

Directive (EU) 2017/2399 of the European Parliament and of the Council
of 12 December 2017 amending Directive 2014/59/EU as regards
the ranking of unsecured debt instruments in insolvency hierarchy

Article 1

Amendments to Directive 2014/59/EU

Directive 2014/59/EU is amended as follows:

- (1) in Article 2(1), point (48) is replaced by the following:
 - (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;;
- (2) Article 108 is replaced by the following:

Article 108

Ranking in insolvency hierarchy

- 1 Member States shall ensure that in their national laws 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 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;
 - (ii) deposits that would be eligible deposits from natural persons and 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):
 - (i) covered deposits;
 - (ii) deposit guarantee schemes subrogating to the rights and obligations of covered depositors in insolvency.
- 2 Member States shall ensure that, for entities referred to in points (a) to (d) of the first subparagraph of Article 1(1), ordinary unsecured claims have, in their national

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laws governing normal insolvency proceedings, a higher priority ranking than that of unsecured claims resulting from debt instruments that meet the following conditions:

- a the original contractual maturity of the debt instruments is of at least one year;
- b the debt instruments contain no embedded derivatives and are not derivatives themselves;
- c the relevant contractual documentation and, where applicable, the prospectus related to the issuance explicitly refer to the lower ranking under this paragraph.

3 Member States shall ensure that unsecured claims resulting from debt instruments that meet the conditions laid down in points (a), (b) and (c) of paragraph 2 of this Article have a higher priority ranking in their national laws governing normal insolvency proceedings than the priority ranking of claims resulting from instruments referred to in points (a) to (d) of Article 48(1).

4 Without prejudice to paragraphs 5 and 7, 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) to (d) of the first subparagraph of Article 1(1) of this Directive prior to the date of entry into force of measures under national law transposing Directive (EU) 2017/2399 of the European Parliament and of the Council⁽¹⁾.

5 Where, after 31 December 2016 and before 28 December 2017, a Member State 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 of this Article shall not apply to claims resulting from debt instruments issued after the date of application of that national law, provided that all of the following conditions are met:

- a under that national law, and for entities referred to in points (a) to (d) of the first subparagraph of Article 1(1), ordinary unsecured claims have, in normal insolvency proceedings, a higher priority ranking than that of unsecured claims resulting from debt instruments that meet the following conditions:
 - (i) the original contractual maturity of the debt instruments is of at least one year;
 - (ii) the debt instruments contain no embedded derivatives and are not derivatives themselves; and
 - (iii) the relevant contractual documentation and, where applicable, the prospectus related to the issuance explicitly refer to the lower ranking under the national law;
- b under that national law, unsecured claims resulting from debt instruments that meet the conditions laid down in point (a) of this subparagraph have, in normal insolvency proceedings, 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 Directive (EU) 2017/2399, the unsecured claims resulting from debt instruments referred to in point (b) of the first subparagraph shall have the same priority ranking as the one referred to in points (a), (b) and (c) of paragraph 2 and in paragraph 3 of this Article.

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- 6 For the purposes of point (b) of paragraph 2 and point (a)(ii) of the first subparagraph of paragraph 5, debt instruments with variable interest derived from a broadly used reference rate and debt instruments not denominated in the domestic currency of the issuer, provided that principal, repayment and interest are denominated in the same currency, shall not be considered to be debt instruments containing embedded derivatives solely because of those features.
- 7 Member States that, prior to 31 December 2016, adopted a national law governing normal insolvency proceedings whereby ordinary unsecured claims resulting from debt instruments issued by entities referred to in points (a) to (d) of the first subparagraph of Article 1(1) are split into two or more different priority rankings, or whereby the priority ranking of ordinary unsecured claims resulting from such 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 that of claims that meet the conditions of points (a), (b) and (c) of paragraph 2 and of paragraph 3 of this Article..

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- (1) Directive (EU) 2017/2399 of the European Parliament and of the Council of 12 December 2017 amending Directive 2014/59/EU as regards the ranking of unsecured debt instruments in insolvency hierarchy ([OJ L 345, 27.12.2017, p. 96](#)).²