A Banque de France guide

OVERINDEBTEDNESS

Your rights, your obligations
The solutions available
Your application
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The overindebtedness procedure: an overview  
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1. I am having financial difficulties: who can I turn to for advice?

Above all else, you must first try to balance your budget and avoid going further into debt.

If you think you need help, do not hesitate to speak to one of the many organisations that can help you manage your budget or give you an overview of the welfare benefits available (family allowances, housing benefit, etc.). You can contact:

• your local social action community centre (CCAS – centre communal d'action sociale);
• your departmental council’s social services;
• family support or consumer protection associations.*

These organisations will help you identify the initial solutions to your problems and/or will assist you in submitting an overindebtedness application if necessary.

If your financial difficulties are temporary and modest, you can talk to your bank advisor and review your financial situation together.
If your financial difficulties are temporary but significant, you can also file a request for an extension to your payment deadlines with your local district court judge.

*A list of consumer associations is available on the following website:

2. How do I know if I am overindebted?

You are overindebted when you can no longer pay your personal debts, despite your best efforts.

The overindebtedness procedure is only for persons not covered by the collective procedures provided for in the French Commercial Code. Therefore, if you work on a self-employed basis (tradespersons, retailers, freelance professionals, etc.), you must contact the commercial courts or the Tribunal de grande instance (high court).

Overindebtedness mainly concerns non-professional debts:
bank debts: mortgages, consumer loans, overdrafts, etc.;
debts related to regular expenses: rent arrears, unpaid bills (gas and electricity, water, telephone, etc.) and taxes, etc.;
debts resulting from guarantees given on behalf of an individual or a company.
However, certain debts – such as unpaid maintenance, fines and damages arising from criminal convictions, pawnbroking and fraudulently incurred debts to social security organisations – are excluded from the overindebtedness procedure.
3. How do I submit an overindebtedness application?

You must first complete a declaration of overindebtedness. The form and a list of the required supporting documents are available from your local Banque de France branch or can be downloaded from the Banque de France website: www.banque-france.fr.

Should you wish, you can request assistance from an organisation, which will help you fill in your declaration and complete your application (see Question 1).

The application should then be handed in or sent by post to your local Banque de France branch. The overindebtedness procedure is free of charge.

Applications can be submitted jointly or individually. However, if your debts are jointly held, it is advisable to submit an application together. Should you chose to submit an application separately, the resources of the person you live with must be disclosed and evidenced. The commission will then be able to calculate a breakdown of household expenses.

4. What is the role of the Household Debt Commission? How is it organised?

There is at least one Household Debt Commission in each department in France and the head offices are located in the Banque de France's Paris headquarters.

The commission makes every effort to find a solution tailored to your situation, on the understanding that you are genuinely overindebted and that you are acting in good faith. Therefore, you must not have deliberately become overindebted and you must do all you can to pay off your debts.

The commission does not settle your debts on your behalf and cannot loan you money.

A Household Debt Commission has seven members: it is chaired by the prefect (préfet) or his or her proxy, and includes a public finance representative, two members acting on behalf of credit institutions and consumer bodies, respectively, an expert in social and household economics and a legal practitioner.

The local Banque de France director, or his or her representative, acts as secretary.

A list of the members of each commission is available on the Banque de France website, www.banque-france.fr.

The commission meets regularly and considers your application, deciding if you are genuinely overindebted, what solution would be most appropriate to your situation, etc.
5. I have submitted my application: what happens next?

The secretariat checks that your application includes the minimum amount of information required:

- if your application is incomplete, you are informed in writing and asked to provide the missing items.
- if your application is complete, the secretariat confirms receipt of your application in writing within 48 hours. At the same time, you are automatically listed in the National Register of Household Credit Repayment Incidents (FICP).

Neither your creditors nor your bank are informed that you have submitted an overindebtedness application.

At this point in the procedure, you must continue to pay your bills (rent, taxes, telephone, gas and electricity, etc.) and settle your debts.

You can request that any legal action taken against you, such as the seizure of your assets or resources, be suspended. The commission can also refer this matter to the courts if deemed necessary.

You must not go further into debt. Do not use your credit cards and do not take out any new loans.

6. How does the Household Debt Commission handle my application?

The secretariat checks and examines your situation before presenting your case before the commission.

By assessing:

- your personal, family and professional situation;
- your debts and your assets;
- your ability to repay, i.e. what you should be able to pay each month to pay off your debts;
- your good faith,

the commission evaluates the eligibility of your case. The commission can accept your application – declare it eligible – or decline it as ineligible.

You have the right to appeal against this decision.

Should you conceal or misrepresent any information, your application will be rejected.
Once your case has been accepted, the commission will look for the most appropriate solution for your situation:

- if your situation allows it, the commission will define:
  - a proposal for a negotiated arrangement between you and your creditors if you are a property owner (see Question 8);
  - or, if you are not a property owner, measures that will be imposed on you and your creditors (see Question 9).

Both solutions will facilitate a temporary freeze in your debt repayments or monthly repayments tailored to your financial situation.

- if your financial situation prevents you from envisaging a repayment, even partial, of your debts, the commission can:
  - impose a personal recovery procedure without initiating a judicial liquidation;
  - or refer the matter to the district courts, with your agreement, in order to open a personal recovery procedure with judicial liquidation, if you have assets of significant value (see Question 10).

Both solutions allow all your debts to be cleared.

7. The Household Debt Commission has decided my case is eligible: what are the consequences?

This means that the commission accepts your application and will handle your case. You will be informed of the decision, as will your creditors and your bank.

There are several consequences.

- **Seizures and foreclosures**
  All ongoing seizure and foreclosure proceedings against you must be suspended and all proceedings are prohibited for a two-year period, with the exception of unsettled maintenance obligations (such as monthly allowances) and debts arising from criminal convictions. Should a creditor or bank open or pursue a seizure or foreclosure proceeding, contact the bailiffs or organisations responsible and insist that they comply with the injunction. Should you need assistance in this regard, contact the commission's secretariat, which will be happy to help.

- **Housing**
  If you are about to be evicted from your home, the commission can look into your situation and, at your request, ask the court to suspend the eviction procedure. It is important to note that a request to suspend eviction is not automatically accepted and the agreement of a judge is required.

- **Contracts**
  Neither your creditors nor your bank have the right to terminate or amend a contract (terminating a tenancy agreement or a mortgage insurance contract, for example) simply because you have submitted an overindebtedness application and it has been accepted by the commission.
Bank account
You have the right to keep your bank account and the means of payment that befit your situation. Discuss it with your bank representative.

Charges
You cannot be charged for a rejected direct debit. Service fees charged by the bank (if you go overdrawn, for example) are reduced in accordance with the charter for customers experiencing financial difficulties.

During the procedure, you must respect certain obligations. You must not:

• go further into debt, particularly by taking out new loans or using your credit cards;
• transfer or sell any of your assets;
• repay your loans: mortgages, consumer loans, overdrafts, etc.;
• settle any outstanding debts: rent arrears and unpaid bills declared before an application’s eligibility is decided.

These restrictions apply until your case is closed and up to a limit of two years. However, you can make an exceptional request for authorisation from your local district court judge.

You must:

• continue to pay your rent and bills (taxes, telephone, gas and electricity, insurance, etc.) for the current and coming months;
• settle all payments related to maintenance, divorce settlements and fines;
• balance your budget.

If you are a tenant and your housing benefit has been suspended, the allowance must be reinstated by the appropriate family allowance or welfare benefits body and paid to the lessor. You must provide proof of occupancy, such as a rental contract or a protocole de cohésion sociale (an agreement signed between the tenant and the lessor). If you encounter any difficulties, you can contact the body concerned and inform it that the commission is handling your overindebtedness case.

8. If I am a property owner, what repayment plan can the Household Debt Commission propose?

If you are a property owner, a repayment plan called a plan conventionnel de redressement will be drawn up.

The plan is based on an agreement between you and your creditors to:

• spread the total payment of your debts;
• and/or reduce your repayment amounts;
• and/or reduce the interest charged on your loans;
• and/or, in exceptional circumstances, temporarily freeze your debts (a "debt moratorium");
• and/or sell your property.

In return, the commission may ask you to implement certain steps such as improving your cash management, seeking employment, selling your car, unlocking savings, etc.
If both you and your creditors agree, the commission approves the repayment plan and it can be put into effect.

If you encounter any difficulties implementing the plan, do not hesitate to ask for assistance (see Question 1).

The repayment plan is binding on you and your creditors:

- You must comply with all the steps and obligations set out in the plan. In return, your creditors promise not to launch legal proceedings against you and to comply with the plan's requirements.

The plan is an official document. Keep it in a safe place.

If you have any problems in respecting the plan
Contact your creditors and inform them of your situation. If your circumstances have worsened since the plan was agreed (loss of employment, divorce, etc.), you can submit a new overindebtedness application and the commission will examine your case again.

If you do not comply with the plan and the repayment conditions, your creditor(s) can reopen legal proceedings against you.

9. In what situations can the Household Debt Commission impose measures on my creditors?

Imposed measures concern you if:

- you are not a property owner,
- or you are a property owner and a creditor (or you yourself) has refused the proposed repayment plan. This means that the commission has been unable to reach an amicable settlement.

The commission can then impose measures that apply to you and your creditors.

Both parties have the right to challenge these measures and in this case, you will be summoned to a court hearing for adjudication.

Once approved, the measures are binding on both you and your creditors and must be complied with in the same way as a repayment plan.

In return, the commission may ask you to implement certain steps such as improving your cash management, seeking employment, selling your car, unlocking savings, etc.
10. What is a personal recovery procedure?

If the commission considers that it is impossible to remedy your financial situation through the use of repayment solutions, it can look at clearing your debts through a personal recovery procedure, which can take one of two forms:

- without judicial liquidation, if you have no assets of significant value. Your debts to your creditors will then be written off by the commission;

- with judicial liquidation, if you have assets of significant value that can be seized and sold to partially or fully repay your debts. If you give your agreement, the commission sends your case to the courts and you will be summoned for a hearing. Your assets may then be sold at court auction by a liquidator and the amounts received will be used to repay your debts. Any debts not repaid during this process due to insufficient funds are then written off.

Both you and your creditors have the right to challenge these measures and the dispute will be referred to the courts for adjudication.

Some debts cannot be written off as part of the personal recovery procedure, particularly professional debts, unpaid maintenance, debts arising from criminal convictions and fines, fraudulently incurred debts to social security organisations, pawnbroking debts and debts settled on your behalf under guarantees or by a co-obligant (natural person).

11. I have an overindebtedness case: am I on a register?

Yes. Once your overindebtedness application is submitted to the Banque de France you are listed in the National Register of Household Credit Repayment Incidents (FICP) and remain so throughout the procedure. Once a solution has been reached, you will continue to be listed in the FICP:

- for a maximum period of seven years in the case of a repayment plan or imposed measures;
- for a fixed period of five years in the case of a personal recovery procedure with or without judicial liquidation.

In the event that your plan or the measures imposed upon you are for a period of more than five years, if you fully comply with their terms you will be automatically removed from the register after an initial five-year period. You must nevertheless continue to adhere to your plan after the initial five years.
Key words

Banque de France
Provides the secretariat for the Household Debt Commissions and is your sole point of contact for the commissions' activities.

Creditors
All people and organisations to which you owe money.

Debts
Money owed to a person, administration or company that must be repaid: bank loans and borrowings, everyday bills and expenses (rent, telephone, gas and electricity, insurance, taxes), etc.

Eligibility
Once your application is complete, the commission examines whether your case qualifies for the overindebtedness procedure. If the response is positive, your case is declared eligible. If the response is negative, it is declared ineligible and your application is rejected by the commission.

FICP
Fichier national des incidents de remboursement des crédits aux particuliers (the National Register of Household Credit Repayment Incidents). You are listed in the FICP for a maximum period of seven years in the case of a repayment plan or imposed measures, and a fixed period of five years in the case of a personal recovery procedure.

Handling the application
Once your application has been accepted as eligible, the commission will find and prepare the most appropriate solution for your situation

Imposed measures
If you are a property owner and negotiations with creditors to agree a repayment plan fail, the commission can impose measures if requested to do so.

Personal recovery procedure
This involves the clearing of your debts. If the commission considers that it is impossible to remedy your financial situation, it can impose a personal recovery procedure without initiating a judicial liquidation or refer the matter to the district courts, with your agreement, in order to open a personal recovery procedure with judicial liquidation.

Plan conventionnel de redressement
This repayment plan applies to applications from property owners only. It is signed by the chairman of the commission and is a legally binding contract designed to manage the repayment of debts between you and your creditors.
The overindebtedness procedure

1. You are listed in the National Register of Household Credit Repayment Incidents (FICP) for the duration of the procedure.
2. You are removed from the FICP with regard to overindebtedness.
3. You are listed in the FICP for 5 years.
4. You are listed in the FICP for the duration of the measures (7 years maximum).

LEGEND:
- You or your creditors can challenge the commission's decision in the courts.
- You are listed in the National Register of Household Credit Repayment Incidents (FICP) for the duration of the procedure.
- You are removed from the FICP with regard to overindebtedness.
- You are listed in the FICP for 5 years.
- You are listed in the FICP for the duration of the measures (7 years maximum).
The Banque de France is your sole point of contact for overindebtedness cases. Please feel free to get in touch.

Visit the Banque de France website
www.banque-france.fr

or call
0 811 901 801
(5 euro cents per minute + the connection charge)

Monday to Friday, from 8a.m. to 6p.m.