Neutral Citation Number: [2026] EWHC 1401 (Comm)

Case No: FL-2024-000016

**IN THE HIGH COURT OF JUSTICE**
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**
**KING'S BENCH DIVISION**
**FINANCIAL LIST**

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 18/06/2026

**Before** :

**MR JUSTICE ANDREW BAKER**

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**Between :**

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|---|---|
| **DEXIA S.A.** | **Claimant** |
| **- and -** | |
| **COMUNE DI TORINO** | **Defendant** |

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**Andrew Lodder and Matthew Hoyle** (instructed by **Bonelli Erede Lombardi Pappalardo LLP**) for the **Claimant**
The **Defendant** did not appear and was not represented

Hearing dates: 3, 4 June 2026

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# Approved Judgment

This is a reserved judgment to which CPR PD 40E has applied.
Copies of this version as handed down may be treated as authentic.

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MR JUSTICE ANDREW BAKER

## Mr Justice Andrew Baker :

## Introduction

1. This judgment follows the trial of this Claim, at which the defendant ('Torino'), the municipal authority of Turin, Italy, did not appear and was not represented. The claimant ('Dexia') is a French banking corporation which has succeeded to the rights and obligations of its former subsidiary in Italy, Dexia Crediop SpA, previously Crediop SpA, ('Crediop'). I shall refer to the proceedings in this jurisdiction, i.e. this Claim, as 'the English Proceedings'.

2. The English Proceedings, like the Italian Proceedings which I introduce below and to which the English Proceedings were and are a response, relate primarily to certain interest rate swap transactions concluded between Crediop and Torino in 2006 ('the 2006 Transactions'). The background to the 2006 Transactions included interest rate swap transactions concluded between the parties in 2001 (the '2001 Transactions') and in 2003 (the '2003 Transactions'). The 2003 Transactions replaced all but one of the 2001 Transactions; and then the 2006 Transactions replaced the remaining 2001 Transaction and the 2003 Transactions. I shall refer to the 2001, 2003 and 2006 Transactions collectively as 'the Transactions'.

3. As might be expected, the Transactions were concluded pursuant to, and as individual transactions under and governed by, an ISDA Master Agreement, in this case a 1992 ISDA Master Agreement (Multicurrency - Cross Border) signed by Torino and Crediop on 18 April 2001 ('the Master Agreement'), which incorporated a bespoke Schedule also signed by Torino and Crediop on 18 April 2001 ('the Schedule'). Individual transaction confirmations were then issued under the Master Agreement for each of the Transactions ('the Confirmations'). By Section 1(c) of the Master Agreement, all those documents together form a single contract. I shall refer to the documents collectively as the 'Transaction Documents', and to the single contract they create, following the definition in Section 1(c) of the Master Agreement, as 'the Agreement'.

4. The Transactions related to Torino's borrowing, and more particularly the cost of its borrowing, under municipal bonds issued by it in 1998 (bonds numbered 1568, 1577 and 1578) and 1999 (bonds numbered 1591 and 1599), collectively 'the BOCs'. Torino's aggregate principal indebtedness under the BOCs as issued was more than €400 million. They had been issued to raise funds for proper purposes under Italian law, including in particular infrastructure investment related to hosting the 2006 Winter Olympics. By the time the 2006 Transactions were concluded, the principal debt outstanding under the BOCs was c.€321 million.

5. The coupon on the BOCs was at a variable rate, benchmarked to the six-month EURIBOR. Torino's total debt was c.€5 billion, which it sought to manage actively, given in particular that c.75% of it was debt paying interest at a variable rate, so that Torino was heavily exposed to the risk of rising interest rates. Conversely, of course, it stood to gain, in the sense that its borrowing cost was liable to fall substantially, if prevailing interest rates fell. Like any borrower in such circumstances, Torino could decide to carry in full the risk of a rise in

prevailing rates thus built into its debt portfolio, or it could seek to hedge that risk through additional financial market transactions or (perhaps) insure against it (if insurance of that kind was available to it).

6. With the benefit of independent advice (not from Crediop, which was not asked to act as advisor and did not do so), Torino chose to hedge its debt portfolio's exposure to the risk of rising interest rates. The Transactions were sought and executed by Torino as part of implementing that debt cost strategy. While their specific terms were not identical, the essence of all of the Transactions was the same: an interest rate swap with Crediop, so that Crediop paid Torino a variable amount matching Torino's coupon obligation on the BOCs and Torino paid Crediop a rate that was for an initial period (until the end of 2009) less exposed to interest rate rises, and was thereafter (from the start of 2010) until maturity of the BOCs not exposed at all to such rises because it then would become a simple fixed rate.

7. As things have turned out, due to the global financial crisis of Q4 2008/Q1 2009, and the extraordinary and prolonged period of ultra low prevailing interest rates that followed*, Torino's cost of debt on the indebtedness linked to the Transactions has been very substantially greater than it would have been if it had not decided to hedge against rising rates.

* 6-month EURIBOR fell below 2% in early 2009 and stayed below 2% until late 2022; from mid-2012 to the end of the summer of 2022 it was below 1%; and from late 2015 until mid-2022 it was ***negative***.

8. Those basic facts give Torino no ground for complaint, or basis for a legal claim. Its appreciation, with hindsight, that the cost of servicing its debt under the BOCs would have been lower (to date), if they had been left as they were, is no different than the appreciation a homeowner would have who took out a fixed rate mortgage in (say) early 2008, wanting cashflow certainty and no exposure to rises in interest rates, that as things turned out, a variable rate mortgage would have generated a substantially lower interest cost from 2009 onwards. Equally obviously, it cannot make a difference, without more, that Torino proceeded in two stages, initially issuing the BOCs with variable rate coupon, then from 2001, via the Transactions, moving towards and ultimately onto a fixed rate, rather than issuing the BOCs with the final interest profile it achieved, or something like it, in place from the outset.

9. Torino has performed its obligations under the BOCs and the Transactions throughout, and at the date of this judgment is continuing to do so. There has been no payment default. However, on 18 June 2024 Torino brought a claim against Dexia in the Tribunale di Torino, ref. R.G.C. n.10739/2024 (the 'Italian Proceedings'). Torino seeks various relief, but principally damages equal to the aggregate net payments it has made under the 2006 Transactions or, in the alternative, declarations that the 2006 Transactions are null and void, with consequential monetary relief.

10. The English Proceedings, commenced by a Claim Form dated 18 October 2024, were brought by Dexia in response. Dexia sought declaratory relief that it

contends will or may be of significant utility in the Italian Proceedings. No money claims have been made in the English Proceedings.

11. On 11 July 2025, Butcher J heard *inter alia* an application by Dexia for summary judgment on some of its declaratory claims. Torino did not appear and was not represented, but Butcher J concluded that it was appropriate to proceed in its absence. He handed down judgment on that application, granting it, on 25 July 2025, [2025] EWHC 1903 (Comm). By Order of that date giving effect to that judgment, Butcher J *inter alia* granted and made final declarations that:

> "(a) Section 13(b) of the ISDA Master Agreement and Part 4(h) of the Schedule confer exclusive jurisdiction on the English courts over disputes relating to the Transaction Documents, including (a) the validity of the Transactions and Transaction Documents, (b) any contractual liability arising under the Transactions and Transaction Documents, (c) any extra-contractual (tort) or pre-contractual liability relating to the Transactions and Transaction Documents, and (d) any liability arising out of any advice provided by the Claimant to the Defendant in relation to the Transactions and Transaction Documents.
>
> (b) Each of Torino's claims in the Italian Proceedings was commenced by the Defendant against the Claimant in breach of Section 13(b) of the ISDA Master Agreement."

12. By a further Order dated 8 September 2025, Butcher J awarded costs in favour of Dexia, to be assessed if not agreed, and directed Torino to pay £196,250 as a payment on account within 14 days of that date.

13. As will often occur in claims for declaratory relief, the precise form of the further declarations to be sought at trial was refined, including by re-amendment of the Claim Form and Particulars of Claim for which I granted permission on 3 June 2026, which was the first sitting day of the trial after a reading day for me on 2 June 2026. Taking account of those re-amendments, the declarations finally sought at the start of the trial hearing were those set out in the first column of the Appendix to this judgment. The second column summarises the outcome, for each declaration sought, under this judgment. The remainder of this judgment explains why those are the outcomes I consider to be correct.

## Torino's Absence

14. Torino participated in the English Proceedings only to a very limited extent. After service of the Claim Form in December 2024, acting by an Italian law firm, Gianni & Origoni, Torino sought a time extension for acknowledgment of service under CPR 58.6(1). Dexia consented and the time extension was granted by a Consent Order dated 14 January 2025. No acknowledgment of service was ever filed or served, nor has Torino filed or served any Defence.

15. After Butcher J's summary judgment decision and Order, Torino requested an extension of time to apply to set aside that judgment. Dexia also consented to that time extension, and it was granted by a Consent Order dated 14 August 2025. No application to set aside the summary judgment was made by Torino, however.

16. Dexia ensured throughout that Torino was made aware of all procedural steps taken in the English Proceedings. Torino was served with every application made, every order issued, the trial bundle prepared by Dexia's solicitors, and Dexia's written submissions for trial (with supporting materials).

17. By letter dated 20 January 2026, Dexia referred Torino to the existing costs liability in the English Proceedings (paragraph 12 above), and warned of further costs of c.£1 million likely to be generated by the conclusion of the trial here, which Dexia would also seek from Torino. It proposed that Torino could avoid that costs escalation if it ceased its "*persistently contentious conduct and culpable failure to meet its payment obligations*" (a reference, I should be clear, to the costs debt only). Dexia declared itself willing to work with Torino to seek an amicable resolution.

18. In reply, by letter dated 2 February 2026, Torino asserted that it was not bound by the decisions and orders of the English court, said it contested the proposition that the Master Agreement jurisdiction clause conferred exclusive jurisdiction on the English court, or had been breached by its pursuit of the Italian Proceedings, and generally rehearsed various of its contentions articulated in those Proceedings. All that notwithstanding, Torino also declared itself willing to arrange a meeting to discuss the possibility of amicable settlement.

19. There was no amicable settlement, and so the English Proceedings moved in the ordinary way to trial, which came to be listed before me. The Italian Proceedings meanwhile have been stayed, on Torino's application, pending determination by the Italian Supreme Court of an interlocutory petition lodged by Torino for a determination as to jurisdiction.

20. The relevance for this judgment of the exchange of correspondence referred to in paragraphs 17 and 18 above is that it confirms, firstly, that the matters in respect of which declaratory relief is sought here, or at any rate most of them, are indeed a matter of live contention between the parties, and, secondly, that Torino is well aware of the English Proceedings and has chosen on an informed basis not to play any part in them.

21. CPR 39.3 entitles the court, if in the exercise of its discretion it concludes that it is just to do so, to proceed with a hearing or trial in the absence of a party. The approach to the exercise of that discretion is that set out by the Court of Appeal in *R v Jones* [2001] EWCA Crim 168, [2001] QB 862, which applies to civil proceedings as well.

22. The right to be present and/or legally represented at trial can be waived by a defendant; and waiver may be inferred if, "*knowing, or having the means of knowledge as to, when and where his trial is to take place, [a defendant] deliberately and voluntarily absents himself and/or withdraws instructions from those representing him*" (*R v Jones*, *supra*, at [22(2)], [2001] QB 872H-873A).

23. The discretion to proceed with a trial in a defendant's absence must be exercised with great care, having regard to all the circumstances, including: (i) the nature and circumstances of the defendant's behaviour in being absent, in particular whether the defendant's behaviour was deliberate, voluntary and such as plainly

waived the right to appear; (ii) whether an adjournment might result in the defendant attending for a re-listed trial; and (iii) whether the defendant is, or wishes to be, legally represented at the trial or has, by conduct, waived (also) the right to representation. If a trial is to take place in the absence of an unrepresented defendant, the court must ensure that the trial is as fair as that circumstance permits, and an assessment of its ability to discharge that duty should properly form part of its assessment of whether it is appropriate to proceed.

24. As Gross LJ said in *Williams v Hinton* [2011] EWCA Civ 1123 at [40], "*it is … of the first importance that a party is afforded a fair opportunity to present its case to the judge. It is also, however, of great importance that judges, as a matter of case management, act robustly to bring cases to a conclusion; in the present context, CPR r.39.3 furnishes a safeguard in the event of mishap [viz., the right to apply to set aside]*". That guidance was cited and applied recently in *Maersk Guine-Bissau Sarl v Almar-Hum Bubacar Balde Sarl* [2024] EWHC 993 (Comm), *per* Jacobs J at [5]-[12], who considered that "*any other approach would be seriously prejudicial to the Claimants, who were seeking to establish their rights in (what they contended to be) the agreed contractual forum*". It is valuable to bear in mind when judging whether to proceed in the absence of a defendant that a fair opportunity to present a case at trial is *prima facie* afforded by the simple application of the ordinary procedural rules, through which a defendant will have had reasonable time to file and serve a defence, to file and serve evidence for trial and to file and serve written arguments, and will have been given due notice in ample time of the trial listing. It will often be a natural conclusion to draw, and in the particular case the proper conclusion to draw, from a defendant's failure to appear or be represented, that it has chosen not to avail itself of a fair opportunity that was given, to prepare and present any case it wished to present, and not that it was not given such an opportunity.

25. On the facts of this case, it was clear that:

(i) Torino was well-aware of the English Proceedings throughout, and of its entitlement to participate and be legally represented in order to do so;

(ii) Torino had been served with all relevant documents notwithstanding its general non-engagement, including latterly the order fixing the trial date, the notice of the hearing, the witness statements and expert reports, the applications by Dexia to be considered as part of the trial hearing (e.g. to re-amend), the trial bundle, and Dexia's (full and detailed) written submissions for trial;

(iii) Torino at no stage instructed English lawyers to take any step to defend the claim against it, but it used external counsel, Gianni & Origoni, when it suited it to do so, and would have had no difficulty instructing English legal representatives if it had wished to be heard at trial;

(iv) in particular as to that, Torino was obviously in a position to afford legal representation for litigation. It is one of Italy's wealthiest and most sophisticated municipal authorities and there is no reason to think it is any less able to litigate here than Milano, Venezia or Busto, all of whom

have participated in litigation here in recent years raising similar issues, as I mention below.

26. The clear inference was that Torino had made a conscious tactical choice not to litigate here, in the hope that it will be to its advantage to litigate instead in Italy, if it can persuade the Italian Supreme Court that the Italian Proceedings are jurisdictionally competent, and to ignore the English Proceedings. This was, in my view, a plain and obvious case of deliberate waiver of any right to participate or be represented, on a fully informed basis, and there was no purpose in adjourning or waiting because Torino had made clear that non-participation was its definitive stance in relation to the English Proceedings. That made it a clear case in which there was no countervailing interest to weigh in the balance against Dexia's strong legitimate interest in having the matter brought to a final determination.

27. I therefore ruled and directed on the first sitting day of the trial, 3 June 2026, that the trial would proceed in Torino's absence. I was satisfied, and the subsequent presentation of the merits by Mr Lodder and Mr Hoyle at trial bore out my assessment, that the trial would be fair to Torino and, as part of that, the case that Torino would have put forward if represented could and would be identified and explained from the documents, most obviously from what it had said in its written arguments to date in the Italian Proceedings.

28. The identification and explanation of Torino's case in that way discharged Dexia's relevant obligation, the trial having proceeded undefended, namely to show, if it could, why the court might be satisfied on the balance of probabilities that its claim was made out and, when doing so, present fairly to the court points, factual or legal, that might be to the benefit of the absent party: see, for example, *CMOC Sales & Marketing Ltd v Persons Unknown* [2018] EWHC 2230 (Comm) at [12]-[15], *Lakatamia Shipping Co Ltd v Morimoto* [2023] EWHC 3023 at [12]-[13].

## Re-Amendment

29. Dexia sought permission under CPR 17.1(2)(b) to re-amend the Claim Form and Particulars of Claim by an Application Notice dated 22 May 2026 supported by a witness statement from Giuseppe Massimiliano Danusso, the managing partner of Dexia's solicitors, Bonelli Erede Lombardi Pappalardo LLP, who is dual qualified as an English solicitor and an Italian *avvocato* and member of the Bar of Rome. The application and supporting materials were served on Torino in plenty of time for it to respond, if it wished to do so, before the trial. It did not suggest in response, nor was there any reason to suppose, that the intimated desire to make the proposed re-amendments affected in any way its determined intention not to participate in the trial.

30. The application was referred to me on the papers, but I saw no need to deal with it prior to trial, or advantage in doing so, and I directed therefore that I would consider it, as I did, at trial.

31. The proposed re-amendments were, in summary:

(i) the addition of two declarations that would confirm the court's findings, if made at trial, as to the purpose and effect of the Transactions;

(ii) positive factual allegations that at all material times Torino was assisted by its own external financial advisors;

(iii) a clarification of the losses claimed by Torino in the Italian Proceedings with an associated amendment to the proposed wording for some of the declaratory relief to be sought; and

(iv) the removal of certain duplicative or unnecessary proposed declarations.

32. The proposed re-amendments did not alter the substance of Dexia's claims or raise any point of fact or law with which Torino would not have been able to deal had it participated at trial, or the late raising of which could sensibly have been said to cause any prejudice to Torino. It was a plain case for allowing the application to be made and determined without hearing from Torino, and for allowing the re-amendments. In short, it was appropriate, and I was satisfied it did not arguably embarrass or prejudice Torino, to allow Dexia to perfect for trial, with those very limited supplementary allegations of fact also, the case it wished to present in support of its claim for declaratory relief. Whether or not that claim, or every part of that claim, would be made out, it was all properly arguable, and there was nothing to be gained from any fine slicing of the various proposed declarations at the stage of considering what breadth or detail of claim Dexia should be allowed to pursue in its trial argument.

## Trial Evidence

33. Dexia adduced in evidence and relied upon the contemporaneous documents copies of which were in the trial bundle, as evidence of the truth of their contents, pursuant to Section J.8.5 and J.8.6 of the Commercial Court Guide, and also:

(i) the trial witness statement of Samir Belarbi, who joined Dexia in Paris in 1999, transferred to Crediop in April 2003, and was from May 2004 Head of the Debt Management Team for public finance, who learned of and became familiar with the 2001 and 2003 Transactions as part of his roles at Crediop and who had personal involvement in and recollection of the negotiation and conclusion of the 2006 Transactions and their subsequent performance;

(ii) certain parts of Mr Danusso's statement, filed in support of Dexia's application to re-amend discussed above but admissible and relevant also to the merits of Dexia's claims, which I gave Dexia permission to rely on as trial evidence; and

(iii) expert evidence in written reports on Italian law, from Professor Emanuele Rimini, and on the technical analysis of derivatives, from Professor Paolo Cucurachi.

## Detailed Facts

34. Upon the basis of that trial evidence, and having considered the submissions made on behalf of Dexia by reference to it, I am able to make and now set out the following detailed findings as to the facts of this case.

35. These English Proceedings come after a number of other cases over the last decade or more concerning derivatives governed by English law and standard ISDA terms, and subject to exclusive English jurisdiction, in which Italian local authorities have sought to challenge their counterparties' apparent contractual rights by relying on Italian law arguments as to capacity, authority, validity and/or breaches of mandatory laws. A chronological summary of the previous cases up to early 2023 was set out by Foxton J (as he was then) in *Banca Intesa v Venezia* [2022] EWHC 2586 (Comm) ('*Venezia*') at [153]-[166].

36. Within that historical litigation context, this case is at the simpler end of any spectrum of complexity. The Transactions were a very simple type of derivative, effectively substituting the variable interest rate on Torino's related borrowing for semi-fixed, later fully fixed, rates, functionally indistinguishably from a mortgagor moving from a variable rate to a fixed rate. They involved no upfront payment, modification of indebtedness, or material uncertainty of outcome. Torino chose a predetermined rate (or band of rates for the semi-fixed rate period) that gave it greater, and later total, certainty in its related borrowing cost until maturity, and that protected (hedged) against increased borrowing cost if underlying rates increased, all in line with Torino's debt portfolio management strategy.

37. Professor Cucurachi's expert evidence demonstrated entirely persuasively that there was no alternative interest rate swap available at the time on better terms for Torino's stated purposes. That is unsurprising, given that Torino went out to tender, received offers from multiple banks, and used independent expert advisors, all as I describe below. In fact, Professor Cucurachi's conclusion, which I accept, is that if anything Torino would have been worse off had it entered into any of the alternative interest rate substitution options that were available to it.

38. The analysis of this case is also simplified by two very recent Italian Supreme Court decisions upon which Professor Rimini could and did rely, which explain and limit the effect of what has been the most significant Italian decision in this field, the *Cattolica* decision, Decision No. 8770/2020. The recent decisions are Decision Nos. 2262/2026 of 3 February 2026 and 2358/2026 of 4 February 2026 ('the 2026 S/C Decisions').

39. Even without the simplifying benefit of those recent decisions, the English court has to date consistently granted and upheld relief in terms similar to the relief sought by Dexia here. Bryan J granted such relief in relation to similar transactions in *Dexia v Regione Emilia Romagna* [2023] EWHC 3236 (Comm) ('*Emilia Romagna*'), as did Hildyard J in *Deutsche Bank v Provincia di Brescia* [2024] EWHC 2967 (Ch) ('*Brescia*'), as did Cockerill J (as she was then) in *Banca Nazionale del Lavoro v Provincia di Catanzaro* [2023] EWHC 3309 (Comm) ('*Catanzaro*') and in *Deutsche Bank AG London v Comune di Busto Arsizio* [2021] EWHC 2706 (Comm); [2022] EWHC 219 (Comm) ('*Busto*'), as did Peter MacDonald Eggers KC (sitting as a Deputy High Court Judge) in

*Dexia Crediop SpA v Provincia di Pesaro e Urbino* [2022] EWHC 2410 (Comm) ('*Pesaro*').

40. In *Venezia*, *supra*, Foxton J found against Banca Intesa, and in favour of the Comune di Venezia, that the Comune had lacked capacity to enter into the swaps in that case; but that decision was overturned by the Court of Appeal, *Banca Intesa Sanpaolo SpA and Dexia Credit Local SA v Comune di Venezia* [2023] EWCA Civ 1482 ('*Venezia CA*'). The conclusion on appeal, essentially, was that on the facts of that case (which were stronger for the argument of lack of capacity, if it might be a good argument, than the facts of this case), Foxton J had interpreted *Cattolica* as going further than it could properly be taken.

41. For the avoidance of doubt, I should be clear that none of that prior record of success for banks in litigation here tackling Italian municipal authorities' claims of invalidity in respect of swaps transactions lessened Dexia's burden to persuade me, if it could, that its claims in this case deserved to succeed, or caused me to scrutinise those claims any less carefully. The prior decisions here were, however, directly relevant as to the content of applicable or potentially applicable Italian law. That is because Dexia filed a notice under section 4(3) of the Civil Evidence Act 1972 in respect of various findings of Italian law in those prior decisions of English courts. The effect is that by operation of section 4(2) of that Act, those findings were both (a) admissible evidence as to the content of Italian law and (b) presumptive proof that Italian law is as stated in those findings, i.e. "*the law of [Italy] with respect to [the relevant] matter shall be taken to be in accordance with that finding … unless the contrary is proved*". Dexia did not seek to prove that any of the findings covered by its Civil Evidence Act notice did not state Italian law correctly; and there was of course no such attempt by Torino either.

42. Torino is an Italian municipal authority. It is one of the wealthiest public authorities in Italy and, at the time of the Transactions, actively managed a total debt portfolio of over €5 billion. It also had the benefit of dedicated internal financial planning, debt management and treasury functions, and sophisticated external financial advisors, in relation to the Transactions.

43. The BOCs, when issued, gave rise to a variable rate coupon obligation in respect of over €400 million for a period of 20 years. By the end of 2000, c.75% of Torino's total debt was at variable rates of interest so it was highly exposed to the risk of an increase in market interest rates.

44. To address that risk, Torino initiated a tender procedure on 28 November 2000 by Municipal Board Resolution No. 2428/2000 seeking proposals to reduce the risks arising from its variable rate exposure under the BOCs by substituting the floating interest rates payable on it. A notice inviting tenders was published on 12 December 2000. Dexia/Crediop applied to be admitted to the procedure on 22 December 2000, and in January 2001 Torino's Tender Commission identified Dexia/Crediop, ABN Amro/Banco di Sicilia and Cofiri/Deutsche Bank as meeting Torino's requirements to participate. Each of them was invited by letter dated 10 January 2001 to submit a proposal by 12 February 2001.

45. That 10 January 2001 letter asked the banks to propose "*financial transactions aimed at lowering the cost of municipal debt by means of instruments to contain the risks of future increases in interest rates (e.g. swaps)*". Additional technical specifications against which the banks were required to tender were set out in a subsequent letter dated 18 January 2001, including (among other things) a requirement thus specified by Torino that a stable or slightly upward trend in interest rates was to be assumed.

46. The respective proposals from Dexia/Crediop, ABN Amro/Banco di Sicilia and Cofiri/Deutsche Bank were submitted to the Tender Commission on 8 February 2001. Dexia/Crediop proposed *inter alia* that Torino (i) re-schedule payments due under the BOCs to free up funds in 2001, without extending the life of the BOCs, and (ii) enter into interest rate swap transactions to substitute the variable rate indebtedness under the BOCs.

47. On 14 February 2001, the Tender Commission, with the assistance of Lazard, the very well-known global financial advisory and asset management house, in the person of Alessandro Pansa, acting as independent expert financial advisor appointed by Torino:

    (i) concluded that, "*…the forecasts of the most accredited analysts and the structure of revenue (including potential revenue) of [Torino] suggest that, for a portion of the debt, it is convenient to identify a partially fixed rate, meaning a rate that becomes variable only in situations of financial tension, when it is difficult even for the banking system to ensure the maintenance of the fixed rate*"; and

    (ii) on Mr Pansa's advice, identified the transactions proposed by Dexia/Crediop as the most suitable to achieve Torino's purposes as set by it for the tender process.

48. Torino's Municipal Board approved, by Resolution No. 269 of 6 March 2001, the transactions proposed by Dexia/Crediop, along with the entry into of the appropriate ISDA Master Agreement and Schedule to enable those transactions to be executed, drafts of which were annexed to Resolution 269. By Resolution 269, the Board approved the use of:

> "*…the derivative instruments proposed by [Dexia]* ***on the prior indebtedness deriving from the issue of the BOCs*** *… in order* ***to reduce the risks connected to the fluctuation of interest rates*** *applied to its indebtedness or to the concentration of the indebtedness in certain rate categories, considering that these instruments* ***do not pursue speculative intentions*** *in that they do not use indexation to off-market interest rates, they do not use for the calculation of underlying principal amounts greater than those at any time resulting as debt of the Municipality in relation to the amortisation schedules of loans or bonds being repaid, and they do not provide for the payment of an amount deriving from the implementation of hypothetical cash flows…*" (emphasis added)

49. Resolution 269 also recorded that Torino had "*avail[ed] itself of the advice of Mr. Alessandro Pansa, financial expert appointed by Resolution No. 11/24*",

and did not mention having requested or received any advice from Dexia/Crediop. It stated that Mr Pansa had examined the various proposals put forward by the tender banks to use derivatives "*that allow, without constituting new indebtedness, to substitute the rate profile of existing contracts*", specifically the "*substitution of the variable rate benchmarked to six-month EURIBOR*" under the BOCs.

50. Torino notified Dexia/Crediop of the decision to award it the business by letter dated 7 March 2001. Specifically, Torino confirmed that it intended to implement only the subset of debt management proposals Dexia/Crediop had put forward in respect of the BOCs (Dexia/Crediop had also offered transactions related to certain other Torino debt), and referred to Resolution 269 as having already "*approved the use of the proposed derivative instruments*".

51. On 2 April 2001, by Municipal Council Resolution No. 102/2001 and having regard to Article 42 of Legislative Decree No. 267/2000, the Consolidated Law on Local Authorities ('TUEL'), the Municipal Council approved Torino's Budget and the Forecast and Programmatic Report for 2001, which referred to Torino's policy of active debt management and the plan for the BOCs and recommended that Torino enter into the transactions proposed by Dexia/Crediop. The 2001 Forecast and Programmatic Report also recorded that the 2001 Transactions involved the substitution of the interest rate payable in respect of existing indebtedness without incurring any additional indebtedness:

> "*... the execution of a derivatives transaction (interest rate swap) which neutralises the risks related to rate oscillation and ... allows, without building new debt, to substitute the rate profile of existing transactions.*"

52. The same report highlighted, in similar terms to Resolution 269, that the 2001 Transactions could not be speculative and therefore had to be indexed to benchmark rates with no interest payable otherwise than in respect of underlying principal amounts in fact due:

> "*...these financial instruments ... must, in order to meet the criteria of proper administration, take place without any speculative intentions; therefore, no transactions may be entered into that provide for indexation to off-market interest rates. In the same vein, no interest may be calculated on capital amounts greater than those payable by the Municipality at any given time, nor may transactions be carried out that envisage the payment of an amount deriving from the discounting of presumed cash flows.*"

53. By Executive Resolution No. 200103581/24 of 18 April 2001 and Executive Resolution No. 200103806/24 of 26 April 2001, Torino approved the execution of the ISDA Master Agreement and Schedule and the entry into the 2001 Transactions. Express reference was made to the Board decision and the Council's approval of it.

54. The Forecast and Programmatic Report for 2002-2004, which was approved by Municipal Council Resolution No. 200200430/24 of 6 March 2002, confirmed after the fact that the 2001 Transactions were:

> "*...without speculative intent; therefore, transactions involving indexation to non-market interest rates, or the calculation of interest on principal amounts greater than those at any time owed by the Authority, were avoided.*"

55. The Municipal Council also recognised in that report that interest rates had fallen rather than increased (contrary to the assumption that Torino stipulated was to be made for the tender process that led to the 2001 Transactions). It stated Torino's intention to continue "*active debt management policies*", to take advantage of the favourable movement in market interest rates to reduce the cost of its indebtedness.

56. To pursue that, Torino sought proposals from financial institutions during 2002 for active management of its existing indebtedness. Dexia/Crediop submitted presentations in response, in January and February 2003, proposing further transactions to lower the cost of Torino's borrowing.

57. On 11 February 2003, by Municipal Board Resolution No. 887/024 and Executive Resolution No. 13, Torino approved Dexia/Crediop's proposal to replace the 2001 Transactions with the 2003 Transactions, with "*the purpose of reducing the costs of the swaps in place*". Resolution 887 described the prior 2001 Transactions as "*transforming this variable-rate debt into a fixed rate with a knock-out floor and cap ... to guarantee protection against the risk of rate increases, taking into account that a large part of* [Torino's] *total debt was indexed to variable rates*". Resolution 887 reconfirmed that "*such instruments do not pursue speculative purposes*".

58. Professor Cucurachi's analysis showed, and on that basis I find, that the 2001 and 2003 Transactions outperformed standard fixed-rate alternatives. In particular, the fixed rate with threshold and knock-out collar structures of the 2001 Transactions reduced Torino's debt servicing cost by €7.8 million over their operating period, relative to the cost that would have resulted from a standard fixed-rate hedge; similarly, the fixed rate within range and Constant Maturity Swap spread structures of the 2003 Transactions reduced Torino's debt servicing cost by €10.5 million on an equivalent basis.

59. In or about July 2005, Torino again requested Dexia/Crediop, and another bank, to propose options to restructure its indebtedness and derivative portfolio. In the period between 21 July 2005 and 7 April 2006, Dexia/Crediop sent Torino various proposals in response. Professor Cucurachi's view, which I accept, is that that those presentations included "*all the information (including the forward rate curve) sufficient to calculate the initial mark-to-market for the 2006 Transactions using the standard formulas commonly used to evaluate interest rate swaps (discounted cash flow) and interest rate options*". Torino engaged independent financial advisors to advise it on its debt management strategy in 2005 and 2006, and they did advise Torino on the various proposals it received.

60. By Municipal Council Resolution No. 32 dated 6 February 2006, Torino's Municipal Council approved the Forecast and Planning Report for 2006, in which it resolved to proceed with the renegotiation of Torino's municipal bonds

and related swap transactions. This report confirmed, as earlier such reports had done, that:

> "*…the criteria of correct administration have been observed and* [the 2001 and 2003 Transactions] *have been activated without speculative purposes; therefore, transactions that reference to off-market interest rates, or the calculation of interests on capital amounts greater than those resulting as debt of the Municipality of Turin at any material time, have been avoided.*"

61. On 10 April 2006, in response to a request from Torino, Crediop provided an excel spreadsheet showing the discounted cash flows until maturity for the 2006 Transactions, which communicated to Torino the mark-to-market ('MTM') based on the present value of future cash flows of swaps identical to the 2006 Transactions two days before the date on which they were in fact executed under only marginally different market conditions. The spreadsheet also showed the difference between the discounted cash flows of the restructured swap transactions and the new swap transactions, often referred to as the "*implicit costs*" of moving to the new transaction.

62. By Municipal Board Resolution No. 3026 dated 11 April 2006 and Executive Resolution No. 3106 dated 12 April 2006, Torino extended the maturity of the BOCs to 31 December 2030 and replaced the 2003 Transactions with the 2006 Transactions, stating that it was doing so "*in accordance with the provisions of*" Article 41 of Law 448 ('Article 41') and Ministerial Decree No. 389 of 1 December 2003 ('Decree 389') and without "*any speculative purpose*".

63. The 2006 Transactions had a simple 'collar plus fixed rate' structure by which, since Torino's variable rate obligations on the BOCs, as extended, was exactly matched by Dexia's variable rate obligation on the swaps, the effective coupon profile of the BOCs, as extended, became a variable rate with an interest rate collar until the end of 2009, thereafter a fixed rate until maturity. The Municipal Board explained that the 2006 Transactions were for "*protection against any rise in rates*" and "*to hedge the aforementioned debt positions, in order to adapt them to the new terms of the underlying liabilities, with a view to containing the cost of debt.*"

64. As well as complying, as it has to date, with its payment obligations under the 2006 Transactions, Torino has routinely reaffirmed them and its commitment to them since they were concluded. In particular, Torino publishes annual financial statements and multi-year budgets, which have always included without qualification the payments due and contained detailed notes describing the financial effects of the Transactions. For example:

    (i) **April 2011**: The Explanatory Note to the Financial Report for 2010 reported on Torino's "*active debt management policies … aimed at achieving the primary objective of containing the cost of debt*" and gave the exposures and MTM as at 31 December 2010 of all of its derivative transactions, including the 2006 Transactions. This showed that Torino's derivatives had a residual notional amount of €907 million, with a negative MTM of €126 million that was (accurately) stated to be "*a penalty payable solely and exclusively in the event of early termination*";

(ii) **September 2021**: The Consolidated Financial Statements for 2020 included a note on "*Contracts in derivative financial instruments*" giving the details and MTM of each swap, including the 2006 Transactions, as at 31 December 2020. This showed that Torino's derivatives had a residual notional amount of €478 million and negative MTM of €120m, which was (again and correctly) stated to be "*a penalty payable solely and exclusively in the event of early termination*";

(iii) **December 2024**: The Supplementary Note to the Budget Forecast for 2025-2027 contained a note setting out the "*financial liabilities and commitments provided for and allocated in the budget, arising from contracts relating to derivative financial instruments*" that reported derivatives (including the 2006 Transactions) with a residual notional amount of €205 million and a negative MTM of €41 million "*payable solely and exclusively in the event of termination*".

65. Those same documents clarified that Torino's wide portfolio of derivatives was meant to "*adjust*" or "*convert*" the interest rate payable on loans and other debt contracts into new interest rate structures. Consistently with this, Torino's financial statements and budgets have always referred to "*the outstanding debt subject to derivative contracts*", reaffirming the nature and purpose of the derivatives, with their matched connection to Torino's underlying debt.

66. The result has been that for the duration of the 2006 Transactions to date, Torino has paid either a rate within the interest rate collar (for the period from 2006 to 2009, i.e. between 4.21% and 5.51% or between 4.68% and 5.45% depending on the swap), or (since 2010) the fixed rate (of 5.51% or 6.5%) agreed for each swap, and Torino has planned, budgeted and expected to continue paying on that basis until maturity in 2030, as an unqualified and certain obligation. In other words, Torino has paid and planned to pay interest on the BOCs, as extended to 2030, at exactly the rates that in 2006 it agreed and understood it would have to pay. Torino has thus been able to determine with certainty the precise amounts due under the Transactions at all relevant times.

## The Italian Proceedings

67. It is convenient now to summarise the principal claims and allegations put forward by Torino in the Italian Proceedings, giving rise to Dexia's claim here for declaratory relief. Thus, Torino is seeking:

(i) damages for breach of an alleged advisory agreement, said to have arisen from Torino's acceptance by its letter dated 7 March 2001 of Dexia's proposal dated 8 February 2001 for what became the 2001 Transactions, or by necessary implication of advisory duties under Italian law, or by application of Articles 1703 and 1710 of the Italian Civil Code;

(ii) damages for alleged pre-contractual and tortious liability of Dexia for having (allegedly) structured and offered the Transactions negligently and without providing proper, transparent and diligent information (including the initial MTM and "*hidden costs*"), said to be in breach of

Article 21 of the Consolidated Law of Finance ('TUF') and Article 26 of Consob Regulation No. 11522/1998 ('the Consob Regulation');

(iii) a declaration that the Transactions are void under Italian law and regulations because of an alleged want of authority under Article 42 of TUEL, because the Transactions were allegedly speculative, or because of alleged breaches of the following rules of Italian law, namely:

(a) Article 119 of the Italian Constitution (said to result in nullity under Article 30(15) of Law No. 289/2002), Article 41 and Decree 389 (and the accompanying Explanatory Circular dated 27 May 2004 ('the MEF Circular');

(b) Article 23 of TUF; and/or

(c) Articles 1322, 1325 and 1346 of the Italian Civil Code;

(iv) termination of the 2006 Transactions and restitution of payments made thereunder;

(v) compensation and other relief for alleged breaches of what are said by Torino to be mandatory rules of Italian law, even if those breaches (as alleged) would not invalidate the Transactions.

68. All versions of Torino's claims for compensation or restitution in the Italian Proceedings come to the same thing: a claim for the aggregate net amount it has paid under the 2006 Transactions, which would put Torino in a position as if from the effective date of the 2006 Transactions, it had had in place (i) the BOCs, as then extended to 2030, (ii) no related derivatives, and (iii) no liability for closing out any prior derivatives. The last element cannot be ignored. The *status quo ante* the 2006 Transactions was not unhedged BOCs, but BOCs hedged by the 2003 Transactions that, in MTM terms, were out of the money for Torino.

69. One of the difficulties with the statement of Torino's case in the Italian Proceedings is its failure to state squarely the counterfactual that Torino says is to be used for its damages claim. To be coherent, the asserted claim for the full aggregate amount paid under the 2006 Transactions, without making any allowance – a claim, as it were, for a gross or total loss – would have to be based on either a proposition that there should not have been any prior Transactions either, in 2001 or in 2003, or that (somehow) Torino could and would have closed out any prior Transactions for free.

70. Dexia submitted before me that in the Italian Proceedings Torino does not say that it would ever not have sought to hedge its enormous variable rate exposure, or identify what transaction(s) allegedly more favourable to Torino than one or more of the Transactions concluded with Dexia it would have used instead to effect such a hedge. The submission then was that in those circumstances the gross loss asserted by Torino is necessarily not a recoverable loss known to the law (English or Italian).

71. I do not accept that argument. The Italian Proceedings have been stayed at a relatively early procedural stage and there might be plenty of room for their asserted *quantum* to be explained further if those Proceedings continue. Further, the burden of proof here is on Dexia, to persuade me that Torino is pursuing a claim on a basis that cannot be viable, if it wishes to have declaratory relief on an allegation that what is claimed in Italy is irrecoverable by nature. In fairness to Torino, it seems to me the proper approach is to read the claim articulation in Italy as coherent by nature if it is capable of such a reading. It is capable of such a reading, I think, because it can be taken to be asserting, so that it then makes sense for it to be asserting the gross loss claim, as I have labelled it, that but for the matters upon which its various claims are said to be founded, it would never have entered into any swap-based hedge, it would indeed have left the BOCs as they were, until 2006, and then extended them to 2030 as in fact occurred, but then without any swap-based hedge in place that needed to be closed out or adjusted, and without putting any new swap-based hedge in place.

72. On that basis, Dexia still pursues here a claim for declaratory relief confirming that, as it alleges, Torino has no damages entitlement. For that, Dexia argues that I am in a position to find in its favour that as a matter of fact, Torino *would* have hedged, essentially as it planned to do and actually did; and that in the light of Professor Cucurachi's analysis, which I have already said I accept, Torino could not have done better (in terms of outturn result) than it has in fact done under the Transactions concluded with Dexia.

## Dexia's Claims

73. Many of the individual declarations sought by Dexia simply track the language of representations made by Torino to Dexia in the Transaction Documents, or follow straightforwardly from those representations. The truth of their content is put in issue, explicitly or implicitly, by Torino's allegations in the Italian Proceedings. Accordingly, if the Agreement is legally valid and effective, (a) those various matters are true as a matter of contract between the parties, and (b) it will be proper and appropriate to confirm their truth by declaratory relief.

74. Dexia says in any event that those declarations reflect the reality, i.e. they are true in their content even if there is no contractual estoppel to their effect or such that what they wish the court to declare necessarily follows. If that is right, then again since that truth is disputed by Torino, which seeks to pursue claims in Italy that have no merit if the matters asserted here by Dexia are true, and since the Agreement provides for all disputes between the parties to be determined in this jurisdiction, it will be proper and appropriate to confirm that Dexia is correct by declaratory relief.

75. That makes it convenient, and this was also the approach adopted by Mr Lodder and Mr Hoyle in presenting the argument for Dexia, to consider first the various strands of Torino's case or possible case seeking to attack the Transactions, before turning to the specifics of the declarations sought. If Dexia is correct that the attack on the Transactions is not well founded, much of the relief sought will follow without more ado. If it cannot overcome the attack on the Transactions, at least some and perhaps much of the relief sought here may be much harder for Dexia to justify, or simply unavailable to it.

## Characterisation and Applicable Law

76. The meaning of the concept of 'capacity' in private international law was addressed by the Court of Appeal in *Haugesund Kommune v Depfa ACS Bank* [2010] EWCA Civ 579, [2012] QB 549. Whether a legal rule of the law of the place of incorporation is to be considered a rule about capacity or a rule about some other matter, e.g. illegality or authority, is an issue of characterisation, which is determined by the *lex fori*. However, the effect of *Haugesund* is that in English law, 'capacity' as a characterisation criterion for fixing the system of law under which its existence or absence will then fall to be determined in the particular case, has a "*broad, 'internationalist'*" meaning which refers to "*the legal ability of a corporation to exercise specific rights, in particular the legal ability to enter into a valid contract with a third party*" (*Haugesund* at [47]); "*a lack of substantive power to conclude a contract of a particular type is equivalent to a lack of 'capacity', to use English terminology*" (*ibid*).

77. In this case, then, Torino's capacity to enter into the Transactions, in the *Haugesund* 'internationalist' sense, is a matter governed by Italian law. The private law consequences, if Torino lacked capacity, would fall to be determined under English law, however, as the putative governing law of the Transactions: *Haugesund* at [60]. Under English law, a purported contract concluded by a party lacking capacity is void, a nullity.

78. The other aspect of this case that is governed by Italian law is the actual authority (if any) of the individuals by whom Torino purported to enter into the Transactions. They were municipal officials at Torino, everything about them, their role, and Torino as a municipal authority, was Italian. However, there is no difficulty about actual authority if Torino had capacity. On the facts, the Transactions were all approved and authorised by the Municipal Board and the Municipal Council (see paragraphs 48-57 and 60-62 above). That unarguably gave due authority to those who executed the Transaction Documents on behalf of Torino, unless they were Transaction Documents that Torino was not capable of binding itself to as a matter of capacity.

79. Since no disputable question of authority arises, capacity is the only aspect here that is governed by Italian law. Rules of Italian law said by Torino not to have been honoured that do not go to its capacity in the *Haugesund* sense are irrelevant. The material validity of the Transactions, if Torino had capacity to conclude them, is governed by English law under Article 8 of the Rome Convention, since English law is the putative applicable law under Article 3(1) of that Convention. Given their dates, the Transactions were within the purview of the Rome Convention rather than the subsequent Rome I Regulation.

80. For completeness, the applicability of English law under Article 3(1), if the Transactions were valid, and therefore its applicability to the question of their validity under Article 8, is subject to Article 3(3). Article 3(3) provides that a choice by parties of a foreign law as the law to govern their contract (here, Italian parties, Crediop and Torino, choosing English law), shall not prejudice the application of rules which cannot be derogated from by contract ('mandatory rules') of another country if "*all the other elements relevant to the situation at*

*the time of the choice [of governing law] are connected with*" that one other country.

81. The meaning of that provision was considered by the Court of Appeal in *Dexia Crediop SpA v Comune di Prato* [2017] EWCA Civ 428 ('*Prato CA*'), an appeal from the decision of Walker J in that case, [2015] EWHC 1746 (Comm) ('*Prato*'). Article 3(3) has no impact in this case, because all the elements relevant to the situation at the time when Crediop and Torino chose English law as their contractual governing law, other than that choice of law itself, were not connected with Italy. That is to say, the choice of law was not the only element relevant to the situation that disconnected it from Italy. Thus:

    (i) the ISDA Master Agreement chosen was the 'Multicurrency - Cross Border' agreement rather than the 'Local Currency-single Jurisdiction form', so it contemplated more than one currency and the involvement of more than one country, as well as being in the English language;

    (ii) the Transactions were part of a wider set of derivative agreements entered into with other banks, including JPM, a foreign bank (relative to the putative exclusive tie to Italy); and

    (iii) the Transactions were the subject of two back-to-back hedges with Barclays Bank plc originally dated 12 April 2006 and amended on 24 June 2008, one of which was novated to Goldman Sachs International on 23 July 2015, and both Barclays Bank plc and Goldman Sachs International are foreign banks (relative to the putative exclusive tie to Italy).

82. I am reinforced in that conclusion by the fact that Article 3(3) was also held to be inapplicable on their respective facts in the following prior Italian swaps cases in this jurisdiction: *Pesaro* at [77]-[79]; *Prato CA* at [126]-[137]; *Venezia* at [338]-[342]; *Catanzaro* at [102]; *Emilia Romagna* at [136]

**Alleged Advisory Duties**

83. Torino contends in the Italian Proceedings that the combination of Dexia's 8 February 2001 presentation and the award of the contract to Dexia by Torino's 7 March 2001 letter gave rise to an advisory contract incorporating the terms of slide 9 of the 8 February 2001 presentation. That contention has no merit.

84. Firstly, the Agreement contained an entire agreement clause that precludes the contention. It is Section 9(a) of the Master Agreement (and therefore would survive even a lack of capacity on the part of Torino to conclude the Transactions – there is no basis whatever for proposing a lack of capacity to enter into an ISDA Master Agreement). The language is familiar and effective: "*This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communications and prior writings with respect thereto*". Furthermore, the Agreement expressly provided both that Crediop was not acting as an advisor to Torino (Part 5(4) of the Schedule) and that Torino was not relying on any investment advice or recommendations from Crediop in relation to the

Transactions (Part 5(5)(vi) of the Schedule). Those likewise are effective to preclude any advisory contract or duty owed to Torino; and they likewise, in my view, would survive even an incapacity in Torino to enter into the 2001 Transactions, or the later 2003 or 2006 Transactions – they are contractual terms of an ISDA Master Agreement Schedule to which unarguably Torino had capacity to commit.

85. Secondly, on the basis of Professor Rimini's evidence, there are no substantive differences between Italian and English law as regards contract formation for present purposes: both systems have the familiar concepts of offer, acceptance and invitations to treat. There are other aspects concerning the requirements under Italian law for a bargain to be considered a legally enforceable contract, but that is a different matter. Professor Rimini's view was that "*the correspondence which took place in February and March 2001 did not amount to an offer and acceptance; at most, the correspondence might evidence negotiations that did not result in a contract*." Strictly, that conclusion, applying the legal rules to the facts, was not a matter for Professor Rimini, since the application of foreign legal rules to the facts is a matter for the court, not a matter for an expert witness on foreign law. However, as it happens Professor Rimini's view coincides with my own assessment:

(i) by Resolution 2428 on 28 November 2000 and the Invitation to Tender on 18 January 2001, Torino sought proposals from potential counterparties to enter into financial transactions with requirements specified by Torino. Torino did not seek proposals for advisory or financial consultancy services;

(ii) the 8 February 2001 presentation responded to the Invitation to Tender with Dexia's proposals. Slide 9 explained Crediop's post-transactional services that would be available in the event that Torino purchased the proposed products, namely "*continuous monitoring of the proposed structures in relation to market trends*" in the form of specific services that it was "*happy to provide at no extra cost*": (a) Excel software for debt analysis, (b) training of Torino's staff on analysis and active debt management, (c) legal and accounting assistance, (d) tools for periodic monitoring of debt positions, (e) MTM value quotation of the rate structures used, and (f) the creation of a Debt Management Committee for periodic verification and redesigning of the products;

(iii) thus, slide 9 was self-evidently concerned with services Torino could request Crediop to provide if, and then after, it entered into the Transactions. It was not an offer of advisory or consultancy services in relation to Torino's decision whether to enter into the Transactions. It was also in the nature of an invitation to treat ("*happy to provide*");

(iv) the 7 March 2001 letter notified Crediop of Torino's actions taken the previous day to adopt some of the debt management proposals in the 8 February 2001 presentation. It did not purport to accept any offer, still less to request or accept any of the post-transactional services offered on slide 9, even less again to request, or accept any offer of, advisory or consultancy services in relation to Torino's decision whether to enter

into the interest rate swaps proposed by, or any other contract with, Crediop.

86. Nor did Torino in fact seek or receive, or consider that it had sought or received, any advice from Crediop in relation to the 2001 Transactions. The transactions proposed in the 8 February 2001 presentation were selected by Torino's Tender Commission, with the assistance of Torino's independent financial expert (Mr Pansa of Lazard), and approved in Resolution 269 and the 2001 Executive Resolutions. No advisory or consultancy agreement with Crediop was referred to or approved in Resolution 269, the 2001 Executive Resolutions, or any other resolution of Torino's Municipal Council, Board or executive officers. The clear inference, and my finding, is that Torino did not consider that it was entering into any such contract.

87. Resolution 269 and the 2001 Executive Resolutions resulted in Crediop and Torino entering into the Master Agreement, Schedule and 2001 Transactions, which were the only contracts (or, strictly, which together constituted the only, single contract) entered into between the parties relating to or in connection with the 2001 Transactions. They did not enter into any separate advisory or consultancy agreement; and Crediop did not assume any advisory or consulting obligations or duties in respect of the 2001 Transactions.

88. Since there was no advisory agreement or consultancy, it follows that Articles 1703, 1710 and 1711 of the Italian Civil Code have no application. Those provisions classify certain advisory contracts as "mandates" for the purposes of Italian law and require services provided by an agent under a mandate to be performed diligently and within the limits of the agency agreed. There is no basis for a suggestion that either provision applied to Crediop's relationship with Torino.

**Alleged Breach of Duty**

89. It follows that the advisory duties alleged by Torino in the Italian Proceedings were not breached because they did not exist; and even if there was a contract by which Crediop agreed to provide the services in slide 9 of the 8 February 2001 presentation on request, Torino never requested any such services.

90. Finally, even if (contrary to the above) there was an advisory contract, and (also contrary to the above) it did include an obligation to advise Torino on the Transactions, or any of them, the analysis of Torino's diligence requirements under Article 21 of TUF from paragraph 151 below applies when considering any allegation of breach of duty under Articles 1703, 1710 and 1711 of the Italian Civil Code. If Crediop met its statutory obligations under TUF, as a financial intermediary, it follows that it did not fall below the required standard for a financial intermediary acting under a mandate. Professor Rimini's view, which I accept, is that that last proposition is correct. I consider that to be a matter on which it was proper for Professor Rimini to express a view, since it is effectively a proposition of Italian law as to the meaning and effect of (the proper interpretation of and interaction between) those Articles of the Italian Civil Code and Article 21 of TUF. My conclusion, on the facts, when dealing

with Article 21 of TUF, below, is indeed that Crediop met its obligations thereunder.

## No Recoverable Loss

91. Finally, as explained in paragraph 68 above, Torino's damages claim for breach of alleged advisory duties is based on the notion that Crediop's supposed advice failures caused Torino loss in the amount of the interest differentials paid under the 2006 Transactions, said to be c.€133 million by the date of the Italian Proceedings. In other words, by way of compensatory damages, Torino seeks to reverse the effect of the 2006 Transactions.

92. Professor Rimini explains, and I accept, that Italian law does not award restitution for breaches of an advisory duty. The rule adopted, as in English law if stated at this level of generality, is that the advisor is liable to compensate the client for the damage caused by the deficient information/conduct. In other words, the aim in awarding damages is to identify how much, if at all, the client is worse off as a result of acting on the advice, and the extent to which any such loss fell within the scope of duty assumed by the advisor. Judging that requires, in principle, a counterfactual assessment of the position the client would have been in if the advisory duty had been properly discharged.

93. However, as I explained in paragraph 71 above, that does not make it impossible as a matter of law (English or Italian) for damages for breach of an advisory duty to equal in amount what might be awarded as restitution, if available. Dexia referred me to Professor Rimini's evidence about two Italian court decisions in damages cases with factual similarities to the present case, namely: Court of Rome Decision No. 11544/2025 of 1 August 2025; Court of Milan Decision No. 20904/2021 of 25 July 2025. I do not accept that those cases establish, or that Professor Rimini persuasively opines, that as a matter of law what I have called a 'gross loss' claim cannot succeed. They are decisions on the facts, and bearing in mind what had or had not been pleaded before the court (a matter of procedure, not substance), the effect of which was to dismiss the particular claims made in each case.

94. In this case, then, it is Dexia's burden, as claimant seeking declaratory relief to this effect, to show that on the facts Torino has not suffered loss that might be recovered as damages for breach of an advisory duty, had there been such a duty and had it been breached.

95. In my judgment, that is what the evidence demonstrated, and Dexia's claim for declaratory relief succeeds on that basis. In that regard, it is clear on the evidence that Torino decided, prior to the tender process in which Dexia/Crediop and others participated, to substitute the variable interest rate on its debt for a fixed or semi-fixed rate; and Torino took that decision independently, with the benefit of advice from others, not from Crediop. Crediop was not the only bank to respond with an offer meeting Torino's tender specifications. It is a fanciful notion, on the evidence, to suppose that Torino would ever have left itself exposed to variable interest rates and not proceeded with a hedging trade of the type it had sought from the market.

96. Indeed, I consider it fanciful, on the evidence, to suppose that Torino would not have transacted with Crediop exactly as it did if told the opening MTM or the 'hidden costs' of the swaps, or if given some reasonable probabilistic scenarios concerning future interest rate movements. The purpose and effect of all of the Transactions was to hedge Torino's interest rate risk in respect of its existing borrowing with variable-rate coupon under the BOCs. Torino was not betting on interest rate differentials in the abstract, or on hypothetical notional amounts unmatched to its real indebtedness. As Torino's budgetary resolutions noted, repeatedly and accurately, a MTM valuation of the interest rate swaps was an irrelevance to Torino unless it defaulted, or sought an agreed early termination of the Transactions. The existence of a negative MTM, at the outset or during the life of the swaps, did not represent loss suffered by Torino in any meaningful sense; just as a positive MTM, if the swaps at some stage came to be 'in the money' for Torino, would not have represented profit for Torino in any meaningful sense.

97. Moreover, as Professor Rimini explained that Italian case law has recognised, a negative opening MTM on a trade of this kind is in truth only a certain way of articulating, or measuring the potential impact of, the margin for the bank (here Crediop) built into the transaction terms. Torino could not have had a reasonable expectation, and did not have any actual expectation, that Crediop (or any other bank) would provide a fixed-for-variable interest rate swap, to cap or otherwise reduce Torino's exposure to interest rate rises, for free.

98. Professor Cucurachi's expert analysis, which I accept, demonstrates that Torino in fact got, from Crediop, the best deal for an interest rate substitution contract available to it in the market at the time and would have been either no better off, or worse off, if it had adopted any of the other structures available to it.

## Capacity to Conclude the Transactions

99. In the Italian Proceedings, Torino has submitted, by reference to *Cattolica*, that "*the public-law limits to the general private-law capacity of the Authority are infringed* [by the 2006 Transactions]", the "*limits*" referred to being "*the limits allowed by Article 119, paragraph 6, of the Italian Constitution*". There is real room for doubt whether such limits go to capacity, in the sense of the substantive power of an Italian municipal authority to contract, rather than, if at all, to the material validity of a contract it may have concluded. Italian local authorities have general civil law capacity (as that phrase is understood in Italian law); and the Italian Supreme Court has held that under the Italian legal system, "*there is no rule of nec ultra vires (which characterises the activity of public legal entities in the Anglo-Saxon system) so that both public legal entities and private legal entities have the same legal capacity*" (Italian Supreme Court, Joint Divisions, Decsion No. 11656 of 12 May 2008, at [7.1]). Professor Rimini's opinion is indeed that Article 119(6) of the Italian Constitution does not limit a municipal authority's capacity to contract, but rather is a rule affecting material validity.

100. Furthermore, Torino appears to accept, at least implicitly, in its Italian pleadings that it had capacity to conclude the Transactions. Its complaint that the Transactions were not duly authorised is made on the basis that: (i) as a matter of law, so Torino says, they needed to be authorised by the Municipal Council,

and not only by the Municipal Board, because they were speculative in nature and involved an assumption of indebtedness, contrary to the requirements of Article 119(6) as interpreted in *Cattolica*; and (ii) as a matter of fact, they were not so authorised. That complaint is plainly bad in any event at the second stage, i.e. on the facts: the 2001, 2003 and 2006 Transactions were all authorised by Municipal Council Resolutions. The first stage of the complaint, however, only makes sense on the basis that Torino accepts it would be bound by the Transactions if authorised by the Municipal Council, which in turn means that the alleged departure from the requirements of Article 119(6) cannot go to Torino's capacity.

101. All that said, however, the civil capacity of local authorities like Torino has been considered in several of the judgments in the Italian swaps litigation in this jurisdiction, in particular *Busto, Pesaro*, *Venezia*, *Venezia CA*, and *Catanzaro*, in respect of the relevant findings in which Dexia served its Civil Evidence Act notice. These cases found Italian law to be as follows, namely that:

(i) there is no general limit on the capacity of Italian local authorities to enter into private law contracts, such as derivatives transactions, and Italian law has no principle of an act being *ultra vires* the civil law capacity of a local authority: *Venezia* at [201]; *Busto* at [174], [251];

(ii) ay specific limits on the capacity of Italian local authorities must be specifically prescribed by Italian law: *Venezia* at [200(ii)]; *Busto* at [177]-[179], [184]-[190];

(iii) subject to (iv) below, at the time of the Transactions, there were no such limits on Italian local authorities' capacity to enter into derivatives;

(iv) the following two points, arising from Article 119(6) of the Italian Constitution as interpreted in *Cattolica*, do constitute limits upon capacity, *viz.*:

(a) a prohibition on Italian local authorities concluding "*speculative*" derivatives (as opposed to hedging using derivatives): *Venezia* at [196]-[197]; *Venezia CA* at [177]-[179]; *Busto* at [277]-[280]; and *Catanzaro* at [76(iii)];

(b) the rule that Italian local authorities may resort to "*indebtedness*" only as a means of funding investments: *Venezia* at [233]-[234], [248]-[252]; *Venezia CA* at [177]-[179]; *Pesaro* at [91]-[97]; and *Catanzaro* at [76(iii)].

102. For what any additional contribution from this judgment may be worth, it does not seem to me that there are, in truth, two separate rules of Italian law, whether they go to capacity or not. Rather, the rule set by Article 119(6) of the Italian Constitution limits the proper purposes for which an Italian municipal authority may take on debt, and, as I seems to me, the rule against speculative derivatives may be not so much a separate prohibition on such trades, but rather an instance of the operation of the primary rule. Be that as it may, it is not inconvenient to consider separately, as the cases have to date, whether impugned transactions

were impermissibly speculative and whether in some (other) way they involved the assumption of impermissible debt.

103. As I indicated in paragraph 99 above, Professor Rimini disagrees with the conclusion reached in the English cases that Italian local authorities lack capacity to enter into speculative derivatives or to incur indebtedness for purposes other than funding investments. He considers those to be mandatory rules of Italian law, sanctioned by nullity pursuant to Article 30(15) of Law no. 289/2002 (a statutory provision setting out the consequences of a breach of Article 119 of the Italian Constitution). Having considered Professor Rimini's evidence, and the supporting case law, in my judgment he may well be correct about that.

104. However, Professor Rimini fairly recognises that the Supreme Court in *Cattolica* "*seems to have reached a different conclusion on this point*"; and more importantly, for my purposes, Dexia's Civil Evidence Act notice in effect asserted the accuracy of the English court's findings in the prior cases that Article 119(6) does go to capacity; and Dexia explicitly did not seek to prove the contrary, in that it asked me to proceed on the basis that this was indeed an aspect of capacity, not just material validity. It is therefore unnecessary to pause for any thought over whether and if so when a claimant can properly seek to disprove foreign law as presumptively proved by prior findings of the English court on which it, the claimant, has said by a CEA notice it will rely.

105. Dexia's simple submission, then, was that neither the speculation prohibition nor the indebtedness for investment rule was infringed by the Transactions. For the reasons that follow, I accept that submission on the facts.

*The Transactions were not speculative*

106. As explained above, the purpose and function of the Transactions was and is simple, to substitute the variable interest rate that Torino was obliged to pay under the BOCs for a new, semi-fixed and later fixed rate, for greater certainty and predictability. Under Italian law, an arrangement of that kind, in respect of an existing underlying indebtedness, is never speculative. It is equivalent, in financial terms, to Torino varying the terms of the BOCs directly to agree a new interest rate with the bondholders. It makes no difference that exactly the same substitution is carried out synthetically via a derivative.

107. Professor Rimini's evidence, which I accept, is that the substitution of one interest rate for another on an existing underlying indebtedness is not an arrangement which has ever been held under Italian law to be an impermissible speculation. The examples where trades have been said in the Italian case law to have been speculative derivatives involve derivatives entered into either in the absence of underlying indebtedness or without being highly correlated with underlying indebtedness. It is the lack of matching to a real cost of real (and permitted) debt that makes a derivative speculative because it is then, in essence, a free-standing bet on interest rate movements.

108. Furthermore, at the time of the 2006 Transactions, which are the only ones that post-dated Decree 389, that Decree expressly permitted local authorities like

Torino to enter into interest rate derivatives in respect of underlying debt (Article 3(3)) and specifically authorised (amongst others) derivatives that replaced the interest rate payable on underlying debt (Article 3(2)(a)/(d)). Thus, Torino was statutorily empowered to enter into the 2006 Transactions, and its claim in the Italian Proceedings that it could not enter into swaps it was allowed to execute under an express power conferred on it by the Italian legislature is extraordinary and not sensibly arguable.

109. As the Court of Appeal held in *Venezia CA* at [159]-[166], which paragraphs are to be taken as accurate under Dexia's Civil Evidence Act notice in this case, a derivative will not be speculative when it satisfies two conditions set out in Consob's determination no. DI/99013791 of 26 February 1999, namely that:

(i) it is entered into expressly for the purpose of reducing the riskiness of other positions held;

(ii) there is a high degree of correlation between the technical and financial aspects (maturity, interest rate, type, etc.) of the exposure being hedged and the financial instrument used for that purpose.

I mention for completeness that the exhaustiveness of those two conditions was a point on which the Court of Appeal differed from Foxton J as part of overturning his decision in *Venezia* (see *Venezia CA* at [159]-[160]). I also mention for completeness a third requirement of the Consob determination, *viz.* that there must be internal control procedures and measures in place to ensure that derivatives are only concluded that meet those two substantive conditions. That does not determine the limits of the speculation prohibition. It is an internal management requirement designed to ensure that the prohibition will not be contravened in practice.

110. I accept Professor Rimini's evidence that the first condition of the Consob test is applied by Italian courts by reference to the subjective purpose of the parties, as evidenced by the contemporaneous documents. It also must be assessed *ex ante*, when the transaction is concluded: *Venezia* at [210], which is also covered by Dexia's Civil Evidence Act notice in the present case. On the facts, Torino's subjective purpose was to reduce the floating interest rate risk of its existing indebtedness by substituting more certain and predictable semi-fixed and ultimately fixed interest rates under the BOCs. That purpose is readily apparent from, and consistently confirmed in, Torino's internal documents analysing and approving the Transactions. Torino was manifestly not seeking to bet on whether variable rates would go up or down; rather, it was seeking to balance its exposure to variable rates on 75% of its indebtedness by substituting partially fixed and later fully fixed rates for some of it, including the BOCs, in line with the advice given to it by Mr Pansa and in line with the views at the time, as Torino had identified, of "*most accredited analysts*". It was on this basis that Torino itself took the view, when it entered into them, that the Transactions complied with relevant Italian laws and declared the same to Dexia, because it was not speculating, it was reducing its risk exposure under the BOCs.

111. I also accept Professor Rimini's evidence that the second condition of the Consob definition (i.e. a high degree of correlation between the derivative and the underlying borrowing being hedged) will be satisfied if:

(i) the notional amount of the derivative instrument matches a portion (or the entirety) of the notional amount of the underlying liability;

(ii) the maturity of the derivative instrument matches the maturity of the underlying liability; and

(iii) the cash flows received (as either interest or principal amounts) match what is due pursuant to the underlying liability.

112. Professor Rimini explains, and I also accept, that there does not have to be a precise correlation, only a high degree of correlation: a degree of mismatch will not render a derivative speculative. However, in this case, as it happens, it is obvious from the terms of the Transactions, and confirmed by Professor Cucurachi's analysis, that there is a perfect financial and technical correlation between underlying borrowing and each set of Transactions:

(i) the notional amount always exactly matches the outstanding principal amounts due under the BOCs (or, in the case of one of the 2006 Transactions, the proportion of the relevant bond hedged by it);

(ii) the maturity of the Transactions and the underlying debt is always identical;

(iii) the frequency and payment dates of the BOCs and of the Transactions are the same, such that the two cashflows match exactly, the variable rate payable by Torino under the BOCs being equal and opposite to that payable to Torino under the swaps, so the overall and simple effect is to replace that rate, as Torino's cost of indebtedness under the BOCs, with the semi-fixed, and later fully fixed, rate payable by it under the swaps.

113. Professor Cucurachi fairly notes that as a result of the unprecedented period of negative interest rates that resulted from the financial crisis of Q4 2008/Q1 2009, a minor discrepancy developed between the interest paid by Torino under the BOCs and the interest it received from Dexia under the 2006 Transactions in 2016-2022. As concluded, the BOCs, as extended to a 2030 maturity in 2006, and the 2006 Transactions to hedge them, exhibited the perfect match described in the previous paragraph. As part of that perfect matching, neither the BOCs nor the 2006 Transaction swaps contained zero-floor clauses. On 21 March 2016, the Italian Ministry of Economy and Finance decided to apply a zero floor to government bonds, so that bondholders of national government debt would never be required to pay (inverse) coupon to the government. Torino chose to follow suit and zero-floored the BOCs.

114. Torino opportunistically suggests in the Italian Proceedings that the resulting *ex post facto* minor discrepancy show the 2006 Transactions to have been "*clearly different from mere hedging contracts*". That is an obviously false point:

(i) the 2006 Transactions must be assessed *ex ante*, so the point is completely irrelevant;

(ii) Dexia agreed to refund the negative interest amounts payable by Torino under the swaps, since they were not cancelled by negative interest amounts payable to Torino under the BOCs; and

(iii) anyway, the amount involved is proportionately tiny, well within the margin afforded by the Consob test. Torino in the Italian Proceedings calculated the difference at €601,041 across 2019, 2020 and 2021; the hedged interest cost of the BOCs, for comparison, across that three-year period, was c.€24.5m. That 'discrepancy' (of c.2.45% on that interest cashflow), even if it had been present *ex ante* under the terms of the trades, would not have prevented there being a high degree of correlation between the BOCs and the 2006 Transactions as required by the Consob test.

115. Torino's other principal argument in the Italian Proceedings, an argument which was also raised in *Busto*, *Pesaro*, *Venezia*, *Catanzaro* and *Brescia*, is that the Transactions had a negative MTM for Torino on the trade date, alleged to have had the effect of "*radically compromising the suitability of the contracts in question to perform hedging functions*" because, it is said, such swaps were very likely to result in a net loss to Torino. That is of course a *non sequitur*. As Professor Rimini explained in his evidence, the Italian Supreme Court made clear in *Cattolica* itself, at [4.6], that derivatives are normally non-par transactions and a non-par transaction will always have a negative MTM at inception for one of the parties. That is because, as Professor Cucurachi explained in his evidence, anyone offering a derivative will offer terms that allow them to cover their costs and make a profit, so the terms will build in a margin. Or again, as the Council of State put it in the *Pisa* decision, Decision no. 5962 of 2012 of the Council of State*, a negative MTM "*merely stand[s] for the value that the swap could have in an abstract and hypothetical (but utterly unrealistic and untrue) negotiation*". Whether the Transactions as a whole, or any of their component parts, had a negative MTM forms no part of, and is irrelevant when applying either limb of, the Consob test.

* The Council of State is the highest judicial authority in Italy on matters of public law, i.e. hierarchically equivalent, in that arena, to the Supreme Court in other arenas.

116. Torino also relies on the fact that the negative MTM of the 2006 Transactions resulted in part from rolling over the existing negative MTM of the 2001 and 2003 Transactions. A view that this amounted to a 'bet' to cover the cost of closing out the previous swap and infringed the speculation prohibition found favour with Foxton J in *Venezia* but was overturned on appeal, and can be given short shrift in these proceedings. Since there is nothing improper about there being a negative MTM at the outset (see immediately above), there cannot be anything improper about rolling any current negative MTM at the time of an early termination into a replacement hedge, rather than requiring it to be paid as the cost of terminating.

117. Torino further argues in Italy that various disclosures should have been made by Crediop prior to the Transactions, including in particular the negative MTM for the Transactions, the "*implicit costs*" and "*probabilistic scenarios*". It was found in *Busto* at [263] and *Venezia* at [192]-[201], findings covered by Dexia's Civil Evidence Act notice in this case, and it was also Professor Rimini's evidence, that arguments of that kind do not go to the speculation prohibition, but rather go (if anywhere) to material validity under Italian law (with which I deal from paragraph 130 below).

118. In conclusion, on the speculation prohibition, the Transactions effected a straightforward hedge by substituting the interest rate on Torino's underlying borrowing under the BOCs by way of fixed or semi-fixed interest rates, which complies with the two limbs of the Consob test and the requirements of Italian law. The speculation prohibition contained in, or that is part of, Article 119(6) of the Italian Constitution was not infringed by the Transactions or any of them.

*The Transactions did not constitute or create impermissible indebtedness*

119. Article 119(6) of the Italian Constitution states that local authorities may resort to "*indebtedness*" only to finance their investment expenditure; and the meaning of "*indebtedness*" for that purpose was given, at the relevant time, by Article 3(17) of Law 350/2003, which I accept from Professor Rimini was an exhaustive list of transaction types. The list specifically excluded restructuring existing borrowing to improve liquidity in a way that does not involve "*additional resources*", which was held in *Busto* at [200] to be "*apt to cover swaps which restructure borrowing by adjusting the repayment profile*".

120. The Transactions in the present case do not involve any adjustments to Torino's repayment profile by way of a principal exchange or amortising element (in contrast with *Busto*). Torino extended the maturity of the BOCs in 2001, and again in 2006, by modifying the BOCs themselves, rather than synthetically by using derivatives to affect the repayment profile. The Transactions were, rather, straightforward interest rate swaps that substituted Torino's chosen fixed or semi-fixed interest rate for the variable rate under the BOCs through to the revised maturity date. The direct change to the repayment profile of the BOCs in 2006 meant that Torino had to either terminate the 2003 swaps or replace them with (something like) the 2006 swaps, in order to maintain the high degree of correlation between the primary debt instruments and the derivative trade intended to hedge them, as discussed above when considering the speculation prohibition.

121. The list in Article 3(17) was amended, with prospective effect only, from 1 January 2009 (after all the Transactions had been concluded), to include the upfront payment component of a derivative, highlighting that derivatives more generally are excluded from the definition of "*indebtedness*" in Italian law, as confirmed by Professor Rimini in his evidence and as held in *Venezia* at [233] and *Busto* at [195], [280] and [328]. In *Cattolica*, and the most controversial aspect of that decision, the Italian Supreme Court held that while indeed derivatives typically do not fall within the definition of indebtedness, an upfront component of a derivative could constitute indebtedness even prior to the legislative change that added such 'upfronts' to the list of transactions in Article

3(17). The Court also held that derivatives that extinguish or significantly modify the underlying debt may themselves involve resorting to indebtedness.

122. Those conclusions in *Cattolica* have no bearing on the present case. The Transactions did not involve the payment of any upfront by Torino. As held in *Venezia CA* at [171]-[172], the rolling over of an MTM of existing transactions when replacing them, as was done here for the 2003 Transactions and again for the 2006 Transactions, does not amount to an implicit payment of an upfront or other resort to indebtedness. Furthermore, the Transactions did not affect the underlying debt owed by Torino. The BOCs were not extinguished or modified, whether significantly or at all, by the Transactions or any of them. Torino had to make the exact same capital repayments under the BOCs as it would have been obliged to make without the Transactions. The effect in each case was simply to substitute, after cashflow netting, the floating interest rate payable under the BOCs with a new fixed or semi-fixed interest rate.

123. I agree with the conclusions in *Pesaro* at [93]-[97] and *Busto* at [336]-[342] that a plain vanilla interest rate swap with a collar, like the 2006 Transactions for the initial period, does not involve any significant modification to the underlying borrowing being hedged; *a fortiori* a swap to a fully fixed rate. By extension of the same logic, the 2001 and 2003 Transactions, which also substituted the variable interest rate under the BOCs without affecting their terms, did not involve any significant modification of the BOCs.

**Authority to Conclude the Transactions**

124. As I noted in paragraph 100 above, Torino contends in the Italian Proceedings that because (as it says) the Transactions involved it in resorting to indebtedness outside Article 119(6) of the Italian Constitution, they had to be approved by its Municipal Council and were not so approved. That is a hopeless contention on the facts, since it is plain that each set of Transactions as ultimately executed in 2001, 2003 and 2006 was in fact covered by a specific Municipal Council Resolution giving approval and authority. It is in any event a false point because, as I have found in the immediately preceding part of this judgment, the Transactions did not go outside Article 119(6) anyway.

125. For completeness only, Article 42 of TUEL, relied on by Torino, is indeed the provision enumerating "*fundamental acts*" to be approved by the Council, any act not so enumerated being within the competence of the Board; and the Transactions would indeed constitute a relevant "*fundamental act*" if they involved resorting to indebtedness, which they did not. I accept and agree with Professor Rimini's opinion that the Municipal Council Resolutions here complied with the requirements of Article 42 of TUEL; and Mr Belarbi, with the benefit of his considerable experience of such transactions, gave evidence that Torino simply followed what he had seen as the "*standard procedure*" for "*how Italian municipalities were required to approve transactions of this nature*".

126. In any event, Torino held out Filippo Dentamaro (Torino's Finance and Fiscal Manager) and Domenico Pizzala (Torino's Finance Manager), the officials who executed the Transaction Documents, as having been properly authorised, and

represented to Dexia that all necessary authorisations had been obtained. They therefore had ostensible authority to bind Torino to the Transactions as they purported to do, a matter governed by English law as the law governing the Transactions, not Italian law as the law governing Torino as an Italian municipal authority. Specifically, in each of Resolutions 269, 887 and 3026 (see paragraphs 48, 57 and 61 above) the Board authorised Messrs. Dentamaro and Pizzala to enter into the Transactions and execute all relevant documentation to that end. Those Resolutions were provided to Dexia under the terms of the Master Agreement, and Resolution 269 annexed draft versions of the Transaction Documents that included an express representation of their authority.

127. Furthermore, and another matter governed by English law as the governing law of the Transactions, they were ratified over a period of many years. Thus:

(i) Torino made all payments due pursuant to the Transactions from 2001 to date, and did so until at least 18 June 2024 without any suggestion that the sums were not due; and

(ii) the annual approval by Torino's Municipal Council of its budgets and financial statements, including without qualification the cashflows from the Transactions and detailed notes and information about the notional amount, cashflows and MTM of those Transactions.

128. Similar conduct was held to have amounted to ratification under English law in *Busto* at [383]-[386], in *Pesaro* at [100]-[101], and in *Emilia Romagna* at [128]-[129]. It is a plain and obvious case of ratification.

129. It follows that Torino's authority arguments have no merit. The Transactions were duly authorised as a matter of Italian law and, even if not, Messrs. Dentamaro and Pizzala had ostensible authority to enter into them and Torino repeatedly ratified them by over two decades or so of subsequent conduct.

**Material Validity / Alleged Breach of Mandatory Laws**

130. The other arguments set out in paragraph 67 above that are relied upon by Torino to attack the Transactions in the Italian Proceedings all allege that the Transactions were inconsistent with or infringed what Torino says are mandatory rules of Italian law. Thus, Torino alleges:

(i) breaches of Articles 21 and 23 of TUF and Article 26 of the Consob Regulation;

(ii) that the Transactions lacked the requirements for a valid contract under Articles 1322, 1325 and 1346 of the Italian Civil Code, i.e. that they lacked "*meritevolezza*", "*causa*" and "*oggetto*", because of the alleged failure to provide information as to the negative initial MTM, "*hidden costs*" and "*probabilistic scenarios*";

(iii) breach of Article 41; and

(iv) breaches of Decree 389 and the 2004 MEF Circular.

131. The alleged breaches of Article 21 of TUF and Article 26 of the Consob Regulation are not said by Torino to result in invalidity or unenforceability of any of the Transactions, and unarguably do not do so. I accept Professor Rimini's evidence that breaches of TUF and the Consob Regulation do not affect the material validity of a contract unless that is expressly provided for. A breach of Article 23 of TUF does, by the legislation, affect validity. A breach of Article 21 of TUF or of Article 26 of the Consob Regulation, by contrast, sounds only in a liability to pay compensation.

132. The other alleged difficulties with the Transactions are, or may be, said by Torino to go to validity. All those arguments, however, are without merit for the simple reason that validity is governed by English law, not Italian law (see paragraph 80 above). None of those points arguably goes to Torino's capacity to enter into the Transactions.

133. It follows that the Transactions are valid, and in the face of Torino's seeming challenge to that proposition in Italy it is appropriate to grant declaratory relief to that effect.

134. Dexia, however, as has become typical in the Italian swaps cases here, also seeks declaratory relief confirming that, if it be the case, at all events the main Italian law arguments advanced by Torino in Italy are not well founded on the facts anyway. The trial evidence of Mr Danusso justifies the conclusion that further declarations of that type, if justified on the merits, may have utility for the enforcement of any English judgment, based on his recent experience of similar cases. In particular, his evidence supports a finding that it may not be sufficient for this judgment to have made clear that, after a trial, the court was satisfied that the proposition advanced by Dexia was established, since the approach taken in Italy to interpreting what has been determined by a foreign court decision, when applied to the product of English procedural tradition, may well give exclusive or determinative weight to what is stated in the Order drawn up to give effect to any judgment handed down after a trial, without reference to that judgment.

135. On that basis as to why, Dexia submits, the court should consider granting declaratory relief on specific points, declarations are sought as regards:

(i) Article 31 of the Consob Regulation, on Torino's status as a professional investor;

(ii) Article 41;

(iii) Decree 389 and the 2004 MEF Circular;

(iv) Article 21 of TUF and Article 26 of the Consob Regulation;

(v) Article 23 of TUF; and

(vi) Articles 1322, 1325 and 1346 of the ICC.

*Professional Investor (Consob Regulation, Article 31)*

136. Article 31(2) of the Consob Regulation provides that professional investors include "*companies or legal persons possessing specific expertise and experience in matters of transactions in financial instruments expressly declared in writing by their legal representative.*" On 2 December 2003, Torino entered into a mandate agreement with Banca IMI in which it declared to that bank, by a duly authorised representative, that it possessed "*specific expertise and experience in matters of transactions in financial instruments*", and classified itself as a professional investor under Article 31(2). That declaration stated that it applied for "*the purposes of the present mandate*" which included "*the active management of the Municipality of Torino's debt and financial position through the use of financial instruments*". Thus, Torino declared to Banca IMI, in respect of the very debt management activities of which the Transactions formed part, its professional investor status.

137. It does not matter that the declaration was not addressed to Crediop or Dexia (which is the only point taken in the Italian Proceedings against applying Article 31(2) to Torino on the basis of its declaration to Bank IMI). I accept Professor Rimini's evidence that there is no requirement under Article 31(2) for the declaration to be made in a particular form or given to a particular person; it is not a matter of contract or representation between two parties, it is a matter of status *erga omnes* which (under this limb of Article 31(2)) has either been declared in writing by an official representative of the investor or not. The Italian Supreme Court in Decision No. 24654/2022 of 17 June 2022 specifically rejected the argument that the Consob Regulation requires "*precise elements (pre-existence, specificity, clarity and origin from the legal representative of the investing company)*"; and in the *Brescia* litigation, the Italian Court of Accounts Decision No. 221/2022 of 6 September 2022 categorised the local authority as a professional investor for all purposes even though it had only provided a written declaration to one of the two litigant banks (Deutsche Bank), not to the other (as it happens, Crediop).

138. Article 31(2) of the Consob Regulation also provides that "*companies and entities that issue financial instruments traded in regulated markets*" qualify automatically as professional investors, irrespective of whether they have issued any written declaration to that effect. Torino qualifies as a professional investor, and did so at all material times, on that basis also. It has issued and publicly traded shares through its subsidiary, Azienda Energetica Metropolitano Torino ('AEM'). I accept Professor Rimini's evidence that under Italian law, AEM is classified as an "*in house company*" under Italian law such that it is treated as an organ of Torino, with Torino exercising an analogous degree of control over AEM as it does over its own departments and internal functions. The position is analogous to a company raising capital on public markets using an SPV issuer. If that type of activity has an impact, as is likely, on the proper characterisation of the company as an investor or investment client, it cannot sensibly avoid that impact by saying it did not carry out the activity, its SPV did.

139. The consequence of Torino's professional status is set out in Article 31(1) of the Consob Regulation: Articles 27 to 30 and 32 of the Consob Regulation did not apply to Torino when concluding the Transactions and executing the

Transaction Documents. Furthermore, Article 30 of TUF expressly does not apply to professional investors. Torino's misplaced reliance in the Italian Proceedings upon provisions that do not apply, because of its status as a professional investor, means that in my judgment it is appropriate to grant relief to Dexia in the form of declarations confirming the true position.

*The Economic Convenience Test (Article 41)*

140. Article 41(2) placed an obligation on Torino at the time of the 2006 Transactions (the 'economic convenience' rule) to ensure that any refinancing of its existing indebtedness was cost effective, meaning that it ensured "*a reduction of the financial value of total liabilities to be paid by the bodies themselves*". Article 41 did not apply to the 2001 Transactions, because they pre-dated that law, or to the 2003 Transactions, because there was no refinancing of the BOCs in 2003.

141. Torino contends in the Italian Proceedings that the 2006 Transactions breached Article 41 on the basis that the negative initial MTM or implicit costs meant the Transactions were not economically convenient. However, the economic convenience rule had no such application either. As already explained above, the 2006 Transactions did not extinguish or modify (substantially or otherwise) debt obligations, which arose under the BOCs. I accept Professor Rimini's evidence that, to fall within Article 41, it is necessary for a transaction to replace existing debt with new debt. On any view, that is not what the 2006 Transactions did, i.e. the new interest rate swaps.

142. Professor Cucurachi further explains that, consistently with the legal position, market practice was therefore to ignore such swaps in performing the economic convenience test, and I accept that evidence also.

143. It follows that any purported requirement of economic convenience does not apply to the 2006 Transactions, and I note that a similar conclusion was reached in *Prato* at [163]-[181] and *Prato CA* at [80]-[100], and in *Emilia Romagna* at [151]-[153], and that Dexia was granted summary judgment on the Article 41 issue on this basis in *Pesaro* at [105]-[106].

144. Even if that is wrong, and the economic convenience requirement did apply to the 2006 Transactions, Professor Rimini explains, on the basis of Council of State Decision 5962/2012 of 19 June 2012, that only the "*implicit cost*" element (i.e. the bank's margin) could ever be taken into account under Article 41; and Professor Cucurachi performed the economic convenience test on that basis and I accept his resulting conclusion and opinion that the 2006 Transactions satisfied the test.

145. The 2006 Transactions thus complied with Article 41, and on a similar basis to other topics, namely that Torino has made an issue of that by its contentions in the Italian Proceedings, in my view it is appropriate to grant declaratory relief to Dexia formally to confirm the position.

*Decree 389 and the 2004 MEF Circular*

146. Decree 389 sets out the "*Regulations concerning access to the capital market by provinces, municipalities, metropolitan cities, mountain communities and island communities ... pursuant to* [Article] *41*". It was issued pursuant to Article 41(1) and set the regulatory framework of technical rules on the use of derivative contracts by Italian public authorities. Decree 389 only applies to the 2006 Transactions as the 2001 and 2003 Transactions pre-dated its introduction.

147. Professor Rimini explains, and I accept, that given their "*fundamental functional and economic nexus*" with the BOCs, the 2006 Transactions fall within Article 3 of Decree 389:

(i) the swaps are of a type approved in Article 3(2)(a)/(d):

> "*a) 'interest rate swaps' between two parties who undertake to exchange interest payments on a regular basis, linked to key financial market benchmarks, in accordance with contractually agreed terms, timing and conditions;*
>
> *...*
>
> *d) purchase of interest rate 'collars' in which the buyer is guaranteed an interest rate to be paid, fluctuating within a pre-established minimum and maximum;*"

(ii) the swaps relate "*to liabilities actually due*" under the BOCs using rates indexed to Euribor 6-month within Article 3(3);

(iii) applying the guidance in the 2004 MEF Circular, the 2006 Transactions were "*plain vanilla*" derivatives.

148. In the Italian Proceedings, Torino only resists the conclusion that the 2006 Transaction complied with Decree 389 in two ways:

(i) first, an alleged divergence of cashflows from the underlying obligations by more than 1% is said to breach Article 3(2)(f). However, the 2006 Transactions are plain vanilla derivatives within Article 3(2)(a)/(d) and not within Article 3(2)(f), which applies only to "*other derivatives*" (i.e. not falling within the earlier sub-paragraphs) which are "*aimed at debt restructuring*" (and again, as already explained, the 2006 Transactions did not restructure the cashflows under the BOCs);

(ii) second, an alleged imbalance in the market value of the cap and floor is said to put the 2006 Transactions in breach of Article 3(2)(d). That sub-paragraph is quoted in full in paragraph 147(i) above; it contains no such requirement, nor does Italian law more generally (on which I am able to accept Professor Rimini's evidence and, under Dexia's Civil Evidence Act notice, rely on findings to that effect in the prior decisions in this jurisdiction: *Venezia CA* at [78], [158]-[168]; and *Emilia Romagna* at [109(5)]).

149. Decree 389 is augmented by the guidance in the 2004 MEF Circular. Professor Rimini explained, and I accept, that the 2004 MEF Circular "*only seeks to explain and to assist with the interpretation of Ministerial Decree 389... It does not impose further requirements on local authorities wishing to enter into derivative transactions and, in any case … it is an interpretative tool which is not binding on a court.*" Torino alleges that the 2006 Transactions breached the 2004 MEF Circular because the rates payable "*are not consistent with the market rate levels prevailing on the trade date*". However, Professor Cucurachi's analysis, which I accept, shows that the 2006 Transactions were closely comparable, and if anything favourably comparable, to other potential transactions available at the time, and Crediop's margin was market standard.

150. It follows that the only two requirements for the 2006 Transactions to comply with Article 3 of Decree 389 and the 2004 MEF Circular are that (i) the type of derivative falls within Article 3(2) and (ii) the derivative relates to an existing debt of the local authority or region. Both requirements are satisfied here, as noted already. Accordingly, the 2006 Transactions complied in all respects with Decree 389 and the 2004 MEF Circular, insofar as they applied; and it is appropriate since Torino contests that proposition in Italy to grant declaratory relief to Dexia in respect of it.

*Article 21 of TUF and Article 26 of the Consob Regulation*

151. Article 21 of TUF is a rule of conduct for Italian financial intermediaries that sets out the duties of a financial intermediary when providing financial services, being (in summary) to:

(i) act diligently, fairly and transparently;

(ii) acquire the necessary information from the client and keep the client adequately informed at all times; and

(iii) minimise the risk of conflicts of interest and, in case of conflict, act with transparency and fairness.

152. I accept Professor Rimini's evidence that these rules are to be applied proportionately in light of their ultimate objective, which is to put an investor in a position to make informed and rational investment decisions; and that this requires a case-by-case analysis of the financial experience and sophistication of the financial intermediary's customer, having regard to the circumstances of the individual case. In addition, as Professor Rimini explains, Article 26 of the Consob Regulation specifies some of the more general duties set out under Article 21 of TUF as follows:

> "*a) act independently and consistently with the general principles and rules of the Consolidated Law;*
>
> *b) comply with the operating rules of the markets in which they operate;*
>
> *c) refrain from any conduct that might benefit one investor to the detriment of another;*

*d) promptly execute the instructions given to them by investors*

*e) acquire knowledge of the financial instruments, services and products other than investment services, whether their own or those of third parties, which they offer, appropriate to the type of service to be provided;*

*f) operate with a view to keeping costs to investors low and obtaining the best possible result from each investment service, also in relation to the level of risk chosen by the investor.*"

153. Torino alleges in the Italian Proceedings that Crediop breached those obligations because it failed, so Torino says:

(i) to provide certain information prior to the conclusion of the Transactions, including information about the negative initial MTM, the method of calculating such MTM, the alleged "*implicit costs*" and risks of the derivative, and a "*probabilistic representation of the expected movem*ent" of Euribor;

(ii) to pursue the best trading conditions for Torino in breach of the 'best execution' rule;

(iii) to communicate to Torino its right (as alleged) to an upfront payment to redress the initial negative MTM; and

(iv) to communicate to Torino that the Transactions should have been authorised by its Council rather than its Board.

154. As regards the first of those arguments, the alleged failure to provide information about the negative initial MTM, alleged "*implicit costs*" and risks of the derivative, and a "*probabilistic representation of the expected movement*" of Euribor:

(i) in line with the purpose of Article 21 of TUF set out above, its application is fact sensitive, with regard not only to the service provided or instrument sold but also to the client. Here, the Transactions arise out of an underlying strategic decision of the client to hedge the risk of its existing debt profile, by fixing the interest rates payable under the BOCs. Synthetically replacing the floating rate on the BOCs is functionally and commercially equivalent to varying the BOCs themselves to modify their interest rate. Professor Rimini is not aware of any Italian law or regulatory guidance that suggests an intermediary is required to provide the information alleged by Torino in those circumstances. In my view, that is hardly surprising. In such a case, the client knows and accepts the trade-offs inherent in their strategic decision. The information suggested by Torino was unnecessary for it to make a decision;

(ii) at the time of the Transactions, Article 21 of TUF, and regulators acting pursuant to it, did not require or recommend that a financial intermediary disclose to the customer the initial MTM, probabilistic scenarios and implicit costs of a derivative transaction. The first suggestion of any such

requirement in the Italian regulatory landscape was a non-binding recommendation in Consob Communication no. 9019104 of 2 March 2009, with prospective effect in connection with the introduction of MifiD I (which post-dated the Transactions). I accept Professor Rimini's view that "*financial intermediaries were under no duty to disclose the* [MTM], *probabilities scenarios or implicit costs to their counterparties in order to comply with Article 21*". That was also the conclusion reached by the Italian Council of State in decision 5962/2012 about a transaction entered into in 2007, and has now been confirmed by the 2026 S/C Decisions referred to in paragraph 38 above;

(iii) Communication 9019104 only applies to retail customers, and not to professional investors like Torino;

(iv) I accept Professor Rimini's evidence that claims under Article 21 of TUF and Article 26 of the Consob Regulation are subject to a 10-year limitation period under Italian law that commences on the date of breach of the relevant duty in respect of the financial services transaction in question, and the Italian Supreme Court has held that delay due to a claimant's ignorance of its rights, and thus due to uncertainty of having a right it might enforce, does not prevent the running of the limitation period. Even if (contrary to that conclusion) the limitation period only began to run when, using ordinary diligence, the customer could reasonably have had knowledge of the breach, the first reference to the disclosure of the MTM and costs of a derivative transaction and probability scenarios in the Italian regulatory framework was Communication 9019104. Torino could have reasonably discovered the basis for its complaints about the negative initial MTM, "*hidden costs*" and probability scenarios in or around March 2009. It follows that all of Torino's claims under Article 21 of TUF and Article 26 of the Consob Regulation are time barred under Italian law. The alleged breaches date, in every case, from 2006 or before, and time either began to run then or, at the very latest, in or around March 2009;

(v) in Professor Rimini's view, which again I accept, Crediop would have complied with its obligations under Article 21 of TUF so long as it properly informed Torino about the terms of the Transactions, diligently proposed a transaction consistent with Torino's needs and its level of risk appetite, and set out the risks of the transaction in light of the degree of financial sophistication of Torino and the factual circumstances. That is all consistent with the conclusion reached by Cockerill J (as she was then) in *Busto* at [267] that disclosure of the negative initial MTM, "*hidden costs*" and "*probabilistic scenarios*" was not required in all cases and that a case-by-case approach had to be adopted, taking account of the complexity of the transaction, the sophistication and experience of the counterparty and the information provided. There can be no doubt at all, in my judgment, that the above requirements were satisfied in the present case given the information provided to Torino by Crediop at the time of the Transactions and their straightforward nature.

155. In any event, Torino was in fact provided with the information it says was withheld from it, and was also capable of performing the calculations itself from the information that was provided by Crediop, either internally or using its independent advisors. This is particularly true of the 2006 Transactions, given that Crediop, at Torino's request, supplied future cashflow forecasts for the swaps two days prior to execution and thus the (very closely) approximate MTM and "*implicit costs*" for the 2006 Transactions as executed.

156. As regards the alleged breach of the 'best execution' rule under Article 26 of Consob, the allegation made by Torino is parasitic on its allegation that the 2006 Transactions had an initial negative MTM, included "*hidden costs*", and breached Article 41, Decree 389 and the 2004 MEF Circular. As already explained, none of these points is well founded. In any event, Professor Cucurachi found upon analysis of the terms of the Transactions and availability in the market at the time that Torino did get the best execution; the alternative transactions available to Torino at the time were overall more costly by around €190,000. The negative MTM for the 2006 Transactions was also within the prudential range approved by the Council of State in the *Pisa* case. Finally, there is also here an unanswerable time bar defence to Torino's claim.

157. As regards the alleged requirement to disclose to the customer which body within the customer should approve a derivative transaction, there is no such requirement under Italian law and there was no such requirement at the time of the 2006 Transactions. On the contrary, it is for the customer to ensure that it is acting through appropriately authorised bodies or individuals, and to identify to the bank those who have authority to act, not the other way around. Once again, the 10-year time bar under Italian law is also an insuperable bar in the way of Torino's claim.

158. Finally, there is also no requirement to make an upfront payment to the counterparty in a "*non-par*" swap (i.e., where the initial MTM is not zero), nor was there any such requirement at the time of any of the Transactions. As Bryan J found in *Emilia Romagna* at [171], the suggestion of such a requirement is based on a misreading of Annex 3 of the Consob Regulation. Both Council of State Decision No. 5962/2012 and *Cattolica* recognised that it is normal and unobjectionable, not unlawful, for a derivative to have a negative initial MTM; and there is no Italian authority to support an obligation for one of the parties to rebalance the value of the initial MTM with an upfront payment in favour of the other party. Yet again, time bar under Italian law also provides a complete answer to Torino's complaint.

159. It follows that there is no basis for Torino's allegations of a breach of Article 21 of TUF or Article 26 of the Consob Regulation; and in my judgment Dexia should be granted declaratory relief to that effect given the nature and terms of the attack launched against it by Torino in the Italian Proceedings.

*Article 23 of TUF*

160. Article 23 of TUF requires that contracts relating to the provision of financial services (such as the Master Agreement) are in written form and provided to the customer. That requirement was obviously satisfied here. Torino's contrary

argument put forward in the Italian Proceedings is convoluted and proceeds from a false factual premise. Thus, Torino contends that there was an advisory contract, that it was not contained in the Master Agreement (or any of the other Transaction Documents), and that therefore Article 23 of TUF was infringed. But there was no advisory contract.

*Articles 1322, 1325 and 1346 of the Italian Civil Code*

161. As Professor Rimini explained in his evidence, Article 1325 of the Italian Civil Code requires three elements for an agreement to be a legally enforceable contract under Italian law: (i) *meritevolezza* (worthiness of legal protection); (ii) *causa* (lawful purpose) and (iii) *oggetto* (literally 'object', but in effect lawfulness and certainty of content):

    (i) *meritevolezza* (Article 1322) arises in the context of 'atypical' contracts, i.e. contracts other than the nominate types of contract provided for by law. An atypical contract must be directed towards fulfilling interests worthy of legal protection, which is analysed by references to the parties' objective purpose in entering into the contract;

    (ii) *causa* (Articles 1343-1345) concerns the legality of the economic and functional purpose at which, objectively, the contract is directed. A contract must not have an unlawful cause, which includes seeking to circumvent mandatory rules or facilitate an illegal purpose;

    (iii) *oggetto* (Article 1346) concerns the content of contractual obligations. They must be possible, lawful, and determined or measurable, so that they are capable of enforcement.

162. Under Italian law, these elements are to be decided by reference to the wider economic arrangements between the parties, and the purpose pursued, not by taking a contract in isolation. In this case, therefore, it is essential on this topic, as in truth on every topic, to keep in mind the functional and economic nexus between the BOCs and the Transactions, and the basic purpose of the latter to effect a substitution of collared/fixed rates for variable rates as the basis of the interest cost for Torino of the former.

163. Torino contends, purportedly applying *Cattolica*, that the 2006 Transactions failed to meet the requirements of validity under Article 1325 because it was not informed of the negative initial MTM, "*hidden costs*" and "*probabilistic scenarios*". There are three reasons why that is wrong, indeed not even seriously arguable:

    (i) the analysis in *Cattolica* does not apply to the 2006 Transactions at all;

    (ii) even if that analysis did apply, the information identified by Torino was not required to be disclosed in the circumstances of the 2006 Transactions;

(iii) even if the 2006 Transactions were aleatory so as potentially to have required disclosure of information needed to understand the risks, the necessary information was in fact provided by Crediop to Torino.

164. As to the first point, as Professor Rimini explained in his evidence, if the 2006 Transactions pursued a hedging function permitted by Decree 389 (and they plainly did, as I have already found), then they are necessarily to be regarded as worthy of legal protection (*meritevolezza*) and as having licit *causa*. The terms of the 2006 Transactions were perfectly clear and capable of enforcement, so that, given the lawfulness of their content, there is also no lack of *oggetto*. I agree with and accept Professor Rimini's view that *Cattolica* is perfectly consistent with all of that. The contracts in that case appear to have lacked any connection to underlying indebtedness, so as to be aleatory in nature. The analysis of *causa* and *oggetto* in *Cattolica* must be understood in that light, starting from the premise that the contracts were financial bets, which fell outside Decree 389, rather than hedging transactions. It is to be noted that in *Cattolica*, the Italian Supreme Court proposed that disclosure of MTM, implicit costs and "*probabilistic scenarios*" was needed in order to assess the "*alea razionale*" of the contract in that case, as part of determining its validity. That reasoning is simply inapplicable where, as here, it is plain from the terms of the parties' dealings as a whole, and indeed simply from the terms of the 2006 Transactions read with the BOCs, that the *alea razionale* was hedging permitted by Decree 389.

165. As to the second point, I accept Professor Rimini's evidence that it would be wrong in any event to understand *Cattolica* as imposing a rigid requirement for disclosure in all derivatives cases of the information that Torino claims not to have been given. Some lower Italian courts have suggested such a rigid rule; but the Court of Appeal of Milan has consistently taken the view that in the case of "*plain vanilla*" derivatives no such information is required, and I accept Professor Rimini's opinion that that is the better view. Furthermore, I agree with and accept his conclusion that his view is now confirmed as correct by the 2026 S/C Decisions, to which I have made reference already. Professor Rimini explains that those decisions, which are not concerned with public authorities and so are not determined by Decree 389 alone, establish or confirm that:

(i) the concept of *alea razionale* relates only to *meritevolezza*, as only with sufficient risk awareness can an atypical aleatory contract be worthy of legal protection;

(ii) the *causa* and *oggetto* of a derivative do not depend on the formal disclosure of information – what matters is the substance, the coherence of contractual structure and economic function, and the determinability of the obligations; and

(iii) there is no general pre-requisite for (or indeed stable concept of) "*probabilistic scenarios*", the relevance of which, if any, will depend on the particular context. Disclosure of scenarios, MTM and/or implicit costs, is only required where the structure and complexity of the contract prevent the counterparty from understanding the risk from the contract

itself. A simple, transparent contract (like, I consider, each of the 2006 Transactions), will not require disclosure to have *meritevolezza*.

166. The 2006 Transactions were not standalone bets on hypothetical notional amounts, but hedging contracts referable to and exactly correlated with Torino's indebtedness under the BOCs, exchanging a fully floating variable rate for a bounded (collared) variable rate, becoming from 2010 a fixed rate. There was no need for Torino to be given information to assess potential future movements of rates, as it might if it were betting on interest rates in the abstract. The economic purpose was to collar for a clearly defined period, and to fix after that until maturity, Torino's existing interest rate exposure under the BOCs, and the 2006 Transactions achieved that purpose under all conceivable future scenarios in an ascertained, or at least measurable, way that was straightforwardly capable of performance. Torino was not being exposed to any new risk that it might be said the *Cattolica* decision may have required it to be given information to assess.

167. Finally, as to the third point, Torino sought and was given a large amount of information, including everything needed to calculate the MTM of the 2006 Transactions.

168. The overall conclusion as regards Articles 1322, 1325 and 1343-1346 of the Italian Civil Code is that even if they were relevant (which they are not, since they go to material validity, which is not governed by Italian law), they were comfortably satisfied. There is no viable case for saying that they impact upon the validity of the 2006 Transactions, which were legally valid and enforceable contracts even if assessed by reference to Italian law. As with other points, Torino having seemingly put all of that in issue by its assertions in the Italian Proceedings, it is just and convenient to grant declaratory relief to confirm the true position.

**Damages / Indemnity**

169. Dexia also seeks declarations that:

(i) it is entitled to damages in respect of its loss and damage incurred as a result of Torino commencing the Italian Proceedings in breach of Section 13(b) of the Master Agreement, including the legal fees Dexia has incurred in Italy and England; and

(ii) it is entitled to be indemnified by Torino on demand, pursuant to Section 11 of the Master Agreement, in respect of all loss and damage arising out of its breaches of the Transaction Documents, again including the legal fees incurred in Italy and England.

170. Without doubt Dexia is, in principle, entitled to damages, to be assessed, for Torino's breach of Section 13(b) of the Master Agreement, Butcher J having finally declared the existence of the breach by his summary judgment order last year. There was evidence at trial from Mr Danusso of the substantial costs incurred by Dexia in dealing with the Italian Proceedings, and of the likelihood

that more such cost will be incurred; and obviously the costs of the English Proceedings will also have been significant.

171. On the other hand, however:

(i) there is no evidence, or in my view reasonable basis, to suppose that Torino disputes the entitlement to damages if the liability conclusion is correct. It has made clear that it continues to dispute the claim that it brought the Italian Proceedings, and is continuing them, in breach of contract, despite the final decision of Butcher J confirming that fact, but that in my view does not evidence any live issue over the right to damages as an incident of the liability judgment if it is binding, as of course I am bound to say that it is;

(ii) Dexia offered no evidence to explain the absence, as things stand, of a damages claim in the English Proceedings. It is true no doubt that a final damages assessment might conveniently be adjourned until a future date given the degree to which assessing damages now would be an exercise in estimating costs not yet incurred. The obvious and routine solution in such a case is for there to be a damages claim, judgment for damages to be assessed, an adjournment of any final assessment and, it may be, an order for an interim payment on account of damages in the meantime under CPR 25.1(1)(l). That solution was adopted very recently in the current context of damages for breach of an exclusive jurisdiction clause: see *Diageo DV Ltd v NIO S.R.L. (in liquidation)* [2026] EWHC 1198 (Comm);

(iii) that normal solution is not available here because Dexia has not brought any damages claim. There being no evidence of the thinking on Dexia's part, the possible explanations for that, it seems to me, and as between which I cannot make any finding, are that either that option was not identified or it was identified but a decision was made not to pursue it;

(iv) either way, I do not accept Dexia's submission that there would be utility in granting a declaration of entitlement to damages, and in the absence of any evidence-based reason to conclude that a declaration would serve some useful purpose, I disagree with the related submission that there is no good reason not to grant a declaration.

172. This court has finally declared Torino to have been in breach by bringing the Italian Proceedings. The continued prosecution of the Italian Proceedings is a continuation of that breach. I have been provided with no basis for concluding that granting a declaration that Dexia has an entitlement to damages would serve any useful purpose. The just course, Dexia having chosen not to make any damages claim, and any damages claim being by contract a claim it was bound to bring in this jurisdiction absent an agreed variation of Section 13(b) of the Master Agreement, is to leave the formal record as it stands and leave Dexia to take such advice as it may wish to take on how, if at all, it may wish to seek to pursue any entitlement to damages.

173. As regards contractual indemnity, Section 11 of the Master Agreement requires a "*Defaulting Party*", on demand, to "*indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees and Stamp Tax, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement*".

174. A 'Defaulting Party' is defined under Section 6(a) of the Master Agreement as a party with respect to which an "*Event of Default*" has occurred; and 'Events of Default', listed in Section 5(a), include breaches of the Master Agreement (Section 5(a)(i)) and the falsity of any of the representations given by Torino (Section 5(a)(iv)).

175. Dexia submitted that since Torino's contentions in the Italian Proceedings, if correct, would make a number of the representations it gave under the Master Agreement false, Dexia would be entitled to be indemnified by Torino on the basis of an Event of Default under Section 5(a)(iv) of the Master Agreement, "*in the alternative to [Dexia's] position that Torino's representations in the Master Agreement were true and it should be held to them*". It suggested that all expense incurred in enforcing and protecting its rights under the Master Agreement "*in respect of any representations that were relevantly false*" would be recoverable in principle under such an indemnity, and that I could say that all costs incurred in the Italian Proceedings or these English Proceedings would fall within the scope of that indemnity.

176. I do not consider that an indemnity in respect of expense incurred 'in respect of any representations that were relevantly false' has clear or meaningful content fit to be the subject of declaratory relief. Moreover, and more fundamentally, I accept Dexia's primary case that all Torino's representations in the Master Agreement were true, (a) by operation of contractual estoppel since the Master Agreement is a valid and enforceable contract, and (b) as a matter of fact (as regards at all events any of the representations I was asked to consider). The alternative possible indemnity claim is hypothetical and academic.

177. As regards Section 5(a)(i), however, the position is different and simple. The bringing of the Italian Proceedings was a breach of the Master Agreement; the continued prosecution of those proceedings is a continuation of that breach. It materially adds value, in circumstances where Torino has in correspondence rejected the notion that it now stands bound to indemnify Dexia on demand, to grant a final declaration confirming Dexia's contractual right under Section 11 of the Master Agreement in respect of the Section 5(a)(i) Event of Default.

## Conclusion

178. For the reasons given above, I am persuaded that it is correct, just and convenient to grant most, but not all, of the declaratory relief sought by Dexia in these English Proceedings. As regards the declaratory relief I shall grant, there are in certain cases small points on the wording, for example an ability to express the relevant proposition more accurately or more concisely than under Dexia's proposed wording. Those points are identified in the Appendix to this judgment, which, as I said at the outset (paragraph 13 above), sets out for each declaration pressed at trial, after taking account of the re-amendments for which

I gave permission, (i) the declaration sought, and (ii) the result, identifying in each instance whether I shall grant a declaration and, if so, whether in the precise terms sought or with some amendment to those terms.

# Dexia S.A. v Comune di Torino, [2026] EWHC 1401 (Comm)

## Appendix: Declaratory Relief Sought at Trial and Granted / Not Granted

| **Declaration Sought** | **Declaration Granted / Not Granted** |
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| The Claimant is entitled to damages in respect of all loss and damage incurred by the Claimant arising out of or as a result of the commencement of the Italian Proceedings, including but not limited to, legal fees incurred in respect of the Italian Proceedings and the present proceedings. | Not Granted.<br>The Claimant has final judgment declaring that the bringing of the Italian Proceedings was a breach by the Defendant of Section 13(b) of the parties' ISDA Master Agreement. The Claimant has made no damages claim and I was not persuaded that it was appropriate to grant declaratory relief about damages. |
| The Claimant is entitled to an indemnity, payable on demand, from the Defendant as the Defaulting Party pursuant to Section 11 of the ISDA Master Agreement and/or damages in respect of all loss or damage incurred by the Claimant arising out of, or in respect of breach of the Transaction Documents and in respect of all reasonable out of pocket expenses, including legal fees (including, but not limited to, costs incurred in the Italian Proceedings and the present proceedings) and Stamp Tax, incurred in the enforcement and protection of the Claimant's rights under the Transaction Documents, including but not limited to costs of collection. | As regards damages, Not Granted (see above).<br>As regards entitlement to an indemnity on demand, Granted in substance. That is a contractual entitlement, on the basis of the declared (and continuing) breach of Section 13(b) of the Master Agreement that it is appropriate to confirm by declaratory relief; but it is possible to be more concise.<br>Declaration accordingly that:<br>*The Claimant is entitled to an indemnity from the Defendant, payable on demand, in respect of all loss or damage, and in respect of all reasonable out of pocket expenses, incurred by the Claimant arising out of, or in respect of, the commencement or pursuit by the Defendant of the Italian Proceedings, including reasonable legal fees (including, but not limited to, reasonable costs incurred in the Italian Proceedings or the English Proceedings).* |

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| (i) The Claimant and the Defendant did not enter into any advisory agreement or relationship such as is alleged in the Italian Proceedings; and/or<br>(ii) The Claimant was not bound by any advisory or consulting obligation or duty with respect to the Transactions; and/or<br>(iii) The Claimant did not breach any duty arising out of such an advisory agreement or relationship (which did not exist); and/or<br>(iv) The Claimant is not liable to the Defendant (whether in or pursuant to contract, tort/delict, statute or otherwise) in respect of any loss or damage arising out of or in connection with any advisory agreement or relationship (which did not exist) or the Transactions which may have been suffered or incurred by the Defendant; and/or<br>(v) The damages claimed by the Defendant in the Italian Proceedings (i.e., the differentials paid by the Defendant to the Claimant in accordance with the 2006 Transactions' netting arrangements) do not constitute recoverable loss; and/or<br>(vi) In any event, the Defendant did not suffer any loss as a result of any breach (which did not take place) of such an advisory agreement or relationship (which did not exist) or the Transactions. | In substance, Granted.<br>In certain respects, the declarations proposed by the Claimant go too far (declaration (v)) or, as drafted, are inappropriately hypothetical (declarations (iii), (iv) and (vi)).<br>Declarations accordingly that:<br>*(i) The Claimant and the Defendant did not enter into any advisory agreement or relationship such as is alleged in the Italian Proceedings, or at all.*<br>*(ii) The Claimant did not owe the Defendant any advisory or consulting obligation or duty with respect to the Transactions.*<br>*(iii) The Claimant did not act or fail to act in any way that would have been in breach of an advisory or consulting agreement, relationship, obligation or duty.*<br>*(iv) The Claimant is not liable to the Defendant (whether in or pursuant to contract, tort/delict, statute or otherwise) in respect of any loss or damage arising out of or in connection with the Transactions which may have been suffered or incurred by the Defendant.*<br>*(v) The Defendant did not suffer any recoverable loss or damage arising out of or in connection with the Transactions.* |

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| The 2006 Transactions replaced the interest rate applicable to the 1998 and 1999 BOCs with a new predetermined rate until maturity and determined, with certainty, until 2030, the rate of interest payable by the Defendant in respect of the 1998 and 1999 BOCs. | In substance, Granted. The references to a 'predetermined' rate and to the rate being 'determined, with certainty' until 2030 are not apt, because under the 2006 Transactions the effective revised interest cost of the BOCs, as then extended to a 2030 maturity, that cost was still variable, but 'collared' (bounded by a cap and a floor) until 2009.<br>Declaration accordingly that:<br>*The 2006 Transactions replaced the interest rate applicable to the 1998 and 1999 BOCs with a new rate until their revised maturity in 2030 and determined, within a fixed range until 2009 and with certainty thereafter until 2030, the rate of interest payable by the Defendant in respect of the 1998 and 1999 BOCs.* |
| The Transactions were entered into by the Defendant for the purposes of managing its borrowings (by substituting the interest rate profile of the 1998 and 1999 BOCs with new certain and predetermined interest rates) and not for the purpose of speculation (on future cash flows in the absence of an underlying indebtedness). | In substance, Granted. Again, though, the reference to 'certain and predetermined' interest rates is not apt.<br>Declaration accordingly that:<br>*The Transactions were entered into by the Defendant for the purposes of managing its borrowings (by substituting the interest rate profile of the 1998 and 1999 BOCs with new interest rates calculated in a predetermined manner agreed under the Transactions) and not for the purpose of speculation (on future cash flows in the absence of an underlying indebtedness).* |

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| The Defendant<br>(i) has and at all material times had the power (a) to execute the Transaction Documents and any other documentation relating to the Transaction Documents to which it is a party, (b) to deliver the Transaction Documents and any other documentation relating to the Transaction Documents that it was required by the ISDA Master Agreement to deliver, and (c) to perform its obligations under the Transaction Documents;<br>(ii) has taken all necessary action and made all necessary determinations and findings to authorise such execution, delivery and performance as referred to in sub-paragraph (i)(a) above; | Granted, save only that in paragraph (ii), "took" is more apt than "has taken".<br>Declaration accordingly that:<br>*The Defendant*<br>*(i) has and at all material times had the power (a) to execute the Transaction Documents and any other documentation relating to the Transaction Documents to which it is a party, (b) to deliver the Transaction Documents and any other documentation relating to the Transaction Documents that it was required by the ISDA Master Agreement to deliver, and (c) to perform its obligations under the Transaction Documents;*<br>*(ii) took all necessary action and made all necessary determinations and findings to authorise such execution, delivery and performance as referred to in sub-paragraph (i)(a) above.* |
| The execution and delivery of, and the performance of its obligations under, the Transaction Documents and any other documentation relating to the Transaction Documents by the Defendant does not, and did not at any material time, violate or conflict with any law applicable to the Defendant, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets. | Granted.<br>Declaration accordingly that:<br>*The execution and delivery of, and the performance of its obligations under, the Transaction Documents and any other documentation relating to the Transaction Documents, by the Defendant, does not, and did not at any material time, violate or conflict with any law applicable to the Defendant, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets.* |

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| All governmental and other consents that were or are required to have been obtained by the Defendant with respect to the Transaction Documents have been obtained and were at all material times, or are, in full force and effect, and all conditions of any such consents have been, or are being, complied with, and the Defendant is obliged to use all reasonable efforts to maintain in full force and effect all such consents. | Granted, save only that, in context, "were obtained" is more apt than "have been obtained".<br>Declaration accordingly that:<br>*All governmental and other consents that were or are required to have been obtained by the Defendant with respect to the Transaction Documents were obtained and were at all material times, or are, in full force and effect, and all conditions of any such consents have been, or are being, complied with, and the Defendant is obliged to use all reasonable efforts to maintain in full force and effect all such consents.* |
| The Defendant's obligations under the Transaction Documents constitute, and at all material times constituted, its legal, valid and binding obligations enforceable in accordance with their respective terms. | Granted.<br>Declaration accordingly that:<br>*The Defendant's obligations under the Transaction Documents constitute, and at all material times constituted, its legal, valid and binding obligations enforceable in accordance with their respective terms.* |
| All applicable information that was furnished in writing by or on behalf of the Defendant to the Claimant and was identified for the purpose of Section 3(d) of the ISDA Master Agreement in Part 3(b) of the Schedule was, as of the date of the information, true, accurate, and complete in every material respect. | Granted.<br>Declaration accordingly that:<br>*All applicable information that was furnished in writing by or on behalf of the Defendant to the Claimant and was identified for the purpose of Section 3(d) of the ISDA Master Agreement in Part 3(b) of the Schedule was, as of the date of the information, true, accurate, and complete in every material respect.* |

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| In entering into the Transaction Documents and the Transactions, and on each date that a Transaction was amended, extended, or otherwise modified, the Defendant:<br>(a) was acting for its own account and made its own independent decisions to enter into each of them and as to whether the Transaction Documents and the Transactions were appropriate or proper for the Defendant based upon its own judgment and upon advice from such advisors as it had deemed necessary; and/or<br>(b) did not rely on any communication (written or oral) of the Claimant as investment advice or as a recommendation to enter into the Transaction Documents and the Transactions, it being understood that (i) information and explanations related to the terms and conditions of the Transaction Documents and the Transactions would not be considered to be investment advice or a recommendation to enter into the Transaction Documents and the Transactions, and (ii) no communication (written or oral) received from the Claimant would be deemed to be an assurance or guarantee as to the expected results of the Transactions. | Granted.<br>Declaration accordingly that:<br>*In entering into the Transaction Documents and the Transactions, and on each date that a Transaction was amended, extended, or otherwise modified, the Defendant:*<br>*(a) was acting for its own account and made its own independent decisions to enter into each of them and as to whether the Transaction Documents and the Transactions were appropriate or proper for the Defendant based upon its own judgment and upon advice from such advisors as it had deemed necessary;*<br>*(b) did not rely on any communication (written or oral) of the Claimant as investment advice or as a recommendation to enter into the Transaction Documents and the Transactions, it being understood that (i) information and explanations related to the terms and conditions of the Transaction Documents and the Transactions would not be considered to be investment advice or a recommendation to enter into the Transaction Documents and the Transactions, and (ii) no communication (written or oral) received from the Claimant would be deemed to be an assurance or guarantee as to the expected results of the Transactions.* |

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| The Transaction Documents constitute the entire agreement and understanding of the parties with respect to their subject matter and supersede all oral communication and prior writings with respect thereto. | Granted.<br>Declaration accordingly that:<br>*The Transaction Documents constitute the entire agreement and understanding of the parties with respect to their subject matter and supersede all oral communication and prior writings with respect thereto.* |
| When entering into the Transactions, the Defendant (a) was capable of assessing the merits of and evaluating and understanding (on its own behalf or through independent professional advice), and understood, assessed, and accepted, the terms, conditions, and risks of the Transactions; and/or (b) was capable of assuming, and assumed, the financial and other risks of the Transactions. | Granted.<br>Declaration accordingly that:<br>*When entering into the Transactions, the Defendant (a) was capable of assessing the merits of and evaluating and understanding (on its own behalf or through independent professional advice), and understood, assessed, and accepted, the terms, conditions, and risks of the Transactions; (b) was capable of assuming, and assumed, the financial and other risks of the Transactions.* |
| The Claimant did not act as a fiduciary for, or an advisor to, the Defendant in respect of any of the Transactions. | Granted.<br>Declaration accordingly that:<br>*The Claimant did not act as a fiduciary for, or an advisor to, the Defendant in respect of any of the Transactions.* |

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| Prior to entering into the 2006 Transactions:<br>(a) the Defendant received from the Claimant the Document on General Risks involved in Investments in Financial Instruments ("*Documento sui Rischi Generali degli Investimenti in Strumenti Finanziari*") as established by CONSOB Regulation n. 11522, attachment no.3 (CONSOB Regulation n.11522 dated 1 July 1998) and/or<br>(b) the Claimant requested, and the Defendant provided, information regarding its experience in the investment in financial instruments, its financial data, its investment objectives, and its risk propensity. | Granted.<br>Declaration accordingly that:<br>*Prior to entering into the 2006 Transactions:*<br>*(a) the Defendant received from the Claimant the Document on General Risks involved in Investments in Financial Instruments ("Documento sui Rischi Generali degli Investimenti in Strumenti Finanziari") as established by CONSOB Regulation n. 11522, attachment no.3 (CONSOB Regulation n.11522 dated 1 July 1998);*<br>*(b) the Claimant requested, and the Defendant provided, information regarding its experience in the investment in financial instruments, its financial data, its investment objectives, and its risk propensity.* |
| The 2006 Transactions were entered into in conformity with Ministerial Decree no. 389 of 1 December 2003 issued by the Treasury Department of the Italian Ministry of Economy and Finance and the Italian Ministry of Interior and published in the Official Gazette no.28 of 4 February 2004 (Decree 389) and the Explanatory Circular dated 27 May 2004 (the 2004 MEF Circular) and, in compliance with Article 3, paragraph 4, of Decree 389, the Defendant gradually tended towards ensuring that the overall nominal amount of the 2006 Transactions would not exceed 25% of the totality of the derivative transactions entered into by the Defendant. | Granted.<br>Declaration accordingly that:<br>*The 2006 Transactions were entered into in conformity with Ministerial Decree no. 389 of 1 December 2003 issued by the Treasury Department of the Italian Ministry of Economy and Finance and the Italian Ministry of Interior and published in the Official Gazette no.28 of 4 February 2004 (Decree 389) and the Explanatory Circular dated 27 May 2004 (the 2004 MEF Circular) and, in compliance with Article 3, paragraph 4, of Decree 389, the Defendant gradually tended towards ensuring that the overall nominal amount of the 2006 Transactions would not exceed 25% of the totality of the derivative transactions entered into by the Defendant.* |

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| The 2006 Transactions were carried out in respect of underlying debts that were actually due and owing by the Defendant and the Defendant undertook to maintain for the entire duration of the Transactions underlying debts having a high correlation with the Transactions, in particular as regards their duration and interest rate. | Granted.<br>Declaration accordingly that:<br>*The 2006 Transactions were carried out in respect of underlying debts that were actually due and owing by the Defendant and the Defendant undertook to maintain for the entire duration of the Transactions underlying debts having a high correlation with the Transactions, in particular as regards their duration and interest rate.* |
| Prior to and when entering into the Transactions, the Defendant had a specific expertise and experience in transactions having as an object financial investment and thereby it is and was at all material times a professional investor (*operatore qualificato*) pursuant to Article 31 of Regulation no. 11522 of 1 July 1998 issued by CONSOB. | Granted.<br>Declaration accordingly that:<br>*Prior to and when entering into the Transactions, the Defendant had a specific expertise and experience in transactions having as an object financial investment and thereby it is and was at all material times a professional investor (operatore qualificato) pursuant to Article 31 of Regulation no. 11522 of 1 July 1998 issued by CONSOB.* |

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| The Transactions were entered into in conformity with all relevant Italian laws and regulations (as in force at the time the Transactions were entered into) to the extent that they are applicable to the Transactions, including but not limited to:<br>(a) Article 119 of the Italian Constitution;<br>(b) Article 41 [i.e. Article 41 of Law No 448 of 2001];<br>(c) Decree 389 and the 2004 MEF Circular;<br>(d) Article 30(15) of Law No. 289/2002;<br>(e) Articles 21 and 23 of Legislative Decree No.58/1998 (*Testo Unico della Finanza*);<br>(f) Article 26 of the Consob Regulation No. 11522/1998;<br>(g) Articles 1322, 1325, 1346, 1703, 1710, and 1711 of the Italian Civil Code; and<br>(h) Article 42 of Legislative Decree No. 267/2000. | Granted, in substance. In closing argument, Mr Lodder withdrew the request for reference to "all relevant Italian laws and regulations …", in line with concern that has been expressed in earlier Italian swaps cases in this jurisdiction about being so all-embracing after an examination, necessarily in practice, only of the particular Italian laws seemingly relied on by the Italian municipal authority that has in some form or other sought to challenge its obligations.<br>Declaration accordingly that:<br>*The Transactions were entered into in conformity with each of the following Italian laws and regulations, to the extent applicable to the Transactions or any of them, namely:*<br>*(a) Article 119 of the Italian Constitution;*<br>*(b) Article 41of Law No 448 of 2001;*<br>*(c) Decree 389 and the 2004 MEF Circular;*<br>*(d) Article 30(15) of Law No. 289/2002;*<br>*(e) Articles 21 and 23 of Legislative Decree No.58/1998 (Testo Unico della Finanza);*<br>*(f) Article 26 of Consob Regulation No. 11522/1998;*<br>*(g) Articles 1322, 1325, 1346, 1703, 1710, and 1711 of the Italian Civil Code; and*<br>*(h) Article 42 of Legislative Decree No. 267/2000.* |