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SUPERVISION OVER THE INTERNATIONAL ACTIVITIES OF NATIONAL COMPETITION AUTHORITIES (THE POLISH EXPERIENCE)

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Abstract:

In recent years, there has been growing international cooperation between national competition authorities (NCAs). This takes various forms – from bilateral cooperation to establishing transnational competition networks. At the same time, this process has not been accompanied by the development of supervisory mechanisms. The article seeks to review the national control mechanisms that may be used to supervise international cooperation between NCAs. They are based on the Polish example and presented in a comprehensive way in order to capture all possible forms of control, such as hierarchical administrative control, control exercised by an ombudsman, a public prosecutor, specialised supervisory administrative authorities and the European Commission, covering judicial (both national and European) supervision, parliamentary and social control. The article supports the view that proper mechanisms of control over the activity of specialised and often independent administration authorities (such as NCAs) are crucial for their accountability. Such mechanisms are also beneficial for the accountability of transnational competition networks.

Keywords:

international cooperation, national competition authority, supervision of public authorities, hierarchical administrative control, parliamentary oversight, social control

INTRODUCTION

National public administration traditionally engages in matters that are national by nature. International relations (matters) have generally been reserved for the central government (usually the head of the government supported by the ministry of foreign affairs) or its specialised agencies (such as agencies supporting exports or foreign investments). Hence it is not surprising that existing national supervisory mechanisms generally focus on controlling and reviewing the execution of national administrative jurisdiction. However, this seems to be inadequate in order to capture the new developing sphere of activities of national public administration that is related to international matters. The processes of globalisation and Europeanisation have a deep influence on national public administration systems. However, this impact is not uniform, which is especially visible in relation to the supervision of international activities undertaken by national public administration bodies. An excellent example of this phenomenon is the regulation of supervision over the international activities of national competition authorities (NCAs). As a starting point for the analysis, the Polish legal and administrative system will be taken into account. Although this NCA may not be wholly representative for all European NCAs, the identified issues are universal in nature and may be relevant for other national jurisdictions.

The issue of supervising the international activity of NCAs touches on the very essence of cooperation between NCAs from various countries, and thus its transnational character. For this reason, it is not the activity itself, nor the existence of a network of competition authorities that is becoming a source of problems, but rather the transnational aspect of their activity. Due to this transnational element of the international activities of NCAs, these activities escape national (state) supervision.¹ In this context, the possibilities of effectively controlling transnational competition networks at a global level seem particularly problematic. This issue may also raise doubts in the case of continental organisations. In the EU, there are two basic problems: how to determine the jurisdiction of national and European courts when supervising European networks (this is a derivative of the issue of the division of competences between national authorities and the Commission and other EU institutions in the case of a network applying EU law), and what fundamental rights will apply to network activities.² These problems point to the fact that, at EU level, there is a lack of adequate administrative mechanisms for controlling networks and the national authorities operating within them (they are essentially limited to judicial review, plus the very limited role of the European Ombudsman). It is emphasised that complex administrative procedures in the EU do not create a new administrative law order, but are rather a collective descriptive category.

- 1 HAMANN, A., FABRI H.R. (2008) Transnational Networks and Constitutionalism. *International Journal of Constitutional Law*, 6(3–4), p. 484.
- 2 BIGNAMI, F. (2010) Individual Rights and Transnational Networks. In: Rose-Ackerman, S., Lindseth P.L. (eds.), *Comparative Administrative Law*. Cheltenham–Northampton: Edward Elgar, p. 636.

The result is that, within the multilevel European administration, there are no specific legal protection measures other than those offered by EU law or national laws.³

Taking all this into consideration, the article will examine possible supervisory mechanisms that may be used to review the international activities of the Polish NCA (including within networks). The analysis will be conducted by examining all the existing and available supervisory mechanisms, with a focus on how they may be used to exert control over the international activities of the Polish NCA. First, it is worth analysing whether national (Polish) law has adequate hierarchical administrative control mechanisms in this respect. Then the next level and forms of administrative control, i.e. as exercised by the Polish ombudsman, public prosecutors, specialised supervisory administrative authorities and the European Commission, will be analysed. That is followed by an overview of judicial (both national and European) control that may take place in the analysed respect. In addition, parliamentary oversight will be discussed. Last but not least, various forms of informal, social control will be considered. The article is completed with some conclusions and recommendations.

HIERARCHICAL ADMINISTRATIVE SUPERVISION OVER THE INTERNATIONAL ACTIVITIES OF THE POLISH NCA

The basic issue emerging in the context of hierarchical administrative supervision in relation to the international activities of the Polish NCA is that this control is often illusory. Traditional public administration relations are hierarchical, whereby authorities with a social mandate exercise control over other official organs. This traditional image of relations has changed significantly in the face of the Europeanisation and globalisation of public administration. Influenced by or obliged by European law, national legislators have given the status of independent authorities to many public administration organs. This has resulted in a significant formal limitation on the possibility of exercising hierarchical administrative control over these independent authorities. At the same time, it meant that these authorities became not only largely independent of national governments, but paradoxically it led to supranational bodies, EU institutions, becoming the guarantors of this independence. This problem has been reinforced by two factors: 1) the membership of national independent administrative authorities in supranational networks, and 2) the transnational nature of many administrative matters requiring international cooperation between national administrative authorities. It is important to realise that, according to some researchers, almost every regulatory issue may now be considered to have an international dimension.⁴ In the Polish context, it is not possible for the Ministry of Foreign Affairs to maintain its monopoly on contacts with foreign governments and national authorities of other states or international and

3 CANANEA della G. (2004) The European Union's Mixed Administrative Proceedings. *Law and Contemporary Problems*, 68 (1), p. 215.

4 Warning, M.J. (2009) *Transnational Public Governance. Networks, Law and Legitimacy*. Basingstoke–New York: Palgrave Macmillan, p. 23.

transnational organisations. As a result, the Ministry of Foreign Affairs has effectively limited its functions to providing consular protection and maintaining diplomatic relations. Transnational cooperation in administrative matters has become the domain of ministries and other public administration authorities.⁵ Currently, the role of the Ministry of Foreign Affairs in coordinating the international activity of Polish administrative organs is even more limited. The Ministry of Foreign Affairs still takes a leading role whenever binding norms (European or international) are adopted on a European or international forum, or in the event of litigation before European or international tribunals and courts to which Poland is a party. Apart from these situations, however, the Polish NCA (and probably the vast majority of Polish public administration authorities) operates basically independently within the European administrative space. In addition, the Polish NCA operates completely independently of the Ministry of Foreign Affairs in many transnational competition networks. So far, the Ministry of Foreign Affairs has ever formally tried to establish the position of the Polish NCA presented on the forum of transnational networks. In the course of researching this article, no information was found that the Ministry of Foreign Affairs has ever taken any action in connection with the Polish NCA creating or acceding to any supranational network of competition authorities (such as the ECA or ICN). Serious doubts may also be raised about how strongly the Ministry of Foreign Affairs actually supervises the developments in the Polish position on the proposed content of binding European law. One example would be negotiations on the content of the ECN+ Directive,⁶ during which the Polish negotiating position was based almost entirely on the position of the Polish NCA. The Ministry of Foreign Affairs did not notice, for example, that the proposed guarantees of the independence of competition authorities are contrary to the decisions of the Polish parliament on limiting the independence of the Polish NCA, and it did not in any way try to influence the position of the Commission in this respect.⁷ This demonstrates the illusory nature of the Ministry of Foreign Affairs's control, not only in areas related to administrative international cooperation of the Polish NCA, but even in areas where the Ministry of Foreign Affairs should traditionally play a leading role.

The scope and influence of national hierarchical administrative control mechanisms is naturally restricted as a result of the internationalisation of public administration. The creation of transnational administrative networks (in particular in the European Union) often led to legislative changes. Those changes involved strengthening the national guarantees and procedures for independent exercising administrative jurisdiction. Moreover procedures within a network (e.g. the ECN), which minimise the impact on the network and its members on NCAs, may often constitute a significant barrier

5 Ibid.

6 Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, OJ L 11, 14.01.2019, pp. 3–33.

7 In the last decade, the Polish Parliament has twice directly deprived the Polish NCA of any formal guarantees of independence.

to ministers and national governments entering the administrative jurisdiction of competition authorities.⁸ This shows that national public administration authorities, by relying on standards of European law and enjoying the support of EU institutions, can limit national mechanisms of control.

At the same time, the issue of hierarchical administrative control and the possibility of supervisory interference in the activities of a national public administration organ by another public administration authority (e.g. a higher level (appellate) authority) touches on the essence of international cooperation and the activities of transnational networks. It is only possible for the national administrative authorities to participate in these networks if they enjoy jurisdictional independence. Cooperation at a transnational level is effective only if the cooperating authorities enjoy such independence.⁹ A situation where every administrative action requires the approval of another authority, or when the authority cannot make any arrangements with other authorities without prior national consultation, means that the effectiveness of cooperation within the network with that authority decreases significantly. For this reason, a reasonable boundary and appropriate measures should be set out for hierarchical administrative control of the activity of national authorities within transnational networks. At the same time, it is impossible not to notice that neither the Polish NCA nor any other Polish regulators have their own higher level (appellate) authorities or ministries with which they would be obliged to consult before presenting their position on the international or network fora. Moreover, in the case of the Polish competition authority, it would be difficult to find another Polish central authority with which it could consult in order to obtain substantive support in antitrust or merger matters. The Polish NCA has been structurally and organisationally independent from the beginning, and was never part of any ministry.¹⁰ The actual independence of Polish NCA has very broad from the start, which was also due to the specialised matters it dealt with. However, in many countries, competition authorities were once part of ministries, and in these cases control mechanisms seem to have been better developed. In Norway, for example, mechanisms for intra-administrative control exercised by the Minister of the Economy in relation to the competition authority included reporting obligations, the coordination of activities or obtaining a negotiation mandate. The basic instrument of control took the form of periodic reports, and other information provided by the competition authority to the minister, which also covered the Norwegian NCA's activity within transnational

8 DANIELSEN, O.A., YESILKAGUT, K. (2014) The Effects of European Regulatory Networks on the Bureaucratic Autonomy of National Regulatory Authorities. *Public Organization Review*, 14(3), p. 368.

9 EBERLEIN, B. (2005) Policy Coordination without Centralization? Informal Network Governance in EU Single Market Regulation. In: Ehlermann, C.-D., Atanasiu, I. (eds.), *European Competition Law Annual 2002. Constructing the EU Network of Competition Authorities*. Oxford: Hart, p. 148.

10 In the last three years of the communist regime in Poland, it was the ministry of finance that perform the function of the antimonopoly authority. However, since the change of the regime in 1989, the Polish NCA has always been a separate authority.

networks. In this regard, the minister even issued a special instruction giving detailed information on when it was compulsory to provide information. In practice, however, the minister rarely specified the mandate that the Norwegian NCA had to implement in the fora of transnational networks.¹¹ In addition, in cases where the issues discussed at the network forum concerned issues beyond the sphere of competition law itself, the Norwegian competition authority sometimes asked the opinion of other Norwegian authorities. This meant that the NCA actually had a very high degree of independence in terms of its activity on the fora of transnational networks.¹² Currently, that direct ministerial oversight has been lifted, and the independence of Norwegian NCA has increased. This shows that, even in countries where there were developed mechanisms for hierarchical administrative control, they were not used due to the special perception of the role of the competition authority.

An interesting paradox of supranational networks of competition authorities is that they can be dominated by a technocratic approach to cooperation and adjudicating cases. Transnational networks can behave like cartels. Joining a cartel results from calculations that the joint adoption of rules of conduct and coordinated behaviour are more favourable than undertaking actions individually. At the same time, each member of the cartel acts under the influence of a motivation to maximise its profit in every situation, and subordinates its behaviour to that motive. At a national level, interventions by politicians (national governments) can therefore be seen as an expression of sovereign control. On a transnational basis, on the other hand, the interventions of politicians (national governments) will be seen as egoistic actions aimed at politically neutral activities of the competition network and, above all, of the interests of other NCSs operating within them. As a result, at a transnational level national politicians and governments are synonymous with egoism and particularism, with transnational competition networks and the NCAs operating within them being treated as the highest good.¹³ It seems that in some situations also national public administration bodies, especially when they are endowed with broad independence, may approach relations with their national governments in the same way.

Studies of selected NCAs have shown that the position of these authorities has strengthened in relation to the ministries supervising them as a result of the institutionalisation and formalisation of the ECN.¹⁴ There is no doubt that the participation of national authorities in supranational administrative networks strengthens the tendency to harmonise national legal regulations, which is not, as a rule, questioned by nation-

11 Those obligations were partially removed before 2014.

12 LÆGREID, P., STENBY, O.CH. (2010) Europeanization and Transnational Networks. A Study of the Norwegian Competition Authority. *Jerusalem Papers in Regulation & Governance*, 25, p. 22.

13 SHAPIRO, M. (2004) Deliberative, Independent Technocracy v. Democratic Politics. Will the Globe Echo the E.U. *Law & Contemporary Problems*, 68(3–4), p. 349.

14 DANIELSEN, O.A., YESILKAGUT, K. (2014) The Effects of European Regulatory Networks on the Bureaucratic Autonomy of National Regulatory Authorities. *Public Organization Review*, 14(3), p. 367.

al governments. There is a view in the literature that this does not necessarily mean weak government control over independent authorities, but it can be a sign of mutual trust between national governments and national independent administrative bodies.¹⁵ It seems that this thesis formulated in the conditions of developed Scandinavian democracy, while in the conditions of post-communist countries with weakly grounded foundations of a republican state, it does not correspond to real intra-administrative relations, which combine a large dose of systemic anarchy and traditionally understood manual hierarchical control.

An interesting form of control exercised by the Council of Ministers in relation to the Polish NCA is the adoption of the government competition policy and the obligation to report its implementation by the competition authority.¹⁶ It seems that this can be an instrument of long-term control of the implementation of specific public policies, also in the transnational sphere. At the same time, this instrument is not suitable for ongoing or day-to-day control. However, the practice of adopting and reporting the implementation of government competition policies in Poland is not optimistic. An analysis of the reports shows that they are constructed with a high level of generality and do not contain particularly ambitious tasks, with transnational and international issues playing only a marginal role.

Despite the lack of developed mechanisms for hierarchical administrative supervision of the functioning of Polish NCA on national and transnational fora, several instruments can be identified that are available in the system of Polish public administration. First of all, this is supervision exercised by the Prime Minister,¹⁷ which manifests itself in six areas:

- The Prime Minister appoints and dismisses the president of the Polish NCA as well as the vice-presidents;¹⁸
- The Prime Minister confers the Statute of the Polish NCA, which specifies the organisation of the NCA and, by regulation, the local and substantive jurisdiction of the regional offices in matters related to the activities of the Polish NCA;¹⁹
- The Prime Minister, executing the policy of the Council of Ministers, issues binding guidelines and instructions to the Polish NCA, with the restriction that they cannot relate to cases concluded by an administrative decision;²⁰
- The Prime Minister may conduct or commission an audit of the functioning of the Polish NCA on the basis of the Act on Control in Government Administration;²¹

15 LÆGREID, P., STENBY, O.CH., p. 28.

16 Article 31 points 4 and 9 of the Polish Act on competition and consumer protection (the 'Competition Act'), 16 February 2007, Dz.U. 2019, item 369.

17 Pursuant to Article 29.1 of the Competition Act the Prime Minister exercises supervision over the activity of the Polish NCA.

18 Article 29 recitals 3 and 30 of the Competition Act.

19 Article 33 recitals 3 and 34 of the Competition Act.

20 Article 33c of the Act on Government Administration Divisions, 4 September 1997, Dz.U. 2018, item 762.

21 Article 8 of the Act on Control in Government Administration, 15 July 2011, Dz.U. 2011, No 185, item 1092.

- The Prime Minister is the body competent to deal with complaints regarding the tasks or activities of the Polish NCA;²²
- The Prime Minister is the head of the civil service corps.²³

The indicated possibilities of the Prime Minister intervening in relation to the Polish NCA may suggest that there is a strong hierarchical relationship. However, the practice of Polish public administration seems to suggest a slightly different picture of these relations in reality. The Prime Minister oversees many central government administration authorities, as well as performing his many other tasks, which means that the ability to exercise ongoing control of the competition authority is quite illusory. In addition, the appointment and organisational rights of the Prime Minister are incidental rather than ongoing supervision.

The issuing of binding guidelines and instructions by the Prime Minister creates the greatest potential to influence the functioning of the Polish NCA. This instrument may be used to implement the policy of the Council of Ministers and concerns the general administrative policy of the competition authority, but it cannot interfere with how the Polish NCA exercises administrative (competition) jurisdiction. It is assumed that the guidelines are general and the instructions are specific, although their practical distinction may be problematic.²⁴ Guidelines are a traditional instrument of administrative management in public administration, particularly popular and often abused during the communist regime in Poland.²⁵ The guidelines and instructions issued to the competition authority by the Prime Minister are binding and the Polish NCA is not entitled to appeal or review them. The subject of the guidelines and instructions may cover all matters falling within the government's scope of interest that also fall under the competence of the competition authority. In practice, these instruments can be used to persuade the Polish NCA to take a closer look at a given sector or a specific type of suspected conduct. Such guidelines could also refer to involvement in international cooperation, e.g. under regional or global initiatives of the Polish government. On the other hand, it should be considered as controversial, and even unacceptable, to specify in the guidelines the meaning of general clauses or other provisions used in the Polish Competition Act, such as the rule of reason or public interest in merger control. Such supervisory interpretations would directly interfere with the exercise of administrative (competition) jurisdiction of the Polish NCA and determine decisions in individual cases, which would be in stark contradiction with the provision of Article 33c of the Government Administration Divisions Act. The issuing of guidelines and instructions is a general system solution appropriate for a hierarchically built public administration.

22 Article 229.8 of the Administrative Procedure Code, 14 June 1960, Dz.U., 2017, item 1257.

23 Article 153.2 of the Constitution of the Republic of Poland, as amended, 2 April 1997, Dz.U. 1997, No 78, item 483.

24 GÓRALCZYK, W. jr (2016) *Kierownictwo w prawie administracyjnym*. Warszawa: Wolters Kluwer, p. 115.

25 They are discussed in detail by HOFF, W. (1987) *Wytyczne w prawie administracyjnym*. Warszawa: PWN.

However, the application of this instrument in relation to independent administrative authorities can raise serious doubts.²⁶ This solution is in line with the current legal status of the Polish NCA. However, it is inconsistent with the ECN+ Directive and the obligation to restore the independence of the Polish NCA. The issuing of guidelines and instructions is contrary to the ECN+ Directive, which explicitly excludes the possibility of independent competition authorities taking political instructions. This means that strengthening the ECN and its members will further lead to the greater autonomy of NCAs against national governments. This will be a development of the current phenomenon in Polish administration, consisting in the fact that membership of transnational networks of administrative authorities weakens, in practice, the importance of this supervision instrument of the Prime Minister in relation to the bodies reporting to the Prime Minister.²⁷ A significant difficulty in the empirical verification of this observation was that the Prime Minister has never used this instrument in relation to the Polish NCA. This situation can be explained using various hypotheses. The most optimistic one concerns the desire to respect the position of the Polish NCA and its expert knowledge by the Prime Minister. Another assumes that the Prime Minister does not use this instrument due to a lack of need or lack of practice. The most pessimistic hypothesis assumes that there is no need to issue formal guidelines and instructions due to the fact that they are issued informally. As assessment of these hypotheses and their veracity goes beyond the scope of this article.

The Act on Control in Government Administration also creates broad possibilities of the Prime Minister controlling the functioning of the Polish NCA. According to Article 6.1 of this Act, the Prime Minister controls government administration organs or units, as well as units subordinate to or supervised by them. The Polish NCA is such a body. The Prime Minister may order an individual audit of the competition authority, but may also order an audit of the entire area of government administration (Article 8.2 of the Act on Control in Government Administration). At the same time, the Prime Minister defines the scope and object of the audit and its methodology. During the audit, the auditors have the right to access documents or receive witness testimony (Article 22). After the audit, a report is prepared and, if necessary, recommendations and post-audit conclusions are formulated. There is no publicly available information on the Prime Minister ever having ordered any individual audit of the competition authority. The Polish NCA was covered by several sectoral (covering all central public administration authorities) audits, though there is also no publicly available data on whether any post-audit conclusions were formulated regarding the Polish NCA, or whether and how the authority implemented them. Furthermore, there is no data on whether such an audit has ever involved international cooperation of the competition

26 HOFF, W. (2008) *Prawny model organu regulacyjnego sektorowej*, Warszawa: Difin, p. 194 et seq.

27 SUPERNAT, J. (2007) *Koncepcja sieci organów administracji publicznej*. In: Zimmermann, J. (ed.), *Koncepcja systemu prawa administracyjnego. Zjazd Katedr Prawa Administracyjnego i Postępowania Administracyjnego, Zakopane 24–27 września 2006*, Warszawa: Wolters Kluwer, p. 215.

authority, including its involvement in transnational networks. The lack of such data in the public domain may indicate that the control over the functioning of the Polish NCA by the Prime Minister on the basis of the Act on Control in Government Administration has so far been quite limited. There is also no indication that this practice will change in the near future.

The Prime Minister's supervision over the civil service corps, including officials in the Polish NCA, is also rather general. In practice, the use of this controlling instrument is somewhat an exception and has not been exercised in recent years in relation to any of the competition authority officials. A potentially large scope of control may result from the consideration of complaints and motions that any individual may lodge to the Prime Minister if dissatisfied with the functioning of a particular public administration authority, or the behaviour of a civil servant. However, this system is highly inefficient in Poland. There is no publicly available information about any formal activities initiated by the Prime Minister in relation to employees of the Polish NCA. Nor is there any information about any complaints lodged to the Prime Minister concerning the international activity of the Polish competition authority.

At the end of this part of the article, it should be noted that the Minister of Finance exercises specific financial control over the competition authority. The Polish NCA has no budgetary independence, and the budget is proposed by the Minister of Finance and adopted by parliament. The Minister of Finance also controls the observance of budgetary discipline by the competition authority. However, there is no publicly available information as to whether and to what extent the Minister of Finance actually exerts any pressure or influences the competition authority with the leverage of the budget. Certainly, the Minister of Finance is not particularly sensitive to attempts to increase the budget of the Polish NCA, even in a situation where its scope of responsibility has significantly increased. An example is the Act on Combating the Unfair Use of a Contractual Advantage in Trade in Agricultural and Food Products,²⁸ which imposed new broad obligations on the Polish NCA. In the first accompanying memorandum to the draft of this act, several dozen new positions were envisaged for the Polish NCA in order to implement and apply the new act. In the end, no new posts were created, but the vast numbers of new tasks were attributed to the Polish NCA. Therefore, although the budgetary instrument may potentially be an important mechanism of administrative control, the practice of the Polish competition authority does not confirm this thesis. Despite the fact that the international activity of the authority may burden its budget, there is no publicly available information about any significant restrictions or budget charges being formulated regarding the activity of the Polish NCA in the international sphere.

An analysis of the mechanisms of hierarchical administrative control regarding the international activities of the Polish NCA showed that national administrative law only allows for such supervision by certain authorities (the Prime Minister or the

28 Act on Counteracting unfair use of contractual advantage in agricultural and food products, 15 December 2016, Dz.U. 2017, item 67.

Minister of Finance within the scope of their competences). It is also interesting that the existing supervisory mechanisms are not used at all, or only selectively (mainly limited to nominating and dismissing the President of the Office, or approving the statute and regional organisation of the competition authority). This may be due to many factors, e.g. the low political ‘visibility’ of the international activity of the Polish NCA, the lack of greater importance in current policy to certain areas of regulation, e.g. antitrust, the lack of substantive preparation of individuals who would carry out these inspections, and finally the existence of informal relations between the supervisory and supervised bodies. However, there is no publicly available data or separate analysis in this regard. For this reason, the question of not applying formal supervisory mechanisms undoubtedly requires further research.

SUPERVISION EXERCISED

BY THE OMBUDSMAN AND THE PUBLIC PROSECUTOR

In Poland, the Ombudsman and the prosecutor’s office control the functioning of public administration, but their supervision of international activity of the Polish NCA appears to be limited. It is assumed that the prosecutor’s control of administration concerns two main forms of administration: administrative decisions and general normative acts adopted by the public administration.²⁹ This means that the prosecutor’s control primarily concerns formalised administrative actions. In particular, pursuant to Article 182 of the Administrative Procedure Code, the prosecutor may participate in administrative proceedings as an entity with the rights of a party to remove an unlawful state. However, with regard to control over the international activity of national authorities in the supranational sphere, it is difficult to find special legal grounds for the intervention of the prosecutor’s office. Moreover, any direct intervention by the prosecutor’s office in the activities of the supranational network of national authorities is on even shakier legal grounds.

Similarly, the role of the Ombudsman in controlling the international activity of national public administration bodies appears to be very limited. In accordance with Article 14.6 of the Act on the Ombudsman of 15 July 1987,³⁰ the Ombudsman may request the initiation of administrative proceedings, may lodge complaints with an administrative court, and may participate in these proceedings with the rights of a prosecutor. The premise of the Ombudsman’s intervention is a violation of civil rights and freedoms. As a result, the scope of the Ombudsman’s potential control will apply to selected formalised administrative actions of the national authorities undertaken in the course of administrative proceedings. Therefore, it is difficult to consider the Ombudsman as a body that could effectively undertake control activities in relation to the activity of administrative authorities (including the Polish NCA) in the supra-

29 HABUDA, A. (2004) *Granice uznania administracyjnego*, Opole: Oficyna Wydawnicza Politechniki Opolskiej, p. 187.

30 Act on the Ombudsman of 15 July 1987, Dz.U. 2017, item 958.

national sphere. Similarly, the role of the Ombudsman in controlling the operation of supranational networks of public administration bodies is more than limited.

SUPERVISION EXERCISED

BY INDEPENDENT SPECIALIST PUBLIC AUTHORITIES

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National public administration bodies also come under the control of state control authorities. The most important would be the control exercised by the Supreme Audit Office. Pursuant to the Act on the Supreme Audit Office of 23 December 1994,³¹ the Supreme Audit Office is the supreme authority of state control and supervises, among other things, the activities of public administration. In particular, it examines the implementation of the state budget and the implementation of laws and other legal acts in the field of financial, economic and organisational-administrative activities of these authorities, including the implementation of internal audit tasks. The audit criteria of the Supreme Audit Office are very broad and include legality, economy and efficiency. The Supreme Audit Office may control public administration bodies on its own initiative or at the request of the Parliament, the President or the government. It should be added that the Supreme Audit Office is independent and reports directly to Parliament. The system and jurisdiction concept of the Supreme Audit Office is derived from the Russian model and is much broader than audit offices in many European and EU countries. The position of the Supreme Audit Office predestines this institution to play an important role in verifying the correct functioning of public administration bodies, including potentially their international activity. However, among the information available on the Supreme Audit Office website and in the annual reports of the Office, there is no information that it has ever audited any national authority in this respect.³² It should be noted that the effects of the Supreme Audit Office audit are quite limited, especially with regard to the functioning of independent public administration bodies. The basic instrument of the Supreme Audit Office's impact is in the form of audit findings and the possible notification of the relevant authorities of any violations of law. With regard to auditing the activity of administrative bodies in the supranational sphere, it is difficult to find a special legal basis for intervention by the Supreme Audit Office. As noted earlier, this sphere of functioning of administrative bodies is regulated by law in a limited way, most often there are no legally defined goals for this activity, which makes it difficult to create an appropriate control criteria in this respect. In addition, since the basic form of international activity is soft cooperation and adopting soft law, it is rather difficult to imagine how the Supreme Audit Office auditors undertake

31 Act on the Supreme Audit Office of 23 December 1994, Dz.U. 2017, item 524.

32 Such an audit is taking place in 2020 and it concerns how the Polish NCA conducted its administrative proceedings in competition cases. No information about the outcome of this audit is currently available.

their audit, because it is not clear what would be the purpose of such an audit and what control criteria they would use.

SUPERVISION EXERCISED BY THE EUROPEAN COMMISSION

It is also worth mentioning the issue of administrative control exercised by the European Commission in relation to European administrative networks. An analysis of Regulations 1/2003 and 139/2004 shows that the possibility of the Commission exercising administrative control over NCAs is practically excluded. The Commission may, in limited situations, intervene in ongoing cases. However, the Commission cannot intervene when the NCA does not voluntarily take administrative action, e.g. it fails to initiate proceedings, despite being obliged to do so by European regulations. In a system where proceedings are instituted only *ex officio* (like in antitrust cases), it is actually the NCA that decides about the initiation of proceedings. Interestingly, this applies equally to national and EU law. It is emphasised that, while the Commission may take over the case, express an opinion and influence the content of the decision, there are no legal instruments preventing the NCA's inaction and non-application of European law by not instituting antitrust proceedings.³³ Information exchange or case allocation mechanisms provided for under the ECN or Regulation 139/2004 in merger cases provide for the powers of the Commission. However, they are not of a controlling nature, but result from the effectiveness of the proceedings conducted by the Commission and a desire for the uniformity of antitrust decisions based on the Treaty provisions. This means that the Commission cannot be treated as a higher-level (appellate) authority or a supreme authority within the meaning of the Administrative Procedure Code, or a state control authority in relation to the Polish NCA. The Commission itself is generally not subject to administrative control,³⁴ but is subject to extensive judicial review in the area of administrative jurisdiction, where the rules of exercising that jurisdiction have largely been shaped by the case law of European courts. It is also important to remember that the Commission undertakes many of the activities controlled by European courts as a member of European administrative networks and is also subject to judicial jurisdiction in this regard.³⁵

33 TESAURO, G. (2005) The Relationship between National Competition Authorities and Their Respective Governments in the Context of the Modernisation Initiative. In: Ehlermann, C.-D., Atanasiu, I. (eds.), *European Competition Law Annual 2002. Constructing the EU Network of Competition Authorities*. Oxford: Hart, p. 272.

34 Some form of administrative control, in relations to financial matters, is exercised by OLAF, though.

35 WIDDERSHOVEN, R.J.G.M., CRAIG, P. (2017) Pertinent Issues of Judicial Accountability in EU Shared Enforcement. In: Scholten, M., Luchtman, M. (eds.), *Law Enforcement by EU Authorities. Implications for Political and Judicial Accountability*. Cheltenham–Northampton: Edward Elgar, p. 334 et seq.

JUDICIAL CONTROL OVER THE TRANSNATIONAL ACTIVITIES OF NCAS

Judicial control over the activities of NCAs may be initiated when actions undertaken by the authorities have affected the legal situation of third parties. As a result, judicial review cannot, by its very nature, cover most forms of international cooperation. For this reason, the activities of supranational competition networks themselves are not covered by judicial cognition, as no competition network has administrative jurisdiction or can take administrative actions or decisions affecting the legal situation of third parties. At the same time, binding acts of national, transnational and international law determine autonomously which acts and administrative decisions of public administration bodies are subject to the jurisdiction of a given court. It should also be emphasised that there are noticeable differences in the jurisdictions of national courts in competition cases, which means that the addressees of administrative actions undertaken by ECN members must take into account the different level and intensity of judicial review exercised in a given national jurisdiction.³⁶

A certain paradox is noticeable that, although the international activity of NCAs or competition networks takes place in a transnational space, the administrative activities of NCAs are undertaken within the framework of the national orders. In this respect, the role and significance of transnational courts, not to mention international ones, is very limited. Obviously, if a transnational authority, e.g. the European Commission, takes administrative action, the court competent to assess its activities will be the European court. Decisions issued by NCAs, even if preceded by international cooperation, are subject to the jurisdiction of national courts. In addition, it is clear from the case law of the European courts that if the Commission carries out dawn raids on national undertakings in accordance with Article 20 of Regulation 1/2003, the Commission must ask the national court for authorization should national law requires so. However the national court has no competence to assess the legality of the inspection itself, but only verifies that the limits for the use of coercive measures have not been exceeded.³⁷ Decisions by the national authority with transnational effects can sometimes raise jurisdictional problems because administrative pluralism (resulting from the transnational nature of administrative action) is related to the pluralism of potentially competent courts.³⁸ However, in most cases no such problems occur. The jurisdiction of the court is deter-

36 CSERES, K.J., OUTHUIJSE, A. (2017) Parallel Enforcement and Accountability. The Case of EU Competition Law. In: Scholten, M., Luchtman, M. (eds.), *Law Enforcement by EU Authorities. Implications for Political and Judicial Accountability*. Cheltenham–Northampton: Edward Elgar, p. 113.

37 *Roquette Frères SA v. Directeur général de la concurrence, de la consommation et de la répression des fraudes* [2002] ECLI:EU:C:2002:603.

38 TÜRK, A.H. (2009) Judicial Review of Integrated Administration in the EU. In: Hofmann, H.C.H., Türk, A.H. (eds.), *Legal Challenges in EU Administrative Law*. Cheltenham–Northampton: Edward Elgar, p. 218.

mined by the jurisdiction of the national authority. Therefore, even if the Polish NCA issues decisions on the basis of European law, the Polish court will still be competent to hear legal measures against this administrative decision. In addition, a reference in any decision of the Polish competition authority to the guidelines adopted by a transnational network will not affect the jurisdiction of the courts. In this context, it is also worth noting that supranational soft law norms adopted within the competition networks are not binding on national courts.³⁹ It is an undisputed rule that soft law acts, whether national or transnational, can never be the basis for any administrative acts issued by any NCA.

The competent courts for reviewing the activities of the Polish NCA are the civil courts (i.e. the Court for Competition and Consumer Protection, the Court of Appeal in Warsaw and the Supreme Court) and the administrative courts. Jurisdiction in matters related to supervising the activities of the Polish NCA undertaken in competition proceedings is based on the jurisdictional dualism of those courts. The legislator assigns fundamental significance to civil courts and the Supreme Court, entrusting them with adjudication on legal actions (appeals) against administrative acts taken by the Polish NCA. The role of administrative courts seems to be smaller, although in the case of international cooperation, the Polish NCA may be visible in some situations.

JURISDICTION OF NATIONAL COURTS IN RELATION TO SUPERVISION OVER THE INTERNATIONAL ACTIVITIES OF THE POLISH NCA

When analysing the jurisdiction of Polish courts⁴⁰ and referring to the activities of competition networks and other forms of international cooperation of the Polish NCA, it should be stated that jurisdiction is limited to supervising formal official activities, in particular administrative acts as well as inaction or delayed conduct of the Polish NCA. Due to the fact that civil courts have full jurisdiction in competition cases, they may assess the full course of administrative proceedings and the impact of the individual actions of the authority on the resolution of a case. This also applies to supervision over formal administrative activities undertaken as part of international cooperation between the Polish NCA and its foreign counterparts. Actions undertaken in an informal way, under soft cooperation, if they are non-jurisdictional (i.e. they do not affect the legal position of third parties), in principle remain outside the jurisdiction of the Polish administrative court, let alone the civil courts.

This means that Polish courts do not have legal grounds for a comprehensive audit of the activities of international cooperation of the Polish NCA, but they may inspect

39 LAVRIJSEN, S., HANCHER, L. (2003) Networks of Regulatory Agencies in Europe. In: Larouche, P., Cserne, P. (eds.), *National Legal Systems and Globalization. New Role, Continuing Relevance*, Hague: T.M.C. Asser Press, p. 208.

40 For a detailed analysis of jurisdiction of civil and administrative courts in competition cases, please refer to BŁACHUCKI, M. (2017) Rola i właściwość sądów powszechnych i administracyjnych w sprawach antymonopolowych w świetle najnowszego orzecznictwa i zmian normatywnych. *Studia Prawnicze*, 3, p. 115 et seq.

certain activities undertaken by NCA, as long as they relate to a pending administrative (competition) case. On the one hand, this should not come as a surprise. Soft cooperation between the NCAs does not affect anyone's rights or obligations, so there is no room for court intervention in this respect. A more complex issue is the ability to supervise soft law acts adopted by competition networks. In this respect, the situation does not differ from the judicial supervision over soft law acts undertaken by the Polish NCA. This means that the Polish courts cannot directly check the legality of these acts, or the views expressed in them, but at the same time, by seeing how the legal norm is applied in a particular case, they can present another interpretation of it, potentially contrary to the interpretation expressed in a given soft law act.⁴¹ A possible difficulty with regard to administrative activities undertaken in the framework of soft cooperation between NCAs is usually the absence of any record of such cooperation in the case file. In terms of recording activities undertaken in the course of administrative proceedings, the provisions of the Administrative Procedure Code are very vague, leaving a very wide margin of interpretation to the Polish NCA. At the same time, there are hardly any public announcements by the Polish NCA admitting that cooperation has taken place in a particular case.

JURISDICTION OF TRANSNATIONAL AND INTERNATIONAL COURTS IN RELATION TO SUPERVISING THE INTERNATIONAL ACTIVITIES OF THE POLISH NCA

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The role of supranational and international courts in supervising the activities of competition networks and other forms of international cooperation of NCAs seems even more limited than in the case of national courts. In general, courts exercise jurisdiction over entities that come from their jurisdiction. This means that the European courts will be competent to review the administrative activities of the Commission or other European institutions. The standard judicial control of the Polish NCA is exercised by national courts. European courts do not have jurisdiction in this respect. In principle, European courts may review the compliance of Polish provisions with European ones, e.g. as a result of a question submitted by a Polish court for a preliminary ruling. Alternatively, indirectly, while reviewing administrative activities undertaken in cooperation with the Polish authority, the European court may also find that European law norms have been violated if such administrative activity was carried out incorrectly.

The European Court of Human Rights may also play a role. However, the ECtHR will exercise its jurisdiction should a case involves the imposition of a sanction that, in light of Article 6 of the European Convention on Human Rights may be considered as a criminal sanction. This means that the chances of individual administrative activities undertaken in the framework of international cooperation of NCAs being audited by

41 BŁACHUCKI, M. (2016) Judicial Control of Guidelines on Antimonopoly Fines in Poland, *Revista de Concorrência e Regulação*, 25, p. 53 et seq.

the ECtHR are very limited, are dependent on the imposition of sanctions and can only be implemented after exhausting the jurisdiction of the domestic court.

At the end of this part of the article, it is worth pointing out the possibility of providing judicial protection to the addressees of the activities of NCAs undertaken as part of international cooperation by specialised international bodies of a judicial nature. In this regard, the Appellate Body of the WTO has to be mentioned as an example, as it performs this function within the framework of the World Trade Organization.⁴² This institution is quite effective in raising WTO accountability and providing judicial protection to the addressees of WTO activities. However, it should be remembered that the position of this body is quite unique in the international sphere. One should bear in mind that one of the reasons for the failure of talks on the international competition treaty under the aegis of the WTO was the deep reluctance of many countries to submit disputes arising under this treaty to the binding case law of the WTO Appeals Body.⁴³ This shows that, although specialised international tribunals can be an effective mechanism for judicial protection in the case of activities of transgovernmental competition networks, at the same time they are extremely rare in the practice of international relations and their significance is limited only to selected areas of transnational sectoral regulation.

PARLIAMENTARY CONTROL IN RELATION TO SUPERVISION OVER THE INTERNATIONAL ACTIVITIES OF THE POLISH NCA

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Before proceeding to the conclusions, it is also worth considering whether and to what extent parliamentary control over the international activities of Polish NCA is possible. The issue of parliamentary control over the activities of public administration bodies in Poland is heavily neglected. Parliamentary control is the very essence of parliamentarism. It seems that the lack of Polish legal doctrinal reflection in this area results from the inertia of the Polish parliament itself. In developed republican systems, recognising the role of the representative of *demos*, the role of this branch of power may be much greater. Foreign examples, like the US and even the EU, are convincing. As a result of developing the European composite administration, the number of independent specialised national authorities is increasing. These authorities are largely immunised against administrative (governmental) control mechanisms. Interestingly, there is no doubt that subjecting the activities of independent administration authorities to parliamentary control does not constitute a violation of their independence, though is considered a normal mechanism of control in developed republican states. It is, therefore, worth considering how the system of parliamentary control in Poland looks in relation to public administration.

42 ZWART, T. (2010) Would International Courts be Able to Fill the Accountability Gap at the Global Level?. In: Anthony, G., Auby, J.-B., Morison, J., Zwart, T. (eds.), *Values in Global Administrative Law*. Oxford: Hart, p. 213.

43 DABBAH, M.H. (2010) *International and Comparative Competition Law*. Cambridge: CUP, pp. 129-130.

The lower chamber of the Polish parliament (in Polish the *Sejm*)⁴⁴ controls public administration. The role of the Senate (the higher chamber) in exercising the control function is limited, although there are voices in the literature for its increase.⁴⁵ Parliamentary control can be exercised directly by the Sejm, parliamentary committees or the deputies themselves. Traditionally, parliamentary control includes the right to information, the right to be present and the right to be heard.⁴⁶ In addition, the Sejm plays an important creative role. According to Article 95.2 of the Polish Constitution, the Sejm exercises control over the activities of the Council of Ministers within the scope specified in the provisions of the Constitution and statutes. This provision indicates that the control function of the Sejm is implemented primarily in relation to the Council of Ministers. This primarily concerns the possibility of appointing and dismissing the Council of Ministers and individual ministers (Articles 154, 158 and 159 of the Polish Constitution). Interestingly, the number of authorities appointed by the Sejm is expanding. Traditionally, they include constitutionally-authorized authorities, i.e. members of the National Broadcasting Council, the President of the Supreme Audit Office and the President of the National Bank of Poland. In addition, the Sejm participates in the appointment of the presidents of central public administration authorities, i.e. the Chief Labour Inspectorate, the President of the Office for Personal Data Protection or the President of the Office of Electronic Communications. The expansion of the number of central authorities appointed by the Sejm is the result of the impact of European law and the need to strictly observe the independence of some public administration authorities.⁴⁷

In practice, parliamentary control is carried out by parliamentary committees, including inquiry committees. In accordance with Article 17.2 of the Sejm Regulations,⁴⁸ they carry out control tasks within the scope specified in the Constitution and statutes. It is emphasised that the Sejm committees exercise control over ministers, organs and state institutions related to the enforcement of laws, and have an influence over the functioning of the Council of Ministers, its members and state organs.⁴⁹ Sejm committees may direct 'desiderates' (longer justified opinions) and opinions, or may ask the Supreme Audit Office to carry out an inspection. In addition, the presidium of the commission may oblige ministers and heads of central government administration bodies, as well

44 In Poland, the lower chamber is the most important chamber of the parliament and its position is superior to the (formally) higher chamber.

45 SZYMANEK, J. (2004) *Rola Senatu RP w wykonywaniu kontroli parlamentarnej (uwagi de lege lata i de lege ferenda)*. *Ruch Prawniczy, Ekonomiczny i Socjologiczny*, 1, p. 15 et seq.

46 GWIŹDŹ, A. (1975) Organizacja i zasady funkcjonowania. In: Burda, A. (ed.), *Sejm Polskiej Rzeczypospolitej Ludowej*, Wrocław–Warszawa–Kraków–Gdańsk: Ossolineum, p. 307.

47 ODRWAŹ-SYPNIEWSKI, W. (2008) *Funkcja kontrolna Sejmu na tle zagadnienia rozdziału władzy publicznej i zasady nadrzędności konstytucji*. *Przegląd Sejmowy*, 3(86), pp. 14–15.

48 Resolution of the Sejm of the Republic of Poland of 30 July 1992 – Regulations of the Sejm of the Republic of Poland, MP 2018, item 544.

49 MOJAK, R. (2007) *Parlament a rząd w ustroju Trzeciej Rzeczypospolitej Polskiej*, Lublin: Wydawnictwo UMCS, p. 428.

as heads of other state offices and institutions to present reports, provide information and participate in committee meetings at which matters related to their scope of activity are considered.

The forms of individual parliamentary control vested in deputies are parliamentary interpellations, parliamentary inquiries and questions about current matters. They are often addressed to the Council of Ministers and its individual members. At the same time, MPs often address questions to public administration bodies. In the practice of the Polish NCA, deputies often ask questions and make requests for intervention. In the vast majority of situations, this is generally the result of complaints received from voters in their constituencies. It is difficult to determine the scale of the phenomenon and its effectiveness in this respect, as the Polish NCA does not disclose this in detail. One can, however, consider the practical effectiveness of this form of control in relation to the international activity of the Polish NCA. This type of activity of the authority is generally not in the sphere of interest of the vast majority of Polish voters, and the deputies themselves show quite far-reaching restraint in addressing issues outside the sphere of current politics.

Polish parliamentary practice in relation to exercising supervision over the activities of public administration is rather poor. It is noted that the effectiveness of this supervision in a particular case depends on many conditions, i.e. the involvement of deputies and opposition, the level of their political culture or the actual engagement of the Council of Ministers.⁵⁰ The inherently low level of all these factors also affects the quality of parliamentary supervision in Poland. Earlier considerations have shown a profound deficiency in hierarchical administrative supervision, leaving parliamentary supervision as an interesting alternative. To revitalise such supervision, parliament must be made aware of the importance of regulatory diplomacy and the existence of transnational networks of national authorities, and the competences of parliamentary committees must be extended appropriately, as these actions could methodically address these issues in their works. At the same time, it is emphasised that parliamentary scrutiny of supra-national networks could be carried out jointly with, or rather coordinated by, national parliaments and the European Parliament.⁵¹

Parliamentary control seems to have theoretical potential resulting from its association with the development and spread of independent administrative authorities and their international activities. The guarantees of independence of many public administration authorities immunise them from hierarchical administrative supervision. At the same time, judicial review is limited to standard and legally relevant administrative actions. Meanwhile, the entire sphere of administrative policy and international cooperation of public administration remains unsupervised. In addition, parliamentary control cannot concern individual administrative acts. Instead, it consists in reporting on achievements

50 JUCHNIEWICZ, J. (2013) Instrumenty realizacji funkcji kontrolnej Sejmu – próba oceny skuteczności. *Przegląd Prawa Konstytucyjnego*, 1(13), p. 32.

51 WARNING, M.J. (2009) pp. 236–237.

or failures in the sphere of administrative and legal regulation entrusted to a given authority, as well as on the operations of a given office and how public funds are spent. It may, for example, include parliament obtaining information on the directions of administrative policy of a given administrative authority, its actions and an assessment of their effects on the international stage. An interesting issue, especially under Polish conditions, are the possible consequences of parliamentary control for a given public administration authority. These effects should be seen in two dimensions. The formal dimension relates primarily to strengthening the legitimacy and accountability of a given public administration authority, which can certainly translate into an increase in the perception of its position, and perhaps also actual independence. This will be possible if the result of parliamentary scrutiny is positive. However, in the event of a negative result the effects may be different. The second dimension refers to possible effects in the material sphere. Supervision may be regarded as a form of pressure on the authority to achieve results – a lack of it can create even more pressure. However, parliamentary control may not involve personal measures, as the closed catalogue of grounds for dismissal from the office, which is the foundation of independence of many authorities, does not include parliament's non-acceptance of the authority's policy. However, if the policy of a given authority is not accepted, or the achieved results (or if there are no positive effects of the authority's activities), it may lead parliament to limiting the budget of a given authority. It can also result in attempts to keep a closer control over the activities of the authority through more frequent inquiries and listening to the authority. The *ultima ratio* of parliamentary control is to take a legislative initiative to change the legal basis for the functioning of the authority and to influence its functioning by setting new tasks or modifying the existing administrative jurisdiction. Obviously, parliament does not have full freedom in its parliamentary legislative intervention. Both the Constitution of the Republic of Poland and international obligations, especially European law, set out the basic limits of parliamentary power.

SOCIAL CONTROL OF PUBLIC ADMINISTRATION IN POLAND

Last but not least is the control that citizens and their associations can exercise in relation to public administration. The gist of social control is that any citizen has the right to learn about activities of public authorities and any citizen has the prerogative to demand justification for actions undertaken or a failure to act. There are no specific Polish regulations in this respect that would apply to the international activities of the Polish NCA. This means that citizens and their associations must rely on general regulations on the one hand, and on good will and the developed information practice of public administration bodies on the other. As regards general regulations, the Act on Access to Public Information and the Administrative Procedure Code should be mentioned here. The first of these acts makes it possible to access any public information, and information on the international activities of Polish NCA is certainly public. The significance of this statute results from the fact that it implements a constitution-

al right of access to public information, where obtaining this information does not depend on fulfilling any subjective or objective conditions. The second of these statutes has a narrower application. Pursuant to Article 31 § 1 of the Administrative Procedure Code a social organisation may be admitted to pending proceedings as an entity with the rights of a party where it is justified by the statutory objectives of that organisation, and when there is a public interest in it. In practice, however, admitting social organisations to many administrative proceedings, in particular competition ones, is extremely unusual. Social control is an important element of the accountability of Polish public administration and their international activities, but it still has not revealed even part of its potential. The negative effect of this lack of interest is, unfortunately, the reluctance of many authorities (including the Polish NCA) to comprehensively inform the public about their international activity.

CONCLUSIONS

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The analysis undertaken showed that the existing forms of supervising the international activities of the Polish NCA are quite limited. In practice, this area of the Polish NCA's activities remains unsupervised. Generally, traditional mechanisms of hierarchical administrative supervision have weakened considerably, which is due to the spread of independent administrative authorities. This is surprising since they should constitute the basic mechanism of supervision over the national and transnational activity of Polish public administration authorities. Even though there are many institutions that may control the Polish NCA, the actual level of supervision is rather low, especially with respect to the international activities of the Polish NCA. Failure to secure the effective supervisory mechanism of the Polish NCA the Polish state resigns to influence informal international lawmaking which takes place at the level of transnational competition networks⁵². This is not a feature that is unique to the Polish legal system – foreign researchers also note that the existence of many institutions and control mechanisms at a national level does not translate into actual supervision, which is actually very low.⁵³ Significantly, this problem will become even worse due to the implementation of the ECN+ Directive. National competition authorities will need to be guaranteed even broader independence, while their scope of international cooperation obligations will increase. Due to ineffective control mechanisms at the national level, this makes the supervision over the international activities of the Polish NCAs even more illusory.

This draws attention to the hidden potential in parliamentary control, which seems particularly limited in Poland. It also highlights the need to introduce additional legal mechanisms increasing the accountability of public administration in Poland, in particular

52 CASINI, L. (2012) Domestic Public Authorities within Global Networks: Institutional and Procedural Design, Accountability, and Review. In: Pauwelyn, J., Wessel, R.A., Wouters, J. (eds.), *Informal International Lawmaking*, Oxford: OUP, p. 408.

53 BERMAN, A. (2012) *The Role of Domestic Administrative Law in the Accountability of Transnational Regulatory Networks. The Case of the ICH. IRPA Working Paper*, 1, p. 26.

the Polish NCA. This would be done, among other ways, by enhancing parliamentary control, fine tuning the hierarchical administrative control in relation to other authorities conducting international cooperation, and by increasing the transparency of proceedings before the Polish NCA, whether by restoring the category of interested parties or implementing a better information policy at the competition authority. Those ideas and postulates should be treated as a package, as each of them tackles a distinct aspect of transparency and supervision. The implementation process of the ECN+ Directive may be a good occasion to put them into law. Otherwise, there is a good chance that those ideas will be buried for a long time.

Finally, it should be noted that the control mechanisms are not only intended to ensure the supervised authorities function correctly. In the case of independent public administration authorities, which the European NCAs are already or will soon become, the control mechanisms are one of the basic instruments for ensuring the accountability of those authorities. Unfortunately, the ECN+ Directive completely ignores this aspect of the competition authorities' function, focusing only on the effectiveness of cooperation and the uniform application of European competition law. At the same time, strengthening national mechanisms of control over the functioning of NCAs in the international sphere not only strengthens their accountability at the national level, but also, paradoxically, at the transnational level. Better supervision and accountability of NCAs translates into better supervision and accountability of transnational competition networks.