LEGAL TOOLS SUPPORTING THE HOUSEHOLD DEBT FINANCING IN HUNGARY

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The spread of foreign currency based loans in Hungary

In the years between 2000 and 2008 the banking sector grew impressively in Hungary, aided by the government's generous housing loan interest rate subsidy scheme and the accommodative stance of regulators towards the dynamic spread of increasingly risky foreign currency based loans (hereafter: FX loans). In 2009 the depreciation of the domestic currency caused banks' credit portfolios to deteriorate at an alarming pace, prompting regulators to put an end to foreign currency lending and reverse the trend of dynamic but risky profit growth. Since the crisis, both retail and corporate loan volumes have been on the decline, led by the sharp drop in foreign exchange based financing, while bank profits suffered as a result of several government measures aimed to improve the financial position of household borrowers.

A study published by experts of National Bank of Poland in 2007 analyzed the monetary policy's effect on foreign currency based loans in Central Europe. Estimates based on a panel of quarterly data for the period 1997–2007 show that indeed domestic and foreign currency loans are close substitutes in the analysed countries: the Czech Republic, Poland and Hungary. Although, as expected, a rise in domestic interest rates affects , domestic currency lending negatively, it concurrently encourages credit expansion in foreign currency. Hence, consumers, facing higher borrowing costs in domestic currency simply turn to foreign credit. Simulations show that newly created foreign currency loans substitute a non-negligible part of the value of lost domestic currency loans after a monetary policy tightening. Nevertheless, there are substantial differences between the countries, as the ratio of newly created foreign to lost domestic currency loans amounts to 5–6% in the Czech Republic, 15–19% in Poland and 31–39% in Hungary in 2007.[1]

The stock of housing loans up to the year of 2011 can be seen on Figure 1, verifying the upper mentioned study's promise of the rising of foreign currency loans even after 2007. The number of these contracts reached its highest point in 2010, meaning about 2.7 million.

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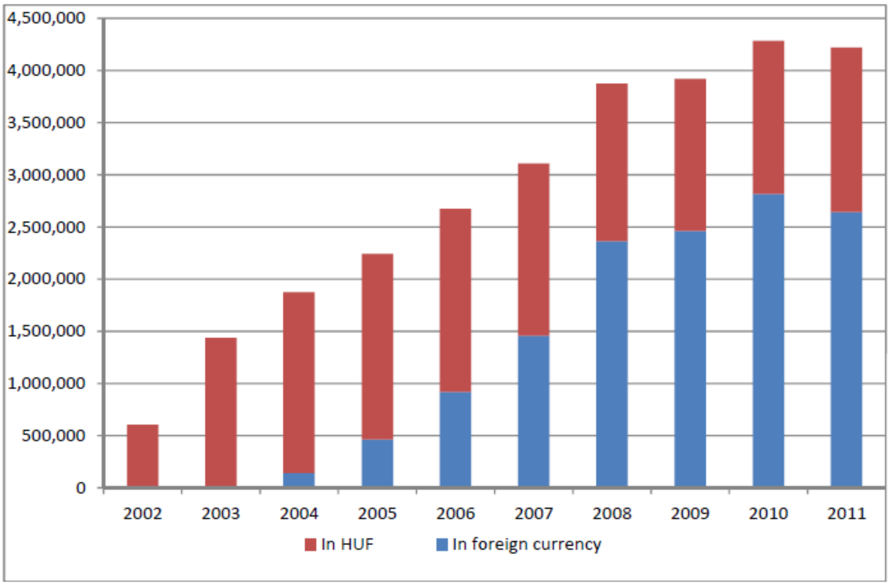
[1] Brzoza-Brzezina, Michal – Tomasz Chmielewski – Joanna Niedzwiedzinska (2007) Substitution between domestic and foreign currency loans in Central Europe. Do central banks matter? MPRA Paper No. 6879. Online available: http://mpra.ub.uni-muenchen.de/6879/

Figure 1. Stock of housing loans in Hungary. Source: Szikszai et al 2012.[2]



In an empirical study published in November 2009 by authors Pellényi and Bilek we can see that – Hungarian FX borrowers are not more financially literate, wealthy or risk-loving than their peers. Instead of borrower heterogeneity different forces may be at work: persistent interest rate differentials between local currency and FX loans, and the underestimation of currency risk due to backward-looking expectations.[3]

The attractiveness of FX loans may be attributed to two macroeconomic factors. First, interest rates on FX loans were considerably lower, even though disinflation lowered domestic interest rates. This gap was basically the consequence of a global liquidity glut on the one hand, and the significant Hungarian risk premium due to loose fiscal policy on the other hand. Second, the exchange rate was fairly stable against the euro (with some swings around the 250 value) and was gradually strengthening against the Swiss franc. This strengthening was due to the Swiss franc being a vehicle currency of carry trade and the forint being a main target for carry trade investors. In addition, economic theory predicts that long term real convergence results in real appreciation. Finally, Central and Eastern European currencies tended to overshoot in their depreciation following transition. The return to equilibrium levels coincided with the onset of financial deepening, creating a favorable environment for FX borrowing.[4]

[2] Szikszai, Szabolcs et al (2012): Financialization, Economy, Society and Sustainable Development – Studies in Financial Systems No. 8. Hungary. ISSN: 2052-8027. Online available: fessud.eu/wp-content/uploads/2012/08/Hungary-studies1.pdf

[3] Pellényi, Gábor – Bliek Péter (2013) Foreign Currency Borrowing: The Case of Hungary. In: Financial Systems, Efficiency and Stimulation of Sustainable Growth Working Paper FINESS.D.5.4. p. 14.

[4] Pellényi, Gábor – Bliek Péter (2013) Foreign Currency Borrowing: The Case of Hungary. In: Financial Systems, Efficiency and Stimulation of Sustainable Growth Working Paper FINESS.D.5.4. p. 6.

In the economic literature there is no common opinion on the real driving factor of the spread of FX loans. While Király et al.[5] points out that in the case of Hungary the combination of foreign-bank ownership and intense inter-bank competition was a key determinant of FX lending, results from a 20 country database analysis contradict the view that foreign-owned banks have been driving FX lending to unsuspecting retail clients throughout Eastern Europe as a result of easier access to cross-border wholesale funding. The cross-sectional results suggest that while foreign banks do lend more in FX to corporate clients, they do not do so to retail clients, and while foreign acquisition of a bank does lead to faster growth in FX lending to households, this is driven by faster growth in household lending per se, and not be a redirecting of household credit from domestic to foreign currency.[6]

In the Hungarian FX mortgage loan market the typical type of contract was the foreign exchange-based loan, which means that the obligation is recorded in FX, the installment is defined in FX but the loan is granted in HUF and the installment also has to be paid in HUF, depending on the exchange rate on the day it should be performed, and it was calculated on FX sell prize of the financial institution.

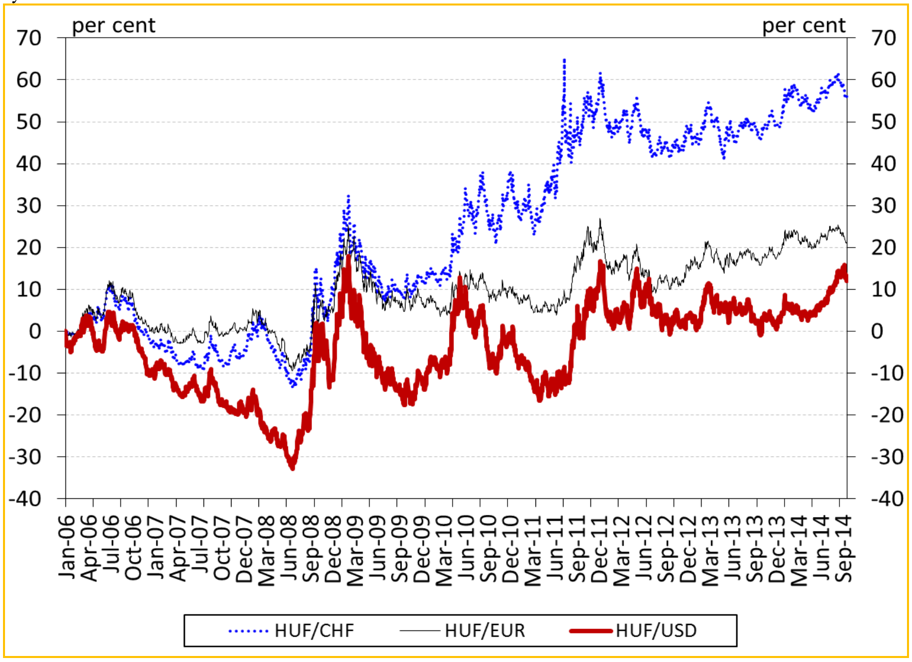
The effect of the crisis on exchange rates and installment

The financial crisis, however, fundamentally changed the situation in Hungary. As it can be seen in Figure 2., the exchange rates of both the EURO and Swiss Franc, which had been the most common basis of FX mortgage loans have sharply emerged, which meant a dramatic change in installments. As the concrete amount of monthly installments depends on the exchange rate, most households were facing the fact that installment aroused sharply, in many cases they even doubled in comparison with the time the contract was signed.

[5] Király, Júlia – Judit Antal – Márton Nagy – Viktor Szabó (2009): Retail credit expansion and external finance in Hungary: lessons from the recent past (1998–2007)', BIS Papers No. 4, Bank for International Settlements, Basel.

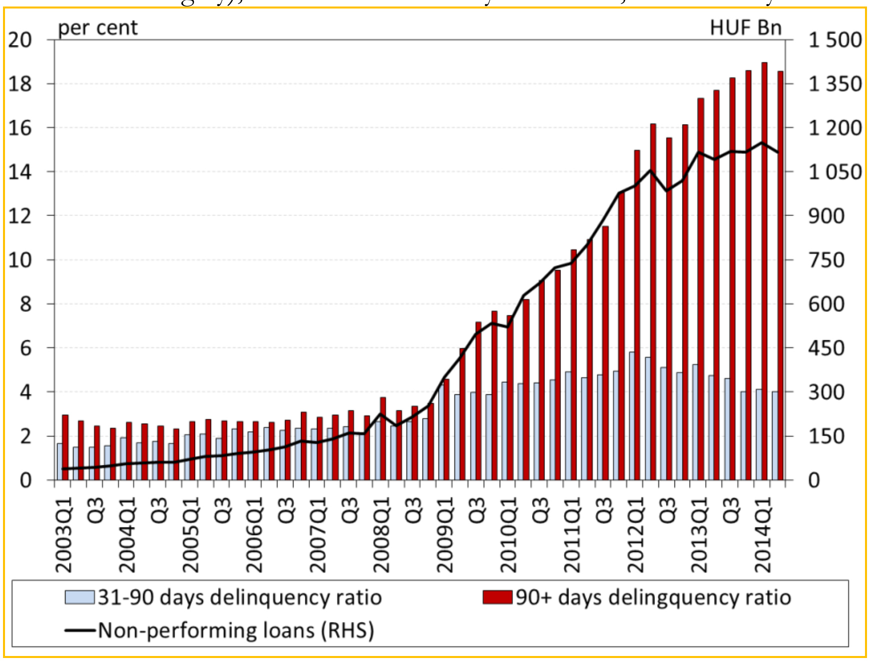
[6] Brown, Martin – Ralph De Haas (2012): Foreign Banks in Emerging Europe. Economic Policy, 2012/1. p. 85.

Figure 2. HUF/EUR, HUF/USD and HUF/CHF exchange rates compared to 2 January 2006. Source: Reuter



Not surprisingly, this caused an emergence of non-performing loans in the financial sector.

Figure 3. Share of non-performing household loans of the banking sector. Source: MNB (National Bank of Hungary), Note: Before 2010 by costumers, thereafter by contracts.



Governmental actions on restructuring foreign exchange based loans in the household sector

Final pay-off on preferential rates

The first tool to support household borrowers was the chance to pay-off the complete debt on fixed and – according to the spot rates – preferential exchange rates. By passing Act CXXI of 2011 on 26th September 2011, the Parliament enabled foreign exchange and foreign exchange based mortgage debtors to repay the full amount of their debt at a preferential, fixed exchange rate (180 HUF/CHF, 250 HUF/EUR and 2 HUF/JPY). Final repayment requests for those fulfilled the criteria could have been submitted between 30 September and 30 December 2011, and the full amount should have been repaid within 60 days after requesting submission, however, the availability of funding had to be proved by 31 January 2012. The closing of final repayment and final settlements took place until the end of February 2012.

As another step, amended on 28th June 2011, was Act LXXV of 2011 on fixing the exchange rate of FX loans and on the order of forced foreclosure of properties, financial institutions had to convert FX-mortgage loans past due for more than 90 days on 30 September 2011 into loans denominated in HUF at the average of the mid rates published by the MNB of the respective currencies provided that the value of the property did not exceed HUF 20 million at the moment of the conclusion of the contract. After the conversion creditors cancelled 25% of the debt. The conversion period closed on 31st August 2012.[7]

According to the official communication of Supervisory Authority of Financial Institutions (formal supervisory authority, now the MNB is responsible for supervision), 169.256 FX loan contracts have been paid off in the value of 1354,4 billion HUF, which meant a 23,3% decline in FX-based loans. The direct loss of the banking sector was 370,2 billion HUF, coming from the loss on the preferential exchange rates, but 30% of this loss could have been comprised in the tax.[8]

As from the financial institutions' point of view, besides the exchange rate losses, the upper program adversely impacted the quality of banks' loan portfolios, as it was mostly their wealthiest, most creditworthy clients who were able to repay the total debt. As a result, banks lost a great share of their lowest-risk clients, while retaining those who were barely able or unable to meet their monthly instalment obligations. From the point of view of the Hungarian National Bank (MNB), the program posed a significant threat to exchange rate stability. By nominally fixing the preferential conversion rates, the parliamentary ratification of the scheme, in a single legal act, changed the denomination of a significant portion of the banking system's assets from foreign currencies to the Hungarian forint, while leaving the denomination of the liabilities intact. As a result, the foreign currency position of credit institutions opened up well before the actual launch of the early repayment scheme, creating unintentional

[7] OECD: OECD Economic Surveys: Hungary. OECD 2012. p. 64.

[8] Pénzügyi Szervezetek Állami Felügyelete (2012): Gyorselemzés a végtörlesztésről. Online available: http://www.mnb.hu/letoltes/gyorselemzes-vegtorlesztes-120312j.pdf (08.09.2015)

exchange rate exposure for them. Banks thus needed to buy foreign currency – and sell forint – to eliminate their exposure.[9]

Home Protection Action Plan

The Home Protection Action Plan (HPAP) was announced by the Government on 30th May 2011, the Country Protection Action Plan was introduced in September 2011, allowing early repayment of FX loans at favorable exchange rates. Finally, in December 2011, the Government and the Banking Association agreed to introduce several changes to the earlier measures that ensured a fair burden sharing between banks and the state budget.

The Home Protection Action Plan introduced the elimination of the foreclosure and the eviction moratorium. The foreclosure moratorium was abolished for real estate properties valued above HUF 30 million (approximately EUR 100 000) and with an outstanding credit volume of more than HUF 20 million (approximately EUR 60 000) on 1st July 2011. In the case of loans and real estate properties of lower values, the moratorium was abolished on 1st October 2011. For these lower value real estate properties a foreclosure quota will be introduced amounting quarterly to 2% in 2011, 3% in 2012, 4% in 2013 and 5% in 2014, of the loans with instalments more than 90 days overdue. The abolition of the eviction moratorium took place as of 1st July 2011, nevertheless, it has had limited impact since then. First, because of low market activity in the property markets; second, for social reasons as another seasonal moratorium has been implemented according to which eviction in the winter months is prohibited.[10]

The main point of the Plan involves a temporary fixed exchange rate (around 20% below the HUF/CHF rate at the time of the announcement) applicable to the instalments of performing mortgage loan debtors. Only borrowers with no 90 days overdue instalments have the right to participate. The difference between the fixed exchange rate payment and the actual exchange rate is accumulated on the separate forint account bearing the three month BUBOR (Budapest Interbank Offered Rate) interest rate and banks are not allowed to charge any additional fees. After the expiration of the fixed exchange rate period at the end of 2014, borrowers had to repay the difference, meaning an increase in monthly instalments. The government provided a guarantee on 100% of the outstanding volume of the bridge loans during the fixation period until 31st December 2014, and 25% of the volume afterí the fixation period is over. For the guarantee banks pay a fee of 1.5% during the fixation period. The HPAP contains an extension of the exchange rate fixing program, available for duly performing FX mortgage debtors and those who are delinquent with a delay of less than 90 days.

Accordingly, exchange rates of instalments for participants in the program would be fixed until the end of end 2016 at HUF/CHF 180, HUF/EUR 250 and HUF/JPY 2.5 exchange rates; borrowers could apply for participation in the program until the end of end 2012. The difference between fixed and actual rates are shared by the borrower, the

[9] Balogh, Csaba – Áron Gereben – Ferenc Karvalits – György Pulai (2013): Foreign currency tenders in Hungary: a tailor-made instrument for a unique challenge. BIS Papers No.73. Bank for International Settlements, Basel. p. 159.

[10] OECD: OECD Economic Surveys: Hungary. OECD, 2012. p. 64.

state and the bank in a way that the principal part of the monthly instalment due burdens the borrower, whereas the interest rate portion of the instalment is paid by the state and the bank in a 50-50% proportion.

The Hungarian National Asset Management Inc. (HNAM) played and still plays a leading role in the HPAP system. The work of the Hungarian National Asset Management Inc., as a primary asset manager, allows a uniform framework for records on assets to be developed and also a professional, economic-efficiency-focused property management to be performed.

As the element of the HPAP, the National Asset Management company buys the houses of the borrowers, in which they can further stay as tenants, and the bank releases the loan of the borrower. There are strict rules for joining the program both for the property and for the borrower.

As for the property to be bought by the state:

- the value of the real estate may not reach 20 million HUF (about 60 000 EUR) by the time of the loan contract
- the amount of the loan had to be 25-80% of the market prize of the property
- the loan contract had to be made before 30th December 2009, and on 1st January 2013 the loan had to be non-performing for more than 180 days
- the property is registered as "house", "flat" or "farmstead"
- the cover of the FX loan is the solely the property to be bought

As for the borrower:

- he/she is indigent (social requirements, like nursing a family member, or being retired or having at least one children) and
- has only one immoveable estate, the object of the mortgage.

According to the data of the company published in August 2014, since its working period until August 2014, the HNAM has bought more than 22.000 real estates from indigent borrowers securing the living for more than 102.000 people effected by the financial crisis.

Restrictions on financial contracting

Act CXII of 1996 on the functioning of financial institutions, being in force at the time of the credit boom and still applicable at the beginning of the global financial crisis in 2008, specified in Article 210 (3)that interest rates, charges and other contract conditions may be unilaterally amended under the "conditions and circumstances established by the financial institutions" if the contract makes this explicitly possible in a separate clause. This provision was in effect until 8th August 2009. The situation only partially changed in 2009 with the adoption of the Code of Conduct that contains an exhaustive list of situations where credit institutions may unilaterally change repayment conditions. This is a soft law instrument (although, in case of noncompliance by the signatory banks the HFSA can impose sanctions) and only applies to agreements concluded after its entry into force. The Code of Conduct mentions three main groups of events and circumstances which justify unilateral amendment of the loan agreement by the creditor: a) changes in laws and regulations directly affecting contracts on financial services and those on the activity of the financial institutions; b) changes in the financial market, and c) changes in macro-economic environment and customers' risk rating.

The new rules introduced by Act LXXXVI of 2009 (in force as of January 1st, 2010) narrowed the far-reaching liberalism which existed before by limiting the possibility of unilateral amendment of loan agreements and financial leasing agreements to the interest rate, charges and costs. Amendment of other contract conditions, including the conditions on unilateral contract amendment is no longer allowed to the detriment of the debtor. However, creditors can only exercise their right to unilaterally amend the contract when the contract explicitly contains the objective circumstances of such amendment and subject that the creditor had previously established his pricing policy in written. However, the law does not detail what is meant by written form. Conditions of unilateral amendment of the interest rate were further detailed by Government Ordinance No. 275/2010. According to this, unfavourable changes in costs of the creditor connected to its financing sources may also justify unilateral amendment of the contract. Increase in the costs of the financing sources may mean an increase in the base interest rate of the National Bank of Hungary, in the inter-bank money market interest rates' loan rate, shift of the yield curve of the bonds issued by the Hungarian State or the creditor and the swap yield curve relative to each other and the provable increase of the costs of loan agreements concluded by the financial institution for re-financing the loan agreement.[11]

In early July 2014, the Hungarian Parliament adopted a new law on FX mortgage agreements (Act XXXVIII of 2014). The antecedent of this Act was Supreme Court decision 2/2014, Civil Law Decisions, which is examined later in this study. This law, among other things, enacted a statutory presumption that all provisions entitling banks to unilaterally modify costs in consumer mortgage agreements are unfair. This statutory presumption was extended to all general terms and conditions (GTC) used by banks between 2004 and 2014. Banks were given the option, if they wanted to protect the validity of their current or previous general terms and conditions, to file a legal action against the state. In this newly established court procedure banks bear the burden of proof that their GTC provisions are not unfair. Approximately 60 financial institutions filed such legal actions against the state. Ordinary courts are currently delivering the final judgements and banks are losing in these procedures.

A final step in leading out FX mortgages is the so called "forinting" of these agreements – an option to change the currency of debt according to Act LXXVII of 2014. The main object of the regulation is to turn back household borrowers to HUF currency based loans, and with applying the preferential rates guaranteed by the Act, stop the growth of FX denominated loans. The next Table summarizes the regulated fields of the Act LXXVII of 2014.

Table 1: Main points of Act LXXVII of 2014 – leading out household FX loans

Scope	Consumer loan agreements made after 1st May 2004 and still in effect on 1st February 2015, including loan or lease contracts. Not in scope: credit card contracts, loans connected to bank accounts and state-supported house-loans

[11] Domurath, Irina – Comparato, Guido – Micklitz, Hans-W. (eds) (2014) The Over-Indebtedness of European Consumers – A View from Six Countries. EUI working paper law 2014/10. p. 169-170.

Enforcement	After 1st February, banks should modify their contracts according to the Act, and after 1st January 2015, FX-based installments should be calculated and payed on the official exchange rate of the Hungarian National Bank on 7th November 2014
Preferential exchange rates	256,5 HUF/CHF, 309 HUF/EUR and 2,16 HUF/JPY (MNB official exchange rates on 7th November, 2014)
Modifying the financial contract	3.§ (1) "The consumer loan contracts are modifying according to this Act" (2) "The financial institute should prepare the modified consumer loan contract and the connected security contract"
Turning the contract into HUF-based loans	According to 15 §, financial institutes shall exchange the amount of FX-based debt to HUF-based debt on 1st February 2015 on the upper mentioned exchange rates and shall inform borrowers on the fact of changing as well as on the amount concretely saved by the regulation of the Act and regulation of the Act of Clearing XL of 2014.
Opportunity to opt-out	12§ of the Act names the opportunity for the consumer to initiate the avoidance of changing in the FX contract *only IF* the consumer proves that he/she has incomes in the foreign currency of the FX loan 15 times more than the official minimum wage of Hungary, and the loans duration ends before 31st December 2020, and declaring to understand that the preferential rules will not be applicable any more for the contract.

As according to 21 § of the Act, preferential exchange rates came into effect on 1st January 2015 and households felt its positive effects almost immediately. On 15th January 2015, Switzerland's central bank declared discontinuing its currency "ceiling" of CHF 1.2 per EUR, introduced in the middle of the eurozone crisis and has significantly lowered interest rates, reducing the deposit rate to -0.75 per cent. Figure 4 shows the average exchange rates of CHF/HUF between 2007 and 2014. As a comparison, Figure 5 shows the exchange rates in January 2015.

Figure 4. Source: MNB

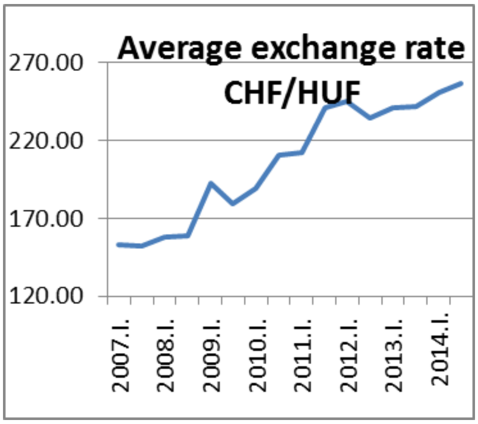
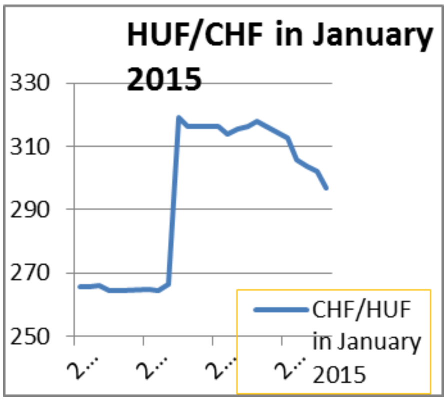


Figure 5. Exchange rates of HUF/CHF in January, 2015. Source: MNB



Experts at the MNB calculated that with the gate of exchange rates enforced by the Act LXXVII of 2014, Hungarian households saved 700 billion HUF of loan-growth just because of 15th January's event, which saving is equal to 2% of the Hungarian GDP.[12]

Significant change in jurisdiction on the subject of FX loans

A definitely new era has come in the Hungarian jurisdiction after judgement C-26/13 of the European Court of Justice. On 16th December 2013, the Hungarian Supreme Court made a decision of legal unity on FX loans declaring that FX loan agreements are not unfair on the basis that they locate the risk of exchange-rates' change merely on consumers/borrowers. These contracts are not barge into morality, are not usurer, are not tending to impossible service and are not pretended ones. The fact that the balance of services has changed (even dramatically, but not foreseeable) during the run, cannot be taken as a purpose of invalidity, as the cause of invalidity must occur in the time of contracting. Although, the decision of the Supreme Court declares that financial institutions should argumentatively prove that they informed borrowers about risks and the possibility of change in the exchange rates and its effects on installments.

After three years of court battles and under the pressure of more than ten thousand individual claims, the Hungarian Supreme Court issued a general statement in June (2/2014 Civil Law Cases) which admits that FX mortgage agreements are affected by a number of irregularities. Many of these irregularities would make FX mortgages void. The Supreme Court, however, is reluctant to apply this legal consequence, it claims that it would not be fair to consumers if courts would declare the FX mortgage agreements void because consumers would be obliged to repay the mortgage at once and this would exceed their financial capabilities. Judges of the Supreme Court openly called on the parliament to adopt a new law in order to restore the validity of FX mortgage agreements and stop consumers filing new claims against banks. Judges say that the high number of consumer claims is obstructing the work of the judiciary.

The Supreme Court also made decisions on the question of currency spread. In addition to the usual costs of a loan, foreign currency mortgage loans also involve costs of currency conversion. Costs relating to the currency conversion arise due to the difference between the bid and ask price for the foreign currency, known as exchange rate spread. The exchange rate spread is incurred in monthly repayment rates and is set according to the bank's own exchange rates ranging between 1% and 5% of the monthly instalments, or several thousand euros per loan agreement in actual terms. According to the EU Consumer Credit Directive as adopted into Hungarian law, loan contracts with consumers must state all costs of loan. Legal consequence if costs are not disclosed is, under Hungarian law, that such contracts are invalid. Between 2000 and 2010, most Hungarian banks failed to state the costs incurred by the exchange rate spread in foreign currency loan contracts.

Connecting to the legislative procedure against financial institutions, the Hungarian Constitutional Court made its position clear in 2014 declaring the following " (…) the

[12] MNB press release. See: http://www.mnb.hu/sajtoszoba/sajtokozlemenyek/2015-evi-sajtokozlemenyek/a-lakossagi-deviza-alapu-jelzaloghitelesek-torlesztoreszlete-mar-nem-emelkedhet (08.09.2015)

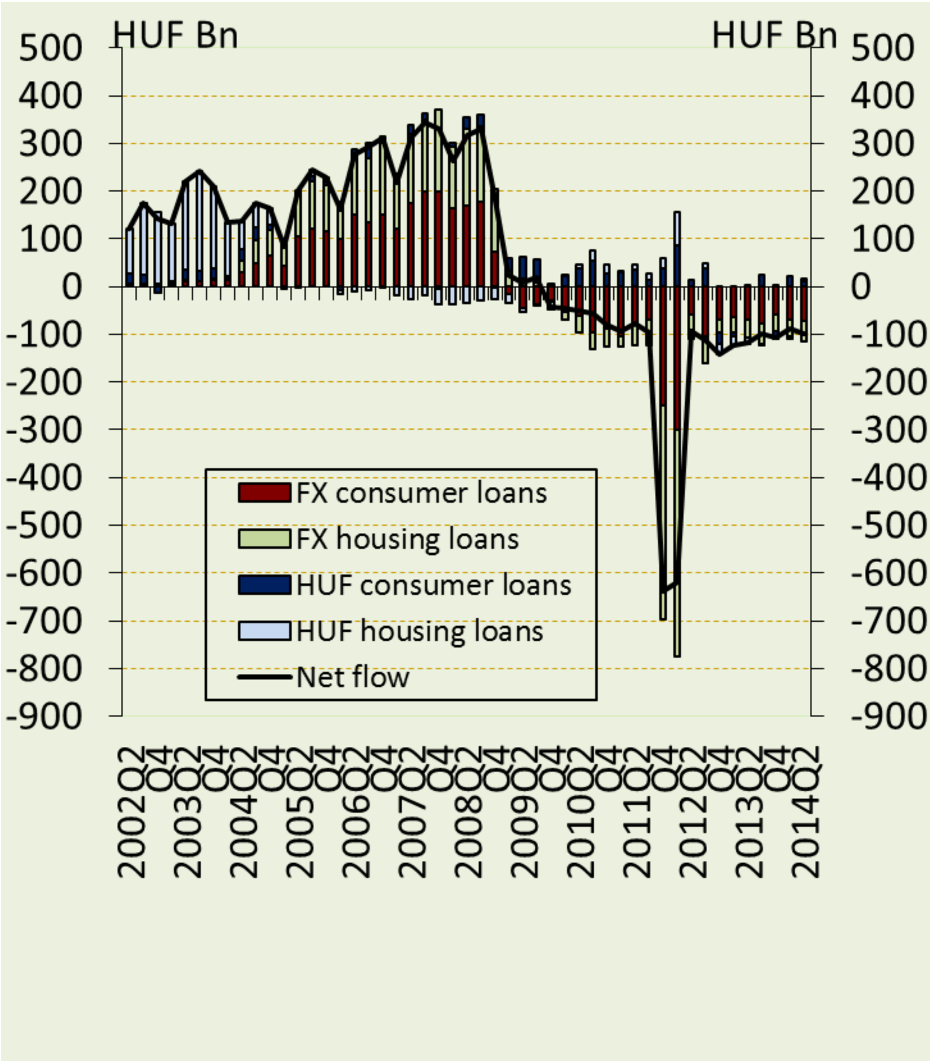
legislature – as well as the court – is entitled to amend existing long-term [private law] agreements if the agreement becomes inapplicable because of a fundamental change in circumstances has occurred after the conclusion of the agreement and adhering to the agreement would violate the substantial legal interest of any party, moreover, if the change in circumstances was not reasonably foreseeable and it goes beyond the ordinary risk of such change. An additional condition for intervention by an act of legislation is that the fundamental change in circumstances must affect the entire society, which means that a large number of agreements must be affected. Parliament has the sole discretion and at the same time obligation to assess when the entire society is affected and, therefore, when an intervention by an act of legislation is required".[13]

Concluding remarks

After the crisis on the Hungarian financial market started in late 2008, the formal regulation of consumer lending was not sustainable. As almost one-third of the nation was affected by FX-loans, basically in Swiss Franc, the main goal of the government was to save their voters – even with sacrificing the banking sector of Hungary, which already faced its darkest days in these years. Hungary had classical liberal democrat governance until 2010 but a turning point can be seen in April 2010: namely, right-sided but in actions socialist and nationalist government has been formed (and re-voted in 2014), facing with the challenge of multitudinous FX-based mortgage loans (with a growing ratio of non-performing ones). The government decided to end up the age of FX loans with relatively hard tools: as a summary we can say that almost all possible risks of FX loans has been turned from the borrowers to the lenders and the price between Hungarian Forint and FX loans has been (or is these days) forced to be paid by the banking sector. As a result of the efforts made by the government, the household debt growth stopped and most FX based loans were eliminated – as can be seen in Figure 6.

[13] 8/2014. Decision of the Hungarian Constitutional Court, point 90. Amended on 20th March, 2014.

Figure 6.: Net quarterly change of bank loan volumes of households by main products and currencies, adjusted for exchange rate changes. Source: MNB



Although it seems that the government's activity is a fairy tale so far, a very important question needs to be answered in the upcoming years: now, that Hungarian households are a bit "stressed away" from loans, how would it affect the inner demand? While the government successfully turned out FX loans and at the same time a strike a blew on the financial sector, with the cutback of personal income taxes hoped to increase the domestic consumption. However, as can be seen on Figure 7, it has not yet been so successful.

Figure 7: Use of household income as a ratio of disposable income. Source: MNB (Note: Disposable income is estimated by the MNB using household consumption, investment and financial savings data.)

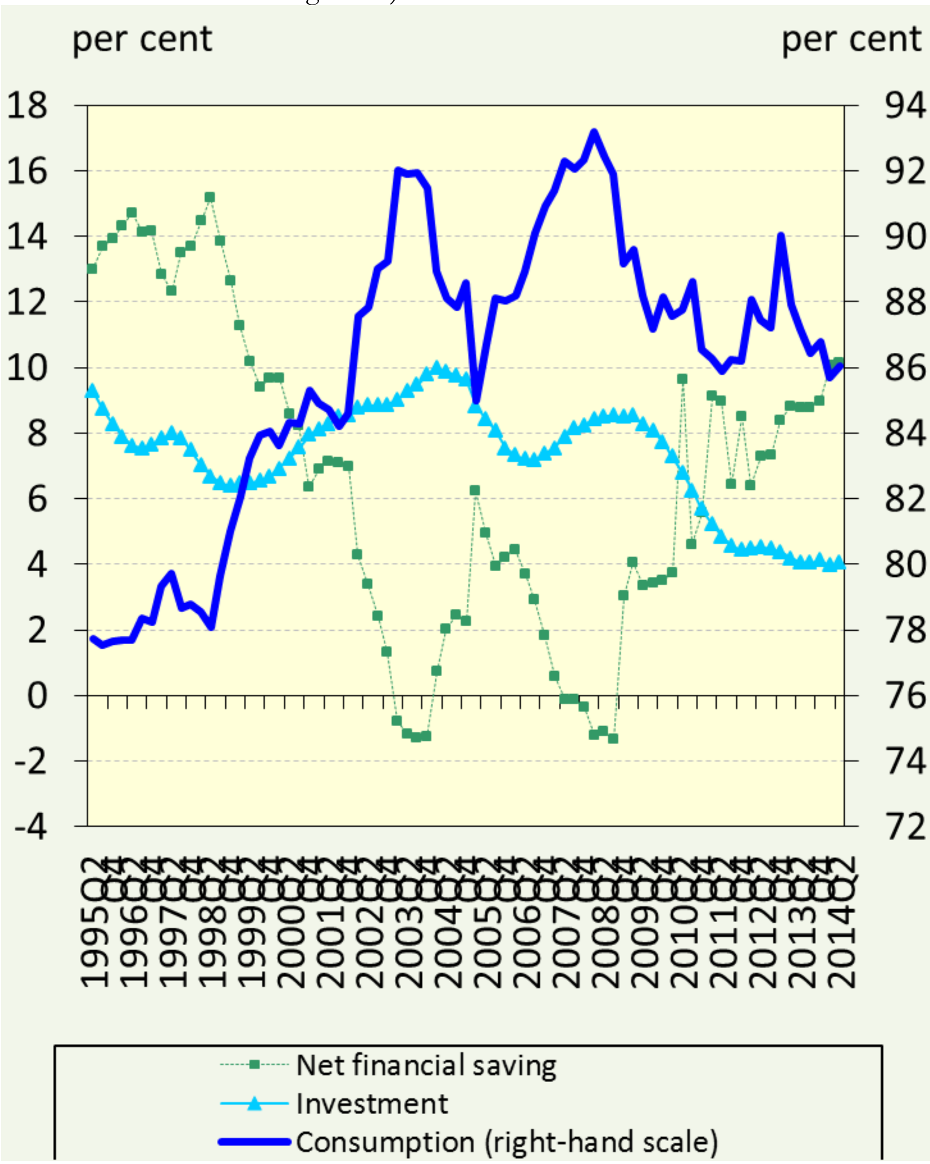


Figure 7 also shows a sharp increase in net financial savings. Sadly, the year of 2015 was also eventful in the financial intermediary sector: during the year 2 great broker and investor companies became under liquidation and the negative effects of these will be seen only in the Q4 of 2015. This also has effect on the Hungarian financial market as a whole: the government's communication is against financial companies since the crisis, and now it seen they were right.

The question of the future is how and when will households turn back to the financial sector both in the field of lending and on the field of savings.

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