

EUDAIMONIA comparative table of institutional design obligations

<p>Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions</p>	<p>Obligations flowing from EU primary law and/or secondary legislation</p>
<p>Legal form ?</p>	<p>ECB is “the competent authority” regarding prudential supervision (Recital 45; Art. 9(1)). Exclusivity for significant institutions (art. 4(1)); NCAs competent for less-significant institutions (art. 6(4))</p> <p>Resources: charges levied from supervised entities (Recital 77)</p> <p>Independence from any other institution (art. 19(1))</p> <p>Members subject to professional secrecy (art. 27(1))</p>
<p>Composition ?</p>	<p>Supervisory board: members of the ECB and representatives of national competent authorities, respecting “gender balance, experience and qualification” (Recital 67; art. 26(2))</p> <p>Council: implementing decision for Chair and Vice-Chair, approval of EP (Recital 69; art. 26(3))</p> <p>Term for Chair: 5 years maximum (Recital 70)</p> <p>Independence: mandatory “cooling-off” period for board members (Recital 76)</p> <p>“Highly motivated, well-trained and impartial staff” for ECB and NCAs + Joint-Supervisory Teams (experts from other states invited in supervision) (Recital 79; Art. 31)</p> <p>Art. 24: Internal Administrative Board of Review: 5 individuals, terms of 5 years, “high repute”, independence beyond doubt</p>

Process ?

Art. 132(3) TFEU and Council Regulation (EC) No 2532/98 : ECB may impose fines and periodic payments for failure to comply with its regulations (Recital 36)

ECB accountable before Council and EP (Recital 55), subject to principles of due process and transparency + access to documents following art. 15(3) TFEU (Recital 59), particularly in light of “the right to an effective remedy and to a fair trial” of the CFR (Recital 63)

“Right to the protection of personal data, the freedom to conduct a business, the right to an effective remedy and to a fair trial” as enshrined in the CFR (Recital 86)

Art. 1(6): non-Eurozone NCAs must sign a memorandum of understanding about cooperation with ECB; obligation to cooperate if non-participating Member State has legislation about information exchange with ECB (art. 7(2c))

Art. 6(2): Duty of cooperation in good faith between ECB and NCAs, including need to exchange relevant information; Art. 11(2): NCAs must ensure access to the facilities of an obstructing supervised entity (in accordance with national law, including judicial authorization if needed [art. 13(1)])

Art. 6(7c): duty of information by NCAs to the ECB regarding supervision of LSIs

Art. 14(1): NCAs must submit authorizations to be a credit institution to the ECB; Art. 14(5): NCAs must notify ECB of their intention to withdraw an authorization

Art. 18(1): ECB may fine credit institutions up to 10% annual turnover for breaching SSM obligations + national penalties for NCAs (art. 18(5))

Art. 22(1): Due process, right to be heard for credit institutions

<p>Modus operandi (judicial review) ?</p>	<p>ECB acts subject to CJEU review following art. 263 TFEU (Recital 60; Art. 13(2)) Principle of liability following art. 340 TFEU (Recital 61)</p> <p>ECB should establish an administrative board of review to review the procedural and substantive content of its decisions (Recital 64)</p> <p>Mandatory accountability of the ECB before the Council, the EP and other EU bodies (art. 20) + answer queries of national parliaments upon request (art. 21(2))</p>
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