



26th CONFERENCE OF EUROPEAN MINISTERS OF JUSTICE

Helsinki (7-8 April 2005)

Social Aspects of Justice

**Seeking legal solutions to debt problems in a
credit society**

*Questionnaire No. 2 prepared by the
Ministry of Justice of Finland*

“Seeking Legal Solutions to Debt Problems in a Credit Society”

In contemporary society, the possibility of obtaining credit is one important factor contributing to economic growth and the financial sustainability of households. While the possibility of credit often promotes economic well-being, it is bound with many risks. Especially during economic down-turns and in rapidly expanding credit markets, many households face debt problems. The reasons for overindebtedness are manifold. Examples are unemployment, business failures, personal problems (such as illness and divorce), and excessive consumption. For this reason it is important to recognize that many social, health and consumer policies can be harnessed to prevent debt problems. In particular debtors should have access to legal counselling and to counselling on financial matters and debt management.

Overindebtedness has become a pervasive problem in credit societies. The debt problems of households and individuals are due to both private consumption and costs related to the operation of small-scale enterprises. In such a situation, many states have developed new policies and legal remedies as a response to debt problems.

In the field of law, adequate consumer protection laws, including the right of consumer debtors to information and protection against excessive credit costs, regulation of credit information and, finally, regulation and monitoring of collection practices and fees, are important safeguards against overindebtedness. Also the situation of overindebted debtors requires regulation. The present memorandum raises questions related to the legal frameworks that apply to the situation of debtors with long-lasting debt problems, consumer debt adjustment, legal debt enforcement, debt counselling and credit registration.

I Consumer Debt Adjustment**Laws on debt adjustment**

Several European countries have introduced laws on judicial debt adjustment (consumer bankruptcy) during the 1990s. Judicial debt adjustment refers here to all legal insolvency proceedings in which all debts of a private person or a household are included and the debtor is granted partial or total relief from his or her debt. Usually, the debtor is required to pay part of the debt through a payment plan, the length of which is generally three to seven years.

Such laws have been enacted, for example, in Austria (1993), Germany (1994; in force 1999), the Netherlands (1997), Belgium (1998), Luxembourg (2001) and four Nordic countries. Also England (1990) and France (1989, revised 2003) have introduced laws to

regulate and alleviate situations of overindebtedness. Similar legislation is on the way in Italy and Portugal.

Questions:

1. Is there a law on judicial debt adjustment in your country? If so, when was it enacted? Please give the title of the law.
2. If the answer to the preceding question was “no”: Are there any plans to prepare a law on debt adjustment? Please answer the following questions on the basis of the draft law, if one exists.

Scope of application

Debt adjustment laws usually cover private debtors. However, debts deriving from the operation of small-scale business are a usual source of debt problems for households. Risks related to the operation of a business may impede the development of the economy.

One special issue is the position of a guarantor in the debt adjustment procedure.

Questions:

3. Does the debt adjustment procedure cover persons whose debts derive from the operation of a business?
4. Does the debt adjustment granted to the debtor have some consequences to the status of the guarantor e.g. by reducing his or her responsibility for full payment?

Scope of the debt adjustment

Debt adjustment is a way of balancing the interests of debtors and creditors. In many respects, this balancing requires careful consideration. In particular, there seems to be a general European policy to require that the debtor pays part of his or her debts through a payment plan as a precondition for partial or total discharge of debt. Also, in the interest of debtors and their possibility of a fresh start, it is important that all or most debts are included in the discharge. In practice, however, sometimes taxes, public fees, alimony payments etc. are excepted from the discharge for different reasons related to the situation of the respective creditor. One special issue is the balancing on one hand of the interests of creditors who have a mortgage on the debtor's home against on the other the debtor's interest in keeping his or her home.

Questions:

5. Is a payment plan mandatory in your country for debt adjustment? If so, what is the usual duration of the plan? How are those debtors treated who have no payment capacity at all?

6. In your country, is it possible for a natural person to obtain a discharge of debts without a payment plan or other obligation to payment?
7. What debts are excluded from the discharge?
8. Is it possible for a debtor undergoing debt adjustment to keep the dwelling that he or she owns?

II Debt Enforcement

Also in those countries where there is no law on consumer debt adjustment the general debt enforcement legislation may include elements of adjustment.

Garnishment (levying of execution on regular income)

In many countries the debtor's wages, pension or other regular income may be garnished, for all or for certain claims. This means, in practice, that a certain sum or proportion is deducted, on a regular basis, from such wages, pension or other income, and turned over to the creditor.

Questions:

9. In your country, are the wages, pension or other regular income of the debtor subject to garnishment?
10. What proportion of the regular income is to be left to the debtor or is there some kind of periodical limitations in garnishment?

Property protected from the levying of execution

Different countries have somewhat different provisions on what property is protected from the levying of execution, in other words what property the debtor is to be allowed to retain.

Questions:

11. According to your legislation, is the debtor allowed to retain the following despite the levying of execution:

yes yes, in part no

- a) ordinary household goods
- b) personal objects
- c) tools
- d) means of transport
- e) others, what?

Organisation of the levying of execution

The different countries in Europe have adopted considerably different organizational models in respect of the levying of execution.

Question:

12. In your country, is the authority responsible for execution the court, a state administrative authority or a private entity?

III Counselling on financial matters and credit information

In credit societies, counselling on financial matters and debt management may have a significant impact in preventing debt-related problems and in dealing with insolvency proceedings.

The registration of credit information helps in preventing a deepening of problems with debt and protects potential creditors from credit losses. However, maintaining credit information for an excessively long period may slow down the restoration of the financial viability of the debtor.

Questions:

13. Is counselling on financial matters and debt management arranged in your country? If so, who is responsible for its arrangement?

14. In your country, are defaults in payment registered on a national level? If so, are such registers based on law? Please give the title of the law. For how long of a period are defaults in payment registered?

15. Do the registers cover also credit in general, i.e. where no defaults in payments occur?