

# SESSION 3: A MORE INTEGRATED COVERED BOND FRAMEWORK? ASSESSING THE OPTIONS.

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**I. Key aspects CB legislation.  
Need for greater convergence?**

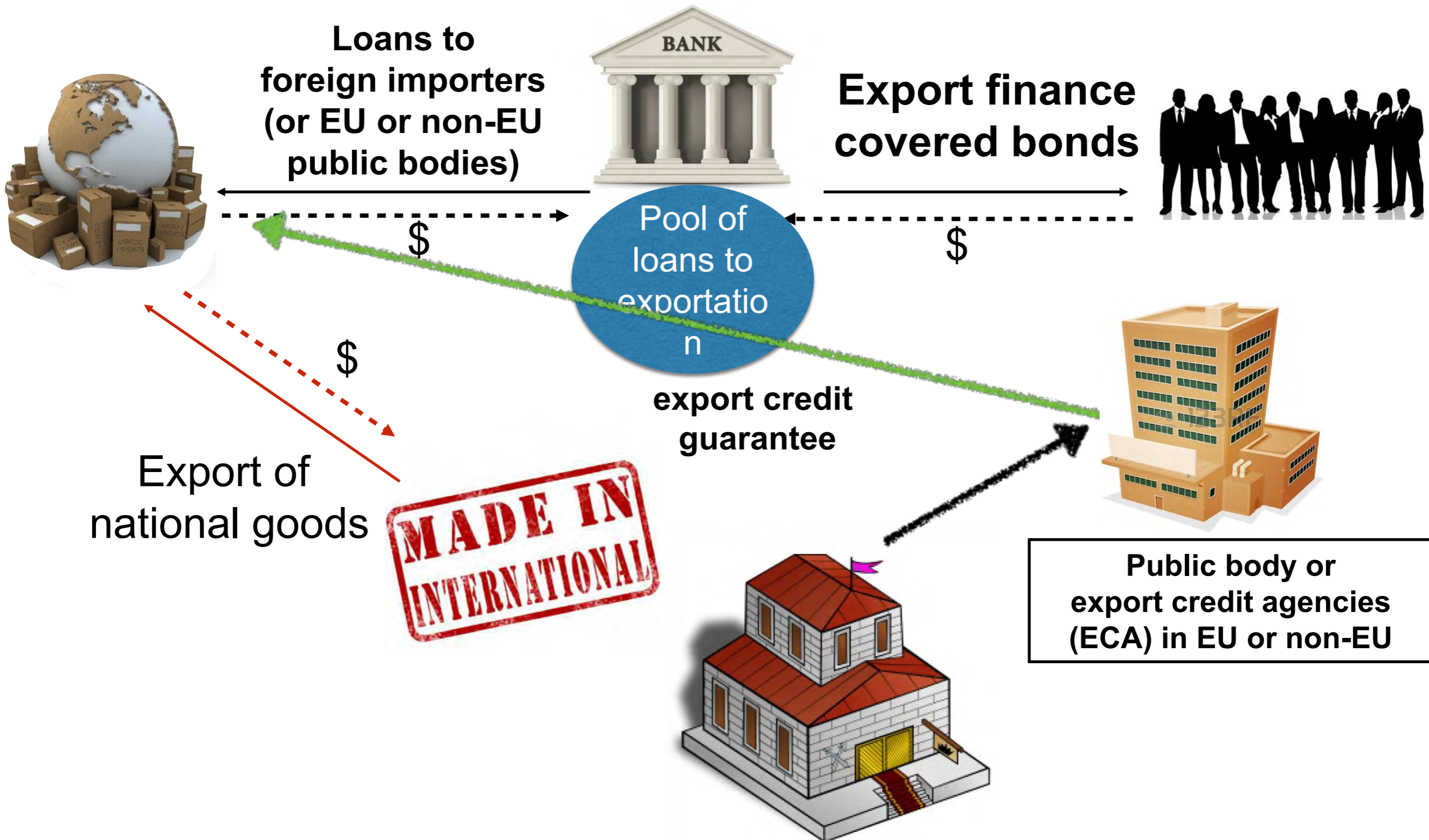
**II. Views EBA report on CB  
framework (EBA recs)**

**III. EU law on CB? 29th regime?**



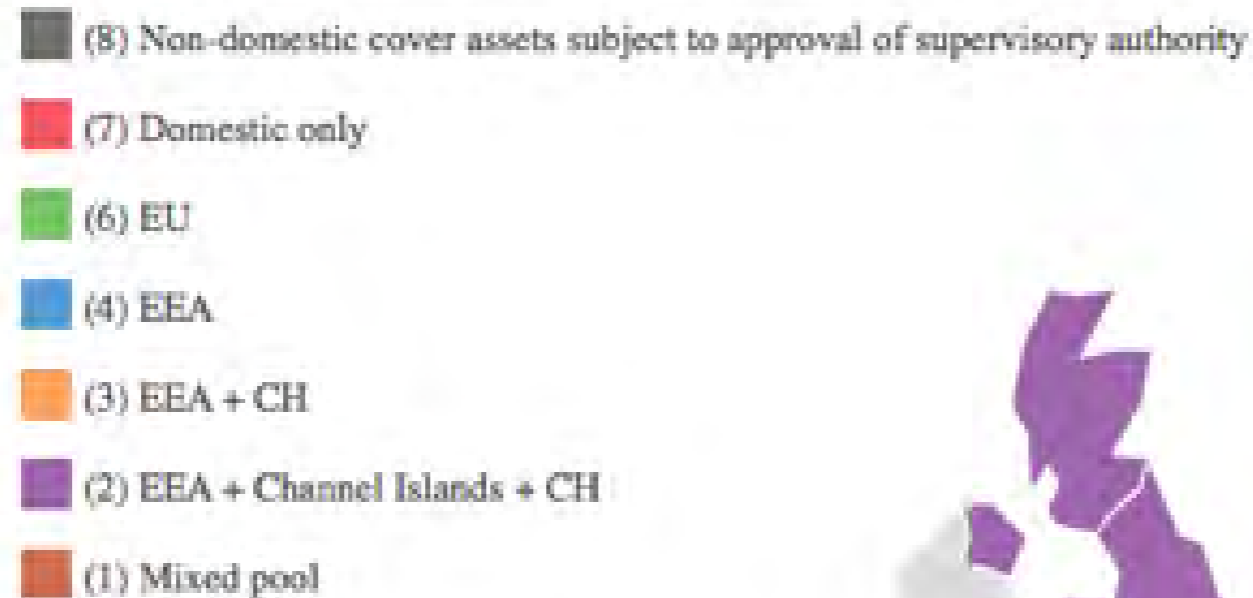
- **Goal:** security (certainty/trust) and recognizability (disclosure) of EU-CB.
- **Key aspects:**
  1. Who could be an **issuer**? Several concepts of legal relation between CB and cover pools—>most CB countries debtor of CB is legal owner of cover assets but not in NL, UK, IT (cover assets transferred to SPV: to achieve insolvency segregation).
  2. Which and how many **underlying assets**?
    - Quality assurance. New?: SME loans or “export finance CB”?
    - cover register or all balance sheet (ES, FR)
    - Requirements of abroad loans and who assess them? Important for true cross-border EU-CB.
    - Role, amount and kind (derivatives, MBS?) of substitutive assets?
  3. issuer’s **insolvency procedure** (segregation, how to ensure the timely payments CB?). Role of overcollateralization vs asset encumbrance?
- **Need?** Yes; positive outputs of a EU-branded product (legally-backed label):
  - A. it can provide **more reliability and no so much state-reliance/risk dependance**. But **who checks requirements are fulfilled?** Implication of EBA or national supervisory authorities.
  - B. It can contribute to create a true **EU mortgage market** (51% GDP are mortgages but only 1% are cross-border)—>cross-border land acquisition, better conditions for EU-wide mortgage loans

# Example 1. Which underlying assets accepted? New development in Spain: Export finance Covered Bond



# Example 2. The creation of a true pan-European mortgage market .Which foreign assets are accepted?

(III.1) MCB: What is the geographical scope for mortgage cover assets in Europe (location of mortgaged property) ?



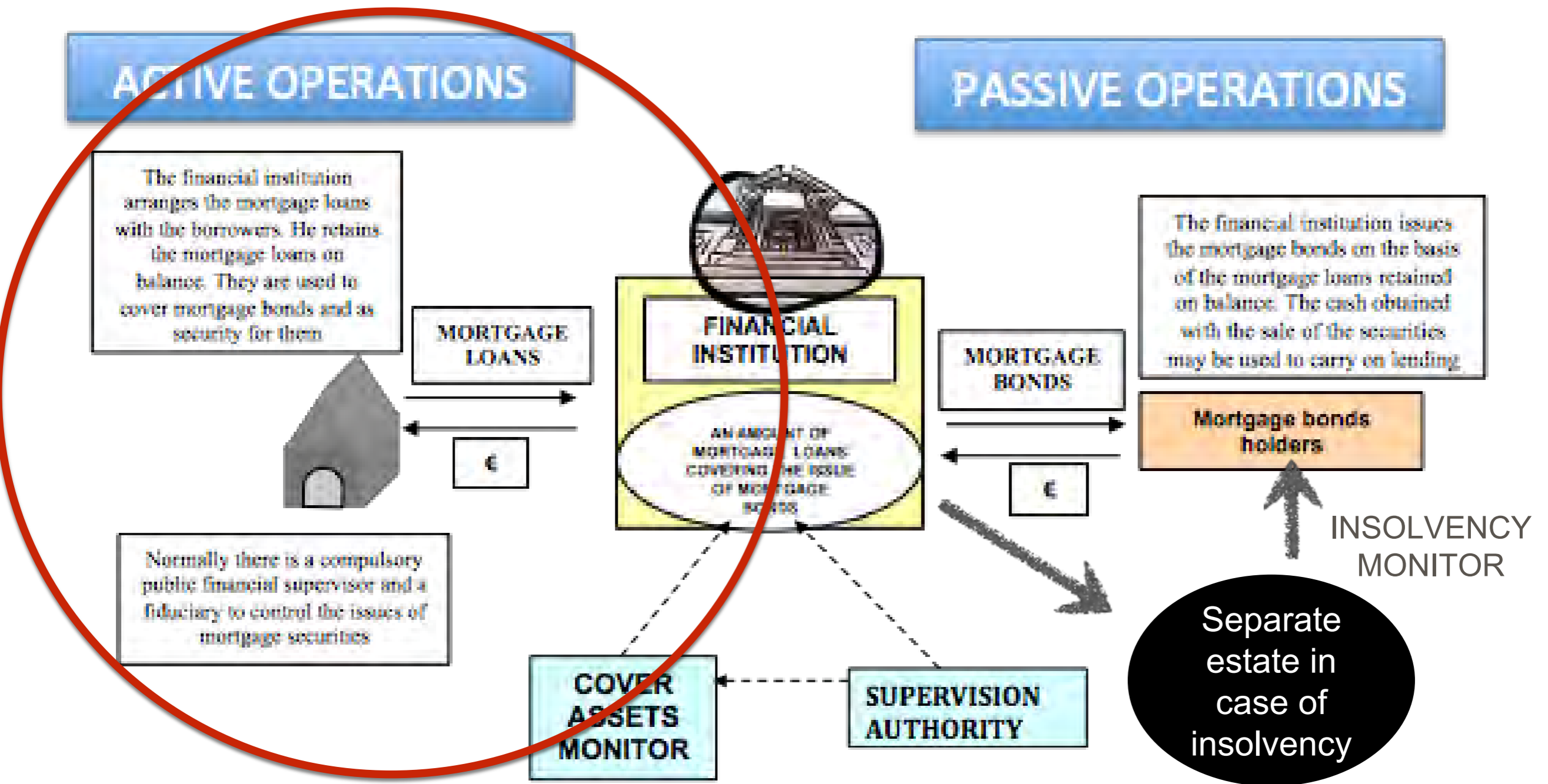
a) **Art. 2.3 Treaty of Lisbon 2007**: “The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability”.

b) **White Paper 2007** of EU mortgage market, linking lending and financing operations.

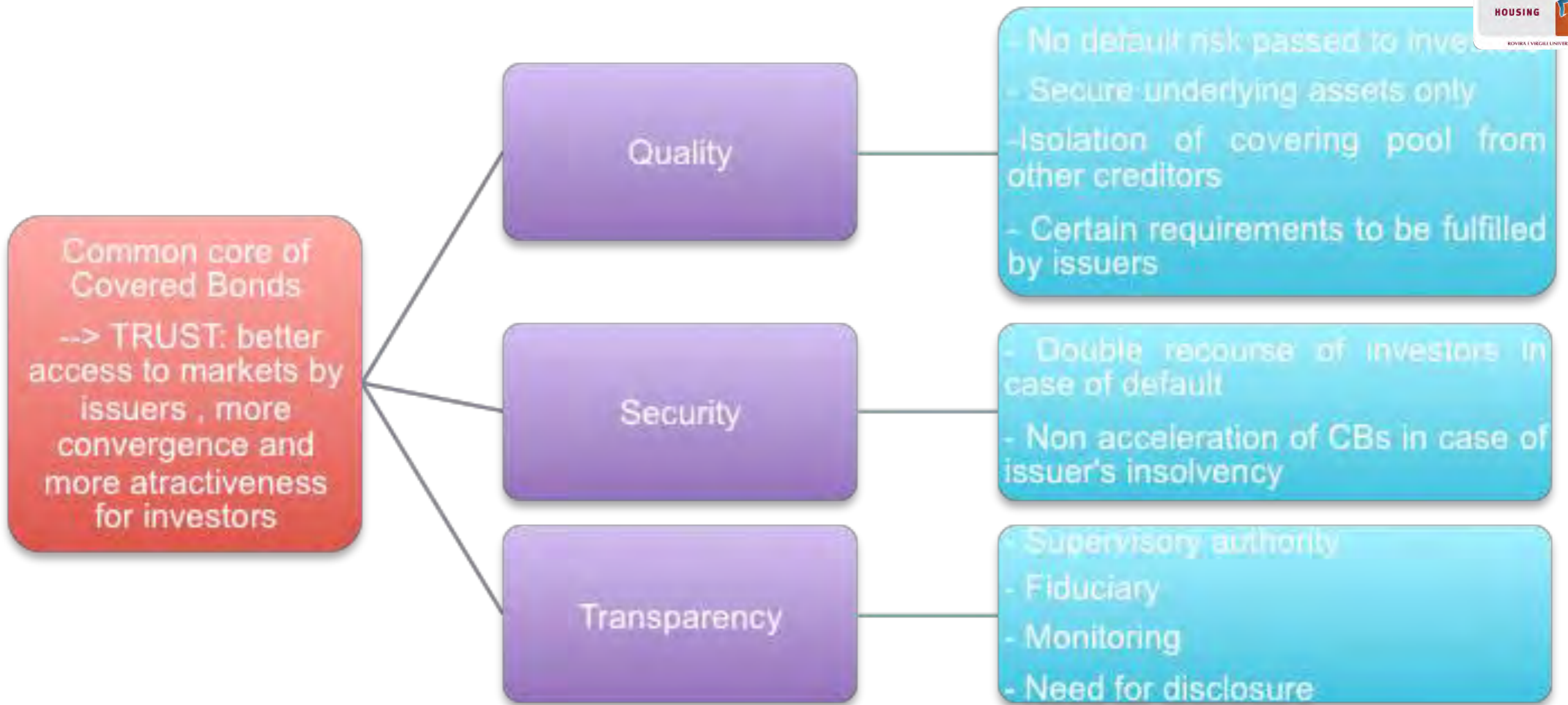
c) EU Commission’s **Capital Markets Union 2015**: “cost-effective funding of banks and provide investors with a wider range of investment opportunities”“



# Challenges



1. Crucial elements in CB legislation in Europe are adjusted to **critical fields of law** that are **exclusively national**: property law, (land) registers, securities law, insolvency and procedural law, taxation law, (in)existence of the trust/autonomous vehicles, company law, etc.
2. Identification of the “**common core**” of CB —>



How to achieve this at EU level?

- a) **Regulation:** too many national disparities to force a harmonization.
- b) **29th Regime:** preferred by ECB (2016)
- c) **Directive**

## Issue

## Directive

## 29th Regime

### EU competence

Not so clear: arts. 5.2 TFEU vs tracing a link with EU freedoms through 50, 114, 115 or unanimity (352)

In principle yes but rises on no application of competence, subsidia. and proport. limits....

### Intensity of harmonization

Less than a Regulation; principles of subsidiarity and proportionality

Very low - an additional CB is created and national crucial aspects remain untouched

### Negative externalities

Still different regimes in Europe due to different grade of implementation

How will this affect non 29th-regimes CB? Will they benefit from UCITs, etc. as well? Are we destroying CB with long tradition?

### Limits of harmonization

In addition to private law and taxation matters. what about national political reactions to a crisis or increased consumers protection?

Agreement on a low-profile standardized CB vs stronger regulatory frameworks of national CB built up during centuries

### Possibilities of real application

Many, due to the “flexible” adaptation of EU rules by countries

With different mortgage market traditions, would one model suit all? Eg. Aren't ES and DE different due to predominance of variable and fixed rate mortgages?

### Conclusion

Seems more **feasible**  
But lack of discussion what CB should promise (**contents of the debt**). So far discussion: how promise can be fulfilled; but what is the promise itself?: 1. Full payment; 2. Timely payment 3. Hard and soft bullets or pass-through

Might not be feasible, even if politically wished.



# THANK YOU



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