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Radosław Łapszyński
University of Warsaw, Poland
e-mail: r.lapszynski@uw.edu.pl
ORCID: 0000-0003-0042-0665

THE ORGANISATIONAL DILEMMA OF NATIONAL REGULATORY AUTHORITIES IN THE EU COUNTRIES: MULTIPLICITY OR UNITY?

Abstract

This paper aims to examine the phenomenon of National Regulatory Authorities (NRAs) tasked with the regulation of various domains, as well as the process of amalgamation of existing specialised authorities that leads to their creation. Firstly, the author presents the materials and research methods used. The second part of the study involves mapping the NRAs currently operating in the EU Member States and creating a typology of such authorities, consisting of single-purpose, multi-sector, and "super regulators". Thirdly, the author verifies his hypothesis that the general consolidation trend of central government administration in Europe also applies to NRAs in the EU Member States and examines selected amalgamations of regulatory agencies in the form of mini case studies. The fourth part addresses the significance of the institutional form (consolidated or specialised) of NRAs from the perspective of regulatory effectiveness, i.e. achieving the EU regulatory objectives.

KEYWORDS

National Regulatory Authorities, consolidation, specialisation

SŁOWA KLUCZOWE

krajowe organy regulacyjne, konsolidacja, specjalizacja

1. INTRODUCTION: GENERAL REMARKS

National Regulatory Authorities (NRAs) constitute a phenomenon directly related to and resulting from European Union law. NRAs are defined as bodies tasked with the protection of competition and consumers in various markets, in particular network industries, such as energy, telecommunications, audiovisual media, or railway. They are considered one type of authority among the broader category of independent administrative bodies,[1] which are described as non-majoritarian, specialised public authorities, separated from other institutions, that are neither directly elected by the people nor directly managed by elected officials.[2]

The EU model of institutional setup of NRAs is general and flexible, providing the Member States with extensive room for manoeuvre in designing national regulators, focusing on setting general rules and expected outcomes, rather than striving for the convergence of institutional models. At the same time, the EU does not respect the full administrative sovereignty of the Member States in this regard because it could potentially undermine its policy objectives, as the NRAs deprived of the guarantees of independence established by the EU law could fail to serve as guardians of the regulated markets.[3] The freedom of the Member States to define (within the boundaries of the EU legal framework) the institutional model of NRAs also applies to determining the number of national agencies and the areas of regulation each of them is responsible for. This implies a relative discretion to create specialised bodies responsible for regulating one regulatory domain (single-purpose regulators), agencies responsible for more than one regulatory domain (multi-sectoral regulators), or "super regulators" tasked with regulating multiple regulatory domains.

Long-term consolidation versus specialisation debate in administrative thought[4] is currently most often decided in favour of consolidation in the legis-

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[1] M. Maggetti, *Legitimacy and Accountability of Independent Regulatory Agencies: A Critical Review*, "Living Reviews in Democracy" 2010, Vol. 2, pp. 1–10.

[2] M. Thatcher, A. Stone Sweet, *Theory and Practice of Delegation to Non-Majoritarian Institutions*, "West European Politics" 2002, Vol. 25.1, pp. 1–22.

[3] D. Sześciło, *Challenging Administrative Sovereignty: Dimensions of Independence of National Regulatory Authorities Under the EU Law*, "European Public Law" 2021, pp. 191–216.

[4] C. Pollitt, G. Bouckaert, *Public Management Reform : A Comparative Analysis*, 2nd ed., Oxford University Press, 2004.

lative practice of European countries.[5] However, public administration scholars have not yet examined whether (and, if so, to what extent) the general consolidation trend of central government administration also applies to NRAs in the EU Member States.

This paper aims to examine the phenomenon of NRAs tasked with the regulation of various domains, as well as the process of amalgamation of existing specialised authorities that leads to their creation. In order to achieve these research objectives, the author carries out desk research of data on regulatory authorities, mini case studies of selected amalgamations of regulators, and legal analysis of EU directives and CJEU's ruling.

The structure of the paper is as follows. Firstly, the author presents the materials and research methods used. The second part of the study involves mapping the NRAs currently operating in the EU Member States and creating a typology of such authorities, consisting of single-purpose, multi-sector, and "super regulators". Thirdly, the author verifies his hypothesis that the general consolidation trend of central government administration in Europe also applies to NRAs in the EU Member States and examines selected amalgamations of regulatory agencies in the form of mini case studies. The fourth part addresses the significance of the institutional form (consolidated or specialised) of NRAs from the perspective of regulatory effectiveness, i.e. achieving the EU regulatory objectives.

2. METHODS & MATERIALS

This study is embedded in the contemporary interdisciplinary approach to public administration research. Among the research methods used, those typical for legalistic paradigms are of key importance. Firstly, the author carries out desk research of data on regulatory authorities currently existing in the EU Member States whose regulatory activity is most heavily based on EU law, i.e. agencies responsible for competition protection, energy, telecommunications, audiovisual media, and railway regulation. The purpose of using this method is to examine which NRAs are consolidated and which specialise in regulating a given sector, as well as to create a typology of NRAs. Additionally, the obtained data on NRAs are subject to quantitative analysis to identify which of the regulatory domains are most often subject to regulation by the same inter-domain regulatory authority and which of the combinations of regulatory domains in one authority are the most common.

As part of the above-described desk research, the author analyses the data on NRAs published on the websites of various institutions. This includes official

[5] D. Sześciło, *Agencification Revisited: Trends in Consolidation of Central Government Administration in Europe*, "International Review of Administrative Sciences", November 2020.

websites of the European Commission, EU regulatory agencies (the European Union Agency for the Cooperation of Energy Regulators – ACER, the Body of European Regulators for Electronic Communications – BEREC), associations of regulators (the European Platform of Regulatory Authorities – EPRA, the Independent Regulators' Group – Rail – IRG-Rail), and individual NRAs.

This is followed by mini case studies aimed at presenting selected amalgamations of regulatory bodies. The author presents information on the context and reasons for the selected amalgamations of regulatory agencies, the rationale behind them, and expectations towards amalgamated NRAs. This part of the study is based on information published on official governmental or regulators' websites, presented in official reports, as well as other grey and academic literature.

Another method used is the analysis of the EU law. In doing so, the author determines whether the single-purpose or multi-sectoral structure of NRAs is legally irrelevant, or whether EU law provides any restrictions or guidelines as to specific amalgamations of regulatory bodies. The legal analysis is based on EU directives regulating the five above-mentioned regulatory domains, as well as the ruling of the Court of Justice of the European Union (CJEU) concerning the conditions of amalgamation of regulatory bodies.

3. NRAS CURRENTLY OPERATING IN THE EU MEMBER STATES

Despite the relative freedom of EU countries to design national regulators, some recurring models can be found in this respect. The number of domains regulated by individual agencies allows the creation of a typology of these bodies, which consists of:

1) single-purpose regulators – responsible for regulating one regulatory domain;
2) multi-sector regulators – responsible for regulating two or three regulatory domains;
3) "super regulators" – responsible for regulating four or five regulatory domains.

As part of the desk study, all regulators of the analysed five regulatory domains (i.e. competition protection, energy, telecommunications, audiovisual media, and railway) in all 27 Member States were assigned to the three above categories (see Table 1 below). This allows some conclusions to be drawn as to the current approach of EU countries to NRAs' institutional setup.

First, it should be noted that the specialised body responsible for regulating one regulatory domain remains the dominant model among NRAs. Currently, in the case of as many as 95 out of 109 NRAs (approx. 87%), Member States have decided to entrust the regulator with only one domain. Looking from the perspective of regulatory domains, it means that in 95 out of 133 cases (approx. 71%), they are regulated exclusively by certain specialised NRA. Moreover, still in most Member States (14 out of 27; approx. 52%) each of the five areas is regulated by a separate body. These countries include Belgium, Bulgaria, Cyprus, Czechia, Denmark, France, Greece, Ireland, Malta, Poland, Portugal, Romania, Slovakia, and Sweden.

12 multi-sector regulators are operating in the European Union. They were established in Austria, Croatia, Estonia (two of them), Finland, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, and Slovenia. Of the multi-sector regulators, 7 are responsible for regulating two domains and five of them are regulating 2 domains.

There are also two "super regulators": National Authority for Markets and Competition (CNMC) in Spain and Authority for Consumers and Markets in the Netherlands (ACM). The CNMC is responsible for regulating all five areas, while only the Audiovisual media sector is excluded from the scope of ACM's regulation.

The gathered data show that Estonia (with two multi-sector regulators), the Netherlands (with one single-purpose and one "super regulator"), and Spain (with one "super regulator") represent the most pro-consolidation approach to NRA's formation.

It is also worth noting that among the EU Member States, there are instances when more than one regulator is responsible for a given regulatory domain. This is the case in two countries with a federal structure: Belgium (three authorities)[6] and Germany (14 authorities)[7]. In both cases, these are the bodies responsible for regulating audiovisual media. Thus, it can be assumed that the authors of the constitutional laws of these states considered the freedom of speech and media (of which the audiovisual media regulator is one of the institutional guardians) as one of the guarantees of the autonomy of the federal regions from the federal government, which, through regulatory activity in this area, could potentially support broadcasters presenting a centralist optic.

Based on the above data, it can be concluded that the degree of specialisation or consolidation of regulatory bodies in the Member States is independent of factors such as the length of EU membership, territory, population, or GDP. Therefore, the intuition that the size of the regulated sector and the number of entities operating in it force the specialisation of the regulatory body should be considered incorrect.

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[6] In Belgium, the distribution of powers between the federal government and the three autonomous regions is organized by the Constitution or by fundamental laws. Cultural matters (including audiovisual) are the responsibility of the regions.

[7] Due to the freedom of broadcasting regulated in Art. 5 sec. 1 of the Basic Law (German constitution), the state is not allowed to exert any influence on radio and television broadcasting in Germany, neither directly nor indirectly via financing. For this reason, media supervision is organised "away from the state". The key regulations in this regard are contained in the State Media Treaty (Der Medienstaatsvertrag – MStV), a treaty between all 16 federal states, which has the status of a state law through corresponding consent laws in all federal states.

Table 1. NRAs in the EU Member States and regulated domains.

No	Country	Regulatory domain: Competition protection	Energy	Telecommunications	Audiovisual media	Railway
1	**Austria**	Federal Competition Authority of Austria – Bundeswettbewerbsbehörde	Energie Control Austria (E-Control)	Austrian Regulatory Authority for 2Broadcasting and Telecommunications – Rundfunk und Telekom Regulierungs-GmbH (RTR-GmbH)	Austrian Regulatory Authority for Broadcasting and Telecommunications – Rundfunk und Telekom Regulierungs-GmbH (RTR-GmbH)	Schienen-Control GmbH
2	**Belgium**	Belgian Competition Authority – Autorité Belge de la Concurrence – Belgische Mededingingsautoriteit	Commission for Electricity and Gas Regulation – Commission de Régulation de l'Electricité et du Gaz (CREG) – Commissie voor de Regulering van de Elektriciteit en het Gas (CREG)	Belgian Institute for Postal Services and Telecommunications – Institut Belge des Postes et Télécommunications (IBPT) – Belgisch Instituut voor postdiensten en telecommunicatie (BIPT)	Three separate authorities: Higher Audiovisual Council of the Wallonia-Brussels Federation – Conseil Supérieur de l'Audiovisuel de la Fédération Wallonie-Bruxelles (CSA); Flemish Regulatory Authority for the Media – Vlaamse Regulator voor de Media (VRM); Medienrat of the German speaking Community of Belgium – Medienrat der Deutschsprachigen Gemeinschaft Belgiens	Regulatory Body for Railway Transport and for Brussels Airport Operations – Dienst Regulering van het Spoorwegvervoer & van de Exploitatie van Luchthaven Brussel-Nationaal – Service de Régulation du Transport ferroviaire et de l'Exploitation de l'Aéroport de Bruxelles-National
3	**Bulgaria**	Commission for Protection of Competition Republic of Bulgaria (CPC) – Komisia za zashtita na konkurentsiyata	Energy and Water Regulatory Commission (EWRC) – Комисия за енергийно и водно регулиране (КЕВР)	Communications Regulation Commission (CRC) – Комисията за регулиране на съобщенията (КРС)	Council for Electronic Media (CEM) – СЪВЕТ ЗА ЕЛЕКТРОННИ МЕДИИ	Railway Administration Executive Agency – Изпълнителна агенция "Железопътна администрация"
4	**Croatia**	Croatian Competition Agency – Agencija za zaštitu tržišnog natjecanja (AZTN)	Croatian Energy Regulatory Agency – Hrvatska energetska regulatorna agencija (HERA)	Croatian Regulatory 3 Authority for Network Industries – Hrvatska regulatorna agencija za mrežne djelatnosti (HAKOM)	Agency for Electronic Media of the Republic of Croatia – Agencija za elektronicke medije (AEM)	Croatian Regulatory Authority for Network Industries – Hrvatska regulatorna agencija za mrežne djelatnosti (HAKOM)

5	**Cyprus**	Commission for the Protection of Competition (CPC) – Επιτροπή Προστασίας του Ανταγωνισμού	Cyprus Energy Regulatory Authority (CERA) – Ρυθμιστική Αρχή Ενέργειας Κύπρου	Office of the Commissioner of Telecommunications and Postal Regulation (OCECPR) – Γραφείο Επιτρόπου Ρυθμίσεως Ηλεκτρονικών Επικοινωνιών και Ταχυδρομείων (ΓΕΡΗΕΤ)	Cyprus Radio-Television Authority (CRTA) – Αρχή Ραδιοτηλεόρασης Κύπρου	No regulatory body (no railway system established within the territory)[8]
6	**Czechia**	Office for the Protection of Competition – Úřadu pro ochranu hospodářské soutěže (UOHS)	Energy Regulatory Office (ERO) – Energetický Regulační Úřad (ERÚ)	Czech Telecommunication Office – Český telekomunikační úřad (CTU)	Council for Radio and TV Broadcasting – Rada pro rozhlasové a televizní vysílání (RRTV)	Transport Infrastructure Access Authority – Úřad pro přístup k dopravní infrastruktuře
7	**Denmark**	Danish Competition and Consumer Authority – Konkurrence- og Forbrugerstyrelsen	Danish Utility Regulator (DUR) – Forsyningstilsynet	Danish Business Authority (DBA) – Erhvervsstyrelsen	Radio and Television Board c/o Danish Agency for Culture and Palaces, Media Division – Radio og tv-nævnet	Danish Railway Regulatory Body – Jernbanenævnet
8	**Estonia**	Estonian Competition Authority (ECA) – Konkurentsiamet	Estonian Competition Authority (ECA) – Konkurentsiamet	Consumer Protection and Technical Regulatory Authority (CTRA) – Tarbijakaitse ja Tehnilise Järelevalve Amet	Consumer Protection and Technical Regulatory Authority (CTRA) – Tarbijakaitse ja Tehnilise Järelevalve Amet	Estonian Competition Authority (ECA) – Konkurentsiamet
9	**Finland**	Competition and Consumer Authority – Kilpailu- ja kuluttajavirasto	Energy Authority – Energiavirasto (EV)	Liikenne- ja viestintävirasto (Traficom) – Finnish Transport and Communications Agency	Liikenne- ja viestintävirasto (Traficom) – Finnish Transport and Communications Agency	Liikenne- ja viestintävirasto (Traficom) – Finnish Transport and Communications Agency
10	**France**	Competition Authority – Autorité de la concurrence	Regulatory Commission of Energy – Commission de Régulation de l'Énergie (CRE)	Regulatory Authority for Electronic and Postal Communications – Autorité de Régulation des Communications électroniques et des Postes (ARCEP)	Higher Audiovisual Council – Conseil Supérieur de l'Audiovisuel (CSA)	Regulatory Authority for Rail and Road Activities – Autorité de Régulation des Activités Ferroviaires et Routières (ARAFER)

[8] In accordance with Art. 64 sec. 2 of the Directive 2012/34/EU establishing a single European railway area, the obligation to establish a railway regulatory authority shall not apply to Cyprus for as long as no railway system is established within its territory.

11	**Germany**	Federal Cartel Office – Bundeskartellamt	Federal Network Agency for Electricity, Gas, Telecommunications, Posts and Railway – Bundesnetzagentur (BNetzA)	Federal Network Agency for Electricity, Gas, Telecommunications, Posts and Railway – Bundesnetzagentur (BNetzA)	Die Medienanstalten – The Media Authorities (Association of the 14 regional Media Authorities)[9]	Federal Network Agency for Electricity, Gas, Telecommunications, Posts and Railway – Bundesnetzagentur (BNetzA)
12	**Greece**	Hellenic Competition Commission – Επιτροπή Ανταγωνισμού	Regulatory Authority for Energy (RAE) – Ρυθμιστική Αρχή Ενέργειας (ΡΑΕ)	Hellenic Telecommunications and Post Commission, Εθνική Επιτροπή Τηλεπικοινωνιών και Ταχυδρομείων (ΕΕΤΤ)	National Council for Radio and Television (NCRT) – Εθνικό Συμβούλιο Ραδιοτηλεόρασης (ΕΣΡ)	Regulatory Authority for Railways – Ρυθμιστική Αρχή Σιδηροδρόμων (ΡΑΣ, RAS)
13	**Hungary**	Hungarian Competition Authority – Gazdasági Versenyhivatal	Hungarian Energy and Public Utility Regulatory Authority (HEA) – Magyar Energetikai és Közmű-szabályozási Hivatal (MEKH)	National Media and Infocommunications Authority – Nemzeti Média- és Hírközlési Hatóság (NMHH)	National Media and Infocommunications Authority – Nemzeti Média- és Hírközlési Hatóság (NMHH)	National Transport Authority – Nemzeti Közlekedési Hatóság (NKH)
14	**Ireland**	Competition and Consumer Protection Commission (CCPC) – Coimisiún um Iomaíocht agus Cosaint Tomhaltóirí	Commission for Regulation of Utilities (CRU) – An Coimisiún um Rialáil Fóntais	Commission for Communications Regulation (COMREG) – Coimisiún um Rialáil Cumarsáide	Broadcasting Authority of Ireland (BAI) – Údarás Craolacháin na hÉireann	Commission for Railway Regulation (CRR) – Coimisiún um Rialáil Iarnróid (CRI)
15	**Italy**	Italian Competition Authority – Autorità Garante Della Concorrenza e del Mercato (AGCM)	Regulatory Authority for Energy, Networks and Environment – Autorità di Regolazione per Energia Reti e Ambiente (ARERA)	Italian communications authority – Autorità per le Garanzie nelle Comunicazioni (AGCOM)	Italian communications authority – Autorità per le Garanzie nelle Comunicazioni (AGCOM)	Transport Regulation Authority – Autorità di Regolazione dei Trasporti
16	**Latvia**	Competition Council – Konkurences padome	Public Utilities Commission (PUC) – Sabiedrisko pakalpojumu regulēšanas komisija (SPRK)	Public Utilities Commission (PUC) – Sabiedrisko pakalpojumu regulēšanas komisija (SPRK)	National Electronic Mass Media Council – Nacionālā elektronisko plašsaziņas līdzekļu padome (NEPLP)	State Railway Administration of Latvian Republic – Latvijas Republikas Valsts Dzelzceļa administrācija

[9] These are: Bayerische Landeszentrale für neue Medien (BLM); Bremische Landesmedienanstalt; Landesanstalt für Kommunikation Baden-Württemberg (LfK); Landesanstalt für Medien NRW; Landesmedienanstalt Saarland (LMS); Hessische Landesanstalt für privaten Rundfunk und neue Medien (LPR); Landeszentrale für private Rundfunkveranstalter Rheinland-Pfalz (LMK); Landesrundfunkzentrale Mecklenburg-Vorpommern (LRZ); Medienanstalt Berlin-Brandenburg (MABB); Medienanstalt Hamburg-Schleswig-Holstein (MA HSH); Medienanstalt Sachsen-Anhalt (MSA); Niedersächsische Landesmedienanstalt (NLM); Sächsische Landesanstalt für privaten Rundfunk und neue Medien (SLM); Thüringer Landesmedienanstalt (TLM).

17	**Lithuania**	Competition Council of the Republic of Lithuania – Konkurencijos taryba	National Energy Regulatory Council (NERC) – Valstybinė energetikos reguliavimo taryba	Communications Regulatory Authority of the Republic of Lithuania – Lietuvos Respublikos ryšių reguliavimo tarnyba (RRT)	Radio and Television Commission of Lithuania – Lietuvos radijo ir televizijos komisija (LRTK)	Communications Regulatory Authority of the Republic of Lithuania – Lietuvos Respublikos ryšių reguliavimo tarnyba (RRT)
18	**Luxembourg**	Competition Council – Conseil de la Concurrence	Luxemburger Regulatory Institute – Institut Luxembourgeois de Régulation (ILR)	Luxemburger Regulatory Institute – Institut Luxembourgeois de Régulation (ILR)	Luxembourg Independent Media Authority – Autorité Luxembourgeoise Indépendante de l'Audiovisuel (ALIA)	Luxemburger Regulatory Institute – Institut Luxembourgeois de Régulation (ILR)
19	**Malta**	Malta Competition and Consumer Affairs Authority (MCCAA)	Regulator for Energy & Water Services (REWS)	Malta Communications Authority (MCA)	Malta Broadcasting Authority	No regulatory body (no railway system established within the territory)[10]
20	**Netherlands**	Authority for Consumers and Markets – Autoriteit Consument & Markt (ACM)	Authority for Consumers and Markets – Autoriteit Consument & Markt (ACM)	Authority for Consumers and Markets – Autoriteit Consument & Markt (ACM)	Dutch Media Authority – Commissariaat voor de Media (CvdM)	Authority for Consumers and Markets – Autoriteit Consument & Markt (ACM)
21	**Poland**	Office of Competition and Consumer Protection – Urzqd Ochrony Konkurencji i Konsumentów (UOKiK)	Energy Regulatory Office (ERO) – Urząd Regulacji Energetyki (URE)	Office of Electronic Communications – Urząd Komunikacji Elektronicznej (UKE)	National Broadcasting Council – Krajowa Rada Radiofonii i Telewizji (KRRiT)	Office for Rail Transport – Urząd Transportu Kolejowego (UTK)
22	**Portugal**	Competition Authority – Autoridade da Concorrência (AdC)	Energy Services Regulatory Authority – Entidade Reguladora dos Serviços Energéticos (ERSE)	National Communications Authority – Autoridade Nacional de Comunicações (ANACOM)	Regulatory Authority for the Media – Entidade Reguladora para a Comunicação Social (ERC)	Mobility and Transport Authority – Autoridade da Mobilidade e dos Transportes (AMT)
23	**Romania**	Competition Council – Consiliul Concurentei România	Romanian Energy Regulatory Authority – Antoritatea Națională de Reglementare în domeniul Energiei (ANRE)	National Authority for Management and Regulation in Communications – Autoritatea Națională pentru Administrare și Reglementare în Comunicații (ANCOM)	National Audiovisual Council (NAC) – Consiliul Național al Audiovizualului	Railway Supervision Council – Consiliul de supraveghere din domeniul feroviar

[10] In accordance with Art. 64 sec. 2 of the Directive 2012/34/EU establishing a single European railway area, the obligation to establish a railway regulatory authority shall not apply to Malta for as long as no railway system is established within its territory.

24	**Slovakia**	Antimonopoly Office of the Slovak Republic – Protimonopolný Úrad Slovenskej Republiky	Regulatory Office for Network Industries (RONI) – Úrad pre reguláciu sieťových odvetví (URSO)	Regulatory Authority for Electronic Communications and Postal Services – Úrad pre reguláciu elektronických komunikácií a poštových služieb (RÚ)	Council for Broadcasting and Retransmission of the Slovak Republic (CBR) – Rada pre vysielanie a retransmisiu	Transport Authority – Dopravny urad
25	**Slovenia**	Slovenian Competition Protection Agency – Javna Agencija Republike Slovenije Za Varstvo Konkurence	Energy Agency – Agencija za energijo	Agency for Communication Networks and Services of the Republic of Slovenia – Agencija za komunikacijska omrežja in storitve Republike Slovenije (AKOS)	Agency for Communication Networks and Services of the Republic of Slovenia – Agencija za komunikacijska omrežja in storitve Republike Slovenije (AKOS)	Agency for Communication Networks and Services of the Republic of Slovenia – Agencija za komunikacijska omrežja in storitve Republike Slovenije (AKOS)
26	**Spain**	National Authority for Markets and Competition – Comisión Nacional de los Mercados y la Competencia (CNMC)	National Authority for Markets and Competition – Comisión Nacional de los Mercados y la Competencia (CNMC)	National Authority for Markets and Competition – Comisión Nacional de los Mercados y la Competencia (CNMC)	National Authority for Markets and Competition – Comisión Nacional de los Mercados y la Competencia (CNMC)	National Authority for Markets and Competition – Comisión Nacional de los Mercados y la Competencia (CNMC)
27	**Sweden**	Swedish Competition Authority – Konkurrensverket	Swedish Energy Markets Inspectorate – Energimarknadsinspektionen (Ei)	National Post & Telecommunications Agency – Post- och telestyrelsen (PTS)	Swedish Press and Broadcasting Authority – Myndigheten för press, radio och tv (MPRT)	Swedish Transport Agency – Transportstyrelsen

Source: Own analysis based on collected data on regulators in the EU Member States.

Table 1. Legend			
Color		NRA Type	Number of regulated domains
1		Single-purpose regulator	1
2	3	Multi-sector regulator	2-3
4		"Super regulator"	4-5
		No regulatory body	-

The collected data can be further analysed to obtain a more comprehensive view of the NRAs. This approach allows for determining how often particular regulatory domains are subject to sharing the same regulatory authority with others and which of the domains' combinations occur most frequently. These data enable us to identify the most common decision-making patterns adopted by the Member States when designing national regulators.

Table 2 below shows the frequency at which certain regulatory domains are regulated by single-purpose regulators and by multi-sector regulators/"super regulators". As can be seen from the table, telecommunications is most often (in various configurations) combined with other regulatory domains – as many as 13 NRAs combine their regulation with other domains. At the other end of the spectrum is competition protection – only three times it is regulated by an agency other than the single-purpose regulator. Thus, the competition protection domain should be considered as the most specialised among the EU Member States.

Table 2. How often a given domain is regulated by single-purpose regulators and by multi-sector regulators / "super regulators"?

	Regulatory domain				
	Competition protection	Energy	Telecommunications	Audiovisual media	Railway
Number of times the regulatory domain is regulated by a multi-sector regulator / "super regulator"	3	6	13	7	9
Number of times the regulatory domain is regulated by a single-purpose regulator	24	21	14	20	18

Source: Own analysis based on the collected data on regulators in the EU Member States.

The information collected on domains regulated by each of NRAs also allows for examining the frequency with which individual domains are combined to be jointly regulated by one authority. This enables all available combinations of domains regulated by currently operating multi-sector regulators and "super regulators" to be examined.

According to Table 3, Member States most often decide to combine telecommunications and railways (eight times), telecommunications and audiovisual media (seven times), energy and railways (five times), and energy and telecommunications (five times) in a single regulatory body. In terms of triple combinations, the most common is the one consisting of energy, telecommunications, and railway (which occurs four times).

The most frequent combination (telecommunications and railway) can be considered counterintuitive. This is because it is difficult to find similarly obvious common features of the markets, as in the case of the next entries on the list where it is the use of frequencies and the digitisation factor (telecommunications and audiovisual media) and the organisation of the market based on a physical network (grid) managed mainly by state-owned entities and the call for liberalisation through the implementation of unbundling (energy and railways).

Surprisingly, among the domain combinations occurring only once, there are as many as two consisting of only two regulatory domains. These are the combinations consisting of competition protection and audiovisual media, as well as energy and audiovisual media (both of these combinations only occur in the case of the Spanish "super regulator" – CNMC). This means that the Member States do not see sufficient added value in joint regulation of these domains by a single authority. The reason may be that the state-predicted increase in regulatory efficiency or reduction in domain regulatory costs does not justify the creation of such multi-sector regulators.

Table 3. Frequency of combining the regulation of specific domains within the competence of one authority – all possible combinations.

Combination	Frequency (number of occurrences)
Telecommunications; Railway	8
Telecommunications; Audiovisual media	7
Energy; Railway	5
Energy; Telecommunications	5
Energy; Telecommunications; Railway	4
Audiovisual media; Railway	3
Competition protection; Energy	3

Competition protection; Energy; Railway	3
Competition protection; Railway	3
Telecommunications; Audiovisual media; Railway	3
Competition protection; Energy; Telecommunications	2
Competition protection; Energy; Telecommunications; Railway	2
Competition protection; Telecommunications	2
Competition protection; Telecommunications; Railway	2
Competition protection; Audiovisual media	1
Competition protection; Audiovisual media; Railway	1
Competition protection; Energy; Audiovisual media	1
Competition protection; Energy; Audiovisual media; Railway	1
Competition protection; Energy; Telecommunications; Audiovisual media	1
Competition protection; Energy; Telecommunications; Audiovisual media; Railway	1
Competition protection; Telecommunications; Audiovisual media	1
Competition protection; Telecommunications; Audiovisual media; Railway	1
Energy; Audiovisual media	1
Energy; Audiovisual media; Railway	1
Energy; Telecommunications; Audiovisual media	1
Energy; Telecommunications; Audiovisual media; Railway	1

Source: Own analysis based on the collected data on regulators in the EU Member States.

4. DOMINANT TENDENCY AND SELECTED AMALGAMATIONS' MINI CASE STUDIES

The institutional form of regulators is not constant, which also applies to the number of bodies operating in a given country and the number of domains regulated by each of them. Thus, it is possible to trace the process that led to the state presented in the previous part of the paper, determine the dominant trend (consolidation or specialisation) in the introduced reforms, and find out the reasons for and background of these changes.

The author set forth a hypothesis that the general consolidation trend of central government administration in Europe also applies to NRAs in the EU Member

States. To verify this hypothesis, he sought media information and information contained in official documents or communications on cases from 2000 to 2021 in which the competences of the existing multi-sectoral/"super-regulator" of the five regulatory domains analysed were divided between two or more bodies[11] or where the existing regulatory authorities of these domains were merged into one. Through his search, the author did not find information about any reforms involving the distribution of regulatory competences between new separate bodies, while learning about a number of cases where the opposite reforms were introduced. The above supports the hypothesis that there is a consolidation trend in the institutional structure of national regulators.

Now that the dominant trend is known, it is reasonable to analyse individual cases to learn about the circumstances in which the amalgamations took place. This can be achieved by examining the context and reasons behind the selected amalgamations of regulatory agencies, the rationale for their implementation, and expectations towards the amalgamated NRAs.

The first of the analysed cases is the creation of a Croatian multi-sector regulator of the telecommunications and railway sectors – the Croatian Regulatory Authority for Network Industries (HAKOM). In its present form, HAKOM was established in 2008 after the merger of two former regulatory agencies – the Croatian Telecommunications Agency (HAT) and the Postal Services Council (VPU). Then, on 19 June 2014, the Act on Amendments to the Electronic Communications Act and the new Act on the Regulation of the Rail Services Market entered into force creating a single NRA responsible for the regulation of electronic communications, postal services, and rail services markets – the Croatian Regulatory Authority for Network Industries. This new network regulatory agency was created as the result of the amalgamation of the Rail Market Regulatory Agency (ARTZU) with the Croatian Post and Electronic Communications (HAKOM) and kept its abbreviated name HAKOM to preserve its recognisability.

The 2014 reform was implemented mainly to rationalise public sector spending. Its authors expected that the amalgamation would also have an envisaged synergic effect. In their view, although the combined regulator's domains are different in the technical and technological sense, activities of electronic communications, postal, and rail services are complementary in terms of legal and economic aspects of achieving sustainable competition. As all three of the above-mentioned services are based on networks built by a state-owned incumbent, HAKOM's long experience and extensive expertise in the liberalisation of

[11] Thus, the author did not take into account cases of replacing an existing body with a new one with the same competences, as happened, for example, in Poland with regard to the telecommunications regulatory agency in 2006.

the electronic communications and postal services market were to help liberalise the railway sector.[12]

Similar expectations towards the amalgamated NRAs guided the creation of the Estonian multi-sector regulator of telecommunications and audiovisual media. Consumer Protection and Technical Regulatory Authority (CTRA) was created on 1 January 2019 by merging the Consumer Protection Authority and the Technical Regulatory Authority. This amalgamation was intended to strengthen the market and make the consumer environment safer.[13]

Reasons for increasing regulatory efficiency also underpinned the creation of a German multi-sector regulator in the energy, telecommunications, and railway sectors. The history of this body dates back to the liberalisation of the telecommunications and postal markets. This process led to the creation of the Regulatory Authority for Telecommunications and Posts (RegTP) on 1 January 1998. When the German government decided to strengthen competition for the energy and railway markets as of 13 July 2005 and 1 January 2006, it found that the RegTP's expertise in enabling open access to telecommunication networks would also be useful in these infrastructure markets. To reflect these new regulatory areas, the agency was renamed to Federal Network Agency for Electricity, Gas, Telecommunications, Posts and Railway (BNetzA).[14]

In Spain, the liberalisation of consumer industries, the end of state monopolies, and the need to adapt to European regulations led to the creation of many regulatory bodies. As a result, in 1995, the National Electricity System Commission (predecessor of the National Energy Commission, CNE) was created, followed by the creation of the Telecommunications Market Commission (CMT) in 1996, the Rail Regulation Commission (CRF) in 2003, the State Council for Audio-Visual Media (CEMA) and the National Postal Sector Commission (CNSP) in 2010, as well as the Airport Economic Regulation Commission (CREA) in 2011. Meanwhile, in 2007, a competition protection agency was also created – the National Competition Commission (CNC). In 2013, the unification of the above-mentioned regulatory bodies and the competition protection authority was approved. As a result, the six supervisory entities in existence at the time – National Competition Commission, National Energy Commission, Telecommunications Market Commission, National Postal Sector Commission, State Council for Audio-Visual Media, and Committee of Railway and Airport Regulation – were combined into

[12] HAKOM, *HAKOM Becomes the Croatian Regulatory Authority for Network Industries*, 2014, https://www.hakom.hr/en/hakom-becomes-the-croatian-regulatory-authority-for-network-industries/6849 (accessed 9 May 2023).

[13] CTRA, *Strateegia 2020-2024*, 2019, https://ttja.ee/media/101/download (accessed 9 May 2023).

[14] BNetzA, *Shaping the Future for Germany's Key Infrastructure*, 2020, https://www.bundesnetzagentur.de/SharedDocs/Downloads/EN/BNetzA/PressSection/ReportsPublications/2020/ImageB.html (accessed 25 August 2021).

one. The “super regulator” thus formed was named the National Authority for Markets and Competition (CNMC). The declared purpose of that merger was to enhance their independence, as well as provide legal certainty and institutional trust by adopting an inclusive view from a regulatory and anti-trust standpoint. The authors of the reform expected the body created as a result of amalgamation to effectively contribute to promoting the modernization of the economy to benefit consumers.[15]

The consolidation of Dutch regulators responsible for competition protection, energy, telecommunications, and railways was presented in a similar way to the previously mentioned one. The creation of the Authority for Consumers and Markets (ACM) was aimed at saving costs and providing synergies in regulatory activities. Additionally, it was also expected that the newly created “super regulator” would be capable of anticipating market developments in a more integrated manner, using consolidated knowledge and expertise.[16]

5. INSTITUTIONAL FORM AND REGULATORY EFFECTIVENESS

Knowing the still prevailing model of specialised agencies and the existing consolidation trend, it is worth examining the significance of the institutional form (consolidated or specialised) of NRAs from the perspective of achieving the EU regulatory objectives, as the objectives of the Member States do not always have to be in line with EU law. This can be answered by examining whether the single-purpose or multi-sectoral structure of NRAs is legally irrelevant, or whether EU law provides any restrictions or guidelines as to specific amalgamations of regulatory bodies.

To some extent, the answer to this question is provided by EU directives regulating individual regulatory domains. As shown in Table 4 below, the directives not for all domains address this issue and the provisions of the directives that do so are rather general. The possibility of creating multi-sector or “super regulators” is explicitly allowed by the directives concerning audiovisual media (Directive 2010/13/EU) and railways (Directive 2012/34/EU). By interpreting Article 5 sec. 1 of the Directive (Eu) 2018/1972, it can be inferred that this is also allowed in the case of the agency regulating the telecommunications sector, as according to this provision, the agency can also be assigned with tasks resulting from other

[15] CNMC, *What Is the CNMC?*, https://www.cnmc.es/en/sobre-la-cnmc/que-es-la-cnmc#objetivo (accessed 5 May 2023).

[16] K. Cseres, *Integrate or Separate - Institutional Design for the Enforcement of Competition Law and Consumer Law*, “SSRN Electronic Journal” 2020.

EU legal acts. This issue is not directly addressed in the directives on energy and competition protection. Nevertheless, since the EU institutions have not questioned the possibility of combining the regulation of these domains with others within one NRA, it can be assumed that such a practice does not contradict the requirements imposed on these agencies.

Table 4. Creation of multi-sector regulators/"super regulators" and EU sectoral directives.

Regulatory domain	Relevant EU legislation	Provision
Audiovisual media	Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (significantly revised in November 2018)[17]	Article 30 sec. 1 Each Member State shall designate one or more national regulatory authorities, bodies, or both. Member States shall ensure that they are legally distinct from the government and functionally independent of their respective governments and of any other public or private body. **This shall be without prejudice to the possibility for Member States to set up regulators having oversight over different sectors.** (…)
Competition protection	No precise reference.	
Telecommunications	Directive (EU) 2018/1972 of the European Parliament and of The Council of 11 December 2018 establishing the European Electronic Communications Code[18]	Article 5 sec. 1 **Member States may assign other tasks provided for in this Directive and other Union law to national regulatory authorities, in particular, those related to market competition or market entry**, such as general authorisation, and those related to any role conferred on BEREC. (…)
Energy	No precise reference.	

[17] 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) (Codified version) (Text with EEA relevance), OJ L 95 of 2010, p. 1.

[18] Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast) Text with EEA relevance, OJ L 321 of 2018, p. 36.

Railway	Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (recast)[19]	Article 55 sec. 2 **Member States may set up regulatory bodies which are competent for several regulated sectors, if these integrated regulatory authorities fulfil the independence requirements set out in paragraph 1 of this Article. The regulatory body for the rail sector may also be joined in organisational term with the national competition authority referred to in Article 11 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 101 and 102 of the Treaty (8)**, the safety authority established under Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways (9) or the licensing authority referred to in Chapter III of this Directive, if the joint body fulfils the independence requirements set out in paragraph 1 of this Article.

Source: Own analysis based on the review of EU legislation.

CJEU also provided some guidance on the admissibility of linking domains through amalgamations. This issue was dealt with in the judgment in Case C-424/15 Xabier Ormaetxea Garai, Bernardo Lorenzo Almendros v. Administración del Estado. This case was related to the creation of the Spanish CNMC "super regulator". The act introducing this reform provided for the discontinuation of the mandate of the amalgamated regulators. In the above ruling, the CJEU confirmed the right of states to implement reforms involving merging NRAs. Nevertheless, it was underlined that the will of a Member State to undertake this type of reform cannot be the only justification for premature dismissals.

Based on the ruling, it can be concluded that one of the crucial conditions for a lawful amalgamation is the continuous, uninterrupted term of office of the current agency's management, including the agency's president and his advisers. Thus, in the case of creating a new agency to replace several hitherto existing bodies, the competences of the existing NRAs should be gradually incorporated into the new agency as the term of office of their management ends.

[19] Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (recast) Text with EEA relevance, OJ L 343 of 2012, p. 32.

6. CONCLUSIONS

NRAs are an integral part of the regulatory landscape of the European Union and its Member States. Taking into account the number of regulatory domains regulated by individual agencies, among those established in the Member States, one can distinguish specialised single-purpose regulators, as well as multi-purpose regulators and "super regulators" regulating various domains.

While the model of specialised agencies still prevails, the trend observed in recent years is pro-consolidation. It led to the creation of 12 multi-purpose regulators, as well as two "super regulators", i.e. the Spanish CNMC and the Dutch ACM.

There is a significant disproportion between the frequency of occurrence of individual domain combinations. The most common are telecommunications and railway, telecommunications and audiovisual media, energy and railway, and energy and telecommunications. Among the least frequent domain combinations are competition protection and audiovisual media, as well as energy and audiovisual media. At the same time, the data collected shows that competition protection is the domain least often regulated by multi-purpose regulators and "super regulators".

In carrying out amalgamations of existing NRAs, Member States aimed at rationalising public sector spending. From the agencies created as a result of such mergers, they expected greater independence and synergy as a result of using consolidated know-how and expertise as to the regulation of freshly liberalised markets.

EU law allows for the amalgamations of NRAs. It does so explicitly or implicitly depending on the domain. As the CJEU judgment in Case C-424/15 shows, the freedom to merge regulatory domains within a single authority does not fully apply to the amalgamation process itself. In carrying out such reforms, the tenure of those holding managerial positions in the bodies to be merged must be respected.

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