



## **New Pfandbrief Act and New Act on Funding Register**

**5th/6th December 2005, London**

**4th Annual Covered Bonds**

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# 1. Covered Bonds in Europe

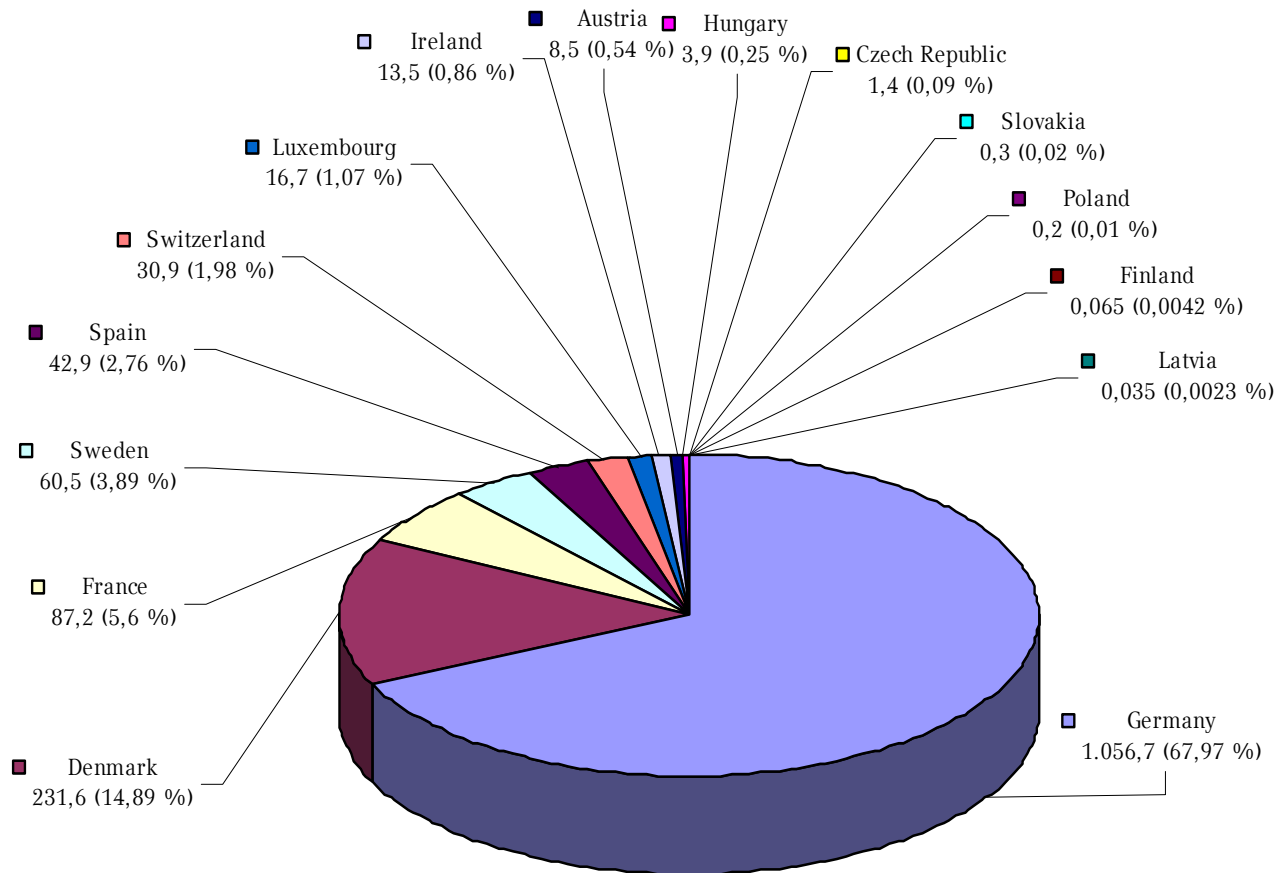


# 1. Covered Bonds in Europe



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Market Share of the European Covered Bond Countries  
in the European Covered Bond Market (end of 2003): 1.554 bn €



for comparison: UK "covered bonds" = 11 bn €  
(09/2004 = 14 bn €)

(Source: EMF/VDH – 22.11.2004)

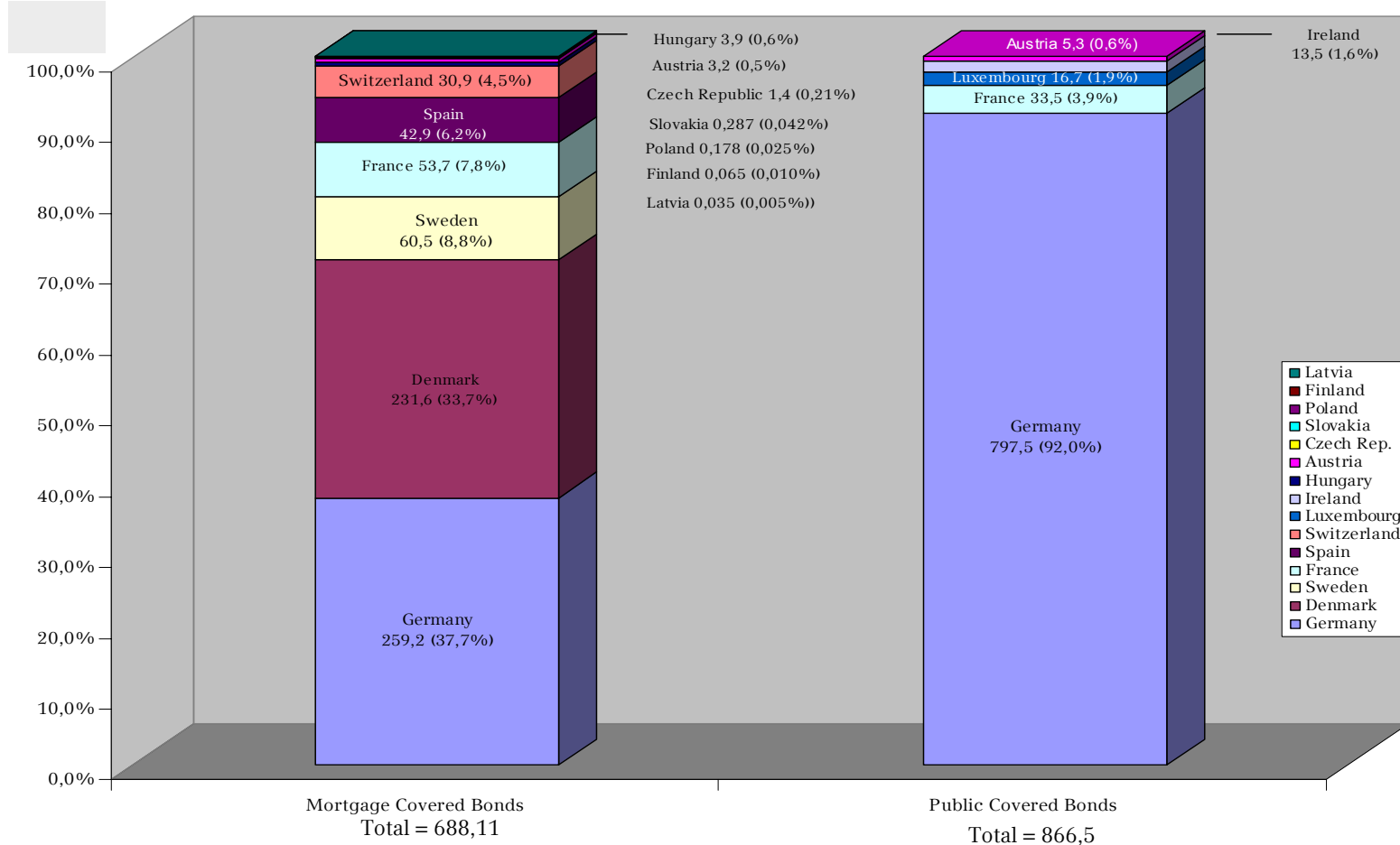


# 1. Covered Bonds in Europe



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## Public Covered Bonds in the EU, compared with Mortgage Covered Bonds (end of 2003, in bn. EUR)



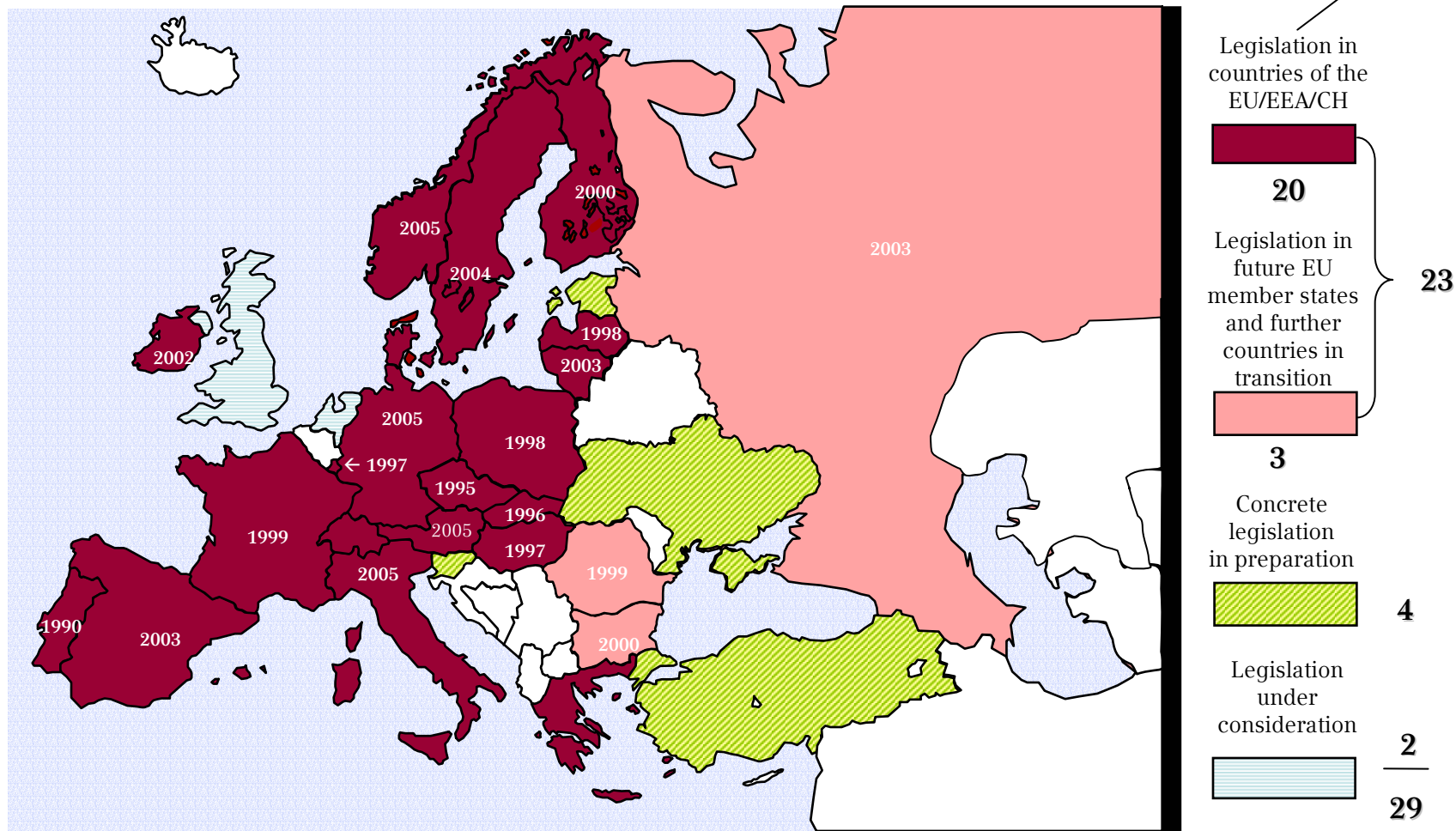


# 1. Covered Bonds in Europe



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## Geographical Overview - Covered Bond Legislation in Europe (as of October 2005)





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## 2. Pfandbrief Act



## 2. Pfandbrief Act



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# PBA

### ***A. Regulatory requirements***

- Specific Pfandbrief license under strict requirements
- Sanction measures of BaFin
- cover audits by BaFin

### ***B. Operational requirements***

- Sustainable Pfandbrief issuance
- Professional risk management
- Enhanced transparency rules
- Expertise of executives

### ***C. Assets quality requirements***

- Claims against public-sector credit institutions without state support not eligible for cover pools
- Stipulations of determination of mortgage lending value

Quality  
safeguarding  
measures

- Cover principle
- Matching principle
- Mandatory over-collateralization of 2% (including stress scenarios)
- High quality requirements for cover assets
  - Conservative evaluation
  - LTV
- Special banking supervision (BaFin)
- Independent cover pool monitor (Treuhänder)
- Insolvency privilege of Pfandbrief holder
- Clear emergency plan, i. e. (detailed regulations about insolvency procedure; cover pool administrator)

Principles  
from the  
Mortgage  
Bank Act



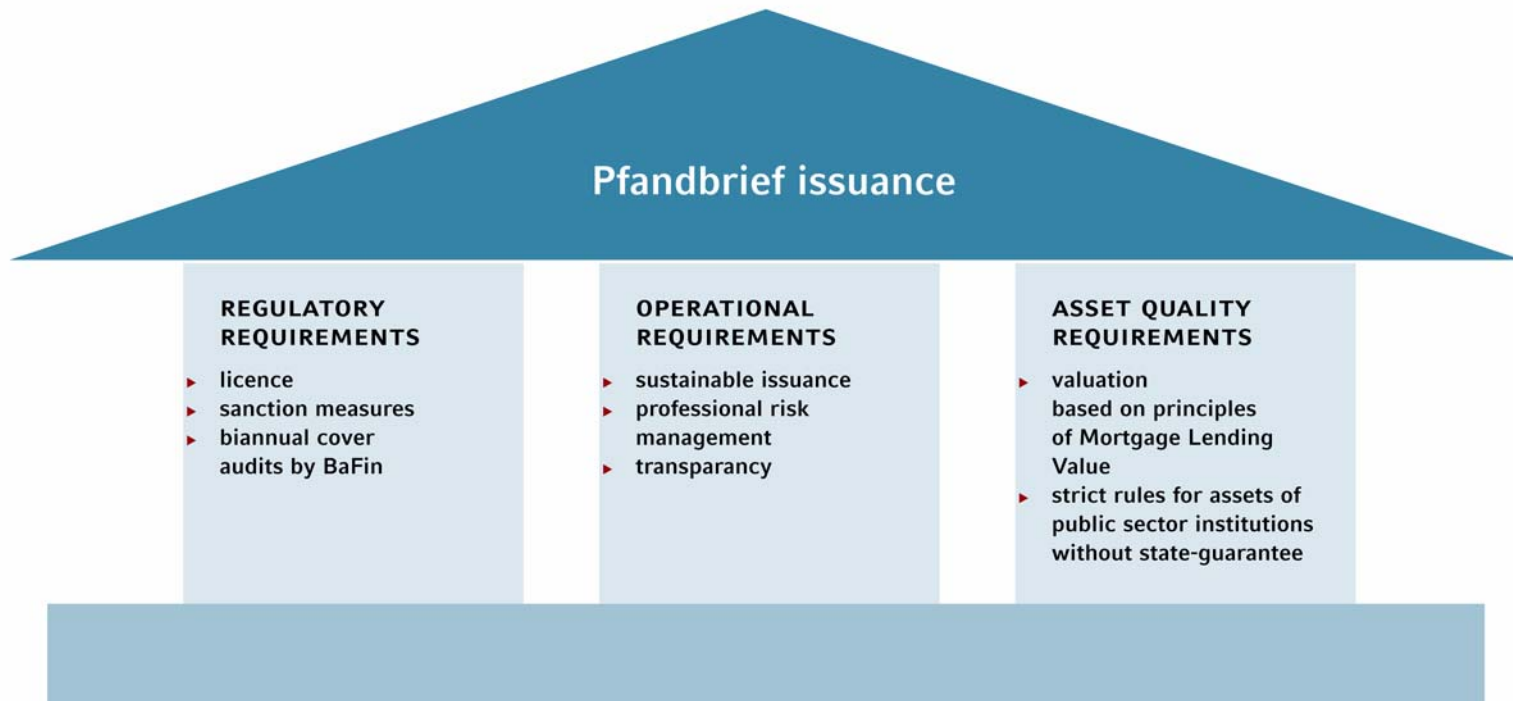


## 2. Pfandbrief Act



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### Quality safeguarding measures





## 2. Pfandbrief Act



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### QSM – regulatory demands

license	supervision / cover audits	sanction measures
<ul style="list-style-type: none"> <li>➤ suitable procedures and instruments in place to effect risk management</li> <li>➤ sustained Pfandbrief issuance</li> <li>➤ adequate organizational structures and resources</li> </ul>	<ul style="list-style-type: none"> <li>➤ continuous flow of information between issuers and BaFin</li> <li>➤ regular bi-annual cover audits</li> <li>➤ ad-hoc bank audits to be conducted by BaFin</li> <li>➤ 3 regulations to be released by BaFin on               <ul style="list-style-type: none"> <li>- NPV-calculation</li> <li>- cover register</li> <li>- valuation</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>➤ if any of the legal requirements are not met on an ongoing basis</li> <li>➤ specifically if no Pfandbrief has been issued for a period of 2,5 years</li> <li>➔ Pfandbrief bank license will be withdrawn</li> </ul>



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### QSM – operational demands

general obligations	business in new markets
<p>➤ monitor, manage and control cover pool risks and issuing business based thereon</p> <ul style="list-style-type: none"><li>- Credit risk</li><li>- Interest rate risk</li><li>- Forex risk</li><li>- Market risk</li><li>- Operational risk</li><li>- Liquidity risk</li><li>- Concentration risk</li></ul>	<p>➤ Pfandbrief bank must entertain and document exhaustive risk analysis and risk management before entering new markets</p> <p>➤ assets generated in new markets are not eligible for cover for a period of two years after market entry</p> <p>➤ strict requirement to determine Mortgage Lending Values and LTV-ratios as with all other mortgage assets</p>



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### QSM - transparency

General	Mortgage Pfandbriefe	Public Pfandbriefe
<p>quarterly disclosure of cover pool data</p> <ul style="list-style-type: none"> <li>➤ nominal value, npv and stressed npv of Pfandbriefe and corresponding cover pools</li> <li>➤ maturity structure of Pfandbriefe and corresponding fixed income assets grouped according to 4 maturity buckets &lt;1year; 1 to 5 years, 5 to 10 years, &gt;10 years</li> <li>➤ disclosure of derivatives included in cover pools</li> </ul>	<p>mortgage cover assets grouped according to</p> <ul style="list-style-type: none"> <li>➤ nominal amount of cover loans &lt; 0,3 mn; &lt;5 mn; &gt; 5 mn euros.</li> <li>➤ geographical distribution</li> <li>➤ to type of collateral, i.e. residential or commercial</li> <li>➤ amount in arrears at least 90 days incl. geographical distribution by states</li> </ul>	<p>public sector cover assets grouped according to</p> <ul style="list-style-type: none"> <li>➤ geographical distribution</li> <li>➤ amount of payments in arrears for at least 90 days incl. geographical distribution by states</li> </ul>



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### Expansion of mortgage loans eligible for cover pools

- PBA allows for mortgage lending in **USA, Canada and Japan** as cover business
- Art. 27 para 2 PBA:
  - Pfandbrief bank must entertain and document **exhaustive risk analysis and risk management** requirements before entering any new market
  - Assets generated in new markets are not eligible for cover for a **period of two years** after market entry
- Strict requirement to determine **Mortgage Lending Value** and LTV-ratios as with all other mortgage assets
- ➔ Mortgage bank may only enter new property loan markets after thorough market analysis and with a long term perspective



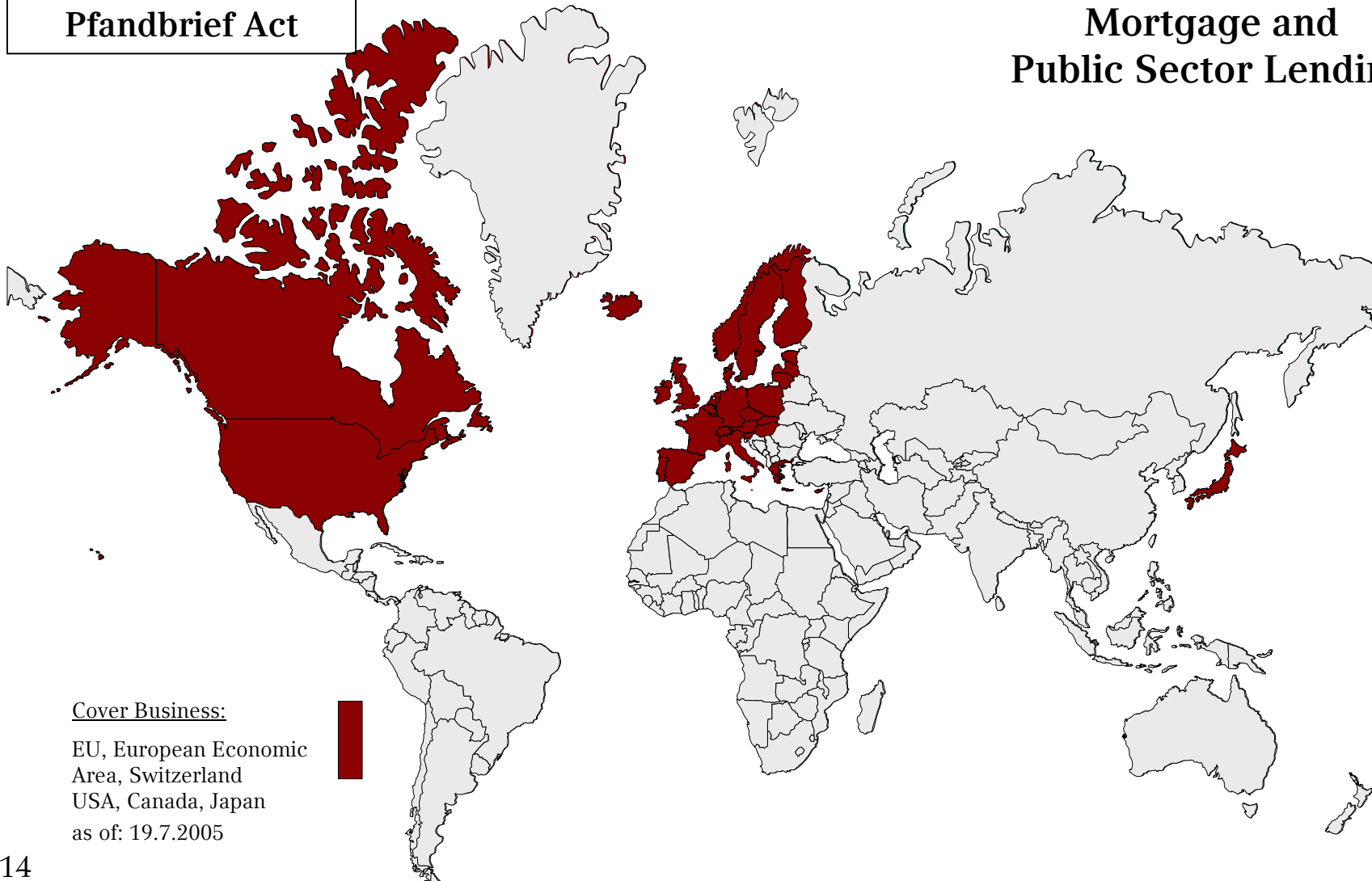
## 2. Pfandbrief Act



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### Pfandbrief Act

### Mortgage and Public Sector Lending



Cover Business:

EU, European Economic Area, Switzerland  
USA, Canada, Japan  
as of: 19.7.2005





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### **Parliament delegated power to the BaFin to create statutory orders:**

- (1) Net present value-method – already came into force
- (2) Cover register – draft
- (3) Mortgage lending value – draft



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### 3. Funding Register





### 3. Funding Register



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- aim**      ⇨ to make easier the funding by means of Pfandbriefe and MBS
- means**    ⇨ the bank manages the claims and/or mortgages in a fiduciary capacity
- either for a Pfandbrief bank or
  - for a SPV

The law came into force on the 28th of September 2005.



### 3. Funding Register



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#### **Formal Requirements**

- Installation of a funding register
  - ⇒ Form: statutory order – no draft yet
  - ⇒ Management by a credit institution – either for its own purposes or for other (smaller) credit institutions
- Appointment of the funding register monitor by the BaFin
- Claim to transfer claims and/or mortgages in favour of
  - the Pfandbrief bank,
  - the SPV or
  - the intermediary transferring it to a SPV
- Also eligible for registration: future or conditional claims to transfer, claims already assigned
- No compulsory registration, but additional possibility to the already existing procedures (esp. transfer, management in a fiduciary capacity)



### 3. Funding Register



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#### **Legal consequences of the registration in the funding register**

- ⇒ Claim for release from insolvency's estate according to § 47 InsO  
  
= insolvency remoteness of the registered assets
- ⇒ As to the claims and the mortgages or their substitutes (cash flows)
- ⇒ In the case of insolvency: appointment of a funding register administrator by the insolvency court (on proposal of the BaFin)



### 3. Funding Register



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#### **Practical implications for Pfandbrief banks**

- The costly registration of the transfer of German land charges and foreign mortgages will be replaced
- Portfolio-sale
- Secondary syndication
- Risk management
- Funding of mortgage loans granted by originating credit institutions through Pfandbrief banks (so called „pool-models“)



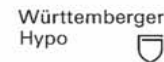
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## 4. Pfandbrief Lobbyism

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### Members of the Association of German Pfandbriefbanks





## 4. Pfandbrief Lobbyism



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### Membership structure for a collective representation of interests

- ▶ across the three pillars of German banking

Private-sector, public-sector, cooperative banking		
ORDINARY MEMBERS	ASSOCIATE MEMBERS	GUEST MEMBERS
Pfandbrief banks	Credit institutions with similar interests	Legal and natural persons with justified general interest
<ul style="list-style-type: none"><li>▶ Mortgage banks</li><li>▶ Landesbanken</li><li>▶ Savings banks</li><li>▶ Commercial banks</li><li>▶ Commercial and agricultural credit cooperatives</li><li>▶ Ship Pfandbrief banks</li></ul>	<ul style="list-style-type: none"><li>▶ Financiers for real estate, public-sector bodies, ships – as well as non-Pfandbrief issuers</li></ul>	<ul style="list-style-type: none"><li>▶ Associations from banking and real estate industry</li><li>▶ Research institutes/ universities/scientists</li><li>▶ Services providers in the field of property finance, public-sector lending, ship financing and capital market</li></ul>



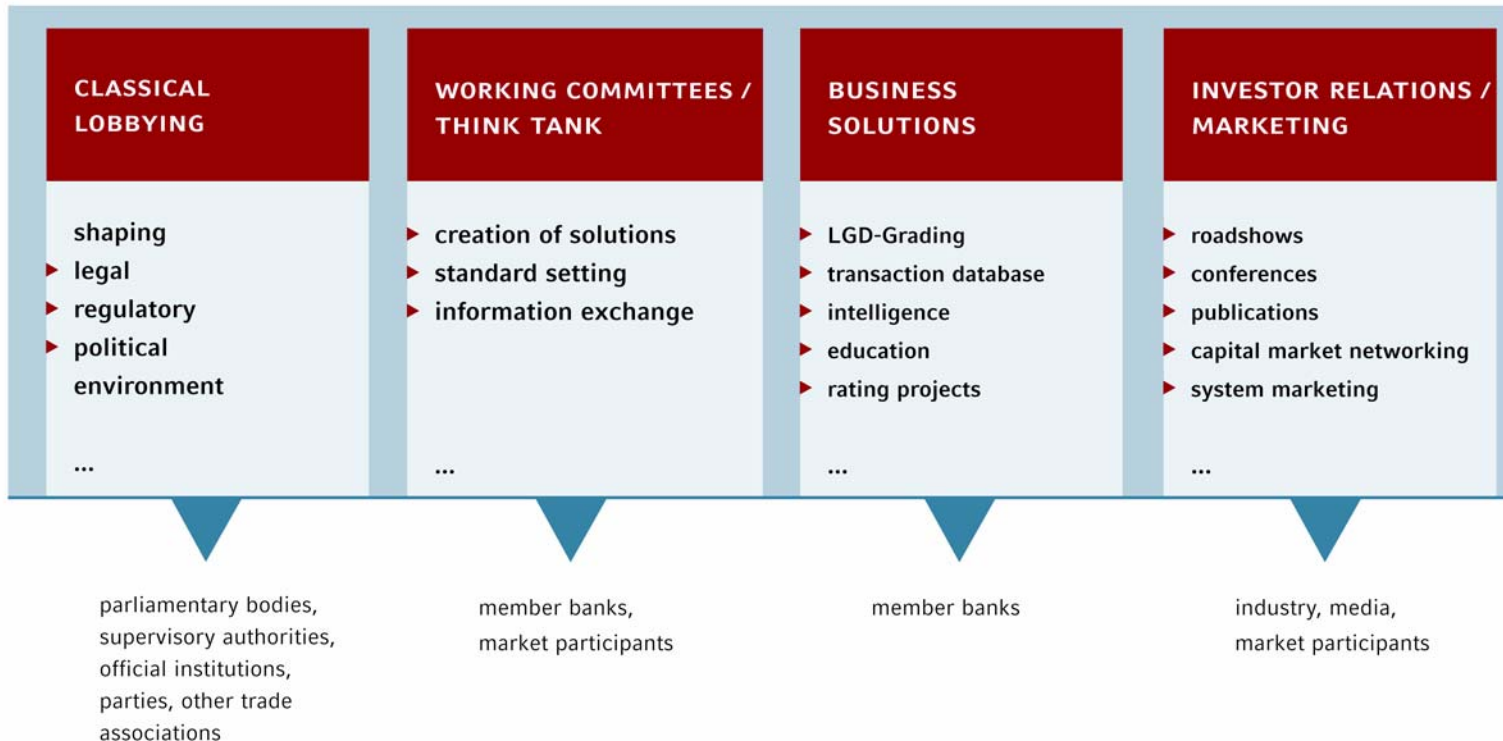
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### Service range of the Association

- ▶ Create a positive legal and business environment for members to enhance their business activities, i.e. lending, funding services







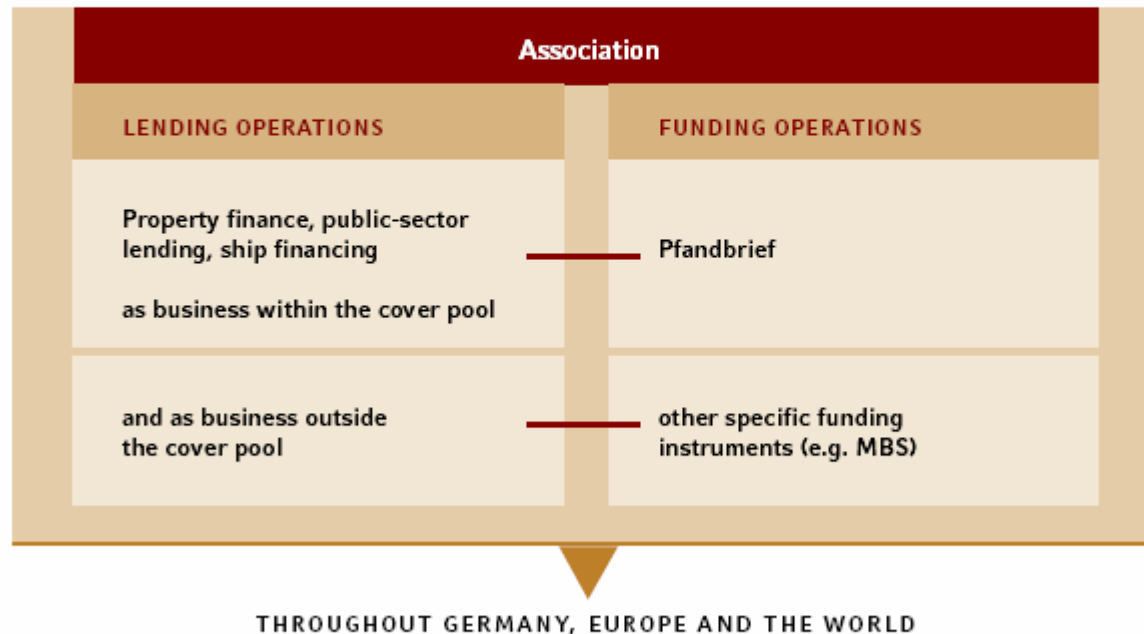
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### Objective

- ▶ Collective representation of interests for all Pfandbrief issuers





## Summary

- Strong competition of the national legislations on covered bonds
- Pfandbrief Act = new benchmark for covered bond-laws in Europe
- Funding register offers new ways of structuring
- vdp represents the interests of all Pfandbrief-issuers and intensively works on questions of interpretation of the Pfandbrief Act and surrounding legislation, develops solutions and discusses them with the BaFin



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