

The completion of the Internal Market in retail financial services: the consumers' perspective

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Le specificità dei servizi finanziari per i consumatori non possono essere ignorate: l'opacità dell'offerta, la difficoltà nell'ottenere informazioni chiare, complete e comparabili, l'immobilità forzata dei consumatori sono tutti fattori che mettono in evidenza lo squilibrio tra i consumatori e gli operatori e che costituiscono un grosso ostacolo alla concorrenza.

L'integrazione del mercato dei servizi finanziari potrebbe in teoria rappresentare un beneficio per i consumatori. Tuttavia, tali potenziali benefici si riducono al minimo in caso di mancanza di trasparenza dell'offerta o di mancanza di fiducia del consumatore. In tale settore, l'asimmetria tra consumatori e operatori in termini di informazioni e conoscenze è particolarmente elevata.

Secondo una recente indagine condotta dall'Autorità britannica per i servizi finanziari, i consumatori non compiono i passi necessari per scegliere il prodotto che va maggiormente incontro alle proprie necessità. Questo è dovuto alla natura dei servizi finanziari, particolarmente complessi, ma anche al comportamento degli operatori finanziari volti a sviluppare strategie di marketing che puntano a rendere un servizio globale.

Informazioni complesse, difficili da ottenere

I servizi finanziari sono essenzialmente un mix di diritti e doveri sia per gli operatori sia per i consumatori. Ciò rende le informazioni ancora più complesse e difficilmente comparabili. Di conseguenza, è difficile supporre che un aumento della concorrenza o un'estensione della possibilità di scelta siano di per sé vantaggiose per i consumatori.

L'associazione di consumatori francese UFC-Que Choisir ha identificato, per il solo 2003, più di 180 differenti costi nel mercato dei servizi finanziari al dettaglio. Spesso i consumatori non sanno esattamente per quali servizi pagano determinati costi, anche perché spesso uno stesso servizio può assumere nomi differenti se fornito da un operatore o da un altro.

In Danimarca 7 consumatori su 10 hanno dichiarato di non ricevere informazioni chiare sul proprio c/c, né di fidarsi.

In Italia, nel 2005, quasi il 20% dei consumatori ha dichiarato nel corso di un'indagine condotta da Altroconsumo di non sapere quanto spende per il proprio conto corrente, mentre il 51% ha dichiarato di non sapere quanto paga annualmente per l'utilizzo della carta bancomat. Inoltre, coloro che credono di sapere quanto spendono, generalmente sbagliano.

La constatazione dell'immobilità dei consumatori si ritrova all'interno dell'indagine settoriale della Direzione Generale Concorrenza della Commissione europea del luglio 2006 in applicazione del Regolamento 1/2003. Poiché i consumatori incontrano molte difficoltà nel recuperare e nel comparare le informazioni, non ci si deve sorprendere se i consumatori si attivano per cambiare banca e conto corrente solo a seguito di problemi con la propria banca. La ragione principale per cui un correntista decide di cambiare istituto è direttamente correlata al grado di insoddisfazione nei confronti della banca di appartenenza.

Molti consumatori vorrebbero "divorziare" dalla propria banca, ma non se lo possono permettere, soprattutto a causa dei costi elevati per l'estinzione del conto corrente che, nella maggior parte dei casi, rappresentano un vero e proprio ostacolo alla mobilità. Tali costi dovrebbero in ogni caso avere limiti precisi da rispettare e soprattutto essere in linea con i reali costi che questa operazione comporta.¹

Il problema legato alla mobilità dei consumatori va comunque oltre il problema dei costi di chiusura. I pacchetti sono un'ottima cosa per la fidelizzazione del cliente, ma hanno un impatto negativo in termini di trasparenza, poiché sono ovviamente studiati per rendere più difficile la comparazione delle proprie offerte con quelle dei concorrenti.

Non dovrebbe, inoltre, esistere l'obbligo di aprire un conto corrente in una banca per poter acquistare altri prodotti/servizi o viceversa. Cambiare la propria banca, quindi, diventa più costoso. Anche i correntisti spesso non selezionano i prodotti da inserire nel pacchetto e finiscono col comprare e pagare più prodotti e servizi di quelli di cui hanno veramente bisogno.

L'asimmetria informativa, la moltiplicazione delle commissioni, l'allineamento dei prezzi e, in alcuni Stati, il potere di mercato limitato dei consumatori sono elementi che portano al rischio di una tacita collusione tra operatori del settore bancario.

Efficienza regolamentare ed efficacia dei controlli

Fatto salvo quanto su esposto, è abbastanza difficile immaginare che regole non complesse possano essere efficaci nel regolamentare il settore dei servizi finanziari. Nonostante ciò, a livello europeo una parte della discussione sulla migliore regolamentazione è correlata all'aumento della tendenza a fare affida-

¹ Significativo è notare la recidiva che emerge dal monitoraggio condotto da Altroconsumo sui costi di chiusura dei c/c a seguito dell'introduzione del divieto di spese di chiusura previsto dall'Art. 10 della Legge 248/2006: 11

banche a gennaio e 12 banche a maggio 2007 delle 35 monitorate continuano a esigere commissioni e spese come oneri accessori alla chiusura del c/c per trasferimento titoli.

mento nella cosiddetta Commissione Lamfalussy, costituita da rappresentanti degli Stati membri, al fine di adattare, semplificare e completare lo scenario legislativo anche nell'area dei servizi finanziari.

Questo non sempre avviene tenendo in considerazione il punto di vista dei consumatori e di chi li rappresenta.

Inoltre, il momento politico ha bisogno di essere considerato quando si valutano "velocità ed efficienza" della regolamentazione e si paventa un rallentamento o appesantimento delle norme laddove queste debbano contemperare l'impatto sui consumatori. Per esempio, il Regolamento sui pagamenti transfrontalieri in euro è stato adottato in un lasso di tempo molto breve proprio perché ci si trovava nella fase di transizione verso una moneta unica.

Un elemento indispensabile per stimolare la fiducia dei consumatori è garantire un elevato e uniforme livello di tutela dei loro diritti. La fiducia dei consumatori viene meno se non possono fare affidamento sulle norme, che già conoscono poco, del loro ordinamento nazionale.

Infine, il coordinamento delle autorità di vigilanza del settore non può far venir meno la possibilità delle Autorità nazionali di intervenire anche ritirando la licenza ai fornitori di servizi finanziari che non rispettino la normativa, pregiudicando gli interessi dei consumatori.

Il caso del SEPA

Il Single European Payment Area è un'iniziativa voluta e portata avanti dall'industria per permettere ai cittadini, alle imprese e agli altri attori economici di effettuare e ricevere pagamenti in euro all'interno del territorio comunitario, con le stesse condizioni, con i medesimi diritti e doveri a prescindere dal loro luogo di residenza.

Gli standard relativi al SEPA andranno, quindi, a impattare direttamente sulle caratteristiche dei prodotti disponibili ai consumatori a livello nazionale, sia dal punto di vista dei prezzi sia delle modalità di erogazione dei servizi (carte di pagamento, prelievi presso bancomat e trasferimenti di crediti) da parte delle banche.

Molte incertezze sono, tuttavia, ancora legate all'interpretazione e all'implementazione della Direttiva sui Servizi di Pagamento, per poter dire che questa armonizzazione sia vantaggiosa per i consumatori. Per esempio, per quanto riguarda l'incertezza sull'onere della prova e sulla responsabilità in caso di mezzi di pagamento andati perduti o rubati; il rischio di un passaggio a servizi meno efficienti o più cari di quelli attualmente offerti a livello nazionale; infine, nel caso non si possieda un conto corrente, il rischio d'inaccessibilità di alcuni prodotti.

Introduction

The achievement of the Internal Market has been at the heart of the project of European integration, since the very beginning for coal and steel (ECSC Treaty) or more globally with the Rome Treaty and the creation of the European Economic Community.

For a long time, the goods or agricultural product markets were more of a priority than the financial services one. After the integration process was re-launched with the Single European Act, the Financial Services Action Plan launched in May 1999 aimed at completing the Single Market in wholesale financial services, and at developing open and secure retail financial services markets. The latter priority has been confirmed in the White Paper of the European Commission on Financial Services Policy (2005 -2010), and in the Green Paper on Retail Financial Services.

However, the specificities of retail financial services for consumers cannot be ignored. The opacity of offers, the difficulties obtaining clear, complete and comparable information, the forced immobility of consumers highlight the imbalance in terms of market power between consumers and operators, and constitute as many obstacles to competition. These problems have an impact on the manner in which the integration of retail financial services must be envisaged, not only from the point of view of the legislator, but in terms of political priority.

Consumers and retail financial services

The integration of retail financial services could in theory benefit consumers, since it would allow them to reap substantial financial gains (price reductions or better quality of services through enhanced competition).

However, these potential benefits would be reduced to nothing if consumers confidence is called into question, or in case of lack of transparency of offers, weak mobility or limited competition.

Peculiar markets for consumers

Retail financial services markets do not present the same characteristics as good markets. In particular the asymmetry in terms of information and (technical) knowledge between consumers and providers is particularly high. The “professionals” have an undisputable advantage in terms of information and technical knowledge.²

² «The mind of the merchant, the lawyer, the physician, and the man of science, becomes gradually equipped with a store of knowledge and a faculty of intuition, which can be obtained in no other way than by the

continual application of the best efforts of a powerful thinker for many years together to one more or less narrow class of questions.» In Alfred Marshall (1920), “Principles of Economics”, Book IV, Chapter 9, paragraph 3.

It seems highly improbable that financial education of consumers as such will do away with these asymmetries. It is not realist to imagine that the average consumer would be able to grasp the subtleties of highly complex products. "The enlightened amateur" in financial services will most probably find it difficult to achieve the same level of experience or even a "sufficient" one as compared to the professionals.

It is highly doubtful that consumers have become increasingly sophisticated and possess a broad range of skills and abilities to make their choices, especially with new and more complicated retail financial services products appearing all the time. According to a research conducted by the UK Financial Services Authority, «people do not take adequate steps to choose products to meet their needs. Most households spend material amounts on financial services, yet many do not shop around to find a good deal». «The distribution of scores shows relatively few people demonstrating behaviours that would be considered more capable. Even of those who have bought financial products, approximately one third are clearly not very capable at choosing them».³

This has to do with the nature of financial services, but also to the increasing complexity of products, linked to the "bundles", as well as to the willingness of financial actors to develop a "global relationship" with their customers.

A complex information, hard to obtain

Financial services are in essence a mix of rights and obligations, for the provider as well as for the consumer. This naturally renders the information more complex, and makes it more difficult to compare between offers.

As a consequence of this, one cannot assume that an "increased" competition or an extension of "choice" per se would necessarily benefit consumers. As an example, in the UK more than 30.000 financial services products are on offer. For "essential" financial services such as mortgage credits, complexity of products and information asymmetry are all the more problematic since the risks and consequences of a bad decision are substantial.

Beyond these aspects, the number and the multiplication of tariffs, the lack of clarity of the services covered fuel confusion. The French consumers association UFC - Que Choisir had identified more than 180 charges in the field of retail banking alone in 2003 in France⁴ (bank account, bank card, bank transfers, payment incidents, loans).

Various charges for "advice", encoding or intervention can be claimed, without the consumer knowing exactly what they cover. Tariff innovation results in the absence of standardisation of the labelling of services considered, the non linearity of tariffication (the same service can be free for a certain number of

³ http://www.fsa.gov.uk/pubs/other/fincap_baseline.pdf

⁴ "Frais bancaires - les Français exigent une facture

séparée", Etude IFOP/UFC - Que Choisir, Mars 2003.

operations, and then the customer is being charged), whilst for other operators a complex charging formula is applied.

The same service can also be found under different names from one provider to the next, which highlights the need for a common public domestic glossary of retail banking vocabulary in order to facilitate customers' understanding of the terminology and ability to compare offers ("same words for the same services").

In Denmark in 2005, 7 out of 10 consumers stated that they found bank prices confusing, which suggests a lack of transparency, and that they did not trust the public price lists.⁵ In Italy,⁶ in 2005 nearly 20% of consumers declared not knowing how much they paid for their current account whilst 51% declared not knowing how much they pay per year for using ATMs. And those who believed they knew were generally wrong.

The access to these tariffs is also difficult. In spite of the commitment of French banks in November 2004 that all tariffs would be easily accessible on Internet and in branches as leaflets, a survey conducted by the French consumers association CLCV beginning of 2006 in 280 branches covering 10 networks has showed that in only 50% of cases tariff leaflets were available.⁷ This was confirmed by a 2007 survey,⁸ which indicated that although some progress has been made, a lot still needs to be done in this respect. The obligation for French banks to make a list of automatic and recurring transactions available for a reasonable price has been respected, but this has led some banks to create a new tariff line for this "service", which is charged 30 euros in several branches of *Crédit Agricole* and *Société Générale*. This leads to the situation where consumers get the information only after they have signed the contract.⁹

As a result of limited transparency, information asymmetry and the complexity of products, consumers might use imperfect proxies such as brands, reputation or proximity of the provider (bank-next-door) instead of analyzing prices, quality of service, contract terms and conditions. This will impact competition as such, since for instance marketing might play a bigger role than the quality of the offers themselves, resulting in small players with more limited resources/new entrants with a limited brand recognition not being able to match the activism of bigger operators.

Consumer immobility, cause and consequence of the lack of competition

In a market where price transparency is limited, and the cost of acquiring information is high, the level of competition between market actors is necessarily more limited.

This immobility of consumers has been highlighted for example in the framework of the sectoral investigation of the Directorate General Competition of the

⁵ http://www.oem.dk/graphics/oem/nyheder/Presse-meddelelser_2005/RapportGebvrer.pdf.

⁶ Altroconsumo, *March 2005*.

⁷ "Banques: des engagements non tenus!", *Confédération Logement et Cadre de Vie*, Avril-Mai-Juin 2006.

⁸ "Tarification bancaire: l'enquête annuelle de la clcv. En collaboration avec Mieux Vivre Votre Argent", *clcv*, 2007.

⁹ "Banques - le compte n'y est pas", *ufc - Que Choisir* n. 425, April 2005.

European Commission.¹⁰ If information is hard to get, and comparability difficult, it should be no surprise that consumers are not necessarily looking for best deals, even when better offers are available on the market. Consumers' decision to switch would then be based primarily on dissatisfaction with their current bank.

However, this is not even the case: in Belgium, 8 out of 10 consumers have not changed banks over the last 10 years in spite of 65% of them not being satisfied with the service offered. In the UK in 2005, less than 5% of consumers had changed banks over the last two years, in spite of 35% of consumers being annoyed with their banks, and the current account market being dominated by four big banks: Lloyds TSB, Barclays, NatWest and HSBC (as 70% of consumers bank with them) none of them offering the best current accounts.¹¹

In this respect, the so-called "satisfaction" of consumers has to be considered with caution. Since a large proportion of consumers do not have a precise idea of how much their bank costs them and how much the same level of service would cost in another bank, their ability to compare alternative offers is severely constrained as a result. Besides, the quality of services is often difficult to assess, and consumers are not well aware of their rights and obligations in the ever more complex field of financial services, including under their own national rules.

Most consumers would like to "divorce", but cannot afford to. Closing fees for bank accounts are problematic in this respect since they have a negative impact on the capacity/willingness of consumers to change provider. In Austria, for example, according to the Austrian consumers organisation VKI,¹² closing fees for a bank account varied between 5 euros and 25 euros, the average being around 12 euros in 2005.

Closing fees for a bank account should in any case be limited and in line with real costs. These fees should be forbidden when the decision of closing the account results from non acceptance of new banking or contractual conditions.

However, consumers' mobility goes much beyond the problem of closing fees.

The capacity of consumers to choose between providers/products or services (transparency of information, comparability of offers) and their capacity to exert their capacity to choose (no obstacles to switching/consumers mobility, level of competition on the market) have to be taken into account.

In 2004, UFC-Que Choisir had assessed the opportunity costs linked to switching bank in France to around 335 euros.¹³ Besides the charges imposed on consumers for closing a bank account at the time, other costs have to be taken into account, (transfer of contracts, for example, costs of lost payments, administrative fees, that is to say the necessity to send letters, to fill in forms, the time lost in looking for a new provider).

The red tape linked to changing bank accounts has to be lightened as well. In Austria, additional fees are charged for specific services such as permanent

¹⁰ "Interim Report II Current Accounts and related services", Sector Inquiry under Article 17 Regulation, 1/2003 on retail banking, 17th July 2006.

¹¹ "Give us back our money", Which?, July 2005.

¹² "Bankenwechsel - Auf Nimmerwiedersehen!", Konsument, 3/2005, pp. 38-39.

¹³ "Etude sur le coût des services bancaires", UFC - Que Choisir, Juillet 2004.

order. In general, banks willing to attract consumers propose to take care of bureaucratic tasks - but do not cover closing fees. More generally, switching current accounts can be a complex operation for consumers because of the range of everyday functions that are conducted through the account. Filling in the necessary forms for opening a new account, closing the old one, transferring balances, transferring direct debits, setting up payment instructions, informing customers about the new account number can be time-consuming. In addition, there is a risk that direct debits or other transactions might be lost. In Italy for instance, it can take more than 2 months to switch a current account to another bank.

Packages have a negative impact in terms of transparency as they make it more difficult for consumers to compare offers and prices. Besides, it increases consumers' reliance on their bank and thus it might be more difficult for a consumer to exit a contractual relationship or have more than one bank. For instance, a consumer can fear for that the interest rate he obtained for his mortgage credit is called into question if he switches bank account provider. Also, consumers may not end up getting the best deal.

If the consumer has subscribed or subscribes to a "package" of banking services, it is highly probable that at least some of these services will overlap and will lead to a costly double charging. It is evidently not a solution in this respect to resort to a 'gradual' switching of provider under which the consumer would keep at least some services with his former provider until the contract has elapsed. This can only negatively impact the ability of consumers to switch, since he/she would be limited in his endeavours as far as this particular service or a package including this service is concerned.

At the same time, even if tying of products¹⁴ (making the provision of an offer for a specific product conditional on the purchasing of another) is forbidden, consumers could be in the situation where they are strongly advised to acquire another product if they want to get a specific product under specific conditions. Consumers should always have the possibility to buy services in isolation. They should not be under an obligation for instance to open a bank account as a prerequisite of buying other services and vice versa. Failing this, consumers would not be able for example to switch their bank account, if it is bundled with a mortgage credit and the mortgage is expensive to repay early. Bundling therefore tends to make it more costly to leave the current provider. Also, customers often do not select which products to include into a bundle and end up buying more products than they actually need.

Bundling of products/services is also likely to have an impact on the level of multi-banking consumers (multi-banking meaning having bank accounts with more than one bank),¹⁵ and on the extent to which multi-banking would contribute to consumers mobility. Multi-banking can in no way be considered a

¹⁴ According to the Interim Report II: Current Accounts and Related Services by DG Competition, tying occurs when two or more products are sold together in a package, and at least one of those products is not sold separately. Tying, unlike bundling, involves coercing customers to take on additional - and perhaps unnecessary - products. Bundling

means selling two or more products together in a package. These products may only be available as a bundle (pure bundling), or available separately but offered at a discount relative to their individual prices (mixed bundling).

¹⁵ Multibanking is more likely when banks do not charge high maintenance fees for bank accounts.

substitute for switching, or evidence of a competitive market. In fact, consumers may be forced into multi-banking in the case of bundled products and high fees for terminating or transferring a contract of a specific product in the package. Whilst the optimal solution for them would be to switch provider entirely or at least for the product considered, they might refrain from doing so during the lifetime of the contract if the costs of terminating/transferring the contract are higher than the potential benefits they would get from switching.

The forced immobility of consumers has a detrimental impact on the level of competition on the market as well as on the level of entry of new competitors.

Information asymmetries, the similarity of charging structures, stability of demand as well as limited market power of consumers (atomised demand) might lead to a risk of tacit collusion between operators. The multiplication of banking fees and the apparent parallelism of prices in some Member States are elements to consider in that respect.

Paradoxically, exclusionary practices from dominant firms (price decreases, advantageous tariffication of “packages”, fidelity rewards) might seem to benefit consumers in the short run. However, if these offers are part and parcel of a strategy aiming at price competitors out of the market, consumers will be disadvantaged in the medium to long run. Therefore, this strategy has to be distinguished from the efficient and legitimate competitive behaviour which is to the permanent benefit of consumers.

The low “churn” rates, at around 9% yearly on average in the UE¹⁶ impact negatively the level of entry on the market. In fact, since few consumers switch provider as a result of lack of transparency and high opportunity costs render demand relatively inelastic to prices: consumers switch less than the price movements on the market would normally imply. This inelasticity can result in prohibitive costs of acquiring clients for new entrants, whilst they are faced with the necessity to make economies of scale to render profitable their entry on the market. As a consequence, entry can be limited, all the more since the sunk costs of attempting to attract customers and/or to build one’s reputation and credibility cannot be ignored.

“Better regulation” and regulatory efficiency

The problems highlighted above impact the manner in which the integration of retail financial services must be envisaged from a regulatory perspective.

The “better regulation” approach including impact assessments and an extensive consultation, is put forward as a leitmotiv at European level.

Even if “excessive regulation” and “bureaucracy” must naturally be avoided, one can wonder why a “simple/simpler” legislation should be on the agenda in

¹⁶ “Interim Report II Current Accounts and related services”, Sector Inquiry under Article 17 Regulation, 1/2003 on retail banking, 17th July 2006.

a sector characterised with sophisticated products, complicated offers/tied products and information asymmetries as well as “not so simple” a legislation at national level.

The test for a legislation to be proposed should in no case be its purported “simplicity”, but its capacity to solve the problems that consumers and providers could encounter on the market. Obviously, rules need to be proportionate and a good transposition of European rules must be ensured. However, it is difficult to imagine that non complex rules could be efficient in the field of retail financial services.

The decision making process necessitates more transparency and consultation. The effective implication and representation of consumers’ organisations are essential. There is a need for European institutions to be informed about what constitutes progresses in respect of integration from the point of view of consumers, the manner in which the regulatory initiatives influence consumers and the areas in which decision makers should concentrate their efforts.

Similarly, the integration of consumer protection policy into other community policies, as defined in Article 153 of the Treaty must be implemented, and the legislative process must reflect this integration.

Consequently, the use of Consumers Impact Assessments, to assess the cost-benefits of the proposed legislation, and to take into account the impact on consumers’ welfare, should be on the agenda.

Part of this discussion on better regulation is the increasing tendency to rely on the so-called Lamfalussy Committees, made up of member state representatives, to adapt and complete the framework legislation in the area of financial services, supposedly to reduce the time necessary to adapt financial regulation to new market developments. Whilst there is a need for better consultation mechanisms and greater transparency, and to improve the involvement of stakeholders and of consumer organisations in particular, in fact, lawmaking might not be faster and more efficient since the consultation on implementing measures will impact on the time when the final package of measures is agreed upon. The process as it stands allows a delegated authority to issue subsidiary legislation: this is law-making, which should not be done behind closed doors. It could also call into question national discretionary powers as far as consumer protection provisions are concerned.

The political momentum needs to be considered when assessing “speed and efficiency”. For instance, the Regulation on cross border payments in euros¹⁷ was adopted in a short time-span due to the political momentum (the changeover to the Euro) – and this was outside the Lamfalussy process. Also, timely implementation/transposition of Community directives (including implementing measures in the form of directives) into national laws and enforcement are key issues, and actual implementation remains an unknown factor.

Corporate governance could also play a complimentary role in the field of retail financial services. Besides companies, accountants and auditors and other market

¹⁷ Regulation 2560/2001 of 19th December 2001 proposed in July 2001.

participants having to apply the highest ethical standards in their work, consumers must be put at the heart of corporate governance. Corporate governance would cover information to consumers, product design, contractual terms and conditions, fair penalty charges, to try to promote consumer confidence in financial services. The linking the remuneration of financial firms' directors to indicators factoring in how well consumers are treated, fair and responsible practices could be considered, as well as rules to prevent retail financial firms from using remuneration strategies which conflict with the duty to treat customers fairly.

The political agenda: priority to integration?

Consumers' protection as such should not be considered as an obstacle to the integration of the internal market in retail financial services. On the contrary, a high level of consumers' protection is necessary to stimulate consumers' confidence (in all the EU retail financial service providers).

This is the only way to resolve (partly) the problem of asymmetric relationship between consumers and financial services providers. Harmonisation must not lead to a deterioration of the existing level of consumers' protection. Mutual recognition and maximum harmonisation are no viable option in that matter.

Mutual recognition can only be envisaged when there has been a natural process of adaptation of retail products and services to local demand. Consumers already face difficulties in comparing financial services, even within one single Member State. It does not seem realistic to expect consumers to be able to make "an enlightened choice in contractual law", as they would have to understand the different national legislations to be in a position to benefit from the potential advantages and the larger choice provided by free movement.

Maximum harmonisation would reinforce uncertainties and ambiguities, since consumers could not count on "their" national rules developed to deal with problems relevant for "their" markets. These are not "simple obstacles" to integration, which would have to be eliminated. Member States should be able to keep/introduce additional consumer protection rules going beyond the (European) harmonised level. Maximum harmonisation could by its very nature undermine consumers' confidence.

The choice of the regulatory instrument most appropriate must be done in a fair and balanced manner and should not be biased towards self-regulation, in particular since it is not necessarily "quicker" or "more efficient" in terms of adoption and implementation, nor more "flexible" than binding regulation.

Lastly, convergence in respect of supervision must not call into question the capacity for national authorities to intervene if a provider does not abide by the rules or prejudices consumer interests. This would include the possibility to ban a provider or to withdraw its licence if necessary.

A practical case: the Single Euro Payments Area

Amongst the far reaching initiatives considered at European level, the Single Euro Payments Area project is at the same time the most advanced and the most likely to directly impact consumers in their daily life.

In theory, SEPA is a mostly industry-led initiative¹⁸ to allow “citizens, companies and other economic actors to make and receive payments in euros, within Europe, whether between or within national boundaries under the same basic conditions, rights and obligations, regardless of their location”.¹⁹ Replacing national products by Euro-wide products based on common standards for both national and cross border payments goes beyond Regulation 2560/2001 on cross border payments in euros, which was based on the fundamental principle of equivalence of charges for national and cross border payments in euros. It covered card payments, cash withdrawals at ATMs and credit transfers, whilst under SEPA standards will be defined for cards, credit transfers and direct debits. SEPA will concern payments in euro within the EEA area and Switzerland.

In fact, the SEPA standards will impact directly the features of the products available to consumers at national level, as well as their pricing, and potentially banking services in general.

How SEPA products would compare with current national products in terms of price, quality and adaptation to consumers needs is likely to vary from one Member State to another and from one bank to another. Besides, uncertainties remain as regards the “core” features of products, beyond which providers will compete.

For instance, even if the Payment Services Directive clarifies that from 2012, the execution time for credit transfers will be one day within the Single Market. However, the SEPA standard for credit transfers refers to “a common maximum 3-day time cycle”. In some Member States, depending on the date of implementation of the SEPA credit transfer standard, same day execution time (which is the rule) might be called into question by SEPA, unless there is “good market behaviour” from operators. Owing to the limited consumers’ mobility in the sector, this raises some doubts at the very least.

Therefore, there could be a forced transition towards less efficient SEPA products than the ones currently on offer at national level.

Even if the pricing of SEPA products is not normally on the agenda of the industry discussions, for fear of breach of antitrust rules, SEPA products could also end up being more expensive for consumers than current national payment products. The transition from “national” products to “SEPA” products is unlikely to be achieved before 2012 at the earliest. However, some banks have already

¹⁸ The European Commission and the European Central Bank working with the Eurosystem have been supporting the work of the European Payments Council (EPC), which brings together the European payments industry.

¹⁹ “Making SEPA a Reality” - Implementing the Single euro Payments Area, European Payments Council, 16 April 2007.

anticipated this move, resulting in new “packages” for consumers, in Belgium, Slovenia and the Netherlands.

The Eurosystem itself has expressed concerns²⁰ that the implementation of a SEPA for cards may lead to increase in card fees and could be detrimental to consumers and merchants, especially owing to the fact that in Europe national card schemes are generally very efficient and relatively inexpensive.

The restriction of choice can also result in higher (relative) prices for consumers. For instance, if consumers only needed a (cheaper) payment card for purely national payments, they might be forced to opt for (more expensive) euro-wide payment card, offering facilities they do not need at a higher price.

Some of the benefits to consumers put forward by the EPC are elusive at best. For instance, consumers might not be in a position to only possess one bank account to make payments across the eurozone even if they so choose. Consumers might still be faced with substantial fees for withdrawing cash at an ATM outside the network of the bank of their country of origin, at national and cross border level, even when considering the implementation of Regulation (EC) No 2560/2001 on cross border payments in euro,²¹ which provides for equivalence of charges for national and cross-border payments.

This is compounded by the uncertainties linked to the interpretation and implementation of the Payment Services Directive (to be formally adopted in September 2007) for instance, as regards the burden of proof and liability when payment means have been lost, stolen or misappropriated. Article 50²² of the text does not make a distinction between loss/theft and misappropriation of payment instruments, whilst consumers are generally not aware that their payment instrument has been misappropriated before some time has elapsed, and the ability of consumers to prevent misappropriation is limited. To request a consumer to ensure for instance that his credit card details are not accessible to a hacker when paying online is quite simply impossible. Whilst it is possible for Member States to reduce consumers' liability, taking into account especially the nature of the personalised security features of the payment instrument and the circumstances under which it was lost, stolen or misappropriated, the extent to which this margin of manoeuvre will be used is still unknown quantity.

²⁰ “The Eurosystem’s view of a SEPA for cards”, ECB, November 2006, available at <http://www.ecb.int/pub/pdf/other/eurosystemsviewsepacardsen.pdf>

²¹ OJ L 344 of 28.12.2001, pp. 13-16.

²² Article 50, “Payer’s liability for unauthorised use of payment instrument”

1. By derogation from Article 49 the payer shall bear the loss relating to any unauthorised payment transactions, up to a maximum of euro 150, resulting from the use of a lost or stolen payment instrument or, if the payer has failed to keep the personalised security features safe, from misappropriation of a payment instrument .
2. The payer shall bear all the losses on unauthorised transactions if he incurred them by acting fraudulently or by failing to fulfil one or more of his obligations under Article 46 with intent or gross negligence . In such cases, the maximum amount referred to in paragraph 1 shall not apply.

2a. In cases where the payer has not acted fraudulently or with intent failed to fulfil his obligations under Article 46, Member States may reduce the liability referred to in paragraphs 1 and 2, taking into account especially the nature of the personalised security features of the payment instrument and the circumstances under which it was lost, stolen or misappropriated.

3. The payer shall not bear any financial consequences resulting from use of the lost, stolen or misappropriated payment instrument after the notification in accordance with Article 46(1)(b), except where he has acted fraudulently.

4. If the payment service provider does not provide appropriate means for the notification at all times of a lost, stolen or misappropriated payment instrument, as required under Article 47(c), the payer shall not be liable for the financial consequences resulting from use of that payment instrument, except where he has acted fraudulently.

Conclusions

It is important to implement competition policy in an active manner in the field of retail financial services but there is also a need for binding measures to deal with the “captivity” of consumers and the bundling of products. In particular, early repayment fees and other contractual terms ‘tying in’ consumers to providers have to be dealt with.

The harmonisation of “interfaces” (structured and normalised presentation of products, for example) should also be on the agenda, to allow for better information, transparency and comparability of products.

A higher level of “financial education” or the improvement of financial skills could lead to important benefits in the long run, and allow for instance to focus on the “risk elements” of the different products. Nevertheless, allowing to the fact that most consumers live a very active life and their ability to follow a financial services training is necessarily very variable, this is certainly not panacea.

For consumers to manage their financial products in a more efficient manner, it is therefore important that they receive quality, professional and independent advice, indicating them the product(s)/service(s) best adapted to their needs and to their financial situation (e.g.: reimbursing capacity, personal employment and family situation). The need for such advice will only increase with cross border provision of services, extension of choice and higher involvement of financial intermediaries.

Access to redress is also indispensable and consumers must be in a position to introduce a complaint with the local authorities locals of their country of residence, without having to go to the authorities of the Member State the company originates from.

Finally, without a bank account, many financial services remain out of reach, and even finding a job can be difficult due to the administrative charges in handling cash payment of the salary. Few consumers in the “new” Member States have access to a bank account. In fact, less than 40% of them have a bank account in Poland, Lituania or Latvia.²³ This raises the issue of universal service obligations in the area of financial services.

²³ Candidate countries Eurobarometer 2003. 5 May 2004.