

The German Personal Bankruptcy Law and Indebted Immigrants – What Lessons Can be Drawn To date?

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Abstract

The purpose of this paper is to analyze empirical data accumulated to date at debt counseling services for the unemployed with an immigration background with the aim of providing not only overall guidance to entrepreneurs and consumers but also to policymakers with practical recommendations on courses of action. Most of the debtors in the sample were immigrants as well as clients of publicly funded debt advisory offices across Germany. The analysis finds that most of these over-indebted individuals were right from the beginning candidates for personal bankruptcy proceedings and that the submission of a waivers of claims outstanding to the creditors, commonly known as Zero-Plan, is nothing but a futile attempt to free a debtor of indebtedness. Measures taken such as endeavors on deferment of payment, agreement to pay in installments or by making settlement offers seem to work in few cases and only for those with relatively low amounts of debt. Given the fact that the larger amounts in the sample were owed by formerly self-employed, it is recommended to redirect the composition of public expenditure towards services that function pretty much along the lines of business consultants who provide bookkeeping services, prepare and complete tax returns for self-employed persons. No significant evidence could be found that supports the doubts that personal bankruptcy law was abused for the purpose of unjust enrichment. The analysis nevertheless points out that neither party, i.e. the debtor through the debt counselors and the creditor through their representatives or factoring companies, is entirely free of unethical

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practice. Hence, the paper also stresses the need to establish institutions which provide mediation services to both private debtors and their creditors at the same time.

Keywords: indebtedness amongst immigrants, German personal bankruptcy law, debt counseling services, unemployed immigrants, out-of-court settlement

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Introduction

It was for reasons of rising household debt that prompted the enactment of the personal bankruptcy law in many countries of Europe by the end of the 20th century. In line with these developments the German Insolvency Regulation (Insolvenzordnung abbreviated as InsO) on company failures (Regular insolvency proceedings) has begun in 1999 to incorporate also personal bankruptcy (Consumer insolvency proceedings).² The introduction of this Act brought a continuous growth in the number of consumer insolvencies. In 1999 a total of 7.562 consumers had filed for bankruptcy and in only few years this number increased more than tenfold: in 2005 the number of bankruptcies reached a total of 99.711.³ In 2010 this figure increased to a peak of 139.110, with a slight tendency to decline gradually from then onwards: In 2014 the number of insolvency applications was around 115.269.⁴ Just like companies the law on Personal Bankruptcy permits an indebted individual to declare bankruptcy. One of the constraints is, however, that the debt-ridden individual should not have too many debts and creditors. At the time of writing consumer bankruptcy proceedings are initiated for persons with

² The Act was reformed almost two years later, on the 1 December 2001.

³ www.bafoeg-aktuell.de/recht/privatinsolvenz.html; see also www.schuldnerberatungen-berlin.de/privatinsolvenz-beratung/. [Accessed: 09.12.2015]

⁴ www.schuldnerberatungen-berlin.de/privatinsolvenz-beratung/. [Accessed: 07.11.2015]

up to 19 creditors. This way the law aims professional and social integration of an indebted individual, i.e. to relieve him from being exposed to constant pressure by creditors through payment orders and risk of seizure of the debtor's property as well as fairly long-lasting lawsuits and gives him a chance to attempt a fresh start. In Germany an uncontested enforcement order remains valid for a period of thirty years, that is a title can be enforced as soon as income or savings exceed the seizure limit. Once the debtor is declared bankrupt by the bankruptcy court, however, he is put under the supervision of a receiver or trustee and gets rid of all his debts within a period of six years. Nevertheless, the procedure is not as easy as it seems to be.

Prior to the application for insolvency proceeding certain preliminary steps need to be taken: As a first step any individual who wants to make use of this regulation is expected to try to find an amicable solution for his debts with his creditors. Settlement options vary depending upon the financial circumstances of the indebted person. It may be complicated for a layman to master any of these procedures. Specialists such as lawyers, notaries or tax advisors must hence be called on to mediate between the debtor and his creditors. However, an indebted individual or household and in particular the unemployed, who got into payment difficulties as a result of unemployment in the first place, cannot be expected to take additional financial burdens by using such pricey service providers. With this in mind, several publicly acknowledged and financed credit counseling centers or debtor advisory offices were set up across Germany. Among these few offer also services to individuals from ethnic minorities who are not able to master the German language proficiently. Though relatively new, the experience gained so far in these institutions as well as the experience of their clients may be of significant importance to understand the debt profile of immigrants so that appropriate measures are taken to protect both consumers as well as their creditors.

Empirical evidence for this work consists of primary data from individuals mainly with immigration background who were declared bankrupt by district courts (Amtsgericht). Contact

to subjects was sought through two different channels. Firstly, during the period between 2013 and 2014 clients of a debt counseling services, which offer additional services in Arabic and Turkish, were asked directly whether they would accept to cooperate and discuss their experiences following their appointments with their consultants. Few indigenous clients of debt counseling services as well as debt advisors also agreed to cooperate with regard to the aims of the study. Secondly, the internet page (www.insolvenzbekanntmachungen.de) was crucial in identifying individuals, who met the criteria set in this research. The site informs about the status of the insolvency proceedings following a debtor's application to institute insolvency proceedings. The page also shows the name and address of the person in question. Individuals with names which sounded foreign were then contacted with a view to seeking their cooperation to achieve the aims of this paper. In this way it was possible to secure the cooperation of a total of 395 individuals and to collect both quantitative (amounts invoiced, default interests, dunning charges, etc.) and qualitative (interviews) data. In 2015 an opportunity has arisen to collect data from another 40 indebted individuals. To our best knowledge no research exists that analyses the topic at hand with such extensive data as well as using both methods of research at the same time.

The findings in this paper may provide some valuable insights which could give impulses to debates on problems that may come with immigration. Some economists argue, for instance, that the huge wave of immigration from Syria into Germany can stimulate the German economy as it represents access to a new customer base for many producers of goods and providers of services. This may be the case, but in markets, where businesses compete at the highest level to capture customers, and where credit-driven consumerism is common practice, newcomers might easily fail to balance income and expenditure. Immigrants fall in general within the category of disadvantaged groups of job-seekers. Difficulties in getting employment may induce some to establish their own businesses. Again, such ventures may end quickly due to lack of experience and become a major problem for their contractual partners and public

creditors. Therefore, measures must be taken to safeguard both new households and those with entrepreneurial spirit with emigrational background.

Personal or Consumer bankruptcy proceedings

Despite its advantages to the over-indebted person a bankruptcy proceeding is not without any consequences for the future of the individual concerned. Having a "hard" negative entry at the General Credit Protection Agency, the so called "Schutzgemeinschaft für allgemeine Kreditsicherung" abbreviated as SCHUFA, for three years and not being permitted to be appointed as Executive Manager or Managing Director for some time are just two examples of several disadvantages of personal insolvency. Hence, all possible means of settling debts out-of-court should be employed to avoid personal bankruptcy. And this is what debt counselors try to achieve primarily by using a wide range of methods depending upon the personal and financial circumstances of an indebted person.

Out-of-court settlement

In general, three types of out-of-court proceedings can be distinguished. From best to worst in regards to the outcome or payout for the creditor, the order of these conciliation and settlement proposals is as follows. Deferment of payment or agreement to pay in installments is proposed if the debtor is in a temporary financial crisis and has good prospects of finding a new employment. The debtor can make a settlement offer if there is absolutely no way to pay off the full amount owed. In cases where the debtor has no prospects of an improvement in his financial situation to pay off the total outstanding neither in one go nor in installments the creditor is asked to waive his claims. Depending from the type of the creditor and the amount owed, these settlement proposals can be employed interchangeably across all creditors of one single debtor. Repeat petitions may need to be made, if the creditor rejects the offers made or

if the debtor's financial circumstances do not improve. Hence this process may last for a relatively long time.

Waivers of claims outstanding, the so called Zero-Plan

Filing for insolvency proceeding becomes more likely, if these attempts fail to free a debtor from his obligations. This is reflected to the creditors in the so called waivers of claims outstanding (Zero-Plan), the only remaining option available to the debtor without the involvement of the courts. This final step emulates the proceedings initiated by the courts and can take the burden off the courts (filter effect) if it succeeds. Referring to the Insolvency Act and stating the intention of the debtor to declare bankrupt all creditors are asked in a petition to waive their claims altogether against the debtor. The creditors are given a deadline for submitting their approval or rejection (usually two weeks). A payment plan is also attached, which shows all creditors and their respective quotas calculated on the basis of their claims and the total amount of debt owed. With this payment plan proposal the debtor guarantees to pay monthly or once a year all earnings exceeding the seizure limit to the receiver in bankruptcy (Insolvenzverwalter) for a period of six years. Once an agreement with the creditor is reached, the receiver in bankruptcy distributes this amount according to each quota stated in the payment plan. Instead of a Zero-Plan a payment plan can be solicited, which is adjusted to the financial capacity of the debtor, if at the time of petition income exceeds the seizure limit: the debtor then offers to distribute any excess amount according to the quotas stated in the payment plan and guarantees to adjust payments accordingly if his income increases during the period of six years. In addition reference is expressly made to the fact that the outcome of the insolvency proceedings would not differ from the attempts made outside the court. It is no longer necessary to apply for bankruptcy if, and only if, all creditors accept this particular payment plan. If, however, one or more creditors do not agree to the proposal, the debtor has no option but to file a bankruptcy petition with the court. In this case, a very comprehensive form must be completed

in which the debtor is asked to disclose all assets, earnings and claims. Should the court decide to approve the bankruptcy petition, the same procedure that had been initiated by the counselors is repeated by the courts. All relevant documents are presented for perusal, the creditors are asked to state the exact amount of their claims, as these may need to be adjusted for interest and costs, and a payment plan is proposed to all creditors once again. Unlike the petition of the debt counselors however the petition and payment plan proposed by the courts is declared legally binding even if all creditors reject it. A lawyer who is authorized to act as receiver or trustee is then appointed to supervise the debtor's earnings for a period of six years (period of good conduct), and, should these increase above the non-attachable amount, to allocate these to the creditors according to the rates outlined in the payment plan.

Description of the Data

The first set of data consist of 395 clients, who consulted advisory services for debtors between 2002 and 2014, and applied for bankruptcy proceedings as well as those who were already declared bankrupt by the courts. Of the clients 190 were male and 205 were female. The great majority of these clients were native Turkish and quite a few were Arabic speakers. The figure includes also 47 native German speakers and 38 clients, among others, of Italian and Bulgarian origin. The total number of clients equally includes 45 formerly self-employed, as by law consumers with debts from their earlier entrepreneurial activities without liabilities to their former employees and no more than 19 debtors are also permitted to make use of the consumer insolvency proceedings. At the time of writing among 395 debtors the bankruptcy applications of 234 debtors was accepted by the courts, which arranged according to year looks as follows: In 2008 a total of 6 clients were declared bankrupt by the court, in 2009 (33), 2010 (35), 2011 (30), 2012 (51), 2013 (39), and in 2014 (40). The total amount of debt of all clients in the sample was €13.372.039 (€5.063.678 or 38% of it incurred by the 45 self-employed in the sample) owed to 3280 creditors. 276 out of a total of 3280 (8.4%) invoices were issued by

factoring companies or debt collection agencies. Among the invoices in the sample, were also some that were secured through court judgement so that the claim does not become time-barred. In Germany this is the case for at least 30 years. Among the total of 3280 creditors, 1063 (slightly more than 32% of the creditors) had secured their claim by law (title), i.e. their claims were legally enforceable. At least 71 of the 395 debtors were married couples, whose spouses or partners had no option but equally to apply for bankruptcy proceedings. As the liability for certain bills and agreements may rest on both couples, the total amount owed is to some extent amplified by the amount owed by this group of subjects of study.

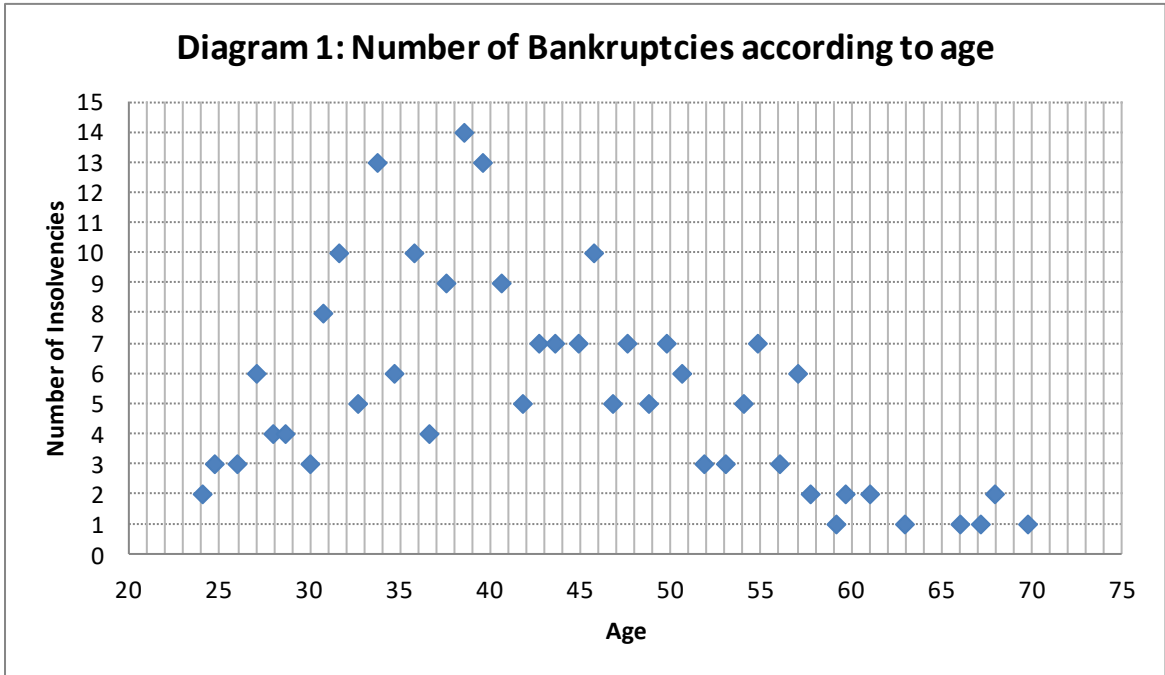
All of the 3280 creditors were contacted and updated invoices were requested by debt advising services as per the mandate given by the debtors. With some inaccuracies and errors in the large data the following numbers in brackets relate roughly to the number of invoices addressed to debt counselors during the years in question: 2002 (8), 2003 (6), 2004 (9), 2005 (18), 2006 (19), 2007 (64), 2008 (303), 2009 (538), 2010 (390), 2011 (517), 2012 (594), 2013 (463), 2014 (184). Thus most contacts with the creditors or their representatives was made between 2009 and 2013, with a peak in 2012 with almost 600 requests for a list of claims. The relatively high number of debt problems during this period is congruent with the worsened economic conditions in Germany: in 2009 the Gross Domestic Product had deteriorated by 5.6% in comparison to the previous year.⁵ Despite a significant improvement in 2010 the decline had continued until 2013.

Gaining knowledge regarding information about age of a debtor at the time of bankruptcy, number of creditors per debtor and debts by sector will help to design the right precautionary measures. It was with this in mind that we collected data in this regard as follows.

Age at Bankruptcy

⁵ <http://de.statista.com/statistik/daten/studie/2112/umfrage/veraenderung-des-bruttoinlandprodukts-im-vergleich-zum-vorjahr/>. [Accessed: 12.02.2015].

The date of birth of only 232 clients could be identified. Bankruptcy age at the time of bankruptcy decision of the courts for all subjects in the study ranged between 24 to 70 (see **Diagram 1**). The diagram clearly shows a bell shaped curve, initially increasing sharply and reaching a peak at the age of about 39 and fading off gradually from then onwards. Bankruptcy seems to inflict people at an age range, i.e. between 31 to 46, an age range where one is normally expected to have a profession or occupation and is able to stand on his own feet economically. Thus indebtedness seems to start to inflict people mostly between the ages 29 - 44, if one considers a time lag of at least two years between payment difficulties, bankruptcy application and bankruptcy declaration. Almost 60%, i.e. 137 of 232 clients were between this particular age range. Those between the ages 47 and 70 made 30%, while those between 24 to 30, slightly more than 10%.



Number of Creditors

Around 41% of the debtors had up to 5 creditors, and almost 32% between six to ten and 15% had eleven to 15 creditors (see **Table 2**). In cumulative terms thus, slightly more than 73% of the debtors had less than 10 creditors and 88% of all debtors had less than 15 creditors.

6.5% of the debtors had 16 to 20 creditors, those with 21 to 25 debtors evolved around 2%, and those with 26 to 30 and 31 to 58 were 1.5% each. The debtors, who had relatively high number of creditors, were almost invariably formerly self-employed.

Number of Creditors	Number of debtors	in %
1 to 5	165	41,5
6 to 10	126	31,7
11 to 15	60	15,1
16 to 20	26	6,5
21 to 25	9	2,3
26 to 30	6	1,5
31 to 58	6	1,5

Debts by Sector

Overall, the creditors were identified as falling into roughly about 45 distinct sectors, categories of expenditure and liabilities including criminal offences perpetrated by debtors (see **Table 3**). The debt profile of the subjects in the study in order of importance can be described as follows: With 60% (€8.023.246) the largest amount of the total debt of €13.372.039 was owed to financial institutions. 479 invoices related to this particular category. Second highest amount was owed to tax authorities: the amount of €1.931.942 (57 invoices) that is more than 14% of the total indebtedness – consisted of income tax, value added tax, business taxes and car tax. Sales agreement, installment contract, service agreement (such as repairs, holidays, etc.) ranked third with the amount of €669.428 (5% of the total amount). Tenancy costs ranked as the fourth largest problem of indebtedness. It made with the amount of €630.316 almost 5% of the overall debt volume.

Table 3: Claims by Sector		
Sector	Total Claim in €	Number of Credits
Credit	8.023.246	479
Income tax & VAT	1.190.516	36
Business tax	737.031	12
Sales agreement, installment contract & Service agreement (repairs, holidays)	669.428	399
Tenancy costs	630.319	176
Telecommunication	477.794	546
Benefit overpayments	347.052	173
Advance child maintenance payment	260.692	41
Insurance premium	186.903	191
Energy costs, water, gas, heating	133.200	130
TV-Licence	67.364	128
Medical treatment, emergency, quarterly charges	61.889	68
Court expenses	61.029	28
Legal expenses	58.215	48
Health insurance premium	55.953	23
Monetary fine, legal fine, traffic offence, court expenses, administrative fee	49.176	57
Social security insurance	39.299	14
Claims for damages	38.116	20
Car rental	34.910	17
Car insurance premium	33.897	26
Tuition fee	30.483	9
Dental treatment	24.811	30
Membership fee	19.432	29
Nursery fee	18.754	10
Building saving contract	14.915	6
Fines for fare dodging	14.315	77
Advance salary payment	13.085	6
Fees for lunch at school/nursery	12.226	7
Study loan	9.224	5
Pay TV	8.583	7
Animal care costs & dog tax	7.817	7
Fraud regarding health insurance	7.343	1
Contributions to the professional association	6.540	6
Internet service costs	4.970	19
Criminal proceedings	4.840	4
Advertisement costs	4.495	7
Car tax	4.395	9
Breach of the traffic law	2.697	15
Administrative fee for car	2.080	5
Administrative fee	2.012	3
Tax advising services	1.311	3
Online services	912	5
Fraud (purchase of goods & insurance)	624	2
Gambling	147	1

The above mentioned ranking changes somewhat if the frequency of invoices are considered. In this case credit debts become second to bills from the telecommunication providers. The latter is represented with 546 invoices, which is almost 19% of the total of 2885 bills, in the sample.⁶ 399 invoices (almost 14%) related to payment difficulties through sales and service contracts, making it the third largest cause of indebtedness as before. Also, quite a significant portion of the debtors seem to have debts to insurance companies. About 191 clients fell into arrears with insurance premium payments. If arrears in car insurance premium, health insurance premium and social security insurance are considered, then the total amount owed increases to €316.052 (2.4% of the total amount), and with 254 invoices makes up almost 9% of the total number of invoices in the sample.

The next highest cause of indebtedness – as per invoice count - relate to the basic living needs in declining order of importance as follows: With 176 invoices tenancy costs (more than 6% of the total number of invoices), with 173 (6%) invoices benefit overpayments, “Energy costs, water, gas, heating” with 130 (4.5%) invoices and TV-Licence with 128 (4.4%).

The medical sector was also among the top ten sectors to which significant amounts were owed to. Unpaid bills for medical treatment, including dental treatment and emergency charges totaled €86.700 with 98 invoices in the sample. Viewed as a percentage, this makes 0.6% of total indebtedness and 3.4% of the overall invoices considered for this study.

Among the applicants for bankruptcy proceeding there were some who also had invoices relating to criminal and fraudulent activities. With €180.151 such bills made 1.3% of the total indebtedness. Considering frequency among the total, however, 207 invoices or 7.2%, had to do with breach of the law. These included in order of importance the following: Fines for fare dodging (77), “Monetary fine, legal fine, administrative fee” (60), Court expenses (28), Claims

⁶ 2885 of the 3280 invoices were assignable to a sector. The underlying cause of the remaining invoices was unidentifiable.

for damages (20), Breach of the traffic law (15), Criminal proceedings (4), Fraud (purchase of goods & insurance) (2), and Fraud regarding health insurance (1). If the welfare authorities are given the benefit of the doubt and “Benefit overpayments” with 173 unpaid bills are considered as unjust enrichment the total amount in this particular category increases to €527.203 making 3.9% of the total outstanding amount in the sample. The result is much more significant if frequency of invoices in this category is considered: with 13.2% (380 of 2885) of the total invoices were related either to fraud or unjust enrichment.

Quite a few applicants were also lagging behind with their child maintenance obligations. Altogether 41 exclusively male bankruptcy applicants owed a total of €260.692 (almost 2% of the total) as alimony to authorities, which provides advance payments in cases where parents fail to comply with their duty to pay maintenance for their children.

Requests for Debt write-offs, Responses to rescheduling proposal, installment payments

All 3280 creditors in the sample were sent a Zero-Plan and asked to write off their claim by explaining the reasons for the debtors’ inability to pay. Among these slightly more than 4% (137)⁷ only accepted the request, 43% (1397 creditors) rejected it and 25% (824) did not respond within the allotted time. The response of 28% (922) was still outstanding at the time of writing. Thus almost 70% of the creditors rejected the write-off request when non-response can be interpreted as a sort of waiving legal rights or resignation.

The sectors which accepted as well as those that rejected the Zero-Plan are presented in **Table 4**. In decreasing order of frequency and ignoring the least frequent, the sectors accepting the write off proposal – though a very small number - are: Telecommunication 20%, Sales 13%, insurance 11%, financial sector 11%, court expenses 7%, and medical treatment 6%. Arranged in descending order the rejections, in turn, were, among others, from the following sectors:

⁷ Of these the underlying causes of the outstanding amounts of 14 acceptance letters could not be identified. Thus **Table 4** subdivides only 123 responses into their respective sectors.

Financial sector 20%, Telecommunication 17%, Sales 10%, Insurance 7%, TV-licence 5%. In relative terms acceptance in per cent were higher than rejections in the following sectors (in descending order of importance): Court expenses, medical treatment, membership fees, insurance companies, etc.

	Accept	Accept in %	Reject	Reject in %	Difference %
Telecommunication	25	20,3	245	17,5	2,8
Sales agreement	16	13,0	142	10,2	2,8
Credit	13	10,6	281	20,1	-9,5
Insurance	13	10,6	101	7,2	3,3
Court expenses	9	7,3	8	0,6	6,7
Tenancy costs	8	6,5	53	3,8	2,7
Medical treatment	7	5,7	14	1,0	4,7
Service agreement	6	4,9	37	2,6	2,2
Membership fee	5	4,1	8	0,6	3,5
Legal expenses	4	3,3	14	1,0	2,2
Energy costs	3	2,4	52	3,7	-1,3
Administrative fees	3	2,4		0,0	2,4
TV-licence	2	1,6	72	5,2	-3,5
Internet service costs	2	1,6		0,0	1,6
Benefit overpayments	1	0,8	48	3,4	-2,6
Tax	1	0,8	30	2,1	-1,3
Monetary fines	1	0,8	25	1,8	-1,0
Damage claims	1	0,8	2	0,1	0,7
Car rental	1	0,8		0,0	0,8
Overdraft, service agreement	1	0,8		0,0	0,8
Building savings contract	1	0,8		0,0	0,8
Advance child maintenance p	0	0,0	28	2,0	-2,0
Other	0	0,0	237	17,0	-17,0
Total	123	100,0	1397	100	

Table 5 shows the frequency of the amounts that were written-off by the creditors. Debts between the amounts of €7 and €198 were most likely to be written off by creditors. About 31% of the acceptances were in this particular range. The acceptance rate of debts between €202 and €298 and €301 and €395 were 10% and 9%, respectively. Four- and five-digit euro amounts, although less frequent, were also written-off. The largest amount that was written-off was

income tax in the amount of €58.841 from a self-employed debtor. The next largest amount that was written off was a credit €35.452 owed by an indigenous couple to a savings bank. Similarly, the amount of credit €11.280 as well as €5.678 were waived by Barclays bank and Kreissparkasse, respectively, from indigenous male debtors. The amount of €3.350 was building savings contract also of an indigenous individual. A credit initially granted by Citibank amounting to €19.171 - including €7.153 interest and costs - was waived by the Deutsche Inkasso Dienst. Similarly, the amount that had risen through interest and costs from €8.977 to €14.680 was equally written-off by Citibank. Yet, another large amount of €13.423, including €4.520 interest and costs, was waived by a non-profit-making housing association from a female indigenous tenant, who was in rent arrears. Monetary fines in the amount of €5.738 that had risen through costs of debt recovery to €12.065 was written off by a police headquarters. The amount of €6.893 was benefit overpayment and was waived by the Federal Employment Agency (Bundesagentur für Arbeit).

Table 5: The Profile of Waivers of Claims		
Amounts	Number of acceptances	Average
7-97	17	54
100-198	25	143
202-298	14	246
301-395	13	344
400-489	8	433
500-590	6	563
620-686	3	644
716-791	6	746
839-841	2	840
906-994	7	941
1023-1092	6	1042
1252-1281	5	1266
1365-1365	1	1365
1432-1460	2	1446
1500-1589	4	1539
1666-1675	2	1670
2245-2248	2	2246
3000-3350	3	3151
5608-5686	3	5657
6893	1	6893
11281	1	11281
12065	1	12065
13423	1	13423
14680	1	14680
19171	1	19171
35452	1	35452
58841	1	58841

Disguising or stashing assets and property

These numbers may sound impressive, but considering the total number of invoices the rate of acceptances is negligible. The reluctance of creditors to accommodate debtors is likely to be due to distrust. Since its enactment the personal bankruptcy law is viewed with a degree of skepticism especially by those who are representing the interests of creditors. Several response letters of lawyers in the sample express clearly feelings of doubt whether the liability was incurred intentionally or not and whether income is being held arbitrarily under the non-attachable amount.

Indeed, the presence of corruption on behalf of the debtor can not be entirely excluded during the period from contract conclusion to any phase of the applied diverse debt solution options available to the counselors and courts including the good conduct period. The interviews showed indications that the consumer bankruptcy law is being misused by some debtors. The counselors did also not exclude the presence of misuse. Examples given by counselors included for instance mobile phone contracts that were signed simply to access phones and to sell it to third parties or false declarations on wealth. Some clients brought more and more invoices to the counselors during the course of the consultation sessions: One client had started with 12 invoices and ended up with 29 two years later.

A few questions in the application form for bankruptcy proceedings relate to the bankruptcy applicant's wealth abroad. A few clients confirmed having property, land or real estate holdings in their home countries. Despite of checks with authorities abroad, little or nothing is said to have been recovered from these not only for reasons of low value but also due to unsettled entitlement claims of inheritance. Being under the supervision of a trustee, too, does not guarantee full integrity of the debtor and the possibility that a debtor might disguise or stash assets and property cannot be eliminated entirely. Interviews conducted did not provide any evidence that debtors were trying to evade financial means or assets from their trustees. Only in one instance a debtor interviewed admitted that he prefers cash transactions rather than credits on his account. He admitted to have tried his best to stop a pending tax reclaim that was about to be credited onto his bank account. There were also hints that the debt counselors when consulted seemed to be rather siding with debtors in such matters. In more than one case it was mentioned that they were advised to be watchful and take precautionary measures when they expect any payment.

The original debt and the fines

On the other side, however, the creditors cannot be said to be free from any misconduct, if charges such as interest and costs for open claims from people going through financial distress is considered as unethical. With this in mind the invoices in the sample were analyzed taking into account the principal claim and the final amount including interest, costs and fees that had been accumulated during the default period (see **Table 6**). The amount of total cost charged was €850.992 thus 6.4% of the total debt consisted of costs. Interest charges were somewhat higher. The total amount of interest charged was €1.363.372. Thus about 10.2% of the total debt consisted of interest. The first two largest amounts of charges (€189.663 and €30.014) were levied by the tax authorities for unpaid income tax and VAT initially amounting to €122.368 in one case, and for unpaid business taxes in the amount of €26.102 by an self-employed individual in another case. Similarly, it was self-employed people, who were charged the highest amount of interest in the sample. Interest in the amount of €338.054 and €29.326 was levied for an unpaid credit in the case of former and for unpaid rental of business premises in the latter case.

Table 6: Interest and Cost Charges by Sector						
	Net Claim	Interest	Cost	Interest in %	Cost in %	Total Charges in%
Income tax & VAT	915815	16338	258362	1,20	30,36	31,6
Credit	6842491	1015966	164678	74,52	19,35	93,9
Telecommunication	307424	58610	111760	4,30	13,13	17,4
Sales agreement, installment contract	438287	105425	64747	7,73	7,61	15,3
Tenancy costs	528289	43210	58818	3,17	6,91	10,1
Business tax	691917	6974	38140	0,51	4,48	5,0
Insurance premium	128881	25171	32851	1,85	3,86	5,7
Energy costs, water, gas, heating	101383	13411	18406	0,98	2,16	3,1
Service agreement (repairs, holidays, etc.)	37141	7662	16166	0,56	1,90	2,5
Monetary fine, legal fine, traffic offence, court	38791	201	10185	0,01	1,20	1,2
Health insurance premium	46406	2884	6663	0,21	0,78	1,0
Claims for damages	25463	6028	6625	0,44	0,78	1,2
Court expenses	41210	13248	6571	0,97	0,77	1,7
Car rental	20683	7742	6486	0,57	0,76	1,3
Tuition fee	12983	11521	5980	0,85	0,70	1,5
Legal expenses	49881	2391	5943	0,18	0,70	0,9
Fines for fare dodging	8024	753	5538	0,06	0,65	0,7
Medical treatment, emergency, quarterly char	53097	3962	4830	0,29	0,57	0,9
Dental treatment	17433	3015	4364	0,22	0,51	0,7
Social security insurance	35547	0	3752	0,00	0,44	0,4
Car insurance premium	27750	2669	3477	0,20	0,41	0,6
TV-Licence	64212	79	3073	0,01	0,36	0,4
Benefit overpayments	341975	3300	1778	0,24	0,21	0,5
Pay TV	4915	1962	1709	0,14	0,20	0,3
Internet service costs	3072	439	1459	0,03	0,17	0,2
Membership fee	17209	827	1396	0,06	0,16	0,2
Advertisement costs	2835	303	1358	0,02	0,16	0,2
Animal care costs & dog tax	6681	47	1089	0,00	0,13	0,1
Building saving contract	13727	422	767	0,03	0,09	0,1
Car tax	3635	0	761	0,00	0,09	0,1
Advance salary payment	11625	800	660	0,06	0,08	0,1
Fees for lunch at school/nursery	11674	0	552	0,00	0,06	0,1
Administrative fee for car	1626	0	455	0,00	0,05	0,1

Broken down by sector, with almost 75% of the total interest charges most interest was charged by the financial sector for bad loans. The highest amount of interest €338.054 was claimed by an Inkasso firm for a loan in the amount of €305.957 that was initially granted by the Kreissparkasse to a self-employed person. Sales contracts for consumer goods with almost 8% ranked second and telecommunication sector third with slightly more than 4%. The financial sector was also the sector that incurred the highest expenses to claim back credits granted: with slightly more than 19% it ranks second to tax authorities with almost 35% for unpaid taxes (income tax, VAT and business tax). As it was the case in the interest category, the telecommunication sector as well as the consumer goods sector levied significant amounts of charges within the cost category. The former with 13% and the latter with 7.6% ranked third and fourth, respectively. Costs for claiming back rents for residential property were not least significant in both categories of charges. Interest charges from this particular sector, taking up around 3% of the total interest charged, made it fourth highest in the interest category and with almost 7% the fifth highest in the cost category. Insurance companies' charges to claim back unpaid premium took almost 6% of the total for interest and costs.

There were also invoices in the sample, which contained more cost charges, and others where interest charges excessively topped costs. An unpaid doctor's bill in the amount of €100, which was issued in 2008, for instance, had increased up until 2014 by 414% (that is €31 interest and €413,39 cost) to € 514. The out-of-court settlement proposals were rejected by this creditor. In particular companies that specialize in managing overdue receivables of banks were found to boost the principal amounts significantly. To mention just one example in one case the outstanding amount of €1.328,41 in 2001 was increased by 257% (that is €2.037,83 interest and €44,69 cost) to €3.410,93 in 2014.

Anaysis and Conclusion

There is no doubt that debt counseling services are indispensable for unemployed and indebted individuals in many respects. Counselors first and foremost try to obtain a more precise view of the debts of a client, as some debtors may not have an overview of their debts. Debt counseling certainly helps to dispel fears associated with lawsuits that are usually connected with high legal and consulting fees. Not only the fact that 8.4% of invoices in the sample were issued by debt collection and factoring companies but also the fact that 32% of the invoices were titled claims indicates that the clients seem to take up the services after a relatively long period of time of distress caused by constant reminders and ever increasing punitive charges. Few interviewees, some of whom with drug addiction, said that they were constantly living in fear – even of imprisonment - and that only through the help of counselors they found some consolation. The counselors are also legally entitled to issue certificates to prevent execution of an account attachment, so that debtors' livelihoods are not put under risk. They may also succeed to stall future interest and cost charges.

Their main task, that is to relieve a debtor from his indebtedness out-of-court, however, seems to succeed only in few cases and for those with relatively small amounts of debt. Interviews conducted with forty debtors in 2015 confirmed this: In case of only 13 clients (32.5%) deferral of liabilities as well as installment payment could be made. Through negotiations and settlement offers the debts of only five of the 13 clients could be halved. Such reductions should not always be interpreted as great benevolence of a creditor. According to the data collected a significant number of the write-offs relate to accumulated fines and interest, and quite often by debt collection companies. In case of 27 clients (67.5%) a decision was made to make a Zero-Plan offer straight away, and in all cases the plan was rejected by creditors. Similarly, the larger set of data used in this paper showed the same tendency: The great majority of debtors, in particular those with relatively high amounts of indebtedness, had to apply for bankruptcy and this was recognized right from the beginning both by the counselors as well as the debtors. The typical insolvency applicant had several creditors among which the largest

amounts were owed to financial institutions and tax authorities. However, as it is a legal requirement a Zero-Plan was still submitted to all creditors. The findings have shown that in very rare cases such requests were accepted and only by those creditors with relatively modest outstanding amounts ranging mostly between the average amounts €54 and €344 (see **Table 5**). In none of the cases outlined above did a single waiver of debt avert insolvency as by law all creditors must agree with the plan. The sample contained 43 clients who had one debtor and the remaining 355 more than one. At the time of writing 28% of the responses to such requests was still outstanding, and it is highly likely that the response rate will remain low due mainly to low regard for the procedure. With this rate the total non-response rate increases from 25% to 53%. Considering the rejection rate of 43%, this total increases to 96%. Thus, Zero-Plan requests do not bring any solution to the conflict between the two parties and, hence, are generally considered as useless procedure by all parties involved. The response of a solicitor, rather written in a rough tone, is exemplary for the point here: *“We have no time for your Zero-Plan game. It has already become clear that your client will not pay anything at all. Answer the question first whether your client has actually any income over the seizure limit before we waste time for no sense letters here.”*

Significant amounts of public funds could be saved if unnecessary processes, such as requesting waivers of claims outstanding (Zero-plan) while the outcome is obvious, are eliminated and replaced by preventive measures against consumer insolvencies. One such measure could be, for instance, to provide publicly funded bookkeeping services, including the preparation and completion of tax returns, for freelancer, self-employed individuals, and small companies not only to comply with laws and regulations but also to work closely with the client to keep the financials accurate as their businesses grow. Interviews with the formerly self-employed debtors clearly showed that such obligations were either not taken seriously, or were completely disregarded just for cost reasons. The urgency of such a measure is additionally endorsed by our finding that the second largest amount of claims was from tax authorities.

To a lesser extent the private households in the sample had liabilities to providers of goods and services including real estate providers, energy, water and gas suppliers, state fee collection agency for TV-Licenses, benefit authorities, insurance companies, and medical services. Preventive measures could be particularly worthwhile pursuing to prevent consumers getting into debt in the following two consumer sectors: The data revealed that nearly all debtors owed monies to the telecommunication sector. The financial sector however, is the one sector, to which largest share of the total debts in the sample is owed to. It is also second to the telecommunication sector, if frequency of invoices is considered.

Experience to date has shown that only few creditors receive some payment during the administration process of six years. The law on personal bankruptcy could thus well be viewed as inequitable as it relieves debtors but forces most creditors to write off debts owed to them. On the other side of the spectrum, several creditors are far from responsible and impeccable conduct toward their customers in financial distress. For one thing, there is a great discrepancy between the principal amount owed and the latest invoice issued up until the initiation of the bankruptcy proceedings. The analysis of unpaid bills in this work has shown that principal amounts had increased four- to fivefold before they were presented to the debt counselors. And quite frequently it was possible to see pages-long printouts of invoices starting with small amounts as little as €100 or sometimes even €1 and rising to astronomical amounts of money. The data collected has also revealed information concerning the extend of costs and interest charges that have been levied by the creditors in each sector. It was interest and not cost charges that boosted the amount of the initial debts most. Even a rough analysis of the invoices in the sample confirms how certain business entities try to take advantage of the ‘dynamics’ in this particular ‘market’ to obtain returns. Throughout the analysis period from 2002 to 2014, more and more invoices were issued by factoring companies. Furthermore, a large number of claims were purchased by debt collection agencies (Inkassounternehmen) and one could not fail to notice that these shared the same address as the solicitors, who were initially representing the

creditors. There is indeed a growing trend among solicitors to purchase claims at a significant discount and, due to economies of scale and scope, realize profits from whatever they can manage to recover. From an ethical point of view, however, any attempt to benefit financially from the poverty and desperation of others must be viewed with a critical eye. A few interviewees conducted admitted that accountability is lessened as soon as the chain of ownership passed from the original creditor to another, i.e. to B2C businesses. From their perspective, the debt was perceived as having been fully written off as soon as the relation with the initial creditor ceased through the sale. Reminders, and in particular punitive charges, by a company that had never played a role in the initial business dealings between the two parties were perceived as being unjust and non-payment became more likely. In summary, the approaches of both sides is problematic, that is rapport that is generally established between debt consultants and their clients and the disadvantages this brings to the creditors on the one hand; on the other hand, the discouraging effect of charges on claims, and factoring companies' or debt collection agencies' approaches to debt recovery. One way to solve these problems fairly could be to pass on unpaid claims to entities designed along the lines of a Social business. More research is needed to find out how social businesses in this particular sector could best mediate between debtors and creditors.