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A Patchwork or a Uniform? Organisational Designs of Member States' Administrations in the EU Environmental Law (working paper)

Katarzyna Aleksandra JANCEWICZ, PhD Researcher, University of Liège, Belgium¹

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Abstract

This working paper presents the results of the legal analysis conducted to uncover the organisational design obligations imposed on the Member States' administrations by the environmental secondary legislation of the European Communities and the European Union. The detailed study covered 167 legislative acts (directives and regulations) adopted between 1987 and 2024. Based on mapped provisions, the most common pattern of obligations was the designation of one or more competent authorities or bodies. Furthermore, the analysis also indicated case-specific patterns of obligations, categorised as the duties of the designation of contact/focal points and laboratories, delineation of governance units and establishment of systems. In addition, certain individual directives and regulations bind the Member States to ensure that the competent authorities are independent and have adequate resources. However, those organisational design obligations appeared fragmented and specific for particular legislative acts. That circumstance raises concerns about the practical consequences of potentially inconsistent allocation of implementation and enforcement responsibilities across Member States. Furthermore, the obligation to designate competent authorities is not always accompanied by the publication and update of their list. Therefore, a common or environmental 'EU Competent Authorities Portal' could be created.

Keywords:

Competent Authorities; EEA; Enforcement; Governance; Independence;

¹ This is the first draft of the working paper. Usual disclaimers apply. Comments are most welcome at: kajancewicz@uliege.be

Introduction

The environmental policy of the European Communities (EC) and the European Union (EU) dates back to 1973.² Since then, their body of environmental law has placed considerable legal obligations on decision-making authorities in the Member States and transformed their national legal systems.³ Furthermore, one of the distinctive features of EU governance has been the cooperation and coordination of various actors across administrative levels, including the Member States.⁴ Although, as a rule, EU law is implemented and enforced by the Member States,⁵ the EU has been traditionally reluctant to interfere with the Member States' administrative design decisions due to national sovereignty concerns. However, it has been submitted that such an approach has gradually eroded, and recently, the EU has developed an interest in the organisational structure, legal powers and resourcing of Member States' authorities that implement and enforce the EU environmental law.⁶ This raises the question of whether such a paradigm shift could be reflected in the relevant EU secondary legislation. Given the significant amount of environmental *acquis*, researchers have focused on the effects of specific EU directives and regulations in particular Member States⁷ rather than theoretical cross-sectoral analysis. Therefore, this working paper studies the organisational (institutional) design requirements present in the EC and EU secondary law with the help of broad-based legal research. Accordingly, Chapter I clarifies the scope of the analysis and adopted methodology. Chapter II presents the most common characteristics of the institutional design obligations throughout the EC and EU legislation. Chapter III depicts the specific cases of obligations concerning the number of administrative authorities in charge, their internal structure and dedicated territorial entities. Chapter IV discusses the obtained results. Finally, Conclusions are drawn.

I. Scope of analysis and adopted methodology

Before the performance of the analysis, the precise scope of this working paper shall be determined because of the lack of a definition of environmental law, its perception in terms of policy agenda and proximity to the phenomenon (or label) of 'governance'.⁸ Due to the historical reasons and integration of environmental protection into other policies, such as industry, transport and taxation, multiple Treaties' provisions may be perceived as environmental rule-making competences.⁹ From a legal perspective,¹⁰ however, the dedicated legal base was only formally incorporated into the Treaty of Rome (EEC Treaty)¹¹ by the Single European Act in 1987.¹² Given the long history of EU environmental lawmaking, the specific legal bases, as based on objective factors,¹³ are in focus due to the changes in decision-making procedures,¹⁴ as well as to the shift from pre-Lisbon constitutional exclusivity¹⁵ to shared competence in the principal area of the environment under the Treaty on the Functioning of the European Union (TFEU).¹⁶ Correspondingly, this working paper indirectly seeks further clarifications of the blurred vertical dimension of EU competence and its limitations

² Ingmar von Homeyer, 'The Evolution of EU Environmental Governance' in Joanne Scott (ed), *Environmental Protection: European Law and Governance* (Oxford University Press 2009).

³ Elizabeth Fisher, 'EU Environmental Law and Legal Imagination' (Oxford University Press 2021).

⁴ André M Latour and Gerard C Rowe, 'Environmental Protection' in Herwig CH Hofmann, Gerard C Rowe and Alexander H Türk (eds), *Specialized Administrative Law of the European Union: A Sectoral Review* (Oxford University Press 2018).

⁵ Article 192(4), Article 291(1) TFEU.

⁶ Martin Hedemann-Robinson, *Enforcement of European Union Environmental Law: Legal Issues and Challenges* (Routledge 2015) Part III Enforcement of EU environmental law by national authorities.

⁷ For example, Nicolas Jager and others, 'Transforming European Water Governance? Participation and River Basin Management under the EU Water Framework Directive in 13 Member States' (2016) 8 *Water* 156.

⁸ Fisher (n 3).

⁹ Albert Weale and others, 'The Single Market and the Environment: From Issue Linkage to Political Choice' in Albert Weale and others (eds), *Environmental Governance in Europe: An Ever Closer Ecological Union?* (Oxford University Press 2002).

¹⁰ Helle Tegner Anker, 'Competences for EU Environmental Legislation: About Blurry Boundaries and Ample Opportunities' in Marjan Peeters and Mariolina Eliantonio (eds), *Research Handbook on EU Environmental Law* (Edward Elgar Publishing 2020).

¹¹ Not published in the Official Journal.

¹² Single European Act [1987] OJ L169/1.

¹³ Case C-244/17 *Commission v Council (Agreement with Kazakhstan)* ECLI:EU:C:2018:662 para 36 and the case-law cited there.

¹⁴ Geert Van Calster and Leonie Reins, *EU Environmental Law* (Edward Elgar Publishing 2017) 54-61.

¹⁵ Sacha Garben and Inge Govaere, *The Division of Competences between the EU and the Member States: Reflections on the Past, the Present and the Future* (Hart Publishing 2020).

¹⁶ Article 4(2)(e) of Consolidated version of the Treaty on the Functioning of the European Union (TFEU) [2012] OJ C326/47

embedded in the principles of proportionality and subsidiarity.¹⁷ Therefore, this study covers the initial and consolidated English versions of basic secondary legislation, adopted subsequently under Articles 130s EEC, 130s TEC,¹⁸ 175(1) TEC¹⁹ and 192(1) TFEU.²⁰ According to EUR-Lex, as of August 2024, the environmental *acquis* counts 167 directives and regulations. Among them, 31 were adopted under Article 130s EEC,²¹ 16 under Article 130s TEC,²² 23 under Article 175 TEC (1997 consolidated version),²³ 49 under Article 175 TEC (23 under 2002 consolidated version²⁴ plus 26 under 2006 consolidated version²⁵) and 47 under Article 192(1) TFEU.²⁶ A complete list of analysed secondary legislation can be found in a separate file.²⁷

Having defined the scope of the analysis, it is important to clarify its object and adopted methodology. Hence, the underlying research question is as follows: does the EU secondary legislation impose on the Member States the obligation or not to design their public administrations in a particular way? In other words, subject to the inquiry were all provisions referring to the Member States, stating that they shall, should or may undertake an action. Among such general phrases further analysed were those (in)directly invoking Member States' public authorities. The data derived from that exercise was then tabled in a dedicated file.²⁸ Besides the document references and types of legal acts, the table contains information about whether particular directives and regulations were in force²⁹ and their repealed predecessors. Then, specific legal acts were assigned to one of 10 categories based on the issues they addressed to be better visible on a visualisation.³⁰ However, it should be noted that as no official categorisation exists, the segmentation of the environmental *acquis* is the author's, although inspired by its division into horizontal ('non-sectoral') and vertical ('sectoral') ones³¹ and one of the Staff Working Documents of the European Commission (Commission).³²

The central part of the table consists of five subsequent columns. They contain information as to whether a given legislative act binds the Member States to have a competent authority or authorities in place (yes/no), about their number, the verbs used to introduce that obligation, the purpose of designation/establishment or otherwise identification of competent authorities, as well as relevant legal provisions. Further, the table compiles the transparency-related duties imposed on the Member States concerning the publication of the lists of the competent authorities in place and their reporting to the Commission. Next, the author mapped the duties concerning the internal organisation of the competent authorities (if any), specific governance/management units to be delineated and the establishment of other bodies/structures. Finally, the table closes a repository of indirect references to various public bodies of the Member States. Overall, that exercise aimed

¹⁷ Tegner Anker (n 10); Alexander Proelss, 'The Scope of the EU's Competences on the Field of the Environment' (Springer Japan 2016) 19-20.

¹⁸ Treaty establishing the European Community (Maastricht consolidated version) (TEC) [1992] OJ C224/52.

¹⁹ Treaty establishing the European Community (Amsterdam consolidated version) (TEC) [1997] OJ C340/255.

²⁰ EUR-Lex mistakenly identifies as adopted under Article 192(2) TFEU the 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.

²¹ This result was obtained through a search on EUR-Lex <eur-lex.europa.eu> in August 2024. The query relied on was Domain: EU law and case-law, Subdomain: Legal acts, Legal basis treaty: Treaty establishing the European Economic Community (1957), Type of act: Regulation, Directive, Legal basis – article: 130s, Limit to basic acts: True, Search language: English.

²² As above, except Legal basis treaty: Treaty establishing the European Community (consolidated version 1992).

²³ As above, except Legal basis treaty: Treaty establishing the European Community (consolidated version 1997) and Legal basis – article: 175.

²⁴ As above, except Legal basis treaty: Treaty establishing the European Community (consolidated version 2002).

²⁵ As above, except Legal basis treaty: Treaty establishing the European Community (consolidated version 2006).

²⁶ As above, except Legal basis treaty: Treaty on the Functioning of the European Union, Legal basis – article: 192.

²⁷ A complete list of analysed legislation can be found in Annex I available at: <https://mseduculiegebe-my.sharepoint.com/:f/g/personal/kajancewicz_uliege_be/EtmfZPU-c21LutU4vigDM6IB7Z54YfCg67rw6z_H0tIRHQ?e=D0rEag>

²⁸ the table used for mapping can be found in Annex II available at: <https://mseduculiegebe-my.sharepoint.com/:f/g/personal/kajancewicz_uliege_be/EtmfZPU-c21LutU4vigDM6IB7Z54YfCg67rw6z_H0tIRHQ?e=D0rEag>

²⁹ As of August 2024.

³⁰ Categories: Air, Biodiversity, Chemicals, Emissions, Energy, Financial, Horizontal, Industry, Waste, Water.

³¹ Van Calster and Reins (n 14) 53.

³² European Commission, 'Commission Staff Working Document - Environmental Compliance Assurance - scope, concept and need for EU actions, accompanying the document EU actions to improve environmental compliance and governance' COM(2018) 10 final, Annex II.

to assess the organisational design requirements directed at the Member States from functional, organisational, structural and procedural standpoints.³³

II. Common features of organisational design requirements

Given the extensive body of EC and EU environmental legislation, acquiring adequate insight into its main characteristics and structure may seem arduous, if not hardly possible. Hence, the idea for this working paper gradually emerged with the progress of a preliminary mapping exercise, which aimed at the systemic identification of organisational design obligations present in particular legislative acts under the broadly understood environmental policy.³⁴ With each examined directive and regulation, as confirmed by the extended analysis, it became increasingly clear that the EC and EU legislators followed four different legislative strategies concerning the designation (or not) of a competent authority or authorities (Section 1). At the same time, although over 76 secondary legislative acts required the designation of the competent authority or authorities (among them 50 [yet] in force or upcoming), only a few included cross-references to the competent authorities already in place (Section 2.). Moreover, even if the Member States had to designate their competent authorities, such an obligation was not always accompanied by a duty to publish and update their lists (Section 3.).

1. The designation of the competent authorities or bodies

Throughout the analysed secondary legislation, one phrase appeared particularly often: the competent authority or authorities of the Member States. It can be also found throughout the TFEU,³⁵ even though not in Part Three Title XX ‘Environment’. In secondary law, the concept of a competent authority predates the first environmental legal basis. A EUR-Lex database search reveals its use as early as 1958.³⁶ Among the directives and regulations adopted under Article 130s EEC, the first mention of that phrase appeared in Article 3 of Council Regulation (EEC) No 2242/87,³⁷ while just a year later, in 1988, Member States had to designate the authority or authorities competent for the notification and information procedures laid down by the Council Regulation (EEC) No 1734/88.³⁸ Since then, the EC and EU legislators have taken four different approaches. First, in 29 directives and regulations, among which nine were in force in August 2024, no reference has been made to any Member States’ authorities. Second, there has been a group of 57 legislative acts, among which 29 remained in force in August 2024, which mention some public or competent authorities of the Member States but without any obligation to establish or otherwise identify them. Third, the secondary legislation continuously imposes on the Member States a duty to designate, establish or otherwise appoint their competent authorities or bodies to implement a given legislative act or perform particular tasks. Among such 76 cases, in force or upcoming, were 47 directives and regulations. The analysis has revealed that the EC and EU legislators took the opportunity to introduce such a designation obligation not through amendments but solely in the cases of adopting or repealing the secondary legislation. In two cases,³⁹ the previous secondary legal acts, which contained the obligation to appoint a competent authority (Council Regulation (EC) No 3093/94)⁴⁰ and establish or designate the competent authority or

³³ Herwig CH Hofmann, Gerard C Rowe and Alexander H Türk, ‘The Idea of European Union Administration—Its Nature and Development’ in Herwig CH Hofmann, Gerard C Rowe and Alexander H Türk, *Administrative Law and Policy of the European Union* (1st edn, Oxford University Press Oxford 2011) 4.

³⁴ The tables with mapped relevant provisions present in particular legislative acts: <https://www.eulegalstudies.uliege.be/cms/c_11734196/en/environmental-protection> Accessed 10 September 2024.

³⁵ Pieter Van Cleynenbreugel, Katarzyna Aleksandra Jancewicz and Julien Bois, ‘Inconsistent administrative enforcement of EU law at Member State level: the Lisbon Treaty’s hidden constitutional challenge?’ (EUDAIMONIA Working Paper 2024/2, ORBi-University of Liège) <<https://hdl.handle.net/2268/314238>> Accessed 5 September 2024, Introduction, Section 1.

³⁶ This result was obtained through a search on EUR-Lex <eur-lex.europa.eu> in August 2024. The query relied on was Domain: EU law and case-law, Subdomain: Legal acts, Results containing: competent AND authority In title and text, Search language: English; See Article 11 of Regulation (EUROATOM) No 3 implementing Article 24 of the Treaty establishing the European Atomic Energy Community, [1958] OJ 406/58.

³⁷ Council Regulation (EEC) No 2242/87 of 23 July 1987 on action by the Community relating to the environment [1987] OJ L207/8.

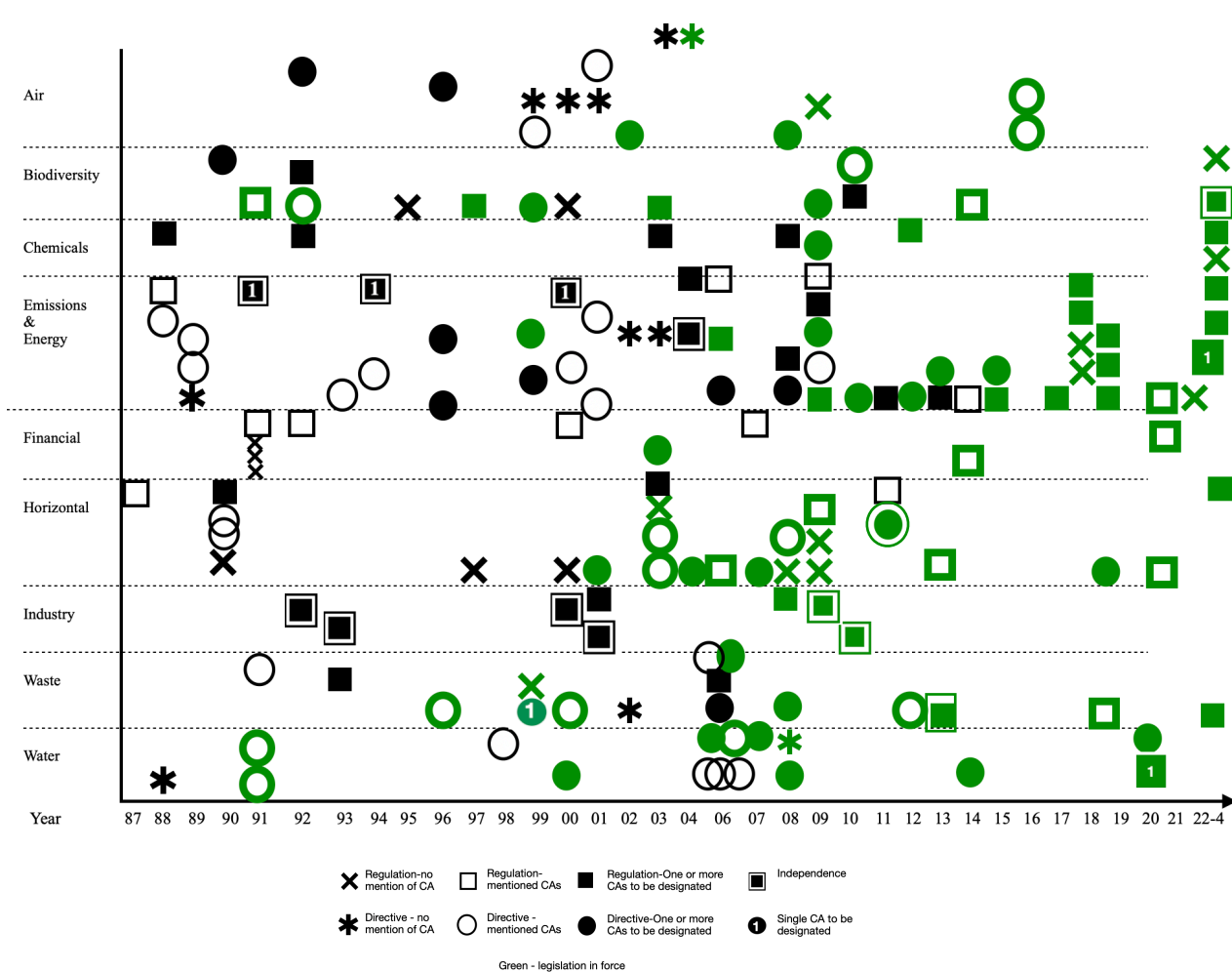
³⁸ Article 3 of Council Regulation (EEC) No 1734/88 of 16 June 1988 concerning export from and import into the Community of certain dangerous chemicals [1988] OJ L155/2.

³⁹ Cases where the obligation to designate a competent authority or authorities has not been reintroduced by later repeal.

⁴⁰ Article 6(1) of Council Regulation (EC) No 3093/94 of 15 December 1994 on substances that deplete the ozone layer, [1994] OJ L333/1.

authorities (Directive 2006/12/EC)⁴¹, have been repealed by acts only indirectly referring to those bodies (subsequently Directive 2008/98/EC⁴² and Regulation (EC) No 1005/2009,⁴³ the latter repealed by Regulation (EU) 2024/590⁴⁴). Fourth, in two historical cases of Directives 2001/77/EC⁴⁵ and 2009/28/EC,⁴⁶ the designation of competent authorities was optional. Finally, it shall be noted that each obligation to designate a competent authority was followed by procedural duties directed to such competent authority. In theory, the study thus further confirms the continuous proximity of those two dimensions of EU administration.⁴⁷ A visualisation of directives and regulations with (and without) designation duties can be found below.

Organisational requirements - designation of competent authorities/bodies



⁴¹ Article 6 of Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste, [2006] OJ L114/9.

⁴² 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.

⁴³ Regulation (EC) No 1005/2009 of the European Parliament and of the Council of 16 September 2009 on substances that deplete the ozone layer, [2009] OJ L286/1.

⁴⁴ Regulation (EU) 2024/590 of the European Parliament and of the Council of 7 February 2024 on substances that deplete the ozone layer, and repealing Regulation (EC) No 1005/2009, [2024] OJ L2024/590.

⁴⁵ Article 5(2) of Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market [2001] OJ L283/33.

⁴⁶ Article 22(3)(a) of Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC [2009] OJ L140/16.

⁴⁷ Hofmann, Rowe and Türk (n 33) 11.

2. Lack of cross-references

Another common feature of the designation obligations is the absence of binding cross-references to the definitions of competent authorities, which have already been established for other directives and regulations belonging to the environmental acquis. Among the legislation in force, two exceptions that prove the rule can be found. Regulation (EU) 2015/757⁴⁸ invokes an administering authority responsible within the meaning of Directive 2003/87/EC (EU ETS).⁴⁹ Additionally, the consolidated version of Regulation (EU) 2019/1242⁵⁰ indicated that competent authorities responsible for monitoring and reporting data shall be those designated by the Member States under Regulation (EU) 2019/631.⁵¹ Furthermore, cross-references are equally missing in the cases of repeals. An exception has only been made in the cases of successors of Regulation (EC) No 304/2003,⁵² annulled by the CJEU.⁵³ In Articles 4 of both Regulation (EC) No 689/2008,⁵⁴ later replaced by Regulation (EU) 649/2012,⁵⁵ all concerning the export and import of dangerous chemicals, one can find a statement that the Member State shall designate the authority or authorities ('the designated [national] authorities') to carry out the administrative functions required by those Regulations unless it has already done so before the entry into their force.

3. The (incomplete) transparency of designated competent authorities

The obligation to identify a competent authority may invoke transparency-related duties, going beyond the usual notification of transposing legal acts to the Commission. Among the analysed directives and regulations, one can distinguish four legislative techniques. First, the Member States shall publish their list of competent authorities. Second, the Member States shall (also) notify their competent authorities to the Commission, which shall then make such lists publically available. In three cases, historical Council Regulation (EEC) No 880/92 (Ecolabel I),⁵⁶ Council Regulation No 338/97⁵⁷ and Regulation (EU) 2023/956 (CBAM),⁵⁸ the Commission shall publish the lists of competent authorities in the Official Journal. Third, the legislative, delegated or implementing acts may bind the Member States to report to the Commission specific data, such as reports, plans or programmes. The required information may include the competent authorities and their addresses. The Commission or Agencies then shall or may publish such plans or programmes or include the relevant information in a database, like e-PIC.⁵⁹ However, even the published lists of competent authorities may be invalid, as the secondary legislation only sometimes explicitly requires the Member States or the Commission to update them. Finally, the lists may remain undisclosed due to an explicit lack of

⁴⁸ Article 3(p) of Regulation (EU) 2015/757 of the European Parliament and of the Council of 29 April 2015 on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport, and amending Directive 2009/16/EC, [2015] OJ L123/55.

⁴⁹ Article 3(y), Article 3gf of Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC, [2003] O. J. L275/32.

⁵⁰ Article 13a(2) of Regulation (EU) 2019/1242 of the European Parliament and of the Council of 20 June 2019 setting CO2 emission performance standards for new heavy-duty vehicles and amending Regulations (EC) No 595/2009 and (EU) 2018/956 of the European Parliament and of the Council and Council Directive 96/53/EC, [2019] OJ L198/202.

⁵¹ Article 7(6) of Regulation (EU) 2019/631 of the European Parliament and of the Council of 17 April 2019 setting CO2 emission performance standards for new passenger cars and for new light commercial vehicles, and repealing Regulations (EC) No 443/2009 and (EU) No 510/2011, [2019] OJ L111/13.

⁵² Regulation (EC) No 304/2003 of the European Parliament and of the Council of 28 January 2003 concerning the export and import of dangerous chemicals [2003] OJ L63/1.

⁵³ Case C-178/03 *Commission v Parliament and Council* ECLI:EU:C:2006:4.

⁵⁴ Regulation (EC) No 689/2008 of the European Parliament and of the Council of 17 June 2008 concerning the export and import of dangerous chemicals [2008] OJ L204/1.

⁵⁵ 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 [2012] OJ L201/60.

⁵⁶ Article 14 of Council Regulation (EEC) No 880/92 of 23 March 1992 on a Community eco-label award scheme (Ecolabel I) [1992] OJ L99/1.

⁵⁷ Article 13(3)(a),(c) 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.

⁵⁸ Article 11 of Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism, [2023] OJ L130/52.

⁵⁹ <<https://echa.europa.eu/information-on-chemicals/pic/designated-national-authorities>> Accessed 6 September 2024.

publication duty, like in the cases of Directive 2014/89/EU⁶⁰ and Regulation (EU) 2023/1542.⁶¹ At the same time, even if Member States are not or no longer obligated to designate competent authorities, they may be otherwise compelled to disclose them. Under the abovementioned Directive 2008/98/EC, the EU legislator bound the Member States to notify the Commission of their Waste Management Plans and Waste Prevention Programmes.⁶² To fulfil that duty, the Member States should use a format set in the dedicated Commission Implementing Decision,⁶³ and, consequently, notify the name, address and e-mail of the administrative body responsible for the adoption/revision of that plan/programme.

III. Case-specific organisational requirements

Against the background of the four observed common legislative strategies depicted in Chapter II, certain analysed directives and regulations introduced specific institutional and organisational design requirements. Although each of these solutions has its unique characteristics, after mapping relevant provisions, it turned out that they have certain similarities. First, the most contrasting cases are described where only one competent authority is mentioned (Section 1). The second group is created from arrangements dedicated to exchanging information, such as focal/contact points and correspondents (Section 2). The third kind of case-specific administrative arrangements constitute territorial management or governance units (Section 3). Fourth, certain legislative acts mentioned systems, laboratories and scientific authorities (Section 4). In turn, Section 5 and Section 6 depict organisational design requirements that concern independence, power, resources and hierarchies.

1. Single competent authority

In opposition to the common duties to designate one or more competent authorities, in certain cases, the EC and EU legislators decided to use exclusively the singular form. The earliest example of such specific institutional design requirements constituted Article 4(1) of Council Regulation (EEC) No 594/91,⁶⁴ according to which each Member State had to determine its competent authority. Among the legislation in force, analogous obligations were imposed on Member States by Council Directive 1999/31/EC,⁶⁵ CBAM Regulation⁶⁶ and Regulation (EU) 2020/741.⁶⁷ Furthermore, a specific case constitutes a concept of a single competent authority of transit. In contrast to Council Directive 84/631/EEC (Shipment of Hazardous Waste),⁶⁸ Regulation (EEC) 259/93 (Shipments of Waste I) required the designation of a single authority of transit.⁶⁹ That obligation was replicated in subsequent Regulations (EC) No 1013/2006 (Shipments of Waste II)⁷⁰ and (EU) 2024/1157 (Shipment of Waste III).⁷¹ Despite the lack of preparatory documents, the recitals of the Shipments of Waste I Regulation indicate the source of the then-new organisational arrangement, namely Article 5 (1) of the Basel Convention.⁷²

⁶⁰ Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework for maritime spatial planning, [2014] OJ L257/135.

⁶¹ Regulation (EU) 2023/1542 of the European Parliament and of the Council of 12 July 2023 concerning batteries and waste batteries, amending Directive 2008/98/EC and Regulation (EU) 2019/1020 and repealing Directive 2006/66/EC, [2023] OJ L191/1.

⁶² See Article 33 and Article 39(3) of Directive 2008/98/EC.

⁶³ Commission Implementing Decision of 6 December 2013 establishing a format for notifying the information on the adoption and substantial revisions of the waste management plans and waste prevention programmes (2013/727/EU), [2013] OJ L329/44.

⁶⁴ Council Regulation (EEC) No 594/91 of 4 March 1991 on substances that deplete the ozone layer [1991] L67/1.

⁶⁵ Article 2(p) of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste [1999] OJ L182/1.

⁶⁶ Article 11(1) of Regulation (EU) 2023/956 (CBAM).

⁶⁷ Article 3(1) of Regulation (EU) 2020/741 of the European Parliament and of the Council of 25 May 2020 on minimum requirements for water reuse [2020] OJ L177/32.

⁶⁸ Adopted under Articles 100 and 135 EEC; See Article 2(1)(b) and Article 16 of Council Directive of 6 December 1984 on the supervision and control within the European Community of the trans-frontier shipment of hazardous waste (84/631/EEC), [1984] OJ L326/31.

⁶⁹ Article 2(e), Article 36 of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community, [1993] OJ L30/1.

⁷⁰ Article 2(18),(19)-(21), Article 53 of Regulation (EC) No 1013/2006 (Shipment of Waste II) of the European Parliament and of the Council of 14 June 2006 on shipments of waste, [2006] OJ L190/1.

⁷¹ Recital (66), Article 3(9)-(12), Article 75 of Regulation (EU) 2024/1157 of the European Parliament and of the Council of 11 April 2024 on shipments of waste, amending Regulations (EU) No 1257/2013 and (EU) 2020/1056 and repealing Regulation (EC) No 1013/2006, [2024] OJ L2024/1157.

⁷² Basel Convention on the control of transboundary movements of hazardous wastes and their disposal, [1993] OJ L39/3.

Apart from the abovementioned examples, there are two constellations where a single competent authority shall perform specific functions. In light of Regulations (EC) No 443/2009⁷³ and (EU) No 510/2011,⁷⁴ both repealed by Regulation (EU) 2019/631,⁷⁵ Member States shall designate a competent authority for the collection and communication of the monitoring data in accordance with that Regulation and shall inform the Commission of the competent authority designated. In addition, the designated competent authorities shall ensure the correctness and completeness of the data transmitted to the Commission and shall provide a contact point available to respond quickly to requests from the Commission to address errors and omissions in the transmitted data. Finally, an analogous case can be found in Regulation (EU) 2024/795 establishing the Strategic Technologies for Europe Platform (STEP).⁷⁶ Such a single national competent authority shall only act as a main point of contact for the implementation of the STEP at the national level.⁷⁷ The Regulation (EU) 2024/795, however, has several TFEU provisions as a legal base⁷⁸ and is closely related to the context of the European Single Market.⁷⁹

2. Eionet, focal points, contact points and correspondents

The European Environment Agency (EEA) has been enumerated as one of the ‘key actors and bodies at the core of EU environmental management’.⁸⁰ However, in parallel to the establishment of EEA emerged the European Environment Information and Observation Network (Eionet).⁸¹ The Eionet shall comprise the main component elements of the national information networks, the national focal points and the topic centres. Member States had to inform the EEA of the main components of their national environment information networks, including any institution which in their judgement could contribute to the work of the Agency, taking into account the need to ensure the fullest possible geographical coverage of their territory. However, the Regulation left them discretion for the designation of their ‘national’ focal points and institutions or other organisations established in their territory, which could be specifically entrusted with cooperating with EEA and Eionet as regards certain topics of particular interest.⁸²

Another example of organisational design obligation emerged in the Regulation (EC) 1946/2003,⁸³ dealing with transboundary movements of genetically modified organisms (GMOs). In addition to one or more competent authorities,⁸⁴ each Member State shall designate one focal point to be responsible for liaising with the Secretariat of the Cartagena Protocol on Biosafety.⁸⁵ In this case, one can spot that the obligation to establish such an entity first introduced the abovementioned international instrument.⁸⁶

⁷³ Article 8(7) of Regulation (EC) No 443/2009 of the European Parliament and of the Council of 23 April 2009 setting emission performance standards for new passenger cars as part of the Community's integrated approach to reduce CO₂ emissions from light-duty vehicles [2009] OJ L140/1.

⁷⁴ Article 8(8) of Regulation (EU) No 510/2011 of the European Parliament and of the Council of 11 May 2011 setting emission performance standards for new light commercial vehicles as part of the Union's integrated approach to reduce CO₂ emissions from light-duty vehicles [2011] OJ L145/1.

⁷⁵ Recital (44), Article 7(6) Regulation (EU) 2019/631.

⁷⁶ Regulation (EU) 2024/795 of the European Parliament and of the Council of 29 February 2024 establishing the Strategic Technologies for Europe Platform (STEP), and amending Directive 2003/87/EC and Regulations (EU) 2021/1058, (EU) 2021/1056, (EU) 2021/1057, (EU) No 1303/2013, (EU) No 223/2014, (EU) 2021/1060, (EU) 2021/523, (EU) 2021/695, (EU) 2021/697 and (EU) 2021/241, [2024] OJ L2024/795.

⁷⁷ Article 6(4) of Regulation (EU) 2024/795.

⁷⁸ Articles 164, 173, 175 third paragraph, Articles 176, 177, 178, 182(1) and 192(1) TFEU.

⁷⁹ European Commission, ‘Proposal for a Regulation of the European Parliament and of the Council establishing the Strategic Technologies for Europe Platform (‘STEP’) and amending Directive 2003/87/EC, Regulations. (EU) 2021/1058, (EU) 2021/1056, (EU) 2021/1057, (EU) No 1303/2013, (EU) No 223/2014, (EU) 2021/1060, (EU) 2021/523, (EU) 2021/695, (EU) 2021/697 and (EU) 2021/241’ COM(2023) 355 final.

⁸⁰ Latour and Rowe (n 4).

⁸¹ Council Regulation (EEC) No 1210/90 of 7 May 1990 on the establishment of the European Environment Agency and the European Environment Information and Observation Network [1990] OJ L120/1; Regulation (EC) No 401/2009 of the European Parliament and of the Council of 23 April 2009 on the European Environment Agency and the European Environment Information and Observation Network [2009] OJ L126/13.

⁸² Article 1, Article 4 of Council Regulation (EEC) No 1210/90; Article 1, Article 4 of Regulation (EC) No 401/2009.

⁸³ Regulation (EC) No 1946/2003 of the European Parliament and of the Council of 15 July 2003 on transboundary movements of genetically modified organisms, [2003] OJ L287/1.

⁸⁴ Article 3(19); Article 17 of Regulation (EC) 1946/2003.

⁸⁵ Council Decision of 25 June 2002 concerning the conclusion, on behalf of the European Community, of the Cartagena Protocol on Biosafety, [2002] OJ L201/48.

⁸⁶ Compare Article 3(20), Article 17(1),(2) of Regulation (EC) 1946/2003 and Article 19 of the Cartagena Protocol on Biosafety to the Convention on Biological Diversity [2003] United Nations Treaty Series 2226/208.

A similar solution to the focal points, although worked out exclusively by the EU legislator, can be found in three more secondary legal acts. First, Regulation (EU) 2020/741 stipulates that in addition to competent authorities, where water reuse is of cross-border relevance, Member States shall designate a contact point for the purposes of cooperation with other Member States' contact points and competent authorities, as appropriate, or shall use existing structures stemming from international agreements.⁸⁷ Second, Directive 2007/2/EC (INSPIRE) provides that each Member State shall designate a contact point, usually a public authority, to be responsible for contacts with the Commission in relation to this Directive. This contact point will be supported by a coordination structure, taking account of the distribution of powers and responsibilities within the Member State.⁸⁸ Third, in light of Article 21(2) of Regulation 2023/1115,⁸⁹ competent authorities shall establish administrative arrangements with the Commission concerning the transmission of information on investigations and the conduct of investigations.

Yet another constellation of organisational design obligations emerged under the Shipments of Waste I Regulation. Besides the designation of the competent authorities, the Member States and the Commission should each designate at least one correspondent, defined as the central body designated by each Member State and the Commission. The correspondent was responsible for informing or advising persons or undertakings who or which make enquiries. The Commission correspondent should also forward any questions to the correspondents of the Member States and *vice versa*. Furthermore, if requested by the Member States or if otherwise appropriate, the Commission could periodically hold a meeting of the correspondents to examine with them the questions raised by the implementation of that Regulation.⁹⁰ The concept of correspondents and their meeting reappeared in the Shipment of Waste II Regulation.⁹¹ However, while the Shipment of Waste III Regulation still requires the designation of correspondents,⁹² their meeting replaced the waste shipment enforcement group. It shall consist of up to three representatives nominated per Member State.⁹³

3. The management units and other territorial arrangements

The first group of territory-related administrative arrangements constitute the so-called 'EU Nature Directives': Council Directive 92/43/EEC (Habitats Directive)⁹⁴ and the codified version of Directive 2009/147/EC (Birds Directive).⁹⁵ While none of them requires the designation of the competent authorities, Member States shall set up a coherent European ecological network of protected areas under the title Natura 2000. The Natura 2000 consists of two types of areas, the special areas of conservation (SACs), designated under the Habitats Directive⁹⁶ and the special protected areas (SPAs), designated under the Birds Directive.⁹⁷ As in the case of the SACs,⁹⁸ the designation of SPAs should be carried out by a formal decision of designation and the unquestionable demarcation of boundaries on the maps.⁹⁹ The CJEU jurisprudence, however, left the Member States little discretion in the designation of the SPAs and SACs, limiting it to ecological (ornithological) criteria.¹⁰⁰

⁸⁷ Article 8 of Regulation (EU) 2020/741.

⁸⁸ Article 19(2) of 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.

⁸⁹ Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010 [2023] OJ L150/206.

⁹⁰ Article 2(f), Article 37, Article 38 of Regulation (EEC) 259/93.

⁹¹ Article 54, Article 57 of Regulation (EC) No 1013/2006 (Shipment of Waste II).

⁹² Article 76 of Regulation (EU) 2024/1157 (Shipment of Waste III).

⁹³ Article 66 of Regulation (EU) 2024/1157 (Shipment of Waste III).

⁹⁴ 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.

⁹⁵ Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (Codified version), [2010] OJ L20/7.

⁹⁶ Article 1(l), Article 3(1) of Council Directive 92/43/EEC.

⁹⁷ Article 3(2)(a), Article 4 of Directive 2009/147/EC.

⁹⁸ Article 1(l), Article 3(1) of Council Directive 92/43/EEC.

⁹⁹ Case C-415/01 *Commission of the European Communities v Kingdom of Belgium* ECLI:EU:C:2003:118, paras 19-22.

¹⁰⁰ On the Natura 2000 network and designation of the sites and relevant CJEU jurisprudence, see Cliquet An, 'EU Nature Conservation Law: Fit for Purpose' in Marjan Peeters and Mariolina Eliantonio (eds), *Research Handbook on EU Environmental Law* (Edward Elgar Publishing 2020); Schoukens Hendrik and Woldendorp Hans Erik, 'Site selection and designation under the Habitats and Birds Directives: a Sisyphean task?' in Charles-Hubert Born and others (eds), *The Habitats Directive in Its EU Environmental Law Context: European Nature's Best Hope?* (Routledge, Taylor & Francis Group 2015).

In the temporal order, zones and agglomerations emerged as a second category of territorial arrangements, present in the EU legal order since the adoption of the Council Directive 96/62/EC.¹⁰¹ In its most recent consolidated version, Directive 2008/50/EC (Ambient Air Quality) defines the former as a ‘part of the territory of a Member State, as delimited by that Member State for the purposes of air quality assessment and management’. In turn, the agglomeration shall mean a ‘zone that is a conurbation with a population in excess of 250 000 inhabitants or, where the population is 250 000 inhabitants or less, with a given population density per km² to be established by the Member States.¹⁰² Furthermore, each Member State or neighbouring Member States shall set up (jointly) at least one measuring station,¹⁰³ understood as a ‘location where measurements or samples are taken at one or more sampling points at the same site within an area of approximately 100 m².¹⁰⁴ If the pollution limit value is exceeded at least at a single sampling point,¹⁰⁵ then fixed stations must be used.¹⁰⁶ However, it should be noted that in addition to the Ambient Air Quality Directive, Directive 2002/49/EC (Noise) also imposes delimitation of agglomerations but gives that term a different meaning.¹⁰⁷

The third kind of territory-related administrative arrangements refers to water. Just as water can be sweet and saline, so does the approach of the EU legislator. Under Directive 2008/56/EC (Marine Strategy Framework Directive), Member States should designate their competent authority or authorities for each marine region already delineated in that legislative act.¹⁰⁸ Conversely, Directive 2000/60/EC (Water Framework Directive)¹⁰⁹ implemented the then-new idea of multi-level governance in another manner. One of the principles established by the WFD is management per river basin.¹¹⁰ A river basin is legally defined as an area of land from which all surface run-off flows through a sequence of streams, rivers and, possibly, lakes into the sea at a single river mouth, estuary or delta.¹¹¹ The Member States thus, at first,¹¹² identified river basins among all waters covered by the scope of the Water Framework Directive.¹¹³ Hence, the river basins shall concentrate around the natural hydrological formations (river catchment areas/drainage basin), regardless of national borders or policies, with a view to sustainable development.¹¹⁴ Next, Member States had to assign the identified river basin or several river basins to the main management units called river basin districts (RBDs).¹¹⁵

¹⁰¹ Article 2(8)-(9) of Council Directive 96/62/EC of 27 September 1996 on ambient air quality assessment and management, [1996] OJ L296/55.

¹⁰² Article 2(16)-(17), Article 4 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.

¹⁰³ Article 6(5)(b) of Directive 2008/50/EC.

¹⁰⁴ Article 2(1) of the Commission Implementing Decision of 12 December 2011 laying down rules for Directives 2004/107/EC and 2008/50/EC of the European Parliament and of the Council as regards the reciprocal exchange of information and reporting on ambient air quality (notified under document C(2011) 9068) (2011/850/EU), [2011] OJ L335/86.

¹⁰⁵ See Case C-723/17 *Lies Craeynest and Others v Brussels Hoofdstedelijk Gewest and Brussels Instituut voor Milieubeheer* ECLI:EU:C:2019:533; Kendro Pedrosa, ‘The Decentralised Enforcement of the Provisions on Measurement and Assessment of Air Quality under Directive 2008/50/EC: Comment on CJEU Case C-723/17 of 26 June 2019, Craeynest’ (2020) 17 *Journal for European Environmental & Planning Law* 247.

¹⁰⁶ Article 6(2) of Directive 2008/50/EC.

¹⁰⁷ Article 3(k)-(m) 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 (Noise) [2002] OJ L189/12.

¹⁰⁸ Article 3(2), Article 4, 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 L164/19.

¹⁰⁹ 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.

¹¹⁰ Case C-525-12 *Commission v Germany* ECLI:EU:C:2014:2202 para 53; Opinion of AG Jääskinen ECLI:EU:C:2014:449 para 72; Joint Cases C-105/18 to 113/18 *Asociación Española de la Industria Eléctrica (UNESA) and Others v. Administración General del Estado*, ECLI:EU:C:2019:935, para 41.

¹¹¹ Article 2(13),(14), Article 3(1) of Directive 2000/60/EC.

¹¹² Case C-516/07 *Commission des Communautés européennes v. Royaume d’Espagne*, ECLI:EU:C:2009:291, paras 31-32.

¹¹³ Case C-461/13 *Bund für Umwelt und Naturschutz Deutschland e.V. v Bundesrepublik Deutschland*, Opinion of AG Jääskinen ECLI:EU:C:2014:2324 para 9.

¹¹⁴ Opinion of AG Jääskinen, Case C-525/12 (n 109), paras 1, 58.

¹¹⁵ Opinion of AG Jääskinen, Case C-461/13 (n 112) para 9; Article 3(1), Article 2(15) of Directive 2000/60/EC: ‘River basin district’ means the area of land and sea, made up of one or more neighbouring river basins together with their associated groundwaters and coastal waters, which is identified under Article 3(1) as the main unit for management of river basins.

Besides the Water Framework Directive, the concept of a river basin and a river basin districts appears in Directive 2007/60/EC (Floods Directive).¹¹⁶ According to Article 2, for the purpose of that Directive, the definitions of ‘river basin’, ‘sub-basin’ and ‘river basin district’ as set out in Article 2 of Directive 2000/60/EC shall apply. Further, Member States shall make use of the administrative arrangements made under the Water Framework Directive.¹¹⁷ At the same time, however, the Floods Directive contains derogations, allowing Member States to appoint different competent authorities and identify certain coastal areas or individual river basins differently than pursuant to the Water Framework Directive.¹¹⁸ Ultimately, water-related secondary legislation determined one more territorial arrangement. Although Council Directive 91/676/EEC (Nitrates) does not bind the Member States to designate any competent authorities, they should designate certain areas of land as vulnerable zones and establish and apply action programmes to reduce water pollution from nitrogen compounds within them.¹¹⁹

4. Systems, laboratories and scientific authorities

Further institutional design obligations that emerged during the study could be best described as relating to systems, laboratories and scientific establishments. The first category illustrates the national inventory system, defined in Article 3(2) of Regulation (EU) 525/2013.¹²⁰ Such a system means institutional, legal and procedural arrangements established within a Member State for estimating anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol and for reporting and archiving inventory information in accordance with Decision 19/CMP.1 or other relevant decisions of UNFCCC or Kyoto Protocol bodies. Recital (8) of that Regulation further clarifies that such a duty originates from the Kyoto Protocol¹²¹ and that the Member States shall also apply the guidelines for national systems set out in the abovementioned decision.¹²²

Given the above, according to the air-related Ambient Air Quality Directive, Member States’ competent authorities or bodies shall be responsible for the approval of measurement systems, which include equipment, networks and laboratories, including accredited National Reference Laboratories.¹²³ Correspondingly, a network is defined as an ‘organisational structure performing assessment of ambient air quality by measuring at one or more stations’.¹²⁴ A further instance of a science-related establishment provides Regulation (EC) No 338/97. Again, as in the case of the Management Authority, that Regulation complies with the Cites Convention,¹²⁵ thus the Member States shall designate one or more Scientific Authorities. Regulation (EC) No 338/97, however, further extends organisational requirements and stipulates that the designated one or more (competent) Scientific Authorities shall have appropriate qualifications and whose duties shall be separate from those of any designated Management Authority.¹²⁶

5. Independence, powers and resources

The concept of separating one authority from another, as demonstrated in the provisions regarding Scientific and Management Authorities in Regulation (EC) No 338/97, was introduced to the environmental acquis even earlier. The first example provided Council Regulation (EEC) No 1836/93 (EMAS I), under which a Member State had to ensure that the composition of its competent body is such as to guarantee its

¹¹⁶ 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.

¹¹⁷ Article 3(1) of Directive 2007/60/EC.

¹¹⁸ Article 3(2) of Directive 2007/60/EC.

¹¹⁹ Article 2(k); Article 3 - Article 5 of Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (Nitrates) [1991] OJ L375/1.

¹²⁰ Regulation (EU) No 525/2013 of the European Parliament and of the Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision No 280/2004/EC [2013] OJ L13/40.

¹²¹ Article 5(1) of Kyoto Protocol to the United Nations Framework Convention on Climate Change [1997] FCCC/CP/1997/L.7/Add.1

¹²² Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP) ‘Guidelines for national systems under Article 5, paragraph 1, of the Kyoto Protocol’ (19/CMP.1).

¹²³ Article 3(b), Annex I Section C(iv) of Directive 2008/50/EC.

¹²⁴ Article 2(2) of Commission Implementing Decision(2011/850/EU).

¹²⁵ Article IX of Convention on International Trade in Endangered Species of Wild Fauna and Flora (Cites Convention) [2015] OJ L75/4.

¹²⁶ Article 2(q), Article 13(2) of Council Regulation (EC) No 338/97.

independence and neutrality.¹²⁷ Analogous requirements appeared later in subsequent amendments, Regulation (EC) 761/2001 (EMAS II)¹²⁸ and Regulation (EC) 1221/2009 (EMAS III). The latter, however, further specified that the competent bodies shall have appropriate resources, both financial and in terms of personnel, for the proper performance of their task.¹²⁹

The second instance of independence-related design obligations can be found in Council Regulation (EEC) No 880/92 (Ecolabel I), adopted under Article 130s EEC. That Regulation established an EC eco-labelling scheme designed to inform the consumer of the quality of the product and the impact of the product on the environment.¹³⁰ To give effect to Article 9(2) of that Regulation, Member States had to ensure that the composition of the designated competent body or bodies was such as to guarantee their independence and neutrality. However, the Ecolabel II regulation further extended the organisational design obligations. It stipulated that the MS should ensure that the composition of the competent bodies is such as to guarantee their independence and neutrality. Furthermore, the rules of procedure of the competent bodies ensure, at [the] national level, the active involvement of all interested parties and appropriate level of transparency and that the competent bodies apply correctly the provisions of this Regulation¹³¹ While slightly modified provision reappeared in Ecolabel III Regulation,¹³² the Member States, however, were additionally bound to ensure that their competent bodies and their personnel meet the requirements laid down in Annex V.

The third case of independence-related duties exemplified Directive 2011/92/EU, concerning the effects of certain public and private projects on the environment. In light of its 2014 consolidated version, the competent authority shall ensure it has or has access as necessary to, sufficient expertise to examine the environmental impact assessment report, as well to perform the duties arising from that Directive in an objective manner and not find themselves in a situation giving rise to a conflict of interest; Where the competent authority is also the developer, Member States shall at least implement, within their organisation of administrative competences, an appropriate separation between conflicting functions when performing the duties arising from that Directive.¹³³ For the fourth time under environmental acquis, we can encounter provisions concerning independence and adequate resources in Directive 2013/30/EU on the safety of offshore oil and gas operations. By that legislative act, the EU legislator binds the Member States to ensure that the competent authority is independent, legally empowered and has adequate resources.¹³⁴ Finally, as the fifth one, Regulation (EU) 2023/1115 obliges the Member States to ensure that the competent bodies have adequate powers, functional independence and [a high level] of resources to fulfil the obligations set out.¹³⁵

6. Coordination duties: branching the hierarchies

Under the environmental acquis, when the EC or EU legislator binds the Member States to have competent authorities in place, they usually grant them the discretion to decide on the number and hierarchies. In certain cases, however, as illustrated by Regulation (EC) 66/2010 (Ecolabel III),¹³⁶ Directive 2003/87/EC (EU

¹²⁷ Article 2(o), Article 18(2) of Council Regulation (EEC) No 1836/93 of 29 June 1993 allowing voluntary participation by companies in the industrial sector in a Community eco-management and audit scheme (EMAS I) [1993] OJ L168/1; However, according to Article 6 and Article 7 of that Regulation, the Member States could designate or set up any other body than the competent one for the systems for the accreditation of independent verifiers and the composition of those systems had to be so as to guarantee their independence and neutrality in the execution of their tasks.

¹²⁸ Articles 4-5(2)-(3), Article 7 of Regulation (EC) No 761/2001 of the European Parliament and of the Council of 19 March 2001 allowing voluntary participation by organisations in a Community eco-management and audit scheme (EMAS II) [2001] OJ L114/1.

¹²⁹ Article 11(3)-(4) of Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC (EMAS III) [2009] OJ L342/1.

¹³⁰ Geert Van Calster and Leonie Reins (n 14) 119-26.

¹³¹ Article 14(2) of Regulation (EC) No 1980/2000 (Ecolabel II).

¹³² Article 4 of Regulation (EC) No 66/2010.

¹³³ Article 5(3)(b), Article 9a 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 [2012] OJ L2012/1.

¹³⁴ Recitals (19)-(21), Article 2(13), Articles 8 - 9, Article 24-25(2), Annex III of Directive 2013/30/EU of the European Parliament and of the Council of 12 June 2013 on safety of offshore oil and gas operations and amending Directive 2004/35/EC [2013] OJ L178/66.

¹³⁵ (Recital (64), Article 14(4) of

¹³⁶ Article 3 of Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel (Ecolabel III) [2010] OJ L27/1.

ETS)¹³⁷ and Directive 2012/18/EU (SEVESO III),¹³⁸ when more than one competent authority is designated, the work of those authorities must be coordinated. Similarly, Regulation (EC) No 106/2008 binds the Member States to determine the respective powers and the coordination requirements if it decides to designate more than one national representative among policy experts, authorities or persons.¹³⁹ Against that background, a special case of organisational design obligations illustrates Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein. As the Cites Convention,¹⁴⁰ with which it shall apply in compliance,¹⁴¹ that Regulation compels the Member States to designate a management authority. In opposition to that underlying international act, however, the Regulation stipulates that where a Member State designates additional management authorities or other competent authorities to assist in its implementation, then the abovementioned primary management authority shall be responsible for providing the additional authorities with all the information required for correct application of the Regulation.¹⁴² From the assembly of those - literally - organisational requirements protrudes Article 23 of Directive 2009/31/EC.¹⁴³ According to that provision, if more than one competent authority is designated, Member States shall ‘establish arrangements for the coordination of the work of those authorities undertaken pursuant to th[at] Directive’. Overall, the boundary between procedural and organisational aspects of hierarchies between multiple competent authorities seems blurred.

IV. Discussion

In light of the analysis, the organisational design obligations directed at the Member States seem to follow the pattern of multiple ‘environmental governance regimes’ of EC and EU environmental policy, but parallelly, not subsequently.¹⁴⁴ While the repeals impose the designation of competent authorities rather than omit such a duty, the EU legislator continues to adopt new legislative acts that do not invoke them, like Regulation (EU) 2024/1991 on Nature Restoration.¹⁴⁵ Furthermore, once the EU has exercised its competence, it tended to replicate the same concepts in the next generations of secondary legislation, independence, correspondents, zones and agglomerations. Except for rare sectoral cross-references, administrative design obligations remain characteristic of a given secondary legislative act, thus, based on them alone, no division into environmental sectors could be performed. Therefore, the theoretical framework of organisational design obligations under environmental *acquis* constitutes a highly fragmented landscape.

Although some of the analysed EU legislative acts repeat the requirements of international law, that tendency cannot be explained alone by their influence. This, in turn, raises two questions. The first for the reasons behind such differentiation. Second, whether that diversity of approaches has not led to the emergence of a fragmented and inconsistent patchwork of competent authorities in practice, as each Member State could understand what a competent authority means differently, thus inconsistently allocating implementation and enforcement tasks vertically and horizontally. At the same time, the EU constitutional principles alone do not promise to structure administrative designs consistently.¹⁴⁶ In other words, the EU environmental *acquis* requires the Member States to have pieces of institutional fabric in place, but neither determines their precise shape nor how they shall be needed. Nevertheless, the answer to that question cannot be obtained by legal analysis alone.

Another instance of the fragmentation of the EU environmental *acquis* presents the ambiguous transparency of their administrative designs. It has been submitted that one of the values of adequate public access to environmental information is holding public authorities accountable.¹⁴⁷ However, if the Member States or the

¹³⁷ Article 18 of Directive 2003/87/EC.

¹³⁸ 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.

¹³⁹ Article 9 of Regulation (EC) No 106/2008 of the European Parliament and of the Council of 15 January 2008 on a Community energy-efficiency labelling programme for office equipment [2008] OJ L39/1.

¹⁴⁰ Article IX of Cites Convention.

¹⁴¹ Article 1, Article 2(b) of Council Regulation (EC) No 338/97.

¹⁴² Article 2(g), Article 13(1) of Council Regulation (EC) No 338/97.

¹⁴³ Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006 [2009] OJ L140/114.

¹⁴⁴ Compare with, von Homeyer (n 2).

¹⁴⁵ Regulation (EU) 2024/1991 of the European Parliament and of the Council of 24 June 2024 on nature restoration and amending Regulation (EU) 2022/869, [2024] OJ L2024/1991.

¹⁴⁶ Van Cleynenbreugel, Jancewicz and Bois (n 35), Section 2.

¹⁴⁷ Uzuazo Etemire, ‘Access to Environmental Information under EU Law’ (Edward Elgar Publishing 2020) 118.

Commission do not consistently publish and update the lists of competent authorities, it might be challenging to determine the right one. Such difficulties may be encountered by the citizens and the Member States' competent authorities, especially in a transboundary context where no network is established. To effectively cooperate and exchange information, the competent authorities may decide to prepare such lists by themselves, thus duplicating the work. Analogously, such hardship may concern the EU institutions, agencies and bodies. In their case, knowledge of the institutional designs of the Member States may play a role in the context of Article 7 of Regulation (EC) 1367/2006.¹⁴⁸ In light of that provision, [w]here a Union institution or body receives a request for access to environmental information and where this information is not held by that Union institution or body, it shall, as promptly as possible, but within 15 working days at the latest, inform the applicant of the Union institution or body or the public authority within the meaning of Directive 2003/4/EC¹⁴⁹ to which it believes it is possible to apply for the information requested or transfer the request to the relevant Union institution or body or the public authority and inform the applicant accordingly. In other words, the inquired EU institution or body shall indicate the government, other public administration or natural or legal person performing administrative functions under national law at the national, regional or local levels.¹⁵⁰ At least in theory, the insufficient transparency of the designated competent authorities could be addressed with the help of the arrangements undertaken by the Member States with the purpose of the implementation of Article 3(5) of Directive 2003/4/EC. According to that provision, to make available environmental information, the Member States shall ensure, among others, that lists of public authorities are publicly accessible and that the practical arrangements are defined for ensuring that the right of access to environmental information can be effectively exercised, such as the designation of information officers or registers or lists of the environmental information held by the public authorities.¹⁵¹ Therefore, given the complexity of EU environmental acquis and national legal systems, it could be in the common interest of civil society, Member States and EU institutions, bodies and agencies to have a single website, 'EU Competent Authorities Portal' in place which would include all competent authorities under the EU (not only environmental) acquis and their competences.

Conclusions

In light of the analysis, 167 directives and regulations, although united by specific environmental legal bases, impose highly fragmented organisational design obligations. Irrespective of the subsector or issue covered, the Member States may be bound to designate one or more competent authorities or not have to comply with such a duty. However, the individual rules on the publication of lists of designated competent authorities are inconsistent, which may make it difficult for citizens, EU institutions and even authorities from other Member States to comprehend the administrative designs in place. Furthermore, on a case-by-case basis, the EU secondary legislation may require establishing further administrative arrangements, delineating governance units or ensuring independence. The side effect of such an inconsistent approach may be inconsistent implementation and enforcement of environmental acquis across various Member States.

Treaties and international law

1. Basel Convention on the control of transboundary movements of hazardous wastes and their disposal [1993] OJ L39/3 (Basel Convention)
2. Kyoto Protocol to the United Nations Framework Convention on Climate Change [1997] FCCC/CP/1997/L.7/Add.1
3. Cartagena Protocol on Biosafety to the Convention on Biological Diversity [2003] United Nations Treaty Series 2226/208
4. Single European Act [1987] OJ L169/1
5. Treaty establishing the European Community (Maastricht consolidated version) (TEC) [1992] OJ C224/52
6. Treaty establishing the European Community (Amsterdam consolidated version) (TEC) [1997] OJ C340/255

¹⁴⁸ Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies [2006] OJ L264/13.

¹⁴⁹ Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC [2003] OJ L41/26.

¹⁵⁰ See Article 2 of Directive 2003/4/EC.

¹⁵¹ Case C-71/14 *East Sussex County Council v Information Commissioner and Others* ECLI:EU:C:2015:656, paras 32-8; Opinion of AG Sharpston, para 50;

7. Council Decision of 25 June 2002 concerning the conclusion, on behalf of the European Community, of the Cartagena Protocol on Biosafety, [2002] OJ L201/48
8. Consolidated version of the Treaty on the Functioning of the European Union (TFEU) [2012] OJ C326/47
9. Convention on International Trade in Endangered Species of Wild Fauna and Flora (Cites Convention) [2015] OJ L75/4

Secondary legislation (quoted in the text)

1. Council Directive of 6 December 1984 on the supervision and control within the European Community of the trans-frontier shipment of hazardous waste (84/631/EEC) [1984] OJ L326/31
2. Council Regulation (EEC) No 2242/87 of 23 July 1987 on action by the Community relating to the environment [1987] OJ L207/8
3. Council Regulation (EEC) No 1734/88 of 16 June 1988 concerning export from and import into the Community of certain dangerous chemicals [1988] OJ L155/2
4. Council Regulation (EEC) No 1210/90 of 7 May 1990 on the establishment of the European Environment Agency and the European Environment Information and Observation Network [1990] OJ L120/1
5. Council Regulation (EEC) No 594/91 of 4 March 1991 on substances that deplete the ozone layer [1991] L67/1
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