

Netherlands 2006

Amnesty of debts: Amicable Agreement and Statutory Solution

Minutes



On behalf of
European Commission
DG Employment, Social Affairs and Equal Opportunities



Rotterdam, 6-7 November 2006

The Peer Review was hosted by the Dutch Ministry of Justice, the Dutch Popular Credit Association (NVVK) and the Municipal Credit Bank of Rotterdam. The Dutch model of voluntary and statutory debt regulation is unique within the EU, as it includes a procedure permitting the achievement of debt-free status after three years. This “clean slate” approach aims to achieve social inclusion by allowing over-indebted people to make a fresh start in life. Its possible transferability to other EU countries was discussed.

Day 1

Opening session

Welcoming the participants to Rotterdam, **Ron van den Bosch** (Manager, Municipal Credit Bank, Rotterdam, Netherlands) emphasised that responsible lending and debt rehabilitation are important issues in the Netherlands but also in all European countries. He hoped that the programme organised for the peer reviewers would provide them with all the information they need on the Dutch model. He asked for full discussion and critical appraisal.

Geert Lankhorst (Ministry of Justice, Netherlands) also welcomed the peer reviewers to the Netherlands. The Dutch system tackles over-indebtedness both preventively, through advice at an early stage, and through court intervention later if necessary. Both these stages attempt, in different ways, to cope with the social exclusion which comes with over-indebtedness. The Dutch Ministry of Justice had cooperated closely with the Dutch Popular Credit Association (NVVK), the Municipal Credit Bank of Rotterdam, the District Court of Rotterdam, the Dutch Legal Aid Council and the European Commission and ÖSB in the preparation of the review meeting. He thanked all of them, as well as the participants and the thematic expert for the well-prepared background papers. He hoped that the two days of the review would be a two-way street. The hosts would be happy to tell the reviewers everything they always wanted to know about Dutch debt rehabilitation¹ but were afraid to ask. At the same time, the Dutch wanted to learn from their European neighbours. The Dutch model was being presented as a good practice, but not necessarily the best practice. Over-indebtedness is at the root of many problems in society, he pointed out. It causes inactivity, unhappiness and social exclusion. European society has to strike a just balance between, on the one hand, being open to finance and credit and, on the other, protecting the social and economic interests of households. Exchanges of experience and best practice are essential to this task. The resolution on over-indebtedness adopted by the European Council calls for a recommendation on legal solutions to debt problems by the beginning of 2007. Most European countries regard debt settlement through the courts as a last resort and not as a safe refuge. However, the judge can act as a last resort only if the court procedure has been preceded by a good voluntary debt settlement mechanism, which is

¹ During this Peer Review, participants used various English terms to translate the Dutch word “schuldsanering”. These included “debt adjustment”, “debt relief”, “debt amnesty”, “debt rescheduling”, “debt restructuring”, “debt regulation”, “debt settlement” and “debt remission”. Not all of these terms are equivalent, and some could give a misleading impression of the Dutch scheme. To avoid confusion, the present minutes consistently use the term “debt rehabilitation” when referring specifically to the Dutch model under review, as it is the closest possible translation of “schuldsanering”. However, some of the other terms appear in the various PowerPoint presentations and in the background documentation for the meeting.

uniform, provides high-quality service and enjoys the confidence of the creditors. He reminded participants that the quay next to the Hotel New York, where the meeting was held, was the point from which many Europeans had emigrated to America in order to escape poverty and social exclusion. But these days, new hope and a fresh start can be achieved if Europeans learn from each other.

Hugues Feltesse (European Commission, DG Employment, Social Affairs and Equal Opportunities) expressed his deep appreciation to the Dutch authorities and the City of Rotterdam for this contribution to the Peer Review Programme. This was the second Peer Review to deal with the very important issue of over-indebtedness. The first, in Ireland, had concentrated on debt counselling. He was convinced that the present review of amicable and statutory solutions for debt rehabilitation would be very fruitful.

Over-indebtedness affects all parts of the population. Evidence has shown that people on social assistance who have debt problems tend to have little motivation to find a job. Their financial problems are uppermost in their minds and they know that, if they find a job, a substantial part of their pay will go towards settling their debts. As had emerged clearly from the Irish review, the scourge of over-indebtedness affects human capabilities and individual resources, including physical and mental health, social capital and human capital. It also badly affects the living conditions of the families involved and the education of their children.

The European Union is based on fundamental rights and freedoms. It is a Union in which all citizens have a right to dignity. It strives to combine economic competitiveness and prosperity with social justice and social inclusion. In March 2006, the European Council set new objectives and working methods for social protection and social inclusion. In order to achieve “a decisive impact on the eradication of poverty and social exclusion”, it emphasised the need to ensure “access for all to the resources, rights and services needed for participation in society, preventing and addressing exclusion ...” It must also be ensured that “social inclusion policies are well-coordinated and involve all levels of government and relevant actors, including people experiencing poverty, that they are efficient and effective and mainstreamed into all relevant public policies, including economic, budgetary, education and training policies and structural fund (notably ESF) programmes.” Organisation for solving problems of over-indebtedness is a key issue in the implementation of these EU objectives and working methods.

For those new to the Peer Review exercise, he recalled its three main objectives:

- Mutual learning about what works well, but also about what does not work - a process which entails frankness and objectivity on all sides.
- Improving the effectiveness of policies and strategies in this area for all the Member States – a vital challenge, as social inclusion policies still face scepticism if not open criticism in many circles, which tend to see economic and employment growth not only as a condition but also as the only way to reduce poverty and exclusion.
- Facilitating the transfer of key components of policies or of institutional arrangements which have proved effective in combating poverty and social exclusion – the most ambitious objective.

A special responsibility therefore falls upon each seminar participant, and particularly those closer to policy-making at the national level. They are the key actors in enabling an effective transfer of policies, as a result of their privileged access to information. Policy transfer can also be supported by the wide dissemination of the seminar's results. Full minutes and summaries of the meeting, newsletters and background reports are available on the programme's dedicated website (www.peer-review-social-inclusion.net). This provides a wealth of information. The objective of the Peer Review Programme is not competition or a ranking of policies. However, the reasons why certain policies are successful in certain conditions can be replicated elsewhere, if appropriate care is taken in adapting them to different cultural, institutional and economic contexts. Although "success" is a word to be used sparingly, the programme should indeed be looking for success stories, or at least inspiring stories. Mutual learning and the exchange of good practice are *raison d'être* of the open method of coordination. He and his colleagues at the Commission, as well as the consulting consortium and the Social Exclusion Programme Committee, would be following the seminar attentively, both in order to learn more about the Dutch model and to improve the whole process of the open method of coordination. He asked for participants' collaboration in evaluating the Peer Review process by giving their feedback to the evaluation survey that would be conducted at the end of the year.

Introductions to the Dutch approach

I - The extrajudicial stage of debt counselling

Harro Norder (Dutch Popular Credit Association, NCVK) explained that the first, extrajudicial stage of Dutch debt rehabilitation is a complex one. The amicable process is like a supermarket, with a lot of different products to choose from. Many organisations are active in this field – the municipalities, the social security system, the social services, the commercial banks and the social banks. In the early days, social security in the Netherlands was organised by the churches. Then the government organised the popular credit banks. Pawn shops were also an important resource for debtors. Later, these three elements came together in the municipal credit banks, which tried to prevent over-indebtedness, to resolve it when it occurred, and to provide loans when necessary. Historically, when the economic situation was good, Dutch governments tended to favour only low-profile State involvement in the resolving over-indebtedness. But today, debt resolution is back on the social agenda.

The municipal credit banks, which vary considerably in size, created their own national structure and opted for an integrated approach to resolving debt. They see the problem in a broad perspective, taking in the various financial and social factors. They also visualise the problem, including by keeping statistics. However, registered debt shows only part of the problem. 160,000 households in the Netherlands were registered as having debt problems in 2005, but there are actually thought to be some 500,000 households in financial difficulties. The problem cases being worked on by the municipal credit banks currently number about 43,000 nationwide. Whereas the court-based system is based on national law and finance, amicable solutions depend on municipal finances, which vary widely. This is a weakness of the amicable approach.

Several "products" are available from the municipal credit banks:

- **Prevention programmes** are conducted in the form of presentations in schools, workplaces and local housing corporations. These teach people how to avoid serious debt. A wide range of training materials are available. These sessions help people to overcome their reluctance to discuss the question of debt.
- The **“intake” phase** is when somebody first approaches a municipal credit bank. Here, attempts are made to tackle the problem immediately. For example, if the client has been served with notice to leave their accommodation because of rent arrears, the bank will contact the landlord and try to arrange a solution. At this stage, the primary problem should be solved within 20 days. The client should have a roof over their head and a guarantee of energy supplies.
- **Budget management**² is the next stage. An arrangement is made that the client's total income is channelled through, and managed by, the bank. This is generally a very tough process. Clients whose budgets are being managed are not allowed to make any payments by themselves. A special bank card is also issued, which does not allow the client's account to go into deficit. This tight control of the client's finances will gradually be loosened as the situation improves.
- **Debt resolution** then follows – the paying off of the debts by arrangement with the creditors. That is then the end of the process. This stage should be reached within 90 days. Three months later, the bank will follow up with the client to make sure that no new debt problems have arisen.
- If debt refinancing is required, **“responsible credit”** arrangements permit the municipal credit banks to provide small loans (up to €4,000).

By law, if the bank cannot resolve the debt problem, or if an amicable solution cannot be reached with the creditors, the matter is brought to the attention of the courts. This is the end of the extrajudicial process and the beginning of a judicial one.

Part of the banks' role is to train clients to handle their income correctly. The banks' consultants have a very close relationship with the customer. Contacts take place virtually every week, and the clients are asked how they have spent the money allocated to them for that week. Good cooperation with the social services is another important element – for example, in the many cases where over-indebtedness is related to drug or alcohol addiction.

Integrated management and advanced computer technology are crucial to the municipal credit banks' role in preventing and resolving debt. The central elements of this process are ISO-certified. The banks are part of a national network which covers virtually all of the country. However, their local nature and their dependency on the municipalities do imply that the service provided can vary from place to place. This can sometimes pose problems, but it also means that provisions can be adjusted to meet the needs of a particular locality.

² The Dutch term “budgetbeheer” was variously translated as “balancing income” and “budget control” during the Peer Review, and the second of these expressions caused some criticism. As the Dutch word means “budget management”, we have used that as the standardised translation in these minutes. Where “balancing income” and “budget control” occur in the PowerPoint presentations and background documents about the Dutch system, they mean the same as “budget management”.

In sum, the **strong points of the system** are:

- **Good local organisation.**
- **A successful and effective approach.** For example, in his region, intermediation by the municipal credit banks has reduced the number of evictions each year from about 1,200 to around 100. Landlords have an interest in cooperating with the banks on this, as the cost of carrying out an eviction is €5,000 – 7,000.
- **Neutral position.** As the municipal credit banks do not have a financial stake in the clients, they can act in their best social interests.
- The municipal credit banks are **embedded in their local situation.**
- They use **hi-tech solutions.**

Weak points are:

- **Competition between the amicable process and the judicial one.** This competition is seldom discussed, but it does exist.
- **The amicable approach does not have any legal back-up.** If a client chooses to walk away from the process, the municipal credit banks cannot do anything about it. This raises the issue of whether it is socially acceptable for the banks to exercise strong control over their clients – a point which he felt might usefully be discussed further.
- **Different regional approaches.** He believed that a more standardised national approach could be helpful.
- **No national structure.** Municipalities can simply decide not to take part. This can be a problem.
- **Full dependency on local finance.** The level of funds available for the scheme ultimately depends on budget priorities set by local politicians. If a new fire engine needs to be bought, less money may be available for debt prevention and amicable resolution.

II – The judicial debt rehabilitation procedure and the Legal Aid Council

Ingrid von Burg (Legal Aid Council, Netherlands) explained that there are five regional Legal Aid Councils in the Netherlands. Under the Legal Aid Act, people who have a legal problem but cannot afford a lawyer, are eligible for funded legal assistance. This means they have to pay the lawyer a personal contribution, based on their income and assets. The Council will pay the remaining costs for legal assistance. The lawyer receives a flat-rate fee based on the case type of case.

This payment system is very similar to the one devised for trustees³ under the Law on Debt Rehabilitation for Natural Persons (WSNP)⁴ before that Act came into force in 1998. The two main

³ The term “trustees” has been preferred throughout these minutes. The word “administrators” was also sometimes used in the same sense during the Peer Review. In PowerPoint presentations and background documents specifically concerning the WSNP, “administrator” means the same thing as “trustee”.

⁴ The WSNP is designed to promote the social inclusion of good faith debtors who have been unable to reach an amicable agreement with their creditors. If the courts accept a debtor’s application to take part in the WSNP procedure, a trustee is appointed to work alongside the debtor and oversee the process. Provided that debtors fulfil all their obligations under the debt rehabilitation plan, they will usually be declared to have a “clean slate” after three years, even if the debts have not been paid off.

tasks assigned to the Council in relation to the WSNP are maintaining the trustees register and paying subsidies.

The trustees register distinguishes two types of trustee: lawyers and non-lawyers. Non-lawyers include employees of the municipalities, the municipal credit institutions, lawyers' offices, or private trustee organisations. In order to qualify for registration as a trustee, a non-lawyer:

- must be employed by a recognised trustee organisation or a lawyers' office currently practising on insolvency cases
- must have successfully completed the basic WSNP trustee training for non-lawyers.

Lawyers, on the other hand:

- must be employed by a lawyers' office with a current insolvency practice.
- must demonstrate that they have sufficient experience with the insolvency practice or have followed special training for that purpose.

Three further conditions apply to lawyers and non-lawyers alike:

- They must have taken out liability insurance covering at least two potential incidents per year, to the value of at least €450 000 per incident.
- They must have a personal, operational e-mail address.
- They must not, in the ten years prior to applying for registration, have been subject to bankruptcy, suspension of payments or statutory debt rehabilitation, nor have had other problematic debts during this period.

Only when trustees are listed in the WSNP trustees register and their financial information has been audited can the Legal Aid Council make payments to them. When the Court assigns cases to the trustee, the Council is informed accordingly. There are four case types: single private person, double private person, single entrepreneur, and double entrepreneur.

Single: a private person, not married in community of property, no registered partnership in community of property

Double: two private persons, married in community of property or a registered partnership in community of property

Private person: not currently or formerly an entrepreneur

Current or former entrepreneur: a person who has been active as an independent professional or has had an enterprise during five years previous to the request for statutory debt rehabilitation. In addition, at least 20% of the debts can be attributed to the enterprise.

Different levels of subsidy (VAT included) apply for the various case types:

Case type	Subsidy	Postage and other costs	Total subsidy	Advance	Second payment	Final payment
Single private person	€ 910	€ 187	€ 1097	€ 641	€ 228	€ 228
Double private person	€ 1092	€ 216	€ 1308	€ 762	€ 273	€ 273
Single entrepreneur	€ 2019	€ 187	€ 2206	€ 1196	€ 505	€ 505
Double entrepreneur	€ 2421	€ 216	€ 2599	€ 1407	€ 596	€ 596

Most debt rehabilitation processes last three years. The subsidy is paid in three instalments: an advance as soon as possible after the appointment of the trustee, a second payment eighteen months later, and a final payment when the trustee has completed a case. If there are many complaints about a specific trustee, the Council may decide to reduce the subsidy paid, until the trustee has solved the problems. The Council has had this power since late 2004, but has not yet seen the need to use it.

The Council has a number of other responsibilities in relation to the WSNP:

The **procedure for the recognition of trustee organisations** determines whether an organisation is capable of providing suitable trustees within the framework of the WSNP. There must also be a reasonable chance that the organisation's trustees will be appointed frequently enough to guarantee the financial continuity of the organisation as well as to develop the required knowledge and quality and to justify any investments by the Council. The central concern is that the implementation of the WSNP should comply with the applicable quality standard.

The following starting points apply:

- In fact, the Court is the trustee's main client. The Court makes its appointments on the basis of the trustees register run by the Council. The Court must be satisfied that the trustees on this register are reliable partners and that they meet the generally accepted quality criteria for this profession.
- The Council assumes that, in addition to individual qualities, a solid organisation is required for a proper and efficient performance of the trusteeship. The quality of lawyers' offices is already monitored by the Dutch Bar Association, and no additional criteria are imposed for trustee work. However, lawyers do have to comply with the specific rules of the WSNP trustees register.
- The organisation must enable trustees to promote the interests of debtors and creditors with the aid of the instruments available under the law. Debtors usually belong to a vulnerable group and they require a careful and unambiguous procedure. Creditors do not have much influence on the way the scheme is arranged, but of course they do have

to deal with the consequences. They too have a right to a clear contact person and careful handling of the applicable procedures.

- For that purpose, the organisation must comply with requirements as regards professionalism, independence and expertise.
- The organisation's continuity (e.g. financially) must be guaranteed.
- It must have adequate capacity and support (people and means) to be able to carry out the administratorship efficiently.
- It must be able to interlink with existing networks in the field of integrated debt relief and have access to electronic information exchange.
- The trustees and the organisations must be of unimpeachable conduct and they must not have been in a state of bankruptcy themselves.
- The organisation must be able to make a contribution to realising the objectives of the WSNP. For that purpose, its other activities must to a certain degree link up with the implementation of the WSNP and the organisation must demonstrate that it is involved in tackling the underlying problems.
- The organisation must be prepared to comply with the applicable rules and regulations and to accept the applicable conditions for the implementation of the law.

These starting points are reflected in the applicable quality standards. She offered to e-mail these detailed standards to the meeting participants on request.

Improving the quality of individual trustees is another important task for the Council. When trustees have completed basic training and are placed on the register, they are assigned their first cases. It is mandatory for them to attend an annual one-day refresher course organised by the Council to ensure continued high-quality performance. After a survey of the trustees' wishes, a number of subjects are selected for which they may enroll. Trustees pay a participation fee of €100 or €60 depending on the course.

In 2005, the Council introduced its "**maximum policy**" as a further guarantee of quality, by ensuring that trustees were no longer permitted to take on more cases than they could reasonably handle. A full-time trustee may at any time be handling cases totalling a maximum of 250 points (a case involving a single private person counts for 5 points; a "double private person", 3 points per person = 6 points; a single entrepreneur, 10 points; a "double entrepreneur, 6 points per person = 12 points). The Council monitors compliance. If a trustee or organisation exceeds, or is about to exceed, the maximum, they are given the opportunity to explain why they should be permitted to do so. At the same time, the Council asks the courts if there are any quality problems which may be due to case overload. Any measures are decided by mutual consultation. It is ultimately up to the courts to decide if the trustee or organisation in question will continue to be appointed.

The Council also periodically conducts **quality audits** to ensure that trustees and organisations still comply with the applicable standards. Audits generally take place every three years, but may be more frequent if information from the courts suggests a quality problem.

Council research initiatives include an annual WSNP Monitor, using a baseline measured in 2005. The 2006 monitoring exercise, almost complete at the time of the Peer Review, includes an analysis of the experience of debtors who have successfully completed the WSNP procedure and received

the “clean slate”. How do they look back on their debt rehabilitation and what points for improvements have they identified? A survey due for completion in 2007 examines which is the best model for escrow accounts from the statutory, fiscal and practical points of view. University research is also sponsored, including a current evaluation of the refresher courses for trustees. On the policy side, the Council helps to develop new ideas for the design of the WSNP and contributes to proposals for amendments to the legislation. Information provision to the public is another Council role. It also supports the WSNP chain by promoting consultation, the standardisation of reports and the establishment of a professional body for trustees, as well as by taking part in the EU network. The Council has set up a focus group for trustees and has provided them with a special ID card for house calls and access to the courts.

Comments by peer country participants

Roland Maas (Centre d’Etudes de Populations, de Pauvreté et de Politiques socio-économiques, Luxembourg) recalled that, at the beginning of the 1990s, over-indebtedness became an increasing problem in Luxembourg. In response, the government created the National Service to Fight Against Over-Indebtedness. Then, in the year 2000, the Law to Prevent Over-Indebtedness was passed by parliament, creating three institutions: the Over-Indebtedness Information and Advice Service (SICS), providing information, prevention and training services and preparing debt recovery plans; the Mediation Commission (CM), composed of representatives of the financial institutions, the social actors and the Ministry of the Family and Integration, and which is responsible for approving or rejecting the recovery plans submitted by the SICS; and the Over-Indebtedness Stabilisation Fund, which grants consolidation loans. After five years’ experience of this law, a report to parliament indicated that 2150 applications had been submitted to the SICS and 1300 dossiers opened. Of these, only 63 cases were handled by the Mediation Commission. 31 of these cases were settled amicably and 32 went to court. The small number of cases processed does not permit general conclusions to be drawn about over-indebtedness in Luxembourg. Nevertheless, the report did stress that people on low incomes, as well as those confronted with divorce, separation or unemployment, are overrepresented in the cases examined. The report to parliament opened up the discussion about the introduction of a “civil bankruptcy” procedure, as the present law does not permit over-indebted people to make a new start in life. At present, a magistrate seeking a solution has to contend, on the one hand, with the seven-year time limit for debt settlement and, on the other, with the restrictions imposed by Article 14 of the law, which permits him only to suspend the payment of the debts, in part or in total; to reduce the interest ; to suspend the rights of a secured creditor; or to order the remission of delayed interest. The law does not currently permit the realisation of the active part of the property, nor the withdrawal of the debtor’s property during liquidation, so it is difficult to reach any amicable agreement with the creditors. So almost always, the case ends up in court.

The introduction of an application also poses an important problem. By law, all execution procedures are suspended at the moment of the application. This leaves the procedure open to abuse if somebody applies with incomplete files, simply in order to halt the execution procedure. Also, the law does not specify what should happen to the suspended execution procedure if the application is deemed to be inadmissible.

A number of elements in the Dutch model could be relevant to the current discussion in Luxembourg:

- Identical procedures for amicable and statutory settlement
- Increasing creditors' confidence in the procedures, by means of strong supervision and the creation of a national debtors' database
- A signed contract committing the debtor to observe the rules of the procedure, on pain of not being admitted to it a second time
- A guaranteed income, for the debtor, of 95% of the national assistance level
- A fresh start after three years.

However, account must be taken of the differences in social organisation and in population size between Luxembourg and the Netherlands.

Dieter Korczak (Thematic Expert, GP Forschungsgruppe, Germany) had been surprised to read that debtors in Luxembourg are denied access to the procedure if they are offered social assistance. **Cécile Kellens-Greisch** (Ministry of the Family and Integration, Luxembourg) explained that, at present, no part of the minimum income in Luxembourg can be seized in order to repay debts. She would like to see this changed, so that even people on a minimum income make some small contribution to paying off their debts. However, there are not many people in this situation.

Frank Walterson (Ministry of Finance, Sweden) reported that Sweden has recently adopted a new Debt Relief Act, which takes effect on 1 January 2007. The material requirements are unchanged by this new law. What has changed is the procedure. As this legislation has just been brought in, this is not the appropriate time to ponder further amendments. But in the longer term, the topics examined in this Peer Review will be highly relevant. One striking difference between the Dutch and Swedish models is that the Swedish system has not engaged the banks in any organised way. On this issue, the light in Sweden came from the South. It was the Danish example that inspired Sweden to design a regulated debt relief system. The original proposal from the Swedish government commission was very similar to the Danish model – a district court procedure, with the debtor being assisted by a court-appointed trustee. It was mainly for budgetary reasons that Sweden ended up with something different. As the model suggested by the government commission was considered too expensive, a system was devised that is based on the knowledge that the enforcement authorities have already collected about the debtors, so avoiding the need to appoint a trustee. However, the enforcement service had not been empowered to adopt a debt relief scheme if any of the creditors were against it. Some of the cases had therefore still ended up in the district court, which did have such powers. This procedure had proved lengthy and, despite the wish to economise, rather expensive. So one of the main changes in the new legislation is that the enforcement service has been given the power to conduct a debt relief scheme, even against the will of one or more creditors.

Dieter Korczak asked about the amicable procedure in Sweden. He also wanted to know how Sweden deals with the role performed by the trustees in the Dutch model. **Frank Walterson** replied that Sweden has a three-step procedure. The first step is completely unregulated. Under the previous legislation, the debtor was supposed to seek an amicable solution, assisted as far as possible by the municipal advice services. This did not work in a uniform way throughout the country, and was often ineffective, so the new law no longer requires that the debtor first attempt to reach an amicable settlement. It remains to be seen how this will affect the number of cases registered with the

enforcement authority. **Hans Dethmers** (District Court of Roermond, Netherlands) had read with interest that Sweden, which had favoured amicable procedures, was moving more towards statutory processes. In the Netherlands, the success of the present statutory procedure had produced a decline in amicable settlements. So attempts are underway in the Netherlands make the amicable procedure more substantial, just at the time when Sweden is seeking to give more substance to the legal one. One possible conclusion, in both countries, is that it should be more difficult for one or more creditors to veto an amicable procedure.

Lola Foster (Ministry of Social Affairs, Denmark) said there is now a growing school of thought in Denmark that debt remission is the best solution. The idea is that once the debtors received this remission, they will themselves no longer owe anything to creditors. The debts will be paid out of the State budget over a period of five years. Legislation to that effect was passed by the Danish parliament in June 2006, but has not yet come into force, so it is not yet known how it will work out in practice. One aspect of the law is that the creditors will have little say in the matter. They will receive 10% of the money owed, and then the case will be closed. This scheme will be administrative rather than judicial, making it easy to implement. It will apply only to the cases of the worst-off debtors. The normal bankruptcy procedure will also continue to operate in other cases. **Peter Juul** (Ministry of Social Affairs, Denmark) added that the new procedure will apply only to debts towards public bodies. A survey had shown that people who have been on social assistance for four years or more owe an average of DKK. 55,000 (app. 7.300 EURO) to the public sector. The idea behind the new scheme is that it will encourage the beneficiaries back on to the labour market and back into paying taxes, as they will no longer feel that all their earnings would disappear in debt repayments. So it will be a win-win situation. **Dieter Korczak** asked what exactly is covered by the notion of "public debt" in the new Danish law. He was also surprised, in the Danish paper, by the disparity between the number of people who had been on social assistance for four more years or more (64,232, according to the definition used by the Danish National Institute of Social Research, with 36,034 owing money to the public sector) and the number of people expected to meet the conditions for debt remission (5,000). While he accepted that debt remission might encourage some debtors back into employment, did Denmark have enough jobs available for people who were likely, for the most part, to be low-skilled? And what of Luxembourg's experience that some long-term benefits recipients had no wish to find employment? **Peter Juul** replied that taxes, VAT, TV licence fees, fines, student loans and many more payments owed to public authorities are covered by the idea of "public debt". **Lola Foster** explained that the disparity between the social assistance figures and the predicted number of qualifiers for debt remission was precisely due to the expectation that a large proportion of social assistance recipients would neither wish nor be able to take part in the scheme, because one of the conditions is that they should have a job.

Harro Norder asked if the peer countries had ever considered involving the banking system in the administration of debt rehabilitation. **Frank Walterson** replied that Sweden does not have a municipal banking sector. The Banking Association of Sweden had been represented on the government commission that drafted the original proposal for a debt relief system, but they had been very negative towards the whole idea, and certainly towards any suggestion that they should be involved in administering the system.

Peter Juul wanted to know why the trustees and the banks take part in the Dutch scheme. Is there money to be made from it, or are they just good people? **Harro Norder** replied that, as the banks

concerned are municipally owned, their participation is justified in terms of the benefits that will flow back to society from debt rehabilitation. Also, as they charge commercial high-risk interest rates on the loans made for debt refinancing purposes, they can earn money on those loans if they successfully pull their clients out of debt. Regarding the trustees, **Ingrid von Burg** explained that, in addition to the subsidies from the Legal Aid Council, they are entitled to payments from the debtors themselves: €45 per month in the case of a single debtor and €55 in the case of a couple. This is because the legislator had felt that debtors themselves ought to make a contribution.

Nicolas Revenu (National Union of Family Associations, UNAF, France) said the French system works with adjustment plans drawn up by a commission. Then, for people in what is termed an “irremediably compromised situation”, there is the possibility of obtaining the cancellation of debts through a form of civil bankruptcy proceedings. He asked what is the relationship between the WSNP process and normal bankruptcy proceedings within the Dutch model. **Ingrid von Burg** replied that some people have been declared bankrupt before they apply for the WSNP process. It is then up to the judge to decide whether they will be admitted to the WSNP. The bankruptcy law had already provided possibilities for the suspension of payments, but the WSNP procedure had been introduced because it had been felt that people needed an opportunity to start afresh. **Geert Lankhorst** added that those not living up to their commitments under the WSNP will be declared bankrupt, and will then be subject to the other procedure. **Cécile Kellens-Greisch** asked how the Dutch system keeps track of how many creditors each debtor has. **Harro Norder** replied that the average debtor in the Netherlands has 11-17 different debts totalling €30,000. Debtors seeking assistance from the municipal credit banks or the WSNP enter into a contractual commitment to declare all their debts, and of course the creditors are usually very willing to provide any further information needed. **Dieter Korczak** asked if any kind of public notice is issued, calling upon creditors to make themselves known. **Geert Lankhorst** emphasised that the debtors are under an obligation to provide all the information and documentation needed, and this can be checked against a register of creditors. Withholding information can lead to exclusion from the process. However, **Ingrid von Burg** added, it has to be proved that the debtor withheld the information on purpose. Announcements are made in the official journal, the *Staatscourant*, and there is also a publicly accessible database online, where creditors can check if a debtor has applied for the WSNP process. If so, the creditor can of course contribute any relevant information. The WSNP leaves plenty of time for this, but there is an obligation on the creditor to seek information as to whether the debtor has applied for the WSNP. **Cécile Kellens-Greisch** noted that, as there is an openly available database, the fact that somebody is going through the WSNP must be public knowledge. **Ingrid von Burg** confirmed that this is the case.

NGO statement

There is a strong interdependence between poverty and over-indebtedness, stated **Michaela Moser** (European Anti-Poverty Network). Usually it is not just excessive shopping, but rather income problems, that create over-indebtedness. In her experience in Austria, 75% of over-indebted people have incomes of €1,000 per month or less. People experiencing poverty, and especially over-indebted people, have limited access to financial services and products. There is also a shortage of socially responsible financial services, although there are good practices in this field, including the Dutch model which appears to be functioning very well. Almost everywhere in Europe, there is a lack of financial education, and in particular of financial education that reaches out to socially excluded people. Debt-

solving strategies need to be integrated and inclusive. They are an important contribution to social inclusion strategies in general.

It is positive that the Dutch approach links public responsibility with market responsibility, that the banks are involved, that a number of supporting legal measures have been taken and that it is quite locally rooted. As has frequently been mentioned, also within the European projects on debt problems, in order to find solutions that really fit people's needs, it is very important that they are locally rooted. But national coordination is needed as well. It is important and positive that a broad range of products and services is available in the Netherlands in order to help people to overcome indebtedness, and that different sectors of society are involved in the Dutch approach. Three issues that need closer examination with regard to the Dutch model are:

- **The “voluntary” nature of the involvement of municipalities.** This can create inequalities, depending on where people live. A coordinated national approach needs to be explored. This is important in terms of influencing overall policy.
- **The extent to which the Dutch model is linked with social and labour market policies in a more structured way.** Over-indebtedness is often closely bound up with unemployment, so it is important to look at such linkages when examining ways of improving the effectiveness of the measures adopted.
- **Which target groups benefit most?** Usually, in programmes on indebtedness, one or other group is left out. In Austria, for example, migrant populations are scarcely reached at all by such programmes. There is also often a “skimming” process, by which the lower middle classes benefit most from debt rehabilitation programmes, while those suffering most from poverty and social exclusion are once again excluded.

Challenges to be met at the national and European levels:

- **Data** on over-indebtedness need to be improved at the national as well as the European level. At the same time, there is a need for **common definitions**. There are now efforts underway to improve this situation, and this will be to the benefit of all the stakeholders in all countries.
- **Best practice exchanges**, through such programmes as this Peer Review, need to be further enhanced. The **involvement of all relevant actors** needs to be strengthened in most European countries and at the European level. In particular, the involvement of over-indebted people themselves should be ensured. How can they be integrated into the search for better solutions? How can their feedback be obtained?
- **All measures taken against over-indebtedness should be better linked with social and labour market policies but also with economic and education policies.** It should be made clear that debt has an impact on a country's economic situation. A recent study in Austria showed that public investment in debt advice and debt regulation support services is recouped more than twice over by society, due amongst other things to the savings made on social assistance and unemployment benefits.
- **Stronger cooperation at European level** is needed in order to broaden the possibility for exchanges and mutual learning, but also to stimulate a more coordinated approach among the different DGs involved in the issue within the European Commission. This is also true for

other stakeholders, and efforts are currently underway to relaunch a European network against over-indebtedness. The previous Consumer Debt Network had become rather dormant, but is now being revived as part of the European projects in progress. The aim is to bring the various actors together, so that they can make policy recommendations but also play an active monitoring role, to increase dialogue and to ensure that the people directly experiencing over-indebtedness are also heard and included. Influencing public opinion and the media will be another important role.

- **Strong social inclusion strategies** in general are an important way of fighting debt problems. In seeking an integrated approach, it can be helpful to go back to the EU's Nice objectives and ensure that people do have access to rights and resources, that there are measures for the most vulnerable groups, that there are prevention strategies, and that all relevant actors are involved. In that way, we will already be taking some important steps forward, including in the solution of debt problems.

Debt amnesty

Presenting the main discussion paper, **Dieter Korczak** emphasised the need for common definitions in Europe. The Commission had already put out a call for tenders to draw up such definitions, he said. At present, there is a different definition of over-indebtedness in each country. Some years ago, an attempt was made to combine at least the various German definitions, while taking other European definitions into account. The conclusion had been that there are at least **three ways of defining over-indebtedness**:

- the subjective feeling of being over-indebted, which is linked to anxiety and other factors
- the social definition of relative over-indebtedness, looking at the economic situation of a household
- the legal definition of absolute over-indebtedness, covering court procedures, the WSNP and similar processes.

These can lead to **three forms of exclusion**:

- financial exclusion, upon which most of the research concentrates
- social exclusion, which is closely related to financial exclusion
- self-exclusion from society, due to feelings of shame and inferiority.

The **purposes of debt management** are also threefold:

- economic: to maintain or reintegrate people in normal economic channels and employment, including by giving them a fresh start where necessary
- social: to avoid exclusion (for all members of a family – money problems are one of the main causes of marital breakdown)
- regulative: to encourage mediation between debtors and creditors, without having to go to court all the time.

How do people become over-indebted in the first place? It often begins with precarious living conditions, but it is also due to easy credit. The most popular type of credit in Germany these days is standardised. The lender does not need to talk to anybody about it. It can be taken out over the Internet or via the cash machines in banks. The interest rate is advertised as 5%. However, under an alias, he had sought more information, and had concluded that the interest rate was really 12-13%. So credit is easy to obtain, but is expensive. And debts build up. The over-indebtedness addressed by insolvency legislation and debt counselling is just the tip of the iceberg. On their way into over-indebtedness, people suffer a lot of difficult life situations.

Presenting his Theory of Over-Indebtedness (*shown in a graphic within his PowerPoint presentation*), he emphasised that economic, cultural and educational resources all play a role. Motivation is another important factor. Why do people want to take on debts – in order to boost their ego, for reasons of prestige, or simply because they want a newer and better car? There is also the question of needs. Is a washing machine a basic need? Is a TV set a need? The creation of demand is another factor in over-indebtedness. A huge industry exists to tell us what we need, and many people are paying for these needs with money that they do not have. The four background dimensions (resources, motives, needs and demand creation) create a market supply. If you ignore that market, you live within your means and stay out of debt. If you go into the market, and take out credit, the statistics show that in 90-95% of cases you will repay the loan more or less without conflict. However, no hard figures are available on this.

Things are becoming critical if there is an imbalance between income and expenditure, which can happen very easily. Here, there are three main possibilities for restoring the balance:

- to increase one's income, which in reality is very difficult
- to reduce one's expenditure – rather easier than increasing income, but still difficult, even when people want to do it, because spending is an expression of hope in the future, and also because some spending is contractual and cannot be immediately reduced
- to reduce one's assets, by selling off a house or shares, but the value of such assets can fluctuate.

If the balance is not restored, then you are in danger of being seen as an “active debtor”, regarded by banks and others as irresponsible and unreliable. Estimates suggest that only about 30% of debtors are “active”, risk-taking debtors. And up to 90% of those who become over-indebted do so through either the intensification of precarious life situations or extraordinary financial burdens. Divorce and unemployment are among the commonest indicators for over-indebtedness. The insurance against unemployment offered by banks covers only the banks' risk.

Responses to serious over-indebtedness can include vagrancy, suicide and dependency on social assistance. More positively, amicable settlements or processes such as the WSNP can provide a fresh start.

In the previous Peer Review on this topic, the Irish approach had been examined – a good combination of a social system, a governmental approach and the participation of the credit unions. Some peer reviewers had attempted to have this approach transferred to their own countries. In

Germany, the Ministry of Family Affairs was persuaded to make a study of the Irish model, in order to see if it could be at least partially transferred.

In Germany, Austria and a number of other countries, the social security system is strictly separated from the banking sector, and debt counselling is performed by welfare organisations and municipalities. The Dutch approach, with its social banking system, achieves a great deal. However, in a study on access to financial services, he had found that only four EU Member States have a social bank system. In some countries, such as Germany, social banking is performed by the savings banks, whose statutes commit them to providing social credit.

He suggested that, for poor and excluded people, no real division can be made between amicable and statutory solutions. They are a continuity. The one is not thinkable without the other. Some countries also have a specific mediation structure, such as Luxembourg's Mediation Commission or the Swedish enforcement authority.

More discussion was needed of the different approaches. The Scandinavian and French-speaking countries' approach takes the creditors' responsibility very much into account. The Dutch and German approach puts the emphasis on good faith debtors who are keen to solve their problems. In Germany, the seven-year insolvency process is, in fact, called the "good behaviour period". Concepts such as the "good faith debtor" would need to be addressed in any discussion of transferability.

One question that he still had about the Dutch system, after visiting several municipal banks and talking to many Dutch people, was about the linkage between the financial and psychosocial aspects of the model. He was still unsure about the institutional arrangements for bringing in social advice when clients needed it. But he thought it was very necessary, because debt is first of all a psychosocial problem. The financial problem comes later.

Another point for discussion could be the differences in the organisation of money counselling and debt advice in the various European countries: centralised versus decentralised; amicable versus statutory advice processes; open or limited access for people with debt problems; no governmental funding versus total government funding.

Target groups are a further important issue. In many countries, single people and single-parent households make up 60% or more of all the clients. In terms of age, the majority of over-indebted people are in the 24-45 age group. This is the core family phase, when financial needs are greatest. People on low incomes, the unemployed and debtors who are socially disadvantaged or excluded for other reasons are other frequent target groups for anti-debt measures, as are debtors acting in good faith.

As for the ranking of various types of debt, roughly 30% of over-indebted clients in Germany have public debts. Most private debts are for credit and loans (70%, according to a recent German study). Then come debts to utilities, mortgages, trade debts, insurance debts and debts to mobile phone companies. The total monetary amount behind private debts is much higher than behind public debts.

Some countries (Ireland, Luxembourg, France) have centralised debt resolution structures, while in others (UK, Germany, Netherlands, Austria, Hungary), they are decentralised. The financing of debt

regulation varies greatly, from 100% government financing in Ireland and Luxembourg to municipal financing in the Netherlands and voluntary financing in the UK.

He suggested a number of major questions for debate concerning the Dutch model. How do elections influence the situation of the municipal credit banks? Does the political complexion of local government influence the way in which they can work? How much independence of decision-making do the directors of municipal credit banks have? What can be done to restimulate the use of amicable agreements? How are the competition and cooperation between the different elements of the model organised? Have the gender aspects of over-indebtedness in the Netherlands been analysed? What is the relapse rate for those declared debt-free after three years? Who supervises the debtor's property? Where is the borderline set between private and professional debt? Does the public database raise issues of privacy? How long do debtors remain registered?

In the afternoon, participants visited the Rotterdam Municipal Credit Bank, where they had discussions with staff on the various products available for preventing, mediating and resolving debt. The peer reviewers then split into two working groups, to discuss transferability aspects of the Dutch model. They reported back on their conclusions at the plenary session on the following day.

Day 2

In the morning, the participants, visited the Court of Rotterdam, where they were welcomed by its Vice-President, **Larisa de Loor-Alwin**.

She explained that the Rotterdam court's judges hear between 30 and 40 applications per week for admission to the WSNP procedure. Each hearing takes approximately 10 minutes. An applicant may be turned down if the judge believes that there has been no attempt to pay off the debts in good faith, or if there are grounds for fearing that the debtor will not meet the requirements of the process and will act negatively towards the creditor. Debtors with an addiction or psychological problems are also scrutinised carefully. Addicts must have been "clean" for at least one year before the judge will admit them to the WSNP process. For debtors with psychological problems, the judge must be satisfied that help is available.

In the Rotterdam district, 25-30% of the applications are rejected. Those who are turned down may apply again, but must demonstrate that they have changed in the meantime. For those applicants who are admitted to the process, the judge will appoint a trustee, who will visit the debtor within two weeks, make an inventory of the assets and explain the procedure. The trustee opens and administers an account into which the debtor's income is paid. The whole process and the trustee's work will be supervised by a judge, but not the judge who heard the original application.

The court will impose an obligation to seek work on the debtor (except in medical cases), as a condition of continued participation in the process. Debtors must also commit themselves not to make any further debts and to give a full account of their finances. Under the "postal blockade", all mail addressed to the debtor is redirected to the trustee, who checks it before passing it on. In principle, the blockade is lifted at the end of the WSNP process, but this sometimes happens sooner.

If the debtor fails to meet all the requirements over the three-year period, the WSNP process will be ended and the debtor will be bankrupt. However, 75% of WSNP participants in the Rotterdam district complete the process. Most are then given a “clean slate”, but in about 20% of the cases, the granting of the clean state is not automatic. In most of the cases, less than 10% of the debt will have been paid off by the time the debtor is given a clean slate.

Participants then observed a series of court hearings on applications for admission to the WSNP process.

Feedback from the site visits

Peter Juul felt that the applicants attending the court hearings had been very unprepared. Many had not brought the papers required. Why was this? **Ingrid von Burg** did not think that the hearings just witnessed by the reviewers were representative of what usually happens. Generally, applicants will previously have gone through an attempted amicable settlement, so a debt mediator will have told them what to expect in court. The case of entrepreneurs is different, as their financial affairs are more complicated for a debt mediator to deal with, so many entrepreneurs have not first gone through amicable settlement procedures. She noted that one couple applying to the Rotterdam court that morning clearly did not understand much Dutch and had not brought an interpreter. Asked if applicants have to pay for their own interpreters, she confirmed that they do, as in all civil cases, but they can also bring friends or family to interpret for them. **Erica Schruer**, an attorney practising in Rotterdam, felt that the cases seen in the court demonstrated how the quality of the amicable phases of debt settlement varies widely. This can pose problems in terms of the preparation of applicants for the WSNP phase. She was also rather surprised that one of the applicants had been accepted, as he had shown clear signs of psychosocial problems. She had serious concerns about his ability to complete the programme successfully. **Larisa de Loor-Alwin** felt that the cases seen had perhaps not been typical of the Dutch system, but they were typical of the situation in Rotterdam. There is great variation, across the country but also within districts, in the way the cases are prepared. All the applicants seen by the reviewers had in some way been in contact with the amicable settlement system, and they had all been told what was going to happen. But clearly, they do not always understand. It also has to be borne in mind that people arrive in the WSNP process for various reasons. One applicant had been in contact with the amicable settlement system, but his income had been simply too low to make any amicable settlement possible. On the case of the man with psychosocial problems, she pointed out that the judges often have very little documentary evidence to work on. They will therefore give people the benefit of the doubt, knowing that the trustee will inform the court if real problems arise later. **Frank Walterson** noted that most of the applicants seen had clearly been of foreign origin. Could language have been a factor in their lack of preparation? **Larisa de Loor-Alwin** agreed that it might.

Michaela Moser said she was very impressed with the Dutch system overall, but wondered if more should be invested in preparation for the WSNP process. Was there any analysis of which kinds of people failed in their applications? **Ingrid von Burg** pointed out that Dutch municipalities have a high level of autonomy, including in their work on debt resolution. This is one reason why some people are better prepared than others. Without impinging on municipal autonomy, the Legal Aid Council would like the Ministry of Social Affairs to have more say on this issue. **Ron van den Bosch** said that preparation is very difficult because of the language barrier. Many foreigners come to the municipal

credit bank. When they are about to go to the WSNP hearing, the bank invites them round to its office, so that they can be given good information face to face. They are also given information brochures, but these are all in Dutch. The city's policy is that it is their responsibility to learn Dutch, so brochures are not provided in other languages. **Ingrid von Burg** added that the Legal Aid Council's brochures are also available in Dutch only. **Erica Schruer** felt that, particularly in view of that policy, proper legal representation should be required for applicants during the hearings. **Ron van den Bosch** said the bank advises foreign clients to take family, friends or colleagues along as interpreters. **Hugo Swinnen** (Network Expert, Verwey-Jonker Institute, Netherlands) suspected that in the case of the man with apparent psychosocial problems, the judge's decision had been influenced by the availability of sheltered employment. This raised the question of the links between debt and recent changes in the Dutch social security system. For instance, the tightening of the invalidity benefits system has pushed people down the income scale, making indebtedness more likely. Behind indebtedness, there is not only the personal responsibility of the debtor and the creditor, but also systemic effects. Recent changes in official policy towards immigrants are another factor. It is only recently that people have been expected to integrate fully into Dutch society, so that some are now being expected to be fluent in Dutch without having had the time to learn it properly. Policy shifts of this kind have been made without paying attention to their immediate effects on people. **Nigel Meager** (Facilitator, Institute for Employment Studies, UK) wondered if the implication of this assimilation policy is that people do not acquire rights before the law until they have assimilated. In the transition period, people who have not yet assimilated are not placed on an equal footing in the courts with Dutch citizens who speak the language. **Larisa de Loor-Alwin** disagreed with that proposition. It is standing jurisprudence that somebody who cannot speak the language is nevertheless able to take part in society and to find a job. There might sometimes be communication problems in court, but in the cases observed by the reviewers, the judge had been careful to check that he had understood and had been understood.

Nicolas Revenu asked if the situation of other family members is taken into account when reaching a decision on a WSNP application. In the cases observed, one applicant had brought his wife with him to court and another had brought her (adult) daughter. **Larisa de Loor-Alwin** replied that the decision concerns the applicant. In the case of the man and wife, both had applied, so there will be two separate decisions. But obviously, in practice great difficulties would arise if one spouse were accepted and the other not. Both are responsible for the household's debts and both would be required to find a job if admitted to the process. In the case of the woman and her daughter, the daughter had simply accompanied her mother to court and had not applied for admission to the WSNP process, so her circumstances would not be taken into account in the judge's decision.

Dieter Korvacs asked **Larisa de Loor-Alwin** about her comment, in her introduction, that a clean slate is not always automatically granted at the end of the three years. What would be the reasons for not declaring a clean slate? Did it depend on the size of the debt? She replied that the clean slate can be given in less than three years, if the debt is paid off, but it may take longer than three years if certain things have happened in the meantime – for example that the debtor has stopped paying the trustee for some time, and then for some reason has resumed payments. If it is thought that the debtor can make up that backlog, given more time, the period might be extended, for example to four years instead of three. But the size of the debt is not a factor to be taken into account – except inasmuch as the accumulation of a series of high debts within a short time may be seen as a sign of bad faith. **Erica Schruer** added that another possible reason for extending the period beyond three

years would be that new debts have been contracted during the course of the programme. **Ingrid von Burg** emphasised that there are no minimum or maximum levels of debt or of income among the criteria for admission to the programme. The focus is on the kind of debt. A high level of consumer debt or credit card debt may, for example, be taken as a sign of irresponsibility, and the applicant may be rejected.

Catherine Lesterpt (DGAS, France) asked if the employment services make a particular effort to find work for those who need to have a job in order to qualify for WSNP admission. If that is not the case, are the unemployed debtors not being punished twice over? In reply, **Laris de Loor-Alwin** pointed out that the obligation is to *try* to find a job, and to show that an effort is being made. That is why job applications have to be shown to the trustee. WSNP participants are expected to write at least one job application per week. **Erica Schruer** pointed out that the same obligation is placed on those receiving social benefits. This is not a penalty for being in debt. **Peter Juul** argued that this again showed the need for proper preparation of WSNP applicants. They should be told clearly that they must bring at least one job application with them to court. Otherwise, the court's time will be wasted. But **Ingrid von Burg** and **Hugo Swinnen** pointed out that one frequent characteristic of WSNP applicants, as of applicants for other kinds of social support, is that they do not understand or do not accept society's norms.

Cécile Kellens-Greisch asked how much of the debtor's mail the trustee is allowed to read. Does the "blockade" include private correspondence? In principle, the trustee can read everything, **Ingrid von Burg** replied. The trustee will be looking for signs that new debts have been contracted. A number of reviewers expressed surprise at this, and asked about the implications for privacy. She replied that there is an awareness that this is an intrusive measure, but WSNP participants sometimes receive letters containing large amounts of cash from their families. It is a requirement of the programme that all this money must be handed over to the trustee. **Erica Schruer** added that it is up to debtors to decide if they wish to sacrifice their privacy in order to qualify for the programme. **Ingrid von Burg** agreed that, unless people accept the loss of privacy implied by the postal blockade and the Internet list of debtors, they should not apply for the WSNP programme. **Geert Lankhorst** pointed out that ordinary bankruptcy proceedings also entail considerable loss of privacy, so the WSNP process is not unusual in this respect. Asked what details are published on the database, **Ingrid von Burg** said it announces that a person, whose name and date and place of birth are given, is being admitted the WSNP process. Details of the trustee, the court that took the decision, and the supervising judge are also given. So all creditors know exactly whom to contact if they have claims.

Dieter Korczak thought that the interception of mail would be regarded as a serious breach of constitutional rights in Germany and that, even if somebody chose to sign away their rights, the courts would overturn that decision. Has people's right to abandon their rights ever been tested in Dutch law? He also drew attention to the German institution of the "Rechtsberater" (legal adviser), who is somebody who has studied law but has not taken their final examinations. These Rechtsberater often help people to prepare themselves for court appearances. Does anything similar exist in the Netherlands? **Erica Schruer** replied that there is no such institution in the Netherlands. She agreed that it might be helpful, as there is no entitlement to legal aid for civil cases, including WSNP cases. Regarding the first question, Dutch courts have no power to check the constitutionality of formal legislation, as Dutch law assumes that the constitutionality has been tested before the legislation is adopted. The legislation's conformity with human rights could possibly be tested in the

European courts, but not in the Dutch ones. She felt that, in the case of bankruptcy, some small exceptions in human rights terms might be permissible in order to ensure good faith and effort. **Dieter Korczak** replied that taking one stone out of a wall is always a risky business. **Ingrid von Burg** added that the Netherlands does have a network of legal offices, where people can go for advice on any aspects of civil law. These offices should be able to explain the WSNP process to debtors. The problem is that many debtors will not go and seek such advice in the first place. Also, the legal offices have not existed for very long in their present form. The Legal Aid Council is currently going round the offices and giving them presentations about the WSNP, to ensure that they are fully informed. **Michaela Moser** emphasised that equality of access to the law entails equality of access to advice. In Austria, it is recognised that while some people may require advice just once, others may have to be accompanied over the course of several years, and may need to be pushed to get their act together. Generally, it is either lawyers or social workers who do this. They also accompany people to court. This is important, as communication problems are caused not only by different mother tongues but also by unfamiliarity with legalistic language.

Feedback from the working groups on transferability

Reporting back for one group, **Hugo Swinnen** said more information had been given about the age and gender aspects of the WSNP. 45% of debtors in the system are aged 36-50. 56% are men. This seems to be linked to the fact that more men are entrepreneurs. Several countries reported that more younger and older people are now coming into the debt-solving systems. In the case of older people, this seems to be because they are increasingly taking on debts in order to help their children out. The problem of finding a better balance between the rights and duties of debtors and creditors was also discussed. It was argued that the concept of “good faith” should apply to creditors as well as debtors. Better regulation of the market might be needed. Especially in the private sector, creditors should be made to face the consequences of knowingly pushing people to take on debts that they cannot service. A system of giving priority to “good faith” creditors might be established. He cited the example of a fund in Luxembourg which exists to help out small entrepreneurs who have not been paid by their debtors.

The importance of good databases and sufficient information was emphasised. European regulation might also be required here. In the case of Luxembourg, for instance, people can easily build up debts in several neighbouring countries, without there being any overview of the total. It was noted that people with low incomes and education are often expected to be much more managerial than those with high incomes and education. The importance of making links between the work against over-indebtedness and other parts of the social security system was emphasised. There was a call for some pragmatism on the remission of debts. It should be remembered that repayment problems affect only 10% of all debts contracted.

In terms of transferability, everybody had been very impressed by the comprehensiveness of the services offered by the municipal credit bank, and by its systematic, professional approach. In some peer countries, there appear to be problems in combining professionalism with a social approach to indebtedness. However, social banking has a long history in the Netherlands. In countries where it does not exist, it is difficult to imagine its creation in the present circumstances. At the same time, commercial banks in some countries are unlikely to be cooperative on debt-solving issues. On the transferability of the database idea, some countries had expressed fears about the impact on privacy

but also about the risk of commercial misuse. Credit providers could use these databases to check who is not too overcredited and is therefore worth targeting. The remission of debts after three years was an eye-opener for several peer countries. There was general agreement on the need to give people a fresh start after a reasonably short time, rather than after seven years or more as in some countries. Some aspects of the new Danish system for dealing with “public debt” might also be transferable to other countries.

For the other group, **Frank Walterson** reported that there had been a discussion about the categories of debtors to be targeted by the system. This was sparked by a question about what can be done for the most severely excluded groups, such as homeless people. In the Netherlands, there are no limitations as to who can be covered by the system, except that he or she has to be a natural person. France has a guarantee system for cases where really poor people are involved. The group agreed that the debt relief procedure is an extremely important tool for preventing homelessness.

A second topic was the transferability of the Dutch model. Peer country participants had been highly impressed by what they had seen, but some felt that the time was not yet right, from a political point of view, to put forward similar proposals in their own countries.

Success rates were also discussed. What constitutes “success” in this context? Is it when the debtor can start with a clean slate at the end of the three-year period? Or is it when a problematic situation is no longer that problematic, even though no clean slate has been given? Or is success achieved only when it is clear that no new debts have been contracted for several years after the clean slate has been received? No authoritative answer had been found to those questions.

The fourth discussion point was about the length of the probation period. Just as that length varies considerably from country to country, so the amount of money that the debtor is allowed to keep for personal expenditure differs widely. In Denmark and Sweden, it is in the region of €400-500 per month. In the Netherlands, it is considerably lower. The differences in living costs are not sufficiently great to explain this gap, so it may be that there is a correlation between the length of the probationary period and the amount of money that the debtor is allowed to keep.

Databases were discussed in this group, too. It was felt that information should also be used to identify potential debtors and bring them into the system. And, like the other group, participants argued that the “good faith” yardstick should be applied to creditors as well as debtors.

Final session: key learning elements from the review

Peter Juul raised the issue of cost-benefit analysis. Spending on debt prevention and resolution benefits society, because it is cheaper not to have people in debt. This could be a basis for discussion. What incentives can people be given to keep out of debt? **Dieter Korczak** agreed that each euro spent on debt advice and debt management saves two euros in other parts of society. Other countries might think that the Dutch system is too expensive for them, but that might be a false economy. **Ron van den Bosch** argued that to do nothing would be even more expensive, because families would then be made homeless. In addition, **Ingrid von Burg** said, the Dutch government feels that it has a moral obligation to help citizens to get back into the economy and society, and a price tag cannot be put on that. **Dieter Korczak** asked if that might be a calvinistic approach which

would not necessarily be echoed in other countries. She replied that the Dutch could not answer that question. There are certainly calvinistic elements within Dutch attitudes, she felt - particularly to debt, and the Dutch approach has to work within that context. **Peter Wagenmaker** (Ministry of Justice, Netherlands) suggested that this is not so much a calvinistic approach as a capitalist one. Trading is based on trust. There is an expectation that somebody who buys something will pay for it. So there has to be a certain threshold for debt rehabilitation, and a pragmatic balance has to be struck. The government has to protect the rights of creditors as well as those of debtors. **Peter Juul** added that the legal theory of a contract between equals is not always reflected in reality. Debtors tend to be less strong than creditors, and the benefits to society of showing some pragmatism may make a slightly less strict approach worthwhile. **Dieter Korczak** believed that every society has some kind of moralising attitude to debt. **Frank Walterson** said that political circumstances can also play a role. The Swedish act of 1994 had been introduced because a majority in favour of legislation emerged in Parliament followed by a parliamentary statement which left the government little choice but to submit a bill.

Preben Brandt (President, Projekt UDENFOR, Denmark) felt strongly that, when poor people have to face a judge, they should have legal support. This is, he said, something that is lacking in the Dutch system. **Cécile Kellens-Greisch** said that, when people in Luxembourg have to face a judge in these circumstances, the social services accompany them to court. **Dieter Korczak** suggested that the Dutch system might learn from the Luxemburgish, Austrian and German approaches to the preparation and accompaniment of debtors appearing in court. Some reviewers felt that there was a gap between the amicable and WSNP stages of the Dutch procedure. **Ron van den Bosch** said that a Dutch delegation would be visiting Cologne at the end of November, and might usefully look into the German approach to this question. **Nigel Meager** said many participants felt that the applicants they had observed in court had not been adequately prepared. **Peter Wagenmaker** accepted that this may have been true of the cases observed, although from what he had heard, they had not been typical of Dutch court proceedings. It should be emphasised that the overall acceptance rate for WSNP applications is around 80% and the success rate is also over 80%. But it might well be that those rates could be further improved through better preparation.

Dieter Korczak said that he and some other participants had been surprised to learn that the “clean slate” is not given automatically after the successful completion of the three-year period. **Ingrid von Burg** said that people who behave properly do get the clean slate. Nationwide, 80% of the participants get a clean slate and a further 5% either pay off their debts during the process or reach agreement with their creditors on a reduced pay-off. **Ron van den Bosch** added that, if the trustees have done their work correctly, the situation should never arise that the debtor does not get a clean slate at the end of the three years. People who do not live up to their commitments should be ejected from the process long before the three years are up.

Nicolas Revenu said one current discussion point in France was how to give socially disadvantaged people access to credit at low interest rates, as opposed to the 16% currently being charged by the Dutch municipal credit banks. **Dieter Korczak** asked why a municipally owned bank cannot charge a symbolic interest rate of 5-6%. **Ron van den Bosch** replied that the 16% rate was set by the Dutch social banking organisation SBN. However, discussions were currently underway about a return to 14% (and 12% in Rotterdam). That is still high, but some of the credit banks finance part of their costs through the interest charged on small loans. Also, the people being assisted by the municipal

credit banks cannot be helped by commercial banks, due to their debt record. So the interest rate also reflects the added risk. **Michaela Moser** revived a suggestion, made by Dieter Korczak and others at previous European conferences on debt, that all or part of this risk premium should be set aside by the banks. If the high-risk lenders then prove to be reliable payers, this money should be reimbursed to them. This would improve poorer people's access to credit. **Ron van den Bosch** said this was perhaps one solution that could be looked at in Rotterdam. **Peter Juul** said he had been highly impressed with the Dutch municipal banking system and its wide range of debt prevention and debt resolution products. **Mudite Priede** (Adviser on Financial and Economic Issues, Latvian Association of Local and Regional Governments) had been similarly impressed. Unfortunately, it would be very difficult to construct a similar system in Latvia, which has very small municipalities. But **Dieter Korczak** pointed out that, in some parts of the Netherlands, a number of municipalities are grouped together within one bank. Centralised social banking is also possible, on the Irish model.

Ritwa Mattson Övergaard (Swedish Enforcement Administration) said that banks in Sweden had not shown any interest in becoming involved in debt resolution. **Michaela Moser** felt that the presence under one roof, in the municipal banks, of such a wide range of services, is a very important aspect of the Dutch model which could well be considered in other countries. **Cécile Kellens-Greisch** said that a law now in preparation in Luxembourg would bring all the country's local authorities together in order to provide some social services. Within the debt-solving procedure, debtors can borrow up to €10,000 in order to pay off their debts. Each year, the government sets the interest rate payable on these loans. Currently, it is 5%. A contract is drawn up for the repayments, but the authorities have the possibility of waiving repayment where necessary. Often, after debtors have been seen to be paying off their debts for two or three years, the matter is regarded as closed.

Dieter Korczak asked if the "postal blockade" aspect of the Dutch approach would be transferable to other countries. The Luxemburgish, Danish, Swedish and French participants said that it would be impossible in their countries. **Geert Lankhorst** recalled that the European Court of Human Rights, in a case brought by a Finnish creditor, had found that the granting of an amnesty to his debtor by the Finnish authorities could be considered a violation of the creditor's constitutional rights to property, but that it was a justifiable breach in the light of the over-indebted situation of the debtor. So the same argument might apply, vice versa, to the postal blockade. It might be regarded as a justifiable breach of constitutional rights, as the rights of the creditor were also at stake. **Anda Masejeva** (Ministry of Welfare, Latvia) felt that people who decide to go into a debt rehabilitation procedure should recognise that they must cooperate with those appointed to help them, and should not be oversensitive about their privacy.

Dieter Korczak asked each peer country and the NGO representative to give a final evaluation of the past two days.

Lola Foster, for Denmark, said it had been very interesting to see what has been built up in the Netherlands. Excellent ideas had been presented. She was less fond of the "control" aspects of the Dutch model. She wondered what would happen, for example, to a drug addict who took methadone during the WSNP process. Would that person be excluded? (*Ron van den Bosch explained that this was a question of definition – the addict's condition has to be "stable", but that term is not defined. It might well be that the correct use of methadone could be regarded as a stabilising factor*). Other than that, she felt that many aspects of the Dutch model could well be transferable to other countries.

Michaela Moser, for the European Anti-Poverty Network, said that she was impressed by the Dutch approach, which she found very positive. She was still concerned to ensure that the most excluded people are not excluded again. This is a challenge not only for the Dutch system but for all systems. The Dutch approach, for very good reasons, concentrates on the individual, but this should not be allowed to distract attention from the system that creates exclusion in the first place. To achieve real change, it is necessary to continue combining individual and systemic approaches.

Anda Masejeva, for Latvia, said that she had benefited from seeing how the Dutch system achieves its goals in practice. Debts are a problem in Latvian society, too. In future, debts due to consumer credit will become more of an issue. So the Peer Review had been very useful in providing the Latvians with an opportunity to learn how other countries are tackling a problem that Latvia will increasingly face in future. **Mudite Priede** added that she would be presenting the Dutch experience and those of other peer countries to the Latvian Social Committee when she returned home. Latvia must start developing a debt-solving strategy before it is too late.

For France, **Nicolas Revenu** said the most important thing seen by the reviewers in the Netherlands had been all the different methods that are used to give the right assistance at the right moment to the right person. France's system has been operating for many years, but some people who go through it come back again a few years later. This shows that there is a problem of assistance, because people are not completely "cured" of indebtedness. This aspect needs to be tackled, and France will be able to draw on the Dutch experience.

For Sweden, **Frank Walterson** emphasised the need to deal with every person as an individual, with individual needs. He had been particularly impressed by the broad range of services offered by the municipal credit bank. That aspect was something that could be taken home, although Sweden was unlikely to introduce social banking in the foreseeable future. He felt that commercial banks could do more to keep people out of over-indebtedness by providing credit at reasonable rates. **Ritwa Mattson Övergaard** added that tackling over-indebtedness is primarily a task for governments, rather than the banks.

For Luxembourg, **Cécile Kellens-Greisch** had been very interested by the three-year WSNP period. She would be taking that experience to the Luxembourg parliament, as part of the debate on the future of the Luxembourg system.

Closing remarks

Peter Wagenmaker, on behalf of the Dutch hosts, said they had opted to put their model up for Peer Review in order to hear fresh views on it, and they had realised that they might make themselves slightly vulnerable in doing so. He had been amused to hear that some aspects of the Dutch model were regarded as strict. He was sure that if the Dutch policy on soft drugs had been put up for Peer Review, calls would have been heard for stricter control. That goes to show that each policy area is part of a broader social picture which balances out.

Everybody knows the saying that "success has many fathers but failure is an orphan". Europe's free market society is very much focussed on success, and is inclined to treat failure as an orphan. Debtors, creditors, banks and even governments tend to deny their own responsibility for over-

indebtedness. Easy access to credit, combined with higher unemployment and a trend towards higher consumption, leads to more over-indebtedness. It is to be hoped that the current upturn in the European economy will improve matters, but solutions to the debt problem cannot be left up to economic cycles.

Despite their differing approaches, EU Member States have a common interest in combating the effects of over-indebtedness. This is why they should exchange information and share good practices at the European level. With the input from this Peer Review, it might perhaps be possible to work on common European standards. The Dutch Ministry of Justice welcomed the review's focus on embedding the over-indebtedness problem within a wider range of measures and perspectives.

The perspective of most lawyers is to seek legal solutions to debt problems. However, the expectations placed on purely legal solutions may sometimes be too high. A judge or a trustee cannot abolish the underlying causes of over-indebtedness. Debt problems are neither purely legal nor purely financial. The cause of over-indebtedness is often a personal one. There may be an imbalance between income and expenditure, for example after a divorce or the loss of a job. "Financial illiteracy" may also be involved. And there may be an inability to hold on to money – known in the Netherlands as "having a hole in one's hand". There may be problems of addiction to drugs, alcohol or gambling. All of these underlying causes call for a multidisciplinary approach. In this field, legal solutions are powerful, but they also have a limited range. Targeted education of young people in money management is an essential investment in Europe's future. So he was particularly happy that the Dutch municipal credit banks had been willing to share their experience of this.

Traditionally, the focus when dealing with debt problems has been on the debtor. But over the past few years, it has gradually been recognised that over-indebtedness also has a creditor aspect. The classic view is that all creditors have equal rights. Should we not also recognise that all creditors have equal obligations? Why do we talk about the good faith of the debtor, but not the good faith of the creditor? Access to credit has become very easy, and the advertising is aggressive and sometimes even misleading. We should also focus on a demand for informed consent by a consumer who enters into a credit relationship. The credit provider is under an obligation to inform the consumer about the legal consequences, and to seek information on the creditworthiness of the consumer. We do not want a "debtor's paradise". Debtors should make every effort to pay back what they owe. What we do all want is that the debtor's effort should last for a fixed period of time, whether it be three, five or seven years. But greater scrutiny of the credit supplier is also needed. The Dutch parliament had just approved a change in the Debt Settlement Act, addressing this problem by introducing a forced settlement procedure. He thanked the peer reviewers for their enthusiasm and for sharing their thoughts with their Dutch hosts.

Hugues Feltesse warmly thanked the Dutch Government and the Municipality of Rotterdam for the excellent working conditions and their great hospitality. The peer reviewers had appreciated the wealth of information and experience shared in the various visits and presentations. The approach presented by the Dutch authorities is highly impressive in its comprehensiveness and professionalism. Many lessons could be drawn from the Dutch organisation of the trustees' and debt mediators' work. The Dutch programme is clearly cost-effective, and the trust-based approach is very important for achieving consensus within society.

Everybody taking part in the Peer Review was convinced of the need to go further. Dieter Koczak had identified three dimensions of the debt management system – the economic, social and mediation dimensions. Clearly, the economic dimension comes first. There is a obligation to give specific support to people who have the will to achieve or maintain participation in the labour market. This requires more examination of the links between debt settlement and the job centres. The social dimension aims to avoid the social exclusion of families. This requires a more coordinated approach, and the closer linking of social support to the needs of families at different stages of life should be examined.

On mediation, the role of social banks has been noted. One difference between the Dutch and Irish approaches is that the Irish credit unions also place some emphasis on enabling debtors to build up some savings. Debt mediation could be on the collective as well as the individual level, and this might be further discussed nationally and perhaps later at the European level. Is a three-year or a five-year probationary period more effective? This could be further analysed between countries. The role of trustees and debt mediators could also be discussed – what balance should they strike between the capacity to listen to people's problems and the need for strictness? Which skills are needed for these tasks, and is a new qualification, either at national or European level, needed? The efficiency of credit registration has seldom been evaluated, and this would be a useful exercise in most countries. Last but not least, comparative results from different countries could permit conclusions to be drawn about the need for control measures such as the postal blockade. Coming back to the Dutch example, greater security of continuity is perhaps also needed. While not wishing to discuss the relations of subsidiarity between States and municipalities, he suggested that the European approach of benchmarking and Peer Review might also be of use for the exchange of good practice at the Dutch level. At the European level, a study has been launched to produce common operational definitions of over-indebtedness. It is due to start in January 2007, and the results are expected by the end of that year. So it is hoped that, by 2008, Europe will have a common set of terms in which to discuss over-indebtedness. The EU will continue to support networking on this issue, as it is convinced of the importance of this kind of action. He hoped that the Peer Review would be fruitful for all of the participants' work in the future.