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*Special Issue — Harmonizing and Enhancing the Enforcement of Consumer Law: A
Comparative Analysis of Germany and Italy*

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I. INTRODUCTION: EXPANDING STRUCTURES, LAGGING OUTCOMES

The workshop that took place in Villa Vigoni over five days (5-9 May 2025), gathering expert scholars and researchers on the topic of “Harmonizing and strengthening the enforcement of consumers’ rights”, ended up in these collective papers, representing in my view a cornerstone that provides a complete and deep analysis of a fundamental theme in consumer’s law literature.

Across the precious contributions, a shared diagnosis emerges: European consumer enforcement is expanding procedurally, yet often struggles to convert availability into effective outcomes. The under-enforcement gap is attributed to: (i) the uneven design and uptake of collective mechanisms after transposition of the Representative Actions Directive (EU 2020/1828, ‘RAD’) ; (ii) persistent information and evidence asymmetries, particularly salient in platform and data-driven harms; (iii) financing constraints and exposure to adverse costs that deter qualified entities from pursuing complex cases; and (iv) institutional design problems in digital redress, where ‘gateway’ models fail without credible incentives or authority. Taken together, these contributions portray a ‘compliance and capability paradox’: EU law mandates structures, while national procedural cultures, institutional competences, and market incentives determine whether and when deliver those structures. This is particularly evident in Italy and Germany as concerns the high requirements imposed for the admissibility of the new redress actions, although they result into different procedural models; in the possibilities for commercial funders to support representative actions under the RAD that must face legitimate concerns expressed in different way and intensity in the different legal systems; in the different procedural law systems, affecting in particular access to information and the disclosure of evidence in the context of collective claims and related Third-Party Funding (“TPF”) agreements; in the redress vulnerability of digital consumers, as demonstrated by the substantive failure of ODR, notwithstanding the double shield provided by EU legislation for data protection.

II. FRAGMENTATION AND DUAL-TRACK ARCHITECTURE AFTER THE RAD

Multiple papers highlight fragmentation not only between Member States but within national systems. Comparative analysis of Germany and Italy underscores that minimum harmonisation leaves wide discretion on scope, beneficiaries, and procedural design. This discretion can improve

fit with domestic legal cultures, yet it also creates inconsistent access depending on legal basis and procedural route. In Italy, the coexistence of a general collective action under the Civil Procedure Code and a consumer representative action under the Consumer Code illustrates a ‘dual-track’ complexity, with cross-references and scope boundaries that may raise transaction costs and generate strategic uncertainty. In Germany, choices such as broader material scope (‘gold-plating’) may expand theoretical coverage, but do not automatically resolve the practical barriers that discourage filing and participation.

III. STANDING, GOVERNANCE, AND THE REPRESENTATION DILEMMA

The EU’s preference for Qualified Entities over individual ‘entrepreneurial’ representatives is defended as a safeguard against opportunism, but it generates a representation dilemma. Over-curation - through limited standing, strict designation criteria, and reliance on a small ecosystem of organizations - may reduce responsiveness to emerging mass harms. Conversely, expanding standing to public authorities can improve capacity and coordination with administrative enforcement, but raises equality-of-arms and role-confusion concerns (regulator versus litigant), particularly where competences overlap across consumer, competition, and data protection domains.

The digital environment intensifies this dilemma: overlapping mandates may be practically managed through cooperation, yet legal conflicts remain, producing residual uncertainty in both public and private enforcement pathways.

IV. EVIDENCE AND INFORMATION ASYMMETRY: DISCLOSURE AS A BOTTLENECK

Evidence access is treated as a decisive variable for collective enforcement because many mass harms are ‘data-rich’ for traders and ‘data-poor’ for consumers. The papers contrast procedural cultures. German analysis emphasises that reliance on pre-existing civil procedure tools (rather than a robust disclosure regime) tends to preserve high thresholds (conclusiveness, specificity, anti-‘fishing expedition’ doctrines) and judicial discretion that may narrow practical access to disclosure. Italian analysis, by contrast, describes a more court-driven, deformed approach that explicitly empowers judges to order exhibition of evidence and uses sanctions and evidentiary facilitation (including statistical evidence and presumptions) to address asymmetries - while still balancing confidentiality, privilege, and proportionality. A common concern remains: collective mechanisms risk being most usable for ‘simple arithmetic’ harms and least usable for complex digital harms, where evidence is structurally concentrated.

V. FINANCING AND THIRD-PARTY FUNDING: ACCESS TO JUSTICE V. CAPTURE RISKS

Financing is presented as both a practical bottleneck and a political lever. Collective redress is expensive, involves high preparation costs, and - under loser-pays rules preferred in European Procedural Civil Codes - creates significant risk exposure for qualified entities. The RAD’s promise that actions should not fail for lack of resources is widely seen as programmatic rather than self-executing. TPF is framed as a potential solution that reallocates risk and enables cases against well-resourced defendants, especially for diffuse and low-value harms in digital markets. At the same time, TPF raises governance concerns: conflicts of interest, funder influence on settlement strategy, and transparency deficits. The papers caution that rigid remuneration caps can be counterproductive if they make funding economically non-viable, whereas ‘light-touch’

frameworks combining disclosure, fairness controls, and judicial oversight may better preserve both legitimacy and market availability.

VI. DIGITAL REDRESS AND THE LESSON OF ODR FAILURE

The post-mortem of the EU ODR platform illustrates the limits of technology-first designs. High traffic did not convert into outcomes because the platform relied on voluntary trader consent, creating a structural bottleneck where complaints closed without progression to ADR. Comparative lessons emphasise that digital redress requires at least one anchor: authority (binding outcomes), incentives (reputational or market discipline), or mandatory engagement. This insight aligns with analyses of sectoral ombuds models (in particular, in Italy and Germany) where mandatory participation and reputational sanctions produce higher compliance and predictable pathways. The broader implication is that digital consumer justice cannot be achieved through interfaces alone; it must be designed as an enforcement ecosystem that makes engagement rational for traders and credible for consumers.

VII. FIVE STRUCTURAL FAULT LINES AND AN EFFECTIVENESS AGENDA

Across the papers, five recurring fault lines stand out: (1) fragmentation and dual-track complexity; (2) representation and competence dilemmas; (3) evidence bottlenecks and restrained disclosure cultures; (4) financing constraints and the contested governance of TPF; and (5) incentive misalignment in digital redress systems. The effectiveness agenda implied by the analysed contributions is pragmatic: reduce pathway complexity and forum uncertainty; strengthen proportionate access to evidence for high-asymmetry harms; ensure funding is economically viable while subject to transparent, case-specific safeguards; and redesign digital redress with credible participation incentives or authority. Without such capacity-building measures, collective redress risks becoming a procedural architecture of enforcement without enforcement capability.

VIII. FINAL OVERVIEW EFFICIENT ENFORCEMENT DESIGN AS THE “MISSING LINK” IN CONSUMER PROTECTION: ECONOMIC AND SOCIAL INSIGHTS

The outcome of this five-days marathon provides inspiration for some further reflections. Why enforcement design matters (beyond “rights on the books”)?

Consumer protection rules only shape market outcomes if they are credible - that is, if traders expect that violations will be detected and sanctioned, and consumers can realistically obtain remedies. Modern policy frameworks explicitly connect effective enforcement to consumer confidence and the proper functioning of the internal market, especially in cross-border and digital settings where rogue traders can relocate or obscure their identity. In the EU context, this is the core premise of the “New Deal for Consumers” agenda, which was launched precisely because high formal protection can be undermined by weak public and private enforcement.

From a law-and-economics viewpoint, enforcement is an input into deterrence: compliance depends on the probability of detection and the expected sanction, relative to gains from non-compliance. A large body of enforcement theory emphasizes that policy-makers can trade off monitoring intensity and sanction severity to achieve efficient deterrence, while accounting for administrative costs, errors, and strategic behavior by regulated actors. In consumer markets, these deterrence mechanics are tightly linked to classic failures - information asymmetries, bounded rationality, and “low-value, high-volume” harms - where individual claims are often too small to pursue. When enforcement is predictable and timely, it reduces transaction costs (e.g., fewer

disputes, less need for costly self-protection), discourages “lemon” equilibria by making deception unprofitable, and supports fair competition by preventing non-compliant firms from undercutting compliant rivals.

EU measures illustrate how enforcement design is increasingly tuned to deterrence and cross-border scalability. The Consumer Protection Cooperation (CPC) framework strengthens coordinated investigative and corrective powers (e.g., information requests, mystery shopping, orders to remove scam content) to address fast-moving online infringements across jurisdictions; precisely where private enforcement alone tends to underperform. Likewise, the “Omnibus” reform explicitly highlights that consumer law effectiveness is compromised by weak enforcement and seeks stronger, more consistent penalties for widespread infringements, including turnover-based fines to make sanctions economically salient for large traders.

Enforcement also has a distributional and social function: it protects those who are least able to “self-insure” through expertise, time, or legal resources. Policy documents emphasize that large-scale unlawful practices can make consumers feel powerless and deter them from acting due to cost-benefit imbalances and psychological reluctance; dynamics that are especially acute for vulnerable groups.

An efficient enforcement architecture therefore supports substantive equality: it narrows the gap between formally equal rights and unequal real-world capacity to vindicate them. When consumers observe that unlawful conduct is promptly stopped and harm is repaired, trust in markets and institutions increases; when enforcement is slow or fragmented, cynicism rises and compliance becomes selectively rational. The EU’s strategic framing repeatedly links effective enforcement and redress to consumer confidence and to shielding compliant businesses from unfair competition, thereby reinforcing social cohesion alongside market integrity.

In short, efficient enforcement is not merely a technical add-on: it is the mechanism that converts consumer law into credible market governance. By aligning incentives (deterrence), lowering system-wide frictions (transaction costs), and improving fairness in access to justice (equity), enforcement design supports both economic performance and social legitimacy: two pillars that consumer protection ultimately depends on.

This volume underlines what the EU objectives are, how to achieve them, how to improve the adopted tools.

