1 Introduction: Setting the Scene

Federico Ferretti

The topic of this book is the over-indebtedness of consumers in the European Union (EU) from a multidisciplinary and multi-stakeholder perspective.

With the recent unprecedented turmoil in financial markets and the long-lasting effects of the ensuing most severe economic crisis in the modern history of Europe, this has become a concern for both national and EU policymakers. Yet it is not an entirely new theme, and the possible role of the EU has already been discussed in both policy and academic circles for over twenty years.1 However, materially, little has been done so far at the EU level, but in the light of the gravity of the recession on consumers, the issue seems to have turned from urgency into emergency.

The latest official figures are a few years old, and they indicate that over-indebtedness is a problem that concerns one in nine people across the EU2 and that it impacts harshly on the lives of those who are affected, carrying great social and economic costs for the EU as well as challenges for the integration of its markets. Few years on, anecdotal evidence suggests that these figures have certainly not improved. On the contrary, they may be even worse as the effects of the crisis persist and many Member States are still coping with profound economic, political and social repercussions. Moreover, with the austerity measures imposed by many Member States, non-performing loans and job losses have remained high with poor prospects of improvement.

All in all, the harm caused by the financial crisis has raised important issues regarding the protection of consumers, the scope, intensity and effectiveness of regulation in financial

---


markets as well as the need for additional safeguards to alleviate the social problems that the crisis has exacerbated.  

At the same time, the topic of this book is a traditionally difficult one to analyse, especially if taken in its European context. Consumer over-indebtedness has often been associated with financial credits, whose cultural approach, use and extension have varied significantly from one Member State to the other. Yet the integration of EU consumer and mortgage credit markets is crucial for an efficient functioning of the EU financial system, the economy and the Internal Market. The market for loans available to consumers has grown rapidly across the EU, and it has become increasingly sophisticated. The liberalisation and expansion of credit markets alongside the increased availability of credit from financial institutions have explained the relatively recent mounting levels of consumer debt across societies. If more credit is available and offered to a broader base of consumers, more consumers become indebted and, consequently, a larger number of consumers become unable to meet the contracted obligations. On the other hand, credit availability and open access to credit markets have meant widening participation and financial inclusion to allow as many consumers as possible without discrimination to participate in the credit society and the consumption model of the market economy. These observations may also suggest why excessive lending or borrowing has long been the focus of consumers becoming overcommitted and unable to repay their debts, pushing the debate over behavioural issues of creditors or debtors. Irresponsible lending and predatory practices, on the one hand, and irresponsible borrowing decisions, consumption choices and cognitive biases, on the other hand, have so far dominated the attention of scholars and policymakers alike. The emphasis on behavioural causes has often resulted in the attribution of defaults to a responsibility of the creditor or a personal failure of the debtor. Therefore, alongside the advancement of measures for the removal of obstacles for further integration, the promotion of responsible lending to limit over-indebtedness has gained priority in the EU agenda as the core policy to address consumer over-indebtedness. It has introduced a new concept that makes reference to the delivery of responsible and reliable markets, where consumer confidence is restored and credit products are appropriate for consumers’ needs and tailored to their ability to repay. They envisage a framework that could ensure that all lenders and intermediaries act in a fair, honest and professional manner before, during and after the lending transaction. To obtain credit, consumers must provide relevant, complete and accurate information on their finances. They are encouraged

---


to make informed and sustainable borrowing decisions.\textsuperscript{5} The resulting legal instruments focus on the advertising and marketing of credit products, the information to be provided to borrowers before granting any loans, ways to assess product suitability and borrower creditworthiness, advice standards, responsible borrowing and issues relating to the framework for credit intermediaries (disclosures, registration, licensing and supervision).\textsuperscript{6}

However, in so doing, over-indebtedness has been looked at in its static dimension. All definitions, conceptualisations and measurements make reference to the time when consumers apply for credit. This has been reflected in the policy and the law, which insist on the usual paradigm of information requirements and the assessment of creditworthiness at the time the loan is being made. Such measures may capture existing or likely debt problems if further credit is taken, but they cannot address the most frequent causes of consumer over-indebtedness, such as life-time events and poor market conditions, when repayment difficulties emerge at a later stage.

Certainly, behavioural factors may have a role in consumers becoming over-indebted, but market deregulation, coupled with incomplete social safety nets, is often recognised as a structural condition that leads to an environment hospitable to financial difficulty.\textsuperscript{7}

This consideration should be contextualised with the findings of recent studies on the nature and causes of over-indebtedness, which reveal empirically how this is not limited to the issue of debts stemming from financial credits but includes all consumer essential outgoings, and is tied to income and other expenditures relating to taxation and cuts in social welfare. Consumers are considered over-indebted if they are having – on an ongoing basis – difficulties meeting (or falling behind with) their commitments, whether these relate to servicing secured or unsecured borrowing or to payment of rent, utility or other household bills.\textsuperscript{8}

The major causes of consumer over-indebtedness, which the literature had already acknowledged,\textsuperscript{9} have been confirmed to be external lifetime events such as illness or divorce,
or macroeconomic factors such as unemployment, declining wages or generally low income vis-à-vis the cost of living. The findings reveal that people who lose their jobs and incomes have a higher probability to default and become entrapped in unsustainable debt, as do people confronted with accidents of life no one can anticipate. Behavioural factors, such as poor financial choices, mismanagement of resources or irresponsible lending practices, seem to have a limited bearing. Yet a reading of the major causes behind problem debt could be a conjuncture of external events with behavioural factors, where consumers do not effectively adjust their budgets to the external changes.

All considered, it becomes clear that the nature of the problem is rooted in a number of national soils that are beyond the remit or control of what the law can do, and that are far broader than the credit–debt relationship – for example, issues of political economy, taxation, labour markets, salary levels and cost of living, etc. These are very sensitive national political issues, and not much can be expected at the level of EU policies and law.

Clearly, responsible lending policies and the resulting law appear inadequate to address the problem comprehensively and certainly do not offer debt solutions. Yet if the law cannot do much to solve the causes of the problem, it may nevertheless intervene to alleviate it in ways similar to the recovering of the economic value of businesses facing financial hardship or collapse. When natural persons are involved, however, this issue raises moral and political questions and resistance. Still, as over-indebtedness has increased with the crisis, in the last few years many Member States have moved towards national regimes for the protection of consumers in financial distress and the treatment of the insolvency of natural persons. However, these are individual but uncoordinated regimes or initiatives in the Member States that expose the absence of common, harmonised or appropriately resourced strategies at the EU level.

---

10 Civic Consulting, supra note 8.
11 For example, see Banque de France, Étude des Parcours Menant au Surendettement (September 2014).
As far as the EU is concerned, Council Regulation (EC) 1346/2000 and its Recast Regulation\textsuperscript{13} – which have been designed for the cognate area of corporate insolvency but that can have limited application for the insolvency of natural persons – attempt not to impose a common system at the EU level, but instead to ensure that insolvency proceedings opened in one Member State are recognised in all other Member States. The Council Regulation outlines that the domestic law of the country where the case is opened is applicable as long as the individual has established a ‘centre of main interest’ (COMI) in the relevant jurisdiction. Moreover, the Council Regulation’s rules have given rise to forum shopping also by natural persons through abusive COMI-relocation, i.e. the movement of assets from one country to another so as to take advantage of a more favourable legal position. The Recast Regulation is designed to improve the coordination of insolvency proceedings within the EU, ensure the equitable treatment of creditors and minimise ‘forum shopping’. They do not provide for substantive rules on insolvency proceedings.

In any case, COMI provisions and the new rules of the Recast Regulation are capable of affecting a minority of skilled or well-informed consumers/small traders, but can hardly be applicable to the majority of people in financial distress, i.e. the vulnerable consumers.

It is in this context and against this background that this book took shape as part of a broader research project funded by the Civil Justice Programme of the European Commission. If EU responsible lending alone does not appear suited to deal with the complex multidimensional problem of household over-indebtedness, to what extent would an integrated but reformed EU personal insolvency regime be necessary? This is the wider research question of the research project entitled ‘Consumer Over-indebtedness, Responsible Lending, and the Insolvency of Natural Persons: the Need for a Comprehensive Reform to Protect Consumers in Financial Difficulty’, led by Dr Ferretti (Brunel University London, UK) in partnership with Prof Salomone (University of Trento, Italy), Prof Sutschet (Osnabrück University of Applied Sciences, Germany) and Mr Tsiafoutis (Consumer Association EKPIZO, Greece).

The research project is related to the EU priority that aims to promote the creation of a genuine European area of justice in the area of personal insolvency. As hinted, it aims to investigate the extent to which re-conceptualised and integrated responsible lending and personal insolvency regimes at the EU level may be necessary or desirable, where irresponsible lending and borrowing behaviours are punished but objective difficulties and good faith of over-indebted consumers find protection. The hypothesis is that a desirable legal regime should comprehensively address all the stages that lead to the

financial difficulty of consumers from prevention to cure, and it should recognise that the financial distress of natural persons is intertwined with social, political and cultural issues.

This collection of edited multidisciplinary essays from academics and a variety of stakeholders originates from expert workshops that the research team has organised in four selected Member States: the UK, Germany, Greece and Italy. They are a selection of papers emanating from a range of presentations delivered by recognised national academic and non-academic experts representing a diversity of interests involved in the issues surrounding over-indebtedness. These experts were invited to discuss national perspectives from different disciplines and interest groups, and to exchange knowledge with the research team – consumer organisations, practitioners, academics, advisors, industry representatives and local agencies.

The workshops held in the UK, Germany, Greece and Italy also offered the opportunity to draw comparisons of the social, economic and regulatory frameworks of over-indebtedness; responsible lending and borrowing; and personal insolvency regimes and understand the difficulties behind a prospective EU intervention in the area and its form.

These jurisdictions have been chosen to offer samples of diversity in terms of economic and legal tradition, culture, historical and current attitude towards personal debt, and the scale of pre-crisis household indebtedness. They also offer an interesting comparative view from the perspective of the impact of the current economic crisis and its effect on the levels of over-indebtedness, since they are at extreme ends of the spectrum. According to the latest findings, each jurisdiction belongs to a different grouping/cluster of countries classified as ‘very high’ (Greece), ‘high’ (Italy), ‘moderate’ (UK) or ‘low’ (Germany) in terms of frequency of household arrears and percentage of total population with arrears on key commitments. The selection of countries that are mature in their membership of the EU is intended to avoid issues of financial sectors typical of the new Member States that have been through structural changes in a relatively short period and, consequently, have common structural characteristics that may have exacerbated the effects of the financial turmoil or have impacted differently on the causes of over-indebtedness (e.g. borrowing in foreign currencies, heavy reliance on influx of foreign capital, transition to


15 Civic Consulting, *supra* note 8; See also the data in Bouyon and Boeri, *ECRI Statistical Package* (ECRI, 2014).
market economy and sudden growth in house prices with ensuing severe negative equities, etc.).

The research team is indebted to all those experts who held presentations or participated as discussants.

In particular, in the UK it is grateful to Professor Peter Cartwright (University of Nottingham), Professor Elaine Kempson (University of Bristol), Professor Robin Jarvis (Brunel University London and ACCA), Dr Joseph Spooner (London School of Economics and Political Sciences), Ms Joanna Elson (Money Advice Trust), Ms Gillian Key-Vice (Arrow Global and GVK Limited), Ms Sue Lewis (Consumer Panel UK), Mr Mick McAteer (The Financial Inclusion Centre), Ms Sarah Beddows, Mr Peter Tutton (Step Change).

In Germany, many thanks go to Professor Heinz Vallender (University of Cologne), Professor Peter Rott (University of Kassel), Ms Patricia Wruuck (Deutsche Bank, Research), Mr Walter Joachimiak (Statistisches Bundesamt), Mr Christoph Zerhusen (Verbraucherzentrale), Mushtaq Ahmad (Deutsche Bank, Credit Risk Management), Michael Bretz (Creditreform), Eva-Maria Trube (Diakonie); Professor Antonio Miras (University of Applied Sciences Osnabrück).

In Greece, the team’s appreciation is for Professor Giorgos Mentis (University of Athens), Ms Despoina Prassa (Bank of Greece), Ms Melina Mouzouraki (Practitioner and Member of European Consumer Debt Network), Professor Christina Livada (University of Athens and Legal Advisor in Hellenic Bank Association), Ms Olympia Linardatou (Legal Advisor in EKPIZO), Professor Theodoros Katsas (Democritus University of Thrace), Ms Celia Tsekeri (Lawyer, Vice President of Panhellenic Federation of Consumer Associations ‘Paremvasi’).

Finally, in Italy the expertise of the following experts is deeply valued: Professor Luisa Anderloni and Professor Daniela Vandone (State University of Milan), Professor Diana Cerini (University of Milan Bicocca), Professor Stefano Cosma (University of Modena and Reggio Emilia), Dr Guido Comparato (European University Institute), Dr Carlo Biasior (Center for Research and Protection of Consumers), Mr Alessio Bertocco and Mr Marco Pasini (UNIREC), Mr Enrico Lodi, Ms Luisa Monti, and Ms Claudia Pollio (Centrale Rischi Finanziari), and Ms Fabrizia Giacomini (Experian).

The book is structured in five parts. Part I comprises a chapter on the EU dimension. It sets the scene and explores the state of the art of EU policies and law to address consumer over-indebtedness (Ferretti and Livada).

---

It is followed by four parts, each focusing on the studied Member States and presented in the book in the chronological order of the workshops held throughout the project.

*Part II* covers the UK, with contributions from the perspective of debt advisors (Elson), the impact of the crisis on household over-indebtedness (Kempson), the debt crisis and the function of responsible credit (Gibbons), the role of the State in responsible lending and how it has been regulated over the last decade along with evidence of irresponsible behaviour (Rowlingson, Gardner and Appleyard), and the structure of English and Welsh personal insolvency solutions and the problems that they create for consumer protection (Tribe).

*Part III* explores consumer over-indebtedness in Germany. It includes contributions on the statistics and analysis of over-indebtedness in the country and the role played by the Federal Statistical Office (Joachimiak), followed by an economic discussion of the micro and macro dimensions of over-indebtedness from a lender’s perspective (Wruuck). An analysis of the law and policy in relation to prevention of over-indebtedness (Rott) and the German legal framework (Sutschet) provides the juridical picture.

*Part IV* is focused on Greece. Essays range from a discussion of the dimension of crisis and a general presentation of the response of the law (Mentis) to the role of debt advice and consumer organisations in the Greek personal debt crisis (Mouzouraki), a detailed account of the regulatory framework of responsible lending as a preventive tool of over-indebtedness (Livada), the recent amendments introduced in personal insolvency legislation (Katsas) and the sensitive issue in Greece of the protection of the principal residence of consumers (Tsiafoutis).

Finally, *Part V* analyses the situation in Italy from multiple perspectives. Contributions include the dimension of over-indebtedness in Italy and the characteristics of the over-indebted households (Anderloni and Vandone), the evolution of the household credit market and changes in the structure of the supply side in order to highlight the way in which these changes have improved the quality and efficiency of the credit provided (Cosma), the powers and the duties of consumer associations in Italy, including case studies and proposed solutions for preventing and repairing over-indebtedness (Biasior), an analysis of the peculiar approach taken by the Italian legal system and the interface with credit contracts (Cerini), and non-contract legal tools against over-indebtedness in the debt discharge discipline introduced by the new consumer insolvency law, addressing in the end the residual issues of debt advice and financial education (Comparato).

Grant Agreement JUST/2013/JCIV/AG/4620 under the Civil Justice Programme of the European Commission.