

**Need for a reinforced (Belgian) legal
framework for amicable debt mediation? *On
the main features of personal debt
mediation***

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The UK national inflation basket

Consumer price inflation basket (FT categories), August 2022



WORLD ECONOMIC OUTLOOK APRIL 2022

CHAPTER

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PRIVATE SECTOR DEBT AND THE GLOBAL RECOVERY

- *“However, analyses based on micro-level data show that the recovery is likely to be slower in countries where (1) leverage is concentrated among vulnerable firms and low-income households, (2) **insolvency procedures are inefficient**, (3) public and private deleveraging coincide, and (4) monetary policy must be tightened rapidly”*

introduction

- **solutions** to over-indebtedness:

purely contractual

formal (judicial)

– Belgian context:

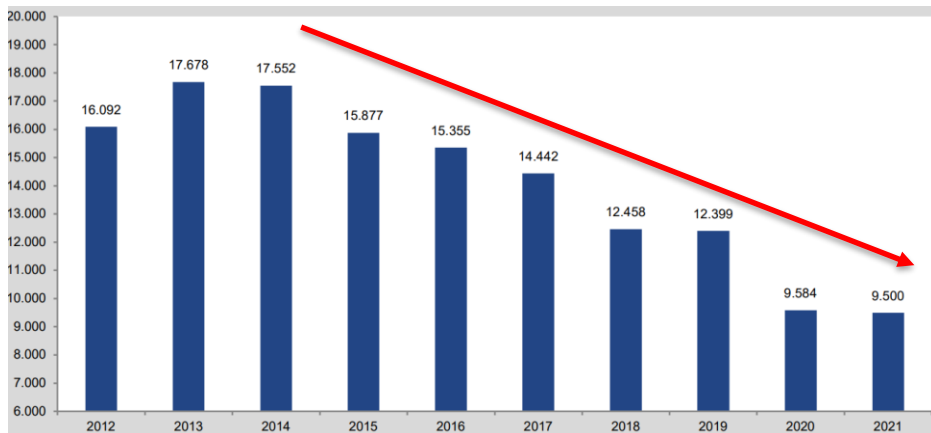
- extrajudicial debt mediation
- judicial Collective Debt Arrangement

- **is there a need for a separate, legal framework for the extrajudicial amicable debt mediation; and, if so, what are the main features thereof?**

(access to) continuum of insolvency proceedings

- judicial insolvency proceedings for **structural** debt problems
 - Belgian Collective Debt Arrangement
 - individuals facing over-indebtedness or **serious** financial difficulties
 - aim: give people with **structural** debt problems chance to **repay** debts, while leading a **decent existence**
 - **debt mediator**
 - managing the debtor's income
 - paying off existing debts: repayment plan
 - » amicable (7 years in practise)
 - » judicial (6 years in practise)

(access to) continuum of insolvency proceedings



- judicial insolvency proceedings for **structural** debt problems
 - Belgian Collective Debt Arrangement: evaluation in practise
 - **effective** policy?
 - increasingly **poor image**
 - growing group of people with **structural** debts
 - **relapse**

(access to) continuum of insolvency proceedings

- judicial insolvency proceedings for **structural** debt problems
 - Belgian Collective Debt Arrangement
 - debtors **discouraged** from going into debt mediation
 - **complementary**: create a (strengthened) legal framework for the amicable phase of debt mediation
 - amicable > judicial
 - » **amicable** debt mediation: temporary debt problems, preventing escalation
 - » **judicial** insolvency proceedings: lasting, structural payment difficulties

(access to) continuum of insolvency proceedings

- amicable debt mediation for **temporary** debt problems
 - **voluntary** out-of-court settlement
 - debt mediation, budget counselling and budget management
 - too late → **not effective**

(access to) continuum of insolvency proceedings

- amicable debt mediation for **temporary** debt problems
 - **advantages** of (early) amicable debt mediation
 - avoid stigma
 - lower costs
 - make additional financial efforts (disposal of assets)
 - thoroughly prepared file
 - flexibility (changing circumstances)
 - intervene as soon as possible

(access to) continuum of insolvency proceedings

- amicable debt mediation for **temporary** debt problems
 - **access conditions** and **interaction** with judicial insolvency proceedings
 - simple, quick and low-threshold
 - amicable negotiations as **entry condition** (Germany, Netherlands...) (?)
 - benefits often **imaginary**
 - » agreement with all creditors
 - » repayment plan unfeasible (due to negotiation power of creditors)
 - » long delays
 - amicable phase no more than **formality**
 - → debtor's ability to offer a **substantial repayment**

repayment plan

- **duration:** predetermined maximum term
 - **reasonable** period (3-5 years)
 - if longer: Collective Debt Arrangement more appropriate
- **monthly payments**
 - vs. income left for the debtor
 - flexibility (changing circumstances)
- **full** repayment of the principal amount
 - vs. discharge

pitfalls... and how to avoid them

- reasons for **low success rate** amicable debt mediation (World Bank's Report on the Treatment of the Insolvency of Natural Persons)
 - negotiations difficult when creditors demand **enforcement of their claims**
 - suspension of enforcement
 - creditors **more confidence** in formal, court-controlled procedures
 - role for the independent, impartial and qualified debt mediator
 - creditors difficult to reach + **veto**
 - minority disagreement should not lead to automatic rejection

smooth transition to judicial insolvency proceedings

- **in case of:**
 - no sufficient repayment capacity
 - repayment plan not approved
 - execution repayment plan no longer possible
 - → file request for Collective Debt Arrangement within short term
 - advisory role **debt mediator**

conclusion

- guidance to **most appropriate solution**
 - *"debt mediation if possible, collective debt settlement only if necessary"*
 - successful debt mediation, less need for Collective Debt Arrangements → **complementary**
 - debt mediation **unsuccessful** (?)
 - balance
 - **promoting** out-of-court, amicable debt mediation
 - **focusing** resources on (the minority of) eligible cases
 - limitations
 - no discharge
 - no asset sale
 - need for agreement
 - → only for debtors able to make **substantial repayments** within reasonable period of time
 - achieving amicable agreement within judicial procedure?

contact

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