

CHAPTER IV

The Authority's organisation and relations with the institutions

4.1 The new organisational framework aimed at efficiency

The Authority's new organisation

In the last year, the Authority has completed the course for the review and renewal of its organizational structure, in order to adapt it to the profound changes of the markets of its competence and to the changing institutional context. Since 15 January 2015, in fact, the new organisation of the Authority's first level structures (Directorates and Services) and second level structures (offices) has been operative, approved unanimously by the Board with resolution no. 534/14/CONS on the "New organization of the Authority's offices" and subsequently implemented by resolution no. 628/14/CONS for the identification of the second level offices. The redefinition of the new internal organisation, expressed in the "Authority's organization and functioning rules" pursuant to resolution no. 569/14/CONS, required an in-depth analysis of the Authority's organization.

In terms of the management and development of internal resources, the reorganization has produced significant changes, such as a necessary generational change, aimed at recognizing the increased professional skills and competence of the staff, and the exploitation of the qualified contribution of managers with high experience, through coordination and supervisory tasks. At the same time, the need to ensure gender equality also for senior levels was taken into account, resulting in almost double the number of women in top-level management positions (5 of 13 directors).

With regard to the reported requests for adaptation of the organizational structure to the challenges of the new technology and market scenarios, the actions undertaken have introduced an more specialized organisational structure. This has led to a small increase, compared to the previous structure, in the number of first level organizational units (from 10 to 13 units), more than offset by a greater reduction in the second level departments (from 32 to 23 units). Offsetting the greater specialization, *ratione materiae*, the reorganization has strengthened the coordination functions assigned to the General Secretariat, also through closer and continuous cooperation of the two Deputy Secretaries with the Secretary-General.

As a whole, the design of the Authority's new structure, described below, is therefore preordained to achieve certain basic objectives, such as increased capacity of effectiveness of the initiatives promoted by the Authority in the areas of competence and more efficient work process, greater cooperation between the departments, as well as necessary and significant containment of operating costs in a context of severe economic crisis and the spending review of all public institutions. In defining these objectives, the Authority also took into account the aims pursued by the Italian decree law of 24 June 2014, converted into law no. 114/2014, which regards both the organization and the personnel of independent authorities, as illustrated more fully on the following pages.

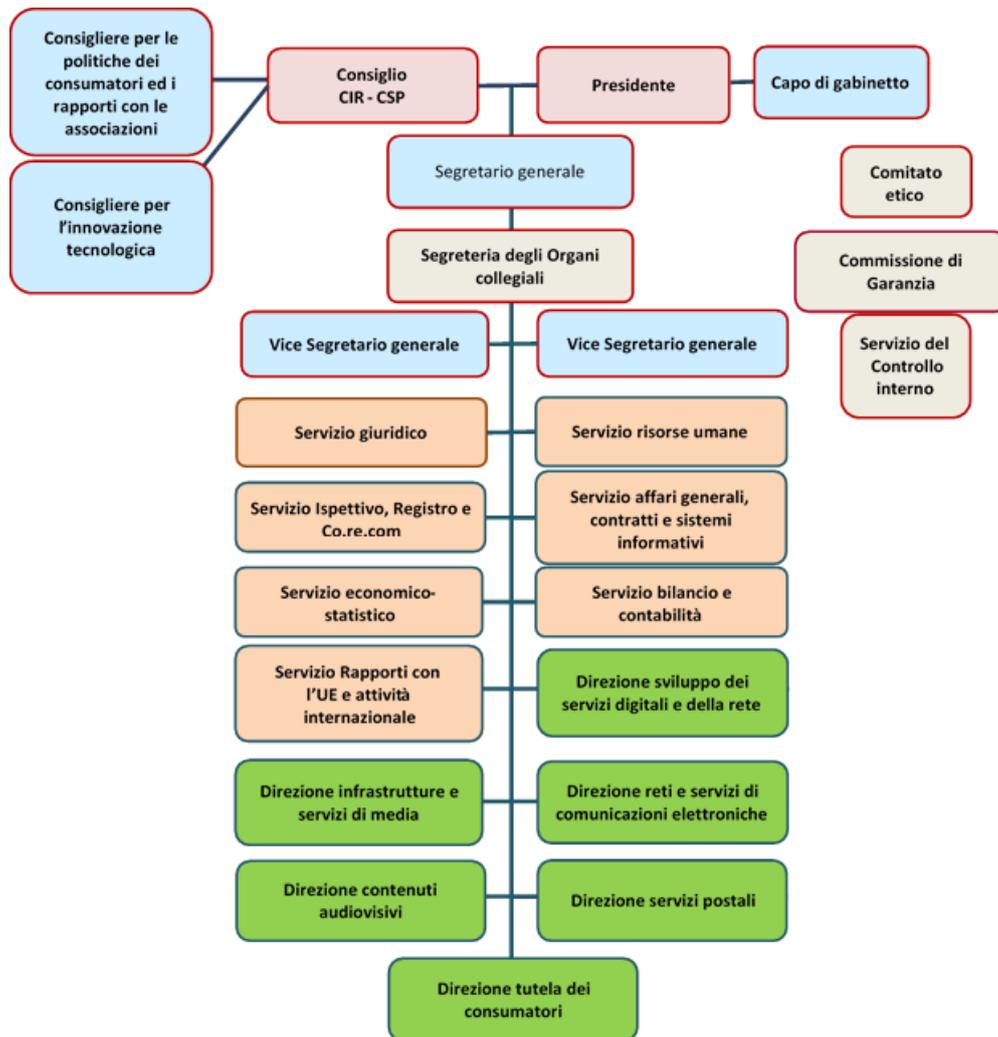


Figure 4.1.1 - The Authority's organisation chart

Human resources

The personnel policy that has characterized the Authority's activities during the period of reference was aimed at introducing highly qualified human resources into its workforce. The purpose was to be able to exercise its institutional functions according to the important role recognised to the Authority by the law by which it was established, as well according to European standards.

In particular, in order to continue the process aimed at progressively filling the staff positions according to the Authority's plan (pursuant to resolution no. 315/07/CONS and modified, in terms of the number of qualified employees, by resolution no. 374/11/CONS) and at the same time proceeding with the rationalization of the management of human resources, the reduction of temporary personnel within the administration and the simultaneous development of the human capital already present within the Authority (which has gained a high degree of experience in the relevant areas of competence), it was decided, in June 2014, to adopt an overall operational plan for staff recruitment (see resolution no. 310/14/CONS).

In order to respond adequately to the above requirements, the Authority followed three paths: i) recruitment of already qualified available personnel; ii) transforming temporary employment contracts into permanent contracts; iii) recruitment through voluntary redundancy from other public administrations. In particular, with regard to recruitment of already qualified personnel, the persons in question are those who have already taken competitive examinations for positions in administrative, technical, economic, sociological and legal positions, with the introduction of 26 permanent officials for the various areas of expertise and administration (see resolutions no. 311/14/CONS, no. 312/14/CONS, no. 313/14/CONS, no. 314/14/CONS and no. 530/14/CONS).

According to the same logic, which aims to prevent the dispersion of professional skill and expertise (with years of experience within the administration) and, therefore, in order to guarantee a skilled workforce, the Authority intends to apply policies aimed at overcoming the proliferation of temporary workers in public administrations. For this purpose, in order to stabilise the so-called precarious personnel, a special procedure has been introduced for special transitory recruitment (in accordance with art. 4, paragraph 6 of decree law 101/2013). In this way, 6 people who were already on the Authority's staff as temporary workers have become permanent (see resolution no. 432/14/CONS).

In line with the objective of ensuring the efficient execution of the administrative activity and to avoid depriving the Authority of the professional skill and expertise of resources from other administrations (who already had acquired considerable experience within the Authority's structures in positions of leadership or as external workers) a redundancy procedure was launched which led to the transfer of 6 employees to the Authority's staff.

To attract to regulatory work young people already with consolidated basic experience in legal, economic, sociological or technical areas regarding the communications sector, in the year of reference a competitive selection procedure was organised (see resolution no. 153/14/CONS) to give young graduates in various disciplines of interest of the Authority practical training lasting one year within the sphere of its organizational structure. As a result of the selection procedure, 25 young people were positively assessed (see resolution no. 657/14/CONS) and were assigned to various operational departments, starting their one-year training period in February 2015.

The Authority's staffing plan, as defined in resolution no. 350/07/CONS, adopted pursuant to art. 1, paragraph 543, of law no. 296 of 27 December 2006, contemplates a total workforce of 419 persons and the remodelling of the organic texture according to qualification pursuant to resolution no. 374/11/CONS (Figure 4.1.2).

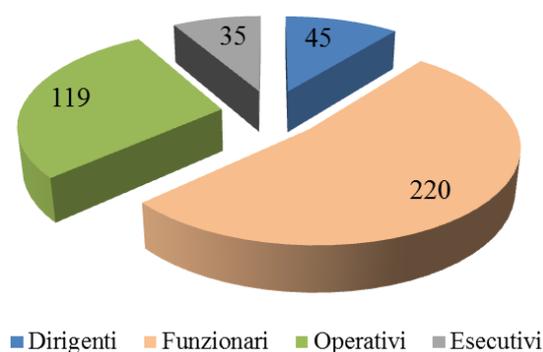


Figure 4.1.2 - The Authority's staffing plan

Based on the recent recruitments - which took place between the end of 2014 and the beginning of 2015 - the staff in service at 10 April 2015 including those selected pursuant to the above-mentioned competitive procedure, amounted to 372 persons.

The organisation of the personnel in service, divided according to the diverse positions and taking into account the different types of contract (permanent, temporary, trainee, on transfer), as well as the provisions of art. 1, paragraphs 18 and 19 of Italian law no. 249/97 and the subsequent provisions of art. 3, paragraph 67 of Italian law no. 350/2003, is shown in the table below (see Table 4.1.1).

Table 4.1.1 - Personnel in service at 10 April 2015

	Permanent	On transfer	Temporary or trainee	Total
Managers	34	3	1	38
Officials	173		27	200
Operators	90		15	105
Executives	29			29
Total	326	3	43	372

Protection and safety in the workplace, safety training

Within the sphere of the policies for protection and safety in the workplace, the activities foreseen by the relative legislation were carried out in the year of reference. In particular, periodic meetings were held with all those involved in the Prevention and Protection Service. In addition, periodic inspections of the premises were carried out, and the Risk Assessment Documents were also updated. At the same time, adaptation measures were planned, to ensure the safety levels required by law and include the Prevention and Protection Service in the Organisational Chart; emergency plans were drafted with the fire-fighting and first aid teams, and the obligatory evacuation drills were practised.

The training activities required by the legislation on safety were updated, and specific activities were organised to provide for the relative instruction to be given to the employees. At the same time, targeted courses were organized for the fire-fighters, for the first aid team and for supervisors. Lastly, specific attention was paid to staff health surveillance, with the constant monitoring of employees in relation to the risks specific to video terminals.

Staff training

Specific staff training initiatives have been taken, in view of the new duties assigned to the Authority in the regulated sectors, and in consideration of the need to allow employees to update their knowledge of regulatory matters, and their language skills. In fact, the Authority considers it necessary to constantly update the staff in service on legislative innovations (national and European) in the fields of competence, as well as on the best regulatory practices adopted in other countries, in and outside the European Union.

With this in view, several officials from various organizational structures were allowed to participate in training activities, also at international level, on regulatory issues held at the most prestigious Italian universities. Certain official also participated in training in investigation techniques in the field of computerised inspections.

In order to allow employees working in the areas of procurement and public contracts to increase their expertise in the field of public contracts, they have been offered the opportunity of studying the legal-economic sector by special training courses. Targeted training has also been provided to allow the staff to be constantly updated in the field of computer applications.

In addition, taking into account the Administration's need to participate in international projects in partnership with other countries, and to develop a more intense communications, collaboration and cooperation with the corresponding authorities of other countries and for constant dialogue with the structures of the European Commission and BEREC, a number of training courses have been organised for the study of language skills (English and French), in collaboration with some of the leading educational institutions in the field of languages.

Lastly, to ensure the training and updating of employees without expenditure, in-house seminars have been organised on law and economics (computerised inspections, regulation and competition, consumer protection, public consultations, etc.). The Authority is also one of the public administrations included, in the field of training, subject to national monitoring on the training carried out by the National School of Administration (NSA).

Targets achieved or in progress

During the reporting period, as already mentioned, all the procedures to ensure the permanent employment of the personnel concerned by the various procedures (competitive selection, stabilisation, voluntary redundancy) were carried out. At the same time, the trainees were selected by a competitive procedure in which a considerable number of young candidates (351) participated, most of which presented high profile curricula.

In order to streamline activities and the operational framework concerning the management of human resources, process of reorganization, digitization and outsourcing of the management of the personnel files was launched. The work in this field is being performed with the aid of a special work group composed of staff belonging to various offices.

This action answers the need to free space within the premises which house the Authority's offices, to increase comfort and fire safety, and to improve and render more efficient archive management in order to raise standards of quality and efficiency in the administrative action.

In application of the general guidelines relative to the spending review and in compliance with recently introduced legislation on the reduction of costs of independent administrations (pursuant to art. 22, paragraph 5, of the decree law of 24 June 2014, converted into law no. 114/2014), the accessory part of the salaries of employees of the various levels, including managers, has been considerably reduced (see resolution no. 566/14/CONS).

Regarding the recruitment policies, the Authority signed the Framework Agreement on competitive procedures, (see art. 22 - entitled "Rationalization of independent authorities" - paragraph 4 of decree law no. 90 of 24 June 2014 converted with amendments by law no. 114 of 11 August 2014), which contemplates a single management for the selection procedures for the recruitment of staff for the independent administrations, after concluding special agreements with the said bodies to ensure the transparency and impartiality of the procedures and the specific nature of the professional skills of each body.

Also in application of the above-mentioned legislation, according to which the said administrations must have a single management for the services used (for at least three of the following services: general business, financial services and accounting, purchasing and procurement, personnel administration, asset management), the Authority entered into a special agreement for the joint management of the instrumental services, signed together with the electricity, gas and water board (AEEGSI - *Autorità per l'energia, il gas e il sistema idrico*) and with the Personal Data Protection Authority.

The primary objective is to achieve significant cost savings through the rationalization and streamlining of administrative activities. To this regard, the Authority has set itself the goal of identifying common solutions for more effective service management, improved efficiency and quality and savings in expenditure. To this end, the administrations adhering to the Agreement have launched intensive cooperation concerning, among other things, the exchange of information and studies to identify other synergies, also within the sphere of joint projects, relative to all the following instrumental services: general business, financial services and accounting, purchasing and procurement, personnel administration, asset management, technical and logistical services, information systems and information technology. In practice, and jointly with all the above authorities, it was decided to carry out the management of the "general affairs", "purchases and contracts" and "personnel administration" departments. Moreover, in collaboration only with AEEGSI, joint management has also been adopted for "financial services and accounting".

More specifically, it was decided to proceed with the joint management of several work processes in the various operational areas listed below: a) the sharing of methods, practices, technologies, documentation and information, and to conduct studies and research on issues of common interest to activate services and supplies of common interest; b) the analysis, planning and identification of shared solutions for common needs aimed, at times and when necessary, to offset the possible shortage of internal resources, to standardize procedures for the execution of specific activities and to rationalise service management activities; c) the

acquisition of goods and services of common interest through jointly managed tender procedures; d) the organization of training and updating in respect of regulatory changes, law or techniques in order to improve the effectiveness and quality of the services; e) the identification of additional synergies in shared projects aimed at reducing the management costs of the instrumental services that are not managed jointly.

In order to ensure the correct implementation of the above mentioned Agreement, a Coordination Committee has been set up precisely to guarantee the necessary liaison between the different undersigning bodies in the application of the prescriptions contained in the said act. At the same time, various Joint Committees for management have also been set up, to enable the effective implementation of the provisions of the Agreement.

The Ethics Committee and the control system

The code of ethics has been adopted by the Authority, in accordance with art. 1, section 9 of law no. 249 of 31 July 1997, in order to provide clear rules on loyalty, impartiality, diligence, correct personal behaviour, ethical standards and rules of conduct for its departments and employees. In fact, the Authority has set up a special ethics committee, the members of which are well known for their independence and moral authority, in order to ensure correct enforcement of the code and to take advantage of authoritative opinions on the subject of institutional ethics. At present the Ethics Committee is chaired by Riccardo Chieppa and the other two members are the chairman Angelo Gargani and the chairman Egidio Schinaia.

The Authority also has a Guarantee Commission and an Internal Control Service, responsible, according to the provisions of the regulations on the Authority's organization and the administrative and accounting management, for monitoring the correctness of, respectively, the administrative and accounting activities and the strategic control activities.

The Guarantee Commission supervises to ensure that the administrative structure complies with the provisions of the laws and regulations in force, checking on financial management and contracting procedures, and performing quarterly audits on cash and budgets. The Commission expresses its opinion on the draft financial statement and on the annual report in a specific report of its own and pays special attention to verifying the consistency of the entries in the accounting records with the annual report, and also ensures the regularity of the management procedures. In its activities, although with the full cooperation of the Authority's departments, it is completely independent. The Commission, chaired until 19 November 2014 by the Honorary President of the Court of Auditors, Fulvio Balsamo, is now chaired by Francesco Caringella, a member of the Council of State, and it is composed of the Councillor Maria Annunziata Rucireta and Dr. Gianluca Battaglia.

The Internal Control Service, on the basis of an assessment carried out by comparative cost and performance methods, checks on the achievement of the targets set by law, regulations and the Authority's directives, taking into consideration the correct and economic management public resources. It provides support to the Authority's Corporate bodies, Directorates, Services and Offices on performance planning, measurement, monitoring and assessment. Recently the Internal Audit Control Service (see resolution no. 161/15/CONS)

has also been assigned the task, precisely of independent bodies, to assess the performance, promotion and certification of the obligations of transparency and integrity, in order to align its functions to the changes in legislation and the provisions of the National Anti-Corruption Authority, promoting the effectiveness of the Authority's internal controls system.

The Service, currently composed of Prof. Giovanni Valotti, Councillor Giuseppe Troccoli and Prof. Gianluca Vagnani, carries out its activity with full independence, although with the collaboration of the Authority's offices.

4.2 The instrumental and auxiliary bodies

The Co.Re.Com. and the decentralized communications system

In 2014 the process of reviewing the 2008 Framework Agreement between the Authority, the Conference of Regions and Autonomous Provinces and the Conference of Presidents of the Legislative Assemblies of the Regions and Autonomous Provinces was started, with the establishment of a work group to check with the Authority's internal departments any application problems and the future development of delegation agreements.

In 2014 the Regional Communications Committees (Co.Re.Com.) in 2014, carried out a large quantity of work, also in execution of the delegated functions, and represent a virtuous example of the efficiency of the decentralized communications system. 16³⁷ Co.Re.Com. out of 21 are delegated to perform all the functions contemplated by the 2008 Framework Agreement and 5³⁸ have expressed their intention of aligning with the system of delegations in 2015; including that of Sicily which has already formally applied for adhesion.



Figure 4.2.1 - Map of the Co.Re. Com.

The table below gives information on the Co.Re.Com. that have been formed.

³⁷Abruzzo, Basilicata, Bolzano, Calabria, Emilia Romagna, Friuli Venezia Giulia, Lazio, Liguria, Lombardy, Marche, Molise, Piedmont, Apulia, Tuscany, Trento, Umbria.

³⁸Campania, Sardinia, Sicily, Veneto and Aosta Valley.

Table 4.2.1 - The Co.Re.Com: constituting law, chairpersons, delegations and institutional sites

	Chairperson	Constituting law	Phase I delegated functions (starting date)	Phase II delegated functions	Institutional site
Abruzzo	Filippo Lucci	Regional law no. 45 of 24 August 2001	1 October 2006	1 May 2011	www.corecomabruzzo.it
Basilicata	Giuditta Lamorte	Regional law no. 20 of 27 March 2000	1 January 2004	1 January 2012	www.consiglio.basilicata.it/consigionew/site/consiglio/section.jsp?sec=101865
Bolzano – Autonomo us Province	Roland Turk	Provincial law no. 6 of 18 March 2002	1 March 2008	1 January 2012	www.consiglio-bz.org/comitatocomunicazioni/
Calabria	Alessandro Manganaro	Regional law no. 2 of 22 January 2001 and successive amendments	1 July 2004	1 January 2010	http://corecom.consrc.it/hp2/default.asp
Campania	Lino Zaccaria	Regional law no. 9 of 1 July 2002 and successive amendments	1 January 2010		www.consiglio.regione.campania.it/corecom/jsp/
Emilia Romagna	Giovanna Cosenza	Regional law no. 1 of 30 January 2001 and successive amendments	1 March 2004	1 October 2009	www.assemblea.emr.it/corecom
Friuli Venezia Giulia	Giovanni Marzini	Regional law no. 1 of 10 April 2001	1 February 2004	1 October 2009	www.corecomfvg.it
Lazio	Michele Petrucci	Regional law no. 19 of 03 August 2001	1 January 2004	1 January 2010	www.corecomlazio.it
Liguria	Alberto Maria Benedetti	Regional law no. 5 of 24 January 2001	1 March 2004	1 July 2014	www.regione.liguria.it/argomenti/consiglio/corecom/cose-il-corecom.html
Lombardy	Federica Zanella	Regional law no. 20 of 28 October 2003	1 May 2005	1 January 2010	www.corecomlombardia.it
Marches	Pietro Colonnella	Regional law no. 8 of 27 March 2001	1 September 2004	1 July 2013	www.corecom.marche.it
Molise		Regional law no. 18 of 26 August 2002	1 January 2010	1 January 2012	www.corecommolise.it
Piedmont	Bruno Geraci	Regional law no. 1 of 07 January 2001	1 July 2004	1 October 2012	www.cr.piemonte.it/cms/organismi/corecom.html
Apulia	Felice Blasi	Regional law no. 3 of 28 February 2000	1 January 2007	1 October 2009	http://corecom.consiglio.puglia.it/
Sardinia	Mario Cabasino	Regional law no. 11 of 28 July 2008 and successive amendments	1 July 2013		www.consregсарdegna.it/corecom/
Sicily	Ciro Di Vuolo	Regional law no. 2 of 26 March 2002 and successive amendments	1 January 2012		http://corecom.ars.sicilia.it/ https://pti.regione.sicilia.it/portal/page/portal/PIR_PORTALE/PIR_LaStrutturaRegionale/PIR_PresidenzaellaRegione/PIR_SegreteriaGenerale/PIR_Area1/PIR_UOCOReCom
Tuscany	Sandro Vannini	Regional law no. 22 of 25 June 2002	1 February 2004	1 January 2010	www.consiglio.regione.toscana.it/oi/default.aspx?idc=46&nome=CORECOM
Trento – Autonomo us Province	Carlo Buzzi	Provincial law no. 19 of 16 December 2005	1 April 2007	1 January 2010	http://www.consiglio.provincia.tn.it/istituzione/comitato-per-le-comunicazioni/
Umbria	Gabriella Mecucci	Regional law no. 3 of 11 January 2000	1 March 2004	1 January 2010	www.corecom.umbria.it

	Chairperson	Constituting law	Phase I delegated functions (starting date)	Phase II delegated functions	Institutional site
Aosta Valley	Enrica Ferri	Regional law no. 26 of 04 September 2001	1 January 2004		www.corecomvda.it
Veneto	Alberto Cartia	Regional law no. 18 of 10 August 2001	1 February 2005		http://corecom.consiglioveneto.it/corecom/

The increasingly active role of the National Coordination of the Co.Re.Com. has favoured the convergence towards the common goal, through the establishment of work groups both to solve problems in a standardised manner throughout the country, and in the activity of exchanging and sharing of valuable experiences and practices. Noteworthy results have been obtained with the opinions of the Regional Courts of Auditors on the use of the Authority's contribution, from which the restrictions of the regional budget have now been removed.

In the activity that has been carried out in execution of delegated functions, the results can be divided into three main areas of work, i.e. disputes, audiovisual supervision and the COR.

The Co.Re.Com. received and processed 86,670 conciliation requests and 10,786 requests for temporary measures; these data confirm the increased use of the mediation procedure according to trend that has now become established. 52,314 agreements were concluded between users and operators, for a value of about Euro 21 million, and 5,198 requests for the definition of disputes were received, of which 3,362 were closed or defined by a Co.Re.Com. order, for a value of more than Euro 1 million.

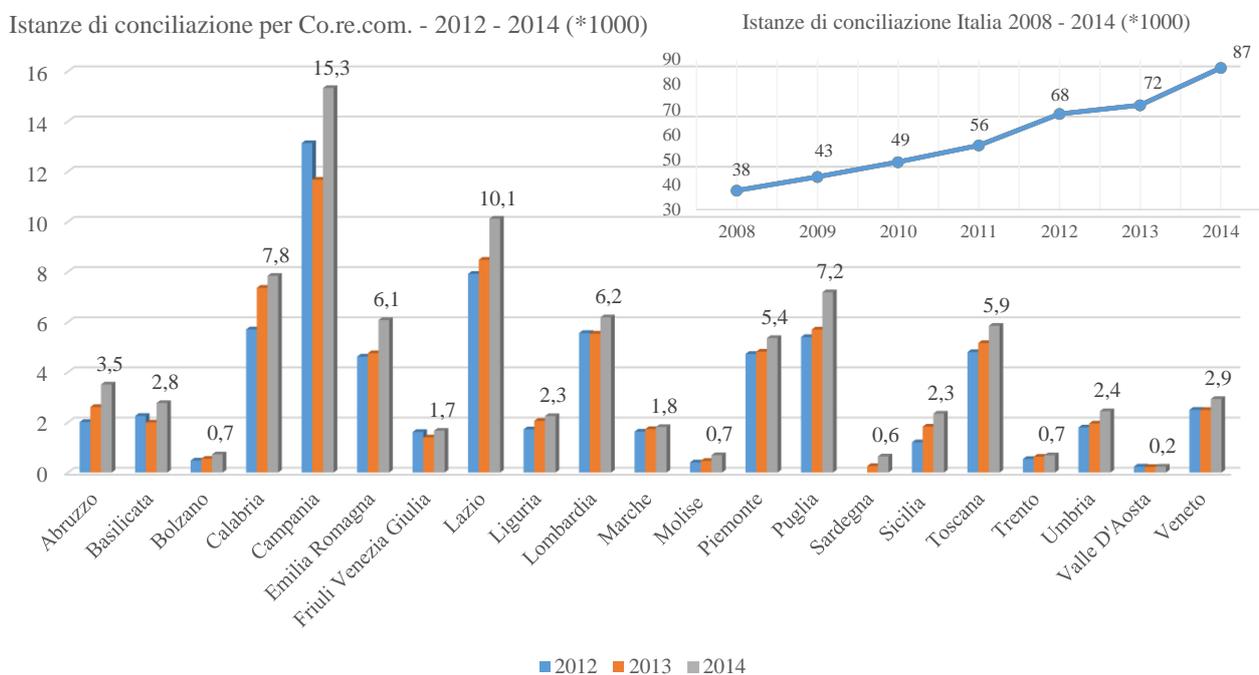


Figure 4.2.2 - Applications for Co.Re.Com. conciliation

These results confirm and support the deflationary effect of alternative methods of settling legal disputes, also in view of the increasing number of positive agreements that characterizes Co.Re.Com activities.

Rapporto percentuale tra esito positivo e negativo dal 2012 al 2014

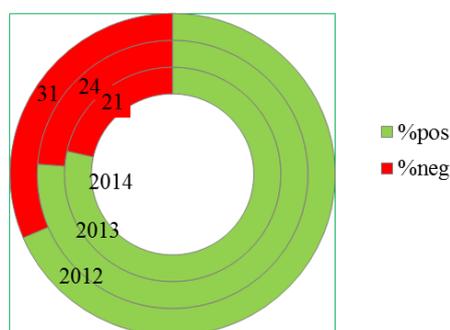


Figure 4.2.3 - The deflationary effect of methods other than court action (years 2012-2014)

The exchange of views and the interpretations of the legislation were lively and productive, especially with regard to the applicability of administrative costs and the discussion of case involving bankrupt operators. Within the sphere of the monitoring of compliance with audiovisual provisions, 186 local broadcasters were checked and 104 sanction procedures were opened, most of which, specifically 67, regarded advertising (an important source of revenue for local broadcasting) whereas only 5 were for breach of the legislation to protect minors, confirming the downward trend over the years in violations compared to the number of enterprises controlled and thus the deterrent effect of the delegated function.

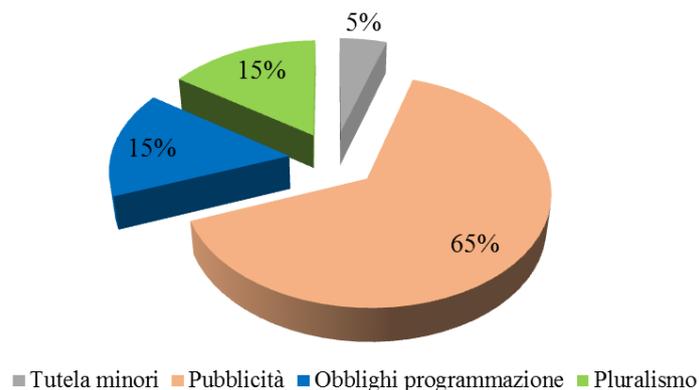


Figure 4.2.4 - Sanction procedures opened per macro area monitored

There were relatively few applications to exercise the right of correction, and the cases of breach of the law on the publication of surveys were also marginal.

The activity relative to the local management of the Register has resulted in improved relations with operators who are strongly in favour of local services and have responded positively to the request to participate in updating the EIS as well as the COR, an activity started last year.

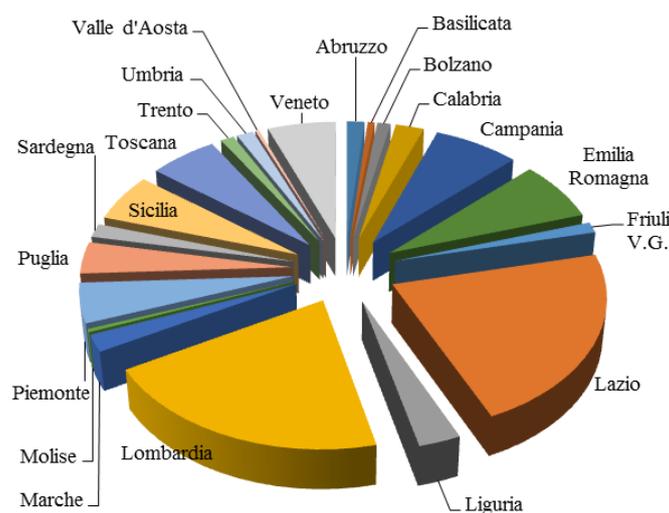


Figure 4.2.5 - Breakdown of operators on the COR by Region (%)

Information on studies, research and the in-depth examination of the issues of competence, and on the initiatives to promote media quality and improvement in the relationship of citizens, including children, with the media, can be found at the institutional websites of the individual Regional Committees, indicated in the above table.

The National Council of Users

The National Council of Users (CNU), a collegiate body constituted pursuant to law no. 249 of 31 July 1997 within the Authority, has the task of protecting the rights of citizens involved in the communication process, with special attention paid to defending the rights and needs of minors and of presenting proposals and opinions on issues regarding the protection of users' rights, to the Authority, Parliament, the Government and the public and private bodies in the audiovisual sector.

The Authority's Regulation assigns to the CNU the duty of stimulating activities in defence of pluralism and human dignity in the communication system, based on the constitutional principles of freedom and the right to information and communication and the Community principles on the protection of consumers and users. The eleven members are chosen by the Authority's Board from the experts designated by the associations representing users and those involved in the protecting of the rights of children and the disabled, who are particularly qualified in the fields of law, sociology, psychology, educational pedagogy and mass-media, in order to satisfactorily express the pluralism of the associations and of civil society.

The intense activity carried out by the CNU in the period of reference was marked by initiatives of moral suasion and by motivated draft laws, for the purpose of protecting users, especially younger users and those of the weaker sections of society, deemed more vulnerable in the use mass communications media.

On several occasions the CNU has intervened on issues related to a safer use of the Internet and it is engaged, in particular, on the protection of minors in terms of contrasting the phenomenon of pornography and child pornography. In order to intervene effectively on the phenomenon of cyber bullying, it promoted and followed a project to create an effective synergy between various institutions and associations in order to

achieve real prevention and an incisive control of the phenomenon. The CNU has continued its work of spreading the charter of rights of the disabled in communications and of overcoming communication barriers, and it has carried forward the initiatives promoted within the permanent board for confrontation with the associations of people with disabilities.

The CNU has ascertained that the phenomenon of gambling is becoming more and more invasive especially among the weaker sections of the population, namely adolescents, with distorting effects on their behaviour. It therefore promoted an activity aimed approving the bill which bans gambling advertising in the protected areas and time brackets. A further proposal concerned the establishment of a regulatory system more suitable for ensuring the protection of minors in the audiovisual sector than the current system based on ex ante control carried out by the Film Review Boards. Particular attention was given to examining the issues relating to the programme schedule of public service broadcasting with particular regard for the protection of minors.

4.3 Legal protection at national levels

In the period between May 2014 and April 2015 certain important decisions were taken by the administrative courts, by which the case law opinions of relevance to the Authority's activities have been taken note. The law which established the Authority (no. 249 of 31 July 1997) sanctions the exclusive jurisdiction of the administrative court, due to the high degree of specialization that characterizes such jurisdiction. In particular, in the first instance jurisdiction is attributed to the Regional Administrative Court (TAR) of Lazio, while appeals against this latter's decisions fall under the jurisdiction of the Council of State.

Among others, art. 14 of the Administrative Procedure Code (APC) regards this point. The said article, together with the general hypothesis of the mandatory local jurisdiction of the administrative courts pursuant to the preceding art. 13 APC, indicates the cases which fall under the mandatory jurisdiction of the said court and refers the investigation and decision of the disputes listed under art. 135 APC to the Rome section of the Lazio TAR. These cases include those concerning the measures adopted by the Communications Authority (art. 135, paragraph 1, letter b), APC).

The following paragraphs give a brief description of the principles of law recently developed by administrative case law regarding the matters of the Authority's institutional competence. The Authority's regulatory activity is strongly influenced by the indications of national case law, and in particular by the opinion of the administrative courts relative to the decisions taken. The results of the activity performed by the Authority in its various areas of competence are reported below.

Table 4.3.1 - Activities concerning disputes

Esiti attività contenziosa*	2014/15
TAR	
AUDIOVISIVO	24
<i>meriti favorevoli</i>	20
<i>meriti sfavorevoli</i>	4
TELECOMUNICAZIONI	15
<i>meriti favorevoli</i>	9
<i>meriti sfavorevoli</i>	6
PERSONALE	15
<i>meriti favorevoli</i>	4
<i>meriti sfavorevoli</i>	11
ORGANIZZAZIONE E FUNZIONAMENTO	3
<i>meriti favorevoli</i>	3
<i>meriti sfavorevoli</i>	0
PAR CONDICIO	2
<i>meriti favorevoli</i>	0
<i>meriti sfavorevoli</i>	2
CONSIGLIO DI STATO	
AUDIOVISIVO	4
<i>meriti favorevoli</i>	2
<i>meriti sfavorevoli</i>	2
TELECOMUNICAZIONI	5
<i>meriti favorevoli</i>	4
<i>meriti sfavorevoli</i>	1
PERSONALE	8
<i>meriti favorevoli</i>	6
<i>meriti sfavorevoli</i>	2
ORGANIZZAZIONE E FUNZIONAMENTO	6
<i>meriti favorevoli</i>	0
<i>meriti sfavorevoli</i>	6

*2 cases regarding anti-union behaviour were decided by the ordinary courts (1 favourable and 1 unfavourable), and one case on pensions was brought before the Court of Accounts which pronounced a favourable judgement.

In the electronic communications sector there were, in particular, issues concerning the user protection and the universal service. With regard to user protection, the Lazio TAR limited the subjective scope of the application of the rules on the supply of the user migration code (see resolutions no. 23/09/CIR and no. 52/09/CIR) to fixed-line operators (i.e. telephone operators) therefore excluding mere traffic retailers and the so-called Internet service providers (ISP) (Lazio TAR no. 4574 of 25 March 2015). The Lazio TAR, differing from a previous opinion (see Lazio TAR no. 10264/12, confirmed by Council of State decision no. 2224/13), with judgement no. 5215 of 19 May 2014, stated that resolution no. 326/10/CONS merely imposes transparency in the indication of the roaming prices of SMS services (for which the Authority supervises pursuant to the powers conferred on the same by law) without imposing any tariff cap.

With regard to the universal service, the Lazio TAR, with judgement no. 4926 of 13 May 2014, confirmed - as of 2004 - the extension to mobile operators of the charges relative to the functioning of the universal service on the basis of the level of competition between fixed and mobile telephony.

Lastly, the Lazio TAR, in judgements no. 1186 and no. 1187 of 22 January 2015, stated that the retroactive application of the new method of calculating the net cost of the universal service introduced by resolution no. 1/08/CIR does not ensure compliance with the principle of cost efficiency in the provision of the universal service. This is because the operator, at the time of providing the service, was not aware of the method for calculating the net cost of the service and, if the said operator had known of the new method in advance, it might well have been to make different choices in its provision of the universal service.

With judgements no. 2772, no. 2775 and no. 2769 of 18 February 2015, and no. 3916 of 9 March 2015, the Lazio TAR rejected the appeals of Telecom, Fastweb and BT against resolution no. 746/13/CONS and of Telecom and Fastweb against resolution no. 747/13/CONS, bearing the reference offers for respectively bitstream services and unbundled access services. In these cases, the court of the first instance found the method chosen by the Authority for the calculation of cost of capital (the so-called WACC) reasonable, taking due account the financial crisis from which the country was suffering in 2012, and the other components that contribute to determining the monthly fee of local loop unbundling. The TAR also rejected the lack of inquiries and the disputed conflict with Community law, pointing out that the procedure followed by the Authority in the adoption of the disputed measures had respected the *"needs of the participation of all operators and had not made the alleged "logical leaps" [...] and justified the changes introduced also in the light of criticisms of the European Commission"*. Lastly, the TAR agreed that the Authority was free to depart from the recommendation of the European Commission adopted under the former art. 7-bis on the basis of the pertinent justifications adopted.

In the field of audiovisual media services the most significant legal action concerned the commercial breaks, reporting rights, the protection of pluralism, frequencies, the Economic Reporting System, concession fees and copyright. With judgement no. 1210 of 22 January 2015 the Lazio TAR - after noting that films are normally transmitted as single units, without significant interruptions other than a usual break between the first and second halves - declared that the inclusion of two very short information programmes in the half-time break of a feature film is an "artificial interval" in addition to and different from the actual break of the film broadcast, created by the broadcaster in breach of art. 37 of legislative decree no. 177/2005. With the said decision, the Lazio TAR has also confirmed the so-called "gross principle" (of Community origin and also stated in art. 35, para. 7 of legislative decree no. 177/2005), according to which the "scheduled duration" of a given transmission is the time between the start of the opening theme and the end of the ending theme of the program, gross (in fact) of the advertising inserted.

With judgement no. 2156 of 27 April 2015, the Council of State, in confirming the decision of the Lazio TAR (judgement no. 7860/2014), stated that the transmission of football match images, exploited commercially, in the course of sports discussion programmes - even if placed in the background of the studio and interspersed with shots of the guests - represents the activity of "competition in the economic use of the work" and, consequently the broadcaster cannot invoke art. 70 of law no. 633/1941, which provides for the free transmission of such images for the purpose of criticism or discussion.

The Lazio TAR, with the judgements no. 9981 and no. 9982 of 25 September 2014, ruled on the legality of

the procedure for the allocation of television frequencies in digital technique (approved with resolution no. 277/13/CONS) - intended to foster competition in the radio and television market - in as much as consistent with art. 14, paragraph 1, of legislative decree. no. 259/2003 and art. 9, paragraph 1 of Directive 2002/21/EC: the Authority, in the exercise of its powers, on one hand to take into account the need to resolve a number of criticisms on interference which emerged from the public consultation, and on the other to ensure adequate international coordination resulting from the need to keep the 700 MHz frequency free.

The Lazio TAR, with judgement no. 5687 of 16 April 2014, stated that the final allocation of a resource not yet coordinated at international level does not meet the guiding principles relative to the allocation of frequencies and, in particular, relative to the fee for the optimal use of resources: it is influenced by the temporary nature of the system, due to the fact that the possible failure of the negotiations prejudices the position of the assignee of that resource, violating the principle of *par condicio* imposed by the law.

The Council of State, with judgement no. 582 of 5 February 2015, in reversing the decision of the court of the first instance, pointed out that the legislation underpinning the Economic Information System (referred to by decree law no. 545/96, as converted by law no. 650/96), "reveals the unique intention of subjecting to the obligations in question all companies operating in the media sector" without, however, any limitation on the latitude of the data that can be acquired through the same from the Authority.

The Lazio TAR, with judgement no. 6786 of 26 June 2014, stated that, for the purpose of calculating the license fee for the performance of radio and television broadcasting, i) revenues deriving from the control of the quality of television material and from the services of the duplication of advertising material, quality control and certification, and ii) revenues deriving from the sale of rights to third parties and the relative technical costs of programmes, are not considered related to the object of the concession, since they are not closely related to the effective practice of radio and television activities.

The Lazio TAR, with orders no. 10020 and no. 10016 of 25 June 2014, in submitting to the Constitutional Court the examination of the constitutionality legitimacy of the law conferring regulatory power on the protection of copyright on electronic communications networks (see resolution no. 680/13/CONS), stated that the Authority, in the adoption of the said regulation, had not infringed the principle of the reserve of the law, had acted in the exercise of its powers, had correctly implemented laws in force, had not infringed the principle of the reserve of jurisdiction or that of cross examination, and had complied with the criteria of gradualness, proportionality and appropriateness.

Another fundamental aspect regards the Authority's internal organization. In this sphere, the Council of State, with judgements no. 1273 and no. 1274 of 11 March 2015, no. 1224 of 10 March 2015, no. 815 of 17 February 2015 and no. 600 of 5 February 2015, rejected the Authority's appeals against the judgements of the Lazio TAR pronounced issued in cases filed by electronic communications operators of against the warnings issued by the Authority for the recovery of certain amounts not paid in the years 2006-2010, and against the resolutions for the payment of the annual contribution for the years 2009 and 2011.

The decisions of the Council of State are based on a particular reconstruction of the regulatory framework of European derivation, in the field of electronic communications according to which: i) the general

authorization for the provision of networks and electronic communications services would be limited to the single "relevant markets", identified by the Authority, subject to ex-ante regulation; ii) the Authority's activities in the electronic communications sector - and, as such, subject to financing with the contribution of the operators - would be limited only to ex ante regulation, thereby excluding all other activities, such as consumer protection, dispute resolution, frequency management, etc. (although clearly set out in art. 12, paragraph 1, of Directive no. 2002/20 / EC).

Based on this, the decision of the Council of State judges was the consequence of the interpretation of art. 12 of Directive no. 2002/20/EC expressed by the Lazio TAR in the impugned judgements in respect of all the elements of the case regarding the contribution.

With judgements no. 3916 of 9 March 2015, no. 2775 and no. 2769 of 18 February 2015, and no. 10652 of 23 October 2014, the Lazio TAR pointed out that the examination of the technical evaluations carried out at the discretion of the Authority is not possible for the administrative court, without encroaching on the scope of the technical discipline reserved to the Administration. The legitimate discretion of the administrative judge involves the direct verification of the facts at the basis of the contested decisions and also extends to the technical profiles, for which the examination is necessary in order to rule on the legality of such measures; however when such technical profiles are involved in assessments and evaluations which have a margin of objective discretion, said discretion of the judge - apart from checking the reasonableness, logic and consistency of the contested decision - is limited to checking that said measure does not exceed the aforesaid margin of discretion, since the court cannot substitute its own assessment for that of the Authority if this has remained within the said margins.

4.4 The Authority's position in the national system

Relations with the Government and Parliament

As usual, in this last year relations between the Authority and Parliament have been characterized by intense dialogue essentially represented in practice by the hearings of the Authority's Chairman at the Parliamentary committees responsible for the areas concerned by the Authority. The number of the meetings, the breadth of the topics covered, the level of detail achieved and the diversification of the Parliamentary seats where the fact-finding hearings were held, demonstrate the importance and the usefulness of the analysis and common reflection at such meetings, as a means and an indispensable tool of connection and harmonization between the guiding function of Parliament and the Authority's regulatory and supervisory activity.

On 9 July 2014, the Commissioner Martusciello, representing the Chairman Cardani, was heard at the Health Commission of the Senate within the sphere of the Survey on the origin and development of the so-called Stamina case. The purpose of the hearing was to obtain knowledge on the work of the media in disclosing information on health care methods, with emphasis on the laws regarding the protection of minors in audiovisual communications. In the introduction, the Commissioner outlined the context of the powers that the law grants the Authority with respect to information and the protection of minors, according to which the guarantee function of the same must be exercised in strict compliance with art. 21 of the Constitution which guarantees freedom of expression and of opinion. With regard to the protection of minors (par. 1.3), the Authority is responsible for supervising compliance with the provisions of the Consolidated Act on audiovisual and radio media services and the Media and Minors Self-Regulation Code. The Code of Ethics relative to personal data processing in the exercise of journalism is also relevant, according to which the absolute anonymity of minors must be guaranteed and television broadcasters must *"not use children with serious illnesses or disabilities for propaganda purposes and for any other reason that conflicts with their rights and does not take into account their dignity"*, compliance with which is supervised by the Personal Data Protection Authority. The Stamina case received special media attention in 2013 in line with the contingent evolution of the events. With regard to content, the monitoring showed that the topic was covered - in accordance with the evolution of the events and the effects of the judicial and institutional proceedings - from different points of view, from the scientific to the more strictly social, connected to the difficulties and the serious and "urgent" situation experienced by patients and their families. In addition, the event was also treated in terms of judicial reporting, in relation to the investigations opened by the Turin Public Prosecutor's office. In some programs the case was presented with strong emotional tones, particularly those that hosted the patients and their families, but without any aspects in breach of the legislation in force to protect children, nor did the Authority receive any reports to that effect, even from the Media and Minors Committee, which represents for the Agcom a privileged observatory on the respect for the protection of minors. In light of the fact that the Authority's responsibilities do not include assessments of an ethical or a medical-scientific nature on journalistic activities, it was noted that the emphasis which, in some cases, existed in the representation of the Stamina case, especially relative to minors, can be justified also for the

social value that the topic assumed; however, even in the most "extreme", the limits set by law were not exceeded.

On 10 July 2014, the Chairman Cardani was heard by Commission I (Constitutional Affairs, of the Prime Minister's Department and the Ministry of the Interior) of the Chamber of Deputies to report on the draft law converting decree-law no. 90 of 2014 on "urgent measures for simplification and administrative transparency and the efficiency of the courts". In the introduction, the Chairman pointed out the particular "convergent" nature of the Communications Authority, first in order of time among similar European Authorities, with widespread transversal skills relative to the complex of networks markets and information content. He then focused on the progressive increase of its powers, most recently culminating in the transfer of regulatory and supervisory powers relative to the postal services market (par. 1.4). With specific regard to the subject of the hearing, the Chairman stressed that every initiative aimed at achieving cost savings should be viewed positively, as a fundamental prerequisite for the efficiency and economy of the public administrative machine, provided it does not lead to depriving or limiting the sphere of action or the prerogatives and functions of the general nature of the independent administrative authorities.

On 16 July 2014, at a hearing of the General Broadcasting Steering and Supervisory Commission, the Chairman outlined the proposal to revise the regulatory framework of non-electoral periods, in accordance with the principles established by law no. 28/2000 (par. 1.3). In presenting the reasons in support of the proposed regulatory amendment, he explained that, while waiting for a legislative updating and systematization of the matter, the draft regulation intended to aggregate and coordinate in a single regulatory body the rules contained in the Authority's various provisions issued over time (see resolutions no. 200/00/CSP, no. 22/06/CSP and no. 243/10/CSP) and at the same time introducing - as far as possible - the innovations strictly necessary to harmonise the text to the indications given in the mean time by Constitutional and Administrative case law, as well as adapt it to the changed technological scenario and to established practice. In conclusion, the Chairman explained in detail the draft regulation, and presented to the Commission the main indications emerging from the cycle of preparatory hearings promoted by the Authority with the broadcasters, the sector associations and the Regional Communications Committees.

On 8 October 2014, the Chairman was again heard by the General Steering and Supervisory Broadcasting Commission in order to report on resolution no. 494/14/CONS of 30 September 2014 laying down the criteria for the establishment on the part of the Ministry of Economic Development of the annual contributions for the use of the terrestrial television frequency bands, in compliance with art. 3-quinquies, paragraph 4, of decree-law no. 16/2012, converted by law no. 44/2012. The hearing, held in the wake of the large and complex debate on information media triggered off by the aforesaid resolution, allowed the Chairman to clarify firstly the reasons for the Authority's intervention (par. 1.2), expressly required by the changed legal and technological context (analogue/digital transition of the national television system). The Commission was subsequently reminded that the current laws circumscribe the Authority's task solely to adopting the criteria for determining the contribution for the radio frequency usage rights, the amount being set in practice by the competent Government bodies. He then outlined the long and complex investigation

that characterized the process (also involving a public consultation), to finally describe the reasons that led the Authority to identify the preordained criteria for fixing the annual contribution on the part of the Ministry. He lastly explained in detail the content of the provision, illustrating the characteristics and nature of the model used to determine the contribution as well as the criteria adopted based on progression, the derogations and exceptions introduced, the measures identified to protect local broadcasters in support of investments in technological innovation on the transmission networks.

On 25 February 2015, the Chairman was at the House of Representatives by the IX Permanent Transport, Post and Telecommunications Commission, within the sphere of the fact-finding survey on the audiovisual and radio media services system. The essential message conveyed at the hearing by the Chairman was that the analogue/digital transition process, carried out together with the more general process of innovation in the electronic communications world, has ended up by becoming a part of a more general and tumultuous overthrow of the context, in which the differing aspects in respect of the past, the irreversibility of the change of consumption and habits and the definitive crisis of the traditional communication models, prevail over the mere operation to foster the efficiency the system induced by the simple advent of innovative technology. Hence the need to guide the processes through updated regulatory tools, the result of analyses and meditated in-depth examination. The hearing thus allowed for illustrating, among other things, the many study activities put in place and concluded by the Authority in the last two years in order to put into focus premises and consequences of the aforementioned innovative processes. These include, in particular, fact-finding surveys on the "Internet services and advertising sector", on "Information and the Internet in Italy" (par. 2.2), on "Television 2.0." (par. 1.3) and on "Machine to Machine - M2M - Communication Services" (the so-called Internet of Things, par. 1.6), study contributions, the contents of which have already been discussed in the preceding pages.

On 12 January 2015, the Chairman was heard in Parliament by the Commission for the rights and duties relative to the Internet promoted and chaired by the Chairwoman Boldrini. The topic of the hearing regarded a range of issues also the subject matter of a second Parliamentary hearing of the Chairman Cardani, which took place on 29 April 2015 at the Senate Commission for Constitutional Affairs, and regarded the proposal (bill 1561) to introduce into the Constitutional Charter an article 34-bis aimed at the constitutional recognition of the right of access to the Internet. On both occasions, he started by stating that the Internet is now an essential and indispensable tool for the present and the future of any democratic society, because the network - over the last two decades - has taken on the nature of immense area of individual and collective freedom; a factor of cultural, social and economic growth; a universal medium of exchange and knowledge. Starting from this premise, the Chairman focused on the many aspects that, with reference to the nature and rules of the network, involve the Authority's sphere of competence. Both hearings were therefore an opportunity to address, with the valuable contribution of the members of the two Parliamentary committees, issues of particular relevance such as: net neutrality; prospects and the critical elements of broadband infrastructure plans in the country; the digital divide that persists at various levels in the country, in its various cultural, geographical and socio-economic aspects; the question of rights on the network in its

multiple manifestations (the right to privacy, the right to oblivion, the protection of human dignity, editorial responsibility, transparency and the legitimacy of circulating information on the network). The common reflection on both occasions, and the specific topic of the hearing dedicated to the draft constitutional amendment, regarded access to the network for all citizens, on the assumption that freedom of expression is manifested increasingly also through the Internet and that access thus becomes an indispensable means and tool for the efficient and effective protection of citizens' freedoms and rights. On this point, the Chairman Cardani expressed the convinced appreciation of the philosophy behind the proposed constitutional amendment, at the same time mentioning the other possible legislative action suitable for achieving the objective of recognition of the right of access, virtuously matched with the principle of neutrality capable of being defined on principle as suitable for effectively satisfying the values and essential needs of a modern political and economic democracy.

Lastly, on 2 April 2015 the Chairman of the Authority was heard in the House by the Parliamentary Commission of Inquiry on the phenomena of commercial counterfeiting and piracy and illegal trading. The subject of the hearing was the text of resolution no. 680/13/CONS regulating the protection of copyright on electronic communications networks (par. 1.3). The hearing and the lively debate which followed allowed to put into focus: the salient features of the Regulation; the underlying regulatory framework of reference which gives it legitimacy; the goals of the action, mainly based on two objectives of fostering the legal use of content and of countering multi media piracy - carried out at an industrial level and on a large scale; and, lastly, the enforcement tools put in place, inspired by the dual objective goal of guaranteeing and respecting the fundamental rights relative to this subject (freedom of expression, protection of privacy, protection of property rights) and of respect for the principles of legality, reasonableness and proportionality in the administrative action. In conclusion, the Chairman illustrated the effects of the Regulation one year after its entry into force, reconstructing in detail the content, procedures and results of the total 209 claims received.

With regard for institutional relations with the Government, over the past year the Authority has exercised the power conferred on the same by art 1, paragraph 6, letter c), no. 1 of law 249/1997. Specifically, in August 2014 it informed the Government of the opportunity of introducing certain changes to the discipline on the promotion of standards for digital television decoders, in order to introduce by law the DVB-T2 specification in association with the MPEG-4 compression standard or subsequent developments. According to the Authority, this legislative change would allow for optimal use of radio spectrum reserved for digital terrestrial television, especially when combined with the current availability of evolved standards such as HVEC. In addition, in October 2014 the Authority informed the Government of the opportunity of introducing certain changes to the discipline on the connection of terminal devices to communication networks. The legislative gap was highlighted during the proceedings initiated following a report from Wind, in which the operator complained that the manufacturer Apple Inc. had not given authorisation for the iPhone5 terminals to be connected to Wind's LTE/4G network.

The issue has led to the consideration of amending legislative decree 269/2001 in order to introduce the obligation bearing on terminal manufacturers to allow, except in the case of technical reasons, connection to

all the appropriate interfaces and, therefore, the use of the frequencies for which the telephone operators have been granted usage rights.

In February 2015 the opportunity was reported to make amendments to the system of sanctions of the current postal legislation (article 21 of legislative decree. no. 261/1999 and subsequent amendments) in order to enable the Authority, within the powers conferred on the same, to carry out its supervisory activity more effectively and to impose more proportionate sanctions. On this occasion, it was clarified, in particular, that the critical aspects of the system of sanctions in the postal sector are due to the scarcity of the sanctions that can be imposed in the case of breaches even of considerable importance, especially when one considers the possibility, for the enterprise on which a sanction is imposed, to apply to the system of a reduced fine (so-called cash settlement) pursuant to art. 16 of law no. 689 of 24 November 1981, as well as the substantial uniformity of the amount of almost all the fines contemplated by the said article 21, even for violations of different severity.

Discretionary inspections

The Authority maintains an ongoing collaboration with the Ministry of Economic Development and the Prime Minister's Department aimed at immediate response, via procedures managed entirely by electronic systems, to requests for information to the Government for a complete response to Parliamentary questions and interrogations.

The subject matter of such questions have been mainly: the issues concerning the Authority's nature, functions and organization; the reorganization and rationalization plan of Post Italiane S.p.A., the universal service and the supply of the relative services, the impact and the consequences on the local population of the said rationalization plan; the criteria for the establishment on the part of the Ministry of Economic Development of the annual contributions for the use of digital terrestrial television frequencies, in compliance with art. 3-quinquies, paragraph 4, of decree-law no. 16/2012, converted by law no. 44/2012; the national strategic vision for the telecommunications sector, development of the network infrastructure and governance of the Digital Agenda; the business plan aimed at a more rapid development of next-generation fibre networks, in line with the objectives set by the European Digital Agenda; the development of next-generation networks and the results of the fact-finding survey - carried out jointly with the Antitrust Authority - on the static and dynamic competition in the access services market and the prospects of investment in broadband and ultra-broadband telecommunications networks; the protection of copyright on electronic communications networks, the promotion of the legal offer of digital works, user education for the correct use of the same and the enforcement of the tools for the protection of copyright on-line; the implementation of the provisions for the protection of copyright on Internet sites that offer teaching materials to primary school children; the Telefonica-Telecom Italy operation and in particular the implementation of the rules on golden powers and the separation of the Telecom Italy network; the initiatives aimed at the corporate unbundling of the infrastructure of the telecommunications network and the definition of the relative governance model; the difficulty of signal reception, especially of the RAI channels, found in some

areas of the country following the transition from analogue to digital terrestrial transmission; problems related to the service contract between Rai and the Ministry of Economic Development; the supervisory and sanctioning action against operators relative to fraud in distance contracts and the unrequested activation of services on mobile phones in order to protect consumers; the regulation concerning the plan for the automatic numbering of free and pay digital terrestrial television channels; the assessments linked to the Integrated Communications System (ICS); the distribution of advertising resources within the television market; institutional political pluralism on television networks and protection of said pluralism; the restrictions on participation in the companies that publish daily newspapers imposed on the television broadcasters; the regulation of linear audiovisual media or radio services on other electronic communications means and the on-demand supply of audiovisual media content.

Opinions communicated to the Antitrust Authority

Over the last year the Authority, within the sphere of its institutional cooperation with the Antitrust Authority, in the exercise of its duties pursuant to art. 1, paragraph 6, letter c), no. 11, of law no. 249 of 1997, informed the Antitrust Authority of its opinion on the draft measures of non-ascertainment of violation and the acceptance of commitments relative to the case - I757 - Barriers to the market access of a new mobile operator. In this case the investigation, launched by the Antitrust Authority against Telecom Italia, Wind and Vodafone to establish the existence of an understanding to prevent the virtual operator Bip Mobile SpA from entering the market of mobile telephony services, was later expanded with reference the supplemental agreements signed by Telecom Italian and Wind with certain multi-brand dealers. Following this expansion, Wind and Telecom submitted commitments relative to the agreements that were deemed suitable by the Antitrust Authority - also as regards their duration - for the purpose of removing any artificial barrier to market entry and to the affirmation of mobile telephony operators not sufficiently consolidated to make the necessary investments for vertical integration in a proprietary or single brand sales network. In its a favourable opinion, the Authority agreed with the definition of the relevant market on the part of the Antitrust Authority, the assessment of the absence of operators with significant market power, as well as the position taken by the Antitrust Authority that there had been no breach of art. 101 TFEU and on the acceptance of the commitments.

During the reporting period the activity of drafting the opinions requested by the Antitrust Authority continued pursuant to article 27, paragraph 1-bis and paragraph 6, of the Consumer Code as amended by legislative decree no. 21/2014. With regard to paragraph 1-bis, the measures transmitted by the Antitrust Authority were analysed to assess whether behaviour could be traced back to the application of a sector provision of European derivation, suitable, as such, to be the basis also of the competence of the Authority itself to intervene in such a case. With reference to paragraph 6, however, the aptitude of the communication means used to influence and amplify any misleading and/or incorrect behaviour of commercial practice.

The Postal and Communications Police

The Postal and Communications Police Section (Section), in the period of reference collaborated with the Authority within the sphere of the Memorandum of Understanding, on the execution of the verifications into the telecommunication infrastructures and networks and the connected services and products. Also on the basis of reports received by the Authority from users, the Postal Police Section collaborated on the execution of inspections on certain telecommunications service operators. This activity was mainly aimed at verifying compliance with the regulations of the sector and, above all, compliance with the self-regulation code on premium services in respect of the correct use of numbering for numbers in the so-called "decade 48".

As part of these verifications, the Section carried out detailed monitoring, through smartphone navigation, aimed at checking on whether the procedures for the activation of premium services in decade "48" complied with the principles of the self-regulation code on premium services and of correct information to the users "subscription" services and the activation and deactivation methods. This activity has concerned certain mobile telephony operators.

The Section also collaborated in inspections on a number of fixed telephony operators, aimed at verifying, also with reference to reports sent by users, the compliance of the sector relative to the activation, migration, Number Portability (NP) and termination of fixed network access services and, in general, compliance with consumer protection legislation.

During the reporting period verification continued on the value-added numbers, such as 899, 892 and 895 advertised during television broadcasts, in order to check on the compliance of premium services with current legislation and, in particular, compliance with the rules relative to the initial information message, the services offered and the pricing applied, with particular reference to resolution no. 26/08/CIR and decree no. 145/06 (arts. 12 and 13), and also regarding compliance with the Regulation on radio and television advertising and television pursuant to resolution no. 538/01/CSP and successive amendments, and the provisions on interactive propaganda, audiotex, videotex and similar (see art. 1, paragraph 26 of decree no. 545/96, as amended by law no. 650 of 23 December 1996).

The Guardia di Finanza

The *Guardia di Finanza* (the Financial Police), with the task of protecting free trade, freedom of enterprise and the free market, also performs important duties in the areas of radio and television broadcasting, electronic communications and publishing. This is in accordance with the provisions of reference and the Memorandum of Understanding signed between the Authority and the Financial Police Special Unit for Broadcasting and Publishing, which ensures every possible form of synergy and professional skill with the capacity of influencing, in a flexible and decisive manner, the quality of the actions and their effectiveness.

In the period considered the collaboration focused mainly on the following activities: i) payment of the concession fee due by the radio and television companies; ii) respect for the equal access to the information media; iii) verification of the positions of control or connection with publishing; iv) compliance with the rules on television programming to guarantee users (advertising, television sales, protection of minors, etc.); v) compliance with copyright on-line.

The activities of the Special Unit developed on the basis of their own initiatives, with the support of the Operations Office of the Special Units Command, in the two directions of context analysis and risk assessment of the areas covered by the Authority.

In the reporting period, the Special Unit concluded 139 inquiries. Of these, about half were subsequent to specific requests for the Authority's collaboration, pursuant to the Memorandum of Understanding. The Authority received reports of 88 administrative irregularities and 21 subjects were reported to the Judicial Authority. With regard to the payment of the concession fee due by radio and television companies, pursuant to art. 27, paragraphs 9 and 10, of law no. 488 of 23 December 1999, the activity of the Special Unit, in the area in question, is represented by a verification of the accounting and management aspects of the obliged subjects, in order to determine the amount of the fees due (equal to 1% of turnover for the national television broadcasters, with maximum limits for other types of broadcasters). For this purpose, a database is used containing the data of the subjects operating in the sector, as indicated by the licences issued by the Ministry

of Economic Development and by the Communication Operators' Register held by the Authority, in order to identify the broadcasting companies that have regularly paid the fees due.

Thanks to the action carried out in respect of certain national television companies, important cases of the evasion of the said contribution were discovered. The results of the controls were the subject of reports from the Communications Authority to the Ministry of Economic Development.

With regard to respect for equal access to information media ("level playing field"), pursuant to law no. 28 of 22 February 2000, to the Memorandum of Understanding and to the regulations issued by the Authority from time to time, the Special Unit provides a significant contribution in the activities of: i) the acquisition of magnetic supports and publications; ii) the management of reports relative to local broadcasters and publications, interfacing, as needed, with the Provincial Headquarters of the Financial Police; iii) direct assistance through dedicated resources. This activity takes place mainly during the European Parliament election campaigns, political, regional and administrative election campaigns and for every referendum.

With regard to verification of positions of control or connections between companies requesting publishing grants, within the sphere of the collaboration, the Authority asked the Special Unit to make inquiries in order to verify the existence of any positions of direct or indirect control and/or associations between companies requesting the publishing grants, pursuant to art. 3, paragraph 11-ter, of law no. 250 of 7 August 1990.

Pursuant to Presidential decree no. 223 of 25 November 2010, the Authority - at the request of the Information and Publishing Department of the Prime Minister's Department - communicates whether the ownership structure of the applicant publishing house conforms with the provisions in force and whether the company is involved in relevant corporate relationships of control or association as envisaged by art. 2359 of the Italian civil code. The purpose of the said legal provisions is to introduce into the system protective measures to prevent a publishing house from obtaining the grant more than once in the period of the application.

In order to discover the right to receive the grants issued by the State to publishers, the Special Unit carried out in-depth studies and analyses of the discipline, and of the ownership structures and financial situations of the companies concerned, aimed at defining the risk indicators and operating methods for the subsequent controls to be carried out "in the field". In various cases, the inquiries carried out allowed for "reconstructing" complex and articulated company and cooperative structures arranged parallel to and officially entirely separate from those declared, governed by subjects without evident connection with each other, allowing the Authority and the Information and Publishing Department to prevent companies from obtaining the grant more frequently than permitted.

With regard to compliance with the rules on television and radio programming for user protection, the controls on the radio and television programming are designed to enable the Authority to exercise its supervisory powers pursuant to law no. 249 of 31 July 1997. The investigations of the Special Unit involve the monitoring of the programmes broadcast by the television and radio stations and mainly regard advertising, television sales, and the protection of users and minors (law 223/1990 and legislative decree

177/2005 and successive amendments). In the period considered, the action of the service allowed for detecting many cases of illicit behaviour, reported for the opening of the relative sanction procedures. In particular, breaches were identified regarding advertising (crowding, positioning and the content of the "ads"), breaches of the provisions to protect users and minors (the broadcasting of transmissions prejudicial to physical, mental and moral development, and transmissions with pornographic content during the night-time bracket).

Lastly, on the issue of compliance with copyright on-line, the law grants the Authority specific competence (see law no. 633/1941, legislative decree no. 177/2005, decree no. 70/2003, implementing Community directive 2000/31 on electronic commerce). In this context, the Special Unit and the territorial departments of the Financial Police carry out constant and careful monitoring of the Internet, aware that the illegal practices committed by the network can represent market distortion. Moreover, with the entry into force of the Regulation on the protection of copyright on electronic communications networks (see resolution no. 680/13/CONS), the Committee for the development and protection of the legal offer of digital works was set up, composed of a number of subjects including the Special Unit for Broadcasting and Publishing of the Financial Police.

The Supervisory Board

The Supervisory Board (SB) was established in 2009 following the Authority's approval of the proposed commitments submitted by Telecom Italia (resolution no. 718/08/CONS). The SB, as an independent body which monitors the correct execution of the commitments and ensure full respect of the principle of equal treatment, adopts, in the performance of its duties, measures and recommendations imposed on Telecom Italia aimed at stimulating a more correct implementation of the Commitments, i.e. to ensure that the various operators on the market have the possibility of access to the main operator's network without any hindrance or prejudice, with full equality of access compared to internal sales divisions of Telecom Italia itself. For this purpose, on its own initiative or on reports from third parties, it checks on any inadequacies or abnormalities, informing the Authority within the term and according to procedure prescribed by the Regulation. The SB does not replace the Authority in any way: the assessments and any decisions taken on the correct execution of the Commitments do not prejudice the exercise of the Authority's powers, which include the execution of inquiries into breach of the Commitments.

The activities of the SB mainly concern the following areas: delivery, co-location and wholesale customers; incentives, codes of conduct, the ban on selling on the part of the network forces and reports of unwanted services; performance monitoring systems; transparency of technical plans for network quality and development; integration of regulatory accounting and transfer charges; transparency of the development plans of next generation access networks; institution of the body for the settling of disputes and for litigation deflation.

The board is composed of three members who perform their duties with complete independence. The current Chairman of the SB is Professor Antonio Sassano, designated by the Authority and appointed by Telecom Italia; the other members of the Board are Professor Marco Lamandini (designated by AGCOM) and

Professor Michele Polo (designated by Telecom Italy). The SB is assisted in its work by a Secretary General (Mr. Fabrizio Dalle Nogare) and by a Supervisory Office which carries out, at the request and on the indications of the SB, activities preliminary and auxiliary to the processing of the reports.

The Supervisory Board meets at least once a month and acquires the information and data necessary to carry out its duties at all the Telecom Italia offices. Every three months the Authority is sent a report on its activities and on any anomalies or inadequacies found in the execution of Commitments. By the end of March each year the SB publishes on its website the Annual Report on the activities and results achieved. The last Report was presented on 9 March 2015.

In order to consolidate results reached and to increase the guarantee of non-discrimination in the access market by strengthening the supervisory activities, the SB, in the past year, continued dialogue with the alternative operators and intensified the discussions already started with the Authority, through regular consultations and exchanges of views on the subjects falling within the activities of the Supervisory Board's activities and on regulatory matters relative to network access. In particular, the issues discussed concerned the topics and the challenges associated with the renewal and evolution of the equivalence model. The SB informed the Authority of its activities for the definition of proposals for adaptations to be made to the Commitments to reinforce the principle of access equivalence.

Universities and research bodies

In the last year, the Authority intensified its collaboration with academia and research, through the continuation of the research program Screen - Services and content of the new generation networks - and the implementation of the project and development activities within the scope of the Ugo Bordoni Convention. The Authority also approved the new Regulation containing the draft convention and the new guidelines for the activation of agreements with universities or research centres, based on criteria of efficient and transparent administration (see resolution no. 176/15/CONS). The activities in collaboration with the Ugo Bordoni Foundation contemplated, among other things, the execution of projects concerning the protection of copyright on-line and consumer safeguards.

The Authority was intensely involved in safeguarding public initiatives falling within the scope of its institutional competence. To this regard, in 2014 the Authority supported dozens of public occasions for debate and discussion, sponsoring the promotion of public events and encouraging the participation of users, stakeholders and academics on the issues related to the different segments of the communications.

4.5 The Authority's position in the international system

The communications sector in Europe: Towards a single digital services market

At the end of 2014 the institutional debate began on the issues that will be featured in the next revision of European legislation in the electronic communications and audiovisual media services sectors.

The start of these important reform processes, formalized in the 2015 work programme of the European Commission, comes at a time when technological developments and market dynamics show the consolidation of trends destined to radically change the context of reference, calling for thorough reflection on the suitability of regulatory revision in a long-term perspective. The intimately converging nature of *all* IP networks and the affirmation of new actors which provide traditional services, alternative electronic communications services, multimedia services or information society services on these networks, makes it increasingly complex to demarcate the different regulatory areas that currently govern the various traditional markets.

These considerations fall within the broader context of the ongoing debate at the global level about the relationship between Internet access service providers and content providers and on-line applications (such as the US debate on the open Internet, which culminated in the decision of the law-making body, the Federal Communications Commission, last February) and on the legal treatment of the various subjects which operate in the new value chain of digital services.

By virtue of its institutional framework, the Authority has taken steps to guard these legislative processes and to provide the viewpoint of a converging regulator in the various national and European institutional contexts.

Electronic communications

During the reporting period, the European system of regulatory cooperation in the electronic communications sector continued to operate on the basis of the consolidated dialogue between the NRAs, the European Commission and the Body of European Regulators for Electronic Communications (BEREC), in multilevel proceedings to definite national regulatory measures. In line with its own founding Regulation, BEREC has established itself as a privileged interlocutor for the European institutions regarding all the processes for the legislative reform of the sector and the review of the relevant soft law acts.

In this context, the Authority confirmed its constant contribution to the activities of BEREC, taking responsibility for coordinating the strategic lines of activity. One of the most important was the definition of BEREC's opinion on the important legislative process concerning the proposal for regulating the so-called Single Market Telecom. A specially formed international work group, led by the Authority, monitored the European legislative process of co-decision and drafted the BEREC opinion on the parliamentary resolution presented in first reading in April 2014. The same group then coordinated the positioning of BEREC in relation to the many proposals for compromise drawn up by the Board of the Union during the reference period, up to the most recent proposals of the Latvian presidency, on the subject of international roaming and network neutrality.

In early 2015, the Commission launched the ambitious project to define a European strategy for the creation of a single market for digital services (the so-called Digital Single Market Strategy), which will include the proposals for legislative reform in the sectors of the Authority's competence.

The line of activity launched by BEREC for an in-depth analysis of the future technological and market context and the consequent possible need to revise the existing legislative framework, both through national considerations and by liaising with the European Commission, is coordinated Authority and is expected to take on increasingly greater importance throughout the whole process of legislative reform. The Authority continued to ensure the coordination of the activity in relation to the study of the "Machine to Machine" phenomenon and the points at which it is influenced by the current and future regulatory framework for electronic communications.

In terms of the internal governance of BEREC, the Authority coordinated the draft revision of the operational architecture of the body culminating, last December, in a new version of the internal rules of the Board of Regulators, based on the criteria of optimising the efficiency and the transparency of the activities of the work groups.

In continuity with the past and in line with its obligations pursuant to the sector directives, the Authority ensured the supervision of all the BEREC lines of activity, contributing to the pursuit of the objectives of regulatory harmonization and promotion of the internal electronic communications market. To this regard, during the reference period, the Authority was engaged on the process of updating the list of relevant markets, culminating in the adoption of a new Commission Recommendation which, although not binding, has a significant impact on the ex-ante regulating activities falling under the responsibility of the NRAs. For that matter, active participation in the BEREC is a key tool for achieving the institutional objectives of promoting long-term competitive dynamics, technological innovation and consumer protection, assigned to the Authority by European and national legislation of the sector.

The Authority has also ensured its technical regulatory contribution in the activities of all the European committees of the sector, participating in the Radio Spectrum Policy Group (RSPG) and completing the composition of national delegations to the Communications Committee and the Radio Spectrum Committee.

Audiovisual

The strengthening of the cooperation between the audiovisual regulatory Authorities continues to be strongly promoted in Europe; this is evidenced by the importance recognized by the European Commission at the European Regulators Group for Audiovisual Media Services (ERGA), an advisory body set up by the Commission itself in 2014, and by the role assigned to ERGA within the sphere of the forthcoming revision of the Audiovisual Media Services Directive. The ERGA work programme for 2015 in fact contemplates the in-depth examination of four issues of fundamental importance for the future regulation of the sector: the independence of national regulators, material jurisdiction, territorial jurisdiction and the protection of minors. The Commission has also involved ERGA for the collection of the assessments of the institutional and market protagonists of the 28 Member States for a cost/benefit analysis of the main regulatory measures defined by the Directive on Audiovisual Media Services (SMAV), within the sphere of the REFIT

programme, aimed at assessing the effectiveness of existing European legislation and possible areas of simplification.

The Authority plays a central role in the ERGA, actively participating in all the work groups and chairing the group on the independence of regulators. To this regard, the Authority coordinated the activities for the development of a common ERGA position (adopted in October 2014) and it is coordinating the drafting of a report aimed at identifying the main criteria (*de jure* and *de facto*) on which to base principle of independence of sector regulators.

Postal services

During the reporting period, the works of the European Regulators Group for Postal Services (ERG-P) continued, within which the Authority has ensured its active participation, confirming the commitment as the institution coordinator of the work group on the regulation of the Universal Service. The main activities of the ERG-P in the reporting period included the two important public consultations which were launched on the implementation of the Universal Service in the postal sector and on best practices in the field of consumer protection, as well as reports on the state of the liberalization of the European postal market, the quality of the postal service, consumer protection and the handling of complaints, and the delivery of postal items related to e-commerce within the sphere of the liberalization of the market and the main monitoring indicators of the postal market.

International cooperation

In addition to the efforts on all platforms and in the advisory groups formally contemplated by the European regulatory framework of reference, the Authority fosters regulatory cooperation dynamics at international level, through participation in the various sector and regulatory platforms and by bilateral initiatives, aimed at the exchange of best practices and regulatory skills in the areas of competence.

The twinning project with the Tunisian regulator of the electronic communications sector, the *Instance Nationale des Telecommunications* (INT), for which the Authority has been awarded the position of the leader of a consortium formed by the Spanish regulator and the *Direction générale de la compétitivité, de l'industrie et des services* of the French Ministry of Economy, Industry and Labour, was launched last January. The twinning will have a duration of 24 months and a value of Euro 1.2 million, with which the European Commission will finance all the activities related to the execution of the project, that goal of which is to contribute to the competitive evolution of the sector of telecommunications, audiovisual and postal services in Tunisia, by strengthening the regulatory framework in which the INT operates.

Another framework within which the Authority has developed its international dimension is that of the program Technical Assistance and Information Exchange (TAIEX), funded by the European Union and aimed at bringing the regulatory framework of countries outside the EU towards the *Acquis communautaire*; in this context, the Authority received the visit of the Broadcasting Council of the Republic of Macedonia in June 2014, for a transfer of the experience gained in monitoring political representation in the audiovisual sector.

Referring to bilateral commitments, the Authority met with the Permanent Commission on Communications of the Senate of the Czech Republic, on the protection of pluralism and competition in the media sector, and with the National Commission on Television and Radio (NCTR) of Armenia, on the issues of the digital transition. The Authority also collaborates with the National Broadcasting and Telecommunications Commission (NBTC) of Thailand, through which the Authority contributes to a project for the training of young officials the Thai Authority on the regulation of mobile communication systems, alternative systems for resolving disputes, best practices in the field of consumer protection, market analysis and the digitization of radio and television.

With regard to the multilateral commitments, the Authority continues to offer its active participation in the platforms of regulators of both the audiovisual sector (the European Platform of Regulatory Authorities and the Network of regulators in the Mediterranean area) and of the electronic communications sector (the European Mediterranean Regulators' Group and the Group of Latin American regulators), as well as in the activities of the regulatory committees operating within the sphere of the Organization for Economic Cooperation and Development (OECD) and the ITU and the main international think tanks operating within the institutional and market spheres of interest of the Authority.