

MONEY MATTERS

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Debt settlement processes



Despite positive experiences with existing private bankruptcy proceedings across Europe, many European citizens still wait for the introduction of legal debt settlement processes for private households and individuals to help them cope with their debt problems.

- ★ Debt adjustment in Finland and Sweden
- ★ Insolvency proceedings in Germany
- ★ Amendments to the Dutch Wsnp
- ★ Planned reform of the Austrian proceedings
- ★ Regulation urgently needed in Poland and Spain



Debt adjustment in Finland



Finland has a well-functioning basic structure to fight debt problems. But although over-indebtedness isn't any more a hot political topic, it has become a permanent problem in credit society.

by Vesa Mutttilainen

Finland was an 'early bird' in alleviating debt problems together with some other countries in western Europe. It has now well-functioning basic structures like debt adjustment legislation and a nation-wide debt counselling network. Also other legislative and policy reforms have strengthened debtor's position since the 1990s.

Anyway, there are some actual challenges in Finland:

- * the position of debtors, who have dropped outside the current procedures (rejected debt adjustments etc.)
- * some new phenomena (for example SMS-loans)
- * effects of radical amendments in debt enforcement procedure (final time-limit for debt collection)

Background

In Finland, the level of relative poverty is about 12%, which is still among the lowest in the EU. However, this number has increased slightly during the 2000s. The rate of unemployment has fallen continuously since 1994 and is now under 8%.

Debt problems grew considerably during the economic depression in the early 1990s. In the late 1990s their number began to decrease and this same trend has continued in the beginning of the 2000s. According to recent statistical information about 5 to 7% of Finns have problems with their debts.

The economic and debt counselling offices have had about up to 20,000 new clients every year over the last years. At the same time, the number of new debt adjustment petitions in district courts has varied between 3,000 and 5,000.

Debt adjustment legislation

The Liberalisation of financial markets in the late 1980s created a dangerous combination: easy access to credits and life-long responsibility for debts. This increased both debt problems and the need for debt adjustment and other policy measures. Finally, the Finnish Debt Adjustment Act came into force in 1993. The number of new debt adjustment petitions has decreased from up to 14,000 in the first years to under 4,000 in 2005.

The National Research Institute of Legal Policy has published several research reports on the implementation of this legislation. A summary of the most recent report 'Debt adjustment in courts – debtors and payment plans in 2005' is available on the web: <http://www.optula.om.fi/38708.htm>.

The target groups of the debt adjustment legislation are permanently insolvent private persons with an overwhelming debt burden. First steps within the debt adjustment are negotiations with creditors and financial analysis in debt counselling. The debt counsellor usually prepares a debt adjustment petition and a payment plan, which has to be confirmed (or rejected) by the district court.

Usually the debtor re-pays his or her debts for five years, the remaining debts are forgiven. If the debtor neglects the plan, it may be declared as lapsed.



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Policy priorities

The key political objectives for combating social exclusion and poverty in Finland in 2006–2008, as reported in the National Strategic Plan on Social Protection and Social Inclusion, are:

- * Guaranteeing work opportunities for as many as possible
- * Prevention of social problems and social risks
- * Safeguarding the continuity of the existence of measures that prevent and correct social exclusion and poverty
- * Ensuring the supply of skilled labour in services safeguarding the welfare state

None of these objectives is directly linked to over-indebtedness. However, over-indebtedness has been mentioned several times in the National Strategic Plan. Firstly, the section on 'an assessment of the status of poverty and social exclusion' includes statistics on over-indebtedness. Secondly, the over-indebted are one of the 'risk groups requiring special measures'. In this context, the plan refers to reforms in both debt adjustment and debt enforcement procedures. Thirdly, 'mobilisation of participation of actors' in the section 'good governance' refers to non-governmental organisations combating social exclusion and over-indebtedness. The Evangelical Lutheran Church has been one active player in this field.

There is only one reference to 'financial exclusion' in the strategic plan. It is in the appendix, where 'social credits' are described as an example of good practice.

In Finland, about 7% of adults have a bad credit record, which jeopardizes their access to credit. However, these people usually have access to basic banking services.

Challenges for the future

Legislation on social credits is an example of good practice to prevent over-indebtedness. It is aimed to help people outside the mainstream credit market with low interest small-loans. However, the use of these loans has not expanded as expected.

One interesting example of good (or bad) practices is 'time limits of debt enforcement'. It was introduced as a part of a major reform of the enforcement procedure and will be in effect in 2008. This reform means in practice that debts may be collected from individuals by way of enforcement usually only for a period of 15 years.

Those over-indebted persons who have been excluded from current procedures may need more attention in future strategic plans. In this regard, especially experiences on 'time limits of debt enforcement' will be interesting. Over-indebtedness is not any more such a hot political topic in Finland as it was in the 1990s. However, it has become a permanent problem in contemporary credit society. ::

Recent developments

The amendment of the Enforcement Act has meant in practise that on 1 March 2008 about 30 000 debtors were relieved of their 15 year old debts either totally or partly. The Ministry of Justice has appointed a working group to consider problems caused by SMS loans and the need for amending the current legislation.

Over-indebtedness in Finland

(research 2005, results based on 565 cases)

The Debtors:

- median age: 49 years
- 46% are women
- about 50% live alone
- two thirds are not working

The Debts:

- median amount of debts is 47,000 Euros
- one debtor has on average 12 debts
- only 57% of debtors pay their debts
- about 90% of debts is forgiven





The Dutch Debt Rescheduling Act



Recent amendments to the Dutch Debt Rescheduling Act Wsnp from 1998 further increase debtors chances to tackle their problems and get a new start.*

The Wsnp (as introduced in 1998) is intended to prevent situations in which natural persons are endlessly pursued by their creditors if they have ended up in problematic financial circumstances.

Debtors eligibility and obligations

If debtors and creditors are unable to reach an amicable settlement, then a natural person (also if he/she is running a business) can lodge an application with the District Court to be admitted to the Wsnp, including details that show that he or she is no longer in a position to pay off this debts on his or her own, and that he/she has tried to sort out the debts by means of an amicable debt assistance programme. In addition, the debtor must have acted in good faith when incurring the debts and leaving them unpaid.

Beside this debtors have to meet a series of obligations, such as not allowing any further debts to arise and generating as much money as possible to satisfy the debts. The debtor also must pay all income in excess of the exempted amount to the Court-appointed administrator (trustee) and inform him or her about any matters that might be important for the statutory debt rescheduling scheme. The reasons for the debt arising must be eliminated.

The debtor also will be obliged to live on a minimum budget at around the level of social security benefits for three years. The Court-appointed administrator can also sell any valuable goods that the debtor does not actually need.

When the Wsnp is declared applicable to the debtor, the District Court appoints an Examining Judge and an administrator. The Examining Judge's duty is to supervise the correct implementation of the statutory duties by the administrator.

The administrator, in turn, supervises the debtor's compliance with his/her obligations arising under the debt rescheduling scheme. The administrator will visit the debtor at home and inspect all of the debtor's mail that is delivered to him/her as a result of a postal redirection. The administrator is also responsible for managing and liquidating the debtor's assets and implementing the repayment plan.

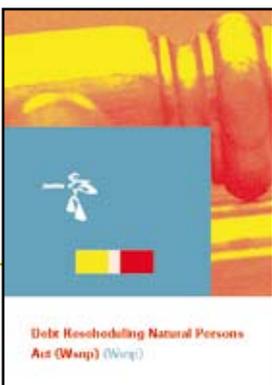
Creditors

The contents of the Court's decision admitting the debtor to the Wsnp is published in the State Gazette and a Central National Insolvency Register (CIR), so that creditors can check whether their debtor has been admitted to the Wsnp and can approach the administrator with details of their claims.

Only then will the debts have a chance of being settled if funds are distributed at the end of the Wsnp programme. If a creditor has imposed an attachment on property, this will lapse at the point when a debtor is admitted to the Wsnp.

Termination of the Wsnp

At the start of the Wsnp programme, the Court will set its duration, which is generally three years. About one month after the expiry of that period, the Court checks to see whether it can agree to award a clean slate or whether the duration of the programme needs to be extended. The debt rescheduling



* The following information is based on the text of a brochure on the Wsnp published by the Dutch Ministry of Justice. For a full version of the brochure as well as additional information on the 'Dutch system' visit www.ecdn.eu

programme can also, however, be terminated by shortening its term. This will happen if there are no reasonable further prospects of the debtor being able to meet his/her obligations, either entirely or partially.

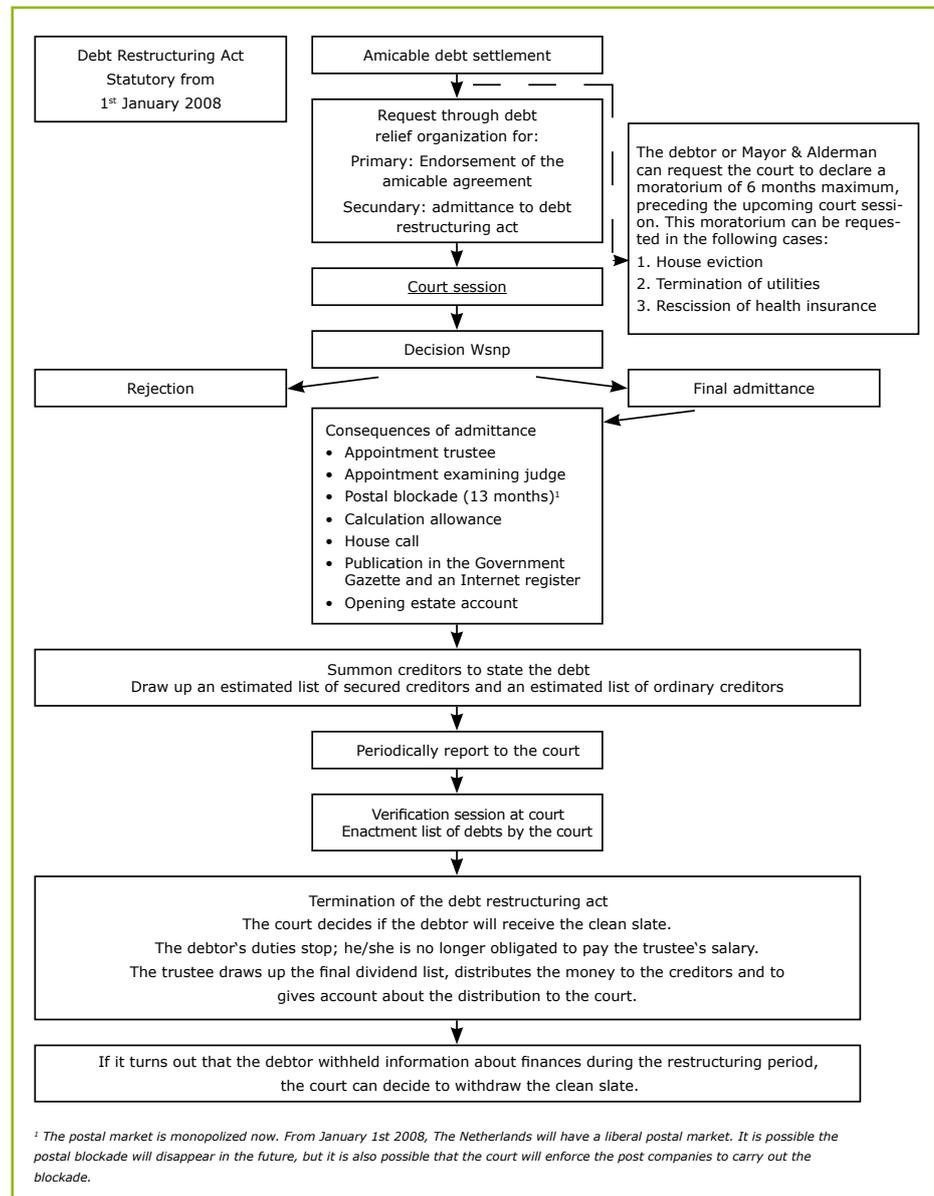
Section 350 of the Dutch Bankruptcy Act also provides the Court with an option of terminating a rescheduling programme at an interim stage, if the Court considers that there are good reasons for doing so. Interim termination may be due to positive factors: the claims might have been settled or the debtor might be in a position to resume his/her payments. On the other hand, the debtor's negative attitude towards the rescheduling programme or the creditors might also be a reason for terminating the scheme.

In such a case, where the debtor fails to abide by his/her obligations under the Wsnp, current law decrees that the debtor will be declared bankrupt by operation of law. The application of the debt rescheduling scheme also comes to an end if the debtor is declared bankrupt during the course of the rescheduling programme.

It may happen that the debtor allows new debts to arise in the course of the scheduling scheme. If he/she leaves these debts unpaid, he/she can be declared bankrupt in relation to these debts, which will not be covered by the rescheduling scheme. Finally, the Court may also decide to terminate the rescheduling programme if the debtor dies.

Amendments to the Wsnp from 1 January 2008

At the same time as an application is lodged under the Wsnp, there will also be a facility for invoking a 'preliminary injunction' and/or a 'compulsory debt scheme'. These applications will be dealt with before the application for admission to the Wsnp is considered. A preliminary injunction offers a debtor protection against any impending threat of the disconnection of gas, water or power, notice of termination of lease, eviction, or termination of healthcare insurance. The Court may impose a preliminary injunction for a maximum of six months. This means that during this period an amicable settlement with the creditors may still be reached. A compulsory debt scheme or mandatory agreement involves the debtor asking the Court to impose a composition on any unwilling creditors who are unreasonably refusing to cooperate. ❖❖



¹ The postal market is monopolized now. From January 1st 2008, The Netherlands will have a liberal postal market. It is possible the postal blockade will disappear in the future, but it is also possible that the court will enforce the post companies to carry out the blockade.



Insolvency in Germany



The introduction of consumer insolvency proceedings has made it possible for every debtor to benefit from out-of-court debt settlement.
by Werner Sanio

With the introduction of consumer insolvency proceedings in January 1999, insolvency counselling was added to debt counselling as a further field of activity, providing debtors with information, advice and support on their way to discharge remaining debts. Since 2001 there have been several legal adjustments to improve insolvency proceedings.

Social Situation in Germany

About 12% of people in Germany are unemployed (2005). Over 36% of these are long-term unemployed (for 12 months or more). People with little education and training are a large group among the unemployed. Around 1.6 million or 39.5% of the unemployed in Germany in 2005 had no training. Every year, 9% of the young people obtain no school-leaving qualifications. At least 13% of the German population are at risk of poverty.

Costs of the insolvency proceedings

If the debtor is an individual and if he/she has made a request for discharge of residual debt, the cost of the insolvency proceedings shall be deferred on request until such time as discharge of residual debt is awarded, insofar as his/her assets are likely not to be sufficient to cover these costs. Deferment in accordance with the first sentence shall also cover the costs of the proceedings regarding the plan for the settlement of debts and the proceedings for discharge of residual debt. If the costs of the proceedings are deferred to the debtor, on request a lawyer of his/her choice shall be appointed who is willing to represent him/her if representation by counsel appears to be necessary in spite of the duty of assistance incumbent on the court.

The effect of deferment shall be as follows:

1. the Federal or Land cash office may claim court costs in arrears and those arising and the claims of the appointed lawyer which transfer to the cash office against the debtor only in accordance with the provisions made by the court;
2. the appointed lawyer is unable to assert claims for fees against the debtor.

The charges for the action concerning the application for the opening of the insolvency proceedings have to be paid by the applicant. If the application is refused or cancelled, this will also apply for the incurred expenses. The costs for the action concerning the refusal or the cancellation of the release of the remainder of the debt have to be paid by the applicant. The debtor in the insolvency proceedings has to pay the remaining costs.

The intended reform of the insolvency proceedings¹

According to the planned regulation, the over-indebted person shall contribute to financing the costs of the court proceedings and will be obliged to pay at least EUR 13 a month during the repayment period (and EUR 25 in advance when applying for consumer insolvency) regardless of their financial situation. The court opens a new 'process of debt relief' instead of the traditional consumer's insolvency proceedings if the assets won't cover the costs of the proceedings. A positive effect of the planned regulation is that the process of debt relief will be simplified for debtors who have no assets or attachable income.

Some points of criticism

The insolvency proceedings continue the process of the individual distraint, which is strictly related to parties, as total distraint and thus remain an issue between the creditor and the debtor. The insolvency regulation of 1999 renounces quite deliberately to derive refusal in the form of blanket clauses on the basis of the probity of the debtor. In this regard, however, it is sufficient to except the respective demand from the release of the remainder of the debt.



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The possibility of a refusal ex officio shall be granted in the case of obviousness. Refusal applies in the case of conviction to 90 daily rates or more on the grounds of the elements of a crime, which is determined for the protection of the property or the assets and in case the criminal offence was committed at the disadvantage of the creditor who made the application. A blocking period of 10 years in future will take effect also in the case of a refusal of the release of the remainder of the debt. If a discharge of residual debt is granted, this will not affect any liabilities from arrears of alimony which the debtor has not paid on purpose, contrary to their obligations.

From the point of view of the debt advice centres, the planned reforms also have other weaknesses: no security of service provision for debtors without means; the costly obligation to appoint a preliminary trustee; the abolition of deferred payment in cases where no assets exist and thus heavy costs imposed on debtors with incomes near the poverty line; and former self-employed people continue to face restrictions regarding eligibility for consumer insolvency proceedings. ❖❖

¹ Ministerial Bill for the reform of the insolvency proceedings – as presented by the German government on 22 August 2007

Debts in Spain



ADICAE drew up extensive studies on consumer over-indebtedness and its serious social consequences in past years. The latest data on the level of indebtedness of families are worrying: according to the Bank of Spain, Spanish households have accumulated debts of 910 000 million euros, or 105% of GDP. Recent news on the first private bankruptcy sentence gave rise to intensive debates of the situation of growing over-indebtedness of Spanish households. However, the judicial debt settlement procedure is unsuitable for consumers as a way out of the problem, because of the high costs involved (more than 12 000 €) and the slowness of such a process.

The new bankruptcy procedure, now also open to individuals but originally aimed at companies, does not allow the judge to suspend or reduce payments, not even to permit a fresh start for the consumers after a likely liquidation of their assets, but rather has to attempt to achieve an amicable solution accepted by a majority of the creditors, supervised by a commercial court. Although the regulation is not an effective measure for the majority of households that run into arrears due to an unexpected increase in mortgage loan instalments, this process can be used to suspend temporarily the compulsory sale of their home and the accumulation of interest on outstanding payments.

As an alternative ADICAE recommends the establishment of a three-party-commission that includes representatives of public authorities, organisations of creditors and consumer organisations. This commission could be authorised to define the details of the debt settlement process under the supervision of specialised judges who are only consulted in specific cases. This and other measures to fight over-indebtedness effectively are urgently needed by a growing number of over-indebted consumers in Spain.

Spanish consumers hope for better measures that effectively fight over-indebtedness.



ADICAE – Asociación de Usuarios de Bancos, Cajas y Seguros



The Swedish Debt Relief Act



More and more consumers in Sweden have problems with paying their debts. The Debt Relief Act benefits people deeply in debts as well as budget and debt counsellors.

by Vilhelm Nordenanckar

The Debt Relief Act was introduced in 1994. It was amended and the new act came into force in 2007¹. A natural person who is so deeply in debt that he or she will not be able to pay his or her debts in the foreseeable future can apply for debt restructuring. A further requirement is that it should be appropriate in the light of the debtor's personal and financial circumstances to approve debt restructuring.

Debt restructuring means that debts covered by the procedure are reduced or eliminated altogether. All debts, such as bank loans, tax debts, private debts, shall be included in the debt relief. The main rule is that debts should be treated equally and attributed the same repayment percentage. All creditors must accept debt relief. Applications for debt restructuring are lodged with the Enforcement Authority. On application by the debtor the Enforcement Authority can decide to open a case of debt relief and makes the final decision. A debt restructuring decision will include the proportion of the debt that the debtor must pay. During the handling of the case no enforcement against the debtor is allowed. The debt relief procedure is financed through taxes. The person in debt does not pay any charge; while the debtor is not entitled to legal aid during the procedure, according to the debt relief act he or she may get aid and advice from the local debt counsellors all through the procedure upon request.

A decision on debt relief means that the person in debt must live on the minimum subsistence amount for a period of, ordinarily, five years. All additional incomes go towards paying the debts. If the debtor has no income over and above the minimum subsistence amount he or she does not have to pay anything; this happens in approximately between a third and a half of the cases. After these five years, the person in debt is released from the payment obligation for his/her debts. If the debtor is not paying according to the plan a creditor can apply to the Enforcement Authority for enforcement of the plan.

Municipal budget and debt counselling

The debtor is free to seek a voluntary agreement with his or her creditors. The local debt counsellors help the debtor to create proposals for such voluntary agreements. Access to municipal budget and debt counselling for people with household financial problems has existed in Sweden ever since the 1980s. But it was only when the Debt Relief Act was passed that it became possible to speak of a general advanced municipal service. In the Debt Relief Act it is stated that access to qualified municipal budget counselling is a necessary precondition for the operation of the debt relief system.

Today virtually all municipalities in Sweden have budget and debt counselling, either within the Social Welfare Service or the Consumer Advice Service, or within both operations. Counselling is free of charge but the waiting times can be long: normally between one and three months.

In order to further strengthen the professional role and skills of budget and debt counsellors, a professional association was formed in 1995. The majority of Sweden's budget and debt counsellors are members of the association, which deals with the development of working methods, discusses issues of ethics, supports regional networks and issues a newsletter for members, to mention a few examples.



Vilhelm Nordenanckar

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Head of unit*

Consumer Agency

The Consumer Agency is the public authority entrusted with protecting the interests of the consumer. The aim of the Consumer Agency is to provide households with good opportunities to utilise their financial and other resources efficiently. In the Debt Relief Act it is stated that the Agency shall support the municipal budget counselling with help and necessary guidance for the operation of the debt relief system.

The Consumer Agency arranges, among other things, continuous courses and training specifically oriented towards the municipal budget and debt relief counsellors, and has furthermore developed an extensive computer system (HEPSYSTEM) for budget and debt counselling.

The Swedish Enforcement Authority

The authority of the Enforcement Administration is responsible for the enforcement of both public and private claims, and is also in charge of providing preventive information. There is a special preventive unit. An individual creditor who does not receive payment of the debt is not personally entitled to attach the debtor's income or seize any assets. This can only be done through the Enforcement Authority.

The Enforcement Service has powers to seize the income, bank assets and other property of a person in debt. At the same time, society provides protection, as the person in debt always is entitled to retain a sufficient income for maintenance and housing, the so-called subsistence level. Wages can be seized until the debts are paid. Very deep indebtedness may involve a person being forced to live at the level of subsistence for the rest of his/her life if he/she does not get a debt restructuring.

Win-Win-Situation

The passing of the Debt Relief Act has meant a lot both for people deeply in debt and for the budget and debt counsellors. It has also proven to be positive for the creditors. The Act, and together with it the judicial practice that has been created, has demonstrated solutions and ways out of the debt trap that has in many cases been previously considered hopeless. The number of people visiting the municipal budget and debt counselling service is increasing and there is nothing to suggest that the need will decline. Since the end of the 1990s, the indebtedness of Swedish households has once again increased greatly. During 2006 around 1 500 people and in 2007 around 2 500 people were granted debt relief following a decision by the Swedish Enforcement Authority. The local debt counsellors also made many more voluntary agreements. The need for more alternatives of debt relief is currently under debate in Sweden.

New insolvency legislation is under investigation, social loans and a system like the Guarantee Foundation in Finland are also being discussed in Sweden (the Guarantee Foundation assists persons who suddenly find themselves in a financial crisis in managing on their own by offering guarantees for loans to support them in taking care of their finances). ::

Increasing Indebtedness

The indebtedness of Swedish households increased greatly between the years 1985–1989. One cause for the increased lending to private people by banks, credit institutes and home-loan institutes was the deregulation of the credit market that commenced in 1985. It consequently became relatively 'cheap' to take a loan at this time and there was a great increase in value of, for example, property. In the beginning of the 1990s, Sweden entered a recession, which resulted in unemployment. Furthermore, property prices fell and many households and businesses became so severely indebted that it was impossible for them to pay back their loans within the foreseeable future. In the 2000s the lending to consumers has again increased to high levels. Although the situation is not as severe as during the 1990s, more and more people have problems with paying their debts.

¹ The new debt relief law was introduced in January 2007 to provide a faster and easier way for people to apply for debt relief.





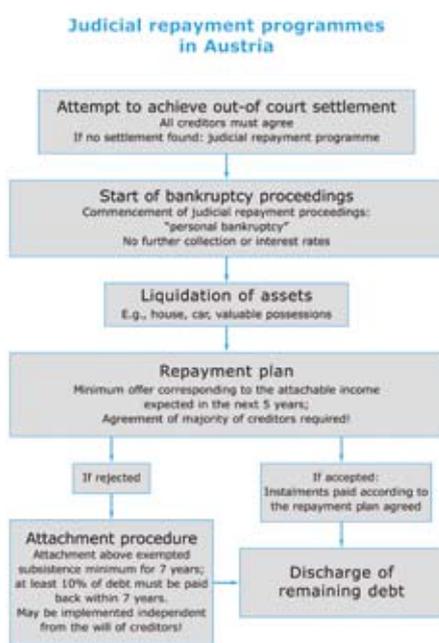
Reform is expected in Austria



A comprehensive reform of judicial debt proceedings is under preparation

by Gabriele Horak

Personal bankruptcy is a form of judicial repayment proceedings that were established in 1995 and include a set of procedures and provisions laid down in Austria's Bankruptcy Act. The goal of these proceedings is to give 'righteous and motivated' persons who have run into debt a realistic chance to start again (economically).



Seven years on subsistence minimum

If bankruptcy proceedings are opened, this has direct consequences for a debtor: for instance, both the creditors and the employer as well as the bank where the debtor has an account are informed that proceedings have been started. There are banks that react to this by closing the current account of the customer in question, which in turn may lead to further problems with employers or difficulties to find a job. However, the start of bankruptcy proceedings also stops any collection measures and payment of interest. For debtors, personal bankruptcy means that they have to live on the defined subsistence minimum for seven years, as any income above the subsistence level is used for debt repayment. If the bankruptcy proceedings are successful, i.e., if the debtor fully meets the corresponding obligations (in particular, the required repayment quota of a minimum of 10%), the court grants exemption from the rest of the debt.

Eligibility to personal bankruptcy is a problem especially for people with low incomes, in particular because of the minimum repayment quota of 10% as a requirement for an exemption from the remaining debt. In a few cases, the rest of the debt is cancelled on the statutory basis of reasonably exercised discretion. The pertinent application may be filed with the competent court, with good chances especially if the 10% quota has almost been met. The debt counselling services have demanded an abolition of the 10% quota for many years.

Reform plans

At present a comprehensive reform of judicial debt regulation proceedings is under preparation to improve access to and success of judicial debt regulation proceedings.

The concrete reform proposals that the Ministry of Justice has communicated so far retain the minimum quota, but discretionary exemption will be possible in a greater number of cases: a quota of less than 10% will be admissible also if the debtor's income situation has considerably worsened without any fault on his/her part. In addition, the reform bill includes a system of overall collection as an interim stage before personal bankruptcy proceedings. This will help insolvent debtors who already face collection measures initiated by several creditors but who are not eligible for private bankruptcy at present. The new system is an opportunity for them to stabilise their situation: no further interest and costs accrue, and all creditors are treated equally. In this way, over-indebted people with low incomes have a chance to escape the debt spiral of continually increasing interest and costs and after a few years, when they are eventually in a position to repay debts, they may still file for personal bankruptcy and thus obtain debt relief. The prerequisite for the system of overall collection is that a debtor's insolvency must be manifest. ::



Gabriele Horak

ASB Schuldnerberatungen GmbH



Poland: regulation urgently needed



At present, Poland's legal system does not include the option to file for personal bankruptcy proceedings. The number of over-indebted households has risen quickly, however. In the past two years, the volume of consumer loans grew by up to 26%, and up to 54% in the case of mortgage loans. Corporate loans went up by approximately 15% only, and wage increases were as small as 2%. As a result, Poland's loan sector has changed massively in recent years. While in the past corporate loans accounted for considerably larger shares than consumer loans, this has been reversed in a dramatic way. According to the National Bank of Poland, up to 1.2 million households have difficulties paying back their loans. Almost one out of three is over-indebted, either because of large consumer loans or in connection with mortgages.

Poland's legal system does not yet include the option to file for personal bankruptcy proceedings.

by Mariusz Mowka, Society for Promotion of Financial Education SKEF

Strong lobby of bankers

In 2004 SKEF, the Association for the Promotion of Financial Education, a Polish NGO, initiated activities to adopt statutory provisions regulating private bankruptcy proceedings. This was supported by Poland's Cooperative Savings and Credit Unions. In cooperation with a group of lawyers, bills to this effect were proposed.

The Parliament of Poland discussed these proposals several times in the past and also put them to the vote in the corresponding committees but they have not been adopted so far – not least because of resistance on the part of the strong lobby of bankers. For instance, in April 2007, the Vice Director of the Financial Institutions Confederation criticised the idea of personal bankruptcy. 'Society should not be held responsible for a group of consumers who run into debt carelessly,' he said.

Two bills proposed

In 2007 two different bills were discussed by Parliament: one was the proposal prepared since 2004 by representatives of the governing Law and Justice Party, under which, on principle, any over-indebted person is entitled to file for personal bankruptcy proceedings as a last resort. An out-of-court agency then decides on the proceedings to be pursued (repayment plan to which all creditors have agreed, or attachment including liquidation of assets).

According to the other bill drawn up by the Civic Platform, a conservative opposition party, personal bankruptcy proceedings shall be possible only for persons who have become over-indebted without fault on their part. None of the two bills was adopted in the present Parliamentary period. On 21 October 2007, Parliamentary elections have been held in Poland. It is to be hoped that the new Parliament will finally agree on a bill that introduces an urgently needed statutory regulation of personal bankruptcy proceedings. ❖❖





Debt settlement processes: A European approach is needed

Despite positive experiences with existing private bankruptcy proceedings across Europe, many European citizens still wait for the introduction of such processes. In countries where legal debt settlement solutions have been implemented they have proved to effectively contribute towards tackling the growing problems of thousands of over-indebted private households and individuals. Some of these processes have been amended or are currently under review in order to further improve access and thus increase the number of people who are granted the possibility of a fresh – economic – start and thus a way out of financial and social exclusion.

In order to enforce the effectiveness of remedial policies across Europe ecdn members at various occasions have strongly recommended a more systematic European approach.

Fostering further exchange between various actors will be as important here as taking an intelligent comparative approach. While there might be no existing single system that can be transferred from one country to another, identifying key elements of the various debt settlement processes and evaluating their effects most certainly would contribute to developing adequate debt settlement systems where they are still lacking. Such a comparative approach could also form the basis of a common European framework for remedial policies on fighting over-indebtedness and financial exclusion, which would need to include common objectives, common principles and best practice examples.

ecdN started to work in this direction during a series of seminars and workshops organised in 2007. The contributions to this issue of Money Matters reflect the input and discussions on experiences and most recent developments with regards to legal debt settlement proceedings as exchanged at a seminar in Poland in June 2007.

Further work will need to be built on this as much as on other results of European cooperation in this area, such as the conclusions from the Social Inclusion Peer Review on Amnesty of debts, held in 2006 in the Netherlands and the recent recommendations made by the Council of Europe. The appeal to introduce mechanisms to facilitate rehabilitation of over-indebted individuals and families by ensuring access to impartial advice and debt adjustment that are reasonable regarding both payment plans and duration, and allow for partial or total discharge of debts, to establish better mechanisms for extra-judicial settlements and effectively limit the means of creditors to hinder debt settlement unreasonable as included in these recommendations can only be supported.

Together with the Council of Europe's Committee of Ministers of Justice ecdN also calls for the debtors' active participation in debt settlement processes, supported by counselling and complemented by measures to ensure access to the labour market and a minimum income that provides everyone with a new opportunity for engaging in economic and social activities.

For further information and recommendations go to
www.ecdn.eu

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