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

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COMPARATIVE LAW REVIEW VOL. 17/3 – 2026

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

5

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

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

9

CRISTINA AMATO

A Critical Assessment of Contemporary EU Collective Redress

14

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

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

63

MALTE JOCHEM

Disclosure of Evidence in Representative Actions under German Law

81

ANDREA PILETTA MASSARO

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

96

VERONICA MONTANI

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

137

ASTRID STADLER

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

154

CRISTINA PONCIBÒ

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

169

GIORGIO AFFERNI

Mass Damages and Collective Litigation in Italy

181

MARINA FEDERICO

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

192

LUIGI CRISTIANO

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

211

MARIA CECILIA PAGLIETTI & PETER ROTT

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

226

ANGELO BONAITI

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

251

AXEL HALFMEIER

Research Perspectives on Collective Litigation and Society

*HARMONIZING AND ENHANCING THE ENFORCEMENT OF CONSUMER LAW: A
COMPARATIVE ANALYSIS OF ITALY AND GERMANY*

Veronica Montani, Laura Bugatti & Peter Rott

The present *Special Issue* collects a selection of papers originally presented and discussed during the Italo-German colloquium held at Villa Vigoni from 5 to 9 May 2025, devoted to the theme *Harmonizing and Enhancing the Enforcement of Consumer Law: A Comparative Analysis*. The initiative was jointly coordinated by Veronica Montani, Laura Bugatti and Peter Rott and brought together a distinguished group of scholars with the aim of fostering a structured dialogue between the Italian and German legal systems on the evolving architecture of consumer law enforcement.

In this context, the introductory contribution by Cristina Amato—drawing on her dual experience as an academic and as a judge of the Corte di Cassazione—provides a critical framework for the volume, highlighting the persistent gap between the formal development of EU consumer enforcement mechanisms and their practical effectiveness, and thereby framing the broader reflection developed in the contributions that follow.

At the core of both the discussions and this volume lies a comparative inquiry into the dual-track system of consumer law enforcement, understood as the interaction between public and private mechanisms of protection, alongside an assessment of the impact of Directive (EU) 2020/1828 on representative actions and of the broader reconfiguration of access to justice in an increasingly digital and mass-harm-oriented society.

The structural divergences between the Italian and German systems constitute the principal analytical axis of this volume, which is grounded in a systematic and critical comparison aimed at identifying convergences, persistent asymmetries, and potential pathways for mutual learning. The implementation of Directive (EU) 2020/1828 on representative actions has provided a common normative reference point; however, its transposition in the two legal orders reveals how deeply embedded legal traditions continue to shape the architecture of enforcement. In Germany, the cautious evolution of pre-existing procedural instruments has resulted in a system marked by significant safeguards and access thresholds; in Italy, the introduction of new representative mechanisms has occurred alongside existing forms of collective redress, raising concerns about fragmentation and systemic coherence.

Against this backdrop, the volume captures a legal landscape in transformation. A recurring theme across the contributions is the tension between the European aspiration toward harmonisation and the persistence of national procedural autonomy. This tension manifests itself in multiple dimensions: in the design of collective redress mechanisms, in the role and legitimacy of qualified entities, in the financing of litigation, and in the integration of alternative dispute resolution systems within the broader enforcement landscape.

Particular attention is devoted to emerging forms of enforcement, which are reshaping the traditional boundaries between public and private action. The rise of legal tech-driven claims management, the growing relevance of third-party litigation funding, and the expansion of collective remedies into adjacent fields such as data protection and environmental law all point toward a more complex and hybrid enforcement ecosystem. These developments, while opening

new avenues for access to justice, also raise significant normative questions concerning transparency, accountability, and the preservation of procedural guarantees.

Taken together, the contributions articulate a common research agenda structured around three interrelated dimensions: the evolution of collective redress, the institutional interplay between different enforcement actors, and the emerging challenges posed by digitalisation and new market structures.

Within this analytical framework, the contribution by Laura Bugatti, Ann-Kristin Mayrhofer and Caroline Meller-Hannich provides a comprehensive comparison of the implementation of the Representative Actions Directive in Italy and Germany, illuminating both convergences and enduring divergences between the two systems and setting the stage for the more specific analyses that follow.

A second line of inquiry concerns the procedural architecture of representative actions, particularly with regard to evidentiary issues. In this respect, Malte Jochem examines the German framework for disclosure, highlighting its restrictive features and the potential gaps in the implementation of Article 18 of the Directive. From a comparative perspective, Andrea Piletta Massaro analyses the Italian model, emphasising both the innovations introduced by recent reforms and the persistent challenges linked to evidentiary asymmetries in mass litigation.

The internal functioning of representative actions is further explored by Veronica Montani, who focuses on the relationship between procedural design and the effective implementation of compensatory remedies, thereby linking normative architecture with practical enforceability.

Closely connected to these issues is the problem of financing collective redress. Astrid Stadler underscores the structural centrality of funding, and of third-party litigation funding in particular, as a precondition for the effective functioning of representative actions, pointing to the limitations of current institutional arrangements. Cristina Poncibò further develops this line of inquiry by examining the role of third-party litigation funding as a mechanism capable of mitigating financial barriers, while simultaneously raising complex regulatory concerns relating to transparency, independence, and conflicts of interest.

In this evolving landscape, Giorgio Afferni offers a broader reflection on the development of collective litigation in Italy, highlighting the emergence of a true “industry” of mass claims, driven in particular by litigation funders and claims aggregation mechanisms. His analysis emphasises both the limits of existing class action models and the growing relevance of alternative techniques—such as the assignment of claims—as more flexible and economically sustainable tools for managing mass harm and reducing inefficient forms of serial litigation.

Within the Italian context, Marina Federico examines the intersection between consumer law and data protection, arguing that collective mechanisms represent a privileged tool for addressing the “redress vulnerability” of digital consumers and for integrating fundamental rights protection with market regulation.

From a different perspective, Luigi Cristiano critically reassesses the European ODR system, demonstrating how its limited success exposes the structural constraints of a governance model grounded in voluntarism and technological intermediation in the absence of effective enforcement incentives.

The institutional interplay between different enforcement actors is further explored in a joint article by Maria Cecilia Paglietti and Peter Rott who analyse hybrid enforcement models in the financial sector in Italy and Germany, illustrating how regulatory authorities and ADR mechanisms interact within an evolving and multilayered framework.

Within the strand focusing on the articulation between public and private enforcement, Angelo Bonaiti reconstructs the Italian system of public consumer protection, highlighting the persistence of overlapping competences among independent authorities and the resulting need for a more coherent institutional design, particularly in the digital environment.

Finally, Axel Halfmeier situates European developments within the broader global trajectory of collective redress, highlighting its dual function as an instrument of access to justice and as a mechanism for the effective enforcement of substantive law, thus providing a conceptual framework that ties together the various contributions of the volume.

The overall picture that emerges is one of a legal system in transition. The Europeanisation of consumer law enforcement, most notably through the Representative Actions Directive, has expanded the available instruments and strengthened the role of collective mechanisms. Yet, as the contributions consistently demonstrate, the effectiveness of this evolving framework depends on a delicate balance between procedural design, institutional coordination, economic sustainability, and adaptability to technological change.

It is precisely this interaction that defines the intellectual horizon of the present Special Issue, which seeks to contribute to a broader rethinking of the “enforcement mix” in European consumer law by critically assessing existing models, exploring avenues for reform, and reflecting on how enforcement may evolve toward greater effectiveness, accessibility, and systemic coherence.

