

BANKING TRANSACTIONS AND SERVICES

edited by Antonio Proto



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CHAPTER 1

Transparency between Banks and Customers

by Antonio Proto

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1.1. The Activities of Banks

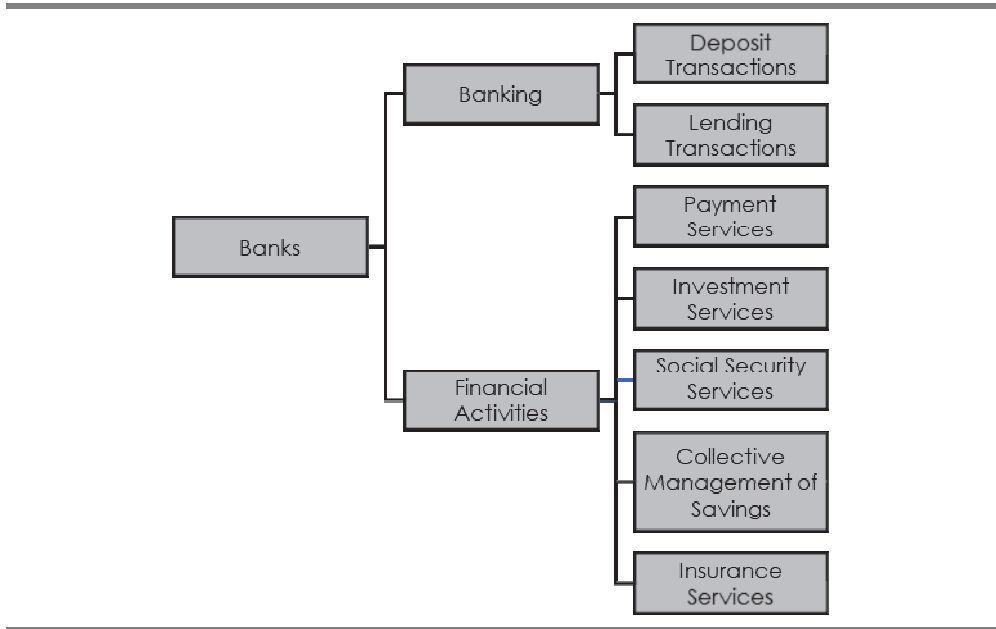
Banks are businesses that carry out banking and any other financial activities that are not reserved for particular financial intermediaries (article 10 of the Consolidated Law on Banking). Banking, which is reserved for banks, includes collecting savings and liquid funds from the public and granting loans. Specifically, collecting savings on demand is reserved for banks (article 11, paragraph 5). When working with customers, banking takes the form of *deposit transactions* (see Chapter 5) and *lending transactions* (see Chapter 4).

Other financial activities include *payment services* (see Chapter 6), *investment services* (Chapter 7) and *social security services* (see Chapter 8). Reserved financial activities include *collective management of savings*, which is carried out by asset management companies (Sgr), open-ended investment and fixed capital investment companies (Sicav, Sicaf), and *insurance services*, which are handled by insurance companies. These activities cannot be performed directly by the bank; however, they can be carried out indirectly through the creation of a group¹. Furthermore, the bank can provide insurance services by stipulating commercial deals with insurance companies (see Chapter 8).

¹ Banks that control an asset management company make up a banking group (article 60 of the Consolidated Law on Banking). When a bank also controls an insurance company, the group is defined as a financial conglomerate if the insurance activity is deemed significant (article 3 of lgs.d. n. 142/2005).

The activities of banks are summarized in Figure 1.1.

Figure 1.1. – *The Activities of Banks*



1.2. Banking Transparency

As previously stated, banking is a business that offers transactions and services to customers. As this activity is intangible, transparency is of crucial importance so that the customer has all the information to make informed decisions. In particular, it is essential to understand the characteristics and costs (*economic conditions*) of banking transactions and services in order to assess these features in relation to the needs of the customer, to check their economic convenience and to compare them with other market alternatives.

It is not only the information itself that is significant in bank and customer relationships, but also the conduct of the bank itself. The bank often finds itself in a position of power with respect to the customer, who often does not have an adequate knowledge on how these transactions and services work, nor of their financial and economic profiles. This situation also depends on the fact that, as a rule, banking transactions and services are carried out by the customer signing a contract provided by the bank which they themselves have not negotiated (*adhesion contract*). Furthermore, these contracts bind customers over time (*fixed-term contracts* or *open-ended contracts*).

These considerations explain why legislators are invested in safeguarding the

customer, as the weaker counterparty, through specific regulations² aiming not only to guarantee adequate information, but also good conduct by the bank. These regulations apply to transactions and services as provided for by the Consolidated Law on Banking³ offered to customers by banks⁴ in Italy, including when they are off-site⁵ and via remote communication techniques⁶. In particular, they regard:

- public notice on contractual conditions and on safeguarding tools for the customer;
- requirements for the form and contents of contracts;
- ways of safeguarding in the event of changes to contractual conditions by the bank;
- the obligation to communicate with the customer to inform them of the performance of relations with the bank;
- specific regulations to calculate interest; and,
- organizational requirements to minimize the bank’s legal and reputational risks and managing complaints by customers.

Therefore, the law intervenes in various phases of bank and customer relationships such as in the collecting and comparing information on available transactions and services, the purchasing decision in signing a contract, the subsequent summaries on the performance of relations with the bank, and the management of any contractual changes. The provisions on interest calculation and complaint management are also particularly significant.

Finally, it is important to remember that the regulations on transparency may only be waived under the most favourable conditions for the customer (article 127, paragraph 1 of the Consolidated Law on Banking) and are subject to Bank of Italy

²This is regulated by the Consolidated Law on Banking (Title VI – *Transparency of terms and conditions of contract and of customer relations*) and by the Provision of the Bank of Italy (*Transparency of banking and financial transactions and services and proper conduct in the relations between intermediaries and customers*).

³These regulations do not apply to investment services and activities, to the placement of financial products and transactions and services inherent to those financial products (which are subject to the regulations on transparency set out in article 23, paragraph 4 of the Consolidated Law on Finance) nor the implementing provisions from CONSOB (see Chapter 7). Furthermore, the Consolidated Law on Banking and the Provision of the Bank of Italy lay out specific provisions on consumer credit, real estate credit to consumers (see paragraph 4.3) and payment services (see Chapter 6).

⁴Financial intermediaries which grant loans (article 106 of the Consolidated Law on Banking) and Poste Italiane S.p.A. for Bancoposta transactions and services are also subject to regulations on transparency.

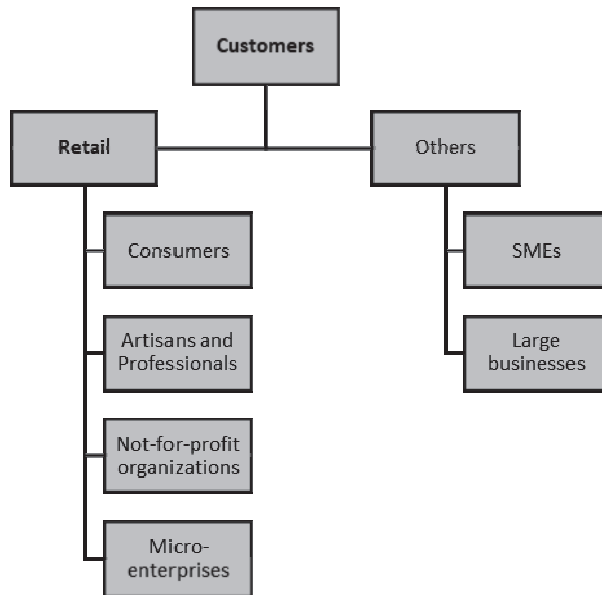
⁵Off-site relates to any promotion, placement or conclusion of transactions and services which take place outside the bank’s headquarters and branches.

⁶These are ways to contact a customer (other than through advertising) which do not involve the physical presence of the customer (or their proxy) in the bank. Some examples are postal communications, email, other online communications, telephone, and so on.

supervision. This entity is able to inform, inspect and intervene in banks in the event of irregularities (articles 128 and 128-ter).

If the aim of these regulations is to safeguard the customer, that is any subject, individual or legal entity, who has or intends to enter into a contractual relationship with a bank⁷, it must be remembered that this definition includes various categories of subjects, each with a different ability in managing their relations with the bank as the competences and contractual power are different for each. Once a system of general regulations that guarantees a minimum level of transparency and proper conduct has been set out, it follows that specific provisions for safeguarding customers who are considered the most vulnerable are necessary. To this end, regulations on transparency identify *retail customers*, which include consumers (individuals who are not working in a business or professional capacity), artisans and professionals, not-for-profit organizations and micro-enterprises⁸. These are small clients who generally have limited competences in financial affairs. Therefore, small and medium-sized enterprises (SMEs)⁹ and large businesses come under *other customers* (Figure 1.2).

Figure 1.2. – Customers



⁷ Other financial intermediaries and subjects that carry out financial intermediation do not fall within the definition of bank customers.

⁸ Micro-enterprises are defined as a business with fewer than 10 staff or a balance sheet total of less than €2 million.

⁹ Small enterprises are businesses with fewer than 50 staff and a turnover or a balance sheet total of less than €10 million. Medium-sized enterprises have fewer than 250 staff and a turnover of less than €50 million or a balance sheet total of less than €43 million.

To apply provisions to safeguard these subjects, before the signing of the contract the bank must verify whether the clients fall into the category of *consumer* or *retail customers*. This can be subsequently changed only at the request of the customer, if the conditions for those provisions are met. These checks may be difficult since some customers, such as artisans and professionals, often carry out both their business and professional banking activities as well as their personal banking needs with the same bank.

1.3. *Public notice and Pre-contractual Information*

The bank must clearly outline all economic conditions related to the transactions and services available to the customer. This obligation cannot be fulfilled simply by referral to usage (article 116 of the Consolidated Law on Banking). The following transactions and services are subject to the rules on public notice¹⁰:

- deposits;
- certificates of deposit;
- loans (mortgages, overdraft facilities, bank advances, signature loans, portfolio discounts, financial leases, factoring) and other loans that are not considered as consumer credit transactions;
- collateral received;
- correspondent accounts;
- issuing and administering means of payment;
- collections and payments that are not configurable as payment services; and,
- safekeeping and administration of financial instruments.

These rules do not apply to contracts arranged unilaterally by the customer or subject to individual negotiation.

Public notice must take place through information documents intended for the customers such as practical guides, information sheets, a copy of the contract, a summary document.

With reference to these, banks must:

- make the *Practical Guide to the Banking and Financial Ombudsman* available to customers. This must be written in line with the template published on the website www.arbitrobancario-finanziario.it; and,
- publish the *Buying a House: Mortgages Made Easy*, *The Central Credit Register Made Easy*, *Bank Accounts Made Easy* and *E-commerce Payments Made*

¹⁰This list is not complete as the Bank of Italy may add other transactions and services as bank running operations and the market evolve.

Easy guides on their website. These must be in line with the templates published on the website *www.bancaditalia.it*.

For all transactions and services that the bank provides for the customer, the *information sheet* must be made available in areas within the bank visible to the public eye and on the bank's website. It must include:

- bank information including its name, registration in registers, the address of legal headquarters, office phone numbers for extra information for customers and/or when signing a contract, fax number, website and email addresses;
- characteristics and common risks associated with the transaction or service, for example, the interest rate risk for variable rate transactions, the liquidity risk for deposit transactions in illiquid securities¹¹, the exchange rate risk for transactions in currencies other than the Euro and the resolution risk in the event of bail-in (see paragraph 5.5);
- a complete list of economic conditions; and,
- all contractual clauses concerning the right to withdrawal for both the bank and the customer as well as the maximum time to terminate relations and the out-of-court safeguards available to the customer.

Economic conditions must be stated in their fullest extent if in favor of the bank and to their minimum extent if in favor of the customer. For each term listed, a fixed amount or a minimum/maximum amount can also be stated. Interest rates are reported annually and with reference to a calendar year (365 days). For contracts concerning current accounts, the information sheet must state any minimum requirements to open the account (initial deposit, depositing salaries into the account, etc.), the value and the availability dates and all the situations in which the customer may incur further costs along with the specified amount (see Chapter 2). When the contract is offered to consumers, terms relating to any additional services (e.g., payment cards) that are not included in the main economic conditions listed on the information sheet must be reported on a separate information sheet regarding additional services. Furthermore, a booklet with the information sheets regarding all additional services on the current account must be made available to the customer. Finally, the bank must draw up a *fee information document* showing all fees that the consumer must pay for the most common current account services in Italy¹². Regarding lending transactions, information sheets must report the possibility of consulting the *All-In Average Effective Rate*, as foreseen by anti-usury laws.

¹¹ These are financial products (e.g., bonds) that present barriers or limitations to disinvestment in reasonable times and at significant price terms, since they are not listed in regulated markets and there is a lack of bank buyback commitment (See CONSOB, Communication of 2 March 2009, n. 9019104).

¹² Standardized European terminology is used to describe these services. The Bank of Italy includes them in its published list pursuant to article 126-*undecies*, paragraph 1 of the Consolidated Law on Banking.

For loans in currencies other than the Euro, the information sheet must contain a reminder of the exchange rate risk and a simulation of its impact on the total amount to be refunded at maturity as well as, for instalment loans, on the instalment, resulting from:

- a currency appreciation equal to 20%; and,
- a currency appreciation equal to 20% and a concurrent rise in the interest rate of 2% after two years from the date that the contract is concluded (for loans with a term length over two years).

For financial leases, on the other hand, an internal discount rate is applied instead of an interest rate. For this discount rate, the bank must check that purchase price of the asset (after taxes) and the present value of rents and redemption price (after taxes) are equal (see paragraph 4.2.3).

In the event of composite products (two or more linked contracts making up a single economic operation), the bank must prepare a single information sheet covering all parts of the product, indicating all costs to be paid by the customer.

There are particular provisions set out for off-site offers and the use of remote communication techniques. In the case of off-site offers, it is also necessary to provide information on who will be coming into contact with the customer (employees, financial consultants, etc.); when remote communication technology is being used, specific regulations on pre-contractual information must be followed.

Before concluding the contract, the bank must give the customer a copy of the contract ready for signature or the summary document within a reasonable time if requested. This action does not oblige either party to sign the contract, and the right to obtain a copy of the contract or summary document cannot be subject to terms and conditions. In the event of changing contractual conditions, the bank must inform the customer before the conclusion of the contract. Also, if requested by the customer, the bank must give a copy of the new contract or the summary document to the customer.

In loan contracts, inasmuch as the economic conditions are laid down after an investigation carried out by the bank (see Chapter 3), the customer can choose between:

- a copy of the contract ready for signature, which can be subject to payment of an amount no higher than the investigation cost; the maximum fee must be published on the information sheet; or,
- a free outline of the contract with no economic conditions and a quote with the economic conditions based on information provided by the customer.

For retail customer mortgage contracts, different from real estate credit contracts for consumers, the copy of the contract is free once the date for its signature in the presence of a notary has been decided.

In all other cases, delivering pre-contractual information is free (article 127-*bis*).

A personalized *summary document* shows the economic conditions published

on the information sheet as stipulated by the contract. This document must be used as the front page of the contract and is an integral part of the contract if there is an agreement of the parties to that effect. If there is no personalization of the transaction or service offered by the bank, the information sheet and the summary document can be the same. In this case, the front page of the contract must be the information sheet. For mortgages which are (or could remain) fixed-rate for the entire contract, the summary document must show the amortization plan at the end (see paragraph 4.2.3).

Regarding consumer current accounts, the bank must calculate a *total cost indicator* (ICC – *Indicatore dei Costi Complessivi*), equal to the total costs and fees that the customer would have to pay across the year excluding taxes and interest¹³. Three types of accounts must be clearly indicated. These are:

- current accounts with a flat-rate pricing system (*packaged accounts*). There are six operative profiles for this type of accounts: Youths; Families with low number of transactions; Families with medium number of transactions; Families with high number of transactions; Retirees with low number of transactions; Retirees with medium number of transactions;
- current accounts with a pay-as-you-go pricing system (*ordinary account*), with a single profile for activities on the account, which in themselves are particularly low. The accounts are generally only used occasionally or intermittently for specific needs (for example, for mortgage repayments); and,
- current accounts for specific clients such as for employees of public authorities or businesses where the conditions of the account have been collectively negotiated with the bank (*in agreement*).

Both the fee information sheet and the summary document on costs must show the total cost indicator for each type of account (see paragraph 1.6).

For lending transactions (mortgages, bank advances, credit lines in retail client bank current accounts or other loans), both the information sheet and the summary document must show the *Annual Percentage Rate of Charge* (APRC). This indicator is calculated as laid out by the regulations on consumer credit or, in the presence of a mortgage on a real-estate property, by the regulations on mortgage credit for consumers (see paragraph 4.3).

¹³ The way of calculating the ICC is shown in Attachment 5A of the Provision of the Bank of Italy.

1.4. Contracts

Contracts are drawn up in writing¹⁴ and a copy including general terms and conditions must be given to the customer (article 117 of the Consolidated Law on Banking). A written copy is not mandatory:

- for transactions and services carried out in fulfilment of contracts drawn up in writing; for example, transactions in current accounts; or,
- for occasional transactions and services such as the purchase and sale of currency as well as the issue of bankers' drafts, as long as the total value of the transaction is no higher than €5,000 and provided that the bank keeps evidence of the transaction and sends confirmation of the transaction, highlighting all economic conditions applied to the customer.

If the default form is ignored, the contract is null and void. As laid out by the regulations on transparency, nullity shall only operate for the benefit of the consumer and may be ascertained *ex officio* by the court (article 127, paragraph 2). Contracts may also be signed via remote communication techniques, in line with the conditions and criteria set out in the general provisions on the subject.

In terms of content, contracts must state all economic conditions and other contractual clauses applied including any general conditions of the contract. Contractual clauses of reference to uses, or that establish less favourable conditions for the customer than those published on the information sheets and summary documents are null and void and are considered non-binding. In these cases, or where there is no indication of the conditions offered, the bank must apply:

- the minimum (for lending transactions) and maximum (for deposit transactions) nominal interest rate on annual Treasury bills or other similar securities that may be indicated by the Ministry of Economy and Finance; these are issued in the twelve months before the conclusion of the contract or, if more favourable for the customer, in the twelve months before carrying out the transaction; or,
- the other public conditions for similar categories of transactions and services active when concluding the contract or, if more favourable for the customer, when the transaction or service was carried out. If public conditions do not exist, nothing is due.

If the contract contains indexing clauses, the bank must state the parameter value when concluding the contract as well as indicate the way in which the customer can check on its progress during the contract. Furthermore, if any of the factors that contribute to calculating the overall cost of a transaction depend on quotes of financial instruments, future trend of currencies or cannot be identified when drafting the contract, the bank must state the elements that determine these cost components.

¹⁴For digital documents, the need for a written copy is met based on objective characteristics of security, integrity, quality, and immutability (articles 20 and 21 of lgs.d. n. 82/2005).

In the event of real estate credit transactions other than those regulated by article 120-*ter* of the Consolidated Law on Banking¹⁵, the contract must state at least one example showing the application of the formula for calculating the overall fee in the event of early repayment.

The contents of the contract can also be written by the Bank of Italy, which has the power to require that certain contracts or financial instruments have a specific, predetermined content (on penalty of nullity). These contracts or financial instruments can be identified by means of a particular denomination or by specific qualifying criteria; it is, therefore, possible to standardize contracts, which makes it easier for the customer to assess and compare transactions and services. This helps prevent situations of incompatibility arising between banks' differentiation strategies and the aims of transparency and good conduct. This has been used to regulate deposit transactions in financial instruments (see paragraph 5.4).

The customer has the right to withdraw from an open-ended contract with no penalties or fees, although a reimbursement to cover costs incurred for additional services may be applied (article 120-*bis*). This right is also foreseen in the event of a unilateral amendment to the terms of the contract (see paragraph 1.5).

1.5. *Unilateral Amendment to Contracts*

The bank may unilaterally change the terms of an open-ended contract (article 118 of the Consolidated Law on Banking) if¹⁶:

- this possibility is provided for by a specific clause in the contract approved by the customer; and,
- the amendment is motivated by a justified reason. This is an event that produces a demonstrable effect on the relations with customers (for example, a change to their creditworthiness) or the general economic conditions, which could mean a rise in the bank's operational costs (for example, a change in interest rates or in inflation rate, etc.).

In fixed-term contracts changes to interest rates is not permitted if the customer is a consumer or a micro-enterprise. It is, however, permitted in other cases in exceptional circumstances that are specified within the contract. The amendments cannot introduce any new clauses. Changes to interest rates deriving from indexing clauses do not fall within the definition of unilateral amendments as these result

¹⁵ The law concerns the purchase or restructuring of a property for residential use or for a commercial or professional activity by a physical individual. In these cases, the bank may not charge a fee or fine to the customer.

¹⁶ See the Ministry for Economic Development Note of 21 February 2007 n. 5574, Note of 13 October 2014, and the Bank of Italy Deliberation n. 197/2017.

from specific parameter changes which are indicated in the contract and this change is deemed beyond the control of the parties.

The customer must be informed of the amendment, on paper or in another durable medium, with at least two months prior warning; this information must be provided free of charge (article 127-*bis*). The customer may also withdraw from the contract within the date of entry into force of the amendments; no fees and the previous terms and conditions are applied. If they do not withdraw, the changes are regarded as approved and take effect on the day stated in the unilateral change proposal.

1.6. Communication with Clients

Communication with clients includes all information on contract amendments (see paragraph 1.5), reports that the bank must send to customers (*recurring communications*) and all information concerning specific transactions (*on-demand communications*) (article 119 of the Consolidated Law on Banking).

The bank must provide, at the end of the contract or at least annually, a clear and complete communication regarding the relations with the customer and an overview of the terms and conditions applied. This communication can be on paper or in another durable medium as decided by the customer. If the customer does not lodge a written complaint within sixty days of receiving this communication, it shall be regarded as approved.

Recurring communications consist of two documents, a *statement* and a *summary document* detailing the main economic conditions. This statement (*account statement* for current accounts – see Chapter 2) shows, also through summary cost items, the transactions, totals of money in and out, debit and credit balance and any other relevant information to make the analysis clear and understandable. The summary document updates the one attached to the contract, showing the current economic conditions and highlights any changes made since the preceding communication. The summary document sent out with the statement for the time period finishing 31st December also lists the total number of changes made across the year.

The contract parties may decide to omit sending periodic communications if no transactions are made for more than a year, and if the customer has a credit balance of under €2500. If there have been no changes to the economic conditions since prior communication, a summary document is not needed. This is the case provided the customer can for free and promptly receive an updated copy of the summary document with all economic conditions currently in force if requested or, if the customer has chosen online communications, they can access the updated summary document through the bank's website or get a copy via email.

The contract also states the means of sending periodic communications to the customer and any costs connected that may be incurred; online communications are free. The contract may include fees for additional information or communications requests; for communications to be sent more frequently than the law foresees; or,

for sending communications in a format other than those agreed upon in the contract. Such fees must be suitable and proportionate to the costs incurred by the bank (article 127-*bis*).

Recurring communications must also inform the customer of any legal procedures or self-regulations that may favour customers in porting their accounts, and refer them back to any specific information guides available on the topic.

When dealing with current accounts, the account statement and the summary document are sent annually or, at the request of the customer, every six months, quarterly or monthly. The ways of calculating interest are also indicated in the account statement (see paragraph 1.7).

For retail clients, the account statement issued 31st December shall show a summary of the costs incurred on their current account and for liquidity and payment management services. The costs of any credit lines and unarranged overdrafts must also be listed (see paragraph 2.2). In particular, the summary document shows the number of transactions carried out, separated into categories, and the overall total of money debited and the partial amount related to each service.

For consumers, in addition to the account statement and the summary document, the bank must also provide a *summary document of costs* free of charge and at least annually. This document lays out all the costs that the customer has undertaken in the reference period, the debit rate and debit interest in the event of the customer using an unarranged overdraft, and the credit rate and any interest credited. The summary related to the period up to and including 31st December also shows the ICC published in the fee information document made available for consumers from the date in which the summary document on costs was sent; It draws the attention of the consumer to the possibility to compare the total costs they have incurred with the ICC, thus checking whether there are more appropriate services to fulfil their needs.

In real estate credit transactions (see paragraph 4.4) recurring communications include how to repay a loan early and any charges the customer may incur, which are indicated in the overall cost.

Regarding safekeeping and administration agreements of financial instruments, the bank and customer may decide to halt communications where the nominal value of the deposit is no more than €10,000 and there have been no transactions on the account for over a year or, where if there have been transactions, the information requested is already stated in other communications such as in the account statement regarding interest payments.

Regarding on-demand communications, the customer, the customer's successor (in any capacity) and the person who takes over the administration of the customer's assets all have the right to receive, within a reasonable time and in any case no later than ninety days, a copy of documents regarding single transactions carried out in the last ten years at their own expense. Banks must state the expected amount of related expenses, that cannot exceed the cost of producing these documents.

1.7. Ways of Calculating Interest

An important aspect in calculating interest is the compounding frequency (*capitalization*), which increases costs incurred by the customer measured by *compound interest*¹⁷.

To understand the economic effects of interest capitalization, consider a current account with a debit balance of 100, an annual nominal interest rate of 8% and quarterly capitalization. Interest calculation (table 1.1) shows how capitalization (that is, the calculation of interest on top of interest) increases the debit capital (initial debt + interest of previous quarter) and leads to an increase in the total interest. In relative terms, the effective interest rate is higher than the annual nominal rate as shown by the following formula:

$$i_e = [(1 + i/n)^n - 1] \times 100 = [(1 + 0.08/4)^4 - 1] \times 100 = 8.24\%;$$

where i_e is the effective interest rate, i the nominal rate and n the capitalization frequency.

Table 1.1. – Interest calculation

	<i>Annual interest</i>	<i>Quarterly interest</i>	<i>Compound interest</i>
1 st quarter	2	2	–
2 nd quarter	2	2.04	0.04
3 rd quarter	2	2.08	0.08
4 th quarter	2	2.12	0.12
Total interest	8	8.24	0.24

Interest is calculated in accordance to the Consolidated Law on Banking (article 120, paragraph 2) and the Inter-ministerial Committee for Credit and Savings (CICR), Deliberation of 3 August 2016, n. 343. Accrued debit interest cannot produce more interest except in the case of default interest¹⁸, and this is accounted for separately from the capital. For current accounts, the same frequency of at least a

¹⁷The Italian Civil Code (article 1286) allows compound interest in the absence of contrary uses, only from the date of the legal action started by the creditor or by virtue of an agreement signed after the interest due date, provided that said interest had been due for at least six months. Some judgments of the Court of Cassation (for all cases, see Civil Cassation Sec. III, 7 March 2017, n. 5609) have established that the quarterly capitalization clauses for interest that, in the past, the bank inserted into contracts are null and void as they are based on negotiating and not regulatory use.

¹⁸Interest calculated on late loan repayments.

year is guaranteed in both credit and debit interest calculation; this occurs annually on 31st December or at the end of the contract.

When opening overdraft facilities in current accounts and unarranged overdrafts (see paragraph 2.2), debit interest is payable on 1st March of the year after the interest is accrued; the customer must be guaranteed a period of at least thirty days from receiving the communication foreseen by rules on transparency. The customer may authorize, pre-emptively if preferred, the interest charges on their account as soon as they are due and, in this case, the amount charged is considered to be capital; this authorization can be withdrawn at any time before the charge is applied. The contract may stipulate that, from the moment that the interest is due, funds that are credited to the bank's account and intended to be moved into the customer's account where the loan is managed should be used to pay off the interest debt. In the event of account closure, interest is immediately due; the balance relating to the capital can produce interest, but this cannot be capitalized.

In summary, the law bans the use of the infra-annual capitalization of interest; however, given that annual interest must be paid once it is due, the law allows the customer to authorize the interest charge on their account, which are added to the customer's capital and produce interest. In this way, we have the annual capitalization of interest.

Finally, it must be noted that the ban on capitalization does not apply to other charges incurred by the customer (fees and other expenses); these can be charged to their current account as often as is specified in the contract.

1.8. *Complaint Management*

In keeping with laws and the monitoring any legal and reputational risks that may arise from customer relations, the bank must put into practice a series of organizational initiatives. This is to ensure that the principles of transparency and good conduct are applied at every stage of the activity. To this end, the rules on transparency¹⁹ regulate internal procedures and staff remuneration practices and policies²⁰; these must be implemented by the bank when producing and distributing their products (that is, transactions and services). Within internal procedures, complaint management is particularly important.

The bank must apply procedures that guarantee quick and complete replies to

¹⁹ Provision of the Bank of Italy, Sec. XI.

²⁰ Given that the customer must not be guided towards a product that does not meet their financial needs, the bank must adopt forms of remuneration and evaluation for sales staff that removes incentives to sell products that are not suitable for the customer. This does not mean that the staff has to identify the most advantageous offer for the customer, but that the bank implements procedures that stop sales techniques that may induce customers to choose products that are patently unsuited to their needs.

complaints, favour the resolution of any issues brought up by the complaint, and safeguard the quality of relations with customers. From an organizational standpoint, the bank must identify a manager and/or office that is independent from the corporate function of providing services. The bank must also establish the ways in which it will pass on all complaints and how the manager/office should respond; this may be through the post or via email. Interaction with staff members from complaints offices or any call centres must remain free of charge. The procedures must also establish how the complaints will be dealt with and the maximum response time (which cannot be more than 60 days from when the complaint was received)²¹. All essential information regarding each complaint must also be logged and all steps taken to resolve the customer's issues. The bank must also publish an annual summary of its complaint management with all relevant data on its website or, if it has no website, in another appropriate form.

At the minimum, responses to complaints must state:

- whether the complaint is considered justified; or
- whether the complaint is considered unjustified along with a clear and complete explanation of why the dispute has been rejected, as well as necessary steps to take to submit the complaint to the Banking and Financial Ombudsman (ABF – *Arbitro Bancario Finanziario*) or other forms of alternative out-of-court dispute resolution schemes, such as mediation.

If the customer is not satisfied with the bank's reply or the bank does not respond within the established deadline, they may submit a dispute to the ABF within a year of presenting the complaint. In doing so, it is not necessary for the customer to use mediation which would be an obligatory procedure when faced with disputes concerning banking and financial transactions and services (article 5, paragraph 1, lgs.d. n. 28/2010)²². All banks must adhere to the ABF (article 128-*bis* of the Consolidated Law on Banking).

Every disputes relating to banking and financial transactions and services²³, re-

²¹ This time limit becomes 15 working days for payment services. In exceptional circumstances, when the bank is unable to respond within this deadline it must send an interim response in which it clearly outlines the reasons for the delay and specify a deadline by which the customer will receive a definitive response; this cannot be more than 35 working days.

²² See Bank of Italy, *Provisions on the establishment of an out-of-court settlement scheme for disputes between customers and banks and other financial intermediaries*. Furthermore, the customer can submit a complaint online and free of charge to the Bank of Italy to report incorrect behaviours by the bank (<https://servizionline.bancaditalia.it/esposto>).

²³ These regulations do not apply to investment services or activities, to the placement of financial products and transactions and services that are part of financial products, which are subject to the regulations on transparency set out in article 23, paragraph 4 of the Consolidated Law on Finance. The Securities and Financial Ombudsman (ACF – *Arbitro per le Controversie Finanziarie*) is the competent body in these cases.

ardless of the amount of money disputed, can be submitted to the ABF; if the customer's request concerns the payment of any sum of money, it cannot be over €200,000. The customer must pay €20 as a contribution to procedural expenses, which is reimbursed if the complaint is accepted. The outcome of the dispute is communicated within 90 days of the completion of the procedure, although this can be extended by a further 90 days in particularly complex cases.

The ABF may also be called upon by prefects who, where necessary and justified, flag up specific problems related to banking and financial transactions and services. These reports take place following a confidential request by the customer and after the prefect has invited the bank, subject to notice as to the nature of the request, to provide a justified response on the creditworthiness. In these cases, the ABF has no more than thirty days from the moment of reporting (article 27-*bis* of l.d. n. 1/2012). This regulation is applied in the event that the complaint regards failing to disburse a loan, revocation of a loan, worsening economic conditions, or any other conduct of the bank that comes from assessing the customer's creditworthiness.

The ABF's decisions are not binding for the parties; either party can appeal to legal authorities or use any other way foreseen by the legal framework on safeguarding customer's rights and interests. However, if the bank does not comply with the decision, this is published on the ABF's website for five years and on the bank's own homepage for six months; this incentivizes the bank to comply with the ABF's decisions in order to avoid image and reputational backlash.

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CHAPTER 2

Current Accounts as a Tool for Bank and Customer Relationships Management

by *Antonio Proto*

SUMMARY: 2.1. Definition and Operational Characteristics. – 2.2. Economic Profile. – 2.3. Financial Profile. – 2.4. The functioning of current accounts and convenience evaluation. – References.

2.1. *Definition and Operational Characteristics*

The bank current account is a contract by which the bank carries out a treasury service where it manages the collection of money and payments on behalf of the customer, using the customer's own funds or funds made available by the bank¹. As this treasury service can only be carried out whether funds are available, the current account must be accompanied by a deposit (see paragraph 5.3) where the funds belong to the customer, or by an overdraft facility (see paragraph 4.2.2) where the bank has made funds available after granting a credit (see Chapter 3).

Bank current accounts are regulated by the Civil Code concerning banking transactions in current accounts (article 1852 and subsequent articles) and the associated Uniform banking regulations². Furthermore, this contract is subject to transparency regulations (see Chapter 1).

¹ This contract is different to an ordinary current account (regulated by the Italian Civil Code, article 1823 and subsequent articles) as it can only work per instructions given by the customer to the bank, and the balance is available and collectable in any moment, not only at the moment of closing the account.

² Uniform banking regulations are general contract conditions issued by the Italian Banking Association (ABI) with the aim of integrating and amending laws on banking transactions and services. It also aims at providing standard forms of contracts to regulate and standardize relations between banks and customers. These rules are not binding for its member banks, which can decide to use them if they wish or to modify them as they see fit (Bank of Italy Provision n. 12 of 3 December 1994).

From an operational point of view, a bank current account can be analysed taking into consideration:

- the ways of opening and closing the account; and,
- the documents that the bank must regularly send to customers informing them of any transactions, balances and costs regarding the account (interest, fees and any other expense).

The process of opening a current account includes:

- establishing which economic conditions to apply such as interest rates, value dates, fees and other expenses;
- producing by the customer the necessary documents to start the procedure with the bank. The documents needed will depend on the type of client which can be private, sole proprietorships or larger businesses. These are, in general, the customer's identification documents³ and, in the case of a company, credentials documents;
- signing the contract and other documents (proxies, authorization forms to carry out specific transactions, signature specimen forms⁴, etc.);
- attributing a current account number, which must abide by the definition of an IBAN (*International Bank Account Number*⁵); and,
- where appropriate, giving the customer a cheque book in the event of an initial deposit into that account or granting a credit.

Choosing the type of registration for the account is particularly important at this stage. The account can be registered:

- to one person: only the individual named on the account is authorized to carry out withdrawals and payments in this case; or
- to two or more people: if the account is registered with joint signatures (an “and” joint account), the signatures of all named individuals are needed to make withdrawals from the account; if the joint account is opened with separate signatures (an “or” joint account), each signatory is able to carry out all transactions with no limits.

When closing the current account, the client can withdraw from the contract without being charged a fee (article 120-*bis* of the Consolidated Law on Bank-

³ The bank must verify the identity of those opening a current account (*duty of due diligence*) as provided for by article 17 of lgs.d. n. 231/ 2007, which implements the European Directives on Money Laundering.

⁴ This document contains the signatures of individuals authorized to carry out transactions in the current account, thus allowing the bank to compare these signatures with those on cheques or any other signed document in order to verify its authenticity. The process of collecting a signature specimen can also take place via an electronic signature.

⁵ These are international bank account numbers that allow an individual or a bank to identify the recipient of a bank transfer (see paragraph 6.4.2).

ing). It is also possible for customers to transfer all payment services to a current account in a different bank without any fees due (*account portability*) (see paragraph 6.2.1).

The *account statement* and the *interest account* are the informative documents that allow clients to track their current account. The account statement is a list of all transactions across a set period and recorded in the bank accounts. The sum of the transactions and costs constitutes the *account balance* at the end of the period. The interest account lists all transactions in relation to the value date and is used to determine the *numbers* to calculate interest (see paragraph 2.4). This balance (*value date balance*) may be different to the account balance as some transactions may have a value date after the closure date of the account statement.

2.2. Economic profile

The economic profile of a bank current account can be analysed by examining the main economic conditions applied by the bank. These are:

- interest rates: a debit rate is applied when the account balance goes into debt through the use of credit or of an overdraft (*overdrawn account*)⁶; a credit rate, on the other hand, may be applied when there is a credit balance on the account;
- account management fees and expenses: the bank may stipulate the payment of a variable cost related to the number and type of transactions carried out, or a fixed periodic fee (regardless of the number of transactions). For example, the *basic bank account* is a current account which has an all-inclusive annual fee that the bank must offer to consumers; this account allows a certain number of transactions and access to some payment services (article 126-*noviesdecies* and subsequent articles of the Consolidated Law on Banking)⁷;
- arranged (or possible unarranged) overdraft fees: according to the Consolidated Law on Banking (article 117-*bis*), in the event of a customer using an arranged overdraft, the bank may apply an *overdraft fee* which is proportionate to the sum made available and the duration of the overdraft; it cannot be more than 0.5% of the arranged overdraft per quarter. In the event of the customer using an unarranged overdraft, the bank may instead apply a *fee for fast credit investigation*, which is expressed as absolute values⁸; and,

⁶ A current account is *overdrawn* when the balance is in debt without a credit, or it exceeds the credit arranged (*unarranged overdraft*).

⁷ This initiative is aimed at facilitating access to bank services for the less wealthy population (*financial inclusion*) and to reduce the use of cash. To this end, the bank must identify clients from socially disadvantaged backgrounds and then offer them a basic account with no fees.

⁸ The fee is calculated by using the available balance at the end of the day (see paragraph 2.3); if the unarranged overdraft is only on the value date balance, this fee is not applied. With