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.

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