

# The Italian Derivatives War

A Case Study on EU Financial Harmonisation and Brexit  
Fallout

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# Introduction: What's at Stake

- Legal battles over derivatives expose cracks in EU financial harmonisation
- The clash: ISDA contracts vs. national public law
- Brexit adds jurisdictional uncertainty

# The Italian Derivatives War: Overview

- Early 2000s: widespread use of derivatives by Italian local entities
- Post-2008: massive losses trigger litigation
- Courts often rule contracts null and void
- Example: Comune di Milano v. JPMorgan & Dexia

# Common Law Meets Civil Law

- ISDA: English law, London jurisdiction
- Italian courts: focus on public policy and informed consent
- Legal reasoning: contracts as speculative, non-transparent

- MiFID I/II: aims at unified financial conduct and investor protection
- Markets in Financial Instruments: transparency, suitability, risk disclosure
- Limits: Directives allow room for national implementation
- ECJ deference to national courts in civil law contexts

# Italy's Judicial Approach

- Protective stance toward public entities
- Public procurement and *ultra vires* doctrines
- Courts reluctant to defer to foreign jurisdiction when local interest affected
- Tension with financial market uniformity

# Brexit: Adding to the drama

- End of automatic recognition of UK judgments
- UK no longer part of Brussels Ia Regulation
- Enforcing English judgments in EU now requires local procedures
- Jurisdiction clauses under scrutiny in EU courts (Italy included)
- The game is who starts first

# Recent Case Law: UK Decisions - 1/3

## Pesaro Case

- Pesaro initiated proceedings in Italy against Dexia over interest rate swaps
- Dexia obtained a favorable judgment in England
- Enforcement in Italy remains pending due to ongoing local litigation



# Recent Case Law: UK Decisions - 2/3

## Venezia Case

- Venice challenged the validity of swaps under Italian law
- The English Court of Appeal upheld the transactions, rejecting the claim that they were speculative and beyond the municipality's capacity

# Recent Case Law: UK Decisions - 3/3

## Emilia Romagna Case

- Emilia Romagna contested the validity of derivatives in Italian courts
- Dexia secured a favorable judgment in England
- Emilia Romagna did not participate in the English proceedings, yet the court proceeded and ruled in Dexia's favor

# Italian Court Reactions

- Italian courts often resist enforcing English judgments, citing public policy
- The “Italian torpedo” tactic resurfaces: initiating proceedings in Italy to delay or undermine foreign judgments
- This approach complicates cross-border litigation and enforcement

# Italian Decisions: Brescia and Busto Arsizio - 1/2

## Brescia Case

- The English High Court upheld the validity of derivative transactions with Brescia
- The court found that the transactions were not speculative and fell within the municipality's capacity
- Case pending in Italy on enforcement of the English decision

# Italian Decisions: Brescia and Busto Arsizio - 2/2

## Busto Arsizio Case

- Busto Arsizio argued lack of capacity to enter into swap agreements
- The English court ruled that the municipality had the capacity and that the swaps were valid
- Highlights the importance of litigating promptly to establish legal clarity
- Again, public policy enforcement issue

# Implications for Market Participants

- Greater legal uncertainty for cross-border derivatives
- Need for better contractual risk assessment post-Brexit

# Final Thoughts

- Italian courts' resistance shows limits of formal harmonisation
- Brexit amplifies legal fragmentation
- A call for deeper integration — not only in lawmaking but in enforcement

## Questions and Discussion