



Insolvency Regulations in Europe

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*„If history shows anything, it is that there is no better way to justify relations based on violence, to make such relations seem moral, then by reframing them in the **language of debt** – above all, because it immediately makes it seem that it's the victim who's doing something wrong“*

Daniel Graeber

Debt: the first 5.000 years

Transformation of the Insolvency law to an Instrument of Social Policy

How do states and societies deal with
citizens' debt problems?

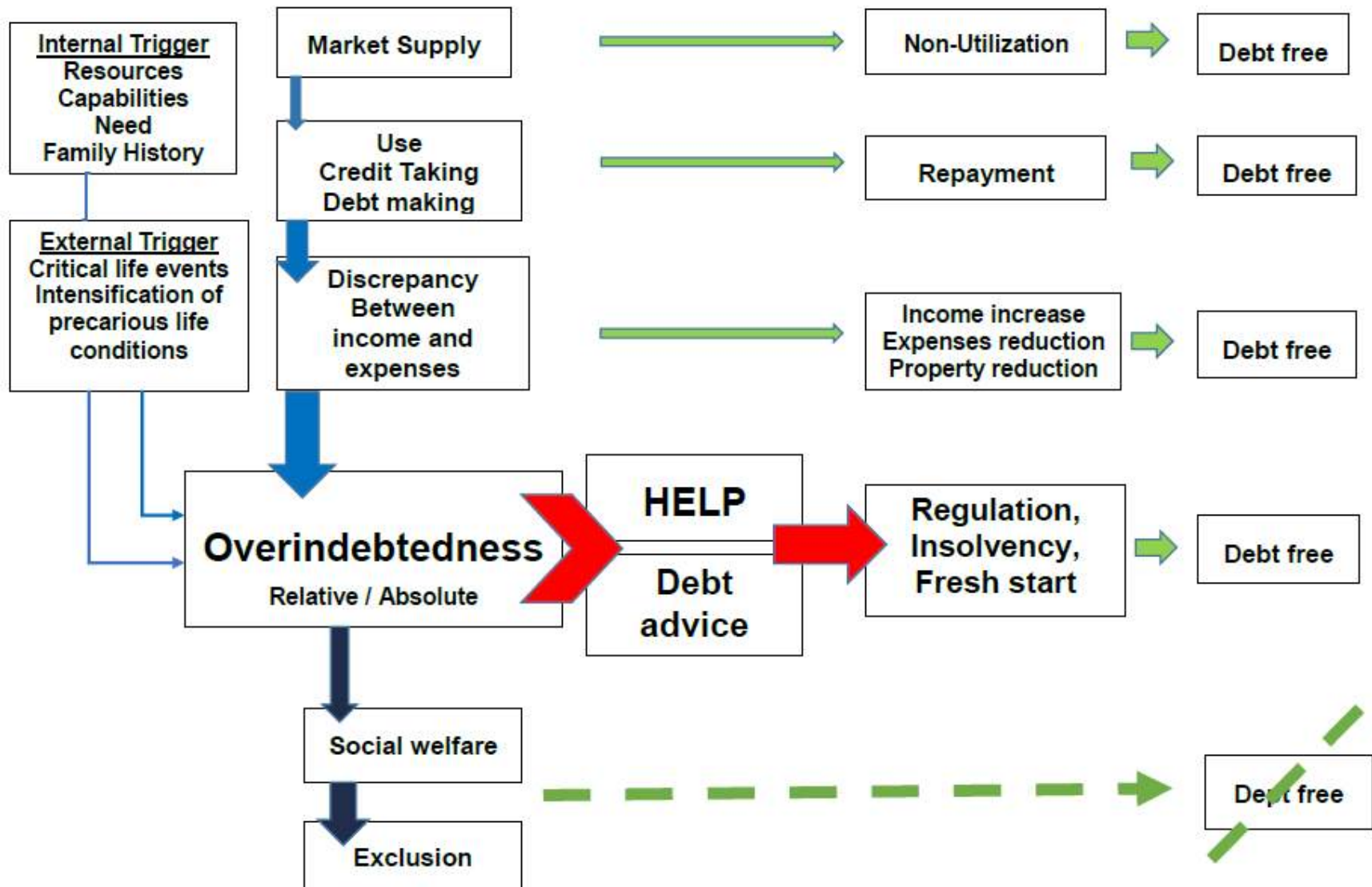
Residual Debt Relief

As reaction on increasing over-
indebtedness of private households :
State-legitimised cancellation of
financial liabilities recorded in the Court
proceedings

Entry into force of consumer insolvency proceedings

| | |
|------|-------------------------------------|
| 1979 | USA |
| 1984 | Denmark |
| 1989 | France |
| 1993 | Norway, Finland |
| 1994 | Sweden |
| 1998 | The Netherlands |
| 1999 | Belgium, Germany |
| 2004 | Estonia, Portugal |
| 2006 | Slovakia |
| 2008 | Lithuania, Slovenia, Czech Republic |
| 2009 | Poland |
| 2011 | Greece |
| 2013 | Ireland, Italy |

Model of Overindebtedness



Insolvency models (Jan-Ocko Heuer)

Market model

USA, Canada

Restrictions model

UK, New Zealand, Australia, Slovakia

Liability model

Germany , Austria, Spain, Cyprus

Grace model

Scandinavia, France, Belgium, NL

Market model - USA

(Bankruptcy Code)

- Chapter 7 (Quick Fresh Start)
Immediate debt resolution with complete realisation of assets
- Chapter 13
 - 3-5-years repayment plan (without consideration of assets)
- (Exclusions: Tax debts, Fines, Child maintenance, Damage claims)

Restrictive model - UK

(Debt Relief Order, 2009)



- Debt not higher than 20.000 Pounds
- Fortune not higher than 1.000 Pounds
- Monthly available income not more than 50 Pounds
- Many economic, political, civil law restrictions
- Debt relief after 1 year
- Prerequisite: not in any other insolvency
- Activation of a Trustee

New EU Directive 2019/ 1023

- Shortening the residual debt discharge procedure (3 years now)
- Waiver of coverage of procedural costs or fulfilment of minimum satisfaction requirements
- **But:** Only invitation to extend the application of the discharge principles also to consumers, however, this possibility is left to the discretion of Member States.
- The directive does not address the special needs of 'no income-no assets' debtors or 'low income-low assets' debtors.

Liability model - Germany (InsO)



- Residual debt relief is a new law instrument
- **4-step procedure:**
- unsuccessful out-of-court settlement attempt with the creditors
- Failed judicial settlement attempts
- Opening of insolvency proceedings and period of good conduct (3 years of control)
- Residual debt discharge
- Responsibility of the debtor for repayment

Grace model - Sweden

(Skuldsaneringslag)



- Case-by-case-assessment
- Replication of the welfare state with individual needs tests
- Enforcement of a payment plan with discharge of residual debt by Swedish Enforcement Agency (SEA)
- Definition of all process parameters by SEA
- Costs for procedures are borne by the state

Grace model - Netherlands




**Amicable
Process**


- Recommendation of partial cancellation (over-indebtedness commission)
- Mediation Commission
- Enforcement authority

**Statutory
Process**

Summary



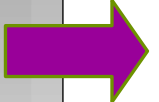
USA: Open credit economy /Mandatory debt insurance/ Quick social reintegration



UK: Duration 1-3 years / protection society from deviant debtors



Germany/ Austria: Leading idea = „*bad*“ debtor



Scandinavia: Insolvency law for sociopolitical purposes – Focus on the debtor's need – Decision by state authorities

Many thanks for your attention!

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