Money Matters

No 1/01

The Consumer Debt Net Newsletter ◆ April 2001

Contributions from
Ireland ✪ Poland ✪ Estonia ✪ Finland ✪ Germany

Message from the Editor

Hello and welcome to the first issue of 2001. I am sure you will enjoy this issue, we have a batch of interesting and informative articles. These range from distance learning in Ireland to Consumer Policy in Estonia and Household Accounting in Germany.

Thomas Fischer has provided us with an introduction to the European Council Regulation on Insolvency. This article serves, I feel, to highlight the need for a co-ordinated approach not just from those of us working in the field of overindebtedness but also from the European Commission. At the moment we are unsure of whether the overindebtedness file will stay with DG Sanco or if indeed it has been transferred to DG5. We must await this information with patience.

The next issue of your newsletter is due out in the summer, please feel able to submit articles to me anytime until the end of July and don't forget to enclose a photograph.

If you have links you wish to have inserted on our website then contact me via my email address, you can also raise discussion topics on the CDN website to be found at http://www.consumerdebt.net.

I would also draw your attention to the Money Advice Scotland Conference to be held in Edinburgh in June, we would be delighted to see delegates from other countries and hopefully I will meet some of you there. If you want information about the conference contact Keith Hudson, Money Advice Scotland on + 441415720237.

Best wishes from

Joan Conlin Ramsay
and the team at Money Matters

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Ireland

Women and Poverty

In this Irish section of this issue we present two very interesting and exciting articles, they demonstrate quite clearly the depth of work still to be undertaken in the field of Debt as well as showing how Advisors can work towards better qualifications and on to a better quality of service to our consumers.

In this article Terry Carton, Money Advice Co-ordinator with Wexford Money Advice and Budgeting Services (MABS), outlines how she carried out a study into women's experience of debt as part of a degree course and encourages other MABS staff to consider using the experience gained from working in the field of money advice to avail of similar opportunities to participate in third level education.

In October 2000 I was conferred with a Masters Degree in Women's Studies from the Faculty of Arts, UCD. This involved studying five subjects and submitting a thesis, of approximately 18,000 words, for which half of the marks for the MA were awarded. I chose to write my thesis on women's debt problems.

The first problem that I encountered was that there is very little written about debt problems. As a major part of any thesis is a literature review of the subject, I decided to focus on the processes by which women become vulnerable to poverty and social exclusion and to set women's debt problems in this context. My reading covered a broad range of areas including Government initiatives to tackle poverty and social exclusion, women and the development of the social welfare system, women and work, the feminisation of poverty and women's rights as human rights.

Methodology

I chose to use a methodology of case studies, as I believe that they provide an insight into what it is like to actually live in debt and highlight the daily struggle that these women endure. The research was carried out from a feminist perspective, which, I believe, is actually quite similar to community development principles. Feminist research focuses on allowing women to participate in generating knowledge about their lives with particular emphasis on quality, rather than quantity, and is committed to changing women's lives.

Terry Carton, MA Wexford, MABS

I used semi-structured interviews, with five of my clients, to allow them to tell their own story, in their own words. The interviews took approximately one and a half-hours and were, with the client's permission, recorded. The women had all been clients of Wexford MABS for at least one year and my ongoing relationship with them allowed for a more in-depth interview than would have been possible if I had been interviewing them as a stranger. This was confirmed by the fact that each of the women disclosed information during the interviews that they hadn't previously. I do not believe that the women would have revealed these experiences and feelings in either a once off interview or a more traditional type of interview. This also had implications for my work as a Money Adviser as I realised that we really only scratch the surface of the true effect of debt on people's lives, as we concentrate on solving their problems. This is not to under estimate what we do but rather to remind us of how hard it is for our clients and not to assume that we know what they are going through.

Selection

In selecting the women for the study I chose women with different types of debt problems and different types of family situations.

- The first woman is married to a man who has a drink problem and is barred from the family home because of domestic violence.
- The second woman is married to a professional/ businessman but had no access to the family income and he is now barred from the family home.
- The third woman's partner is an alcoholic and I included her as a woman who was still living with her partner despite the problems. However during the course of the research project her situation deteriorated and she had to get a barring order.
- The fourth woman is an alcoholic, a victim of domestic violence and suffers from a disability.
- The fifth woman and her husband were self-employed but the debts, although undertaken in the course of the business, were mainly in her name. During the course of the research she also had to get a barring order.

As a consequence only one of the women is still with her husband/partner, whereas, when I was planning the study three of the women were living with their husband/ partner. This reflects the complex nature of debt problems.

Quantitative element

In order to bring a quantitative element to the research I issued a questionnaire to gather statistics from, and to draw on the expertise of, the Money Advice and Budgeting Services in the South East region. The questions were posed to uncover the nature and extent of women's debt problems and to find out if the welfare system adequately meets the needs of women. The MABS1 computer package for recording client details has serious limitations and does not record the breakdown of individual debts. The inadequacy of the recording process severely restricted the type of questions that I could pose in the questionnaire. In effect I was confined to asking about the Money Advisers experience of women presenting with debt problems rather than the actual percentage of women clients who experience certain problems. However, I do believe that this should not unduly take from the study as the Money Advisers took great care and consideration in completing the questionnaires. The answers given reflect the situation for the majority of their clients.

All of the MABS projects submit monthly statistics and annual reports to the Department of Social, Community and Family Affairs, however there are no statistics complied on a national level for the service. This is surprising given the amount of funding that the service receives and the importance of compiling statistics on debt problems, particularly in relation to moneylending. I understand that when the new MABS2 package comes on stream that this problem will be rectified.

The main purpose of my chosen research project was to generate knowledge about women with debt problems, to give a voice to women's experiences of being over indebted and to facilitate the women involved in identifying social policies that need to be changed. As there is so little written about debt and its effects on individuals and families it is important that people working within MABS realise their potential to generate and document this knowledge and experience.

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Learning at a Distance

In this article Anita Kilgallon, Money Advice Co-ordinator, Limerick MABS gives an update on how the Diploma in Money Advice in Ireland is being converted into distance learning format.

In 1996, the PAUL Partnership/ Limerick MABS, in conjunction with the University of Limerick offered the Adult & Continuing Education Certificate/ Diploma in Community Development (Money Advice) for the first time. This programme sought to develop a partnership approach to the problems of debt, poverty and low cost credit options by helping all concerned to develop the skills and knowledge necessary to actively participate in the community development process as it related to money advice. It also aimed to provide a recognised qualification to staff of existing money advice projects, community activists and others wishing to access employment in this area.

Run on a part-time basis over two years, a total of 39 students successfully completed the Limerick based course. However, a nation-wide survey conducted by Limerick MABS in 1998 into the demand for the programme revealed that the opportunity to pursue the University of Limerick accredited programme eluded many who found that existing work, family commitments and location prevented them from taking part on the course. However, as technological advances had heralded the dawn of distance learning, the PAUL Partnership/ Limerick MABS (in conjunction once again with U.L.) decided to develop a distance learning version of the existing programme.

A Steering Committee, comprising representation from Limerick MABS, the PAUL Partnership, University of Limerick, Irish Bankers' Federation, Comhairle and MABS/ Department of Social, Community & Family Affairs, was established to oversee the completion of the transfer of material into distance learning format. The material writers were drawn from the ranks of expert practitioners and consultants involved in either the money advice or community development process, many of whom were involved in the delivery of the U.L. based programme.

The transfer phase has now been completed and a total of seven modules (comprising Adult Learning, Money Advisers Skills I & II, Financial Skills for Money Advisers, Basic Legal Framework for Consumer Credit, Community Development, Legislation & Policy and a Work Placement module), will be offered under the Adult & Continuing ☞

Education Distance Certificate/ Diploma in Community Development (Money Advice).

Students of the programme will be able to access the material through the Internet. The advantage of distance learning lies in the fact that the student decides where and when he/she will access the material and participants are not restricted by set lecture times and venues.

Each module will comprise core text, which will be supplemented by recommended reading. Additionally, a number of individual and group tasks will feature throughout the material, as well as discussion topics to encourage and facilitate discourse with fellow students thereby ensuring a degree of peer support. A number of tutor/ group sessions will also be included in each module. These sessions will not take the form of lectures but rather act as interactive sessions/ workshops to more fully explore certain concepts as set out in the core material

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Poland

Establishing advisory services

Polish society currently faces the intensification of social tension linked to the process of radical political, economic and social transformation underway since the beginning of the 1990s.

The process of transformation from a state socialist system based on a centrally planned economy and a highly centralised decision making system towards a market economy and regional self government has been swift and continues to gain momentum. Notwithstanding this, major social challenges have emerged, and public authorities face mounting social costs, and experience increasing difficulty dealing with both established and newly emerging social problems.

Each Polish province has specific reasons for its own social problems, nevertheless some problems are found in all regions. They include restructuring of leading industry sectors resulting in the conflicts within enterprises, rising unemployment, growing income inequality, higher crime rates, and a general worsening of quality of life.

Poverty has thus become one of the most striking results of the programme of economic transition that began in 1989/1990. In 1997, over 50% of Polish people lived in poverty with 17% under the basic subsistence level. In the first years of economic transformation the growth of unemployment was over 1 million people annually. In 1994, unemployment peaked at 3 million people (16.5% of the labour force). Subsequent growth in small and medium sized enterprises (SME) resulted in a fall to 10.4% unemployment in 1998. However this trend has been reversed and unemployment in June 2000 was 13.5%. The main reasons for this reversal are:

- Registration of unemployed seeking health insurance.
- Slower growth of employment in the SME sector.
- Lack of incentives for the SME sector to increase employment.
- Rapid restructuring of some sectors of the economy (e.g. coal mining).
- Increased graduate unemployment.

Low-income citizens have problems not only with receiving direct funds in order to satisfy their basic needs. Very often, due to their lack of understanding of legal and banking procedures, they do not know how to maximise their income though tax and social welfare systems. Poor budgeting, lack of money management and overuse of aggressively advertised credit are some of the reasons for getting into financial difficulties. Those who are not experienced borrowers are especially vulnerable when using easy accessible credit like credit cards and e-commerce.

In addition, low-income citizens have difficulty gaining access to information on their entitlements and other available services. There are special difficulties when legal problems are involved. Some have difficulty in gaining access to financial services and credit. Those who are dependent on seasonal income from farming and tourism have money management problems and often are not aware of their entitlements and other services.

Poland faces the need to establish local advisory centres, which would serve low-income citizens in particular and provide confidential, professional and reliable advisory assistance as well as training activity. Advisory centres should concentrate not only on solving direct financial problems, but also on providing education to prevent citizens from falling into debt.

Co-operative Savings and Credit Unions

The Polish National Association of Co-operative Savings and Credit Unions originated the project of launching advisory centres because Polish credit unions are among institutions mostly approached for help. This is due to their growing popularity and extension of their activities over ever-new geographical regions and social groups.

Established in 1992 Polish credit unions aim to serve those who need to save and borrow small amounts and who are generally excluded from other financial services and credit. The problem of money management and budgeting is in harmony with credit unions' philosophy yet they were unable to respond to the demand primarily due to the complexity of problems that are presented, and the demands on their time and resources. Within the structures of the Polish credit union movement there has also been launched an institution designed especially for training and educational purposes, this is the Society for Promotion of Financial Education. The Society is involved in numerous educational initiatives, it provides advice and counselling as well as publishing brochures and leaflets promoting home budgeting.

As the pattern of establishing advisory centres in close co-operation with credit unions proved to be extremely successful in Ireland, Irish experience and practice will assist the Polish project. On the basis of a mutual NACSCU's and UNDP's project, the National Co-ordinator of the Money Advice and Budgeting Service in Ireland, Mr Liam Edwards has been invited to Poland and following a two-week trip to Poland he designed a full-format project including training pattern, activity schedule, terms of reference etc.

The centres will aim to:

1. Provide assistance in working out a budget suited to the individual or family
2. Negotiate with creditors as necessary
3. Give advice to individuals or families who have financial difficulties
4. Help with the setting up of 'special accounts' with the Credit Union
5. Provide ongoing support to people who successfully overcome their financial difficulties
6. Provide information on their rights and entitlements
7. Provide assistance on legal matters
8. Provide psychological counselling

The programme is expected to start in early 2001 and will last 3 years. I hope to have a chance to share our achievements with readers of Money Matters.

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Estonia

Problems with debts

Albert Alvar, Executive Inspector with the Consumer Protection Board of Estonia looks at some consumer debt issues in Estonia and provides a view of Consumer protection.

Consumer Protection in Estonia

The basis for developing the consumer protection system in Estonia was created with the adoption of the Consumer Protection Act (CPA) on 15 December 1993. The CPA came into force on the 1st January 1994.

The Estonian CPA determines consumer rights between the consumer and the seller in the purchase and use of goods and services as well as the obligations of the seller and responsibility for violation of the legislation.

The Estonian consumer policy is to an extent based on prevention, and consists of consumer information, education and market surveillance. It also takes into account both informal and fair handling of complaints as well as formal means of consumer redress. In May 1994 a specific institution - the Consumer Protection Board (CPB) under the jurisdiction of the Ministry of Economic Affairs was established to implement the Consumer Protection Act (CPA). The three most important functions of the Board are:

- To supervise the consumer market.
- To settle consumer complaints.
- To inform and advise consumers.

Basic debt problems created by financial legislation

We might consider debtors as mainly consumers of financial services.

The first issue in this area is the ☞

differing definitions of the term "consumer" in several laws.

- *The Consumer Protection Act (CPA)* Sec 3 p1 defines the "consumer" as meaning a natural person who purchases or uses, or intends to purchase or use goods or services for his or her own needs. However, the financial institutions don't agree with this definition.
- *The Credit Institutions Act* part 89 sect 1 – states that any person who uses or has used a service offered by the credit institution, or a person who has turned to the credit institution with a view to using a service and who has been identified by the credit institution is a **"client"** of a credit institution.
- *The Deposit Guarantee Fund Act* part 3 sect 3 – states that a person who owns a deposit placed with a credit institution is a **"depositor"**.

The second issue is about understanding the information provided by financial institutions when entering into a contractual relationship between a natural person (client) and a financial institution and in case of bankruptcy of the enterprise.

The Credit Institutions Act:

- Part 89 sect 3 – states that all clients have the right to access all data subject to mandatory disclosure pursuant to this Act and credit institutions are required to disclose such data to clients at the request thereof.
- Section 5 of the Act – states that the list of transactions concluded or services provided by a credit institution, the general conditions for relationships between the credit institution and clients, interest rates, service charges and all amendments thereto shall be displayed in a visible place in the client service area of the credit institution.

Clients have the right to request corresponding explanations and instructions from the credit institution.

- Section 6 – states that the general conditions are a document which contains standard conditions applicable to all clients of a credit institution and which provides the general principles for relationships between the credit institution and clients, the procedure for communication between the credit institution and clients and general conditions for transactions between clients and the credit institution.
- Section 7 states that - application of the general conditions to relationships between the credit institution and a client shall be provided by a written agreement between the credit institution and the client.

According to the Deposit Guarantee Fund Act: Part 28 sect 1 – credit institutions shall notify persons entering into deposit contracts with the organisation of deposit guarantee, the extent of compensation for guaranteed deposits, and the conditions and procedure for payment of compensation.

In the Boards' experience the main problems in the field of financial services occur with understanding or not understanding the contract terms. The problem is that these terms are generally written in very small print in a very large document, they are in very formal language and controversial and people usually don't trouble to read them. Even if they do read them it's very hard to understand these terms fully and completely. These pre-formulated standard contract terms may be relatively unfair, giving the entrepreneur the right and opportunity to claim that a natural person has been violating the contract terms and back out from the contract without fulfilling his duties.

Consumer protection in banking sector

Relations between the CPB and the financial sector in Estonia are neutral, because Part 2 section 2 of the CPA excludes CPB's interference with these matters.

CPA Part 2 s 2 – states that: upon purchase and the sale of banking or insurance services, this Act regulates the relationship between consumers and sellers in so far as not otherwise regulated in other Acts.

As it was stated before, the Credit Institutions Act Part 89 settles the basis of consumer or client protection in the banking area. According to sect 8 of above-mentioned Act - the assets of a client of a credit institution may be seized or confiscated or a claim for payment may made thereon only pursuant to the procedure prescribed by law.

However, the Deposit Guarantee Fund Act, Part 2 sect 2, – states that the purpose of the activities of the Fund are to guarantee the deposits placed with a credit institution by depositors in the event of the insolvency of the credit institution by providing compensation for the deposits under the conditions and to the extent provided for in this Act.

Article 16 of the same Act states that:

- The Fund shall guarantee the deposits taken by credit institutions and Estonian branches of foreign credit institutions registered in Estonia.
- The Fund shall compensate for the guaranteed deposits of every depositor in every credit institution and Estonian branch of a foreign credit institution, including the interest thereon as at the date on which the deposits become unavailable, to the extent of 90 per cent,
- And shall pay compensation of no more than 20 000 ECU per depositor in one credit institution at the rate determined by the Bank of Estonia on the date on which the deposits become unavailable, unless otherwise prescribed by law.

However, according to Part38 sect 1 of the same Act – the maximum amount of compensation for guaranteed deposits, 20 000 ECU, specified in subsection 16 (2) of this Act applies not later than 1 January 2001. When the Act came into force, 20 000 Estonian kroons per depositor of each credit institution was established as the maximum amount of compensation for guaranteed deposits.

Contract terms in Estonian legislation

In a contractual relationship between a legal person and a natural person there is always material inequality and the natural person is the weaker party. The banking contract, as a pre-formulated standard contract, is very binding on a natural person, as the rights created by this are given mainly to the company whilst obligations are imposed mainly on the natural person.

CPA art 5 sets down terms on contracts between the consumer and the seller today as follows:

- A term or condition of a contract entered into between a consumer and a seller which reduces the liability of the parties, provides a privilege for the seller or a restriction for the consumer as compared to the provisions of law is void.
- An inaccurate or incomplete term or condition of a contract entered into between a consumer and a seller shall be interpreted in favour of the consumer.

Estonia is moving towards joining the European Union and one step in this process would be the harmonisation of our legislation to suit the demands of EU directives. The Parliament of Estonia will soon adopt the new Obligation Law, which will establish the basic conditions of allowable contract terms in standard contracts. European Council Directive 93/13/EEC of 5 April 1993 on Unfair Terms in Consumer Contracts is almost word for word imposed in the Estonian Obligation Draft.

According to the Obligation Draft "consumer" means any natural person who is acting for purposes, which are outside his trade, business or profession. So the meaning of a term "consumer" is therefore going to be wider and this will eliminate restrictions stated in CPA art 2 sect 2.

According to the Obligation Draft a contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer. In the case of contracts where all or certain terms offered to the consumer are in writing - these terms must always be drafted in plain, intelligible language. The Obligation Draft contains an indicative and non-exhaustive list of the terms, which may be regarded as unfair.

Article 40 in the Obligation Draft gives the CPB status as the one and only body, of all governmental bodies, the right to go to court to get a decision as to whether contractual terms in pre-formulated standard contracts concluded between seller and consumer are unfair and if they are, then prevent using such terms any longer.

Finland

Finnish Communities Gain Financial Advantages by providing Debt Counselling

In this article Matti Harkonen, CDN Board Member, Finland provides interesting and informative statistics relating to the provision of debt counselling by Finnish municipalities following the enactment of recent legislation making this a statutory duty for them.

Receiving debt counselling and having their financial problems resolved has been found to provide remarkable relief for those households and individuals who have come to a dead end with their debts. It has also been proved that it provides a straightforward advantage to communities by reducing welfare costs.

Research by Nykänen-Kontula-Palonen-Liukkonen;Stakes 171:1995; shows that communities save on average 2.706 Fim per household per year by reducing welfare costs when overindebted citizens are able to have their debts settled either voluntarily or by court. According to the same research in the City of Vantaa (130.000 inhabitants) the saving will be 5,4 million Fim per year.

What is to be noticed is, that it is most unlikely, that the same people will in the future need to access social assistance again. This is because they have an opportunity to live without the great overbearing pressure which over-indebtedness causes within individual households.

From 1996 to 1999 welfare costs in Finland have reduced from 33 billion Fim to 13 billion Fim.

This reduction is partly explained by the reducing level of unemployment, but debt settlements have also played a major role.

(Stakes: Toimeentulotuen saajat ja kustannukset 1990–1999).

Health costs

Several different pieces of research have shown that over-indebted people and their families use communal health care services considerably more often than other citizens.

Examples of 3 pieces of research:
Nykänen-Kontula-Palonen 1997:

	Over-indebted	Others
Bad health in general	20 %	7 %
Suicidal thoughts (When helped with their debts 50 % will change their minds)	22 %	3 %
Taking care because different Psycho-social health problems	16 %	2 %
Using medication for sleeping problems or tranquillisers	33 %	16 %

Hintikka J, Kontula O, Koskela K, Viinamäki H: Finnish Medical Journal 1999: 54 pages 4209-4212 :

	Over-indebted	Others
Different mental disorders	35%	16%
Doctors Appointments per year	3·9 times	2·3times
Using prescribed medication	41%	–
Using sleeping medication or tranquillisers	28%	7%
Using psychiatric services	10%	7%
Hopeless future	31%	7%

Sunila – Järvelä; talous – ja velkaneuvontaa ylivelkaantuneille 1994:

Debt counselling clients - their reactions to over-indebtedness:

Depression	40.6%
Lack of concentration	35.3%
Sleeping problems	51.9%
Exhaustion	54.1%
Suicidal thoughts or attempted suicide	12.8%
Relationship problems	27.8%
Human relation problems	13.5%
Domestic violence	3.0%
Increased use of alcohol or drugs	5.3%
Physical problems	15.0%
Other illnesses	21.8%
Other serious problems	6.0%

Hospital care costs to communities are:

General hospital	600FIM per day
University hospital	1000FIM per day
Psychiatric or other specialised hospital	1250FIM per day.
Childcare costs	600FIM per day

The savings to communities can be calculated by using these research results. It was noted that resolving the economic problems within the family resulted in a decrease of other problems within the family. Although there is no current research directly establishing this it can be clearly identified by looking at the research results relating to health care costs.

Other social costs

Costs related to everyday living; when the debts have been settled it was shown that 50% of clients would manage to keep their own apartment or house. Savings will also be made as a consequence of reduced costs relating to welfare and housing/residential allowances.

There are also savings from the reduced level of family counselling required as a direct result of the decrease in the number of divorces, along with a reduction in childcare costs.

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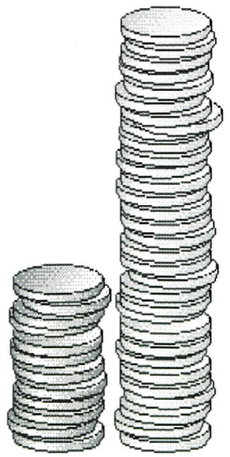

Germany

The New European Council Regulation on Insolvency Proceedings

Thomas Fischer LL.M of Germany provides a brief introduction to the European Council Regulation (EC) No 1346/2000 of 29th May 2000 on insolvency proceedings.

On 29 May 2000 the European Council adopted a new Regulation on insolvency proceedings[1] which does not only effect the insolvency of enterprises but also the insolvency of private individuals, if there are cross-border relations. The Regulation will come into force on 31 May 2002.[2] As the legal means of a Regulation has been chosen there is no national implementation necessary for the applicability of the provisions. The Regulation is directly applicable law in all the Member States.

This article will introduce briefly the provisions of the Regulation, which are of importance for the insolvency procedures of individuals.

The Objectives of the Regulation

The intention of the Regulation is to make insolvency procedures with cross-border effects less expensive and more efficient as 'the proper functioning of the internal market requires that cross-border insolvency proceedings should operate efficiently and effectively'.[3] Moreover it has a main objective 'to avoid incentives for the parties to transfer assets or judicial proceedings from one Member State to another, seeking to obtain a more favourable legal position (*forum shopping*)'.[4]

The Regulation was due as 'the activities of undertakings have more and more cross-border effects'.[5] In the course of increasing trade between the Member States on the one hand and increasing mobility of citizens on the other hand, cross-border problems of insolvency will become much more important in future.[6] With regard to consumer insolvency the e-commerce might play a significant role in future. For orders via the internet, no matter whether goods or stocks, national borders are no longer obstacles. The only hindrance affecting orders in other Member States might be the language barrier or difficulties in realising warranty rights against a trader who is geographically distant.

The Scope of the Regulation

The Regulation applies ***ratione materiae*** 'to collective insolvency proceedings which entail the partial or total divestment of a debtor and the appointment of a liquidator'.[7] It is listed in the Annex for the single Member States which procedures are comprised. For Germany it is e.g. das Insolvenzverfahren, for the UK e.g. bankruptcy or sequestration, for Ireland e.g. bankruptcy.[8] Consequently, consumer insolvency procedures[9] are comprised by the Regulation, if they belong to the procedures listed in Annex A.

Ratione personae the Regulation applies to natural persons as well as to legal persons, to traders as well as to individuals.[10] It does not apply, however, 'to insolvency proceedings concerning insurance undertakings, credit institutions, investment undertakings which provide services involving the holding of funds or securities for third parties, or to collective investment undertakings'.[11]

Cross-Border Problems for Consumers

For insolvent consumers cross-border problems can arise basically in two ways. A consumer may have assets in Member States other than the Member State where the insolvency proceedings are initiated. These assets may exist for instance in the form of credit, machinery and equipment or in the form of immovable property. The other case where cross-border problems can arise is, if the consumer has debts in other Member States, for instance in the form of open bills for the delivery of goods or in the form of loans by a foreign lender which have to be paid back.

The interests of the parties involved in the insolvency procedure are different. In the first case (assets abroad) the consumer's creditors will be highly interested in getting access to the foreign assets in case of the consumer's insolvency. In the other case (debts abroad) the debtor will be interested that a discharge from the remaining obligations granted by the national court does also cover assets in other Member States.

International Insolvency Law

The Regulation does not interfere with national laws for insolvency proceedings, neither the procedural nor the substantive rules, but 'should set out, for the matters covered by it, uniform rules on conflict of laws which replace, within their scope of application, national rules of private international law'.[12] Like this the Regulation introduces a uniform standard of international insolvency law. The applicable law is, unless otherwise stated, the law of the Member State of the opening of the proceedings, the so called ***'lex concursus'***.[13] ☞

standard of international insolvency law. The applicable law is, unless otherwise stated, the law of the Member State of the opening of the proceedings, the so called ***'lex concursus'***.[13]

Mutual Recognition of Insolvency Proceedings

The Regulation provides that 'any judgment opening insolvency proceedings … shall be recognised in all the other Member States from the time that it becomes effective in the State of the opening of proceedings'.[14] The opening of insolvency proceedings in one Member State does not preclude the opening of insolvency proceeding in another Member State.[15] If this happens, the latter proceedings are so called 'secondary insolvency proceedings'.[16] The effect of the secondary insolvency proceedings is restricted to the debtor's assets situated within the territory of the Member State where the secondary insolvency proceedings take place. The mutual recognition of the judgment opening insolvency proceedings means that this judgment produces, with no further formalities, the same effects in any other Member State as under the law of the State of the opening of proceedings.[17]

Effects of the Regulation for Consumer Insolvency Proceedings

The jurisdiction to insolvency proceedings is in the hands of 'the courts of the Member State within the territory of which the centre of a debtors main interests is situated'.[18] The debtor's main interests are in his place of habitual residence. In other words, the main insolvency proceedings may only be initiated in the Member State of the debtor's habitual residence, even if substantive assets are situated in anotherMember State.

What does that mean in cases where the debtor has property in Member States other than the Member State where the main insolvency proceedings take place? The Regulation confers effective powers to the liquidator. 'The liquidator appointed by a court … may exercise all the powers conferred on him by the law of the State of the opening of proceedings in another Member State, as long as no other insolvency proceedings have been opened there …'[19] 'He may in particular remove the debtor's assets from the territory of the Member State in which they are situated …'[20] But the liquidator's powers do 'not include coercive measures or the right to rule on legal proceedings or disputes'.[21]

However, in the field of money advice it is much more likely that there are no assets, only obligations in other Member States. Is a stay or a discharge from debts granted by the court of the main insolvency proceedings valid in the other Member States as well? The Regulation provides that 'any restriction of the creditors' rights, in particular a stay or discharge, shall produce effects vis-à-vis assets situated within the territory of another Member State only in the case of those creditors who have given their consent'.[22] That means in other words a discharge from debts will become effective only within the territory of the Member State where the debtor's permanent residence is, i.e. where the insolvency proceedings take place. There is no 'fresh start' in the other Member States, unless the creditors in these Member States agree.

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Footnotes

1. Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings, Official Journal L 160, 30/06/2000 page 1 - 13
2. Article 47 of the Regulation
3. Section 2 of the introduction to the Regulation
4. Section 4 of the introduction to the Regulation
5. Section 3 of the introduction to the Regulation
6. See the article by McCaul, Debts Knows No Borders, Money Matters 3/2000, page 4 (about Ireland)
7. Article 1, paragraph 1
8. Annex A
9. For the German procedure see: Purlein, Consumer Bankruptcy, Money Matters 2/2000, page 4 and Groth, Consumer Insolvency Procedures in Germany – Hurdles for Debtors, Money Matters 3/2000, page 8
10. Section 9, first sentence of the introduction to the Regulation
11. Article 1, paragraph 2; section 9 of the introduction to the Regulation
12. Section 23 of the introduction to the Regulation
13. Section 23 of the introduction to the Regulation
14. Article 16, paragraph 1; section 22 of the introduction to the Regulation
15. Article 3, paragraph 3, Article 16, paragraph 2
16. ibid.
17. Article 17
18. Article 3, paragraph 1
19. Article 18, paragraph 1, first sentence
20. Article 18, paragraph 1, second sentence
21. Article 18, paragraph 3, second sentence
22. Article 17, paragraph 2

Household accounting in Germany

The development of new household bookkeeping systems

This article is a only a very short extract from a fuller article by Michael – Burkhard Piorkowsky of the Faculty of Agriculture, Rheinische Friedrich-Wilhelms-Universität, Bonn. It derives its information from the results of research projects on accounting practices in private households.

The New Household Accounting Book

The development of a new household bookkeeping system was the principal aim of the research project. In accord with the literature on household and information economics, as well as rational choice theory, we sought to develop a convenient, user-orientated, system for keeping financial records, which would strengthen the domestic management (Weber, 1922; Nickell and Dorsey, 1967; Bryant 1990; Kooreman and Wunderink, 1997). Guided by this approach and the results of our two empirical surveys, an attempt was made to design a prototype household accounting book, which was simple, convenient, and flexible and which offered scope for modification according to individual circumstances.

The basic attributes of a new manual household accounting system were identified from the survey findings. It should:

- be based on single entry bookkeeping,
- support the performance of planning and control functions,
- comprise a modular structure with basic and supplemental components,
- permit the monitoring of income and expenditure flows,
- provide sections for monitoring savings, financial investments and liabilities,
- contain loose-leaf proformas kept in a ring binder with separate, colour-coded modules and tables,
- not prescribe income and expense categories,
- provide examples on how to keep the records including guidance on possible classifications of income and expenditure, savings, investments and liabilities.

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The prototype of a 'new household accounting book' was prepared and tested in 145 selected households. These comprised 125 households in which accounting was performed regularly and 20 where there was no experience of household accounting. Each householder used the system for eight weeks, following which a standardised questionnaire was completed (Piorkowsky et al, 1995; Warnecke, 1997). Closing interviews were conducted from November 1994 to January 1995 and the data was analysed using the SPSS programme.

The test version of the new household accounting book was generally well received (Warnecke, 1997). A total of 12.9 per cent of users considered it to be 'very good', and 54.3 per cent considered it 'good'. Another 20.7 per cent deemed it to be 'partly good and partly not good' and 5.0 per cent thought it 'fairly acceptable'. Only 3.6 per cent considered it "bad" and 2.1 per cent thought it 'totally unacceptable'. The remainder offered no answer or were indifferent. The opinions of test users of the household accounting book were also elicited on its particular features. The results showed that the absence of prescribed categories of income and expenditure, the provision of examples, and the colour-coded system were especially well received. Less satisfaction was expressed about the high number of tables in the supplementary modules of the system.

In the light of these test results some modifications were made and a final version of Das Neue Haushaltsbuch (The New Household Accounting Book) was produced. This comprised a basic programme and a supplementary programme. The former contained modules for recording and analysing income, fixed expenses, variable expenses and the construction of financial statements on a monthly and/or yearly basis. The latter provides modules for recording balances of cash, savings, investments and abilities; transactions conducted by credit card or cheque; and long-term financial planning. The contents, layout and form of The New Household Accounting Book differed from existing accounting systems available for use in Germany.

Production and distribution of The New Household Accounting Book was organised as a joint venture between the Deutsche Gesellschaft für Hauswirtschaft (dgh) e.V (German Association of Home Economics) and the Bausparkasse Schwäbisch Hall, a German savings and loan association, under the name Das Haushaltsbuch von Schwäbisch Hall und dgh (The Household Accounting Book from Schwäbisch Hall and dgh). Since January 1996 about 40,000 copies have been sold (Deutsche Gesellschaft für

Hauswirtschaft, 1996; Piorkowsky et al, 1996)

Follow-up projects have involved the development of variants of The New Household Accounting Book for use by particular groups.

A version was devised for young families named Das Junge Haushaltsbuch (The Young Household Account Book) (RWE Energie Aktiengesellschaft, 1997). This project was financed by the RWE Energie Aktiengesellschaft@ an electricity supplier with a network of home economic advice service agencies. About 2,000 copies have been sold.

Another modified version, Der Euro-Budgetplaner (The Euro-Budget-Planning-System) permits parallel bookkeeping in the national currency and in the single European currency (Deutscher Sparkassen-und Giroverband, 1998; Piorkowsky and Pfeiffer, 1999). The research and development of The Euro-Budget-Planning-System was funded by the Bundesministerium für Familie, Senioren, Frauen und Jugend (Federal Ministry of Family Affairs, Senior Citizenship, Women and Youth) and its production and distribution has been supported by the Deutscher Sparkassen-and Giroverband (German Savings Banks and Giro Association). The Euro-Budget-Planning-System is available free of charge and since September 1998 about 200,000 copies have been distributed.

Other follow-up projects have included devising a new approach to budget advice using household bookkeeping in the Neue Länder of Germany, and the development of a pocket-money book for children. Details of these projects are discussed in the following sections.

Household bookkeeping and budget advice

As part of the attempt to promote the transition from a centrally planned economy to a market economy, counselling agencies were established to advise individuals on household management in the former East Germany. These initiatives included the creation of a new budget advice service, Präventive Einkommens-und Budgetberätung für Familien (Preventive Income and Budget Advice Service for Families), in 1994 in Rostock, the core industrial region of Mecklenburg-Western Pomerania (Bertsch, 1998; Piorkowsky, 1998a). The project was financed by the Bundesministerium für Familie, Senioren, Frauen und Jugend (Federal Ministry of Family Affairs, Senior Citizenship, Women and Youth), the Sozialministerium Mecklenburg-Vorpommern (Ministry for Social Affairs of Mecklenburg-Western Pomerania), and the Senator für Jugend, Gesundheit und Soziales der Hansestadt Rostock (Ministry of Youth, Health and Social Affairs of the City of Rostock).

The New Household Accounting Book was considered as an essential tool in the work of the budget advice service in Rostock. However, it was recognised that modification would be necessary to take account of the circumstances of potential users and the objectives of the scheme. The idea of preventive income and budget advice was to encourage clients to plan and control their income and expenditure by using accounting and financial management techniques. A modified New Household Accounting Book was prepared which emphasised comparisons of income and expenses as well as assets and liabilities, with a view to ensuring that the needs of the family were met. This modified (New) Household Accounting Book was made available in both paper and PC versions (Einkommens-und Budgetberätung Rostock e. V. 1996).

Since the establishment of the counselling service in Rostock the demand for advice on budgeting and household bookkeeping has increased substantially. During the second year of its existence about 37 per cent of all counselling activity concerned expenditure management and household bookkeeping (Piorkowsky, 1998b). Other areas of advice provided by the counselling service at Rostock relate to income generation and debt management.

New clients are offered guidance on the use of The Household Accounting Book. Having kept records for a suitable period the client may return to their adviser to review progress. The counsellor may also conduct a financial evaluation of the client's management of the three core areas of household finance: income and expenditure, cash flow, and capital formation, by performing a financial ratio analysis according to a standard form. The latter provides a means of data aggregation as well as sensitivity analysis (Hadaschik and Piorkowsky, 1997). Though not utilised as greatly as The (Modified) New Household Accounting Book itself, the prescribed financial ratio analysis has proved useful for identifying structural problems in household financial management and in developing strategies to address them.

The pocket-money book for children

In modern market economies money is the principal medium of exchange as well as a culturally significant reference system, which is encountered from childhood onwards. This reference system not only relates to everyday activities such as comparing the price of goods and services but is also implicated in complex social phenomena such as evaluations of social placement.

For children and adults, exchange and consumption are about identity and belonging. Operating with money is also considered a socialising function and one in which children are able to prepare for adult roles. Despite the recognition of the importance of financial management as a life skill, this subject does not feature explicitly in the school curriculum in Germany and it appeared that no comprehensive bookkeeping system specifically designed for children was available (Reisch, 1996; Bornemann, 1996; 1998).

It is known that many parents encourage their children to undertake bookkeeping when they receive pocket-money (Deutscher Sparkassen-und Giroverband, 1995a). Some consumer bodies provide brochures on pocket-money management for children. Such literature is produced by, for example, the Berätungsdienst der Sparkassen - Geld und Haushalt (Advice Service of the Savings Bank - Money and Household) and the Stiftung Verbraucherinstitut (Foundation for Consumer Affairs) (Deutscher Sparkassen- und Giroverband, 1995a; 1995b; Stiftung Verbraucherinstitut 1997). But a practical instrument for financial management and budget administration by children was not available. It was decided therefore, to research and develop such a system. This project was financed by the Deutscher Sparkassen-and Giroverband (German Savings Banks and Giro Association).

Given the distinctive experiences, preferences and thought processes of children it was clear that a pocket-money book for children could not be derived by a scaled-down version of The Household Accounting Book. A pocket-money book was therefore designed with the co-operation of classes of school children aged between 12 and 14 years in the Neue Länder and the Alte Länder. The project ran from January to May 1997. The children were organised into groups of three to five and set the task of creating a pocket-money book. For background and guidance the teachers of the two classes gave lessons on consumption money, and financial management as well as some instruction on the criteria for constructing a record keeping system. However, the only constraint placed on design was the need for the system to be workable in practice. Children were requested to test the usefulness of their own model pocket-money book. A prize was offered for the best submission.

At least 18 outlines of a pocket-money book were created and presented for evaluation by a jury of five experts drawn from business, politics, and science. The following criteria were set by the jury as a basis for evaluating the outlines:

- workability with respect to regular account keeping,
- scope for recording all financial transactions,
- functional layout,
- motivating aspects of layout such as the use of colour and graphics,
- design in relation to broader aspects of record keeping such as consumption behaviour, life styles, and environmental concerns.

The final version of the pocket-money book for children, Mein Taschengeld (My Pocket Money), was produced from the three best outlines submitted by the school children (Deutscher Sparkassen- und Giroverband, 1997). It contains proforma tables for recording income and expenditure as well as a variety of informative and motivating components. In contrast to The New Household Accounting Book it was decided to specify expense categories as follows: leisure, music, books and magazines, hobbies, school items, clothing, computer, foods and drink, sweets, presents, and other expenses. The book also provides scope for recording-. intentions to save money and earn income, amounts saved over the year, lists of desired items, games and jokes, birthday calendar, timetable, address list and a photograph of the account keeper. My Pocket Money became available in May 1999. Since then about 50,000 copies have been distributed free of charge.

Conclusion

The attempts to produce household accounting systems to assist financial management and budget administration appears to have met with a degree of success. About 300,000 copies of The New Household Accounting Book and its variants, such as The Euro-Budget-Planning-System and My Pocket Money, have been distributed since January 1996. This success is based on the empirical foundation of the development of the new systems, and is confirmed by responses from both adults and children who have used the systems. The Pocket Money Book is perceived as encouraging both technical and expressive functions and as a first step towards encouraging rational behaviour, financial management and budget administration among children. Regular users of the New Household Accounting Books have reported that they have not suffered 'money trouble' since using them.

The success of the scheme in Rostock has encouraged the research team at the University of Bonn to focus more strongly on the way in which household accounting systems and enhanced management competencies can be used to prevent poverty, especially over-indebtedness (Korczak, 1997), and ease difficult life situations. In December 1999 a programme to this effect was instituted by 15 welfare organisations in the field of home economics and is supported by the Bundesministerium fur Familie, Senioren, Frauen und Jugend (Federal Ministry of Family Affairs, Senior Citizenship, Women and Youth) (Bertsch, 1998; 1999; Piorkowsky, 2000). A central element of this programme is the encouragement of financial management and budget administration through the use of household bookkeeping. Future research projects in this field are likely to be concerned with developing household accounting systems for people with limited literacy and numeracy skills. Further research is also required on accounting practices in a growing sector of the economy in Germany: household-enterprise-complexes, where the household and business entities are not always well defined (Storey, 1994; Piorkowsky, 1997).

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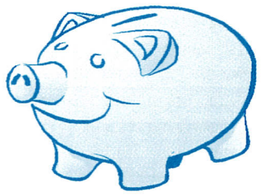

Consumer Debt Net
Aims and Objectives

"The network shall deal with debt and budget advice, budget standards, household economic analysis, consumer and social problems due to overindebtedness."

The main objective o f the network is to encourage member organisations to provide practical action to prevent consumer overindebtedness and to facilitate consumer assistance by the provision of budget and debt advice. The network will also strive to achieve exchanges of information and research results which may provide more general knowledge of such practices and the way in which they are handled in various countries.

Consumer Debt Net will:

- establish and maintain an up to date list of contacts in each participating country,
- maintain regular contacts in particular by means of an annual conference and exchanges of view on matters of topical interest through multilateral contacts of all kinds,
- mutually exchange information to enable members to gain an overview of each other methods, legal and administrative aggangements,
- to work towards better and commonly accepted methodology and definitions relation to debt advice, budget standards and debt prevention throughout Europe,
- collect information on creditors practice and procedures in relation to consumers and to co-operate informally at an operating level in preventing marketing malpractice's as they arise. Participants should use their best endeavours to assist each other, subject to national law and practice and availability of resources,
- organisation of special training for advisers,
- planning and realisation of collective actions in European countries,
- intervention on European legislation, for example in relation to debt settlement, credit rules and bankruptcy laws.

Participation is open to organisations from each European country, who would normally be involved with budget advice, debt settlement, debt counselling or budget standards, though for certain countries other arrangements may be necessary.

THE EUROPEAN CONSUMER DEBT NETWORK

A project supported by the Nordic Council of Ministers

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