

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 20*

#### **Access to discharge**

1 Member States shall ensure that insolvent entrepreneurs have access to at least one procedure that can lead to a full discharge of debt in accordance with this Directive.

Member States may require that the trade, business, craft or profession to which an insolvent entrepreneur's debts are related has ceased.

2 Member States in which a full discharge of debt is conditional on a partial repayment of debt by the entrepreneur shall ensure that the related repayment obligation is based on the individual situation of the entrepreneur and, in particular, is proportionate to the entrepreneur's seizable or disposable income and assets during the discharge period, and takes into account the equitable interest of creditors.

3 Member States shall ensure that entrepreneurs who have been discharged from their debts may benefit from existing national frameworks providing for business support for entrepreneurs, including access to relevant and up-to-date information about these frameworks.

### *Article 21*

#### **Discharge period**

1 Member States shall ensure that the period after which insolvent entrepreneurs are able to be fully discharged from their debts is no longer than three years starting at the latest from the date of either:

- a in the case of a procedure which includes a repayment plan, the decision by a judicial or administrative authority to confirm the plan or the start of the implementation of the plan; or
- b in the case of any other procedure, the decision by the judicial or administrative authority to open the procedure, or the establishment of the entrepreneur's insolvency estate.

2 Member States shall ensure that insolvent entrepreneurs who have complied with their obligations, where such obligations exist under national law, are discharged of their debt on expiry of the discharge period without the need to apply to a judicial or administrative authority to open a procedure additional to those referred to in paragraph 1.

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Without prejudice to the first subparagraph, Member States may maintain or introduce provisions allowing the judicial or administrative authority to verify whether the entrepreneurs have fulfilled the obligations for obtaining a discharge of debt.

3 Member States may provide that a full discharge of debt does not hinder the continuation of an insolvency procedure that entails the realisation and distribution of assets of an entrepreneur that formed part of the insolvency estate of that entrepreneur as at the date of expiry of the discharge period.

#### *Article 22*

### **Disqualification period**

1 Member States shall ensure that, where an insolvent entrepreneur obtains a discharge of debt in accordance with this Directive, any disqualifications from taking up or pursuing a trade, business, craft or profession on the sole ground that the entrepreneur is insolvent, shall cease to have effect, at the latest, at the end of the discharge period.

2 Member States shall ensure that, on expiry of the discharge period, the disqualifications referred to in paragraph 1 of this Article cease to have effect without the need to apply to a judicial or administrative authority to open a procedure additional to those referred to in Article 21(1).

#### *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.

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.

#### *Article 24*

### **Consolidation of proceedings regarding professional and personal debts**

1 Member States shall ensure that, where insolvent entrepreneurs have professional debts incurred in the course of their trade, business, craft or profession as well as personal debts incurred outside those activities, which cannot be reasonably separated, such debts, if dischargeable, shall be treated in a single procedure for the purposes of obtaining a full discharge of debt.

2 Member States may provide that, where professional debts and personal debts can be separated, those debts are to be treated, for the purposes of obtaining a full discharge of debt, either in separate but coordinated procedures or in the same procedure.