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Mortgage Credit in Hungary

Introduction

This article deals with the Hungarian implementation of Directive 2014/17/EU on mortgage credit agreements (MCD), focusing in particular on the extent to which it raises the level of consumer protection.

The current legal framework is influenced by Hungary's obligations to implement EU law (including the MCD), and also by the local socio-economic circumstances (the severe effect of loans denominated in foreign currency on consumer welfare and financial stability). The rules implementing the MCD should therefore be understood in this context. The paper looks at the new rules on aspects of mortgage credit agreements that originated from the MCD and how they function within the broader legal framework.

The paper starts by highlighting the socio-economic relevance of mortgage credit agreements in Hungary. It then gives a general overview of the legal framework for mortgage credit agreements, and looks at specific aspects of the role of MCD in protecting consumers of mortgage credit agreements: pre-contractual information, assessment of creditworthiness, terms of the contract and their modification, foreign currency loans, and arrears and foreclosures.

The paper concludes that the MCD has brought important improvements in the protection of consumers and, together with rules addressing the local circumstances, has significantly raised the level of consumer protection. However, the current legal framework has several deficiencies that may prevent achieving the full potential of the new rules.

Socio-economic relevance of mortgage credit agreements

Mortgage credit agreements play an important role in the Hungarian economy and society at large. The home ownership rate is among the highest in Europe. In 2015, 88.6% of occupants owned the house in which they lived,¹ and we can assume that a significant proportion of houses are purchased on mortgage credit.

Having seen lending as an important driving factor for economic growth, the Hungarian mortgage portfolio has significantly increased in the period 2000-2008. The expansion has been made initially possible by government subsidized loans (2000-2004), and when these ceased to exist, by cheap loans indexed in Swiss Francs (2004-2008). Swiss Franc denominated loans flourished in the relaxed and supervisory environment, with no significant checks and balances. The number of these loans went from nearly zero in 2004 to 90% of the mortgage portfolio in 2008.²

These inherently risky products were offered without appropriate creditworthiness assessments and without properly informing consumers of the associated risks. The typical Swiss Franc denominated loan was with a variable interest rate (i.e. 3-, 6- or 12-month EURIBOR/CHFLIBOR), the contract

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¹ Hypostat 2016, 'A review of Europe's mortgage and housing markets' (European Mortgage Federation, September 2016) 107 <<http://www.hypo.org/PortalDev/Objects/6/Files/Hypostat%202016%20FINAL.pdf>> accessed 5 May 2017

² József Hegedűs et al. 'National Report for Hungary' *TENLAW: Tenancy Law and Housing Policy in Multi-level Europe* 12 <http://www.tenlaw.uni-bremen.de/reports/HungaryReport_09052014.pdf> accessed 5 May 2017

giving a broad power to the creditor to change it unilaterally.³ The product thus transferred the exchanged rate risk onto consumers and exposed consumers to uncertainty as to the final costs of the loan. These elements were not transparent for consumers, as the exchange rate risk did not appear in the price of the products (was not part of the interest rate), and the power to unilaterally modify the contract empowered the creditors to change for example fixed rates of interest or their profit margin in contracts with variable rates of interest.⁴ These features of the product, coupled with loans issued up to the maximum repayment capacity of consumers and above 100% loan-to-value (LTV)⁵ ratio and aggressive marketing practices, had devastating social and economic consequences. By strengthening the value of Swiss Francs compared to Hungarian Forints, consumers' monthly instalments sharply rose and many households became overindebted and defaulted on their loans.⁶ The large number of defaults came as a wake-up call and there were various attempts (by courts, regulators and the parliament) to help these debtors. The most notable rescue measures were the conversion of these loans into the local currency (Hungarian Forints), enabling debtors to repay their loans early at a fixed exchange rate and for the most vulnerable, enabling the state to take over the debt obligation.⁷ However, around 140.000 (affecting around 5% of GDP) overindebted debtors with non-performing mortgage loans (i.e loans with more than 90 days of default) and multiple outstanding debts did not benefit from the rescue programmes. This constitutes a continuing risk to financial stability and represents a pressing social problem.⁸

Given the importance of mortgage credit, and its potential effect on households and the society at large, it has become a policy priority to regulate these loans for the protection of customers and financial stability. Along with adopting the above rescue measures the legal framework has been gradually strengthened, including the rules originating from the MCD.

Legal framework for mortgage credit agreements: a general overview

As a result of the above factors, the legal framework for mortgage credit agreements is complex. Act CLXII of 2009 on Credit Agreements for Consumers (CCA) contains *lex specialis* rules for mortgage

³ András Bethlendi, 'Bad Product Development Results in Systemic Market Failure – Foreign Currency Mortgage Loans to Hungarian Households' [2015] 14(1) *Financial and Economic Review* 5, 12

⁴ *Ibid.*, 12,16. See more on how these loans work from the aspect of consumers in Andrea Fejős, 'A different look at foreign currency loans? AG Jääskinen's Opinion in C-312/14 Banif Plus Bank Zrt v Márton Lantos and Mártonné Lantos' (Recent Developments in European Consumer Law 20 September 2015 <<http://recent-ecl.blogspot.co.uk/2015/09/a-different-look-at-foreign-currency.html>> accessed 5 May 2017

⁵ Júlia Király, Márton Nagy 'Jelzálogpiacok válságban: kockázatalapú verseny és tanulságok' [Mortgage markets in crisis: lessons from risk based competition] 7(5) *Hitelintezeti Szemle* 451, 466

⁶ Mónika Józson 'Country Report Hungary' in Hans-W Micklitz, Irina Domurath (eds), *Consumer Debt and Social Exclusion in Europe* (Ashgate, 2015)

⁷ See on these measures in detail *Ibid.*

⁸ Bálint Dancsik et al. 'Comprehensive analysis of the nonperforming household mortgage portfolio using micro-level data' (MNB Occasional Paper Special Issue, 2015) 6 <<https://www.mnb.hu/en/publications/studies-publications-statistics/occasional-papers/op-special-issue-balint-dancsik-gergely-fabian-zita-fellner-gabor-horvath-peter-lang-gabor-nagy-zsolt-olah-sandor-winkler-comprehensive-analysis-of-the-nonperforming-household-mortgage-portfolio-usi>> accessed 5 May 2017; Lóránt Baracsi et al. 'Jegybanki szabályozói eszközökkel megakadályozható a túlzott lakossági eladósodás' [Overindebtedness can be prevented by regulatory measures of the National Bank] (Hungarian National Bank, no date) <<https://www.mnb.hu/letoltes/baracsi-lorant-grosz-gabriella-faykiss-peter-jegybanki-szabalyozoi-eszkozokkal-megakadalyozhato-a-tulzott-lakossagi-eladosodas.pdf>> accessed 5 May 2017; Penzügyi stabilitási jelentés [Financial Stability Report] (Hungarian National Bank, November 2015) <<https://www.mnb.hu/letoltes/stabilitasi-jelentes-2015-november-hun.pdf>> accessed 5 May 2017

credit agreements, and pre-contractual commercial communication.⁹ The CCA has been adopted to implement Directive 2008/48/EC on Consumer Credit (CCD). Although the scope of the CCA initially extended to mortgage credit agreements,¹⁰ it has been modified several times to implement the MCD - the first modifications came into effect on 1 January 2014.¹¹ This CCA is the first point of reference for credit agreements, including mortgage credit agreements. The scope of the Act is also extended to (residential) financial leases (Section 1 paragraph 3 of CCA).

Although CCA regulates most aspects of mortgage credit agreements, it operates within the broader legal framework. The CCA frequently points to the applicability of other primary and secondary law. For example, for the definition of mortgage loans it points to Act CCXXXVII of 2013 on Credit Institutions and Financial Enterprises.¹² Lex specialis rules on information provision should be applied in conjunction with the general obligation of the parties to cooperate and inform each other before and after the contract has been concluded in line with Section 6:62 of Act V of 2013 of the Civil Code.¹³ Some rules of the MCD are implemented via secondary legislation, for example, the rules on calculation of the annual percentage rate of charge (APRC) are in Government Decree 83/2010 on the Determination, Calculation and Publication of the APRC.¹⁴ Secondary law is also used to develop basic rules incorporated into Act CLXII of 2009, i.e. the basic rules on creditworthiness assessment (Section 14 of CCA) are further developed in the Government Decree 361/2009 on Responsible Lending and Assessing Creditworthiness.

Important conduct of business rules for mortgage firms are implemented elsewhere than the CCA. Act CCXXXVII of 2013 contains the provisions on credit intermediaries and these are further developed by secondary law.¹⁵ Access to database for the assessment of creditworthiness is secured by Act CXXII of 2011 on the Central Credit Information System¹⁶ regulating access to data held by the Central Credit Register. The rules on arrears and foreclosure are given effect in Act LIII of 1994 on court enforcement.¹⁷ Knowledge and competence requirements for staff are laid down in Government Decree 462/2015 on knowledge requirements for staff and mortgage advise, and on the process of providing and intermediating mortgage credit agreements.¹⁸

⁹ [2009. évi CLXII. törvény a fogyasztónak nyújtott hitelről](#)

¹⁰ See an analysis of implementation of Directive 2008/48/EC into Hungarian law: Bálažs Bodzási 'A fogyasztói hitelszerződések új szabályai' [New rules on consumer credit] [2011] 10(3) *Hitelintézetesi szemle* 262

¹¹ Act CCXXXVI of 2013 ([2013. évi CCXXXVI. törvény egyes pénzügyi tárgyú törvények módosításáról](#)) with effect from 1 January 2014; Act LXXVIII of 2014 ([2014. évi LXXVIII. törvény a fogyasztónak nyújtott hitelről szóló 2009. évi CLXII. törvény és egyes kapcsolódó törvények módosításáról](#)) with effect from 1 February 2015; Act CCXV of 2015 ([2015. évi CCXV. törvény a pénzügyi közvetítőrendszer egyes szereplőit érintő törvények jogharmonizációs célú módosításáról](#)) with effect from 21 March 2016 and Act LXXXV of 2015 ([2015. évi LXXXV. törvény egyes törvényeknek a pénzügyi közvetítőrendszer fejlesztésének előmozdítása érdekében történő módosításáról](#)) (these acts are listed as implementing acts of MCD at the official website of the European Commission <<http://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32014L0017>> accessed 5 May 2017)

¹² [2013. évi CCXXXVII. törvény a hitelintézetekről és a pénzügyi vállalkozásokról](#)

¹³ [2013. évi V. törvény a Polgári Törvénykönyvről](#)

¹⁴ [A Kormány 83/2010. \(III. 25.\) Korm. rendelete a teljes hiteldíj mutató meghatározásáról, számításáról és közzétételéről](#)

¹⁵ E.g. A független pénzügyi szolgáltatás közvetítői, valamint függő jelzáloghitel közvetítői felelősségbiztosítási szerződés tartalmi követelményeiről szóló 463/2015. (XII. 29.) Korm. rendelet

¹⁶ [2011. évi CXXII. törvény a központi hitelinformációs rendszerről](#)

¹⁷ 1994. évi LIII. törvény a bírósági végrehajtásról

¹⁸ Jelzáloghitel nyújtásával, közvetítésével kapcsolatos eljárásra, a hiteltanácsadásra és a foglalkoztatottak szakmai ismereteire vonatkozó szabályokról szóló 462/2015. (XII. 29.) Korm. rendelet

The supervisory and regulatory authority for Hungarian financial markets is the Hungarian National Bank (HNB)¹⁹. The HNB has wide reaching powers and competences in maintaining the stability of the financial system and in protecting the customers of financial services and products. Supervision and enforcement is regulated by Act CXXXIX of 2013 on the Hungarian National Bank²⁰ laying down a special supervisory procedure for the protection of consumers of retail financial service and products and the applicable sanctions. The same statute regulates the setting up of, and the procedure before, the Financial Consumer Arbitration Board,²¹ the alternative dispute resolution body set up at the HNB for solving disputes between consumers and financial firms.²² In addition to wide supervisory powers the HNB also acts as a regulatory authority. Some of the above rules of primary and secondary law are further developed by orders and recommendations of the HNB, for example HNB Order 32/2014 on debt to income ratio and loan to value ratio.²³ Finally, the HNB is also involved in the financial education of consumers and raising their financial culture; these efforts are funded from levies and fines imposed on the financial services industry (Section 170 of Act CXXXIX of 2013).²⁴

The MCD was implemented at a time when foreign currency loans had already caused significant detriment to Hungarian consumers and after the Government had already made numerous attempts to find a solution for these debtors. Given that the CCA has been amended several times, it is impossible to precisely delimit the Government's efforts to make mortgage loans safer for consumers and the process of implementing the MCD, and therefore no distinction of these will be made in the paper.

The paper elaborates on selected aspects of this complex legal framework (see below). Given the tight word limit, the new regulation of financial intermediaries will not be discussed as it deserves a separate and more detailed study than this paper would allow.²⁵

The role of MCD in protecting consumers of mortgage credit agreements

This section focuses on some features of the mortgage credit agreement: on pre-contractual information, assessment of creditworthiness, terms of contract and their modification, foreign currency loans and on arrears and foreclosure. It looks at the rules within the broader legal framework in which they operate.

Pre-contractual information

An important aspect of the MCD is the regulation of pre-contractual information provision to remedy information asymmetries between consumers and creditors.²⁶ Following the implementation of the CCD which significantly focuses on remedying information asymmetries, the

¹⁹ Magyar Nemzeti Bank (MNB)

²⁰ [2013. évi CXXXIX. törvény a Magyar Nemzeti Bankról](#)

²¹ Pénzügyi Békéltető Testület

²² Giving effect to Article 39 of MCD.

²³ 32/2014. (IX. 10.) MNB rendelet a jövedelemarányos törlesztőrészlet és a hitelfedezeti arányok szabályozásáról

²⁴ Giving effect to Article 6 of MCD.

²⁵ See e.g. on changes effected by MCD 'Tájékoztató az Európai Parlament és a Tanács 2014. február4-i 2014/17/EU irányelvének (MCD Direktíva) implementálásáról és az ezzel összefüggő változásokról' [Information on the implementation of Directive 2014/17/EU and on the changes it effected] (Hungarian National Bank, no date) <<https://www.mnb.hu/letoltes/mcd-direktiva-tajekoztato-vegleges.pdf>> accessed 5 May 2017

²⁶ Article 11 of MCD is implemented into Section 4 of Act 2009, articles 14,15 and 16 are implemented into Sections 5-13 of Act CLXII of 2009. These rules equally apply to creditors, credit intermediaries and appointed representatives (with special information requirements applicable for intermediaries in Section 7 of CCA)

CCA already contained detailed rules on the provision of information of consumers. These have been extended and made more effective with the 1014 and 2015 amendments²⁷ needed to implement the MCD and also triggered by local conditions requiring steps to be taken to make credit safer for customers. Some rules are further developed by the Ministerial Decree 3/2016 on rules regarding the provision of information on mortgage credit.²⁸

The result of these reforms is the existence of a body of rules containing very detailed instructions to creditors in terms of their conduct i.e. instructing the creditor that all information should be clear and concise, provided with representative examples and predictions of how the emergence of different risks would affect a consumer's ability to repay the loan (Section 5 paragraphs 2 and 3 of CCA), and an obligation to explain any unusual features of a product, for example when the mortgage is an endowment product (Section 6 paragraph 5 of CCA). Consumers must be provided with standard and personalized information and selected key information on a durable medium (e.g. Sections 5,6 and 12 of CCA). Both standard as well as personalized information must be provided on a standardized sheet, in a tabular form (European Standard Information Sheet (ESIS) for standard information is in Annex I of CCA, the model for personalized information is set out in Decree 3/2016). In addition to receiving standardized and personalized information, consumers are given between 3 to 15 days to study the draft mortgage credit agreement and they are barred from accepting the creditor's offer in the first 3 days after receiving the draft credit agreement (Section 13 paragraph 1 of CCA).

These special information provisions are part of a broader legal framework. Based on Section 1 paragraph 4 CCA, the above measures should be read in conjunction with the general obligation of the parties to cooperate in negotiations preceding the conclusion of a contract under Section 6:62 of the Civil Code. Following this mixture of rules in the Civil Code and in the CCA, the breach of information provisions gives rise to various remedies. The Civil Code provides consumers with private law remedies. These may be for breach of contract (provided the contract is concluded following negotiations) or for establishing non-contractual liability (provided consumers are harmed by pre-contractual information but negotiations did not result in the conclusion of a contract). In addition to these, the CCA (Section 27 paragraph 1 of CCA) contains public law remedies empowering the HNB to monitor and sanction non-compliance.

The comprehensive information provisions prior to the conclusion of a mortgage contract are aimed at enabling consumers to make an informed decision by comparing offers on the market and estimating the suitability of a loan to their needs and financial circumstances (See Section 5 of CCA). Given that a significant portion of information is provided in a standardized format, even personalized information, the lawmaker aimed at balancing the protection of consumers with their own responsibility for taken out the loan. Although consumers receive personalized information adjusted to their financial and personal situation this is not necessarily accompanied with personalized explanations. It is therefore left to the consumers to carefully study the standard sheet. Indeed, the HNB emphasizes that consumers must inform themselves and that they remain ultimately responsible for the loan. The task of the HNB is to map out the risks and to ensure that

²⁷ See Act LXXVIII of 2014 and Act CCXV of 2015 above.

²⁸ [A nemzetgazdasági miniszter 3/2016. \(I. 7.\) NGM rendelete a jelzáloghitelre vonatkozó tájékoztatás szabályairól](#)

consumers are informed of them.²⁹ It follows that the opportunity to examine the standardized information and the draft credit agreement may be useful to an extent but it is unlikely to be able to remedy the well-known limits of information, such as consumers' failure to read the information or their behavioural biases.³⁰ Provisions remedying information asymmetries are therefore only part of a framework for providing a high level of consumer protection together with the responsibility of the creditor to assess consumers' creditworthiness and specific product regulation measures that prevent the creation and marketing of harmful products.

Assessment of creditworthiness

The rules on creditworthiness assessment (Articles 18-21 of MCD) are implemented in Section 14 and 14/B of CCA and are further developed in the Government Decree 361/2009. These rules should be read together with Act CXXII of 2011 setting rules relating to access and use of data held by the Central Credit Register; and with HNB Order 32/2014.

Decree 361/2009 was adopted before the implementation of MCD. It aimed at raising the standard of lending practices following the period of irresponsible lending, as discussed above, the consequences of which can still be felt today. Decree 361/2009 obliges creditors to assess the creditworthiness of consumers before granting a mortgage credit. It directs creditors to make use of objective independent information, those available in the Central Credit Registry (Section 14 of CCA), and those that can be obtained from the consumer. The problem, however, is that the Central Credit Register is primarily a database of negative information, it lists for example arrears of over 90 days and information that a consumer previously attempted to obtain a loan using false information or falsified documents (Sections 11-12 of Act CXXII of 2011). The uploading of positive data, that is information on the outstanding loans, is subject to consumer consent (Section 5 paragraph 3 of Act CXXII of 2011) entirely depending on the consumer's discretion. It is therefore possible that a consumer that is solvent one day becomes insolvent the next day, because of the number of outstanding commitments; and the voluntary nature of reporting positive credit commitments may seriously impede creditors in making sound judgments on consumers' creditworthiness. The absence of relevant data in the Central Credit Registry should be overcome by a requirement to obtain the relevant documents from consumers, this allowing verification of the consumers' income, and making allowances for consumer commitments and other non-discretionary expenditures, as well as allowances for potential future negative scenarios. However, currently, the exact documents to obtain information from consumers are left to the discretion of the creditors (Section 4 paragraph 2 Decree 361/2009). Obtaining information this way has its limits as reporting of some information especially future, not yet documented commitments entirely depends on the consciousness of consumers. To this effect, Decree 361/2009 (Section 3 paragraph 3) also aims to increase the consumers' own responsibility for the taken loan by instructing the creditor to hand over the Hungarian National Bank's comprehensive Information Guide on the Risks of Overindebtedness.³¹

²⁹ Penzügyi fogyasztóvédelmi jelentés [Financial consumer protection report] (Hungarian National Bank, 2016) 13 <<https://www.mnb.hu/letoltes/fogyasztovedelmi-jelentes-2016-hun-digitalis.pdf>> accessed 5 May 2017

³⁰ See e.g. Chris Willett 'The functions of transparency in regulating contract terms: UK and Australian approaches' [2011] 60 *ICLQ* 35; Geraint Howells 'The Potential and Limits of Consumer Empowerment by Information' [2005] 32 *Journal of Law and Society* 349; Michael Faure, Hanneke Luth 'Behavioural Economics in Unfair Contract Terms, Cautions and Considerations' [2011] 34 *JCP* 337; Omri Ben-Shahar 'The Myth of the 'Opportunity to Read' in Contract Law, [2009] 5 *ERCL* 1.

³¹ Tájékoztató a túlzott eladósodottság kockázatairól [Information on the risks of overindebtedness] (Hungarian National Bank, 2016) <<https://www.mnb.hu/letoltes/tajekoztato-a-tulzott-eladosodottsag-kockazatairol-20150918.pdf>> accessed 5 May 2017.

Although Decree 361/2009 was a step forward in improving lending practices, its provisions often stayed basic and vague. Following the financial crisis there has been a move to bring about a more detailed set of instructions for creditors. The HNB Order 32/2014³² introduces a strict LTV and debt-to-income (DTI) ratios. It introduces 80% LTV ratio for mortgage loans and 85% for financial lease indexed in the local currency (Hungarian Forints). These thresholds are much lower for loans issued in foreign currency, 50% for mortgage loans, and 55% for financial lease indexed in EURO, and 35% and 40% respectively for loans indexed in other foreign currencies (Section 3). The HNB Order also contains detailed rules on DTI ratio. Taking into account the amount of income and the contractual currency it differentiates the applicable DTI ratio for lower income (below 400.000 Hungarian Forints - around 1.300 EUR) and for higher income (above 400.000 Hungarian Forints) individuals or families. For example, lower income individuals/families can only afford 50% DTI ratio whereas higher income individuals/families can go up to 60% DTI ratio for loans issued in domestic currency. The thresholds are much lower for loans issued in foreign currency. For higher income individuals/families the DTI ratio can go up to 30% for loans issued in EURO and 15% for loans issued in other currencies, whereas these thresholds are 25% and 10% respectively for lower income individuals/families (Section 6 paragraph 1 and 2). It should be noted, however, that the LTV and the DTI ratios are determined at the time of approving the credit application, and it does not take account of changed circumstances. It would be important to implement mechanisms for obtaining information on changed circumstances and effect periodic reviews in calculating DTI ratio given the duration of mortgage credit agreements.

Although the most recent rules on LTV and DTI ratios will certainly make loans safer and in this sense raise the level of protection of consumers and secure financial stability, the legal framework for responsible lending should be further strengthened. Currently it seems that too much reliance is made on the information obtained from the consumer and there are no mechanisms for obtaining other independent information and factoring in changed circumstances.

Terms of the contract and their modification

The CCA contains a long list of mandatory general content for credit agreements (Sections 15-16) and some special conditions. Without going into too much detail, it is interesting to mention special conditions that have been developed as a response to problems caused by foreign currency loans. These seriously limit the contractual freedom of creditors, by introducing rules that directly regulate the key element of a mortgage product, the price of the credit and other charges and fees.

Most importantly, the CCA regulates the price of the credit, by imposing a general cap and limiting the APRC chargeable in the amount of the Central Bank Base Rate increased by 24% (Section 17/A paragraph 1). In addition, the CCA also determines the maximum arrangement fee chargeable; it cannot be more than 1% of the amount of the loan, or 200.000 Hungarian Forints (around 650 EUR).

Secondly, the CCA contains detailed rules on the modification of credit agreements. These have been developed gradually as a response to problems with foreign currency loans.³³ There is a general limit on the creditor's freedom that only the interest rate, interest rate risk premium, fees and charges can be modified unilaterally, and not the other terms of the contract (Section 17/B paragraph 1). The effect of this rule, however, depends on the duration of the credit. The CCA differentiates the regimes applicable for credits of a duration of less and more than 3 years also

³² Non-compliance with HNB Orders is sanctionable under Act CXXXIX of 2013.

³³ See for a historic perspective Nikolett Kiss, Gergely Baffia 'The experiences of consumer protection investigations and legal proceedings conducted in relation to unilateral modification of fees' [2016] 12 *Versenytükör* 47.

differentiating the regime applicable for loans with fixed and variable rates of interest (Section 17/C). The CCA provides detailed instructions to creditors on how to take effect of changes of variable rates of interest (Section 17/D). Importantly, any increase in the rate of interest should be proportionate, any benefit of a decrease in reference rates should be conferred onto consumers, and any change must be foreseen in the contract. Finally, Section 18 provides special information obligations creditors on any changes in the cost of credit.

Interestingly, the CCA provides for the option of standardization of standard terms and conditions. It empowers the organizations representing creditors to draft model standard terms and conditions that are subject to the approval of the HNB (Section 29/A). Although this option could improve the substantive fairness of standard terms and conditions and their transparency, it has not yet been used in practice.

Foreign currency loans

Given the detriment and social problems caused by loans indexed in foreign currency (primarily Swiss Franks) the rules on foreign currency and variable rate loans are more developed in the CCA than in the MCD. These rules aim to eradicate established and unfair practices, for example, charging fees for currency conversion for determining the amount payable for monthly instalments; and to raise the transparency of risks associated with loans in foreign currency.

Article 23 of MCD is implemented into Sections 21/A-21/E of CCA. For increased transparency, creditors must now inform consumers on the risks carried by loans indexed in foreign currency (Section 21/A paragraph 1), and should respect other information requirements laid down in Section 21/E of CCA (implementing Article 23 paragraphs 4 and 6 of MCD). Apart from the provision of information, creditors' contractual freedom are further limited by specific, product regulation tools. The CCA sets the exchange rate for calculating monthly installments that are determined in the selected foreign currency but are payable in local currency (Section 21/B paragraph 1), banning creditors from imposing fees or charges for the conversion (Section 21/B paragraph 3).

In addition to these safety mechanisms, consumers are also given the right to change their minds, and to convert their foreign currency loan into another selected currency (Section 21/C paragraph 1). However, the CCA limits consumers' choice of currency and leaves it to the discretion of the creditor to impose further restrictions (Section 21/C paragraphs 3-4). The conversion is done based on the exchange rate set in Section 21/B, and creditors can charge compensation to cover their expenses up to the maximum of 2 percent of the outstanding debt (Section 21/C paragraph 5). Changing the currency of the loan is not a modification of a contract, and it does not affect the type of interest rate (e.g. fixed or variable) and any fees or charges (Section 21/D of CCA).

Arrears and foreclosures

Article 28 MCD is implemented between various acts that aim to help debtors in payment difficulties.

Firstly, the CCA imposes a cap on the default interest chargeable in arrears in the same amount as the above general cap on the APRC (Section 17/F).

Secondly, the CCA also confers an important right on consumers in arrears. Consumers in arrears for more than 90 days have a right to request an extension of their loan with a maximum of 5 years, the request of which creditors cannot deny without a valid reason, and no additional fees can be charged for this service (Section 28 paragraphs 3 and 4).

Finally, Act LIII of 1994 has been recently modified to help consumers obtain the best price of the foreclosed properties that are sold at public auctions (Section 159 paragraph 8, Section 147 paragraph 3).

These key rules are supplemented by a HNB Recommendation 1/2016 on the correction of residential mortgage loans in arrears.³⁴ This recommendation sets out the HNB's expectations on the ways in which customers in payment difficulties should be treated. It gives detailed instructions, including sharing good practices on establishing policies and procedures for the early detection and handling of consumers experiencing payment difficulties, and contains guidance on the ways to find acceptable solutions for the resolution of payment difficulties. The problem, however, is that the Recommendation is not binding and therefore creditors can refuse compliance.³⁵

Conclusion

The legal framework for regulating mortgage credit agreements is very complex in Hungary. Informed by the severe consequences of loans indexed in foreign currency on consumer protection and financial stability, the rules in many respects go beyond the requirements of the MCD. We cannot therefore look at the rules of MCD in isolation from local efforts to protect consumers and eradicate irresponsible lending practices.

The current legal framework made mortgage loans safer for consumers. The range of product regulation measures regulating the price of the credit and other fees and charges payable significantly limited the contractual freedom of creditors for the benefit of consumers and financial stability.

The rules on responsible lending are a significant step forward, especially the new rules on LTV and DTI ratios, but it seems that more work needs to be done for the current rules to realize their full potential. The Central Credit Registry should contain positive information i.e. information on not defaulted outstanding credit commitments to give a real chance to creditors to assess consumers' creditworthiness or at least to put creditors at notice to require further documentary proof for credit commitments and financial situation of consumers. There should be also a mechanism that factors in changed circumstances in calculating the DTI ratio

Responsible lending rules balance the protection of consumers and paternalism, conferring a responsibility on consumers for the taken loan. However, consumers should only be able to 'accept' this responsibility after being able to understand and compare offers on the market and make informed decisions. This, however, requires a reasonable level of financial literacy, and current indications are that this is not adequate in Hungary.³⁶ The work of the HNB is therefore crucial in educating and informing consumers.

The new rules may also negatively impact the price and the availability of credit. There is a danger that the poorest will be denied credit and access to owning their own home for not being creditworthy. The Government therefore needs to look after these consumers, by creating social housing programmes.³⁷

³⁴ A Magyar Nemzeti Bank 1/2016. (III.11.) számú ajánlása a fizetési késedelembe esett lakossági jelzáloghitelek helyreállításáról

³⁵ Point 74, HNB Recommendation 1/2016

³⁶ OECD/INFE International Survey of Adult Financial Literacy Competencies (OECD, 2016) <<https://www.oecd.org/daf/fin/financial-education/OECD-INFE-International-Survey-of-Adult-Financial-Literacy-Competencies.pdf>> accessed 5 May 2017

³⁷ See for the history and current tendencies in social housing Hegedus et al (footnote 2 above).

Finally, consumers that find themselves in payment difficulties remain inadequately protected. The mandatory rules provide only the basic protection; following the recommended good practices and compliance with more detailed instructions depends on the discretion of the creditor.

We can therefore see that significant improvement has been made in recent years (also as a result of implementing the MCD) on raising the level of consumer protection and securing financial stability, yet the full potential of many rules remains unrealized.