

Section "C" of the template:

Mortgages, burdens, restrictions

IMOLA WS 1 Conclusions Krakow 15 October 2015









Perspective: Section "A"

Section A: LR UNIT*

- LR Unit—Property
- LR Unit—Cadastral parcel
- LR Unit—Property—Apartment
- LR Unit—Special property
- LR Unit—Property rights
 - Choice of LR Unit is decided by each LR system in accordance with local criteria
 - Minimum common denominator for purposes of description:
 - IDENTIFIER (ID) of LR Unit
 - LOCATION of LR Unit
 - Completing information according to levels:
 - basic,
 - supplementary
 - extended,







Perspective: Section "B"

Section "B": Proprietorship

- 1. Class of title, primary or main right (mostly "ownership")
- 2. Proprietorship
 - Owners/Communities/Name of the buyer in "B"
- 3. Entitlement
 - Act or contract of acquisition
 - Deed of acquisition
- 4. Price European Land Registry Association
- 5. Restrictions







Perspective: Section "C"

"Section C" is understood as the part that comprises charges, encumbrances or restrictions that affect to "A".

Extreme legal diversity

- Needs to include in "C":
 - Main charges and restrictions and the most important elements of information for each LR system
 - Options to provide the information relevant for the different LR systems and to leave blank that of which not available or existing







Section "C":

Approach based on data collected by questionnaires

- 1. Organization of Section "C" of the template
- 2. Guidelines of the information
- 3. Information data and Registry Association







Organization of Section "C" of the template

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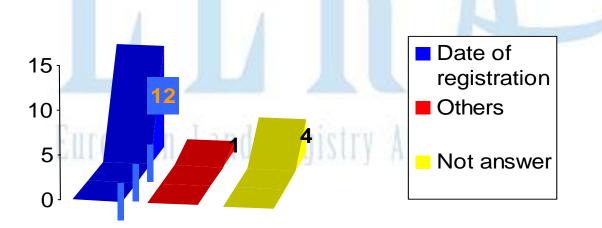




Organization of Section "C" (1). Main criterion

Mostly LR systems consider the <u>date of registration</u> as the main criterion for organizing the template

Main criterion of organization of the template









Organization of Section C (2). **Possible subdivision**

Land Registry Association

Two alternatives (no other suggestions)

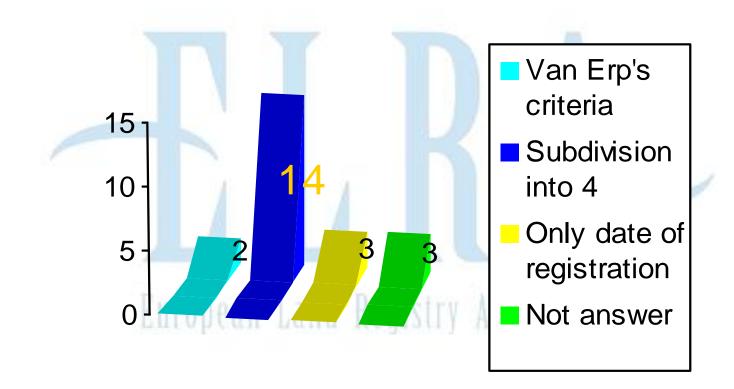
- Simplified subdivision into 4 categories:
 - Mortgages
 - Property rights
 - Judicial restrictions or charges
 - Other restrictions
- Professor Van Erp's suggestion (Vienna seminar)
 - Secondary rights
 - □ rights to use,
 - □ security,
 - pre-emption,
 - management
 - [Tertiary rights]







Organization of Section C (3): **Proposal of subdivision**









2. Guidelines of the information of Section "C"

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Property rights

- Property rights become also quite heterogeneous according to the European systems.
- For purposes of ordering information and refining the IMOLA template, steps may be:
 - Collect the most frequent quoted property rights registered
 - Try to find categories among them, from a point of view from Semantics

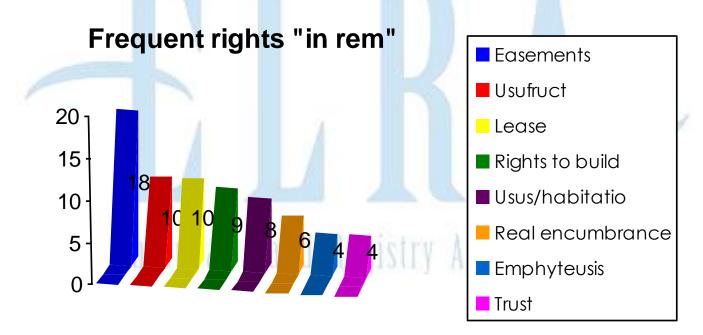






Most frequent property rights in the LR systems

(In the sight of the replies to last questionnaires)









Mapping property rights

- IMOLA guidelines: Bottom up approach, mapping from LR systems
- It follows a collection of the rights in rem mentioned in the replies to QC2:
 - □ Country
 - Right
 Label







- Easements and real servitude (I).

Country	Right	Original Name	Label of classification
Austria	Easement	Dienstbarkeit	"Rights of use –only on the level of toleration
Croatia	Easement	Pravo služnosti	"Restricted real right"
Italy -Agenzia-	Easement	Servitù prediale	Diritto reale su cosa altrui
Spain	Easement	Servidumbre	Rights of use
Portugal	Easement	Servidão	"Rights of use"
Portugal -ascr-	Easement	Servidão	"Right of use"
Netherlands	Servitudes / Easements	Erfdienstbaarheid	Rights of use
Poland	Easement	Służebność: a) służebność gruntowa, b) służebność osobista, c) służebność przesyłu	"Rights of use and disposal"
Romania	Easemente rights	Drepturi de servitute	Easement rights
England & Wales	Easement	Easement	Rights of way







- Easements and real servitude (II).

Country	Right	Original Name	Label of classification
Greece	Easement	Δουλεia (Doulia)	Rights in rem (according to art. 973 Civil Code, rights in rem are the following: ownership, easements, pledge and mortages)
Northern Ireland	Easement	Easement	Rights of use
Belgium	Real servitude	Erfdienstbaarheid, servitude	From the point of view of the owner of the dominant land, is a "complementary right". From the point of view of the owner of the servient land, is a charge on the servient land.
Estonia	Real servitude	Reaalservituut	Servitude - rights of use
Lithuania	Servitude	Servitutas	"Rights of use"
Latvia	Servitude	Servituts	Lietu tiesība
Scotland	Servitude	Servitude	Servitudes are subordinate real rights (a real right held by a person in land owned by another)







- Charge on land, encumbrance, real encumbrance.

Country	Right	Original Name	Label of classification
Austria	Charge on land	Reallast	"Forces (and saves) Positive Performance" from the freeholder to the beneficiary
Croatia	Encumbrance	Pravo stvarnog tereta	"Restricted real right"
Estonia	Real encumbrance	Reaalkoormatis	Security right?
Latvia	Real charge Encumbrances	Realnasta Apgrūtinājumi	<i>Limited right in rem</i> - "right of use"
Scotland	Real burden	Real burden	Right of use
Finland	Special rights	Erityset oikeudet	Rights of use







- Usufruct.

Country	Right	Original Name	Label of classification
Austria	Usus, Usus Fructus, Habitatio	Gebrauchsrecht, fruchtgenussrecht, wohnungsrecht	"Forces Positive Performance" from the freeholder to the beneficiary
Belgium	Usufruct	Vruchtgebruik, usufruit	The right of ownership minus the right of disposal
Italy -Agenzia-	Usufruct	Usufrutto	Diritto reale su cosa altrui
Spain	Usufruct	Usufructo	Rights of use
Estonia	Usufruct	Kasutusvaldus	Personal servitude-rights of use
Lithuania	Usufruct	Uzufruktas	"Rights of use"
Portugal	Usufruct	Usufruto	"Rights of use"
Portugal -ascr-	Usufruct	Usufruto	"Rights of use"
Netherlands	Usufruct	Vruchtgebruik	Rights of use
Poland	Usufruct	Użytkowanie	Limited right in rem - "right of use"
Romania	Usufruct right	Dreptul de usufruct	Usufruct right
Scotland	Liferent	Liferent	Right of use







- Building (construction) lease.

Country	Right	Original Name	Label of classification
Austria	Building (construction) lease	Baurecht	"Separated Ownership"

- Alientation prohibition, burden prohibition.

Country	Right	Original Name	Label of classification
Austria	Alientation prohibition, burden prohibition	Veräußerungsverbot, belastungsverbot	"Ownership restrictions/prohibitions"

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- Pre-emption right – option of repurchase.

Country	Right	Original Name	Label of classification
Austria	Pre-emption right – option of repurchase	Vorkaufsrecht - wiederkaufsrecht	"Ownership restrictions"
Spain	Pre-emption and redemption rights First refusal	Derechos de tanteo y retracto Derecho de opción	Pre-emption right or right of preferential acquisition
Estonia	Right of pre-emption	Ostueesõigus	Pre-emption right
Latvia	Pre-emption / repurchase rights	Pirmpirkuma / atpakalpirkuma tīesibas	Lietu tiesība
Netherlands	Pre-emption right for the sale of property	Vormekung	Preemption rights

- Contract of sale art. 10 WVG.

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Country	Right	Original Name	Label of classification
Netherlands	Contract of sale art.	Koopovereenkomst art. 10	Exception to "right of
	10 WVG	WVG	pre-emption"







- Leasehold.

Country	Right	Original Name	Label of classification
Austria	Leasehold	Bestandsrecht	"Ownership restrictions"
Spain	Lease	Arrendamiento	Right of use
Portugal	Lease	Arrendamento	"Rights of use"
Portugal -ascr-	Lease	Arrendamento	Right <i>in persona</i> - when registered, you may say it becomes exercisable against the world at large, as a right of use.
Latvia	Lease and rental contracts	Nomas/īres tiesības	Lietu tiesība
Netherlands	Long lease	Erfpacht	Rights of use
Poland	Lease	Użytkowanie wieczyste	Rights of use and disposal
England & Wales	Lease	Lease	Lease to which the superior title is subject
Scotland	Lease	Lease	Right of use







- Condominium Trust Relations.

Country	Right	Original Name	Label of classification	
Austria	Condominium Trust Relations	Treuhänder der wohnungseigentümer	"Publicity relations"	
Portugal	Condominium	Propriedade horizontal	"Rights of use"	
Portugal -ascr-	Condominium	Propriedade horizontal	"Right of use" / "Property right with restrictions"	
- Right to build.				
Country	Right	Original Name	Label of classification	
Croatia	Right to build	Pravo građenja	"Restricted real right"	

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- Ownership.

Country	Right	Original Name	Label of classification
Belgium	Ownership	Eigendom, proprieté	Rights of use, enjoyment and disposal
Lithuania	Right of ownership	Nuosavybės teisės	"Rights of use"
Netherlands	Ownership	Eigendom	Eigemdom
Romania	Private property right	Dreptul de proprietate privată	Private property right
Komama	Public property right	Dreptul de proprietate publică	Public property right
Scotland	Ownership	Ownership	Real right in land

- Co-ownership.

Country	Right	Original Name	Label of classification
Belgium	Co-ownership	Mege-eigendom, coproprieté	-
Netherlands	Common ownership	Mandeligheid	Common ownership
Poland	Cooperative ownership	Spółdzielcze własnościowe prawo do lokalu	Limited right in rem – "right of use and disposal"







- Use and habitation.

Country	Right	Original Name	Label of classification
Belgium	Use and habitation	Gebruik en bewoning, usage et habitation	"Mini-usufructs" (restricted usufructs)
Italy -Agenzia-	Right of use Right of habitation	Diritto d'uso Diritto di abitazione	Diritto reale su cosa altrui
Spain	Usus Habitatio	Uso Habitación	Rights of use
Portugal	Use and habitation	Uso e habitação	"Rights of use"
Portugal -ascr-	Use and housing	Uso e habitação	"Rights of use"
Latvia	Right of use / Agreements with overlay	Lietojuma tiesības / Līgumi ar uzlikumiem	Lietu tiesība
Netherlands	Right of use Right of occupation	Recht van gebruik Recht van bewoning	Rights of use Rights of habitation
Romania	Use right Habitation right	Dreptul de uz Dreptul de abitație	Use right Habitation right







- Emphyteusis.

Country	Right	Original Name	Label of classification
Belgium	Emphyteusis	Erfpacht(recht), droit d'emphytéose	Right <i>in rem</i> of long lease
Italy -Agenzia-	Emphyteusis	Enfiteusi	Diritto reale su cosa altrui
Lithuania	Emphyteusis	Ilgalaikė nuoma	"Rights of use"
	- Supe	erficies.	
Country	Right	Original Name	Label of classification
Belgium	Superficies	Opstalrecht, droit de superficie	Limited and temporary ownership limited in time to 50 years
Italy -Agenzia-	Superficie	Superficie	Diritto reale su cosa altrui
Spain	Superficiary	Derecho de superficie	Right of use
Estonia	Right of superficies	Hoonestusõigus	-
Lithuania	Right on superficies	Užstatymo teisė	"Rights of use"
Portugal -ascr-	Superficies	Superfície	"Right of use"
Netherlands	Right of superficies	Opstal	Rights of use
Romania	Superficies right	Dreptul de superficie	Superficies right
Portugal	Surface	Superfície	"Rights of use"







- Super and sub edifications.

Country	Right	Original Name	Label of classification		
Spain	Super and sub edification	Derechos de sobre y sub edificación (o de vuelo y suelo)	Right of use		
	- Census.				
Country	Right	Original Name	Label of classification		
Country Spain	Right Census	Original Name Censo	Label of classification Right of use / guarantee		
	•		Right of use /		

Country	Right	Original Name	Label of classification
Spain	Retention agreement	Pacto de reserva de dominio	Security right, guarantee right or right of security
Netherlands	Lien / Right of retention	Retentierecht	Right of suspension







- Subsequent condition.

Country	Right	Original Name	Label of classification
Spain	Subsequent condition	Condición resolutoria	Security right, guarantee right or right of security

- Anthicresis.

Country	Right	Original Name	Label of classification
Spain	Anthicresis	Anticresis	Security right, guarantee right or right of security
	J	rust.	

Country	Right	Original Name	Label of classification
Spain	Trust	Fideicomiso / sustitución fideicomisaria	Acquisition right
Esthonia	Right of trust	Turto patikėjimo teisė	"Rights of use"







- Personal right of use.

Country	Right	Original Name	Label of classification
Ectopia	Estable Dereand right of use		Personal servitude –
Estonia	Personal right of use	Isiklik kasutusoigus	rights of use

- Right of security.

Country	Right	Original Name	Label of classification
Estonia	Right of security	Pandiõigus	Right of security
Netherlands	Mortgage	Hypotheek	Security rights
Scotland	Right in security / Mortgage	Standard Security	Right in security

- Possession.

Country	Right	Original Name	Label of classification
Lithuania	Possession	Valdymas	"Rights of use"
Portugal -ascr-	Possession	Posse	"Provisional right in rem"







- Property right in rem of periodic occupation or time-share.

Country	Right	Original Name	Label of classification	
Portugal	Property right in rem of periodic occupation or time- share	Direito real de habitação periódica	"Rights of use"	
Portugal -ascr-	Time sharing	Direito real de habitação periódica	"Right of use" / "Property right with restrictions"	
- Financial lease.				

Country	Right	Original Name	Label of classification
Portugal	Financial lease	Locação financeira	"Rights of use"
Portugal -ascr-	Financial leasing	Contrato de locação financeira	Right of use; some authors defend it is also a right of acquisition

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Country	Right	Original Name	Label of classification
Portugal -ascr-	Touristic venture	Empreendimento turistico	Right of use (in the sense of using the property, by the owner to legally admitted purposes)







- Land division operation for urbanization purpose.

Country	Right	Original Name	Label of classification
Portugal -ascr-	Land division operation for urbanization purpose	Operação de transformação fundiária - Loteamento	"Property right with restrictions"

- Concession of an immovable property in the public domain.

Country	Right	Original Name	Label of classification
Portugal -ascr-	Concession of an immovable property in the public domain	Concessão em bens de domínio público	"Right of use"

- Promissory contract of transfer with real effects.

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Country	Right	Original Name	Label of classification
Portugal -ascr-	Promissory contract of transfer with real effects	Contrato promessa com eficácia real	"Right of acquisition"







- Pre-emption contract with real effects.

Country	Right	Original Name	Label of classification
Portugal -ascr-	Pre-emption with real effects	Contrato de prefêrencia com eficácia real	"Right of acquisition"

- Contract with appointment of a third party.

Country	Right	Original Name	Label of classification
Portugal -ascr-	Contract with appointment of a third party	Contrato para pessoa a nomear	"Right of acquisition"

- Apartment right.

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Country	Right	Original Name	Label of classification
Netherlands	Apartment right	Appartementsrecht	Rights of use

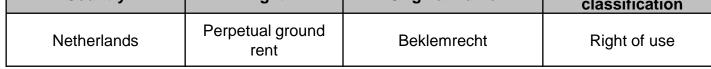






- Qualitative obligations.

Country	Right	Original Name	Label of classification	
Netherlands	Qualitative obligation	Kwalitatieve verplichting	Obligation to tolerate / refrain	
	- Right to a parti	ion of an accretion.		
Country	Right	Original Name	Label of classification	
Netherlands	Right to a partion of an accretion	Recht op gedeelte van een aanwas	Right to a part of accretion	
	 Perpetual ground rent. 			
-11T(nean Land	JO224 VII2ID48	1211011	
Country	Right	Original Name	Label of classification	









- Right to forever use the grounds of the city of Groningen.

Country	Right	Original Name	Label of classification
Netherlands	Right to forever use the grounds of the city of Groningen	Stadsmeierrecht	Right of use

- Right to determine the plants and growth.

Country	Right	Original Name	Label of classification
Netherlands	Right to determine the plants and growth	Pootrecht	Right of use

- Graze right.

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Country	Right	Original Name	Label of classification
Netherlands	Graze right	Weiderecht	Right of use







- Right of duck decoy.

Country	Right	Original Name	Label of classification	
Netherlands	Right of duck decoy	Recht van eendenkooi	Right of use	
- Right of wind collection.				
Country	Right	Original Name	Label of classification	
Netherlands	Right of wind collection	Recht van windvang	Right of use	

- Right of the 13th penny.

Country	Right	Original Name	Label of classification
Netherlands	Right of the 13 th penny	Recht van de dertiende penning	Right of use







- Fishing right.

Country	Right	Original Name	Label of classification	
Netherlands	Fishing right	Visrecht	Right of use	
- Right to ferry across the water.				
Country	Right	Original Name	Label of classification	
Netherlands	Right to ferry across a water	Veerrecht	Right of use	
- Barrage right.				
LITO	Furanoan Land Registry Accordation			
Country	Right	Original Name	Label of classification	
Netherlands	Barrage right	Stuwrecht	Right of use	







- Right on pews.

Country	Right	Original Name	Label of classification
Netherlands	Right on pews	Recht op kerkgestoelte	Right of use

- Impediments governed by private law.

Country	Right	Original Name	Label of classification
Netherlands	Impediments governed by private law	Privaatrechtelijke belemmering	Duty to tolerate

- Manage public right.

Country	Right	Original Name	Label of classification
Romania	Management public	Dreptul de administrare	Management public
	right	publica	right







- Concession right.

Country	Right	Original Name	Label of classification	
Romania	Concession right	Dreptul de concesiune	Concession right	
- Free usage right.				
Country	Right	Original Name	Label of classification	
Romania	Free usage right	Dreptul de folosinta gratuită	Free usage right	

- Restrictive covenants.

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Country	Right	Original Name	Label of classification
England & Wales	Restrictive covenants	Restrictive covenant	Rights of use







- Bankruptcy entries in relation to a charge of a registered charge.

Country	Right	Original Name	Label of classification	
England & Wales	Bankruptcy entries in relation to a charge of a registered charge	Bankruptcy notice or bankruptcy restriction	Bankruptcy entries	
- Rentcharge.				
Country	Right	Original Name	Label of classification	
England & Wales	Rentcharge	Rentcharge	Rentcharge	
- Customary right.				
	Diskt	Original Name	Label of	

Country	Right	Original Name	Label of classification
England & Wales	Customary right	Customary rights	Customary right







- Franchise.

Country	Right	Original Name	Label of classification		
England & Wales	Franchise	Franchise	Affecting franchise		
- Profit a pendre.					
Country	Right	Original Name	Label of classification		
England & Wales	Profit a pendre	Profit a pendre in gross	Profit		

- Notices generally.

Suranoan Land Registry According

Country	Right	Original Name	Label of classification
England & Wales	Notices generally	Notice (agreed or unilateral)	Notice







- Can be organized "families" or rights in rem for purposes of organization of the template?
- Is it somehow viable to organizing registered rights in rem...?
 - Regardless their legal nature according to tradicional Property Rights Systems
 - From a point of view exclusively from Land Registers, strictly functional







Judicial restrictions

Approach to closest equivalent measures

- Judicial order-judicial restriction-notices Types of LR notices (approach)
 - 1. notices of seizure/ attachment;
- 2. notices of claims or dispute, or pending land actions;
- 3. notices of prohibition or limitation of the authority of disposal;
- 4. notices of foreclosure/enforcement;
- 5. notices of forfeiture or confiscation;
- 6. notices of insolvency.

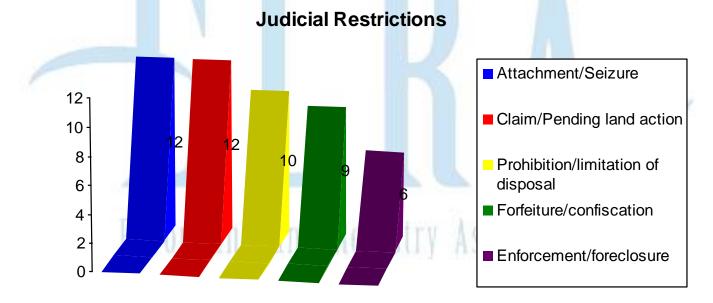






Judicial restrictions Closest equivalent measures

Types of judicial restrictions in LR systems









Judicial restrictions. European legislation

Closest equivalent judicial measures within scope of:

- Brussels | recast 2012
- Successions and wills
- Insolvency
- Framework decisions in judicial matters

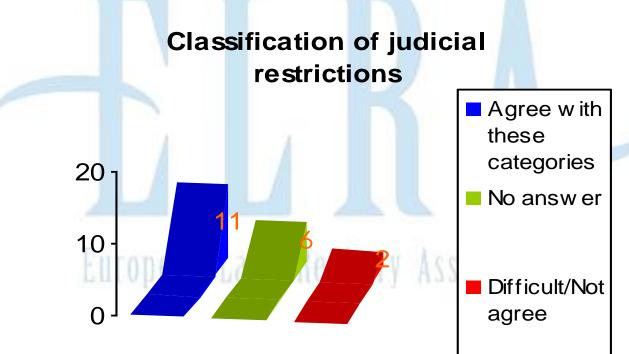






Judicial restrictions. ELRN opinion on classification

ELRN Contact Points' view









- Suitable categories
- I agree with these categories
- Difficult
- In general we agree
- Possible to work on the basis...
- Fully agree
- No answer
- See above (they have these categories to a greater extent)
- No suggestions
- Agree and suggest an additional category ("limited authorization of disposal over the property on the basis of a judicial order...")
- Classification is correct
- No answer
- No answer
- Agree with the above categories categories
- No answer
- Not agree
- No answer/
- Yes

11 agree 6 no answer 2 difficult/not agree







Judicial restrictions. Possibilities of a European clasification

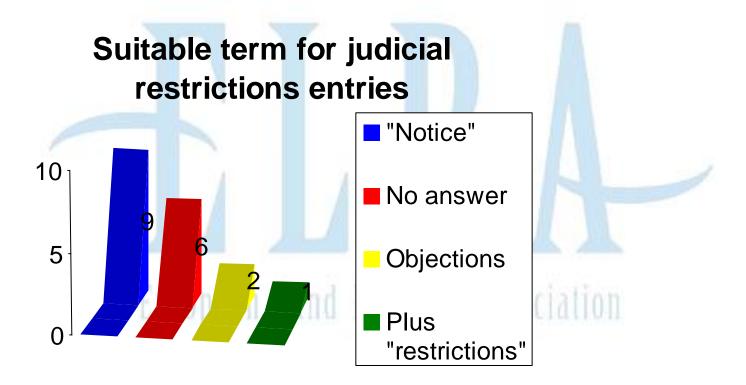
- Connected with the idea of the closest equivalent judicial measures (different procedures, equivalent purpose)
- Just most frequent types but not limitative.
- Some LR systems are flexible or open to judiciary measures whatever they are (numerus apertus).
- Adequate Reference Information regarding to proceedings and effects







Judicial restrictions. Suitable registry term









3. Information data of Section "C"

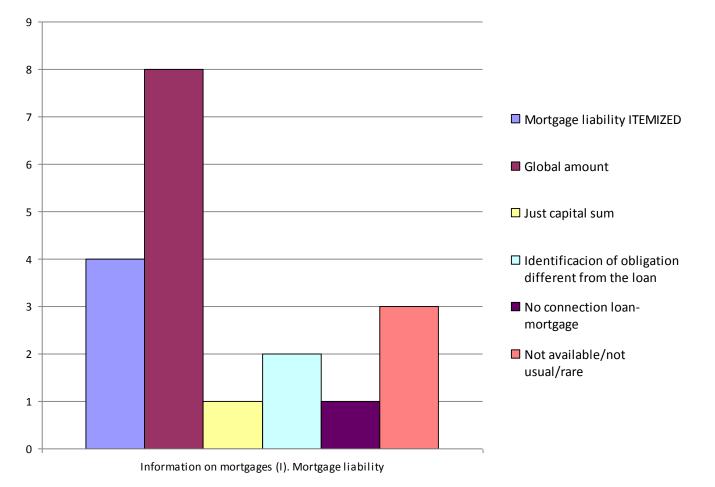
European Land Registry Association







INFORMATION DATA ON MORTGAGES (I). Mortgage liability

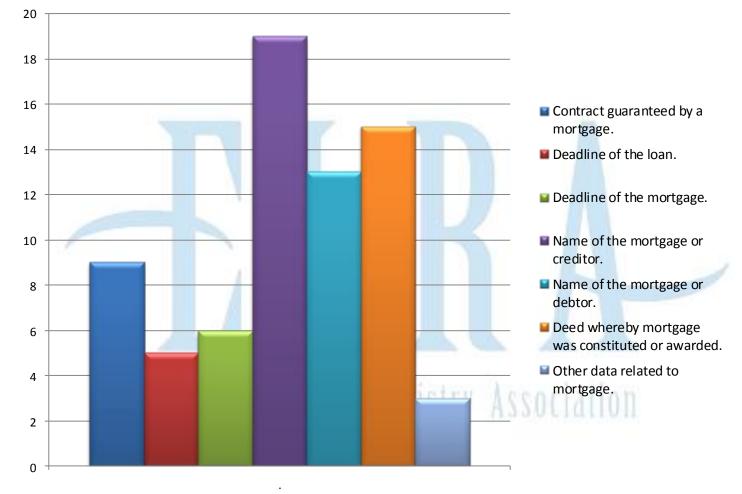








INFORMATION DATA ON MORTGAGES (II). Relevant data

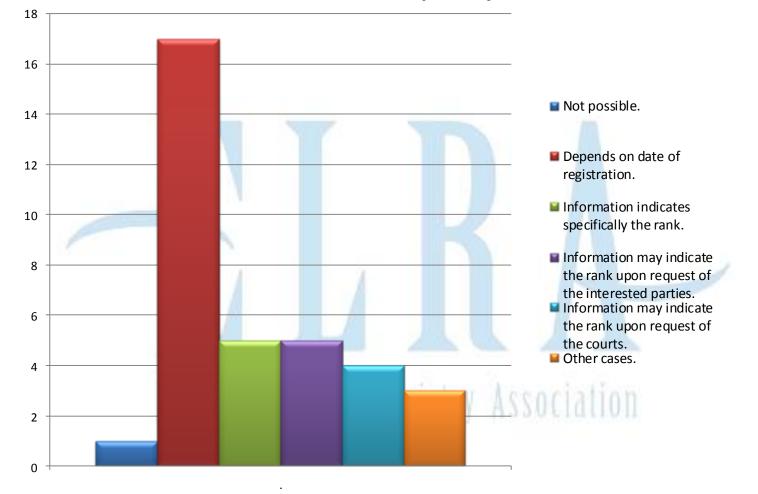








INFORMATION DATA ON MORTGAGES (III). Rank of priority

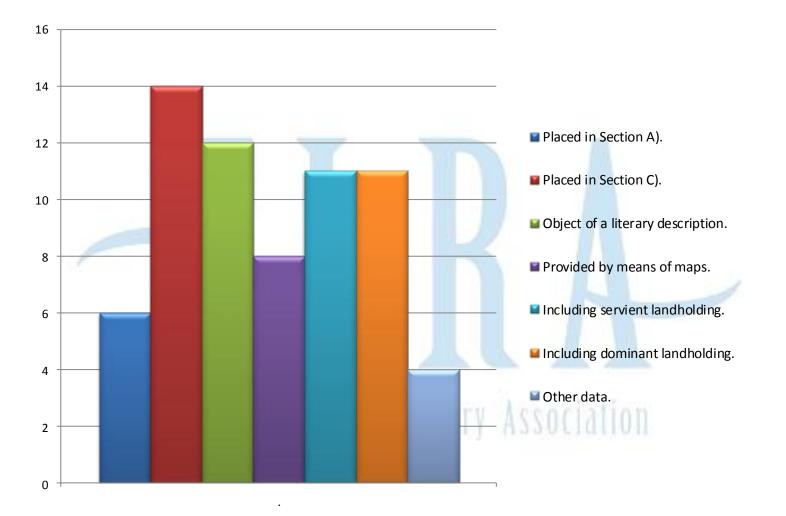






INFORMATION ON EASEMENTS



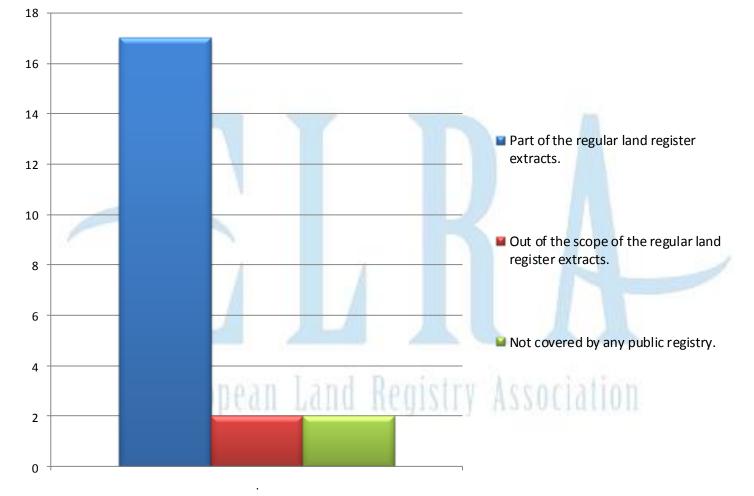








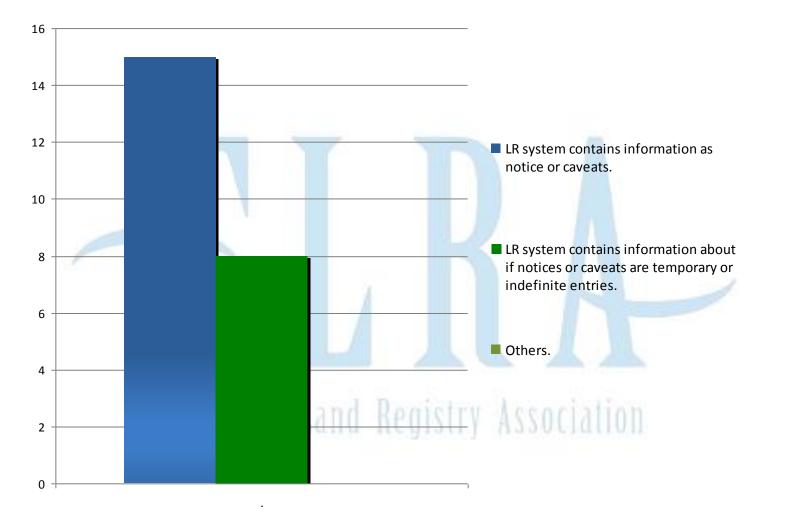
INFORMATION ON JUDICIAL RESTRICTIONS OR CHARGES (I).







INFORMATION ON JUDICIAL RESTRICTIONS (II)





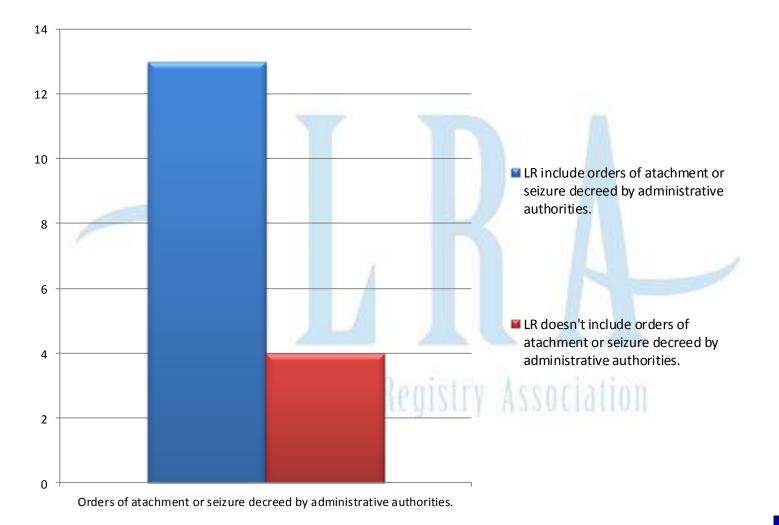
IV

Interoperability Model for Land Registers





INFORMATION ON ADMINISTRATIVE RESTRICTIONS (I)

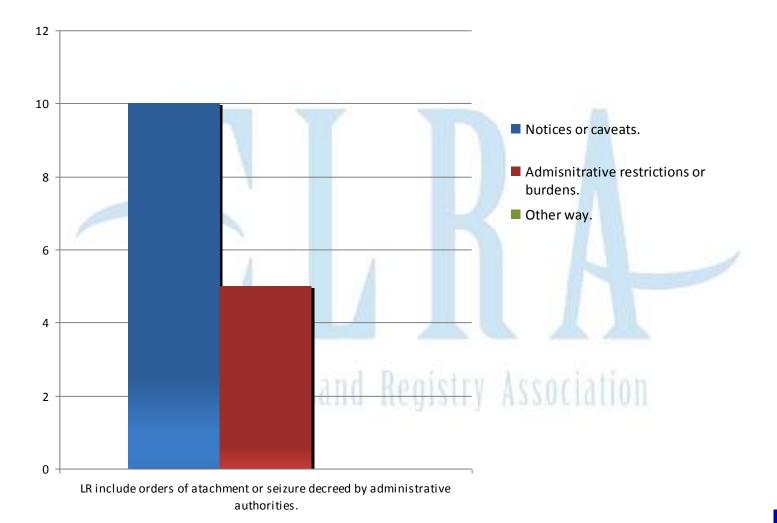








ADMINISTRATIVE RESTRICTIONS (II). Nature

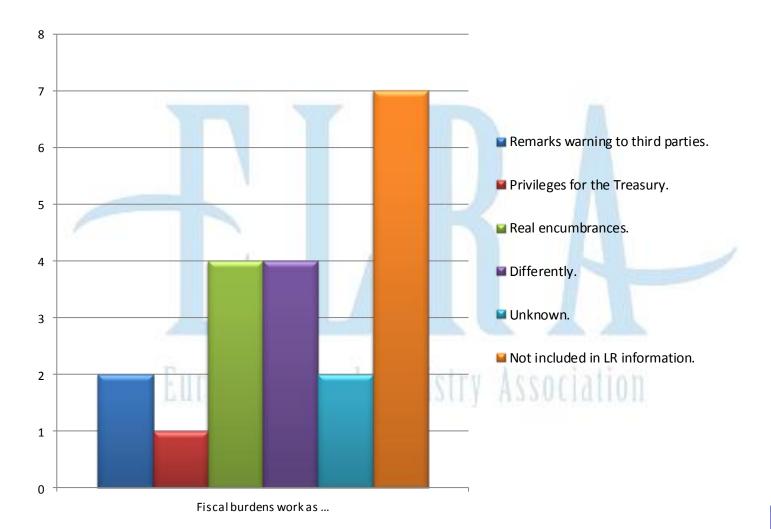








ADMINISTRATIVE RESTRICTIONS (III). Fiscal burdens









Thank you for your attention

