

# The judicial measures from the point of view of land registration: «Notices» and judicial restrictions

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# Framework: the Judicial Cooperation

- **The recognition of the judicial resolutions across Europe is an important goal**
  - It could imply the registration of them
- **Land registration matters are governed by national registry law**
  - But this fact should not become an obstacle for a common space of justice
- ✓ *Our legal systems should find ways of making known and predictable the national LR systems responses about the registration of these judicial resolutions: mutual understanding*

# European Regulations: *principle of adaptation* (in the light of the national differences)

- **Principle of adaptation:**

- *“Where a judgment contains a measure or order which is not known in the law of the Member State addressed, that measure or order, including any right indicated therein, should, to the extent possible, be adapted to one which, under the law of that Member State, has **equivalent effects** attached to it and pursues **similar aims**. How, and by whom, the adaptation is to be carried out should be determined by each Member State”*

*(Regulation (UE) 2012/1215, recital 28)*

- Principle of adaptation is also relevant in Regulations (UE) on Successions, Insolvency or Matrimonial Regime

# The field of judgments, restrictions, notices

- Idea of “***closest equivalent judicial measures***”
  - Different proceedings -from the judicial and registry point of view-
  - Equivalent effects, similar aims
- Judgments, judicial restrictions, are **subject to registration**
- Relevant links with **IMOLA project**
  - Methodology
    - Selection of **generic categories** to cover as many national situations as possible, the different classes of “notices”: Section C, 3rd Subsection
    - “Formants”: **attributes** should identify **effects and aims** of the notices in order to let us know them
  - Feedback
    - For the subsection “**Notices**” in Section C of the template

# The «notices» in IMOLA project

- «Notices» are **registry warnings** about **judicial restrictions** due to judicial procedures [See Notices as a *pivot term*]
- «Notices» constitute a **taxonomy** of categories of judicial restrictions based on similar aims
  - attachment, a claim on land, a seizure, a freezing order...
- IMOLA formants allow to identify relevant **attributes** related to the «notices» such as:
  - Which effects do the notices imply? (What is the restriction?) Does involve more than one?
  - Which type of registration? (if it is a remarkable issue for the national system)
  - In which cases is a notice temporary or provisional and in which cases it is indefinite of final?

# Notices are legal warnings with a legal meaning and...

The **warning** of the notices can have various **legal meanings** such as:

1. Attachment to a debt due to a judicial claim
2. A judicial dispute pending on the land or property (claiming the ownership, challenging the status of the property rights on it)
3. Freezing or total prohibition of disposing of the ownership
4. Prohibition of making the acts disposing the ownership decided by a judgment (but not all)
5. Constraints on the use or possession of the property due to a judicial custody or administration
6. A criminal proceeding could involve the loss or deprivation of the property as a result of it
7. A mortgage foreclosure procedure is pending on the property
8. An enforcement procedure (different from the mortgage) is pending on the property
9. The property is affected by an insolvency proceeding
10. Other restrictions due to judgments

On the basis of these legal meanings we would form **generic categories**, the following:

# ... it would lead to a taxonomy

NOTICE (KIND)	LEGAL EFFECT (Land Register warns on...)	STATUS OF THE L.R. unit
ATTACHMENT	Attachment to a debt liability due to a judicial claim	Charged for debts
CLAIM ON LAND	A dispute pends on the land or property (claiming the ownership, challenging the status of the property rights on it)	Under a claim
FREEZING	Prohibition of making any act disposing of the ownership	Frozen
LIMITATION OF DISPOSAL	Prohibition of making the acts disposing the ownership indicated by a judgment, but not all	Limitedly frozen
SEIZURE	The use or possession of the property is banned for the owner; the property is under judicial custody or administration	Seized
FORFEITURE	The ownership is affected by a criminal proceeding which could involve the confiscation or loss of the property.	Subject to confiscation
FORECLOSURE	Subject to a mortgage foreclosure procedure	On foreclosure
ENFORCEMENT	Subject to an enforcement procedures affecting the property, different from the mortgage	On enforcement
INSOLVENCY PROCEEDING	Affected by an insolvency proceeding	Under an insolvency procedures
OTHER RESTRICTIONS	Other restrictions	Under not specified restriction

# Why the terminology?

Name	Source
ATTACHMENT	<i>Green Paper on improving the efficiency of the enforcement of judgments in the European Union: the attachment of bank accounts [COM(2006) 618</i>
CLAIM ON LAND	<i>Common law</i>
FREEZING	<i>Directive 42/2014</i>
LIMITATION OF DISPOSAL	<i>Common Law / Generic</i>
SEIZURE	<i>Directive 42/2014</i>
FORFEITURE	<i>Proposal for a regulation of the European Parliament and of the Council on the mutual recognition of freezing and confiscation orders Brussels, 21.12.2016 - SWD(2016) 468 final. Alternative: confiscation</i>
FORECLOSURE	<i>White Paper on the Integration of EU Mortgage Credit Markets (presented by the Commission) Brussels, 18.12.2007 COM(2007) 807 final</i>
ENFORCEMENT	<i>Common Law</i>
INSOLVENCY PROCEEDING	<i>Directive (UE) 2015/848</i>
OTHER RESTRICTIONS	<i>Generic</i>



# Discussion questions for ELRN

- The taxonomy of notices is a crucial issue to get a FPA deliverable but also for purposes of IMOLA template
- IMOLA methodology leads to get **generic categories or containers** to cover as many national concepts as possible.
  - For instance:

IMOLA	Notice of attachment
England and Wales	Charging order: a restriction
Germany	Arrest
Portugal	Penhora
Spain	Anotación de embargo

# Questions (1)

- **Judicial** restrictions, not any restrictions
  - According to your system, it is advisable the assimilation of any kind of not judicial restrictions?
- **Taxonomy** of the notices
  - Potentially up to 10 types, including one by-default; do you agree with this taxonomy?
- Cases in which a registration of a notice involves more than one effect
  - vgr. if a seizure or an attachment involve a prohibition of disposal

# Questions (2)

- Attachment/seizure
  - The first one would imply only attachment to a debt, without other limitations
  - the second one would implies limitations in the possession and use, or to a greater extent
- Seizure / forfeiture
  - Seizure would imply limitations in the possession or use of the property (judicial custody or administration) -due to a civil or criminal procedure;
  - Forfeiture would is referred to a procedure that could lead to the loss or deprivation of the property -due to a criminal procedure
- Freezing: prohibition of disposal or limitations of disposal, one or two categories
  - Total prohibition of disposing
  - Partial prohibition

# Collection: a deliverable

- **Option A**

- CPs would indicate what judicial restrictions are registered or recorded in each LR system, with annotations about their legal regime
  - Questions about legal sources, aims and interests, type of registration and if the registration can be temporary or indefinitely)

- **Option B**

- CPs would answer a questionnaire keeping IMOLA methodology (yes/no/n.a.),
  - In this event, *usage notes* and *explanatory notes* would be especially important
- ✓ Introduction: a list of judicial restrictions according to the criterion of the «aims and interests» (up to 10) from the background of IMOLA and discussions (for coordinators)

Thank you for your attention!  
Discussion, please

