



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

THE ELRA PROPOSAL

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ELRN WORKSHOP, Madeira. Funchal

THE STARTING POINT:

LEX REI SITAE

1^o MS law as applicable law both to substantive regulation as to registration.

2^o MS courts as competent in land disputes

**SO ESTABLISHED BY EUROPEAN LAW
& RECOGNISED BY EUCJ**

THE IMMOVABLE MARKET REQUIRES FORMALITY

- ◎ **THE VALUE**
- ◎ **SOCIAL IMPORTANCE**
- ◎ **PUBLIC PURPOSES: TAXES, STATISTICS,
OTHER...**

THE RESULT: A DEED IS REQUIRED

DEEDS ARE MOVABLE

EACH MS HAS THEIR OWN RULES

EU LAW IS VERY LIMITED

THE BIG QUESTION:
SHOULD THE EU TAKE AN ACTION?
IS IT EVEN POSSIBLE?

YES

THE TEU

Art. 5.2: “Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States”

THE TEU

Art. 5.3: “Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level”.

THE TEU

Art. 5.4: *“Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.”*

THEN:

**1^o There is EU competence: TFUE
sections 67.4 y 81.1**

**2^o There is subsidiarity: double
documentation and digitalitation
restrictions**

**3^o Proportionality is granted by EU law
& MS**

CHALLENGES:

1^o AUTHENTICITY

2^o LANGUAGE

TOOLS

1° IDAS REGULATION

2° E-JUSTICE

3° E-CODEX

THE PROPOSAL

**1° ONCE ONLY ACCES TO A EU
PLATFORM**

2° ACCES TO INFORMATION

3° SOUND TRANSFER OF DEED

CONCLUSSIONS:

**1^o ONLY THE EU CAN ADRESS THE
ISSUE**

2^o THERE ARE PRECEDENTS

3^o THERE ARE TOOLS

**4^o THIS IS THE ONLY WAY TO HAVE
A SINGLE AND COMPETITIVE
IMMOVABLE MARKET**

THANK YOU !!!!



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