



Conference CFR and Property Law - Maastricht, 8th June 2007

**Real estate liens as security for cross border property finance
The Eurohypotheec – a security instrument with real prospects**

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Association of German Pfandbrief Banks



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| Immobilien- | Staats- | Schiffsfinanzierung |



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A) Case Studies



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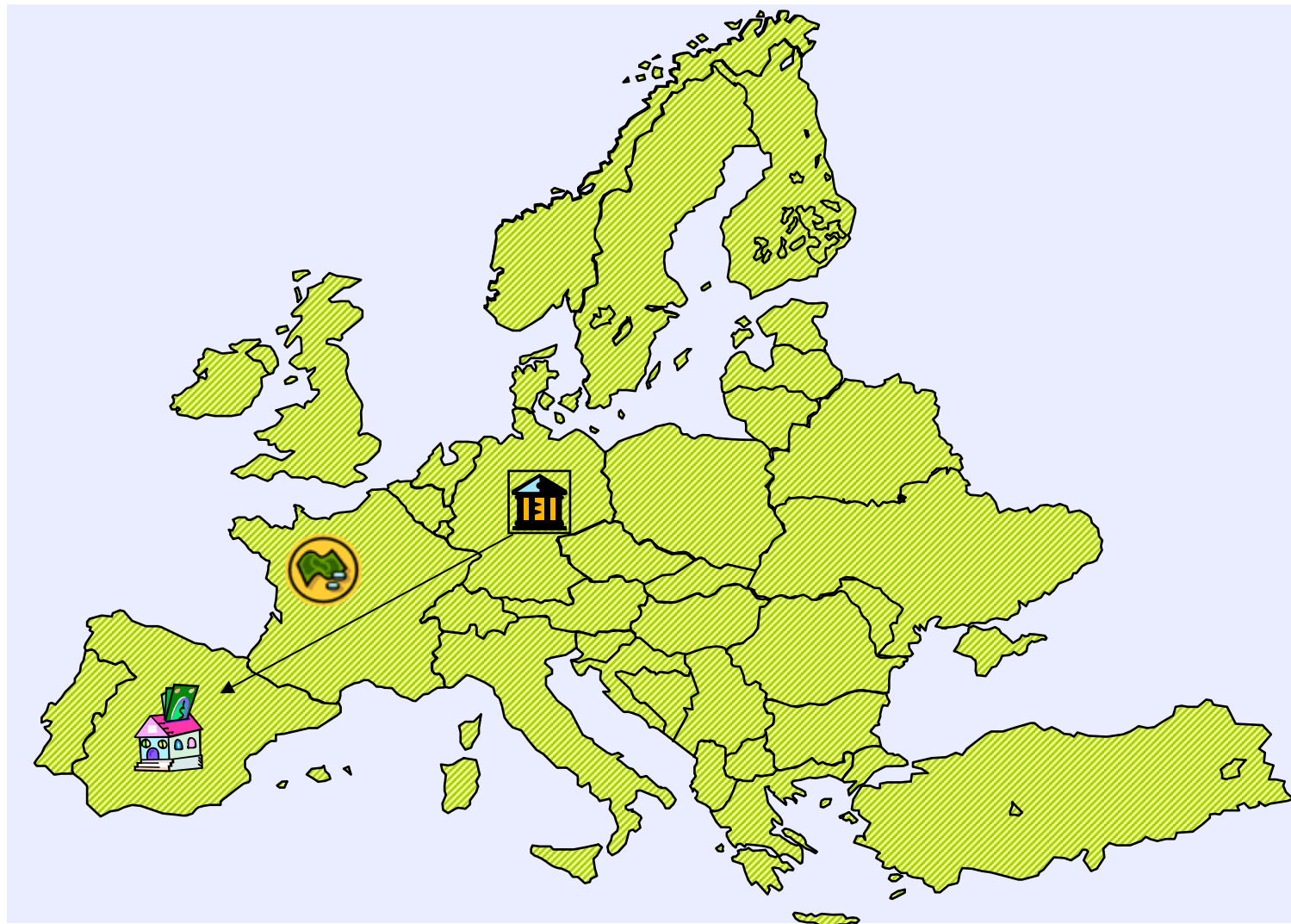
- A) Case studies = development of cross border property finance
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I. Cross border mortgage lending – low volume and simple structure



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1990

loan < 500.000 €



II. Increasing volumes of cross border mortgages



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1990 loans < 500.000 €

1995 3 Mio. € < loan < 50 Mio. €

⇒ international investors → international standards on investment and loan

⇒ professional legal expertise necessary

⇒ new financial structures → national collateral law sufficient?

! cross border housing loans profitable ?

- low volume
- high production costs
- work flow
- consumer protection law

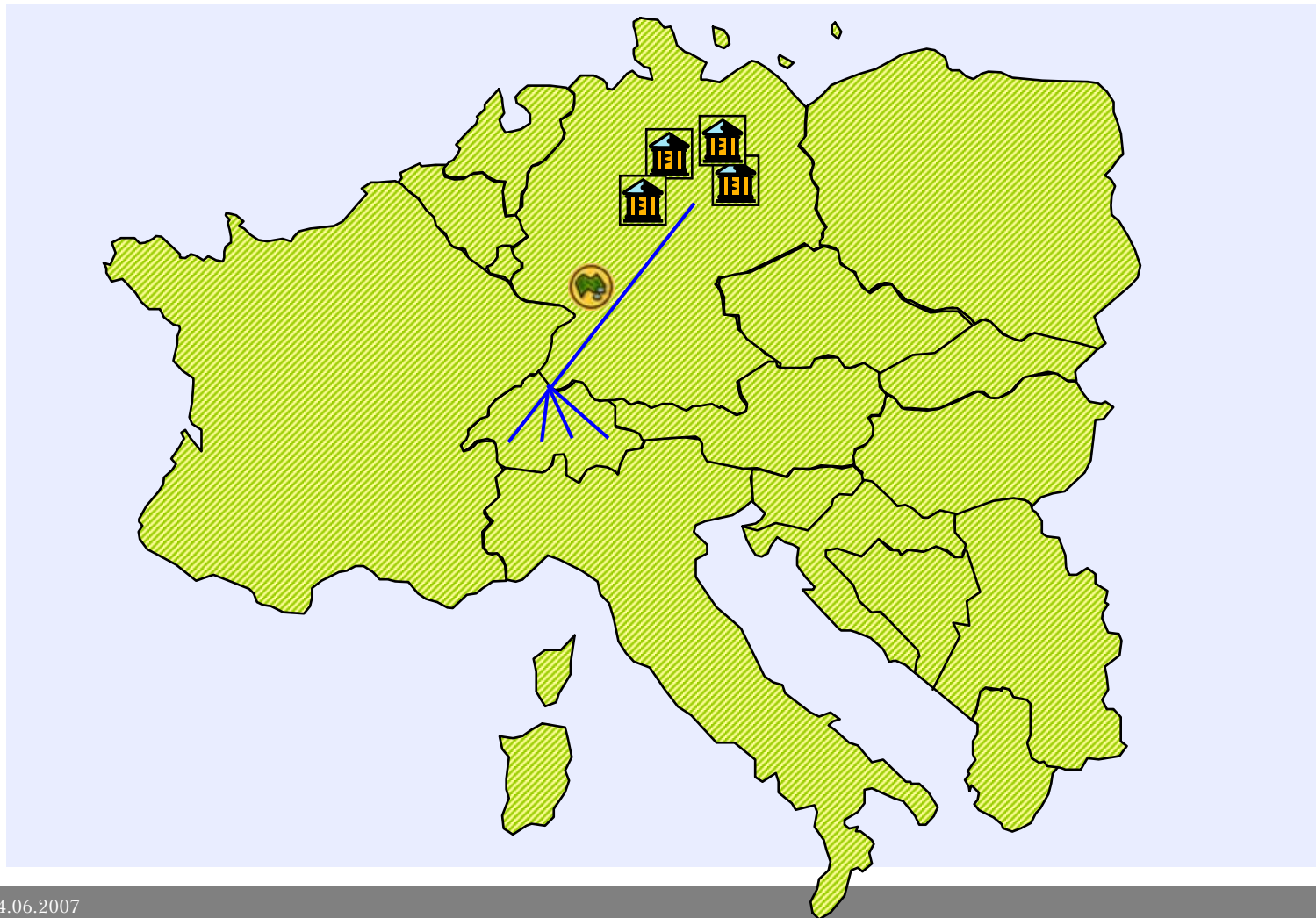


III. Cross border portfolio finance and initial syndication



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Case study: CH





III. Cross border portfolio finance and initial syndication



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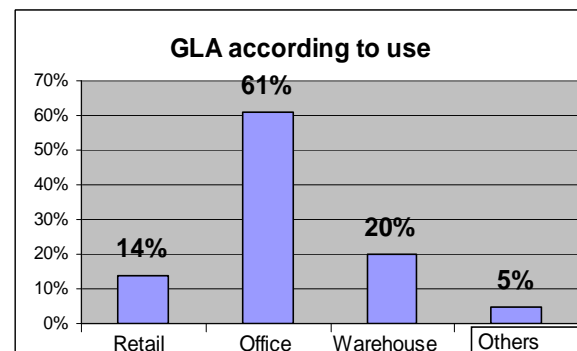
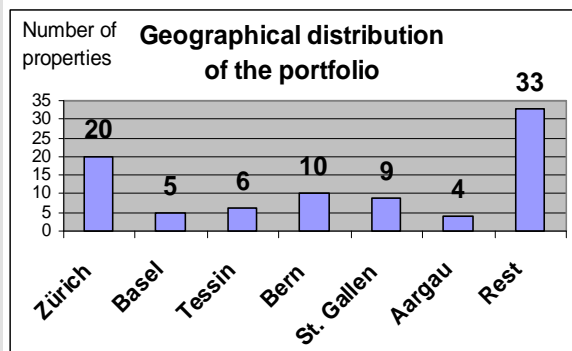
Financing of a Sale- and Lease Back portfolio transaction with UBS AG in Switzerland (2001)

Volume of the transaction:

CHF 800 m

Properties:

87 office and retail properties distributed in Switzerland with a GLA of approx. 214.000 m²



Initial financial ratios:

Loan to Open Market Value as determined by E&Y	Loan amount/Net rental income p.a.	Relation of equity and debt	Debt Servie Ability (as per current rental income p.a.)
91%	14,5 times	20 : 80	6,70%

Main tenant and seller:

UBS SA

Investors:

Maag Holding AG, RSE Grundbesitz und Beteiligungs AG, Prima Inmobiliaria SA (now: Vallehermoso)

Strategy for syndication:

Rheinhyp, AHBR, Eurohypo/old, Deutsche Hyp



III. Cross border portfolio finance and initial syndication

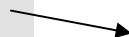


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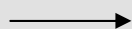
Basics on portfolio transactions

- overall risk of a real estate portfolio is lower than the added risks of the individual real estate assets
- contractual cross collateralisation
 - full loan amount on every real estate asset ? fees !
 - on every real estate asset only a mortgage representing its individual value → change of values cannot be equalized easily, at least not in the mortgage rank !
- joint mortgage
 - less fees
 - equalizing of change of values through mortgages

possible, but high
transaction costs



not in
all countries

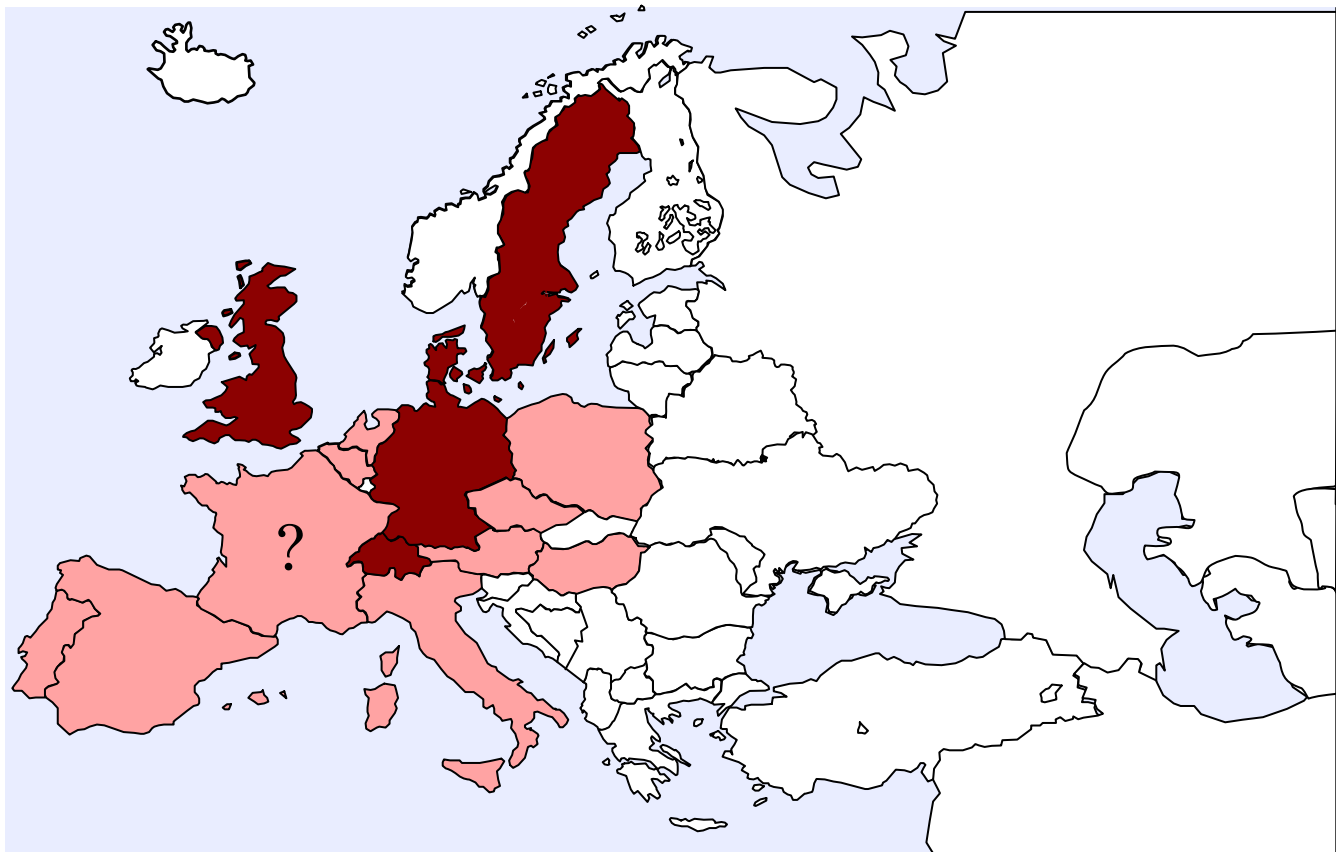




IV. Cross border secondary syndication



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possible in
efficient way



very difficult

as of 4.6.2007

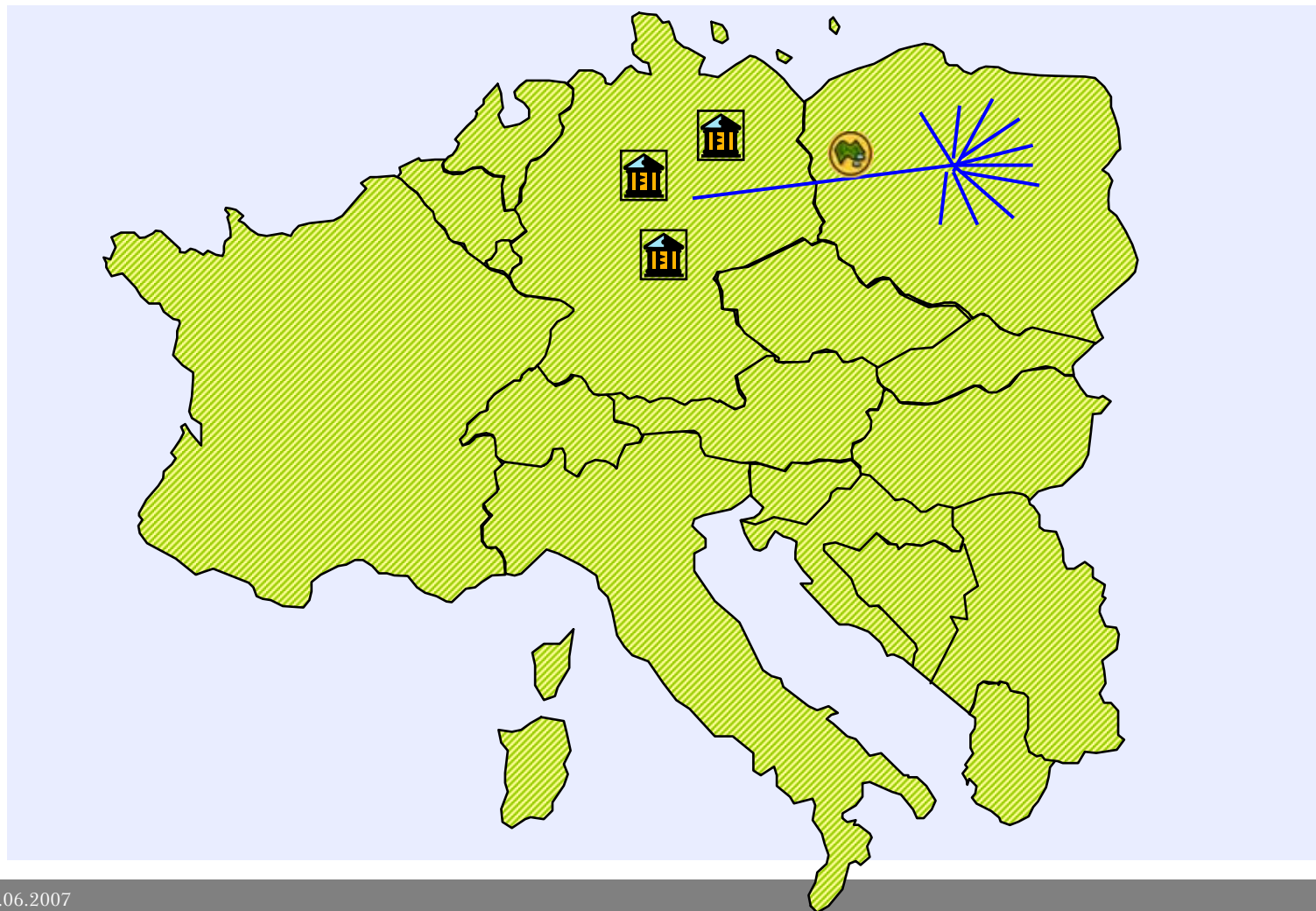


V. Cross border real estate portfolio finance and secondary syndication



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Case study: Poland





V. Cross border real estate portfolio finance and secondary syndication



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EXAMPLE OF A FINANCING OF A PORTFOLIO WITH SYNDICATION (2004)

Subject of the financing: Financing of a Sale- and Lease Back portfolio transaction, closed with Metro Group in Poland

Volume of the transaction: EUR 850 m

Properties: 27 retail properties distributed in Poland with a GLA of approx. 678.000 m² (Real-, Media-, Praktiker-Stores)

Initial financial ratios:

Loan to Open Market Value	Loan amount/Net rental income p.a.	Debt Service Ability (a per current rental income p.a.)
64%	11,7 times	11,04%

Main tenant and seller: Metro Group

Investors: Apollo Rida

Strategy for syndication: Eurohypo, HSH Nordbank, HypEssen - Full underwriting, subsequent syndication up to a final hold of EUR 225 m



V. Cross border real estate portfolio finance and secondary syndication



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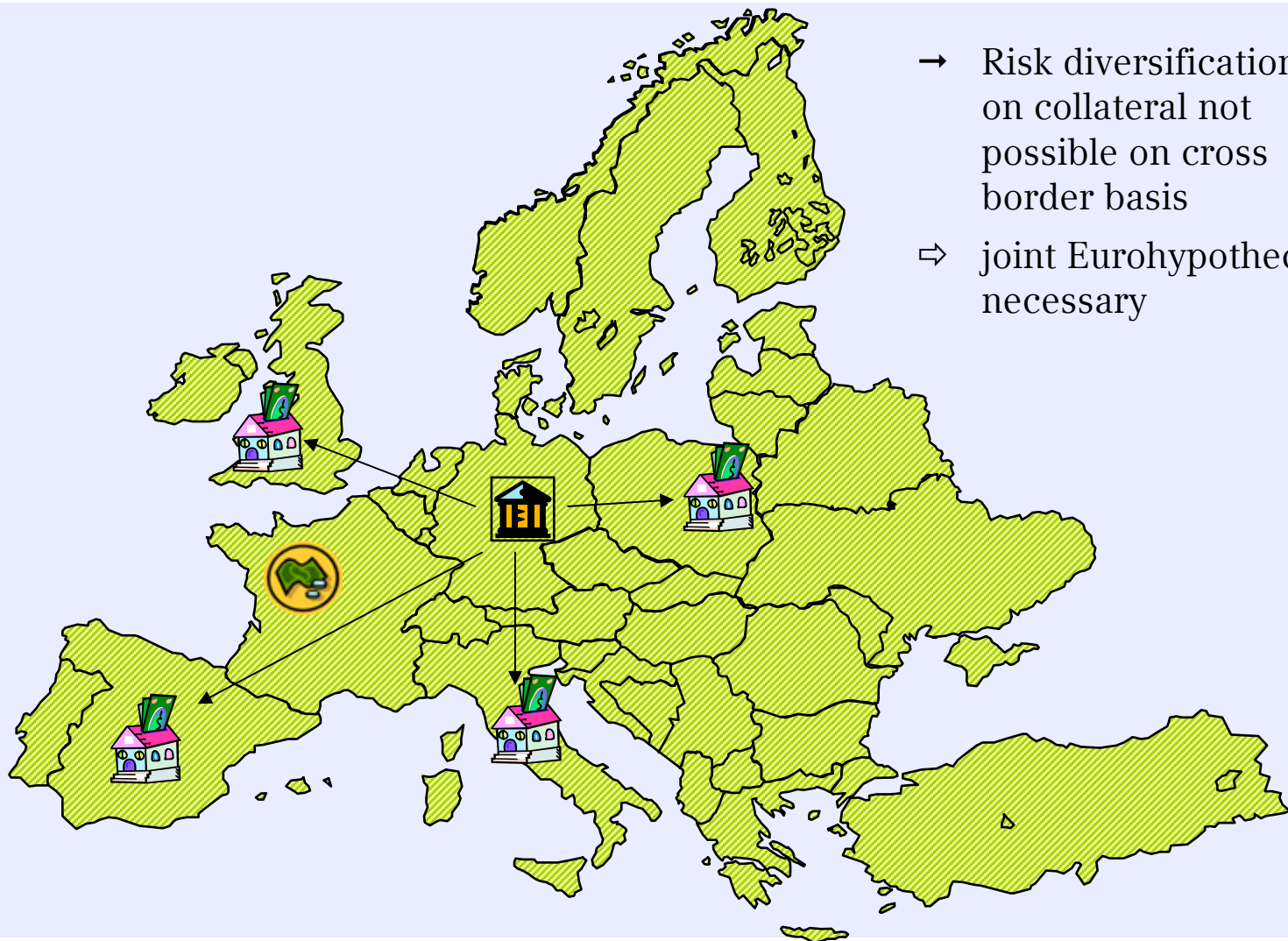
- shortly before: Poland introduced initial joint mortgage
→ portfolio-risk-structure possible in efficient way
- problem: secondary syndication → huge documentation necessary



VI. Multi country portfolio finance



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- Risk diversification on collateral not possible on cross border basis
- ⇒ joint Eurohypothec necessary



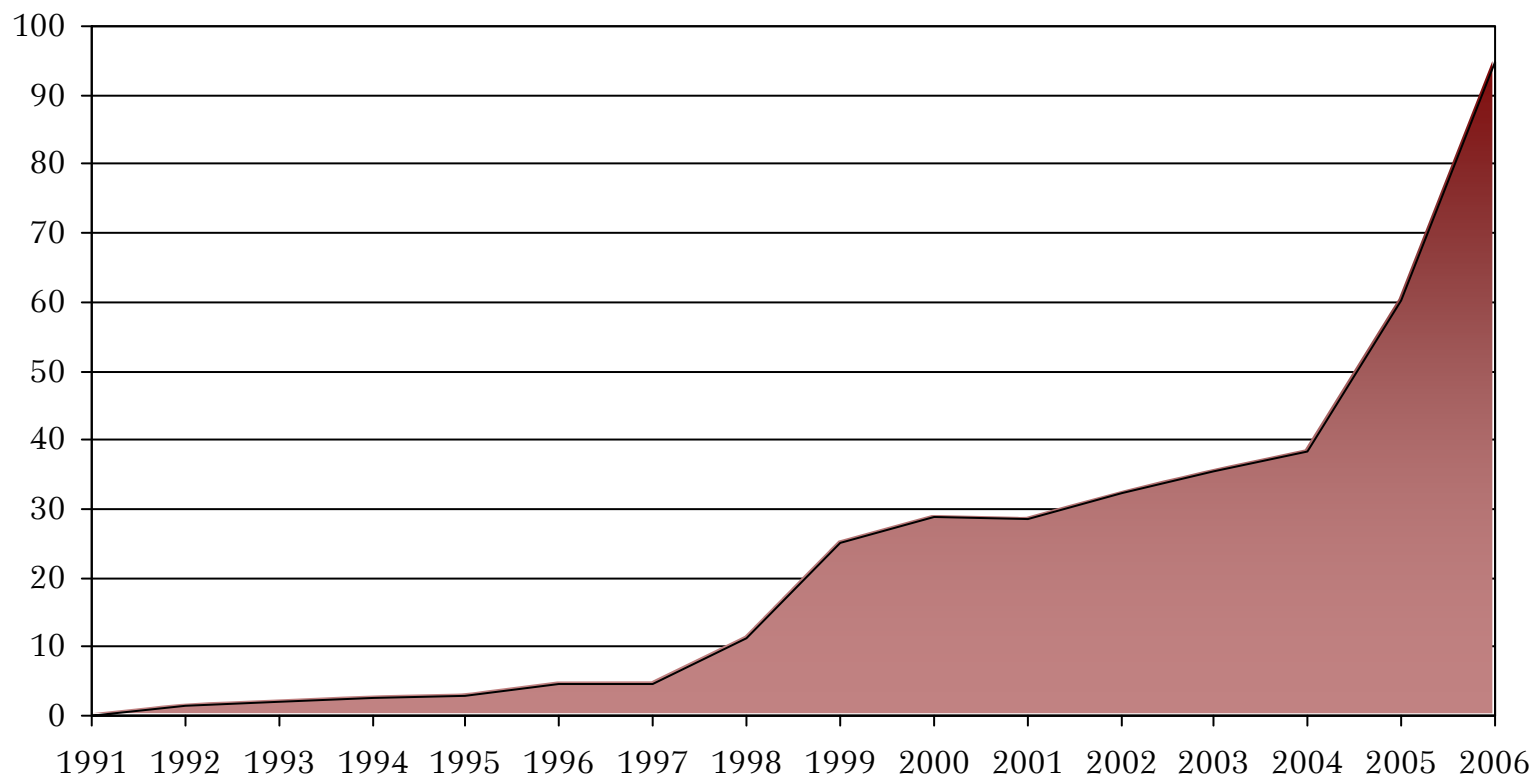
VI. Multi country portfolio finance



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Volume of cross border mortgage business of vdp member banks

in bn. €



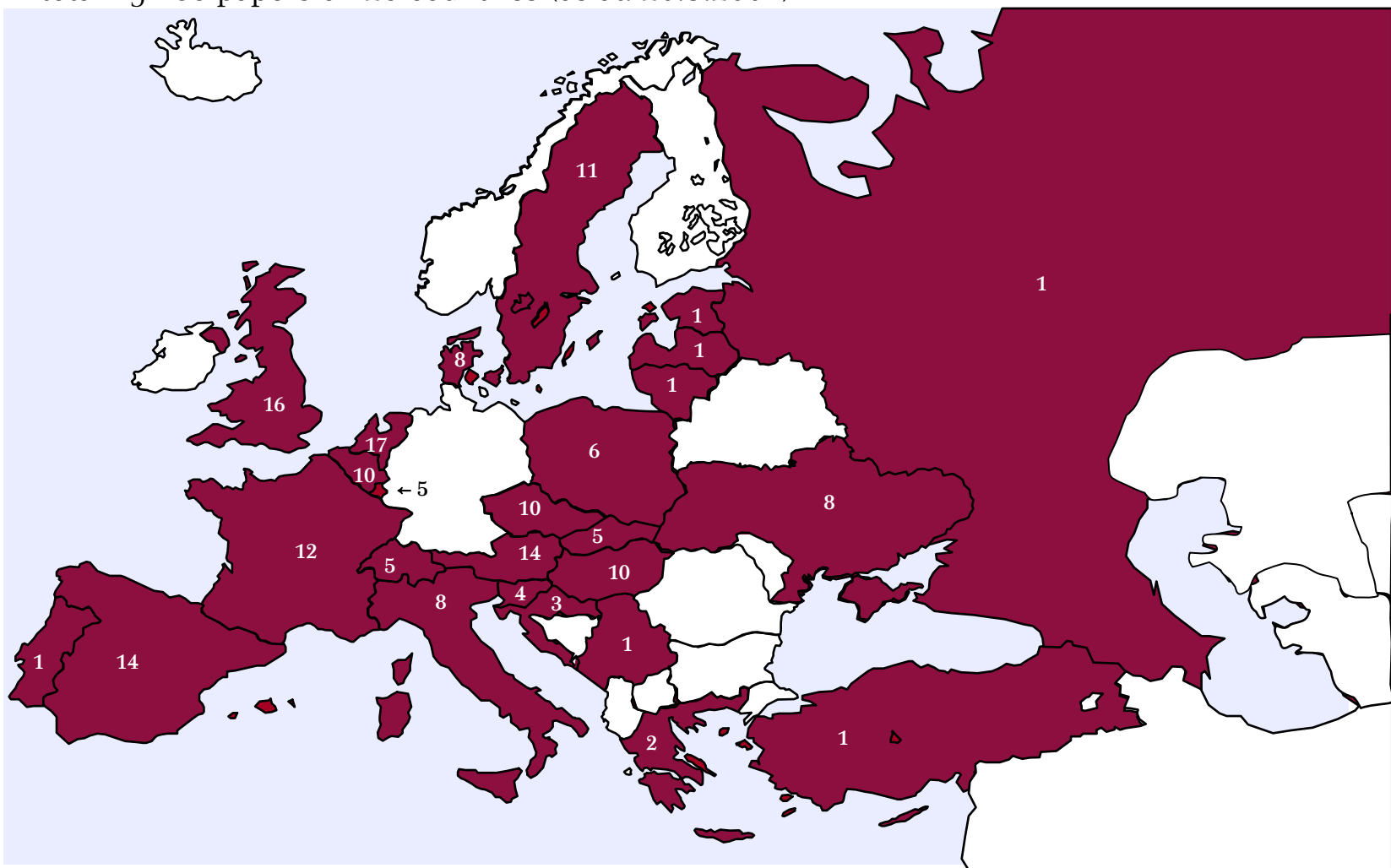


VI. Multi country portfolio finance (synergies through country reports, papers on special issues, publications CLC)



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- totaling 188 papers on 28 countries (as at: 20.3.2007) -



USA: 12
CND: 1



B) Legal issues



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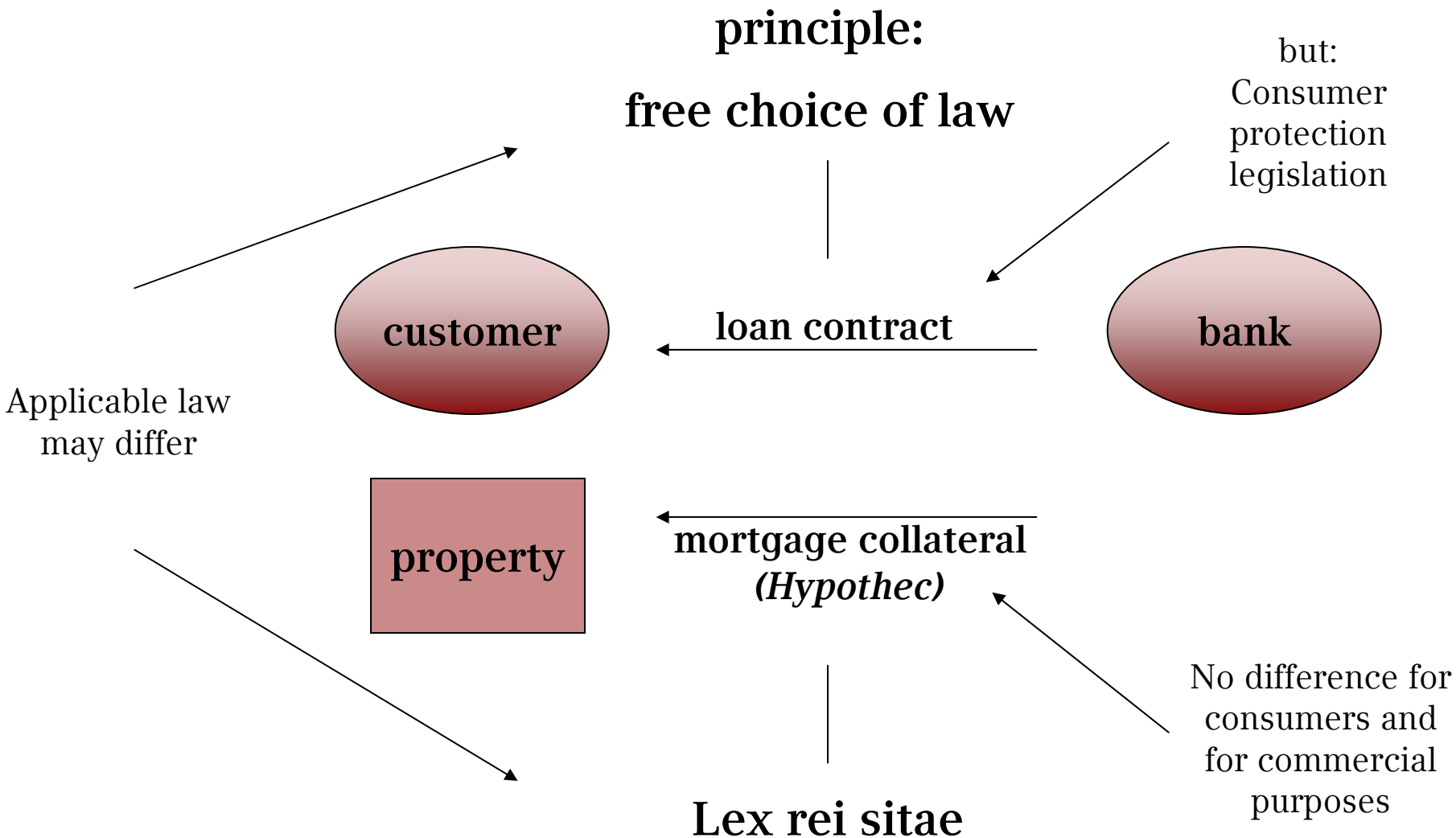
- 🖥 applicable law - *lex rei sitae*
- 🖥 flexibility between loan and collateral
- 🖥 Euromortgage
- 🖥 pan-European Security Trust



Applicable law - lex rei sitae



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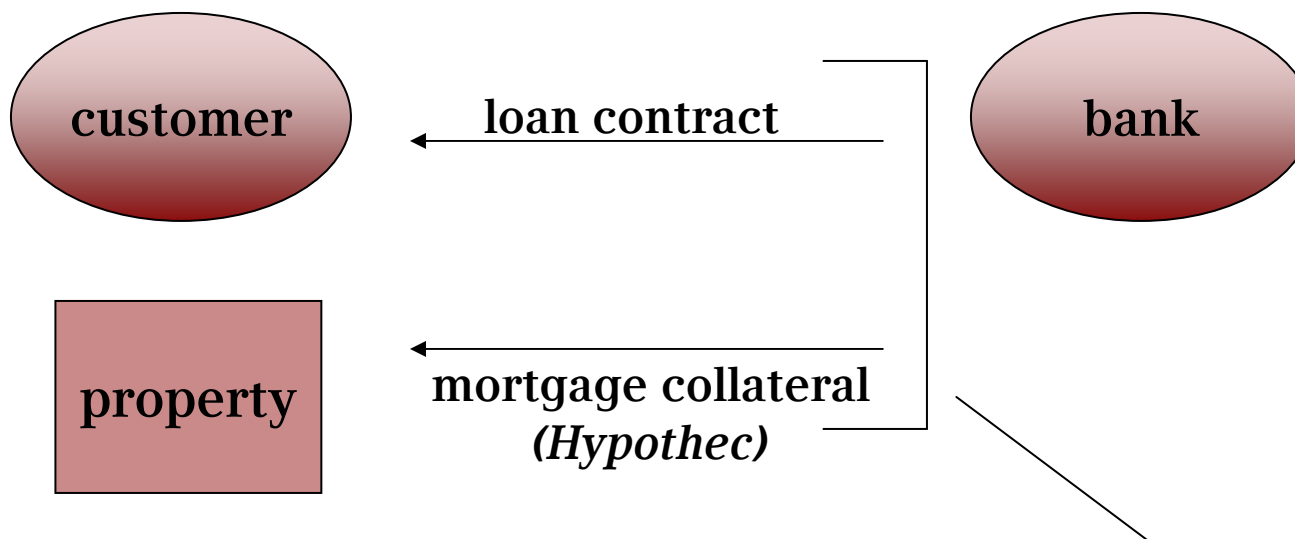




Flexibility of mortgage collateral



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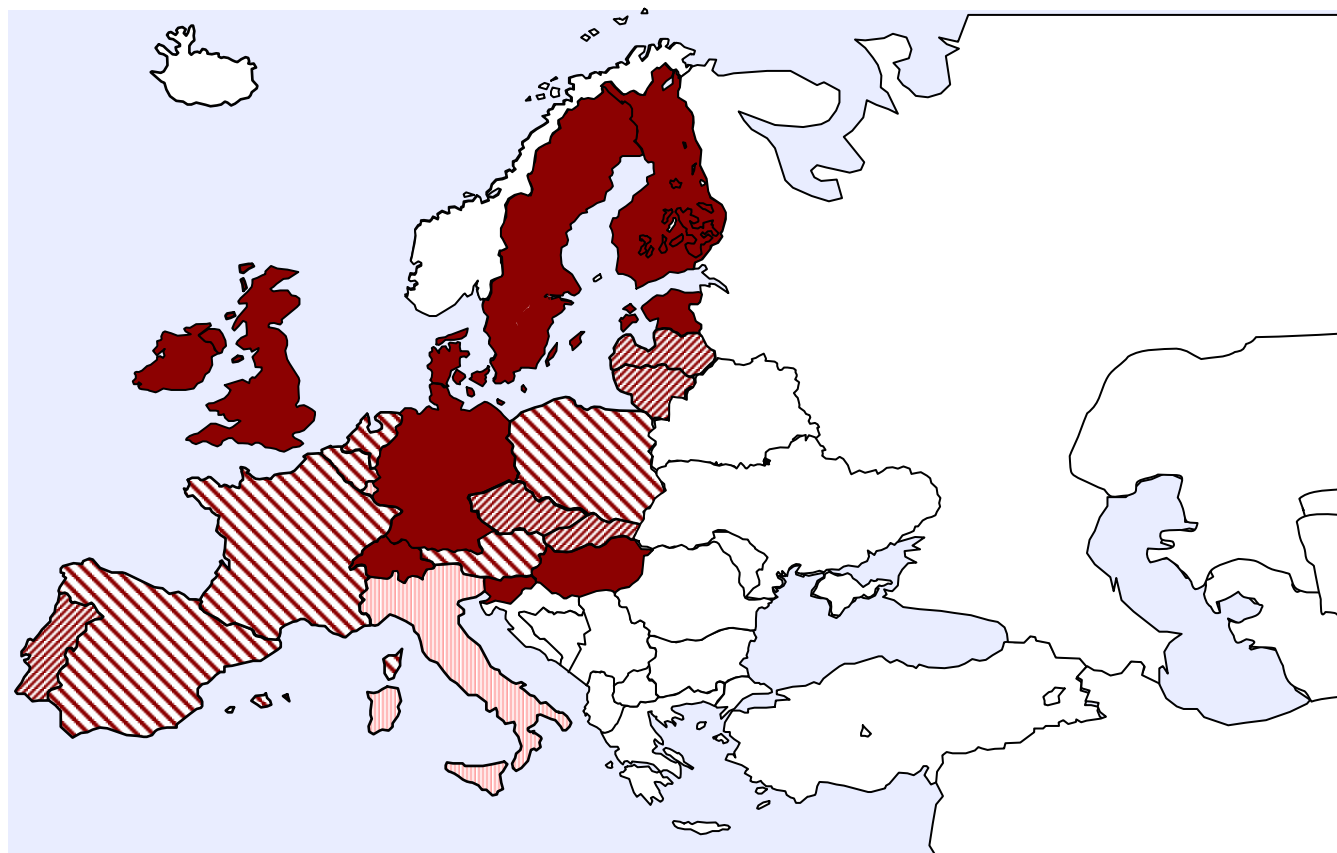
- change of secured claim?
- change of lender? (= transferability)
- lender and mortgagee must be one and the same person







Flexibility of mortgage collateral instruments in Europe



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- 
Contractual accessoriness
(= high flexibility)
- 
Statutory accessoriness,
but relative flexible relation,
if bank and customer do not
change
- 
Accessoriness and a
low level of flexibility
- 
Accessoriness and a
very low level of flexibility

as of 20.4.2007



A. What is the idea of a Eurohypotheck?

The idea is to create

- a real estate security instrument (charge, pledge, guarantee),
- uniform in all EU member states,
- flexible and efficient for all kinds of real estate finance transactions.

It is not a new loan product.



B. Long history of proposals and a lot of actual work:

- **1966** “**Segré Report**” on “The Development of a European Capital Market”: “The introduction of a mortgage common to all Member States would help to integrate capital markets.”
- **1987** **International Union of Latin Notaries (UINL):** “Eurohypothèque”
- **1998** **Association of German Mortgage Banks (VDH)**, with the help of a team of experts from both academic and practical backgrounds, developed guidelines for a flexible security right (for consulting work in Central Europe)



B. Long history of proposals and a lot of actual work:

- **2004** Pan-European group of experts “**The Eurohypotheec**” (initiated in Spain)
 - further developed VDH-guidelines in English
- **2004** **Forum Group on Mortgage Credit**
 - recommended Eurohypotheec
- **2004/2005** **The European University Institute (EUI) in Florence:**
 - comparison of property law in EU countries
- **2004/2005** **European Union Land Information System project** (www.eulis.org)
 - comparative-law review of the rights registered – including security rights over real property.



B. Long history
of proposals
and a lot of
actual work:

2004/2005 Initiative of the expert group "The Eurohypothech" in order to exchange ideas with specialists of the

- Forum Group's collateral subgroup
- EUI property law project
- EULIS

⇒ 2 workshops in Berlin in October 2004 and April 2005

⇒ outcome: new version of guidelines and additional papers



"Basic guidelines of a Eurohypothech",
published by the Polish Mortgage Credit
Foundation in May 2005

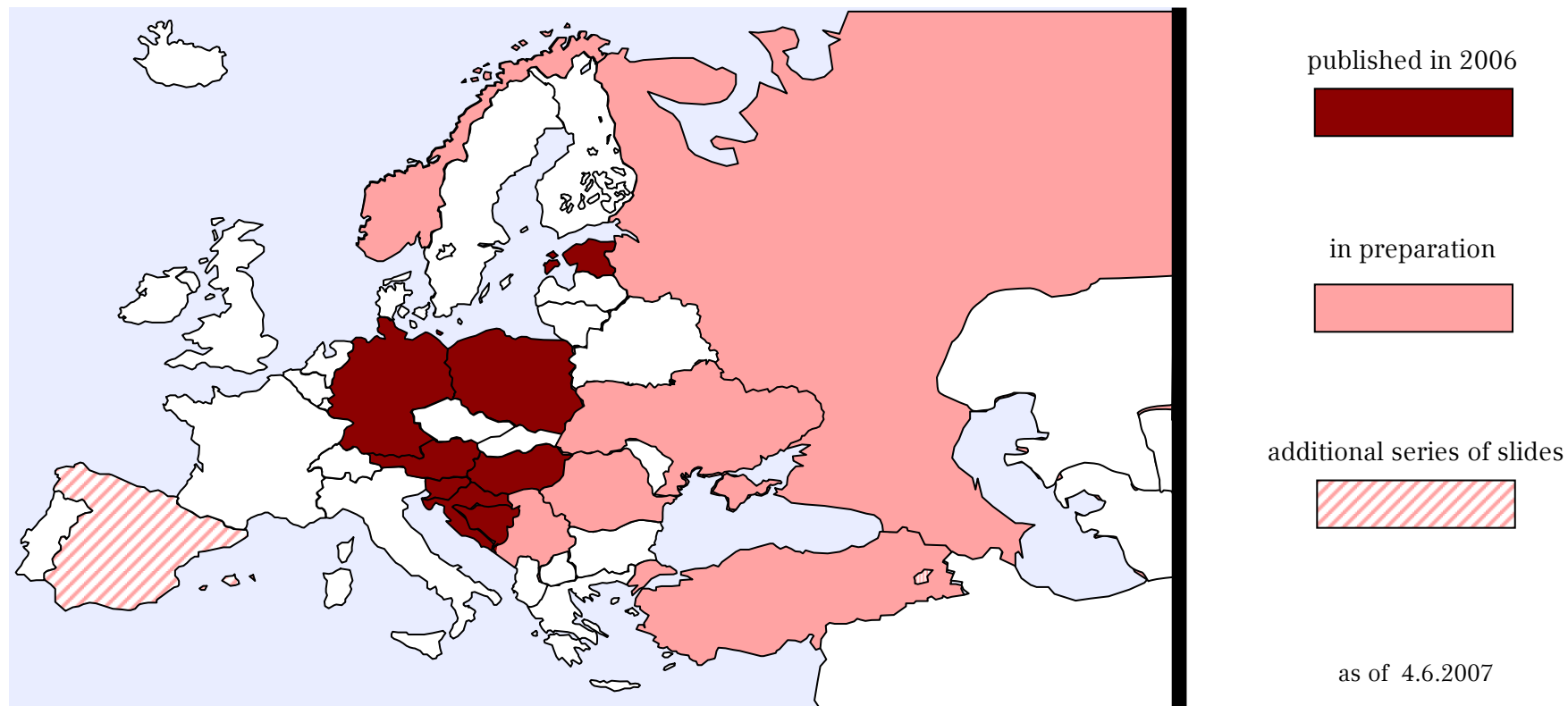


Round Table / Flexibility of Real Estate Collateral



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- 3 work shops have been held since 2005
- Central and Eastern European countries involved
- Publication of 8 country reports in 2006 in German (volume 23 vdp series)
- 6 more reports to be published in 2007 / 2008



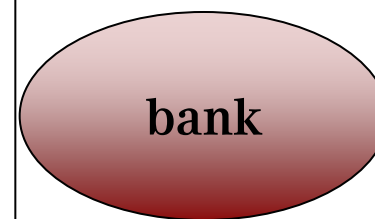
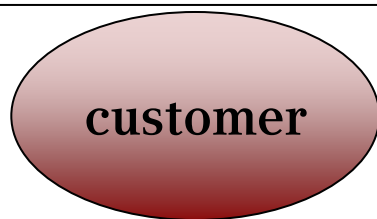


The solution: Eurohypotheck



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Eurohypotheck



loan contract



Eurohypotheck

= charge on real estate



statutory connection replaced by
contractual one → flexibility!

contractual connection:
security contract

accessoriété légale



accessoriété conventionnelle obligatoire

statutory accessoriness

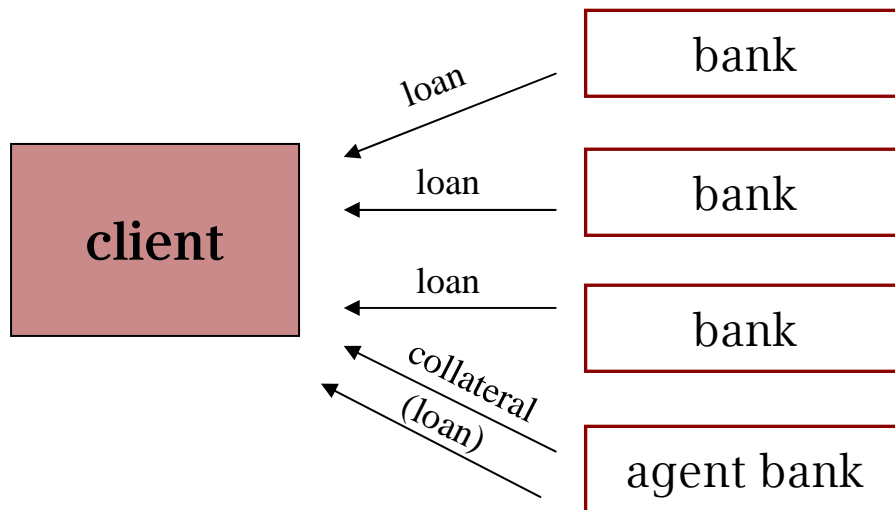


compulsory contractual accessoriness



Modern financial instruments more often need to split secured claims and collateral:

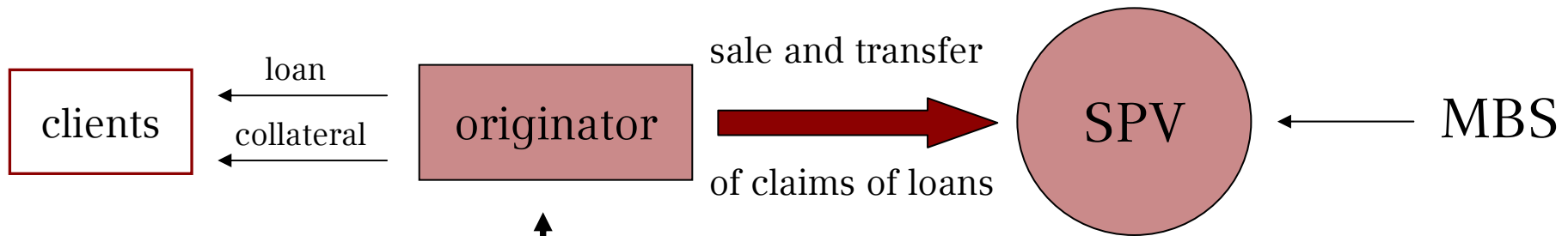
- syndication → collateral only in the hand of the syndication agent, but loans granted directly from syndication partners



1. only possible, if there is no legal accessoriness between loan and collateral → Eurohypotheck
2. collateral insolvency remote? → trust / fiduciary relation



■ funding structures: securitisation

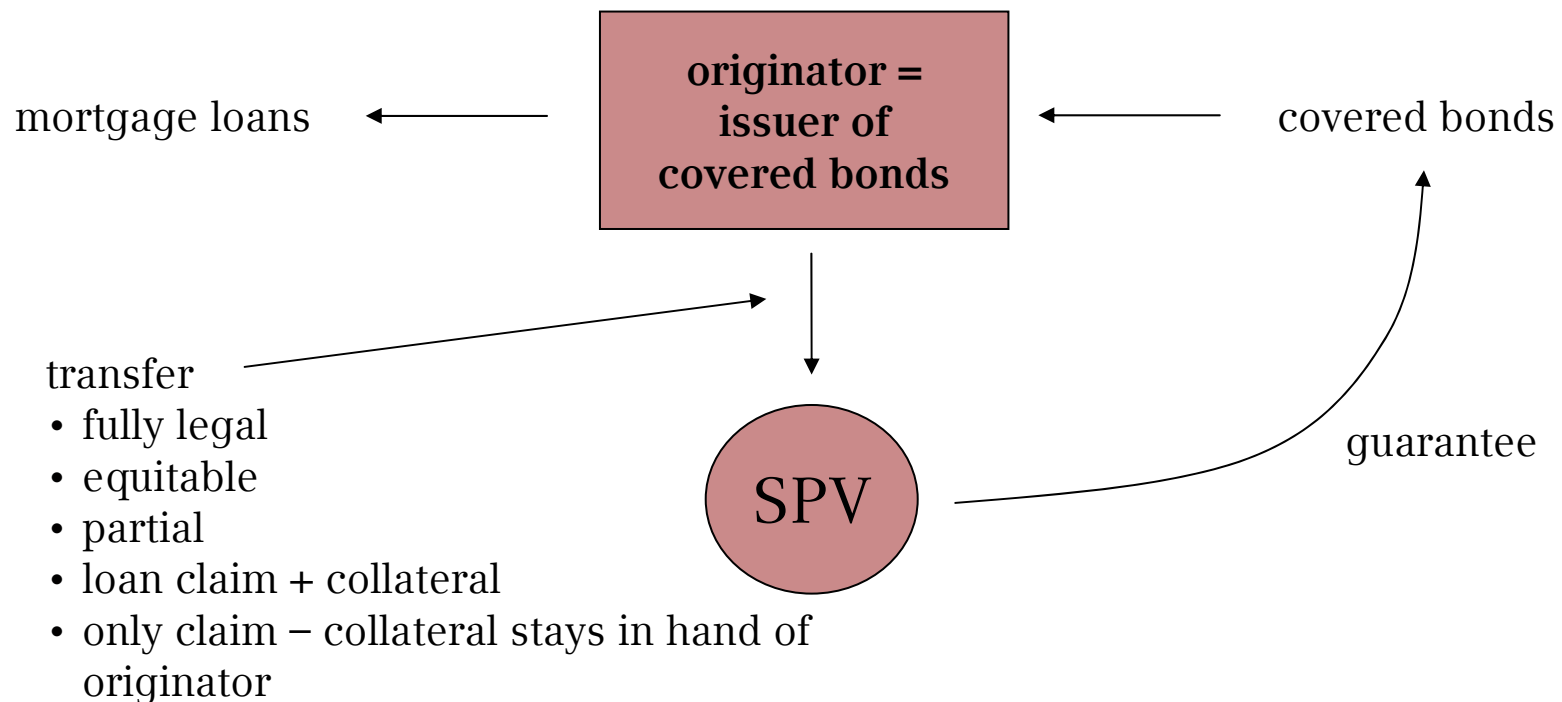


often keeps collateral legally in trust / fiduciary relation,
because transfer of mortgage collateral is costly

only possible, if there is no legal accessoriness between loan and collateral
+ structure is insolvency remote



new funding structures in Europe: structured covered bonds (UK, NL)





C. Summary



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- complex real estate transactions
 - like cross-border portfolio finance and modern structured finance products –
 - need modern collateral law

 - on a European-wide basis nearly nothing so far !
but first proposals were developed:
 - Eurohypotheec
 - Forum Group on Mortgage Finance
 - Green Book
 - London Economics
 - Basic Guidelines on a Eurohypotheec
 - Euro-Trust – first steps to develop concrete structure were started
- ⇒ every support is welcome !



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