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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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This article explores how the boundaries between consumer law and data protection law have increasingly become blurred in the digital economy, and considers how these bodies of law can be integrated in order to strengthen the protection of users' rights, starting from the concept of “redress vulnerability”. The essay begins from a European law perspective, then focuses on the intersections between consumer law and data protection law in the Italian and German legal systems. It analyzes some recent judicial rulings, highlighting the need to use consumer law tools to enforce data protection rights, and vice versa. The article frames data privacy as a consumer right and discusses the advantages of collective redress for the protection of consumers' digital rights, as well as the main challenges that aggregate litigation is likely to face in this field in the coming years.

Keywords: Consumer law – data protection – collective redress – enforcement – redress vulnerability

I. THE “REDDRESS VULNERABILITY” OF DIGITAL CONSUMERS

The term “redress vulnerability” refers to consumers’ “difficulty in seeking remedies for wrongs suffered”¹. This expression appears in a study devoted to “vulnerable consumers” conducted by the European Parliamentary Research Service (EPRS). It describes the complications which consumers may encounter when asserting their rights and interests before an administrative or judicial body. However, the EPRS does not dwell extensively on this concept, and focuses on other “layers”, types, and dimensions of consumer vulnerability instead². Similarly, the growing body of literature on “digital vulnerability” seldom devotes sustained attention to the law of remedies³.

One way to mitigate, or at least reduce, the redress vulnerability of consumers in online markets is through the use of collective redress mechanisms. Collective actions are judicial remedies which allow a plurality of individuals to bundle their claims and bring them jointly before a court, asking for an injunctive or compensatory relief, when these claims share a sufficient degree of

¹ N. Sajn, *Vulnerable consumers*, EPRS Briefing, 3 (2021).

² For a layered approach to vulnerability, see F. Luna, *Elucidating the Concept of Vulnerability: Layers Not Labels*, in *International Journal of Feminist Approaches to Bioethics*, 121 ff. (2009).

³ On digital vulnerability, among many, see M. Grochowski, *Digital Vulnerability in a Post-Consumer Society. Subverting Paradigms?*, in Max Planck Institute for Comparative and International Private Law Research Paper Series, 215 (2024); C. Crea - A. De Franceschi (eds.), *The New Shapes of Digital Vulnerability in European Private Law*, Varese (2024); G. Malgieri, *Vulnerability and data protection law* Oxford (2023); N. Helberger - M. Sax - J. Strycharz - H.W. Micklitz, *Choice Architectures in the Digital Economy: Towards a New Understanding of Digital Vulnerability*, in *Journ. of Consum. Policy*, 175 ff. (2022); C. Riefa, *Protecting Vulnerable Consumers in the Digital Single Market*, in *Eur. Bus. Law Rev.*, 1 ff. (2022). In general, on the concept of vulnerability, M. A. Fineman, *The Vulnerable Subject: Anchoring Equality in the Human Condition*, in *Yale Journ. of Law and Feminism*, 1 ff. (2009); for a group-based approach to vulnerability, L. Peroni - A. Timmer, *Vulnerable groups: the promise of an emerging concept in European Human Rights Convention Law*, in *I•CON*, 1056 ff. (2013).

“homogeneity”. In essence, they ought to present common “issues” of law or fact, or at least originate from a common title⁴.

This work explores collective redress as a way to strengthen the enforcement of consumer rights in the digital environment⁵. Particular attention is devoted to the data protection rights of consumers, which appear to be well suited to being presented in a collective proceeding. In the *big data* economic model, violations of data protection law often occur on a large scale, given the massive volume of personal data collected by companies. Collective proceedings can enhance the effectiveness of the rights and obligations provided for in data protection law, granting data subjects effective relief when their rights are infringed, and reducing their “redress vulnerability”. To this end, this article examines the intersections between data protection law and consumer law in the collective private enforcement of digital rights. Data protection and consumer law might in fact be used in an integrated way. Individuals frequently hold a “double” legal qualification: they are data subjects, according to Regulation EU/2016/679 (the General Data Protection Regulation, GDPR), and consumers. When users consent to the processing of their personal data in exchange for services or products, they provide a “double consent”: one to the processing of their data, in accordance with the GDPR, and the other to the contractual terms unilaterally drafted by the service provider⁶.

The intersections between consumer and data protection law are multifaceted. An unlawful processing of personal data may simultaneously constitute an unfair practice, or terms and conditions of a service may include abusive clauses that also impair the exercise of data protection rights. The same conduct may violate the GDPR and other consumer law rules, such as Directive EU/2011/83 (the “consumer rights” directive), as well as Directive 2005/29/EC on unfair commercial practices, or Directive 93/13/EC, on unfair contractual terms⁷.

In the spirit of this gathering, this analysis focuses on Italy and Germany. The two legal systems both adopt a “dignitary” and “personalistic” conception of data protection, and have developed similar rules with respect to the compensation of non-pecuniary losses. Moreover, data protection law and consumer law are extensively harmonized at the EU level, thus a common approach is needed for ensuring their effectiveness⁸.

⁴ On collective redress in Europe, in general, see, among many, M. E. Bartkus – M. Tulibacka – I. Varga – S. Voet (eds.), *Collective Litigation in Europe: Law and Practice*, Huntington, NY, 2025; C. I. Nagy, *Collective actions in Europe. A Comparative, Economic and Transsystemic Analysis*, Berlin (2022); D. Fairgrieve, *Collective redress in Europe: Moving forward or treading water?*, in *International and Comparative Law Quarterly*, 465 ff. (2020); S. Voet, *European Collective Redress and Compensation*, in *Effet de l'action collective. The Class Action Effect*, 125 ff. Montréal (2018); R. Caponi, *Azioni collettive: interessi protetti e modelli processuali di tutela*, in *Riv. dir. proc.*, 1210 ff. (2008); R. Donzelli, *La tutela giurisdizionale degli interessi collettivi*, Napoli (2008); R. Mulheron, *The Class Action in Common Law Legal Systems. A Comparative Perspective*, Oxford (2004).

⁵ On the application of collective redress for protecting fundamental rights in the digital age, G. Versaci, “*TikTok ban*” confermato dalla Supreme Court: le condotte contestate alla piattaforma cinese sotto le lenti del diritto europeo, in *Foro it.*, 306 ff. (2025); M. Federico, *Protezione dei dati personali e tutela collettiva. Itinerari di comparazione tra Europa e Stati Uniti*, 159 ff. Torino (2024); A. Palmieri – F. Altamura (eds.), *Class actions e meccanismi di tutela collettiva. Le prospettive di sviluppo e le sfide della dimensione digitale* Torino (2023).

⁶ C. Camardi, *Prime osservazioni sulla Direttiva UE/2019/770 sui contratti per la fornitura di contenuti e servizi digitali. Operazioni di consumo e circolazione dei dati personali*, in *Giustizia civile*, 499 ff. (2019); G. Resta, *I dati personali oggetto del contratto. Riflessioni sul coordinamento tra la Direttiva 2019/770 e il Regolamento 2016/679*, in *Ann. del contratto* 127 ff. (2018). See also, on this matter, F. Caggia, *Cessione di dati personali per accedere al servizio digitale gratuito: il modello del “consenso rafforzato”*, in V. D’Auria (ed.), *I problemi dell’informazione nel diritto civile, oggi. Studi in onore di Vincenzo Cuffaro*, 417 ff. Roma (2022).

⁷ See, on the relationship between consumer and data law, among many, recently, C. Angiolini, *Le intersezioni tra disciplina in materia di dati personali e diritto dei consumatori*, in C. Angiolini – A. Iuliani (eds.), *Manuale sulla protezione e circolazione dei dati personali*, Firenze 97 ff. (2025).

⁸ On the issue of ensuring the effectiveness of private law remedies in this field, see G. De Gregorio – S. Demkova, *The Constitutional Right to an Effective Remedy in the Digital Age*, in *Eur. Yearbook of Constitutional Law* 223 ff. (2023).

The article begins from a European law perspective, then narrows its scope, analyzing the intersections of consumer and data protection law in the Italian and German legal systems, with a focus on the law of remedies. The aim is to find a way to effectively tackle the above-mentioned “redress vulnerability” of consumers, and collective judicial remedies are claimed to be a tool to achieve this objective.

The paper starts with the analysis of concrete cases attesting the functioning of public and private enforcement at the EU level, looking at some recent rulings of the Court of Justice, and at the judicial interpreting the GDPR and Directive EU/2020/1828, on representative actions for the collective interests of consumers (hereinafter: RAD). These cases highlight the necessity and the possibility of using consumer law for enforcing data protection law, and vice versa.

This paper embraces a comparative law methodology, comparing the legal systems of Italy and Germany, with respect to the role of collective disputes in data protection and consumer law⁹. Both statutory law and case law are analyzed. The essay employs an integrated approach combining substantive and procedural law, while the topic also lies at the intersections of public and private law. On the one hand, the aim of this research is theoretical. It argues that data protection is not only an individual right, but also a collective and diffuse interest, and it maintains the difficulty in drawing boundaries between these categories, and between fundamental rights and consumer rights, in our digitized and globalized society. On the other hand, the aim of the research is also practical. It argues that consumer law tools may enhance the fundamental right to data protection, and that collective actions are not only suitable, but useful, to bring these interests to court in terms of access to justice and the protection of fundamental rights¹⁰.

The essay is structured as follows. Following this brief introduction, the second paragraph provides an overview of the European legal framework, advocating for a more holistic conception of consumer privacy. Then, the third paragraph focuses on why collective redress may be an effective tool to tackle consumer redress vulnerability and explores the collective dimension of consumer privacy. Afterward, the fourth paragraph examines the Italian and German systems of collective redress. The fifth paragraph shifts the analysis to some judicial cases where collective proceedings have been brought in the data protection field, in both Germany and Italy. Eventually, a conclusion is drawn, advocating for further integration of consumer law and data protection law, and pointing to the main challenges that collective judicial actions for enforcing consumer privacy are likely to face in the coming years.

II. CONSUMER LAW, COMPETITION LAW AND DATA PROTECTION LAW: A TRIANGLE

For a while, the European Union stressed that data protection law and consumer law should be kept separate¹¹. Formally, this was linked to a conception of personal data as attributes of

⁹ In general, on the role of comparative law in the digital age, G. Smorto, *Il ruolo della comparazione giuridica nella contesa per la sovranità digitale*, in DPCE online 339 ff. (2023).

¹⁰ On the access to justice movement and the role of collective redress in it, B. G. Garth – M. Cappelletti, *Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective*, in Buffalo Law Review, 181 ff. (1978).

¹¹ A critique to this perspective is offered by G. Smorto – A. Quarta, *Diritto privato dei mercati digitali*, 155-157 Firenze (1st ed. 2020). See also S. Pagliantini, *GDPR e consumerizzazione dei dati personali*, in Giurisprudenza italiana, 2212 ff. (2023); F. Zuiderveen Borgesius – N. Helberger – A. Reyna, *The perfect match? A closer look at the relationship between EU consumer law and data protection law*, in Common Market Law Review, 1427 – 1466 (2017); O. Lynskey – F. Costa Cabral, *Family ties: the intersection between data protection and competition in EU law*, in Common Market Law Review, 11-50 (2017).

personality rather than tradable commodities. Integrating data protection and consumer law more closely would have implied acknowledging the property-like nature of personal data¹².

However, beyond statements and declarations, separating data protection and consumer law also served to distribute competences between the different supervisory authorities. Consumer authorities would enforce consumer law, while data protection authorities would enforce data protection law rules.

This assumption was finally and remarkably challenged by the German *Bundeskartellamt* (*BKartA*), in the well-known case *Facebook Inc. et al v. Verbraucherzentrale Bundesverband e.V.*¹³. Facebook was accused of abusing its dominant position in the social media market, thereby distorting competition. The Federal Cartel Office argued that Facebook had unduly secured its dominant position by collecting the personal data of millions of users without their valid consent, in breach of the GDPR, and created barriers for others trying to access the market.

Facebook appealed the decision of the *BKartA* to the Higher Regional Court of Düsseldorf. The question of whether a national competition or consumer law authority is entitled to declare a violation of data protection law was referred to the Court of Justice. Specifically, the German court asked whether this complied with the GDPR, which assigns the task of enforcing data protection law to data protection supervisory authorities.

In case C-252/21, the CJEU took a clear stand in favor of enhanced cooperation between different authorities, and integration between data, competition and consumer law. It stated that in investigating the compliance with data protection law it may be “*a vital clue to assess the compatibility of a certain conduct with the interests of the market or to assess the consequences of a certain practice for consumers*”. It then hoped for sincere cooperation among national authorities.

The European Commission in its investigation into Apple and Metaplatforms for breaches of Regulation EU/2022/1925, the Digital Markets Act (hereinafter: DMA), eventually stated that Metaplatforms’s controversial “pay or okay” model violated the DMA, infringing antitrust and data protection law rules, and therefore imposed heavy sanctions on the platform¹⁴.

Italian jurisdictions have likewise supported the application of consumer law rules in cases involving the right to data protection. In 2018, the Italian Competition and Market Authority (Autorità Garante della Concorrenza e del Mercato, AGCM) sanctioned Metaplatforms for its misleading commercial practices. The Authority affirmed that Metaplatforms was deceiving consumers declaring that its main social media service, Facebook, was provided for free. The Authority declared that users’ personal data served as counter performance for the platform’s service. Facebook filed an appeal against the Authority’s decision before the regional administrative court (TAR Lazio), then before the Council of State. Both courts upheld the decision of the AGCM, confirming its competence and the applicability of consumer law, specifically of the

¹² See the European Data Protection Board Opinion on Directive 770/2019, available at: https://www.edps.europa.eu/sites/default/files/publication/17-03-14_opinion_digital_content_en.pdf. The EDPS has vouched against the possibility of formally qualifying personal data as counter performance, affirming that: “There might well be a market for personal data, just like there is, tragically, a market for live human organs, but that does not mean that we can or should give that market the blessing of legislation. One cannot monetise and subject a fundamental right to a simple commercial transaction, even if it is the individual concerned by the data who is a party to the transaction”.

¹³ See C. Osti – R. Pardolesi, *L’antitrust ai tempi di Facebook*, in *Mercato Concorrenza Regole* 195 ff. (2019).

¹⁴ See European Commission, press release, “The European Commission finds Apple and Meta in breach of the Digital Markets Act”, available at: https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip_25_1085/IP_25_1085_EN.pdf. On the integration between competition and data law, I. Graef – B. van der Sloot, *Collective Data Harms at the Crossroads of Data Protection and Competition Law: Moving Beyond Individual Empowerment*, in *European Business Law Review*, 513 ff. (2022).

prohibition of unfair commercial practices, admitting that data subjects can rely on consumer law rules in addition to the GDPR¹⁵.

The same approach is desirable for private enforcement. In Germany, data protection has been included among the rights that can be enforced through collective injunctions since 2001. Under Section 2 of the *Gesetz über Unterlassungsklagen bei Verbraucherrechts- und anderen Verstößen* (*Unterlassungsklagengesetz*, hereinafter: UKlaG, the “law on injunctions against infringements of consumer law and others”) qualified entities may seek collective injunctions to enforce consumer law. This includes “*the rules defining the lawfulness of the collection of personal data of a consumer by an undertaking, the processing or use of personal data which have been collected by a business in relation to a consumer, where the data are collected, processed or used for purposes of advertising, market and opinion research, use by an information agency, a personality and usage profile establishment, of any other data business or for similar commercial purposes*” (Section 2, UKlaG).

Integrating consumer, data protection, and competition law not only strengthens substantive protection for digital users, but also saves judicial and administrative resources¹⁶, enhances legal certainty, secures consistency and coherence of decisions. Thus, the CJEU affirmed that consumer law tools can be used to enforce data protection law interests also as far as private enforcement is concerned.

Specifically, the CJEU vouched for the integration between data and consumer law in private enforcement in case C-319/20, *Metaplatforms v. the German Federal Union of Consumer Organizations and Associations*. This case also originated in Germany, when the German Federal Union of Consumer Organizations and Associations brought a collective injunction against Meta pursuant to Section 2 of the UKlaG. The Higher Regional Court of Berlin asked the Court of Justice about the compatibility with Article 80 GDPR of a law allowing a consumer organization to raise a collective claim for securing privacy rights, namely the UKlaG. Article 80 GDPR enables the representation of the data subjects by an entity upholding their rights on their behalf. The case offered the Court the chance to rule on the possibility of using consumer collective redress for enhancing data protection rights¹⁷.

Although the RAD was not yet in force¹⁸, the CJEU expressly referred to it. The RAD lists the GDPR among those European legal acts whose violation, pursuant to Annex I, may ground a representative action for “the collective interests of consumers” (Annex I, n. 56; Article 2, RAD). Annex I of the RAD also enumerates other legal acts which are closely linked to the GDPR, such as the Digital Services Act, the AI Act, Directives EU/770/2019 and 771/2019. The Court

¹⁵ TAR Lazio nn. 260-261/2021, Cons. di Stato n. 2631/2021; among many, see V. Ricciuto, *Lo scambio dei dati con i contenuti e i servizi digitali: una nuova modalità di contrarre?* in EJPLT 20-33 (2023) and F. Bravo, *La “compravendita” di dati personali?*, in Diritto di internet, 531-540 (2022).

¹⁶ See J. G. Backhaus – A. Cassone – G. B. Ramello, *The law and economics of class actions in Europe: Lessons from America*, Cheltenham (2012); A. Bitetto, *European vs. American Class Action: Discrepancy in Law and Economics Perspective!*, in Comparative Law Rev., 195 ff. (2023).

¹⁷ See on this case, M. Federico, *European Collective Redress and Data Protection. Challenges and Opportunities*, in Medialaws 86 ff. (2023); K. Wörle – O. J. Gstrein, *Collective Data Protection Litigation*, in Eur. Journ. of Comp. Law and Gov., 293 ff. (2024). The very same case gave rise to another preliminary ruling proceeding, one year later, case C-757/22, *Metaplatforms v. the German Federal Union of Consumer Organisations and Associations (Metaplatforms II)*, 11 July 2024. Moreover, the Court of Rotterdam has recently raised a request for preliminary ruling to the CJEU (C/2025/5934) asking whether Article 80 GDPR legitimises collective actions for damages.

¹⁸ On the RAD and its implementation, P. Rott – A. Halfmeier – W. Vandenbussche – L. Bugatti – J. Mucha, *Comparative legal study on procedural rules and their impact on collective redress actions in Europe*, Study commissioned by BEUC, 2025; A. Biard, *Collective redress in the EU: a rainbow behind the clouds?*, in ERA Forum, 197 ff. Berlin (2018); G. Scarchillo, *Class action: dalla comparazione giuridica alla formazione del giurista: un caleidoscopio per nuove prospettive* Torino (2nd ed. 2024).

explicitly recognized the RAD as a potentially important instrument for enforcing data protection law, and increasing its effectiveness.

III. THE CASE FOR COLLECTIVE REDRESS

The RAD represents the latest step in the development of a European “procedural consumer law”, to borrow the terminology of Maria Cecilia Paglietti and Vincenzo Zeno-zencovich¹⁹.

Representative actions may be brought when the same commercial practice violates both consumer and data protection rights. As the Court of Justice noted, “*the infringement of a rule relating to the protection of personal data may at the same time give rise to an infringement of rules on consumer protection or unfair commercial practices*”²⁰.

Representative actions, however, are not the only collective enforcement mechanism available for data protection law. Article 80 GDPR provides a distinct legal basis for starting collective proceedings in the interest of data subjects, irrespective of their nature as consumers and market actors.

Article 80 leaves the choice up to the laws of Member States on whether to allow bodies, organizations and associations to lodge a complaint with a supervisory authority, or to ask for a judicial remedy, with or without a data subject’s mandate, when the rights of the data subjects have been infringed²¹.

This provides data subjects with a “double shield”: the one of consumer law, and the other of data protection law.

Collective proceedings present significant advantages in terms of access to justice, enabling individuals to bundle their claims. Pecuniary and non-pecuniary losses may be small on an individual scale, but acquire great relevance when considered collectively, bringing to light the societal dimension of privacy harms, and performing a deterrent effect against unlawful conducts²². As to the suitability of data protection rights for collective proceedings, the answer appears affirmative. Data protection is, indeed, an individual and fundamental right, but it does also have a serial and collective dimension.

In each relationship and contractual agreement between platforms and their users, the right to control the flow of one’s personal data belongs to each individual. Yet, in many contexts - for instance, when profiling techniques “group together” a plurality of individuals for marketing purposes, or targeted advertising, and discriminate against them, or profile them inaccurately - data protection takes on the features of a collective interest. This collective interest can be traced to a certain group, the members of which hold an interest in the processing of their data happening in a “fair, lawful, and transparent” manner, as prescribed by the GDPR. Such an interest can then be represented by a qualified entity, which may assert it in court.

This situation is similar to other subjective juridical situations in consumer law, such as the interest in fair competition, or in proper market functioning, which have the dual nature of an individual *and* collective interest.

¹⁹ M. C. Paglietti – V. Zeno-zencovich, *Diritto processuale dei consumatori* Roma (2011).

²⁰ CJEU, *Metaplatforms*, I, cit.

²¹ On the interpretation of Article 80 GDPR, see F. Episcopo – A. Van Duin – A. Jonkers, *Towards Collective Redress for Data Protection Harms Under the GDPR*, in *Mass Claims Journal*, 67 ff. (2025); E. Palmerini, *Il problema dei (nuovi) danni negli illeciti algoritmici*, in *Resp. civ. prev.*, especially 430 f. (2025); G. Versaci, *Trattamenti illeciti dei dati personali e tutele collettive dei consumatori*, in F. Altamura, A. Palmieri (eds.), cit., 95 ff.; M. Federico, *European Collective Redress*, cit.

²² See I. Cofone, *The Privacy Fallacy: Harm and Power in the Information Economy* (2023); D. Citron – D. J. Solove, *Privacy harms*, in *Boston University Law Review* 818 (2022); A. Palmieri – M. Federico, *Collective privacy litigation and the law of torts. A comparative perspective*, in *Siena-Tirana Comparative Law Day. Legal Issues in the Digital Age, Proceedings Book*, 7 ff. Tirana (2025).

In the field of data protection, we also witness a societal interest in a data driven economy where the fundamental rights of the individuals are safeguarded and respected, and their personal data processed fairly. “Group data protection” is the term that can effectively encompass this multi-layered and stratified dimension of data privacy²³.

IV. THE IMPLEMENTATION OF THE REPRESENTATIVE ACTION IN ITALY AND GERMANY

For collective actions to flourish, it is vital to overcome the longstanding skepticism and reluctance that civil law systems, such as those of Italy and Germany, and other European Countries, have traditionally shown toward aggregate litigation mechanisms²⁴.

It remains to be seen how collective proceedings will evolve in this field across different European states. Both consumer and data law are extensively harmonized by European law. However, Member States enjoy a wide margin of discretion in civil procedure law, due to the principles of subsidiarity and procedural autonomy²⁵.

a) Currently, in the Italian legal system there are two main pathways for starting a collective proceeding in private law matters. The first is the so-called “Italian class action”, laid down in articles 840 *bis* ff. of the Italian civil procedure code (c.p.c.)²⁶. The second is article 140 *ter* ff. of the Italian consumer code, implementing the European Directive on representative actions for the collective interests of consumers²⁷.

It should be taken into due consideration that these two procedural law mechanisms are “mutually exclusive”. According to Article 140 *ter*, comma II, of the consumer code, when a qualified entity intends to start a collective claim on behalf of a plurality of consumers, it must use the representative action. Therefore, the representative action is more likely to be used than the Italian class action, which is not a bad outcome in and of itself, as representative actions offer procedural advantages over Italian class actions. One of these is the possibility to seek both injunctive and redress measures within the same proceeding, which is not an option under the Italian class action regime.

²³ M. Federico, *Protezione dei dati personali*, cit., 159 ff. This expression is driven from the notion of group privacy, famously elaborated by scholars such as L. Taylor – L. Floridi – B. van der Sloot (eds), *Group privacy: new challenges of data technologies* (2017). On the “group” dimension of privacy, see also A. Mantelero, *Personal data for decisional purposes in the age of analytics: from an individual to a collective dimension of data protection*, in Comp. Law & Sec. Rev., 238 ff. (2016).

²⁴ A. Stadler, *Are class actions finally (re)conquering Europe?*, in Juridical international, 15 ff. (2021). Extensively, A. Uzelac – S. Voet, *Class actions in Europe: holy grail or a wrong trail?* Berlin (2021).

²⁵ See in general F. Gascón Inchausti – B. Hess (eds.), *The Future of the European Law of Civil Procedure. Coordination or Harmonisation?*, Cambridge (2020).

²⁶ On the Italian class action, see, among many, U. Ruffolo (ed.), *Class action ed azione collettiva inibitoria. Commento sistematico alla legge 12 aprile 2019 n. 31*, (Milano) 2021; P. Pardolesi – R. Pardolesi, *La (azione di) classe non è acqua*, in Foro it., 325 ff. (2019); A. Giussani, *La riforma dell'azione di classe*, in Riv. dir. proc. 1572 ff. (2019); P.G. Monateri, *La riforma italiana della class action tra norme speciali processuali e ricostruzione della tutela civilistica*, in Danno e resp., 312 ff. (2019); R. Pardolesi, *La classe in azione. Finalmente*, in Danno e resp., 301 ff. (2019); G. Ponzanelli, *La nuova class action. Commento a legge 12 aprile 2019 n. 31*, in Danno e resp., 306 ff. (2019); C. Consolo, *La terza edizione dell'azione di classe è legge ed entra nel c.p.c. Uno sguardo d'insieme ad un'ampissima disciplina*, in Corriere giuridico, 737 ff. (2019). On the previous regime, among many, E. Ferrante, *La via italiana alla "class action" fra interesse di classe e regole ostruzionistiche per le adesioni*, in Giur. it., 66 ff. (2017).

²⁷ On the Italian representative action, E. Camilleri, *L'azione rappresentativa e il raccordo imperfetto con il diritto privato regolatorio. Le decisioni delle authorities tra libero apprezzamento e presunzioni giurisprudenziali: spunti dall'arrêt Repsol*, in NLCC, 437 ff. (2024); G. De Cristofaro, *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.*, in NLCC, 1 ff. (2024). On the relationship between the Italian class action and the Italian representative action, B. Randazzo – A. Henke – S. Voet (eds.), *L'azione di classe italiana nel quadro europeo: profili sostanziali e processuali*, Torino (2025).

An individual may also initiate an action on behalf of a plurality of data subjects, using the Italian class action. Both Articles 840 *bis* and 840 *sexiesdecies* c.p.c. allow an individual to act as a class representative in injunctive and compensatory proceedings. Nevertheless, it seems unlikely that a single person would bear the burden of a collective action on behalf of a large group, given the Italian litigation culture, and the lack of economic resources and incentives.

However, it can be argued that an entity meeting the requirements of Article 80 GDPR can bring forward an action on behalf of a plurality of users when their rights as *data subjects* – not as consumers – are infringed²⁸. For instance, this may occur in cases of data breaches.

b) As far as Germany is concerned, the implementation of the RAD has consolidated and unified the mechanisms of existing group actions²⁹. The KapMug and the UKlaG have been adapted to EU law, and the Verbraucherrechtsetzungsgesetz (VDuG), the law transposing the Directive, has introduced a new collective compensatory action: the Abhifelklage³⁰. Thanks to this new instrument consumers can finally seek damages in a collective proceeding³¹.

In Germany, collective injunctions have historically been employed in the field of data protection. The famous European cases *Fashion ID* and *Metaplatforms* both originated from two German collective actions where a consumer organization asked for injunctive measures against the unlawful processing of personal data³².

Moreover, the law implementing the Directive allows a plurality of small companies to join a representative action, which seems to be particularly interesting. In fact, some associations may challenge digital platforms with the aim to simultaneously protect the rights of the data subjects and promote the rights of small companies. For instance, this model could work extremely well with the right to data portability (Article 20, GDPR). This right not only promotes users' informational self-determination, but also favors fair competition in the market. This model may be especially useful in light of the Data Governance Act (Regulation EU/2022/868), which introduces the new role of “*data intermediation service providers*”. If they fulfill the requirements laid down in the VDuG, data intermediaries or data cooperatives could potentially act as class representatives of groups of users in collective proceedings³³.

V. THE COMING TO LIFE OF COLLECTIVE PROCEEDINGS IN THE FIELD OF DATA PROTECTION

Collective actions in the field of data protection law are on the rise, in Germany and Italy.

²⁸ It is noteworthy that Article 80, GDPR, has been implemented in Italy by a modification of Article 10 of the legislative decree n. 150/2011. The law lists the requirements that entities shall have to represent a data subject in court, but it does not consider the collective dimension of Article 80 GDPR.

²⁹ On the previous regime A. Halfmeier, *Collective Litigation in German Civil Procedure*, in The Cambridge Handbook of Class Actions. An International Survey, B. T. Fitzpatrick – R. S. Thomas (eds.), 233-245 Cambridge (2021).

³⁰ *Verbraucherrechtsetzungsgesetz vom 8. Oktober 2023* (BGBl. 2023 I Nr. 272). See P. Rott, *The new German representative action - a mixed bag*, in *Revue européenne de droit de la consommation*, 255 ff. (2024); L. Hernkohl, *Collective Actions for Competition Law Violations and DMA Infringements Following the Transposition of the Representative Actions Directive (Germany)*, in *Journal of European Competition Law and Practice*, 311 ff. (2024); D. Markworth, *Implementation of the Representative Actions Directive (RAD) in Germany – Does the “VDuG” lack bite?*, in *Observatoire des actions de groupe et autres actions collectives*, 1 ff. (2023).

³¹ The previous model of the Musterfeststellungsklage allowed consumer associations to bring forward an action to obtain a declaratory judgement deliberating on the harmfulness of a certain conduct, but then it was up to consumers to sue, individually, the defendant, in order to recover damages (A. Stadler, *Are Class Actions?*, cit., 15-16).

³² On the ongoing proceeding for obtaining collective redress for unlawful personal data processing in front of the Hamburg court, see A. Palmieri – M. Federico, *Collective privacy litigation*, cit., 9 ff.

³³ On data intermediaries and the collective dimension of data protection G. Resta, *Pubblico, privato, collettivo nel sistema europeo di governo dei dati*, in *Governance of/ through Big Data, Vol. II*, 614 ff Roma (2023); F. Bravo (ed.), *EU Data Cooperatives. L'ingresso delle cooperative di dati nell'ordinamento europeo*, Torino (2024).

Recently, SOMI, a Dutch-registered representative entity, initiated a transborder collective proceeding in Germany against TikTok. SOMI is seeking both injunctive and compensatory relief on behalf of the represented subjects. It claims that TikTok manipulated users - especially minors – by unduly collecting their data for targeted advertising, failing to adopt adequate security measures, and neglecting to report data breaches. The same entity has also sued the platform X, for failure to report data breaches and unlawful processing of users' sensitive data³⁴.

Furthermore, another consumer organization has recently launched a collective action against Google asking for damages for unlawful processing of individuals' data, before the Hamburg court³⁵.

Meanwhile, in Italy, a collective proceeding was recently started against Google by the association Algoritmo. The association brought a collective injunction using the scheme of Article 840 *sexies-decies* c.p.c. to enforce the represented parties' right to be forgotten. Specifically, the association has asked for measures to secure Google's compliance with the GDPR when handling delisting requests submitted by users. The entity has also requested an order requiring Google to establish a system for the rapid management of users' complaints, and to avoid the re-publishing of harmful, defamatory or false content under different domain names³⁶.

Another collective action has been announced by the consumer association Altroconsumo against the company Infocert following a data breach that occurred at the beginning of 2025. The association issued a "cease-and-desist" letter to ask Infocert to provide information on the measures put in place to restore security after the data breach, and to recognize a lump sum compensation of 400 euros to every user affected by it.³⁷

A collective action for damages was also initiated in the famous case Cambridge Analytica, pursuant to the former (now repealed) Article 140 *bis* of the consumer code. However, this latter case was settled before reaching a judicial decision³⁸.

VI. FUTURE PATHWAYS AND MAIN CHALLENGES

Collective litigation in the field of data protection law is still at a very early stage, not only in Italy and Germany, but overall across Europe, and there are several challenges and questions that must be addressed in the coming years for it to become truly effective.

The first challenge pertains to cross-border actions. The RAD enables transborder actions, but the Brussels I *bis* Regulation has yet to be updated to reflect the specificities of collective litigation. In one of the *Schrems* cases, the Court of Justice explicitly stated that the consumer-jurisdiction rule does not apply to aggregate proceedings and called for a reform of the Brussels I *bis* Regulation, to make it fit for the digital age and mass claims³⁹.

³⁴ About this collective action see <https://www.medialaws.eu/tiktok-and-x-faces-class-action-suit-for-violations-of-dsa-gdpr-and-ai-act/>.

³⁵ Some information about the judgment is available at the following link: <https://www.sammelklagen.de/verfahren/facebook>.

³⁶ Information about the proceeding can be found here: <https://www.classactiongoogle.com/>.

³⁷ Information about the proceeding can be found here: <https://www.altroconsumo.it/azioni-collettive/dati-infocert>.

³⁸ See the joint statement by Facebook and Euroconsumers available at: https://assets.ctfassets.net/iapmw8ie3ije/1sxhDq70DZNeZgPR3jsXjz/35bf318dca775644f2b725d118774939/Joint_press_release_with_Facebook.pdf.

³⁹ CJEU, Case C-498/16, 25 January 2018, *Maximilian Schrems v. Facebook Ireland Limited*. Recently, see CJEU, Case C-34/24, *Stichting Right to Consumer Justice, Stichting App Stores Claims v. Apple*, 2 December 2025, where jurisdiction for a collective, transborder claim was set in the place where the harm occurred, namely where the users targeted by an anticompetitive practice were established.

Furthermore, the outcome of these collective proceedings still remains to be seen. Will they culminate in settlements? In judicial decisions? What are the implications of allowing settlements in a sensitive field like data protection law?

A further point of complexity regards the compensation of non-material damages. This topic has been the subject of extensive scholarly debate. Privacy harms are often non-material harms, hard to prove, and difficult to quantify⁴⁰.

In Italy and Germany, non-material harm ought to overcome a certain “threshold” in order to be compensated⁴¹. Nevertheless, in the light of the recent judgment of the CJEU in case *Österreichische Post AG v. UI*, this orientation must now be reconsidered in relation to non-material privacy harms⁴². In fact, the Court held that setting a threshold for awarding damages for unlawful processing of personal data is incompatible with EU law. Non-material privacy losses should always be compensated, however small.

This development discloses interesting opportunities for collective redress. In fact, when small individual claims for non-pecuniary damages under the GDPR are aggregated, they reveal their “social dimension”. Collective proceedings expose the massive dimension of privacy harms, and their impact on a democratic digital public sphere.

For aggregate litigation to be effective, public and private enforcement should be properly aligned. While Directive EU/2014/104 coordinates judicial and administrative enforcement in the field of competition law, explicit rules are lacking in other areas of the law⁴³.

Doubts may arise when a collective proceeding for the unlawful processing of personal data is brought before a judicial authority, while the very same practice is being assessed by a judge of a different State, or by a supervisory authority. What happens if administrative and judicial authorities assess the practice differently? What if a consumer authority ascertains the unfairness of a certain practice, but the judge reaches a different outcome? What is the binding force of the authority’s decision in an ongoing judicial proceeding? Italian courts are currently assessing and considering these issues, but a clearer legislative framework appears necessary.

Even though there are still many challenges to be overcome, the time has come for the collective private enforcement of data protection law to be tried and tested. To ensure its effectiveness, integration between consumer law and data protection law is essential.

Collective litigation can be a flexible and effective means to safeguard users’ digital rights in the context of a regulatory framework that is increasingly struggling to keep pace with technological developments. Notwithstanding the challenges, difficulties and inevitable risks, collective claims can contribute to the process of adapting our legal systems to the rapid transformations of our present economic and social reality.

⁴⁰ See I. Cofone, *The Privacy Fallacy*, cit.; K. Wörle – O. J. Gstrein, *Collective Data Protection*, cit., 289 ff.; J. Cohen, *Law for the platform economy*, in UC Davis Law Rev., 177 ff. (2017).

⁴¹ For an overview of civil liability rules in both legal systems, see G. Alpa, *Responsabilità civile (profili di diritto comparato)*, in I tematici VII, Responsabilità civile, dir. by C. Scognamiglio, 746 ff. (2024).

⁴² CJEU, Case C- 300/21, *UI v. Österreichische Post AG*, 4 May 2023, commented on *Il Foro Italiano*, 268 ff., 2023 by A. Palmieri – R. Pardolesi, *Mai futile il danno non patrimoniale da violazione della privacy (purché lo si provi!)*; S. Pagliantini, *Un altro palcoscenico della «guerra» tra le corti: il danno (immateriale) bagatellare dell’art. 82 Gdpr*; M. Federico, *«La tempesta perfetta»: ultime dalla Corte di Lussemburgo su danno (non patrimoniale) da illecito trattamento dei dati personali e possibili risvolti in tema di tutela collettiva*; see also U. Salanitro, *Illecito trattamento dei dati personali e risarcimento del danno nel prisma della Corte di Giustizia*, Riv. dir. civ., 429 ff. (2023); C. Scognamiglio, *Danno e risarcimento nel sistema del Rgdpr: un primo nucleo di disciplina eurounitaria della responsabilità civile?*, Nuova giur. civ. comm., 1151 ff. (2023); C. Camardi, *Illecito trattamento dei dati e danno non patrimoniale. Verso una dogmatica europea*, Nuova giur. civ. comm., 1137 ff. (2023).

⁴³ E. Camilleri, *L’azione rappresentativa*, cit., 437 ff. On the need to coordinate public and (collective) private enforcement in privacy litigation, K. Wörle – O. J. Gstrein, *Collective Data Protection*, cit., 304 ff.

