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FSUG Opinion Paper on Personal Insolvency

Introduction

With this position paper, the Financial Services User Group (FSUG) takes the opportunity to stress the necessity and the urgency for harmonised EU personal insolvency rules.

Over-indebtedness is a serious problem in the EU that already existed before the current economic crisis and is set to get worse. It carries considerable economic and social costs as it negatively impacts work productivity, increases the demand and costs on healthcare and social welfare systems and leads to an overall drop in a country's economic output. Estimates from a Finance Watch study from early 2022, before the current cost-of-living crisis, showed that the social and economic costs of over-indebtedness for Sweden alone, for example, are as high as €36.6 billion.[1] This situation has likely worsened and is set to get worse due to the cost-of-living crisis which has either plunged many EU households in over-indebtedness or put them at risk of becoming over-indebted.

EU households are currently faced with high inflation that severely outpaces wage growth.[2] The current high interest rate environment leads to both rising borrowing costs as well as a drop in the price of collateral property.[3] In addition, inflation has been very and persistently high for food which is a key essential for consumers and therefore poses a big strain on consumers' finances, hitting vulnerable households the most.[4] On top of this, EU households are faced with great economic uncertainty after the Covid-19 pandemic and the on-going war in Ukraine. While it is too soon to know the full extent of the impact of the crisis on households' budgets, it is abundantly clear from first pieces of data, well-established literature as well as past experiences that such factors have the potential for catastrophic effects on consumers' finances and therefore on consumers' capacity to repay their existing debts (both consumer credit and mortgages).

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[1] Paul Fox, Peter Norwood and Emily Glantz, 'From debtor prisons to being prisoners of debt, Making the case for harmonised EU consumer insolvency rules' (Finance Watch 2022) <https://www.finance-watch.org/wp-content/uploads/2022/01/Personal-insolvency-paper-january-2022.pdf> (accessed 7/4/2023).

[2] European Commission, 'Winter 2023 Economic Forecast: EU Economy set to avoid recession, but headwinds persist', <https://economy-finance.ec.europa.eu/economic-forecast-and-surveys/economic-forecasts/winter-2023-economic-forecast-eu-economy-set-avoid-recession-headwinds-persist_en> (accessed 12/3/2023).

[3] Niccolò Battistini, Johannes Gareis and Moreno Roma, "The impact of rising mortgage rates on the euro area housing market" (ECB Economic Bulletin, Issue 6/2022).

[4] https://www.reuters.com/world/europe/core-euro-zone-inflation-edges-up-march-keeping-ecb-alert-2023-04-19/

Data from Germany for Q1 2023, for example, shows that the cost-of-living crisis has led to a notable deterioration of the financial situation of the German population, in particular for vulnerable households. According to data from the European Consumer Debt Network (ECDN), 39% of German households with a net income of less than 2000 euros cannot save and the German credit register Schufa registered 30% more negative entries in 2022 than in 2021.[5] Data shows that the level of borrowing in the EU is high which is a clear sign that many European households are at risk of becoming over-indebted. Data from early 2023 shows that the rate of borrowing is 63 per cent in Greece, followed by Italy, and Poland (between 40 per cent and 41 per cent) and France (36 per cent).[6] The most recent European Banking Authority (EBA) Consumer Trends Report also confirms that rising inflation and the normalisation of interest rates have increased the burden of mortgage credit and has led to an increase in consumer demand for consumer credit with the result that over-indebtedness is one of the key risks consumers in the EU are facing.[7]

In addition, a recent study published by the Austrian Central Bank on the CESEE-9 countries reveals two important issues. Firstly, based on data from fall 2020 and 2021, a common characteristic is the high ratio of vulnerable households at risk of being unable to repay their loans. This means that vulnerable households had already a grimmer outlook before further shocks materialised in 2022. Secondly, this report highlights the cross-country exposure of the domestic financial sector to the over-indebted households in other EU countries. Hence, financial stability concerns cannot be tackled in isolation. Rather, the borrower's perspective should also be taken into account to swiftly detect potential vulnerabilities building up.[8]

Fair and accessible personal insolvency schemes are needed to address the high costs of over-indebtedness. The need to improve consumer insolvency rules in the EU has long been known – with the Council of Europe creating a comprehensive list of recommendations that were broadly supported by Member States in 2007.[9] Unfortunately, however, there has been a lack of political will to move forward. Up until now, with regards to insolvency

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[5] European Consumer Debt Network, 'ECDN fact sheet – Situation of over-indebtedness at the beginning of 2023' <https://ecdn.eu/2023/02/16/ecdn-fact-sheet-situation-of-over-indebtedness-at-the-beginning-of-2023/> (accessed 7/4/2023).

[6] Ben Cuzzupe and Peter Norwood, 'Crunch Time for Consumer Credit in Europe' (Green European Journal 2023) < https://www.greeneuropeanjournal.eu/crunch-time-for-consumer-credit-in-europe/?utm_campaign=Retail%20%26%20Financial%20Inclusion&utm_content=238492295&utm_medium=social&utm_source=linkedin&hss_channel=lcp-3242278> (accessed 23/4/2023).

[7] European Banking Authority, EBA Consumer Trends Report 2022/23, <https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Reports/2023/1054879/Consumer%20Trends%20Report%202022-2023.pdf> (accessed 9/5/2023).

[8] European Systemic Risk Board, 'The ESRB Handbook on Operationalising Macro-prudential Policy in the Banking Sector' (European System of Financial Supervision 2018).

[9] Council of Europe, 'Recommendation CM/Rec(2007)8 of the Committee of Ministers to member states on legal solutions to debt problems' <https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805d5b81> (accessed 7/4/2023).

frameworks, EU policymakers have only focused on business insolvency while neglecting personal insolvency. This has resulted in a patchwork of different national personal insolvency schemes in the 27 EU Member States. Most of these national schemes are ineffective as they have high barriers to access them and fail to provide the consumer with a true fresh start, as it is the case for the businesses.

Therefore, we are in urgent need of a well-functioning and effective pan-European personal insolvency framework that incorporates best practices. In addition to the social and economic arguments to intervene at the EU level, there are also internal market benefits to having a harmonised EU personal insolvency framework in place. This FSUG Opinion paper will explore the reasons why an EU harmonised scheme are needed and will provide recommendations for EU policymakers with regards to how such a scheme should look like to be effective.

Why harmonised EU personal insolvency rules are urgent now

During 2022, households have seen the largest increase in consumer prices in decades and the first increase in interest rates in over ten years. The pressure from these factors will lead to financial distress of households from different income quintiles which in turn will lead to an increase of over-indebtedness in the EU.

Households with lower incomes will be most definitely disproportionately affected, leading to debt defaults and inability to pay their bills.[10] Households with smaller financial cushions, or non-existent cushions, for which food and energy costs represent a large share of expenditure, have suffered particularly badly from the double hit of high increases in interest rates and inflation and are already becoming overburdened. At the same time, those with lower incomes are much more exposed to the credits offered by loan sharks, with a huge APR.[11]

In addition, despite the false assertion that middle- and higher-income households are not as severely affected by increased inflation and high interest rates, the threat posed by these factors is not limited to low-income households. In recent years, the indebtedness of middle- and high-income households has dramatically increased. This has been driven by very low interest rates and strong housing demand. As shown, for example, in the EBA Consumer Trends Report 2022/2023, lending for house purchases during times of low interest rates has risen steadily from euro 4.6 trillion in January 2015 to euro 6.10 trillion in

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[10] Evangelos Charalampakis, ‘The impact of the recent rise in inflation on low-income households’ (ECB Economic Bulletin, Issue 7/2022).

[11] https://www.finance-watch.org/wp-content/uploads/2022/03/CDD-consumer-credit-directive-rootcause-overindebtedness.pdf

July 2022.[12] As a result, many middle- and even higher income households are now low on savings as they have spent this money on purchasing a house and are at the same time, due to their mortgage, at maximum debt servicing capacity. Indeed, recent literature has identified middle-class households are those with the highest risk of over-indebtedness.[13] High interest rates, in combination with inflation, will thus put extra pressure on middle-income households and put them at risk of insolvency. As shown in the EBA Consumer Trends Report 2022/23, variable rate mortgages, i.e. mortgages with interest rates that fluctuate based on changes to the interest rate, are very common in the EU.[14] The risk of insolvency for these borrowers will be even higher if unemployment, divorce, illness or any other common, but falsely presumed "unexpected" or "rare" event occurs. Unemployment for some may be even induced by the ongoing structural shifts in the economy related to the green and digital transitions.[15]

Furthermore, the insolvency-related consequences from the effect of increased interest rates on house prices should not be underestimated. According to empirical evidence, house prices (i.e., the value of mortgage collateral) are very sensitive to the increase of interest rates.[16] Based on estimations, a 1% increase in the mortgage interest rate leads, all else being equal, to a decline in house prices of around 5%. This increases to 15%, if it follows a low interest rate environment, as in the current situation.[17] Recessions associated with real estate market developments tend to be even more harmful than other recessions.[18]

This reinforces the risks deriving from the so-called "double trigger" theory,[19] that chances of inability to service debt increase when an event, in this case events, putting pressure on consumers' finances, is combined with negative equity, that hinders households from exiting over-indebtedness by selling the collateral at the same price at which it was acquired (if this is even possible, taking into account that this is often the family home).

[12] European Banking Authority, 'Consumer Trends Report 2022/23' (n 7).

[13] Teresa Sullivan, Elizabeth Warren and Jay Westbrook, *The Fragile Middle Class American in Debt* (Yale University 2000); Civic Consulting, The Over-Indebtedness of European Households: Updated Mapping of the Situation, Nature and Causes, Effects and Initiatives for Alleviating Its Impact: Final Report (2013) < https://ecdn.eu/wp-content/uploads/2020/03/Alleweldt-et-al-2013-The-over-indebtedness-of-European-households-updated-mapping-of-the-situation-nature-and-causes-effects-and-initiatives-for-alleviating-its-impact-part-1.pdf> (accessed 21/3/2023).

[14] European Banking Authority, 'Consumer Trends Report 2022/23' (n 7), 13-14.

[15] Krzysztof Bańkowski, 'The economic impact of Next Generation EU: a euro area perspective' (ECB Occasional Paper Series, No 291/ April 2022).

[16] Battistini and others (n 3).

[17] Ibid.

[18] Christopher Crowe, 'How to Deal with Real Estate Booms: Lessons from Country Experiences' (IMF Working Paper April 2011).

[19] Christopher Foote, Kristopher Gerardi and Paul Willen, 'Negative equity and foreclosure: theory and evidence' (2008) 64 Journal of Urban Economics 234; Brent White, 'Underwater and not walking away: Shame, fear, and the social management of the housing crisis' (2010) 45 Wake Forest Law Review 971.

The combination of the above factors may quickly escalate into a vicious circle of over-indebtedness for a large proportion of EU consumers. This imminent threat is consistent with the consensus among experts that over-indebtedness is rarely intentional and that there is no evidence of widespread abuse of favourable personal insolvency frameworks.[20]

Consumers on the brink of insolvency are often unable to participate in the economy due to physical and/or mental health problems,[21] weighing on the Gross Domestic Product (GDP), leading to further economic downturn and further loan defaults. People who are over-indebted and have no way to repay their debts often experience considerable impacts on their physical and mental health. Research from Sweden, for example, 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.[22] This results in a rise in medical care costs along with time periods where these indebted individuals are unable to work, leading to loss of economic output for the country as a whole and increased costs for national social welfare systems.

In addition to the economic and social arguments, a harmonised EU personal insolvency scheme would help further the deepening of the EU internal market. Personal insolvency cuts across different EU policies. With regards to insolvency in general, the European Parliament, the Council, the EU Commission and the European Central Bank (ECB) have repeatedly stressed that the absence of an effective insolvency framework is a limitation to the well-functioning of the Capital Markets Union (CMU), is a barrier to market integration, and to cross-border investment.[23] For example, harmonised personal insolvency rules would be beneficial to the development of the securitisation market. The EU securitisation market is largely composed of residential mortgage-backed securities, representing more than 60% of total outstanding securitisations in the EU.[24] Currently the absence of an EU personal insolvency framework makes it more difficult to pool and securitise assets across borders. Due to the difference between national personal insolvency laws, mortgages in different Member States are in essence legally different ‘products’ to pool together. Not only that, but national variations of personal insolvency laws create uncertainty for

[20] Joanna Niemi, ‘Personal insolvency’, in Geraint Howells, Iain Ramsay and Thomas Wilhelmsson (eds), *Handbook of research on international consumer law* (2018 Edward Elgar); Ian Ramsay, ‘Towards an international paradigm of personal insolvency law? A critical view’ (2017) 17(1) QUT Law Review 15.
[21] Richard Ahlström and others, ‘Is debt relief rehabilitative?’ (The Swedish Consumer Agency, Report 2014(15)).
[22] Ibid.
[23] ‘Five presidents report’ (https://ec.europa.eu/info/publications/five-presidents-report-completing-europes-economic-and-monetary-union_en), European Parliament resolution of 9 July 2015 on Building a Capital Markets Union (2015/2634(RSP)) and of 8 October 2020 on further development of the Capital Markets Union (CMU) (2020/2036(INI)); Brussels, 24.9.2020 COM(2020) 590 final COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONSA Capital Markets Union for people and businesses-new action plan.
[24] European Systemic Risk Board, ‘Monitoring systemic risks in the EU securitisation market’ (July 2022), 3.

investors that are reluctant to invest to products banding together mortgages from different jurisdictions. Hence, the potential for private cross-border risk is limited.[25]

In addition, harmonised EU personal insolvency rules could lead to an increase in cross-border sales of consumer credit. Cross-border sales of consumer credit is currently low in the EU.[26] This is, in part, a result of creditors hesitating to offer more credit cross-border because they lack sufficient knowledge about the applicable personal insolvency schemes in other EU Member States. The patchwork of different personal insolvency schemes across the EU – and the absence of such a scheme in some Member States - creates risks for firms wishing to conclude a consumer credit contract with consumers cross-border.[27] If lenders are unable to assess and quantify the outcome of insolvency proceedings and repossession laws, they will not feel confident in lending to individuals in other EU Member States.

The limitations of EU measures taken so far

To combat over-indebtedness, the focus at EU level has so far been mostly on preventive tools, such as ex-ante creditworthiness checks to prevent lending to people at risk of over-indebtedness. Preventive measures, such as those included in the Consumer Credit Directive (CCD) and the Mortgage Credit Directive (MCD),[28] despite their limitations,[29] are useful tools and will become more effective when the new creditworthiness assessment rules which were agreed by EU policymakers as part of the recent review of the CCD come into force. They have helped routinise and internalise[30] creditworthiness checks into the standard operating procedures of financial institutions, making compliant behaviour habitual and reducing the need for penalties.[31]

Yet, preventive tools and financial literacy are not a silver bullet and cannot provide for a comprehensive solution. While preventive measures are important and necessary, ex-post

[25] 'Supervisory priorities and securitisation, Keynote speech by Elizabeth McCaul, Member of the Supervisory Board of the ECB', (26th Annual Global ABS Conference Barcelona, 14 June 2022).
[26] European Commission, Evaluation of the Consumer Credit Directive, <https://op.europa.eu/en/publication-detail/-/publication/e2a5882a-7d65-11eb-9ac9-01aa75ed71a1> (accessed 9/5/2023), 27.
[27] Federico Ferretti, 'The over-indebted European consumers: quo vadis personal insolvency law?' (2016) European Law Review 843.
[28] Consumer Credit Directive, Art 8; Mortgage Credit Directive, Art 18.
[29] Among others, these pre-contractual obligations lack clear and binding rules on how the consumer's creditworthiness must be assessed, and they do not provide for any significant degree of harmonisation of enforcement measures, such as remedies and penalties. For a criticism see Federico Ferretti and Daniela Vandone, 'The Treatment of Over-Indebtedness Towards a Harmonisation of Personal Insolvency Law in a Fragmented EU?' in *Personal Debt in Europe The EU Financial Market and Consumer Insolvency* (Cambridge University Press 2019).
[30] On an overview of Internalisation see Harold Hongju Koh, 'Why Do Nations Obey International Law' (1997) 106(8) Yale Law Journal 2599.
[31] Helmut Breitmeier, Oran Young and Michael Zürn, *Analyzing International Environmental Regimes, From Case Study to Databases* (MIT Press 2006), 155.

measures providing debt relief for those who are or will become over-indebted are also necessary. This has been made clear by the current challenges consumers face. For example, the impact of high inflation and the sudden increase of interest rates could not have been foreseen and considered in the creditworthiness assessments of loans that have already been granted in the past. Borrowing an analogy used by Ferretti and Vandone, it is like providing for rules and safeguards to minimise road accidents, but not having hospitals if accidents do occur.[32] The current challenges call for ex-post tools, as much as ex-ante tools, to help consumers navigate over-indebtedness, in the form of a personal insolvency framework.

In addition to preventive measures, measures at EU level have been limited to business insolvency,[33] based on the assumption that personal insolvency has a limited cross-border dimension.[34] As pointed out in the previous chapter, however, this view is short-sighted. For example, EU harmonised personal insolvency rules would be beneficial for the development of the EU securitisation market, and it will address the current low level of cross-border sales of consumer credit.[35]

Furthermore, it is difficult to distinguish between personal and business debt. Business debts and personal/consumer debts often overlap with one another when it comes to entrepreneurs and self-employed. While the Directive on Restructuring and Insolvency tries to overcome this issue,[36] this is done unsuccessfully. This is because of the diversity in procedures for entrepreneurs among Member States. In some Member States, entrepreneurs are treated as any other business; in others as a separate category; and by some, they are treated as consumers.[37]

The Directive on Restructuring and Insolvency invites Member States to extend the application of the discharge principles also to consumers, however, this possibility is left to the discretion of Member States. On top of that, the Directive is not tailored to the needs of consumers and therefore even if many Member States opted to extend the discharge measures of the directive to consumers, it would not provide for effective harmonised personal insolvency rules in the EU. For example, the directive does not address the special needs of 'no income-no assets' debtors or 'low income–low assets' debtors. Furthermore, it does not include safeguards on protecting the debtor's livelihood.[38] In addition, it does

[32] Federico Ferretti and Daniela Vandone, *Personal Debt in Europe: The EU Financial Market and Consumer Insolvency* (Cambridge University Press 2019), 200.
[33] Directive on Restructuring and Insolvency.
[34] Commission, 'Impact Assessment Report, Accompanying the document Proposal for a Directive of the European Parliament and of the Council harmonising certain aspects of insolvency law' (Staff Working Document) SWD(2022) 395 final.
[35] Matthias Enzinger, Melanie Koch and Aleksandra Riedl (n 5).
[36] Article 24.
[37] Gerard McCormack, *The European Restructuring Directive* (Edward Elgar Publishing 2021), 218.
[38] Ibid, 220.

not provide provisions ensuring accessibility to personal insolvency schemes such as mandating no debt thresholds to access a personal insolvency scheme.

Opponents of an EU harmonised personal insolvency directive frequently claim that the great diversity in Member States' legal systems is a barrier to establishing such a scheme.[39] As it will be further analysed in the next section, however, this argument is not valid. After the 2008 economic crisis, there has been notable convergence among Member States' systems and thus harmonisation would not cause too much disruption and therefore be too ambitious.

A pan-European personal insolvency framework would have clear social and market benefits. At the same time, it should be stressed that while insolvency frameworks do serve market goals, such goals should not be prioritised over social justice, consumer protection and second chance for the over-indebted.

Why existing national frameworks are ineffective

In the aftermath of the 2008 economic crisis, many Member States have introduced or reformed their personal insolvency frameworks, in what appears to be individual and uncoordinated legal initiatives. Each Member State has developed its own legislation with own features and institutional infrastructure for the implementation of the law (including the availability and training of judges and trustees, administrative capacity, accounting, and valuation systems). The design of these initiatives appears to be primarily driven by internal economic and social policy considerations.[40] At the same time, several national insolvency frameworks have been introduced as part of the conditionality of Financial Assistance Programs or following country specific recommendations in the context of the European Semester; or more recently based on the commitments of Member States under the Recovery and Resilience Plan to access the fund under NextGenerationEU.

The result is that, while personal insolvency laws in the EU are not cohesive, there has been some convergence. At the same time, however, it should be emphasised that there are many challenges in terms of availability, accessibility, and effectiveness with respect to the existing national schemes in solving over-indebtedness. Some national frameworks prioritise debt recovery over providing a fresh start, impeding the effectiveness of the

[39] Pierre Hausemer and others, 'Impact assessment study on policy options for a new initiative on minimum standards in insolvency and restructuring law' (2016 European Commission) JUST /2015 /JCOO/FWCIVI 0103 FRAMEWORK CONTRACT ENTR/ 172 / 2012 FC LOT 2.

[40] Yan Liu and Christoph Rosenberg, 'Dealing with Private Debt Distress in the Wake of the European Financial Crisis A Review of the Economics and Legal Toolbox' (IMF Working Paper 2013); Although according to Joseph Spooner, 'Fresh Start or Stalemate? European Consumer Insolvency Law, Reform and the Politics of Household Debt' (2013) 3 European Review of Private Law 747, the common factors shaping insolvency regimes across Member States are political ideology, policy salience, and interest group influence.

insolvency framework as a whole.[41] In other cases, insolvency frameworks are just rendered unusable, leaving the country with no effective personal insolvency framework. Data collected by Eurofound on the number of users of personal insolvency frameworks, for example, highlights the existence of access barriers and the ineffectiveness of some national frameworks to combat over-indebtedness.[42]

The FSUG will conduct further research on the shortcomings in the coming months but has so far already identified the following main common shortcomings in many of the existing national frameworks in the EU:

- The existence of access barriers rendering it difficult to access the procedure. Common barriers to access personal insolvency procedures in EU Member States include the debtor-paid insolvency proceedings costs; the need to have accumulated a certain amount of debt to be eligible to access the scheme; and the need to provide proof that the financial difficulty was reached in good faith and that the debtor has attempted to resolve the debt out of court;
- The duration of the procedures often takes a disproportionately long time.[43] Debtors currently spend an average of 5 years discharging their debts, living on subsistence wages while the remainder of their income is divided between their creditors. Evidence shows, however, that a discharge period of 3 years or more is not socially sustainable.[44]
- Setting the threshold for repayment is often inflexible and there is not always enough protection of the debtor's home and the essential goods for work.
- There is a failure to truly provide indebted consumers with a fresh start.[45]
- A lack of adequate tailored measures for no-income, no-assets consumers: For example, inaccessibility to immediate discharge for no-income individuals; and a cost barrier to access insolvency procedures for no-income, no-asset individuals.[46]

These barriers persist despite the wide acceptance that fresh start mechanisms are linked to encouraging entrepreneurialism; increased productivity; promoting financial and social

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[41] According to Eurofound, *Addressing household over-indebtedness* (Publications Office of the European Union 2020), 43, some notable examples are Slovenia, Greece and Italy.
[42] Ibid, 42.
[43] For example, see World Bank Personal Insolvency Report, 'Report on the Treatment of the Insolvency of Natural Persons' <https://documents1.worldbank.org/curated/en/668381468331807627/pdf/771700WP0WB0In00Box377289B00PUBLIC0.pdf> (accessed 31/3/2023). This Report provides an overview of the issues, both in terms of policy and practicalities, that arise in relation to personal insolvency regimes and identifies potential solutions. The World Bank Report does not distinguish between insolvent individual entrepreneurs and other natural persons entrepreneurs.
[44] Jerusalmy, Olivier, 'Is the human dignity of individual debtors at risk?' (Financial Watch 2020) <https://www.finance-watch.org/wp-content/uploads/2020/01/Report_Human-dignity_final_with-annex.pdf> (accessed 7/4/2023).
[45] Monica Calu, 'Steps towards Harmonising and Improving Consumer Insolvency Rules in the European Union'
[46] World Bank Personal Insolvency Report (n42).

inclusion; reducing health and welfare costs; encouraging responsible lending; and maximising economic activity.[47]

Lessons learned from past experiences in different jurisdictions is that long, punitive personal insolvency regimes negatively affect our societies, increase the potential for financial instability and hamper national economic recovery.[48]

Recommendations for an EU consumer insolvency directive

For a harmonised EU personal insolvency framework to be effective, the following best practices need to be incorporated in such a future harmonised scheme:

- Protection of the debtor's dignity and ensuring their minimum living standards, regardless of the level of outstanding debts, providing enough flexibility to accommodate the specific situation of the debtor. To ensure social protection, the focus should not be limited to income, but also consider access to services such as childcare, education, housing, healthcare and long-term care.[49]
- No debt threshold or minimum payment amounts to creditors should exist to access the insolvency framework.
- Provision of exemptions for certain income and property, in particular the family home, car of reasonable value and pension entitlements;
- Accessibility, in terms of costs and other burdensome requirements;
- Short processes that provide swift relief;
- A clear framework, that provides for automatic stay of execution, such as a moratorium on debt collection when a consumer is identified as unable to meet their contractual obligations to pay their debts., that is not subject to the discretion of the lender;
- Neutral procedures;
- Effective debt discharge either immediately or after a short repayment plan that does not exceed 3 years.[50]
- Automatic debt discharge on expiry of the discharge period without the need to apply to a judicial or administrative authority to open some new procedure.
- Upon discharge there should be a credit score registry neutralisation.
- Special procedures tailored to no-income, no-asset (NINA) and little-income, little-assets (LILA) debtors, including through low-cost or free processes.

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[47] Ibid.

[48] Xiaojing Wang and Anne Marie Ward, 'Socio-economic framework for the design of national household insolvency systems' (2023) Socio-Economic Review 1.

[49] Eurofound (n 40), 51.

[50] To bring personal insolvency in line with the provisions of the Restructuring Directive, Article 21.

- 'Good faith' or absence of 'bad faith' requirements should be abandoned. These fluid concepts result in uncertainty, and are subject to abuse by judicial and administrative authorities that often result in the promotion of existing out-dated contract law principles;[51]
- Consumer protection should be integrated into insolvency administration, providing relief during the process for violations by the creditor of creditworthiness checks during the loan granting phase and other consumer protection violations;
- Financial incentives for debtors to maximise their income and seek work during debt settlement procedures (for example by shortening the repayment period or by allowing debtors to retain a proportion of the additional income).[52]
- Most debts should be covered (including tax debts).

Conclusion

It has been repeatedly stressed that countries with well-functioning insolvency frameworks typically see faster reduction of household over-indebtedness and reductions in non-performing loans in the aftermath of adverse shocks, with positive implications for macro-financial stability as well as positive social impact and reduction of financial exclusion and inequality. Such countries also tend to benefit from more efficient allocation of resources, less debt lingering on over-indebted consumers that are unable to properly participate in the economy and higher medium-term productivity growth.[53] It is for these exact reasons that we need a pan-European personal insolvency framework. The current patchwork of personal insolvency frameworks across the EU have fallen short of providing fair access and a true fresh start for the over-indebted.

The time to act is now. The current circumstances show why it is urgent to work towards providing such a harmonised framework for Europe.

[51] Gerard McCormack, *The European Restructuring Directive* (Edward Elgar Publishing 2021), 216.
[52] Eurofound (n 40),51.
[53] Krzysztof Bańkowski and others, 'The macroeconomic impact of the Next Generation EU instrument on the euro area' (Occasional ECB Paper, Series No 255/January 2022).