

**Netherlands 2006**

# **Amnesty of debts: Amicable agreement and statutory solution**

**Short Report**



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



The Peer Review was held in Rotterdam (Netherlands) on 6-7 November 2006 and hosted by the Dutch Ministry of Justice, the Dutch Popular Credit Association (NVVK) and the Municipal Credit Bank of Rotterdam. In addition to the host country, five peer countries took part: Denmark, France, Latvia, Luxembourg and Sweden. Also participating were a stakeholder representative from the European Anti-Poverty Network, an observer from the Danish Social Ministry and representatives from the European Commission Directorate-General for Employment, Social Affairs and Equal Opportunities.

Proposed by the Netherlands for Peer Review, 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.

The **Municipal Credit Banks** (GKB) play an important part in debt resolution in the Netherlands. These non-profit organisations are owned by the municipalities, to which they are financially responsible. The NVVK is their national umbrella organisation. They have a number of “products” designed both to prevent over-indebtedness from occurring in the first place and to help resolve it when it occurs:

- Their debt prevention activities include presentations in schools and workplaces, as well as individual advice.
- Coaching is also available to clients, covering issues ranging from good money management to insurance.
- The “intake” phase is a structured analysis of the client’s budget, including the possibilities for increasing income and reducing expenditure. Initial information is given about debt resolution, budget management and possible follow-up.
- The issuing of a restricted bank card, which does not permit debts to be built up, is another technique which may also be used as part of a learning programme with the client.
- “Responsible credit” (small loans) may be provided by the GKBs, but they may not take part in the commercial loans market.
- Budget management, entailing bank control over the client’s income and expenditure, can take place either through direct agreement between the bank and the client or via a trustee.
- Debt resolution entails arranging settlements between clients and their debtors. This is a strongly formalised stage of the process.

Debt resolution may be voluntary, by amicable agreement, but it can also be regulated by law. This is the function of the Law on Debt Rehabilitation for Natural Persons (**WSNP**), which since 1992 has existed alongside the Dutch Bankruptcy Law. As its name implies, the WSNP process is available to individual debtors only, not to companies, although it can also be applied to the business debts of the self-employed.

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. It is usually a last resort, but no debtor is obliged to use it. The alternative is to go through the classic bankruptcy process. Admission to the WSNP procedure is not automatic. On the basis of a report from the debtor's home municipality, and a court appearance by the debtor, a judge must be satisfied that the debtor has already made good faith attempts to pay off the debt, is in work or is actively seeking work (except if medically unfit), and is willing and able to meet the requirements of the WSNP procedure. If the application is accepted, the court sets the rescheduling process in motion and appoints a trustee to work alongside the debtor and oversee the process. Five regional Legal Aid Councils maintain a register of approved trustees, pay subsidies, and monitor and build trustees' skills. A judge maintains overall supervision of each WSNP process. Under the scheme, the debtor is entitled to retain an income equivalent to 95% of the applicable national assistance income. Any surplus goes to pay off the creditors. Provided that debtors fulfil all their obligations under the debt rescheduling plan, they will usually be declared to have a "clean slate" after three years, even if the debts have not been paid off. If they do not meet their obligations under the plan, they are usually declared bankrupt.

During the Peer Review, participants visited the Municipal Credit Bank of Rotterdam for discussions with staff on each of its products relating to debt prevention and resolution. They also attended court sessions at which applications for admission to the WSNP procedure were heard.

### Key learning elements from the Peer Review

- The possibility of a **"clean slate" after three years** under the Dutch WSNP procedure, rather than five or seven years or longer as in some other countries impressed the peer reviewers. Although they learnt during the review that the "clean slate" is not an automatic right in all WSNP cases, it is clearly an idea to be taken back and studied for possible transferability. However, there may be a trade-off between the length of time before the "clean slate", the level of income that debtors are permitted to retain in the intervening period and the degree of control the trustees have over the indebted people's life (e.g. the "postal blockade", where all mail addressed to the debtor is redirected to the trustee, who checks it before passing it on). In some of the peer countries, debtors are allowed a significantly higher retained income than in the Netherlands and interception of mail would be regarded as a serious breach of constitutional rights.
- Some aspects of the **Danish debt remission system** might also be transferable to peer countries. The idea behind this system is that debt to the public sector can be a barrier to employment for the most disadvantaged benefit claimants. Debtors who, for a consecutive period of four years or more have been receiving social assistance benefits and who find a job, start an education or enter a rehabilitation process can apply for remission of their debt to the public sector. Once the debtors received a remission and provided they stay employed over a five year period they will no longer owe their public debts as these will be paid out of the State budget over this period. However, the political climate in some countries might make it difficult to propose new debt rehabilitation systems at this time.

- In Latvia the problem of over-indebtedness is relatively new but becoming increasingly important in the future. Since Latvia will thus have to develop a debt-solving strategy, the Latvian official welcomed the Peer Review as an opportunity to learn how other countries are tackling the problem. There might be a rare **window of opportunity for Latvia and other new member states** in a similar situation as it can be assumed that for services that have yet to be build up there is even more room for mutual learning and implementing good practices.
- The peer reviewers were impressed by the **systematic approach of the Municipal Credit Banks**. This blending of social care with banking professionalism could usefully be transferred to other countries. However, municipal banking has a long history in the Netherlands. In the present-day context, it is unlikely that municipal banking systems would be created in countries where they do not already exist.
- Of particular interest for the peer reviewers was also the **integrated range of services provided**, which might be more easily transferable to other countries (e.g. through the implementation by social services) than the Dutch banking system.
- In the Netherlands individual municipalities are free to take their own decisions on the priority they attach to services with regard to over-indebtedness and on the amount of money they want to invest, which can lead to problems of unequal treatment. Therefore an important issue is the **right spread of competences** over the different levels of government. It might for instance be worth considering having a national framework law setting minimum standards, while municipalities would then still be free to take the decisions about the organisation of the services.
- The **availability of skilled, verified trustees in sufficient numbers** is an important guarantee of quality within the Dutch scheme, as is the **judicial supervision** of the WSNP process. This promotes **creditors' confidence** in the system.
- The peer reviewers particularly stressed the importance of making links between the work against over-indebtedness and **other parts of the social security system**. In many countries the social security system is strictly separated from the banking sector and debt counselling is performed by welfare organisations and municipalities. The Dutch example, with its social banking system, therefore illustrates an innovative approach for them.
- The effective use of **databases** in the Dutch process was noted with great interest, also as a means of identifying serious debt risks at an early stage. But the public accessibility of these databases might be difficult to reproduce in some countries, due to concerns about **privacy** and commercial abuse. Similarly, the "postal blockade" system, under which the Dutch trustees can intercept and check the mail received by debtors within the WSNP process, might raise problems of human rights law or constitutionality in some countries.
- Some reviewers felt that better **preparation and support of debtors during the WSNP court proceedings** would be helpful and might save the courts' time. Candidates for the WSNP process are not legally represented at the court hearings, unless they pay for a lawyer themselves, and some did not appear to be well informed about the papers needed by the

court (such as written proof of job applications, or balance sheets in the case of self-employed debtors). It was also wondered if the provision of information in languages other than Dutch might assist this process. However, it was pointed out that this would run counter to the present general Dutch policy that immigrant communities should integrate and become fluent in Dutch. On the other hand, it was emphasised that **80% of WSNP applicants are admitted to the procedure, and 80% of those complete it successfully.**

- The question was raised of the **particularly high interest rates charged to high-risk borrowers** in many countries. This further increases the risk of over-indebtedness. One suggestion was that, if the high-risk borrowers prove to be reliable re-payers, the lenders should reimburse part of this risk premium to them.
- In all countries, there is a need to strike a **balance between the interests of debtors and those of creditors**, the peer reviewers emphasised. Debtors must act in good faith, but so must credit suppliers. Tighter regulation of the credit market may be needed, perhaps at the European level, in order to prevent credit providers from knowingly pushing people into debts that they cannot service. It may be necessary to distinguish “good faith” creditors and to give them priority in the repayment of debts.
- **Society’s spending on debt management is cost-effective.** For each euro spent on debt counselling and management, two euros are saved in other parts of society. Debt rehabilitation can reverse the descent into poverty and homelessness, and so promote social inclusion.