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Delegation of powers to the Commission in the Digital Markets Act

Prof. Marta Simoncini
SUPERVISOR

Prof. Mark Thatcher
CO-SUPERVISOR

Hugo Pinai – ID: 645992
CANDIDATE

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To all my friends and family and to the love of my life.

Without your unwavering support, love and understanding,

I would never have been able to finish this journey.

I don't know what the future holds, but

"all we have to decide is what to do with the time that is given to us".

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1. Introduction

The European Digital Markets Act (DMA), first proposed by the European Commission on 15 December 2020 (COM, 2020), was officially adopted on 14 September 2022 as a landmark new piece of legislation seeking to address the competition problems caused by a small number of giant tech corporations in the digital economy. These large digital players act as gateways to the digital markets for other businesses and for consumers by providing one or more of what the regulation defines as ten kinds of "core platform services" (art. 2 DMA). In doing so, they have been able to create increasingly entrenched positions of dominance, which they have leveraged to make all users dependent on them, set conditions unilaterally and generally eliminate competition in the provision of their services. Acknowledging that competition law enforcement had not been able to correct or prevent the harmful behaviours of these powerful companies (COM, 2020), the Commission proposed the DMA with the objective of ensuring fairness and contestability in the digital markets, which the regulation will seek to do by introducing a series of asymmetrical behavioural obligations on undertakings that will be designated as "gatekeepers" according to a set of quantitative and qualitative criteria (art. 3 DMA).

Most of the academic literature analysing the DMA, during and after its final approval, has primarily focused on critically assessing its contents, its institutional design and its relationship with general EU competition law and areas of national law with which it could overlap (Akman, 2021; Carugati, 2021 and 2022; Chirico, 2021; Colangelo, 2022; De Streel & Larouche, 2021; Falce, 2021; Komninos, 2022; Larouche & De Streel, 2021; Monti, 2021; Petit, 2021; Renda, 2022; Van Cleynenbreugel, 2021). What emerges from reviewing these analyses is a general consensus among academics that the ex-ante obligations introduced by the DMA on the behaviour of large digital players are necessary and should be more effective at preventing distortions of competition in the digital economy compared to ex-post competition law enforcement. At the same time, scholars also generally agree that the system of enforcement chosen for this regulation might prevent it from fully achieving its goals. The reason for these doubts is that the EU legislators, rather than opting for the model of indirect administration that is usually employed for EU regulation, made the unusual decision to delegate all implementation to the European Commission, which scholars have argued will most likely not have enough resources and expertise to carry out this new role effectively.

However, despite the fact that centralised enforcement has been considered questionable for the purposes of the regulation, not much attention has been paid in the literature to the fact that centralisation is a key feature that distinguishes the DMA from the vast majority of EU regulation. While the delegation of exclusive powers to supranational institutions is a key feature of the European Union, this generally happens at the treaty level, with member states coming to an agreement on what elements of their sovereignty they are willing to delegate in order to further the European integration project (Franchino, 2004; Majone, 2001; Pollack, 2006; Coen & Thatcher, 2008). On the other hand, it is much rarer for secondary EU legislation to give excusive discretionary powers to an EU institution (Migliorati, 2021). In fact, in the post-Maastricht period a model of multi-level network governance has become increasingly dominant: EU regulations are

normally implemented at the national level, often through a national regulatory agency (NRA), while in order to encourage a harmonised approach throughout the Union a network of regulators or an EU agency is set up, which are EU-level institutions with relatively limited formal powers where national regulators share information, coordinate and develop best practices for enforcement (Dehousse, 2008; Dehousse, 2013; Coen & Thatcher, 2008; Migliorati, 2021; Martinsen, Mastenbroek & Schrama, 2022; Ripoll Servant, 2018). If one takes this general "agencification" trend into account, the DMA can be considered a significant outlier, which raises a fundamental question that at the time of writing has not received much attention from the academic literature: why did the EU legislators, but especially the member states, make the unusual decision to delegate exclusive new powers to the Commission to implement the DMA? Or in other words, what specific factors contributed to this unusual case of delegation, in contrast with the general trend towards network governance and agencification in EU internal market regulation?

This thesis seeks to find an answer to this research question by analysing the DMA's case of delegation within the wider literature on the delegation of powers in the EU, and in particular, it will use the Principal-Agent framework as the theoretical basis for this analysis. The P-A theory is an analytical tool that frames the act of delegating powers from one or more actors, the principals, to another actor, the agent, to achieve a specific goal (Epstein & O'Halloran, 1994 and 1999). In political science, it is generally used to analyse the relationship between elected officials (the principals) and the non-majoritarian institutions (the agents) they may confer powers onto with the objective of implementing a public policy, in an effort to answer different questions about delegation: for instance, why do principals choose to delegate some of their powers? What degree of discretion are agents given and why? How does the relationship between principals and agents evolve following the act of delegation?

The P-A framework has been used by scholars to analyse the different paths delegation might take in the European context, and in fact it has been applied to explain the increasingly dominant model of multi-level governance that the DMA is an outlier of. In this sense, discussing the DMA's case within this framework will not only provide an answer for this thesis' research question, by finding explanatory factors that contributed to the ultimate decision to delegate new powers to the Commission, but also make a small contribution to this line of literature, by showing how it can be applied to a case that seemingly defies expectations and is an outlier compared to wider trends in EU governance.

The thesis will be structured as follows.

Chapter 2 will lay out the theoretical framework that will be necessary to answer the research question by reviewing some of the main contributions of the Principal-Agent literature. It will first discuss the origins of this framework in American economics and political science and its main concepts: the core relationship between principals, the actors that choose to delegate powers, and agents, the actors who have powers conferred onto them, and some of the main functional explanations for why elected officials choose to delegate discretionary powers to non-majoritarian institutions (section 2.1). It will then analyse the application of this general model to the specific case of the European Union, discussing how the nature of the Union makes P-A

relationships more complex and outlining how the explanatory factors for delegation apply to a political system that is different from a state (section 2.2). Having set out the main concepts of the framework in its application to EU studies, section 2.3 will demonstrate how the decision to delegate implementation of the DMA exclusively to the Commission is an interesting outlier to a general trend in EU regulation toward network governance and agencification, framing this trend within a P-A approach and also obtaining from this analysis additional factors that may influence acts of delegation in the EU. Finally, section 2.4 will recap the most important points resulting from the literature review done in the chapter and explain how, despite going against expectations, delegation in the DMA can still be analysed through the P-A framework.

Chapter 3 will argue that the main functional factors that are normally utilised by the P-A literature to provide an explanation for individual acts of delegation, regulatory efficiency and policy complexity, are not strong explanatory factors for the case of the DMA. It will do so by first briefly reviewing some of the main elements and objectives of the regulation (section 3.1) and the specific powers being delegated to the Commission to exercise its role as centralised regulator for the digital markets (section 3.2). It will then make the case that the decision to centralise all implementation in the hands of the Commission will most likely cause inefficiencies because of insufficient resources and expertise to enforce the regulation and because of the overlaps and conflicts with national laws, which might lead to fragmentation (section 3.3). Because of these problems, it will argue that regulatory efficiency and the need for technical expertise could not have been the main concerns of the EU legislators during the DMA's legislative process and that other factors must have contributed to the decision to delegate new powers to the Commission.

Chapter 4 will make the argument that these factors were a strong political pressure to find an EU-wide solution to the issues of the digital markets, the need to make a credible commitment to strict new rules for digital platforms and the dynamics of mistrust and conflict between member states during the DMA's legislative process. Section 4.1 will reconstruct this process by discussing the most relevant events and dynamics that led to the DMA's proposal and eventual approval, while section 4.2 will refer back to explanatory factors identified during the literary review of the applications of the P-A framework to the EU and use evidence from the legislative process to show how those factors ultimately contributed to the decision to delegate discretionary and exclusive new powers to the European Commission to implement the Digital Markets Act.

Finally, the conclusion will recap the main arguments of the thesis and briefly discuss how it contributes to the wider literature on EU governance and delegation.

2. Theoretical framework: delegation of powers in the European Union

This chapter will provide the theoretical basis for the analysis of the delegation of new enforcement and implementation powers to the European Commission under the Digital Markets Act (DMA). It will first outline the origins and main elements of the Principal-Agent model of delegation to non-majoritarian institutions (NMIs) (section 2.1). It will then review how the model has been adapted and applied from its origin in a national context to the study of delegation in the particular case of the EU (section 2.2). It will also briefly describe the evolution of delegation in the EU and point out how the DMA's institutional design is a relatively rare and unique case compared to the general trend towards network governance and "agencification" (section 2.3). Finally, it will outline how explanatory factors emerging from this overview will be then applied to the DMA's specific case to answer the research question (section 2.4).

2.1 The Principal-Agent model: origin and main concepts

The principal-agent (P-A) model finds its origins in the work of American economists who first utilized it to analyse the insurance sector and then applied the model to the relationships within companies between shareholders, who own the companies, and executives, who are delegated the powers to manage them (Spence & Zeckhauser, 1971, cited in Delreux & Adriansen, 2017; Jensen & Meckling, 1976). It was then adopted by political scientists as a framework used to analyse the phenomenon of the delegation of powers to independent regulatory agencies and other non-majoritarian institutions, such as independent central banks and courts, by the American Congress (Epstein & O'Halloran, 1994 and 1999).

In its application to politics, the model can be described as a way to frame the mechanism of delegation: in order to achieve a specific goal, for instance the implementation of a policy, one actor, the "principal", chooses to delegate some of its powers to another newly appointed actor, the "agent", who then has a level of autonomy and discretion to achieve that goal. In their seminal work applying the original economic concepts to the political sphere, which would go on to become the basis for the application of the PA framework to the study of international organizations and the European Union (Delreux & Adriansen, 2017), Epstein and O'Halloran sought to answer the question of why elected officials (in their case Congress) would make the conscious decision to delegate some of their powers to a separate authority, as well as to analyse the relation between the principle and agent once the latter has been established. To put it simply, why do principals choose to delegate some of their authority? And how do they ensure that once delegation has happened their original objectives will actually be achieved, or even just pursued, by the agent?

The first element of the P-A framework is the analysis of the decision to delegate. According to this literature, political principals make the decision to delegate powers to an agent because they believe that delegation will be beneficial for the achievement of their policy objectives. Some of the most widely recognised reasons for giving up some powers to a non-majoritarian institution in the literature are what Thatcher and Stone Sweet (2002) define as "functional" reasons for delegation. In particular, principals delegate to agents to:

- improve the efficiency of implementation and regulations: NMIs are considered the most appropriate regulators for a public policy area, as they are seen as more efficient at implementing and even specifying the detailed application of the general policies set out by the principals. For instance, anti-trust authorities are generally considered more efficient at preventing or addressing anti-competitive behaviour than leaving that power in the hands of elected officials;
- implement a policy that requires a high level of expertise: NMIs are generally comprised of experts in the specific sectors they are established for, and their expertise is both considered necessary to regulate that sector or implement a public policy and unavailable to elected officials. Here an example could be national, international or supranational medical authorities who employ experts who are in charge of setting rules and standards in that field, for example by establishing a set of rules for the approval of a specific medicine being to be sold on the market;
- make a credible long-term commitment to a specific public policy: an NMI is considered more credible in its commitment to a long-term policy, as its preferences and objectives are not directly affected by electoral politics and changes in government. For example, it has become standard practice in most western countries to delegate the control of monetary policy to an independent central bank, who's role, in the simplest terms, is to maintain the yearly inflation rate at a certain level for the long-term, and is considered more credible in that commitment than elected politicians would be.

In summary, legislators confer powers on an NMI because they believe it will be functional to their policy goals. However, it is important to note that the P-A model provides a framework through which specific cases of delegation can be analysed, but it is not a deterministic set of causes and effects that always lead to the same outcomes. While in general, functional explanations are always part of the reason why delegation happens, they cannot explain on their own how elected officials came to the conclusion that delegation was the best option for a specific policy in the first place and they cannot account for variation across time, policy areas and countries (Thatcher & Stone Sweet, 2002). Perhaps most crucially, they cannot fully explain the differing levels of discretion and the range of powers that NMIs are given by their principals, as well as their specific institutional design. Other essential political and institutional factors must also be considered: policy learning and isomorphism, country-specific institutional history (Thatcher & Stone Sweet, 2002), the general political climate in which the act of delegation is being implemented in terms of the political pressure to achieve a certain goal (Dehousse, 2013; Mathieu, 2020), the relative levels of cohesiveness or conflict between principals, either within individual institutions or between different institutions that participate in the act (Heldt, 2021; Migliorati, 2021).

Having made the decision to create an NMI or delegate more powers to a previously existing one, legislators then shall determine how much power and autonomy they are willing to confer on such bodies, which is generally formalised with a statute. In delegating powers, legislators inevitably face the risk that agents either develop their own autonomous priorities and objectives that diverge from those of the principals

- a phenomenon called "agency drift" in the P-A literature - or are unable to achieve the policy outcomes they were expected to pursue, showing "agency loss" (Migliorati, 2021). Ideally, principals should give NMIs enough authority and discretion to achieve the desired goals but not so much that they become too independent and act on their own agendas. Thus, the level of discretion they are willing to give to NMIs is an essential variable for principals in their act of delegation (Franchino, 2004; Migliorati, 2021). In studying individual cases of delegation, if "why delegate?" is the first and question to answer, "how much delegation and why this specific amount of delegation?" is the obvious corollary, as it provides a more complete picture. The level of discretion, just like the decision to delegate, can be analysed with a combination of functional and political factors.

In order to discuss the level of discretion in a specific case of delegation, the P-A scholarship has focused on the institutional design of NMIs in terms of the ex-ante and ex-post systems of controls that principals can employ to ensure their agents actually pursue their policy objectives (Migliorati, 2021). Principals can attempt to control the actions of their agents by clearly delineating, in statutes, their powers, area of authority and the procedures they must follow (ex-ante) and by maintaining a level of direct control on them even once they are established, for instance by controlling their budgets and their membership (ex-post).

The basic theoreticalts from the P-A literature outlined so far could already provide some insights into the delegation of powers to the Commission with the DMA. Functional and political pressures could be used to provide an explanation to the need for a regulation specifically targeting large tech companies operating in the digital markets and distorting competition and for the delegation of the enforcement and implementation side of the regulation. However, what is interesting about the DMA, in terms of the delegation literature, is not the question "why delegate?", but it is "why delegate to the Commission?".

While the delegation of enforcement and implementation is a commonplace practice in EU governance, in the majority of cases powers have been delegated to national regulatory agencies under the model of indirect administration (Simoncini, 2018), with some level of supranational coordination in the form of European Administrative Networks or European Agencies, which are more or less formal EU-level institutions in which NRAs and the Commission pool their competences and develop best practices in order to ensure as much as possible a harmonised approach throughout the EU (Martinsen, Mastenbroek & Schrama, 2022). In the DMA, contrary to expectations, enforcement and implementation are entirely in the hands of the Commission and there are very limited systems of coordination with the national level to ensure harmonisation and avoid conflicts between the enforcement of the DMA and other EU and national laws that target similar policy areas (Carugati, 2021; Carugati, 2022; Colangelo, 2022).

To attempt to untangle the seemingly unexpected decision to delegate new powers to the Commission it is first and foremost necessary to review how the P-A framework has been adapted and employed by scholars to the specific case of the European Union.

2.2 How the P-A framework has been applied in EU studies

In applying the model of delegation developed by Epstein and O'Halloran for national systems to the study of delegation in the EU, the first consideration to make is that, however obvious this might seem, the EU is not a state, but a complex supranational political system characterised by a multiplicity of actors who can, on a case-by-case basis, be principals or agents. Delegation in the EU may take multiple different directions and forms: member states may delegate powers to the EU level; an EU regulation might delegate implementation powers to the member states; a network of national regulators or an EU agency might be set up and given some powers to ensure harmonisation (Dehousse, 2013; Migliorati, 2021). In each of these cases the principals and agents change: the member states, represented in the Council, are principals when they are delegating powers to the EU, but national authorities are also agents of the EU when they are put in charge of implementing EU law; the Commission is an agent for the member states, but it may also be considered a principal, given that it has the power to introduce legislative proposal that may lead to acts of delegation; the Council and European Parliament (EP) also act as agents in exercising the powers that were delegated to them by the treaties, but they also share legislative power at the EU level so they are also principals in delegating implementation to the national level. In fact, most acts of delegation in the EU involve multiple principals, who most of the time will have differences in their preferences and interests, and are directly shaped by the dynamics between them (Dehousse, 2008; Dehousse, 2013). Not only will there be complex dynamics between the main EU institutions, who will each presumably attempt to push their own agendas, but also between different member states or groups of member states.

In one of the earliest applications of the P-A framework to the EU, Majone (2001) reframes Epstein and O'Halloran's model and states that the two main reasons for delegation are the reduction of decision-making costs for elected officials, for instance by leveraging the expertise of the members of an agency, and the need to make a credible commitment to a certain policy. Majone argues that the EU presents a form of full delegation of political property rights, defined as the "rights to exercise public authority in a given policy area" (Majone, 2001, p. 113), from the member states to EU institutions that cannot be explained by the agency literature alone. When member states give up some of their sovereignty to the EU through the treaties, whichever EU institution is in charge of a specific power is not acting simply as an agent but it has full discretion over a specific policy area. In this case, rather than a relationship between principle and agent, the dynamic between the EU and the member states is that of a trustee in a fiduciary relationship: the trustee (the EU) manages its powers for the benefit of the fiduciaries (the member states). To explain such a strong case of delegation, Majone identifies the need on the part of the members to prove the credibility of their major commitment to the process of European integration as the most important factor.

The need expressed by Majone to go beyond the P-A model to analyse full delegation in the EU context has been debated. However, what remains relevant in all the P-A literature in EU studies is the credible commitment to supranational integration as an important explanatory factor, especially when delegation is made directly to an EU institution, such as the Commission or the ECB. In his analysis of delegation by the

members to the Commission in the treaties, Pollack (2006) seconds Majone's explanation, although in his view this is consistent with expectations built on the P-A model. He points out that the strongest powers given to the Commission are in setting the agenda for the Union, as it has the exclusive right to propose EU legislation, and in monitoring member state compliance with EU law, with both soft law measures and the faculty of opening an infringement procedure against members in front of the Court of Justice. He concludes, similarly to Majone, that these powers were delegated by the member states as a means to ensure their mutual commitment to the integration project.

Furthermore, Dehousse (2013) argues that full delegation to the EU can be framed within a P-A model as long as it is adapted to consider the existence of multiple principles and the dynamics between them, which is the approach that this thesis will take. In his view, at the inception of the European Community and in the subsequent gradual strengthening of the Union, member states (the principals) agreed in general terms on their commitment to European integration but had differing preferences and did not trust one another to implement the national provisions that were needed for it. Consequently, delegating powers to independent supranational bodies that would enforce integration in the terms agreed on by the members was a necessary choice to ensure that each state did its part, even if it meant losing some level of sovereignty. In other words, according to Dehousse, on top of the need to reaffirm a commitment to integration, mistrust and conflict between multiple principles is another determining factor of delegation in the EU.

While supranational delegation through the treaties, what so far has been defined as "full delegation", is a major distinguishing feature of the study of delegation in the EU, it is equally important for the purposes of this thesis to discuss how the framework has been applied to the delegation of implementing powers for regular EU laws. Implementation of EU regulations is generally based on a principle of indirect administration, meaning that it is normally delegated to the national level, where enforcement is often the prerogative of national regulatory agencies (NRAs) (Simoncini, 2018). More rarely, administration can also take a direct form, where implementation is delegated to an EU-level institution, such as the Commission in the case of the DMA. Finally, implementation can also take the form of a hybrid model, where the Commission and national authorities share enforcement powers. Such is the case for the enforcement of EU competition law, which starting from the so called "Modernisation Regulation" (Regulation 1/2003) can either be enforced directly by the national competition authorities (NCAs), who in practice deal with the majority of cases, or by the Commission, depending on a case allocation mechanism coordinated within the European Competition Network (ECN). Interestingly, the Digital Services Act (DSA), the other regulation introduced together with the DMA as part of a wider EU digital strategy, adopted a model of implementation relatively similar to competition law (Van Cleynenbreugel, 2021), which is generally considered a successful model of administration that combines benefits from both centralisation and decentralisation and that the Commission itself has argued should be a template for EU regulation (Cengiz, 2010; Potocnik-Manzouri, 2021).

Several studies have attempted to determine which factors contributed to the path delegation would take for EU law implementation by formulating theoretical hypotheses based on P-A considerations and then

testing those hypotheses with datasets of EU legislative acts as empirical evidence. Since the DMA falls into this category, reviewing some of the findings of these studies should provide some insight into factors that may have influenced its chosen delegation path.

Franchino (2004) uses statistics to analyse an extensive dataset of 158 major EU legislative acts to test the effect on delegation paths of two main factors: decision rules and information intensity. First, he hypothesises that a higher degree of delegation and discretion for the Commission should be expected for legislation adopted under qualified majority voting in the Council, because in the former case the Commission, who presumably would attempt to increase its role as much as possible, could leverage the configuration of preferences in the Council to make proposals that favour more supranationalism and that are more likely to pass. On the other hand, for decisions taken under unanimity rules the preferences of the members most unwilling to give up powers to the EU level should prevail and therefore the expectation is that implementation will be delegated to the national level. Second, by information intensity he means the level and type of expertise required to implement a specific policy: his expectation is that delegation will be more likely in favour of the Commission for issues that require general managerial skills and more likely in favour of the member states for policies that require a high level of specific expertise. His statistical analysis of the dataset confirms his expectations and also finds that despite qualified majority voting increasing the role of the Commission in a given policy area, implementation is mainly delegated to the national level in the majority of cases, particularly when it requires a high level of expertise.

More recently, Migliorati (2021) builds on Franchino's work based on a more extensive data set of EU secondary legislation that encompasses the period between the Maastricht treaty and the year 2016. Her hypotheses on the effects of decision rules and information intensity, which she calls policy complexity, are the same, but in her study she also considers the role of two additional factors: previous supranational integration and conflict between principals. She argues that a high degree of supranational integration in a specific policy area should make further delegation to the supranational level, or at least a larger involvement of the supranational level in implementation, more likely (path dependence). Further, she infers that a higher level of preference heterogeneity between the multiple principles involved in delegation should lead to more delegation and wider discretion for the supranational level. Her study confirms Franchino's findings, adding some level of nuance where it finds that policy complexity is a strong predictor for the use of a multi-level system of governance for policy implementation which involves both the Commission and NRAs collaborating through an agency or network. It also shows that path dependence has an effect on new delegation choices and that conflict among principles generally leads to more discretion for the supranational level.

Having analysed some of the main contributions to the P-A literature in the European context, from which have emerged several explanatory factors that may be utilized to investigate the determinants of delegation in the DMA, the next section will analyse the multi-directional patterns of delegation in the European Union that have led to the current system of multi-level governance that is used for implementation

in most policy areas. The comparison with these patterns will establish why the DMA's case is an interesting outlier worthy of academic discussion and provide additional factors to consider in answering the research question.

2.3 Evolution of delegation in the EU: network governance and agencification

As was discussed in the previous section, delegation is a key and unique feature of the EU integration process. Up until the Maastricht Treaty, member states have progressively delegated more and more of their sovereignty to the supranational level in order to further integration. Starting from the late 90s, however, with EU regulation now operating in a wide variety of policy areas, rather than delegating new powers to the EU with each new legislative act, implementation has mainly been in the hands of NRAs. In order to attempt to ensure harmonised implementation of EU law across the entire Union, the Commission and the member states have gradually established a European administrative space composed of European regulatory networks (also called administrative networks) and European agencies, in which NRAs and the Commission collaborate, sharing useful data and developing best practices for implementation (Coen & Thatcher, 2008). Networks and agencies address the issue of implementing EU policies while simultaneously allowing member states not to have to give up more and more powers to supranational institutions. While from a functional point of view they have similar roles and objectives, agencies are relatively stronger institutions with their own legal identity and basis, as well as stronger powers and autonomy, and generally have a more supranational character compared to networks (Martinsen, Mastenbroek and Schrama, 2022).

EU agencies have developed in spite of the general principle of indirect administration that guides the implementation side of EU regulation, in response to the need for more uniformity. Despite their general objectives being similar, their formal powers and institutional design vary on a case-by-case basis, but what can be noticed is a trend of more and more agencies being established and stronger powers being delegated to them over time. Some agencies, called executive agencies, are created directly by the Commission and are designed to assist it in its executive roles, with strong supervision and clearly defined advisory tasks. On the other hand, a second kind of EU agency is decentralised, established with legislative acts and with more discretion in the role of ensuring uniform application of EU regulation by sharing information and fostering cooperation between the Commission and national authorities (Simoncini, 2018). Among these, Griller and Orator (2010) identify four different types, with progressively stronger formal powers: ordinary agencies, which exist only for cooperation and information sharing; pre-decision-making agencies, which on top of the more general role also had a large influence on Commission decisions with their own recommendations; decision-making agencies, which under certain conditions can make legally binding decisions; and rule-making agencies, which do not yet exist in the European administrative space but that would in theory be full EU-level regulators capable of making rules that would be binding in the whole Union.

The delegation of administrative tasks to EU-level institutions that have increasingly stronger formal powers and that have in some cases come to have a "quasi-rule-making" role raises an issue of legality within

the EU's system, as it is in conflict with the long standing non-delegation doctrine developed by the Court of Justice of the European Union (CJEU) in its landmark *Meroni* and *Romano* decisions (Simoncini, 2017). In these cases, the Court established that in the EU's legal order the principle of the balance of powers is a consequence of the principle of conferral, which only allows EU institutions to act within the limits of the powers and competences conferred upon them by the member states through the treaties (art. 5 TEU). As a corollary, in order to maintain the balance of power, the delegation of discretionary powers to authorities not expressly mentioned in the treaties would be incompatible with the EU's constitutional order. In other words, the EU was not allowed to delegate any rule-making competences to EU-level independent regulators and delegation to an agency could only be admissible if it was exclusively of administrative tasks, with clear rules on how agencies should operate and strict supervision by the EU.

However, as was outlined above, the process of agencification continued in spite of the constitutional concerns it might have raised, with agencies gaining more and more powers that increasingly approached de facto rule-making, gradually chipping away at the initial rigidity of the *Meroni* doctrine (Simoncini, 2017). In particular, the new European Supervisory Authorities, introduced in the aftermath of the Euro crisis to lead controls and harmonisation for the new reforms on supranational financial supervision, eventually forced the Court to re-address its non-delegation doctrine in a new landscape where agencification had fully taken place (Simoncini, 2021). In the *ESMA – short selling* case, somewhat softened its stance on delegation, acknowledging that agencies had been included in the included as legal actors in the treaties with the Lisbon Treaty (art. 298 TFEU) and recognising that the EU had the power to delegate administrative powers to agencies that go beyond the strict executive powers that were considered legitimate in *Meroni* and *Romano*, while still maintaining the general principle of *Meroni* that prevents delegation of a wide margin of discretion (Bergstrom, 2015; Simoncini, 2017). This softened stance not only legitimised a process that had already been happening, but also set the stage for further development of administrative agencies.

The establishment and proliferation of this model of network governance has been explained from both a functional and political perspective. In functional terms, delegating implementation to the national level allows to leverage the specific expertise of NRAs, which is necessary to efficiently enforce often highly technical EU policies, while creating a forum for collaboration with the Commission is useful to prevent excessive fragmentation (Martinsen, Mastenbroek and Schrama, 2022). At the same time, it has been noted that similar functional outcomes could also have been achieved with the establishment of powerful European regulators, to whom enough powers and resources could have been delegated to directly implement EU regulations. This alternative, however, was rejected by the member states, who in the post-Maastricht era have been particularly unwilling to give up more powers in favour of supranationalism (Coen & Thatcher, 2008; Ripoll Servent, 2018). Consequently, the increasing trend towards what has been termed "agencification" is also influenced by divergent preferences between the various principles involved in the creation of networks and agencies: member states are unwilling to give up more powers while the Commission would presumably prefer a supranational solution (Dehousse, 2013). In this sense, networks and agencies have been seen as a

political compromise between the national and supranational level, or in other words a second-best solution for both sides (Coen & Thatcher, 2008; Ripoll Servant, 2018; Martinsen, Mastenbroek & Schrama, 2022). Their nature as a compromise is further evidenced by the relative weakness of the formal powers that have been delegated to them, mostly consisting of soft law measures they can utilise: while they have had some positive effects in ensuring harmonisation, this is mainly due to their more informal role as forums in which NRAs can coordinate their efforts with the Commission, rather than because of their ability to directly influence the behaviour of national regulators (Coen & Thatcher, 2008; Dehousse, 2013; Martinsen, Mastenbroek & Schrama, 2022).

Despite the general agencification trend, which has also been interpreted as a relative crisis of supranationalism in favour of a more intergovernmental approach to EU governance (Dehousse, 2013), a notable exception can be found in the EU's response to the Euro-crisis, which consisted of major new powers being delegated to the Commission and to the ECB. Without going into too much detail, as what is interesting for this thesis is the reason why this exception to the rule might have happened, the Commission was given new and stricter powers in macroeconomic governance, particularly concerning the surveillance of national fiscal policy, while the ECB became the new supervisor of the entire European banking sector with the establishment of the banking union. Dehousse (2016), argues that despite a general political climate adverse to supranational delegation, in the highly charged crisis situation it came to be perceived by member states as the correct course of action because of a number of factors. First, the scope of the crisis itself created a strong political pressure to seek EU-wide solutions and the high political stakes created the perception for member states that regulatory integration was the best, or at least most immediately viable, solution to a pressing issue (Mathieu, 2020). Second, member states not only felt the pressure to find solutions, but also had growing conflicts between them on what the solutions should be and the differences in their preferences influenced the eventual decision to delegate new powers to the supranational level. Finally, the institutions themselves, the Commission and the ECB, played active roles in pushing for additional powers for themselves and shaped the form those powers would take: the Commission introduced the proposal for the reform in macroeconomic governance just at the right moment, when the political pressure to tackle the crisis was high and there was a sense of urgency, while the ECB, guided by its president at the time Mario Draghi, lobbied heavily for the introduction of the banking union and the single supervisory mechanism right when the Spanish banking system was on the brink of collapse and threatening spillover effects in the whole Euro-zone.

All these regulatory trends show how exceptional the centralisation of tasks on the Commission in the DMA is. The case of the DMA appears as an outlier which may contribute to expanding the literature on delegation of powers and EU governance. Furthermore, the two notable cases of supranational delegation in the post-Maastricht EU will provide further insights into what some of the factors that have shaped DMA delegation might be. The following section will briefly recap some of the main explanatory factors of delegation that emerge from the P-A literature and highlight which ones will be used for the purposes of this thesis.

2.4 How explanatory factors from the P-A framework can be used to answer the research question

This brief overview of the Principal-Agent framework has provided a series of explanatory factors that could be applied to the DMA's case of delegation to find whether they have influenced the decision to delegate new powers and give a high level of discretion to the Commission rather than opting for the more widely used option of network governance.

First, the general P-A literature provides functional reasons why delegation might happen. Powers may be delegated: because of the perception that an NMI, such as the Commission, would be the most efficient enforcer for the implementation of a specific policy; because policy implementation requires a high level of expertise that legislators do not have; or because delegation is useful to make a credible commitment to a policy vis-à-vis voters and stakeholders who have an interest in that policy. Further elements can be found in the application of the framework to the specific case of delegation in the EU. For instance, delegation to the supranational level may happen because member states make a credible commitment, towards the public but also towards each other, to the general project of supranational integration. Further, EU regulations that requires qualified majority voting in the Council rather than unanimity tend to have a larger role for the supranational level on the implementation and enforcement side. Path dependence is another important factor in EU delegation: it is more likely that further delegation of powers to the EU level will happen in policy areas in which there is already a higher level of supranational integration. Finally, all acts of delegation in the EU are shaped by the dynamics between the multiple principles involved and by the political climate in which a certain policy is being discussed and introduced: mistrust between principles can lead to more delegation and higher levels of discretion for EU institutions, while a political situation in which there are strong pressures to introduce an EU-level solution to a certain policy problem can create a sense of urgency that allows EU institutions to influence the policy process to carve out new powers for themselves.

The theoretical framework built in this chapter will be applied to the DMA case as follows.

Firstly, the role of path dependence and QMV will be disregarded to allow this thesis to focus on the factors that appear to be most relevant for this case, for the following reasons. First, with qualified majority voting becoming the norm in most policy areas, while it could be acknowledged that the type of delegation that happened with the DMA would have been less likely to happen if it was introduced with unanimity rules, this cannot be considered a distinguishing factor of the DMA itself and does not help to explain why it is such an exception in the general EU regulatory landscape. Second, path dependence is also not a strong factor in this case, as policy areas adjacent to the DMA (for instance the Digital Service Act and the General Data Protection Regulation) generally followed the network governance model. In fact, its going against path dependence is what makes the DMA an interesting case of delegation in the first place.

Secondly, chapter 3 will address the stated reasons for centralised enforcement in the DMA: the Commission itself, in its legislative proposal, argues that it was the most appropriate level of governance for implementing the regulation as it would be best equipped to deal directly with the multinational corporations that will be the regulatees (COM, 2020). According to this view, the main reasons why delegation to the

Commission would have happened in the DMA are functional: namely, efficiency and the need for specific expertise. This thesis will argue that these factors are not sufficient explanations for the DMA's rare case of supranational delegation, as centralisation of all powers in the Commission and the lack of a clear coordination mechanism with the national level create relevant issues and conflicts that might lead to inefficiency and fragmentation. In fact, if efficiency and policy complexity were the main concerns during the legislation process, a system of multi-level governance similar to what is employed in Competition Law enforcement and other EU regulations in similar sectors as the DMA, such as the GDPR and the DSA, would have been the most likely outcome.

Finally, having argued against the purely functional explanations of efficiency and policy complexity, chapter 4 will make the case that the need to make a credible commitment and project authority in the face of powerful tech giants, the sense of urgency and political pressure to address a major issue in one of the most important new economic sectors and the conflicting preferences of the principals were the main contributing factors that led to the delegation of new powers directly to the Commission with the DMA.

3. Why regulatory efficiency is not a sufficient explanation for the level of delegation to the Commission in the DMA: issues with centralised enforcement and implementation of the DMA

The main reason behind the introduction of the DMA is that in the digital economy a small number of large platforms are increasingly entrenched in their dominant position, which makes other businesses and consumers themselves increasingly dependent on their services as gateways to the digital markets (COM, 2020). To be more specific, the DMA is necessary because it prohibits a series of harmful practices by large digital companies operating that competition law enforcement has not been able to deter or correct: some of these practices fall out of the scope of competition law, because they do not directly involve an abuse of dominant position but are inherent to the dominant position itself, while others may be sanctioned under competition law but the length of the investigative procedures makes sanction ineffective, as big tech firms are often able to eliminate competition before the investigations are over and can therefore consider the monetary penalties as that monetary penalties "a cost of doing business" (Akman, 2021; Petit, 2021; Renda, 2022).

The existence and importance of the policy problems the DMA aims to address, and therefore the necessity of a specific EU-level regulation to tackle them, has been widely accepted both by scholars analysing the regulation during and after the legislative process as well as lawmakers, member states and other relevant authorities, notably the European Competition Network (ECN, 2021). However, what emerges from a review of the literature specifically dealing with the DMA is a general sense of doubt on whether the regulation's choice to delegate implementation entirely to the Commission and not provide clear mechanisms for cooperation with the national level, to coordinate with actions taken by national authorities in adjacent policy areas, might prevent it from being effective in practice (Carugati, 2021; Carugati, 2022; Colangelo, 2022; De Streel & Larouche, 2021; Renda, 2022). The main concerns, as this chapter will explore, are that the Commission does not have enough resources and expertise to efficiently implement the DMA and that without proper coordination with the national level there will be conflicts and overlaps that will not only increase fragmentation but also hurt the overall effectiveness of the new regulation. Therefore, the purely functional factors of regulatory efficiency and need for expertise are insufficient explanation for the choice to delegate new powers to the Commission with the DMA, as in fact this choice might lead to the opposite of efficiency.

This chapter will first provide a brief overview of the main elements of the DMA (section 3.1), then discuss the role of the Commission as the centralised regulator for the digital markets (section 3.2) and finally argue against the functional explanation by pointing out the issues caused by the delegation of its implementation to the Commission (section 3.3).

3.1 A brief overview of the key elements of the Digital Markets Act

The DMA's two main objectives are contestability and fairness in the digital markets. The regulation aims at eliminating barriers to entry to digital markets so that there can be a level playing field between digital gatekeepers and firms that may offer similar digital services and avoid unfairness in the relationship between gatekeepers and other business users in the digital markets (De Streel & Larouche, 2021). Another major objective is the harmonisation of national laws for the realisation of a functioning internal market in this specific sector (Larouche & De Streel, 2021). To achieve this goal, the DMA prohibits Member States from imposing additional obligations on gatekeepers in the digital sector that are aimed at ensuring fairness and contestability (Art. 1 DMA). In other words, the DMA is being positioned as a piece of sector-specific economic regulation that is intended to complement general competition law enforcement and the European and national levels (Akman, 2021).

The choice of using economic regulation in a specific economic sector to address certain structural problems that competition law has not been able to prevent is nothing new in EU law, with precedents in other sectors such as electronic communications, finance, cross-border mail services and more. However, the DMA distinguishes itself in that most sector-specific regulations assign enforcement directly to national authorities or to a shared system of multi-level governance between the Commission and the national authorities, whereas the DMA concentrates all enforcement power in the Commission (Larouche & De Streel, 2021).

The DMA's provisions do not encompass the entirety of digital services provided on the market, but only those that business users and consumers are almost required to utilize (Chirico, 2021). Article 2 of the DMA defines a list of ten "core platform services" to which the regulation will apply. These core platform services were selected because they are considered those more likely to generate the kind of entrenched position of power and consequent negative effects on contestability and fairness that the DMA was designed to counteract. The listed services are all characterised by the fact that they are multi-sided services, meaning they provide digital infrastructures which connect two or more groups of users, often for transactions between buyers and sellers, and because they are generally provided by a very limited number of large undertakings, which we may define as "digital platforms". Because of the characteristics of the core services, digital platforms achieve a high level of dominance in the market and are able to set terms and conditions unilaterally, which without regulation may lead to unfairness and dependency for other business users and for consumers (COM, 2020).

Beyond the identification of the core platform services, the scope of the DMA is further restricted by the concept of gatekeeping. That is to say that the obligations introduced by the DMA will not apply to any undertaking that provides one of the listed services, but only to those providers who are designated as gatekeepers, meaning users are forced to go through them to access the digital markets, according to some specific criteria. Article 3 outlines two alternative mechanisms for establishing whether an undertaking fits the criteria and is therefore designated as a gatekeeper. The default mechanism takes the form of a rebuttable presumption: an undertaking is automatically designated as a gatekeeper if it satisfies three quantitative

thresholds. Undertakings that do not satisfy the quantitative criteria may nevertheless be designated as gatekeepers according to a second procedure outlined by article 17 of the DMA, which empowers the Commission to designate a gatekeeper following a market investigation.

The core of the DMA's ambition to address the issue of gatekeeping in the digital markets is a series of prohibitions and prescriptions stipulated in articles 5 and 6 of the regulation that attempt to avoid or correct the most problematic behaviours identified in the sector. We may identify at least three broader aims they are designed to achieve by prohibiting or prescribing specific practices (Chirico, 2021). First, some obligations seek to empower consumers by ensuring their ability to make choices (Arts. 5(2), 5(5), 5(8), 6(3), 6(4), 6(9) DMA). Second, some obligations are designed to prevent gatekeepers from using their position of dominance to prevent fair competition in their relations with other business users (Arts. 5(3), 5(7), 6(2), 6(5), 6(7), 6(12) DMA). Third, certain obligations concern access, mobility and fair use of data and information, as well as transparency in the ways in which gatekeepers operate their core platform services (Arts. 5(2), 5(9), 5(10), 6(2), 6(8), 6(9), 6(11) DMA).

Interestingly, many of the obligations listed in the DMA can essentially be seen as codifications of past and even ongoing competition law proceedings against large companies operating in the digital markets (Facebook, Amazon, Google, etc…) at both the national and EU level (Akman, 2021). This makes it additionally surprising that the member states were willing to delegate all implementation to the Commission, because the DMA does not simply introduce new rules and assign enforcement powers to the EU-level, it directly prevents national authorities to act in areas that they were actively enforcing up until its introduction. Additionally, the level of discretionary power it provides to the Commission is extensive, as it allows it to avoid the lengthy procedural limitations it would have had to face if it attempted to address the behaviours prohibited by the DMA through competition law enforcement. The next section will expand of the powers delegated to the Commission.

3.2 The Commission as the centralised regulator for the digital markets

As opposed to the multi-level decentralised governance system of general competition law enforcement, as well as many other areas of EU law and regulation, and even to the Digital Services Act, the DMA opts for centralising all enforcement powers in the European Commission, which will become the central regulator for the digital markets (Larouche & De Streel, 2021). The logic behind this choice, according to the Commission's proposal (COM, 2020), is that the gatekeepers that the regulation is targeting will be relatively small in number and mostly operate on a global scale, which in the European context means that they are operating core platform services very similarly across multiple member states, which coupled with the need to avoid regulatory fragmentation makes the EU level the most appropriate level of governance to efficiently implement the DMA's rules (Monti, 2021).

First, the Commission designates gatekeepers with a decision after receiving their notification that they fit the quantitative criteria (Art. 3 DMA). In addition, the Commission will oversee the flexibility of the DMA

by using the market investigation tool to determine whether an undertaking that provides a core platform service but does not satisfy the quantitative criteria should nonetheless be designated as a gatekeeper, to examine the state of the digital markets to determine whether there are new digital services which should be included on the list of core platform services in article 2, whether there are new practices that should be addressed by including new obligations on gatekeeper or whether some of the obligations listed in articles 5 and 6 are no longer relevant and should be amended or removed (Arts 16-19 DMA). Furthermore, the Commission will be in charge of continuously monitoring compliance with the DMA's obligations and will also be the direct enforcer of the DMA towards the gatekeepers, through a series of increasingly restrictive corrective measures it has at its disposal (Van Cleyenbreugel, 2021; Arts. 21-26, 29-31 DMA).

The main element of decentralisation in the original DMA proposal is the requirement to create a Digital Markets Advisory Committee (DMAC) composed of representatives of all the member states to advise the Commission with non-binding opinions (Art. 50 DMA). The DMAC is intended as a forum for the Commission to gain some insight from the expertise available at the national level in order to implement the DMA effectively. However, the Committee will essentially be modelled after the comitology system, meaning in practice there will be no requirement for its members to be selected from the staff of NCAs, which would be able to provide useful expertise, and in many cases might be selected from national ministries (De Streel & Larouche, 2021). Despite the Council pushing for more decentralisation in DMA enforcement, that would include a direct role for national authorities (Andriychuk, 2021), the only compromise reached in this sense during the legislative process was the addition to the original draft text of a new article that obliges the Commission to establish a European High-Level Group of Digital Regulators (EHLGDR), which shall be composed of members from relevant European bodies and networks, but that will also exclusively have an advisory role (art. 40 DMA).

In contrast, the provisions of the DMA for the cooperation with member states to avoid regulatory fragmentation are fairly limited. The DMA is positioned as a piece of economic regulation that is intended to complement, not substitute, competition law enforcement in the digital sector. To safeguard complementarity and avoid overlaps and conflicts, the DMA prohibits member states from imposing further obligations on the designated gatekeepers that aim at contestability and fairness in the digital markets (Art. 1(5) DMA). However, it does not prevent member states from using their national laws to impose general obligations to safeguard competition that happen to also target the gatekeepers, nor does it stop them from enforcing national or European competition law rules vis-à-vis the same undertakings that will also be regulated by the DMA, nor, in principle, does it forbid member states from introducing sector-specific economic regulations at the national level that deal with the digital markets, as long as they are not specifically aiming for contestability and fairness, which are vague enough concepts to allow for interpretation (Colangelo, 2022; Falce, 2021).

The overall picture of the role assigned to the Commission by the DMA is that of a centralised regulatory body with extensive powers and discretion. However, due to the large asymmetries of information and resources between the Commission and the global corporations that will be designated as gatekeepers, as

well as the potential conflicts with national laws, the choice not to leverage the skills, expertise and resources of national regulators at all on the enforcement side and not to include stronger cooperation mechanisms may cause the DMA to not be implemented as effectively as it should, as will be argued in the next section.

3.3 Inefficiencies of centralisation at the Commission level

As was briefly pointed out in the previous section, what might prove to be a major hindrance to implementation will be the availability of the resources and expertise that will be necessary to enforce the DMA's many obligations vis-à-vis a powerful group of gatekeepers. In fact, it seems likely that asymmetries in information, resources and expertise between the Commission and the regulated gatekeepers will be the single most significant challenge for the effective enforcement of the DMA.

In order to face this challenge, the staff of DG Competition will only be increased with 80 new members of staff specifically entrusted with DMA enforcement with a budget of around 81 million euros for the 2021-2027 period. Compared to the substantial amount of resources gatekeepers will have at their disposal to resist enforcement, both financially and in terms of the legal and technical teams they can employ, this does not seem to be sufficient and may lead to enforcement either not being effective as a whole or to the Commission having to make choices between which obligations on which gatekeepers or which cases to enforce at the expense of others (Carugati, 2021). The limited resources available to the Commission on its own will most likely have a variety of negative effects on the enforcement of the DMA.

First of all, monitoring compliance over the obligations of articles 5 and 6 will be an extremely complex endeavour. Most of the harmful practices addressed by the DMA are operated by gatekeepers through complicated and constantly updating algorithms, programs and A.I. systems, which means the people in charge of enforcement will be required to have a high degree of specific expertise that will be difficult to find and that most current members of DG Competition are unlikely to have, especially in comparison to the teams of software engineers that gatekeepers employ (Renda, 2022). Monitoring is arguably one of the areas where the choice not to employ the resources and skills of national authorities is most surprising: not only because being closer to the day to day operations of gatekeepers in each respective member state they could have an effective role at identifying potential violations, but also because some of them have already been setting up teams of experts in big data and algorithms that would have the necessary expertise, all without the need to additionally increase the Commission's staff or budget (De Streel & Larouche, 2021).

The information asymmetries between Commission enforcers and gatekeepers will be significant, with undertakings operating in the digital markets collecting and having constant access to enormous amounts of data on the operation of their services and on their clients, both business users and end-users, which regulators will have a hard time handling despite their investigative powers. These information asymmetries will come into play in different ways. For example, while article 5 obligations will always be directly applicable without further intervention, the article 6 obligations will have to be specified by the Commission for each individual gatekeeper, which will happen "in regulatory dialogue" with the gatekeepers themselves. Given the

aforementioned asymmetry, this opens the door to a risk of regulatory capture, whereby undertakings are in such a strong position in comparison to the regulator that they are able to influence the specification process in their favour and make the obligation as small a burden on their operations as possible.

Another area in which the resources and staff the Commission will be able to employ for DMA enforcement may also be insufficient, and where it would seemingly be useful to involve national authorities as a complement, is in the main new tool introduced by the regulation: the market investigations (De Streel & Larouche, 2021; Van Cleynenbreugel, 2021). Market investigations are a tool introduced by the DMA that the Commission may utilize to designate new gatekeepers, introduce new obligations or core platform services covered by the regulation or determine whether a gatekeeper is in systemic non-compliance with the regulation. The digital sector is constantly and rapidly evolving, so being able to keep the DMA's provisions up to date will be essential to its long-term effectiveness. If the Commission's resources are insufficient to react efficiently to changing conditions, the DMA could become obsolete very quickly. Gatekeepers could potentially be able to find new ways to exploit their position as operators of core platform services that circumvent the limitations imposed on them by the DMA faster than the Commission is able to adapt the regulation to new practices. Further, even market investigations into systemic non-compliance may be affected by the need to be selective on how to employ available staff and resources, as well as the ability for gatekeepers to use their massive resources to resist enforcement. It does not seem too difficult to foresee a more prominent role for national authorities in this aspect as well: under the Commission's direction, they could carry out the investigation in each respective member state, whether it is for adapting the DMA or into systemic non-compliance, and then this information could be gathered by the central regulator to more rapidly compile an overall analysis of the market conditions in the EU as a whole.

Beyond the problems that centralisation may generate to the enforcement of the DMA itself, which may prevent it from fully achieving its goals of contestability and fairness in the digital markets, a second set of issues arise from the limited provisions for cooperation with member states, which may cause regulatory fragmentation by not preventing overlaps and conflicts between the DMA, competition law and other areas of national legislation.

As was mentioned, the DMA expressly prohibits Member States from introducing additional obligations on gatekeepers aimed, like the DMA, at ensuring contestability and fairness in the digital markets (Art. 1(5) DMA). However, as long as they do not directly target designated gatekeepers for the same reasons as the DMA, Member States are free to regulate the digital markets with their national competition laws, laws on economic dependence or sector-specific regulations to introduce rules and obligations that happen to also affect gatekeepers (Colangelo, 2022). Without stronger cooperation mechanisms that ensure complementarity between the DMA and national legislation, this may lead to multiple sets of rules applying to gatekeepers and even to situations in which they conflict with each other, making it impossible for gatekeepers to comply with all of them at the same time (Falce, 2021). When such a situation arises, DMA obligations should prevail over national rules to avoid fragmentation, but in order for this to happen efficiently there should be a clear

mechanism or forum for cooperation that either prevents conflicts from appearing in the first place or resolves issues once they present themselves (De Streel & Larouche, 2021).

The first, and arguably most obvious, area of potential conflict between the DMA and national legislation is competition law. The similarities between competition law and the DMA, which as was stated based most of its obligations on practices that emerged from completed or ongoing competition law enforcement proceedings, will almost inevitably create situations of conflict (Komninos, 2022). Not only will the contents of national competition laws targeting anti-competitive behaviour in the digital markets, which member states will be free to introduce as long as they are in compliance with article 101 and 102 TFEU, potentially be similar, but there may well even be cases of parallel enforcement, where NCAs and the Commission open proceedings on the same undertakings at the same time to determine whether they violated competition law or the DMA (Colangelo, 2022).

Another specific area of national law that may cause overlap issues is legislation on economic dependence. Several member states, such as, among others, France, Belgium, Germany and Italy, have rules that specifically target the abuse of economic dependence by a large undertaking in its bilateral relations with smaller business partners (Carugati, 2022). The concept of economic dependence refers to situations in which large companies, that may or may not have a general position of absolute market power in the sense that is intended under competition law, are in a strong enough position of advantage in their bilateral business relations that they might be able to unilaterally set unfair terms and conditions on their business partners, who on the other hand are dependent on the service or product provided by the larger firms because of exceedingly high costs of switching or the unavailability of alternatives (Colangelo, 2022). While laws that forbid the exploitation of these positions in business relationships do not specifically target the digital sector, it is easy to see the similarity between the DMA's new concept of "gatekeeping" and the concept of "abuse of economic dependence" and how these national rules could apply to designated gatekeepers, leading to overlapping sets of rules regulating similar behaviour and potentially causing many instances of parallel enforcement.

One final area of potential conflict, which might turn out to be the most problematic of all, is in possibility that member states could introduce sector-specific rules that directly deal with digital markets and even with online platforms While article 1(5) DMA forbids national laws that target gatekeepers with obligations aimed at achieving contestability and fairness, in practice it will be challenging to determine whether a national law that deals with anti-competitive behaviour by online platforms falls into those criteria or not, especially if the rules are positioned as part of general competition legislation (Carugati, 2022).

Such is the case, in what constitutes a major example of regulatory fragmentation, for the new provisions regarding large undertakings operating in the digital sector introduced by the German Parliament with the 10th amendment to the German national antitrust law (Carugati, 2022). This new amendment empowers the Bundeskartellamt (the German competition authority) to identify which firms in the digital markets should be deemed "of paramount importance for competition across markets" and imposes a series of ex-ante rules on such firms that are almost identical to those of the DMA from a functional standpoint

(Colangelo, 2022). Even though these new provisions introduced in Germany would seem, at first glance, to be in direct violation with article 1(5) of the DMA, their positioning as an extension of national competition law, which formally aims at protecting a different legal interest than contestability and fairness, will make it really difficult for the Commission to argue that it violates what member states are allowed to do under the DMA (Colangelo, 2022). On top of the obvious conflict between the national and European provisions that does not seem to have, as it stands, a clear path towards resolution, it should also be noted that the German amendment has been in effect since January 2021, predating the DMA's final approval by over a year, and the Bundeskartellamt has already designated Google as one of the undertakings targeted by the new rules, with ongoing proceedings for the potential designation of Facebook Meta, Amazon and Apple (Carugati, 2022). In other words, Germany had already been enforcing rules on large digital platforms before the DMA had even officially entered into force, with no clear understanding on how uniformity would be maintained between the two pieces of legislation. Simultaneously, other member states (Italy, Greece, Austria) have been considering taking the German approach as an example for their own national laws, which would lead to additional fragmentation (Colangelo, 2022).

In addition, if the need for specific expertise for the technical implementation of the DMA was a major factor, the more likely choice would have been to leverage the knowledge and experience that National Competition Authorities have acquired over the years. In a study that analysed publicly available data on the enforcement or advocacy actions carried out by NCAs in the digital sector in the period between 2010 and 2021, Carugati (2021) found that NCAs have been operating in the digital sector and building expertise for a number of years, with over 180 actions being carried out in the period that was analysed, of which a little over 40% were enforcement cases, antitrust or merger control, and a little under 60% were advocacy actions, such as articles, market investigations, reports, position papers. What this shows is that NCAs have been engaging with competition issues in the digital economy in many instances, focusing on different areas such as issues surrounding digital platforms (many of which will be gatekeepers under the DMA), as well as e-commerce and online advertising (which are areas that will be regulated by many DMA obligations), and thus building and refining specific expertise over years of practice. It should also be noted that the amount of yearly cases has been steadily increasing, with over 85% of actions having been carried out from 2017 to 2021, meaning NCAs have been more and more willing and, crucially, able to engage with the digital economy.

The analysed data, however, did show some differences in the amount of engagement, and therefore in the level of expertise built up over the years, of different NCAs. For instance, the German and French national authorities led all NCAs in the overall number of actions and there is also evidence of certain NCAs building specific expertise by specialising in one area of the digital economy over the others, with France, for example, representing 57% of all actions undertaken in the area of online advertising. However, most NCAs have engaged in at least a few actions in the digital economy over the years and have developed at least some skills, for instance relating to smaller local platforms that may elude the general scope of larger cases. The data is also evidence that, having operated in the digital economy for years, NCAs have not only developed skills but

also built up resources that could be leveraged to increase the amount of overall staff dedicated to DMA enforcement.

If, as Carugati's (2021) study suggest, national competition authorities, though to varying degrees across member states, have the necessary requirements, skills and resources, to actively participate in DMA enforcement, then considering the problems centralisation may cause that have been discussed above, it would seem to indicate that the choice to not give them a larger role in the DMA's institutional design by delegating all implementation to the Commission could not have been made if efficiency and expertise were the primary concerns during the legislative process. If that was the case, the expectation would have been that a system of multi-level network governance would have been created, in which the Commission might have remained the central and principal regulator for the digital markets, but with additional NCA involvement, in complementary roles, becoming a major factor in the potential achievement of the DMA's goals: DG Competition could have leveraged the staff and skills of the NCAs to quickly increase its ability to effectively enforce the DMA, making the goals of contestability and fairness in the digital markets more achievable, and improve coordination with other areas of national law, improving regulatory harmonisation for the digital sector. National authorities, being closer than DG Comp to the daily operations of gatekeepers in each respective market, could have been particularly useful for monitoring compliance and receiving complaints from business and end users, as well as in assisting the Commission in market investigation by collecting and elaborating data from each economy to be compiled with the data from all the other markets, thus making the process more efficient. Furthermore, specific NCAs could also have been directly involved in cases where they have developed targeted expertise over years of engagement with a specific area of the digital economy or when there is a case that requires knowledge related to local dynamics, businesses and conditions.

Not only do all these potential issues with centralised enforcement that may cause inefficient implementation emerge from most scholarly articles on the DMA, but perhaps more importantly they were also acknowledged by various EU-level and national officials before and after the regulation received its final approval, making it even more puzzling that this level of delegation to the Commission was accepted in the first place.

One major group who recognised these problems were the NCAs themselves, who during the legislative process for the DMA published a joint paper through the ECN arguing that the Commission on its own would not have the sufficient resources or expertise to "ensure its effectiveness and complementarity with competition enforcement" (ECN, 2021). In the same paper, the ECN, while acknowledging that because of the nature of the behaviours and regulatees targeted by the regulation the Commission should be in the lead in terms of enforcement, argues that the expertise of national authorities would significantly improve DMA implementation and coordination with other national policies if a system closer to the more common network governance model was adopted instead of delegating all powers to the EU level. On top of this joint action, individual heads of NCAs repeatedly lobbied for a more prominent role in DMA implementation.

But it was not just the NCAs, that it might be argued could have a somewhat biased position on the matter given that they would be the ones losing powers to the Commission, that pointed out these problems. For instance, Andreas Schwab, the MEP who led the debate on the DMA in the European Parliament which eventually led to its approval, wrote a letter to the Czech Republic (which at the time held the rotating EU presidency) expressing concern over the limited resources allocated for DMA enforcement. He argued that the new staff of DG Competition hired for DMA enforcement should be at least doubled, otherwise the achievement of the DMA's objectives might be in serious jeopardy, which in his view would cause "irreversible damage to the digital single market" (Espinoza, 2022a).

Additionally, the Commission itself, while always holding firm on its view that centralised enforcement was the optimal option for the DMA, has shown its concern over the possibility of regulatory fragmentation. Commissioner Margrethe Vestager, who together with commissioner Henry Breton was the lead on the legislative proposal for the DMA, expressed this concern by pointing out that France, Germany, Denmark and Austria had all been working on their own national legislation that would tackle very similar issues as the DMA, which would lead to widespread fragmentation (Espinoza, 2021a). The literature on the DMA analysed in this thesis agrees with this assessment by the Commission, but as was pointed out above it will be challenging in practice to prevent member states from applying their own laws tackling digital platforms, especially if they are introduced within national competition law. In fact, while the conflict between the Commission and NCAs on how much of a role they should have in DMA implementation went in favour of the Commission during the legislative process, NCAs continued to argue that national laws would not lead to fragmentation and that member states had every right to introduce their own laws tackling big digital platforms, with the head of the German authority, Andreas Mundt, saying that only "those who don't want national competition agencies to have a say" would talk about fragmentation (Espinoza & Solomon, 2021) and the head of the Dutch authority, Martijn Snoep, calling the choice to centralise enforcement a "political decision" (Espinoza, 2022a). In other words, it would seem that the battle on who should be able to regulate big tech has moved past DMA implementation, with member states continuing to introduce their own rules.

Prior to the official proposal of the regulation, the expectation was that EU countries would be unwilling to give up new powers to the Commission (Espinoza, 2020b) and during the legislative process the Council, representing the member states, even attempted to introduce a decentralised model of implementation with its own version of the draft regulation (Andriychuk, 2021). Yet, regardless of the concerns over lack of resources and expertise and over conflicts between the DMA and national law, and despite the initial opposition from the Council, the decision was ultimately made to delegate all implementation to the Commission anyway. This section leads to the conclusion that a purely functional explanation for this delegation choice is insufficient: not only are regulatory efficiency and the need for expertise not strong explanatory factors for this unusual case of delegation, but in fact it seems likely that the delegation itself will lead to an inefficient application of the DMA. The next chapter will focus on the factors that contributed to the decision to centralise competence on the commission, and in particular: the conflict between the multiple

principals involved, the political pressure to address a complex and pressing policy problem and the need to make a strong commitment to the new policy in the face of the powerful digital players that are targeted by the new regulation.

4. How political pressure, credible commitment and conflict between principals have contributed to the decision to delegate new powers to the Commission

The Digital Markets Act was first proposed by the Commission on 15 December 2020, together with the Digital Services Act, and was officially approved on 14 September 2022. During that two-year period, the initial draft text received a series of amendments, but most of them regarding technical issues such as the scope of the regulation and the procedural rules that the Commission would have to follow in its new role. The initial proposal by the Commission that new and exclusive powers should be delegated essentially remained intact, with the aforementioned (section 3.2) and relatively minor exception of the introduction of the EHLGDR. That is not to say, however, that the Commission simply acted as its own principal and that the Council and Parliament passively accepted its proposal. In fact, objections to the unusual proposal to centralise all enforcement in the Commission were raised both at the EU and national level, based on all the potential problems that this might cause as was argued in the previous chapter. Nevertheless, not only did the Council and Parliament eventually decide to accept this new delegation, but they did so with overwhelming support for the final text of the regulation: the Council approved the text unanimously and the EP with a resounding 588 votes to 11, with 31 abstentions (Council, 2022; EP, 2022a and 2022b).

This thesis so far has argued against the merely functional explanation that the EP and Council (and therefore the member states) decided to delegate new exclusive powers to the Commission because of regulatory efficiency and policy complexity, establishing that centralised enforcement would potentially lead to inefficient implementation of the DMA, that the Commission could not have the highly technical expertise necessary to enforce the regulation, especially in the face of powerful regulatees, and that these problem were fully known to all relevant authorities and institutions. But if this is the case, other factors must have contributed to the final decision reached by the EP and Council.

This chapter will argue that the decision to delegate DMA implementation almost exclusively to the Commission was ultimately influenced by the intense political pressure to find an EU-level solution to an increasingly pressing policy problem - the entrenched position of tech giants that was becoming structural to the digital markets, destroying competition and harming consumers - which went hand-in-hand with the need to make a credible commitment to a strong new digital policy in the face of powerful regulatees, and it will also make the case that another important explanatory factor are the dynamics of mistrust and conflict between essential institutions during the legislative process, which ultimately went in favour of the compromise that allowed the Commission to retain its proposal for new powers intact. To do so, it will first reconstruct the main steps of the DMA's legislative process that led to its eventual approval using official documents and Financial Times reporting as sources (section 4.1), then it will use this reconstruction as evidence and refer back to the P-A literature to argue that the three identified explanatory factors were important contributing factors that led to the decision to delegate new powers to the Commission (section 4.2).

4.1 The DMA's legislative process

The inception of the idea for the DMA initially came from a report titled "Competition Policy for the digital era" in which the authors, three academics chosen as special advisers by the Commission, outline how the EU's competition policy should evolve to tackle the growing challenges presented by the digital sector (Montjoye, Schweitzer & Cémer, 2019). The report was commissioned directly by Margrethe Vestager, who at the time of its publication was at the end of a five-year term as competition commissioner, during which she had built a reputation for the EU as a leader in the enforcement of antitrust rules against the powerful big tech corporations that dominate the digital economy (Brunsden & Espinoza, 2019). Despite Vestager's efforts, worth tens of billions of euros in fines directed at big tech, the growing concern among EU officials was that due to the specific conditions of the digital markets these large companies had become so entrenched in their dominant positions - and therefore able to leverage their power to set unfair market conditions for competitors as well as use their access to private data to manipulate consumers - that they could see fines as a cost of doing business (Toplensky & Murgia, 2019). The report confirmed these fears, finding that despite tough antitrust enforcement big tech companies were incentivised to engage in anti-competitive behaviour in the digital markets and recommending that the EU should modify its strategy to directly address the problem, for instance by reversing the burden of proof and obliging platforms to demonstrate that their operations are not harmful for competition or consumers, rather than the EU having to prove every time that a behaviour is harmful on a case-by-case basis and with the lengthy procedures of competition law enforcement (Montjoye, Schweitzer & Cémer, 2019). This report was a key catalyst for what would eventually turn into the DMA proposal, as it identified key problems and behaviours in the digital markets that needed to be addressed beyond the traditional application of competition law.

Meanwhile, the EU was finding itself under public scrutiny and in the difficult position of having to admit the ineffectiveness of its attempt to curb big tech's anti-competitive behaviour. With her second mandate about to start, Vestager warned large digital firms that she would go beyond fines and look into behavioural remedies "in order for competition to come back in a market that has been plagued with illegal behaviour" (Espinoza, 2019). While this was an attempt to present a renewed willingness to address antitrust issues in the market, it was also an admission that competition law enforcement, at least in the ways it had been applied to the sectors so far, had been ineffective. In fact, representatives of a law firm that had represented complainants in a case against Google regarding mobile search engines, while welcoming the new wider scope of future enforcement, pointed out that by the time the lengthy procedures of EU competition law had imposed fines the company had already eliminated competition entirely for that specific service (Espinoza, 2019). Not long after, the European Court of Auditors (ECA) published a special report on the Commission's antitrust operations, where it found that antitrust action had not been able to prevent distortion to competition in the digital sector, where ex-post enforcement has not prevented large digital firms from eliminating competitors: in the ECA's view, in the digital economy firms "compete for a market instead of in a market" (ECA, 2020, p. 29), which leads to winner-takes-all outcomes in which individual companies become the only providers of

specific platform services, which business-users and consumers are then completely dependent on. (ECA, 2020). The ECA even mentions the potential benefit of having ex-ante rules preventing behaviours that distort competition in the digital markets, which is of course what the DMA would eventually be introducing.

Simultaneously, outside of its shortcomings on competition law, the EU was also having to account for criticism of the lack of major fines being imposed for violation of the first major piece of legislation introduced as a part of its wider digital strategy to curb the harmful behaviour of tech giants, the General Data Protection Regulation (GDPR). The EU initially argued that even without fines the regulation was a deterrent for big tech companies (Kahn, 2019), but later an internal EU document surfaced where officials admitted that implementation of the GDPR had been challenging, especially because of a lack of harmonised enforcement across the Union (Espinoza, 2020d). These implementation difficulties could also have influenced the decision by the Commission to centralise enforcement in the case of the DMA, as it was finding that delegating to national authorities had been ineffective in this sector. In fact, right before the official publication of the draft regulation, another internal document stated that up until then the policing of large digital platforms had been "uncoordinated and ineffective" and that the patchwork of national-level laws attempting to deal with platforms had actually given tech giants an additional "competitive advantage" over the competition (Espinoza, 2020a).

With mounting pressure to find an EU-level solution to the issues of the digital economy, the Commission became convinced that ex-post competition law enforcement was no longer sufficient and decided to introduce ex-ante behavioural rules to prevent digital platforms from exploiting their structural position on their digital markets. To add to the sense of urgency that was felt at the time, the Commission also feared the negative effects in terms of fragmentation of member states introducing their own laws addressing similar issues to the DMA before EU-level rules could be established. At the time, Germany had already proposed its own digital law, that would eventually turn into the 10th amendment to its national competition law, which as discussed above is a major case of national law overlapping with the DMA (section 3.3), and it was expected that other members would take this as an example to follow (Chazan, 2020).

In the lead up to the proposal, as it became known that the Commission was drafting new rules for large platforms in the digital markets, different actors expressed their views on the upcoming regulations. For instance, France and the Netherlands, which interestingly had not always agreed on tech regulation before then, published a joint statement in which they called for Brussels to take decisive action against digital gatekeeper platforms, specifically mentioning the harm caused by their entrenched dominant position (Espinoza & Kahn, 2020). The EP also weighed in with a variety of recommendations, from giving as many protections to consumers making purchases on online platforms as they would have in physical shops to suggesting that the upcoming regulations should focus primarily on introducing clear behavioural rules for the largest digital firms (Espinoza, 2020c). On the other hand, big tech companies, while publicly presenting themselves in support of homogenised rules for the digital economy in the whole Union, started gearing up their lobbying efforts against new asymmetrical that would specifically target them and not their smaller

competitors. For example, Booking.com chief executive Glenn Fogel stated that new rules would "hobble" its business and that its sector has healthy competition, despite Statista showing that Booking had a 67.7% share of the European online travel agency market (Espinoza, Khan & Hancock, 2020). Meanwhile, an internal report from Google was leaked to the press, in which the company outlined a lobbying plan to specifically target and undermine key officials on the new regulations, such as commissioner Breton, in an effort to weaken support for the upcoming proposals, as well as proposing to seek alliances with other tech giants for stronger opposition to the new rules (Espinoza, 2020e).

It was in this charged political climate that the Commission first introduced the DMA proposal on 15 December 2020, which was received positively by stakeholders outside of the potentially targeted tech companies in terms of its objectives, scope and content. While national governments and the EP had already expressed a favourable view of the new proposals before they were even officially introduced, it should also be noted that actors that would not be directly involved in the legislative procedure generally praised the EU's initiative: first, companies operating in the digital markets, such as Spotify, welcomed the new rules, commenting that there was a consensus among business users that gatekeeper platforms were leveraging their positions to harm competition and even slow down innovation; second, legal experts and academics argued in favour of the shift away from case-by-case ex-post enforcement, hoping that ex-ante rules would lead to more efficient regulation of the sectors; finally, consumer groups, such as the leading *Bureau Europèen des Unions de Consommateurs* (Beuc), focused on the benefits that behavioural rules would have on consumer protection, which had not been sufficient under the previous competition law framework (Espinoza & Hindley, 2020). At the same time, despite what seemed like a general agreement on the objectives of the DMA, the Council and EP would now have to look at the details of the draft regulation and form their counter-proposal, while the reaction from big tech companies was expectedly negative, so it was clear that the process that would lead to the approval of the regulation would be relatively long and complex: the Commission was fully aware that lobbying efforts from large tech firms would be massive and expected resistance from member states on the proposed institutional design of the regulation (Espinoza, 2020b).

The period before the Council and EP would publish their official opinions was relatively long, lasting over six months. Vestager herself publicly expressed her frustration on the delays caused by infighting within the EP over which committee should be in charge of first debating the proposal, especially because pressure on the EU was still rising: while Parliament was debating on who had competence instead of on the content of the draft text itself, more countries had began the process of introducing their own DMA-like laws and at the same time competitor companies on the digital markets were lobbying the EU heavily to push the regulation through, fearing that competition could end up being eliminated completely in the sector before it even came into force (Espinoza, 2021a and 2021b). As was shown by the aforementioned special advisor report, if national governments were able to introduce their own laws before the DMA was approved, which would be the case for the German law, the resulting regulatory fragmentation would benefit big tech firms, who would be able to leverage their extensive resources against national authorities and create a competitive advantage

against smaller firms (Montjoye, Schweitzer & Cémer, 2019). Meanwhile, excessive delays could curb the DMA's effectiveness as a whole because it could not prevent further distortion of competition if by the time it came into force there was no competition left in the digital markets. These two factors contributed to a growing sense of urgency: the DMA had to be pushed through as fast as possible or it would not be able to achieve its objectives.

Eventually, it was decided that discussion of the DMA in the EP would be led by the Internal Market and Consumer Protection Committee (IMCO), chaired by MEP Andreas Schwab, of the EPP. IMCO's first report and draft proposal was published on 1 June 2021 (EP-IMCO, 2021a), a little over six months after the initial proposal, with the expectation that it would set the tone for the tough debates that would follow on the contents of the DMA (Espinoza, 2021c). Schwab's draft report would then undergo a series of debates and amendments in the EP and it would eventually be approved as a draft regulation on 30 November 2021 (EP-IMCO, 2021b). While the EP as a whole generally pushed for even stricter obligations compared to the initial Commission proposal, the main issue that sparked the months-long internal debates were the criteria for designating gatekeepers (Espinoza, 2021e). Schwab's initial draft report wanted the quantitative thresholds for designation to be raised significantly compared to the Commission's draft, from €65bn to €100bn in market capitalisation and from €6.5bn to €10bn in turnover over the past three years (EP-IMCO, 2021a), so that the regulation would only target the five largest firms, whereas other groups in parliament wanted the target to be closer to the Commission's initial idea of targeting around twenty companies with the new obligations (Espinoza, 2021e). A compromise on this main issue was eventually reached, with the proposed threshold being set at €80bn (EP-IMCO, 2021b). However, more interestingly for the purposes of this thesis, the EP seemed willing to agree on the delegation of exclusive enforcement powers to the Commission, only adding to the initial draft the establishment of the EHLGDR, which it considered a sufficient element of cooperation between the Commission and the member states, despite there being no direct involvement on their part in implementing the regulation (Andriychuk, 2021; EP-IMCO, 2021b).

Where there would be stronger opposition to centralisation, as expected, was in the position of the member states. The first evidence of this pushback was in the progress report published by the Council on 17 May 2021, in which the main representative of the member states at the EU-level, while also expressing a general agreement with the objectives of the DMA and even with the central role that should be given to the Commission in its implementation, underlined that a majority of members called for direct roles for national authorities "in the opening of market investigations, market monitoring and in the decision-making procedure" as well as identifying the need to clarify the mechanisms for cooperation between the Commission and member states (Council, 2021b). Moreover, on 22 June 2021, only a little over a month after the Council's first progress report, the heads of the NCAs of the EU published a joint paper through the ECN (already mentioned in section 3.3), in which they first argued that the effective implementation of the DMA would benefit greatly from utilising the resources and expertise of the national authorities, accumulated over the course of years of practice and that the Commission could not replicate on its own, and then went on to propose that the DMA should be

enforced following the well-established system of multi-level governance used for competition law enforcement, under which NCAs would directly participate in enforcement and the Commission would have a central supervisory role and directly enforce the regulation itself when appropriate (ECN, 2021). This proposal would prove to be influential, at least initially, as when the Council published its general approach and draft version of the regulation on 16 November 2021, it proposed an enforcement system very much in line with the ECN's joint paper (Council, 2021a)

However, despite presenting a united front in terms of their opposition to centralised enforcement of the DMA, there is some evidence to suggest that member states might not have been as in tune with each other as it might have seemed. First, there is the fact that many countries at this point, including Germany, France, Denmark and Austria, were all in the process of introducing their own national laws directed at the behaviours of digital gatekeepers (Carugati, 2022; Espinoza, 2021a), which could be interpreted as member states trying to anticipate the EU so that they could each have their own preferred set of rules for the digital markets, rather than putting all their efforts into finding a common solution to the policy problem and lobbying even harder for a direct involvement of national authorities. Second, there is the issue of mistrust and even open tensions emerging between NCAs on issues related to the enforcement of EU rules in the digital sector.

This tension first emerged indirectly, when French minister for the digital economy Cedric O met with senior EU officials and MEPs in February 2021 to propose a change to the enforcement mechanism of the DSA, which differently from the DMA would be enforced directly by national authorities: rather than simply following a case-allocation mechanism similar to the one used for competition law enforcement - according to which each individual case is assigned to the most "well-placed authority", which generally is the authority of the country where the case is first filed (Cengiz, 2010) - France wanted each member to be given the power to enforce the DSA in any territory of the Union (Abboud & Espinoza, 2021). While this proposal was for an entirely different regulation from the DMA and did not directly single out other national authorities, it does not require too much speculation to tie it to the wider criticisms of enforcement of competition law in the digital sector and of the GDPR, which also employs a similar case-allocation system, that France had expressed in the past (Espinoza & Kahn, 2020). Because of the fact that many tech giants have their European legal headquarters in Ireland, cases against them under competition law or the GDPR are often allocated to the Irish authorities, which have been criticised for their unwillingness to impose strong corrective measures (Kahn, 2019). The French proposal did not ultimately affect the DSA's enforcement system, but it is relevant as evidence of mistrust between member states that what the French minister was essentially proposing was that other national authorities should be given the power to circumvent what would have been the well-placed authority under the case-allocation system, often in Ireland, if they deemed that they would be able to enforce the regulation more strictly.

But even more evidence of this mistrust would emerge only a month after the French proposal, this time much more explicitly: as Javier Espinoza of the Financial Times put it at the time, "long-simmering tensions over Ireland's regulation of Big Tech have burst out into the public" (Espinoza, 2021d). In March

2021, the EP's Civil Liberties Committee (LIBE) voted to name and shame the data protection authorities of Ireland and Luxembourg for their weak enforcement of the GDPR (Espinoza, 2021d). But more importantly as evidence of division among member states, only a week later the head of Germany's data protection authority Ulrich Kelber wrote to the EP to openly criticise Ireland for not addressing any of the more than 50 complaints that the German authority had forwarded to Ireland and for its general slowness in closing the numerous cases that fell under its competence: Kelber specifically pointed out that of the 196 GDPR cases assigned to Ireland it had only closed 4, while Germany had already closed 56 of its 176 (Espinoza, 2021d). While it needs to be pointed out once again that these criticisms were not directly related to the DMA, which at this point was still in its approval process, they do show a lack of cohesion between national authorities, or in other words a lack of trust in the ability and willingness of certain countries to enforce regulations regarding the digital economy up to a sufficient standard. Ultimately, if they could not be able to push for an enforcement system similar to the one proposed by the French minister, they might have become willing to accept the Commission's proposal to delegate all implementation to the EU level in the case of the DMA as a second-best solution, rather than having to put their trust in other members that they were sceptical of.

Indeed, going back to the legislative procedure, in November 2021 the draft regulations proposed by the EP and the Council still differed substantially in their proposed enforcement mechanisms, with the Council pushing for direct implementation by NCAs (Andriychuk, 2021), but these differences would be ironed out relatively quickly in the months of trialogues that would follow, with member states eventually accepting that enforcement would be entirely delegated to the Commission. At this point in the process, with approval seemingly not too far off in the future, the pressure on lawmakers and member states to reach a compromise and finally introduce the new rules was at an all time high. Vestager once again leveraged the political strength of the Commission to publicly urge the other the EU legislators to push the regulation through as quickly as possible, arguing that time was of the essence, as the new rules were necessary to prevent competition in the digital markets from being completely eradicated by big tech, and that a "very good law" being introduced now would be more beneficial to its goals than a "perfect law" introduced too late (Espinoza, 2021f).

Meanwhile, big tech companies were attempting a final push to soften the upcoming regulations. In general, according to the EU's lobbying transparency data, Google, Facebook, Microsoft and Apple were all ranked in the top ten list of Europe's corporate lobbyists, with a combined 594 meetings with EU officials and a combined lobbying budget of around €20mn (Espinoza, 2022d). But in particular, Google significantly ramped up its lobbying action, both directly and through sector organisations, such as the Connected Commerce Council, which also represent other tech giants: Google started increasing its direct meetings with high level officials, including Vestager, and MEPs started reporting that they had seen a significant increase in the amount of emails from representatives of tech giant and that they were even being targeted on their social media accounts with ads from tech lobby groups (Espinoza, 2022c). However, not only did these efforts not have the intended effect, but the sudden increase in lobbying attempts seem to have been detrimental to big tech, with leading MEP Andreas Schwab taking it as a demonstration that tech giants were worried about the

new rules, which showed that the upcoming regulations were in a good position to succeed in their objectives (Espinoza, 2022c).

This perception that the companies that would be designated as gatekeepers under the DMA in the future were fearful of the upcoming rules was another incentive for legislators to come to a compromise and finally approve the regulation. And in fact, the trialogue between the Commission, the Council and the EP found its resolution relatively soon, with reports that already in March 2022 the three institutions had come to an agreement on most of the details of the final text: the Council had finally given up on its efforts to introduce national implementation to the DMA, accepting the compromise of the EHLGDR, and most of the final debates were on the gatekeeper designation criteria, similarly to what had happened the previous year within the EP (Espinoza, 2022b). The final provisional agreement between the EP and Council was on 12 May 2022 (EP-IMCO, 2022), and the two institutions would then approve the final text of the DMA with overwhelming support only a few months after that (as mentioned in section 3.3).

This rundown of the legislative process that led to the final approval of the DMA already provides some insights into how the political pressure to solve an urgent policy problem, the need to make a credible commitment in the face of the future regulatees and the mistrust and conflict between some of the principals in charge of approving the act of delegation ultimately influenced the unusual and unexpected decision to delegate new exclusive powers to the Commission to implement a new regulation. The next section, however, will argue more specifically in favour of these explanatory factors, referring back to the theoretical framework set up in chapter 2 and using this section's recount of events as evidence.

4.2 Explanatory factors that contributed to the decision to delegate

The reconstruction of the key elements that shaped the legislative procedure of the DMA that was done in the previous section is useful to link back to the theoretical framework established in chapter 2 and build the final argument that some of those factors - in particular, political pressure, credible commitment and conflict between principals - were significant contributors to the ultimate decision to delegate exclusive new powers to the Commission.

Starting with political pressure, section 2.3 established that in situations where political stakes are high and there is a strong sense of urgency to find an EU-level solution to a particularly critical policy problem, it becomes more likely that member states will be willing to delegate new powers to an EU institution: while this might not be their preference in general, in moments of crisis that require swift and decisive action they could reach the conclusion that regulatory integration is the most viable solution, especially if they are not willing to take the political cost of preventing a solution from being adopted at all or from it arriving too late when it is no longer necessary (Dehousse, 2016; Mathieu, 2020). One key example of this from the recent history of EU regulation, despite a general aversion by member states to delegating more powers to the EU in the post-Maastricht period (Coen & Thatcher, 2008; Ripoll Servent, 2018), is the delegation of new powers to the Commission and to the ECB as a way to tackle the Euro-crisis (Dehousse, 2016).

While it would obviously be a stretch to argue that the policy problem addressed by the DMA was as pressing or as grave in entity as the financial crisis, there is nevertheless evidence that the entrenched power of digital platforms was on the verge of becoming a permanent structural problem of the digital markets and that once this was recognised the pressure to provide a solution kept getting higher and higher. Even before the DMA proposal was first being drafted by the Commission, it had become clear that the EU's efforts to curb the harmful effects of the behaviour of big tech companies had not had the intended effect. In fact, the inconsistent enforcement by the authorities in different member states, as well as the differences in national laws, had created an even stronger competitive advantage for large digital corporations compared to the smaller businesses operating on the digital markets. In addition, it was also clear from the start that competition was being quickly eroded in the sector and that new ex-ante rules on gatekeeper behaviour were needed sooner rather than later. The fact that this was happening in the digital sector is also significant, because every other sector of the economy is increasingly digitalised and was at risk of becoming entirely dependent on core services provided by a very small number of multinational corporations. Finally, a number of member states, both before and after the DMA's official proposal, were introducing their own rules on digital platforms, which would have undercut the attempt of finding EU-level solutions to the problem, adding to the general sense of urgency.

This rising pressure could certainly have convinced the Commission that centralised enforcement would be the best way to tackle the issue in its proposal, as national regulators had not appeared to be strong enough to deal with powerful tech companies. Then, once the proposal was in the hands of the EU legislators, representatives of both consumers and competing companies in the digital sectors started lobbying the EU to push the regulation through as quickly as possible so it could achieve its much-needed objectives. The Council and EP were initially in conflict with each other over the issue of delegation, with the member states initially opposed to conferring all implementation powers to the Commission. But at that point the Commission itself used its political strength, repeatedly and publicly calling for regulators to push the regulation through while at the same time there was a rapid increase in the lobbying efforts against the regulation, which actually backfired and made lawmakers even more convinced that the regulation was necessary. And in this political environment where the pressure to introduce this new regulation kept rising, the Council eventually gave up on its opposition and agreed to delegate implementation to the EU-level rather than pushing for national enforcement. This decision may not have been its first choice, but the urgency of the situation contributed to its decision accept delegation rather than having to push back the introduction of new rules even further.

A second, but closely linked with the first, factor that influenced this final decision was the need to make a credible commitment to the new rules for the digital markets. In reviewing the applications of the P-A literature to EU studies, section 2.2 found that credible commitment to the objectives of a policy was a strong explanatory factor for delegation in the European Union, especially when member states delegating powers were doing so as a mutual commitment to the integration project (Majone, 2001; Migliorati, 2021; Pollack, 2006).

In the case of the DMA, it could be argued that if the new rules had not been introduced in time, significant and hard to reverse harm would have been caused to the digital single market, which in itself would have hurt economic integration in the digital sector. However, a stronger argument for the role that credible commitment might have played in the decision to delegate is that the nature of the giant corporations that would be regulated by the DMA created the perception that the EU would appear stronger in its commitment to strict rules if it could position the Commission as an authoritative central regulator. While indirect administration has been the standard when dealing with competition issues in the EU up until the DMA, it should be once again pointed out that in the specific case of dealing with big tech the EU's national enforcement has been questioned. Ireland and Luxembourg, where as was mentioned the tech giants targeted by the DMA have their legal headquarters in the EU, employing thousands of people, have especially been under scrutiny for their weak enforcement against big tech, weather because they were unwilling or unable to be stricter. Furthermore, a lack of cohesion on how competition law had been enforced at the national level in cases regarding the digital economy had been identified as one of the reasons why large digital platforms had been able to create and maintain such an entrenched position of dominance. Ultimately, it could be argued that some national authorities, and particularly some that would end up dealing with a large number of cases if an allocation system similar to the one used for competition law was implemented for the DMA, might not be coordinated enough to ensure harmonised implementation of the new essential regulation and not authoritative enough to face the powerful future gatekeepers. While from a technical standpoint the resources and expertise of the Commission may not be sufficient to always implement the regulation effectively, from a political point of view making it the European regulator for the digital market projects a higher level of authority than leaving implementation in the hands of individual national authorities, showing a higher level of commitment by both the member states and the EU to the new regulation.

Finally, the decision to delegate was also influenced by the dynamics of mistrust and conflict between the multiple institutions, or rather multiple principals, involved in the act of delegation. This explanatory factor was shown by the P-A literature to be particularly important for cases of delegation in the European context. The importance of mistrust is most evident in the delegation of powers to the EU through the treaties: governments understand that economic integration will benefit them collectively, but in order to ensure that they will all follow a set of common rules to achieve integration they choose to delegate the power to preside over these rules to supranational institutions (Dehousse, 2013). But even in secondary EU legislation, preference heterogeneity between multiple principals, for instance between member states or between the Council and the EP, is a factor that generally leads to more supranational delegation and more discretion for supranational institutions (Migliorati, 2021). Interestingly, the dynamic of conflict has also led to forms of governance that are different from the direct administration by the Commission that was ultimately chosen for the DMA. In fact, the agencification process, which involves the delegation of some more or less limited power to a network or agency, has often been explained in the literature as a second-best solution to the problem of harmonisation, accepted as a compromise between the Commission, which would generally prefer more

centralisation, and the member states, who are generally unwilling to give up powers to the EU (Coen & Thatcher, 2008; Ripoll Servant, 2018; Mastenbroek & Schrama, 2022). However, in some specific cases, conflict has been one of the explanatory factor for delegation to the EU with secondary legislation: the example is once again the delegation to the ECB and the Commission in response to the financial crisis, where member states did not trust each other to be financially responsible and EU institutions were able to leverage this mistrust to obtain the delegation of new supervisory powers in the financial sector (Dehousse, 2016).

During the legislative process for the DMA, a long-simmering conflict between member states broke out over the weak enforcement of competition law and GDPR rules against big tech on the part of some national regulators. Ireland and to a lesser extent Luxembourg, who as was discussed deal with a large number of cases because of the case-allocation mechanisms, were directly and indirectly called out by other member states and even by the EP itself for their insufficient actions. Jointly, the member states initially attempted to push for national implementation, but simultaneously a number of states were trying to anticipate the EU with their own national laws so they could tackle digital platforms on their terms, rather than put all their efforts into obtaining a direct role in DMA enforcement. And at the same time, some members even tried to propose a system that would allow every national regulator to enforce the regulation directly even if a violation did not happen in their territory, indirectly showing that states did not trust each other to deal with big tech effectively. In this sense, member states might have eventually come to accept centralisation rather than having to rely on the national implementation of regulators they did not trust to do a good enough job. And similarly to what happened for the delegation of new powers during the financial crisis, the Commission used its political voice strategically, when pressure to approve the regulation was at the highest and when big tech was seen most unfavourably because of its desperate last-second attempts to lobby against the new rules, to leverage the legislators into pushing the regulation through as fast as possible, even if it did not completely satisfy all of their preferences. Which is not to say that member states gave up on their ambition to regulate big tech directly, as evidenced by the fact that they continued to work and introduce their own DMA-like rules within their national competition law, but they eventually seemed to accept that continuing to fight for a role in the DMA itself would not have been worthwhile.

5. Conclusion

This thesis set out to provide an explanation for a puzzle. In a political environment in which for almost thirty years after the Maastricht treaty member states had been unwilling to give up any more powers to supranational institutions by way of delegation and in which indirect administration and network governance had become the norm in most areas of EU regulation, with the Digital Markets Act the decision was made to delegate exclusive new enforcement powers to the European Commission in an essential policy area. To untangle the puzzle, this work's first priority was to find a strand of academic literature under which to frame the analysis and make sense of this unexpected regulatory choice, finding its starting point in the Principal-Agent framework. Not only has the P-A model been applied to the study of many cases of delegation in the EU, which makes its literary contributions a useful resource to analyse delegation in the DMA, but it also has the advantage of being a rather flexible model, that does not consist of strict cause and effect elements and can be applied to a number of different cases and configurations that delegation might take. In fact, the P-A model had also been used to provide explanations for the agencification trend that the DMA could be considered an outlier of.

From reviewing key contributions to the P-A literature, particularly in its applications to EU studies, a number of explanatory factors that may influence individual cases of delegation in the EU were identified. The first factors addressed are the purely functional reasons for delegation of regulatory efficiency and policy complexity, which this thesis has argued could not have been the most important considerations for the principals that led to their decision to delegate. Chapter 3 argued against functional explanations in the DMA's case by discussing a number of potential issues, pointed out by both scholars and actors directly or tangentially involved with the legislative process and directly related to centralisation of all enforcement in the Commission, that may prevent the regulation from being implemented effectively. In the simplest terms, these potential inefficiencies boil down to two main problems: on the one hand, the resources and specific expertise available to the Commission on its own, compared to the regulated gatekeepers, do not appear to be sufficient to effectively exercise its role as central regulator for the digital markets; on the other, the lack of a more robust cooperation mechanism with national authorities makes it likely that DMA enforcement will often be in parallel and potentially in conflict with the enforcement of national competition laws, national laws on economic dependence and especially national laws directly targeting similar issues as the DMA. Because of these potential inefficiencies, this thesis argues that factors other than regulatory efficiency and policy complexity must have contributed to influencing the EU legislators to opt for delegating DMA implementation exclusively to the Commission.

Having argued against regulatory efficiency and policy complexity as explanatory factors for delegation in the DMA, this thesis makes the case that other factors emerging from the P-A literature have influenced the decision to delegate. To recap the findings of chapter 4, based on its review of the Principal-Agent literature (chapter 1) and on the reconstruction of the DMA's legislative process (section 4.1), this

contribution argues that the unusual decision to delegate new exclusive powers to the Commission seems to have been influenced by:

- a strong political pressure to find a common EU solution to the problem of anti-competitive behaviour by digital platforms, caused by the realisation that competition law had not been preventative enough and consistently increased by the lobbying efforts of businesses operating in the digital markets, consumer organisations and the Commission itself, which led to a sense of urgency on the part of the legislators to approve the regulation as fast as possible even if it meant accepting that all implementation powers would be centralised;
- a perception that the Commission as a centralised regulator would be more authoritative than individual national authorities in dealing with powerful corporations, which made delegation useful to present the stronger possible political commitment to enforcing strict behavioural rules on gatekeepers, despite concerns over whether the resources and expertise of the Commission would be technically sufficient;
- a mistrust in the willingness and ability of some national regulators - particularly the Irish authorities, that would be dealing with a large amount of cases if a system for allocation similar to the one used for competition law was implemented for the DMA - to be strict enough enforcers of rules vis-à-vis large tech firms, which made it easier for members to ultimately accept leaving implementation in the hands of the Commission, even as a second-best option.

In applying the Principal-Agent framework to the specific case of the DMA, this thesis makes a modest contribution to the literature on delegation in the EU and on EU governance in general.

First, in terms of the P-A literature, it proves the flexibility of the framework itself and its applicability as an analytical tool even in outlier cases of delegation that seem to go against expectations. This case provides an effective example of the functional reasons for delegation, namely regulatory efficiency and policy complexity, not always being the main explanatory factors that shape the decision made by principals to confer powers onto an agent. In the case of the DMA, in fact, if these factors were to be considered as the most important ones, they would lead to expecting that the form delegation would take would be in line with the more common network governance model. However, as this case demonstrates, other factors that are more political in nature - the pressure to act on a particularly urgent policy problem, the need to make a credible commitment to a specific policy vis-à-vis powerful stakeholders and the dynamics of conflict between the multiple principals involved in acts of delegation in the EU - can sometimes have a stronger influence on principals than functional pressures and contribute to creating a seemingly unexpected outcome. Even fully understanding that the Commission alone might not have the resources and expertise to effectively implement the DMA on its own, member states were ultimately willing to accept a centralised enforcement model, even if it was a second-best solution for them, because the sense of urgency to push the regulation through as fast as possible was extremely high, because the perception was that the Commission as a central regulator would present a stronger sense of authority and commitment to the new rules targeted at powerful digital platforms

and because they did not trust each other to enforce the rules against big tech companies as strictly as was deemed necessary.

On the other hand, this application of P-A theory to such an outlier case also shows its relative weakness as a predictive model. While it proved particularly apt for analysing the specific case of delegation discussed in this thesis ex-post, if the same analytical framework were to be used to try to predict the path delegation would take in the DMA before the regulation was introduced, it would have led to the wrong expectation that the most likely outcome would be that implementation would be delegated to national authorities, because of the functional considerations outlined in this thesis (section 3.3) and because of the wider trends of EU governance. In other words, no matter how much the literature has specified and elaborated on the model, its malleability remains both its greatest strength, as it can be used to frame a wide variety of different forms of delegation, and its biggest weakness, as the different explanatory factors that may shape delegation that it identifies may lead to erroneous expectations if used as predictive factors of future delegation. Moreover, its strength as a theory in political science may also be called into question because of the very fact that it could be used to explain opposite outcomes in very similar circumstances. Because of these issues, it seems advisable to apply the model as a framework to analyse cases or trends in delegation, rather than as a theory to build expectations on future delegation.

Furthermore, in terms of the wider study of EU governance, this contribution shows that even strong multi-decade-long trends can have major exceptions. Despite the fact that a specific governance model, indirect administration and agencification, has become increasingly dominant in EU regulation in the post-Maastricht period, the case of the DMA demonstrates that under specific circumstances and for specific regulations, direct administration may still be chosen by the EU legislators. In this sense, future academic work could analyse the DMA in parallel to other outliers cases to the general trend, for instance the new supervisory powers given to the Commission and the ECB in response to the Euro-crisis, to find even more similarities than those identified in this thesis (section 2.3 and 4.2) and potentially build an analytical model to frame the unusual cases in which new supranational powers are introduced with secondary EU legislation even in a political environment where member states seem opposed to more supranationalism. At first glance, the most significant common factor of these cases seems to be the perception that a particularly critical policy problem can only be addressed at the EU level, but this line of thinking deserves its own specific research.

Finally, it should be noted that providing an explanation for the unusual choice to centralise all enforcement of the DMA in the Commission does not erase the legitimate concerns expressed by various institutions and by scholars on whether the Commission will be able to effectively implement the new rules in practice. This thesis' aim is to identify explanatory factors that contributed to the decision to delegate implementation to the Commission, and it does so by pointing out a series of political dynamics that affected the EU legislators during the legislative process, but it does not have the ambition to also determine whether the decision will prove to be beneficial for the objectives of the DMA itself. While it seems reasonable to cast some doubt, as many have, on the Commission's ability to achieve the DMA's goals, based on the limitations

of its resources and the different risks of fragmentation identified by scholars (section 3.3), it will only be possible to judge the regulation's effectiveness once some time passes and its outcomes can be properly analysed.

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Thesis summary

The new Digital Markets Act (DMA) was introduced by the UE as part of its continued efforts to limit the damages to competition caused by big tech corporations operating core services in the digital economy. The regulation seeks to ensure fairness and contestability in the digital markets by introducing asymmetrical obligations on large companies that will be designated as gatekeepers based on a set of quantitative and qualitative criteria. While scholars have generally considered the new rules a step in the right direction, there is also a consensus in the literature that the choice to centralise all DMA enforcement in the Commission might cause inefficient implementation. However, not much attention has been given to what factors might have led to the decision to delegate exclusive implementation powers to the Commission, rather than opting for a decentralised model of enforcement that has become the norm in EU governance. This feature of the DMA makes it stand out compared to the vast majority of EU regulations, because it does not fit into the general trend toward network governance and agencification that has become increasingly dominant in the post-Maastricht EU: member states have not been willing to delegate new powers to the EU, so regulations are generally implemented at the national level, with a network or agency being set up to ensure some level of harmonisation.

This thesis aims at framing the DMA within the wider literature on delegation in the European context to find what some explanatory factors that contributed to the decision to delegate exclusive powers to the Commission might be. In particular, to build a theoretical framework for this analysis, it first focuses on the application of the Principal-Agent model of delegation in EU studies.

The Principal-Agent (P-A) framework originates from American economics and political science and can be described as a way to analyse and explain the relationship between actors who delegate powers and the actors who they delegate these powers to: principals delegate some specific powers to agents in order to achieve a certain goal. In political science, this phenomenon presents itself when elected officials, the principals, delegate powers to non-majoritarian institutions (NMIs), the agents, to implement specific public policies. According to the P-A literature, elected officials delegate powers to NMIs because delegation serves different functional purposes, because they believe it will improve the likelihood of achieve their policy objectives. For instance, they may chose to delegate to: improve regulatory efficiency, leverage specific expertise that an NMI could be better equipped to have or make a credible long-term commitment to a policy. These functional reasons for delegation, however, do not paint the full picture: delegation not the only possible way to achieve these functional objectives and the decision to delegate varies across time, policy areas and political system, which means other factors also influence officials to choose this option or not. In fact, reviewing some of the main literary contributions where the P-A framework is applied to the EU context shows how a variety of other factors can shape delegation.

Delegation is a key feature of European integration: member states delegate powers to supranational institutions through the treaties in order to achieve common goals, of which the most important one is

economic and political integration. However, delegation in this context can take different paths, as on top of delegation to the supranational level, the powers to implement EU regulations is generally delegated to the national level, often specifically to national regulatory agencies (NRAs), and some more limited powers can also be given to a network or agency to ensure cooperation and harmonisation. The P-A literature identifies a number of explanatory factors, on top of the purely functional reasons already mentioned, that may shape decisions to delegate in the EU context and determine the different paths of delegation, of which the following three are most relevant for the DMA's case:

- the political environment: the more there is strong political pressure to solve an EU wide policy problem that is particularly urgent, the more likely it is that there will be more supranational delegation;
- the dynamics of mistrust or conflict between the multiple principals involved in the policy process: when the preference of different member states are misaligned, it is more likely that there will be more supranational delegation, as the members would rather give more powers to a supranational institution that they participate in than trust each other to implement EU policy;
- credible commitment, which in the specific case of the EU is not only to specific policies, but to the wider EU integration project: members, who's preferences might not always completely align, decide to give powers to the supranational level to make a commitment to each other to European integration.

In the post-Maastricht EU, these factors have also been used to explain the increasing trend towards network governance and agencification. Member states have become particularly unwilling to confer more powers onto the supranational level and delegation to supranational institutions has generally been limited to relatively weak powers to coordinate between national authorities being given to a network of regulators or EU agency. Further it should be noted that supranational delegation has generally been done through the treaties rather than with secondary EU legislation, which has normally always been implemented according to a model of indirect administration. The DMA, as was stated, is a rare outlier to this general trend in EU governance, which is the reason why it is an interesting case study for the delegation literature.

In attempting to find an explanation for this unusual case of delegation, the thesis first focuses on the two main functional reasons for delegation: regulatory efficiency and policy complexity, or the need for specific technical expertise. What it finds is that most scholars agree that the resources and expertise available to the Commission will be relatively limited in comparison with the regulated gatekeepers, which risks compromising regulatory efficiency in a variety of ways. DG Competition's staff for DMA implementation will only be increased by 80 new members, who will most likely not be enough or have the necessary expertise to monitor compliance across the entire Union for the highly technical rules introduced by the regulation, to deal with all necessary enforcement procedures and to carry out the complex new market investigations envisioned by the DMA as a tool to designate new gatekeepers, introduce new obligations or core platform services covered by the regulation or determine whether a gatekeeper is in systemic non-compliance of its

obligations. Additionally, the DMA will most likely overlap or be in conflict with a variety of national laws, such as competition laws, laws on economic dependence and sector specific regulations, which because of centralisation and a lack of clear mechanisms for cooperation with national authorities - who will also be disincentivised to work with the Commission because of their lack of direct involvement in DMA enforcement - to resolve cases of parallel or conflicting enforcement will most likely lead to regulatory fragmentation. Finally, it can be argued that if the need for expertise was a primary concern, then involving National Competition Authorities would have been the natural decision, as they have accumulated both experience and specific knowledge that would improve DMA implementation over years of competition law enforcement in the digital economy.

All these potential inefficiencies were not only pointed out by academics but also fully known to relevant authorities, as demonstrated by the European Competition Network publicly arguing that the Commission would not have sufficient resources and knowledge to enforce the DMA on its own, by MEP Andreas Schwab, who led the debate on the proposed regulation in the European Parliament, stating that the resources allocated to DMA implementation should be at least doubled and by the Commission itself repeatedly expressing concerns about regulatory fragmentation. Because of this, this thesis argues that regulatory efficiency and policy complexity not only do not provide an explanation for the decision to delegate DMA implementation to the Commission, but in fact that if these functional factors were primary concerns of the EU legislators they would have led to a different outcome, most likely in line with the more common model of indirect administration.

Having argued against these functional explanations for delegation, the thesis then reconstructs the legislative process that led to the DMA's final approval to use it as evidence for how other more political factors contributed to the ultimate decision to delegate implementation to the Commission. The proposal for the regulation was introduced in a moment when it had become clear that the EU's previous efforts to curb the power of big tech in the digital economy had not been sufficient: not only had the EU been under scrutiny for the inefficacy of its competition law enforcement, but even the more recent regulation specifically targeting the digital sector, the General Data Protection Regulation, had proven difficult and slow to implement. Inconsistent implementation across different member states had also been identified as a point of weakness, as it had created a competitive advantage for large tech firms rather than preventing anti-competitive behaviour. Representatives of businesses operating in the digital sector and of consumers were lobbying the EU to act and at the same time a number of member states were in the process of introducing their own sectors specific regulations to deal with big tech at the national level. All of these elements created strong pressures to find an EU-level solution to the problems caused by dominant gatekeepers in the digital markets, leading the Commission, who was particularly concerned with potential fragmentation, to propose itself as the centralised regulator for the new DMA. These pressures continued to increase during the legislative process, as it became increasingly clear that the new rules needed to be approved as soon as possible, or digital platforms would be able to completely eradicate competition.

The European Parliament, while taking some time to debate the actual content of the regulation, seemed willing to accept the new delegation of powers to the Commission almost from the start. Member states, on the other hand, initially fought back against this option, proposing a model of decentralised enforcement both in the Council and through the European Competition Network. However, despite presenting a united front, conflict and mistrust between members soon came to light: a general sense of mistrust in the willingness and ability of some national authorities to be strong regulators against big tech emerged, especially against Ireland and Luxembourg, where many tech corporations had their European headquarters, causing these countries to deal with a large number of cases under competition law and the GDPR. Unable to push for a solution that allowed all national authorities to enforce the upcoming regulation regardless of where violations might have happened, with the political pressure to approve rising and the increased lobbying efforts by big tech firms to weaken the provisions of the upcoming regulation, the member states were ultimately willing to accept centralised enforcement, even as a second-best option. If they had delayed the regulation to push for a case-allocation system similar to competition law, not only would they have delayed the approval of the DMA, curbing its effectiveness, but they would also have had to let national authorities that many of them did not consider strong enough deal with many of the enforcement procedures.

Having reviewed the legislative procedure of the DMA, the thesis ultimately argues that the decision to delegate was influenced by three contributing factors:

- a strong political pressure to find a common EU solution to the problem of anti-competitive behaviour by digital platforms, caused by the realisation that competition law had not been preventative enough and consistently increased by the lobbying efforts of businesses operating in the digital markets, consumer organisations and the Commission itself, which led to a sense of urgency on the part of the legislators to approve the regulation as fast as possible even if it meant accepting that all implementation powers would be centralised;
- a perception that the Commission as a centralised regulator would be more authoritative than individual national authorities in dealing with powerful corporations, which made delegation useful to present the stronger possible political commitment to enforcing strict behavioural rules on gatekeepers, despite concerns over whether the resources and expertise of the Commission would be technically sufficient;
- a mistrust in the willingness and ability of some national regulators - particularly the Irish authorities, that would be dealing with a large amount of cases if a system for allocation similar to the one used for competition law was implemented for the DMA - to be strict enough enforcers of rules vis-à-vis large tech firms, which made it easier for members to ultimately accept leaving implementation in the hands of the Commission, even as a second-best option.

In applying the P-A framework to the DMA's case, on top of providing an answer to its research question, the thesis contributes to the delegation literature and to the literature on EU governance. It confirms that the strength of the P-A model is in its flexibility, as it can be used as an analytical tool even in cases that

stray away from expectations like the DMA. In particular, it provides an example of how functional explanations are not always the main determinants of delegation, which in specific circumstances may be affected more by the political factors identified above. It also, on the other hand, shows the relative weakness of the P-A framework as a theory, as its malleability also means that it is not very useful as a predictive model for future delegation: in the case of the DMA, in fact, if it was used this way it would have led to the wrong expectations. Finally, in terms of the wider literature on EU governance, the DMA's case shows that even a trend as strong as agencification and network governance, which has become the standard in the decades after the Maastricht treaty, can have major exceptions under a specific set of circumstances. In this sense, the DMA could be studied by future research in parallel with other rare cases of centralised delegation in the post-Maastricht EU to find commonalities and potentially develop another strand of academic analysis.