The Netherlands

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1. HISTORICAL BACKGROUND

On the 1st December 1998, the Debt Rescheduling (Natural Persons) Act [*Wet schuldsanering natuurlijke personen*, hereinafter "WSNP"] came into force in the Netherlands.[1] This Act provides those debtors who are unable to pay their debts with the opportunity to apply to the court for a fresh start. The court then checks whether the debtor acted in good faith in regards to the creation of his debt. Should the request then be accepted, the debtor is to repay the highest amount possible to the creditors over a period of three years. After this period, the residual debt is converted into natural commitments. The remaining debts continue to exist but the creditors are no longer entitled to enforce the payment. In actual fact, the debtor is then debt-free. In the Netherlands, a debtor may only appeal to the court if it is evident that it is not possible to reach an amicable debt settlement. The Municipal Debt Counselling Act [*Wet gemeentelijke schuldhulpverlening*, hereinafter "WGS"] regulates how amicable debt settlements are to be established. The WSNP and the WGS thus form the Dutch system of debt counselling.

From a historical standpoint, the following events should be identified:
1. 1998: entry into force of the WSNP
2. 2001: the Act is critically evaluated and there is growing discontent from the judiciary
3. 2008: the Act is amended, inter alia to restrict the influx of applications
4. 2010: the Supreme Court breaks the municipal monopoly on access to the WSNP
5. 2012: amicable debt counselling becomes legally regulated
6: 2016: there is a lot of criticism on the system

1. 1998: entry into force of the WSNP

The draft WSNP bill was submitted in 1992. During its consideration in the Lower House of Parliament, there was broad political support and only a few minor points in the draft bill were changed. During its consideration in the Upper House, however, an intense political debate arose. It eventually took eight years before the Act was entered into force. The main criticism of the draft bill in the Upper House was that the Act would be too complex and costly, and that it would result in an excessive workload for the courts[2]. To meet this criticism, the requirement was added to the draft bill that prior to appealing to the courts, a debtor must always first try to arrive at an amicable debt settlement[3]. The Netherlands has a long tradition of amicable debt counselling by municipalities (see item 2).[4] As early as the mid-seventies, Dutch citizens have been able to request such counselling from their municipalities. Much like in legal proceedings, an amicable debt settlement is to last three years. By amending the draft bill, amicable debt settlements would now be recognised as a statutory form of debt settlement.

The WSNP is embodied in Chapter 3 of the Bankruptcy Act. In the Explanatory Memorandum, three objectives are cited: (1) to offer debtors a debt-free future by means of a statutory debt settlement, (2) greater willingness of creditors to participate in amicable debt settlements, and (3) to bring about a decrease in the number of bankruptcies of natural persons.[5]

The first objective should be achieved due to the fact that, by operation of law, the remaining claims (if any) following the expiry of a statutory debt settlement are converted into natural commitments. The second objective should be achieved by making statutory debt settlement so unattractive to creditors that they opt more frequently to cooperate in amicable debt settlements. Finally, the third objective should be achieved by offering debtors recourse to the WSNP as soon as their creditors have filed a bankruptcy petition.

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[1] Parliamentary Papers II, 1992/1993, 22 969, no. 3 (Memorie van toelichting Wsnp)

[2] Van Hees (1996) De Eerste Kamer moet het wetsvoorstel schuldsanering natuurlijke personen verwerpen (The Upper House must reject the draft bill on debt rescheduling for natural persons). Nederlands Juristen Blad, nr. 16. P. 589-591. Van Hees (1996) Postscript. Nederlands Juristen Blad nr. 22., p 850-853

[3] Parliamentary Documents II 1997/1998, 29 942, no. 3 (Amendment to the draft Wsnp bill)

[4] Jungmann, N. (1996) De Wsnp: bedoelde en onbedoelde effecten op het minnelijk traject (The WSNP: intended and unintended effects on the amicable process). Leiden University press. Leiden

[5] Parliamentary Papers II, 1992/1993, 22 969, no. 3.

The second objective of the WSNP is directly related to the trend in the success rate of amicable debt counselling. If the willingness of creditors to participate in amicable debt settlements increases, then the success rate rises.

2. 2001: the Act is critically evaluated and there is growing discontent from the judiciary

Once the Act had come into force, it came under fire again fairly soon after. The evaluation conducted by the Department of Justice three years after its entry into force found that the introduction of the WSNP had the effect that the success rate of amicable settlements had decreased by 20 percent[6]. This was an unintended effect that arose due to a number of developments. The three most important developments that contributed to this were:
1. *Municipalities were not as anxious to reach an amicable settlement since a legal alternative was now available*. During the time that there was no legal alternative to an amicable debt settlement, debt counsellors would try their upmost to achieve a result. Such settlement would only be established where all creditors were willing to cooperate. Therefore, debt counsellors would phone the creditors, send countless letters, and put in a great deal of legwork to support the debtor's request. Once the WSNP entered into force, a new procedure was available whereby creditors could now be forced to cooperate and, as a result, many debt counsellors limited their efforts to achieve cooperation. This adjustment inadvertently contributed to a reduction in the number of amicable settlements.
2. *Municipal emergency funds were abolished*. Prior to the entry into force of the WSNP, many municipalities offered emergency funds. If there should be a single creditor blocking an amicable debt settlement by refusing to provide his consent, the debtor could then request a grant from the fund. The grant would be used to pay off the debts owed to the refusing creditor. Once the WSNP entered into force and established a procedure whereby such creditors could be forced to cooperate, many municipalities abolished the funds. This adjustment also inadvertently contributed to the reduction in the number of amicable settlements.
3. *The national code of conduct for amicable debt counselling was made stricter in order to achieve a good link between the amicable and legal courses of action*. In 1979, the 'Debt Rescheduling Code of Conduct' was introduced in the Netherlands. The Code of Conduct contains conditions to be fulfilled by debt counsellors when reaching an amicable debt settlement[7]. Debt counsellors hereafter lost any room for discretion. Under the stricter Code of Conduct, for instance, they could no longer establish debt settlements of longer than three years. This was also a reason why fewer settlements were established than before.

The judiciary were also among those criticising the new Act. Judges and insolvency officer holders (administrators), i.e. the legal professionals who supervise the implementation of statutory debt settlements, indicated that the cases gave rise to a very great deal of work for the courts and that they 'were obliged' by the Act to even accept people for whom the risk of relapse into debt was all too likely[8]. Judges ascertained that too many applicants had psychosocial problems which were not under adequate control. In addition, judges found that it was not easy to assess whether the debtor had indeed behaved in good faith.

3. 2008: the Act is amended, inter alia to restrict the influx of applications

The above reports became the basis for the Minister of Justice to amend the Act. In 2004, a draft amendment was submitted; in 2008, the amended Act entered into force. The five most important amendments to the Act were[9] [10]:
1. *The admission procedure was tightened up*. Article 288 of the Bankruptcy Act was amended in such a way that from now on the debtor had to demonstrate that the circumstances which brought about the emergence of, or continuing failure to, pay the debt have been brought under control by the debtor. For example, if the individual was addicted to drugs or gambling at the time the debt arose, he or she must demonstrate that such addiction has meanwhile been brought under control and that there is no risk of relapse. Under the old law, the rule was that the debtor was admitted unless there was any ground for

[6] Niemeijer, B. Ter Voert, M. Jungmann, N. (2001) Van schuld naar schone lei. (From debt to a fresh start). Evaluatie Wet schuldsanering natuurlijke personen. (Evaluation of the Debt Rescheduling (Natural Persons) Act). Wodc (Wetenschappelijk Onderzoek- en Documentatiecentrum, Ministerie van Veiligheid en Justitie; Scientific Research and Documentation Centre, Ministry of Security and Justice), The Hague, p42.

[7] Debt Rescheduling Code of Conduct., available at: www.nvvk.eu

[8] Huls, N.J.H. , Schellekens, V. (2001) Je ziet de gaten in hun handen. (You can see the holes in their hands) De eerste ervaringen van rechtbanken en gerechtshoven met de toepassing van de Wet Schuldsanering Natuurlijke Personen. (The first experiences of the district courts and courts of appeal in applying the Debt Rescheduling (Natural Persons) Act). Lemma.

[9] Parliamentary Papers II 2006/2007 29 942, no. 3, no. 20, no. 25 and no. 34.

10 Engberts, B.J. (2015) Voorlopige voorzieningen en dwangregeling in het schuldsaneringsrecht (Provisional provisions and compulsory regulation in debt restructuring law.). Universiteit Leiden, Leiden. Diss

rejection. Under the current law, the burden of proof lies with the debtor. The latter must demonstrate that he or she meets the eligibility requirements. The obligation to state reasons is thus shifted from the court to the debtor[11].

2. *There is a new provision making it compulsory to attempt an amicable debt settlement (Article 287a of the Bankruptcy Act)*. If one or several creditors refuse to cooperate with an amicable debt settlement, the debtor may petition the court to force these creditors to cooperate.

3. *There is a new provision permitting a limited moratorium* (Article 287b of the Bankruptcy Act). The Act requires that before making an appeal to the WSNP, the debtor must first try to reach an amicable debt settlement. However, in some cases there is not enough time to reach such an agreement. These may be situations in which the debtor is at threat of being evicted or having his energy or water supply cut off. In these situations, the debtor may ask the court for a moratorium. If this is granted, the relevant creditor must not attempt to collect the debt for six months and thus not evict the debtor, etc. The cooling-off period can be used to eventually arrive at an amicable debt settlement.

4. *Preliminary injunctions* (Article 287 paragraph 4 of the Bankruptcy Act). In urgent situations other than impending eviction or shutting off of power or water, a debtor may also request a preliminary injunction. The court will then assess in an individual case whether a creditor should be temporarily forbidden from carrying out certain forms of debt collection. This applies to acts such as confiscation of driving licences, selling off household effects, etc. The court will only grant a preliminary injunction if the debtor can argue that the award of a preliminary injunction would give the parties a real chance of achieving an amicable debt settlement. The request for a preliminary injunction may be made at the same time as a request for admission to the WSNP.

5. *Court-imposed damages for crimes will no longer qualify for a fresh start.* When the WSNP entered into force, only student debts were excluded from discharge.

4. 2010: the Supreme Court breaks the municipal monopoly on access to the WSNP

Until 2010, a debtor could only make an appeal to the WSNP if the municipality had issued a so-called WSNP petition. In this petition, the municipality outlines to the court inter alia the efforts which have been made to reach an amicable settlement, which creditors are being uncooperative, and why a three-year arrangement with the debtor should be expected to achieve a positive result. This monopoly was broken in 2010 when the Supreme Court in a judgment elaborated that administrators, lawyers and other legally regulated professions must also be able to draw up a request for admission to the WSNP.[12]

5. 2012: amicable debt counselling becomes legally regulated

To be able to make an appeal to the WSNP, the debtor must first try to reach an amicable debt settlement. Its implementation has been somewhat regulated since 1979 in the Debt Rescheduling Code of Conduct, produced by the Dutch Association for Lending to Private Individuals [*Nederlandse Vereniging voor Volkskrediet, NVVK*], of which most debt counselling organisations are members. In 2012, amicable debt counselling was regulated. With the entry into force of the Municipal Debt Counselling Act (Wet gemeentelijke schuldhulpverlening or short Wgs) in the Netherlands, a system developed whereby two separate Acts together formed a single entity in response to addressing debt (see below item 2).

6. 2016: there is a lot of criticism on the system on the system. The criticism swelled around 2014 when it became clear that a growing number of debtors remained deprived from help. The entry into force of the Wgs coincided with a major austerity operation for municipalities. In order to realize the cutbacks, municipalities started imposing ever higher access requirements on debtors. Debtors had to do more and more paperwork to be admitted, and in legally more complicated situations, debtors themselves had to find a solution first[13]. For a growing group of debtors, what was asked of them was more complicated than they could handle. As a result of the increasingly strict requirements, the number of applications for amicable debt counseling decreased and also derived from the number of applications WSNP. The developments in the implementation resulted in a lot of criticism on the system in 2016. Among other by important government related organizations such as the Netherlands scientific council for Government Policy[14]

[11] The mail redirection is regulated in Article 287 paragraph 5 of the Bankruptcy Act. Van der Winkel, Marsman, A. (2011) Praktijkboek insolventierecht (Practical insolvency law). Part 9 Debt rescheduling for natural persons. Wolters Kluwer Business P 31

[12] European Case Law Identifier: NL:PHR:2010:BN8056

[13] Jungmann, N. Lems, E. Vogelpoel, F. Van Beek, G. Wesdorp, L.P. (2014) Onoplosbare schuldsituaties (debt situations that cannot be solved). Hogeschool Utrecht, Utrecht.

[14] Tiemeijer, W. (2016) Eigen schuld? Een gedragswetenschappelijk perspectief op problematische schulden (Own fault? A behavioral science perspective on problematic debts). WRR, Den Haag

, the National Ombudsman[15] and the Netherlands court of Audit[16]. On top of that there was a critical evaluation of the Wgs. This was commissioned by the Ministry of Social Affairs and Employment. In summary, the criticism of the system is that it has become too complicated for people with debts to find their way to municipal (Wgs) or legal debt counselling (WSNP). A too large group of debtors will not receive a fresh start as a result, while for a large part of this group the only way is to get out of debt at some point. People become, as it were, hostage in their problems.

2. A PRE-ACTION STAGE

The Netherlands has a long tradition of amicable debt counselling. In the thirties, municipal banks were the first to carry out amicable debt settlements.[17] In the seventies, the Dutch Association for Lending to Private Individuals, the NVVK, created more uniformity by implementing a Code of Conduct. Application of that Code of Conduct took place on a voluntary basis. By 2012, the implementation of amicable debt counselling was regulated. In that year, the Municipal Debt Counselling Act came into operation. This section explains these three stages and describes what the Municipal Debt Counselling Act involves. At the end of this section, there is a brief description of how amicable debt counselling currently operates.

1. The thirties: the first amicable debt settlements

This was a period when usury was rampant and many households thus ended up in insoluble debt. Municipal banks tried to counteract the growth of usury by providing loans at reasonable interest rates. Households could use that credit to purchase durable goods or to pay off their creditors (and thereby break the often vicious circle of usury). In 1939, it was proposed for the first time that a special type of credit be established for the redemption of debt, so-called restructuring credit. In the period before and just after World War II, debtors would use restructuring credits to fully pay off their debts, but in the course of time this changed. For debtor who would never be able to repay their debts, municipal banks increasingly asked creditors whether they would be prepared to settle for partial discharge.

2. In the seventies, implementation was harmonised by means of a Code of Conduct

In the sixties and seventies, debt settlements with discharge were commonplace. Besides municipal banks, in the sixties and seventies, social services and organisations for social work also began to offer debt counselling. With the growth of the number of suppliers, differences in implementation also increased. In particular, when the number of debt settlements grew, creditors operating nationwide found it increasingly bothersome that there were now large differences in the characteristics of each debt settlement (surrender rate, duration of the settlement, the amount that the debtor was entitled to retain, etc.). To unify the implementation, the NVVK introduced the Debt Rescheduling Code of Conduct in 1979. This included all the most important features of an amicable debt settlement. Among these features: a maximum duration of three years, the condition that all creditors participate, and the manner of calculating how much money the debtor would be live off.

3. In 2012, the Municipal Debt Counselling Act (WGS) entered into force

Despite the Debt Rescheduling Code of Conduct, major differences remained in how debt counselling was carried out[18]. In 2008, the Ministry of Social Affairs commissioned a study into amicable debt counselling. The main conclusions were that[19]:
- there were major divergences in quality (the success rate of applications for amicable debt settlement varied from 10 to over 50 percent between different municipalities);
- many municipalities had substantial waiting lists;
- there were major divergences in the eligibility requirements imposed on debtors;
- there were major divergences in the type of support that debtors received (only a debt settlement, or individual or group debt counselling in addition);
- there were major divergences in the extent to which municipalities personalised debt settlements;
- there were only a few municipalities offering prevention and/or aftercare.

[15] National Ombudsman (2016) Burgerperspectief op schuldhulpverlening (Citizen's perspective on debt assisitance). National Ombudsman, Den Haag
[16] Netherlands court of Audit (2016) Aanpak problematische schulden.(Approach problematic debts) Netherlands court of Audit, Den Haag
[17] Segaar, J.W. (1982) 50 jaren gemeentelijk Volkskrediet, NVVK, (50 years of municipal lending to Private Individuals, NVVK) Almere
[18] Jungmann, N. (1996) De Wsnp: bedoelde en onbedoelde effecten op het minnelijk traject (The WSNP: intended and unintended effects on the amicable process). Leiden University press. Leiden
[19] Jungmann, N. Telgen, J. Tazelaar, P. Overeem, G. Sandbergen. R. (2008) Schulden? De gemeente helpt! (Debts? The municipality will help!) Hiemstra & De Vries/ Significant, Utrecht/Barneveld

By providing a legal framework alongside the WSNP for amicable debt counselling (the WGS), the Ministry of Social Affairs wanted to provide a system of debt counselling in which the two Acts collectively offered a guarantee that every Dutch debtor could count on appropriate support.

The Municipal Debt Counselling Act aims among other objectives to ensure that municipal debt counselling is accessible to every citizen with debts, that there are no waiting lists and that the process is as expeditious as possible for citizens[20]. In addition, pursuant to the WGS, municipalities must provide for prevention and aftercare. Municipalities are obliged to draw up a community-wide policy for debt counselling. It must also work out how they will cooperate with other parties (addiction care, mental health care, etc.) and what the municipality is doing specifically for families with large debts and children. The Municipal Debt Counselling Act should provide a minimum quality of implementation on which every citizen can rely.

4. Partly due to the WGS, municipalities have gone different ways

The entry into force of the WGS took place at a time when many municipalities were already having to cut back on debt counselling. Depending on the area, municipalities had been confronted with the task of finding between 25 and 30 percent of efficiency savings on average. The combination of a new legal framework and these austerity measures led many municipalities to use different methods in response to debt counselling. The most important change is that the municipalities have become much stricter in selecting debtors for whom it is worth attempting an amicable debt settlement with discharge. With regard to the influx of petitions to the WSNP, this has the consequence that there are also fewer people who can ask the court for admission[21].

Stricter selection at the gate is at odds with the objective of the WGS that amicable debt counselling be widely accessible. In order to remain capable of fulfilling this mission, many municipalities have meanwhile distinguished between two types of amicable debt counselling[22]. The first type is light support to prevent escalation. This is also described as stabilisation. Debtors making use of it get light support. Examples of light support are:
- assessing whether the attachment of earnings imposed by the bailiff has been properly calculated
- assessing whether a person is still entitled to income support (for example, housing benefit)
- providing a budgeting course which the debtor shall follow to learn how to manage money differently.

The second type of amicable debt counselling is to undergo a debt settlement with discharge. This is a labour-intensive process. Municipalities only initiate this if there are good grounds to expect that the debtor will successful complete the debt settlement. The debtor cannot choose what type of support he receives. In principle, the goal is always to get a debt settlement with discharge. Reasons raised to instead offer stabilisation may be legal or psychosocial. For example, a legal reason may be that the debtor is undergoing an incomplete divorce. A psychosocial reason may, for example, be an addiction that is not yet under control or spending behaviour that does not fit within the budget.

Aside from rigorous selection at the gate, there is a second development taking place. Many municipalities set up social teams in 2015. These are teams consisting of social work professionals who understand all sorts of problems (education, unemployment, debt, addiction). They have the task of determining in the case of each family that applies whether, in addition to the issue for which they are coming, there are also other problems going on. If that is the case, they then have the task of providing a comprehensive plan. For people in debt, the establishment of social teams means that they can usually no longer apply directly for debt counselling. Debt counselling has become a second-line facility. If there are several problems going on simultaneously (e.g. parenting problems and debts), the social worker from the social team ensures that implementation of the various types of second-line support (child welfare and debt counselling) are aligned.

The entry into force of the WGS in 2012 and the developments already described are the reason why the Ministry of Social Affairs and Employment is to carry out a statutory assessment of the WGS in 2016. At the time that this chapter was written, this evaluation was not yet available. However, the statistics do reveal the following pictures. The number of applications for amicable debt counselling increased in the period

[20] Parliamentary Papers II, 2009/2010, 32 291, no. 3 (Explanatory memorandum on the draft Municipal Debt Counselling Act)

[21] Jungmann, N. Lems, E. Vogelpoel, F. Van Beek, G. Wesdorp, L.P. (2014) Onoplosbare schuldsituaties (debt situations that cannot be solved). Hogeschool Utrecht, Utrecht

[22] Many municipalities already started making this distinction around 2010. The entry into force of the WGS has intensified the tendency to distinguish two types of amicable debt counselling. Jungmann, N. (2012) Schuldenproblematiek, een vraagstuk in transitie (Debt problems, an issue in transition). Hogeschool Utrecht, Utrecht.

2011-2014 by approximately 21 per cent (to about 92,000[23] applications in 2014)[24]. During the same period, the influx of applications to the WSNP actually fell by around 14 per cent (to 17,619 applications in 2014[25]). Thus more people are applying for amicable debt counselling while, on the other hand, applications to the WSNP are declining. The most obvious explanation would appear to be that more amicable settlements are being agreed upon, but that is not the case. The percentage of applications for amicable debt counselling culminating in amicable settlement declined in the period 2011-2014 from 44 to 39 per cent[26]. There is thus a growing call for assistance which is not followed by a debt settlement. By nature, this group often remain in insoluble debt situations for years.

The two opposing trends outlined above can be explained by two developments:
- After applying for an amicable debt settlement, a selection takes place which has become considerably more stringent in recent years. Debtors are increasingly being told that in any event, no attempt is being made to reach a debt settlement. [27]
- If no amicable debt settlement comes about (because one or more creditors refuse), debt counsellors are less and less likely to refer the debtor to the WSNP. The decision not to refer is usually motivated by the assumption that the debtor will not be admitted (because of the tightened WSNP eligibility requirements since 2008 and major differences in relevant interpretation by the courts[28]).

The growth in the number of households with insoluble debt takes place behind the backdrop of the Netherlands having among the most severe household debt in Europe. The Netherlands occupies third place after Denmark and Norway[29]. The fact that the Dutch have high mortgage debts, moreover, is an important explanation for this. For a large number of Dutch with (high) debts, it is thus more likely to be the case that they do have debts, but are not in arrears. These debtors therefore need not worry about creditors trying to use coercive measures to enforce their payments. The percentage of households who, on the other hand, were in arrears during the period 2012-2015 remained stable at around 18 per cent[30]. This group comprises households with both risky and problematic debts. In the case of risky debts, households that make every effort to solve the financial problems usually resolve them on their own. If the debts are problematic, then a debt settlement with discharge is the only solution to become free of debt in the foreseeable future. In the period 2012-2015, the percentage of households with risky debt decreased, while the percentage of households with problematic debt (and having no contact with debt counselling) actually increased. Although the fact that the overall figure remained stable at around 18 per cent over these years gives rise to mild optimism, the increase in the number of households with problematic debt (and having no contact with debt counselling) does give cause for concern. Table 1 summarises the progression of issue of household debt in which creditors actively seek to enforce payments. (For example: if someone promptly pays his mortgage every month, he does have a debt but in the table below, he is counted under the category of ‘no risk’).

[23] NVVK (2015) Annual figures 2015, Utrecht, available at: www.nvvk.eu

[24] The Netherlands lacks records on the number of requests for amicable debt counselling. Only the NVVK, the professional association for debt counselling, keeps national figures. It may be assumed that these may also be representative of the trends for non-members. The estimated coverage of the NVVK is more than 80 per cent. In light of this, the number of applications to the NVVK would barely have to be increased by 20 per cent to give the national picture. Jungmann, N. Kruis, G. (2014) Het verhaal achter de cijfers. (The story behind the figures). Hogeschool Utrecht/Regioplan.

[25] S.L. Peters, Combrink-Kuiters, L., Verkleij, R. (2015) Monitor Wsnp. Elfde meting over het jaar 2014 (Eleventh measurement over the year 2014). Wolf legal publishers, Utrecht/Den Haag.

[26] Available at: http://www.nvvk.eu/jaarverslag2014/cijfers/

[27] Jungmann, N. Kruis, G. (2014) Het verhaal achter de cijfers. (The story behind the figures). Hogeschool Utrecht/Regioplan.

[28] Jungmann, N. Kruis, G. (2014) Het verhaal achter de cijfers. (The story behind the figures). Hogeschool Utrecht/Regioplan.

[29] Mc Kinsey & Company (2015) Debt and (not much) deleveraging. Mc Kinsey Global Institute

[30] Westhof, F. De Ruig, L. Kerkhaert, A. (2015) Huishoudens in de rode cijfers. (Households in the red). Over schulden van huishoudens en preventiemogelijkheden. (About household debt and prevention opportunities). Panteia, Zoetermeer p 18

Table 1: Comparison between % of households in each group, 2015 and 2012[31]

Group	Percentage of households 2012	Percentage of households 2015
No risk	81.6 - 83.9%	81.2 - 82.6%
Risky debt situation (creditors enforcing payments but the household can resolve itself if it exerts maximum effort)	9.7 - 12.9%	8.1 - 11.3%
Problematic debts (creditors enforce payments. The burden of debt in relation to the income is so high that the debtor cannot provide full payment in the coming years)	2.7 - 4.8%	4.6 - 7.5%
Problematic debts known to debt counselling (amicable or legal)	2.3 - 2.3%	2.5 - 2.5%
Total	16.1 - 18.4%	17.4 - 18.8%

3. ACCESS TO PROCEEDINGS

3.1. Types of proceedings

The WSNP only establishes one type of procedure. This begins upon admission to statutory debt settlement proceedings. After admission to the WSNP, the court appoints an administrator. The latter has the task of ensuring that the debtor pays all income above a certain threshold, that any valuables are sold, and that creditors get as large a portion of their claims as possible. In addition, the administrator is instructed to identify whether the debtor has excess goods that can be sold. For the purposes of such assessment, the administrator has two instruments: house calls and mail redirection. The house call is used at the start of the debt settlement. The administrator visits the debtor's home to determine that there are no valuable items that can be sold. In addition, the administrator will receive all mail for 13 months.[32] By going through the mail, the administrator can determine whether there may still be items that can be sold (a boat, caravan, car of exceptional value, etc.), or whether a (savings) account is still being withheld. The rationale behind the mail redirection is that if there are goods or (savings) accounts, at least once a year, mail will be sent about it (annual statement, invoice for garaging, etc.).

3.2. Thresholds for proceedings

The extent of the burden of debt does not determine whether someone is to be admitted to statutory debt settlement proceedings. To qualify for these proceedings, the debtor must show that it is sufficiently likely that he:
1. cannot continue to pay his debts (Article 288 paragraph 1 sub a);
2. has acted in good faith regarding the emergence of, or continuing failure to, pay his debts in the five years preceding the day on which the application is filed (Article 288 paragraph 1 sub b);
3. will comply with the obligations arising from the statutory debt settlement as he ought to and will endeavour to ensure the maximum proceeds for the estate (Article 288 paragraph 1 sub c).

The debtor must prove the aforementioned matters. The burden of proof is clearly on the debtor. With regard to not continuing to pay the debts, it is already sufficient if the debtor can prove this in respect of a single debt (Article 288 paragraph 1 sub a).[33]

The test of whether the debtor acted in good faith in the emergence and continuing failure to pay the debts is undertaken seriously by courts (Article 288 paragraph 1 b). It is subject to a limit of five years. Debts older than five years may quite possibly not have been entered into in good faith but do not constitute an impediment to being admitted to statutory debt settlement proceedings.

[31] Source: Westhof, F. De Ruig, L. Kerkhaert, A. (2015) Huishoudens in de rode cijfers. (Households in the red). Over schulden van huishoudens en preventiemogelijkheden. (About household debt and prevention opportunities). Panteia, Zoetermeer).
[32] Mail redirection is regulated under Article 287 paragraph 5 of the Bankruptcy Act. Van der Winkel, Marsman, A. (2011) Praktijkboek insolventierecht (Practical insolvency law). Part 9 Debt rescheduling for natural persons. Wolters Kluwer Business
[33] HR 13 June 2003, NJ 2003, 520 (Supreme Court 13 June 2003, Dutch Jurisprudence 2003, 520)

If debts are less than five years old and have emerged from social security fraud (benefits etc.) or from a final criminal conviction, they are regarded as not being in good faith. In addition, judges may involve other issues in their assessment of good faith[34]:
- The debts were incurred while the debtor could have known that he was unable to repay them;
- The debts stem from a drug, alcohol, gambling or other addiction;
- The applicant had his own company and did not keep accurate accounts;
- The applicant has several fines arising from traffic offences (speeding, uninsured driving, driving through a red light, driving without lights, etc.).

For the court, the five-year limit is crucial in the assessment of good faith. For debtors, in practice, it is often quite a challenge to show when each debt arose, especially when the debt has been sold on (which is a more and more common practice).

In practice, different judges handle the good faith test in very different ways. For example, there are judges who regard just one or two tickets for speeding as an indication of bad faith, while others are much more lenient in practice[35]. With respect to matters such as addiction, the court may drop the five-year limit if the debtor establishes that the addiction is under control (Article 288 paragraph 3).

In addition to the above, the debtor must also demonstrate that he will make every effort to comply with the obligations stemming from the statutory debt settlement (Article 288 paragraph 1 sub c). The debtor should indicate roughly how much he thinks he will earn and if he is out of work, what efforts he is going to make to again obtain paid work.

Judges also assess whether the debtor's situation is sufficiently stable. This includes income. Because entrepreneurs generally do not have stable income, this group is now largely irrelevant under the WSNP.

3.3. Types of debtors

Statutory debt settlement proceedings may be declared for the benefit of any natural person (with or without a company)[36]. The debtor must be resident in the Netherlands during the period when the debt rescheduling is deemed to apply. If a debtor is married under a community property regime, then cooperation of the spouse is necessary (Article 284 paragraph 3). As regards debtors with insufficient command of the Dutch language, they will be asked in advance to demonstrate that they have arranged for someone to translate all correspondence which they are due to receive[37].

3.4. Restrictions to apply for proceedings

The application for admission is rejected if (Article 288 paragraph 2):
- a debt settlement is already applicable;
- the process of attempting to reach an amicable settlement is not carried out by a municipality or any legal professional referred to in Article 48 paragraph 1 of the Consumer Credit Act (hereinafter *inter alia* referred to as: lawyers, bailiffs, administrators, etc.);
- the debtor has debts arising from a final conviction in the last five years (or longer if the relevant court sees fit when making its decision);
- in the ten years preceding the application, the debtor has already been admitted to statutory debt settlement proceedings (Article 288 paragraph 2). The ten-year limit is an inflexible limit. Only if a statutory debt settlement ended prematurely, through no fault of the debtor, can admission within ten years be accepted[38].

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[34] This list of considerations is not included in the Act. It is a list prepared by judges which may be taken into consideration during a decision. These policy agreements have since been laid down in Appendix IV to the *Procesreglement verzoekschriftprocedures insolventiezaken rechtbanken* (*Process regulations for petition procedures to courts in insolvency matters*). Van der Winkel, Marsman, A. (2011) Praktijkboek insolventierecht (Practical insolvency law). Part 9 Debt rescheduling for natural persons. Wolters Kluwer Business P32

[35] Jungmann, N. Kruis, G. (2014) Het verhaal achter de cijfers. (The story behind the figures). Hogeschool Utrecht/Regioplan

[36] Verschoof, R.J. (1998) Schuldsaneringsregeling voor natuurlijke personen (Debt rescheduling settlements for natural persons). NIBE, Amsterdam

[37] Appendix IV to the *Procesreglement verzoekschriftprocedures insolventiezaken rechtbanken* (*Process regulations for petition procedures to courts in insolvency matters*).

[38] Van der Winkel, Marsman, A. (2011) Praktijkboek insolventierecht (Practical insolvency law). Part 9 Debt rescheduling for natural persons. Wolters Kluwer Business P39

The above-mentioned grounds are mandatory grounds for refusal. By means of mandatory grounds for refusal, the legislator intended to limit the workload of the judiciary[39].

3.5. Persons eligible to file a petition

A request for application to the statutory debt settlement proceedings can only be made by the debtor. To that end, the latter can take any of three routes:
1. The debtor requests it himself; the spontaneous request (Article 284).
2. The debtor requests it in order to avoid a creditor's request for his bankruptcy; the defensive request (Article 284 in conjunction with Article 3).
3. The debtor requests at this point that a bankruptcy or moratorium be pronounced (Article 284 in conjunction with Article 15b/247a).

In the period 2009-2013, the number of conversions from bankruptcy to statutory debt settlement proceedings increased from 641 to 1,142. In percentage terms relative to the total number of statutory debt settlements, this is an increase from 7.1 to 9.2 per cent[40]. Whether a debtor can appeal to the WSNP via the Bankruptcy Act is under discussion. The Supreme Court has pronounced in a judgment that this is not the intention of the Act[41]. Some judges elaborate on this. There are also judges who disregard the judgment and consider this to be a positive move in certain situations and therefore condone it. In particular, such situations arise where people are – wrongfully – not eligible for amicable debt counselling. This happens, for example, when a municipality wrongfully refuses them because of their possession of an owner-occupied home or entrepreneurs in municipalities that do not offer support with financial problems to this group.

3.6. Costs of filing a petition

For the debtor, there are no costs associated with a request for admission to statutory debt settlement proceedings.

3.7. Consequences of commencement of the proceedings

If the debt settlement is applicable, then a number of rules apply. The most important rules are that:
- the debtor may not create any new debts;
- if unemployed, the debtor must evidence that he is searching for a job and, if in a job working a limited number of hours, must demonstrate an attempt to extend his working hours;
- if he is an entrepreneur, the debtor must in principle liquidate the business (Article 311 Bankruptcy Act);
- the debtor may not sell any items included in the estate without the permission of the administrator;
- the debtor may not move house without permission.

From the day the statutory debt settlement comes into force, the debtor has no authority to make transactions with respect to the estate. The debtor can still enter into agreements but if debts arise from them then this could be a reason for premature termination.

Twice a year, the administrator must send a progress report to the court. The reports are used to determine, at the end of proceedings, whether the claims are to be converted into natural commitments. The format of the reports is fixed.[42]

3.8. Termination of proceedings

A statutory debt settlement can be terminated in one of three ways:
1. The court grants the debtor a fresh start. The unpaid portion of the claims is converted into natural commitments (Article 352 in conjunction with Article 354 in conjunction with Article 365).
2. The court does not grant the debtor a fresh start. The debtor has not complied with the demands made, has paid the claims within the period of the statutory debt settlement or is able to resume his payments. (Article 350 of the Bankruptcy Act)

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[39] Van der Winkel, Marsman, A. (2011) Praktijkboek insolventierecht (Practical insolvency law). Part 9 Debt rescheduling for natural persons. Wolters Kluwer Business P35

[40] Combrink-Kuiters, L. Peters, S.L., Nauta, B., Vlemmings, M. (2014) Monitor Wsnp. Tiende meting over het jaar 2013 (Tenth measurement over the year 2013). Wolf legal publishers, Utrecht/Den Haag

[41] European Case Law Identifier: NL:PHR:2015:47

[42] Available at: www.bureauwsnp.nl

3. During the term of the settlement, an agreement is offered to the creditors. The creditors agree to the conversion of the debts into natural commitments. The court has the authority to nonetheless establish a rejected agreement as if it had been adopted (Article 340 paragraph 1 of the Bankruptcy Act).

The court may on its own initiative, and at the request of the creditor(s), debtor or the administrator, decide to terminate the statutory debt settlement prematurely. Grounds for termination why often apply are: failure to provide information or failure to make adequate efforts[43]. *Inter alia* debtors are expected:
- to do their upmost to retain paid employment;
- to try to find paid work, even if they have children under four years of age[44] (unless exempted by the bankruptcy judge);
- if they have a job working fewer than 36 hours per week, to endeavour to reach this number of hours;
- if they are looking for paid work, to apply at least four times per month (excluding open applications) and be registered with at least three or four employment agencies;
- to apply for all types of work;
- to send copies of their job applications to the administrator;
- if they are incapacitated for medical reasons, to submit a certificate of medical examination or allow themselves to be examined by an expert designated by the administrator or by the court.

3.9. Publicity of proceedings

The granting of a statutory debt settlement is published in the Government Gazette (www.officielebekendmakingen.nl) and in the Central Insolvency Register (CIR) (http://insolventies.rechtspraak.nl). The granting will remain registered in the CIR for ten years following the end of statutory settlement proceedings. For an amicable debt settlement, the debtor is registered with the Bureau Kredietregistratie (Bureau of Credit Registrations) (www.bkr.nl). The registration remains visible for five years after the end of the settlement.

4. THE PAYMENT PLAN

4.1. Basic procedure

For the duration of the statutory debt settlement, the debtor himself ensures that monthly payments are made to the administrator. If someone is demonstrably unable to do so, he can get help in the form of budget management or protection from the court. The amount of each monthly payment depends on the income of the debtor. A technique has been developed which is applied to both amicable and statutory debt settlements in order to calculate the amount the debtor may retain each month. All income above that threshold must be transferred to the administrator for the benefit of the creditors. There is an online calculator available to calculate the debtor's so-called "available funds"[45].

4.2. Making the plan binding on all creditors

If the debtor is admitted by the court for statutory debt settlement proceedings, then this is binding on all creditors. They are required to cease all collection activities from that moment. If attachment of income has taken place, the debtor is to regain disposal of his income from this moment.

4.3. Methods of implementation of the plan

There are no specific directions on this point.

4.4. Duration of the plan

Just as is the case for the amicable debt settlement, in principle, the statutory debt settlement lasts for 36 months. The bankruptcy judge may adjust the term (potentially at the request of the debtor, the creditor or the administrator). The maximum term is 60 months. An extension of the term is usually applied if, during the settlement, a new debt has arisen that can still be paid off if there is an extension of the term. The bankruptcy judge will agree with that if the debt has been incurred in good faith. A second common reason

[43] Van der Winkel, Marsman, A. (2011) Praktijkboek insolventierecht (Practical insolvency law). Part 9 Debt rescheduling for natural persons. Wolters Kluwer Business P88.
[44] The Dutch social security system provides scope for parents with children under the age of four to seek less work or not to seek paid employment.
[45] Available at: http://www.bureauwsnp.nl/vrij-te-laten-bedrag/de-berekening-van-het-vrij-te-laten-bedrag.html

to extend is because a debtor has not complied with the requirements. This may be the case, for example, if the obligation to seek work has not been fulfilled. For an extension, there need not always be a direct link between the shortcoming and the extension. If, during a period of three months, the debtor has not sufficiently applied for work, this can result in a six month extension[46].

In exceptional cases, the statutory debt settlement can also be shorter than 36 months. The minimum duration is 12 months. During the parliamentary debate on the draft bill, there was an insistence that it be used with restraint[47]. The period can be shortened if, prior to the statutory debt settlement for bankruptcy, the debtor has already been paying an amount to the estate which is higher than the threshold in force in the debt rescheduling for some time[48]. The bankruptcy must have lasted long enough so that, for example, half of the bankruptcy period may be deducted from the term of the debt rescheduling[49]. Repayments in performance of an amicable settlement which has preceded the statutory debt settlement are not, in principle, grounds for a shorter term (although some judges do apply the Act in this way)[50].

4.5. Minimum repayment amount

The debtor will distribute the estate so as to pay off his creditors. In Article 295 paragraph 1, it is stated that the estate shall comprise the goods which the debtor possesses at the time that the debt settlement becomes effective as well any goods which he acquires during the course of the settlement.

A certain portion of income remains outside the estate. These are the debtor's so-called "available funds". This amount is equal to 95 per cent of standard income support. In the case of debtors who work, the amount is equal to 100 per cent of the standard income support. If a debtor works overtime, in principle, he can keep half of the additional income himself. In this way, the debtor has an incentive to work overtime.

4.6. Treatment of debtors with no capacity to repay

The Netherlands uses a basic personal allowance system. Citizens who have no income or an income below the standard income support may appeal under the Participation Act. Under that Act they shall then receive (supplementary) benefits. In principle, every citizen thus has the basic personal allowance at his disposal. The WSNP is open to citizens with an income equivalent to the basic personal allowance. During the settlement, 5 per cent of that is deducted in favour of the creditors. Depending on the type of household, this amounts to approximately EUR 50 to 80 per month.

5. DISCHARGE

5.1. Granting discharge

At the end of a statutory debt settlement, the bankruptcy judge evaluates whether someone qualifies for a discharge. Any remaining funds are converted into natural commitments. Specifically, this means that the claims do still exist but that the creditors lose their rights to demand payment of their claims. The conversion takes place by means of a ruling.

To assess whether the debtor qualifies for a fresh start, the administrator is to report to the bankruptcy judge no later than three months before the expiry of the statutory debt settlement (Article 351a). The administrator also substantiates whether in his opinion the debtor ought to be given the fresh start. No later than one month before the expiry of the settlement term, a session is scheduled. This session is a pro forma session. The debtor and the administrator are only required to appear before the court should there be any doubts. The *pro forma* session is published in the Official Gazette so that creditors who see a reason to do so can still communicate. On the day of the session or eight days thereafter, the court is to issue a ruling as to whether the debtor has been accepted or not. In so doing, the finding may be that the debtor has indeed fallen short of the mark but that this shall nevertheless not preclude him from receiving a fresh

[46] Combrink-Kuiters, L. Peters, S.L., Nauta, B., Vlemmings, M. (2014) Monitor Wsnp. Tiende meting over het jaar 2013 (Tenth measurement over the year 2013). Wolf legal publishers, Utrecht/Den Haag p10

[47] Van der Winkel, Marsman, A. (2011) Praktijkboek insolventierecht (Practical insolvency law). Part 9 Debt rescheduling for natural persons. Wolters Kluwer Business P85

[48] Combrink-Kuiters, L. Peters, S.L., Nauta, B., Vlemmings, M. (2014) Monitor Wsnp. Tiende meting over het jaar 2013 (Tenth measurement over the year 2013). Wolf legal publishers, Utrecht/Den Haag p10

[49] Recofa guidelines Wsnp 2009

[50] Jungmann, N. Kruis, G. (2014) Het verhaal achter de cijfers. (The story behind the figures). Hogeschool Utrecht/Regioplan

start (Article 354 paragraphs 1 and 2).[51] Should the debtor receive a discharge, the administrator is to take care of any payments to be made to the creditors. Where the final accumulated amount is less than EUR 500, no payment takes place.

5.2. Claims excluded from discharge

There are three types of debts which are not eligible for discharge: claims on account of a fine or criminal conviction, student debts and mortgage debts (if the house is not sold during the statutory debt settlement).

Student debts come under their own regime (defined in the Student Finance Act 2000). Student debts are covered by a separate repayment arrangement. After completion of the statutory debt settlement, it may be the case that the debtor is again able to pay off his student debt. During the application of the statutory debt settlement, the student debt repayment obligation is suspended.

Claims of creditors with a lien (right of pledge and/or mortgage) do not fall within the scope of a statutory settlement (Article 299 paragraph 3 of the Bankruptcy Act). Any debt remaining after selling a home is covered by the discharge. See item 9.2 for a further explanation of the position of the debtor's private home in a statutory debt settlement.

5.3. Consequences of discharge

Entering into statutory debt settlement proceedings is not without its consequences. The debtor is entered by name into the Central Insolvency Register (CIR) (http://insolventies.rechtspraak.nl). The name will remain in the register for 10 years. The result is that, even after expiry, it is known that the debtor has made use of the settlement proceedings in the past. Debtors report that as a result of this, they find it increasingly difficult to take out insurance and loans and that buying a home is often particularly difficult.

In the Netherlands, credit ratings do not (yet) play a major role. There are some parties who request credit ratings but it is certainly not common at this stage.

6. COMPETENT COURT

On 1 January 2013, the judiciary was reorganised. Since that date, there have been eleven district courts to which debtors can apply. A debtor must apply to the court in the area of his residence. In practice, there are substantial differences in the ways in which courts undergo statutory debt settlement proceedings (some severe, others liberal). Comparable cases are not to be admitted by one court when they have been admitted by another court[52].

Examples of other matters that are handled very differently[53]:
- The obligation to include the dates when all debts originated.
- The willingness to convert a bankruptcy into a statutory debt settlement (as an alternative route for an amicable procedure).
- The opportunity to award the costs of a compulsory composition against creditors.
- The extent to which courts apply the policy regarding the WSNP as the starting point to any application.
- The supervision of efforts by an unemployed debtor to find paid work.

7. INSOLVENCY OFFICE HOLDER

7.1. Types of insolvency office holders

Insolvency office holders (administrators) are natural persons. To be able to work as an administrator, a person must be registered in the registry of administrators. This register is maintained by the WSNP Agency (which is part of the Legal Aid Board). The Legal Aid Board is fully funded by the Ministry of Justice and is responsible for implementing the WSNP. The WSNP Agency (or *Bureau WSNP*) ensures, *inter alia*, that

[51] Van der Winkel, Marsman, A. (2011) Praktijkboek insolventierecht (Practical insolvency law). Part 9 Debt rescheduling for natural persons. Wolters Kluwer Business P91

[52] Jungmann, N. Kruis, G. (2014) Het verhaal achter de cijfers. (The story behind the figures). Hogeschool Utrecht/Regioplan

[53] Combrink-Kuiters, L. Peters, S.L. (2011) Quick scan of access impediments to the WSNP. Raad voor rechtsbijstand (Legal Aid Board). Utrecht. Jungmann, N. Kruis, G. (2014) Het verhaal achter de cijfers. (The story behind the figures). Hogeschool Utrecht/Regioplan pp 75-86

there are effective regulations in place that new rules of policy delivered by the judiciary are brought to the attention of the administrator, etc. There are two types of administrator: lawyers and non-lawyers[54]. Of the administrators who were active in 2014, 40 per cent were lawyers[55]. There are major differences depending on the region. In some regions, only 10 per cent of the administrators are lawyers and in other regions more than half. The number of active administrators declined further in 2014. On 31 December 2014, the Netherlands had 533 active administrators, which is 8 percent fewer than in 2013.

7.2. Role of the insolvency office holder

The administrator has the task of identifying what the debtor owns and what income he receives (from employment, his business, or welfare). The administrator manages the estate and monitors the debtor. *Inter alia*, the administrator ensures that the debtor complies with monthly payments and, if relevant, ensures that the debtor make sufficient efforts to find a full-time job. The administrator also ensures that any money raised is distributed among the creditors. To be able to act, the administrator is authorised by the bankruptcy judge (Article 316 Bankruptcy Act). If any goods are sold, it is in principle the administrator who carries out such task by private contract.

In carrying out the work, the administrator is bound both by the WSNP and by policies drawn up by the courts. The policies dictate, for instance, that[56]:
- The administrator always be able to be reached by the court via a direct telephone line.
- The administrator always be able to answer questions from the bankruptcy judge within 14 days.

Furthermore, the administrator is required to submit a report about the estate within two months of admission to statutory debt settlement proceedings. Thereafter, the administrator must issue a report on each file every six months. The report must comply with format requirements (www.bureauwsnp.nl)

During the course of the statutory debt settlement proceedings, the debtor is to retain full legal capacity.

7.3. Qualification of insolvency office holders

On the basis of their profession, lawyers can be registered as administrators. Non-lawyers must first undergo training and pass an exam to be eligible for registration. Training as administrator is only offered by the OSR Legal Training Institute (in consultation with the WSNP Agency). In addition, administrators must meet the following requirements:
- The administrator works at a law firm for current insolvency practice or for an organisation that has been registered by the Legal Aid Board in the register as a WSNP administrator organisation.
- In the ten years prior to the request for registration, the administrator has not been personally insolvent, has not had any (problematic) debts and has been of (financially) irreproachable behaviour.
- The administrator is to submit a Declaration of Good Conduct (*Verklaring omtrent gedrag*, or VOG) along with Profile 55 (legal service provision) renewed no longer than three months prior, and a copy of a valid ID. A VOG is evidence that a person has not committed any crimes.

7.4. Licensing of insolvency office holders

After passing the exam the administrator gets a certificate. But passing the exam is not enough to be able to get to work as an administrator. It has been necessary, since 1 January 2016, for a person[57]:
- to take on a minimum of ten cases each calendar year;
- to obtain at least 36 points per calendar year in the context of continuing education (PE). One PE point is equivalent to one hour of education.

An administrator can obtain PE points through: relevant training activities, peer consultation/peer review/inter-colleague monitoring (maximum of 5 points per year), keeping abreast of professional literature (maximum of 3 points per year), fulfilling an active role at organisational level within the sector as a board

[54] Jungmann, N. (1996) De Wsnp: bedoelde en onbedoelde effecten op het minnelijk traject (The WSNP: intended and unintended effects on the amicable process). Leiden University press. Leiden p 40

[55] Peters, S.L. Combrink-Kuiters, L. Verkleij, C. (2015) Monitor Wsnp, Elfde meting over het jaar 2014 (Eleventh measurement over the year 2014). Wolf legal publishers, Utrecht/Den Haag

[56] Recofa guidelines Wsnp 2009

[57] Policies for enrolment of WSNP administrators and WSNP administrator organisations in the register. (http://www.bureauwsnp.nl/binaries/content/assets/wsnp/regelingen/beleidsregels-inschrijving-bewindvoerders-en-organisaties-wsnp-11-12-1015-stcrt-2015-44924.pdf)

member or member of a working group/committee (maximum of 3 points per year), publication in professional literature (maximum of 3 points per year).

7.5. Restrictions to act as the insolvency office holder

An administrator may no longer act as an administrator if he has been struck off the register. See items 7.2, 7.3 and 7.4 for the terms and conditions for remaining registered therein.

7.6. Appointment of the insolvency office holder

The debtor does not select the administrator. The latter is appointed by the court. A prerequisite for appointment is that the requirements as detailed in items 7.2, 7.3 and 7.4 be fulfilled.

7.7. Release of the insolvency office holder

The administrator can be dismissed by the court at the request of creditors, the debtor or on the court's own initiative. The court is obliged to hear the administrator. If the court decides to dismiss the administrator, no appeal is possible. If an administrator is dismissed, the subsequent administrator receives a one-time extra payment of EUR 200 of expenses for familiarising himself with the file.[58]

7.8. Civil liability of the insolvency office holder

An administrator is appointed in a personal capacity. If the administrator makes mistakes which disadvantage stakeholders, he is liable for them. Every administrator will have taken out professional liability insurance for such cases. If a conflict cannot be resolved during the WSNP procedure, the disadvantaged party may initiate a separate civil action against the WSNP administrator.[59]

8. POSITION OF THE DEBTOR

8.1. Debtor and his or her spouse

If a debtor is married under a community property regime, then the things that are owned in common are part of the estate (Article 313 in conjunction with 63). These are then to be liquidated. Certain property may be left out of the estate by way of exception. This may play a role, for example, in a legacy in which the deceased has recorded in a will that the inheritance may not be included in the community property of a marriage. But pension entitlements can also have a special status.

Formally, in the case of a married couple, there are three estates: the private estate of one person, the private estate of the other person, and the common estate. Because there is usually joint liability and there is seldom any significant private capital belonging to one of the two spouses, a dual statutory debt settlement is usually handled as a single statutory debt settlement proceeding. It is then referred to as a single estate and not three separate estate.[60]

8.2. Principle of good faith

See the explanatory notes in item 3.2.

8.3. Restrictions imposed on the debtor

The most important requirement imposed on the debtor is that he does not carry out any acts that are detrimental to the creditors. The debtor may also not take out any (new) loans or sell various assets such as a car, goods or a house; the consent of the administrator and the bankruptcy judge is always necessary for this. Other restrictions imposed on the debtor are[61]:
- That the debtor may not move house without permission from the bankruptcy judge;

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[58] Van der Winkel, Marsman, A. (2011) Praktijkboek insolventierecht (Practical insolvency law). Part 9 Debt rescheduling for natural persons. Wolters Kluwer Business P68

[59] Available at: http://www.bureauwsnp.nl/voor-bewindvoerders/veelgestelde-vragen/is-een-bewindvoerder-wsnp-aansprakelijk-voor-gemaakte-fouten.html

[60] Van der Winkel, Marsman, A. (2011) Praktijkboek insolventierecht (Practical insolvency law). Part 9 Debt rescheduling for natural persons. Wolters Kluwer Business P43-45.

[61] Modus Vivendi (2016) practical manual Wsnp www.modusvivendi.nl

- That the debtor may not receive education or training without permission from the bankruptcy judge;

The debtor remains authorised to perform official acts.

8.4. Persons related to the debtor

The WSNP does not cover assets belonging to persons related to the debtor (except for the partner if there is a marriage or registered partnership).

9. DEBTOR'S ASSETS

9.1. Disposal of debtor's assets

The administrator is empowered to manage the estate. The debtor retains full legal capacity to deal with his own resources (the available funds) during the course of the statutory debt settlement proceedings. The debtor may also enter into contracts. The debtor loses his legal capacity with regard to the estate. The debtor may not make any payments out of his own resources in respect of the claims covered by the estate (Articles 306 and 308). If the debtor nevertheless makes a commitment in respect of the estate, then the person with whom a commitment is made may not recover it against the estate. Thus the commitment does have force of law but the other party has no recourse to retrieval.[62]

9.2. Assets included in the proceedings

All income falls within the estate, except for the debtor's available funds (see items 4.1 and 4.5). In addition, any excessive household effects and other items of value such as a caravan or boat are to be included in the estate.

9.3. Assets excluded from the proceedings

Excluded from the estate are the debtor's available funds (see items 4.1 and 4.5), non-excessive household effects, and goods acquired by the debtor with performance that is excluded from the estate. For example, if the debtor uses money from his available funds to purchase something that he sells for a higher amount (unless the increase is disproportionate). Depending on the situation, the bankruptcy judge can authorise the exclusion of certain items from the estate. This could be, for example, a car needed for commuting to and from work which does not have an excessive value.

9.4. Exempt property

N/A

9.5. Assets in joint ownership

If a debtor has assets in joint ownership, these must be valued and the other party shall be permitted to buy the debtor out.

9.6. Sale of assets

The debtor may not sell any goods without permission from the bankruptcy judge (Article 326 Bankruptcy Act).[63] In principle, goods are sold by private contract.

9.7. Sale of mortgaged property

If a debtor has a mortgage on a house with surplus value, then the house must be sold. If there is no surplus value, then, in principle, the house may be retained if the housing costs do not exceed the costs of alternative rented accommodation. If these requirements are complied with, the administrator may ask the bankruptcy judge whether the house may be retained. If a house is sold, in principle, the first to be paid will be the mortgagor (*e.g*. for instalments in arrears).

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[62] Verschoof, R.J. (1998) Schuldsaneringsregeling voor natuurlijke personen (Debt rescheduling settlement for natural persons). NIBE, Amsterdam pp 66-67.

[63] Verschoof, R.J. (1998) Schuldsaneringsregeling voor natuurlijke personen (Debt rescheduling settlement for natural persons). NIBE, Amsterdam pp 104-105.

There are also situations where there are no arrears on the mortgage and the housing costs are not higher than those of a rented house, but where the house is nevertheless sold. The main reason for opting to do this is if the house has been overvalued (the value of the mortgage exceeds the value of the house). Especially if, for example, a person has uncertainty regarding his income, the administrator can ask the bankruptcy judge whether the house may be sold. By selling the house during the term of the statutory debt settlement, the residual debt shall form part of the estate. After completing a statutory debt settlement, the debtor will no longer be eligible for a new statutory debt settlement for a period of ten years. By eliminating the risk of new debt (to be expected in real terms if the debtor has already experienced a reduction in his income during the WSNP procedure), the debtor has the prospect of a truly fresh start.

Municipalities often wrongly exclude debtors with their own home from amicable debt counselling. Private home owners are regularly told that they have to sell the house and only then can they request an amicable debt settlement. This practice is contrary to the aims of the WGS.[64]

10. DEBTOR'S CONTRACTS AND TRANSACTIONS

10.1. Treatment of contracts

The statutory debt settlement applies with respect to all claims that the debtor has at the time that the settlement comes into force (Article 287 paragraph 1 of the Bankruptcy Act). Thus the statutory debt settlement also relates to claims which the debtor has not himself reported to the administrator. Claims of creditors with a lien (right of pledge and/or mortgage) do not fall within the scope of a statutory settlement (Article 299 paragraph 3 of the Bankruptcy Act).

At the moment that the statutory debt settlement enters into force, the powers of creditors to enforce payment lapses. In concrete terms, this means that:
- the confiscation of household goods, movable property such as cars, boats, or income expires;
- a proposed eviction, disconnection of water or energy will no longer take place;
- the attachment of a bank account must be lifted;
- etc.

10.2. Voidable and revocable transactions

If a creditor has a lien, he does not lose that right through the application of the WSNP (Article 299b paragraph 1 of the Bankruptcy Act).

11. POSITION OF THE CREDITOR

11.1. Protection of creditors' rights

The WSNP barely provides for the protection of the rights of the creditors. Nearly all debts fall under the discharge. Alimony obligations also come into this category (Article 358 paragraph 1). Creditors have rights primarily when it comes to monitoring implementation. They have the right to inspect the reports of the administrator so that they are aware of the progress of the file. If a creditor believes that the administrator is not doing his job properly, the creditor can make this known to the bankruptcy judge. With every decision taken by the bankruptcy judge, the creditors have five days in which to appeal against it.

The creditor cannot initiate any objection to, appeal against, or move to quash the ruling of the court to admit a debtor to the WSNP (Article 292 of the Bankruptcy Act).The granting of a discharge does not require any consent from the creditors.

Upon admission to statutory debt settlement proceedings, the debtor is to submit a list of all creditors known to him. The creditors listed are summoned. It can happen that a creditor is not on the list. In that case, the creditor must register himself. If he is not registered, the creditor does not share in the distribution of the estate. If the debtor gets a fresh start, the power to still collect the outstanding amount lapses. So unless he is registered, a creditor leaves empty handed.

[64] Jungmann, N. Lems, E. Vogelpoel, F. Van Beek, G. Wesdorp, L.P. (2014) Onoplosbare schuldsituaties (Insoluble debt situations). Hogeschool Utrecht.

11.2. Lodgement and verification of creditors' claims[65]

After being appointed, the administrator draws up a list of all creditors known to him. The administrator lets them know that the statutory debt settlement applies and that they must cease collection activities. If, for example, by means of the redirection of the debtor's mail, the administrator learns about the existence of further creditors, he is to add these to the list and also informs them of the statutory debt settlement proceedings. Creditors who are not notified of the proceedings are expected to be aware on the basis of the notice in the Government Gazette.

In the same period in which the list of creditors is made as complete as possible, the administrator schedules a creditors' meeting. This meeting aims to determine whether the list of creditors as drawn up by the administrator is correct. If one or more creditors indicate in advance that they are coming to the meeting, the administrator notifies the registry. In that case, no *pro forma* session is held, but a substantive discussion will take place. Based on the *pro forma* session or the substantive discussion, the administrator draws up a definitive list of claims. In so doing, he makes a distinction between acknowledged and disputed claims. The administrator also sends this list to the debtor and he posts it on the WSNP Agency website (www.bureauwsnp.nl) in the form set up for that purpose.

No later than two weeks before the creditors' meeting, the administrator is to provide the bankruptcy judge with the provisional list of acknowledged and disputed claims. In addition, he requests the bankruptcy judge to deposit the list with the registry as well. Until the creditors' meeting takes place, the administrator may request the bankruptcy judge to make changes to the list of acknowledged and disputed claims. If an administrator is of the opinion that a claim does not qualify to be acknowledged, he is to consult with the debtor about this. The administrator will always try to avoid a claims validation procedure (if only because of the cost). If they nevertheless cannot reach agreement, the administrator places the claim on the list of provisionally disputed claims.

For creditors who arrive to the creditors' meeting, the bankruptcy judge will decide there and then, or following the conclusion of the meeting, whether his claim will be acknowledged. If a *pro forma* creditors' meeting takes place, the bankruptcy judge and the registrar certify the lists of provisionally acknowledged and disputed claims. The administrator will be notified of this as soon as possible. Then the administrator advises the creditors whether their claim is eligible to be acknowledged.

11.3. Curtailment or modification of creditors' claims

The WSNP offers no opportunities for customisation with regard to the claims of creditors.

11.4. Right of set-off

A creditor who is also a debtor may set off his claim if it comes within the scope of the debt rescheduling settlement (Article 6:127 of the Dutch Civil Code).[66]

11.5. Satisfaction of creditors' claims

In principle, distribution only takes place at the end of the debt settlement. If the estate yields enough assets, the admission ruling often stipulates that the administrator may already pay himself an advance on his salary during the statutory debt settlement.

11.6. Creditor bodies

See item 11.2 for the explanation of the creditors' meeting. There is no other creditor body established in the WSNP.

11.7. Rights of the creditor bodies

Creditors have no power in statutory debt settlement proceedings. The bankruptcy judge determines whether a debtor is admitted and how the statutory debt settlement is organised. No majority is required to progress to admission or distribution.

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[65] The description in this item is lifted almost word for word from the Recofa guidelines for debt rescheduling settlements. Recofa 2009.

[66] Van der Winkel, Marsman, A. (2011) Praktijkboek insolventierecht (Practical insolvency law). Part 9 Debt rescheduling for natural persons. Wolters Kluwer Business P59.

12. COSTS OF THE PROCEEDINGS

12.1. Administrative costs of the proceedings

The administrative costs of the WSNP can be divided into two types of costs: the costs of the administrator and court fees.

The costs of the administrator are in principle covered by the debtor's money (see 12.2). Only when the debtor's payment is insufficient to provide for the salary of the administrator is a supplemental subsidy given. It is rare for the administrator to sell goods belonging to the debtor. Expenses for postal services during the first 13 months are paid for by the administrator.

The costs of the court are paid for by the Ministry of Justice.

12.2. Remuneration of the insolvency office holder

When the WSNP came into effect, the administrator was remunerated via two sources. The debtor paid a sum of approximately EUR 50 per month to the administrator and in addition, the administrator received a subsidy from the Legal Aid Board. From the moment the WSNP entered into force, there was criticism that the financial differences between an amicable and statutory debt settlement were not big enough to encourage creditors to opt for an amicable debt settlement[67]. In 2013, the reimbursement system was finally adjusted. Now, in principle, the administrator no longer receives any subsidy from the Legal Aid Board. Only when the debtor's payment is insufficient to provide for the salary of the administrator a supplemental subsidy is given. Thus it is sometimes the case that the debtor does indeed make payments, but the creditors do not get a penny.

How much an administrator receives for a case depends on the type of case. For each case, the administrator receives a duration-dependent and a duration-independent portion. These two portions added together constitute his remuneration. A distinction is made between single and double cases. After taxes, an administrator is left with EUR 42.50 per month for a single case and EUR 51 per month for a double one (married couple). For a case of a duration of 36 months, an administrator thus earns EUR 1,530 for a single case and EUR 1,836 for a double case in duration-dependent remuneration. Additionally, the administrator receives a duration-independent amount of EUR 1,033 for a single case and EUR 1,240 for a double case. In the case of entrepreneurs, the remunerations are somewhat higher. Added together, an administrator here receives EUR 2,563 exclusive of other expenses for a single case and EUR 3,075 for a double one.

In addition to this remuneration, the administrator can also apply for reimbursement of travel costs and additional fees for unforeseen work. The number of additional hours is subject to a limit of 30 hours in total. Such supplementary hours may only be granted if caused by an exceptional social or legal complexity, if there has been prior consultation with the bankruptcy judge, and if the additional salary can be met by the estate[68]. If mail forwarding lasts longer than 13 months, the administrator may charge an additional EUR 11 per month, which is payable from the estate. In addition, in an appeal, the administrator will be entitled to additional compensation.

In an amicable debt settlement, the debt counselling organisation usually receives between 9 and 14 per cent of the amount that the debtor ultimately redeems. The divergence in possible payment contributes to the fact that it is financially more attractive for creditors to agree to an amicable debt settlement if the debtor has a low income but, on the contrary, to aim for a statutory debt settlement if the debtor has a higher income.[69]

12.3. Approval of administrative costs

The bankruptcy judge is to give approval to any additional charges. See, in that context, item 12.2.

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[67] Jungmann, N. (1996) De Wsnp: bedoelde en onbedoelde effecten op het minnelijk traject (The WSNP: intended and unintended effects on the amicable process). Leiden University press. Leiden

[68] Recofa Guidelines for debt rescheduling settlements (2009).

[69] Jungmann, N. (1996) De Wsnp: bedoelde en onbedoelde effecten op het minnelijk traject (The WSNP: intended and unintended effects on the amicable process). Leiden University press. Leiden.

13. SUPERVISION

13.1. Supervisory body

The bankruptcy judge maintains supervision over the (performance of the) administrator. In carrying out this task, the administrator generally makes requests of the bankruptcy judge more than the other way round. The administrator issues a report two months after the granting of a statutory debt settlement and every six months thereafter. The administrator also issues a report two months before the termination of proceedings. If the administrator wishes to sell the debtor's good or home, there must be permission from the bankruptcy judge.

Supervision of the administrator by the bankruptcy judge can best be characterised as passive supervision.[70]

13.2. Competence of the supervisory body

Court appeals may be made against almost all of the bankruptcy judge's decisions within a five day time frame. After a hearing, the court decides whether the appeal is granted. No appeal is available against decisions such as the determination of the debtor's available funds.

13.3. Disciplinary liability of the insolvency office holder

Should the administrator not meet the required standards, he may be removed from office by the bankruptcy judge (see items 7.3 and 7.4).

14. CRIMINAL OFFENCES IN CONNECTION WITH BANKRUPTCY

N/A

15. DEBT COUNSELLING SERVICES

In the Netherlands, debt counselling is regulated by the Municipal Debt Counselling Act. For a description, see item 2.

In the Netherlands, it is forbidden to offer debt counselling for a fee. This is regulated by the Consumer Credit Act (Article 48, Wet op het consumentenkrediet or Wck). Third parties, such as employers, are allowed to pay a commercial or non-profit party to effect a debt settlement.

Budget coaching and budget management may be offered in return for payment in the Netherlands. In the case of budget management, the income or benefit is deposited with a professional (budget manager) who then ensures that the fixed charges are paid. On average, debtors pay about EUR 60 per month for budget management. In recent years, the number of households with problematic debt has grown. At the same time, municipalities are often making less of an effort to achieve a debt settlement with discharge. These two developments are contributing to a substantial increase in the supply of commercial budget management. Such services will not solve the debt, but sometimes bring peace of mind. There are no figures available on the number of households that use budget management. Many budget managers do attempt payment arrangements with creditors. There is a very thin line between budget management and debt counselling for a fee. The line is regularly crossed. In such cases, debtors can report a complaint, but in practice that rarely happens.[71]

16. INTERNATIONAL INSOLVENCY LAW

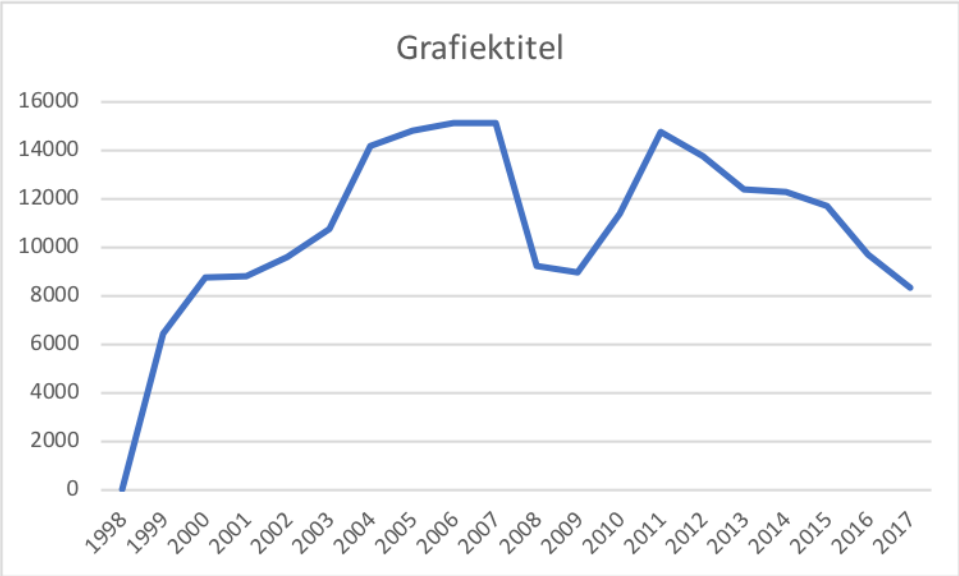
Foreign debts can be included in statutory debt settlements. Creditors from the European Union, outside of the Netherlands, cannot recover their claims from a debtor during a statutory debt settlement. At the end of the settlement, they are to share in the final distribution. For a foreign debt, however, this does not automatically mean that the remaining amount will be converted into a natural obligation. For that to

[70] Van der Winkel, Marsman, A. (2011) Praktijkboek insolventierecht (Practical insolvency law). Part 9 Debt rescheduling for natural persons. Wolters Kluwer Business P 64.

[71] Jungmann, N. Wesdorp, L.P. Duinkerken, G. (2015) De eindjes aan elkaar knopen (Making ends meet). Crucial questions about financial problems in the district. Platform31, The Hague.

happen, the debtor must submit an application separately to a court in the country where the debt arose. The application can be submitted under the European Insolvency Regulation (Council Regulation 1346/2000/EC; as of 26 June 2017 – Regulation 2015/848). This is valid in all European countries except Denmark. In countries outside the EU, an application for discharge or conversion into natural commitments only has a chance of success if there is a recognition agreement between the parties. If there is no recognition agreement, residual debts can again be requested by the creditor after completion of the WSNP.

17. STATISTICS



Number of admissions to WSNP Source: S.L. Peters, *S.L. Peters, Combrink-Kuiters, L., (2016) Monitor Wsnp. Dertiende meting over het jaar 2014 (Thirteenth measurement over the year 2012016). Wolf legal publishers, Utrecht/Den Haag S.L. Peters, Combrink-Kuiters, L., Verkleij, R. (2015) Monitor Wsnp. Elfde meting over het jaar 2014 (Eleventh measurement over the year 2014). Wolf legal publishers, Utrecht/Den Haag* https://www.bureauwsnp.nl/bibliotheek/instroom-wsnp

Year	Number of requests	% rallocations	Conversion of bankruptcies to statutory debt settlements	Number of requests for amicable debt settlements	Number of active administrators (insolvency officer holders)
2010	15,587		789	77.000	707
2011	20,411		839	76.000	644
2012	19,340	66%	952	84.000	640
2013	17,593	65%	1,146	89.000	579
2014	17,916	63%	1,023	92.000	533
2015	17,000	64%	787	90.400	552
2016	15,021	61%	486	89.300	503

Source: S.L. Peters, *S.L. Peters, Combrink-Kuiters, L., (2016) Monitor Wsnp. Dertiende meting over het jaar 2014 (Thirteenth measurement over the year 2012016). Wolf legal publishers, Utrecht/Den Haag S.L. Peters, Combrink-Kuiters, L., Verkleij, R. (2015) Monitor Wsnp. Elfde meting over het jaar 2014 (Eleventh measurement over the year 2014). Wolf legal publishers, Utrecht/Den Haag* and *Jungmann, N. Kruis, G. (2014) Het verhaal achter de cijfers. (The story behind the figures). Hogeschool Utrecht/Regioplan http://jaarverslag2016.nvvk.eu/cijfers/index.html*

Year	Total cases	Percentage of cases that achieve a fresh start for the debtor
2006	14.929	73,1
2007	14.943	72,8
2008	9.190	75,8
2009	8.823	77,1
2010	10.803	77,0
2011	10.830	73,2

Total 1998-2011	142.047	72,6

Source: *S.L. Peters, Combrink-Kuiters, L., Verkleij, R. (2015) Monitor Wsnp. Elfde meting over het jaar 2014 (Eleventh measurement over the year 2014). Wolf legal publishers, Utrecht/Den Haag*

	2010	2011	2012	2013	2014	1999-2014
Household						
Single	39,3	39,4	40,5	41,3	42,3	36,9
Single parent	19,6	19,9	18,4	19,7	17,0	17,2
Couple with children	27,5	26,9	25,8	25,9	25,6	27,7
Couple without children	13,6	13,8	15,2	13,1	15,1	18,1
Total (cases)	**5.001**	**6.322**	**5.150**	**3.881**	**383**	**47.759**
Age						
18-20	0,1	0,2	0,1	0,0	0,1	0,4
21-35	30,4	30,3	28,0	26,8	26,3	34,2
36-50	48,3	46,9	46,8	47,3	45,6	45,3
51-64	19,1	20,4	22,4	22,7	24,5	17,8
Over 65	2,1	2,2	2,6	3,2	3,5	2,2
Average age in years	**41,9**	**42,1**	**43,0**	**43,4**	**43,8**	**41**
Total (cases)	11.385	14.727	13.765	12.360	12.258	185.041
Sex						
Men	50,5	50,2	50,8	50,1	51,7	51,0
Women	49,5	49,8	49,2	49,9	48,3	49,0
Total (cases)	**5.260**	**6.633**	**5.349**	**4.781**	**5.671**	**60.064**

Source: *S.L. Peters, Combrink-Kuiters, L., Verkleij, R. (2015) Monitor Wsnp. Elfde meting over het jaar 2014 (Eleventh measurement over the year 2014). Wolf legal publishers, Utrecht/Den Haag*

18. CRITICISM

The Dutch system is under discussion. The evaluation of the amicable debt settlement procedure (Wgs) and the critical reports from, among others, the National Ombudsman and the Netherlands scientific council for Government Policy indicate that a large group of debtors fails to use the system. The strong growth of individual debt in recent years seems to have flattened out somewhat. However, among those experiencing financial difficulties, there is a growing number of people with problematic debts. The debt of these individuals is so vast and complex that it can rarely be solved without debt settlement with discharge. This is a source of concern because access to the debt counselling system is under heavy pressure.

The Dutch system has several problems. To begin with, a growing group of debtors can not get access to municipal debt assistance. With the entry into force of the Wgs, many municipalities have imposed much stricter requirements on debtors. Previously, debtors received assistance in collecting papers and were assisted in completing a possible divorce or contesting a claim. Nowadays debtors are expected to carry out all preparatory activities themselves. In many municipalities, debtors are asked, among other things, to provide a complete list of creditors, to ensure that they make use of all income subsidies to which they are entitled and that they have arranged all matters with, for example, the tax authorities. Previously, all these kinds of issues were regulated by debt assistance.

The reason for the stricter requirements is twofold. To begin with, municipalities had to realize a considerable cutback around 2012. Cuts of 20 to 30 percent on the budget for debt assistance were the rule rather than the exception. In addition, there was the political wish that the government would demand more self-reliance from its citizens. From 2013 the Dutch social policy has changed. Citizens are expected to make maximum efforts to arrange as many things as possible themselves. The idea is that the government only helps if someone really cannot do it independently

The consequence of this policy change in Dutch debt counselling is that many of debtors are asked to do more than they are able toe. To help them, hundreds of volunteer projects have been started up in recent years. But despite this support, an ever-larger group is unable to submit an application to a municipality at all. The number of applications for debt counselling has indeed increased in recent years. But the debt problem increased a lot stronger. As a result, a relatively growing group does not make use of municipal debt assistance.

The second major problem in the Dutch system is that fewer and fewer people move from the amicable to the legal process. In the period 2013-2017, the number of applications at municipalities fluctuated around 90,000. In all these years about 40 percent were helped with an amicable settlement. Nevertheless, the number of applications for the WSNP in the same period decreased from 12,361 to 8,357. The cause of this decrease is not clear. The most popular explanation is that the procedures at the municipalities take so long that the number of debtors who drop out is growing. There are no figures available to investigate this assumption.

The situation outlined above led the professional associatin for debt counselling (NVVK), the professional association for social services (Divosa), the professional association for social work (MO group) and the Association of Dutch Municipalities (VNG) to summarise their concerns in a pamphlet. The pamphlet was presented on 5 April 2016 to the State Secretary for Social Affairs and Employment. The pamphlet entitled 'Naar een betere aanpak van schulden en armoede' ('Towards a better approach to debt and poverty')[72], summarised what the professional members of each association could do better and what support was needed from the government. Importantly, the pamphlet called for a limitation of the collection powers of creditors (and especially the government). Since the development of debt counselling in the Netherlands, the parties carrying it out have not previously issued such a strong signal.

The majority of attention in the public debate has been focused on the functioning of amicable debt counselling, the entry hall to the WSNP. The implementation of the WSNP is supported by the WSNP Agency (see item 7.2). This organisation is part of the Legal Aid Board and is financed by the Ministry of Justice. Its activities include, inter alia, managing the register of administrators, controlling the training of administrators, and keeping administrators aware of legislative and policy changes. For years, the WSNP Agency has expressed concerns about the declining number of entries into the WSNP. To reverse this trend, the WSNP Agency is seeking opportunities to promote entry within the framework of the Act. The WSNP Agency has utilised the Supreme Court's judgment, in which it was detailed that amicable debt relief organisations are not the only parties permitted to refer people to the WSNP in order to facilitate the alternative route. Legal professionals who are authorised, on the basis of the judgment, to refer debtors to the WSNP may request a fee (supplement) from the WSNP Agency for the activities they perform[73]. The WSNP Agency hopes thereby to facilitate entry into statutory debt settlement proceedings.

Aside from concerns over the ease of entry, there is also concern over the courts' interpretation over how the WSNP applies[74]. There is substantial disagreement between judges over how the WSNP is to be implemented. This sometimes leads to a situation whereby creditors working nationwide are totally unable to ascertain how their case will be treated in comparison with comparable cases.

The WGS and WSNP provide a legal framework to carry out debt settlements that result in discharge. Besides these two frameworks, there is a further third legal framework in the Netherlands that debtors can use. In the past few years, the use of this framework has vastly increased. This framework is called 'the Court of Protection'. It is a statutory provision for people who are (temporarily) unable to manage their finances themselves. Traditionally, this provision is granted to people with physical or mental disabilities. More than half of those who request to be placed under the Court of Protection are individuals with problematic debts. When this request is granted, the citizen is assigned an administrator (called a 'deputy') who manages the (negative) assets and performs all actions that are required to that end. In the case of problematic debts, the deputy corresponds with the creditors and bailiffs, makes arrangements for payment, and, if there is sufficient income, takes care of the payment of fixed costs.

If someone wishes to make use of the Court of Protection, he must submit an application to the court. A judge assesses whether the debtor is indeed incapable of properly managing the (negative) assets. If a

[72] The pamphlet of the four professional associations available at: http://www.mogroep.nl/?file=12735&m=1459859891&action=file.download

[73] Available at: http://www.bureauwsnp.nl/voor-bewindvoerders/toevoegen-bewindvoerders-wsnp

[74] Combrink-Kuiters, L. Peters, S.L. (2011) Quick scan

person is admitted, then the deputy will charge around EUR 100 per month for his services[75]. The law stipulates that municipalities must compensate citizens with low incomes for this amount. The deputy usually makes payment agreements with creditors. These agreements are intended to prevent seizure of the income or to sell the household effects. An important difference between this 'Court of protection' by a deputy and debt counselling is that 'Court of protection' does not have a fresh start as the main goal while debt assistance does.

In the period 2009-2017 the number op people that were placed under the Court of Protection grew from 150,000 to nearly 350,000. In 2013, entry was 66 per cent higher than in 2011[76]. The lack of access to amicable debt counselling seems to be the main explanation for the increase[77]. For municipalities, this is a source of concern because the debts are not being resolved, but the majority of those placed under the Court of Protection are compensated each month for the costs. It is possible to combine being under the Court of Protection with an amicable or statutory debt settlement with discharge. The Court of Protection is looking into this practice. However, it is certainly not always the case that an amicable or statutory debt settlement with discharge will follow assignment to the Court of Protection. An investigation by Den Hartogh[78] showed that 49 per cent of those placed under the Court of Protection also receive a form of debt counselling; 36 per cent receive income support payments. A debtor who is in fact bankrupt will remain under the Court of Protection for many years. Often there is an attachment on the income and the debtor must make do for many years with an income below the Dutch basic personal allowance. Partly as a result of interest and collection costs, during a period under the Court of Protection, the debts often mount further still.

19. RECOMMENDATIONS

Based on the WGS, municipalities are instructed to offer appropriate support to citizens with financial problems. Amicable debt counselling must be accessible and the quality of service provision must be sufficient. The WSNP has the goal of offering debtors a debt-free future, encouraging creditors to cooperate in amicable debt settlements and reduce the number of bankruptcies. In the current situation, access to both amicable and statutory debt settlements with discharge is under pressure.

The Dutch legislator has provided two Acts that together form a system. It is noteworthy that the WGS contains requirements for municipalities whilst the WSNP contains requirements for debtors and creditors. It is recommended that the legislator consider joining up the two Acts, although this may entail the unintended (and undesirable) increase in the use of the Court of Protection. In carrying out this task, it is of great importance for both debtors and creditors that the admission requirements and other guidelines be made more uniform. At present, the residence of the debtor is almost a postcode lottery, determining whether or not the latter will be admitted and whether supervision is strictly organised or not. The lack of understanding over these distinctions threatens to destabilise the public support that exists for the current system.

[75] See: www.bpbi.nl. The amount of the fee depends inter alia on whether someone is under the Court of Protection on his own or as a couple. In addition, it also counts if there are problematic debts. In that case, the fee is higher (because the deputy usually has more work on a file with debts)

[76] Hartogh, van V. Kerckhaert, A. (2014) Court of Protection. Quantitative investigation into the development and costs for municipalities. Stimulansz. Utrecht

[77] Bureau Bartels (2015) Verdiepend onderzoek naar de onderbewindgestelden (Advanced research into placement under the Court of Protection). Amersfoort

[78] Hartogh, van V. Kerckhaert, A. (2014) Court of Protection. Quantitative investigation into the development and costs for municipalities. Stimulansz. Utrecht