

ELRA POSITION ON DIGITALISATION OF JUSTICE

Introduction

The European Land Registry Association has been informed of the publication of the Communication on Digitalisation of Justice in the European Union by the European Commission on 2 December 2020.

This Communication aims to make judicial cooperation in cross-border matters more effective as a result of COVID-19 encouraging the authorities involved in each country to use digital technology, rather than paper, to communicate and to provide legal information. Its purpose is to improve access to justice by ensuring that individuals, companies and legal practitioners involved in cases can communicate digitally with the competent authorities in other countries.

General Principles:

1.- The information of the Land Registry is open in some countries while in others is only at disposal of those who have a “legitim interest”. Moreover, the different position of the applicants will determine different degree of access to the land registry information (e.g. a judge will be granted with a broader access that a private person). An electronic request of land registry information must identify the person who applies for it, and if possible also the position or the attributes of the applicant.

When we come to the information delivered from the land registers, due to the big disparity of land registration systems existing in the EU, it is crucial that the information is presented in a manner that is accurately understood. ELRA is in favour of the re-use of instruments already approved by ELRA such as the ELRD document as a model for an interconnected land registration response. More over, tools as the one developed by IMOLA project, shall be very useful.

2.-The second point of connection of the registers with electronic judicial cooperation will be with the receipt and registration of documents. Land registries are natural receivers of judicial documentation (confiscations, claims, judicial dissolutions of marriages, divorces..). It would be advisable to open a channel for the electronic sending and receiving of documents, with assured security, that must comply with national requirements, both substantive and technical, for access to legal registers.

So, technological neutrality for the submission of documents according to the specifications of each Member State.

The use of a platform at a European level, in the same sense as the the Land Registers Inter - connection might be very useful.

3.- The third point of connection is given by the nature of the document, only if it is electronic can it circulate in the environment it is intended to be used. Such a document should comply with the technological conditions that allow it to be read and processed, in addition to the substantive requirements of authenticity and minimum content required by national law.

4.- Due to the important effects derived from registration, national land registration law mainly accept qualified documents, authentic acts, and judicial decisions. In these cases the document must be authenticated or the decision must be certified by the issuing authority. Even in those cases when not authentic documents are accepted in the Land Registry, land registries would mainly accept documents in such a format that guarantees its integrity and a proper identification of the interested parties. Exceptions to the qualified documents should be assessed on individual basis, considering the particularities of the countries.

Moving to the digital world, we should not reduce in any manner the degree of reliability of the document.

5.- Electronic Identification is also of capital importance for the Land Registry an indisoutable identification of the individual who signs the document and also of the one who submitss the application to the register. Any electronic document presented to the Land Registry should be electronically signed with qualified electronic signature envisaged in the Regulation (EU) No 910/2014 of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market .

Therefore:

ELRA, with full respect for the national Land Registry systems, its organization and management, considers itself to be in favour of the proposal to increase the level of digitisation in cross-border judicial cooperation, but understands that this approach should be on a voluntary and progressive basis, with technological neutrality and full respect for the material and formal requirements of each Member State.

Digitalisation should be in a way that it does not limit access to justice in countries that are not yet technologically ready.

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