



Weekly Briefing

Poland economy briefing:
**Judgment of the CJEU in the case of “franc-borrowers” and
consequences for the banking sector in Poland**

Joanna Ciesielska-Klikowska

China-CEE Institute

Kiadó: Kína-KKE Intézet Nonprofit Kft.
Szerkesztésért felelős személy: Chen Xin
Kiadásért felelős személy: Huang Ping

 1052 Budapest Petőfi Sándor utca 11.

 +36 1 5858 690

 office@china-cee.eu

 china-cee.eu

Judgment of the CJEU in the case of “franc-borrowers” and consequences for the banking sector in Poland

On October 3, 2019, the judgment of the Court of Justice of the European Union (CJEU) was long awaited by all Polish debtors, who took loans in Swiss francs. In the media, commonly due to pro-consumer associations and proxies representing borrowers in disputes with banks, there were voices about the “significant decision for banks”, imposing on them the responsibility for persuading their customers to get loans in CHF. However, it is difficult to state unequivocally that the judgment of the CJEU will bring the final success of the so-called “franc debtors” over banks. This case has been going on for over a decade and has been causing great public interest all the time.

Loans in Swiss francs

The “Franc-borrowers” (“Frankowicze”) are people who took loans in Swiss francs (CHF), most often for the purchase of real estate. These loans were often taken by young families who bought their first apartments during the largest housing boom in the years 2006-2008, but also in the years later. At that time, many banks operating on the Polish market offered loans at very favourable interest rates, yet in Swiss franc. The CHF exchange rate was very low at that time (the cost of CHF 1 was then around PLN 2 [EUR 0.50]), and the banks outdid each other in attractive offers stressing that there is no exchange rate risk and the franc is one of the most stable currencies in the world. For many Polish families, the opportunity to take a long-term (usually 30-year) but low-interest franc loan to buy their own apartment seemed like a lifetime opportunity. The real estate market has exploded and housing supply has not kept up with consumer demand. Real estate prices soared up at least threefold. Still, it was argued that this was a temporary situation, the real estate market would soon stabilize and Poles would be able to enjoy new, own apartments purchased with favourable loans.

However, this bubble burst to a large extent on January 15, 2015, when the Swiss National Bank (SNB) released its currency. The decision led to panic in the markets, which in turn caused a sudden change in the exchange rates of individual currency pairs. Starting from that day, the CHF strengthened strongly against other currencies - from a few to several dozen percent. This decision turned out to be far-reaching one for Polish borrowers.

CHF as a stable currency

Already during the financial crisis of 2008, the Swiss franc became a safe currency for investors in which they could invest their funds, what translated into increased demand and thus strengthening the currency. Yet, on September 6, 2011, the SNB decided to partially stiffen the exchange rate of the euro for the Swiss franc, pointing out that the maximum exchange rate for these currencies may not be lower than 1.2. This meant SNB's interventions in the financial markets in the event that one euro would pay less than 1.2 Swiss franc. A statement issued by SNB indicated that the strong CHF threatens the Swiss economy, which can even lead to deflation. Over the following years, the Swiss franc exchange rate against the euro did not fall practically below 1.2. At the same time, the SNB considered stiffening the course as the basis of its policy.

However, on January 15, 2015, SNB reported that it had abandoned the policy of defending the minimum exchange rate of the euro to the Swiss franc. The justification stated that maintaining a rigid exchange rate was no longer justified due to a significant weakening of the euro against the US dollar, which in turn translated into a weakening of the franc against the US dollar, that SNB could no longer afford. The reaction of the international market was immediate, the more that the decision was a surprise to analysts and financial market participants. There was panic and a snowball effect, and the Swiss franc strengthened strongly against other currencies. SNB's decision made the CHF gain a lot, including against Polish PLN. Already on January 15, 2015, the CHF was valued at a record PLN 5.19, although the day before it was valued at PLN 3.57. Such a significant increase in the CHF's price has become a huge problem for around 1 million Polish borrowers in debt in this currency.

From that point on, their struggle continued till today to convert the loan from CHF to PLN or to change the loan agreement so that instead of paying interest (which is now disproportionate to the day that the loan agreements were signed due to the increase in the price of the Swiss franc) they could already pay off their debts.

The Credit Information Bureau calculated that in the years 2006-2014 over 566,000 loans in Swiss francs were taken in Poland. The total debt refers so to 954,000 people. The total value of all loans taken in CHF was PLN 137.1 billion (EUR 32,6 billion). Most of the debtors (65%) who have a Swiss franc housing loan come from the so-called Generation X, meaning the people born in the years 1967-1981. Borrowers from Generation X have 72% of all loans in CHF and now they still have to pay the total sum of PLN 98.9 billion (EUR 23.54 billion). They

are mostly people who regularly pay their debts - even though the media circulated stories about those borrowers who, because of the very high debt, even took their lives. Yet, for years, they have been demanding that the banks take responsibility for loan agreements, which were presented as exceptional occasions and have become a stone at the feet of most borrowers. These people demand state intervention and a clear interpretation of the law, especially in the form of provisions ensuring more favourable repayment terms. That is why the judgment of the European Court of Justice in this case from October 3, 2019 turned out to be so important.

Judgment of the CJEU

The court responded to the so-called preliminary ruling questions directed by the Polish court in an individual case of a Polish family named Dziubak, which sued Raiffeisen Bank in connection with a mortgage indexed to CHF taken in 2008, in which, according to the claimants, the bank applied a prohibited indexation clause by applying franc exchange rates according to a specially created chart. The CJUE ruled that such prohibited clauses should be removed from the contract, and the only criterion for assessing their illegality is the borrower's interest. It further stated that if the removal of unlawful clauses from credit agreements changes "their nature and main subject matter", EU law does not preclude such agreements from being annulled.

In that sense the EU judiciary institution has issued two important credit judgments. In both cases, they hit banks and give borrowers a chance to assert their rights. The first judgment concerns loans in CHF. The CJEU has opened the door wide for borrowers to deal with banks, suggesting that they are not in a lost position, and they can hope for a good chance of a favourable outcome. Recent judgments of Polish courts, which cite the judgment of the CJEU of October 3, show that borrowers win with banks 5:1. The second judgment of the CJEU pointed out that when paying off a loan or credit before the deadline specified in the contract, banks should pay back to clients proportionally all costs they incurred in connection with e.g. commissions, fees and insurance. Until now, they remained in banks entirely due to misinterpretation of EU directives.

Decisions of the CJEU have been presented in Poland as a huge success of consumers in relations with banks, and in particular a great hope for thousands of "franc-borrowers" who have been calling for changes in regulations for several years.

Although the CJEU's judgments are favourable to customers, banks are not willing to give away money voluntarily. They have long threatened that currency conversion of loans and reimbursement of costs of previously repaid loans will cause such great consequences that it may threaten the stability of the entire financial sector in Poland - more or less suggesting that in the extreme scenario bankruptcies of individual banks are possible, and the financial consequences will be passed on to all customers. Vice President of the Association of Polish Banks, Jerzy Bańka, himself admitted that: "customers will pay for it, since all costs of banking operations are reflected in the costs of services provided by the bank".

Another issue is the reimbursement of costs associated with early repayment of the loan. Banks do not see a problem and promise to comply with the CJEU judgment when granting new loans. Yet, the situation is different with loans already repaid. The banking community suggests, e.g. limiting the possibility for customers to apply for a refund up to three years back. In fact banks do everything to discourage clients from processing with them.

Conclusion

The ruling of the CJEU will definitely not solve the problem of franc loans in Poland. Still, this judgment gives courts in Poland the matrix of how to deal with disputes between “franc-borrowers” and the courts. The question of what to do next remains open. The banks may completely annul the contract, but there is the issue if the banks will not demand immediate return of the money borrowed? According to lawyers, if the court does not annul the contract, the loan due to the lack of indexation mechanism to CHF will become a loan in PLN with an interest rate of LIBOR (interest on the Swiss currency on the interbank market, currently negative one).

Thus, the problem is not resolved systemically. The judgment of the CJEU gave borrowers a kind of promise for a favourable resolution of the dispute in a Polish court. However, to make tangible benefits, the borrower must file a lawsuit and await the court’s verdict.

Certainly, groups of borrowers having the same type of contracts will want to take the opportunity to bring collective actions, which law firms already use when offering their services to desperate clients. In fact, the service of the “franc-borrowers” debt will, however, fall on all bank customers. There are already many voices today that citizens do not want to pay for servicing loans of those borrowers who were tempted to use loans in the currency in which they do not actually earn – so their greed should therefore be punished.