

EUDAIMONIA comparative table of institutional design obligations

<p><b>Energy (Directive 2019/944 for electricity and Directive 2009/73 for gas)</b></p>	<p><b>Obligations flowing from EU primary law and/or secondary legislation</b></p>	
<p>Legal form ?</p>	<p>Single national regulatory authority at national level (art. 57(1) + possibly regional regulatory authorities (art. 57(2) and (3) Dir. 2019/944</p> <p>Legally distinct and functionally independent from any other public or private party (art. 57(4)(a))</p> <p>All the necessary human and financial resources it needs to carry out its duties and exercise its powers in an effective and efficient manner (art. 57(5)(b) + separate annual budget allocations, with autonomy in the implementation of the allocated budget (art. 57(5)(c) Dir. 2019/944 – ex post control by independent auditor possible (art. 57(6))</p>	<p>Single national regulatory authority at national level (art. 39(1) + possibly regional regulatory authorities (art. 39(2) and (3) Dir. 2009/73</p> <p>Legally distinct and functionally independent from any other public or private party (art. 39(4)(a))</p> <p>Adequate human and financial resources + separate annual budget allocations, with autonomy in the implementation of the allocated budget (art. 39(5)(a) Dir. 2009/73)</p>

<p>Composition ?</p>	<p>Staff needs to act independently (art. 57(4)(b) Dir. 2019/944)</p> <p>Members of the board of the regulatory authority or, top management need to act independently (not taking instructions from any public or private party), rotating mechanism between them and appointed for a fixed term of five up to seven years, renewable once based on objective, transparent and published criteria, in an independent and impartial procedure (art. 57(5)(d) and € + dismissal only if no longer fulfilling functions (art. 57(5)(g)</p> <p>Conflict of interest provisions are in place and confidentiality obligations extend beyond the end of the mandate of the members of the board or top management of regulatory authorities concerned (art. 57(5)(f) Dir. 2019/944)</p>	<p>Staff needs to act independently (art. 39(4)(b) Dir. 2009/73)</p> <p>Members of the board of the regulatory authority or, top management need to act independently (not taking instructions from any public or private party), rotating mechanism between them and appointed for a fixed term of five up to seven years, renewable once + dismissal only if no longer fulfilling functions(art. 39(5)(b)</p>
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<p>Process ?</p>	<p>Exercise powers impartially and transparently (art. 57(4) Dir. 2019/944)</p> <p>Interpret Directive in light of the Charter (Recital 91)</p> <p>NRAs should take autonomous decisions, independently from any political body (art. 57(5)(a) Dir. 2019/944)</p> <p>Regulatory authorities have Investigative, decision-making and sanctioning (up to 10% turnover) powers, including binding decisions and autonomous decisions, independently from any political body (art. 58-59)</p> <p>Approval of tariff methodologies (art. 58(7))</p> <p>Complaint mechanism (art. 60)</p> <p>Regulators' decisions fully reasoned and justified to allow for judicial review. The decisions shall be available to the public while preserving the confidentiality of commercially</p>	<p>Exercise powers impartially and transparently (art. 39(4) Dir. 2009/73)</p> <p>NRAs should take autonomous decisions, independently from any political body (art. 39(5)(a) Dir. 2009/73)</p> <p>Regulatory authorities have Investigative, decision-making and sanctioning (up to 10% turnover) powers, including binding decisions and autonomous decisions, independently from any political body (art. 41+ Recital 33)</p> <p>Approval of tariff methodologies (art. 41(6))</p> <p>Complaint mechanism against transmission storage (art. 41(11))</p> <p>Regulators' decisions fully reasoned and justified to allow for judicial review. The decisions shall be available to the public while preserving the confidentiality of commercially sensitive information (art. 41(16)) + right</p>
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	<p>sensitive information (art. 60(7)) + right to appeal (art. 60(8))</p> <p>Consultation, information exchange cooperation between Member State authorities (art. 61) also within the framework of ACER (Reg. 2019/942)</p>	<p>to appeal (art. 41(17))</p> <p>Consultation, information exchange cooperation between Member State authorities (art. 42) also within the framework of ACER (Reg. 2019/942)</p>
<p>Modus operandi (accountability, judicial review) ?</p>	<p>Regulatory authorities decisions are subject to a right of appeal to a body independent of the parties involved and of any government (art. 60(8), could be a court (recital 86) – judicial review must also be possible (recital 86 + art. 60(7))</p> <p>Proceedings must be possible against breach of confidentiality obligations (art. 60(5))</p> <p>Opinions by ACER to ensure compliance with its guidelines (art. 63) – ACER has subsidiary binding decision-making powers overruling NRAs in cross-border (security) situations (Art. 6(10) Reg. 2019/942)</p> <p>General policy guidelines issued by the government not related to the</p>	<p>Regulatory authorities decisions are subject to a right of appeal to a body independent of the parties involved and of any government (art. 41(16), could be a court (recital 33) – judicial review must also be possible (art. 41(15))</p> <p>Opinions by ACER to ensure compliance with its guidelines (art. 43) – ACER has subsidiary binding decision-making powers overruling NRAs in cross-border (security) situations (Art. 6(10) Reg. 2019/942)</p> <p>General policy guidelines issued by the government not related to the regulatory powers and duties (art. 39(4)(b)(ii) Dir. 2009/73)</p> <p>Approval of the budget of the regulator by the</p>

	<p>regulatory powers and duties (art. 57(4)(b)(ii) Dir. 2019/944)</p> <p>Approval of the budget of the regulator by the national legislator possible (Recital 80)</p> <p>budgetary controls by parliament possible, see also C-718/18, <i>Commission v Germany</i>, para 127</p> <p>+ ex post control over annual budget by independent auditor possible (art. 57(6))</p>	<p>national legislator possible (Recital 30)</p> <p>budgetary controls by parliament possible, see also C-718/18, <i>Commission v Germany</i>, para 127</p>
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