

1. In today's social problems triggered by the crisis of Swiss franc and other forex denominated loans, problems that dragged on for more than a year and a half, a large numbers of indebted consumers saw their interest rates, especially for foreign currencies denominated loans, rise considerably for the first year of the contracted loan.

Starting in 2008, the level of over-indebtedness grew rapidly, to the extent that by the end of 2008, the volume of overdue payments had tripled. Similarly, throughout 2009-2015, overdue payments and the non-performing loans (NPLs), continued to increase.

The cause of over-indebtedness are manifold. Among the most significant factors are: the housing and credit bubble, the practice of foreign currencies and forex-denominated loans, making the amount of monthly installments contingent upon fluctuating exchange rates; the high fluctuation in the interest rate due to the depreciation of the Romanian domestic currency to the foreign currency of the contracted loan, and to the bank's policies responding to the legislative amendments implementing the relevant legislation of the European Union.

The irresponsible lending practices followed by the banks before the start of the financial crisis, also contributed towards encouraging consumers to undertake obligations that were not sustainable in the long run and gave them a false impression of what the interest rate it would be throughout the course of a long term of credit-agreement.

At the beginning of the financial crisis, the national currency depreciated against euro by up to 50% and more than doubled against Swiss franc, placing consumers with forex denominated loans in an extremely difficult position.

The failure of the loan reorganization process was due also to the limited methods which banks could employ, as refinancing was often not possible due to the fact that the guarantees that had been given could not cover refinancing.

Instead of drafting rescheduling plans that would tackle the problems faced by consumers under the impact of the financial crisis, the bank's loan strategies were more concerned on how to keep their high interest rates and circumvent the safety rules imposed by the new legislative measures aimed to protect the consumers from abusive behavior in credit contracts (Ordinance no. 50/2010).

Among their strategies, banks choose to unilaterally increase the variable interest rate or introduce new type of commission.

A high rate of unemployment between 2008-2014 also contributed to the increasing of poverty and grew the number of non-performing loans.

The number of individual debtors to banks and non-banking financial institutions (NBFI) increased in June 2016 by 14,715 (almost 15,000) from the previous month, up to 754,228 people, a high record versus January 2013 when reached 756,850, according to National Bank of Romania (BNR) data. June was the sixth month in a row when the number of debtors increased.

**Out of total outstanding, 4.25 billion represented debt in local currency and some 4.6 billion (in Romanian domestic currency) – debts in euro, while R2.11 billion (in Romanian domestic currency) are debts in Swiss francs.**

Before the middle of 2015 Romanian legislation did not provided rules for the personal bankruptcy of natural persons. When consumers were in a situation when they can no longer fulfil their payment obligations towards banks or financial institutions, the only solution was

reorganization of the debt (loan rescheduling or refinancing). If these measures proves unsuccessful, the creditor will start eviction procedures.

## **2. Alternative legislative solutions in Romania**

2.1. Personal insolvency law has become a necessity due to changes occurred in the economic, financial, social and political environment in Romania during recent years.

On May 20, 2015 the individual insolvency law was passed in the Chamber of Deputies for decision making body and the President has signed a decree promulgating the law. But, the Government decided, by an emergency ordinance, to postpone the deadline for entry into force of the law on individuals' insolvency by one year, until November 1st, 2016.

(Personal insolvency law was published in the Official Gazette on June 18, following to entry into force six months from the date of publication.)

Government argues the postponement of law's application that no necessary step for implementation of the law has been met, giving as exemple the approval of methodological norms and the accomplishment of the insolvency committees at central level.

It was also extended the period in which the National Authority for Consumer Protection (ANPC) has the task to set up 42 insolvency committees at local level and the Commission of insolvency at the central level in order to have a national system to ensure fairness and transparency in matters of personal insolvency.

2.2. After a year and a half since the Swiss Franc blew up for us to adopt an extreme solution for people who borrowed in the currency that looked so tempting eight years ago. Friday, 13th of May, 2016, will remain in the history of the Romanian banking system and in the memory of the debtors as the day that allowed the giving in payment of the real estate guarantees, as the borrowers get discharged of their whole debt. But how are they set free? By giving up the home that they have enthusiastically acquired, while trustingly taking on banks as long time partners.

The burden of paying amounts that were several times bigger than the ones they borrowed, to leave behind the long and unsuccessful fight that they had over the last few years with the banks, to forget about the currency that brought them joy and distress.

The law, adopted in November and which faced a review, allows retail mortgage borrowers to give their real estate collateral to the banks in exchange for writing off their loans. The debtor will not have to pay anything else to the bank, even if the value of the property does not cover the amount to be reimbursed. The law would apply to new and outstanding retail mortgage-backed loans under 250,000 euros. Over 99 per cent of almost half a million mortgage borrowers in Romania fall into this category.

Regardless of whether they are going to give the property back to the bank or not, when debtors send a notice to the bank means that they will be required to negotiate with their borrowers, and the installments will be frozen until the situation is clarified.

Those who want to resort to the new law must notify the bank about their intention of giving in payment, through a lawyer, a judicial executor or a notary and to wait for 30 days the acceptance or the dispute of the bank. If the dispute is admitted, the parties will be placed in the

initial situation.

If the bank doesn't comply with the provisions of the law, then the debtor can go to court and ask both the extinguishment of the mortgage loan, as well as the transfer of the right of ownership.

The law of giving in payment stipulates that, starting from the time they submitted the notification, the debtor wouldn't be making any installments payments to the bank until the situation is resolved. The law protects the consumer.

But, the **law on debt discharge** is to be accompanied by protective measures taken by banks. The large banks have increased the down payment for mortgage loans. 15 banks have taken that step.

(The first Romanian bank that announced the increase of the advance payment up to 35% for mortgages is BRD Groupe Societe Generale.

Alpha Bank: the down payment for mortgage loans has been increased to 30% for loans in RON and to 40% for the ones in EUR, regardless of the amount borrowed.

Raiffeisen Bank has announced the increase in down payments for mortgages to 35% for loans in RON and to 40% for the ones in EUR etc.)

**2.3. Romania finally transpose into the national legislation the The Mortgage Credit Directive ( Directive 2014/17/EU of the European Parliament)** , directive which provides a balanced and equitable framework for the conversion of foreign currency loans.

The Romanian government adopted an emergency ordinance meant to regulate the rights and obligations of the parties as regards credit agreements for consumers in the real estate field.

The normative act transposes the provisions of the EU Directive 2014/17/EU at national level and regulates aspects of the market and national practices.

The ordinance aims all credit contracts that concern the transfer of ownership of immovable property or that are secured by real estate, thus the credit agreements related in any kind to real estate property for consumers. The consumers are natural persons, including co-debtors, who act for purposes outside trade, business or professional activities.

The ordinance includes provisions on accurate and complete information of consumers seeking mortgages or mortgage secured crediting. The information covers both the banking products advertising and the pre-contractual information of the consumers.

**2.4. In Romanian Parliament for a long time, there are a number of legislative initiatives on the conversion of loans in foreign currency into the Romanian domestic currency.** This week, on Tuesday, into the Romanian Chamber of Deputies in a joint session, the deputies of the Legal and the Budget Commissions have agreed, on principle, that next week, when they are going to discuss the text, they will go with the alternative of conversion at the historic exchange rate, even though a few other alternatives have been presented. One of the alternative is the proposal of the Ministry of Finance made about two years ago, which proposes applying a discount to the balance of the loan, a conversion at the current exchange rate and a government guarantee for half of the outstanding balance of the loan.

**MPs have agreed to discuss the conversion at the historic exchange rate, but only for the loans in Swiss francs.**

The talks between the MPs, representatives of banks and of the NBR, debtors and initiators of the law have also brought about some new elements.

One deputy has presented, for the first time, the possibility of applying a cap to the amount of the loans targeted by the law.

His proposal has been backed by the head of stability of the Central Bank, who has also asked for the inclusion in the draft of a provision stipulating that a borrower may only ask for the conversion of one loan.

Unfortunately, the deputies have once again postponed the talks on the legislative draft concerning the conversion of foreign loans taken out in foreign currencies. The debates have been postponed until next Monday and MPS have decided that if the text gets agreed upon in one form or another, then the draft would be put on the agenda of Tuesday's session. This delays are not a good thing, because MPs will soon start their electoral campaign.

#### **4. Solutions favorable to consumers with CHF loans obtained in courts**

The courts admitted the claims of the consumers and gave favorable decisions in over 150 cases, 38 of them being final decisions. The judges noted the unfairness of the contractual clauses inserted in the loans agreement and absolute nullity of these clauses.

It also ordered the removal of these clauses from the contracts and ordered the defendant to refund the amounts collected by way of management fee and processing fee, amounts updated until actual payment date.

Moreover, it noted the unfairness of the contractual clauses inserted in the loan contracts in sections regarding the disbursement in the currency of the loan and bearing by the consumer the foreign exchange rate differences, the absolute nullity of such clauses as well as freezing of the CHF – Romanian National Currency (leu) exchange rate - for making payments under the credit agreement at the amount as of the conclusion date of the contract. Respectively, the courts ordered the calculation and payment of the loan repayment rates in leu after the conclusion date of the contract, for the entire period of validity of the contract, following the defendant to refund the amounts overpaid by the applicant.

The courts based these decisions considering that is abusive a clause which has not been individually negotiated, as in the case of loan contracts concluded with banking companies, is contrary to good faith and creates a significant imbalance between the rights and obligations of the parties obviously in the detriment of the consumer. Thus, the terms specified put in question the contractual balance, because it gives to the bank the right to revise the current interest rate, without negotiating the new level of the interest with the client, the client only having to be notified.

In addition, banks' failure to inform the consumer on the hyper valorization risk of CHF, a phenomenon which was predictable for financial experts, given that CHF- is an unstable currency, and at the time of concluding the contract the value of this currency was at a historic low level, its increscent of value against the national currency being inevitable, **constitutes a breach of the advice obligation, severely sanctioned in the European and national law as it is likely to engage in legal terms a consumer starting from a distorted image of the limits of the consumer's rights and obligations.**

Regarding the exchange rate freeze CHF – Romanian leu value of the conclusion and signing of the convention, given the unfairness of clauses bearing the currency risk exclusively by buyers, the Courts ruled that it must freeze CHF exchange rate versus Romanian leu, to make payments under the conventions concluded, the value of the conclusion and signing conventions, calculation and payment of loan repayment rates at this value throughout the period of validity of the contract and repayment of amounts overpaid to the applicant.

Also, considering the contractual imbalance caused due to the currency clause, in detriment of the consumer, the courts considered that there must be restored the benefits inherent to the contract, assumed by freezing the CHF – Romanian leu exchange rate at the value from the signing date of the contract, so as to ensure a proportionality of the payments which the will for engaging in this legal relationship.

Hyper valorization of CHF is an unpredictable, uncertain and future event in comparison with the power of understanding of consumers, because they do not have specialized knowledge in finance and banking, allowing them to anticipate an accelerated growth of the exchange rate and, consequently, to knowledgeable assume the currency risk. Given this aspect, it may be considered that the revising of the effects of the contracts corresponds to the agreement will between the parties, because hyper valorization of the CHF hijacks the contracts from the purpose in which they were concluded, changing their nature, to the extent that their execution in the current context no longer meets the consensus between the parties.

Among the 11 final decisions favorable to the consumers, 4 are against Piraeus Bank, 3 are against Bancpost (member of Eurobank EFG Group ) , Credit Europe Bank – in 2 cases, 1 against Romanian Bank and one against Millenium Bank.

After the debtors with CHF loans failed in their repeated attempts to negotiate with the banks, after they have hoped the Parliament would pass a law that would stipulate the splitting of the currency risk between them and the lenders, after countless street protests, after sending thousands of messages and letters to all the competent national and international institutions, CHF borrowers in Romania are celebrating a bittersweet victory today - the coming into force of the law that allows them to give their homes to the banks without them hounding them until their death and beyond.

The other possibility is to go in court and to fight with the bank, hoping that in the end they'll find protection and justice.

### **The situation in courts**

It has surpassed 150 sentences freezing rate CHF / Romanian Leu the value of granting loans.

We present rankings and detailed list.

**Final - 38 decisions:**

Bancpost- 11 final ruling

Piraeus Bank- seven final ruling

OTP final ruling in June Bank-

Volksbank- final ruling in May

Credit Europe Bank- four final ruling

Bank Româneasca- three final ruling

Raiffeisen two final ruling

**First court rulings more than115:**

Bancpost- 26

OTP- 22

Piraeus Bank- 21

Volksbank- 15

Raiffeisen 15

Bank Româneasca- 7

Credit Europe Bank- 6

1n Millenium-

Due to the lack or delay of the notification of national transposition measures or their incompleteness, an Infringement proceeding for non-communication of the national transposition measure was pending against Romania..

Raiffeisen Bank International (RBI) recently warned Romania that, if there is no intervention to amend the Law of giving in payment within three months, it will bring a lawsuit with the Arbitrage Court of the World Bank (ICSID). Raiffeisen Bank has demanded the amendment of the law, in order to eliminate the threat the law poses to the safety of the bank's investments in Romania. RBI claims that the investments of Raiffeisen Bank have been "heavily harmed" by the Law of giving in payment, as the bank has suffered significant losses "due to the way Romania has acted".