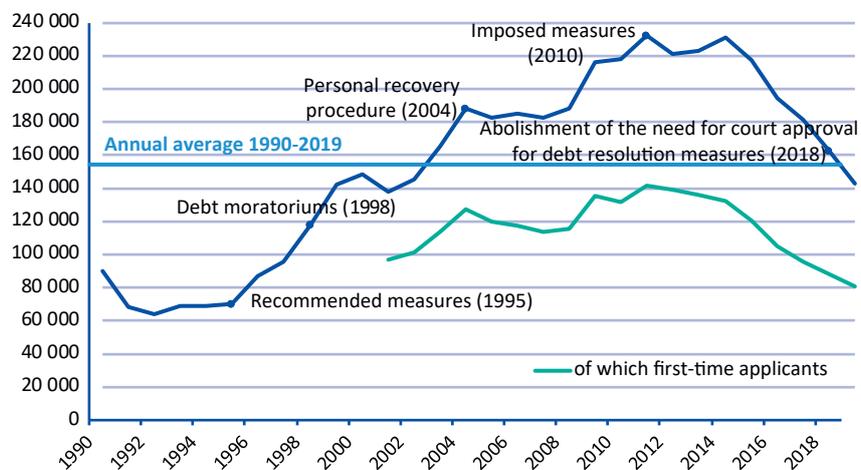


France: 30 years fighting overindebtedness

Cases submitted to the household debt commissions (number)



Source: Banque de France

1990-2002: an emphasis on amicable settlements and the rescheduling of debts

As a social phenomenon, household overindebtedness first emerged at the end of the 1980s when the French government deregulated lending in a context of strong consumer spending growth.

In France, the fight to prevent overindebtedness began in earnest in 1990 with the introduction of Law No. 89-1010 of 31 December 1989, known as the Neiertz Law. The aim of the text was twofold: to prevent overindebted individuals from falling into poverty, and to allow creditors to recoup all or part of the money they were owed.

The Neiertz Law set up a register of credit repayment incidents (the *Fichier des incidents de remboursement des crédits aux particuliers* or FICP), and at the same time **introduced a collective procedure for resolving cases of individual overindebtedness**. The first step in the process was administrative in nature and involved the negotiation of an amicable settlement between the debtor and his/her creditors. If this step failed, the second stage was the launch of judicial proceedings,

with a court potentially ordering a recovery plan for the debtor and his/her creditors, and rescheduling all debts.

Over the years, the procedure underwent regular adjustments to take account of the difficulties that arose.

In response to the high failure rate for amicable settlements and the increasing backlog of cases in the courts charged with drawing up recovery plans, legislators introduced a first reform in 1995 strengthening the powers of the departmental household debt commissions (Law No. 95-125 of 8 February 1995).

The combination of an administrative amicable settlement procedure and civil judicial proceedings was abandoned, and replaced by a new three-stage procedure: an amicable settlement stage involving a debt rescheduling; a second phase whereby the household debt commissions issued recommendations aimed at clearing the liabilities;

and a final phase where the presiding judge verified the commissions' decisions. The system prioritised the repayment of creditors, and debts could be rescheduled over a relatively long and unlimited period, without taking into account the debtor's actual ability to repay.

As a result, legislators adopted Law No. 98-657 of 28 July 1998 on the fight against exclusion. The text gave debt commissions the power to recommend that all debts (other than those relating to child maintenance or taxes) be suspended for up to three years if the debtor had insufficient resources or seizable

assets to settle the amounts due in full or in part. If, at the end of this moratorium period, the debtor was still insolvent, the commission could then recommend that all or part of the debts (except those relating to child maintenance and taxes) be written off.

The annual number of applications for the overindebtedness procedure reached 90,000 in 1990, before stabilising at below 70,000 in the years up to 1995. From 1996 onwards it began to rise again, and then stabilised at just under 150,000 in the period 1999-2002. In total, between 1990 and 2002, 1.3 million cases were submitted to the household debt commissions.

2003-10: a more rapid resolution of overindebtedness thanks to the introduction of the personal recovery procedure and the strengthening of the commissions' role

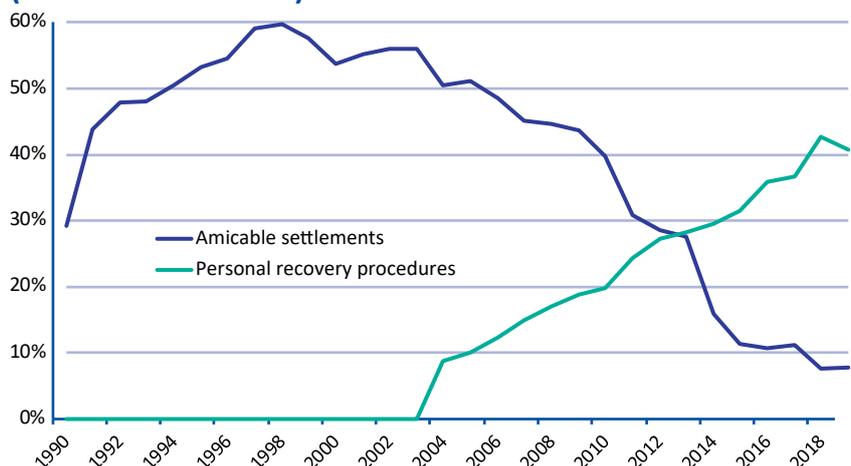
At the turn of the 21st century, **the profile of overindebted individuals began to evolve**. Whereas the phenomenon had previously mainly concerned households with an excess of consumer loans, an increasing number of cases began to emerge linked to family or professional difficulties, and involving individuals who had lost their job or households unable to pay day-to-day bills. The system put in place in 1998 proved increasingly unsuitable for the most complicated cases.

Therefore, in 2003, the government decided to implement a new debt cancellation mechanism to complement the existing overindebtedness procedure. Under the Law of 1 August 2003 on the orientation and planning of municipalities and urban planning (the Borloo Law), a new procedure was put in place known as the "personal recovery

procedure". Inspired by the civil bankruptcy proceedings used in the Haut-Rhin, Bas-Rhin and Moselle departments since 1877, when they were part of Germany, it allowed individuals' debts to be written off, and thus offered them a new solution and in many cases a second chance. In contrast with the procedure followed by the household debt commissions, this solution could only be applied by a court. It was inspired by the collective bankruptcy procedures in place for retailers, tradespeople and farmers.

The Borloo Law also changed some aspects of the existing overindebtedness system. The **duration of amicable recovery plans was limited to eight years** (with the possibility of a two-year extension) and tax-related debts could also be written off, as well as debts to the social security.

Solutions put in place by the household debt commissions (% of cases handled)



Source: Banque de France

Since the Borloo Law, a number of other changes have been made to the handling of overindebtedness cases – both to the household debt commission procedure and to the personal recovery procedure:

- Debts to lessors now take priority over debts to credit institutions and consumer loans (Law No. 2005-32 of 18 January 2005 on planning for social cohesion).
- If a court is asked to implement a personal recovery procedure, all other measures, including the eviction of the debtor, are automatically suspended pending the court's initial ruling. The court may also order the closure of the personal recovery procedure on the grounds of insufficient funds if the debtor's assets have no resale value or the fees on their sale would be excessively high (Law No. 2007-290 of 5 March 2007 establishing the enforceable right to housing).

- At the initial hearing for a personal recovery procedure, the court may order both the opening and closure of the procedure on the grounds of insufficient funds in the same ruling (Law No. 2007-1787 of 20 December 2007).

- The overindebtedness procedure is now also open to debtors who are unable to repay their debts because they have guaranteed or are jointly liable for the debts of a sole proprietor or company (Law No. 2008-776 of 4 August 2008 on the modernisation of the economy).

In light of the rise in the number of applications between 2003 and 2010 (over 1.5 million cases filed, of which more than a third were resubmissions), and despite the improvements in the procedure, a wide-reaching review was launched in 2010 to find ways of increasing the efficiency of the legal provisions in place.

2011–20: overindebtedness falls sharply and becomes more concentrated among vulnerable populations; the provision of credit becomes more tightly regulated to protect borrowers; and efforts are made to simplify the procedure and find long-term solutions

Law No. 2010-737 on the reform of consumer credit, also known as the Lagarde Law, was a broad-reaching text designed to protect consumers from abusive practices in consumer lending. It made credit institutions more accountable for their practices and increased their obligations vis-à-vis consumers: they now have to offer them the choice of paying for purchases immediately without credit, and then the option of either a revolving or an instalment loan (for all credit in excess of EUR 1,000); they are also obliged to check that borrowers are solvent, consult the FICP, etc.

With regard to the overindebtedness procedure, the Lagarde Law reduced the amount of time a debtor remains listed on the FICP from eight to five years, and limited debt rescheduling plans to a maximum of eight years instead of ten. In addition, household debt commissions now have to come up with a solution for overindebted applicants within a maximum of three months. The Lagarde Law made it illegal to close bank accounts on the sole grounds that the holder is overindebted. It also ensured that overindebted consumers are given better guidance and more transparent information on loans.

The 2013 banking law was designed to further improve the overindebtedness procedure, and ensure better

protection for indebted households, notably by allowing them to stay in their homes. Under its terms, households whose overindebtedness application has been deemed admissible are once again entitled to receive family and housing benefit, and especially the *aide personnalisée au logement* (APL – personalised housing benefit). The law also opened up the procedure to households that are in the process of acquiring property or already own their home.

The period during which measures initiated by creditors are suspended or forbidden, pending the implementation of debt resolution measures, was extended to two years from the previous one. Debt commissions were also given the option of speeding up the procedure by leaving out the amicable settlement phase (which was previously compulsory), if it is clear the debtor has insufficient funds to honour the repayment schedule.

Finally, the law set up the Observatory for Banking Inclusion and introduced a charter on banking inclusion and the prevention of overindebtedness.

In 2014, the Hamon Law on consumer spending put in place further measures to prevent excessive debt, and reduced the duration of the overindebtedness

procedure to seven years. This time limit can nonetheless be lifted by special derogation, to allow households to keep their main home.

Two further reforms came into force on 1 January 2018: the amicable settlement phase was abolished for certain categories of debtor, and the commissions' recommendations no longer have to be approved by a court.

Law No. 2016-1547 of 18 November 2016 on the modernisation of French legislation for the 21st century (the Justice 21 Law) abolished the need for a court to approve a personal recovery procedure or the debt resolution measures recommended by the household debt commissions. In parallel, it extended the time limit for lodging appeals or contesting a decision. To speed up the procedure further, Law No. 2016-1691 of 9 December 2016 on transparency, the fight against corruption and the modernisation of the economy (the Sapin 2 Law) limited the amicable settlement phase to cases where the debtor owns real estate. It also stipulated that if no objections have been received from creditors within a maximum of 30 days, then any debt repayment schedules drawn up by the debt commissions are deemed to have been automatically accepted.

Thirty years after its creation, France's system for handling overindebtedness has evolved into a unique collective procedure, free of charge and with no equivalent elsewhere in the world. It is underpinned by the legitimacy of the departmental household debt commissions, which bring together government representatives, creditors and associations, and whose secretariat functions and tasks are carried out by the Banque de France. The commissions have the power to impose appropriate debt resolution measures on both creditors and debtors, subject to court supervision.

The various provisions adopted in terms of prevention, resolution and guidance have led to a strong and continuous fall in the number of overindebtedness cases (the number of first-time applications for the procedure, which is the most meaningful indicator,

dropped by 43% between 2011 and 2019, or from 142,000 to around 81,000). In parallel, the nature of overindebtedness cases has also undergone a profound change. Since 2011, there has been a sharp fall in the amount of consumer credit in overindebtedness cases (decline of EUR 2 billion or 47% in eight years), and in 2019 25% of cases involved no consumer loans at all. In addition, there has been a sharp reduction in the number of resubmissions filed as part of a debt postponement measure, following efforts to reduce the use of this type of mechanism. The share of applications for which the commissions have been able to find a permanent solution has risen from 60% in 2011 to more than three quarters in 2018 and 2019 (76.4%).

However, the decline in the number of overindebtedness cases and in situations linked to an excess of consumer credit has also led to an increasing concentration of the most socially vulnerable populations among admissible applicants, as demonstrated by the 2019 typological survey: less than 47% of overindebted individuals lived with a partner; and in those age brackets most affected by overindebtedness (ages 25 to 54), 55% of applicants were women. A quarter of overindebted individuals (debtors and joint debtors) were unemployed, and 56% of individuals belonging to overindebted households lived below the poverty line.

This rise in the vulnerability of overindebted households and individuals constitutes a strong argument for stepping up preventive measures, and for providing closer support for the overindebted, who are often overwhelmed by the complexity of the procedure. In line with this objective, the Banque de France has firmly supported the development of the *Points Conseil Budget* (budget management advice bureaus) which were set up under the 2013 poverty prevention plan. Each year, the Banque de France also organises numerous information and awareness sessions for the benefit of some 15,000 social workers. The Bank also uses its role as national operator for France's financial literacy strategy (adopted in December 2016) to provide information to the general public, especially through its educational portal, mesquestionsdargent.fr, which was launched at the start of 2017.

Since being entrusted with the secretariat functions for the household debt commissions, the Banque de France has regularly adapted its organisation and tools to ensure it can handle cases efficiently and with compassion. Over the past five years, major efforts have been made to modernise the tools made available to stakeholders – creditors, commissioners, courts – and to those dealing with applications. The handling of overindebtedness cases has been digitalised, with the creation of internet portals and interconnected applications. For households, these modernisation initiatives will continue in 2020 with the opening of the “applicants” portal allowing individuals to submit their dossiers online. Applicants will still be able to submit dossiers in paper format, and contact the Banque de France's departmental commissions in person.