Gianfranco Alfano and Ludovica Vairo[*]

SPECIAL SECTION

TECHNOLOGICAL TOOLS AND TRADITIONAL MEASURES TO COMPLY WITH THE DMA

Legal analysis from gatekeepers' reports under Article 11

Abstract

This paper provides an in-depth examination of the technological and governance tools implemented by companies designated as "gatekeepers" under the Digital Markets Act (DMA) to fulfil the extensive *ex-ante* obligations set forth by the Regulation. Drawing on the (non-confidential summaries of the) compliance reports submitted in 2024 and 2025 by these companies under Article 11, the paper reveals – exploring both legal and technological dimensions – how gatekeepers align with the DMA's requirements. The study thus highlights the interplay between centralised enforcement by the European Commission, sophisticated technological solutions and robust governance measures required by the DMA, shedding light on both the achievements and challenges of maintaining compliance in rapidly evolving digital markets.

JEL CLASSIFICATION: K10, K21, K22, K23

SUMMARY

[*] Gianfranco Alfano is a business law researcher at University of Naples "Federico II". Ludovica Vairo is PhD graduate in economic and business law at University of Naples "Federico II". This paper is the outcome of a unified approach and a shared reflection by both authors. However, paragraphs 1, 2, 2.1, 2.2 and 4 are attributable, in particular, to Gianfranco Alfano while paragraphs 3, 3.1, 3.2, 5 and 6 are attributable, in particular, to Ludovica Vairo.

 DOI 10.13135/2785-7867/12270

1 Introduction

The Regulation (EU) 2022/1925 (Digital Markets Act, hereinafter "DMA")[1] represents a pivotal step towards contestability and fairness in the digital markets. Adopted pursuant to Article 114 TFEU[2], the DMA specifically targets large digital platforms, designated as "gatekeepers" in relation to specific core platform services. It imposes *ex-ante* obligations aimed at preventing anti-competitive behaviour and promoting an open, innovative environment within the digital sector, both in the EU and globally[3].

The DMA not only prescribes substantive obligations but also mandates rigorous reporting to demonstrate adherence. Indeed, a critical component of this regulatory framework is compliance, seen as the interaction between rules and gatekeepers' behaviour[4].

This paper provides a comprehensive analysis of the role of compliance reports, and the synergy between technological and governance strategies that support the broader compliance ecosystem. The research aims to investigate: *i*) the extent to which the compliance reports submitted under Article 11 of the DMA may be considered not only as tools for regulatory enforcement, but also as indicators of a substantive transformation in gatekeepers' business practices and as catalysts for greater transparency and accountability in digital markets; and *ii*) how the technological solutions and internal governance mechanisms adopted by gatekeepers vary across different core platform services in response to the DMA's obligations. The methodological approach adopted is primarily qualitative and legal-analytical, relying on the systematic analysis of all non-confidential compliance reports yearly published by gatekeepers, as available on the European Commission's website.

[1] European Parliament and Council Regulation (EU) 2022/1925 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) [2022] OJ L265/1.

[2] The choice of legal basis is due to the cross-border nature of digital services, which carries the risk of regulatory fragmentation with a negative impact on the functioning of the single market. See Sophia Catharina Gröf, 'Regulating BigTech: An Investigation on the Admissibility of Article 114 TFEU as the Appropriate Legal Basis for the Digital Markets Act based on an Analysis of the Objectives and Regulatory Mechanisms' [2023] SSNR <https://ssrn.com/abstract=4549209> accessed 9 March 2025; Marco Vargiu, 'Revitalisation of the essential facilities doctrine in EU competition law' (2023) 2(1) JLMI 104, 123.

[3] Fabiana Di Porto, Tatjana Grote, Gabriele Volpi and Riccardo Invernizzi, '"I see something you don't see". A computational analysis of the digital services act and the digital markets act' [2021] Stanford Computational Antitrust 85; Aline Blankertz and Julian Jaursch, 'How the EU Plans to Rewrite the Rules for the Internet' [2020] <https://www.brookings.edu/techstream/how-the-eu-plans-to-rewrite-the-rules-for-theinternet> accessed 9 March 2025; Aviv Gaon and Yuval Reinfeld, 'Advancing fair digital competition: a closer look at the DMA framework' (2024) 3(3) JLMI 358, 374.

[4] See Benjamin van Rooij and D Daniel Sokol (eds), *The Cambridge Handbook of Compliance* (Cambridge University Press 2021) 1,10.

2 Duty of power: the importance of being (designed as) a gatekeeper

The fact that the DMA's rules apply solely to a limited and predefined group of entities (formally designated as "gatekeepers" by the European Commission) leads to at least two types of consequences.

Firstly, and upstream, this affects the definition of the obligations imposed on gatekeepers, which are precise, pre-defined, and highly formalised[5]. In fact, the list of companies subject to this regulation has effectively been established by the European legislator, who then calibrated the size and qualitative thresholds set out in Article 3 of the DMA to "capture" the target companies[6].

Moreover, and downstream, it affects the characteristics of enforcement, allowing for the establishment of a centralised framework, essentially placed in the hands of the Commission alone[7] (which may be supported, in rather vague terms, by national authorities[8]). Both circumstances, as will be seen, contribute to fostering the development of regulatory dialogue spaces between the regulator and the regulated companies, who effectively cooperate in identifying virtuous behaviours and scrutinising the measures adopted within the framework of a process characterised by openness, adaptability, and collaboration.

2.1 Qualitative and quantitative criteria for the designation of gatekeepers. The (formal?) irrelevance of acting as an ecosystem orchestrator

Gatekeepers are designated according to both qualitative and quantitative criteria[9].

[5] See Friso Bostoen, 'Understanding the Digital Markets Act' (2023) 68(2) The Antitrust Bulletin 263, 267 <https://ssrn.com/abstract=4440819> accessed 9 March 2025.

[6] Bostoen (n 5) 274: «the EC had an idea which companies should be captured—in particular the GAFAM (*Google*, *Apple*, *Facebook*, *Amazon*, and *Microsoft*)—and then crafted the thresholds accordingly».

[7] On the contrary, Alberto Bacchiega and Thomas Tombal, 'Agency Insights: The first steps of the DMA adventure' (2024) 12(2) Journal of antitrust enforcement 189, 191, believe that the Commission should not be seen as «a lonely enforcer» of the DMA, as it can rely on mechanisms that ensure the involvement of national competition authorities (*ie,* European Competition Network and High-Level Group).

[8] Although some scholars advocate for a collaborative approach from the NCAs (see Gabriella Muscolo, 'Il rapporto tra applicazione/regolamentazione antitrust e il DMA', in Jacques Moscianese and Oreste Pollicino (eds), *Concorrenza e regolazione nei mercati digitali* (Giappichelli 2024) 110, no significant intervention by these national authorities has been observed during the initial phase of the DMA's application.

[9] Under Article 3(1) of DMA, an undertaking shall be designated as a gatekeeper by the European Commission if it: (a) has a significant impact on the internal market; (b) provides a core platform service which is an important gateway for business users to reach end users; and (c) enjoys an entrenched and durable position in its operations, or it is foreseeable that it will enjoy such a position in the near future. Article 3(2) of DMA provides quantitative thresholds, such as annual EEA turnover equal to or above EUR 7.5 billion or a market capitalisation of at least EUR 75 billion, along with a large base of monthly active end users and yearly active business users. As can be easily inferred from the examination of the European Commission's practice, the quantitative conditions set out in Article 3(2) establish a mere presumption of the fulfilment of the substantive requirements outlined in Article 3(1), which, however, may be proven through other means, following appropriate and more detailed market investigations conducted by the Commission.

Though the DMA itself characterises the quantitative thresholds as indicative rather than definitive, the Commission's «first wave»[10] of designations on September 2023[11] illustrates the considerable weight placed on these numerical benchmarks. Beyond the challenges in identifying a clear demarcation line between qualitative and quantitative criteria[12], the emphasis on quantitative metrics may be excessive, as it may overlook the ability of a platform to wield ecosystem-wide influence even without meeting the precise thresholds. The concept of "ecosystem" is absent in DMA rules: the word "ecosystem" appears only in the recitals[13], while the regulatory framework explicitly revolves around the (sole) notion of "core platform service", as clearly outlined in the wording of Article 3(1), letter b) of the DMA, under which a company may be designated as a gatekeeper if and insofar as it provides a core platform service that constitutes an important gateway for business users to reach end users[14].

Giving more prominence to qualitative considerations could better capture the power of the gatekeeper to be «market makers or orchestrators»[15], who not only govern the architecture of the ecosystem – typically shaped (often at the moment of its creation) to meet their own economic needs – but also have the power to unilaterally modify the operating rules of the same ecosystem[16]. And besides, the «gatekeeper power is not a mere measure of bigness»[17].

However, it «could be a strategic choice»[18] to avoid references to the (vague) concept of a digital ecosystem, to ensure the fulfilment of one of the primary objectives that inspired the very adoption of the DMA, namely, to guarantee swift and effective

[10] Alba Ribera Martínez, 'Full (Regulatory) Steam Ahead: Gatekeepers Issue the First Wave of DMA Compliance Reports' (*Kluwer Competition Law Blog*, 2010) <https://competitionlawblog.kluwercompetitionlaw.com/2024/03/11/full-regulatory-steam-ahead-gatekeepers-issue-the-first-wave-of-dma-compliance-reports/> accessed 9 March 2025.

[11] Commission Decision (2023) C/2023/6100 (*Apple*); Commission Decision (2023) C/2023/6101 (*Alphabet*); Commission Decision (2023) C/2023/6102 (*ByteDance*); Commission Decision (2023) C/2023/6104 (*Amazon*); Commission Decision (2023) C/2023/6105 (*Meta*); Commission Decision (2023) C/2023/6106 (*Microsoft*).

[12] Case T-1077/23 *ByteDance Ltd v. European Commission* [2024] ECLI:EU:T:2024:478, par 40, where it is stated that «it may be difficult, if not impossible, to distinguish between 'quantitative' and 'qualitative' arguments or evidence» and «it may appear artificial to separate one from another and to accept the relevance of the quantitative element alone where it is in fact intended to support an argument of a qualitative nature».

[13] Recitals 3, 32 and 64 of DMA.

[14] Many scholars have suggested – in the discussions preceding the final adoption of the DMA – the addition of the ability to coordinate ecosystems among the criteria for qualifying businesses as gatekeepers: see Alexandre de Streel, Richard Feasey, Jan Kramer and Giorgio Monti, 'Making the Digital Markets Act More Resilient and Effective' (Centre on Regulation in Europe 2021) 17 <https://cerre.eu/wp-content/uploads/2021/05/CERRE_-DMA_European-Parliament-Council-recommendations_FULL-PAPER_May-2021.pdf> accessed 9 March 2025.

[15] Robin Mansell, 'Platforms of power' (2015) 43(1) Intermedia 20, 25.

[16] Michael G Jacobides and Ioannis Lianos, 'Ecosystems and Competition Law in Theory and Practice' (2021) 30(5) Industrial and Corporate Change 1199, 1215.

[17] Alexandre de Streel, 'Gatekeeper Power in the Digital Economy: An Emerging Concept in EU Law' (*Organisation for Economy Co-operation and Development* 22 June 2022) 11 <https://one.oecd.org/document/DAF/COMP/WD(2022)57/en/pdf> accessed 9 March 2025.

[18] Phillip Hornung, 'The Ecosystem Concept, the DMA, and Section 19a GWB' (2023) 12(3) Journal of Antitrust Enforcement 17.

enforcement. And in fact, although formally irrelevant for the designation purposes (as confirmed by the EU case law[19]) some consideration of digital ecosystems seems "implicit" in certain obligations set out in Articles 5-7 of the DMA[20], which aim to fragment the services offered by gatekeepers (for example, preventing access to a core platform service from being conditional on prior registration with another core platform service offered by the same gatekeeper). It is not far-fetched to assert that, in substance, «the DMA has been intended to specifically address the problems related to ecosystems»[21].

The Commission has already demonstrated a willingness to consider non-numerical evidence by opening market investigations to confirm or reject gatekeeper designations[22]. Following the first wave of designations, the Commission soon included *Booking Holding Inc.* (*BHI*) for its accommodation intermediation service *Booking.com* and *Apple*'s *iPadOS*. Notably, *iPadOS* did not meet the quantitative thresholds but was deemed – after a qualitative investigation under Article 17(1) – to constitute an "important point of access" for business users, considering the market power held by *Apple* in the tablet operating systems segment[23].

This decision of the Commission also demonstrates the dynamism of the DMA. In light of the rapidly evolving and complex technological nature of core platform services, in fact, the DMA foresees «regular reviews» of gatekeeper status[24] (as well as of core platform services and obligations, in order to keep pace with the digital sector's rapid transformations)[25]. The Commission is required to adopt a flexible approach, reassessing whether designated gatekeepers continue to meet both quantitative and qualitative conditions at least every three years[26]. This mechanism ensures that the initial designations remain up to date and that newly influential platforms can be brought under the DMA's purview.

[19] Case T-1077/23 (n12), par 132, where it is stated that «no provision or recital of the DMA suggests that, in order to be designated as a gatekeeper, a company must necessarily control a platform ecosystem».

[20] de Streel, Feasey, Kramer and Monti (n 14) 50. See Frédéric Marty and Jeanne Mouton, 'Ecosystem as quasi-essential facilities: should we impose platform neutrality?' (2022) 1(3) JLMI 108, 133.

[21] Giuseppe Colangelo, 'DMA begins' (2023) 11(1) Journal of Antitrust Enforcement 116, 120.

[22] Article 17(1) of DMA.

[23] Commission Decision, C(2023) 4374 final (*The designation of iPadOS*) follows a qualitative investigation (Commission Decision (2023) C/2023/6076). According to European Commission analysis, «iPadOS has been one of the two leading operating systems for tablets in the Union for more than 10 years», and «it is expected that the number of end users and business users of iPadOS, and therefore its importance as a CPS, will continue to grow»; hence, although it does not meet the quantitative thresholds set by the regulation, iPadOS represents an important access point for commercial users to reach end users and must therefore be designated as a gatekeeper.

[24] Recital 30 of DMA.

[25] Recitals 77 and 105 of DMA.

[26] Article 4(2) of DMA. Some authors had suggested setting a longer timeframe (of at least 5 years) for the review of the gatekeeper status: see A de Streel, Feasey, Kramer and Monti (n 14) 87.

2.2 Gatekeepers' obligations under Article 5-7

Under the DMA, gatekeepers must comply with a series of obligations aimed «to ensure contestability and fairness for the markets in the digital sector»[27]. These obligations are numerous and diverse, yet all are intended to address the dysfunctions of digital markets not only in terms of prices, quality, choice, and innovation, but also in relation to abusive behaviours by the gatekeepers[28]. Specifically, some obligations primarily aim at ensuring fairness; others combine fairness with the facilitation of competition; still other obligations are primarily aimed at preventing the strengthening and consolidation of gatekeepers' market power, thereby facilitating the actions of competitors in the core services market or in adjacent markets.

At this point, a clarification is useful. The DMA is adopted based on Article 114 TFEU and aims – at least in principle – to seek objectives distinct from those of antitrust law. Nonetheless, the intention to promote competition in the digital markets overlaps at least partially with the provisions of Articles 101-102 TFEU[29]. The rules contained in the DMA have indeed been described as «*ipso facto* competition rules»[30].

Even in this area, however, the DMA seeks to achieve objectives that antitrust law has chosen not to pursue (or that, in any case, has not pursued adequately), and namely, removing barriers to entry in digital markets and levelling the playing field for businesses operating within them[31]. Many of DMA obligations are therefore aimed at "levelling" the starting conditions for companies operating in the digital sector[32], and can thus be considered as «a new, broader, 'antitrust plus' embodiment of the evolving concept of competition law»[33].

[27] Recital 7 of DMA.

[28] Pietro Manzini, 'Equità e contendibilità nei mercati digitali: la proposta di Digital Market Act' (*Aisdue* 2021) 33-39 <https://www.aisdue.eu/pietro-manzini-equita-e-contendibilita-nei-mercati-digitali-la-proposta-di-digital-market-act/> accessed 9 March 2025.

[29] Some scholars highlight how «the DMA appears to be merely an antitrust intervention vested by regulation»: G Colangelo (n 21) 122; similarly, Natalia Moreno Belloso and Nicolas Petit, 'The EU Digital Markets Act (DMA): A Competition Hand in a Regulatory Glove' (2023) 48 European Law Review 391. On the relationship between DMA and European competition law, see Mario Libertini, 'Il regolamento europeo sui mercati digitali e le norme generali in materia di concorrenza' (2022) 4 Rivista trimestrale di diritto pubblico 1069; Margherita Colangelo, 'La regolazione ex ante delle piattaforme digitali: analisi e spunti di riflessione sul Regolamento sui mercati digitali (Regolamento (UE) 2022/1925 del 14 settembre 2022)' (2023) 2 Le Nuove Leggi Civili Commentate 422, 440.

[30] Oles Andriychuk, 'Do DMA obligations for gatekeepers create entitlements for business users?' (2022) 11(1) Journal of Antitrust Enforcement 123, 125.

[31] According to Giulia Ferrari and Mariateresa Maggiolino, 'Il potere across markets delle GAFAM: come reagire?' [2021] Rivista Orizzonti del diritto commerciale 471, antitrust law does not seek to eliminate barriers to entry; instead, it recognises their presence primarily to assess the potential longevity of the market power enjoyed by firms shielded by such barriers.

[32] Mariateresa Maggiolino, 'Is the DMA (Un)Fair?' (2024) 12(2) Journal of Antitrust Enforcement 267, 271: «the various rules outlined in the DMA can be interpreted as *equity-oriented* measures aimed at promoting *merit* over *meritocracy*».

[33] Andriychuk (n 30) 125.

More specifically, the catalogue of obligations set out in Articles 5-7 – while originating from case law in the area of antitrust[34], which in a *de jure condendo* perspective will also influence the evolution of the aforementioned set of obligations[35] – presents its own peculiarities[36], capable of overcoming some of the challenges encountered in the recent past in the application of antitrust law (particularly regarding abuse of dominance) in digital markets[37].

What emerges is a regulatory framework characterised by the *ex-ante* definition of the *dos & donts* that companies designated as gatekeepers must adhere to[38], following a logic typical of regulatory action[39]. While «competition laws are closer to standard»[40], the prescriptions of the DMA identify the objectives to be pursued by public authorities, define the parameters for identifying relevant subjects for the regulation, and then precisely establish the obligations imposed on them[41], within the pro-competitive perspective of regulatory acts[42].

These obligations, which are exhaustive in nature and thus not subject to broad or analogical interpretation, apply uniformly to all gatekeepers, «irrespective of their different business models»[43]. In doing so, they confer renewed substance to the concept of "special responsibility," long acknowledged as applicable to companies with significant market power[44].

[34] Lyuxing Tao, 'The 'gatekeeper scope' of the Digital Markets Act: An analysis of its soundness and compatibility of 'dominant position' in the competition law' (2024) 10 North East Law Review 108, 114; M Colangelo (n 29) 418. For a critic, see Rupprect Podszun, Phillip Bongartz and Sarah Langenstein, 'The Digital Markets Act: Moving from Competition Law to Regulation for Large Gatekeepers' (2021) 10(2) Journal of European Consumer and Market Law 60, 67, according to which «the list of obligations should be closely revised, not with a view to competition law only, but with a broader assessment of market failures related to the activities of digital gatekeepers».

[35] Not only that: the update of the catalogue of obligations and prohibitions also appears "linked" to the evolution of case law in antitrust matters under Articles 101-102 TFEU, as expressly provided under Article 19(1) of the DMA.

[36] Filippo Donati, 'Verso una nuova regolazione delle piattaforme digitali' (2021) 2 Rivista della regolazione dei mercati 238.

[37] In digital contexts, therefore, the difficulties related to the (not always easy) identification of the relevant market in a digital setting and the demonstration of a company's "dominant" position are well known.

[38] According to Aurelio Gentili, 'Le fonti del diritto d'impresa: un tentativo di sistema' (2024) 2 Contratto e impresa 342, 344, «regulatory law performs a corrective function with respect to entrepreneurial autonomy».

[39] Bruno Carotti, 'La politica europea sul digitale: ancora molto rumore' (2022) 2 Rivista trimestrale di diritto pubblico 997, 1003.

[40] Bostoen (n 5) 267.

[41] See Rupprect Podszun, 'From Competition Law to Platform Regulation. Regulatory Choices for the Digital Markets Act' (2022) 17(1) Economics 1, 7: «regulatory law works with rules that are much more specific and prohibit or prescribe exact behavior».

[42] Ginevra Bruzzone, 'Verso il Digital Markets Act: obiettivi, strumenti e architettura istituzionale' (2021) 2 Rivista della regolazione dei mercati 323, 330.

[43] See G Colangelo (n 21) 118, 121, who instead suggests «the definition of obligations tailored to the business model under scrutiny», that «would have safeguarded the economic justification and the regulatory nature of the DMA».

[44] Case C-322/81, *Michelin v Commission* [1983] ECR I-3461, par 10.

The European Commission can apply conduct obligations not only to digital companies that already hold a «gatekeeper power»[45], but also to those that are close to acquiring such a status. In fact, some measures can be applied to so-called emerging gatekeepers, ie, companies that currently do not meet the qualitative and quantitative conditions to be designated as gatekeepers but that «will enjoy an entrenched and durable position in the near future» that «could become unassailable» so as «it appears appropriate to intervene before the market tips irreversibly»[46]. Such emerging gatekeepers may be subject to obligations which are particularly relevant for multi-sided platforms[47].

In any case, for each company subject to the DMA, compliance with the obligations set out in the regulation involves building technical solutions and governance measures (ie, a dedicated compliance function), amending existing mechanisms, and reviewing and revising existing policies. The following pages are dedicated to the analysis of the tools employed by gatekeepers, based on the information derived from the non-confidential summaries of the compliance reports published by the European Commission.

3 "Comply and explain": the role of compliance reports in enforcing the DMA

Gatekeepers have to comply with obligations of a dual nature: on the one hand, they are required, after an initial self-assessment, to align their services and business models with the provisions of the DMA through technical tools and internal governance mechanisms ("substantial obligations"); on the other hand, they must explain the measures they plan to adopt and/or have already adopted to the European Commission and the broader public of stakeholders ("reporting obligations").

One complementary to the other[48], these obligations appear to form an unprecedented "comply and explain" mechanism and provide the interpreter with a regulatory model that places significant emphasis on compliance reporting activities.

Each gatekeeper is required to submit a compliance report to the Commission within six months of designation (by the same deadline set for complying with substantial obligations), and to update it at least annually[49]. A summary of each report (excluding confidential information but still capable of illustrating the ongoing compliance efforts) is shared with the public on the European Commission's website.

[45] de Streel, Feasey, Kramer and Monti (n 14) 3.
[46] See Recitals 26 - 27 and Article 3 of DMA.
[47] Fabiana Di Porto and Annalisa Signorelli, 'Regolare attraverso l'intelligenza artificiale' in Alessandro Pajno, Filippo Donati and Antonio Perrucci (eds), *Intelligenza artificiale e diritto: una rivoluzione? Diritti fondamentali, dati personali e regolazione* (Il Mulino 2022) 627; Caio Mario Da Silva Pereira Neto and Filippo Lancieri, 'Towards a layered approach to relevant markets in multi-sided transaction platforms' (2020) 82(3) Antitrust Law Journal 701; Andrei Hagiu and Julian Wright, 'Multi-sided platforms' (2015) 43 International Journal of Industrial Organization 163.
[48] Anne Witt, 'The Digital Markets Act – Regulating the Wild West' (2023) 60(3) Common Market Law Review 640.
[49] Article 11(1) of DMA.

As some scholars have rightly pointed out, «the starting point of DMA enforcement is the compliance report by the gatekeeper»[50]: in addition to maximising overall transparency in the long term, in fact, the imposition of this reporting obligation allows for tracking the effects of the DMA's application in terms of market contestability and fairness[51], by highlighting the structural changes that various gatekeepers have implemented to comply with the rules[52].

These reports serve several interlocking functions, which can be identified in at least three categories.

The first function – undoubtedly the most evident – pertains to the assessment and control (both external and internal) of the measures implemented by the gatekeeper to ensure compliance with the DMA obligations.

The primary function of the compliance reports (which, in fact, will be examined in greater detail below) is fulfilled in their complete version, which is not subject to publication and is transmitted solely to the Commission. By reviewing these reports, the European authority can evaluate the effectiveness of gatekeepers' strategies, determining whether companies have genuinely adhered to the obligations or if further remedial actions are required.

In this sense, compliance reports thus become a fundamental and irreplaceable tool for reducing the informational asymmetries between the Commission and the gatekeeper company. The information must – in addition to being complete and detailed, as required by Article 11 DMA – be reliable for the Commission. The issue of credibility is central, as «compliance with the DMA cannot be rendered effective if the enforcer does not believe in the gatekeeper's informational disclosure»[53].

Moreover, always from an external perspective, non-confidential public summaries of these reports can be used by third parties (*ie*, competitors, consumers and consumer organisations, and even scholars and other stakeholders) to play a role in "bottom-up surveillance", often encouraged by the Commission itself, which invites experts and other

[50] Jasper van den Boom and Rupprecht Podszun, 'Procedures in the DMA: non-compliance navigation –Exploring the European Commission's space fordiscretion and informality in procedure and decision-making in the Digital Markets Act' [2025] European Competition Journal 4 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5091649> accessed 9 March 2025.

[51] It is therefore entirely understandable the surprise expressed by some scholars when recalling that the provision in Article 11 DMA was not included in the original proposal made by the European Commission in 2020, being added only following the intervention of the European Parliament: Alba Ribera Martínez, 'The Credibility of the DMA's Compliance Reports' (2024) 48 (1) World Competition 6, 7 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4932420> accessed 9 March 2025.

[52] Jacques Crémer, David Dinielli, Paul Heidhues, Gene Kimmelman, Giorgio Monti, Rupprecht Podszun, Monika Schnitzer, Fiona Scott Morton and Alexandre De Streel, 'Enforcing the Digital Markets Act: institutional choices, compliance, and antitrust' (2023) 11(3) Journal of Antitrust Enforcement 315, 325.

[53] Ribera Martínez (n 51) 3.

interested parties to provide feedback on the compliance proposals put forward by one or more gatekeepers[54].

From an internal perspective, however, the process of drafting the report represents a useful opportunity for self-assessment[55] and (consequently) self-correction for the gatekeeper companies[56]. These companies are encouraged to track the techniques employed to ensure compliance with the DMA, to highlight opportunities and risks, with the aim of improving future implementations.

In addition to the functions mentioned, two other perhaps less evident functions emerge, likely unintended – at least according to the legislator's declared intentions – but equally significant.

First and foremost, the public version of the compliance reports often acts as a knowledge-sharing platform, indirectly guiding smaller operators and market entrants on best practices and compliance strategies that might otherwise remain hidden. This can foster the development of a collaborative compliance culture across digital markets, engaging even smaller companies with less market power in a virtuous and spontaneous alignment with some of the behaviours outlined in the DMA.

Along the same lines, there is another function that can be defined as "voice". The significance of these documents may go far beyond the mere public representation of the gatekeeper's efforts to comply with European rules. Public summaries of compliance reports serve as an elective space where gatekeeper companies can present their perspective on the concrete choices made to adhere to the obligations laid out in the DMA (and the more or less participatory processes through which these choices were made[57]).

[54] See European Commission, *Consultation on the proposed measures for requesting interoperability with Apple's iOS and iPadOS operating systems* DMA.100204, 18 December 2024 – 9 January 2025 <https://digital-markets-act.ec.europa.eu/dma100203-consultation-proposed-measures-interoperability-between-apples-ios-operating-system-and_en> accessed 9 March 2025. As stated in the press release accompanying the document, the scope of the European Commission is to seek «feedback from interested third parties on the proposed measures in relation to the iOS features in the scope of these proceedings, namely notifications, background execution, automatic Bluetooth audio switching, high-bandwidth peer-to-peer Wi-Fi connections, AirDrop, AirPlay, close-range wireless file transfers, media casting, proximity-triggered pairing, automatic Wi-Fi connection, and NFC functionality. In particular, the Commission seeks views on the technical aspects of the measures». Among scholars, see Crémer, Dinielli, Heidhues, Kimmelman, Monti, Podszun, Schnitzer and de Streel (n 52) 327, who consider the non-confidential public summaries as «an enforcement tool that can substantially lower the costs to the Commission». This is by no means a minor issue; indeed, it has been noted that *ex-ante* regulation (such as the DMA) «is very costly since it involves mobilizing supervisory agents and efficient administration upstream of any activity» Pierre Bentata, 'Regulating "gatekeepers": predictable "unintended consequences" of the DMA for users' welfare' (*Competition forum,* 2022) 13 <https://competition-forum.com/wp-content/uploads/2022/01/art.-n%C2%B00031.pdf> accessed 9 March 2025.

[55] See Alexandre de Streel, Marc Bourreau, Richard Feasey, Jan Kraemer and Giorgio Monti, 'Implementing the DMA: substantive and procedural principles' [2024] Centre on Regulation in Europe 96.

[56] In the drafting of the compliance report, the head of the compliance function, envisaged under Article 28 DMA, takes on a primary role of responsibility. See Crémer, Dinielli, Heidhues, Kimmelman, Monti, Podszun, Schnitzer and de Streel (n 52) 327.

[57] See Amazon's Compliance Report (2024) 4: «Finally, prior to the launch of new features and consistent with Amazon's usual processes, we conducted user studies on key DMA requirements. The study outcomes helped inform the final

It can be seen as a tool for dialogue – and, in some respects, for marketing purposes[58] – with their users and other stakeholders, undoubtedly valuable given the profound changes that, in many cases, gatekeepers have made to their services and business models specifically to comply with the regulations. In this sense, the voice function of compliance reports would at least partially balance the European legislator's «institutional choice» to impose high penalties in the event of DMA violations, which are capable of attracting «significant media attention and stock market reactions»[59].

Compliance reports published on the European Commission's website provide insight into the guiding principles and strategic direction adopted – and formally declared – by the supervised BigTech companies in relation to the core objectives of the DMA. This approach manifests both in their autonomous initiatives, extending beyond mere compliance with the obligations set forth in the Regulation, and in their adherence to the means and methods established by the European legislator. A notable example in this regard is *Apple*'s Compliance Report, in which the Cupertino company expresses its clear discontent (and concern) regarding the choices made by European institutions, which it believes could «bring greater risks to users and developers» going so far as to declare that «Apple will continue to urge the European Commission to allow it to take other measures to protect its users»[60]. At the same time, it is equally interesting to consider the statements (rather different) accompanying the publication of *Microsoft*'s Compliance Reports, which highlight how the company's business model, based on offering an "open" OS service like *Windows*, has always been consistent with the spirit of the DMA[61].

The choice of venue by the two companies mentioned does not appear to be accidental, precisely because of the publicity that characterises these reports, which can be consulted by industry operators and the broader public of interested stakeholders. Whether and to what extent European institutions will heed these warnings – within the framework of the

customer-facing touch points, and help our customers, our advertising customers, and Sellers to navigate through the experience and understand its impacts and implications. Looking ahead, we have a wide variety of mechanisms for gathering feedback from our stakeholders, including customers, Sellers, and advertising customers, to help us continuously improve our compliance measures». It is noteworthy that *Amazon*, despite highlighting the open dialogue it has with its stakeholders, chose to produce a compliance report (in its public version) that is very concise and far less explanatory than those submitted by other gatekeepers.

[58] As observed by Ribera Martínez (n 10) some gatekeepers (namely: *Apple* and *Amazon*) «only presented a patchwork of marketing-approved statements to satisfy, in appearance, the requirement of submitting a compliance report».

[59] See Umberto Nizza and Cristina Poncibò, 'Antitrust Mega Fines in Digital Markets and Their Impact on Compliance: An Overview of EU and US Approaches' [2024] Stanford-Vienna Transatlantic Technology Forum Working Paper n° 115.

[60] Apple's Compliance Report (2024) 1.

[61] See Chris Nelson, 'Microsoft implements DMA compliance measures' (*Microsoft EU Policy Blog*, 7 March 2024) <https://blogs.microsoft.com/eupolicy/2024/03/07/microsoft-dma-compliance-windows-linkedin> accessed 9 March 2025: «because Windows is designed as an open platform for applications and has been for decades, it complied with many of the key provisions of the DMA even before the act was passed».

DMA review scheduled for 3 May 2026, and every three years thereafter[62] – remains to be seen.

3.1 Compliance reports and gatekeepers dialogue with the European Commission

Compliance reports serve as a vital tool for fostering an ongoing dialogue between gatekeepers and the European Commission.

The reports represent an opportunity for discussion from which positive effects can arise both for the Commission and for the gatekeepers, and ultimately, for the fairness and contestability of the digital markets.

From the Commission's perspective, the reports are an inexhaustible source of information regarding the dynamics of digital markets and the business models adopted by gatekeepers. These reports enable the Commission to attain a more comprehensive and timely understanding – otherwise inherently delayed and partial – of digital markets as a whole, with particular regard to the technical tools and governance measures adopted by gatekeepers. The effects are at least twofold: by having a greater (and more objective) awareness of the gatekeepers' adherence to the DMA's rules, the Commission is able, on one hand, to ensure more precise and comprehensive oversight, taking immediate corrective actions in the event of gaps or deficiencies, and on the other hand, to promote future revisions of the Regulation that would be more aligned with the needs of gatekeepers and digital markets, enhancing their fairness and contestability[63].

In fact, from the gatekeepers' perspective, compliance reports are not merely a means of reporting compliance but can serve as a space for gatekeepers to outline their concerns, approaches, and potential challenges in meeting the obligations. Furthermore, the gatekeeper «can also use it strategically (...) to test the limits of what can be considered compliant»[64].

The space dedicated to dialogue for compliance purposes – in which third parties may also participate[65] – is clearly highlighted by the Commission's practice of organizing specific public workshops dedicated to each gatekeeper[66]. In this context, the Commission

[62] Article 53 of DMA. From a combined reading of that article and Recital 105 of the DMA, it follows that the obligation of periodic review consists in assessing whether the objectives of ensuring fair and contestable markets have been achieved and determining the impacts on commercial users—particularly SMEs—and on end users. This assessment serves as a basis for considering any modifications to both the list of core platform services and the obligations imposed on gatekeepers, while also considering technological and commercial developments. On the evaluation and revision process of the DMA, see Alexandre de Streel, Richard Feasey and Giorgio Monti, *DMA@1: Looking back and ahead* (Centre on Regulation in Europe 2025) 90.

[63] Antonio Manganelli, 'Piattaforme digitali e social network, fra pluralità degli ordinamenti, pluralismo informativo e potere di mercato' (2023) 2 Giurisprudenza costituzionale 883, 886.

[64] Van den Boom and Podszun (n 50) 4.

[65] Namely, civil society representatives such as consumer protection associations, but participation is open to journalists, consultants, external lawyers, and academics or students.

[66] The list of workshops (*ie*: 25 November 2024 - BHI DMA compliance workshop; 26 March 2024 - Microsoft DMA compliance workshop; 22 March 2024 - ByteDance DMA compliance workshop; 21 March 2024 - Alphabet DMA compliance

acts as a "consultant", functioning as an «*amicus*» for the gatekeepers[67]. In particular, Article 8(3) allows gatekeepers to request a *preliminary* opinion from the Commission regarding the effectiveness of the measures they intend to adopt to comply with the obligations set out in the DMA. However, it is worth noting that, even if «it would be beneficial for gatekeepers to discuss its proposed compliance measures with the Commission before the deadline (…) it cannot be obliged to»[68].

It can be stated that «gatekeepers become part of and not just subject to the regulatory design»[69]; this option appears essential for overcoming one of the «weakest points» of the DMA, namely the irrelevance of economic justifications put forward by gatekeepers[70].

The regulatory paradigm underlying the DMA shifts from being a typically reactive mechanism addressing market dysfunctions and suppressing abuses to assuming a preventive and evaluative character[71].

3.2 Compliance reports and European Commission's centralised enforcement

The European Commission – through the joint team involving DG Competition and DG Connect[72] – is responsible for designating gatekeepers, issuing delegated regulations, updating obligations, and proposing amendments to the regulation. Consequently, it may initiate market investigations, conduct inspections, and adopt application guidelines, in the exercise of its monitoring functions. Furthermore, the Commission has investigative and monitoring powers, and acts as the *sole enforcer* of the DMA.

The rationale behind such a centralisation of powers essentially rests on at least two reasons: on one hand, the unprecedented nature of the rules could lead to fragmented

workshop; 20 March 2024 - Amazon DMA compliance workshop; 19 March 2024 - Meta DMA compliance workshop; 18 March 2024 - Apple DMA compliance workshop) is available at <https://digital-markets-act.ec.europa.eu/events_en> accessed 9 March 2025. See Ribera Martínez (n 10); Jasper van den Boom and Sarah Hinck, 'A Week of Workshops: Observations from the DMA Compliance Workshops' (*SCiDA Blog* 27 March 2024), <https://scidaproject.com/2024/03/27/a-week-of-workshops-observations-from-the-dma-compliance-workshops/> accessed 9 March 2025, who highlights that these workshops may be «transformative», since «such an open debate via a public engagement platform on how gatekeepers intend to comply and such direct feedback is a novel development within the EU».

[67] Jacques Moscianese, 'Il Digital Markets Act: oltre l'auto-regolamentazione dei gatekeeper' in Jacques Moscianese and Oreste Pollicino (eds), *Concorrenza e regolazione nei mercati digitali* (Giappichelli 2024) 13, 16.

[68] de Streel, Bourreau, Feasey, Kraemer and Monti (n 55) 103.

[69] Imelda Maher, 'Regulatory design in the EU Digital Markets Act: no solo run for the European Commission' (2024) 12(2) Journal of Antitrust Enforcement 273, 277.

[70] Bostoen (n 5) 288.

[71] Pedro Magalhães Batista and Wolf-Georg Ringe, 'Dynamism in financial market regulation: harnessing regulatory and supervisory technologies' [2021] Stanford Journal of Blockchain Law & Policy 203.

[72] See European Commission, Digital Markets Act, <https://digital-markets-act.ec.europa.eu/index_en#:~:text=The%20European%20Commission%20is%20the,and%20enforcement%20of%20the%20DMA> accessed 9 March 2025.

and contradictory outcomes[73]; on the other hand, the goal of a European digital single market is facilitated by the uniqueness of the oversight system, to avoid gaps and regulatory discrepancies[74]. This is even more significant given the targets of this regulation, identified as a small group of entities with immense power and impact at both the EU level and globally.

In addition to the aforementioned objectives, there may be another, less explicitly stated aim—one that, in certain respects, could be seen as a step towards a "return to the past". This concerns the desire to curb the assertiveness that National Competition Authorities (NCAs) had demonstrated in applying European antitrust law[75], which had been encouraged by the decentralisation process established through Regulation No. 1/2003[76].

The "political decision" to centralise powers within the Commission[77], while facilitating a coherent and efficient interpretation and application of the rules (and avoiding fragmentation of the internal market[78]), also raises some concerns[79]. The centralisation may have a potentially negative impact on the Commission's activities, which are burdened with additional functions[80], leading to a likely insufficiency in the enforcement of the DMA (with the potentially paradoxical effect of «amplifying the privileging of gatekeepers through insufficient DMA enforcement»[81]), especially given the unclear coordinating role that private enforcement can play[82].

[73] Not surprisingly, many scholars emphasise the need for a learning-by-doing approach aimed at gradually harnessing the experience acquired by the Commission itself – and, albeit in a more secondary role, by the NCAs – in enforcing the DMA (thus, Maher (n 69) 279). On this topic, also see Florian Wagner-von Papp, 'Digital antitrust and the DMA: in praise of institutional diversity' (2024) 12(2) Journal of Antitrust Enforcement 338, 344, who highlights the need for «experimentation with new competition tools». As observed by Nicolas Petit, 'The Proposed Digital Markets Act (DMA): A Legal and Policy Review' (2021) 12(7) Journal of European Competition Law & Practice 529, 540, the DMA «is based on very little 'experience' from cases and no feedback from judicial review».

[74] Luisa Torchia, 'I poteri di vigilanza, controllo e sanzionatori nella regolazione europea della trasformazione digitale' (2022) 4 Rivista trimestrale di diritto pubblico 1101, 1108.

[75] Roberto Pardolesi and Cristoforo Osti, 'Superleague. Il canto di Natale della Corte di giustizia' (2023) 3 Mercato concorrenza regole 487, 498. However, limiting the role of national competition authorities may be seen as a risk, according to Gaon and Reinfeld (n 3) 363.

[76] Petit (n 73) 539, observes that the complex system of governance embodied by the DMA «appears designed in the same way as the governance system of Regulation 17/62». According to Giuseppe Giordano, 'Il Digital Markets Act e la centralizzazione dei poteri in capo alla Commissione europea: quale ruolo per le Autorità antitrust nazionali?' (2022) 3 Comparazione e diritto civile 979, 985, the approach adopted in the DMA contradicts the traditional decentralisation of European law.

[77] Libertini (n 29) 1078.

[78] Oreste Pollicino, 'Diritti, mercati e poteri: il processo di costituzionalizzazione dell'Unione Europea' in Jacques Moscianese and Oreste Pollicino (eds), *Concorrenza e regolazione nei mercati digitali* (Giappichelli 2024) 3, 7, 8.

[79] See Maher (n 69) 277, which highlights the need for the Commission to have «adequate human, financial and technical resources to perform its duties effectively».

[80] See Wagner-von Papp (n 73) 343: «the centralization of the enforcement powers with the Commission was criticized, especially in light of the resource constraints of the Commission, which is to take on the largest and most powerful undertakings in the world with only 80 additional staff».

[81] Jörg Hoffmann, Liza Herrmann and Lukas Kestler, 'Gatekeeper's potential privilege - the need to limit DMA centralization' (2024) 12(1) Journal of Antitrust Enforcement 126, 146.

[82] See M Colangelo (n 29) 435.

The principles of collaboration and cooperation between the Commission, national antitrust authorities[83], national courts[84], and Member States[85], although stated, have a «very weak» substance[86]. Furthermore, the DMA «does not provide many rules that would support such private enforcement»[87] which «may be rare but it can serve as an additional deterrent service»[88].

This institutional framework – which sees the Commission as a sort of "federal regulator for digital gatekeepers"[89] – must be considered alongside the decision to impose significant compliance and transparency burdens on the gatekeepers themselves, as well as the obligation to demonstrate proactively how their internal processes and technological interventions satisfy the DMA's requirements. This serves to mitigate the concerns mentioned above and ensure more precise monitoring of compliance by the European Commission. Indeed, it can be stated that «as part of their special responsibilities, 'gatekeepers' must be proactive in their cooperation with the Commission's scrutiny»[90], both at the designation stage and in the enforcement phase. Consequently, the actual attitude adopted by the gatekeeper can either facilitate or hinder, depending on the degree of cooperation, the Commission's activities[91].

Specifically, it is the gatekeepers who conduct the initial self-assessment and establish appropriate technical tools and internal governance mechanisms – *ie*, a dedicated compliance control function – aimed at ensuring full and continuous compliance with the obligations of the regulation. The reporting function constitutes one of the key governance measures introduced by the DMA, the purpose of which is also to facilitate enforcement by the European Commission.

[83] According to Article 37 of DMA, national competition authorities are required to report to the Commission on any violations of regulatory obligations resulting from their investigations, as well as to coordinate with it for the implementation of antitrust rules, with the aim of aligning their respective actions and avoiding regulatory overlap. The importance of strengthening coordination with national authorities is emphasised by Muscolo (n 8) 110; Gabriella Romano, 'Il ruolo delle ANC nell'implementazione del DMA' in Jacques Moscianese and Oreste Pollicino (eds), *Concorrenza e regolazione nei mercati digitali* (Giappichelli 2024) 43.

[84] According to Article 39 of DMA, national courts are involved in ensuring the «coherent application» of the regulation, mitigating the risk of conflicting judicial decisions with those adopted by the Commission.

[85] Member States (at least three) encourage the Commission to initiate specific investigations when they suspect that a company exceeds the relevant regulatory thresholds for qualifying as a gatekeeper or that violations of obligations exist. See Recital 41 of DMA.

[86] Rupprecht Podszun, 'From Competition Law to Platform Regulation – Regulatory Choices for the Digital Markets Act' (2022) 17(1) Economics 1, 10.

[87] Jirí Kindl, 'Prospects for concurrent private enforcement of the DMA and Article 102 TFEU' (2024) 12(2) Journal of Antitrust Enforcement 241.

[88] Giorgio Monti, 'The Digital Markets Act - Institutional Design and Suggestions for Improvement' [2021] TILEC Discussion Paper 1, 18 <https://ssrn.com/abstract=3797730> accessed 9 March 2025.

[89] M Colangelo (n 29) 430.

[90] Tao (n 34) 114.

[91] Crémer, Dinielli, Heidhues, Kimmelman, Monti, Podszun, Schnitzer and de Streel (n 52) 323.

The burden of proof of demonstrating compliance is placed on the gatekeepers[92]. The rationale behind this choice lies in the fact that they, much more than the Commission itself, are «the ones who know best about their business and true technical possibilities and limitations of their services» and are therefore «in the best position to determine how to offer their core platform services in a DMA-compliant way»[93]. As previously mentioned, the fulfilment of the reporting duty imposed on the gatekeeper thus serves to reduce the informational asymmetries that separate the gatekeeper and the enforcer; this circumstance, along with the irrelevance of economic justifications[94], helps ensure a quicker enforcement of the obligations set out in the DMA compared to antitrust law, thereby resolving one of the main weaknesses (or presumed weaknesses) of the latter regulatory framework.

A key role is played by the completeness of the information provided by the gatekeeper. Specifically, an effective report should present technical and economic data that clearly illustrate the gatekeeper's compliance with the DMA. Such information must be sufficiently detailed to allow for verification by the Commission and provided with a level of granularity that ensures both utility and comprehensibility[95]. Moreover, it is within the annual compliance report that the gatekeeper must demonstrate that «the implementation of the compliance solutions is workable»[96].

It is surprising, especially when compared with choices made in other contexts, the degree of freedom left by the Regulation to gatekeepers in drafting the reports. In addition to the (very few) guidelines found in Article 11 of the DMA, gatekeepers must adhere to the template published by the European Commission on 9 October 2023[97], which outlines «the minimum information that gatekeepers should provide in the Compliance Report» while leaving a considerable amount of flexibility to the obligated companies.

[92] However, as observed by Ribera Martínez (n 51) 11, «if a gatekeeper fights the scope of application of a provision, then the burden reverts to the EC to prove the undertaking wrong so that the burden of proposing new compliance solutions shifts back to the gatekeeper»; thus «the gatekeeper will not deliver the renewed technical implementation within the expected compliance deadline nor in the quickest possible manner».

[93] Bacchiega and Tombal (n 7) 193. See Crémer, Dinielli, Heidhues, Kimmelman, Monti, Podszun, Schnitzer and de Streel (n 52) 326, who underline that «gatekeepers know best the changes they have made and have access to data on the results».

[94] According to Emely von Platen, 'With or without efficiency defence? Analysing the role of efficiency defence in traditional ex-post enforcement, the EU Digital Markets Act & the UK Digital Markets, Competition and Consumers Act' (2024) (28) North East Law Review 22, 28: «concerns arise about potential overregulation and reduced flexibility due to the absence of an efficiency defense».

[95] Crémer, Dinielli, Heidhues, Kimmelman, Monti, Podszun, Schnitzer and de Streel (n 52) 325, who also underline that «an unsatisfactory or incomplete report should be seen as a signal that the obligation was not met, and hence should increase the probability of finding an infringement», just as «an obfuscatory report might signal non-compliance, and hence encourage the regulator to focus its attention on the gatekeeper who submitted it».

[96] Christophe Carugati, 'Compliance principles for the Digital Markets Act' (2023) 21 Policy Brief 1, 11.

[97] Commission, 'Template form for reporting pursuant to Article 11 of Regulation (EU) 2022/1925 (Digital Markets Act)' <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 9 March 2025.

It is precisely this flexibility, however, that has led to the emergence – particularly in the first wave of reports – of two different "types" of reports: some are very detailed, consisting of hundreds of pages of descriptions, while others are quite generic, full of vague and marketing-approved information[98]. In this regard, it is worth noting that, under Article 29 of the DMA, «the incomplete submission of non-confidential reports (based on Article 11 DMA) misses the mark of sustaining a standalone infringement whilst substantially undermining the DMA's efficacy with respect to third party»[99].

One may then wonder if the need for complete and comparable (public) reports might not make it appropriate to foresee a more detailed reporting obligation, similar to what is established by the Regulation on the European Single Electronic Format (ESEF), which requires – for financial compliance purposes only – the use of the European Single Electronic Format, with the stated aim of ensuring the automated readability of the related reports to facilitate analysis by investment firms and supervisory authorities.

4 Technological compliance tools

The compliance reports reveal a wide range of advanced technological tools designed by gatekeepers to comply their core platform services with DMA obligations.

The financial and human resources required to achieve full technical compliance are particularly substantial[100]. This reality is openly acknowledged by gatekeeper companies, which, in their compliance reports, explicitly highlight the significant multidisciplinary (legal expertise, engineering proficiency, and executive oversight) effort associated with ensuring adherence to the DMA obligations for their core platform services. For instance, *Meta* discloses allocating 11,000 personnel to DMA-related tasks and dedicating over 590,000 hours, illustrating the substantial human capital devoted to compliance[101]. Similarly, *BHI* underlines in its report that «hundreds of employees, from front-line account teams to senior executives, have been involved over the past two years in assessing BHI's compliance position, building tools to ensure that BHI operates in

[98] Ribera Martínez (n 10).

[99] Ribera Martínez (n 51) 13-19, who underlines that «there is no credible threat that the EC may set forth so as to disincentivise the motion as deriving from the letter of the law», since «the EC cannot trigger individual action to sanction the gatekeeper for an infringement of the terms of Article 11 DMA».

[100] Andriychuk (n 30) 127, identifies a potentially punitive dimension of the DMA, asserting that its obligations are intended to slow down gatekeepers, thus making room for new entrants.

[101] Meta, *Meta's Compliance Report* (2024) 2 <https://scontent-ord5-3.xx.fbcdn.net/v/t39.8562-6/431009250_1846639239090452_3219463139934460359_n.pdf?_nc_cat=107&ccb=1-7&_nc_sid=b8d81d&_nc_ohc=5BSmm3MqV1wQ7kNvwHu-Hwx&_nc_oc=AdkUMz7pqTcVjSf4Z-Xb7c2AyVAc0WyAefO95EWCt1X-bJlBAXjZ3Byoyf5iNGpGOPxK9UIV9t7xffpBrXDvsqii&_nc_zt=14&_nc_ht=scontent-ord5-3.xx&_nc_gid=tva-JsdTZKwO6jxiPjL5-Q&oh=00_AfOH2NVz2FWKgDJatAQZ8moRaQvkSbQOLQVbAibLayR4Sg&oe=68682F13> accessed 20 June 2025.

compliance with the DMA's requirements, and in communicating these changes to our partners»[102].

Certainly, in many cases, gatekeepers had already adopted, well before the application of the DMA, a conduct compliant with the rules set by the European legislator. However, in many other cases, the gatekeepers had to face – depending on the specific DMA obligation – the need to «building technical solutions, amending existing mechanisms, and reviewing and revising existing policies»[103]. In this regard, it is worth noting that the main innovations were seen primarily in two areas: data portability[104] and service interoperability[105].

As for the data portability mechanisms to ensure users can freely transfer their data between services, gatekeepers have begun to offer streamlined solutions, ranging from user-friendly application programming interfaces (APIs) to secure data export portals. Such measures aim to reduce switching costs and encourage competition by allowing users to choose alternative platforms without losing valuable data, thus facilitating the simultaneous use of multiple competing platforms (the so-called multi-homing). Indeed, the greatest risk stems from platforms that hold bottleneck power—«a situation where consumers primarily single-home and rely upon a single service provider (a "bottleneck"), which makes obtaining access to those consumers for the relevant activity by other service providers prohibitively costly»[106]. It is precisely in this case that the platform becomes the sole point of access for these users, acquiring the capacity (and incentive) to establish "the rules of the game" even possibly "manipulating" users' preferences, who have no other option but to comply[107]. In other words, platforms «act as regulators of the interactions they host»[108]: they unilaterally set the contractual rules, which users voluntarily accept by agreeing to the terms and conditions of service[109].

[102] BHI, *BHI's Compliance Report* (2024) 4 <https://build-health-international.shorthandstories.com/2024-bhi-annual-report/index.html> accessed 20 June 2025.

[103] Amazon, *Amazon's Compliance Report* (2024) <https://s2.q4cdn.com/299287126/files/doc_financials/2025/ar/Amazon-2024-Annual-Report.pdf> accessed 5 June 2025.

[104] Within the framework of the DMA, the right to data portability becomes a fundamental pillar for enabling competition among digital enterprises (and not merely, as in the GDPR, an individual right). See Federico Ruggeri, *Poteri privati e mercati digitali. Modalità di esercizio e strumenti di controllo* (RomaTre Press 2023) 183.

[105] Bertin Martens, 'An Economic Policy Perspective on Online Platforms' Institute for Prospective Technological Studies Digital Economy Working Paper 44 (European Commission 2016): «the value of data is often limited by regulatory, commercial and practical barriers to interoperability».

[106] Stigler Committee on Digital Platforms, 'Final Report' [2019] <https://www.chicagobooth.edu/-/media/research/stigler/pdfs/digital-platforms---committee-report---stigler- center.pdf> accessed 9 March 2025.

[107] Ryan Calo, 'Digital Market Manipulation' (2014) 82 The George Washington Law Review 995, 1000, redefines the concept of "market manipulation" to account for companies' ability, in the context of digital marketplaces, to exploit consumers' cognitive limitations and "target" them, with the aim of persuading them through the complete personalisation of every aspect of their experience.

[108] Jacques Crémer, Yves-Alexandre de Montjoye and Heike Schweitzer, *Competition policy for the digital era. A report* (Publications Office of the European Union 2019) 71.

[109] Jack M Balkin, 'Free speech is a triangle' (2018) 118(7) Columbia Law Review 2011.

For real interoperability and the possibility of migration between competing platforms to be achieved, establishing complex mechanisms for downloading and transferring personal data can be not sufficient. It is essential that gatekeepers provide *effective* data portability for both business users and end users[110]. Therefore, it is necessary that the service is, on the one hand, user-friendly, so that it can be easily utilised – in a self-service perspective, without the need for external support – by users with limited knowledge in the field of information technology[111]; and, on the other hand, efficient and prompt, so as to avoid "technical disincentives" (related to excessive timing of the data download and transfer function) that would prevent migration to alternative platforms.

On the first aspect, very often the mechanisms provided by the gatekeepers are specifically described in compliance reports through mobile screenshots. This circumstance highlights the usability of compliance reports as communication tools to facilitate the public's understanding of the technological solutions adopted by gatekeepers[112]. On the second point, compliance reports show how gatekeepers have, on various occasions, technically improved their data download and transfer services even beyond what is strictly required under the DMA, upon European Commission's nudge[113].

In other circumstances, compliance reports describe the future developments of the services offered by gatekeepers, which in the area of data download and transfer are clearly moving towards a better (and faster) functionality of the provided services. In this regard, it is certainly worth mentioning the example of *ByteDance*, which, even before being designated as a gatekeeper, had already equipped its core platform service *TikTok* with «various data portability solutions» functionalities (such as the "Download Your Data - DYD"), which provide users with the ability to port their data, including their videos. In addition, *ByteDance* has enabled *TikTok* users «to (a) download their own videos and (b) instantly share them on multiple other platforms from the TikTok app»[114]. Even for these services, the impact of the obligations set out in Article 6(9) of the DMA has resulted in

[110] Petit (n 73) 536.

[111] On the other hand, a different approach would exclude precisely the most vulnerable users from the protection afforded – albeit indirectly – by the DMA, as these individuals do not have sufficient familiarity with IT systems and are therefore at greater risk of being discouraged (if not practically barred) from migrating from one service to another.

[112] See Amazon (n 103) 10, where the technical solutions adopted by *Amazon* are described as «customer- and developer-friendly».

[113] Meta's Compliance Report (2024) states that *Meta* – after its dialogue with the European Commission – has further improved its services. Although the company had already made data download and transfer mechanisms available to its users (*ie*, the "Download Your Information – DYI" and the "Transfer Your Information Tool – TYI"), and although through these services *Meta* was already compliant with the obligations under Article 6(9) of the DMA, «in response to the Commission's feedback, *Meta* has increased the recurrence of TYI transfers for monthly to daily and increased the duration from 3 months to 1 year».

[114] ByteDance's Compliance Report (2024) par 18.2. The most recent enhancements to *TikTok*'s data portability offering, in line with Article 6(9) of the DMA, «consist of three main parts: *i*) developing a Data Portability API (...); *ii*) improving data access speeds (...); and *iii*) offering a more granular selection of the data to be ported (...)», which enables users to make a more granular selection of data types for portability (users can choose either the complete archive or select specific categories of data such as posts and user profiles).

some technical improvements to the services planned for the near future: as declared in the compliance report, *TikTok*'s DYD will be further enhanced and its data storage and serving system upgraded to shorten the time between the portability request and the porting from 1-2 days to an estimated seconds or minutes.

Complementary to this aspect are the interoperability solutions, which remain a cornerstone of the DMA's vision for an open digital ecosystem, as they can lower entry barriers. Gatekeepers are required to facilitate interactions with rival services, whether through integrated messaging platforms or standardised protocols that allow smaller market participants to connect with the gatekeeper's user base. Achieving genuine interoperability can be technically complex, often involving protocol adaptation or the creation of bridging solutions, but it allows for «rebalancing the allocation of resources between gatekeepers and their competitors»[115] to ensure equal opportunities. Naturally, the implementation of such solutions requires significant technical efforts from gatekeepers to ensure, on the one hand, the efficiency and robustness of the systems (so as not to worsen the user experience) and, on the other hand, the protection of the data and information shared via these integrated services.

Another particularly impactful aspect of the DMA, with significant consequences for the operations of gatekeepers, concerns the functioning of the automated ranking mechanisms operated by digital platforms. The adoption of advanced and increasingly sophisticated algorithmic tools offers both opportunities and risks[116]. While these technologies enhance process efficiency, they also introduce opacity into decision-making mechanisms[117], potentially leading to covert distortions in competition among business users relying on a gatekeeper's core platform services. Given that algorithmic transparency and non-discrimination are crucial for mitigating covert manipulation and ensuring fair market conditions, it is essential to continuously evaluate both the foundational structures and the outputs of the algorithmic processes in place[118].

Gatekeepers frequently deploy algorithms to rank search results, recommend products, or personalise user interfaces. In pursuit of non-self-preferencing, some gatekeepers have implemented transparent ranking parameters. Although the exact details of these algorithms are often proprietary, compliance reports detail the efforts made to remove undue bias and ensure that third-party listings have equitable visibility. In this context, *Amazon* states in its 2024 compliance report that its «ranking processes operate in an unbiased manner, using objective inputs and weighing them neutrally to facilitate the

[115] Maggiolino (n 32) 271.

[116] See Filippo Donati, 'Diritti fondamentali e algoritmi nella proposta di regolamento sull'intelligenza artificiale' in Alessandro Pajno, Filippo Donati and Antonio Perrucci (eds), *Intelligenza artificiale e diritto: una rivoluzione? Diritti fondamentali, dati personali e regolazione* (Il Mulino 2022) 112.

[117] Frank Pasquale, *The black box society. The Secret Algorithms That Control Money an Information* (Harward University Press 2015).

[118] Mariateresa Maggiolino, *I big data e il diritto antitrust* (Egea 2018) 37-43.

best possible customer choice irrespective of whether a product is offered by Amazon Retail or Sellers», in order to be compliant with Article 6(5). Additionally, to meet the requirements set forth in Articles 5(9), 5(10), and 6(8), *Amazon* reports having added «more granularity» to pricing reports to provide detailed data on the fees paid by advertisers and received by publishers for ads displayed on third-party websites and apps. The company also highlights updates to its advertising services, including the introduction of a new clean room, allowing advertisers to independently verify the performance and impact of their campaigns. Moreover, in its 2025 compliance report, *Amazon* states that, following the adoption of specific compliance measures related to its automated systems supporting retail decisions (including any automated algorithm, model, or tool), «all automated systems in connection with the decisions that could be viewed as "in competition with business users" do not ingest non-public business user data»[119].

Finally, it is not excluded that gatekeepers may use advanced machine-learning tools to monitor and report compliance continuously. These systems could track metrics such as how often third-party applications are recommended compared to the gatekeeper's own services or whether user data handling procedures align with DMA stipulations[120].

In contrast, compliance with some obligations, though still significant, has required modest technical efforts, as they refer to gatekeeper companies as providers of multiple (and interconnected) core platform services. For example, consider the compliance with the obligation set out in Article 5(8) of the DMA (according to which «the gatekeeper shall not require business users or end users to subscribe to, or register with, any further core platform services listed in the designation decision pursuant to Article 3(9) or which meet the thresholds in Article 3(2), point (b), as a condition for being able to use, access, sign up for or registering with any of that gatekeeper's core platform services listed pursuant to that Article»), where, in some cases, it proved sufficient to remove the login screen that previously required access to a different service offered by the gatekeeper[121].

The same applies to the obligation under Article 5(2) of the DMA[122]. In this case, it was sufficient for gatekeepers to include in the initial screen of its core platform services a

[119] Amazon, *Amazon's Compliance Report* (2025) <https://www.aboutamazon.eu/news/policy/amazon-and-the-digital-markets-act> accessed 5 June 2025 par 136.

[120] For instance, Amazon has declared—albeit somewhat vaguely—that it has implemented «guidelines as forward-looking compliance mechanisms designed to prevent any new agreements from containing clauses inconsistent with Article 5(3) […] Articles 5(4) e 5(6)». In addition, Amazon states that it has implemented «a range of mechanisms designed to maintain continued compliance with the requirements of Article 6(2) of the DMA, both in relation to automated and manual decision-making. Such mechanisms include review processes to audit proposed system changes, refresher training courses for employees, and updating the controls, monitoring, and auditing mechanisms that apply to relevant data access paths on an ongoing basis».

[121] See Meta, *Meta's Compliance Report* (2025) <https://ppc.land/content/files/2025/03/481770322_1578920512785307_385504078597978166_n.pdf> accessed 5 June 2025 par 71.

[122] According to Article 5(2) of DMA, «the gatekeeper shall not do any of the following: (a) process, for the purpose of providing online advertising services, personal data of end users using services of third parties that make use of core

section offering users the choice to either use the services jointly (allowing the gatekeeper to combine the data) or use them separately[123]: *Meta*, *Alphabet* and *Amazon*, for example, acted in this direction, as stated in their compliance reports[124].

5 Compliance functions in gatekeepers' corporate governance

Beyond the field of technical innovation, the DMA underscores the importance of robust organisational structures for ensuring sustained compliance.

Pursuant to Article 28, gatekeepers are required to establish a dedicated compliance function, independent from their operational functions and equipped with sufficient authority, stature, and resources. The DMA compliance function must also have direct access to the gatekeeper's management body to actively advise on and oversee the implementation of strategies and policies for adopting, managing, and monitoring compliance with the DMA.

The European legislator, therefore, places companies designated as gatekeepers on par with other supervised entities (particularly in the banking sector), in line with the current trend of extending the scope of oversight by granting explicit powers in this regard to the board of directors, expanding those of the supervisory body, and creating a proliferation of functions, bodies, and committees.

These functions are situated in a high-level management sphere and remain near the corporate bodies, with whom the responsible individuals interact continuously[125]. The function envisaged under Article 28 of the DMA is thus integrated into the polycentric system of controls adopted by gatekeepers, which is itself delicate and heterogeneous[126].

The precise configuration of these functions is, however, not easily determined. It is worth noting, in fact, that the concept of compliance risk and the provision for the corresponding function do not appear in primary legal sources and remain rather

platform services of the gatekeeper; (b) combine personal data from the relevant core platform service with personal data from any further core platform services or from any other services provided by the gatekeeper or with personal data from third-party services; (c) cross-use personal data from the relevant core platform service in other services provided separately by the gatekeeper, including other core platform services, and vice versa; and (d) sign in end users to other services of the gatekeeper in order to combine personal data, unless the end user has been presented with the specific choice (…)».

[123] However, according to Alphabet's Compliance Report (2025) 7, to comply with Article 5(2), Alphabet developed and launched controls «through measures within both the front-end of Google's services (ie, the end-user facing portions of Google's services) and Google's backend infrastructure (ie, the systems and code that underpin the provision of services to end users)».

[124] Meta (n 121) par 1, lett b); Alphabet's Compliance Report (2025) 7; Amazon (n 103).

[125] Sabino Fortunato, 'Il dirigente preposto ai documenti contabili nel sistema dei controlli societari' (2008) 4 Le Società 401, 402, has long referred to the "baroque" construction of the control system.

[126] Paolo Montalenti, *Impresa, società di capitali, mercati finanziari* (Giappichelli 2011) 143; Francesco Chiappetta, 'Il controllo interno tra compliance normativa e attività gestionale' in Umberto Tombari (ed), *Corporate governance e "sistema dei controlli" nella s.p.a.* (Giappichelli 2013) 53.

underexplored in legal literature and case law[127]. Conversely, the focus on compliance with laws and regulations – and thus the establishment of a dedicated function – has long been embedded in the regulatory framework governing banks and financial intermediaries. It has also been comprehensively embraced in the field of management, which recognises the full proceduralisation of corporate and business organisation and activities. Through organisational and functional charts, the various operational, support, and control functions – reporting to the governance bodies – are delineated, specifying their respective responsibilities, execution methods, designated personnel, and allocated resources.

The compliance function constitutes a tool in the hands of management[128] for the informed and dynamic management of regulatory compliance risk, namely the risk of incurring judicial or administrative sanctions, significant financial losses, or reputational harm because of violating mandatory rules (whether legal or regulatory) or self-regulatory measures (e.g., statutes, codes of conduct, self-regulation codes)[129]. Given that this risk cuts across every level of the organisation (being not only operational but also reputational, and therefore multidimensional[130]), it is evident that the compliance function, endowed with independence and autonomy, its own budget, and a dedicated organisational structure, is entrusted with assurance and advisory tasks. These tasks ultimately aim to promote a culture of reputational value within the organisation[131].

This typically entails the identification of compliance officers and the establishment of compliance committees. These are individuals or bodies within the corporate governance hierarchy who oversee compliance processes, resolve internal disagreements, inform and advise managers and employees regarding adherence to the DMA, and collaborate with the Commission. It is also necessary to designate a senior independent executive with distinct responsibilities for the compliance control function, placed in a suitable hierarchical and functional position, who will serve as the head of the compliance control function and, as such, report directly to the gatekeeper's management body.

[127] See Roberto Wiegmann, *Responsabilità e potere legittimo degli amministratori* (Giappichelli 1974) 303, 364; Berardino Libonati, *L'impresa e la società. Lezioni di diritto commerciale* (Giuffrè Editore 2004) 264.

[128] Umberto Tombari, 'Governo societario, compliance e indagini "interne" nella s.p.a. quotata' in Guido Rossi (ed), *La Corporate Compliance: una nuova frontiera per il diritto?* (Giuffrè Editore 2017) 263.

[129] See EBA, 'Guidelines on internal governance under Directive 2013/36/EU' [2021] par 33 («the compliance function monitors compliance with legal and regulatory requirements and internal policies, provides advice on compliance to the management body and other relevant staff and establishes polices and processes to manage compliance risks and to ensure compliance»). The concept of compliance risk and the need to establish a compliance function within banks and banking groups has been highlighted, since 2005, also by the Basel Committee on Banking Supervision (see BCBS, 'Compliance and the compliance function in the banks' [2005]).

[130] BCBS, 'Proposed Enhancements to the Basel II Framework' [2009], where it is clarified that such risk is to be understood as «the risk arising from negative perception on the part of customers, counterparties, shareholders, investors or regulators».

[131] Alessandro De Nicola, *Il diritto dei controlli societari* (Giappichelli 2023) 290.

Such governance frameworks are designed to institutionalise compliance; however, gatekeeper companies bear the burden of transforming it from a box-checking exercise into a core business function. By embedding compliance at the highest levels of corporate governance, gatekeepers aim to foster a culture where meeting regulatory standards is treated as a strategic priority rather than a peripheral cost.

In this regard – and in view of the influence that the compliance function is intended to exert on the decision-making process and the board of directors' monitoring activities – technical standards, guidelines, opinions, recommendations, and Q&As issued by legislators and supervisory authorities in regulated sectors beyond the digital domain are extremely helpful. In short, these flexible and multifaceted regulatory instruments, lacking binding effect yet not without force, perfectly align with the latest trends[132].

The role of the head of the compliance control function is significant, especially regarding the relationship with the gatekeeper's management body. It should be noted that this role typically (though not necessarily) exists *outside* the management body[133]. Nevertheless, pursuant to Article 28(2), gatekeepers must take all necessary measures to ensure that the head of this function has full access to the management body. In this regard, the precise allocation of competences and decision-making authority (from which clear implications arise in terms of liability) between the compliance officer and the management body has yet to be fully understood[134].

A constructive exchange can therefore develop between the head of the function and the board to ensuring thorough and genuine adherence to the obligations set out in the DMA. Consistent with regulatory provisions and established practice, this function is supervised by the gatekeeper's management body, with which it keeps constantly proactive dialogue[135]. At the same time, it maintains an operational role in support of the supervisory body for conducting inspections and investigations, and it requires continuous information flows with other compliance functions, as well as with risk management and internal audit. This confirms a relatively recent approach that views the organisational system as a whole, recognising the interplay between governance bodies and the

[132] See Luisa Torchia, 'I poteri di regolazione e di controllo delle autorità di vigilanza sui mercati finanziari nella nuova disciplina europea' in Giuseppe Carcano, Maria Chiara Mosca and Marco Ventoruzzo (eds), *Regole del mercato e mercato delle regole. Il diritto societario e il ruolo del legislatore* (Giuffrè Editore 2016) 355.

[133] The European legislator does not intervene on this topic, presumably in consideration of (the lack of harmonisation and) the national peculiarities characterising corporate and business law at the Union level.

[134] See Luigi A Bianchi, 'Key manager e gestione dell'impresa: appunti per una futura ricerca' (2022) 2(3) Rivista delle società 646, who also criticises the legislative void that characterises Italian corporate law *in subiecta materia*.

[135] On the pivotal role of the management body, see Maurizio Irrera and Elena Fregonara, 'I sistemi di controllo interno e l'organismo di vigilanza' in Maurizio Irrera (ed), *Diritto del governo delle società per azioni e delle società a responsabilità limitata* (Giappichelli 2020) 261. On the proliferation of oversight demands in the face of increasingly complex internal decision-making processes and corporate programs, see Gastone Cottino, 'Dal vecchio al nuovo diritto azionario: con qualche avviso ai naviganti' (2013) 1 Giurisprudenza commerciale 5, 26; Giovanni Strampelli, *Sistemi di controllo e indipendenza nelle società per azioni* (Egea Editore 2013) 2.

corporate structure and functions, as well as the need for predefined organisational and behavioural rules[136].

Obviously, the effectiveness of the information exchange between the head of the control function and the board can be enhanced when the latter is better equipped in terms of knowledge, skills, and experience. In this regard, it is worth noting that some gatekeepers have chosen to "replicate" certain provisions established in the banking sector concerning the suitability of the board of directors[137]. As an example, *BHI* stipulates that the management body must be «well-suited to fulfil the duties and responsibilities outlined in the DMA» and «devote sufficient time to managing and monitoring DMA compliance, actively participate in major decisions, and ensure adequate resources are allocated»[138]. A similar perspective emerges in *Microsoft*'s compliance report, which outlines how the introduction of new duties and responsibilities for members of the management body – particularly in light of the need to collaborate with the head of the compliance function – has influenced the board member selection process[139].

To ensure that the head of the compliance function can effectively fulfil their assigned duties without undue external influence, it is established that this individual should report exclusively to the board of directors or a dedicated committee (as in the case of *Meta*), rather than to senior executives. Likewise, to ensure independence and strengthen this position, Article 28(4) provides that the head of the function may be removed only with the prior approval of the management body. For example, *ByteDance* states that to ensure the independence of the DMA compliance function, the personnel «are not instructed by the ByteDance management body or the TikTok Ireland board regarding the exercise of their activities and tasks»[140].

Hence, the compliance function occupies a central role in supporting and guiding both management and top-level bodies. This makes it advisable to formalise procedures capable of ensuring the possibility and continuity of the function's involvement in the

[136] Michele De Mari, 'Gli assetti organizzativi societari' in Maurizio Irrera (ed), *Assetti adeguati e modelli organizzativi nella corporate governance delle società di capitali* (Zanichelli 2016) 23, 26-27.

[137] See Article 91 of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC [2013] OJ L 176, as amended by Directive (EU) 2024/1619 of the European Parliament and of the Council of 31 May 2024 amending Directive 2013/36/EU as regards supervisory powers, sanctions, third-country branches, and environmental, social and governance risks [2024] OJ L.

[138] BHI, *BHI Compliance Report* (2024) <https://build-health-international.shorthandstories.com/2024-bhi-annual-report/index.html> accessed 5 June 2025 sec 3, 28.

[139] Microsoft, *Microsoft's Compliance Report* (2025) <https://www.microsoft.com/en-us/legal/compliance/dmacomplianceresourcesandreports> accessed 5 June 2025 par 35, 13: «Microsoft selected the members of its Management Body to ensure that they can fulfil» DMA's obligations.

[140] ByteDance's Compliance Report (2024) sec 3, par 16 <https://sf16-va.tiktokcdn.com/obj/eden-va2/uhsllrta/DMA/2025%20DMA/Bytedance%20DMA%20Compliance%20Report%20Public%20Overview_2025.pdf> accessed 20 June 2025.

operational structure's processes[141]. In this regard, many gatekeepers report significant investment in staff education to ensure that legal obligations are fully integrated into daily operations. This includes comprehensive training programs, internal legal audits, and the dissemination of up-to-date policy manuals.

Internal guidelines and training play a crucial role in concretising the otherwise broad and undefined suitability requirements imposed by the Regulation on compliance function officers. These measures ensure that officers possess the necessary professional qualifications, knowledge, experience, and skills to effectively perform their duties[142]. However, the Regulation does not provide specific criteria in this regard, nor does it grant the Commission the authority to adopt delegated acts to further define these requirements. Therefore, further clarity would indeed be advisable with respect to compliance management training programs, aimed at defining and enhancing the requisite managerial and operational skills, establishing procedures for identifying the relevant rules and practices to prevent infringements, and fostering a culture of behavioural integrity. In any event, responsibility for verifying the actual suitability of the relevant individuals – particularly the head of the function (as well as for setting more or less stringent selection requirements) – lies with the gatekeeper and would presumably be the subject of subsequent interactions with the Commission[143].

From an examination of the compliance reports, it appears that the requirement in question is observed in all cases[144], but a certain unevenness of information can be discerned especially in the early versions of 2024. For instance, while some gatekeepers such as *ByteDance* and *Alphabet* provide highly detailed and sophisticated descriptions of the function and its organisation (excluding, of course, any redacted references to personal information and business secrets), *Apple*, *BHI* and *Amazon* offer significantly fewer details[145].

---

[141] Marco Saverio Spolidoro, 'La funzione di compliance nel governo societario' in Guido Rossi (ed), *La Corporate Compliance: una nuova frontiera per il diritto?* (Giuffrè Editore 2017) 184.

[142] Article 28(3) of DMA.

[143] The dialogue between the Commission and the gatekeeper regarding compliance with the obligation under Article 28 It is emphasised in paragraph 39 of the Commission, 'DMA Annual Report 2023' (*Digital Market Act Annual Report* 2023) <https://digital-markets-act.ec.europa.eu/about-dma/dma-annual-reports_en> accessed 9 March 2025 («The Commission has been monitoring the establishment of such a compliance function by each designated gatekeeper to ensure that it meets the requirements laid down in Article 28 DMA. After discussions with and guidance from the Commission regarding these requirements, all designated gatekeepers have appointed compliance officers following principles laid down in Article 28 DMA and communicated the details to the Commission»). It is rather doubtful whether the Commission can in any way influence the selection of the individual holding such a function, given that no specific removal powers are conferred on the Commission.

[144] This is also summarily confirmed by the Commission, 'DMA Annual Report 2023' (n 143) par 39.

[145] Amazon (n 103) merely stated — within the (sole) introductory paragraph dedicated to its "approach to compliance" — that *Amazon* has «established robust internal compliance monitoring and governance reporting processes, including setting up a DMA-specific compliance function». However, in 2025, *Amazon* has produced a much more detailed compliance report on this point (including a separate attachment as indicated in the Commission's timetable): see Amazon (n 119) 88.

From an external perspective, the head of the compliance control function plays a fundamental role both in preparing compliance reports and in serving as a counterpart to the European Commission (as well as, potentially, in providing «a focal point for external engagement»[146]). Including the head of the compliance control function in all meetings with the Commission is particularly important, as they effectively represent the gateway to dialogue with the gatekeeper. Strengthening relations between the gatekeepers' compliance function and the Commission—by developing clear information-sharing procedures and engaging in regular reporting—helps to minimise potential information gaps and grants the head of the function that «soft power»[147] (stemming from complete information) which is undoubtedly essential. Maintaining ongoing, open dialogue in this manner could also allow the gatekeeper to more swiftly identify potential breaches of the DMA's provisions and intervene early in technological processes.

6 Final remarks

Compliance with the obligations laid down by the DMA for companies designated as gatekeepers has, in most cases, required the deployment of substantial human and financial resources.

The analysis carried out has first and foremost emphasised the importance of the compliance reports that gatekeepers are required to prepare and submit to the European Commission under Article 11. The experience gained from two years of reports (most gatekeepers have already submitted the second annual report, updated to 6 March 2025) has demonstrated that these documents not only enable gatekeepers to perform an appropriate self-assessment, but also make it easier for the Commission to conduct its monitoring activities as the sole enforcer of the DMA, reduce information asymmetries, and enable the involvement of public stakeholders, thus also serving as an important mechanism for voicing concerns.

A key dimension highlighted by the compliance reports is the dynamic interplay between gatekeepers and the European Commission, supported by a broader circle of stakeholders that includes competitors, consumer associations, and the academic community. Through processes such as workshops, feedback sessions, and iterative consultations, the European Commission has assumed a dual role: regulator and ally in navigating complex implementation hurdles. The DMA's emphasis on transparency – embodied by the "comply and explain" mechanism – allows for a multi-layered dialogue that not only strengthens enforcement but also fosters greater trust and legitimacy among market participants. Whether this dialogue – especially with the broader public of stakeholders – can consistently deliver the DMA's ambitious goals will depend (also) on

[146] de Streel, Feasey and Monti (n 62) 34-35, who, however, point out that, in most cases, compliance officers «do not appear to be very visible outside of the gatekeeper organisations».
[147] Crémer, Dinielli, Heidhues, Kimmelman, Monti, Podszun, Schnitzer and de Streel (n 52) 327.

gatekeepers' willingness to cooperate in good faith, since the DMA does not allow the European Commission to impose a specific sanction for the incomplete drafting of the non-confidential version of the report.

The study has demonstrated that, with a view to ensuring full compliance with the DMA obligations, gatekeepers have undertaken an extensive revision of their business models, driven by changes in some of their core platform services, as well as a fundamental restructuring of their corporate governance frameworks.

Gatekeepers have introduced or strengthened a wide range of tools – from data portability and interoperability solutions to algorithmic transparency protocols – that align with the DMA's goal of ensuring fairness and contestability in digital markets. The public and private versions of their compliance reports underscore both the scale of the endeavour and the resource-intensive nature of the compliance process, particularly in relation to the ongoing obligation to self-assess and explain.

From a governance perspective, the mandatory establishment of an independent compliance function with direct access to the highest corporate bodies marks an important step toward institutionalising compliance at the core of gatekeepers' strategic decision-making. Inspired in part by practices in regulated sectors like banking and finance, this structure seeks to ensure that compliance is not merely a formal obligation, but a process embedded in the corporate governance of each entity. Establishing this function, however, is neither straightforward nor free from challenges. The same flexibility that allows gatekeepers to tailor internal governance to diverse business models leaves room for disparity in how compliance requirements are interpreted and fulfilled. Over time, practice may reveal whether stronger or more detailed rules – perhaps issued through soft law – are needed to reduce the risk of under-compliance and to promote a consistent approach.

Ultimately, the DMA signals a turning point in European Union's approach to governing digital markets. It builds upon, but also transcends, traditional antitrust principles (and tools) by imposing a tailor-made proactive framework for the most influential digital actors. The test of time and digital markets evolution will tell us whether the significant transformations in how gatekeepers structure their services and their internal corporate governance will be sufficient to achieving the ambitious goals set-up by the European legislator in terms of competition, equity, innovation, and consumer choice across the digital landscape.