

Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency) (Text with EEA relevance)

TITLE III

DISCHARGE OF DEBT AND DISQUALIFICATIONS

Article 23

Derogations

1 By way of derogation from Articles 20 to 22, Member States shall maintain or introduce provisions denying or restricting access to discharge of debt, revoking the benefit of such discharge or providing for longer periods for obtaining a full discharge of debt or longer disqualification periods, where the insolvent entrepreneur acted dishonestly or in bad faith under national law towards creditors or other stakeholders when becoming indebted, during the insolvency proceedings or during the payment of the debt, without prejudice to national rules on burden of proof.

2 By way of derogation from Articles 20 to 22, Member States may maintain or introduce provisions denying or restricting access to discharge of debt, revoking the benefit of discharge or providing for longer periods for obtaining a full discharge of debt or longer disqualification periods in certain well-defined circumstances and where such derogations are duly justified, such as where:

- a the insolvent entrepreneur has substantially violated obligations under a repayment plan or any other legal obligation aimed at safeguarding the interests of creditors, including the obligation to maximise returns to creditors;
- b the insolvent entrepreneur has failed to comply with information or cooperation obligations under Union and national law;
- c there are abusive applications for a discharge of debt;
- d there is a further application for a discharge within a certain period after the insolvent entrepreneur was granted a full discharge of debt or was denied a full discharge of debt due to a serious violation of information or cooperation obligations;
- e the cost of the procedure leading to the discharge of debt is not covered; or
- f a derogation is necessary to guarantee the balance between the rights of the debtor and the rights of one or more creditors.

3 By way of derogation from Article 21, Member States may provide for longer discharge periods in cases where:

- a protective measures are approved or ordered by a judicial or administrative authority in order to safeguard the main residence of the insolvent entrepreneur and, where applicable, of the entrepreneur's family, or the essential assets for the continuation of the entrepreneur's trade, business, craft or profession; or
- b the main residence of the insolvent entrepreneur and, where applicable, of the entrepreneur's family, is not realised.

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

4 Member States may exclude specific categories of debt from discharge of debt, or restrict access to discharge of debt or lay down a longer discharge period where such exclusions, restrictions or longer periods are duly justified, such as in the case of:

- a secured debts;
- b debts arising from or in connection with criminal penalties;
- c debts arising from tortious liability;
- d debts regarding maintenance obligations arising from a family relationship, parentage, marriage or affinity;
- e debts incurred after the application for or opening of the procedure leading to a discharge of debt; and
- f debts arising from the obligation to pay the cost of the procedure leading to a discharge of debt.

5 By way of derogation from Article 22, Member States may provide for longer or indefinite disqualification periods where the insolvent entrepreneur is a member of a profession:

- a to which specific ethical rules or specific rules on reputation or expertise apply, and the entrepreneur has infringed those rules; or
- b dealing with the management of the property of others.

The first subparagraph shall also apply where an insolvent entrepreneur requests access to a profession as referred to in point (a) or (b) of that subparagraph.

6 This Directive is without prejudice to national rules regarding disqualifications ordered by a judicial or administrative authority other than those referred to in Article 22.