

ELRA XXXI GENERAL ASSEMBLY

DATA PROTECTION & LAND REGISTRY

Juan Pablo Murga Fernández
Associate Professor of Civil Law
University of Seville
jpmurga@us.es

PRELIMINARY ISSUES

- **Current and familiar expressions:**
 - Big data, artificial intelligence, interoperability of data, data broker...
- Meglena Kuneva: “personal data is the new oil of the internet and **currency of the digital market**”
- Growing importance of guaranteeing the **right to the protection of personal data** → General Data Protection Regulation
- **Essential question:** can the characteristic publicity of the Land Registry be reconciled with the protection of personal data?

PRELIMINARY ISSUES

□ Structure:

1. Basic data protection issues and concepts
2. Essential characteristics of the registry systems and its purpose
3. Connect the two issues, based on the study of different controversial points

1. BASIC DATA PROTECTION ISSUES

- Right to the protection of personal data: **Fundamental right** (art. 8 of the EU Charter of Fundamental Rights)
- **Personal data:** “Any information relating to an identified or identifiable natural person”
- **Processing:** “Any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means...”
- **Data controller:** “The natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data”
- **Lawfulness of processing:** Conditions for the validity of processing operations on the personal data of another person

2. THE LAND REGISTRY AND ITS PUBLICITY

- **Land registry** → Instrument to generate publicity and a legal appearance that can be protected
- **Protection** of those who trust in their content → Presumptions that affirm the identity between the reality of the register and that which exists outside the register
- **Security** to legal-economic transactions → Specific manifestation of **legal certainty**
- **Without publicity**, land registers would lose the very justification for their existence

3. PUBLICITY IN THE LAND REGISTRY AND THE RIGHT TO PERSONAL DATA PROTECTION

- A. Does the Land Registry contain personal data and does the answer vary depending on how the Land Registry is organized - personal folio/real folio systems?
- B. Does the land registry carry out processing of personal data and who is the data controller?
- C. Does the GDPR apply to the Land Registry?
- D. Which system of access to the registry data is the most suitable?

A. Does the Land Registry contain personal data?

- All land registries contain **information** on immovable property that is **related to a person** (the holder of the right or interest) → Personal data
- Characteristic of all systems, regardless of how they organise their registry books → Personal/real folio
- Some of the data contained in the Registry may qualify as “**special category of data**” → data revealing sexual orientation or mental health
 - The processing of special categories of data is, as a general rule, **prohibited**; and this rule is only exempted in the specific cases provided for in Art. 9.2 GDPR
- All the information contained in the Land Registry is **strictly necessary?** (“data minimisation”)

B. Does the land registry carry out processing of personal data / who is the data controller?

- Fundamental **processing operations**:
 - **Collection** of personal data → Consent of the data subject
 - **Disclosure** of the registry information offered through the publicity of the registry → compliance with a legal obligation + performance of a task carried out in the public interest
- **Data controller** → **Registrar**: responsible for the fulfilment of each and every one of the obligations and guarantees established by the data protection regulations

C. Does the GDPR apply to the Land Registry?

- **Art. 2.2.a) GDPR** → The registry constitutes an **activity which falls outside the scope of Union law**, thereby the exclusion from the application of the GDPR
- Spanish LOPDGDD expressly establishes in its **art.2.3** → “(...) shall be governed by the provisions of their **specific legislation**, if any, and **supplementarily** by the provisions of the aforementioned regulation and this Organic Law”
 - Must we apply the regime contained in the GDPR directly and in its entirety?
 - Or would it make more sense to contemplate **special regulations** or provisions to guarantee the right to data protection within the peculiar characteristics of the Land Registry?

D. Which system of access to the registry data is the most suitable?

- **The land registry is and must be public:**
 - **Free and indiscriminate access** by anyone to the contents of the Registry (Netherlands)
 - **Restricted access** by means of the need to prove a “**legitimate interest**” in accessing its contents (Germany, Spain)
- **Spanish system** (arts. 607 CC, 221 LH, 332.3 RH)
 - The evaluation of this interest is carried out by the registrar
 - Interest:
 - Known
 - Legitimate
 - In accordance with the purpose of the Land Registry → Legal research (property, economic research)

D. Which system of access to the registry data is the most suitable?

□ Advantages and disadvantages of this system:

□ Advantages:

- Enables a proven way to protect personal data without detriment to the publicity principle
- The legitimate interest test is flexible so it can adapt for changing perspectives on who should be provided access

□ Disadvantages:

- It can slow down access to information
- The decisions can vary from one Registry to another when evaluating the existence of the legitimate interest

□ These disadvantages can be **overcome**:

- Clear and uniform criteria for the assessment of the legitimate interest are established
- Existence of different layers of information