



FX LOANS IN EUROPE

*The problem of selling them as a
mass market product*

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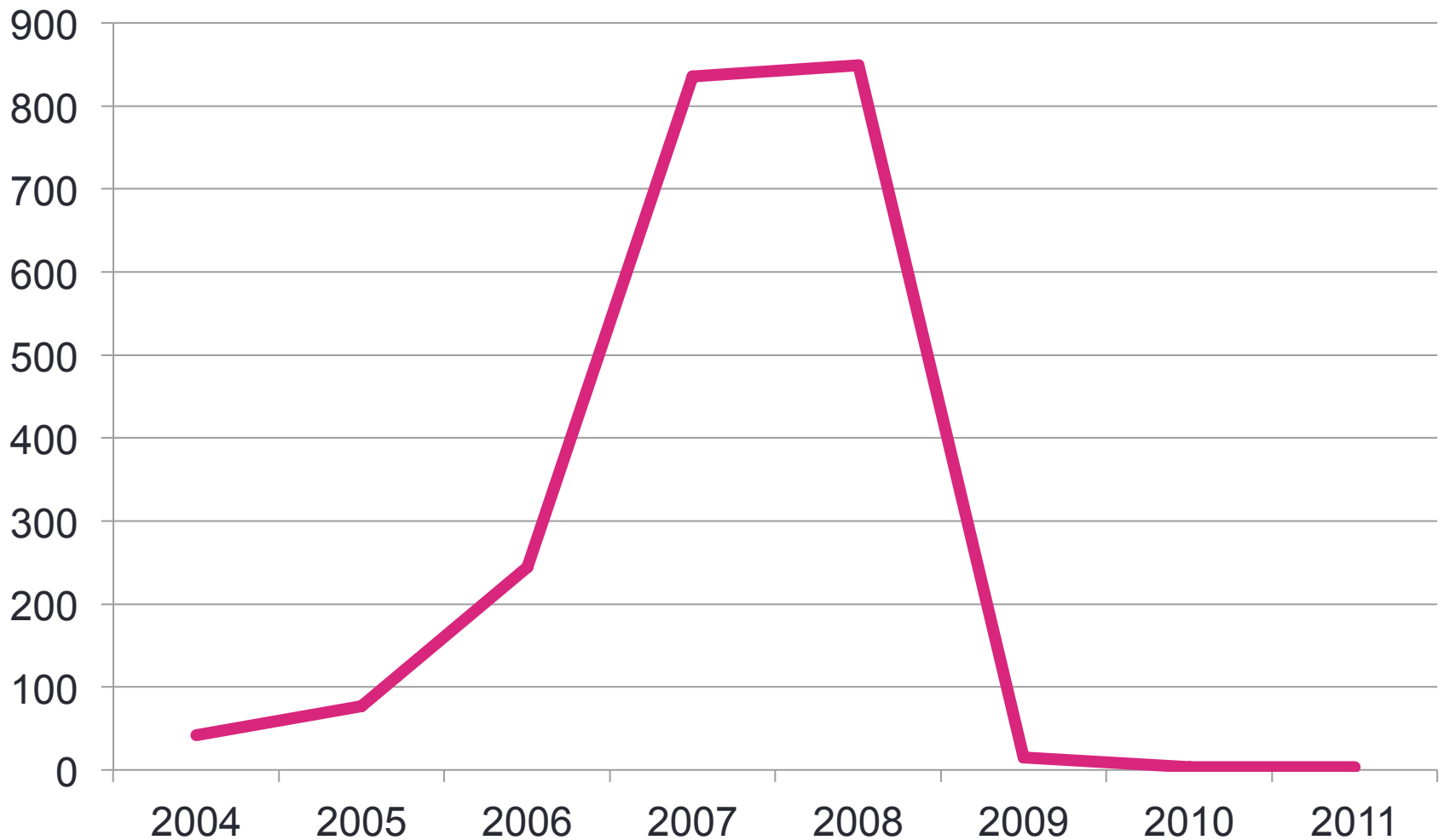
1. Spain FX Loans
2. CJEU Case Law
3. Spain Case Law
4. Conclusions



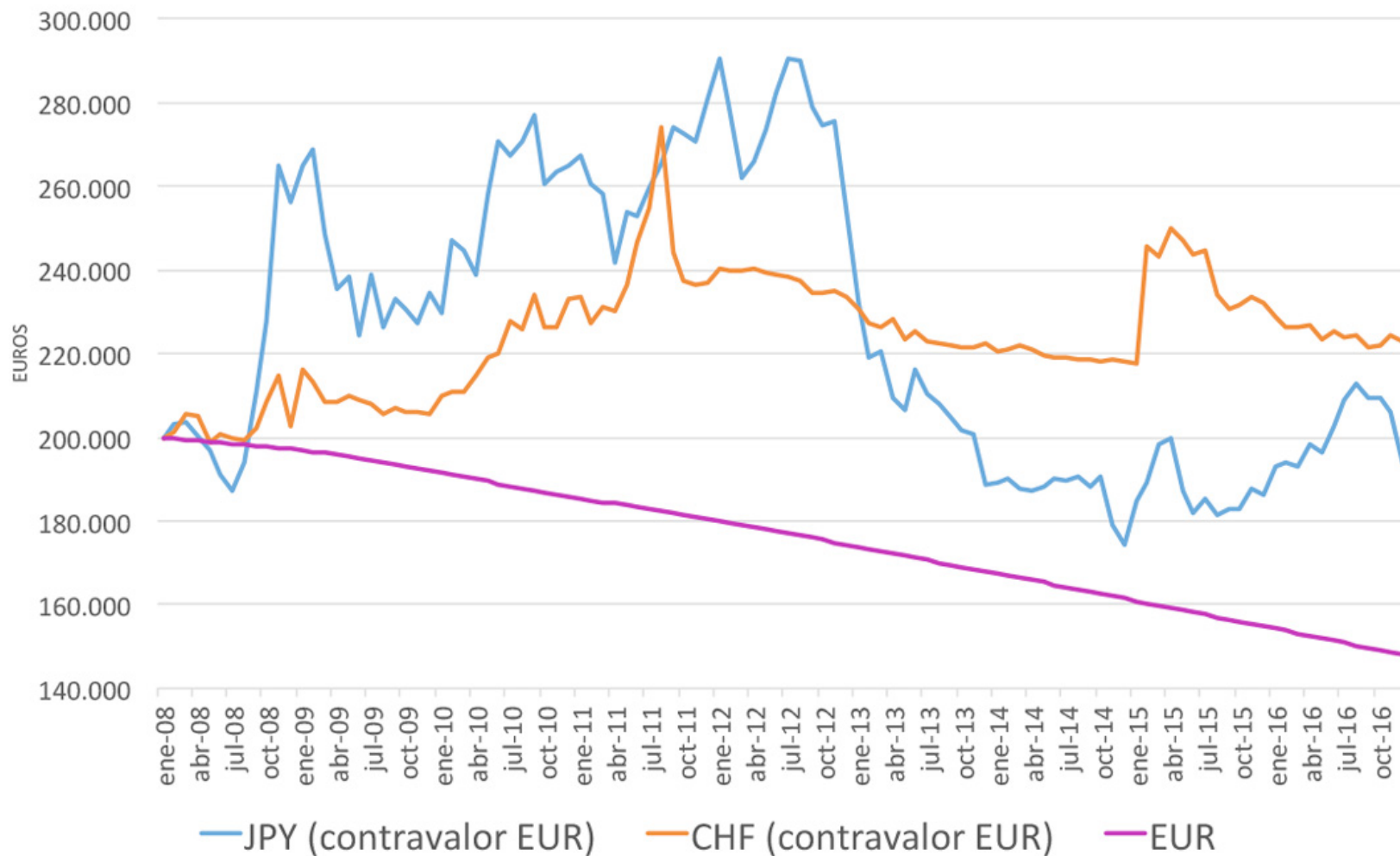
SPAIN FX LOANS

Mass marketing

Mass selling in Spain



ECONOMIC IMPACT IN REMAINING DEBT 200.000€ - 2008 - 2016



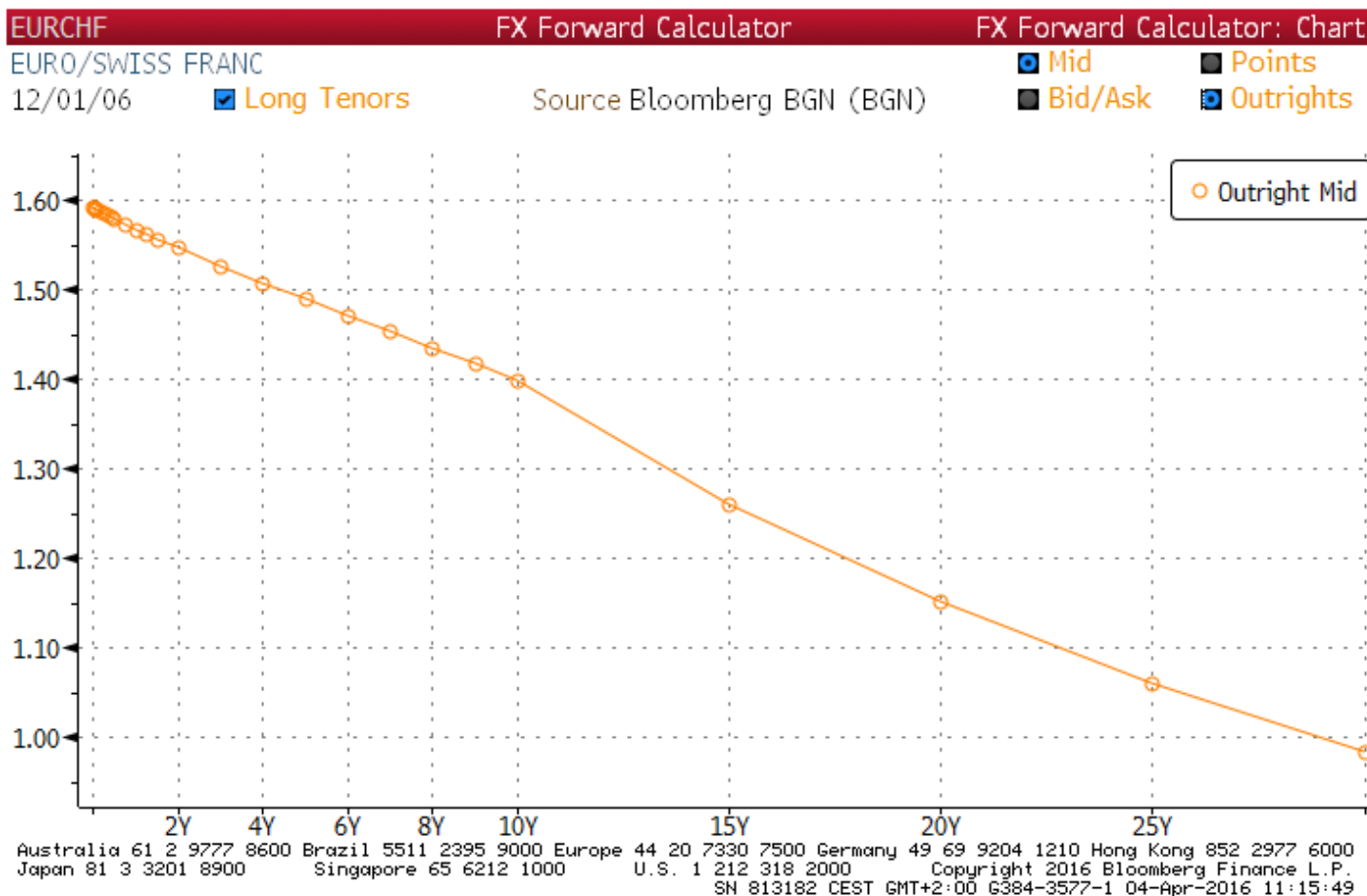
WHAT THE SAY

- **Lower** monthly fee
- **Lower** interest rate
(Euribor vs. Libor)

WHAT THEY DIDN'T SAY

- **Interest rate risk**
→ Euribor forecast
- **Interest currency exchange** → increase in monthly payments and in **REMAINING DEBT**

BLOOMBERG FORECAST



Example EUR / CHF

12/2006 - 200.000 € - 318.000 CHF – 1,56

FORWARD	SPOT	EUROS	DIFFERENCE
2Y	1,55	205.161,29	-5.161,29 €
10Y	1,40	227.142,86	-27.142,86 €
15Y	1,25	254.400,00	-54.400,00 €
20Y	1,15	276.521,74	-76.521,74 €



CJUE CASE LOW

European Court Justice

CJEU CASE LAW

CJEU C-26/13

30/4/2014

Árpád Kásler vs OTP
Jelzálogbank

CJEU C-186/16

20/09/2017

Andriciuc vs Banca
Românească

CJEU C-312/14

3/12/2015

Banif Plus Bank
vs Márton
Lantos

CJEU C-26/13 - Kásler

Directive 93/13/EEC

- contracts should be drafted in **plain, intelligible language**
- all contractual terms must be linguistically and grammatically intelligible. However, it could also mean, in a wider sense, that the **economic reasons** for using the term and its relationship with the other contractual terms **must be clear** and intelligible to the consumer.
- **national court** declaring an unfair term to be invalid **can substitute it**

Hungary, Czech, Germany, Greece, Italy, Austria, EU

CJEU – C-312/14 - Lantos

Directive 2004/39/EEC

- foreign exchange transactions effected by a credit institution in the performance of a foreign currency denominated loan agreement ... **cannot regarded as investment services**

Hungary, Germany, Poland, UK, EU

CJEU – C-186/16 - Andriciuc

Directive 93/13/CEE

- a term under which the loan must be repaid in the same foreign currency must be understood by the consumer **both at the formal and grammatical level**, and also in terms of its actual effects
- the **average consumer** would
 - Be aware both of the possibility of **a rise or fall in the value of the foreign currency** in which the loan was taken out
 - Be able to assess the potentially significant **economic consequences** of such a term with regard to his financial obligations

Directive 2014/17/EU

- **Directive 2014/17/EU**, 4.2.2014 on credit agreements concluded with consumers for residential real estate .- Transposition 21.3.2016 but Spain

“some of the problems identified derive from foreign currency loans signed by consumers because of the advantageous interest rate offered, without information or adequate understanding of the exchange rate risk entailed”

“it is necessary to introduce measures to ensure that consumers are aware of the risks they assume and that they have the ability to limit their exposure to foreign exchange risk during the term of the loan”

“The risk could be limited by giving the consumer the right to convert the currency of the credit agreement, or ... including maximum limits or risk warnings, if these are sufficient to limit the currency exchange risk”



SPAIN CASE LAW

Supreme Court Judgements

SPAIN CASE LAW

2015

Consumer
vs
Kutxabank

A derivative financial
instrument - *Directive*
2004/39/EC, MiFID

2017

ASUFIN vs
Barclays

Lack of transparency

2018

ASUFIN vs
Caixa
Catalunya

Cancels 2
Fx Loans

2018

ASUFIN vs
Banco
Santander

Pre-contractual
information

SPAIN CASE LAW

HIPOTECA MULTIDIVISA

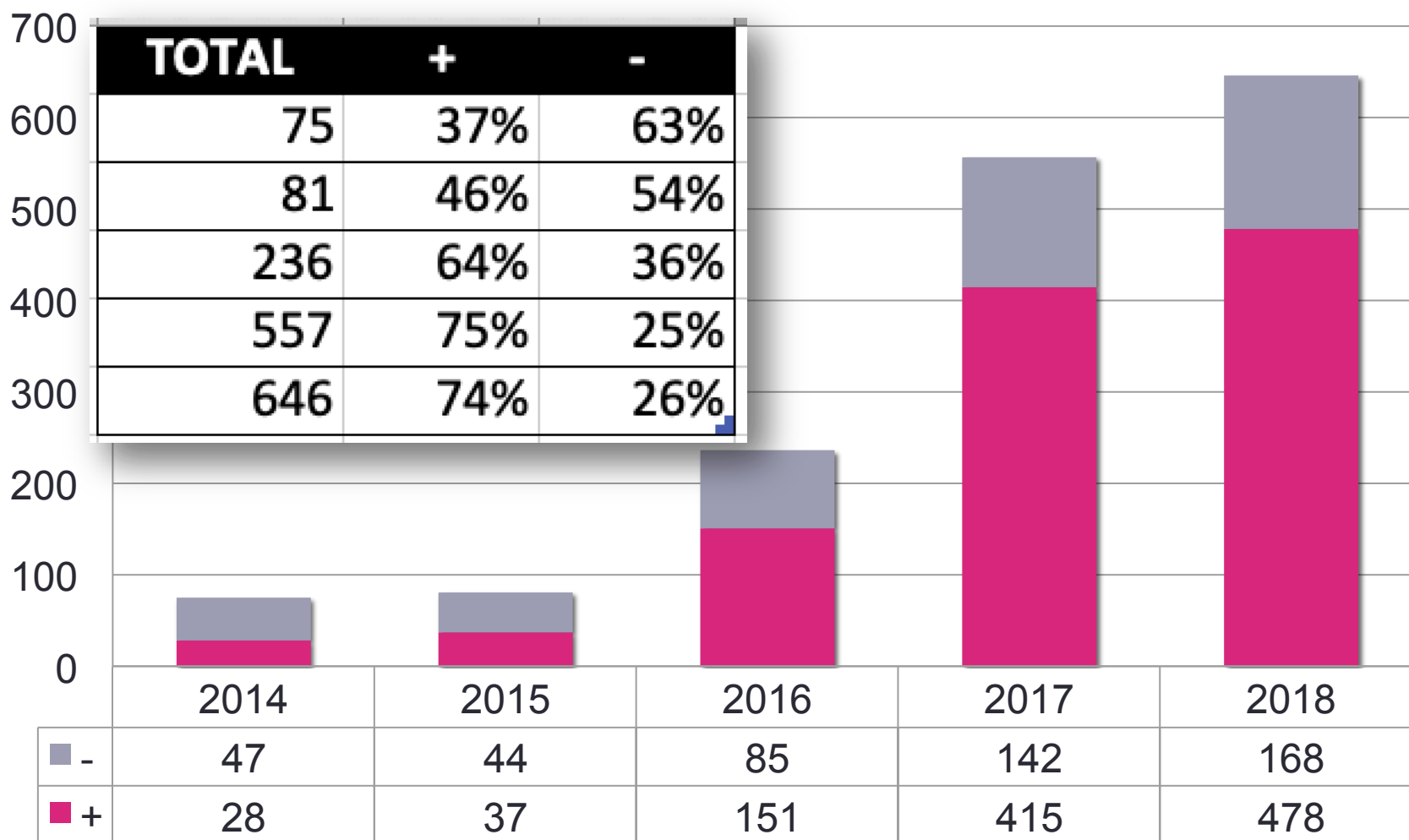
Página

 Mostrando sentencias desde la 1201 a la 1208 de **1208 sentencias**

 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21
 22 23 24 **25**

		<u>BANCO/GRUPO</u>	<u>BANCO</u>	<u>FECHA</u>	<u>JUZGADO</u>	<u>CIUDAD</u>	<u>PERFIL</u>	<u>SENTENCIA</u>	<u>NOTAS</u>
	1201	  BANKINTER	BANKINTER	08/01/2019	JPI 45	MADRID	PART.		COSTAS + DEMORA
	1202	  BANKINTER	BANKINTER	08/01/2019	JPI 50	MADRID	PART.		EURIBOR +0.50. COSTAS
	1203	  BANKINTER	BANKINTER	10/01/2019	JPI 92	MADRID	PART.		DOS CRÉDITOS. COSTAS + DEMORA
	1204	  BANKINTER	BANKINTER	14/01/2019	JPI 101	MADRID	PART.		MORA + COSTAS
	1205	  BANKINTER	BANKINTER	14/01/2019	JPI 26	BARCELONA	PART.		SIN COSTAS.

Spain Case law – by year





CONCLUSIONS

Some proposals for the future

The **risk of exchange** rate and its terrible consequences for households **was known**, yet, massive selling of FX Loans was allowed in Europe.

Europe and its Member States must take **measures** to ensure that there is no repetition in the future.

Examples like the case of Hungary demonstrates that a **conversion law** is possible

In some countries Courts are in favor of consumers. However, **litigating is not the solution** (time & money).

We must **work together** to find an acceptable **solution** for households



THANKS

They've got the money, we've got the right

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