26th Central European Covered Bond Conference, Budapest

Panel 3: Cross Border Cover Assets

Legal Framework for Cross Border Business

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vdp Die deutschen Pfandbriefbanken

Agenda

I. Insolvency Protection

II. Extension of Insolvency Protection to Foreign Cover Assets

III. EU Countries

IV. Cover Assets from Third Countries

V. EU-Regulation on Cross Border Business for CB Issuers

VI. National Regulation

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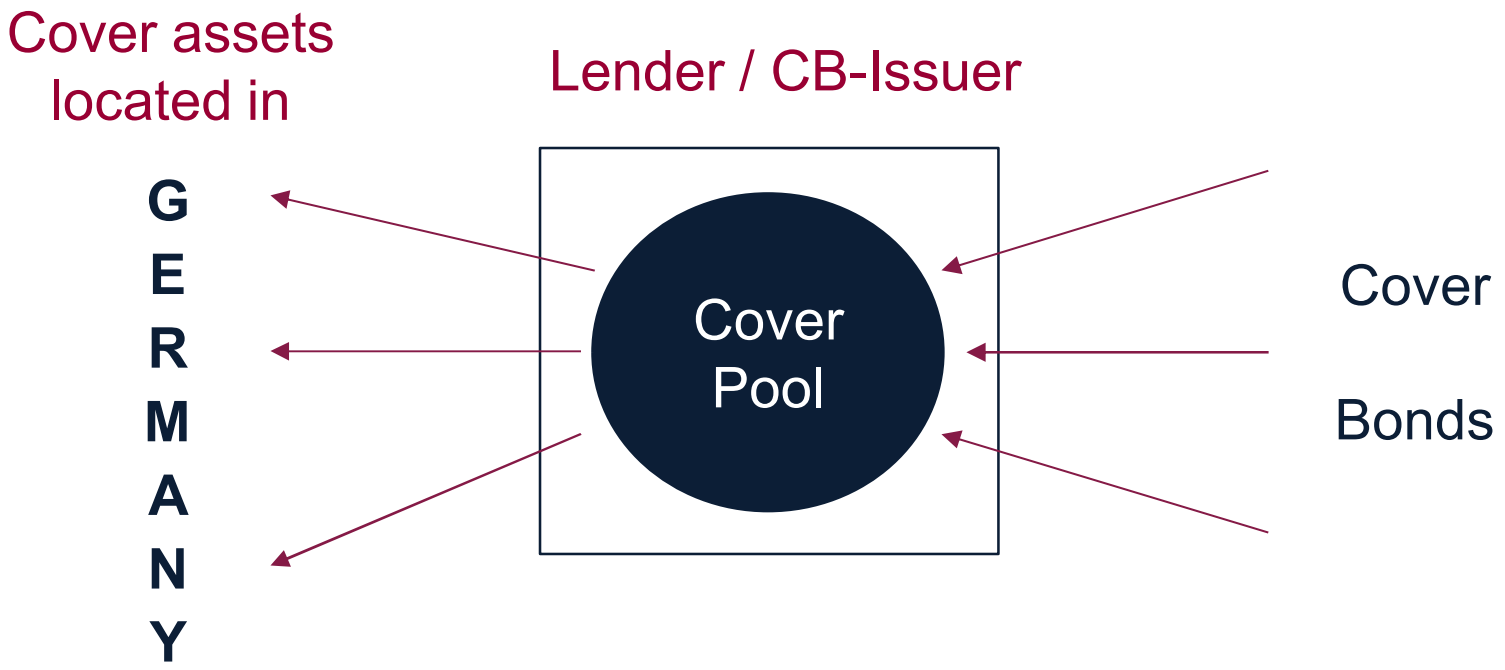
I. Insolvency Protection



- If the registered office of CB issuers is in the same country as the cover assets,
- the legislator may regulate the allocation of cover assets to the covered bonds
- because both are located in its territory and therefore subjects to its regulatory competence.

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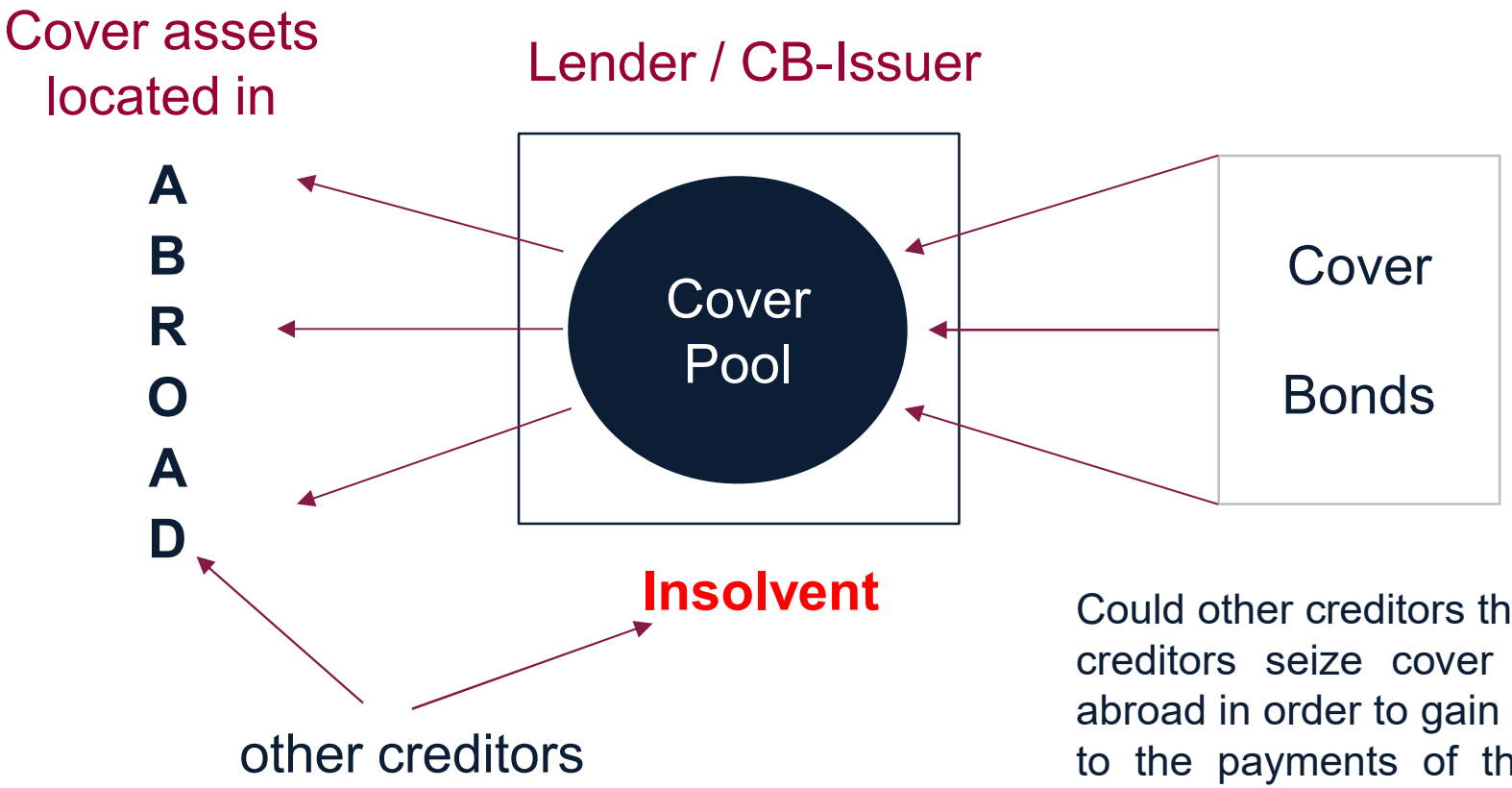
II. Extension of Insolvency Protection to Foreign Cover Assets

1.) Seizure by third parties



Could other creditors than CB-creditors seize cover assets abroad in order to gain access to the payments of the loan debitors?

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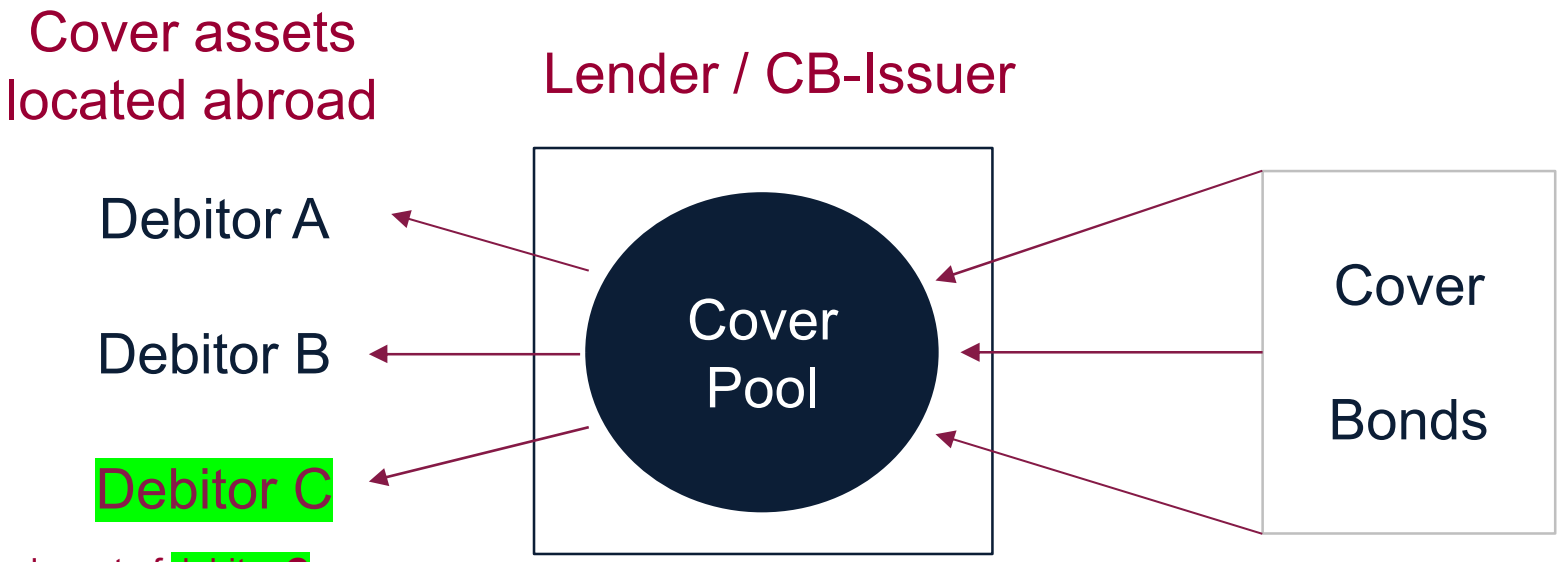
II. Extension of Insolvency Protection to Foreign Cover Assets

2.) Secondary or Territorial Insolvency Proceedings



- National court of debitor **C** opens secondary insolvency proceedings in respect of cover assets there.
- If so: Will the insolvency protection / preferential treatment under CB-issuers home law be respected?

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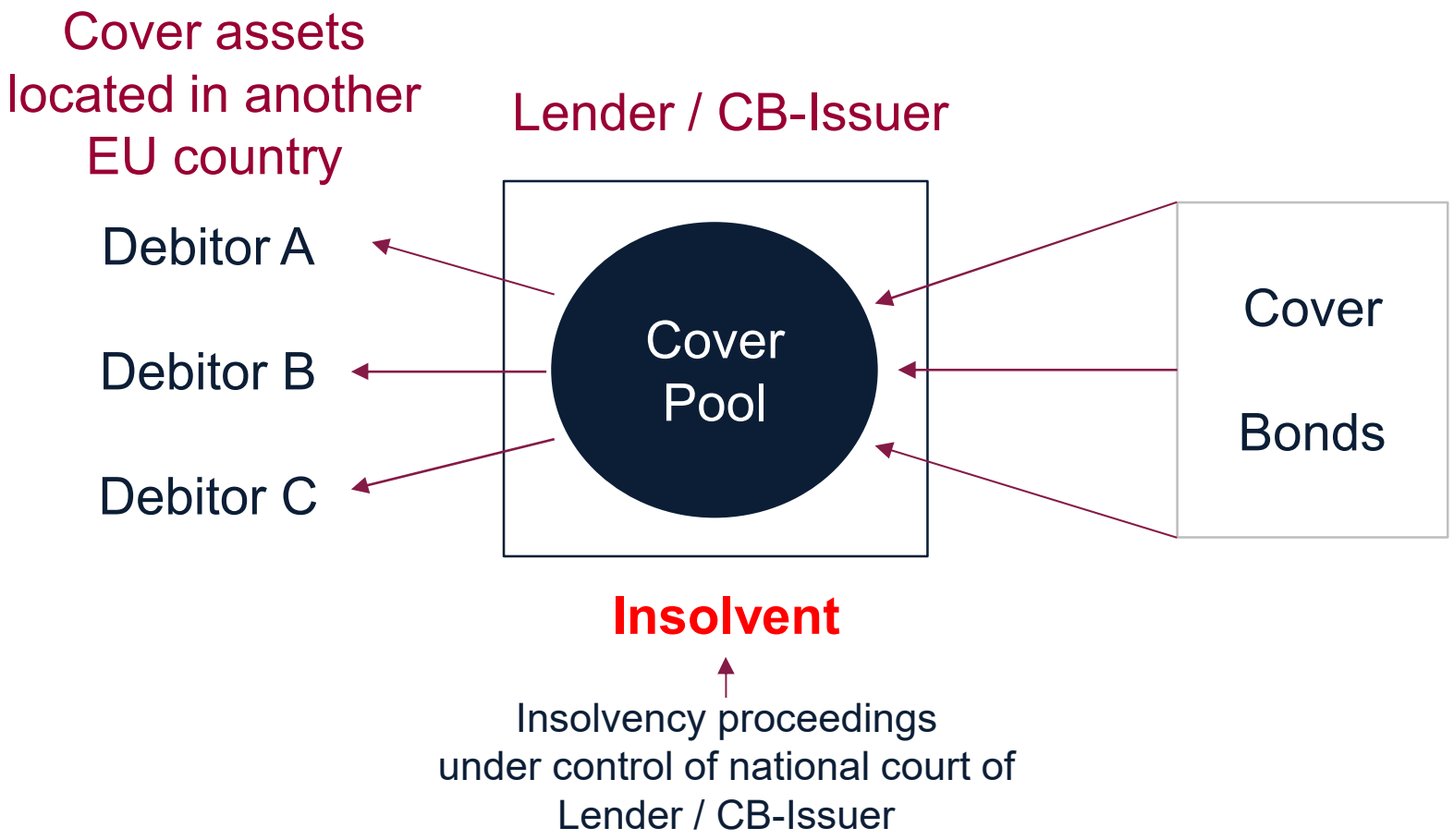
III. EU Countries (I)



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III. EU Countries (II)

Directive on the reorganisation and winding-up of credit institutions

(Directive 2021/24/EC; 4 April 2001, OJ L 125/15 of 5 May 2001)

PRINCIPLES

Country of origin — Universality

- Authorities and courts of Lender / CB-issuers' home country are competent for recovery measures including:
- National FSA measures in advance or to prevent insolvency
  (Recitals 6, 7 Art. 3 (1),3(2) Directive)
- Opening and performance of *winding-up proceedings (recitals 14, 16, Art. 9, 10 Directive*

BRRD / SRM Regulation

- SRB for credit institutions subject to ECB supervision.
- Has to comply with private internatinal law / international insolvency law.
- In insolvency proceedings the national law of the credit institution applies.
- Assets in other EU-states are assessed only according to this national law of CB issuer.
- Also with regard to separate estates.

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III. EU Countries (III)

Creditors other than CB-creditor

- *cannot attach cover assets* in other EU-member states.
- thus *cannot access the payments* of loan debitors.

Secondary or territorial

bankruptcy proceedings against assets of CB-issuer in other EU-countries *are impossible to open*.

Effect of CB insolvency protection of national CB-laws is fully effective within EU-members!

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IV. Cover Assets from Third Countries

Neither EU nor national legislators can create regulations

- that impact third countries,
- override international enforcement and insolvency law,
- directly interfere with regulatory sovereignty of third countries.

⇒ Attachment and bankruptcy proceedings in third countries *cannot be excluded* by domestic legal measures.

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V. EU-Regulation on Cross Border Business for CB Issuers

1. Covered Bond Directive (I)

Covered Bond Directive (2019/2162)

Art. 7 (1) CBD
- Explicitly allows EU-member states to include assets segregation has to be identical to national or EU regulation.

Art. 7 (2) CBD
- Requires comparability related to collateral of assets and their enforceability.

Art. 7 does not require that scope of asset segregation has to be identical to national or EU regulation.

Any vagaries are with national CB legislator, possible to

prohibit | limit | unlimit

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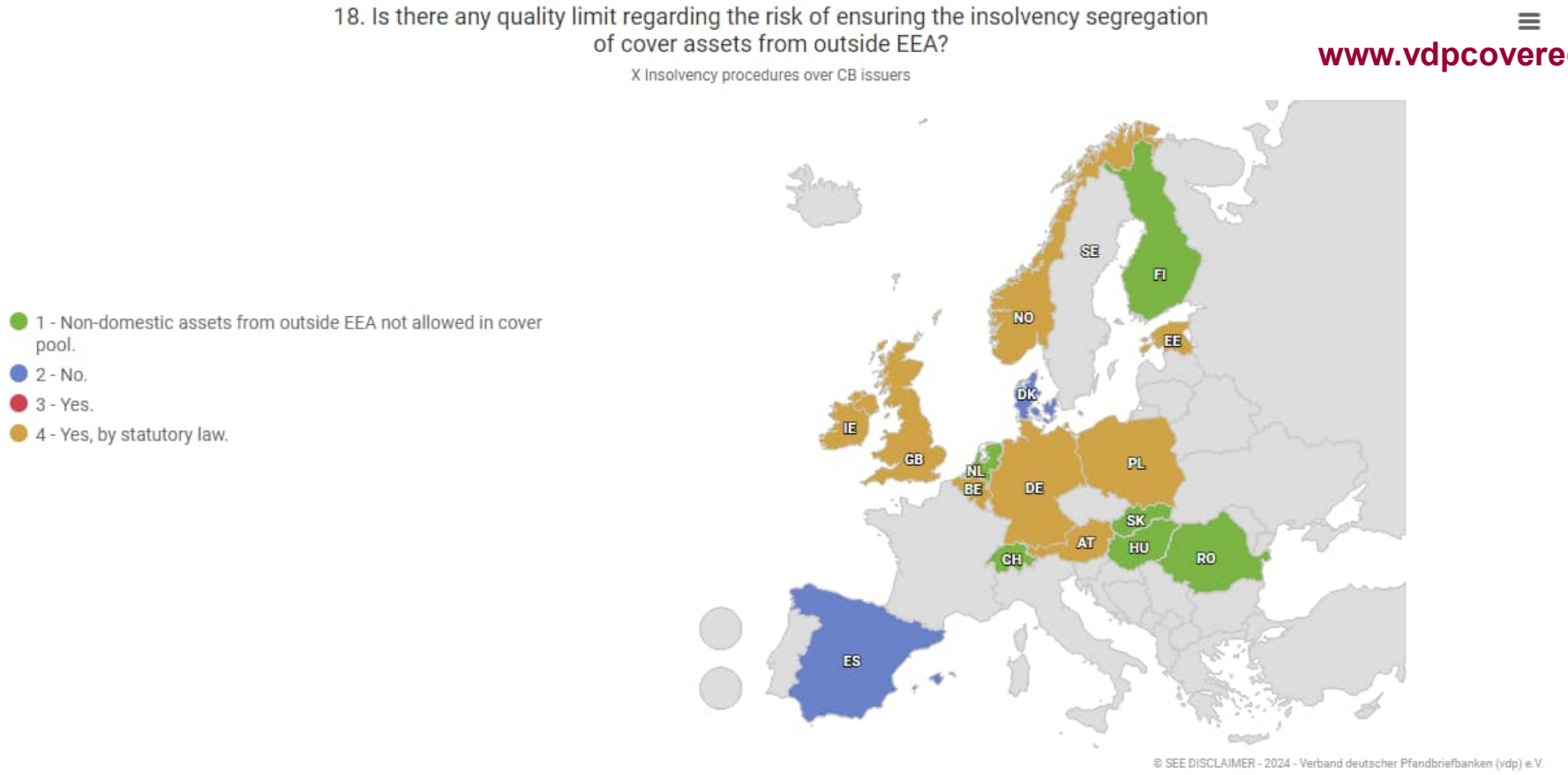
V. EU-Regulation on Cross Border Business for CB Issuers

1. Covered Bond Directive (II)



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V. EU-Regulation on Cross Border Business for CB Issuers

2. Legal Monitoring Art. 194 CRR

➢ **Regulatory requirements in accordance with Art. 194 CRR**:

Banks must
- asses legal effectivness and enforceability of mortgages in all relevant jurisdictions,
- which they wish to recognize as equity-reducing,

and
- ensure this on an ongoing basis through ad hoc reviews.
- To this end, the development of the legal framework must be continuously monitored and evidence of this must be provided.

➢ **vdpRechtsmonitoring** (vdp legal monitoring) enables banks to prove this, as required by the supervisory authority.

This is done by checking
- whether a change in the law or new case law in one of the selected countries
- makes it necessary to review existing real estate financing,
- should be given special consideration for future financing and/or
- triggers the need for further research.

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VI. National Regulation
Valuation

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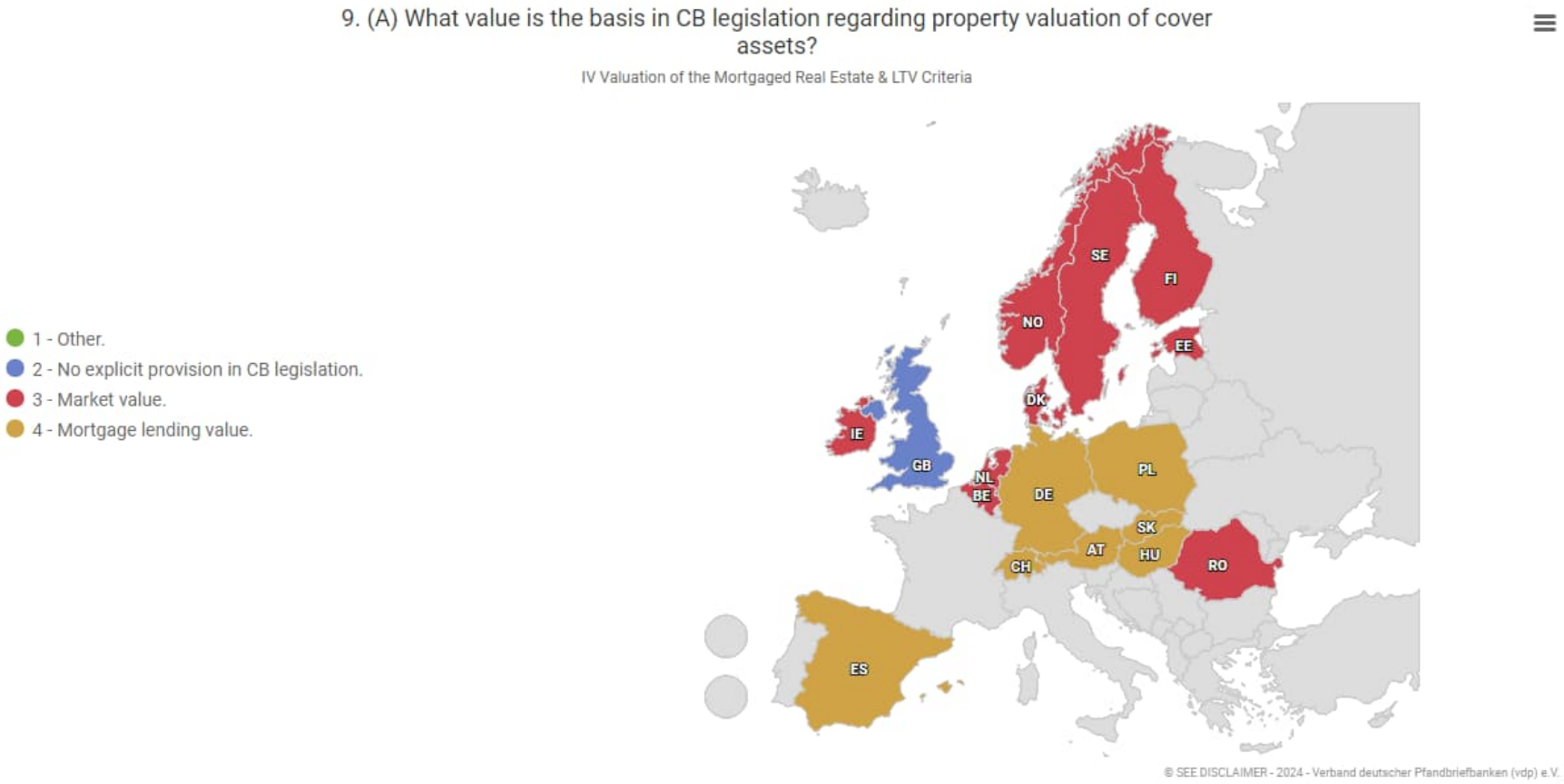

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Thank you!

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