

Ongoing study on Judicial Restrictions in EU Land Register Systems

ELRN workshop

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Jorge López



Relevance of the issue

❖ In FPA (Framework Partnership Agreement):

- A *deliverable*, FACT SHEET on judicial restrictions

❖ In IMOLA project:

- A part of the structure of the template.
Subsection of the Section «C» of the ELRD
- Key semantic field
 - Attributes, Pivot terms

«Judicial restriction» in the field of IMOLA

It is any restriction constraining the powers of the proprietor or encumbering the ownership to some extent. Registry entries for meaning judicial restrictions shall be registered through judicial orders. Some administrative restrictions issued by governmental decisions have similar registry effects.

“Notice” in the field of IMOLA

- *It is a kind of registration or entry **to mean the existence of judicial restrictions** coming from cases of lawsuits related to a property (or the owner of it) and warn the third parties about them. By means of notices, land registers will publish information about cases or disputes referring to ownership or property rights registered, attachment of the debtors who appear in the registry as the owners, seizures of property, prohibitions of disposal, also judgments about limitations on legal incapacity to administer, bankruptcy or insolvency and in generally any situation that modifies the capacity of disposal, or in general any judicial decision or case affecting the properties or the legal capacity or powers of the owner. Some administrative restrictions issued by governmental decisions have similar register effects, in this case in particular. In particular, in the event that governmental agencies deal with the legal task of issuing orders of attachment of properties.*

RESPONSES TO THE QUESTIONNAIRE

- **Goal: a method to study and classify «notices»**
 - Legal purposes and effects from a LR point of view
- **Initial taxonomy with 10 types of notices**
 - Taxonomy is in progress,
 - Most types are widespread
- **16 contributions**
 - Austria, Croatia, Estonia, Finland, Ireland, Italy – Agenzia-, Italy –Libro Fondiario-, Latvia, Lithuania, Malta, Poland, Portugal, Romania, Scotland, Spain, Sweden

RESPONSES FOR EACH KIND OF RESTRICTION OR NOTICE

Notice of attachment

1. Notice of attachment included in the system:

- Yes: Austria, Croatia, Estonia, Finland, Ireland, Italy -Agenzia-, Italy – Libro Fondiario- Malta, Poland, Portugal, Romania, Scotland, Spain, Sweden -14
- Not included in: Lithuania, Latvia -2

2. Freezing-blocking effect:

- Yes: Austria, Estonia, Finland, Malta -5
- NO (just warning 3rd parties): Croatia, Ireland, Italy -Agenzia, Italy – Libro Fondiario-, Poland, Portugal, Romania, Scotland, Spain, Sweden -11

3. Duration

- Temporary: Croatia, Spain -2
- Indefinite: Austria, Estonia, Finland, Ireland, Italy -Agenzia-, Italy – Libro Fondiario-, Latvia, Lithuania, Malta, Poland, Portugal, Romania, Scotland, Sweden -14

Notice of pending land dispute/claim

- **Notice of claim or dispute included in the system:**
 - Yes: Austria, Croatia, Estonia, Finland, Ireland, Italy -Agenzia-, Italy – Libro Fondiario-, Latvia, Lithuania, Malta, Poland, Portugal, Romania, Scotland, Spain, Sweden -**16** (all)
- **Freezing-blocking effect:**
 - Yes: Estonia, Finland, Italy -Agenzia-, Latvia, Lithuania, Poland, Sweden -**7**
 - NO (just warning 3rd parties): Austria, Croatia, Estonia, Ireland, Italy – Libro Fondiario-, Malta, Portugal, Romania, Spain, Scotland -**9**
- **Duration**
 - **Indefinite:** Austria, Croatia, Finland, Ireland, Italy -Agenzia-, Italy – Libro Fondiario-, Latvia, Lithuania, Malta, Poland, Portugal, Romania, Sweden -**13**
 - **Temporary:** Scotland, Spain -**2**
 - **Not answered:** Estonia -**1**

Notice of prohibition of disposal

- **Notice of prohibition of disposal included in the system:**
 - Yes: Austria, Croatia, Estonia, Finland, Italy -Agenzia-, Italy –Libro Fondiario-, Latvia, Lithuania, Malta, Poland, Portugal, Romania, Spain, Sweden **-14**
 - NO: Ireland, Scotland **-2**
- **Freezing-blocking effect:**
 - Yes: Austria, Estonia, Finland, Latvia, Lithuania, Malta, Romania, Scotland, Spain, Sweden **-10**
 - NO (just warning 3rd parties): Croatia, Italy -Agenzia-, Italy –Libro Fondiario-, Poland, Portugal **-5**
 - Not applicable: Ireland **-1**
- **Duration**
 - **Indefinite:** Austria, Croatia, Estonia, Finland, Italy -Agenzia-, Italy –Libro Fondiario-, Latvia, Lithuania, Malta, Poland, Scotland, Sweden **-12**
 - **Temporary:** Romania, Spain **-2**
 - **Not applicable:** Ireland, Portugal **-2**

Notice of limitation of disposal

1. Notice of LIMITATION of disposal included in the system:

- Yes: Austria, Croatia, Estonia, Finland, Ireland, Italy –Libro Fondiario-, Lithuania, Poland, Portugal, Romania, Spain, Sweden - **12**
- NO: Italy -Agenzia-, Latvia, Malta, Scotland -**4**

2. Freezing-blocking effect:

- Yes: Estonia, Ireland, Lithuania, Portugal, Romania, Spain -**6**
- NO (just warning): Austria, Croatia, Finland, Italy –Libro Fondiario-, Poland -**5**
- Not applicable: Italy -Agenzia-, Latvia, Malta, Scotland, Sweden -**5**

3. Duration

- Indefinite: Austria, Estonia, Finland, Ireland, Italy –Libro Fondiario-, Latvia, Lithuania, Poland, Portugal, Romania -**10**
- Temporary: Spain -**1**
- Not answered: Croatia, Italy -Agenzia-, Malta, Scotland, Sweden -**5**

Notice of constraints of use or possession

- **Notice included in the system:**

- Yes: Austria, Estonia, Italy –Libro Fondiario-, Poland, Latvia, Spain -6
- NO/Not applicable: Croatia, Finland, Ireland, Italy -Agenzia-, Lithuania, Malta, Portugal, Romania, Scotland, Sweden -10

- **Freezing-blocking effect:**

- Yes: Latvia -1
- NO (just warning 3rd parties): Austria, Estonia, Italy –Libro Fondiario-, Poland, Spain -5

- **Duration**

- Indefinite: Austria, Estonia, Italy –Libro Fondiario-, Poland, Latvia, Spain -6
- Temporary: Spain (both) -1

A notice apparently not so generally envisaged...

- Not really? Sequestration by judicial order? Aren't there any cases in which a court decrees restrictions of the use of a house or real estate? Or prohibits to someone to use a house or real estate?
- Is a this restriction included in the limitations of disposal?

Notice of proceeding of confiscation

- **Notice of confiscation included in the system:**

- Yes: Austria, Croatia, Estonia, Finland, Ireland, Italy -Agenzia-, Italy –Libro Fondiario-, Latvia, Malta, Poland, Portugal, Romania, Spain, Sweden -14
- NO: Lithuania -1
- Not available: Scotland -1

- **Freezing-blocking effect:**

- Yes: Austria, Croatia, Finland, Latvia, Lithuania, Malta, Romania, Scotland, Sweden -9
- NO (just warning 3rd parties): Austria (both), Estonia, Ireland, Italy -Agenzia-, Italy –Libro Fondiario-, Spain, Poland, Portugal -8

- **Duration**

- Indefinite: Austria, Finland, Ireland, Italy -Agenzia-, Italy –Libro Fondiario-, Latvia, Poland, Portugal, Romania, Scotland, Sweden -11
- Temporary: Spain -1
- Not applicable: Estonia -1
- Not answered: Croatia, Lithuania, Malta -3

Notice of foreclosure

- **Notice of foreclosure included in the system:**

- Yes: Austria, Croatia, Estonia, Finland, Italy -Agenzia-, Italy –Libro Fondiario-, Lithuania, Malta, Poland, Romania, Scotland, Spain, Sweden **-13**
- NO: Ireland **-1**
- Not available: Portugal **-1**
- Not applicable: Latvia **-1**

- **Freezing-blocking effect:**

- Yes: Croatia, Finland, Malta, Sweden **-4**
- NO (just warning 3rd parties): Austria, Estonia, Italy -Agenzia-, Italy –Libro Fondiario-, Lithuania, Poland, Romania, Spain **-8**
- Not applicable: Ireland, Scotland, Latvia, Portugal **-4**

- **Duration**

- Indefinite: Austria, Croatia, Finland, Italy –Libro Fondiario-, Lithuania, Malta, Poland, Romania, Spain, Sweden **-10**
- Temporary: Italy **-1**
- Not answered: Estonia **-1**
- Not applicable: Ireland, Scotland, Latvia, Portugal **-4**

Notice of enforcement

- **Notice of enforcement included in the system:**
 - Yes: Austria, Croatia, Estonia, Finland, Ireland, Italy -Agenzia-, Italy –Libro Fondiario-, Malta, Scotland, Spain, Sweden **-11**
 - NO: Lithuania, Sweden (maybe both in practice in this context) **-2**
 - Not applicable/No answer: Latvia, Poland, Portugal, Romania **-4**
- **Freezing-blocking effect:**
 - Yes: Finland, Malta **-2**
 - NO (just warning 3rd parties): Austria, Croatia, Estonia, Ireland, Italy -Agenzia-, Italy –Libro Fondiario-, Lithuania, Scotland, Spain, Sweden **-10**
 - Not answer: Latvia **-1**
 - Not applicable: Poland, Portugal, Romania **-3**
- **Duration**
 - Indefinite: Austria, Croatia, Estonia, Finland, Ireland, Italy –Libro Fondiario-, Lithuania, Malta, Spain, Sweden **-10**
 - Temporary: Italy **-1**
 - Not answered: Latvia, Scotland **-2**
 - Not applicable: Poland, Portugal, Romania **-3**

Notice of insolvency proceeding

- **Notice of insolvency proceeding included in the system:**

- Yes: Austria, Croatia, Estonia, Finland, Ireland, Italy -Agenzia-, Italy –Libro Fondiario-, Latvia, Lithuania, Malta, Poland, Portugal, Romania, Spain, Sweden **15**
- NO: Scotland **1**

- **Freezing-blocking effect:**

- Yes: Austria, Estonia, Ireland, Latvia, Malta, Spain, Sweden **7**
- NO (just warning 3rd parties): Croatia, Italy –Libro Fondiario- Italy -Agenzia-, Latvia (both), Lithuania, Poland, Portugal, Romania, Spain (both) **9**
- No answer: Finland

- **Duration**

- **Indefinite:** Austria, Estonia, Italy -Agenzia-, Italy –Libro Fondiario-, Latvia, Lithuania, Malta, Poland, Portugal, Romania, Spain, Sweden **12**
- **Temporary:** Ireland, Spain (both) **2**
- **Not answered:** Finland, Croatia **2**

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Notices on eviction

- Quite unusual
 - responses reveal it is not applicable or not envisaged by the national legislations
- However, some CPs realize that they are hypothetically possible in their systems

Conclusions

We can find a **minimum common denominator** for the *Notices*, managing 3 issues for depicting each type of notice:

1. Legal purpose

- *For classifying our taxonomy of notices*

2. Effects

- *Freezing/Blocking following applications of registration*
- *Just a warning to third parties*

3. Duration

- *Temporary/Indefinite*

(Of course, from then on we may add new relevant issues as they come up from the ELRN workshops)

Conclusions

- In relation to the FPA we are in situation of collecting material for a factsheet (it is a deliverable)
 - Focusing on the 3 main features of the notices;
 - Adding the CPs' comments to point out the specifics;
 - Indicating the legal sources
- For IMOLA purposes, we could
 - Get attributes on the basis of these issues
 - Develop them (to make them more accurate)

If you see any error or consider it appropriate to clarify anything, let me know it. Please, send me an email to jlopez@registradores.org !

Thank you for your attention

