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Administrative design obligations in European Union secondary legislation: the emerging contours and constitutional cracks of an implicit legislative template

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This chapter identifies and conceptualises the European Union law contours of the conceptual framework that implicitly accompanies the EU legislator's structuring of (parts of) Member States' administrations. Legislative interventions of this kind have increased over the past two decades, but with varied intensities across different policy fields. The chapter maps the diversity through a cross-sectoral analysis based on EU legislation in 18 of those fields. On that basis, it identifies four categories of administrative design obligations imposed by means of EU secondary legislation. Throughout those categories, the implicit contours of a specific administrative design template can be identified. The chapter subsequently submits a combined reading of Article 197(3) TFEU with the duty to state reasons in Article 296(2) TFEU requires those administrative design choices to be made more explicit. The EU legislator is therefore called upon to take this duty to state reasons for administrative design obligations more seriously in future legislative initiatives.

1. Introduction

1. The European Union legislator's ambition to structure or streamline the administrative organisation of Member States' administrative bodies and authorities by means of secondary legislation instruments has increased noticeably over the past two decades. Although the implementation, application and enforcement of EU rules has traditionally been the province of the Member States, EU secondary legislation increasingly set out to determine how Member States' administrations – and more particularly administrative authorities – have had to be organised. In practice, legislative obligations in that regard have varied from 'simple' obligations to designate certain competent bodies or authorities to legislative norms requiring more full-fledged Member States' administrative bodies to be established or operated. In the latter case, the EU legislator also has not shied away from requiring authorities to be structured as independent or self-standing bodies or to be composed by professionals appointed in accordance with appointment procedures (structural requirements, which relate to the specific (administrative or) legal structure of the administration concerned or to the composition of administrative bodies). On top of that, those bodies may have to apply streamlined decision-making procedures with a list of powers and sanctions or remedies determined by the EU legislator (process or decision-making requirements).

2. All in all, EU legislative interventions have been taking place in a sector-specific context and have as a result received little transversal attention. Their development nevertheless marks an important additional step in the design and formatting of a Europeanised administration at Member State level. As part of that administration, Member States' administrative bodies increasingly independent from both regulatees and from the Member States themselves develop into key drivers of a European administrative space in the shadow of increasingly detailed EU substantive law obligations. Mapping and studying the varieties of administrative design obligations may therefore constitute a promising – yet so far not studied – way of grasping the contours of the legal foundations enabling the rise of that space.

3. This chapter maps the different types of legislative intervention in the organisation and design of Member States' administrations as apparent from the EU legislator's initiatives across 18 policy fields covered by European Union secondary legislation. Building on a qualitative analysis of administrative design obligations across those fields, it distinguishes four categories of administrative design obligations. Those categories range from very little to very detailed design obligations imposed on Member States' legal systems. The analysis additionally also confirms that those administrative design obligations have increased in different policy fields and over time across the EU legal order (section 2).

Building on those findings, the chapter subsequently identifies the contours of an emerging – albeit implicit – legislative template accompanying the introduction of administrative design obligations. That template is grounded in two key pillars of administrative design. Conceptualising those as “impartiality” and “effectiveness” pillars, it will be argued that both inform and structure the configuration of administrative design obligations across EU secondary legislation. As those template contours do not feature explicitly in the legislative process, they have therefore also not been identified as such in the Court of Justice of the European Union's case law or in more general debates on how EU secondary legislation can contribute to the emergence of a European administrative space. Questioning why that is the case, it will be maintained that administrative design obligations appear to have fallen in between the cracks of the EU's competence conferral provisions, which in itself exclude streamlining Member States' administrative capacity from the scope of EU harmonisation by virtue of Article 197(2) TFEU. Confronted with that finding, it is nevertheless submitted that a combined reading of Article 197(3) and Article 296(2) TFEU would require administrative design choices to be made more explicit in EU secondary legislation instruments as part of the duty to state reasons. Compliance with that duty could be the subject of judicial oversight by the EU Courts. The EU legislator is therefore called upon to take this duty to state reasons for administrative design obligations more seriously in future legislative initiatives (section 3).

2. EU secondary legislation and the organisation and design of Member States administrations

4. The application and enforcement of rules determined at European Union level is entrusted in the first place to its Member States.¹ Absent specific Treaty requirements in that regard, those Member States remain free to determine how, by whom and through which means those rules would be applied and enforced. As long as the “effet utile” of EU law could be guaranteed and its provisions would be enforced effectively, Member States have been given significant leeway to organise their own administrative structures and enforcement mechanisms. Over time, however, the policy room given to Member States in that context has come to be constrained, or at least captured, increasingly by EU secondary legislation. Throughout a variety of policy fields covered by European Union law, the EU legislator increasingly has come to require precise designations of Member States' authorities competent for the application and/or enforcement of EU substantive rules. This chapter builds upon the findings of a qualitative

¹ Article 291 (1) TFEU in that regard states that Member States shall adopt all measures of national law necessary to implement legally binding Union acts. ; see also for a general overview, R. SCHÜTZE, ‘From Rome to Lisbon: “Executive federalism” in the (New) European Union’, 47 *Common Market Law Review* (2010), 1385-1427.

assessment of the presence and scope of such obligations in 18 policy fields covered by European Union secondary legislation. Those fields have, for presentation purposes, been divided in three groups: market liberalisation (or competition-related), safety-and-security related rules and weaker-party-protection related fields, as the table also shows:

competition and market liberalisation-related policy fields	stability and safety-related policy fields	weaker party protection-related policy fields
<ol style="list-style-type: none"> 1. competition law 2. energy (electricity and gas) 3. electronic communications and audiovisual media 4. postal services 5. railway liberalisation 6. digital services 	<ol style="list-style-type: none"> 1. prudential regulation in financial services 2. Member States' budgetary soundness 3. border protection 4. food safety 5. environmental protection 6. transport safety 	<ol style="list-style-type: none"> 1. data protection 2. general consumer protection 3. consumer financial protection 4. asylum protection 5. equality and non-discrimination 6. medicinal products

5. Across those 18 policy fields², significant varieties in administrative design obligations accompanying secondary legislation can be found. This section identifies and summarises those varieties and illustrates how and when they have come forward.

In general, administrative design obligations featured in EU secondary legislation could be classified in distinct categories. Those categories vary between no legislative requirements at all to very detailed requirements that involve the ways in which a Member State administrative authority has to be structured or staffed. Four categories can more specifically be distinguished in that regard:

- no specific requirements to designate or structure authorities, but implicit requirements as to the effective application and enforcement of EU substantive rules (2.1.);
- a ‘simple’ legislative requirement imposed on Member States to designate competent authorities or competent bodies, without further requirements as to their composition, structure or decision-making procedures (2.2.);
- legislative requirements to designate competent authorities and bodies, on which specific powers have been conferred accompanied by more or less detailed EU secondary legislation provisions. Those provisions determine the types of decisions designated authorities can take or the procedures and processes accompanying those decisions. By contrast, no precise organisational requirements regarding authorities’ composition and structure are imposed simultaneously (2.3.);

² For a fuller overview updated until June 2026, see https://www.eulegalstudies.uliege.be/cms/c_8012264/en/eulegalstudies-eudaimonia.

–legislative requirements to designate competent authorities, accompanied not only by streamlined decision-making powers and/or processes, but also by composition or structural requirements. Composition requirements e.g. refer to the need to have in place specifically qualified or competent management staff, appointed for a specific duration and with limited means to revoke their appointments. Structural requirements call for a designated authority to function as a fully self-standing body or as a body functionally independent from the rest of the administration. (2.4.).

2.1. Effective application or enforcement considerations aside, no explicit structural, organisational or process requirements

6. Although, in the policy fields covered in this chapter, most instruments of EU secondary legislation have contained at least some reference to the obligation to designate competent authorities or bodies, that has not always been the case. Most notably, in the field of EU environmental law, the need to have in place authorities is at times only indirectly or implicitly required by the legislator. The Asbestos Directive³, the Waste Water Directive⁴, the Nitrates⁵, groundwater⁶ and Drinking Water⁷ Directives, the different Directives on waste and waste disposal⁸ as well as the Directive on Infrastructure for Spatial Information in the European Union (INSPIRE)⁹ and the Directive on seal skins and Regulation on trade in seal products¹⁰ do not require Member States explicitly to provide for specific bodies or authorities accompanying the implementation and enforcement of the obligations set out in those

³ Council Directive 87/217/EEC of 19 March 1987 on the prevention and reduction of environmental pollution by asbestos, [1987] OJ L85/40.

⁴ Directive (EU) 2024/3019 of the European Parliament and of the Council of 27 November 2024 concerning urban wastewater treatment (recast), [2024] OJ L2024/3019 (the 2024 Directive contains numerous references to local and competent authorities and even describes to a certain extent what they have to do ; their existence is nevertheless presumed and the Directive does not explicitly require Member States to designate particular new or existing authorities.

⁵ Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources, [1991] OJ L375/1.

⁶ Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration, [2006], OJ L372/19.

⁷ Directive (EU) 2020/2184 of the European Parliament and of the Council of 16 December 2020 on the quality of water intended for human consumption, [2020] OJ L435/1.

⁸ Council Directive 86/278/EEC of 12 June 1986 on the protection of the environment, and in particular of the soil, when sewage sludge is used in agriculture, [1986] OJ L181/6 ; European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste, [1994] OJ L365/10; Council Directive 96/59/EC of 16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT), [1996] OJ L243/81 ; Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of life vehicles, [2000] OJ L269/34; Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC, [2006] OJ L266/1; Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, [2008] OJ L312/3 ; Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment (WEEE), [2012] OJ L197/38; see also Directive 2009/126/EC of the European Parliament and of the Council of 21 October 2009 on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations, [2009] OJ L285/36.

⁹ Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE), [2007] OJ L108/1.

¹⁰ Council Directive 83/129/EEC of 28 March 1983 concerning the importation into Member States of skins of certain seal pups and products derived therefrom, [1983], OJ L81/30 and Regulation (EC) No 1007/2009 of the European Parliament and of the Council of 16 September 2009 on trade in seal products, [2009] OJ L286/36.

instruments. Similarly, instruments containing specific obligations, such as the Regulation prohibiting leghold traps¹¹ and the Directive on volatile organic compound emissions caused by the storage of petrol¹², or transversal instrument such as the wild birds Directive¹³ or the habitat Directive¹⁴, do not contain provisions directly requiring Member States to designate competent authorities. At the same time, however, those different instruments all apply and operate on the assumption that its provisions will, in one way or another, be implemented, applied and enforced by Member States' administrations and authorities. A similar conclusion also goes for coast guard authorities in the field of marine transport safety legislation.¹⁵

2.2. Requirements to designate competent authorities or bodies, without additional organisational or procedural requirements

7. Other EU secondary legislation instruments more explicitly contain provisions requiring Member States to designate competent authorities and/or competent bodies. Contrary to the legal instruments highlighted in the previous subsection, those instruments contain at least one explicit provision requiring Member States to set up one or more competent authorities. Instruments featuring in this category, however, do not impose any further requirements. Apart from requiring Member States to set up authorities and/or bodies, those States retain an important degree of autonomy in setting up and structuring those authorities.

8. First, the field of cross-border health care and threats to health regulation offers an apt illustration of those kind of administrative design obligations. In the cross-border healthcare Directive¹⁶, the Directive on tobacco products¹⁷ and the cross-border threats to health Regulation¹⁸, Member States have been obliged to set up bodies, that vary between national contact points, or competent authorities.¹⁹ The powers entrusted on those authorities have been outlined in the specific instruments of secondary legislation; the EU legislator did not,

¹¹ Council Regulation (EEC) No 3254/91 of 4 November 1991 prohibiting the use of leghold traps in the Community and the introduction into the Community of pelts and manufactured goods of certain wild animal species originating in countries which catch them by means of leghold traps or trapping methods which do not meet international humane trapping standards, [1991] OJ L308/1.

¹² European Parliament and Council Directive 94/63/EC of 20 December 1994 on the control of volatile organic compound (VOC) emissions resulting from the storage of petrol and its distribution from terminals to service stations, [1994] OJ L365/24.

¹³ Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, [2009] OJ L20/7.

¹⁴ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, [1992] OJ L206/7.

¹⁵ See Regulation (EU) 2025/2434 of the European Parliament and of the Council of 26 November 2025 on the European Maritime Safety Agency and repealing Regulation (EC) No 1406/2002, [2025] OJ L2025/2434.

¹⁶ Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare, [2011] OJ L88/54.

¹⁷ Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC, [2014] OJ L127/1.

¹⁸ Regulation (EU) 2022/2371 of the European Parliament and of the Council of 23 November 2022 on serious cross-border threats to health and repealing Decision No 1082/2013/EU, [2022] OJ L314/26.

¹⁹ Article 6 of Directive 2011/24/EU (national contact points); Article 26 of Directive 2014/40/EU; Article 13(9) of Regulation 2022/2371 (authorities).

however, specify how those powers have to be executed and implemented, apart from requiring different Member States' bodies to cooperate with their counterparts in other Member States.²⁰

9. Second, the field of EU transport safety legislation highlights a similar trend. In the fields of road safety regulation²¹, inland vessel safety regulation²² and marine safety regulation²³, EU secondary legislation has required the designation of Member States' competent authorities. Although the tasks of those bodies have been outlined in those instruments of secondary legislation, the ways in which decision-making powers that accompany those tasks have to be organised or structured, have not been the subject of further harmonisation.²⁴

10. Third, the obligation to designate competent authorities and/or bodies, without additional procedural requirements imposed on them, features prominently across a range of EU environmental law instruments.²⁵ The wild animals in zoos²⁶, water framework²⁷, noise²⁸, environmental liability²⁹ bathing water³⁰, floods³¹, marine strategy³², ambient air quality³³, dangerous substances³⁴, (industrial) emissions³⁵, environmental impact assessment³⁶ and liquid

²⁰ Article 10(1) of Directive 2011/24/EU; Article 23 of Directive 2014/40/EU; Article 16 of Regulation 2022/2371.

²¹ Directive 2008/96/EC of the European Parliament and of the Council of 19 November 2008 on road infrastructure safety management, [2008] OJ L319/59.

²² Directive 2009/100/EC of the European Parliament and of the Council of 16 September 2009 on reciprocal recognition of navigability licences for inland waterway vessels, [2009] OJ L259/8.

²³ Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC, [2002] OJ L208/10. See also Articles 12 and 18 of Regulation (EU) 2019/1239 of the European Parliament and of the Council of 20 June 2019 establishing a European Maritime Single Window environment and repealing Directive 2010/65/EU, [2019] OJ L198/64.

²⁴ See e.g. Article 2(2) of Directive 2008/96/EC; Article 2 of Directive 2009/100/EC; Article 3(k) of Directive 2002/59/EC.

²⁵ See also the chapter by Katarzyna JANCEWICZ in this volume for a fuller overview and analysis.

²⁶ Article 7 of Council Directive 1999/22/EC of 29 March 1999 relating to the keeping of wild animals in zoos, [1999] OJ L94/24.

²⁷ Article 3 of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, [2000] OJ L327/1.

²⁸ Article 4 of Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise, [2002] OJ L189/12.

²⁹ Article 11 of Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, [2004] OJ L143/56

³⁰ Article 2(2) of Directive 2006/7/EC of the European Parliament and of the Council of 15 February 2006 concerning the management of bathing water quality and repealing Directive 76/160/EEC, [2006] OJ L67/34.

³¹ Article 3(2) of Directive 2007/60/EC of the European Parliament and of the Council of 23 October 2007 on the assessment and management of flood risks, [2007] OJ L288/27.

³² Article 7 of Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive), [2008] OJ L164/119.

³³ Article 3 of Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe, [2008] OJ L152/1.

³⁴ Article 6 of Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC, [2012] OJ L197/1.

³⁵ Article 71 of Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (recast), [2010] OJ L334/17 and Article 10 of Directive (EU) 2015/2193 of the European Parliament and of the Council of 25 November 2015 on the limitation of emissions of certain pollutants into the air from medium combustion plants, [2015] OJ L313/1.

³⁶ Article 1(2)(f) of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (codification), [2012] OJ L26/1.

fuels³⁷ Directives require the designation of competent authorities. Those designations are, to a variable extent, accompanied by specific cross-border cooperation requirements.³⁸ Those requirements do not, however, always and naturally accompany the obligation to designate a specific, particularly structured or newly designed competent (administrative) authority or body. In a similar manner, EU environmental law regulations have required Member States to designate competent authorities or bodies. The fauna and flora trade³⁹, shipments of waste⁴⁰, timber⁴¹ship recycling⁴², access to genetic resources (in compliance with the so-called Nagoya Protocol)⁴³, invasive species⁴⁴ and mercury⁴⁵ Regulations follow a similar approach.

11. Fourth, instruments in the realm of e-commerce and online trade, predating the major overhaul of EU platform regulation starting in 2020, require Member States to designate competent authorities, but do not further require them to be structured or cooperate in a coordinated manner.⁴⁶

12. Fifth, in the context of budgetary supervision, Regulation 47/2013 equally requires the designation of independent bodies, separate from the budgetary authorities.⁴⁷ Despite adding that those bodies need to be independent, the Regulation does not impose a particular institutional arrangement. Neither does it determine how those independent bodies have to be

³⁷ Directive (EU) 2016/802 of the European Parliament and of the Council of 11 May 2016 relating to a reduction in the sulphur content of certain liquid fuels (codification), [2016] OJ L132/58 (although no direct designation provision features in this Directive, an authority has to be designated in order to meet the requirements set out in that instrument).

³⁸ See e.g. Article 3(3) of Directive 2000/60/EC and Article 6 of Directive 2008/56/EC; Article 21 of Directive 2012/18/EC.

³⁹ Article 13 of Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, [1997] OJ L61/1.

⁴⁰ Article 2(18) of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste, [2006] OJ L190/1.

⁴¹ Article 2(8) of Council Regulation (EC) No 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community, [2005] OJ L347/1 and Article 7 of Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market, [2010] OJ L295/23.

⁴² Article 3(11) of Regulation (EU) No 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling and amending Regulation (EC) No 1013/2006 and Directive 2009/16/EC, [2013] OJ L330/1.

⁴³ Article 6(1) of Regulation (EU) No 511/2014 of the European Parliament and of the Council of 16 April 2014 on compliance measures for users from the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization in the Union, [2014] OJ L150/59.

⁴⁴ Article 15(2) of Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species, [2014] OJ L317/35.

⁴⁵ Article 17 of Regulation (EU) 2017/852 of the European Parliament and of the Council of 17 May 2017 on mercury, and repealing Regulation (EC) No 1102/2008, [2017] OJ L137/1.

⁴⁶ Article 19 of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), [2000] OJ L178/1; Article 7(1) of Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC, [2018] OJ L60/1 and Article 14 of Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services, [2019] OJ L186/57.

⁴⁷ Article 5 of Regulation (EU) No 473/2013 of the European Parliament and of the Council of 21 May 2013 on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the euro area.

able to take certain decisions or how they have to be composed. As a result, the EU legislator largely left Member States free to determine how those bodies will operate in practice.

2.3. Requirements to designate competent authorities or bodies, accompanied by more streamlined decision-making requirements

13. Within the 18 fields investigated, instruments of EU secondary legislation across five fields shown a marked tendency to go beyond the ‘mere’ obligation to designate competent bodies or authorities. Within that context, the EU legislator required that designated bodies or authorities would have to be accompanied by more or less detailed decision-making procedural frameworks. Those frameworks contain two key elements. On the one hand, the EU legislator specifies the type of decisions (sanctions, injunctions) a competent body can or must take. On the other hand, Member States are also required to allot a sufficient amount of resources or staff to the designated authority, in order for it to be able to implement the tasks and missions required by the EU legislator. By contrast, the legislative instruments highlighted here, do not in themselves impose one specific format of competent authority to be created. Member States in that regard remain free to choose the setup of a fully independent administrative authority, a semi-independent administrative division forming part of the overall national administration or another format. As long as the designated bodies are able to function in such a way as to meet the objectives and decision-making procedural obligations set by the EU legislator, Member States are at liberty to structure their day-to-day operations and impose requirements (or not) on (management) staff of those authorities in accordance with their national legal traditions.

14. First, EU consumer protection law offers an excellent illustration of such requirements. According to Regulation 2017/2394, Member States have to set up competent authorities and a national office for consumer protection.⁴⁸ Those bodies need to be granted the necessary resources for the application of that Regulation, including sufficient budgetary and other resources, expertise, procedures and other arrangements. At the same time, however, no specific composition or legal form requirements are imposed on those authorities. A competent authority is defined as ‘any public authority established either at national, regional or local level and designated by a Member State as responsible for enforcing the Union laws that protect consumers’ interests’⁴⁹ That can involve any ministerial department, independent supervisory body or any other structure tasked with enforcing, in the public interest, EU consumer law. Each of those bodies nevertheless needs to cooperate with its counterparts in other Member States⁵⁰ and needs have minimum powers and has to be able to adopt a minimum amount of decisions, including the power to access documents, carry out on-site inspections, impose interim measures and to inflict effective, proportionate and dissuasive sanctions or administrative penalties.⁵¹ Member States are nevertheless granted discretion on deciding which sanctions will be considered effective in that regard and on whether the designated bodies

⁴⁸ Article 5(1) of Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004, [2017] OJ L354/1.

⁴⁹ Article 3(6) of Regulation 2017/2394.

⁵⁰ Article 11 to 23 of Regulation 2017/2394.

⁵¹ Article 9 of Regulation 2017/2394.

can impose them directly or through an intermediary (such as a public prosecutor service or the courts).⁵²

15. Second, the EU regulatory framework shaping the protection of financial consumers (investors) shows similar characteristics. The EU's Markets in Financial Instruments Regulation (MIFIR), its market abuse Regulation and its crypto-asset regulatory framework⁵³ all require Member States to designate one⁵⁴ or more competent authorities⁵⁵, without nevertheless imposing detailed requirements on how those authorities have to be structured or operate. Apart from professional secrecy obligations⁵⁶, those authorities need to be structured only in such a way that the minimum enforcement powers and decision-making procedures, including the infliction of administrative penalties⁵⁷, can be exercised in an effective manner.⁵⁸ In the same way, they have to be set up so as to make coordination with their counterparts in other Member States possible and effective.⁵⁹

16. Third, in the context of the regulation of chemical products, Member States are required to designate a competent authority or multiple competent authorities responsible for performing the tasks allocated to competent authorities under the EU's REACH Regulation and for cooperating with the Commission and the European Chemicals Agency.⁶⁰ Similar obligations exist in relation to the classification, labelling and packaging of substances and mixtures⁶¹, to

⁵² Article 10 of Regulation 2017/2394.

⁵³ See for a detailed analysis, P. VAN CLEYNENBREUGEL, 'The New Regulatory Framework on Market Abuse Involving Crypto-Assets' in A. VANDENBULKE (ed.), *Les aspects juridiques de la blockchain et de ses applications. Analyse du règlement MiCA et autres questions choisies*, Limal, Anthemis, 2024, 185-204.

⁵⁴ Article 22 of Regulation 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC, [2014] OJ L173/1 (MAR).

⁵⁵ For one or more authorities, see Article 32 of Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps, [2012] OJ L86/1 (ssR); Article 93(1) of Regulation 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937, [2023] OJ L150/40 (MICA); article 67 of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast), [2014] OJ L173/34 (MIFID II).

⁵⁶ Art. 34 ssR – art. 76 MIFID II – art. 27 MAR – art. 100 MICA

⁵⁷ Article 41 ssR or sanctions or measures; Art. 70 MIFID II – art. 30-31 MAR – art. 111 MICA

⁵⁸ Art. 33 ssR – art. 69-70 MIFID II – art. 23 MAR – art. 94 MICA.

⁵⁹ More particularly, Designated authority or authorities must be able to cooperate within the framework of the European Securities and Markets Authority (ESMA – Reg. 1095/2010), see art. 35-37 ssR – art. 79-87 MIFID II – art. 24-25 MAR – art. 95 and 105 MICA or European Banking Authority in case of MICA (EBA – Reg. 1093/2010 – art. 96 and 106 MICA).

⁶⁰ Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC, [2006] OJ L396/1; see also, containing a similar enforcement design, Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006, [2008] OJ L353/1. On the cooperative framework thus put in place, see among others M. PAWLIK, *Das REACH-System und die Meroni-Doktrin. Ein imperfekter Quantensprung im Europäischen Verwaltungsverbund*. Baden-Baden: Nomos, 2013. 228 p.

⁶¹ Article 2(24) and 43 of Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing

import and export of hazardous chemicals⁶², as well as to pollutants⁶³, pesticides⁶⁴ and biocidal products.⁶⁵ Although the format of those authorities remains to be determined by the different Member States, EU legislation requires them to have in place specific procedures⁶⁶ and, in order to ensure transparency, impartiality and consistency in the level of enforcement activities⁶⁷, to set up an appropriate framework governing the provisions on penalties.⁶⁸ The penalties provided for must be effective, proportionate and dissuasive.⁶⁹

17. Fourth, a similar picture emerges in the realm of EU food safety regulation, where competent authorities have to be designated in order to participate in the processes enabled by the European Food Safety Authority (EFSA).⁷⁰ In 2002, EU secondary legislation did not, however, outline in a detailed manner how those authorities have to be structured. The Official controls Regulation, as adopted in 2017, did impose some more precise obligations in that regard.⁷¹ Article 5(2) of that Regulation requires national competent authorities to have sufficient safeguards and procedures in place in order to ensure that controls can be executed

Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006, [2008] OJ L353/1, which requires both the setup of competent and enforcement authorities.

⁶² Article 19 of Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants (recast), [2019] OJ L169/45.

⁶³ Article 81(1) of Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products, [2012] OJ L167/1.

⁶⁴ Article 4 of Regulation (EU) No 649/2012 of the European Parliament and of the Council of 4 July 2012 concerning the export and import of hazardous chemicals (recast), [2012] OJ L201/60.

⁶⁵ Article 5 of Directive 2009/128/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for Community action to achieve the sustainable use of pesticides, [2009] OJ L309/71.

⁶⁶ E.g. Article 130 of Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC, [2007] OJ L396/1 (REACH); Article 49(3) of Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006, [2008] OJ L353/1; Article 6 of Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants (recast), [2019] OJ L169/45; Article 17 of Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products, [2012] OJ L167/1; Article 8 of Regulation (EU) No 649/2012 of the European Parliament and of the Council of 4 July 2012 concerning the export and import of hazardous chemicals (recast), [2012] O.J. L201/60; Articles 6 and 7 of Directive 2009/128/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for Community action to achieve the sustainable use of pesticides, [2009] OJ L309/71.

⁶⁷ See Recital 66 of Regulation 1272/2008.

⁶⁸ Article 126 REACH.

⁶⁹ Article 126 REACH.

⁷⁰ Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, [2002] OJ L31/1.

⁷¹ Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC (Official Controls Regulation), [2017] OJ L95/1.

effectively. As part of those safeguards, official controls should be performed by staff who are independent, i.e. free from any conflict of interest, and in particular who are not in a situation which, directly or indirectly, could affect their ability to carry out their professional duties in an impartial manner. Appropriate arrangements should also be in place to ensure impartiality in cases where official controls are performed on animals, goods, places or activities which belong to a public authority or body.⁷² Minimum inspection and decision-making powers have been outlined⁷³, as well as the right to lodge an appeal against an authority's decision.⁷⁴ Member States additionally have to provide for penalties, which need to be effective, proportionate and dissuasive, in case of non-respect of the Regulation's obligations.⁷⁵ In a similar, albeit somewhat less outspoken manner, other legislative instruments on human and animal food safety, require Member States to designate competent authorities, without further attaching specific conditions to the structuring and design of those authorities.⁷⁶ Their designation is nevertheless to be accompanied by an outline of their inspection and/or decision-making powers⁷⁷, as well as by certain guarantees as to their impartiality or independence in the exercise of their mandates.⁷⁸

18. Fifth, in the framework of border controls and asylum procedures, Member States are also required to designate competent authorities or bodies (national services⁷⁹ or determining authorities⁸⁰). Those authorities have to be able to function in an effective and impartial manner, but do not need to be configured in one specific format; in the same manner, no specific requirements are imposed as to the recruitment or appointment of management staff. EU secondary legislation additionally also determines the decision-making procedures those designated bodies have to follow⁸¹, including sanctions or penalties.⁸² The EU legislator also explicitly requires Member States to provide for judicial review opportunities in that regard.⁸³

2.4. Requirements to designate competent authorities or bodies, accompanied by streamlined procedural requirements as well as structural and/or composition-related requirements

⁷² See also recital 35 of Regulation 2017/625.

⁷³ Articles 5(2) and 138(2) of Regulation 2017/625.

⁷⁴ Article 7 of Regulation 2017/625.

⁷⁵ Article 139 of Regulation 2017/625.

⁷⁶ For a full overview, see the schematic summary in the table on food safety, available on the following website: https://www.eulegalstudies.uliege.be/upload/docs/application/pdf/2024-03/foodsafetytable_eudaimonia.pdf.

⁷⁷ By way of example, see Articles 26 and 27 of Regulation (EU) 2016/429 of the European Parliament and of the Council of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health ('Animal Health Law'), [2016] OJ L84/1.

⁷⁸ See e.g. recital 52 of Regulation (EU) 2024/1143 of the European Parliament and of the Council of 11 April 2024 on geographical indications for wine, spirit drinks and agricultural products, as well as traditional specialities guaranteed and optional quality terms for agricultural products, amending Regulations (EU) No 1308/2013, (EU) 2019/787 and (EU) 2019/1753 and repealing Regulation (EU) No 1151/2012, [2024] OJ L 2024/1143.

⁷⁹ Article 2(14) of Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), [2016] OJ L77/1.

⁸⁰ Article 3(16) of Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, [2024] OJ L2024/1348.

⁸¹ E.g. Articles 7, 14 and 17 of Regulation 2016/399; Articles 34 and 36 of Regulation 2024/1348.

⁸² At least in relation to illegal border crossing, see Article 5(3) of Regulation 2016/399.

⁸³ Article 14(3) of Regulation 2016/399; Article 67 of Regulation 2024/1348.

19. Contrary to the examples given in the previous section, the EU legislator has gone farther in other fields. In those fields, EU secondary legislation has not only required the designation of competent authorities tasked with the enforcement of EU rules in accordance with streamlined procedures, but has also imposed direct conditions on how the authority or body in question has to be structured and/or how its composition needs to guarantee its independence and effectiveness.⁸⁴ In practice, this has resulted in requiring administrative authorities to be independent both from public authorities and from market operators. In doing so, they are envisaged to constitute independent administrative bodies which, despite belonging to a Member State's administrative law framework, also have to operate somewhat detached from that framework.⁸⁵ Those independently configured authorities need to have all the powers required by EU law. They have traditionally accompanied the emergence of liberalised markets, in which incumbent operators had direct ties with the State. It is for that reason that the EU legislator required independent authorities to be created. Later legislative developments have nevertheless resulted in independence requirements being extended to other fields as well, such as the protection of equality and non-discrimination or in prudential supervision, which operates in accordance with a safety rather than a market liberalisation logic.

20. In about half of the policy fields falling within this category, the structural requirements imposed on national authorities have been somewhat general and without many precisions as to requirements senior or management staff has to respect (2.4.1.). In the other half, however, those requirements have become increasingly detailed on that front as well (2.4.2.).

2.4.1. Streamlined procedural requirements, accompanied by basic structural requirements

21. In the context of market liberalisation of postal and railway services – fields where the incumbent operator had traditionally been the State – the EU legislator from the start required the establishment of independent authorities overseeing the liberalisation process. To achieve that objective, the relevant Directives have imposed additional or complementary requirements in that regard. A similar legislative approach can also be found in the context of air, railway and maritime safety regulation, with regard to the regulation of medicinal products and medical devices, prudential oversight of credit institutions and recent instruments in the digital field.

⁸⁴ It is not excluded, however, that a Member State would integrate different authorities or confer additional regulatory or enforcement powers on them. A proposal had been made in that regard in Belgium in 2024, see in that regard a proposition made in Voorstel van Resolutie (Leen Dierick en Hendrik Bogaert) betreffende het onderzoek om marktregulatoren samen te voegen, Belgische Kamer van Volksvertegenwoordigers 2019 (bijzondere zitting), zittingsperiode 55, nr. 73/001, <https://www.lachambre.be/FLWB/PDF/55/0073/55K0073001.pdf>. For the Belgian Competition Authority's remarks in that regard, <https://www.bma-abc.be/sites/default/files/content/download/files/20240612%20Voorstel%20Advies%20fusie%20Regulatoren%20ONL.pdf>; see also the example of the Netherlands, where energy, telecommunications, consumer law and general competition law enforcement powers are united in a single authority, see the Wet van 28 februari 2013 houdende regels omtrent de instelling van de Autoriteit Consument en Markt (Instellingswet Autoriteit Consument en Markt), available at <https://wetten.overheid.nl/BWBR0033043/2025-09-01>.

⁸⁵ On tensions in that regard, see inter alia M. PÂQUES, "Entre géométrie et finesse: le droit administrative réducteur et créateur d'incertitude", *Annales de droit de Louvain*, 2019, 261; see also Y. MARIQUE et E. SLAUTSKY, "Contours d'une indépendance sous pression" in E. SLAUTSKY, P.-O. DE BROUX, A. DESMEDT and J.-F. FURNÉMONT (ed.), *Les régulateurs des industries de réseau*, Bruxelles, Larcier, 2022, p. 67-72.

22. First, in the framework of postal services liberalisation, EU secondary legislation has been accompanied by the requirement to set up independent regulatory authorities.⁸⁶ Those authorities have to be legally separate from and operationally independent of the postal operators.⁸⁷ No additional or more precise requirements have been imposed with regard to the actual composition of the authority. Although not a formal legal obligation, they also need to have sufficient resources at their disposal.⁸⁸ Their decision-making powers are, in general terms, outlined in EU secondary legislation.⁸⁹ By contrast, no legal obligation is being imposed with regard to taking part in a cross-border EU-wide network of regulators.⁹⁰

23. Second, with regard to the liberalisation of railway services, rules of EU law accompanying the so-called “Third railway package”⁹¹ have also required the designation of independent regulatory bodies.⁹² The effective functioning of those bodies requires guarantees in terms of staff and resources to ensure its independence. The appointment of board members by ministries must follow clear and transparent rules, but the Directive contains no particular composition-related legislative obligation with regard to the term of board members.⁹³ Judicial review against regulatory bodies’ decisions has to be provided for, yet no formal legislative obligation to take part in an EU-wide regulatory network is imposed.⁹⁴

24. Third, since 2016, a very comparable approach to designing national authorities has been required from Member States in the field of railway safety and aviation safety. Directive 2016/798 requires Member States to establish a national safety authority.⁹⁵ They have to ensure that those national safety authorities have the necessary internal and external organisational capacity in terms of human and material resources. It has to be independent in its organisation, legal structure and decision-making from any railway undertaking, infrastructure manager, applicant or contracting entity and from any entity awarding public service contracts. Provided that such independence is guaranteed, the authority may be a department within the national ministry responsible for transport matters.⁹⁶ No more detailed provisions as to the term of office of management staff has been provided for in the Directive. In addition, an independent investigative body has to be created. The tasks of the authority and body are outlined in the

⁸⁶ Article 1(20) of Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008 amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services, [2008] OJ L53/3.

⁸⁷ Article 22 of Directive 97/67/EC, as modified by Directive 2008/6/EC.

⁸⁸ See Recital 47 of Directive 2008/6/EC.

⁸⁹ See Article 22(2) of Directive 97/67/EC

⁹⁰ See, however, recital 49 of Directive 2008/6/EC and Article 22(3) of Directive 97/67/EC.

⁹¹ See for background on the regulatory design context, J. BOIS, ‘The mismatch between regulatory ideals and practical implementation: the challenges faced by national regulatory bodies in pursuit of the single European railway area’ (2025) *Journal of European Integration*, 1-20.

⁹² Article 55 of Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area, [2012] OJ L343/32.

⁹³ Article 55(3) of Directive 2012/34/EU.

⁹⁴ See, however, the Independent Regulators Group-Rail, which came to being outside the scope of EU secondary legislation, see <https://irg-rail.eu/>, and which regroups both EU and also non-EU Member States.

⁹⁵ Directive (EU) 2016/798 of the European Parliament and of the Council of 11 May 2016 on railway safety (recast), [2016] OJ L 138/102.

⁹⁶ Article 16(1) of Directive 2016/798.

Directive⁹⁷ and need to be complemented by penalties.⁹⁸ The national safety authority's decisions must be subject to judicial review.⁹⁹ Given the attachment of railway safety regulation to the territory of a specific Member State, no particular obligation to take part in an EU-wide network is foreseen. In the framework of aviation safety, Member States must designate competent authorities responsible for aviation certification.¹⁰⁰ They must ensure that those national competent authorities are independent when taking technical decisions on certification, oversight and enforcement and exercise their tasks impartially, and transparently and are organised, staffed and managed accordingly. Member States shall also ensure that their national competent authorities have the necessary resources and capabilities to carry out the tasks assigned to them in an efficient and timely manner.¹⁰¹ The European Aviation Safety Agency (EASA) coordinates and oversees this process and national authorities cooperate with each other within that framework.¹⁰² Member States' authorities must also be empowered to impose penalties, which must be effective, proportionate and dissuasive.¹⁰³ Similar organisational requirements accompany the setup of safety investigation authorities in relation to accidents in the maritime transport sector.¹⁰⁴

25. Fourth, a similar tendency can be observed equally in more recent EU regulatory interventions in the fields of medicinal products and medicinal devices. Both Directive 2001/83 and Regulations 2017/745 and 2017/746 require competent authorities to be designated by the Member States.¹⁰⁵ In addition, although Member States remain at liberty to design and structure the format of those authorities, they have to be staffed by independent members without any conflicts of interests.¹⁰⁶ No specific limits on terms of office or on conflict of interest-rules have

⁹⁷ Articles 16(2), 18 and 23 of Directive 2016/798.

⁹⁸ Article 30 of Directive 2016/798.

⁹⁹ Article 18(3) of Directive 2016/798.

¹⁰⁰ Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91, [2018] OJ L212/1.

¹⁰¹ Article 62(3) of Regulation 2018/1139.

¹⁰² Article 62(1) of Regulation 2018/1139.

¹⁰³ Article 62(2)(d) and 131 of Regulation 2018/1139.

¹⁰⁴ See Articles 8 and 10 of Directive 2009/18/EC of the European Parliament and of the Council of 23 April 2009 establishing the fundamental principles governing the investigation of accidents in the maritime transport sector and amending Council Directive 1999/35/EC and Directive 2002/59/EC of the European Parliament and of the Council [2009] OJ L 131/114; Article 22 of the Directive allows for penalties to be imposed in this context.

¹⁰⁵ Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use, [2001] OJ L 311/67 ; Regulation (EU) 2017/745 of the European Parliament and of the Council of 5 April 2017 on medical devices, amending Directive 2001/83/EC, Regulation (EC) No 178/2002 and Regulation (EC) No 1223/2009 and repealing Council Directives 90/385/EEC and 93/42/EEC, [2017] OJ L117/1 ; Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017 on in vitro diagnostic medical devices and repealing Directive 98/79/EC and Commission Decision 2010/227/EU, [2017] OJ L117/176.

¹⁰⁶ Article 126b of Directive 2001/83/EC : « In order to guarantee independence and transparency, the Member States shall ensure that members of staff of the competent authority responsible for granting authorisations, rapporteurs and experts concerned with the authorisation and surveillance of medicinal products have no financial or other interests in the pharmaceutical industry which could affect their impartiality. These persons shall make an annual declaration of their financial interests. »

See also Article 101 of Regulation 2017/745 and Article 96 of Regulation 2017/746 : « The Member States shall designate the competent authority or authorities responsible for the implementation of this Regulation. They shall

been adopted in a harmonised manner. The rules of procedure and decision-making powers have been enumerated in EU secondary legislation¹⁰⁷, as well as cooperation and coordination obligations among competent authorities.¹⁰⁸ In the context of medical devices regulation, an EU-wide medical devices coordination group is established, for which similar conflict of interest rules apply.¹⁰⁹ No particular attention is devoted to administrative or judicial review requirements accompanying the functioning of national authorities.

26. Fifth, the 2022 Digital Services Act Regulation (DSA) requires Member States to set up an enforcement framework along similar lines. As part of the DSA, independent competent authorities have to be designated, each benefitting from a minimum amount of resources and decision-making powers.¹¹⁰ When carrying out their tasks and exercising their powers in accordance with this Regulation, the Digital Services Coordinators shall act with complete independence.¹¹¹ They shall remain free from any external influence, whether direct or indirect, and shall neither seek nor take instructions from any other public authority or any private party.¹¹² In addition, one of those authorities has to be designated as Digital Services Coordinator.¹¹³ Those Digital Services Coordinators need to perform their tasks under this Regulation in an impartial, transparent and timely manner. In practice, they need to act with complete independence and are required to remain free from any external influence, whether direct or indirect or from instructions from any other public authority or any private party.¹¹⁴ The Regulation outlines in a detailed manner the powers and enforcement procedures digital services coordinators and other competent authorities would have to respect.¹¹⁵ Digital Services Coordinators take part in a European Board for Digital Services.¹¹⁶ The Board's role consists in exchanging information, to ensure coordinated enforcement and decision-making.¹¹⁷

27. Sixth, the most recent updates to prudential supervision authorities in the banking sector have resulted in a similar enforcement framework. Directive 2024/1619, which modified

entrust their authorities with the powers, resources, equipment and knowledge necessary for the proper performance of their tasks pursuant to this Regulation. »

¹⁰⁷ E.g. art. 111-118 of Directive 2001/83/EC ; Articles 93-100 of Regulation 2017/745 and Articles 88-95 of Regulation 2017/746.

¹⁰⁸ Articles 122 and 124 of Directive 2001/83.

¹⁰⁹ Articles 102-107 of Regulation 2017/745 and Article 98 of Regulation 2017/746.

¹¹⁰ Articles 49 and 51 Regulation 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act), [2022] OJ L227/1 (DSA).

¹¹¹ For a detailed analysis of those requirements, see P. VAN CLEYNENBREUGEL, 'Articles 49-55 du DSA: commentaire des dispositions relatives à l'organisation des autorités de contrôle', in B. BERTRAND, *Règlement DSA 2022/2065 relatif à un marché unique des services numériques: Commentaire article par article*. Bruxelles, Bruylant, 523-621.

¹¹² Article 50(2) DSA.

¹¹³ Article 49(2) and 50 DSA.

¹¹⁴ Article 50(2) DSA.

¹¹⁵ Article 51 DSA.

¹¹⁶ Article 48 DSA.

¹¹⁷ Article 61 DSA.

Directive 2013/36/EU¹¹⁸, imposed increasingly¹¹⁹ more stringent and detailed organisational requirements on national competent authorities responsible for the prudential supervision of credit institutions.¹²⁰ As a result, competent authorities in this field now have to be set up so that they have the expertise, resources, operational capacity, powers and independence necessary to carry out functions relating to prudential supervision and investigations and the powers necessary to impose the periodic penalty payments and penalties provided for by EU law.¹²¹ In that regard, a cooling-off period, as well as a maximum length of 14 years of service is additionally imposed on those authorities' managers.¹²² The authorities take part in the network structured around the European Banking Authority, which can take binding decisions in cases of conflict between authorities from different Member States.¹²³

28. Seventh, the 2024 Artificial Intelligence Act (Regulation 2024/1689) also proposes a similar structuring of national competent authorities. Within the framework of that Regulation, both notifying authorities and market surveillance authorities have to be designated at Member State level.¹²⁴ Those authorities do not have to be structured along a particular format, but have to operate in such a way as to exercise their powers independently, impartially and without bias so as to safeguard the objectivity of their activities and tasks, and to ensure the application and implementation of this Regulation. In addition, the members of those authorities shall refrain from any action incompatible with their duties. Provided that those principles are observed, such activities and tasks may be performed by one or more designated authorities, in accordance with the organisational needs of the Member State.¹²⁵ Decision-making processes and enforcement procedures are covered by or referred to in the AI Act itself¹²⁶ and Member States have to provide rules on penalties and other enforcement mechanisms.¹²⁷ National authorities also take part in the activities of the European Artificial Intelligence Board, which presents the characteristics of a network of representative national authorities.¹²⁸

¹¹⁸ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, [2013] OJ L176/338.

¹¹⁹ See already, in the wake of crisis, E. CHITI, 'In the aftermath of crisis – the EU administrative system between impediments and momentum', 17 *Cambridge Yearbook of European Legal Studies* (2015), 311-333.

¹²⁰ Directive (EU) 2024/1619 of the European Parliament and of the Council of 31 May 2024 amending Directive 2013/36/EU as regards supervisory powers, sanctions, third-country branches, and environmental, social and governance risks, [2024] OJ L 2024/1619.

¹²¹ See e.g. Articles 65 and 66 of Directive 2013/36/EU.

¹²² Article 4(4) of Directive 2013/36/EU ; see also Article 4a of the same Directive.

¹²³ See, for those procedures, Articles 17 to 19 of Regulation (EU) 1093/2010 No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, [2010] OJ L331/12.

¹²⁴ Article 70(1) of Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act), [2024] OJ L 2024/1689 (hereafter: AI Act).

¹²⁵ Article 70 of the AI Act.

¹²⁶ E.g. Articles 28 to 39 of the AI Act for notifying authorities; for market surveillance authorities, Article 73 of the AI Act refers to the powers outlined in Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011, [2019] OJ L169/1.

¹²⁷ Article 99 of the AI Act.

¹²⁸ Article 65(4) of the AI Act.

2.4.2. Streamlined procedural requirements, accompanied by more detailed structural and/or composition-related requirements

29. In still other fields, the EU legislator has also imposed more or less detailed structural requirements (e.g. a separate, independent authority), in addition to composition-related requirements (e.g. conditions relating to the appointment duration of an authority's leadership).¹²⁹ Those particular and detailed conditions in practice also aim to ensure that different regulatory authorities can take part, in the most effective manner, in EU-wide networks or groups of regulators. To ensure decision-making processes within those networks are not disturbed by different authorities' formats or by contradicting approaches to appointing and dismissing (senior) staff members called upon to take part in those networks, the EU legislator increasingly also streamlines the composition of national authorities.

30. First, in the framework of energy market liberalisation, EU secondary legislation imposed the establishment of regulatory authorities.¹³⁰ As part of that process, EU secondary legislation foresaw the establishment of regulatory authorities that had to be configured as independent from both States (which often still had a stake in energy companies) and private interests. Those requirements emerged against the background of a legislatively imposed separation of network operators and network owners so as to allow for more effective competition between those operators. To oversee that process, independent regulatory authorities were considered to have to play a key role.¹³¹ Each Member State was therefore obliged to designate a single regulatory authority at the national level, with the option of creating additional regional authorities and the establishment of specific regulatory authorities for small systems on a geographically separate region.¹³² Those authorities have to be legally distinct and functionally independent from any other public or private entity and should act independently from any market interest.¹³³ They cannot seek or take direct instructions from any government or other public or private entity

¹²⁹ An earlier version of those obligations has already been highlighted in P. VAN CLEYNENBREUGEL, 'Independent administrative authorities and the sectoral "Europeanisation" of national administrative law: a European Union law perspective' in M. DELNOY et al. (ed.), *Liber Amicorum Michel Pâques – Dire et faire le droit*, Bruxelles, Bruylant, 2024, 707-721.

¹³⁰ See on that notion, A. DE STREEL, A. GAUTIER and X. WAUTHY, 'La régulation des industries de réseau en Belgique', *Reflets et perspectives de la vie économique* (2011), 73-92.

¹³¹ Article 23 Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC, [2003] OJ L176/37 and Article 25 of Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in gas and repealing Directive 98/30/EC, [2003] OJ L176/57 and Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, [2009] OJ L211/53 (and Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, [2009] OJ L211/94 (2009 Natural Gas Directive). The 2009 Electricity Directive was replaced in 2019 by Directive 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU, [2019] OJ L158/125 (2019 Electricity Directive). The 2009 Natural Gas Directive has also been replaced by Directive (EU) 2024/1788 of the European Parliament and of the Council of 13 June 2024 on common rules for the internal markets for renewable gas, natural gas and hydrogen, amending Directive (EU) 2023/1791 and repealing Directive 2009/73/EC (recast), [2024] OJ 2024/1788 (2024 Natural Gas Directive).

¹³² Article 57(1) 2019 Electricity Directive and Article 76(1) 2024 Natural Gas Directive. See also Article 57(2), stating that the designation of a single authority shall be without prejudice to the designation of other regulatory authorities at regional level within Member States. For general objectives, see Article 58 2019 Electricity Directive and Article 77 2024 Natural Gas Directive.

¹³³ Article 57(4)(a) 2019 Electricity Directive and Article 76(4)(a) 2024 Natural Gas Directive.

when carrying out regulatory tasks. In addition, they should equally exercise their powers impartially and transparently.¹³⁴ The members of the board of those authorities or, in the absence of a board, the regulatory authority's top management are appointed for a fixed term of between five and seven years, renewable once.¹³⁵ Member States' regulatory authorities have to be able to issue binding decisions on electricity and natural gas undertakings, carry out investigations into the functioning of electricity and gas markets and impose effective, proportionate and dissuasive penalties on undertakings.¹³⁶ They convene in the framework of the Agency for the Cooperation of Energy Regulators (ACER)¹³⁷ which functions as a network of national regulators and serves as the driver for mutual discussions and, potentially, support.¹³⁸

31. Second, and in a similar manner, in the framework of the liberalisation of electronic communications markets, comparable independent authorities have been tasked by the EU legislator to oversee the liberalisation process. Relevant EU legislation in that domain also required that national authorities had to be legally distinct and functionally independent from any other public or private entity and should act independently from any market interest.¹³⁹ Again, they cannot seek or take direct instructions from any government or other public or private entity when carrying out regulatory tasks, which are to be exercised impartially and transparently.¹⁴⁰ The head of a national regulatory authority, or, where applicable, the members of the collegiate body fulfilling that function within a national regulatory authority or their alternates, shall be appointed for a term of office of at least three years from among persons of recognised standing and professional experience, on the basis of merit, skills, knowledge and experience and following an open and transparent selection procedure. Member States shall ensure continuity of decision-making. Member States shall ensure that the head of a national regulatory authority, or where applicable, members of the collegiate body fulfilling that function within a national regulatory authority or their alternates may be dismissed during their term only if they no longer fulfil the conditions required for the performance of their duties which are laid down in national law before their appointment. Any dismissal decision is to be made public.¹⁴¹ Electronic communications regulators were required to have powers similar to the ones applying to energy regulators¹⁴². A Board of European Regulators of Electronic

¹³⁴ Article 57(4), first sentence 2019 Electricity Directive; Article 76(4), first sentence 2024 Natural Gas Directive; see also Case C-718/18, *Commission v Germany*, EU:C:2021:662 and A-K KAUFHOLD, 'Complete, Yet Limited: The Guarantee of Independence for National Regulatory Authorities in the Energy Sector: *Commission v. Germany*' 59 *Common Market Law Review* (2022) 1853.

¹³⁵ Article 57(5)(d) 2019 Electricity Directive ; Article 76 (5)(d) 2024 Natural Gas Directive.

¹³⁶ Article 59(3) 2019 Electricity Directive; Article 78(4) 2024 Natural Gas Directive.

¹³⁷ <https://www.acer.europa.eu/the-agency/about-acer>.

¹³⁸ Article 2(1) Regulation 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators, [2009] OJ L211/1; this Regulation has been recast into Regulation 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators, [2019] OJ L158/22.

¹³⁹ Originally Article 3 of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), [2002] OJ L108/33, currently featuring in Articles 5 to 7 of Directive 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast), [2018] OJ L321/36.

¹⁴⁰ Article 6(1) of Directive 2018/1972.

¹⁴¹ Article 7 of Directive 2018/1972.

¹⁴² Article 5(1) Directive 2018/1972.

Communications (BEREC¹⁴³) allows the different authorities to meet and exchange information and best practices, coordinated by the European Commission.

32. Third, the field of personal data protection offers a good illustration of a similar EU legislative approach outside the realm of liberalised network industries. The 1995 Data Protection Directive required independent data protection supervisors to be set up at Member State level in order for the newly harmonised rules of protection to be properly respected across all different Member States.¹⁴⁴ In addition, Article 8(2) of the Charter of Fundamental Rights of the European Union directly confirmed that data protection guarantees need to be enforced by independent authorities. For its part, the Court of Justice confirmed that authorities have to be independent bodies from every public or private actor, although they may depend on their budget on Parliaments.¹⁴⁵ Each member of the supervisory authority is to be appointed in accordance with a transparent procedure established in national law; such a member shall be dismissed only in cases of serious misconduct or if the member no longer fulfils the conditions required for the performance of the duties.¹⁴⁶ The 2016 General Data Protection Regulation (GDPR) further specified those requirements.¹⁴⁷ That Regulation also contains a detailed list of minimum enforcement powers each data protection authority must have in place¹⁴⁸, which must also include the power to impose administrative fines.¹⁴⁹ In addition, authorities must be structured in such a manner that they can assist each other in joint cross-border investigations.¹⁵⁰ To that extent, the different national authorities meet in the framework of the European Data Protection Board (EDPB), which itself functions independently from public or private interests.¹⁵¹ The EDPB can take binding decisions in case of conflict between national authorities.¹⁵²

33. Fourth, in competition law, Directive 2019/1 imposed direct independence requirements on national competition authorities whenever those authorities are obliged to apply EU provisions prohibiting anticompetitive agreements or abuses of a dominant economic position (Articles 101 and 102 TFEU). The Directive invokes the need for the effective application and enforcement of those provisions to justify the imposition of new institutional design obligations.¹⁵³ Among those obligations, transparent selection procedures for decision-making

¹⁴³ <https://www.berec.europa.eu/en>.

¹⁴⁴ Recitals 62-64 and Article 28 Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, [1995] OJ L281/31.

¹⁴⁵ CJEU, Case C-518/07, *Commission v Germany*, EU:C:2010:125; Case C-614/10, *Commission v Austria*, EU:C:2012:63 and Case C-718/18, *Commission v Germany*, EU:C:2021:662.

¹⁴⁶ Article 53 of Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), [2016] OJ L119/1 (GDPR).

¹⁴⁷ Articles 51- 52 GDPR

¹⁴⁸ Article 58 GDPR.

¹⁴⁹ Article 83 GDPR.

¹⁵⁰ Articles 60-61 GDPR.

¹⁵¹ Article 69 GDPR.

¹⁵² Articles 65-66 GDPR.

¹⁵³ Directive 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, [2019] OJ L11/3.

members of an authority have to be foreseen.¹⁵⁴ As the EU legislator stated in general terms, ‘Member States shall ensure that such authorities perform their duties and exercise their powers impartially and in the interests of the effective and uniform application of [Articles 101 and 102 TFEU], subject to proportionate accountability requirements.’¹⁵⁵ The Directive also harmonises Member States’ authorities’ inspection, decision-making and sanctioning powers.¹⁵⁶ For cross-border cases where multiple national authorities may be involved, cases can be allocated to one Member State in the framework of a European Competition Network (ECN) composed of the representatives of different competition authorities and is chaired by the European Commission.¹⁵⁷

34. Fifth, the 2018 modifications to the 2010 Audiovisual Media Services Directive have required Member States to designate one or more independent competent authorities as responsible for its application and enforcement of their rules. Media regulators have to be independent and have at their disposal sufficient resources and minimum decision-making powers.¹⁵⁸ In that context, Member States shall lay down in their national law the conditions and the procedures for the appointment and dismissal of the heads of national regulatory authorities and bodies or the members of the collegiate body fulfilling that function, including the duration of the mandate. The procedures shall be transparent, non-discriminatory and guarantee the requisite degree of independence. The head of a national regulatory authority or body or the members of the collegiate body fulfilling that function within a national regulatory authority or body may be dismissed if they no longer fulfil the conditions required for the performance of their duties which are laid down in advance at national level. A dismissal decision shall be duly justified, subject to prior notification and made available to the public.¹⁵⁹ They also need to be structured in such a way as to allow for effective participation in the European Regulators’ Group for Audiovisual Media Services (ERGA), through which best practices can be exchanged between Member States.¹⁶⁰ The need for such independent authorities, as well as their decision-making powers, have been extended in the framework of the European Media Freedom Act.¹⁶¹

35. Sixth, EU equality and non-discrimination law asks Member States to provide for one or more equality bodies ensuring assistance to victims of discriminatory treatment.¹⁶² Such

¹⁵⁴ Article 4(4) Directive 2019/1: Member States shall ensure that the members of the decision-making body of national administrative competition authorities are selected, recruited or appointed according to clear and transparent procedures laid down in advance in national law.

¹⁵⁵ Article 4(1) Directive 2019/1.

¹⁵⁶ Articles 6 to 16 Directive 2019/1.

¹⁵⁷ https://competition-policy.ec.europa.eu/antitrust-and-cartels/european-competition-network_en.

¹⁵⁸ Article 30 Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive), [2010] OJ L95/1, modified by Directive 2018/1808, [2018] OJ L303/69.

¹⁵⁹ Article 30(5) of Directive 2010/13.

¹⁶⁰ Article 30(4) Directive 2010/13, see also <https://erga-online.eu/>.

¹⁶¹ See Articles 4 and 7 of Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (European Media Freedom Act) ; [2024] OJ L 2024/1083.

¹⁶² Article 13(1) Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, [2000] OJ L180/22; Article 12(1) Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the

assistance must in any case be independent and effective¹⁶³. Directive 2024/1500 asks Member States to take measures to ensure that equality bodies are independent and free from external influence, and that they do not seek or take instructions from the government or from any other public or private entity while performing their tasks and exercising their competences. To that extent, they must be able to manage their own financial and other resources and adopt their own decisions with regard to their internal structure, accountability, staffing and organisational matters.¹⁶⁴ In addition, Member States shall provide for transparent procedures concerning the selection, appointment, revocation and potential conflicts of interest of the staff of equality bodies holding decision-making or managerial positions, and where applicable members of the governing board, in order to guarantee their competence and independence.¹⁶⁵ Those bodies need to possess investigative and fact-finding powers.¹⁶⁶ They additionally have the right to give assistance to victims¹⁶⁷, including the right to act in court proceedings in civil and administrative law matters relating to the implementation of the principle of equal treatment laid down in Directives 2006/54/EC and 2010/41/EU.¹⁶⁸ Although this is not obligatory, Member States can entrust them with binding, judicially reviewable, decision-making powers.¹⁶⁹ An information exchange focused European Network of Equality bodies (Equinet) coordinates the enforcement actions between the Member States.¹⁷⁰

3. The implicitly emerging contours of an EU legislative administrative design template, grounded in “impartiality” and “effectiveness”

36. The overview of different administrative design obligations in the previous section allows to formulate three main insights, each to be subdivided in specific key findings or takeaways, on the prevalence and nature of legislatively configured obligations. First, it cannot be denied that those obligations have increased across EU sector-specific legislation (3.1.). Second, over time and most notably in recent years, some sectoral legislative instruments have been upgraded in such a way that they now incorporate more detailed administrative design obligations (3.2.). Third, it is submitted that the contours of two key pillars accompanying administrative design obligations emerge against that background. Those contours at the very least give the

access to and supply of goods and services, [2004] OJ L373/37; Article 20(1) Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, [2006] OJ L204/23; Article 11(1) Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC, [2010] OJ L180/1. See also article 2(1) of Directive (EU) 2024/1500 of the European Parliament and of the Council of 14 May 2024 on standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation, and amending Directives 2006/54/EC and 2010/41/EU, OJ L 2024/1500.

¹⁶³ Article 13(2) Directive 2000/43/EC; Article 12(2) Directive 2004/113/EC; Article 20(2) Directive 2006/54/EC; Article 11(2) Directive 2010/41/EU.

¹⁶⁴ Article 3 of Directive 2024/1500.

¹⁶⁵ Article 3(2) of Directive 2024/1500.

¹⁶⁶ Articles 8 and 9 of Directive 2024/1500.

¹⁶⁷ Article 6 of Directive 2024/1500.

¹⁶⁸ Article 10 of Directive 2024/1500.

¹⁶⁹ Article 9 of Directive 2024/1500.

¹⁷⁰ See for more information and background on the specifics of this network, <https://equineteurope.org/>.

impression that the EU legislator adheres to a specific view on how EU rules are to be administered at Member State level (3.3.).

Despite those tendencies and developments, however, the structuring of legislative administrative design obligations still appears to take shape mainly under the radar and without much attention throughout the legislative debate. Questions can be raised as to what that is the case. One explanation, it is submitted, could reside in the fact that Article 197(2) TFEU excludes the possibility for the EU legislator to engage in harmonisation initiatives with regard to administrative implementation capacities (3.4.). Confronted with that finding, this section nevertheless posits that this argument should not be relied on as a justification for the legislator to refrain from motivating how administrative design requirements take shape. Instead, it calls for more explicit attention to be given to the reasons for requiring particular administrative design obligations, arguing that Article 296(2) TFEU read in conjunction with Article 197(3) of the TFEU could be construed even to require those reasons to be made explicit (3.5.).

3.1. Variable prevalence of administrative design obligations across different fields

37. The overview of administrative design obligations in section 2 of this chapter has demonstrated an increased presence of administrative design obligations across all fields. From that starting point, this section infers the following three key findings in relation to the prevalence and diversity of those administrative design obligations.

38. First, across the 18 policy fields analysed in this paper, the emergence of more or less detailed administrative design obligations is hard to ignore. In every policy field, Member States have been tasked with the designation of competent authorities or bodies. What is more, in the majority of fields, not only do such bodies or authorities have to be designated, they also have to be accompanied by a procedural or decision-making framework which has been shaped directly by EU secondary legislation. As a result, administrative design obligations can be considered to form part and parcel of the European Union's legislator approach towards ensuring the implementation, application and enforcement of EU substantive rules and obligations. Only within subfields in the field of EU environmental law and with regard to coast guard enforcement structures, one could notice a notable absence of specific authorities' designation and accompanying design obligations.

That general finding must not, however, obscure the fact that the scope of such administrative design obligations remains subject to significant variety and to an absence of cross-sector coordination. Whereas in fields as varied as market liberalisation (see nrs. 22, 26, 28, 30, 31, 33 and 34), air and railway transport safety (nr. 25), equality and non-discrimination (nr. 35) as well as data protection (nr. 32), the EU legislator intervenes directly in identifying the structure and composition of the designated competent authority, it limits itself in others such as environmental law (nr. 10), road and inland vessel transport safety (nr. 9) or budgetary supervision (nr. 12) to merely requiring its designation, leaving it up to Member States to determine which type of authority will be designated and which decision-making framework will apply in that case. At first glance, no coherent picture as to how the EU legislator wants Member States' administrative authorities to be structured, emerges from the overview given here.

39. Second, the subdivision of the 18 policy fields covered in the chapter into three main groups (market liberalisation, safety-and-security related legislation and weaker party-protection related fields) at the outset of the inquiry reveals two interesting tendencies. On the one hand, it turns out that the legislative template on how to design Member States' administrative authorities has been much more detailed in relation to market liberalisation rules, yet becomes more blurred in relation to safety-and-security and weaker-party-protection legislation. On the other hand, however, some policy fields appear to have adhered more to the fully developed market liberalisation template, despite their focus not lying on creating and maintaining a competitive market.

In the fields of market liberalisation, a common and somewhat detailed 'design template' for administrative authorities appears most clearly. Starting with the electronic communications and energy sectors (nrs. 30 and 31), EU secondary legislation has imposed the establishment of independent, self-standing authorities that would be able to supervise all market players, including State-owned incumbents.¹⁷¹ To ensure that those authorities could take the decisions necessary to police the thus created liberalised market, their independence had to be firmly established. For that reason, both the composition and decision-making features of those authorities had been outlined in detail in EU secondary legislation. In most recent updates to EU secondary legislation, those features have been refined and developed even more. The completely independent authority was deemed necessary effectively to maintain competitive market conditions. It is no surprise, therefore, that also in general competition law (nr. 33), similarly modelled national authorities had to be established. It is in those fields that EU secondary legislation has been most detailed from the outset and the level of detail has increased most prominently precisely with legislative updates in those fields. It is also in this domain that the Court of Justice of the European Union has re-emphasised the independence requirements as key attributes to well-functioning authorities and to ensuring that competition in those liberalised markets could be maintained effectively.¹⁷² More generally, all six policy fields forming part of the "market liberalisation" category highlight a preference for and a tendency towards legislative requirements imposing the designation of independent authorities, the structural, composition and decision-making features of which have been the object of increasingly detailed secondary legislation provisions.

For safety-and-stability related fields and weaker party protection related fields, the picture is somewhat more blurred. Whereas in fields as varied as prudential control of banks (nr. 27), air and railway transport safety (nr. 35) and most recently for artificial intelligence Regulation (nr. 28) for safety-and-stability related rules on the one hand and data protection (nr. 32) as well as equality and non-discrimination (nr. 35) for weaker-party-protection on the other hand, a tendency towards the designation of increasingly independent authorities, the decision-making process of which have been streamlined, exists, that tendency is not present as consistently as is the case with regard to market liberalisation sectors. On top of that, in the fields of food safety

¹⁷¹ See in general, on that distinctive feature, S. LAVRIJSSEN and A. OTTOW, 'Independent Supervisory Authorities: A Fragile Concept', 39 *Legal Issues of Economic Integration* (2012), 419-446.

¹⁷² CJEU, Case C-438/04, *Mobistar v IBPT*, EU:C:2006:463 (implicitly underlying the Court's reasoning); Case C-474/08, *Commission v Belgium*, EU:C:2009:681, para 29 and 30 and Case C-718/18, *Commission v Germany*, EU:C:2021:662, para 108-110.

(nr. 17), border controls (nr. 18), asylum procedures (nr. 18), consumer protection (nr. 14), consumer financial protection (nr. 15) and health regulation (nr. 8), a clear tendency can be witnessed as well towards increasingly or, in the case of health care, incrementally detailed administrative design obligations, focused in particular on the powers and decision-making processes of Member States' authorities. Although no one single "independent" body or authority template emerges, the EU legislator in those fields also increasingly imposes requirements so as to guarantee effective and sufficiently sound decision-making by those authorities. Overall, it turns out that the EU legislator at least adheres to some extent to common standards on how Member States' authorities tasked with the application, implementation and enforcement of EU substantive rules need to be structured or organised in order to effectively be able to comply with those tasks. Those common standards have nevertheless remained implicit in the legislative process.

40. Third, despite the intensifying and increasing prevalence and appearance of legislative administrative design obligations, EU environmental law appears to constitute an exception of some sorts, as it contains less legislatively imposed administrative design obligations. In all its variety (as explored further in the chapter by Katarzyna Jancewicz in this volume), EU environmental law oscillates between the complete absence of administrative design obligations (nr. 6) over simply the requirement to designate competent authorities (nr. 10) to, in the field of chemicals regulation (nr. 16), requirements that also co-determine the procedural and decision-making processes of national authorities. Contrary to the other fields analysed here, however, environmental rules are not accompanied with the same degree of intensity by legislatively structured administrative design obligations.

3.2. Intensified, albeit variable, changes in administrative design obligations over time

41. In addition to the variable prevalence of administrative design obligations uncovered, a temporal element has also come to light over the course of the analysis of the legislative obligations in the 18 policy fields summarised in section 2 of this chapter. That temporal element highlights that, in some fields, the scope and format of administrative design obligations tends to increase, whereas in others, it remains stable. Interestingly, however, no field has been characterised by a downsizing or flexibilization of those administrative design obligations. Either they increase over time or they remain stable. As such, the insertion of administrative design obligations in EU secondary legislation presents itself as a one-directional trajectory, where more EU substantive rules can – but do not have to – be accompanied by more specific or detailed administrative design obligations. Three separate, but related tendencies could be distinguished from that point of view.

42. First, in the field of market liberalisation rules, administrative design obligations continue to be refined or updated.¹⁷³ Fields closely linked to market competition, such as artificial

¹⁷³ The 2024 natural gas Directive constitutes a clear example of that tendency, as the European Commission has to draw up even more detailed reports on how the independence of national regulatory authorities will be safeguarded in that context. Article 76(6) of the 2024 Natural Gas Directive ("By 5 July 2026 and every four years thereafter, the Commission shall submit a report to the European Parliament and to the Council on the compliance of national authorities with the principle of independence set out in this Article. The Commission shall make such reports publicly available."); see also, already, Article 57(7) of the 2019 Electricity Directive.

intelligence regulation or digital services regulation, also have adopted a similar administrative design obligations framework and have required Member States to structure their authorities in that manner. As a result, the different market liberalisation-related legislative instruments evolve towards a similarly structured detailed framework. However, railway and postal liberalisation Directives have so far not followed this tendency, as those instruments have not been the object of recent legislative updates.

43. Second, policy fields where little administrative design obligations featured in the past, have over the past five to ten years witnessed a significant increase. Food safety (nr. 17), health law (nr. 8), prudential supervision of credit institutions (nr. 27) and consumer financial protection (nr. 15) norms have all been updated, not only substantively, but also in terms of administrative design obligations. Although those administrative design updates have been variable across those fields, they have all shown a move forward towards designating more specific authorities, towards a clearer description of tasks and decision-making processes or to specific composition-related or structural functioning requirements. All in all, if and when additional administrative design obligations are imposed, they all move towards an intensified EU-determined decision-making process, possibly accompanied by specific structural or composition-related requirements. Despite the identified variety, the different policy fields in that regard seem to harbour the potential to move towards a more consistently structured administrative design framework imposed by the EU legislator.

44. Third, however, not every field analysed has been as prone to the introduction or updating of administrative design obligations as the ones mentioned here. In EU environmental law (nr. 6, such as the new 2020 Drinking Water Directive 2020/2184), new or updated legislative instruments have been adopted without them being accompanied by administrative design obligations. In the same way, despite upgrades to the substantive regulatory frameworks, rules on border controls and asylum procedures (nr. 18) have also not been accompanied by equally upgraded administrative design obligations. Upgrading substantive EU rules is not necessarily and automatically accompanied by the imposition of more enhanced administrative design obligations. The introduction of those obligations depends on the willingness of the EU legislator – which includes the Member States in the Council – to take steps in that direction and on the felt necessities for legislative change on that front. EU primary law as such does not impose those requirements across all affected policy fields in an equivalent or coherent manner.

45. It follows from the foregoing that, although a singular and consistent focus on increased administrative design obligations required by EU secondary legislation cannot be observed across all policy fields, the inverse tendency cannot be detected either. Administrative design obligations either remain stable or increase and no legislative steps are undertaken to downsize or abolish them in the policy fields covered here.

3.3. The emerging contours of a (vague) template centred on legislatively imposed “impartiality” and “effectiveness” requirements

46. The previous sections have highlighted the extent to which EU secondary legislation varyingly imposes requirements with regard to the designation, structuring and functioning of administrative authorities tasked with the implementation and enforcement of EU secondary

legislation. However, the picture that emerges from that overview is one of significant variety. The design obligations identified range from simple designations to obligations to establish completely independent, even quasi-judicial bodies¹⁷⁴, that are separate from the rest of the administration. The identified varieties in the scope and range of administrative design obligations allow to conclude that the EU legislator does not have a single and clearly limited template in mind when configuring or developing those obligations. The analysis of the policy fields covered highlights, at least implicitly, a willingness from the point of view of the EU legislator, if and when considered necessary, to impose administrative design obligations. Indeed, the overall presence of administrative design obligations within EU secondary legislation and the lack of a downsizing tendency with regard to those obligations appear to indicate that such obligations are not a temporary or disparate phenomenon.

Upon closer analysis, it can even be submitted that, despite their variety, the differently imposed administrative design obligations all constitute expressions of two key – yet also vague and open-ended – requirements the EU legislator seems to have in mind: impartiality (3.3.1.) and effectiveness (3.3.2.). It is submitted here that the differently structured administrative design obligations indeed all constitute, in one way or another, specifically created norms in order to achieve the objectives of an impartial and effective national administration, operating in the service of the implementation, application and enforcement of EU substantive rules also established by EU secondary legislation. In preambles and preparatory documents, the EU legislator highlights those factors, albeit to a variable extent. That variable referencing should not, however, detract from the fact that the different administrative design obligations identified in this chapter can be said to fall in either the impartiality or the effectiveness category, or in both. It would therefore at least be plausible to infer that both requirements serve to structure and shape the ways in which administrative design obligations emerge across policy fields (3.3.3.).

3.3.1. The impartial administration requirement

47. The designation of specific competent authorities and, above all, the streamlining of the enforcement powers and decision-making processes they have to implement, at least implicitly reflects a willingness to create an administration that applies EU substantive rules in a correct, impartial, manner, having in mind only the interests and objectives underlying those rules and not other, unrelated contradictory interests. Against that background, setting up specialised administrative authorities is meant to contribute to the impartial implementation and application of EU rules. To the extent that it is felt necessary to specify more how such impartiality can be attained, EU legislative instruments contain specific provisions on how authorities or bodies have to be structured in order to achieve that objective. It is submitted that being set up as an independent authority constitutes the most far-reaching legislative intervention with a view to achieve that aim, but other less far-reaching approaches (such as requiring decision-making to be transparent and impartial) can also be envisaged if this is considered sufficient by the

¹⁷⁴ See on that question, P. MATTIOLI, ‘The Quasi-Judicial Role of National Competent Authorities: an Ambiguity that the Principle of Effective Judicial Protection could help address?’, *17 Review of European Administrative Law* (2024), 99-120.

legislator. Preambles to some instruments highlight the need for impartial enforcement¹⁷⁵, as do some EU legislative provisions themselves.¹⁷⁶ Some other instruments rather highlight the need for independent decision-making by designated authorities, which also at the very least seems to imply that those decisions are to be taken in an impartial manner.¹⁷⁷ Although not being mentioned consistently and in the same manner, it is submitted that impartiality is a requirement sought to be protected by means of the development of EU legislative administrative design requirements.

48. More generally, requirements related to impartial decision-making are not as such strangers to EU administrative law. Article 41 of the Charter of Fundamental Rights of the European Union also explicitly requires that everyone has his or her affairs handled impartially by the institutions, bodies, offices and agencies of the Union. The expression of a general principle of good administration accompanying EU law¹⁷⁸, the same impartiality requirements are also imposed on national administrative authorities acting within the scope of EU law.¹⁷⁹ As a result, it would seem that both EU and national bodies entrusted with the application and enforcement of EU law would have to act to at least a certain extent in an impartial manner.¹⁸⁰ In its scarce case law on the subject, the CJEU has confirmed that administrative impartiality contains both subjective and objective impartiality standards.¹⁸¹ From an objective impartiality point of view, EU legal instruments harmonising the supervisory and enforcement procedures at Member State level at times explicitly refer to the need for impartial decision-making structures and features as well (see nr. 47). Objective impartiality therefore at first sight appears to play an important role in the setup and functioning of EU-structured national administrative enforcement regimes.

49. Despite the apparent importance of impartiality, its contours and legal status in EU administrative law have remained unclear.¹⁸² Although the concept is used by the EU legislator when imposing administrative design obligations on the Member States, EU law remains vague as to its specific implementation and legal status. Somewhat surprisingly, impartiality is being

¹⁷⁵ See e.g. Recital 66 of Regulation 1272/2008 (in the field of Chemicals Regulation) ; Recital 129 of the GDPR ; Recital 19 of Directive 2019/1

¹⁷⁶ See e.g. Article 5(1) Regulation 2017/625 ; Article 13(3) of Regulation 1151/2012 ; Article 62(3) of Regulation 2018/1139 (aviation safety legislation) ; Article 50(2) of the DSA ; Article 70(1) of the AI Act ; Article 57(4) of the 2019 Electricity Directive ; Article 76(4) of the 2024 Natural Gas Directive ; Article 6(1) of Directive 2018/1972 ; Article 4(1) Directive 2019/1 ; the different references to impartiality further feature in the summary tables on the EUDAIMONIA project website.

¹⁷⁷ Among others, see e.g. Article 13(3) of Regulation 995/2010 and Article 126b of Directive 2001/83/EC, which refers to independence and the absence of interests which could affect the impartiality of staff members. See also Article 3 of Directive 2024/1500.

¹⁷⁸ See Opinion of Advocate General BOT in Case C-277/11, *M.M.*, EU:C:2012:253, para 114.

¹⁷⁹ Implicitly, see CJEU, Case C-277/11, *M.M.*, EU:C:2012:744, para 93 – see also I. CUCULOSKA, ‘The scope of application of the charter’s right to good administration of the European Union’, (2018) 3 *Journal of Liberty and International Affairs*, 25

¹⁸⁰ Cf. also J. GRIMHEDEN and G. TOGGENBURG, ‘The Right to Good Administration in the Multilevel System of the European Union—A “Newish” Right Strengthening the Administrative Culture’ in W. ZHANG, R. LI and Z. YAN (ed.), *Human Rights and Good Governance*, Brill, 2016, 109-116.

¹⁸¹ CJEU, Case C-439/11 P, *Ziegler v Commission*, EU:C:2013:513, para 155 ; Case C-521/15, *Spain v Council*, para 91.

¹⁸² For a similar observation, P. CRAIG, « Article 41 » in S. PEERS, T. HERVEY, J. KENNER and A. WARD (ed.), *The EU Charter of Fundamental Rights: A Commentary*. Hart 2021), 1133.

granted less attention than the conditions and requirements accompanying, in certain policy fields, the setup of independent administrative authorities. Whereas, in the context of courts and tribunals, independence and impartiality are often seen as complementary design tools, the relationship between impartial and independent administrative decision-making is less clearly developed in the EU legal order. Against that background, questions arise as to how the requirement of administrative impartiality is to be put in practice as a matter of EU law and how it relates, in certain, but not all, policy domains, to the need to have independent authorities in place.

50. Across the legislative instruments analysed in the framework of this chapter, the references to impartiality, whether stand-alone or in conjunction with independence requirements, also largely remain undefined. If and when it is mentioned (see nr. 47), it is done in a scarce, almost programmatic manner, without further precisions as to how impartiality is to be designed in the functioning of Member States' administrative authorities or bodies. As a result, it is unclear whether the EU legislator has sought to cover both objective and subjective types of impartiality. That question is nevertheless important. On the one hand, subjective impartiality required in any type of decision-making forms part of the duty of care incumbent upon any administration acting within the scope of EU law.¹⁸³ On the other hand, objective impartiality requirements focus much more on the actual institutional design of authorities and on the ways in which they have to be structured or organised in order to operate in a manner complying with EU law.¹⁸⁴

51. Even when accepted that impartiality in its objective dimension has an impact on the institutional design of administrations, questions nevertheless remain as to how impartiality could actually influence such designs. In the same manner, questions remain on how a Member State could be said to have violated EU law when not having set up an impartial administrative structure. The overview given in the previous section has shown that objective impartiality is, within the context of market liberalisation and data protection, more explicitly designed into

¹⁸³ See also Herwig HOFMANN, 'The Duty of Care in EU Public Law – A Principle between Discretion and Proportionality' (2020), 13 *Review of European Administrative Law*, 87-112.

¹⁸⁴ See on the distinction between objective and subjective impartiality, above all, the ECtHR's case law; According to Article 6 ECHR, in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. The impartiality requirement in that context only applies to courts and tribunals covered by Article 6. On that notion, see M. SWZED, 'Fixing the problem of unlawfully appointed judges in Poland in the light of the ECHR', (2023) 15 *Hague Journal on the Rule of Law* 353-384. According to the European Court of Human Rights (ECtHR), impartiality normally denotes absence of prejudice or bias, see ECtHR, 1 October 1982, *Piersack v Belgium*, application 8692/79, para 30; ECtHR, 25 June 1992, *Thorgeirson v Iceland*, application 13778/88, para 49; ECtHR, 24 February 1993, *Fey v Austria*, application 14396/88, para 30. The absence of such prejudice or bias can be tested in two ways. The ECtHR distinguishes between a subjective and an objective test in that regard. The subjective test seeks to ascertain the personal conviction of a given judge in a given case. As to that subjective test, the personal impartiality of a judge must be presumed until there is proof to the contrary, see ECtHR, 23 June 1981, *Lecompte, De Meyere and Van Leuven v Belgium*, applications 6878/75; 7238/75, para 58 and ECtHR, 26 October 1984, *De Cubber v Belgium*, application 9186/80, para 25. By contrast, under the objective test, it needs to be determined whether he offered guarantees sufficient to exclude any legitimate doubt in this respect. According to the ECtHR case law, such objective test seeks to analyse whether a doubt as to the objective and impartial functioning of a court or tribunal may persist. According to the ECtHR, the lack of impartiality cannot be determined in abstracto, but has to be verified in the specific circumstances of each case, see among others, ECtHR, 6 June 2000, *Morel v France*, application 34130/96, para 45-50; ECtHR, 2 May 2019, *Pasquini v San Marino*, application 50956/16, para 148.

national administrations by virtue of provisions on the independence of such administrations. The Court of Justice has not shied away from interpreting and further shaping those independence requirements.¹⁸⁵ In that understanding, it would seem that independence requirements represent a *species* of more general objective impartiality elements. To achieve such objective impartiality, structural- or composition-related administrative design obligations requiring the administration to be (completely) independent appear to serve as elements contributing to setting up an objectively impartial administration in some fields. In the absence of such specific provisions, however, the actual content of the objective impartiality obligation remains difficult to grasp. Case law in the field of independence shows that the European Commission has instigated successful infringement procedures against Member States having disrespected detailed independence requirements in the fields of data protection and energy.¹⁸⁶ It thus at present remains to be speculated whether a similar approach could still be taken in cases of lack of impartiality in the absence of such more specific independence requirements. Given the absence of more detailed explicit guidelines or recommendations on how to achieve such impartiality and the difficulty to operationalise that concept on a general, cross-sector level (as is also the case with the independence concept), this would not seem very probable at first sight.

52. It follows from the foregoing that the identified process-related, composition and structural design requirements imposed by secondary legislation could conceptually be understood as particularly specified manifestations of an ideal-typical understanding of impartiality as key component of the administrative application of EU law. In that understanding, administrative design obligations would constitute a legislative translation of the impartiality requirement also present in the Charter and as a general principle of EU law. At the very least, the explicit references and developments, in some sectors, could be understood to highlight that impartiality is a concern that cannot be ignored simply by the Member States when setting up structures tasked with the implementation and enforcement of EU rules.

However, the fact that impartiality references do not feature coherently in some of the fields covered and not in others gives the impression that this is not the case. The somewhat haphazard use of the notion rather conveys the impression that impartiality is not as such explicitly used on a more transversal scale when the design of national authorities is contemplated at the EU legislative level. As a result, the question remains open to what extent impartiality could really be understood, as a matter of EU law, as a legal design standard separate from more detailed independence requirements in this context. The lack of certainty with regard to the interpretation and ‘design scope’ to be given to it in this context additionally also raises the question as to the extent to which it could be used as a judicially reviewable standard against

¹⁸⁵ See e.g. M. SZYDLO, ‘Independent Discretion or Democratic Legitimation? The Relations between National Regulatory Authorities and National Parliaments under EU Regulatory Framework for Network-Bound Sectors’, 18 *European Law Journal* (2012), 793-820 and M. SZYDLO, ‘National Parliaments as Regulators of Network Industries: In search for the dividing line between regulatory powers of national parliaments and national regulatory authorities’, 10 *International Journal of Constitutional Law* (2012), 1134-1166.

¹⁸⁶ CJEU, Case C-518/07, *Commission v Germany*, EU:C:2010:125; Case C-614/10, *Commission v Austria*, EU:C:2012:63 and Case C-718/18, *Commission v Germany*, EU:C:2021:662; Case C-718/18, *Commission v Germany*, EU:C:2021:662.

which Member States' administrative decisions and structures could be reviewed as a matter of EU law, at least for actions falling within the scope of the latter.

3.3.2. The effectiveness requirement

53. Whereas impartiality is mentioned as a separate concept, the requirements of effectiveness pervade even more generally the legislative instruments analysed in this chapter. Referenced to in relation mostly to penalties or fines¹⁸⁷, it is nevertheless submitted that effectiveness concerns are much wider in scope and seem to underlie the whole of administrative design obligations imposed. It appears indeed that the requirements to have in place particular enforcement powers or to be set up in a particular way serve to contribute directly to the effectiveness of EU law. Although no one would deny that effectiveness is an attribute associated with the application of any legal rule¹⁸⁸, the concept has been given a particular meaning in the European Union legal order, where it has been considered to constitute a general principle of law.¹⁸⁹ To be distinguished from its general meaning¹⁹⁰, effectiveness as a general principle of EU law has come to require that Member States take on additional obligations not necessarily explicitly stated in legislative texts.¹⁹¹ The Court of Justice of the European Union (CJEU) has repeatedly referred to the effective implementation and application of EU law as a justification for imposing on Member States new obligations, often of a procedural or remedial nature.¹⁹²

54. Inspiration for the acknowledgement of an effectiveness 'administrative design standard' could be found in the case law of the Court of Justice. The latter has developed a line of case law on the principle of effectiveness in the context of assessing the compatibility with EU law of Member States' procedural rules and obligations. In that context, the principle of effectiveness, in essence, serves as a constraint on Member States' so-called procedural (and

¹⁸⁷ Among others, see Article 9 of Regulation 2017/2394; Article 126 of REACH; Article 139 of Regulation 2017/625; Article 62(2)(d) and 131 of Regulation 2018/1139; Article 59(3) 2019 Electricity Directive; Article 78(4) 2024 Natural Gas Directive.

¹⁸⁸ According to Pescatore, it is the soul of legal rules, see P. PESCATORE, 'The Doctrine of Direct Effect : An Infant Disease of Community Law' (1983) 8 *ELRev* 135.

¹⁸⁹ For a more general appraisal, see E. MENDEZ-PINEDO, 'The principle of effectiveness of EU law : a difficult concept in legal scholarship', (2021) 11 *Juridical Tribune* 5-29.

¹⁹⁰ In general terms, effectiveness refers to the capacity of chosen legislative patterns in obtaining results that are as close as possible to realising the ideal expressed by the political actors, considering the context of operation, see M. ZAMBONI, 'Legislative Policy and Effectiveness: A (Small) Contribution from Legal Theory' (2018) 9 *EJRR* 420. See on the emergence of the legal principle, M. ROSS, 'Effectiveness in the European Union Legal Order(s): Beyond Supremacy to Constitutional Proportionality?', (2006) 33 *ELRev* 476-498.

¹⁹¹ E. MENDEZ-PINEDO, 'The principle of effectiveness of EU law : a difficult concept in legal scholarship', 17. See also R. WIDDERSHOVEN, 'National Procedural Autonomy and EU law limits' (2019) 12 *REALaw* 5-34. For a similar framing in the context of judicial remedies, see M. ELIANTONIO and E. MUIR, 'The Principle of Effectiveness : under strain ?' (2019) 2 *REALaw* 265.

¹⁹² P. VAN CLEYNENBREUGEL; 'Structuring 'procedural fairness' through the principle of effectiveness: a promising starting point for a more uniform legal protection in EU digital law and beyond?' in P. VAN CLEYNENBREUGEL and L. GROZDANOVSKI (ed.), *The standards of fairness in digital law – The normative foundations of the Data, Data Governance, Digital Services, Digital Markets and Artificial Intelligence Acts*, Cheltenham, Edward Elgar, 2025, 317-341; E. MENDEZ-PINEDO, 'The principle of effectiveness of EU law : a difficult concept in legal scholarship', 14-15 ; for the evolution of the principle see F. EPISCOPO, 'The Vicissitudes of Life at the Coalface: Remedies and Procedures for Enforcing Union Law before the National Courts' in P. CRAIG and G. DE BÚRCA (ed.), *The Evolution of EU law* (OUP, 3rd edition, 2021).

institutional) autonomy.¹⁹³ According to the EU Courts' well-known mantra, 'in the absence of [Union] rules governing the matter, it is for the domestic legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from [EU] law'.¹⁹⁴ Clearly, the Member States' procedural autonomy is not absolute.¹⁹⁵ Even in the absence of legislation laying out EU procedural rules, Member States are required under Article 4(3) TEU not to compromise EU law's substantive effectiveness and the protection of rights individuals derive from EU law.¹⁹⁶ The principle of effectiveness in that regard comes into play when procedural rules make it impossible (e.g. by not allowing EU law-based claims from being invoked within a reasonable time frame¹⁹⁷) or excessively difficult (e.g. by imposing extremely short time-limits¹⁹⁸) for a litigant to invoke or rely on rights conferred by EU law, including EU legislation. Member States' discretion in the field of procedure is considered to be exercised to the detriment of the effective application of EU law.¹⁹⁹

The judicially crafted general principle of effectiveness operates in a negative manner. When a national procedural rule makes impossible or excessively difficult the exercise of a subjective right afforded by EU law, that national rule should be disapplied.²⁰⁰ In such cases, the CJEU typically stops at declaring that a rule is ineffective, without providing any specific guideline on what EU law requires for a national procedural measure to meet the desired effectiveness level. This kind of reasoning has been criticised, as it obscures what is actually required from Member States in order to make their rules or remedial frameworks comply with the principle of effectiveness.²⁰¹ The lack of indication in that regard is unlikely to contribute to a uniform interpretation of EU law, as the CJEU does not indicate what is exactly required in order for national law to be effective. In that context, the Court has, nevertheless, hinted at procedural

¹⁹³ For a general overview, see W. VAN GERVEN, 'Of Rights, Remedies and Procedures' (2000) 37 *CMLRev* 501-536.

¹⁹⁴ CJEU, Case 33/76 *Rewe-Zentralfinanz eG et Rewe-Zentral AG v Landwirtschaftskammer für das Saarland* EU:C:1976:188, para 5; Case 45/76 *Comet v Produktschap Siergewassen* EU:C:1976:191, para 13; see also already implicitly Case 13/68 *SpA Salgoil v Italian Ministry of Foreign Trade, Rome* EU:C:1968:54, p. 463. More recently, see also CJEU, Case C-432/05 *Unibet* EU:C:2007:163, para 39; Case C-40/08 *Asturcom* EU:C:2009:615, para 41; Joined Cases C-317/08 to C-320/08 *Alassini and Others* EU:C:2010:146, para 49; Case C-676/17 *Călin* EU:C:2019:700, para 30 ; Case C-497/20 *Randstad Italia* EU:C:2021:1037, para 58.

¹⁹⁵ As such, it is not a principle of EU law, see P. HAAPANIEMI, 'Procedural Autonomy: A Misnomer?' in L. ERVO, M. GRÄNS and A. JOKELA (ed.), *The Europeanization of Procedural Law and New Challenges to a Fair Trial* (Europa Law Publishing 2009) 33 ; M. BOBEK, 'Why there is no principle of 'procedural autonomy' of the Member States' in B. DE WITTE and H. MICKLITZ (eds), *The European Court of Justice and the Autonomy of the Member States* (Intersentia, 2012) 320 and R. WIDDERSHOVEN, 'National Procedural Autonomy and EU law limits' 13.

¹⁹⁶ CJEU, Case 45/76 *Comet v Produktschap Siergewassen* para 12; see also M. KLAMERT *The principle of loyalty in EU law* (OUP 2014) 262 and K. HAVU, 'EU Law in Member State Courts: "Adequate Judicial Protection" and Effective Application - Ambiguities and Nonsequiturs in Guidance by the Court of Justice?' (2016) 8 *Contemp Readings L & Soc Just* 159.

¹⁹⁷ CJEU, Case C-312/93 *Peterbroeck* EU:C:1995:437, para 16-20.

¹⁹⁸ CJEU, Case 33/76 *Rewe-Zentralfinanz eG et Rewe-Zentral AG v Landwirtschaftskammer für das Saarland*, EU:C:1976:188, para 5.

¹⁹⁹ CJEU, Joined Cases C-430/93 and C-431/93 *van Schijndel and van Veen* EU:C:1995:441, para 19.

²⁰⁰ See by way of example, CJEU, Case C-312/93 *Peterbroeck* para 21. On those negative obligations, see also J. KROMMENDIJK, 'Is there light on the horizon? The distinction between "Rewe effectiveness" and the principle of effective judicial protection in Article 47 of the Charter after Orizzonte' (2016) 53 *CMLRev* 1395-1418.

²⁰¹ J. BLOCKX, 'Effet utile Reasoning by the Court of Justice is Mostly Indirect : Evidence and Consequences', (2022) 14 *European Journal of Legal Studies* 148.

fairness being a referent for assessing the effectiveness of a national procedural provision, by highlighting that such a provision should be made ‘[i]n the light of that analysis the basic principles of the domestic judicial system, such as protection of the rights of the defence, the principle of legal certainty and the proper conduct of procedure.’²⁰²

55. It is submitted that the EU Courts’ effectiveness approach may have constituted an implicit source of inspiration, to the legislative policymaking process with regard to administrative design obligations. The Court intervenes only when Member States make the application of an EU rule in practice impossible or excessively difficult. It could be argued, in a similar fashion, that the EU legislator would also be encouraged to intervene *ex ante* in order to avoid that such a situation will happen in practice. By considering that the effective administrative application and enforcement of EU rules is built on the premise of having in place streamlined decision-making procedures and minimum common enforcement powers, the EU legislator seeks to contribute directly to the effective implementation, application and enforcement of EU substantive law. As a result, the adoption of administrative design obligations would only be necessary whenever risks – as perceived by the legislator – may emerge with regard to the practical impossibility or excessive difficulty of ensuring the application of substantive rules in practice. By imposing a set of requirements, the legislator envisages, in a manner subsequently to be tested and confirmed in practice, to streamline decision-making processes in such a way as to attain a certain kind of convergence in administrative decision-making. Effectiveness in that understanding constitutes an accessory to EU substantive rules and justifies the adoption of administrative design obligations supporting the implementation, application and enforcement of those rules. As a result, effectiveness requirements justify the legislator’s intervention in the setup and structuring of decision-making procedures and in determining minimum enforcement powers; the fact that, absent those provisions, the effective enforcement of EU law would be put at risk, could serve as a justification to impose additional obligations on that front. Against that background, effectiveness could be understood also to constitute an implicit standard against which the need for, and format of, administrative design obligations is to be evaluated.

3.3.3. An implicit and, therefore, flexible, “impartiality”-“effectiveness” balance?

56. The previous subsections maintained that requirements structured around the need for impartial administration and for the effectiveness in terms of administrative implementation, application and enforcement capacities and processes could constitute explanatory concepts to conceptualise and determine the legislative development of administrative design obligations forming part of EU secondary legislation instruments. At the very least, the legislative instruments analysed here do not contradict the importance of those requirements and, in some cases, explicitly confirm them. At the same time, however, those notions do not feature explicitly in the preambles and legislative documents as general and transversal EU constitutional requirements to be implemented in every specific instrument and context. That raises concerns, as this means that their scope is not fully clear and the way in which both would

²⁰² CJEU, Case C-312/93 *Peterbroeck* EU:C:1995:437, para 14.

have to interact and be balanced within the context of a specific legislative instrument also remains unanswered.

57. First, despite the fact that both impartiality and effectiveness references can be found in the legislative instruments analysed here, the exact scope of application and interpretation of both concepts remains elusive, as does their transversal scope as an implicit constitutional background standard. It follows from the previous sections that both impartiality and effectiveness are legal concepts clouded in vagueness, the exact scope of which remains unclear. To the extent that the EU legislator implicitly relies on both concepts as background standards to structure administrative design obligations, it would at the very least seem that more conceptual clarity as to their limits and format would be required, if only to understand why and how the EU legislator decides to impose particular composition, design or decision-making requirements. A clear motivation highlighting why and how administrative design obligations respond to both impartiality or effectiveness concerns, is not, however, developed in the present legislative policymaking framework.

58. Second, the balance to be struck between impartiality and effectiveness requirements remains undeveloped in the legislative instruments. To the extent that the EU legislator indeed does rely on arguments grounded in impartiality and/or effectiveness to justify the development and configuration of certain administrative design obligations, the precise nature of those justifications and the fact that they address either impartiality or effectiveness concerns remain to be guessed for. It is not excluded that impartiality requirements at times contradict effectiveness requirements and vice versa. The requirement of having in place a specific composition and collegiate decision-making framework may indeed limit the potential for more rapid regulatory rulemaking than an authority overseen by one single Director. Against that background, it would be necessary better to clarify how impartiality and effectiveness requirements interact and when one requirement could take precedence over the other. Such reflection or analysis is not explicitly engaged in in the preambles and preparatory documents of the instruments analysed in the 18 policy fields covered here.

3.4. Falling in between the cracks created by the principle of conferral and an inflated interpretation of Article 197(2) TFEU?

59. The previous section argued that the different administrative design obligations analysed in this chapter could be framed as more or less general or particular translation of constitutionally anchored impartiality and effectiveness requirements into specific secondary legislation requirements. At the same time, however, it cannot be denied that references to impartiality and effectiveness do not feature consistently across all policy fields. As a result, administrative design obligations across different sectors appear to be imposed largely in isolation from each other and without much cross-sectoral awareness about the scope of application of transversal impartiality and effectiveness requirements. Although that finding is in itself already relevant, questions can be raised as to why a more explicit motivation of the administrative design choices does not feature more prominently in the legislative preambles of EU secondary legislation instruments. This section submits that this is due to the particular competence conferral setup foreseen in the EU Treaties, which excludes administrative implementation designs from the scope of EU legislative harmonisation.

60. Article 5 TEU refers to the principle of conferral.²⁰³ In accordance with that principle, only competences explicitly or implicitly conferred on the European Union can be exercised by its institutions.²⁰⁴ In the realm of the administrative enforcement, however, Article 197 TFEU severely restricts the Union's competences in relation to the administrative implementation of European Union law.

According to Article 197(1), the effective implementation of Union law by the Member States, which is essential for the proper functioning of the Union, shall be regarded as a matter of common interest. The concept of effective implementation is not specified in the Treaty. It nevertheless has been argued that structural or organisational requirements may fall within its scope.²⁰⁵ As a result, this provision would potentially constitute a candidate legal basis for enhancing administrative design obligations by means of EU secondary legislation.²⁰⁶

In accordance with its second paragraph, however, the Union may only support the efforts of Member States to improve their administrative capacity to implement Union law, which may include facilitating the exchange of information and of civil servants as well as supporting training schemes. However, no Member State shall be obliged to avail itself of such support. The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall establish the necessary measures to this end, excluding any harmonisation of the laws and regulations of the Member States.

61. Article 197(2) TFEU has received only scarce attention in legislative practice and in legal scholarship. According to a literal interpretation of that provision, any improvements to Member States' 'administrative capacity to implement Union law' would enter within its scope. As a result, any legislative intervention explicitly seeking to improve Member States' administrative capacities would fall within the ambit of the prohibition on harmonisation also outlined in that provision. Contributing to streamlining impartiality requirements as well as effective administrative implementation or enforcement requirements would therefore also be covered by the prohibition on harmonisation flowing from that provision. As a result any harmonisation instrument explicitly contributing, through the streamlining of impartiality or effectiveness requirements, to improving Member States' administrative capacities, would violate the principle of conferral and of the prohibition on harmonisation laid out in Article

²⁰³ The provision states that the limits of Union competences are governed by the principle of conferral.

²⁰⁴ See already, before the Lisbon Treaty, A. VON BOGDANDY and J. BAST, 'The European Union's Vertical Order of Competences: The Current Law and Proposals for its Reform', 39 *Common Market Law Review* (2002), 227-268 ; see also A. VON BOGDANDY and J. BAST, 'The Federal Order of Competences' in A. VON BOGDANDY and J. BAST (eds.), *Principles of European Constitutional Law* (Oxford, Hart, 2nd Edition, 2009), 275-307. See also the Opinion of AG ČAPETA in Case C-553/24, *Assemblée nationale de la République française v Parliament and Council*, EU :C :2026 :454, para 78, where she reiterates that the principle of conferral as such governs the existence and the limits of EU competences.

²⁰⁵ See P. NICOLAÏDES and M. GEILMANN, 'What is effective implementation of EU law ?', (2012) 19 *Maastricht Journal of European and Comparative Law* 383-399, in which the authors find that the case law on effective implementation has included instances where certain types of decision-making powers at Member State level had to be separated from one another in order to achieve the effective implementation objective.

²⁰⁶ A more general harmonisation of Member States' administrative procedures would by contrast not be possible on that ground, see also J. SCHWARZE, "European administrative law in light of the Treaty of Lisbon", (2012) 18 *European Public Law* 285-304.

197(2) TFEU.²⁰⁷ That would explain why the preambles of the legislative instruments analysed in this chapter only scarcely refer to impartiality and effectiveness requirements and consider the obligations to designate, structure or operate Member States' authorities and bodies rather as an accessory accompanying the harmonisation of EU substantive rules provided for by the EU legislative instrument concerned. For those harmonising secondary legislation rules in the fields covered by this analysis, the TFEU does provide explicit legal bases allowing for harmonisation. By way of example, existing effectiveness references in that regard point at the need to effectively apply EU substantive rules, but do not directly touch upon the administrative implementation and enforcement effectiveness necessary to attain that objective.²⁰⁸ As references to improving administrative capacity would risk to make legislative acts to be in violation of EU primary law, the preambles only scarcely or indirectly refer to them. If and when such references appear, they are linked to the substantive field of harmonisation and the Treaty legal basis enabling the adoption of legislation in that field.

62. It is submitted that this literal interpretation of Article 197(2) TFEU has a significant impact on the conceptualisation of and on the perception with regard to the importance of legislatively imposed administrative design obligations.

On the one hand, the only indirect references to obligations seeking to improve or streamline administrative capacity as accessories to conferred substantive competences create the impression that administrative design obligations are not at all present or even important features of harmonised EU substantive law. Administrative design obligations simply 'tag along' substantive law provisions and constitute the logical or natural extension of them. As a result, there would also be no need to conceptualise and frame the emergence of administrative design obligations across policy fields. Nor would there be any need to motivate explicitly why Member States' administrations have to meet certain impartiality and effectiveness requirements and how those objectives can be achieved by harmonising the administrative design requirements imposed on them.

On the other hand, the lack of conceptualisation of administrative design requirements within EU legislative instruments also affects the way in which those requirements can be and will be the object of judicial scrutiny. Although the EU Courts have engaged with questions regarding the independence of national regulatory or supervisory authorities²⁰⁹, those questions and infringement procedures have always structured around detailed and specific harmonisation provisions. As part of those procedures, no transversal impartiality and/or administrative

²⁰⁷ M. MACCHIA, 'Questione amministrativa e cooperazione dopo Lisbona: un nesso inscindibile', (2012) 22 *Rivista Italiana di diritto pubblico comunitario* 85-111.

²⁰⁸ By way of example, compare the recitals in Directive 2019/1, the GDPR and the MiCA regulations. Recital 5 of Directive 2019/1 embeds administrative design requirements in the effective enforcement of Articles 101 and 102 TFEU; Recital 129 of the GDPR justifies the setup of national supervisory authorities in order to ensure consistent monitoring and enforcement of this Regulation; Recital 23 of the MiCA Regulation also refers to the effective monitoring of substantive obligations. In all three instruments, the administrative design requirements are somehow hidden behind justifications only and directly grounded in the application of the harmonised EU substantive law provisions.

²⁰⁹ Most notably with regard to their independence, see the case law highlighted in notes 145 and 182 of this chapter.

effectiveness questions have been raised. If and when such questions are raised in the CJEU case law, this happens with regard to an administrative procedure, rather than with regard to the design of an administrative authority.²¹⁰ The fact that those design obligations are implemented and applied “by stealth”, implies that they also remain under the radar of potential litigants. It would however not be excluded that in litigation against administrative decision-making, questions as to the lack of impartiality or of effectiveness of EU law requirements would be raised. To the extent that both impartiality and effectiveness appear to limit Member States’ freedom to structure and designate administrative authorities, such arguments – grounded in more generally applicable EU law principles – would seem likely candidates for judicial refinement. One could even draw a parallel with the principles of equivalence and effectiveness that have been developed by the CJEU in its so-called “procedural autonomy” case law with regard to Member States’ remedial and procedural rules.²¹¹ Although possible in theory, practice has not followed suit in this regard. Absent a clearer conceptual framework, the development of such a framework within the CJEU case law is even to be discouraged, as the chapter by Pietro Mattioli also argues. A reason that could explain the lack of such litigation resides in the fact that the requirements accompanying administrative design obligations – and therefore indirectly structuring and shaping them – are not linked explicitly to general EU law benchmarks or pillars, such as the impartiality and effectiveness pillars distinguished here. The current legislative setup of administrative design obligations at EU level in that manner limits litigants’ willingness and the CJEU’s resulting possibilities to shape and further develop such a reasoning framework. To the extent that Article 197(2) TFEU hinders the explicit reliance on those requirements in legislative policymaking, it could be argued that litigants have not yet come to rely on those same requirements in ex post litigation on Member States’ administrative decision-making.

3.5. The duty to state reasons as an instrument to lift the veil on the scope and format of administrative design obligations?

63. The previous subsection concluded that the way in which Article 197(2) TFEU has been set up, could explain the fact that the EU legislator contents itself with only indirect references to administrative impartiality and effectiveness when configuring administrative design obligations in secondary legislation instruments. That approach justifies a lack of conceptualisation of the scope and format of those obligations and results in them not being the object of litigation and judicial refinement. Questions can nevertheless be raised as to whether that setup is compliant with other EU primary law provisions. More particularly, it is argued that this approach fails to take stock of Article 197(3) TFEU, especially when read and applied in light of the duty to state reasons found in Article 296(2) TFEU.

64. Article 197(3) TFEU states that the prohibition on harmonisation of improvements to administrative capacity ‘shall be without prejudice to the obligations of the Member States to

²¹⁰ See e.g. CJEU, Case C-511/23, *Caronte & Tourist*, EU:C:2025:42, para 71 ; See P. Van Cleynenbreugel, note 186, 326.

²¹¹ For a general overview of those principles, see P. VAN CLEYNENBREUGEL, ‘Procedural Autonomy’ in S. PAIS, J. VAN DE GRONDEN and M. VEENBRINK (ed.), *Elgar Encyclopaedia of EU competition law*, Cheltenham, Edward Elgar, 2026, forthcoming.

implement Union law or to the prerogatives and duties of the Commission. It shall also be without prejudice to other provisions of the Treaties providing for administrative cooperation among the Member States and between them and the Union'. That provision at first sight only appears to confirm that Member States have to implement EU law, without further allowing the EU to streamline Member States' administrative capacities. At the same time, however, it does not exclude the EU legislator from taking measures to facilitate and coordinate the implementation of EU law at Member State level. It could even be understood to allow the EU legislator to oblige Member States to ensure such implementation.²¹² Nothing in Article 197(3) could be understood as impeding the EU legislator from relying on general, cross-sector requirements such as administrative impartiality or effectiveness, to condition and frame the type of administrative design obligations deemed necessary in a particular sector. Although it is true that cross-sector legislative instruments cannot bring about harmonisation, that provision does not constrain the EU legislator to rely on more general requirements when it adopts sector-specific requirements. As a result, it would be perfectly possible to make the impartiality and effectiveness requirements more explicit in preparatory documents and legislative preambles, without, by doing so, violating Article 197(2) TFEU.

65. Article 296(2) TFEU for its part holds that EU legal acts shall state the reasons on which they are based. Since the 1980s, the Court of Justice argued that the statement of reasons, required at present by Article 296 TFEU, must be appropriate to the nature of the measure in question. The reasoning of the institution which adopted the measure must be stated clearly and unequivocally, so as to inform persons concerned of the justification for the measure adopted and to enable the Court to exercise its powers of review.²¹³ It also follows from that case-law that the statement of reasons for a measure is not required to detail every relevant point of fact and law, as the question whether the statement of reasons satisfies the requirements of Article 296 of the Treaty must be considered with reference not only to its wording but also to its context and the whole body of legal rules governing the matter in question. Consequently, if the contested measure clearly discloses the essential objective pursued by the institution, it would be excessive to require a specific statement of reasons for each of the technical choices made by the institution.²¹⁴ Most recent case law phrases that obligation as follows :

“the statement of reasons required by Article 296 TFEU must show clearly and unequivocally the reasoning of the EU authority which adopted the contested measure.

The statement of reasons must therefore enable the persons concerned to ascertain the

²¹² See also M. RUFFERT, “The constitutional basis of EU administrative law” in S. ROSE-ACKERMAN, P. LINDSETH and B. EMERSON (ed.), *Comparative administrative law*, Cheltenham, Edward Elgar, 2017, 667-679.

²¹³ See e.g. CJEU, Case C-344/04, *IATA and ELFAA*, EU:C:2006:10, para 67; Case C-380/03, *Germany v. Parliament and Council*, EU:C:2006:772, para 108, case C-63/12, *Commission v Council*, EU:C:2013:752, para 98; case C-62/14, *Gauweiler e.a.*, EU:C:2015:400, para 70; case C-493/17, *Weiss*, EU:C:2018:1000, para 31; case C-304/16, *American Express*, EU:C:2018:66, para 75-76.

²¹⁴ CJEU, case C-466/93, *Atlanta Fruchthandelsgesellschaft*, EU:C:1995:370, para 16. See also e.g.; Case 296/82 and 318/82, *Netherlands and Leeuwarder Papierwarenfabriek v Commission*, EU:C:1985:113, para 19; case C-350/88 *Delacre e.a. v Commission*, EU:C:1990:71, para 15 and 16; case C-122/94, *Commission v Council*, EU:C:1996:68, para 29; case C-367/95 P, *Sytraval*, EU:C:1998:154, para 63; case C-501/01, *Netherlands v Commission*, EU:C:2003:603, para 45; joined cases C-154/04 and C-155/04, *Alliance for Natural Health*, EU:C:2004:848, para 133; case C-413/04, *European Parliament v Council*, EU:C:2006:741, para 81; case C-508/13, *Estonia v Parliament and Council*, EU:C:2015:403, para 58; case C-442/18 P, *ECB v Espírito Santo Financial (Portugal)*, *SGPS SA*, EU:C:2019:1117, para 54.

reasons for that measure and enable the Court to exercise its power of judicial review. However, it is not required to go into every relevant point of fact and law. In addition, as regards measures of general application, the statement of reasons may be limited to indicating, first, the general situation which led to the adoption of the measure at issue and, secondly, the general objectives which that measure is intended to achieve. Consequently, if the contested measure clearly discloses the essential objective pursued by the institution concerned, it would be excessive to require a specific statement of reasons for each of the technical choices made by that institution”.²¹⁵

It follows from this line of case law that the EU legislator’s duty to state reasons must allow the addressees to ascertain the reasons for the adoption of the legal act concerned and the Court to exercise its judicial review. In practice, that means that the addressees of a legal act must first of all be able to know why the act concerned contains the provisions included in it. In addition, the EU Courts must be able to verify to what extent the legal act respects the limits of conferred competences outlined in the EU Treaties and, in case of shared competences, corresponds to the requirements imposed by the principles of subsidiarity and proportionality. To make such verification possible, a decent statement of reasons is to be required. Failure to provide such a statement constitutes a breach of an essential procedural requirement, which could result in the annulment of the legal act in the context of an action for annulment on the basis of Article 263 TFEU or in the invalidity of the act being declared in the framework of a preliminary reference procedure on the basis of Article 267 TFEU.

From that point of view, a sufficiently sound and readily available statement of reasons is a key requirement for any EU legal act. Although not every point of law has to be reasoned in an in-depth manner in a legal act’s preambles, the “essential objective pursued by the institution” must nevertheless be put forward. That essential objective must be exposed in relation to the context and the whole body of legal rules governing the matter in question. To the extent that a legal act further harmonises EU substantive law, grounded in a specific Treaty legal basis, it goes without saying that the reasons for adopting that act in light of that legal basis need to be given. At the same time, however, if and to the extent that a legal act would venture, as an accessory to the Treaty legal basis, in streamlining or upgrading the desired administrative capacity at Member State level in order to ensure the act’s effective enforcement, those reasons would need to be outlined as well. As shown in this chapter, analysing a significant part of the body of EU legal rules on administrative design obligations allows to infer the presence of two sets of general requirements, grounded in impartiality and effectiveness obligations. To the extent that those requirements form part of the ‘whole body of legal rules governing the matter’, the duty to state reasons should include those aspects and refer to the ways in which the EU legislator envisages to structure or streamline administrative impartiality and effectiveness requirements in a given field. Relying on general concepts such as impartiality and effectiveness may help to analyse the essential objective pursued with regard to administrative designs and to assess the compliance of those obligations against wider EU constitutional standards such as impartial and effective administration.

²¹⁵ CJEU, Case C-617/24, *Siegfried PharmaChemikalien Minden GmbH*, EU:C:2025:908 , para 45 and joined cases C-78/16 and C-79/16, *Pesce and Others*, EU:C:2016:428, para 88 to 90.

66. A combined reading of both Article 197(3) and 296(2) TFEU results in the following intermediate conclusion.

On the one hand, Article 197(3) TFEU does not impede further administrative capacity streamlining. Such streamlining could take the form of legislatively imposed administrative design obligations. The inclusion of such obligations in an EU legal act must nevertheless be attached to a Treaty legal basis that allows for such measures to be taken. In practice, the CJEU's case law on competence conferral allows this to happen whenever those obligations are necessary to the achievement of the substantive law objectives laid out in the legal basis concerned.²¹⁶ Against that background, EU legal acts' preambles would also have to highlight why certain administrative design arrangements are necessary and require further streamlining. By contrast, those preambles only rarely evoke the foundations and structuring aspects of the legislative imposed administrative design obligations. It has been submitted that, because of Article 197(2), the EU legislator appears to refrain from being overly explicit about the scope, format and configuration of those requirements in a cross-sector or transversal manner. As highlighted above, because of the existence of Article 197(3) TFEU, however, there is no justified reason for such lack of explicitness.

On the other hand, the duty to state reasons in Article 296(2) TFEU as interpreted by the EU Courts, any legal act proposing to enhance Member States' administrative designs in one way or another, should highlight how those designs can be framed against the whole of legal rules governing that subject-matter. In practice, that would mean that the EU legislator would be required to address how the administrative impartiality and effectiveness requirements, identified as a common denominator underlying the different administrative design obligations studied in this chapter, are operationalised in the specific legal act. Although there would be no obligation to state in a detailed manner the reasons for every particular administrative design choice (e.g. the reasons justifying a particular, well-defined time limit on the duration of appointment of management staff of a national regulatory authority in the field of media or of a national competent authority in the field of prudential supervision), a general outline of why and how the envisaged legislative measures fit the administrative impartiality and effectiveness requirements would need to be a part of the statement of reasons. That outline would indeed allow to highlight the general situation which led to the adoption of the administrative design measures at issue and, would give an insight in the general objectives which that measure is intended to achieve. As those elements are to be part of the statement of reasons according to

²¹⁶ An example of this tendency can be found in Article 114 TFEU. That general provision allows the EU institutions to adopt harmonising measures supporting the EU internal market. As outlined in the first paragraph of that provision, "save where otherwise provided in the Treaties, the following provisions shall apply for the achievement of the objectives set out in Article 26. The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market". It has been accepted that measures for the approximation can also include measures enabling the streamlined application or enforcement of harmonised substantive law provisions. Such possibilities exist despite the prohibition on harmonisation featuring in Article 197(2) TFEU, see P. VAN CLEYNENBREUGEL, "Meroni circumvented? Article 114 TFEU and EU regulatory agencies", 21 *Maastricht Journal of European and Comparative Law* (2014), 86. See for more general examples, e.g. CJEU, Case C-270/12, *United Kingdom v European Parliament and Council (Short-selling)*, EU :2014 :18 ; see also A. ENGEL and A. ZEMKOVSKA, 'The Good, the Bad and the Ugly: the choice of legal basis in EU digital finance', 10 *European Papers*, 2025, 435-450.

the EU Courts , they also have to extend to the administrative design obligation accompanying the harmonisation of EU substantive law.

As a result, taken together, the requirements flowing from Articles 197(3) and 296(2) TFEU would require the EU legislator to be explicit about upgrading or streamlining administrative capacities of Member States by making use of legislative administrative design requirements. The statement of reasons accompanying the legal act in question should be explicit about the reasons for which enhancing administrative capacity is chosen, but also about how the proposed format fits the impartiality and effectiveness requirements that underlie legislative ventures into Member States' administrative designs in other fields of EU law as well. Failure to do so could constitute the breach of an essential procedural requirement as a matter of EU law. So far, however, the EU Courts have not taken an explicit stance on the matter in relation to those administrative design obligations.

67. It is submitted that, in the realm of shared competences more particularly, the principles of subsidiarity and proportionality further reinforce that conclusion. As a reminder, Article 5(3) TEU holds in that regard that, “[u]nder the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level”. Article 5(4) adds that “[u]nder the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties”. Protocol no2 attached to the TEU and the TFEU require that the EU institutions engage in wide consultation prior to proposing a legislative act as well as in stating the reasons for its compliance with both principles.²¹⁷

In practice, the principles of subsidiarity and proportionality have above all been configured as benchmarks, against which the adoption of a legal act in the realm of shared competences must be evaluated. In her opinion of 4 June 2026 in Case C-553/24, Advocate General Ćapeta held that “the principle of subsidiarity does not concern the question as to which level of government, the European Union or the Member States, has the authority to decide on the *concrete objectives* of legislative action – if the European Union is given competence over a certain policy on the basis of the principle of conferral, it may set a concrete objective of legislative action in the framework of that policy.”²¹⁸ She continued:

²¹⁷ See more particularly, Article 2 of Protocol no2 on the application of the principles of subsidiarity and proportionality requires legislative proposals to be preceded by a wide consultation. Article 5 imposes a specific reasoning requirement for draft legislative (not for every legal) acts : “Draft legislative acts shall be justified with regard to the principles of subsidiarity and proportionality. Any draft legislative act should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality. This statement should contain some assessment of the proposal's financial impact and, in the case of a directive, of its implications for the rules to be put in place by Member States, including, where necessary, the regional legislation. The reasons for concluding that a Union objective can be better achieved at Union level shall be substantiated by qualitative and, wherever possible, quantitative indicators. Draft legislative acts shall take account of the need for any burden, whether financial or administrative, falling upon the Union, national governments, regional or local authorities, economic operators and citizens, to be minimised and commensurate with the objective to be achieved”.

²¹⁸ Opinion of AG ĆAPETA in Case C-553/24, *Assemblée nationale de la République française v Parliament and Council*, EU :C :2026 :454, para 86

“87. The principle of subsidiarity can therefore only be checked in relation to the concrete objective that was chosen by the EU legislature, and the political choice regarding what to regulate cannot be questioned through that principle. The question that the principle of subsidiarity, as defined in Article 5(3) TEU, addresses is thus not which level (European Union or Member State) can decide that something is a problem that requires regulation within the policy area for which competence is conferred on the European Union, but rather whether it is necessary that the European Union takes action to achieve the regulatory objective that it has itself considered to require regulation.

88. In that light, the principle of subsidiarity postulates that, even if the possibility to regulate within a policy area is conferred on the European Union, and even if the need to achieve a certain concrete objective in that area by regulation is identified by the EU institutions, that still does not mean that legislative measures should be taken at the EU level. EU action is triggered only if the problem identified as requiring regulatory action could not be sufficiently resolved by Member States and the regulatory goal could be better achieved by the European Union.”

The proportionality analysis, which is to be distinguished and separated from the subsidiarity analysis, follows a similar logic and only comes into play once the competence to regulate has been determined.²¹⁹ The appropriateness and necessity of a measure are assessed in relation to the concrete regulatory objective chosen at the EU level.²²⁰

That understanding of subsidiarity and proportionality implies that, when it is determined that the European Union can determine regulatory objectives, the EU legislator also needs to justify why EU action is necessary and what form EU action takes. It has been submitted previously that Treaty legal basis can be interpreted to accessorially require administrative streamlining efforts to take place. Once it is established that those efforts are required in order to exercise the competence conferred in a useful and workable manner, the duty to state reasons flowing from Article 296(2) TFEU requires that the objectives to be achieved are formulated. To the extent that administrative streamlining requires administrative impartiality and effectiveness requirements to be put in place, the reasons for such requirements to be put in place needed to be made explicit. In the realm of shared competences, the principles of subsidiarity and proportionality additionally require that the choice for EU-level streamlining measures and the form of such measures are evaluated *ex ante* and motivated as part of the adoption process of a legal act. The additional motivation obligations flowing from both those principles would seem to require that choices to streamline administrative capacities, in the exercise of a conferred competence on the Union but shared with the Member States, need to be motivated against that background as well. Compliance with the duty to state reasons in those cases could then be understood also to encompass the communication of explicit reasons why a legislative act complies with the principles of subsidiarity and proportionality. Such compliance is at present already motivated in light of the substantive law objectives to be achieved by that instrument.

²¹⁹ *Ibid.*, para 98

²²⁰ *Ibid.*, para 98 See also, *inter alia*, CJEU, Case C-491/01, *British American Tobacco (Investments) and Imperial Tobacco*, EU:C:2002:741, para 12 and Case C-358/14, *Poland v Parliament and Council*, EU:C:2016:323, para 78.

However, it is submitted that administrative streamlining requirements, which have to be motivated in light of Article 296(2) TFEU, should also and additionally be motivated in light of the principles of subsidiarity and proportionality. Such an additional motivation accompanying a legislative instrument would allow addressees of that instrument better to grasp, understand and frame the administrative capacity enhancements required by EU secondary legislation. Motivating those enhancements in light of those principles would also diminish the risk that the EU Courts would annul or invalidate legislative acts for failure to respect the requirements flowing from subsidiarity and proportionality.

68. It follows from all the foregoing that the duty to state reasons, as flowing from Article 296(2) TFEU, would require the emerging template accompanying the imposition of administrative design obligations in EU secondary legislation to be made more explicit. More particularly, that template could be used as a benchmark, against the background of which administrative design choices are motivated more explicitly and outlined more directly in the legal act's preambles. Although the duty to state reasons in Article 296(2) TFEU does not require every administrative design choice to be outlined in exquisite detail, the principles of subsidiarity and proportionality – understood as requiring enhanced statement of reasons obligations from the EU legislator – may demand further precisions, explaining why specific composition or structural choices are made at EU level and why leaving some choices to Member States' administrative autonomy would have detrimental consequences for the application of EU law. It is therefore submitted that having a direct and explicit discussion – in legislative practice as well as before the EU Courts – about the contours of such a framework would be essential to the development of a more mature European administrative space.²²¹ The fact that key actors in the administrative enforcement of EU law do not consider those obligations to play a key role in their day-to-day decision-making practices but are simply received as an external 'given' within the context of which one has to work, as highlighted in the chapter by Julien Bois, confirms that this discussion is not even materialising at this stage and, as a result, remains somewhat clouded in mystery.

4. Conclusion

69. This chapter has set out to identify and conceptualise the different administrative design obligations accompanying the adoption of EU secondary legislation instruments in 18 policy fields. It has been argued that EU secondary legislation contains important administrative design obligations which nevertheless vary significantly according to each policy field concerned. Their presence within the EU legal order has increased in recent years: more recent EU secondary legislation instruments have been shown to contain more detailed and targeted obligations accompanying the setup and structuring of administrative bodies or authorities at Member States' level.

²²¹ On the notion of European administrative space, see among others, J.P. OLSEN, 'Towards a European Administrative Space', 10 *Journal of European Public Policy* (2003), 506–531; I. KOPRIĆ, A. MUSA and G. LALIĆ NOVAK, 'Good administration as a ticket to the European administrative space', 61 *Zbornik PF* (2011), 1517–1560; E. CHEVALIER, 'L'espace administratif européen' in J.B. AUBRY and J. DUTHEIL DE LA ROCHÈRE (ed.), *Traité de droit administratif européen*, Bruxelles, Larcier, 2014, 451. See also, applied in the context of digital regulation, P. VAN CLEYNENBREUGEL, 'Les enjeux de droit administratif européen du DSA' in B. BERTRAND (ed.), *La regulation juridique des plateformes*, Paris, Mare et Martin, 2025, 198–208.

70. Despite the varieties in the prevalence of administrative design obligations imposed by EU secondary legislation, it was submitted that the contours of a common template underlying legislative instruments can be identified. Those contours are structured around “impartiality” and “effectiveness” pillars that implicitly underlie and accompany the EU legislator’s vision on how to structure Member States’ administrative authorities. Despite the vagueness and open-ended nature of both the impartiality and effectiveness notions, it has been argued that, whenever the legislator conceptualises an administrative design obligation, it operationalises at least one of those impartiality or effectiveness pillars.

71. Against that background, the chapter subsequently questioned whether and to what extent the identification of the “impartiality”-“effectiveness” contours of administrative design obligations could or should be embedded more in the legislative policymaking process. In that regard, it called for the EU legislator to make those contours explicit and to provide for their consistent application and verification across different policy fields. It argued that a combined reading of Article 197(3) and 296(2) TFEU would compel the EU legislator to do so in a much more direct manner. Doing so, it was argued, would additionally also enable the EU Courts to verify – at least to some degree – whether those conditions had been applied and to interpret the scope of different legislative obligations against that background, much more than is presently the case. Lifting the veil in that manner would not only ensure that legislative practice better complies with the requirement flowing from Article 296(2) TFEU, but would above all allow for more informed and explicit debates on how administrative design obligations should be embedded in a wider European administrative space and how that space should be shaped and refined further.