Bank recovery and resolution: ranking of unsecured debt instruments in insolvency hierarchy

2016/0363(COD) - 13/10/2017 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Economic and Monetary Affairs adopted the report by Gunnar HÖKMARK (EPP, SE) on the proposal for a directive of the European Parliament and of the Council on amending Directive 2014 /59/EU of the European Parliament and of the Council as regards the ranking of unsecured debt instruments in insolvency hierarchy.

As a reminder, the proposed amendments to Directive 2014/59/EU is part of the efforts to implement in the European Union the standard the Total Absorption Loss Capacity (TLAC) standard adopted by the G20.

In order to enhance the operational execution and robustness of bail-in powers and to avoid legal uncertainty, the TLAC standard requires that liabilities may be eligible for TLAC only if they are subordinated to other liabilities, i.e. if they absorb losses in insolvency or in resolution prior to other “preferred” liabilities that are explicitly excluded from TLAC eligibility, such as derivatives, covered deposits or tax liabilities.

The TLAC standard provides, therefore, for a subordination requirement subject to certain exemptions, but it is not prescriptive on the way to achieve it.

The committee recommended that European Parliament’s position adopted at first reading under the ordinary legislative procedure, should amend the Commission proposal as follows.

Objective of the Directive: it is specified that the amending Directive shall lay down harmonised rules for the insolvency ranking of unsecured debt instruments for the purposes of the Union recovery and resolution framework especially with regard to **ensuring a credible bail-in regime**.

The objective of the TLAC standard is to ensure that global systemically important banks (G-SIBs), referred to as global systemically important institutions (G-SIIs) in the Union framework, have the loss-absorbing and recapitalisation capacity necessary to help ensure that, in and immediately following a resolution, critical functions can be continued without public finances or financial stability being put at risk.

To ensure that the **new 'non-preferred' senior class of debt instruments** meet the eligibility criteria as described in the TLAC standard, Member States shall:

- ensure that those debt instruments are **not derivatives** and contain no embedded derivatives;
- ensure that the relevant contractual documentation related to their issuance and, where applicable, the **prospectus**, explicitly refers to their lower ranking under normal insolvency proceedings.

To enhance legal certainty for investors, Member States shall ensure that ordinary senior debt instruments and other unsecured ordinary senior liabilities that are not debt instruments have a higher priority ranking in their national insolvency laws than the new 'non-preferred' senior class of debt.

Review: at the latest **three years** after the date of entry into force of the Directive, the Commission shall assess whether it is necessary to make further amendments with regard to the ranking of deposits in insolvency. The Commission shall submit a report thereon to the European Parliament and to the Council

Transposition: Member States shall comply with the Directive no later than one year after the date of entry into force.