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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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DISCLOSURE OF EVIDENCE IN COLLECTIVE ACTIONS: THE ITALIAN MODEL IN A COMPARATIVE PERSPECTIVE

*Andrea Piletta Massaro**

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Collective redress represents one of the most powerful tools provided in the interest of consumers and, more generally, individuals to recover the damages in case of a mass tort. This topic stimulated a quite copious academic debate and brought to various reforms issued by both national legislators and the European Union. One of the most impactful aspects has regard to the disclosure of evidence in the context of collective claims, given the imbalance between the parties which usually characterise such actions. Therefore, particular rules are needed to facilitate the collection of evidence in favour of plaintiffs, thus safeguarding the rights of defendants. Additionally, the increased scholarly and regulatory interest over the Third Party Funding of collective claims also raised the issue of the disclosure of such agreements in the context of these disputes. Therefore, this article will scrutinise how the Italian legislator addressed these issues in the recently enacted measures on collective actions. This study will be conducted through a comparative approach, in particular with reference to the model introduced by means of Directive (EU) 2020/1828 by the European legislator, and the French system.

Keywords: Collective Redress – Representative Actions – Disclosure of Evidence – Italy – France

I. INTRODUCTION: CONTEXTUALISING THE ISSUE

Collective or representative actions now constitute a cornerstone in the ‘portfolio’ of remedies available to consumers, citizens or companies affected by the so-called mass torts. The importance of these tools stems from the nature of the latter torts, given that the same behaviour may harm a multitude of subjects (e.g., in case of competition law infringements, product liability issues and, as recently recognised, damages related to climate change¹). Therefore, although this kind of actions was a peculiar trait of common law jurisdictions,² they progressively became part of the continental Europe legal systems, as well. In this realm, a twofold parallel reception of this tool underwent: From one side, each member State tried to introduce its own collective or representative action

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¹See European Court of Human Rights, Grand Chamber, decision 9 April 2024, case no. 53600/20, *Verein Klimasenioren Schweiz and others v. Switzerland*. The action was brought by an association representing older women worried about the possible negative consequences of climate change on their health, and the ECHR recognised the responsibility of the Swiss State, under Article 8 of the European Convention on Human Rights, for not having respected its obligations related to greenhouse gases' reduction. See N. Burnett, J. Dawson, *A new precedent for climate change in human rights law*, House of Commons Library, 1 May 2024, available at <https://commonslibrary.parliament.uk/a-new-precedent-for-climate-change-in-human-rights-law/> (last visited Aug. 6, 2026). More generally, see Salim, *Collective Redress and Climate Change Litigation in the EU: A Promising Future or More of the Same?*, in I. Alogna, C. Billet, M. Fermeglia, A. Holzhausen (Eds.), *Climate Change Litigation in Europe* (2025).

² For an overview about class actions in common law systems, see G. Scarchillo, *Class action. Dalla comparazione giuridica alla formazione del giurista: un caleidoscopio per nuove prospettive* 27-88 (2024).

system, whilst a debate started developing at the EU Institutions level.³ This led to the introduction of a multitude of collective redress schemes across the Single Market, thus creating a certain level of ‘procedural fragmentation’, given the differences among the various national civil procedure legal traditions. These divergencies were ranging from the configuration of the tool itself (for instance, as collective or representative action regimes), to more truly procedural issues, such as the formalities to be carried out, the intersection with decisions of administrative Authorities (an aspect which is crucial in claims stemming from violations of competition rules), the adhesion mechanisms and, not less importantly, disclosure of evidence. This led to a high degree of regulatory competition, with certain systems being the preferred *forum* for these actions due to a more favourable procedure, whilst others were characterised by mechanisms too burdensome to manage and not providing effective results to the claimants.

The collective redress models introduced in the European context have of course some commonalities with the American ‘ancestor’, the properly defined *class action*, but they generally tend towards a system referred to as representative action, given the fact that the introduction and the management of the claim is generally devolved to a representative entity, usually an association which is active in protecting a certain kind of interests, e.g., consumers’ interests.⁴ This is the model, for instance, promoted by Directive (EU) 2020/1828,⁵ by the French *action de groupe*⁶ and also by the Italian consumeristic representative action recently included in the Italian *Codice del Consumo* (Consumer Code).⁷ Similarly, but also contrarily, the ‘generalist’ Italian collective redress scheme contained in the *Codice di Procedura Civile* (Civil Procedure Code, henceforth Cpc), although designed for providing standing to the cited representative associations, allows also single class members to file a collective claim,⁸ more in the spirit of a proper class action model.

In the context of these claims, overcoming the evidentiary burden is one of the main challenges. This proves essential in two moments. First, during the proceeding on the merit of the claim it is necessary to establish the existence of a common violation (and according to the *commonality* requirement). For this purpose, the representative body must demonstrate that a defendant’s practices have produced a common harm that affects a group of consumers, users, citizens, etc. This typically involves gathering documents, expert reports, statistics, and other forms of aggregate evidence, which might include official records, industry audits, and consumer complaints that support the existence of a recurring or systematic breach. On the other hand, once the decision on the merit of the case is issued and the class perimeter is defined, each party who aims at being included in the class must substantiate the relevant individual harm. In this sense, parties must show that individual members of the group have been affected in a way that traces back to the

³ Commission Recommendation (2013/396/EU) 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, published in OJ 26 July 2013, L 201/60.

⁴ E. Camilleri, *La Dir. 2020/1828/UE sulle azioni rappresentative e il “sistema delle prove”. La promozione dell’interesse pubblico attraverso la tutela degli interessi collettivi dei consumatori: verso quale modello di enforcement?*, in NLCC 1064-1065 (2022).

⁵ 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, published in OJ 4 December 2020, L 409. See M. Bona, *La direttiva UE 2020/1828 sulla tutela rappresentativa dei consumatori*, in E. Dalmotto (Ed.), *Profili della tutela individuale dei consumatori e della riforma di quella collettiva*, in Giur. It. 252-262 (2021).

⁶ Given the complex stratification of the discipline, which cannot be referred to a single legislative act, detailed references will be provided in footnotes *infra*.

⁷ Legislative decree 6 September 2005, no. 206, published in OJ 8 October 2005, no. 235.

⁸ G. De Cristofaro, *Le «azioni rappresentative» di cui agli artt. 140-ter ss. 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 5-6 (2024). An interesting reflection on this profile is provided by F. Auletta, *L’azione rappresentativa come strumento di tutela dei diritti*, in NLCC 1674-1676 (2022).

common cause. If the initial phase may focus on a broad factual picture, the eventual personal claim often requires additional evidence detailing the individual harm.

Whilst the latter described phase should not present particular issues to the adherent parties, given that they have ‘just’ to demonstrate that they are part of the class perimeter outlined in the decision on the merit of the claim (therefore showing the relevant causal nexus),⁹ the former one appears much more challenging. Indeed, the imbalance between the parties which generally characterizes collective actions is particularly felt in the field of evidence’s disclosure, given that essential pieces of evidence are usually kept by the defendant and, without *ad hoc* means, it would result particularly difficult for plaintiffs to reach these proofs, thus undermining the essential principle of effectiveness declined in judicial proceedings.

Therefore, the purpose of this article is that of analysing how the Italian legislator, under the input of the European one, refined the relevant disclosure rules in order to make collective actions more effective. In doing so, the article will provide a comparative analysis on the topic object of the investigation, with reference – in particular – to the French model and the Slovenian *ZKoIT*.¹⁰

II. THE 2019 ITALIAN REFORM: TOWARDS A ‘GENERALIST’ AND ‘DEFORMALIZED’ COLLECTIVE ACTION MODEL

The first collective action model was introduced in Italy in 2007, planned to enter into force in 2010,¹¹ and envisaging the creation of Article 140-*bis* of the Italian Consumer Code. However, in 2009 a new model was enacted and started being applied (with the consequence that the previous set of rules never entered into force).¹² The relevant provisions were always contained under Article 140-*bis* Consumer Code and slight amendments were brought in 2012.¹³ Given its systematic collocation, this tool was available in the field of consumer protection claims only. However, it proved to be particularly demanding for plaintiffs to succeed in reaching a favourable outcome in this kind of proceedings, especially because of the high procedural hurdles and evidentiary requirements characterising this system.¹⁴ Therefore, after a long debate, a totally brand new collective action model was passed into law in April 2019, although it entered into force in May 2021.¹⁵ This marked a very important shift in respect to the previous regime, since it moved the

⁹ On the disclosure during this phase, see A. Mengali, *La fase istruttoria della nuova azione di classe*, in A. Carratta (Ed.), *La Class action riformata*, in Giur. It. 2310-2316 (2019).

¹⁰ In force since 2018 and reformed in 2023 (with the latter reform's entry into force in January 2024). Law on Collective Actions (*Zakon o kolektivnih tožbah – ZKoIT*), published on the OJ of the Republic of Slovenia 6 October 2017, no. 55, available at https://www.uradni-list.si/_pdf/2017/Ur/u2017055.pdf (last visited Dec. 10, 2025). The 2023 reform text is contained in the OJ of the Republic of Slovenia 27 December 2023, no. 133, available at https://www.uradni-list.si/_pdf/2023/Ur/u2023133.pdf (last visited Dec. 10, 2025). See C.I. Nagy, *European models of collective actions*, in C.I. Nagy (Ed.), *Collective actions in Europe* 71-112 (2019); A. Piletta Massaro, *Towards an EU-Wide Collective Redress Model: An Opportunity for Strengthening Eastern Europe's Countries Access to Justice*, in *Zbornik Radova Kopaničke Škole Prirodnog Prava – Slobodan Perović* 205-206 (2020).

¹¹ Article 2, Subs. 446, Law 24 December 2007, no. 244, published in OJ 28 December 2007, no. 300.

¹² Article 49, Subs. 1r, Law 23 July 2009, no. 99, published in OJ 31 July 2009, no. 176.

¹³ Article 6, Law Decree 24 January 2012, no. 1, published in OJ 24 January 2012, no. 19, then converted into Law 24 March 2012, no. 27, published in OJ 24 March 2012, no. 71. See G. Afferni, “Opt-in” Class Actions in Italy: Why are They Failing, in *Journal of European Tort Law* 82 (2016); G. Afferni, *Recenti sviluppi nell'azione di classe*, in *Cont. Imp.* 1275 (2013); E. Corapi, *Appunti sull'ambito di applicazione soggettivo ed oggettivo della class action nella legge di riforma*, in F. Capriglione (Ed.), *Liber Amicorum Guido Alpa* 481 (2019).

¹⁴ A. Piletta Massaro, *The Italian Class Action Reform: A Redesigned Tool Beyond Consumer Law*, in *European Review of Private Law* 845 (2020); G. Ponzanelli, *La nuova class action*, in *Danno Resp.* 306 (2019).

¹⁵ Law 12 April 2019, no. 31, published in OJ 18 April 2018, no. 92. It is worth reminding that this reform's entry into force has been postponed several times, until it became effective on 19 May 2021 (see Law Decree 28 October 2020, no. 137, published in OJ 28 October 2020, no. 269, converted by Law 18 December 2020, no. 176, published in OJ 24 December 2020, no. 319).

collective actions rules from the Consumer code to the Cpc, thus making the new tool available as a ‘generalist’ collective action, *c’est à dire* for every kind of claim, also outside the scope of consumer protection. Moreover, it introduced a completely redesigned procedure, especially with regard to the adhesion mechanism for class members and the overall procedural management of the whole claim, therefore also with reference to the collection of evidentiary materials.¹⁶

Having regard to the first profile, the innovation was significant, since one of the main obstacles of the previous system was the fact that class members should have joined the action through an *opt-in* mechanism just in the preliminary stage of it, therefore before the decision on the merit, thus carrying a quite high degree of uncertainty about its outcome. Contrarywise, the reformed regime allowed class members to join the action both during the initial stage – alike the previous system – but also after the relevant decision on the merit of the case, thus rendering the adhesion much easier and based on a favourable judgement on the main claim. This system, that we labelled elsewhere as a *postponed opt-in*,¹⁷ was transplanted from the French *action de groupe* introduced in 2016 and has the merit of finding a quite balanced compromise between a pure *opt-in* scheme and an *opt-out* adhesion mechanism.¹⁸

However, the reform brought also very important innovations from the evidentiary viewpoint, given that one of the main obstacles for plaintiffs under the previous regime was exactly related to such a profile. This hurdle has been simplified by the reform, since Article 840-ter Cpc provides that the entire proceeding is regulated by the *rito semplificato di cognizione*. This is a simplified procedural scheme provided for by Articles from 281-decies to 281-terdecies Cpc,¹⁹ whose deformatized structure, also with regard to the collection of evidence, should simplify the plaintiff’s tasks. Furthermore, Article 840-ter Cpc specifies that the possibility to mutate the procedure – as generally envisaged by Article 281-duodecies Cpc – is not available in cases involving a collective action. Therefore, the described deformatized procedure represents the only possibility in this kind of claims. In the end of the initial phase, a decision on the action’s admissibility is released within 30 days from the filing of the same. The action may be deemed inadmissible if, *inter alia*, it results manifestly unfounded.

However, it is worth mentioning that the proceeding can be suspended in case of an ongoing investigation in front of an independent Authority or an administrative Court (which could be the case especially when proceedings related to the infringement of competition rules are concerned). In the evidentiary context, this creates an interaction between the collective action and the eventual administrative proceeding, in order to reach a decision which is based upon and not contrasting with the same administrative decision.²⁰ This is of particular importance, as already mentioned, in competition law cases, where, according to Article 7 of Legislative Decree no. 3/2017²¹ (which implements Directive 2014/104²² into the Italian legal system), the decision of the Autorità Garante per la Concorrenza e il Mercato (AGCM), once definitive – usually after being appealed in front of

¹⁶ For an overview of the new regime see, A. Carratta, *I nuovi procedimenti collettivi: considerazioni a prima lettura*, in A. Carratta (Ed.), *La Class action riformata*, cit., 2297-2300.

¹⁷ A. Piletta Massaro, *The Italian Class Action Reform*, cit., 862.

¹⁸ *Ibidem*, 841.

¹⁹ Being this procedure introduced by means of Legislative Decree 10 October 2022, no. 149 (published in OJ 17 October 2022, no. 243), as modified by Law 29 December 2022, no. 197 (published in OJ 29 December 2022, no. 303). See, in particular Article 31, comma 1), these provisions apply from 28 February 2023. Therefore, proceedings pending before that date are subject to the previous regime.

²⁰ A. Piletta Massaro, *The Italian Class Action Reform*, cit., 853.

²¹ Legislative Decree 19 January 2017, no. 3, published in OJ 19 January 2017, no. 15.

²² Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union, published in OJ 5 December 2014, L 349.

the TAR Lazio and the Consiglio di Stato – establishes, without further possibility of being put into question, the relevant violation of competition law.²³

Having regard to evidence, Article 281-*duodecies* Cpc delineates a quite deformed admission of evidentiary materials led by the court, without providing further details on the matter, but just that the judge admits the proofs which are relevant for the decision and s/he proceeds with their gathering. Having particular regard to collective actions, Article 840-*quinquies* Cpc further specifies this phase,²⁴ thus delineating a structure of the disclosure phase aimed at favouring the equality between the parties: The Tribunal, omitted any formality which is not essential for the adversarial procedure, acts in the way it deems more appropriate with regard to evidence collection. The formulation of this provision evidently leaves a quite high degree of power to the judge over the evidence gathering phase's management.²⁵

Furthermore, the same Article 840-*quinquies* Cpc provides for peculiar rules regarding specific evidentiary items. In particular, in case a technical consultancy would be necessary, the relevant expenses should be anticipated by the defendant. This, of course, shifts the financial burden of this evidentiary means on the defendant, which usually is a more financially capable subject than the plaintiff. In fact, whilst the technical consultancy could be essential to establish the plaintiff's claim from an evidentiary standpoint, s/he could find it very difficult to perform it, with the consequence of almost making practically impossible for the proposed collective action to succeed. Moreover, always with the aim of easing the plaintiff's evidentiary burden, the reformed scheme plainly allows the admission of rebuttable presumptions and statistical evidence into the proceeding. Of course, this is dictated by the fact that such items could generally be pivotal in proving a damage arising out of a mass tortious behaviour.

However, what is for sure most penetrant from the procedural viewpoint is the fact of allowing the judge to order the exhibition of evidence kept by the defendant. In order to do so, a motivated request should be filed by the plaintiff, indicating facts and proofs reasonably in the availability of the defendant and sufficient to sustain the plausibility of the lawsuit itself.²⁶ It is worth underlining that the mentioned plausibility should not be interpreted as a sort of anticipated evaluation on the merits of the plaintiff's action, but simply as an assessment of the fact that the claim is not manifestly unfounded.²⁷ Of course, the described tool acquires particular importance in cases where evidence regarding the tort is contained in corporate records or in internal documentation, which can be very difficultly in the plaintiff's availability. Anyhow, this *favor* towards the claimant is tempered by a certainty and proportionality requirement, designed by means of the fact that the judge, in her/his request, must specifically indicate the items of evidence or the category of evidence object of the exhibition order. Such order shall also be granted upon having first analysed whether the plaintiff's request is sustained by facts or evidence which justify the same. Furthermore, the judge must take into account the extension and costs of disclosure and if

²³ On this point see also the reflections conducted by 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 457-463 (2024). In the same vein, Article 15 of Directive (EU) 2020/1828 establishes that the final decision of a court or administrative Authority of any Member State concerning the existence of an infringement harming collective interests of consumers can be used by all parties as evidence in the context of any other action before their national courts or administrative authorities to seek redress measures against the same trader for the same practice. See E. Camilleri, *La Dir. 2020/1828/UE sulle azioni rappresentative e il "sistema delle prove"*, cit., 1065-1073.

²⁴ A detailed analysis is provided by A. Mengali, *La fase istruttoria della nuova azione di classe*, cit., 2310-2316.

²⁵ E. Camilleri, *L'azione rappresentativa e il raccordo imperfetto con il diritto privato regolatorio*, cit., 453.

²⁶ BEUC, *Comparative Legal Study on Procedural Rules and their Impact on Collective Redress Actions in Europe*, cit., 87-92. See also E. Camilleri, *L'azione rappresentativa e il raccordo imperfetto con il diritto privato regolatorio*, cit., 454-455.

²⁷ E. Camilleri, *L'azione rappresentativa e il raccordo imperfetto con il diritto privato regolatorio*, cit., 454-455; A. Mengali, *La fase istruttoria della nuova azione di classe*, cit., 2312-2314.

confidential information are concerned. In the latter case, a tempered solution has been found by the legislator through the prescription that parties can be asked to carry out confidentiality obligations, to prepare redacted versions of the concerned documents or by means of synthesis prepared by experts, as well as through attending private hearings or establishing confidentiality rings. The same Article 840-*quinques* Cpc includes in the concerned category confidential information from the personal, commercial, industrial or financial point of view, related to both people or firms, including trade secrets. The same provision specifies that the legal privilege is protected.²⁸

In light of the analysed judicially-led disclosure procedure, it is prescribed the right to be heard of the party who must disclose the relevant pieces of evidence. However, particularly interesting is the sanction envisaged in case such a party fails to comply with the judge's order or whether the relevant evidence is destroyed. At the occurrence of these events, the Cpc gives the judge the power to impose a sanction ranging from 10,000 to 100,000 €. Of course, someone can object that, especially in case a mass tort is involved and whether the evidence concerned represents a key element for establishing the defendant's liability, no pecuniary sanction could be sufficiently effective, in particular if directed towards a very affluent defendant firm. Exactly to cover this possibility and in line with the principle of effectiveness, the same provision grants the judge the power to deem proved the fact which should have been object of the evidence destroyed or not disclosed. This solution ought to be positively welcomed, although the pecuniary sanction tool – also as a medium possibility between the two provided ones in case of non-disclosure – could have been reinforced with the power to impose a periodical payment (*i.e.*, *astreinte*) on the non-compliant party.

It is finally worth underlining that an almost coincident set of rules regarding the disclosure of evidence has been provided for by the mentioned Legislative Decree no. 3/2017 with reference to actions pertaining to the domain of private enforcement of competition law.²⁹ This is of interest since this field represents – as already noted – one of the main possible venues for collective actions. However, no conflicts should arise between general and special norms, since Article 3 of the mentioned Legislative Decree almost coincides with the dictum of Article 840-*quinques* Cpc, and the same can be said for the Legislative Decree's Article 6 regarding sanctions in case of non-disclosure (although slightly higher). However, what is interesting and should be integrated as *lex specialis* in case of a collective action pertaining to the competition law domain are the provisions contained in Articles 4 and 5 of the same Legislative Decree and dealing with the disclosure of evidence contained in the National Competition Authority (NCA)'s file. In particular, and in synthesis, the disclosure of elements contained into a NCA's file should be granted only in case that such evidence cannot reasonably be provided by both the concerned parties or third ones. In the specific case governed by the provisions at stake, a balance is needed between the exigencies of the private proceeding on one side and the public enforcement of competition provisions on the other one. In detail, the NCA is highly sensitive with regard to the disclosure of elements contained in its file and related to the so-called *leniency applications*. The latter are a very powerful whistleblowing instrument into the toolbox of competition Authorities, which allows them to grant immunity from fines to the first company which is part of a cartel and 'blows the whistle', thus allowing the same Authority to discover the collusive practice concerned. Of course, this tool's effectiveness would be put under serious discussion in case the whistleblower's statements (*leniency statements*) could be in the availability of private parties in a parallel and related private enforcement

²⁸ A. Piletta Massaro, *The Italian Class Action Reform*, cit., 857.

²⁹ *Ibidem*, E. Camilleri, *L'azione rappresentativa e il raccordo imperfetto con il diritto privato regolatorio*, cit., 452.

action, and especially in case of a collective one. To avoid this contrast of tools in the enforcement of competition rules, Directive 2014/104, and consequently Legislative Decree no. 3/2017, provided that these statements are part of a so-called *black list* of elements which can never be disclosed in a private proceeding. The same treatment is provided for settlement submissions to the relevant NCA. Contrariwise, information rendered during a proceeding conducted by the same NCA, together with the information transmitted to the parties by the same NCA or revoked settlement proposals form part of a *grey list*, *c'est à dire* they can be disclosed after the conclusion of the NCA's proceeding. All the other elements can be disclosed, if duly requested.

III. THE DISCIPLINE CONTAINED IN DIRECTIVE (EU) 2020/1828 AND ITS IMPLEMENTATION IN ITALY

As already mentioned, a possible solution to the fragmented situation across the EU showed in the introductory paragraph was brought by the European legislator through the enactment of Directive (EU) 2020/1828. This instrument aims at creating a sort – by using a quite recurring expression nowadays – of 28th regime establishing an EU-wide representative action scheme in the field of subjects related to consumer protection (the complete scope of the Directive can be found in its Annex I). In particular, the Directive's aim is for sure that of providing an harmonised tool, given the plethora of different regimes across the Single Market (Article 1, paragraph 1), but also that of introducing a procedure which can be used in cross-border representative actions (Article 6).

Turning the focus into the rules related to disclosure of evidence, it can first be mentioned the same Directive's Article 18.³⁰ This provision states that *Member States shall ensure that, where a qualified entity has provided reasonably available evidence sufficient to support a representative action, and has indicated that additional evidence lies in the control of the defendant or a third party, if requested by that qualified entity, the court or administrative authority is able to order that such evidence be disclosed by the defendant or the third party in accordance with national procedural law, subject to the applicable Union and national rules on confidentiality and proportionality. Member States shall ensure that, if requested by the defendant, the court or administrative authority is also able to equally order the qualified entity or a third party to disclose relevant evidence, in accordance with national procedural law.*

A careful reading of the Directive's provision, in combination with what already illustrated above with regard to the new Italian collective action regime, should conduct to the conclusion that the previously enacted Italian reform is in line with the Directive requirements. However, it is worth bearing in mind that the Italian legislator implemented the same Directive through the creation of an additional representative action regime, this time contained (back) in the Consumer Code. In particular, whilst the previous consumer class action was disciplined by Article 140-*bis* of the Consumer Code, the new model, introduced in 2023, is contained in Articles from 140-*ter* to 140-*quaterdecies* of the same Code.³¹ The first Article's paragraph 2 specifies that this regime constitutes a *lex specialis* with regard to the subjects listed in the Code's Annex II *septies*, which reproduces the Directive's Annex I.³² Moreover, Article 140-*quinquies* provides some specifications regarding the entities which are authorised to file cross-border actions. The proceeding is also regulated by the *procedimento semplificato di cognizione* (Article 140-*septies* of the Consumer Code). Also in this case, an admissibility decision is envisaged and the proceeding can be suspended in the event that a case is pending in front of an administrative Authority (and a direct reference is made to the already

³⁰ For a comparative perspective see BEUC, *Comparative Legal Study on Procedural Rules and their Impact on Collective Redress Actions in Europe*, cit., 130-133. See also E. Camilleri, *La Dir. 2020/1828/UE sulle azioni rappresentative e il "sistema delle prove"*, cit., 1073-1075.

³¹ Legislative Decree 10 March 2023, no. 28, published in OJ 23 March 2023, no. 70.

³² Although the mentioned Annex II *septies* contains a certain number of inconsistencies, as highlighted by G. De Cristofaro, *Le «azioni rappresentative» di cui agli artt. 140-ter ss. Cons.*, cit., 12-19.

mentioned Legislative Decree no. 3/2017, although a clarification will be provided about this just *infra*).

However, by shifting to the scope of this paper (*i.e.*, disclosure of evidence), the relevant rules are contained in Article 140-*octies* with regard to inhibitory proceedings, whilst the following provision is related to compensatory ones. In the first case, the Consumer Code provides that the requesting party is not called to prove the fault or wilful misconduct of the professional, nor the actual losses or damages suffered by the individual consumers concerned. However, the same Article 140-*octies* of the Consumer Code then specifies that during the inhibitory proceeding the rules on disclosure of evidence contained in Article 840-*quinquies* of the Code of civil procedure find application. The same recall is made by the following Article 140-*novies* of the Consumer Code with regard to compensatory proceedings. This, in a way, establishes a sort of ‘procedural parallelism’ on the rules regarding disclosure of evidence between the ‘general’ collective action and the newly introduced consumeristic one.

To conclude with the newly adopted ‘consumeristic’ Italian representative action, it is worth mentioning that although the reference made about the suspension of the proceeding by Article 140-*septies* of the Consumer Code, the subject regulated by Legislative Decree no. 3/2017, *c’est à dire* the private enforcement of competition law, is not included into the scope of this specific representative action tool (Annex II *septies* to the Consumer Code, and analogously to Annex I to Directive 2020/1828, which do not mention Directive 2014/104).³³ As already expressed elsewhere,³⁴ this constitutes for sure a (difficultly explainable) weakness of the mentioned Directive, which is indirectly addressed in the Italian context by the possibility to file a general class action under the regime contained in the Cpc. However, this does not solve the issue of cross-border collective proceedings, which are highly likely to happen in competition law cases. Furthermore, the mentioned reference made to Legislative Decree no. 3/2017 by Article 140-*septies* of the Consumer Code could generate some interpretative confusion.

Furthermore, and curiously, Directive 2020/1828 (and, consequently, the Italian ‘consumer’ representative action) includes the recently enacted Regulation (EU) 2022/1925, better known as Digital Markets Act (DMA)³⁵ into its scope (see Article 42 DMA). For sure, this can first reinforce the logical doubts regarding the exclusion of private enforcement of competition law from the scope of Directive 2020/1828, given the complexity of proceedings related to the DMA.³⁶ However, from the evidentiary standpoint this does not raise particular issues, apart from the value to be attributed in a collective claim to decisions issued by the European Commission in relation to the DMA in this sense, Article 39, paragraph 5, DMA provides that national courts shall not give a decision which runs counter to a decision adopted by the Commission under the same DMA. They shall also avoid giving decisions which would conflict with a decision contemplated by the

³³ *Ibidem*, 11.

³⁴ A. Piletta Massaro, *The New Directive on an EU-Wide Representative Action and Third-Party Litigation Funding: An Opportunity for European Consumers?*, in *Revija Kopaoničke Škole Prirodnog Prava* 100 (2021). It is worth highlighting that the inclusion of private enforcement of competition law in the scope of the directive was requested, *inter alia*, by the European Consumer Organisation (BEUC) in the position paper *Proposal for a Directive on Representative Actions*, 7-8, 2018, available at https://www.beuc.eu/publications/beuc-x-2018-094_representative_actions_beuc_position_paper.pdf (last visited Dec. 10, 2025).

³⁵ Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act), published in OJ 12 October 2022, L 265.

³⁶ A. Piletta Massaro, *The Rising Market Power Issue and the Need to Regulate Competition: A Comparative Perspective Between the European Union, Germany, and Italy*, in *Conc. Merc.* 28-29 (2023).

Commission in proceedings it has initiated under the DMA. To that effect, the national court may assess whether it is necessary to stay its proceedings.

IV. A COMPARATIVE PERSPECTIVE: THE REFORMED FRENCH ‘ACTION DE GROUPE’

The analysis conducted with regard to the Italian collective action regime should be complemented with a comparative study, especially in light of the recently enacted reforms in the collective redress field in various Member States, especially for the purpose of implementing Directive 2020/1828. A parallelism ought first to be established with the French *action de groupe*, given some relevant similarities with the Italian model. In particular, as already mentioned, the scheme introduced by the Italian legislator in 2019 abandoned the adhesion mechanism for class members configured as an *opt-in* whose window was only in the initial phase of the dispute.³⁷ In fact, the reform opted for what we called a *postponed opt-in*, where class members could join the collective claim also after the relevant decision on the case’s merit. This, as said, can for sure increase the number of adherents to a collective action by reducing the risk for parties interested in joining the lawsuit and therefore by increasing its appeal. Indeed, these parties do not bear the risk of a defeat as a result of the decision on the merit. Of course, this, in turn, also constitutes an advantage for the entity – or, in the Italian case, also the class member – introducing the claim, since it is likely that, if successful, the class will be composed by quite a large number of participants. This innovation, which tried to address one of the main hurdles of the first Italian class action scheme, was transplanted by the *action de groupe* introduced by the French legislator in 2014 in the consumer law field³⁸ and extended to other sectors in 2016.³⁹ It is anyway worth specifying that the French model does not provide for a double adhesion window, like the Italian one, but just for the one opening after the main judgement is delivered. Moreover, the French scheme has been recently reformed by Article 16 of Law 2025-391, issued on 30 April 2025 and in force since 3 May 2025 (so-called *Loi DDADUE*).⁴⁰ The first impression on this reform is that of a peculiar drafting style, since a single, long, article contained into a generic law reforms a complex procedure. By putting it into sarcasm, it seems that the French legislator took the Italian *milleproroghe* laws’ drafting style as a model for this reform.⁴¹ However, the overall evaluation of the reform should be positive, since, in a similar vein to the 2019 Italian act, one of the main innovations brought by the French reform is the extension of the *action de groupe*’s scope. Indeed, the reformed scheme is applied *ratione personae* to damages suffered by a plurality of physical or moral persons (therefore, without specification of the quality, for

³⁷ A. Piletta Massaro, *The Italian Class Action Reform*, cit., 841.

³⁸ Law 2014-344 of 17 March 2014 (the so-called *Loi Hamon*), published in the OJ 18 March 2014, no. 0065, p. 5400. The *Loi Hamon* added Articles from L623-1 to L623-32 to the French Consumer Code. The latter legislative provisions were supported, in the context of the same French Consumer Code, by the regulatory provisions provided for by Articles from R623-1 to R623-33. See V. Rebeyrol, *La nouvelle action de groupe*, in Recueil Dalloz 940 (2014).

³⁹ Law 2016-1547 *de modernisation de la justice du XXI^e siècle*, title V. In particular, this ‘extension’ concerned the fields of health, environment, labour discrimination and protection of personal data. See S. Mraouahi, *L’action de groupe rénovée : nouvelle ère pour le contentieux social ?*, in *Revue du Droit du Travail* 564 (2025); O. Kafi Cherrat, *La réforme de l’action de groupe française, ou l’art de « couper la poire en deux »*, in *Gazette du Palais* 3 (2025); *D’une pluralité d’actions de groupe à un régime à vocation universelle*, in *Le Lamy droit économique* 1 (2025); A. Piletta Massaro, *The Italian Class Action Reform*, cit., 846.

⁴⁰ Published in OJ 2 May 2025, no. 0103.

⁴¹ About the difficulties in properly systematising the new procedural tool, see S. Mraouahi, *L’action de groupe rénovée : nouvelle ère pour le contentieux social ?*, cit., 564-565; J.-D. Pellier, *Regard sur la nouvelle action de groupe à la lumière du droit de la consommation*, in *Revue des contrats* 2-3 (2025); O. Kafi Cherrat, *La réforme de l’action de groupe française, ou l’art de « couper la poire en deux »*, cit., 3-4. See Conseil d’État, Avis 9 February 2023, no. 406516, paragraph 8, available at <https://www.conseil-etat.fr/avis-consultatifs/derniers-avis-rendus/a-l-assemblee-nationale-et-au-senat/avis-sur-une-proposition-de-loi-relative-au-regime-juridique-des-actions-de-groupe> (last visited Dec. 9, 2025).

instance, of consumers),⁴² and *ratione materiae* to all the torts committed by a professional in the framework of its activity and it can give rise also to the compensation of non-patrimonial damages (whilst the previous regime was limited just to patrimonial ones and to specific subjects),⁴³ therefore by extending the action's scope to all the domain of the so-called *contentieux social*.⁴⁴ The creation, likewise, of a common model was deemed necessary in light of the previous scheme's scarce success, given that since 2014 only 32 *actions de groupe* were started, and only 20 in the consumer law field.⁴⁵

Analogously to the consumer representative action in Italy, also the French model distinguishes between inhibitory and compensatory actions and, from the evidentiary point of view, in the former one the plaintiff is required nor to prove a damage suffered by the group members nor the defendant's negligence or wilful conduct.

In case compensatory representative claims are concerned, the action follows the provisions contained in the *Code de procédure civile* under Articles from 848 to 849-2-2 and from 849-11 to 849-20. These rules were introduced by means of the *Décret* no. 2019-1333 of 11 December 2019 and they were then partially amended by *Décret* no. 2025-734 of 30 July 2025, issued after the enactment of the cited Law 2025-391. Having regard to the main procedural aspects, Article 849-2 of the *Code de procédure civile* simply states that the judicial demand is formed, instructed and judged along the rules applicable to the ordinary written procedure. This, according to Article 10 of the *Code de procédure civile*, provides that the judge has the power to order *ex officio* all the measures legally admissible (detailed in Articles from 132 to 322 of the same Code). The following Article 11, interestingly, provides that the judge can order the exhibition of a piece of evidence required by a party and in possession of the counterparty and that, in case of non-compliance, s/he can impose a periodical payment, known as *astreinte*.

Therefore, differently from the Italian context, there is not a specific procedure governing the disclosure of evidence aimed at addressing the peculiarities which can stem from a collective action. Relying on the ordinary civil procedure rules with regard to evidence is also the solution envisaged by another quite scholarly discussed collective action model, which is the Slovenian *ZKoIT* (Article 34). However, we deem preferable the approach followed by the Italian legislator: For sure, the creation of a special proceeding might cause a certain degree of confusion, but collective actions are peculiar from the point of view of the parties and the claims involved and less formal rules can ease their success.

In addition, a critical reflection must be reported also with regard to the French model. We already mentioned the absence of Directive 2014/104 from the scope of Directive 2020/1828. In a similar vein, the 2025 reform, at point VIII of the analysed Article 16, maintained one of the most illogical – in our view – limitations present in the French *action de groupe*, *c'est à dire* the fact that in the field of competition law representative actions are allowed just as *follow-on* claims and not as *stand-alone* ones (in other words, they are available just in case a previous infringement decision has been issued).

⁴² J.-D. Pellier, *Regard sur la nouvelle action de groupe à la lumière du droit de la consommation*, cit., 3-5.

⁴³ It is worth noticing that the award of such damages was already recognised by Italian Courts: *Inter alia*, Corte di Cassazione, III civil section, 31 May 2019, no. 14886, *Trenord v. Altroconsumo*; Corte d'Appello di Milano, decision 25 August 2017; Tribunale di Napoli, 18 February 2013, no. 2195. See BEUC, *Comparative Legal Study on Procedural Rules and their Impact on Collective Redress Actions in Europe*, cit., 79-87; G. Afferni, *Recenti sviluppi nell'azione di classe*, cit., 1275; G. Ponzanelli, *Il danno non patrimoniale dei pendolari all'esame della Corte di Cassazione*, in NGCC 1002 (2019); C. Consolo, *La terza edizione dell'azione di classe è legge ed entra nel c.p.c. Uno sguardo d'insieme ad una amplissima disciplina*, in Corr. Giur. 737 (2019); A. Piletta Massaro, *The Italian Class Action Reform*, cit., 849.

⁴⁴ J.-D. Pellier, *Regard sur la nouvelle action de groupe à la lumière du droit de la consommation*, cit., 5-6; S. Mraouahi, *L'action de groupe renouvelée : nouvelle ère pour le contentieux social ?*, cit., 565. O. Kafi Cherrat, *La réforme de l'action de groupe française, ou l'art de « couper la poire en deux »*, cit., 4-5.

⁴⁵ J.-D. Pellier, *Regard sur la nouvelle action de groupe à la lumière du droit de la consommation*, cit., 2.

by the NCA or ascertained by a court).⁴⁶ Given that competition law is one of the fields where collective actions would prove most effective and useful, this ‘limitation’ of the power of collective claims vis-à-vis *stand-alone* actions appears without a solid logical ground. An objection can be raised with regard to the possibility of abusive litigation, based on insufficient evidentiary ground (*i.e.*, without the previous administrative or judicial ascertainment of the competition law infringement). However, this – at least by considering the *law in the books* – should not happen, since the judge is granted the power, during the preliminary phase of the judgement, to evaluate the soundness of the claim and, if not properly grounded from the evidentiary standpoint (although at a preliminary stage), to reject it as manifestly unfounded.

V. TO DISCLOSE OR NOT TO DISCLOSE: THE CASE OF TPLF AGREEMENTS

An aspect which is not totally related to the disclosure of evidentiary materials, but which can anyway be of particular interest in the context of the present analysis, has regard to the eventual obligation of disclosing Third Party Litigation Funding (hereinafter, TPLF) agreements in a collective proceeding.⁴⁷ TPLF proves to be a very important tool in collective litigation, given the fact that it can compensate what is usually the main imbalance in this kind of lawsuits, *c’est à dire* the difference in financial resources between the parties. In this sense, its aim is that of easing access to justice, also according to the related constitutional principles.⁴⁸ Although it is a typical feature of common law systems, it is now gaining pace also in civil law jurisdictions. In this sense, the already mentioned Slovenian *ZKoIT* already regulated it since its enactment and a provision regarding the management of TPLF agreements in representative actions is also provided for by Directive 2020/1828.

The reason why TPLF is mentioned in the context of the present article is that one of the main issues regarding this tool is the fact of disclosing or not disclosing the TPLF agreement during a proceeding.⁴⁹ In fact, two contrasting points arise: On the one hand, the TPLF agreement is a private contract between a party in the litigation and its funder, but, on the other hand, the presence of a TPLF agreement drastically changes the position of that party vis-à-vis the counterparty in the case’s management. Therefore, among other issues – such as the role of the funder in decisions regarding the claim management, possible conflicts of interest,⁵⁰ the relationship between the

⁴⁶ E. Claudel, *La procédure d’action de groupe explicitée*, in RTD Com. 81 (2015); A. Piletta Massaro, *The Italian Class Action Reform*, cit., 853.

⁴⁷ On the topic, see the conclusions provided by the Author of this paper (as rapporteur for paragraph 3.4) in European Parliamentary Research Service, Research Paper, *State of play of the EU private litigation funding landscape and the current EU rules applicable to private litigation funding*, March 2021, 77-81, available at [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/662612/EPRS_STU\(2021\)662612_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/662612/EPRS_STU(2021)662612_EN.pdf) (last visited Dec. 10, 2025). See also U.S. Chamber Institute for Legal Reform, *Uncharted Waters, An Analysis of Third Party Litigation Funding in European Collective Redress*, October 2019, available at https://instituteforlegalreform.com/wp-content/uploads/2020/10/Analysis_of_TPLF_Funding_in_the_European_Collective_Redress.pdf (last visited Dec 10, 2025); European Law Institute, *Principles Governing the Third Party Funding of Litigation*, 2024, available at https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_el/ELI_Publications/ELI_Principles_Governing_the_Third_Party_Funding_of_Litigation.pdf (last visited Aug. 6, 2026). A. Burri, G.M. Solas, *Third-party funding under the EU’s New Representative Actions Directive*, in Global Competition Litigation Review 29 (2022); G.M. Solas, *Third Party Funding, Law, Economics and Policy* 266-268 (2019).

⁴⁸ M.C. Paglietti, *Il mercato delle controversie. Il third party litigation funding come strumento di finanziamento responsabile dell’accesso alla giustizia*, in Banca Borsa 821 ff. (2023).

⁴⁹ E. D’Alessandro, *Prospettive del third party funding nel processo civile italiano: il progetto fundIT e le iniziative del Parlamento europeo*, in Riv. Trim. Dir. Proc. Civ. 273 ff. (2022).

⁵⁰ A. Giussani, *Class actions e finanziamento delle liti*, in Riv. Trim. Dir. Proc. Civ. 303 ff. (2022); M.C. Paglietti, cit.

funder and the party's lawyer,⁵¹ etc. – the fact of having an obligation to disclose such an agreement constitutes a focal point, which needs to be regulated.

In this sense, Article 10, paragraph 3, of Directive 2020/1828 requires the class representatives to disclose to the court or administrative authority a financial overview listing the sources of funds used to support the action. However, this formulation does not clarify, *inter alia*, a) when the disclosure must take place (logically in the early stages of the action), b) if the disclosure concerns only the existence of a TPLF agreement or the name of the funder, and c) if the details of the funding must only be disclosed to the court (as appears to be the case from reading Recital 52: *Qualified entities should be fully transparent vis-à-vis courts or administrative authorities*) or also to the counterparty.

A comparative analysis could ease the interpretation of such a quite generic provision. As a starting point, Article 140-*septies*, paragraph 5, of the Italian Consumer Code establishes that the representing entity must indicate a certain number of elements in the claim form, including the action's funding, received or promised by third parties. The same Article's paragraph 8 provides that the action is inadmissible in case, *inter alia*, the funder is competitor of or dependant on the defendant. This formulation appears to provide for a total disclosure, *i.e.*, also towards the counterparty.

In a similar vein, the reformed French model provides that TPLF is object of a publication whose conditions are determined by a judge's decree. In this sense, the judge can order the relevant party to disclose elements proving that there is no conflict of interest with regard to TPLF.⁵² Anyway, the judge is endowed with the power to declare the action unreceivable and to refuse the homologation of any funding agreement between the parties.

Accordingly, Article 59 of the Slovenian *ZK o IT* states that the claimant must publicly disclose and declare to the court the source of the funds that s/he will use to finance the legal proceedings. If the claimant so requests when submitting the financing agreement, the court shall redact the part of the financing agreement that contains business secrets, if it is not relevant for the assessment of the conditions referred to in the same Article.

The analysed measures appear also in line with Rule 237 of the *ELI-UNIDROIT Model European Rules of Civil Procedure*.⁵³ The mentioned Rule provides that the court may require disclosure to the court and *insofar as appropriate, to the parties*. If, after the disclosure, a conflict of interest emerges, the court or administrative authority should be empowered to take the appropriate measures, such as requiring the qualified entity to refuse or change the relevant funding and, if necessary, rejecting the legal standing of the qualified entity or declaring a specific representative action inadmissible. Anyhow, what can be generally highlighted is a pivotal role of courts in the management of this issue.

Finally, and in relation to the funding of collective proceedings, the reformed French model introduced a civil sanction at Article 1254 of the Code Civil. In particular, this provision provides that in case a person is found liable for a breach of the legal or contractual obligations relating to her/his/its professional activity, s/he/it can be condemned to the payment of a civil sanction, the proceeds of which are allocated to a fund dedicated to actions de groupe's financing. In order to

⁵¹ E. D'Alessandro, cit.

⁵² P. Vignal, *L'action de groupe généralisée en droit du travail. Enfin*, in Les Cahiers Lamy du CSE 2 (2025); S. Amrani-Mekki, *L'action de groupe : source d'inspiration pour le droit commun processuel ?*, in Gazette du Palais 1 (2025); O. Kafi Cherrat, *La réforme de l'action de groupe française, ou l'art de « couper la poire en deux »*, cit., 5.

⁵³ *ELI/UNIDROIT Model European Rules of Civil Procedure*, 2020, available at <https://www.unidroit.org/english/principles/civilprocedure/eli-unidroit-rules/200925-eli-unidroit-rules-e.pdf> (last visited Dec 10, 2025).

get this sanction, the *faute* must be committed with a view to obtaining an unjust gain or saving. The interesting aspect has regard to the fact that the amount of the sanction shall be proportionate to the seriousness of the offence committed and to the profit derived. In case the offence was put in place by a natural person, such amount may not exceed twice the profit realised, whilst, in case a legal person is concerned, the sum may not exceed five times the amount of the profit realised.⁵⁴ Additionally, the risk related to this payment explicitly cannot be insured. The introduction of such a public fund for collective actions deserves particular attention, although its operativity is still not clear. Anyhow, it could represent a valid solution aimed at, in a way, restoring the strength positions' balance between the parties in collective claims, as a sort of public aid to the enforcement of private rights. In this sense, it could induce a certain deterrent effect, such as the well-known *treble damages* do in U.S. antitrust litigation.

VI. CONCLUSION

The analysis conducted through the present article tries to enlighten an aspect which is peculiar to every national civil procedure system, but which constitutes one of the key points on which every lawsuit, and especially collective claims, are based, that is the disclosure of evidentiary material. The fact that this aspect of collective claims is deeply embedded in each Country's civil procedure rules leads to the presence of different regimes and to a lack of harmonisation in the context of the various jurisdictions, especially if reference is made to the European Union's member States. This could represent an obstacle for the creation of a proper *level playing field* regarding the disputes which arise in the Single Market, especially in the consumer law field, which is deeply harmonised from a substantive law standpoint.

Therefore, during the years, with regard to collective redress, and disclosure of evidence therein, regulatory competition among the various national regimes was the rule.⁵⁵ Subsequently, Directive 2020/1828 tried to reach a sufficient level of harmonisation, by incentivising member States to issue or reform rules in the field of collective claims.⁵⁶ This impulse brought to new or revised pieces of legislation where – as it can be seen from the analysis conducted in this article – a certain degree of rapprochement with regard to disclosure of evidence has been reached, notwithstanding the fact that national peculiarities will – at a certain extent obviously – continue to persist. The distinctive trait of the reformed or newly introduced regimes is, under a sort of common law flavour, the pivotal role played by the courts in managing the disclosure of evidence phase, given the quite deformed rules prescribed by the various legislative schemes. This could lead to a 'common practice' or increase local or national praxis. The only way to overcome the latter possible negative outcome is, together with the enactment of the mentioned rules, an effort by the European Institutions directed at training national judges in the management of collective redress actions, as it already happens in specific and highly harmonised fields such as IP or competition law litigation.

⁵⁴ S. Mraouahi, *L'action de groupe rénovée : nouvelle ère pour le contentieux social ?*, cit., 569; E. Poisson, J. Metois, *L'action de groupe réformée et unifiée par l'article 16 de la loi du 30 avril 2025*, in *Revue Lamy droit des affaires* 2 (2025); O. Kafi Cherrat, *La réforme de l'action de groupe française, ou l'art de « couper la poire en deux »*, cit., 5-6. Having regard to punitive damages and collective claims in civil law systems (in particular, France and Italy) see Cour de Cassation, First Civil Chamber, 1 December 2010, no. 1090 and Corte di Cassazione, Sezioni Unite, 5 July 2017, no. 16601, *Axo Sport v. Nosa*. See also B. Pozzo, *The enforcement of foreign decisions concerning punitive damages*, in *European Review of Private Law* 661 (2018); C. Salvi, *Le funzioni della responsabilità civile e il volto italiano dei danni punitivi*, in *Foro It.* 2504 (2018); P.G. Monateri, *I danni punitivi al vaglio delle sezioni unite*, in *Foro It.* 2648 (2017); A. Piletta Massaro, *The Italian Class Action Reform*, cit., 863.

⁵⁵ A. Piletta Massaro, *The Italian Class Action Reform*, cit., 843-844.

⁵⁶ M. Bona, *La direttiva UE 2020/1828 sulla tutela rappresentativa dei consumatori*, in E. Dalmotto (Ed.), *Profili della tutela individuale dei consumatori e della riforma di quella collettiva*, cit., 252-254.

Exactly with reference to competition law claims – which, as observed, are one of the main arenas where collective redress could play an essential role – the mentioned exclusion from the scope of Directive 2020/1828 could represent an unsolved issue in the just described harmonisation process. However, some legislators, and the Italian one probably provides the best example, found a practical solution, by doing at the national level what the European legislator – inexplicably – did not do.

Finally, the article touched the issue of 'TPLF agreements' disclosure. Although not constituting pieces of evidence, the presence of a funder behind a party's claim is a quite important element, which can concretely determine the success possibilities of a lawsuit. In this case, the European legislator provided for a generic provision in Directive 2020/1828, which for sure represents a good starting point, but it still leaves a quite wide margin of manoeuvre to each national legislator. As we observed, there are still few points to be addressed on this issue. The latter aspects might find interesting solution proposals in model laws, such as the mentioned *ELI-UNIDROIT Model European Rules of Civil Procedure*.

All in all, the legal landscape described in the present paper shows a tendency from a fragmented status towards an always increasing harmonisation, promoted by the European legislator and the need to provide always more 'Europeanised' instruments to firms, consumers and people acting in the Single Market, like the debate around a 28th system for business transactions stimulated by the Letta Report⁵⁷ showed.⁵⁸

In conclusion, being the Italian collective redress model the main focus of the present analysis, it can be concluded that the 2019 reform, and its subsequent amendments, provides now one of the most interesting collective action reference models in the European landscape, also – and especially – with regard to evidentiary issues. This legislation could for sure constitute a reference model for other national legislators in the described 'stimulated harmonisation' process occurring in the analysed field.

⁵⁷ E. Letta, *Much more than a market. Speed, security, solidarity. Empowering the Single Market to deliver a sustainable future and prosperity for all EU Citizens*, April 2024, available at <https://www.consilium.europa.eu/media/ny3j24sm/much-more-than-a-market-report-by-enrico-letta.pdf> (last visited Dec. 10, 2025). See also E. Letta, *Molto più di un mercato. Viaggio nella nuova Europa* (2024).

⁵⁸ See, *inter alia*, A. Piletta Massaro, *A 28th Legal Regime for Market Transactions in the EU: A Long-Awaited Opportunity?*, in *Revija Kopaoničke Škole Prirodnog Prava* 29 ff. (2025).

