



COMPARATIVE LAW REVIEW

VOLUME 17 · N. 3 · 2026

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

COMPARATIVE LAW REVIEW

The Comparative Law Review is a biannual journal published by the
I. A. C. L. under the auspices and the hosting of the University of Perugia Department of Law.

Office address and contact details:

Department of Law - University of Perugia
Via Pascoli, 33 - 06123 Perugia (PG) - Telephone 075.5852437
Email: complawreview@gmail.com

EDITORS

Giuseppe Franco Ferrari
Tommaso Edoardo Frosini
Massimiliano Granieri
Pier Giuseppe Monateri
Giovanni Marini
Salvatore Sica
Alessandro Somma

EDITORIAL STAFF

Fausto Caggia
Giacomo Capuzzo
Cristina Costantini
Virgilio D'Antonio
Edmondo Mostacci
Alessandra Pera
Giacomo Rojas Elgueta
Lorenzo Serafinelli

REFEREES

Biagio Andò
Salvatore Andò
Elvira Autorino
Ermanno Calzolaio
Diego Corapi
Giuseppe De Vergottini
Tommaso Edoardo Frosini
Fulco Lanchester
Maria Rosaria Marella
Antonello Miranda
Elisabetta Palici di Suni
Giovanni Pascuzzi
Maria Donata Panforti
Roberto Pardolesi
Giulio Ponzanelli
Andrea Zoppini
Mauro Grondona
Marina Timoteo

SCIENTIFIC ADVISORY BOARD

Christian von Bar (Osnabrück)
Thomas Duve (Frankfurt am Main)
Duncan Kennedy (Harvard)
Christoph Paulus (Berlin)
Carlos Petit (Huelva)
Thomas Wilhelmsson (Helsinki)

Comparative Law Review is registered at the Courthouse of Monza (Italy) - Nr. 1988 - May, 10th 2010.

COMPARATIVE LAW REVIEW VOL. 17/3 – 2026

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

5

VERONICA MONTANI, LAURA BUGATTI & PETER ROTT (EDS.)

Harmonizing and Enhancing the Enforcement of Consumer Law: A Comparative Analysis of Italy and Germany

9

CRISTINA AMATO

A Critical Assessment of Contemporary EU Collective Redress

14

LAURA BUGATTI, ANN-KRISTIN MAYRHOFER, CAROLINE MELLER-HANNICH

Comparative Analysis of Collective Redress in Italy and Germany. Framework Conditions and Legal Decisions in the Implementation of the European Representative Action

63

MALTE JOCHEM

Disclosure of Evidence in Representative Actions under German Law

81

ANDREA PILETTA MASSARO

Disclosure of Evidence in Collective Actions: The Italian Model in a Comparative Perspective

96

VERONICA MONTANI

Collective Redress and Structural Tensions: Focusing on (Non-Material) Damages

137

ASTRID STADLER

Financing of Collective Redress Proceedings – A Major Challenge for Qualified Entities

154

CRISTINA PONCIBÒ

Who Pays for Consumer Justice? Third-Party Litigation Funding and Collective Redres

169

GIORGIO AFFERNI

Mass Damages and Collective Litigation in Italy

181

MARINA FEDERICO

Harmonizing and Enhancing the Enforcement of Digital Rights. The Integrated Role of Consumer Law and Data Protection Law

192

LUIGI CRISTIANO

From Failure to Redesign: The European ODR System and the Next Generation of Digital Consumer Redress

211

MARIA CECILIA PAGLIETTI & PETER ROTT

Public and Hybrid Enforcement of Financial Services Consumer Law in Italy and Germany

226

ANGELO BONAITI

Public Enforcement of Consumer Protection in Italy: The Competence Saga among Independent Authorities

251

AXEL HALFMEIER

Research Perspectives on Collective Litigation and Society

PUBLIC ENFORCEMENT OF CONSUMER PROTECTION IN ITALY: THE COMPETENCE SAGA AMONG INDEPENDENT AUTHORITIES

Angelo Bonaiti

TABLE OF CONTENTS:

I. CONSUMER PROTECTION AND PUBLIC LAW - II. COLLECTIVE INTERESTS AND DIFFUSE INTERESTS AS “GENERAL” INTERESTS - III. PUBLIC ENFORCEMENT OF CONSUMER PROTECTION IN ITALY - IV. THE COMPETENCE SAGA AMONG INDEPENDENT AUTHORITIES - V. THE PERSISTENT OVERLAPPING OF COMPETENCES IN THE DIGITAL ENVIRONMENT

This paper analyses public enforcement of consumer protection in Italy through the conceptual framework of Italian public law and the practical problem of overlapping administrative competences. It first explains why consumer protection was traditionally marginal in administrative thinking, and it clarifies the role of supra-individual positions—collective interests and diffuse interests. It then shows how liberalisation of public services and the rise of regulated markets fostered new enforcement architectures, including the so-called “public class action” aimed at restoring efficiency rather than awarding damages. Against this background, the paper reconstructs the “competence saga” among independent authorities, focusing on the antitrust authority’s general power to repress unfair commercial practices and its interaction with sectoral authorities and data protection authority. It argues that legislative and judicial attempts to resolve conflicts have produced residual uncertainty and uneven sectoral outcomes. Finally, the paper shows how the digital regulatory package intensifies competence overlapping, making cooperation useful in practice yet insufficient to eliminate legal conflicts and potentially calling for structural rethinking of institutional design.

Keywords: public enforcement – consumer protection – competence saga – public authorities – digital markets – digital services

I. CONSUMER PROTECTION AND PUBLIC LAW

The Italian Antitrust Authority (*Autorità Garante della Concorrenza e del Mercato*, “AGCM”) holds a pivotal role in public enforcement of consumer protection. It is well known that, since 2007, the Authority has been given the power to suppress and sanction “unfair commercial practices” perpetrated by “traders” in every market¹. Furthermore, AGCM indirectly safeguards consumers by enforcing competition rules, repressing agreements that may restrict competition or abuses of dominant position², thereby guaranteeing that the free market offers the best products at the fairest price.

¹ Implementing Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005, Article 1 of Legislative Decree 2 August 2007, No. 146, amended Articles 18-27 of Italian Consumer Code (Legislative Decree 6 September 2005, No. 206) defining unfair commercial practices, and administrative and judicial remedies against them. AGCM has been entrusted with the general competence provided for in the Directive.

² CJEU, 25 February 2025, C-233/23, *Alphabet and Others*: «it is, in particular, the need for undertakings in a dominant position to continue to have an incentive to invest in developing high-quality products or services, in the interest of consumers, which, as the Advocate General stated, in essence, in point 30 of her Opinion, justifies applying the conditions referred to in paragraph 39 of the present judgment where an undertaking in a dominant position has developed infrastructure for the needs of its own business and owns that infrastructure» (§ 43). Conduct carried out by the undertaking in a dominant position (according to Article 102 TFEU) «which restricts competition on the merits [...] is thereby capable of causing harm to consumers» (§ 51), so the same undertaking «may demonstrate, to that end, either that its conduct is objectively necessary, or that the exclusionary effect produced may be counterbalanced or even outweighed by advantages in terms of efficiency which also benefit the consumers» (§ 71); see also ruling of Italian Council of State, 7 January 2026, No. 102: «the welfare of consumers, both intermediate and final, is the ultimate objective that justifies the intervention of competition law to suppress the abusive exploitation of a dominant position in the internal market or in a substantial part thereof» (§ 10.4.2).

In the consumer protection field, private enforcement may also benefit from public enforcement³. The infringement assessment carried out by AGCM – and confirmed in the administrative judicial proceedings – is still not binding on the parties in civil proceedings brought for compensation for damages (as is the case in competition law⁴). However, civil courts confer a “privileged probative value” to any decision taken by AGCM; accordingly, the professional operator shall provide evidence to rebut the “legal presumption” against it, and civil courts shall specifically refute the Authority’s conclusion on the relevant facts⁵.

Undoubtedly, most scholars have focused on the functions performed by AGCM against unfair commercial practices⁶; also in foreign legal systems, public enforcement of consumer protection has been mainly examined in relation to public measures against unfair commercial practices, or

³ Whether public or private enforcement is preferable is a matter of debate and, apparently, one without a clear-cut answer; however, this issue will not be addressed in this paper. Experience shows that the two tools are increasingly being used in a complementary manner: see F. Cafaggi, H-W. Micklitz (eds.), *New Frontiers of Consumer Protection: The Interplay Between Private and Public Enforcement*, Den Haag, 2009; F. Weber, M.G. Faure, *The Interplay between Public and Private Enforcement in European Private Law: Law and Economics Perspective*, in *European Review of Private Law*, 525 ff. (IV, 2015), regarding criminal law enforcement as well. For a discussion of the topic in Europe and the United States, see: C.E. Jones, *Litigate or Regulate? The Elusiveness of an Effective Consumer Protection Regime*, in *Canadian Business Law Journal*, 360 ff. (III, 2013); J. Kalajdzic, *Public Goals by Private Means, & Public Actors Protecting Private Interests: A Response to Professor Jones*, *ivi*, 371 ff. See also K.P. Purnhagen, A. Molitorisová, *Public and Private Enforcement in European Union Food Law*, in *European Journal of Risk Regulation*, 464 ff. (XIII, 2022), who examined the most effective type of enforcement in the specific field.

⁴ D. Dalfino, *Autorità amministrative indipendenti e tutela dei diritti*, 85 ff. (2022); L. Miccoli, *Tra public and private enforcement: il valore probatorio dei provvedimenti dell’AGCM alla luce della nuova direttiva 104/14 e del d.lgs. 3/2017*, in *juscivile*, 348 ff. (2017, IV).

⁵ See rulings of the Italian Court of Cassation, I, 31 August 2021, No. 23655, followed by lower courts: Pistoia Tribunal, I, 15 September 2023, No. 688 (which confers on the administrative decision an “high probative value”); Bergamo Tribunal, IV, 18 January 2024, No. 136, and 29 January 2024, No. 207; Court of Appeal of Bologna, III, 19 June 2024, No. 1324. However, according to Italian Civil Code, a presumption is qualified as “legal”, and it moves the burden of proof on the respondent, when a statutory provision clearly establishes it; to the contrary, a judge may infer a “mere” presumption from a fact, but the burden of proof remains on the claimant. In the cited cases, judges deduced such presumption from the legal system on consumer protection, lacking a specific law provision, and qualified it as “legal” to strengthen its probative value. However, the administrative decision is technically only a “fact” for civil courts, and it gives rise only to a mere presumption.

⁶ See, A. Chiarella, *“Isomorfismo” o superindividualità degli interessi e protezione del consumatore: riflessioni su taluni aspetti di rilevanza dogmatica circa la legittimazione ad agire, ex art. 21-bis, l. n. 287/1990, dell’Autorità Garante della Concorrenza e del Mercato nella recente giurisprudenza del Consiglio di Stato*, in *federalismi.it*, 54 ff. (III, 2024); C. Ruggiero, *Tra asimmetrie informative e pratiche commerciali scorrette: quali tutele per il consumatore?*, in *Rivista della Corte dei Conti*, 61 ff. (II, 2024); G. Pailli, C. Poncibò, *The transformation of Consumer Law Enforcement: an Italian perspective*, in C.A. d’Alessandro, C. Marchese (eds.), *Ius dicere in a globalized world*, II, Roma, 2018, 656 ff.; E. Battelli, *Il principio di unitarietà nella tutela amministrativa dei rapporti di consumo*, in C. Giustolisi (ed.), *La direttiva consumer rights: impianto sistematico della direttiva di armonizzazione massima*, Roma, 2017, 121 ff.; G. De Cristofaro, *Pratiche commerciali scorrette*, in *Enciclopedia del Diritto*, V, 1079 ff. (2012). See also the case law review of M. Filice, *La giurisprudenza in materia di “antitrust” e di tutela del consumatore*, in *Giornale di diritto amministrativo*, 525 ff. (IV, 2019). In relation to the average real or expected knowledge of the consumer, see also C. Bona, N. Bonini, *Tutela del consumatore e nuovi paradigmi scientifici (scienze cognitive e neuroscienze varcano la soglia di Palazzo Spada)*, in *Foro it.*, 542-546 (XI, 2022); S. Thobani, *Pratiche commerciali scorrette e sistemi di conoscenza alternativi al pensiero scientifico: tra protezione del consumatore e tutela del pluralismo*, in *Rivista critica del diritto privato*, 113 ff. (I-II, 2023).

unfair contract clauses, alongside private law remedies⁷. However, the competences attributed to the Authority do not exhaust public enforcement of consumer protection, which extends beyond the repression of unfair commercial practices and the powers conferred upon that Authority.

Before examining the various existing forms of public enforcement, it is necessary to define, albeit on a preliminary basis, the notion of consumer in public law. Indeed, every analysis of the instrument (i.e., public enforcement) requires prior clarification of the object of its activity (i.e., the consumer).

Traditionally, Italian public law did not recognise the consumer as a subject vested with rights to be protected against certain offences.

It is rather telling that the consumer is not expressly mentioned in the Italian Constitution⁸. Principle of solidarity enshrined in Article 2 grounds good faith and correctness duties within contractual and non-contractual relations, and the entire first part of the Charter is dedicated to the protection of the rights of individuals and groups from any abuse perpetrated by the authorities or third parties. On the other hand, while safeguarding economic initiative from interference by the State, the Constitution requires that private and public enterprises contribute to “social utility”⁹. However, the idea of direct public protection of individuals as consumers of goods or services, provided by traders or suppliers, was quite unknown to the Constitution; indeed, public enforcement of consumer protection grew beneath the constitutional provisions.

At the administrative law level, the existence of consumer protection competences was at odds with a fundamental premise: the administration may act only where it pursues a public interest, by exercising an authoritative (unilateral) power. According to the principle of legality, public authority

⁷ See M.B.M. Loos, *The Modernization of European Consumer Law (Continued): More Meat on the Bone After All*, in *European Review of Private Law*, 412 (II, 2020); R. Podszun, C. Busch, F. Henning-Bodewig, *Consumer Law in Germany: a Shift to Public Enforcement?*, in *Journal of European Consumer and Market Law*, 72 ff. (II, 2019), highlighting that, before consumer-protection competences were conferred on the existing market and competition authority, the enforcement was exclusively private, in Germany, and should be boosted with “supplementary powers”; S. Ammerlaan, D. Janssen, *The Dutch Consumer Authority: an introduction*, in W. Van Boom, M.B.M. Loos (eds.), *Collective enforcement of Consumer Law: securing compliance in Europe through private group action and public authority intervention*, Groningen, 2007, 107 ff.; R. Steennot, *Public and Private Enforcement in the Field of Unfair Contract Terms*, in *European Review of Private Law*, 589 ff. (IV, 2015), who describes the Belgian approach to public-enforcement mechanism against unfair contract terms, which provides for the issuance of warnings, followed by penal sanctions in case of infringement, or the proposal of a “transaction”, which implies the payment of a certain amount not higher than the penal sanction (§ 6); J. Mucha, *Public Enforcement of Consumer Law in Poland: Mission Impossible?*, in *Krytyka Prawa*, 29 ff. (II, 2021), focuses on public enforcement conducted by the “Polish President of the Office of Competition and Consumer Protection”, which is an administrative authority responsible for implementing the consumer safeguard policies drawn according to EU law provisions; the Author addresses the issue of “legal impossibilism”, defined as «*the situation when material justice is not brought due to the lack of the principles of procedural justice*», concluding that such phenomenon does not exist in the field of administrative proceedings carried out by consumer protection authority, as procedural mechanisms enable the authority to act in favour of consumers.

⁸ E. Bonelli, *Il valore costituzionale della tutela del consumatore: spunti ricostruttivi (tra Italia ed Unione europea)*, in *giustamm.it*, 30 ff. (2021). While the most recent constitutions of other countries, including Spain and Portugal, contain principles relating to consumer protection (both public and private), older constitutions—the German and French constitutions, as well as the Italian one—do not devote specific provisions to this aspect; even in its most recent revisions (dating back to 2001), when the principle of competition protection was expressly affirmed, consumer protection has not been included in the Constitution. Nevertheless, in the Italian legal system, it is possible to infer from the principles of solidarity (Article 2) and freedom of association (Article 18) the recognition of the value of groups representing several people, also aimed at safeguarding the positions of individuals; these provisions formed the basis for recognising the procedural and legal standing of such groups, as will be seen. With the process of integration of the European Community, later the European Union, the principle of consumer protection has entered national legal systems.

⁹ Article 41 of the Italian Constitution requires that private enterprises shall not interfere with people’s health, environment, safety, freedom, and human dignity; the law shall also guarantee that the economic activity shall be directed and coordinated towards social and environmental purposes. However, such provision does not imply specific protection of the natural person as a consumer, namely a market client.

is entitled to protect general interests defined by law, whether the interest of a specific administration or that of the community which the entity is required to guarantee. If that dimension of general interest were lacking, the administration could not act at all, remaining indifferent to the specific situation of the individual. In other words, public powers are not traditionally conferred for the protection of purely private positions, which are framed as “legitimate interests”, since the authority must in any event ascertain whether the adoption of a punitive measure against the trader serves the public interest¹⁰.

This objection has since been overcome, given that the authority’s intervention to curb practices harmful to consumers safeguards the public interest in market fairness, and in certain cases general interest coincides with consumers’ interests.

From the opposite perspective, a citizen or a natural person may always be seen as a consumer vis-à-vis the public administration, since individuals benefit from activities performed by public or private bodies providing functions or public services—especially where they supply individual services of a social or welfare nature, yet with an economic content. Public law provides remedies in favour of the consumer so intended, as public decisions may be challenged before administrative courts, with the possibility—only from the end of the 1990s—of obtaining compensatory relief for the infringement of relevant interests. However, this notion of consumer tells little on the subject matter regarding what the administration should do to safeguard consumers against third-party professionals: the consumer is the individual that should be protected by, not from, the authority’s initiative.

II. COLLECTIVE INTERESTS AND DIFFUSE INTERESTS AS “GENERAL” INTERESTS

To understand more precisely the notion of consumer in public law, it is necessary to clarify the meaning of two further subjective, “supra-individual” or “trans-individual” positions long discussed: “collective interests” and “diffuse interests”. One may think that public enforcement of consumer protection involves such positions as well; however, they fall within a field that differs from the protection of individual consumers.

It is well established that such interests relate to assets or values commonly described as “ownerless” (*adespoti*), namely, not vested in any individual. At the same time, they do not identify with “public interest”, as public entities do not hold them.

Accordingly, legal standing has been conferred in respect of those interests to ensure that the bodies entrusted with their protection are entitled to bring proceedings against offences. The evolution of such representation differs considerably for collective and diffuse interests.

Pursuant to Italian public law and historically speaking, collective interests only pertain to a legal person (association, committee) representing a “category” and, by embodying it, holding that interest¹¹. Typical examples are groups of workers, professionals or undertakings gathered in bodies, associations or trade unions representing the interests of those categories. Such entities are recognised a role by various legal provisions, which impose their involvement in different public

¹⁰ The individual does not have a “subjective right” (*diritto soggettivo*) in the intervention of the authority, which does not have an obligation or a duty to act, or to adopt a specific decision. If the administration exercises—or may exercise—a power, the individual (natural or legal person) holds a “legitimate interest” (*interesse legittimo*), which is legally relevant because it corresponds to the public power regulated by law; it is the interest in the authority doing, or not doing, something in order to confer or preserve a personal good (*bene della vita*). Such notion has been adopted by European Union law, which qualifies the position of consumers or their groups as a «*legitimate interest in combating unfair commercial practices*» (see Article 11(1) of Directive No. 2005/29).

¹¹ C. Cudia, *Gli interessi plurisoggettivi tra diritto e processo amministrativo*, Santarcangelo di Romagna, 2012; G. Manfredi, *Interessi diffusi e collettivi (diritto amministrativo)*, in *Enc. dir. – Ann.*, 515 ff. (2014).

procedures concerning the category, or allow them to assert the category's interests in judicial proceedings¹².

In recent years, consumer organisations, registered or not¹³, have been recognised as holders of collective interests in that specific sense, *i.e.* the interest refers to the category of consumers, and it is not a collection of individual interests. Representative entities shall have the possibility to challenge and request annulment of administrative acts that may harm collective interests¹⁴, even in the absence of a specific law provision attributing such standing¹⁵. A limit remains, as representative associations cannot claim compensation for damages caused to the consumers by public administration: lawsuits promoted by representatives of the collective interest do not directly and immediately concern the individuals and, vice versa, the association cannot enforce individual claims.

This notion of “collective” interests must not be confused with the one set out in the Italian Consumer Code, which refers to «*interests of a number of consumers who have been or could be harmed by a violation*» of certain provisions of the Code itself perpetrated by a trader (Article 140-ter(c)); such individual interests may be enforceable through representative actions¹⁶, or class actions¹⁷, so that the consumer may join the lawsuit and require compensation. The two¹⁸ “collective” situations have common features (such as the standing of the “qualified entity”, or the possibility of requesting the issuance of a judicial order). However, according to Italian public law, collective interests cannot lead to personal benefits, while representative actions (as an instrument of private enforcement) may also lead to redress measures, because the interest remains individual—namely egoistic—and may receive monetary compensation¹⁹. Although injunctive measures aim to protect the collective interests of consumers irrespective of whether any actual loss or damage is suffered

¹² See recent ruling of Court of Cassation, Civil Joint Sections, 23 November 2023, No. 32559, which recognised legal standing to an association representing the managers of sea bathing facilities, because it has its own collective interest (pertaining to the category in addition to legitimate interests of the operators) in contesting an unfavourable ruling of the administrative judge.

¹³ Article 137 of Italian Consumer Code provides that the registration of a consumer association in the national register depends on certain requirements. A registered association may promote “class actions” according to Articles 840-*bis* and ff. of Italian Code of Civil Procedure and “representative actions” according to Articles 140-*ter* and ff. of Italian Consumer Code. However, in past years those associations were not given the legal standing to challenge administrative acts in judicial proceedings before administrative courts.

¹⁴ Council of State, Plenary Assembly, 20 February 2020, No. 6, affirms that the collective interests, to be relevant, shall be exclusively referred to the representative entity; in that sense, it is not necessary to prove that the legitimate interests of consumers are “homogeneous”. See also Council of State, III, 28 May 2021, No. 4116, and Id., IV, 1 October 2024, No. 7869, on the criteria to admit the standing to bring proceedings of representative associations or committees. See, in this regard, S. Casilli, *Legittimazione, accertamento e risarcimento: il punto sulla capacità delle associazioni esponenti*, in *giustiziasieme.it* (2021).

¹⁵ According to a more restrictive opinion, Council of State, VI, 21 July 2016, No. 3303, declined the appeal filed by a consumer association against CONSOB approval of an offer prospectus, considering that any law provision confers the association the right to challenge administrative acts on behalf of consumers: legitimate interests of the individuals do not merge into the collective position. Decision No. 6/2020, cited above, overruled such opinion and affirmed a general, implicit legal standing of representative organisations with certain requirements.

¹⁶ Under Directive No. 2020/1828 and Articles 140-*ter* and ff. of Italian Consumer Code.

¹⁷ According to Articles 840-*bis* and ff. of Italian Code of Civil Procedure. Different and common features of the two private enforcement instruments are discussed in previous papers of the *Journal* special issue.

¹⁸ Article 3 of Directive (EU) No. 2020/1828 defines “collective interests of consumers” as the «*general interest of consumers and, in particular for the purposes of redress measures, the interests of a group of consumers*».

¹⁹ See A. Gambaro, *Interessi diffusi, interessi collettivi e gli incerti confini tra diritto pubblico e diritto privato*, in *Riv. trim. dir. pubb.*, 779 ff. (III, 2019), on the uncertain distinction between Italian private and public law.

by individual consumers²⁰, or independently of the infringement of specific rights of consumers²¹, the initiative carried out by the representative entity corresponds to an individual interest of each consumer.

For the same reasons, the so-called “public class action” (discussed below at § III.1) has different premises and effects from the private one.

If the supra-individual interest cannot be deemed collective, because no specific category may claim it, it remains a “diffuse interest” (*interesse diffuso*)²². In theory, an interest is diffuse because it does not belong to anyone, neither to a specific category or group: no single person or entity is vested with an individual right, despite having the interest in protecting a “greater good” which pertains to everyone²³.

In the absence of an explicit and substantive legislative recognition of such interests, “collective” entities have acquired relevance within the domestic legal order through the judicial conferral of procedural standing, justified by their constitutional grounding in Article 2 (the principle of solidarity) and Article 3(2) (the principle of substantive equality)²⁴. While participation in administrative proceedings is guaranteed by general provisions²⁵, representatives of diffuse interests still do not have general standing in judicial proceedings; they must demonstrate, on a case-by-case

²⁰ See Recital 33 of Directive No. 2020/1828.

²¹ See CJEU, 28 April 2022, C-319/20, *Meta Platforms Ireland*, in a case regarding the breach of GDPR provisions and the standing for representative actions pursuant to Article 80(2) GDPR, recognised that «it is sufficient to claim that the data processing concerned is liable to affect the rights which identified or identifiable natural persons derive from that regulation, without it being necessary to prove actual harm suffered by the data subject, in a given situation, by the infringement of his or her rights» (§ 72). Such reasoning may be applied also to representative actions under Directive No. 2020/1828, which, according to the Court's opinion, do not prevent Member State from providing for specific remedies against data breach. See A. Capellà i Ricart, *Fundamental Rights' Protection in the Digital Environment: Collective Actions Defending Diffuse Interests and Public Interest*, in *Journal of Consumer Policy*, 636 ff. (48, 2025), on cited case and CJEU, 11 July 2024, C-757/22, *Meta Platforms Ireland Ltd*.

²² Diffuse interests are recognised in several legal systems at National and International level, and they have been studied from various scientific perspectives. Among lawyers, see N. Reich (contr. by), *Law and diffuse interests in the European legal order* (III, 1997). The definition of diffuse interest in social and policy studies tends to be more generic than the legal one, as it encompasses every interest shared by multiple individuals or groups; in this regard, see the earliest studies on the lack of diffuse interests representation (namely the inability to organise as institutional groups) by M. Olson, *The Logic of Collective Action*, Harvard, 1965, 165 ff.; according to M. Bailey, *Quiet Influence: The Representation of Diffuse Interests on Trade Policy*, in *Legislative Studies Quarterly*, 45 ff. (I, 2001), diffuse interests (in the specific case, skilled labor), despite not being organised, cause an anticipated reaction of policy makers, thereby making them relevant. More recently, see also S. Dothan, *Elites, Power Struggles, and the Law. How Courts Support Diffuse Interests*, London, 2025, *passim*, on diffuse interest studied through an integrated socio-legal approach.

²³ Domestic literature is abundant and cannot be entirely cited here. Among others, see F.G. Scoca, *La tutela degli interessi collettivi nel processo amministrativo*, in *Le azioni a tutela di interessi collettivi. Atti del convegno di studio: Pavia, 11-12 giugno 1974*, Padova, 1976, 43 ff.; A. Romano, *Il giudice amministrativo di fronte al problema degli interessi c.d. diffusi*, in *Foro. it.*, ff. 8 (I, 1978); V. Denti, *Interessi diffusi*, in *Novissimo digesto italiano. Appendice*, 305 ff. (IV, 1983); R. Federici, *Gli interessi diffusi. Il problema della loro tutela nel diritto amministrativo*, Padova, 1984; G. Berti, *Diritto e Stato. Riflessioni sul cambiamento*, Padova, 1986; M. Nigro, *Le due facce dell'interesse diffuso: ambiguità di una formula e mediazioni della giurisprudenza*, in *Foro it.*, 7 ff. (I, 1987); G. Alpa, *Interessi diffusi*, in *Dig. disc. priv. Sez. civ.*, 609 ff. (IX, 1993); R. Ferrara, *Interessi collettivi e diffusi (ricorso giurisdizionale amministrativo)*, in *Dig. disc. pubb.*, 481 ff. (VIII, 1993); R. Rota, *Gli interessi diffusi nell'azione della pubblica amministrazione*, (1998); S. Cassese, *Gli interessi diffusi e la loro tutela*, in L. Lanfranchi (ed.), *La tutela giurisdizionale degli interessi collettivi e diffusi*, Torino, 2003, 596 ff.; G. Iudica, *Diritti diffusi*, in *Enc. giur.* (III, 2004).

²⁴ G. Recchia, *Considerazioni sulla tutela degli interessi diffusi nella Costituzione*, in A. Gambaro (ed.), *La tutela degli interessi diffusi nel diritto comparato. Con particolare riguardo alla protezione dell'ambiente e dei consumatori*, Milano, 1976, 25 ff., who also refers to the explicit constitutional protection of health and landscape, and to the implicit protection of (right to) home and environment. M. Cresti, *Contributo allo studio della tutela degli interessi diffusi*, Milano, 1992.

²⁵ See Article 9 of Law 7 August 1990, No. 241, which confers procedural standing to associations and committees of diffuse interests that may be damaged by the administrative decision to be adopted.

basis, that they can exercise that exceptional form of protection beyond public interest and legitimate interests²⁶.

Certain diffuse interests gained broader protection. In environmental matters, legislation came to recognise the right of associations or committees to participate in administrative procedures and opened their standing to bring proceedings²⁷.

Although the notion of diffuse interests has gained considerable support among scholars²⁸, such that the existence of a distinct category is no longer seriously in doubt at the theoretical level, the legal mechanisms devised for their protection tend in practice to conflate them with “general interests”. The debate remains open, and recognising standing for entities bearing these interests—distinct from public entities and situated within the non-profit sector—offers certain theoretical possibilities; however, this does not directly pertain to consumer law and its protection, because diffuse interests have a general and super-individual dimension that goes beyond the position of an individual consumer.

Two concrete examples assist in clarifying the point.

In Italy, for years the environment has been protected by a traditional administration, *i.e.* the Ministry for the Environment, which is entrusted with the function of combating pollution, preventing and remedying environmental damage.

Those tasks are now well defined. The Ministry must adopt preventive measures and exercise supervisory and sanctioning functions in environmental matters, which are: (a) proportionate to the level of protection intended to be achieved; (b) non-discriminatory and consistent with analogous measures already adopted; (c) based on an assessment of potential benefits and burdens; and (d) capable of being updated according to scientific data²⁹.

In the event of a threat of environmental damage³⁰, the intervention of the Ministry may be requested to safeguard the environment. In addition to territorial public bodies, individuals or associations promoting environmental protection are entitled to act. They may also bring proceedings before the administrative court to challenge measures adopted, or the Ministry’s inertia in adopting effective precautionary, preventive, or containment measures in respect of environmental damage³¹. However, only the Ministry may adopt such measures.

When environmental damage occurs, public enforcement takes place through the Ministry’s initiative in a twofold sense: (i) it brings an action for damages, also in criminal proceedings. While individual actions may be brought by people directly harmed by the environmental damage, in

²⁶ See cited ruling of Council of State No. 6/2020; Id., IV, 1 October 2024, No. 7869, which sets out the criteria to admit the standing to bring proceedings of representative associations or committees.

²⁷ See Article 18 of Law 8 July 1986, No. 349, which gave legal standing for the intervention in judicial proceedings for the compensation of damages, and for the appeal against administrative acts, to the representative association recognised by the Minister of the Environment according to Article 13.

²⁸ See comparative studies of A. Aragao, *Les intérêts diffus, instruments pour la justice et la démocratie environnementale*, in *Vertigo* (2015), who refer to a subcategory of trans-individual interests beyond the individual interests and the public interest, which—in certain legal systems—may be enforceable through the so-called *action popularis*; see also M.J. Azar-Baud, *L’action de groupe, une valeur ajoutée pour l’environnement ?*, in *Vertigo* (2015), regarding group action in French consumer law.

²⁹ Preventive measures are adopted in accordance with the precautionary principle set out in Article 191 TFEU: «where there are risks, even potential ones, to human health and the environment, a high level of protection must be ensured» (Article 301, c. 1, of Italian Environment Code).

³⁰ Environmental damage, pursuant to Article 300, par. 1, of the Environment Code, is defined as «any significant and measurable deterioration, direct or indirect, of a natural resource or the utility provided by it» (e.g., natural species and habitats, inland waters, coastal waters, land, soil).

³¹ G. Ceccherini, *Danno all’ambiente e garanzia dell’accesso alla giustizia: una questione aperta*, in *Riv. dir. civ.*, 347 ff. (II, 2021); M.A. Lupoi (ed.), *Emergenze ambientali e tutela giuridica*, Santarcangelo di Romagna, 2017; F. Giglioni, *La legittimazione processuale attiva per la tutela dell’ambiente alla luce del principio di sussidiarietà orizzontale*, in *Dir. proc. amm.*, 414 (I, 2015); A. Miletto, *Tutela inibitoria individuale e danno ambientale*, Napoli, 2006; M. Maugeri, *Violazione delle norme contro l’inquinamento ambientale e tutela inibitoria*, Milano, 1997.

respect of their health or property, class or representative actions seem to be precluded³²; alternatively, (ii) it initiates the procedure for the adoption of an order enjoining those responsible to restore the environment, by way of compensation in kind. In the event of inertia, the Ministry itself proceeds to restore the impaired environmental matrices, charging the costs.

One may say that people interested in the protection of the environment might fall within a broad notion of consumer and, in that sense, diffuse interests might be relevant to the public enforcement of consumer protection; however, supervisory functions in environmental matters are not materially different from protective functions pursued for general interest. Vis-à-vis public power (to be exercised against potential infringements of the public interest), all persons are consumers. Yet, as it has been said above, this would render wholly useless the notion of consumer in the public sphere, which is, instead, narrower.

Climate litigation confirms such opinion. Whilst a private law remedy, it has a broader object, since it targets—at least insofar as can be understood—polluting emissions, and it is brought against private enterprises and, more recently, States and Governments³³. Apart from other problems concerning the establishment of fault, the causal link between event and damage, and the quantification of damage, the difficulty of such litigation lies in the lack of standing of representative associations and individuals to claim compensation for damages caused to environment or climate³⁴.

On the other hand, the interest in the fairness and integrity of the financial market might be another example of diffuse interest of all the investors, who in certain cases are consumers (*i.e.*, retail investors benefiting from investment services).

The law currently empowers the criminal court to condemn the offender to pay a sum in favour of the financial market authority (*Commissione Nazionale per le Società e la Borsa* – “CONSOB”), in cases of insider dealing and market manipulation³⁵. In practice, compensation for damage arising from breach of rules on transparency and proper conduct in the financial market accrues to a public authority (not to any subject representing investor-consumers), which may receive a sum calculated by the court on a substantially equitable basis and entirely irrespective of proof of specific damage to specific investors³⁶.

According to the law, (private) collective actions do not absorb diffuse interest, because the initiative of the representative entity may only “collect” individual rights, not legitimate interests nor public interests. Indeed, registered consumer associations are entitled to protect the collective

³² According to Article 310 of Environment Code, only damaged individuals may intervene into the proceedings.

³³ A. Merone, *Lo Stato quale legittimato passivo della climate change litigation: tra diritti fondamentali e giudizi universali*, in *Il processo*, 579 ff. (II, 2024); R. Tiscini, *Contenzioso climatico e processo civile. Considerazioni a margine di alcune recenti pronunce*, in *judicium.it* (2024).

³⁴ In a very recent national case, where environmental associations and citizens sued the Italian Ministries and public companies for the assessment of the violation of climate change obligations, the Court of Cassation, Civil Joint Sections, 21 July 2025, No. 20381, following the ECtHR decision in *Verein KlimaSeniorinnen Schweiz v. Suisse*, recognised courts’ jurisdiction on the subject matter; however, it did not decide on the legal standing of representative association, to be evaluated in the merits phase of the proceeding. It should be emphasised that the claimants did not actually seek compensation for environmental or climate damage; rather, to avoid a finding that they lacked standing to bring the action, they sought compensation for the alleged violation of human rights, which is distinct from environmental harm. In that sense, climate litigation focuses on the violations committed by States and undertakings, and *personal* damages suffered by people.

³⁵ See Article 187-*undecies* of the Legislative Decree No. 58/1998 (*Testo Unico in materia finanziaria*).

³⁶ See first ruling of Criminal Court of Milan (first instance), 27 March 2006, on a market manipulation. More recently, Italian Criminal Court of Cassation, I, 5 July 2023, No. 45333, regarding the abuse of inside information, has also affirmed that the compensation for damages cannot include a punitive sum, which pertains to the sanction autonomously imposed by the authority.

interests of investors through class actions or representative actions, namely on behalf of the interest of consumers³⁷; however, an equitable compensation for market damages it is solely for the public authority.

In conclusion, for the purposes of public enforcement, diffuse interests largely overlap general interests: they belong neither to the administration nor, *a fortiori*, to individuals, but are protected by public authorities in an institutional and objective capacity. While a collective interest, in the public-law sense, is the interest of a defined category, a diffuse interest concerns a plurality of people, albeit not on an individual basis. In the absence of specific and explicit legislative provisions allowing such positions to be characterised as diffuse interests, their protection is mainly afforded by public bodies, which are institutionally charged with safeguarding general interests on behalf of citizens, in the absence of any personal interest belonging to consumers.

III. PUBLIC ENFORCEMENT OF CONSUMER PROTECTION IN ITALY

In a broad sense, public enforcement would encompass any action undertaken by public authorities (administrative or judicial powers), as organisational components of the Republic, to safeguard the individual consumer. Even the European legislation on unfair commercial practices leaves it up to Member States to decide whether to entrust the enforcement of the rules exclusively to an administrative authority, or involve the judicial authorities as well, following an action taken by the administration³⁸. In other words, public administration and courts ascertain and repress unlawful conducts, which affects multiple people simultaneously and cause single damages of limited amount, whenever a natural person, or a group of people, would not autonomously proceed, lacking the necessary means to prove complex unlawful conduct or the incentive to seek compensation for small claims.

In a strict sense, enforcement is public only if public administration takes the initiative and decides whether to adopt an injunction or a sanction, or to defer the professional operator to a court. Otherwise, the notion of public enforcement would include decisions taken by civil courts to define collective claims: these remain disputes between private parties governed by civil law.

The Italian legal system currently favours administrative route of public enforcement, as the (administrative) judge only intervenes if the decision has already been made (*i.e.* when it is challenged), or decides disputes brought directly by consumers or their associations according to a scheme similar to private enforcement. Consequently, the internal framework delivers a narrower definition of public enforcement of consumer protection. Public enforcement still identifies with the action undertaken by a public administrative authority—whether a traditional governmental authority, or an independent entity charged with protecting a specific good or entrusted with the regulation and supervision of a sector.

It draws a tripartite relationship among consumers, traders and the authority, and may become quadripartite with the intervention of the court. Here, the consumer figures more as a passive beneficiary than as an actor of protection, to the extent that it has no true right in relation to the

³⁷ See Article 32-*bis* of the Consolidated Finance Act.

³⁸ Article 11(1) of Directive No. 2005/29 provides that persons and organisations shall be given the possibility to bring unfair commercial practices before an administrative authority. However, according to par. 2, «Member States shall confer upon the courts or administrative authorities powers enabling them, in cases where they deem such measures to be necessary taking into account all the interests involved and in particular the public interest: (a) to order the cessation of, or to institute appropriate legal proceedings for an order for the cessation of, unfair commercial practices; or (b) if the unfair commercial practice has not yet been carried out but is imminent, to order the prohibition of the practice, or to institute appropriate legal proceedings for an order for the prohibition of the practice, even without proof of actual loss or damage or of intention or negligence on the part of the traders». Similarly, MS shall confer a court or an administrative authority the power to eliminate the effects of unlawful practices.

imposition of a sanction or a specific remedy. The law requires public authorities to exercise enforcement powers against providers of the relevant good or service who act in breach of the rules safeguarding consumers and users. Consumers derive both indirect and direct benefits from public action, since the findings made by the Authority may assist the consumer in protecting himself privately, including jointly with other subjects, before the civil court to obtain compensation for damage, or may grant the consumer a personal compensation.

Such public competences in the field of consumer protection have become relevant because of two factors, one consequent to the other.

III.1 The liberalisation of public services, the relevance of “homogeneous interests”, and the so-called “public class action”

The historical impetus for the development of public enforcement of consumer protection arose from the privatisation of public enterprises and the liberalisation of *large public services* and *local public services* (both constituting “services of general economic interest”).

The process of European integration has contributed greatly to this transition, because liberal economic doctrines promoted a free and competitive market, limiting public economic intervention and state monopolies. Despite several inefficiencies and distortions, at least public companies—at national, regional and local levels—indirectly performed a social function by guaranteeing accessible and universal services to satisfy people’s fundamental and constitutional rights; being not driven exclusively by the logic of profit, they guaranteed fair prices. With the end of the active intermediation by public authorities between market and users, it became necessary to defend the latter from aggressive or unfair conducts perpetrated by professional operators, in the absence of structural safeguards in contractual relationships³⁹. Thus, the “legal order of the market”⁴⁰ implied consumer protection, alongside competition.

While older national constitutions do not mention consumers, their protection has long been the subject of specific provisions in European treaties, which seek to balance market liberalism with the legal protection of market users⁴¹.

Competition-driven European and National policies chose the regulation as the preferred instrument between the law and the administrative act⁴². At a national level, independent sectoral authorities have been appointed as markets regulators and supervisors in the interest of consumers in major liberalised sectors⁴³.

³⁹ G. Alpa, A. Catricalà, *Diritto dei consumatori*, Bologna, 2016; A. Barenghi, *Diritto dei consumatori*, Padova, 2024, 129 ff.

⁴⁰ N. Irti, *L’ordine giuridico del mercato*, Bari, 1998.

⁴¹ See now Articles 4(2)(f), 12, 39, 40, 102, 107, 114, and the entire Title XV (Consumer protection, Articles 169 ff.), of the Treaty on the Functioning of the European Union. Those provisions were already included in the last version of the Treaty establishing the European Community; the very first version of the Treaty (1957) contained some provisions protecting the consumer in the common agricultural policy, and against the abuses of dominant position.

⁴² A. Zito, *Mercati (regolazione dei)*, in *Enc. dir.*, 805 ff. (III, 2010); P. Guarini, *Contributo allo studio della regolazione “indipendente” del mercato – Profili pubblicistici*, Bari, 2003; F.G. Scoca, *Attività amministrativa*, in *Enc. dir.*, 80 ff. (VI, 2002).

⁴³ Law No. 15 November 1995, No. 481/1995 provided the first set of rules on the regulation of competition in liberalised public utility services, quality standards, and a certain tariff system. See, in the Italian literature, D. Iacovone, *I servizi di pubblica utilità tra Stato, mercato, regolatore e consumatore*, 83 ff. (2014); M. Mariani, *La nuova Costituzione economica: le Autorità Amministrative Indipendenti in Italia*, in G. Borrelli (ed.), *Governance*, Napoli, 2004, 91 ff.; CM. Clarich, *Le autorità indipendenti tra regole, discrezionalità e controllo giudiziario*, in *Foro amm – Tar*, 3858 ff. (XIV, 2002); G. Giraudi, M.S. Righettini, *Le autorità amministrative indipendenti. Dalla democrazia della rappresentanza alla democrazia dell’efficienza*, Bari, 2001; M. Passaro, *Le amministrazioni costituzionali come organismi «neutri»*. Tra falsi problemi ed equivoci dottrinari, in S. Panizza (ed.), *Il contributo della giurisprudenza costituzionale alla determinazione della forma di governo italiana*, Torino, 1997, 275 ff.; S. Niccolai, *Poteri garantiti della Costituzione e Autorità indipendenti*, Pisa, 1997, 175 ff.

While in the banking and financial sectors the supervisory authorities have been established a long time ago⁴⁴, Law No. 481/1995 provided a general framework on privatised “public utility services”, and instituted regulatory authorities in the electricity, gas and communications fields. The authority for the regulation of energy, nets and environment (now called «*Autorità di regolazione per energia reti e ambiente*» – “ARERA”) and communications authority («*Autorità per le garanzie nelle comunicazioni*» – “AGCOM”) were established and became operative a few years later. Recently, AGCOM, whose importance in general consumer protection is attested by Consumer Code⁴⁵, has also been appointed as the “Digital Services Coordinator”⁴⁶ under the so-called Digital Services Act (“DSA”), and it should coordinate supervision by other national authorities⁴⁷. An authority for transport regulation («*Autorità di regolazione dei trasporti*» – “ART”) was later established for the supervision of all kinds of transport services and the implementation of a fair tariff mechanism.

Regulatory and supervisory authorities ensure that services are provided correctly and consistently with quality standards set out in service charters, exercising their powers on consumers and users’ protection⁴⁸. A form of enforcement is ensured by the Alternative Dispute Resolution mechanism provided by each specific authority in conformity with the Consumer Code.

Whereas in the past the user of a public service was subject to the administrative power of the entity managing the service, whose choices were in part reviewable, with privatisation and liberalisation of public economic services the relationships have been fully brought back within a contractual regime⁴⁹. This applies both to completely liberalised sectors, in which the authority may only exercise “external” regulatory and supervisory powers⁵⁰, and to “externalized” services, where the administrative authority selects a private operator to carry out the activity according to a

⁴⁴ In the banking sector, the Bank of Italy exercises regulatory and supervisory powers over “sound and prudent management” (*sana e prudente gestione*) of banking institutions, and compliance with transparency rules in relations between the bank and the customer (see Consolidated Law on Banking, adopted with Legislative Decree No. 385 of 1 September 1993). Founded in 1893 as a private institution with monetary functions, it became a public-law institution pursuant to the Banking Reform of 1936; despite being functionally independent from the Government and the market, its capital is shared by credit institutions and foundations. In the financial sector, CONSOB supervises issuers and intermediaries, ensuring transparency of market operations, proper information in the market, and the due provision of investment services, which under capital markets legislation must comply with the principle of “adequacy” of the transaction and the financial instrument to the investor’s subjective conditions (see cited Consolidated Finance Act); it was founded in 1974. In the insurance sector, the first public supervisory authority was created in 1982.

⁴⁵ See Article 27(6) of Italian Consumer Code: «*When the commercial practice has been or is to be disseminated through periodicals or daily newspapers, or by radio, television or other means of telecommunication, the Authority shall, before taking action, seek the opinion of the Communications Regulatory Authority*»; the opinion is mandatory, but not binding.

⁴⁶ See Article 15 of Law Decree 15 September 2023, No. 123, converted, with amendments, into Law 13 November 2023, No. 159. S. Vaccari, *Riflessioni sulla responsabilità dei c.d. hosting providers tra enforcement privatistico e regolazione amministrativa*, in *Munus*, 695 ff. (II, 2024), underlines the impact of such regulation on the hosting providers’ activity and liability.

⁴⁷ With Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services (Digital Services Act), European law introduced rules intended to guarantee a safe, predictable and reliable online environment, in which the fundamental rights of users of digital services are effectively protected and innovation is facilitated, countering the dissemination of illegal content and the risks to society that the spread of disinformation or other unlawful or harmful content may generate.

⁴⁸ See, *inter alia*, Article 2(20)(c) of Law No. 481/1995, in the original version, according to which the Authority «*orders the service provider to cease conduct that infringes users’ rights, imposing, pursuant to paragraph 12, letter g), the obligation to pay compensations*»; more recently, Article 8 of Law Decree 24 January 2012, No. 1, converted, with amendments, into Law 24 March 2012, No. 27, which provides that independent regulatory authorities and other public entities with supervisory competences on public services shall define users’ rights to be guaranteed by service and infrastructure managers.

⁴⁹ M. Ramajoli, *La tutela degli utenti nei servizi pubblici a carattere imprenditoriale*, in *Dir. amm.*, 383 ff. (III-IV, 2000); G. Carapezza Figlia, *I rapporti di utenza dei servizi pubblici tra autonomia negoziale e sussidiarietà orizzontale*, in *Rassegna di diritto civile*, 440 ff. (II, 2017), see authors cited therein at note 2.

⁵⁰ E.g., in the electricity market (except for network distribution) or the telecommunications field, where regulatory authorities do not have managing powers on the service (there is no concession).

“service contract”⁵¹. While in the first case regulatory acts establish mandatory contractual terms and conditions to be observed in single supply contracts, in the second hypothesis service contracts lay down the general conditions for the provision of public services. In any case, the supplier may set out in the service charter certain quality standards to be guaranteed⁵².

The user (of services) is placed alongside the consumer (of products) by Article 2(2) of the Italian Consumer Code: «*Consumers and users are recognized as having the fundamental right: [...] (g) to the provision of public services according to quality and efficiency standards*»⁵³. Where an activity is qualified as a public service, even in an “objective” sense⁵⁴, the user/consumer therefore receives enhanced protection, which must be specified in specific State or regional laws⁵⁵. In that context, public enforcement of consumer protection has emerged in regulating the service, approving model contracts and service charters, and supervising the provision of services according to criteria of universality, continuity and economic efficiency⁵⁶.

With the recognition of consumers’ right to obtain adequate public services, according to the contractual provisions concluded with the operator, public law—limited to activities classifiable as services of general economic interest—has come to recognise the notion of “*homogeneous interests*”, namely a subjective position common to all beneficiaries of the same performance regulated, wholly or in part, by public law. According to public law, such an individual position appears, in all respects, as an interest in receiving a service with minimum quality standards, while in private law those situations are normatively qualified as “*homogeneous individual rights*”⁵⁷. These individual

⁵¹ E.g., in local services, or in railway transport services, where the service contract must be awarded to private undertaking through a tender procedure.

⁵² V. Silla, *La tutela dei consumatori nei servizi pubblici*, in P. Cendon, C. Poncibò (ed.), *Il risarcimento del danno al consumatore*, Milano, 2014, 553 ff.; G. Carapezza Figlia, *I rapporti di utenza dei servizi pubblici tra autonomia negoziale e sussidiarietà orizzontale*, cit., 448 ff.; S. Mirate, *La tutela del cittadino utente consumatore: profili pubblicistici*, in *Responsabilità civile e previdenza*, 41 ff. (I, 2020); S. Torricelli, *Il contratto di servizio nella nuova disciplina dei servizi pubblici locali*, in *Munus*, 303 (II, 2023).

⁵³ S. Mirate, *La tutela del cittadino utente consumatore: profili pubblicistici*, cit., 47 ff., highlights that the two definitions are not equivalent: the user does not consume products, rather it receives all those services that satisfy its fundamental constitutional rights as human person. In this regard, the user holds, at the same time, mere interests and full rights, depending on the specific service.

⁵⁴ Meaning that a service may be qualified as “public” even if it is not carried out by a public entity, but only because it is necessary to satisfy people’s fundamental rights, freedoms or needs. Such a notion emerged after the liberalisation of services already provided by public enterprises, and it remains controversial lacking certain criteria to ascertain whether a service meets those requirements.

⁵⁵ Pursuant to Article 101 of the Consumer Code, which is the only provision regarding public services (translated from the official Italian version):

«1. *The State and the regions, within the scope of their respective competences, guarantee the rights of users of public services through the concrete and correct implementation of the principles and criteria set out in the relevant legislation in force.*

2. *The user relationship must be conducted in compliance with predetermined quality standards that are adequately made public.*

3. *Users shall be guaranteed, through representative forms, participation in the procedures for defining and evaluating the quality standards provided for by law.*

4. *The law establishes the obligation for certain public service providers to adopt, through specific implementation mechanisms diversified according to sector, appropriate service charters.*».

Accordingly, legal provisions protecting consumers also apply to users, when they are compatible with the features of the service provided (e.g., Article 128 of Consumer Code does not classify water, gas and energy supply as “consumer goods”; consequently, rules on product conformity do not apply).

⁵⁶ G. Carapezza Figlia, *I rapporti di utenza dei servizi pubblici tra autonomia negoziale e sussidiarietà orizzontale*, cit., 452.

⁵⁷ Article 840-bis of Italian Code of Civil Procedure, introduced by Law 12 April 2019, No. 31, provides that homogeneous individual interests may also be enforceable through class actions regulated by the following provisions. Such instrument, which can be activated both by individual consumers and representative associations, differs from the “representative actions” regulated by Articles 140-ter and ff. of Consumer Code according to Directive (EU) No. 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers.

positions differ from the diffuse and collective interests outlined above, in that they are vested in identifiable individuals⁵⁸.

As a hybrid form of enforcement, holders of homogeneous interests may file an appeal before the administrative court to establish a breach committed by a subject carrying out an activity of public interest, from which they benefit as users; the claim may be brought even by one consumer or user in the name of the entire category, or by a representative association (as for the private class action)⁵⁹. Known as the “Appeal for the efficiency of public administration and managers of public services” (*Ricorso per l’efficienza delle pubbliche amministrazioni e degli esercenti un pubblico servizio*)⁶⁰, the procedure provides for a formal notice to the authority or service provider, followed by a court application seeking a declaration of the duty to remedy the breach or infringement. It is not possible to advance a claim for damages⁶¹.

If the judicial order remains unfulfilled, it may be enforced in a form of follow-on proceeding between the same parties, before the same judge (*giudizio di ottemperanza*); in that case, the court may decide on the merits of the dispute, appointing, where appropriate, a special commissioner (*commissario ad acta*), namely a judicial officer who substitutes the administration or the defaulting service operator.

Based on its features, such remedy has been defined as a sort of “public class action”. However, from a reconstructive standpoint, this is not a true class action because the claimants obtain no individual benefit, but only (possible and) indirect benefits⁶². One might say that the remedy corresponds to a “minor” public enforcement of consumer protection. In a proper sense, by contrast, public enforcement is the action of a public administration aimed at protecting the position of multiple consumers through the exercise of peremptory and repressive powers. In this sense, public enforcement has incorporated elements of private enforcement (just as, more generally, over the past thirty years public law has incorporated, rightly or wrongly, many private-law concepts), and consumer law has become increasingly a matter of general law.

In any case, the remedy has not proved particularly successful in past years, both because of the limited incentives to bring it and because it is not straightforward to condemn the administration or operator to compensate the user, and, above all, the compulsory execution of the obligation encounters many practical difficulties⁶³.

⁵⁸ Such clear distinction is adopted in other legal systems. For the Brazilian system, see A. Gidi, *Derecho difusos, colectivos e individuales homogéneos*, in A. Gidi, E. Ferrer Mac-Gregor (eds.), *La tutela de los derechos difusos, colectivos e individuales homogéneos*, México, 2004 (2^a ed.) 27 ff., translated from the original Brazilian version of the author’s *Coisa julgada e litispendencia em acoes coletivas*, Saraiva, 1995.

⁵⁹ S. Mirate, *La tutela del cittadino utente consumatore: profili pubblicistici*, in *Responsabilità civile e previdenza*, 56 ff. (I, 2020); E. Caterini, *L’utente dei servizi pubblici e la riforma fallimentare: nuovi scenari*, in *Rassegna di diritto civile*, 80 ff. (I, 2019); F. Mataluni, *Sulla azione per l’efficienza amministrativa introdotta con il D.Lgs. 198/2009 con riferimento ai primi orientamenti giurisprudenziali*, in *Rass. Am. Stato* 239 ff. (II, 2013).

⁶⁰ The action is governed by Legislative Decree 20 December 2009, No. 198 (implementing Article 4 of Law of 4 March 2009, No. 15) and, according to Article 1, is aimed at «restoring the proper performance of a function or the proper provision of a services». Among earlier studies, see G. Fidone, *L’azione per l’efficienza nel processo amministrativo: dal giudizio sull’atto a quello sull’attività*, Torino, 2012; A. Fabri, *Le azioni collettive nei confronti della pubblica amministrazione nella sistematica delle azioni non individuali*, Napoli, 2011; E. Zampetti, *Class action pubblica ed effettività della tutela*, in *Foro amm. TAR*, 4104 (XII, 2011); C.E. Gallo, *La class action nei confronti della pubblica amministrazione*, in *Urb. e app.*, 501 ff. (II, 2010).

⁶¹ See Council of State, III, 20 September 2024, No. 7704, on the standing of representative associations.

⁶² E. Saresini, *La legittimazione attiva nell’azione per l’efficienza delle amministrazioni e dei concessionari di pubblici servizi. Commento a margine della sentenza Cons. St., III, 20 settembre 2024, n. 7704*, in *giustamm.it* (2025).

⁶³ A. Maltoni, G. Fidone, *L’azione per l’efficienza delle amministrazioni e dei concessionari pubblici*, in *federalismi.it*, 135 (XVI, 2024).

III.2 Consumer protection as specific competence of certain public authorities

When European law required specific regulation protecting consumers' rights in any economic sector, public authorities began directly safeguarding consumers against market abuses—acting as a form of market police by countering unlawful conduct by third parties. This occurred in the protection of the consumer in the various markets, by assigning to a single authority the power to repress unfair commercial practices or other abuses against consumers. In Italy, as it has been said, such powers have been conferred to the Antitrust Authority considering the functions already carried out⁶⁴. Recently, AGCM has also been appointed as the competent authority for the execution of the so-called Digital Markets Act (“DMA”)⁶⁵, while AGCOM is the Digital Services Coordinator under DSA.

Article 27 of the Italian Consumer Code confers upon the authority the competence to ascertain whether undertakings comply with their duty of conduct. Endowed with broad investigative powers (such as requests for information, inspections and on-site checks), the Authority may: (i) prohibit the continuation of the activity⁶⁶, (ii) eliminate the effects, also setting a deadline for compliance with the imposed obligations; (iii) require the operator to undertake specific “commitments” (*impegni*) to end the infringement; (iv) alongside the inhibition of the activity, impose a sanction considering the gravity and duration of the infringement, as well as the trader's economic and financial situation. Moreover, in urgent cases, the Authority may, by way of interim measure, order the suspension of the activity pending the final decision.

Commitments are now broadly used by the authority⁶⁷, which can obtain the reparation of the misconduct without being obliged to formally adopt a final decision; such measures often imply the obligation⁶⁸ to remove the negative consequences of the conduct and directly compensate each of the harmed consumers. In that sense, public enforcement enables direct economic redress for harmed consumers⁶⁹.

The same broad powers may be used to ascertain and repress unfair contract terms included in general contractual conditions or forms applied to consumers⁷⁰.

That said, three cautions are necessary.

⁶⁴ Among others, see recently E. Labella, *Pratiche commerciali scorrette e autonomia privata*, Torino, 2018, 93 ff.

⁶⁵ Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act). Article 18 of Law 30 December 2023, No. 214, confers on the authority investigative and sanctioning powers to support the Commission's action, which is «the sole authority empowered to enforce this Regulation» (recital 91) against the gatekeepers that offer core platform services to users (or professional users) established or located in the Union.

⁶⁶ In the case of digital or telematic services, pursuant to Regulation No. 2017/2394, the Authority may also order the provider of internet connectivity services or the network operator to remove initiatives or activities aimed at consumers and disseminated through telematic or telecommunications networks which constitute an unfair commercial practice.

⁶⁷ Pursuant to Article 10 of AGCM Regulation on administrative procedures regarding consumer protection and misleading and comparative advertising of 5 November 2024, No. 31356, commitments may be proposed by the trader concerned, and the authority shall accept or reject them if they are inadequate.

⁶⁸ The procedure does not even commence when AGCM exercises the so-called “moral suasion”: according to Article 3(3) of AGCM Regulation (see footnote above), the authority may invite the trader to remove the unlawful aspects of the conduct; in case of acceptance, the pre-investigative phase is closed.

⁶⁹ G. Straetmans, J. Vereecken, *Recent developments in private and public enforcement of EU consumer law: which way forward?*, in C.M. Cascione (ed.), *Public and private in contemporary societies*, Rome, 2024, 465 ff. [already published as *Towards a New Balance Between Private and Public Enforcement in EU Consumer Law*, in *European Review of Private Law*, 41 ff. (I, 2024)], consider that such compensatory function may “bridge the gap” with private enforcement.

⁷⁰ F. Trubiani, *La conformazione del contratto da parte dell'AGCM tra tutela del consumatore e regolazione del mercato*, in *Rivista di diritto dell'impresa*, 143 ff. (I, 2023), observes that the extension of such powers to the repression of unfair contractual provisions strengthened the efficacy of public enforcement.

First, in such cases, the consumer/user has an interest in obtaining the activation of the authority's intervention (following a report), which will adopt an adverse measure against the operator who has engaged in unlawful conduct and, in turn, will hold a legitimate interest against the exercise of sanctioning or injunctive powers). However, the consumer does not have a right vis-à-vis the Authority, but only vis-à-vis private operators (so that, where appropriate, it may avail itself of private enforcement tools); as against the Authority, it has, at most, a legitimate interest in the exercise of the power⁷¹. This affects the consumer's ability to prompt a public repressive action, which the administration may, in its discretion, decide not to initiate⁷².

Second, the public interest maintains a primary position, since the authority targets behaviours that are potentially or actually harmful to the general interest in the correct functioning of the market. Interests of individual consumers are indirectly protected and merge into broader consumer protection across an entire sector⁷³. Accordingly, the authority suppresses practices (or contests contractual clauses) which may harm a considerable number of consumers, so that the interest in repressing such conducts assumes a "general" dimension.

Third, although it is true that European law and national implementing rules have required AGCM to supervise behaviours of market operators, so that they do not harm the consumer, specific rules governing sectors or markets (see above § III.3) still attribute to other independent authorities the protection of the proper functioning of those markets, which *indirectly* safeguards the consumers of those markets. Accordingly, one may identify as many types of consumer as there are regulated markets, in which they receive goods, services, or other performances from professional operators according to a specific regulation⁷⁴: for example, in the banking sector the consumer is normally the "account holder"⁷⁵; in the financial market, the "investor"⁷⁶; in the energy market, the "user"⁷⁷, likewise in the telecommunications market. These are not merely descriptive distinctions devoid of legal relevance, because each sectoral situation gives access to certain forms of protection (one may think of banking and financial arbitration schemes, or other forms of enforcement). Above all, it is precisely from this multiplication of figures and corresponding public protection functions that the principal competence conflicts to be discussed arise.

Fourth, AGCM is not the sole authority with general competence in safeguarding consumer.

⁷¹ Even European Union Law qualifies consumers' position as a "legitimate interest" in the intervention of the public authority.

⁷² See ruling of Council of State, VI, 22 September 2014, No. 4773, referred to public enforcement of competition law, which clarified a general principle applicable to other sectors: the individual does not hold the right to request the intervention of the authority, despite being legitimately interested in it.

⁷³ See Article 11(2) of Directive No. 2005/29, according to which the authority (administrative or judicial) shall consider the public interest before taking any action against unfair commercial practices.

⁷⁴ See G. Pailli, C. Poncibò, *The transformation of Consumer Law Enforcement: an Italian perspective*, cit., 657: «our first observation is that the public enforcement regime appears to be fragmented due to the overlapping authority of many sectorial public authorities (e.g., energy, telecommunications, insurance, banking services, etc.)».

⁷⁵ V. Minervini, *La tutela del consumatore nel settore bancario (con qualche digressione su quello finanziario) tra codice del consumo e disciplina settoriale. A la recherche di un equilibrio perduto*, in *Diritto della banca e del mercato finanziario*, 593 (IV, 2021), underlines that—according to judicial opinion—banking law does not directly or indirectly protect consumers, being rather focused on the correct management of credit institutions; thus, Bank of Italy does not exercise specific competences in consumer protection, beyond supervision over compliance with transparency obligations. See also G. Biferali, *La sanzione per violazione dell'obbligo di valutare il merito creditizio del consumatore*, in *giustiziacivile.com* (VII, 2022), according to which the obligation to evaluate financial capacity of borrower—namely its creditworthiness—safeguards it as consumer.

⁷⁶ F. Bilotta, *Pratiche commerciali scorrette nel settore finanziario e assicurativo e tutela individuale*, in *Riv. dir. Comm.*, 135 ff. (I, 2012), reminds that, according to the administrative judge's opinion, finance law and regulation protect a specific subjective figure, the investor, as distinct from the general notion of the consumer.

⁷⁷ A. Colavecchio, *La tutela del consumatore nei confronti delle pratiche commerciali scorrette: il ruolo dell'AEEGSI*, in C. Giustolisi (ed.), *La direttiva consumer rights: impianto sistematico della direttiva di armonizzazione massima*, cit., 89 ff.

Pursuant to Article 144-*bis* of the Consumer Code, regarding the cooperation among national consumer protection authorities under Regulation No. 2017/2394, the Ministry of Enterprises and Made in Italy is the “competent authority” for the application of consumer safeguard provisions in relation to the guarantees in the sale of consumer goods, consumer credit, electronic commerce, timeshare, long-term holiday products, resale and exchange contracts. It designates the “single liaison office” responsible for coordinating the investigative and enforcement activities of the competent authorities according to Article 5 of Regulation No. 2017/2394⁷⁸, whereas AGCM is designated as the “body responsible” for the adequate and effective enforcement of the provisions of Regulation No. 2018/302⁷⁹, which lays down measures to prevent unjustified geo-blocking and other forms of discrimination based on nationality, place of residence or place of establishment of customers within the internal market; in relation to the latter Regulation, AGCM is the “competent authority” holding the “minimum powers” referred to in Article 9 of Regulation No. 2017/2394 (namely powers of investigation, prohibition and sanction).

Pursuant to Article 137 of the Consumer Code, the Ministry maintains the list of nationally representative consumer and user associations, which are entitled to bring class actions or representative actions. The National Council of Consumers and Users (CNCU) operates within the Ministry, as the representative body of consumer and user associations at national level, with the aim of contributing—through opinions issued to bodies responsible for adopting legislation, or through the adoption of informational and statistical measures—to improving and strengthening the position of the consumer/user in the market.

Above all, general competence on consumer protection may overlap data protection⁸⁰, which is indeed nothing other than a specific field of consumer law⁸¹.

Privacy of personal data must be safeguarded by a specific authority, called Garante per la protezione dei dati personali (“GPDP”)⁸², which safeguards natural persons as regards the processing—rather than the appropriation—of data understood as “information”⁸³.

According to Italian Privacy Code, the data subject benefits from a dual track of alternative protection. If proceedings have been brought before the court, a complaint can no longer be lodged with the Authority; conversely, if a complaint has been lodged, it is no longer possible to bring a

⁷⁸ Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017, on the cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) 2006/2004.

⁷⁹ Regulation (EU) 2018/302 of the European Parliament and the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers’ nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC.

⁸⁰ N. Muccioli, *Contratti telematici e diritto europeo in un recente libro: la tutela del consumatore e il problema della privacy*, in *Rivista del diritto commerciale e del diritto generale delle obbligazioni*, 437 (III, 2017); A. Zambon, *Il consumatore nella prospettiva dei “big data”: alcune considerazioni filosofico-giuridiche*, in *Cyberspazio e Diritto*, 117 ff. (I-II, 2019).

⁸¹ See P. Rott, *Data protection law as consumer law – How consumer organisations can contribute to the enforcement of data protection law*, in *Journal of European Consumer and Market Law*, 113 ff. (III, 2017), who argues that data protection falls within the scope of consumer protection, which may be enforced both publicly and privately, against the State and private traders. See also M. Federico, *Harmonizing and Enhancing the Enforcement of Digital Rights. The Integrated Role of Consumer Law and Data Protection Law*, in this *Special Issue*.

⁸² Data protection authority was established by Law 31 December 1996, No. 675. Today, it supervises compliance with Legislative Decree of 30 June 2003, No. 196, the so-called Privacy Code (*«Codice in materia di protezione dei dati personali»*), which implements Regulation (EU) No. 2016/679 of the European Parliament and of the Council of 27 April 2016, on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (“GDPR”).

⁸³ Rather than being property, personal data is defined by Article 4(1)(1) as *«any information relating to an identified or identifiable natural person»*, namely the “data subject”. [...].

further claim before the court between the same parties and with the same subject-matter, unless nine months have elapsed from the lodging of the complaint without the Authority having decided it.

GPDP has been assigned specific tasks in protecting consumers' right to lawful processing of personal data (Article 57 GDPR); to that purpose, the Authority may exercise, pursuant to Article 166 Privacy Code and GDPR, (i) investigative powers (Article 58(1) GDPR), (ii) corrective powers (Article 58(2) GDPR), (iii) authorisation and advisory powers (Article 58(3) GDPR), and (iv) imposition of administrative fines, that must be effective, proportionate and dissuasive (Article 83 GDPR)⁸⁴. Alongside the sanction, the Authority may require the adoption of institutional communication campaigns aimed at promoting awareness of the right to personal data protection, based on projects previously approved by the GPDP and considering the gravity of the violation. Within 30 days, the sanctioned party may comply with the prescriptions and pay half of the sanction⁸⁵.

The privacy authority has basically the same powers as the Antitrust Authority, when it enforces consumer protection laws. Prescriptions imposed by GPDP correspond, as for the effects on the users and the markets, to commitments approved by AGCM.

IV. THE COMPETENCE SAGA AMONG INDEPENDENT AUTHORITIES

As AGCM's general competence may easily overlap with special competences of sectoral authorities in regulated sectors, or with parallel general competence of privacy authority in consumers' data protection, the question promptly arose of identifying the competent authority responsible for repressing unfair conduct by traders.

The issue was debated for a long time, owing to the absence of a rule establishing which authority should repress abusive conduct towards consumers in regulated sectors, because the few relevant provisions remained unclear. Article 3(4) of Directive No. 2005/29 provides that: «*In the case of conflict between the provisions of this Directive and other Community rules regulating specific aspects of unfair commercial practices, the latter shall prevail and apply to those specific aspects*»; Articles 19(3) and 46(2) of Consumer Code transposed such provision with no substantial amendments. This provision directly concerns the relationship between rules, and it indirectly regulates the interplay between competent authorities: it prevents different rules from being applied to the same facts, and that two public entities punish the same conduct under the same circumstances, applying different rules, in violation of the *ne bis in idem* principle⁸⁶.

⁸⁴ Administrative fines shall, depending on the circumstances of each individual case, be imposed in addition to, or instead of, corrective measures referred to in points (a) to (h) and (j) of Article 58(2).

⁸⁵ Concluding a recent proceeding against *OpenAI*, provider of the AI model known as "*ChatGPT*", by decision No. 755 of 2 November 2024 the Authority found a series of GDPR infringements in the period up to 15 February 2024. In particular, the operator: (i) failed to notify the Authority of the data breach suffered in March 2023; (ii) processed users' personal data to train ChatGPT without first identifying an adequate legal basis; (iii) breached the transparency principle and the related information obligations vis-à-vis users; (iv) failed to provide mechanisms for age verification, with the consequent risk of exposing children under 13 to responses unsuitable for their degree of development and self-awareness (a provisional limitation measure on data processing had already been adopted). For the first time, the Authority ordered the implementation of a six-month institutional communication campaign on radio, television, newspapers and the internet, in addition to a EUR 15 million fine in light of the company's collaboration. However, the Civil Court of Rome, by decision of 18 March 2026, n. 4153, upheld OpenAI's opposition and overturned the sanction.

⁸⁶ According to the well-known opinion of ECtHR, 4 March 2014, *Grande Stevens v. Italia*, Article 4 of Protocol 7 does not permit the prosecution or trial a person for a second violation if it is based on the same facts that justified a sanction (or a proceedings) for a first violation; see also, ECtHR, 27 September 2011, *Menarini v. Italia*, according to which the antitrust sanctions provided for in Law No. 287/1990—referred to in Consumer Code—are materially criminal sanctions based on the so-called "Engel criteria".

The uncertainty on the interpretation of Article 3(4) gave rise to a long “saga” concerning the identification of valid criteria for allocating competences between authorities (especially, AGCM and AGCOM), in which the legislator, the administrative courts, the European Commission and the Court of Justice intervened on several occasions⁸⁷: initially, with specific reference to the financial sector, the Council of State rendered an opinion which preferred the criterion of “sectoral speciality”, interpreting Article 3(4) as a rule of distinction between general markets and specific sectors⁸⁸. In that sense, the competence of the sectoral regulatory authority should prevail over AGCM’s general competence, since sector-specific knowledge should make it easier to identify and punish unfair practices that are hidden within the market’s technicalities; thereafter, regarding the electronic communications field, the administrative courts opted for the criterion of “normative speciality” (*specialità per norme*), which—in adherence to Recital 10 of Directive No. 2005/29—places greater emphasis on regulatory aspects than on industry-specific ones. Thus, sectoral regulation prevails, with disapplication of the general rules under the Consumer Code, if general and special provisions differ, considering the “contrast” referred to in Article 3(4) not as an “incompatibility” between norms, rather as to the simple existence of a different regime for specific sectors⁸⁹. In that sense, the “contrast” clause of Article 3(4) of Directive No. 2005/29 has been interpreted according to the less strict wording of Recital 10 of the same Directive.

With specific reference to the electronic communications sector, there was no doubt that the sectoral legislation regulated specific aspects of consumer protection, so AGCOM’s competences should prevail; from a political and institutional standpoint, the conditions were not yet ripe for entrusting a single authority with cross-sectoral powers, to the detriment of the sector-specific competences of the regulatory authorities, which had been established only slightly more than a decade earlier and possessed the expertise relating to the functioning of their respective sectors. Indeed, in 2012, shortly after the affirmation of the “normative speciality” criterion, the legislator reiterated the principle of “sectoral speciality”, excluding AGCM’s competence where specific regulation exists⁹⁰; an infringement procedure was therefore commenced by the Commission for the alleged breach of Directive No. 2005/29, according to which only the radical “incompatibility” between general and specific rules justifies the exclusive competence of the sectoral authority: the mere existence of a specific regulation, or even its difference from the general one shall not justify sectoral authority’s competence⁹¹; to solve the conflict, Paragraph 1-*bis* was added to Article 27 of

⁸⁷ R. Chieppa, *La direttiva Consumer Rights: l’esperienza del mercato e gli orientamenti dei regolatori*, in C. Giustolisi (ed.), *La direttiva consumer rights: impianto sistematico della direttiva di armonizzazione massima*, cit., 77 ff.; S. Perugini, *Il public enforcement e la tutela del consumatore dopo il recepimento della direttiva 2011/83/UE*, *ivi*, 203 ff.; L. Lorenzoni, *Il Riparto di Competenze tra Autorità Indipendenti nella Repressione delle Pratiche Commerciali Scorrette*, in *Italian Antitrust Review*, 83 ff. (I, 2015); V. Mosca, *Il riparto di competenza sulla tutela del consumatore all’esame della Corte di Giustizia*, in *Giorn. dir. amm.*, 519 ff. (IV, 2017); Id., *Verso un equilibrio nel riparto di competenze per la tutela del consumatore*, in *Giornale di diritto amministrativo*, 195 ff. (II, 2019); B. Rabai, *Ancora sul riparto di competenze tra Autorità Antitrust e Autorità di settore in tema di pratiche commerciali scorrette*, in *Riv. Reg. mercati*, 369 (II, 2019).

⁸⁸ See Opinion of the Council of State, I, 3 December 2008, No. 3999, according to which CONSOB has the power to protect investors against infringements of transparency and correctness in providing financial services; see also F. Bilotta, *Pratiche commerciali scorrette nel settore finanziario e assicurativo e tutela individuale*, cit.

⁸⁹ See the rulings of Council of State, Plenary Assembly, 11 May 2012, Nos. 11–16, which gave prominent relevance to Recital 10 of Directive No. 2005/29: «*This Directive accordingly applies only in so far as there are no specific Community law provisions regulating specific aspects of unfair commercial practices, such as information requirements and rules on the way the information is presented to the consumer. It provides protection for consumers where there is no specific sectoral legislation at Community level and prohibits traders from creating a false impression of the nature of products*». Accordingly, it was ruled that the sectoral authority retains competence if there is «*a discrepancy in discipline such as to render the overlapping of the two rules illogical*».

⁹⁰ See Article 23(12-quinquiesdecies) of Law Decree 6 July 2012, No. 95, converted, with amendments, into Law 7 August 2012, No 135.

⁹¹ See infringement procedure No. 2013/2169 commenced by letter of 18 October 2013.

the Consumer Code⁹², providing that «*Even in regulated sectors, pursuant to Article 19, paragraph 3, the power to intervene in relation to the conduct of professionals that constitutes an unfair commercial practice, without prejudice to compliance with current regulations, lies exclusively with the Competition and Market Authority, which exercises this power on the basis of the powers referred to in this article, after obtaining the opinion of the competent regulatory authority*»⁹³.

The legislator changed course and clearly opted for the general competence of AGCM in all markets or sectors, despite the existence of a specific regulation or a discrepancy between norms: only the blatant conflict referred to in Article 3(4) of Directive No. 2005/29, transposed in Article 19(3) of Consumer Code, may justify the competence of sectoral authorities; although such provision was already clear on the criterion to be applied, case law sought to take other factors into account when identifying the competent authority. Indeed, administrative courts affirmed that “aggressive” commercial practices perpetrated in regulated sectors, being more serious than the mere infringement of regulatory provisions, absorb less serious forms of conduct and must be punished by AGCM⁹⁴.

In this respect, the administrative courts relied on the criteria ordinarily applied by the criminal courts in determining the applicable offence where several provisions are concurrently engaged; notwithstanding the multiple parameters proposed, the system seemed to have reached a certain equilibrium, and AGCM’s general competence prevailed; however, shortly afterwards, the situation became more complicated again. According to the European Commission opinion, the conflict clause of Article 3(4) of Directive No. 2005/29 implies that, where two provisions overlap, the *lex specialis* should prevail and be applied by the competent sectoral authority⁹⁵. Again, the competence of the sectoral authority did not presuppose any radical incompatibility among the legislative provisions on consumer defence; in light of such repeated uncertainty, following a further request for a preliminary ruling made by the Italian Council of State, in 2018⁹⁶ the Court of Justice eventually ruled that “conflict” between general and specific provisions referred to in Article 3(4) of Directive No. 2005/29 shall be understood as a relationship between provisions going beyond mere disparity or simple difference, showing a divergence which cannot be overcome by a unifying formula enabling both situations to exist alongside each other without the need to bring them to an end⁹⁷.

The intervention of the Court of Justice appears to have put an end to the saga. At national level, the subsequent measures imposed by the Antitrust Authority were deemed legitimate, as they

⁹² By Article 1(6)(a) of Legislative Decree of 21 February 2014, No. 21. M. Cappai, *Quando l’erosione dei limiti costituzionali avviene dall’interno: il Caso dell’art. 27, comma 1-bis del codice del consumo e della sua (presunta) natura interpretativa*, in *Riv. AIC* (II, 2018), criticized the qualification of such provision as a norm of “authentic interpretation”, because it entails unlawful retroactive effects.

⁹³ The same provision specifies that «*The regulatory authorities shall remain competent to exercise their powers in cases of regulatory violations that do not constitute unfair commercial practices. The authorities may regulate the application and procedural aspects of their mutual cooperation through memoranda of understanding, within the framework of their respective competences*».

⁹⁴ See ruling of Council of State, Plenary Assembly, 9 February 2016, Nos. 3-4. On the specific point, see M. Cappai, *La repressione delle pratiche commerciali scorrette nei mercati regolati: cosa aspettarsi dalla Corte di giustizia?*, in *Riv. it. dir. pubbl. com.*, 898 (III-IV, 2017).

⁹⁵ See the European Commission staff working document—SWD(2016) 163 final—entitled «*Guidance on the implementation/application of directive 2005/29/EC on unfair commercial practices*» of 25 May 2016, accompanying the Commission’s communication on a comprehensive approach to stimulating cross-border e-Commerce for Europe’s citizens and businesses.

⁹⁶ See ordinances of Council of State, VI, 17 January 2017, Nos. 167 and 168, commented by G.M. Barsi, *Il conflitto di competenze in materia di pratiche commerciali scorrette nei settori regolati approda in Corte di Giustizia*, in *Riv. reg. mer.*, 151 (I, 2017).

⁹⁷ CJEU, Second Chamber, 13 September 2018, Cases C-54/17 and C-55/17, *AGCM v Wind Tre and Vodafone*, which once again concerned the electronic communications sector. The principle has been recently confirmed in CJEU, First Chamber, 30 April 2026, C-301/25, *Lidl Italia*.

related to unfair commercial practices which, according to the judge, were not regulated by sector-specific rules due to “specific aspects” incompatible with the general rules; consequently, they remained within the competence of AGCM according to Article 27 of the Consumer Code⁹⁸. However, based on this provision, a sanction has been ruled unlawful as it was adopted without the mandatory opinion of the GPDP, despite the unfair commercial practice involved processing of personal data⁹⁹.

V. THE PERSISTENT OVERLAPPING OF COMPETENCES IN THE DIGITAL ENVIRONMENT

The criterion based on the incompatibility between provisions of EU origin and the domestic legislative designation of the AGCM’s general competence gives rise to systematic issues, which may, in the future, rekindle conflicts of jurisdiction between the authorities.

First, since any regulated activity carried out vis-à-vis customers constitutes a commercial practice, any conduct that breaches the obligations imposed on the trader and, at the same time, is detrimental—albeit only potentially—to consumers’ rights may be sanctioned by AGCM. The sanctioning functions of the sectoral authorities are accordingly confined to conduct contrary to the rules of professional diligence set out in regulation.

Secondly, AGCM may apply sector-specific rules drafted by different regulatory authorities based on sectoral expertise. Indeed, not only does Article 27(1-*bis*) preserve compliance with the applicable regulatory framework, but, above all, in order to establish that unlawful conduct has occurred, AGCM shall assess compliance with the rules governing traders’ activity, interpreting those rules to ascertain whether duties of professional diligence have been infringed. Obtaining the opinion of the sectoral authority would serve precisely to avoid a misapplication of the regulatory framework, by ensuring a uniform interpretation thereof. However, as already occurred, the non-binding nature of the opinion issued by the sectoral authority may result in the sanctioning of conduct that are compliant with the regulatory framework but are deemed unfair by AGCM¹⁰⁰. Where it penalises conduct that is formally consistent with rules of professional diligence, AGCM may ultimately exercise indirectly normative powers, in that it shapes behavioural obligations beyond the scope of the regulation. In so doing, it undermines the principle of technical competence underpinning the allocation of regulatory functions to specific authorities.

Thirdly, the allocation criterion does not appear, at present, to be applied uniformly. In the telecommunications sector—directly concerned by the “saga” (many of the decisions, as noted, involved a conflict between AGCM and AGCOM)—the distribution of competences appears, at least *prima facie*, to align with the approach laid down by the Court of Justice; the same is true in relations with the GPDP (save as will be stated shortly regarding the emergence of new markets). In the field of energy supply—which at times overlaps with telecommunications (as in the case of

⁹⁸ See ruling of Council of State, VI, 11 November 2019, No. 7699, according to which the so-called “non-requested supply” (*fornitura non richiesta*) of telephony and internet connectivity services constitutes an aggressive commercial practice, and it may be sanctioned by AGCM pursuant to the Consumer Code. See also Council of State, VI, 25 October 2019, No. 7296, and 5 April 2024, No. 3175.

⁹⁹ Council of State, VI, 15 January 2024, No. 497, the so-called *Telepass* case. See on that M. Guerra, *Le prospettive di collaborazione tra Autorità indipendenti nell’era digitale*, in *Riv. it. inform. dir.*, 425 ff. (I, 2025).

¹⁰⁰ V. Minervini, *La tutela del consumatore nel settore bancario*, cit., 594 ff., reminds that, in a certain case regarding the banking sector, while the Bank of Italy considered credit institutions’ conduct compliant with transparency rule in bank-client relations, AGCM punished the absence of clear and complete information. The Author proposes to render the opinion binding (not only merely mandatory), so that AGCM cannot overrule the contrary opinion of the sectoral authority on the conformity of the practice to sectoral regulation.

“teleselling”)—the competence of the sectoral authority is regarded as residual¹⁰¹. In the banking sector, which historically has not witnessed particular activism by the supervisory authority, and in the insurance sector, consumer-protection functions remain firmly in the hands of AGCM¹⁰², which has most recently been entrusted with the task of repressing unfair commercial practices in digital payment systems¹⁰³.

However, the financial sector retains certain peculiarities: the judicial opinion that initiated the aforementioned competence saga seems to be still followed in the specific sector, notwithstanding the recent decisions of the Court of Justice¹⁰⁴. Indeed, according to civil case-law¹⁰⁵, breach of transparency and correctness duties committed by financial operators shall be sanctioned by CONSOB, since, in determining the competent authority, the interest in market integrity is deemed to prevail over consumer protection. The Italian Court of Cassation clarified that such an interpretation of sectoral rules does not conflict with the provisions of the Consumer Code concerning AGCM’s general competence¹⁰⁶. However, the Court did not explain why the general and sectoral provisions are “incompatible” (within the meaning set out by the CJEU), nor did it refer to the ruling of the European judge: in those cases, the appeals challenged the competence of the financial authority in favour of the banking authority and did not concern AGCM’s competences. In any event, the financial sector appears to follow a logic different from that applicable to other sectors, without any apparent explanation being provided. While Article 3(9) of Directive No. 2005/29 undoubtedly constitutes the basis for a different and more restrictive regime, it is not sufficient to conclude that rules on investor protection in the financial market are, by their nature, incompatible with the provisions of the Consumer Code¹⁰⁷.

Fourthly, to resolve potential conflicts of jurisdiction, AGCM has concluded several memoranda of understanding with sectoral authorities for the repression of unfair commercial practices, with

¹⁰¹ See ruling of Council of State, VI, 6 November 2023, No. 9566, regarding electricity and gas supply contracts stipulated without the explicit consent of users, through external agencies or teleselling methods.

¹⁰² See ruling of Regional Administrative Tribunal of Lazio, Rome, I, 1 August 2019, No. 10193, which confirmed AGCM’s competence on consumer credit, based on CJEU’s ruling. See also ruling of the same Tribunal of 5 January 2024, No. 224, which excluded the incompatibility between Consumer Code and banking and insurance laws. With specific reference to the insurance sector, a dated decision of the Tribunal (17 January 2013, No. 535), which recognised the competence of the sectoral authority, has been taken before the saga began and it is based on preceding principles.

¹⁰³ M. Rabitti, *Il riparto di competenze tra autorità amministrative indipendenti nella Direttiva sui sistemi di pagamento*, in M.C. Paglietti, M.I. Vangelisti (eds.), *Innovazione e regole nei pagamenti digitali*, Roma, 2020, 88 ff., analyzes provisions of Legislative Decree 15 December 2017, No. 218, which implemented Directive No. 2015/2366 (Payment Services Directive 2), conferring to AGCM the repression of specific UCP related to digital payments, while Bank of Italy shall supervise banks’ compliance with the Directive.

¹⁰⁴ Since cited opinion No. 3999/2008 (see supra § IV), Council of State ruled that the Consolidated Finance Act is “specific” and “exhaustive” on the protection of retail investors, thus the violation of its rules against consumers pertains to CONSOB, not to AGCM. See A. Zoppini, *Appunti in tema di rapporti tra tutele civilistiche e disciplina della vigilanza bancaria*, in *Banca, borsa, tit. cred.*, 28 ff. (I, 2012); M. Libertini, *La tutela della libertà di scelta del consumatore e i prodotti finanziari*, in M. Grillo (ed.), *Mercati finanziari e protezione del consumatore*, Milano, 2010, 21 ff. By contrast, in the banking sector the competence has always been conferred to AGCM, V. Minervini, *La tutela del consumatore nel settore bancario*, cit., says, defining the approach followed by Bank of Italy as “prudent”.

¹⁰⁵ Until recently, appeals against administrative fines imposed by CONSOB under financial law (or by the Bank of Italy pursuant to banking law) shall be filed before Civil Court of Appeal, whose decisions may be challenged before the Court of Cassation. To the contrary, sanctions imposed by AGCM (or AGCOM, and ARERA) may be contested before administrative courts. However, Legislative Decree No. 128 of 25 June 2026 restored administrative-court jurisdiction over appeals against sanctions imposed by CONSOB and the Bank of Italy for infringements of the TUF.

¹⁰⁶ See ruling of Court of Cassation, II, 18 September 2020, n. 19558, followed by rulings of 30 May 2022, No. 17400, and of 31 May 2022, Nos. 17574 and 17518: pursuant to Articles 5, 21 and 190 of the Consolidated Finance Act, CONSOB supervises the intermediation of financial products and the determination of their fair value, while Bank of Italy supervises the correct management of bank operators.

¹⁰⁷ One may think about greenwashing practices in financial products; see A. Bassi, M. Lamandini, G. Mollo, A. Troisi, F. Vella, *Greenwashing e tutela del consumatore per un’economia sostenibile*, in *Quad. giur. Consob* (33, 2025).

a view to coordinating public (administrative) action in consumer protection¹⁰⁸. The very existence of such protocols, however, demonstrates that the issuance of an opinion by the sectoral authority does not exhaust cooperation between authorities; rather, such cooperation extends to the supervisory phase—including inspections—and to other technical activities that escape legal and judicial scrutiny. In practice, two or more administrations exercise the same function, allocating individual tasks among themselves, while acknowledging that only one of them may decide, namely AGCM.

Finally, the balance of competences between the authorities risks being undermined by the recent evolution of the EU regulatory framework concerning digital markets and data protection¹⁰⁹.

On the one hand, AGCM has been designated as the competent authority for the application of DMA¹¹⁰, but supervision of compliance with specific provisions has been reserved to GPDP¹¹¹. On the other hand, AGCOM is the digital service coordinator under DSA¹¹², and other independent authorities—AGCM and GPDP included—shall cooperate with AGCOM, which holds the pivotal role in the enforcement of DSA¹¹³. *Inter alia*, it supervises compliance with transparency standards, service restrictions imposed by providers, and internal complaint-handling systems—matters that appear, in substance, to constitute consumer and user protection rules against unlawful commercial practices.

Moreover, whereas implementation of the Data Governance Act¹¹⁴ has been entrusted to an existing governmental agency (“AgID”)¹¹⁵, one or more competent authorities for the

¹⁰⁸ Each memorandum is available at www.agcm.it/per-la-P.A-e-gli-esperti/normativa-e-procedure/protocolli-di-intesa (URL accessed on 12th February 2026).

¹⁰⁹ Such approach is analysed, at Italian level, by M. Guerra, *Le prospettive di collaborazione tra Autorità indipendenti nell'era digitale*, cit. From a broader perspective, see G. Straetmans, J. Vereecken, *Towards a New Balance Between Private and Public Enforcement in EU Consumer Law*, in *European Review of Private Law*, cit., 41 ff., who observe that recent European reforms show «a new emphasis on public enforcement especially on the context of digitalization of the markets», re-defining also the existing interplay between private and public enforcement. With specific reference to private enforcement in the digital era, see J. Vereecken, J. Werbrouck, *Goods with Embedded Software: Consumer Protection 2.0 in Times of Digital Content?*, in *Indiana Int'l & Comp. Law Review*, 53 ff. (I, 2019).

¹¹⁰ See above footnote 65. See also A. Licastro, I. Ottaviano, *Il ruolo del public e private enforcement nel Digital Markets Act*, in *Il diritto dell'economia*, 582 (II-III, 2025), who underlines that national competition authorities maintain a mere support role in the cooperation with European Commission, which is the sole entity in charge of the enforcement of DMA (see Article 38(7)).

¹¹¹ See Article 18(8) of Law No. 214/2023, which reserves to GPDP supervisory powers on gatekeepers' obligations under Articles 5(2, 6 and 10), 7(8), 8(1), and 13(5) of DMA.

¹¹² See above footnote 46.

¹¹³ AGCOM imposes administrative fines—effective, proportionate and dissuasive—for breach of Articles 9-28, 30 and 45 of DSA, which impose several obligations upon providers of digital services, and providers of hosting services, protecting consumers in the digital environment.

¹¹⁴ Regulation (EU) 2022/868 of the European Parliament and of the Council of 30 May 2022 on European data governance and amending Regulation (EU) 2018/1724 (Data Governance Act), which lays down: (a) conditions for the re-use, within the Union, of certain categories of data held by public sector bodies; (b) a notification and supervisory framework for the provision of data intermediation services; (c) a framework for voluntary registration of entities which collect and process data made available for altruistic purposes; and (d) a framework for the establishment of a European Data Innovation Board.

¹¹⁵ See Article 2 of Legislative Decree 7 August 2024, No. 144, which designates the Agency for Digital Italy (*Agenzia per l'Italia Digitale* – “AgID”) as the competent authority for data intermediation services (pursuant to Article 13 of Data Governance Act), which carries out the tasks related to the notification procedure for data intermediation services, and the competent authority for the registration of data altruism organisations (pursuant to Article 23 of Data Governance Act).

implementation of the Data Act have yet to be designated¹¹⁶. The latter does not displace the GDPR, since it aims, *inter alia*, to facilitate data sharing and data subjects' access to personal data or product data (the data-protection rules laid down by the GDPR remaining substantially intact). Competent authorities will be required to perform consumer protection functions that will overlap with those performed by GPDP (unless it is itself designated as competent authority), by AGCM (as regards, *e.g.*, misleading information concerning access to product data), by AGCOM (in relation to the use and sharing of data for digital services), and, further, by the authorities competent for the supervision of artificial intelligence systems.

In implementing Artificial Intelligence Act (AI Act)¹¹⁷, Italian legislator appointed two governmental agencies—AgID and National Cybersecurity Agency (*Agenzia per la cybersicurezza nazionale*, “ACN”)—as national competent authorities: AgID acts as the “notifying authority”; ACN acts as the “market surveillance authority” and “single point of contact”¹¹⁸. Independent sectoral authorities in banking, finance and insurance have been appointed as “market surveillance authorities” pursuant to Article 74(6) of AI Act, and therefore hold regulatory and supervisory powers. Similarly, the competences of GPDP and AGCOM (as Digital Services Coordinator) have been preserved, as they are “authorities protecting fundamental rights” under Article 77 of AI Act, notwithstanding that national legislator does not specify how the respective attributions are to be coordinated¹¹⁹.

Accordingly, it is readily apparent that the digital sphere exacerbates the overlapping of competences between authorities. This situation does not only concern the boundaries of AGCM's competence as general consumer protection authority, but also affects the relations between all authorities tasked with safeguarding the rights of natural persons. Consider, for instance, the indispensable role of GPDP in a market that uses data as the fulcrum of its exchanges, and the interferences with supervisory powers of AGCOM¹²⁰.

¹¹⁶ Regulation (EU) 2023/2854 of the European Parliament and of the Council of 13 December 2023 on harmonised rules on fair access to and use of data and amending Regulation (EU) 2017/2394 and Directive (EU) 2020/1828 (Data Act), aimed, *inter alia*, at (i) making personal data and product data available to users, operators, and public bodies, (ii) facilitating switching between data processing services, (iii) developing interoperability standards, and (iv) introducing safeguards against unlawful third-party access to non-personal data (without prejudice to the GDPR). Each Member State should have appointed the competent authorities and, when more than one competent authority is designated, a data coordinator; however, Italy has not proceeded with such designation yet.

¹¹⁷ Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act).

¹¹⁸ See Article 20 of Law 23 September 2025, No. 132.

¹¹⁹ Article 19 provides for the institution of a coordination committee based at the Presidency of Council of Ministers, and it is composed of members of the Government; representatives of national authorities may be invited to committee's meetings. However, such committee is aimed at the implementation of the National strategy on artificial intelligence, rather than coordinating supervisory activities of general and sectoral authorities. On the other hand, Article 24 of Law No. 132/2025 delegated to the Government the adoption of a legislative decree to specify, *inter alia*, competences and powers of national authorities: such legislative decree, which was adopted on 4 August 2026 but has not yet been published, is expected to better define coordination between public bodies with “vertical” and “horizontal” supervisory powers, as M. Rabitti, F. Bassan, *L'applicazione dell'AI Act in Italia e la tutela del consumatore. Il ruolo delle autorità indipendenti*, in *federalismi.it*, 256 ff. (30, 2024), noted regarding the transposition of AI Act with specific reference to coordination between ACN and authorities protecting fundamental rights according to Article 77 of AI Act: the Authors do not doubt that AGCOM and GPDP may be included in the latter.

¹²⁰ M. Rabitti, *Il riparto di competenze tra autorità amministrative indipendenti nella Direttiva sui sistemi di pagamento*, cit., 84, underlines the strict relation between privacy and communications, as data are massively exchanged in the internet through mobile devices. On the other hand, the author reports the overlapping competences between GPDP (general data protection) and the Bank of Italy (supervisor of payment system), that may only be solved through a loyal cooperation.

Reliance on “loyal cooperation” between the authorities, crystallised in various memoranda of understanding that are proliferating in this period, may help in practice; however, at the legal level, it does not eliminate potential conflicts of competence. On the contrary, the existence of shared functions inherently increases the risk that one authority may claim ownership of a given task to the detriment of another. The absence of precise rules governing the allocation of competences reflects the legislator’s difficulty in distributing functions among a plurality of authorities that pursue the same mission and safeguard the same underlying interests, notwithstanding that they are distinct organisations—essentially for historical reasons, or because it is still considered impossible determining which of them is truly more competent.

In conclusion, the proliferation of digital systems and the associated protective functions may prompt a fundamental reconsideration of the institutional allocation of public functions to ensure the unitary—no longer merely “coordinated”—exercise of the public enforcement of consumer protection.

