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IMOLA II

A comparative view from an EU perspective



A comparative view from an EU perspective

- I. Introduction
- II. Brief comparative overview
- III. EU perspective
- IV. Unintended impact?
- V. Concluding remarks

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- II. Brief comparative overview (1)
 - A. Several distinctions possible
 - B. Substantive land law and land registration law
 - EU law follows its own path (cf. the Kubicka case, interpreting the Succession Regulation)

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- II. Brief comparative overview (2)
 - C. Positive v. Negative systems
 - D. Title v. Deeds
 - E. Role of the registrar
 - F. Who has access (privacy, role of GDPR)
 - G. Evidence

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- III. EU perspective (1)
 - Land registration data may come within the ambit of the EU's new 5th freedom: free flow of data
 - See the draft *Regulation on a framework of non-personal data in the European Union*

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- **III. EU perspective (2)**

"The world is witnessing a dramatic increase in the amount and variety of data being produced. Alongside the data created by billions of people using digital devices and services for personal and professional reasons, and the data generated by the increasing number of connected objects, there is data from research, from digitised literature & archives and from public services such as hospitals and land registries. This "Big Data" phenomenon creates new possibilities to share knowledge, to carry out research and to develop and implement public policies.

Communication on a European Cloud Initiative, p. 2

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- III. EU perspective (3)
 - Technology is bypassing both positive and negative EU integration
 - Although land registries provide information on (rights in) immovables, the digital format of that information (“data”) makes that information a movable and thus of a potentially cross-border nature

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- III. EU perspective (4)
 - This was, in fact, the background of the CROBECO project
 - However, CROBECO came too early (and did not fit very well within the practice regarding art. 345 TFEU: no integration without reciprocity), but did raise awareness

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- III. EU perspective (5)
 - CROBECO was based on three pillars:
 - Technological developments (interoperability)
 - National acceptance, flowing from private international law
 - No change of substantive law was envisaged

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- III. EU perspective (6)
 - The aim of IMOLA is to create a European Land Register Document +
“Implement a publication engine that takes a request and formats the results in a standard predefined form”.

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- III. EU perspective (7)
 - IMOLA does not link land registries, but provides a uniform extract
 - However, any uniform extract in digital format demands interoperability
 - The form will have to be accepted by each national legal system
 - No substantive law changes are envisaged

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- IV. Unintended impact? (1)
 - Could IMOLA result in crypto-harmonisation?
 - Digitalisation cannot take place without standardisation: IMOLA will create a standard e-document
 - Once a document has been standardised, non-lawyers might not perceive the different legal background and different degrees of evidence

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- IV. Unintended impact? (2)
 - Could IMOLA result in crypto-harmonisation?
 - The extensive comparative legal research underlying the form as such is unknown to its users
 - Users may invoke the standardised (for them: “EU”) nature of the document as an argument that the information is meant to circulate (“data”) and can be relied upon

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- IV. Concluding remarks
 - Comparative overview
 - EU perspective
 - Crypto-harmonisation?

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