

THE POSITION OF THE POLISH CENTRE FOR ACCREDITATION IN THE POLITICAL SYSTEM AND ITS IMPACT ON THE PERFORMANCE EFFICIENCY OF PUBLIC TASKS IN THE FIELD OF ACCREDITATION

Dr. habil. Agnieszka Żywicka, University Professor

Jan Kochanowski University in Kielce, Poland
e-mail: agnieszka.zywicka@onet.eu; <https://orcid.org/0000-0002-5789-8355>

Dr. Paulina Bieś-Srokosz

Jan Długosz University in Czestochowa, Poland
e-mail: p.bies@ujd.edu.pl; <https://orcid.org/0000-0002-7353-3460>

Abstract. This paper examines the position of the Polish Centre for Accreditation within the structure of Polish public administration. On the presumption that the PCA is a specialised administrative entity of a legal nature similar to one of an agency, which performs state tasks by accrediting notified bodies within the product conformity assessment scheme, the article assesses the influence of the Centre's tasks and its position within the political system on the efficiency and quality of public functions it fulfils in the area of accreditation. The study demonstrates that the current structure and position of the Centre in the political system substantially facilitates the efficient implementation of state tasks in respect of accreditation. The research method employed herein in order to achieve the adopted research assumptions is the dogmatic and legal method.

Keywords: agency; accreditation; public administration

INTRODUCTION

Technological advancement and globalisation as well as the resulting increase in specific public tasks have led to the expansion of public administration structures, and thus novel administrative entities have come into being. For the efficient performance of tasks in a specialized economy, it was necessary to establish a new, heterogeneous type of entities. This includes agencies [Gronkiewicz and Ziółkowska 2016, 205; Gronkiewicz 2013, 11]. European integration and the need to accommodate the domestic law to the EU law only intensified the “agencification” of public tasks [Bieś-Srokosz 2016,

9-20; Idem 2015, 23-26; Idem 2013, 27-37]. Such tasks include the accreditation of entities operating in the field of conformity assessment (laboratories, certification and inspection bodies) assigned with particular activities aimed at demonstrating the compliance of products with the relevant technical standards. Intended to confirm and verify the credibility of entities performing conformity assessment of products placed on the EU internal market, the public task of accreditation has both a domestic and EU dimension. Thus, it serves the implementation of the free movement of goods in the EU internal market, constituting an element of the EU regulatory policy in the realm of product safety.

The problem analysed in this study is the influence of the political position of the Polish Centre for Accreditation on the efficiency and quality of public tasks performed in the area of accreditation. In order to vest the normative competence of an accreditation body in a single national entity, it was necessary to organise its activities so as to ensure objectivity and impartiality towards the entities accredited. The particular nature of accreditation tasks called for an entity exceeding the classic structures of public administration, which would employ qualified specialists who demonstrate technical knowledge and competences. This study aims to determine whether the current position of the Polish Centre for Accreditation within the structures of public administration, i.e. as a quasi-executive agency, enables it to perform public tasks in the field of accreditation efficiently.

Based on the identified problems and established goals, it was possible to put forth the thesis that the Polish Centre for Accreditation is a specialised administrative entity of a legal nature similar to one of an agency, which performs state tasks by accrediting notified bodies within the product conformity assessment scheme. The current structure and position of the Centre within the political system substantially facilitates the efficient implementation of state tasks in respect of accreditation.

The research method employed herein in order to achieve the adopted research assumptions is the dogmatic and legal method.

1. LEGAL STATUS OF GOVERNMENT AGENCIES

Government agencies,¹ also referred to as administrative agencies and state agencies by legal academics and commentators, are an example of entities with a special legal status. Their main legislative objective resulted primarily from the implementation of new public tasks of an economic nature. Administrative agencies, namely, were established to modernise

¹ For more information on government agencies in Poland, see: Bieś-Srokosz 2020.

and innovate on agriculture and defence in particular. Several of them, such as the Agency for Restructuring and Modernization of Agriculture, emerged from the Community legal regulations which obliged the Polish state to establish these entities.

It is important to stress that the notion of a government agency, regardless from the terms used herein, denotes an agency organised in the form of a state legal entity. For this reason, the term “government agency” is recommended². Of course, the use of the term “agency” alone is appropriate, but on condition that the interpretation of this concept has been provided beforehand. Therefore, when referring to the definition of the concept of an agency in the *strict sense*, as presented in the literature, it is worth noting that this entity is perceived as an institution established by law in the form of a state legal entity in order to perform the economic tasks of the state within the scope of its competences and powers [Sawicka 2008, 445]. K. Sawicka also emphasises that agencies are state legal persons established on the basis of acts that define their organisational and legal structure, objectives of operation, and principles of financial management. According to J. Niczyporuk, the concept of an agency in the *strict sense* should denote state legal persons or state organisational units with legal personality, established on the grounds of statutory provisions, subject to specification in acts of a lower rank. The purpose of these government agencies is to implement the economic tasks of the state within the scope of competence and authority granted [Niczyporuk 2000, 341]. Whether it is a government agency or not is determined primarily by its organisational and legal form, the scope of the tasks performed, and the method of managing the property of the State Treasury. It is obvious, therefore, that the use of the term “government agency” does not necessarily denote such an entity in fact. In this context, it is essential to indicate the features that distinguish government agencies from other typical public administration entities. First, the legal personality of a government agency is a constitutive feature. A state agency obtains legal personality by means of an act. The act automatically endows this entity with state property. Having obtained legal personality, a government agency is empowered to participate in civil law transactions. The fact that state agencies are granted legal personality stems from their objective, i.e. to perform public functions while supporting the implementation of their tasks with their own economic activity. Nevertheless, it should be emphasised that granting legal personality to an administrative agency means that it has the capacity to perform acts in law and legal capacity conferred by civil law. A state agency may therefore be the subject of rights and obligations, as well as a party to an obligation relationship. At the same

² It is not a mistake to also use the term “administrative agency” or “state agency”.

time, the fact that a government agency is established by means of an act, entrusted with public tasks, and that administrative authority is employed thereto leads to the conclusion that such an agency is a subject of public and administrative law and has administrative [Filipek 2005, 184-85] legal capacity [Łaszczycza, Martysz, and Matan 2003, 292; Niczyporuk 2009, 182-85]. Secondly, it should be pointed out that government agencies are established and operate on the basis of statutes. By means of this normative act, the legislator decides on the organisational structure, organs, tasks and financial management of a government agency. Nevertheless, the statutory regulations are of a framework nature which complements and clarifies the statute of the administrative agency. The internal organisational structure is centralised. Being one of its bodies, the president of the agency has the authority to determine the internal organisation of individual organisational units and departments of the agency on the basis of its internal regulations. In addition, the president manages the state agency and represents it externally. The catalogue of the president's tasks is quite vast, which implies considerable impact on the operation of the government agency in general. The centralised system of the agency consists of a headquarters with the president as the main body, regional offices of a lower level supervised by area directors, and then the district (field) offices led by managers. Although these bodies are subordinate to the agency president, they have a separate catalogue of tasks and competences in their area of operation.

Thirdly, state agencies are hierarchically dependent (subordinate) to government administration bodies. At this point, it should be clarified that it is permissible to use the terms "dependence" or "subordination" in relation to the supreme organs of state administration. Pursuant to the provisions of the law establishing a government agency, this entity is subject to and supervised by the competent minister in the matter. In almost all cases, the relationship of supremacy and subordination of a government agency to the competent minister takes the form of a management system. Should the competent minister, however, pass the statute of an administrative agency by way of an order, it is the case of organisational subordination, where the supreme body is entitled to issue legal acts binding its subordinate entities, defining their general structure, tasks, competences, procedures, etc. This issue will be elaborated on in the chapter on supervision over the activities of government agencies. Another criterion which differentiates government agencies from other public administration entities is the specific scope of the public tasks they conduct. These tasks relate largely to the following fields: innovation, modernisation of agriculture and financing the development of the economy, which contribute to reinforcing the position of the administrative agency at the national and European level. A characteristic feature that distinguishes state agencies from other public

administration entities is their variety of legal forms of operation. When implementing public tasks, these entities use legal forms of activity characteristic both of public (administrative decisions and material and technical activities) and private law (civil law contracts). They have not been empowered by law, however, to freely choose between these two forms of activity, as it is provided for in a specific legal provision in every case. In the current legal state, each administrative agency employs civil law contracts on the basis of specific provisions regulating the creation and operation of government agencies. On the basis of the research conducted, it should be stated that this particular form of activity is most frequently used in the implementation of public tasks by government agencies.

2. POLISH CENTRE FOR ACCREDITATION – – ORGANISATIONAL STRUCTURE

The Polish Centre for Accreditation (PCA) was established pursuant to Article 12(1) of the Act of April 28, 2000, *on the system of conformity assessment, accreditation and the amendment to certain acts*,³ which created the legal grounds for the establishment of a national accreditation body as an impartial and independent body with the aim of performing accreditation tasks. The PCA was established on the basis of the Accreditation Office of the Polish Centre for Testing and Accreditation and the Accreditation Team of Measuring Laboratories of the Central Office of Measures. It began its activity on 1 January 2001, assuming the liabilities and receivables of its predecessors in respect of accreditation, as well as their experienced personnel, operational procedures, a vast group of auditors, and international contacts.⁴ It was already this act that endowed the PCA with legal personality. In terms of its function and organisation, it remained within the structures of the central administration, subordinate to the Prime Minister. The Prime Minister determined the organisation and operation of the unit and appointed and dismissed the head of the PCA. In view of the planned accession of Poland to the EU and the adjustment of Polish law to comply with the *acquis communitaire*, the Act on the Conformity Assessment System was passed on August 30, 2002,⁵ pursuant to which the supervision over the PCA was transferred to the minister competent for economy. No specific changes were made to the status of this entity or the catalogue of its tasks.

³ Journal of Laws of 2000, No.43, item 489.

⁴ <https://www.pca.gov.pl/o-pca/wydarzenia/aktualnosci/akredytacja-i-gospodarka-tworza-system-naczyn-polaczonych,558.html> [accessed: 22.09.2022].

⁵ Journal of Laws of 2002, No. 166, item 1360 as amended.

Under the current legal environment, the status of the PCA within public administration structures is regulated by the Act of April 13, 2016 on Conformity Assessment and Market Surveillance Systems.⁶ It stipulates that the PCA is a national accreditation body authorised to accredit conformity assessment bodies. This act was the result of the “new legal framework” of technical harmonisation, comprising Regulation 765/2008/EC,⁷ which established the legal framework for accreditation, market surveillance and CE marking, as well as Decision 768/2008/EC,⁸ which defined common rules for all harmonisation legislation as regards definitions, criteria for designating notified bodies, conformity assessment procedures, and obligations of entities participating in the production and distribution chain.

Pursuant to Article 4(1) relating to Article 2(11) of Regulation 765/2008 (EC), each Member State is to appoint one accreditation body to be considered as the only authoritative body in that Member State to provide accreditation authorised by the state. Pursuant to Article 38(1) of the Act on Conformity Assessment and Market Surveillance Systems, the Polish Centre for Accreditation was designated as the only national accreditation body. The Centre is a state legal person subordinate to the minister competent for economy.

The documents governing the activity of the PCA include its statute, the Act on Conformity Assessment and Market Surveillance Systems, Regulation 765/2008 (EC), and an annual action plan. The statute of the Centre is passed by the minister responsible for economy by way of an ordinance. The current statute was issued on July 15, 2016.⁹ It defines the internal structure of the unit and the management control system.

The bodies of the Centre are the director as the executive body and the accreditation board as the consultative and supervisory body. The body managing the activities of the Centre is the director appointed by the minister from among candidates selected in a competition organised by the minister for a 4-year term (Article 41 of the Act). At the director's

⁶ Journal of Laws of 2016, item 542 as amended.

⁷ Regulation (EC) No. 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (Official Journal of the European Union, L 218, 13 August 2008, p. 30) [hereinafter: Regulation 765/2008/EC].

⁸ Regulation (EC) No. 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC (Official Journal of the European Union, L 218, 13 August 2008, p. 30) [hereinafter: Regulation 768/2008/EC].

⁹ The statute of the Polish Centre for Accreditation is specified in the Regulation No. 39 of the Minister of Development of 15 July 2016 on granting the statute to the Polish Centre for Accreditation – consolidated text (Official Journal of the Ministry of Entrepreneurship and Technology of 2018, item 45).

request, the minister appoints two deputies selected in a competition organised by the director. The tasks of the director include: 1) financial management of the Centre and the management and management of its assets; 2) independently performing legal acts on behalf of the Centre, 3) preparing the Centre's annual financial plan and financial plan in a task-oriented system for a given budgetary year and for 2 subsequent years and presenting it (after obtaining a positive opinion of the Council) for approval to the Minister, 4) preparing the annual financial statements of the Centre together with an audit report drawn up by an audit firm, by March 31 each year and presenting it (after obtaining a positive opinion of the Council) for approval to the Minister, 6) preparing and presenting it to the Minister responsible for economy, by March 31 each year, the draft annual activity plan of the Centre approved by the Council, covering the issues of implementation of the specific tasks of the Centre, and the annual report on the implementation of the tasks of the Centre approved by the Council (Article 47 of the Act).

The Accreditation Council is a collective body with up to 20 members. This number ensures a balance of votes in the Council among delegates of government administration bodies and organisations representing conformity assessment units, spokespersons of nationwide organisations representing consumers, employers, as well as economic, scientific and technical organisations, a representative of the Polish Committee for Standardization, and a representative of the President of the Central Office of Measures. Council members are appointed by the minister from among candidates proposed by the above-mentioned bodies and institutions for a five-year term (Article 49 of the Act). The tasks of the council include: 1) examining the status and directions of accreditation development; 2) scrutinising the substantive activity of the Centre; 3) reviewing and approving projects, annual financial plans and financial statements prepared by the director; 4) assessing the applications regarding the distribution of the Centre's profit; 5) appraising the appointment and dismissal of members of the Appeal Committee operating at the PCA.

There is an accreditation council functioning at the PCA, with 3 to 10 members appointed by the minister upon consulting non-council members. The task of the Appeal Committee is to consider appeals against decisions refusing to grant, suspend, withdraw or limit the scope of accreditation (Article 57 of the Act).

In terms of financing, the PCA is an independent and self-sustained non-profit entity, covering its operating costs from its own revenues. This includes employee salaries and investments. The income sources for the Centre are revenues from service fees charged on the accreditation of conformity assessment bodies, fees for supervision of accredited conformity assessment

bodies, and other revenues. Profit from the accreditation activity conducted may be allocated to its development.

The minister responsible for economy exercises substantive and financial supervision over the PCA's activities. This entails the following: financial inspection on the terms and in the manner stipulated by the regulations on inspecting government administration; approving of the Centre's draft annual financial plan; appraising any changes to the Centre's financial plan; approving of the Centre's annual accounts; accepting the report on the activities of the Centre presented by the Director; evaluating the activities of the Centre on the basis of the reports submitted (Article 57 of the Act).

3. POLISH CENTRE FOR ACCREDITATION AS A GOVERNMENT AGENCY?

The legal status of the Polish Centre for Accreditation can be likened to that of an executive agency. While it is true that the legislator does not directly state that the Polish Centre for Accreditation (PCA) is an executive agency in the Act on Conformity Assessment and Market Surveillance Systems, its features are fully consistent with those of executive agencies. This is mainly due to the fact that the PCA is a state legal person established on the basis of an act.¹⁰ Furthermore, its activity is aimed at implementing specialized public tasks and is supervised by the competent minister.

The legal status of by the Polish Centre for Accreditation is a state legal person, which results from Article 38(2) of the Act on Conformity Assessment and Supervision. It stipulates that the PCA has legal personality in the light of the provisions of civil law. State legal entities, which also include government agencies, are established mainly in order to shift the actions taken in the field of civil law economic relations from the State Treasury bodies to specialists performing the functions of state bodies of legal persons [Radwański 2011, 193]. State legal persons perform public tasks of an economic nature, bringing economic benefits to the state. They are defined by legal academics and commentators [Bednarek 1997, 78; Klein 1983, 128; Frąckowiak 2012, 1176] as entities by virtue of which the economic interests of the state are safeguarded.

Consideration of the legal situation of PCA only from the private law perspective should first of all review the legal personality of this entity. In the light of civil law,¹¹ the fact that a given entity has acquired legal

¹⁰ Act of 13 April 2016, Journal of Laws of 2022, item 5.

¹¹ Article 33 of the Civil Code stipulates that legal persons include the State Treasury and organisational units granted legal personality by virtue of a special provision. It follows, therefore, that the State Treasury is not an organisational unit, and the term "granted legal

personality implies that it is an organisational unit with legal personality. In such case, it is appropriate to regard the PCA as the embodiment of the state in property relations. It is, therefore, a completely separate unit, the structure of which resembles the construction of a typical organisational unit with legal personality, comprising an element of organisation, property, and people. Legal personality not only allows PCA to enter into civil law relations and participate in economic transactions in the broad sense but also to conclude civil law contracts. Therefore, it is worth considering that the legal personality of the Polish Centre for Accreditation is a means needed for the state to perform public tasks rather than a means to satisfy its own needs [Szydło 2008, 103]. In civil law transactions with the State Treasury, the PCA as a state legal person should act as an autonomous legal person, equal to the other party. Legal personality indicates its empowerment, allowing the PCA to function in civil law transactions as well as endowing it with the capacity to perform acts in law and legal capacity conferred by civil law. Therefore, it may be a subject of rights and obligations, as well as a party to obligatory relations. At the same time, it is a subject in terms of public and administrative law [Filipek 2005, 185-86] and has legal capacity in terms of administrative law [Łaszczyca, Martysz, and Matan 2003, 292; Niczyporuk 2009, 182-85].

It should be recalled that it is a normative act of the rank of a bill that must clearly recognize the entity as a legal person [Frąckowiak 2012, 1140]. Moreover, the issue of liability does not arise in relation to legal persons that are created by means of a normative act. The linguistic interpretation of the term “endowment” of a legal person with property stipulates that it should arise free from any burden of debt. As to assigning the legal consequences of certain actions to a given organisational unit, including PCA, it is possible only when there is a basis for marking it and separating it from other organisational units, i.e. indicating its name and seat. Additionally, what makes it possible to consider an organisational unit as a whole is that it has its own structure. For this reason, it is, indeed, possible to distinguish the Polish Centre for Accreditation from other organisational units.

While there is no doubt that the PCA is an organisational unit with legal personality, it should be emphasized that it is a “fictional” creation nevertheless [Pazdan 1968, 202]. Its rights and obligations are performed, namely, by an entity separated from the PCA’s structure, on the terms specified in the legal act establishing the Polish Accreditation Centre.¹² These entities

personality” should be understood in the strict sense. It should be noted that legal personality is determined only by a legal provision. In Article 33 of the Civil Code, the legislator does not directly *grant legal personality to* government agencies, but only makes reference to individual legal regulations that determine the organisation and structure of an agency.

¹² This is due to Article 38 of the Civil Code.

act for and on behalf of the PCA, taking legal actions only in those forms which are provided for in a specific legal provision. In the case of PCA, we can define permanent bodies¹³ whose position in the system was set out in the founding legal act. This suggests that the scheme of the PCA's bodies results from the legal norm, while the actions of a specific natural person acting as one of its bodies must not exceed the scope of the behaviour designated for this particular PCA body in general.

It is also worth mentioning the supervision that the Minister of Economy exercises over the Polish Centre for Accreditation. Taking into account the fact that the Minister appoints and dismisses the Director of the PCA and establishes the entity's statute by way of an ordinance, it is a hierarchical dependence (subordination) towards government administration bodies, and even organisational subordination, that constitutes the PCA's position. Within this relationship, the supreme body is empowered to issue additional legal acts binding the PCA. These may define its general structure, tasks, competences, procedures, etc. There is a certain similarity to government agencies in relation to financial supervision, where the minister supervises their budget by issuing opinions, approving or consenting to changes to the PCA's financial plan. The visible difference, however, lies in the PCA's Appeals Committee. Constituting an additional organisational form, it is to consider appeals in cases of decisions refusing to grant, suspend, withdraw or limit the scope of accreditation.

3. ACCREDITATION AS A PUBLIC TASK

Public tasks do not constitute a uniform category and do not have a normative definition. They are often equated with legal forms of administration activities [Stahl 2011, 41], and are the subject of many scientific studies. Legal academics and commentators define them as tasks of the state, which it conducts independently or by means of its bodies; it may also transfer these tasks to other entities of public administration [Stahl 2011, 41; Chruściel 2014, 95-120]. A detailed record and review of the standpoints presented by different legal theorists has been advanced by L. Zacharko. In an attempt to capture the essence of a public task, he adopted a functional approach, according to which a public task means an administrative obligation which constitutes a specific purpose of an administrative body [Zacharko 2000, 13-17]. It is this approach that will be adopted in this study. However, it should be noted that public economic law also recognizes the public task

¹³ Centre Director and the Council for Accreditation, Article 40 of the Act on Conformity Assessment and Supervision Systems.

as a function [Popowska 2006, 80; Lissoń 2006, 91], yet this context goes beyond the scope of this study and, therefore, will not be analysed.

When considering the issue of accreditation as a public task, attention must be drawn to the wider context, as it is the cause of its intensive development both at the national level and, above all, the EU level, where its principles undergo harmonisation. Accreditation is an element of the EU regulatory policy in terms of product control, adopted by the EU under the “New Approach” to technical harmonisation. The dynamics of market processes occurring in the economy (technological development, introduction of new processes, systems, technologies, and the production of various products used in various areas of life) have triggered new trends and challenges. This includes the need to introduce uniform regulations regulating the principles of controlling the safety of new technologies and products by accreditation. These complex consequences (also in terms of the law), which imply technological development in various spheres of social and economic life, have imposed new tasks in the economy on the state and its bodies [Żywicka 2017, 266]. Given the intensified trade between countries within the EU internal market, it was necessary to create an appropriate legal scheme of product safety control to include accreditation. From the institutional point of view, product safety control is a public task and the manner of its implementation is determined by particular Member States in their domestic law.

The normative definition of accreditation is stipulated by Article 2(10) of Regulation 765/2008 (EC), pursuant to which “accreditation” shall mean an attestation by a national accreditation body that a conformity assessment body complies with the requirements set out in harmonised standards and, if applicable, any additional requirements, including requirements set out in the relevant systems sector measures necessary to carry out specific conformity assessment activities.

When describing the essence of accreditation as a public task, one can use the definition formulated by Ł. Gorywoda, whereby accreditation is a formal system ensuring independent and authoritative certification of the competence, impartiality and integrity of the conformity assessment body [Gorywoda 2011, 72]. Certification of the competence of a conformity assessment body (notified body) is the basis for establishing and maintaining confidence in the results of work of these bodies and for specific certificates, tests and the results of the inspections conducted within the entire conformity assessment system [ibid.].

Taken in a broad sense, accreditation as a public task serves to increase the safety of products placed on the market as well as build and reinforce the trust of users, both in notified bodies and in products (certificates) that have been assessed by them, thus contributing to economic development. Regulation 765/2008 (EC) introduced a coherent framework for accreditation

at the EU level, laying down the principles of its functioning and organisation. This has had an impact both at the national and EU level. The implementation of this task gave rise to a single EU safety certificate, recognised by all EU Member States. It is worth stressing that a coherent accreditation framework requires that each notified body is reported to the European Commission and the European NANDO database during accreditation.¹⁴ This is to fulfil the information duty regarding notified bodies which perform conformity assessment tasks in the EU.

In line with the intention of the EU legislator, accreditation is not classified as an economic activity. It may therefore only be performed non-for-profit.¹⁵ While accreditation bodies may charge fees for their services or receive income, they are not intended to maximize or distribute profits. Any excess revenue resulting from the provision of services may be used to invest to develop the activities of the national accreditation bodies further, provided it is compatible with their primary activities. The EU legislator emphasises that accreditation should be a self-financing activity in principle. Member States should provide adequate financial support for the implementation of any special tasks. Should an accreditation body generate revenues exceeding its operating costs, it is recommended to take steps to reduce profits by reducing accreditation fees or expanding its scope of activities.

Pursuant to Article 38(1) of the Act on Conformity Assessment and Market Surveillance Systems, all public tasks in the field of accreditation in Poland are executed by the Polish Centre for Accreditation. The tasks related to accreditation conducted by the PCA include the following activities: 1) accreditation of conformity assessment bodies; 2) supervising accredited conformity assessment bodies in terms of their compliance with statutory requirements; 3) keeping a record of accredited conformity assessment bodies; 4) conducting activities aimed at promoting accreditation, including the organisation of non-commercial training and publishing activities; 5) international cooperation in the area of accreditation, in particular within the European Cooperation in the Field of Accreditation. The Centre may also conclude agreements with foreign accreditation bodies on mutual recognition of the competences of accredited conformity assessment bodies.

¹⁴ Website – Nando search engine. Nando (New Approach Notified and Designated Organisations) is a European Commission database of all the notified bodies: <https://ec.europa.eu/growth/tools-databases/nando/index.cfm?fuseaction=notifiedbody.main> [accessed: 22.09.2022].

¹⁵ Recital No. 14 of Regulation 765/2008 (EC).

4. THE POSITION OF THE POLISH CENTRE FOR ACCREDITATION IN THE POLITICAL SYSTEM AND THE EFFICIENCY OF ACCREDITATION

In order to present the role of the Polish Accreditation Centre within the political system as an entity performing public tasks in the area of accreditation, it is necessary to illustrate the framework rules for placing products on the EU market. In principle, prior to placing a product on the EU market, a manufacturer is obliged to ensure that their product complies with the requirements set out in the relevant provisions (EU directives and regulations) which implement harmonised standards. This ensues through conformity assessment. Compliance with a harmonised standard provides a presumption of conformity. Admittedly, the application of harmonised standards is voluntary. Should, however, other standards be used, the manufacturer is still obliged to confirm the compliance of the product with the requirements by subjecting the product to the conformity assessment procedure. The structure of conformity assessment involves eight basic modules constituting various conformity assessment procedures, according to which product tests are performed. The choice of a given module is contingent on the product class and the level of risk it generates [Cieśliński and Zymonik 2007, 291-93]. Depending on the product classification and safety risk assessment, it is required that the conformity assessment be conducted by an external and impartial notified body. Its impartiality and competence must be previously confirmed in the accreditation process by the accreditation body in accordance with the principles set out in Regulation 765/2008 (EC) [Żywicka 2019, 195-203]. The notified body is also regularly monitored by the accreditation body in order to verify the quality of its product conformity assessment. The verification of the competence of a commercial conformity assessment service provider through accreditation by an independent body is therefore crucial for the credibility of the conformity assessment results.

It is noteworthy that some of the tasks in the conformity assessment system, particularly the assessment of product conformity, have been subject to the privatization process [Żywicka 2020, 135-53; Fleszer 2012, 7; Kieres 2012, 86; Zimmermann 2016, 210-11; Zacharko 2000, 31; Błaś 2000, 23; Biernat 1994; Bieś-Srokosz 2018, 509-22]. Therefore, these activities are performed mainly by non-public entities, i.e. entrepreneurs for whom conformity assessment is the subject of their economic activity. With this fragment of the conformity assessment system privatised, the impartiality and independence of the entity performing these tasks from the entities assessed is the *sine qua non* for reliable conduct of accreditation. The above-mentioned postulate was formulated in Regulation 765/2008 (EC) in relation to national

accreditation bodies. In order to prevent any competition between particular accrediting bodies, the EU legislator also requires the Member States to establish only one accrediting body per state. In the Polish legal system, this requirement has been fulfilled by entrusting accreditation tasks to the Polish Centre for Accreditation. As an agency-type entity, it remains within the structures of public administration. It may seem, therefore, that this position guarantees the PCA's independence and impartiality to supervised entities in respect of the accreditation services provided.

Taking into account the considerations presented herein, it is finally possible to assess whether the position within the political system as determined by the legislator allows the PCA to efficiently perform the tasks with which it was entrusted, and whether it ensures high quality of the services the PCA provides in the field of accreditation. At this point, attention should be drawn to the organisational structure of the PCA as a state agency. In this type of administrative entities, one party (supervisor) delegates work to the other (agent). The superior party in this relationship is the state (represented by the minister for economy), whereas the agent is a specialized unit, i.e. the Polish Centre for Accreditation. This has been identified as the agency's disadvantage, as such a relationship may lead to a goal conflict between the state and the superior party.¹⁶ This, in turn, may reduce the task performance in terms of the superior party's goals, harm the final recipients of a given service, i.e. the agent's clients, and generate high costs related to supervision and verification of the agent's activity (agency costs, transaction costs).

The instrument applied by the legislator under the Act on Conformity Assessment and Market Surveillance Systems with the aim of limiting the problem described above is granting the Accreditation Council independence from the PCA director. The Accreditation Council is an expert body with specific competences, which include appraising plans and financial

¹⁶ Upon analysing the content of the legal provisions examined, it is possible to conclude that authorising the competent minister to issue binding guidelines or orders is an example of a management system. As a result, the relationship of superiority and subordination between an organisational unit and a minister is based on the principle of management, which is regulated by management acts, i.e. guidelines, instructions, circulars or ordinances. The minister issues management acts on the basis of the competence standard stipulated in Article 34a of the Act on the Council of Ministers. Their managerial value lies in the fact that they order subordinated entities to act or perform a task in a specific way or assume a particular legal form of their performance by virtue of a directive. Although addressed to a specific recipient, they normalise the situation of entities outside the organisational system of the subordinated entity in most cases (e.g. in relation to government agencies). In this regard, it seems appropriate to claim that government agencies are an example of centralised entities subordinated to a higher body on the basis of management rather than supervision [Korczak 1991; Pakuła 1991].

reports, approving plans and substantive reports, reviewing applications regarding profit distribution, evaluating candidates for members of the Appeal Committee. It consists of expert representatives of the community involved in the accreditation process, who demonstrate substantive knowledge in this field and who have been appointed by the minister. An independent assessment of the functioning of the unit provided by experts and conducted with the participation of a wide range of entities interested in the PCA activities contributes to the efficiency and quality of accreditation services. The Council is also the basic forum for discussion and exchange of views as well as organisation of the environment involved in the accreditation and conformity assessment process, i.e. conformity assessment bodies, economic organisations and public administration bodies.

The quality of tasks performed by PCA is also increased by the legal mechanism for the control of PCA's decisions in the second instance (Appeal Committee of experts at the PCA) and the admissibility of submitting a complaint to the administrative court against final decisions (Articles 25 and 26 of the Act). In the event of the PCA granting, refusing to grant, withdrawing, suspending or limiting the scope of accreditation, a conformity assessment body may appeal to the Appeal Committee of experts operating at the PCA. After considering the appeal, the Appeal Committee may state that it is justified and refer the case to the PCA for reconsideration, or dismiss the appeal. In this case, the conformity assessment body seeking accreditation may file a complaint to the administrative court through the Appeal Committee. Moreover, the Polish Centre for Accreditation is obliged to inform the ministers and heads of central offices relevant with regard to the subject of conformity assessment about the restriction, suspension, or withdrawal of accreditation to a notified body or a recognised third party organisation (Article 24(8) of the Act).

CONCLUSIONS

The analysis presented in this article, demonstrating the position of the Polish Centre for Accreditation within the political system in the context of its impact on the efficiency and quality of public tasks in respect of accreditation activities it performs, does not exhaust the issue at hand. It may be regarded merely as an introduction or a contribution to a discussion. However, the findings hereof make it possible to formulate several remarks or signal the crucial issues and doubts which arise in connection with the subject presented. First of all, it is becoming noticeably common in the system that the state seeks novel forms for the performance of public tasks. This is closely related to the growing social needs as mentioned at the beginning and aimed at increasing the efficiency of task performance

by public administration [Jagielski, Wierzbowski, and Wiktorowska 2005, 211-19].

Despite being a state legal person, which results directly from legal provisions, the Polish Centre for Accreditation has an ambiguous legal status compared to other public administration entities in Poland. This article has attempted to demonstrate that the PCA may be described as a quasi-government agency. Although not entirely so in the sense stipulated by legislation or by legal academics and commentators, its characteristics correspond to those of government agencies in many cases. It can be concluded, therefore, that the quasi-agency nature of the PCA reflects the economic needs as to the efficient and independent conduct of accreditation by an entity which employs qualified personnel within its structures. Remaining somewhat beside the classic forms of the administrative apparatus, and, more importantly, being able to finance its activities on its own, the PCA maintains relative independence and impartiality, both towards accredited entities and public authorities.

All things considered, an accreditation scheme executed according to binding regulations contributes to developing mutual trust among Member States as regards the competence of conformity assessment bodies and, consequently, the certificates and test reports they prepare. Thus, this scheme upholds the principle of mutual recognition of accreditation results. It is about the quality of certificates and test reports issued by notified bodies throughout the European Union. Therefore, accreditation is an equally important task at both the European and national level. Hence the need of an administrative entity with a new structure, similar to the one of an agency. It may be concluded that the model adopted by the Polish legislator fulfils the role assigned by the EU legislator as the structure of the Polish Centre for Accreditation facilitates the efficient implementation of these tasks.

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