

The evolution of the Italian regulation on transparency of lending operations

Vis-à-vis the EU policy on protection of consumers and SMBs

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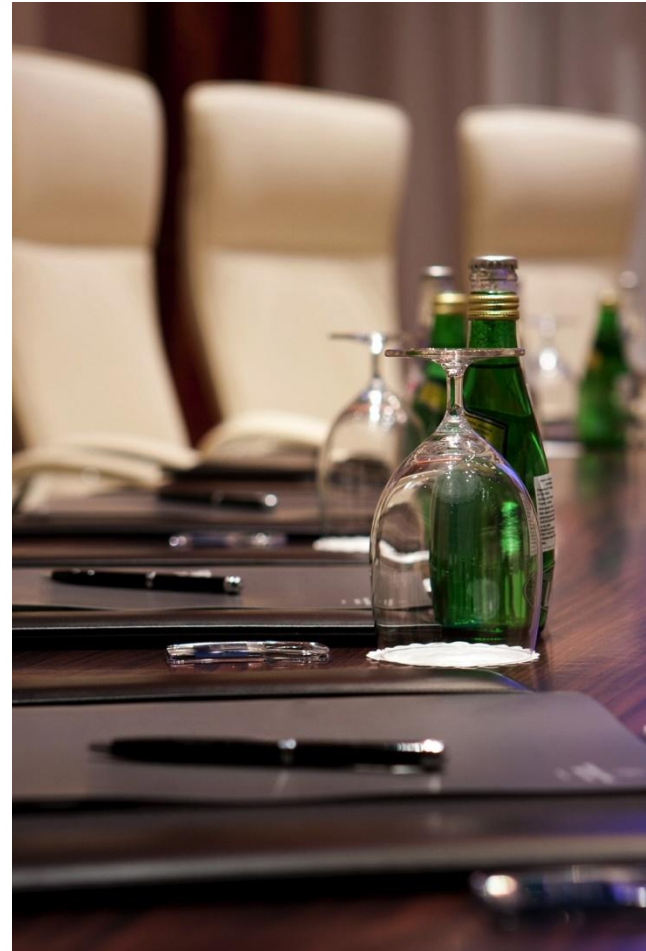
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STUDIO LEGALE BONORA E ASSOCIATI



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1. What does “transparency” mean?



An attempt to define the concept

*“Transparency, as used in science, engineering, business, the humanities and in a social context more generally, implies **openness, communication, and accountability.***

*Transparency is operating in such a way that **it is easy for others to see what actions are performed**”*

(Source: Wikipedia)



Transparency in Italian Banking Law

*"The rules on **transparency** of banking and financial services aim, while respecting the autonomy of the contracting parties, at **disclosing to clients the essential elements of the contractual relationship and their alterations**, thus also **promoting competition in banking and financial markets**. Respect for rules and principles of **transparency** and **fairness** in relationships with clients **reduces legal and reputational risks and contributes to the sound and prudent management of institutions**"*

(Source: Bank of Italy, 2013 Consultative Document on Transparency Regulation)



Transparency in Italian Banking Law (cont'd)

Duties

Disclosure

"Substantial" fairness

Purposes

Client protection

Promotion of competition

Risk management

Sound and prudent
management



The notion has “grown-up” over time

Disclosure



Competition



“Substantial” fairness and rebalancing



Reduction of risks and sound and prudent management



Financial inclusion



Transparency in EU Banking Law

- The notion is consistently focused on **information duties** and on **protection of consumers** – more recently, also in terms of responsible lending/borrowing
- *“In order to ensure full transparency, the **consumer** should be provided with **information** concerning the borrowing rate, both at a pre-contractual stage and when the credit agreement is concluded. During the contractual relationship, the **consumer should further be informed** of changes to the variable borrowing rate and changes to the payments caused thereby” (32nd recital of CCD)*



2. Comparison between Italian and EU regulations on transparency



Profile	Italy	EU
Objective Scope of Application	<ul style="list-style-type: none"> Originally (and conceptually), all banking and financial services Nowadays, specific regulations deriving from the transposition of EU directives apply to certain services (CC, PSs, etc.) 	<p>Single financial services or contracts:</p> <ul style="list-style-type: none"> Consumer credit Payment services Credit agreements relating to residential property Distance marketing of consumer financial services Unfair terms in consumer contracts
Subjective Scope of Application	<ul style="list-style-type: none"> Originally, all clients with no distinctions Currently, rules applicable to consumers and other retail clients (micro-enterprises, practitioners, non-profit organisations) are partly different from those applicable to large businesses, also due to the transposition of EU directives 	<ul style="list-style-type: none"> No general regulation Approach based on consumer protection In case of payment services micro-enterprises included if member States opt-in



Profile	Italy	EU
Purposes	<ul style="list-style-type: none"> • Reducing information asymmetries • Enhancing competition • Ensuring “substantial” fairness • Avoiding abuse of contractual/economic power • Reducing legal and reputational risks • Ensuring sound and prudent management • Easing financial inclusion 	<p>Ensuring:</p> <ul style="list-style-type: none"> • Consumer protection • Responsible lending • Retail financial services market integration • Access of consumers to basic financial and payment services
Instruments	<ul style="list-style-type: none"> • Information requirements • Mandatory rules on contracts • Mandatory rules on changes to T&Cs • Organisational requirements (including remuneration and inducements) • Specific supervisory powers of Bol • Control over competition entrusted to Antitrust Authority rather to Bol 	<ul style="list-style-type: none"> • Information requirements • Mandatory rules on contracts • Mandatory rules on changes to T&Cs

3. Final remarks

CLIENTS



Comments on evolution of the Italian regulation

1. Combating information asymmetry and “neo-liberal” regulations of the 1990s have proven not to be sufficient to avoid adverse selection and moral hazard
2. Scandals of the early 2000s and financial crisis have highlighted a close interconnection between protection of clients and stability of single institutions and of the financial system as a whole
3. The evolution of the regulatory framework concerning transparency has often been caused by court and banking ombudsman decisions and initiatives of Antitrust authority
4. Thus, the transparency regulation has evolved and now shows an increased level of interference with the autonomy of contracting parties and with the internal organisation of banks, as well as an enlargement of powers of supervisors



Comments on evolution of the Italian regulation (cont'd)

4. The goals of the regulation (and the regulation itself) are now more complex and ambitious
5. The ever-changing and fast-growing regulatory framework causes uncertainty about the applicable rules and additional compliance costs
6. Transposition of EU directives has resulted in a layering of different sets of rules, sometimes difficult to co-ordinate between themselves and with the “general” transparency regulation
7. Complex products (i.e., PRIPs) pose specific and still unresolved issues in terms of overlapping of different rules (banking, investment services, insurance, etc.)



Comments on EU approach

1. The sectoral approach based on consumer adopted by the EU causes various issues in terms of
 - Overlapping of EU and domestic transparency rules
 - Fragmentation of EU financial market, due to the lack of co-ordination
 - Additional legal and compliance costs for institutions (and for clients/borrowers)
2. Sometimes, single EU sectoral regulations are misaligned with one another (e.g., micro-enterprises)
3. In addition, laws and regulations on protection of clients aiming at restoring confidence in the financial system after the financial crisis of 2008-2009 have often been approved at a national rather than a EU level



Comments on EU approach (cont'd)

In light of the above, it would seem advisable:

- To promote a **better co-ordination** among national legislations on protection of clients (as requested by the G20), with specific focus on borrowers
- To go beyond the current sectoral approach focused on (and limited to) consumers and to rethink the concept of “**client needing special protection**”
- To clarify how the “domestic” supervision on bank-client relationship will be co-ordinated with the new **Single Supervisory Mechanism**, taking into account that the quality of such relation is crucial to ensure the stability of institutions (the EBC/EBA mandate should be revised and enlarged?)



Thank you for your attention