

COMPARATIVE STUDY ON HOW TO REGISTER PROPERTY IN OTHER COUNTRIES

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Abstract: Property registration systems in different countries are extremely diverse, and knowing their status leads to progress. Also important are the significant efforts in the last 10-15 years to find solutions for their harmonization. From this perspective we considered relevant to highlight how these complex and different systems are working with property information, taking account of multiple characteristics.

Keywords:– property, registration system, cadastre, legislative harmonization

1. Introduction

Currently, there are a wide variety of property registration systems, each with its features derived from the historical evolution of the concept of ownership in each country.

It is normal in a world where the pace of development is becoming faster that property implications to be significant. The direct implication is the need for active real estate market there, which no longer depend exclusively on the borders of states.

People are moving and growing businesses in increasingly beyond national borders, exploiting opportunities offered by open national borders and the single European market. In such circumstances it is necessary to facilitate access to vendors, creditors, business partners and consumers to documents and official and reliable information to improve transparency and legal certainty across the European Union.

In this context, international efforts are great to make connections between property registration systems, this is accomplished in several ways, in several directions, including:

- the IT area:
 - a common IT standards compliance data organization;
 - a creation of software and hardware means of interconnection of databases;
- harmonizing the technical issues of ownership registration:
 - establishing a base cadastral model to be implemented in as many systems states, in the idea to meet certain parameters;
- harmonization of legal aspects of ownership registration, with the most varied and complex problems.

In this article we will focus on harmonizing these efforts, providing comparative elements between systems of registration of some countries that we considered interesting either in terms of rapid changes in the systems implemented, either in terms of tradition in the field.

2. Comparative study on how to retrieve information on properties in several EU countries

One relevant way to present ownership information in various systems is presented in Table 1.

Actual flow carried on recording in Figures 1 and 2 are specific stages of the registration system of each country considered. We chose the examples of Lithuania and the Netherlands.

Table 1. How to retrieve information about the property through EULIS in different countries (adapted from <http://eulis.eu/>)

| Country | AUSTRIA | IRELAND | LITHUANIA | NETHERLANDS | SWEDEN |
|---|--|--|---|---|---|
| Method of recovering information about properties | <ul style="list-style-type: none"> - ID of the real estate, - Parcel Address, - ID plot - Select on the map, - Owner name (restricted) | <ul style="list-style-type: none"> - Address, - Select on the map online - Selection by entering coordinates | <ul style="list-style-type: none"> - ID of the property - Address, - Cadastral number of the plot, - Select on the map, - Street name, - Address | <ul style="list-style-type: none"> - Address, - Postal code, - Number of land register, - Select on the map | <ul style="list-style-type: none"> - Address, - Introducing coordinates |
| Information available on the property | <ul style="list-style-type: none"> - parcel data: address, area, etc., presented tabular or graphic cadastral plan - Data on real estate: ownership, mortgages, restrictions, encumbrances - Other information on the property type: monument, the airport, other obligations for the municipality, etc.. | <ul style="list-style-type: none"> - coordinates of building, property type, name and the address of the owner, title property type, details of encumbrances, etc.. | <ul style="list-style-type: none"> - Information about real estate, construction, apartments, utilities, category of use, cadastral number, type of measurement, market value, coordinates, title, possession, mortgages, easements, usufruct, special conditions of use, other observations | <ul style="list-style-type: none"> - general information: ID property, area, address, property type, owners, addresses, ownership (public access) -Cadastral Extract: contains general information and plan, certified and available on a particular date - General information on mortgages: ID property area, property type, lender, address, mortgages, encumbrances (public access) - Mortgage statement: general information on mortgages, certified and available on a certain date | <ul style="list-style-type: none"> - description of property, cadastral index plan, owner address, title, the amount of purchase, details of the encumbrances, observations on other restrictions: historical, municipal restrictions, etc.. |

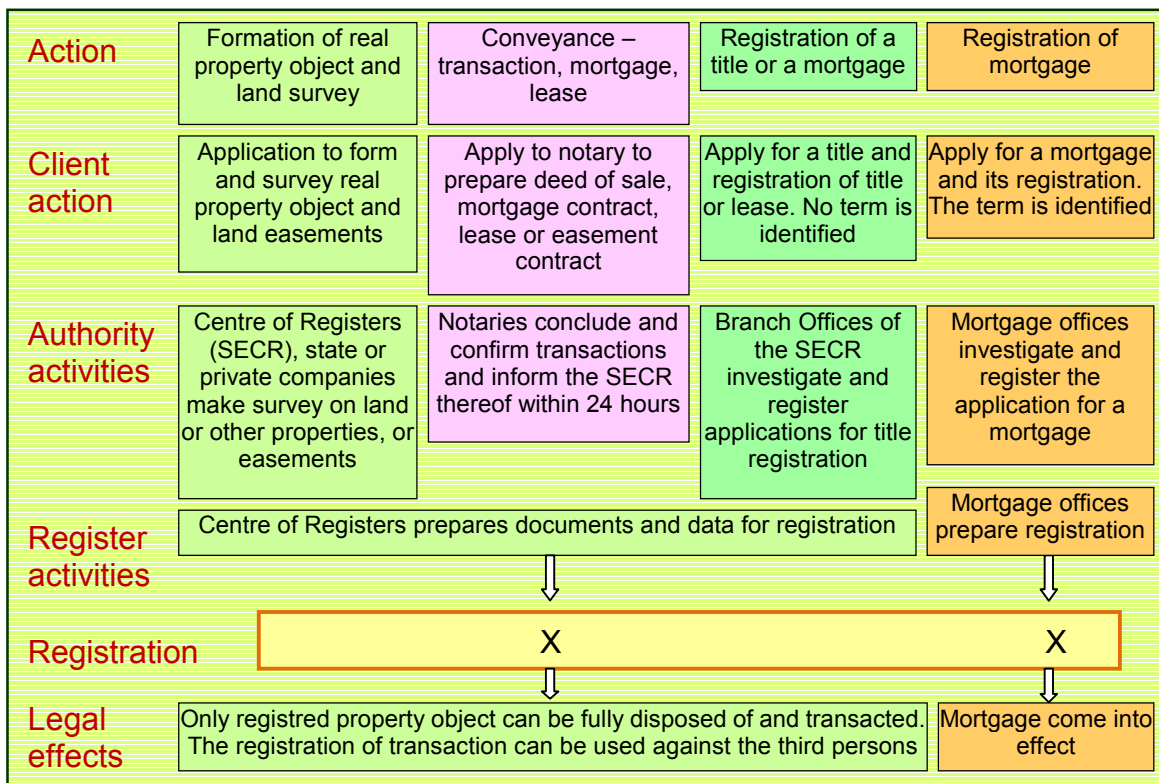


Fig. 1. Land transaction and registration process – Lithuania (adapted from e-Justice)

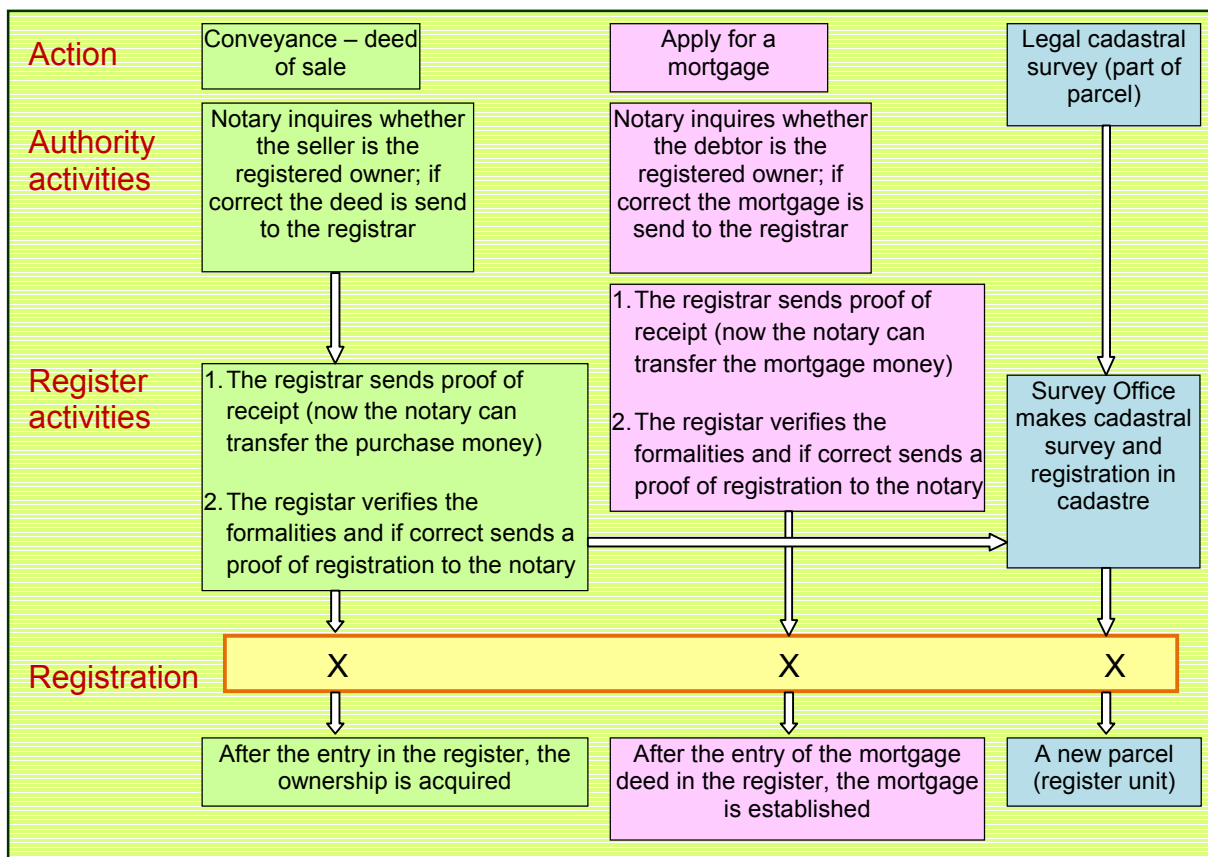


Fig. 2. Registration process for land transactions, mortgages, easements and encumbrances – Netherlands (adapted from e-Justice)

3. Efforts on harmonization issues in the EU registration of property

Among the main projects considered relevant for further harmonization between systems of different countries from the cadastral functional (technical) viewpoint, we must mention EULIS project (European Land Information Service). EULIS initiative can be considered an important part of Eurogeographic vision.

The EULIS portal it is possible to select the country where the property is located of interest, then you can enter reference information for further information or you can directly access the national registry to find the information you want on the property in question. By EULIS have access to basic information for each country.

These include basic information:

- the description of the basic legal concepts;
- describing the effects of the flow and real estate and mortgage records;
- the able to contact the authorities in real estate transactions.

Access to information about the property can be done by use of a property ID or its address . A subscriber to the national register of a country is allowed to consult the national registers of all other countries involved, their number being growing continuous . Using the national registry of a country to obtain information about a property is not free, these expenses are charged along with those for domestic use national registry.

EULIS is closely linked with legal European e-Justice portal, which is implemented in Romanian language too. European e-Justice was conceived as an on-line point of contact for the justice. In the first phase, the portal provides, in 22 languages, information on judicial systems and facilitate access to justice in the European Union.

LINE Project (Land INformation for Europe) is another initiative which is coming to continue the EULIS project. The next generation of EULIS 2.0 platforms is a key deliverable of the LINE project. The technical solution of this project will aim to be sustainable and financially viable, to enable organizations to connect to EULIS 2.0 platform as a fair-value ratio.

At the same time, this project is a flexible and future possibility for the new systems to interconnect. This will be aligned with European e-Justice portal. LINE project runs from September 1, 2010 for a period of two years, until August 1, 2012.

The priorities of this project are:

- creating a EULIS platform that is viable in terms of technology and financial and cadastral organizations across Europe can provide services across borders;
- improving internal functioning housing market;
- creating a community of the official cadastral organizations from all EU Member States, in order to facilitate their collaboration;
- creating a compliance with European e-Justice program, which aims to harmonize the legal issues;
- identifying and defining a varied set of information for delivery cadastral services in Europe through the European e-Justice portal, which will benefit the civil law legal professionals (including lawyers, judges, notaries, bailiffs and other stakeholders);
- facilitate cross-border access and use legal information on a property of a wide range of users.

We can not talk about EULIS and LINE without mentioning the relevant partners in the legal underpinning this initiative:

- ELRA (European Land Registry Association)
- EMF (European Mortgage Federation)

- ELRA (European Land Registry Association) was launched in October 2004 and has 23 organizations representing land registers from 20 Member States. As priorities in their activity, ELRA manages the development and understanding of the role of land registration and development of capital markets. ELRA is fully committed to working on behalf of land registries in Europe, in cooperation with EU institutions. Land records are considered a pillar of legal and which are employed to transfer the principles of Community law.
- EMF (European Mortgage Federation) - was founded in 1967 and is the core of EU mortgage. It involves groups of national associations and individual creditors in European Union member states. Mortgage industry is a major EU economy. The main purpose is to provide a sustainable living environment for EU citizens. In pursuing this goal encourages the exchange of information and best practices, providing updated information on legal, economic, development of specialized documents, published detailed research in the EU, production of statistics. Based on changes in the financial crisis, has recently published a set of appropriate lending standards, detailing EU accredited lenders in order to increase transparency and consumer confidence in the mortgage markets in Europe, to boost the property market and transactions, and default to keep the stability of mortgage lending.

With support from the European Commission, ELRA has initiated a European pioneer project in order to facilitate the purchase of foreign real estates. The project involves the Netherlands, Spain, England and Portugal. The project is called CROBECO (CRO (ss) B (order) E (lectronic) CO (nveyancing)), and describes a simple method of purchasing a real estate abroad.

The Title is usually written in a foreign language of the buyer, with applicability of seller's national law of obligations. The document was presented to the Dutch cadastral register like usually. The aim of this approach is to reduce bureaucracy, to increase trust of the foreign buyer in rights protection. Are also facilitated acquisition of property in Spain and Portugal, where economic problems are already emerging on the property market.

On May 31, 2012, CROBECO project will be concluded with a meeting in Brussels.

The objectives of the project are:

- electronic cross-border property exchange;
- facilitating cross-border transactions and access to national real estate records;
- to increase confidence in legally transactions;
- benefits for domestic real estate markets;
- benefits of the existing legal systems.

Operation stages of the process involves identifying transactions in each Member State to define the services offered by the land registration authorities in the field at every stage, providing legal information, strengthening the instruments of cooperation between land registers.

3. Estonia Case – A Successfull European Project

Estonia is one of the countries who has traveled faster the distance to the traditional countries that already had functionally data portals. Starting with May 28, 2011, applications

for registration are submitted electronically instead of version e-mail through a new portal - Land Registry - which, in addition to applications allows viewing, modification and withdrawal requests are already being processed.

Land portal advantage compared to the previous mode of transmission by e-mail is a quick and handy registration, which involves the real time recording applications.

Besides the above-mentioned features, Land portal offers several additional opportunities as diverse as:

- submission of additional documents attached to an application for registration, which is already in process, change and withdrawal applications submitted already and tax payments that represent the state;
- preparation and submission of appeal against decisions of registration applications;
- grant permits that are necessary to make an entry in the Land Register;
- authorization for submission of application for registration.

Land Registry portal is intended for use for all those who must fulfill a registration application that requires no contract in notary form attached. If an attached notarial contract is a prerequisite for making an entry in the land register, a notary shall prepare and submit the application.

The opportunity to submit applications for registration by a notary will remain valid in all other cases.

The electronic version of the land register contains information from 1994. The transition to the electronic version was launched in summer of 2010. The project was financed from European funds - European Regional Development Fund.

Land Registry in Estonia is a record of titles of the ownership and limited property rights, providing information on real estate registered to the third parties. Land Registry is based on the circumstances of law and fact. All properties are entered in the land registry, unless otherwise provided by law. Each individual property is recorded separately and given a unique number (registration number of the property). The register has four parts.

Part 1 contains the following information on each property registered:

- cadastral code (ID);
- specific purpose;
- location;
- limited set of property rights registered;
- area (size);
- mergers and divisions;
- incorporation of another registered property or part of property division.

Part 2 contains the following information on each property registered:

- the owner;
- if shared property, information about them, if co-ownership or joint ownership, the owners name;
- share of actual co-owners (common property);

Part 3 contains the following information on each property registered:

- limited rights affecting the property (except mortgages);
- restrictions on the property;
- indications for such restrictions;
- restrictions on the use of the owner;
- other indications of ownership (including restrictions on the right to use the people concerned), and deleting and modifying entries above.

Part 4 contains the following information on each property registered:

- mortgage lender (if any);
- the monetary value of the mortgage (amount due);
- references to the mortgage;
- changes in input;
- deleting entries.

Any person may consult the land register for free at the land registry office of the district court. Owners of property may consult information on their properties for free using the State Portal. Also, anyone may consult the land register using the search engine provided by the Center for records and information systems. Using of the search engine is free. The search result displays all the information recorded in Part 1 of the land register (registration of property, specific purpose, size and address). To access a specific information from land register exists a fee.

There are possible many searches in the database using the following search criteria:

- address;
- cadastral number of the property;
- name of the owner;
- personal identification number / registration code;
- name of the property;
- the number of property;
- land registry district.

5. CONCLUSIONS

The next step may be to harmonize the national land registers. It can be concluded that, technically, integrating different systems of property management in a harmonized system is not a problem.

From the organizational and integration viewpoint there are many challenges that must be analyzed in depth. For this integration to be successful, some experts are promoting the possibility of achieving a technical standard and legal basis for registration (the choice between recording title or facts), this is more important than differences in land rights between EU Member States.

On December 2, 2011, in Tallinn, on the XIV Congress ELRA, it was presented a proposal for a Regulation on Common European Sales Law (CESL).

Land Law is essentially a matter for each Member State. Three processes are important to set up a European law on land. There is a gradual evolution towards a European law on real estate transactions in response to the high volume of cross-border purchases.

There is a tendency of convergence between property registration systems, but this form of harmonization is weak and can not overcome the basic structural differences between French law and Germanic and Nordic common law systems.

Main initiatives is moving towards a common area provisions, which could include a European code for real estate. The mentioned proposal is a project as a common frame of reference, although it seems unlikely that political will for its adoption.

Any initiative to harmonize the points of law involving negotiations on the reform of land law.

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