STEPS TOWARDS HARMONISING AND IMPROVING CONSUMER INSOLVENCY RULES IN THE EUROPEAN UNION

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Abstract

At various stages of the development of human society, personal insolvency has been studied in depth and analyzed in relation to various jurisdictions. Looking at the overall picture in the European Union just ahead of the implementation date of the restructuring and insolvency Directive 2019/1023/EU, most Member States had some rules on consumer insolvency. Research and evidence from these areas indicate that recourse to personal insolvency proceedings not only makes economic sense, but is also necessary to protect the fundamental rights of human beings but also the rights of consumers. However, a fundamental problem that arises in the EU is related to the ability of the various legislative frameworks in Europe to address the problem of over-indebted citizens in a more uniform way, especially since personal debts can originate in various states and can generate cross-borders issues so that certain harmonization revisions were seen as necessary. The Covid-19 crisis has added urgency to an already delayed review of these frameworks. In their efforts to mitigate the economic effects of the COVID-19 pandemic on consumers, some measures introduced by Member States, although largely uncoordinated, reflect an upward trend towards harmonization and a convergence towards common approaches. This paper questions whether the personal insolvency frameworks in different Member States provide adequate answers to the personal bankruptcies induced by the COVID-19 pandemic in different European countries. Thus, the study reveals the current inadequacy of legal procedures for determining the insolvency of the debtor in various jurisdictions of the Union to the particular situations induced by the pandemic, the limitations of the current approach to the recovery of the debtor and the lack of harmonization in personal insolvency between Member States. Finally, the paper proposes steps to follow and key recommendations for an EU consumer insolvency directive.

Keywords: *personal insolvency, Directive 2019/1023/EU, consumer rights, harmonization, COVID-19 effects.*

1. Introduction

In modern times, credit is the basis of the economy, so that those who take out a loan may in some cases become overly indebted for reasons over which they do not always have control, personal business management being difficult and sometimes even impossible. The consumerist society has developed an economic model in which credit has become widely available to the vast majority of consumers. People access these financing products in the form of loans for personal needs, mortgages, overdrafts or credit cards. According to some studies, the primary causes of over-indebtedness include "life accidents"[1]: loss of employment or ability to work, health problems, divorce, reduced income so that the cost of living by using credit is inherently risky. If something does not work properly, the result is the consumer's over-indebtedness.

Personal insolvency has been studied and analyzed on a large scale and for long periods. It is to some extent available in most European countries and in many developed countries around the world. With regard to the categories of debtors against whom insolvency proceedings could be initiated, it is undeniable that most national regulations have taken into account the business sector, traders or individuals have long been ubiquitous in this category. As for insolvency, it has been and still is considered in those legal systems that refuse to regulate it extensively as a tool for consumers as a solution for professionals only and therefore unsuitable for individuals. These procedures, when recognized in law, generally have different purposes: if the insolvency proceedings of professionals are aimed at paying the debts of creditors, the insolvency proceedings of individuals seek to protect debtors against measures taken by creditors.

For instance, European Union law does not differentiate between traders and non-traders in the application of insolvency proceedings. Council Regulation (EC) no. 1346/2000 of 29 May 2000 on insolvency proceedings provides, in paragraph (9)[2], that there should be no differentiated regime between

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[1] https://londoneconomics.co.uk/blog/publication/study-on-means-to-protect-consumers-in-financial-difficulty-personal-bankruptcy-datio-in-solutum-of-mortgages-and-restrictions-on-debt-collection-abusive-practices/.

[2] (9) This Regulation should apply to insolvency proceedings, whether the debtor is a natural person or a legal person, a trader or an individual. The insolvency proceedings to which this Regulation applies are listed in the Annexes. Insolvency proceedings concerning insurance undertakings, credit institutions, investment undertakings holding funds or securities for third parties and collective investment undertakings should be excluded from the scope of this Regulation. Such undertakings should not be covered by this Regulation since they are

traders and non-traders on insolvency. The Regulation thus recommends that Member States establish identical treatment of debtors in insolvency proceedings, without distinction between natural or legal persons, traders or non-traders. Council Regulation (EC) no. 1346/2000 also applies to natural persons as consumers, provided that the national procedures are listed in its Annex A. The national procedures listed do not include the large number of national insolvency laws as they were adopted later by the Member States.

Therefore, the adoption of legislation regulating the insolvency of natural persons was not only necessary but also mandatory, given that the provisions of Regulation (EC) no. Council Regulation (EC) no. 1346/2000 of 29 May 2000 on insolvency proceedings requires Member States to extend insolvency proceedings to natural persons. The limits of Regulation (EC) no. 1346/2000, among other things, concerns only cross-border insolvency.

2. Brief presentation of the legal framework on insolvency of individuals in other Member States of the European Union

Research[3] and expert evidence[4] confirm that the introduction of consumer insolvency frameworks makes economic sense and is necessary to protect the fundamental and human rights of citizens.

Three major schools on how to resolve the conflicting interests of creditors and debtors, identified by Kilborn[5] in several studies. 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.

These are:

- The Nordic approach: the Nordic countries were the first to address the issue of the correctness of the concept of non-fulfillment of contractual obligations in order to get rid of over-indebtedness. They condition the exit from insolvency in the form of personal bankruptcy by the application of a "test of good faith". Individuals cannot access solutions for over-indebtedness if their behavior is considered to have been in bad faith such as taking out very large loans even before resorting to a path of financial recovery or if it is proven that they have not done enough efforts to repay loans.

- The German approach, initially implemented in Germany, Austria and Estonia. Unlike the Nordic model, it allows any individual access to a solution, but then requires compliance with a payment plan whose rationale is shaped by strict rules, whereby the debtor must honor as much of the debt as possible. The German model applies clear, standardized rules so that both debtors and creditors know exactly the consequences, whether they are or do not agree with a particular solution.

- The Latin model is characterized by greater freedom of action. This method is applied in the Benelux countries and in France and is an approach according to which voluntary agreements between debtor and creditor have been encouraged as much as possible, and the role of the courts is reduced to the control of the legality of the whole procedure. This is limited to the general rule that lawsuits are cumbersome, payment plans are lengthy, and the conditions for obtaining a debt relief are difficult, so that voluntary agreements are more advantageous.

With regard to the scope of the insolvency proceedings of the natural person, some jurisdictions limit the application of the law to natural persons whose debts are not incurred in connection with the conduct of business. In other jurisdictions, the scope is extended to include retailers.

Representatives of financiers (IMF) has pointed out that limiting the application of the procedure only to consumers raises the question, on the one hand, of the procedure applicable to natural persons engaged in commercial activities and, on the other hand, of the options available to such persons, in accordance with the general national insolvency framework[6].

Although there is no uniform approach in this regard, current areas of consumer insolvency can be broadly classified into three types: bankruptcy, debt settlement procedures or informal arrangements.

There are jurisdictions governing out-of-court procedures that apply in addition to court proceedings. It should be emphasized, however, that the opening of proceedings entails the limitation of the debtor's ability to dispose of his assets.

In recent years, Member States' jurisdictions have taken a much more active approach to insolvency. The recession following the 2008 credit crunch has brought this issue back to the attention of governments

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subject to special arrangements and, to some extent, the national supervisory authorities have extremely wide-ranging powers of intervention. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32000R1346.

[3] https://www.elibrary.imf.org/view/journals/001/2021/152/article-A001-en.xml.

[4] https://www.elibrary.imf.org/view/journals/001/2019/027/article-A001-en.xml.

[5] Kilborn, Jason J, *Two decades, three key questions, and evolving answers in European consumer insolvency law. Responsibility, discretion, and sacrifice*, în Johanna Niemi, Iain Ramsay, William C. Whitford, Consumer credit, debt and bankruptcy. Comparative and international perspectives, Oxford, Hart Publishing, 2009, pp. 307-329.

[6] Amira Rasekh and Anjum Rosha *Restructuring and Insolvency in Europe: Policy Options in the Implementation of the EU Directive*, https://www.elibrary.imf.org/view/journals/001/2021/152/article-A001-en.xml.

trying to address the problem of social hardship by creating consumer debt adjustment mechanisms.

Looking at the overall landscape in the European Union, prior to the implementation of Directive 2019/1023/EU on restructuring and insolvency, it is found that most Member States had some rules on consumer insolvency in place, each of them aiming to balance the interests of insolvent persons, those of creditors and society. Assessing current frameworks in terms of good practice and recurring shortcomings, problems with current regulatory frameworks fall into two main areas: the difficulty of individuals accessing the procedure and the failure to truly give them a fresh start or a second chance.

Best practices are identified as: a short process, which operates in accordance with clear and non-court-based rules, in which debt cancellation occurs during a short repayment plan.

It is also preferable for the procedure to allow the debtor's rehabilitation to take place after a sufficiently short period of time to be fully reintegrated into a social and economic life.

In principle, a natural person is considered to be insolvent when its assets do not have sufficient funds available for the payment of debts, as they become due. It should be emphasized, however, that the opening of proceedings entails the limitation of the debtor's ability to dispose of his assets.

With the efforts of lawmakers at Union and Member State level, personal bankruptcy has become more widespread in Europe[7].

3. Steps for harmonising and improving consumer insolvency rules in the European Union

When the financial crisis erupted in Europe in 2008, weaknesses in Member States' insolvency laws became apparent, leading EU authorities to consider a paradigm shift in the purpose of insolvency law. Primarily, in European jurisdictions based on Roman law, bankruptcy regulations had focused on the rights of creditors, the control that creditors have over the assets of debtors, and the satisfaction of creditors' claims. For more than a millennium, "the classical reaction to insolvency ('bankruptcy') was punishment of the debtor and comprehensive liquidation and distribution of the debtor's property among the creditors."

A change of vision in Europe happens only at the beginning of the 21st century, and even then only to a limited extent. At a time when economic instability is expected to affect households and the consumer credit market, emerged the need to rethink the European Union's legislative architecture in line with international standards and to harmonize national practices. At European level, protecting the debtor's dignity and ensuring his or her minimum living standards, regardless of the level of outstanding debts, tend to become the principles governing the legal treatment of over-indebtedness.

It was when the global crisis loomed on the horizon in June 2007 and Member States' governments came together to commit to addressing "debt issues" with legal solutions. They have made collective recommendations to the Council of Europe (CoE) to address debt and over-indebtedness issues by calling for legal action transposed by legislation in this area. The Council of Europe's recommendations also provided a clear way to address key issues in the debt of individuals and families. These recommendations formed the basis of a definition of over-indebtedness[8] and set crucial policy objectives for the various European governments to pursue in post-crisis reforms. Recommendation CM / Rec (2007)8[9] of the Committee of Ministers to Member States on legal solutions to debt problems which, although not binding on regulations, cannot be ignored in substantiating Directive 2019/1023 / EU. Thus, para. (32) states that a debt adjustment procedure leads to the adoption of a payment plan, which must contain the amount that the debtor is required to pay periodically to creditors, as well as a reasonable time frame within which such payments would be made must be completed.

Further on EU initiatives aimed to harmonise of insolvency rules and to establish a distinct regime for natural persons crystallised with the adoption of the European Commission Recommendation on a New Approach to Business Failure and Insolvency in 2014 (ECR 2014) [10] and the European Insolvency Regulation Recast 2015 (EIRR 2015)[11],

One more step into the course of a EU consumer insolvency regulation is the Preventive Restructuring Directive 2019 (PRD 2019)[12] on preventive

[7] For an exhaustive list of good practices, see: *From debtor prisons to being prisoners of debt. Making the case for harmonised EU consumer insolvency rules*: A Finance Watch report, January 2022, pp. 11-12.

[8] For a definition of over-indebtedness see Research note 4/2010 Over-indebtedness New evidence from the EU-SILC special module, p. 4*:"An over-indebted household is, accordingly, defined as one whose existing and foreseeable resources are insufficient to meet its financial commitments without lowering its living standards, which has both social and policy implications if this means reducing them below what is regarded as the minimum acceptable in the country concerned."*

[9] https://rm.coe.int/09000016807096bb.

[10] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014H0135.

[11] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R0848.

[12] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32019L1023.

restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency). Into the preamble of it is stated: (21) *Consumer over-indebtedness is a matter of great economic and social concern and is closely related to the reduction of debt overhang. Furthermore, it is often not possible to draw a clear distinction between the debts incurred by entrepreneurs in the course of their trade, business, craft or profession and those incurred outside those activities. Entrepreneurs would not effectively benefit from a second chance if they had to go through separate procedures, with different access conditions and discharge periods, to discharge their business debts and other debts incurred outside their business. For those reasons, although this Directive does not include binding rules on consumer over-indebtedness, it would be advisable for Member States to apply also to consumers, at the earliest opportunity, the provisions of this Directive concerning discharge of debt.* The directive aims to address business insolvency, but leaves an option for EU Member States to apply some of the rules to individual citizens.

Although the harmonisation of insolvency laws has been at the top of the European institutions' agenda over the last decade, the COVID-19 pandemic has revealed some of the limits of these EU's harmonisation efforts and the Covid-19 crisis has made the already delayed review of these insolvency frameworks an urgent one. Previously, the analysis of the existing framework had proved its inadequacy in addressing the issue of over-indebted citizens in situations of normal functioning of the economy.

It takes a long time for the EU legislature to adopt a completely new regulatory framework, as is the case with decisions, directives and regulations. On the other hand, recommendations and opinions can be adopted more quickly, but they are not binding on Member States. For the time being, the EU legislator has had to leave it to national governments to address the immediate effects of the crisis, and they have responded with financial support for Covid-19 or debt moratoria[13], which have mitigated the full impact of the crisis. Meanwhile the economic recovery of over-indebted European households may be hampered by the pandemic and also due to the war on the EU border.

The next steps towards harmonising and improving consumer insolvency rules in the European Union are provided by the Directive 2019/1023/EU[14].

Under recital (98), ”*a study should be carried out by the Commission in order to evaluate the necessity of submitting legislative proposals to deal with the insolvency of persons not exercising a trade, business, craft or profession, who, as consumers, in good faith, are temporarily or permanently unable to pay debts as they fall due. Such study should investigate whether access to basic goods and services needs to be safeguarded for those persons to ensure that they benefit from decent living conditions.”*

In the Review Clause (art. 33) is stated that *„no later than 17 July 2026 and every five years thereafter, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application and impact of this Directive, including on the application of the class formation and voting rules in respect of vulnerable creditors, such as workers. On the basis of that assessment, the Commission shall submit, if appropriate, a legislative proposal, considering additional measures to consolidate and harmonise the legal framework on restructuring, insolvency and discharge of debt.”*

For the next course of the process of lawmaking:

- by 2022 the European Commission should conduct the study required under recital (98) of the Restructuring and Insolvency Directive 2019/1023/EU;
- also in 2022 European Commission to collect and review information on Member State transposition of art. 1 (4) of the Directive.

After analyzing the data, there are two options to move forward:

- in 2023 to compile the results and propose a new standalone consumer insolvency directive or
- according to art. 33, in 2026, to include a new chapter on consumer insolvency as part of a revision of the Restructuring and Insolvency Directive 2019/1023/EU.

4. Aspects regarding the good faith of the debtor

The insolvency procedure of the natural person, whether it takes the radical form of immediate liquidation of the traceable assets or is done on the basis of the financial recovery plan proving the efforts of the over-indebted consumer to pay, grants the debtor discharge of uncovered debts only conditionally by the debtor’s good faith.

When it is in default, good faith is the intention of the honest debtor to use the insolvency proceedings to

[13] See, for example, Comparative Table of Insolvency Related Measures Adopted or Planned for Adoption in Member States (European Commission, Directorate-General Justice and Consumers 2020) (August 19, 2021), available at: https://e-justice.europa.eu/fileDownload.do?id=8c19af5d-3e73-4de9-994b-0b975101b5eb.

[14] https://www.eumonitor.eu/9353000/1/j9vvik7m1c3gyxp/vkzpoa70klz4.

get a fresh start, getting rid of oppressive debts that have been incurred either because of circumstances beyond his control, such as those contracted for unexpected medical conditions, caused by the loss of a job, or due to a recession, or because the debtor did not manage his finances well, but without being seriously guilty. On the contrary, when bad faith intervenes, the subject may borrow money that he does not intend to return or is aware that he cannot return it. Because good faith is necessary to achieve the purpose of the bankruptcy proceedings, the court will punish the lack of good faith, either by rejecting the debtor's claim without releasing the debtor, or by lifting the suspension of foreclosures, which prevented creditors from confiscating the debtor's assets or income in order to pay the debts.

With regard to the good faith of the debtor in the case of the insolvency of natural persons, two main typologies are recognized internationally:

- the Anglo-American model, called "fresh start";
- the continental-European version, also known as the deserved fresh start.

According to the Anglo-American model, almost any individual debtor can benefit from the effects of the law, while the second procedure, adopted by most European states in the field of insolvency of individuals, can only benefit the debtor who has reached the situation of impossibility to payment of current debts due to causes beyond his control or due to unforeseen causes, provided that he was in good faith.

5. Barriers and limitations in access to personal insolvency for debtors

The debtor's access to insolvency proceedings may be subject to several eligibility conditions, including a certain minimum level of debt.

Difficulties also arise in setting the minimum amount to be recovered by creditors in insolvency proceedings. This is a key issue for many low-income, low-assets or no-income and no assets borrowers (the so called 'NINA' – no income, no asset consumers - or 'LILA' – little income, little asset consumers), which can rule them out from the procedure *ab initio*. For the poorest borrowers, the costs of the procedure itself can also be a hindrance. Other thresholds refer not only to the amount of outstanding debt a person has, but also to their seniority, and the result is that access to proceedings is restricted to those who, although sufficiently indebted, payment incidents are not long enough. Where unpaid debt thresholds reach relatively high levels, a large number of other insolvent debtors may also be excluded if they do not fall under the scale. The debtor should be able to request that the proceedings be opened when it is reasonably foreseeable that he will not be able to continue to pay the debts at maturity. In other words, when the state of insolvency become imminent and not when it is found that he/she cannot pay the debts at maturity. This would allow the borrower to apply for debt restructuring at an early stage, thus increasing the prospects for creditors to settle and recover debts.

In some states, the debtor must demonstrate that he or she has consulted with an authorized intermediary, obtained advice, or attempted a method of settlement by agreement with creditors before filing for insolvency. For example, in Germany, in some cases, the admissibility of the application also requires certification by a lawyer or a consulting agency that the debtor has tried to reach an out-of-court settlement with his creditors in the last six months, to no avail, as well as the reasons for not reaching such an agreement.

Although obviously extremely concise, this statement of the problems currently posed by the conceptualization and legal treatment of the over-indebtedness of the consumer of credit, it raises the need to harmonize at Community level the procedure of consumer insolvency through a tool that would complement the architecture of European Union legislation on the subject.

6. Personal insolvency in Romania

Due to the relaxed lending conditions for the population in the few years of economic boom before the mortgage crisis of 2008, Romanians became over-indebted to banks and sometimes the monthly instalment exceeded the income. But shortly after the crisis broke out, and with the austerity measures being taken, a significant number of Romanian consumers could no longer pay off their bank loans, and then the need for a debt discharge regulation for individual debtors began to be felt.

Despite the resistance, especially from financiers, a number of steps have been taken in Romania to help consumers, especially by reviewing and refreshing the regulations that apply to creditors who grant loans to individuals, aimed on preventing over-indebtedness[15]. However, Regulation no. 24 from 28.10.2011 on granting loans to individuals which laid down provisions on sound lending practices and stricter rules for banks when setting the maximum amount that the consumer can borrow, could only apply to future borrowers, not for previously contracted debts.

The beginning of 2018 marked the entry into force of the Insolvency Law for individuals, Law no. 151/2015 on bankruptcy of individuals ("Law no. 151/2015"), which entered into force on 1 January

[15] NBR Regulation no. 24 from 28.10.2011 on granting loans to individuals, https://legislatie.just.ro/Public/DetaliiDocumentAfis/132549.

2018. The law establishes a collective procedure for recovering the financial situation of debtors-individuals in good faith, covering their liabilities and discharging their debts. Prior to the entry into force of the Personal Bankruptcy Law, the Romanian legislation regulated only the insolvency of legal entities.

The Law regulates three separate procedures that pursue to safeguard debtors from discretionary enforcement procedures and on the other side to maximize the amounts recovered by creditors. These are:

- recovery plan procedure: a general insolvency procedure based on a debt recovery plan;
- liquidation procedure: insolvency procedure based on liquidation of assets;
- simplified procedure: simplified insolvency procedure.

Law no. 151/2015 has in its center the idea of protection of the debtor natural person who is in good faith, so that the provisions do not benefit the debtor in bad faith. As a result, the purpose of the Insolvency Law of individuals cannot be to impose a stigma on those who use the benefits of the law, its negative effects can only be felt in terms of access to credit and other financial instruments and does not limit access to the labor market or publicly discrediting the individual

According to Law no. 151/2015, the insolvency of a natural person debtor "is presumed when he, after a period of 90 days from the due date, has not paid his debt to one or more creditors". Therefore, only those who have debts of more than three months to at least one creditor can apply for the initiation of insolvency proceedings.

The provisions of Law no. 151/2015 applies to individual debtors who have their domicile, residence or habitual residence for at least six months prior to the submission of the application in Romania and who are in a state of insolvency and there is no reasonable probability of becoming able within one year to perform again their obligations as contracted, while maintaining a reasonable standard of living for themselves and their dependents.

6.1. Conditions and barriers to make use of Law no. 151/2015 by the debtors

The insolvency proceedings may not be applied to natural persons who have previously been the subject of such proceedings (completed with the elimination of residual debts) less than five years prior to the filing of a new application for insolvency proceedings or those already in such a procedure.

With regard to this instrument of treatment of the installed over-indebtedness of the individual, the scope of application of the Law no. 151/2015 distinguishes fairly and efficiently between excusable and non-excusable over-indebtedness. Nor can resort to insolvency proceedings those who have been definitively convicted of an offense of tax evasion, forgery or intentional infringement of property by disregard of trust, those who have been dismissed in the last two years for reasons which are attributable to them, those who, although fit for work, did not make an effort to engage in or unjustifiably refused a proposed job or any other activity that could bring them income, but also those who accumulate new debts while in a state of insolvency[16].

In the context of the Covid-19 pandemic, some criticisms could be brought against Law no. 151/2015.

Thus, according to art. 4 para. (4) letter c): the procedure does not apply to the debtor who has been dismissed in the last 2 years for reasons attributable to him.

We consider it appropriate to waive this provision, which limits access to proceedings for debtors who have had the misfortune to lose their jobs in the last two years, for reasons which are not always and entirely attributable to them, some of them being unpredictable, if we refer to the appearance of a pandemic.

Another debatable aspect of that provision is that, if the employee challenges the dismissal decision and goes through all the steps in court, including a reversal of the case with reference to retrial, only at the end of the trial which could exceed two years, in the event that the court issues a final judgment stating that the reasons are not attributable to him, the employee may make a request to initiate proceedings.

During all this time, the employee who has been dismissed for reasons considered imputable by the employer does not have the opportunity to address the territorial insolvency commission.

Moreover, if the text of the law were to apply strictly, neither the debtor who, after being dismissed for imputable reasons, had concluded a new employment contract could benefit from the effects of the procedure.

In art. 4, para. (4) letter d): provides that it cannot benefit the category of debtors natural persons who, although fit for work, have not made the reasonable diligence necessary to find a job.

By the above provisions, the legislator has restricted access to this procedure to individual debtors who have made no effort to find a job, in case they are

[16] Romanian Law no. 151/2015, in its turn, offers a definition of insolvency. According to point 12 of art. 3, Definitions, "insolvency is that state of the debtor's patrimony which is characterized by the insufficiency of funds available for the payment of debts, as they become due. The insolvency of the debtor is presumed when, after a period of 90 days from the due date, he has not paid his debt to one or more creditors. The presumption is relative."

in debt. The law does not determine what this "reasonable diligence" means, leaving it to the discretion of the insolvency commission or the court to assess whether or not the debtor has made the reasonable diligence to find a job. In the context in which millions of employees were in a situation of technical unemployment for certain periods of time in the last years of the pandemic, the submission of reasonable diligence could inevitably result in failure, even if it took steps to the employee, including proving that he is registered with the Employment Agency without being offered a job.

As a result, it would have been useful for the legislator to specify exactly what these "reasonable diligences" are, so that the text of the law gives rise to as few interpretations as possible.

If we consider the pandemic as an unpredictable event that has affected the whole society and the global economy, we consider that the legislator would take an important step in the event of an amendment to the Insolvency Law of natural persons, namely if, apart from good faith of individual debtors, the law could, under certain conditions, apply to individuals who have shown bad faith, but who could benefit from a "new chance" and the family of the bad faith debtor and/or the dependents of the debtor, could also take advantage of this chance.

Another[17] important deficiency of Law no. 151/2015 in the light of the coordinates drawn by this paper is the fact that the treatment of cross-border insolvency was omitted. A further revision of the act should take into account the issues of the recognition and enforcement of foreign insolvency judgments in matters of insolvency of individuals.

7. Conclusions

Although beneficial to the debtor in good faith, recourse to the procedure of personal bankruptcy should not become a habit for debtors. The legislator should prevent the abuse of this remedy, and the insolvency proceedings of the individual should be regulated so that the use of the personal bankruptcy procedure does not become recurrent and the individual does not repeatedly become insolvent. The legislator should also consider the causes that led to insolvency, assessing, as far as possible, good faith, without neglecting the preparation of a payment plan and proper supervision of compliance with it.

Regarding the rationale for regulating the insolvency of the natural person, this exists as long as the law establishes a framework that offers both the debtor and the creditor accessible and viable remedies. In order to achieve these goals, the balance between debtor and creditor must be ensured, but at the same time, an equilibrium must be ensured at the technical level, between the philosophy of regulation and the way it is transposed into law through the establishment of clear and well determined legal assumptions. Whatsoever option the legislator adopts, it is necessary to clearly define the scope of the law and the eligibility requirements for the debtor, as well as the explanation of the principles and logic that led to the solution, in order to determine whether the limits and requirements are adequate.

If the concern of the legislator is to provide a legal framework that provides solutions to the debtor to get out of default, this concern should target all debtors, providing them with viable and accessible solutions, as appropriate.

The main aim currently pursued at European level in private insolvency proceedings is, therefore, to rehabilitate the consumer, avoiding punitive measures against him as a result of the impossibility of paying debts.

The fact that debts are only partially recovered in the event of consumer bankruptcy should also encourage creditors to pay more attention to lending, helping to prevent over-indebtedness through responsible lending. However, the existence of a way to get out of debt through personal insolvency also creates a moral hazard problem in society, as consumers might be encouraged to engage in overly risky indebtedness. Therefore, the law should provide for bankruptcy relief only for those who are in real need, the truly insolvent debtors in whose case the inability to pay would generate social costs in the absence of debt write-down. In order to fully address over-indebtedness, Europe needs to address other variables, including cross-border insolvency.

In order to limit the risks of over-indebtedness of individuals, the macro-prudential policy should aim not only to improve the credit worthiness assessment, but also to limit the indebtedness of households.

The indebtedness is often reflected in the service capacity of household debt and the instantaneous probability of default.

The experience of the last decade after the 2008 financial crisis indicates that the macro-prudential framework in several countries could not prevent the further accumulation of household debt in the context of the liquidity of the market by central banks. Moreover, the easing of monetary policy in response to

[17] For an exhaustive critics of the Law no. 151/2015, see Carmen Pălăcean, *Insolvenţa persoanelor fizice prin prisma reglementărilor cuprinse în Legea nr. 151/2015: Scopul legii, principiile, domeniul de aplicare, formele procedurii şi iniţierea procedurii. Câteva aspecte cu privire la minusurile şi beneficiile aduse de lege*, https://www.universuljuridic.ro/insolventa-persoanelor-fizice-prin-prisma-reglementarilor-cuprinse-in-legea-nr-151-2015-scopul-legii-principiile-domeniul-de-aplicare-formele-procedurii-si-initierea-procedurii-cateva-aspecte-cu/.

the Covid-19 crisis has also boosted household indebtedness and house prices. At the same time, the long-term environment of saturated interest rates has further delayed debt adjustment and widening imbalances, pointing to the need to revise macro-prudential policy on the household sector.

This analysis shows that a well-designed insolvency directive for individuals would represent another step in the European legal context towards legislative harmonization in the Member States and would optimize mechanisms for judicial cooperation and cross-border insolvency.

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