

On the Scope of Public Tasks of Polish Chambers of Commerce



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The legislator refers to the chambers of commerce existing in Polish law as “economic self-government.” However this formulation has been criticized. The term “local self-government” means obligatory local self-government empowered to carry out public tasks. The Polish model of business self-government assumes that these chambers are entrusted with public tasks performed on a voluntary basis, with their participation being optional. Creating business self-government as a public law entity is a complex and long-term process. It must first assume the analysis of the need for its creation on the part of entrepreneurs. The next stage includes assessing the manner of performing public tasks entrusted to local self-government structures. At the end of this process it should be determined whether there is a need to create business self-government and whether the structure created in this way will perform public tasks properly to the benefit of entrepreneurs. The catalogue of public tasks that may be transferred to the future public-law business self-government is limited by the regulation set forth in Art. 17 section 2 of the Polish Constitution, prohibiting business self-government from interfering with the freedom to undertake and pursue business activity.

Key words: chamber of commerce, business self-government, public administration, public task, common good, decentralization

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1. Introduction

Business self-government¹

- ¹ The Polish concept of “samorząd gospodarczy” should be translated into English as “business self-government.” The name “economic self-government” is a simple translation of the concept “samorząd gospodarczy” and it is not the correct name. The term “self-government of entrepreneurs” is a broader term, including other organizations bringing together entrepreneurs such as employers’ unions, federations and

is essentially outside the mainstream of public law scholarship. Apart from the first decade of the 21st century, when the future of the model of Polish business self-government was widely discussed in Polish scholarship,² this topic

employers’ confederations. Therefore, the term “business self-government” will be used later in this text.

- ² R. Kmiecik, *Samorząd gospodarczy w Polsce. Rozważania na temat modelu ustrojowego* (Business Self-

operated outside the mainstream of the jurisprudential debate. Only recently the issue of the Polish business self-government model has become the subject of quite a lively discussion, both journalistic³ and scientific,⁴ with the vast majority pointing to the need to create compulsory business self-government.⁵

The assignment of public tasks to business self-government organizations is one of the fundamental issues determining their qualification within the category of self-government under public law. Self-government organizations are not only within the domain of public law, they can also function within the scope of private law. This view, expressed in the interwar period,⁶ has not lost its relevance to this day. This is directly confirmed by Art. 2 of the Act on Chambers

of Commerce,⁷ according to which chambers of commerce are an organization of business self-government, even though the view of their private law nature prevails in science.⁸ As a result of such a regulation, the chambers of commerce existing in Poland cannot be classified as part of the structure of public administration under the current normative regulation.

When analyzing the issue of creating universal, i.e. compulsory, business self-government, the authors pay too little attention to the primary assumption concerning the need to indicate what public tasks could be performed by compulsory business self-government – or at least to what extent these tasks could be performed by such entities – and whether the current model of this kind of self-government does not provide for such tasks.

This seems to be the main issue determining the substantive discussion on the need to create compulsory business self-government in Poland. First of all, it is necessary to determine what public tasks should be performed by business self-government and whether there is a need for business self-government to have public tasks at all. Only on this basis we can discuss the shape of business self-government. Therefore, the aim of this article is to determine whether the current formula for the functioning of business self-government organizations among entrepreneurs in Poland provides for public tasks and whether any changes are needed in this respect.

Government in Poland. Considerations on the Political Model) (Wydawnictwo Naukowe INPiD UAM, 2004); M.A. Waligórski, S. Pawłowski eds., *Samorząd zawodowy i gospodarczy w Polsce* (Professional and Business Self-Government in Poland) (Wydawnictwo Naukowe INPiD UAM, 2005); S. Wykretowicz ed., *Spór o samorząd gospodarczy w Polsce* (Dispute over Business Self-Government in Poland) (Wydawnictwo Naukowe INPiD UAM, 2005).

- 3 W. Kruk, “Samorząd gospodarczy jest w demokracji potrzebny” (Business Self-Government is Needed in Democracy), *Rzeczpospolita* of 22 March 2023, No. 68 (12527), 21A; H. Bochniarz, “Samorząd gospodarczy? Osiem razy NIE” (Business Self-Government? Eight Times NO), *Rzeczpospolita* of 14 February 2023, No. 37 (12496), A21; D. M. Grabowski, “Samorząd potrzebny od zaraz” (Business Self-Government Needed Immediately), *Rzeczpospolita* of 3 March 2023, No. 52 (12511), A21; A. Zdebski, “Samorząd gospodarczy? Po wielokroć TAK” (Business Self-Government? Many Times YES), *Rzeczpospolita* of 14 March 2023, No. 61 (12520), A21; P. Podgórski, “Mity wokół samorządu gospodarczego” (Myths around Business Self-Government), *Rzeczpospolita* of 3 March 2023, No. 52 (12511), A21.
- 4 P. Marciniak, *Sektorowy model samorządu gospodarczego. Założenia i perspektywa wprowadzenia w Polsce* (Sectoral Model of Business Self-Government. Assumptions and Prospects for Implementation in Poland) (C.H. Beck, 2023).
- 5 Kruk, *Samorząd*, 21A; Grabowski, *Samorząd*, A21; Zdebski, *Samorząd*, A21.
- 6 T. Bigo, *Związki publiczno-prawne* (Public-Law Organizations) (Wydawnictwo Kasy im. Mianowskiego, 1928), 51–67.

7 The Act of 30 May 1989 on Chambers of Commerce (Polish Journal of Laws of 2019, item 579), hereinafter: Act on Chambers of Commerce.

8 T. Jędrzejewski, “Samorząd gospodarczy a współczesne ustawodawstwo polskie” (Business Self-government and Contemporary Polish Legislation), in *Spór o samorząd gospodarczy w Polsce* (Dispute Over Business Self-Government in Poland), S. Wykretowicz ed. (Wydawnictwo Wyższej Szkoły Bankowej, 2005), 83–85; M. Stahl, “Zagadnienia ogólne” (General Issues), in *System prawa administracyjnego. Podmioty administrujące* (The System of Administrative Law. Administrative Entities), vol. 6, R. Hauser, Z. Niewiadomski, A. Wróbel eds. (C.H. Beck, 2011), 60; R. Kmiecik, P. Antkowiak, K. Walkowiak, *Samorząd gospodarczy i zawodowy w systemie politycznym Polski* (Business and Professional Self-Government in the Political System of Poland) (Elipa, 2012), 90–96; Kmiecik, *Samorząd*, 143.

In Polish law, there are many business or entrepreneurs' organizations: chambers of commerce, chambers of crafts,⁹ chambers of agriculture,¹⁰ professional self-government organizations of certain entrepreneurs,¹¹ employers' organizations¹² etc. This article addresses only the tasks which are assigned by the legislator to chambers of commerce or which may be entrusted to business self-government.

The main research method used in this study is dogmatic, focusing on the analysis of legislation, court decisions and the views of representatives of legal scholarship.

2. Business self-government as part of public administration

Public administration constitutes all activities of an organizational and executive nature, aimed at achieving the common good by various entities bound by the act in terms of the basis and forms of action and remaining under legal supervision and social control.¹³ Formulated in this way, this definition directly indicates that the basic feature of such administration is its action for the common good (public interest). The authority of such administration was perceived as its basic feature distinguishing public administration from other entities operating in administration.¹⁴ Currently, how-

ever, this feature has ceased to serve as the basic paradigm. Although public administration still undertakes regulatory activities and uses institutions such as, for example, an administrative decision (noncompliance with such a decision by the addressee may result in the administration using coercion¹⁵), there is a constant shift away from the authoritative activities of a jurisdictional nature towards non-authoritative, providing or organizing activities.¹⁶ The latter scope is becoming the domain of modern public administration. A secondary role is increasingly played by the way these tasks are performed, i.e. in a domineering or non-powerful way.

Business self-government can only become part of public administration if the activities assigned to it are aimed at achieving the common good, and there should be no doubt that this common good or common interest must be directly related to meeting the needs of entrepreneurs.

In economic sciences, the common good is understood as any renewable resource managed collectively by a group of people, in a way that takes into account equal access and use of this good,¹⁷ where the common good does not have to be used exclusively to achieve the goals of a given environment (social or professional group), but also to achieve social goals.¹⁸

In jurisprudence, the common good is often treated synonymously with the public interest, which is defined by the legal system determining the permissible scope of administrative activities and is used to describe the citizen-administration relationship aimed at the implementation of this good.¹⁹ What constitutes the public interest (public good) is determined by political will aimed at achieving a specific goal.²⁰ The administration, acting for the public interest, carries out tasks in the field

9 Act of 22 March 1989 on crafts (Polish Journal of Laws of 2020, item 2159, as amended, consolidated text).

10 Act of 14 December 1995 on agricultural chambers (Polish Journal of Laws of 2022, item 183, consolidated text).

11 Act of 30 May 1989 on professional self-government of certain entrepreneurs (Polish Journal of Laws of 1989, item 194, as amended).

12 Act of 23 May, 1991 on employers' organizations (Polish Journal of Laws of 2022, item 97, consolidated text).

13 Z. Niewiadomski, "Pojęcie administracji publicznej" (The Concept of Public Administration), in *System prawa administracyjnego. Instytucje prawa administracyjnego* (The System of Administrative Law. Institutions of Administrative Law), vol. 1, R. Hauser, Z. Niewiadomski, A. Wróbel eds. (C.H. Beck, 2010), 58; H. Izdebski, M. Kulesza, *Administracja publiczna. Zagadnienia ogólne* (Public Administration. General Issues), 3 ed. (LIBER, 2004), 93.

14 Bigo, *Związki*, 80–81; Z. Leński, *Zarys prawa administracyjnego* (An Outline of Administrative Law) (LexisNexis, 2001), 16–18; J. Filipek, *Prawo administracyjne. Instytucje*

ogólne (Administrative Law. General Institutions) (Universitas, 1995), 20–21.

15 Bigo, *Związki*, 80.

16 Niewiadomski, *Pojęcie*, 59–60.

17 K. Prandecki, "Dobro wspólne a zrównoważony rozwój" (The Common Good and Sustainable Development), *Optimum. Studia Ekonomiczne* 82 (2016) No. 4, 59.

18 Prandecki, "Dobro", 66.

19 E. Knosala, *Zarys nauki administracji* (An Outline of the Science of Administration) (Wolters Kluwer Polska, 2006), 54–56.

20 Izdebski, Kulesza, *Administracja*, 96–97.

of regulation and order, service administration, exercise of ownership rights and development management.²¹ The implementation of the common good is the goal of every public administration, and the administration should aim to achieve a specific level of satisfaction of a social need recognized by the legislator at a specific level.

Taking into account the above, it should be stated that the implementation of the common good is the goal of

ial system of the Republic of Poland ensures decentralization of public authority. The territorial system concerns local (general) self-government. Therefore, a question arises whether business self-government, for which the territorial system does not have to be the basic determinant of its creation, can be treated as part of public administration ensuring the decentralization of public power.



Each task entrusted to the administration is always public in nature.

every public administration, and the administration should aim to achieve a specific level of satisfaction of a social need recognized by the legislator at a specific level. The legislator has the exclusive right to determine what the purpose of the administration is. The purpose of the administration is achieved by specifying the tasks and competences of a given administration.²² Competences may be regulated by the instruments provided for by both public law (e.g. issuing administrative decisions) and private law (e.g. concluding sales and lease agreements, etc.). Each task entrusted to the administration is always public in nature. Public administration has no private (non-public) tasks to perform because the administration strives to achieve the common good (public interest), not private interest.

3. Regulation business self-government in the Polish Constitution

Before issues relating to the scope of public tasks of business self-government are analyzed, it is necessary to consider the constitutional empowerment of this form of self-government to carry out public administration tasks. Pursuant to Art. 15 section 1 of the Constitution of the Republic of Poland,²³ the territor-

The answer to this question should be positive. First of all, Art. 15 section 1 of the Constitution of the Republic of Poland does not contain regulations covering the entire decentralization of public authority. Although this provision defines the basic referent of the concept of decentralization, directly indicating that it is the territorial system (basic territorial division into communes, districts and voivodeships) that ensures this decentralization, it is not exhaustive.²⁴

Apart from the decentralization component based on the territorial system, other components not based on this criterion have been preserved. Decentralization itself means such a way of organizing the state apparatus in which lower-level bodies are not hierarchically subordinated to higher-level bodies, and interference in the activities of lower-level bodies can only take place on the basis of, within the limits, and in the manner provided for by statute.²⁵ An important element of the definition of decentralization is that

amended), hereinafter: the Constitution of The Republic of Poland.

21 I. Lipowicz, "Dobro wspólne" (The Common Good), *Ruch Prawny Ekonomiczny i Socjologiczny* 79 (2017) No. 3, 17–34.

22 Niewiadomski, *Pojęcie*, 47–55.

23 The Constitution of The Republic of Poland of 2 April 1997 (Polish Journal of Laws of 1997, item 483, item 571, as

24 W. Wierzbowski, A. Wiktorowska, "Decentralizacja i centralizacja administracji" (Decentralization and Centralization of Administration), in *Prawo administracyjne* (Administrative Law), M. Wierzbowski ed. (Wolters Kluwer Polska, 2000), 106–107.

25 P. Tuleja, "Art. 15 [Zasada decentralizacji]" (Article 15 [Principle of Decentralization]), in *Konstytucja Rzeczypospolitej Polskiej. Komentarz* (Constitution of the Republic of Poland. Commentary), P. Tuleja ed. (Wolters Kluwer Polska, 2019), 73.

which provides decentralized entities with a certain degree of independence in performing public tasks.²⁶ This statement directly corresponds to the principle of subsidiarity contained in the preamble to the Polish Constitution, according to which the functioning of the Republic of Poland as a whole should respect the principle of strengthening the rights of citizens and their communities.²⁷ However, the legislator decides when a community in the constitutional (more broadly legal) sense is created.

Article 17, section 1 of the Constitution of the Republic of Poland defines professional self-governments as a form of decentralization of public authority and indicates their basic tasks. This is an example of the so-called material decentralization of public authority,²⁸ consisting in entrusting independent bodies or organizations – usually local government entities – with the right to manage specific types of matters.²⁹ The constitutional position of business self-government is defined in Art. 17 section 2 of the Constitution of the Republic of Poland, constituting a continuation of the regulation of local governments, which may indicate that it is considered a form of decentralization of public authority. This provision is of fundamental importance and in accordance with its content, other types of self-government different from professional self-government may be established by statute, pro-

vided that these self-governments do not violate the freedom to pursue a profession or limit the freedom to undertake business activity.

The linguistic interpretation of Art. 17 section 2 of the Constitution of the Republic of Poland does not expressly suggest that self-government other than territorial or professional self-government is a form of decentralization of public authority; however, reaching for a systemic interpretation allows one to dispel doubts in this respect. According to the systemic interpretation, the location of a given provision in the internal structure of a given legal act is also important for the interpretation of a given provision.³⁰ It is no coincidence that the legislator included the regulation set forth in Art. 17 section 2 among the basic principles of the state system as a development of the principle of decentralization based in this case on the material criterion, i.e. the tasks assigned by the legislator to this form of self-government. Thus, despite the lack of a clear constitutional definition of the main tasks of business self-government, this self-government may constitute part of the decentralization of public power.³¹ The Constitution leaves the choice in this respect to the legislative authority.

4. The procedure for determining public tasks for future business public self-government

The legislator has considerable freedom in defining the tasks of public administration, but the delegation of public tasks to individual segments of the executive power should not be accidental. This applies in

26 Judgment of the Constitutional Tribunal of February 18, 2003, ref. K 24/02, LEX No. 76809; J. Boć, “Stosunki ustrojowo-prawne między podmiotami administracyjnymi” (Political and Legal Relations between Administrative Entities), in *Prawo administracyjne* (Administrative law), J. Boć ed., 7 ed. (Kolonia Limited, 2001), 226.

27 L. Garlicki, M. Derlatka, “Wstęp” (Introduction), in *Konstytucja Rzeczypospolitej Polskiej. Komentarz* (Constitution of the Republic of Poland. Commentary), vol. 1, L. Garlicki, M. Zubik eds., 2 ed. (Wolter Kluwer, 2016), 34–35; B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz* (Constitution of the Republic of Poland. Commentary), 2 ed. (Wydawnictwo Sejmowe, 2012), 7–8.

28 P. Sarnecki, “Art. 17”, in *Konstytucja Rzeczypospolitej Polskiej. Komentarz* (Constitution of the Republic of Poland. Commentary), L. Garlicki, M. Zubik eds., 2 ed. (Wydawnictwo Sejmowe, 2016), 480; P. Tuleja, “Art. 15 [Zasada decentralizacji]”, 77.

29 Wierzbowski, Wiktorowska, *Decentralizacja*, 107.

30 Judgment of the Supreme Administrative Court of January 20, 2023, ref. III OSK 8837/21, LEX No. 3600117; L. Morawski, *Zasady wykładni prawa* (Principles of Legal Interpretation) (TNOIK, 2010), 125–127.

31 Judgment of the Constitutional Tribunal of March 24, 2015, ref. K 19/14, LEX No. 1659372; K. Bandarzewski, “Udział izb gospodarczych w decentralizacji władzy publicznej” (Participation of Chambers of Commerce in the Decentralization of Public Authority), in *Związki publicznoprawne w świetle współczesnego prawodawstwa międzynarodowego, unijnego i krajowego* (Public-Law Organizations in the Light of Contemporary International, EU and National Legislation), J. Korczak ed., *Acta Universitatis Wratislaviensis* 333 (2021), 166.

particular to local government administration, where one of its important elements consists in ensuring a certain level of independence in the tasks delegated to it by law, called “own tasks.”

It would be unjustified, or even wrong, to delegate public tasks to self-governments, the scope and manner of performance of which would be fully regulated by normative acts originating from outside the bodies of

delegate to business self-government only such tasks in which entrepreneurs will have the right to shape the rules for their implementation, which in turn will ensure the implementation of independence as an indispensable element of self-government.³² The tasks delegated by the legislator to business self-government should be perceived by entrepreneurs themselves as making their functioning easier.³³



It would be unjustified, or even wrong, to delegate public tasks to local governments, the scope and manner of performance of which would be fully regulated by normative acts originating from outside the bodies of a given local government.

a given self-government. Such self-government would in fact be part of the government administration, based on the principle of centralization and fully subordinated to the supreme, central or local government administration body (or bodies). In connection with the above, it is possible to point out the main assumptions that the legislator should take into account when entrusting business self-government with public tasks.

Firstly, the basic scope of tasks that should be delegated to business self-government should not be uniform or homogeneous in the sense that it would be unacceptable to adapt its performance to the needs of a given group of entrepreneurs. Only exceptionally, as an additional scope of public tasks (so-called “commissioned tasks”), can these tasks which constitute government administration tasks and must be performed uniformly on a national scale, be transferred to business self-government.

Secondly, the tasks that the legislator should delegate to business self-government should assume the need to adapt them to local/regional needs, conditions and expectations of entrepreneurs in order to best achieve the intended goal. This premise is related to another assumption, according to which the legislator can

Thirdly, the tasks delegated by the legislator to business self-government must be important for entrepreneurs. Tasks whose content or scope of performance will not concern the functioning of the entrepreneur or will be of marginal importance for them should not be delegated. This results from the assumption that business self-government includes entities that have a basic common feature, which conduct of business activity.³⁴

Fourthly, the tasks delegated by the legislator should respect the constitutional limitation resulting from Art. 17 section 2 of the Constitution of the Republic of Poland, i.e. they cannot limit the guarantee stipulated by Art. 22 of the Constitution of the Republic of Poland, i.e. the freedom to undertake business activity, including the freedom to choose and pursue the business activity, and the freedom to conclude

32 Bandarzewski, *Udział*, 178.

33 K. Bandarzewski, *Samorząd gospodarczy w prawie polskim. Studium prawne* (Business Self-Government in Polish Law. Legal Study) (Wydawnictwo Uniwersytetu Jagiellońskiego, 2014), 219.

34 Bandarzewski, *Samorząd*, 219.

contracts as part of its conduct, nor can they violate the freedom guaranteed by virtue of Art. 65 section 1 of the Constitution of the Republic of Poland, i.e. the freedom to pursue a profession by, for example, providing business self-government with the power to grant the right to practice a given profession.³⁵ Importantly, the described assumption is the basic scope of limiting the tasks of business self-government. It concerns the very essence of this business self-government, which, due to the participation of entrepreneurs in it, should have tasks related to economic activity. Therefore, the constitutional exclusion of business self-government from regulating business activity or practicing a profession not covered by professional self-government constitutes a significant barrier to the possibility of entrusting it with public tasks.

Fifthly, when entrusting business self-government with public tasks, the legislator should not only define the competences of such self-government bodies, but also enable these competences to be implemented. The issue of competences themselves does not raise any significant doubts. They could enable the performance of public tasks of business self-government and the achievement of the intended goal. It is also important to ensure the financing of business self-government with public taxes paid by entrepreneurs (it seems that it should be a state tax, part of which would be transferred to such a local self-government, e.g. financing agricultural chambers from a 2% deduction from the agricultural tax revenues³⁶), which will not only ensure a permanent and independent source of income, but also constitute a kind of “connection” of entrepreneurs paying such taxes with the structure of the local government itself. Moreover, business self-government should be obligatory.

The legislator can quite freely create public tasks for a given self-government body, but imposing tasks and waiting for their proper performance without the participation of the interested parties themselves may lead to less than acceptable results. This is primarily due to the fact that the current Polish legal system

generally does not recognize obligatory business self-government,³⁷ which results in the lack of practically developed skills for the proper performance of public tasks by such self-government. Moreover, the statutory entrustment of a given public task to business self-government means that, in the absence of its hierarchical subordination, the only criterion for supervision over the performance of this task will be legality. Legality cannot be transformed into an assessment of the validity, purposefulness or quality of the performance of a given task.

Therefore, it seems reasonable to prepare the structures of future business self-governments to perform public tasks. This process can basically start at any time, as long as entrepreneurs demonstrate at least minimal organization in any structures. If such structures (e.g. private law organizations) do not exist, it is too early to create business self-government because there will be no common bonds or goals for such entrepreneurs. Such bonds (or goals) are necessary, so that the bodies of this self-government composed of entrepreneurs can correctly “read” common goals and treat them as a priority in relation to the individual goals of specific entrepreneurs, including those entrepreneurs who will act as the authorities of such self-government.

However, if there is any level of integration in a given area of the economy, even a minimal one, then one of the first stages should involve an assessment – made by the entrepreneurs themselves and their organizations – of whether the existing public tasks performed for them or performed in the area of the economy by the government administration or local self-government are implemented correctly, reliably, economically, etc. If the answer to this question is positive, it essentially means that entrepreneurs themselves do not see any need to change the existing situation and that it is sufficient to create private law organizations consisting of these entrepreneurs. Moreover, the possible lack of mutual trust between entrepreneurs may speak against electing people from among them to the bodies of the future self-government.

35 Judgment of the Constitutional Tribunal of March 24, (2015), ref. K 19/14, *op. cit.*

36 Article 35 section 1 point 1 of the Act on agricultural chambers.

37 Except for the insurance business self-government – articles 420–429 of the Act of 11 September 2015 on insurance and reinsurance activities (Polish Journal of Laws of 2023, item 656, as amended, consolidated text).

Only the recognition that the current public tasks towards entrepreneurs are being performed incorrectly by the public administration, or that they do not take into account their needs or expectations, or that they should be expanded to include other tasks, or that the existing ones should be changed, justifies the transition to the next stage of creating business self-government bodies and entrusting them with public tasks.

This stage aims to indicate which tasks could be transferred to existing private law organizations of entrepreneurs. The transfer of a public task could be based, for example, on the assignment to such an organization of a public task previously carried out by a public administration pursuant to Art. 5 of the Act on public benefit activities and volunteering.³⁸ After such an entrustment for a trial period (e.g. 1 or 2 years), it should be assessed whether a given task is performed better or more effectively by the entrepreneurs' organization, or whether it should be left in the current form.

This description may also include modifying the task or extending the "trial" period. Its aim is to determine whether a given task is of a business self-government nature through the possibility of adapting it to the local/regional needs of entrepreneurs and whether the entrepreneurs themselves are interested in performing it. Only after this stage is successfully completed should one proceed to the statutory creation of obligatory self-government and entrusting it with public tasks. However, this assessment can only be made by the legislator because the creation of business self-government as part of the decentralization of public power depends on his will.³⁹ The process outlined in this way will not only allow entrepreneurs to make necessary adjustments to be able to participate in obligatory self-government but also enable them to implement public tasks and bear responsibility for their performance.

The "road map" presented above in determining public tasks entrusted to business self-government appears to be a long process whose results are uncer-

tain. Can this process not be shortened by the legislator unilaterally granting specific public tasks to business self-government without waiting for their approval by the entrepreneurs themselves? The legislator may choose any mode of introducing tasks, including the awarding of such tasks to the newly established business self-government. Such actions are carried out towards the local self-governments, without conducting any dialogue with these local self-governments as a result of which public tasks are arbitrarily transferred to local self-government.⁴⁰ However, there is an important difference between local self-government, which, in principle, performs the vast majority of various public tasks and which are addressed to all residents of a given territory, regardless of their profession or business activity and business self-government. Regardless of how the legislator builds the structure of local administration, the local self-government will still perform most public tasks at the local level. However, business self-government would constitute a new form of decentralization that may be created in the future, and since it would be composed chiefly of entrepreneurs, they could not be omitted also at the stage of determining what tasks such self-government should perform.

It is also possible to point out certain spheres of public administration activity in which additional tasks of the future business self-government can be sought. The public tasks of business self-government should include providing assistance to entrepreneurs in their business activities. This task should include legal assistance, as well as accounting, IT support and any other assistance relevant to the scope of the business activity undertaken or conducted. This is quite a common scope of tasks in the continental model of European chambers of commerce.⁴¹ Business self-government should also perform public tasks includ-

38 The Act of 24 April 2004 on public benefit activities and volunteering (Polish Journal of Laws of 2023, item 571, consolidated text).

39 Bandarzewski, *Samorząd*, 298.

40 For example, sales of solid fuels by municipalities on preferential terms based on the Act of 27 October 2022 on preferential purchase of solid fuel for households (Polish Journal of Laws of 2022, item 2236, as amended).

41 M. Pilgrim, R. Meier, *National Chambers of Commerce. A primer on the organization and role of chambers of commerce* (Center for International Private Enterprise, 1995), 36–40.

ing the appointment of experts (appraisers), and public tasks should be sought within the scope of obligatory, rather than only optional, participation in shaping vocational and secondary education programmes, including the establishment of schools.

Another area of search for future public tasks of business self-government can be indicated. It is the possibility of managing public goods (public utility facilities) provided that such management is more effective or efficient, or that it serves the common good (public goal) more effectively than the current method of its implementation. It should be unacceptable to provide business self-governments with the powers to grant individual administrative acts

5. Public tasks performed by chambers of commerce

This description is not intended to indicate “ready-made” public tasks for future business self-government. These tasks should be developed during the process of creating the self-government itself. Nevertheless, referring to the specific “road map” presented in this article, it should be stated that a stage is already being implemented that can be described as transferring specific public tasks to existing private law self-government organizations of entrepreneurs. Therefore, in the discussion on the future of business self-government, a reliable assessment of the scope of these tasks and the method of performing them should be made.

Business self-government cannot acquire the right to independently issue decisions necessary to undertake and conduct business activities; however, possible participation of such a chamber in proceedings aimed at issuing such acts may be considered.

(e.g. concessions) necessary to start business activity⁴² or to limit the conduct of business activity. Business self-government cannot, in conjunction with Art. 17 section 2 of the Constitution of the Republic of Poland, acquire the right to independently issue decisions necessary to undertake and conduct business activities; however, the possible participation of such a chamber in proceedings aimed at issuing such acts may be considered.

Pursuant to Art. 4 section 1 and section 2 of the Act on Chambers of Commerce, these chambers are entitled to express opinions on draft solutions relating to the functioning of the economy and may participate, under the terms specified in separate provisions, in the preparation of draft legal acts in this regard, as well as assess the implementation and functioning of legal provisions relating to conduct of business activity.

The current regulation independently grants the right to chambers of commerce to express opinions on draft proposals concerning various solutions covering both legal acts and planning acts or acts giving directions for future solutions, as well as to assess the functioning of the existing regulation. There should be no doubt that the described scope covers public tasks of chambers of commerce performed in an impersonal manner. Neither a public administration body nor the

42 However, the legislator is not consistent in this respect in the regulation of the Minister of Infrastructure of 5 July 2011 on authorizing Polish nationwide organizations bringing together international road carriers to issue foreign permits (Polish Journal of Laws of 2011, item 869), 24 business organizations were authorized to grant foreign permits for the transport of persons and goods.

Polish Sejm or the Polish Senate (the lower and the upper house of the Polish Parliament, respectively) has been obliged to ask chambers of commerce to express their opinion or assessment.⁴³ Nor is anybody obliged to take into account the chamber's opinion or assessment submitted. The existing regulation in this area is defective because ensuring some form of actual participation by chambers of commerce in the procedure of preparing legal acts would constitute an important right of such chambers.⁴⁴ In legislative practice, such participation was noted only in a few cases.⁴⁵

It seems that the participation of chambers of commerce in the law-making process should not only be obligatory but also secure the actual participation of business self-government in the law-making process. Examples include obliging the authority preparing a draft piece of legislation to obligatorily justify the reasons of refusing to take into account the business self-government's proposals submitted to a given draft, or granting, in the field of economy (or its segments), the business self-government the right to submit its own draft pieces of legislation.

Another scope of the search for public tasks of the future business self-government should be the sphere of resolving disputes between entrepreneurs or entrepreneurs and consumers.⁴⁶ The creation of arbitration courts, further simplification of procedures before these courts or the creation of further alternative

dispute resolution or arbitration procedures to the common courts should be recognized as public tasks of these business self-governments.⁴⁷ This scope has already been regulated under Art. 5 section 2 point 4 of the Act on Chambers of Commerce and thus it would be necessary to assess in this respect how this task is already being carried out by chambers of commerce and to what extent it is possible to introduce any changes.⁴⁸ It would be necessary to leave regulated under Art. 5 section 2 point 2 of the Act on Chambers of Commerce the task of the chambers is to issue opinions on existing customs relating to business activities.

The public tasks that can be performed by the chamber of commerce include supporting, in cooperation with the relevant educational authorities, the development of vocational education, supporting vocational training in workplaces and the professional development of employees (Article 5 section 2 point 2 of the Act on Chambers of Commerce).⁴⁹ Pursuant to Art. 3 section 1a and section 2 of the Education Law,⁵⁰ the educational system in the field of vocational training is supported by business self-governments,⁵¹ and public administration bodies, including bodies managing schools and institutions, are obliged to cooperate with these self-governments in performing educational tasks.

The legislator granted chambers of commerce the right to submit to the relevant ministers a proposal to

43 Resolution of the Sejm of the Republic of Poland of 30 July 1992 (Official Gazette of the Government of the Republic of Poland of 2022, item 990, as amended, consolidated text), Resolution of the Senate of the Republic of Poland of 23 November 1990 (Official Gazette of the Government of the Republic of Poland of 2024, item 10, consolidated text).

44 Bandarzewski, *Samorząd*, 229–237.

45 For example, the National Chamber of Commerce was asked to express its opinion on the draft act of 8 February 2018 amending the Act on social assistance, justification to the bill, form No. 2111 of the 8th term of office of the Sejm, <https://orka.sejm.gov.pl/Druki8ka.nsf/0/D659073EB95D7910C12581F00035B221/%24File/2111.pdf> (access: 10.09.2023).

46 D.P. Kała, "O relacjach między sądownictwem państwowym a polubownym w znaczeniu wąskim" (On the Relationship Between State and Arbitration Judiciary in the Narrow Sense), *Kwartalnik ADR. Arbitraż i Mediacja* 17 (2012) No. 1, 77–86.

47 Articles 1154–1217 of the Act of 17 November 1964, Code of the Civil Procedure (Polish Journal of Laws of 2023, item 1550, as amended, consolidated text).

48 For example, in 2017 one of the largest arbitration courts, i.e. the Court of Arbitration at the Polish Chamber of Commerce, received 195 cases, <https://www.prawo.pl/prawnicy-sady/195-spraw-w-sadzie-arbitrazowym-kig-w-2017-r,186256.html> (access: 10.09.2023).

49 Bandarzewski, *Samorząd*, 223–229.

50 Act of 14 December 2016 Education Law (Polish Journal of Laws of 2023, item 900, as amended, consolidated text).

51 J. Fila, "Współpraca szkół z pracodawcami" (Cooperation between Schools and Employers), in *Współpraca szkół zawodowych z przedsiębiorcami na przykładzie Działania 9.2 PO KL* (Cooperation of Vocational Schools with Entrepreneurs on the Example of Measure 9.2 of the Human Capital Operational Programme), J. Fila ed. (Instytut Badań Edukacyjnych, 2014), 59–62.

introduce a profession into the classification of vocational education professions, to delete a profession or to make changes to a profession, a qualification separate in a profession or additional professional skills,⁵² as well as to participate in meetings of the pedagogical council of a vocational school.⁵³ In addition, the minister responsible for education and upbringing may conclude agreements with business self-governments in order to improve the state of vocational education, in particular the implementation of practical vocational training⁵⁴ or the establishment of a vocational school by a business self-government body.⁵⁵

Another sphere of public tasks performed by chambers of commerce is the collection and transmission of information on the state of the economy to legislative bodies and the main (central) bodies of executive power and local self-government bodies.

The public tasks of chambers of commerce, and in particular of the National Chamber of Commerce, are the sphere of economic turnover with foreign entrepreneurs. These tasks are carried out through the authorization to issue, for example, certificates of origin of goods, legalization certificates and other documents required in economic transactions.⁵⁶ As an example of the existing regulation, we can point to the powers of the National Chamber of Commerce.⁵⁷ The public tasks of chambers of commerce could also include the sphere of promoting entrepreneurs and the economy abroad.

The scope of public tasks transferred to chambers of commerce is neither too narrow nor inappropriate. The indicated defects of the existing regulation should first be the subject of analysis and modification, and only then may their reliable assessment lead to conclusions

regarding further directions of change. As a questionable example of the proper delegation of a public task, the possibility for the chambers of commerce to issue a public task – pursuant to Art. 12 section 5 of the Act on Chambers of Commerce in conjunction with Art. 10 section 2 of the Customs Law⁵⁸ – certificates confirming the non-preferential origin of goods. Such certificates may be issued either by customs authorities or by chambers of commerce, and while the customs administration issues them free of charge, chambers of commerce charge fees for their issuance.⁵⁹ Therefore, these are not identical conditions for performing the above public task by public administration and chambers of commerce.

Previous draft laws on business self-government included catalogues of public tasks that largely referred to the areas of searching for public tasks presented above.⁶⁰ However, indicating the scope of the search for public tasks is one thing, and proposing specific public tasks is another thing. The tasks included in the previous proposals were aimed primarily at justifying the need to establish public-law business self-government without assessing whether entrepreneurs themselves would be interested in such obligatory self-government and whether there would be any change in the scope of the tasks performed so far. The only change consisted essentially in taking a given task away from a body, e.g. local self-government administration or government administration, and transferring it to the planned public law business self-government. Such automatism is unnecessary and even harmful. Entrepreneurs may perceive it as

52 Article 46 section 7 of the Education Law.

53 Article 69 section 3a of the Education Law.

54 Article 120 section 6 of the Education Law.

55 Article 88 section 4 of the Education Law. In 2018 were 38 vocational schools established by the craft business self-government, educating approximately 6,000 students, „Forum Szkół Rzemiosła – dyskusja o edukacji zawodowej” (Craft Schools Forum – Discussion on Vocational Education), 2018, <https://warsztat.pl/artykuly/forum-szkol-rzemiosla-dyskusja-o-edukacji-zawodowej,65772> (access: 12.09.2023).

56 Article 12 section 3–5 Act on Chambers of Commerce.

57 Bandarzewski, *Samorząd*, 242–244.

58 The Act of 19 March 2004 Customs Law (Polish Journal of Laws of 2023, item 1590, as amended, consolidated text).

59 <https://kig.pl/wp-content/uploads/2023/05/Cennik-swiadczenia-potwierdzajace-niepreferencyjne-pochodzenie.pdf> (access: 10.09.2023).

60 Kmiecik, Antkowiak, Walkowiak, *Samorząd*, 152–153; Kmiecik, *Samorząd*, 218–220; S. Wykretowicz, „Podstawy teoretyczne Obywatelskiego projektu ustawy o izbach przemysłowo-handlowych w Polsce” (Theoretical Foundations of the Citizens’ Bill on Chambers of Commerce and Industry in Poland), in *Obywatelski projekt ustawy o izbach przemysłowo-handlowych w Polsce* (Citizens’ Bill on Chambers of Commerce and Industry in Poland), S. Wykretowicz ed. (Wydawnictwo Naukowe UAM, 2012), 22–23.

an additional threat to their independence which, in fact, limits the freedom of business activity which is already heavily regulated by law.

6. Conclusions

In answering the research question posed at the beginning of this article, regarding the assessment of whether, in their current form, business self-government organizations operating in Poland are entrusted with public tasks and whether changes are needed in this respect, it should be stated that the current regulations allow for the performance of a significant number of public tasks by chambers of commerce or other self-government structures with the participation of entrepreneurs.

Before starting to create a new catalogue of public tasks of business self-government, an actual assessment of the implementation of existing public tasks by local self-government organizations should be made. This will show whether the existing model is defective, requires any changes, or whether it is appropriate. Public tasks should determine the creation of business self-government as a public law entity, and not the other way round.

The proposed mode of a specific “road map”, allowing for the determination of subsequent tasks of the future (possible) business self-government will enable the involvement of entrepreneurs themselves in the process of its creation. This will mean a real treatment of entrepreneurs as entities and even partners in creating a new structure addressed to them and a real implementation of the principle of subsidiarity strengthening the powers of business communities.⁶¹ Such a community would be self-government under public law, entrusted not only with obligatory public tasks but also with the independence to perform them and the performance of tasks in such a way as to best adapt them to entrepreneurs’ needs. However, this is a long process, and its acceleration, as proposed in the journalistic statements quoted at the beginning of this article, cannot be the reason for shortening it.

61 Judgment of the Polish Constitutional Tribunal of 7 March 2012, ref. K 3/10, LEX No. 1124353.

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