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Consumer bankruptcy and the problem of financial exclusion

Abstract

Consumer bankruptcy allows insolvent consumers to be put out of debt, but it also carries risks related to restrictions on access to certain financial services, including transactional and credit services (e.g. blocking money in a bank account), which can cause serious difficulties for over-indebted individuals in managing their personal finances. Banks may discriminate against insolvent persons in various areas of financial services during and even after insolvency proceedings. The financial exclusion of insolvent persons exacerbates their economic problems, including exposure to poverty and social exclusion as persons unable to carry out normal household activities. From a macroeconomic perspective, the increasing number of consumer insolvencies causes losses to financial institutions from these transactions and indirectly affects access to credit. However, the arbitrary exclusion of bankrupts from these services may deprive many debtor consumers of the opportunity to improve the well-being and economic condition of their households once valuable assets have been liquidated in the course of bankruptcy proceedings.

Keywords: consumer bankruptcy, financial exclusion, over-indebtedness

JEL Codes: K 34, L 31

Upadłość konsumencka a problem wykluczenia finansowego

Streszczenie

Upadłość konsumencka pozwala na oddłużenie niewypłacalnym konsumentom, ale niesie też zagrożenia związane z ograniczeniami w dostępie do niektórych usług finansowych, w tym usług transakcyjnych i kredytowych (np. zablokowanie pieniędzy na rachunku bankowym), co może powodować poważne utrudnienia dla nadmiernie zadłużonych osób w zarządzaniu finansami osobistymi. Banki mogą w różnych obszarach usług finansowych dyskryminować

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upadłych w trakcie postępowania upadłościowego, a nawet po jego zakończeniu. Wykluczenie finansowe osób niewypłacalnych pogłębia ich problemy ekonomiczne, w tym naraża na ubóstwo oraz wykluczenie społeczne jako osób niezdolnych do prowadzenia normalnej działalności w gospodarstwie domowym. Z perspektywy makroekonomicznej zwiększająca się liczba upadłości konsumenckich powoduje straty instytucji finansowych z tych transakcji, a pośrednio wpływa na dostęp do kredytów. Niemniej, arbitralne wykluczenie upadłych z tych usług może pozbawić wielu oddłużonych konsumentów możliwości poprawy dobrostanu i kondycji ekonomicznej ich gospodarstw domowych po upłynięciu wartościowych aktywów w toku postępowania upadłościowego.

Słowa kluczowe: upadłość konsumencka, wykluczenie finansowe, nadmierne zadłużenie

Kody JEL: K 34, L 31

Introduction

Loss of liquidity will generally lead to insolvency, which will trigger court and then enforcement proceedings by creditors and expose the debtor to a number of problems in accessing various financial services, most notably credit and loans. A state of insolvency lasting at least two months allows the court to declare the debtor bankrupt. Thanks to the debt relief procedure, which was introduced into the national legal order on 31 March 2009 by an amendment to the Act of 28 February 2003. Bankruptcy and Reorganisation Law (Journal of Laws of 2003, No. 60, item 535), the debtor can get rid of the ballast of debt, which will enable him to carry out normal activities, including the management of his personal finances. The course of the bankruptcy procedure is complex and multi-stage, and the proceedings themselves may last many years, when the debtor will have to face various difficulties that may worsen his economic situation.

The aim of this article is to analyse the impact of bankruptcy proceedings on the bankrupt consumer's ability to use financial services and to assess to what extent the existing solutions are inclusive, i.e. including the financially excluded debtor in the financial system as a full participant. To this end, a critical analysis of the literature on the phenomenon of financial exclusion was carried out, taking into account the academic literature on over-indebted people and an analysis of relevant statistical data in the area of transactional and credit services. Part of the article was devoted to considerations concerning the relationship between debt relief procedures and financial exclusion of bankrupt consumers, mainly based on the interpretation of legal acts, as well as the analysis of statistical data covering the number of bankruptcies declared in Poland and the number of debtors registered by economic information bureaus

1. The phenomenon of financial exclusion of insolvent persons

Financial exclusion consists of depriving an individual of access to financial services or making it difficult to use these services. Research on this phenomenon has been ongoing since the 1980s, and initially focused on the analysis of geographically based determinants (Leyshon, Thrift 1997, pp. 21–22). Gradually, the research spectrum was broadened to include socio-economic factors, and consideration was given to the relationship between financial exclusion, poverty and social exclusion (Kempson, Whyley, Caskey, Collard 2000, pp. 7–8). With time, thanks to the use of better research instruments drawn, inter alia, from behavioural finance, the determinants of this phenomenon were diagnosed more accurately, including those of a non-economic nature such as psychological (Solarz, Swacha-Lech 2011, pp. 41–46).

The set of determinants of financial exclusion is extensive, including, inter alia, determinants of an economic nature (e.g. the price of services), marketing (e.g. the lack of an offer for certain customer groups), as well as educational or cultural ones, resulting from the level of low economic awareness (Anderloni, Carluccio 2007, pp. 6–8). The European Commission considers financial exclusion as a process that can lead to social exclusion, preventing an individual from functioning normally in society (EC, Financial services... 2008 p. 9). Households' financial exclusion can be influenced by both external determinants, including inflation, leading to tighter monetary policy and higher loan servicing costs, and internal determinants (e.g. low or unstable income preventing the use of credit services). Regardless of the different approaches, financial exclusion is a manifestation of discrimination and marginalisation of the consumer resulting from financial institutions finding it unprofitable or too risky to serve certain groups of customers (Polasik, Piotrowska 2014, p. 317).

The considerations undertaken in the article concern the specific determinants of financial exclusion of bankrupt, i.e. insolvent persons who experience various difficulties in accessing financial services, as a result of both a difficult economic situation, enforcement actions and the debtors' possible withdrawal from socio-economic life, or even a kind of escape from problems by taking up work in the '*shadow economy*', in order to evade severe bailiff enforcement. Financial exclusion in this article will not be seen as a state, but as a progressive process marked by successive stages of debt relief proceedings.

It should be emphasised that the phenomenon of financial exclusion itself, which has been the subject of numerous scientific studies, public debate, legislative changes, as well as various activities of many institutions, has been noticeably reduced in recent years. According to a World Bank study (World Bank 2021), in the decade 2011–2021 in Poland the average percentage of people with a bank account increased from 71% to 96%, and in the group of poorer people the increase was even greater (from 62% to 94%), i.e. the number of bank account users increased by several million people, approaching the level for the euro area (Table 1). This is mainly due to an improvement in the living standards of Polish households and the development of the financial services on offer, mainly after Poland's accession to EU structures (Kuchciak 2020, p. 95). The

progressive digitalisation of the economy, which facilitates the management of personal finances and also improves access to financial services for residents of smaller towns and cities where bank outlets do not operate, also has an impact on reducing the number of so-called bank absentees (Czerwiński 2021, p. 283). Comparing financial exclusion in Poland and the euro area, it can be seen that within transactional services, the level of financial exclusion is similar, but credit services were used by significantly fewer customers in Poland. In addition, the total value of household debt to GDP in Poland, according to the International Monetary Fund, in 2023 was 24% being significantly below the level of consumer debt in wealthier economies. Among the G7 countries, for example, this percentage was 77% (INF 2023).

Table 1. Percentage of people with a bank account and a loan in a financial institution in the supervised financial services market in Poland and the euro area [in %]

Specification	Years			
	2011	2014	2017	2021
Banking in Poland ^{a)}	71	78	87	96
Banking ^{a)} in the EURO area	90	95	95	98
Banked ^{a)} among the 40% of the population with the lowest income in Poland	62	71	84	94
Bankedness in group ^{a)} 40% of the population with the lowest income in the EURO area	90	92	94	97
Percentage of population with borrowing in Poland ^{b)}	10	22	29	28
Percentage of population with borrowing in the Eurozone ^{b)}	12	42	46	48
Percentage of population with borrowing ^{b)} among the 40% with the lowest income in Poland	5	22	29	28
Percentage of population with borrowing ^{b)} in the group of 40% with the lowest income in the EURO area	12	33	37	45

^{a)} Number of bank account holders to total population

^{b)} Number of borrowers to total population

Source: own elaboration based on <https://databank.worldbank.org/source/global-financial-inclusion>

Groups at particular risk of financial exclusion include insolvent debtors, especially when they are vulnerable individuals (e.g. sick, elderly, single parents). Exclusion from the financial system causes a number of negative consequences for insolvent individuals, which may contribute to gradual pauperisation, resulting from the need to reduce many expenses and thus lower living standards (Reczuch 2020,

pp. 141–143). Financial exclusion caused by insolvency can lead not only to poverty but also to social exclusion. Increasing financial problems will affect other aspects of a household's functioning, e.g. limiting the ability to use health services, causing conflicts within the family or the inability to participate in socio-cultural life, or even leading to pathological phenomena in the form of, for example, alcoholism, and stigmatising all its members, including children (Grzega 2022, p. 93).

The financial exclusion of an insolvent person is mainly due to legal restrictions stemming from ongoing debt collection, court (including insolvency) and enforcement proceedings, which prevent normal household management.

Financial exclusion due to insolvency negatively affects the following areas of household finances:

- restrictions on the use of transactional services due to the attachment of a bank account;
- difficulties in accessing credit due to the disclosure of debt in debtors' registers;
- a reduction in creditworthiness resulting from a reduction in income due to seizures by the enforcement authority;
- disclosure in the land and mortgage registers of pending court and enforcement proceedings, making it practically impossible to obtain a loan or mortgage and benefit from a so-called reverse mortgage.

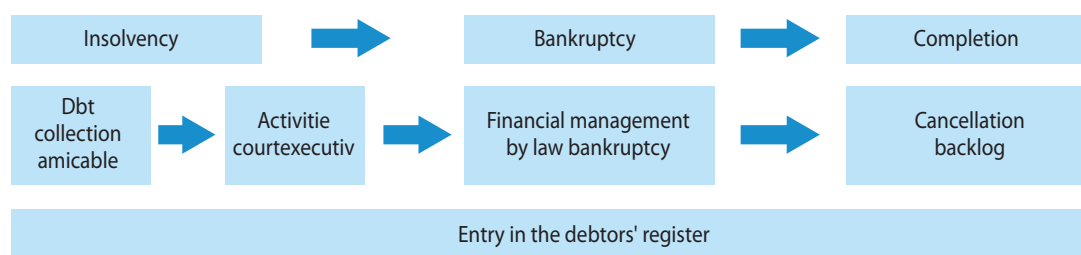
The two main areas of financial exclusion for a bankrupt person include credit and loan services and transactional services. Financial exclusion can also extend to other areas of services, including savings, investments or insurance, which are important for the wellbeing and security of the household (EC, Financial services... 2008, pp. 11–14). However, the key difficulties of over-indebted people will be linked to transactional and credit services, which are the main focus of this study. Problems in using other areas of financial services are seen as an offshoot of the debtor's financial distress, limiting the use of, for example, savings products.

The bankruptcy procedure has been amended several times, including in 2014 (Journal of Laws 2014, item 1306) and 2019 (Journal of Laws 2019, item 1802), and the amendments made have generally liberalised the procedure, making it more accessible to insolvent persons. According to the current legislation, three main stages of the insolvency procedure and the post-bankruptcy stage can be distinguished, which can affect the degree of financial exclusion of the debtor:

- 1) the adjudication of the bankruptcy petition (from the filing of the bankruptcy petition by the debtor to the declaration of bankruptcy);
- 2) proper insolvency proceedings in which, among other things, the debtor's assets are liquidated;
- 3) a repayment plan, during which the debtor pays his creditors – this is an optional stage, as in exceptional cases the court remits the arrears without setting a repayment plan;
- 4) the post-bankruptcy stage (from the discontinuance of the proceedings to the removal of the debtor from the National Debtors Register database).

The build-up of a debtor's financial problems is gradual. Before a debtor loses liquidity, he or she usually makes attempts to restructure his or her debt, expenditure reduction or measures to increase income (cf. Swiecka 2009, p. 123). In a situation of deteriorating financial health, debtors become increasingly chaotic or panicky in managing their personal finances, including taking out further loans to repay their loans. In the case of delays in debt repayment identified in debt monitoring, creditors initiate amicable debt collection, initially trying to motivate the debtor to voluntarily repay the debt, without resorting to court enforcement tools. Usually, already at this stage, the debtor is entered in the debtors' registers, making it difficult for him to use credit services. More serious problems in the management of personal finances will arise with the initiation of foreclosure, initially from the bank account and other assets and, at a later stage, also from the property, making it impossible to take out a mortgage loan (Figure 1).

Figure 1. The course of the debt process leading to insolvency and bankruptcy and its impact on the different areas of financial exclusion



Source: own elaboration.

Insolvency proceedings are a complex process during which the management of the bankrupt's assets is strictly regulated by the insolvency law regime. The process of the bankrupt's return to the financial market (financial inclusion of the bankrupt) is usually lengthy, and the debtor's full inclusion in the financial system can only occur after the bankruptcy entry has been removed. Even the cancellation of the debt does not result in the full inclusion of the bankrupt into the financial system, although the bankrupt regains the ability to freely manage his or her assets. This is because the bankrupt will continue to be listed on the National Debt Register for the applicable period.

The realisation of one's own consumption aspirations by households is one of the key pillars of economic freedom, which may be restricted only for reasons of important public interest (Article 22 of the Polish Constitution). The protection of creditors' rights requires the application of certain restrictions imposed on debtors in order to discipline them to service their obligations, as well as to reduce creditors' losses or improve the efficiency of the debt collection process. On the other hand, however, restrictions on the management of personal finances should respect the essence of the principle of proportionality. Such limitations are necessary in a democratic state of law for, inter alia, its security and public order, protection of freedoms

and rights of other persons, including creditors (Article 33(3), first sentence, of the Constitution). The principle of proportionality emphasises the adequacy of the measure to the goal – if a specific effect may be achieved by means of a less onerous measure, then a more beneficial solution for the citizen should be chosen (Judgment of the Constitutional Tribunal of 8.10.2007, file ref. K 20/07). Moreover, in accordance with the principle of proportionality, *such restrictions may not infringe upon the essence of freedoms and rights* (Article 33(3) sentence 2 of the Constitution). Hence, legally imposed restrictions on the management of household finances may not prevent the fulfilment of the household's elementary socio-economic functions, including the consumption function of satisfying the basic needs of life.

The application of the principle of proportionality requires a proper balancing of the conflicting interests of two stakeholder groups: debtors and creditors, in particular financial institutions. On the one hand, restrictions must be imposed on insolvent persons' access to financial resources in order to prevent their further indebtedness, but also to protect the creditor's interest for the sake of the stability of the financial system as a whole. On the other hand, the restrictions imposed on debtors must serve a purpose and, at the same time, these burdens must be the least onerous of the possible solutions to achieve the desired objective.

2. The pre-bankruptcy stage of the insolvency process

With the Act of 6 December 2018 on the National Register of Debtors (Journal of Laws 2019, item 55), a remote bankruptcy procedure was introduced from December 2021, via the National Register of Debtors platform. This made it simple, fast and free to follow the ongoing activities in bankruptcy cases, even without having to register on the KRZ platform.

From a formal legal point of view, if the debtor has not paid his debts for at least 2 months (art. 11 pr. up), he may file a consumer bankruptcy petition. The mere filing of the application results in the disclosure of this fact in the National Register of Debtors. An entry in the NCR may aggravate various socio-economic problems of the debtor (e.g. the possibility to rent a flat on the free market), but these are unlikely to be difficulties related to credit services in regulated credit institutions, after all such a debtor will – as a rule – already be listed in other registers (e.g. economic or credit information bureaus), which are used by financial institutions in the procedure of examining applications for credit or loans.

While awaiting the declaration of bankruptcy, the debtor may continue to incur debts with various unregulated institutions (e.g. para-banks or payday lenders), but usually on very unfavourable financial terms. Such behaviour creates negative consequences in the future by setting up a long repayment plan. Therefore, after filing the bankruptcy petition, the debtor should refrain from contracting any liabilities, especially additional credits or loans, as such behaviour may cause negative consequences in the future and the court may find that the debtor, by contracting

many credits and loans, did so intentionally or with gross negligence, which will lead to the establishment of a repayment plan of 36 to 72 months (art. 491¹⁵ para 1a of the Bankruptcy Act). In the first phase of bankruptcy proceedings, from the filing of the petition to the declaration of bankruptcy, the degree of financial exclusion of the debtor should not worsen, after all, the bankrupt as an insolvent person will as a rule have already experienced various difficulties on the financial services market, inter alia due to the attachment of the bank account by the enforcement authority.

3. Stage of the actual insolvency proceedings

As a result of the adjudication of the debtor's petition, the court declares his bankruptcy by a decision, which results in the abolition of the debtor's freedom to manage his assets (Article 75 of the Bankruptcy Act), as from the date of the declaration of bankruptcy, the debtor loses the right to dispose of the bankruptcy estate (Article 61 of the Bankruptcy Act), with exemptions for statutorily defined categories of assets (inter alia, basic household equipment – Article 62(1)(1) of the Bankruptcy Act in connection with Article 829 of the Code of Civil Procedure. After the declaration of consumer bankruptcy, the role of the enforcement authority will be taken over by the trustee and other bodies of the bankruptcy proceedings, whose main goal is not the collection of debts but debt relief (Article 2(2) pr. up.).

From an economic point of view, over-indebted households run a simple household economy, consisting of meeting basic consumption needs (mainly existential), trying to survive with the prospect of debt relief in the future. For such households, transactional services are crucial, enabling necessary current payments (e.g. food expenses, utility and rent payments) to be met.

Pursuant to Article 63(1)(1) of the Bankruptcy Law, property not subject to seizure under the Code of Civil Procedure (Journal of Laws 2023, item 1550, as amended) is excluded from the bankruptcy estate. With regard to income exempt from execution (e.g. alimony), the debtor may freely dispose of funds, including depositing them in a bank account. The amount of funds free from seizure is set out in Article 54 of the Banking Law (Journal of Laws of 2024, item 1646), stating that *funds held in savings accounts, savings and checking accounts and savings term deposit accounts of a single person, regardless of the number of agreements concluded, are free from seizure under a court or administrative enforcement order, in each calendar month in which the seizure is in force, up to 75% of the minimum remuneration for work, determined pursuant to the Act of 10 October 2002 on the minimum remuneration for work (Journal of Laws of 2020, item 2207 and of 2023, item 1667) to which a full-time monthly employee is entitled*. Therefore, in 2025, the bankrupt will be able to dispose of funds up to the amount of PLN 3499.50 accumulated in bank accounts. In light of the current legislation, declaring bankruptcy should not impair the debtor's ability to use the funds in the bank account, although the trustee will replace the enforcement authority. The limit of funds free from seizure in the bank account

will remain unchanged. Moreover, after the declaration of bankruptcy, under the disposition of Article 152 of the Bankruptcy Act, the commissioner judge may, in justified cases, reduce the scope of deductions or release the debtor's bank account altogether.

Banks making funds available to the debtor, which constitute the bankruptcy estate, expose themselves to liability under Article 78 of the Bankruptcy Act, [...] *the fulfilment of a benefit to the bankrupt made after the announcement of the bankruptcy announcement in the Register does not release the bankrupt from the obligation to fulfil the benefit to the bankruptcy estate, unless the equivalent of the benefit has been transferred by the bankrupt to the bankruptcy estate.* In connection with the above, the Financial Supervision Commission issued a communication:

1) banks should keep the Court and Commercial Monitor (after 1 December 2021, the National Debt Register) up to date with regard to notices concerning announcements of consumer bankruptcy orders of account holders held by the banks and carry out immediate account freezes on the basis of such notices;

2) banks should refrain from disbursing the funds in the bankrupt's account or carrying out other instructions of the bankrupt regarding the blocked account until they receive an appropriate instruction from the trustee, unless, based on the information in their possession, they are able to unequivocally assess that the funds in the account do not form part of the bankrupt's estate pursuant to Article 63 of the Bankruptcy Act."

Observation of practice indicates that the banks' obligation to monitor publications on the National Debtors Register platform on an ongoing basis means that sometimes debtors find out precisely from the banks about their declared bankruptcy thanks to the SMS information received. Similarly, despite the FSC's guidelines, banks' practices are still patchy, as in many cases banks unlawfully block funds while waiting for the trustee's instruction, which in the best case can take several days before the trustee completes the formalities at the bank. During this period, bankrupt pensioners, pensioners or single parents, among others, are deprived of access to their non-seizable funds in bank accounts. Given that these people usually have no other savings in cash, the transactional exclusion will result in an inability to meet even the most basic needs.

It is well known that some bankrupt bank customers give up their bank account, collecting income or benefits due in cash. However, not all payers, especially in the micro, small and medium-sized enterprise sector, maintain cash services. Unfortunately, the blocking of funds by the bank to the extent that they should remain at the debtors' disposal, combined with the delayed actions of the trustee, can expose bankrupts to a kind of unexpected economic shock of suddenly being deprived of access to money.

According to the recommendation of the FSC, banks should assess, on the basis of the information they have, whether the funds in the bank account are part of the bankruptcy estate. From the Author's practice, it appears that some banks allow transactions within these funds and even publish clear information for bankrupts to

make them aware of their right to freely dispose of funds within statutory limitations. Unfortunately, this is not common standard. A bankrupt can file complaints about the discriminatory practices of banks, or simply change banks by choosing an outlet that will allow limited use of the account, or file complaints about the discriminatory practices of banks. This requires knowledge and discernment of the financial services market, and debtors are sometimes people with shallow economic awareness and a low level of knowledge about managing personal finances.

When analysing the phenomenon of the bankrupt's exclusion from credit services, it should be noted that, from a formal legal point of view, the bankrupt may incur such financial obligations at any stage of bankruptcy proceedings. The only exception to this is the prohibition of mortgaging assets under Article 81 of the Bankruptcy Act, i.e. any products involving mortgage collateral will be unavailable to bankrupts. Of course, the bankrupt will still be able to perform minor acts of simple housekeeping with the property left to the bankrupt, but any decisions beyond that should at least be agreed with the trustee.

Market analysis shows that there are loan companies that specifically target debtors in insolvency proceedings. Using their services even dramatically worsens the economic and financial situation of debtors in bankruptcy proceedings.

4. Repayment plan implementation stage

Once the list of claims has been established and the debtor's assets have been liquidated, which is the main part of the insolvency proceedings, the court decides on the establishment of a repayment plan. Other options are also possible, i.e. write-off or conditional write-off of arrears and refusal to set a repayment plan. In practice, the most common option is to establish a repayment plan, as debt write-offs occur exceptionally (Hrycaj, Kosma 2021, p. 38).

The establishment of a repayment plan in principle results in the bankrupt regaining almost complete freedom to manage his assets. During the period of implementation of the repayment plan, the bankrupt may not carry out legal actions concerning his assets that could impair his ability to fulfil the plan of repayment of creditors (art. 491¹⁸ sec. 1 pr. up.) and is obliged to submit annual financial statements (art. 491¹⁸ sec. 2 pr. up.). Also, during this period, no enforcement proceedings may take place with respect to debts incurred prior to the establishment of the repayment plan, with the exception of certain categories of debts (e.g. alimony – art. 491¹⁸ para. 5 pr. up.). Despite the fact that the bankrupt must carry out the repayment plan, the overall economic condition of his household should improve, after all the court, when fixing the repayment plan, takes into account, inter alia, the earning capacity and the necessary costs incurred by the bankrupt and his dependants, including their subsistence needs (art. 491¹⁸ sec. 4 pr. up.).

5. Termination of insolvency proceedings and the problem of financial exclusion

Once the repayment plan has been implemented, the court issues an order to write off the arrears, with the exception of a few categories of debts, e.g. alimony (art. 491²¹ pr. up.). At this point, the bankrupt has no debts and his debt relief process is completed. However, this does not imply full financial inclusion and integration of such a person into the financial system as a full participant, as even after the bankruptcy proceedings are completed, the debtor may experience problems in managing his personal finances (Table 2). Obtaining credit will be much more difficult for the next 10 years, as for such a period the information on bankruptcy will appear on the platform of the National Debtor Register (art. 11(2) ustawa o KRZ Dz.U. 2019 poz. 55).

Table 2. constraints of bankrupt people in managing their finances

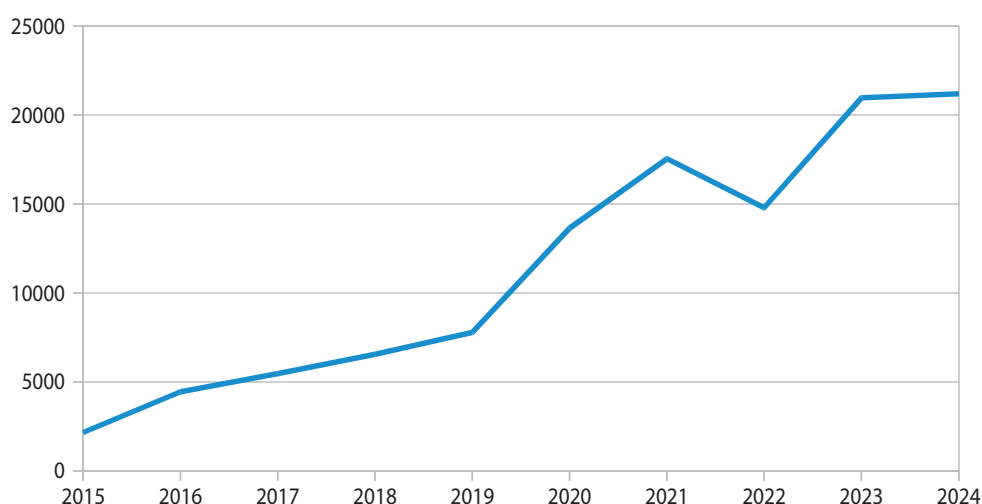
Restrictions	Steps in the bankruptcy process			
	Submission of the application	Declaration of bankruptcy	Repayment plan	Cancellation of debts
Enforcement of the account conducted by the enforcement body	Yes	Not	Not	Not
Blocking of accounts (art. 63 pr.up.) by the trustee	Not	Yes	Not	Not
NCR Register	Yes (information on the application submitted)	Yes	Yes	Yes (10 years after redemption)

Source: own elaboration.

It should be taken into account that the debtor may appear in registers other than those in the NCR (e.g. Credit Information Bureau SA, economic information bureaus). Although the final discontinuation of the arrears should be recorded by these entities and the debtor's data deleted, some information still remains visible. In addition, the deletion of data from the registers of business information bureaus does not take place automatically after the conclusion of bankruptcy proceedings, but requires the initiative of the debtor or creditor. Finally, access to these databases is neither general nor free of charge, and the bankrupt may not even know that the debtor's information is still visible after the completion of the debt relief process.

Banks' reactions to the phenomenon of increasingly massive consumer bankruptcies are not known. So far, banks have also not disclosed data on the losses incurred on this account, although it is known from KRD BIK that creditors lost PLN 304.3 million as a result of consumer bankruptcy in 2024 (KRD BIG 2024), part of which is due to banks. Overall, the value of all consumer debts owed to banks (including liabilities not covered by bankruptcy proceedings) amounted to PLN 39.5 billion in 2024 and shows an increasing trend (InfoMonitor 2024). Moreover, the number of bankruptcies being declared is also increasing, which is likely to increase banks' losses from written-off consumer arrears in bankruptcy proceedings.

Figure 2. Number of consumer insolvencies declared between 2015–2024



Source: own compilation based on data from the Ministry of Justice.

In such circumstances, banks are likely to refuse to lend to bankrupts for a number of years after the declaration of consumer bankruptcy. Which will mean not only refusing credit for household investment purposes (e.g. buying a property), but also to make other relatively small purchases (e.g. buying white goods on hire purchase, obtaining a debit card with a small debt limit or, even more so, a credit card). Such bank policies can make it more difficult for people who have gone through the complicated debt relief procedure and made a repayment plan to run their household. Debtors who have previously lost virtually all of their life's possessions as they were liquidated in the course of bankruptcy proceedings will want to rebuild the material base of their household, especially to meet their housing needs. When examining debt in Poland in 2024, it should be noted that the most indebted were those aged 36–45 (InfoDług 2024), and that debtors aged 40–50 were the most likely to declare consumer bankruptcy (COIG 2024). Given that these people will regain their creditworthiness several years after the bankruptcy declaration, i.e. after they are over fifty or even sixty years old, many of them will be deprived of the chance to obtain a mortgage, even for the purchase of a bedsit. The problem of the exclusion of bankrupts from the area of credit services can be considered on at least several levels. From the point of view

of the entire economic system, the losses of banks resulting from increasingly frequent consumer bankruptcies will inevitably translate into increased costs of financial services for all customers and, in extreme cases, may even lead to a serious economic collapse, the most notable example of which was the global economic crisis triggered by the bankruptcy of the US investment bank *Lehman Brothers* in 2008 (Taylot 2010, pp. 111–112). The financial crisis was caused by a number of overlapping factors, but one of the causes was the granting of too many real estate mortgages in the US to people without proper incomes, who were unable to pay the loan instalments and became insolvent and had their properties repossessed by banks. The increase in the number of homes put up for sale by the banks and the eventual collapse of property prices contributed to the bankruptcy of numerous banks, triggering a deep recession in many economies. It should be noted here that the United States has a liberal model of bankruptcy, which is based on the so-called ‘*fresh start*’ concept, which enables debts to be discharged smoothly. Thanks to this solution, consumers are quickly de-indebted, incorporated as full-fledged market participants and can realise their consumption aspirations, thus mitigating various economic shocks and turbulence in the short term and allowing the entire economy to grow stably in the long term (Christian, Reller 2022, p. 403). In so-called continental Europe, also in Poland, a different, more restrictive model of insolvency proceedings based on re-educating the debtor and mobilising him to repay at least part of the debt, focusing primarily on the interests of creditors, prevails (Swiecka 2009, pp. 198–199). These two models have been converging somewhat in recent years. Access to bankruptcy was tightened in the US in 2005, due to the reprehensible practices of debtors of getting back into debt and declaring bankruptcy as a kind of way of life (White 2010, p. 15); there are also discernible legislative actions in European countries, including Poland, aimed at reducing the rigour of the continental model of bankruptcy proceedings, as it is unable to effectively reduce the number of insolvent consumers.

Banks’ rationing of access to credit for bankrupts is a measure justified not only by the stability of the financial system as a whole, but also by the protection of debtors against renewed over-indebtedness. However, overlong and onerous restrictions on bankrupts can have a dampening effect on the economy by preventing households from realising various consumption aspirations. However, taking into account the microeconomic aspects of credit exclusion and examining its impact on the bankrupt’s household, it is important to note that the lack of access to credit services may hinder the economic well-being of a bankrupt who has repaid his or her debts and seeks to reasonably improve his or her standard of living. One of the main objectives of consumer bankruptcy in the continental model is the re-education of the debtor, who should acquire appropriate skills in household management during this procedure. A repayment plan plays a key role in this, and the length of the repayment plan translating into its severity has been made dependent on the degree of culpability of the bankrupt in losing financial liquidity. Thus, the more recklessly and irrationally the bankrupt has previously indebted himself, the longer he will have to fulfil his obligations to his creditors, which should influence an appropriate correction of his behaviour.

Despite a mature financial services market, with a rich and varied offer, fewer consumers are taking out credit in Poland than in the Eurozone countries. At the same time, the sector of non-bank lending companies is growing. According to BIK S.A. data, in 2024, the value of non-bank loans granted to households contributed 1.7 billion (1144 thousand new loans) and the number of such loans was 8.3% higher than in 2023, while their amount increased by 32.8% in that period (BIK, pp. 1–3). As a result of the exclusion of bankrupts from the main credit services market, they will be forced to use the services of loan companies. It should be added that the assessment of creditworthiness carried out by loan companies is sometimes superficial, although it should be carried out extremely thoroughly and reliably with regard to people who have previously declared bankruptcy. Hence, the indebtedness of bankrupts with loan companies may give rise to the risk of their subsequent insolvency.

6. Consumer bankruptcy and financial inclusion

The debt relief procedure should be inclusive, gradually integrating the bankrupt into the financial system. Inclusion should include the two key areas of personal financial management for the bankrupt, namely transaction services and credit services. Transactional services should be seen as a fundamental personal financial management tool of fundamental importance to the household economy. The transactional exclusion severely restricts the individual's freedom and autonomy, so restrictions on debtors' use of a bank account should be balanced so as not to violate the principle of proportionality. The debtor should be able to carry out payment services, operate a payment card or receive and collect money to the extent allowed by the regulations, without additional obstacles, at any stage of the insolvency proceedings.

The problem of excluding an insolvent from credit services is more complex. An insolvent person, being excluded from the mainstream credit services market, may be forced to use the services of loan companies. Customers of loan companies are focused on solving current problems without analysing the long-term consequences of their actions (Walega, Walga... 2020). Insolvent people experience a lack of various assets, including *cognitive resources* (*cognitive resources*), which may limit their decision-making capacity to make financial commitments (Mani, Mullainathan, p. 980). For insolvent individuals, their deficits in financial resources may also be linked to a lack of knowledge about personal finances, and patterns of behaviour based on cognitive errors may be strongly entrenched. Individuals who have been in a state of permanent insolvency for many years may have adapted to this situation by developing strategies to survive the most severe phases of the crisis by staying out of the mainstream financial services market and using, for example, pawnshops. Changing established patterns of behaviour during the period of a crippled household economy requires an upgrade in personal finance skills.

The socio-economic inclusion of a bankrupt person cannot be equated solely with the recovery of liquidity. While solvency is a certain key foundation for the secure functioning of households, efficient management of personal finances should improve the economic condition of households, including the possibility to accumulate assets, after bankruptcy proceedings. The debtor should, as a result of re-education, acquire the appropriate competences that will enable him or her to raise the standard of living of his or her household in a rationalised manner in the future. The bankruptcy procedure contains educational elements, including, above all, a repayment plan, in the elaboration of which the bankrupt should take an active part, i.e. cooperate with the bankruptcy authorities in order to restructure the debt, and then implement this plan by submitting annual reports on its implementation. It is important to note that the debtor will bear the consequences of his financial decisions and repay his debts at least to some extent.

In macroeconomic terms, access to financial services is one of the key tools to reduce poverty, social inequality, but also fosters capital accumulation, technological innovation and thus stimulates economic development (Adamo, Federico, Notte p. 37). The financial inclusion of bankrupt and insolvent persons will have a positive impact on the economic development of the country, translating into an improvement in the economic condition of all households.

7. Postulated changes to address financial exclusion of bankrupts

The phenomenon of financial exclusion can give rise to a number of potential risks for both financial institutions, their customers and the financial system. Changes to the law are needed to clearly and precisely enable people with consumer bankruptcy to use a bank account to the extent permitted by law. At the same time, it is also necessary to tighten up the possibilities for debtors who, with extreme recklessness, have taken on too many financial obligations and may again lose liquidity in the future. Post-bankruptcy sanctions should be introduced for this category of debtors, following the example of other countries – e.g. England (Kabza 2009, p. 128) – and bankrupts should remain under the control of the relevant state authorities with regard to their household economy even after the bankruptcy proceedings have ended. In Poland, all bankrupts are disclosed in the National Debt Register for many years after the end of the proceedings, which discriminates against those debtors for whom there is no rational justification to publish their bankruptcy data for such a long time, making it difficult for them to access credit services (Table 3).

Table 3. Proposals for change

Consumer organisations	Regulator	Financial institutions	Legislator
<ul style="list-style-type: none"> – information campaigns on the debt relief procedure; – legal and financial advice to insolvent persons. 	<ul style="list-style-type: none"> – ensuring the security of the financial system; – credit rationing guidelines. 	<ul style="list-style-type: none"> – lending in line with the concept of responsible finance. 	<ul style="list-style-type: none"> – Increasing consumer protection against transactional exclusion; – imposing restrictions on access to credit by bankrupts who have grossly negligently over-borrowed and may replicate their reprehensible behaviour in the future; – closer supervision of the bankrupt's financial management during insolvency proceedings.

Source: own study.

Bankrupts may need access to financial resources, especially young people interested in improving the economic health of their own household. A series of difficulties associated with previous insolvency may have caused them to change and adjust their economic behaviour towards a more responsible one. Banks should develop individualised offers, taking into account the specifics of the debt process, conducting a more thorough analysis of the situation. For example, a bankrupt who has become insolvent for reasons beyond his or her control should be assessed differently from a person with dozens of different loans taken out in a short space of time for current needs. Financial institutions, within the framework indicated by the regulator, should make an appropriate selection and allow the use of credit services to certain groups of bankrupts who give adequate guarantee that they will use them rationally.

In the wake of the global financial crisis, the G20 countries developed the so-called concept of responsible finance addressed to all financial market participants (G20, Innovative... 2010, p. 8). According to this concept, banks should take measures to include financially excluded people by appropriately selecting financial products and providing borrowers with knowledge of financial management in addition to money (World Bank, Financial... 2012, pp. 11–18). The concept of responsible finance obliges banks to raise the economic awareness of borrowers through the use of educational tools. The idea of responsible finance is also one of the key foundations of the concept of sustainable economic development, based on the assumption that economic growth should take place in a harmonious manner for the entire society, without generating negative consequences such as poverty or social or financial exclusion (Solarz 2009, p. 159). In addition, an important role in the process of social

inclusion of bankrupts should be played by consumer organisations that can provide assistance in the broadly understood legal and economic counselling, enabling not only the proper completion of formalities during bankruptcy proceedings, but also assistance in solving numerous problems in managing personal finances by over-indebted persons.

Within the framework of supervision, the judge-commissioner may issue certain instructions (Article 152 pr. up.), but the scope of his competence in the area of the bankrupt's financial management is not clearly defined in the Act. The judge-commissioner should be allowed to give instructions to the bankrupt, e.g. with regard to contracting financial obligations, making them conditional on his consent. Financial management should be carried out by the bankrupt under closer supervision of the bankruptcy authorities. Naturally, the scope of decision-making should include both increasing restrictions and loosening them, including leaving a bankrupt's bank account at the bankrupt's disposal (without restrictions) if he has legitimate financial burdens with relatively low income – e.g. for treatment of sick children.

Summary

Simplified and accessible to almost every debtor, the remote bankruptcy procedure, which facilitates debt relief proceedings, is an important tool for the socio-economic inclusion of the consumer. In the area of financial services, an important role is played by the repayment plan, which forces the bankrupt to conduct a prudent economy for a period of 1 to 7 years. However, there are risks for the debtor, notably from the sudden and unexpected blockage of a bank account after bankruptcy, as well as potential difficulties in accessing credit services.

When assessing the level of financial exclusion from transactional services in Poland, it should be noted that there has been a significant increase in the bankisation rate in recent years – although there are still several hundred thousand people without a bank account. In an era of rapid development of the digital economy and technological innovation, unjustified and excessive barriers to accessing payment services should be removed, including allowing bankrupts to dispose of money in a bank account within legally permissible limits.

A comparison of data on bank lending in Poland and other euro area countries shows that Poles are rapidly catching up. The comparison is much worse in the category of financing household needs with bank loans – although even here, significant progress can be seen in all analysed groups of borrowers (Table 1). Assuming a likely increase in consumer activity in the financial services market, special attention should be paid to the risk of so-called over-consumption and the potential risk of re-borrowing financial liabilities to an extent that exceeds the ability to service them by those who have already experienced a loss of capacity for normal repayment. On the other hand, however, credit for households is one of the key tools for achieving consumption aspirations, and consumption itself is becoming an

increasingly important factor for economic development in the modern world. For people who have declared bankruptcy, further credit can be both an opportunity and a threat, and financial institutions should take a particularly responsible approach to lending to this client group, without automatically excluding such people from access to monetary resources.

In an era of increasing numbers of consumer bankruptcies, the socio-financial inclusion of bankrupts is one of the important challenges of civilisation. However, the problem of financial exclusion of bankrupts is not well diagnosed, neither in the demographic-social dimension, nor in the formal-legal dimension, nor in the financial services practice of financial institutions. It raises the risk of arbitrary exclusion from the field of financial services. Debtors of the middle-aged and older generation, who, once cleared of arrears, could carry out normal household financial management. Coordinated action by various institutions, both public and private, including in particular the legislature and financial institutions, should eliminate a number of risks and harmful consequences associated with consumer bankruptcy experienced by households.

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