



ALMA MATER STUDIORUM
UNIVERSITÀ DI BOLOGNA

Consumers & SMES
in the Digital Single Market

Jean Monnet Centre of Excellence



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NEWSLETTER 3/2021

NEWS from JEAN MONNET CENTER OF EXCELLENCE Consumers & SMEs in the Digital Single Market

Publications:

In our newsletter, we'll suggest you interesting publications provided by the members of our Centre.

This time we propose you:

1. Ferretti F., *Open Banking: Gordian legal knots in the uncomfortable cohabitation between the PSD2 and the GDPR*, accepted, forthcoming in the European Review of Private Law

ABSTRACT: This work analyses problems in the legal framework of Open Banking enabled by the PSD2. It goes through the role of EU law in the regulation of payment services up to their transition towards digitalisation and fintech, to show the scale of the changes brought by the PSD2 in a territory unfamiliar to traditional banking. The resulting conflation between banking and the data economy reveal a brand-new market. The normative intersection between the PSD2 and the GDPR expose not only poor coordination but also a growing entanglement of legal knots. The legal inconsistencies, loopholes, and interpretative difficulties are examined to expose operational risks beyond difficulties of legal technicism. A rethinking, or at least a correction, of the European regime of Open Banking is necessary to reconcile the needs of an emerging market and the protection of its users.

RÉSUMÉ: Cet article analyse les problèmes du cadre juridique de l'Open Banking permis par la PSD2. Il passe par le rôle du droit communautaire dans la régulation des services de paiement jusqu'à leur transition vers la digitalisation et la fintech, pour montrer l'ampleur des changements apportés par la PSD2 dans un territoire peu familier à la banque traditionnelle. L'amalgame qui en résulte entre la banque et l'économie des données révèle un tout nouveau marché. L'intersection normative entre la PSD2 et le RGPD expose non seulement une mauvaise coordination, mais aussi un enchevêtrement croissant de nœuds juridiques. Les incohérences juridiques, les lacunes et les difficultés d'interprétation sont examinées pour exposer les risques opérationnels au-delà des difficultés de technicité juridique. Repenser, ou

du moins corriger, le régime européen d'Open Banking est nécessaire pour concilier les besoins d'un marché émergent et la protection de ses utilisateurs.

ZUSAMMENFASSUNG: Diese Arbeit analysiert die Probleme im rechtlichen Rahmen des Open Banking, das durch die PSD 2 ermöglicht wurde. Sie erläutert die Rolle des EU-Rechts bei der Regulierung von Zahlungsdiensten bis hin zu ihrem Übergang in Richtung Digitalisierung und Fintech, und zeigt das Ausmaß der Veränderungen auf, welche die PSD2 in einem - dem traditionellen Bankwesen unbekanntem - Gebiet mit sich gebracht hat. Die daraus resultierende Verschmelzung von Bankdienstleistungen und Datenökonomie eröffnet einen völlig neuen Markt. Die normative Überschneidung zwischen der PSD 2 und der DSGVO offenbart nicht nur die mangelnde Abstimmung zwischen diesen Materien, sondern auch eine wachsende Verstrickung rechtlicher Knoten. Die normativen Inkonsistenzen, Rechtslücken und Auslegungsschwierigkeiten werden untersucht, um operative Risiken jenseits der rechtstechnischen Schwierigkeiten aufzudecken. Ein Umdenken oder zumindest eine Korrektur der europäischen Regelung des Open Banking ist notwendig, um die Bedürfnisse eines Schwellenmarktes mit dem Schutz seiner Nutzer in Einklang zu bringen.

Keywords: Consent, GDPR, Open Banking, Payment Services, PSD2

2. Cherednychenko O.O., *Islands and the Ocean: Three Models of the Relationship between EU Market Regulation and National Private Law*, *Modern Law Review*, DOI: 10.1111/1468-2230.12664, <https://onlinelibrary.wiley.com/doi/epdf/10.1111/1468-2230.12664>

ABSTRACT: EU regulatory measures in the field of private law have been compared to islands in the ocean of national private law. This article reconceives the relationship between the two, focusing on how national private law today responds and should respond to EU market regulation given the tension between the instrumentalist rationality of EU private law and its own relational rationality. It identifies three main models of this relationship: separation, substitution, and complementarity. These models reflect elements of the current legislative and judicial practices in a variety of jurisdictions across different areas of EU private law and provide an analytical framework for assessing such practices in terms of their ability to reconcile the competing rationalities of EU and national private law. Each model has a bearing on the ability of EU measures to achieve their regulatory objectives, and the overall shape of European integration more generally.

Call for paper:

1. 2022 EDPL Young Scholars Award

The European Data Protection Law Review cordially invites young researchers at the beginning of their academic career (Master or PhD students under the age of 35) to submit articles based on their thesis for the **6th annual EDPL Young Scholars Award**.

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The contribution must deal with a data protection issue and address it from a European perspective. The preferred approach is legal, but interdisciplinary approaches are also welcome. The article should depict the thesis' core points, including key questions, hypothesis, methodology, findings and policy recommendations, if applicable.

Regardless of the original language of the work, submissions are only accepted in English. They are subject to the scrutiny of an expert jury which will evaluate their quality, degree of innovation and clarity of presentation.

Participation Requirements:

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- Format (5.000 - 7.000 words, in English)
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