

CONSUMER BANKRUPTCY REGIMES IN EUROPE

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Citation Guide:

Tamás Fézer and Nikolett Zoványi,
'CONSUMER
BANKRUPTCY
REGIMES IN EUROPE'
[2023] 5 (1) Prophetic Law
Review 42.

Received:

13 April 2023

Accepted:

22 May 2023

Published:

4 July 2023

DOI:

10.20885/PLR.vol5.iss1.art3



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Abstract

Consumer over-indebtedness has been a problem in Europe especially since the 2008 financial crisis. Legal procedures addressing consumer insolvency were scarce and sporadic prior to 2008, however, legislation have accelerated in most Member States of the European Union in the past fifteen years. In lack of any harmonization in the area of consumer bankruptcy in the EU, Member States, while learning from each other in some instances, established their own procedures and regulatory frameworks. The paper attempts to map the various approaches in addressing consumer over-indebtedness looking for common cores to serve as a base for a future legislation in an EU level. The research follows a comparative method mostly relying on the analysis of the relevant norms in the Member States of the EU also wandering to the territory of the sociology of law. The paper concludes the consumer bankruptcy regimes in Europe can be categorized easily and show similarities mostly in the identification of the vulnerable groups and in the legal consequences of the procedures. This finding proves there is ground for the European Commission to propose legislation, preferably in the form of a directive of the Council and of the European Parliament, to ensure a harmonized approach in the field of consumer bankruptcy procedures.

Keywords: *Consumer bankruptcy, consumer law, European Union law, insolvency.*

A. Introduction

In Europe, over-indebtedness of private individuals has been a problem equal to the insolvency of businesses for almost half a century now. Consumer society turned consumers to buy more products and to contract for services even if they do not have the

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necessary financials available at the time of making the contract for such commodities. Consumer credit as a legal institution was created to assist consumers in reaching their goals and to satisfy their desires by obtaining a loan from either credit institutions or from the merchant of the products or services. Also, consumers may face financial difficulties even without diving deep into consumer society. Losing their jobs, spending on unplanned extraordinary expenses (e.g. sudden illness) may also push consumers down the insolvency spiral. Over-indebtedness of consumers, however, was neglected in most jurisdictions in Europe until the end of the 20th century. In most cases, however, consumers also expected some safety net, a solution to receive discharge of their obligations and to continue their lives with a fresh start.³

Consumer over-indebtedness may typically arise from two typical scenarios. One is the debts owed to credit institutions, while the other significant source of over-indebtedness is the inability to pay the public utility fees. In 2022, the latter got especially disturbing due to the highly expensive energy prices. Consumer bankruptcy is, therefore, a much-needed legal institution that is always under fine-tuning in every single jurisdiction.

Consumer bankruptcy is seen as a viable alternative to some of the practices consumers developed over the decades on how to live a life with still owing serious amounts of money (debt) to creditors. Illegal income, non-declared workplaces, forged contracts on the transfer of the assets were the last resorts to consumers suffering from over-indebtedness. Consumer bankruptcy can, therefore, certainly offer a lawful and regulated way toward a fresh start. All parties can benefit from consumer bankruptcy as the creditors can calculate and predict the satisfaction of their demands through some minimum satisfaction. For the debtor-consumer who is suffering from over-indebtedness, consumer bankruptcy offers the possibility to earn a lawful income, to still keep some minimum assets that can grant him/her a simple living, and in case of full cooperation to the creditors, the consumer may even keep the often most valuable property in the portfolio, the real estate.

In the past decades, more and more member states of the European Union decided to introduce legal framework to their consumer law to handle the problem of consumer over-indebtedness. One of the pioneers was Denmark that adopted the first rules on consumer

³ S Angel and K Heitzmann. 'Over-indebtedness in Europe: The relevance of country-level variables for the over-indebtedness of private households' (2015) 25 *Journal of European Social Policy* 3, 332.

bankruptcy in 1984.⁴ The United Kingdom followed this approach in 1986 creating the first Consumer Bankruptcy Act in the Commonwealth.⁵ France created a legal framework for consumer bankruptcy in 1989,⁶ while Finland adopted its consumer bankruptcy regime in 1993.⁷ Sweden,⁸ Austria⁹ and Germany¹⁰ adopted laws to provide a helping hand to consumers in debt in 1994, however, the German proposal only entered into force in 1999. The Netherlands made laws to cover this area in 1998,¹¹ while Belgium reacted to this social need in 1999.¹² In most cases, these early examples to consumer bankruptcy procedures in Europe have already gone under revision based on the practical experiences and the lessons learned from the relatively young age of the institution.

It is also important to add that consumer bankruptcy is not the only instrument member states of the European Union used and still use to handle the situation of the over-indebtedness of consumers. These additional measures were typically adopted in times of massive social crisis like the one in Hungary related to the victims of the foreign currency bank loan practices.¹³ Governmental interventions, however, are still very scarce in the area of consumer over-indebtedness. This study aims to provide for a method to classify how to determine and address consumer over-indebtedness in the European Union Member States. The study does not go into a deep analysis on the models and approaches Member States follow, instead, its purpose is to serve as a starting point for the construction of future research that looks for a potential unified and harmonized approach at European Union level. To facilitate this, the study intends to identify common cores of basic differences in the models Member States of the EU developed over the relatively short history of addressing consumer over-indebtedness.

B. Problem Formulations

Two legal issues provide for grounds for this study: *first*, what are the key dilemmas and factors that determine over-indebtedness and the inability of consumers to settle their dues in Europe? *Second*, what trends and new directions can be experienced in the Member

⁴ Denmark Bankruptcy Act No. 444 of 28 August 1984.

⁵ United Kingdom Insolvency Act 1986.

⁶ France Code de la consommation 1989.

⁷ Finland Act on the Adjustment of the Debts of a Private Individual 1993.

⁸ Sweden Bankruptcy Law 1994. Art. 672.

⁹ Austria Insolvency Act 1994.

¹⁰ Germany Insolvency Code of 5 October 1994.

¹¹ The Netherlands Bankruptcy Act (Faillissementswet) 1998.

¹² Belgium Collective Debt Resolution Act of 1999.

¹³ Gy Suranyi. 'Ten years after the crisis in Hungary' (2018) 68 Acta Oeconomica S2, 132.

States of the European Union in assisting consumers to overcome the issue of over-indebtedness?

C. Methodology

This paper applies normative research methodology merging two legal approaches: conceptual and statutory approaches. Conceptual approach is applied to identify the legal issue related to the phenomenon of consumer over-indebtedness. The statutory approach is also used to analyse the current legal framework in selected Member States of the EU that aims to provide for solutions on over-indebtedness and the inability of consumers to settle their dues. The primary, secondary and tertiary sources of legal authorities were compiled and analysed through library research. Beyond the qualitative research methods, a quantitative approach was also used to illustrate the magnitude of the problem. The research outcome is delivered in the form of a descriptive and systematic legal argumentation.

D. Discussion and Result

1. Key Dilemmas in the Approach to Solve Consumer Over-Indebtedness

One of the most important decisions jurisdictions in Europe had to face in the past decades when addressing consumer over-indebtedness was the nature of the proceeding in which the law provides for the possibility to consumer to leave the debts behind and to gain release from the trap of debts. It may sound natural court proceedings should be the focal point of this legal institution, however, it does not seem to be that obvious and practical. While court proceedings are, no doubt, powerful and have a binding effect that also bears the power of discretion and finality that other authorities may not grant in proceedings. A court typically also has the competence at amending the title of the demands and even the final release of the debt. On the other hand, court proceedings may sound too harsh and may be dangerous on the interests of the creditors.¹⁴ As every bankruptcy proceeding requires finding a balance or and equilibrium in between various interests (most commonly the interests of the debtor and the creditors), the harsh possibility for the court to intervene into the general structure of the underlying legal relations (most

¹⁴ R.D. Arpan. 'A New Perspective on Insolvency: The Procedure Applicable to the Debtor Who is a Natural Person' (2017) 68 *The Juridical Current Journal* 1, 124.

commonly a contract) between the debtor and creditor may sound favorable for the consumer debtor but definitely onerous for the creditor. The pros and cons of court proceedings, however, can certainly be seen as a complex picture, and there is evidence some Member States of the European Union actually take advantage of both regimes. Hungary, for example, introduced a two-step model that starts as an out-of-court settlement attempt and may finish on court. While the United Kingdom seized to be a member of the European Union, it still has a very powerful influence on some of the Member States. Therefore, it is interesting to see how England provides for the option to choose between an out-of-court and an on court proceeding for the consumer debtor.¹⁵ The proceeding that does not require the active involvement of the court may provide for firm grounds for the parties (the debtor and the creditors) to negotiate and to find a solution that can guarantee the much needed equilibrium is found not in the form of a pre-set legal order that uniforms the proceedings and, therefore, the interests of the parties but provides for a flexible approach to tailor to the needs of the individual proceedings. It seems, however, that most Member States of the European Union, in some format, involve the court in the proceeding either as an exclusive remedy or as an option/second step in the negotiation. The court proceeding seems to be quite useful to reach the effect of bindingness and to put an end to an otherwise potentially never-ending negotiation process between the parties. As the main goal of the proceeding related to consumer over-indebtedness is to grant settlement between the parties and to free the consumer debtor from the obligations in order to start a new life financially, the court proceeding is unavoidable at some point.¹⁶ It is a question how the English model can serve the purpose of a fair, predictable and fast proceeding. As it is up to the decision of the consumer debtor to decide whether the court proceeding or the out-of-court settlement attempt enjoys priority, the law also has to indicate a clear deadline in case the debtor chooses the latter to avoid negotiations without a resolution. Another solution may be to open the possibility to shift the extrajudicial proceeding into a court proceeding for the creditor after some time is elapsed from the start of the extrajudicial negotiations. Either way, it is crucially important to

¹⁵ A. Bigaj. 'The evolution of the institution of the consumer insolvency in 2009-2016 – opportunities and risks (2015) 15 Academic Debuts of the Students of the WSB University, 21.

¹⁶ Council of the European Union. 'Report on legal solutions to debt problems in credit societies' (2019).

meet the requirement of predictability and fairness. Predictability is a guarantee mainly for the consumer debtor who expects the consumer over-indebtedness proceeding or consumer bankruptcy is granting a realistic and foreseeable chance for the release of outstanding financial obligations. Fairness is, on the other hand, crucial for the creditors who expect the consumer bankruptcy proceeding is not used for stalling payment of obligations.

When looking for a model on how to approach consumer over-indebtedness, the research disclosed a true dividing line in between the eastern and the western part of the European Union. Culturally and traditionally, the Member States in the eastern end of the EU (mostly the post-Soviet countries) show a high rate of affection for real estate, therefore, property interests are considered valuable in these societies. People are more concerned about owning a flat than just facilitating the need to live somewhere, mainly through rental apartments. In the western part of the EU, however, it is quite the opposite. People are more willing to live their lives without ever owning a flat and consider real estate as a tool to serve their needs for staying and living somewhere.¹⁷ Debts owed to credit institutions (typically mortgages) are, therefore, less problematic and are not important parts of the debt portfolio of consumers, while in the eastern end of the European Union, credit institutions are the main creditors for consumers. Considering the economic crisis the COVID-19 pandemic started and then the war in Ukraine in 2022 deepened, it is very likely some of the eastern Member States of the Union will slowly change the attitude of being heavily attached to ownership over real estates. In the eastern Member States, therefore, we can typically find consumer bankruptcy regimes that target the debts owned by credit institutions through easement on payment or rescheduling of the installments. Again, the Hungarian solution is a prime example to this approach as the out-of-court settlement stage at the Family Bankruptcy Protection Services (*Családi Csődvédelmi Szolgálat*) intends to provide for such easement on payment for the consumers.¹⁸

¹⁷ Adrienne Csizmady and J Hegedüs. “Hungarian Mortgage Rescue Programs 2009-2016” in Narodowy Bank Polski (ed.), *The Narodowy Bank Polski Workshop: Recent trends in the real estate market and its analysis* (Narodowy Bank Polski, 2016). 18.

¹⁸ Hungary Act CV of 2015 on the Debt Management of Natural Persons.

2. Factors that Determine Over-Indebtedness and the Inability of Consumer to Settle Their Dues

The definition of over-indebtedness alone is a burdened concept. There are quite a few options on how to determine over-indebtedness. The construction of a precise definition is essential as it is often seen as the precondition for the consumer to debtor to be able to initiate the consumer bankruptcy proceeding. The available scenarios are as follow:

1. the total debt owed by the family per capita;
2. the ratio of net debt in the family compared to the net assets of the family;
3. the ratio of spending the income in the family;
4. the amount of debt compared to the income;
5. the amount of debt compared to the assets;
6. the number of incidents of missed/failed payments;
7. subjective assessment of the family that includes a projection for the future.¹⁹

The diverse solutions the Member States of the European Union established over the past few decades, despite the above-mentioned variations on the definition of over-indebtedness, can be categorized as follow:

1. Objective, quantitative models provide for an exact definition on bankruptcy and over-indebtedness. In Hungary, the debt should be between 2-60 million HUF (cc. €5,150 - €154,500), the debt is 80-200% of the assets, 80% of the debts are either recognized or not debated, and at least one debt (minimum of 500,000 HUF (cc. €1,290)) is past its due date for at least 90 days.²⁰ These quantitative requirements can be easily measured and examined, therefore, they withstand the test of predictability and stability. The quantitative models, however, can be quite restrictive and, depending on the changes in the market (e.g. fluctuation of the national currency, the rate of inflation etc.), they may not be that future-proof. The latter may become a serious problem for the lawmaker and for the parties alike as a consumer bankruptcy regime should show confidence and one that can guarantee a solution under potentially every possible market change. The question here is which ratio is a better indicator in defining consumer over-indebtedness. As we could see in the Hungarian example, the quantitative models may merge the two main ratios that can serve as a base for defining consumer over-indebtedness. Those arguing for the exclusive use of the debt to asset ratio believe the debts are already there, therefore, the income has less relevance if debts are already due. The promoters of the debt to income ratio theory, however, argue most debts are expected to settle in installments rather than in a lump-sum payment. This is the reason the income has a bigger relevance. While we should admit both theories seem valid and justified, none may provide for a

¹⁹ Hans Dubois and Robert Anderson. "Managing household debts in the EU: An integrated approach to service provision and the interaction with legal arrangement" in Hans Dubois et.al., *Consumer bankruptcy in Europe: Different paths for debtors and creditors* (European University Institute, San Domenico di Fiesole, 2011) 89.

²⁰ Hungary Act CV of 2015 on the Debt Management of Natural Persons (n 18). Art. 7.

perfect definition on consumer over-indebtedness. The combination of the two is certainly a more precise estimation on whether the consumer in question is in need of the consumer bankruptcy proceeding or not.

2. Subjective models provide for a very flexible solution. As already mentioned above, the United Kingdom, starting from the establishment of consumer bankruptcy, considers consumer bankruptcy as an option for the consumer debtor and not an obligation in any way. Just like the classic approach on bankruptcy for legal persons, consumer bankruptcy in England also heavily relies on the personal feeling of the consumer debtor. Instead of thresholds, debt and asset or income ratios, the procedural regime is in place and is available to anyone who believes the proceeding can ease the financial burden for him/her. In the European Union, Ireland is the promoter of the originally English approach on the definition of consumer over-indebtedness and relies on the consumers' desire whether they wish to be engaged in such proceedings or not.²¹
3. The administrative type models only count the number of incidents in a given period when the consumer debtor was unable to meet the payment obligations. Malta is a prime example to this approach in the European Union.²² The argument behind this purely administrative concept is that it also serves the purpose of prevention that the other two models (objective and subjective) substantially neglect. Prevention may not be a requirement *per se*, however, as seen in the bankruptcy regimes designed for legal entities, bankruptcies are significantly more successful in cases when the debtor is not already over-indebted but experiences frequent burdens in meeting the financial obligations. This preventive approach, therefore, is suitable to intervene before the consumer's financial situation gets fundamentally worse and can prevent scenarios when the only option for the bankruptcy proceeding is the dismissal of outstanding obligations that creditors are not likely to welcome. The administrative type models, therefore, prove to be the most distant from the subjective and objective models as they target the essence, the core question of the entire dilemma on how to approach the problem of consumer over-indebtedness: should it serve the function of prevention or remedy?

While in the European Union, the two functions of prevention and remedy are not articulated parallel to each other in the national consumer bankruptcy regimes, it is without doubt many Member States, at least latently, aim to take into account both of these interest throughout the proceeding. After all, every consumer aims to prevent a much more difficult financial situation when they decide to initiate a proceeding against themselves, while the proceeding itself is there to serve as a remedy for the already existing financial difficulties. The proceeding can loosen the leash around the consumer debtor's neck through the rescheduling or the rearranging of the obligations, and also it can prevent more obligations arrive beyond those the

²¹ Hans Dubois and Robert Anderson (n 19) 86.

²² Council of the European Union. 'Report on legal solutions to debt problems in credit societies' (2019).

consumer already struggles with. This dual functionality of the consumer over-indebtedness proceedings can be traced back in virtually all European regimes on consumer bankruptcy. The only difference in the above-mentioned models is which one enjoys priority in the concept of the lawmaker.

3. *Vulnerable Groups*

Finding the main path for the proceedings related to consumer over-indebtedness is not the only question the lawmaker has to decide. The equilibrium of interests and the definition of over-indebtedness are just halfway to success. As the nature of the consumer bankruptcy proceedings is to help those who are in need, vulnerable groups must also be identified in the community. It is a sensitive question as too much emphasis put on vulnerable groups may jeopardize the idea of a harmonized or even unified approach in a European Union level, while neglecting vulnerable groups may lead to an inefficient or not used model.²³ In advance, it is important to emphasize, the author of this study believes in harmonization rather than unification in the European Union when addressing the problem of consumer over-indebtedness. The desired model that may work EU-wide should provide for a firm and unified procedural path that can be available in all Member States, while Member States can freely prioritize certain groups (the vulnerable groups) by adopting special rules that may derogate the main column of the unified procedural rules. According to the findings of the European Foundation for the Improvement of Living and Working Conditions (Eurofound), based on a survey they conducted in 2020 in the then 28 Member States of the European Union,²⁴ people between 25-49 years of age are most at risk of being over-indebted. The younger part of the population is certainly producing most of the incidents, however, the Eurofound report also emphasizes those over 65 years of age experience much bigger problems financially and they overall have lower mental well-beings. The report also concludes single parents are at an increased risk of poverty. It is understandable as they bear the burden of taking care of the family alone, plus single parents with more children also, at least periodically, jeopardize their ability to earn for the household

²³ Eurofound. 'Managing household debts: Social service provisions in the EU' (Workshop report, Dublin, 2010).

²⁴ Eurofound. 'Public services – Addressing household over-indebtedness (Workshop report, Dublin, 2020).

when they are entrusted with parenting the children (e.g. sick leaves). Lower education may also play a vital role in belonging to a vulnerable group. In the Netherlands, for example, the most common group of people who contacted the debt advice services in the country were single men between 26 and 45 years of age, being unemployed and having lower education.²⁵ Lower education may not necessarily lead to financial difficulties and unemployment as most Member States of the European Union are in need of workers in the service and commercial sectors that mostly require blue-collar workers, however, lower education is still a risk factor that has an impact on the amount of income and earnings. One-person households may be considered as the most economic way of living, however, experiences of Germany prove otherwise. In Germany, individuals receiving debt advice were mostly single men who also lived alone. Paying the rent and the utilities may also be a burden financially if there is no one to share the costs with.²⁶ Consumer over-indebtedness is a very complex problem, so the causes leading to this situation are diverse too. Poverty is not only seen as a cause but also a consequence in this scenario. Also, over-indebtedness can easily push people onto a downward spiral as it badly affects mental health and triggers mental problems and depression that has a direct impact on financials (losing the ability to earn money).

Understanding the causes and consequences of consumer over-indebtedness is, however, not only a question for sociology and an interesting topic for social researchers. The law also must pay attention to these causes and consequences to get a detailed snapshot on the vulnerable groups. Identifying vulnerable groups, or at least the most vulnerable, in a Member State is crucial to tailor the procedural rules on consumer bankruptcy to the needs of these people. Also, it is vital to grant easy access to these groups to the consumer over-indebtedness proceedings. Finally, it is also important to emphasize how the understanding on vulnerable groups can play a role for the law- and/or policy maker in deciding on how to facilitate access and availability for people to the consumer over-indebtedness services (e.g. online or media campaign, awareness services, advisory boards, legal aid). Eurofound's study proves Member States are not experiencing the same causes and consequences in consumer over-indebtedness, therefore, the somewhat tailored approach in

²⁵ Eurofound (n 24).

²⁶ Destatis (Statistisches Bundesamt) Statistik zur Überschuldung privater Personen 2018 (2019) 15 Wiesbaden 5.

lawmaking is more than justified in this domain of the law.²⁷ For example, in Member States where lower education is identified as a common risk factor of getting overcommitted, legal aid or advisory services may be more efficient in raising and facilitating access to consumer bankruptcy proceedings than awareness campaigns in the media. The latter relies on self-interpretation and assessment that people with lower education may not be in possession with as skills, therefore, active counselling and involvement of third parties, preferably free of charge or at reduced cost, are more efficient and welcome.

Finally, related to the problem of identifying vulnerable groups, it is often overlooked how an occasional phenomenon can suddenly change the classic causes and consequences of over-indebtedness. Raising inflation, worsening national currency, a boom in rent or the value of flats can be short-term phenomenon that play a major role in pushing people into overcommitment. While it is a general expectation from the law to be stable and withstand radical and short-term events in the market and in society, consumer over-indebtedness will probably always require the lawmaker to occasionally react to sudden changes and fine tune, if only for a short period of time, the procedural rules and the eligibility requirements in consumer bankruptcy. When constructing a model for the entire European Union, the possibility for occasional derogations should be granted to the Member States.

4. Debt Advisory Services

Consumer over-indebtedness proceedings typically require the involvement of third parties (court, public body or a private entity) that serve as mediators between the consumer debtor, decision makers if need be and even counsellors for the consumer. Debt advisory services, therefore, perform multiple tasks and are expected to raise awareness on the availability and the substance of the consumer over-indebtedness proceedings while being active players in such proceedings as well. In some Member States, debt advisory services are relatively well-established. Austria, Belgium, France, Germany, Ireland, the Netherlands and Sweden are all famous of having historically strong debt advisory services that can reach large parts of the population and cover the entire country.²⁸ In these Member States, it is fairly typical that debt advisory services are almost the same age as the proceeding itself.

²⁷ Eurofound (n 24).

²⁸ Eurofound. 'Household debt advisory services in the European Union' (Dublin, 2012).

For example, the French Crésus was established in 1992 as a regional pilot project that gained experience and grew into a nation-wide body in the country.²⁹ In Austria, the ABS Schuldnerberatungen started its operation 1995, immediately as a country-wide service. Ireland's example is very interesting as the MABS started as a body to fight against illegal money-lending practices that later grew into a true debt advisory service in the country only three years after its establishment in 1992.³⁰ We can see these debt advisory services can rely on decades of experience and could provide for input for the lawmaker to fine tune the regime of consumer indebtedness proceedings. In Bulgaria, Croatia, Cyprus, Italy, Lithuania, Malta, Slovenia and Spain, where debt advisory services are not that developed and available, people in need are forced to turn to private players, most commonly lawyers to seek advice on the available proceedings and services in the country. This most certainly undermines the availability and popularity of the proceedings related to consumer bankruptcy as seeking advice alone can worsen the otherwise bad financial situation of the consumers. In these systems, civil society organizations remain as last resorts for the consumers that may be able to provide for help and advice on the proceedings free of charge. We can easily see why a country is worth to invest in the development of the debt advisory services as the lack of them or the low-efficiency of these services can pile up on the problem of over-indebtedness that can have an overall negative effect on unemployment, non-payment incidents, mental well-being of people and many other areas.

The services debt advisory services can provide for also heavily vary from Member State to Member State. In countries that are economically stable and, therefore, very few people lose their jobs, obviously less help is needed. In these countries, the debt advisory services mainly address issues related in preparation for the procedures that address the problem of insolvency rather than on raising awareness on the availability of these services. In countries where the need for insolvency procedures are bigger, debt advisory services may perform tasks of assisting consumers in prioritizing payments that can also show an emphasis put on the preventive function of the consumer bankruptcy regime. The debt advisory services may also create structure among the often overwhelming letters arriving

²⁹ European Consumer Debt Network. 'Debt advice and over-indebtedness in Europe' (Money Matters 2019) 16.

³⁰ Ireland Money Advice and Budgeting Service (MABS).

from creditors not only to reduce stress but to make sure the client, the consumer debtor understands what creditors want and how to establish a reasonable and efficient way of settling the dues. In other countries, the debt advisory services are deeply involved in the effective restructuring through providing loans that are much cheaper than those available in the market, coming from credit institutions. An excellent example to this latter approach is the *Fondo per la prevention del fenomeno dell'usura*, a fund that was established in 1996 to prevent usury in the market that can provide for credit to over-indebted consumers guaranteed by public funds. The credit can be claimed from various organizations and Fondo is ensuring the conditions of the loan are favorable to the consumer.³¹ The most active involvement of debt advisory services in the insolvency procedures can be seen if the services are also entrusted with the function of providing for legal counselling to over-indebted consumers. In Sweden, for example, according to statistics from 2018, 59% of the consumer debtors approved for debt settlement in the insolvency proceeding assisted by debt advisors.³² In the Czech Republic, the debt advisory services Poradna is mainly giving legal advice to clients and receives funds for performing this agenda.³³ In Poland, SKEF's debt advisory services actively support consumer debtors in filing bankruptcy petitions.³⁴

We can see various bodies and organizations performing the functions of debt advisory services in the Member States. In Spain, Portugal and Greece, consumer organizations are performing the functions of debt advisory services. In the Netherlands and in Sweden, local authorities are entrusted with the functions of debt advisory. Ireland operates and finances MABS that is a national consumer debt advice organization and, therefore, having a clean profile to deal exclusively with consumer insolvency. In Norway and Estonia, social security organizations have a side duty to assist consumers in need, while in Hungary, civil society organizations are leading the services of debt advisory. There is Belgium where the military provides for such services to its employees, while Bulgaria and Croatia and Cyprus that the Eurofound research identified as Member States where debt advisory

³¹ Eurofound (n 24).

³² Federico Ferretti and Dabiela Vandone. *Personal debt in Europe: the EU Financial Market and Consumer Insolvency* (Cambridge University Press, 2019).

³³ Federico Ferretti and Dabiela Vandone (n 32).

³⁴ European Commission. *Towards a Common Operational European Definition of Over-indebtedness* (Publications Office of the European Union, 2008).

services are almost completely missing in a state level, private consultants and lawyer fill in the gap in providing debt advisory services.³⁵

We also have to address the question of funding debt advisory services. Complexity is certainly evident in this area as well as the funding entity is very often not the same as the provider. Funding, therefore, can be public and private, depending on the decision of the lawmaker in a given Member State. In Portugal, for example, the debt advisory services are provided only for the members of the consumer organization entrusted with this function. Members of the organizations pay a membership fee yearly, and one of the services available in exchange for the payment of the fee is debt advice. The same is evident in Slovakia.³⁶ The most interesting phenomenon in the funding of debt advisory services is funding by creditors. In the Czech Republic, Poradna, the bank and consumer association that performs debt advisory services is funded by several banks that pay a percentage of their annual income. Denmark is also very interesting as banks pay special hours to employees who spend time on giving debt advice to clients. The employees of the banks in Denmark do not perform this task as part of their normal work, instead, they act as voluntary worker in this role.³⁷ Funding by creditors may also involve gambling businesses (Finland) or telecommunications companies. Ital's Fondo per le prevenzione del fenomeno dell'usura is financed by legal proceedings raising administrative fines and sanctions in the field of money laundering and currency violations. In the latter cases, the law suggests the funders play a major role in pushing consumers into insolvency and overcommitment, therefore, they should bear the costs of giving advice to the consumer on how to get out of the overcommitment. It is a remarkable idea on risk allocation in the society that seems to be more and more apparent in other areas of the law too.

Barriers to access the debt advisory services, however, exist almost everywhere across the European Union. The lack of availability of these services is a real problem in some countries as there are no specific services where consumers can turn to. Even in countries where these services are available, many people stuck

³⁵ Eurofound (n 24).

³⁶ European Commission. 'Report from the Commission to the European Parliament and the Council on the implementation of Directive 2008/48/EC on credit agreements for consumers' (2014) COM (2014) 259 Final.

³⁷ Eurofound (n 24).

outside these services as they do not fall into the target group as the lawmaker does not consider them vulnerable. It can also happen the law defines consumers in insolvency procedures to exclude those who are self-employed. Private entrepreneurs or sole traders, in such scenarios, may be completely seized from the possibility or restructuring or dismissal of the debts as they do not qualify as legal entities and not even consumers. It is definitely a problem a future European Union wide insolvency regime should address granting access even to the self-employed to such options. The lack of knowledge on the availability of services or even related to the availability of the insolvency procedures is a key problem. It is no doubt Member States should invest more in raising awareness in this area. User fees may also serve as common barriers to get access to debt advisory services. Especially in countries where structured debt advisory services are missing (Bulgaria, Croatia, Cyprus), unregulated private lawyers charge hefty fees that keep many of the vulnerable and target groups away from seeking advice from such providers.³⁸ Finally, we should not forget about the social stigma people feel they are wearing when turning to debt advisory services.³⁹ This is why it is worth considering providing such services in a more private manner, like through a telephone hotline or through internet-based chat platform. Anonymity is key in these platforms to avoid stigmatization.

5. Trends and New Directions in the Member States of the European Union

As elaborated above, consumer over-indebtedness and the insolvency procedures in place to address the problem is in constant motion and, therefore, always require some fine-tuning or novelty to keep the phase with the rapidly evolving society we live in the 21st century. Over-indebtedness and financial overcommitment have serious impact on a number of social and also economic problem including unemployment, medical costs, financial fitness of business and many other. This is why the European Union, to maintain the desirable position of being a welfare entity in the world, should further work on expanding the availability and the efficiency of insolvency procedures available for consumers suffering from over-indebtedness. This chapter aims to highlight some of the recent

³⁸ Federico Ferretti and Dabiela Vandone (n 32).

³⁹ Council of the European Union (n 22).

developments in the Member States that are considered as best practices by the author.

The availability of consumer over-indebtedness procedures can certainly be increased through awareness campaigns. France, in 2006, established family budget advisory points across the country that facilitate awareness campaigns targeting prevention and providing information to the target audience. Awareness campaigns may not only be similar to marketing campaigns in the media, they can actually be efficient if advice and information is given to people free of charge similar to the example of a tourist information. France recognized it is crucial awareness for campaigns to be as close to the target audience as they can be, therefore, instead of a central body, the advisory points are scattered across the country to be close to people.

In 2019, Poland extended the availability of the legal aid services to cover even consumer insolvency proceedings. Under the legal aid services, clients can enjoy access to free legal counselling that goes beyond the regular advice giving activity of lawyers as it means legal representation in the out-of-court insolvency scenarios. The purpose of Poland is to prevent the main creditor dictating unilaterally unfavorable term in the settlement proceeding and to make sure the interests of the debtor are taking into consideration during the proceeding. It is not surprising why free legal aid is only extended to the out-of-court format of the consumer bankruptcy proceedings. As the court must also serve as a guardian of the debtor's interests in the procedure, there is no need for another lawyer there. In the direct negotiation between the creditor and the debtor consumer, however, especially in cases when a large credit institution is the main creditor, the consumer is vulnerable and suffers from information and legal asymmetry.

In Belgium, a mediator is available to assist the debtor consumer in making a settlement proposal. As the law in Belgium obliges the debtor to work on a plan and to obtain consent of the creditors on the restructuring plan that may restore the financial fitness of the debtor, the debtor needs assistance in setting up the plan. Mediators ensure the debtor can reasonably oversee the overcommitment and that the debtor is putting together a sane and executable restructuring plan.

While Cyprus, in general, is not preponderant in debt advisory services in the European Union, it recently adopted a new legal order to help those with extreme

low income. In case the consumer has no assets and having an income that is under €200, he/she can turn to court to ask for the full dismissal of the outstanding financial obligations that do not go beyond €25,000. The requirement, however, is that the debtor has an associate who will then become the sole debtor for the obligation concerned. This easement is not a big price to pay by the creditors as they only have to dismiss one of the debtors from the obligation while the other still remains.

Romania introduced the social aspect into consumer over-indebtedness proceedings. In case the debtor consumer is not in the active age (e.g. retired) and the amount of the debt does not go beyond ten times of the amount of the minimum wage, the court first orders the selling of the debtor's assets and then it dismisses the outstanding obligations completely. This truly grants a fresh start for the consumer, however, it is much debated how the retired consumer will restart his/her life having no ability to work anymore. Still, the social consideration behind the Romanian concept is appreciated and can be a model for identifying vulnerable groups and constructing special paths for them to regain financial stability.

Slovakia extended and strengthened the autonomy of the parties involved in the proceeding. Debtors have a choice. They either decide to give away their assets or they undertake an obligation to live by a restructuring plan. The creditor, however, must provide for a consent prior to making this decision. This solution trusts the parties to decide which form of the insolvency procedures they wish to follow, and it is not the lawmaker that establishes conditions and eligibility criteria on what path is available.

E. Conclusions

Consumer over-indebtedness is a growing problem in the European Union and it is especially disturbing in the 2020s. The insolvency proceedings available in the Member States to assist overcommitted consumers are diverse in purpose, function and in nature, however, they all aim to prevent the negative social and economic effects over-indebtedness can induce in the society and in economy. While the European Union has only adopted sectoral measures (e.g. Consumer Credit Directive 2008), it is committed to address the problem in an EU level. The need for a harmonized European concept is justified by the borderless space the EU grants to its nationals and by the serious

differences in the availability and in the efficiency of the available procedures in the Member States. While determining an approach that can rule the European Union seems to be an impossible task, the study explored some common cores and possibilities that can bring Member States to the table to join their forces for the greater good. In the construction of the EU consumer bankruptcy regime, it is vital to pay attention to the vulnerable groups that may vary in the Member States and, therefore, the option for derogation should always be offered to the Member States. Also, strengthening the availability and funding of the debt advisory services is crucial and can be the first step in the construction of the harmonized EU approach on consumer over-indebtedness.

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