



**2016/0363(COD)**

8.9.2017

# **AMENDMENTS**

## **32 - 100**

**Draft report**  
**Gunnar Hökmark**  
(PE606.264v02)

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

Proposal for a directive  
(COM(2016)0853 – C8-0479/2016 – 2016/0363(COD))



**Amendment 32**  
**Notis Marias**

**Draft legislative resolution**  
**Citation 2 a (new)**

*Draft legislative resolution*

*Amendment*

- *having regard to the Protocol (No 1) of the Treaty on the Functioning of the European Union (TFEU) on the role of national parliaments in the European Union,*

Or. el

**Amendment 33**  
**Notis Marias**

**Draft legislative resolution**  
**Citation 2 b (new)**

*Draft legislative resolution*

*Amendment*

- *having regard to the Protocol (No 2) of the Treaty on the Functioning of the European Union (TFEU) on the application of the principles of subsidiarity and proportionality,*

Or. el

**Amendment 34**  
**Notis Marias**

**Proposal for a directive**  
**Citation 1 a (new)**

*Text proposed by the Commission*

*Amendment*

- *having regard to the Protocol (No 1) of the Treaty on the Functioning of the European Union (TFEU) on the role of national parliaments in the European Union,*

**Amendment 35**

**Notis Marias**

**Proposal for a directive**

**Citation 1 b (new)**

*Text proposed by the Commission*

*Amendment*

- *having regard to the Protocol (No 2) of the Treaty on the Functioning of the European Union (TFEU) on the application of the principles of subsidiarity and proportionality,*

Or. el

**Amendment 36**

**Fabio De Masi**

**Proposal for a directive**

**Recital -1 (new)**

*Text proposed by the Commission*

*Amendment*

- (-1) Regulatory shortcomings in financial market legislation have been one of the key reasons for the 2007/2008 financial crisis. These shortcomings have, however, been only marginally addressed by policy makers in the Union and elsewhere and especially the too-big-to fail problem persisted. As highlighted by recent bail-out cases, despite the Directive 2014/59/EU of the European Parliament and of the Council<sup>1a</sup> the socialisation of losses continues.*

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<sup>1a</sup> *Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC,*

*and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, (OJ L 173, 12.6.2014, p. 190)*

Or. en

### **Amendment 37**

**Ernest Urtasun**

on behalf of the Verts/ALE Group

### **Proposal for a directive**

#### **Recital 3**

#### *Text proposed by the Commission*

(3) Member States should ensure that credit institutions and investment firms **should** have sufficient loss-absorbing and recapitalisation capacity to ensure smooth and fast absorption of losses and recapitalisation in resolution with a minimum impact on financial stability **and taxpayers**. This should be achieved through constant compliance by credit institutions and investment firms with a TLAC minimum requirement as provided in Regulation (EU) No 575/2013 and a requirement for own funds and permissible liabilities as provided in Directive 2014/59/EU.

#### *Amendment*

(3) Member States should ensure that credit institutions and investment firms have sufficient loss-absorbing and recapitalisation capacity to ensure smooth and fast absorption of losses and recapitalisation in resolution with a minimum impact on financial stability, **taxpayers and retail investors who are unable to assess the complex risks of holding instruments constituting this capacity nor exert any meaningful influence over their management**. This should be achieved through constant compliance by credit institutions and investment firms with a TLAC minimum requirement as provided in Regulation (EU)No 575/2013 and a requirement for own funds and permissible liabilities as provided in Directive 2014/59/EU.

Or. en

### **Amendment 38**

**Fabio De Masi**

### **Proposal for a directive**

#### **Recital 3**

*Text proposed by the Commission*

(3) Member States should ensure that credit institutions and investment firms should have sufficient loss-absorbing and recapitalisation capacity to ensure smooth and fast absorption of losses and recapitalisation in resolution with a minimum impact on financial stability and taxpayers. This should be achieved through constant compliance by credit institutions and investment firms with a TLAC minimum requirement as provided in Regulation (EU) No 575/2013 and a requirement for own funds and permissible liabilities as provided in Directive 2014/59/EU.

*Amendment*

(3) Member States should ensure that credit institutions and investment firms should have sufficient loss-absorbing and recapitalisation capacity to ensure smooth and fast absorption of losses and recapitalisation in resolution with a minimum impact on financial stability and taxpayers. This should be achieved through constant compliance by credit institutions and investment firms with a TLAC minimum requirement as provided in Regulation (EU) No 575/2013 and a requirement for own funds and permissible liabilities as provided in Directive 2014/59/EU. ***Nothing should prevent competent authorities to set higher MREL levels than the minimum TLAC requirement.***

Or. en

**Amendment 39**  
**Burkhard Balz**

**Proposal for a directive**  
**Recital 3**

*Text proposed by the Commission*

(3) Member States should ensure that credit institutions and investment firms should have sufficient loss-absorbing and recapitalisation capacity to ensure smooth and fast absorption of losses and recapitalisation in resolution ***with a minimum*** impact on financial stability and taxpayers. This should be achieved through constant compliance by ***credit institutions and investment firms*** with a TLAC minimum requirement ***as provided in*** Regulation (EU) No 575/2013 and a requirement for own funds and ***permissible*** liabilities as provided in Directive 2014/59/EU.

*Amendment*

(3) Member States should ensure that credit institutions and investment firms should have sufficient loss-absorbing and recapitalisation capacity to ensure smooth and fast absorption of losses and recapitalisation in resolution ***while avoiding an*** impact on financial stability and taxpayers. This should be achieved through constant compliance by institutions with a TLAC minimum requirement ***that will be implemented in Union law by amending*** Regulation (EU) No 575/2013 and a requirement for own funds and ***eligible*** liabilities as provided in Directive 2014/59/EU.

**Amendment 40**  
**Peter Simon**

**Proposal for a directive**  
**Recital 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***(4a) In the interests of planning and legal certainty for the markets and for individual institutions and a level playing field for institutions, it is necessary to introduce safeguards, under existing national legislation, for the eligibility of debt instruments issued before the entry into force of this Directive.***

Or. de

**Amendment 41**  
**Othmar Karas**

**Proposal for a directive**  
**Recital 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***(4a) In order to ensure legal certainty in the markets and thus to allow a build-up of the necessary buffers, there also needs to be timely clarity about the eligibility criteria required for instruments to count as TLAC/MREL liabilities.***

Or. de

*Justification*

*In order to ensure legal certainty on the markets and thus build up the necessary buffers, clear timeframes are needed for the eligibility criteria for instruments to count as TLAC/MREL liabilities.*

**Amendment 42**  
**Pervenche Berès**

**Proposal for a directive**  
**Recital 4 a (new)**

*Text proposed by the Commission*

*Amendment*

**(4a) In order to ensure certainty for markets and to allow a build-up of the necessary buffers, markets also need timely clarity about the eligibility criteria required for instruments to be recognised as TLAC/MREL liabilities and about the levels of TLAC/MREL requirement and guidance.**

Or. en

**Amendment 43**  
**Pedro Silva Pereira**

**Proposal for a directive**  
**Recital 4 a (new)**

*Text proposed by the Commission*

*Amendment*

**(4a) In order to avoid shortfalls and to ensure a level playing field among banks, it is necessary to provide for a grandfathering of the eligibility of those instruments issued prior to the eligibility criteria coming into effect.**

Or. en

**Amendment 44**  
**Fabio De Masi**

**Proposal for a directive**  
**Recital 6**

*Text proposed by the Commission*

*Amendment*

(6) The national rules adopted so far

(6) The national rules adopted so far



diverge significantly. The absence of harmonised Union rules creates uncertainty *for issuing credit institutions, investment firms and investors alike and makes the application of the bail-in tool for cross-border institutions more difficult. This also results in competitive distortions on the internal market given that the costs for credit institutions and investment firms to comply with the subordination requirement established in Regulation (EU) No 575/2013 and Directive 2014/59/EU and the costs borne by investors when buying debt instruments issued by credit institutions and investment firms may differ considerably across the Union.*

diverge significantly. The absence of harmonised Union rules creates uncertainty *and may therefore further reduce the effectiveness of a credible and effective bail-in regime as countries may use loopholes in existing legislation.*

Or. en

#### **Amendment 45** **Fabio De Masi**

#### **Proposal for a directive** **Recital 8**

##### *Text proposed by the Commission*

(8) It is, therefore, necessary to remove the significant obstacles *in the* functioning of the internal market and avoid distortions of competition resulting from the absence of harmonised Union rules on bank creditors' hierarchy and to prevent such obstacles and distortions from arising in the future. Consequently, the appropriate legal basis for this Directive should be Article 114 of the Treaty on the Functioning of the European Union (TFEU), as interpreted in accordance with the case law of the Court of Justice of the European Union.

##### *Amendment*

(8) It is, therefore, necessary to remove the significant obstacles *to the proper* functioning of *the bail-in regime in* the internal market and avoid distortions of competition resulting from the absence of harmonised Union rules on bank creditors' hierarchy and to prevent such obstacles and distortions from arising in the future. Consequently, the appropriate legal basis for this Directive should be Article 114 of the Treaty on the Functioning of the European Union (TFEU), as interpreted in accordance with the case law of the Court of Justice of the European Union.

Or. en

**Amendment 46**  
**Fabio De Masi**

**Proposal for a directive**  
**Recital 9**

*Text proposed by the Commission*

(9) In order to *reduce to a minimum credit institutions and investment firms' costs of compliance with the subordination requirement and any negative impact on their funding costs*, this Directive should allow Member States to keep the existing class of unsecured senior debt, which has the highest insolvency ranking among debt instruments *and is less costly for credit institutions and investment firms to issue than any other subordinated liabilities*. It should, *nevertheless*, require Member States to create a new asset class of 'non-preferred' senior debt that should *only* be bailed-in during resolution after other capital instruments, but before other senior liabilities. *Credit institutions and investment firms should remain free to issue debt in both classes while only the 'non-preferred' senior class should be eligible to meet the subordination requirement of Regulation (EU) No 575/2013 and of Directive 2014/59/EU. This should allow credit institutions and investment firms to use for their funding or any other operational reasons the less costly senior debt while issuing the new 'non-preferred' senior class for compliance with the subordination requirement.*

*Amendment*

(9) In order to *ensure that the bail-in regime works effectively and to avoid the socialisation of losses*, this Directive should *not* allow Member States to keep the existing class of unsecured senior debt, which has the highest insolvency ranking among debt instruments. It should require Member States to create a new asset class of 'non-preferred' senior debt *which fulfils the subordination requirement and* that should be bailed-in during resolution after other capital instruments, but before other senior liabilities. *Only professional clients should be allowed to purchase such instruments.*

Or. en

**Amendment 47**  
**Burkhard Balz**

**Proposal for a directive**  
**Recital 9**

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*Text proposed by the Commission*

(9) In order to reduce to a minimum **credit institutions and investment firms'** costs of compliance with the subordination requirement and any negative impact on **their** funding costs, this Directive should allow Member States to keep the existing class of unsecured senior debt, which **has the highest insolvency ranking among debt instruments and** is less costly for **credit institutions and investment firms** to issue than any other subordinated liabilities. **It** should, nevertheless, require Member States to create a new **asset** class of 'non-preferred' senior debt that should **only be bailed-in during resolution after other capital instruments, but before** other senior liabilities. **Credit institutions and investment firms** should remain free to issue debt in both classes while only the 'non-preferred' senior class should be eligible to meet the subordination requirement **of Regulation (EU) No 575/2013 and of Directive 2014/59/EU**. This should allow **credit institutions and investment firms** to use for their funding or any other operational reasons the less costly senior debt while issuing the new 'non-preferred' senior class **for compliance** with the subordination requirement.

*Amendment*

(9) In order to reduce to a minimum **the** costs of compliance with the subordination requirement and any negative impact on funding costs, this Directive should allow Member States to keep, **where applicable**, the existing class of **ordinary** unsecured senior debt, which is less costly for institutions to issue than any other subordinated liabilities. **In order to enhance the resolvability of institutions, this Directive** should, nevertheless, require Member States to create a new class of 'non-preferred' senior debt that should **rank in insolvency before own funds, instruments and subordinated liabilities, but after** other senior liabilities. **Without prejudice to other options provided for in the TLAC standard to comply with the subordination requirement, institutions** should remain free to issue debt in both **senior and 'non-preferred' senior** classes while, **of those two classes**, only the 'non-preferred' senior class should be eligible to meet the subordination requirement. This should allow institutions to use for their funding or any other operational reasons the less costly **ordinary** senior debt while issuing **debt in** the new 'non-preferred' senior class **to obtain funding while complying** with the subordination requirement.

Or. en

**Amendment 48**

**Marco Zanni**

**Proposal for a directive**

**Recital 9**

*Text proposed by the Commission*

(9) In order to reduce to a minimum credit institutions and investment firms'

*Amendment*

(9) In order to reduce to a minimum credit institutions and investment firms'

costs of compliance with the subordination requirement and any negative impact on their funding costs, this Directive should allow Member States to keep the existing class of unsecured senior debt, which has the highest insolvency ranking among debt instruments and is less costly for credit institutions and investment firms to issue than any other subordinated liabilities. It should, nevertheless, require Member States to create a new asset class of '**non-preferred**' senior debt that should only be bailed-in during resolution after other capital instruments, but before other senior liabilities. Credit institutions and investment firms should remain free to issue debt in both classes while only the '**non-preferred**' senior class should be eligible to meet the subordination requirement of Regulation (EU) No 575/2013 and of Directive 2014/59/EU. This should allow credit institutions and investment firms to use for their funding or any other operational reasons the less costly senior debt while issuing the new '**non-preferred**' senior class for compliance with the subordination requirement.

costs of compliance with the subordination requirement and any negative impact on their funding costs, this Directive should allow Member States to keep the existing class of unsecured senior debt, which has the highest insolvency ranking among debt instruments and is less costly for credit institutions and investment firms to issue than any other subordinated liabilities. It should, nevertheless, require Member States to create a new asset class of '**preferred subordinated**' debt that should only be bailed-in during resolution after other capital instruments, but before other senior liabilities. Credit institutions and investment firms should remain free to issue debt in both classes while only the '**preferred subordinated**' class should be eligible to meet the subordination requirement of Regulation (EU) No 575/2013 and of Directive 2014/59/EU. This should allow credit institutions and investment firms to use for their funding or any other operational reasons the less costly senior debt while issuing the new '**preferred subordinated**' class for compliance with the subordination requirement.

Or. en

## Amendment 49 Luigi Morgano

### Proposal for a directive Recital 10

#### *Text proposed by the Commission*

(10) To ensure that the new 'non-preferred' senior class of debt instruments meet the eligibility criteria *of Regulation (EU) No 575/2013 and of Directive 2014/59/EU*, Member States should ensure that *their initial contractual maturity spans one year, that they* have no derivative features, *and that the relevant contractual*

#### *Amendment*

(10) To ensure that the new 'non-preferred' senior class of debt instruments meet the eligibility criteria *as described in the TLAC standard and as set out in Directive 2014/59/EU, thereby enhancing legal certainty*, Member States should ensure that *the relevant contractual documentation related to their issuance*

*documentation related to their issuance explicitly refers to their ranking under normal insolvency proceedings.*

*explicitly refers to their ranking under normal insolvency proceedings, and that those debt instruments have no derivative features, unless a given amount of the liability arising from the debt instrument is known in advance at the time of issuance, is fixed, and is not affected by a derivative feature; and the debt instrument, including its derivative feature, is not subject to any specific valuation rules concerning netting in Directive 2014/59/EU. Such liabilities should only be included in the amount of own funds and eligible liabilities for the part that corresponds to the above fixed amount. This Directive should be without prejudice to any requirement in national legislation to register debt instruments in the issuer's company registry for liabilities to meet the conditions for non-preferred senior class of debt instruments as provided in this Directive.*

Or. en

#### *Justification*

*The proposed amendments clarify that debt instruments with embedded derivatives should be considered under certain circumstances eligible liabilities for the purposes of this directive.*

#### **Amendment 50** **Danuta Maria Hübner**

#### **Proposal for a directive** **Recital 10**

##### *Text proposed by the Commission*

(10) To ensure that the new 'non-preferred' senior class of debt instruments meet the eligibility criteria of Regulation (EU) No 575/2013 and of Directive 2014/59/EU, Member States should ensure ***that their initial contractual maturity spans one year***, that they have no derivative features, and that the relevant

##### *Amendment*

(10) To ensure that ***most instruments within*** the new 'non-preferred' senior class of debt instruments meet the eligibility criteria of Regulation (EU) No 575/2013 and of Directive 2014/59/EU, Member States should ensure that they have no derivative features and that the relevant contractual documentation related to their

contractual documentation related to their issuance explicitly refers to their ranking under normal insolvency proceedings.

issuance explicitly refers to their ranking under normal insolvency proceedings. ***In order for institutions and resolution authorities to be able to reap the benefits of subordination in terms of facilitated bail-in of the instruments and improved resolvability of the institutions, institutions should also be allowed to issue "non-preferred" debt instruments with a maturity shorter than one year, which will not meet the eligibility criteria of Regulation (EU) No 575/2013 and of Directive 2014/59/EU but the place of which in the creditors' hierarchy will be clarified.***

Or. en

**Amendment 51**  
**Fulvio Martusciello**

**Proposal for a directive**  
**Recital 10**

*Text proposed by the Commission*

(10) To ensure that the new 'non-preferred' senior class of debt instruments meet the eligibility criteria ***of Regulation (EU) No 575/2013 and of Directive 2014/59/EU***, Member States should ensure that ***their initial contractual maturity spans one year, that they have no derivative features***, and that the relevant contractual documentation related to their issuance explicitly refers to their ranking under normal insolvency proceedings.

*Amendment*

(10) To ensure that the new 'non-preferred' senior class of debt instruments meet the eligibility criteria ***as described in the TLAC standard and as set out in Directive 2014/59/EU, thereby enhancing legal certainty***, Member States should ensure that ***those debt instruments have no derivative features, except as specifically allowed within instruments eligible for MREL under Directive 2014/59/EU***, and that the relevant contractual documentation related to their issuance explicitly refers to their ranking under normal insolvency proceedings. ***This Directive should be without prejudice to any requirement in national legislation to register debt instruments in the issuer's company registry for liabilities to meet the conditions for non-preferred senior class of debt instruments as provided in this***

**Amendment 52**

**Burkhard Balz**

**Proposal for a directive**

**Recital 10**

*Text proposed by the Commission*

(10) To ensure that the new 'non-preferred' senior class of debt instruments meet the eligibility criteria *of Regulation (EU) No 575/2013 and of Directive 2014/59/EU*, Member States should ensure that their initial contractual maturity spans one year, that they have no derivative features, and that the relevant contractual documentation related to their issuance explicitly refers to their ranking under normal insolvency proceedings.

*Amendment*

(10) To ensure that the new 'non-preferred' senior class of debt instruments meet the eligibility criteria *as described in the TLAC standard and as set out in Directive 2014/59/EU, thereby enhancing legal certainty*, Member States should ensure that *those debt instruments are not derivatives, have no embedded derivatives and that* their initial contractual maturity spans one year, that they have no derivative features, and that the relevant contractual documentation related to their issuance explicitly refers to their ranking under normal insolvency proceedings. *In particular, debt instruments with a variable interest, derived from a broadly used reference rate such as Euribor or Libor, should not be considered as debt instruments with embedded derivatives solely because of this feature.*

**Amendment 53**

**Ernest Urtasun**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Recital 10**

*Text proposed by the Commission*

(10) To ensure that the new 'non-

*Amendment*

(10) To ensure that the new 'non-

preferred' senior class of debt instruments meet the eligibility criteria of Regulation (EU) No 575/2013 and of Directive 2014/59/EU, Member States should ensure that their initial contractual maturity *spans* one year, that they have no derivative features, *and* that the relevant contractual documentation related to their issuance explicitly refers to their ranking under normal insolvency proceedings.

preferred' senior class of debt instruments meet the eligibility criteria of Regulation (EU) No 575/2013 and of Directive 2014/59/EU, Member States should ensure that their initial contractual maturity *is of at least* one year, that they have no derivative features that the relevant contractual documentation related to their issuance explicitly refers to their ranking under normal insolvency proceedings *and that these instruments are qualified as complex instruments as provided for in Directive 2014/65/EU of the European Parliament and of the Council<sup>1a</sup> and are subject to specific monitoring and consumer protection requirements.*

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*<sup>1a</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349)*

Or. en

## **Amendment 54** **Marco Zanni**

### **Proposal for a directive** **Recital 10**

#### *Text proposed by the Commission*

(10) To ensure that the new '*non-preferred' senior* class of debt instruments meet the eligibility criteria of Regulation (EU) No 575/2013 and of Directive 2014/59/EU, Member States should ensure that their initial contractual maturity spans one year, that they have no derivative features, and that the relevant contractual documentation related to their issuance explicitly refers to their ranking under normal insolvency proceedings.

#### *Amendment*

(10) To ensure that the new '*preferred subordinated*' class of debt instruments meet the eligibility criteria of Regulation (EU) No 575/2013 and of Directive 2014/59/EU, Member States should ensure that their initial contractual maturity spans one year, that they have no derivative features, *that - due to their higher level of risk - they are suitable for the client as defined in Directive 2014/65/EU of the European Parliament and of the Council<sup>1a</sup>*, and that the relevant contractual



documentation related to their issuance explicitly refers to their ranking under normal insolvency proceedings.

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*1<sup>a</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349)*

Or. en

## **Amendment 55**

**Pedro Silva Pereira, Pervenche Berès**

### **Proposal for a directive**

#### **Recital 10**

##### *Text proposed by the Commission*

(10) To ensure that the new 'non-preferred' senior class of debt instruments meet the eligibility criteria of Regulation (EU) No 575/2013 and of Directive 2014/59/EU, Member States should ensure that their *initial* contractual maturity *spans* one year, that they have no derivative features, and that the relevant contractual documentation related to their issuance explicitly refers to their ranking under normal insolvency proceedings.

##### *Amendment*

(10) To ensure that the new 'non-preferred' senior class of debt instruments meet the eligibility criteria of Regulation (EU) No 575/2013 and of Directive 2014/59/EU, Member States should ensure that their *original* contractual maturity *is of at least* one year, that they have no derivative features, and that the relevant contractual documentation related to their issuance explicitly refers to their ranking under normal insolvency proceedings.

Or. en

## **Amendment 56**

**Jonás Fernández**

### **Proposal for a directive**

#### **Recital 10**

##### *Text proposed by the Commission*

(10) To ensure that the new 'non-

##### *Amendment*

(10) To ensure that the new 'non-

preferred' senior class of debt instruments meet the eligibility criteria of Regulation (EU) No 575/2013 and of Directive 2014/59/EU, Member States should ensure that their initial contractual maturity *spans* one year, that they have no derivative features, and that the relevant contractual documentation related to their issuance explicitly refers to their ranking under normal insolvency proceedings.

preferred' senior class of debt instruments meet the eligibility criteria of Regulation (EU) No 575/2013 and of Directive 2014/59/EU, Member States should ensure that their initial contractual maturity *is at least* one year, that they have no derivative features, and that the relevant contractual documentation related to their issuance explicitly refers to their ranking under normal insolvency proceedings.

Or. en

### **Amendment 57**

**Ernest Urtasun**

on behalf of the Verts/ALE Group

### **Proposal for a directive**

#### **Recital 10 a (new)**

*Text proposed by the Commission*

*Amendment*

*(10a) Conferring a priority ranking on all deposits is expected to enhance the implementation of the bail-in tool in resolution, because the resolution authority will be able to bail in other senior unsecured bank debt instruments prior to deposits, while minimizing the risk of compensation claims under the ‘no creditor worse off’ principle. The bail-in of such senior unsecured bank debt instruments is regarded as carrying a lower contagion risk than that of operational liabilities such as deposits. A general depositor preference is therefore likely to render the bail-in of senior unsecured bank debt instruments more effective and credible, thus fostering effective resolution action and reducing the need to have recourse to the resolution fund. The effectiveness of the bail-in tool should also be enhanced by providing that all senior unsecured claims in the form of transferable debt should in future be of the non-preferred senior class.*

**Amendment 58**  
**Jonás Fernández**

**Proposal for a directive**  
**Recital 11**

*Text proposed by the Commission*

(11) To enhance legal certainty for investors, Member States should ensure that *standard* senior debt instruments have a higher priority ranking in their national insolvency laws than the new 'non-preferred' senior class of debt instruments under normal insolvency proceedings. Member States should also ensure that the new 'non-preferred' senior class of debt instruments *have* a higher priority ranking than the priority ranking of own funds instruments or any other subordinated liabilities and that, contrary to such instruments or liabilities, the 'non-preferred' senior class of debt instruments could only be bailed-in when the issuing institution is placed under resolution.

*Amendment*

(11) To enhance legal certainty for investors, Member States should ensure that senior *unsecured* debt instruments, *which have the highest insolvency ranking among debt instruments*, have a higher priority ranking in their national insolvency laws than the new 'non-preferred' senior class of debt instruments under normal insolvency proceedings. 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 or any other subordinated liabilities and that, contrary to such instruments or liabilities, the 'non-preferred' senior class of debt instruments could only be bailed-in when the issuing institution is placed under resolution.

Or. en

**Amendment 59**  
**Marco Zanni**

**Proposal for a directive**  
**Recital 11**

*Text proposed by the Commission*

(11) To enhance legal certainty for investors, Member States should ensure that standard senior debt instruments have a higher priority ranking in their national insolvency laws than the new '*non-*

*Amendment*

(11) To enhance legal certainty for investors, Member States should ensure that standard senior debt instruments have a higher priority ranking in their national insolvency laws than the new '*preferred*

*preferred' senior* class of debt instruments under normal insolvency proceedings. Member States should also ensure that the new '*non-preferred' senior* class of debt instruments have a higher priority ranking than the priority ranking of own funds instruments or any other subordinated liabilities and that, contrary to such instruments or liabilities, the '*non-preferred' senior* class of debt instruments could only be bailed-in when the issuing institution is placed under resolution.

*subordinated'* class of debt instruments under normal insolvency proceedings. Member States should also ensure that the new '*preferred subordinated'* class of debt instruments have a higher priority ranking than the priority ranking of own funds instruments or any other subordinated liabilities and that, contrary to such instruments or liabilities, the *new 'preferred subordinated'* class of debt instruments could only be bailed-in when the issuing institution is placed under resolution.

Or. en

## **Amendment 60** **Gabriel Mato**

### **Proposal for a directive** **Recital 11**

#### *Text proposed by the Commission*

(11) To enhance legal certainty for investors, Member States should ensure that standard senior debt instruments have a higher priority ranking in their national insolvency laws than the new 'non-preferred' senior class of debt instruments under normal insolvency proceedings. Member States should also ensure that the new 'non-preferred' senior class of debt instruments have a higher priority ranking than the priority ranking of own funds instruments or any other subordinated liabilities and that, contrary to such instruments or liabilities, the 'non-preferred' senior class of debt instruments could only be bailed-in when the issuing institution is placed under resolution.

#### *Amendment*

(11) To enhance legal certainty for investors, Member States should ensure that standard senior debt instruments have a higher priority ranking in their national insolvency laws than the new 'non-preferred' senior class of debt instruments under normal insolvency proceedings. Member States should also ensure that the new 'non-preferred' senior class of debt instruments have a higher priority ranking than the priority ranking of own funds instruments or any other subordinated liabilities and that, contrary to such instruments or liabilities, the 'non-preferred' senior class of debt instruments could only be bailed-in when the issuing institution is placed under resolution. ***Additionally, Member States should ensure that the national insolvency laws correctly reflect the loss absorption hierarchy under resolution, avoiding any mismatches between the resolution and the insolvency legal frameworks and***

*ensuring that the regulatory capital instruments shall absorb losses both in resolution and insolvency before the rest of subordinated claims.*

Or. en

**Amendment 61**  
**Fabio De Masi**

**Proposal for a directive**  
**Recital 12**

*Text proposed by the Commission*

(12) Since the objectives of this Directive, namely to lay down uniform rules for bank creditor hierarchy for the purposes of the Union recovery and resolution framework, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

*Amendment*

(12) Since the objectives of this Directive, namely to lay down uniform rules for bank creditor hierarchy for the purposes of the Union recovery and resolution framework *especially with regard to ensuring a credible bail-in regime*, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

Or. en

**Amendment 62**  
**Peter Simon**

**Proposal for a directive**  
**Recital 13**

*Text proposed by the Commission*

(13) It is appropriate for the

*Amendment*

(13) It is appropriate for the

amendments to Directive 2014/59/EU provided for in this Directive to apply to **liabilities** issued on or after the date of application of this Directive **and to liabilities still outstanding as of that date**. However, for legal certainty purposes and to mitigate transitional costs in as much as possible, Member State should ensure that the **treatment** of all outstanding **liabilities that credit institutions and investment firms** have issued before that date is governed by the laws of the Member States as they were adopted on [31 December 2016]. **Outstanding liabilities should thus continue to be subject to the regulatory requirements set out in Directive 2014/59/EU and the relevant national law in the version that was adopted on [31 December 2016]**.

amendments to Directive 2014/59/EU provided for in this Directive to apply to **unsecured claims resulting from debt instruments** issued on or after the date of application of this Directive. However, for legal certainty purposes and to mitigate transitional costs in as much as possible, Member State should ensure that the **insolvency ranking** of all outstanding **unsecured claims resulting from debt instruments that institutions** have issued before that date is governed by the laws of the Member States as they were adopted on 31 December 2016. **To the extent that certain national laws as adopted on 31 December 2016 could have already addressed the objective of allowing institutions to issue subordinated liabilities, part or all outstanding unsecured claims resulting from debt instruments issued prior to the date of application of this Directive may have the same insolvency ranking as the 'non-preferred' senior debt instruments issued under the conditions of this Directive**.

Or. de

### **Amendment 63** **Jonás Fernández**

#### **Proposal for a directive** **Recital 13**

##### *Text proposed by the Commission*

(13) It is appropriate for the amendments to Directive 2014/59/EU provided for in this Directive to apply to liabilities issued on or after the date of application of this Directive and to liabilities still outstanding as of that date. However, for legal certainty purposes and to mitigate transitional costs in as much as possible, Member **State** should ensure that the treatment of all outstanding liabilities that credit institutions and investment firms

##### *Amendment*

(13) It is appropriate for the amendments to Directive 2014/59/EU provided for in this Directive to apply to liabilities issued on or after the date of application of this Directive and to liabilities still outstanding as of that date. However, for legal certainty purposes and to mitigate transitional costs in as much as possible, Member **States** should ensure that the treatment of all outstanding liabilities that credit institutions and investment firms

have issued before *that date* is governed by the laws of the Member States *as they were adopted on [31 December 2016]*. *Outstanding liabilities should thus continue to be subject to the regulatory requirements set out in Directive 2014/59/EU and the relevant national law in the version that was adopted on [31 December 2016]*.

have issued before *the date of implementation of this Directive in national law* is governed by the laws of the Member States *in force on the day prior to the date of implementation of this Directive in national law*.

Or. en

**Amendment 64**  
**Jonás Fernández**

**Proposal for a directive**  
**Recital 13 a (new)**

*Text proposed by the Commission*

*Amendment*

*(13a) This Directive harmonises the ranking under normal insolvency proceedings of unsecured claims resulting from debt instruments and does not cover the insolvency ranking of deposits beyond the existing applicable provisions of Directive 2014/59/EU. Therefore, this Directive is without prejudice to national laws of Member States governing normal insolvency proceedings that cover the insolvency ranking of deposits not harmonised by Directive 2014/59/EU, irrespectively of how deposits rank in the insolvency proceedings and of their dates.*

Or. en

**Amendment 65**  
**Pedro Silva Pereira**

**Proposal for a directive**  
**Article -1 (new)**

**Article -1**

**Scope**

**1. This Directive harmonises the ranking under normal insolvency proceedings of unsecured claims resulting from debt instruments.**

**2. This Directive does not cover the insolvency ranking of deposits beyond the existing applicable provisions of Directive 2014/59/EU and is without prejudice to national laws of Member States governing normal insolvency proceedings that cover the insolvency ranking of deposits not harmonised by Directive 2014/59/EU.**

Or. en

**Amendment 66**

**Ernest Urtasun**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 1 – paragraph -1 (new)**

Directive 2014/59/EU

Article 2 – paragraph 1 – point 48

*Present text*

(48) ‘debt instruments’ referred to in points (g) and (j) of Article 63(1) means bonds and other forms of transferable debt, instruments creating or acknowledging a debt, and instruments giving rights to acquire debt instruments;

*Amendment*

**-1. in Article 2(1), point (48) is amended as follows:**

‘(48) ‘debt instruments’ referred to in points (g) and (j) of Article 63(1) **and in Article 108(2) and (4)** means bonds, notes and other forms of transferable debt, instruments creating or acknowledging a debt, and instruments giving rights to acquire debt instruments;’

Or. en



**Amendment 67**  
**Burkhard Balz**

**Proposal for a directive**

**Article 1 – paragraph 1 a (new)**

Directive 2014/59/EU

Article 108 – paragraph 1 – point b – introductory part

*Present text*

*Amendment*

(b) the following have the same priority ranking which is higher than the ranking provided for under point (a):

***1a. in Article 108, point (b) is replaced by the following:***

***‘(b) the following have the same priority ranking which is higher than the ranking provided for under point (a) and the ranking of all other liabilities, without prejudice to costs, expenses and other creditors of the insolvency estate:***

Or. en

**Amendment 68**  
**Danuta Maria Hübner**

**Proposal for a directive**

**Article 1 – paragraph 2**

Directive 2014/59/EU

Article 108 – paragraph 2 – point a

*Text proposed by the Commission*

*Amendment*

***(a) the initial contractual maturity of debt instruments spans one year;***

***deleted***

Or. en

*Justification*

*See amendment to recital 10*

**Amendment 69**  
**Ernest Urtasun**  
on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 1 – paragraph 2**

Directive 2014/59/EU

Article 108 – paragraph 2 – point a

*Text proposed by the Commission*

(a) the initial contractual maturity of debt instruments *spans* one year;

*Amendment*

(a) the initial contractual maturity of debt instruments *is of at least* one year;

Or. en

**Amendment 70**

**Jonás Fernández**

**Proposal for a directive**

**Article 1 – paragraph 2**

Directive 2014/59/EU

Article 108 – paragraph 2 – point a

*Text proposed by the Commission*

(a) the initial contractual maturity of debt instruments *spans* one year;

*Amendment*

(a) the initial contractual maturity of debt instruments *is at least* one year;

Or. en

**Amendment 71**

**Luigi Morgano**

**Proposal for a directive**

**Article 1 – paragraph 2**

Directive 2014/59/EU

Article 108 – paragraph 2 – point b

*Text proposed by the Commission*

(b) they have no derivative features;

*Amendment*

(b) they have no derivative features, *unless the following conditions are met:*

(i) *a given amount of the liability arising from the debt instrument is known in advance at the time of issuance, is fixed, and not affected by a derivative feature;*

*(ii) the debt instrument, including its derivative feature, is not subject to any netting agreement and its valuation is not subject to Article 49(3); such liabilities shall only be included in the amount of own funds and eligible liabilities for the part that corresponds with the amount referred to in point (i);*

Or. en

*Justification*

*The proposed amendments clarify that debt instruments with embedded derivatives should be considered under certain circumstances eligible liabilities for the purposes of this directive.*

**Amendment 72**  
**Fulvio Martusciello**

**Proposal for a directive**  
**Article 1 – paragraph 2**  
Directive 2014/59/EU  
Article 108 – paragraph 2 – point b

*Text proposed by the Commission*

(b) they have no derivative features;

*Amendment*

(b) they have no derivative features,  
***unless all the eligibility conditions for such instruments to be eligible for MREL are met;***

Or. en

*Justification*

*Debt instruments with embedded derivatives (Structured notes, equity certificates) should be considered eligible if: a) the principal is protected (even partially) at maturity and always known; b) only the interest component with a derivative feature is linked to an Equity market index, while the principal redemption at maturity is protected, fixed, has no derivative feature.*

**Amendment 73**  
**Marco Zanni**

**Proposal for a directive**  
**Article 1 – paragraph 2**  
Directive 2014/59/EU  
Article 108 – paragraph 2 – point b

*Text proposed by the Commission*

(b) they have no *derivative features*;

*Amendment*

(b) they have no *embedded derivatives and are not derivatives themselves*;

Or. en

**Amendment 74**  
**Marco Zanni**

**Proposal for a directive**  
**Article 1 – paragraph 2**  
Directive 2014/59/EU  
Article 108 – paragraph 2 – point b a (new)

*Text proposed by the Commission*

*(ba) they are suitable for the client;*

*Amendment*

Or. en

*Justification*

*As defined in the Directive 2014/65/EU (MiFID II).*

**Amendment 75**  
**Marco Zanni**

**Proposal for a directive**  
**Article 1 – paragraph 2**  
Directive 2014/59/EU  
Article 108 – paragraph 2 – point c

*Text proposed by the Commission*

(c) the relevant contractual documentation related to the issuance explicitly refers to the ranking under this subparagraph.

*Amendment*

(c) the relevant contractual documentation *and, where applicable, the prospectus* related to the issuance explicitly refers to the ranking under this subparagraph, *mentioning the higher risk*

*of this investment.*

Or. en

**Amendment 76**

**Ernest Urtasun**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 1 – paragraph 2**

Directive 2014/59/EU

Article 108 – paragraph 2 – point c

*Text proposed by the Commission*

(c) the relevant contractual documentation related to the issuance explicitly refers to the ranking under this subparagraph.

*Amendment*

(c) the relevant contractual documentation related to the issuance ***and, where applicable, the prospectus*** explicitly refers to the ranking under this subparagraph.

Or. en

**Amendment 77**

**Fabio De Masi**

**Proposal for a directive**

**Article 1 – paragraph 2**

Directive 2014/59/EU

Article 108 – paragraph 2 – point c a (new)

*Text proposed by the Commission*

*Amendment*

***(ca) they can be sold only to professional clients as defined in point (10) of Article 4 (1) of Directive 2014/65/EU.***

Or. en

**Amendment 78**

**Fabio De Masi**

**Proposal for a directive**  
**Article 1 – paragraph 2**  
Directive 2014/59/EU  
Article 108 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

**2a. In Member States where ordinary unsecured claims resulting from debt instruments with the highest priority ranking among debt instruments under national law governing normal insolvency proceedings, as it stood prior to the adoption of the legal instruments necessary to comply with [this Directive], are statutorily subordinated to other ordinary senior liabilities, Member States shall ensure that debt instruments that meet the conditions referred to in this paragraph rank *pari passu* with such statutorily subordinated senior unsecured debt instruments under national insolvency law.**

Or. en

*Justification*

*ECB opinion*

**Amendment 79**  
**Ernest Urtasun**  
on behalf of the Verts/ALE Group

**Proposal for a directive**  
**Article 1 – paragraph 2**  
Directive 2014/59/EU  
Article 108 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

**2a. Member States shall ensure that, for entities referred to in points (a), (b), (c) and (d) of Article 1(1), ordinary unsecured claims other than those resulting from debt instruments have a**

*higher priority ranking in national law governing normal insolvency proceedings than ordinary unsecured claims resulting from debt instruments issued after ... [the date of application of this Directive].*

Or. en

#### *Justification*

*Conferring a priority ranking on ordinary unsecured claims other than those resulting from debt instruments; including all deposits is expected to enhance the implementation of the bail-in tool in resolution, because the resolution authority will be able to bail in other senior unsecured bank debt instruments prior to deposits, while minimising the risk of compensation claims under the ‘no creditor worse off’ principle.*

#### **Amendment 80** **Gabriel Mato**

**Proposal for a directive**  
**Article 1 – paragraph 2**  
Directive 2014/59/EU  
Article 108 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

**2a. Member States shall ensure that in national law governing normal insolvency proceedings the regulatory capital instruments (namely Common Equity Tier 1 instruments, Additional Tier 1 instruments and Tier 2 instruments as defined under Regulation (EU) no 575/2013) shall have lower ranking than the ranking provided for the rest of subordinated claims not qualifying as regulatory capital instruments.**

Or. en

#### **Amendment 81** **Jonás Fernández**

**Proposal for a directive**  
**Article 1 – paragraph 2**  
Directive 2014/59/EU  
Article 108 – paragraph 4

*Text proposed by the Commission*

4. Member States shall ensure that their national laws governing normal insolvency proceedings as they were ***adopted at [31 December 2016]*** apply to ordinary unsecured claims resulting from debt instruments issued by entities referred to in points (a), (b), (c) and (d) of Article 1(1) prior to ***[date of application]*** of this Directive – ***July 2017***."

*Amendment*

4. Member States shall ensure that their national laws governing normal insolvency proceedings as they were ***in force on the day prior to the date of implementation of this Directive in national law*** apply to ordinary unsecured claims resulting from debt instruments issued by entities referred to in points (a), (b), (c) and (d) of Article 1(1) prior to ***the*** date of ***implementation*** of this Directive ***into national law***.

Or. en

**Amendment 82**  
**Fabio De Masi**

**Proposal for a directive**  
**Article 1 – paragraph 2**  
Directive 2014/59/EU  
Article 108 – paragraph 4

*Text proposed by the Commission*

4. Member States shall ensure that their national laws governing normal insolvency proceedings as they were ***adopted at [31 December 2016]*** apply to ordinary unsecured claims resulting from debt instruments issued by entities referred to in points (a), (b), (c) and (d) of Article 1(1) prior to ***[date of application]*** of this Directive – ***July 2017***."

*Amendment*

4. Member States shall ensure that their national laws governing normal insolvency proceedings as they were ***in force on the day prior to the date of implementation of this directive in national law*** apply to ordinary unsecured claims resulting from debt instruments issued by entities referred to in points (a), (b), (c) and (d) of Article 1(1) prior to ***the*** date of ***implementation*** of this Directive ***in national law***.

Or. en



*Justification*

*ECB opinion.*

**Amendment 83**

**Ernest Urtasun**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 1 – paragraph 2**

Directive 2014/59/EU

Article 108 – paragraph 4 – subparagraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***Member States shall ensure that debt instruments issued by entities referred to in points (a), (b), (c) and (d) of Article 1(1) after [the date of application of this Directive] shall comply with the criteria set out in points (a), (b), (c) of paragraph 2.***

Or. en

*Justification*

*This clause effectively ensures that all senior unsecured claims in the form of transferable debt will in future be of the “non-preferred” TLAC-compatible variety.*

**Amendment 84**

**Fabio De Masi**

**Proposal for a directive**

**Article 1 – paragraph 2**

Directive 2014/59/EU

Article 108 – paragraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

***4a. Member States shall ensure that all debt instruments as defined in point (48) of Article 2(1) issued by entities referred to in points (a), (b), (c) and (d) of Article 1(1) after the date of***

*implementation of this Directive shall comply with the criteria set out in points (a), (b), (c) and (c a) of paragraph 2.*

Or. en

**Amendment 85**  
**Ernest Urtasun**  
on behalf of the Verts/ALE Group

**Proposal for a directive**  
**Article 1 – paragraph 2**  
Directive 2014/59/EU  
Article 108 – paragraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

*4a. Member States shall ensure that, for the purposes of Article 25 of Directive 2014/65/EU the debt instruments referred to in paragraph 2 are considered complex and that the provisions in that Directive concerning conflict of interest are strictly enforced in relation to the sale of such instruments to existing clients of the issuing institution. Member States shall ensure that investment firms are regarded as not fulfilling their obligations under Directive 2014/65/EU where they pay or are paid any fee or commission, or provide or are provided with any non-monetary benefit or whenever they do not disclose specific internal sales guidelines in connection with the marketing of senior non-preferred debt to investors not qualifying as professionals under that Directive.*

Or. en

**Amendment 86**  
**Marco Valli**

**Proposal for a directive**  
**Article 1 – paragraph 2**

PE609.639v02-00

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*Text proposed by the Commission*

*Amendment*

**4a.** *Member States shall ensure that investment by pension, insurance and reinsurance funds in the new category of ‘non-preferred’ debt instruments with the highest priority referred to in paragraph 2, is admissible only up to a limit of 2% of their total liquidity;*

Or. it

**Amendment 87**  
**Burkhard Balz**

**Proposal for a directive**  
**Article 1 – paragraph 2**  
Directive 2014/59/EU  
Article 108 – paragraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

**4a.** *Where, after 31 December 2016 and before the [date of entry into force of this Directive], a Member State has adopted a national law governing the ranking in normal insolvency proceedings of unsecured claims resulting from debt instruments issued after the date of application of such national law, paragraph 4 shall not apply to claims resulting from debt instruments issued after the entry into force of that national law provided that it complies with the following:*

- (a) that national law provides that, for entities referred to in points (a), (b), (c) and (d) of Article (1) 1, ordinary unsecured claims shall, in normal insolvency proceedings, have a higher priority ranking than that of unsecured claims resulting from debt instruments which meet the following conditions:*
- (i) they are not derivatives, have no*

*embedded derivatives and the initial contractual maturity spans one year; and*

*(ii) the relevant contractual documentation and, where applicable, the prospectus, related to the issuance explicitly refers to the lower ranking under the applicable law;*

*(b) that national law provides that unsecured claims resulting from debt instruments that meet the conditions laid down in point (a) of this paragraph shall, in normal insolvency proceedings, have a higher priority ranking than the priority ranking of claims resulting from instruments referred to in points (a) to (d) of Article 48 (1).*

*On the date of entry into force of the measures under national law transposing this Directive the unsecured claims resulting from debt instruments referred to in point (b) shall have the same priority ranking as the one referred to in points (a), (b) and (c) of paragraph 2 and in paragraph 3.*

Or. en

**Amendment 88**  
**Syed Kamall**

**Proposal for a directive**  
**Article 1 – paragraph 2**  
Directive 2014/59/EU  
Article 108 – paragraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

*4a. Where, after 31 December 2016 and before the [date of entry into force of this Directive], a Member State has adopted a national law governing the ranking in normal insolvency proceedings of unsecured claims resulting from debt instruments issued after the date of application of such national law, paragraph 4 shall not apply to claims*

*resulting from debt instruments issued after the entry into force of that national law provided that it complies with the following:*

*(a) that national law provides that, for entities referred to in points (a), (b), (c) and (d) of Article 1(1), ordinary unsecured claims shall, in normal insolvency proceedings, have a higher priority ranking than that of unsecured claims resulting from debt instruments which meet the following conditions:*

*(i) they are not derivatives and have no embedded derivatives; and*

*(ii) the relevant contractual documentation and, where applicable, the prospectus, related to the issuance explicitly refers to the lower ranking under the applicable law;*

*(b) that national law provides that unsecured claims resulting from debt instruments that meet the conditions laid down in point (a) of this paragraph shall, in normal insolvency proceedings, have a higher priority ranking than the priority ranking of claims resulting from instruments referred to in points (a) to (d) of Article 48(1).*

*On the [date of entry into force of measures under national law transposing this Directive], the unsecured claims resulting from debt instruments referred to in point (b), shall have the same priority ranking as the one referred to in points (b) and (c) of paragraph 2 and in paragraph 3.*

Or. en

**Amendment 89**  
**Ernest Urtasun**  
on behalf of the Verts/ALE Group

**Proposal for a directive**  
**Article 1 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

***4b. Resolution authorities shall, as part of the assessment of resolvability in accordance with Articles 15 and 16 monitor the extent to which debt instruments susceptible to bail-in are held by investors that do not qualify as professional investors according to Directive 2014/65/EU and report the results to EBA at least once per year.***

***EBA shall disclose annually on a group or, where relevant, institution specific basis the amounts of debt instruments susceptible to bail-in that are held by investors that do not qualify as professional investors.***

***Where, on the basis of this information, EBA deems it necessary, it shall issue warnings or recommendations for remedial action.***

***EBA shall within ... [12 months from the date of the publication of this Directive] issue draft regulatory technical standards in accordance with Article 10 of Regulation (EU) No1093/2010 to specify the definition of derivative features referred to in point (b) of paragraph 2.***

***The Commission is empowered to supplement this Directive by adopting the regulatory technical standards referred to in the fourth subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.***

Or. en

**Amendment 90**  
**Burkhard Balz**

**Proposal for a directive**  
**Article 1 – paragraph 2**

Directive 2014/59/EU  
Article 108 – paragraph 4 b (new)

*Text proposed by the Commission*

*Amendment*

**4b. EBA shall develop draft regulatory technical standards to specify the condition referred to in point (b) of paragraph 2.**

**EBA shall submit those draft regulatory technical standards to the Commission by [xxx].**

**The Commission is empowered to supplement this Directive by adopting the regulatory technical standards referred to in the first subparagraph in accordance with the Articles 10 to 14 of Regulation (EU) No 1093/2010.**

Or. en

**Amendment 91**  
**Syed Kamall**

**Proposal for a directive**  
**Article 1 – paragraph 2**  
Directive 2014/59/EU  
Article 108 – paragraph 4 b (new)

*Text proposed by the Commission*

*Amendment*

**4b. Member States which, prior to 31 December 2016, have adopted a national law governing normal insolvency proceedings whereby**

**(i) unsecured claims resulting from debt instruments issued by entities referred to in points (a),(b),(c) and (d) of Article 1(1) are split into two or more different priority rankings or where the priority ranking of unsecured claims resulting from debt instruments is changed in relation to all other ordinary unsecured claims of the same ranking, and**

**(ii) that national law has the objective of**

*ensuring that eligible liabilities that meet the criteria for inclusion in the minimum requirement for own funds and eligible liabilities of entities referred to in points (a), (b), (c) and (d) of Article 1 (1) are subordinated to other ordinary unsecured claims, may provide that debt instruments with the lowest priority ranking among those ordinary unsecured claims have the same ranking as the one of claims that meet the conditions of paragraph 2(b) and (c) and paragraph 3.*

Or. en

**Amendment 92**  
**Peter Simon**

**Proposal for a directive**  
**Article 1 – paragraph 2**  
Directive 2014/59/EU  
Article 108 – paragraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

**4a.** *Member States which, prior to 31 December 2016 have adopted a national law governing normal insolvency proceedings whereby unsecured claims resulting from debt instruments issued by entities referred to in points (a), (b), (c) and (d) of Article 1(1) are split into two or more different priority rankings or where the priority ranking of unsecured claims resulting from debt instruments is changed in relation to all other ordinary unsecured claims of the same ranking, may provide that debt instruments with the lowest priority ranking among those ordinary unsecured claims have the same ranking as the one of claims that meet the conditions of paragraph 2(b) and (c) and paragraph 3.*

Or. de



**Amendment 93**  
**Pedro Silva Pereira**

**Proposal for a directive**  
**Article 1 – paragraph 2**  
Directive 2014/59/EU  
Article 108 – paragraph 4 b (new)

*Text proposed by the Commission*

*Amendment*

**4b. Member States which prior to ... [date of entry into force of this Directive] have adopted a national law governing the ranking in normal insolvency proceedings of unsecured claims resulting from debt instruments issued after the date of application of such national law, may provide that those debt instruments that comply with the conditions set in points (a), (b) and (c) of paragraphs 2 and in paragraph 3 have the same insolvency ranking as the 'non-preferred' senior debt instruments issued under the conditions of this Directive.**

Or. en

**Amendment 94**  
**Jonás Fernández**

**Proposal for a directive**  
**Article 1 – paragraph 2**  
Directive 2014/59/EU  
Article 108 – paragraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

**4a. In Member States where ordinary unsecured claims resulting from debt instruments, with the highest priority ranking among debt instruments, under national law governing normal insolvency proceedings, before [the date for implementation of this Directive into national law], are statutorily subordinated to other ordinary senior liabilities, Member States shall ensure that debt**

*instruments that meet the conditions referred to in paragraph 2 points (a) and (b) rank pari passu to such statutorily subordinated unsecured claims resulting from debt instruments.*

Or. en

**Amendment 95**  
**Pedro Silva Pereira**

**Proposal for a directive**  
**Article 1 – paragraph 2**  
Directive 2014/59/EU  
Article 108 – paragraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

**4a.** *Paragraph 4 shall not prevent Member States from adopting national laws governing the ranking of deposits in normal insolvency procedures, regardless of the date in which they were made and of their current position in the ranking in normal insolvency procedures.*

Or. en

**Amendment 96**  
**Jonás Fernández**

**Proposal for a directive**  
**Article 1 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 1a**

*This Directive harmonises the ranking under normal insolvency proceedings of unsecured claims resulting from debt instruments and does not cover the insolvency ranking of deposits beyond the existing applicable provisions of Directive 2014/59/EU. Therefore, this Directive is without prejudice to national laws of*

*Member States governing normal insolvency proceedings that cover the insolvency ranking of deposits not harmonised by Directive 2014/59/EU, irrespectively of how deposits rank in the insolvency proceedings and of their dates.*

Or. en

**Amendment 97**  
**Pedro Silva Pereira**

**Proposal for a directive**  
**Article 2 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

Member States shall ***adopt and publish by [June 2017]*** the laws, regulations and administrative provisions ***necessary*** to comply with this Directive. They shall communicate the text of those measures to the Commission forthwith.

*Amendment*

Member States shall ***bring into force*** the laws, regulations and administrative provisions to comply with this Directive by ... .. ***[12 months from the date of entry into force of this Directive]***. They shall communicate the text of those measures to the Commission forthwith.

Or. en

**Amendment 98**  
**Othmar Karas**

**Proposal for a directive**  
**Article 2 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

Member States shall ***adopt and publish by [June 2017]*** the laws, regulations and administrative provisions necessary to comply with this Directive. They shall communicate the text of those measures to the Commission forthwith.

*Amendment*

Member States shall ***bring into force*** by ... ***[12 months from the date of entry into force of this Directive]*** ***at the latest*** the laws, regulations and administrative provisions necessary to comply with this Directive. They shall communicate the text of those measures to the Commission forthwith.

Or. de

### *Justification*

*No later than 12 months from the date of entry into force of the revised BRRD articles on the ranking of unsecured debt instruments in insolvency hierarchy, Member States should bring into force the laws, regulations and administrative provisions necessary to comply with the directive in force, with a view to ensuring careful transposition into national law.*

#### **Amendment 99** **Pedro Silva Pereira**

#### **Proposal for a directive** **Article 2 – paragraph 1 – subparagraph 2**

##### *Text proposed by the Commission*

Member States shall apply those measures *from [July 2017]*.

##### *Amendment*

Member States shall apply those measures *at the date of their entry into force in the national law that shall occur no later than on ... [12 month from the date of entry into force of this Directive]*.

Or. en

#### **Amendment 100** **Othmar Karas**

#### **Proposal for a directive** **Article 2 – paragraph 1 – subparagraph 2**

##### *Text proposed by the Commission*

Member States shall apply those measures from *[July 2017]*.

##### *Amendment*

Member States shall apply those measures *as from the date of their entry into force in national law, which shall occur no later than on ... [12 months from the date of entry into force of this Directive]*.

Or. de

### *Justification*

*No later than 12 months from the date of entry into force of the revised BRRD articles on the ranking of unsecured debt instruments in insolvency hierarchy, Member States should bring into force the laws, regulations and administrative provisions necessary to comply with the directive in force, with a view to ensuring careful transposition into national law.*

