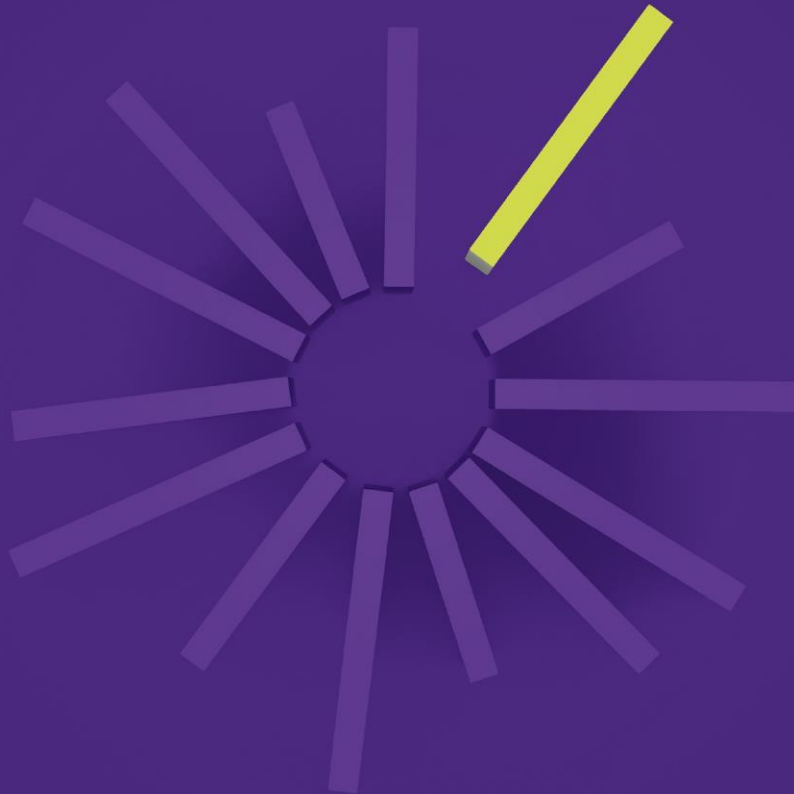




NOMIKI BIBLIOTHIKI

8th International Conference

COMPETITION LAW & POLICY



17 & 18 | October | 2024
Wyndham Grand Athens

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«Evaluation of Regulation (EC) 1/2003 – Investigative tools, powers, procedure and cooperation: the way forward»

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- [Regulation 1/2003](#) ('Modernization' Regulation) [entered into force on 1 May 2004, replacing the prior procedural Regulation 17/1962]
- [Implementing Regulation 773/2004](#)
- Modernization Package

→ 225 enforcement decisions (infringement and commitments) | > €42 billion fines

March 2022: Executive VicePresident Vestager announced that Regulation 1/2003 will be subject to an evaluation process to assess whether it is still “fit for the digital age”, also in light of the enforcement experience gained in the meantime by the Commission.

Commission's priority: to create a Europe that is fit for the digital age, taking into account the need for a stronger single market.

Final Commission Staff Working Document published – 05.09.2024 [EVALUATION of Regulations 1/2003 and 773/2004 {SWD(2024) 217 final}]

ECN Statistics data from 2004 to 2023

[✕ Clear all selections](#)

Member State

Legal Basis

Submission Year

Case Investigations launched within the Network per year *

	Totals	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Totals	3230	302	203	163	150	158	151	170	163	110	120	196	178	145	149	164	138
COMMISSION	458	102	22	20	10	9	22	13	26	6	5	23	43	18	29	31	19
NCA's	2772	200	181	143	140	149	129	157	137	104	115	173	135	127	120	133	119

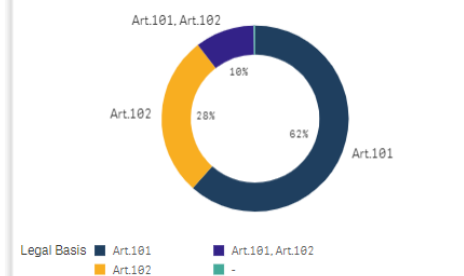
* Article 11(3) of Council Regulation (EC) Nr. 1/2003

Envisaged decisions submitted by NCAs per year **

	Totals	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
	1,495	32	76	64	71	59	70	92	62	85	48	101

** Article 11(4) of Council Regulation (EC) Nr. 1/2003

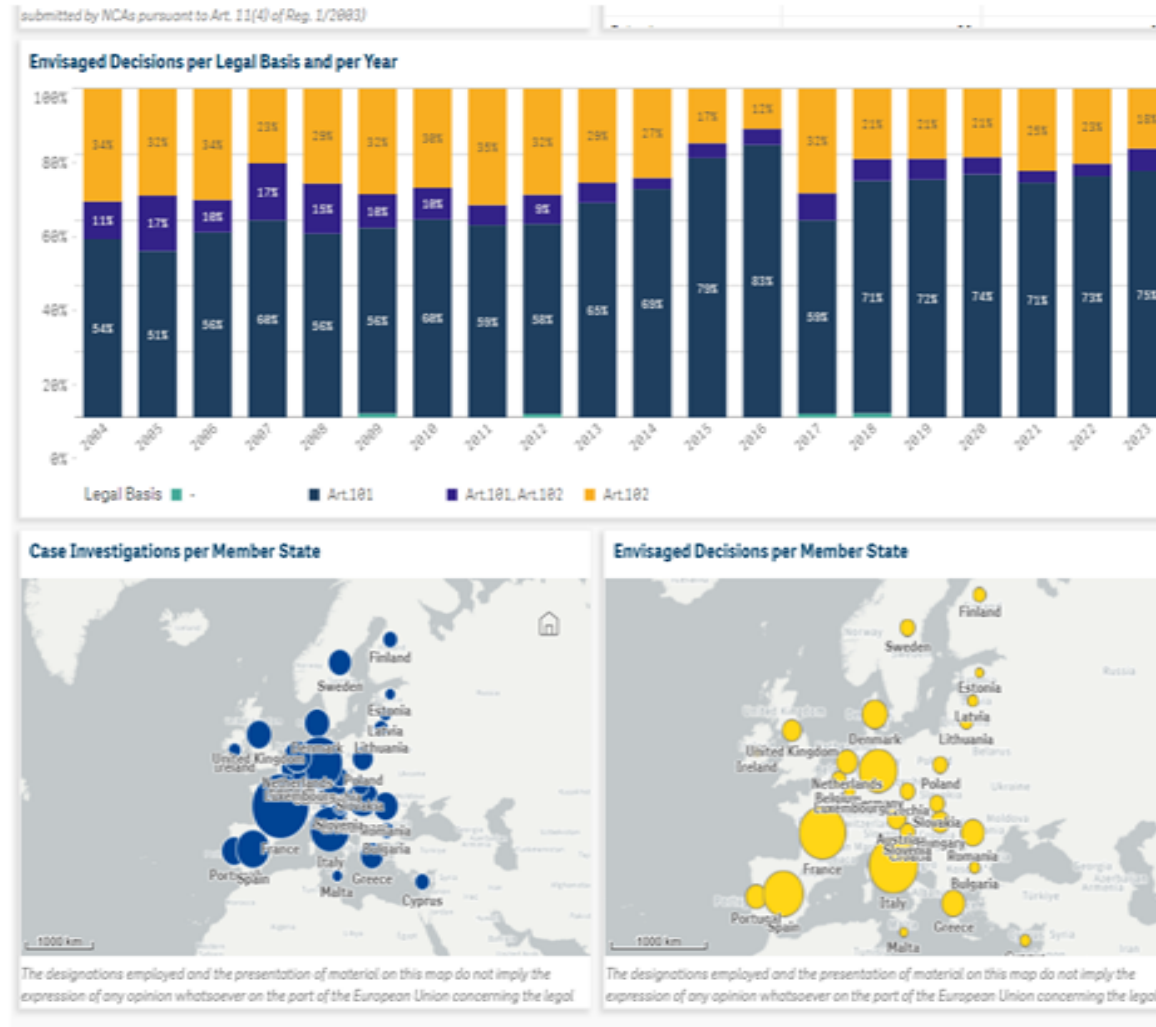
Envisaged Decisions per Legal Basis



Statistics by type of suspected infringement (based on the number of envisaged decisions submitted by NCAs pursuant to Art. 11(4) of Reg. 1/2003)

Cases per Member State

Member State	Nr. of Case Investigations	Nr of Envisaged Decisions
Totals	2772	1,495
France	240	100
Germany	275	139
Greece	99	74
Hungary	161	58
Ireland	24	5
Italy	231	193
Latvia	25	11
Lithuania	35	21
Luxembourg	37	10
Malta	10	4
Netherlands	127	65



The future of European competitiveness: Report by Mario Draghi

“The previous global paradigm is fading. The era of rapid world trade growth looks to have passed, with EU companies facing both greater competition from abroad and lower access to overseas markets.

All the while, geopolitical stability is waning, and our dependencies have turned out to be vulnerabilities. Technological change is accelerating rapidly. Europe largely missed out on the digital revolution led by the internet and the productivity gains it brought:

*And we must take a **new stance towards cooperation: in removing obstacles, harmonising rules and laws, and coordinating policies.** There are different constellations in which we can move forward. But what we cannot do is fail to move forward at all.*

Our confidence that we will succeed in moving forward should be strong. Never in the past has the scale of our countries appeared so small and inadequate relative to the size of the challenges. And it is long since self-preservation has been such a common concern. The reasons for a unified response have never been so compelling – and in our unity we will find the strength to reform”.

Key takeaways:

- Findings on the European model of open economy in a rule of law context. Raising funding, productivity, cooperation.
- Accelerate the decision-making processes and increase the predictability of decisions.
- The processes through which competition policy is enforced must continue to be revised to make business operations easier and faster, assessing all instances where it is possible to reduce the burden on companies.

- ✓ The public consultation led to the submission of **43 contributions**. Additionally, **8 stakeholders submitted documents directly to the relevant functional mailbox**. Other **11 stakeholders submitted their contributions directly on the dedicated Better Regulation page**.
- ✓ A [factual summary](#) including detailed information of the public consultation stakeholders and the contributions is available on the Have your say [website](#).
- ✓ NCAs provided input via a targeted questionnaire: summaries of the National Competition Authorities ('NCAs') [feedback](#).

The evaluation looked into the effectiveness, efficiency, relevance, coherence, and EU added value of the Regulations.

Basic Achievements of Regulation 1 according to the findings:

- + The Regulations have generally **achieved their objective** of **effective**, and **uniform application of EU competition rules**, **and remain relevant**.
- + The main changes of Regulation (EC) 1/2003 that were viewed very positively consisted in:
 1. The **abolition of the notifications system of business agreements to the Commission**
 2. The decentralised system of **parallel enforcement** of EU competition rules by the Commission and NCAs.

3. The development of the ECN, also through the 'Network Notice' (Commission Notice on cooperation within the Network of Competition Authorities).



4. The provisions on cooperation with national courts, under the obligation of sincere cooperation under Article 4(3) TEU, and the power for the Authorities to make submissions (as amicus curiae) to national courts at their own initiative and in the EU's public interest.

5. Article 3 encompassing the obligation for NCAs to apply EU competition rules to practices falling within their scope (Article 3(1)) and the convergence rule of (Article 3(2)) regarding the harmonized enforcement of art. 101 TFEU.

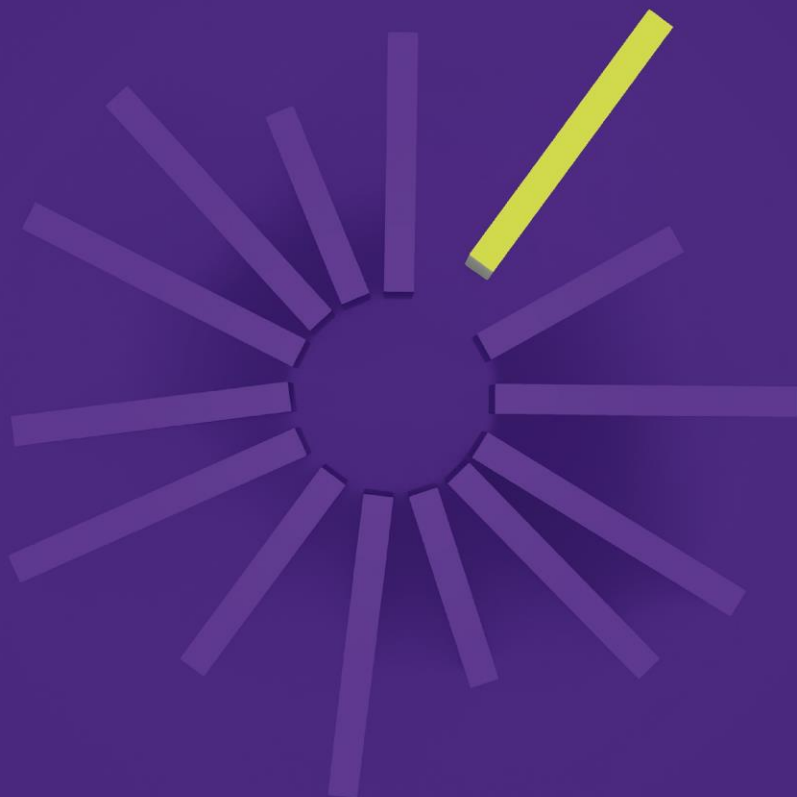
Certain perceived shortcomings of Regulation (EC) 1/2003:

1. Some **decision-making powers of the Commission**, in particular the possibility to impose **structural remedies** and **interim measures**, are not as effective as they could be.
 2. The lack of powers to impose **fines** for certain procedural breaches.
 3. Even more **coordination** within the ECN could be beneficial.
 4. **Unnecessary parallel investigations** by several authorities should be avoided.
 5. The relationship between EU and national competition laws should ensure the complementary enforcement **of available legal instruments**, especially when it comes to the integrity of the internal market.
 6. The Commission's **investigations may be too lengthy**, although they are acknowledged to be complex and of course the fundamental rights of the parties must be fully respected.
 7. **Inspections** are resource-intensive, and digitalisation has an increasing impact on the efficiency of the inspection tools. Business records may no longer be physical or stored on company premises but are often hosted in the cloud. They may be hosted outside the EU.
- In general, the **economy's digitalisation highlights a tension between the need for fast intervention and the average duration of antitrust proceedings.**

Certain perceived shortcomings of Regulation (EC) 1/2003 (cont'd):

8. Some types of **requests for information** take too long to be responded.
9. The **power to take statements** is useful but not as effective as it could be, given the requirement for consent and the absence of penalties for misleading information.
10. While intended to be a tool for urgent situations, the **interim measures** process takes too long. The requirement of 'irreparability' of the damage is regarded as too stringent.
11. **Commitment procedures**, while regarded as an efficient alternative to prohibition decisions, are also relatively lengthy.
12. The procedures for granting **access to file** and for **rejecting formal complaints** are resource-intensive.
13. The procedures of the Regulations may now be inconsistent with, or lagging behind, other recent legislation, such as **the ECN+ Directive or the Digital Markets Act**.

Thank you! Questions?



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