Provisional text

JUDGMENT OF THE COURT (Sixth Chamber)

10 April 2025 (*)

(Reference for a preliminary ruling – Judicial cooperation in civil matters – Directive (EU) 2019/1023 – Procedures concerning restructuring, insolvency and discharge of debt – Article 20 – Access to discharge – Article 23(1) and (2) – Derogations – Natural person who has become insolvent – Conditions for access to discharge of debt – Concept of 'dishonest or bad faith' conduct – Conduct towards creditors of a third party)

In Case C-723/23 [Amilla], (i)

REQUEST for a preliminary ruling under Article 267 TFEU from the Juzgado de lo Mercantil No 3 de Oviedo, con sede en Gijón (Commercial Court No 3, Oviedo, sitting in Gijón, Spain), made by decision of 13 October 2023, received at the Court on 28 November 2023, in the proceedings

Agencia Estatal de la Administración Tributaria

v

VT,

UP,

THE COURT (Sixth Chamber),

composed of A. Kumin, President of the Chamber, F. Biltgen (Rapporteur), President of the First Chamber, and S. Gervasoni, Judge,

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– VT and UP, by I. Blanco Urizar, abogado,

– the Spanish Government, by A. Ballesteros Panizo, acting as Agent,

– the European Commission, by J.L. Buendía Sierra, G. Meeßen and G. von Rintelen, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 20 and Article 23(1) of 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) (OJ 2019 L 172, p. 18).

2 The request has been made in proceedings between VT, a natural person who has become insolvent, and the Agencia Estatal de Administración Tributaria (State Tax Administration Agency, Spain) ('the AEAT'), concerning an application for discharge of debt filed by VT in the course of the insolvency proceedings concerning him.

Legal context

European Union law

3 Recitals 78 to 81 of the Directive on restructuring and insolvency provides:

'(78) A full discharge of debt or the ending of disqualifications after a period no longer than three years is not appropriate in all circumstances, therefore derogations from this rule which are duly justified by reasons laid down in national law might need to be introduced. For instance, such derogations should be introduced in cases where the debtor is dishonest or has acted in bad faith. Where entrepreneurs do not benefit from a presumption of honesty and good faith under national law, the burden of proof concerning their honesty and good faith should not make it unnecessarily difficult or onerous for them to enter the procedure.

(79) In establishing whether an entrepreneur was dishonest, judicial or administrative authorities might take into account circumstances such as: the nature and extent of the debt; the time when the debt was incurred; the efforts of the entrepreneur to pay the debt and comply with legal obligations, including public licensing requirements and the need for proper bookkeeping; actions on the entrepreneur's part to frustrate recourse by creditors; the fulfilment of duties in the likelihood of insolvency, which are incumbent on entrepreneurs who are directors of a company; and compliance with Union and national competition and labour law. It should also be possible to introduce derogations where the entrepreneur has not complied with certain legal obligations, including obligations to maximise returns to creditors, which could take the form of a general obligation to generate income or assets. It should furthermore be possible to introduce specific derogations where it is necessary to guarantee the balance between the rights of the debtor and the rights of one or more creditors, such as where the creditor is a natural person who needs more protection than the debtor.

(80) A derogation could also be justified where the costs of the procedure leading to a discharge of debt, including the fees of judicial and administrative authorities and of practitioners, are not covered. Member States should be able to provide that the benefits of that discharge can be revoked where, for example, the financial situation of the debtor improves significantly due to unexpected circumstances, such as winning a lottery, or coming in the possession of an inheritance or a donation. Member States should not be prevented from providing additional derogations in well-defined circumstances and when duly justified.

(81) Where there is a duly justified reason under national law, it could be appropriate to limit the possibility of discharge for certain categories of debt. … Member States should be able to exclude further categories of debt when duly justified.'

4 Article 20 of that directive, entitled 'Access to discharge', provides:

'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.

…

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.

…'

5 Article 23 of the Directive on restructuring and insolvency, entitled 'Derogations', provides:

'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:

…

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;

…'

Spanish law

6 The law applicable *rationae temporis* to the dispute in the main proceedings is the Real Decreto Legislativo 1/2020 por el que se aprueba el texto refundido de la Ley Concursal (Royal Legislative Decree 1/2020 adopting the consolidated text of the Law on Insolvency) of 5 May 2020 (BOE No 127 of 7 May 2020, p. 31518), as amended by the Ley 16/2022 de reforma del texto refundido de la Ley

Concursal aprobado por el Real Decreto Legislativo 1/2020, para la transposición de la Directiva (UE) 2019/1023 (Law 16/2022 amending the consolidated text of the Law on Insolvency, approved by Royal Legislative Decree 1/2020 for the transposition of Directive (EU) 2019/1023), of 5 September 2022 (BOE No 214 of 6 September 2022, p. 123682) ('the TRLC').

7 The preamble to Law 16/2022 states:

'…

… Where the insolvent debtor is a natural person, the insolvency procedure is intended to identify debtors of good faith and offer them a partial discharge of their debt, thereby enabling them to benefit from a second chance and preventing them from falling into the black economy or living in the margins.

…

The [Directive on restructuring and insolvency] requires all Member States to put in place a second-chance mechanism to prevent debtors from being tempted to relocate to other countries which already provide for such mechanisms, with the cost that that would entail for both the debtor and his or her creditors. At the same time, standardisation in this area is considered essential for the operation of the single European market.

One of the most radical changes in the new legislation is that, instead of subordinating discharge to the settlement of a certain type of debt (as provided for in Article 487(2) of the consolidated text of the Law on Insolvency), a merit-based discharge system is adopted in which any debtor, whether or not he or she is an entrepreneur, provided that the debtor fulfils the requirement of good faith on which that institution is based, can have access to full discharge of his or her debts, except for those which, exceptionally and owing to their special nature, are regarded as not being legally dischargeable. The option, already accepted by the Spanish legislature in 2015, to grant a discharge to any debtor who is a natural person of good faith, whether or not that person is an entrepreneur, is maintained.

…

The debtor's good faith remains the cornerstone of the discharge system. In accordance with the recommendations of international bodies, a legislative delimitation of good faith is established, by reference to certain objective types of conduct which are exhaustively listed (*numerus clausus*), without having recourse to vague or insufficiently specific patterns of behaviour, or those which place an impossible burden of proof on the debtor. …

…

The discharge of debt shall apply to all claims under insolvency proceedings and claims against assets. Exceptions shall be based, in certain cases, on the particular importance attached to such debt being paid in a fair and cohesive society based on the rule of law (such as maintenance debts, debts arising from claims governed by public law, debts arising from criminal offences or debts arising from tortious liability). Thus, the discharge of debt in respect of claims governed by public law is subject to certain limits and can only take place at the time of the initial discharge of debt, and not at the time of subsequent discharges. In other cases, the exception is justified by the synergies or negative externalities that could result from the discharge of certain types of debt: the discharge of debts resulting from the obligation to pay the costs of the procedure leading to a discharge of debt might dissuade certain third parties from cooperating with the debtor for that purpose (for example, lawyers), which would prevent the insolvent person from accessing his or her file. Similarly, the discharge of debt secured with collateral would, without any basis, undermine one of the essential elements of access to credit and, with it, the correct functioning of modern economies, namely the immunity of a creditor benefiting from a strong security interest to the vicissitudes of insolvency or non-compliance on the part of the debtor. Finally, by way of exception, the court is allowed to order the full or partial non-discharge of certain debts where that is necessary to avoid the insolvency of the creditor.

…'

8 Article 486 of the TRLC provides:

‘A debtor who is a natural person, whether or not he or she is an entrepreneur, may apply for the discharge of outstanding debts under the terms and conditions laid down in this law, provided that that person is a debtor of good faith:

1° by submitting to a payment plan without prior liquidation of assets, in accordance with the debt discharge system referred to in subsection 1 of Section 3 below; or

2° by liquidating assets, in which case the discharge will be subject to the system provided for in subsection 2 of Section 3 below, if the cause of the closure of the insolvency proceedings is the conclusion of the asset liquidation phase or its insufficiency to meet the claims against those assets.’

9 Article 487 of the TRLC is worded as follows:

‘1. A debtor in one of the following situations shall not be able to obtain a discharge of outstanding debts:

1° Where, during the 10 years preceding the application for discharge, he or she has been sentenced by final judgment to a term of imprisonment, including suspended or replaced, for offences against property and against socioeconomic order, for falsification of documents, for offences against the Treasury and social security or against the rights of workers, provided that the maximum sentence for the offence is three or more years, unless, on the date on which the application for discharge is made, criminal liability has been extinguished and the financial obligations arising from the offence have been discharged.

2° Where, during the 10 years preceding the application for discharge, he or she has been penalised by a final administrative decision for a very serious tax offence, for a social security offence or for a labour offence, or where, during the same period, a final decision to enforce secondary liability has been handed down, unless, on the date on which the application for a discharge is made, he or she has paid all the debts for which he or she is liable.

In the case of serious offences, debtors who have been penalised for an amount exceeding fifty percent of the amount eligible for discharge by the [AEAT] referred to in point 5 of Article 489(1) may obtain the discharge only if, on the date on which the application for discharge is made, they have paid all the debts for which they are liable.

3° Where the insolvency has been declared fault-based. However, if the insolvency has been declared fault-based only because of the debtor’s failure to comply with the obligation to apply for a declaration of insolvency in due time, the court may take into account the circumstances in which the delay occurred.

4° Where, during the 10 years preceding the application for discharge, he or she has been declared the person concerned in the judgment classifying the insolvency of a third party as fault-based, unless, on the date on which the application for discharge is made, he or she has paid all the debts for which he or she is liable.

…

2. In the cases referred to in points 3 and 4 of the preceding paragraph, if the classification is not yet final, the court shall suspend the decision on the discharge of debt until the classification is final. …’

The dispute in the main proceedings and the questions referred for a preliminary ruling

10 VT and his wife, UP, were the directors of BLANCO Y NARANJA SL and MALVA Y NARANJA SL. Those two companies were each the subject of insolvency proceedings following which they were declared insolvent and it was held that those insolvencies were to be classified as ‘fault-based’. In both

sets of proceedings, VT and UP, in their capacity as joint and several directors of those companies, were identified as being ‘persons concerned’ by that classification and were disqualified from managing the property of others and from representing any person for a certain period (five years in one set of proceedings and seven years in the other). Furthermore, they lost all the rights which they had held as creditors in respect of the insolvency or of the assets of the same companies. In addition, they were ordered, jointly and severally, to pay the shortfall in the assets of the two companies concerned, namely the amounts of EUR 169 085.24 and EUR 62 035.91, and to pay the costs of the proceedings.

11 Having experienced difficulties in repaying those amounts, VT initiated an out-of-court payment agreement procedure before the Cámara Oficial de Comercio, Industria y Navegación de Gijón (Official Chamber of Commerce, Industry and Navigation, Gijón, Spain). As that procedure did not lead to the conclusion of such an agreement, VT lodged an application for a declaration of insolvency before the referring court, the Juzgado de lo Mercantil No 3 de Oviedo, con sede en Gijón (Commercial Court No 3, Oviedo, sitting in Gijón, Spain).

12 By order of 8 February 2021, that court declared VT’s personal insolvency and classified that insolvency as ‘inadvertent’.

13 On 2 February 2023, in the context of the insolvency proceedings opened against him, VT submitted an application for a discharge of outstanding debts. The AEAT objected to that application, arguing that the insolvency in question came under the exception laid down in point 4 of Article 487(1) of the TRLC and recalling that VT had been declared the ‘person concerned’ in the sets of insolvency proceedings referred to in paragraph 10 of the present judgment, that the insolvencies of the companies concerned had been classified as ‘fault-based’ and that VT had not fully discharged his liability.

14 VT claimed, first, that he was a debtor of good faith with regard to ‘his own creditors’ and that the fact that he had been declared the ‘person concerned’ in the insolvency proceedings relating to the legal persons in respect of which he was a joint and several director, as guarantor, did not restrict his access to discharge of debt with regard to his creditors. Second, he maintained that the exception laid down in point 4 of Article 487(1) of the TRLC, in so far as it establishes strict liability which cannot be moderated, is contrary to the system established by the Directive on restructuring and insolvency, which, he argues, requires account to be taken of the subjective circumstances in which the debtor finds himself or herself in order to determine whether he or she has been dishonest.

15 The referring court notes, in the first place, that Article 23(1) of that directive covers a situation in which an insolvent entrepreneur acts dishonestly or in bad faith towards creditors. It observes that it cannot, however, be clearly established whether that provision covers a situation such as the one at issue in the main proceedings where a debtor, as joint and several director, has been held jointly liable vis-à-vis the creditors of a third party. In its view, the question thus arises whether the derogation concerning access to the discharge of a debtor’s outstanding debts with regard to his or her own creditors is applicable to the creditors of a third party and whether such application is compatible with the concept of ‘creditors’, within the meaning of that provision.

16 In the second place, the referring court considers that the exception laid down in point 4 of Article 487(1) of the TRLC prevents VT from having access to a procedure that can lead to a full discharge of his debts with regard to his own creditors. It is unsure whether Article 20 of the Directive on restructuring and insolvency, which requires Member States to provide for a procedure that can lead to a full discharge of debt, must be interpreted as precluding such a provision.

17 In the third place, the referring court has doubts as to whether the Directive on restructuring and insolvency, in particular Article 20(2) thereof, requires that the scheme for access to full discharge of debt put in place must take into account the subjective circumstances surrounding the debtor’s situation, that is to say, his or her individual situation, or whether Member States have the option of maintaining or introducing a provision, such as point 4 of Article 487(1) of the TRLC, which lays down purely objective criteria and which does not take that situation into account.

18 In those circumstances, the Juzgado de lo Mercantil No 3 de Oviedo, con sede en Gijón (Commercial Court No 3, Oviedo, sitting in Gijón) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Must Article 23(1) of [the Directive on restructuring and insolvency] be interpreted as precluding a national provision such as [point 4 of Article 487(1)] of the [TRLC], where it includes, in the concept of dishonest action or bad faith on the part of the debtor[,] actions relating to creditors of third parties, other than those which make up the list of creditors for his or her own personal insolvency?

(2) Is [point 4 of Article 487(1)] of the [TRLC] consistent with Article 20 of [the Directive on restructuring and insolvency], given that it provides for an exception within the second-chance procedure which prevents it culminating in a full discharge of debts?

(3) Is [point 4 of Article 487(1)] of the [TRLC] consistent with Article 20(2) and recital 79 of [the Directive on restructuring and insolvency], given that the national provision does not provide for the debtor’s individual situation, setting out an exception which is objective in nature, without any possibility of the Spanish courts being able to assess the subjective circumstances of a debtor accessing the second-chance procedure?’

Consideration of the questions referred

The first question

19 By its first question, the referring court asks, in essence, whether Article 23(1) of the Directive on restructuring and insolvency must be interpreted as precluding national legislation which excludes access to discharge of debt where the debtor has acted dishonestly or in bad faith towards the creditors of a third party and has been declared a ‘person concerned’ in the context of a judicial declaration of the fault-based insolvency of that third party.

20 That question arises from the fact that point 4 of Article 487(1) of the TRLC provides, in essence, that a debtor who, during the 10 years preceding his or her application for discharge, has been declared a ‘person concerned’ in a judgment classifying the insolvency of a third party as ‘fault-based’ may obtain such a discharge only if, on the date on which that application is made, that debtor has paid all the debts for which he or she is liable.

21 That being so, it should be recalled that, in accordance with the case-law of the Court, for the purpose of interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgment of 14 March 2024, *VR Bank Ravensburg-Weingarten*, C-536/22, EU:C:2024:234, paragraph 35 and the case-law cited).

22 As regards, in the first place, the wording of Article 23(1) of the Directive on restructuring and insolvency, that provision provides that Member States are to 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, inter alia, ‘towards creditors … when becoming indebted, during the insolvency proceedings or during the payment of the debt’.

23 That provision contains an indirect temporal indication as to the point in time at which the debtor must have acted dishonestly or in bad faith, namely ‘when becoming indebted’, ‘during the insolvency proceedings’ or ‘during the payment of the debt’, which permits the inference that the ‘creditors’ referred to in that provision are those which can be determined either at the time when the debtor concerned became indebted, during the insolvency proceedings or during the payment of the debt. As the European Commission argued in its written observations, that temporal indication may be understood as supporting an interpretation of Article 23(1) of the Directive on restructuring and insolvency to the effect that the term ‘creditors’ refers only to creditors in respect of which the debtor concerned has become directly and personally indebted, namely ‘his or her own’ creditors, and not to those which, initially, were creditors of a third party and which became the debtor’s creditors only following a judgment declaring that debtor the ‘person concerned’ by the fault-based insolvency of that third party.

24 However, in so far as, in a situation such as that at issue in the main proceedings, a person acting as a director of a company the insolvency of which has been classified as 'fault-based' knows that, in accordance with the applicable national legislation, he or she may be declared a 'person concerned', within the meaning of that national legislation, and therefore become a debtor in respect of that company's creditors, that person cannot reasonably be unaware that the creditors in respect of which he or she decides to commit that company are potentially his or her own creditors. Accordingly, in such a case, dishonest or bad faith conduct on the part of that person towards the creditors of that company, and therefore towards his or her potential personal creditors, must be treated in the same way as dishonest or bad faith conduct towards his or her own creditors.

25 That interpretation of the wording of Article 23(1) of the Directive on restructuring and insolvency is supported by the fact that the French language version of that provision uses the words '*des créanciers*' (creditors) and not '*ses créanciers*' (his or her creditors). If the EU legislature had intended to limit the class of creditors referred to in that provision to the debtor's own creditors, it could easily have done so by using the possessive adjective '*ses*' (his or her).

26 In that regard, it must be observed that language versions of Article 23(1) of the Directive on restructuring and insolvency other than the French version, inter alia the versions in German ('*gegenüber den Gläubigern*'), English ('towards creditors'), Danish ('*for kreditorer*'), Spanish ('*respecto a los acreedores*'), Hungarian ('*a hitelezőkkel … szemben*'), Italian ('*nei confronti dei creditori*'), Portuguese ('*para com os credores*'), Romanian ('*față de creditori*') and Swedish ('*gentemot borgenärerna*'), confirm that the legislature did not use that possessive adjective.

27 As regards, in the second place, the context in which Article 23(1) of the Directive on restructuring and insolvency occurs, it must be stated that that provision constitutes the first of a series of provisions derogating from the principle of access to a procedure that can lead to a full discharge of debt established in Article 20 of that directive and that, accordingly, it is to be interpreted strictly.

28 However, as is apparent, inter alia, from the Czech, Danish, German, English, Irish, French, Croatian, Italian, Latvian, Dutch, Portuguese, Romanian, Slovak, Slovenian, Finnish and Swedish language versions of the Directive on restructuring and insolvency, in contrast to paragraphs 2, 3 and 4 of Article 23 of that directive, which use terms that are, in essence, equivalent to the French term '*peuvent*', namely '*mohou*', '*kan*', '*können*', 'may', '*féadfaidh*', '*mogu*', '*possono*', '*var*', '*kunnen*', '*podem*', '*pot*', '*môžu*', '*lahko*', '*voivat*' and '*får*', respectively, and thus grant Member States a certain margin of discretion to 'maintain or introduce' certain derogations to that principle, 'provide for' longer discharge periods and 'exclude specific categories of debt from discharge of debt, or restrict access to discharge of debt or lay down a longer discharge period', respectively, paragraph 1 of that article does not, in those language versions, contain a similar term and requires Member States to put in place such a derogation by providing that they 'shall maintain or introduce', inter alia, provisions denying or restricting access to discharge of debt or providing for longer periods for obtaining a full discharge of debt or longer disqualification periods, where the insolvent debtor acted dishonestly or in bad faith. That finding is not called into question by the fact that the Spanish language version of Article 23(1) of that directive uses the term '*podrán*' (may), since the wording used in one of the language versions of an act cannot serve as the sole basis for the interpretation of that act, or be made to override the other language versions in that regard (see, to that effect, judgment of 20 February 2018, *Belgium* v *Commission*, C-16/16 P, EU:C:2018:79, paragraphs 50 and 51 and the case-law cited).

29 Since the EU legislature decided to require Member States to maintain or introduce that derogation from the abovementioned principle and did not merely grant them a margin of discretion in that regard, Article 23(1) of the Directive on restructuring and insolvency must be interpreted in a manner which serves, as far as possible, to prevent debtors who have acted dishonestly or in bad faith towards creditors or other stakeholders from benefiting from a discharge of debt.

30 Accordingly, the contextual interpretation of Article 23(1) of that directive supports the literal interpretation set out in paragraphs 24 and 25 of the present judgment.

31 As regards, in the third place, the objective of Article 23(1) of the Directive on restructuring and insolvency, it is apparent from recital 78 of that directive that the EU legislature intended to require a derogation from access to discharge of debt 'where the debtor is dishonest or has acted in bad faith',

without further limiting, in that recital, the class of creditors towards which the debtor may have acted dishonestly or in bad faith.

32 As regards, specifically, the circumstances to be taken into account in establishing whether a debtor was dishonest, the EU legislature, in recital 79 of that directive, referred to 'the nature and extent of the debt; the time when the debt was incurred; the efforts of the entrepreneur to pay the debt and comply with legal obligations, including public licensing requirements and the need for proper bookkeeping; actions on the entrepreneur's part to frustrate recourse by creditors; the fulfilment of duties in the likelihood of insolvency, which are incumbent on entrepreneurs who are directors of a company; and compliance with Union and national competition and labour law.'

33 It must be observed, first, that that list, which is not exhaustive, since it is introduced by the words 'such as', does not contain any indication that the class of creditors towards which the debtor acted dishonestly or in bad faith is limited in any way and does not include persons who were initially creditors of a third party and who became that debtor's creditors following the fault-based insolvency of that third party. Second, the circumstances thus listed, in particular those referring to 'the nature and extent of the debt', 'the time when the debt was incurred' and 'actions on the [debtor's] part to frustrate recourse by creditors', encompass a wide range of situations and are drafted in terms which permit the inference that the EU legislature intended to cover the conduct of a debtor towards both his or her own creditors and the creditors of a third party, such as the company of which that debtor was the director.

34 Therefore, having regard to the objective thus highlighted, Article 23(1) of the Directive on restructuring and insolvency cannot be interpreted as meaning that a person who has been found to be liable for the fault-based insolvency of a commercial company may avoid the joint and several liability which that person has, under national law, vis-à-vis the creditors of that company by applying for the opening of personal insolvency proceedings and by seeking, in the context of those proceedings, a full discharge of his or her debt.

35 In the light of the foregoing considerations, the answer to the first question is that Article 23(1) of the Directive on restructuring and insolvency must be interpreted as not precluding national legislation which excludes access to discharge of debt where the debtor has acted dishonestly or in bad faith towards the creditors of a third party and has been declared a 'person concerned' in the context of a judicial declaration of the fault-based insolvency of that third party.

The second and third questions

Admissibility of the third question

36 The Spanish Government contends, in essence, that the third question is based on the premiss that the TRLC does not allow the Spanish authorities and courts to carry out a subjective assessment of the conduct of a person applying for a discharge of outstanding debts. In its submission, that premiss is incorrect. It argues that that question is therefore not relevant to the outcome of the dispute in the main proceedings and, accordingly, should be declared inadmissible.

37 In that regard, it must be recalled that, in the context of the cooperation between the Court of Justice and the national courts provided for in Article 267 TFEU, it is solely for the national court, before which a dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court of Justice. Consequently, where the questions referred concern the interpretation of EU law, the Court is, in principle, required to give a ruling (judgment of 22 February 2024, *Consejería de Presidencia, Justicia e Interior de la Comunidad de Madrid and Others*, C-59/22, C-110/22 and C-159/22, EU:C:2024:149, paragraph 43 and the case-law cited).

38 It follows that questions relating to EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of a rule of EU law sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 22 February 2024,

Consejería de Presidencia, Justicia e Interior de la Comunidad de Madrid and Others, C-59/22, C-110/22 and C-159/22, EU:C:2024:149, paragraph 44 and the case-law cited).

39 In the present case, it must be held, first, that it is not quite obvious that the provisions of EU law in respect of which interpretation is sought in the third question bear no relation to the purpose of the main action or that the problem raised by that question is not relevant to the outcome of the dispute in the main action.

40 While it is true, as the Spanish Government has pointed out, that it is apparent from the request for a preliminary ruling that, in the referring court's view, point 4 of Article 487(1) of the TRLC provides for a derogation from the procedure for discharge of debt which is based exclusively on objective factors and which does not allow the Spanish courts to assess the subjective circumstances surrounding the situation of the debtor who accesses that procedure, the fact remains that, according to settled case-law, the referring court alone has jurisdiction to interpret and apply national law. Therefore, the Court of Justice must take account, under the division of jurisdiction between itself and the national courts, of the legislative context, as described in the order for reference, in which the questions put to it are set (judgment of 14 November 2024, *S. (Modification of the formation of the court)*, C-197/23, EU:C:2024:956, paragraph 51 and the case-law cited).

41 Second, the referring court has, in its request for a preliminary ruling, provided all the information necessary to enable the Court to give a useful answer to the third question.

42 That question is therefore admissible.

Substance

43 As regards the second and third questions, which it is appropriate to examine together, it should be stated that, in so far as those questions arise from the examination of a derogating national provision which, under certain conditions, excludes the benefit of the generally applicable scheme, they must be understood as referring, in essence, to the interpretation of Article 23(2) of the Directive on restructuring and insolvency. That provision provides, under certain conditions, for the possibility for Member States to maintain or introduce derogations 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. Those questions cannot refer to Article 20 of that directive, which is a basic provision requiring Member States to ensure that insolvent entrepreneurs have access to a procedure that can lead to a full discharge of debt in accordance with that directive.

44 Accordingly, it must be held that, by its second and third questions, the referring court asks, in essence, whether Article 23(2) of the Directive on restructuring and insolvency must be interpreted as precluding national legislation which sets out a derogation from the principle of access to a procedure that can lead to a discharge of debt which is not provided for in that provision and which excludes such access where, during the 10 years preceding the application for discharge, the debtor has been declared a 'person concerned' in a judgment classifying the insolvency of a third party as 'fault-based', unless, on the date on which that application is made, that debtor has paid all the debts for which he or she is liable, without the national courts being required to assess subjectively whether that debtor acted dishonestly or in bad faith.

45 As regards, in the first place, the question whether Article 23(2) of that directive precludes national legislation which excludes access to a procedure for discharge of debt in circumstances other than those listed in that provision, the Court has previously held that Article 23(2) must be interpreted as meaning that the list of circumstances set out therein is not exhaustive and that the Member States have a margin of discretion allowing them to 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 circumstances other than those listed in that provision, provided that, as follows from the wording of that provision, those circumstances are well-defined and that such derogations are duly justified (judgment of 7 November 2024, *Corván and Bacigán*, C-289/23 and C-305/23, EU:C:2024:934, paragraph 28).

46 As regards the conditions to which the exercise of the power thus granted to the Member States is subject, namely that the derogations adopted by the Member States must concern ‘certain well-defined circumstances’ and be ‘duly justified’, the Court has held that, when the national legislature adopts provisions which set out such derogations, the reasons for those derogations must derive from national law or from the procedure which led to them and those reasons must pursue a legitimate public interest (judgment of 7 November 2024, *Corván and Bacigán*, C-289/23 and C-305/23, EU:C:2024:934, paragraph 31 and the case-law cited).

47 In that regard, it must be recalled that both recital 78 of the Directive on restructuring and insolvency, which refers to derogations that are ‘duly justified by reasons laid down in national law’, and recital 81 of that directive, which refers to a reason ‘duly justified … under national law’, permit the inference that the EU legislature considered that it was sufficient that the detailed rules laid down for that purpose in the various national legal systems were complied with (judgment of 7 November 2024, *Corván and Bacigán*, C-289/23 and C-305/23, EU:C:2024:934, paragraph 32).

48 Moreover, in a case concerning a provision similar to the one at issue in the main proceedings, namely point 2 of Article 487(1) of the TRLC, the Court held that Article 23(2) of the Directive on restructuring and insolvency does not preclude national legislation which excludes access to discharge of debt in certain well-defined circumstances such as the situation where, during the 10 years preceding the application for discharge, a debtor has been penalised by a final administrative decision for a very serious tax offence, a social security offence or a labour offence, or where he or she has been the subject of a final decision to enforce secondary liability, unless that debtor has, on the date on which that application for discharge was submitted, paid in full his or her tax and social security debts, provided that it follows from national law that such an exclusion is justified by the pursuit of a legitimate public interest, which is a matter for the referring court to assess (see, to that effect, judgment of 7 November 2024, *Corván and Bacigán*, C-289/23 and C-305/23, EU:C:2024:934, paragraph 47).

49 The same conclusion must be reached with regard to a national provision such as point 4 of Article 487(1) of the TRLC, which provides that a debtor who, during the 10 years preceding the application for discharge, has been declared a ‘person concerned’ in a judgment classifying the insolvency of a third party as ‘fault-based’ is to be able to obtain such a discharge only if, on the date on which that application is made, that debtor has paid all the debts for which he or she is liable.

50 In the present case, as is apparent from paragraph 7 of the present judgment, the Spanish legislature, in the preamble to Law 16/2022, which is intended to transpose the Directive on restructuring and insolvency into Spanish law, set out the reasons that led it to provide for derogations from discharge of debt. In that preamble, that legislature states, inter alia, that ‘the debtor’s good faith remains the cornerstone of the [debt] discharge system’ and that ‘a legislative delimitation of good faith is established, by reference to certain objective types of conduct which are exhaustively listed (*numerus clausus*), without having recourse to vague or insufficiently specific patterns of behaviour, or those which place an impossible burden of proof on the debtor.’

51 Moreover, it is apparent from that preamble that the Spanish legislature considered it necessary to establish exceptions to the principle that the debtor who fulfils the requirement of good faith can have access to full discharge of his or her debts, applicable in the case of debts which, ‘exceptionally and owing to their special nature, are regarded as not being legally dischargeable.’ Those exceptions are justified inter alia by ‘the particular importance attached to such debt being paid in a fair and cohesive society based on the rule of law’ or by ‘the synergies or negative externalities that could result from the discharge of certain types of debt’.

52 In the present case, it is for the referring court to assess, first, whether those reasons constitute reasons pursuing a legitimate public interest and, second, whether it follows from the national legislation that those reasons justified the exclusion of discharge of debt in well-defined circumstances such as those set out in point 4 of Article 487(1) of the TRLC.

53 As regards, in the second place, the question whether Article 23(1) of the Directive on restructuring and insolvency precludes national legislation which excludes access to discharge of debt in well-defined circumstances and without the national courts being required to assess subjectively whether the

debtor concerned acted dishonestly or in bad faith, it must be observed that, although that provision makes express reference to insolvent entrepreneurs who acted ‘dishonestly or in bad faith’, there is no such reference in paragraph 2 of that article. Article 23(2) of that directive merely provides that 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’, without, however, requiring the existence of ‘dishonest’ conduct or ‘bad faith’ on the part of the entrepreneurs concerned (judgment of 7 November 2024, *Corván and Bacigán*, C-289/23 and C-305/23, EU:C:2024:934, paragraph 41).

54 As the Court has previously held, the circumstances, listed by way of illustration in Article 23(2) of the Directive on restructuring and insolvency, in which derogations from discharge of debt may be provided for are not characterised by the existence of ‘dishonest’ conduct or ‘bad faith’ on the part of the entrepreneurs concerned, and those circumstances correspond, in essence, to those referred to in recitals 79 and 80 of that directive, from which it is also not apparent that the EU legislature intended to limit the ‘well-defined circumstances’ referred to in Article 23(2) of that directive to situations in which the entrepreneurs concerned had acted dishonestly or in bad faith (judgment of 7 November 2024, *Corván and Bacigán*, C-289/23 and C-305/23, EU:C:2024:934, paragraphs 42 and 43).

55 Since Article 23(2) of the Directive on restructuring and insolvency does not, according to the Court’s case-law, preclude national legislation which excludes access to discharge of debt in well-defined circumstances in which the debtor has not acted dishonestly or in bad faith (see, to that effect, judgment of 7 November 2024, *Corván and Bacigán*, C-289/23 and C-305/23, EU:C:2024:934, paragraph 44), it must be held that that provision also does not preclude national legislation which excludes access to discharge of debt in such circumstances without the national courts being required to assess subjectively whether the debtor concerned acted dishonestly or in bad faith.

56 It follows that Article 23(2) of the Directive on restructuring and insolvency must be interpreted as meaning that Member States have the power to lay down national provisions which exclude access to the procedure for discharge of debt in situations that are not characterised by dishonest conduct or bad faith on the part of the debtor concerned, without the national courts being required to assess subjectively whether that debtor acted dishonestly or in bad faith.

57 However, the EU legislature expressly made the exercise of that power subject to the conditions that the derogations referred to in that provision concern ‘certain well-defined circumstances’ and be ‘duly justified’. It follows that, as has been recalled in paragraph 46 of the present judgment, when the national legislature adopts provisions which set out such derogations, the reasons for those derogations must derive from national law or from the procedure which led to them and those reasons must pursue a legitimate public interest. National law must therefore make it possible to identify a legitimate public interest which justifies, in those well-defined circumstances, the exclusion of a discharge of debt.

58 Article 23(2) of the Directive on restructuring and insolvency does not therefore preclude national legislation which excludes access to discharge of debt in certain well-defined circumstances such as the situation of a debtor who, during the 10 years preceding the application for discharge, has been the subject of a final decision to enforce secondary liability, unless that debtor has, on the date on which that application was submitted, paid in full his or her tax and social security debts, provided that it follows from national law that such an exclusion is justified by the pursuit of a legitimate public interest, which is a matter for the referring court to assess (judgment of 7 November 2024, *Corván and Bacigán*, C-289/23 and C-305/23, EU:C:2024:934, paragraph 47).

59 In the light of the foregoing considerations, the answer to the second and third questions is that Article 23(2) of the Directive on restructuring and insolvency must be interpreted as not precluding national legislation which sets out a derogation from the principle of access to a procedure that can lead to a discharge of debt which is not provided for in that provision and which excludes such access where, during the 10 years preceding the application for discharge, the debtor has been declared a ‘person concerned’ in a judgment classifying the insolvency of a third party as ‘fault-based’, unless, on the date on which that application is made, that debtor has paid all the debts for which he or she is

liable, without the national courts being required to assess subjectively whether that debtor acted dishonestly or in bad faith, provided that such an exclusion is duly justified under national law.

Costs

60 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Sixth Chamber) hereby rules:

1. **Article 23(1) of 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),**

   must be interpreted as not precluding national legislation which excludes access to discharge of debt where the debtor has acted dishonestly or in bad faith towards the creditors of a third party and has been declared a 'person concerned' in the context of a judicial declaration of the fault-based insolvency of that third party.

2. **Article 23(2) of Directive 2019/1023**

   must be interpreted as not precluding national legislation which sets out a derogation from the principle of access to a procedure that can lead to a discharge of debt which is not provided for in that provision and which excludes such access where, during the 10 years preceding the application for discharge, the debtor has been declared a 'person concerned' in a judgment classifying the insolvency of a third party as 'fault-based', unless, on the date on which that application is made, that debtor has paid all the debts for which he or she is liable, without the national courts being required to assess subjectively whether that debtor acted dishonestly or in bad faith, provided that such an exclusion is duly justified under national law.

[Signatures]

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* Language of the case: Spanish.

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i The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.