

E-book IMOLA II



The European Land Register Document (ELRD): A common Semantic Model for Land Registers Interconnection



ACRONYMS

CROBECO	Cross Border Electronic Conveyancing Project
EIF	European Interoperability Framework
ELRA	European Land Registry Association
ELRD	European Land Registry Document
ELRN	European Land Registry Network
EULIS	The European Land Information Service
FBSM	Formant-Based Semantic Methodology
IMOLA	Interconnexion Model for Land Registries
I-KOS	IMOLA Knowledge Organization System
KOS	Knowledge Organization System
LADM	Land Administration Domain Model
LRI	Land Registers Interconnection
LRI-MS	Land Registers Interconnection Member States Project

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Letter ELRA President

Article by **Fernando de la Puente**

It is for me, as ELRA President, an honor to have the opportunity to present this dissemination work of the IMOLA II Project (Interoperability Model for Land Registers), fulfilling one of the commitments acquired with the European Commission.

This new formula for dissemination opens the way for future initiatives focused on promoting the use of new technologies. ELRA has chosen this format given the importance that the IMOLA II project has in relation to the Interconnection of Property Registries and for the harmonization of Land Registry information.

IMOLA II has been a very important challenge for ELRA, both from a legal and semantic point of view, and from a technological and organizational one. And we are sure that we have successfully overcome it thanks to the efforts and collaboration of all the professionals involved in the project, especially to the feedback provided by the Contact Points (CPs) of the European Land Registry Network (ELRN), which constitute the basic pillar of the IMOLA II project.

Along with the CPs, there have been other fundamental contributions, such as those from several

Professors and Academics who have participated in the learning seminars, providing the necessary knowledge and teaching material. These Academics have sometimes even discovered new horizons in the fields of Law, Semantics and Technology, starting interesting debates. A basic principle has been to maintain a practical and respectful vision of the competence framework established in the Treaty on the Functioning of the European Union (TFEU).

The management of a project such as IMOLA II has also been a considerable challenge for the association itself. Based on the Project Governance Plan, the IMOLA II Project has been managed through the collaboration and coordination of the Project Manager, Jesús Camy, and the Technical Director, Anabel Fraga, assisted by the Work Stream Coordinators, Jorge López and Mihai Taus, and the ELRA Secretariat.

Nonetheless, IMOLA II would not have been possible without an institutional support, both internally from the Association, and externally from the European Commission.

In this regard, I would like to highlight the support given to the Project by the former Presidents: Wim Louwman, Alasdair Lewis and Jan Moerkerke. From the beginning, they knew how to facilitate the Interconnection of Land Registries in Europe and the harmonization of information to make it more transparent and understandable for citizens, Judicial Authorities, Notaries,

Registrars, Lawyers, etc. In short, to provide a better service to citizens from the Land Register respecting the different national systems.

The financial and institutional support provided by the European Commission has also been essential. The IMOLA I and II Projects have been financed by the EC Justice Program, and ELRA has been in permanent collaboration with DG Justice and DG Digit-SEMIC, which have backed the development of the project in each stage.

IMOLA II has been a project based on the principles of collaboration and consensus, which are also reflected in this e-book. This is a collective work in which all the actors involved in the project have taken part. It has been designed to make the public aware of the advantages of the interconnection of the Land Registries. This interconnection of Land Registries is based on a harmonized registration information, based on a common semantic model, instrumentalized through the ELRD (European Land Register Document) as a common template, and aligned with the European Interoperability Scheme and a repository containing the Land Register context specific core vocabulary.

According to the previous considerations, the content of the IMOLA e-book has been structured in four large sections to facilitate the reading of the book and the correct understanding of the project.

The first section includes contributions of an institutional nature, starting with a work by Fidel Santiago (Project Manager of SEMIC), which shows the possible lines to follow in order to reuse the ISA

Core Vocabularies in the field of Land Registry information (ELRD), together with the Land Register Context Specific Core Vocabulary. The reflections of the former ELRA Presidents who have promoted the IMOLA Project since its beginning in 2014 have also been included in this part of the book.

Later, a series of works focused on the global management of the Project can be consulted. These works cover both the legal-semantic field, as well as the technological, requirements analysis, work methodology and fundamentals of the semantic web, as a support architecture for technological development. The authors are the people involved in the management or development of the Project (IMOLA II Team).

Articles from the Academics who have participated in the Project are also included in this e-book. Research works are essential in projects as innovative as IMOLA. Thanks to them, it has been possible to better understand the impact that Data Economy and Tokenization can have for Land Registry information and, in general, for disruptive technologies in Land Registry Systems (Professor Sjeff van Erp), or the use of new methodologies, such as the “formants,” to define comparative schemes between different property rights systems based on the assignment of attributes to each National Concept, making it possible to comply with the information provisions of the European Regulations by facilitating the application of the adaptation principle (Professor Elena Ioriatti and her assistant, Sara Giacomini).

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ELRA former Presidents

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The inventing of IMOLA

Article by **Wim Lowman**

1. INTRODUCTION

On September 2012, I was driving in my car to an apartment in Italy. I was looking forward to my holiday. It should offer me a possibility to think about the answers to different questions involving ELRA. ELRA had signed a Memorandum of Understanding with Eulis¹ and agreed to cooperate in new projects. Now ELRA intended to start a project to standardize the output from national land administrations. We still had to decide on the organization of the project, the cooperation with EULIS, the financing of the project and the name of the project. When I arrived near Milan, the highway became busier and busier. Italian drivers seemed to assume they were driving in a Ferrari racecar. The result was a collision of cars and a tremendous traffic jam. I had to stop my car and waited hours before I could continue my trip. After cursing my decision to travel on the day before a Formula 1-race, my eyes were caught by traffic signs that guided to the nearby race circuit. The name was

"IMOLA". Suddenly I knew the name of our new ELRA project. The "I" for Interoperability, the "MO" for model and the "LA" for Land Registers, together they formed the perfect abbreviation of

our new project. After returning home I proposed the name to the board of ELRA, who fully agreed. Now we could focus on the other actions that were deemed necessary.

2. THE ACTIONS NECESSARY FOR IMOLA

One of the interesting aspects of being President of ELRA is the possibility to visit foreign EU Land Registries and collect information about their administration. The visits made me aware of the existing juridical differences and the cultural reasons for these differences. I learned that the registration systems and the content of broadly equivalent property rights could differ from one country to another. A mortgage-right in Spain was not the same as a mortgage-right in England, an apartment-right in the Netherlands was not the same as an apartment-right in Germany and so on and so on. Abolishing these differences should ask for a radical change of national legislations and that was no realistic option. However, the new EU Succession Regulation² and other future European Regulations asked for structured easy understandable output from Land Registers. So together with my colleagues from the Board of ELRA, I started searching for methods to provide this type of output without changing the existing responsibilities and legislation. Academics from the European

Law Institute advised us to amplify the national administrations with placeholders for equivalent rights. A suitable ICT tool could export the placeholder to fixed positions in a standardized European Land Registry Document (ELRD). So it seemed possible to present an EU document with the same lay out in the language of each Member State. The placeholders could be linked to a glossary with descriptions of the registration and the exact content of the property-rights in each Member States. By presenting the ELRD together with these explanations, correct juridical information could be assured. This approach should allow national registrars to present ELRD's by means of their own ICT system. Access to the ELRD could be provided by the portals of national ICT-systems that could be connected to the European portal. So, no change of existing liability and responsibility was demanded. What was needed was a predefined ELRD, description and developing of proper ICT tools and a glossary with national explanations. In order to evaluate the progress of this project, conferences and seminars with legal scientists and training of registrars were esteemed necessary.

3. THE ORGANIZATION OF THE PROJECT

ELRA considered it of crucial importance that local specialists should have an opportunity to comment on and guide the progress of the project. For that reason, we decided to repeat the type of project-organization that had proved successful during the previous CROBECO project. It consisted of a Steering Committee for overall management and separate project

teams for specific topics. Because of the different national legislations, the IMOLA Steering Committee should consist of representatives from five Member States with different juridical systems. The ELRA President should be the overall project-manager. Specific project teams with specialists were foreseen for Land registry output, ICT solutions and seminars and conferences. The team for Land Registry Output should define the template of the European Land Registry Document. The team for seminars and conferences should focus on the glossary. The ICT solution team should govern the ICT activities and organize a tender to select a company for developing ICT tools. The selecting of this company should be the responsibility of the Steering Committee and be based on advice from the ICT project-team. This team should also control the progress and advise on payments by the Steering Committee.

4. NO EUROPEAN SUPER-REGISTRAR

After deciding on the actions, I started working on the text of the application for a grant from the Commission. A draft was sent to EULIS for comments. Nowadays EULIS does not exist anymore but in 2013 EULIS was still "alive and kicking". They governed a portal for presenting output from several Land Administrations and should like to become the manager of the portal for IMOLA. EULIS answered that they preferred to keep IMOLA simple by limiting all the output from IMOLA to that of a registration that complied with the Land Administration Domain Model (LADM)³.

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³ <https://www.gim-international.com/content/article/land-administration-domain-model>

¹ <https://www.elra.eu/mou-elra-eulis/>

² <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R0650&from=EN>

IMOLA: the ELRA's vision of Land Registers Interconnection

Article by **Alasdair Lewis**

The European Union is built on four 'pillars' or 'freedoms'; the free movement of goods, services, capital and labour. These 'four freedoms' were enshrined in the 1957 Treaty of Rome and reinforced in the Single European Act in 1986, the 1992 Maastricht treaty and the Lisbon treaty of 2007. To exercise these freedoms to their fullest extent, European citizens need to be able to buy, sell and mortgage real property in every country of the Union. To this end, the European Commission and Council have sponsored and supported several projects to help individuals and businesses, and the professionals advising them, to obtain information regarding real property and to transact cross-border. As citizens have increasingly exercised their freedoms, and capital and people have moved across the continent, law enforcement agencies, insolvency practitioners, those involved in resolving matrimonial disputes and others have also needed to obtain information regarding real property located in other countries.



The EULIS (The European Land Information Service) Project, which started in 2001, built an on-line portal which allowed

property professionals to order land registry information cross-border. The portal allowed the professional to place the order in their own language and pay for the information with their own currency. The initiative has been superseded by the Interconnection Project referred to below and the EULIS portal was closed in May 2017.

The CROBECO (Cross Border Electronic Conveyancing) Projects were led by ELRA (European Land Registry Association). The aim of the projects was to facilitate cross border conveyancing by allowing a suitably qualified professional (a notary) to prepare a deed in their own country and to then submit it electronically to a land registry in another country. The notary was provided with expert advice through an online resource called NetPRO. As part of the project a Cross Border Conveyancing Reference Framework was developed to give the notary the tools they need to transact cross-border.

The LRI (Land Registries Interconnection) Project is an initiative of the European Commission. The aim of the project is to provide, on the European E-Justice Portal, a single access point for searching and obtaining land property information from the land registers of member states of the European Union. This initiative is taking forward and building on the EULIS Project.



These projects have highlighted some of the issues that make it difficult to deal with real property cross-border. Some of these issues are easier to solve than others. For example, language can create barriers, but technology is increasingly making this less of a problem. The development of glossaries and 'reference information' can also help.

Differences in law can be more of a problem. Real Property law has not been harmonised across the Union and different countries come from very different legal traditions. However, in my view, it is easy to overstate the problems; at the most fundamental level all real property law is seeking the same outcomes and dealing with the same sorts of questions.

Each land registry has developed its own procedures and forms and each jurisdiction has its own rules prescribing who is allowed to prepare a deed and submit it to the registry. Sometimes it is very difficult to explain why such differences need to exist.

Privacy rules, which you would think should be harmonised across the Union, also differ greatly across the EU. Some countries have completely 'open' registers (where anyone can obtain land registry information, including price paid and mortgage information, about any property), some countries have 'closed' registers (where the consent of the owner must be obtained before information is released) and in some countries information is only released to those who can prove they have a 'legitimate interest'. These differences present additional challenges if you are trying to interconnect the land registries.

The original idea behind the IMOLA (Interoperability Model for Land Registers) Projects was that it would be beneficial for customers obtaining land registry information through the E-Justice Portal to have that information presented to them in a common format or template. This idea was explored by ELRA's European Land Registry Network (ELRN), a group of land registry experts. The ELRN comprises 29 ELRA members from 22 countries. The first question the Network set out to answer was whether the land registers maintained by the European land registries have enough commonality to enable a common template to be created.

The Network quickly established that every land register is organised following an 'A B C' format. This format applies not just to title registers (that are typically organised by property) but also to deeds registers (that are typically organised by person). The ELRN went on to run a number of workshops to look at each part of the register in turn.

The 'A' part of the register describes the property (or parcel) that is the subject of the registration. We found a number of different ways in which the properties are described, for example, property address, co-ordinates and unique reference numbers. Typically there is also reference to a plan, either a plan created by the land registry or a cross-reference to a cadastre. Very often these descriptors are used in combination, such as a property address together with reference to a plan.

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IMOLA II, the ELRA's commitment with European citizens: opening a collaboration framework with EU authorities

Article by **Jan Moerkerke**

The aim of this contribution is to situate the IMOLA II project within a broader context of the European legislation on property and real estate and the Land Registers Interconnection program, which is to be a part of the E-Justice platform. Although finally IMOLA II itself will not be too much in the picture, I hope the importance and the progressive approach of the program may become clear.

The world is becoming a village. We buy an electronic component at a low price at the Alibaba platform in China. We pay it through a smoothly working payment system. The platform contacts a company that can provide you with the goods and a few day later the parcel is delivered at your door, just in time as promised. During the whole process you can follow the status at all time.

Within Europe we might expect the same ease of action when it comes to real estate transactions and getting them registered properly. But unfortunately, that is not so.

As well as the platform economy has

certainly generated economy as such, we may be convinced that a seamless way of trading real estate within the European Union would equally enhance the markets. But unfortunately, the actual situation is not at all ready for that.

Theoretically there is an open market, but practically many obstacles occur, preventing a trouble-free transfer of real rights. This is often a very frustrating situation for all parties involved. Cross border contracts and inheritances cause numerous problems due to differences in the national legislations and practices and also due to discussions on what may be the applicable law.

It is obvious that the European Union and actors in the market produce efforts to improve this situation. First of all, there are legislative initiatives of the European Union itself. Often it is regulations interfering in private contract law, applicable in the context of the transition of real estate as well. Next to that there are several efforts made to support policies in a more practical way for example by offering information on electronic platforms. Several professional organizations are co-operative and are able to launch projects favorable to integration, supported by the European Union. A few of them have resulted in operational tools. Nevertheless we must admit that the



situation is not optimal and a lot of improvement still is possible.

In fact, it are the provisions of the Treaty of the European Union that have prevented the creation of a substantive EU property law. There is no European owner, no European ownership. The extend and the legal meaning of "Rights in Rem" may differ in the Member States. There is no European Land Register. The rules for registration and the guarantee the systems deliver differ, state by state, and so on.

Competence does exist to regulate transactional aspects of dealings with land, since land is a form of capital, but cross border acquisitions of land have rarely reached EU agendas. This is a sharp contrast with the effort devoted to ensuring that cross border acquisitions of goods are unrestricted. The difference perhaps stems from the facility with which movables can be transported from one Member State to another. Land is immovable and tied to its site and its location within a particular Member State. There is no compelling case for a single land law. Immovability prevents land itself, and most rights in land, from crossing a border from one legal system to another. Land is characterized by a fixed site. However, there are things which are legally immovable, but which can in fact cross national boundaries, one obvious example being mortgage lending.

This ties a particular parcel of land to a single Member State and determines both the law to be applied to disputes about the land and the forum in which disputes are to be resolved. Europe in fact respects the territoriality of its Member States in relation to land. Classification

of a particular thing as an immovable determines the conflict regime, and its allocation to a particular property system according to its site. The land regime is based on site-based exclusive forums, the differentiation of property rights and personal obligation, selection of the land law of the site and the mutual recognition of property judgments.

On the other hand, we notice that recent legislations give the impression that this strict borders is starting to fade. The pressure of markets, professionals and public are so strong that sooner or later a more substantive part of the real estate market and securities may be organized at European level.

Up until now all national systems share a single conception of personal obligation whereas there are fundamental disagreements about the conception of property between civil law codes and the common law, so there can be no certainty that it would be technically feasible to codify a European land law. Whether or not this is the case, the political climate shows that a property codification is inconceivable.

All EU-28 Member States assert their territoriality through the enactment of a specific law regulating the land and sea ownership, as an essential pillar of their private law systems with effects in their administrative law (e.g. planning, taxation) and family and succession laws. Land laws, registers and conveyance systems are essentially site based. EU-28 has close to fifty land laws on account of the regionalism of many member states.

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European
Commission

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Reusing ISA core vocabularies in the European Land Registry Document -ELRD- schema

Article by **Fidel Santiago**, Interoperability Unit, Directorate General for Informatics

1. INTRODUCTION

The main objective of semantic interoperability is that *what is exchanged is also understood*, paraphrasing the European Interoperability Framework. Thanks to the *interconnectedness* of today's society and the expectations of citizens and businesses, semantic interoperability is more important than ever. Land registries information is a valuable asset for our society in more ways than only from an economic point of view. In Europe, it is crucial to be able to exchange this information and to access it across language and cultural barriers.

The European Commission is aware of the importance of interoperability and the value of connecting public administrations. The European Commission has supported, and still does, efforts in this field through different European Union programmes such as ISA², ISA, IDABC, etc. One of the main outcomes of this investment is the creation and evolution of the European Interoperability Framework that recognizes the

importance of semantic interoperability. Grandchildren of these programmes and framework are the e-Government Core Vocabularies. They are simplified, re-usable and extensible data models that represent fundamental building blocks when addressing any particular semantic interoperability challenge.

This chapter will address the relationship between the particular reality of semantic interoperability in land registries and these *simplified models*. The reader will learn about the European Interoperability Framework and the e-Government Core Vocabularies and their relationship to the European Land Registry Document. Due to its importance for interoperability in Europe in general, and for *semantic interoperability* in particular, the ISA² Programme and its SEMIC action will be described as well.

2. THE EUROPEAN INTEROPERABILITY FRAMEWORK

The European Interoperability Framework¹ (EIF) is a conceptual framework supporting interoperable²

¹ Communication from the Commission to the European Parliament, the Council, the European Economic Social Committee and the Committee of the Regions: European Interoperability Framework – Implementation Strategy (COM(2017) 134 final) <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52017DC0134>; https://ec.europa.eu/isa2/eif_en and [the EIF brochure](#).

² In the EIF, interoperability is understood as 'the ability of organisations to interact towards mutually beneficial goals, involving the sharing of information and knowledge between these organisations, through the business processes they

cross-border and cross-domain digital public services. It offers recommendations on how to improve governance of interoperability activities, establish cross-organizational relationships and streamline processes supporting end-to-end digital exchanges.

The EIF recommendations are organized and complemented by *interoperability principles*, an *interoperability model* and a *conceptual model*. The interoperability principles are 'fundamental behavioral aspects to drive interoperability actions'³ and provide guidance on the values behind interoperability decisions. The interoperability model includes '(1) four layers of interoperability: legal, organizational, semantic and technical; (2) a cross-cutting component of the four layers: integrated public service governance; and (3) a background layer on interoperability governance'⁴. (See Figure 1.)



Figure 1 – EIF interoperability model

The conceptual model 'comprises loosely coupled service components interconnected through shared infrastructure'⁵. The model's structure contains (1) 'integrated service delivery' based on a 'coordination

support, by means of the exchange of data between their ICT systems' EIF Brochure p. 5.

³ Ibid. p. 9.

⁴ Ibid. p. 22.

⁵ Ibid. p. 33.

function' to remove complexity for the end-user; (2) 'no wrong door' service delivery policy to provide alternative options and channels for service delivery, while securing the availability of digital channels (digital-by-default); (3) reuse of data and services to decrease costs and increase service quality and interoperability; (4) catalogues describing reusable services and other assets to increase their findability and usage; (5) integrated public service governance; and (6) security and privacy. (See Figure 2.)

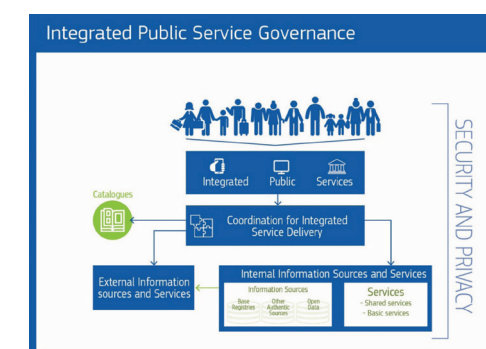


Figure 2 – EIF conceptual model

The EIF has a long history. It was developed in 2013 and published in 2014 thanks to a collaborative effort of the European Commission and EU countries represented in an expert group. This spirit and actual collaboration are maintained in the evolution of the framework. Since the EIF inception, different EU programmes dealing with interoperability and digital public services have supported the framework. In the past, it was IDA, IDABC and ISA, and currently it is ISA². More information on these programmes is available below.

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IMOLA Management

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IMOLA II overall management vision

Article by **Jesús Camy**, Project Manager and **Anabel Fraga**, Technical Director

1. INTRODUCTION AND AIMING

IMOLA II is a follow up project, very innovative as from the juridical as from the technological view, promoted by the European Land Registry Association -ELRA- and created to facilitate the effective implementation of the European Regulations according to the following objectives:

- To make up a common template, the European Land Registry Document (ELRD) to share the Land Registry Information, providing support to the institutional action deployed by the European Commission regarding the Land Registry Interconnection project (LRI).
- To define a common semantic model applicable in the field of Land Registers, Core Context specific vocabulary for Land Registers (LRV), in order to provide a harmonized Land Registry information within the European Interoperability Framework (EIF).
- To set up a multilingual thesaurus built upon semantic web architecture and technologies (I-KOS) increasing the transparency, certainty and understanding as regards the legal meaning and effects of LR information
- To make possible the adaptation principle and other EU policies such as the prevention of money laundering and European immovables single market.

IMOLA II basically pursues to solve the problems stemming from the increased demand for Land Registers information to registration of foreign documents and judicial decisions, establishing local equivalents for foreign legal rights, in order to get an efficient implementation of EU Regulations on civil and commercial matters, what makes new demands on registrars, judges, academics, solicitors, notaries, lawyers, and citizens. They will need to have improved knowledge of foreign property rights, registration systems and legislation and to provide understandable information through the e-Justice portal. The European Court decision on 12/10/2017 (Kubicka case), regarding the scope of European Inheritance Regulation EU 650/2012 might be a good example of its utility.

Furthermore, when citizens and enterprises get involved in legal

relationships or inheritance situations with immovable assets, their personal statute interacts with the real statute of property rights on land. The EU instruments in the field of civil justice take into account this situation and state that the nature of property rights, the registration rules and the effects of registration are out of their scope and remain under the national law of the Member States (MS). But it is also certain that all EU Regulations demand to be effective a wide information system based on judicial and registers networks, factsheets, official publications, and more. This aim is claiming to develop an information ecosystem integrated on e-Justice portal enhancing from it the framework of judicial cooperation on civil and commercial matters.

Therefore, there is a need to bridge the gap between national property rights and Land Registers Systems and EU law in order to allow Land Registers to deliver legal certainty at EU scale. Hence more is needed to provide the necessary tools and semantic web technologies, to obtain all the potential advantages from the interconnection. Thus, it is essential to define a common semantic model that makes understandable Land Registers Information supported by an explanatory material: glossaries and thesaurus as formal model vocabulary, called LRV.

2. A COMPLEMENTARY PROJECT FOR LAND REGISTRY INTERCONNECTION (LRI)

The Land Registry Interconnection (LRI) is the last stage to close the schema to keep interconnected the different juridical, business and population Registers in the EU, that should be completed with the LRI project. This institutional action

which started with the Business Registers Interconnection System – BRIS Directive-, was followed by the EU Regulation 2015/848 on Insolvency Proceedings and more recently on the Beneficial Ownerships Register, whose provisions has been set out in the Directive (UE) 2018/843 of 30 May 2018 to prevent Money Laundering or Terrorist Financing, whose article 32.b envisages that Commission “*Shall submit a report to the European Parliament and to the Council assessing the necessity and proportionality of harmonizing the information included in the registers and assessing the need for the interconnection of those registers. Where appropriate, that report shall be accompanied by a legislative proposal*”, which must be raised by the Commission to the Conseil and European Parliament before 31 December 2020.

So, the LR Interconnection is a key issue to make daily life issues easier for European Citizens, given that the cross-border transactions are increasing more and more. Trend analysis is clearly showing that this cross-border component can be also perceived as regards the inheritance procedure and judicial resolutions enforcement.

LR Interconnection aims to enhance the effective implementation of EU basics freedoms, strengthen the legal certainty and the accessibility to the registration information from a single access point, e-Justice portal, crucial aspect to foster the European immovable single market and its financing within the schema of a digital Administration supported by an intensive use of new technologies.

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Workstreams Coordinators

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ELRD as a tool to organize registry information of any Land Register system

Article by **Jorge López**, Work Stream 1

1. THE PRIMARY PROPOSAL

Theoretically, a project of creating a tool for exchanging registry information at European level, a ELRD, would be open to different approaches. One of them would be to create an entirely new system, of course (something not very realistic). Another would be to impose one of the existing systems currently (inacceptable for the others). And there could also be a bottom-up approach starting from the mapping of the elements of every European land registration system. The latter is the IMOLA proposal. Such approach intends to include how many more European land register systems better.

In order to build an ELRD, the primary proposal of IMOLA entails:

- 1) to design a **structure** for the template in which information has to be organized, flexible enough to cover all systems if it is possible;
- 2) to decide **data fields** for endowing with content –admitting that it will be only provided insofar it is available in the different national systems– and
- 3) the use of **Semantics** in order to make information from one legal system

understandable to another and create a shared vocabulary for land registration.

Semantics is extremely important for this project. We may start a way towards a European common registry language by means of the factorial description of the national concepts or national elements of information. This first step could well become a vocabulary KOS (knowledge organization system), gathering these national elements around *pivot-terms* or terms-archetypes, conceived with some degree of abstraction for facilitating the association of national elements to them.

To approach the legal meaning of the national legal concepts (rights for example) IMOLA project is relying on the technique of *legal formants*, which has shown to be quite efficient for the aim pursued, since it allows inferring the content and effects of the elements or characteristics of the national information.

Somehow, Semantics is enabling the progress of legal techniques –so important for building European legal categories– such as the concepts of the closest equivalent rights *in rem* (EU Regulation 650/2012) or closest equivalent judicial measures (Brussels I recast). Not to mention the importance of semantic fields (or data fields) for gathering similar or nearby registry terms, which could be managed to create

common pivot-terms, categories of information and labels.

From another point of view, it seems wise to take into account that information does not always have the same goals and interests. We can distinguish territorial information, mostly focused on the physical features of the land –such as use or environmental or urban classification–, from property information, particularly related to legal status –ownership and encumbrances– regarding to a particular plot or piece of land, that is to say, intended for legal purposes as an asset of the market for sales, mortgages, etc.

2. THE TEMPLATE

As is well known, the land registration systems can be divided into title registration systems or deed registration systems, depending on the kind of organization they have. In the first case, the connecting factor of the registry organization or information, the axis of them, will be a property or real estate. In the second one, the connecting factor will be a person (natural or legal). In this regard, all registrations related to a property can be found duly ordered in a title system, while the deed system consists of a collection of the deeds concerning to a person. The title system is based on the real folio; the deed system, on the personal folio.

This fact –registry information is organized by real folio or personal folio– leads to an initial choice in order to define any land register information system. It is difficult to be neutral in this respect. The land register interconnection project (LRI project) has not been neutral. From the very beginning (terms of

reference) LRI opted for a land/property template, although it did not ignore the differences between both systems.

Certainly, the most extended impression is that a title registration system is likely the best option. At international level it appears so. IMOLA project involves mostly a choice of a property template for organizing registry information. It can be explained by the international overview in land registration and the influence of the LRI –the first relevant European project in land registration matters– but also by the awareness of the majority of the members of ELRA.

However, the deed systems must be taken into account. Probably a property template is not the most natural environment for them, but IMOLA also involves efforts for including them in its schema. Besides, we should not exclude the possibility of organizing information based on the person. Definitely not because sometimes, simply, it is required that information from land registers is arranged in relation with a person and it presupposes a *personal* connecting factor. It happens so in legal situations of successions or insolvency. For these purposes, we can expect to courts –or legal practitioners– require information on properties but concerning to a person, for instance the deceased in a succession or the debtor affected by an insolvency procedure.

Anyway, the use of ELRD, even intended as a property template, is not unattainable for the deed registration systems. In fact, IMOLA 2 WS1 includes a specific guideline for their adaptation.

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IMOLA: building an international land registration terminology

Article by **Gabriel Alonso**, Work Stream 1

1. PRELIMINARY REMARKS: AN UNDERSTANDABLE CROSS BORDER LAND REGISTRY INFORMATION

The cross border land register information (hereinafter LRI) only becomes useful when is properly understood, so citizens and authorities can make an effective use of it, and for this to happen an explanation about the meaning and legal value of its content must be given together with the information itself.

Previous experiences in Europe had shown that even when interconnection between the Land register's online publicity services is not only possible but relatively easy, the lack of a proper understanding of the legal meaning of the information deprives it from any practical use. In fact, not even a simple glossary of terms is enough to put the land registry information in action, in order to produce a real cross border economic exchange in the field of immovable

property.¹ Nowadays this traffic is mostly domestic and conducted by local experts.

Moreover, citizens need not only to understand the meaning of the information but also its degree of reliance, the accuracy of legal information. Obviously this is closely linked to the nature and principles underpinning each land registration system. Hence, in a typical positive effect's land registry, the title systems, the information provided is entirely reliable, since the *bona fides* effects confers protection to any third party in good faith who enters in a legal relation with the holder of the right in the land registry, while in other type of land registration systems, typically the deeds systems, the information should have to be checked and completed with further investigations in order to achieve certain degree of accuracy.

Although land registries systems were created to produce transparency in the immovable market by delivering legal certainty, they comply with this task in different manner depending on the role given in each national legal system, so to identify the specific land registry effects in each country and compare them with the ones produced by the others becomes a very sensitive but crucial issue, especially when the outcome from all of

them are placed in a single point of access for citizens. The legal certainty delivered by the European land registration systems is different, and this is also another issue which must be tackled with in a European interconnection scheme.

The problem of a proper understanding of land registry information was addressed by the Commission implementing study of land registries interconnection,² by considering a uniform response a necessary tool to deliver an effective land information system, so it facilitates adequate identification of the relevant information and translation issues.

2. IMOLA: A CONTRIBUTION OF THE EUROPEAN LAND REGISTERS TO THE EUROPEAN SPACE OF JUSTICE

IMOLA, a research Project developed by ELRA (European Land Registry Association) as a contribution to the EU registers interconnection action, represents the attempt of European land registry organizations to produce a unified and understandable cross border LR information model.

How has the IMOLA Project dealt with those constraints in order to produce a single and effective response from the MS? A single and harmonized land information document.

The leading principles of the Project has been: first, the respect to national system's legal rules and principles, the legal value of the document will be determined by

each national organization, (whether the document becomes an official document with binding and legal value or just a document to circulate together with the official information, will be for each national land registry to decide); second, the bottom-up method, from the more generic to the more specific, so we have built only upon what is common for most systems, the minimum common denominator, and by doing so we are conscious we had lost preciseness in the definition of the concepts we have created in favor of a common outcome; and a third principle is the use of a non-dogmatic but a practical approach, we faced this comparative study looking at the LRI from the different MS having in mind their consequences and practical effects rather than their conceptual grounds and theoretical principles.

I'll try to briefly present in this article the main steps and basic rules we have developed to produce a uniform and understandable response, and by doing so we present the very first attempt to develop an international common language in the field of land registration.

3. THE (FORMAL) HARMONIZED LAND REGISTRY INFORMATION.

The uniform response from the land registries in Europe is the ELRD (European land registry document). The document is divided in three basic sections, following the scheme of the German Grundbuch.

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¹ The European Land Information Service (EULIS) <https://joinup.ec.europa.eu/solution/european-land-information-service-eulis/about>

² Land registry Interconnection Feasibility and Implementation study. EU Commission DG Justice Unit B2 <https://publications.europa.eu/en/publication-detail/-/publication/831afdff-311c-4177-8d53-1d8d634b1d10>

IMOLA: driving fast and safe to land registries interconnection

Article by **Mihai Taus**, Work Stream 2

National land registries are deeply rooted in the national legal environment and that's because their origins dates back to the time when humanity was consolidating national boundaries, it was the time when the accent has to be put on instruments desired to strengthen the relations between different national institutions in order to ensure a strong and functional identity of the state. Of course, examples of best practice were welcome (see the evolution of Torrens systems), but the land registry was always developed in alignment with the national legal framework, cross-border issues being usually ignored. A recent study made by ELRA highlights the applicability of the *lex rei sitae* principle in all European and registry systems. Even European legislation is elaborated having in mind this idea, land registry issues being out of the scope of regulations and left in the hands of national legislator.

This is correct, since land registry is an expression of the state authority. However, people's increased freedom of movement, new technologies and new markets requires changes in approaching to the land

registry. National boundaries are less and less relevant from the real estate transactions perspective. Now, land registry Information has to be available, understandable and reliable not only in a national environment, but also global.

We are living in a changing world. New technologies arrive, information is created, structured and manipulated at a speed and a volume never imagined before, human legal relations complexity increases and there is a need to cover areas which weren't spotted in the past. Increased mobility of the people led to increased number of cross-border transactions. Land registry information's value increase due to its versatility, actuality and completeness. As a consequence, all above, there is a need for new legal and technical tools to address the issues arouse by this new challenging environment.

In 2009, during one of the General Assembly of ELRA, hasted in Brussels, it was the first time when the concept of a "European land book certificate" was mentioned. Ten years later we already have the second project regarding the visionary interoperability model for land administration - IMOLA. The project has a button up approach and is based on the work done by work done by land registry experts. They are contact points of European Land Registrars Network who deal with land registry issues on their daily duties, therefor



the information Step by step, IMOLA evolved from a common template for national land registries to a complex instrument for interconnection of the land registries, preserving the full respect for the national legislations.

In the first stage, the main issue was to build a structure of land registry information that fits to all national systems which is named European Land Registry Document - ELRD. ELRD represents an A, B, C structure which fits to all land registry systems in Europe. Common types of information were figured out and for specific information there are optional fields available. Even deed systems and use the IMOLA template.

The ELRD language is English. Therefor a special attention has to be granted to the translations of the national legal terms. That led to a different issue: national concepts. For a better understanding of the land registry, terms used in the ELRD has to be defined and explained in accordance with their native legal environment - the national system they belong to. Besides, answers to the questionnaires addressed to the members of ELRN and the discussions we had during seminars proved that although identical as legal term translation some information has different legal substance or legal effect. In such circumstances the risk of misleading information could affect the value of the ELRD.

When IMOLA I represent a technical restructure of information - an interface through which the interconnection of land registries has to operate, IMOLA II represent an important leap due to the added value represented by the semantic

information. Moreover, IMOLA 2 "scanned" national land registry systems and mapped all the concepts. IMOLA is not only a common template for national land registries in Europe and a translation of the legal terms used in this field. For the first time, there is a conceptual and structural translation which ensure a real and efficient addressability to national land registries.

IMOLA II is a follow up project, based on European Land Registry Document -ELRD, aiming to make more understandable Land Registry Information provided by national systems. The interoperability of juridical metadata is the key issue. In order to get it, the technologies and the architecture of semantic web aid the creation of ontologies, what assures the reuse of LR information, not only by persons but also by machines using specific applications.

Ontologies were developed according to an incremental methodology which envisaged the following steps:

- - Definition of the dominium affected,
- - Developing of the glossary using Natural Language Techniques which should have to include the list of concepts and their accurate description, assembling a controlled vocabulary that constitutes the juridical background of the ontology.
- - Include relationships, to set up a thesaurus to characterize and to relate the concepts and terms - included on the glossary, assigning labels to these conceptual relationships.

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Comparative law and IMOLA II: the way forward

Article by **Elena Ioriatti** and **Sara Giacomini**¹,
Faculty of law, Trento University (Italy)

1. INTRODUCTION

The current challenges of legal sciences are the identification of new solutions and strategies, as a response to the needs of a world that is under a constant and unstoppable change. In nearly every field, legal science is experimenting confrontation with the supranational situation and with an urge to harmonization, new technologies and the elaboration of new legal languages. In this framework, law is one of the instruments that contributes to the construction of new realities. However, the creation of rules, the amendment and

updating of previous solutions, the effort of harmonization is not the only playing field in which every law discipline is, by now, definitely involved. These new law instruments need to be supported by methodologies too. In this regard, Comparative Law² is, and has always been, at the core of the discussion about method, to the point that comparative law was initially considered a method itself.

Comparative law is a science and its primary and essential aim is to acquire knowledge.³ As stated in the first Thesis of Trento, a Manifesto signed

¹ The different paragraphs of this Chapter refer to the Authors as follow: Elena Ioriatti Introduction, par. 3 and 4. Sara Giacomini par. 2 and Conclusions.

² Comparative law developed as an independent science during the second half of the 20th century, and in this process the Italian School played a very important role. After that the study of comparative law became more and more popular across Europe and the world, bringing to a very rich and fertile academic production. A few of the many works that have recently been published in the area are for example: J. W. HEAD (2011), *Great Legal Traditions: Civil Law, Common Law, and Chinese Law in Historical and Operational Perspective*, Carolina Academic Press; M. A. GLAEDON, P. C. CARROZZA, C. B. PICKER (2015), *Comparative Legal Traditions in a Nutshell*, West Academic Publishing; K. ZWEIGERT, H. KÖTZ (2011), *Introduction to Comparative Law*, Clarendon Press (Oxford); M. SIEMS (2018), *Comparative Law*, Cambridge university press; J. BOMHOFF, M. ADAMS (2012), *Practice and Theory in Comparative Law*, Cambridge University Press; A. GUARNIERI (2018), *Lineamenti di diritto comparato*, CEDAM. R. SACCO, A. GAMBARO (2010) *Sistemi Giuridici Comparati*, Utet Giuridica.

³ R. SACCO (1991), *Legal Formants: A Dynamic Approach To Comparative Law*, The American Journal of Comparative Law, Vol. 39, No. 1, p. 6. On the non-essentiality of utilitarian claims in the purpose of comparative law see also R. SACCO, P. ROSSI (2015), *Introduzione al diritto comparato*, Utet giuridica, sesta ed., pp. 11 ss.; cfr. also Patrick Glenn, who qualified comparative law as an instrument of learning and knowledge, H. P. Glenn, *Aims of comparative law*, in J. Smits (ed.) (2006), *Eldgar Encyclopedia of Comparative Law*, p. 57 ff. K. ZWEIGERT, H. KÖTZ (1998), *An Introduction to Comparative Law*, Oxford University Press, pp. 15 ss.



in 1987 by many of the most eminent comparatists⁴, “Comparative law, understood as a science, necessarily aims at the better understanding of legal data”. Comparative law studies precisely the plurality of legal models in order to be able to establish to what extent they are uniform and to what extent they are different⁵; furthermore, instruments and the methods developed in comparative law can nevertheless be helpful not only in the comparison among systems, but also to better understand a specific legal order, its composition and evolution⁶.

The knowledge and understanding of a system are the first purposes of comparative law, but they are also vital to enable a further implementation of this science. From this perspective, the scope and method of comparison are intertwined. In general, many believe that comparative research does not follow a given methodology and think that the study of the research itself, and of the matters to focus on, determine which method is more suitable.⁷

In this regard, it is well known, comparative law can support harmonization and the unification of law as much as it can be a precious tool for supranational courts and so on. Nevertheless, in defining the scope of comparative law as knowledge, even

Trento's thesis specify that “Further tasks - for example the promotion of the best legal or interpretative model - deserve the greatest consideration, but they represent only a possible end of comparative research”, it is known that scholars refer to a comparative methodology in search of innovative solutions. This is the case of the European Land Registry Association (ELRA) which considered the comparative methodology for the IMOLA II project.

This paper will explain how comparative law, and some of its tools, are useful in the development of this relevant project and how it can help scholars involved in IMOLA II to keep a tight connection with the reality of the European legal world and consequently guide decisions. On the other hand, the dialogue of the European Land Registries has determined the approach - in particular the formants theory - acting as a testing group of the effectiveness of this methodology.

Just to start our consideration is important to be aware that, at present, no legal system of the current legal world is composed by norms enacted and formulated locally, by the system itself, but also by norms, institutions, solutions - in technical terms “models” - which were originated abroad.

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⁴ The Thesis of Trento, developed in 1987 by professor Roberto Sacco in the newly founded University of Trento, were signed by F. Castro, P. Cendon, A. Frignani, A. Gambaro, M. Guadagni, A. Guarnieri and PG Monateri, with the subscription of G. Ajani and U. Mattei.

⁵ See R. SACCO, P. ROSSI, *Introduzione al diritto comparato*, cit., p. 9; cfr. R. SACCO, A. GAMBARO, *Sistemi Giuridici Comparati*, Utet Giuridica, cit., p. 26-27.

⁶ R. SACCO, *Legal Formants*, cit., pp. 3-4; on the importance of comparative law for the understanding and improvement of national law see R. DAVID, J. E.C. BIERLEY (1978), *Major Legal Systems in the World Today. An Introduction to the Comparative Study of Law*, The Free Press, pp. 6 ss.

⁷ M. Van Hoeck, *Methodology of Comparative Legal Research*, at https://biblio.ugent.be/publication/7145504/file/7145530_V_Grosswald_Curran, *Comparative Law and Language* (2005), in R. Zimmermann and M. Reimann, eds., *Oxford Handbook of Comparative Law*, Oxford University Press. See also very recently U. Kischel, *Comparative Law* (2019), Oxford University Press.

The Land registration and “disruptive” (or “trustworthy”?) technologies: Tokenisation of immovable property

Article by **Sjef van Erp**, University of Maastricht (The Netherlands)

1. INTRODUCTION

In the past few years Internet technicians developed various new types of technologies, which, according to their creators and promoters, were “disruptive” for how we until then organized our economy (including the monetary and banking system), law (together with the role of legal professionals) and our political system. Highly sophisticated software, with the ability to learn by itself, would create a Copernican change in the way we would organize our society. The technologies I am referring to are: (1) Distributed Ledger Technology (better known as, but not limited to, blockchain and its most prominent representation: Bitcoin), (2) smart contracts (in spite of the words used not contracts, but self-executing computer programmes), (3) machine learning and Artificial

Intelligence, supported by the massively collecting of data through all kinds of means, and in particular sensors, which more and more are connected to physical things such as cars and household appliances: (4) the Internet of Things, which data are being

stored, combined and processed, in databases, resulting in (5) Big Data. The outcome of these developments is what we now call the data economy, because at the heart of all these developments are data. Software is data, smart contracts are data, machine learning and Artificial Intelligence is software and, consequently, data, and sensors collect data. The result is not only a mixed or hybrid, real and data, economy: We are beginning to live in a hybrid world. In this contribution to a collection of articles focusing on the IMOLA project, I will analyze how this hybrid world, where the “real” and the “data” economy together create the environment in which we live, affects or may affect land registration.

2. DO NEW IT DEVELOPMENTS REALLY “DISRUPT” OR, ON THE CONTRARY, ARE THEY “TRUSTWORTHY”?

When looking at English dictionaries what the word “disruptive” actually means one tends to get definitions such as “To be disruptive means to prevent something from continuing or operating in a normal way.” The essential question to be asked is, of course, what is the “normal” way? When qualifying these technologies as “disruptive”, looking at these developments from the perspective of a legal system, we assume that they break into existing,

established and well-justified, laws and practices and the role and function of legal practitioners. The term is certainly a clear expression of a legal system and legal professionals in the defense. But is this necessary? It is quite revealing to see how the legislature of the Principality of Liechtenstein recently adopted an Act that qualifies these technologies as trustworthy: The Law on Tokens and Trustworthy Technology Service Providers (Token and TT Service Provider Act; TVTG) 2019. The terminology used in the Liechtenstein legislation almost speaks for itself. From the perspective of the Liechtenstein legislature the new IT technologies are opportunities to develop a digital economy next to the real economy. If the reaction might be that Liechtenstein is only a very small jurisdiction and therefore not a good example, it should be realized that in the world of data the physical size of a country is irrelevant. We now see a hybrid type of nation-state coming up, or perhaps even a different type of sovereignty. Who, from a public international law point of view, has sovereign power over data, which can flow anywhere? Who controls data sources and data flows? Border checks in the virtual world are difficult, although some countries attempt to create a firewall type of border to filter data. Liechtenstein might be only 25 km long, locked in between Austria and Switzerland, nevertheless physical size is irrelevant in the digital world. What matters is that Liechtenstein – and this applies to any other micro-state or, for that matter, de facto sovereign unity – will be able to attract IT businesses investors by offering an excellent IT infrastructure and a legal setting that at the same facilitates and regulates, thus creating for everyone involved not only an innovative, but also a reliable and trustworthy environment. This will support investment in data centers and

establishing (branches of) IT companies. Looking at it from that perspective, it can be very profitable for a small jurisdiction to become, perhaps next to a “tax haven”, a “data haven”. In fact, a small jurisdiction seems to have an advantage over larger jurisdictions in that it can react far more swiftly as political and legislative debates tend to be less time consuming and more targeted. The outcome is that Liechtenstein now seems to lead the way.

The Liechtenstein legislation will be further elaborated upon at the end of this contribution. However, first a few introductory remarks must be made about the causes, nature and consequences of the hybrid reality in which we now live, focusing on land registration. Historically, land registration was done by describing parcels of land in handwritten ledgers, where the size of the parcel was physically measured by surveyors who would draw maps on paper. The rights of people regarding such land were laid down in physical documents, drawn up by legal professionals, such as notaries and land registrars. Consulting the land registry meant that someone had to come in person to the land registrar’s office and request a physical copy from the land book. Thus described, it seems almost natural to see land law as the law concerning the rights of natural persons regarding physical plots of land, ownership of which – at least after the French Revolution with its ideals of equality, liberty and fraternity – gave these persons the most complete freedom to do with the land what they wanted and to expel anyone from their land whom they did not tolerate on it.

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The European Land Registry document common semantic model as a necessary tool for the efficient implementation of the European Union Regulations in the field of Civil Justice

Article by **Guillermo Palao**, University of Valencia (Spain)

ABSTRACT

The development of a European Judicial Space in Civil and Commercial matters has been the origin of several Regulations which, although their importance, do not totally solve all the complexities connected to cross-border real estate transactions in the European Union (EU). In such a legal challenging context, Bottom-up initiatives like the IMOLA Project must be very much welcome, in terms of enabling a sound coordination and interoperability of the Land registries systems from the Member states. This paper, makes a particular mention to the model European Land Registry Document (ELRD), as well as the benefits derived from the development of an ontology and the diverse tools related the use of the ELRD –in terms of neutrality, accessibility to information collected in Land registries or data protection-, as well as from the use of the Information and Communication Technology (ICT) instruments offered by the European e-Justice Portal.



1. INTRODUCTION

The development of a European Judicial Space in Civil and Commercial matters has amounted to the enactment of a quite an impressive number of legal instruments –mainly receiving the form of Regulations-, which are devoted to several and significant legal institutions affecting all sectors of Private International Law (PIL). Aimed at the enhancement and at the consolidation of the Internal Market, this productive legislative action certainly improves everyday life of European residents who operate cross-border within the European Union (EU) borders, and it also has an impact in significant questions like the construction of a integrated European real estate and mortgage market. However, although highly positive in terms of the objectives which pursues and of some of the results of this harmonization process, this coordinating effort can be characterised not only for its limited material scope of application –particularly in respect to the legal regime and to the publicity of transactions related to immovable property, which are questions mainly left for the national legislator-, but also it must face the decisive role of the territoriality principle which informs real property and the still dramatic existing differences in the legal treatment of real

state property from one Member State to the other (Van Erp, 2016). Thus, in order to overcome the possible legal uncertainties which this lack of harmonization can produce to hamper the rights of European residents, both the efforts of the European institutions and of the rest of stakeholders must meet, in order to achieve the necessary legal security which cross-border real estate transactions deserve in a highly integrated market.

2. EUROPEAN COOPERATION IN CIVIL AND COMMERCIAL MATTERS AND LAND REGISTERS: OPPORTUNITIES AND LEGAL RISKS

As it has been rightly underlined by institutions (European Systemic Risk Board, 2016) as well as authors (Wallis, 2011), the EU offers exceptional opportunities in respect to cross-border real property transactions, but also generates evident legal uncertainties which should be beard in mind, as they are able to undermine the accomplishment of the Internal Market objectives. Such legal risks are related inter alia to the existing disparities among Member States –which extent to significant questions like their legal framework for property, land recording and their publicity regimes, or the different level of transparency in their respective housing markets (Lindqvist, 2012)-, which even relate to the diverse legal concepts and terms Member States embrace and their problematic translation in practice (Miscenic, 2016).

Different types of actions have been conducted by the EU institutions to confront those difficulties. Firstly, those initiatives have led to the partial unification of the PIL rules which affect

real property transactions, as shown in Regulations 1215/2010 (Brussels I (Recast) Regulation), 650/2012 (EU Successions Regulation), 2016/1103 (Regulation in matters of matrimonial property regimes) and 2016/1104 (Regulation in matters of the property consequences of registered partnerships). Nevertheless, it is essential to note that some of the key issues which are related to real property and its publicity have been left to national legislators. And this so, as long as real rights relating to property and the publicity and effects of their recording guaranteed by Land Registries have been excluded from the substantive scope of application of some of such relevant instruments, if arts. 1(2) h) and l) EU Successions Regulation (Palao Moreno/ Alonso Landeta, 2015) and 1(2) g) and h) of both 2016/1103 and 2016/1104 Regulation (Rodríguez Benot, 2019), are taken into consideration.

Secondly, and apart from the enactment of the mentioned Regulations, several positive and decisive actions have been pursued by the EU institutions to overcome those legal uncertainties. In this respect, one can mention not only the autonomous and uniform delimitation of the concepts used by such Regulations by the European Court of Justice has proved to produce significant results –particularly in relation to 650/2012 Regulation (Palao Moreno, 2019)-, but also all measure related to the development of the European e-Justice Portal in order to facilitated the spread of accurate information collected in public Land Registers, which has eased the cooperation and interconnection among the different institutions and stakeholders related to European real estate dealings –notably, Land registers- (European Commission, 2018).

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IMOLA: Harmonization, Standardization, and Automation in EU Land Registries: Some Thoughts from a Legal Perspective

Article by **Teresa Rodríguez de las Heras**, University Carlos III (Madrid)

ABSTRACT

The aim of this Paper is to elaborate some thoughts and stir a forward-looking debate about the future of land registries in Europe based on the objectives and the outcomes of IMOLA Project. The discussion pivots on three key ideas aroused by the conception of the IMOLA Project: harmonization, standardization, and automation. These ideas have a profound impact on the legal configuration, structure, and effects of land registries. This Paper aims to open the discussion and prospect for possible future models for land registries under the three coordinates of harmonization, standardization, and automation. The Paper concludes first that the setting of standards (technical and legal standards) is a primary and fundamental

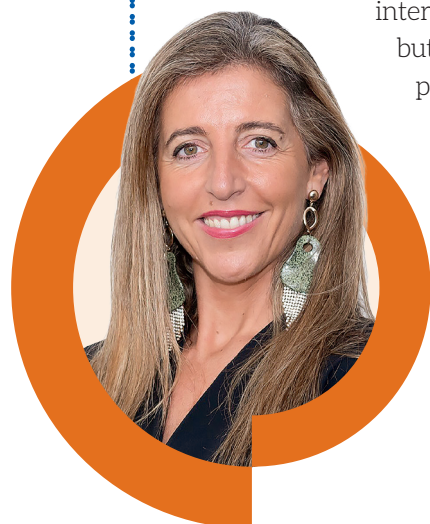
- as it facilitates interoperability -, but not sufficient, prerequisite for harmonization, unless it is followed and completed by legal coordination, increasing uniformity in legal frameworks, and

common principles. Secondly, standardization enables automation of a multitude of tasks, procedures, and even decision-making. Nonetheless, automation requires a thoughtful legal analysis to ensure legality, validity, and enforceability. Even more, the scope of automation is promising but limited in the legal domain and, in particular, in the land registry realm. These limits must be consciously considered and respected in order to guarantee that legal protection of rights and interests, as well as the values of legal certainty, predictability, and trust are not jeopardized.

Keywords: Standardisation, automation, interoperability, platforms, algorithm-driven system, smart contract, dynamic registration, legal certainty, land registry, electronic registries

1. SETTING THE SCENE: ONE PROJECT, THREE VECTORS FOR A FORWARD-LOOKING DEBATE ON LAND REGISTRIES' PROSPECT

Accessibility and cross-border exchange of land registry information in the European Union is complicated, limited, and unsatisfactory. Complexities arise from legal disparities in domestic legislation, diverging registry practices, and intricacies naturally



inherent to linguistic plurality. Standard means of accessing and exchanging information among European land registry systems is then needed. In acknowledging these intricacies, IMOLA aims to design and produce a model for standardised land registry output, paired with explanatory material and training programs to improve understanding of different legal systems in several languages. Therefore, IMOLA's key objectives are to increase accessibility, enhance transparency, and facilitate registration in cross-border situations. The project starts from the assumption that, despite the disparity between national legal system, common points can be identified and established as the base from which to define a standard structure of key information shared by most EU land registries.

IMOLA Project lays the foundations for opening a forward-looking debate on the future of registry systems under three main coordinates: harmonisation, standardisation, and automation. The successful outcomes of IMOLA Project invites a deeper and broader discussion from a legal perspective. The interplay between technological feasibility and legal admissibility defines the limits of an ongoing dialogue to accommodate the legal framework to technological disruption and harmonization at the EU level.

This Paper takes the IMOLA Project, its objectives and outcomes, as a trigger for assessing how technological solutions can contribute to the harmonization of the legal framework for registry systems in Europe;

enhance standardisation as a solution to reduce legal discrepancies, increase effectiveness, and improve interoperability; and implement automation strategies in registry procedures to reduce costs, streamline processes, and optimize recourse allocation. The Paper is essentially a reflection on the extent and the limits of a digital transformation of registry systems starting from the actual technological possibilities that IMOLA produces and implements.

2. INTERPLAY BETWEEN LEGAL HARMONISATION AND STANDARDISATION: OPPORTUNITIES AND RISKS

The main outcome of IMOLA is the achievement of a proof of concept of an ELRD (European Land Registry Document) based on the principles of legal neutrality, legal minimum and flexibility. The idea of producing a standardized interface enabling the accessibility of relevant registry data and facilitating transactions over properties provides a powerful tool to discuss how standardization promotes, contributes or even replaces the need for legal harmonization. As discrepancies between domestic laws and national registry practices and models¹ are the source of complexity and deficiencies in the cross-border exchange of information, the production of a standard model of collecting, sharing and exchanging relevant registration data is certainly conducive to overcome those hurdles.

[READ THE FULL ARTICLE HERE](#)



¹ Analysis and proposals for coordinating registry systems, in general, in Europe in: Pau, Antonio (2004). *La convergencia de los sistemas registrales en Europa*. Madrid: Colegio de Registradores de la Propiedad, Mercantiles y Bienes Muebles de España; Cámara Lapuente, Sergio (2004). *Los sistemas registrales en el marco del Derecho privado europeo: reflexiones comparatistas sobre la inscripción registral como formalidad de los contratos*. *Anuario de Derecho Civil*, Tomo LVII, 929-1001.

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The use of ELRD as a complementary tool when assessing an application for a for the European Certificate of Succession (Art. 66.5 of the Regulation 2012/650)

Article by **Paula Pott**, Judge and Portuguese CP of the EJC

1. INTRODUCTION

The aim of this chapter is to highlight how the results of IMOLA Project, namely the use of the European Land Register Document (ELRD), may be complementary to the operation of Article 66(5) of Regulation 650/2012 in the context of the examination of an application for a European Certificate of Successions (ECS).

According to the information in its website, the European Land Registry Association (ELRA) has developed the IMOLA I project to produce a model for standardized land registry outputs. The European Land Registry Document has been developed through an XSD/ XML

scheme that allows semi-automatic processing of information through shared rules with metadata derived from a thesaurus.

The ELRD gives homogeneity to the registration information which flows through the e-Justice portal and becomes the

interface through which the interconnection of Land Registers may operate.

IMOLA II, as a follow-up project, provides a platform of semantic interoperability among Land Registers in Europe, using controlled vocabularies and a semantic shared repository (Knowledge Repository) integrated in the e-justice portal (Thesaurus). As a result, through a web page, National Land Registers' Systems become costumers of this web service.

That said, Article 66(5) of Regulation 650/2012 (to which belong all the legal provisions or recitals mentioned hereinafter) provides for a cooperation mechanism at the stage of the examination of an application for an ECS, between the authorities competent to issue the ECS in a Member State and, as it may be the case, the Land Registers in another Member State.

Article 66 (1) and (5) of Regulation 650/2012 reads:

"1 - Upon receipt of the application the issuing authority shall verify the information and declarations and the documents and other evidence provided by the applicant. It shall carry out the enquiries necessary for that verification

of its own motion where this is provided for or authorized by its own law, or shall invite the applicant to provide any further evidence which it deems necessary.

(...)

5 - For the purposes of this Article, the competent authority of a Member State shall, upon request, provide the issuing authority of another Member State with information held, in particular, in the land registers, the civil status registers and the registers recording documents and facts of relevance for the succession or for the matrimonial property regime or an equivalent property regime of the deceased, where that competent authority would be authorized, under national law, to provide another national authority with such information."

According to this provision, before issuing the ECS the competent authority shall verify the information, declarations, documents and other evidence provided by the applicant.

These enquiries shall be made by the issuing authority of its own motion when its national law so provides or authorizes it. If not, the issuing authority shall invite the applicant to provide further evidence.

In the first scenario, when its national law provides or authorizes an issuing authority to carry on enquiries of its own motion, the request for information, namely information held by a Land Register in another Member State, is mandatory when it is necessary for the establishment of certain elements to be certified.

To make such a request for information, some conditions have to be met and some difficulties may arise.

The conditions that have to be met are the ensuing: (1) the national law of the requesting authority has a provision that authorizes or sets forth that it may carry out enquiries of its own motion; (2) the requested authority in the other Member State is authorized, under its national law, to provide another national authority with such information; (3) the information is of relevance for the succession, or for the matrimonial property regime or an equivalent property regime of the deceased; the information is necessary for the establishment of certain elements to be certified in the ECS.

Implementing this cooperation mechanism may give rise to some difficulties in practice. It is not always easy to identify the requested Land Register in another Member State, namely in case of regional register systems which are not interconnected, or to know if there is a requesting form in use in the other Member State, or if that form is mandatory. To know if languages other than the official language of the requested Member State can be accepted to make the request, which are fees to be paid, if it is possible for some registers to issue certified information in another official language, if the search for information on the situation of an asset can be based on the name of the deceased or if it shall be based on the identifying elements of that asset, if in the requested Member State the purpose of the registry is only to publicize the legal status of assets or if it aims at publicizing which assets a person possesses, are additional issues that may need to be clarified to facilitate the execution of the request for cooperation under Article 66(5).

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The ELRD. Registry information for purposes of judicial cooperation

Article by **Francisco Martín Mazuelos**,
Magistrate at the Appeals Court of Huelva (Spain)

1. THE ELRD

Any official Land Registry is intended to give authentic publicity to the rights in rem on immovable property, by recording either deeds or titles. Its main effect is the validity of a transfer or burden against the beneficiary of any non-recorded right, burden or interest. The transfer of property and the effects of a mortgage or any other charge or burden are thus assured, in favor of economic traffic and credit. A purchaser of a property, as well as a mortgagee, will have their rights protected by the Land Registry. A creditor who has recorded a claim for the payment of the debt may have the debtor's property attached for that purpose, even if the debtor transfers or has his property encumbered later.

Any of those persons, with an interest to know beforehand the ownership and burdens of a property, the rights and limitations on it, may get information from a Land Registry, in accordance with the law of the State where the register is situated. If the property is situated in a different State, perhaps with a Land Registry system or with rights in rem not entirely equivalent

to his own State's, the information given by a foreign Registry will almost certainly need a translation and even then its interpretation may be confusing.

Regulations 1347/2000 (repealed by Regulation 2201/2003) and 44/2001 found a practical way to facilitate the recognition of a judgment in another Member State. In order to certificate the judgment, they include Annexes, with forms that may be found in any official language and make available the meaning of any of its paragraphs. The issuing court, the parties to the proceedings, the legal aid if granted, the date of service, the enforceability and other particulars are just filled in. Annex I to Regulation 805/2004, as well as later ones, add details of the amount to be paid, instalments and interests, so that often no additional information is needed for the enforcement of the judgment and no costs of translation have to be afforded.

The European Land Registry Document (ELRD) is, essentially, a form designed to supply the information available in a Land Registry. A standard template is not at all easy to achieve in this field. On one hand, it is well known that there are two main systems for the organization of Land Registries: the "title system" organized around the property or land plot and the rights on them, and the "deed system", around the personal folio and conveyancing. On the other hand,

the rights themselves, the powers of the person entitled to them, and the systems of acquisition and transfer of those rights, are not entirely equivalent.

Fortunately, modern technologies help to overcome those difficulties. There is a tendency to coordinate the Land Registry and the cadaster (born for tax reasons), to make possible digital access to them and to include a cadastral reference in the deeds. Indexes of persons and of properties, which did not exist in the title and the deed system, respectively, may be afforded now with the help of information technologies. The ELRD states the reference to a certain person and/or property, as well as the effect that the national law attaches to the certification or document itself. Each item of information in the document may be linked to an explanation of its meaning. This means that a standard explanation of the notion of each right or limitation may be incorporated in the ELRD, as well as its effects, the effects of a deed or a judicial order, and of their registration in that particular registry. Quotation of links in the ELRD may facilitate access to further details on these subjects. A great effort has been made to build that support and to produce a template, so that the information available in each Registry may find a place in it and the applicant receives a result as exact as possible.

It is easy to understand how this standard document is able to help the circulation of information and, in the end, safer economic traffic and the recognition of judicial decisions. In my opinion, this is not the proper place to give a more complete or a technical explanation, which is the subject of other papers, so that the aforesaid notions may be enough to supply an idea of the content and possibilities of the ELRD.

The application for getting the information is an important subject too. The European Land Registry Network, coordinated with the e-justice site of the European Union, will certainly play an important role. There are differences as to the persons entitled to get information from a particular registry, either authorities (courts, notaries) or private persons, whether and how an interest needs to be justified, or a fee has to be paid. The form of the application, what information has to be supplied by the applicant and which information may be supplied by the registry need to be known. A common access and the interconnection among registries are the aims, and steps have been already taken.

2. REGISTRY INFORMATION FOR PURPOSES OF JUDICIAL COOPERATION

International judicial cooperation has two main meanings:

One of them is referred to obtaining from the authorities of another State the same aid as could be expected from national authorities. Regulations that rule transmission of documents and obtaining evidence belong to this category. In a number of situations, a court may need information about the ownership of property, its burdens, and charges.

The other meaning implies setting rules for the decision of civil matters, in order to avoid the conflicts that may arise if different States claim to have jurisdiction with the risk of giving different judgments on the same subject.

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The ELRD as a source of information for courts in Cross-border matters

Article by **Michele Cuccaro**, Judge Court of Rovereto (Italy)

The work of a judge has changed and developed a lot in the last years: until a few years ago it concerned only the national sphere and only rarely transnational relationships were taken into consideration; today, instead, judges deal every day with what we refer to as the real "European juridical area".

As it can be inferred, this situation involves many difficulties and challenges.

First of all, the ruling in a dispute with cross-border elements requires not only knowledge of the legislative sources (such as statutes, regulations, constitutions...) of the foreign State, but also the acquisition of the relevant jurisprudence.

The knowledge of foreign legislative and judicial sources - however complex - is in any case facilitated by the existence of official collections and specialized law magazines which, beside the mere linguistic difficulties, help providing a clear and complete overview of the legal issues that are the object of the decision.

On the other hand, this type of support is often not sufficient in order to suitably resolve a controversial cross-border dispute, as the solution of a judicial proceeding passes necessarily through the knowledge of other information and secondary sources that are more difficult to acquire.

Among these other set of information can be ascribed also the registries that the Member States hold in connection to different kind of legal areas, such as, for example, the Register for Criminal Records, the Civil Status Registry in family law, the Business Register in commercial law and the Land Registry.

The prospect of making the data contained in those registries available and accessible to all the citizens, even outside the strictly national context, is a challenge that the European Union has long contemplated and which encouraged the creation, for example, of the ECRIS (European Criminal Records Information System) and the BRIS (Business Registers Interconnection System).

These last two registers¹ are characterized and can properly function thanks to the legal obligation for the

¹ see for example the COUNCIL FRAMEWORK DECISION 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings and directive (eu) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (codification)

Member States to interconnect their national registers to the central European platform.

A similar solution could not be adopted with regard to Land Registries, which are characterized, as is known, by two fundamental rules, namely the application of the *lex rei sitae* with regard to the regulation of rights *in rem* and the *lex auctoris* with regard to the effects that the registration can produce. As it can be imagined, this scenery makes it very problematic to even imagine a real interconnection among Land Registries at the European level.

Nevertheless, the need to become acquainted with these type of data and to allow their circulation outside the national context is unquestionable, and the best demonstration of this necessity can be found in the milestone Regulation (EU) No 650/2012 of the European Parliament and of the Council of July 4, 2012 on jurisdiction, applicable law,

recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession.

In article 1(2), the Regulation expressly excludes from its scope:

k) *the nature of rights in rem*; and

(l) *any recording in a register of rights in immovable or movable property, including the legal requirements for such recording, and the effects of recording or failing to record such rights in a register*

Accordingly, also the recitals number 18 and 19 exclude from the scope of the Regulation the requirements for the recording in a register of a right in immovable or movable property.²

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² Recital n. 18 of Regulation 650/12 declares that: "The requirements for the recording in a register of a right in immovable or movable 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 which authorities, such as land registers or notaries, are in charge of checking that all requirements are met and that the documentation presented or established is sufficient or contains the necessary information. In particular, the authorities may check that the right of the deceased to the succession property mentioned in the document presented for registration is a right which is recorded as such in the register or which is otherwise demonstrated in accordance with the law of the Member State in which the register is kept. In order to avoid duplication of documents, the registration authorities should accept such documents drawn up in another Member State by the competent authorities whose circulation is provided for by this Regulation. In particular, the European Certificate of Succession issued under this Regulation should constitute a valid document for the recording of succession property in a register of a Member State. This should not preclude the authorities involved in the registration from asking the person applying for registration to provide such additional information, or to present such additional documents, as are required under the law of the Member State in which the register is kept, for instance information or documents relating to the payment of revenue. The competent authority may indicate to the person applying for registration how the missing information or documents can be provided."

Recital n. 19 instead states that: "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. Thus, where, for example, the acquisition of a right in immovable property requires a recording in a register under the law of the Member State in which the register is kept in order to ensure the *erga omnes* effect of registers or to protect legal transactions, the moment of such acquisition should be governed by the law of that Member State."

Polish matrimonial property regime – how to get the information and how to understand it from the point of view of an EU registrar

Article by **Trzeciakowski Piotr**, District Court in Białystok (Poland)

Being a member of the EU demands from its organs understanding the law systems of all the member states. This principle refers also to the organs responsible for land registers.

Keeping this in mind I will show how Polish system (as far as the matrimonial property regime is concerned) works, how to receive the information about real property and how to understand it from the point of view of an EU organ.

1. THE MAIN PRINCIPLES OF THE POLISH MATRIMONIAL PROPERTY REGIME.

The statutory matrimonial property regime is the community of property, which takes effect upon conclusion of the marriage. It includes assets acquired by the spouses both individually and jointly during the regime (community property). Assets excluded from the community property belong to the personal property of each spouse (art. 31 § 1 of the Family and Guardianship Code).

Community property includes, in particular:

- 1) remuneration received for work and income from other profit-oriented activities;
- 2) income from the community property as well as from each of the spouses' personal property;
- 3) financial benefits from an open or employee pension fund (art. 31 § 2 of the Family and Guardianship Code).

Household appliances used by both spouses also form part of the community property if they were acquired by inheritance, bequest (legacy) or donation, unless the testator or donor stipulated otherwise (art. 34 of the Family and Guardianship Code).

The personal property of each spouse includes (but is not limited to) the following:

- 1) assets acquired before the community of property regime took effect, assets acquired by inheritance, bequest (legacy) or donation unless the testator or donor stipulated otherwise, assets which exclusively serve one spouse's personal needs, assets obtained as a reward for a spouse's personal achievements, and assets

acquired in exchange for personal assets unless particular provisions provide otherwise;

- 2) property rights resulting from a joint ownership of property subject to separate regulations (e.g. joint ownership in a civil law partnership or commercial partnership);
- 3) inalienable rights to which only one person may be entitled;
- 4) assets received as damages for bodily injury or a health disorder or as a compensation for harm suffered. This does not, however, include disability benefits received due to the partial or total loss of earning ability of a spouse or due to his/her increased needs or decreased prospects for future;
- 5) claims for remuneration from work or for income from other profit-oriented activities;
- 6) copyrights and related rights, intellectual property rights or other rights of a creator (art. 33 of the Family and Guardianship Code).

Either spouse may individually possess and use the assets which form part of the community property (art. 341 of the Family and Guardianship Code). During the statutory community of property regime, neither spouse may request the division of the community property. In addition to this, neither spouse may dispose of or undertake to dispose of a share of the community property or of a particular asset thereof that would fall to him/her when the statutory regime ceased (art. 35 of the Family and Guardianship Code). Spouses are obliged to cooperate in the management of their community property (art. 36 para. 1 of the Family and Guardianship Code). Either spouse may manage the property

alone, but such management excludes the activities described below (i.e. activities requiring the consent of the other spouse). A spouse may object to the management of community property by the other spouse, except for acts concerning everyday matters, acts intended to satisfy the everyday needs of the family, or an act performed as part of a profit-oriented activity (art. 361 § 1 and 2 of the Family and Guardianship Code).

If requested by one of the spouses, the court may, for an important reason, deprive the other spouse of the right to manage the community property on his/her own. The court may also decide that its authorization will be required instead of the spouse's consent for acts stipulated in art. 37 § 1 of the Family and Guardianship Code.

The consent of the other spouse is required for:

- 1) any legal transaction concerning the disposal, encumbrance or purchase of immovable property or of the right of perpetual usufruct or any other legal transaction concerning the use and exploitation of the immovable property;
- 2) any legal transaction concerning the disposal, encumbrance or purchase of a right in rem on a building or premises;
- 3) any legal transaction concerning the disposal, encumbrance, purchase or lease of an agricultural farm or an enterprise;
- 4) donations made from the community property, except for customarily accepted donations (art. 37 § 1 of the Family and Guardianship Code).

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The Italian Land Registration System and the IMOLA Experience: How to harmonize diversity

Article by **Agostina Lodde**, Agenzia delle Entrate (Italy)

ABSTRACT

In the European legal context, the land registration system in force in Italy is an exception. In fact, it represents an intermediate model between the original deed system, derived from the Napoleonic one, and others civil law systems evolved in title systems, that are the majority in Europe. The peculiarity of the Italian registry of transcriptions, implanted and maintained with the technique of the personal folio could have been an obstacle to the adoption of the ELRD shared scheme. However, the development of information technology has allowed, also for the Italian system, to imagine possible solutions to be part of the ambitious project carried out by IMOLA.

Keywords: Italy- Deed system
-Registry of transcriptions- Personal folio -IMOLA -ELRD



1. THE LAND REGISTRIES INTERCONNECTION TO BOOST THE EUROPEAN SINGLE MARKET

The land registry systems protect the fundamental human right to property of the citizens and provide legal certainty in the circulation of immovable property, setting the conditions for the development of an efficient and more transparent market. But what has been achieved in the last two decades at the national level must now be able to be achieved at a pan-European one as well, through a more widespread use of the information technology and secure communication platforms.

In the European context, there is a widespread need for standardised tools to rapidly and efficiently access to information held by the national property registries. This need, strongly felt mostly by justice professionals, like notaries, lawyers, judges, corresponds to the aspiration of every citizen for obtaining, when necessary, reliable information on property rights beyond national borders, verifying whether the registration of these right is valid, for example, to purchase or sell a property; to the banks' request for loaning money in a secure way; to the need of the judiciary for investigating and bring to justice the perpetrators of serious tax and

economic crimes. In one word, to boost the European single market.

2. THE INTERCONNECTION OF EUROPEAN LAND REGISTRIES: BRIEF HISTORY AND CURRENT STATUS

The various associations that operate in the sector of land registration, and among these mainly ELRA (European Land Registry Association) with its network of experts in the field of real estate registration called ELRN (European Land Registry Network), have for many years engaged in initiatives to laid the foundations for a harmonisation of the rules and instruments for cross-border access to real estate information.

All initiatives and projects move in the framework of an expressed European desire to make cross-border access to information on real estate faster and more efficient, in implementation of the principle of free movement of persons and their assets and rights in the common space of freedom, justice and security.

To that end, in implementation of a specific decision of the EU Council, as early as 2010, the European Commission has activated, and progressively implemented, a European Justice Portal (<https://e-justice.europa.eu>), "destined to become an electronic one-stop-shop in the area of justice. According to the declared intent of the Commission, the final objective is to make the lives of the citizen easier, providing information on justice systems and improving the access to justice throughout the EU, in 23 languages".

Among the various sectors of information present in the portal is the entry "Registries", aimed at facilitating the possibility of taking advantage of the opportunities offered by the opening of borders and the European internal market, through the access of sellers, creditors, commercial partners, and consumers to documents and reliable and official information. This item is divided into three different categories: business registries; land registries and insolvency registries.

With regard to the land registries, the portal currently presents only information sheets drawn up by individual Member States, containing a brief description of each national land registry, with a link to the website of its institution.

The strategy outlined by the EU Council in matters of European electronic justice 2014-2018 then envisages, with regard to the theme of the registries, the need to focus the action "on the interconnection of the registries that are of interest to citizens, private companies, legal professionals and the judiciary". Therefore, "the necessary technical and legal preconditions should be ensured to make such interconnections possible".

Consequently, the 2014-2018 multi-annual action plan regarding European electronic justice has indicated a series of actions to be undertaken in the sector of the registries, among which it marks as a priority project (category A) that of carrying out a specific feasibility study on the interconnection of the land registries.

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IMOLA – a joint effort in European integration

Article by **Paula Gallharda, IRN, Filomena Rosa, IRN, Fátima Ferreira, ASCR, Maria Luis Marinho, ASCR** from Portugal

1. THE PORTUGUESE LAND REGISTRATION SYSTEM

The Portuguese land registry is essentially intended to publicize the legal situation of immovable properties, in view of the security of the real estate legal trade. It is through the information provided by the registry that one can find out the ownership and charges (mortgages, easement, attachment, etc) over an immovable. It is a legal publicity in the sense that guarantees the accuracy of the immovable legal situation. The principle of publicity means that any person has the right to request information on the ownership and other real rights entered in the register and on their content. This is so more important as the increase of cross border transactions within the European Union.

The land registry publishes the information, after a previous control of legality provided by the Registrar, a legal professional. The inscription of any right or burden constitutes a legal presumption that the right

exists and belongs to the registered owner, in the precise terms in which the register defines it – principle of public faith (*iuris tantum presumption*). It is correct to say that the Portuguese system respects the curtain principle and it is considered to be a title system.

The rule in the Portuguese registry system is that registration is declarative with the exception of the mortgage registration that is constitutive. Apart from few exceptions, all the facts subject to registration shall only have effect against third parties after their registration.

One of the main registration principles is the priority of registry, which means that the right entered in the first place shall prevail over those which follow it in respect of the same asset – *prior tempore potior iure*. It is the prevalence criterion of the right first registered, regardless the antiquity of the title.

Portuguese civil and registry law is based on the *numerus clausus* principle. Facts subject to registration are pre-determined by law and the registration rules with which they must comply and are based mainly on the Civil Code.

Land Registry system is ruled by the principle of chained transmission – also called the *tractu sucessivo* principle – associated to the legitimation principle which implies that a

new registration depends on the previous one in the name of the transferor.

The system organization is a *real folio*, meaning that all rights and charges are inscribed in a specific file which identifies the immovable based in the information provided by the interested party according to its previous declaration for taxation purposes. This information as regards to rural property is based on the cadastral data for about 50% of the national territory. Recently, the geo-referenced information is also part of the immovable physical information and it will soon be mandatory to perform any further inscription of ownership.¹

Portuguese land registry also carries out specific other functions, in addition to the publicity of the real rights, such as tax control, harmonization with the cadastre regarding the area of the land and article of the plot, prevention of money laundering, interconnection with public administration in order to control the housing or using license of the building or the existence of technical file of habitation.²

In the last decade Land Registry knew a technological evolution and, nowadays, it is completely computerized. This evolution allows more proximity to citizens, better speed and efficiency and the possibility of implementation of new online services. Now it is possible to require the registration

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online and to access the information via webservices (www.predialonline.pt).³ In addition, in Portugal, since 2008, some conveyancing proceedings have been allocated to the Registrars, aiming to serve a kind of *one stop shop* for, partition, mortgaging or purchasing purposes.

This modernization effort by Ministry of Justice is transversal to all areas of its domain, in particular land, business, vehicles and civil registry, and allowed the development of new services, with emphasis in land registry.

As above referred, recently is ongoing a project that aims to reinforce the geographical identification of the land associated with its geo-reference data, allowing the accessibility and visualization of the land configuration in a platform especially created that interconnects different types of immovable relevant information⁴, such as cadastral, taxation, environmental, nature protection and ownership.

READ THE FULL ARTICLE HERE



¹ Law 78/2017 dated 17/08 first in force only in 10 municipalities, but soon in all country.

² Executive Law 281/99 dated 26/07 and Executive Law 28/2004 dated 25/03.

³ Since 2009, when the online land registration applications became available, 3.311.197 have been required. As regards to information requests – the called “permanent certificates” since 2009 is about 15.000.000.

⁴ It is the BUPi – Balcão Único do Prédio, in English “Unique On line Counter on Immovable Information”.

The Spanish Land Registration system and the IMOLA project

Article by **Teresa Touriñán**, Colegio de Registradores (Spain)

1. BRIEF IDEA OF THE SPANISH LAND REGISTRATIONS SYSTEMS: ITS STRENGTHS AND WEAKNESSES TO IMPLEMENT THE ELRD AND IMOLA PROJECT

The Spanish law defines the land registry System as a purely causal title registration system. There is one single land registry System for the whole country, managed by "Colegio de Registradores" on behalf of the Spanish Justice Minister...

As a title tittle, registration implies always the ownership or real right contained on the public or authentic document, not the document or deed itself, which is not archived neither copied in the Land Registry. The title system is as well reinforced with several principles which give the rights published and the information given strong effects.

For any transfer of ownership of a plot of land to produce effect against third parties in good faith, it has to be registered. This implies that, when a public document is entered for registration, the registrar has the

task to ensure that only legally valid changes are registered. To this end, the registrar will indicate what documentation is required and once presented for registration a legal assessment takes place before the entry is done. Similarly, any interest which affects or limits the ownership rights of the registered owner, such as a mortgage, can also be noted on the register. There are legal rules which regulate the rights and powers of each of these interests in relation to each other and in relation to third parties. For the owner who registered his right the most important principle is the chain title principle. This means that no transfer can be done without the consent of the registered owner or a judicial statement set in a procedure in which the owner has been party. For the third parties who trust in the information published the main principle is the bona fides one, which in this case implies that any party who conveys in accordance with the registry publicity formally issued will be always protected, that means, that the third party will always be kept in his acquisition and no other real right, encumbrance or charge which is not registered can be allege against that third party.

Spanish land registrars also carry out specific several functions different from those developed in other countries such as the following ones:

- Urbanism control: The land registry acts as a preventive control urbanism authority as for the registration of buildings (which is possible in our

systems) the registrar checks the compliance with all administrative licenses or building permits required. They also give notice of any urbanism process that is taking place over a certain registry plot.

- Tax Control: In addition, prior to registration they check the compliance with tax obligation and in villages, it is also committed for tax collection (succession taxes, land transfer taxes and some municipality taxes).
- Interconnection with other public administration: Once an entry is practice, the registrar can check the inscription of the owner's company in the Business registry, it is foreseen the same interconnection with the Civil registry (which is relevant in case of succession transfer or matrimonial property regime changes). It is also connected with the cadastre, so that any change made in the registry plot is then automatically updated in the cadastre mapping model¹.

And, (especially useful for foreign transactions) it is in permanent communication with the urban authority which is obliged to notify the registry any urban restructuring action plan or any process to recover urban legality over the buildings registered.

The land registry is organized on a territorial base. There are as many registries as registry districts. In charge of each registry there is always a registrar, which is a civil servant, expert in law

who has passed a strong qualification Estate exam and who is responsible of the management of the office. Every Land Registry has its own district with exclusive competence and every Registry has its own database regarding the land included in their territory.

However, every data base is interconnected, so although there is not a purely centralized data base, there is a central search server so that information regarding any property registered can be done with a unique access point and with a unique request. There is an online solution is available 99.996% of the time in any given month, 24 hours a day 365days per year. The solution serves 50.000 user queries (not formal requests) per month, using the system 30.000 user on average and rising up to 60.000 at a maximum.

Nevertheless, take into account that as the Spanish platform gives asynchronous answer (due to our property and mortgage law requirements and data protection rules) that will mean that the time to answer the requests made will depend on the opening hours of the land registries. Land registries are open in the whole Spain from 9:00 to 17:00 form Monday to Friday. The legal answering time is 24hours since the request is received in the registry. But the average answering time is one hour for the entire country. The solution is ready to accept additional number of searches due to international users.

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¹ The Spanish cadastre is an administrative structure created for fiscal purpose (land taxes collection and management) on a territorial mapping base. There is one national cadaster for de 90% of the spanish terrotory and 4 independent regional cadaster for Alava, guipuzcoa, Vizcaya and Navarra, Information aon ownership offered by the cadastre gives no prove of evidence for transaction and mortgages.

The Swedish Real Property Register and the IMOLA II project

Article by **David Fridh**, Lantmäteriet (Sweden)

1. THE SWEDISH REAL PROPERTY REGISTER AND LAND REGISTRATION

Lantmäteriet is the Swedish mapping, cadastral and land registration authority. Lantmäteriet manages and is responsible for the Real Property Register. There is one single digital register for the entire country and all properties are covered in the register. The land register is an integrated part of the Real Property Register.

All land in Sweden is divided into real properties called property units. A property unit includes land and fixtures. Property fixtures are e.g. buildings, utilities and vegetation. A real property can include a water area; both inland and in the coastal areas. Areas belonging to several properties jointly are called joint property units. The property areas including the boundaries are presented in the digital cadastral map which is part of the Real Property

Register. Properties can be found also as three-dimensional properties; e.g. underground or as a specific type of ownership apartment also classified as real property.

The Real Property Register contains

vital information about the immovable property. The part of the property register that covers the land register, contains for example information about the registered owner of the property and eventual mortgages, site leaseholds and registered property rights such as usufructs and easements.

Ownership of immovable property is not dependent on registration in Sweden. If all legal requirements have been fulfilled, the ownership of the property is transferred when the deed has been signed by the contracting parties.

Sweden does not have a notary system and the deeds are not authorized. Any transfer of property should be registered in the land register part of the Real Property Register through an application for registration of ownership. This should be made within three months of the transfer being completed. The registration creates publicity and transparency about the ownership and provides certain rights in rem effects. For example, only the registered owner can apply for registration of mortgage or registration of property rights (such as easements and usufructs). Registration can also protect against third party claims. Bona fide acquisitions are possible but there are also some exceptions where this is not possible, even if the proprietor has been in good faith about the information in the land register.

In 1995 the whole of Sweden was included in the digital unified Real

Property Register as a result of the Land Data Bank Reform and also a reform as to property designations. The Land Data Bank Reform included the transfer of information from earlier books to the Register and the introduction of the registration system. The technical environment and channels for dissemination of information has developed continuously thereafter and are today evolving as to e.g. smarter processes between authorities.

2. THE LAND REGISTERS INTERCONNECTION TO BOOST THE EUROPEAN SINGLE MARKET

Land registry publicity is needed at a European level in many different cases and for different reasons. The exchange of legal information about ownership, mortgages and property rights is required in cases of cross boarder insolvency proceedings. Other examples are the EU regulations about succession and matrimonial property regimes and property consequences for registered partnerships.

The scope of the IMOLA project is to become one of the main cornerstones for realizing the Land Registers Interconnection, including accessibility and understanding of the registers between different member states.

3. THE EUROPEAN LAND REGISTRY DOCUMENT -ELRD-, A COMMON TEMPLATE TO HARMONIZE THE LAND REGISTRY INFORMATION

There are many similarities between the different countries and many of the

pivot terms, definitions and formants are known and used within the Swedish system.

However, some characteristics of the Swedish system made it difficult to understand or describe some of the terms and definitions. Some of them are not known or included in the Swedish system and are non-applicable. This has in no way been a major obstacle.

A high-level online publicity solution and a developed integration of the land registry data bases via LRI should provide a good base for implementing a pan-European model in the future.

One of the key points for LRI will be compliance with data protection regulation and national legislation.

From a Swedish point of view, property information has to meet the needs of the society, being accurate, fast and accessible.

In accordance with the principle of public access to official registers, the Swedish Real Property Register is public and legitimate interest does not have to be proved to get an excerpt or selected information from the register. Register information can be administered in both paper- and electronic form but the authority only has an expressed obligation to provide the information in paper form and direct access to the real property register is only permitted for certain purposes. For various forms of customized or adapted information there are resellers specialized within different areas.

[READ THE FULL ARTICLE HERE](#)

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