Basic information

2016/0363(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Bank recovery and resolution: ranking of unsecured debt instruments in insolvency hierarchy Amending Directive 2014/59/EU 2012/0150(COD) **Subject** 2.50.03 Securities and financial markets, stock exchange, CIUTS, investments 2.50.04 Banks and credit 2.50.08 Financial services, financial reporting and auditing 2.50.10 Financial supervision	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
ECON Economic and Monetary Affairs	HÖKMARK Gunnar (PPE)	24/11/2016
	Shadow rapporteur SILVA PEREIRA Pedro (S&D) KAMALL Syed (ECR) CORNILLET Thierry (ALDE) SCHIRDEWAN Martin (GUE/NGL) URTASUN Ernest (Verts/ALE) VALLI Marco (EFDD) ZANNI Marco (ENF)	

Committee for opinion	Rapporteur for opinion	Appointed
BUDG Budgets	The committee decided not to give an opinion.	
JURI Legal Affairs	The committee decided not to give an opinion.	

Council of the European Union

Council configuration	Meetings	Date

	Economic and Financial Affairs ECOFIN	3549	2017-06-16
	Employment, Social Policy, Health and Consumer Affairs	3583	2017-12-08

European Commission	Commission DG	Commissioner
	Financial Stability, Financial Services and Capital Markets Union	DOMBROVSKIS Valdis

European Economic and Social Committee

Key events

Date	Event	Reference	Summary
23/11/2016	Legislative proposal published	COM(2016)0853	Summary
16/01/2017	Committee referral announced in Parliament, 1st reading		
10/10/2017	Vote in committee, 1st reading		
10/10/2017	Committee decision to open interinstitutional negotiations with report adopted in committee		
13/10/2017	Committee report tabled for plenary, 1st reading	A8-0302/2017	Summary
23/10/2017	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 72)		
25/10/2017	Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 72)		
21/11/2017	Approval in committee of the text agreed at 1st reading interinstitutional negotiations	PE613.527 GEDA/A/(2017)010686	
30/11/2017	Decision by Parliament, 1st reading	T8-0470/2017	Summary
30/11/2017	Results of vote in Parliament		
30/11/2017	Debate in Parliament		
08/12/2017	Act adopted by Council after Parliament's 1st reading		
12/12/2017	Final act signed		
12/12/2017	End of procedure in Parliament		
27/12/2017	Final act published in Official Journal		

Technical information

Procedure reference	2016/0363(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Amendments and repeals	Amending Directive 2014/59/EU 2012/0150(COD)
Legal basis	Treaty on the Functioning of the European Union TFEU 114

Other legal basis	Rules of Procedure EP 165
Mandatory consultation of other institutions	European Economic and Social Committee
Stage reached in procedure	Procedure completed
Committee dossier	ECON/8/08557

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE606.264	04/07/2017	
Amendments tabled in committee		PE609.639	08/09/2017	
Committee report tabled for plenary, 1st reading/single reading		A8-0302/2017	13/10/2017	Summary
Text agreed during interinstitutional negotiations		PE613.527	15/11/2017	
Text adopted by Parliament, 1st reading/single reading		T8-0470/2017	30/11/2017	Summary

Council of the EU

Document type	Reference	Date	Summary
Coreper letter confirming interinstitutional agreement	GEDA/A/(2017)010686	15/11/2017	
Draft final act	00057/2017/LEX	12/12/2017	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2016)0853	23/11/2016	Summary
Document attached to the procedure	SWD(2016)0377	23/11/2016	
Document attached to the procedure	SWD(2016)0378	23/11/2016	
Commission response to text adopted in plenary	SP(2018)8	10/01/2018	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	FR_SENATE	COM(2016)0853	02/03/2017	
Contribution	PT_PARLIAMENT	COM(2016)0853	08/03/2017	
Contribution	ES_PARLIAMENT	COM(2016)0853	09/03/2017	
Contribution	IT_SENATE	COM(2016)0853	16/01/2018	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES0002/2017	22/02/2017	
ECB	European Central Bank: opinion, guideline, report	CON/2017/0006 OJ C 132 26.04.2017, p. 0001	08/03/2017	Summary

Additional information

Source	Document	Date
European Parliament	Briefing	29/01/2018
European Commission	EUR-Lex	

Final act

Directive 2017/2399
OJ L 345 27.12.2017, p. 0096 Summary

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

2016/0363(COD) - 08/03/2017 - European Central Bank: opinion, guideline, report

Opinion of the European Central Bank (ECB) on a proposal for a directive of the European Parliament and of the Council on amending Directive 2014/59/EU as regards the ranking of unsecured debt instruments in insolvency hierarchy.

The European Central Bank received a request from the Council (on 3 January 2017) and the European Parliament (on 17 February 2017) respectively for an opinion on the abovementioned proposal.

The ECB made the following observations:

The ECB **welcomed the proposed directive**, which sets out amendments to Directive 2014/59/EU of the European Parliament and of the Council relating to the insolvency ranking of holders of debt instruments issued by Union credit institutions, and certain other institutions.

The proposed amendments aim to enhance the implementation of the bail-in tool provided for under Directive 2014/59/EU and to facilitate the application of the minimum requirement for own funds and eligible liabilities (MREL) and the forthcoming total loss-absorbing capacity (TLAC) requirement concerning the loss-absorption and recapitalisation capacity of credit institutions and investment firms.

As such, the amendments provide an additional means for credit institutions and certain other institutions to comply with the forthcoming TLAC and MREL requirements and improve their resolvability, without constraining their respective funding strategies. This reform should be adopted as soon as possible to assist credit institutions in their preparations for meeting the new requirements, especially where such institutions are faced with a shortfall in building up the necessary levels of loss-absorbing liabilities (where subordination is required), and in light of potential constraints on the capacity of markets to rapidly absorb large volumes of new issuances

The ECB considered that **this reform should be adopted as soon as possible** to assist credit institutions in their preparations for meeting the new requirements. It considered that the proposed directive only provides for partial harmonisation and that additional reforms would be useful to **promote further harmonisation** in the hierarchy of creditor claims in bank insolvency.

The ECB made specific observations on:

- the proposal to create a **new asset class** of ‘non-preferred’ senior debt instruments with a lower rank than ordinary senior unsecured debt instruments in insolvency: the ECB is of the opinion that credit institutions and certain other institutions should be allowed to issue ‘non-preferred’ senior debt instruments with initial maturities that are either more than or less than one year;

- the need for clarity regarding the **envisaged transitional arrangements** applicable to senior unsecured debt instruments that are outstanding at the point in time when the new regime takes effect, including any grandfathering regime required;
- the merit in the introduction of a **general depositor preference, based on a tiered approach**, in the Union. This would be complementary to the proposals set out in the proposed directive: the ECB suggested establishing a general depositor preference, based on a tiered approach, across the Union would promote further harmonisation in the Union as regards the hierarchy of creditor claims in bank insolvency;
- the need to enhance the harmonisation by requiring that national insolvency regimes be aligned in such a way that Tier 2 instruments are treated differently and rank below other subordinated liabilities.

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

2016/0363(COD) - 30/11/2017 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 523 votes to 113, with 8 abstentions, a legislative resolution 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 proposed Directive require Member States to create a new class of non-preferred senior debt that should rank in insolvency above own funds instruments and subordinated liabilities that do not qualify as own funds instruments, but below other senior liabilities.

The European Parliament’s position adopted at first reading under the ordinary legislative procedure amended 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, in particular to **improve the effectiveness of the bail-in regime**.

The amended Directive introduces a new provision specifying the **priority ranking in insolvency hierarchy**.

New class of ‘non-preferred’ senior debt securities: to ensure that it fulfils the eligibility criteria described in the TLAC standard, it is specified that Member States shall ensure:

- that those debt instruments have an **original contractual maturity of at least one year**, do not contain embedded derivatives and are not derivatives themselves;
- that the relevant contractual documentation related to their issuance and, where applicable, the prospectus explicitly refer to their lower ranking under normal insolvency proceedings.

In order 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.

Maintaining eligibility: in order to ensure legal certainty for TLAC-regulated markets and entities, the amended text introduces appropriate grandfathering provisions for the eligibility of liabilities issued before the revised eligibility criteria come into effect.

Review: at the latest three years after the date of entry into force of the Directive, the Commission review the application of Directive 2014/59/EU in particular as regards the need for any further amendments with regard to the ranking of deposits in insolvency.

Transposition and entry into force: Member States shall comply with the Directive no later than 12 months from the date of entry into force of this amending Directive or 1 January 2019, whichever is the earlier.

In order to ensure legal certainty for markets and individual institutions and to facilitate the effective application of the bail-in tool, this Directive should enter into force on the **day following** that of its publication.

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.

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

2016/0363(COD) - 12/12/2017 - Final act

PURPOSE: to lay down harmonised rules for the insolvency ranking of unsecured debt instruments for the purposes of the Union recovery and resolution framework.

LEGISLATIVE ACT: Directive (EU) 2017/2399 of the European Parliament and of the Council amending Directive 2014/59/EU as regards the ranking of unsecured debt instruments in insolvency hierarchy.

CONTENT: **Directive 2014/59/EU** on bank recovery and resolution makes unsecured deposits (over EUR 100 000) subordinate to guaranteed deposits in the event of insolvency proceedings. It establishes a preference for individuals and SMEs. On the other hand, it does not provide for subordination for senior unsecured debt securities over other forms of unsecured debt.

This amendment to Directive 2014/59 / EU of the European Parliament and of the Council on Bank Recovery and Resolution (BRRD) is part of the strategy to implement in the Union the **standard Total Loss-absorbing Capacity (TLAC)** adopted by the G20.

To be implemented by global systemically important banks in 2019, the TLAC standard **requires the holding of subordinated instruments** ("subordination obligation"). More specifically, it 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.

The Directive requires Member States to create a **new asset class of non-preferred' senior debt** eligible for compliance with the subordination requirement.

This instrument will thus facilitate the application of the EU's internal bail-in rules in cross-border situations and avoid distortions of the EU's single market.

To **enhance legal certainty for investors**, Member States should ensure that ordinary unsecured debt instruments and other ordinary unsecured 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 instruments.

Member States should also ensure that the new non-preferred senior class of debt instruments has a higher priority ranking than the priority ranking of own funds instruments and the priority ranking of any subordinated liabilities that do not qualify as own funds.

The amendments to Directive 2014/59/EU will apply to unsecured claims resulting from debt instruments issued on or after the date of application of this Directive. However, for the purposes of legal certainty and to mitigate transitional costs as much as possible, it is necessary to introduce appropriate safeguards as regards the insolvency ranking of claims resulting from debt instruments issued before that date.

ENTRY INTO FORCE: 28.12.2017.

TRANSPOSITION: by 29.12.2018.

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

2016/0363(COD) - 23/11/2016 - Legislative proposal

PURPOSE: to harmonise the priority ranking of unsecured debt instruments in insolvency hierarchy.

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with Council.

BACKGROUND: following the adoption of the total loss absorbing capacity (TLAC) standard by the G20, and in order to facilitate a more efficient path towards compliance with TLAC, a number of EU Member States have amended (or are in the process of amending) the ranking of creditor claims under their national insolvency law, creating significant divergences. Such discrepancies have the potential to amplify uncertainty for debt issuers, investors and resolution authorities and to make the application of the bail-in tool in cross-border resolution cases legally more complex and less transparent. At the same time, the buyer side would experience information asymmetry among different EU jurisdictions, rendering the process of pricing the risk more cumbersome. The resulting uncertainty could also trigger competitive distortions because unsecured debt holders could be treated differently in different Member States and the Minimum Requirement for own funds and Eligible Liabilities (MREL) compliance costs for banks may be different according to the location of the issuance.

In its Communication of 24 November 2015, the Commission recognised the need for further risk reduction and committed bringing forward a legislative proposal that would build on internationally agreed standards.

IMPACT ASSESSMENT: several policy alternatives were considered. The impact assessment concludes that the creation of a specific 'unpreferred' senior class for unsecured debt is the most cost effective way to comply with the requirement of subordination of the TLAC standard for G-SIIs and with the case-by-case request of resolution authorities to request compliance with the MREL through subordinated debt.

CONTENT: the proposed amendments to Directive 2014/59/EU (the Bank Recovery and Resolution Directive or BRRD) propose a **harmonised national insolvency ranking of unsecured debt instruments** to facilitate banks' issuance of such loss absorbing debt instruments. This would enable banks to issue debt in a **new statutory category of unsecured debt** available in all EU Member States which would rank just below the most senior debt and other senior liabilities for the purposes of resolution, while still being part of the senior unsecured debt category (only as an un-preferred tier senior debt). Clear, harmonised rules on the position of bond holders in the bank creditors' hierarchy in insolvency and resolution could facilitate the way bail-in is applied, by providing greater legal certainty and reducing the risk of legal challenges.

The EU harmonised approach will not affect the existing stock of bank debt and will apply to any new issuance of bank debt in the relevant category following the date of application of this amendment as provided in the proposal.

These proposed amendments to Directive 2014/59/EU (the Bank Recovery and Resolution Directive) are part of a legislative package that includes also amendments to Regulation (EU) No 575/2013 (the Capital Requirements Regulation), to Directive 2013/36/EU (the Capital Requirements Directive) and to Regulation (EU) 806/2014 (the Single Resolution Mechanism Regulation).