Finance Watch

Making finance serve society

From debtor prisons to being prisoners of debt

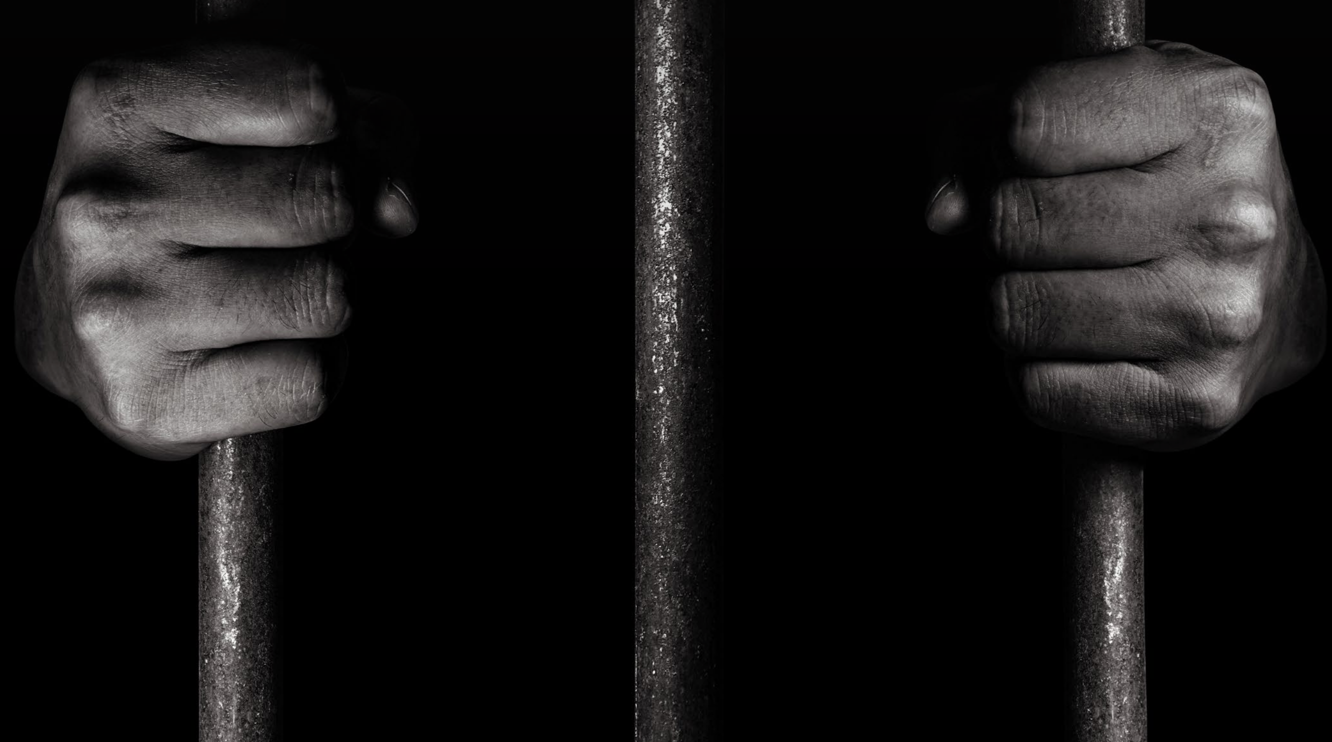
Making the case for harmonised EU consumer insolvency rules

A Finance Watch report

January 2022

“If history shows anything, it is that there’s no better way to justify relations founded on violence, to make such relations seem moral, than by reframing them in the language of debt—above all, because it immediately makes it seem that it’s the victim who’s doing something wrong.”

David Graeber,
Debt: The First 5,000 Years



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Introduction - from *privatus carcer* to the debt trap

The practice of lending began far back in history and has grown into an increasingly vital part of modern life. Even the very first records of credit use show attempts to regulate lending and borrowing and address societal consequences.[1] A focus often came on banning usury and even limiting collection of interest on loans – arguably a good starting point for protecting borrowers. The capping of interest rates can even be seen as an advanced policy, given that it remains a loadstone of regulating credit markets today.[2]

Another historical aspect of lending is penalising insolvent debtors. In Roman times, debtors who could not repay were put into the *privatus carcer*, a private prison, until their families could pay off their debts. An alternative punishment at the time was debt bondage, or *nexum*, where debtors themselves effectively became the collateral for their debt. If the debtor was unable to repay, they became a slave obliged to work off the debt. The latter practice was abolished by the Romans,[3] but debtor prisons continued to be used throughout medieval times and up until the 19th century.

Although debtor prisons themselves may no longer exist, people are still being incarcerated as a result of unpaid debts, regardless of their reason for not paying. In some EU countries, like Ireland, debtors who are unable to pay court fines or who cannot meet repayment schedules under debt enforcement processes can be put in prison. The law should differentiate between debtors that cannot afford to pay and those who refuse to pay although they can. In practice this difference may not be made when court-ordered repayments are missed, whatever the reason.[4] This clearly infringes on the European Convention on Human Rights, which prohibits the imprisonment of people for breach of contracts.[5]

Although debt bondage no longer exists in theory, people are still held prisoner by their debts and forced into indecent living conditions.The road to this modern-age prison can manifest in a number of ways. One clear example is debt traps, where debtors end up taking out increasingly more costly short-term loans to meet their pressing financial commitments, including built-up interest payments.[6] Often a clear indication that debtors are over-indebted already, taking on additional debt to meet payments may, however, mask the debtor situation as they fall deeper into a debt trap. To compound the problem, debt collection practices in Europe are underregulated and citizens are not yet level guaranteed enough income to live off.[7] Debtors in Europe are being pushed into situations where they lack the means to lead a dignified life, a fundamental right under the European Charter of Human Rights.[8]

Looking back at past Roman times, the view today shows progress, but raises the question of whether Europe has transferred from debt prisons to modern-era prisoners of debt. Citizens have rights on paper, but need them guaranteed in practice.

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1 Finance Watch, *What makes credit so risky? A consumer perspective*, 2019

2 Finance Watch, *Consumer credit market malpractices uncovered*, 2021

3 S. Roselaar, *lex Poetelia Papiria,* 2017

4 Law Team, Oireachtas Library & Research Service Spotlight, *Debt Part 3: The imprisonment of civil debtors*, 2010

5 Protocol 4, *Article 1 of the European Convention on Human Rights*

6 New Economic Foundation, *End the Debt Trap Campaign*, 2019

7 Finance Watch, *Is the human dignity of individual debtors at risk?*, 2020

8 *Articles 1, 33 and 34 of the European Charter of Fundamental Rights*

Key recommendations for an EU consumer insolvency directive

1 **Ensure that payment plans and asset liquidation are compatible with ensuring a decent living standard and debtors capacity to repay, including a list of exempted assets and income from discharge procedures and guaranteeing a minimum level of income.**

2 **Ensure as full a discharge of debt as possible in three years, procedures should not exceed this limit.**

3 **The good faith of debtors should be assumed as a starting point and no criteria on the amount of debt (too low or too high), minimum payment amounts to creditors should be used to limit access to debt discharge procedures.**

4 **Automatically open the debt discharge procedure and put a moratorium on debt collection when a consumer is identified as unable to meet their contractual obligations to pay their debts. Precise trigger points for the procedure should be defined and should take into account the definition of non-performing loans in the European Union.**

5 **Refer debtors to available debt advice and ensure administrators of debt discharge procedures are fully neutral, aiming to secure a successful process for both debtors and creditors.**

6 **Establish key indicators and require authorities to collect data to report on the effectiveness of the new directive and levels of enforcement.**

7 **Procedures should be explicitly available and tailored to no-income, no-asset (NINA) and little-income, little-assets (LILA) debtors as well, including through low-cost or free processes.**

A move to address over-indebtedness in Europe

Citizens in Europe and across the world face consumerism head on. Increasingly pushed to actively consume goods and services to expand the economy, they access huge numbers of credit offers promoted and proposed as a way for citizens to boost their standard of living. This is in part because consumption drives a large share of growth and lending unlocks capacity on financial institutions' balance sheets.

In the aftermath of the 2007-2008 financial crisis, the effects of the push for citizens to consume credit became evident. In fact, in June 2007 European governments joined together to commit to addressing "debt problems" with legal solutions. They produced collective recommendations at the Council of Europe (CoE) to address debt problems and over-indebtedness when formulating legislation and seeking legal solutions in this area.[9]

The Council of Europe recommendations provided a clear way forward to address key parts of the over-indebtedness problem. They formed the basis for a definition of over-indebtedness and laid out crucial policy goals for the different European governments to target in post-crisis reforms.

Despite efforts to regulate and implement recommendation 2(d) at EU level, a proper safety net for borrowers is absent. A much-needed review of the EU *Consumer Credit Directive 2008/48/EC (CCD)* now underway can address a number of short-comings. During the process, issues exposed in the current rules focus on creditworthiness assessment, the scope of the directive, the lack of a cap on the annual percentage rate of charge, advertising, and online sales. Shortfalls pinpointed within these issues have prevented the CCD from being an effective tool to prevent over-indebtedness in the European Union. If the current review addresses these points, it would significantly reduce the risk of over-indebtedness by tackling irresponsible and predatory lending.

Currently working on further initiatives to implement recommendations 2(b) and 2(c), the European Union is exploring ways to improve financial literacy levels[10] in the Europe as well as running pilot projects on debt advice.[11] As these initiatives are at early stages, it remains unclear to what extent they will prove effective. If these measures reach these goals, along with a revised CCD, they can address large parts of recommendation 2. If successful, this could slash the number of future over-indebted citizens, especially if buttressed by measures that ensure an adequate social infrastructure in Europe. To fully tackle over-indebtedness, Europe must also address other variables, including unemployment insurance, access to affordable and quality care services for children and other dependents, fair wages and working conditions, and affordable health care.

Select 2007 Council of Europe Recommendations

2(d): Providing the necessary measures and regulations to ensure responsible practices during all phases of the credit relationship including marketing of credit as well as the collection and use of credit data and other financial information.

2(b): Introducing and developing financial literacy on the rights of consumers in general, and budget management in particular, as part of the national education system.

2(c): Effective access to impartial financial, social and legal advice and counselling to those who have problems with and questions about their debts.

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9 *Recommendation CM/Rec(2007)8 of the Committee of Ministers to member states on legal solutions to debt problems*, 2007

10 *European Commission report on the results of the feasibility assessment for the development of a financial competence framework in the EU*, April 2021

11 Tenders Electronic Daily, *2019/S 211-514673, Contract notice*, 31 October 2019

This still leaves considerable work to be done to provide relief for people already over-indebted or at risk of becoming over-indebted, covered in recommendations 3 to 5. These recommendations cover regulating debt collection and recovery procedures, reintegrating over-indebted people back into society through procedures to resolve debts and direct policy targets to implement the Council of Europe recommendations. Even with effective regulation to prevent irresponsible and predatory lending, many citizens may end up in financial hardship as a result of untimely shocks that impact their finances. This scenario formed the logic behind these additional recommendations, which implicitly acknowledge a move away from the historic view of penalising insolvent debtors towards resolving their situations while protecting fundamental citizen and human rights.

The cost of over-indebtedness

A strong argument for addressing over-indebtedness is to lower the economic and social costs it creates. In Sweden, for example, a monetary value has been put to this cost.[12] The figure reveals the frightening scale of the problem. Additional data from the Netherlands shows that an average of €100,000 is being spent to collect the debts of the insolvent. The average amount owed by those under collection is €35,000 and in the majority of cases, only 10% of debt owed ultimately gets collected.[13] This translates into €100,000 being spent to collect €3,500. This combined with the human impact at the individual level form on their own powerful incentives for policymakers to swiftly make progress to address the issue.

An example of how the economic and social costs can manifest is through the impact of over-indebtedness on physical and mental health. In the research from Sweden, a cross-sectional health survey was used to measure mental and physical health amongst heavily over-indebted people. It showed that these people are much more likely to have mental and physical health issues when compared with the rest of the population. The research shows that over-indebted people are nine times more likely to receive specific medical diagnoses such as clinical depression, diabetes and heart conditions, when compared with the general population.[14] The medical care costs therefore inevitably rise, along with the risk of time periods without being able to work, leading to loss of economic output and creating a cost for social welfare systems. A 2019 study from the University of Singapore found that stress associated with debt impairs decision-making and psychological functioning. Ultimately, this means over-indebted individuals have a reduced capacity to face the challenges of accessing insolvency procedures.[15]

12 R. Ahlström et al., The Swedish Consumer Agency, Report, *Is debt relief rehabilitative?*, 2014

13 Nibud, *Overkoepelende blik op de omvang en preventie van schulden in Nederland*, 2014

14 R. Ahlström et al., The Swedish Consumer Agency, *Report, Is debt relief rehabilitative?*, 2014

15 W, Qiyan Ong et al. *Reducing debt improves psychological functioning and changes decision-making in the poor*. Proceedings of the National Academy of Sciences, 2019

Calculating the social and economic cost of over-indebtedness[16]

The estimated annual cost of an over-indebted individual in Sweden can be calculated as follows:

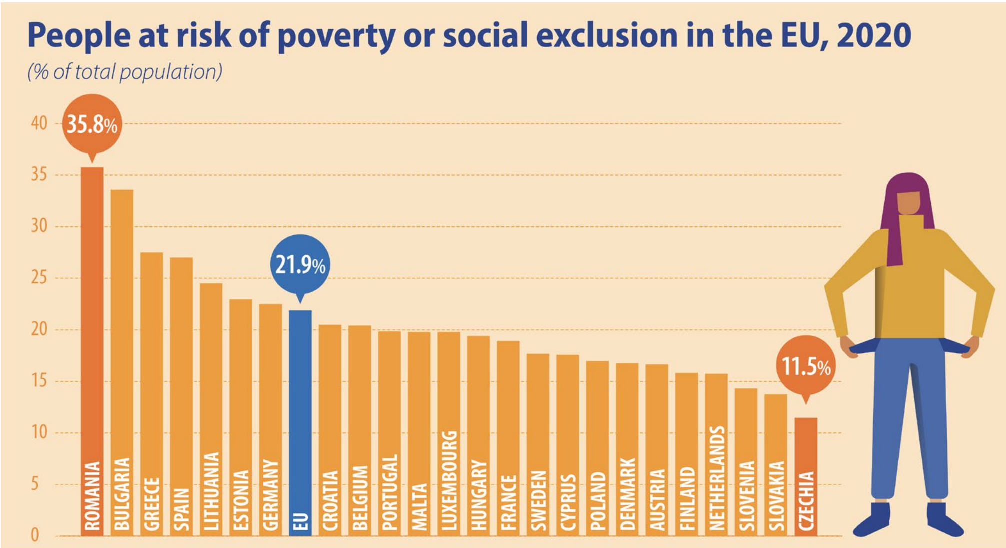
- Estimated cost of medical care = **€13,500**.
- Estimate cost of loss of production = **€62,000**.
- Estimated cost of social insurance system and unemployment benefits = **€16,000**.

Overall cost = **€91,500**

Using an estimation of **400,000** over-indebted Swedes[17] this brings the potential cost of over-indebtedness in Sweden to **€36.6 billion**.

The intergenerational effect gets often overlooked in the debate. A costly consequence of financially vulnerable or over-indebted households, children of over-indebted individuals are more likely to be diagnosed with a mental illness, face bullying, and perform more poorly in school.[18] They have reduced chances to participate in extracurricular activities as well as attend social outings with their peers that results in a lower long-term capacity for personal and professional growth.

Some 96.5 million EU citizens risk falling into poverty and social exclusion, around 21.9% of the total EU population.19 These figures are based on the 2020 EU Survey on Income and Living Conditions (EU SILC). Whilst the EU SILC cannot measure the related, complex phenomenon of over-indebtedness, or people at risk of over-indebtedness, it does provides some context for the scale of the issue.



Provisional values: France, Croatia, Netherlands Poland, Slovakia
No data: Ireland, Italy, Latvia

ec.europa.eu/eurostat

This aforementioned figure is particularly relevant when considering the links between financial fragility and risk of over-indebtedness. This touches on one of the specific areas of the EU SILC: the ability of people to face unexpected financial expenses. It shows that 32% of people do not believe they would be able to withstand the financial shock equal to the value of a month of income. Many may be using credit and quickly get into arrears, or move to use credit as a stop-gap solution to cope with the sudden change in their financial situation. This can quickly push them into financial

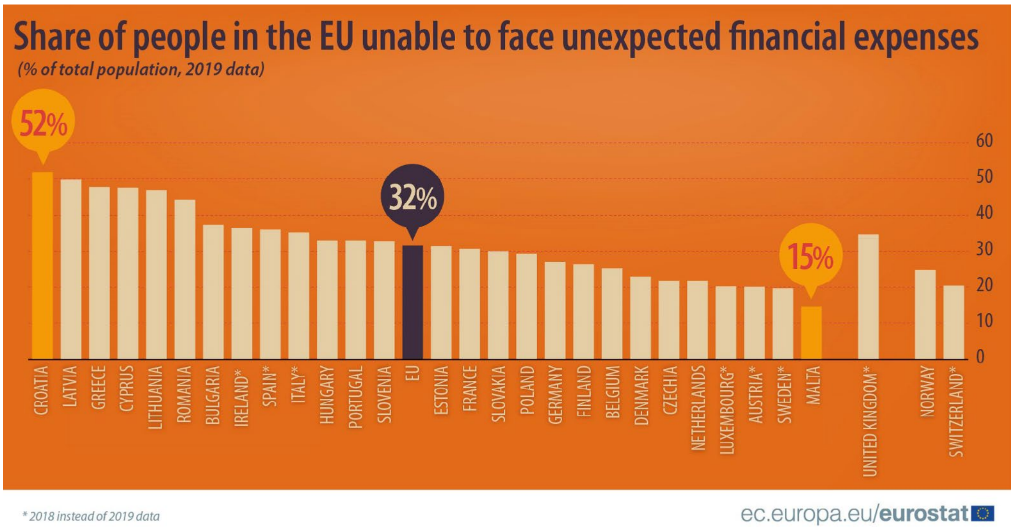
16 Finance Watch, *Response to the Consultation on the Evaluation of the Consumer Credit Directive*, 2019

17 European Consumer Debt Network (ECDN), *Money Matters*, 2009

18 Swedish Public Health Agency (Folkhälsomyndigheten), *Public Health Development: Yearly Report 2020*, 2020

19 Eurostat, *Living conditions in Europe - poverty and social exclusion*, 2020

difficulty and even a debt trap they cannot escape from. Certain groups of people also appear more at risk of both financial and social exclusion as a starting point.[20] These groups are not only more likely to be unable to face unexpected financial expenses, but are also more likely to be excluded from using financial services or restricted in how they can access them. This can push them towards less regulated credit, which risks being predatory and high-cost.



The Covid-19 crisis raises particular concerns as well over how these numbers may be about to change.[21] If an average of one in three European citizens was unable to meet unexpected financial expenses before the crisis hit, then the number of people in financial difficulty and at risk of over-indebtedness seems likely to have risen. Covid-19-related financial support, such as furlough schemes and debt moratoria, have also potentially masked the full extent of the impact that the crisis has had.

To cope with the expected number of people in financial difficulty, a main recommendation is to ensure policy puts in place fair, accessible and efficient insolvency frameworks for individuals and that citizens can gain access to debt advice.[22] measures made so far by governments to tackle Covid-19, such as lock-downs, have potentially restricted citizens' access to court procedures and debt advice. Courts were closed for significant periods and may have suffered case backlogs while debt advice agencies were closed for periods of time in some cases. As a result, people in financial difficulty may have ended up worse off and at a higher risk of becoming over-indebted.

An underlying issue also surfaces around the capacity of the different legislative frameworks in Europe to address the problem of over-indebted citizens in the best of times. The Covid-19 crisis has added urgency to an already overdue overhaul of these frameworks.

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20 Finance Watch, *Financial exclusion: Making the invisible visible*, 2020

21 M. Demertzis et al., *The financial fragility of European households in the time of Covid-19*, 2020

22 World Bank, *Covid-19 Outbreak: Implications on Corporate and Individual Insolvency*, 2020

Making debtors pay

Personal or consumer insolvency has been widely studied and analysed. Frameworks exist to some extent in most European countries and in many developed countries across the world. Research and expert evidence confirms that introducing consumer insolvency frameworks makes economic sense and are necessary to protect the fundamental and human rights of citizens. This formed the basis for the Council of Europe recommendations and informed the policy goals they set out. What has emerged since then is analysis of the different frameworks that have been put in place and developed.

Current consumer insolvency frameworks can be broadly classified into three types: bankruptcy, debt settlement procedures or informal arrangements.[23]

Bankruptcy	Debt settlement	Informal arrangements
Debtor assets are liquidated and divided between a set ordered list of creditors.	Debtors commit to payment plans and do not necessarily have assets liquidated.	An agreement is made between the creditor(s) and debtor to resolve outstanding debt. *Unlike the other two options, this does not necessarily involve court proceedings or a procedure by a government authority.*

The general aim of these frameworks is to recover as much "value" as possible for creditors and also to provide debtors with a way out of debt to start over. Issues start to emerge swiftly within the different frameworks around the second stated aim of giving debtors a fresh start. How debtors "earn" their fresh start[24] is different in discharge procedures to bankruptcy. A key difference is often that bankrupt debtors have their assets liquidated and are granted a more immediate fresh start, whereas under debt discharge procedures the start is earned through an agreed payment plan, although assets may also be liquidated. Despite the clear socio-economic case for addressing over-indebtedness, this seems to be part of a historical "hangover" on the intentions of the debtor. There is effectively still a punitive element to dealing with insolvent debtors, even if their intentions were not fraudulent. Fraudulent debtors, or those that refuse to pay despite having the capacity to do so, generally face denied access to any of the three types of insolvency proceedings. The sad reality shows many 'honest' debtors also get excluded from these procedures. Others are discouraged by the stigma of bankruptcy and the restrictions it brings in some cases for employment, business activity and use of financial services.[25]

The stigma around being over-indebted or even in debt is perhaps still to be expected. In German and in Swedish, the words "schuld" and "skuld" can even be used to mean both debt and guilt. This should not be the basis for legislation that aims to tackle the problem though. The aim should instead be to find the balance between relieving debtors of an insurmountable debt burden and allowing creditors to recover a reasonable amount of profit where possible. Debtors should pay what they can, but not have to sign away their right to lead a dignified life and fall into poverty as a result. The economic and social cost is too high for both the individuals and for society, as this paper has already established.

23 G. McCormack et al., *Study on a new approach to business failure and insolvency: Comparative legal analysis of the Member States' relevant provisions and practices*. *Tender No. JUST/2014/JCOO/PR/CIVI/0075*, January 2016

24 J. Kilborn, *The Personal Side of Harmonizing European Insolvency Law*, Norton Journal of Bankruptcy Law and Practice, No. 5, 2016

25 J. Kilborn, 2016

Too much debt and not enough money

The key pieces of the consumer insolvency puzzle have already been found by looking at the three frameworks present in Europe. Looking at the overall picture in the EU just ahead of the implementation date of the *Restructuring and Insolvency Directive 2019/1023/EU*, most Member States have some rules in place on consumer insolvency. By drawing out the best practices and reoccurring pitfalls, a common direction starts to emerge to strike the balance between the interests of over-indebted people, creditors and society. The main issues with the current frameworks fall into two main areas: difficulty for people to access them and failing to provide a true fresh start or second chance. The best practices directly address these two points by setting limits around insolvency proceedings to protect debtors.

Country	National rules potentially falling under Article 1.4 Directive on Restructuring and Insolvency EU 2019/1023/EU	Assessment of national law on access to insolvency procedures	Assessment of national law on time for discharging debts	Some level of income and asset protection or extemptions
Austria	✓	No minimum quota required. Costs of the proceedings must be expected to be covered when the proceedings are initiated	3 to 5 years	✓
Belgium	✓		5 years	✓
Bulgaria	○	-	-	○
Croatia	✓	Requirement to attempt out of court conciliation before accessing formal debt relief procedures	5 years	✓
Cyprus	✓		5 years	✓
Czechia	✓	Requires creditors to be expected to recover at least 30% of outstanding credit [minimum payment requirement] + cover administrative costs of the procedure.	5 years	✓
Denmark	✓		5 years	✓
Estonia	✓		5 years	✓
Finland	✓		5 years	✓
France	✓		Immediate discharge possible- up to 7 years	✓
Germany	✓	Requirement to attempt out of court conciliation before accessing formal debt relief procedures	3 to 5 years	✓

Greece	✓	Requirement to attempt out of court conciliation before accessing formal debt relief procedures	4 years	○
Hungary	✓	“Minimum debt thresholds (only debts within a certain range of amounts can qualify for ‘debt management’ procedures.	5 years	✓
Ireland	✓		3 years to discharge	✓
Italy	✓		4 years	○
Latvia	✓		1 to 3.5 years	✓
Lithuania	✓		5 years	✓
Luxembourg	✓		Immediate discharge possible- up to 7 years	✓
Malta	○	-	-	○
Netherlands	✓	Requirement to explicitly prove that the consumer got into financial difficulty in good faith	3 years to discharge	✓
Poland	✓		3 years + possible 18 months extension to meet payment requirements	○
Portugal	✓		5 years	✓
Romania	✓		1, 3 or 5 years for different repayment levels of outstanding amounts	✓
Slovakia	✓	Low numbers of cases opened- likely due to need to pay administrative fees	5 years	○
Slovenia	✓		5 years	✓
Spain	✓		5 years	✓
Sweden	✓		5 years with payment holidays in June and December of each year	✓

Personal Insolvency Schemes in Europe mapping[26]

26 Evidence in the table was collected from J. Kilborn, 2016 and F. Ferretti, *The over-indebted European consumers: quo vadis personal insolvency law?*, Brunel University London, 2016

Access barriers

Eight EU Member States currently place requirements that act as barriers to access for consumers attempting to go through insolvency proceedings. Consistent problems arise around setting minimum amounts for creditors to recover as part of insolvency proceedings. This poses a key problem for many no-income, no-asset (NINA) or little-income, little-assets (LILA) debtors,[27] potentially excluding them from the start. For this group of debtors the costs linked to proceedings itself can also act as a barrier. Where the thresholds reach relatively high levels, it also potentially excludes large numbers of other insolvent debtors as well. Other thresholds relate to the amount of outstanding debt that a person has. Limits on the amount of debt restrict access from accessing proceedings for those not indebted enough or to hold too much debt.

Another recurrent access barrier is linked to a requirement to attempt out-of-court, “informal” agreements between debtors and creditors. Whilst out-of-court agreements can be used as a way to reduce the cost of insolvency proceedings to the state, and can be significantly quicker, far less safeguards and visibility for authorities to ensure debtor’s rights are respected. These extrajudicial requirements can also take a considerable amount of time to complete, during which the over-indebted individual’s financial problems persist or compound.

In several Member States requirements to prove that debtors are “honest” restricts access to insolvency proceedings. These requirements can be both subjective and overly restrictive, particularly given the low numbers of cases that actually prove to be fraudulent.[28] They seem to be rather related to the historical approach of punishing debtors for becoming insolvent, which in the modern context of a push to consume credit is no longer relevant or just.

Discharge barriers

One of the key issues with current consumer insolvency proceedings is the length of time that the procedure can last for. Evidence shows that holding a person in a discharge procedure for more than three years is not sustainable from a social point of view.[29] It is considered to be too detrimental to the well-being of the debtor. Currently, a three-year or lower discharge period is only possible in eight Member States and only guaranteed in two.

A related issue arises around whether the procedures envisage exemptions for certain assets and a sufficient level of income to guarantee to lead a dignified life. Whilst most countries have some level of exemptions in place, they are generally a long way from ensuring that debtors can retain lower value personal effects and a minimum level of income to lead a decent life.[30] The well-being of the debtor – financial and otherwise – is not guaranteed in either case. This means that the discharge procedure risks missing the goal of providing debtors with a fresh start and reducing over-indebtedness.

A distinct issue can arise for self-employed people who might have both personal and business debts. These cases cannot necessarily be dealt with in the same way as other consumer insolvency cases and require specific tailored measures. This is an area that warrants further study and investigation to set the right rules for the measures.

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27 F. Ferretti, 2016

28 J. Kilborn, 2016

29 J. Kilborn, 2016

30 Finance Watch, *Is the human dignity of individual debtors at risk?*, 2020

Commitment issues in Europe

The issues of over-indebtedness and consumer insolvency have already been investigated at EU level. A series of studies were conducted for the Commission in the run-up to the *Restructuring and Insolvency Directive 2019/1023/EU*.[31] The directive aims to address business insolvency, but leaves an option for EU Member States to apply some of the rules to individual citizens. Much of the evidence gathered seemed to make the case for having harmonised rules at EU level, but the Commission conclusions did not seem to match the analysis.

Harmonised EU consumer insolvency rules would also help the EU meet its other key goals to deepen the internal market. Cross-border sales of consumer credit could be increased through harmonisation of existing frameworks. Creditors may currently hesitate to offer more cross-border credits because they lack sufficient knowledge about the applicable consumer insolvency regimes in the Member States where they exist. This creates additional risk for firms wishing to enter a cross-border business relationship with customers, particularly in relation to provision of credit.[32] If lenders are unable to assess and quantify the outcome of insolvency proceedings and repossession laws, they will not feel confident lending to individuals. Too much uncertainty and cost exists when calculating the risk involved and adapting to different countries based on whether consumer insolvency rules exist or not and what the rules cover. It would also address potential issues related to bankruptcy tourism, where insolvent individuals move to a different jurisdiction to declare bankruptcy or start debt discharge procedures as they are considered to be more favourable than where they reside.[33]

The logical conclusion from the research and expertise assessed in the Commission 2016 "Study on a new approach to business failure and insolvency"[34] would be to introduce rules to harmonise consumer insolvency at EU level. More recent research has also shown that a majority of stakeholders across the financial services industry, civil society organisations, insolvency practitioners, lawyers and academics support the harmonisation of EU consumer insolvency rules.[35]

Arguments raised in the Commission's 2016 assessment tend to link to the EU principle of subsidiarity and suggest that the existence of diverging national rules is proof in and of itself that no harmonisation should take place. The scale of the task at hand is also raised in this context, given that a number of different laws at national level could require amending, along with judicial systems and changing national cultures and norms.[36] The support from a wide range of impacted stakeholders for harmonised rules indicates that the expected gains are considered well worth the investment of creating the framework. This, combined with the estimated cost posed by over-indebted people, appears to leave only one avenue for action.

The decision of the European Commission and EU co-legislators not to introduce rules to harmonise consumer insolvency procedures seems then to be a political choice. Unfortunately, it effectively carries a sentence for many over-indebted citizens in Europe, condemning them to be prisoners of their debt.

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31 *Directive EU 2019/1023/EU of 20 June 2019* on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt

32 F. Ferretti, 2016

33 F. Ferretti et al., *Personal Debt in Europe; The EU Financial Market and Consumer Insolvency*, 2019

34 G. McCormack et al., 2016

35 F. Ferretti et al., 2019

36 F. Ferretti et al., 2019

Plotting the course to EU consumer insolvency rules

The next steps towards harmonising and improving consumer insolvency rules in the European Union have already been set. The European Commission will have to complete a study on how to address consumer insolvency and will have to review the *Restructuring and Insolvency Directive 2019/1023/EU*. The study is required under recital 98 of the directive and the review under article 33. The European Commission has also recognised the risks and time-sensitivity of the impact of the Covid-19 crisis on over-indebtedness in the European Union.[37]

2022 — **European Commission to conduct the study required under recital 98 of the *Restructuring and Insolvency Directive 2019/1023/EU*.**

2022 — **European Commission to collect and review information on Member State transposition of Article 1(4) of the directive.**

Two options to move forward:

2023 — **Compile and propose a new standalone consumer insolvency directive.**

2026 — **Include a new chapter on consumer insolvency as part of a revision of the *Restructuring and Insolvency Directive 2019/1023/EU*.**

When comparing the two options on the table, the arguments weigh in favour of a standalone consumer insolvency directive at EU level. It offers the best opportunity to introduce the necessary legislative measures to render consumer insolvency proceedings effective in the shortest time frame possible. This is particularly important given the current context of the Covid-19 crisis and impact.

The main obstacle to achieve this seems to be potential political resistance from Member States, who are willing to bear the social and economic costs of inaction, due to perceived yet unfounded political costs of introducing new legislation in this area.

	Standalone consumer Insolvency Directive		**Amending the 2019 Directive on Restructuring and Insolvency**	
	Advantages	*Disadvantages*	*Advantages*	*Disadvantages*
Impact	Standalone directive can be more targeted in terms of application, assessment and revision.	N/A	N/A	The directive takes on two aims and was mainly designed for business insolvency proceedings.
Timing	Standalone directive can progress quickly after the recital 98 study is completed.	N/A	N/A	The review of the 2019 directive is due to be completed by June 2026, which does not match the immediate need for a rule change in the aftermath of the Covid-19 crisis.
Feasibility	Most of the measures to form part of the new directive have been identified and evidenced already.	Requires EU Member States to more significantly amend their current insolvency frameworks .	Member States can more easily adapt existing insolvency legislation.	The discussion would be part of an overall review and revision of the directive, meaning less focus on addressing consumer insolvency.

37 European Commission, *Impact Assessment Report Accompanying the proposal for a revised directive on consumer credit*, 2021

Tackling debt problems and over-indebtedness

The case had been made in 2007 to address over-indebtedness and a comprehensive set of recommendations was supported by all EU Member States at the Council of Europe. The economic and social cost of over-indebtedness, combined with the impact it has on the human and fundamental rights of citizens is clear. The legislative action taken by Member States has fallen well short of the goals set by the recommendations and, by extension, has not done enough to tackle over-indebtedness. Barriers to either access of consumer insolvency proceedings, discharge from proceedings, or both, have been identified in every EU Member State. Two Member States still lack any consumer insolvency rules.

Some lessons have been learned though, through the initial legislation introduced since 2007. The first iteration of the CCD did not create the levels of borrower protection needed for a single EU credit market and to achieve Council of Europe recommendation 2 and part of recommendation 5. The experience of living with the incomplete directive has, however, exposed the outstanding issues that need to be addressed more clearly. It has also allowed evidence to be collected to demonstrate the effects of these issues. Whilst the more recent *EU Mortgage Credit Directive 2014/17/EU (MCD)* has made progress here, it also needs to be adjusted.

Reviews currently underway for both directives provide the opportunity to act now. The main measures needed to create a safer EU market for credit include ensuring better creditworthiness assessment, cost caps, stricter rules on advertising, rules on debt collection, debt advice for all citizens and ensuring proper data collection takes place to assess the effectiveness and enforcement of the rules in place.[38] The Commission will also start work on minimum income in the European Union in 2022. This is an essential area to protect the living standards of EU citizens and ensure that they can lead a life worthy of human dignity. The Commission has an important foundation for this work from the project on reference budgets.[39]

The path to achieve the goals set by the remaining Council of Europe recommendations is clear. The Commission now needs to kick off the process for the recital 98 study under the *restructuring and insolvency Directive 2019/1023/EU*. The study can assess the wealth of research and evidence gathered on the insolvency procedures that EU citizens can access today. Given the context of the current Covid-19 crisis, an urgent need exists. Of the legislative options on the table, this would mean moving forward to a proposal for a new standalone EU directive on consumer insolvency.

38 Please refer to our *press release on the publication of the Commission proposal for a revised CCD*

39 European Commission, *Pilot project for the development of a common methodology on reference budgets in Europe*, 2015

Annex

2007 Council of Europe recommendations to address debt problems and over-indebtedness

1. Note that for the purposes of this recommendation, over-indebtedness means, but is not limited to, the situation where the debt burden of an individual or a family manifestly and/or on a long-term basis exceeds capacity to repay;

2. Aim to prevent over-indebtedness of individuals and families in particular by:

a. collecting information and statistics on debt problems and analysing the situation of over-indebted individuals and families in their countries;

b. introducing and developing financial literacy on the rights of consumers in general, and budget management in particular, as part of the national education system;

c. effective access to impartial financial, social and legal advice and counselling to those who have problems with and questions about their debts;

d. providing the necessary measures and regulations to ensure responsible practices during all phases of the credit relationship including marketing of credit as well as the collection and use of credit data and other financial information;

e. safeguarding the rights of the guarantors to information as well as preventing the irresponsible use of guarantees;

3. Take appropriate measures to alleviate the effects of the recovery of debt in particular by:

a. ensuring an efficient and unbiased enforcement system as well as appropriate legislation, which defines the powers of enforcement agents;

b. respecting the debtor's rights and human dignity at all stages of debt collection and debt enforcement procedures without infringing the rights of creditors;

c. introducing enforcement alleviation procedures, including the protection of the essential assets of the debtor and garnishment of part of his/her revenue, which take into account the need to strike a balance between the protection of at least the basic living needs of the debtor and his/her family and the efficiency of debt recovery;

d. ensuring the rights of the guarantors of the debtor at all stages of debt enforcement procedure, including, as far as possible, the right to treatment equal to that accorded to the debtor; and

e. facilitating the recognition and enforcement in member states of payment judgments and repayment plans emanating from the competent authorities in other member states;

4. Introduce mechanisms necessary to facilitate rehabilitation of over-indebted individuals and families and their reintegration into society in particular by:

a. ensuring that debtors have effective access to impartial advice and to debt adjustment in accordance with the criteria established by national law;

b. ensuring that payment plans in debt adjustment are reasonable, in accordance with national practices, both in repayment obligations and in duration;

c. ensuring that debt adjustment covers all debts, excluding only those covered by special waivers provided under national law;

d. establishing mechanisms for extra-judicial settlements and encouraging such settlements between the debtor and creditor;

e. effectively limiting the means of creditors to hinder debt settlements unreasonably;

f. encouraging effective financial and social inclusion of over-indebted individuals and families, in particular by promoting their access to the labour market;

g. encouraging the active participation of the debtor in debt settlement and, where necessary, counselling and advice following the debt settlement; and

h. allowing partial or total discharge of the debts of individuals and, where applicable, families in cases of over-indebtedness where other measures have proved to be ineffective, with a view to providing them with a new opportunity for engaging in economic and social activities.

5. Facilitate the implementation of this recommendation in particular by:

a. setting up policies relating to debt management and to treatment of over-indebted individuals and families and ensuring uniformity of such policies;

b. ensuring effective co-operation between the competent bodies and professionals involved in the prevention of over-indebtedness, the alleviation of the effects of the recovery of debts and the rehabilitation of over-indebted individuals and families;

c. setting up debt advice, counselling and mediation mechanisms, as well as ensuring, or at least encouraging, effective participation of lending institutions and other public and private creditors in implementing national policies for debt management;

d. ensuring appropriate quality standards and impartiality of the services provided by the responsible bodies and professionals as well as effective mechanisms for controlling these standards; and

e. providing easy access to information about consumer rights, which should be readily understood by the general public.

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About Finance Watch

Finance Watch is an independently funded public interest association dedicated to making finance work for the good of society. Its mission is to strengthen the voice of society in the reform of financial regulation by conducting advocacy and presenting public interest arguments to lawmakers and the public. Finance Watch's members include consumer groups, housing associations, trade unions, NGOs, financial experts, academics and other civil society groups that collectively represent a large number of European citizens. Finance Watch's founding principles state that finance is essential for society in bringing capital to productive use in a transparent and sustainable manner, but that the legitimate pursuit of private interests by the financial industry should not be conducted to the detriment of society. For further information, see www.finance-watch.org

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