



# **STUDY ON THE FREE MOVEMENT OF PUBLIC DOCUMENTS IN THE EU LR**

## **BUILDING AN ELRA CONSENSUS**

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**ELRN WORKSHOP, Stockholm**

## CONSENSUS IN LR

- 1<sup>o</sup> Free movement of titles relevant to IM
- 2<sup>o</sup> Titles from other EM treated as equal
- 3<sup>o</sup> Avoid double documentation
- 4<sup>o</sup> Digital revolution should not harm
- 5<sup>o</sup> In any case LR law of LR of destination must prevail

## **THIS IS NOT SOMETHING NEW**

- ◎ **1. BRUSSELS 1 REGULATION**
- ◎ **2. REG 650/2012**
- ◎ **3 REG 2016/1103 & 2016/1104**

**THE AIM IS TO EXPAND THIS LEGISLATION**

Recitals 27 and 18 of reg 2016/1103 &  
1104 and 650/2012:

**«In order to avoid duplication of documents, the registration authorities should accept such documents, drawn up in another Member State by the competent authorities the circulation of which is provided for by this Regulation.»**

**AND**

**«The requirements for the recording in a register of a right in immovable or moveable property should be excluded from the scope of this Regulation. It should therefore be the law of the Member State in which the register is kept (for immovable property, the *lex rei sitae*) which determines under what legal conditions, and how, the recording must be carried out»**

**AND**

Recitals 28 and 19 of reg 2016/1103 &  
1104 and 650/2012:

**«The effects of the recording of a right in a register should also be excluded from the scope of this Regulation. It should therefore be the law of the Member State in which the register is kept which determines whether the recording is, for instance, declaratory or constitutive in effect.»**

## **FIRST CONSENSUS**

**APPLICABLE LAW = LR LAW**

- . Transfer of property or right in rem**
- . Requirements for registration. CJEU 9th/3**
- . Registration effects**

## **Any other issue like...**

- . Problems about the deed
- . Problems about the personal capacity...

**Out of scope**



## SECOND CONSENSUS

### JURISDICTION = LR ME

- . Validity of the entry
- . Effects and value of the entry

## **NOTHING NEW:**

**Brussels I: «Article 24. The following courts of a Member State shall have exclusive jurisdiction, regardless of the domicile of the parties:**

**(1) in proceedings which have as their object rights in rem in immovable property or tenancies of immovable property, the courts of the Member State in which the property is situated.»**

## THIRD CONSENSUS

### MUTUAL RECOGNITION AS A PRINCIPLE

- . EU definition of public document as in Brussels I and 2016 and 650 regulations
- . Solution must be seek for those ME without such concept

- . No legalisation BUT verification of authenticity when no electronic signature
- . Necessary translation BUT not a task for LR
- . European acces to digital platforms of different LR

## A PATH ALREADY DEVELOPING

### NEW EUROPEAN INITIATIVE TO MODIFY COMPANY DIRECTIVE

- . Free movement of documents in BR
- . No legalisation at all BUT reasonable doubt
- . Necessary translation BUT some exceptions

## CONCLUSIONS

- . THE TIME HAS COME TO ADDRESS THE ISSUE AND REINFORCE INTERNAL MARKET
- . IN DOING SO THE GUIDELINES ALREADY EXISTS IN EUROPEAN LAW. FROM EXCEPTION TO PRINCIPLE
- . FULL RESPECT TO LR NATIONAL LAW
- . CONSENSUS EXISTS BUT ALL ACTORS INVOLVED MUST EXPRESS THEIR POINT OF VIEW

## QUESTIONS

**. What are the main challenges your Land Registry organisation faces in the event that the free movement of documents is established in the European LRs? Digital standards, authenticity, verification mechanisms...**

**THANK YOU !!!!**



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