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Thirty years on from Law No. 108/1996: between mandatory rules, market failures, and the need for European harmonisation of interest rate ceilings..

ABSTRACT

On 7 March 2026 the Italian anti-usury statute, Law No. 108/1996, turns thirty. The law marked a structural shift in Italian usury regulation: it moved away from the traditional, largely subjective criminal-law paradigm (centred on "exploitation" and on an open-ended assessment of disproportionality) and embraced an objective model based on Interest Rate Ceilings (IRCs). Under this framework, a quarterly computed market benchmark (the tasso effettivo globale medio, by categories of transactions) is increased by a statutory spread; exceeding that threshold triggers the usury regime irrespective of the borrower's status (consumer or professional), the lender's nature (bank, regulated intermediary, or unlicensed lender), and – even more strikingly – also in ordinary banking contracts, with the consequence of nullity of the interest clause under Art. 1815(2) Italian Civil Code, so that no interest at all is due.

Despite the "alluvial" literature and the massive volume of litigation generated by this model – visible both in the case-law of the Italian Supreme Court and of lower courts – the Italian debate has only sporadically addressed a more fundamental, policy-oriented question: is a generalized IRC a desirable regulatory tool for modern credit markets? This paper aims to reopen that question by highlighting the eccentricity of the Italian

approach in comparative perspective and by reconstructing the contingent political-economy conditions that produced the 1996 reform.

The paper first frames the debate on IRCs as a long-standing controversy, from classical political economy to contemporary regulatory discussions. Pro-IRC arguments typically invoke: (i) protection of vulnerable borrowers from over-indebtedness spirals; (ii) correction of market failures such as informational asymmetries, opacity of pricing, limited competition in small-ticket credit, and financial illiteracy—issues prominently exposed during the 2007–09 financial crisis and again during the COVID-19 period; and (iii) a public-order intuition that deems “too expensive” credit socially intolerable. Yet these arguments generally target consumer credit and other high-risk, high-friction segments, rather than supporting an indiscriminate IRC applicable to all borrowers and all lenders. Contra-IRC arguments, conversely, stress credit rationing (especially for low-creditworthiness applicants), the displacement of costs into fees and ancillary charges, the multiplication of borderline contractual practices, and the risk of pushing the weakest borrowers toward informal or criminal lending channels.

Against this background, the paper contends that the Italian 1996 choice is best understood as a short-cut response to a historically specific scenario: the early-1990s monetary turmoil (notably the 1992 crisis and subsequent rapid convergence of rates in the run-up to EMU) combined with an Italian contract-law environment that, at the time, offered no effective market-corrective mechanisms for borrowers trapped in earlier high-rate fixed loans—such as portability or a workable early-repayment right. Rather than intervening to enhance contractual flexibility (which would come later through consumer-credit directives and domestic liberalisation measures), the legislature opted for a rigid cap system while rhetorically framing the reform primarily as an anti-mafia, law-and-order instrument. The subsequent backlash over “usura sopravvenuta” and the legislative reaction (d.l. 394/2000) further reveal a model that operates as a form of price control detached from market dynamics.

The core of the paper is a critical assessment of the thirty-year record of Law 108/1996. It argues that the framework has produced enduring uncertainty and fragmentation, largely because the legal system has struggled to

stabilise key technical notions and boundary issues. Illustratively, the paper recalls the long-running controversies over: (i) “usury arising during performance” and its relationship with good faith; (ii) the computation of the relevant effective rate (TEG), with emblematic disputes around items such as the *commissione di massimo scoperto* and related “re-qualification” litigation; and (iii) the treatment of default interest. The overall effect, the paper suggests, is that rigid price caps can generate judicial arbitrariness and strategic litigation incentives, undermining legal certainty for both lenders and borrowers in ways that are not obviously superior to a more contextual, conduct-based approach.

A comparative survey then shows that generalised IRCs are increasingly recessive in advanced capitalist economies, while many jurisdictions have either (a) targeted caps confined to consumer or “high-risk” products (e.g., revolving credit, microcredit, payday lending), (b) open-textured usury rules, or (c) robust transparency and conduct regimes backed by administrative enforcement. In this regard, the paper also clarifies that analogies often drawn with France are misleading: even where France retains a ceiling mechanism, it is structured and accompanied by tools (including temporary adjustments in exceptional rate environments) that differ markedly from the Italian “one-size-fits-all” model.

Finally, the paper places the Italian regime in the European Union context. It argues that divergent national positions on IRCs have historically constrained EU harmonisation efforts in consumer credit since the 1987 directive cycle, pushing EU law toward functional substitutes: standardised disclosure metrics (TAEG/APR), enhanced creditworthiness assessment duties, bans on specific abusive practices, and a mix of administrative and private enforcement. The latest Consumer Credit Directive (EU) 2023/2225 confirms this trajectory by requiring Member States to adopt “effective measures” against excessive interest, disproportionate total cost, and predatory practices, without mandating a uniform EU-wide ceiling. Persisting divergences, the paper concludes, foster regulatory arbitrage and impede the internal market, while leaving Italy with a regime that risks both competitive disadvantage and misalignment with the EU’s broader regulatory philosophy.

The paper's broader claim is not that all ceilings are inherently undesirable, but that the Italian general cap – applied indiscriminately across borrowers and lenders – has proved an especially blunt instrument: weak against genuine criminal usury, distortionary for legitimate banking credit, exclusionary for SMEs and high-risk/high-return enterprises, and potentially anti-competitive by favouring incumbents. The paper therefore calls for a renewed debate on reform options and for a credible European equilibrium that prioritises transparency, proportionality, and risk-based pricing under prudential supervision, rather than relying on rigid, economy-wide price controls.