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IMPACT OF COSTS ON LEGAL RISK OF CHF FOREIGN CURRENCY MORTGAGE LOANS IN SHAPING FINANCIAL PERFORMANCE OF SELECTED BANKS

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ABSTRACT

The purpose of the article. Costs associated with legal risks, including those arising from the need to carry out loan conversions, compensate borrowers, and court or settlement costs, are an element that affects the profitability of banks that have granted such loans. The purpose of this article is to indicate the impact of costs associated with the legal risk of foreign currency mortgage loans in CHF in the context of the financial performance of selected banks in Poland. Particular attention was paid to the impact of costs related to litigation, the settlement process and loan conversions on the financial performance of banks. The article uses an analysis of studies and data published by financial safety net institutions and an analysis of the financial results of banks operating in the Polish banking sector. Due to the provisions made, banks are more prepared for the challenge of the materialization of legal risks related to foreign currency housing loans. However, it should be emphasized that this risk will be one of the main factors affecting the situation of banks in the coming years. The article complements the existing body of research on legal risk provisions with the impact of the level of provisions on the financial performance of banks operating in the Polish banking sector.

Methodology. The article uses an analysis of studies and data published by financial security network institutions, as well as an analysis of the financial results of banks operating in the Polish banking sector that have the largest share of foreign currency loans in their portfolios: PKO BP S.A., Millennium S.A., Santander S.A. and mBank S.A.

Results of the research. The analysis of the role of costs related to the legal risk of foreign currency mortgages in CHF in shaping the financial performance of selected banks in the Polish banking sector, indicates that this risk has a significant impact on the financial performance of the studied institutions. Due to the provisions made, banks are more prepared for the challenge of materialization of legal risk related to foreign currency housing loans. However, it should be emphasized that this risk will be one of the main factors influencing the situation of banks in the coming years. Based on the analysis, it is shown that the level of provisions made by banks related to the legal risk of foreign currency housing loans is increasing.

Keywords: legal risk, banking, mortgages.

JEL Class: G2, G21.

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Impact of Costs on Legal Risk of CHF Foreign Currency Mortgage Loans in Shaping Financial Performance of Selected Banks

Banks operating in the Polish banking sector introduced and granted mortgages denominated and indexed to the Swiss franc (CHF) between 2004 and 2008. Initially, they were widely promoted as a favorable solution, especially during the period of low interest rates and a stable CHF exchange rate, but in subsequent years they began to generate serious problems for both borrowers and banks. The rise in the value of the Swiss franc against the Polish zloty and the changing legal situation, especially in the context of the growing number of lawsuits related to the terms of the loan agreement, revealed legal risks that affected the functioning of the banking sector and the stability and financial performance of the banks granting such loans. Costs associated with legal risks, including those arising from the need to carry out loan conversions, compensate borrowers, and court or settlement costs, are an element that affects the profitability of banks that have granted such loans.

The purpose of this article is to indicate the impact of the cost of legal risk of foreign currency mortgage loans in CHF in the context of the financial performance of selected banks in Poland. Particular attention has been paid to the impact on banks' financial performance of costs related to legal proceedings, the settlement process and loan conversions. In addition, taking into account the changing economic conditions, an attempt was made to assess how the selected banks responded to the legal risks associated with foreign currency loans and how the management of these risks affects their financial performance in 2021–2023.

Literature review

Bank security is affected among others by institutional, structural and market conditions (Zaleska, 2022). The level of risk can also be affected by the bank's responses to government actions, including those taken in response to the crisis triggered by the increase in risk in the banking sector (Koleśnik, 2019). The literature points out that among the important systemic risks there are the so-called CHF credits and the materialization of legal risks (Zaleska, 2022). The issue of so-called CHF credits is a materialization of foreign exchange risk and legal risk (Zaleska, 2022). The legal risk situation burdening some banks in the sector affects the prospects of the entire sector (Lusztyn, 2024). Factors that seemingly only affect risk in some banks can cause an increase in systemic risk (Koleśnik, 2019).

Loans denominated and indexed to CHF were introduced into the banks' offerings and granted on a massive scale in 2004–2008 (Jura, 2021). It should be noted that loans were granted during this period at the CHF exchange rate of PLN 2.0–2.6 (Kata, 2015). The design of the loans offered at that time, allowed the application of a lower interest rate, at the expense of linking the amount of the installment to the future exchange rate (Korpalski, 2020). A significant increase in exchange rate risk initiated a decline in sales of residential loans denominated or indexed in Swiss francs (Czechowska

et al., 2022). New loans in Swiss franc are granted only in very small amounts, but since 2021, there has been a materialization of the operational risk of the pre-2009 transaction (Baginski, 2022). For several years, the portfolio of foreign currency loans and mortgages has been a major risk factor in the banking sector. It is also a factor significantly affecting the financial position of banks in the Polish sector (UKNF, 2024). The National Bank of Poland emphasizes in its annual reports that the main weakness in systemic risk remains the legal risk associated with foreign currency housing loans (NBP, 2021b). In the context of financial stability, the legal risk of foreign currency housing loans is indicated as the most important risk (NBP, 2021b). The literature indicates that the stability of the Polish banking sector is not directly threatened due to issues related to credits denominated and indexed to the Swiss franc. This is influenced, among other things, by higher capital requirements, compared to other European Union countries (Jura, 2021). The area of the impact of legal risk on the situation of banks is analyzed, among other things, within the framework of non-reporting research on the legal risk of the foreign currency loan portfolio by the Office of the Financial Supervisory Commission (UKNF) (UKNF, 2024).

An increase in the probability of legal risk materializing occurred in 2019, following a ruling by the Court of Justice of the European Union (Jura, 2021). Some of the institutions in 2021–2024 wrote off legal risk provisions, which were related to foreign currency mortgages, in an amount higher than the total amount of capital needed to operate in the state at that time (Lusztyn, 2024). In the case of an extreme scenario, which would involve maximizing the statute of limitations on the banks' claims, if the loan agreements were ruled invalid, the costs would exceed the capitals accumulated by the banks in the Polish sector. As a result of such a scenario, a banking crisis would be possible, burdening taxpayers with the costs (Lusztyn, 2021).

Banks began making provisions for legal risks starting in 2019, but their scale has increased significantly in subsequent years (ZBP, 2022). Banks that have a large share of mortgage loans indexed to the Swiss franc exchange rate in their portfolio may create high allowances for expected loan losses, in connection with court proceedings that may be settled to the bank's disadvantage (Czechowska et al., 2024). It is worth noting the establishment of the Borrower Support Fund, fed by banks, which was one of the solutions to support the area of foreign currency loan portfolio (ZBP, 2022).

One of the key solutions was the process of offering settlements to customers (ZBP, 2022). A report by the Polish Bank Association in 2024 indicated that the number of lawsuits against banks concerning foreign currency home loans exceeded 150,000 cases. On this basis, the risk level of banks on this account should be described as high or very high (ZBP, 2024). A measure to reduce the legal risk associated with the portfolio of foreign-currency housing loans was the use of a mechanism making the weight of the risk dependent on the recognized costs of the settlements (ZBP, 2024). This also affected the process of amicable resolution of the bank's disputes with the borrower. The level of legal risk provisions established by banks is influenced by the process of offering settlements to borrowers, the line of court decisions that are favorable from the perspective of borrowers, as well as the growing number of settlements on the invalidity of loan agreements citing abusive clauses (UKNF, 2024).

Attention should be paid to the proposal of the Chairman of the The Polish Financial Supervision Authority, which assumes the possibility of voluntarily converting foreign currency loans in Swiss franc to gold loans (NBP, 2021b). The sector also hints at a proposal to have disputed foreign currency loans taken over by a dedicated state institution (EKF, 2020). In connection with the growing value of loan debt denominated or indexed in Swiss francs, legislative solutions are being attempted to statutorily modify the content of loan agreements concluded between consumers and banks (Jurkowska-Zeidler, 2017).

Methodology and research

The article uses an analysis of studies and data published by financial security network institutions, as well as an analysis of the financial results of banks operating in the Polish banking sector that have the largest share of foreign currency loans in their portfolios: PKO BP S.A., Millennium S.A., Santander S.A. and mBank S.A. According to data as of the end quarter of the 2022, the gross value of the portfolio of CHF-based mortgages was as follows (in PLN million): 14,731, 11,454, 9126, 8787. The analysis covers the years 2021–2023. The period adopted illustrates the situation of the sector after the so-called proposal of the Chairman of the FSC in December 2020. The proposal envisaged the conversion of franc loans to zloty loans on such terms that a franc loan would be treated as if it were a PLN loan from the beginning. The article complements the existing body of research on legal risk provisions with the impact of the level of provisions on the financial performance of banks operating in the Polish banking sector, which have the largest share of foreign currency loans in their loan portfolios.

Results

In the analyzed years 2021–2023, the Office of the Financial Supervisory Commission identified the portfolio of foreign currency loans and mortgages as one of the main risk factors in the banking sector, which significantly affected the financial position of banks (UKNF 2022; 2023; 2024). Banks two-book provisions according to individually developed models in accordance with the framework set forth in the International Financial Reporting Standards (IFRS). The criteria based on which banks calculate the value of provisions include:

- number of lawsuits (current and expected),
- average duration of proceedings,
- the probability that the case will be resolved to the bank's disadvantage, and
- the estimated amount of loss in the event of such a settlement.

Banks that offer settlements to borrowers also include in their reserves the projected number of contracts included in the settlement process and the projected costs incurred in the process (NBP, 2021a). Banks establish reserves from which they cover losses incurred in connection with court judgments or settlements. According to a simulation by the Union of Polish Banks (ZBP), in its report on the situation of the banking sector, “Banks 2023”, 25% of borrowers with active CHF loans will jump to a settlement,

while 75% will file a lawsuit. In the case of repaid loans, ZBP estimates that 25% of borrowers will use the court path.

In 2021, banks in the entire Polish sector in the item of provisions for legal risk of foreign currency mortgages in CHF showed PLN 7.6 billion. In 2021, mBank tied up a total of about PLN 2.75 billion. Bank Millennium, on the other hand, made write-downs for legal risk of CHF mortgages to the tune of PLN 2.3 billion. This had an impact on the bank's financial result, specifically, the bank made a loss of PLN –1.33 billion. Santander Bank Polska periodically increased the amount of write-downs for legal risk associated with the mortgages in question.

In 2021, the value of the object of sport was 13.2 billion (an increase of 142.2% compared to 2020). The value of provisions made by banks amounted to 23.3 billion (an increase of 17.7 billion (317.2%) compared to 2020). It is worth noting that the value of provisions exceeded the total value of the subject of litigation. This was due, among other things, to the expectation of unfavorable court decisions for banks and the start of activities related to the process of offering settlements to borrowers. Provisions for settlements amounted to PLN 6 billion in total provisions.

In 2022, the value of disputed loans amounted to PLN 35.8 billion (an increase of PLN 15.6 billion (77.3%) compared to the balance at the end of 2021). The number of disputed loans (included in bank balance sheets and repaid) amounted to 105.7 thousand (up 32.6 thousand (44.6%) year-on-year). In the balance sheets of banks and branches of credit institutions, the number of housing loans for households linked to the Swiss franc was 310 thousand. It is worth noting that due to the expected judgment of the Court of Justice of the European Union, the level of legal risk of the portfolio of foreign currency mortgages increased in 2022, including, in particular, the issue concerning the possibility of demanding remuneration for the use of capital by the consumer, granted by the bank, in the event of cancellation of the contract (Case C-520/21) (KNF, 2023). Due to the increase in legal risks, banks increased their level of provisions in 2022 to 37.1 billion (an increase of 14.1 billion (61.7%) compared to 2021) (UKNF, 2023).

At the end of 2023, the number of Swiss franc-linked home loans for households across the sector was 240.0 thousand. In the same year, the value of the disputed loans was PLN 58.6 billion (an increase of PLN 22.8 billion (63.6%) over 2022). The number of disputed loans (included in the bank's balance sheets and repaid) amounted to 149.9 thousand (up 44.3 thousand (51.9%) year-on-year) (UKNF, 2024). The annual dynamics of gross foreign currency receivables from housing loans to households in 2021–2023 is presented in Table 1.

Table 1

Annual growth rate of gross foreign currency receivables from housing loans to households in 2021–2023

Receivables from housing loans	2021	2022	2023
Total [%]	106,8	92,3	96,5
Foreign currency [%]	88,5	74,2	56,1

Source: own elaboration based on the ZBP (2024).

The value of provisions in 2023 amounted to PLN 57.5 billion (an increase of PLN 20.4 billion (55.1%) compared to 2022) (UKNF, 2024). Banks in 2023 actively offered and entered into settlements with borrowers, which were based on the proposal of the Chairman of the FSC to use mediation through the Arbitration Court at the Financial Supervision Commission. Some of the banks offered settlements under the terms they set. As of the end of 2023, banks had reached 89,000 settlements, with a total value of PLN 15.2 billion (UKNF, 2024). An analysis of the level of provisions in 2021–2023 is presented in Table 2.

Table 2

Level of provisions for legal risk associated with CHF loan portfolio in 2021–2023

Year	Level of provisions for legal risk related to CHF loan portfolio (as of year-end)	Increase/decrease y/y
2021	PLN 23.3 billion (including PLN 6 billion for reserves dedicated to settlement)	increase by 17,7 billion PLN (+317,2%)
2022	PLN 37.1 billion	increase by 4,1 billion PLN (+61,7%)
2023	PLN 57.5 billion	increase by 20,4 billion PLN (+55,1%)

Source: own elaboration based on *Information on the situation of the banking sector 2021–2023*, UKNF (2022–2024).

The National Bank of Poland points out that the strong variation in the amount of provisions may be due to differences in the adequate reflection of risk at individual banks. It is worth noting that in 2020–2021, some banks have made higher provisions for legal risk than for credit risk provisions.

The legal costs associated with the foreign currency mortgage portfolio of the individual banks included in the analysis for 2021–2023 are shown in Table 3. It should be noted that for three out of four banks, legal costs increased year-on-year during the period under review.

Table 3

Legal costs associated with foreign currency mortgage portfolio in 2021–2023

Bank/ Amount of costs (million PLN)	2021	2022	2023
PKO BP S.A.	6 552	1 914	2 715
Millennium S.A.	2 086	2 017	3 065
Santander Bank Polska S.A.	231	1 611	2 405
mBank S.A.	2 758	3 112	4 908

Source: own elaboration based on banks' financial statements.

Legal costs translated directly into reduced financial results of banks in the period under review. Some of the banks (Millennium S.A, Santander Bank Polska S.A. and mBank S.A.) made a loss,

resulting from the legal costs incurred. In banks' financial statements in the years under review, all of the banks surveyed indicated a significant impact of costs for legal risk on net profit. The financial results for 2021–2023 of the analyzed banks are presented in the Table 4.

Table 4

Banks' financial performance in 2021–2023

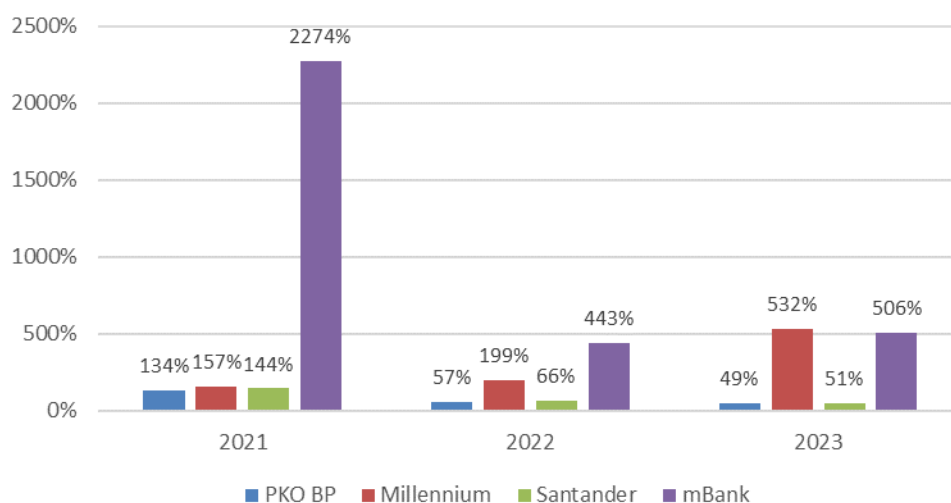
Bank/Net profit (PLN million)	2021	2022	2023
PKO BP S.A.	4 874	3 333	5 502
Millennium S.A.	–1 332	–1 015	576
Santander Bank Polska S.A.	160	–2 449	–4 672
mBank S.A.	–121,3	–702,7	970,6

Source: own elaboration based on banks' financial statements.

The share of costs in the financial results of banks in the analyzed period is presented at Figure 1.

Figure 1

Scale of legal costs associated with foreign currency mortgage portfolio in 2021–2023 in relation to banks' financial performance



Source: own elaboration based on banks' financial statements.

Conclusions

The analysis of the role of costs related to the legal risk of foreign currency mortgages in CHF in shaping the financial performance of selected banks in the Polish banking sector, indicates that this risk has a significant impact on the financial performance of the studied institutions. Due to the provisions made, banks are more prepared for the challenge of materialization of legal risk related to

foreign currency housing loans. However, it should be emphasized that this risk will be one of the main factors influencing the situation of banks in the coming years. Based on the analysis, it is shown that the level of provisions made by banks related to the legal risk of foreign currency housing loans is increasing.

The banks showed stable operating results in the years under review, but their gross results were burdened by the cost of legal risks, particularly those related to foreign currency mortgages. The institutions hedged against this risk through high provisions, as well as through the settlement programs implemented. The cost element for legal risk includes the cost of litigation, as well as the level of losses on the loan exposure if the bank loses the case. Banks also consider in costs the scenario of cancellation of loan agreements without the possibility of claiming the cost of using the capital that was made available to the borrower. Note that the costs of the settlement program are also in this cost category. It is worth noting that the banks' losses related to the settlement concluded with the customer or for declaring the contracts ineffective depend on the exchange rate at which the loan is converted to zlotys or written off the balance sheet.

In the long term, a key element in the strategy for managing risks associated with foreign currency loans will be not only monitoring foreign currency risk, but also actively managing legal risk and adapting loan products to the requirements of changing legislation. An increase in provisions for legal risk will be associated with an increase in fees and commissions, as this type of risk will be taken into account by banks in the products they offer and their prices due to the need to raise additional revenues to cover the increase in costs. The challenges associated with this risk require banking institutions not only to effectively manage legal risk, but also to constantly monitor and adapt their strategies to the dynamically changing regulatory and market environment.

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