

**Mario Nava**  
**The European CSD landscape in transition**

As I have said in the introduction, Barrier 9 has economic and ethical implications. Traditionally, till the foundation of modern economics by Adam Smith, with the publication of his *Essay on the Wealth of Nations* in 1776, Economics was a part of Ethics. It would have been better if had remained as such, but still to introduce Barrier 9 I went back and looked at Classics. In particular, I went back to Aristotle, who, in the *Politics*, claims that democracy is the political environment where greater is the freedom of citizens. As economists are peculiar people, they understand freedom as freedom of choice, and they give of this concept a mathematical expression. Freedom of choice has not to be confused with mean indifference between different options. On the contrary, it consists in the maximization of a mathematical function which express the satisfaction of an individual, given his budget constraints. In other words, being free to choose means being able to pick up the bundle of good and services which better serves the individual needs. The ability to exercise freedom is therefore theoretically underpinned by the theory of rational choice.

If you have followed my chain of reasoning until this point, that is, the passage from democracy to freedom and from freedom to freedom of choice, and if you have agreed with that, you will probably also agree with the conclusion that the market is the best environment for rational choice. This is because the market has the most "democratic" structure for exchange, as it ensures perfect anonymity and fungibility between actors and goods exchanges. We can see this characteristic of the market if we compare it for example to the OTC, which on the contrary looks rather as a pre-market system. In OTC, the exchange conditions are strictly related to the identity of seller and buyer. Moreover, the basic rules of the market can even be subverted, for example with a lowering of price if a higher quantity is demanded. Finally, in a OTC environment there is much more imperfect information and asymmetries and reputational mechanisms matter substantially.

I believe that European institutions have built substantive democracy at a communitarian level and the tools for building such democracy are the Four fundamental freedoms: in particular, Barrier 9 deals closely with these freedoms, free circulation of capital and free circulation of services.

It has been said today that the proposal of removing Barrier 9 is one of the most provocative of the whole work of the Legal Certainty Group. In my view, what is more provocative about Barrier 9 is its very existence, which today appears like an arbitrary monopoly.

The fast evolution of the financial environment and the hardships of the financial crisis have put in evidence the obsolescence of some aspects of financial infrastructures. This was already claimed in the Giovannini report, which reads:

«National restrictions on location of securities reflect the evolution of efficient national structure, when there was no demand for trade in domestic securities by non-residents».  
(Giovannini report 2001, p. 50)

Or, as it was put more directly by the President Sarkozy:

«We try to realize a union with almost all the tool of XIX century: the nation-State.  
(Sarkozy, Allocution to European Parliament 21 oct 2008, p.5).

Barrier 9 appears as a arbitrary situation of monopoly as it collects the problems of a monopoly, such as the issues of the Minimum Efficiency Scale and the Pareto-inefficiency. As for the first one, the cost of a CSD are higher because their national market is relatively little. As for the second, national CSD are not Pareto-efficient either for the CSD, which could gain more from foreign clients willing to pay for their specific services, either for the customers.

This said, let me summarize the work of the Commission so far on the issue, and what still needs to be done. The Commission Communication included Barrier 9 in the mandate of LCG in 2004; LCG issued Recommendation 15 where new concepts have been defined,

"importability" and exportability", "creation of securities", and "settlement of securities". Finally, after the completion of a fact-finding study, the Commission, taking also advantage of the measures of the Code of Conduct, has decided the cross-border standard settings.

If needed, a legislative proposal by the Commission might be issued in the future.

This is the present situation and the work done so far. To conclude these brief survey, let me stress once again how the removal of Barrier 9 will enhance that faculty of choice for economic actors which is at the very foundation of the modern principles of economic freedom.