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Single Market for goods
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NOTE TO THE EXPERT GROUP ON THE INTERNAL MARKET FOR PRODUCTS (IMP)

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<p style="text-align: center;">Abstract:</p> <p>This paper aims to reach a common understanding on how to implement the not-for profit character of accreditation that is envisaged by Regulation (EC) No 765/2008. It argues that any excess revenue should be reinvested in reducing tariffs charged to conformity assessment bodies and in the development of accreditation.</p>			
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References:	Regulation (EC) No 765/2008 setting out requirements for accreditation and market surveillance relating to the marketing of products		



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Accreditation as a not-for-profit activity

1. OBJECTIVE

The aim of this paper is to reach a common understanding on the provisions concerning the not-for-profit character of accreditation according to Regulation (EC) No 765/2008 setting out the requirements for accreditation and market surveillance (the Regulation).

Bearing in mind that the ultimate say on matters of EU law rests with the Court of Justice of the European Union, this draft paper contains a proposal for a common understanding and pragmatic solution for this question.

2. BACKGROUND

The Regulation links accreditation's character as the last level of public control in the conformity assessment system to its public authority character, which is underpinned by its not-for-profit character.

Article 4(7) stipulates that national accreditation bodies must act on a not-for-profit basis.

Recital 14 of the Regulation qualifies: *'For the purposes of this Regulation, not-for profit operation should be understood by a national accreditation body as an activity that is not intended to produce any gain to the resources of the body's owners or members. While national accreditation bodies do not have the objective of maximising or distributing profits, they may provide services in return for payment, or receive income. Any excess revenue that results from such services may be used for investment to develop their activities further, as long as it is in line with their main activities. It should accordingly be emphasised that the primary objective of national accreditation bodies should be to support or engage actively in any activities that are not intended to produce any gain.'*

Article 4(9) stipulates that Member States need to ensure that their national accreditation body has the appropriate resources to fulfil special tasks such as the support of European and international accreditation cooperation and activities that support public policy and which are not self-financing.

According to Article 4(6), the responsibilities and tasks of the national accreditation body have to be clearly distinguished from those of other national authorities.

3. PROBLEM

There have been instances, especially in cases where the national accreditation body takes the form of a government agency, where “excess” revenues of the accreditation body have been transferred back to the state budget. Any such regular transfers to the state as the body’s owner would leave serious doubt about the not-for-profit character of the body’s operations required by the Regulation and by extension, the tariffs it charged for obtaining accreditation.

4. COMMON APPROACH

Regular excess revenues could be a signal that there is a potential to reduce the tariffs charged for accreditation and to encourage smaller conformity assessment bodies to apply for accreditation. Given the prominence that the Regulation gives to accreditation’s not-for-profit character, Recital 14 clarifies that accreditation is not to produce any gains to its owners or members. In the case that there should nevertheless be any gains, the situation may be corrected by the reduction of tariffs or the revenue may be reused for the further development of accreditation, so as to avoid any conflict with the not-for-profit principle of the Regulation. One could reasonably expect that any excess revenues generated by an accreditation body could also be used to support the accreditation body’s involvement in the accreditation activities in the European, international or public sphere.

Regardless of the legal structure of the national accreditation body, there should thus not be a regular transfer of excess revenue to the owners or members of the national accreditation body – be they public or private. Using accreditation as another form of revenue for the state would in consequence cast serious doubts on its compliance with the Regulation’s intentions concerning the not-for-profit character of accreditation.