

ECJ Preliminary Ruling Request: *Instituto da Segurança Social and Others* (Case C-20/23) – *Tribunal da Relação do Porto* Submits Referral on Exclusion of Tax Debts from Discharge of Debt Procedures

8 May 2023

Report from Carla Valério, Associate, IBFD

The Court of Appeal in Porto (Tribunal da Relação do Porto) made reference to the Court of Justice of the European Union (ECJ) on 16 January 2023 for a preliminary ruling in the case *SF v. MV, Instituto da Segurança Social, IP, Autoridade Tributária e Aduaneira, Cofidis SA – Branch in Portugal* (C-20/23) on the possibility of excluding tax debts from the discharge of debt procedures under the [Directive on restructuring and insolvency \(2019/1023\)](#).

The Court of Appeal in Porto requested the ECJ to answer the following questions:

1. Must Article 23(4) of [Directive \[2019/1023\]](#) be interpreted as meaning that the exclusion of other debts (other than those listed in the respective letters of Article 23(4)) is permitted only if it is 'duly justified'?
2. Must the possibility for Member States of excluding specific categories of debt from discharge of debt (where such exclusions are duly justified as provided for in Article 23(4) of Directive 2019/1023) be interpreted as allowing Member States to exclude tax debts (which are not listed in that article), thereby placing themselves in a privileged position?
3. If the answer to those questions is in the affirmative, what criteria must that justification satisfy, within the meaning of EU law, in order to comply with the general principles of EU law and the protection of fundamental rights, to which the European and national legislatures are subject [prohibition of discrimination on grounds of nationality' (Article 18 TFEU), 'freedom to conduct a business' (Article 16 of the [\[Charter of Fundamental Rights of the European Union\]](#)) and the fundamental economic freedoms of the internal market]?
4. If the answer to the aforementioned question is in the negative, do the definitions (within the meaning of EU law and for the purposes of interpreting the directive in question) of 'debts arising from or in connection with criminal penalties' and 'debts arising from "tortious liability"' also include tax debts as provided for in the national legislative act transposing Directive 2019/1023 (Lei No.º 9/2022, de 11 de janeiro (Law No 9 of 11 January 2022))?"

