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**“The Land Registrar
as a Legal Professional”**

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Quite probably, more than one person in the room will find surprising that an Association such as ELRA, devotes any of its time to discuss the role of the Land Registrar as a Legal Professional.

However, what is really surprising -even shocking- is the fact that the E-Justice Portal, does not list the Land Registrars among the Legal Professionals of the EU.

This is the motive behind this presentation.

If someone visits the E-Justice Web Portal of the European Commission a section designated as “Legal Professions” can read as follows:

“Within the different legal and judicial systems of the Member States of the European Union (EU), there is a wide range of legal professions such as lawyers, notaries, judges, prosecutors and judicial officers. Members of legal professions do not hold the same titles in all Member States, and their role and status can vary considerably from one Member State to another.”



The screenshot shows the 'Legal professions' page on the E-Justice portal. The page header includes the European Commission logo and navigation links. The main content area features a blue header with the title 'Legal professions' and a search bar. Below the header, there is a paragraph of text: 'Within the different legal and judicial systems of the Member States of the European Union (EU), there is a wide range of legal professions such as lawyers, notaries, judges, prosecutors and judicial officers. Members of legal professions do not hold the same titles in all Member States, and their role and status can vary considerably from one Member State to another.' To the right of this text is a search bar and a 'Recent updates' section. Below the text is a blue-tinted illustration of four legal professionals (two men and two women) standing together. To the right of the illustration is a section titled 'Introduction' which states: 'Apart from lawyers, European Union law does not regulate the conditions for exercising as a legal professional. Legal professions are generally regulated at national level. Although there may be natural similarities between them, these national regulations differ quite substantially from one country to another because they reflect the continuation of often ancient traditions.' Below this is a paragraph mentioning the Committee of Ministers of the Council of Europe (COE) and its recommendations on the legal profession. To the left of the main content area is a vertical sidebar menu with various legal topics such as 'Law', 'Case law', 'Judicial systems', 'Legal professions and justice networks', 'EJN in civil and commercial matters', 'Going to court', 'Legal aid', 'Mediation', 'Succession', 'Victims of crime', 'Rights of defendants in criminal proceedings', 'Tools for courts and practitioners', 'Registers', 'Find a...', 'Glossaries and terminology', 'European judicial training', 'Dynamic forms', 'Access to justice in environmental matters', and 'European Judicial Atlas in civil matters'.

Legal professions



Considering the role played by the Land Registry and the Land Registrars

–in spite of their institutional diversity within the EU-

it is shocking to find that the Land Registrars have been omitted from the Legal Professions list of the E-Justice Portal

- Judges
- Public Prosecutors
- Court Staff
- Bailiffs (judicial officers)
- Lawyers
- Notaries
- ???????????

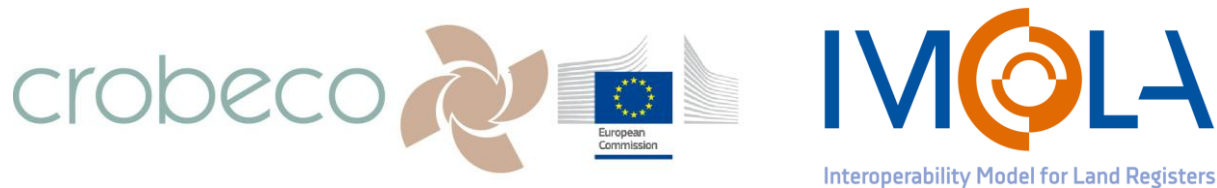
This omission implies, in essence, the exclusion of Land Registrars from the diverse working groups.

Looking at the Multiannual European E-Justice Action Plan 2014-2018, among other documents, we can see that Land Registrars have been excluded, among others, from the following matters:

- a) Cooperation with Judiciary Authorities and Legal Professionals.**
- b) Registries.**
- c) Semantic Web.**

Fortunately, these consequences have been partially mitigated thanks to the existence and activity of ELRA, playing the role of interlocutor before the EU Authorities.

So, even Land Registrars are not acknowledged as part of the legal professions roster of the E-Justice Portal, ELRA is carrying out two projects financed by the EU, which are essential in the field of Registry Interconnection, such as the IMOLA and CROBECO Projects.



In a first approach, we can attribute this exclusion to two reasons:

1. The European Union lacks competence over the Land Registry, according to art. 345 of Treaty on the functioning of the EU.
2. Land Registrars do not perform a legal function, and therefore they're not considered legal professionals.

Let's briefly examine each of these points:

The European Union lacks competence over the Land Registry.

This is not a solid argument.

The provisions of articles 345, 61 and 65 of TFEU determine the extent of the legislative competence of the European Union in Registries of property matters: within the boundaries established by art. 345 of TFEU cooperation is possible.

In other words, cooperation in Land Registry matters is a manifestation of the judicial cooperation foreseen in the TFEU –arts. 61 y 65- and an instrument to make it effective in the sphere of property rights over Real Estate.

Land Registrars do not perform a legal function, and therefore they're not considered legal professionals

This second argument lacks –in my opinion- the slightest justification.

However, the depiction of the Land Registry provided in the E-Justice Portal generates confusion

Whoever reads the description found on this website, will hardly understand what is a Land Registry, what are its goals or what it does, that is: what is its function.

From reading the previous website one would get the impression that the Land Registry serves an advisory, rather than a legal, function.

Probably, two of the factors which contribute more heavily to the current misconception of the Land Registries are:

- 1.- Considering Real Estate Registration Law as Land Law
- 2.- Land Registries, although they all pursue the same goals, do not serve the same functions.

Let's examine each of these points.

The law governing registration, in its substantial aspect, is part of Patrimonial Civil Law, in particular of the System for transmitting and acquiring property and other real rights over real estate, and its protection. This is why Land Registries remain out of the sphere of competence of the European Union.

This is the essential nature of all registration systems, regardless of the Conveyance System –v.gr. causal or abstract-, the determination system for real rights –*numerus apertus vs numerus clausus*-, or the type of registration system- Registry of Rights, Documents, or some intermediate approach-.

The function of the registrar varies depending on the kind of registry, on the legal transmission system is causal or abstract and on the system of property rights is *clausus* or *apertus*. In a deeds system, the registry does not show any entitlement. It only shows documents. However, a registration in a registry of rights shows the entitled person because it is part of the process of the generation of the entitlements *in rem* of property rights on immovables.

In a causal system, the contract or juridical act is part of the transmission – *justus titulus* – but they are not part of it in an abstract system. This is why in a causal system with a registry of rights the legality check of the registrar usually reaches the *justus titulus*. but this legality check does not reach it in an abstract transmission system, even with a registry of rights system, nor in a causal transmission system with a registry of deeds.

As we can see, legality check is limited to formal requirements of the documents, in some cases, but most go further and include the assessment of legal compliance of the contract according to the material legal requirements of national law.

In all jurisdictions, but one, registrars are legal professionals, usually highly qualified, with a significative prevalence of adscription to the judiciary – <http://network.elra.eu/?cat=107>, see “process of registration”-. In all cases a legality check is performed.

The Multiannual European E-Justice Action Plan 2014-2018, when dealing with the Registries, focuses exclusively on

“National Registers included in the Justice Sphere... to facilitate the access to and the administration of justice, establishing to that end a single access point by means of interconnection of such Registries.”

The Interconnection Project of Land registries is conceived in this Plan as a tool for the Judicial Cooperation foreseen in the TFEU, in the terms set by arts 61 and 65 of the TFEU and to the extent allowed by art. 345 of the same Treaty.

This is why, whatever technical approach is used for Land Registry Cooperation, such cooperation will always require the understanding and knowledge of the meaning of key registration-related legal figures.

Challenging as the technical complexities of this cooperation may appear, they pale in comparison with the legal intricacies involved.

A proper understanding of the Land Registry entries, requires that not only the procedural aspects of each national registry are understood, but also its patrimonial civil law, its taxation law, the rules of civil and administrative procedure and a long etcetera.

The legal configuration of contracts, succession and, above all, property rights on real estate, displays the real DNA of each country. Certain legal figures which are admitted in one country are rejected in others and, at best, regulated in a different manner.

None of that is whimsical, but the sediment of a long and painstaking historical process.

These are the real challenges involved in the Cooperation in the field of Private Patrimonial Law and therefore in the field of Land Registration, more than the development of Technological platforms or, in its case, the physical description of the registered properties.

This reality constantly appears in the field of Private Patrimonial Law, especially in relation to Real Estate.

For instance, REGULATION (EU) No 650/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 4 July 2012 on the creation of a European Certificate of Succession:

Art. 30 establishes the prevalence in real estate law of the “lex rei sitae” principle.

Art. 31 establishes the principle of “*Adaptation of Real Rights*”

This operation, always tricky, will vary in its difficulty depending on different concerns, according to the requirements of national law. In Spain, the Legislation assigns the task of conducting the adaptation for the registration to the Land Registrar.

Article 1.2.1 places the competence over the Land Registry on each Member State and, therefore, any related provisions will fall outside the scope of the Regulation

As a consequence if, for example, a conflict exists between the presumption of ownership, established in art. 69.2 of the Regulation, and the registered ownership backed by the public faith of the Registry of a Member State, the latter will prevail.

Judicial Cooperation –and therefore, Land Registry Cooperation-, especially in the field of property rights on real estate, can only operate within the permitted extent of each State's legal system.

This demands a profound knowledge of Patrimonial Law of the countries involved, as to the make them legally interoperable to some extent. And this is, as a consequence, the most challenging obstacle for Land Registry Cooperation.

Without legal interoperability it is not possible to attain an effective cooperation among the Land Registries of different Member States, without prejudice of the auxiliary role that the technical interconnection may play in order to manage the legal interoperability, which is the real challenge and does not depend at all on whether a technical interconnection among Registration systems exists or not.

Land Registrars have been aware that the key issue in the field of Land Registry Cooperation lies in the semantic interoperability, and of the difficulty of such interoperability. For this reason ELRA devised the IMOLA Project –*Interoperability Model of Land Administration*–.

On the website of ELRA devoted to the IMOLA project, this perspective is clearly set out:

“There is a need for a standard means of accessing basic land registry information within the EU. Yet, the cross-border exchange of information between European land registries is complicated. Differences in national legislation and divergences inherent to the practice of land registration are the main causes of this complexity”

The Feasibility Study, however, is not aware of the importance of the Legal or Semantic Interoperability, relegating it to trivial role, by focusing on the technical interconnection as the key element of Land Registry Cooperation, which constitutes, in my opinion, a key mistake.

This is due, among other factors, to the fact that the Feasibility Study has been realized without the participation of Land Registrars.

This fact also explains that such interconnection is conceived not only among such Registries, but also encompasses the National Cadastres on an equal footing with the Registries (r.1 list), which allows the study to overflow the field of what many countries understand as their “registration system” without any academic base or any other backing for that matter, to reach a conception of the Land Registry in its “broadest meaning”.

In some countries Registries and Cadastres are separate institutions with varying degrees of coordination, in other they are “merged organizations”.

The Feasibility Study, in fact, does not respect the different national solutions, over which the EU has no competence at all, but by including not only ownership and lien information from the Land Registry, but any type of relevant information from a geographical or territorial perspective.

All the reasons discussed in this presentation, show the necessity that Land Registrars are included in the E-Justice Portal list of Legal Professionals, not only for them to participate in the various working groups relating to formal, organisational or procedural matters in the sphere of the Land Registry, but also in those focusing in material legislation which may be involved in the Registrar's legality check prior to admitting or rejecting an application for Registration.

Thank you very much for your attention!

