

**GUIDELINES ON LEGAL ELEMENTS FOR LAND REGISTER
INFORMATION IN EUROPE**

Jorge López

Summary

- I.** A structure for the registry information
- II.** The part of information related to properties
 - 1. The connecting factor
 - 2. The description of the property
 - 2.1. Descriptions in the ownership title and spatial data
 - 2.2. The description of the properties in land registers: an attempt to find a minimum common denominator
 - 2.3. More criteria for purposes of identification or description
- III.** The part of information related to owners
 - 1. Approach to proprietorship
 - 2. Elements of information on ownership
- IV.** The part of information related to mortgages and encumbrances
 - 1. Kinds of encumbrances
 - 2. Rank or preference between charges
- V.** Other relevant aspects

References

One of the results of IMOLA project is a lot of material on legal aspects of land registration across Europe. The Contact Points of ELRN have made interesting contributions explaining their models and systems. This is an important background, valuable for the mutual understanding in this scope, and can be used and studied to try to understand the complex European situation regarding land registration, from the legal point of view.

The aim of this article is to present relevant legal aspects to consider laying down some guidelines for exchanging land register information at a European level, especially considering what the main targets should be: judicial cooperation and conveyancing.

I. A structure for the registry information

ABC structure for land register information

In several Land Register systems of Europe there are practices which allow us to find some commonalities in legal aspects on land register information, as well as what structure may be adequate to deliver the system across Europe for the mentioned purposes of judicial cooperation and conveyancing.

Such practices are unequal to some extent. They have different origins and evolutions, although the systems which have these practices are considered mostly *title registration systems*¹. They consist of dividing the registry title into three parts or sections, devoted to the description of the property, the ownership and finally the mortgages, burdens or other restrictions that encumber the ownership. This structure of land register information could be called *ABC*, where Section “A” is for the property, Section “B” for the ownership and Section “C” for the mortgages and other encumbrances.

Of course there may be in these systems other types of Sections or subdivisions, or other ways to denominate the Sections, but the structure *ABC* seems to be an acceptable minimum common denominator or principle of order. Hereinafter Sections “A”, “B” and “C” will be intended as Sections or Parts referred to respectively as “description of property”, “ownership” and “encumbrances” in general.

¹ The title system operates on the principle of "title by registration" (granting a high indefeasibility of a registered ownership), tends to keep continuity of registration (chain of title) and is based on three principles: *Mirror principle* – the register (Certificate of Title) reflects (mirrors) accurately the legal status of the properties. *Curtain principle* – it is not necessary to go behind the Certificate of Title as it contains all the information about the title, ownership need not be proved by long complicated documents or procedures. *Indemnity principle* – provides for compensation of loss caused by errors. Classical explanations of title systems were given by Ruoff, Theodore B.F. (*An Englishman looks at the Torrens system (1957)*).

It is indeed a familiar schema for German or Swiss or other systems arising from the Austro-Hungarian one, which became a pattern for countries that formed part or were linked to the former Empire despite their later national developments (apart from Austria and Hungary, Croatia, Slovenia, Bosnia-Herzegovina or Italian Autonomous Provinces of Trentino-Alto Adige and Bolzano for instance)—. Also, it is familiar for the English and Welsh system or those of Portugal or Spain.

However, it seems timely to warn that there are also deed registration systems² where this *ABC* structure does not work or becomes too forced, although there are also cases in which it is in some way taken into account for the purposes of arranging land register information (Italy or Romania).

The *ABC* structure —not exclusive to European systems— may be considered a starting point for supporting the exchange of land registry information across Europe, at least with respect to the title registration systems and provided that we do not forget the specifics of the deed systems.

One of the aims of this paper is to present succinctly what legal elements should be taken into account at European level for exchanging land registry information. This task appears to be at least easier if we rely on the structure *ABC* for explanatory purposes.

Discussions on what is the extent of every Section's scope may be constructive and interesting.

An initial view on this topic

Once explained this tripartite structure of information, in a very elementary way some factors have to be remarked to reach a wider perspective:

A) Some factors have influence on the scope of “A”:

- Research on land registration shows that properties or plots of land appear as the most common *connecting factor* of the land register information, but that there are also other entities that may be so as well. And they are marketable. The European experience shows that there is no unique category of properties (e.g. cadastral parcels) nor are properties the only land register unit that are possible. On the contrary, there are entities, even rights *in rem* that are also considered so by operation of law or by means of a legal fiction or for the purposes of the registry organization and information derived normally from national practices or underlying property rights systems. In simple terms: land

² In contrast of title registration system whose goal is that the owner of properties according to the land registry has an indefeasible title, deeds registration system merely consists in recording all relevant deeds related to properties, by means of transcriptions of them and a personal folio as basis of organization or connecting factor. There is not any presumption of accuracy of the content of the register.

registers of Europe have different kinds of land register units and not only parcels, or even pieces of land.

- Moreover we find different categories of information, *land or territorial information*, mostly focused on the physical features such as land use or environmental or urban status, and *property information*, particularly related to legal status —ownership and encumbrances— from a particular plot or piece of land, that is to say, intended for legal purposes.

B) With respect to “B” or the part of the information concerning proprietorship, the identity of the owner of the properties appears as a necessary element of information but this is not sufficient. A land register system should ensure first and foremost reliable information about who the owner of a concrete property is. This is an essential item of data. Otherwise the system would absolutely fail.

However, apart from identification of the owner of a property, there is another type of information relevant to obtain an accurate idea about this part of the information (proprietorship), such as the extent of the title of the owner or the existence or absence of restrictions on his/her/its person. If the title of ownership were inconsistent or the owner were affected by a procedure of insolvency —with restriction of his/her powers— information missing from these data would become misleading and incomplete, particularly if it had been requested for purposes of conveyancing or to be used for a lawsuit.

Certainly some attributes should be added to the identity of the owner to provide legal security.

C) Finally, it is remarkable the complexity of the legal situations that may affect or burden the properties and potentially be included in Section “C” as mentioned below.

The absence of a suitable treatment of the encumbrances may create a misleading impression that properties are free of burdens. In terms of land register information, missing a burden or more, or expressing it inaccurately, can have devastating effects on the required information.

ABC Structure and deed registration systems

How could the deed systems be adapted to the *ABC* structure of information? First it should be recognized that the main response or solution should come from their own organizations. From outside, from a title system point of view, mere suggestions might be made, such as the following points:

- One way to do it would be to obtain the data envisaged for the information model from the data of archived documents, provided they were available: a) information concerning the description of the property existing in the last

recorded or transcribed document: guidelines of deed systems should be respected so as to permit parties to define a given property (its situation, its boundaries, its physical characteristics) making use of cadastral mapping of which that property forms part —admitting differences between parcels and the properties and taking for granted differences between legal boundaries and cadastral boundaries—; and finally quoting the cadastral code or reference of the parcel involved —although it would be advisable to warn interested parties of dissimilarities between the parcel and the plot defined in the deed—; b) ownership data would be obtained from the document recorded later —it is assumed to be updated—; and c) mortgages or encumbrances, probably part of the most complicated information, would be obtained from the documents relating to them in the order in which they were recorded or transcribed. In any case, it is not such an easy method: land registration of *deed systems* is not intended for the use of the properties as *connecting factor* (typical of folio real systems). *Deed systems* are set on the basis of *personal folio*. We have to admit that deep down this suggestion calls for deed systems to provide the data that appear relevant in an alien information model (based on the real folio) where the connecting factor is properties, not persons.

- The Italian system (State Agency, not other systems in force in certain areas of Italy³) appears to offer more possibilities. Insofar as entries are organized in transcriptions *for (a favore)* and *against (contro)*, the first corresponds to the current owner and it is fit to be taken to "B" section; the second corresponds to the holders of the transcribed encumbrances, which might be taken to the "C" section, in both cases indicating the deed from which these data come from. As for the "A" section, the issue would be the same as in the previous case: to take the property as was defined by the parties in the deed. Information about this act and in which deed it was done should also be provided.

It seems wise that any data from the deed systems should be explicitly supported by the deed recorded, which in turn should be the most recent. Of course, it would be appropriate to warn that these data come from the most updated deeds recorded, and that the value and effects of such information should be understood within the legal system they come from. It would be unacceptable to pretend that such information could produce different effects. All remarks in this regard would be useful, even proper.

II. The part of information related to properties

1. The connecting factor

A basic approach to the field of land registration across Europe —also outside Europe— would lead to two types of land registration systems, *deed system* and *title system*. The initial conclusion is that the connecting factor of the title systems should be the properties

³ Trentino-Alto Adige, Bolzano, Giulia-Venezia, Trieste and several municipalities (e.g. Cortina d'Ampezzo) that have *title registration systems* unlike the most spread in this country.

which the information is based on (*real folio* organization) and the connecting factor of the deed systems should be the person of the owners who appear as parties to the deeds (or copies of them) recorded (*personal folio* organization). Both systems have made a choice of land register units with the aim of organization, crucial for understanding their differences.

However, when information is focused on land or properties and the latter are the relevant part of the information, properties or plots appear as the main object of the information. In the deed systems, the contract of the deed is related to properties but the resulting information (and organization) does not consider them as the main object and they cannot provide this information in a direct way, unlike the title systems, which provide direct information on the properties intended as objects.

In any case, both systems are organized and based on land register units (hereinafter referred as *LR Units*). So, *LR Units* may be understood as all properties or entities with individual register and/or LR number or title number assigned in accordance with each Land Register system.

This definition is remarkably abstract, given that it does not prejudge whether the object is a property or a person and could be acceptable for both systems because it is formal and works regardless of the nature of the “unit”. However, even so, the title systems likely would accept this more easily than deed systems because of the relationship between “unit” and “object”: whereas the object, the property or plot, equals the unit in the title systems, the property conceived as the object of the deed does not equal the unit in the deed systems. This role in the latter belongs to persons.

Focusing the question on the direct object of the information, the properties, a European overview shows definitely that there are diverse land register units or entities which in accordance with the legislations of the Member States may have a separate or individual register and/or title number so that each of them has assigned a specific folio for registering the data which make up their history in the land register and consequently provide information based on it.

Most of the Land Register systems show that a plot of land is the “unit” or “object” of registration. This plot of land could be rural or urban, it may have a construction or not, and it may also have a map attached to it, or not. Now, in the Member States where there is a cadastre, the properties or plots may coincide with a cadastral parcel or (often) not. This arises from the fact that Cadastre and Land Registry have or may have different aims: Cadastre has a fiscal purpose whereas Land Registries operate as the legal basis for ensuring the legal status of ownership and other legal rights over land.

Moving this point to the construction of a European template for exchanging information across Europe, it appears a priority that information on the properties is related to what basically coincides with the interest of the parties, the marketable object of legal traffic (for sale, mortgage). But the properties deemed so do not always have the same description in the Cadastre because as a matter of fact properties often do not equal

cadastral parcels. Many differences seem to remain between them concerning boundaries, size even location or other relevant dissimilarities which question the identity of the marketable object.

Moreover there is indeed a large diversity amongst Member States in their approach to registration of land data and their implementation of the corresponding land registers, which includes the legal context as well as the scope of the information stored in such registries. All these difficulties suggest that the choice of considering exclusively or mainly the cadastral parcel as object of registration is not realistic or feasible at all. In fact some Member States do not even have a cadastre (e.g. England and Wales) or even a cadastre not developed enough. Opting for a connecting factor so restricted would lead to the consequence of excluding from the scope a significant part of the properties or registry entities. On the contrary, the approach should probably be flexible. This issue would be crucial if we aimed to successfully build a European Land Register Document (ELRD) to fulfil the needs of judicial cooperation and conveyancing.

Mostly, but not only from the perspective of the *title systems*, we may distinguish different kinds of properties that work as land register units.

An attempt to rank all this diversity would be the following.

1. *Properties*

In principle there are many types of properties, plots, pieces of land, buildings, building sites. Likely, we could deepen classifications according to their nature but it requires further analyses and the idea is that property or plot has a rather broad and flexible meaning.

Properties once registered have generally a number or ID, which may coincide with cadastral ID or not, or not have cadastral ID at all. The properties sometimes have even got both (cadastral ID or fiscal number and property ID or title number).

2. *Cadastral parcel*

When plots are included in a public or official survey for purposes of tax effects or territorial mapping, they become cadastral parcels. The cooperation or participation of the private owners in the public surveys is uneven across Europe. There are cases in which the role of the owners seems irrelevant in order to describe the parcels or, in any case, less relevant as the role of the surveyors.

- a) Some systems establish a Section “A” where the cadastral parcels and properties should coincide. The law imposes the principle of conclusive boundaries, so that in principle there would be only one object for the deeds or contracts and there would not be differences between parcels and properties. This is the case in the German or Austrian system. In theory Scandinavian systems also may be included

in this kind with the caveat that they are merged organizations unlike the Germanic systems.

- b) In some systems (deed systems), it is the parties who define the boundaries in the deed. The corresponding cadastral parcel may be used for their private interest in an indirect way, laying down the boundaries on it. Hence, differences between legal boundaries and cadastral boundaries are admitted and taken into account. It happens in merged organizations (The Netherlands, Italy-*Agenzia delle Entrate*).
- c) In systems where cadastre and land register are separate organizations, there are frequent divergences between properties and cadastral parcels. However, the divergence is not considered desirable and there may be mechanisms of coordination between them so that they become a single object for the purposes of legal traffic and marketability, at least while the cadastral survey does not change the description later. It is the case of Spain or Portugal.
- d) In some systems there is no cadastre. Registration titles are recognized on the basis of the private properties and the parties are entirely free to define them. It is the case of England and Wales, where Ordnance Survey is also used for drawing the map of the property.

So, to make cadastral parcels and boundaries equivalent appears only possible in the land register systems with a criterion of conclusive boundaries. There are not so many: conclusive boundaries or coincidence between legal boundaries and cadastral ones are not precisely the most widespread possibility. Even once legally established, it seems difficult (and costly) to be implemented to a significant degree.

In conclusion, there are cases in which properties are determined by cadastral parcel, but they are not the majority. Mostly, properties do not equal cadastral parcels and so, they might be coordinated, or at least cadastral parcels may be useful for the parties in order to define their properties. Besides, we should not forget that there are systems with no cadastre.

Finally, cadastral parcels appear as units. As such, they have an ID or cadastral ID or reference for each one. But in the event that the parties define the boundaries on the ID the object of the deed or contract does not equal the unit. And in some systems definitely cadastral parcels are cadastral units but not land register units, which have their own land register ID.

3. *Apartments or flats*

Ownership of apartments is very important from the social and economic point of view (the object of transactions is often apartments) and probably the most common kind of ownership for European citizens. “Prevalence of flats” has just been stressed by a report for the European Parliament that includes statistics about the high average of European population accommodated in flats and also the high number of registered units per

million population in the EU⁴. Likely this fact, and how important this kind of property is, should not need further explanation.

Hence logical registry responses there could be expected in this sense. It is certainly widespread the fact that apartments or flats of buildings or blocks have independent registers or title numbers, reflecting the often called *horizontal ownership*. As a matter of fact, a majority of the land register systems open a *real folio* for every flat endowing them with a title number⁵. Whereupon they are able to be sold or mortgaged (or embargoed by judicial decisions) in an independent or separate way, which neither interferes with the other condominium flats nor the ownership of the communal elements. So, this type of registry organization facilitates to a great extent a fluent marketability and legal traffic of this property and also transparency.

There are other legal schemes based on ownership of the block or building on what leases or leaseholds are granted and also Scandinavian housing co-operatives. But anyway it appears indisputable that ownership of apartments is very important from the social and economic point of view and that the object of the transactions is often individual apartments.

From the perspective of land registration the first step is to determine whether flats or apartments are considered property units or not, as seen above, and likely the second one is dealing with the specifics of the identification and description of this type of property, and within the relationship between the apartment and the block and location in it (storey or floor) or main elements of the condominium (share or number).

In several European countries apartments or flats appear totally disconnected from the building they belong to, due to practices, even historical reasons (denationalisation of properties), but European legislations that rule horizontal ownership usually deal with the legal situation of the apartments with respect to the block, identifying the apartments as units and indicating their shares in relation with the communal elements of the building or block. It would also seem useful to incorporate within the description of the apartment—once considered a marketable and specific type of property—some more information about the storey where they are located or a basic description of the layout or distribution.

Condominiums where apartments or flats lie are usually governed by statutes. Although to find out these rules of organization seems very important, there is usually no immediate or easy access to them by the ordinary means of registry information (excerpts). Likely all land register systems should make efforts for this purpose so that information related to a flat may (at least optionally) include the statutes of the

⁴ “Cross border acquisitions of residential property in Europe” (Directorate General for Internal Policies Policy Department C: Citizens’ Rights and Constitutional Affairs). [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556936/IPOL_STU\(2016\)556936_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556936/IPOL_STU(2016)556936_EN.pdf) Page 93 and the following. See tables 19 and 20.

⁵ See ELRN fact sheet on Condominium: <http://www.elra.eu/network/7147-2/>

condominium. It seems worth working on this aspect in order to improve transparency for the sake of buyers or creditors.

Apparently, apartments or flats do not have an easy connection with the cadastre. In the land register systems in which they are considered units or objects, having their own registry history, they have an individual register. On the contrary, it is not so frequent that apartments have an individual cadastral number, but that the reference or cadastral number is related to the building they belong to.

4. *Special properties*

There are special properties, often economically valuable, whose description or identification is complex because they are fragmented or discontinuous or too large. For example mines, pipelines, ownership of waters or underground properties. They might comprise several parcels or plots or parts of them.

It may also occur that a given special property embraces land and rights of diverse nature, for example private and public. For example, a shipyard may comprise ordinary private land and an administrative concession to occupy or use a part of the public domain of the coast.

Given that they might comprise several parcels or plots or rights of different nature, maintaining unity from the point of view of the legal traffic, they should be considered as land register units and endowed with an individual register. We may even expect these special land register units to reflect the entire parcel IDs of the parcels or plots they embrace and also describe which part is included and which not.

Moreover, it appears reasonable to seek means of identification as sophisticated as possible. Probably UTM coordinates and/or mappings are particularly appropriate here.

Thus, we understand that the potential complexity of these special properties justifies a separate category.

5. *Property rights*

LR systems and law of the Member States show different cases of property rights whose status is different than usual because they are recognized with an individual register or title number. For example, leases and leasehold (mostly); time-sharing units; administrative concessions; *profit a prendre in gross*, franchise; likely the temporary ownership after being exercised a right to *superficies*⁶ on a site; etc.

⁶ The often mentioned study on *Cross Border acquisitions* points out that “elsewhere on the continent most systems have long recognized some form of superficies, giving rights in the building but not in the land” (Page 82). Although the right of superficies normally in a first stage certainly gives a real right

For these rights/properties or rights/objects identification or description are in practical terms the right itself, defined with respect to the legislation governing them.

In this event an cadastral ID is unlikely but it is taken for granted they will have received a register number given that they have arisen from a legal fiction (treating as property what is only a real right), but this legal fiction at the same time comes from the needs or conveniences of the legal traffic.

2. The description of the property

2.1. Descriptions in the ownership title and spatial data

Within the model of the title registration systems, the properties —whatever their nature— appear as the connecting factor of the information because they are the axis of the registry folio (real folio) which the information is obtained from.

INSPIRE spatial data provide a framework but not the registration data itself. First and foremost, spatial data seem to be important with respect to the description of the registered properties or plots but not properly with respect to their legal status, that is to say, who the owner is and which restrictions or encumbrances correspond. Ownership and rights *in rem* can not be considered spatial data or data within the scope of INSPIRE considering the terms of Article 8 or the Annex of Directive 2007/2/CE

Moreover the results of the interoperability (Article 7 Directive 2007/2/CE) would enable the collection of territorial or land-related information, so relevant to enhance the description data of the properties embraced by the area of administrative units or cadastral parcels defined by the Member States.

The European Land Register systems usually rely on methods for identifying and describing the properties as objects or units for purposes of registration and information, such as title plans or literary descriptions. Unless one has an exaggerated idea about INSPIRE developments, we cannot expect spatial data to replace the national methods but complement them. Geography may facilitate land registration but does not equal it.

An overview on the Land Register systems on this aspect, the description of their properties as object or units of registration and information, shows a significant diversity with respect to what land register units may be, what effects they may have, what their organization is like and what criteria of identification of description are observed. So, a pan-European perspective should take this into account firstly.

in land that encumbers it as any other right *in rem*. Once it is exercised on the land when it grants a real right —quite similar to a temporary ownership— on the building.

2.2. *The description of the properties in land registers: an attempt to find a minimum common denominator*

Land register systems use different methods to depict properties or pieces of land, more or less exhaustively, based on literary descriptions or backed by mapping. Although we may find commonalities, every system seems to have its preferences.

However, the main point, prior to a suitable description of their physical features, should be the identification of the properties so that they become an independent and unique object. In that sense, we could recognize at least two elements generally used for this purpose, which may be used as minimum common denominators of the LR units: the register number or ID and its location.

1. Individual register number or title number of each LR unit means its individuality and existence according to the organization and legislation under whose scope it was created.
2. Location, even geo location. It appears also as a minimum physical feature. ISA core vocabularies (*core location*) are useful in this respect. Boundaries or size of a given property may be debatable but as far as it is identifiable, the location of a property is much less debatable than those.

Land register systems generally comply with both requirements and enable searches through them (search by ID, search by location or address). So, the minimum description at least enables 1st identifying properties or plots by means of its number/ID with the effects corresponding to property law; 2nd establishing the situation of such properties or plots.

Nevertheless, the description of the properties should be more complete for the sake of clarity and transparency for purchasers or creditors and the next element to be considered is the boundaries, either by means of a literary description or by some kind of mapping.

Within the discussions on land registration matters, divergence between legal boundaries (fixed by mutual consent of the owners of adjoining properties or by means of an action at law) and cadastral mapping (as a result of the mapping performed by cadastral surveyors), is a classical topic. Attempts to make cadastral boundaries prevail on legal boundaries have been considered abusive and to infringe on human rights (e.g. case *Devecioglu versus Turkey*)⁷

The physical data of a parcel such as boundaries are considered facts, not rights, which means that the legal presumptions regarding the content of the Land Registries do not apply to them –the presumption that registered rights in rem exist and belong to the registered holders on the precise terms stated in the Registry-. We can trust that the owner

⁷ Decision European Court of Human Rights (Second section, Application no. 17203/03) —13 November 2008— stated that there had been “a violation of Article 1 of Protocol No. 1 to the Convention.”

of a certain property is the one published by the Land Registry, but the registrar will not be held responsible for the boundaries of said property.

The study for the JURI committee above mentioned makes observations⁸ about the negative effect of the lack of determination of boundaries on transactions, but in this respect also recognizes that whether future purchasers feel concerned by this problem, or not, they usually rely on the practice of securing a survey before buying. However, experience shows that these previous surveys might be due to something else, like the interest of the creditor who is going to fund the acquisition by means of a mortgage in order to reinforce the value of the real right of security or simply because it is due to a specific provision of the Law to avoid subprime mortgages (it happens for example in Spain), which requires a specific survey and valuation that cannot be avoided, although boundaries have been established with the greatest faithfulness.

Also, this Study shows concerns about problems of quality of geo-spatial information, specifically the variation between the extent shown on the cadastre and on the register, and speaks of the “reconciliation” or “coordination” of the cadastre and land registers, our experience suggests that divergence between cadastre and register titles is often the result of the measurement or mapping performed by cadastral surveys outside the will of the interested owners and their titles. It does not make sense to describe faithfully a property in a title if the cadastre is entitled to change unilaterally this description and it is also a source of problems which —as above mentioned— potentially breach rights to enjoy peaceful ownership, definitely a human rights matter.

2.3. More criteria for purposes of identification or description

The differentiation of categories of properties is also justified by the different needs of description. So,

1. Description of properties in general —in addition to ID (LR unit number) and location— is enhanced when other descriptive data can be added such as nature (building, building site, plot...), land use, even size (metric system preferably) although boundaries should prevail in any case if they have been laid down by mutual consent of the parties and faithfully.
2. Description of cadastral parcels is backed by mapping and endowed with data provided by specialists, surveyors, usually in an exhaustive way. A UNECE report (“Land Administration in the UNECE Region”, 2005) indicates: “Data in a cadastre may include: geometric data (coordinates, maps); property addresses; land use; real property information; the nature and duration of the tenure; details about the construction of buildings and apartments; population; and land taxation values. Data may relate to single plots of land or may cover many properties, as in land-use

⁸ *Cross border acquisitions of residential property in Europe*” (Directorate General for Internal Policies Policy Department C: Citizens' Rights and Constitutional Affairs). Pages 66 77).

zoning...”⁹ As these data are accepted by the owners (given the functional differences remaining between cadastre and registration of titles)¹⁰, and embodied in the ownership title, this can be very useful to complete the physical description, although if an eventual imposition of the cadastral description were not accepted this may lead to misunderstandings and the undesirable situation of divergence between cadastral boundaries and legal boundaries, so damaging the interests of the owners and the certainty of the ownership titles.

3. Apartments or flats as land register units have specific aspects. Requirements of identification and description should comprise relevant data such as postal address of the building, storey or floor, housing use or different use, size and data suitable for the relationship between the apartment and the block where it is located, such as share or average in the condominium and a reference to the title number or register ID of the building. The more data are added to the description, the more accurate it will be. In fact the interests of the owners of apartments seem first and foremost focused on the description of the apartments on which their exclusive right falls. However, we must not forget that in the condominium there are also rights with respect to the communal elements, including the building site, albeit they are different types of properties or rights and involve different requirements for description
4. Due to their particular complexity, special properties often require exhaustive even technical descriptions that give a precise idea about them. In the event of uncommon extension or surface (a highway or pipeline), it would be appropriate to indicate their UTM coordinates and use maps as main data of description, so that their identification is able to be made on cartographic maps. Nevertheless, there is also important information concerning the pieces of land which form a special property in the event they are subject to a different legal regime (private ownership/public domain) or the rights that fall on them are of a different nature (public domain, possession, use, administrative concession).
5. For those special property rights which become LR Units, *nomen iuris* seems very relevant, but in this event the requirements of description are reduced to the right itself.

⁹ The UNECE report, “Land Administration in the UNECE Region. Development trends and main principles” (Geneva, 2005) (See page 19).

¹⁰

“...The function of the cadastre is to collect and make available graphic and textual information in support of title registration, property valuation and land resource management. It is distinguished from a land register in that the latter is fundamentally concerned with the ownership and legal rights that are attached to the land, while the cadastre focuses on a wider range of attributes. The maps and surveys produced as part of the cadastre can be used to support a land registration system and indeed in many countries the term ‘cadastral surveying’ is used to describe the survey of land for the purposes of recording ownership rather than value...” (UNECE report above mentioned, see page 18)

III. The part of information related to owners

1. Approach to proprietorship

In the structure of land register information that conventionally we call ABC, part of section B is devoted to including relevant data about the owners.

The paradigmatic kind of proprietorship is ownership but there are other main rights on the basis of which the registration information is structured, as discussed below. We may assume that the type of main right will be identified by the registry information. In any case, the following explanations are valid for any kind of proprietorship.

Information on who owns a property is crucial for the most elementary reasons. A land register system should unmistakably indicate who the owner of the properties is, object of the information. This is the main requirement. No registry information would be valid if it did not identify the right owner.

This item of data is a necessary condition but not sufficient. It seems relevant to reflect not only the identity of the owner but also other information data that give an idea of the extent or reach of the powers of disposal of the owner, for instance related to insolvency or a legal inability. Users should be properly informed not only about the name of the owner but also if there are restrictions registered on this person affecting his/her powers of disposal, so that they can find out if the owner is in a position to transfer the full ownership or not. Otherwise the error would be as serious as ignoring or mistaking who the owner is, given that information issued would conceal data in accordance with which a transfer of a property could not be carried out, or not completely, or only after fulfilling certain requirements, for instance a judicial authorisation.

Although this type of information on personal restrictions of the owner is not always available—it depends on the organization of every land register system—it would be deplorable not to include it if it were available.

For similar reasons it seems a better option to add some other relevant attributes to the information on the owners which could facilitate more complete information.

Thus, the main observation about what information on owners should be like is that, insofar as possible, it should comprise all relevant data on the persons of the owners apart from the name or identity card as long as a given land register system has available data in this respect.

This approach is not as simple as dealing with the identity of the owner (an issue that sometimes seems difficult enough in itself) but is aimed at making secure transactions. Certainly, negative consequences could occur if we ignored the existence of relevant data in the land registers, which are not exactly burdens or limitations on the property given that they are not encumbrances, but restrictions on the person of the owner, normally as a

result of registry notices entered by virtue of judgements or deeds, even information crossed with other registries different from the land register (civil status for example). The idea is that the extent of the ownership is shown in a way as comprehensive as a given land register system allows, avoiding omissions or inaccuracies that may invalidate, restrict or alter a transaction, with potential detriment to the legal security.

2. Elements of information on ownership

The elements or items of data that we could consider with respect to the owners, information on proprietorship, or relevant data of Section B, would be the following:

1. *Kind of proprietorship or main right*

First of all, it is very important to qualify the kind of ownership for the purposes of suitable information.

This involves identifying the main right (of section B) falling on the object (on the property, in section A). So, full ownership must be distinguished from bare ownership and other situations of limited ownership. In some cases the land register systems may include trusts here.

Also, it seems necessary to point out or lay down the different levels or degrees of a registered title if a land register system so establishes them, through its proper indication —absolute, freehold...—

From a functional point of view, the holdership of some property rights, which (exceptionally) are object of the information in a main way, seems close to ownership. It is the event of the leasehold, time-sharing units and so on, in accordance with the criteria of the land register systems that envisage this possibility.

Choosing one of them, leasehold may be the main right of registry information given that leads, in England and Wales (although it is not the only case), a marketable title in the event of long leaseholds, recognized in all European systems (according to the Study “Cross border acquisitions of residential property in Europe”¹¹). So, leaseholds may be independent titles and marketable and consequently are logical to be considered as main rights in the so called section “B”.

Along with individual ownership there are situations of co-ownership or joint ownership. In this event it is important to identify all co-owners or joint owners as part of the information, as well as shares in co-ownership, inherent to them. So, information should cover owners and shares if that it is the case, but concerning the effects of the type of community in which owners participate, it would seem to be out of the scope of the present study.

¹¹ Page 82 (5.3.2.)

2. Data of the owners

The core information of Section B is the name of the person who appears as owner or proprietor of the LR Unit referred to in Section “A”.

For purposes of identifying owners adequately, information usually includes data related to the persons. The aim of ensuring the identification of owners is general among the LR systems but there are not so many commonalities in this respect.

To facilitate a flexible way of identification there should be included at the very least the following data:

- Natural person: 1. First name, surname. 2. ID or other identification number, even date of birth. 3. Name of the husband or wife in the event of acquisition for matrimonial community.
- Legal person: 1. Name (including kind of company). 2. ID. 3. Business address.

Likely there might be admitted some other data so that identification of owners becomes indubitable, insofar as they are available and data policy allows. It is important to avoid what could be called the “John Smith problem”, when a name gets to be so common or usual that it becomes impossible to find out who he or she is among so many others, in practice normally solved adding some more identification data (ID, name of the spouse...) when they are available.

3. Entitlement

It does not seem irrelevant the information about the basis of the acquisition of the owner, that is to say, related to the contract or other legal act by virtue of which he or she became owner.

The information data of the purchase contract which founds the right of the owner are registered and available for purposes of information in many land register systems. There is an important reason to do so and it is the different level of protection granted by law to purchases, depending on it being for a valuable consideration or not. If owners purchased by virtue of a contract that implies a valuable consideration, e.g. a sale or swap, normally the law grants them a higher level of protection than others free of charge, e.g. a donation.

This seems sufficient reason to consider the important data related to entitlement of the owners. But obviously the fact of being provided or not depends on their availability in a given land register system.

4. Deed of acquisition

Information of deeds of acquisition or transfers is also relevant, for purposes of evidence, fit to be used in legal or court proceedings and also formal justification of the ownership in case of conveyancing.

5. Restrictions

Restrictions that in a direct or indirect way may affect the properties should be reflected in land registers beyond any doubt. A sale may be rendered useless if a legal restriction on the transferor, or on the property sold, has been ignored.

First of all it is important to stress that different kinds of restrictions can exist. Given the European systems, restrictions may be part of section “A” (e.g. legal limitations) or “C” (e.g. judiciary restrictions), but there are also restrictions concerning the persons of owners or proprietors. The latter should be part of section “B”. Some relevant restrictions on the person of the owner are the following:

- Restrictions on capacity of the registered owner: legal inabilities
- Indications on bankruptcy or insolvency (potentially different types)
- Restrictions on owner’s powers to disposal established by judiciary orders

There may be discussions about whether the place of such restrictions is in “B” or in “C”. Diverse responses can be made. Systems may distinguish restrictions on the persons themselves or restrictions on properties, placing each in a different section or part of the information, or may make a choice to unify all possible restrictions in a single Section (likely, section “C”)

Restrictions of the person of the owner nearly always come from judgements.

6. Conditions and deadlines

In several LR systems information is included about the conditions on which the ownership depends on:

- Condition antecedent or suspensive
- Condition subsequent or resolutory

Probably it is a case quite similar to restrictions. It makes sense to include conditions in section “B” as data concerning main rights registered or entitlement or to be considered restrictions affecting the property and taken to the part of information that collects all type of encumbrances or limitations, or Section “C”.

Moreover, it might be necessary to foresee the cases of temporary ownership or ownership under deadline which may take place by disposition of law or particularly by the will of the parties. It seems important to bind a possible deadline to the main right and consequently to include this information in the section related to proprietorship.

IV. The part of information related to mortgages and encumbrances

Assuming the structure of registry information conventionally called *ABC*, its part of section *C* would be devoted to collecting all type of charges, burdens or restrictions encumbering the property or LR Unit, which is the “object” or connecting factor, axis of Section “A”.

1. Kinds of encumbrances

Legal diversity is huge in this scope across Europe. Property rights, charges or restrictions on properties —or other LR Units— have varied nature, origin and classifications and are rooted in the legal traditions of the European countries. Certainly there are cases of rights in rem shared by the different legislations, even to some extent closely equivalent judiciary restrictions in common, but differences are meaningful in any case.

This approach will include the main cases of potential elements of information of Section *C*. It must be admitted that this classification may seem somewhat generic. In the absence of further detailed study, the extreme legal diversity, so many particularities, do not allow us to be more specific without forcing the results or leaving out a part of the encumbrances or restrictions.

1. Mortgages

Mortgages in European systems can be collateral or not, and can even appear disconnected from the loan, but their importance is maximum for the legal traffic. One can expect all registry information to include this issue in a marked way.

In turn, information on mortgages should be as complete as possible, identifying its main elements. At this point, information is uneven because several factors, such as the nature of the mortgage in a given national property law or the availability of the data of the organization of a given land register system are relevant.

We may discuss what aspects of mortgages are adequate to provide an idea of their extent, but the land register systems do not coincide with them. Likely some main data on the mortgages are

- basis of the obligation guaranteed (e.g. a loan);

- sum or sums of responsibility guaranteed by the mortgage (some systems provide information distinguishing the amount corresponding to the main debt and the one to interest rates, or other amounts also guaranteed that are different from those, while some systems provide information on a global amount of the debts covered by the mortgage without distinguishing the different items guaranteed, others indicate nothing in this respect);
- deadlines;
- identification of the parties: mortgagee/mortgagor; creditor or moneylender and borrower or debtor...

However there are land register systems that do not even regard some of these data as a part of the information on the mortgages and others in which they are not available, although considered part of the ordinary content of the mortgages. So, flexibility should be paramount and it would be wise to study the property law particularly in these cases.

Another relevant aspect of mortgages is their rank, relevant to know the legal preference, to put it this way, the hierarchy or priority of a mortgage with respect to the other burdens encumbering a given property. Information should allow us to know what the rank is between mortgages or between a mortgage and other registered rights in rem. This item of information seems crucial. Errors or ignorance about this potentially jeopardise the interests of the creditors. A sort of registry information including several mortgages (or other burdens, which may also be aggressive for a current ownership) without providing at a time enough information about their rank, would definitely be misleading.

Rank or legal preference of a given mortgage over other mortgages or rights will often come from the date of registration, but it may be modified by agreements or judicial alterations of it in accordance with each one of the LR legislations. If agreements existed, registry information should also cover or consider them to provide an accurate idea about legal preference. In any case, it seems unnecessary to insist more on this point, rank of mortgages is particularly regarded as relevant information for legal purposes and of the legal traffic of transactions.

2. *Property rights*

Property rights are also quite heterogeneous according to the systems. The more frequently quoted property rights registered may be the following.

- *Servitudes or easements*

Servitudes or easements are widespread across Europe. First and foremost they usually have a (shared) legal nature of rights in rem or property rights. Therefore the suitable

place for them within a structure ABC would be section “C”, as a part of the real rights encumbering a given property.

However, sometimes they are taken to the description of the property (section A), appearing as limitations of such property. It happens particularly in the event that the servitudes are due to public interests.

- *Usufruct*

Usufruct is also quite widespread (although we should not forget that in Britain this right does not exist), albeit a broad casuistry may arise because its legal content varies depending on the national property law systems. It seems adequate to include it in the part of the information devoted to publishing encumbrances that we call conventionally section “C”.

The nature of right *in rem* is indisputable; however, since usufruct is considered the part that is missing on the bare ownership, it is not unlikely or absolutely inadequate that usufruct appears in section “B” linked to a bare ownership given.

- *Use and habitatio*

There is a variety of rights of use which fall on a dwelling or rooms within it, often intended for family needs, even linked with effects of the marriage. In principle they should be considered rights opposable to third parties in the broadest sense and included in the part of encumbrances (Section “C”), because in any case this involves limitations to the ownership.

- *Superficies*

The Study on *Cross Border Acquisitions* indicates that “elsewhere on the continent most systems have long recognized some form of superficies, giving rights in the building but not in the land”¹². The right of superficies normally in a first stage certainly grants a real right in land that encumbers it as any other right *in rem*. Once it is exercised on the land is when it gives a real right—quite similar to a temporary ownership—on the building.

So, it is to be expected that the creation of the right of superficies leads to a registration of it as a real right or right *in rem*, and consequently appropriate for the part of the information devoted to publishing encumbrances that we call conventionally section “C”. Later, once exercised, the status of this right changes and may lead to a sort of a new main right, a temporary ownership that would lead to a new real folio and a new title or register number, of course marketable, therefore becoming a new object (to be considered for purposes of description of properties in section “A” and with repercussions on the part of information intended for proprietorship or main rights, conventionally called section “B”).

¹² Page 82.

For the sake of transparency it seems relevant to clarify the possible stages of the superficies and probably to keep the relationship between all the sections of the information involved by exercising this real right.

- *Leasehold or lease*

Leaseholds or leases are usually registered when they are long leaseholds or at least they are granted for a period not too short. In principle they should be considered a right opposable to third parties, regardless of their nature of real right or not and, insofar as entered in land registers, included in the part of information intended for encumbrances (section “C”).

However, leasehold may be the main right of registry information given that it may lead to (as in England and Wales) a marketable title in the event of long leaseholds, recognized in all European systems (according to the Study “*Cross border acquisitions of residential property in Europe*”¹³). So, leaseholds may be independent titles and marketable and consequently it is logical for them to be considered as main rights in the so called section “B”.

- *Other rights in rem*

Across Europe there are other types of real rights, like diverse classes of real encumbrances, or emphyteusis (4), or less common ones although potentially object of information. In some systems *trusts* could be considered as such.

3. *Judicial restrictions*

Given their decisive influence on the legal status of the properties, it is beyond any doubt that judicial restrictions established by judgements should be included in land register information, at least as long as they are available.

Of course, there might be some conceptual problems because judicial restrictions on the properties may come from legal actions either on the property or on the person of the owners. The latter theoretically would lack the effect in rem but in practice land registers must provide information about all types of restrictions insofar as available.

Regardless of the issues of the nature of actions that have caused registrations by means of judgements, from the strict perspective of the land registration, there are certain commonalities that in some way enable the suggestion of a classification of judicial restrictions or charges in their registry aspect as *notices* or *caveats* (LR entries made by virtue of judicial orders). We find interesting this attempt of taxonomy for the purposes of judicial cooperation (implementation of Regulations Brussels I 2012 recast, Successions

¹³ Page 82 (5.3.2.)

or Insolvency, and also measures within the framework decisions in criminal matters). The types would be the following:

1. involving attachment or seizure of a property due to a court proceeding in which the fulfilment of debts or obligations is pursued (*notices of seizure/attachment*);
2. for purposes of claims about ownership of rights *in rem* about properties (*notices of claims or dispute*);
3. for purposes of freezing ownership or banning the disposal of the property (*notices of prohibition or limitation of the authority of disposal*);
4. warning about the foreclosure or enforcement procedures affecting the property (*notices of foreclosure/enforcement*);
5. indicating the confiscation or forfeiture of the property (*notices of forfeiture or confiscation*);
6. warning about aspects of the proceedings of insolvency or bankruptcy (*notices of insolvency*).

This is not an exhaustive collection at all but simply a list of usual or more common *notices*. Of course other types of notices/judicial orders can be registered or have more than one effect.

The usefulness of this classification may be to facilitate the implementation of guidelines of recent European legislation leaning towards the application of “***closest equivalent judiciary measures***”, given that national legislations have measures with different proceedings but often with similar or equivalent purpose.

Of course, it may have its importance also for the purposes of Semantics.

4. *Other restrictions*

The category of “other restrictions” is potentially very heterogeneous and a challenge for future developments of the structure of the template. It is aimed at

- Rights or interests affecting properties but either not included in previous categories or of controversial or indefinite nature.
- All kinds of administrative charges or limitations over properties. Maybe fiscal burdens among them (in this respect, we can observe very different legal answers of the European legislations: remarks, notices, real encumbrances, legal mortgages...).

- Privileges over the properties due to different legal sources.

So, although allocating a part free seems advisable—even inevitable—, for the sake of transparency it would be important to continue building subcategories or subdivisions. Better than a hotchpotch in any case.

2. Rank or preference between charges

Finally, it would certainly be relevant to find criteria to organize encumbrances within the means of information (excerpts, certificates) and it seems clear that there is also a widespread idea about what registry rank or priority is, based on the rule of date of registration as a common criterion to set it.

Rank or priority amongst registered encumbrances appears a relevant question to lay down the legal status of the properties, and it would be very useful if land register systems provided information about this particular issue, allowing us to find out the paramount burdens as easily as possible. In several LR systems regular information indicates what the mortgage rank is, as a general rule or upon request.

Date of registration appears as the most usual way of finding out the preference of registered real rights or burdens, but it is important to warn about the possible changes in priority rank by means of agreements of the parties or as a result of judicial procedures.

V. Other relevant aspects

These guidelines do not exclude other relevant information, such as might be on pending documents, i.e., those deeds that have come to the registration of the property but have not yet registered. Unquestionably, such information is important to users of the land registries, who can expect the legal status of the property of interest to change as soon as the pending document is recorded.

Moreover, it is not necessary to stress the importance of legal warnings, and in particular those on data policy. Also, disclaimers play an important role in the information because they allow the user to know the exact legal value of the information provided.

It is obvious that any approach to a European initiative of exchanging registry information should be backed by clear and sufficient reference information (so relevant from the legal point of view) as accurate as possible, to be drawn up and disseminated by the relevant organizations to issue the registration information through the European networks (as ELRN).

If the goal is to improve mutual understanding in a way that further alignment of registry practices can take place, we cannot ignore the important role of semantics, which so far

has enabled the progress of legal techniques such as the concepts of the *closest equivalent rights in rem* (EU Regulation 650/2012) or *closest equivalent judicial measures* (Brussels I recast). An important result of Semantics may be *semantic fields* (or data fields) for gathering similar or nearby registry placeholders, which could be placed and managed to form categories of information and labels.

References

Sparkes, Peter. *European Land Law*. Hart Publishing. Oxford and Portland, Oregon. 2007

Van Erp, Sjef (JHM) (Maastricht University). Akkermans, Bram (Maastricht University). *Cases, Materials and Text on National, Supranational and International Property Law*. Hart Publishing. Oxford and Portland, Oregon. 2012

Ruoff, Theodore B.F. *An Englishman looks at the Torrens system*. Sydney: Law Book Company of Australasia Pty Ltd. 1957

Clarke, Sandra, and Greer Sarah. *Land Law Directions*. 2nd Edition. Oxford University Press 2010

Cross border acquisitions of residential property in Europe” (Directorate General for Internal Policies Policy Department C: Citizens' Rights and Constitutional Affairs).
[http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556936/IPOL_STU\(2016\)556936_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556936/IPOL_STU(2016)556936_EN.pdf)

Land Administration in the UNECE Region. Development trends and main principles”. Geneva, 2005

Reference Information on the draft of ELRD of IMOLA project can be seen in <http://www.elra.eu/network/>