

**3rd Workshop On Housing Finance
in Transition Economies
Warsaw/Poland, 5th/6th December 2002**

Development of Mortgage Bonds

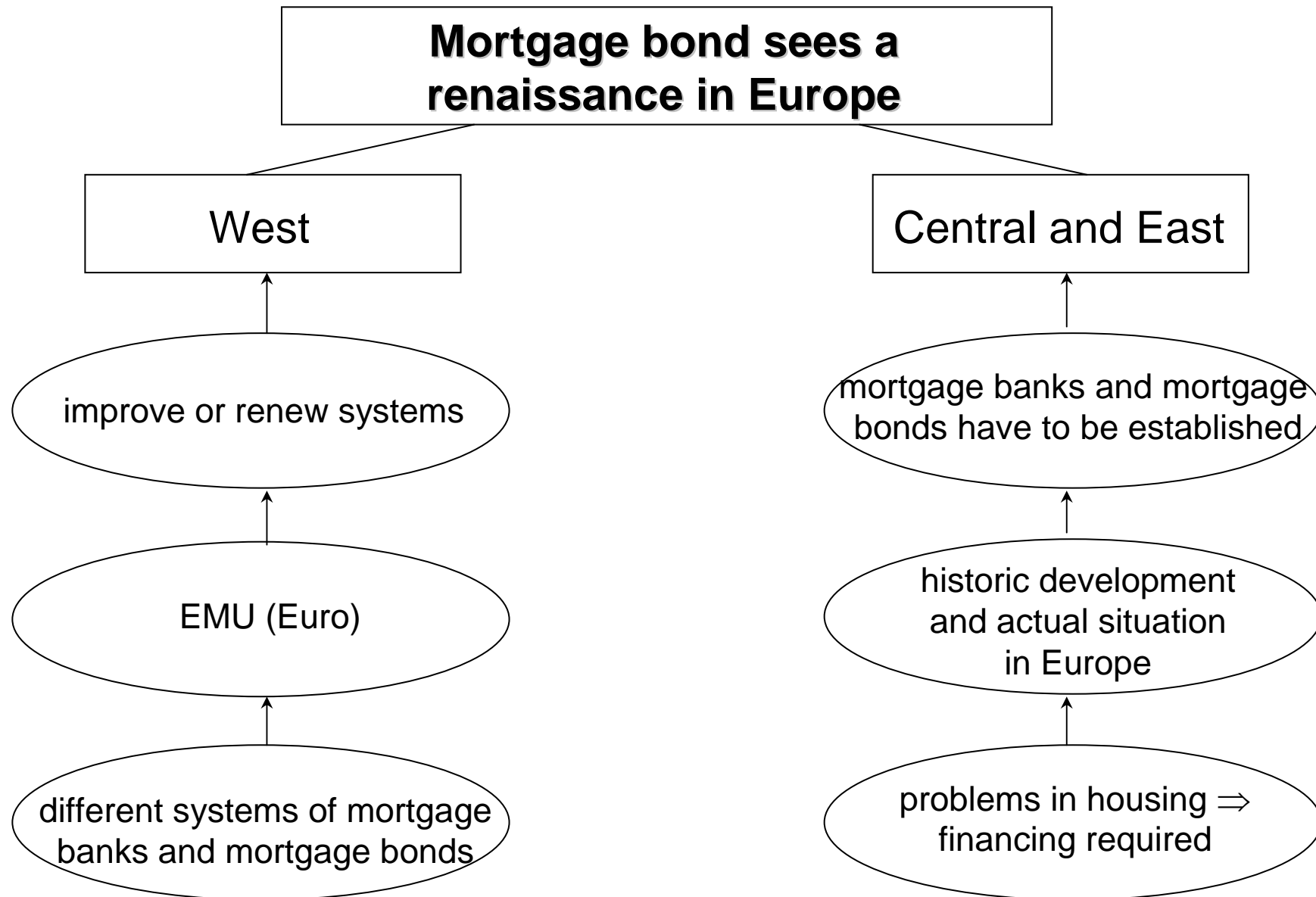


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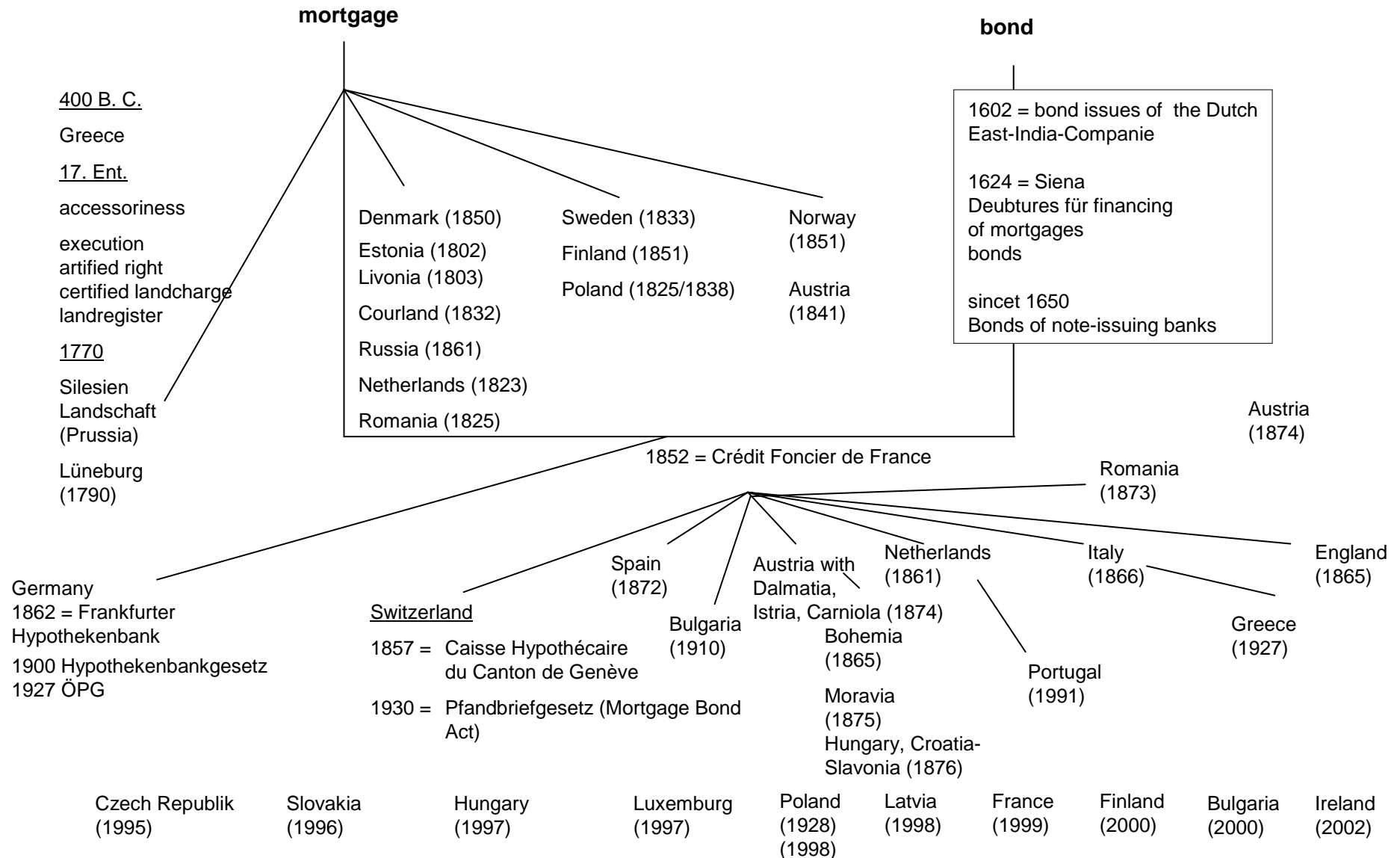
I. History



History

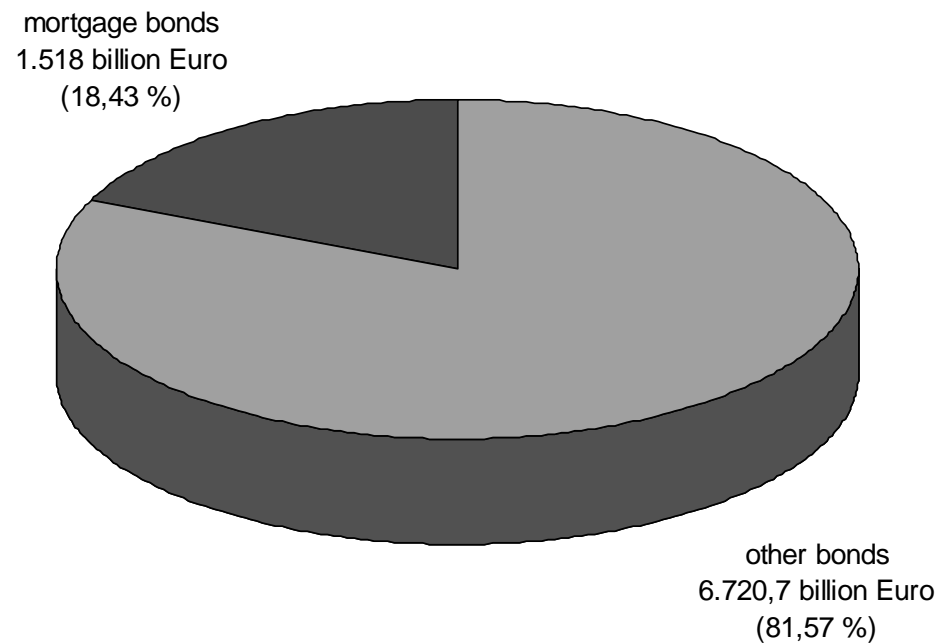
1770	Silesian Landschaft, Breslau
1825	Crédit Foncier de France, Paris = 1. mortgage bank Preußische Centralboden-Credit-Actiengesellschaft, Berlin, (modern mortgage bank)
24.04.1874	Austrian Law „Concerning the safeguarding of rights of the holders of mortgage bonds“
01.01.1900	the German Mortgage Bank Act (HBG) comes into force

Historical development of the mortgage bond



II. Mortgage Bond in Europe
1. Economic point of view

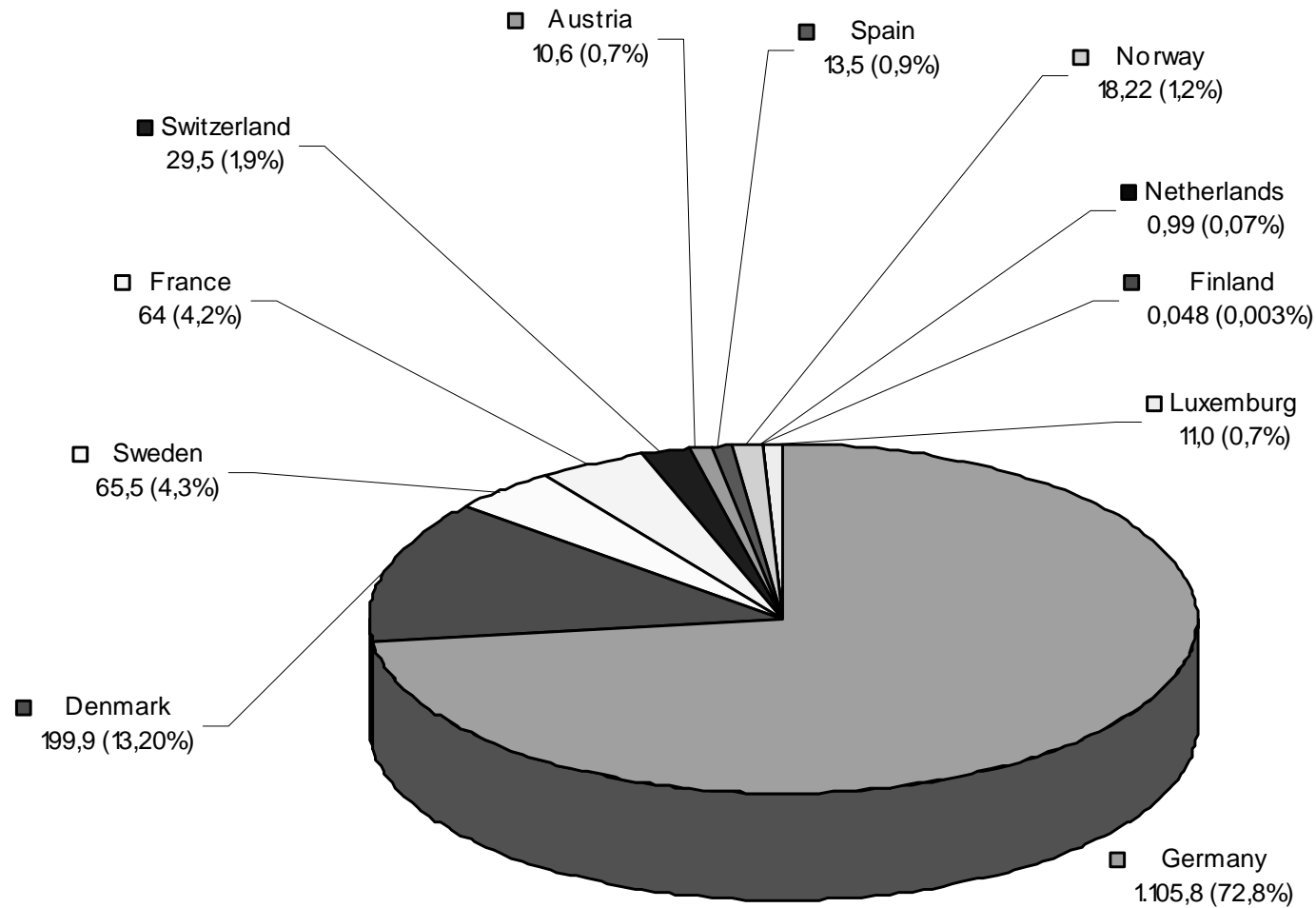
The European Bond Market: 8.238,7 billion Euro (end of 2001)



(bond market – total of all covered bonds, government bonds included)

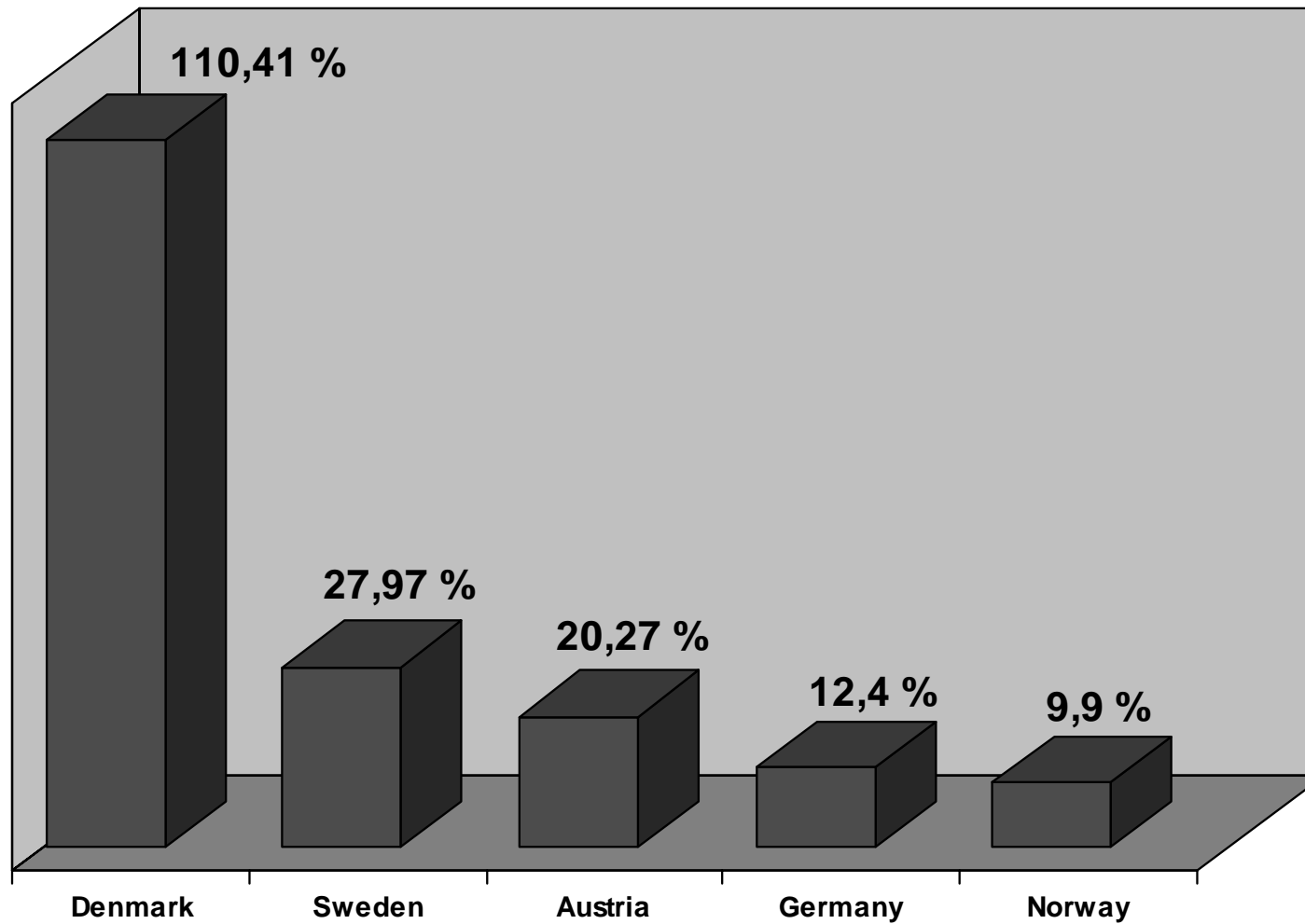
(source: Kälberer/VdH office Brussels, Merrill Lynch)

Market share of the EU-mortgage bond countries in the EU-mortgage bond market (end of 2001, in billion Euro): 1.518 bn Euro



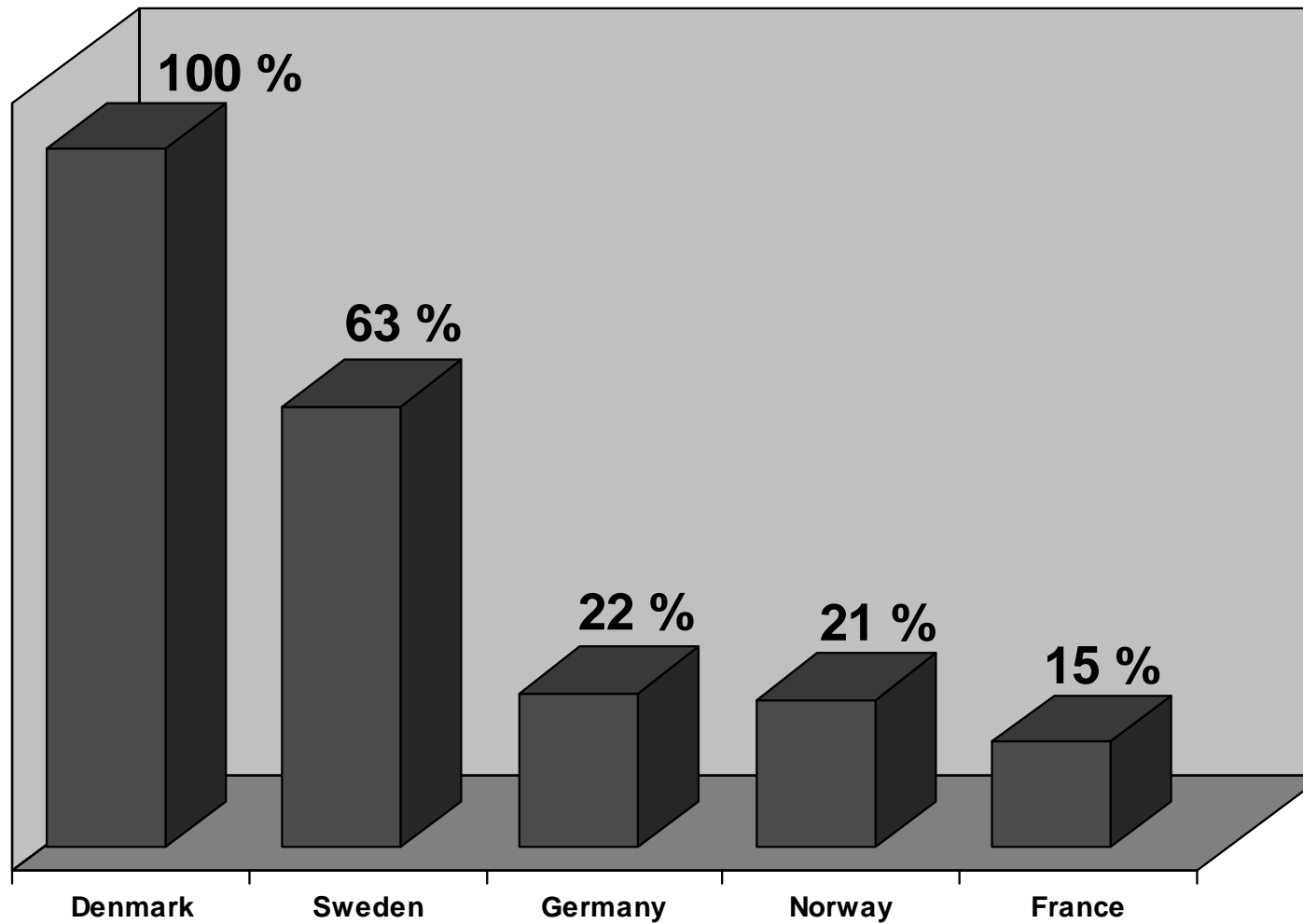
(source: Kälberer/VdH office (Brussels), European Mortgage Federation, Brussels)

Outstanding mortgage bonds in % of GDP (end of 2000)



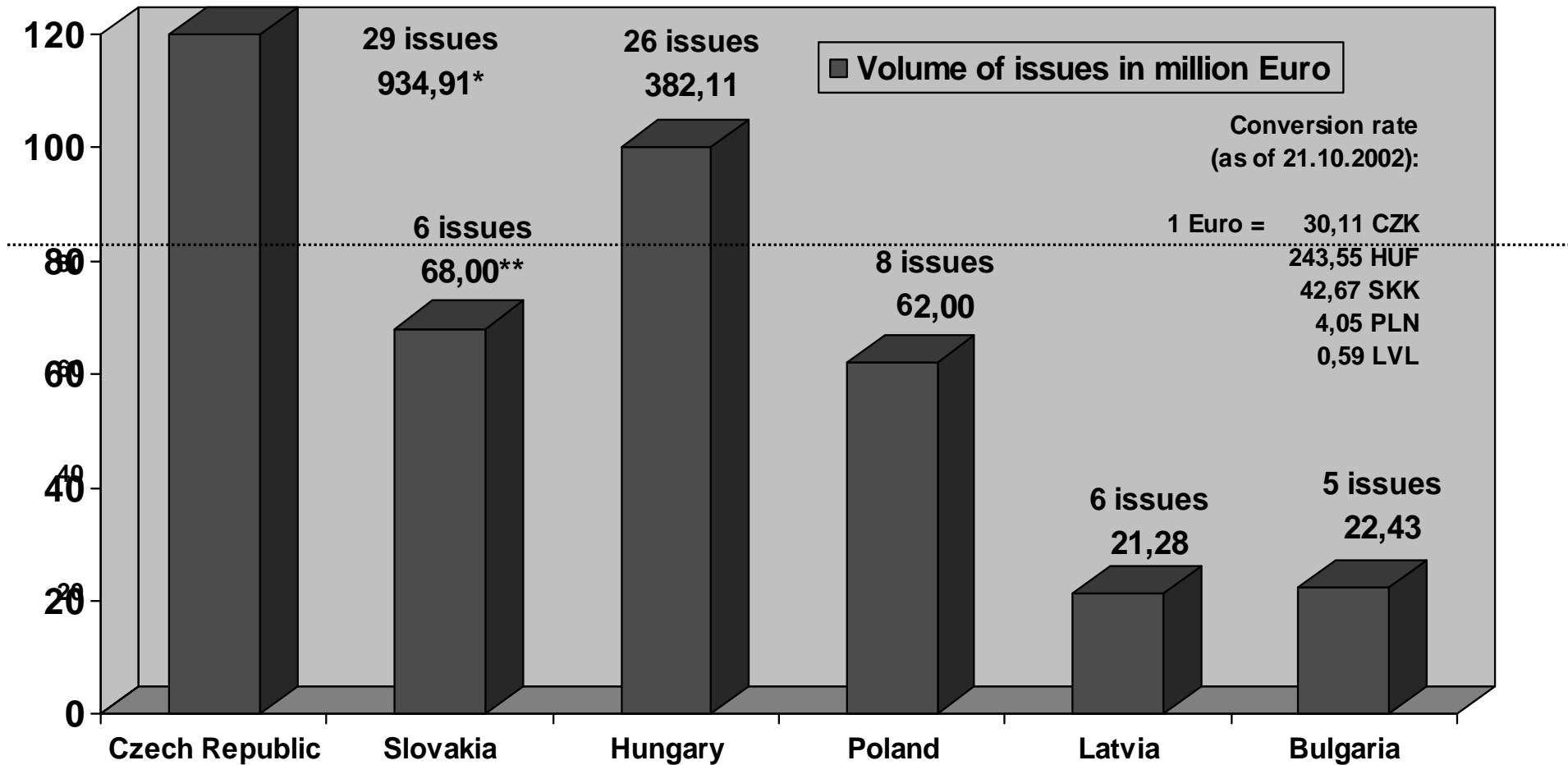
(source: European Mortgage Federation, Brussels)

Refinancing of housing mortgage loans through mortgage bonds in EU- member states (end of 2000)



(source: European Mortgage Federation, Brussels)

Mortgage bond issues in central Europe since 1996 (as of 15.11.2002)



* Mortgage bonds already due are not considered!

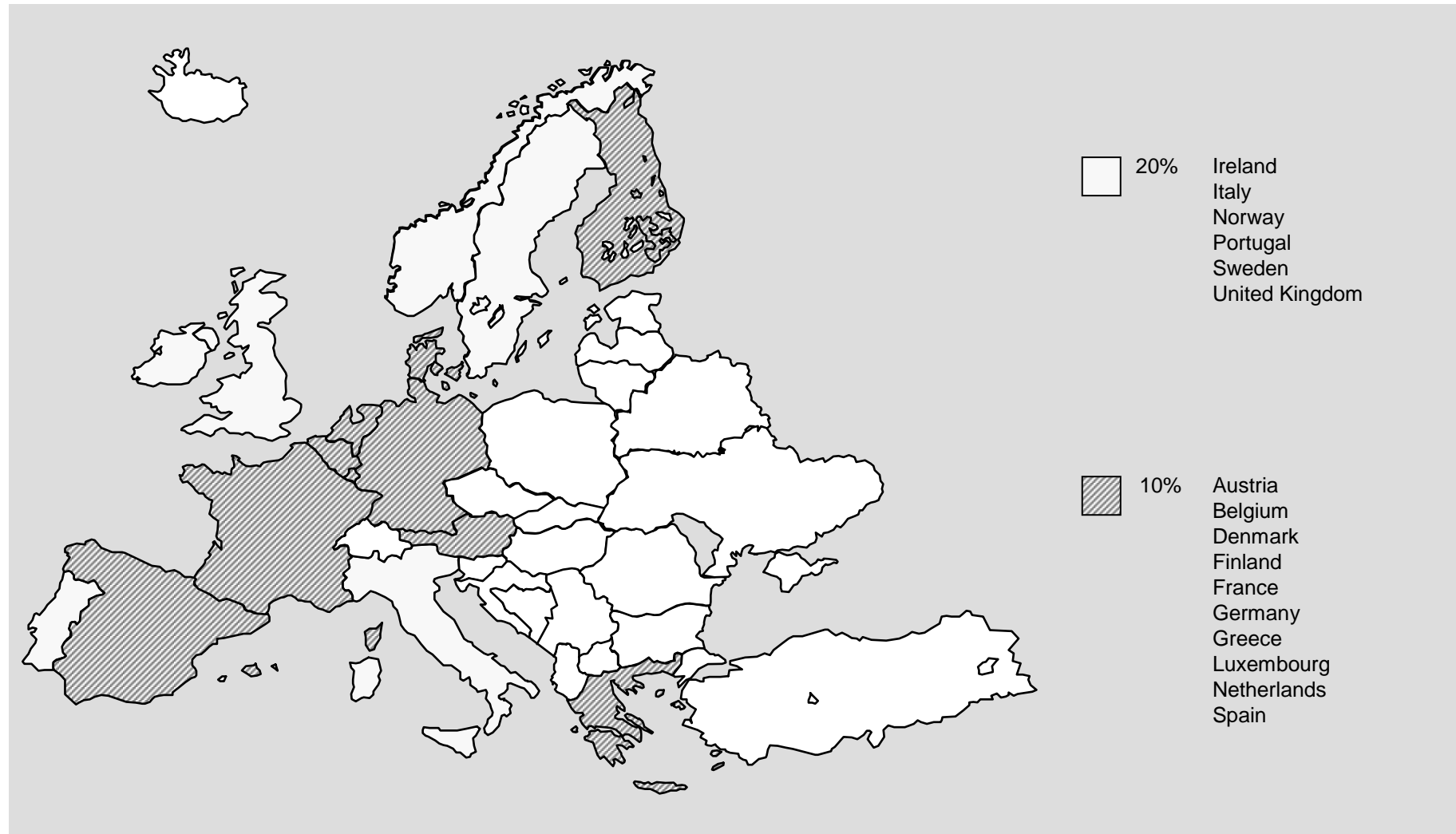
** as of August 2002

II. Mortgage Bond in Europe
2. Legal point of view

Meaning of Art. 22 IV UCITS-Directive → „Mortgage bond“ as privileged investment instrument

Investment funds	Directive on life insurance companies	Directive on large exposure credits	Directive on capital adequacy	Directive on deposit insurance
<p>funds may be invested in mortgage bond/ bonds according to Art. 22 IV UCITS:</p> <p>25% instead of 5-10% in securities of one issuer</p>	<p>„bound assets“ may be invested in mortgage bond / bonds according to Art. 22 IV UCITS:</p> <p>40% instead of 5 % in securities of one issuer</p>	<p>mortgage bond/ bonds according to Art. 22 IV UCITS:</p> <p>are not included in the calculation of the upper limit</p>	<p>mortgage bonds / bonds according to Art. 22 IV UCITS:</p> <p>have to be covered only with half of the equity</p>	<p>mortgage bonds / bonds according to Art. 22 IV UCITS:</p> <p>are excluded from the term of „deposit“</p>

Weighting of mortgage bonds complying with Art. 63 (2) Consolidated Banking Directive 2000/12/EC (former Art. 11 II Solvency Ratio Directive), as of 5/2001



mortgage bond = 22 IV UCITS Directive?

- no Europe-wide uniform definition of the mortgage bond
- but minimum standard for a particular safe type of a bank's bond, taken into account in 7 directives and in Tier I of the ECB

- **Criteria of the Art. 22 IV UCITS-Directive
(investment directive/UCITS)**

Bond of a credit institution that

- has its registered office in a EU-member state and
- is - due to legal provisions protecting bond-holders -
- by law subject to a special public supervision.

According to legal provisions earnings from the issue of these bonds have to be invested in assets

- which during the whole period of validity of the bonds are capable of covering claims attaching to the bonds and
- which in the event of failure of the issuer would be used on a priority basis for the reimbursement of the principle and payment of the accrued interest

- **Shortcomings of the Art. 22 IV UCITS-Directive**
 - Which assets? Not only mortgage loans and public sector loans
 - Which criteria should be applied to the valuation of real estate / lending value / mortgage lending value - see differentiation in the directive on a solvency ratio for credit institutions
 - Which loan to value ratio?
 - cover register?
 - trustee?
 - special bank principle?

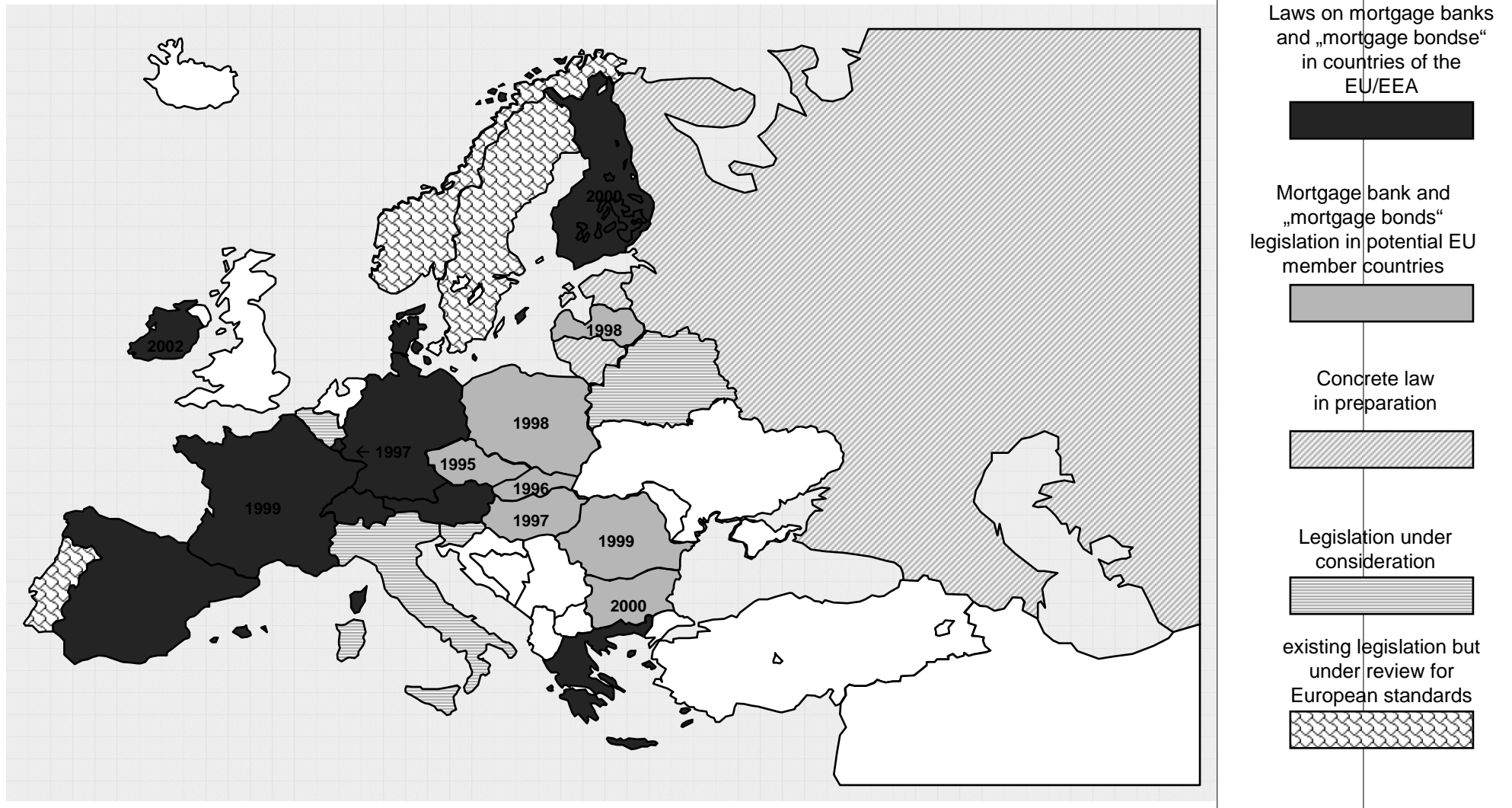
- conclusion: Art. 22 IV UCITS-Directive = only minimum standard for mortgage bonds
- name protection is stipulated in many countries; it has to be interpreted according to EU-law!

EU-law for mortgage bonds

- Art. 22 (4) UCITS-Directive (Investment Directive)
- Art. 49 (1) letter I); Art. 63 (2) of the Consolidated Banking Directive
- Art. 22 (4) of the 3rd Directive on life insurance companies
- Art. 22 (4) of the 3rd Directive on other insurance companies
- Art. 11 (2) of the Directive on capital adequacy for investment firms
- Art. 1 No 1 (3) of the Directive on deposit insurance
- EZB: Tier 1 (eligible as collateral)

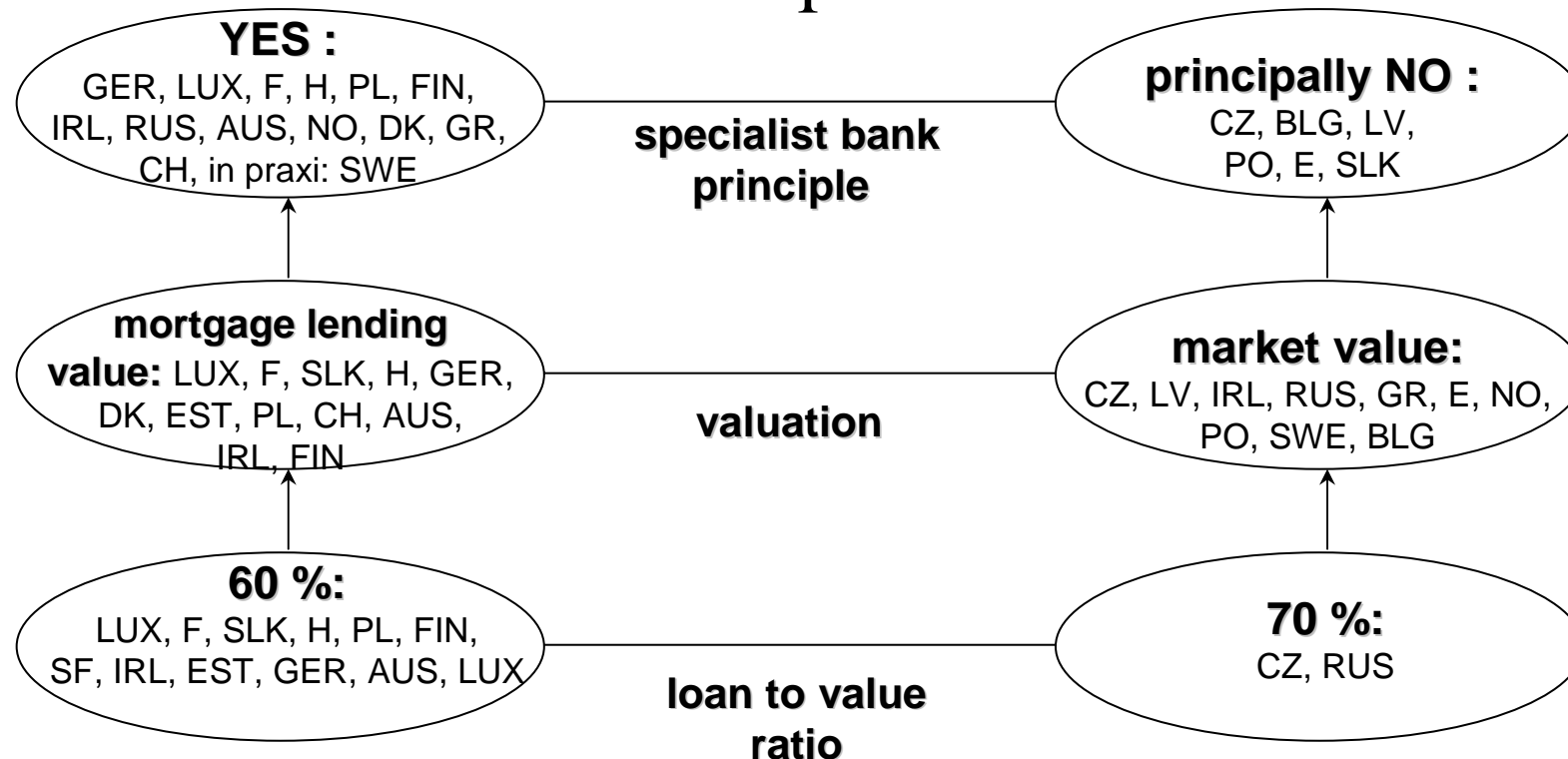
III. Legislation on mortgage bonds in Europe

Geographical Overview of Mortgage Bank and Mortgage Bond Legislation in Europe (as of Nov. 2002)



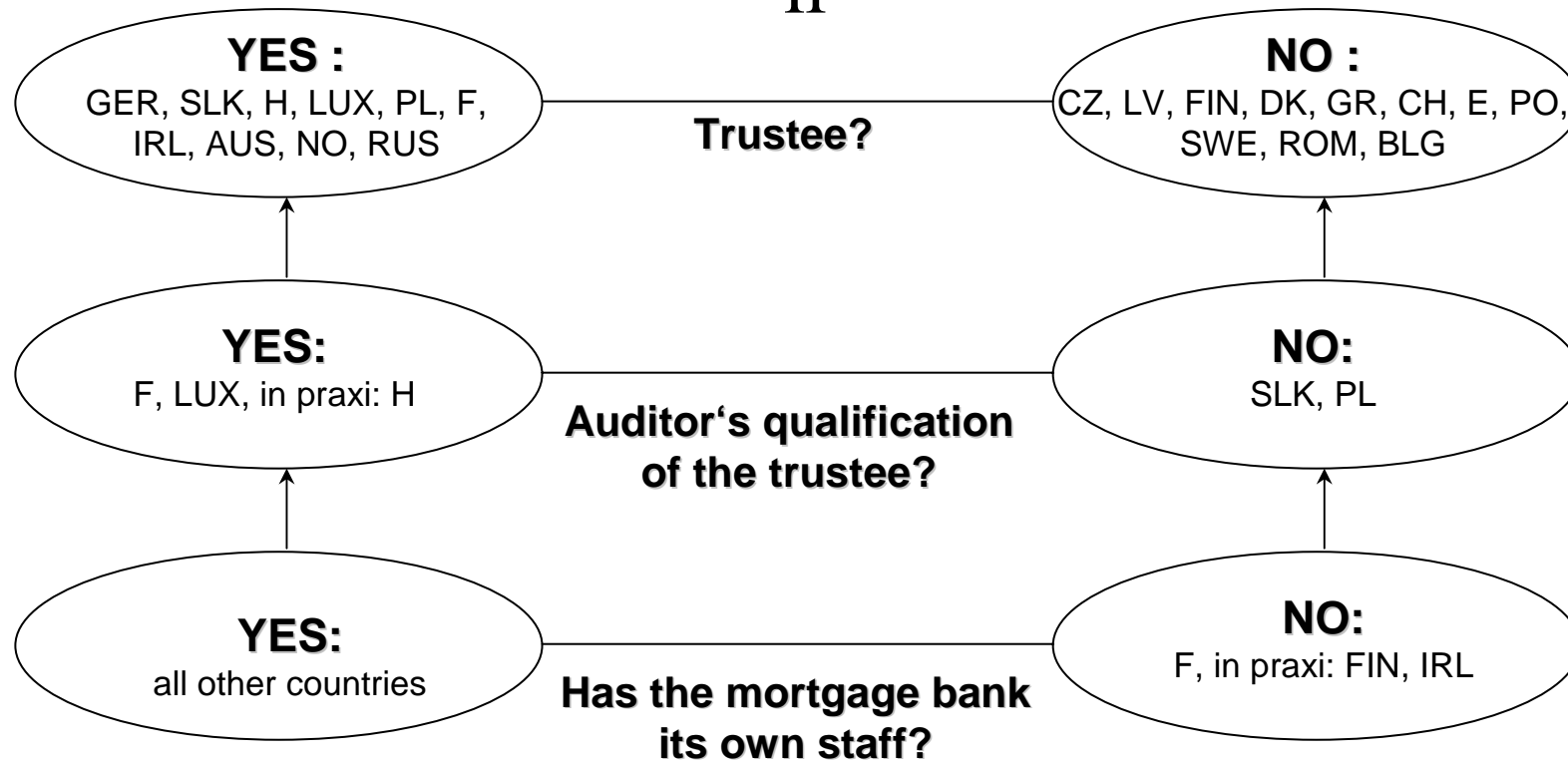
Basic differences between the new laws/draft laws for mortgage banks and Pfandbrief-like products in Europe

I



**Basic differences between the new laws
for mortgage banks and Pfandbrief-like
products in Europe**

II



Comparison of Mortgage Bank and Mortgage Bond Laws in Europe with German legislation (24.9.2002) (1)

	Germany	Denmark	Greece	Switzerland	Austria	Spain	Norway
Entered into force	1.1.1900	1850 / 1989	1924	01.02.1931	01.01.1939	05.05.1981	1988
Specialist bank principle	yes	yes	yes	yes (central issuing entities)	yes	no	yes
Term protected by law	yes (Pfandbrief)	yes (reakredit-obligation)	unclear (Katharevousa-Text: κτηματικά ομολογήματα – Transkribiert: ktimatike omologije Translit.: ktematikai omologiai Neugr.: κτηματικές ομολογίες Transkr.: ktimatikes omologies Translit.: ktematikes omologies)	yes (Pfandbrief, lettre de gage, obbligazione fondiaria)	yes (Pfandbrief)	yes (cédulas hipotecarias)	no (obligasjon)
Refinanceable through mortgage bonds	mortgage and public sector loans	mortgage and public sector loans	mortgage loans	mortgage loans	mortgage and public sector loans	mortgage and public sector loans	mortgage and public sector loans
Cover register	yes	no	yes	yes	yes	no	no
Legally anchored preferential right in bankruptcy	yes	yes	yes (but uncertain)	yes	yes	yes	no
Valuation regulations	yes	yes	yes	yes	yes	yes	no
(Relative) lending limit for funding through mortgage bonds	60 % of mortgage lending value	40/60/70/80/84 % of mortgage lending value	75 % of market value	2/3 of mortgage lending value	60 % of mortgage lending value	70/80 % of market value	mostly 80 % of market value (?)
Absolute lending limit	basically no (100 % of market value)	yes	75 % of market value	no	no	no	no
Limit for lending beyond the cover (volume above the relative lending limit)	20 %	not permitted	not permitted	no	no	no	no
Trustee	yes	no	no	no	yes	no	yes, for regular issues
Substitute collateral	yes	no	no	yes	yes	no	no
Limit for substitute collateral	10 %	no	no	no	no	no	no
Public-sector bond	yes	no	no	no	yes	yes (but not used)	yes, from other specialized institutions
Special ranking of cover mortgages	no	yes	no	no	no	yes	no
Special public supervision	yes	yes	yes	yes	yes	yes	no
Art. 22 (4) UCITS directive fulfilled	yes	yes	yes (but uncertain)	yes	yes	yes	no

Comparison of Mortgage Bank and Mortgage Bond Laws in Europe with German legislation (24.9.2002) (2)

	Portugal	Sweden	Czech Republic	Slovak Republic	Hungary	Luxembourg	Poland
Entered into force	16.04.1990	1992	1.7.1995	1.3.1996	7.6.1997	19.12.1997	1.1.1998
Specialist bank principle	no	in praxi: yes	limited Pfandbrief licences	limited Pfandbrief licences	yes	yes	yes
Term protected by law	unclear (obrigações hipotecárias)	no (bostads-obligationer)	yes (zástavní list)	yes (záložný list)	yes (jelzáloglevél)	yes (lettre de gage, Pfandbrief, mortgage bond)	yes (list zastawny)
Refinanceable through mortgage bonds	mortgage loans	mortgage loans	mortgage loans	mortgage and mortgage secured public sector loans	mortgage loans and, to a limited extent, public sector loans	mortgage and public sector loans	mortgage and public sector loans
Cover register	yes	no	„independent declaration“	yes	yes	yes	yes
Legally anchored preferential right in bankruptcy	yes	no	yes	yes	yes	yes	yes
Valuation regulations	yes	yes	no	yes	yes	yes	yes
(Relative) lending limit for funding through mortgage bonds	80 % of market value	60 / 75 / 85 % of value of the property	70 % of market value	70 % of mortgage lending value	60 % of mortgage lending value	60 % of mortgage lending value	60 % of mortgage lending value
Absolute lending limit	no	no	no	no	70 % of mortgage lending value	basically no (market value?)	100 % of mortgage lending value
Limit for lending beyond the cover (volume above the relative lending limit)	no	no	no	10 %	no	no	30 %
Trustee	no	no	no	yes	yes	yes	yes
Substitute collateral	yes	no	yes	yes	yes	yes	yes
Limit for substitute collateral	no	no	10 %	10 %	20%	20 %	10%
Public-sector bond	no	no	no	yes	no	yes	yes
Special ranking of cover mortgages	no	no	yes	yes	no	no	yes
Special public supervision	yes	no	yes	yes	yes	yes	yes
Art. 22 (4) UCITS directive fulfilled	yes	no	yes	yes	yes	yes	yes

Comparison of Mortgage Bank and Mortgage Bond Laws in Europe with German legislation (24.9.2002) (3)

	Latvia	France	Romania	Finland	Bulgaria	Ireland
Entered into force	29.9.1998	27.07.1999	9.12.1999	1.1.2000	13.10.2000	22.3.2002
Specialist bank principle	limited Pfandbrief licences	yes, but no staff permitted	unclear	yes	no	yes
Term protected by law	yes (ķīlu zīme)	yes (obligation foncière)	unclear (obligațiunile ipotecare)	yes (kiinteistövakuudellinen joukkovelkakirjeslaina, julkisyhteisöva-kuudellinen joukkovelkakirjeslaina)	yes (ипотечна облигация ipotečna obligaciyes)	yes (mortgage credit covered security, public credit covered security)
Refinanceable through mortgage bonds	m ortgage loans	m ortgage and public sector loans and loans guaranteed by banks or insurances	m ortgage loans	m ortgage and public sector loans	m ortgage loans	m ortgage and public sector loans
Cover register	yes	No	no	yes	yes	yes
Legally anchored preferential right in bankruptcy	yes	yes	no	yes	yes	yes
Valuation regulations	yes	yes	no	yes	yes	yes
(Relative) lending limit for funding through mortgage bonds	60 % of market value	60 / 80 / 100 % of mortgage lending value / market value	60 % of value of portfolio	60 % of mortgage lending value	60 / 80 % of market value	60 / 75 % of the prudent market value
Absolute lending limit	no	60 / 80 / 100 % of mortgage lending value / market value	no	basically no (market value?)	no	yes (80 % of the prudent market value)
Limit for lending beyond the cover (volume above the relative lending limit)	no	no	unlimited	1/6	no	yes (10 %)
Trustee	no	yes	no	no	basically no	yes
Substitute collateral	yes	yes	no	limited in time	yes	yes
Limit for substitute collateral	20 %	20 %	no	no	30 %	20 %
Public-sector bond	no	yes	no	yes	no	yes
Special ranking of cover mortgages	no	no	no	no	no	no
Special public supervision	yes	yes	no	yes	unclear	yes
Art. 22 (4) UCITS directive fulfilled	yes	yes	no	yes	unclear	yes

**Further information and material
offers our website:**

**in German:
www.hypverband.de
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**in English:
www.pfandbrief.org
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