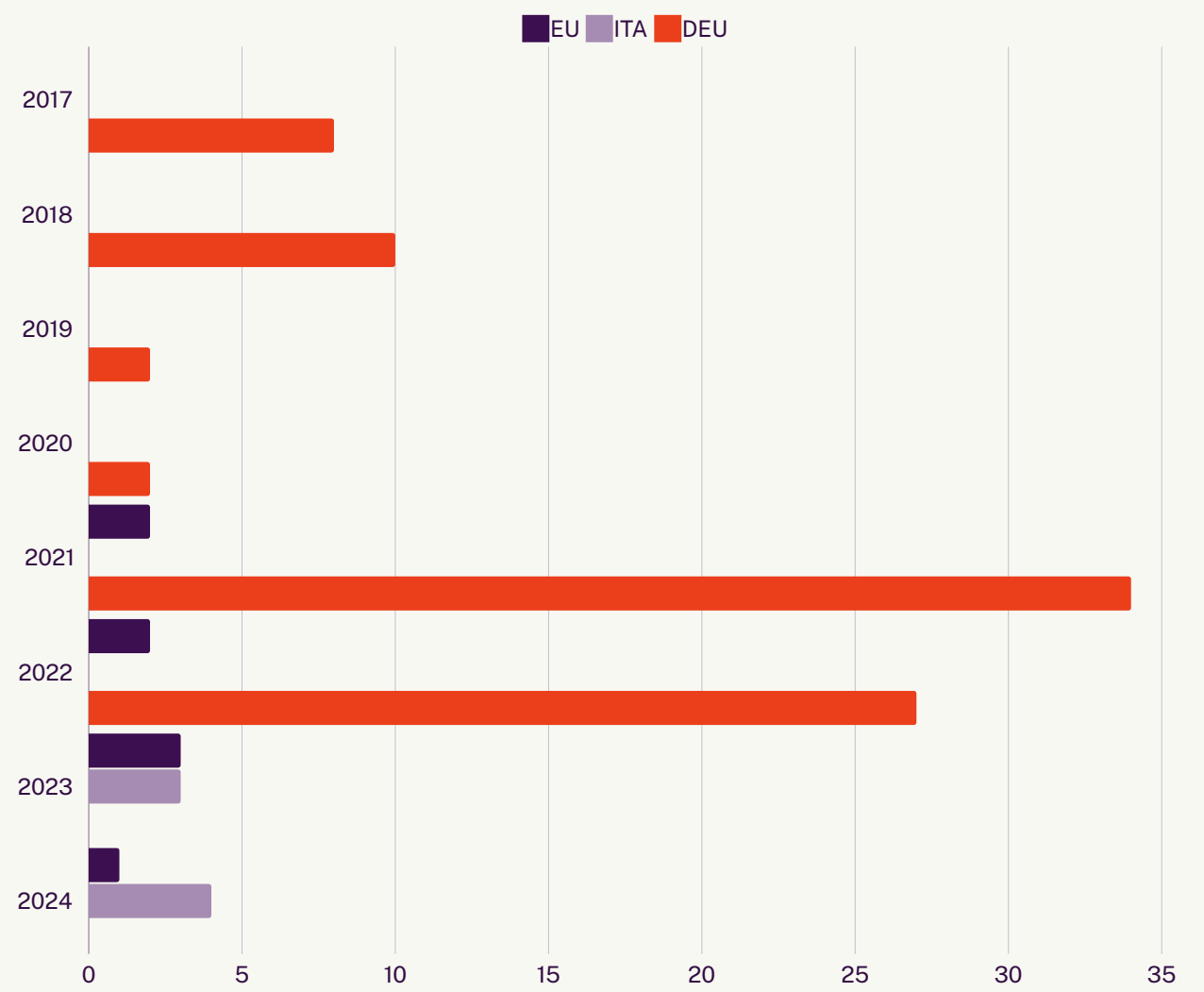


# Below-thresholds mergers

an analysis of the different approaches adopted to tackle the challenge

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The starting point for the EU was the year in which the Commission adopted the new and revised interpretation of Article 22 EUMR. For Germany and Italy, it was from the introduction of their respective control instruments into the legislative framework. 2023-2024 data availability is limited in relation to Germany.

## TOPIC AND CONTEXT

In recent years, technological development, the flourishing of start-ups and innovative companies, and the overwhelming power of 'big tech' have led legislators and authorities to question the existence of a possible enforcement gap that has the consequence of rendering the well-established merger control system based on turnover thresholds obsolete in some contexts. A couple of years after the first response measures were introduced, we can begin to analyse the solutions proposed in the patchwork of jurisdictions that make up the EEA, focusing on the most relevant and peculiar ones.

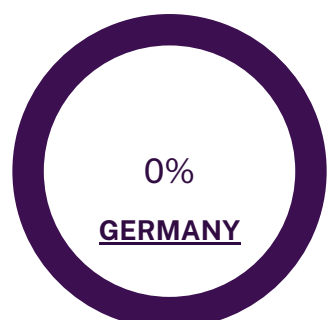
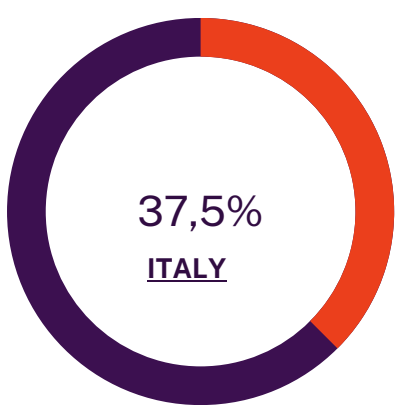
## OBJECTIVE

The purpose of this work is to analyse the merger data at our disposal referring to transactions 'captured' with alternative tools to the traditional turnover threshold system, in order to compare them with each other. The work aims to provide useful elements for an efficiency-certainty balancing test.

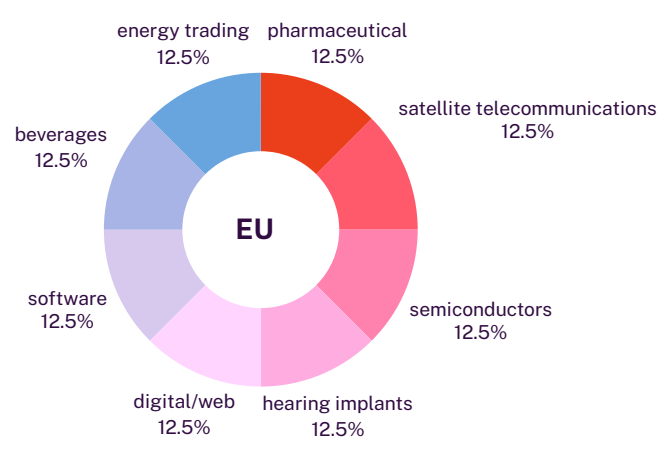
## METHODOLOGY

The analysis focuses on the mechanism chosen by the European Commission, i.e. the revitalised and reinterpreted Art. 22 EUMR, its 'national' version proposed by Italy and the solution proposed by the jurisdiction of Germany (and Austria), i.e. the introduction of the transaction value threshold. The same work has been conducted in relation to the jurisdictions of Sweden, Norway, Spain and Portugal, all of which have sub-threshold merger control instruments that, although not all of them were introduced in recent years and specifically for this reason, present peculiarities worthy of note for the purposes of a comprehensive analysis. After collecting the available data in relation to concentrations, above and below the thresholds, from all selected jurisdictions, we compared the data. In this poster we will exclusively analyze the EU, Germany and Italy.

## SOME DATA

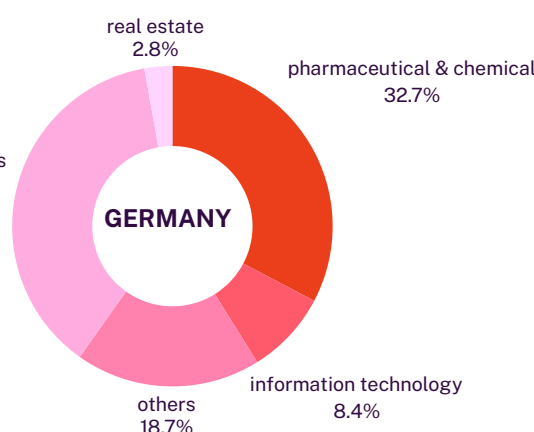
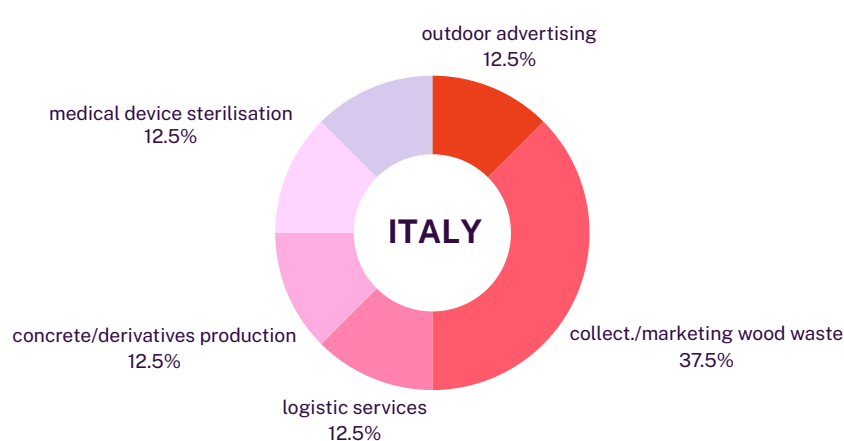


PHASE 2

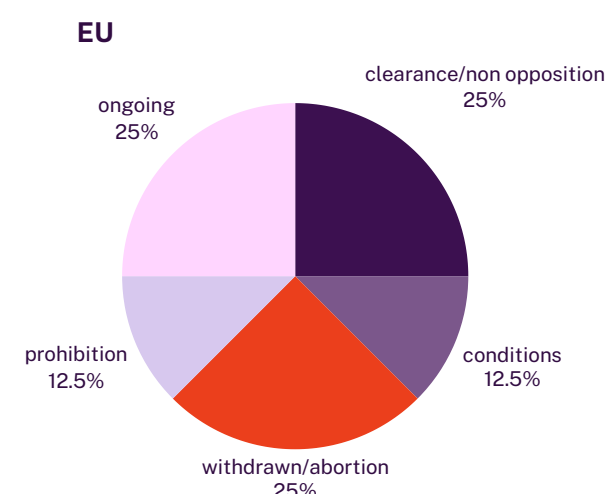


### MARKETS

Please note that the market data for Germany are based on an estimate calculated on the basis of the number of notifications and the estimation of the markets involved provided by the German authority and not on a true number.



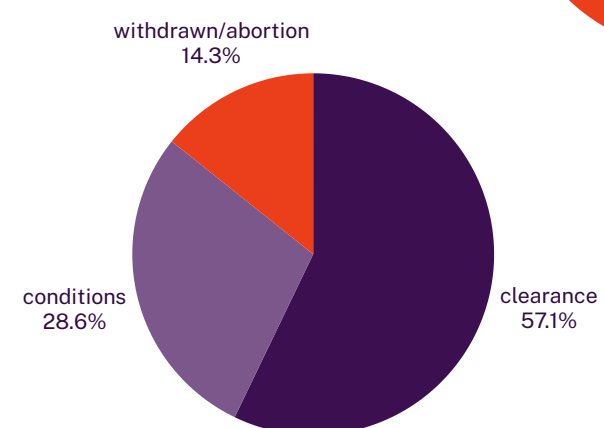
## OUTCOMES



### GERMANY



### ITALY



## FEW CONSIDERATIONS

1. The European Union, while presenting a broadly structured mechanism with critical legal certainty issues, is also the one that has been most successful in limiting its analysis to innovative markets and transactions with a real potential for harming competition, with 4 out of 6 transactions examined blocked, conditionally cleared, or withdrawn, including one potential so-called reversed killer acquisition.
2. Italy presents a control mechanism with very broad application profiles, especially when combined with the referral power under Art. 22 EUMR. The affected markets are purely traditional markets, which pose concerns in relation to the health of the domestic market rather than in relation to potential effects on innovative markets such as, for example, the risk of killer acquisitions.
3. Germany has introduced a mechanism that, combined with the guidance provided by the authority, would seem to present the solution with the highest point of legal certainty, as it is threshold-based and not too broad. However, the increasing number of notifications in recent years combined with a single Phase II (2024) (in any case concluded with authorization), make the mechanism seem less effective.