

EUDAIMONIA comparative table of institutional design obligations

<p>Consumer financial protection¹ (short-selling Regulation (ssR)², MIFID II³, MAR⁴, and MICA⁵)</p>	<p>Obligations flowing from EU primary law and/or secondary legislation</p>
<p>Legal form ?</p>	<p>No one single legal form, obligations by EU secondary legislation to designate</p> <ul style="list-style-type: none"> • one or more competent authorities (art. 32 ssR – art. 93(1) MICA), or ; • one or more public authorities (with limited delegation option to other entities art. 67 MIFID II, referred to as competent authorities in art. 68) or ; • a single administrative authority (art. 22 MAR) <p>Internal cooperative arrangements to be put in place in case multiple authorities can be designated within one and the same Member State (art. 32 ssR – art. 68 MIFID II – art. 93(2) MICA)</p> <p>Appropriate measures need to be in place so that competent authorities can exercise the supervisory and investigatory powers that are necessary to perform their duties (art. 94(6) MICA)</p>

¹ The notion of consumer financial protection is used in the context of the EUDAIMONIA project to refer to the set of rules that seek to protect the integrity of financial markets so that (non-professional) investors can take informed decisions as to whether or not to invest in certain financial or similar instruments. Although not all those measures seek to protect consumers in the traditional meaning of that term in EU law, the philosophy underlying the EU regulatory obligations in this field is similar to the one accompanying consumer protection law. For that reason and in order to capture the different legal norms by one term, the notion of ‘consumer financial protection’ is used in this context.

² 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] O.J. L86/1.

³ 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] O.J. L173/349. Regulation 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, [2014] O.J. L173/84 complements this instrument.

⁴ 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] O.J. L173/1.

⁵ 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] O.J. L150/40.

	<p><i>No references to independence, budgetary autonomy or the need for sufficient budget</i></p>
<p>Composition ?</p>	<p><i>No specific composition requirements</i></p> <p>Professional secrecy guarantees from staff of authorities concerned explicitly required (art. 34 ssR – art. 76 MIFID II – art. 27 MAR – art. 100 MICA)</p>
<p>Process ?</p>	<p>Minimum investigation and enforcement powers (art. 33 ssR – art. 69-70 MIFID II – art. 23 MAR – art. 94 MICA)</p> <p>Powers must include administrative penalties (art. 41 ssR or sanctions or measures (art. 70 MIFID II – art. 30-31 MAR – art. 111 MICA (although Member States may replace administrative sanctions with criminal law penalties in both MAR and MICA))</p> <p>Sanctions or measures must be effective, proportionate and dissuasive (art. 41 ssR – art. 70(1) MIFID II) or effective and proportionate (art. 31(2) MAR and art. 112(2) and 132(2) MICA, the latter repeating this only for periodic penalty payments) and take into account gravity and circumstances of the case (art. 72(2) MIFID II – art. 31(1) MAR – art. 112 MICA)</p> <p>Mechanisms enabling the reporting of infringements must be established (art. 73 MIFID II – art. 32 MAR – art. 116 MICA) + complaint and extra-judicial redress procedures (art. 75 MIFID II)</p> <p>Designated authority or authorities must be able to cooperate within the framework of the European Securities and Markets Authority (ESMA – Reg. 1095/2010) (art. 35-37 ssR – art. 79-87 MIFID II – art. 24-25</p>

	<p>MAR – art. 95 and 105 MICA or European Banking Authority in case of MICA (EBA – Reg. 1093/2010 – art. 96 and 106 MICA)</p> <p>Mutual assistance through exchange of information (art. 32 ssR – art. 79 MIFID II – art. 33 MAR (with ESMA) – art. 95 and 106 MICA (with ESMA and EBA)) and joint supervisory activities, with possibility to participate directly in supervisory activities on the territory of another Member State (art. 37 ssR – art. 80 MIFID II – art. 25 MAR -art. 95(4) MICA)</p>
<p>Modus operandi (accountability, judicial review) ?</p>	<p><i>No specific (parliamentary or government) accountability mechanisms</i></p> <p><u>Authorities implicitly hold each other to account through ESMA participation and coordination – binding conflict resolution mechanism in art. 19 Reg. 1095/2010</u></p> <p>Reporting of administrative penalties and measures to ESMA and EBA in the context of MICA (art. 115 MICA)</p> <p>Obligation to publish decisions (art. 71 MIFID II – art. 34 MAR – art. 114 MICA) – decisions must be reasoned (art. 74(1) MIFID II – art. 113(1) MICA)</p> <p>Right of appeal before a tribunal (art. 74 MIFID II, implicitly art. 34(2) MAR – art. 113(1) MICA)</p>