The Decentralisation of the DMA's Enforcement System

Alba Ribera Martínez*

ABSTRACT

The harmonisation of the internal market is a fundamental aspect of the EU *acquis*, and the Digital Markets Act[1] (DMA) is no exception. It aims to harmonise digital markets across the Union based on the concepts of contestability and fairness. The DMA is enforced through a *quasi*-centralised enforcement system, with the European Commission as its sole enforcer and national competition authorities (NCAs) playing a secondary and supporting role. This centralisation of enforcement powers with the European Commission is key to ensuring harmonisation. In parallel, the DMA complements the application of Articles 101 and 102 TFEU, national competition laws and merger control regulations. This complementarity requires the Member States not to adopt legislation targeting the DMA's regulatory objectives.

The paper highlights the potential risks at the national level due to NCA involvement in the DMA's enforcement. While the regulation does not need to be transposed into national law to be effective, some Member States have introduced legislation specifying which authorities are responsible for enforcement and how they should apply their powers in line with the DMA. The paper examines these legislative developments, revealing potential deviations undermining the DMA's effective enforcement and disrupting its current enforcement system.

KEYWORDS: Digital Markets Act; National competition authorities; Fragmentation; Internal Market; Harmonisation

* PhD Candidate at University Carlos III of Madrid, and Lecturer in Competition Law at University Villanueva. Email: riberamartinezalba@gmail.com. According to the ASCOLA Declaration of Ethics, the author has nothing to disclose. The author thanks both Giorgio Monti and Marco Botta for their comments on the first draft of this piece. Moreover, the author also thanks Paulina Ambrasité, Márton Angyal, Christian Bergqvist, Marco Cappai, Kati Cseres, Zvezdelina Filova, Juris Gaikis, Chris Grech, Lena Hornkohl, Griet Jans, Louiza Kofina, Jan Kupčík, Eryk Lucas, Stavros Makris, Toni Malminen, Andrej Matov, Raluca Alexandra Maxim, Jeanne Mouton, Inês Neves, Michal Palisin, Jasminka Pecotic, Henrik Trasberg, Pieter Van Cleynenbreugel, David van Wamel, David Vogrinec, Linnea Wernheim and Monika Wozniak-Cichuta for their help in the identification of the national legislative developments at the Member States' repositories and in helping with the translations, when needed.

[1] Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1928 (Digital Markets Act) [2022] OJ L265/1.

I. Introduction

The Digital Markets Act (DMA) sets out two clear objectives. Article 1(1) enshrines that the purpose of the regulation is to contribute to the proper functioning of the internal market by laying down harmonised rules ensuring for all businesses, contestable and fair markets in the digital sector across the Union where gatekeepers are present, to the benefit of business users and end users.

The regulation builds on the EU legal tradition starting with the Single European Act and followed by the transformation from the single to the internal market.[2] Thus, the regulation seeks to address fragmentation across the Member States in the digital sector, both in terms of rulemaking and enforcement.[3] It easily follows that the DMA's legal basis is that of Article 114 TFEU and not that for competition regulation.[4] Aside from the harmonisation objective, the regulatory instrument stands away from the pursuit of an undistorted system of competition in the sense of Articles 101 and 102 TFEU. Instead, the regulation presents two idiosyncratic concepts which must influence its enforcement: contestability and fairness.

The DMA's adoption has been contested on both these fronts.[5] Article 114 TFEU is an inadequate legal basis to approximate the regulations on the digital sector across the Member States, especially bearing in mind that at the time of its adoption, none of the Member States had passed substantive legislation in different regulatory directions.[6] Furthermore, contestability and fairness are loosely defined under the regulatory instrument, and they hold a multi-dimensional role when the enforcer seeks to apply them transversally.[7] In this context, the objectives of contestability and fairness act as limits to the Member States' capacity to adopt their own legislation and rules on the same targets of the regulation addressed via the DMA. Article 1(5) DMA prohibits the Member States from adopting DMA-like rules at the national level, although Article 1(6) DMA

---

[2] Single European Act [1987] OJ L169/1; Stefano Micossi, '30 Years of the Single European Market' (Lecture, College of Europe, October 2016); Damian Chalmers, Gareth Davies and Giorgio Monti, '16 – The Internal Market' in Damian Chalmers, Gareth Davies and Giorgio Monti (eds), *European Union Law* (CUP 2012); Richard Whish, '21 – EU Competition Policy and the Single Market Imperative' in Fabian Amtenbrink, Gareth Davies, Dimitry Kochenov and Justin Lindeboom (eds), *The Internal Market and the Future of European Integration* (CUP 2019); and Michelle Cini and Patrik Czulno, 'Digital Single Market and the EU Competition Regime: An Explanation of Policy Change' (2022) 44(1) Journal of European Integration 41.

[3] DMA (n 1), Recitals 8-10.

[4] Treaty on the Functioning of the European Union [2016] OJ C202/1.

[5] Arguing against its existence, see Nicolas Petit, 'The Proposed Digital Markets Act (DMA): A Legal and Policy Review' (2021) 12(7) Journal of European Competition Law & Practice 529; and David J. Teece and Henry J. Kahwaty, 'Is the Digital Markets Act the Cure for Europe's Platform Ills? Evidence From the European Commission's Impact Assessment' in James Langenfeld and Frank Fagan (eds), *The Economics and Regulation of Digital Markets* (Emeral Publishing Limited 2023).

[6] The argument in full can be found under Alfonso Lamadrid de Pablo and Nieves Bayón Fernández, 'Why the Proposed DMA Might Be Illegal under Article 114 TFEU, and How to Fix It' (2021) 12(7) Journal of European Competition Law & Practice 576.

[7] For an in-depth analysis of both concepts, see Alba Ribera Martínez, 'The DMA's Ithaca: Contestable and Fair Markets' (2023) 46(4) World Competition 429.

recognises the complementarity between the application of Articles 101 and 102 TFEU, of national competition law regimes and merger control and the regulation's obligations.

At least from an external perspective, the DMA is secured against legislative developments arising at the national level contradicting the regulation on its own terms. Nonetheless, it is not entirely clear whether Article 1(5) DMA and the enforcement system are potent enough to act as an effective safe net to catch regulatory overlap.[8] In the interim of the DMA's legislative process, the introduction of the German Section 19a to the national Competition Act was adopted and conferred similar powers upon the German competition authority to designate undertakings of paramount significance across markets.[9] The question of whether the DMA is apt to neutralise this type of regulatory intervention is largely contested and unresolved.[10] The paper, however, does not aim to provide a clear response to this challenge referring to the external aspect of the regulation's harmonisation objective.

On the contrary, the paper enquires and investigates its internal aspects. The paper questions the DMA's enforcement system at face value. In principle, the European Commission (EC) is the DMA's sole enforcer, as enshrined in Recital 91. The EC assumes all the regulation's enforcement actions in a direct way. In most cases, the EC does have the last word on what enforcement strategy it wishes to pursue. By this token, the DMA stands in stark contrast to Regulation 1/2003.[11] As opposed to the decentralised (and *ex-post*) system of enforcement of antitrust, the DMA is, therefore, configured as a centralised enforcement system.[12] Notwithstanding, there are clear parallels between both regulations since some of the terms within the DMA directly mimics that of Regulation 1/2003. For instance, regarding the cooperation rules between the EC and the national competition authorities (NCAs) or the preclusive effect of the EC's triggering of a non-compliance procedure. Regulation 1/2003 operationalised decentralisation through the designation of national authorities under Article 35, while it successfully maintained EU-

---

[8] These issues were raised by Marco Cappai and Giuseppe Colangelo, 'Applying ne bis in idem in the aftermath of bpost and Nordzucker: The case of EU competition policy in digital markets' (2023) 60(2) Common Market Law Review 431; and Alba Ribera Martínez, 'An inverse analysis of the Digital Markets Act: Applying the ne bis in idem principle to enforcement' (2023) 19(1) European Competition Journal 86.

9 Competition Act in the version published on 26 June 2013 (Bundesgesetzblatt (Federal Law Gazette) I, 2013, p. 1750, 3245), as last amended by Article 1 of the Act of 25 October 2023 (Federal Law Gazette I, p. 294).

10 For different views on the topic, see Jens-Uwe Franck and Martin Peitz, 'Digital Platforms and the New 19a Tool in the German Competition Act' (2021) 12(7) Journal of European Competition Law & Practice 513; Mikołaj Barczentewicz, 'German Big Tech Actions Undermine the DMA' (2022) ICLE Issue Brieg Paper 2023-06-22 <https://laweconcenter.org/wp-content/uploads/2023/06/MB-DMA-v-Germany.pdf> accessed 25 June 2024; or Philipp Hornung, 'The Ecosystem Concept, the DMA, and Section 19a GWB' (2023) Journal of Antitrust Enforcement.

[11] Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty [2003] OJ L1/1.

[12] Remarking on the perceived need to avoid fragmentation, see Florian Wagner-von Papp, 'Digital Antitrust and the DMA: In Praise of Institutional Diversity' (2024) 12 Journal of Antitrust Enforcement 343.

wide consistency and uniformity once the ECN+ Directive produced its fully-fledged impact.[13]

However, when one closely looks at the letter of the law, there may well be more authorities involved in the regulation's enforcement. At face value, the DMA does acknowledge the supporting and secondary role of national competition authorities (NCAs) in monitoring the regulation's enforcement. Article 38(7) recognises this possibility by declaring that NCAs may monitor compliance with the obligations under Articles 5, 6 and 7 DMA at the national level. However, the scope of these monitoring powers stands limited by the European Commission's discretion in opening non-compliance procedures as a result of the findings the NCAs may produce.

The national component of the DMA's institutional framework is larger than the reach of Article 38(7) DMA. The regulation recognises different powers upon different authorities which presents a complex depiction of how the regulation's enforcement must be complemented not only by the NCAs but also through the support of other authorities. On this note, different concepts are streamlined across the regulation, such as national authorities, national competent authorities, competent national competition authorities or competent authorities of Member States. To enquire about the topic in all earnestness, Section II disentangles the different concepts of national authorities which crystallise into fourteen distinct forms of national intervention across the regulation, with different meanings and repercussions to them.

Once this preliminary analysis has been conducted, the paper goes on to determine whether there are similar safeguards to Article 1(5) DMA when it comes to the internal aspect of the regulation's harmonisation objective. To do that, the paper first identifies the DMA as a regulation which does not, in principle, require further transposition at the Member State level to become fully applicable, as a consequence of the principle of direct applicability. The DMA only reserves two brief mentions of the need for transposition with reference to the necessity of making necessary adjustments to the transposition of the Whistleblower and Representative Actions Directives.[14]

---

[13] Wouter P.J. Wils, 'Regulation 1/2003: An Assessment After Twenty-one Years' (2023) 46 World Competition 3; Katalin Cseres, 'Comparing Laws in the Enforcement of EU and National Competition Laws' (2010) 3(1) European Journal of Legal Studies 7. For the ECN+ Directive, see Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market [2019] OJ L11/3.

[14] DMA (n 1), Recitals 103 and 104 referencing Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law [2019] OJ L305/17 and Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC [2020] OJ L409/1. The European Commission has already presented its own whistleblower tool, see Directorate-General for Competition and Directorate-General for Communications Networks, Content and Technology, 'Commission launches Whistleblower Tools for Digital Services Act and Digital Markets Act' (*Digital Markets Act (DMA)*, 30 April 2024) <https://digital-markets-act.ec.europa.eu/commission-launches-whistleblower-tools-digital-services-act-and-digital-markets-act-2024-04-30_en> accessed 25 June 2024. On the interaction between collective actions and the DMA, see

Despite the full impact of the principle of direct applicability, the Member States have adopted legislative developments at the national level to flesh out those provisions within the DMA that were not entirely clear for the purposes of their enforcement.[15] The motion is a clear recognition on the Member States' side of the shortcomings of the DMA's terms when it comes to its relationship with the principle of direct effect.[16] The consensus is quasi-unanimous since twenty-one out of the twenty-seven Member States have adopted, in some form or shape, a legislative development revolving around the DMA's national implementation.[17]

Section III presents those legislative developments both from the quantitative and qualitative perspectives. On the quantitative side, the paper analyses them across different axes so to demonstrate their heterogeneity. Regarding the qualitative aspect of the analysis, the paper considers whether these legislative developments deviate from the core of the DMA's terms correlated to the level of regulatory intervention displayed in each one of them. Moreover, Section 3 circles back to the conundrum elucidated in Section 2 and demonstrates what the DMA is referring to when the EU legislator includes the national authorities in the enforcement mix.

By doing this, the paper interprets the NCAs' capacity to intervene in the DMA's enforcement in reverse. The paper works its way backwards from the legislative developments proposed and adopted by the Member States to understand how they can impact the DMA's enforcement system. By this token, the paper answers the question of whether these legislative developments are necessary to understand the DMA's enforcement technically and institutionally complete. Sections II and III navigate both alternatives. If they are necessary, then the existence of the national legislative developments is clearly explained. Under this premise, national authorities could not intervene in the DMA's enforcement without the legislative development. Thus, those national authorities willing to exert those powers have taken an active stance in doing so. If, on the contrary, the answer is that the legislative developments are not necessary (or, at least, some of the provisions do not require it), then the paper goes on to question why they even exist and whether there is a material difference impacting on the DMA's enforcement system.

Lena Hornkohl and Alba Ribera Martínez, 'Collective Actions and the Digital Markets Act: A Bird Without Wings' (2023) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4637661> accessed 25 June 2024.

[15] Case 43-71 *Politi s.a.s. v Ministry for Finance of the Italian Republic* [1971] ECR I-1039.

[16] The distinction between direct applicability and the requirements of direct effect was first set out in Case 26-62 *NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration* [1962] ECR I-3 and developed further in Case 44/84 *Derrick Guy Edmund Hurd v Kenneth Jones (Her Majesty's Inspector of Taxes*) [1986] ECR I-29 and Case C-236/92 *Comitato di Coordinamento per la Difesa della Cava and others v Regione Lombardia and others* [1994] ECR I-483.

[17] The legislative developments referred to under Section 3 can be found listed in full under Annex I.

II. A conflation of concepts: DMA enforcement at the national level

The European Commission is the DMA's sole enforcer under the terms presented in Recital 91. Despite the centralised enforcement system, the DMA imposes additional coordination and cooperation rules upon the EC. As opposed to the designation operated under Article 35 of Regulation 1/2003 in favour of national administrative and judicial authorities, the DMA is much wider in scope regarding those public bodies that can intervene in its enforcement. The national component of the DMA's enforcement crystallises into two main groups. First, the public authorities established at the national level. Second, the Member States in themselves.

Within the first group of authorities with powers to enforce the DMA in some way or another, up to seven different concepts are streamlined across the regulation. The difference in the concepts used throughout the DMA points to the idea they may each cover a national authority of a different nature. Their distinction is not without reason, given that the obligations under Articles 5, 6 and 7 DMA touch upon a whole myriad of different tenets of digital regulation, which must prove coherent and coordinated with other fields of EU and national law.

Table 1 below illustrates the different categories of authorities listed under the DMA, depending on the type of cooperation which is required from them:

Table 1. The first group of national authorities vested with powers under the DMA.

Concept	**Powers conferred upon the authority and provision**
1. National competent authorities.	- Information to authorities on gatekeeper transactions (Recital 71 DMA).[18] - Distribution of competences and the DMA's national enforcement (Recital 91 DMA).[19]
2. National authorities.	- Need of cooperation with the European Commission (Recitals 86, 90 and 99 and Articles 1(7), 35(2)(d) and 37(2) DMA).[20] - Harmonisation of private enforcement (Recital 92 DMA).[21]
3. Competent national competition authority.	- Concept of notifiable concentrations (Article 14(1) DMA).
4. National competent authority of the Member State enforcing the rules referred to in Article 1(6) DMA.	- Power to carry out interviews (Article 22(1) DMA).

[18] The interpretative provision corresponds with the obligation under Article 14 DMA. As shown in the table, there is a divergence between the notion included in Recital 71 'national competent authorities' and the concept of a 'competent national competition authority' enshrined in Article 14(1) DMA.
[19] Recital 91 DMA also presents a divergence with the corresponding article it fleshes out relating to the public authorities designated for the task, Article 38(7) DMA.
[20] Some of the interpretative provisions corresponding to the cooperation rules established by the DMA do not reference the same concept, whereas others included in this same category, do.
[21] Private enforcement is not referenced under the DMA. The rules applying to national courts contained under Article 39 DMA do not explicitly contain any further notion.

	- Power to conduct inspections (Articles 23(3), 23(4), 23(5), 23(6), 23(9) and 23(10) DMA). - Information by third parties (Article 27 DMA). - Cooperation and coordination rules when applying national competition rules (Articles 38(1), 38(2) and 38(3) DMA). - Support to the EC in market investigations (Article 38(6) DMA). - Monitoring of DMA's provisions at the national level (Article 38(7) DMA).
5. National competent authorities of the Member States.	- Monitoring of the obligations (Article 26(2) DMA).
6. National authorities composing European bodies and networks under Article 40(2) DMA.	- Powers of High-Level Group (Article 40(6) DMA).
7. Competent authorities of the Member States.	- Monitoring of obligations (Recital 85 DMA).[22] - Use of information for Dutch clause under merger control (Article 14(5) DMA). - Rights of access to the file and regime on confidentiality of information obtained at the national level (Article 34(4) DMA). - Regime of professional secrecy (Article 36(4) DMA. - Review of DMA transmission of relevant information (Article 53(4) DMA.

The concepts streamlined throughout the different provisions are different in their scope and nature. The EU legislator deliberately sets out seven different manifestations of public authorities that may have a say in some of the mechanisms engrained into the DMA. Therefore, one cannot simply argue that all seven concepts explicitly reference NCAs and their role in the DMA's enforcement. Reaching that conclusion would undermine the DMA's flexibility in accepting other public bodies' intervention when cooperating with the European Commission. The paper distinguishes and fleshes out in turn the meanings of each one of these national authorities.

[22] The corresponding provision to Recital 85 is Article 26(2) DMA. As shown above, it includes a completely different concept altogether.

1. One and the same: national competent authorities of the Member States enforcing the rules referred to in Article 1(6) DMA and national competent authorities

From the seven different concepts pointed out in Table 1 above, the EU legislator has a clear predilection for a concept that one can easily associate with the notion of NCAs: national competent authorities of the Member States enforcing rules referred to in Article 1(6) DMA.[23]

Article 1(6) DMA establishes the complementarity between the application of EU competition law and the DMA. The latter is without prejudice to the application of the former, especially when it comes to the application of the prohibitions stemming from national competition rules prohibiting anti-competitive agreements, abuses of dominant positions or other forms of unilateral conduct. Complementarity stems, in the DMA's own words, from the different legal interests protected under the regulation (i.e., contestability and fairness) and competition rules (the protection of undistorted competition on the market).[24] In a similar vein, Article 1(7) follows upon the complementarity imposed under Article 1(6) by highlighting that national authorities shall not take decisions which run counter to a decision adopted by the Commission under the DMA. The provision transplants the wording and sense of Article 16(2) of Regulation 1/2003 into the DMA.[25] Thus, Article 1(6) DMA references the same concept of competition authorities of the Member States in the sense of Regulation 1/2003.

However, not all Member States apply EU competition rules and their national competition rules in the same way from the institutional viewpoint. Although all twenty-seven Member States participate in the European Competition Network (ECN) via their NCA representatives,[26] there are Member States where there is a certain sense of further decentralisation of their enforcement system at the national level. Member States such as Finland and Spain do have other types of national competition authorities at the regional level applying national competition rules satisfying the requirement of Article 1(6)(a) DMA.[27] These regional authorities apply national competition rules prohibiting anti-competitive agreements and abuses of dominant position only within their territory. Nothing hinders them from doing so in the presence of conduct only comprising their respective territories. This is the reason behind the fact that most of the legislative

[23] The concept corresponds to item 4 of Table 1.
[24] DMA (n 1), Recitals 10 and 11.
[25] For comment on the parallels between Regulation 1/2003 and the DMA, see Alba Ribera Martínez, 'The Support and Complementary Role of National Authorities in Enforcing the DMA: All Enforcement Systems Go' (2023) 2024/3 Mededingingsrecht in de Praktikj 41.
[26] The ECN functions according to the rules engrained under Commission Notice on cooperation with the Network of Competition Authorities [2004] OJ C101/43; Giorgio Monti, '5 – Independence, Interdependence, and Legitimacy: The EU Commission, National Competition Authorities, and the European Competition Network', Dominique Ritleng (ed), *Independence and Legitimacy in the Institutional System of the European Union* (OUP 2016), 180.
[27] For brief references to the system of enforcement in Spain, see Beatriz de Guindos, 'The Spanish Competition Act: An Evaluation and Future Perspectives' (2019) October 2019 *CPI Antitrust Chronicle* 4.

developments executing the DMA clearly 'designate' to what national authority Article 1(6) is alluding to.[28]

Therefore, the designation of national competent (not competition) authorities applying the rules referred to in Article 1(6) DMA corresponds to the NCAs of each Member State, which are, in turn, part of the ECN. The most substantive provisions conferring powers upon national authorities use this concept, such as those instances where the authorities cooperate with the European Commission in conducting dawn raids on their own territory and their capacity to receive direct complaints on non-compliance with Articles 5, 6 and 7.[29] As a matter of fact, aside from the substantial powers conferred upon these authorities, the regulatory instrument ensures uniformity in its interpretation relying on the ECN's structure. Articles 38 and 37 DMA, which also remark on the same concept of national competent authorities, establish that NCAs and the European Commission may exchange information within the ECN to secure the regulation's effective enforcement. The ECN has created a working group of the DMA to that effect.[30]

Even though the exercise of determining what authority is concerned with the application of the DMA's provisions at the national level might seem trivial, the designation is inherently crucial for ensuring that the regulation's effective enforcement is not undermined. The regulatory instrument applies a *quasi*-centralised system of enforcement revolving around the European Commission's powers to make gatekeepers accountable for their actions in line with the DMA's mandates.[31] Every deviation from this scheme of enforcement implies that the European Commission relays some of its legitimacy as the regulation's sole enforcer to other authorities. At the same time, however, it only seems reasonable that the EC should find support from other authorities to complete its enforcement powers, due to the lack of financial and human resources at its disposal to effectively enforce the DMA.[32]

---

[28] This topic is further referenced under Section III.3).

[29] DMA (n 1), Articles 23 and 27.

[30] The working group's creation was acknowledged by the Spanish competition authority's official Pedro Hinojo, 'EU's Digital Markets Act: New rules and challenges ahead' (Contribution, Universidad Pontificia Comillas ICADE, November 2022). Following these exchanges of information and the ECN's ongoing work in this respect, those mechanisms have already been triggered during the last year, at least once, under terms of Article 38(3) DMA. In other words, one NCA communicated to the EC draft measures it intends to impose on a designated gatekeeper based on national competition law, see European Commission, 'Report from the Commission to the Council and the European Parliament – Annual report on Regulation (EU) 2022/1925 of the European Parliament and of the Council on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act)' COM(2024) 106 final.

[31] This was not always the case. When it was first proposed in December 2020, the DMA only accounted for the EC's intervention as an enforcer and included few references to the collaboration of national authorities, see European Commission, 'Proposal for a Regulation of the European Parliament and of the Council on contestable and fair markets in the digital sector (Digital Markets Act)' COM/2020/842 final contain those references under Articles 1(7), 3(2)(a), 12(1), 29(3)(b), 30(4), 31(2), 33(1), 33(2), 36(2) and 37(4) and Recitals 9, 17, 21, 72, 77, 78, 79 and 91.

[32] European Commission officials have already confirmed they will rely on some of the NCA resources to apply the DMA's provisions, given that it only has twenty officials enforcing them at the EU level, see Olivier Guersent, 'The DMA is here, now what?' (Contribution, Forward Global, April 2024). The EC's

In any case, relaying legitimacy to other authorities comes with its limitations. The European Commission is the only authority to hold a wide margin of discretion in enforcing the DMA's provisions.[33] On the contrary, the rest of the authorities' powers in interpreting and enforcing the regulation are minimal, in comparison.

Stemming from their presentation under Table 1, the regulation recognises the EC's general need to cooperate with national competent authorities under Recital 91 DMA when they enforce national competition rules against gatekeepers. The concept of national competent authorities, in isolation to the explicit reference of their application of the rules under Article 1(6) DMA, is indeed one and the same concept.[34] That same notion also applies to the powers conferred upon the national competent authority to refer the acquisitions it gains knowledge of as a consequence of the gatekeeper's obligation to notify every single transaction they realise in the market.[35] In principle, once it has received that information, the national competent authority may opt into applying Article 22 EUMR in referring the acquisition back to the European Commission for its scrutiny with sufficient margin of discretion at the national level.[36] In turn, the national competent

---

enforcement strategy is aligned with this same view since it is concluding Memoranda of Understanding (MoUs) with several NCAs to pool their resources in pursuing investigations under the DMA. For instance, see Comisión Nacional de los Mercados y la Competencia, 'La CNMC y la Comisión Europea firman un acuerdo para la creación de un equipo de investigación conjunto para supervisar las grandes plataformas digitales' (*CNMC*, 6 June 2024) <https://www.cnmc.es/sites/default/files/editor_contenidos/Notas%20de%20prensa/2024/20240606_MoU_CE.pdf> accessed 27 June 2024. Other national authorities, such as the Dutch or Belgian, have also joined their efforts to the European Commission in seconding their competition experts to the EC's DMA unit, see Bethan John, 'National agencies' mixed DMA support highlights enforcement risks' (*GCR*, 5 July 2024) <https://globalcompetitionreview.com/article/national-agencies-mixed-dma-support-highlights-enforcement-risks> accessed 15 July 2024.

[33] In this regard, see Pablo Ibáñez Colomo, 'The Draft Digital Markets Act: A Legal and Institutional Analysis' 12(7) Journal of European Competition Law & Practice 561 and proving the point in the context of the DMA's designation process, see Alba Ribera Martínez, 'The Requisite Legal Standard of the Digital Markets Act's Designation Process' Journal of Competition Law & Economics (forthcoming). The European Commission also recognises this same point when declaring it has a wide margin of discretion in deciding when and how to open non-compliance procedures against the gatekeepers, see European Commission, 'Template Form for Reporting Pursuant to Article 11 of Regulation (EU) 2022/1925 (Digital Markets Act) (Compliance Report)' (*Digital Markets Act*, 9 October 2023) <https://digital-markets-act.ec.europa.eu/document/download/904debdf-2eb3-469a-8bbc-e62e5e356fb1_en?filename=Article%2011%20DMA%20-%20Compliance%20Report%20Template%20Form.pdf> accessed 15 July 2024.

[34] The concept corresponds to item 2 of Table 1.

[35] DMA (n 1), Recital 71.

[36] Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) [2004] OJ L24/1, Article 22. The possibility to trigger the Dutch clause for the purposes of analysing 'killer acquisitions' was opened up by the European Commission, 'Communication from the Commission – Guidance on the application of the referral mechanism set out in Article 22 of the Merger Regulation to certain categories of cases' 2021/C 113/01. DMA (n 1), Article 14 establishes the obligation compelling gatekeepers to notify all of the transactions they realise in the market. In principle, the NCAs may exercise their discretion to make the referral, as set out by Katalin J Cseres, 'Re-Prioritising Referrals under Article 22 EUMR: Consequences for Third Parties and Mutual Trust between Competition Authorities' (2023) 14(7) Journal of European Competition Law & Practice 416.

authority (or, directly the NCA) may want to reserve its right to analyse the acquisition by itself once it has been completed in the market under the lens of Article 102 TFEU.[37]

Furthermore, NCAs hold six main powers to substantially cooperate with the EC in different forms.[38] If one reads those provisions in isolation, each of the powers recognised upon the NCAs appears to be disconnected from the general duty of coordination and are very limited in scope in terms of the potential margin of discretion the NCAs may exert in monitoring the DMA's enforcement. However, if analysed in conjunction, a completely different picture appears before our eyes.

Even though it is true that the EC is the DMA's sole enforcer, NCAs may gain knowledge of a violation of the regulation via different means. First, in the terms presented under Article 27, any third party of the core platform services (CPSs) listed in the designation decisions issued by the EC may inform them about any gatekeeper practice or behaviour falling within the DMA's scope.[39] Once it has received the information, the NCA has full discretion as regards the appropriate measures that should be followed. The NCA is not automatically compelled by the information to follow up on it. On the contrary, if it finds there may be an issue of DMA non-compliance, then it shall transfer that information to the EC.

Second, the NCA can, on its own initiative, conduct investigations into possible non-compliance by the gatekeepers on its territory of the DMA's mandates, as set out under Article 38(7) DMA. It is not completely apparent that this monitoring power can be directly tied to the discretion granted upon the NCA via Article 27 DMA nor what cooperation mechanisms must apply to their interplay. Due to this reason, Figure 1 below demonstrates the different (and alternative) scenarios that could arise once an NCA gains sufficient knowledge about a DMA violation:

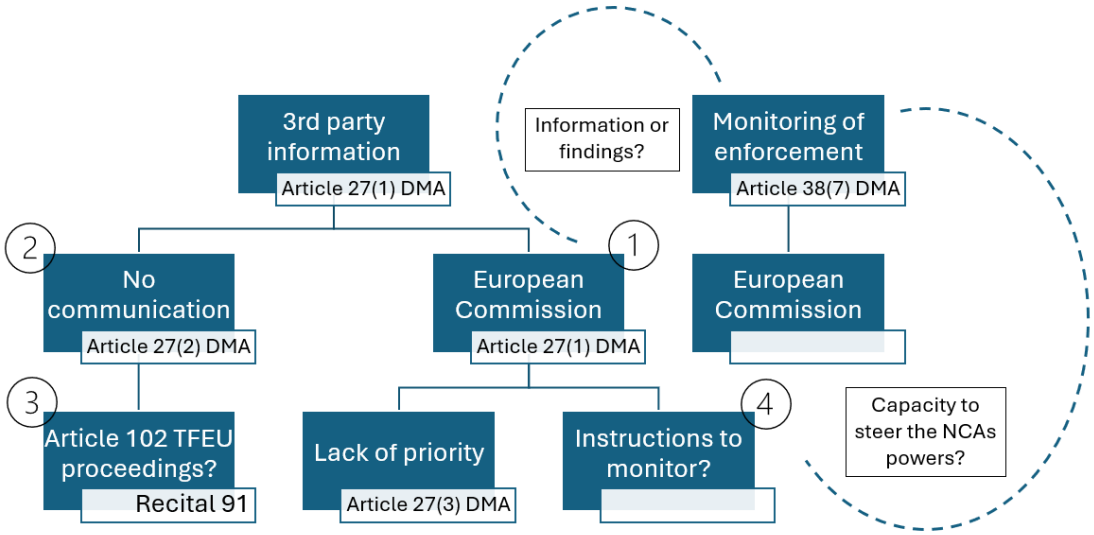
---

[37] The Court of Justice explicitly recognised the NCA intervention in this same vein in Case C-449/21 *Towercast v Autorité de la concurrence and Ministère de l'Économie* (Second Chamber of the Court of Justice of the European Union, 16 March 2023), para 53.

[38] Those provisions are listed under item 4 of Table 1 and discussed in the following lines.

[39] At the moment of writing, the European Commission has designated seven gatekeepers for twenty-four core platform services, see Directorate-General for Competition and Directorate-General for Communications Networks, Content and Technology, 'Commission designates six gatekeepers under the Digital Markets Act' (*Digital Markets Act (DMA)*, 6 September 2023) <https://digital-markets-act.ec.europa.eu/commission-designates-six-gatekeepers-under-digital-markets-act-2023-09-06_en> accessed 15 July 2024; Directorate-General for Competition and Directorate-General for Communications Networks, Content and Technology, 'Commission designates Apple's iPadOS under the Digital Markets Act' (*Digital Markets Act (DMA)*, 29 April 2024) <https://digital-markets-act.ec.europa.eu/commission-designates-apples-ipados-under-digital-markets-act-2024-04-29_en> accessed 15 July 2024; and Directorate-General for Competition and Directorate-General for Communications Networks, Content and Technology, 'Commission designates Booking as a gatekeeper and opens a market investigation into X' (*Digital Markets Act (DMA)*, 13 May 2024) <https://digital-markets-act.ec.europa.eu/commission-designates-booking-gatekeeper-and-opens-market-investigation-x-2024-05-13_en> accessed 15 July 2024.

Figure 1. Scenarios arising from third-party information received by the NCA.



Upon receiving a complaint or information from a third party, the NCA may react in one of two ways. Either the complaint must be followed because it may well be relevant to the EC's enforcement of the DMA's provisions or not. Scenarios 1 and 4 apply to the former, whereas Scenarios 2 and 3 of Figure 1 correspond to the latter.

Scenario 1 is quite straightforward: the NCA transmits the information to the European Commission of a potential DMA violation. From the letter of the law, however, it is quite unclear whether the NCA loses all privileges to conduct further investigations once it transmits that information to the European Commission. In case the transmission of information does not preclude further NCA intervention, it may decide to trigger its own investigatory powers at the national level, in those cases where the infringements are as wide as their national territory. In turn, presumably, the information it receives may be EU-wide, so exercising its investigatory powers in the sense of Article 38(7) DMA would make less sense. It may well be the case that although the NCA may consider the infringement's investigation should be a part of the EC's top priorities, the DMA's sole enforcer may not agree. In that case, the EC is not directly compelled to act in any given direction upon the information it receives from the NCA.

Alternatively, in those cases where the EC does consider the violation's investigation should be pursued upon receiving the information from the NCA, the DMA's enforcer may opt into exercising its prerogatives under Scenario 4 to Figure 1. Although the infringement may touch upon its priorities, the EC cannot dedicate its resources to every single case presented to it. Therefore, the EC may direct the NCA to exercise its powers under Article 38(7) DMA as a mandate, despite the case being EU-wide. The letter of the law, however, seems to hinder the capacity of this iteration, since the provision reads that the NCA may conduct these investigations on its own initiative and, thus, there is a presumption these types of behaviours should be scrutinised by the NCAs' own willingness to pursue a particular proceeding. Whilst the NCA is compelled to decide under Article 27 DMA whether it communicates the information to the European

Commission, Article 38(7) DMA establishes the option of conducting an investigation thereof.

Scenario 2 demonstrates the other side of the coin. The NCA, within its margin of discretion conferred by Article 27(2) DMA, may decide not to communicate the information to the European Commission. For instance, it may simply consider the information to be irrelevant to the DMA. In a similar vein to Scenario 4, the NCA is not automatically hampered from exercising its monitoring powers under Article 38(7) DMA to determine whether it should communicate the information to the European Commission in accordance with Article 27 DMA.

By doing this, the NCA may first receive the information via the means of Article 27, re-direct its investigatory capacity under its monitoring capacity and then, decide whether it communicates to the European Commission. Under Scenario 3, the NCA may reach the conclusion the information bears no weight regarding the DMA and only touches upon a potential violation of Article 102 TFEU, which it can pursue without any further impediment from the EC. By this means, NCAs may undermine the strict limitations imposed on Article 38(7) DMA. The provision reads the NCA must transmit its findings directly to the EC so that it may initiate non-compliance proceedings thereof. Thus, the conjunct interpretation of both provisions on the side of the NCAs could, potentially, constitute a clear means for them to escape their subordination from the EC as the regulation's sole enforcer.

Furthermore, Articles 22, 23 and 38(6) DMA reflect the supporting role of NCAs with regard to the European Commission's investigatory powers within the Member States. For instance, it may seek assistance from NCA officials when conducting interviews for the purpose of information collection when they take place within their Member State.[40] The EC may make a similar request for assistance when conducting inspections at the Member State level or when conducting any of its market investigations pursuant to the DMA.[41]

2. A broader notion: national authorities

In taking the 'competent' out of the concept of national competent authorities, more authorities are comprised under the term. National authorities are not necessarily and exclusively NCAs.[42] In fact, Recital 92 DMA demonstrates this point. The harmonised application and enforcement of the regulation corresponds to public and private enforcement. As with any other regulation adopted by the European Union, individuals may bring actions before the national courts against gatekeepers on the basis of violations of those same rules due to the principle of horizontal direct effect. Therefore, the DMA's effective enforcement must be equally harmonised regarding this tenet of enforcement.

[40] DMA (n 1), Article 22(2).
[41] *Ibid.*, Articles 23(3).
[42] The notion corresponds to item 1 of Table 1.

By this token, Recital 92 explicitly remarks national courts are national authorities, although their inclusion is only exemplary.

Therefore, a greater trove of different public bodies may come under the notion. This is the impression one gets when turning to Recital 86. The interpretative provisions remark on the efforts that the 'relevant' national authorities should make in coordinating their enforcement efforts to ensure that the principles of proportionality and *ne bis in idem* are respected.[43] Going back to the Court of Justice's recent statements recognising the obligation of national regulatory authorities to coordinate with NCAs in fining the same facts over targets of sectoral regulation, one can even go as far as saying that national regulatory authorities may also be comprised under the concept of national authorities in the DMA's sense.[44] Recital 90 compels national authorities to cooperate with the Commission in the actions necessary for the enforcement of the available legal instruments applied to gatekeepers, whilst respecting the principle of sincere cooperation under Article 4 TEU.[45] Despite the DMA applies without prejudice to the GDPR, national supervisory authorities in charge of applying data protection rules are called to coordinate their actions relating to gatekeepers, especially as far as their interpretation touches upon the huge trove of data-related obligations engrained within the DMA.[46] The regulation

---

[43] The interpretative provision is, then, mirrored in DMA (n 1), Article 37(2).

[44] In line with the narrow interpretation of the Court of Justice on the principle of double jeopardy, see Case C-117/20 *bpost SA v Autorité belge de la concurrence* (Grand Chamber of the Court of Justice of the European Union, 22 March 2022), paras 51, 55 and 58. On the interpretation of the principle in the context of the DMA, see Bernadette Zelger and Ina Kapusta, 'The Principle of ne bis in idem in the Digital Economy EU Competition Law vs. the DMA?' (*EU Law Live's Competition Corner,* 15 April 2024) <https://eulawlive.com/competition-corner/the-principle-of-ne-bis-in-idem-in-the-digital-economy-eu-competition-law-vs-the-dma-by-bernadette-zelger-and-ina-kapusta/> accessed 25 June 2024.

[45] Consolidated version of the Treaty on European Union [2016] OJ C202/15. The Court of Justice recalled the application of the principle of sincere cooperation as enshrined under Article 4 TEU in the context of EU competition law recently in its interaction with the application of the GDPR, see Case C-252/21 *Meta Platforms and Others (Conditions générales d'utilisation d'un réseau social)* (Grand Chamber of the Court of Justice of the European Union, 4 July 2023), paras 53, 54 and 61-63.

[46] The 'without prejudice' clause is contained under DMA (n 1), Recital 12 and for a critique, see Konstantina Bania, 'Fitting the Digital Markets Act in the existing legal framework: The myth of the "without prejudice" clause' (2022) 19(1) European Competition Journal 116. The overlap is more evident in light of Meta's processing of personal data and how it can be interpreted differently from the perspective of the DMA and the GDPR. On the former, the European Commission has already triggered a non-compliance procedure for Meta's implementation of the obligation under Article 5(2) DMA, see Directorate-General for Competition and Directorate-General for Communications Networks, Content and Technology, 'Commission opens non-compliance investigations against Alphabet, Apple and Meta under the Digital Markets Act' (*Digital Markets Act (DMA)*, 25 March 2024) <https://digital-markets-act.ec.europa.eu/commission-opens-non-compliance-investigations-against-alphabet-apple-and-meta-under-digital-markets-2024-03-25_en> accessed 25 June 2024. On the side of the latter, the European Data Protection Board recently issued an opinion on Meta's pay-or-consent model, see European Data Protection Board, 'Opinion 08/2024 on Valid Consent in the Context of Consent or Pay Models Implemented by Large Online Platforms' <https://www.edpb.europa.eu/system/files/2024-04/edpb_opinion_202408_consentorpay_en.pdf> accessed 25 June 2024. For two distinct proposals on how to reconcile both legal interests, see Marco Botta and Danielle Da Costa Leite Borges, 'User consent at the interface of the DMA and the GDPR: A privacy-setting solution to ensure compliance with Art. 5(2) DMA' (2023) Centre for a Digital Society RSC 2023/68 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4650373> accessed 25 June 2024; and Alba Ribera Martínez, 'The Circularity of Consent in the DMA: A Close Look into the Prejudiced Substance of Articles 5(2) and 6(10)' (2023) 29/2022 Rivista Concorrenza e Mercato 191.

outright provides such fora of discussion via the High-Level Group of the DMA as well as the capacity of concretising those cooperation mechanisms via an implementing act.[47] Via the High-Level Group, the DMA does not only open the door for intense interaction with data protection supervisory authorities but with national authorities composing European bodies and networks, such as the Body of the European Regulators for Electronic Communications, the Consumer Protection Cooperation Network or the European Regulatory Group of Audiovisual Media Regulators.[48]

Against this background, the DMA references two types of national authorities. On one side, those national authorities in charge of ensuring coordination for the purposes of private enforcement and coherence with other fields of law. This first category includes national courts, national regulatory authorities as well as consumer protection and data protection authorities. They derive their legitimacy for intervening in the DMA's enforcement from their presence at the national level. On the other side, those national authorities composing European bodies and networks. As opposed to the first category, this second group of authorities gathers national enforcers at a supra-national level via their representation in specialised networks.

3. National competent authorities and competent authorities of the Member States

Deviating from the scope of NCAs, other public bodies aside from data protection supervisory authorities or national courts may also assist the European Commission in its enforcement. The European Commission can monitor the obligations and measures imposed upon gatekeepers by seeking advice from officials from the national competent authorities of the Member States.[49] Since cooperation and coordination for the purposes of ensuring complementarity already takes place via the mechanisms under Articles 37 and 38 DMA, the concept of national competent authorities of the Member States does not include NCAs, at least exclusively. Instead, a wide array of experts may be appointed via this means, such as experts from data or consumer protection authorities.[50]

Stemming from the fact that this provision is concretised via Recital 85 where these examples of public bodies are termed as 'competent' authorities of the Member States, one can establish both notions basically refer to the same group of authorities. In any case, however, they cannot be held to be equated with the national authorities mentioned above, since the limitations imposed upon them will rarely touch upon the DMA's private enforcement. Thus, national courts are automatically excluded from the scope. For

[47] DMA (n 1), Article 40. In fact, the High-Level Group has already discussed this interplay and constituted a Data-related obligations subgroup within the High-Level Group, see European Commission, '2nd Meeting of the High-Level Group for the Digital Markets Act' CNECT.F.1/GC and COMP.J.1./VR. The Commission's capacity to issue implementing acts is recognised in DMA (n 1), Recital 99.
[48] DMA (n 1), Articles 40(2)(a)-(e) and 40(6).
[49] *Ibid.*, Article 26.
[50] The examples are extracted from *ibid.*, Recital 85.

instance, the competent authorities of the Member States cannot disclose the information they exchanged with the European Commission in the form of confidential information and internal documents.[51]

4. A broad national intervention in the DMA's enforcement

From the discussion above, therefore, one can simplify the exercise into Table 2, by attributing each of the six different concepts outlined in Table 1 to the public bodies they comprise at the national level:

Table 2. Distribution of concepts and public bodies to designate national authorities under the DMA.

Concept	**Public bodies of the Member States included**
National competent authorities/National competent authority of the Member States enforcing the rules referred to in Article 1(6).	NCAs.
National authorities.	NCAs, other authorities (such as consumer protection, national regulatory authorities, or data protection authorities) as well as national courts.
National competent authorities of the Member States/Competent authorities of the Member States.	NCAs and other authorities (such as consumer or data protection authorities) but excluding national courts.
National authorities composing European bodies and networks.	Body of the European Regulators for Electronic Communications, European Data Protection Supervisor, European Data Protection Board, European Competition Network, Consumer Protection Cooperation Network and European Regulatory Group of Audiovisual Media Regulators.

National intervention in the DMA's enforcement is, thus, not reduced to the actions of the NCAs but is much broader in scope, as shown in Table 2 above. As apparent as the EC's prominence in enforcing the regulation appears at face value, the thorough assessment of the concepts outlined in Table 1 demonstrates that NCAs and other public bodies established at the national level bear some weight in terms of decision-making in the DMA's enforcement. The regulation demonstrates its interdisciplinarity in this respect by substantially expanding the scope of the national authorities intervening in its enforcement to, for instance, data and consumer protection authorities.

Therefore, the DMA's provisions point to a first sense of decentralisation. The European Commission is the regulation's sole enforcer, but that approach is not without its caveats. NCAs and other public bodies hold a relevant role in securing the DMA's enforcement, especially in light of resource constraints and enforcement limitations on the EC's side.

[51] DMA (n 1), Article 34(4).

5. A separate trove of powers of enforcement for the Member States

On top of this complex network of authorities intervening in the regulation's enforcement, the executive branches of the Member States are also called to play a major role in securing and futureproofing the DMA. Table 3 illustrates the different provisions where they may intervene:

Table 3. Potential intervention of the Member States in the DMA's enforcement.

Type of manifestation of Member State intervention	**Vested powers with provisions**
1. Member States.	- Fragmentation (Recitals 9 and 107 and Articles 1(5) DMA). - Cooperation in transaction information for mergers (Recital 71 and Article 14(2) DMA). - Legislative development for national enforcement (Recital 91 DMA).[52] - Consider their experience for annual reporting of DMA (Recital 105 DMA).[53] - Close cooperation with the European Commission (Articles 1(7) and 37(1) DMA). - Limitation period for enforcement of penalties (Article 33(3)(b) DMA). - Forwarding of written judgments (Article 39(2) DMA). - Submission of evidence of a request for a market investigation (Article 41(4) DMA).
2. At least three Member States.	- Focus on quantitative and qualitative thresholds (Recitals 17, 21 and 23 and Articles 3(2)(a) DMA). - Market investigations to update obligations of gatekeepers (Recital 69 DMA).[54]
3. Member States' experts/experts designated by each Member State.	- Preparation of delegated acts (Recital 98 DMA and Article 49(4) DMA).[55]
4. Member States and experts from competition authorities with Member States.	- Representation in advisory committee (Recital 101 DMA).[56]
5. Three or more Member States.	- Market intervention for gatekeeper designation (Article 41(1) DMA). - Market investigation to add CPS or one or more practices (Article 41(3) DMA).

[52] The recital corresponds to the powers under DMA (n 1), Article 38(7) and reads "*it should be possible for Member States to empower their national competent authorities enforcing competition rules to conduct investigations into possible non-compliance by gatekeepers with certain obligations under this Regulation*".
[53] The recital corresponds with the annual report the European Commission must issue under DMA (n 1), Article 35.
[54] Recital 69 DMA establishes at least three Member States must request the market investigation, whereas Article 41(1) DMA (listed under item 5 of Table 3) establishes that three or more Member States may intervene in this sense.
[55] Although both provisions related to the exercise of the European Commission's delegation, they reference different concepts, including both as items 3 to Table 3.
[56] The interpretative provision corresponds to Article 50, which does not include a reference to the Member States.

6. One or more Member States.	- Market investigation for systematic infringements (Article 41(2) DMA).

The six manifestations of the Member States stand in stark contrast to the references to national intervention in enforcement in the DMA. Most of the instances where Member States may intervene in the regulation's interpretation provide the means for its flexibilisation. For instance, the regulation provides ample leeway for the legislator to flexibilise its obligations and its list of CPSs. One of the mechanisms the DMA establishes to do that is to provide the Member States with the possibility to open market investigations to enquire whether the economic reality corresponds with their intuition that, for example, a certain CPS should be included under the list of Article 2.[57]

In this context, there is a potential risk of divergence between the policy-oriented choices NCAs make as a consequence of their independence with respect to their governments and the actual priorities those Member States ascribe to digital policy. The DMA's design accommodates the intervention and cooperation with NCAs and other public bodies within the Member States as well as with Member States directly, through their politically and democratically backed ministries.

Against this framework, national intervention is not embodied in one form under the DMA. Both the executive branches of the Member States as well as the NCAs may intervene to secure the regulation's enforcement. The identification of the public bodies called to intervene performed throughout Section II is, thus, key to responding to the question of transposition and to assessing the legislative developments the Member States have been proposing and adopting since the DMA entered into force.[58]

[57] NCAs have already voiced their concern in this sense by considering generative AI as a potential 'new' CPS to be targeted under Article 2 DMA via the High-Level Group but Member State intervention is key to crystallise that wish into reality, see High-Level Group for the Digital Markets Act, 'Statement on Artificial Intelligence' (*Register of Commission Expert Groups and Other Similar Entities*, 22 May 2024) <https://ec.europa.eu/transparency/expert-groups-register/core/api/front/document/105425/download> accessed 15 July 2024.

[58] The DMA entered into force on the 2nd of May 2023, despite its obligations started to apply for most gatekeepers starting on March 2024.

III. The DMA's decentralisation via national legislative developments: legal but not factual

The DMA is a regulation. As with any other regulation, it is directly applicable in all the Member States, in the terms presented by Article 288 TFEU. The regulation only addresses the need for transposition as far as the whistleblower tools and the potential application of collective action mechanisms are concerned.[59] It is not particularly uncommon for the EU legislator to adopt regulations needing substantive fleshing out by national legislation to become fully effective. As a matter of fact, the European legislature's discretion in choosing between a regulation or a directive is quite ambiguous, since some areas of law dominate in the former category vis-à-vis the latter and vice versa.[60] From the analysis performed throughout Section II, it does seem obvious that the Member States may have to clarify at the national level what authorities will do what in terms of the DMA's execution.

The DMA's reliance on Article 114 TFEU as a legal basis is not equally paired with the explicit identification of whether the regulation provides any substantive scope for different national rules with respect to the procedural aspects of its implementation.[61] There is legislative ambiguity in terms of whether national rules within the DMA's material scope are, indeed, permitted.[62] In line with Articles 1(5) and 1(6) DMA, the Member States cannot regulate on matters relating to contestability and fairness at the national level since the DMA mandates full harmonisation in this respect.[63] Notwithstanding, it is not entirely clear the Member States cannot establish the procedural pathways to their implementation of the DMA.

As a response, most of the Member States (twenty-one out of the twenty-seven) have chosen to adopt legislative amendments to complement the DMA via their national legal regimes, as if the procedural aspect of the regulation would be subject to minimum harmonisation.

Stemming from the regulation's initial proposal in December 2020 by the European Commission, the DMA was devised as a centralised system of enforcement where the Member States and the national authorities highlighted throughout Section II did play a

---

[59] The need for transposition stems from the fact that both amendments relate to directives, which are not directly applicable in the Member States.

[60] Ton Van Den Brink, 'The Impact of EU Legislation on National Legal Systems: Towards a New Approach to EU – Member State Relations' (2017) 19 Cambridge Yearbook of European Legal Studies 218.

[61] Marcus Klamert, 'What We Talk About When We Talk About Harmonisation' (2015) 17 Cambridge Yearbook of European Legal Studies 362.

[62] Stephen Weatherhill, 'Critical Reflections on the Internal Market and its Future' in Sacha Garben and Inge Govaere (eds.), *The Internal Market 2.0* (Hart Publishing 2021) 261.

[63] On this point, see Julian Nowag, 'When the DMA's Ambitious Intentions Interact with the EU's Constitutional Set-Up: A Future Drama in Three Acts' (2024) 12 Journal of Antitrust Enforcement 304; Jörg Hoffmann, Liza Herrmann and Lukas Kestler, 'Gatekepeer's Potential Privilege – The Need to Limit DMA Centralization' (2024) 12 Journal of Antitrust Enforcement 126; and Jasper van den Boom, 'What Does the Digital Markets Act Harmonize? – Exploring Interactions Between the DMA and National Competition Laws' (2023) 19(1) European Competition Journal 72.

minimal role in enforcement. The European Parliament and Council, acting as co-legislators uprooted, on paper, the regulation's initial configuration of enforcement to a *quasi*-centralised system of enforcement where the Member States and national authorities held more powers to intervene in the DMA's enforcement actions. Once the DMA has been adopted and entered into force, this *quasi*-centralised system of enforcement is shifting again towards *de facto* decentralisation. For good reason. The lack of human and financial resources may make the European Commission's sole enforcement of the regulation as insufficient to meet the high standards of intervention expected from it. In turn, however, NCAs may overcompensate the perceived inactivity by the EC on some fronts.[64]

De facto decentralisation is, however, taking place through an indirect means, irrespective of the NCA's powers to enforce the DMA's provisions. The impact of decentralisation comes as a consequence of the three main tenets one can put forward when performing an in-depth analysis of the Member States' legislative developments.

Given that none of the regulatory instrument's provisions compel the Member States to transpose the powers into their legal regimes, the legislative developments adopted and proposed at the national level bear a heterogeneous nature. In other words, each of the Member States has chosen what powers it prefers to attribute its public bodies as if choosing from the range of provisions established by the DMA. The heterogeneity is problematic because *de facto* decentralisation does not necessarily entail the DMA's enforcement system has substantially changed. In fact, most of the powers the DMA attributes to NCAs come only as a consequence of the European Commission's prior intervention. For instance, NCAs may only intervene in supporting the European Commission's actions when it conducts interviews or dawn raids at their national territory. One could argue those powers need not necessarily stem from national legislation, since the NCAs are already bound by the principle of sincere cooperation under Article 4(3) TEU. There is, therefore, no duty imposed on the Member States to modify their national laws so they can correctly execute the DMA. Assuming the regulation provides for minimum harmonisation in its procedural ways, the Member States adopting these rules may adopt national rules insofar as they do not establish additional requirements to those initially enshrined in the regulatory framework.

Furthermore, the legislative developments are quite heterogeneous in terms of their content. In other words, most of them do not replicate the DMA's provisions nor directly expand on them. By this token, some of the legislative developments outright enlarge the NCA's capacity to enforce the DMA. At the same time, however, the legislative developments do away with the nuance the DMA explicitly provides for when referencing the types of public bodies which may intervene in enforcing the regulatory instrument, in the terms presented in the previous section. Most of the provisions and amendments engrained into the legislative developments reference the concept of national competent authorities of the Member States enforcing the rules referred to in Article 1(6) in isolation,

[64] Wagner-von Papp (n 12) 339.

to the exclusion of any further intervention. As opposed to the heterogeneous nature of the legislative developments in terms of the provisions they cover, this tenet of the DMA is particularly characterised by its uniformity, to the detriment of the complex network of authorities initially sketched out through the *quasi*-centralised system of enforcement.

The next three sub-sections illustrate these phenomena in turn to demonstrate how the Member States' legislative developments may operate to undermine (more than to support) the regulation's effective enforcement. By doing so, the paper enquires whether these few tenets respond to the wider question of what the impact of these legislative developments might be in the coming years.

1. The heterogeneous nature of the legislative developments

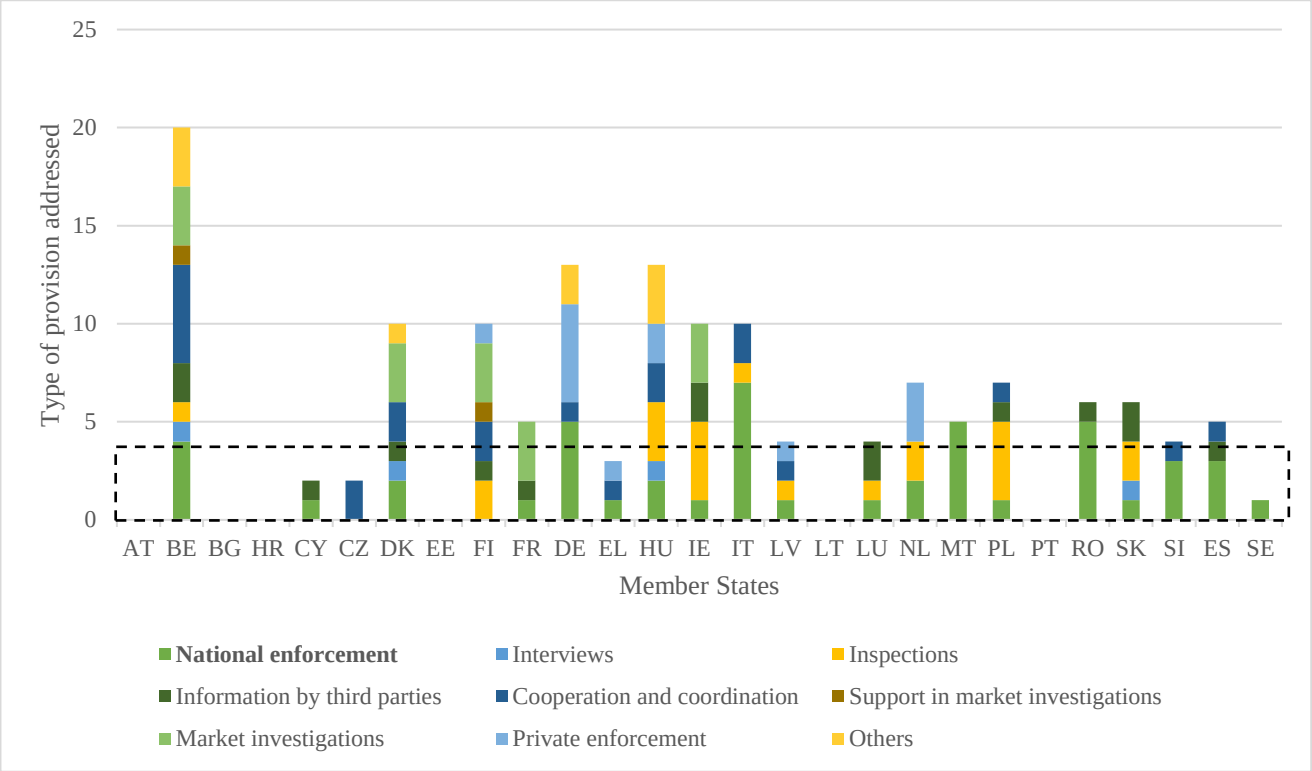
Aside from the DMA's direct applicability in the Member States, it is yet unclear whether the DMA's terms are sufficiently clear and precise to trigger the capacity of directly alleging violations before the national courts without taking recourse to a legislative development. That discussion corresponds to the interpretation of the principle of direct effect as set out in *Van Gend en Loss.*[65]

The principle of direct effect does not, however, address the question of whether the Member States must adopt a legislative development so their NCAs can exercise the powers the DMA vests upon them. At face value, the DMA explicitly recognises some kind of legislative movement to be required for the case of the NCAs monitoring the DMA at the national level under Article 38(7) DMA. The provision reads NCAs can only intervene "*where (they) have competence and investigative powers to do so under national law*".

One would, therefore, guess that most of the legislative developments proposed or adopted at the national level would attribute those powers to their NCAs in terms of this same provision. As shown in Figure 2, the attribution to the NCAs of these powers (in light green, at the bottom of the figure and circled) systematically applies to the legislative development. Notwithstanding, they are paired up with the fleshing out of completely different provisions which do not, in principle, require such a national amendment as per the DMA.

[65] Case 26-62 (n 15), page 12.

Figure 2. Distribution of provisions per each of the Member State's legislative developments.



Based on the twenty-one different legislative developments adopted and proposed at the Member State level, it is not completely apparent that every single one of them vests upon their NCAs sufficient powers in the terms presented under Article 38(7) DMA. The dotted rectangle at the bottom of the graph shows those instances where a direct reference to that power is made on each of the legislative developments (highlighted in dark green). Although most of them do include some type of granting of powers in this direction (nineteen out of the twenty-one Member States proposed some type or form of legislative development), they are quite heterogeneous in nature.

Few exceptions such as Cyprus, Romania, Spain, Greece or Italy adopt these legislative developments for the particular purpose of granting those powers to their NCAs in isolation from nearly any other provision.[66] This may mean one of two things regarding the need for regulatory intervention at the national level. Either the reference to Article 38(7) DMA must be explicit in the national law to allow the NCA to investigate non-compliance with the regulation's provisions or the Member States have adopted the legislative amendments out of precaution to ensure they can monitor the DMA as the national level.

[66] For the case of Spain, there seems to be a preference on triggering the NCA's capacity to coordinate and cooperate with the European Commission. Spain is the first Member State to have signed a Memorandum of Understanding to that effect, aside from its legislative amendment to its competition law regime, see Comisión Nacional de los Mercados y la Competencia, 'La CNMC y la Comisión Europea firman un acuerdo para la creación de un equipo de investigación conjunto para supervisor las grandes plataformas digitales' (*CNMC*, 6 June 2024) <https://www.cnmc.es/sites/default/files/editor_contenidos/Notas%20de%20prensa/2024/20240606_MoU_CE.pdf> accessed 25 June 2024.

When going back to the letter of Article 38(7) DMA, the regulation requires the NCA must have sufficient competence and investigative powers to trigger these types of enforcement actions 'under its national law'. It may well be the case the legislative development is not necessary in light of the national competition law regime. In fact, some of the Member States which have decided to not adopt any legislative development still believe they have sufficient powers to monitor the regulation's enforcement at the national level. For instance, even though Portugal has not adopted or proposed any amendment to this effect, it already set out in its priorities for 2023 its wish to cooperate with the European Commission in the DMA's context.[67]

By turning to the rest of the pieces of regulation adopted by the European Union within its digital strategy, the European Commission is the only ideally placed institution to make a clear determination on this point. If the Member States fail to confer their NCAs with sufficient enforcement powers, the European Commission can flag these situations by triggering an infringement procedure under Article 258 TFEU.[68] If the European Commission were to open infringement procedures against those Member States failing to grant the powers to NCAs under Article 38(7) DMA, then it would be quite clear the legislative developments are necessary without an exception. In their absence, any enforcement action moving in this direction would lack a sufficient legal basis. As a matter of fact, the European Commission has not shied away from triggering infringement proceedings against Member States for not granting sufficient enforcement powers to their national authorities, such as in the context of the DSA and the Data Governance Act.[69]

---

[67] In this regard, see Autoridade da Concorrência, 'Prioridades de política de concorrência para 2023', (*Autoridade da Concorrência*) <https://www.concorrencia.pt/pt/artigos/prioridades-2023-adc-reforca-capacidade-de-investigacao-no-contexto-da-economia-digital> accessed 25 June 2024.

[68] Laurence W. Gormley, '4 – Infringement Proceedings' in András Jakab and Dimitry Kochenov (eds), *The Enforcement of EU Law and Values: Ensuring Member States' Compliance* (OUP 2017), 65; and Kim Lane Scheppele, '5 – Enforcing the Basic Principles of EU Law through Systemic Infringement Actions' in Carlos Closa and Dimitry Kochenov (eds), *Reinforcing Rule of Law Oversight in the European Union* (CUP 2016), 105.

[69] The European Commission triggered infringement proceedings against Cyprus, Czechia, Estonia, Poland, Portugal and Slovakia for this reason under the DSA and against Belgium, Czechia, Germany, Estonia, Greece, France, Italy, Cyprus, Latvia, Luxembourg, Malta, Austria, Poland, Portugal, Romania, Slovenia, Slovakia and Sweden under the DGA, see European Commission, 'April infringement package: key decisions' (*European Commission*, April 24, 2024) <https://ec.europa.eu/commission/presscorner/detail/en/inf_24_1941> accessed 25 June 2024; and European Commission, 'Commission calls on 18 Member States to comply with the EU Data Governance Act' (*Shaping Europe's digital future*, May 23 2024) <https://digital-strategy.ec.europa.eu/en/news/commission-calls-18-member-states-comply-eu-data-governance-act> accessed 25 June 2024. In fact, Portugal and Bulgaria, which are two out of the six Member States that have not proposed a legislative development to the DMA, are constantly ranked within the higher positions of the infringement procedures the Commission triggers against them, see, for instance, European Commission, 'Report from the Commission – Monitoring the application of European Union law: 2022 Annual Report' COM(2023) 453 final; European Commission, 'Report from the Commission – Monitoring the application of European Union law: 2021 Annual Report' SWD(2022)194 final; and European Commission, 'Report from the Commission – Monitoring the application of European Union law: 2020 Annual Report' SWD(2021) 212 final.

Aside from Article 38(7) DMA, most of the regulatory intervention at the Member State level directly attributes enforcement and monitoring powers to the NCAs, regardless of an explicit transposition, such as those provisions under Articles 23 or 27 DMA. In any case, some of the legislative developments concretise them into the reality of the Member State's national law regimes.

On one side, Member States pave the way for their NCAs to coordinate their competition law efforts vis-à-vis the DMA within the ECN's structure. Eighteen out of the twenty-one legislative developments touch upon this subject. For instance, some of the amendments extend the scope of the confidentiality of the information exchange between the Member States to the DMA, such as in the Danish or Hungarian legislative developments.[70]

On the other side, four legislative developments flesh out the procedure NCAs must follow to request judicial authorisation to enter an undertaking's premises for the purposes of the DMA. In practical terms, however, the legislative developments of only three of the Member States are of particular importance for the EC to effectively count on their support, the Republic of Ireland, Luxembourg, and The Netherlands. Although the seven designated gatekeepers by the EC are American-based, they hold their subsidiaries in these Member States.[71] Both the Republic of Ireland and Luxembourg

[70] 2023/1 LSV 37 om supplerende bestemmelser til Europa-Parlamentets og Rådets forordning om digitale markeder, Chapter 2, Sections 6 and 7; and 2022. évi LV. törvény egyes igazságügyi tárgyú törvények módosításáról (Act on the amendment of certain judicial-related laws) (Hung), Section 55/A(1)(e).

[71] From the seven gatekeepers (Alphabet, Amazon, Apple, Booking.com, ByteDance, Meta and Microsoft), all have established an Irish subsidiary of their parent company for the handling of their EU operations, with the exception of Amazon, which is established in Luxembourg and Booking.com, with its establishment in The Netherlands, see *Alphabet* (Cases DMA.100011 – Alphabet – OIS Verticals, DMA.100002 - Alphabet - OIS App Stores, DMA. 100004 – Alphabet – Online search engines, DMA.100005 – Alphabet – Video sharing, DMA.100006 – Alphabet – Number-independent interpersonal communications services, DMA.100009 – Alphabet – Operating systems, DMA.100008 – Alphabet – Web browsers, DMA.100010 – Alphabet – Online advertising services) Commission Decision of 5.9.2023 designating Alphabet as a gatekeeper pursuant to Article 3 of Regulation (EU) 2022/1925 of the European Parliament and of the Council on contestable and fair markets in the digital sector, C(2023) 6101 final, paras 4-6; *Amazon* (Cases DMA.100018 Amazon - online intermediation services – marketplaces; DMA.100016 Amazon - online advertising services) Commission Decision of 5.9.2023 designating Amazon as a gatekeeper pursuant to Article 3 of Regulation (EU) 2022/1925 of the European Parliament and of the Council on contestable and fair markets in the digital sector, C(2023) 6104 final, para 3; *Apple* (Cases DMA.100013 Apple – online intermediation services – app stores, DMA.100025 Apple - operating systems and DMA.100027 Apple – web browsers) Commission Decision of 5.9.2023 designating Apple as a gatekeeper pursuant to Article 3 of Regulation (EU) 2022/1925 of the European Parliament and of the Council on contestable and fair markets in the digital sector, C(2023) 6100 final, para 4; *ByteDance* (Case DMA.100040 ByteDance – Online social networking services) Commission Decision of 5.9.2023 designating ByteDance as a gatekeeper pursuant to Article 3 of Regulation (EU) 2022/1925 of the European Parliament and of the Council on contestable and fair markets in the digital sector, C(2023) 6102 final, para 3; *Meta* (Cases DMA.100020 Meta - online social networking services DMA.100024 Meta – number-independent interpersonal communications services DMA.100035 Meta - online advertising services DMA.100044 Meta – online intermediation services – marketplace) Commission Decision of 5.9.2023 designating Meta as a gatekeeper pursuant to Article 3 of Regulation (EU) 2022/1925 of the European Parliament and of the Council on contestable and fair markets in the digital sector, C(2023) 6105 final, para 3; *Microsoft* (Cases DMA.100017 Microsoft - online social networking services; DMA.100023 Microsoft - number-independent interpersonal communications services; DMA.100026 Microsoft - operating systems) Commission Decision of 5.9.2023 designating Microsoft as a gatekeeper pursuant to Article 3 of

have regulated the subject and their legislative developments have entered into force at the national level.[72] The Netherlands has not passed any legislative development relating to the granting of powers to its NCA.[73] Therefore, it may well be the case that in the absence of the legislative development, the Dutch competition authority will not be able to assist the EC upon its request to conduct an inspection on Booking.com's premises, regardless of the fact that the EC can *de facto* conduct those inspections by itself. In case the undertaking opposes the inspection, the Dutch NCA will not have a legal basis to sustain its request for a judicial authorisation to conduct such a dawn raid.

2. The deviations arising from the terms of the DMA to the legislative developments

The distribution of the different legislative developments evidences the sense of heterogeneity across the Member States. Some of the Member States, such as Belgium, Germany and Ireland, have taken a preference to cover as wide a scope of action as possible, whereas others, such as Cyprus, Greece and Sweden have decided to interfere as little as possible with the EC's enforcement action. Three alternative scenarios unravel as a consequence of the configuration of these legislative developments.

First, the NCAs from these Member States may well be *ex officio* attributed sufficient competence to exert those powers conferred by the DMA due to the principle of direct applicability. Every single DMA-derived power would, therefore, be directly attributable to the NCA. Under this scenario, the legislative developments would not have much weight in attributing NCAs with the powers included under the regulation. Second, the NCAs will only have the capacity to exert those powers at the national level which the Member States have explicitly provided for under their legislative developments. Therefore, depending on the Member State, the NCAs will have a wider or narrower mandate to abide by, depending on the scope of their legislative development. This scenario relies on the premise that each and every of the provisions attributing some sort of power to a national authority under the DMA must be complemented by a legislative amendment to become effective and enforceable. Third, the NCAs can exercise all the

---

Regulation (EU) 2022/125 of the European Parliament and of the Council on contestable and fair markets in the digital sector, C(2023) 6106 final, para 3; and Securities and Exchange Commission, '*Booking Holdings Inc. - Form 10-K*' (*SEC*, 31 December, 2023) <https://www.sec.gov/ix?doc=/Archives/edgar/data/1075531/000107553124000014/bkng-20231231.htm> accessed 25 June 2024.

[72] S.I. No. 117 of 2024 - European Union (Contestable and Fair Markets in the Digital Sector) Regulations 2024 (Ir.), https://www.irishstatutebook.ie/eli/2024/si/117/made/en/print, §6 and 7 provide for the assistance to the EC officials of authorised officers or members of the police (Garda Síochána) to conduct an inspection on its territory, as well as to use reasonable force when necessary. On this same point, the amendment also establishes the possibility of the officials to ask for a warrant to a judge of the corresponding District Court. In parallel, in *Loi du 30 novembre 2022 relative à la concurrence*, April 2, 2024, https://legilux.public.lu/eli/etat/leg/loi/2022/11/30/a588/consolide/20240402, the NCA is generally authorised to support the EC's conducting of those dawn raids.

[73] At the moment of writing, The Netherlands proposed a first draft of the changes it wishes to implement to accommodate its national legal regime to the DMA's provisions, but the legislative process has not advanced any further.

powers the DMA confers upon them due to the principle of direct applicability, except for those provisions where the EU legislator unequivocally points out a legislative development is necessary. Under this last scenario, the enforcement of the DMA's provisions at the national level under the terms of Article 38(7) DMA will only take place in the presence of a legislative development. In its absence, however, NCAs would still hold sufficient powers to enforce the rest of the provisions, whose enforceability does not depend on the presence of a national development.

To determine what scenario is best aligned with the DMA's current, it is, therefore, key to verify whether there are potential risks arising from any one of them. The third scenario could cause the highest risk of undermining the DMA's effective enforcement since it would create great friction not only with the regulation's direct applicability but also with the fact that the EC's role as the regulation's sole enforcer would vary across the Member States. Stemming from their heterogeneity, some of the 'enlarged' NCAs would concur in a decentralisation-prone configuration of enforcement, whereas others would co-exist with the EC as their subservient counterparts at the national level.

To this effect, the paper identifies the lack of correlation between some of the Member States that have intervened more heavily through their legislative amendments and the extent these amendments deviate from the DMA's terms in Figure 3 below:

Figure 3. Deviations of the national legislative developments vis-à-vis the DMA's terms.

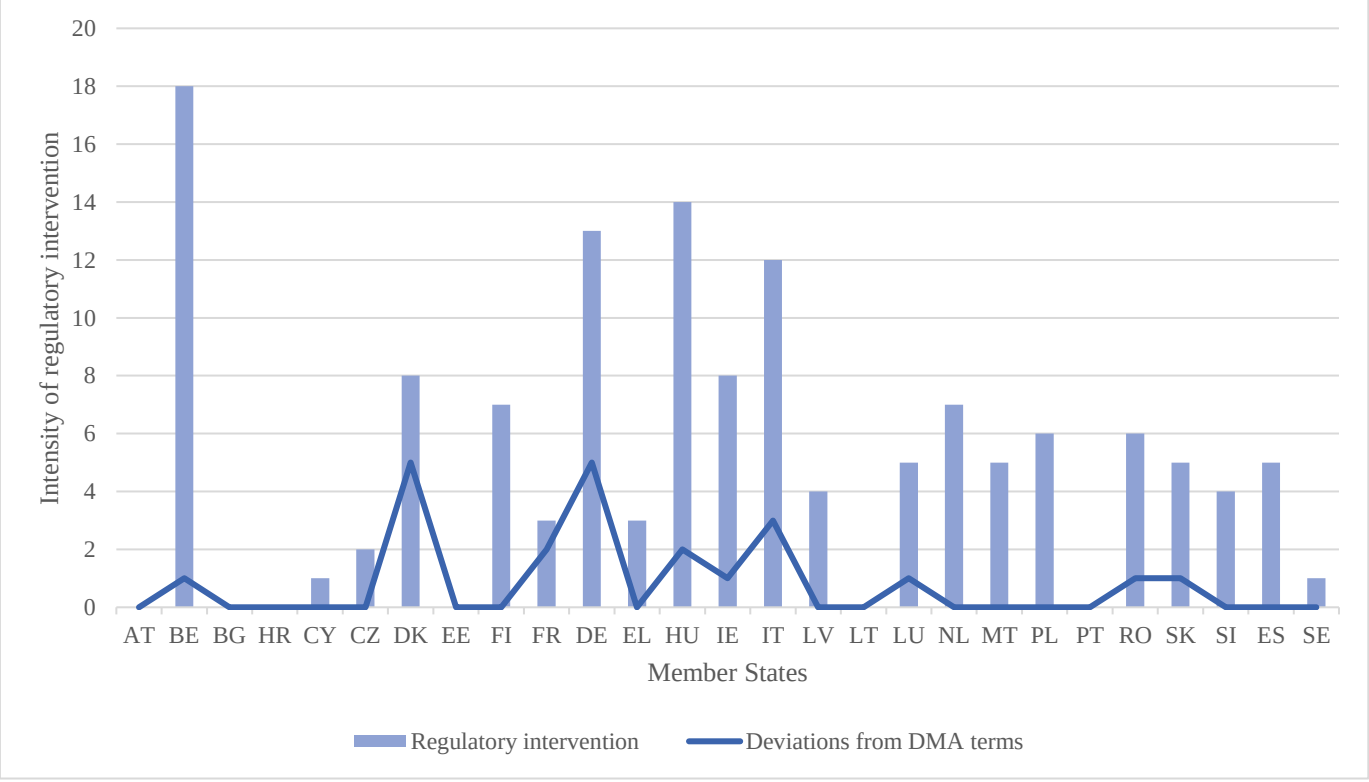


Figure 3 traces the deviations from the DMA's terms by contrasting each of the national provisions vis-à-vis their counterparts under the regulatory instrument.[74] From the analysis, four types of Member States can be distinguished depending on the degree of their regulatory intervention. First, those Member States which have not proposed any form of regulatory intervention, such as Austria, Bulgaria, Croatia, Estonia, Lithuania and Portugal. The other three types of Member States can be distributed according to their low-, medium- and high-tier intensity of regulatory intervention. The most active Member States are Belgium, Germany, Hungary and Italy, followed by medium-tier Denmark, Finland, Ireland and The Netherlands. Finally, the other thirteen Member States have introduced the least provisions (four or less) into their legislative developments.

Classifying these Member States into these four groups is not entirely useful. The three groups which have intervened in some way, or another suffer from the same problem. To some extent, the Member States of the different categories deviate from the DMA's terms, even though the most intense deviation takes place regarding the Member States lying within the top bracket of regulatory intervention, namely Belgium, Germany, Hungary and Italy.[75] Despite this general trend, Denmark, Luxembourg and Romania also deviate from the regulation's terms regardless of the intensity on regulatory intervention. In appearance, therefore, there does not seem to be a clear correlation between both metrics.

Furthermore, each of the Member States incurs different types of deviations concerning distinct provisions. There is no sufficient evidence nor facts supporting the idea that some of the regulation's provisions are particularly prone to deviation. Notwithstanding, some of the provisions are the most problematic in their incorporation into national legislation, namely Articles 38(7) and 39 DMA.

By this token, four of the legislative developments go further than the limitations imposed by the terms presented in Article 38(7) DMA. The provision establishes that the NCAs may monitor the violation of the regulation's Articles 5, 6 and 7 by triggering investigations when those infringements touch upon their national territory. The NCAs, however, cannot go any further in terms of enforcement. For instance, they cannot impose any remedies nor adopt any determination to the effect. Once the NCA concludes the investigation, it must communicate its findings to the European Commission, so that it can decide whether to deploy any further action. The Danish, Italian, German and Romanian amendments hint at the idea that their NCAs will not only conduct those investigations but that they will produce their own conclusions on the investigation and refer those back to the European Commission (instead of their rough findings).[76] In a

[74] The contrast of both sets of rules is set out under the Annex to the paper, namely in Table 7.
[75] In fact, the four more pronounced peaks of regulatory intervention lie within the high tier of regulatory intervention.
[76] This is particularly evident in Gesetz zur Änderung des Gesetzes gegen Wettbewerbsbeschränkungen und anderer Gesetze v. 25.10.2023 BGBl. 2023 I Nr. 294 (herein, German legislative development), Section 32g since the legislative amendment directly remarks that it will report the 'results of the investigation' to the European Commission and that it may publish a report on the results prior to passing on that information to the DMA's sole enforcer. In the Danish case, see 2023/1 LSV 37 om supplerende bestemmelser til Europa-Parlamentets og Rådets forordning om digitale markeder, Section 3 of Chapter II (PCS.4) (herein,

similar vein, the Italian amendment does not only grant its NCA with the capacity to monitor the enforcement of Articles 5, 6 and 7 DMA, but it directly attributes its data protection supervisory authority with monitoring powers to investigate the profiling of individuals as set out under Articles 5(2), 5(6), 5(10), 7(8), 8(1) and 13(5).[77] The Italian legislator, therefore, grants the data protection supervisory authority the power to supervise the application of those DMA mandates particularly concerned with the GDPR's interpretation. The Italian amendment expands the monitoring capacity of this public body regarding provisions which must be only analysed and interpreted by the European Commission, especially if one glances over at the 'without prejudice clause' operating between the interpretation of the DMA vis-à-vis the GDPR.[78] For instance, Article 5(2) DMA prohibits the processing of personal data across the gatekeeper's core platform services, except if end users manage to provide their consent in the terms presented under Articles 4(11) and 7 of the EU's data protection regulation.[79] In a similar vein, Article 7(8) enshrines the gatekeeper's capacity to collect and exchange the personal data of its end users with providers of messaging services making an interoperability request whilst complying, in parallel, with the GDPR's and e-Privacy Directive's obligations.

Furthermore, the legislative amendment's deviations also demonstrate a clear conflation of the authorities in charge of the application of each of the powers outlined in Section II. Even though the Member States (that is, the governments and executive bodies of those Member States, and not their NCAs) are in charge of requesting market investigations to supplement the DMA's provisions and CPSs, Belgium, Finland, Denmark, Ireland and Slovakia confer the powers to request market investigations to the EC under Article 41 DMA to their NCAs, despite it is for the Member States to make that determination. Belgium, Denmark and Slovakia go one step further by expanding those powers in two different directions. The Belgian legislative development establishes the possibility of a 'mediated' request for a market investigation to take place. That is, a public body in charge of the monitoring of a specific sector in Belgium may prompt the NCA to address a request for launching a market investigation to the European Commission.[80]

Danish legislative development) the deviation is more nuanced, since the legislative amendment points out that the NCA can, after it has completed the investigation, notify the European Commission its conclusions. However, those conclusions are approved before the agency notifies the EC by the Competition Council. Therefore, it is implied that a certain margin of discretion will be exercised by the NCA's Council, which is in charge of making decisions across its sanctioning proceedings.

[77] See Legge annuale per il mercato e la concorrenza 2022, n. 214, G.U. Dec. 31, 2023, n. 303 (It.), Article 18(8).

[78] The 'without prejudice' clause is enshrined in DMA (n 1), Recital 12. For a detailed analysis of the interaction, see Konstantina Bania, 'Fitting the Digital Markets Act in the Existing Legal Framework: The Myth of the 'Without Prejudice' Clause' (2022) 19(1) European Competition Journal 116.

[79] On this same point, the Italian competition authority has already taken issue with the means by which Google has complied with Article 5(2) DMA via its consumer protection mandate, see Autorità Garante della Concorrenza e del Mercato, 'PS12714 – Italian Competition Authority: Investigation Launched Against Google for Unfair Commercial Practices' (*Autorità Garante della Concorrenza e del Mercato*, 18 July 2024) <https://en.agcm.it/en/media/press-releases/2024/7/PS12714> accessed 20 July 2024.

[80] Loi exécutant le règlement (UE) 2022/1925 du Parlement européen et du Conseil du 14 septembre 2022 relatif aux marchés contestables et équitables dans le secteur numérique et modifiant les directives (UE)

Furthermore, the Slovakian amendment confers the NCA the capacity to carry out an investigation of its own to then refer those findings back to the European Commission so it can secure the outcome of the opening of a market investigation in the fashion of 'qualified request'.[81] In a similar vein to its interpretation of Article 38(7) DMA, Denmark also makes the potential request from the NCA to the EC of a market investigation contingent on the prior approval of the Competition Council to submit it.[82]

The rest of the provisions within the legislative amendments that deviate from the DMA's terms are quite idiosyncratic in nature. For instance, Luxembourg attributes the capacity of its NCA to carry out the verification of the information it receives via Article 27 DMA by replacing the EC's decision-making capacity.[83] Moreover, Germany vests more powers upon its NCA in private enforcement, for example, providing the NCA's President with the capacity to intervene via written statements to the court.[84]

Against this background, the heterogeneous legislative developments do not necessarily demonstrate any correlation with the Member State's willingness to expand their powers away from the DMA's terms. It is true that all Member States introducing the highest degree of regulatory intervention deviate from the DMA's terms in some way or another. The most salient of those deviations are Denmark and Germany. However, all deviations touch upon different provisions so that one cannot determine some of them are more prone to divergence than others. This aspect is both positive and negative. Not one provision has *de facto* caused regulatory divergence due to its ambiguous terms. Notwithstanding, a trove of provisions may undermine the DMA's uniform and effective enforcement across the Member States on different fronts.

3. National competition authorities and the decentralisation of the DMA's system of enforcement

The last tenet of the three-pronged analysis revolving around the national legislative developments ties in with the findings presented under Section II. The paper puts forward there are different concepts referring to public bodies, aside from NCAs, which may intervene in the DMA's enforcement at the national level. One would have expected, therefore, from the heterogeneous nature of the legislative developments in terms of the provisions they touch upon, that different types of national authorities would have been referenced and attributed powers by them, as initially intended by the DMA.

2019/1937 et (UE) 2020/1828 et modifiant diverses dispositions relatives à l'organisation et aux pouvoirs de l'Autorité belge de la concurrence [Act relating to Contestable and Fair Digital Markets], M.B., May 3, 2023, https://etaamb.openjustice.be/fr/-., Article 54.

[81] *Návrh zákona, ktorým sa mení a dopĺňa zákon č. 187/2021 Z. z. o ochrane hospodárskej súťaže a o zmene a doplnení niektorých zákonov v znení zákona č. 309/2023 Z. z*, November 29, 2023, https://rokovania.gov.sk/RVL/Material/29034/1, Article 1(1).

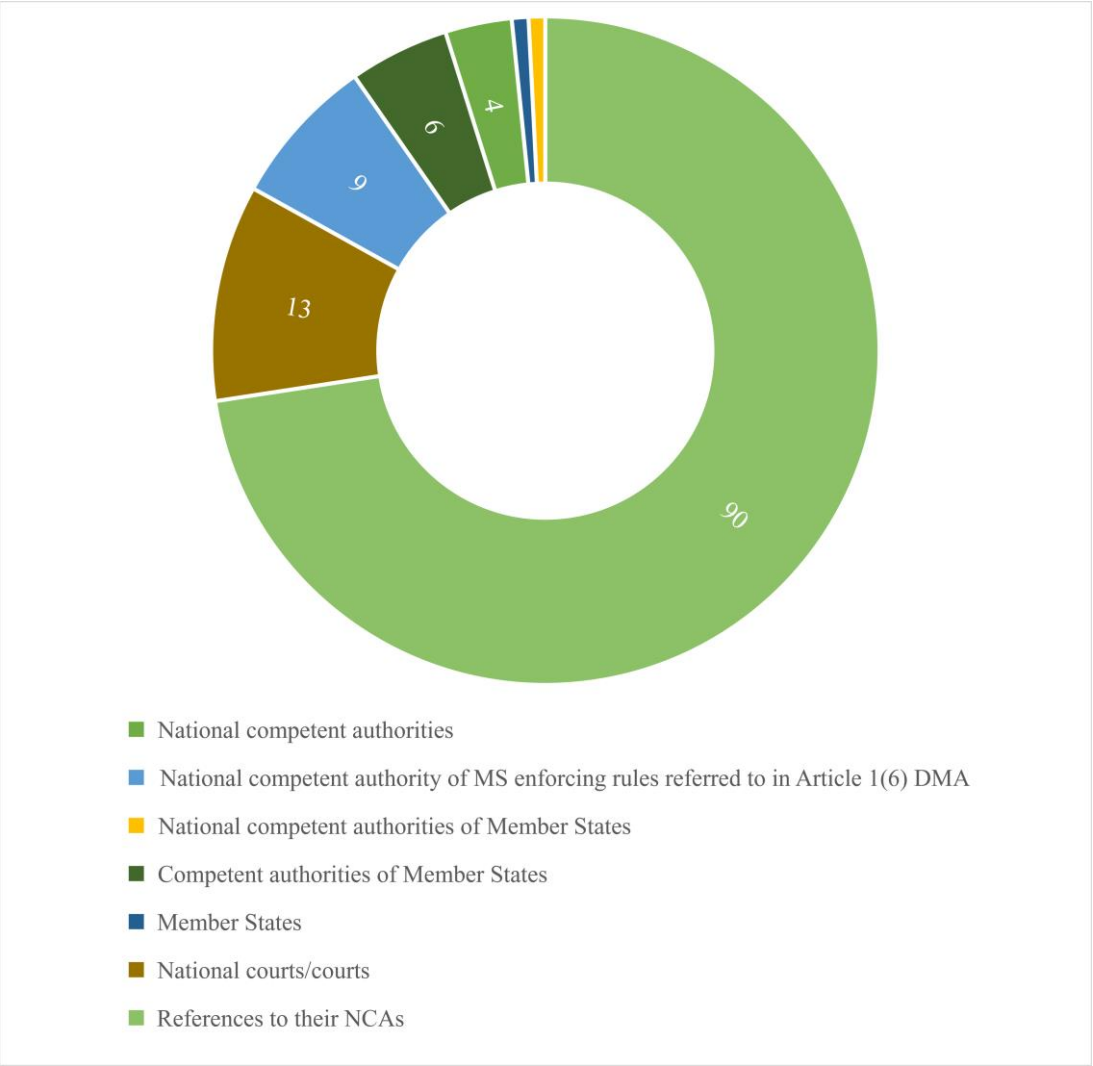
[82] Danish legislative development (n 76), Section 2 of Chapter 2 (PCS.4).

[83] *Loi du 30 novembre 2022 relative à la concurrence*, April 2, 2024, https://legilux.public.lu/eli/etat/leg/loi/2022/11/30/a588/consolide/20240402, Article 73(2).

[84] German legislative development (n 76), Section 90.

Reality stands far from this scenario. Most of the amendments directly reference, or address provisions concerned with the concept of national competent authorities of the Member States enforcing rules referred to in Article 1(6) DMA, i.e., NCAs, as shown in Figure 4:

Figure 4. References/provisions to types of national intervention under the national legislative developments.



As shown in Figure 4, despite their heterogeneous nature in terms of provisions, the legislative developments proposed and adopted by the Member States surrounding the DMA are nothing more than a circular attempt on the side of the Member States to complete their self-fulfilling promise they first vouched for in the DMA's legislative process. The Member States basically ignore the multiplicity of concepts the regulation includes so that they can designate distinct public bodies for the purposes of cooperation and coordination with the European Commission.

The majority of the references to public bodies included within the legislative developments refer back to the NCAs, and not to the concepts embedded in the DMA. Thus, one can only derive that the national legislative developments fulfil a clear role of supplementing the DMA in those instances where the Member States believe the

regulation comes short of sufficiently accommodating the national realities, as they already demonstrate throughout the legislative process.

IV. Conclusions

The DMA's system of enforcement is *quasi*-centralised on the basis of the European Commission's role as the regulation's sole enforcer. In principle, all enforcement actions fall within the European Commission's remit. The Member States and their NCAs tend to disagree. They already voiced their concern when the DMA was first proposed, and a centralised system of enforcement was set out. Most of the substantive powers conferred upon the NCAs date back to the European Parliament's and Council's interventions in the legislative process. As shown in Section II, those attributions did not only include a reference to NCAs but to other public bodies called to play a role in the DMA's enforcement.

The paper demonstrates the effects of the decentralisation of the DMA's system of enforcement via the legislative developments that most of the Member States have adopted at the national level. Despite the DMA being directly applicable in the Member States, they have adopted amendments supplementing the regulation's provisions. The paper considers their introduction considering three distinct ideas: their heterogeneity, their potential deviation from the DMA's terms as well as the sole attribution of the DMA's cooperation powers to the NCAs.

The adopted and proposed legislative developments illustrate a clear trend of heterogeneity, insofar as the Member States regulate different tenets of distinct provisions within the regulation. The only common thread between those legislative developments is that of Article 38(7) DMA. Nearly all legislative developments vest their NCAs with the power to monitor the DMA's substantive provisions at the national level. The aspect of minimum harmonisations seems to, therefore, touch upon this provision. The rest of the provisions are not systematically included in the legislative developments. One could, therefore, presume that the DMA does substantially cover the limitations imposed upon national implementation. Deviation from the DMA's terms does not streamline the national legislative developments. A few of them do expand the powers of their NCAs to appraise and apply the regulation's provisions. However, there is no indication a systematic divergent interpretation of the DMA will be realised in practice by the public bodies applying it at the national level. With respect to the last tenet of the analysis, the paper demonstrates Member States have omitted to incorporate all public bodies legally established as competent in the regulation's provisions, aside from their NCAs, into the DMA's framework enforcement. Member States (perhaps out of precaution) directly attribute most of the powers the regulation vests upon their NCAs via their national legislative developments.

Against this framework, the paper identifies the enforcement framework the DMA enshrines in favour of national authorities under Section II. In legal terms, coordination and cooperation are vast and encompass different national authorities aside from NCAs.

However, the legislative developments adopted by the Member States paint a completely different picture of enforcement steering away from cooperation and the DMA's rich *acquis* of implementation.

Annex 1: Methodology of the quantitative analysis

The Member States have adopted and proposed legislative developments relating to the DMA's execution. Out of the 27 Member States, 21 of them have decided to take such a course of action. Find in Table 4 below the full description of their current state and their full references:

Table 4. Legislative developments proposed and adopted by the Member States.

Member State	Status	Full reference
Austria (AT)	None.	-
Belgium (BE)	Adopted and entered into force in May 2024.	Loi exécutant le règlement (UE) 2022/1925 du Parlement européen et du Conseil du 14 septembre 2022 relatif aux marchés contestables et équitables dans le secteur numérique et modifiant les directives (UE) 2019/1937 et (UE) 2020/1828 et modifiant diverses dispositions relatives à l'organisation et aux pouvoirs de l'Autorité belge de la concurrence [Act relating to Contestable and Fair Digital Markets], M.B., May 3, 2023, https://etaamb.openjustice.be/fr/-.
Bulgaria (BG)	None.	-
Croatia (HR)	None.	-
Cyprus (CY)	Proposed in April 2024 but pending public consultation.	*ΔΗΜΟΣΙΑ ΔΙΑΒΟΥΛΕΥΣΗ: Προσχέδιο νομοσχεδίου που τιτλοφορείται «ο περί της Προστασίας του Ανταγωνισμού (Τροποποιητικός) Νόμος του 2024»*, April 4, 2024, http://www.competition.gov.cy/competition/competition.nsf/All/9AD374928D9C996BC2258AF500258C84?OpenDocument.
Czech Republic (CZ)	Adopted and entered into force in July 2023.	Zákon č 226/2023 Sb, kterým se mění zákon č 143/2001 Sb, o ochraně hospodářské soutěže a o změně některých zákonů (*zákon o ochraně hospodářské soutěže*), ve znění pozdějších předpisů, a zákon č 273/1996 Sb, o působnosti Úřadu pro ochranu hospodářské soutěže, ve znění pozdějších předpisů.
Denmark (DK)	Adopted and entered into force in January 2024.	2023/1 LSV 37 om supplerende bestemmelser til Europa-Parlamentets og Rådets forordning om digitale markeder.
Estonia (EE)	None.	-
Finland (FI)	Proposed in September 2023.	*Digimarkkinasäädökseen liittyvä kansallinen sääntely*, April 18, 2024, https://tem.fi/en/project?tunnus=TEM045:00/2022.
France (FR)	Adopted and entered into force in May 2024.	Loi 2044-449 du 21 mai 2024 visant à sécuriser et à réguler l'espace numérique [Law 2008-776 of May 21, 2024 on Digital Market Regulation] [J.O.] [OFFICIAL GAZETTE OF FRANCE], May 21, 2024, p. 21.
Germany (DE)	Adopted and entered into force in November 2023.	Gesetz zur Änderung des Gesetzes gegen Wettbewerbsbeschränkungen und anderer Gesetze v. 25.10.2023 BGBl. 2023 I Nr. 294.

Greece (EL)	Adopted and entered into force in December 2023.	Nomos (2023:5019) ΝΟΜΟΣ ΥΠ' ΑΡΙΘΜ. 5019 ΦΕΚ Α 27/14.12.2023 [Law No. 5019], Ephemeris tes Kyverneseos tes Hellenikes Demokratias [E.K.E.D.] 2023, A:27 (Greece).
Hungary (HU)	Adopted and entered into force in January 2023.	2022. évi LV. törvény egyes igazságügyi tárgyú törvények módosításáról (Act on the amendment of certain judicial-related laws) (Hung).
Ireland (IE)	Adopted and entered into force in March 2024.	S.I. No. 117 of 2024 - European Union (Contestable and Fair Markets in the Digital Sector) Regulations 2024 (Ir.), https://www.irishstatutebook.ie/eli/2024/si/117/made/en/print.
Italy (IT)	Adopted and entered into force in December 2023 (and supplementing provision subject to public consultation until early July 2024).	1- Legge annuale per il mercato e la concorrenza 2022, n. 214, G.U. Dec. 31, 2023, n. 303 (It.). 2- Consultazione publica sullo schema di Regolamento sulle forme di collaborazione e cooperazione previste per l'attuazione del Digital Markets Act (It.).
Latvia (LV)	Adopted and entered into force in March 2024.	*Grozījumi Konkurences likumā*, February 29, 2024, https://titania.saeima.lv/LIVS14/saeimalivs14.nsf/webSasaiste?OpenView&restricttocategory=446/Lp14.
Lithuania (LT)		
Luxembourg (LU)	Adopted and entered into force in April 2024.	*Loi du 30 novembre 2022 relative à la concurrence*, April 2, 2024, https://legilux.public.lu/eli/etat/leg/loi/2022/11/30/a588/consolide/20240402.
The Netherlands (NL)	Proposed in March 2023.	*Wetsvoorstel tot uitvoering van de digitalemarktenverordening*, March 3, 2023, https://www.internetconsultatie.nl/uitvoeringswetdma/document/11046.
Malta (MT)	Adopted and entered into force in August 2023.	*L.N. 200 of 2023*, August, 11, 2023, https://legislation.mt/eli/ln/2023/200/eng.
Poland (PL)	Proposed a first legislative development in July 2023 (which was abandoned) and proposal of the	1- *USTAWA z dnia o zmianie niektórych ustaw w celu ulepszenia środowiska prawnego i instytucjonalnego dla przedsiębiorców*, December, 2023. 2- *USTAWA z dnia … 2024 r. o zmianie niektórych ustaw w celu zapewnienia stosowania przepisów unijnych poprawiających funkcjonowanie rynku wewnętrznego*, April 17, 2024, https://www.gov.pl/web/premier/projekt-ustawy-o-zmianie-

	second legislative development in April 2024.	niektorych-ustaw-w-celu-zapewnienia-stosowania-przepisow-unijnych-poprawiajacych-funkcjonowanie-rynku-wewnetrznego.
Portugal (PT)	None.	-
Romania (RO)	Adopted and entered into force in December 2023.	*ORDONANȚĂ DE URGENȚĂ nr. 108 din 29 noiembrie 2023 pentru modificarea și completarea Legii concurenței nr. 21/1996, precum și a altor acte normative*, Romanian Official Gazette no. 1100 of 6 December 2023, https://legislatie.just.ro/Public/DetaliiDocumentAfis/277026.
Slovakia (SK)	Adopted and entered into force in April 2024.	*Návrh zákona, ktorým sa mení a dopĺňa zákon č. 187/2021 Z. z. o ochrane hospodárskej súťaže a o zmene a doplnení niektorých zákonov v znení zákona č. 309/2023 Z. z*, November 29, 2023, https://rokovania.gov.sk/RVL/Material/29034/1.
Slovenia (SI)	Proposal submitted in October 2023.	*Zakon o spremembah in dopolnitvah Zakona o preprečevanju omejevanja konkurence (ZPOmK-1E)*, 26 January, 2023, https://pisrs.si/pregledPredpisa?id=ZAKO6615.
Spain (ES)	Adopted and entered into force in June 2023.	Law on the adoption of certain measures in response to the economic and social consequences of the War in Ukraine, to support the reconstruction of the island of La Palma and other situations of vulnerability; transposition of European Union Directives on structural modifications of commercial companies and reconciliation of family life of parents and caregivers; and of the execution and compliance with European Union law (R.D.-Ley 2023, 5) (Spain).
Sweden (SE)	Proposed in July 2023.	Promemoria - Nya bestämmelser i anslutning till konkurrensregelverket [Memorandum – new regulations in connection with competition regulation] (Swed.).

All the figures and tables illustrated throughout the paper build upon these legislative developments in their state as of the moment of writing (July 2024), irrespective of whether they have already been adopted by their Member States (14) or a text has been proposed at the national level (7). The Polish legislative amendment includes two different pieces of law since the first one was dropped by Parliament following the national elections. The Italian amendments to the competition law also include an additional procedural guide for the NCA to implement the DMA's provisions. The acronyms used in Table 4 in the left column are also replicated across the different figures.

Figure 2

This figure illustrates the heterogeneous nature of the legislative developments of the Member States. The different categories they address included at the bottom of the figure correspond to the following provisions:

Table 5. List of provisions fleshed out by the legislative developments of the Member States.

Category corresponding to Figure 2	**Type of provisions addressed**
National enforcement.	Articles 1(6) and 38(7) DMA.

Cooperation and coordination.	Articles 1(7), 21(5), 27(1), 37(1) and 38(1), (2) and (3) and 50 DMA.
Information by third parties.	Article 27 DMA.
Inspections.	Article 23 DMA.
Interviews.	Article 22 DMA.
Market investigations.	Article 41 DMA.
Private enforcement.	Article 39 DMA.
Support in market investigations.	Articles 16(5), 38(6) and 41(4) DMA.
Others.	Articles 1(7), 12(1), 14 DMA, 26(2), 33(3), 34(4), 36(4), 40(6), 49(4) and 53(4) (and other provisions not included under the terms of the DMA).

The left axis of Figure 2 termed 'type of provision addressed' matches the different provisions under Table 5 with their inclusion in the corresponding legislative development in a quantitative fashion. The following data underlies its visual representation:

Table 6. Type of provisions addressed through the legislative developments.

Member State	**Type of provision addressed by the legislative development**
Austria (AT)	-
Belgium (BE)	1. National enforcement: i) power to trigger non-compliance investigation (Articles 14 and 50); ii) designation of a member of the NCA and team in charge of such an investigation (Article 50); iii) once the investigation is finished auditeur general communicates findings to the European Commission (Article 50); and iv) designation of the Belgian competition authority as the competent authority (Article 7(3)). 2. Cooperation and coordination: i) notification of an existing procedure via antitrust over a gatekeeper by the auditeur; ii) the auditéur general or the Collège de la concurrence (Article 45); iii) secondary/supporting role to support with other competences to cooperate with the EC (Article 50); iv) support in the collection of information for requests of information (Article 51); v) participation at the Digital Advisory Committee as a permanent member and capacity to invite experts from other authorities (Article 55). 3. Information by third parties: i) secondary/supporting role of the NCA (Article 51); and ii) capacity of the auditeur general to take no action based on a complaint (Article 53). 4. Inspections: secondary/supporting role of the NCA (Article 51). 5. Interviews: secondary/supporting role of the NCA (Article 51). 6. Market investigations: capacity of the auditeur general to request market investigations of the three types (Article 54). 7. Private enforcement: - 8. Support in market investigations: auditeur general may designate members of the NCA to perform tasks relating to market investigations (Article 51). 9. Others: i) secondary/supporting role in the designation of experts for the monitoring of the market (Article 54); ii) confidentiality applied to all its enforcement actions under the DMA, its participation in the High-Level

	Group and the Digital Advisory Committee (Article 20); and iii) acknowledging capacity of the European Commission to set out rules of cooperation via an implementing act (Article 52).
Bulgaria (BG)	-
Croatia (HR)	-
Cyprus (CY)	1. National enforcement: application of the DMA (Article 38). 3. Information by third parties: any person can anonymously disclose information about any practice or behaviour relating to possible violations of the DMA (Article 46(2)).
Czech Republic (CZ)	2. Cooperation and coordination: i) authorised to require the EC with necessary cooperation for the fulfilment of the tasks resulting from the DMA (Section 20a(3)); and ii) obliged to provide the EC with cooperation (Section 20a(4)).
Denmark (DK)	1. National enforcement: i) can conduct an investigation into possible non-compliance on its own initiative or on the basis of a complaint (Chapter 2§3); and ii) decides whether an investigation must be carried out, including whether the case must be temporarily or permanently suspended and once completed, notify the EC with the prior approval of the Council Chapter (2§3 PCS.3 and 4). 2. Cooperation and coordination: i) Danish Competition and Consumer Authority is the NCA in Denmark in accordance with Article 38 DMA (Chapter 2§2 PCS. 2); and ii) NCA can demand information, access to algorithms and information about tests and demand explanations regarding these which are deemed necessary for the performance of the tasks assigned to the NCA (Chapter 2§4). 3. Information by third parties: may publish information about an investigation on the DMA and include it in cases and investigations for which there is a need for third-party comment (Chapter 2§6). 4. Inspections: - 5. Interviews: may conduct interviews with any legal or natural person who consents to it when in possession of relevant information to enforce the DMA (Chapter 2§5). 6. Market investigations: capacity to submit a request for a market investigation (of the three types) with prior approval of the Competition Council to the European Commission (Chapter 2§2 PCS.3 and 4). 7. Private enforcement: - 8. Support in market investigations: - 9. Others: the capacity to impose coercive fines daily or weekly on companies that fail to provide complete and/or correct information in requests of information relating to the DMA (Chapter 3 §8).
Estonia (EE)	-
Finland (FI)	1. National enforcement: - 2. Cooperation and coordination: i) NCA acts as the national liaison authority in matters related to the DMA (Section 7d); ii) right to obtain from other national authorities all information and documents referred to in Articles 21(5) and 53(4) DMA and to hand them over to the European Commission (Section 7d).

	3. Information by third parties: has the right, regardless of confidentiality regulations, to hand over to the EC all information and documents submitted to it pursuant to Article 27 DMA (Section 7d). 4. Inspections: i) assist the European Commission in the inspections (Section 7e); and ii) may request official assistance from the police (Section 7e). 5. Interviews: - 6. Market investigations: may submit a request to the European Commission regarding the initiation of market investigations (the three types) (Section 7f). 7. Private enforcement: national courts are responsible for the exchange of information and handing of all documents with the European Commission (Section 7d). 8. Support in market investigations: assist the European Commission with market investigation information under Article 16(5) DMA (Section 7f). 9. Others: -
France (FR)	1. National enforcement: designation of the NCA, the Minister responsible for the economy and officials designated or authorities as national authorities in terms of Article 1(6) DMA (Section 27.2º, Chapter III). 3. Information by third parties: NCA and the Minister responsible for the economy responsible for the implementation of the provision (Section 27.3º, Chapter III). 6. Market investigations: the Minister responsible for the economy or his representative is competent to send the EC a request to open a market investigation (the three categories) (Section 27.5º, Chapter III).
Germany (DE)	1. National enforcement: i) Bundeskartellamt (as well as the supreme Land authorities) in the sense of Article 1(6) DMA (Section 89e(1) GWB); ii) granted powers to investigate possible violations of Articles 5, 6 and 7 DMA by gatekeepers (Section 32g GWB); iii) may conduct all inquiries necessary for the investigation (Section 32g(2) GWB); iv) in cases of lack of compliance with Article 7 DMA, the NCA will give the Bundesnetzagentur the possibility to comment (Section 32g(2) GWB); and v) reporting of the results of the investigation to the EC and may publish them publicly (Section 32g(3) GWB). 2. Cooperation and coordination: Bundeskartellamt is the competition authority to cooperate in proceedings conducted by the EC (Section 50(2) GWB). 7. Private enforcement: i) exclusive jurisdiction of regional courts in civil actions concerning the DMA and capacity of Land governments to refer cases to them (Sections 87 and 89(1) GWB); ii) German courts shall inform the NCA about all legal actions in which decisions depend on the application of the DMA and the court shall provide copies all briefs, records, orders and decisions (Section 90 GWB); iii) President of the NCA may intervene by providing written statements to the court (Section 90 GWB); iv) in all proceedings applying the DMA, court shall forward a duplicate of every decision (Section 90a GWB); and v) the judicial courts are bound by the EC's designations and decisions (Section 33b GWB).

	9. Others: i) limitations of requests of information from the authority's file (Section 89c(3) GWB); and ii) rectification of infringements and cease and desist orders on further infringements (Section 33 GWB).
Greece (EL)	1. National enforcement: designation of the NCA as the competent authority for this purpose, without prejudice of sectoral regulation (Article 83.1A). 2. Cooperation and coordination: may use powers provided for in Article 38 DMA (Article 83). 7. Private enforcement: may use powers provided for in Article 39 DMA (Article 83).
Hungary (HU)	1. National enforcement: i) may initiate competition proceedings to determine whether it considers gatekeepers do not comply with DMA provisions (Section 80/S(2)); and ii) shall be concluded upon the investigator's ruling on the transmission of the report to the EC (Section 80/S(2)). 2. Cooperation and coordination: i) cooperation with the EC for the purpose of applying the DMA as the competent authority (Section 33(2d)) and ii) may provide the EC and competent authorities with information (Section 80/S(2)). 3. Information by third parties: - 4. Inspections: i) executing inspections with the rules governing sanctioning proceedings and concluded by the investigator's ruling to verify the transmission of the evidence obtained (Section 80/R); ii) EC officials permitted to attend site searches held by the NCA (Section 80/R); iii) NCA to submit request to the court for prior authorisation for the inspection or through the NCA (Section 80/R); and iv) request police assistance on behalf of the EC (Section 80/R). 5. Interviews: EC officials are permitted to attend interviews held by the NCA. 6. Market investigations: - 7. Private enforcement: i) courts send a copy of their judgments to the National Office for the Judiciary after delivering it to the parties (Section 80/T); and ii) without delay send a copy to the Minister in charge of the judicial system for its transmission to the EC (Section 80/T). 8. Support in market investigations: - 9. Others: i) use of information received for requesting referrals in merger control via the DMA mechanism (Section 80/D(4a)); ii) denial of documents requested on internal documents of the NCA, including correspondence with the EC (Section 55/A(1)(e)); and iii) President of the NCA shall designate the persons representing it before the Digital Advisory Committee and High-Level Group (Section 36(1)(e)).
Ireland (IE)	1. National enforcement: authority responsible for the enforcement of Article 1(6) DMA (§3). 3. Information by third parties: i) any third party may inform the EC about any information (§8(1)).; and ii) when the EC determines there may be an issue of non-compliance, then it shall transfer that information to it (§8(2)). 4. Inspections: i) authorisation of officers to accompany NCA officials for the purposes of assisting the EC in inspections (§6(2)).; ii) enable NCA

	officials to conduct DMA inspections (§6(1)); iii) provision for the judge of the District Court to authorise inspections (§6(3)); and iv) capacity to impose fines when obstruction of investigation happens (§7) 6. Market investigations: NCA may, either alone or with another MS, request the EC to open a market investigation (three types) (§9).
Italy (IT)	1. National enforcement: i) may exercise the same investigative powers referred to in Competition Act for the purposes of Article 38 DMA (Article 18(3) and Article 4 of the draft procedural regulation); ii) designation as the competent authority for DMA enforcement (Article 18(1)); iii) carrying out the tasks referred herein with available human, instrumental and financial resources (Article 18(7)); iv) supervision by the data protection supervisory authorities with reference to provisions under Articles 5(2), 5(6), 5(10), 7(8), 8(1) and 13(5) DMA (Article 18(8)); v) measure to start the investigation notified to companies and those submitting complaints or requests to start the investigation as well as its publication in the official bulletin (Article 5 of the draft procedural regulation); vi) third-party involvement in submitting documents for DMA monitoring (Article 6 of the draft procedural regulation); vii) capacity to appraise economic analyses and statistical data (Article 10 of the draft procedural regulation); and viii) once completed, the NCA's Board decides whether to send the results of the investigation to the EC (Article 14 of the draft procedural regulation). 2. Cooperation and coordination: i) all forms of collaboration and cooperation provided the DMA are in place (Article 18(2)); and ii) the results of the investigation can be used by the NCA for the purposes of exercising its power as well as in the fields of agreements, abuse of a dominant position, abuse of economic dependence and merger control (Article 18(6) and 11 of the draft procedural regulation). 4. Inspections: all forms of collaboration and cooperation provided by the DMA are in place, including the assistance during the inspections requested by the EC (Article 18(2)). 9. Others: may impose sanctions when gatekeepers do not comply with their requests pursuant to their DMA monitoring (Article 18(4)).
Latvia (LV)	1. National enforcement: powers specified in Article 38(7) to investigate possible DMA non-compliance (§10(1)). 2. Cooperation and coordination: supports the European Commission in accordance with procedures for investigating and examining possible violations of the DMA (§10(1)). 4. Inspections: capacity to exercise powers in inspections (§11). 7. Private enforcement: application of DMA in civil claims (§5-8).
Lithuania (LT)	-
Luxembourg (LU)	1. National enforcement: vested powers of duties arising from DMA by Article 1(6) DMA (Article 8(9º)). 3. Information by third parties: i) capacity to receive information/complaints (Article 73(2)); and ii) capacity to carry out verification on the side of the EC when information is received (Articles 73(2) and (3)). 4. Inspections: providing assistance with inspections without the authorisation of the investigating judge (Article 8(10º)).

	9. Others: the capacity to exercise the Dutch clause in case they receive information via Article 14 (Article 73(2)).
The Netherlands (NL)	1. National enforcement: i) responsible for compliance with the DMA in the Netherlands (Article 2(1)); and ii) authorised to carry out the tasks and powers granted pursuant to the DMA in the sense of Article 1(6) DMA (Article 2(2)). 4. Inspections: i) provides assistance during an inspection under the DMA via its civil servants (Article 3); ii) provides assistance in case of opposition to an inspection both via the aid of police officers or requesting judicial authorisation (Article 4). 7. Private enforcement: i) the registrar shall immediately provide a copy of judgments and orders relating to the application of the DMA to the European Commission (Article 5); ii) EC may intervene in judicial proceedings via written observations (Article 5(2)); and iii) judge shall provide the European Commission with documents referred to in judicial proceedings (Article 5(2)).
Malta (MT)	1. National enforcement: i) national competent authority to exercise the powers mentioned under Article 1(6) DMA (§3) ii) Director General shall have the power to carry out investigations on his own initiative in the case of alleged non-compliance of the DMA on the territory of Malta (§4(1)); iii) before taking a first formal investigative measure, the Director General shall inform the EC in writing (§5); iv) the Director General shall report to the EC on the findings of the investigation (§6); and v) the Director General shall have the same powers to institute judicial proceedings against any person for failure to comply with the investigative measures and to impose penalties for non-compliance (§7).
Poland (PL)	1. National enforcement: granting the President of the NCA the competence to conduct on its own initiative an investigation into potential non-compliance (Article 2(10)). 2. Cooperation and coordination: the President of the NCA to perform cooperation and exchange information under Article 38 DMA (Article 2(3)). 3. Information by third parties: the President of the NCA can receive notifications of non-compliance (Article 2(3)). 4. Inspections: i) recourse to inspections if the person authorised objects to the EC carrying it out in the course of the sanctioning proceedings (Article 2(9)); ii) cooperation in inspections (Article 2(9)); iii) expansion of the list of grounds for conducting a search so that investigative measures can be used in proceedings regarding compliance (Article 2(9)); and iv) capacity to conduct inspections without the need of a separate proceeding (Article 2(9)).
Portugal (PT)	-
Romania (RO)	1. National enforcement: i) investigate possible infringements of Articles 5 to 7 DMA in Romania and report the findings of the investigation to the EC (Article 25(1)(w)); ii) the detection and investigation of these infringements shall be the responsibility of the NCA through the competition inspectors (Article 32(1)); iii) capacity to trigger investigations in the presence of sufficient legal and factual grounds with prior information of the EC (Article 33(1)); and v) case rapporteur is responsible for drawing up a report on the

	investigation, communicating it to the parties, receiving comments and presenting it to the Plenary of the NCA (Article 46(6)). 3. Information by third parties: rules governing the exchange of information and use of such information as evidence in investigations pursuant to Article 38 DMA (Article 34(9)).
Slovakia (SK)	1. National enforcement: the capacity to investigate under Article 38(7) DMA to assert a possible violation of an obligation (§16c). 3. Information by third parties: i) right to demand any information and documents that are essential for DMA monitoring (§16(3)); and ii) cooperation with other central bodies of the state administration to receive such information (§16(5)). 4. Inspections: i) extension of the NCA's mechanisms for the performance of DMA inspections (§16j and §17(1)); ii) can request judicial authorisation to conduct an inspection in the EC's place (§16q). 5. Interviews: right to require an oral explanation (§16(4)). 6. Market investigations: conduct an investigation for the purposes of determining whether there is a reason to submit a request for market investigation (§16d).
Slovenia (SI)	1. National enforcement: i) competent authority for the DMA's implementation (Articles 1 and 2); ii) may investigate non-compliance with the DMA on its national territory (Article 12(6)); and iii) discloses data and findings of the investigation to the EC once it is concluded (Article 37(1)). 2. Cooperation and coordination: application *mutatis mutandis* of the cooperation mechanism rules with the EC regarding the procedures under the DMA (Article 102(7)).
Spain (ES)	1. National enforcement: i) Competition Directorate conducts an investigation on non-compliance in Spain (Article 18(3)); ii) informs in writing and assesses the impact of the EC on its own proceedings (Article 18(3)); and iii) application of the rules of the rest of its investigatory proceedings (Article 18(3)). 2. Cooperation and coordination: the information it receives may be used for the application of the rest of its competition rules (Article 18(3)). 3. Information by third parties: capacity to receive and use information by third parties (Article 18(3)).
Sweden (SE)	1. National enforcement: given the authority to, on its own initiative, carry out investigations relating to DMA violations (Section 13a).

Figure 2 illustrates the quantitative representation of Table 6 by plotting on the left axis the number of provisions pertaining to each provision under Table 5. For example, taking the example of Sweden, only one provision (1) will be plotted in Figure 2.

Figure 3

The left axis of the figure termed 'Intensity of regulatory intervention' collates the data extracted from Table 6. Basically, the figure measures that metric by adding up the different manifestations and provisions included in those legislative developments. For

example, Latvia would count as having an intensity of four (4) since those are the provisions included by the Member State.

In parallel, the figure plots the deviations from the DMA's terms by comparing the regulation's strict procedural and substantive safeguards and limitations vis-à-vis the legislative development's provisions. By this token, the figure assigns a higher degree of deviation for those legislative developments surpassing the narrow role played by NCAs in the DMA's regulatory context. Table 7 details those instances where those deviations occur:

Table 7. Deviations stemming from the legislative developments vis-à-vis the DMA's text.

Member State	**Type of provision addressed by the legislative development**	**DMA limitations**
Belgium (BE)	1- Auditeur general may designate members of the NCA to perform tasks relating to market investigations (Article 51).	1- Article 41 DMA enables the Member States (not the NCAs) to request market investigations, but the NCAs cannot conduct them themselves.
Denmark (DK)	1- Decides whether an investigation must be carried out, including whether the case must be temporarily or permanently suspended and once completed, notify the EC with the prior approval of the Council Chapter (2§3 PCS.3 and 4). 2- NCA can demand information, access to algorithms and information about tests and demand explanations regarding these which are deemed necessary for the performance of the tasks assigned to the NCA (Chapter 2§4). 3- May publish information about an investigation on the DMA and include it in cases and investigations for which there is a need for third-party comment (Chapter 2§6). 4- Capacity to impose coercive fines daily or weekly on companies that fail to provide complete and/or correct information in requests of information relating to the DMA (Chapter 3 §8).	1- Article 38(7) DMA establishes for the NCA to refer all findings to the EC, with an implied sense that there should not be any decision coming from the NCA on the nature of those findings. 2- No legal basis for the NCA's request for information on this type of data. 3- Article 27 DMA enshrines a 'passive' complaint mechanism, i.e., the NCA may receive information but does not open the door for overall third-party comment. 4- Overlaps with the EC's own powers to fine undertakings, as per Article 31 DMA.
Finland (FI)	1- May submit a request to the European Commission regarding the initiation of market investigations (the three types) (Section 7f)	1- Article 41 DMA enables the Member States (not the NCAs) to request market investigations.
France (FR)	1- Designation of the NCA, the Minister responsible for the economy	Both provisions conflate the concepts of national competent authorities and

	and officials designated or authorities as national authorities in terms of Article 1(6) DMA (Section 27.2º, Chapter III). 2- NCA and the Minister responsible for the economy responsible for the implementation of the provision (Section 27.3º, Chapter III).	the role played by the Member States (details under Section II of the paper).
Germany (DE)	1- In cases of lack of compliance with Article 7 DMA, the NCA will give the Bundesnetzagentur the possibility to comment (Section 32g(2) GWB). 2- Reporting the results of the investigation to the EC and may publish them publicly (Section 32g(3) GWB). 3- German courts shall inform the NCA about all legal actions in which decisions depend on the application of the DMA and the court shall provide copies of all briefs, records, orders and decisions (Section 90 GWB). 4- President of the NCA may intervene by providing written statements to the court (Section 90 GWB). 5- Rectification of infringements and cease and desist orders on further infringements (Section 33 GWB).	1- The enforcement of Article 7 DMA does not provide leeway for direct cooperation with other authorities (they should take place via the adequate procedures of the High-Level Group). 2- Article 38(7) DMA establishes that NCAs must report the findings (not the results) and there is no provision on their publication prior to the EC's decision. 3- Article 39(2) DMA provides for the national courts' information to the EC and not the NCAs. 4- Article 39(3) DMA only provides the EC's intervention before the national courts. 5- Interference with EC powers to impose interim measures under Article 24 DMA.
Hungary (HU)	1- EC officials are permitted to attend interviews held by the NCA. 2- Courts send a copy of their judgments to the National Office for the Judiciary after delivering it to the parties (Section 80/T).	1- EC officials bear the power to conduct interviews under Article 22 and they may seek support from NCAs (not vice versa). 2- Adding an intermediate step between the communication from the national court to the European Commission of written judgments, as per Article 39(2) DMA.
Ireland (IE)	1- NCA may, either alone or with another MS, request the EC to open a market investigation (three types) (§9).	1- Article 41 DMA enables the Member States (not the NCAs) to request market investigations.
Italy (IT)	1- Supervision by the data protection supervisory authorities with reference to provisions under Articles 5(2), 5(6), 5(10), 7(8), 8(1) and 13(5) DMA (Article 18(8)). 2- Capacity to appraise economic analyses and statistical data (Article 10 of the draft procedural regulation).	1- The enforcement of those provisions does not provide leeway for direct cooperation with other authorities (they should take place via the adequate procedures of the High-Level Group). 2- The DMA does away with economic analysis as stemming from Recital 23.

	3- Once completed, the NCA's Board decides whether to send the results of the investigation to the EC (Article 14 of the draft procedural regulation).	3- Article 38(7) DMA establishes for the NCA to refer all findings to the EC, with an implied sense that there should not be any decision coming from the NCA on the nature of those findings.
Luxembourg (LU)	1- Capacity to carry out verification on the side of the EC when information is received (Articles 73(2) and (3)).	1- Article 27 DMA does not enshrine the EC's capacity to direct the NCA to carry out verification of any information.
Romania (RO)	1- Case rapporteur is responsible for drawing up a report on the investigation, communicating it to the parties, receiving comments and presenting it to the Plenary of the NCA (Article 46(6)).	1- Article 38(7) DMA establishes for the NCA to refer all findings to the EC, with an implied sense that there should not be any decision coming from the NCA on the nature of those findings.
Slovakia (SK)	1- Conduct an investigation for the purposes of determining whether there is a reason to submit a request for market investigation (§16d).	1- Article 41 DMA enables the Member States (not the NCAs) to request market investigations so that the European Commission considers whether the regulation should be flexibilised.

Based on Table 7, for instance, Romania would be assigned with a numerical value of one (1) deviation from the DMA's terms, whereas Italy is assigned with four (4) deviations.

Figure 4

Figure 4 presents the visual representation of the types of public bodies referenced across the legislative developments. Most of the Member States' legislative developments and amendments do not even include an explicit reference to the NCAs, since they include a direct attribution to their powers under their existing powers under the national competition law regime. Table 8 below shows the rough data incorporated into Figure 4:

Table 8. References to public bodies in the legislative developments of the Member States.

Category corresponding to Figure 4	**Number of times referenced and Member States involved**
National competent authorities.	4 (DK, FI, EL and MT)
National authorities.	-
National competent authority of the Member State enforcing the rules of Article 1(6) DMA.	9 (BE, FR, DE, IE, LU, NL and MT)
National competent authorities of the Member States.	1 (FR)
Competent authorities of the Member States.	6 (BE, DK, HU, PL and SI)
Member States.	1 (IE)
Member State experts.	-
Three or more Member States.	-
One or more Member States.	-
National courts/courts.	13 (FI, DE, HU, IE, NL, MT)

Not every reference is accounted for under Table 8 but only the direct attribution of powers under the DMA mandated by each one of them. Similarly to the quantitative analysis performed above, Table 8 only considers the wording of the legislative developments, but not the wording of the explanatory memoranda to those rules. Aside from the concepts included in the DMA, the most popular reference to NCAs (over ninety times) happens with reference to their own officials and bodies. Moreover, other types of authorities not included in the regulation's wording are also included across the different legislative developments.