

THE BIG HANDBOOK OF FOREIGN CURRENCY LENDING

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The Big Handbook of Foreign Currency Lending
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The entire sphere of problems relating to foreign currency lending, from the perspectives of law, sociology and economics, is comprehensively covered in this handbook. Edited by *Csaba Lentner*, a professor of economics at the National University of Public Service (NKE), the volume contains contributions from more than 20 authors. The significance of the work is underlined in three forewords. In his foreword, *András Patyi*, rector and professor at the NKE, describes foreign currency lending as a complex social, economic and political problem which the legal profession must also address. In a second foreword, *György Matolcsy*, governor of the National Bank of Hungary (MNB), emphasises that this volume discusses the antecedents to one of the most complex crisis situations of the end of the 20th century, and the steps taken to deal with this crisis. He cites the role that exchange rate risk and the lack of financial literacy may have played in excessive indebtedness, which the banks – we are inclined to agree – unfairly exploited. Given that this became an issue affecting society as a whole, the government was obliged to intervene and tackle the problem. The legal foundation for managing the problem was provided by Hungary's supreme court, the Curia; a third foreword by *Péter Darák*, the court's president, provides details. The book is divided into five thematic areas spread over a total of 20 chapters.

The first thematic area discusses the economic problems of foreign currency lending and consolidation, drawing on writing by nine distinguished authors or groups of authors. In the first chapter, the editor himself shows, based on extensive and intense research, how excessive lending has become a phenomenon worldwide and – compared to the other new member states of the European Union (EU) – particularly in Hungary. *Lentner's* professional view is that the problem of Hungarian consumer borrowing in foreign currency cannot be interpreted in isolation, but

only in an international and historical context and by adopting a combined legal and economic approach. *András Schlett* presents the historical precursor of foreign currency lending as foreshadowed in Hungary's indebtedness of the 1920s. The third chapter, which is the work of several authors (*Bethlendi, Fáykiss, Gyura* and *Szombati*), adopts a critical slant in presenting the Hungarian state's macroprudential and microprudential regulations and supervisory system governing foreign currency lending, revealing deficiencies and consumer protection anomalies. Likewise the work of several authors (*Erharth, Kékesi, Koroknai, Kóczian, Matolcsy, Palotai* and *Sisak*), the fourth chapter demonstrates how the banks' ascendancy and misleading of customers in foreign currency lending sparked social tensions that also impacted the government's work. The authors trace macroeconomic problems to this source, while exploring and evaluating statist responses to these problems.

The following chapters are all the work of individual authors. In the fifth, *György Barcza* discusses the theory of foreign currency lending in the context of debt dynamics, while in the sixth *Csaba Szilovics* examines the effects of foreign currency lending on the central budget. The seventh chapter by *Pál Péter Kolozsi* outlines the causes of the spread in consumer foreign currency borrowing in Hungary. In addition, essentially expanding on the foreword by *Matolcsy, Kolozsi* deals with the state's cancellation of foreign currency loan contracts, necessitated by the unilateral increases in interest and fees that provoked a widespread social catastrophe, as well as the method of carrying this out. In the eighth and penultimate chapter in this section, *Péter Novoszáth* examines the evolving rules and practice in financing home-building from the perspective of financial regulation, adopting a fairly critical tone and proposing points at which fundamental and necessary changes should be made. In the last chapter in this thematic area, *Etelka Gregóczki* deals with the spread of foreign currency borrowing among local councils and the subsequent consequences for councils' indebtedness, examining and analysing the legal background for prescribing restrictions in this regard.

The next major thematic area employs a legal perspective in examining the complex social problems of foreign currency lending in Hungary at the microeconomic and macroeconomic levels. This thematic area covers four chapters, by *Gábor Török, András Téglási, Tamás Prugberger* (the writer of this review) and *Mihály Pulinka*. *Török* demonstrates the unfairness of the method of foreign currency lending practiced in Hungary and how its infringement of good ethics renders it partially invalid. He also recalls how, on this basis, the government endeavoured to rescue defaulting foreign currency debtors – some of whom had already been evicted by the banks or were on the brink of eviction – by announcing that clauses serving the unilateral interests of banks were declared null and void on the basis of

a ruling in principle handed down by the Curia. In this context, Török analyses the Curia's two uniformity decisions in detail, as well as the two connected laws on the fixing of exchange rates and early debt repayments, which likewise declared that unilateral amendments of foreign currency loan contracts were detrimental to customers and infringed on good ethics due to inadequate information provided to customers.

Téglási examines the constitutional framework of foreign currency lending as reflected in the practice of the Constitutional Court. This chapter focuses in particular on how the banks failed to grasp the declaration of unconstitutionality of the two laws analysed by *Török*. In his study the author also touches upon the state's petition to the Constitutional Court, in which it requested an interpretation of the Fundamental Law with regard to how far the state is permitted to go within constitutional limits in the matter of intervention in foreign currency loan transactions. In settling the issue of foreign currency loan transactions, the government – despite the fact that no official position had yet been taken regarding its petition – proceeded by taking into account negative decisions reached with regard to the banks' own petitions.

The *Prugberger* chapter examines unfair contractual conditions not discussed individually, in the context of Hungarian and EU private and consumer protection law, as well as of legal regulations pertaining to economic competition and lending. Within this, the study demonstrates when contracts are unfair, and when the parties' economic transactions and business conduct contravenes rules governing fair market competition.

In the last chapter in this thematic area, *Pulinka* discusses the cooperation displayed by notaries in the foreign currency lending process, which he nevertheless characterises as quite contradictory given that they served the interests of the banks.

Of the four chapters in the third thematic area, which deals with issues of foreign currency lending in European law, the first – by the writing pair of *Sipos* and *Fellegi* – deals with the European legal and economic aspects of crisis management in the area of market supervision. In this regard, the authors review the causes of the crisis that erupted in 2008, the forms it took, and the evolution of the financial supervisory structure that was accelerated as a consequence of the crisis. They also look at the development of monetary and fiscal policy in relation to crisis management, as well as the evolution of financial regulation.

While in Chapter 12 *Prugberger* discusses the problems of economic and commercial legal transactions in the context of competition law and a dogmatic system, here in Chapter 15 *Tihamér Tóth* expands in thoroughly penetrating detail on aspects of foreign currency lending as reflected in competition law. Regarding

banks' unilateral amendment of contracts, he writes that one frequent form of this was the increasing of bank charges.

Moving into the last two chapters of this thematic area, *Zoltán Nagy* analyses the practice of the European Court of Justice from the perspective of consumer protection. In doing so, the author concentrates on judgments which strove to eliminate imbalances between service providers and consumers that tended to the detriment of the latter. *Éva Erdős* discusses provisos attached by courts of arbitration to foreign currency loan contracts, focusing on how these courts take the practice of the European Court of Justice into account. In disputed cases concerning foreign currency lending, the question is how fairly or unfairly these provisos of courts of arbitration treat the service provider, in this case the banks. *Erdős* answers the question by taking Directive 93/13/EEC as a basis in evaluating the unfairness of provisos of courts of arbitration attached to consumer contracts.

Necessitating a broader international outlook, the fourth thematic area comprises three chapters, the first written by the trio of *Bethlendi*, *Fáykiss* and *Zsigó*. In this study, the authors demonstrate – within the framework of an international comparison of the legislative background to foreign currency lending which focuses on the countries of Central and Eastern Europe – how foreign currency lending has emerged in the countries of the region, examining which countries' governments have endeavoured to restrict this form of credit and which have not. The three authors point out that, as a consequence of unequal standpoints, significant differences exist in this area between individual countries in the region. *Lorina Buda*'s study examines this problem in the case of ten Central and East European countries, while *László Nagy* discusses the Slovak method of managing foreign currency lending.

The final thematic area comprises empirical research by students of the NKE, which covers two chapters. The first (by *Bagány*, *Dávid*, *Fási* and *Kiss*) reviews an investigation the students carried out into the extent of foreign currency lending, while the second examines the process of consolidation affecting foreign currency borrowers between 2010 and 2014. The group of authors writing up the latter study comprises *Bodnár*, *Gondos*, *Tóka* and *Vécsei*.

This volume resting on very thorough theoretical and practical research closes with an Afterword by the editor *Csaba Lentner*. In his Afterword, the editor summarises the findings of the book and provides a synthesis of the authors' research and the individual thematic areas. He points out that a direct consequence of operating public finances with a neoliberal economic policy is the formation of a deficit and public debt, followed by the spreading of the deficit into the national economy, eventually wrecking household finances. This is what happened in the case of foreign currency lending. Previous Hungarian governments – as *Lentner*

explains – financed the deficit and public debt from external resources using the tools of economic policy prevalent in the international sphere without circumspection, thereby leading families into a debt trap.

Concerning the book as a whole, it is worth noting that the editor has grouped together a set of substantial studies with outstanding skill. With an important and comprehensive, interdisciplinary body of knowledge at his disposal, *Lentner* was able to reflect this in the book's structure and the authors have written their studies with this in mind, producing a set of pieces which complement each other well. The editor's work can be regarded as truly creative. Thanks to his efforts, each study begins with an abstract in Hungarian and English, and each documents its sources in footnotes and a specialised bibliography. The book therefore represents useful "ammunition" not only for economists, scholars of economic law and sociologists, but also for politicians and political scientists.