

Legislation on usury

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Regulations on Usury

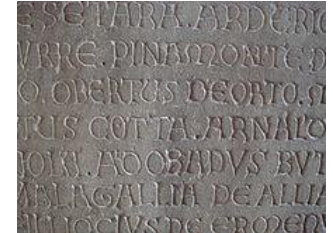


I have been given a borderline topic to deal with.

Many say: *“Usury is not a banking problem because the banks don’t practise usury”.*

It is certainly true that the banks don’t practise usury, but it’s also true – at least in Italy – that the banks have to deal with the problem of usury on a daily basis, at times before the criminal court, but regularly before the civil court when they attempt to recover a debt and the debtor claims that usurious interest has been applied.

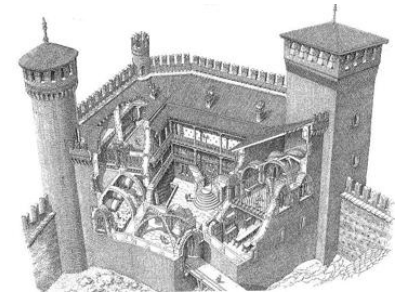
A little history (1)



1. The first legislative text on usury is contained in the Code of Hammurabi, written in Babylon (between the 20th and 17th centuries BC). It governs the lending of agricultural commodities;
2. Then came the Bible (7th century BC) which, in the Pentateuch, prohibits loans at interest between Jews (but not to non-Jews);
3. In the Roman era we have:
 - the Twelve Tables (450 BC) which limited interest rates ("Fenus unciarum: 8.33%");
 - Lex Genucia (342 BC) which abolished interest;
 - subsequent provisions in the republican and imperial eras on the "usurae centesimae" (12% pa – 1% per month).
4. In the Middle Ages, in particular after the 9th century, the church prohibited loans with interest which was considered always usurious;
5. With the economic and mercantile revival loans with interest were practised in commerce and business (with the establishment of the Florentine and Lombardy banks) in the principal European cities



A little history (2)



6. Also in the Middle Ages, small loans that we now call “consumer loans” became the monopoly of the Jews who invented loans issued against a pledge;
7. In order to counter the phenomenon, from the end of the 15th century the “Monte di Pietà” were established in Italy and Spain, promoted by the Franciscans, which allowed a limited interested rate to pay running expenses;
8. In the rest of Europe many credit institutions sprang up (and thus the savings banks), except in Germany where the small credit market was monopolised by the Jews from the middle of the 19th century;
9. The Catholic Church acknowledged only in 1821 that lending with ordinary interest was not a sin (Congregation of the Holy Office – pontificate of Pope Pius VII);
10. The Koran prohibits loans with interest (Sura II – Verses 276-277);

Civil legislation has distinguished between loans with interest and usury only since a law promulgated by the French Constituent Assembly in 1789



European Union and Usury Overview (1)

1. The issue of usury has been considered, and there has been a survey on the situation in all EU nations. It was considered that there was no need for harmonised laws on interest rates.
2. Because:
 - a) There is a different “sensitivity” around the issue in the various EU nations;
 - b) European financial integration requires:
 - freedom of establishment and free provision of services;
 - deregulation of the conditions under which those services are provided and, in relation to those, deregulation of interest rates.



European Union and Usury Overview (2)

However, the problem of international civil law remains, because in the individual nations:

- a) the laws on interest rates and usury are overriding mandatory provisions;
- b) the laws on usury are considered laws of public order.

What happens if a party enters into a contract in Country A in which the interest rate is legal and then moves to Country B where local laws consider the same rate to be usurious?

We'll see later on.

European Union and Usury Positive Action by the Union



EU law does not regulate interest rates, but identifies a link between:

- a. the prevention of excessive consumer indebtedness and poorly-functioning markets; and
- b. an increase in interest rates and the restriction of access to credit.

Directive 2008/48/EC on consumer credit contracts promotes the adoption of responsible practices for the provision of credit: information on the credit market, warning on the risks of excessive debt.



European Union and Usury Restrictions on interest rates in EU countries



The situation in the various countries differs:

- there are many countries that equate the application of excessive interest rates to breaches of the laws of public order and public decency;
- in all member states interest in arrears is regulated in some way;
- 14 member states have direct administrative regulations that set ceilings on interest rates (some only for consumer credit, others in general).

European Union and Usury Case Law in the European Court of Justice



The European Court of Justice has considered the issue of usury from the perspective of “Unfair Contractual Terms”.

In judgement C 484/08 Caja de Arrosos y Monte de Piedad the Court found that:

- it is possible, where permitted by the laws of the member state in relation to Directive 93/13/EEC, to assess as unfair a clause relating to interest rates (such as price);
- the general principles of the EU treaty on competition and competitive economics are not a barrier to this application (even though not applying directly).



European Union and Usury Current Situation (1)



Currently, the debate at the European level is about whether:

- deregulation of interest rates is a positive move or not for the purposes of competition and integration;
- a law on usury would be a hindrance to the exercise of fundamental liberties;
- a law on usury would be in the general interest.



European Union and Usury Current Situation (2)



In the event of conflict of laws between the various countries, the case law of several nations has intervened on the basis of the traditional stance of the European Court of Justice on the subject of interest generally.



European Union and Usury Current Situation (3)



That case law holds that laws on usury in the borrower's country apply to the lender in another country only when:

- they are not discriminatory, but apply to borrowers both at home and abroad;
- they are objectively necessary for the achievement of the objective sought;
- they are proportionate to the objective sought;
- they protect an interest that is protected by the laws to which the lender is subject in the member state of origin.

It is considered that, in relation to such case law, exceeding the interest rate threshold of one country does not impede the application of the law on usury in another country of the Union.



Italy – Usury Law



The Usury Law in Italy was passed in 1996 (Law 108 of 7 March 1996).

The Italian Usury Law was inspired by the relevant French law (article 29 of Law 89-1010 of 31 December 1989 – the “*Neiertz Law*”).

In France, this law was gradually repealed, in 2003 in relation to companies, and in 2006 in relation to individual business people. It remains now only in the Code de la Consommation (article 38 of Ordinance 346 of 23 March 2006).



Italy – Usury Law: Legal Principles – Criminal Aspects (1)

A “threshold rate” was introduced for the various loan categories, anything above which would automatically be the offence of usury.

Usury remains an offence where, in a loan agreement, advantage is taken of the “*economic and financial difficulties of the lender*”.



Italy – Usury Law:

Legal Principles – Criminal Aspects (2)

The offence is punishable by imprisonment for two to ten years and a fine of €5000 to €30,000;

There are aggravating circumstances (increase of penalty by one-third), as follows:

- if the offender acted in the course of professional activity – banking or brokerage;
- if the offender sought shares or holdings in the company or mortgages;
- if the offence is committed to the detriment of those carrying out a business, profession or trade.



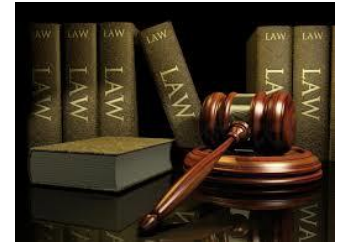
Italy – Usury Law (1)



If a bank applies an interest rate threshold above what is permitted, it thereby almost always commits the offence of aggravated usury.



Italy – Usury Law (2)



The Usury Law is a law of public order.

It must be complied with by anyone operating in Italy or having Italian counter-parties.



Italy – Usury Law

Calculation of the interest rate threshold

The interest rate threshold – as amended by Decree 70 of 13 May 2011, converted to Law 106 of 12 July 2011 – is:

- at the average rate derived from the survey of quarterly interest rates for like categories carried out by the Ministry of Economics and Finance and published in the *Gazzetta Ufficiale*;
- raised by one-quarter;
- increased by a further four points.

In any case the threshold rate cannot exceed the average rate by more than eight percentage points.



Italy – Usury Law Calculation of interest rate threshold. Like categories (1)

Originally (in 1996) there were six like categories.

There are now 25





Italy – Usury Law Calculation of interest rate threshold. Like categories (2)

**ACTUAL AVERAGE GLOBAL
INTEREST RATES AS SET
OUT IN LAW 108/96
Period of application: 1 October
2013 to 31 December 2013**



CATEGORY OF OPERATION	AMOUNT GROUPINGS <i>in euros</i>	ACTUAL AVERAGE GLOBAL INTEREST RATES <i>on annual basis</i>	INTEREST RATE THRESHOLD <i>on annual basis</i>
Opening of credit facility in current account	up to 5000 over 5000	11.38 10.13	18.2250 16.6625
Overdrafts	up to 1500 over 1500	16.22 14.93	24.2200 22.6625
Advances and discounts	up to 5000 from 5000 to 100,000 over 100,000	8.85 8.02 5.52	15.0625 14.0250 10.9000
Factoring	up to 50,000 over 50,000	7.77 4.21	13.7125 9.2625
Personal loans	entire distribution	11.99	18.9875
Other loans to families and companies	entire distribution	10.65	17.3125
Loans against transfer of one-fifth of salary and pension	up to 5000 over 5000	11.87 11.43	18.8375 18.2875
Leasing of motor vehicles and aero-naval craft	up to 25,000 over 25,000	7.95 7.62	13.9375 13.5250
Property leasing at fixed interest	entire distribution	7.12	12.9000
Leasing immobiliare a tasso variabile	entire distribution	5.04	10.3000
Equipment leasing	up to 25,000 over 25,000	8.73 6.25	14.9125 11.8125
Specific purpose loan	up to 5000 over 5000	12.32 9.96	19.4000 16.4500
Revolving credit	up to 5000 over 5000	17.09 12.25	25.0900 19.3125
Fixed interest mortgages	entire distribution	5.11	10.3875
Variable interest mortgages	entire distribution	3.88	8.8500



Italy – Usury Law - Calculation of interest rate threshold. Commission and expenses (1)

The law provides that, for the purposes of calculating usurious interest, commission, any kind of remuneration and expenses must be taken into account, with the sole exception of duties and taxes associated with loan disbursement.



Italy – Usury Law - Calculation of interest rate threshold. Commission and expenses (2)

This has given rise to considerable dispute between the banks and their clients because the Bank of Italy originally excluded from the survey:

- interest on arrears (which can be considered punitive damages and not simple repayment);
- maximum overdraft charge; that is, charge for full use of the credit in the current account in the quarter (now *de facto* abolished)



Italy – Usury Law - Calculation of interest rate threshold. Commission and expenses (3)

Case law has subsequently indicated that that interest and charge are to be included in the calculation of usurious interest.

There is currently some discussion about applying the Usury Law to derivatives contracts.



Italy – Usury Law - Calculation of interest rate threshold. Current issues

Decree 394 of 29 December 2000 provided that, for the purposes of assessing whether an interest rate is usurious, the time the contract was entered into is also relevant. These differences between the Ministry, the regulatory authorities and case law have led to a various judgements which refer to “*usury supervened*” (see Supreme Court judgement 350 of 9 January 2013 – Banking and Finance Arbitrator decision 1796 of 3 April 2013).



Italy – Usury Law - Civil Law



With regard to civil law, Law 108 of 7 March 1996 (amending article 1815 of the Italian Civil Code) provides that if a loan agreement has usurious interest, the “*clause is null and void and interest is not owed*”.



Italy – Usury Law

Current issues



The banks
are involved
in
considerable
litigation

- in terms of criminal law, the problem is limited since the court usually recognises that:
 - the legislation is not clear and has not been unambiguously interpreted by public authorities;
 - breaches of the law by banks are inadvertent and not intentional (Reggio Calabria Court of Appeal Judgement 10971 of 2010).
- in terms of civil law, there is a large group of cases because, against debt recovery actions by banks, debtors in many cases respond by disputing, on the basis of the Usury Law, the negative balance which the bank is seeking to have repaid

Italy – Usury Law

Other features of the law



The Italian usury law has also:

- regulated the activity of financial intermediaries (which has now been considered at the EU level and thus included in the Consolidated Banking Law);
- created funds for the prevention of usury and support for victims of usury.



Italy – Usury Law - Assessment of the effectiveness of the legislation (1)



My opinion of this legislation is largely negative.

- In Italy an average of 1000 persons are reported for usury a year and of these, between one-third and one-half are convicted (300-500 persons).
- Criminal organisations do not operate in breach of the Usury Law because they give loans at normal interest rates and then impose on companies the purchase of goods and services by companies linked to these criminal organisations and gain earnings from this practice.

Italy – Usury Law - Assessment of the effectiveness of the legislation (2)



My opinion of this legislation is largely negative.

- Those who are victims of usury are often those with poor personal history (bankrupts, usurers, gamblers, etc).
- To protect these few, the State:
 - has created an extremely costly system to identify the average interest rates, the cost of which falls to the banking system;
 - spends millions of euros on anti-usury initiatives (conferences, websites, awareness-raising initiatives, etc) the actual benefits and usefulness of which are not known (given the number of criminal cases);
 - has created for the banking system – in addition to the cost and inconvenience of the interest rate survey and the compliance obligations – often unjustified, but still costly, litigation that insolvent clients embark upon with the aim of delaying enforcement and obtaining a reduction of their debt.



Italy – Usury Law - Assessment of the effectiveness of the legislation (3)



My opinion of this legislation is largely negative.

- I hope that, as in France, this legislation will remain limited to consumer credit and provide administrative sanctions only for intermediaries who breach it.



Thanks for your attention

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