

Decentralised judicial review of EU competition law enforcement

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Two decades ago, EU competition law underwent a significant transformation with the decentralisation of its enforcement. Previously, public enforcement of the EU prohibitions against anti-competitive agreements (Article 101 TFEU) and abuse of dominance (Article 102 TFEU) was primarily carried out by the European Commission, with decisions subject to review by the General Court (GC) and the European Court of Justice (ECJ). This structure changed with the entry into force of [Regulation 1/2003](#) in May 2004, which, for the first time, granted national competition authorities (NCAs) the authority to effectively enforce Articles 101 and 102 TFEU.

Notably, decentralisation in competition law enforcement extended beyond the first-instance decision-making powers of the European Commission and NCAs to also encompass the judicial review stage. Appeals against NCAs decisions are now solely reviewed by national courts, which play a pivotal role in supervising the NCAs' operations and ensuring the effectiveness of EU competition law enforcement. National courts must strike a delicate balance between intervening sufficiently to ensure the correct application of competition law and policy - promoting deterrence, safeguarding fundamental rights, and maintaining consistency across the EU - while avoiding excessive interference that could undermine the work of the NCAs. In this highly decentralised framework, the EU Courts retain only indirect influence over national court decision-making, primarily through preliminary reference proceedings and their binding interpretations of EU law in judgments in appeals concerning the European Commission's enforcement actions.

While Regulation 1/2003 has harmonised certain aspects of the powers and characteristics of NCAs, EU law has left as unregulated almost all aspects of national court procedures, offering only general obligations as outlined in the Treaties, the Charter, the Regulation, and the ECN+ Directive. In line with the principle of national procedural and institutional autonomy, the Regulation does not specify whether national courts should be composed of specialised tribunals, generalist courts (civil, administrative, or criminal), or specialised chambers within generalist courts. It also refrains from prescribing key procedural elements, such as the number of appeal instances, grounds for appeal, burden of proof, limitation periods, fees for filing appeals, the qualifications of judges (whether specialised, ordinary, or layperson judges), or the composition of judicial panels. As national courts operate within the procedural frameworks and institutional structures established by their respective domestic laws, the standard, scope, and intensity of judicial review vary significantly across the EU, leading to diverse review structures, processes and also, as our research project outlined below discovered, outcomes.

The decentralisation of judicial review, going beyond the decentralisation of the first-decision making enforcement by the NCAs, was a highly controversial policy choice. During the negotiations for Regulation 1/2003, [the Economic and Social Committee](#), for example, called for a less decentralised institutional framework, proposing that national court judgments reviewing NCAs' decisions should be subject to appeal before a supranational court, on both matters of law and fact. The Committee argued that 'in a decentralised system without a single appeal authority it is difficult to guarantee not only the right of defence, but also the coherent and consistent application of

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Community competition rules across the EU'. It further cautioned that the preliminary reference procedure, along with the cooperation requirements for national courts 'are definitely not great enough to reach this objective'. The European [Commission](#) also reported that other stakeholders raised concerns that divergent application of EU competition law by national courts would 'pose a threat to the proper functioning of the single market and the coherence of the system'. Some [scholars](#) were also sceptical about the ability of national courts to perform effective judicial review, particularly given that many national courts had limited experience with the competition law provisions.

Surprisingly, despite the heated debate surrounding its adoption, the decentralisation of judicial review garnered very little attention in the years following the entry into force of Regulation 1/2003. The practical functioning of national judicial systems and the extent to which they have effectively achieved the goals of judicial review as envisaged by the Regulation have been largely overlooked in the European Commission's [five](#), [ten](#), and [twenty](#)-year assessments of the Regulation or [the Court of Auditors report](#). Similarly, this issue has received limited focus in both EU and national academic discussions.

In our [recent project](#), we conducted an EU-wide legal and empirical study to address the noticeable gap in understanding the effectiveness of competition law enforcement across Member States. This study resulted in the creation of a new, open-access dataset that compiles all judicial reviews of public enforcement actions under Articles 101 and 102 TFEU, as well as their national equivalents, by the national courts of the EU's 27 Member States and the UK. The dataset spans a 17-year period, from the entry into force of Regulation 1/2003 in May 2004 to end April 2021. Developed with the assistance of [28 teams of national rapporteurs](#), each with expertise in the relevant national competition law enforcement system, the dataset includes detailed information for each judgment. This information includes [case-level information](#), such as the reviewing court, presiding judges, the parties involved, the NCA's decision under review (such as the competition rule being appealed, and whether leniency or settlements were involved), grounds for appeal, their success rates, remedies imposed, and the case outcome. Additionally, the dataset provides insights into the national judicial review systems as a whole, covering aspects such as the relevant courts across all instances, grounds for appeal, whether the courts are specialised, fees for submitting appeals, and any reforms within the relevant period. The national datasets, and more information on the project's team, scope, methodology, and definitions are available here (<https://www.mappingcomplawreview.com>).

Our empirical findings cast doubt on whether many national courts have effectively fulfilled the pivotal role intended for them under Regulation 1/2003—ensuring the effectiveness, uniformity, and consistent application of EU competition law across the single market. Our study reveals significant divergence in substantive aspects of judicial review and its operation in practice, and highlights a troubling lack of thorough consideration regarding the relationship between EU and national laws in the judgments of many national courts. [In particular, the study points to ~~There is~~ a noticeable scarcity in the application of EU competition law by some NCAs and national courts, along with infrequent use of the preliminary reference procedure in most Member States. ~~For example, many of the courts of the 'newer' Member States that have joined the EU since 2004 \(including, Bulgaria, Croatia, Cyprus, Czech Republic, Lithuania, Latvia, Malta, Poland, and Slovakia\) have overwhelmingly reviewed decisions on the infringement of national competition laws alone \(above 70% of all first-instance judgments rendered\).~~](#) In light of these issues, we call for more academic and policy attention to investigating whether the decentralised judicial review system fully complies with the integration objectives of EU law.

The project also underscores the failure of the monitoring mechanisms introduced by Regulation 1/2003 in ensuring the uniform application of EU competition rules. Specifically, under the heading of 'cooperation with national courts,' Article 15(2) of the Regulation obliges Member States to forward a copy of any written judgment from national courts addressing the application of Articles 101 and 102 TFEU to the European Commission. The Regulation stipulates that this copy 'shall be forwarded without delay after the full written judgment is notified to the parties.'

However, our findings suggest that these procedural safeguards have proven ineffective. Despite the provisions of Article 15(2), the European Commission has received only a very limited number of judgments pursuant to this requirement. Our database identified 5,707 judgments rendered between May 2004 and April 2021, concerning appeals against public enforcement decisions by NCAs alone. In contrast, the European Commission had received only [around 1,600 judgments](#) relating to both public and private enforcement during the period from May 2004 to December 2022. This discrepancy indicates that the European Commission has access to only a fraction of the relevant information regarding the scope and nature of national judicial review of EU competition law enforcement. Furthermore, the European Commission reported that it had experienced difficulties in making the judgments it did receive publicly available.

Our study suggests that the failure of Article 15(2) may stem from a 'technical' issue related to the EU instrument chosen to facilitate decentralisation. Specifically, the decentralisation of enforcement and judicial review was achieved through a directly applicable regulation, rather than a directive that would require implementation by Member States. As a result, many Member States have not enacted the necessary practical rules to guide courts on how and when to transmit their competition law judgments to the European Commission, nor on how such practices could align with both EU and national data protection and privacy regulations. We contend that the sharing of all relevant judgments with the European Commission is an important control mechanism for ensuring the effectiveness of judicial review of EU and national competition law. Therefore, the operation of this tool should be reconsidered in any future assessment and potential reform of the Regulation.

The findings of the study have been published in an edited collection titled '[Judicial Review of Competition Law Enforcement in the EU Member States and the UK](#)' (Kluwer Law International, 2024). This book is comprised of 28 national reports, offering a detailed quantitative and qualitative analysis of the effectiveness of national judicial review, as well as comparative insights. The database and a detailed account of the methodology are also available on the [project's website \(https://www.mappingcomplawreview.com\)](https://www.mappingcomplawreview.com).