cerre Centre on Regulation in Europe

POLICY RECOMMENDATIONS TO IMPROVE DMA PROCESS AND INSTITUTIONS

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Issue Paper

DMA Implementation Forum

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1. Introduction

One year of implementing the DMA has already delivered some concrete results, opening opportunities for business users and increasing choice for end-users.[1] However, *Roma non uno die aedificata est* and indeed, this first year shows that DMA implementation is a complex task, with both regulators and those being regulated learning as they go. The process has proven more challenging than anticipated, as few prohibitions and obligations have been self-executing. This is not surprising, given that the DMA applies to markets that are both complex and evolving, many of which have not been regulated previously. In some cases, gatekeepers also lack the incentives to self-enforce. Additionally, every new law contains provisions that require clarification through administrative processes and, potentially, judicial interpretation. The current geopolitical context further complicates the task of implementation.

In Section 2, we explain how some of these challenges can be addressed, drawing on lessons learned during this first year of experience. Specifically, we focus on increasing transparency, improving legal predictability, streamlining institutional arrangements, and ultimately building greater trust among all stakeholders. Having (and being perceived to have) robust processes for implementing and enforcing the DMA in a predictable and de-politicised manner is important as many of the DMA obligations are not self-executing and are even more critical in today's increasingly tense international geopolitical environment.

The DMA is also a key part of the broader European digital rulebook, which has expanded significantly over the past five years. It is therefore crucial that the DMA is implemented consistently with the other laws in this rulebook, maximising synergies and minimising potential conflicts. As discussed in Section 3, this requires close coordination between the EU and national regulators overseeing the DMA and other aspects of the digital rulebook.

Finally, due to its complexity and novelty, the implementation of the DMA may lead to unintended consequences, and some prohibitions or obligations may need to be refined to effectively achieve their goals. For this reason, as outlined in Section 4, the DMA should be subject to a thorough and independent evaluation. If necessary, the EU institutions should be ready to adjust the rules and/or their implementation based on the outcomes of that evaluation.

[1] https://digital-markets-act.ec.europa.eu/about-dma_en

2. Improving the Implementation Process

2.1. Greater Transparency

Multi-lateral Regulatory Dialogue

To date there has been, to our knowledge, limited dialogue directly between gatekeepers and business users, or as part of a multi-lateral dialogue involving gatekeepers, business users and the Commission. This lack of dialogue reduces transparency and introduces delays because gatekeepers and business users both find themselves having to engage bi-laterally with the Commission and the Commission finds itself acting as an intermediary between gatekeepers and business users.

To increase and improve multi-lateral dialogue will require the **Commission taking a more active convening role by organising physical meetings to which both gatekeepers and business users are invited to address specific issues, in monitoring the effectiveness of these dialogues and, if necessary, in providing further guidance and direction.** When useful in case of technical issues, technical experts from the national regulatory authorities should be associated.

The format of these meetings will depend on nature of the issues to be addressed. **At least initially, the Commission should take an active role** in chairing them, organising the agenda and ensuring that appropriate representatives are present. It could, for example, encourage business users to co-ordinate positions in advance, ensure there is a wide range of representation and ensure that the meetings focus on problem solving in relation to specific obligations rather than wider advocacy or commercial matters. It could ensure that commercially confidential information is appropriately handled and that actions arising from the meeting are properly recorded and followed through. Over time, it may be possible for the Commission to take a less active or directive role and for the gatekeeper and business user participants to manage arrangements amongst themselves.

The Commission should also **trial online tools to improve engagement between gatekeepers and business users on specific technical issues**, with dedicated chatrooms or forums in which gatekeepers and business users can participate, including (for business users) on an anonymous basis if they wish (to overcome concerns about retaliation). These tools are already used by gatekeepers and business users in their normal course of business and should be adopted (or at least trialled) by the Commission for regulatory purposes. If guidelines or conduct changes are required to ensure online tools work more effectively (e.g. how the gatekeeper is expected to assess conflicting proposals and how disagreements will be resolved, how business users should engage and how discussions should be structured), then the Commission should develop them in consultation with the participants.

If these approaches are not effective then the Commission may require additional legal powers, for instance to compel gatekeepers or particular gatekeeper staff to attend meetings, or may need to consider introducing other incentives to ensure constructive participation and engagement.

The advantages of this approach have been discussed by, for example, the Joint Research Center, which has recommended the implementation of co-creation as an alternative to regulation. This is “a collaborative and participatory process in which multiple stakeholders – ranging from public administrations to citizens, businesses, academia and civil society – work together in designing,

implementing and evaluating public services and policies."[2] It is approach used in more mature sectoral regulatory environments, such in telecommunications<;[3] but is seen as particularly useful in digital markets which are characterised by fast-moving technical processes and has been encouraged when digital public services are deployed.

A similar participatory approach should improve implementation by encouraging the identification of better compliance solutions (through widespread participation and dialogue) which business users who have been part of the process should be more likely to accept. It will, however, take time and effort to establish these dialogues and to build trust amongst the participants and this will require the Commission to take the initiative at the outset.

Compliance Reports and Officers

Another important transparency tool in the DMA is the **compliance report** which could be improved by requiring that confidential parts of the report are made available to business users subject to suitable NDAs. Moreover, the non-confidential version of the compliance report could be subject to **more continuous updating** and revision (rather than annually) while respecting the principle of proportionality – this should become a 'live' document on the gatekeeper's website (allowing for annual publication and scrutiny to be withdrawn)**.** In particular, substantial changes to interfaces or business user services or support should be reflected in changes to the live report as and when they are implemented by the gatekeepers.[4]

Also, compliance reports could be **more standardised** regarding their content and their indicators in order to facilitate comparison and compliance benchmarking across gatekeepers while recognising the differentiation in the business models of the gatekeepers.

Moreover, there should also be contact points for business users that wish to engage with the gatekeeper on commercial issues arising from the compliance report, with **compliance officers** taking a more prominent and visible role than envisaged under the DMA at present. The compliance officer could be required to certify not only that the contents of the compliance report were factually accurate, as required by the Commission's Template,[5] but also to provide an opinion (akin to a solvency report in a financial audit) as to whether or not the actions thereby described meant that the gatekeeper is in compliance with the DMA.

2.2. More Legal Predictability

Priorities Setting

The **Commission should develop guidance on how it will prioritise implementation and enforcement of the DMA** (and the associated evidence and data collection) while recognising the constraints which

[2] Joint Research Center, 'Supporting EU policy implementation with co-creation: The Case of the Interoperable Europe Act' (JRC139808) (EU, 2025).

[3] CERRE, 'Implementing the DMA' (2024), p.109 https://cerre.eu/wp-content/uploads/2024/01/CERRE-BOOK-IMPLEMENTINGDMA.pdf

[4] We note that gatekeepers are likely to be subject to Art 3 of the Platform to Business Regulation 2019/1150 which requires that notice of changes be given at least 15 days in advance of their implementation.

[5] https://digital-markets-act.ec.europa.eu/legislation_en#templates

the Commission is subject to. Priority principles set by the National Competition Authorities are pitched at a high level of generality. For example, the British CMA takes five considerations into account before deciding to enforce the law: strategic significance, impact of intervention, whether the CMA is best placed to act, resources required, risks.[6] Similar criteria are found in others, like the Belgian Competition Authority.[7] Other agencies set out priorities by focusing on certain markets, e.g. the Dutch competition authority in 2024 promised to focus on digital, energy and sustainability as focus areas.[8] Our preference is for DMA priorities to resemble those of the CMA and that these criteria are then utilised when individual enforcement action is taken.[9]

Regulatory Objectives and Compliance Acceptability

The DMA shifted the burden of proof onto the gatekeepers (relative to competition law) to show that they comply effectively with the obligations of the law. However, the feedback from the interviews we carried out suggests that sometimes the objectives of specific obligations are not clear and gatekeepers are unsure of the measures required to achieve effective compliance. The Commission appears sometimes reluctant to commit explicitly to accepting measures as being compliant and the gatekeepers are sometimes reluctant to engage fully and transparently with the Commission because they are unsure how the Commission will react.

In future, **the Commission should be willing to give more precise indications on the specific or concrete objectives to be achieved for each core platform service and their related obligations as well as more feedback on whether potential measures proposedly the gatekeepers would be accepted by the Commission as being compliant**. However, in order to provide greater reassurance to gatekeepers, the Commission may require the gatekeeper to provide evidence of performance in trials against output indicators (i.e. conducts that arise from users engaging with gatekeepers) or outcome indicators (i.e., consequence of those users conducts for market structure) and gatekeepers should be prepared and willing to provide such evidence when requesting guidance on specific proposals.

Specification Decisions

One important legal tool to clarify whether potential measures will be acceptable is the specifications decisions that can be adopted by the Commission. To our knowledge at this stage, no gatekeeper has requested a specification decision from the Commission, despite feedback from gatekeepers that compliance is inhibited or delayed by the lack of clarity as to what the Commission considers is required to ensure compliance and despite the publication of template for such requests.[10] The

[6] CMA, Prioritisation Principles (CMA 188) (30 October 2023)
[7] https://www.abc-bma.be/sites/default/files/content/download/files/2024_politique_priorit%C3%A9s_ABC.pdf https://www.abc-bma.be/sites/default/files/content/download/files/2024_politique_priorit%C3%A9s_ABC.pdf
[8] https://www.acm.nl/system/files/documents/focus-acm-2024.pdf
[9] J. Cremer, D. Dinielli, P. Heidhues, G. Kimmelman, G. Monti, R. Podszun, M. Schnitzer, F. Scott-Morton and A. de Streel, Enforcing the Digital Markets Act: Institutional Choices, Compliance, and Antitrust (with), *Journal of Antitrust Enforcement*, 2023.
[10] Article 8(3) DMA was intended to allow gatekeepers to obtain further guidance on measures required to comply with obligations in Article 6 so as to comply more quickly and more effectively, but has yet to achieve that objective.

Commission may wish to investigate whether and how gatekeepers could be encouraged to request specification decisions or, in the absence of that, should take the initiative themselves.

One way to do this involves **Commission being more pro-active in setting forth its position as to what compliance might mean at the start of a regulatory dialogue rather than by asking the gatekeeper to come up with an alternative method of compliance to that set out in the compliance report without providing any guidance on where the compliance point lies**. If the gatekeeper considers this guidance to be unsatisfactory (i.e. insufficient or incomplete), it should be prepared to initiate a specification decision procedure. If the gatekeeper does not do so, then the Commission might reasonably consider the guidance is clear and that the gatekeeper should comply with it. This requires both parties to the dialogue to take steps which may expose them to an element of legal risk, but which are necessary if greater trust is to develop between them.

More generally, the **Commission should explain when it will initiate a specification decision rather than, for example, initiating infringement proceedings**. The limited practice to date does not necessarily allow one to draw any general lessons yet as to when the Commission will act in particular ways. The two specification decisions adopted so far suggest that the Commission had already engaged with the gatekeeper involved on several occasions regarding compliance with Article 6(7) of the DMA, that it is aware of many interoperability requests and that it is thus appropriate to specify this obligation.[11] This suggests that specification decisions will come only after several rounds of dialogue[12] and then perhaps only when the Commission judges that the obligation in question is a priority for enforcement in light of its economic importance. This is a helpful first step in explaining some of the considerations that the Commission will take when deciding to specify and we expect that further practice will clarify the criteria further. As noted above, in our view there is an important distinction to be drawn, on the one hand, between a lack of clarity about what is required to comply (which is resolved via specification decisions) and, on the other hand, disagreement between Commission and gatekeeper as to whether measures which the Commission has clearly stated are required to be taken are in fact required to ensure compliance (which is addressed via enforcement decisions and potentially, subsequent appeals).

In the longer term, the Commission should also explore whether the **scope of the specification decisions should be expanded** to also include measures required to comply with the obligations included in Article 5 of the DMA.

2.3. Improving Institutional Arrangements

Organisation within the Commission

The issue paper on DMA implementation suggests that the joint reporting lines and staffing (from both DG Comp and DG Connect) involved in establishing the Commission's DMA team create complexity for the Commission itself and uncertainty for gatekeepers and business users. It may also undermine the development of a consistent approach or an effective regulatory culture, with some teams seen to be adopting an approach more appropriate to antitrust enforcement than regulatory dialogues. In

[11] https://digital-markets-act-cases.ec.europa.eu/cases/DMA.100204 and https://digital-markets-act-cases.ec.europa.eu/cases/DMA.100203

[12] As indicated in recital 65 of the DMA.

addition, dual reporting lines add complexity and may increase the risk that decisions are perceived to be taken on political rather than administrative grounds, which we think should be avoided. There is no obvious benefit to the existing institutional arrangements.

To address these concerns, we recommend that the **DMA team should be established as an independent entity within the Commission with a separate premises, budget and identity of its own.** This should allow it to develop a distinctive culture more appropriate to the particular functions it performs. This team should also have close links to (or co-exist with) those staff implementing the Digital Services Act (DSA), since there are likely to be some synergies between the two and it is important to avoid conflicts. Also, this DMA team should work closely with the other departments of the Commission in charge of other policies which are related and impacted by the DMA implementation, such as consumer protection, privacy, cybersecurity or intellectual property.

Moreover, the **role of technical reports which are commissioned by the Commission** should be clarified: will they be published, how does the Commission intend to use them and how can interested parties engage with the consultants or academics?

In the longer term, it should also be explored whether the Commission enforcement powers under the DMA (and other laws of the EU digital rulebook) should be transferred to a **new and independent European Digital Authority, with appropriate safeguards against political interference**. Such European regulator has been proposed in the Letta Report of 2024 and was already recommended in the Bangemann Report back in 1994.[13]

Division of Enforcement Roles Between the Commission and the National Authorities

National authorities currently perform a limited role in the implementation of most of the DMA obligations, though that are some important exceptions such as the horizontal interoperability obligation for which BEREC plays a very useful role.[14] We recommend that the **Commission and national authorities** – in particular national competition authorities - **seek to agree on a clear division of tasks in implementing the DMA based on their respective comparative advantages** and how those national authorities might better engage in the future.

This might include **national authorities taking primary responsibility in advocacy on the opportunities afforded to business users by the DMA and the benefits to consumers[15] and for initial engagement with business users and end users in national markets.** In particular, the national authorities may be well placed to receive inquiries about the DMA or complaints and to carry out preliminary assessments to filter those which are worth passing on to the Commission for further

[13] Bangemann group, Recommendations of the high-level group on the information society to the Corfu European Council, p.17; E. Letta, Much more than a market: Empowering the Single Market to deliver a sustainable future and prosperity for all EU Citizens, Report to the Council, p. 56.

[14] https://www.berec.europa.eu/en/all-topics/ni-ics-interoperability

[15] For example, the Dutch ACM with the support of other NCAs organised a conference for business users to explain the benefits of the DMA: https://www.acm.nl/en/publications/ecn-digital-markets-act-conference-2024. The Belgian Competition Authority has published a brief guide for the benefit of tech challengers to explain the opportunities that the DMA generates for them as well as examples of successful compliance: https://www.belgiancompetition.be/en/about-us/publications/digital-markets-act-short-guide-tech-challengers-0

action and/or signposting business users to engage directly with the Commission and/or participate in a multi-lateral dialogue a particular issue (which may be easier if earlier our recommendations for using digital platforms is pursued). However, it is important that business users are not thereby denied direct access to the Commission if they wish to pursue it and that engagement between the national authorities and Commission is undertaken in a transparent manner.

Inclusive Governance Mechanisms

Finally, the Commission could incentivise the gatekeepers and the business users to agree on **inclusive governance mechanisms**[16] which could facilitate the implementation of some access type obligations such as interoperability and portability when they are clear and targeted to achieve the objectives of the DMA; such mechanisms could also reduce the trade-offs between certain rights and interests. Those governance mechanisms could include: (i) the continuous development of standards; (ii) independent third-party or gatekeeper non-discriminatory automated certification mechanisms for access seekers, as well as (iii) independent and rapid dispute resolution mechanisms when there is a disagreement between the gatekeepers and business users on the implementation of the security defence.[17]

2.4. Building Trust Between Participants

The feedback from the interviews we carried out indicates that trust between the main stakeholders (Commission, gatekeepers and business users) and in the regulatory process itself needs to be strengthened. Without trust, it is difficult to have constructive dialogue or to avoid reverting to a formal enforcement process. This lack of trust contributes to delay and uncertainty on both sides, inhibits compliance by gatekeepers and makes it more difficult for business users to take advantage of opportunities arising from measures which gatekeepers have taken.

The different recommendations made so far to increase transparency, legal predictability and streamline the institutional arrangements should contribute to increase trust among market participants. Additional measures to protect the rights and expectations of the gatekeepers and business users are also intended to promote trust.

Protection of Rights and Expectations of the Gatekeepers

Trust may be improved by measures to ensure the Commission will have proper regard to gatekeepers' rights. This could be achieved by introducing **a function akin to that of the Hearing Officer** in antitrust and merger cases, as was already discussed during the legislative negotiations. This was a position established in the early 1980s recognising the need to better safeguard the procedural rights of undertakings at a time when the Court of Justice of the EU was beginning to fashion these rights on a case-by-case basis. Its role extends to protecting undertakings subject to competition proceedings and also third parties.[18] The Commission is primarily responsible for safeguarding procedural rights, but the Hearing Officer is a safeguard mechanism to which parties may turn to in

[16] Z. Meyers, *Which Governance Mechanisms for Open Tech Platforms?*, CERRE Report, January 2025.
[17] Z. Meyers, Balancing security and contestability in the DMA: the case of app stores, European Competition Journal, 2024 referring to the dispute resolution mechanisms which have been established in telecommunications regulation.
[18] Decision 2011/695 on the function and terms of reference of the hearing officer in certain competition proceedings [2011] OJ L275/29, Recital 3. Of course, the hearing officer also protects complainants but this role does not exist in the DMA.

case there is no bilateral resolution of procedural issues.[19] Even prior to the oral hearing, the Hearing Officer has certain powers that may be relevant in the DMA context (e.g. to extend the time limit for replying to a request for information, to secure access to the file, and to ensure the protection of business secrets and confidential information).[20] This role also exists in national competition authorities (e.g. the office of the procedural officer in the CMA).[21] A Hearing Officer for the DMA can probably be introduced by a Commission Decision. However, the possible establishment of a Hearing Officer should not undermine the effectiveness of the DMA enforcement.

Protection of Rights and Expectations of the Business Users

Business users are also engaging bi-laterally with the Commission. Article 27 of the DMA envisages that business users may inform national authorities or the Commission about a practice or behaviour that falls within the scope of the DMA but the recipients are 'under no obligation to follow-up on the information received.' The DMA's Implementing Regulation also focuses on the rights of gatekeepers.[22] Any perception that complaints will not be considered by the Commission or national authorities or that feedback to the Commission will not then be put to gatekeepers risks making business users reluctant to provide input into matters of compliance or engaging commercially with the opportunities which the DMA is intended to create.

This can be addressed by **guidance to business users on how to engage with the Commission** and what they can expect from the Commission when they do. This should include a clear statement explaining what can be expected when information is supplied to address concerns that information conveyed to the Commission ends up in a 'black box'.[23] It might also include guidance to encourage (under appropriate circumstances) business users to co-ordinate their activities amongst themselves before providing inputs to the Commission (or gatekeepers). By now, the Commission should have received enough input from third parties to be able to make suggestions on good practices on the submission of information and to have designed an internal process to manage the input it receives. While the Commission enjoys full discretion, it is still important that principles of good administration are followed.[24]

[19] Decision 2011/695, Recital 8 and Article 3(7). W.P.J. Wils, 'The Role of the Hearing Officer in Competition Proceedings before the European Commission' (2012) 35(3) World Competition 431.
[20] Decision 2011/695, Articles 7, 8 and 9.
[21] Guidance, Procedural Officer: raising procedural issues in CMA cases (13 March 2024) https://www.gov.uk/guidance/procedural-officer-raising-procedural-issues-in-cma-cases
[22] Commission Implementing Regulation (EU) 2023/814 of 14 April 2023 on detailed arrangements for the conduct of certain proceedings by the Commission pursuant to Regulation (EU) 2022/1925 of the European Parliament and of the Council [2023] OJ L102/6, Art 7(7).
[23] Cf. Competition and Markets Authority, Digital markets competition regime guidance (CMA194) (2024), pp.127-128
[24] Commission Decision 2024/3083 of 4 December 2024 establishing the Code of Good Administrative Behaviour for Staff of the European Commission in their relations with the public OJ L, 2024/10001.

3. Strengthening Regulatory Cooperation

Along with improvements to the DMA implementation process, we recommend better coordination between the EU and national regulators responsible for the DMA and other components of the digital rulebook to ensure strong regulatory coherence. This consistency is crucial, as emphasised in the mission letter of Executive Vice President Virkunnen.[25]

3.1. Regulatory Cooperation at the National Level

The growing body of laws within the EU (and national) digital rulebooks has resulted in an increase in the number of national authorities overseeing digital platforms. These include authorities responsible for competition law, data protection, consumer protection, telecommunications services, and media services. [26]

To ensure effective supervision, **these different authorities should work closely together to develop a shared understanding** of the digital ecosystems they regulate. Based on this common understanding, they can develop **coordinated general policy approaches and make consistent individual decisions**. Such national coordination is also encouraged by the Court of Justice of the EU on the basis of on the loyalty clause of the EU Treaties. [27]

In practice, an increasing number of Member States, such as France, Germany, and the Netherlands,[28] have established networks of national authorities involved in supervising the digital value chain.

3.2. Regulatory Cooperation at the EU level

In addition to cooperation at the national level, cooperation at the EU level also needs to be strengthened—both among the regulators responsible for the DMA and between the regulators overseeing the DMA and other laws within the digital rulebook.

For the first type of cooperation, the **DMA establishes mechanisms for collaboration between the Commission and national authorities**, particularly the national competition authorities within the European Competition Network. However, as mentioned earlier, the division of roles between the Commission, which is the sole enforcer of the DMA, and the national authorities, which support the Commission's tasks, could be clarified and improved. Looking ahead, the Commission may consider adopting maximum harmonisation as a more effective approach to regulating digital markets, thereby preventing the application of parallel national laws.

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[25] "*You will also work to stress test the EU acquis and table proposals to eliminate any overlaps and contradictions and be fully digitally compatible, while maintaining high standards. To achieve this goal, regulators should have the ability and the incentives to cooperate at the national level and at the EU level*."

[26] G. Monti and A. de Streel, *Improving institutional design to better supervise digital platforms*, CERRE Report, January 2022. The national authorities of the Member States where the gatekeeper is established often have a particularly important role given the application of the principle of the country of origin in most of the laws of the EU digital rulebook.

[27] Case C-252/21 *Meta Germany*, paras 52-53, ECLI:EU:C:2023:537. The Court decided that Art.4(3) TEU requires consultation and cooperation among the different regulatory agencies.

[28] https://www.acm.nl/en/about-acm/cooperation/national-cooperation/digital-regulation-cooperation-platform-sdt

The second type of cooperation is particularly complex, as it involves regulators overseeing different legal instruments. To facilitate this regulatory cooperation, the DMA has established the Digital Markets Advisory Committee (DMAC) and the DMA High Level Group, a network that includes five regulatory networks: ECN, CPC, EDPB, BEREC, and ERGA. The High-Level Group is a crucial mechanism for ensuring regulatory consistency across the digital rulebook and for providing a holistic view of platform markets and the orchestrating role of gatekeepers.

However, the **roles of the DMAC and the High-Level Group could be enhanced in terms of transparency and stakeholder involvement**. Initial steps could include creating a more user-friendly dedicated websites that explain how the DMAC and High-Level Group function, provide reports of meetings, and detail the work being undertaken by sub-groups (including an annual work plan).[29]

Additionally, gatekeepers, business users, and other interested parties should be given opportunities to consult and/or submit comments on the work of the DMA High-Level Group. Furthermore, the High-Level Group could encourage the participation of technical experts in fields beyond competition, such as security, privacy, and intellectual property. In light of the importance of cybersecurity objectives and regulations, the composition of the DMA High Level Group could also be **expanded to include ENISA**.

In the longer term, it may be beneficial to establish a systemic and comprehensive institutional structure that, on one hand, enables and incentivises coordination across countries and regulatory regimes, and, on the other hand, provides for hierarchical relationships that allow for the rapid adoption of final decisions in the interest of the EU as a whole, rather than merely in the interest of individual Member States. One way to achieve these goals could be to **establish a European System of Digital Regulators, consisting of a European Digital Authority and a network of National Digital Regulators**.[30] The European Digital Authority could assume the direct enforcement powers currently held by the Commission under existing laws of the digital rulebook (such as the DMA, DSA, etc.), as well as the enforcement powers of the various regulatory networks established by the EU digital rulebook. National digital regulators would retain significant roles, as they would, on one hand, participate in the main aspects of decision-making conducted by the European Digital Authority and, on the other hand, implement decisions adopted by the European Digital Authority in their respective Member States and monitor compliance by regulated firms.

[29] The current website of the DMAC is at: https://ec.europa.eu/transparency/comitology-register/screen/committees/C114400/consult?lang=en and of DMA High Level group is at https://ec.europa.eu/transparency/expert-groups-register/screen/expert-groups/consult?lang=en&groupID=3904

[30] A potential source of inspiration for this new system could be the Single Supervisory Mechanism (SSM), under which significant banks in the Eurozone are supervised by the European Central Bank (ECB) in close cooperation with national financial supervisors through the establishment of Joint Supervisory Teams.

4. Preparing the DMA Evaluation

Given the complexity of digital markets and ecosystems, as well as the novelty of the DMA, an ex post evaluation of the law will be essential to identify both the strengths and weaknesses of the rules and their enforcement, as well as the necessary remedies to address these weaknesses. The first evaluation should be conducted by the Commission in May 2026, with subsequent evaluations every three years thereafter. Given the importance, as well as the challenges, of this evaluation, preparations should begin today. [31] In particular, three key issues need to be addressed in accordance with the 2021 Better Regulation Guidelines of the Commission. [32]

Who Will Do the Evaluation?

The first issue concerns who will carry out and be involved in the evaluation. The DMA stipulates that, as with all other EU laws, the Commission should conduct the evaluation. However, unlike many EU laws that are enforced by national authorities, the DMA is enforced by the Commission itself. This creates a potential conflict of interest, as the Commission would be tasked with evaluating its own enforcement.

To mitigate this risk, **an independent body could be involved in the evaluation, ideally ahead of the Commission**. This could be the Court of Auditors or an ad hoc independent high-level group, which could prepare a report to inform the evaluation conducted by the Commission. Additionally, the **draft evaluation report from the Commission could be subject to public consultation** before being reviewed by the Regulatory Scrutiny Board and finalised by the Commission. Of course, there is a balance to be struck between the number of actors involved, the procedural steps required, and the speed of the evaluation process. However, we believe that involving independent experts before the Commission drafts the evaluation report, and allowing for public consultation afterward, will ensure sufficient expertise and independence without overly complicating the process.

What Will Be Evaluated?

The second issue concerns the framing of the evaluation, particularly in terms of effectiveness, efficiency, and consistency. The evaluation of *effectiveness* is likely the most complex aspect because, on one hand, the DMA pursues multiple objectives (contestability, fairness, internal market), and on the other, evaluation can occur at different levels (firms/gatekeepers, core platform digital services, rules/obligations). This requires an identification of the **multiple and causal relationships between: (i) the steps taken by gatekeepers to implement DMA obligations, (ii) the behaviours that emerge from businesses and end users interacting with gatekeepers to leverage the opportunities created by the DMA, and (iii) the long-term interests of the users, in particular in terms of choice and innovation.**

The evaluation should also examine the **trade-offs and tensions between the DMA's various objectives as well as with the other laws of the digital rulebook and whether they are balanced in a way that favours the long-term interests of end users. This includes identifying possible unintended**

[31] M. Bassini, M. Maggiolino and A. de Streel, Better Law-Making and Evaluation for the EU Digital Rulebook, CERRE Report, January 2025.
[32] European Commission Better Regulation Guidelines SWD(2021) 305.

consequences of DMA implementation, such as a deterioration in the consumer journey, the loss of innovation if new products are not deployed in the EU, or potential reductions in the security of digital services or privacy protections. The trade-off analysis should also recognise that some effects (positive or negative) may be more immediate than others. It is therefore crucial that the evaluation considers these dynamic elements.

The evaluation of *efficiency* could deal with the **implementation process** and whether the existing process is adapted to the nature of the DMA and the types of its obligations. As we discussed in Section 2 of this paper, this part of the evaluation could focus in particular on transparency, legal predictability, institutional arrangements, and the mechanisms to build trust among all stakeholders.

Finally, the evaluation of *regulatory consistency* in objectives and rules will be particularly important, given the significant **regulatory interplay between the DMA and other parts of the EU digital rulebook**. This will also require an assessment of the effectiveness of the regulatory coordination mechanisms in place.

Which Indicators and Data Need to be Collected for this Evaluation and by Whom?

This evaluation framework will enable the Commission to determine which **quantitative and qualitative indicators** should be measured to ensure the robustness of the evaluation.

Once the evaluation has been properly framed and the indicators identified, the third issue is to determine which **data is necessary for the evaluation, why it is needed, and how and from whom it should be sourced**. Data could be sourced from a variety of entities, including the gatekeepers (particularly through their compliance reports), business and end-users, civil society, the Commission (such as the Joint Research Centre), the DMA High-Level Group, ENISA, consumer surveys, and independent academic or commercial research.

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