

Monitoring the Dutch debt adjustment law: Minister of Justice publishes 6th assessment report.

Geert Lankhorst

Ministry of Justice, policy advisor Department Access to Justice, Den Haag, the Netherlands

Results sent to Parliament

Each year the Dutch Minister of Justice informs Parliament about the effects of the Dutch debt adjustment law for natural persons (the so-called *Wsnp*¹). This assessment report is drafted every year in cooperation with the Council of Legal Aid and is done since the year 2005. The most recent report was sent to Parliament by Minister of Justice E. Hirsch Ballin on the 1st of September 2010. The monitor report constitutes an update of the results of the fifth report published in August 2009. Apart from the usual set of data regarding applications, influx, supply, continuation and outcome, the monitor takes a close look at the court-approved creditor agreement orders, moratoria and interim injunctions, which are three relatively new provisions (since 1 January 2008) facilitating extra-judicial solutions to overindebtedness problems.

This sixth monitoring report includes an interesting study on the sustainability of the debt discharge (“clean slate”) on the basis of an internet survey among 695 former debtors. In addition, the Minister has identified whether or not several socio-economic characteristics of the overall group of former debtors have changed after the court procedure period, compared to the earlier situation, and if so, what those changes are.

Most significant findings.

Application

In 2009, 12,719 applications for the court procedure were filed. This is 13% more than in 2008 (the first year after the amendment to the legislation which also aimed to reduce the number of applications) but is still 32% less than in 2005. This pattern is only visible in 12 of the 19 district courts (7 of the districts do not display this pattern); in particular in the southern provinces, there was also evidence of a drop in the number of applications in 2009, as well.

Dismissal

The dismissal rate is slightly lower in 2009 than it was in 2008: 14.8% (2008: 16.4%). There are significant differences between the district courts where the percentage rate and the development of the dismissal rate are concerned.

Influx

The number of applications that were granted in 2009 dropped slightly compared to 2008: from 9206 to 8964. The number granted per 100,000 adult inhabitants varied strongly between the districts; it varied from 21 in the district of Dordrecht to 135 in the district of Zwolle.

The number of bankruptcy orders converted into the debt adjustment procedure is between 500 and 600 per year. The conversions account for 5% of the total number per year.

¹ *Wsnp* = *Wet schuldsanering natuurlijke personen* = Debt Rescheduling (Natural Persons) Act, since 1998 the third chapter of the Dutch Insolvency Act.

Trends in the profile of new debtors identified in the previous monitoring reports show some changes: firstly, the number of (former) business owners was slightly higher in 2009. The increase in the average age of the debtor, which had risen for years, came to a halt in 2009. The average income remained the same for both (former) business owners and private individuals, whereas the overall debt burden went up slightly (€ 30.000), even for business owners (whose liabilities rocketed suddenly in 2008).

The number of debtors who reached an amicable settlement prior to court intervention rose significantly compared to 2007 and 2008 (private individuals 69% and (former) business people 35%).

Post-appeal application

The number of cases where debtors were granted access to the debt adjustment procedure upon appeal proceedings in 2009 decreased further, to 1.4% (2008: 2%).

Supply

The number of active court debt administrators (trustees) dropped again in 2009 by 9%, amounting to a total of 830. The number of pending cases dropped, as was the case in 2008, by 10% (to 34,800). The percentage of lawyers acting as court administrators continued to fall steadily (in 2009 to 57%) and differed considerably per district. A lawyer had an average of 9 cases in the beginning of 2010. Non-lawyers had an average case load of 53 cases.

Results

With respect to cases that started before 2002, the percentage of debt discharge granted by the judge after the usual three years of effort by the debtor fluctuated quite high around 70% per year of commencement. After that, the percentage rose slightly to 72.5% in cases commencing in 2005. The percentage of bankruptcies dropped from 18.1% in cases commencing in 2003 to less than 14% in cases commencing in 2006.

In 2009, debt discharge was granted by the judges in 9733 cases.

Court-approved compositions², stand-still orders (moratoria) and interim injunctions

The number of applications for approval of a composition by the court, a moratorium or an interim injunction rose considerably in 2009 compared to 2008. The courts received 682 applications for court-approved compositions (a 70% increase), 473 for a moratorium (+ 31%) and 834 for interim injunctions (+ 67%).

The percentage of applications allowed was 32% for court-approved compositions, 53% for moratoria and 63% for interim injunctions. Approximately 20% of the applications were dismissed. The figures for withdrawal of applications were as follows: 40% for court-approved composition, 22% for moratoria and 15% for interim injunctions.

As in 2008, there were major differences between the different district courts where it concerned the number of applications filed and the percentages of applications either allowed or denied.

Sustainability of the debt discharge

It appeared that there is a reasonable sustainability of the debt discharge. The majority of the former debtors, who were in debt trouble some three years ago, had stayed out of financial problems since then. The risk of a person finding himself or herself again in payment problems after the debt discharge increases if such person has loans, or lives in rented

² Article 287a Dutch Bankruptcy Act: *dwangakkoord* = a composition which is approved and enforced by the court, if a creditor refuses in an unreasonable way to agree voluntarily with an out-of-court settlement.

accommodations, or has a large number of children in the household, or if he or she has a lower income.

The causes mentioned most for running into trouble again are the price increases in the necessities of life, and expenses that exceed income. Striking fact is that a lot of households who were in the debt adjustment procedure now were able to save money on a regular basis (67%).

The majority of former debtors is satisfied with the information provided in advance, the role of the district court and the administrator. The majority is not happy with the fact that their post is blocked via the court administrator, and how the administrator handles this. Private individuals are more positive than former business owners.

Employment after court procedure and aim of the law

Two years after the debt discharge, a large number of people has found paid employment (36%).

When looking at the aim of the law to offer debtors a fresh start, the chances seem to have risen somewhat, from 68.5% debt discharge to 72.5% of cases commencing in 2005.

In this 6th assessment report the second aim of the law is not investigated: "promoting the willingness of debtors and creditors to agree to an amicable settlement". Based on the data, it is however possible to make an educated guess. The number of applications for approval of court-approved compositions by the court rose in 2009 by 70% compared to 2008. The share of withdrawn cases fell slightly, but was higher in actual numbers (240) than in 2008 (154). Withdrawal can imply that an amicable settlement has been reached, which would suggest in that case that the Act worked as an incentive. The NVVK annual report (organisation of municipal credit banks, operating in voluntary debt counseling agreements) shows that the share of amicable settlements in the form of a debt rescheduling loan or debt rescheduling mediation rose from 18.9% in 2008 to 19.9% in 2009. These results are successful according to the NVVK.

The third aim of the law is to reduce the number of bankruptcies of natural persons. This is a goal that was hard to achieve in the year 2009. The economic crisis began in the year 2008 and first affected small businesses, while private households, making up a significant part of the natural persons in financial problems, were affected a little later. The total number of bankruptcies of natural persons rose in the year 2009 from 3000 to well over 3800. The increase of insolvency of legal entities in 2009 was much higher than in 2008 (+ 82%).

An explanation for the decrease in influx

The influx in 2009 was a bit lower than in 2008. This is striking, because more people are facing financial difficulties due to the economic crisis, as the increase in people relying on help reaching amicable settlements by 23%³ shows.

There are other factors that also may affect the influx of people applying for the debt rescheduling court procedure, such as the use of court-approved compositions and moratoriums. In 2009, the number of court-approved compositions and moratoriums was higher than in 2008. This growth has a buffering effect on the number of people applying for administration of the Wsnp: part of these cases would have resulted in an application for the Wsnp, if the above two new alternative measures would not have come into force.

³ Source: NVVK 2009 annual report, p. 16.

Court access

People do not have a free access to the debt rescheduling court procedure. Overindebted persons have to search for amicable debt solutions first, and have to show to the court that this out-of-court-procedure did not work in their case. The courts faced less applications. A so-called article 285 Insolvency Act-certificate is a pre-requisite for filing an application in Wsnp proceedings before the judge. This model document means that the debtor has court access, and has to show proof that an out-of-court settlement is really not possible. It is remarkable that in 2009, the number of article 285 Insolvency Act-model certificates issued by municipalities and/or members of the NVVK was 30% lower than in 2008 (6004 v. 8599). In 2009, the percentage of applications allowed by the courts was a fraction higher than in 2008 (77% v. 77.8%). The percentage of cases denied was a little lower than in 2008 (14.8% v. 16.4%). The conclusion is that the district courts did not apply stricter testing criteria, for example on the good faith of the debtor.

The monitoring report comes to the conclusion that especially the strong decrease in the number of court access certificates issued (by debt-rescheduling support organizations with NVVK membership) seems to explain the decreased influx in 2009 compared to 2008. The number of people seeking out-of-court help in rescheduling their debts has gone up significantly, probably mainly due to the economic crisis, but the extent to which they are applying for the court procedure has dropped strongly.

The smaller number of court-access-certificates issued is not caused by a success of more amicable solutions. Moreover, there are no data available as to whether these amicable solutions lead to a permanent situation of people staying out of overindebtedness.