

CROBECO

(CROss Border Electronic Conveyancing)



EU prioritized projects.

- Law choice involving:
 - contractual obligations (Rome I, EC 593/2008)
 - non contractual obligations (Rome II, EC 864/2007)
- Choice of court (Brussels I, EC 44/2001)



Project : CRoss Border Electronic COnveyancing

- Choice for legislation of home country of foreign buyer involving (non) contractual obligations.
- Choice for jurisdiction of home country courts.
- Contract of sale in home country language.
- Contract of sale by home country conveyancer (only possible when submission of foreign deeds is allowed)



Two laws are applicable:

- obligations related to the transfer of property rights, law of foreign buyer;
- property rights, law in country of the plot of land.

Different systems of conveyance (deeds -, title -, common law systems).

Different systems to identify plot of land in a contract:

- land extends to previous surveyed (cadastral/taxes) boundary;
- land extends to (physical) boundary as described in contract

Different electronic system (electronic lodging, electronic registration, electronic conveyancing)

Solution: frame work suitable for different systems



CROBECO I

A study on a CCRF (Cross border Conveyance Reference Framework)

Tested in:

- pilots Netherlands /Spain;
- desk research Netherlands/Portugal;
- discussions with stakeholders in three conferences;
- advices Universities of Maastricht (Netherlands), Valencia (Spain), Coimbra (Portugal).

Findings, CROBECO approach is possible when:

1. contracts from foreign conveyancers are accepted;
2. foreign conveyancers are specialized in cross border contracts;
3. tools exists to support foreign conveyancers





CROBECO 2

Tools to support Dutch/English buyers of real estate in Spain/Portugal

Start January 2013

Is follow up for contracts of sale and mortgage contract Netherlands / Spain (CROBECO 1)

May 2013, CROBECO Contract of sale Netherlands/Portugal

August 2013, CROBECO Contract of Sale England/Spain

To be finished in December 2014





CROBECO Repository of clauses

Clauses selection

Document type:	<input type="text" value="Contract of sale"/>
Country of sender:	<input type="text" value="Netherlands"/>
Country of receiver:	<input type="text" value="Spain"/>

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- Below clauses are shown that are required for the receiving country (Spain) or applicable for the sending country (Netherlands) for the deed type "Contract of sale"
- Clauses that are required for the receiving country are displayed in bold, clauses that are applicable for the sending country are displayed in normal font.
- You can inspect the clause text of the receiving country, the guidelines, adaptations and translations of the sending country by clicking on a clause title.

▶ **[INFORMATION ABOUT THE NOTARY]**

▶ **[SELLER, BUYER (NATURAL PERSON)]**

▶ **[SELLER, BUYER (CORPORATE BODY)]**

▶ **[POWER OF ATTORNEY (BOTH FOR NATURAL PERSON AND CORPORATE BODY)]**

▶ **[PLOT IDENTIFICATION]**

▶ **[TITLE NON REGISTERED PLOT]**

▶ **[FREEDOM OF CHARGES]**

▶ **[CONTRACT OF SALE]**

▶ **[FAMILY RESIDENCE]**

▶ **[LOCATIONAL DEMANDS]**

▶ **[PURCHASE AMOUNT]**

▶ **[KNOWLEDGE NOTARY]**

Guideline

ACCORDING TO ARTICLE 4 TREATY ROME I, THE LAW OF THE COUNTRY WHERE THE PROPERTY IS LOCATED IS APPLICABLE TO ALL ISSUES RELATED TO THE PROPERTY RIGHT AND THE REGISTRATION. HOWEVER WITH AN EXPLICIT CHOICE THE PARTIES CAN AGREE THAT THE LAW OF THE COUNTRY OF THE FOREIGN BUYER IS APPLICABLE TO CONTRACTUAL OBLIGATIONS.

ALTHOUGH ABOVE MENTIONED LAW CHOICE NEVER CONCERNS THE ACQUIRING OF PROPERTY RIGHTS ITSELF (THIS IS GOVERNED BY THE LAW OF THE PLOT, THE SO CALLED "LEX REI SITAE"), A CHOICE OF THE LAW OF HIS HOME COUNTRY COULD HAVE AN IMPORTANT PSYCHOLOGICAL EFFECT ON A PROSPECTIVE FOREIGN BUYER. ALSO BECAUSE OF THE FACT THAT THE (BILINGUAL) DEED IS EXECUTED IN HIS OWN LANGUAGE BY A CONVEYANCER FROM HIS HOME COUNTRY, HE GETS THE FEELING OF BEING LEGALLY PROTECTED IN A FOR HIM FAMILIAR WAY.

CONSEQUENCE OF LAW CHOICE IS THAT A BUYER WHO DISCOVERS THAT THE SELLER HAS VIOLATED THE CONTRACT (FOR EXAMPLE BECAUSE OF A HIDDEN DEFECT) CAN CLAIM COMPENSATION AT HIS HOME COUNTRY COURT. (THE CONTRACT CANNOT BE DECLARED INVALID, BECAUSE SPAIN HAS A CONCLUSIVE TITLE SYSTEM)

Clause text receiving country

REGULATION ROME 1 (EC 593/2008).

DESPITE THE PROPERTY SOLD BEING LOCATED IN A FOREIGN COUNTRY, BOTH THE BUYER AND THE SELLER CHOOSE DUTCH LAW AS THE APPLICABLE LAW GOVERNING THIS PURCHASE CONTRACT, WITH THE PURPOSE OF AVOIDING THE APPLICATION OF ART. 4.1.C OF REGULATION 593/2008 (ROME I), REGARDING THE CONTRACT AND ITS EXECUTION. REGARDING THE ACQUIRING OF PROPERTY RIGHTS OR THE VALIDITY OF THE REGISTRATION IN THE LAND REGISTRY OFFICE, ONLY SPANISH LAW WILL BE APPLICABLE, IN ACCORDANCE WITH THE LEX REI SITAE RULE. INSOFAR AS THE TRANSFER AND ACQUISITION OF THE RIGHT OF OWNERSHIP AND LEGAL CONSEQUENCES OF THE REGISTRATION IN THE REGISTRO DE LA PROPIEDAD ARE CONCERNED, SPANISH LAW APPLIES IN ACCORDANCE WITH THE LEX REI SITAE.

System of repository: suitable for all ELRA members



CROBECO Repository of clauses

Clauses selection

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Country of sender:	<input type="text" value="Netherlands"/>
Country of receiver:	<input type="text" value="Greece"/>

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▶ HIDDEN CHARGES

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▶ DESCRIPTION OF LAND
REGISTRATION SYSTEMS



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The ELRN (European Land Registry Network) was set up in 2010 among ELRA members. It was designed to resemble the EJJ, in order to facilitate mutual cooperation and even possible future integration. Currently twenty two ELRA members from 18 Member States have joined the Network. Each organization appoints a registrar, that is, a land registry officer expert in property rights and land registration, as its contact point for the Network.

The Network is coordinated by a working team within ELRA, and it has a public and a private area.

ETPRO > NEW PROJECT

MY PROJECTS

NEW PROJECT

MY REFERENCE*:

2013A17277FS

PROPERTY IDENTIFICATION*:

N. IDUFIR: 290420005275

OR

Registry: Select...

Municipality: Select...

Section number:

Finca number:

Subfinca number:

1

OBTAINING THE PROPERTY INFORMATION

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PREPARING THE DEED

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PROCESSING THE DEED

For more information:

<http://www.elra.eu/support-for-notaries/>

<http://www.elra.eu/protected-buying-of-foreign-real-estate/>

