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European Parliament
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Subject: Response to request for information during the EP ECON Public Hearing on
28 January 2016

Dear Mr Giegold,

During the public hearing of the Single Resolution Board (SRB) Chair in the European Parliament's ECON Committee that took place on 28 January, you requested Ms. Koenig to provide information in writing about the legal restrictions to resolution in both European and national (insolvency) law¹.

The Chair of the SRB mentioned that the SRB was analysing, for internal purposes, "[...] the legal insolvency laws per country and what does that entail for, for example, bail-in"¹ and agreed to share the conclusions from that exercise with ECON.

The SRB analysis is on-going as regards the national insolvency laws. However, we would like to share with you some of our preliminary concerns identified so far. We are fully aware that the discussion on the harmonisation of insolvency laws takes place at different European fora, in particular, within the European Commission in its preparation for a proposal in this regard.

We are happy to continue a dialogue with the European Parliament concerning this pertinent topic, which is of particular importance to the SRB as the European Resolution Authority.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Jan Reinder DE CARPENTIER", is written over a horizontal line.

Jan Reinder DE CARPENTIER
General Counsel of the SRB

¹ <http://www.europarl.europa.eu/ep-live/en/committees/video?event=20160128-0900-COMMITTEE-ECON>

"I would like to know whether you could report in writing in detail about legal restrictions to resolutions or reduction of resolvability in national and/or European law. So I would like to know whether you have encountered legal limits which cause problems for your institution and the important mandate you have."





Enclosure: Possible impediments to resolution based on national insolvency laws

The SRB carries out its tasks and responsibilities as the European resolution authority based on the SRM Regulation and BRRD. This European legislative framework contains multiple references to "*liquidation*" and "*normal insolvency proceedings*". Through all phases in resolution, starting with the resolution planning and finishing with the resolution scheme, the knowledge about applicable insolvency regime is necessary and essential for any entity falling under the SRB responsibilities. During the resolution scheme phase for example, it has to be decided whether winding up of the entity under normal insolvency proceedings would not meet the resolution objectives to the same extent.

Current divergences in the national insolvency regimes are creating particular challenges to the SRB when performing its resolution tasks. Aspects that are currently identified as uncertain include for example:

- a) how the different classes of creditors rank in each national regime, as national legislations provide for different statutory waterfall of creditors and interrelated, whether and how there are discrepancies between the ranking that Tier 1 and Tier 2 instruments have in the national insolvency law and the ranking the same instruments have in the resolution bail-in cascade;
- b) whether and how set-off rights would apply under national insolvency law, with any possible impact on the NCWO assessment;
- c) which type of insolvency proceeding should be taken as a reference when an assessment of the counterfactual hypothetical treatment of creditors in insolvency is carried out, since in some Member States more than one insolvency regime exists.

Those are just some examples that can lead to uncertainties and discrepancies causing a challenge to the SRB when performing its tasks. These differences in insolvency regimes may also lead to uncertainty for creditors and investors and can, on a cumulative basis, have a negative effect on European capital markets.

