



# **Provision of a European Platform for the Prevention of Over-indebtedness by Increasing the Accessibility and by Improving the Effectiveness of Debt Advice for Citizens (PEPPI)**



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# WEBINAR 1

## Legal Framework for Debt Advice

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# Agenda

1. Introduction
2. Insolvency Act, SGB II, SGB XII, RDG
3. Access
4. Finance



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# Introduction

- 1,450 debt and insolvency counselling offices
- Under the patronage of municipalities, charities (e.g. Caritas, Diakonia), NGOs (e.g. AWO, Paritätischer, Red Cross) or consumer protection agencies
- In some federal states: separation of insolvency counselling and debt counselling.
- Subsidiarity principle: priority to voluntary welfare organisations



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# Insolvency act

- The federal states are responsible for financing the implementation of overall regulation procedures (insolvency counselling).
- The legal basis for this is provided by the respective state implementation laws for the Insolvency Code of the Länder (LAG InsO der Länder) and the associated state ordinances.
- The precondition for being able to support a debtor in insolvency proceedings (i.e. not only to provide debt counselling) is recognition according to § 305 InsO.



# A distinction is made between five groups.

- Persons with entitlement to social assistance or basic benefits according to SGB XII
- Persons without entitlement to social benefits for current subsistence according to SGB II or XII
- Employed persons or recipients of ALG I without SGB II entitlement
- Persons capable of gainful employment and in need of SGB II benefits
- Members of the community of need without entitlement to SGB II

*-> Unemployed persons who are able to work and receive social benefits currently have the easiest access.*



# German Social Code

## (SGB II)

- The reduction of debts serves the purpose of integration into the labour market. To this purpose § 16 of the Second Book of the Social Code (SGB II) stipulates cost assumption by the Job Centre.
- § 16a SGB II: Debt counselling as a municipal integration service

*"In order to realize holistic and comprehensive care and support for integration into work, the following services which are necessary for the integration into the working life of the person who is entitled to benefits and who is capable of working may be provided:*

- 1. the care of minor or disabled children or the domestic care of relatives*
- 2. **debt counselling***
- 3. psychosocial care*
- 4. addiction counselling".*



# German Social Code (*SGB II*)

§ 6 Para.1 No. 2: Bodies responsible for providing services: independent cities and rural districts

§ 17: Facilities and services for integration benefits

- State is not allowed to develop services of its own if suitable services of third parties exist or can be developed - subsidiarity - support by the voluntary welfare organisations.
- Entitlement to remuneration presupposes performance agreement
  - content, scope and quality
  - flat-rate or case-by-case remuneration
  - Audit of the economic efficiency and quality of the service





# German Social Code

## (SGB II)

### § 17: Facilities and services for integration benefits

*"(1) In order to provide benefits for integration into employment, the competent institutions for benefits under this Book shall not create new institutions and services of their own, provided that suitable institutions and services of third parties are available, can be expanded or can be created in the near future. The competent institutions for benefits under this Book shall provide appropriate support to voluntary welfare organisations in their activities in the field of basic benefits for job-seekers.*



# German Social Code (SGB XII)

## § 11 Para. 5 SGB XII

- Costs should be covered in the case of benefit recipients, or if there is otherwise a risk of benefit withdrawal -> "**shall**"
- In other cases, costs "**may**" be assumed. -> Responsible person is free to decide, at his/her own discretion

Other cases: Cases not falling under the third chapter of the Social Code Book XII but are within the Social Code Book XII, e.g. Chapter Eight Help to overcome special social difficulties § 67-69



# German Social Code (SGB XII)

## §11 Para 5 S. 2 - 4 SGB XII

*"If further counselling by a debt counselling centre or other specialised counselling centres is required, their use shall be encouraged. **Reasonable costs of counselling according to sentence 2 shall be assumed** if a situation in life which makes assistance for subsistence necessary or expected cannot otherwise be overcome; in other cases, costs may be assumed. The assumption of costs may also take the form of a lump-sum payment for the services of the debt counselling centre or other specialised counselling centres."*



# Conclusion

- Funding responsibility of the districts and independent cities.
- The actual type and scope of funding varies from municipality to municipality:  
Funding through lump sums, individual case remuneration.
- Counselling for employed persons, pensioners, etc. without benefit entitlement SGB II or SGB XII
  - no counselling on the basis of these laws
  - see BSG, judgement of 13.7.2010 - B85014/09R





# Legal Services Act

## *(Rechtsdienstleistungsgesetz)*

- General legal framework for the counselling and support services of the Social Debt Counselling Service.
- According to the Legal Services Act publicly recognised bodies (§ 8 RDG) are permitted to provide legal services within the scope of their respective tasks and areas of responsibility. E.g. voluntary welfare associations and their institutions, recognised youth welfare organisations, consumer centres and other publicly funded consumer associations
- Another requirement: non-legal staff must have the possibility to contact a lawyer.



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# Finance

- No nationwide regulation: Debt counselling is a matter for the municipalities, insolvency counselling is a matter of the federal states: many different regulation
- In a few federal states: Financing participation by banks/business
- No permanent funding, usually new applications have to be submitted every few years
- Long-standing demand: Demand key as the basis for funding. E.g.: two full-time debt counsellors should be available for every 50,000 inhabitants
- Funding compromises professional standards
- Financing is mainly provided by means of general allowances or flat rates per case.



# Access

- About six million people in Germany are over-indebted, just under 10-15 percent of them receive help in a debt counselling centre.
- There is no legal right to debt counselling.
- Example: Employed persons, students or pensioners do not have the possibility of free debt counselling in all municipalities.
- Limited counselling capacities.





Thank you for your attention!

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