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Consumer law and the economic crisis

CONSUMER LAW AND THE ECONOMIC CRISIS

by Cristina Poncibò[*]

ABSTRACT

The economic and financial crisis is leading to a renewed focus on consumer and investor protection and the new regulatory environment is often characterised by attempts to design innovative regulatory techniques and policy-making approaches both in the EU and the US.

The article point outs two of the most relevant lessons that could be learnt from the economic crisis and it starts by posing two questions. The first question is descriptive: does the current regulatory framework in EU Law profile the 'real' consumer? The second question is normative and focuses primarily on consumer contracts: does the informational model, consisting in the mandatory provision of pre-contractual information to the consumer, still represent an adequate tool for consumer protection?

The working paper argues that, first, there is still a gap between the Law and the Science of Consumer Behaviour, so that, in the end, the 'real' consumer is not effectively protected. Second and also important the information disclosure strategies adopted in the most recent EU provisions (e.g. Consumer Rights Directive and CESL) are dated and probably ineffective.

Doubtless, in the aftermath the economic crisis, the 'myth' of informational consumer protection, mostly based on information disclosure, has been seriously challenged: policy-makers are now called to reform their strategies.

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Introduction.

An author, among those who have predicted the 2008 financial crisis, notes: "It is a sin to waste a crisis". In saying this, the speaker implies that the factors that generate a crisis should be studied and learned from[1]. In our view, this is also true for consumer protection.

Although some years have passed since the onset of the most profound recession since 1929, most world economies are still fragile and slipping into another recession is imminent for many of them. Some authors believe that the current financial crisis is not an ordinary one and the traditional remedies applied in these situations will not work: "This recession is different. It is not caused only by the low demand. It will be difficult and perhaps impossible to achieve the objective of full employment if the global loan need falls considerably below its normal levels". In addition, when speaking about the "New Economy" that was based on deregulation and financial engineering and ultimately responsible for triggering the Great Depression of 2008, Stiglitz believed that it should bring us something else, like "prosperity for all and the end theory of the economic cycles". In retrospect this prophecy was not fulfilled with Stiglitz commenting: "we do not want and we cannot return to the world that was before crisis"[2].

Because of the economic and financial crisis, the adoption of new consumer (and investor) protection rules is becoming a cornerstone of regulatory reform in the United States and the European Union.

To provide few examples, in many parts of the world, reforms have recently been introduced or are being proposed to existing consumer credit laws (EU, UK, Switzerland, Canada, Australia, New Zealand, US, South Africa and Asia). These reforms take place against a background of substantial growth in consumer credit and the international spread of consumer credit institutions, such as credit bureaux and other forms of credit such as credit cards[3].

In addition, many laws at both the federal and state levels regulate consumer affairs in the United States: among them are the federal Fair Debt Collection Practices Act[4], the Fair Credit Reporting Act[5], and Truth in Lending Act[6], Fair Credit Billing Act[7], and the Gramm-Leach-Bliley Act[8]. The Federal Trade Commission and the U.S. Department of Justice enforce federal consumer protection laws for the most part. In addition, a number

[1]The phrase by Nouriel Roubini is quoted by C. Marinescu, D.A. Bodislav, D. Belingher, *Could Be Considered a Failure the of the Economist Profession the Current Global Crisis?*, in: Annals - Economy Series, Constantin Brancusi University, Faculty of Economics, (2009), v. 1, pp. 137-140.

[2]J. E. Stiglitz, *The Current Economic Crisis and Lessons for Economic Theory*, in: Eastern Economic Journal (2009), v. 35, n. 3, pp. 281-296.

[3]I. Ramsay, *Comparative Consumer Bankruptcy*, in: University of Illinois Law Review (2007), p. 241, the same author wrote: *Consumer credit regulation as 'The third way'*? Keynote address at the Australian Credit at the Crossroads Conference, 8 November 2004, p. 16.

Of the same author, *Consumer Credit Society and Consumer Bankruptcy: Reflections on Credit Cards and Bankruptcy in the Informational Economy,* in J. Niemi-Kiesilainen, I. Ramsay & W. C. Whitford, *Consumer Bankruptcy in Global Perspective*, Oxford, Hart, 2003, p. 23.

[4]Fair Debt Collection Practices Act, ('FDCPA'), Pub. L. 95-109, 91 Stat. 874, codified as 15 U.S.C. § 1692 –1692p, approved on September 20, 1977 (and as subsequently amended).

[5]Fair Credit Reporting Act (FCRA) is a United States federal law (codified at 15 U.S.C. § 1681 et seq.)

[6]Truth in Lending Act was originally Title I of the Consumer Credit Protection Act, Pub. L. 90-321, 82 Stat. 146, enacted June 29, 1968. On July 21, 2011, the Consumer Financial Protection Bureau (established on that date pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act enacted in July 2010) is responsible of the enforcement of such law.

[7]Fair Credit Billing Act (FCBA) is a United States federal law enacted in 1975 as an amendment to the Truth in Lending Act (codified at 15 U.S.C. § 1601 et seq.).

[8]Gramm-Leach–Bliley Act (GLB), also known as the Financial Services Modernization Act of 1999, (Pub.L. 106–102, 113 Stat. 1338, enacted November 12, 1999).

of state-laws protect consumers, for example, many states have adopted the Uniform Deceptive Trade Practices Act[9] containing a private remedy with attorney's fees for prevailing parties where the losing party "wilfully engaged in the trade practice knowing it to be deceptive" (Uniform Act §3(b))[10]. The majority of states also have a Department of Consumer Affairs devoted to regulating certain industries and protecting consumers who use goods and services provided by those industries.

The history of consumer protection is one of specific formal legal responses to crises and emergencies that generate great public outrage and require a public response. In recent times, because of the financial and economic crisis, the US Congress has adopted a fundamental reform of the rules protecting investors and consumers: the Dodd-Frank Wall Street Reform and Consumer Protection Act[11]. Concerning this, some authors have stressed that many factors have contributed to the crisis, or increased the severity of the outcome and the gaps in consumer credit laws. These laws have been adopted as a result of the previous de-regulation of credit legislation and have contributed to the financial crisis: they noted that the gaps are the result of the point that "credit rating agencies have pressured states to weaken consumer laws"[12].

The article aims to explore two questions that have emerged in the economic crisis: the first dimension is descriptive: how the real consumer is profiled under the Law? The economic crisis has shown that our understanding of the behaviour of the real consumer into the market is very limited[13]. For example, empirical studies support a challenge to the sharp distinction between the average and the vulnerable consumer, because they show that all consumers are prone to biases, although the consumer detriment suffered by lower income consumers from these biases may be higher[14].

The second dimension is normative: is information disclosure still an adequate tool, *or* should we consider "alternatives"? The effectiveness of information disclosure, that represents a central tool for a consumer protection, is suffering serious critiques. These critiques have been advanced by scholars in the wake of the mortgage crisis in the US[15]. Indeed, their arguments are, on their turn, challenged by scholars in "traditional" Law & Economics[16].

In conclusion, these emerging issues and approaches combine to make the "new consumer protection agenda" potentially very different from earlier eras. Interestingly, there is a "transatlantic" academic debate about the design of this agenda, confirming that there are common problems that are attracting the attention of the scholars in the very

[9]Uniform Deceptive Trade Practices Act, par 2 (a) (1) (1964).
[10]The deceptive trade practices prohibited by the Uniform Act are unfair or fraudulent business practice and untrue or misleading advertising.
[11]The Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-5) in July 2010. Title X of the law amends a number of existing consumer laws.
[12]J. P. Nehf, *Preventing another Financial Crisis: The Critical Role of Consumer Protection Laws*, in: Indiana University Robert H. McKinney School of Law Research Paper (2012), n. 15.
[13]T. Wang, M. Spezio and C. Camerer, *Pinocchio's Pupil: Using Eye-tracking and Pupil Dilation To Understand Truth-telling and Deception in Games* (2006),
Accessed: 11 June 2014 at http://www.aeaweb.org/annual_mtg_papers/2007/0105_1015_0301.pdf
Wilson.
[14]The definition of an average consumer adopted by the Court of Justice of the EU and the EU
Directive on Unfair Commercial Practices is a consumer 'who is reasonably well-informed and reasonably observant and circumspect'. See the ECJ judgment *Gut Springenheide* C-210/96 [1998] EDR 1-4567, para.31.
[15]O. Bar-Gill, *Consumer Contracts: Behavioral Economics vs. Neoclassical Economics. An Exchange between O. Bar-Gill and R.A. Epstein*, in: Law & Economics Research Paper Series (2007), n. 17.
[16]R. A. Epstein, Behavioral Economics: Human Error and Market Corrections, Symposium: Homo
Economicus, Homo Myopicus, and the Law and Economics of Consumer Choice, in: U. Chi. L. Rev.
(2006), n. 73. P. 111.

different regulatory landscapes for consumer protection of the US and the EU[17]. The full extent and consequences of the differences are nonetheless still to be determined and the main goal of the article is to point out this change and to explore its main features and potentialities.

1. The gap between the Law and Science of Consumer Behaviour.

The first point here is that, after the crisis, it has been more evident that policies regarding consumer behaviour and protection (or lack thereof) have been influenced by two compelling, if somewhat discrepant views.

The first, based on the 'rational agent' model, relies on analytic, a priori analyses of the making of rational decisions. It is the perspective overwhelmingly promoted in business and policy schools, and it has come to dominate much of economics and the social sciences, as well as the formulation and conduct of policy. The second view, that we call 'folk psychology' perspective, consists of policy-makers and judges' intuitive understanding of the decisions that people make and of the factors that motivate and underlie them.

To provide an example, the review of the Consumer Acquis has highlighted that there is a common European definition of the consumer, unless there are some divergences in consumer directives and in their enforcement by domestic courts.[18] According to European Law, the consumer is a reasonably well-informed, usually rational and confident person[19]. He is active and confident in shopping within the internal EU market[20]. Evidently, EU Law has constructed and the Court of Justice of the European Union (CJEU) has interpreted the concept to support the establishment of the internal market.

Many economic models assume that people are on average rational, and can for the most part be expected to act according to their preferences. The concept of bounded rationality - initially proposed by Herbert A. Simon and recently revisited by the before mentioned Stiglitz - revises this assumption to account for the fact that perfectly rational decisions are often not feasible in practice because of the finite computational resources that are available for making them. According to such theory, the rationality of individuals and, particularly, consumers is limited in decision-making by the information they have, the cognitive limitations of their minds and the finite amount of time they have to decide.

This theory revises this assumption to account for the fact that perfectly rational decisions are not often feasible in practice because of the finite computational resources available for making them: these authors still believe in the idea of rationality, unless it is limited or restricted by several factors.

Both approaches before illustrated can be seriously questioned. The first is slowly collapsing under the critiques of emerging behavioural economics stating the irrationality of the consumers and, more important, providing empirical evidence to definitely support this assumption. The second is more intriguing question: indeed, it seems that, in assessing consumers' behaviour, policy-makers and judges have quite neglected the amount of

[17]D. Caruso, *The Baby and the Bath Water: The American Critique of European Contract Law,* in: Am. J. Comp. Law, (2013), n. 61, pp. 479-506.
[18]M. Ebers, *The notion of 'consumer*, in H. Schulte-Nölke, C. Twigg-Flesner, M. Ebers. EC Consumer Law Compendium. Comparative Analysis, 2008.
[19]S. Weatherill, *EU Consumer Law and Policy*, Northampton, MA: Edward Elgar Publishing, 2005, pp. 80-91.
[20]For a critique of the 'confident consumer', see T. Wilhelmsson, *The Abuse of the 'Confident Consumer' as a Justification for EC Consumer Law*, in: Journal of Consumer Policy, (2004), n. 27, pp. 317-337.

consumer behaviour research that have become available in the last decades. And doubtless, how consumers should be protected largely depends *on what they are like*. The gap between the law and the real consumer may be indicated as one of the causes of the lack of protection.

From such a descriptive perspective, studies on the US market for credit cards and cell phones are bringing to the attention the fact that the legal framework for consumer protection *is no longer sufficient* to eliminate or limit the exploitation by the traders of consumer's cognitive limitations[21].

The author points out the exploitation of consumers' biases in these markets and acknowledges that, on principle, competition could correct the problem, but also underlines that in practice competitive forces have often been the problem, *not* the solution: the reason is that sellers must do what the market rewards. If sellers offer people the objectively best cell phone contracts, they will end up losing out to their competitors, who are offering contracts that are in reality not as good, but subjectively more appealing. To be clear, the author does not contend that there is literal fraud here, but urges instead that because of competitive pressures, sellers are forced to exploit the biases and misperceptions of their customers. In his view, the consequences for consumers have been extremely negative. Indeed, "seductive" contract design-helped fuel the demand for subprime mortgages, thus contributing to the subprime meltdown of 2008.

Actually, the study before supports the validity of the "exploitation theory" in our times.[22] This theory dominated the economic discussion about consumer protection in the 1960s and 1970s. Focusing on the exercise of market power, exploitation theory argues that consumers are in need of protection for two reasons. First, consumers have few options but to purchase and contract on the terms set by increasingly large and powerful companies. Second, companies are able to exploit significant information and sophistication disparities in their favour.

However, exploitation theory did not prevail after the 70s, as economists were mostly convinced that it failed to take into account competition between companies and the fact that any bargaining power that companies have vis-a-vis consumers is limited through competition from other companies[23]. Therefore, insofar as consumers are today deemed in need of protection from an economic perspective, it is not because they are considered "weaker" and at risk of exploitation by large companies. Rather, it is because consumers know less about products and contracts than professionals do.

Nevertheless, the recent empirical studies coming from the US prove that competition among companies has, in certain cases, not limited but increased the attempts of exploitation of consumers' cognitive limitations.

Likewise, how, exactly, do companies exploit these biases and misperceptions? The authors emphasise two strategies. The first involves cost deferral. The second involves complexity. It is true that deferral of costs is part of the very nature of loan agreements. In consumer contracts, you can often find agreements whose terms look tantalizingly favourable in the short-term, but a lot less favourable in the long-term. For credit cards, short-term teaser interest rates may cost consumers very little, but after a period of time,

[21]O. Bar-Gill, *Seduction by Plastic,* in: American Law & Economics Association Annual Meetings, American Law & Economics Association, (2004), n. 12.
O. Bar-Gill and E. Warren, *Making Credit Safer,* in: University of Pennsylvania Law Review, (2008), v. 157.

[22]G. L. Priest, *A Theory of the Consumer Product Warranty*, in: Yale L.J., (1981), n. 90, pp.1297-1299- 1302.

[23]S. I. Becher, *Asymmetric Information in Consumer Contracts: The Challenge That Is Yet to Be Met*, in: AM. BUS. L.J., (2008), n. 45, pp. 723-728-733.

the long-term fees and rates may cost a lot. For cell phone contracts, a free phone may be offered, which may appeal greatly to some consumers, but the provision of the free phone is conditional on the signing of a two-year locked-in contract, which contains an assortment of fees and penalties.

Why is such cost deferral so common? The author answers by invoking two features of *homo sapiens*, emphasized greatly by behavioural economists: myopia and optimism. Consumers tend to be myopic in the sense that they focus on the short term. For many, the future could be compared to a foreign country, neglected or not considered in decisions. For this reason, we might be unduly attracted to an agreement that is very beneficial for the next two months but not as good for the next decade. In credit markets, unrealistic optimism increases the problem of myopia. In general, people underestimate the likelihood that things will go wrong for them personally, even if they know the statistical realities. If people are unrealistically optimistic, they will accept contract terms including high overuse fees and late fees, dismissing the risk that those fees may be personally applicable in the future.

The author also notes that with respect to credit cards, mortgages, and cell phones, the underlying agreements are staggeringly complex. Why are there so many confusing and disparate terms? He contends that from the standpoint of sellers, complexity has a big virtue, which is that it prevents consumers from easily figuring out the total cost of the relevant products. As a result, consumers must rely on what is salient. If some terms are salient while others are not, sellers will have real opportunities to make money, and consumers will make big mistakes.

In his view, cost deferral and complexity work together to produce behavioural market failures. As a result, many people end up with arrangements that are poorly suited to their situations and lose a lot of money. Those who are in difficult economic circumstances and end up paying a wide range of fees and penalties are often most vulnerable to exploitation and eventual hardship. Relating to this, the subprime crisis of 2008 suggests that the difficulties faced by the consumers can be severe and eventually have systemic effects.

The main point is that the law protecting consumers is largely dependent on their individual characteristics. What are their strengths and their weaknesses? What can they be taught, be expected to be aware of or to abide by?

In the EU, the behaviour of the consumer is becoming central to the debate over nutritional and environmental labelling, sustainable consumption, bank account switching, consumer contract law, and alcohol and tobacco policy, energy and mobile telephone regulation[24]. This is also happening in the Member States of the EU, for example, the UK, the government has created the Cabinet Office's behavioural insights team (the so called nudge unit)[25].

The EU openly admits that the results of behavioural economics and empirical research should be taken into account in policy-making and, particularly, in the area of consumer protection[26]. The Commission has been using this approach since 2008 and it has sponsored two conferences in 2008 and in 2010 to discuss how can behavioural economics

[24]A. Alemanno, *Nudging Europe*, in: European Voice, 2012, May 16.
[25]David Cameron's 'nudge unit' aims to improve economic behaviour", The Guardian, 9 September 2010.
[26]From the EU Commission Webiste: "We are incorporating behavioural economics in our policy work:
Evidence in behavioural literature for the inclusion of a ban on pre-checked boxes in the proposal for the Consumer Rights Directive (art. 31.3). Conducted the first behavioural study on consumers' decision-making in retail investment services showing that simpler and standardised product information significantly improves investors' decisions. Establishing a procedure to analyse behavioural issues related to policy-makers' decisions and test ex-ante the effectiveness of policy interventions".
Accessed on July 23, 2014 at http://ec.europa.eu/consumers/behavioural_economics/index_en.htm

improve consumer protection in the EU[27]. In fact, in the 'Guidance on the implementation of the directive on unfair commercial practices[28], the Commission expressly states that: "(…) new insights from behavioural economics show that not only the content of the information provided, but also the way the information presented can have a serious impact on how consumers respond to it. In 2010 the Commission also run the first large behavioural study to find out how consumers search for information, and choose between retail investment products[29]. Indeed, the financial market is complex and the consumers are often ill-prepared to make sound decisions about investment products. The study includes a set of online and face-to-face experiments to analyse consumer's behaviour in investment choices; as a result, only 2% of the people made all five investment choice optimally. For example, the study has shown that when financial advisers disclose the commission they would receive, their clients trust them less and reject their advice, even when they would have been better off in following such advice.

In the past years, the European Commission has hosted two international conferences on behavioural economics, aiming to raise awareness among its public and private stakeholders. In the first of these events, European policy-makers learnt about the available behavioural evidence, while researchers found out about the specific needs of policy-makers. The first conference was deemed a success and convinced public bodies around Europe of the added value of the behavioural approach. As a result, two policy-inspired behavioural studies were presented at the conference that took place in November 2010. The Office of Fair Trading presented its study on 'Advertising of pricing'[30], and the Commission unveiled the results of a behavioural study on consumer decision-making in retail investment services.[31]

A study conducted on behalf of DG Environment on consumer behaviour relating to the purchasing of environmentally preferable goods aimed at finding out whether real behaviours differ from the predictions of 'rational' economic models[32]. DG Research has explicitly recognised the need for a better understanding of consumer behaviour, and this was introduced for the first time in the Seventh Framework Programme (FP7).

More important, the European Commission's first behavioural study, the above said on consumer decision-making in retail investment services was a follow-up to the findings of the 2009 Consumer Markets Scoreboard, which identified the retail investment services market as one of the worst-performing markets for consumers. Other evidence also suggested that the financial environment has evolved so much that consumers are often ill prepared to make sound decisions about increasingly complex retail financial products[33]. The inability to benefit fully from this market is in part due to limited financial literacy or asymmetric information, but it may also be directly related to behavioural traits and

[27]The European Commission has organized a Conference in 2008 (How Can Behavioural Economics Improve Policies Affecting Consumers?) and a Conference in 2010 (Behavioural Economics, so What: Should Policy-Makers Care?). On 25 and 26 June 2010, an international and interdisciplinary symposium on Behavioural economics, consumer policy and consumer law took place at the European University Institute in Florence.

[28]European Commission 'Guidance on the Implementation/Application of Directive 2005/29/EC on Unfair Commercial Practices' SEC (2009), 1666, Brussels, p. 32.

[29]Decision Technology Ltd., *Consumer Decision-Making in Retail Investment Services: A Behavioural Economics Perspective*, November 2010. Accessed on July 23, 2014 at http://ec.europa.eu/consumers/strategy/docs/final_report_en.pdf

[30]Office of Fair Trading, *Advertising of Pricing*, London, 2010.

[31]European Commission, *Consumer Decision-Making in Retail Investment Services: A Behavioural Economics Perspective: Final Report'*, November 2010.

[32]Policy Studies Institute, *Designing Policy to Influence Consumers: Consumer Behaviour Relating to the Purchasing of Environmentally Preferable Good*, study for DG Environment, 2009.

[33]European Commission, *Consumer Markets Scoreboard*, COM (2009), 25 final.

market features driving consumers towards choices that are inconsistent with their long-term preferences.

The novel aspect of the study was a series of online and face-to-face experiments conducted with 6,000 consumers in eight EU countries, which produced a number of striking results. For example, it showed that people struggle to make optimal investment choices, even in very simplified investment tasks. Only 56% of funds in the experiment were invested optimally, with 25% of investment decisions being completely optimal and only 1.4% of subjects making all five investment choices optimally. It also confirmed that investment decisions are prone to biases and framing effects. Subjects made worse investment decisions when the optimal choice was harder to understand (when fees were framed as percentages, and annual returns were not compounded over the duration of the investment), and they were disproportionately averse to uncertainty, ambiguity and product complexity.

Somewhat surprisingly, disclosing conflicts of interest elicits a 'knee-jerk' reaction that can be harmful as well as helpful. Subjects exhibited the opposite behaviour in their investment choices when biased incentives were disclosed.

In terms of policy recommendations, the results of the study suggest that standardising and simplifying product information can improve consumer choices, whereas disclosing the adviser's bias may have varying effects depending on how strong the 'health warnings' are.

The impact of the study goes beyond its direct application in the sector of retail investment services. Indeed, its results confirm that disclosure of information alone will often not be sufficient to provide consumers with what is needed to optimise their understanding and decision-making, and the resulting outcomes. In this sense, the study breaches the limit of conventional regulation, still largely stuck in two competing models: product restrictions and disclosure.[34] This study was not only about product restrictions, because the vast majority of financial products on the market are not inherently unreasonable. And it was also not just about disclosure, because we found compelling evidence of sub-optimal decision-making. Instead, the study produced new considerations of the design and implementation of regulation, including features such as the framing of information and the provision of warnings.

The methods, tools and insights of behavioural economics could also be used for testing remedies, and some authors argues for incorporating behavioural economics in the Impact Assessment procedure. Indeed, empirical testing represents an effective and reliable tool for gathering specific evidence that could inform the appraisal of policy proposals. It could provide complementary information for the identification of the problem, as well as for the analysis of the impact of the policy options.

The first behavioural study on retail investment services was meant to be a pilot exercise with a view to designing a framework contract, open to all services of the European Commission, to analyse behavioural issues in relation to policy-makers' decisions.

[34]Similar studies are have been conducted in the US by M. Barr, S. Mullainathan and E. Shafir, *Behaviourally Informed Financial Services Regulation,* New America Foundation, 2008.

2. The crisis of the informational model for consumer protection.

Before the economic crisis, the regulatory techniques for consumer protection were mostly designed in the EU by relying on consumer rationality *or* on a sort of "intuitive understanding" about the behaviour and decisions that consumers make and the factors that motivate and trigger them[35].

Accordingly, regulators assume the consumer reads, understands and uses the information. Thus, EU Consumer Law provides for an incredible number of mandatory pre-contractual disclosure duties concerning a number of information (e.g. the directive on consumer rights[36]).

For example, the provisions of the Directive 2008/48/EC on Credit agreements for consumers and repealing Council Directive 87/102/EEC (hereafter: EU Consumer Credit Directive) predominantly follow the information paradigm. It promotes consumer autonomy by aiming at enabling consumers to make informed decisions. To this end, it imposes information duties on the creditor and credit intermediaries by means disclosure of information to be included in advertising with figures relating to the Recently, the EU has also attempted to standardize the information with the aim to avoid information overload and at maintaining or allowing the comparability of different offers. This strategy has been adopted in more recent directives, starting from the EU Consumer Credit Directive, and including the Consumer Rights Directive and the CESL.

While the regulatory landscape is totally different and mostly based on voluntary disclosure, the proliferation of disclosure rules to protect consumers has been noted also with respect to the US. Some authors conclude that: "These rules, in the main, have been a spectacular, albeit well-intentioned failure. Not only have they imposed substantial costs and given rise to misplaced liability, but they rarely have done much good"[37].

Now, empirical research does not confirm the assumption that consumers read and understand such information does not fully correspond to reality[38]. Obviously, avoiding problems through consumer responsibility for his or her purchasing choices is the desirable objective. This objective is in line with popular support for consumer autonomy while avoiding potential accusations of paternalism.[39]. However, the assumption that consumers are attentive and knowledgeable, and typically able to equip themselves with important information is wrong. Instead, there appears to be often a rampant ignorance of options, program rules, benefits and opportunities, ignorance that is not limited to the poor or uneducated. In support of this, the EU Commission's first behavioural study, on consumer decision-making in retail investment services shows that, among other issues, fewer investors (in stocks, bonds, funds or other securities) can be considered 'financially literate'. Similar findings describe the understanding shown by pension plan participants. Indeed, older beneficiaries often do not know what kind of pension they are set to receive, or what mix of stocks and bonds the pension is invested in[40].

[35]G. J. Stigler, The Economics of Information, in: Journal of Political Economy, (1961), v. 69, pp. 213-25.
[36]Council Directive on consumer rights 2011/83 of 25 October 2011, OJ [2011] L304, pp. 64-88.
In the literature: E. Hondius, The Proposal for a Directive on Consumer Rights: The Emperor's New Clothes? in: *European Review of Private Law*, (2011), v. 19, n. 2, pp. 163-166.
[37]O. Ben-Shahar & C. E. Schneider, *The Failure of Mandated Disclosure*, in: U. Pa. L. Rev. (2011), v. 159, p. 647.
[38]Evidently, information requirements restrict the freedom of traders insofar as they are required to disclose information they may have preferred not to reveal, or to disclose it in a prescribed format. This limitation on the autonomy of the trader is minimal compared to the potential growth in autonomy of the consumer who can make an informed choice of product or service.
[39]G. K. Hadfield, R. Howse and M. J. Trebilcock, *Information-Based Principles for Rethinking Consumer Protection Policy*, in: J. Cons. Pol., v. 21, 1998, pp. 131-169.
[40]European Commission, *Consumer Decision-Making in Retail Investment Services: A Behavioural Economics Perspective: Final Report*, November 2010.

Regulators have to consider a more sophisticated approach to frame information in various environments, such as the Internet[41]. More thoughtful reflection is required on how the message can best be brought to the consumer's attention. What is the optimum content of the information? How can the information rules be framed?[42]

Examples of such approaches are available in the recent literature, especially from the US[43].

Unfortunately, the EU has not been able to adopt new approaches to information disclosure: in the most recent provisions (Consumer Rights Directive and CESL) it has extended the quantity of information that traders should provide in the pre-contractual phase to consumers *without* considering some fundamental issues about the quality and format, or about the possibility to introduce new forms of smarter disclosure[44].

This argument is confirmed by analysing the disclosure strategies provided for by the two most recent provisions: the Directive on Consumer Rights and the Proposal for a Regulation on European Sales Law (CESL)[45]. It is worth noting that both represent missed opportunities to experiment significantly new disclosure strategies.

2.1. The Consumer Rights Directive.

The regulatory technique based on the provision of information lies at the heart of the CRD: by requiring that a huge number of information is made available to consumers, it aims to reduce the information gap, giving the consumer the choice between different kinds of goods and services in an informed way. This according to the traditional informational approach for consumer we have introduced in the section before about "Propensity to read, information overload and information processing" to clarify that this approach is not satisfactory in the light of results of the studies in economics and psychology regarding consumer behaviour.

The pre-contractual information obligations are covered in Articles 5-8. These articles are divided across two chapters: Chapter II, comprising only the consumer information for contracts other than distance or off-premises contracts, while Articles 6-8 of Chapter III cover the ground in the present acquis, namely the consumer information obligations for distance and off-premises contracts.

Despite the consumer information duties only being in four articles, they involve extensive detailed rules encompassing a total of 64 sub-paragraphs containing a number of rules relating, for instance, to the scope of application, the content of the information, and when the information is to be given by the trader.

A new feature of the CRD with respect to the present *consumer acquis* is the inclusion in Article 5 of an information obligation to be fulfilled by the trader in a contract other

[41]C. Camerer, S. Issacharoff, G. Loewenstein, T. O'Donoghue, and M. Rabin, *Regulation for Conservatives: Behavioral Economics and the Case for 'Asymmetric Paternalism,* in: University of Pennsylvania Law Review, v. 151, 2003, p. 1211.
J.D. Hanson and D.A. Kysar, *Taking Behavioralism Seriously: The Problem of Market Manipulation,* in: NYU Law Review, v. 74, n. 3, 1999, pp. 630-749.
[42]Cabinet Office and Institute for Government, MINDSPACE. Influencing Behaviour through Public Policy. London: Cabinet Office, 2010.
[43]L. Garrison, M. Hastak, J M. Hogart, S. Kleimann, A. Levy, *Designing Evidence-based Disclosures: A Case Study of Financial Privacy Notices*, in: Journal of Consumer Affairs, Special Issue on Product Literacy, (2002), v. 46, n. 2, pp. 204–234.
[44]E. Shafir, *A behavioural perspective on consumer protection*, working paper presented at the Roundtable of the OECD Committee on Consumer Policy, 2005, Paris, pp. 1-16.
[45]Directive on consumer rights 2011/83 of 25 October 2011, OJ [2011] L304, pp. 64-88.
Proposal for a Regulation of the EU Parliament and of the Council on a Common European Sales Law, Brussels, 11.10.2011, COM (2011) 635 final, 2011/0284 (COD).

than a distance or an off-premises contract. Precisely, the obligation applies in sales and service contracts not concluded in a manner that features all the required characteristics of either a distance or off-premises contract (Articles 2(7) and 2(8), respectively).

a) Distance and off-premises contracts

The information to be given in distance and off-premises contracts is covered in Article 6(1). This article consists of 20 different points of information, each of which contains further details as to the information to be given.

The new information requirements represent a radical change to the information requirements for doorstep selling (previously limited only to information on the right of withdrawal), but also expands upon the catalogue of information to be provided under the Distance Selling Directive. The list of information under Article 6(1) can be divided into mandatory and relevant information, though in both instances the information provided forms an integral part of the contract and cannot be altered absent express agreement (Article 6(5)).

b) Other contracts

As before suggested, Article 5(1) contains a catalogue of information obligations concerning eight different subject matters, each in turn consisting of various different elements. However, the extent to which the information on these matters is to be provided is limited by a number of factors: firstly, the information need not be provided if it already apparent from the context, secondly, in some instances some of the information requirements need not be fulfilled because they are not applicable either to the subject matter or the conditions of the contract. Finally, the notion of 'appropriate information' applies to the main characteristics of the goods and services: what is considered to be appropriate is not clear and it depends on the manner in which the information is presented and the nature of the goods or service.

The disclosure paradigm adopted by the CRD represents an old and unsatisfactory regulatory technique (as explained in the section concerning consumer biases related to contracts). In our view, the same instruments of disclosure have not helped consumers in the past, are highly unlikely to deliver any benefit, impose unnecessary costs, and might even have unintended harms. In particular, CRD's pre-contractual disclosures are likely to fail because consumers will not pay attention to them. As explained in the first part of this Chapter, consumers do not pay attention to standard forms, neither long nor short, in plain language or in legalese, written or oral, separately signed or unified into one document, handed out in advance or ex post. The failure of consumers to attend to mandatory information disclosure has been documented thoroughly, in area after area of consumer transactions and financial literacy.

It is surprising that disclosure mandates in the CRD are still written without regard for the studies about people's cognitive abilities and literacy levels. They disregard consumer's reluctance to read texts that are unfamiliar and imposing: they do not read the disclosures because good things will rarely emerge from this exercise. It is time consuming, dull, largely irrelevant, and with the load of disclaimers and warnings it rarely

conveys any good news, thus draining their enthusiasm from the transaction. Besides, if they read something they dislike, would they switch to another trader?

This does not imply that disclosure, as a regulatory tool, can never work. If mandated disclosure is to help consumers, a new approach must be adopted – one very different from the traditional paradigm that the CESL implements, and with far less ambitious goals. As discussed before, effective information tools come in very simple, aggregate metrics that consumers can easily understand and compare, like total cost of ownership or satisfaction ratings. Nevertheless, these fundamental insights have been totally underestimated in the design of these provisions.

Indeed, the Consumer Rights Directive only takes few innovative steps, by requiring the indication of the total cost of the good or service among the information, and banning the adoption of pre-checked boxes in e-commerce websites. For example, the directive on consumer rights includes a provision to limit the adoption of pre-checked boxes in consumer contracts, with the aim to protect the European consumers against their 'default bias'; in concrete, traders should not offer additional services 'by default' to the consumer, who should - *consciously* - decide to purchase the services offered by the trader[46].

2.2. CESL.

On 11 October 2011, the European Commission published a proposal for a Common European Sales Law (CESL), which traders may choose to use to govern their cross-border contracts. It covers the sale of goods, the supply of digital content and some related services.[47] With its proposal, the European Commission aims to improve the establishment and the functioning of the internal market by facilitating the expansion of cross-border trade for business and cross-border purchases for consumers. This objective can be achieved in the view of the Commission by making available a self-standing uniform set of contract law rules including provisions to protect consumers, the Common European Sales Law, which is to be considered as a second contract law regime within the national law of each Member State[48].

Effectively, the European Commission has made two separate proposals: one law for traders to use when selling to consumers; and one law for businesses selling to other businesses. Under the current law, as set out in the Rome I Regulation, a trader that directs its activities to a European Member State must comply with the mandatory consumer protection laws of that state. This may be a problem in Internet and other distance selling where traders are dealing with consumers from many different states at once. Under the proposal, in cross-border sales, the trader could offer to contract under the new system of consumer contract law set out in this provisions. The trader would state that the goods were offered under the CESL and would provide a short information leaflet about it (around a page and a half long). If the consumer explicitly agreed, the law governing the contract would then be the CESL rather than a national system.

The CESL also mandates various mandatory disclosures, requiring informed parties to grant the consumer a number of information before he enters the contract (pre-

[46]Council Directive (EU) 83/2011 on consumer rights [2011] OJ L304, pp. 64-88.
[47]Proposal for a Regulation of the European Parliament and of the Council on a Common European Sales Law, Brussels, 11.10.2011, COM (2011) 635 final, 2011/0284 (COD).
[48]In July 2010 the Commission published a Green Paper, "Policy options for progress towards a European contract law for consumers and businesses" setting out a number of possible options to address the challenges presented by contract law to cross border trade, COM (2010) 348 final, 1 July 2010.

contractual), and supervises over voluntary disclosures to grant their integrity, with causes of action against deception and fraud. Article 23 requires sellers to make plain the basic attributes of what they are selling. The seller of goods has a duty to disclose "any information concerning the main characteristics of the goods which [he] has or can be expected to have and which it would be contrary to good faith and fair dealing not to disclose to the other party". Whether any particular information needs to be disclosed turns on all the circumstances and these include such things as the special expertise of the seller, the cost to the seller consumer contracts the nature of the information, its importance to the buyer, and good commercial practice. This means that the seller has to explicitly disclose a variety of terms, ranging from the most basic (e.g., price, fees, payment and delivery, duration) to the more specialized (e.g., conditions for termination, post-sale services, digital rights limitations, right to withdraw and also the governing law).

In addition, the CESL mandates a 'duty of transparency', which is achieved in several ways. Boilerplate terms have to be communicated "in plain intelligible language" (Artt. 13-18, 20, 22, 27). Many of them have to be in writing (Artt. 82, 13 (3) (b), 13 (4) b). And drafters have "the duty to raise awareness" to terms that are particularly important-"a mere reference to them in the contract document" is not sufficient (Art. 18 for off-premises contracts). A separate and specific acknowledgement of assent is required, to ensure that information passed through. Thus, the consumer must receive not only the standard form contract in a durable medium, but also a separate disclosure regarding the right to withdraw and its limitations (Artt. 17 (4), 19 (5) and 41 (3)).

It is important to note that the CESL now requires the sellers use a uniform 'Standard Information Notice', a two-page pre-drafted form that consumers must receive in writing, separate from the sellers' standard form contract. This disclosure explains and highlights the "core rights" guaranteed by CESL, and provides a quick, two-paragraph tutorial of Sales Law.

The goals of this provision are far-reaching: "Consumers must be fully aware of the fact that they are agreeing to the use of rules which are different from those of their pre-existing national law. The use of the Common European Sales Law should be an informed choice. The trader should (…) provide information on its nature and its salient features". [49] In practice, consumers will likely have to sign two forms: the contract and the consent to use the CESL. In addition, it imposes requirements for distance contracts or electronic contracts: these requirements involve specific confirmatory memoranda and specific acknowledgment of disclosures.

CESL's contract disclosures are likely to fail because consumers will not pay attention to them. As explained in the first part of this Chapter, consumers do not pay attention to standard forms, neither long nor short, in plain language or in legalese, written or oral, separately signed or unified into one document, handed out in advance or ex post. The failure of consumers to attend to mandated disclosures packaged in pre-drafted language, like ones CESL utilizes, has been documented thoroughly, in area after area of consumer transactions and financial literacy.

Many factors account for this "non-readership" phenomenon. First, CESL alone requires a hefty amount of disclosures; far too time consuming for shoppers to investigate in the course of routine sale transactions. The typical CESL consumer would take home a "packet": the standard terms of the contract (embellished by specific terms that must be included); the right to withdraw disclosure; the actual withdrawal form; and the Standard

[49] CESL, Articles 8 and 9 and Annex II.

Information Notice. In this respect, it is clear that the CESL will have detrimental effects on the level of consumer protection.

Interestingly, the same critique applies to certain U.S. Laws. Bar-Gill and Ben-Shahar openly criticise the sector specific disclosure mandates that are common in US Law for certain products (cars, appliances, food, drugs, timeshares, credit and insurance). Correctly they question whether consumers, even the most educated ones, are likely to read the Appendix, the Annex. The same applies to the CESL's pre-printed boilerplate.[50]

To pose an example, consumers will affirm that they agree to use the CESL. But will they read the 'Standard Information Notice' provided for by the proposed Regulation? And, if they read it, will they understand how it differs from national law to be affirmatively choosing it as a feature of their transaction? How many consumers will actually read the tedious terms in the written affirmation or remote contracts and re-evaluate their choice? It is true that one additional form, one additional signature, an additional click-all these are not too costly and will not slow down the wheels of commerce. But such costless mechanical gestures are not very beneficial either. If the CESL were true to its "conscious choice" rationale, it would require more thorough and meaningful procedures that would guarantee more than an appearance of choice.

3. Designing Disclosures to Inform the Consumer.

The limitations of the information disclosure strategies has been analysed since 1984, when it has been noted that their effects are limited because of: consumers' lack of attention, cognitive limitations (e.g. sunk cost effects, confirmation bias and information overload) and their lack of understanding.[51] Recently, the mandatory disclosure of information that characterises EU Consumer Contract Law has been subject to serious critiques according to which they are not effective to protect the consumer[52].

By examining some of the literature on the subject, it is possible to say that key tools are: key-information forms, defaults, simplification, and plain language. In addition, the author indicate: 'mapping, giving feedback, structuring complex choices, and creating incentives'.[53] The Table below summarises some points.

[50]O Bar Gill, O. B. Shahar, *Regulatory techniques in consumer protection: a critique of the Common European Sales Law*, working paper presented at the Conference on European Contract Law: A Law-and-Economics Perspective, April 27, 2012. Accessed 1 June 2014 at
http://www.law.uchicago.edu/files/files/OBS-OBG%20paper_0.pdf
[51]J. Jacoby, *Perspectives on Information Overload*, in: Journal of Consumer Research (1984), n. 10, pp. 432-435.
[52]O. Ben-Shahar, C. E. Schneider, *The Failure of Mandated Disclosure*, in: U. Pa. L. Rev. (2011), n. 159, p.647.
[53]E. J. Johnson & S. B. Shu & B. Dellaert & C. Fox & D.G. Goldstein & G. Häubl & Richard P. Larrick & J. W. Payne & E. Peters & D.Schkade & B. Wansink & E. U. Weber, *Beyond nudges: Tools of a choice architecture,* in: Mark Lett (2012), v. 23, pp. 487-504.

Biases	Traditional information disclosure	New strategies
Lack of attention	Long sentences, huge quantity of information	Less is more Visual signs Labels for numeric information Customized information Reconsider plain language doctrine Internet and new technologies Intermediaries
Information overload	Long sentences, huge quantity of information	Key - information document Simplification
Alternative overload	Long sentences, huge quantity of information	Reduce number of alternatives Use technology
Lack of understanding of contractual terms	Complexity Legal terminology	Plain language doctrine applied to consumer contracts Maintain cooling off periods
Contractual risks	Long sentences, huge quantity of information	Warnings Use defaults Help consumers to evaluate long-term running costs related to contracts
Decision inertia		Use defaults
Myopic procrastination	Long sentences, huge quantity of information	Focus on satisficing Limited time windows
Outcome valuation		Focus on experience
Too many options	Long sentences, huge quantity of information	Reducing and simplifying the options Make it easy for consumers to choose Easing participation and providing clearer messages to targeted groups of consumers
Context		Information should focus on the context of the transaction

In the light of the above, it is possible to say that the (mandatory) pre-contractual disclosure of information in the Consumer Rights Directive and the CESL is not well

designed: they insist on information disclosure, without seriously modifying the traditional strategies to reach the attention of the consumer. Indeed, it is not necessary to be a behavioural scholar to point out that the information disclosure strategies adopted in Consumer Acquis, and extended by the Consumer Rights Directive and the CESL, do not capture the attention of the consumer, and that they are not effective and may also cause a problems of information overload[54].

The list of the information is too long, detailed and complex to assure that the consumer takes an 'informed and conscious' decision before to conclude the sales contract.

With respect to financial products, the study about consumer decision-making in retail investment services correctly suggests reducing the amount of information provided and standardising their content[55]. Indeed, the CESL provides for the 'Standard Information Notice' (and similar notices are provided for by the Consumer Rights Directive, with the aim to simply the information to be given to the consumers about their rights.

The attempt to standardise the format of the information by proposing standard notices and model letters is positive, but the proposed simplification is *not* totally obtained because of the complexity and the number of information.

To exemplify, the CESL provides for the above mentioned 'Standard Information Notice' to inform to the consumer about the existence a model sale contract and the possibility to opt-in and benefit from certain rights. The idea to adopt a standard notice and to introduce a summary of rights herein is positive because it contributes to simplify the information for the consumer. Nevertheless, the said Notice ends by stating that the full list of rights is not complete and suggests the consumer to look at the full text of the Regulation, this by clicking on a link. When the consumer clicks on the link, the 186 Articles of the Regulation overburden his attention: the propensity to read decreases sensibly and he is also overloaded with information.

In such as case, the consumer may for satisficing (i.e. consumers focus only on salient aspects, ignoring all the other terms) than consciously deciding are extremely high[56]. But, within the CESL 186 Articles is also difficult to find out the salient aspects and there is the risk that the consumer can be paralysed by the too vast amount of information he is expected to read and thus that he decides to refrain from reading. Too much information often means paralysis and inertia[57].

The above said existing strategies based on mandatory disclosure are not effectively protect consumers. This does not mean that such an instrument should be abandoned: such strategy could be sensibly improved according to more sophisticated models.

3.1. Disclosures about product attributes and uses.

To complete the picture, it should be noted that there is a growing body of research about the disclosure information not specifically regarding the contract, but concerning the product attributes and uses.

[54]Geraint Howells, 'The Potential and Limits of Consumer Empowerment by Information ' (2005) 32 Journal of Law and Society 349, 370, 354.
[55]Decision Technology Ltd., Study on 'Consumer Decision-Making in Retail Investment Services: A Behavioural Economics Perspective', November 2010, at 389.
[56]Russell B. Korobkin 'Bounded Rationality, Standard Form Contracts, and Unconscionability' (2003) 70 University of Chicago Law Review 1203, 1295.
[57]Florencia Marotta-Wurgler, 'Does Contract Disclosure Matter?'(2012) 168 J. Inst' & Theo. Econ. 94.

An example concerns cell phones, the author[58], by focusing on the US market, suggests to focus far more on disclosure of product use. Cell phone plans have a set of features that should be made aware to the consumer. However, the cost of your plan does not depend only on those features, it depends also on how the phone is used, a factor that is just as worthy of consideration[59].

What would product-use disclosure entail? The author considers two possibilities; the first is average-use information, by which issuers reveal the average pattern shown by the entire population, or relevant subgroups; the second is individual-use information, derived from the actual behaviour of the individual consumer. Building on recent practices within the U.S. government, he argues in favour of the two approaches: the first is the simple and clear disclosure of the "total cost" to consumers. Cell phone companies should be required to disclose the aggregate annual cost of owning a phone (combining standard rate information with individual use-patterns). In this view, if consumers are able to obtain a clear sense of aggregate costs, they can diminish the problems of complexity and unrealistic optimism. The second approach is to require companies to disclose more comprehensive information to "intermediaries". They would be able to assemble information about the many plans offered by cell phone companies and to combine that information with a particular consumer's product-use information, thus providing the consumer with helpful comparative information. This idea might seem a bit technical, but it has a lot of potential to help people, in areas ranging from financial products to health care to education to energy use, to saving money and to promote competition. Some recent legislative enactments in the US, including the above mentioned Card Act and the Dodd-Frank Act follow similar strategies, given that they are significant steps toward improved disclosure, as they include specific disclosure of important product-use information[60].

The author has now been called to apply his theory in the field of financial protection and particularly in guiding the work of the recently established Consumer Financial Protection Bureau (CFPB)[61]. Oren Bar-Gill and Elizabeth Warren are elaborating on the strategies to be considered by the authority[62]. They contend that consumers systematically make choices that are both to their detriment and do not represent their true preferences. Thus, agencies such as the CFPB might then improve consumer decision making by "altering" the basic design of consumer credit products, adding disclosure requirements and reducing consumer choices. The advocates of the CFPB argue that this sort of "super nanny" will help to prevent consumers from utilizing their flawed evaluations of their ability to repay loans to their own detriment.

The Bureau has displayed interest in two different approaches. First, it is promoting clear and simple disclosure, so that people can learn, more or less at a glance, about the agreements that they are about to enter into. Secondly, the agency will go beyond the conventional consumer-protection function of providing information: it will design

[58]O. Bar Gill *Seduction by Contract*, OUP, 2012

[59]Consumers ought to know, for example, the per-minute charges for minutes not included in a plan, but they also should know how likely it is that they will exceed the limit, and by how much. Many cell phone users have only a vague idea of their own usage; they need to know more.

[60]The Federal Trade Commission (FTC) organised a Conference "Behavioral Economics and Consumer Policy Conference," held on April 20, 2007 in Washington, DC.

[61]Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203, 124 Stat. 1376) (Dodd-Frank Act), the CFPB has rulemaking, supervisory, enforcement, and other authorities relating to consumer financial products and services. These authorities include the ability to issue regulations under more than a dozen Federal consumer financial laws, which transferred to the CFPB from seven Federal agencies on July 21, 2011.

[62]Elizabeth Warren, the law professor in charge of setting up the Bureau, openly declares she is willing to adopt at the CFPB the tenets of behavioural economics ("The CFPB is almost certainly at the forefront of using behavioural economics for regulation (…))". More details are available on the website: http://www.consumerfinance.gov

"standard" consumer financial products containing whatever features or terms are defined by the agency for the product or service.

4. Conclusions.

In the aftermath of the economic and financial crisis, policy-makers in the EU and the US are now reconsidering consumer laws: but, how can we overcome the gap between the Law and the Science of Consumer Behaviour? And how information disclosure strategies should be reconsidered to be effective?

There is an increasing consensus in reconsidering the ways information is disclosed, including the quantity, the format, the psychological impact of the information on the consumer. The experience of mandatory disclosure of the pre-contractual information in the EU clearly confirms that the format and quantity of the information is a central problem. Surprisingly, the EU has missed the opportunity to seriously review its strategies for pre-contractual information disclosure in the Consumer Rights Directive and the CESL. The only development consists in the adoption of Standard Information Disclosure Notices with the hope that the consumer will read it.

These factors, when combined with other evolving aspects of the policymaking arena, make the new consumer protection era potentially very different from earlier eras. The full effect and consequences of the differences are nonetheless still to be determined.

To conclude, the renewed public and political interest in consumer protection and the heightened interest in reshaping the regulatory landscape provide a timely opportunity to openly re-discuss the informational model for consumer protection. Doubtless, after the economic crisis, the 'myth' of (mandatory) pre-contractual information disclosure has been seriously challenged: smarter strategies to inform consumers should be developed for a better consumer protection in the future.