



ALMA MATER STUDIORUM  
UNIVERSITÀ DI BOLOGNA

**Consumers & SMES**  
in the Digital Single Market

**Jean Monnet Centre of Excellence**



**Digi-ConsME**  
Jean Monnet Centre of Excellence 

## NEWSLETTER 1/2020

### Digi-ConsSME Highlights

The current Covid-19 emergency has deeply impacted Italy and, unfortunately, the whole world in general: therefore, our activities are postponed to a later date.

In particular, the kick-off Conference will be held, hopefully, in Autumn 2020 as the short courses, which would have been set between May and July 2020.

Besides this newsletter, we invite you to visit our website, in order to stay updated and get more information about our Centre: <https://site.unibo.it/digi-consme/en>.

Finally, we are glad to communicate you that the 3 selected fellows for our visiting positions are the following:

1. [Dr Angela Daly](#), University of Strathclyde, Scotland
2. [Prof. Michael Birnhack](#), Tel Aviv University, Israel
3. [Prof. Ruth Plato-Shinar](#), Netanya Academic College, Israel

### Outside ConSME

The European Commission, in collaboration with EU member states opened a call for participation in a pan-European Hackathon to connect innovators, partners and buyers across Europe to develop innovative solutions for coronavirus-related challenges.

One of the challenge domains of the hackathon is Digital Finance, including the following challenges:

1. Support identification of financial shortfalls  
The challenge is meant to supporting short term identification and analysis of businesses' financial shortfalls and needs, in particular for SMEs, through data analytics/open data.
2. Speed-up access to financial support  
The challenge is meant to find solutions to enabling speedy access to public financial support by SMEs, self-employed, citizens.
3. Speed-up distribution of financial support

The challenge is meant to find solutions to quicker distribution of public financial support via digital money/transfers.

4. Availability of emergency health insurance

The challenge is meant to find solutions to ensure an emergency Coronavirus health insurance .

5. Enable crowd to help financially

The challenge is meant to crowdfund to support the fight against Coronavirus such as the provision of medical equipment to local hospitals.

6. Support for digitally excluded

The challenge is meant to find solutions to provision of essential digital finance tools to the digitally excluded such as the elderly and homeless.

7. Other

Further information at <https://euvsvirus.org> and at <https://euvsvirus.org/challenges/#finance>

Check out also the following roundtables organised by the European Commission:  
FISMA online roundtables

- 13 May - Enabling an EU framework for markets in crypto-assets
- 20 May - Enabling a digital operational resilience framework for financial services
- 27 May - Digital Sustainable Finance - how can digital finance support sustainability?

And more at [https://ec.europa.eu/info/publications/digital-finance-outreach-2020\\_en](https://ec.europa.eu/info/publications/digital-finance-outreach-2020_en)

Consultation on a new digital finance strategy for Europe / FinTech action plan  
[https://ec.europa.eu/info/consultations/finance-2020-digital-finance-strategy\\_en](https://ec.europa.eu/info/consultations/finance-2020-digital-finance-strategy_en)

## ConSME Position

The Centre warns against the potentially dangerous techno-enthusiast positions of those who see the opportunity to exploit the COVID19 crisis for the digital development but minimize risks.

A careful cost-benefit analysis should be undertaken before accelerating the establishment of Fintech as a quick-fix for the emergency. The many risks for consumers and SMEs should be considered in light of whether digital finance may really take consumers and SMEs out of the economic crisis. Digitalisation carries with it consequences for fundamental rights of individuals, access and equality, as well as economic and social development. It touches upon basic democratic values of our society and its organisation.

The crisis should not represent a way to allow an easy and quick spread of digitalisation at the expenses of said fundamental rights and values of European societies.

## Publications

In our newsletter, we'll suggest you interesting publications provided by the members of our Centre, as well as selected papers we have found particularly pertinent to our activities.

This time we propose you:

1. Alvisi M., Carbonara E., (2020) "*Cocktails Done Right: Price Competition and Welfare When Substitutes Become Complements*", *Journal of Economics*. <https://doi.org/10.1007/s00712-020-00690-z>

**ABSTRACT:** In this paper we analyze the effects of the introduction (by either firms or authorities) of a composite good consisting of a fixed proportion of two imperfectly substitutable stand-alone products. First, we find that such a "cocktail" rises the Bertrand equilibrium prices as it introduces a certain degree of complementarity. It also creates incentives to price discriminate and products can be sold at a discount or at a premium (depending on their degree of substitutability) when they are used as part of the composite good. We consider two distinct forms of price discrimination: a traditional one, in which producers set their prices independently of each other and a coordinated one, in which producers cooperate (collude) when setting the price of the composite good. Composite goods might have either a positive or a negative impact on consumer surplus. The sign of the impact depends on the form of price discrimination and consumers tend to be better off if producers coordinate. The impact is also more likely to be positive if "cocktails are done right", i.e., if their quality is high compared to the quality of the stand-alone products.

2. Cherednychenko O. O., (2019) *Rediscovering the Public/Private Divide in EU Private Law*, *European Law Journal*, pp. 1-21. <https://doi.org/10.1111/eulj.12351>.

**ABSTRACT:** This article explores the role of the public/private divide within EU private law. It shows that although EU private law cuts across the boundaries of public and private law, the conceptual distinction between these well-established categories does matter within it and may lead to better law-making in the EU more generally. The legal grammar of a particular EU harmonisation measure—which can be more "public" or "private"—may have important implications for the position of private parties at national level, for the CJEU's likely activism in this context, and ultimately for the measure's ability to realise its policy goals. Therefore, instead of ignoring the existing differences between public and private law, EU law should explicitly adopt the public/private law language in its discourse, without, however, introducing any sharp divide between these two areas.

3. Cherednychenko, O. O., Meindertsma, J. M., (2019) *Irresponsible Lending in the Post-Crisis Era: Is the EU Consumer Credit Directive Fit for Its Purpose?*, *Journal of Consumer Policy*, 42(4), pp. 483-519. <https://doi.org/10.1007/s10603-019-09421-4>.

**ABSTRACT:** More than a decade after the outbreak of the global financial crisis, consumers across the EU have been increasing their level of debt in terms of both volume and value of consumer credit products. Among the reasons for this trend are the low interest rate environment, the novel business practices of lenders aimed at

finding new revenue sources, such as fees and charges on loans, and the innovative business models emerging in an increasingly digital marketplace, such as peer-to-peer lending. These developments present new risks to consumers and pose new challenges for regulators in terms of how to address them. This article aims to uncover the problematic aspects of consumer credit provision in the post-crisis lending environment across the EU and to assess to what extent the 2008 Consumer Credit Directive currently in force, which aims to ensure adequate consumer protection against irresponsible lending, is fit for its purpose today. In this context, the article explores the general meaning of “responsible lending” with emphasis on consumer credit, identifies the most imminent irresponsible lending practices in the consumer credit markets, and tentatively analyses their key drivers. It also reveals some important limitations of the Consumer Credit Directive in providing adequate consumer protection against irresponsible lending and offers tentative recommendations for improvement. In the authors’ view, the time now seems ripe for striking a different balance between access to credit and consumer protection in European consumer credit law.

4. Cherednychenko O. O., (2019) *EU Financial Regulation, Contract Law and Sustainable Consumer Finance*, in E. van Schagen, & S. Weatherill (Eds.), *Better Regulation in EU Contract Law: The Fitness Check and the New Deal for Consumers* (pp. 61-91). (Studies of the Oxford Institute of European and Comparative Law; Vol. 29). Oxford: Hart Publishing / Bloomsbury Publishing Plc. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3521472](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3521472),

**ABSTRACT:** The post-crisis era presents major new challenges for the EU legislator in terms of effectively safeguarding the public and private interests in the realm of consumer finance in an increasingly digital environment. New and innovative ways of addressing tensions and contradictions between the common good and individual preferences of market actors in the retail financial markets are needed in order to be able to close the gap between consumer finance and society. However, at present, the efforts to develop workable solutions are seriously hampered by the existence of another gap – the gap between financial regulation and contract law in the current European policy discourse and legal scholarship. In the context of EU law-making, this gap manifests itself, in particular, in a contradictory policy agenda for the retail financial markets, insufficient attention to contract practice, and a lack of a coherent and effective enforcement strategy. While the effectiveness of EU financial regulation in the prudential and conduct of business domains depends on a broader legal framework that often reaches far beyond its regulatory ambit, the post-crisis legal matrix for consumer finance is developing in a piecemeal fashion without a clear and coherent vision of consumer financial contracts for the current millennium. In order to reduce the gap between financial regulation and contract law in the EU policy discourse, this chapter has suggested to better integrate the ‘contract law’ dimension of consumer finance into the assessment of existing and new regulatory measures in this area on the basis of a novel concept of sustainable consumer financial contracts. Such an approach fits into the EU's Better Regulation agenda and its sustainable development strategy, which provide an opportunity to critically rethink the role of contract law in the current regulatory landscape, both in relation to standard-setting and enforcement.

5. Ferretti F., (2020) *Inteligencia artificial, algoritmos y Big Data en los préstamos P2P*, in Cuenca Casas M. Aspectos Legales de la financiación en masa o crowdfunding, Valencia, Tirant lo Blanch, pp. 399 – 440.

**ABSTRACT:** In recent years, extraordinary developments in information technologies in a progressive thrust towards digitalisation have started changing many traditional business models. In so doing, they have also started challenging the regulatory frameworks of reference. The retail financial services sector is one where financial technologies powered by sophisticated artificial intelligence and algorithms ('Fintech') making innovative uses of a large amount of personal data taken from unrelated sources ('big data or 'big data analytics') are prominently affecting business models and markets. Peer-to-peer ('P2P') lending - also known with other names such as social lending or marketplace lending – is one of such new business models engaging in the provision of credit to consumers and/or small entrepreneurs that is differentiating from financing in traditional banking/credit markets. It is a digital model that has experienced rapid growth and is one of the more mature crowdfunding sub-sectors. However, unlike traditional forms of lending to consumers, P2P lending does not find explicit regulation at EU level despite posing not only the same set of problems but new challenges too. Its regulatory framework varies within the EU according to national rules of the Member States. However, not only this is inconsistent with the harmonised norms of EU credit laws for traditional credit provision. It is also at odds with the recent EU efforts to achieve a Capital Markets Union. Within this framework, the goal of the paper is to analyse one of the crucial elements contained in EU credit laws applicable to the provision of credit to consumers, i.e. responsible lending and the assessment of their creditworthiness. It analyses and conceptualises 'responsible lending' and 'the creditworthiness assessment', expanding the examination to risk-taking in finance and credit-risk analysis in the interest of lenders for the protection of their capital or investment.

The underlying question is to what extent P2P lending – availing of Fintech and big data as the key of its business model – falls within the obligations of EU law and to what extent the interests of consumers and investors find protection from identified risks.

6. Ferretti F., Bertarini B., (2020) *Consumer Credit Advertising in the United Kingdom and Italy: the Shortcomings of the Consumer Credit Directive and Scope for Review*, European Business Law Review, 31, pp. 243 – 264.

**ABSTRACT:** This contribution examines comparatively the national laws of the United Kingdom and Italy transposing the provisions of consumer credit advertising as set by the Consumer Credit Directive on account of its review. The Consumer Credit Directive is a full harmonization measure that aims to create a single market in the area of consumer credit with a high level of consumer protection. At the same time, the provision on consumer credit advertising offers a legal choice to Member States as regards its transposition into domestic law. The United Kingdom and Italy have opted for different legal choices. The ultimate question is the extent to which the Directive achieves its goal of creating an internal market and an adequate standard of consumer protection in advertising credit services to consumers.

A comparison of the two jurisdictions suggests otherwise. This is due to a combination of the limited scope of the Consumer Credit Directive, its full harmonisation character, and the transposition of the legal choice explicitly left to Member States by the law.

The upcoming review of the Consumer Credit Directive should identify and fix the problem, especially in light of the rapid digitalisation of financial services and the enhanced provision of cross-border credit to consumers, as envisaged by the Action Plan for a Capital Markets Union and the Digital Single Market.

7. Stefanelli M.A., (2019) *Regtech e equity crowdfunding. Sperimentazioni nella regolazione giuridica del mercato finanziario digitale*, Percorsi Costituzionali, 1, pp. 177-192.

**ABSTRACT:** The study aims to analyze the impact of new technologies on new financial market instruments and on their regulation. The object of the analysis is specifically the Equity Crowdfunding discipline, an innovative digital instrument for business financing. After an analysis of the digital regulatory innovations experimented in the United Kingdom for the discipline of Equity Crowdfunding, the study examines the recent European Regulation Proposal n.113 of 2018 and the most recent provisions at national level highlighting the critical aspects and envisaging the definition of a more experimental and interactive digital regulation, within a Digital Regulatory Framework for the digital market.

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Sincerely,



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