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

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COMPARATIVE ANALYSIS OF COLLECTIVE REDRESS IN ITALY AND GERMANY. FRAMEWORK CONDITIONS AND LEGAL DECISIONS IN THE IMPLEMENTATION OF THE EUROPEAN REPRESENTATIVE ACTION DIRECTIVE

Laura Bugatti, Ann-Kristin Mayrhofer, Caroline Meller-Hannich¹

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This paper examines the implementation of the European Representative Action Directive (RAD)² in Italy and Germany from a comparative perspective, with particular emphasis on representative actions for redress. Section I sets the scene by outlining the pre-existing national frameworks for collective procedures in the two jurisdictions. Section II analyses the prerequisites and admissibility conditions of representative actions, focusing on the scope of application, potential beneficiaries and defendants, the designation of qualified entities (QEs), and the collective dimension of redress. Section III addresses the course of proceedings and the types of judgments, including procedural design, opt-in mechanisms, evidentiary rules, settlements, and the implementation of redress measures. Section IV is devoted to costs, funding, and financial risks of representative actions, with particular attention to litigation costs and the potential role of third-party funding. The paper concludes with comparative reflections on the strengths and weaknesses of the Italian and German models and their implications for the effective enforcement of consumer law under the RAD (Section V).

Keywords: Representative Actions Directive – Redress Action – German-Italian legal comparison – Enforcement – Third-Party Litigation Funding

I. SETTING THE SCENE: COLLECTIVE PROCEDURES IN ITALY AND GERMANY

I.1 Focus on injunctions and consumer association lawsuits in Germany

Germany has long-standing experience with injunction actions brought before the courts by consumer associations. Traditionally, associations have been able to sue companies for injunctions on the grounds of unfair competition, unfair terms and conditions, and practices that violate consumer protection laws.³ Such lawsuits are filed regularly and en masse, with consumer associations supported in their activities by the Competition Centre, Chambers of industry and commerce, and other trade associations.⁴

In contrast, the ability of associations to assert consumer rights in a quasi-collective manner following assignment or authorisation for collection, which has long been regulated in a somewhat hidden provision of the German Code of Civil Procedure (Zivilprozessordnung, ZPO),⁵ has hardly

¹ Although this article is the result of joint work and shared reflection, Sections I, III and V were written by Caroline Meller-Hannich, Sections II was written by Ann-Kristin Mayrhofer, and Section IV was written by Laura Bugatti.

² Directive (EU) 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 and repealing Directive 2009/22/EC.

³ §§ 1, 2 of the German Injunctive Relief Act (Unterlassungsklagengesetz, UKlaG), § 8 of the German Act against Unfair Competition (Gesetz gegen den unlauteren Wettbewerb, UWG).

⁴ For empirical data, see C. Meller-Hannich and A. Höland, Evaluierung der Effektivität kollektiver Rechtsschutzinstrumente, p. 23, at p. 143 passim (2010), available at https://www.bmlh.de/SharedDocs/Downloads/DE/Service/AnWis/Heft523.pdf?__blob=publicationFile&v=2 (last visited Mar. 2, 2026).

⁵ § 79(2) sent. 2 no. 3 ZPO.

been utilised to date, as the effort involved in collecting and organising the lawsuits seems overly arduous and unreasonable for the associations.⁶

Under the impression of the diesel emissions scandal, another legal remedy was introduced relatively late into German law: the model declaratory action (*Musterfeststellungsklage*).⁷ Several model declaratory actions have produced important results and decisions⁸, but they are not brought frequently. The model declaratory action should not be confused with the capital investor model proceedings (*Kapitalanlegermusterverfahren*).⁹ The *Musterfeststellungsklage* focuses on consumer law and is purely an action by a consumer association, although individual consumers can benefit from the action by joining it: the results achieved by the association in the model declaratory action can subsequently serve as a basis for consumers to bring their own lawsuits. *Kapitalanlegermusterverfahren* are, on the other hand, only relevant in the narrow field of investment law and always require individual investor lawsuits, which can then be combined in a relatively complex process based on common legal and factual issues.

These procedures, which are mostly organised and carried out by state-financed associations, have been and continue to be supplemented by legal tech class actions (see II.1.d)aa)(4)). In these actions, private providers bundle individual claims and bring them before the courts.¹⁰ Consequently, matters that were previously not considered economically viable for litigation, such as smaller consumer disputes, air passenger rights and rental disputes, are increasingly being pursued.

1.2 Overview – German framework before the implementation of the RAD

Procedure	Objective	Who can bring an action?	Special feature
Model declaratory action	Model determination	Consumer associations	Only determination, no compensation
Injunction	Omission	Consumer associations, trade associations	Prevention only, no compensation
Model proceedings for capital investors	Exemplary response to capital market questions	Capital investors	Model response for a number of individual proceedings
Legal tech class action	Bundling of individual claims	Private service	No statutory collective redress

Prior to the implementation of the RAD, there was no legal framework in Germany through which consumers could collectively assert claims for performance in the form of compensation, repayment or damages.

⁶ C. Meller-Hannich and A. Höland, *Evaluierung der Effektivität kollektiver Rechtsschutzzinstrumente*, cit., p. 23, p. 31, p. 109, at p. 150 passim. .

⁷ *Musterfeststellungsklage*, previous version: §§ 606-614 ZPO; current version: §§ 1–13, 41–42 *Verbraucherrechtendurchsetzungsgesetz* (VDuG).

⁸ E.g., the lawsuits filed against Volkswagen AG, Mercedes-Benz Group AG, various savings banks and energy providers, for details see the *Musterfeststellungsklagenregister* at the German Bundesamt für Justiz, available at https://www.bundesjustizamt.de/DE/Themen/Verbraucherrechte/VerbandsklagenregisterMusterfeststellungsklagenregister/Verbandsklagenregister/Verbandsklagen/Verbandsklagen_node.html (last visited Mar. 2, 2026).

⁹ See the German Act on Model Case Proceedings in Disputes under Capital Markets Law (*Kapitalanleger-Musterverfahrensgesetz*, KapMuG).

¹⁰ Examples of such providers include flightright, CONNY and financialright claims.

As we will see, in implementing the Directive, the German legislature has remained faithful to the approach of allowing only a select few consumer associations to take legal action. Proposals for class actions discussed in academia¹¹ have yet to become a reality.

1.3 General collective action and representative consumer action in Italy

Even before the implementation of the RAD, Italy had already developed collective litigation mechanisms designed to protect consumers, encompassing both injunctive¹² and compensatory remedies. Following years of debate and in response to major financial scandals such as Parmalat and Cirio, the first legislative framework for consumer collective actions was introduced in 2007 through Art. 140-bis of the Consumer Code¹³. However, before entering into force, this model was replaced in 2009¹⁴ and the new model became effective in 2010. Under that regime, each member of the class (consumers and users, individually or through ad hoc associations or committees to which they granted authority) could initiate class actions against traders through a two-phase opt-in procedure aimed at safeguarding homogeneous consumer rights arising primarily from contractual relationships and, to a lesser extent, from tortious liability, particularly in cases of product or service provider liability, unfair commercial practices, and breaches of competition law¹⁵.

The system soon displayed notable weaknesses, including procedural complexity, difficulties in adapting to the national procedural framework, and uncertainties surrounding the interpretation of “homogeneous” individual rights, a core prerequisite for collective proceedings (see II.2). Additional factors such as high litigation costs, the instrumental use of class actions, and limited consumer participation further undermined its effectiveness. Despite addressing significant cases involving unfair practices, antitrust infringements, and product liability¹⁶, the mechanism remained

¹¹ C. Meller-Hannich, *Gutachten A zum 72. Deutschen Juristentag. Sammelklagen, Gruppenklagen, Verbandsklagen – Bedarf es neuer Instrumente des kollektiven Rechtsschutzes im Zivilprozess?* (Munich, 2018).

¹² The Consumer Code provided for collective injunctive relief under Art. 139 and 140. Registered consumer associations authorised under Art. 137 were empowered to act on behalf of consumers to halt unlawful practices by traders that harmed collective consumer interests. These consumer associations could request the court to impose orders stopping the harmful behaviour, mandate corrective measures to neutralise any damage, and publicise the rulings if this may help to correct or eliminate the effects of any established breaches. Additionally, upon request of the plaintiff, courts could impose monetary penalties payable to the state in cases of non-compliance or delayed compliance by the wrongdoing trader.

¹³ Art. 2, section 446, Legge Dec. 28, 2007 n. 224, Disposizioni per la formazione del bilancio annuale e pluriennale dello Stato (legge finanziaria 2008), Gazzetta Ufficiale n. 300 of Dec. 28, 2007 - S.O. 285, as amended by Art. 6 of Decreto Legge Jan. 24, 2012 n. 1, Disposizioni urgenti per la concorrenza, lo sviluppo delle infrastrutture e la competitività, Gazzetta Ufficiale n. 19 of Jan. 24, 2012 – suppl. Ord. 18, ratified by Legge Mar. 24, 2012 n. 27, Conversione in legge, con modificazioni, del decreto-legge 24 gennaio 2012, n. 1, recante disposizioni urgenti per la concorrenza, lo sviluppo delle infrastrutture e la competitività, in Gazzetta Ufficiale n. 71 of Mar. 24, 2012, S.O. n. 53.

¹⁴ Legge Jul. 23, 2009, n. 99, recante disposizioni per lo sviluppo e l'internazionalizzazione delle imprese, nonché in materia di energia, in *Gazzetta Ufficiale*, Jul. 31, 2009, n. 176, S.O. n. 136. C. Consolo, *Come cambia, rivelando ormai a tutti e in pieno il suo volto, l'art. 140-bis e la Class Action consumeristica*, in *Corr. Giur.*, p. 1297 (10, 2009); F. Camilletti, *Il nuovo art. 140-bis del codice del consumo e l'azione di classe*, in *Contr.*, p. 1179 (12, 2009).

¹⁵ For more details on the former consumer class action based on ex Art. 140-bis of the Consumer Code see: R. Caponi, Italian ‘Class Action’ Suits in the Field of Consumer Protection: 2016 Update (June 16, 2016), available at <https://ssrn.com/abstract=2796611> or <http://dx.doi.org/10.2139/ssrn.2796611> (last visited Mar. 2, 2026); G. Pailli and C. Poncibò, In search of an effective enforcement of consumer rights: The Italian case, in H.W. Micklitz and G. Saumier (eds), *Enforcement and Effectiveness of Consumer Law*, p. 360, p. 172 (Cham, 2018); G. Pailli and C. Poncibò, The transformation of consumer law enforcement: An Italian perspective, in *Comparative Law Review*, 1, p. 19 (8, 2017); M.L. Chiarella, Overview of class actions: Italian consumer law and cross-border litigation, in *Athens Journal of Law*, p. 165, p. 172 (4–2, 2018).

¹⁶ For an overview see L. Bugatti, *The Directive (EU) 1828/2020 and the Consumer Representative Actions in Italy: A Step Back or Forward?*, in *Revue Européenne de Droit de la Consommation*, p. 289, p. 293 ff. (2024).

underutilised and largely ineffective, generating widespread dissatisfaction.¹⁷ Following partial amendments in 2012¹⁸, the consumer class action framework was repealed in 2019 as part of a comprehensive reform that replaced the previous consumer law provisions with a general regime for collective proceedings, now codified in Section IV, Title VIII-bis, Arts. 840-bis to 840-sexiesdecies of the Civil Procedure Code¹⁹.

The new system, applicable to conduct occurring after 19 May 2021, substantially broadened both the scope and the accessibility of collective actions. Extending beyond consumer law, it grants standing to any individual or non-profit organisation pursuing statutory objectives relevant to the claim, allowing them to seek compensatory and/or injunctive relief against businesses, public service providers, and utilities. The reform also introduces innovative procedural elements, such as digital tools for opt-in and publicity, a more flexible opt-in structure with both early and late adhesion, expanded judicial powers regarding evidence, mechanisms encouraging settlements, and financial incentives for lawyers. Collectively, these measures aim to overcome the structural limitations of the earlier model and to establish a more efficient, accessible, and claimant-friendly collective redress system within the Italian legal order²⁰.

Building upon this foundation, Law No. 28/2023 implementing the RAD introduced a new and autonomous representative procedure within the Italian Consumer Code, functioning alongside the general collective actions and injunctive measures of the Civil Procedure Code²¹. This legislative development further enriches Italy's framework for collective enforcement, ensuring alignment with the RAD's requirements while maintaining consistency with the principles of the 2019 reform. Under the new procedure - and in line with the RAD - qualified (*Abstände*) entities (QEs) are authorised to bring representative actions to protect the collective interests of consumers whose rights have been or may be affected by traders' infringements of one or more legislative acts listed in Annex II-septies (corresponding to those in Annex I of the Directive). Although grounded in a distinct legal basis, the representative actions introduced under the Consumer Code preserve key procedural and structural features of the collective mechanisms contained in the Civil Procedure

¹⁷ Available at <https://www.mimit.gov.it/index.php/it/mercato-e-consumatori/tutela-del-consumatore/class-action/ordinanze-class-action> (last visited Mar. 2, 2026). F. De Dominicis, *I numeri e lo stato dell'arte dei primi dieci anni di vita dell'istituto*, in V. Barsotti, F. De Dominicis, G. Pailli and V. Varano (eds), *Azione di classe: la riforma italiana e le prospettive europee*, p. 261 (Torino, 2020); A. Bonafede, *Il "mosaico" della class action italiana: la Legge n. 31/2019, 2022*, available at <https://www.studiolegalebonafede.it/2022/07/05/mosaico-class-action-italiana-legge-31-2019/> (last visited Mar. 2, 2026); E. Silvestri, *Rebooting Italian Class Action*, in A. Uzelac and S. Voet, *Class Actions in Europe: Holy Grail or a Wrong Trail?*, p. 201, p. 202 (Cham, 2021); R. Pardolesi, *La classe in azione. Finalmente, in Danno e resp.*, 301 (3, 2019), who has underlined in 2019 that "I risultati positivi latitano. Li si conta sulle punte delle dita di una mano (monca...)", recalling: Corte di Appello di Milano Aug. 25, 2017, in *Rep. Foro it.*, (2018), voce *Consumatori e utenti*, n. 3, and *Giur. it.*, p. 105 (2018), commented by A. Dondi and A. Giussani, *Commonality all'italiana e avvio (timido) della nostra azione di classe*; Tribunale di Napoli Feb. 18, 2013, in *Foro it.*, p. 1719 (I, 2013), commented by A. Palmieri; Cass. Jan. 31, 2018, n. 2320, in *Danno e resp.*, p. 113 (2019), commented by M. Natale; Tribunale di Venezia Jan. 12, 2016, in *Foro it.*, p. 1017 (I, 2016).

¹⁸ Decreto Legge Jan. 24, 2012 n. 1 – Legge Mar. 24, 2012 n. 27.

¹⁹ Legge Apr. 12, 2019, n. 31 Disposizioni in materia di azione di classe, *Gazzetta Ufficiale* n. 92, Apr. 18, 2019.

²⁰ D. De Santis, *The new Italian class action: Hope springs eternal*, in *The Italian Law Journal*, p. 757 (2019); E. Silvestri, *Rebooting Italian Class Action*, in A. Uzelac and S. Voet, *Class Actions in Europe: Holy Grail or a Wrong Trail?*, cit., p. 203; C. Consolo, *La terza edizione dell'azione di classe è legge ed entra nel c.p.c. Uno sguardo d'insieme ad un'amplessissima disciplina*, in *Corr. Giur.*, p. 737 (2019); P.F. Giuggioli, *L'azione di classe. Un nuovo procedimento collettivo* (Milano, 2019).

²¹ Decreto Legislativo Mar. 10, 2023, n. 28, Attuazione della direttiva (UE) 2020/1828 del Parlamento europeo e del Consiglio, del Nov. 25, 2020, relativa alle azioni rappresentative a tutela degli interessi collettivi dei consumatori e che abroga la direttiva 2009/22/CE, in *Gazzetta Ufficiale* n. 70, Mar. 23, 2023. Arts. 140-ter – 140-quaterdecies Consumer Code.

Code. Within the leeway afforded to Member States, Italy's implementation of the RAD thus reflects a deliberate continuity with the 2019 framework, incorporating and adapting its core procedural innovations into a renewed consumer protection regime.

1.4 Comparative insights on the initial sets of conditions

The implementation of the RAD presented a challenge to the established system of collective legal protection in both countries, leading in some cases to the creation of parallel instruments alongside those already in place. Prior to the RAD, only Italy had regulated legal protection instruments in place that aimed to compensate consumers, rather than simply establish facts or issue injunctions. In Germany, by contrast, private legal tech class actions, which are largely unregulated, operated alongside collective actions that were limited to declaratory judgments and injunctive relief and were primarily brought by consumer associations.

II. PREREQUISITES AND ADMISSIBILITY

II.1 Scope of Application

II.1.a) Infringements covered by the redress action

The RAD only requires Member States to provide for representative actions against infringements by traders of the provisions of EU law referred to in its Annex I, including such provisions as transposed into national law (Art. 2(1) RAD). Annex I refers, *inter alia*, to instruments governing liability for defective products, unfair terms in consumer contracts, air carrier liability, the sale of consumer goods, data protection, product safety, unfair commercial practices, food, insurance, roaming, and the supply of digital content and digital services. However, Recital 18 clarifies that Member States may apply the provisions of the RAD to other areas. While the German legislator has indeed made use of this option, the Italian redress action is confined to the Directive's list, which has been subject to justified criticism.

Under the German Consumer Rights Enforcement Act (*Verbraucherrecht durchsetzungsgesetz*, VDuG), redress actions may also be brought for violations of national rules that do not transpose any EU requirements (§ 1(1) VDuG). When enacting the new law, the German legislator sought to ensure that the level of consumer protection would not fall below that afforded by the model declaratory action (see I.1), which was not confined to violations of EU law.²² This “gold-plating” of the Directive is commendable.²³ It not only enhances consumer protection but also avoids demarcation difficulties. Whether national law transposes EU law is not always evident. For example, § 823(2) of the German Civil Code (*Bürgerliches Gesetzbuch*, BGB), which provides for damages in the event of a breach of a statute intended to protect another person, does not stem from EU legislation. However, the general EU principle of effectiveness may require national law to provide for damages in the case of a breach of a specific EU law, so that the provision may occasionally operate as a transposing measure.²⁴ The extension also avoids inefficiencies in cases

²² See the explanations accompanying the draft VDuG, BT-Drs. 20/6520, p. 69.

²³ See already B. Gsell and C. Meller-Hannich, *Die Umsetzung der neuen EU-Verbandsklagenrichtlinie*, Gutachten über die Umsetzung der europäischen Richtlinie über Verbandsklagen zum Schutz der Kollektivinteressen der Verbraucher (RL (EU) 2020/1828) ins deutsche Recht, pp. 22–23 (2021), available at https://www.vzbv.de/sites/default/files/downloads/2021/02/03/21-02-04_vzbv_verbandsklagen-rl_gutachten_gsell_meller-hannich.pdf (last visited Mar. 2, 2026).

²⁴ See, for example, CJEU Mar. 21, 2023 – C-100/21, *Mercedes-Benz Group*, para. 93 with regard to Art. 5(2) of the EU Regulation No. 715/2007 which, however, is not part of Annex I of the RAD; cf. also the national decision following the preliminary ruling, BGH Jun. 26, 2023 – VIa ZR 335/21, *Entscheidungen des Bundesgerichtshofs in Zivilsachen* 237, 245, paras. 43–44.

where national law and EU-based law apply side by side: without such an extension, a QE could, for example, lose a redress action against a manufacturer grounded in EU-based product liability law, whereas registered consumers could still subsequently sue the manufacturer in individual proceedings under general national fault-based liability. Additionally, from a national perspective, there appears to be no reason to afford consumers better protection against violations of EU law than against violations of national law.

Nevertheless, the Italian consumer representative action introduced by Law No. 28/2023, by contrast, is confined to a narrowly defined material scope, covering only infringements listed in Annex II-septies of the Consumer Code, which mirrors Annex I of the RAD. By choosing not to expand the material subject matter beyond the Directive's list, the Italian legislator has adopted a restrictive strategy for transposition. This decision may be difficult to reconcile with the dynamic nature of markets and the increasing demands for enhanced consumer protection. Critics argue that a broader and more flexible approach, allowing representative actions for any infringement of collective consumer interests, would have enhanced the effectiveness of collective redress. Moreover, this restrictive scope creates systemic inconsistencies within Italy's collective redress architecture. Whereas the general collective action under the Civil Procedure Code applies irrespective of the subject matter and is open to all holders of "individual homogeneous rights", the representative action under the Consumer Code is limited to the enumerated EU law fields. The fragmentation of enforcement regimes produces a disjointed system in which similar infringements may be litigated under different procedural tracks, depending on the legal basis invoked. This dualism risks compromising the effectiveness of collective enforcement by generating jurisdictional uncertainty and procedural asymmetry between claims.²⁵

II.1.b) Potential beneficiaries of the redress action

Redress actions within the meaning of the RAD are aimed at providing remedies to "consumers"²⁶ (Art. 3(1) RAD). However, Member States retain the discretion to extend the scope to other categories of persons (Recital 18 RAD). Once again, the German legislator has made use of this option, while the Italian law is confined to transposing the RAD's requirements.

The German legislator extended protection to "small enterprises", defined as entities employing fewer than ten persons and having an annual turnover or balance sheet total not exceeding €2 million (§ 1(2) VDUG). This extension is equally commendable.²⁷ Considering that redress actions can not only enhance consumer protection but also relieve courts from the burden of dealing with mass individual claims,²⁸ the legislator could even have extended the scope to encompass further B2B disputes.²⁹ At the very least, also for the sake of clarity, the legislator should have aligned the definition of "small enterprises" with the EU definition, which covers enterprises employing fewer

²⁵ L. Bugatti, *Collective Redress 3.0 in Italy: from Consumer Class Action to Consumer Representative Action*, in *The Italian Law Journal*, p. 483, at p. 495 (2024).

²⁶ On the definition of "consumer", see Art. 3(1) RAD.

²⁷ C. Meller-Hannich, *Stellungnahme zum Entwurf eines Gesetzes zur Umsetzung der Richtlinie (EU) 2020/1828 über Verbandsklagen zum Schutz der Kollektivinteressen der Verbraucher und zur Aufhebung der Richtlinie 2009/22/EG (Verbandsklagenrichtlinienumsetzungsgesetz – VRUG)*, p. 2 (2023), available at <https://www.bundestag.de/resource/blob/947438/Stellungnahme-Meller-Hannich.pdf> (last visited Mar. 2, 2026); P. Röthemeyer, *Das Verbraucherrechtsetzungsgesetz (VDUG) zur Umsetzung der Verbandsklagen-Richtlinie – Die neue Abhilfeklage*, in *Verbraucher und Recht*, p. 332, at p. 333 (2023).

²⁸ Cf. the calculation accompanying the draft VDUG, BT-Drs. 20/6520, p. 135.

²⁹ B. Gsell, *Die Umsetzung der Verbandsklagenrichtlinie – Effektiver Rechtsschutz für Verbraucher und Entlastung der Justiz durch die neue Verbands-Abhilfeklage?*, in *Gewerblicher Rechtsschutz und Urheberrecht*, p. 979, at p. 981 (2024).

than fifty persons and having an annual turnover or annual balance sheet total not exceeding €10 million.³⁰ This was initially envisaged by the German government³¹ but did not prevail.

The Italian legislator did not make use of the option to extend the scope of potential beneficiaries to SMEs. Nevertheless, SMEs are not left without collective protection: they can rely on the general collective action under the Civil Procedure Code, which is not limited to consumers but may benefit all holders of individual homogeneous rights, including businesses, regardless of their size or turnover.

II.1.c) Potential obligors and defendants of the redress action

Redress measures within the meaning of the RAD require a “trader”³² to provide consumers with remedies (Art. 3(10) RAD); traders are the defendants in redress actions. Consistent with this approach, the German and Italian transposition provisions only apply to actions against traders (§ 1(1) VDuG, Art. 140-ter Italian Consumer Code).³³ In both jurisdictions, this approach marks a (slight) departure from the previous regime. In Germany, the rules on the former model declaratory action required a B2C relationship but not a specific defendant, which led to discussions as to whether such an action could also be directed against, for example, a person who assumed the claims but was not a trader.³⁴ In Italy, the inclusion of actions against any trader within the meaning of the RAD departs from the Civil Procedure Code-based collective action, which targets only businesses and providers of public services or utilities. The latter exhibits a narrower focus.³⁵

II.1.d) Potential claimants of the redress action: qualified entities

Redress actions within the meaning of the RAD are initiated by “qualified entities” (QEs). The RAD distinguishes between two types of QEs: QEs designated for the purpose of bringing domestic representative actions and QEs designated for the purpose of bringing cross-border representative actions. The Directive lays down different requirements for the two types (Art. 4(3) and (4) RAD). QEs for cross-border actions are subject to detailed regulation, whereas the specific requirements for QEs for domestic actions are largely left to the Member States. However, the RAD explicitly allows Member States to apply the criteria governing QEs for cross-border actions also to those designated for domestic actions (Art. 4(5) RAD). Neither Germany nor Italy has made use of this option. Therefore, as will be shown in the following, in both jurisdictions, QEs for domestic actions are subject to different, and in part stricter, requirements than QEs for cross-border actions.

³⁰ Art. 2(2) of the Commission Recommendation of 6 May, 2003 concerning the definition of micro, small and medium-sized enterprises, OJ 2003 L 124/36. The definition in § 2(2) VDuG corresponds to the definition of “microenterprises” in Art. 2(3).

³¹ See the draft legislation, BT-Drs. 20/6520, p. 69.

³² On the definition of “trader”, see Art. 3(2) RAD.

³³ On the definition of “trader” in Germany, see § 14 BGB, which, however, is primarily designed for contract law and must therefore be slightly modified in the context of civil procedure, see J. Wolber, § 1 VDuG, in T. Rauscher and W. Krüger, *Münchener Kommentar zur Zivilprozessordnung*, vol. 2, mn. 22 (7th ed., Munich, 2025); furthermore, the term must be interpreted in light of the RAD’s definition in Art. 3(2) RAD, see I. Scherer, § 1 VDuG, in H. Köhler and J. Feddersen, *Gesetz gegen den unlauteren Wettbewerb*, mn. 19 (43rd ed. 2025) on the definition of “trader” in Italy, see 140-ter, par. 1, lit. b) Consumer Code: The term broadly includes any individual or entity, whether public or private, engaged in activities related to their trade, business, craft, or profession (including through another entity).

³⁴ See P. Röthemeyer, *Zweieinhalb Jahre Musterfeststellungsklage – eine Zwischenbilanz im Spiegel der Rechtsprechung*, in *Zeitschrift für Bank- und Kapitalmarktrecht*, p. 191, at p. 194 (2021); the BGH left this question open, see BGH Jul. 27, 2023 – IX ZR 267/20, *Entscheidungen des Bundesgerichtshofs in Zivilsachen* 238, 61, para. 9 with further references on the debate.

³⁵ Art 840-bis, par. 3, Civil Procedure Code.

II.1.d)aa) Qualified entities designated to bring domestic redress actions

With regard to QEs designated for the purpose of bringing domestic representative actions, Art. 4(4) RAD only requires that the criteria applied by Member States are consistent with the objectives of the Directive in order to make the functioning of such representative actions effective and efficient. Both the German and the Italian rules focus on consumer organisations designated in advance (see (II.1.d)aa)(1)) and exclude ad hoc organisations (see (II.1.d)aa)(2)). Moreover, in Italy national independent public authorities may also act as claimants in redress actions (see (II.1.d)aa)(3)). Neither jurisdiction extends redress actions to individual consumers or commercial actors; however, in Italy individual consumers may resort to the general collective action under the Civil Procedure Code (see (II.1.d)aa)(4)).

II.1.d)aa)(1) Comparable focus on consumer organisations designated in advance

Both the German and the Italian rules primarily confer standing on consumer organisations that have been designated in advance, rather than for a specific redress action. This focus is consistent with the RAD.³⁶ Indeed, while such consumer organisations are not the only well-suited claimants (see (II.1.d)aa)(2)–(4)), they seem particularly effective in safeguarding consumers' interests through redress actions: their statutes commit them to consumer protection, while they are also subject to a certain degree of governmental supervision.³⁷

In Germany, QEs for domestic redress actions are referred to as “qualified consumer organisations” (qualifizierte Verbraucherverbände, § 2(1) no. 1 VDuG). Such organisations must, first, be registered in a list maintained by the Federal Office of Justice (§ 4 of the German Injunctive Relief Act, Unterlassungsklagengesetz, UKlaG), and, second, obtain no more than 5% of their financial resources from contributions by businesses. Regarding the first condition, § 4(2) UKlaG stipulates that, in order to be eligible for registration on the list, the organisation must be a registered association whose statutory tasks include the non-commercial protection of consumer interests through the provision of information and advice. Furthermore, the organisation must demonstrate that it has a significant number of members (at least three organisations or 75 natural persons), has been registered and active for at least one year, possesses sufficient human, material, and financial resources, and does not grant its members or employees any undue benefits. Consumer associations that are predominantly publicly funded are irrefutably presumed to meet these requirements. As of today, the list comprises 50 associations.³⁸ The second condition, the 5%-limit, concerns financing and will therefore be analysed in more detail later in this contribution (see IV.4). The 5%-limit neither applies to actions seeking injunctive measures (§ 3 UKlaG) nor is it among the requirements that organisations must meet in order to be designated to bring cross-border actions (Art. 4(3) RAD).

In Germany, another difference between actions for redress and actions for injunctions is that the latter may also be brought by qualified trade associations and chambers of industry and commerce (§ 3 UKlaG). Denying these organisations the ability to also bring redress actions is unconvincing, especially considering that redress actions may also be brought on behalf of “small enterprises”

³⁶ See Recitals 24 and 28.

³⁷ Cf. B. Gsell and C. Meller-Hannich, Die Umsetzung der neuen EU-Verbandsklagenrichtlinie, Folgegutachten über die Umsetzung der europäischen Richtlinie über Verbandsklagen zum Schutz der Kollektivinteressen der Verbraucher – (RL (EU) 2020/1828) – ins deutsche Recht, p. 9 (2022), available at https://www.vzbv.de/sites/default/files/2022-02/22-02-23_vzbv_EU-Verbandsklage_Folgegutachten_final.pdf (last visited Mar. 2, 2026).

³⁸ See the list of the German Federal Office of Justice, available at https://www.bundesjustizamt.de/SharedDocs/Downloads/DE/Verbraucherschutz/Liste_qualifizierter_Einrichtungen.html (last visited Mar. 2, 2026).

(see II.1.b)).³⁹ The VDuG excludes, for instance, the Competition Centre (Wettbewerbszentrale), which plays an important role in bringing actions for injunctions.⁴⁰ A positive aspect of the new rule in § 2(1) no. 1 VDuG is that the requirements are less strict than those applicable to the former model declaratory action, which required a higher minimum number of association members and a longer period of activity.⁴¹

In Italy, QEs likewise primarily include nationally representative consumer associations enrolled in a special list maintained by the Ministry of Enterprises and Made in Italy.⁴² As of March 2026, nine consumer associations were registered in this list.⁴³ To be included in the list, organisations must fulfil a set of mandatory requirements, established under Art. 137 of the Consumer Code. The conditions for registration are stringent: entities must have been established for at least three years, have a statute that provides for the exclusive objective of consumer protection and possess a democratic internal structure, operate on a non-profit basis, demonstrate at least three years of activity in the protection of consumer interests, maintain a minimum membership threshold and national relevance⁴⁴, keep a register of members, updated annually, indicating the membership fees paid directly to the association for statutory purposes, and provide transparent financial reporting. Additional criteria related to integrity and independence exclude entities whose legal representatives have been convicted of offences connected with their activities or have economic interests in the same field as the association.

II.1.d)aa)(2) Similar exclusion of ad hoc consumer organisations

The RAD also allows for the designation of QEs for domestic actions on an ad hoc basis (Art. 4(6) RAD). However, Recital 28 sent. 2 RAD clarifies that the Directive should not encourage Member States to introduce this possibility. Neither the German nor the Italian rules on redress actions provide for ad hoc QEs. However, in Germany, the relatively short minimum period of activity—

³⁹ See already B. Gsell and C. Meller-Hannich, Die Umsetzung der neuen EU-Verbandsklagenrichtlinie, Gutachten über die Umsetzung der europäischen Richtlinie über Verbandsklagen zum Schutz der Kollektivinteressen der Verbraucher (RL (EU) 2020/1828) ins deutsche Recht, cit., p. 24.

⁴⁰ See C. Meller-Hannich and A. Höland, Gutachten Evaluierung der Effektivität kollektiver Rechtsschutzinstrumente, pp. 62–64, passim (2010), available at https://www.bmlh.de/SharedDocs/Downloads/DE/Service/AnWis/Heft523.pdf?__blob=publicationFile&v=2 (last visited Mar. 2, 2026).

⁴¹ See § 606(1) ZPO (former version); P. Röthemeyer, Das Verbraucherrecht durchsetzungsgesetz (VDuG) zur Umsetzung der Verbandsklagen-Richtlinie – Die neue Abhilfeklage, cit., at p. 333; on the evolution of the registration criteria with regard to the action for injunctive relief and the former model declaratory action, as well as on the (restrictive) jurisprudence in this context, see A. Halfmeier, P. Rott, in P. Rott, A. Halfmeier, W. Vandenbussche, L. Bugatti and J. Mucha, Comparative Legal Study on Procedural Rules and their Impact on Collective Redress Actions in Europe, pp. 47–48 (BEUC, 2025), available at <https://www.beuc.eu/reports/comparative-legal-study-procedural-rules-and-their-impact-collective-redress-actions-europe> (last visited Mar. 2, 2026).

⁴² Associazione Assoutenti APS; Associazione Confconsumatori; Associazione Adiconsum - Associazione Difesa Consumatori APS; Associazione Codici - Centro per i Diritti del Cittadino; Associazione Difesa; Utenti Servizi Bancari, Finanziari, Postali, Assicurativi – Adusbef; Associazione Altroconsumo; Associazione Centro Tutela Consumatori Utenti – CTCU; Associazione Movimento Consumatori; Associazione UDICON – Unione per la Difesa dei Consumatori, available at <https://www.mimit.gov.it/it/mercato-e-consumatori/tutela-del-consumatore/class-action/azioni-rappresentative-nazionali> (last visited Mar. 2, 2026).

⁴³ See the list of the Ministry of Enterprises and Made in Italy, available at <https://www.mimit.gov.it/it/mercato-e-consumatori/tutela-del-consumatore/class-action/azioni-rappresentative-nazionali> (last visited Mar. 2, 2026).

⁴⁴ There must be at least 0.5 per thousand of the national population as members, and representation in at least five regions or autonomous provinces, with no fewer than 0.2 per thousand of the population of each territory (Art. 137(2), c) Consumer Code).

one year, compared to three years in Italy—may allow for the establishment of a QE for a specific domestic redress action.⁴⁵

On this point, greater boldness on the part of the legislators would have been desirable.⁴⁶ Ad hoc QEs established in response to a specific event—such as a major data breach—may offer greater specialisation and relieve existing QEs of the burden of addressing such exceptional matters in addition to their “daily business”. With regard to Italy, this choice appears to overlook valuable lessons drawn from the country’s earlier experience with consumer class actions, which can also be initiated by ad hoc entities and were, in fact, at times brought directly by ad hoc entities (*comitati*)⁴⁷ rather than by the most nationally representative consumer associations, especially in cases of local matters. This Italian experience suggests that the rigidity of the new system may reduce responsiveness to emerging forms of collective harm. However, it is important to note that Art. 4(6) RAD appears to impose strict conditions on ad hoc entities, insofar as it appears to require them to meet the same criteria as other national QEs. As a result, the stringent requirements for national QEs, such as the minimum period of activity, may have significantly limited the number of eligible ad hoc entities, thereby reducing the practical effects of including them. Consequently, without modifying the requirements for other national QEs, the potential benefits of broadening the scope to incorporate ad hoc entities may have been more theoretical than actionable.⁴⁸

II.1.d)aa)(3) Divergent role of public authorities

Art. 4(7) RAD also allows Member States to designate public bodies as QEs. While the German legislator has refrained from doing so, the Italian rules indeed confer standing on some authorities. In Germany, the participation of public bodies in civil proceedings is generally limited and has tended to be reduced over the past century.⁴⁹ Yet it appears that designating specific public bodies as QEs could enable the redress action to better realise its potential. Including public bodies could allow for better coordination between administrative and private consumer protection, thereby enhancing its effectiveness and efficiency.⁵⁰ One could imagine, for instance, a redress action brought by the Federal Financial Supervisory Authority on behalf of policyholders affected by unlawful premium adjustments.⁵¹

In Italy, independent public authorities entrusted with enforcing consumer law at the national, regional, or local levels (e.g., the Competition and Market Authority, AGCM) are empowered to bring domestic and cross-border representative actions (Art. 140-quater of the Consumer Code).

⁴⁵ See A. Stadler, *Die neue Verbands(abbilf)klage – Umsetzung der Richtlinie 2020/1828*, in *Zeitschrift für Zivilprozessrecht*, p. 129, at p. 135 (2023), who considers that this relatively short period allows for the creation of ad hoc QEs.

⁴⁶ With regard to Germany, see already B. Gsell and C. Meller-Hannich, *Die Umsetzung der neuen EU-Verbandsklagenrichtlinie, Gutachten über die Umsetzung der europäischen Richtlinie über Verbandsklagen zum Schutz der Kollektivinteressen der Verbraucher (RL (EU) 2020/1828) ins deutsche Recht*, cit., p. 24.

⁴⁷ E.g., *Tribunale di Roma, sez. X, ord. June 20, 2018, Comitato composto 166 consumatori nei confronti di ACQUALATINA S.p.A.*, available at <https://www.mimit.gov.it/images/stories/documenti/azione-di-classe-ACQUA-LATINA.pdf> (last visited Mar. 2, 2026). According to F. De Dominicis, roughly one fifth of consumer class actions filed between 2010 and 2023 were initiated by individual consumers or ad hoc entities: F. De Dominicis, *La nuova “class action europea”: tratti fondamentali e criticità del d.lgs. 10 marzo 2023, n. 28 che recepisce la Direttiva 2020/1828 (UE) (2023)*.

⁴⁸ L. Bugatti, Italy, in P. Rott, A. Halfmeier, W. Vandenbussche, L. Bugatti and J. Mucha, *Comparative Legal Study on Procedural Rules and their Impact on Collective Redress Actions in Europe*, cit.

⁴⁹ Cf. A.-K. Mayrhofer, *Die Versicherungsaufsicht als Klägerin im Verbandsklageverfahren? Am Beispiel der Prämienanpassung privater Krankenversicherungen*, in *Zeitschrift für die gesamte Versicherungswissenschaft*, 114, p. 57, at p. 87 (2025).

⁵⁰ For more details, see A.-K. Mayrhofer, *Die Versicherungsaufsicht als Klägerin im Verbandsklageverfahren? Am Beispiel der Prämienanpassung privater Krankenversicherungen*, cit., at pp. 85–104.

⁵¹ On this case, see A.-K. Mayrhofer, *Die Versicherungsaufsicht als Klägerin im Verbandsklageverfahren? Am Beispiel der Prämienanpassung privater Krankenversicherungen*, cit., p. 57.

The legislator clarified that the inclusion of independent public authorities is justified by the aim of reinforcing their institutional functions, given that these bodies are already charged with safeguarding consumer interests within their respective fields of competence.⁵² The significant complexity inherent in representative actions—particularly when they involve cross-border elements (see also Art. 140-quincoques)—further supports this choice. Owing to their organisational and financial stability, as well as their expertise and established experience in consumer protection, these authorities are deemed capable of effectively advancing consumer interests in judicial proceedings. Indeed, integrating authorities into redress actions may enhance the institutional capacity of this mechanism to protect consumers. Admittedly, it may also raise concerns⁵³ about its full alignment with the procedural principle of equality of arms (cf. Recital 68 RAD), since such authorities possess investigatory powers and access to evidence not available to private defendants. In fact, these public entities, under their enforcement mandates, play a critical role in supervising markets and ensuring compliance with legal rules by businesses and professionals. They have the authority to impose sanctions, such as fines, and issue orders to cease unlawful practices. The overlapping roles of public enforcement and private representative actions thus risk blurring the distinction between public and private enforcement. For instance, the Italian Antitrust Authority, after penalising a trader for unlawful conduct, has the power to directly jump into the private realm through a follow-on action, claiming damages on behalf of consumers, leveraging its privileged access to information gathered during the public enforcement proceeding. Nevertheless, it should not be overlooked that procedural equality may likewise be impaired when a consumer organisation with limited financial resources (see IV) and limited access to evidence brings a redress action against a well-equipped trader. Furthermore, traders whose infringements have already been established do not appear particularly worthy of protection against follow-on actions. While the involvement of public authorities may blur the traditional distinction between public and private enforcement, it could also contribute to a closer alignment of these mechanisms, thereby strengthening consumer protection and reducing the number of actors and proceedings with which traders must engage.⁵⁴

Ultimately, it seems that the extent to which the potential benefits and risks of administrative participation in representative actions will materialise depends to a large degree on the specific regulatory design and its practical application. Whether the Italian initiative can offer meaningful empirical insights for the debate remains doubtful, as of March 2026, no public authority had yet applied for registration, raising questions as to whether proceedings initiated by public bodies will in fact be pursued.

II.1.d)aa)(4) Different options for individual consumers and commercial actors

In principle, it would have been possible to make the national collective action mechanisms implementing the RAD available to actors other than QEs, such as commercial actors or individual

⁵² XIX LEG - Schema di D.Lgs. - Recepimento della direttiva (UE) 2020/1828 del parlamento europeo e del consiglio del Nov. 25, 2020 relativa alle azioni rappresentative a tutela degli interessi collettivi dei consumatori e che abroga la direttiva 2009/22/CE - Consiglio dei ministri Mar. 9, 2023, Relazione illustrativa, available at https://www.giustizia.it/giustizia/it/mg_1_2_1.page?contentId=SAN426528#rel (last visited Mar. 2, 2026).

⁵³ See R. Donzelli, *Audizione informale dinanzi alle Commissioni riunite II e X*, Jan. 12, 2023; G. De Cristofaro, *Audizione informale dinanzi alle Commissioni riunite II e X*, Jan. 12, 2023, available at https://www.camera.it/leg19/1104?shadow_organismo_parlamentare=3507&id_tipografico=&annomese=202301 (last visited Mar. 2, 2026).

⁵⁴ See A.-K. Mayrhofer, *Die Versicherungsaufsicht als Klägerin im Verbandsklageverfahren? Am Beispiel der Prämienanpassung privater Krankenversicherungen*, cit., at pp. 89–91.

consumers—who would typically require the support of such commercial actors—provided that such actions do not undermine the effectiveness of the RAD.⁵⁵ Commercial actors cannot replace non-commercial QEs, as their primary interest lies not in representing “consumers’ interests” (see Art. 3(4) RAD), but in pursuing their own goals. Nevertheless, non-altruistic redress actions could serve as a *complement* to those brought by QEs. Neither Italy nor Germany extends redress actions to these actors. However, while German law does not provide them with any other mechanisms of collective redress either, Italian law allows individual consumers to bring general collective actions under the Italian Civil Procedure Code, which mitigates the limitations of the redress action (see already I).

In Germany, commercial actors and individual consumers are confined to the general procedural framework. In particular, legal tech companies, which rely on standardised and often automated procedures to collect and enforce individual claims, play a considerable role in the enforcement of consumer law, for example, in the fields of air passenger rights, tenancy law, and data protection.⁵⁶ In some instances, claims are bundled into a single action;⁵⁷ in others, numerous parallel actions are brought.⁵⁸ Business models vary: some commercial actors operate on a contingency-fee basis, while others make use of the widespread coverage of legal expenses insurance in Germany, which increases individuals’ willingness to litigate.⁵⁹ The principal concerns associated with such claims relate to the burden they place on the judiciary and the structural weakness of consumers in enforcing their interests vis-à-vis the companies.⁶⁰ These models are unlikely to be displaced by the new redress actions under the VDuG, as consumer associations, due to their limited financial resources (see IV), can cover only a fraction of the cases.⁶¹ Prior to the enactment of the VDuG, it had been proposed—including by one of the authors—not only to implement the RAD but also to introduce a group action allowing individuals to seek redress on behalf of a group.⁶² The aim was to empower both consumers and businesses to engage in “bundled legal enforcement in a self-determined manner”.⁶³ Some mechanisms provided for in the VDuG—such as the implementation

⁵⁵ It follows from Art. 1(2) RAD that Member States are allowed to adopt additional procedural means for the protection of the collective interest of consumers at national level.

⁵⁶ Cf. the explanations accompanying the draft Legal Tech Act, BT-Drs. 19/27673, pp. 14, 15.

⁵⁷ See, for example, BGH Jun. 13, 2022 – VIa ZR 418/21, in *Neue Juristische Wochenschrift*, p. 3350 (2022), financialright, where 2004 claims were bundled.

⁵⁸ Recent examples include online gambling and premium adjustments of insurance companies, cf. T. Riehm, *Massenverfahren und kein Ende?*, in *JuristenZeitung*, p. 945, at p. 946 (2025).

⁵⁹ See T. A. Heiß, *Massenverfahren und die Zukunft des deutschen Zivilprozesses*, in *Neue Juristische Wochenschrift*, p. 1625, at pp. 1627–1629 (2025).

⁶⁰ For more details, see K. Engler, *Kollektives Legal Tech in Zeiten der Abhilfe-Verbandsklage*, in *Legal Tech Zeitschrift*, p. 15, at pp. 19–21 (2023).

⁶¹ For more details, see K. Engler, *Kollektives Legal Tech in Zeiten der Abhilfe-Verbandsklage*, cit., at pp. 22–23.

⁶² B. Gsell and C. Meller-Hannich, *Die Umsetzung der neuen EU-Verbandsklagenrichtlinie, Folgegutachten über die Umsetzung der europäischen Richtlinie über Verbandsklagen zum Schutz der Kollektivinteressen der Verbraucher – (RL (EU) 2020/1828) – ins deutsche, Recht*, pp. 11–27 (2022), available at https://www.vzbv.de/sites/default/files/2022-02/22-02-23_vzbv_EU-Verbandsklage_Folgegutachten_final.pdf (last visited Mar. 2, 2026); see also the 2017 proposal of the German parliamentary group “BÜNDNIS 90/DIE GRÜNEN“, BT-Drs. 19/243; in support of group actions, see also Neue Richtervereinigung, *Stellungnahme zum Referentenentwurf eines Gesetzes zur Umsetzung der Richtlinie (EU) 2020/1828 über Verbandsklagen zum Schutz der Kollektivinteressen der Verbraucher und zur Aufhebung der Richtlinie 2009/22/EG (Verbandsklagenrichtlinienumsetzungsgesetz – VRUG)*, p. 5 (2023), available at https://www.bundestag.de/resource/blob/947200/Stellungnahme-Weiss_NRV.pdf (last visited Mar. 2, 2026); A. Stadler, *Die neue Verbands(abhilfe)klage – Umsetzung der Richtlinie 2020/1828*, cit., at p. 137.

⁶³ B. Gsell and C. Meller-Hannich, *Die Umsetzung der neuen EU-Verbandsklagenrichtlinie, Folgegutachten über die Umsetzung der europäischen Richtlinie über Verbandsklagen zum Schutz der Kollektivinteressen der Verbraucher – (RL (EU) 2020/1828) – ins deutsche, Recht*, cit., p. 54.

procedure (see III.8)—could have been applied to such a group action,⁶⁴ whereas others would have required modification, for example regarding consumer participation in the costs of the proceedings and the funding by commercial actors⁶⁵. The latter would have been essential for making the group action a viable alternative to the current practice of mass bundled or parallel individual claims, pursued or supported by commercial actors. A group action could make collective redress in Germany more effective and efficient; yet it appears unlikely that such a mechanism will be introduced in the foreseeable future.

In Italy, the general collective actions under the Civil Procedure Code may be introduced both by individual class members and by associations or non-profit organisations registered in a public list maintained by the Ministry of Justice. As for the former consumer class action, ex art. 140-bis conferred standing on consumers and users, who could sue individually or through *ad hoc* associations or committees to which they granted authority. In practice, this sometimes resulted in actions being filed by individual consumers rather than by the most nationally representative consumer associations.⁶⁶ Under the current legislative framework, in cases of unlawful conduct by a trader affecting the collective interests of consumers in one of the matters listed in Annex II-septies of the Consumer Code, individual consumers retain the right to bring independent claims and may also seek collective redress under the Civil Procedure Code, instead of opting into a representative action initiated by a QE. This dual possibility can give rise to overlapping collective proceedings for the same unlawful conduct: one initiated by a QE under the Consumer Code, and another brought directly by individual consumers under the Civil Procedure Code. Without effective mechanisms to coordinate these parallel regimes, such overlaps risk inefficiencies and potentially inconsistent outcomes⁶⁷.

II.1.d)bb) Qualified entities designated to bring cross-border redress actions

According to Art. 6(1) RAD, Member States must ensure that QEs designated in advance in another Member State for the purpose of bringing cross-border representative actions can also bring such representative actions before their respective courts or administrative authorities. Art. 4(3) RAD sets out specific criteria which must be fulfilled by an organisation to be designated as QE for cross-border actions. These include substantive requirements concerning a minimum period of activity (12 months), the consumer protective statutory purpose, non-profit character, the absence of insolvency proceedings, independency, and freedom from external influence, as well as formal requirements relating to the publication of information. In Germany and Italy alike, the

⁶⁴ B. Gsell and C. Meller-Hannich, Die Umsetzung der neuen EU-Verbandsklagenrichtlinie, Folgegutachten über die Umsetzung der europäischen Richtlinie über Verbandsklagen zum Schutz der Kollektivinteressen der Verbraucher – (RL (EU) 2020/1828) – ins deutsche, Recht, cit., pp. 19–23.

⁶⁵ B. Gsell and C. Meller-Hannich, Die Umsetzung der neuen EU-Verbandsklagenrichtlinie, Folgegutachten über die Umsetzung der europäischen Richtlinie über Verbandsklagen zum Schutz der Kollektivinteressen der Verbraucher – (RL (EU) 2020/1828) – ins deutsche, Recht, cit., pp. 12–13.

⁶⁶ E.g., among the most recent cases: Tribunale di Genova Apr. 2, 2023, Joyce Ruinon c. Costa Crociere spa; Tribunale di Venezia ord. Oct. 21, 2021, D’Amico et al. c. Evolve srl., available at https://www.mimit.gov.it/images/stories/normativa/class_action_evolve_link_2021.pdf (last visited Mar. 2, 2026); Tribunale di Cagliari ord. Feb. 8, 2017, Vincenzo Sileu et al. C. ABBANOIA S.p.a., available at <https://www.mimit.gov.it/images/stories/documenti/Ordinanza-8-febbraio-2017-Tribunale-ord-di-Cagliari.pdf> (last visited Mar. 2, 2026).

⁶⁷ Art. 140-ter, par. 2, Consumer Code provides that in a similar situation (unlawful conduct carried out by a trader harming the collective interest of consumers in one of the matters listed in Annex II-septies Consumer Code), if the plaintiff is a QE, it is obliged to seek protection through the consumer representative action and cannot bring a collective action under the Civil Procedural Code rules.

implementation of these requirements⁶⁸ results in QEs for cross-border actions being, at least in some respects, subject to lighter substantive requirements than QEs for domestic actions.

In Germany, for example, only QEs for domestic actions are required to have a minimum number of members and to have been not only active but also registered for at least one year. In addition, the 5%-limit concerning financing applies only to QEs for domestic actions. In Italy, QEs for domestic actions must demonstrate three years of activity compared to only 12 months for QEs for cross-border actions. Furthermore, only QEs for domestic actions are required to demonstrate a minimum period of establishment, national relevance, and a minimum membership threshold. Additionally, QEs designated for the purpose of bringing cross-border representative actions only need to establish a legitimate interest in protecting consumers, as opposed to having an exclusive statutory purpose. This asymmetry is difficult to justify, given that cross-border disputes are generally more complex and resource-intensive than domestic ones. The resulting inconsistencies not only create unnecessary confusion but also impose additional hurdles for organisations seeking accreditation.

As of March 2026, the Commission's list of QEs for cross-border representative actions (Art. 5(1) subpara. 4 RAD) included only one German entity but six Italian entities.⁶⁹ By that date, three redress actions in Germany have been brought by foreign QEs,⁷⁰ whereas none appeared to have been initiated in Italy⁷¹.

II.2 Collective element

The RAD regulates representative actions for the protection of the “collective interests of consumers” (Art. 2(1) RAD), meaning “the general interest of consumers and, in particular for the purposes of redress measures, the interests of a group of consumers” (Art. 3(3) RAD). Neither the German nor the Italian rules on redress actions require courts to explicitly determine whether a “collective interest” is at stake.⁷² The distinction between the assertion of a “collective interest” and mere individual interests is rather drawn by reference to mediating factors: in Germany, the “group of consumers” eligible for redress actions is delineated through the requirements of similarity (*Gleichartigkeit*) and a quorum. In Italy, no numerical threshold is required for admissibility; instead, the claim must identify the criteria for determining the group of affected consumers and the homogeneity (*omogeneità*) of their individual rights.

⁶⁸ See § 4d(2) UKlaG; Art. 140-*quinquies* Italian Consumer Code.

⁶⁹ See the list of the European Commission, available at <https://representative-actions-collaboration.ec.europa.eu/cross-border-qualified-entities> (last visited Mar. 2, 2026).

⁷⁰ See the list of the Federal Office of Justice, available at https://www.bundesjustizamt.de/DE/Themen/Verbraucherrechte/VerbandsklageregisterMusterfeststellungsklagenregister/Verbandsklagenregister/Verbandsklagen/Verbandsklagen_node.html (last visited Mar. 2, 2026). The Dutch “*Stichting Onderzoek Marktinformatie (SOMI)*” has brought redress actions against TikTok Technology Limited and against X Internet Unlimited Company. The Austrian “*Verein zum Schutz von Verbraucherinteressen*” has brought a redress action against Meta Platforms Ireland Limited.

⁷¹ See the information of the Ministry of Enterprises and Made in Italy, available at <https://www.mimit.gov.it/it/mercato-e-consumatori/tutela-del-consumatore/class-action/azioni-rappresentative-transfrontaliere> (last visited Mar. 2, 2026).

⁷² Against the introduction of such a criterion, see B. Gsell and C. Meller-Hannich, Die Umsetzung der neuen EU-Verbandsklagenrichtlinie, Gutachten über die Umsetzung der europäischen Richtlinie über Verbandsklagen zum Schutz der Kollektivinteressen der Verbraucher (RL (EU) 2020/1828) ins deutsche Recht, cit., p. 23.

II.2.a) *Similarity*

The representative action, as conceived by the RAD, “should offer an effective and efficient way of protecting the collective interests of consumers” (Recital 9 sent. 1). The efficiency of a redress action requires a certain degree of similarity between the claims covered by the action.⁷³ Bundling heterogeneous claims—for example, damages claims relating to different goods and defects—may still benefit consumers who would not have taken action on their own initiative due to a “rational apathy” in pursuing small claims.⁷⁴ However, such aggregation could lead to complex proceedings, placing a considerable burden on the courts and potentially slowing down the judicial system. In such cases, referring consumers to individual proceedings may be preferable, even though some claims might ultimately remain unenforced. At the same time, a redress action does not necessarily require absolute homogeneity. Not all differences prevent redress actions from being the more effective and efficient instrument.⁷⁵ Examples include cases where the damages differ but can be calculated on the basis of easily ascertainable criteria, such as the price paid by the individual consumer.⁷⁶ The RAD leaves it to the Member States “to decide on the required degree of similarity of individual claims”, provided that national rules do not hamper the effectiveness of representative actions (Recital 12). In making this decision, the German legislator was confronted for the first time with the need to codify a similarity requirement due to the absence of prior collective redress mechanisms (see I.1). By contrast, the Italian legislator was able to draw upon earlier experience with collective redress instruments (see I.2).

In Germany, similarity is addressed in § 15(1) VDuG: a redress action is admissible only if the claims of consumers affected by the action are essentially similar (*im Wesentlichen gleichartig*). Such similarity requires that the claims are based on the same facts or on a series of essentially comparable facts, and depend on essentially the same questions of fact and law. The QE’s statement of claim must include specific information regarding the similarity of the consumer claims concerned (§ 15(2) sent. 1 VDuG). The requirement of similarity aims to ensure that redress actions are efficient and that the implementation procedure following the court proceedings (see III.8) remains effective.⁷⁷

§ 15(1) VDuG does not require complete homogeneity—only that the claims are “essentially”⁷⁸ similar. It appears that this assessment must be made on a case-by-case basis, taking into account the RAD’s requirement that the redress action must offer an effective and efficient instrument of

⁷³ See the explanations accompanying the draft VDuG, BT-Drs. 20/6520, p. 77; see also A. Stadler, § 15 VDuG, in H.-J. Musielak and W. Voit, *Zivilprozessordnung*, mn. 1 (22nd ed. 2025): “The similarity of the claims asserted is internationally recognised as a criterion for the suitability of collective redress actions. It serves to distinguish these instruments from cases in which specific individual issues predominate and the consolidation of claims in a single proceeding is therefore not appropriate.” (translation by the authors).

⁷⁴ On this “rational disinterest”, see B. Gsell and C. Meller-Hannich, *Die Umsetzung der neuen EU-Verbandsklagenrichtlinie, Gutachten über die Umsetzung der europäischen Richtlinie über Verbandsklagen zum Schutz der Kollektivinteressen der Verbraucher* (RL (EU) 2020/1828) ins deutsche Recht, cit., p. 5.

⁷⁵ Cf. the explanations accompanying the recommendation of the Committee on Legal Affairs of the German Bundestag, BT-Drs. 20/7631, p. 109.

⁷⁶ Cf. S. F. Thönissen, *Schadensersatz in der Verbandsabhilfeklage*, in *Recht und Schaden*, p. 749, at p. 754 (2023).

⁷⁷ See the explanations accompanying the draft VDuG, BT-Drs. 20/6520, p. 77.

⁷⁸ The original draft legislation did not contain this restriction, see BT-Drs. 20/6520, p. 15.

protection.⁷⁹ Ultimately, courts must conduct a “feasibility test”.⁸⁰ They must assess whether the differences between claims can adequately be addressed in the collective court proceedings, in the implementation procedure, or even left to individual actions after the conclusion of the collective proceedings (see III.8). Where this is possible, differences between the claims should not preclude the admissibility of the redress action.⁸¹ The court should likewise not be allowed to dismiss the action where it is able to divide the claims into sub-groups that are internally sufficiently homogeneous and separable from one another.⁸²

The exact requirements thus depend on the capacities of both the court and the trustee to deal with differences between individual claims.⁸³ As will be illustrated in a subsequent section (see III.6 and III.8), these capacities are limited, largely due to the limited scope for lump-sum estimation in German law. Unfortunately, the legislator did not take the introduction of the VDuG as an opportunity to assess whether the general rules of substantive and procedural law are suitable for handling mass actions, or whether new mechanisms for estimation should be introduced.⁸⁴

Another difficulty in German law is that § 15 VDuG deals only with the similarity of claims forming part of the redress action but is silent on the separability of these claims from others that do not form part of it.⁸⁵ Being aware of the need for similarity, a QE may try to limit the action to clearly similar claims, for example, by including in a contractual liability action only those buyers whose goods manifested a defect, thereby excluding those whose goods function properly. The claims included in the action would certainly be similar, but it might not be possible to define specific prerequisites in the basic judgment (§ 16(1) sent. 1, (2) VDuG) that the trustee could verify by means of formal proof (see III.8).⁸⁶ In view of its purpose to ensure effective and efficient redress

⁷⁹ On the necessity of a flexible procedural framework, see C. Meller-Hannich, *Stellungnahme zum Entwurf eines Gesetzes zur Umsetzung der Richtlinie (EU) 2020/1828 über Verbandsklagen zum Schutz der Kollektivinteressen der Verbraucher und zur Aufhebung der Richtlinie 2009/22/EG (Verbandsklagenrichtlinienumsetzungsgesetz – VRUG)*, cit., p. 9; for an overview of different approaches in German legal doctrine to the interpretation of § 15(1) VDuG, see I. Scherer, *Die Gleichartigkeit der Ansprüche bei der Abhilfeklage*, in *Verbraucher und Recht*, p. 335, at pp. 337–338 (2025).

⁸⁰ A.-K. Mayrhofer and T. Koller, *Die „Gleichartigkeit“ als Nadelöhr der Abhilfeklage - Zur Bedeutung des Gleichartigkeitserfordernisses im Regierungsentwurf eines Gesetzes zur Umsetzung der Verbandsklagenrichtlinie*, in *Zeitschrift für Wirtschaftsrecht*, p. 1065, at p. 1072 (2023): „Handhabbarkeitsprüfung“.

⁸¹ For more details, see A.-K. Mayrhofer and T. Koller, *Die „Gleichartigkeit“ als Nadelöhr der Abhilfeklage - Zur Bedeutung des Gleichartigkeitserfordernisses im Regierungsentwurf eines Gesetzes zur Umsetzung der Verbandsklagenrichtlinie*, cit., at pp. 1068–1072.

⁸² B. Gsell, *Die Umsetzung der Verbandsklagenrichtlinie – Effektiver Rechtsschutz für Verbraucher und Entlastung der Justiz durch die neue Verbands-Abhilfeklage?*, cit., at p. 983.

⁸³ A.-K. Mayrhofer and T. Koller, *Die „Gleichartigkeit“ als Nadelöhr der Abhilfeklage - Zur Bedeutung des Gleichartigkeitserfordernisses im Regierungsentwurf eines Gesetzes zur Umsetzung der Verbandsklagenrichtlinie*, cit., at p. 1072.

⁸⁴ B. Gsell, *Die Umsetzung der Verbandsklagenrichtlinie – Effektiver Rechtsschutz für Verbraucher und Entlastung der Justiz durch die neue Verbands-Abhilfeklage?*, cit., at p. 991.

⁸⁵ B. Gsell, *Die Umsetzung der Verbandsklagenrichtlinie – Effektiver Rechtsschutz für Verbraucher und Entlastung der Justiz durch die neue Verbands-Abhilfeklage?*, cit., at p. 983; see also A.-K. Mayrhofer and T. Koller, *Die „Gleichartigkeit“ als Nadelöhr der Abhilfeklage - Zur Bedeutung des Gleichartigkeitserfordernisses im Regierungsentwurf eines Gesetzes zur Umsetzung der Verbandsklagenrichtlinie*, cit., at pp. 1067–1068.

⁸⁶ B. Gsell, *Die Umsetzung der Verbandsklagenrichtlinie – Effektiver Rechtsschutz für Verbraucher und Entlastung der Justiz durch die neue Verbands-Abhilfeklage?*, cit., at p. 983.

actions,⁸⁷ § 15 VDuG should also be applied to such cases.⁸⁸ The requirement of similarity ought to be supplemented by a requirement of “separability”. Consequently, the QE must not only provide information on the similarity of the consumer claims concerned (§ 15(2) sent. 1 VDuG), but also on their separability from consumer claims not covered by the action. Where such separation is not possible, the redress action should be inadmissible.⁸⁹

In Italy, the legislator addressed this problem of separability by requiring that a claim must not only identify the homogeneity of the individual rights, but also the criteria for determining the group of consumers. Furthermore, unlike German courts, Italian courts already have experience in assessing whether individual claims are sufficiently alike to be dealt with in an action for collective redress. Due to the specific structure of the German redress action procedure—which involves an implementation phase and potentially subsequent individual proceedings—it appears that the Italian standards cannot be directly transposed to German law. However, as will be demonstrated in the following, they may nevertheless support the idea of pursuing a flexible approach, taking into account the feasibility of the action.

In Italy, homogeneity functions as a key admissibility condition (Art. 140-septies, paras. 5 and 8, Consumer Code): in order to be admissible, a redress action must be grounded in the “homogeneity of individual rights”. Under the previous consumer class action framework, defining what constitutes “homogeneous individual rights” was subject to discussion. Initially, the requirement was that the rights needed to be identical in nature. Over time, however, judicial interpretation of the notion of homogeneity gradually shifted toward a more flexible and functional approach⁹⁰. Initially, courts adopted a restrictive reading that resulted in the exclusion of several claims from collective proceedings. For example, in *Unione Nazionale Consumatori/Maggi v. Wecantour di GOA s.r.l.*⁹¹, 30 consumers were excluded because their damages, arising from the defendant’s misconduct concerning the non-conformity of an “all-inclusive” travel package, differed in amount. Likewise, in *Altroconsumo/Bianchi (et al.) v. Trenord s.r.l.*⁹², the Milan Court declared the class action inadmissible, finding that the railway company’s inefficiencies had led to the non-performance of numerous transport contracts, each entailing distinct financial consequences for

⁸⁷ See the explanations accompanying the draft VDuG, BT-Drs. 20/6520, p. 77.

⁸⁸ B. Gsell, *Die Umsetzung der Verbandsklagenrichtlinie – Effektiver Rechtsschutz für Verbraucher und Entlastung der Justiz durch die neue Verbands-Abhilfeklage?*, cit., at p. 984; see also A.-K. Mayrhofer and T. Koller, *Die „Gleichartigkeit“ als Nadelöhr der Abhilfeklage – Zur Bedeutung des Gleichartigkeitserfordernisses im Regierungsentwurf eines Gesetzes zur Umsetzung der Verbandsklagenrichtlinie*, in *Zeitschrift für Wirtschaftsrecht*, p. 1065, at p. 1068 (2023).

⁸⁹ B. Gsell, *Die Umsetzung der Verbandsklagenrichtlinie – Effektiver Rechtsschutz für Verbraucher und Entlastung der Justiz durch die neue Verbands-Abhilfeklage?*, cit., at p. 984.

⁹⁰ This choice was confirmed by the Decree 1/2012 (Law 27/2012), which has definitively replaced throughout the rules any reference to “identity” with “homogeneity”. Regarding the new wording of Art. 140-bis Consumer Code: E. Cesaro and F. Bocchini, *La nuova class action a tutela dei consumatori e degli utenti* (Padova 2012); A.D. De Santis, *La tutela giurisdizionale collettiva* (Napoli 2013) 532; R. Donzelli, *Art. 140 bis c. cons.*, in G. De Cristofaro and A. Zaccaria (eds), *Commentario breve al diritto dei consumatori* (Padova 2013), p. 1039.

⁹¹ Trib. Napoli, Feb. 18, 2013, in *Danno e Resp.*, 2013, 8–9, p. 907, comment by L.C. Paolo, *Tutela del consumatore*; App. Torino, Jan. 23, 2011, in *Foro it.*, 2011, p. 3422.

⁹² Trib. Milano, Nov. 08, 2013, *Giur.it.*, 2014, 3, p. 603, comment by A. Giussani, *Intorno alla tutelabilità con l’azione di classe dei soli diritti «omogenei»*. This judgment was reformed in appeal: App. Milano, Mar. 03, 2014, *Giur. it.* 2014, p. 1910, comment by A. Giussani *Ancora sulla tutelabilità con l’azione di classe dei soli diritti «omogenei»*; The appeal against admission of the class action was rejected: Cass., Mar. 23, 2018, mn. 7244 and 7245. App. Milano, Aug. 25, 2017, n. 3756, *Giur. it.* 2018, p. 105, comment by A. Dondi and A. Giussani, *Commonality all’italiana e avvio (timido) della nostra azione di classe*. Cass. civ., sez. III, May 31, 2019 n. 14886, in *Nuova giur. Civ.*, 2019, 5, p. 1002, comment by G. Ponzanelli, *Il danno non patrimoniale dei pendolari all’esame della Corte di Cassazione*; in *Riv. Dir. Proc.*, 2020, 1, p. 356, comment by A. Giussani, *Diritti omogenei e omogeneizzati nell’azione di classe*.

the affected passengers. In response to these shortcomings, courts progressively adopted a more functional and pragmatic understanding of homogeneity⁹³, emphasising the existence of a shared cause of action and common features among the claims sufficient to justify collective adjudication⁹⁴, while allowing flexibility in the quantification of damages for individual consumers⁹⁵. The concept of “homogeneous rights” remains inherently flexible within the framework of the new representative action, interpreted as rights arising from a common factual or legal matrix rather than requiring identical damages or circumstances.

II.2.b) *Quorum*

Recital 12 RAD also leaves it to the Member States to determine the required “minimum number of consumers concerned by a representative action for redress measures”, provided that its effective functioning is not hampered. Germany, in contrast to Italy, has made use of this option. Establishing a quorum of consumers aims to ensure that redress actions—which generally demand more judicial resources than individual proceedings—are worth the effort, and that QEs make use of their (limited) resources to bring those actions that promise to achieve a broader impact.⁹⁶ However, the risk of low-impact actions in the absence of a (high) quorum appears to be negligible. In their own interest, QEs are unlikely to focus their resources on individual cases; rather, they will prioritise groups of consumers that are sufficiently large.⁹⁷ Overall, it appears that effective collective redress does not necessarily require a (high) quorum. This finding is supported by the Italian experience: the lack of a quorum requirement in the general collective action and in the former class action has not caused any difficulties, and the Italian legislator did not deem it necessary to introduce such a requirement in the new redress action.

In Germany, a redress action is admissible only if the QE demonstrates in a comprehensible manner that the redress action may affect the claims of at least 50 consumers (§ 4(1) VDuG). In the case of a joint action by more than one QE or against more than one trader (§ 7 VDuG), it is the total number that counts. The same should apply in the case in which a single QE sues a single trader, but on behalf of different groups of consumers.⁹⁸

Prior to and during the German legislative process, the question of the quorum was subject to significant debate.⁹⁹ The previous provisions on the model declaratory action required, first, that the QE demonstrate to the satisfaction of the court that the action affected at least ten consumers, and, second, that at least 50 consumers actually registered their claims within two months of the

⁹³ E.g., *App. Torino*, ord. Sept. 23, 2011, in *Resp. civ. prev.*, 2012, p. 186, comment by G. Schiavone, *Sulla legittimazione a proporre l'azione di classe e altre questioni*; *Trib. Napoli*, ord. 9.12.2011, in *Foro it.*, 2012, 6, I, 1909; *Trib. Roma* 27.04.2012, in *Danno e resp.*, 2012, 12, p. 1243, comment by L. Frata, *L'art. 140 bis Consumer Code al vaglio del legislatore e della giurisprudenza di merito*.

⁹⁴ Cass, sez. III, May 31, 2019 n. 14886, in *Nuova giur. Civ.*, 2019, 5, p. 1002, comment by G. Ponzanelli, *Il danno non patrimoniale dei pendolari all'esame della Corte di Cassazione*; in *Riv. Dir. Proc.*, 2020, 1, p. 356, comment by A. Giussani, *Diritti omogenei e omogeneizzati nell'azione di classe*. See, B. Randazzo and A. Maglica, *La disciplina generale delle class action italiane alla prova delle garanzie costituzionali ed europee*, in *Federalismi.it*, 2025, p. 156, spec. at p. 176.

⁹⁵ *Trib. Di Venezia*, ord. Oct. 21, 2021, *D'Amico et al. c. Evolve srl*, available at https://www.mimit.gov.it/images/stories/normativa/class_action_evolve_link_2021.pdf (last visited Mar. 2, 2026).

⁹⁶ P. Röthemeyer, *Verbraucherrecht durchsetzungsgesetz*, § 4 mn. 2 (2024).

⁹⁷ See B. Gsell and C. Meller-Hannich, *Die Umsetzung der neuen EU-Verbandsklagenrichtlinie*, Gutachten über die Umsetzung der europäischen Richtlinie über Verbandsklagen zum Schutz der Kollektivinteressen der Verbraucher (RL (EU) 2020/1828) ins deutsche Recht, cit.

⁹⁸ But see A. Halfmeier, P. Rott, in P. Rott, A. Halfmeier, W. Vandenbussche, L. Bugatti and J. Mucha, *Comparative Legal Study on Procedural Rules and their Impact on Collective Redress Actions in Europe*, cit., p. 49, who hold the view that each sub-group must consist of at least 50 consumers each.

⁹⁹ For more details, see P. Röthemeyer, *Verbraucherrecht durchsetzungsgesetz*, § 4 mn. 2 (2024).

publication of the action.¹⁰⁰ The abolition of the second condition is a favourable development. Considering that consumers may now register up to three weeks after the conclusion of the oral hearing (§ 46(1) VDuG, see III.3), such a condition would have caused practical difficulties, as an action might have been found inadmissible only after significant resources—especially for the taking of evidence—had already been invested. Moreover, a requirement of actual registrations could discourage QEs from bringing redress actions, as they can hardly predict the number of registrations in advance.¹⁰¹

At the same time, the threshold of 50 affected consumers seems to be too high. It is not apparent why the legislator raised this number compared to the former model declaratory action.¹⁰² Demonstrating that at least 50 potential consumers can be affected requires considerable effort on the part of the QE.¹⁰³ Furthermore, such a high number limits the potential of the redress action to offer effective and efficient judicial protection: bundling ten cases for claims that would otherwise be brought individually could already relieve courts and promote more coherent decisions. For claims that would otherwise not be pursued at all (due to rational apathy), enabling ten consumers to enforce their rights could equally justify a redress action.

At least the legislator lowered the evidentiary requirements during the legislative process:¹⁰⁴ contrary to the initial draft,¹⁰⁵ QEs must no longer demonstrate to the satisfaction of the court (*glaubhaft machen*) that a sufficient number of consumers are affected, but rather make this sufficiently comprehensible (*nachvollziehbar darlegen*). However, the exact evidentiary requirements remain unclear. It is certainly not required to mention the consumers by name.¹⁰⁶ In general, to avoid discouraging QEs from bringing redress actions, the courts should not impose high standards in this regard.

II.3 Competent courts

Both the German and the Italian legislators have sought to assign redress actions to judicial bodies composed of experienced judges and to promote specialisation.

In Germany, § 3(1) VDuG provides for the exclusive jurisdiction of the Higher Regional Court (*Oberlandesgericht*) in whose district the trader has their general venue, i.e. usually their place of residence or registered seat (§§ 13, 17 ZPO). In Germany, civil cases are ordinarily heard in the first instance by Local Courts (*Amtsgerichte*) or Regional Courts (*Landgerichte*). However, the legislator considered that the broad impact of redress actions justifies the jurisdiction of the Higher Regional Courts,¹⁰⁷ which usually serve primarily as appellate courts. This assessment is

¹⁰⁰ § 606(2) nos. 2 and 3 ZPO (former version).

¹⁰¹ In particular, the trader cannot render the action inadmissible by “buying consumers out” of it (cf. R. Janal, *Die Umsetzung der Verbandsklagenrichtlinie*, in *Gewerblicher Rechtsschutz und Urheberrecht*, p. 985, at p. 988 (2023)); but see B. Gsell, *Die Umsetzung der Verbandsklagenrichtlinie – Effektiver Rechtsschutz für Verbraucher und Entlastung der Justiz durch die neue Verbands-Abhilfeklage?*, cit., at p. 981, who argues that the previous quorum of 50 registered consumers did not impose administrative burdens on consumer organisations; see also the explanations accompanying the draft VDuG, BT-Drs. 20/6520, p. 71, noting that the previous quorum was always met.

¹⁰² C. Meller-Hannich, *Kollektiver Rechtsschutz im Privatrecht und die Umsetzung der Verbandsklagenrichtlinie*, in *Versicherungsrecht*, p. 1321, at p. 1328 (2023); B. Gsell, *Die Umsetzung der Verbandsklagenrichtlinie – Effektiver Rechtsschutz für Verbraucher und Entlastung der Justiz durch die neue Verbands-Abhilfeklage?*, cit., at p. 981; A. Stadler, *Die neue Verbands(abhilfe)klage – Umsetzung der Richtlinie 2020/1828*, cit., at p. 135.

¹⁰³ Cf. B. Gsell, *Die Umsetzung der Verbandsklagenrichtlinie – Effektiver Rechtsschutz für Verbraucher und Entlastung der Justiz durch die neue Verbands-Abhilfeklage?*, cit., at pp. 981–982.

¹⁰⁴ C. Meller-Hannich, *Kollektiver Rechtsschutz im Privatrecht und die Umsetzung der Verbandsklagenrichtlinie*, in *Versicherungsrecht*, p. 1321, at p. 1325 (2023); B. Gsell, *Die Umsetzung der Verbandsklagenrichtlinie – Effektiver Rechtsschutz für Verbraucher und Entlastung der Justiz durch die neue Verbands-Abhilfeklage?*, cit., at p. 981.

¹⁰⁵ See BT-Drs. 20/6520, p. 11.

¹⁰⁶ R. Janal, *Die Umsetzung der Verbandsklagenrichtlinie*, in *Gewerblicher Rechtsschutz und Urheberrecht*, p. 985, at p. 988 (2023).

¹⁰⁷ See the explanations accompanying the draft VDuG, BT-Drs. 20/6520, p. 71.

persuasive.¹⁰⁸ Redress actions may be complex and resource-intensive and have the potential to replace numerous individual proceedings. It is therefore appropriate that such cases are directly heard by higher courts, avoiding dispersal across several lower courts. In addition, higher courts have judicial panels composed of experienced judges, and are less frequently affected by changes in judicial composition than lower courts.¹⁰⁹ For judges of the Higher Regional Courts, however, this allocation of jurisdiction may prove challenging, insofar as they have less experience with fact-finding, as this task is otherwise typically entrusted to the Local and Regional Courts at first instance.

According to § 3(2) VDuG, German federal states (Länder) with several Higher Regional Courts may assign jurisdiction for redress actions from the districts of multiple Higher Regional Courts to a single court, provided that such concentration promotes the effective conduct of representative action proceedings. Such concentration can foster both organisational and substantive specialisation, thereby increasing the efficiency of redress actions.¹¹⁰ It appears that, as of March 2026, two of the sixteen German federal states—the two most populous ones—had made use of this option.¹¹¹

The jurisdiction of the Higher Regional Courts is accompanied by a reduction in the number of instances. In contrast to ordinary proceedings, where parties are typically allowed to lodge both an appeal (Berufung) and, subsequently, a further appeal on points of law (Revision), a judgment in a redress action issued by the Higher Regional Court may only be challenged once, namely before the German Federal Court of Justice (Bundesgerichtshof, BGH).¹¹² This two-tier system can further accelerate proceedings.¹¹³ It should be noted in this context that the VDuG always allows remedies to be sought against both the basic judgment and the final judgment. It is therefore essential to ensure an efficient system of judicial review.

In Italy, the representative action is initiated through a “ricorso” (petition) filed exclusively before the Commercial Division of the court where the respondent entity is headquartered. In cases where the respondent is an individual, jurisdiction lies with the court of their residence or domicile. If these are unknown, the competent court is determined by the respondent’s place of stay, or, failing that, the headquarters of the claimant entity. In legal scholarship, it has been noted that while assigning jurisdiction to the Specialised Business Divisions is intended to ensure ad hoc expertise

¹⁰⁸ Cf. C. Meller-Hannich, Kollektiver Rechtsschutz im Privatrecht und die Umsetzung der Verbandsklagenrichtlinie, in *Versicherungsrecht*, p. 1321, at p. 1328 (2023); A. Halfmeier, P. Rott, in P. Rott, A. Halfmeier, W. Vandenbussche, L. Bugatti and J. Mucha, *Comparative Legal Study on Procedural Rules and their Impact on Collective Redress Actions in Europe*, cit., p. 47.

¹⁰⁹ On the difficulties, notably the delays, associated with changes in judicial composition, see C. Meller-Hannich *et al.*, *Der Rückgang der Eingangszahlen bei den Zivilgerichten*, pp. 288–290 (2023).

¹¹⁰ See the explanations accompanying the draft VDuG, BT-Drs. 20/6250, p. 71.

¹¹¹ Bavaria and North Rhine-Westphalia, see G. Lutz, § 3 VDuG, in V. Vorwerk and C. Wolf, *Beck’scher Online-Kommentar ZPO*, mn. 6 (Munich 59th ed. 2025) with further references.

¹¹² See §§ 16(5), 18(4) VDuG; cf. the explanations accompanying the draft of the similar provision in § 6 UKlaG, BT-Drs. 20/6520, p. 118.

¹¹³ Cf. the explanations accompanying the draft of the similar provision in § 6 UKlaG, BT-Drs. 20/6520, p. 118.

and a higher degree of specialisation for complex collective proceedings,¹¹⁴ concerns have been raised regarding the actual efficiency of this solution, given the considerable workload already borne by these Divisions.¹¹⁵

II.4 Comparative insights on prerequisites and admissibility

It seems that some of the differences between the German and Italian prerequisites for the admissibility of the redress action may be explained by their divergent experiences with collective redress. While Germany previously lacked a legal framework for collective actions seeking remedies, the Italian legislator could build on prior experience with the former consumer class action and the still-existing general collective action under the Civil Procedure Code. This different background may explain why the Italian legislator—unlike its German counterpart—confined the scope of application to the minimum requirements of the RAD, both in terms of the infringements covered by the redress action and the potential beneficiaries. In Italy, claims falling outside the new regime may still be pursued through the general collective action under the Civil Procedure Code, whereas in Germany, claims excluded from the VDuG's scope of application are not eligible for any mechanism of collective redress at all.¹¹⁶ Nevertheless, even in Italy, the restrictions on the scope of application of the new redress action may still give rise to inconsistencies, as the two collective redress regimes are not perfectly aligned.

In both Italy and Germany, QEs designated in advance for domestic redress actions are subject to more stringent substantive requirements than those for cross-border actions, and neither jurisdiction provides for ad hoc QEs. This choice appears to reflect a general scepticism towards the new redress action: both Member States made use of the discretion afforded by the RAD to make the designation of QEs for domestic actions subject to stricter requirements than those set out by the RAD with regard to QEs for cross-border actions. In both countries, a restrictive approach was thus preferred over coherence. The involvement of public bodies as potential claimants in redress actions only in Italy, but not in Germany, may again be explained by different traditions: whereas German consumer law generally emphasises private enforcement by individuals and consumer organisations, Italian consumer law has traditionally relied on public enforcement—however, such public enforcement has typically been realised through administrative procedures rather than through collective actions before civil courts. Neither the German nor the Italian redress action can be initiated by individual consumers or commercial actors. Yet, in Italy, individual consumers may still rely on the general collective action, while the German system of collective redress continues to lack a group action capable of filling this gap and will therefore most likely continue to be complemented by legal tech class actions.

¹¹⁴ The legislature has justified this choice with the aim of fostering the specialisation of judges handling representative actions, a field characterised by various peculiarities—particularly in terms of case management, which also requires the use of the electronic services portal, established specifically for the implementation of class actions as provided under Arts. 840-bis ff. of Civil Procedure Code: See XIX LEG - Schema di D.Lgs. - Recepimento della direttiva (UE) 2020/1828 del parlamento europeo e del consiglio del 25 novembre 2020 relativa alle azioni rappresentative a tutela degli interessi collettivi dei consumatori e che abroga la direttiva 2009/22/CE - Consiglio dei ministri 9 marzo 2023, Relazione illustrativa, available at https://www.giustizia.it/giustizia/it/mg_1_2_1.page?contentId=SAN426528#rel (last visited Mar. 2, 2026).

¹¹⁵ E. Silvestri, *Rebooting Italian class action*, cit., p. 207; C. Consolo, *L'azione di classe di terza generazione*, in V. Barsotti, F. De Dominicis, G. Pailli and V. Varano (eds.), *Azione di classe: la riforma italiana e le prospettive europee*, cit., p. 19, at pp. 21 ff.

¹¹⁶ According to A. Halfmeier, P. Rott, in P. Rott, A. Halfmeier, W. Vandenbussche, L. Bugatti and J. Mucha, *Comparative Legal Study on Procedural Rules and their Impact on Collective Redress Actions in Europe*, cit., p. 47, the extension can be explained by the diesel emissions scandal, where claims were based on national tort law and were also brought by small enterprises.

As regards the collective element, both Germany and Italy provide for a criterion of similarity and—although not explicitly stated in German law—of separability. By contrast, the question of a quorum is addressed very differently in the two countries: whereas the German legislator still appears to fear floods of representative actions and has established a very high quorum, Italy's experience does not seem to indicate any need for such a requirement. However, given that the former model declaratory action in Germany clearly fell short of expectations in quantitative terms,¹¹⁷ it would also have been reasonable for the VDuG to provide for a lower quorum—or even none at all.

In terms of jurisdiction, both the German and Italian legislators sought to ensure that redress actions are heard by experienced judges and to promote judicial specialisation. While this approach is generally favourable, in Italy, concerns have been raised that the business divisions responsible for hearing redress actions may face excessive workloads. Whether this concern is justified largely depends on which mechanisms are available to the courts to handle redress actions efficiently. The following section will address this issue and, more generally, the procedure for redress actions in Germany and Italy.

III. COURSE OF PROCEEDINGS AND JUDGMENTS

III.1 Requirements and challenges

The RAD is characterised by the principle of respecting the different legal traditions of the Member States. With regard to the course of proceedings and the types of judgments, the Directive's regime is therefore open in many respects, granting Member States considerable discretion in its implementation. For instance, Member States can organise representative actions as either a judicial or administrative procedure, or both (Art. 4(9), Recital 19 RAD). In principle, both an opt-in and an opt-out mechanism, or a combination of both, can be used to grant QEs the power to act on behalf of consumers; Member States can also decide at which stage of the proceedings individual consumers may exercise their right to opt-in or -out (Recital 43 RAD). Furthermore, for “reasons of expediency and efficiency”, Member States are permitted to allow representative actions for redress to benefit consumers independently of a mandate (Recital 47 RAD). In any case, the Directive expressly provides that consumers should be granted measures such as reparation, product replacement, price reduction and contract termination (Recital 37 RAD). Furthermore, consumers must be able to obtain compensation without having to take further individual legal action (Recital 50 RAD).

Against this backdrop, the biggest challenge for Germany in implementing the Directive was probably to develop a procedure and types of judgments that would generate financial or other compensation for the consumer group. As described above (see I.1), German civil procedural law did not yet provide for a genuine collective action for redress, which would enable a representative to assert the claims of the group members collectively by way of an action for performance. Accordingly, it was necessary to establish new regulations—absent a concrete model in the previous German civil procedural law—on how remedies to be obtained by an association in collective proceedings can benefit the affected individual consumers and how such benefits can be enforced without the need for a separate individual action by the consumer. The problem,

¹¹⁷ When drafting the former rules on the model declaratory action, the German legislator estimated that around 450 such actions would be filed each year (see BT-Drs. 19/2439, p. 3). However, between November 2018 and September 2023, only 36 actions were actually filed, see P. Röthemeyer, Ein Jahr Abhilfeklage nach der Verbandsklagen-RL – nach der Reform ist vor der Reform, in Zeitschrift für Bank- und Kapitalmarktrecht, p. 977, at p. 980 (2024).

therefore, was not only to determine the group (see II.2), but also how the liability of the defendant company should be assessed on its merits and how the amount to be paid should be ascertained; and, in addition, how and by whom the entitlement of the individual consumer should be determined and the amount attributable to them distributed. The German system opted for a multi-stage examination and judgment procedure.

The aim was, in any case, to create a system that was effective, yet at the same time as simple and practicable as possible, respecting the principle of a fair trial, accommodating the variety of possible remedies and the needs of justice, and doing so without overburdening the associations entitled to bring actions. But with respect to the result, which will be discussed shortly, one could be reminded of the proverb: “Bisogna sempre dire francamente e chiaramente le cose al proprio avvocato: sarà lui ad imbrogliarle”. This leads to the challenges faced in Italy:

In Italy, alongside the traditional forms of redress, such as compensation and restitution, which are already covered by the general class action rules (Art. 840-bis, par. 2, Civil Procedure Code) and the previous consumer class action (Art. 140-bis Consumer Code), the new regulation introduces a broader spectrum of remedial measures in accordance with the RAD provisions.¹¹⁸ As mentioned earlier, these now include measures such as reparation, product replacement, price reduction and contract termination¹¹⁹, thereby enhancing the scope of consumer protection¹²⁰. The procedural regime governing the Italian consumer representative action closely mirrors the framework established for general collective action under the Civil Procedure Code, insofar as compatible. The resulting system is a composite mechanism that attempts to align national civil law traditions with EU requirements, while also responding to the long-standing structural weaknesses of Italian consumer collective litigation. However, the final configuration reveals a legislative approach characterised by caution and continuity rather than innovation.

The new Italian mechanism for collective redress is designed to be a multifaceted procedural instrument that pursues several fundamental aims. The most important of these is the consolidation of parallel proceedings, which reduces litigation costs for consumers as well as for the judiciary. Centralising disputes of a similar nature also mitigates the risk of divergent judicial outcomes. Furthermore, the procedure strengthens individuals' procedural standing vis-à-vis professionals and businesses, thereby fostering a more balanced and equitable dispute resolution environment.¹²¹

III.2 Procedural steps and types of judgements

In Germany, legal proceedings start with the filing of the lawsuit by an authorised association (§§ 1–5 VDuG). As explained above, the Higher Regional Court at the defendant's venue has exclusive jurisdiction (see II.3). The admissibility of the action depends on the similarity of the claims and on the fact that at least 50 consumers are affected (see II.2). At this stage, the merits of the case are not yet assessed.

QEs are obliged to provide information on their websites about planned and already filed representative actions and the respective status of the proceedings (§ 12 VDuG). The action is

¹¹⁸ F. De Franceschi, *Le «azioni rappresentative» di cui agli artt. 140-ter ss. Consumer Code: ambito di applicazione, legittimazione ad agire e rapporti con la disciplina generale delle azioni di classe di cui agli artt. 840-bis ss. c.p.c.*, in *Le Nuove Leggi Civili Commentate*, p. 1 (1, 2024).

¹¹⁹ Art. 140-*novies*, Art. 140-*ter*, comma 1, h) Consumer Code.

¹²⁰ F. De Franceschi, *Le «azioni rappresentative» di cui agli artt. 140-ter ss. c.cons.: ambito di applicazione, legittimazione ad agire e rapporti con la disciplina generale delle azioni di classe di cui agli artt. 840-bis ss. c.p.c.*, cit.

¹²¹ See the explanations of the Ministry of Enterprises and Made in Italy, <https://www.mimit.gov.it/index.php/it/component/content/article?id=2009676> (last visited Mar. 2, 2026).

entered in a register of representative actions (§ 43 VDuG). Consumers have up to three weeks after the conclusion of the hearing to register their claim in the register (§ 46 VDuG, see 3). The register is not maintained by the court, but by the Federal Office of Justice.¹²² Registration in the register is free of charge. Consumers do not incur any legal costs, meaning that they can benefit from the effects of the action with relatively little effort.¹²³ However, it should be noted that the practical relevance of the register for determining the identity of the eligible consumers is limited, as eligibility requirements are not checked during registration. Nevertheless, it forms the basis for the basic judgment and the collective total amount. There is therefore a considerable need for corrections within the procedure.

The further course of the procedure depends on the type of collective action. This article primarily focuses on actions for redress. Nevertheless, actions for injunctions and model declaratory actions (see I.1) remain available as alternative remedies. In addition, as will be shown in the following, there are also differences among actions for redress:

On the one hand, there is the possibility of a redress action in favour of named consumers (§ 16(1) sent. 2 VDuG). If the court orders the defendant to pay the named consumers, it will directly issue a positive judgment if the claimant prevails. This judgment will be enforced by the association. More importantly, however, on the other hand, is the non-individualised redress action. This is an action for a benefit to a group of consumers determined not by their names but on the basis of uniform characteristics (§ 16(1) sent. 2 VDuG). In this case, the claim is for a group whose individual identities need not be known. In these proceedings, if the claim is successful, a basic judgment will first be given (§ 16(2) VDuG). This judgment must set out specific conditions for determining who is entitled and what evidence must be provided.¹²⁴ If the claim is for an order for payment,¹²⁵ the basic judgement must also state the amount to which each consumer is entitled, or provide a method of calculation. The basic judgement would therefore set out the conditions under which consumers are entitled to compensation, as well as the evidence they must provide to prove their entitlement. Additionally, either a specific amount or a calculation method would have to be specified. After issuing the basic judgment, the court should ask the parties to propose a settlement on how to implement the basic judgment (§ 17 VDuG, see also 7). If no agreement is reached, the court will issue a final judgment to provide redress (§ 18 VDuG). This judgment will include an order for implementation and payment of the sum to a trustee. If a final judgment is issued, the corresponding sum would therefore have to be paid to the trustee, who subsequently administers its distribution through an implementation procedure (see III.8). If the action is dismissed, it would always be by judgment.

¹²² See

https://www.bundesjustizamt.de/DE/Themen/Verbraucherrechte/VerbandsklageregisterMusterfeststellungsklagenregister/Verbandsklagenregister/Verbandsklagen/Verbandsklagen_node.html (last visited Mar. 2, 2026).

¹²³ F. Reuschle, § 46 VDuG, in F. Reuschle, H. Großerichter and F. Kruis, *Verbraucherrecht durchsetzungsgesetz*, mn. 4 (2025).

¹²⁴ F. Reuschle, § 16 VDuG, in F. Reuschle, H. Großerichter and F. Kruis, *Verbraucherrecht durchsetzungsgesetz*, mn. 10 (2025).

¹²⁵ Strangely enough, even an individualised claim for compensation for other (non-pecuniary) damage leads to a basic judgment and subsequently to a final judgment. This does not really make sense, but the wording of § 16(1) sent. 2 is clear; C. Althammer, § 16 VDuG, in R. Zöller, *Zivilprozessordnung*, mn. 2 (2025). Enforcement of this judgment is only selectively regulated, with the court being able to order coercive measures against the trader at the request of the trustee.

In Italy, jurisdiction is vested in the Commercial Division of the court where the trader is headquartered (see II.3) The process unfolds in three distinct phases.

In particular, the procedural structure maintains the two-stage model originally experimented with under the former consumer class action: an initial certification phase devoted to assessing the admissibility of the action, followed (should admissibility be granted) by a merit phase governed by a summary procedure. Consistent with the 2019 reform of the general collective action, a third phase has been introduced. This post-judgment stage concerns the management and assessment of the requests of consumers who opted in. In the last stage, the regulatory framework assigns distinct functions to two figures: (i) the delegated judge, who oversees the opt-in process and supervises the liquidation phase, and (ii) the consumer representative (“rappresentante comune degli aderenti”), who acts as the interlocutor for adherents and participates in structuring settlements and post-certification administration. The common representative is selected from individuals qualified to serve as a kind of “bankruptcy trustee” (“curatore fallimentare”) and acts as a public official.

As pointed out, representative actions must be commenced by petition (*ricorso*) before the competent Commercial Division. The petition must include: 1) clear identification of the consumer group affected by the trader’s conduct; 2) establishment of jurisdiction and applicable law; 3) disclosure of any third-party funding for the action¹²⁶.

Upon filing, both the petition and the decree fixing the first hearing must be published in the public section of the Ministry of Justice’s Telematic Services Portal.¹²⁷ This ensures that the action is publicly accessible and adheres to notification requirements under the procedural rules. This online platform (introduced in 2019 to modernise publicity for collective proceedings) serves as the exclusive channel through which information about representative actions is disseminated and through which consumers may submit opt-in statements electronically (see III.4).

The action follows the simplified procedure outlined in Book II, Title I, Chapter III-quater of the Civil Procedure Code, adapted as necessary to suit the specific nature of representative actions. Notably: a) the expedited timeline excludes the application of Art. 281-duodecies, par. 1: this provision ordinarily allows judges to switch from the simplified procedure to the ordinary procedure in specific circumstances; b) the right to pursue individual actions remains unaffected, barring exceptions under Art. 840-undecies, par. 9; c) third-party interventions under Art. 105 are not permitted.

Certification (decision on the admissibility of the action) must occur within 30 days from the first hearing, although the court may suspend the proceedings where parallel investigations by independent authorities or pending administrative proceedings are ongoing.

The action is inadmissible where: a) the claim is manifestly unfounded; b) it lacks the necessary elements to identify the group of consumers affected by the representative action; c) the claims lack homogeneity; d) the qualified entity lacks the requirements necessary for standing to sue; e) there is a conflict of interests with the defendant, including when the entity financing the action is a competitor of the defendant or depends on the defendant; and f) the statutory purpose of the qualified entity that filed the application does not justify the exercise of the action (Art. 140-septies, par. 8, Consumer Code). The court’s decision regarding admissibility must be published on the

¹²⁶ Art. 140-septies Consumer Code.

¹²⁷

See https://servizipst.giustizia.it/PST/it/pst_2_16.wp?actionPath=/ExtStr2/do/classaction/ricercaClassAction¤tFrame=8 (last visited Mar. 2, 2026).

public section of the Telematic Services Portal managed by the Ministry of Justice within 15 days. If a claim is deemed inadmissible due to manifest unfoundedness, the petitioner may re-bring the action should new circumstances arise or new factual or legal arguments be presented.

Once the redress action is certified as admissible, all potential beneficiaries are notified of the proceedings. They are afforded an opportunity to join the action within a predetermined timeframe ranging from a minimum of 60 to a maximum of 150 days from the publication of the certification order. Upon expiry of this period, the court proceeds to adjudicate the merits of the claim. Should the action be upheld on the merits, a second adhesion window opens: consumers holding homogeneous individual rights may join the action through the late opt-in mechanism, again within a mandatory period of no fewer than 60 and no more than 150 days.

This stage is followed by the third phase dedicated to the quantification of the compensation claims. In its final merits judgment, the court appoints a delegated judge to supervise the opt-in procedure and designates a common representative to act on behalf of the group. During this phase, the common representative prepares a preliminary assessment for the delegated judge, who will subsequently render the final determination.

Specifically, within 90 days from the expiry of the deadline granted to the defendant to file its memorandum of defence (where the defendant responds to the factual allegations underlying each claim and raises any extinguishing, modifying, or impeding objections), the common representative must compile and file a report on the homogeneous individual rights of the registered consumers, formulating reasoned conclusions for each claim. Where necessary, the common representative may petition the court for the appointment of one or more experts possessing the technical skills required to evaluate the factual foundations of the claims. The report is then communicated to both the defendant and the registered consumers.

The defendant and the consumers have 30 days from the notification of the common representative's report to submit written observations and supplementary documents. The common representative then has 60 days to incorporate any changes into the report on homogeneous individual rights and file the revised report in the case's digital file.

The delegated judge, by means of a reasoned decree, when granting all or part of the opt-in claims, orders the defendant to pay the sums or deliver the items owed to each consumer as compensation or restitution. This decree constitutes an enforceable title.

III.3 Opt-in/opt-out

German law provides for an opt-in system, albeit one that permits consumers to make a relatively informed decision: a "late opt-in" allows them to incorporate the findings from the oral hearing into their decision (§ 46 VDuG). In the German legislative process¹²⁸, this was a compromise between mandatory early opt-in, i.e. a binding decision to participate already when the representative action was filed, and an opt-in only after a judgment had been issued.¹²⁹ Under the latter approach, consumers could have opted in with full knowledge of the outcome of the

¹²⁸ See especially Empfehlung 145/1/23, pp. 10-13, available at <https://dserver.bundestag.de/brd/2023/0145-1-23.pdf> (last visited Mar. 2, 2026).

¹²⁹ Proposal of B. Gsell and C. Meller-Hannich, Die Umsetzung der neuen EU-Verbandsklagenrichtlinie, Gutachten über die Umsetzung der europäischen Richtlinie über Verbandsklagen zum Schutz der Kollektivinteressen der Verbraucher (RL (EU) 2020/1828) ins deutsche Recht (2021), available at https://www.vzbv.de/sites/default/files/downloads/2021/02/03/21-02-04_vzbv_verbandsklagen-rl_gutachten_gsell_meller-hannich.pdf (last visited Mar. 2, 2026).

proceedings (which would have been allowed by the RAD (Recital 47)). As the register forms the basis for both the initial judgment and the total amount to be distributed to consumers, and as there is a considerable need for corrections within the procedure (see III.2), it would actually have been more sensible to open registration only after the judgement had been delivered, so that it could be tailored precisely.

Despite the flexibility permitted under the RAD, which authorises Member States to adopt opt-in, opt-out, or hybrid systems, Italy has chosen to retain the opt-in model introduced in 2019 for general collective actions. This model combines an early opt-in (post-certification) with a late opt-in (after the decision on the merits), thereby extending the temporal window for consumer participation.

The adherence to opt-in is traditionally and in both jurisdictions justified by reference to the civil-law principle of private autonomy: individuals should retain full control over the enforcement of their claims and cannot be represented without explicit authorisation. This rationale (often framed as the “blocking argument”) continues to dominate domestic debates, despite the gradual acceptance of opt-out mechanisms across several continental jurisdictions¹³⁰ and the growing recognition that pecuniary rights may be effectively adjudicated under such schemes.

The introduction of a “late opt-in” mechanism seeks to address the problem of low consumer participation due to rational apathy and to secure both compensatory and deterrent objectives. Extending the timeframe for consumers to join a collective action should increase the likelihood of involvement from those impacted by the defendant's misconduct.

Nevertheless, while the late opt-in mechanism undoubtedly expands the opportunities for participation, its capacity to counteract the chronic phenomenon of rational apathy remains doubtful. Italian experience under the former consumer class action demonstrated that consumers rarely opt in unless strongly incentivised, particularly in small-value claims¹³¹.

Collective litigation is fundamentally aimed at securing redress for affected parties, but it also plays a critical role in influencing trader behaviour. The prospect of expensive legal proceedings can act as a deterrent, discouraging legal violations,¹³² while court decisions can establish standards that eliminate harmful practices and corporate misconduct from the market¹³³. However, concerns persist about whether the opt-in system is effective not only in delivering compensation to consumers but also in achieving sufficient deterrence to fulfil its dual purpose. The success of this system depends heavily on the level of consumer participation, which, as already pointed out, has historically been low.

¹³⁰ See C. Nagy, *The European collective redress debate after the European Commission's recommendation. One step forward, two steps back?*, in 22–4 *Maastricht Journal of European and Comparative Law*, p. 530, pp. 541–542 (2015); A. Stöhr, *The implementation of collective redress – A comparative approach*, in 21 *German Law Journal*, p. 1606 (2020), who underlined that “In Europe, the opt-out principle is implemented by the United Kingdom and the Netherlands. Hybrid systems of either opt-in or opt-out, depending on the type of action or the specifics of the case, can be found in Belgium, Bulgaria, Denmark, and competition cases in the United Kingdom”; British Institute of International and Comparative Law (BIICL), *State of Collective Redress in the EU in the Context of the Implementation of the Commission Recommendation*, JUST/2016/JCOO/FW/CIVI/0099, 2018.

¹³¹ G. Afferni, *La nuova azione di classe*, in *Mercato concorrenza regole*, p. 437, at p. 439 (2021).

¹³² Contra see C. Hodges, *Evaluating Collective Redress: Models, Evidence, Outcomes and Policy*, in A. Uzelac and S. Voet, *Class Actions in Europe: Holy Grail or a Wrong Trail?*, cit., p. 19, at p. 22, who underlines that the classic economic theory according to which the “enforcement of law through imposing financial consequences (fines or damages) and public shaming (be adjudged to be in the wrong) increases deterrence” is not supported by strong evidence, while ‘extensive evidence now exists that “regulating through culture” offers the most effective way of affecting future behaviour (...)’.

¹³³ G. Howells, *EU consumer access to justice and enforcement*, in G. Howells, C. Twigg-Flesner and T. Wilhelmsson (eds.), *Rethinking EU Consumer Law*, p. 290, at p. 294 (London, 2017).

On the other hand, traders' associations have sharply criticised the late opt-in model, arguing that it generates unacceptable levels of uncertainty regarding potential liability exposure, thereby discouraging settlement and undermining procedural efficiency¹³⁴.

III.4 Publicity

Publicity is intrinsically linked to the functioning of any opt-in mechanism. In Germany, registration is carried out via a platform at the Federal Office of Justice, but as mentioned above (see III.2), the register is not very informative and the courts have to check the registration and its validity, which can be time-consuming, especially since they do not maintain the register themselves.¹³⁵ The officially maintained register is supplemented by information from consumer associations and, where applicable, the courts.

In Italy, under the previous Italian consumer class action, notice requirements were costly and ineffective, relying even on publication in national newspapers. The 2019 reform radically modernised this system by establishing a digital platform integrated into the Ministry of Justice's Telematic Services Portal. This platform centralises all information concerning pending collective actions and allows consumers to submit opt-in requests electronically. This digital infrastructure significantly reduces costs, enhances visibility, and removes logistical barriers to participation. The same system has been extended—unchanged—to consumer representative actions, thereby creating a unified technological environment for all forms of collective redress. This platform simplifies access to information, enabling consumers to review case details and submit opt-in requests online, thereby reducing procedural barriers and increasing transparency. While these measures may address some concerns about low participation rates, it remains uncertain whether they can fully counteract the inertia often observed among consumers.

III.5 Combination of different types of collective actions

As already mentioned (see III.1), a significant advancement both the Italian and the German legal frameworks is the expansion of available remedies under the new provisions. In Italy, the novelty lies in the qualitative expansion of available remedies under the new provisions; in Germany, before the RAD was implemented, there was no possibility of bringing a redress action at all.

In Italy and Germany, to protect the collective interests of consumers, QEs are empowered to pursue both compensatory and injunctive relief, either independently or in combination. This includes the possibility of seeking interim injunctions. The distinctive feature of the redress action is that it allows not only for the determination and cessation of, for example, the charging of an excessive price, but also for an order requiring payment to all affected consumers of the excess amount paid.

Since associations can proceed flexibly when filing applications in accordance with the general rules of civil procedure, in Germany, it is also possible to initiate combined declaratory and redress proceedings, in particular for the purpose of comprehensively suspending the limitation periods.

¹³⁴ Confindustria, *Schema di decreto legislativo di recepimento della Direttiva Ue n. 1828/2020 sulle azioni rappresentative a tutela degli interessi collettivi dei consumatori – Osservazioni – Position Paper*, 6 (January 2023); see the statements made in the *Legal Affairs Committee of the German Bundestag*, available at <https://www.bundestag.de/dokumente/textarchiv/2023/kw19-pa-recht-verbandsklage-945426> (last visited Mar. 2, 2026).

¹³⁵ C. Meller-Hannich, *Möglichkeiten und Grenzen der Digitalisierung bei Massenverfahren*, in *Göttinger Kolloquium zum Zivilverfahrensrecht*, p. 27, at p. 33, available at https://univerlag.uni-goettingen.de/bitstream/handle/3/isbn-978-3-86395-587-8.3/GKDZ02_03_meller-hannich.pdf?sequence=1 (last visited Mar. 2, 2026).

III.6 Evidence

One of the major difficulties in representative actions in Germany is proving the circumstances of the damaging event, particularly when the group entitled to compensation is undefined at the start of the proceedings, as is the case with non-individualised redress actions.¹³⁶ In other mass proceedings, courts have repeatedly ruled in favour of a reversed burden of presenting the facts (*Darlegungslast*, not burden of proof), thus helping to apply the law in situations where it is difficult for the claimant to present and prove the facts justifying the claim.¹³⁷ This will likely also apply to redress action; however, the implementation of the Directive has not addressed the general problem of the information gap in consumer cases. Although the court can order the defendant to submit documents, files or objects and impose administrative fines for violations (§ 6 VDuG and §§ 142–144 ZPO), this will not be much help in practice, as associations particularly struggle to present the relevant facts, and the rules on submitting documents, which also apply in ordinary civil proceedings, are applied very cautiously by German courts. At least the latest coalition agreement for the 21st legislative term¹³⁸ provides for an expansion of the courts' powers of estimation and standardisation, but how this will be implemented and applied in redress actions remains to be seen.

In Italy, one of the most significant innovations introduced by the 2019 reform (Art. 840-quinquies Civil Procedure Code), mirrored by the representative action provisions (Art. 140-novies Consumer Code), concerns the rules on evidence, which were designed to make the proceedings more claimant-friendly. Courts are now vested with broad discretionary powers to facilitate the establishment of liability and to counterbalance the structural informational asymmetry between parties. The court is entitled to dispense with any formalities not essential to the adversarial process and to conduct the proceedings as it deems appropriate to address the relevant evidence pertaining to the case. Furthermore, the court may rely on statistical data and simple presumptions to determine liability.

Moreover, courts may order disclosure of relevant documents or data held by the defendant, upon a reasoned request by the claimant, detailing facts and evidence reasonably available to the opposing party and sufficient to support the plausibility of the claim. The court must clearly and precisely specify the individual elements or categories of evidence (such as shared characteristics, their nature, the period in which they were produced, their subject matter, or the content they encompass) that are subject to a disclosure request or order. Any disclosure order must remain proportionate to the needs of the case. In particular, the court must: a) assess whether the facts and evidence already available sufficiently substantiate the claim so as to justify the disclosure order; b) evaluate the scope, burden, and cost of the disclosure process; and c) consider whether the requested materials contain confidential information, particularly that of third parties. Where disclosure involves confidential information, the court must adopt appropriate protective measures. These may include the imposition of confidentiality obligations, redaction of sensitive material, holding private hearings ("closed-door-hearings"), restricting access to the disclosed evidence to a limited number of individuals, or appointing experts to produce aggregated or non-confidential summaries. Confidential information covers personal, commercial, industrial, or

¹³⁶ T. Koller, *Die Tatsachenfeststellung bei Klagen nach dem Abtretungsmodell* (Baden-Baden, 2024).

¹³⁷ BGH Mar. 8, 2021 – VI ZR 505/19, in *Neue Juristische Wochenschrift*, p. 1669 (2021).

¹³⁸ Koalitionsvertrag CDU, CSU, SPD, 21. Legislaturperiode, available at https://www.koalitionsvertrag2025.de/sites/www.koalitionsvertrag2025.de/files/koav_2025.pdf (last visited Mar. 2, 2026).

financial data pertaining to individuals or businesses, as well as trade secrets. Attorney–client communications remain privileged and are excluded from disclosure. Prior to issuing a disclosure order, the court must verify that the opposing party had the opportunity to present its observations, thus affording the right to be heard.

In situations of non-compliance with a disclosure order or destruction of relevant evidence, the court is empowered to impose monetary sanctions. Specifically, where a party, without legitimate justification, refuses or fails to comply with a disclosure order, the court may levy an administrative fine between €10,000 and €100,000, payable to the Cassa delle Ammende. The same penalty may be imposed if a party or a third party destroys evidence pertinent to the proceedings. Additionally, when a party unjustifiably disregards a disclosure order or eliminates relevant material, the court, after considering the remaining evidence, may draw adverse inferences and treat the facts to which such evidence relates as established.

The legislation further contemplates the appointment of court experts and sets out specific rules regarding the allocation of related costs. In Italy, as a general principle, the obligation to advance the expenses and to provide the initial payment for the expert's fees lies with the defendant. Failure to comply with this financial obligation does not, however, constitute valid grounds for the expert to refuse the assignment. In Germany, by contrast, it is generally the party who has adduced evidence by means of an expert opinion that is required to pay the advance—just as in individual proceedings.¹³⁹

III.7 Settlements

In collective proceedings, settlements frequently offer an effective means of reconciling the tension between the need for swift and efficient proceedings and the accurate adjudication of individual claims. The German implementation of the RAD, which itself expressly provides for the possibility of settlement (Art. 11 RAD), also relies on settlements and regulates them in §§ 9, 17 VDuG. These provisions diverge from the general rules on court settlements in several respects. For example, the settlement is concluded by the association and the company, but not by the consumers themselves, who benefit from the settlement. In addition, there are strict deadlines for concluding a settlement; it cannot be concluded at any stage of the proceedings. In particular, it is intended for the implementation of the remedial judgment and can only be concluded once the deadline for late opt-in has expired (§§ 16, 17, 9, 46 VDuG). The procedure is such that, after the basic judgment (see III.2), the court requests the parties to submit a settlement proposal and can subsequently approve this proposal. In doing so, the court examines the appropriateness of the compensation, the relationship between performance and consideration, the various groups of consumers and the benefits of the proposed compensation. If a settlement is reached, the proceedings are terminated. If no settlement is reached, the proceedings continue and a final judgment on the remedy and distribution proceedings is issued (see III.2). Consumers may reject the settlement, whereby there is no minimum quorum. Consumers who do not participate in the settlement may assert their claims individually. Looking at the details of German legislation, it becomes clear that the timeframe for reaching a settlement is not very well chosen, as it is only opened late in the proceedings. Nevertheless, there are good prospects that proceedings will end in a settlement, since

¹³⁹ See § 13(1) VDuG, §§ 379, 402 of the German Code of Civil Procedure (Zivilprozessordnung, ZPO).

the subsequent payment and distribution procedures are complex to implement for both the association and the defendant company (see III.8).

In Italy, Art. 140-*decies* of the Consumer Code defines the regulatory framework for settlement and conciliation agreements. In line with the general principles governing collective actions, the representative consumer procedure places particular emphasis on the role of settlements and voluntary dispute resolution. Agreements of this kind may be concluded at various procedural stages, with the involvement of multiple stakeholders throughout the process.

Specifically, paragraph 1 of Art. 140-*decies* allows the parties to submit a settlement or conciliation proposal, while paragraph 2 empowers the court to encourage and facilitate settlement discussions between them. Under paragraph 3, the court is required to verify that any proposed agreement complies with the applicable legal standards and does not contain unenforceable provisions or obligations.

Up to the stage of oral discussion, the QE and the trader may jointly submit to the court a proposal for settlement or conciliation concerning the claim. Likewise, until the case is heard, the court itself retains the authority to propose settlement or conciliation initiatives. Following the issuance of the judgment, the common representative (acting on behalf of the consumers) may negotiate a settlement with the defendant; in any case, after consulting the consumers, this proposal must be reviewed and approved by the delegated judge.

This regulatory model signals a gradual evolution away from Italy's traditionally adversarial legal culture, long rooted in courtroom-based dispute resolution. The Italian system is progressively adopting a more consensual orientation, incorporating procedural mechanisms that actively promote negotiated and cooperative solutions.

III.8 Implementation of the judgment

As a reminder, in German proceedings, following the basic judgment and failed settlement negotiations, a final judgement is issued in which the trader is ordered to pay a collective total amount to a trustee (see III.2). It is only this final judgment that is enforceable by the association. The estimated amount is to be paid to a fund managed by the trustee and distributed to all consumers who provide the evidence determined necessary by the court. The collective amount awarded is therefore distributed to the registered consumers who can prove their entitlement in accordance with the conditions set out in the basic judgment (§§ 22-38 VDuG). All claims must be satisfied in full; hence, the defendant may be obliged to increase the fund. The trustee assesses the eligibility of each individual consumer. Both traders and consumers can appeal against the trustee's decision and (if the appeal is unsuccessful) apply for a court decision.

The implementation procedure is characterised by certain features of insolvency law. To be clear: it is intended for liquid traders. However, since the court estimates the total collective amount to be paid into the fund, the result is a quasi-fictitious insolvency estate. Therefore, the implementation procedure is a distribution procedure. In addition to this similarity with insolvency law, the trustee appointed for the implementation of the final judgment is functionally equivalent to the insolvency administrator in many respects.

However, a major difference between the implementation of collective judgments and insolvency proceedings is that individual consumers are not paid on a pro rata basis, but rather in full. These are therefore "insolvency proceedings" with the peculiarity of a 100% quota. If the estimated collective amount is insufficient, additional contributions are required; if it is excessive, the excess

is returned (§§ 21, 37 VDuG). Therefore, the total amount estimated by the court, on which the implementation procedure is based, is not a fixed liability amount.

Clearly, this is a precautionary withdrawal of capital from a solvent trader, which could continue for years. Neither consumers nor the trader benefit from this payment to a fund. Consumers do not benefit because they do not receive any money until distribution occurs. The trader derives no advantage, as they are deprived of liquid assets without any discharging effect. In some cases, this could even push the trader to the brink of insolvency. If there is an overpayment, the money will be returned to the trader, but it may take a long time to receive it.

It should also be noted that the trader may, of course, become insolvent during the implementation process (see § 38 VDuG). In this case, the liquidation and distribution procedures ultimately overlap, which complicates matters further given the complexity of the legal issues involved.¹⁴⁰

With German thoroughness, these rules have probably become too complex, and it remains to be seen how the courts will deal with this multi-stage procedure. In many cases, settlement will probably be the only possible solution. The involvement of a neutral third party, i.e. neither the association nor the court, in the enforcement of a collective judgment is appropriate. However, this third party could also have achieved the actual satisfaction of the consumers concerned without setting up a liability fund, which impairs liquidity and is also not insolvency-proof. Therefore, the multi-stage nature of the procedure according to German law is particularly problematic. It would have been favourable to adopt a single-stage approach, whereby a trustee reviews the collective judgment and uses it as the basis for distribution. This would also pave the way for individual enforcement.

III.9 Comparative insights on the course of proceedings and judgments

Comparing the German and Italian systems, both had to face the challenge of making new compensation obligations accessible to collective proceedings. In Italy, however, there was at least some experience with asserting monetary claims in collective proceedings, which had been completely lacking in Germany.

In implementing the Directive, both legal systems opted for a number of deviations from the general civil procedure system. This begins with the statement of claim, which also allows to refer to a group of similarly affected consumers, without individualising them by name. Both legal systems opted for a multi-stage procedure. The German system appears particularly complex and formalistic, especially with regard to the distribution procedure. This is largely attributable to the absence of a genuine departure from the individual procedural perspective. Even in collective action proceedings, the German implementation law is primarily concerned with the precise determination of individual claims; collectivisation ends with the transfer of the right to sue to the association.

Both countries have opted for an opt-in system. German law has the advantage that consumers do not have to “buy a pig in a poke”, but can exercise their opt-in quite late, after the remedial judgment has been issued. The same applies to Italy, given the opt-in after the judgment. Both legal systems also allow combinations of different types of legal action, although Germany's model declaratory action has no equivalent in Italy. A combination of injunctive relief and remedial actions is possible in both countries.

¹⁴⁰ C. Meller-Hannich, *Die Insolvenz im Umsetzungsverfahren nach dem Verbraucherrecht durchsetzungsgesetz (VDuG)*, in *Neue Zeitschrift für Insolvenz- und Sanierungsrecht*, p. 745 (2024).

Both countries place great trust and emphasis on the settlement of disputes. In Germany, however, the externally managed register is hardly suitable as a basis for settlement and any settlement must await the expiry of the registration obligation.

IV. COSTS AND FUNDING

The effectiveness and success of representative actions are closely dependent on the existence of adequate incentives to bring proceedings, as well as on the availability of appropriate funding mechanisms. Without sufficient financial support, the practical accessibility and viability of collective redress instruments are significantly undermined.¹⁴¹

In consumer representative actions, the allocation of legal costs is generally governed by the “loser-pays principle”. According to Art. 12(1) RAD, Member States must ensure that the unsuccessful party bears the costs of the proceedings arising from the redress action, in accordance with their general procedural law.

This principle allows QEs to recover litigation expenses in the event of success and, at the same time, encourages a careful ex ante assessment of the merits of a case.¹⁴² However, the prospect of having to assume the full costs of litigation in the event of failure may also exert an overly strong deterrent effect, particularly on QEs with limited financial capacity, potentially discouraging them from pursuing redress actions. Moreover, even where QEs can be confident of success and full recovery of costs, costs may still dissuade them from bringing a claim, as QEs are required to pre-finance the litigation.

For this reason, adequate financing constitutes a prerequisite for effective collective redress.¹⁴³ Furthermore, funding is not only decisive in determining whether a lawsuit can be brought at all, but also influences how it can be conducted and, ultimately, its chances of success: defendants (especially large companies) are typically able to deploy substantial financial resources in legal representation and expert evidence.¹⁴⁴ In order to counterbalance this structural asymmetry, QEs must likewise have access to sufficient and reliable funding.

In this regard, Art. 20(1) RAD requires Member States to adopt measures ensuring that costs do not prevent QEs from effectively exercising their right to seek redress measures. Art. 20(2) refers, by way of example, to public funding (see below IV.4), limitations on court or administrative fees (see IV.2), and access to legal aid (see IV.3). Furthermore, while individual consumers are, in principle, not required to bear the costs of the proceedings (Art. 12(2) RAD)¹⁴⁵, Art. 20(3) RAD allows Member States to lay down rules that permit QEs to require consumers to pay a modest entry fee or similar charge in order to participate in the representative action (see IV.1). Moreover,

¹⁴¹ Recalling M. Cappelletti and B. Garth (eds.), *Access to Justice: A World Survey* (Sijthoff 1978) 1, see E. Silvestri, S. Voet, T. Arruda Alvim and A. Biard, *Overreaching Issues in Representative Actions*, in B. Hess, M. Woo, L. Cadiet, S. Menétrey and E. Vallines García (eds.), *Comparative Procedural Law and Justice* (Part X Chapter 3), available at cplj.org/a/10-3 (last visited Mar. 2, 2026), who define the funding rules as “an essential precondition for the proper functioning of any civil justice system”.

¹⁴² Cf. D. Wendt, *Kollektiver Rechtsschutz in Europa – Kompetenzen, Alternativen und Safeguards*, in *Europäische Zeitschrift für Wirtschaftsrecht*, p. 616, at p. 622 (2011).

¹⁴³ See B. Gsell and C. Meller-Hannich, *Die Umsetzung der neuen EU-Verbandsklagenrichtlinie, Gutachten über die Umsetzung der europäischen Richtlinie über Verbandsklagen zum Schutz der Kollektivinteressen der Verbraucher* (RL (EU) 2020/1828) ins deutsche Recht, cit., p. 45; A. Stadler, *Die neue Verbands(abhilfe)klage – Umsetzung der Richtlinie 2020/1828*, cit. at p. 147.

¹⁴⁴ Cf. B. Gsell and C. Meller-Hannich, *Die Umsetzung der neuen EU-Verbandsklagenrichtlinie, Gutachten über die Umsetzung der europäischen Richtlinie über Verbandsklagen zum Schutz der Kollektivinteressen der Verbraucher* (RL (EU) 2020/1828) ins deutsche Recht, cit., p. 45.

¹⁴⁵ Art. 12(3) RAD provides for an exception: in exceptional circumstances, an individual may be ordered to pay the costs of proceedings that were incurred as a result of the individual consumer’s intentional or negligent conduct.

the Directive recognises the possibility for Member States to allow third-party litigation funding (TPLF), while at the same time laying down specific provisions governing its application. Member States must ensure that conflicts of interests are prevented and that funding by third parties that have an economic interest in the initiation or outcome of the action does not divert the representative action away from the protection of the collective interests of consumers (Art. 10(1) RAD) (see IV.5).

IV.1 “Loser-pays” principle and consumers’ fees

Both in Italy and in Germany, according to the “loser-pays” rule, the allocation of costs is linked to the outcome of the proceedings.¹⁴⁶ While national rules may differ as to which specific costs may be recovered, representative actions invariably involve significant financial risks for QEs, which remain responsible (as the formal claimant) for the procedural costs despite acting in the collective interest of consumers.

In line with the Directive, individual consumers who are not formal parties to a representative action are not required to bear any costs of the proceedings. In fact, in the event of an unsuccessful outcome, consumers may be required to reimburse expenses to the respondent only in the case of bad faith or gross negligence.¹⁴⁷ However, this provision has been implemented in Italy, but not in Germany. As regards the relationship between the QE and the consumers, national approaches diverge. In Germany, as in most Member States, the legislator has not made use of the option under Art. 20(3) RAD allowing participation or entry fees. By contrast, under the Italian transposition, QEs may require consumers who opt in to a redress action to pay a modest charge to contribute to litigation costs.¹⁴⁸

However, requiring consumers to contribute financially remains an exception within the EU¹⁴⁹ and does not, in practice, offer a comprehensive solution to the broader issue of funding. Modest participation fees are insufficient to finance representative actions in their entirety or even to cover a substantial portion of their overall costs.¹⁵⁰

IV.2 Reduction of court and lawyers’ fees

As mentioned above, possible measures contemplated by the RAD to reduce the financial risks of QEs include, *inter alia*, the limitation of applicable court or administrative fees.

Both Germany and Italy have sought to introduce caps on court fees, albeit through different approaches. Italy opted to reduce court fees by half, irrespective of the value of the dispute. Germany, by contrast, introduced an absolute maximum cap on court fees.

¹⁴⁶ See § 13(1) VDuG, §§ 91, 92 ZPO; Art. 840-*novies* Italian Civil Procedure Code, Art. 140-*novies* Italian Consumer Code.

¹⁴⁷ Art. 140-*novies*, par. 3 Consumer Code.

¹⁴⁸ Art. 140-*novies* Consumer Code, Art. 20(3) RAD. The solution of providing for an entry fee has also been adopted in other national contexts. In Poland, for example, QEs are permitted to charge participating consumers up to 5% of the claimed amount, subject to a maximum cap of PLN 2,000 (approximately €500). Similarly, in Austria, the participation fee is capped at €250 pursuant to § 9(4) of the Austrian Qualified Entities Act (Qualifizierte-Einrichtungen-Gesetz, QEG). See A. Halfmeier, P. Rott, in P. Rott, A. Halfmeier, W. Vandenbussche, L. Bugatti and J. Mucha, Comparative Legal Study on Procedural Rules and their Impact on Collective Redress Actions in Europe, cit.

¹⁴⁹ See A. Halfmeier, P. Rott, in P. Rott, A. Halfmeier, W. Vandenbussche, L. Bugatti and J. Mucha, Comparative Legal Study on Procedural Rules and their Impact on Collective Redress Actions in Europe, cit., p. 136.

¹⁵⁰ L. Visscher, M. Faure, *A Law and Economics Perspective on the EU Directive on Representative Actions*, cit.

In particular, in Italy, court costs are fixed amounts established by law. Specifically, under Art. 13(1) of Presidential Decree No. 115 of May 30, 2002¹⁵¹, the unified court contribution is calculated on the basis of a progressive scale linked to the value of the claim, ranging from relatively low amounts for small-value cases (around €40 for claims up to €1,100) to well over €1,500 for high-value claims (exceeding €520,000).¹⁵² Pursuant to Art. 140-*quaterdecies* Consumer Code, in the case of a representative action, the unified court contribution is reduced by half. However, in light of these amounts, it is clear that although the reduction of court fees may provide some relief to QEs, it represents only a minimal portion of the overall costs associated with a representative action. Similarly, in Germany, both statutory court and lawyers' fees generally depend on the value of the claim: the higher the value, the higher the fees.¹⁵³ However, to protect QEs from unlimited risks,¹⁵⁴ the legislator has capped the maximum value at €300,000.00.¹⁵⁵ This cap reduces both the court fees¹⁵⁶ and the lawyers' costs that the losing party must reimburse. Yet it can only slightly reduce, but not eliminate, the cost problem. The downside of this cap is that, in the event of success, QEs will usually not be fully reimbursed. This is because lawyers typically charge more than the statutory fees when the latter are limited (which they are permitted to do), and the difference between the statutory and the agreed fees is not recoverable from the opposing party under §§ 91, 92 ZPO. The cap, in effect, attenuates the "loser-pays" principle.¹⁵⁷ Furthermore, in the event of failure, the cap provides only limited relief for the QE: where the value in dispute amounts to €300,000, the QE would, in a straightforward proceeding, still have to bear costs of approximately €30,000, even if its own lawyers' fees do not exceed the statutory fees.¹⁵⁸ In more complex proceedings involving witnesses and experts, the costs will be considerably higher. The cap can therefore only constitute

¹⁵¹ Decreto del Presidente della Repubblica, 30 May 2002, n. 115, Testo unico delle disposizioni legislative e regolamentari in materia di spese di giustizia, in GU n.139 del 15-06-2002 - Suppl. Ordinario n. 126.

¹⁵² In particular: a) €43 for cases valued up to €1,100, as well as cases concerning mandatory social security and assistance disputes (except as provided by Art. 9, paragraph 1-bis, for joint applications under Art. 473-bis.51 of the Civil Procedure Code);

b) €98 for cases valued above €1,100 and up to €5,200, voluntary jurisdiction cases, as well as contentious proceedings under Art. 473-*bis* of the Civil Procedure Code and special proceedings under Book IV, Title II, Chapter VI, of the same Code;

c) €237 for cases valued above €5,200 and up to €26,000, as well as contentious cases of indeterminate value under the exclusive jurisdiction of the justice of the peace;

d) €518 for cases valued above €26,000 and up to €52,000, as well as civil cases of indeterminate value;

e) €759 for cases valued above €52,000 and up to €260,000;

f) €1,214 for cases valued above €260,000 and up to €520,000;

g) €1,686 for cases valued above €520,000.

¹⁵³ See §§ 3, 48(1) sent. 1 of the German Court Costs Act (Gerichtskostengesetz, GKG) in conjunction with §§ 3–10 ZPO, §§ 1, 23(1) sent. 1 of the German Act on the Remuneration of Lawyers (Rechtsanwaltsvergütungsgesetz, RVG).

¹⁵⁴ On this objective of introducing caps of the value in dispute, see the report of the Committee on Legal Affairs of the German Bundestag on the former ABGB, BT-Drs. 7/5422, p. 13.

¹⁵⁵ § 48(1) sent. 3 GKG. In the original draft of the VDUG, an amount of €410,000 was provided (BT-Drs. 20/6520, p. 130). With regard to the model declaratory action and actions for injunctive relief, a maximum of €250,000 applies (§ 48(1) sent. 2 GKG). The difference is explained by the argument that redress actions have a broader impact, as they are directed towards a performance in favour of consumers (*ibid.*).

¹⁵⁶ Cf. on such reduction Art. 20(2) RAD.

¹⁵⁷ See B. Gsell and C. Meller-Hannich, Die Umsetzung der neuen EU-Verbandsklagenrichtlinie, Gutachten über die Umsetzung der europäischen Richtlinie über Verbandsklagen zum Schutz der Kollektivinteressen der Verbraucher (RL (EU) 2020/1828) ins deutsche Recht, cit., pp. 45–46, also on the compatibility with the RAD.

¹⁵⁸ For the calculation, see <https://www.juris.de/jportal/nav/services/prozesskostenrechner/index.jsp> (last visited Mar. 2, 2026).

one element in a broader set of measures designed to make it financially feasible for QEs to bring redress actions.¹⁵⁹

As a result, when considered in isolation, neither the reduction of court fees in Italy nor the cap applied in Germany eliminates, or substantially mitigates, the financial risk borne by QEs.

IV.3 Legal Aid

Recourse to legal aid schemes, which exist in both legal traditions, although theoretically available to non-profit entities, does not appear to constitute a viable or preferential route for QEs in representative proceedings. This is largely due to the restrictive conditions governing access to legal aid.

In Italy, legal aid funded by the State (*patrocinio a spese dello Stato*) is available not only to natural persons who satisfy the statutory requirements, but also to “entities or associations that do not pursue profit-making purposes and do not carry out economic activities” (Art. 119 DPR 115/2002). Conversely, entities and associations, including those belonging to the so-called “third sector”, are excluded if, despite the absence of a profit motive, they engage in economically relevant activities. An Italian State Legal Aid Commission has clarified that fundraising activities carried out to finance litigation may qualify as economic activity and thus preclude access to legal aid, regardless of the voluntary nature or limited amount of the collected resources.¹⁶⁰

Furthermore, the mere combination of a lack of profit motive and non-engagement in economic activity is not sufficient. The additional conditions established by law must also be met. Specifically, the applicant’s taxable income for personal income tax purposes, as reported in the most recent tax declaration, must not exceed €13,659.64.¹⁶¹ In addition, the claim must not be manifestly unfounded, as required by Art. 122 of DPR 115/02.¹⁶² Accordingly, the admission of entities that do not engage in economic activity to state-funded legal aid is subject to an assessment of financial capacity, which cannot focus solely on income. This assessment must take into account various factors, including the entity’s assets and extraordinary contributions. It is therefore the responsibility of the applicant to demonstrate compliance with the statutory requirements in order to be granted the benefit.

Similarly, in Germany, in principle, a QE can apply for legal aid pursuant to §§ 114–127 ZPO, § 13(1) VDuG. According to § 116 sent. 1 no. 2 ZPO, assistance with court costs shall be granted to organisations if the costs cannot be borne either by the organisation itself or by the parties economically involved in the subject matter in dispute, and if a failure to bring an action would contradict the public interest. In addition, the action must have sufficient prospects of success and must not appear frivolous (§§ 116 sent. 2, 114(1) sent. 1 ZPO). Yet this provision is rarely discussed in relation to redress actions. The reason may be that the requirement of indigence is interpreted rather strictly. It seems that consumers, although benefiting from the action, cannot be regarded as “economically involved,” as it is generally not possible to make them contribute financially to

¹⁵⁹ Cf. B. Gsell and C. Meller-Hannich, Die Umsetzung der neuen EU-Verbandsklagenrichtlinie, Gutachten über die Umsetzung der europäischen Richtlinie über Verbandsklagen zum Schutz der Kollektivinteressen der Verbraucher (RL (EU) 2020/1828) ins deutsche Recht, cit., p. 46.

¹⁶⁰ The State Legal Aid Commission at the TAR Emilia Romagna – Bologna (Commissione per il patrocinio a spese dello Stato presso il TAR Emilia Romagna – Bologna), decision n. 601 of 10 March 2022, held that the applicant entity did not meet the requirements of Art. 119 of DPR 115/2002 because it had conducted a fundraising campaign to finance its legal defence. The Commission emphasised that such fundraising constitutes an economic activity aimed at generating resources, even if voluntarily contributed, and that the resources actually collected, regardless of their amount, demonstrate engagement in economic activity.

¹⁶¹ Art. 76 of DPR 115/02 and the Decree of 22 April 2025, in Official Gazette 11/07/2025, N. 159.

¹⁶² See also Constitutional Court in Ordinance, No. 128/2016.

the redress proceedings (Art. 12(2) RAD). However, it is generally required that the applicant exhausts its available assets and, where appropriate, takes out loans,¹⁶³ which may prevent QEs from being considered sufficiently needy. Moreover, even if legal aid is granted, the party is usually not entirely exempted from court costs but must pay them, at least in part, by instalments (§ 120 ZPO). And while the party receiving legal aid may itself be assigned counsel free of charge (§ 121 ZPO), it would still be liable to reimburse the opposing party's costs (particularly statutory lawyers' fees) in the event of failure. Given that Art. 20(1) RAD requires Member States to support QEs, it may be conceivable to apply the provisions on legal aid in a less restrictive manner in the context of redress actions. However, drawing a line between needy and non-needy QEs would still be difficult. Under the current legal framework, it does not appear possible simply to grant legal aid to all QEs.

In general, legal aid is not intended as a tool to systematically promote litigation in the public interest, but rather as an exceptional measure. If the State seeks to support redress actions through public means, this objective should primarily be pursued either by providing public funding to QEs or by establishing a dedicated public fund to financially support such actions¹⁶⁴ (see IV.4). In the absence of support through public funding to QEs and through multiple collective litigation funds, alternative mechanisms may be explored, including the assumption of litigation risks by actors already involved in the process, such as lawyers, or by external parties, such as third-party litigation funders (see IV.5 and IV.6).

IV.4 Private and public funding of qualified entities and collective litigation funds

In many legal systems, including the Italian one, consumer associations tend to largely self-finance, often through consumers' membership fees, donations, or occasional grants. In some jurisdictions, including Germany, consumer associations may, in principle, also receive contributions by businesses. However, in Germany, the possibility of QEs to receive private funding from businesses is considerably limited: according to § 2(1) no. 1 point b VDuG, qualified consumer organisations are only entitled to bring a redress action if no more than five per cent of their financial resources derive from business contributions. If there is doubt, as to whether this requirement is met, the court shall require the organisation to disclose its financial resources (§ 2(2) VDuG). The rationale for this limitation, which is inspired by the former rules governing the model declaratory action,¹⁶⁵ is to prevent companies from exerting covert influence on such organisations through financial contributions and from using the instrument of representative action to harm a competitor or a company on which they are economically dependent.¹⁶⁶ The rule reflects the traditional German scepticism towards the commercialisation of litigation. However, one may question whether this concern could not be adequately addressed through a more flexible approach, such as that set out in Art. 4(3)(e) RAD. Under this provision, QEs that are designated for the purpose of bringing cross-border actions must not be influenced by persons other than consumers who have an economic interest in bringing a representative action and must therefore establish procedures to prevent such influence and to avoid conflicts of interest. These requirements may also be fulfilled if an organisation receives more than 5% of its financial resources from business contributions. Considering that, when enacting the former rules on the

¹⁶³ D. Wache, § 116 ZPO, in W. Krüger, T. Rauscher, Münchener Kommentar zur Zivilprozessordnung, vol. 1, mn. 23 (7th ed. 2025), with further references.

¹⁶⁴ A. Stadler, Die neue Verbands(abhilfe)klage – Umsetzung der Richtlinie 2020/1828, cit., at pp. 148–149.

¹⁶⁵ See § 606(1) no. 5 ZPO (former version) and the explanations accompanying the draft VDuG, BT-Drs. 20/6520, p. 70.

¹⁶⁶ See the explanations accompanying the draft law on the introduction of the model declaratory action, BT-Drs. 19/2439, p. 23.

model declaratory action, the legislator appeared to be particularly concerned about foreign QEs,¹⁶⁷ it seems inconsistent to apply stricter standards to QEs designated for domestic actions than to foreign QEs.¹⁶⁸ Moreover, as previously noted (see II.1.d)), the 5%-limit does not apply to actions seeking injunctive relief, although such actions may also be used to harm competitors. In any case, when financial support relies primarily on membership fees, donations, or occasional grants, consumer associations often face the inability to undertake significant collective actions precisely because they are frequently under-resourced.¹⁶⁹ These types of funding are unpredictable, and their amounts can fluctuate over time, complicating even medium- to long-term planning, which is necessary for the planning and preparation of a collective claim.

Alongside the model of self-financing by the claim organisation, or, more generally, private funding of QEs, Germany proposes a model in which associations, organised as private-law entities, are partially or predominantly financed by the government.¹⁷⁰ In particular, consumer organisations may receive funding from both the federal states and the federal government, depending on their field of activity.¹⁷¹ The consumer organisations predominantly funded by public means, such as the Federation of German Consumer Organisations (Verbraucherzentrale Bundesverband, vzbv), are irrebuttably presumed to meet the 5%-limit (§ 2(3) VDuG).¹⁷² So far, domestic redress actions in Germany have been brought exclusively by such consumer organisations.¹⁷³

In 2024, for instance, the vzbv—which, as of March 2026, had brought most domestic redress actions¹⁷⁴—received approximately €25.3 million in public funding from the federal government.¹⁷⁵ The significance of such funding for the consumer organisation is underscored by the fact that other income contributing to the vzbv's institutional budget amounted to only about €0.5 million.¹⁷⁶

¹⁶⁷ See the explanations accompanying the draft law on the introduction of the model declaratory action, BT-Drs. 19/2439, p. 23.

¹⁶⁸ Critically P. Röthemeyer, *Das Verbraucherrecht durchsetzungsgesetz (VDuG) zur Umsetzung der Verbandsklagen-Richtlinie – Die neue Abhilfeklage*, cit., at p. 333.

¹⁶⁹ BEUC, *Justice Unchained*. BEUC's view on third party litigation funding for collective redress (BEUC, 2024). According to BEUC's view on third-party litigation funding for collective redress (2024), crowdfunding is also emerging as a potential secondary source of financial support for associations. However, the success of such campaigns often depends on the extent to which a particular action can attract public attention. This mechanism is further complicated by the fact that associations are often reluctant to disclose information about the actions they intend to launch in advance, as would be required by the timelines for public fundraising (ibid., p. 6).

¹⁷⁰ See also VKI (Verein für Konsumenteninformation) in Austria. In Europe, there are also systems in which the promotion of representative actions is entrusted to specific government institutions, funded by taxpayers' money and forming part of the governmental structure, such as the Financial Ombudsman and the municipal consumer ombudsmen in Poland: See P. Rott, A. Halfmeier, W. Vandenbussche, L. Bugatti and J. Mucha, *Comparative Legal Study on Procedural Rules and their Impact on Collective Redress Actions in Europe*, cit., p. 137.

¹⁷¹ *Verbraucherpolitischer Bericht der Bundesregierung 2024*, Nov. 28, 2024, pp. 86–88, available at https://www.bmu.de/fileadmin/Daten_BMU/Download_PDF/Verbraucherschutz/verbraucherpolitischer_bericht_bf.pdf (last visited Mar. 2, 2026).

¹⁷² See already B. Gsell and C. Meller-Hannich, *Die Umsetzung der neuen EU-Verbandsklagenrichtlinie, Folgegutachten über die Umsetzung der europäischen Richtlinie über Verbandsklagen zum Schutz der Kollektivinteressen der Verbraucher – (RL (EU) 2020/1828) – ins deutsche Recht*, cit., pp. 29–30.

¹⁷³ See the list of the Federal Office of Justice, available at https://www.bundesjustizamt.de/DE/Themen/Verbraucherrechte/VerbandsklageregisterMusterfeststellungsklagenregister/Verbandsklagenregister/Verbandsklagen/Verbandsklagen_node.html (last visited Mar. 2, 2026). As of March 2026, domestic redress actions in Germany have been brought by the vzbv, by the “Verbraucherzentrale Sachsen” and by the “Verbraucherzentrale Nordrhein-Westfalen”.

¹⁷⁴ See the list of the Federal Office of Justice, available at https://www.bundesjustizamt.de/DE/Themen/Verbraucherrechte/VerbandsklageregisterMusterfeststellungsklagenregister/Verbandsklagenregister/Verbandsklagen/Verbandsklagen_node.html (last visited Mar. 2, 2026).

¹⁷⁵ Verbraucherzentrale Bundesverband, *Rechenschaftsbericht, Gesamtübersicht zum Jahresabschluss 2024*, p. 1, available at <https://jahresbericht.vzbv.de/2024/bericht/rechenschaftsbericht> (last visited Mar. 2, 2026).

¹⁷⁶ Verbraucherzentrale Bundesverband, *Rechenschaftsbericht, Gesamtübersicht zum Jahresabschluss 2024*, cit.

In 2023—the year in which the VDuG was enacted—the federal government increased its funding of consumer organisations to reflect the growing needs in the areas of collective legal enforcement, market monitoring, and consumer education.¹⁷⁷ However, consumer organisations are naturally able to devote only a limited share of this funding to collective actions. In 2024, the vzbv spent approximately €650,000 on such actions.¹⁷⁸ Overall, public funding of consumer organisations has its limits,¹⁷⁹ particularly in the current climate of strained public budgets.

IV.5 Lawyers' fees

The U.S. experience has demonstrated that lawyers who participate in litigation not only professionally but also financially (by assuming the costs of the litigation in exchange for a share of the outcome or a success fee) can be sufficiently incentivised to pursue even complex collective redress mechanisms. Nevertheless, the U.S. class action system, in which lawyers act as entrepreneurs and make substantial investments with the expectation of a generous fee if successful, has also revealed an increased risk of abuses, including frivolous lawsuits and premature settlements.¹⁸⁰ Although the RAD does not directly and explicitly disapprove of contingency fee arrangements,¹⁸¹ they are still perceived as potentially encouraging “vexatious lawsuits” and rewarding “unscrupulous attorneys”¹⁸² in most EU civil law countries, including Italy and Germany. Consequently, contingency fees remain either prohibited or strongly restricted, reflecting enduring concerns over the “commercialisation of the attorney–client relationship”¹⁸³. In Germany, a 2021 reform slightly expanded the scope for stipulating contingency fees;¹⁸⁴ however, the implementation of the RAD did not prompt the German legislator to permit contingency fees to a greater extent.

Even where permitted, albeit in a more restricted form, within the framework of representative actions an additional structural obstacle emerges. In such actions, the lawyer ordinarily maintains a direct contractual relationship with the formal claimant, namely the QE, rather than with the consumers on whose behalf the action is pursued. As a result, any agreement concluded directly between the QE and the lawyer cannot operate to deprive the consumers (who are not parties to the contractual arrangement) of their substantive rights. In the absence of alternative regulatory mechanisms outside the contractual domain, such as the imposition of a court order mandating a specific payment to the lawyer akin to the U.S. system (cf. U.S. Federal Courts, FRCP Rule 23(h)), the application of contingency fee arrangements encounters significant practical and legal challenges in the context of European representative actions.¹⁸⁵

¹⁷⁷ *Verbraucherpolitischer Bericht der Bundesregierung 2024*, 28.11.2024, p. 87, available at https://www.bmu.de/fileadmin/Daten_BMU/Download_PDF/Verbraucherschutz/verbraucherpolitischer_bericht_bf.pdf (last visited Mar. 2, 2026).

¹⁷⁸ Verbraucherzentrale Bundesverband, *Rechenschaftsbericht, Gesamtübersicht zum Jahresabschluss 2024*, p. 2, cit.

¹⁷⁹ See B. Gsell, C. Meller-Hannich, *Die Umsetzung der neuen EU-Verbandsklagenrichtlinie*, Gutachten über die Umsetzung der europäischen Richtlinie über Verbandsklagen zum Schutz der Kollektivinteressen der Verbraucher (RL (EU) 2020/1828) ins deutsche Recht, cit., p. 46.

¹⁸⁰ See R. Van den Bergh, *Private enforcement of European competition law and the persisting collective action problem*, in *Maastricht Journal of European and Comparative Law*, p. 12 (20, 2013).

¹⁸¹ See also *Commission Recommendation of 11 June 2013 on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law*, 2013, para 30.

¹⁸² H. Buxbaum, *Class Actions, Conflict and the Global Economy*, in *Indiana Journal of Global Legal Studies*, p. 585, at p. 590 (21-2, 2014).

¹⁸³ C. Lemke, *Legal Tech-Gesetz: Vom Ansatz verfehlt und nicht verbrauchergerecht*, in *Recht Digital*, p. 224, at p. 226 (2021).

¹⁸⁴ See the German Act to Promote Consumer-Friendly Offerings in the Legal Services Market (Gesetz zur Förderung verbrauchergerichteter Angebote im Rechtsdienstleistungsmarkt), BGBl. 2021 Teil I, p. 3415.

¹⁸⁵ A. Halfmeier, in P. Rott, A. Halfmeier, W. Vandenbussche, L. Bugatti and J. Mucha, *Comparative Legal Study on Procedural Rules and their Impact on Collective Redress Actions in Europe*, cit.

Overall, the European system's reluctance to embrace contingency fee arrangements, combined with the procedural complexities characteristic of civil law procedures, precludes treating this as a viable solution to the financing challenges inherent in representative actions. Accordingly, the funding of such actions cannot be effectively addressed through this mechanism.¹⁸⁶

In line with this broader European context, it is noteworthy that the Italian prohibition of contingency fee arrangements (*patto quota lite*), which prevents lawyers from receiving remuneration calculated as a percentage of the damages awarded, has historically reduced the attractiveness of collective actions for legal professionals. The significant organisational and procedural complexity associated with such proceedings has not been matched by commensurate economic incentives, thereby discouraging lawyers from engaging in this form of litigation. To address this issue and incentivise lawyers to engage in collective actions despite the ban on contingency fees, the Italian legislator sought to establish adequate financial incentives designed to attract practitioners and foster the development of a specialised legal sector. The new framework—which has no equivalent in German law¹⁸⁷—reflects the “reward fee” system established for collective actions under the Civil Procedure Code in 2019. Under this system, in the event of a successful action, the defendant is required to pay the claimant's lawyer an additional fee, calculated as a success-based premium, by applying a progressive percentage determined according to the number of class members to the total amount due to all class members, in addition to the lawyer's ordinary fees¹⁸⁸. The reward fee system has, however, attracted criticism, particularly from trade associations, which have highlighted the excessive and arguably unjustified financial burden imposed on defendant traders. Further objections concern the allegedly punitive nature of the reward system, which represents a significant departure from a legal tradition that views compensation as the primary objective of the redress system.¹⁸⁹ Additionally, some commentators have warned that the prospect of additional remuneration could encourage legal professionals to initiate representative actions in an overly assertive manner, even in cases where such proceedings may not be fully justified. A closer examination of the broader regulatory framework, however, considerably mitigates these concerns. The economic appeal of the reward fee, its purported punitive effect, and the risk of incentivising opportunistic or abusive litigation strategies—potentially transforming lawyers into so-called “bounty hunters”¹⁹⁰—appear limited in light of statutory caps on such remuneration and the judge's discretionary power to reduce, though not increase, the awarded amount by up to one half.¹⁹¹ In practice, this legal fee regime appears

¹⁸⁶ See the opposition of the Commission to the contingency fee agreements, defined as one of the components of the “toxic cocktail” represented by the U.S. Class Action (together with the punitive damages and the pre-trial discovery): E. Silvestri, *Towards a common framework of collective redress in Europe? An update on the latest initiatives of the European Commission*, in *Russ. L.J.*, 46, pp. 148–50 (2013); European Commission, *Green Paper on Consumer Collective Redress – Questions and Answers* MEMO/08/741, para 9.

¹⁸⁷ German law does not provide for any comparable additional fee; QEs are required to raise the necessary funds themselves in order to ensure adequate remuneration for the lawyer, potentially with the assistance of third-party funding, which, however, as will be shown in Section IV.6., is subject to significant restrictions.

¹⁸⁸ A similar remuneration mechanism also applies to the *rappresentante comune degli aderenti* (common representative of the class members), whose compensation is calculated by applying a progressive percentage determined according to the number of class members to the total amount due to all class members. The common representative is also entitled to reimbursement of documented expenses (Art. 140-novies Civil Procedure Code).

¹⁸⁹ Contra see C. Consolo, *L'azione di classe di terza generazione*, in V. Barsotti, F. De Dominicis, G. Pailli and V. Varano, *Azione di classe: la riforma italiana e le prospettive europee*, cit., p. 28.

¹⁹⁰ J. Coffee, Jr., *Rescuing the private attorney general: Why the model of the lawyer as bounty hunter is not working*, in *MD. L. Rev.*, p. 215, at p. 218 (42, 2, 1983).

¹⁹¹ C. Consolo, *L'azione di classe di terza generazione*, in V. Barsotti, F. De Dominicis, G. Pailli, V. Varano, *Azione di classe: la riforma italiana e le prospettive europee*, cit., pp. 28–29.

insufficient to provide a genuinely strong incentive for legal professionals, particularly when weighed against the substantial investment of time and financial resources required to conduct representative proceedings, compared with the relatively modest potential economic returns.

IV.6 Third-party litigation funding

In recent years, increasing attention has been devoted to the potential of third-party litigation funding (TPLF) as a means of enhancing access to justice, particularly in complex and resource-intensive forms of collective litigation.¹⁹² As anticipated, the RAD affords Member States discretion as to whether to allow third-party funding as a mechanism for financing representative actions (see Art. 10 RAD). TPLF is commonly understood as a business model whereby a third party, with no direct interest in the underlying dispute, finances the litigation costs in exchange for a share of the benefit in the event of success, while bearing the risk of loss in the event of an adverse outcome.¹⁹³ Originally developed in common law jurisdictions, which are traditionally more open to market-oriented approaches to professional legal services¹⁹⁴, TPLF has progressively gained acceptance also within civil law systems. Recent comparative research, including a 2025 study conducted by the British Institute of International and Comparative Law¹⁹⁵, shows that several specialised funds are now active in Europe highlighting the widespread presence of litigation funding across European markets. Despite this expansion, TPLF remains largely under-regulated in Europe, with only a limited number of jurisdictions having adopted a specific and comprehensive regulatory framework¹⁹⁶. However, the increasing prominence of TPLF has drawn sustained attention from both European institutions and legal scholarship, with a view to exploring the desirability and contours of a more structured regulatory framework at EU level.¹⁹⁷ Although the adoption of a

¹⁹² F. Bertelli, Gli accordi di finanziamento della lite, (Napoli, 2024); M. Paglietti, Il mercato delle controversie. Il Third Party Litigation Funding come strumento di finanziamento responsabili dell'accesso alla giustizia, in Banca borsa tit. cred., p. 821 (2023); E. D'Alessandro and C. Poncibò, European Parliamentary Research Service, Responsible Private Funding of Litigation. European Added Value Assessment, in Riv. trim. dir. proc. civ., p. 919 (2021); E. D'Alessandro, Prospettive del Third Party Funding in Italia, (Milano, 2019); G. Solas, Alternative Litigation Funding and the Italian Perspective, in Eur. Rev. Priv. Law, p. 253 (2016); G. De Nova, Il finanziamento della lite: il «Litigation Funding Agreement», in Riv. trim. dir. proc. civ., 2, pp. 267 ff. (2022).

¹⁹³ ELI (European Law Institute), Principles Governing the Third-Party Funding of Litigation, Dec. 10, 2024, available at https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI_Principles_Governing_the_Third_Party_Funding_of_Litigation.pdf (last visited Mar. 2, 2026).

¹⁹⁴ L. Bugatti, La professione forense tra tradizioni e innovazione, Un'analisi storico-comparatistica, (Torino, 2022), pp. 161 ff.

¹⁹⁵ The British Institute of International and Comparative Law, Mapping Third Party Litigation Funding in the European Union, 2025, available at <https://www.biicl.org/projects/mapping-third-party-litigation-funding-in-the-european-union> (last visited Mar. 2, 2026).

¹⁹⁶ Most notably Slovenia: Art. 59 Slovenian Law of Collective Action (2019).

¹⁹⁷ See EU Parliament, *Resolution of 13 September 2022 with Recommendations to the Commission on Responsible private funding of litigation (2020/2130(INL))*, available at https://www.europarl.europa.eu/doceo/document/TA-9-2022-0308_EN.pdf (last visited Mar. 2, 2026).

harmonised, Union-wide regime currently appears to have been postponed, debates remain lively as to the appropriate scope, limits, and potential risks of the phenomenon. Concerns are frequently raised about the potential influence of funders over litigation strategy, conflicts of interest, transparency deficits, and the overall compatibility of TPLF with the traditional objectives of civil justice. Against this background, while allowing the use of third-party funding in representative actions for the protection of consumers, the RAD introduces a number of safeguard mechanisms. Pursuant to Art. 10(1) and (2), Member States are required to ensure, first, that decisions taken by QEs in the context of a representative action (including strategic choices and decisions concerning settlement) are not unduly influenced by a third-party funder in a manner detrimental to the collective interests at stake. Second, the Directive expressly seeks to prevent structural conflicts of interest by prohibiting funding arrangements where the representative action is brought against a defendant that is either a competitor of the funding provider or an entity on which the funder is economically dependent. To give practical effect to these principles, Art. 10(3) empowers courts or administrative authorities, in representative actions seeking redress measures, to assess compliance with the aforementioned requirements whenever justified doubts arise. For this purpose, QEs are subject to a disclosure obligation: they must provide the court or authority with a financial overview identifying the sources of funding used to support the representative action. Art. 10(4) strengthens this supervisory framework by granting courts or administrative authorities the power to adopt appropriate corrective measures where non-compliance is identified, such as requiring the QE to refuse or make changes in respect of the relevant funding and, if necessary, denying the QE's legal standing.

Both Italy and Germany, like the majority of Member States,¹⁹⁸ have exercised the discretion afforded by the RAD by allowing representative actions to be financed by third parties, while incorporating, albeit to differing degrees, the related safeguards. In the Italian legal system, although the national legislator did not closely mirror the mechanisms set out in Art. 10 RAD, it nonetheless introduced functionally equivalent safeguards aimed at ensuring transparency and preventing conflicts of interest. In particular, Italian law requires the QE to disclose to the court, in the claim (*ricorso*), any funding received or promised by third parties in support of the proceedings. This disclosure obligation enables judicial scrutiny of the financial structure underlying the action from its very outset. Moreover, Art. 140-septies of the Consumer Code provides that a representative

See also ELI LI/Unidroit Model European Rules of Civil Procedure, 2020, available at <https://www.unidroit.org/instruments/civil-procedure/eli-unidroit-rules> (last visited Mar. 2, 2026). ELI Third Party Funding of Litigation Project, available at <https://www.europeanlawinstitute.eu/projects-instruments/instruments/eli-third-party-funding-of-litigation> (last visited Mar. 2, 2026); S. Augenhöfer, ELI (European Law Institute), *Principles Governing the Third-Party Funding of Litigation*, 10. December 2024, available at https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI_Principles_Governing_the_Third_Party_Funding_of_Litigation.pdf (last visited Mar. 2, 2026); D'Alessandro, C. Poncibò, *State of play of the EU private litigation funding landscape and the current EU rules applicable to private litigation funding*, Research Paper for the European Parliament Research Service ('EPRS'), March 2021; A. Stadler, *Third-Party Funding in Collective Redress*, in X. Kramer, S. Voet, L. Ködderitzsch, M. Tulbacka, B. Hess (eds.), *Delivering Justice, A Holistic and Multidisciplinary Approach. Liber Amicorum in Honour of Christopher Hodges*, p. 151, at pp. 156–159 (Hart 2022); R. Mulheron, *Third Party Funding, Class Actions, and the Question of Regulation*, in *Mass Claims*, p. 5 (2022); A. Cordina, E. Storskrubb, *The Future Regulation of Third-Party Funding in Europe*, Conference Report, Erasmus University Rotterdam, pp. 1–8 (2023); T. Trapp, Z. Hlady, H. Abildgaard, O. Mokko, *Third-Party Legal Standing under European Union Law: A Comparative Review of Selected EU Law and National Implications*, in *Amsterdam Law School Research Paper no. 2024/01*. On this issue, see also the position of BEUC, which considers it not necessary at this stage to introduce additional EU rules regulating TPLF beyond the existing regulatory framework established by the RAD: BEUC, *Justice Unchained. BEUC's view on third party litigation funding for collective redress* (BEUC, 2024).

¹⁹⁸ A contrary approach has been adopted in Greece and Ireland, where third-party litigation funding remains prohibited.

action is inadmissible where it is brought in a situation of conflict of interest, notably where the entity financing the action is a competitor of the defendant or is economically dependent on it. In such cases, the court is empowered to raise the issue *ex officio* and must grant the QE a time limit within which to reject or amend the relevant funding arrangement.

By contrast, the German legislator has gone beyond what is required by the RAD. In addition to providing that third-party funding is prohibited where the funder is a competitor of the defendant trader or is economically dependent on the latter, German law has introduced a statutory cap on the remuneration of litigation funders, limiting it to a maximum percentage of the benefit (§ 4(2) VDuG). This percentage, set at 10%, appears rather arbitrary¹⁹⁹ and risks constituting a significant obstacle to the effective use of third-party litigation funding. As is well documented in the literature and practice, funders typically require a share of between 25% and 35% of the benefit, depending on the level of litigation risk assumed and the extent of capital committed.²⁰⁰ Against this background, the German cap may render third-party funding largely unattractive, if not practically unviable.²⁰¹ Once again, German concerns about the commercialisation of litigation appear to have prevailed over the objective of facilitating representative actions, without a fully balanced assessment of the actual risks associated with litigation funding.

Further practical difficulties may arise from the application of Art. 10(2)(a) RAD, which excludes funding arrangements where the funder is expected to unduly influence the QE's conduct of the proceedings. While the underlying objective of protecting consumers against undue external influence (particularly in the context of settlement negotiations) is undoubtedly legitimate, the provision is framed in very broad terms. In practice, any third-party funder will necessarily retain a certain degree of control over the proceedings in order to manage its financial exposure,²⁰² for example when deciding whether to finance an appeal. Such forms of involvement could easily be construed as prohibited influence. Art. 10(2)(a) RAD at least qualifies the prohibition by referring to "undue" influence, thereby leaving some room for a more nuanced and balanced judicial assessment. By contrast, the German provision in § 4(2) VDuG does not explicitly contain such a qualification.

Finally, German law also imposes a strong disclosure obligation on QEs, requiring them to inform the court of the origin of the funds used to finance the representative action as well as to disclose any agreements concluded with third-party funders (§ 4(3) VDuG). This obligation enables the court to assess whether the third-party funding meets the admissibility criteria.²⁰³ However, the

¹⁹⁹ A. Stadler, (Fehlende) Finanzierung der neuen Verbandsabhilfeklage nach dem VDuG, in *Verbraucher und Recht*, p. 321 (2023); critically also C. Meller-Hannich, Kollektiver Rechtsschutz im Privatrecht und die Umsetzung der Verbandsklagenrichtlinie, in *Versicherungsrecht*, p. 1321, at pp. 1327–1328 (2023); B. Gsell, Die Umsetzung der Verbandsklagenrichtlinie – Effektiver Rechtsschutz für Verbraucher und Entlastung der Justiz durch die neue Verbands-Abhilfeklage?, *cit.*, at p. 982. See also P. Rott, in P. Rott, A. Halfmeier, W. Vandenbussche, L. Bugatti and J. Mucha, *Comparative Legal Study on Procedural Rules and their Impact on Collective Redress Actions in Europe*, *cit.* Similar limitations on funders' remuneration have also been introduced in other Member States. In Estonia and Poland, however, the permissible share is set at a higher threshold, with the funder's return capped at 30% of the proceeds. By contrast, Portugal and Slovenia have opted for a more flexible approach, refraining from fixing a specific percentage and instead requiring that the funder's remuneration be fair and proportionate.

²⁰⁰ See A. Stadler, (Fehlende) Finanzierung der neuen Verbandsabhilfeklage nach dem VDuG, *cit.* A study found that, across Europe, funded claims typically have a minimum value ranging from €1 million to €14 million, with funders generally receiving a share of 20–30% of the proceeds: The British Institute of International and Comparative Law, *Mapping Third Party Litigation Funding in the European Union*, *cit.*; see also https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/civil-justice/civil-and-commercial-law/third-party-litigation-funding-tpLf_en (last visited Mar. 2, 2026).

²⁰¹ A. Stadler, (Fehlende) Finanzierung der neuen Verbandsabhilfeklage nach dem VDuG, *cit.*

²⁰² Cf. B. Gsell and C. Meller-Hannich, Die Regulierung privater Prozessfinanzierung in der EU, in *Anwaltsblatt Online*, p. 160, at p. 163 (2023).

²⁰³ See the explanations accompanying the draft VDuG, BT-Drs. 20/6520, p. 71.

German rule again goes beyond the RAD, which merely requires the disclosure of a financial overview listing the sources of funding (Art. 10(3) sent. 2 RAD), rather than the production of the funding agreement itself. It therefore remains open to question whether this additional disclosure requirement is appropriate,²⁰⁴ particularly given the uncertainty as to whether the defendant may gain access to the funding agreement, thereby potentially obtaining an unjustified strategic advantage in the proceedings²⁰⁵.

Beyond the possible shortcomings resulting from the national transposition of RAD safeguards, the use of third-party litigation funding in representative actions raises broader concerns, both in terms of the attractiveness of this form of litigation for funders and its practical operability.

Funders typically evaluate several key criteria, including the likelihood of success of the case (including the probability of settlement), the estimated legal fees and procedural costs, and the solvency of the defendant. From an economic perspective, funders generally favour large-scale disputes capable of generating returns sufficient to offset the risks assumed²⁰⁶ (such as high-value antitrust litigation). In the field of consumer law, although certain representative actions may offer the potential for relatively high economic returns (such as cases concerning unlawful practices by large digital platforms²⁰⁷), the vast majority of actions rely on the aggregation of relatively modest individual claims, which may significantly limit their appeal to third-party investors. Moreover, even when private funders confine their interest to redress actions, it is important to note that many of the remedies envisaged by the RAD—including repair, replacement, price reduction and contract termination—do not align neatly with the monetary relief sought by funders.²⁰⁸ This divergence between the structure of consumer redress and the economic objectives of third-party investors may further reduce the practical feasibility of funding representative actions.

²⁰⁴ A. Stadler, Die neue Verbands(abhilfe)klage – Umsetzung der Richtlinie 2020/1828, cit., at p. 150.

²⁰⁵ It seems that the legislator assumes that the information is not generally disclosed to the trader (BT-Drs. 20/6520, pp. 70 - 71). However, the trader might invoke their right to be heard, which would then need to be balanced against the principle of equality of arms, cf. A. Stadler, (Fehlende) Finanzierung der neuen Verbandsabhilfeklage nach dem VDuG, cit., at p. 322; see also B. Gsell, C. Meller-Hannich, Die Regulierung privater Prozessfinanzierung in der EU, in *Anwaltsblatt Online*, p. 160, at p. 163 (2023); but see H. Schläpke, T. Lühmann, Kollektiver Rechtsschutz nach der Umsetzung der EU-Verbandsklagen-RL, in *Neue Juristische Wochenschrift*, p. 3385, at p. 3386 (2023), who argue in favour of general disclosure to the trader.

²⁰⁶ See also E. D'Alessandro, C. Poncibò, *State of play of the EU private litigation funding landscape and the current EU rules applicable to private litigation funding*, Research Paper for the European Parliament Research Service (EPRS), pp. 45 ff., (March 2021): Legal scholarship has pointed out that litigation funders generally focus on claims in which the estimated value is at least ten times higher than the financial resources required to fund the proceedings.

²⁰⁷ See, for example, the redress action brought against Meta, <https://www.meta-klage.de/> (last visited Mar. 2, 2026) and <https://www.padronus.at/meta-klage> (last visited Mar. 2, 2026).

²⁰⁸ A. Stadler, *Are class actions finally (re)conquering Europe? Some remarks on Directive 2020/1828*, in 30 *Juridica International*, p. 14 (2021). Moreover, it has been suggested that: “It remains to be seen, however, whether in practice there will be much appetite on the part of qualified entities to seek external funding; indeed, the not-for-profit nature of these entities makes their seeking external funding somewhat unlikely (and frowned upon in some jurisdictions) and would probably require some elaborate financial engineering to achieve”, D. Fairgrieve, *Collective redress in Europe: Moving forward or treading water?*, in *International and Comparative Law Quarterly*, 71, p. 476 (2020).

At the same time, the structural design of representative actions complicates the practical operation of funding agreements.²⁰⁹ This issue is particularly pronounced in jurisdictions that rely on late opt-in mechanisms, such as Italy and Germany, because these mechanisms add an additional layer of uncertainty regarding the size of the consumer group. Such uncertainty may be exacerbated by other phenomena like rational apathy and free-riding among consumers, while also complicating the practical implementation of funding agreements, particularly in relation to the procedures for entering into the agreement and securing the funder's share of any eventual recovery.

Currently, a specific difficulty arises from the absence of any mechanism under the Italian and German law to address the payment of the success fees that are promised to the third-party funders.²¹⁰ In fact, because funders are remunerated through a share of the proceeds, it is, in principle, the consumers who would be required to relinquish part of their recovery in order to compensate the funder. Some jurisdictions allow these costs to be shifted to other parties. In the Netherlands, for example, the funder's remuneration may be shifted to the defendant; it may be treated as part of the litigation costs subject to the "loser-pays" principle.²¹¹ However, such a rule raises its own concerns, as it could impose an excessive and arguably unjustified burden on the defendant. In German legal scholarship, it has been proposed that the losing defendant should bear the funder's costs up to a certain amount depending on the value in dispute.²¹² Nevertheless, this proposal has not been adopted in practice.

Given the functioning of typical TPLF agreements, consumers are expected to forego part of their redress in order to remunerate the funder. However, it remains unclear how consumers can meaningfully participate in the financial arrangement, since QEs lack the authority to dispose of consumers' substantive rights.²¹³ In the absence of pre-action mechanisms such as book-building or the implementation of credit-assignment models, there is no pre-existing agreement between the QE bringing the redress action and the consumers. As already indicated, this issue is further exacerbated by the German and Italian late opt-in mechanisms, which enable consumers to join the action up to three weeks after the oral hearing in Germany, or even after the judgment on the

²⁰⁹ It should be noted that in Germany, third-party litigation funding gives rise to difficulties not only in relation to redress actions, but also in other types of proceedings—in particular, those introduced or supported by legal tech companies. When addressing this issue, the legislator should therefore not confine its focus to representative actions, but establish a general framework ensuring greater legal certainty, see B. Gsell, C. Meller-Hannich, *Die Umsetzung der neuen EU-Verbandsklagenrichtlinie, Gutachten über die Umsetzung der europäischen Richtlinie über Verbandsklagen zum Schutz der Kollektivinteressen der Verbraucher (RL (EU) 2020/1828) ins deutsche Recht*, cit., pp. 46–49; for a detailed analysis, see T. Domej, *Gutachten A zum 74. Deutschen Juristentag Stuttgart 2024, Effektive Zivilrechtsdurchsetzung: Zugang zur Justiz, Prozessfinanzierung, Legal Tech – Welcher rechtliche Rahmen empfiehlt sich?*, pp. A 17–65 (2024).

²¹⁰ A. Stadler, *(Fehlende) Finanzierung der neuen Verbandsabhilfeklage nach dem VDuG*, cit., at p. 322; B. Gsell, *Die Umsetzung der Verbandsklagenrichtlinie – Effektiver Rechtsschutz für Verbraucher und Entlastung der Justiz durch die neue Verbands-Abhilfeklage?*, cit., at p. 982.

²¹¹ In particular, according to Art. 1018(2) Dutch Code of Civil Procedure, the court may order the unsuccessful party to pay the successful party's reasonable and proportionate legal and other costs, unless fairness dictates otherwise. This provision is interpreted as enabling courts to order the defendant to pay the funder's remuneration, see O. Furter, M. Jacobs and I. Brinkhof, *Netherlands*, in S. Friel and J. Barnes, *Litigation Funding 2025*, p. 5, at p. 13 (2025), available at <https://nivalion.com/wp-content/uploads/2025/04/Netherlands.pdf> (last visited Mar. 2, 2026).

²¹² See B. Gsell and C. Meller-Hannich, *Die Umsetzung der neuen EU-Verbandsklagenrichtlinie, Gutachten über die Umsetzung der europäischen Richtlinie über Verbandsklagen zum Schutz der Kollektivinteressen der Verbraucher (RL (EU) 2020/1828) ins deutsche Recht*, cit., p. 50; but see A. Stadler, *Die neue Verbands(abhilfe)klage – Umsetzung der Richtlinie 2020/1828*, cit., at p. 148.

²¹³ Whether such deduction would be permissible under Art. 20(3) RAD is unclear; see B. Gsell, C. Meller-Hannich, *Die Umsetzung der neuen EU-Verbandsklagenrichtlinie, Gutachten über die Umsetzung der europäischen Richtlinie über Verbandsklagen zum Schutz der Kollektivinteressen der Verbraucher (RL (EU) 2020/1828) ins deutsche Recht*, p. 49 (2021), available at https://www.vzbv.de/sites/default/files/downloads/2021/02/03/21-02-04_vzbv_verbandsklagen-rl_gutachten_gsell_meller-hannich.pdf (last visited Mar. 2, 2026).

merits in Italy. Moreover, in Italy, consumers might be dissuaded from entering into a contract with funders since they can join the action through an online procedure,²¹⁴ either through early or late opt-in,²¹⁵ without having to pay any success fee at the end: in fact, at this stage, consumers who opt in are not obliged by law to accept the funding agreement to join the representative action.²¹⁶ In Germany, where online registration is equally possible, it appears technically feasible that the trustee verifies whether the consumers have concluded the contracts during the implementation procedure; however, it remains unclear whether the VDuG permits collective redress actions to be limited to consumers who are willing to enter into such contracts.²¹⁷

Overall, while the increasing use of TPLF offers a promising avenue for enhancing access to justice in collective litigation, its practical implementation within European representative actions remains fraught with challenges. Nonetheless, given the key role that TPLF can play in ensuring that collective redress does not remain merely aspirational but achieves tangible impact, further reflection is warranted on how to make it operational in light of the specificities of national representative procedures. At the same time, any such framework must continue to maintain strict safeguards to ensure transparency, prevent conflicts of interest, and protect the weaker consumer parties from the risk of being exploited by funders.

IV.7 Comparative insights on costs and funding

The analysis of the Italian and German contexts demonstrates that the financing of representative actions remains one of the most critical determinants of the effectiveness of collective redress. Both jurisdictions operate under the “loser-pays” principle, ensuring procedural accountability and discouraging frivolous litigation, yet they face financial challenges that complicate practical access to collective redress.

Italy adopts a relatively flexible approach, allowing modest consumer participation fees as well as reductions in court costs, and implementing the reward-fee system for lawyers and the consumers’ common representative. It also permits third-party litigation funding under disclosure and conflict-of-interest safeguards. However, all these mechanisms, although potentially capable of alleviating the financial burden on QEs, are insufficient to fully address the challenges of financing collective redress actions.

Germany appears better equipped in terms of public funding. It provides QEs with state support, albeit subject to uncertainties and fluctuations in available resources. However, Germany has taken a more cautious approach as regards private funding options. It imposes strict limits on funders’ remuneration and restricts private contributions to QEs, reflecting a legal culture deeply concerned with limiting the commercialisation of litigation. While this approach reduces the risk of undue external influence, it may also constrain the practical viability of representative actions, particularly those requiring substantial resources to counter well-funded defendants.

In both legal traditions, TPLF has the potential to provide QEs with the financial means necessary to ensure that enhanced protection of consumers’ substantive rights does not collapse in the face of underenforcement. However, opening the door to TPLF without a more thorough reflection on its practical operability within the procedural framework of representative actions, and without carefully calibrating safeguards to preserve procedural fairness, transparency, and the protection of

²¹⁴ See *supra* Section III.4.

²¹⁵ On the relationship between the opt-out model and TPLF in the context of collective redress, see A. Piletta Massaro, *The new directive on an EU-wide representative action and third-party litigation funding: An opportunity for European consumers?*, in *Revija Kopaniške Škole Prirodnog Prava*, p. 95 (1, 2021).

²¹⁶ G. Afferni, *Bundling of claims by way of assignment in Italy*, in *Mass Claims*, p. 30 (2, 2022).

²¹⁷ See P. Röthemeyer, *Verbraucherrechtsetzungsgesetz* (Baden-Baden, 2024), § 4 mn. 17 (2024).

consumers as weaker parties, risks undermining these very objectives. It is therefore imperative to design TPLF frameworks in a way that balances financial feasibility with the effective safeguarding of collective interests, ensuring that funders' involvement supports, rather than distorts, the pursuit of justice.

V. CONCLUSION

In summary, it can be said that both Italy and Germany impose relatively high requirements for the admissibility of the new redress actions. This applies to both the similarity/homogeneity of the claims and the associations entitled to bring legal action. Although public authorities can bring representative actions in Italy, this option is not considered very impactful at present.

In both countries, there is a discrepancy between the intended effects of the Directive and the actual possibilities regarding the financing of associations and redress actions. The representatives bringing the action need an efficient and well-funded legal system. This also applies if they are acting primarily for altruistic reasons. It applies all the more so if they are expected to bring about genuine market corrections in the collective interest of consumers.

The question of a quorum is approached quite differently in the two countries: while the German legislator still seems to fear an influx of collective actions and has set a very high quorum, Italy's experience has revealed no such necessity. The differing starting points of the two legal systems are also reflected in differing scopes of application of the new redress action: The scope of the German implementation extends beyond the claims covered by the directive; in Italy, by contrast, this is not the case. Nevertheless, claims that are not covered by the new regime can be pursued collectively through alternative redress mechanisms. However, this could lead to overlaps between two distinct regimes in Italy.

Both countries have established special judicial jurisdictions for the new legal proceedings. The German and Italian legislators sought to ensure that redress actions are heard by experienced judges and to promote judicial specialisation. However, it is difficult to be more than cautiously optimistic about the ability of courts that are not yet experienced in this area and are already heavily burdened with other tasks to handle these proceedings. In Germany, this is particularly noteworthy given the traditional focus of judicial training on individual dispute resolution and the corresponding self-image of judges.

Both jurisdictions have decided for a late opt-in procedure, although there are differences in the timing of the opt-in. In any case, the easier it is to access the procedure, the more likely consumers are to participate. Italy's system, where late opt-in occurs after the outcome of the proceedings is known, is an example of this. This system would also be more attractive in Germany as an alternative to privately organised and advertised legal tech class actions.

The Italian system seems to offer some procedural advantages to the consumer associations with regard to the facts of the case and the collection of evidence. By contrast, the German system is more or less confined to applying the rules governing individual proceedings.

Both countries have opted for a multi-stage system for conducting proceedings. In both systems, the distribution of redress to consumers may entail significant administrative complexity and costs. These difficulties are, however, particularly accentuated in the German model, due to the coexistence of different types of judgments and the formalised structure of the distribution mechanism.

Against this background, both countries allow for the settlement of legal disputes to a considerable extent. In the case of collective redress actions, this is also a sensible approach to resolving the conflict of objectives between adjudicating individual claims and achieving procedural streamlining and efficiency. Although the period for reaching a settlement in German redress proceedings is short and begins late, the complicated German distribution system has a deterrent effect which can, nevertheless, promote settlement.

Considering the complexity of redress actions, resulting from both the requirements for admissibility and the procedure, it becomes apparent that they will be costly and that the effectiveness of the new representative action regimes ultimately hinges on their financial sustainability. In both Italy and Germany, the gap between the Directive's enforcement-oriented objectives and the practical ability of QEs to bring and pursue collective proceedings remains significant. Existing funding measures (whether based on public support, limited private contributions, modest consumer participation fees, reductions in court costs, or an award mechanism for lawyers) appear insufficient to ensure that representative actions can be used systematically and effectively, particularly against well-resourced defendants. As a result, there is a concrete risk that collective redress will continue to suffer from structural underenforcement, despite the formal expansion of procedural tools. This situation makes it imperative to look more seriously at alternative financing solutions, including third-party litigation funding. While TPLF cannot be regarded as a panacea and must be accompanied by appropriate safeguards, its potential to enhance access to justice and the practical enforceability of consumer rights cannot be ignored.

