

## II

(Preparatory Acts)

## ECONOMIC AND SOCIAL COMMITTEE

**Opinion of the Economic and Social Committee on 'Household over-indebtedness'**

(2002/C 149/01)

On 13 July 2000 the Economic and Social Committee, acting under the third paragraph of Rule 23 of its Rules of Procedure decided to draw up an opinion, on 'Household over-indebtedness'.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 8 April 2002. The rapporteur was Mr Ataíde Ferreira.

The Committee adopted the following opinion at its 390th plenary session of 24 and 25 April 2002 (meeting of 24 April) by 78 votes to six with eight abstentions.

**1. Over-indebtedness — a topical issue**

1.1. On 13 July 1992, in a Resolution on future priorities for the development of consumer protection policy, the Council for the first time included research into over-indebtedness as being one of these priorities.

1.2. From that time on, although the phenomenon of over-indebtedness is acknowledged to have assumed increasing importance at national level in the various Member States, warranting the adoption of specific laws and administrative measures in most of these countries, no policy measures whatsoever have been taken at Community level. This is in spite of the study carried out by Professor Nick Huls<sup>(1)</sup>, and the highly professional monitoring work on the question by DG SANCO.

1.3. On 27 May 1999, the Economic and Social Committee decided to instruct the Section for the Single Market, Production and Consumption to draw up an information report on 'Household over-indebtedness', which was subsequently sent to all the Community institutions by decision of the plenary assembly.

1.4. In the course of the Portuguese presidency, while this report was being drafted, the Consumers' Council meeting in Luxembourg on 13 April 2000 broached this subject again

and drew the Commission's and Member States' attention to the need for the Community to tackle this matter.

1.5. The ESC information report concluded by recommending that the Commission 'make an initial move in this direction by immediately preparing a green paper on household over-indebtedness in Europe, incorporating available research into the issue, providing an up-to-date picture of legal arrangements and statistical data from the Member States and the applicant countries, working towards a single definition of over-indebtedness, and defining its preferred approach to achieve the objectives identified in the present information report'.

1.6. In the wake of this recommendation, it is known that the Commission called for tenders for two studies to be carried out in the Member States, one on statistical aspects and the other on the various legal arrangements covering over-indebtedness.

In the meantime, it has emerged that the Commission has not accepted the study on the legal aspects and has cancelled the relevant contract, and that in examining the statistical study it is encountering difficulties in comparing the data gathered — which is not unexpected given the differing understanding and approaches to the issue in the various Member States. It has not yet officially revealed what tack if any it intends to adopt for dealing with this issue, and it may be that the question will

(1) Over-indebtedness of consumers in the EC Member States: facts and search for solutions, Nick Huls et al., in Collection Droit et Consommation No 29, 1994.

be left out of its action programme. However, the one-off measures resulting from the review of the directive on consumer credit, albeit partial, are to be welcomed.

1.7. As part of its moves to draw up the present own-initiative opinion, the ESC decided to hold a public hearing in Stockholm on 18 June 2001, with support from the Swedish Presidency, designed to collate up-to-date information and to compare the variety of experiences in this sphere in the Nordic countries — an aspect which was noticeably missing from the information report mentioned above.

1.7.1. At this hearing, the Swedish Secretary of State for Justice took the opportunity to point out the value the Swedish government attached to adopting a Community approach to this issue, aimed at finding a solution to the disadvantages flowing from both the diversity of national approaches in this area and the variety of lines of action selected by the different Member States, with uneven results <sup>(1)</sup>.

1.8. Shortly after, on 2 July 2001, the 'Consiglio Nazionale dei Consumatori e degli Utenti (the National Council for Consumers and Users)', held a major conference together with the European Commission on 'Competition rules in the EU and banking systems compared' at which the Head of the SANCO DG's Financial Services Unit presented the guidelines followed in the proposal for the new consumer credit directive, and Community aspects of over-indebtedness problems were discussed <sup>(2)</sup>.

1.8.1. The SANCO DG also took the initiative to hold a hearing with government experts in Brussels on 4 July 2001 to discuss proposed amendments to the consumer credit directive, at which some aspects were highlighted to relating over-indebtedness prevention.

1.9. In the course of the Belgian presidency, a major colloquium was held in Charleroi on 13 and 14 November 2001 on 'Consumer credit and Community harmonisation', where inter alia, the Belgian Minister for Economic Affairs and Scientific Research made a point of highlighting the social and economic aspects of the problem and how these were linked to the development of financial services and cross-frontier trade within the internal market <sup>(3)</sup>.

<sup>(1)</sup> One point from the Secretary of State's speech to highlight is his comment that 'there is a real risk that the current diversity of arrangements within the European Union might contribute to an increase in the number of technical barriers to the free movement of goods and services within the single market'.

<sup>(2)</sup> In Italy, ADICONSUM (a consumer organisation), together with other NGOs and a number of credit institutions, has promoted draft legislation for handling cases of household over-indebtedness.

<sup>(3)</sup> On 25 January 2002 the Belgian Government adopted draft legislation on consumer credit, in which advertising which might encourage over-indebtedness is prohibited.

1.10. The Internal Market, Consumer Affairs and Tourism Council meeting on 26 November 2001 merits particular attention: amongst other statements and recommendations made by the ministers, it was felt that 'divergences as regards both the preventive and the social, legal and economic treatment of over-indebtedness in the Member States could therefore give rise to considerable disparities both between European consumers and between credit-providers' and as a consequence, 'taking into account both the European Community's desire to develop cross-frontier activities relating to financial services and the growing scale of the phenomenon of indebtedness and over-indebtedness, consideration could be given at Community level to complementing the measures to promote the development of cross-frontier credit with measures to prevent over-indebtedness throughout the one credit cycle'.

## 2. Household over-indebtedness — the Community dimension

2.1. Over-indebtedness is a phenomenon with social, economic, financial, legal (civil and procedural) and, of course, political aspects, all of which merit being tackled at Community level.

2.1.1. From the perspective adopted by this own-initiative opinion, legal aspects with a direct impact on policies for making the single market a reality are fundamental.

2.2. The studies and hearings which have been carried out have unequivocally demonstrated that developing a cross-frontier financial services market requires the trust of producers, traders, professionals and consumers.

2.2.1. A vital element for securing this trust is, on the credit providers' side, transparency of the rules regulating the market, even in cases of payment default.

2.3. Although it is true that a large number of payment default cases — default constitutes the first step towards over-indebtedness — can be dealt with under rules on credit provision, in particular on consumer credit, there is a whole series of measures for preventing and dealing with over-indebtedness which fall more within the policy areas of justice and the single market.

2.4. Bearing in mind the subsidiarity principle and the new wording of Article 153 of the Treaty of Rome and of Article 34 of the Treaty of Amsterdam a Community-wide approach to the essential legal aspects of household over-indebtedness is not only possible, but absolutely vital to the single market's effective operation.

2.5. This claim is based on three fundamental reasons.

2.5.1. The first reason is the convergence of competition conditions between those granting credit to private individuals, ranging from credit institutions and other financial operators to actual traders and service providers in credit and instalment sales.

2.5.2. The second concerns the way the single market itself works: while it is 'single' from the point of view of opportunities for cross-frontier transactions, it is split between various national legal systems when dealing with issues generated by this market. In the light of recent approaches, in particular in the field of e-commerce and distance sales of financial goods and services, it is entirely reasonable for arrangements for household over-indebtedness to be harmonised, as has already been done with commercial insolvency: otherwise new barriers to competition and further distortions of business competitiveness will be generated.

2.5.3. The third reason is directly linked to consumer protection and arises from the provisions of new Treaty Article 153. Paragraph 3(b) of the Article now expressly states that the Community shall contribute to the attainment of the objectives referred to in its paragraph 1 — which unarguably include resolving instances of over-indebtedness — through 'measures which support, supplement and monitor the policy pursued by the Member States'. This dispels any remaining doubt as to the need for household over-indebtedness to be framed in a Community policy ensuring harmonisation of national initiatives in this field, without which unjustifiable discrimination will occur against either sellers or consumers.

2.6. Three other circumstances point to the need for immediate action by the Commission.

2.6.1. The first relates to the physical introduction of the single currency and the impetus that this will provide to cross-frontier trade and consequently to the credit involved, eliminating one of the main acknowledged barriers to cross-frontier transactions.

2.6.2. The second circumstance arises from the increase in electronic trade and distance selling, with all that the directives on these subjects aim to contribute to the elimination of geographical and logistical barriers and to increased trust between professionals and consumers. The imminent approval of the proposed directive on the distance selling of financial services will supplement the legal framework necessary for boosting cross-frontier credit.

2.6.3. Lastly, the upcoming enlargement of the European Union calls at the very least for immediate harmonisation before the legal framework becomes even more complex and hard to manage.

### 3. Conclusions and recommendations

3.1. The ESC thus concludes that:

- a) over-indebtedness is a phenomenon which has become widespread throughout all the countries of the European Union and is a problem in the applicant countries, with a tendency to become worse with the opening of borders and cross-border trade;
- b) most countries in the European Union have devised and implemented national systems for preventing and dealing with a variety of over-indebtedness situations; these systems are highly diverse and at times even at variance with one another, both in terms of the basic laws and the judicial and administrative procedures applied;
- c) these differences generate barriers to the development of cross-frontier credit and to the achievement of the single market, itself, and do nothing to generate the necessary confidence amongst economic operators in the single market's potential and benefits;
- d) an effort should therefore be made to harmonise the legal aspects relating to over-indebtedness; such harmonisation is possible as part of the provisions contained in Articles 2 and 34 of the EU Treaty and current Articles 3 t) and 153 of the Treaty of Rome.

3.2. The ESC thus recommends:

3.2.1. that the Commission:

- a) immediately and officially publish the results of the study it commissioned on the statistical aspects, and issue a fresh call for tenders for a study on comparative law on over-indebtedness in Europe;
- b) draw up a green paper as soon as possible analysing the consequences of the current situation from the point of view of completing the single market;
- c) propose measures for harmonising the legal framework for preventing and dealing with over-indebtedness, relating to matters of both substance and procedure, in accordance with the principles of subsidiarity and proportionality and taking account of the provisions of Articles 2 and 34 of the EU Treaty and Articles 3 and 153 of the Treaty of Rome;
- d) define and set up a network for exchanging information between Member States and the Commission to follow developments in household over-indebtedness in Member States and the applicant countries, aimed at establishing a European Over-indebtedness Observatory;

e) pay particular attention to the potential impact of the adoption of measures in a variety of Community policy areas — particularly consumer credit and mortgage loans, commercial communications, advertising and marketing and commercial practices — on creating or exacerbating household over-indebtedness;

3.2.2. that the Member States:

- a) continue along the path embarked upon with the Resolution of 13 July 1992 and resumed at the Consumer Council meetings of 13 April 2000 and 26 November 2001, until a legal framework is devised for a Community approach to household over-indebtedness;
- b) consider the possibility that some legal aspects of over-indebtedness be dealt with in regulations similar to those covering business insolvency arrangements;
- c) urge the Commission to look into and present, in the light of experience and information exchange with Member States, harmonisation proposals on the information consumers should be given on credit contracts, the use of data on their solvency, the role of credit intermediaries and financial companies, procedural

arrangements for dealing with payment default and special procedures for payment recovery;

- d) consider the possibility of setting up codes of conduct on a voluntary basis, by means of co-regulation, to settle cases of over-indebtedness;
- e) envisage cooperation options aimed at dealing with excessive multiple debt situations stemming from cross-frontier loans using non-judicial means;
- f) promote information and education campaigns, from early school age onward, designed to prevent over-indebtedness.

3.2.3. and that the Council and European Parliament:

- a) clearly and unequivocally accept the need for initiatives at EU level to harmonise the legal aspects of over-indebtedness arrangements, as set out in point 3.2.2.(c) above;
- b) provide the Commission with the budgetary resources required to continue monitoring over-indebtedness and to take the preparatory steps needed if the legislative harmonisation measures described above are to be adopted.

Brussels, 24 April 2002.

*The President  
of the Economic and Social Committee*  
Göke FRERICHS

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