



NOTE TO THE EXPERT GROUP ON THE INTERNAL MARKET FOR PRODUCTS

Title:	CERTIF 2012-04 REV4 – The legal personality of accredited bodies – the case of natural persons		
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Abstract:			
<p>The objective of the present paper is to lead to a common understanding that conformity assessment bodies, in order to be eligible for accreditation, should be legal persons or constitute an organisational structure of some sort. The accreditation of natural persons working individually without an organisational structure would blur the lines between accreditation and the certification of individuals.</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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Single Market for goods
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The legal personality of accredited bodies – the case of natural persons

1 Objective of the paper

This paper aims to provide a common understanding on the legal form that accredited bodies should take in order to fulfil the requirements of Regulation (EC) No 765/2008 (the Regulation) and satisfy the relevant standards, namely the EN-ISO 17000 series.

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

2. Problem definition

In the context of the Regulation, the question has arisen whether natural persons may be treated in the same way as legal persons when it comes to accreditation. The Regulation consistently refers to conformity assessment "bodies". The term is clearly suggestive of the notion of a certain organisational structure and, therefore, a legal entity as opposed to a private individual. However, the term 'body' does not necessarily exclude natural persons.

It is therefore appropriate to see whether natural persons alone can fulfil the requirements of the Regulation without undermining the objectives of the accreditation system as set up therein.

3. Solution

In practice, the accreditation of individuals on the basis of personal competence and without it being a company which de facto has no legal personality would raise a number of problems.

Accreditation makes reference to a number of internal procedures that a conformity assessment body needs to have in place in order to comply with the requirements of the Regulation. International accreditation standards of the 17000 series also refer to procedures, to the organisational structure of conformity assessment bodies, their processes and management systems. There is a constant reference to the following aspects in the accreditation standards:

- The personnel as distinct from the management of a conformity assessment body and their respective roles in the conformity assessment process

- The training and supervision of the of the technical competences of the personnel
- Adequate complaint handling mechanisms
- Internal audits
- Management reviews

In some cases such as EN-ISO/IEC 17021 on the certification of management systems and EN-ISO/IEC 17024 on the certification of persons, the certification decision must be taken by a person other than the one who performed the audit.

The accreditation of natural persons also raises concerns about liability and responsibility as well as independence and impartiality. This is the reason why, EN ISO/IEC 17020 for instance, explicitly prohibits a link between the remuneration of the inspectors and the number of inspections carried out. In the case of an individual acting alone such a link would be inevitable.

The accreditation of individuals not representing a de facto organisation would need to focus extensively on the personal qualifications of the person in question and would thus blur the line between accreditation and the certification of individuals according to EN ISO/IEC 17024. As a result, the strict separation and non-competition between the two activities as enshrined in Art. 4(8) and 6(1) of the Regulation would be undermined – putting into question the role of accreditation as the last level of public control.

The importance given to organisational structures and processes implies that accreditation criteria may only be met by legal persons or by individuals that de facto represent an organisation as a whole. Natural persons working individually without an organisational structure are unlikely to meet the requirements laid down in the harmonised standards.

Thus while a one-person company may have the organisational provisions in place to fulfil the requirements of accreditation, a natural person working individually without an organisational structure would not.