PROTECTION OF PERSONAL DATA IN THE CONTEXT OF REGISTRATION OF THE REAL RIGHTS

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The concern for privacy and personal data protection is natural, but recent technological developments required new approaches to this topic. As a matter of fact, personal data protection measures is required since the use of computers. From that point, there is a constant concern for that field. Here are some milestones:

- 1970 – first data protection law in Hesse, Germany
- 1980 -Recommendations of the Council Concerning Guidelines Governing the Protection of Privacy and Trans-Border Flows of Personal Data
- 1995 - Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data
- 2001 - Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000
- 2002 - Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002
  2008 - COUNCIL FRAMEWORK DECISION 2008/977/JHA
- 2012 - Commission proposed a comprehensive reform of data protection rules to increase users' control of their data and to cut costs for businesses
- 2015 -On 15 December, the European Parliament, the Council and the Commission reached agreement on the new data protection rules, establishing a modern and harmonized data protection framework across the EU. The Regulation shall apply 2 years after its formal adoption by the European Parliament and Council.

  The new regulation brings new tools for a better protection of personal data:
- easier access to your own data: individuals will have more information on how their data is processed and this information should be available in a clear and understandable way;

- a right to data portability: it will be easier to transfer your personal data between service providers;
- a clarified "right to be forgotten":when you no longer want your data to be processed, and provided that there are no legitimate grounds for retaining it, the data will be deleted;
- the right to know when your data has been hacked: For example, companies and organizations must notify the national supervisory authority of serious data breaches as soon as possible so that users can take appropriate measures.
- better cooperation between law enforcement authorities.

In order to avoid any confusion some terms should be defined:

- Data: information (in an electronic form that can be processed by a computer).
- Personal data: any information relating to an identified or identifiable natural person.
- Processing of personal data: any operation or set of operations performed upon personal data (collection, recording, consultation, ...).
- Data controller: the person, public authority, agency or any other body which alone or jointly with others determines the purposes and means of the processing of personal data (e.g. the Land Registry itself, the ministry, ...).
- Data subject: the person whose personal data are being processed (e.g. the proprietor, the mortgagor and mortgagee, ... entered in the land register).

Probably presenting a parallel evolution of data protection laws and land registry would have been more effective for a better understanding of the contradictory overlap between data protection legislation and land registries; land registry uses personal data such as names, addresses of natural persons, PINs, data "behind the curtain", or other kind of personal data I might missed. The main purpose of land registries is to make public erga omnes the immovable rights over real estates, as a tool to protect the right itself and the third parties as well. How to deal between the protection of personal data and publicity of personal data as the right over an immovable? The approach to this issue vary widely from a strong protection (only the proprietor may apply for information regarding his/her personal registered assets) to very relaxed policies (anyone is allowed to query for information. "Intermediary" approaches supposes mainly a legitimate interest to apply for information.

It should be noticed that title systems have a kind of native personal data protection system expressed by the principle of curtain. These systems ensure publicity of the right, but not of the deed and there is no need to go behind the curtain to check on the deed, as the certificate of title contain all the information about it. So, the personal data contained by the deed, which are not subject of publicity are protected. Of course, this is not the main application of that principle, but as long as there is no need to look beyond the registration, personal data are under certain protection.

However, the problem is to find the right balance between the way the personal data is processed and the publicity as an outcome of the registration in a land registry system. At least, these few things about the Data Protection Directive are to be mentioned:

1. **Personal data must be processed fairly and lawfully.** This reflects the need for accuracy and precaution when manipulating personal data. it also represents data controllers's liability.

2. **Personal data shall not be kept in a form which permits identification of the data subject for longer than is necessary for the purpose for which the data were collected and/or processed.** Although easy understandable from a general approach, it is completely different and hard to apply from the land registry point of view, as long as the relation between the data subject and the object represented by the immovable shall be stored permanently. If applicable, the role of the land registry might be jeopardised. It is very important to define - from the land registry perspective- how long is too long to keep the personal data. The answer is not an easy one if one would try to apply the same rules as for other data controllers. For the land registry it is never too long to keep the information, as the principle of resoluto iure dantis, resolvitur ius accipientis may occur. This is just an argument in order to open a debate on this topic, but there are a lot of different reasons to find the solution of temporary storage of the information as inapplicable to the land registry. On the other hand, it shouldn't be ignored that the law stipulates that the personal data shall not be kept "longer than is necessary for the purpose for which the data were collected and/or processed". Well, for the land registry, to keep the information permanently is necessary for the purpose for which the data were collected and/or processed and the law shall regulate this exception.

3. **Personal data shall not be transferred to a third country unless that country ensures an adequate level of protection for the rights of data subjects in relation to the processing of personal data.** This should be a topic to be taken into consideration when developing the land registries interoperability framework.

These are just a few rough ideas brought up by thinking of land registry and protection of personal data in the same time. Some questions rises:

- Shall the Land Registry be an exception to data protection legislation? Why or why not? If YES, at what extent? How to regulate this exception or how to make the personal data protection entirely applicable by the land registry?
- How Land Registry comply with Data Protection?
- Does "right to be forgotten" applies to land registry?
- Should the owner be informed if someone accessed its data? In what circumstances? Any exceptions?

As a conclusion, due to the interference between personal data protection rules and land registry rules, special regulations shall be adopted in this respect. Otherwise there is a potential risk that either data protection legislation or the land registry to be undermined, transforming an excellent step for protecting the privacy into a weapon against the good faith.