EFFORTS, ON A EUROPEAN LEVEL, IN ORDER TO FACILITATE CROSS-BORDER TRANSFERS OF REAL ESTATE

Jan Moerkerke
ELRA President

When a EU citizen wants to buy a house in another Member State, at first sight it seems to be easy. We live in an open market and presume no problems will occur.

Practically you easily get quite far. The internet provides us with all kinds of sites and apps presenting the properties as optimal as possible. A description, pictures and even a virtual tour might be available. Search machines are so powerful they detect every available property on the market. In fact there is no need any more to make numerous visits before getting finally convinced to take the step.

Next to the seller's advertisement, one is able to collect a lot of information on the property through other resources. You can get practical information ,often in geo-spatial form, as well from commercial as official sites. It is generally possible to detect a property that will suit you perfectly, without leaving your computer screen.

If it were movable property, in European market, no problem would occur. Possibly a contract might be signed, an invoice would be sent, followed by electronical payment and goods would be handed over, probably delivered by a courier at your doorstep. And that would be it.

But over the ages immovable property has for multiple reasons been treated differently by the states. First of all if you want immovable property to become a marketable object, and become a factor of wealth, one has to search for substitutes. In general it is reached by what we are used to call a "Title".

Since immovable generally represent a substantial part of the assets of persons, states always have been trying to offer extra security on them for its citizen. Special rules for the rights in rem have been elaborated and even specific ones have been organized for immovable property.

But unfortunately European countries have all acted in a different way. Next to the fundamental differences we see in the countries with an Austrian– Hungarian tradition, the Civil Code system and the Common Law system, there are numerous other differences.

Nevertheless a transaction generally follows the same pattern. One collects information on the holder of the right and on the property at the Cadastre and the Land Registry office. It comes to an agreement. A legal professional draws up or rewrites the contract in an authentic way. Afterwards official registration follows, amongst other administrative obligations.

The effects of registering differ already a lot. In some countries it is a constitutory demand for the transition of the property. In some countries it offers you absolute security of your right and title; others only guarantee the existence of a contract, opposable to third parties.

Next to registering, the right itself there generally is room to book all kinds of encumbrances (servitudes, mortgages…) and caveats on the property or limitations to the authority of the known owner to alienate. Generally spoken it are similar s groups, mostly notaries, that perform these activities in the various countries.

So, theoretically there is an open market, but practically there are many obstacles which prevent a trouble-free transfer of real rights. This is often a very frustrating situation as well for the seller as for the buyer. Cross border contracts and inheritances cause numerous problems due to different legislations and practices and discussions on what is the applicable law.

It is obvious that the European Union and actors in het market produce efforts to improve this situation. First of all there are het legislative initiatives of the European Union itself. Often it are regulations interfering in private contract law that are applicable in the context of the transition of immovable property. Next to that there are several efforts made to support policies in a more practical way for example by offering information on electronic platforms. Several professional organizations are co-operative and are able to launch projects favorable to integration, granted by the European Union. A few of them have resulted in operational tools. Nevertheless we must admit that the situation is not optimal and a lot of improvement still is possible.

In the next review we will try to list up some of the most important initiatives that have been undertaken starting with the EU Regulations and other initiatives. Afterwards there will be an overview of the initiatives undertaken by the various private professional groups.

Initiatives by the EU

Legislation

Provisions of the treaty of the European Union have prevented the creation of a substantive EU property law. There is no European owner, no European ownership nor even an amalgam of freehold, propriété and Eigentum , and no European register. Competence does exist to regulate transactional aspects of dealings with land, since land is a form of capital, but cross border acquisitions of land have rarely reached EU agendas. This is a sharp contrast with the effort devoted to ensuring that cross border acquisitions of goods are unrestricted. The difference perhaps stems from the facility with which movables can be transported from one Member State to another. Land is immovable and tied to its site and its location within a particular Member State. There is no compelling case for a single land law. Immovability prevents land itself, and most rights in land, from crossing a border from one legal system to another. Land is characterized by a fixed site. However, there are things which are legally immovable, but which can in fact cross national boundaries, one obvious example being mortgage lending.

This ties a particular parcel of land to a single Member State and determines both the law to be applied to disputes about the land and the forum in which disputes are to be resolved. At its simplest, a dispute about the ownership of a house in Paris is resolved in the French courts using French law. Europe respects the territoriality of its Member States in relation to land. Classification of a particular thing as an immovable determines the conflict regime, and its allocation to a particular property system according to its site. The land regime is based on site-based exclusive forums, the differentiation of property rights and personal obligation,

selection of the land law of the site and the mutual recognition of property judgments. In a further part of the text we will see that by recent legislation this strict borders start to fade.

All systems share a single conception of personal obligation whereas there are fundamental disagreements about the conception of property between civil law codes and the common law, so there can be no certainty that it would be technically feasible to codify a European land law. Whether or not this is the case, the political climate shows that a property codification is inconceivable.

All EU-28 Member States assert their territoriality through the enactment of a specific law regulating the land and see ownership, as an essential pillar of their private law systems with effects in their administrative law (eg. planning, taxation) and family and succession laws. Land laws, registers and conveyance systems are essentially site based. EU-28 has close to fifty land laws on account of the regionalism of many member states. This diversity is protected by the Treaty provision commonly described as the "Property shield' since, according to article 345 of the Treaty on the Functioning of the European Union: "The Treaties shall in no way prejudice the rules in Member States governing the system of property ownership".

Whilst the precise meaning of this provision is a matter of some controversy, it can to some extent be read at face value. It could clearly be used to block a full scale land law code and it restricts more limited proposals. National systems are free in their essentials from European interference. No European element enters into pure property law such as the ownership right, the numerus clausus (the list of real rights recognized in each system), succession upon death, and family law.

However, from an academic point of view this provision only makes clear that decisions to nationalize or privatize enterprises are a matter as to which solely the Member-States have competence. In other words: Article 345 TFEU states a negative competence for the EU, limited to a specific aspect (private or public ownership of enterprises) of a Member-State's economy. All other areas of property law, provided of course that a positive competence exists, are not exempted from EU law making. The impact
of negative integration (a national legal provision is considered to be in violation
of EU law, particularly any of the freedoms of persons, services, goods and capital)
is therefore, at least potentially, more far reaching!

Consequently, it can be concluded that, although it appears that in daily practice most parts of property law are still purely national and that only some areas have become European through positive integration, it could be said that a grey or mixed area exists between, on the one hand, purely national law and, on the other hand, European law. National property law, not replaced as a result of the positive EU integration process, can only function within the limits set by the negative EU integration process. Hence, intervention in property law by the EU is permitted where it falls within some recognized head for intervention, such as conflicts rules and consumer protection. This explains why the property shield has not prevented all regulations. So, there is EU competence with regards to cross border transactions in the following fields:

* Transactional competence based on freedom of capital

Because EU competence is mainly premised on the need to secure effective freedom of the movement of capital, it follows that EU competence over land is focused on those aspects of transactions involving capital freedom.

* Facilitation of movement to engage in economic activity

The relevant issue is the purchase of residential property to house entrepreneurs and migrant workers. Any obstacle should be overridden, so EU action will be justified.

* Facilitation of EU citizenship

Those who are taking advantage of the European project by extending aspects of their life beyond national borders, through travel, study, work, marriage, retirement, buying or inheriting property, voting, or just shopping online from companies established in other Member States, should fully enjoy their rights under the Treaties.

* Consumer protection

Consumers of goods and services within the internal market require protection, which can only be provided by EU led harmonization, both in terms of substantive rights and of the procedure by which rights are enforced (forum and applicable law). Most consumer protection is targeted at those buying goods or using services, so buyers of land are seen as peripheral. EU consumer law has largely excluded itself from sales of land and protection of buyers of land. Nevertheless with respect to cross- border conveyances we see interventions in:

* The Timeshare business (Timeshare Directive, 2008/122/EC)

Timeshare required a hard sell, including leafleting, telemarketing, fly buy, drive to, owner referrals, in house sales, exchange of guests, affinity list mailing, off-site sales offices, and targeting existing owners. Aggressive marketing was targeted at EU visitors resulting in a high potentiality for cross border contracting and hence for European intervention. The Directive introduced in 1994 and toughened in 2008 has been effective in sweeping the continent clear of touts.

However a timeshare, in the property law meaning of the term, is a property law entitlement to land for a limited, usually recurring, period of time and is unknown to civil law systems as it requires a fragmentation of ownership. Unitary ownership as is adhered to in the civil law makes it impossible have this kind of arrangement. Instead, usually a legal person is created that gives out shares or certificates, which are sold as timeshare ownership.
Timeshare arrangements are therefore offered in many Member States and since 1994 there are rules to protect buyers. However, these rules only concern the contractual aspects of the transaction and, due to the complexity and sensitivity of property law and the differences between legal systems, do not deal with the property law aspects themselves.

* The sale of a new build (Consumer Rights Directive, 2011/83/EU) (Consumer Credit Directive, 2008/48/EC) (Unfair Contract Terms Directive, 93/13/EEC) (Unfair Commercial Practices Directive, 2005/29/EC)

A sale of new build will usually fit the 'trader to consumer' (T2C) format. This is the pattern most common to European legislation in the field, including the marketing of goods, consumer credit, unfair commercial practices, and unfair terms.

The problem with land law is that it is far from certain that transactions take place in a T2C setting. It is far more likely that a foreign buyer acquires an entitlement to land from another private person. In such a situation, also if that person is represented by a professional agent, there is no unequal bargaining position and the rules of EU contract law described above do not apply.
A sale of new build property will usually involve a trader and a consumer. Introduction of a cross border element into a purchase raises the potential for EU law to operate. This element will be obvious when the buyer is a citizen or resident of another EU-28 state, but might also be found with a national responding to marketing elsewhere in Europe or drawing the funds for the purchase from another state. In practice EU law will also dictate the domestic law, because Member States generally avoid (reverse) discrimination against their own nationals.

If a buyer is fed false information this will affect the decision making of the buyer whether or not he receives legal advice. False information and deliberate omission have the same effect, and both are prohibited by the Unfair Commercial Practices Directive.

So, European consumer protection is feasible for cross border buyers of new build as well.

* Mortgage finance and consumer credit (Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property) amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010

This Directive is situated in the field of consumer protection and has its impact on cross border transactions of immovable's, since mortgages are important limitations on the property and are often agreed at the same time of the purchase.

The EU market for mortgage credit is highly fragmented, with obstacles to the cross-border provision of services. The financial crisis has also had a strong impact on EU citizens, affecting their confidence in the financial sector. The crisis illustrated the fact that irresponsible lending in one country can have consequences in other states. These issues require action at the European level. The EU is working to integrate the market for mortgage credit and to promote common standards and by establishing rules for mortgage credit. The mortgage credit directive is a step towards an EU-wide mortgage credit market with a high level of consumer protection. It applies to all loans made to consumers and businesses for the purpose of buying residential property.

* Directive 2007/2/EC of the European Parliament and the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE)

This Directive does not immediately interfere nor in the domain of contract law, nor in land law but is of utmost importance. Since in cross – border conveyance information about the asset is often a problem, it is obvious that a European standard is in favour of all parties.

INSPIRE is an EU initiative to establish an infrastructure for spatial information in Europe that is geared to help to make spatial or geographical information more accessible and interoperable for a wide range of purposes supporting sustainable development. The INSPIRE Directive entered into force on 15 May 2007.
INSPIRE is based on the infrastructures for spatial information established and operated by the member states of the European Union. The directive addresses 34 spatial data themes needed for environmental applications. Among them regulations on cadastral parcels and addresses, coordinate reference systems.
To ensure that the spatial data infrastructures of the member states are compatible and usable in a community and trans-boundary context, the INSPIRE Directive requires that additional legislation or common implementing rules are adopted for a number of specific areas (metadata, interoperability of spatial data sets and services, network services, data and service sharing and monitoring and reporting). More information can be found on the platform http://inspire.ec.europa.eu/

Recently four regulations have been adopted that do not only apply to immovable property but are clearly very important for cross border transitions in this field as well. Where the Rome I and II had their impact on the choice of applicable law in contractual and non-contractual obligations, they left land law related questions explicitly a national authority. With these Regulations a European impact on national legal systems becomes visible.

They all have important clauses in order to determinate the applicable law and the choice of court. Except for the possibility of rejection in case of conflict with public policy this choice can have its effect in another member state and even set aside the relevant legislation of this state!

This is relatively new since before these situations were organised by the international private law of the states, which are in fact national laws, differing from each other.

- Regulation (EU) 650/2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession

450 000 cross-border successions take place in the EU every year. These successions represent a considerable value, estimated at more than EUR 120 billion.

Successions with cross-border elements are usually characterised by their high complexity. Succession law varies considerably from one EU country to another. A major step to facilitate cross-border successions was the adoption on 4 July 2012 of European Union rules which will make it easier for citizens to handle the legal side of an international succession. These rules are applicable to the succession of persons who die on or after 17 August 2015. Denmark, Ireland and the United Kingdom do not participate in the Regulation. The uniform rules of will make sure that:

* a given succession is treated coherently, by one single court applying one single law;

* citizens are able to choose whether the law applicable to their succession should be that of their last habitual residence or that of their nationality;

* parallel proceedings and conflicting judicial decisions are avoided;

*decisions relating to successions given in one EU country are recognised and enforced in other EU countries.

However, the initiative in no way alters the substantive national rules on successions. Who is to inherit, property law and family law and tax issues related to the succession assets continue to be governed by national rules.

The Regulation also creates a European Certificate of Succession to enable heirs, legatees, executors of wills and administrators of the estate to prove their status and exercise their rights or powers in other EU countries. Once issued, the ECS will be recognised in all EU countries without any special procedure being required.

On 9 December 2014, the Commission adopted an Implementing Regulation, which establishes the forms to be used under the Succession Regulation. Among these forms is the European Certificate of Succession. These forms can be used as of 17 August 2015. The easy-to-use standardised forms are available to citizens on the e-justice Portal – the one-stop-shop for justice in the EU – along with information sheets on succession law and procedures in each Member State, which are currently being prepared by the European Judicial Network in civil and commercial matters .

The Regulation on cross-border successions represents a considerable improvement compared to the past where people often had difficulty exercising their rights. The Regulation results in faster, easier and cheaper procedures.

In the field of transitions of immovable properties the following articles of this Regulation attire the attention especially:

Article 31. “Adaptation of rights in rem - Where a person invokes a right in rem to which he is entitled under the law applicable to the succession and the law of the Member State in which the right is invoked does not know the right in rem in question, that right shall, if necessary and to the extent possible, be adapted to the closest equivalent right in rem under the law of that State, taking into account the aims and the interests pursued by the specific right in rem and the effects attached to it.“

As rights in rem in the different European countries do not always cover the same content and the same set even does not exist everywhere, this article gives the local authorities a freedom of appreciation. It can also create a lot of discussion!

Article 59 (1) “Enforceability of authentic instruments - An authentic instrument which is enforceable in the Member State of origin shall be declared enforceable in another Member State on the application of any interested party in accordance with the procedure provided for in Articles 45 to 58”

Article 61 (1) “Enforceability of court settlements - Court settlements which are enforceable in the Member State of origin shall be declared enforceable in another Member State on the application of any interested party in accordance with the procedure provided for in Articles 45 to 58.”

Article 69 (5) "Effects of the certificate - The Certificate shall constitute a valid document for the recording of succession property in the relevant register of a Member State, without prejudice to points (k) and (l) of Article 1(2)."

Article 1(2) ".Scope- The following shall be excluded from the scope of this Regulation: ……(k) the nature of rights in rem; and (l) any recording in a register of rights in immovable or movable property, including the legal requirements for such recording, and the effects of recording or failing to record such rights in a register."

When we read this articles together we see that the Regulation is very hope giving but does not solve all problems. First of all it only covers transitions by inheritance. Furthermore although an issued certificate of inheritance is a valid document for registration, the recording of the real right itself remains under national authority. If we see that in various countries registration is one of the requirements to be recognized as owner of a right in rem, the Regulation does not offer a final solution. Often the authentic document, drawn up in foreign state does not meet the standards of local law for being acceptable to registration. A solution can be that the content of this document is taken up into a local authentic instrument, which does meet to the required standards.

Although the certificate of inheritance has direct power in the Member states, we see that States adopt executorial legislation anyway. (A.O. Netherlands 5/11/2014, Germany 29/5/2015) This implementing legislation often contains provisions of a substantive nature. So Member States should indicate which national authority is competent for the issuance of the European certificate of succession. Second, it provides the possibility to delete the incompatible provisions of national law. As example are subject to the national rules on the applicable law in cross-border succession. As the "lex successionis" has in accordance with article 20 regulation a universal application, the existing national rules are without object with respect to the aspects falling within the regulation. To avoid confusion, Member States opt that the corresponding national rules should be deleted. Thirdly, a number of Member States take the opportunity to take more far reaching reforms to put national law more in line with European developments.

- Regulation (EU) 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

This regulation updates a previous EU law on the jurisdiction, the recognition and enforcement of judgments in civil and commercial matters (known as the 'Brussels I regulation'). It aims to make the circulation of judgments in civil and commercial cases easier and faster within the EU.
The regulation applies in civil and commercial matters. It does not apply, however, to family law, bankruptcy, inheritance questions and other specific matters listed in the regulation, such as social security or arbitration.
Under the new law, what was known as the exequatur_procedure under the Brussels I regulation has been abolished. This means that a judgment given in one EU country is recognised in the other EU countries without the need for any special procedure. If it is enforceable in the country of origin, it is enforceable in the other EU countries without requiring any declaration of enforceability.

The person against whom enforcement is sought must be informed of this by means of a certificate concerning a judgment in civil and commercial matters. This is drawn up at the request of any interested party (a model is provided in the regulation). The certificate must be accompanied by the judgment (if it has not already been served). It must be served on the person in reasonable time prior to enforcing the judgment.
In certain cases, the person against whom enforcement is sought may apply for refusal of the recognition or enforcement of the judgment. This can arise when he or she considers one of the grounds for refusal of recognition stipulated in the regulation to be present (e.g. where the recognition of a judgment is manifestly contrary to public policy). EU countries must notify to the Commission the competent courts to which the application has to be submitted.
There has to be a connection between proceedings falling within the scope of this law and the territory of the EU countries. Common rules of jurisdiction should, in principle, apply when the defendant is domiciled in a EU country. A defendant not domiciled in a EU country (i.e. whose permanent home is not in a EU country) should be subject to the national rules of jurisdiction applicable in the territory of the country of the court seized (the court where the proceedings are initiated).
However, certain rules of jurisdiction apply, regardless of the defendant's domicile, in order:

- to ensure that consumers and employees are protected,
- to safeguard the jurisdiction of the courts of EU countries when they have exclusive jurisdiction (e.g. in the case of real estate), and
- to respect the autonomy of the parties.

The rules of jurisdiction may also, under certain circumstances, apply to parties domiciled outside the EU. This may arise, for example, where those parties have agreed that the courts of an EU country should have jurisdiction.
The law improves the effectiveness of choice of court agreements where the parties have designated a particular court or courts to resolve their dispute. It gives priority to the chosen court to decide on its jurisdiction, regardless of whether it is first or second seized. Any other court has to suspend proceedings until the chosen court has established or - where the agreement is invalid - declined jurisdiction.
The United Kingdom and Ireland took part in the adoption and application of this regulation. Denmark applies the regulation in line with the agreement of 19 October 2005 between the European Community and Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.
Furthermore Regulation (EU) No 542/2014 introduces rules on the relationship between proceedings before certain courts that are common to several EU countries (such as the Unified Patent Court and the Benelux Court of Justice) on the one hand and the courts of the EU countries under the Brussels I Regulation on the other. This means that judgments handed down by these courts should be recognised and enforced in line with Regulation.

In the field of transitions of immovable properties the following articles Regulation 1215/2012 attire the attention especially:

Scope and definitions
Article 1 -
"1. This Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative

matters or to the liability of the State for acts and omissions in the exercise of State authority (acta iure imperii).

2. This Regulation shall not apply to:
   (a) the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship or out of a relationship deemed by the law applicable to such relationship to have comparable effects to marriage;
   (b) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
   (c) social security;
   (d) arbitration;
   (e) maintenance obligations arising from a family relationship, parentage, marriage or affinity;
   (f) wills and succession, including maintenance obligations arising by reason of death.

Provisional, including protective, measures
Article 35 –"- Application may be made to the courts of a Member State for such provisional, including protective, measures as may be available under the law of that Member State, even if the courts of another Member State have jurisdiction as to the substance of the matter."

Enforcement
Article 39 – "- A judgment given in a Member State which is enforceable in that Member State shall be enforceable in the other Member States without any declaration of enforceability being required."

Article 40 – "An enforceable judgment shall carry with it by operation of law the power to proceed to any protective measures which exist under the law of the Member State addressed."

Authentic Instruments and court settlements
Article 58 – "
1. An authentic instrument which is enforceable in the Member State of origin shall be enforceable in the other Member States without any declaration of enforceability being required. Enforcement of the authentic instrument may be refused only if such enforcement is manifestly contrary to public policy (ordre public) in the Member State addressed. The provisions of Section 2, Subsection 2 of Section 3, and Section 4 of Chapter III shall apply as appropriate to authentic instruments.
2. The authentic instrument produced must satisfy the conditions necessary to establish its authenticity in the Member State of origin."

Article 59 – "A court settlement which is enforceable in the Member State of origin shall be enforced in the other Member States under the same conditions as authentic instruments."

Article 60 – "The competent authority or court of the Member State of origin shall, at the request of any interested party, issue the certificate using the form set out in Annex II containing a summary of the enforceable obligation recorded in the authentic instrument or of the agreement between the parties recorded in the court settlement."

- Council Regulation (EU) 1103/2016 of 24 June 2016 - implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes

This recent regulation organizes the cross- border effects of matrimonial regimes also with respect to rights on immovable properties. Technically It is build up basically in a similar way as Regulations 650 and 1215/2012 .

In the field of transitions of real estate the following articles of this regulation attire the attention especially:

Article 4 –Jurisdiction in the event of the death of one of the spouses "Where a court of a Member State is seized in matters of the succession of a spouse pursuant to Regulation (EU) No 650/2012, the courts of that State shall have jurisdiction to rule on matters of the matrimonial property regime arising in connection with that succession case."

Article 28 - Effects in respect of third parties

"1. Notwithstanding point (f) of Article 27, the law applicable to the matrimonial property regime between the spouses may not be invoked by a spouse against a third party in a dispute between the third party and either or both of the spouses unless the third party knew or, in the exercise of due diligence, should have known of that law.

2. The third party is deemed to possess the knowledge of the law applicable to the matrimonial property regime, if:

(a) that law is the law of: (i)….. (ii)…… (iii) in cases involving immovable property, the State in which the property is situated;

(b) either spouse had complied with the applicable requirements for disclosure or registration of the matrimonial property regime specified by the law of: (i)…. (ii)….(iii) in cases involving immoveable property, the State in which the property is situated

3. Where the law applicable to the matrimonial property regime between the spouses cannot be invoked by a spouse against a third party by virtue of paragraph 1, the effects of the matrimonial property regime in respect of the third party shall be governed:

(a) by the law of the State whose law is applicable to the transaction between a spouse and the third party; or

(b) in cases involving immoveable property or registered assets or rights, by the law of the State in which the property is situated or in which the assets or rights are registered.

Article 29

Adaptation of rights in rem

"Where a person invokes a right in rem to which he is entitled under the law applicable to the matrimonial property regime and the law of the Member State in which the right is invoked does not know the right in rem in question, that right shall, if necessary and to the extent possible, be adapted to the closest equivalent right under the law of that State, taking into

account the aims and the interests pursued by the specific right in rem and the effects attached to it."

Article 58

Acceptance of authentic instruments

"1. An authentic instrument established in a Member State shall have the same evidentiary effects in another Member State as it has in the Member State of origin, or the most comparable effects, provided that this is not manifestly contrary to public policy (ordre public) in the Member State concerned.

A person wishing to use an authentic instrument in another Member State may ask the authority establishing the authentic instrument in the Member State of origin to fill in the form established in accordance with the advisory procedure referred to in Article 67(2) describing the evidentiary effects which the authentic instrument produces in the Member State of origin.

2. Any challenge relating to the authenticity of an authentic instrument shall be made before the courts of the Member State of origin and shall be decided upon under the law of that State. The authentic instrument challenged shall not produce any evidentiary effect in another Member State for as long as the challenge is pending before the competent court.

3. Any challenge relating to the legal acts or legal relationships recorded in an authentic instrument shall be made before the courts having jurisdiction under this Regulation and shall be decided upon under the law applicable pursuant to Chapter III. The authentic instrument challenged shall not produce any evidentiary effect in a Member State other than the Member State of origin as regards the matter being challenged for as long as the challenge is pending before the competent court.

4. If the outcome of proceedings in a court of a Member State depends on the determination of an incidental question relating to the legal acts or legal relationships recorded in an authentic instrument in matters of matrimonial property regimes, that court shall have jurisdiction over that question."

Article 59

Enforceability of authentic instruments

"1. An authentic instrument which is enforceable in the Member State of origin shall be declared enforceable in another Member State on the application of any interested party in accordance with the procedure provided for in Articles 44 to 57.

2. For the purposes of point (b) of Article 45(3), the authority which established the authentic instrument shall, on the application of any interested party, issue an attestation using the form established in accordance with the advisory procedure referred to in Article 67(2).

3. The court with which an appeal is lodged under Article 49 or Article 50 shall refuse or revoke a declaration of enforceability only if enforcement of the authentic instrument is manifestly contrary to public policy (ordre public) in the Member State of enforcement."

Article 60

Enforceability of court settlements

"1. Court settlements which are enforceable in the Member State of origin shall be declared enforceable in another Member State on the application of any interested party in accordance with the procedure provided for in Articles 44 to 57.

2. For the purposes of point (b) of Article 45(3), the court which approved the settlement or before which it was concluded shall, on the application of any interested party, issue an attestation using the form established in accordance with the advisory procedure referred to in Article 67(2).

3. The court with which an appeal is lodged under Article 49 or 50 shall refuse or revoke a declaration of enforceability only if enforcement of the court settlement is manifestly contrary to public policy (ordre public) in the Member State of enforcement."

Article 69

Transitional provisions

"1. This Regulation shall apply only to legal proceedings instituted, to authentic instruments formally drawn up or registered and to court settlements approved or concluded on or after 29 January 2019 subject to paragraphs 2 and 3.

2. If the proceedings in the Member State of origin were instituted before 29 January 2019, decisions given after that date shall be recognised and enforced in accordance with Chapter IV as long as the rules of jurisdiction applied comply with those set out in Chapter II.

3. Chapter III shall apply only to spouses who marry or who specify the law applicable to the matrimonial property regime after 29 January 2019."

- Council Regulation (EU) 2016/1104of 24 June 2016 - implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships

This Regulation has a parallel effect as the former one

Operational initiatives of the EU

* E- justice action plans and initiatives -E- justice portal –LRI project

European e-Justice is the use of information and communication technologies in the area of justice at EU level. It serves to improve citizens' access to justice, to facilitate procedures within the EU and to make the resolution of disputes or the punishment of criminal behaviour more effective.
This initiative is integrated into all areas of civil, criminal and administrative law in order to ensure better access to justice and to strengthen cooperation between administrative and judicial authorities.

The Working Party on e- Justice assumes a coordinating role in considering technical issues, raised during discussion in other subordinate Council bodies.

The most visible part of European e-Justice is the European e-Justice Portal. In line with the Multiannual European e- justice Action Plan 2014-2018 (2014/c 182/02) , the information and functionalities available on the Portal will be expanded between now and 2018.

The Land Registers Interconnection (LRI) project is explicitly referenced in this action plan. It is classified under the category of "Interconnection of national registers" that includes projects like the interconnection of criminal records, insolvency registers, commercial registers, registers of will, etc.

There is currently a high level of diversity and heterogeneity of land registrations systems among EU Member States. It is also important to note the difference between land registers and cadastres. The former are property rights oriented systems while the latter are land description oriented systems. Land registers list ownership and encumbrances such as mortgages, leasing rights, pre-emptive purchasing rights, and so on. Cadastres detail the physical aspects relating to a property, such as borders, areas, buildings and addresses. Many Member States employ both, but this is not necessary or required. To continue with the example in the disclaimer, England and Wales do *not* operate a cadastre. All of this demands a special approach.

One of the proclaimed functions of European e-Justice in its actions (15315/08) is to address issues like this by *«providing access via interconnections to the information managed by the Member States in the framework of the public administration of justice…»*. The quality of justice itself requires that authoritative land data are available to justice professionals, as well as citizens that have a legitimate interest. Such interest may be expressed, for example, by the need to check the accurate registration of owned property, the acquisition of reliable information on property rights, the determination of succession rights, the establishment of guarantees on properties or the execution of court decisions. Importantly, such enquiries may be cross-border.
The Land Registers Interconnection (LRI) project addresses the above issue of discrepancy, complexity and multitude of land registration systems, by providing a single access point, established within the e-Justice Portal, for the acquisition of land-related information of participating Member States. Through this access point citizens and professionals will be able to query and retrieve relevant information via a single, adaptive, multi-lingual interface. This will be achieved by establishing specific communication channels and services between LRI and the respective land registers of participating countries. In addition to this, the LRI will:
· provide extensive information to citizens regarding the legal value and up-to-datedness of retrieved information;
· ensure that conditions of national registers to provide information are met;
· incorporate a seamless purchase mechanism for land-related information and/or original documentation from multiple national registers;
· inform citizens of the differences in terminology and legal context amongst different Member States;
· comply with national and European laws and national register policies about data protection and privacy.

The Land Registers Interconnection (LRI) project deals exclusively with the implementation

of a single access point within the e-Justice Portal that connects to the appropriate land property services in participating Member States. Users of the service will be able to request information from multiple search systems via an adaptive interface and retrieve information in a single, unified form. All legal and financial requirements of Member States for the provision of data will be respected.

The following items are considered to be "IN" Scope:
· establishment of a multi-lingual search interface allowing users to query and retrieve land-related information of participating Member States;
· implementation of a single authentication process for users which allows differentiation between different groups of users (normal and professional users) with respect to access rights;
· definition of a minimum/standard set of property data that will be available to all users;
· provision of additional property data (e.g., maps) to users when available by Member States;
· implementation or reuse (from the Business Register Interconnection System project) of a single payment process for the purchase of land-related information;
· development of a multilingual taxonomy of LR terminology and glossary of terms;
· provision of information to users concerning the legal value and use of the given information.

The following items are considered to be "OUT" of Scope:
· establishment of a European professional certification system managed and hosted on the e-Justice Portal;
· potential adaptations/extensions of national land registers in the Member States required for their interconnection with the LRI system;
· implementation of a unified and complete set of land-related properties that will be available to all users.

The LRI portal is in full construction and should be launched on the e- justice portal in the second semester of 2017.

Private initiatives

We see that multiple European professional organizations produce efforts to ease cross-border conveyancing. They do so by producing fact sheets, explaining the different juridical systems in their field; by producing position papers; by trainings among their members and some of them launch programs, in co- operation with the European commission, using their expertise. Some of these projects have a practical use. Most of them are more academically orientated.

Such projects show the problems encountered by and the necessity of organization of the cross- border real estate market. Mainly the European Union is prepared to support these initiatives, both financial and logistically. A review in alphabetic order follows, without any classification to importance nor specific working field.

1.- Chambre Européenne des Huissiers de Justice - CEHJ

The European Chamber of Judicial Officers/ Bailiffs is a representative body of the Judicial Officer/ Bailiff profession to the European institutions. Created in April 2012, it participates to the consolidation of the European area of justice by the drafting of position papers, the management of projects and the development of technical tools at the benefit of citizens and companies. The CEHJ contributes to the improvement of the knowledge of European law by Judicial Officers/ Bailiffs and of the sharing of professional good practices. The members of the European Chamber draft positions papers on the European regulations, either during their elaboration or their reform, to bring their good practises and recommendation in order to enhance their use and efficiency. The European Chamber of the Judicial Officers ("CEHJ") has undertaken several European projects that have benefited from European co-funding.

The EJE project (Europe judicial enforcement), led to the creation of a European directory of judicial officers, where any citizen can easily identify the competent judicial officer for the service of documents (in accordance with EU Regulation 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters) and to proceeding of enforcement measures. Since then the CEHJ ensures the management and promotion of the European directory of judicial officers to ensure its expansion and further integration into the e-justice portal, such as the tools "find a notary" / "find a lawyer".

The EJE project also led to the creation of information sheets on procedures to enforce a court decision in each member state of the partnership. If, in fact, the European law favours the free movement of enforceable titles in Europe, the possibility for European citizens to actually implement a court decision in another country of the European Union still faces many practical obstacles, starting with the lack of knowledge of the rules in different legal systems. These sheets provide citizens with an outline of possible actions (measures prior to enforcement, preservation measures, seizure of goods, foreclosure …) to facilitate their steps in the context of cross-border litigation and are available in seven languages.

EJS project (e-justice signification), aims to establish a mechanism for the exchange of acts between judicial officers in Europe, in order to improve the functioning of the European Union regulation on the movement of acts in Europe. EJS is the first international project to develop an electronic transmission of acts of judicial officers in cross-border disputes. It consists in the creation of a platform for secured exchanges of dematerialized acts between judicial officers settled in different states.

Comparative Study project on the Brussels I regulation (recast)

Together with the Council of the Notariats of the European Union (CNUE) and the Instituto Superior de Contabilidad e Administraçao de Lisboa (ISCAL), the CEHJ is taking part in a research project relating to the implementation of regulation no. 1215/2012 of 12 December 2012 (Brussels I recast) by European notaries and judicial officers. This project is co-financed by the EU for the period January 2016 -August 2017.

2.- Council of the Notariats of the European Union - CNEU

In Professional assistance and organization of the conveyancing we see big differences. Most Member States require all conveyancing (and certainly if for gain) to be carried out by professionals, and it is rare to dispense with professional assistance even where Do-It-Yourself conveyancing is permitted (as in Anglo-Celtic countries).

Member States almost always create a local monopoly over the preparation of formal documents, the administration of deceased's estates and conveyancing. Involvement of a notary in transactions with land is frequently mandatory. Across most of continental Europe conveyancing is carried out by ('Latin') notaries, but the organization of the profession has regional variations.

As a result real estate transactions remain very much a national occupation with compartmentalized markets across Europe in many of which conveyancers are isolated from competition. Notaries conduct conveyancing in 22 of EU-28 Member States, from Iberia to the Baltic sea and in many of the later accession states of central and eastern Europe including the largest economies in the Czech Republic, Hungary and Poland. Their essential mission is to confer authenticity on the legal instruments and contracts they establish for their clients in areas of law as diverse as marriage contracts, company statutes, wills, real estate transactions, etc.. In a few states lawyers coexist in the conveyancing market with notaries, but this is rare. In Nordic countries much of the market is held by real estate agents lacking general legal training. In Britain and Ireland conveyancing is conducted by lawyers (a mix of solicitors and licensed conveyancers).
Although the EU clearly has tried to abolish monopolies there are no EU initiatives to unify the landscape. Fundamentally this is not a problem, since authentic instruments enjoy cross-border validity through EU Regulations 650 and 1215/2012 .

But the problem remains the information on the legal systems and the administrative rules of each country. Since they differ that much it is practically impossible for a notary in country A to inform a local buyer about the system and costumes in country B.

CNUE is the official body representing the notarial profession in dealings with the European institutions. Speaking for the profession, it negotiates and makes decisions for the European Union's notariats. It has a permanent office situated in Brussels. Since 2003, the CNUE has taken the form of an ASBL (Association sans but lucratif - non-profit organisation) under Belgian law.

The CNUE's mission is to promote the notariat and its active contribution to any decision-making processes of the European institutions. To this end, the CNUE set up working groups to follow EU affairs and establish position papers committing all of the CNUE's member notariats. Furthermore, the CNUE keeps its members updated on developments in European legislation and any initiatives taken by the EU institutions. It also assists in the continuous training of notaries in EC law.

In this field there is a remarkable project being produced by CNEU, named **EUFIDES.** Actually it is presumably the only really operative IT project in the field of cross- border conveyancing.

However, there is a good chance that the notary who holds office in the country where the buyer resides and what legal system will apply to matters relating to the person will have more knowledge in that field. The notary public of the country where the asset is located, and what legal system will apply to matters relating to it, will probably know more about the property itself.

Thanks to the EUFIDES project, EU citizens are able to purchase real estate in another Member State more easily and with greater legal certainty. Buyers are able to contact their

regular civil law notary, who will handle the sale in cooperation with a notary from the Member State in which the property is situated. The notaries in question will inform and advise the buyer and the seller about the tax and estate consequences of the transaction under national law. They combine their respective powers to take care of all the administrative steps required by the Member States, such as notifying tax authorities, requesting pre-emption rights from municipalities and registration. In order for data to be transferred and the act of sale to be signed quickly, cooperation between the notaries is effected almost entirely electronically. The Notaries of Europe have taken the necessary measures to guarantee that the levels of data protection and confidentiality are extremely high. They use electronic signature verification technologies, which make it possible to verify the identity of signatories and to prevent changes from being made to a document between the time it is signed and the time it is received by the reader. Even though it is interesting, if only from a linguistic perspective; in practice, it is not spread enough yet.

Under the structure of CNEU we also find the **"European notarial network" - ENN**

The ENN-RNE is a tool for notaries facing practical issues with cross-border aspects covering the 22 EU Member States that have civil law notaries. The ENN keeps databases with questions and answers on the foreign and European law. EU-wide it provides information on European and national legislation in the fields where notaries act.
The ENN IT infrastructure is activated as a "one-stop platform" and is operational to all notaries in Europe. The project is co-founded by the European Union

Finally the **"Europe for Notaries – Notaries for Europe"** latest 2015-2017 training programme is a project developed by the Notaries of Europe with the support of the European Union. It involves organizing 12 seminars in 12 Member States, in partnership with the national notarial organisations. The training will focus primarily on the application of the new European regulation on international successions. The programme will help the European Commission reach its target of offering, at least half of the legal professionals in the EU, the chance to receive training in European law at local, national or EU level by 2020. Another of its targets is for all legal professionals to receive at least one week of training in EU law at some point in their careers.

3.- Eurogeographics

Eurogeographics is the membership association and acknowledged voice of the European National Mapping, Cadastre and Land Registry Authorities. It currently brings together 60 organisations from 46 countries, delivering benefits for each regardless of the geographical, technical, political, organisational, linguistic and business parameters in which they work. The purpose is to further the development of the European Spatial Data Infrastructure through collaboration in the area of geographic information and the representation of its members and their capabilities. Through Eurogeographics, members participate in policy developments, share knowledge and experience and collaborate to find solutions to common challenges. The Association's main activities focus on representing members' interests; transferring knowledge, developing capacities; creating and implementing interoperability projects; and producing pan-European products based on the datasets from National Mapping, Cadastre and

Land Registry Authorities. Eurogeographics is an Economic Interest Grouping (EIG) established under Belgian law.

Eurogeographics supports **Knowledge Exchange Networks - KEN** which provide an open forum for discussing good practice and issues of mutual interest. One of them is **Cadastre and Land Registry Knowledge Exchange Network -CLRKEN** which helps the Eurogeographics members to meet user needs for cadastral information at both the national and European levels. The purpose of **INSPIRE KEN** is to help members to implement INSPIRE directive.

The efforts of Eurogeographics fill in the need for uniform pan- European geo- information on properties.

4.- Eurojuris

Eurojuris International has been a network of independent law firms in Europe since 1992. With some 600 firms and about 5 000 lawyers, it covers 650 cities in about 50 countries worldwide. The main objective of Eurojuris International is to provide its member firms with a unique international legal network that meets the growing demands of clients. Eurojuris has established multiple working groups, among them one on Real Estate Law

The main aim of the Group is to provide members with specific real estate law advice, assistance and representation when required in relation to matters falling out of their own jurisdiction. It is also anticipated that the Group aims to provide advice to business clients on how to avoid problems by investing in foreign countries.
The Group wants to contact with potential clients and discusses possibilities to advice them better through the participation on important international exhibitions in Europe and through publications in national and international real estate magazines and represent Eurojuris International in these occasions.

5.- European Land information Service - EULIS

The European Land Information Service (EULIS) is a European Economic Interest Group (EEIG) governed by members, each responsible for land and property information in its own country or region. It owns a service that provides easy, on – line, access to land and property information. The service has been put in place by people with expertise in land registration and the different practices and procedures across European countries. It provides subscribed land registry customers such as banks, lenders, estate agents and lawyers, reliable, direct and easy access to land and property information in member European countries.

Through EULIS partners have access to core information for each participating country. The information includes basic description of legal concepts; description of routines and effects of registration of real property conveyance and mortgaging; contact information to authorities involved in the real property transactions, access to searching real property data is provided in some European Member States to the general public. Where this is not permitted, contacts and website links are provided for ongoing investigations. The aim is to make Land Registry information more transparent in Europe.

The EULIS glossary and reference information assist better understanding of the local environment, not only literally but also the meaning of terminology. The generic definition used in the Glossary is the result of cooperation between EULIS and ELRA (see further).

EULIS sees it as its long-term mission to underpin a single European property market through cross border lending.

Unfortunately only six European countries have subscribed full partnership and the number is not likely to increase. Furthermore the service is not particularly directed to helping individual citizens engaged in a cross border purchase. In fact it looks like the LRI initiative from the EU itself will take over the service in the long run.

6.- European Land Registry association - ELRA

ELRA is an Economic Interest Grouping (EIG) established under Belgian law. It started off with 12 members; it now has 30 organizations representing the land registries of 22 Member States, and is still growing. ELRA wants to underline the significance of Land Registries in Europe as juridical institutions and the scope of the effects of property registration as a fundamental tool for progress and change in the rule of law in the field of property and rights on immovable property. The primary purpose of ELRA is the development and understanding of the role of land registration in real property and capital markets. At the same time, ELRA is fully committed to work on behalf of Land Registries in Europe in cooperation with the EU institutions. Under the terms of the Framework Partnership Agreement with EU-Level Networks, ELRA is developing different activities, such as workshops to discuss the impact of European Regulations on land registries and their customers.

Land registers are very important in the process of transitions of immovable property, also when cross- border. Land Registries are one of the cornerstones of a safe process of property transactions. They maintain registers of rights over the property, charges against the property and in some cases maps and plans of the boundaries and zones affecting the area. They may also be known as Cadastre registers or maps and both Land Registries and Cadastre will be made up of various separate registers, maps and indexes.

Many foreign purchasers find themselves in difficulties when boundaries are disputed, perhaps leading to the loss of connection to amenities; zones are applied to urban zoning and rules probably resulting that the construction the property was built without valid permission; or a property to be sold apparently free from encumbrance but being subject to a mortgage. All these examples could be solved by enquiry in a properly organized and administered state land registry. Unfortunately not all state land registries are at an advanced stage of development may not be easy to access, or the state may not yet centralize information or keep it up to date centrally.
However Land Registries are more than just a deposit of information. For instance in some jurisdictions the actual act of registering a right over property in the Register is constitutory and will in fact create that right itself. So, in that case, the absence of registration of a contract means the right does not exist, even if the purchaser already handed over money or even moved into the property itself.

Basically there is known two systems of registration. There is the “deed” system. In its most

basic form, it only collects the deeds, being the "Instrumentum" of an agreement. The fact of registering only proofs to third parties the existence of an agreement or an encumbrance. The date of registering is generally very important in order to adapt preferences to a contract. It often is called a negative system.

In the "Title" system, the authorities offer certainty of the title through the registration.
That is why it's called a positive system. They perform an active role in the examination of the contract and its legal effects. The simple fact of registration creates a certain right. Errors in the register may create insurance for he who suffered loss due to that fact.
It is known that a title system offers more security but needs far more expertise and administration, which makes it much more expensive. Furthermore the registration systems deliver only very basic information, basically on Rights in Rem.
Nowadays it is requires a lot more to be well informed about the real identity of a property. A lot of the information can be produced in a geo- spatial way (see the efforts of Eurogeographics). Although a title system technically certainly seems to be of higher value, It seems to me that a deed system is better prepared to face future challenges in the market and meet the requirements of the customers. In Europe no jurisdiction adheres one of the two systems entirely. They all are different and lying somewhere in between these two extremes.

European Land Registry Network - ELRN

Within ELRA, the ELRN was set up in 2010 among ELRA members. It is designed with the EJN as an example, in order to facilitate mutual cooperation and even possible future integration. Currently 22 ELRA members from 19 Member States have joined the Network. The aim of the Network is setting up the tools that facilitate a friendly access of the Land Registry services at European level, providing the general public with relevant and useful information about land registration within the European Union and offering information to better understanding the registration systems of the different jurisdictions.
This instrument is to be an essential cooperation tool for the implementation of the Regulation of successions and other European initiatives. But the ELRN should also give assistance to other European legal networks made up of judges, bailiffs, lawyers, notaries and other legal practitioners who are involved every day in immovable property matters. Further objectives are to inform Registrars on the Community instruments and conventions, in force between Member States and help them with het practical application. The ELRN website informs members and public in matters of Property registration, through the use of fact-sheets.

A Network of national Registry "Contact Points" provides an easy and effective hub when information and assistance requested from users and officials from another Member State. It guarantees the smooth operation of procedures with cross-border impact and facilitates cooperation between Registrars in Member States and also with relevant EU authorities. The Network is supported by the European Commission within the framework program on Civil Justice as part of the General Programme 'Fundamental Rights and Justice', in order to contribute to the strengthening of the area of Freedom, Security and Justice.

Interoperability Model for Land Administration - IMOLA

ELRA developed the project IMOLA, which has been co-funded by the European Commission, using the expertise of ELRA Network and ELRN "Contact Points".

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. IMOLA has performed in-depth research on the common key points, developing interoperability solutions that have made the differences understandable to the professionals participating in real estate transactions, and facilitate cooperation with other networks in order to contribute to the development of a European real estate and mortgage market. The IMOLA global objective is to increase the accessibility and transparency of land registry information and to facilitate the registration of cross-border documents. Multiple legislation and practices of Land Registries hamper the exchange of information between them and the registration of cross border documents. Differences in national legislation and divergences inherent to the practice of land registration are the main cause of this complexity. Therefore, there is a need for a standard means of accessing basic land registry information within the EU, paired with the availability of explanatory material and the training of practitioners to improve the understanding of foreign legal systems. A standard model has to take into account fundamental differences. However, common points offer the possibility of defining a structure of key information shared by the majority of Land Registry systems.
Different types of property rights and registration methods have been compared. The research includes the conditions of access to the information of each country, particularly data protection policy, and the use of electronic communication.
The outcome is a draft of an interoperability framework, which was discussed in three conferences. The study has been of great value for het preliminary work in the LRI project of the EC.

Finally IMOLA I has produced a concept of a **European Land Register Document – ELRD** or template for organizing land register information at European level. This legal information is based on a bottom up approach of the European LR systems, using the expertise of the ELRA network and the ELRN contact points. The lessons-learnt during the development, at an academic level, will produce an input to the LRI portal.

Right now the **IMOLA II** project is being launched. The aim of the project is to improve the semantic common model and facilitate the implementation of it as a functional technical system developed by each National System, based on comprehensive explanatory material, being a Knowledge Repository. This Knowledge Repository uses web semantic architecture and technologies. It is supported by a permanent collaborative environment, the ELRN. It operates within the scope of LRI project, which is to be integrated on e-Justice Portal and is to be shared by Member States, as a mean to facilitate the creation of a common area of justice in civil and commercial matters.

Cross Border Electronic Conveyancing - CROBECO

CROBECO is an ELRA research project dealing with cross border registration in foreign Land Registers that enjoyed funding from the European Union. The project aimed to facilitate a European real estate market by supporting foreign buyers of a (second) home in the EU. The first stage of funding enabled the testing of a cross border electronic conveyancing pilot with cooperation between the Dutch, Spanish, and Portuguese Land Registry Associations. This Pilot began in 2010 and concluded in 2012.
The second CROBECO pilot involved HM Land Registry in England and Wales, the Spanish Land Registries Association, and the Portuguese Land Registries. The pilot began on January 2013 and lasted for two years.

ELRA's fundamental objective was to identify a practical method of implementing the provisions of ROME I and Rome II, on the choice of applicable law in contractual and non - contractual obligations.

The right to property as laid down in Article 17 of the Charter of Fundamental Rights of the European Union **(**which was given legal effect in the Treaty of Lisbon 2009) implies that European citizens should not be deprived of their possessions without fair compensation and only for public interest reasons to the extent set out in the law. This includes a right to choose the law that is applicable to contractual and non contractual obligations concerning their property rights. The right to issue such a law is laid down in regulations "Rome I"(Regulation 593/2008 of the European Parliament and the Council of 17 June 2008 on the law applicable to contractual obligations), recast in Regulation 1215/2012, and "Rome II" Regulation 864/2007 of the European Parliament and the Council of 11 July 2007on the law applicable to non-contractual obligations)

ELRA believed that one way of tackling some of the problems experienced by foreign buyers is by researching practical ways of implementing ROME I and ROME II. As this would allow foreign buyers to negotiate their contractual relationship, applying their home law. This should offer an increased certainty and a clearer path of redress under their national law, should things go wrong.

The practical implementation has been performed by means of a Cross Border Electronic Conveyancing Platform, CROBECO.

The system is conceived as follows. The foreign conveyancer downloads and scrutinizes the documents, informs the foreign buyer and drafts an appropriate contract of sale. A repository with clauses contains examples of clauses for cross border contracts of sale and mortgage contracts with explanations is made available and is accessible through a web platform. The platform includes the development of the standard mandatory and optional clauses used in contracts for cross-border Conveyance. It also provides access to information involving national legal systems and national services to submit conveyance documents electronically. The database helps to prevent studying the same type of questions in comparable cases, but can never replace the need for conveyancers who are specialized in cross border contracts.

The system clearly involves an important role for the Land Registrars in both countries, as well for delivering information as for registering the title. If necessary the transfer of the

document to another MS can also be processed by the Land Registrar. The system is to be completely electronic including electronic signatures.

7.- European Mortgage Federation - EMF

Although mortgages are not within the direct scope of transactions of real estate, they are closely related to it. In the event of existing they put a burden on the property all interested parties should be informed of. Also in foreclosure and seizure procedures they are extremely important.

Until now the mortgage business has remained practically entirely nationally based. Partly due to the recently unstable financial situation lenders were not willing to increase their risk in cases of foreclosure by allowing cross-border contracts. Nevertheless there is the EMF. Their aim is to ensure a sustainable housing environment for EU citizens. To this end, they are the key- talking partners of the European Commission. In pursuing the aim they encourage the exchange of information and best practice; provide up-to-the-minute specialist insight into legal, economic, funding and market-related developments; respond to the EU institutions' consultations via specialised position papers and publish in-depth studies and comprehensive EU-wide statistics. There are committees discussing legal issues and questions on valuation of properties.

In the current changing landscape as a result of the financial crisis, the Federation has published a set of Responsible Lending Standards, which detail EU lenders' responsible lending practices ,with a view to increasing transparency and consumer confidence across European mortgage markets, and, in turn, to preserve the stability of the mortgage lending system.

EMF strongly promotes the creation of pan- European lending and mortgage contracts but the offering side remains reluctant. One step ahead certainly is the **Energy Efficient Mortgages Initiative.**

In September 2016, the EMF launched a new ground - breaking mortgage financing initiative to support energy efficiency improvements in buildings. The European Energy Efficiency Mortgage initiative aims to create a standardised "Energy efficient mortgage", on a European level, based on preferential interest rates for energy efficient homes and/or additional funds for retrofitting homes at the time of purchase.

The project represents for the first time a group of major banks and mortgage lenders, as well as businesses and organisations from the building and energy industries. They have come together to address the concept of energy efficient mortgages. The ultimate objective of this pan-European initiative is to design a private bank financing mechanism, based on a standardised approach and a market benchmark, to encourage energy efficient improvement by households of the EU's housing stock by way of financial incentives linked to the mortgage, and in this way support the EU in meeting its energy savings targets. Moreover, validation of end user/homeowner needs and requirements will be captured during this project through customer research. This insight work will be important in ensuring that the output of the project can be implemented across EU mortgage markets, and in ensuring that a customer pull for the product can be cultivated by lending institutions.

8.- The European Property Federation - EPF

EPF is an Economic Interest Grouping (EIG) established under Belgian law.Its mission is to foster a European real estate leadership with a hands-on culture and vision for EU real estate policy, through networking, socialisation, and solidarity among its association and company CEO Board members; foster the development of real estate activities and associative life in new and candidate EU accession countries, putting at their disposal the experience gained from the more established and experienced members; exchange and disseminate property investment and management best practice; facilitate trans-border activities, services and investment; track existing and planned EU regulation, and when warranted, attempt to make draft EU regulation friendly and useful to the real estate industry through its balanced and grounded advocacy efforts; help members, once EU Directives are agreed, in dealing with the Directives' transposition into national law, and in particular help them distinguish true EU requirements from national-added requirements ('gold-plating'); attempt to reform and optimise national property markets and planning law using EU law where progress is not possible in the national political context; counter any disproportionate, arbitrary, unfair, ill-conceived, special-interest-led, or abusive EU or national policy initiatives; promote and/or propose EU initiatives supporting the real estate industry; help attain EU real estate energy-efficiency and sustainability targets and build coalitions with other actors of the real estate sector, such as rural landowners, historic houses, owner-occupiers, small landlords, valuers

9.- Permanent Committee on Cadastre in the European Union (PCC)

The mission of the PCC is to promote the full awareness of the activities developed by the European Union and the Member States related with Cadastre and, by means of this information, to develop strategies and propose common initiatives with the aim of achieving greater co-ordination among the different European cadastral systems and their users. PCC limits its activity to the Member States of the European Union and to the candidate countries for adhesion.

The main objectives of the PCC are at first to constitute a network of information on cadastre to facilitate the exchange of information, expertise and best practices among the members through exchange of available information. This can be realized either in response to specific queries raised by other members, or by the general distribution of information to all members. Members answer surveys and questionnaires in order to improve this information.
Second objective is to represent a privileged link between cadastral institutions and the organs of the European Union and other entities requiring cadastral information to carry out their activities. One of the principal functions of the Committee is to study and present to the organs of the European Union co-ordinated proposals on diverse aspects affecting territorial databases.
In this regard, the Permanent Committee can also play an important role as point of contact for companies developing software or other commonly used products, to attempt to create a more standard demand.

Altough PCC focuses its work exclusively on the Cadastre and on the users of cadastral information, we see that several national organisations, working as well as a Land Register, are member. Under these circumstances the fact sheets they produce are an interesting source of information on different legal systems concerning immovable property in the EU.

10.- United Nations Economic Commission for Europe (UNECE)

Unece was set up in 1947. It is one of five regional commissions of the United Nations. UNECE's major aim is to promote pan-European economic integration. UNECE includes 56 member States. The term is a bit misleading since the US, Canada and some Asian countries take part too. Over 70 international professional organizations and other non-governmental organizations take part in UNECE activities.

Unece promotes energy efficient and adequate housing, including for those with special needs and vulnerable population groups; compact, inclusive, resilient, smart and sustainable cities; the transparent efficient land use, and property registration. The work is based on key United Nations policy documents on housing and urban development, especially the Geneva UN Charter on Sustainable Housing and the Strategy for Sustainable Housing and Land Management 2014-2020.

Working Party on Land Administration (WPLA)

Under the scope of Sound land administration and sustainable land management we find the activities of the WPLA. It is an intergovernmental group of experts and policy officials from UNECE member countries working to improve land administration and management in the UNECE region through activities based on cooperation and the exchange of experiences between all countries in the UNECE region. It provides a venue for sharing knowledge and fostering discussion between Governments. Every two years, the WPLA meets to set policy and direct the work of the UNECE in land management. In between sessions, the WPLA Bureau works year-round to fulfil the mandates of the WPLA. The WPLA focuses on strategies to develop better land management systems by improving cadastre and land registry systems by conducting in-depth research into land management issues. It creates land administration reviews, which are analyses of national land management systems that form part of the UNECE country profiles. It conducts thematic research across the UNECE region, including studies on fraud in land administration institutions and comparisons of cadastral and registration fees and charges. Recent studies include the challenge of informal settlements and on land administration systems. WPLA Facilitates experience sharing and knowledge exchange. Through a series of workshops hosted by UNECE member States, usually in cooperation with an international organization partner, the Working Party promotes international learning and cooperation by collecting and sharing data on land management systems throughout the UNECE region.

Conclusions

Despite the apparently blocking effect of article 345 of the TFEU and by consequence a lesser interest of the EU to immovable, all these efforts express that markets clearly are in need of European standards. In later legislation the EU also limits the influence of this article. Although this survey did not result in finding an overall covering initiative, over the years, we notice a strong unifying process taking place orchestrated by almost all actors. Different organizations, mainly working under the scope of the EU, try to inform cross-border conveyancing parties on the existing legal systems. When we make the effort to consult them all, we get a pretty clear view. Most of these organizations also try to influence policies, clearly promoting an integrated real estate market, which is very hopegiving!

Resources

* Hypostat 2014, A Review of Europe's Mortgage and Housing Markets, (Brussels: European Mortgage Federation, 2014).
* E Ramaekers European Union Property Law (Antwerp: Intersentia, 2013)

* DG Justice and consumers - Unit Just B.2: European Public Prosecutor's Office and Criminal Law - Project Charter - Land Registers Interconnection (LRI) Date: 19/11/2015

* "Properties rights and wrongs" Dianne Wallis and Sarah Allison - ISBN 978-952-67622-1-0 (paperback) ISBN 978-952-67622-2-7 (PDF) (2011)

* common conveyancing reference framework - CROBECO Conference - Brussels, 31st May 2012 – (https://www.elra.eu/wp-content/uploads/2014/10/Final-version-CCRF.pdf.pdf)

* Cross Border Acquisitions of Residential Property in the EU: Problems Encountered by Citizens
Study European Parliament - Directorate General for Internal Policies – Policy Department C: Citizens' rights and Constitutional affairs – Legal affairs – March 2016
-http://www.europarl.europa.eu/supporting-analyses

* The evidentiary effects of authentic acts in the Member States of the European Union, in the context of successions
Study European Parliament - Directorate General for Internal Policies – Policy Department C: Citizens' rights and Constitutional affairs – Legal affairs – March 2016
-http://www.europarl.europa.eu/supporting-analyses
* http://eur-lex.europa.eu
* http://inspire.ec.europa.eu/
* www.hypo.org
* www.elra.eu
* www.eulis.eu
* www.cneu.eu
* www.cehj.eu
* www.eurogeographics.org
* www.eurojuris.net
* www.epf-fepi.com
* www.unece.org
* www.eurocadastre.org