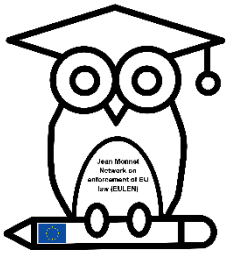

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The European digital sector strategy: towards new (or old?) models of administration?

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Abstract

This paper aims to investigate the models for implementing European Union law in the field of digital technology and artificial intelligence. In particular, the article deals with the governance of the Digital Markets Act (DMA), the Digital Services Act (DSA) and the Artificial Intelligence Act (AIA). This regulatory triad represents not only a decisive step toward uniform legal discipline within the internal market, but also a significant development in the European Union's administrative architecture. The paper analyses the recent trends of governance that emerge from these acts, highlighting the central role of the European Commission in their implementation (and also in their enforcement). Empowered to adopt delegated acts, designate gatekeepers and classify high-risk or prohibited AI systems, the Commission has become a key actor in shaping the regulatory framework. This raises broader questions about the balance of powers within the EU and the implications for the future of supranational governance.

Keywords:

Enforcement, IA, digital markets, digital services, European Commission

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I. Introduction

This contribution aims to investigate the implementation (and enforcement) models outlined by the Digital Markets Act (DMA)[1], the Digital Services Act (DSA)[2], and the Artificial Intelligence Act (AIA)[3].

The digital field was chosen because it currently constitutes a strategic sector for European Union law, as highlighted, among other sources, in the famous speech by Commission President Ursula von der Leyen on 16 September 2020.

More specifically, the decision to examine these three regulations—widely commented on in doctrine—stems from the fact that they represent fundamental legislative acts concerning the digital single market, while being aware that other relevant regulatory instruments exist, such as the General Data Protection Regulation (GDPR)[4], the Data Governance Act (DGA)[5], or the Data Act (DA)[6], which, however, will not be the subject of this study.

Prior to the approval of the so-called digital package and the numerous aforementioned regulations, the regulatory space had largely been left empty, both by the legislators of the Member States and by the EU co-legislator, in order to allow for a liberal development of e-commerce. The few tools available to the courts and national administrative authorities[7] resulted in limited "regulatory" and sanctioning interventions, thereby enabling a flourishing development of the digital ecosystem.

A legal framework, timidly emerging and mainly of a private-law nature[8], had thus developed, shaped largely by the major digital companies. In doctrine, this phenomenon has been referred to as "private digital sovereignty"[9], given the substantial self-regulation[10] by web platforms. The essentially normative power these platforms had acquired over the years[11], however, soon called for a public-law intervention aimed, among

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[1] Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act).
[2] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act).
[3] Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act).
[4]Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).
[5] Regulation (EU) 2022/868 of the European Parliament and of the Council of 30 May 2022 on European data governance and amending Regulation (EU) 2018/1724 (Data Governance Act).
[6] Regulation (EU) 2023/2854 of the European Parliament and of the Council of 13 December 2023 on harmonised rules on fair access to and use of data and amending Regulation (EU) 2017/2394 and Directive (EU) 2020/1828 (Data Act).
[7] L. TORCHIA, in *I poteri di vigilanza, controllo e sanzionatori nella regolazione europea della trasformazione digitale*, in *Rivista trimestrale di diritto pubblico*, n. 4, 2022, p. 1102-1103, identifies a first phase of erosion of the liability exemption regime granted to platforms, driven by the creative function of case law—both national and supranational—and by the enforcement activities carried out by national administrative authorities within the framework of existing instruments.
[8] R. RAMETTA, in *La Governance del mercato digitale europeo*, in *Persona e Mercato*, n. 3, 2025, p. 922-923, highlights how the economic power of big tech had effectively become legal and regulatory power as well, so that the platforms' self-regulation had evolved into a mimicry of public authority. Along the same lines, L. TORCHIA, *op. cit.*, p. 1103, notes that self-regulation by private operators had acquired the typical characteristics of a legal system, autonomous from the general legal order.
[9] G. FINOCCHIARO, *Il Digital Services Act e il Digital Markets Act tra Private e Public Enforcement*, in A. ALBANESE, L. GUFFANTI PESENTI, S. TOMMASI (a cura di), *Il diritto privato nell'economia digitale*, Giappichelli Editore, Torino, p. 135; L. TORCHIA *op. cit.*, p. 1103.
[10] R. SABIA, *L'enforcement pubblico del Digital Services Act tra Stati membri e Commissione europea: implementazione, minotoraggio e sanzioni*, in *MediaLaws,* n. 2, 2023, p. 91.
[11] L. TORCHIA, in *I poteri di vigilanza, controllo e sanzionatori nella regolazione europea della trasformazione digitale*, in *Rivista Trimestrale di Diritto Pubblico*, n. 4, 2022, p. 1102, notes the need to establish rules and limits concerning a private power endowed with a very high degree of autonomy and independence from any public authority.

other things, at limiting the oligopoly of digital companies and increasing the contestability of online markets[12]. This regulatory approach has been labeled "digital constitutionalism"[13]. Consequently, the system transitioned from self-regulation to hetero-regulation.

Within the administrative and enforcement architecture of these regulatory acts lies an interesting trend for scholars of EU law, leading doctrine to identify a model of increasingly centralized administration and a multi-tiered enforcement system.

On this basis, the article opens by providing the reader with a schematic overview of the existing implementation models of supranational law and their characteristics (para. 2). This necessarily brief reconstruction is essential to highlight the quantitative success of the co-administration model[14], which, from the 1980s–1990s onwards, has characterized the predominance of administrative procedures and has been widely recognized as the preferred model for implementing EU law[15].

Within this evolutionary path, the three aforementioned regulations are situated (para. 3) to underscore a turning point compared to the previously linear trajectory. In the framework of these three acts, the Commission assumes a central role in the implementation of supranational law in the broad sense, and thus not only in the adoption of delegated and implementing acts but also in exercising the enforcement powers granted to it by these acts (para. 4). It is clear that such a governance choice has consequences for the multi-level administrative system of the Union and its Member States. Accordingly, the contribution concludes by outlining the *rationes* and problematic aspects of these regulatory choices in institutional relations and in the interactions between the Union and its Member States (para. 5).

II. Existing implementing models of supranational law: direct, indirect and shared administration

As is well known, the complex process of administrative integration within the Union has undergone various phases, which cannot be reconstructed in detail here[16]. Without retracing them fully, this section aims to briefly recall the different models of administration that can currently be identified within the multi-level administrative system characterizing the Union.

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[12] R. RAMETTA, in *La Governance del mercato digitale europeo*, in *Persona e Mercato*, n. 3, 2025, p. 922, refers to the EU as a "regulatory giant" in the field of digital technologies and AI.

[13] O. POLLICINO, *Di cosa parliamo quando parliamo di costituzionalismo digitale?*, in *Quaderni Costituzionali*, n. 2, 2023, pp. 569 ff.; G. DE GREGORIO, *The Rise of Digital Constitutionalism in the European Union*, in *International Journal of Constitutional Law*, 2020, pp. 41 ff.; C. MASSA, *Ultimi sviluppi della riforma del digitale in Europa: il Digital Markets Act tra costituzionalismo europeo e concorrenza*, in *I Post di AISDUE*, n. 7, 2021, pp. 128 ff.

[14] F.B. BASTOS, *An Administrative Crack in EU's Role of Law: Composite Decision-Making and Nonjusticiable National Law*, in *European Constitutional Law Review*, vol. 16, 2020, pp. 63–64: "The European administrative space, as it has come to be called, has undergone progressive development over the decades, evolving into a multilevel administrative system"; P. CHIRULLI, *Amministrazioni nazionali ed esecuzione del diritto europeo*, in L. DE LUCIA, B. MARCHETTI (eds.), *L'amministrazione europea e le sue regole*, Mulino Itinerari, 2015, p. 145: "[...] an integrated model of administration has gradually emerged, in which the organizations of the Member States cooperate with European bodies in the implementation of common policies through increasingly pronounced forms of shared functions and new techniques for reconciling interests".

[15] P. CHIRULLI, *op. cit.*, p. 146: "*This has led to the gradual blurring of the traditional distinction between direct and indirect forms of administration and to the growing prevalence of joint or co-administration models".*

[16] E. CHITI, J. MENDEZ, *The Evolution of EU Administrative Law*, in P. CRAIG, G. DE BURCA, *The Evolution of EU Law*, Oxford, Oxford University Press, 2021, pp. 339–363, identifies three phases in the evolution of EU administration (i.e., birth and consolidation; increased complexity, maturation, and reform; new and old challenges); they also identify three phases in the evolutionary path of the "Community" administrative integration process (i.e., the original framework; the origins of the European administrative system; the administrative take-off of the 1990s). E. CHITI, *La costruzione del sistema amministrativo europeo*, in M.P. CHITI (ed.), *Diritto amministrativo europeo*, Giuffrè Editore, Milan, 2018, pp. 47–82. For a historical-evolutionary approach, see also: G. DELLA CANANEA, C. FRANCHINI, *I principi dell'amministrazione europea*, cit., pp. 14–24; E. Chiti, C. Franchini, *L'integrazione amministrativa europea*, Il Mulino, Bologna, 2010, pp. 9–31; O. PORCHIA, *Principi dell'ordinamento europeo. La cooperazione pluridirezionale*, Bologna, Zanichelli, 2008, pp. 43 ff.

Until recently, a clear distinction could undoubtedly be made between indirect and direct administration[17].

The former model traces its origins to the administrative system of the original European Coal and Steel Community. From the outset, it was believed that supranational law could be effectively implemented through the cooperation of national administrative apparatuses, acting as terminals or *longa manus* of the Community[18]. The decentralization of executive power that characterizes this model leads to its being defined as indirect implementation, precisely because the executive competence lies in the hands of the Member States rather than the Union institutions and agencies.

At the same time, the "Community" administration was characterized by an extremely lean apparatus[19], so much so that, in the original design, it was described as "light"[20] or "minimal"[21]. Jean Monnet famously stated that the Community "does not have to do, but make others do." The then Community thus relied on the administrations of the Member States to ensure the execution of Union law.

Executive federalism[22] is (or should be) still the preferred mode of implementing supranational law, as envisaged by Articles 291 TFEU and 4 TEU. In the original design, characterized by a reduced "Community" bureaucratic apparatus, the Commission thus played a marginal role in the execution of Union law.

The second model referred to above (direct administration), on the other hand, provides that the Commission (or, in exceptional cases, the Council) implements supranational law on delegation from the Union co-legislator. Executive power in this case is centralized, as "uniform conditions of law implementation" are required; therefore, the existence of an objective condition justifies and legitimizes the concentration of competence in the hands of a single institution[23]. However, the Commission does not exercise this power entirely autonomously; Member States assist the guardian of the Treaties in performing its functions through the so-called comitology procedures. In this sense, one speaks of direct administration, but more properly, it is centralized execution with sharing.

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[17] G. DELLA CANANEA, C. FRANCHINI, *I principi dell'amministrazione europea*, *cit.,* p. 15, instead speak of "mission administration" and "management administration" to describe the evolution of the European administrative apparatus over time. The former, corresponding to indirect administration and characteristic of the initial approach advocated by Jean Monnet, involved a light supranational administrative structure capable of leveraging the already existing national structures; the European framework was simply meant to provide guidelines and directions to follow. The latter, however, linked to direct administration and characteristic of later developments, envisages that the Commission and the Community structures are granted greater implementation power. Over time, they began to adopt often very detailed regulations, leaving little room for maneuver to the Member States.

[18] L. DE LUCIA, B. MARCHETTI, *L'amministrazione europea e le sue regole*, Il Mulino, Bologna, 2015, p. 40: *"The original Community was created with the clear intention of 'making it happen,' that is, of relying on national administrations as its executive terminals, except for the few cases of direct implementation. This choice was conditioned by the absence of a supranational administrative apparatus".*

[19] Art. 5, par. 3, Treaty establishing the ECSC: "*The Community's institutions carry out these activities through a streamlined administrative system, in close cooperation with the parties concerned*".

[20] M.P. CHITI, *Diritto amministrativo europeo*, Giuffrè Editore, Milan, 2018, pp. 47–82, 150–169; pp. 50–89: *"[...] it is a light administration"; "the Community administration is a light apparatus of limited importance".*

[21] S. DEL GATTO, G. VESPERINI, *Manuale di diritto amministrativo europeo*, Giappichelli Editore, Turin, 2024, p. 45: "*European Communities conceived as a public authority not endowed with direct administration"; p. 45: "Cases of direct implementation (or administration) of Community law by the European institutions were initially few and limited to a small number of sectoral areas*".

[22] R. SCHUETZE, *From Rome to Lisbon: "Executive Federalism" in the (New) European Union*, in *Common Market Law Review*, vol. 47, 2010, pp. 1385–1427; S. ROETTGER-WIRTZ, M. ELIANTONIO, *From Integration to Exclusion: EU Composite Administration and Gaps in Judicial Accountability in the Authorisation of Pharmaceuticals*, cit., p. 394: "(…) Traditionally in EU administration, adhering to a framework of executive federalism, preference was given to indirect administration of EU law through *the Member States, complemented by direct administration through EU bodies in accordance with the subsidiarity principle (...)".*

[23] L. DE LUCIA, B. MARCHETTI, *L'amministrazione europea e le sue regole*, cit., 43.

However, the dichotomy between direct and indirect administration is today far from current or realistic[24]. Procedures that begin and end at the national level, or, conversely, that start and conclude entirely at the supranational level, are the exception rather than the rule[25].

Today, in fact, there exist countless procedures requiring cooperation between national administrations and between them and Union bodies. Vertical cooperation (or multi-level administration) occurs when Member State authorities assist the EU institutions (or, more generally, the EU bodies and agencies) in performing their tasks; conversely, horizontal cooperation (or cross-level collaboration[26]) occurs when national administrative authorities interact directly with each other[27].

This exchange between authorities from different legal systems gives rise to what can now be defined as integrated administration — a true tertium genus compared to the dichotomy described above[28] — characterized by procedures of variable geometry[29] that imply a clear joint holding of executive powers by national and supranational entities. The tension between Member States—jealous of preserving their administrative sovereignty—and the Union—seeking to ensure as uniform an application of law across the single European space as possible—has, over time, resulted in a multi-level administrative system[30] characterized by shared implementing competence.

The widespread diffusion of variable-geometry procedures, in which national and supranational administrative authorities are called to cooperate, has led doctrine to distinguish this model of implementation from the two

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[24] H.C.H. HOFMANN, M. TIDGHI, *Rights and Remedies in Implementation of EU Policies by Multi-Jurisdictional Networks*, in *European Public Law*, vol.20, n. 1, 2014, 147-148: "*The development of such complex forms of policy implementation by administrative networks have made the distinction between the so-called 'direct' implementation of EU law by EU bodies from 'indirect' implementation by Member State increasingly difficult".*

[25] F.B. BASTOS, *An Administrative Crack in EU's Role of Law: Composite Decision-Making and Nonjusticiable National Law*, in *European Constitutional Law Review*, vol. 16, 2020, pp. 63–64: "The European administrative space, as it has come to be called, has undergone progressive development over the decades, evolving into a multilevel administrative system." In M. CONTICELLI, G. DELLA CANANEA, *I procedimenti amministrativi di adjudication nell'Unione Europea: principi generali e discipline settoriali*, Giappichelli Editore, Turin, 2017, p. 123, this administrative model is recognized as having absolute predominance: "*The concrete evolution of European administrative law (...) suggests that the most developed and frequent model for implementing policies and managing European functions is hybrid or intermediate (...).*" The growth of the integrated implementation model is also emphasized by H.C.H. HOFMANN, M. TIDGHI, *Rights and Remedies in Implementation of EU Policies by Multi-Jurisdictional Networks*, cit., p. 147: *"Implementation of EU law and policy increasingly takes place with the help of administrative networks."*

[26] This terminology is adopted by M. ELIANTONIO, N. VOGIATZIS, *Judicial and Extra-Judicial Challenges in the EU Multi- and Cross-Level Administrative Framework*, in *German Law Review*, vol. 22, 2021, p. 315.

[27]Some authors also speak of triangular procedures as a third type of institutional cooperation. The term derives from the fact that both different Member States and European institutions are involved, and sometimes private parties as well; H.C.H. HOFMANN, M. TIDGHI, *Rights and Remedies in Implementation of EU Policies by Multi-Jurisdictional Networks*, cit., p. 148: "(…) [*A]dministrative actors from different jurisdictions (...) cooperate either vertically in the relation between EU institutions and bodies and those of the Member States, horizontally between various Member States institutions and bodies (...)";* L.A. JIMENEZ, *Effective Judicial Protection and Mutual Recognition in the European Administrative Space*, cit., p. 345: "These difficulties can arise from interactions occurring in both vertical and horizontal senses"; F.B. BASTOS, *An Administrative Crack in EU's Role of Law: Composite Decision-Making and Nonjusticiable National Law*, cit., p. 65: "*Intensive cooperation, both horizontally between national authorities and vertically between national and EU administration (...)".*

[28] L. BARONI, *I modelli di amministrazione: diretta, indiretta e altre forme "intrecciate"*, in D.U. GALETTA (EDS.), *Diritto amministrativo dell'Unione europea*, Giappichelli Editore, Turin, 2020, p. 76: "*The new reality that was emerging is characterized by moments of coordination and integration between the Community institutions (now European) and the administrations of the Member States. In this regard, scholarship has highlighted how, in recent times, the Community administration tends to transform into a 'mixed model' in which direct and indirect interventions coexist, giving rise to an original model that has been authoritatively defined as 'co-administration'*".

[29] M.P CHITI, A. NATALINI, *Lo spazio amministrativo europeo. Le pubbliche amministrazioni dopo il Trattato di Lisbona*, Il Mulino, Bologna, 2012, p. 347.

[30] F.B. BASTOS, *An Administrative Crack in EU's Role of Law: Composite Decision-Making and Nonjusticiable National law*, in *European Constitutional Law Review*, vol. 16, 2020, pp. 63-64: "*The European administrative space, as it has come to be called, has undergone progressive development over the decades, evolving into a multilevel administrative system".*

traditional ones. The variety of forms of cooperation[31] has led scholars to formulate—under different labels that are formally distinct but substantially overlapping — terms such as co-administration, administration in a Community function, shared administration, concurrent administration and composite administration.

The success of this executive model (now widely known and extremely prevalent) has been commented on by numerous academics and scholars: many recognize its predominance over the classical modes of implementing Union law[32]. Many also emphasize the anachronism[33] of the original distinction between direct and indirect administration and consider that even traditional sectors historically falling into one category or the other (such as the Common Agricultural Policy) should now be reinterpreted through the single lens of integrated administration. The shared holding of executive powers has reached such a stage of integration that the historical partition is considered inadequate.

This trend thus seemed to have settled and consolidated (at least in practice, as this slow and progressive evolution occurred without changes to the literal text of the Treaties).

However, the digital and AI sectors seem to suggest a reversal of this trend: a decline of composite administration in favor of a renewed polarization of models, as will be examined in the following paragraph.

III. Centralization in the Implementation of the DMA, DSA and AIA

The digital and artificial intelligence sectors (and, specifically, the three regulations DMA, DSA, and AIA) indeed offer interesting insights into the trends of EU administration.

It appears that, in this domain, the supranational legislator has opted for the implementation of supranational law through a model of direct administration—which, it should be recalled, according to the Treaties, should represent the exception rather than the rule in implementation.

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[31] In M. CONTICELLI, G. DELLA CANANEA, *I procedimenti amministrativi di adjudication nell'Unione Europea: principi generali e discipline settoriali*, *cited*, p. 125: "*The allocation of competences does not follow any predetermined organisational principle; rather, it is the arrangement that is deemed most capable of ensuring, in a predictive sense, the best fulfilment of the function and thus the strongest protection of the public interests connected to it*"; H.C.H. HOFMANN, M. TIDGHI, *Rights and Remedies in Implementation of EU Policies by Multi-Jurisdictional Networks*, *cit.,* p. 148: "*The architecture of information networks is developed in a policy-specific manner. (...) [F]orms of cooperation between Member states' and EU agencies differ considerably from one policy area to another (...)".*

[32] M. CONTICELLI, G. DELLA CANANEA, *I procedimenti amministrativi di adjudication nell'Unione Europea: principi generali e discipline settoriali*, Giappichelli Editore, Turin, 2017, p. 123: "*The concrete evolution of European administrative law (...) suggests that the most developed and frequent model for exercising European policies and performing European functions is hybrid or intermediate (...)"*; H.C.H. HOFMANN, M. TIDGHI, *Rights and Remedies in Implementation of EU Policies by Multi-Jurisdictional Networks*, *cit.,* p. 147: "*Implementation of EU law and policy increasingly takes place with the help of administrative networks".*

[33] S. DEL GATTO, G. VESPERINI, *Manuale di diritto amministrativo europeo*, Giappichelli Editore, Turin, 2024, p. 118: *"In general, however, the dividing line between the two models and the traditional dichotomy concerning administrative execution (indirect administration and direct administration) has, on the one hand, become thinner and, on the other, increasingly anachronistic".*

This assertion is based on the central role attributed to the European Commission[34] in the governance of the DMA, DSA, and AIA (so much so that its position has been described by some as "dominant"[35]).

The supranational legislator's choice in favor of a regulatory source should not be misleading. It clearly expresses the legislative intent to establish a uniform framework across the Single European Market, avoiding internal market fragmentation[36]. However, this has proven to be more formal than substantive: the operational effectiveness of this regulatory triad requires significant administrative implementation (both through delegated acts and executive acts), so much so that several authors have noted that these acts, in terms of substantive detail, resemble directives more than true regulations[37].

As anticipated, the Commission is the main actor in this significant implementation activity.

It is not possible here to analyze in detail all the powers conferred on the Commission by the DSA, DMA, and AIA. Some examples are therefore provided, in the hope that they illustrate the central role attributed to it.

There are several indicators of a real concentration of execution in the hands of the European Commission in the DMA. With reference to this first regulation, it is certainly appropriate to speak of direct administration: first of all, the Commission has extensive powers to adopt delegated and implementing acts pursuant to Articles 290 and 291 TFEU[38], for a five-year period, renewable for an equal period (unless opposed by the Union co-legislators).

More specifically, the Commission not only has the exclusive power to designate[39] which companies qualify as gatekeepers - i.e., providers of core platform services with significant quantitative user thresholds (and can thus update the list of platforms deemed as such[40]) - but can also modify the regulatory indicators/parameters that suggest the presence of such gatekeepers under Article 3[41]. Furthermore, it can update the list of obligations (as a form of ex-ante regulation) to which these entities are subject, regardless of any findings of market or competition-distorting conduct (Article 7). Clearly, this places the institution in a position to outline a "new" regulatory framework beyond what the Union co-legislators had originally envisaged.

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[34] M. CARTA, *Il regolamento UE sull'intelligenza artificiale: alcune questioni aperte*, in *Eurojus*, n. 3, 2024, p. 199: "*In the specific case, the Commission is granted—through delegated and implementing acts—the ability to significantly influence the implementation of AI, with measures without which the Regulation risks failing to achieve its objectives […].*" Also addressing the Commission's extensive powers in this area are: F. FERRI, *Il giorno dopo la rivoluzione: prospettive di attuazione del regolamento sull'intelligenza artificiale e poteri della Commissione europea*, in *Quaderni AISDUE*, n. 2, 2024, p. 12. On the prominent role of the European Commission in the governance of the AI Act, see also: B. MARCHETTI, *L'esecuzione della regolazione digitale dell'Unione europea ed il ruolo della Commissione*, in *Rivista trimestrale di diritto pubblico*, n. 4, 2024, pp. 1097–1120; M. MERLER, *Il ruolo della Commissione europea nella realizzazione dello spazio digitale europeo*, in *Rivista trimestrale di diritto europeo*, n. 4, 2024, pp. 1121–1138; C. NOVELLI, P. HACKER, J. MORLEY, J. TRONDAL, L. FLORIDI, *A Robust Governance for the AI Act: AI Office, AI Board, Scientific Panel, and National Authorities*, in *European Journal of Risk Regulation*, 2024, pp. 1–25.

[35] [35] F. FERRI, *Il giorno dopo la rivoluzione: prospettive di attuazione del regolamento sull'intelligenza artificiale e poteri della Commissione europea*, in *Quaderni AISDUE*, n. 2, 2024, p. 17.

[36] M. CARTA, *Il regolamento UE sull'intelligenza artificiale: alcune questioni aperte*, in *Eurojus*, n. 3, 2024, p. 196: "*One of the objectives characterizing the internal dimension of the Regulation is the reduction of legal fragmentation resulting from divergences among national rules in this field, thereby facilitating the approximation of legislation, the completion and proper functioning of the internal market, in its articulation as a digital single market for lawful, safe, and reliable AI systems".* See also F. DONATI, *Diritti fondamentali e algoritmi nella proposta di regolamento sull'intelligenza artificiale*, in *Il Diritto dell'Unione europea*, n. 3–4, 2021, pp. 453–465.

[37] O. POLLICINO, in *Regolazione e innovazione tecnologica nell'ordinamento della rete*, in *Rivista AIC*, n. 2, 2025, p. 129 talks about "disguised directives."

[38] This power is provided, in particular, by Article 49 of the DMA (as well as Recitals 97 and 98).

[39] C. SCHEPISI, *op. cit.,* p. 7, speaks of the "*constitutive effect*" of the designation.

[40] Pursuant to Article 41 of the DMA, Member States may only request the Commission to open a market investigation when they suspect that a company should be designated as a gatekeeper, without being able in any way to substitute themselves for the Commission in the designation of such entities.

[41] Indeed, in order to modify those qualitative and quantitative parameters, it may also launch specific market investigations.

With regard to the DSA and the AIA, it is formally necessary to speak of a "mixed enforcement system"[42], although in reality this classification conceals a rather prominent role for the Commission.

Even under the DSA and AIA, the Commission holds broad powers to adopt delegated acts (see Article 87 in conjunction with recital 152 DSA and Articles 97 and recital 173 AIA).

Additionally, under the DSA, the Commission is responsible for designating the very large tech operators (the so-called VLOPs -Very Large Online Platforms - and VLOSEs -Very Large Online Search Engines) and may, in this case as well, adjust the regulatory threshold that triggers the application of the stringent rules for these big players. Regarding the Commission's powers over disinformation (e.g., legal informational material) or illegal content, it has been observed that the scope and consistency of its intervention will substantially depend on the interpretative application of Article 35 DSA[43].

Finally, with regard to the AIA, the guardian of the Treaties may expand the list of prohibited AI systems under Article 5 of the Regulation - on the basis of unacceptable risk -and may modify the regulatory parameters that determine the classification of AI systems as high-risk. Moreover, the Commission is the competent authority for the enforcement of the Regulation concerning General Purpose AI. It is also responsible for managing the database for independent high-risk systems and, if necessary, adopting implementing acts to ensure uniform application of the Regulation across the EU.

Although, in this case as well, the administrative system outlined by the Regulation can be defined as "mixed"[44] (due to the formal role attributed to national administrative authorities in implementation and the establishment of an AI Committee composed of representatives of the Member States and the Commission), the role of Member States in implementing the AI Act is entirely marginal[45]: they cannot intervene in the macro-classification of AI systems at the supranational level (low-risk systems, high-risk systems, unacceptable-risk systems, systems entailing systemic risk), nor can they modify the annexes where systems are classified under one risk category or another[46]. They come into play in the governance of the Regulation only after the regulatory act has been applied, as will be discussed in the following paragraph; it is, in fact, the national notifying and supervisory authorities that monitor compliance with the rules and requirements of the supranational framework.

IV. Centralization in Enforcement as Well?

The trend consisting in "moving of the enforcement of EU law to Brussels" [47] is observed not only in the administrative models outlined in the three Regulations but also, albeit to a lesser extent, in the choices made by the Union co-legislator regarding enforcement.

The following analysis will focus on the monitoring and control systems established, respectively, by the DMA, DSA, and AIA.

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[42] B. MARCHETTI, *L'esecuzione della regolazione digitale dell'Unione europea ed il ruolo della Commissione*, in *Rivista trimestrale di diritto pubblico*, n. 4, 2024, p. 1117.

[43] M. HUSOVEC, *The Digital services Act's Red Line: What the Commission Can and Cannot Do About Disinformation*, in *Journal of Media Law*, vol. 16, n. 1, p. 49.

[44] B. MARCHETTI, *L'esecuzione della regolazione digitale dell'Unione europea ed il ruolo della Commissione*, in *Rivista trimestrale di diritto pubblico*, n. 4, 2024, p. 1117.

[45] B. MARCHETTI, *La regolazione europea del mercato dell'intelligenza artificiale*, in *Rivista della regolazione dei mercati,* n. 1, 2024, p. 8.

[46] M. MERLER, *Il ruolo della Commissione europea nella realizzazione dello spazio digitale europeo*, in *Rivista trimestrale di diritto pubblico*, no. 4, 2024, p. 1136: "*Article 96 provides that the Commission may draft guidance, with the support of the AI Office, to assist entities […] in the correct interpretation and implementation of certain parts […] of the Regulation. Among these*, *guidelines may be adopted with regard to […] the prohibited practices under Article 5, particularly to define the criteria under which exceptions to the prohibitions apply. Moreover, it is always the Commission's responsibility to define the rules concerning a 'substantial modification' that alters the risk level of an AI system after its introduction to the market or after its use, such that a 'reclassification' of the system becomes necessary".*

[47] The striking expression of M. SCHOLTEN is borrowed from *Mind the trend! Enforcement of EU law has been moving to Brussels"*, in *Journal of European Public Policy*, vol. 24, n. 9, 2017, pp. 1352–1353.

The dominant role[48] of the Commission clearly emerges in the enforcement framework of the DMA, so much so that scholars explicitly describe this system as centralized[49]. According to Article 39 (read in conjunction with recital 91), the guardian of the Treaties is, in fact, the "sole authority responsible for the application of this Regulation". The Commission is vested with investigative, monitoring, and sanctioning powers under the supranational framework. National antitrust authorities may conduct investigations into breaches of the Regulation, but they must always report to - and, after completing the investigative activity, delegate to - the Commission the imposition of any sanction, respecting the dominant role assigned to it under Article 39 DMA.

This is even more evident considering that, under the DMA (unlike the DSA), there is no detailed regulation - neither substantive nor procedural - of so-called private enforcement[50], suggesting that the Commission is the exclusive protagonist in the monitoring and control of the obligations established by the Regulation. The only regulatory provisions referring to the role of national courts in the DMA monitoring system are designed to "ensure the consistent application of the Regulation"; their aim is merely to prevent potential national court rulings from conflicting with acts adopted by the Commission. The purpose of these provisions is therefore to guarantee uniform interpretation and application of the rules across the Single European Market, rather than to grant national courts a role in the distributed (private) enforcement system. Without being able to fully develop the topic of the complementarity between private and public enforcement here[51], proponents of the view that national courts have limited or no scope argue that otherwise there would be a risk of fragmentation in the application of the DMA, potentially resulting in conflicting judicial decisions (including judgments inconsistent with Commission decisions). Furthermore, if a Commission procedure is already pending, the national proceedings should be suspended.

Less overt—but still present—is the centralization observed in the DSA enforcement framework. The supranational co-legislator appears to have opted for a networked system (scholars also speak of a shared regulatory network[52]), i.e., a monitoring and oversight system based on cooperation between national and supranational administrative authorities, akin to the co-administration model described above.

More specifically, under the regulatory provisions, public enforcement powers can be abstractly divided into three main categories: some are granted exclusively to national administrative authorities (the so-called Digital Services Coordinators, responsible for representing all national authorities competent to implement the DSA—for Italy, this is the AGCM); others exclusively to the Commission; and others under concurrent competence between national and supranational administrations. In the latter case, when imposing sanctions on violators of obligations, Member State authorities must cooperate vertically with the Commission and horizontally with other national Digital Services Coordinators (in a cross-border cooperation perspective); they also cooperate within the European Digital Committee, serving as an institutional liaison between the Member States and the Commission.

However, the distribution of roles is not as equitable as it might appear: in particular, regarding very large online platforms and very large search engines (VLOPs and VLOSEs), the Commission has exclusive competence to exercise investigative, supervisory, and sanctioning powers in the case of breaches of the most stringent obligations under Articles 33–43 DSA; under Article 56 DSA, the Commission is the only institution responsible for enforcing the rules set out in Chapter III, Section V of the DSA.

Furthermore, concerning very large entities (VLOPs and VLOSEs), public enforcement competence is concurrent between Member States and the Commission, and is not decentralized at the national level, as the literal text of the Treaties might suggest. This, it is noted, always respects the Commission's primacy: if national authorities consider imposing a sanction on a provider, they must always notify the Commission beforehand; similarly, the initiation of an investigation by the Commission prevents the national coordinator

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[48] F. CROCI in *Judicial Application of the Digital Markets Act: The Role of National Courts*, in L. CALZOLARI, A. MIGLIO, C. CELLERINO, F. CROCI, J. ALBERTI (a cura di), *Public and private enforcement of EU competition law in the age of big data,* Giappichelli, 2024, p. 234 defines the Commission «*the key player in the public enforcement of the Regulation*».

[49] C. SCHEPISI speaks of a "decisive centralization of enforcement in the hands of the Commission," *L'enforcement del Digital Markets Act: perché i giudici nazionali dovrebbero avere un ruolo fondamentale*, in *I Post di AISDUE*, no. 4, 2022. L. TORCHIA, on the other hand, refers to a "centralized system," *op. cit.*, p. 1106.

[50] F. CROCI, *cit,* p. 235: «*The absence of clear indications in this regard raises many questions about the enforcement of the DMA before national courts».*

[51] The scholarship on the subject is extremely extensive.

[52] L. TORCHIA, *op cit,* p. 1108.

from starting or continuing its own procedure for the same alleged violation. Additionally, in the range of measures the Commission can adopt to sanction a "big provider," it possesses specific instruments not available to national Digital Services Coordinators, such as the enhanced supervision procedure, established by the legislator specifically to curb non-compliance by big companies under the DSA.

Consequently, for the coordinators - the national administrative authorities by default competent to impose sanctions based on the digital enterprise's place of establishment - only "smaller fish" remain[53].

With regard to the AIA, the enforcement system appears indirect/decentralized. However, national administrative authorities are always required to notify the Commission when exercising their sanctioning powers.

Finally, it should be noted that while only the DMA explicitly grants sanctioning competence to the Commission[54], unlike the DSA and AIA, the strategies employed by the Union over the years to centralize supranational enforcement are manifold. In the DMA, DSA and AIA, two indicative trends of the "proliferating EU direct enforcement powers" phenomenon identified by Scholten[55] are present: the inclusion of national administrative authorities within a network and the regulation - through soft or hard law (and via corresponding interpretations by the Court of Justice)- of matters of national enforcement. Both forms of centralization occur in the cases at hand, as seen in paragraphs 3 and 4. Therefore, even in these two cases, a trend toward enforcement of EU law moving to Brussels can be affirmed, albeit less evident.

V. Conclusions: the consequences (positive but, above all, negative) of such governance choices

From the brief analysis above, it emerges, as noted, that the guardian of the Treaties occupies a pinnacle position in the implementation of regulations governing the digital and artificial intelligence sectors.

This regulatory choice certainly has its advantages (and a rationale), but it carries significant consequences, primarily regarding institutional relations and, secondarily, the relationship between the Union and its Member States.

Regarding the advantages, the peculiar nature of the subject matter must first be recognized, as it requires a regulatory framework capable of keeping pace with technological developments. The rapid advancement of innovative technologies demands timely regulatory intervention[56], which is hardly compatible with the ordinary legislative procedure, making the Commission the institution best suited to legislate. In the digital and AI sectors, this is referred to as the "pacing problem"[57]: the legislator's need to continuously adapt to technological evolution requires flexible and adaptable regulatory instruments. This explains the rationale

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[53] R. SABIA, *op. cit.*, p. 93: "*The European legislator nonetheless intended to grant the Commission primacy in handling and managing cases involving the largest/most significant operators*"; p. 104 defines the Commission as the privileged interlocutor of the digital big players.

[54] Pursuant to Artt. 18–26 DMA, the Commission may conduct investigations, accept commitments, and impose fines (Art. 26). On the broad powers of the Commission under the DMA, see C. MASSA, *DMA or not DMA, that is the question*, in *BlogDUE*, 2021, pp. 6–7.

[55] M. SCHOLTEN, *Mind the trend! Enforcement of EU law has been moving to Brussels*, in *Journal of European Public Policy*, vol. 24, n. 9, 2017, pp. 1352-1353; M. SCHOLTEN, M. MAGGETTI, E. VERSLUIS, *Political and judicial accountability in shared enforcement in the EU* in M. SCHOLTEN, M.J.J.P. LUCHTMAN (eds.), *Law Enforcement by EU Authorities Implications for Political and Judicial Accountability*, 2017, Edward Elgar Publishing; M. SCHOLTEN, *EU (Shared) Law Enforcement: who does what and how*? in S. MONTALDO, F. COSTAMAGNA, A. MIGLIO (eds.), *EU Law Enforcement,* 2021, Routledge, pp. 7 – 23.

[56] The case of the development of general-purpose AI during the evaluation of the AI Act proposal is emblematic of the point made.

[57] This refers to the need to ensure that the regulation keeps pace with rapidly evolving technologies: as the case of the emergence and spread of ChatGPT during the AI Act approval process demonstrates, AI tools arise and develop quickly, thus requiring flexible regulation. On the pacing problem, see: E. CIRONE, *L'AI Act e l'obiettivo (mancato?) di promuovere uno standard globale per la tutela dei diritti fondamentali,* in *Quaderni AISDUE*, no. 2, 2024, pp. 6-7; E. PANDOLFI, *AI Act e pacing problem: la disciplina dell'IA per finalità generali*, in *Quaderni AISDUE*, Anticipation issue, 2025.

behind very vague legislation[58], whose content must be concretized and updated by the Commission through its delegated acts, which are normative, non-legislative acts of general scope.

Second, it is evident that the Commission is in a position to ensure uniform implementation of EU law within the Digital Single Market. A diffuse enforcement system, by contrast, would risk fragmentation in the application of regulations: digital operators active in multiple national markets could face judicial decisions resulting in conflicting outcomes or risk having their activities paralyzed in one Member State but not in another. One of the reasons for the Commission's central role is thus to prevent the formation of conflicting judgments and unequal treatment in identical factual situations[59].

Third, the Union legislator may have opted for this governance system to overcome the problem encountered with the GDPR, where, due to the country-of-origin principle, enforcement competence was effectively concentrated in the hands of a single national authority (the Irish DPA), as many big tech operators are based in that Member State.

While the reasons underlying such a regulatory framework may appear reasonable at first glance, its problematic implications cannot be overlooked.

First, delegating extensive powers to the Commission entrusts it with the effective balancing of the protection of rights and the promotion of new technologies[60], placing it, in various respects, in the "optimal position to reshape the core pillars of the protection system"[61] established by the regulations. One must therefore ask whether the power to adopt delegated acts under the three legislative delegations (and thus under the DMA, DSA, and AIA) does not, in fact, amount to regulating essential elements, hardly constituting mere normative integration.

Particularly with regard to the DMA, the Commission appears to be in a position to make value-laden substantive choices that, due to the principles of democracy and representativeness—whose lack of respect the Union as a whole has been criticized for over the years—should be entrusted to the European Parliament and the Council, i.e., the supranational co-legislators[62].

Additionally, the Commission finds itself in an impasse, acting simultaneously as a monopolist of legislative initiative, as a "substantial legislator" (holder of content rule-making power[63]), and as the entity responsible for implementing the legislation. This conflation of technical and political roles in a single institution,

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[58] With specific reference to the DSA, they discuss the vagueness of the legal provisions: M. HUSOVEC, *The Digital Services Act's Red Line: What the Commission Can and Cannot Do About Disinformation*, in *Journal of Media Law*, vol. 16, no. 1, p. 48. With specific reference to the AIA, they address the vagueness of the legal provisions: F. DONATI, *La protezione dei diritti fondamentali nel regolamento sull'intelligenza artificiale*, in *Rivista AIC*, no. 1, 2025, p. 15; B. MARCHETTI, *La regolazione europea del mercato dell'intelligenza artificiale*, in *Rivista della Regolazione dei Mercati*, no. 1, 2024, pp. 4-5; O. POLLICINO, *op. cit.,* pp. 164-165.

[59] C. SCHEPISI, *op. cit,* p. 10.

[60] This also impacts, moreover, the European democratic circuit. F. DONATI, *La protezione dei diritti fondamentali nel regolamento sull'intelligenza artificiale*, in *Rivista AIC*, n. 1, 2025, p. 18; F. FERRI, *Il giorno dopo la rivoluzione: prospettive di attuazione del regolamento sull'intelligenza artificiale e poteri della Commissione europea*, in *Quaderni AISDUE*, no. 2, 2024, p. 7: *"[…] it is evident that the Commission is in the optimal position to reshape the core pillars of the protection system established by the regulation."*

[61] F. FERRI, *Il giorno dopo la rivoluzione: prospettive di attuazione del regolamento sull'intelligenza artificiale e poteri della Commissione europea*, in *Quaderni AISDUE*, n. 2, 2024, p. 7.

[62] O. POLLICINO, *Regolazione e innovazione tecnologica nell'ordinamento della rete*, in *Rivista AIC*, n. 2, 2025, p. 127: "*Under the Regulation, the European Commission also has the task, through the adoption of delegated acts, of updating the list of AI systems considered high-risk. […] The most significant issue that seems to arise with regard to the principle of separation is the following: is the updating of a set of AI uses and applications, with the consequent inclusion of newly emerging types that present a significant risk, a mere technical review that can be delegated to the Union's executive body, or does it imply […] choices of an axiological-substantive nature that should be entrusted to the legislative body within the representative democratic circuit, however hampered, of the Union?"*

[63] M. HUSOVEC, *The Digital Services Act's Red Line: What the Commission Can and Cannot Do About Disinformation*, in *Journal of Media Law*, vol. 16, n. 1, p. 50, excludes such a power (essentially legislative), arguing that in its actions the Commission is bound by the principle of legality and, therefore, in no case will the Commission assume the role of a "legislative surrogate."

according to various "Community-focused" scholars, places the Commission in the position of a regulator "caught between conflicting policy objectives"[64].

Furthermore, concerning institutional relations, one may question whether such an institution is the most suitable to execute regulatory functions in the field of emerging technologies or whether implementation (and enforcement) of supranational law in this area would be better entrusted to independent bodies, free from external interference and pressures, and composed of members capable of providing expertise and technical competence[65]. Indeed, the phenomenon of EU agency proliferation (agencification), mentioned at the outset, owes much of its success to the legitimacy derived from the specialized knowledge and expertise these agencies can provide.

Third, regarding the relationship between the Union and Member States, it is clear that such centralization may not be well received by national administrations, whose conduct could give rise to dangerous sovereigntist tendencies.

Only future application practice and case law will reveal whether the centralization trend described thus far represents an exceptional episode, justified by the peculiarities of the subject matter, or whether the co-administration model (and the phenomenon of the proliferation of Union agencies) is indeed slowly destined to decline. It is believed, in fact, that the AI and digital sectors (and these specific legislative acts, in particular) constitute a privileged field for observing the modes of supranational law implementation, which could, with due caution, provide broader insights into the current functioning of Union administration and the Union's future governance choices.

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[64] I. BURI, *A Regulator Caught Between Conflicting Policy Objectives*, in *Verfassungsblog,* 2022; R. SABIA, *op. cit.*, p. 112.

[65] This normative opportunity was, in fact, considered during the proposal of the AI Act. On this point, see in greater detail: J. ALBERTI, *La manomissione delle sentenze Meroni. Per una lettura originalista della più nota giurisprudenza in materia di delega di poteri nell'ordinamento dell'Unione europea*, in A. ARENA, M.E. BARTOLINI, M. RIBERI (eds.), *L'integrazione europea attraverso la giurisprudenza comunitaria (1954-1974): i processi, gli attori, le narrative*, Naples, Editoriale Scientifica, 2025 (forthcoming).

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