Committee on Economic and Monetary Affairs

2016/0363(COD)

4.7.2017

***I
DRAFT REPORT

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
(COM(2016)0853 – C8-0479/2016 – 2016/0363(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Gunnar Hökmark

Symbols for procedures

*	Consultation procedure
***	Consent procedure
***I	Ordinary legislative procedure (first reading)
***II	Ordinary legislative procedure (second reading)
***III	Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ▌ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.
By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT 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 (COM(2016)0853 – C8-0479/2016 – 2016/0363(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2016)0853),

– having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0479/2016),

– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

– having regard to Rule 59 of its Rules of Procedure,

– having regard to the report of the Committee on Economic and Monetary Affairs (A8-0000/2017),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a directive
Recital 1

Text proposed by the Commission	*Amendment*
(1) The Financial Stability Board (FSB) published the Total Loss-Absorbing Capacity (TLAC) Term Sheet ('the TLAC standard') on 9 November 2015 which was endorsed by the G-20 in November 2015. The TLAC standard ***requires*** global systemically important banks (G-SIBs), referred to as global systemically important institutions (G-SIIs) in the Union framework, ***to hold a sufficient minimum amount of highly loss absorbing (bail-in-able) liabilities to ensure smooth and fast absorption of losses and recapitalisation in resolution***. In its Communication of 24 November 2015[11], the Commission committed to bring forward a legislative proposal by the end of 2016 that would enable the TLAC standard to be implemented by the internationally agreed deadline of 2019.	(1) The Financial Stability Board (FSB) published the Total Loss-Absorbing Capacity (TLAC) Term Sheet ('the TLAC standard') on 9 November 2015 which was endorsed by the G-20 in November 2015. 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 recapitalization 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”*** [***10a***]. In its Communication of 24 November 2015[11], the Commission committed ***itself*** to bring forward a legislative proposal by the end of 2016 that would enable the TLAC standard to be implemented ***into Union law*** by the internationally agreed deadline of 2019.
__________________	__________________
	[***10a***] ***Principles on Loss-absorbing and Recapitalisation Capacity of G-SIBs in Resolution, Financial Stability Board, 9 November 2015***
[11] Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions, "Towards the completion of the Banking Union", 24.11.2015, COM(2015) 587 final	[11] Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions, "Towards the completion of the Banking Union", 24.11.2015, COM(2015) 587 final

Or. en

Amendment 2

Proposal for a directive
Recital 2

Text proposed by the Commission	*Amendment*
(2) The implementation of the TLAC standard in the Union needs to take ***account for*** the existing institution-specific minimum requirement for own funds and eligible liabilities ('MREL') applicable to all Union ***credit*** institutions ***and investment firms*** as laid down in Directive 2014/59/EU of the European Parliament and of the Council[12] . As TLAC and MREL pursue the same objective of ensuring that Union ***credit*** institutions ***and investment firms*** have sufficient loss absorbing capacity, the two requirements should be complementary elements of a common framework. Operationally, the harmonised minimum level of the TLAC standard for G-SIIs ('the TLAC minimum requirement') should be introduced in Union legislation through amendments to Regulation (EU) No 575/2013 of the European Parliament and of the Council[13] , while the institution-specific add-on for G-SIIs and the institution-specific requirement for non-G-SIIs should be addressed through targeted amendments to Directive 2014/59/EU and Regulation (EU) No 806/2014 of the European Parliament and of the Council[14] . The relevant provisions of this Directive as regards the ranking of unsecured debt instruments in insolvency hierarchy are complementary with those in the aforementioned pieces of legislation and in Directive 2013/36/EU[15]	(2) The implementation of the TLAC standard in the Union needs to take ***into account*** the existing institution-specific minimum requirement for own funds and eligible liabilities ('MREL') applicable to all Union institutions as laid down in Directive 2014/59/EU of the European Parliament and of the Council [12]. As TLAC and MREL pursue the same objective of ensuring that Union institutions have sufficient loss absorbing ***and recapitalisation*** capacity, the two requirements should be complementary elements of a common framework. Operationally, the ***Commission proposed that the*** harmonised minimum level of the TLAC standard for G-SIIs ('the TLAC minimum requirement') should be introduced in Union legislation through amendments to Regulation (EU) No 575/2013 of the European Parliament and of the Council[13], while the institution-specific add-on for G-SIIs and the institution-specific requirement for non-G-SIIs should be addressed through targeted amendments to Directive 2014/59/EU and Regulation (EU) No 806/2014 of the European Parliament and of the Council[14]. The relevant provisions of this Directive as regards the ranking of unsecured debt instruments in insolvency hierarchy are complementary with those in the aforementioned pieces of legislation and in Directive 2013/36/EU ***of the European Parliament and of the Council*** [15]***.***
[12] 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	[12] 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	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 ***of the European Parliament and of the Council***, OJ L 173, 12.6.2014, p. 190
[13] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, OJ L 176, 27.6.2013, p.1	[13] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, OJ L 176, 27.6.2013, p.1
[14] Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010, OJ L 225, 30.7.2014, p. 1	[14] Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010, OJ L 225, 30.7.2014, p. 1
[15] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, OJ L 176, 27.6.2013, p. 338	[15] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, OJ L 176, 27.6.2013, p. 338

Or. en

Amendment 3

Proposal for a directive
Recital 3

Text proposed by the Commission	*Amendment*
(3) Member States should ensure that ***credit*** institutions ***and investment firms*** should have sufficient loss-absorbing and recapitalisation capacity to ensure smooth	(3) Member States should ensure that institutions should have sufficient loss-absorbing and recapitalisation capacity to ensure smooth and fast absorption of losses

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.	and recapitalisation with a minimum 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 through an amendment of*** Regulation (EU) No 575/2013 and a requirement for own funds and ***eligible*** liabilities as provided in Directive 2014/59/EU.

Or. en

Amendment 4

Proposal for a directive
Recital 4

Text proposed by the Commission	*Amendment*
(4) The TLAC standard, ***as*** implemented in Union law ***by*** Regulation (EU) No 575/2013, requires G-SIIs to meet the minimum TLAC requirement, with certain exceptions, with subordinated liabilities ***resulting from debt instruments*** that rank in insolvency below ***other senior liabilities*** ('subordination requirement'). ***Directive 2014/59/EU allows resolution authorities to request, on a case-by-case basis, that G-SIIs and other*** institutions meet their firm-specific requirement with subordinated liabilities so as to ***alleviate*** the risk of legal challenge by creditors on the basis that their losses in resolution are higher than the losses that they would incur under normal insolvency proceedings.	(4) The TLAC standard, ***that will be*** implemented in Union law ***through an amendment of*** Regulation (EU) No 575/2013, requires G-SIIs to meet the minimum TLAC requirement, with certain exceptions, with subordinated liabilities that rank in insolvency below ***liabilities excluded from TLAC*** ('subordination requirement'). ***Under the TLAC standard, subordination should be achieved through the legal effects of a contract ('contractual subordination'), the laws of a given jurisdiction ('statutory subordination') or a given corporate structure ('structural subordination'). Where required by Directive 2014/59/EU,*** institutions ***falling within the scope of that Directive should*** meet their firm-specific requirement with subordinated liabilities so as to ***minimise*** the risk of legal challenge by creditors on the basis that their losses in resolution are higher than the losses that they would incur under normal insolvency proceedings ***(no creditor worse off principle)***.

Or. en

Amendment 5

Proposal for a directive
Recital 4 a (new)

Text proposed by the Commission	*Amendment*
	(4 a) 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.

Or. en

Amendment 6

Proposal for a directive
Recital 5

Text proposed by the Commission	*Amendment*
(5) A number of Member States have amended or are in the process of amending the insolvency ranking of unsecured senior debt under their national insolvency law to allow their ***credit*** institutions ***and investment firms*** to comply with the subordination requirement ***as provided in Regulation (EU) No 575/2013 and Directive 2014/59/EU***.	(5) A number of Member States have amended or are in the process of amending the insolvency ranking of unsecured senior debt under their national insolvency law to allow their institutions to comply with the subordination requirement ***in a more efficient manner, thereby facilitating resolution***.

Or. en

Amendment 7

Proposal for a directive
Recital 6

Text proposed by the Commission	Amendment
(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.	(6) The national rules adopted so far diverge significantly. The absence of harmonised Union rules creates uncertainty for issuing institutions and investors alike and ***complicates*** the application of the bail-in tool for cross-border institutions. This also results in competitive distortions on the internal market given that the costs for institutions to comply with the subordination requirement and the costs borne by investors when buying debt instruments issued by institutions may differ considerably across the Union.

Or. en

Amendment 8

Proposal for a directive
Recital 9

Text proposed by the Commission	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***	(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***

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.	***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. ***Member States should be allowed to create several classes for other ordinary unsecured liabilities, provided that they ensure that only the 'non-preferred' senior class of debt instruments is eligible to meet the subordination requirement.***

Or. en

Amendment 9

Proposal for a directive
Recital 10

Text proposed by the Commission	*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.	(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 and*** have no ***embedded derivatives***, 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 Directive.

Or. en

Amendment 10

Proposal for a directive
Recital 11

Text proposed by the Commission	*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***.	(11) To enhance legal certainty for investors, Member States should 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 instruments. 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 ***and any*** subordinated liabilities.

Or. en

Amendment 11

Proposal for a directive
Recital 12

Text proposed by the Commission	*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, cannot be sufficiently achieved by the Member States	(12) Since the objectives of this Directive, namely to lay down ***harmonised*** rules for ***the insolvency ranking of unsecured debt instruments*** for the purposes of the Union recovery and resolution framework, cannot be

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.	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 ***Directive*** does not go beyond what is necessary in order to achieve those objectives. ***In particular, this Directive should be without prejudice to other options to comply with the subordination requirement provided for in the TLAC standard.***

Or. en

Amendment 12

Proposal for a directive
Recital 13

Text proposed by the Commission	*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***]***.	(13) It is appropriate for the 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***. In addition, Member States may, after 31 December 2016 and before the date of entry into force of this Directive, adapt their national laws governing the ranking in normal insolvency proceedings of unsecured claims resulting from debt instruments issued after the date of application of such laws in order to comply with the conditions laid down in this Directive. In that case, only the unsecured claims resulting from the debt instruments issued before the application of this new*** national law ***should continue to be governed by the laws of the Member States as they were*** adopted on 31 December 2016.

Or. en

Amendment 13

Proposal for a directive
Recital 13 a (new)

Text proposed by the Commission	*Amendment*
	(13 a) This Directive should not prevent Member States from providing that this Directive should continue to apply when the issuing entities are no longer subject to the Union resolution framework due, in particular, to the divestment of their credit or investment activities to a third party.

Or. en

Amendment 14

Proposal for a directive
Recital 13 b (new)

Text proposed by the Commission	Amendment
	(13 b) 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. By ... [three years after the date of entry into force of this Directive], the Commission should review the application of Directive 2014/59/EC with regard to the ranking of deposits in insolvency and assess in particular the need for any further amendments thereof.

Or. en

Amendment 15

Proposal for a directive
Article 1 – paragraph – -1 (new)
Directive 2014/59/EU
Article 2 – paragraph 1 – point 48

Present text	Amendment
	-1. In Article 2(1) point (48) is replaced by the following:
(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;	***“***(48) ‘debt instruments’***:***
	(i) for the purpose of points (g) and (j) of Article 63(1)***,*** means bonds and other forms of transferrable debt, instruments creating or acknowledging a debt, and

	instruments giving rights to acquire debt instruments; ***and***
	(ii) for the purpose of Article 108, means bonds and other forms of transferrable debt and instruments creating or acknowledging a debt*.*”

Or. en

Amendment 16

Proposal for a directive
Article 1 – paragraph 1
Directive 2014/59/EU
Article 108 – title and subparagraph 1 – point a

Text proposed by the Commission	*Amendment*
1. The words "of deposits" are deleted from the title of Article 108 and the word "non-preferred" is deleted from point (a) of the first subparagraph of Article 108.	***deleted***

Or. en

Amendment 17

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

Present text	*Amendment*
	1a. In Article 108 the title is replaced by the following:
Ranking ***of deposits*** in insolvency hierarchy	Ranking in insolvency hierarchy

Or. en

Amendment 18

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

Present text	*Amendment*
	1b. In Article 108, paragraph 1, is replaced by the following
“1. Member States shall ensure that in national law governing normal insolvency proceedings:	“1. Member States shall ensure that in national law governing normal insolvency proceedings:
(a) the following have the same priority ranking which is higher than the ranking provided for the claims of ordinary unsecured***, non-preferred*** creditors:	(a) the following have the same priority ranking which is higher than the ranking provided for the claims of ordinary unsecured creditors:
(i) that part of eligible deposits from natural persons and micro, small and medium-sized enterprises which exceeds the coverage level provided for in Article 6 of Directive 2014/49/EU;	(i) that part of eligible deposits from natural persons and micro, small and medium-sized enterprises which exceeds the coverage level provided for in Article 6 of Directive 2014/49/EU;
(ii) deposits that would be eligible deposits from natural persons, micro, small and medium–sized enterprises were they not made through branches located outside the Union of institutions established within the Union.	(ii) deposits that would be eligible deposits from natural persons, micro, small and medium–sized enterprises were they not made through branches located outside the Union of institutions established within the Union.
(b) the following have the same priority ranking which is higher than the ranking provided for under point (a):	(b) the following have the same priority ranking which is higher than the ranking provided for under point (a):
(i) covered deposits;	(i) covered deposits;
(ii) deposit guarantee schemes subrogating to the rights and obligations of covered depositors in insolvency.	(ii) deposit guarantee schemes subrogating to the rights and obligations of covered depositors in insolvency.

Or. en

Amendment 19

Proposal for a directive
Article 1 – paragraph 2

Directive 2014/59/EU
Article 108 – paragraph 2 – introductory part

Text proposed by the Commission	*Amendment*
2. Member States shall ensure that, for entities referred to in points (a), (b), (c) and (d) of Article 1(1), ordinary unsecured claims ***resulting from debt instruments with the highest priority ranking among debt instruments*** in national law governing normal insolvency proceedings have a higher priority ranking than that of unsecured claims resulting from debt instruments which meet the following conditions:	2. Member States shall ensure that, for entities referred to in points (a), (b), (c) and (d) of Article 1(1), ordinary unsecured claims ***shall,*** in national law governing normal insolvency proceedings**,** have a higher priority ranking than that of unsecured claims resulting from debt instruments which meet the following conditions:

Or. en

Amendment 20

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

Amendment 21

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

Text proposed by the Commission	*Amendment*
(b) they have no ***derivative features***;	(b) they ***are not derivatives and*** have no ***embedded derivatives***; ***and,***

Or. en

Amendment 22

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

Text proposed by the Commission	*Amendment*
(c) the relevant contractual documentation related to the issuance explicitly refers to the ranking under this ***subparagraph***.	(c) the relevant contractual documentation ***and, where applicable, the prospectus,*** related to the issuance explicitly refers to the ***lower*** ranking under this ***paragraph***.

Or. en

Amendment 23

Proposal for a directive
Article 1 – paragraph 2
Directive 2014/59/EU
Article 108 – paragraph 3

Text proposed by the Commission	*Amendment*
3. Member States shall ensure that ***ordinary*** unsecured claims resulting from debt instruments ***referred to in*** paragraph 2 shall have a higher priority ranking in national law governing normal insolvency proceedings than the priority ranking of claims resulting from instruments referred to in points (a) to (d) of Article 48(1).	3. Member States shall ensure that unsecured claims resulting from debt instruments ***that meet the conditions laid down in points (b) and (c) of*** paragraph 2 shall have a higher priority ranking in national law governing normal insolvency proceedings than the priority ranking of claims resulting from instruments referred to in points (a) to (d) of Article 48(1).

Or. en

Amendment 24

Proposal for a directive
Article 1 – paragraph 2

Directive 2014/59/EU
Article 108 – paragraph 4

Text proposed by the Commission	*Amendment*
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***]."*	4. ***Without prejudice to paragraphs 4a and 4b,*** Member States shall ensure that their national laws governing normal insolvency proceedings as they were adopted at 31 December 2016 apply to ***the ranking in normal insolvency proceedings of*** 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 ***entry into force of measures under national law transposing this Directive***.

Or. en

Amendment 25

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

Text proposed by the Commission	*Amendment*
	4 a. 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***

Text proposed by the Commission	Amendment
	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 26

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

Text proposed by the Commission	*Amendment*
	4 b. 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. en

Amendment 27

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

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

Or. en

Amendment 28

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

Text proposed by the Commission	*Amendment*
Member States shall apply those measures ***from [July 2017***].	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 months from the date of entry into force of this Directive***].

Or. en

Amendment 29

Proposal for a directive
Article 2 – paragraph 2 a (new)

Text proposed by the Commission	*Amendment*
	2 a. Paragraph 2 shall not apply where the national measures of Member States, in force before the date of entry into force of this Directive, comply with this Directive. In such a case, Member States shall notify the Commission accordingly.

Or. en

Amendment 30

Proposal for a directive
Article 2 – paragraph 3

Text proposed by the Commission	*Amendment*
3. Member States shall communicate the text of the main ***provisions*** of national law which they adopt in the field covered by this Directive ***to the Commission and to European Banking Authority***.	3. Member States shall communicate ***to the Commission and to the European Banking Authority*** the text of the main ***measures*** of national law which they adopt in the field covered by this Directive.

Or. en

Amendment 31

Proposal for a directive
Article 2 a (new)

Text proposed by the Commission	*Amendment*
	Article 2 a
	Review

By ... [three years after the date of entry into force of this Directive], the Commission shall review the application of Article 108(1) of Directive 2014/59/EU. The Commission shall assess in particular the need for any 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.

Or. en

EXPLANATORY STATEMENT

The Banking Recovery and Resolution Directive (BRRD) has changed the logic of the European financial markets. It has clarified that shareholders and investors have to take on the losses by themselves, not expecting that Governments and taxpayers shall bail them out. This is a principle that applies to all regular companies and now also to European banks.

It has two important consequences that are essential to maintain. This was a main aim of your rapporteur when he as Parliament's rapporteur was responsible for advancing the original BRRD proposal and turning it into legislation and reality.

First of all, when a bank is in trouble, there is a clear roadmap for how to deal with the losses. In principle, everything is bail-inable, not only own capital with the consequence that the present owner will lose the bank, but also major investors and in the end depositors, in the ranking order decided. This means that in a resolution a bail-in can be applied without anyone being surprised or claiming that this was not foreseen. This means that there should be no room for anyone questioning or obstructing the bail-in.

For depositors and investors, this provides legal clarity and certainty which also gives security. Saved money of depositors is bailed in last and can also be refunded by national deposit insurance systems, within the applicable limits. Depositors can prepare themselves for a high level of security by spreading their savings across different banks or ensuring that the bank is safe and stable. The same applies to investors; they will be subject to a bail-in before depositors but in a designated order with different categories of capital. This facilitates an efficient bail in and at the same time provides to everyone a clear picture of the risks they are exposed to, giving an opportunity to balance the risks that are acceptable.

Secondly, the awareness that everything can be bailed in creates market discipline where everyone knows that you can lose your shares, your capital or your investments. This forces banks to finance themselves in a way that provides owners and investors with the security they want in order to invest in the bank. As rapporteur for the BRRD, it was important for me, and for Parliament, to secure that all capital was bail-inable, and by that achieving legal clarity and a disciplined market.

Against this background, your rapporteur welcomes the introduction of TLAC in European legislation and in the BRRD as well as the SRMR, based upon international rules for globally systemic important banks. At the same time, your rapporteur would like to underline that the special subordinated capital foreseen for loss absorption is not meant to circumvent the fact that all capital, all debt, is bail-inable, but rather that the subordinated debt is there to facilitate a rapid and stable process of resolution, not limit the debt that is bail-inable. For this reason, TLAC shall be streamlined in line with G20 rules but not beyond that, in order to pave the way for increased investments and clarify the risks for an investor or depositor in a bank. This approach is also important in order to achieve a level playing field for European banks in the global competition.

European banks not being GSIIS shall not be required to face the TLAC rules but the MREL already decided, of course.

With living up to TLAC standards banks should be considered to living up to the MREL requirement, not needing an extra overlapping capital for bail-in.

It is your rapporteur's view that the rules regarding TLAC and MREL must be designed in a way that they are not punishing banks with a high level of own capital. This means that the requirements on MREL must be designed so that banks with a high levels of own capital meets the same requirements on MREL as banks with a lower level of high capital.

Beyond the above mentioned elements, amendments related to the insolvency ranking are necessary in order to integrate TLAC standard requirements into the BRRD. This is because the TLAC standard stipulates the eligibility of liabilities only where they are subordinated to other liabilities. In view of this subordination requirement, the Commission has proposed the creation of a new asset class of 'non-preferred' senior debt with intention to enhance resolvability and minimise the compliance costs stemming from so far differing subordination approaches in Member States. Your rapporteur broadly supports the approach chosen by the Commission, i.e. a statutory recognition of contractual subordination.

Notwithstanding this, your rapporteur recognises that this approach may not be easily accommodated in a number of Member States where a statutory subordination has been enshrined in national legislation. In order to ensure legal certainty for investors and issuers, transitional arrangements need to be put in place. For this purpose, your rapporteur proposes a 'grandfathering regime' that addresses the applicability of national legislation adopted prior to the entry into force of this Directive.

With regard to the conditions to be met by this new asset class of non-preferred senior debt, your rapporteur takes the view that a bail-in could further be facilitated by adjusting the maturity requirements. While the Commission envisaged an initial minimum maturity of one year, your rapporteur proposes not to set minimum requirements for this. A non-preferred senior debt instrument with an initial maturity or residual maturity of less than one year would not meet MREL or TLAC requirements. However, such an instrument could still be bailed in, increasing an institution's loss absorption capacity. Hence, your rapporteur does not want to exclude institutions by default from issuing the new asset class with maturities of less than a year, as where such an initial maturity is chosen or remaining, the resolvability of that institution would improve even if MREL or TLAC requirements are not met.

Lastly, your rapporteur would like to underline that it is important for investors and issuers to swiftly get clarity and certainty about the applicable subordination requirements. In the same vein, it is however of utmost importance to clarify the eligibility criteria laid down in Article 72b of Regulation (EU) No. 575/2013 (CRR). At this, consistency and coherence between both legislative instruments must be ensured by the Legislator.