



BANCA D'ITALIA
EUROSISTEMA

Quaderni di Ricerca Giuridica

della Consulenza Legale

Competition and Payment Services

Conference Papers

Banca d'Italia, Rome, 16-17 June 2022

Collection of contributions and writings by Vincenza Profeta

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FINAL REMARKS

*Ciro Gennaro Corvese**

First, I would like to thank every speaker and I would like to say that I enjoyed all the reports presented from which I have learned so much.

I would also like to thank conference organizers, in particular Professor Alessandro Palmieri and Bank of Italy, for entrusting me with the final remarks that I am about to make even with some embarrassment.

I am embarrassed because usually the conclusions have to be entrusted to someone who is a great expert in the topic of the congress and I am not an expert in the field.

Moreover, summing up is like sewing with needle and thread, but the outline of many conclusions reached thanks to the huge number of speeches (18, to be exact) has already been excellently drawn, albeit with reference to the single sessions, by Marino Perassi, Vittorio Santoro, Alessandro Palmieri and Gianluca Scarchillo.

This perhaps makes my task easier also because I have to do final remarks and not conclusions!

I would thank you for inviting me to the conference as it gave me the opportunity to deepen my knowledge on a topic I know something about but, as said before, I am not an expert; however, I believe it has a strong connection with the themes of the company law, specifically with the organizational structure of the company and with the themes of company governance (particularly mentioned in the speech of Professor Ringe) and with other research fields that are much closer to mine.

I recently prepared a chapter in the commentary on PSD2 edited by Gabriella Gimigliano and Marta Božina Beroš where I dealt with PI corporate governance profiles on which, if there is time, I will focus on it at the end of these remarks. Profile of corporate governance mentioned yesterday by Marta Beros with regards to initial capital, own funds, and many other profiles.

First, as I am not able to go in deep in a complete way on each very interesting single speech, and trying to summarize the study profiles covered by the many and very interesting reports, I could divide them in two large groups that contain all the most important issues related to payment services and competition: in the first group we can include all the reports that were held yesterday and in the first part of this morning that revolved around PSD2, opportunities and risks of PSD2 and beyond PSD2; in the second group, the reports presented this afternoon

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talked about the future; competition, antitrust profiles, digital markets, platforms, data sharing, data becomes commoditized, etc.

Said that, I would accomplish the task assigned to me by highlighting some of the many points of deep consideration that have emerged from the many interesting and relevant works presented at this conference.

We may say that the papers presented at this conference, all together, outlined the perimeter of a territory not yet described by official rules, hard law and soft law, with a vision towards the future and not only in those speeches more specifically dedicated to the future (see, for instance, the last two sessions), which starts from the urgent need, if I have understood well, to understand the transformations that the phenomenon described in the speeches determines in governance models (see specifically the speech of Gabriella Gimigliano, such as transformation in business organizational structure (as Wolf-Georg Ringe explained), transformations in the market (see the papers on competition), that inevitably have effects on the legal level and the task of law: that is to say how the law, hard and soft law, and particularly the European law is entrusted with the task of accompanying these transformations, if not anticipating them!

This central aspect (the role of the law) starts by the relevant introduction of fintech in the framework of enabling technologies of the financial world (see the speech of Giuseppe Pala), of the financial ecosystem (Marta Božina Beroš talks about “open banking ecosystem”, regards expressively money laundering concerns) but we may talk about financial ecosystem: it starts from the milestone of the PSD2 directive (see in particular the speech of Francesca Provini), but which then starts a regulatory perspective that has gone far, beyond PSD2 (see particularly the speeches of the second session Donato Salomone, “Stablecoins on the way to the EU regulation on markets in crypto-assets”; Giuseppe Pala, “Perspectives and prospects for EU rules on (some) FinTech service providers”; Maria Rosaria Maugeri, “Crypto-assets, Proposal for a Regulation on MiCA (Markets in Crypto-assets) and consumer protection”; Filippo Dami, “Tax law aspects of cryptocurrencies”).

If we consider the questions link to cryptocurrencies, crypto-assets, it is relevant to consider the Communication of Bank of Italy published some days ago where the Bank of Italy puts particularly the attention on the various risks regarding crypto-assets, fraud risk, for instance, also mentioned yesterday by Piero Cipollone, especially because at this moment we do not have a specific uniform European legislation on this subject.

We need to think about the centrality of data and platforms, in this context, that involve new problems on governance and supervision.

New legal issues of governance and supervision, different dimensions of supervision that open banking poses (we often heard the term “risks” in many speeches, see Piero Cipollone, fraud risk and other risks and Beck about new financial and non-financial risks), and vulnerability (Maria Cecilia Paglietti), and, before that, the dimension of competition (see the papers present in the

Third session of this congress) and that treatment of data that is relevant in this context (see, in particular, the papers present in the last session of this congress).

All papers has been very interesting for many ideas, the open banking seen in different ways (if we consider the last session of this congress dedicates almost open banking: Giuseppe Colangelo, “Open Banking and the data sharing paradox”; Markos Zachariadis, “The API Economy and Data-Sharing Regulations in Finance: Emergence of New Business Models, Architecture and Competition in Banking”, Konstantinos Stylianou, “Beyond Open Banking: What happens when data becomes commoditized” and Maria Casoria, “A Comparative Approach to Open Banking and Competition”) we may consider the “open finance” as a multiplier of conflicts that it takes a radial character, conflicts between payment providers and customers, between payment providers and other intermediaries with a specific connection with the organizational dimension of the company (see the speech of Wolf-Georg Ringe) on one hand, and the dimension inherent in the contractual relationship (Maria Cecilia Paglietti and Maria Rosaria Maugeri) on the other hand, and in the background, the change in the services transactions, in the object of the service, and the relationship which was also the subject of the contract.

We heard also many competition profiles emerged especially in the Third session, in particular, concerning the bigtech (the speeches of Roberto Pardolesi, Thorsten Beck and Vito Meli): Roberto Pardolesi, “The anti-monopoly scrutiny of digital markets”; Thorsten Beck, “Bank Competition in the Time of Digitalisation: The Good, the Bad and the Ugly”; Vito Meli, “New antitrust challenges in payment systems” and Francesco Di Stasio, “TIPS, the Eurosystem platform for Instant Payments: fostering the competition amongst operators for Euro and beyond”.

The relevance of the entire interoperability of the systems which is the real issue if the API system is a real collaborative and open system (Markos Zachariadis, “The API Economy and Data-Sharing Regulations in Finance: Emergence of New Business Models, Architecture and Competition in Banking”), but is that system really competitive and collaborative?

Markos Zachariadis told us there are critical profiles raised which leave an open or left ajar door and which, although the provisions of the directive provides for non-discriminatory access, lead to persistent barriers to the access (Provini and Beros) and not so much in the management of data as precisely for the interoperability of payment beyond the risks in addition to risks related to the network operated by fintech (many speakers talk about risks) that then brings us to the chiasmus (it is a pity to not know if Enrico Camilleri considers so): banks as platforms or platforms as banks?

All this basically imposes a paradigm shift, a practical and law model at the same time precisely competitive and collaborative that is characterized by the imposition, alongside the obligations, of incentives, benefits to the mutual opening between the actors participating in the system (mentorship as explained

by professor Wolf-Georg Ringe) even just for the mutual use of technologies that is the natural consubstantial character of the payment system (if I have understood correctly, the question is “the software as a service”, as Wolf-Georg Ringe told us yesterday).

A new model that still imposes a new vision of business (Markos Zachariadis, “The API Economy and Data-Sharing Regulations in Finance: Emergence of New Business Models, Architecture and Competition in Banking”); therefore, a collaboration that goes beyond the perimeter of financial intermediaries and at the same time a supervision that goes beyond the subjective dimension.

Two final considerations about my specific research profiles: on one hand, the insurance perspective and, on the other hand, the corporate governance profile.

First, the open banking, open finance in general, is not only the PSD2 directive but it presents additional uses, the creation of “open financial ecosystem” in particular, links with other actors, other intermediaries present in the financial market (Martina Beros talks about “open banking ecosystem”, regards specifically money laundering concerns), for instance, the problem of money laundering is not exclusive of banks.

Given that, when we talk about open finance, is it possible to talk about also open insurance?

I do not think so or, in other words, it is not easy to give an exact answer.

First of all, we must certainly note the distance that there is between the banking and insurance market, banking activities and insurance activities that requires to avoid precisely mere transpositions of those who is already more ahead, and the tendency of the insurances company could be to refer to those intermediaries who have already more experience; this must be done with judgment and critical scrutiny precisely because of the difficulty of replicating solutions it would be dangerous.

Why? Because even if it is clear there are common profiles between banks and insurance company, there are also important peculiarities between these two financial intermediaries.

In other words, the question regards the intermediaries who are not present in open finance and the critical issues presents where we want to make the sharing of data mandatory with the possible anti-competitive effects that could derive from it and that could be limited by selecting clusters of non-personal data.

Selection of data, as we heard, is the theme of the next new rules because we are naturally dealing with not only GDPR (as Vito Meli said), but also with digital market Act and then, with digital service act; however, these rules are present in a context that must be considered from a perspective of more than mere compliance, that is to say, it will not be sufficient to evaluate individual regulations alone, but it will also be necessary to place the phenomenon on a competitive level, especially considering the disciplinary interrelationships

between all the regulatory measures mentioned (Vito Meli, “New antitrust challenges in payment systems” and Francesco Di Stasio, “TIPS, the Eurosystem platform for Instant Payments: fostering the competition amongst operators for Euro and beyond”).

We must also remember that the new financial ecosystem will impose settling the proposal for reforms and also for consumer protection (see the papers of Maria Cecilia Paglietti, “Vulnerability of the digital-financial consumer in the retail payments market” and Maria Rosaria Maugeri, “Smart contracts, crypto-assets and consumer protection”).

Finally, I would like to do some considerations regarding corporate governance.

Professor Wolf-Georg Ringe talked about questions regarding corporate governance especially relating to outsourcing and the internal control system, and we have another profile on corporate governance provided by PSD2; a specific profile of governance could be solicited by the possible connection between the new open finance policies in its various conformations (let’s say we use Internet in a broad sense) and sustainability policies, the ESG factors, under a double profile:

- on one hand, it is recognized that the management of financial intermediaries needs data to fulfill the obligations regarding ESG factors, also to build upstream the related strategies and to ascertain downstream the actual impact of the same with respect to the stakeholders involved; the directors receive data that allow them to understand what the real requests are coming from the stakeholders, and they lead them to synthesis, to fix the real activity objects, purposes, even with respect to their remuneration policies that on those objectives to after defining a significant part of the variable remuneration;
- on the other hand, a second consideration could be that the opening of the data of all financial intermediaries allows a greater degree of knowledge on sustainability risks, therefore, it has a positive effect precisely because of the relevance also in terms of sustainability of the accessibility of data that becomes relevant in the open finance context.

The profile of the governance of these data goes beyond the compliance that the company already must comply with in the coordination of data as well as the requirements for opening data to the general sectoral cooperation (also in this case I am referring to the speech of Wolf-Georg Ringe) and horizontal or vertical one.

It is undoubtable, we are towards the future, in this context we might say “futuribile”, in English I guess “futureble”, a word used by Franco Belli, my professor, who I like to remember in this occasion, in this wonderful place where he was a speaker several times.