

MONEY MATTERS

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Underwater - New debtors

Is debt relief rehabilitative?



The 12th edition of Money Matters includes materials collected during ECDN General Assembly in December 2014.

Marcel Warnaar presents interesting results of research on people currently seeking debt advice among professional advisors.

Is debt relief rehabilitative? Richard Ahlström, Sonya Edström and Mattias Savemark tried to find an answer to this question in Sweden. To do that they pulled a research among 13% of all people who underwent debt relief between 2003 and 2008. Our readers will have an opportunity to get an inside view of the outcomes of their work.

Dieter Korczak presents conclusions of the recent report on the changes in scoring system in Germany as well as information on over-indebtedness in that country.

The subject of legal regulations regarding overly indebted people (or lack of it) is still a topic at hand in many European countries.

Vilhelm Nordenanckar of the Swedish Consumer Agency describes recommendations postulated in governmental reports on changes and amendments in the Debt Settlement Act. It is worth noting that Swedish Consumer Agency was granted new legal instruments aimed to oppose unfair practices conducted by credit institutions.

Polish act from 2009 on personal bankruptcy proved to be utterly ineffective. Piotr Tokarczyk presents recent changes in legalisation regarding that matter that were introduced on the 1st January 2015.

Rodica Apan from Romania shows that even if systematic solutions regarding personal bankruptcy are not present in her country, consumer organizations can still play a major role in fight against unfair practices.

As always have a great read!





New debtors in the Netherlands

by:
Marcel Warnaar
Nibud

Dutch debt advisors are confronted with new groups of debtors that come to their offices, asking for help. Next to the common groups of low-income households, more and more households with middle and high incomes face debt problems. Of all households that applied for debt advice in 2014, 14% was home owner, and 49% had a job.

Underwater

Main cause of this, is the collapse of the housing bubble in the Netherlands. The graph below illustrates this bubble. It shows the price of houses compared to the net income. Whereas it gradually decreased in Germany, it more than doubled in the Netherlands between 1990 and 2008. Since 2008, the house prices fell with almost 20 percent.

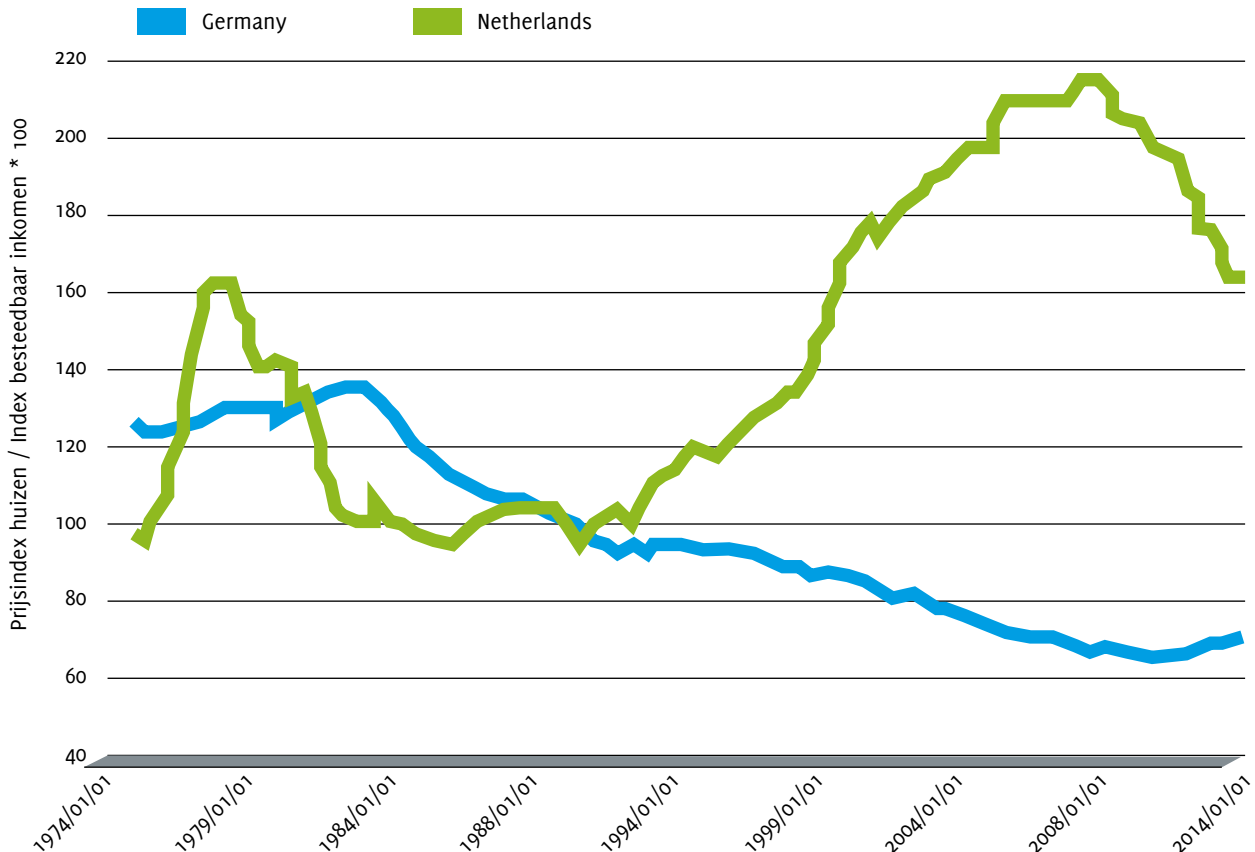
Main characteristic of the Dutch housing market is the possibility to get a mortgage without having to make an own investment. It was quite usual to take out a mortgage higher than the value of the

house. With house prices rising constantly, this was not so much a problem. In a few year's time the value of the house was enough to repay the mortgage, if needed.

However, the fall of the house prices in the past years, made people get stuck in their homes. With a mortgage much higher than the house price, they are said to be "under water", which has of course a threatening meaning to the Dutch. They cannot sell their house, unless they end up with a remaining debt of 10,000s of euros.

Problem of a specific age group

This problem of being under water, is concentrated in specific age groups. Especially, the young households that bought their first house around 2008 are faced with this problem. Graphs 2 and 3 show the loan-to-value ratios of the age groups 25-30 years and 55-60 years. Whereas only a small, but increasing, portion of the 55-60 year old are under water, it holds for the vast majority of the 25-30 year olds.





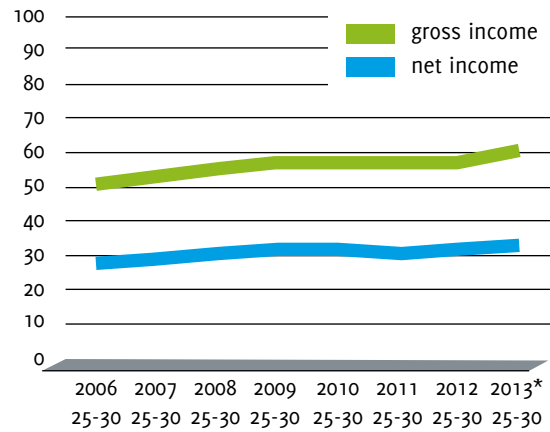
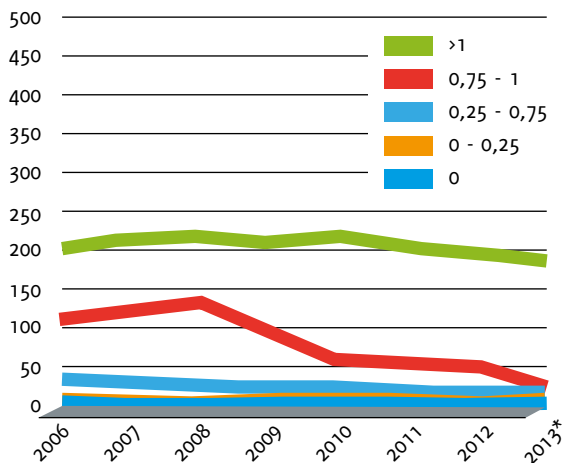
Being under water is not so much a problem, as long as you are able to pay the monthly interest and repayment. Although Dutch banks have been much more keen on investigating the income of the household rather than the value of the house, they have issued risky mortgages (interest-only or with investments in the stock market to repay the mortgage in the end) to consumers.

It means that getting unemployed or divorce brings households into financial problems. Moreover, the purchasing power of Dutch households has decreased for five years in a row since 2009, because of stagnation in wages and rising taxes. The graph below shows the development of gross and net income for the age group 25-30 years.

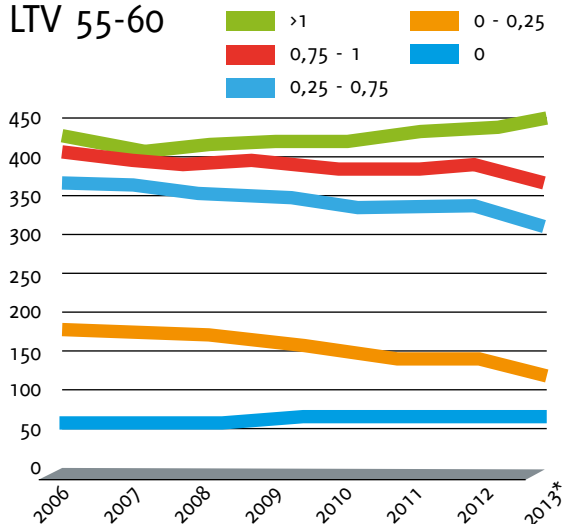
As people are reluctant to sell their house with the prospect of keeping a remaining debt, they keep to too high prices for their dwelling, which means that the housing market itself (the number of houses bought and sold) is going down as well.



LTV 25-30



LTV 55-60



Solutions

This situation is a big challenge for all sides involved:

The house owner has to do his utmost to fulfill the monthly payments. On the other hand, the mortgage issuers can not stretch their incasso practices too far. Selling the house is not an option in these market situations.

Mortgage issuers put up a wide range of tools. They revolve the loan against a lower interest rate. They propose to postpone repayments and even interest. But they also hire “budget coaches” to help consumers with their money matters or “job coaches” to improve the possibilities on the labor market.

Of course, the rules for issuing mortgages have tightened since the crisis. Based on Nibud advice, the Dutch government issues Debt Service to Income ratios.

Although this may be disadvantageous for the short term (it limits the possibilities to get a loan, which means that the prices of houses will fall), it is a solution getting more (young) people into serious debt.



Is debt relief rehabilitative?

A new report from The Swedish Consumer Agency

by:
Richard Ahlström,
Sonya Edström
and Mattias Savemark

The purpose of the report was to provide greater supporting material for a discussion on which rehabilitative impact debt relief under Swedish law has for the individuals who undergo such a process. The issue is whether the opportunity to help the indebted to return to a “normal” functioning social life is provided too late. Another focus has been to investigate the significance of the municipalities’ Budget and debt advisory service during this process.

The study includes thirteen per cent of all persons who underwent debt relief during the period 2003-2008. Thus, it does not relate to a total group investigation, but rather a pilot study. More than half stated that they had been over-indebted for ten years or more before they applied for or were granted debt relief. Three years after the debt relief had ended, approximately 90 per cent answered that they were still debt-free, and that only in a few cases new debts had emerged during the debt relief period.

Long period of over-indebtedness

The long period of over-indebtedness, i.e. the period before debt relief, has entailed that ill-health had already developed. In previous studies the authors illustrated that massive ill-health manifests during the period of over-indebtedness. In addition, many persons who are already ill have a higher risk of over-indebtedness. It is therefore highly likely that the severe sickness during the debt relief period which has been demonstrated in this study, has largely already established during the period of over-indebtedness or even before. This combined with the natural occurrence of an age gradient of ill-health, i.e. that health deteriorates year from year, particularly in the age interval of the research group, probably entails that possible rehabilitation effects of ill-health during and after the debt relief period cannot be clarified.

Three years after the debt relief

Many results in the study indicate that the standard of living three years after the conducted debt relief is unchanged compared to the period before, while the physical and mental health has even deteriorated. Over half state that the strained and long-term financial situation has affected their relationship negatively with their family. It has to be considered as highly alarming that over ninety per cent of the research participants completely or partially had to refrain from contact with their children during the debt relief period. It is also noteworthy that the majority of the research participants live in the same mental conditions and social structures as during the period before debt relief.

Positive consequences

The positive consequences of being debt-free appear not to have emerged to a large extent even in terms of the research participants’ total financial activity vis-à-vis the surrounding community.

The majority of the research participants state that the support from the municipal budget and debt advisory has been very important for self-confidence and has created orderliness in the financial situation, which has resulted in that they have had the stamina to move on and have felt more at ease. A predominant majority also believed that the support was of high or very high significance for the success of the debt relief.

Read the whole report on www.konsumentverket.se
direct link: <http://goo.gl/17tL3k>





Measures against overindebtedness in Sweden 2014

by:
Vilhelm Nordenanckar
Swedish Consumer Agency

Recent achievements and plans

During the last three years the Swedish Consumer Agency has been investigating credit institutions offering so called fast loans and their fulfilment of the credit assessment requirement. Before April 2014, 23 cases were investigated resulting in 20 sanctions. After April 2014, there was a change in the Consumer Credit Act giving the Swedish Consumer Agency the possibility to decide on penalties. Four cases has been investigated since then, and so far – December 2014 - one case has resulted in a prohibition to offer credits to consumers. Investigations such as these are important and an ongoing mission at the Agency.

A specific licensing requirement was established in 2014 for smaller credit institutions, which means that in principle all creditors need a license. The new Parliament/Government has in opposite to the previous government raised the question of interest caps.

Children's debts

In Sweden underage children cannot enter into credit contracts without proper consent. Only parental consent is not considered appropriate. This means that contracts without proper consent are considered void. The Swedish Enforcement Authority has found several cases where companies are still collecting debts where the contract party is a minor; all in opposite of current legislation and the court decision. The Swedish Consumer Agency is cooperating with governmental authorities in order to come to terms with this problem. So far all relevant contract parties have been contacted and educated on current regulations as well as the problem. Many companies have taken actions immediately, and the amount of cases at the Swedish Enforcement Authority has decreased. However a few debt collecting companies are restive. Following this, the supervisory authority of debt collectors, the Swedish Data Inspection Board, has made an investigation regarding the debt collector's compliance with the law.

Two new Government reports in 2014

1. In the Government report "Out of the Debt Trap" proposed amendments to the Debt Settlement Act

Measures to make "eternity debtors" (about 50,000) to seek and obtain debt relief and in general should more consideration be given to the debtor's capacity to both apply and implement a debt restructuring.



ing. The aim is to improve the ability of those who are entitled to debt to also get it.

Proposed Constitutional Amendments

- The creditors will take over the bulk of the accounts of the debtor's liabilities.
- The Enforcement Authority's (KFM) control responsibility increases
- The Enforcement Authority is to decide on the opening of debt restructuring ("Initial Decision") on a more limited basis than in the past when even debt payments begin
- A remittance (the Enforcement Authority) is to be established.



- Some flexibility is proposed for the assessment of qualified insolvency and determination of payment plan.
- Two payment-free months each year
- The possibility that, if necessary, shorter payment plans should be expanded.
- No change in the pay plan's length (5 years, but in fact a bit shorter due to two payment-free months each year)

Other suggestions in the report "Out of the Debt Trap"

- It should be offered better information and education on the debt restructuring process (by Enforcement Authority and Consumer Agency)
- Debt settlement web portal (collectively Enforcement /Swedish Consumer Agent)
- The need for support from the budget and debt advisor particularly stressed (they receive a somewhat different role in the process)
- Opportunity for Web-based applications will be introduced

- Obligation to the Enforcement Authority to provide information on debt to debtors who were the subject of wage attachment etc. (eternity debtors - § 2 of the Draft Constitution).

2. "Indebtedness of the Credit Society - a strategy against overindebtedness"

Measures to lower the risk of over-indebtedness:

Knowledge and support

- A more powerful and equally Budget and Debt Counselling across the country. The state should take over responsibility for the funding on a basic level. Other necessary additional resources for particularly education, support and supervision.
- Experimentation with remediation loans. (as the example in Finland)
- Economy Emergency. An economic intelligence should be linked to the information service for consumers by the Consumer Agency
- Financial public education mission.
- Financial literacy in school (but not a specific school subject)

Legislation

- Investigate the tightening of legislation to better monitor the credit from a consumer perspective
- Sanction for lack of credit checks (according to the government's Council on Legislation)
- Increased resources to the Consumer Agency for market supervision
- Changes of the legislation on usury should be implemented to, among other things enable adjustment of exorbitant interest rates.
- Investigation of whether more credit information would improve the credit documents. (Eg. Existence of debt collection debts)

Debts to Public Bodies (debts to society)

Many debts incurred to the state could be avoided if the time between calculating income and actually fixed income for various contributions could be shortened.

Collaboration between Enforcement Administration and other agencies should be established in order to work preventively to avoid debt

Authorities dealing activities in which many cases handed over to the Enforcement Authority should be instructed to report to the Government proposals that would reduce public debt

Controversial Proposals ...

Final limitation imposed after more than 15 years of claims established by the Enforcement Authority or the courts.

Settlement of debt should be done before payment of interest and fees

Voluntary agreements and separate chord should be facilitated.



Scoring in Germany

by:

Dieter Korczak

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Grundlagen- und Programmforschung



In the study „Scoring after the data protection amendment 2009 and new developments“ on behalf of the Federal Institute for Agriculture and Food (BLE) for the Federal Ministry of Food, Agriculture and Consumer Protection (BMELV) resp. Federal Ministry of Justice and Consumer Protection (BMJV), the Unabhängiges Landeszentrum für Datenschutz (ULD) Schleswig-Holstein and the GP Forschungsgruppe conducted a comprehensive analysis of the legal basis for scoring practices following the amendment of data protection law in 2009 and carried out an empirical investigation of the practice as well as of consumer protection related evaluation and present recommendations.

It is shown that the amendments had impact on banks and reference agencies concerning their information practices but infringements of consumer rights remain. The right to receive free access to information is not very well known yet. Companies are still reluctant to grant easy access. Report file information is often incomplete, unintelligible and inexplicable. Scores are based on estimates whose individual evidence is often questionable. A need to more expressly regulate legitimate data types and sources as well as to broaden the scope of the regulation to secondary data was identified. Transparency can be

enhanced by obliging companies to communicate information more precisely.

Currently, control over scoring practices is carried out insufficiently. Even though limited to mathematical-statistical procedures the quality of data for prognosis and their weighing without laying open the model does not allow proper and effective oversight, neither by the data subject nor by oversight authorities. It is advisable to issue a license and check the quality of the model.

The existing regulations will not adequately address new forms of scoring and profiling based on data especially if collected on the Internet in order to guarantee the right to informational self-determination. The study suggests to apply the regulation not only to contractual relationships but to broaden it in order to address especially intensive forms of infringements to privacy.

*The report is written in German and can be downloaded from
direct link: <http://www.bmju.de>
direct link: <http://goo.gl/LWsskh>*



Overindebtedness in Germany

by:
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In Germany, the situation of overindebtedness is measured since 1989.

Approx 1,2 mio. households were overindebted at that time in West-Germany. After the unification of East- and West-Germany the economic system of West-Germany was installed in East-Germany, including a complete revision of the old banking and saving system of East-Germany. The new ways of credit-taking possibilities and hire purchase on the one hand and the break down of the economic infrastructure and the different organization of the consumption and production area led to an exploding number of overindebted households in East-Germany in a very short time.

Already in 1994, the number of overindebted households climbed up to 500.000 in East-Germany. In the same year, in West-Germany 1,5 mio. households were overindebted. Five years later (1999), the number had climbed up to 870.000 (11,5%) households in East-Germany and 1,9 mio (6,2%). households in West-Germany .

Since 2004, due to political reasons the overindebtedness research was not any longer financed by the Federal Ministry of Family and Youth. From that year on the overindebtedness figures were produced by a registration company (Creditreform). Before the independent social research institute GP Forschungsgruppe used a wide indicator system to measure overindebtedness, including not only private insolvency and late payment figures but also overindebtedness caused by unemployment and divorce, foreclosures, mortgage arrears, maintenance claims and energy debts.

As a result the following figures presented by the Creditreform company show the bottom line of overindebtedness in Germany. In 2004, according to Creditreform, 3,1 mio households have been overindebted in Germany. Ten years later in 2014, the number has climbed up to 3,36 mio (9,9%) households. More men (4,12 mio = 12,6%) than women (2,56 mio = 7,3%), more young adults than older adults are overindebted.

Overindebtedness rate in Germany 2014 by age

< 30 y	30-39y	40-49y	50-59y	60-69y	>70y
15,4%	18,6%	11,8%	8,7%	4,9%	1,1%

On average, men are with 36.500 Euro, women with 28.500 Euro in debt.

Since the ninetieth, the main causes for overindebtedness are unemployment, divorce, bad health/disease, bad financial management, failed self-employment.

Main causes for overindebtedness in Germany 2014 (data from survey of debt counselling agencies, Federal Office for Statistics)

Unemployment	22,2%
Separation/Divorce	13,4%
Disease/ Addiction/ Accident	13,1
Bad financial Household management	11,7%
Failed self-employment/ business	8,3%
Others (e.g. income below poverty threshold)	31,3%





A new legislation on personal bankruptcy in Poland

by:

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Education (SKEF)

The legal doctrine of bankruptcy proceedings against individuals not conducting business activity was established by the Act of 12 May, 2008 and came into force as of 1 April, 2009. The enacted provisions were highly controversial, though, as they **mostly cared for the interests of creditors, while being discriminatory to debtors**. The fact is clearly reflected in the statistics presented by the Ministry of Justice. These reveal that only 60 out of 2,161 bankruptcy petitions filed by consumers brought out positive results for the individuals in question. Considering that, making amendments to the legislation concerning bankruptcy proceedings in case of individuals not conducting business activity became badly needed, to provide for the actual needs of the persons. The legislation was, in fact, amended by means of the Act of 29 August, 2014 (to enter into force on 1 January, 2015).

The most essential amendments made by the enactment include, first of all, defining all the indispensable components of the petition. Besides basic personal data the petition is supposed to indicate: the circumstances substantiating the petition and their plausibility (not the proofs of those, though), current and complete list of the debtor's assets accompanied by an valuation estimate of those, list of the creditors (including their addresses, the amounts owed to each of them and maturity dates), list of contested debts mentioning the extent to which a specific debt is contested by the debtor, list of security interests over the debtor's assets. Just as the case was before enactment of the amendments, it is only the debtor that is entitled to file the bankruptcy petition. A new solution is the debtor's right to file the petition also where there is only one creditor.

The amendments also concern the limits within which the bankruptcy petition may be rejected by the court. According to the new provisions, this may be the case where the insolvency has been caused (or essentially aggravated) by the debtor intentionally or through his/her gross negligence. Currently, the petition is rejected where the debtor's insolvency was not caused by circumstances which were extraordinary and went beyond the debtor's control.

Costs of the bankruptcy proceedings have been considerably reduced by the amendments. The basic petition fee will amount to 30 PLN, as opposed to the current PLN 200.

The new provisions of the Act remove the duty to announce the bankruptcy declaration by publishing it in a daily newspaper of nation-wide circulation, which was found to be a groundless and cost-generating scheme. The bankruptcy declaration will be made public in the court's building and by means of an announcement in Monitor Sądowy i Gospodarczy [Court and Business Official Gazette].

New rules for the setting of the remuneration paid to the receiver in bankruptcy were laid down. Starting from 1 January, 2015, the remuneration



will amount from $\frac{1}{4}$ of the average salary up to twice the sum of the latter, and – in justified cases – to four times the average salary (depending, inter alia, on the amount of work and the size of the bankruptcy estate). The costs of bankruptcy proceedings will be temporarily covered by the State Treasury, should the assets of the bankrupt debtor prove to be insufficient to that end.

An essential amendment provides for the extension of the period in which the bankrupt person will have the right to receive the amount reflecting the average costs of the apartment rental (the Act having extended it to 24 months). Where the living premises being part of the bankruptcy estate have not been sold yet while the debtor actually has to leave them, an advance payment towards the rental amount may be granted to the bankrupt by the judge commissioner.



A new legislation on personal bankruptcy in Poland

An amendment to the Act, infavourable from the debtor's point of view, consists in reduction of the length of the debt repayment schedule (from 5 years to 36 months, with the option of extension of the time by further 18 months).

One of the changes most favourable to the debtor is the possibility for the cancellation of his/her liabilities by the court, no debt repayment schedule being set. Its availability will be conditioned upon the debtor's personal situation - it should clearly show that the person in question would not be able to make any payments under the debt repayment scheme.

A new solution provided for by the Act is the option of arrival at a composition agreement between the debtor and the meeting of creditors, approved by the judge commissioner. An essential requirement for the debtor is to make it plausible that the objectives of the proceedings would be met through the conclusion of the composition agreement. The agreement thus reached may provide that satisfying of the creditors would not necessarily require selling the bankrupt's real estate.

There is also a possibility of filing a cassation appeal in cases provided for in the law, viz. against the decision of the court of appeal concerning the setting of the debt repayment schedule or cancellation of the bankrupt's liabilities without setting the debt repayment scheme.

The number of judges examining the bankruptcy petition gets reduced to one professional judge.

The amendments made by the discussed Act will result in making the application of the consumer bankruptcy scheme more widely available to the debtors, starting from 1 January 2015.





THE FEATURES OF THE CONSUMER PROTECTION ENVIRONMENT AGAINST OVERINDEBTEDNESS IN ROMANIA 2014

by:

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The report covers in short the features of the consumer protection environment against over-indebtedness, in Romania, in 2014 and focuses on the following points:

1. Essential data on granting loans to households in 2014.
2. Consumers vs banks; Legal action on loans granted in foreign currencies.
3. Romanian Consumer Protection Authority - RCPA vs banks; Legal actions initiated by RCPA for the assessment of the unfair character of clauses used by professionals in pre-formulated standard contracts.
4. The lack of specific judicial mechanisms fighting the consequences of over-indebtedness
5. Conclusions

1. Essential data on granting loans to households in 2014

An overview on the situation of loans granted to households in Romania in 2014 is reflected with the following data: the volume of loans granted by credit institutions to households, the average interest rate of new leu-denominated and foreign-currency denominated loans and the interest rate margin of leu-denominated and foreign-currency denominated operations.

- The data was taken from the “Financial Stability Report 2014” issued by the National Bank of Romania –NBR, which analysed data corresponding between July 2013 and July 2014.
- The volume of bank loans to households decreased to 100.8 billion lei in July 2014 from 103.2 billion lei in December 2013 and lei 103.3 billion in July 2013 (from 112.3 billion lei in December 2013 and 115.3 billion lei in July 2013).
- The average interest rate on new leu-denominated loans to households dropped significantly in the reviewed period by 3.3





Overindebtedness in Romania 2014

percentage points, from 11.4 percent in July 2013 to 8.2 percent in July 2014),

- The average interest rates on new foreign currency-denominated loans to households saw a reversal trend compared with the previous period, going up by 0.9 percentage points, from 4.6 percent in July 2013 to 5.5 percent in July 2014. (...)

2. Consumers vs. banks; Legal action on loans granted in exotic currencies.

In the light of the undertakings initiated and carried out by consumers who were granted loans in previous years, 2014 can be called “the year of legal action initiated by consumers against banks, regarding loans granted in foreign currencies”.

Before 2014 consumers’ legal actions against banks (including the so-called “mass trials initiated by a number of consumers) focused mainly on the assessment of unfair character of loan contract clauses, such as the clause on risk charge, the clause on the bank’s right to modify the variable interest rate without connection to objective, verifiable indices of reference, whereas from 2014 the clauses regarding the loans granted in foreign currencies met resurgence after the European Court of Justice decision delivery in case C-26/13 Arpad Kasler si Hajnalka Kaslerne Rabai/OTP Jelzalogbank Zrt.

Legal actions initiated by consumers who entered apparently cheap loans in currencies such as Swiss Francs and Japanese Yens were caused by the unfavourable fluctuation of the exchange rate of these currencies which attracted an increased value of credit instalments compared to their value at the moment the credit was granted. In fact, the monthly instalment of the Swiss Francs credit doubled; hence the risk of the exchange rate fluctuation was borne exclusively by the consumers. At the same time there were also gaps in communication on the bank side and misunderstandings on the consumer side of the economic consequences of such loans.

The object of these legal actions is the request before the court of justice to rule the stabilization of the currency of the loan to the exchange rate the currency registered at the moment the loan was granted/converted into lei. (...)

3. National Authority for Consumer Protection NACP vs. banks; Legal actions initiated by NACP for the assessment of the unfair character of clauses used by professionals in pre-formulated standard contracts.

Means of actions of the authorized national authority in the field of consumer protection were grounded on amendments to the legislative framework laid down by Law no.193/2000 on unfair clauses in contracts concluded by professionals and consumers, published in the Official Gazette no.560 of 10.11.2000(...).

Beginning from 1 October 2013, mainly the following amendments to Law no.193/2000 authorize the NACP, in its capacity of public entity with powers and competencies in the field of consumer protection, to file legal actions for the assessment of the unfair character of clauses used by professionals in pre-formulated standard contracts.

NACP has active capacity to pursue legal action, which if approved rules the cessation of these clauses, the modification of consumer

contracts by eliminating the unfair clauses, hence the effects being erga omnes, as well as the elimination of unfair clauses in pre-formulated contracts to be used in professional activities. (...)

Consequently, in the “battle” between consumers and banks, the holder of the legal action may also be NACP, by filing legal action for the elimination of unfair clauses from the loan contracts. Otherwise NACP, through its president, declares having initiated such actions against banks, without indicating other information, and in accordance with the provisions of the Code of Civil Procedure, a case registered on the docket of a court undergoes the first stage of verification and adjustment of the trial application, and only after this stage is completed the court term is set. The end of 2013 and 2014 represented the times when NACP filed their legal actions, and 2015 shall be the year when at national level the first judgments are to be ruled and then their effects on consumers and banks will be assessed. (...)

4. The lack of specific judicial mechanisms fighting the consequences of over-indebtedness

Personal Bankruptcy

One of the fundamental aspects having consequences of overindebted consumers is that up to this date there has not been adopted any national regulation regarding personal bankruptcy. A draft law in this respect was approved in May 2010 by the Romanian Senate but was blocked by the Chamber of Deputies. (...)





The absence of this essential mechanism for consumer protection in specific fields was noticed in the national judicial doctrine ever since 2007 (see Apan, R.D., 2007, Judicial protection of consumers: Consumer credit and connected domains), and in time became a constant national subject of debate, considering that the absence of regulations on personal bankruptcy needs to be corrected in order to attain effective, real protection of over indebted consumers, but the subject never materialized beyond debate level and up to now has not registered any progress.

The absence of specific regulations on debt recovery

The absence of national regulations on personal bankruptcy leaves consumers at the hand of debt collectors, as the banks transfer the non-performing loan portfolio to them. So far, regulation on the debt collection activity has not been adopted either, despite opinions issued by the NACP which stresses its urgency.

Consequently, creditors can use forced execution on consumers who did not carry out their payment obligations on loans, and the forced execution will be done in accordance with the provisions of the Code of Civil Procedure, as in the absence of a procedure for personal bankruptcy, the consumer does not benefit from any other regulation specific to over-indebtedness.

The consumer has the right to challenge forced execution and also apply to stay under provision of a security. If the challenge is to be rejected or if it was not even submitted then forced execution is carried on, in most cases resulting the sale of the real estate used as security for the loan, but which is the consumer and family residence. Moreover, usually the amount obtained from the sale of the real estate does not cover entirely the amount owed by the consumer. (...)

The specific mechanisms of personal bankruptcy, in force in most UE Member States allow the consumer, amongst other, to keep the right to the family residence, and erase a part of the debt. However, these mechanisms are not available to the Romanian consumers who cannot benefit from the remedies of personal bankruptcy procedure in order to maintain human dignity in front of life's vicis-

situdes and get the chance to a fresh start for them and their families, so they do not get a second chance by means of a legal procedure. (...)

Conclusions

In 2014 we determined an evolution of consumer awareness and responsibility towards the consequences of over-indebtedness. Banks also plead for responsible crediting and for narrowing down the number of non-performing loans, and have tightened the credit standards. This attracted a drop in in the volume of loans granted to individuals, while the degree of over-indebtedness continued to decrease but still maintains relatively high.

It can be observed that at national level, in 2014 consumers adapted their behaviour to the de facto evolution of the economic situation, reacting against the harmful economic consequences of the exchange rate fluctuation of foreign currencies in which their loans were denominated.

At national level, 2015 should bring concerted action from competent bodies and consumer associations, meant to protect consumers in what concerns loan granting and over-indebtedness.

The fight against unfair clauses in consumer loan contracts must be continued by: - initiating new actions and continuous implementation of the actions initiated by NACP for the assessment and elimination of unfair clauses used by professionals in pre-formulated contracts, which remained in an early stage; - the commission for unfair clauses needs to be reactivated in order for it to play its advisory role in the field.

In order for the national regulation on personal bankruptcy to be adopted it is necessary that the consumer associations demand the Parliament to unblock the draft law and adopt it, because in its absence, the wide spectrum of adverse consequences casts upon vulnerable consumers.

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