Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

7 November 2024*

(Reference for a preliminary ruling – Judicial cooperation in civil matters – Directive (EU) 2019/1023 – Procedures concerning restructuring, insolvency and discharge of debt – Article 1(4) – Subject matter and scope – Extension of procedures to insolvent natural persons who are not entrepreneurs – Article 20 – Access to discharge of debt – Article 23(1), (2) and (4) – Derogations – Exclusion of specific categories of debt from discharge of debt – Natural person who has become insolvent – Good faith of the debtor – Conditions for access to discharge of debt – Exclusion of claims governed by public law)

In Joined Cases C-289/23, [Corván] [i] and C-305/23 [Bacigán], [i]

TWO REQUESTS for a preliminary ruling under Article 267 TFEU from the Juzgado de lo Mercantil nº 1 de Alicante (Commercial Court No 1, Alicante, Spain) (C-289/23) and the Juzgado de lo Mercantil nº 10 de Barcelona (Commercial Court No 10, Barcelona, Spain) (C-305/23), made by decisions of 25 April 2023 and 2 May 2023, received at the Court on 25 April 2023 and 15 May 2023 respectively, in the proceedings

Agencia Estatal de la Administración Tributaria

v

A (C-289/23),

and

S.E.I.

v

Agencia Estatal de la Administración Tributaria (C-305/23),

THE COURT (Second Chamber),

composed of F. Biltgen (Rapporteur), President of the First Chamber, acting as President of the Second Chamber, M.L. Arastey Sahún, President of the Fifth Chamber, and J. Passer, Judge,

Advocate General: J. Richard de la Tour,

* Language of the case: Spanish.

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

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Spanish Government, by A. Ballesteros Panizo and A. Gavela Llopis, acting as Agents,

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

after hearing the Opinion of the Advocate General at the sitting on 16 May 2024,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Article 1(4) and Article 23(1), (2) and (4) 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 requests have been made in two sets of proceedings between A, in Case C-289/22, and S.E.I., in Case C-305/23, and the Agencia Estatal de Administración Tributaria (State Tax Agency, Spain) ('the AEAT') regarding applications for discharge of debt submitted by A and S.E.I. during insolvency proceedings in relation to each of them.

Legal context

European Union law

3 Recitals 21 and 78 to 81 of the Directive on restructuring and insolvency state:

'(21) Consumer over-indebtedness is a matter of great economic and social concern and is closely related to the reduction of debt overhang. Furthermore, it is often not possible to draw a clear distinction between the debts incurred by entrepreneurs in the course of their trade, business, craft or profession and those incurred outside those activities. Entrepreneurs would not effectively benefit from a second chance if they had to go through separate procedures, with different access conditions and discharge periods, to discharge their business debts and other debts incurred outside their business. For those reasons, although this Directive does not include binding rules on consumer over-indebtedness, it would be advisable for Member States to apply also to consumers, at the earliest opportunity, the provisions of this Directive concerning discharge of debt.

…

(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. It should be possible for Member States to exclude secured debts from eligibility for discharge only up to the value of the collateral as determined by national law, while the rest of the debt should be treated as unsecured debt. Member States should be able to exclude further categories of debt when duly justified.'

4 Article 1 of that directive provides:

'1. This Directive lays down rules on:

…

(b) procedures leading to a discharge of debt incurred by insolvent entrepreneurs; and

…

2. This Directive does not apply to procedures referred to in paragraph 1 of this Article that concern debtors that are:

…

(h) natural persons who are not entrepreneurs.

…

4. Member States may extend the application of the procedures referred to in point (b) of paragraph 1 to insolvent natural persons who are not entrepreneurs.

…'

5 Title III of that directive, entitled 'Discharge of debt and disqualifications', comprises Articles 20 to 24 of that directive.

6 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.

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.'

7 Article 23 of the Directive on restructuring and insolvency, entitled 'Derogations', reads as follows:

'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.

…

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.

…’

Spanish law

The TRLC

8 The law applicable *rationae temporis* to the disputes 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').

9 According to the preamble to Law 16/2022:

'…

… 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 them 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 opening the way for 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.

…’

10 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 unpaid 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.’

11 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.º 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, as at the date of submission of the application for discharge, criminal liability has been extinguished and the financial obligations arising from the offence have been discharged.

2.º 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 has been 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.º 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.º Where, in 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.

5.º Where or she has failed to comply with the obligations to cooperate and to provide information to the insolvency court and to the insolvency practitioner.

6.º Where he or she has provided false or misleading information or has behaved imprudently or negligently when entering into a debt or discharging his or her obligations, even without that having warranted a judgment classifying the insolvency as fault-based. …

…

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. …'

12 Article 489 of the TRLC provides:

'1. The discharge of debt shall apply to all unpaid debts, with the exception of the following:

…

2.º Civil liability debts arising from an offence.

…

5.º Debts arising from claims governed by public law. However, debts for which the management of recovery falls within the competence of the [AEAT] may be discharged up to the maximum amount of EUR 10 000 per debtor; for the first EUR 5 000 of debt, a full discharge will be given and, from that amount and above, the discharge shall be 50% of the debt up to the maximum indicated. Similarly, social security debts may be discharged in respect of the same amount

and under the same conditions. The amount discharged, up to the abovementioned ceiling, shall be applied in reverse order to the order of priority legally established by this law and, within each class, in accordance with seniority.

6° Debts for fines imposed on the debtor in criminal proceedings and for very serious administrative penalties.

7° Debts relating to the court fees and costs associated with the handling of the application for discharge.

…

3. A claim under public law may be discharged up to the amount laid down in the second sentence of paragraph 1(5), but only at the time of the initial discharge of debt and no amount may benefit from a discharge at the time of subsequent discharges which the same debtor may obtain.'

13 Article 493 of the TRLC provides:

'1. Any creditor affected by the discharge of debt shall be entitled to request the insolvency court to revoke the discharge of debt in the following cases:

…

3° If, at the time of the application, criminal or administrative proceedings as referred to in points (1) and (2) of Article 487(1) are ongoing and, within three years following the discharge in the event of non-existence or liquidation of the assets, or provisional discharge where there is a repayment plan, a final conviction or final administrative decision is handed down.

2. Revocation may not be requested after the expiry of a period of three years from the discharge with liquidation of the assets, or from the provisional discharge where there is a repayment plan.'

General Tax law

14 Article 43(1)(b) of the Ley 58/2003 General Tributaria (General Tax Law 58/2003) of 17 December 2003 (BOE No 302 of 18 December 2003, p. 44987), in the version applicable to the facts of the case ('the General Tax Law'), provides:

'The following persons or entities shall be jointly and severally liable for the tax debt:

…

(b) The directors, de facto or *de jure*, of legal persons that have ceased trading, in respect of their tax liabilities which arose and which are suspended at the time of the cessation, where they have not taken the necessary measures to pay those liabilities or have entered into agreements or measures leading to non-payment.'

15 Article 191 of the General Tax Law provides:

'1. A failure to pay, within the period laid down by the legislation governing each tax, all or part of the tax debt which should arise under the correct reverse charge procedure, constitutes a tax offence unless it is regularised in accordance with Article 27 or unless Article 161(1)(b) applies, both being articles of the present law.

…

The tax offence set out in the present article shall be minor, serious or very serious in accordance with the provisions of the following paragraphs.

The basis for the penalty shall be the amount not set out in the reverse charge, as a result of the commission of the offence.

…

4. An infringement shall be very serious where fraudulent means have been used.

The infringement shall also be very serious, even if fraudulent means have not been used, where there has been a failure to pay sums which have been withheld or which should have been withheld, or [where there has been a failure to make] payments on account, provided that the sums withheld and not paid and payments on account passed on and not paid come to more than 50% of the basic amount of the penalty.

…'

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

Case C-289/23, Corván

16 On 7 July 2022, A submitted a petition for insolvency proceedings to be opened in respect of himself and declared debts amounting to EUR 537 787.69. After the referring court, on 26 July 2022, declared that debtor insolvent and terminated those proceedings on the ground that there were insufficient assets, on 28 September 2022 that debtor applied for a full discharge of debt. On 19 October 2022, that court declared that the AEAT's objection to that discharge of debts was admissible, on account of the existence of various claims governed by public law.

17 Before the referring court, the AEAT submits, first, that the reason for that objection is the existence, for less than 10 years, of a final decision to enforce secondary liability, based on Article 43 of the General Tax Law, in the amount of EUR 114 408.09 in tax debts and penalties due from the company of which A was a director and that, consequently, that debtor is not acting in good faith. The AEAT adds, second, that some of the relevant claims are governed by public law and are therefore excluded from the discharge of debt.

18 The referring court notes, inter alia, first, that, by its judgment No 381/2019 of 2 July 2019 (ES:TS:2019:2253), the Tribunal Supremo (Supreme Court, Spain) held that, when transposing the Directive on restructuring and insolvency into Spanish law, the Spanish legislature opted for a normative model of 'good faith', with the result that bad faith stems from the finding of a series

of circumstances which are laid down in law. The courts therefore do not have the power to assess the circumstances which prevent access to discharge of debt and their function is limited to determining whether the circumstances laid down in law are present. Therefore, the concept of 'good faith' relates not to the general concept set out in the Civil Code, but to compliance with certain conditions. In the legislation in force immediately before that transposition, a debtor was regarded as acting in good faith where two conditions were met, namely, first, that there was no fault-based insolvency and, second, that he or she had not been convicted of certain offences by a final judgment. Consequently, the paradoxical nature of that transposition is that it has introduced a regime for access to discharge of debt that is more restrictive than the regime prior to that transposition, which raises serious doubts as to its compatibility with EU law.

19 In addition, the referring court considers that, in the present case, the transposition of the Directive on restructuring and insolvency may have served to establish a system to encourage the payment of claims which would have been difficult for the public authorities to recover in the event of insolvency and that that system is not based on the concept of the debtor's 'good faith'. That court is uncertain whether such a transposition is compatible with Article 23(2) of that directive and also has a number of doubts as to the interpretation of Article 23(4) of that directive.

20 In those circumstances, the Juzgado de lo Mercantil nº 1 de Alicante (Commercial Court No 1, Alicante, Spain) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Doubts about the interpretation of Article 23(2) of the [Directive on restructuring and insolvency].

(a) Must Article 23(2) of the [Directive on restructuring and insolvency] be interpreted as precluding national legislation which prevents access to discharge of debt as provided for in point 2 of Article 487(1) of the [TRLC], in so far as that limitation was not included in the legislation in force prior to the transposition of [that] directive conferring the entitlement to discharge of debt and was introduced *ex novo* by the legislature? In particular, may the national legislature, when transposing [that] directive, establish more stringent restrictions on access to discharge of debt than those laid down in the previous legislation, especially where that limitation does not correspond to any of the circumstances listed in Article 23(2) of [that] directive?

(b) If the Court's answer to the previous question is in the negative, must Article 23(2) of the [Directive on restructuring and insolvency] be interpreted as precluding national legislation which prevents access to discharge of debt where, in the 10 years preceding the application for a discharge, [the debtor] has been penalised by [a] final administrative decision for very serious tax offences, for social security offences or for labour offences, or where, in the same period, a final decision to enforce secondary liability has been handed down against the debtor, unless, on the date on which the application for a discharge is made, he or she has met his or her liability in full (point 2 of Article 487(1) of the TRLC), in so far as that ground for preventing access to discharge of debt alters the rules on the classification of insolvency claims?

(c) If the Court's answer to the previous question is in the negative, must Article 23(2) of the [Directive on restructuring and insolvency] be interpreted as precluding national legislation which prevents access to discharge of debt as provided for in point 2 of Article 487(1) of the TRLC where … a final decision to enforce secondary liability has been handed down against the debtor, unless, on the date on which the application for a

discharge is made, [the debtor] has met his or her liability in full, in so far as that circumstance is not such as to establish bad faith on the part of the debtor? Is it relevant in that regard that the insolvency was not found to be fault-based?

(d) If the Court's answer to the previous question is in the negative, must Article 23(2) of the [Directive on restructuring and insolvency] be interpreted as precluding national legislation which prevents access to discharge of debt as provided for in point 2 of Article 487(1) of the TRLC where decisions on offences or on enforcement of secondary liability have been handed down or issued in the 10 years preceding the application for discharge, without taking account of the date of the event giving rise to liability or the possible delay in the adoption of the decision to enforce secondary liability?

(e) If the Court's answer to the previous questions is in the negative, must Article 23(2) of the [Directive on restructuring and insolvency] be interpreted as precluding national legislation which prevents access to discharge of debt as provided for in point 2 of Article 487(1) of the TRLC in so far as the national legislature did not state proper reasons for that limitation?

(2) Doubts as to the interpretation of Article 23(4) of the [Directive on restructuring and insolvency].

(a) Must Article 23(4) of the [Directive on restructuring and insolvency] be interpreted as precluding a provision such as that laid down in point 2 of Article 487(1) of the TRLC establishing grounds preventing access to discharge of debt which are not included in the list set out in Article 23(4)? In particular, must the list of grounds in Article 23(4) be interpreted as a *numerus clausus* or, by contrast, is it a *numerus apertus*?

(b) In so far as the list is a *numerus apertus* and it is open to the national legislature to establish exceptions other than those provided for in the [Directive on restructuring and insolvency], does Article 23(4) of [that] directive preclude national legislation which lays down a general rule that claims governed by public law are excluded from discharge except in very limited circumstances and for very limited amounts, irrespective of the nature and circumstances of specific debts governed by public law? In particular, is it relevant in the present case that the previous legislation, as interpreted by the Tribunal Supremo [Supreme Court] in its case-law, allowed the discharge of public claims to some extent and that the transposing provisions restricted the scope of discharge?

(c) If the Court's answer to the previous question is in the negative, must Article 23(4) of the [Directive on restructuring and insolvency] be interpreted as precluding a national provision such as that laid down in point 5 of Article 489(1) of the TRLC which lays down a general rule that public claims are excluded from discharge (subject to certain exceptions considered in the next question), in so far as it treats public creditors more favourably than other creditors?

(d) In particular, and in connection with the previous question, is it relevant that the legislation makes some provision for the discharge of public claims, but only for certain debts and within specific limits which are unrelated to the actual amount of the debt?

(e) Finally, must Article 23(4) of the [Directive on restructuring and insolvency] be interpreted as precluding a provision such as that laid down in point 5 of Article 489(1) of the TRLC, in so far as [the exclusion of claims governed by public law from] discharge of debt is justified by *the particular importance of meeting those claims in achieving a fair and mutually supportive society founded on the rule of law*, and refers generally to public claims without taking account of the specific nature of the claim? In particular, is it relevant in that regard that the generic justification is used for the debts listed in Article 23(4) of [that] directive and for circumstances or debts which do not appear in those lists?'

Case C-305/23, Bacigán

21 S.E.I., a natural person who became insolvent, requested a discharge of debt in the context of insolvency proceedings regarding him. S.E.I., who had previously carried out an economic activity on a self-employed basis, was no longer an entrepreneur when those insolvency proceedings were initiated.

22 In the context of those insolvency proceedings and after the total liquidation of his assets, including his dwelling place, S.E.I., on 18 October 2022, submitted an application for full discharge of the debts that were outstanding on that date. The AEAT opposed that application on the grounds that S.E.I. could not be regarded as a debtor 'acting in good faith', since, during the 10 years preceding that application, he had, by a final administrative decision, received a fine of EUR 504.99 for 'serious tax offences', within the meaning of Article 191 of the General Tax Law, and that fine had not been paid at the time of that application for full discharge of debt.

23 Hearing the case, the referring court, in the first place, notes that the Spanish legislature made use of the option offered in Article 1(4) of the Directive on restructuring and insolvency and extended, in the TRLC, the application of the procedures for discharge of debt provided for by that directive to insolvent natural persons who are not entrepreneurs. In the second place, it asks whether, in such a case, that directive must be interpreted as requiring the national legislature to adopt a scheme applicable to natural persons who comply with the provisions of Articles 20 to 24 of that directive. That court asks, next, whether Article 23 of that directive, and in particular Article 23(1), may be interpreted as meaning that the concept of 'dishonest or bad faith' also covers negligent or imprudent conduct on the part of a debtor. Lastly, that court has doubts as to the correct interpretation of Article 23(2), in particular as to whether or not the circumstances listed in Article 23(2)(a) to (f) are exhaustive.

24 In those circumstances, the Juzgado de lo Mercantil nº 10 de Barcelona (Commercial Court No 10, Barcelona, Spain) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Where a national legislature decides to extend the application of the procedures laid down for the discharge of debts incurred by insolvent entrepreneurs to insolvent natural persons who are not entrepreneurs, as provided for in Article 1(4) of [the Directive on restructuring and insolvency], is it also required to bring its legislation into line with the requirements laid down in Title III of [that d]irective?

If the answer to the first question is in the affirmative,

(2) Does the scope of the concept of dishonest behaviour referred to in Article 23(1) of [the Directive on restructuring and insolvency] include negligent or imprudent behaviour of the debtor which causes the debt to be incurred?

If the answer to the second question is in the negative,

(3) Do the cases set out in Article 23(2)(a) to (f) of [the Directive on restructuring and insolvency] constitute a closed list of well-defined and justified circumstances or may States introduce other well-defined and justified circumstances?

If the answer to the third question is that [Member] States may introduce other well-defined and justified circumstances that differ from the cases set out in Article 23(2)(a) to (f) of [the Directive on restructuring and insolvency],

(4) Do the new well-defined circumstances which [the relevant Member] State introduces have to be based in every case on dishonest behaviour or bad faith?

If the answers to the [third and fourth] questions are that [Member] States may not introduce circumstances that differ from those referred to in Article 23(2)(a) to (f) of [the Directive on restructuring and insolvency], or that, if they introduce other, different, well-defined conduct, that conduct must be based on dishonest behaviour or bad faith on the part of the debtor,

(5) Does a conforming interpretation of Article 23 of [the Directive on restructuring and insolvency] entail the disapplication of a provision like Article 487(1)(2) of the [TRLC] where the very serious tax infringement is found to be based on behaviour of the debtor which is not dishonest or in bad faith?'

Consideration of the questions referred

Part (a) of the first question in Case C-289/23 and the third question in Case C-305/23

25 By part (a) of the first question in Case C-289/23 and the third question in Case C-305/23, the referring courts ask, in essence, whether or not Article 23(2) of the Directive on restructuring and insolvency must be interpreted as meaning that the list of circumstances set out in Article 23(2) is exhaustive and, if not, whether the Member States, when transposing that directive into their national law, have the power to adopt provisions which restrict access to the right to discharge of debt to a greater extent than that provided for by the earlier national legislation, by denying or restricting access to discharge of debt, by revoking the benefit of discharge or by providing for longer periods for obtaining a full discharge of debt or longer disqualification periods in circumstances other than those listed in Article 23(2).

26 As regards, in the first place, the question of whether or not the list in Article 23(2) of that directive is exhaustive, it should be noted that that list is introduced by the words 'such as' and that words with the same meaning are used in the other language versions of that provision. It therefore follows from the wording of that provision that the various circumstances listed in it are not set out exhaustively, but by way of illustration.

27 That literal interpretation of Article 23(2) of the Directive on restructuring and insolvency is supported by recital 80 of that directive, which states that the EU legislature considered that Member States 'should not be prevented from providing additional derogations in well-defined circumstances and when duly justified'.

28 It follows that Article 23(2) must be interpreted as meaning that the list of circumstances set out in Article 23(2) is not exhaustive and that the Member States have a margin of discretion allowing them to adopt 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.

29 As regards, in the second place, the question of whether the Member States may, when transposing the Directive on restructuring and insolvency into their national law, introduce a derogation from the discharge of debt which was not provided for in the national legislation prior to that transposition, in order to restrict to a greater extent access to the right to discharge of debt, it must be noted that neither that directive nor the *travaux préparatoires* for its adoption contain anything to suggest that the EU legislature intended to limit the discretion enjoyed by the Member States in that regard by preventing them from introducing such derogations into their national law.

30 On the contrary, by providing, in Article 23(2) of that directive, that the Member States may, under certain conditions, '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, the EU legislature expressly granted the Member States the power to adopt, where those conditions are satisfied, such provisions which did not previously exist.

31 As regards those conditions, Article 23(2) of the Directive on restructuring and insolvency expressly makes the exercise of the power thus granted to the Member States in Article 23(2) subject to the condition that the derogations which they adopt must concern 'certain well-defined circumstances' and are 'duly justified'. It follows 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 (see, to that effect, judgment of 11 April 2024, *Agencia Estatal de la Administración Tributaria (Exclusion of claims governed by public law from discharge of debt)* (C-687/22, EU:C:2024:287, paragraph 42).

32 In that regard, both recital 78 of the Directive on restructuring and insolvency, which refers to derogations which 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.

33 In the light of the foregoing, the answer to part (a) of the first question in Case C-289/23 and the third question in Case C-305/23 is that Article 23(2) of the Directive on restructuring and insolvency must be interpreted as meaning that the list of circumstances set out in Article 23(2) is not exhaustive and that the Member States, when transposing that directive into their national law, have the power to adopt provisions which restrict access to the right to discharge of debt to a greater extent than that provided for by the earlier national legislation, by denying or restricting access to discharge of debt, by revoking the benefit of discharge or by providing for longer periods for obtaining a full discharge of debt or longer disqualification periods in circumstances other than those listed in Article 23(2), provided that those circumstances are well-defined and that such derogations are duly justified.

Parts (b), (c) and (d) of the first question in Case C-289/23 and the second and fourth questions in Case C-305/23

34 By parts (b), (c) and (d) of the first question in Case C-289/23 and by the second and fourth questions in Case C-305/23, which it is appropriate to consider together, the referring courts ask, in essence, whether Article 23(1) and (2) of the Directive on restructuring and insolvency must be interpreted as precluding national legislation which, in the context of the transposition of that

directive, alters the ranking of insolvency claims that was applicable before the adoption of that legislation in so far as it requires the debtor to pay non-preferred claims governed by public law following insolvency proceedings in order to be able to benefit from a discharge of debt, excludes access to the discharge of debt in circumstances where the debtor has acted negligently or imprudently, without having acted dishonestly or in bad faith, and excludes such access where, during the 10 years preceding the application for discharge, the debtor has been penalised by a final administrative decision for a very serious tax offence, or for a social security offence or for a labour offence, or where the debtor has been the subject of a final decision to enforce secondary liability, unless that debtor has, on the date on which the application for discharge was made, paid in full his or her tax and social security debts.

35 As regards, in the first place, the question of whether Article 23(2) of the Directive on restructuring and insolvency must be interpreted as precluding national legislation which, in the context of the transposition of that directive, alters the ranking of insolvency claims that was applicable before the adoption of that legislation in so far as that legislation requires the debtor to pay non-preferred claims governed by public law in order to be able to benefit from a discharge of debt, it should be noted, first, that insolvency proceedings and debt discharge proceedings are two separate sets of proceedings with their own objectives. Making the grant of discharge of debt subject to the condition that claims governed by public law are paid does not affect the classification of those claims as 'preferred', 'ordinary' or 'subordinated' following a declaration of insolvency. Consequently, it does not appear that the obligation to pay non-preferred claims governed by public law in order to be able to benefit from a discharge of debt entails a change in the ranking of claims following insolvency proceedings.

36 Second, as follows from paragraph 33 of the present judgment, the list contained in that provision is not exhaustive and, when transposing that directive into their national law, the Member States have the power to adopt 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 well-defined circumstances other than those listed in that provision, even though those provisions restrict access to the right to discharge of debt to a greater extent than the earlier national legislation. When exercising that power, a Member State may require a debtor to pay his or her non-preferred claims governed by public law following insolvency proceedings in order to be able to benefit from a discharge of debt.

37 However, the EU legislature expressly made the exercise of that power subject to the conditions that the derogations referred to in that provision relate to 'certain well-defined circumstances' and are 'duly justified'. It follows that when the national legislature adopts provisions for 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 (see, by analogy, judgment of 8 May 2024, *Instituto da Segurança Social and Others*, C-20/23, EU:C:2024:389, paragraph 34 and the case-law cited).

38 The imposition, in the present case, of an obligation to pay non-preferred claims governed by public law in order to be able to benefit from a discharge of debt refers to well-defined circumstances. Furthermore, the fact that that obligation makes it possible to obtain payment of claims which, in the event of a declaration of insolvency, would have been difficult for the public authorities to recover, does not preclude that derogation from the discharge of debt from being duly justified. By requiring payment of those non-preferred claims governed by public law, the legislature may be pursuing a legitimate public interest, which the referring court must, however, verify.

39 It follows that Article 23(2) of the Directive on restructuring and insolvency must be interpreted as not precluding national legislation which, in the context of the transposition of that directive, requires the payment of non-preferred claims governed by public law following insolvency proceedings in order to be able to benefit from a discharge of debt, provided that that obligation is duly justified.

40 As regards, in the second place, the question of whether Article 23(2) of the Directive on restructuring and insolvency precludes national legislation which excludes access to the discharge of debt in circumstances in which the debtor has acted negligently or imprudently, without having acted dishonestly or in bad faith, it must be held that, although it is true that Article 23(1) of that directive expressly refers to insolvent entrepreneurs who have acted 'dishonestly or in bad faith', there is no such reference in Article 23(2).

41 Article 23(2) 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.

42 Furthermore, the circumstances, listed by way of illustration in Article 23(2), 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.

43 It should be added that those circumstances correspond, in essence, to those referred to in recitals 79 and 80 of the Directive on restructuring and insolvency and that it is also not apparent from those recitals 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.

44 It follows that Article 23(2) must be interpreted as not precluding national legislation which excludes access to the discharge of debt in well-defined circumstances in which the debtor has not acted dishonestly or in bad faith.

45 As regards, in the third and last place, the question of whether Article 23(2) precludes national legislation which excludes access to the discharge of debt where, during the 10 years preceding the application for discharge, the debtor has been penalised by a final administrative decision for a very serious tax offence, or for a social security or 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 was submitted, paid in full his or her tax and social security debts, it should be noted that, as follows from paragraphs 28 to 33 of the present judgment, that provision confers a margin of discretion on the Member States by expressly providing that they 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'. Furthermore, as follows from paragraph 29 of the present judgment, neither the Directive on restructuring and insolvency nor the *travaux préparatoires* for its adoption contain anything to suggest that the EU legislature intended to limit that discretion.

46 That said, as follows from paragraphs 31 and 37 of the present judgment, where the national legislature adopts provisions setting out such derogations, the reasons for those derogations must follow from national law or from the procedure which led to those derogations and those reasons must pursue a legitimate public interest.

47 Thus, Article 23(2) of the Directive on restructuring and insolvency does not preclude national legislation which excludes access to the discharge of debt in certain well-defined circumstances such as where, during the 10 years preceding the application for discharge, the debtor has been penalised by a final administrative decision for a very serious tax offence, or for a social security or 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. 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.

48 In the present case, as follows from paragraph 9 of the present judgment, the Spanish legislature has, in the preamble to Law 16/2022, which seeks to transpose the Directive on restructuring and insolvency into Spanish law, set out the reasons which led it to provide for derogations from the discharge of debt. That legislature states in that preamble, inter alia, that a debtor who satisfies the requirement of good faith may have access to a discharge of all his or her debts, except for debts which, exceptionally and because of their special nature, are considered not to be legally capable of being discharged. Those exceptions are based especially on the particular importance of satisfying certain claims for a fair and cohesive society which is based on the rule of law. Those claims include those governed by public law. The discharge of debt in respect of the latter claims is thus subject to certain limits and can take place only at the time of the first discharge of debt, and not at the time of subsequent discharges.

49 It is for the referring court to assess, first, whether those reasons constitute legitimate public interest reasons and, second, whether it is apparent from the national legislation that those reasons justified the exclusion of a discharge of debt in well-defined circumstances such as those set out in point 2 of Article 487(1) of the TRLC.

50 As regards that assessment, it must be noted that the Member States must exercise their powers in accordance with EU law and its general principles, and, consequently in accordance with the principle of proportionality. It follows that the national measure at issue must not go beyond what is appropriate and necessary to attain the objectives legitimately pursued by that measure (see, to that effect, judgment of 24 February 2022, *Agenzia delle dogane e dei monopoli and Ministero dell'Economia e delle Finanze* (C-452/20, EU:C:2022:111, paragraphs 36 and 37 and the case-law cited). It cannot therefore affect the Member States' obligation, laid down in Article 20(1) of the Directive on restructuring and insolvency, to ensure that insolvent entrepreneurs have access to at least one procedure which may lead to a full discharge of debt.

51 Thus, in so far as the referring court considers that the exclusion of a discharge of debt in circumstances such as those defined in point 2 of Article 487(1) of the TRLC is justified by the national legislature on grounds of a legitimate public interest, it is for that court to assess, in the light of that principle, whether that interest justifies, inter alia, that that requirement applies to those debts during the 10 years preceding the application for discharge and that any delay in the adoption of the decision to enforce secondary liability cannot be taken into account.

52 In the light of the foregoing considerations, the answer to parts (b), (c) and (d) of the first question in Case C-289/23 and to the second and fourth questions in Case C-305/23 is that Article 23(1) and (2) of the Directive on restructuring and insolvency must be interpreted as not precluding national legislation which, in the context of the transposition of that directive, requires the debtor to pay non-preferred claims governed by public law following insolvency proceedings in order to be able to benefit from a discharge of debt, excludes access to the discharge of debt in circumstances where the debtor has acted negligently or imprudently, without having acted dishonestly or in bad faith, and excludes such access where, during the 10 years preceding the application for discharge, the debtor has been penalised by a final administrative decision for a very serious tax offence, or for a social security offence or labour offence, or where the debtor 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 such derogations are duly justified under national law.

Part (e) of the first question in Case C-289/23

53 By part (e) of its first question in Case C-289/23, 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 excludes access to the discharge of debt in a particular case, without that exclusion having been duly justified by the national legislature.

54 In that regard, as follows from paragraph 46 of the present judgment, the EU legislature expressly made the exercise of the power granted to Member States under that provision subject to the condition that the derogations adopted on the basis of that provision are 'duly justified'.

55 It follows from the Directive on restructuring and insolvency that the justification to be provided by a Member State in support of a derogation such as that at issue in the main proceedings must be apparent either from the procedure which led to that derogation or from national law. Thus, as regards the first situation, where, under national law, the *travaux préparatoires*, preambles and explanatory memoranda for legislative or regulatory acts form an integral part of those acts or are relevant for the purpose of interpreting them and where they contain a justification for the derogation maintained or adopted in the exercise of the option provided for in Article 23(2) of that directive, it must be held that that justification complies with the requirements of that provision. In addition, as regards the second situation, that justification may also be found in provisions of national law other than the provision containing that derogation, such as a national constitutional, legislative or regulatory provision (see, to that effect, judgment of 8 May 2024, *Instituto da Segurança Social and Others*, C-20/23, EU:C:2024:389, paragraph 37).

56 In the light of the foregoing considerations, the answer to the part (e) of the first question in Case C-289/23 is that Article 23(2) of the Directive on restructuring and insolvency must be interpreted as precluding national legislation which excludes access to the discharge of debt in a particular case, without that exclusion having been duly justified by the national legislature.

Part (a) of the second question in Case C-289/23

57 By part (a) of its second question in Case C-289/23, the referring court asks, in essence, whether or not Article 23(4) of the Directive on restructuring and insolvency must be interpreted as meaning that the list of specific categories of debt set out in Article 23(4) is exhaustive and whether, if that

list is not exhaustive, the Member States have the power to exclude from discharge of debt specific categories of debt other than those listed in that provision, provided that such an exclusion is duly justified under national law.

58 It must be stated that that question is, in essence, identical to the third question referred in the case which gave rise to the judgment of 11 April 2024, *Agencia Estatal de la Administración Tributaria (Exclusion of claims governed by public law from discharge of debt)* (C-687/22, EU:C:2024:287, paragraphs 25 and 36).

59 Accordingly, as follows from paragraph 44 and from point 2 of the operative part of that judgment, the answer to part (a) of the second question in Case C-289/23 is that Article 23(4) of the Directive on restructuring and insolvency must be interpreted as meaning that the list of specific categories of debt set out in Article 23(4) is not exhaustive and that the Member States have the power to exclude from discharge of debt specific categories of debt other than those listed in that provision, provided that such an exclusion is duly justified under national law.

Parts (b) and (e) of the second question in Case C-289/23

60 By parts (b) and (e) of its second question in Case C-289/23, the referring court asks, in essence, whether Article 23(4) of the Directive on restructuring and insolvency must be interpreted as precluding national transposing legislation which provides for a general exclusion, from discharge of debt, of claims governed by public law, on the ground that the satisfaction of those claims is of particular importance for a fair and cohesive society, based on the rule of law, except in very strict circumstances and with very strict quantitative limits, irrespective of the nature of those claims and the circumstances in which they arose, and which, consequently, restricts the scope of the national provisions relating to the discharge of debt applicable to that class of claims before the adoption of that legislation.

61 In that regard, it should, first, be noted that, as follows from paragraph 59 of the present judgment, Article 23(4) of the Directive on restructuring and insolvency must be interpreted as meaning that the list of specific categories of debt set out in Article 23(4) is not exhaustive and that the Member States have the power to exclude from discharge of debt specific categories of debt other than those listed in that provision, provided that such an exclusion is duly justified under national law.

62 As regards, second, the question of whether the Member States may, when transposing that directive into their national law, exclude from discharge of debt categories of debt the exclusion of which was not provided for in the national legislation prior to that transposition, it must be noted that neither that directive nor the *travaux préparatoires* for its adoption contain anything to suggest that the EU legislature intended to limit the discretion of the Member States by preventing them from adopting provisions excluding from discharge of debt categories of debt which were not excluded from discharge of debt before that transposition.

63 On the contrary, by providing, in Article 23(4) of the Directive on restructuring and insolvency, that, under certain conditions, 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', the EU legislature expressly granted the Member States the power to adopt, where those conditions are satisfied, provisions excluding from discharge of debt categories of debt which were not previously excluded.

64 That being so, the EU legislature expressly made the exercise of the power thus granted to the Member States in Article 23(4) subject to the condition that such exclusions be duly justified. It follows that, when the national legislature adopts provisions allowing for 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 11 April 2024, *Agencia Estatal de la Administración Tributaria (Exclusion of claims governed by public law from discharge of debt)*, C-687/22, EU:C:2024:287, paragraph 42).

65 In that regard, both recital 78 of the Directive on restructuring and insolvency, which refers to derogations '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 different national legal systems were complied with (judgment of 11 April 2024, *Agencia Estatal de la Administración Tributaria (Exclusion of claims governed by public law from discharge of debt)*, C-687/22, EU:C:2024:287, paragraph 43).

66 In the present case, it is for the referring court to assess whether the reason relating to the particular importance of satisfying claims governed by public law for a fair and cohesive society, based on the rule of law, set out in the preamble to Law 16/2022, duly justifies the general exclusion, laid down in point 5 of Article 489(1) of that law, of those claims from discharge of debt, except in very strict circumstances and with very strict quantitative limits, irrespective of the nature of those claims and the circumstances in which they arose. When making that assessment, that court will have to take into account the obligation to comply with the principle of proportionality, as stated in paragraph 50 of the present judgment.

67 In the light of the foregoing, the answer to parts (b) and (e) of the second question in Case C-289/23 is that Article 23(4) of the Directive on restructuring and insolvency must be interpreted as not precluding national transposing legislation which provides for a general exclusion, from discharge of debt, of claims governed by public law, on the ground that the satisfaction of those claims is of particular importance for a fair and cohesive society, based on the rule of law, except in very strict circumstances and with very strict quantitative limits, irrespective of the nature of those claims and the circumstances in which they arose, and which, consequently, restricts the scope of the national provisions relating to the discharge of debt applicable to that category of claims before the adoption of that legislation, provided that that exclusion is duly justified under national law.

Part (c) of the second question in Case C-289/23

68 By part (c) of its second question in Case C-289/23, the referring court asks, in essence, whether Article 23(4) of the Directive on restructuring and insolvency must be interpreted as precluding national legislation which lays down a general rule excluding claims governed by public law from discharge of debt, in so far as it accords preferential treatment to public creditors over other creditors.

69 In that regard, first, it follows from the case-law referred to in paragraphs 59 and 61 of the present judgment that Article 23(4) of the Directive on restructuring and insolvency must be interpreted as meaning that the list of specific categories of debt set out in Article 23(4) is not exhaustive and that the Member States have the power to exclude from discharge of debt specific categories of debt other than those listed in that provision, provided that such an exclusion is duly justified under national law.

70 Second, neither the Directive on restructuring and insolvency nor the *travaux préparatoires* for its adoption contain elements capable of supporting the argument that, in view of the internal coherence of the categories of debt expressly referred to in Article 23(4) of that directive, the EU legislature intended to limit the discretion of the Member States as regards the exclusion of categories of debt other than those listed in that provision, such as tax and social security debts, from discharge of debt. On the contrary, it is apparent more particularly from those *travaux préparatoires* that the EU legislature had a stated intention to leave the Member States a certain discretion so that they may, when transposing that directive into their national law, take account of the local economic situation and legal structures (judgment of 8 May 2024, *Instituto da Segurança Social and Others*, C-20/23, EU:C:2024:389, paragraph 42 and the case-law cited).

71 Furthermore, the Court has held that the exclusion of debts governed by public law, such as tax and social security debts, from discharge of debts may be duly justified. Not all debts are of the same nature, creditors do not have the same status and the recovery of those debts may serve specific purposes. Thus, in view of the nature of tax and social security debts and the purpose of collecting tax and social security contributions, Member States may legitimately consider that public institutional creditors are not in a situation comparable to that of creditors in the commercial or private sector from the point of view of recovering the debts concerned. In those circumstances, the possibility of excluding tax and social security debts from the discharge of debt does not amount to unduly favouring public institutional creditors over other creditors who do not benefit from such an exclusion (see, to that effect, judgment of 8 May 2024, *Instituto da Segurança Social and Others*, C-20/23, EU:C:2024:389, paragraph 43).

72 Therefore, the Court has held that Article 23(4) of the Directive on restructuring and insolvency must be interpreted as meaning that Member States are free to exclude certain specific categories of debt from discharge of debts, such as tax and social security debts, and thus confer on them a privileged status, provided that such an exclusion is duly justified under national law (see, to that effect, judgment of 8 May 2024, *Instituto da Segurança Social and Others*, C-20/23, EU:C:2024:389, paragraph 45).

73 Accordingly, the answer to part (c) of the second question in Case C-289/23 is that Article 23(4) of the Directive on restructuring and insolvency must be interpreted as not precluding national legislation which lays down a general rule excluding claims governed by public law from discharge of debt, in so far as that national legislation accords preferential treatment to public creditors over other creditors, provided that such an exclusion is duly justified under national law.

Part (d) of the second question in Case C-289/23

74 By part (d) of its second question in Case C-289/23, the referring court asks, in essence, whether Article 23(4) of the Directive on restructuring and insolvency must be interpreted as precluding national legislation which provides for a limitation on discharge of debt for a specific category of debts by establishing a ceiling above which that discharge is excluded, without that ceiling being fixed on the basis of the amount of the relevant debt.

75 In that regard, it should be noted that, unlike Article 20(2) of that directive, which requires that the Member States which make a full discharge of debt conditional on the partial repayment of debt by the entrepreneur must 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’, Article 23(4) of that directive does not expressly provide that

Member States must, when providing for a limitation on the possibility of discharge of debt, set a ceiling determined on the basis of the actual amount of the relevant debt, nor does it contain any evidence capable of supporting the argument that the EU legislature intended to limit the discretion enjoyed by the Member States when laying down such limitations.

76 As regards, specifically, the discretion which the Member States enjoy under the latter provision, the Court has already held that that provision must interpreted as not restricting the Member States' discretion as regards the choice of categories of debt other than those listed in that provision which they may seek to exclude from discharge of debt (judgment of 11 April 2024, *Agencia Estatal de la Administración Tributaria (Exclusion of claims governed by public law from discharge of debt)*, C-687/22, EU:C:2024:287, paragraph 41).

77 As the Advocate General observed, in essence, in point 35 of his Opinion, it would have been paradoxical for the EU legislature to limit the discretion enjoyed by the Member States, when they restrict the possibility of discharge of debt, more closely than the discretion which they enjoy when they exclude a specific category of debts from discharge of debt.

78 As an intermediate point, it must therefore be concluded that Article 23(4) of the Directive on restructuring and insolvency must be interpreted as not restricting the discretion enjoyed by the Member States as regards the limitations which they seek to put in place in respect of the possibility of discharge of debt.

79 That said, first, as follows from paragraph 64 of the present judgment, the EU legislature expressly made the exercise of the power thus granted to the Member States in Article 23(4) subject to the condition that such limitations on the possibility of discharge of debt are 'duly justified'. It follows that, when the national legislature adopts provisions allowing for 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.

80 In that regard, it follows from the case-law referred to in paragraph 65 of the present judgment that both recital 78 of the Directive on restructuring and insolvency, which refers to derogations '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 different national legal systems were complied with.

81 Second, as follows from paragraph 50 of the present judgment, when the Member States exercise the discretion relating to the derogations which they may adopt under Article 23(4) of the Directive on restructuring and insolvency, they must comply with the principle of proportionality. The means which they choose must not therefore go beyond what is appropriate and necessary to attain the objective which they pursue and must not call into question the objectives pursued by that directive, namely, in the present case, the objective of ensuring that insolvent entrepreneurs have access to at least one procedure which may lead to a full discharge of debt.

82 In the light of the foregoing considerations, the answer to part (d) of the second question in Case C-289/23 is that Article 23(4) of the Directive on restructuring and insolvency must be interpreted as not precluding national legislation which provides for a limitation on discharge of debt for a

specific category of debts by establishing a ceiling above which that discharge is excluded, without that ceiling being fixed on the basis of the amount of the relevant debt, provided that that limitation is duly justified under national law.

The first question in Case C-305/23

83 By its first question in Case C-305/23, the referring court asks, in essence, whether the Directive on restructuring and insolvency must be interpreted as meaning that, where a national legislature decides to exercise the option provided for in Article 1(4) of that directive and extends the application of procedures leading to discharge of debt incurred by insolvent entrepreneurs to insolvent natural persons who are not entrepreneurs, the rules made applicable to those natural persons by virtue of such an extension must comply with the provisions of Title III of that directive.

84 Both the Spanish Government and the European Commission argue that that question is inadmissible on the ground that it is irrelevant. In support of that challenge, the Commission submits that it is clear that, although the debtor concerned does not carry out any entrepreneurial activity at present, he carried out such an activity at the time of the facts in the main proceedings and that is what matters for the purpose of applying the Directive on restructuring and insolvency. The Spanish Government, for its part, argues that that question is not necessary for the resolution of the dispute in the main proceedings, since the national provisions on discharge of debt are applicable to the debtor, whether or not he or she is an entrepreneur.

85 In that regard, it should be noted that questions concerning EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court for a preliminary ruling only where it is quite obvious that the interpretation of EU law that is 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 5 September 2024, *W. GmbH* C-67/23, EU:C:2024:680, paragraph 44 and the case-law cited).

86 In the present case, the interpretation that is sought in respect of Article 1(4) of the Directive on restructuring and insolvency does not appear clearly to bear no relation to the purpose of the dispute in the main proceedings in Case C-305/23. Contrary to what the Commission claims, the first question in that case appears to be relevant since, as stated in paragraph 21 of the present judgment, the insolvency and debt discharge proceedings concern S.E.I. as a natural person and not as an entrepreneur. Furthermore, the fact that Spanish law provides for a discharge of debt to the debtor, whether or not he or she is an entrepreneur, does not affect the relevance of that question, by which the referring court asks whether, where national rules on discharge of debt apply to natural persons, those rules must comply with the provisions of Title III of that directive.

87 As regards the answer to that question, it should be noted that Article 1(4) of the Directive on restructuring and insolvency provides that Member States ‘may extend the application of the procedures referred to in [Article 1(1)(b)] to insolvent natural persons who are not entrepreneurs’.

88 It must be stated that the wording of Article 1(4) is unambiguous in that it merely provides for a simple extension ‘of the procedures referred to’ in Article 1(1)(b), namely those leading to a discharge of debt incurred by insolvent entrepreneurs, to insolvent natural persons who are not entrepreneurs. That wording makes no mention of a partial extension of those procedures.

89 That interpretation of Article 1(4) of the Directive on restructuring and insolvency is supported by recital 21 of that directive, which states, inter alia, that, although that directive does not include binding rules on consumer over-indebtedness, it would be advisable for Member States to apply also to consumers, at the earliest opportunity, 'the provisions' of that directive concerning discharge of debt.

90 It must be added that the Directive on restructuring and insolvency does not, moreover, contain any evidence capable of supporting the argument that the EU legislature intended to confer a margin of discretion on the Member States as to the scope of the application, to insolvent natural persons who are not entrepreneurs, of the procedures referred to in Article 1(1)(b) of that directive. On the contrary, both recital 21 and Article 1(4) of that directive clearly show that the legislature intended not to leave to the Member States the choice of opting for a 'partial' or 'à la carte' extension of those procedures to insolvent natural persons who are not entrepreneurs.

91 In the light of the foregoing, the answer to the first question in Case C-305/23 is that the Directive on restructuring and insolvency must be interpreted as meaning that, where a national legislature decides to exercise the option provided for in Article 1(4) of that directive and extends the application of procedures leading to discharge of debt incurred by insolvent entrepreneurs to insolvent natural persons who are not entrepreneurs, the rules made applicable to those natural persons by virtue of such an extension must comply with the provisions of Title III of that directive.

The fifth question in Case C-305/23

92 Since, as follows from paragraphs 40 to 44 of the present judgment, the fourth question in Case C-305/23 must, in essence, be answered in the negative, there is no need to answer the fifth question in that case.

Costs

93 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 (Second Chamber) hereby rules:

1. **Article 23(2) 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 meaning that the list of circumstances set out in Article 23(2) is not exhaustive and that the Member States, when transposing that directive into their national law, have the power to adopt provisions which restrict access to the right to discharge of debt to a greater extent than that provided for by the earlier national legislation, by denying or restricting access to discharge of debt, by revoking the benefit of discharge or by providing for longer periods for obtaining a full discharge of debt or longer disqualification periods in circumstances other than those listed in Article 23(2),

provided that those circumstances are well-defined and that such derogations are duly justified.

2. **Article 23(1) and (2) of Directive 2019/1023,**

must be interpreted as not precluding national legislation which, in the context of the transposition of that directive, requires the debtor to pay non-preferred claims governed by public law following insolvency proceedings in order to be able to benefit from a discharge of debt, excludes access to the discharge of debt in circumstances where the debtor has acted negligently or imprudently, without having acted dishonestly or in bad faith, and excludes access to discharge of debt where, during the 10 years preceding the application for discharge, the debtor has been penalised by a final administrative decision for a very serious tax offence, or for a social security or labour offence, or where the debtor 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 such derogations are duly justified under national law.

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

must be interpreted as precluding national legislation which excludes access to the discharge of debt in a particular case, without that exclusion having been duly justified by the national legislature.

4. **Article 23(4) of Directive 2019/1023,**

must be interpreted as meaning that the list of specific categories of debt set out in Article 23(4) is not exhaustive and that the Member States have the power to exclude from discharge of debt specific categories of debt other than those listed in that provision, provided that such an exclusion is duly justified under national law.

5. **Article 23(4) of Directive 2019/1023,**

must be interpreted as not precluding national transposing legislation which provides for a general exclusion, from discharge of debt, of claims governed by public law, on the ground that the satisfaction of those claims is of particular importance for a fair and cohesive society, based on the rule of law, except in very strict circumstances and with very strict quantitative limits, irrespective of the nature of those claims and the circumstances in which they arose, and which, consequently, restricts the scope of the national provisions relating to the discharge of debt applicable to that category of claims before the adoption of that legislation, provided that that exclusion is duly justified under national law.

6. **Article 23(4) of Directive 2019/1023,**

must be interpreted as not precluding national legislation which lays down a general rule excluding claims governed by public law from discharge of debt, in so far as it accords preferential treatment to public creditors over other creditors, provided that such an exclusion is duly justified under national law.

7. **Article 23(4) of Directive 2019/1023,**

must be interpreted as not precluding national legislation which provides for a limitation on discharge of debt for a specific category of debts by establishing a ceiling above which that discharge is excluded, without that ceiling being fixed on the basis of the amount of the relevant debt, provided that that limitation is duly justified under national law.

8. **Directive 2019/2013,**

must be interpreted as meaning that, where a national legislature decides to exercise the option provided for in Article 1(4) of that directive and extends the application of procedures leading to discharge of debt incurred by insolvent entrepreneurs to insolvent natural persons who are not entrepreneurs, the rules made applicable to those natural persons by virtue of such an extension must comply with the provisions of Title III of that directive.

[Signatures]