

Abstract

The issue, as it has been investigated, is the impact of modern information technology within the banking system. It has been underlined, in particular, the difference between the so - called home banking phenomenon and that of the so –called “stand alone” banks. In the first case, the bank does not conclude a contract, but simply uses the electronic tool to facilitate online transactions of its customers, who continue to sign *inter praesentes* contracts (so, face to face). In the second case, the bank will disappear in its physical structure and acts exclusively via the web or financial advisors, thus experiencing the so - called “virtual second degree”.

This survey posed two questions of great importance.

Firstly, if the current legislation is able to protect, without any alteration, the client on the one hand and competition on the other. Secondly, if the so-called “e-risks” created by the use of its network need new remedial tools, foreseen for this purpose by the legislature and applied by the ordinary Courts, as well as by arbitrators.

It has emerged, with regard to the first point, that Internet is not a new market, but a simple bargaining tool bending the dialogue to the new demands of speed and economy of the financial market, so that the legislation requires only to be adapted to this new phenomenology. The customer, both retail and corporate, is protected not only by the legislation on consumer credit and trading out of the office, but also by the new regulations on payment services in the internal market, which predisposes enhanced protection of the customer .

As for the second aspect, the competition undoubtedly expands the entry of new operators, however, in an attempt to reach the so-called “break even” of the traditional banking structure they may experience abusive and aggressive forms of competition. With regard to this issue, the current legislation in the field of Unfair commercial practices, in the light of Community law of 2005, appears to be able to deal with this phenomenon and to maintain the right balance between financial stability and competition law.

Finally, the appearance of the so -called “e-risks” arising from the use of network bargaining in modern banking, after a necessary digression on the subject of differences between computer fraud and computer technology, the survey focuses mainly on the remedial protection proposed by the new regulations on payment services in the internal market, ex Legislative Decree no. 11/2010, in the light of its practical application by the ABF. The result of this analysis led to the emergence of a very positive result: the formal distinction between “obligations of means and obligations of results” with regard to the activity carried out by the banks and the new policy adopted by the legislature in 2010 led the ABF to issue decisions that, at the same time, protect the customer and competition in the market. It has emerged, on the one hand, that the bank is responsible whenever not been diligent, ex art. 1176, paragraph 2, of the Civil Code not only with regard to the fulfillment of their professional activity as "shrewd banker," but even if it has adequate internal IT systems to technological developments of the time in question, thus indirectly procuring an unlawful damage to the victims of hackers. On the other hand, there is the

eventual responsibility of the customer, when he/she has contributed by his conduct to the creation of the offense, not with the necessary expertise guarding access codes (user-id and password) to the authentication systems to online banking transactions.