**Association for Consumer Rights, Malta (ACR)**

**Consumer protection and household indebtedness**

**Justification**

## Over-indebtedness generally arises following an unexpected drop in income, related in particular to a job loss, illness, separation or even over‑consumption

## Situations of over-indebtedness can no longer be seen as the problem of an individual as a result of their compulsions and passions. Today, they reflect a social and societal crisis.

## According to a survey by the European Central Bank, over-indebtedness generally arises following an unexpected drop in income, related in particular to a job loss, illness, separation or evenover‑consumption.

* It is currently giving greater cause for concern, as it is hitting poor workers, the unemployed, who have accumulated unpaid bills for essential services such as energy, water, insurance and the telephone and late rent payments, middle class people, often following a twist of fate, and also pensioners whose pensions have fallen because of austerity policies or who give financial support to their family.

## The risk of over-indebtedness is heightened by the imbalance between the rise of income and the rise in the cost of living, which is linked to changing lifestyles, national austerity policies, rising everyday expenses such as energy, housing, electronic communications, telephone, transport and financial costs.

## The recent rise in over-indebtedness encompasses another sociological category: middle class people who have lost their job and are faced with heavy mortgage payments on their home, with no short-term prospect of finding another job.

## Taking out loans in an affluent society, encouraged by aggressive, misleading advertising campaigns, to make up for loss of income or obtain goods and services, is also at the root of over-indebtedness in numerous cases.

## Vulnerable population groups are worse affected by debt as they do not have access to all forms of credit owing to their poor creditworthiness.

## They are directed towards the most costly options, such as "cash credit", which often involve cards distributed by various operators with very high interest rates.

## **Recommendations**

**Defining overindebtedness**

## There is the need to adopt a definition of over-indebtednesswhich should include the following elements: (i) the household, as a relevant unit of measure for quantifying over-indebtedness; (ii) financial commitments; (iii) informal commitments within the family or a community; (iv) inabilityto pay; (v) structural over-indebtedness; (vi) decent quality of life, and (vii) insolvency.

## If over-indebtedness is to be properly addressed, education, prevention and appropriate procedures forreintegrating over-indebted people into normal economic life are needed.

## An overall perspective on the issue of household over-indebtedness and effective measures are essential as implementingmeasures to address over-indebtedness will not be enough to reduce the number of cases.

## It must go hand in hand with measures to develop domestic and financial education

## This means that the necessary human and financial resources must be earmarked for this purpose.

## Financial education must initially be provided in schools, but must also be available at all times for all those who need it.

## Consumer and family associations have an esential role in disseminating information and providing assistance to people.

**Measures when addressing overindebtedness**

Measures must include

## The procedure must be quick and free of charge.

## In addition, the suspension of legal proceedings should be ordered at the beginning of the procedure to avoid pressure from creditors

# When a procedure for containing the over-indebtedness has been opened, thr following meassures are essential:

## verification of claims,

## keeping the main residence,

## equal treatment of ordinary creditors,

## the possibility of cancelling debts in the most burdensome situations and

## the obligation to leave an over-indebted person enough to live on decently day to day, the aim being to reintegrate the consumer into economic and social life quickly.

## Banking inclusion, must be safeguarded for people in a situation of over-indebtedness in order to avoid any social exclusion.

## **The following common factors can serve as a common basis when addressing over-indebtedness.**

* the household, as a relevant unit of measure to quantify over-indebtedness;
* financial commitments. These include mortgages, consumer credit, phone, digital
* communication, utility (water, heating, electricity, etc.) and health-related bills, rent and day-
* to-day expenses (food, transport, education, etc.);
* informal commitments entered into within the family or a community. inability to pay. An over-indebted household is unable to pay its day-to-day expenses or those related to its formal and informal commitments;
* structural over-indebtedness. This is a time-related criterion intended to cover persistent, ongoing financial difficulties;
* decent standard of living. The household must be able to make good its formal and informal financial commitments without reducing the minimum expenditure which is essential for it to maintain its standard of living;
* insolvency. The household is unable to remedy its financial situation by drawing on its financial and other assets.

# **Finding legal solutions for over-indebtedness**

# Thegeneral aim in dealing with over-indebtedness is to find a solution that will enable households to avoid social exclusion and, where possible, to pay off their debts as far as their means allow.

## Business insolvency law, introducing judicial procedures for dealing with over-indebtedness, should provide measures to allow the court to impose a debt settlement plan on over-indebted persons and their creditors.

## The decision is generally preceded by an "amicable" stage, during which an effort is made to obtain agreement among the various parties on a plan and, if this is achieved, the plan is then approved by the court.

### In this regard, the need for provision to be made at National and European level for certain essential property not to be seized on any account nor sold for a low price.

### Procedures for dealing with over-indebtedness should not lead to exclusion from essential bank services, as these are indispensable for economic and social life.

# **Preventing over-indebtedness**

* **Education on responsible budgeting and spending to be included in the national curriculum highlighting the importance of spending within one's means and the dangers of compulsive gambling**
* Information and outreach campaigns on the subject of finance must be stepped up as all sections ofthe public must be able to benefit from education.

### These campaigns can be run by different social and economic players, public authorities, NGOs,

### business federations and consumer federations. This would bring complementary sources of

### information to bear to serve the general interest.

### Efforts to control indebtedness must comply with the spirit and letter of the texts regarding consumer credit, mortgages and unfair business practices (abusive clauses, misleading advertising, aggressive door-to-door selling).

## Professionals must behave responsibly right from their product offers and advertising onwards, as well as in the advice and explanations they give to consumers when they take out a loan.

## A personalised approach is needed, and it is regrettable that it is not currently common practice,

### despite the legislation and codes of conduct that exist in most countries.

### Transparency with regard to products, particularly when it comes to loans taken out in foreign

### currencies, the risks they entail for guarantors or for spouses who are indirectly liable, and clear

### information must be the rule, whatever the medium used.

* Over-indebtedness should be averted by facilitating responsible lending and dissuasive penalties for breach of professionals' information obligations
* Over-indebtedness should be prevented by regulating credit and the personal credit sector.

### Effective legislation in this area must include measures to educate professionals and consumers.

## **Fighting usury**

## Combating over-indebtedness requires a framework for usury. The concept of "responsible credit"

## Should be stressed which requires distributors and underwriters to use fair, ethical practices.

# The issue of mortgage or consumer credit rates also warrants particular attention. Some loans

# have uncapped, variable interest rates which can change considerably according to the market.

# **Providing a high level of consumer protection**

## **Assistance facilities for over-indebted people**

### Advice on financial services and consumption, banks' and credit institutions' obligation to provide advice, and assistance in budget management are often not enough or not appropriate for people in debt.

### National authorities must therefore provide people in difficulties with social assistance services which can supply immediate help, or even free legal assistance, where that is desired.

### Member States could support and formalise the role of legal assistance provision played by consumer protection associations.

### Provision can be made for social assistance for the most serious situations of debt, covering electricity and gas, housing, food, health and payment to creditors of all or part of the debts.

### Moreover, a facility must be put in place for analysing people's specific situations, verifying the legality of the sums claimed from them, negotiating a debt settlement plan with their creditors or working on other solutions such as judicial proceedings, informing them of their rights and obligations.