



European Economic and Social Committee

INT/726
Consumer protection and
over-indebtedness

Brussels, 29 April 2014

OPINION

of the

European Economic and Social Committee

on

**Consumer protection and appropriate treatment of over-indebtedness to prevent social
exclusion**

(Exploratory opinion)

—————
Rapporteur-general: **Reine-Claude Mader**
—————

In a letter dated 6 December 2013, and in accordance with Article 304 of the Treaty on the Functioning of the European Union, Mr Theodoros Sotiropoulos, Permanent Representative of Greece to the European Union, asked the European Economic and Social Committee, on behalf of the future Greek Presidency, to draw up an exploratory opinion on

Consumer protection and appropriate treatment of over-indebtedness to prevent social exclusion.

Given the urgent nature of the work, the European Economic and Social Committee appointed Reine-Claude Mader as rapporteur-general at its 498th plenary session, held on 29 and 30 April 2014 (meeting of 29 April), and adopted the following opinion by 164 votes to 12 with 4 abstentions.

*

* *

1. **Conclusions and recommendations**

- 1.1 The EESC is extremely concerned about the problem of over-indebtedness, which has grown with the financial crisis, the rising cost of living and use of cash credit. In a number of opinions it has stressed the need for measures to be adopted at European level.
- 1.2 It notes that, although the causes have been identified, there is no harmonised definition of the concept of over-indebtedness and no means of getting an accurate picture of the situation in the Member States. It therefore calls for a common definition to be adopted.
- 1.3 This should include the following elements: (i) the household, as a relevant unit of measure for quantifying over-indebtedness; (ii) financial commitments; (iii) informal commitments within the family or a community; (iv) inability to pay; (v) structural over-indebtedness; (vi) decent quality of life, and (vii) insolvency.
- 1.4 The EESC stresses that consumer protection must be genuinely integrated into all the measures adopted to implement the single market.
- 1.5 If over-indebtedness is to be properly addressed, education, prevention and appropriate procedures for reintegrating over-indebted people into normal economic life are needed.
- 1.6 To this end, an overall perspective on the issue of household over-indebtedness and effective measures are essential.

- 1.7 Financial education must initially be provided in schools, but must also be available at all times for all those who need it. In this regard the EESC advocates information campaigns involving all stakeholders in order to ensure pooling of complementary expertise.

It stresses the essential role played by consumer and family associations in disseminating information and providing assistance to people who would like it.

- 1.8 Facilities for pre-empting and dealing with situations of over-indebtedness have been put in place in a number of Member States, but they are different.

The EESC believes that an appropriate, uniform procedure based on Article 38 of the Charter of Fundamental Rights, Article 114 TFEU and also Article 81 TFEU must be put in place in all the Member States, in accordance with general principles proposed by the Commission in a proposal for a directive. This will be tangible proof of the European Parliament's interest in resolving the problems of European citizens.

- 1.9 These principles must include the procedure being quick and free of charge, the suspension of proceedings when a procedure for containing the over-indebtedness has been opened, verification of claims, keeping the main residence, equal treatment of ordinary creditors, the possibility of cancelling debts in the most burdensome situations and the obligation to leave an over-indebted person enough to live on decently day to day, the aim being to reintegrate the consumer into economic and social life quickly.

- 1.10 The Committee also stresses the importance it attaches to banking inclusion, which must be safeguarded for people in a situation of over-indebtedness in order to avoid any social exclusion.

- 1.11 Combating over-indebtedness requires a European framework for usury.

- 1.12 However, just implementing a facility to address over-indebtedness will not be enough to reduce the number of cases. It must go hand in hand with measures to develop domestic and financial education, which means that the necessary resources must be earmarked for this purpose.

- 1.13 Lastly, it stresses the need for compliance with the texts in mastering over-indebtedness. On this point it reiterates its support for the concept of "responsible credit", which requires distributors and underwriters to use fair, ethical practices.

2. Introduction

- 2.1 The Commission noted in 2013, in its Social Investment Package¹, a substantial increase in the number of evictions and homeless since the start of the crisis, and that over-indebtedness was one of the causes of this situation.
- 2.2 Over-indebtedness increased in the early 80s, affecting more and more people and sparing no socio-professional category.
- 2.3 Situations of over-indebtedness can no longer be seen as the problem of an individual in the sway of their compulsions and passions. Today, they reflect a social and societal crisis.
- 2.4 In 2013 the European Central Bank noted that over half the population of the euro area owed debts to financial institutions².
- 2.5 According to this survey, over-indebtedness generally arises following an unexpected drop in income, related in particular to a job loss, illness, separation or even over-consumption³.
- 2.6 After Denmark, which in 1984 adopted a comprehensive facility to address over-indebtedness of individuals, France was the second European country to adopt similar measures, with the law of 31 December 1989 on prevention and resolution of difficulties related to over-indebtedness of individuals and households⁴.
- 2.7 Over-indebtedness affects all the Member States, to different degrees. It has increased with the financial crisis, which has destabilised numerous countries' economies. It is all the more important to address the issue as all economic operators are suffering the financial consequences of over-indebtedness; businesses, especially SMEs, are also weakened by their bankrupt clients' failure to pay.
- 2.8 It is currently giving greater cause for concern, as it is hitting poor workers, the unemployed, who have accumulated unpaid bills for essential services such as energy, water, insurance and the telephone and late rent payments, middle class people, often following a twist of fate, and also pensioners whose pensions have fallen because of austerity policies or who give financial support to their family⁵. The causes of over-indebtedness have been identified. It is a result of

1 COM(2013) 83 final ([OJ C 271, 19.9.2013, p. 91](#)).

2 European Central Bank, 2013. Eurosystem Household Finance and Consumption Survey: Results from the first wave, Statistics Paper Series, April 2013, pp. 57-71.

3 Eurofound (2013), [Household over-indebtedness in the EU: The role of informal debts](#), Publications Office of the European Union, Luxembourg.

4 Senate discussion paper: *Le traitement du surendettement* (Addressing over-indebtedness). European Affairs department. April 1998.

5 Eurofound 2013, op. cit.

unemployment, job insecurity and certain family situations. Single parent households are the worst affected. Over-indebtedness can in certain cases be the result of a twist of fate, a divorce, a separation, a death, an illness or a disability requiring costly care to be provided. The prohibitive cost of university fees in certain Member States also plays a significant role in over-indebtedness among young people.

- 2.9 The recent rise in over-indebtedness encompasses another sociological category: middle class people who have lost their job and are faced with heavy mortgage payments on their home, with no short-term prospect of finding another job.
- 2.10 There are therefore a great variety of causes and effects of over-indebtedness among and within the categories of people concerned.
- 2.11 The risk of over-indebtedness is heightened by the imbalance between the rise of income and the rise in the cost of living, which is linked to changing lifestyles, national austerity policies, rising everyday expenses such as energy, housing, electronic communications, telephone, transport and financial costs.
- 2.12 Taking out loans in an affluent society, encouraged by aggressive, misleading advertising campaigns, to make up for loss of income or obtain goods and services, is also at the root of over-indebtedness in numerous cases. In this regard, it should be noted that vulnerable population groups are worse affected by debt as they do not have access to all forms of credit owing to their poor creditworthiness. They are directed towards the most costly options, such as "cash credit", which often involve cards distributed by various operators with very high interest rates.
- 2.13 Offers for this kind of credit card are frequently sent by post to people's homes and include phrases such as "Congratulations! You have won a free loan with no repayment charges", disregarding the rules on consumer information and protection. The EESC calls for these cards' period of validity and credit limit to be strictly regulated⁶.
- 2.14 The issue of mortgage or consumer credit rates also warrants particular attention. Some loans have uncapped, variable interest rates which can change considerably according to the market.
- 2.15 Sometimes, on the pretext of making households solvent, loans are granted with progressively rising rates on the basis that income will rise, which the salary caps imposed in some countries - or even salary losses - caused by the crisis have prevented from happening.
- 2.16 Moreover, in the absence of European harmonisation, usury is not regulated in some Member States.

⁶ [OJ C 18, 19.1.2011, p. 24.](#)

- 2.17 Some over-indebted households that are in arrears with payments or repayments are at greater risk from social exclusion and in danger of being deprived of utilities or evicted from their home, not to mention the difficulties of access to healthcare caused by this instability. For example, over 75 000 over-indebted Spaniards were evicted in 2012 - that is 16.7% more than in 2011⁷.
- 2.18 Although they are not exactly the same in each Member State, consensus is emerging on the main causes of over-indebtedness. However, we do not have the means to evaluate the situation at European level with the necessary accuracy, as has been pointed out in previous Committee opinions⁸. There are no European records. Moreover, if they are to be established, agreement first needs to be reached on what is meant by "over-indebtedness" and on the criteria and methods for measuring it.
- 2.19 The Committee has already observed this and called for work to start on a Green Paper making recommendations for working solutions and an electronic consultation.
- 2.20 In this regard, the EESC would like to see a common working definition of over-indebtedness established at European level, based on the fact that it is impossible for a consumer to cope with all their debts, of whatever kind and whatever their commitments. Without such a definition enabling this multi-faceted phenomenon to be measured, public action is in danger of being completely ineffectual.
- 2.21 It supports the idea of setting up a European over-indebtedness observatory without additional budgetary expenditure, incorporating effective existing national practices.
- 2.22 Lastly, it considers that over-indebtedness must be addressed, before it arises, through financial education, which is essential for developing responsible, controlled consumption.

3. **Establishing a common European working definition of over-indebtedness**

- 3.1 According to a study published in February 2008⁹, giving an overview of the definitions and measures adopted to address over-indebtedness in 18 Member States and one European Free Trade Association country¹⁰, there is no consensus on the definition of over-indebtedness because the concepts differ between countries.

⁷ L'Expansion.com with AFP, published on 22.3.2013.

⁸ [OJ C 44, 16.2.2008, p 74.](#)

⁹ [Towards a common operational European definition of over-indebtedness](#), a study carried out by the OEE (European Savings Institute), the CEPS (Centre for European Policy Studies) and the PFRC (Personal Finance Research Centre of the University of Bristol) for the European Commission Directorate-General for Employment, Social Affairs and Equal Opportunities.

¹⁰ Austria, Belgium, Bulgaria, the Czech Republic, Finland, France, Germany, Greece, Ireland, Italy, Lithuania, Luxembourg, the Netherlands, Norway, Poland, Portugal, Spain, Sweden and the United Kingdom.

- 3.2 Over-indebtedness is a complex, multi-faceted, evolving phenomenon, as stressed by a 2013 statistical analysis commissioned by the European Commission Directorate-General for Health and Consumers (DG SANCO)¹¹.
- 3.3 As the Council of Europe has also noted¹², it can include problems related to loan instalments and to day-to-day difficulties with paying bills.
- 3.4 Various sources show that the unit of measure used in most cases is the household. Almost half of the national definitions include the length of indebtedness or the fact that it is structural. The majority include ability to honour commitments.
- 3.5 Some of the following common factors can be picked out to serve as a common basis.
- 3.6 The EESC believes that the following factors must be taken into consideration in a common working definition of over-indebtedness:
- the household, as a relevant unit of measure to quantify over-indebtedness¹³;
 - financial commitments. These include mortgages, consumer credit, phone, digital communication, utility (water, heating, electricity, etc.) and health-related bills, rent and day-to-day expenses (food, transport, education, etc.);
 - informal commitments entered into within the family or a community. The EESC insists on the need for this criterion to be included, as it is playing an increasingly large role in over-indebtedness;
 - inability to pay. An over-indebted household is unable to pay its day-to-day expenses or those related to its formal and informal commitments;
 - structural over-indebtedness. This is a time-related criterion intended to cover persistent, ongoing financial difficulties;
 - decent standard of living. The household must be able to make good its formal and informal financial commitments without reducing the minimum expenditure which is essential for it to maintain its standard of living;
 - insolvency. The household is unable to remedy its financial situation by drawing on its financial and other assets.

11 The over-indebtedness of European households: updated mapping of the situation, nature and causes, effects and initiatives for alleviating its impact. Civic Consulting of the Consumer Policy Evaluation Consortium (CPEC), 17.01.2013.

12 Recommendation [Rec\(2007\)8](#) of the Committee of Ministers to member states on legal solutions to debt problems. Council of Europe, 20.06.2007.

13 This definition is derived from the methodology of the European System of Accounts (ESA 95).

4. Preventing over-indebtedness

4.1 Financial education and responsible consumption

- 4.1.1 Just introducing a legislative measure to address over-indebtedness will not be enough to reduce the number of cases. A holistic approach is required. Pre-emptive measures must be taken to avoid over-indebtedness as far as possible.
- 4.1.2 The need for financial education is a recurring theme in financial services debates, but the necessary resources are not allocated to it. This is clear if one looks at the amounts devoted to advertising and the amounts devoted to financial education side by side.
- 4.1.3 Among the measures it advocates, the EESC has already stressed the need to develop education in sustainable consumption¹⁴. It believes that financial education is essential, as it helps an individual to achieve proper management of their budget and to prevent over-indebtedness.
- 4.1.4 The EESC notes that in none of the 18 Member States mentioned was pre-emptive education provided by a single supplier. It calls on the European Union to put in place an education system that can achieve the stated goal.
- 4.1.5 The EESC calls for financial education to be integrated into school teaching curricula. In this connection, it points to the need for training to be adapted to the age and knowledge of recipients so that it meets their needs.
- 4.1.6 The Commission should also encourage Member States to make provision for a national financial education programme delivered either by teachers or through public-private partnerships, and publicise existing European facilities more.
- 4.1.7 The EESC feels that information and outreach campaigns on the subject of finance must be stepped up as all sections of the public must be able to benefit from education. It believes that these campaigns can be run by different social and economic players, public authorities, NGOs, business federations and consumer federations. This would bring complementary sources of information to bear to serve the general interest. The need for this dissemination of information is, moreover, recognised in some countries, which have set up programmes accessible to the public.
- 4.1.8 The EESC also believes it is important for people who so wish to have easy access throughout their lives to information, advice and assistance in managing their budgets or resolving difficulties they may have with their credit institution, or indeed with a service provider or administration. It considers in this regard that the work that has already been carried out by

¹⁴ [OJ C 318, 29.10.2011, p. 24.](#)

consumer associations, which are close to the public, who provide assistance by holding information meetings or supporting and helping the people concerned free of charge, should be supported and promoted.

- 4.1.9 Lastly, efforts to control indebtedness must comply with the spirit and letter of the texts regarding consumer credit, mortgages and unfair business practices (abusive clauses, misleading advertising, aggressive door-to-door selling)¹⁵.
- 4.2 Over-indebtedness should be averted by facilitating responsible lending and dissuasive penalties for breach of professionals' information obligations.
 - 4.2.1 Professionals must behave responsibly right from their product offers and advertising onwards, as well as in the advice and explanations they give to consumers when they take out a loan. A personalised approach is needed, and it is regrettable that it is not currently common practice, despite the legislation and codes of conduct that exist in most countries. Transparency with regard to products, particularly when it comes to loans taken out in foreign currencies, the risks they entail for guarantors or for spouses who are indirectly liable, and clear information must be the rule, whatever the medium used.
 - 4.2.2 The EESC supports the concept of responsible credit, in the sense that it makes the contractual partners accountable¹⁶. Controlling lending with the help of registers is in line with this approach.
 - 4.2.3 In this sensitive context, the EESC believes that particular focus is needed on processing of personal data.
- 4.3 Over-indebtedness should be prevented by regulating credit and the personal credit sector.
 - 4.3.1 Directive 2008/48/EC on credit agreements for consumers¹⁷ instructs the Member States to require lenders or intermediaries to provide the consumer with clear information in their advertising, supplying them with bases for comparison, and also sets out the principal financial information that should be included in agreements.
 - 4.3.2 This directive, which is based on consumer information, is not sufficient to prevent over-indebtedness.

¹⁵ These issues are covered by Directive 2011/83/EC on consumer rights ([OJ L 304, 22.11.2011, p. 64](#)).

¹⁶ [OJ C 44, 16.2.2008, p. 74](#) and [OJ C 318, 29.10.2011, p. 24](#).

¹⁷ [OJ L 133, 22.5.2008, p. 66](#).

- 4.3.3 Effective legislation in this area must include measures to educate professionals and consumers.
- 4.3.4 Hence, some Member States go further than the directive, stipulating that a consumer credit agreement must warn consumers against certain abuses, or remind them of their right to receive a detailed repayment schedule.
- 4.3.5 The EESC calls for EU legislation to be more incisive and ambitious than Directive 2006/114/EC concerning misleading and comparative advertising¹⁸, banning certain forms of misleading or abusive advertising, particularly where they target vulnerable consumers or consumers who are already unable to pay off their debts¹⁹.
- 4.4 Fighting usury
- 4.4.1 The European consumer would be better protected if there was a European framework for usury. The essential mechanism in the fight against usury consists of determining a maximum total cost of the credit, encompassing all interest and charges relating to the credit agreement, expressed as an annual percentage rate (APR). This can vary according to the type of credit and the amount borrowed.
- 4.4.2 The situation differs widely within Europe²⁰.
- 4.4.3 There are generally safeguards on loans to individuals, but some countries have fully liberalised their usury systems for corporate credit. Only France and Italy continue to be the exceptions.
- 4.4.4 In most countries interest rate control is based on case law rather than legislation. That is the case in the United Kingdom and Spain.
- 4.4.5 In Germany the courts assess usury on the basis of the market averages published monthly by the Bundesbank for different types of credit. The margin is considered to be excessive if it is over twice the market figure.

18 [OJ L 376, 27.12.2006, p. 21.](#)

19 For example, when an advertisement states "free credit", "even in the event of litigation" or "even to those on the National Bank register", when it encourages customers to "regroup", under abusive conditions, loans taken out previously, or stresses the ease or speed with which credit can be granted.

20 Article L313-3 of the French Consumer Code. In France, usury is an offence punishable with two years' imprisonment and/or a fine of EUR 45 000. In addition, the excessive charges paid have to be refunded and added to the debt principal paid off. If the debt has been paid off in the meantime, the lender must refund the amounts wrongfully paid with interest. There is a usury rate for each financing category. Each quarter, the usury rate is set by the Bank of France and then published in the Official Gazette.

4.4.6 Like France, Italy has a law regulating interest rates. There, the usury rate is also reset quarterly. However, an interest rate is considered to be usurious if it is over 50% more than the average bank rate.

5. Dealing with over-indebtedness

5.1 Many Member States have introduced judicial procedures for containing over-indebtedness. The available data, despite the absence of comparative studies on legislation covering all the 28 Member States, shows that the general aim in dealing with over-indebtedness is to find a solution that will enable households to avoid social exclusion and, where possible, to pay off their debts as far as their means allow. Some systems provide for partial or total cancellation of the debts where the situation of over-indebted people is irreparable, in order to give them a second chance.

5.2 Business insolvency law, on which the EESC has issued an opinion, is an interesting example in this regard²¹.

5.3 Most European countries have introduced judicial procedures for dealing with over-indebtedness, which vary in type and as regards conditions of access and the nature of the debts concerned.

5.3.1 They all allow the court to impose a debt settlement plan on over-indebted persons and their creditors. The decision is generally preceded by an "amicable" stage, during which an effort is made to obtain agreement among the various parties on a plan and, if this is achieved, the plan is then approved by the court²².

5.3.2 Alongside the intervention of the court, these procedures can include the appointment of a law officer (the debt mediator in Belgium, the receiver in the Netherlands) to receive and check debt statements, investigate the living conditions and assets of over-indebted persons, determine, where necessary, the income needed to enable them to meet current outgoings, retain the surplus income to pay creditors, arrange for some of the property of the persons concerned to be sold, draw up a debt settlement plan and supervise its implementation and monitor the good faith of the over-indebted persons²³.

5.3.3 In this regard, the EESC stresses the need for provision to be made at European level for certain essential property not to be seized on any account nor sold for a low price.

21 [OJ C 271, 19.9.2013, p. 55.](#)

22 It may be incorporated into the actual procedure and be based on the court decision authorising the procedure (France, Belgium) or it may be a compulsory preliminary, without forming part of the decision (Netherlands).

23 Sometimes this supervisory role is not provided for but a number of the tasks listed above are carried out by a government department or other government body (*département* commission in France).

- 5.3.4 Usually, the institution of such procedures makes it impossible for ordinary creditors to bring individual proceedings in order to lay their hands on the assets or income of the persons concerned. Naturally, those persons are not allowed to get further into debt; otherwise they forfeit the benefits of the debt settlement procedure.
- 5.3.5 The Committee believes that standardising these procedures would help to protect consumers from social exclusion, provided that they are fast, simple and free of charge for debtors, who are by definition in a delicate situation.
- 5.3.6 In addition, the suspension of legal proceedings should be ordered at the beginning of the procedure to avoid pressure from creditors.
- 5.3.7 The EESC points to the need for a verification of claims phase, to ensure that the rights of the different parties are respected.
- 5.3.8 It notes that in some countries what happens to the main residence is dealt with separately in order to prevent families being evicted from their dwelling. It welcomes this and believes that it should be systematically the case, in order to avoid social exclusion of families, which must be an essential objective in the interest of society.
- 5.3.9 It recommends providing for partial or total cancellation of the debts for the most burdensome situations, in order to prevent the risk of social exclusion.
- 5.3.10 The Committee feels that procedures for dealing with over-indebtedness should not lead to exclusion from essential bank services, as these are indispensable for economic and social life.
- 5.3.11 The EESC stresses that the resources made available for the operation of these facilities must allow customised handling of situations. In this regard, support schemes for people who feel the need therefore seem a good idea.

6. **Providing a high level of consumer protection to help consolidate the single market**

- 6.1 The EESC believes that in order to reach this goal and achieve a more unified market, a uniform procedure also based on the Charter of Fundamental Rights, Article 114 TFEU and Article 81 TFEU must be introduced in all the Member States, in accordance with general principles that the Commission could propose in a directive along the following lines.
- 6.2 The EESC stresses that some of the measures are already in place in some Member States and it would be worth introducing them across the board.
- 6.3 Assistance facilities for over-indebted people

- 6.3.1 Advice on financial services and consumption, banks' and credit institutions' obligation to provide advice, and assistance in budget management are often not enough or not appropriate for people in debt. National authorities must therefore provide people in difficulties with social assistance services which can supply immediate help, or even free legal assistance, where that is desired. In this connection the Member States could support and formalise the role of legal assistance provision played by consumer protection associations.
- 6.3.2 Provision can be made for social assistance for the most serious situations of debt, covering electricity and gas, housing, food, health and payment to creditors of all or part of the debts.
- 6.3.3 Moreover, a facility must be put in place for analysing people's specific situations, verifying the legality of the sums claimed from them, negotiating a debt settlement plan with their creditors or working on other solutions such as judicial proceedings, informing them of their rights and obligations.

7. **European over-indebtedness observatory**

- 7.1 The EESC advocates setting up a European over-indebtedness observatory without additional budgetary expenditure. This would be based on existing national systems and should make up for the current lack of reliable statistics, making it possible to analyse the causes of over-indebtedness and the groups of people concerned in depth, to compare the situations in the Member States and the measures proposed for remedying them and to measure the development of the phenomenon.
- 7.2 The observatory could be supplemented with a forum, open to all stakeholders, which could include dialogue on good practices.
- 7.3 Fighting consumer over-indebtedness and preventing social exclusion require a holistic approach. The problem cannot be effectively combated by isolated, uncoordinated action at EU level. It is essential for consumers, public administrations and businesses to cooperate more, in order to put more creative, effective methods in place.
- 7.4 The observatory could be made up of departments dealing with the following issues: data collection, existing legal frameworks and awareness-raising and education campaigns.
- 7.5 The members of the observatory would come from both public and private sectors. The private sector could be represented by members of professional associations and national and European consumer associations, from various economic sectors and geographical areas who are engaged in fighting over-indebtedness. They would actively take part in the work of the observatory's departments, where appropriate as part of the working groups.
- 7.6 The public sector would be represented by national experts appointed by the Member States who have forged links with the private sector and have experience in the field of consumer

protection and over-indebtedness. The national representatives should also have some experience in raising public awareness.

Brussels, 29 April 2014.

The president
of the
European Economic and Social Committee

Henri Malosse
