

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

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The fight against over-indebtedness is a matter of great economic and social concern. The COVID-19 pandemic has caused a sharp increase in household debt and over-indebtedness threatens to increase rapidly with the current rise in energy and food prices. According to the International Monetary Fund, global *private* debt as a percentage of GDP increased by 13 per cent in 2020. These developments act as a drag on future economic growth. Moreover, economic recovery would be slower in countries with inefficient insolvency procedures. Therefore, attention should be paid to strengthening the existing insolvency framework, including cost-effective debt-restructuring programs for over-indebted households.

Solutions to (personal) over-indebtedness can be found on a continuum of mechanisms, from purely contractual debt-restructuring to formal insolvency proceedings. As an example, over-indebted Belgian individuals can resort to extra-judicial debt mediation and/or the judicial collective debt settlement procedure (however, both have important shortcomings). Interestingly, while consumer over-indebtedness is a matter of increasing concern, the number of debtors actually accessing judicial procedures is decreasing. Using the Belgian legal framework as an illustration of a broader phenomenon, it is remarkable that the number of ongoing collective debt settlements has been falling significantly for several years. This is partly due to the deteriorating image of the procedure. While it is crucial that it becomes an efficient and effective procedure again, complementary efforts should also be considered to create a reinforced legal framework for amicable debt mediation, as an alternative to the collective debt settlement.

There are many advantages to (early) amicable debt mediation – as recognised by the World Bank in its Report on the Treatment of the Insolvency of Natural Persons: avoidance of stigma, lower costs relative to formal insolvency proceedings, greater flexibility to serve the needs of the debtor and of the creditors...

The main thesis of this paper is that judicial insolvency proceedings should be aimed at individuals with structural payment problems, whereas amicable debt mediation should be aimed at debtors with temporary debt problems and preventing escalation. In case of over-indebtedness, it is important to intervene as soon as possible. Out-of-court debt mediation is more likely to succeed in cases where debtors are facing limited or temporary financial difficulties rather than structural insolvency.

In the light of the ongoing debate (in response to the many individuals facing payment problems, due to the current economic circumstances, and mounting recovery costs) on the establishment of a reinforced legal framework for the amicable phase of debt mediation, this contribution will focus on the main features of such a legal-procedural framework of amicable debt mediation. Lessons are drawn from soft-law recommendations and international experience of different jurisdictions (e.g. Germany, the Netherlands and France). The focus will be on core issues such as access to the procedure, drawing up a repayment plan, pitfalls of amicable debt mediation, ways to remedy these and success factors. Attention is also paid to the relationship of such proceedings with existing (judicial) insolvency proceedings for private individuals and the demarcation between the two.