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# Effectiveness of Discharge of Debt of Entrepreneurs in EU Law

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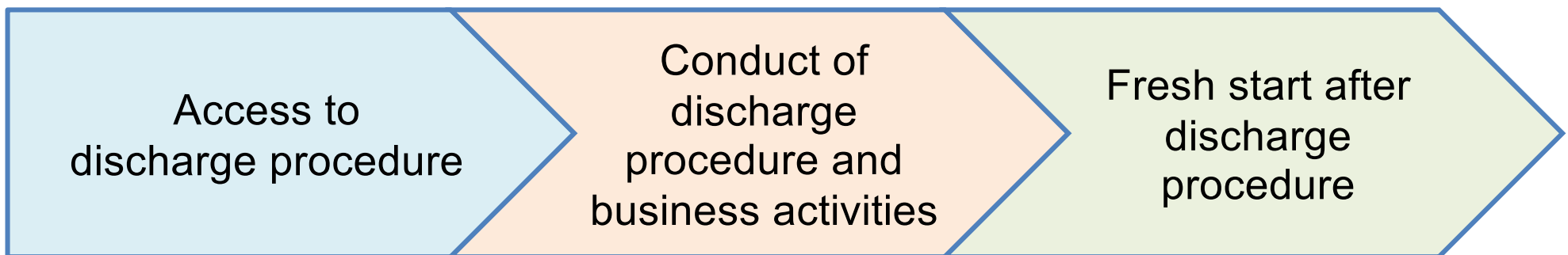


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## Effectiveness of Discharge Procedure





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## European Discharge Procedure

- Directive on Restructuring and Insolvency (*Directive*) establishes discharge of procedure for insolvent entrepreneurs which aims to provide a fresh start (a second chance).
- What is a fresh start in the discharge procedure?
- Inspiration for the Directive? Chapter 7 and 13 of US Bankruptcy Code.



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## Fresh Start as the Leading Goal

*<...> the honest but unfortunate debtor who surrenders for distribution the property which he owns at the time of bankruptcy a **new opportunity in life** and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt.*

US Supreme Court *Local Loan Co. v. Hunt* [1934] 292 U.S. 234



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## Harmonized Elements of the Discharge Procedure

- Access to discharge procedure.
- Discharge period.
- Disqualifications period.
- Derogations.
- Consolidation of professional and non-professional debt.



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## **Access to the Discharge Procedure**

- Who is an entrepreneur (professional and non-professional debts)?
- Is the right to discharge coupled with good faith behaviour?
- Importance of Recital 79 of the Directive.



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# Conduct of the Discharge Procedure

- Satisfaction of creditors' claims.
- With or without a repayment plan?
- Right to pursue business activities during the discharge procedure.
- Protection of the interests of involved persons (family members, business partners).



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## Non-dischargeable debts

- Importance of non-dischargeable debt for a fresh start.
- Article 23(4) of the Restructuring and Insolvency Directive provides a list of non-dischargeable debts which could be *duly justified*.
- Problems about the debts arising from tax claims (C-20/23, C-289/23). Are tax claims dully justified?
- The problem of claims from the fines imposed by any violation of a law in Lithuania.





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## Missed Opportunities

- Remaining issues with the “residence clause” for opening of discharge procedure (Radziejewski (C-461/11) and A cases (C-716/17)).
- Treatment of related persons (personal guarantee, co-owners of business).
- Access to creditor and protection of personal data after the discharge procedure (SCHUFA (C-634/21), (joined cases C-26/22, C-64/22)).