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SELECTED LEGAL ASPECTS OF MORTGAGE BONDS IN EUROPEAN LAW, WITH EMPHASIS ON GERMAN LEGISLATION

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Abstract

The article discusses the German legislation in relation to mortgage bonds, and also briefly describes the state of European legislation in this regard. There are also themes from other countries in which such mortgage bonds are used.
The publication consists of 5 sections, where the first is the introduction and the last contains the conclusions. The main part of the article is part 4, where the author briefly discusses the German Law on Mortgage Bonds. Parts 2 and 3 are the legal background for the main part.
The author believes that due to the crisis of the years 2007-2009, the revision of solutions for securitization is needed. There are already some proven designs that through many years of evolution have perfectly fitted the economy. Such a model is undoubtedly the German bond (in any form). In addition, the German act presents interesting solutions for risks that are inherent in banking activities, including in particular the issue and trading of securities.

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Introduction

The end of the 20th century witnessed a renaissance of the mortgage bond institution in Europe (Drewicz-Tułodziecka, 2001, pp. 3-7). After a short period of stagnation in the market of mortgage bonds, legislators and institutions offering mortgage credit refinanced with mortgage bonds initiated intense work aiming at establishing modern legal framework of the analyzed instrument. Former fears concerning low liquidity of this instrument, its security and flexibility had been overcome (in genere). One could mention here numerous legislative solutions implemented in Poland, Czech Republic, France or in Slovakia and Hungary, as well as stable development of this instrument in countries with strong traditions, such as Germany.
As far as modernity is concerned, we could mention here that the mortgage bond fitted into such solutions as consortium lending (a group of several entities, most frequently banks, provide loans for capital-consuming investment, for example a power station, a port, etc.), "jumbo" offerings (for example in Germany their amount must exceed 1 billion euro) or bank outsourcing (within a capital group). Globalization of financial markets accounts for the fact that we can trade mortgage bonds not only in one or two markets, but all over the world. As a

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result, we may obtain capital in various currencies, which may be exchanged for other currencies in order to optimally reduce the risk. We will not concentrate on this issue here, however, as its complexity calls for a separate paper or even a book.

Moreover, especially in Germany, we can observe positive impact of legal regulation on the market and vice versa. It was the market that changed the attitude of legislators to the issue of mortgage bonds, forcing greater flexibility – departing from the principles of specialization, and on the other hand, strengthening certain mechanisms, which will be discussed in the further part of this paper. We would also like to draw the reader's attention to how the French Crédit Foncier, the bank established by a Polish banker, Ludwik Wołowski (better known as Louis Wolowski), has changed from the state-owned bank to a complex entity providing various services in the real estate market.

The economic practice has shown that mortgage banks are usually part of large capital groups. This happens in Germany and Poland (German DG Hyp Bank belongs to the DZ Bank Group or Polish ING BH which is part of ING Group). The presented ties are extremely important, for example in attracting customers for mortgage loans. Universal banks operating within the group may transfer part or even the whole of its credit activity connected with mortgage indebtedness, to specialist banks. These often provide services connected with consulting or valuation. On the other hand, there are banks which do not need 'help', as their own activities are large enough, and their market presence long enough to become natural choice for customers, as it happens in Denmark. Nevertheless, cooperation within the group or on partnership basis is discernible in all models. Making own outlets available, advisory services, cooperation with real estate agents or developers, are all common examples of this.

At the very beginning of this paper we mentioned the renaissance of mortgage bonds which took place at the end of the 20th century. 9 new acts regulating issues of mortgage banking were passed between 1995 and 2000. It was estimated in 2000 that the share of mortgage bonds in the European capital market was around 20% and 20% of loans were financed by them. Although we have been witnessing certain adjustment since 2005, strengthened considerably by the crisis of American Mortgage Backed Securities (MBS), it is when we face the lack of liquidity of normal banks that we should turn to this well-tried (created after the 7-year war to rebuild the devastated region of Silesia) method of obtaining capital. Talking about MBS we would also like to draw your attention to the fact that mortgage bonds are more secure (Punnett, 2009) – 200 hundred years history without any serious crisis and more complementary instruments, e.g. limited issues, risk management systems or coverage systems. The differences between these papers are significant, although the purpose of their use is very similar. MBS has two characteristics that were the engine of the recent crisis: the higher the risk, the higher interest rates and the possibility of financing the entire property with them. There is in fact no buffer, which is listed in the form of bonds, for example, the border financing for 60% of property value. Moreover, the wound spiral is very tight due to subprime loans. In 2007, the value of all loans of this type was 25% of all loans on the market (Capell 2007). The crash was caused by the insolvency of debtors whose creditworthiness was not investigated properly (which was the main feature of the subprime). This situation is not possible in the case of mortgage bonds, with their defense mechanisms that limit the risk to a minimum.

The Facts and Figures about Europe's Covered Bond Benchmark (Verband Deutscher Pfandbriefbanken, 2011) points as the most important features in favour of mortgage bonds (following German solutions) their safety, liquidity and a relatively high rate of return.

Security is guaranteed by a first-class credit (the valuation of mortgage bonds made by the rating agencies shows that clearly). To obtain such a standard it was necessary to apply the relevant legal framework and adequate supervision. Moreover, banks issuing mortgage bonds must meet a number of requirements and must obtain a special license.

In Germany, liquidity of mortgage bonds is above all due to the jumbo emissions, but also due to the fact that over the years, investors have recognized this paper as a benchmark. Liquidity of the stock emissions from Jumbo in mid 2009 was around 245 billion euros.

An extremely important factor is to obtain high rates of return on investment in mortgage bonds. Over the years the interest rate of Pfandbrief was stable and comparable or often even higher than the interest on government bonds. Moreover, the German mortgage rates do not fluctuate as much as the rates of corporate bonds or bonds of developing countries but also constituted a serious competition for bank deposits.

Our consideration below presents German solutions which are considered as model regulations, and their reflection in the Act of 22nd May, 2005 on Mortgage Bonds (Pfandbriefgesetz, BGBl. I S. 1373). Before we move to this point, however, we would like to discuss the issue of legal protection of mortgage bonds as a common element of most European legal systems.

Legal protection of the mortgage bond name

The acts of various countries contain penal provisions which penalize unlawful actions of mortgage banks and determine the scope of protection for mortgage bonds. This issue is of great importance for example in the international relations. If we assume the possibility of trading in the common European market or trading foreign mortgage bonds in a particular domestic market, it is essential to know whether a given instrument called mortgage bond really possesses the features of this instrument. The Hungarian act accepts the possibility of performing mortgage bank operations by foreign banks in their branches, which, de facto, are not mortgage banks in the understanding of national law (Drewicz-Tułodziecka, 2001, p. 10). Such situation casts different light on the aspect of mortgage bank bankruptcy and the creditors' rights in this case. The bankruptcy proceedings run outside a given country against the parent bank might not take into account the interests of investors who bought mortgage bonds issued by its branch. Such situation could occur when a prosperous branch belonged to a bankrupting parent bank located outside the country in which the branch operated. In this case should we treat the assets of this branch as the assets of bank and consider it as the security?

Another issue is, of course, the access of foreign investors to a given market of mortgage bonds. At present, there are instruments which allow it, but they are not subject of our paper.

It is worth to mention several names of mortgage bond protected by law, used in some European acts regulating this issue. For the German and Austrian legal order, the name "Pfandbrief" is used, Luxemburg uses three terms: „lettres de gage", „pfandbriefe" and „mortgage bond", In Czech Republic -„hypotecni zastawni list", in Slovakia - „hypotekarny zalotny list" and „komunalne obligacie" and in Hungary - „jelzaloglevel" (Drewicz-Tułodziecka, 2001, p. 11).

Two issues connected with the paragraph above need to be considered: the first one is related to trading a foreign security in the domestic market (that is a security which is issued by a bank which is foreign to the country legal system) and the second one is tied to the standardization of law in this area. It seems right to introduce foreign mortgage bonds into the

domestic market so as to make their origin easily identifiable. We do not mean here using legally protected name, such as "Pfandbrief" in German legal order, but pointing out the regulations which German mortgage bonds are subject to. Such a definition would also eliminate potential mistakes in identifying letters coming from other countries where German is an official language (for example Austria). Also another problem appears automatically, namely whether a mortgage bond from a foreign legal order will have the features of a domestic mortgage bond. If there is any discrepancy, even though the legal foundation is pointed out, investors may be misled by the term 'mortgage bond' and believe it offers the same rights as the domestic one. Such situation could take place for example between a Slovakian mortgage bank issuing mortgage bonds for the Polish market. We could look at the issue from an opposite perspective and say that when the legal order and differences between domestic and foreign legislature are mentioned, the interests of investors should be protected. This is not entirely true, due to, for example, the competition aspect. The equivalence of mortgage bonds regulation in the European market is one of the subjects of the Council Directive of 20.12.1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS, Official Journal, L 375 from 31.12.1985, pp. 3 – 18), hereinafter called UCIT Directive. The necessity of meeting the criteria of Article 22, section 4 of the Directive is of real importance here. The contentious issue related to this directive is what it does not cover. We mean the regulations which the directive does not consider necessary and which exist in some legal orders. For example, the Austrian legislators regulated this issue in such a way that foreign mortgage bonds have to meet only the requirements included in the directive.
There are a number of other sticking points, however these seem to be the most important ones for our paper.

Community law

There is no community regulation concerning mortgage bonds or mortgage banks (Drewicz-Tułodziecka and Stöcker, 2000, p. 41). The European legislator did not codify this matter mostly because it does not concern all member states. Moreover, in many countries it is regulated differently.
Looking at the issuance of mortgage bonds, the act determining the limits of capital engagement in securities of a given type is essential (Olszak, 2000, p. 11). We mean here the UCITS Directive which regulates the percentage involvement of subjects in acquiring mortgage bonds. The Directive considers the undertakings for collective investments, according to Article 1, section 2, those "whose only aim is collective investment in securities the capital from citizens and which function on the principle of risk diversification" and "whose participation units are, on their holders' request, bought or redeemed directly or indirectly from the assets of these enterprises". The actions taken by the UCITS in order to assure that the market value of their units would not differ from their nominal net value, will be considered tantamount to such purchase or redemption.
Article 22 of the Directive determines part of the property of an institutional investor which may be employed in mortgage bonds of the same issuer – 5%. An exception to this rule was provided in Article 22, section 4, where the 5% limit may be increased to 25% in case of some debt securities, if they were issued by a loan institution whose statutory registered office is in the Member State and which, by law, is subject to special public supervision aiming at protecting the holders of these securities. The revenue from the issuance of these securities

must be, by law, invested in the assets which can, during the whole period of securities validity, cover the claims related to these securities, and which, in case of the issuer's insolvency, would be used on the priority rights to return the capital and interests. The mortgage bond is an example of such an instrument (Olszak, 2001, p. 11). We may also add here that on 1st July 2011, a new UCITS Directive will come into force (Official Journal L 302 from 17.11.2009, pp. 32-96), which regulates the above-mentioned issues in a similar way.
Another quite new act is Directive 2000/12/EC of the European Parliament and of the Council from 20th March 2000 (Official Journal L 126 from 26.5.2000, pp 1-59) relating to the taking up and the pursuit of business of credit institutions, defining, for example, the issue of the solvency margin and concentration of large credits. The solvency margin is a ratio of own funds to the sum of assets and off-balance sheet items calculated (multiplied) with the so-called risk-weight. The Directive stipulates in Article 47 that the minimum value of the solvency margin is 8%. What is really interesting for our paper is the weights attached to mortgage bonds – 20% (Article 43, section 1, subsection c, point 1 and subsection b point 7), loans secured with property (Article 43 section 1, subsection c point 1, and Article 62) or 0% for own regional and local authorities. As far as the concentration of credit is concerned, Article 49 of the Directive states that the bank's involvement cannot exceed 25% of own funds relating to one client (or a group of interrelated clients), and all liabilities of a credit institution, including a mortgage bank, cannot exceed 800% of own funds. It is vital that the Directive gives the member states the right to shape the legal discipline concerning concentration of credit. For example section 3 of Article 49 offers a possibility of applying restrictions, and section 7 of the same article allows the countries to exclude all or some of these restrictions.
To paint a full picture of European Community regulations we should also mention Directive 2002/83/EC of the European parliament and of the Council of 5th November (Official Journal L 360, 9.12.1992, p. 1) concerning life assurance and the third directive on life insurance and third directive on non-life insurance (Directive 92/49/EEC from 18th June 1992, Official Journal L 228, 11.8.1992, p. 1) , which are important in mortgage bonds trade. They regulate the possibility of higher investment of insurance companies in some types of debt securities of credit institutions (respectively Articles 24 and 22 of the above-mentioned directives). Although the European legislator contained these provisions in the above-mentioned insurance directives, they seem to be a repetition of Article 22, section 4 of UCITS Directive (Stöcker and Drewicz-Tułodziecka, 1998, p. 33).
When analyzing the issue of European regulations concerning mortgage bonds, specialists mention two more acts, namely the Directive 93/6/EEC of the Council of 15th March 1993 (Official Journal L 141, 11.6.1993, p. 1) on the capital adequacy of investment firms and credit institutions and the Directive 94/19/EC on deposit guarantee schemes of 30th May 1994 (Official Journal L 135, 31.5.1994, p. 5). In a nutshell, the first directive corresponds with the provisions of Directive 2000/12/EC concerning starting capital for investment companies and norms of minimum own capital related to financial risk for trading securities of investment companies and banks (Stöcker i Drewicz-Tułodziecka, 1998, p. 35). The second directive in Article 1, section 3, point 1, in accordance with Article 22 of the UCITS Directive, excludes such securities as mortgage bonds from the term of contribution.
Finally we should refer to the implementation of community law into the Polish legal order. Even before Poland's accession to the European Union, many national acts met the

requirements of the directives. At present all the above-mentioned directives have been implemented. The end of the legislative process aiming at implementing the so-called new UCITS directive is planned for July 2011.

Mortgage bonds in Federal Republic of Germany

On German lands (we also include here its old territories) mortgage bonds have had long history, starting from the invention of this institution to the first legislation attempts. German Act on Mortgage Banks was valid for over 100 years (the Act of 13th July 1899 on mortgage banks, Reichshypothekenbankgesetz, dRGBl. 1899 I S. 375) until 2005. On 22nd May 2005 the act on mortgage bonds was enacted (Pfandbriefgesetz, BGBl. I S. 1373), which replaced the old act from 1899 on mortgage banks and all regulations concerning this institution: the act on shipping banks (Gesetz über Schiffspfandbriefbanken, uniform text from 8th May, 1963 , BGBl. I S. 301) and the act on mortgage bonds and related debenture bonds of public credit institutions (Gesetz über die Pfandbriefe und verwandten Schuldverschreibungen öffentlich-rechtlicher Kreditanstalten, uniform text from 9th September 1998 , BGBl. I S. 2772) . The main aim of the amendment was to adjust the regulations concerning mortgage bonds to new legal conditions of public credit institutions. We can also talk here of joint legislation of three acts, which is to assure high quality of issued bonds and widen the circle of issuers (Turek, 2006, p. 88). The new act on mortgage bonds differs in some points from the old act, however, most provisions are identical. Below we will present the most important aspects of this act together with some comparisons to the Polish act on mortgage bonds and mortgage banks.

Abandoning the principle of specialization

The biggest change introduced by the new German act was abandoning the principle of specialization of mortgage banks issuing mortgage bonds. This movement is reflected in two aspects: firstly, mortgage banks, apart from offering mortgage or communal loans, are now allowed to run other bank operations, excluding investment activities and issuing electronic money, as stipulated in §1 section. 1 of the act on credit activities (Gesetz über das Kreditwesen /Kreditwesengesetz/, uniform text from 9th September, 1998, BGBl. I S. 2776, hereinafter referred to as KWG). Secondly, the issuance of mortgage bonds was included in the catalogue of banking activities, which gave universal banks the right to refinance credits with mortgage bonds (it should be noticed that the legal protection of the definition of this instrument was not changed – Pfandbrief – §41 PfandBG). For the bank to be able to issue the instrument analyzed here, it must obtain from the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, hereinafter referred to as FFSA), a permit for performing banking activities. The permit to issue mortgage bonds must meet the following requirements (§2 PfandBG):

1) possessing share capital of at least 25 million euro,
2) possessing a permit for performing credit activities within the framework defined in §1 section 1 No 2 KWG and an intention of actually performing it,
3) possessing appropriate procedures and instruments in the understanding of §27 for risk management,
4) supplying the supervisory organ (FFSA) a business plan which states that the bank intends to run issuance of mortgage bonds regularly, continuously and possesses appropriate organizational structure,

5) having organizational structure and backup necessary for running future issuances of mortgage bonds and to finance property, credits for public sector, financing ships and air fleet.

This permit may be withdrawn in case the bank does not meet at least one of the above requirements (1-3 and 5) or if the bank has not issued any mortgage bonds for 2 years and it is not likely that it will run this kind of operation regularly and continuously within the next 6 months.

Systems of mortgage bond coverage

A desirable feature of mortgage bonds is the guarantee of their solvency. The German legislator insisted on maintaining this guarantee on the same level in spite of widening the circle of potential issuers. This is to be achieved through uniform, though complex system of guarantees and checks of the issued mortgage bonds coverage, risk control system, trustee, periodical (quarterly) publications of information, bankruptcy regulations which secure the issued mortgage bonds coverage. The security of mortgage bonds is the result of covering their value in the value of the property or liabilities with high degree of solvency. PfandBG differentiates 4 types of mortgage bonds (§1 section 3): real estate, public/communal (Kanigowski, 1997, p. 19), shipping and air mortgage bonds. This classification results from the differences between the coverage for these mortgage bonds.

Like in the Polish act on mortgage bonds and mortgage banks, the German act contains a general rule that mortgage bonds are fully covered with the values which secure them (Deckungskongruenz). PfandBG differentiates between two coverage systems: by the nominal value (Nennwertdeckung) and by the cash value (Barwertdeckung).

In the first type of coverage the sum of all mortgage bonds in circulation together with due interests equals the nominal value of coverage volume (§4 section 1 PfanBG). On the other hand, the coverage by the cash value aims at providing conformity between mortgage bonds in circulation and the value of their coverage volumes in market prices subject to economic fluctuations (Turek, 2006, p. 91). The value of coverage volume should amount to 100% of the value of mortgage bonds issued by the bank. In addition, the German act introduces the obligation to cover the underwriter (sichernde Überdeckung), which is at least 2% of the value indicated in the previous sentence (§4 section 2). This additional security is connected with the provision of resources in case additional costs crop up in liquidation proceedings and with the limitation of the risk of losing the coverage volume. Therefore instruments of high liquidity, such as bonds or treasury certificates, are used as securing coverage (Turek, 2006, p. 91).

Real estate mortgage bonds

Real estate mortgage bonds are covered, in principle, by mortgage on real estate, or on the rights similar to the right of property, including mortgages on the rights corresponding to the German legal order located outside Germany, that is in member states of the European Union, European Economic Area (EEA), Switzerland, USA, Canada and Japan (§13 PfandBG). Additional values which may also cover mortgage bonds are defined in §19 of the analyzed act. Similarly to the Polish act, the German act excludes from the coverage volume the mortgages on real estate which do not bring steady income (including mines and quarries). However, the sites on which construction work takes place are not excluded (§16 ust.3), as in this case it is assumed that the profitability will be reached in the future. The coverage on the

mortgage placed on the construction site must also meet additional regulations, for example their total amount cannot exceed 10% or double the value of own capital.
Real estate mortgage bonds must be covered only up to 60% of the value of the real estate on which the mortgage was placed. PfandBG does not say anything about the bank-mortgage value, as it is mentioned in the Polish act, but the real estate evaluation method was incorporated into §16 sections 1 and 2. The analyzed value is determined by an independent surveyor/expert (Gutachter), who possesses professional experience and knowledge in real estate valuation. The valuation must be made sensibly, so that the possible future sale of the real estate would not change drastically. It is also necessary to insure at least 100% of the value of the real estate, and the mortgage must also be insured (§15).

Public mortgage bonds

The legislator gives a fairly wide range of liabilities which may form a basis of coverage for public mortgage bonds. These must be indisputable financial claims arising from granted loans, issued bonds or from similar legal activities or other liabilities confirmed in writing to particular entities. The subjects whose indisputable liabilities may serve as coverage of mortgage bonds are listed in §20 section 1 of the PfandBG, and these are: German state and local authorities, public enterprises and institutions, members of EU and EEA, their central banks, state and local authorities, USA, Switzerland, Japan and their central banks, etc.

Shipping mortgage bonds

The mortgage bonds unknown to the Polish legal system are the shipping mortgage bonds (Schiffspfandbrief) and air mortgage bonds (Flugzeugpfandbrief). With reference to the former ones, similar principles of coverage as in case of real estate mortgage bonds are valid. In principle, the basis for coverage is created from loan claims which secure ship mortgages (§21). An independent surveyor/expert determines the real value of the ship, whose 60% constitutes a basis for coverage of shipping mortgage bonds(§22 section 2). Also in this case there is an insurance order (covering both the ship and the mortgage placed upon it), but it amounts to 110% of the determined value of the ship (§23). The remaining claims, which may be the basis of the coverage for shipping mortgage bonds are included in §26. We should also add here that the above regulations refer to ships under construction, and the loans which are the basis of mortgage bonds issuance may be granted only to ships or ships under construction which are entered into the public registered. The loan should be paid back within 20 years.

Air mortgage bonds

Air mortgage bonds were introduced to the German legal system in the amendment to the PfandBG on 26th March 2009 (BGBl. Teil I, Nr 16, S. 607) in articles 26a-26f. According to them, the only claims secured are those covered with the register of pledges, according to the act on the rights on aircrafts (Gesetzes über Rechte an Luftfahrzeugen, the act of 26th February 1959, BGBl. I S. 57, hereinafter called LuftFzgG). Loans are restricted only to aircrafts in the understanding of the act on air movement (Luftverkehrsgesetz, uniform text from 10th May, 2007, BGBl. I S. 698), which are entered into public register. In other cases, air mortgage bonds do not differ considerably from shipping mortgage bonds.

Supervision

Each bank must nominate a trustee (Treuhänder) and at least one deputy (Stellvertreter). They supervise the state of the coverage volume. The trustee and the deputies are nominated by the FFSA after hearing an opinion of a given bank. The trustee is ormally not a subordinate of the bank, he or she is formally and materially subordinated to the FFSA. The supervisory organ may dismiss this person for several reasons (§7 sections 1-3) and pays their remuneration financed by a given bank (§11 section1). This function may be performed by a person with appropriate experience and knowledge and completely impartial. The work of the trustee consists in supervising the bank's activities (§8) to make sure they conform with the PfandBG, especially in:

1) controlling the coverage of mortgage bonds with appropriate claims (however, this person cannot be held responsible for discrepancies between the value of coverage and the real value),
2) running the register of mortgage bonds,
3) confirming (with signature) the existence of coverage, revealed in the register, before issuing a mortgage bond; PfandBG forbids circulating mortgage bonds which are not fully covered (§4 section7).

To perform their functions effectively, trustees have the right to demand all information regarding the issuance and coverage of mortgage bonds from the bank as well the right to look through documents (§10 section 1). Moreover, the bank is obliged to constantly inform the trustee about payments of loans (§10 section 2).

As we pointed out above, the function of the trustee is connected with running the register (§5). The values securing the mortgage bonds must be entered into the register (Deckungsregister). The register is run separately for each type of mortgage bonds. It serves not only the trustee but also the FFSA to control sporadically its entries (it regards the conformity of coverage, of course - §3 PfandBG).

The system of risk management

An essential issue for German banks issuing mortgage bonds is the specialist system of risk management. The legislator in §27 defines the requirements which should be met by the bank intending to issue mortgage bonds, though it does not impose the obligation of building a new system if the old one fulfils the norms stipulated in the act (Turek, 2006, p. 93). A proper system of risk management for the bank which deals with mortgage bonds is one that identifies, assesses and controls all risks connected with this activity. These are especially risks connected with credit, interest rates, currency and other market price risks, operational risk and solvency risk. Moreover, the act compels the banks to meet further 4 requirements:

1) risk concentration must be limited by the system of limitations,
2) introduction of the procedure aiming at spotting risk increases and then causing its fall: the procedure must also contain the method of notifying the bank authorities of the situation,
3) the system of risk management must be constantly adjusted to change of conditions and reviewed obligatorily at least once a year,
4) making a report on risks and presenting it to the board.

The system of risk management must be precisely and clearly documented. We should also note that the legislator referred to the situation when the bank starts operating in new markets, offers a new product or initiates a new type of activity, and therefore does not possess enough

experience. Such situation, according to the act, may result in an increased degree of risk. If the bank dealing with mortgage bonds wants to start a 'new' activity, it must make in-depth analyses of risk and implement their results into its system of risk management and document everything. Gaining experience in 'new' spheres of bank activities must be confirmed in writing.
Banks issuing mortgage bonds are obliged to make the information on mortgage bonds issued by them available as well as the information on their coverage. This obligation also entails the publication of quarterly information which, apart from information on issued mortgage bonds, contains data on nominal and cash value. This information requirement serves mainly investors, who receive complete information on the present coverage volume, its real value on the market and currency risk (Turek, 2006, p. 94). Access to this data allows investors to compare the offers of all issuers of both mortgage bonds and other debt securities and to choose the most profitable option. We can then say that the analyzed §27 is a regulation which assures fair competition between banks, which is reflected in the quality of the securities issued by them (Turek, 2006, p. 94).

Regulations concerning the bankruptcy of a mortgage bank
The last issue analyzed here is the problem of bankruptcy of a bank issuing mortgage bonds. Although there are certain regulations, the German experience proves that there are not any more secure securities in the German market. This is proved by the fact that since passing the first act dealing with mortgage banking, no bank issuing mortgage bonds has ever gone bankrupt, and no mortgage bonds have been untimely paid (Kanigowski, 1997, p. 21). High standard of security is also reflected by the ratings of such agencies as Standard & Poor's Corporation (AAA), Moody's Investor Service Incorporated (Aaa) or IBCA (AAA). Returning to the act, the main principle states that that the court security or enforcement may be performed on the volume of the coverage of mortgage bonds only if this is to serve the satisfaction of creditors from these securities (§29). In case of instituting bankruptcy proceedings, the volume of the coverage of mortgage bonds entered into the register of an issuing bank does not constitute part of bankruptcy estate (§30 section 1). Therefore, creditors may satisfy their claims from a separate bankruptcy estate, which constituted the coverage for their securities in a preferential way. If creditors do not satisfy their claims, then they join the proceedings following general principles. The rigor of issuing banks practically excludes such a possibility. The property which constitutes the volume of the coverage of issued mortgage bonds, is managed by the agent (Sachwalter). The main responsibility of the agent is to pay all liabilities from mortgage bonds. If after performing their task, the estate that the agent had at their disposal was not fully spent, it is transferred to the bankruptcy estate and is managed by the liquidator.

Conclusions
The main objective of this paper is to familiarize the legal characteristics of mortgage bonds in Europe, particularly in Germany. German solution should serve as a model for other countries wishing to enter the mortgage refinance with mortgage bonds. Moreover, Poland and other countries with a relatively short tradition of the paper should carefully observe changes Pfandbriefgesetz and draw conclusions from them. German legal solutions, ranging from the Act of 1899, and ending with the most recent revisions have always been strongly linked with the needs of the market. The German legislature has introduced new types of

mortgage bonds, strengthened supervision, and also a mechanism for introducing entitlement uelastycznił mortgage bonds to banks, which obtain their consent. All these changes had a positive impact on the market and investor expectations.
It seems to be rational conduct work on the Community act on mortgage bonds. EU Member States should have a rigid framework into which could fit into their solutions. Leading role in this process naturally should be granted the German experts.
The quality of the law undoubtedly provide features such as its use, compliance and timeliness, and quality assurance of its security, volume and popularity. With this in mind it is clear that these requirements have been met. Mortgage bonds in the Federal Republic of Germany, despite the crisis in the years 2007-2009 are still one of the major advantages of the local capital markets.

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