

## **OUTCOMES OF *ADVOCACY* ACTIVITY IN 2022-2023**

**Rome, December 3<sup>th</sup> 2024**

***DIRECTORATE FOR LEGAL STUDIES AND LEGISLATION ANALYSIS***

# OUTCOMES OF ADVOCACY ACTIVITY IN 2022-2023

## I. INTRODUCTION

This document reports the results of the periodic monitoring of the outcomes of reporting and advisory interventions (*advocacy*) undertaken by the Authority pursuant to Law No. 287/1990 and other sectoral regulations, and refers to data for the two-year period 2022-2023.

More specifically, an analysis is firstly made of the summary data, and then of the detailed data broken down by instrument, with further specifications where relevant. The data is updated to 31 October 2024.

The outcomes for the last of the two years under consideration, in this case 2023, will be reviewed in the next periodic survey, which will be carried out during 2025.

The analysis focuses on the compliance rate, intended as recipients' compliance with the indications contained in the interventions by the Authority.

The interventions examined were broken down as follows:

1. reports *pursuant* to Art. 21;
2. opinions *pursuant* to Art. 22;
3. opinions *pursuant* to Art. 22 issued pursuant to Art. 4 of Decree-Law no. 1/2012<sup>1</sup> (hereinafter, 22PCM);
4. reasoned opinions *pursuant* to Art. 21-*bis* (including opinions pursuant to Art. 21-*bis* sent following communications pursuant to Art. 5, paragraph 3, of Legislative Decree 175/2016<sup>2</sup>, TUSPP, or in any case relating to its application, referred to herein as "21-*bis* TUSPP");
5. opinions pursuant to other sectoral regulations.

For monitoring purposes, the outcomes of the interventions are classified as follows:

- positive: full compliance of the actions taken with the requirements;
- partially positive: partial compliance;
- negative: non-compliance;
- not assessable: impossible to issue an opinion for various reasons.

## II. 2022-2023 SUMMARY AND ANALYTICAL DATA

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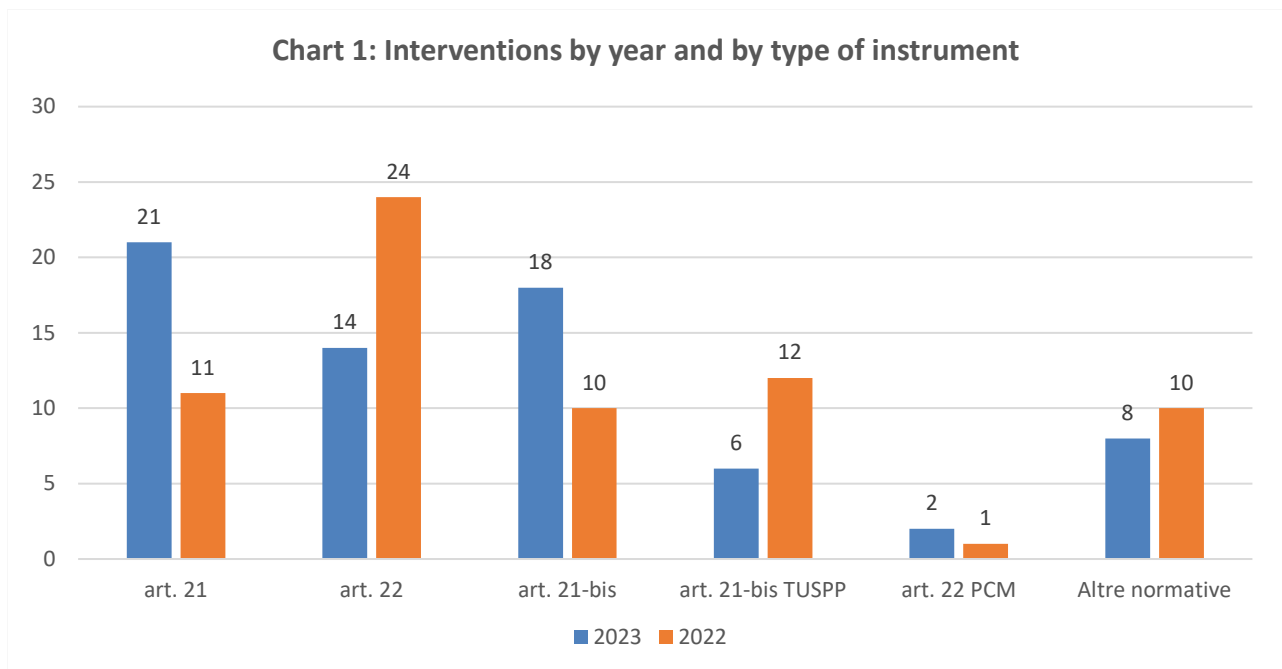
<sup>1</sup> Decree-Law no. 1 of 24 January 2012 (containing *Urgent provisions for competition, infrastructure development and competitiveness*, so-called "Cresci Italia") converted with amendments by Art. 1, paragraph 1 of Law no. 27 of 24 March 2012.

<sup>2</sup> Legislative Decree no. 175 of 19 August 2016 "*Consolidated law on publicly owned companies*" contemplates the reorganisation of the sector, implementing one of the central points of Law no. 124/2015, the so-called "Madia Reform". More specifically, Art. 5, paragraph 3, introduces a new assignment for the Authority, which must receive "*the deed of resolution for the incorporation of the company or the acquisition of direct or indirect investment*", for the purposes of exercising the powers referred to in Art. 21-*bis* of Law 287/1990.

The monitoring covered all *advocacy* interventions carried out from 1 January 2022 to 31 December 2023, for a total of 137 decisions, adopted pursuant to Articles 21, 22 and 21-*bis* of Law No. 287/1990, or pursuant to other sectoral regulations. Two lists are attached to this document relating to all the interventions considered for 2022 and 2023, with a summary of the results.

### 1. Some general data relating to the interventions (2022-2023)

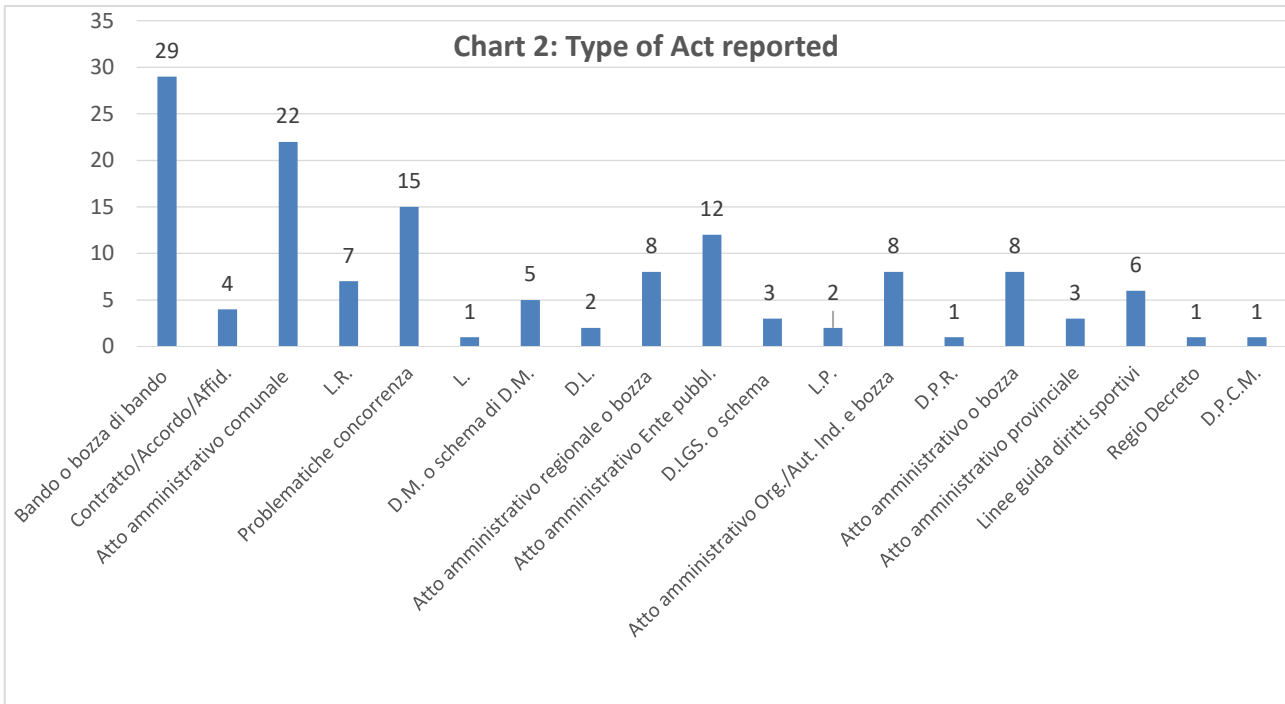
In the comparison between 2022 and 2023, there is a substantial equivalence in the total number of advocacy interventions (68 in 2022 and 69 in 2023), of which 32 under Article 21, 38 under Article 22, 3 under Article 22PMC, 28 under Article 21-*bis*, 18 under Article 21-*bis* of the TUSPP, and 18 under other regulatory frameworks (see Chart 1).



Source: AGCM calculations on 2022 and 2023 data

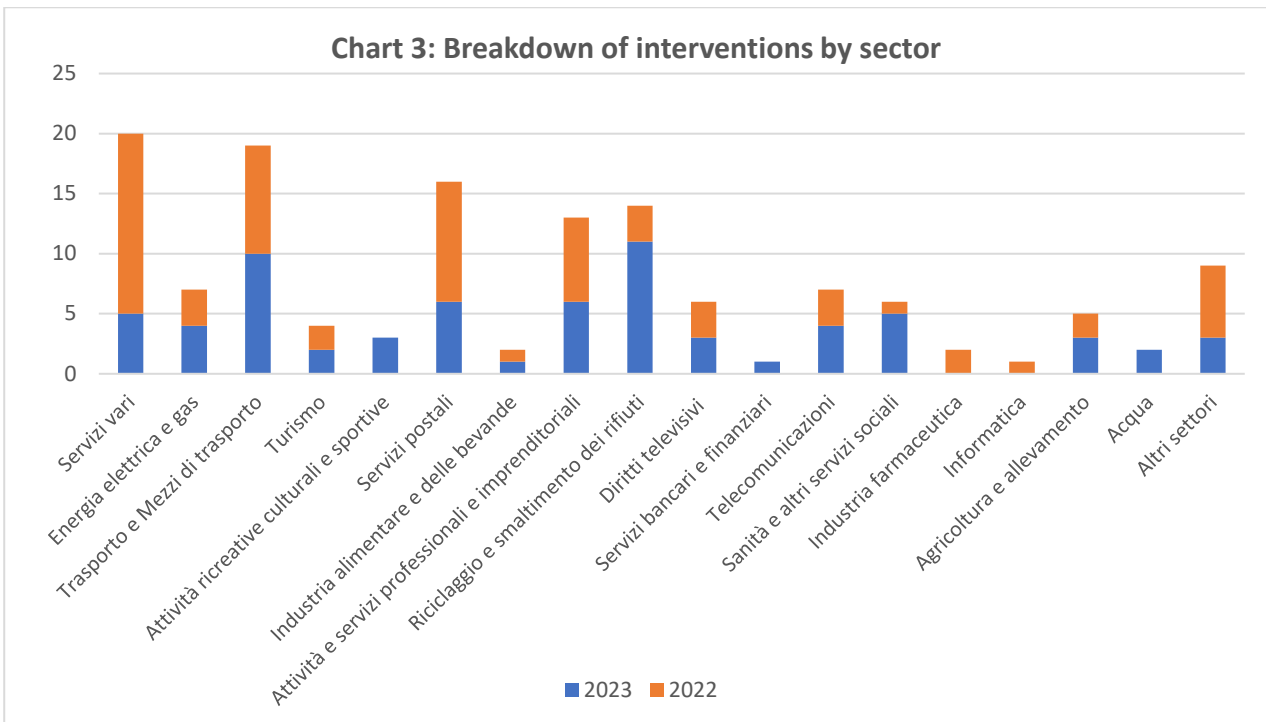
With regard to the **types of acts reported** during the two-year period under review, the advocacy interventions mainly concerned calls for tenders or related drafts (29 cases), municipal administrative acts (22 cases), or were aimed at reporting competition issues (15 cases) (for other types of acts, see [Chart 2](#))<sup>3</sup>.

<sup>3</sup> It should be noted that the same report/opinion may also encompass multiple acts of a different nature.



Source: AGCM calculations on 2022 and 2023 data

**Chart 3** illustrates the breakdown of interventions according to the **sectors involved**:



Source: AGCM calculations on 2022 and 2023 data

With regard to the **recipients**, out of 137 cases, in 45 cases (33%) the advocacy intervention was addressed to the Parliament or to a central administration or body, in 90 cases (66%) to a local administration, and in the remaining 2 cases (1%), the recipients were mixed (both local and central).

Finally, with regard to the **most recurring profiles**, through the 137 interventions overall, the most frequently identified competition concerns relate to restrictions on "limitations to the exercise of business activity" (50 cases), "awards without tender" (37 cases), and "tenders and contracts" (40 cases).

**Overall outcome of advocacy activities (2022-2023)**

In order to consolidate its reliability, the processing of data in this monitoring section referred only to cases where it was possible to assess the outcome, whereas cases considered as "not assessable" were excluded, according to the criterion already introduced for the monitoring relating to the two-year period 2017-2018.

The 8 not-assessable cases were therefore subtracted from the total 137 cases, and the processing of the outcomes referred to 129 interventions, of which 64 in 2022 and 65 in 2023. The success rate for the two-year period was **69%**: this rate was higher in 2022 reaching 73%, while in 2023 it was 65%. This compliance rate is constant compared to the previous Monitoring, covering the years 2021-2022.

*Table 1-A – Total and single-year outcomes (2022-2023)*

OUTCOMES	Total		Cases in 2023		Cases in 2022	
	no. of cases	%	no. of cases	%	no. of cases	%
NEG	40	31%	23	35%	17	27%
P.POS.	15	12%	8	12,5%	7	11%
POS	74	57%	34	52,5%	40	62%
<b>Overall total</b>	<b>129</b>	<b>100%</b>	<b>65</b>	<b>100%</b>	<b>64</b>	<b>100%</b>
Success rate (POS + P.POS.)	<b>89</b>	<b>69%</b>	42	65%	47	73%

*Source: AGCM calculations on 2022 and 2023 data*

Analysing the effectiveness rate of interventions based on the **type of recipient** they were addressed (Table 2), there is greater adherence from central administrations and the legislator ("central recipients") compared to "local recipients": the former achieved a success rate of 77%, while the latter recorded a rate of 66%.

*Table 2 – Total outcomes, broken down by type of recipient*

Recipient	NEG	P.POS.	POS	POS + P.POS	Overall total
Central (43 cases)	23%	16%	61%	77%	100%
Mixed (1 case)	100%	0%	0%	0%	100%
Local (85 cases)	34%	9%	57%	66%	100%
<i>including, in particular*:</i>					
<i>Municipalities (41 cases)</i>	34%	12%	54%	66%	100%
<i>Provinces (5 cases)</i>	40%	20%	40%	60%	100%
<i>Regions (17 cases)</i>	23%	6%	71%	77%	100%
<b>Overall rate</b>	<b>31%</b>	<b>12%</b>	<b>57%</b>	<b>69%</b>	<b>100%</b>

\* only the most recurrent local levels are reported in detail (excluding, for example, Optimal Territorial Areas - ATOs, Chamber of Commerce, even though they are included in the "local" level).

Source: AGCM calculations on 2022 and 2023 data

As for the **level of finality** of the reported act (Table 3), the data clearly shows that the success rate is much higher (88%) when the Authority intervenes on non-definitive acts (e.g. draft calls for tenders, draft decrees, bills) compared to definitive acts (63%).

**Table 3 – Outcome of the interventions, broken down by level of finality of the reported acts**

	NEG	P.POS.	POS	POS + P.POS	Overall total
Final acts (97 cases)	37%	9%	54%	63%	100%
Non-final acts (32 cases)	12%	19%	69%	88%	100%
<b>Overall rate</b>	<b>31%</b>	<b>12%</b>	<b>57%</b>	<b>69%</b>	<b>100%</b>

Source: AGCM calculations on 2022 and 2023 data

## 2. Results broken down by legal basis of intervention instrument

Table 4 illustrates the breakdown of the 129 interventions considered assessable over the two-year period 2022-2023, depending on the legal instrument used:

**Table 4 – Total outcomes, broken down by type of intervention instrument**

Intervention instrument	NEG	P.POS.	POS	POS + P.POS	no. of cases assessed* *	no. of total cases	Overall total
<b>21</b>	48%	21%	31%	<b>52%</b>	29	32	100%
<b>22</b>	26,5%	26,5%	47%	<b>73,5%</b>	34	38	100%
<b>21-bis</b>	36%	0%	64%	<b>64%</b>	28	28	100%
<b>21-bis (TUSPP)</b>	33%	0%	67%	<b>67%</b>	18	18	100%
<b>21-bis TOT</b>	35%	0%	65%	<b>65%</b>	46	46	100%
<b>22 PCM</b>	50%	0%	50%	<b>50%</b>	2	3	100%
<b>Other regulations*</b>	0%	0%	100%	<b>100%</b>	18	18	100%
<b>Overall rate</b>	<b>31%</b>	<b>12%</b>	<b>57%</b>	<b>69%</b>	<b>129</b>	137	<b>100%</b>

\* Interventions pursuant to the Electronic Communications Code; the so-called "Melandri Decree"; Legislative Decree no. 142/2020 on the regulation of professions.

\*\* Number of cases, less interventions classified as "not assessable".

The analyses of data and considerations relating to *advocacy* interventions broken down by legal instrument used by the Authority are set out below.

### 2.1. Outcome of reports adopted pursuant to Art. 21

The overall success rate was **52%** (Table 5) with regard to the 29 reports pursuant to **Art. 21** (10 in 2022 and 19 in 2023), considered assessable.

The success rate of reports varies considerably depending on the type of recipient: in cases where the intervention is addressed to a central administration/institution, it is 25%, whereas

in cases where the recipient is a local administration/institution, the success rate increases to 62%. The monitoring outcomes confirm a lower **success rate for this instrument**, presumably also due to the nature of the acts concerned, usually consisting of final regulatory or administrative acts (see *Tables 3 and 4* above).

**Table 5 – Overall outcomes of reports pursuant to Art. 21, broken down by type of driver and type of recipient**

	NEG	P.POS.	POS	Overall total	POS + P.POS
2022 (10 cases)	40%	40%	20%	100%	60%
2023 (19 cases)	53%	10%	37%	100%	47%
- Central recipient (8)	75%	25%	0%	100%	25%
- Local recipient (21)	38%	19%	43%	100%	62%
<b>Overall rate</b>	<b>48%</b>	<b>21%</b>	<b>31%</b>	<b>100%</b>	<b>52%</b>

Source: AGCM calculations on 2022 and 2023 data

## 2.2. Outcome of opinions pursuant to Art. 22

The 34 opinions considered assessable, issued pursuant to **Art. 22** - of which 21 in 2022 and 13 in 2023 - showed better results with an **overall success rate of 73,5%**.

Table 6 illustrates the outcomes also based on the driver and the administrative level of the recipient.

As it emerged from other monitoring, the data confirms that the success rate of the Authority's interventions is higher in cases where the intervention is requested by the recipient, which then complies in 89% of cases (rising to 93% if we consider only cases where the request comes from a local or mixed administration/institution).

In the case where the driver for the intervention was *ex officio*, on the other hand, the success rate is 56%, remaining at the same level as last monitoring; even in these cases, the success rate is higher when the recipient is a central administration (67%).

The opinions relating to Consip calls for tenders recorded a 100% success rate.

**Table 6 – Outcomes of opinions pursuant to Art. 22, total and broken down by type of driver and type of recipient**

	NEG	P.POS.	POS	Overall total	POS + P.POS
2022 (21 cases)	33%	14%	53%	100%	67%
2023 (13 cases)	15%	46%	39%	100%	85%
<b>Overall rate</b>	<b>26,5%</b>	<b>26,5%</b>	<b>47%</b>	<b>100%</b>	<b>73,5%</b>
<b>Data broken down by driver/administrative level of the recipient</b>					
<b>Asked (18 cases)</b>	<b>11%</b>	<b>28%</b>	<b>61%</b>	100%	<b>89%</b>
By central administrations/institutions (14)	7%	29%	64%	100%	93%

By local or mixed administrations/institutions (4)	25%	25%	50%	100%	75%
of which MEF/CONSIP (4 cases)	0%	25%	75%	100%	100%
<b>Ex officio (16 cases)</b>	<b>44%</b>	<b>25%</b>	<b>31%</b>	100%	<b>56%</b>
To central administrations/institutions (3)	33%	33,5%	33,5%	100%	67%
To local or mixed administrations/institutions (13)	46%	23%	31%	100%	54%

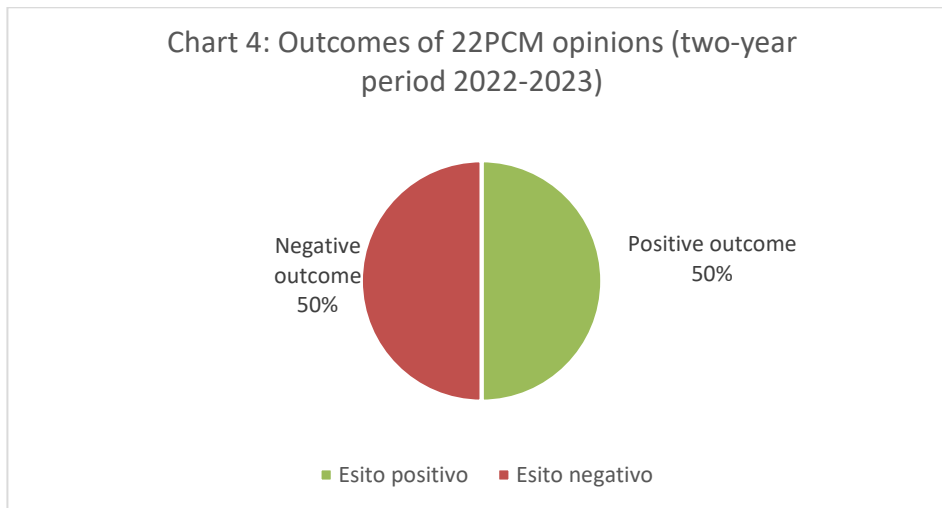
Source: AGCM calculations on 2022 and 2023 data

### 2.3. Outcome of opinions pursuant to Art. 22 to the PCM

With regard to the opinions submitted to the Presidency of the Council of Ministers (**22PCM**) over the period under consideration, the Authority expressed 3 opinions, of which 1 in 2022 and 2 in 2023. Of 3 opinions, 2 were considered "assessable". With regard to the opinions issued, the success rate is measured based on the number of times when the PCM, having received the opinion of the Authority, decided to challenge the regional law before the Constitutional Court, for the profiles covered by the opinion, or the regional law was amended.

In the two-year period under consideration, the PCM challenged regional laws subject to opinions before the Constitutional Court in one out of two cases, achieving a success rate of 50%.

The data for the two-year period confirms the trend that has already been in place for some years, where the number of opinions issued by the Authority to the PCM on the constitutionality of regional laws has decreased.



Source: AGCM calculations on 2022 and 2023 data

### 2.4. Opinions pursuant to Art. 21-bis

There were 46 interventions, carried out pursuant to Art. 21-bis, that received an assessment over the two-year period examined (of which, 18 classified pursuant to Art. 21-bis TUSPP).



It should be noted that the success rate for this instrument is determined by the number of cases where: *i.* the administration followed up on the Authority's requests out of the total number of interventions carried out pursuant to Art. 21-*bis*. More specifically, the following cases are positively assessed: the act was amended following the opinion or in any case the observations expressed by the administrations were deemed suitable to clarify the competitive concerns identified by the Authority which, therefore, did not challenge the reported act before the competent Regional Administrative Court; *ii.* those where the administration complied in the course of the proceedings and the Authority consequently waived the appeal; *iii.* those where the Administrative Court upheld the appeal by the Authority, with a ruling that became final. An in-depth assessment of the instrument can only be carried out fully after the conclusion of the appeals relating to the cases in question.

For these opinions (Table 7), the average overall success rate was 65%. The percentage stands at 64% for interventions pursuant to the “ordinary” Art. 21-*bis*, and at 67% for those pursuant to Art. 21-*bis* TUSPP.

Breaking down the interventions by year, it emerges that the overall success rate of those carried out in 2022 is *higher* (77%) than in 2023 (54%).

**Table 7 – Outcomes of the 2022-2023 reports pursuant to Art. 21-*bis*, broken down by type of intervention and year**

	NEG	POS	Overall total
21- <i>bis</i>	36%	64%	100%
21- <i>bis</i> TUSPP	33%	67%	100%
<b>Total average rate</b>	<b>35%</b>	<b>65%</b>	<b>100%</b>
2022	23%	77%	100%
2023	46%	54%	100%
<b>Total average rate</b>	<b>35%</b>	<b>65%</b>	<b>100%</b>

Source: AGCM calculations on 2022 and 2023 data

### 2.5. Outcome of opinions pursuant to sectoral regulations

Under this item fall a total of 18 interventions, of which, in particular, 9 under art. 3, par. 3 of legislative decree no. 142/2020<sup>4</sup>, 6 under art. 6 of legislative decree no. 9/2008<sup>5</sup> and 3 under art. 64 of legislative decree no. 259/2003<sup>6</sup>.

All cases had a fully positive outcome, with an overall success rate of 100%.

## III. FINAL CONSIDERATIONS

<sup>4</sup> Legislative Decree no. 142 of 16 October 2020 (*Transposing Directive (EU) 2018/958 of the European Parliament and of the Council of 28 June 2018 on a proportionality test before adoption of new regulation of professions*).

<sup>5</sup> Legislative Decree no. 9 of 9 January 2008 (*Regulation on the ownership and marketing of audio-visual sports rights and relative distribution of resources - so-called Melandri Decree*).

<sup>6</sup> Legislative Decree no. 259 of 1 August 2003 (*Electronic Communications Code*).

The data for this monitoring records an overall success rate for **advocacy interventions (69%) which is equivalent to that found in the previous monitoring.**

Regarding instruments, there was confirmation that opinions pursuant to Art. 22 were more effective compared to the reports pursuant to Art. 21 and opinions pursuant to Art. 21-*bis*.

From a systematic perspective, the following aspects deserve consideration regarding the reference two-year period.

The total number of reports and opinions has slightly decreased: from 169 interventions carried out in the 2021-2022 period to 137 in the 2022-2023 period, with a substantial equivalence between the two years: 68 in 2022 and 69 in 2023.

As in the previous monitoring, regarding the most frequently identified types of restrictions, cases relating to awards, both with and without tenders, predominated. Considering the administrative level of the recipients, the cases mainly involved local administrations (particularly municipalities).

Furthermore, the submission in 2022 and 2023 of the report "*Proposals for competitive reform for the purposes of the annual law for the market and competition*" (respectively, AS1824 and AS1893) to the Government, may have had a "deflationary" effect on the number of interventions that were addressed to the legislature or the central administration (24 in 2022 and 21 in 2023) over the two-year period. The submission of a framework report to the legislature, as a rule, absorbs individual interventions that, otherwise, would have been undertaken separately on specific issues.

The monitoring of advocacy interventions provides an assessment on the level of efficiency and effectiveness achieved by the work done, in line with the best practices found among the national Authorities of the *European Competition Network*.

**Annex A** – List of 2022 interventions considered, with the related outcomes

**Annex B** – List of 2023 interventions considered, with the related outcomes