

Over-Indebtedness as a situation of hypervulnerability and its impact on public policy of assessing consumer creditworthiness

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Introduction

It's the configuration of consumer assessment creditworthiness efficient for its intended purpose?

¿content?

- Issues not considered
 - Purpose linked to over-indebtedness and insolvency of the natural person
 - Addressing a variety of consumer typologies

Current status

Paradigm of information to the average consumer

Art. 17 N Consumer Protection Law, Chile, establishes:

- Duty to evaluate economic solvency
- To inform the consumer of the result of the assessment

Art 18.1 and 20.1 Directive 2014:

- The assessment shall be sufficient and proportionate, relating to the consumer's income, expenses and other financial and economic circumstances.

Some nuances

- Variety of types of consumers
 - Recognition of imperfect rationality problems.
 - Development and expansion based on the recognition of circumstantial differences between consumers.
 - Recognition of the hypervulnerable consumer notion.
- How addressing a variety of consumer typologies and their diverse contexts and circumstances?
 - Delivery of information to the average consumer is not sufficient (heuristic theory and biases of behavioral economics <-> rational choice theory).
 - Need to consider all aspects of the individual holistically.

Some nuances

- Consumer over-indebtedness and insolvency as a situation of hypervulnerability
 - Determination of the underlying problem of overindebtedness and insolvency of the natural person
 - Relation with the fresh start principle in the bankruptcy scope
 - Affectation of the capacity to freely develop the personality → Affectation of the dignity of the person
 - Major imbalance of the over-indebted or insolvent consumer, or at risk of becoming so.

A couple of reflections on the content of public policy

- Regarding to the configuration of the public policy of prevention of consumer overindebtedness and insolvency through the solvency assessment.
- Regarding to the type of concret assessment of solvency.

Thank you very much