

E-book IMOLA III



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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ELRA vision regarding the Land Registry Interconnection and the harmonization of information

Article by **Luisa Clode**, ELRA President

The mission of the European Land Registry Association is the development and understanding of the role of land registration in real property and capital markets, aiming to promote mutual knowledge of land registers and, therefore, helping the consolidation of an open and secure Europe.

ELRA considers that the role of Land Registration Systems is fundamental for the effective exercise of basic community freedoms, such as the freedom of movement and of establishment, aiming to provide conditions for a fruitful cooperation with the European institutions whenever it concerns land registries, making it not only understandable but also accessible, and, therefore, useful for professional, courts and citizens in general.

Within the scope of ELRA, IMOLA (Interoperability Model for Land Registers) is the project whose goal is to gather Land Registry information from Member States in an organized and understandable manner. It has been framed a new

paradigm to display the information from Member States. The new structure arose from a general consensus built bottom up, as regards the organization of the substantive content and the technological tool to support it. It allocates the information contained in land registries in the “A B C” structure (the European Land Registry Document – ELRD) and allows its interconnection, in all membership’s national language, through relationships and synonyms using an advanced technological instrument, developed entirely for the purpose of Land Registry.

The European Land Registry Document (ELRD) is the common template that provides the possibility of organizing Land Registry Information within an interoperable framework, thanks to the use of new semantic concepts, called the pivots terms, that bridge the diversity in the Member States.

According to ELRA point of view, the harmonization of Land Registry information at European level must be supported, first of all, through knowledge sharing, making national legal content understandable. Besides, living the digital challenge and the digital transition, enhanced by the pandemic, the information on immovable properties also needs to be accessible and interoperable with secure access, in

accordance with the European Union standards on data processing and data protection.

ELRA is fully aware of the advantages of the interconnection of the Land Registries. We can say that interconnection is unavoidable and demands a serious effort and commitment both at national and European level within the framework of the Treaty on the Functioning of the European Union (TFEU), respecting each one’s role and the principles of subsidiarity and proportionality.

The Land Registry Interconnection II – LRI – project with the participation of a limited set of Member States (Austria, Estonia, Hungary, Latvia, Portugal and Spain) managed to provide a better view of the issues arising from the interconnection of national land registers and of the possibilities to establish a standardised connection between the different systems across the European Union. Under the motto “united in diversity” the project also brought to light expected hindrances like the usability of the information due to different containers and languages, the authorization to access the information, the authentication of the requester and the issuer, and the payment. Nevertheless, “in a long-term perspective, harmonization is inevitable”.

Within IMOLA the goal is to provide a tool that would make the content of national information effectively understandable, using the formants methodology. Concepts, mainly related to civil and commercial matters, displayed in English and in national languages and organized within the framework

ELRA considers that the role of Land Registration Systems is fundamental for the effective exercise of basic community freedoms, such as the freedom of movement and of establishment, aiming to provide conditions for a fruitful cooperation with the European institutions whenever it concerns land registries, making it not only understandable but also accessible, and, therefore, useful for professional, courts and citizens in general.

of the ELRD, are enriched with legal background, doctrine and jurisprudence.

Moreover, in line with the role of Land Registries that ELRA supports (agreed unanimously and published as land registry principles), the concepts regarding to the environment and to the prevention of money laundering and terrorism financing have also been introduced, thus meeting, on one hand, the purposes of Inspire and the Green Deal, and, on the other hand, the needs of the V directive as regards anti money laundering.

In addition, terms have been introduced, whenever possible, using ISA2 core vocabulary, simplified and reusable



→ terms widely accepted and the Inspire glossary. In the future we believe that the corpus semantic contained in IMOLA will determine a Land Registry context domain - that we might call Land Registry Core Vocabulary - which will allow not only the harmonization of land registry information, but also the interoperability of data within the framework of EU digital transformation policy.

In fact, the work developed within IMOLA is in line with a more effective application of European Regulations and Directives, namely the successions regulation, the matrimonial property regulation, the insolvency regulation, the free flow of non personal data regulation, the anti money laundering directive, the re-use of public sector information directive, the freezing and confiscation of instrumentalities and proceeds of crime directive, among others, and all in accordance with the Data Protection Regulation and the e-IDAS Regulation aiming to facilitate the cross border transactions and judicial decisions.

This is quite a lot and it is the way we believe that IMOLA and Land Registry Interconnection should move forward. We consider that IMOLA along with the LRI are lifelong projects. Gathering in a juridical ecosystem all the information related to immovable properties, always updated and in a (re)useable way that allows effective land registry interconnection, is done step by step, in the European space of freedom.

Mutual understanding, as above said, is ELRA main goal; allowing

interconnection is IMOLA and LRI perspective; and harmonizing information is the future of Land Registries in Europe - three different approaches to Land Registries in European Member States that need to be developed in parallel.

As regards the first one, besides the consolidation and permanent update of concepts, ELRA is partner of the EU ADAPT Project, whose purpose is to simplify cross-border succession in face of the adaptation principle stated at article 31 of European Succession Regulation. This project counts on the participation of several European Institutions and Universities and will deepen the study of the features of real rights enriching the information displayed at IMOLA and re-using its electronic tool.

As regards the second approach, ELRA aims to consolidate the IMOLA electronic platform, the I-KOS (IMOLA Knowledge Manager), with concepts organized in accordance with the formants methodology, contributing to an effective perceiving of the information provided by the Member States registry systems. In the future, the goal should be the creation of a Land Registry Core Vocabulary, shaped by MS agreement on minimum common denominator (the pivot term), which would make cross border transactions and judicial decisions easier, better understandable and more feasible.

Finally, in what concerns the harmonization of the information, we do believe that European countries

The Land Registry Interconnection II – LRI – project with the participation of a limited set of Member States (Austria, Estonia, Hungary, Latvia, Portugal and Spain) managed to provide a better view of the issues arising from the interconnection of national land registers and of the possibilities to establish a standardised connection between the different systems across the European Union. Under the moto “united in diversity” the project also brought to light expected hindrances like the usability of the information due to different containers and languages, the authorization to access the information, the authentication of the requester and the issuer, and the payment. Nevertheless, “in a long-term perspective, harmonization is inevitable”.

should think about the adaptation of national systems in accordance with the ELRD schema. The digital transition demands an effective effort at national level to adapt land registry systems making information more standardized, understandable, machine readable and reusable for other purposes such as the fight against money laundering.

Despite the different national systems, Land Registries, keeping the quality and legal effects of the information therein, will catch up the digital transition opportunity towards compatibility with consistency and secure standards, within the European Interoperability Framework. In this context, it is our believe that the best framework to harmonize Land Registry information is to adapt, with legal and technical support

at MS level, the European Land Registry Document with the background of the IMOLA Knowledge Manager, always respecting national differences.

Merging national and European interests is the way the European Union strives for more; being ambitious but moving steadily step by step is the European way of doing; and working bottom up and in collaboration with other institutions and projects is the way to make the most of Europe's potential. This is how ELRA believes Europe should move in view of land registry interconnection and harmonizing information, and it is, in fact, how IMOLA will continue to contribute with openness and transversality.

[READ THE FULL ARTICLE HERE](#)

CORPME and IMOLA

Article by **Enrique Maside**, Head of European Affairs (CORPME)

1. WHAT IS REGISTRY PUBLICITY?

Registry publicity is the continuous and organized externalization of real estate legal situations of real importance to produce general cognoscibility erga omnes, with certain substantive legal effects on the published situation.

The formal publicity of the Property registries pursues several purposes:

- 1) Traffic safety.
 - The acquirer of a right cannot be harmed by causes that he did not know or could know at the time of its acquisition.
 - The general knowability provided by the Registry allows third parties to rely on published situations.
- 2) The security of law. In addition to traffic security, the Registry also protects the static security of subjective rights: the principles of legitimacy and successive tract assure the registrant that he will not modify the content of the Registry without his consent or without having had the opportunity to be heard in judgment. (arts 20, 38, 82 Mortgage Law).
- 3) Promotion of credit (both territorial and personal, because through the Registry the future creditor may have

indications of the solvency of its possible debtor.

- 4) It has a precautionary purpose, (by avoiding possible conflicts between the parties of the legal business).
- 5) It speeds up the contracting, (since the Registry ensures the ownership of the transferor and the existing charges).
- 6) Collaboration with the action of the Public Administration in various areas such as tax and cadastral, urban planning and housing, mortgage market and environment.

The forms of formal publicity admitted and habitual in the Spanish registry legislation are: the simple note, the certification.

2. HOW HAS IT EVOLVED IN SPAIN?

Traditionally, both citizens and registrars and their staff were accustomed to notes being requested in person at the Offices and being issued "as soon as possible" but without being subject to a specific deadline.

However, as of 1996, the possibility of processing them online and subject to a maximum period of seven working hours arises. To do this, the FLOTI system was created, a locator file of registered owners in which the registries issue the simple notes but the requests and shipments are articulated through central services. As objective data, in 2020, 7,445,297 requests were made in FLOTI and in 2021, 7,467,821.



3. WHAT IS THE EUROPEAN EXPERIENCE REGARDING THE INTERCONNECTION OF REGISTRIES?

Accessible, truthful and reliable information on people and goods is essential for the effective implementation of a European area of freedom, security and justice. In the field of civil and criminal judicial cooperation, the importance of access to information published by national registries has been growing at the same time as the progressive development of new technologies has allowed it, as corroborated by the most recent regulations. The five-year plans for electronic justice of the European Union include among the strategic measures the interconnection of the legal registries of the Member States, starting with the mercantile registries, but also those of insolvency, those of acts of last will and finally the registries of the property.

The interconnection of European business registers, established in Directive 2012/17/EU, has been the first to come into operation through the BRIS (Business Registers Interconnection System) platform, developed by the Commission and integrated into the e-Justice portal of the EU, and to which the Spanish commercial registries have been connected from the beginning, having already sent information on three million companies registered in Spain to the European central index, and answered thousands of queries made through said platform.

This infrastructure will also have to provide its services within the framework of the European action

to combat money laundering and the financing of terrorism, as is the result of the fifth Directive, which makes use of it within the corporate transparency measures to facilitate the transnational access to information on beneficial ownership of companies and other legal entities.

This is not by chance, since commercial registries are expressly designated in the recommendations of the FATF group, which constitute the world standard in this matter and which have served as inspiration for successive Community Directives, which suggest, since they could not impose it, the suitability of those institutions to host in the Member States the central registries intended for the publication of the beneficial ownership of companies and other legal entities.

The professional treatment and combined with the corporate information contained in the Mercantile Registry, would allow a more exact knowledge about the ownership and the real control of the companies, since it enables, for example, its traceability through the corporate conglomerates or the information on corporate governance bodies. The Association of Registrars today participates in the EBOCS project, which under supervision and with funding from the European Commission, develops the application to make access to this information effective.

The fifth Directive stipulates that the States shall ensure that the information in this central registry is adequate, truthful and up-to-date, qualities that in our system is only in a position to ensure the Mercantile Registry, whose

→ information is true and complete, since all acts susceptible to registration will have to be registered, wherever they are executed and how and by whom they are implemented.

4. HOW TO DEAL WITH FORMAL REAL ESTATE ADVERTISING ON A EUROPEAN SCALE? IMOLA

As has been said, the European legislator has dealt with the regulation of interconnection in commercial, beneficial ownership and insolvency matters. However, the possible interconnection of registry advertising in the field of real estate is much more complex.

The reasons for such complexity are essentially two: a) the diversity of civil legal traditions within the member states of the EU, unlike corporate regulation in which the European legislator has progressively harmonized the substantive regulation, and b) the division of jurisdiction derived from operating treaties where property and real rights, the foundation of civil law from which registration law emanates, continue to be a matter of national jurisdiction.

To try to address the possible interconnection of registry advertising in the field of real estate, the IMOLA project arises. To understand it in all its dimensions, it is necessary to explain its different phases:

IMOLA is a project promoted by ELRA and financed mainly by the European Commission whose main objective is to develop a simple registration note model accepted by all EU Member States. It is

articulated in three phases:

PHASE I: IMOLA I ELRD *How is the information given?*

The first phase of Imola was the creation of the ELRD, European Land Registry Document, that is, a standard simple note model for all member states.

Part of the scheme A (description), B (ownership), C (charges) typical of the real folio of the Germanic system and is made from:

- agreed rules for the situation of the information
- Boxes that represent abstract legal concepts
- It is accompanied by a basic glossary of terms

PHASE II: IMOLA II ONTOLOGY *How is information understood?*

Once a simple European note model has been created, the next problem that arises is that related to understanding the information.

Keep in mind that a usufruct is not necessarily the same in all the member states of the EU, so in this phase of the project, we tried to define which faculties make up a right in each member state. Thus, the ONTOLOGY appears, that is, a tool to explain and understand the registration information that is presented in the ELRD in such a way that a Glossary of terms is passed to the Semantic Ontology.

Example: if I analyze the usufruct right I see that it is made up of different faculties, the objective of IMOLA II was to determine which faculties make

up each right so that anyone could determine whether, for example, a usufruct right in Romania includes or does not include the of disposition.

However, once each right has been defined by describing the faculties that comprise it, it is proposed in this phase to add associated information (environmental, related sentences, graphic bases, urban information...). In this way, the ELRD will carry the information provided for in IMOLA I, but associated information will also be added.

IMOLA III PLATFORM

The project is at this stage and aims to:

- 1) Extension and improvement of the ontology of the European Land Registry Document -ELRD-.
- 2) Develop a virtualized platform for hosting and maintaining the thesaurus -I.KOS- and the management application used by the European registry network -Knowledge Manager input system-
- 3) Development of new online services to extract and enrich registry information based on the ELRD scheme and the IMOLA repository.

In short, in this third phase the aim is to improve the product obtained in the previous phases and, in addition, to create the platform or infrastructure that maintains what has been created and improves it.

5. CONCLUSIONS

- In general, the publicity of the property registry performs legal

and macroeconomic functions: legal, it provides legal certainty to the owner and to society; macroeconomic, promotes credit and thus social progress.

- As objective data, to assess the importance of registration advertising in Spain, in 2020, 7,445,297 requests for telematic advertising were made and in 2021, 7,467,821.
- We understand that the interconnection of the formal advertising of the EU Property Registries would extend these beneficial effects to citizens throughout Europe.
- However, this interconnection is more complex in the field of real estate than in corporate or commercial matters due to the diversity of legal cultures and the division of Powers
- Registrars from all over Europe have made a notable effort to agree and make viable an interconnection of formal real estate advertising through an innovative project: IMOLA.
- For Spanish Land registry, IMOLA is a project with many strong points:
 - It is a collaborative project: without registrars from all Europe it would not have been possible. Many have contributed, our recognition and gratitude to all of them.
 - It is an inclusive project: respectful of national legal traditions, it has been able to reach a common point of understanding.

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European
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Digital Transformation of European Public Administrations Using the Core Vocabularies

Article by **Peter Burian**, DG DIGIT

ABSTRACT

European public administrations are now in the process of undergoing a digital transformation, which entails a complete re-organization of how everything functions. The aim is to provide user-friendly public services. One goal is to put into practice the once-only principle, where the citizen provides data only once. The public administrations then reuse it for their processes, given the user's consent. The European Commission has put in place several frameworks, tools, and services, which European public administrations can reuse in their digital transformation journey.

THE DIGITAL TRANSFORMATION OF PUBLIC ADMINISTRATIONS

The last two years have shown us how important “digital” really is. The fact that we can now do many things online, has allowed the public administrations to continue on working and delivering services despite the pandemic. However, we have also realized that more needs to

be done. Not all services are online and easily accessible. Not all procedures can be used remotely. Not all processes are streamlined and optimized. The citizen is still often required to go into a physical office and deal with bureaucracy.

This presents a challenge for us, but also an opportunity. The transformation of European public administrations is one of the priorities of the current European Commission. This means the creation of user-friendly public services, and simplification of the processes associated with them. One key initiative is the once-only principle, which states that citizens should provide their data to the public administration only once. It is then up to the different public entities to work together and exchange the data when needed, and when user consent is given.

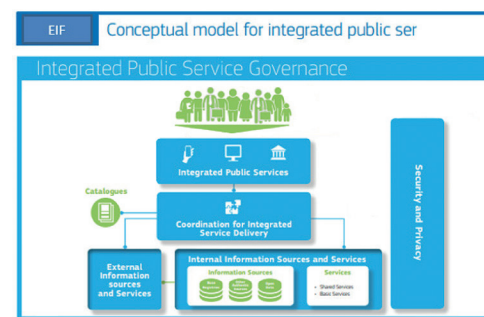


Figure 1. Conceptual model for integrated public services

Underpinning all this is interoperability. The European Interoperability

Framework is the primary document that defines interoperability and can serve as a blueprint for public administrations when creating public services. The EIF Conceptual Model gives an overview of the different parts needed to deliver them. One building block are the base registries, which are the authentic sources of master data for different processes that a public administration needs to do. An example of these are the land registries.

Base registries form the cornerstone of public services. That's why their optimal functioning is fundamental for the smooth flow of processes in the administrations. However, digital transformation is no easy task. There are numerous challenges on the legal, organizational, semantic, and technical levels.



Figure 2. Interoperability Governance

In order to tackle these challenges, the European Commission through the Digital Europe Programme provides different frameworks, tools, and services that can be reused by public administrations across Europe. These include the Base Registry Access and Interconnection Framework on the organizational level, or the Interoperability Test Bed on the technical level.

One special challenge for base registry interconnection finds itself on the semantic level. When you are

exchanging data, things don't end when you send it from one system to another. At this point, meaning comes into the picture. You need to have a common understanding of the data. Agreements on common semantic policies, metadata standards, and tools are crucial for this.

In order to promote a common meaning of the data across public administrations, the European Commission has created the so-called Core Vocabularies. These are simplified, re-usable and **extensible data models** that capture the fundamental characteristics of an entity in a **context-neutral** fashion. They can be used in a variety of different ways.

By designing a new data model and either binding it to an existing syntax or creating a new syntax for it.

By creating mappings from a data model to the Core Vocabularies' conceptual data model and to the respective syntaxes.

There are several Core Vocabularies and their application profiles provided by the European Commission. These include the Core Person, Core Business, Core Location, as well as numerous other vocabularies. A variety of tasks can be performed with their help. Through the Core Public Service Vocabulary – Application Profile (CPSV-AP) you can describe your public services. Through the BRegDCAT-AP, you can describe the data in your base registries. Furthermore, you can also use the latter data model as one of the building blocks in order to create your registries of registries.

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ELRD validation and conformance testing

Article by **Costas Simatos**, DG DIGIT

ABSTRACT

The European Land Registry Document (ELRD) lies at the heart of the interoperability framework produced by the IMOLA project, defining a semantic model for organising land register information at European level. To facilitate its adoption, the IMOLA project in collaboration with the European Commission's Interoperability Test Bed initiative, worked together to launch the ELRD's validation and conformance testing services. These services provide the IMOLA community with intuitive online tools to validate ELRD content and carry out test scenarios to measure the conformance of implementations to the ELRD specification.

VALIDATION AND CONFORMANCE TESTING

IMOLA (Interoperability Model for Land Registers)¹ is a project driven by the European Land Registry Association (ELRA)² and subsidised by the EC Civil

Justice Programme. Its

purpose is to research, analyse and develop interoperability

solutions aimed at increasing the accessibility and transparency of land

registry information and facilitating the registration of relevant cross-border documents. At the heart of the interoperability framework produced by IMOLA is the semantic model for the European Land Registry Document (ELRD)³, represented as an XML-based template for organising land register information at European level.

A key step in facilitating the use of the ELRD is the provision of tools to implementors to ensure their produced land register information is valid with respect to the ELRD's requirements. Building on top of such validation, conformance testing for the ELRD comes into the picture as a more rigorous process through which adopting parties can engage in test scenarios that measure in depth the completeness and correctness of their implementations. Conformance testing provides valuable insight to such parties but can also be monitored at the level of the IMOLA community to determine the maturity of implementations and the overall conformance status of its members.

To support the ELRD's validation and conformance testing needs, IMOLA's management and technical leaders reached out to the Interoperability Test Bed⁴, an initiative of the European Commission's

¹ IMOLA project: <https://www.elra.eu/imola-project/>

² ELRA: <https://www.elra.eu/>

³ ELRD: <https://www.elra.eu/facts-sheets/elrd-reference-information/2117-2/>

⁴ Interoperability Test Bed: <https://joinup.ec.europa.eu/collection/interoperability-test-bed-repository/solution/interoperability-test-bed>



DG DIGIT offering conformance testing services to cross-border interoperability solutions. Following initial contact in November 2018, this collaboration resulted in a successful proof-of-concept that eventually became a public conformance testing service available to all IMOLA community members. This conformance testing service includes two offerings:

- A standalone **XML validator** for the ELRD used as a community tool⁵.
- A **conformance testing community** in the Interoperability Test Bed platform⁶ operated by DIGIT, that reuses the ELRD validator to define conformance testing scenarios.

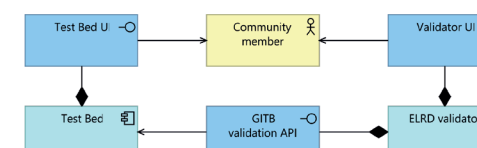


Figure 3: ELRD validation through the standalone validator and the Interoperability Test Bed.

Since the validator's initial implementation in 2018 it has evolved to support all ELRD specification versions. The validator is used in a fully anonymous manner and does not record provided inputs or produced validation reports. In addition, it is available through multiple interfaces, each catering for different validation needs:

- Through a **web user interface**, used by users for manual validation.
- Through a **SOAP web service API** for machine-to-machine integrations.

- Through a downloadable **command-line tool** for use in scripting.

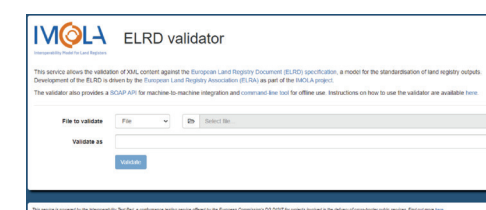


Figure 4: The ELRD validator's web user interface

Complementing the validator, the ELRD conformance testing community, termed as the **ELRD Test Bed**, offers the possibility to test against predefined test scenarios with data and results being recorded and available for detailed reporting and monitoring.

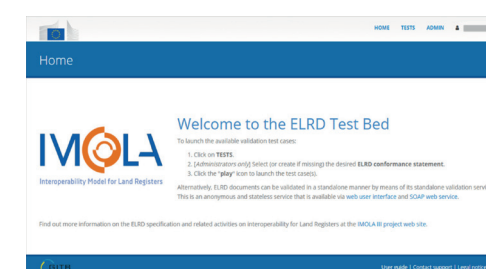


Figure 5: The ELRD Test Bed's landing page

Both the ELRD validator and Test Bed have been progressively updated for each released ELRD version, supporting at the time of writing releases 3.0 through 3.2.1. It needs to be said that the ELRD Test Bed community currently offers simplified test cases replicating the validation that is otherwise possible, and more readily accessible, through the ELRD validator.

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⁵ The ELRD validator (web user interface): <https://www.itb.ec.europa.eu/elrd/upload>

⁶ The Interoperability Test Bed platform: <https://www.itb.ec.europa.eu/itb> (see the public ELRD community).

Academic
experts

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Land registry interconnection and comparative law: towards a future aligned with EU digital transformation policy

Article by **Elena Ioriatti** and **Sara Giacomini**,
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INTRODUCTION

This Chapter explores the application of some of the comparative law methods to the European research IMOLA projects of land registry systems interconnections, with a focus particularly on the legal formants theory and the factual approach, elaborated by Rodolfo Sacco and Rudolph Schlesinger, respectively, in the middle of the last century.

The arguments are mostly discussed in a simple manner, by means of practical examples, in order to make the content accessible to an audience of professionals in the field too. However, the methodological implications underlying this project are complex and, in our opinion, require further scientific investigation.

As noted by Husa¹, comparative law studies are a vast field with different scholarly orientations; from a scientific point of view, this collaboration between the Unitn Trento team² and ELRA was conducted following the cultural guidelines of Italian comparative legal science as defined in the renowned Trento Theses³, a cultural manifesto drawn up in 1987 in this same Faculty by a group of influential comparative law scholars, led by prof. Rodolfo Sacco.

As is well known, according to the first Trento thesis, "Comparative law, understood as a science, necessarily aims at the better understanding of legal data"⁴. This maxim defines the cultural and scientific programme of comparative law which, as in the other scientific fields,

¹ J. HUSA, *Methodology of comparative law today: from paradoxes to flexibility?* In *Revue Internationale de droit comparé* (2006), pp. 1095-1117.

² Members of the Unitn team are prof. Elena Ioriatti (Professor of Comparative law at Trento University, Faculty of Law), Dr. Sara Giacomini (PhD graduate on Comparative Law at Trento University, Faculty of Law) Justice Michele Cuccaro (land registry judge at the Trento Court). Recently the Land Registry Directorate of Trento Province, headed by Dr. Diego Castelli, has joined the research team.

³ <http://www.jus.unitn.it/faculty/guida/tesi.html#top>

⁴ Translation of the five Trento Theses by Prof. Giuditta Cordero Moss, University

consists in the search for data. Since comparative law is a branch of legal science, the data (norms) it researches belong to the legal field. In this context, comparative work consists therefore in measuring the differences that exist between a variety of legal models.

In its short existence, comparative law⁵, like linguistics, ethnology and so many other fields of knowledge, has proved to be the most powerful tool available for highlighting differences and similarities between models. This is due to the fact that comparative methods reveal the details of the models considered in a real context. Indeed, the comparative scholar does not merely pay attention to the legal rules issued by the legislator. This approach is legitimate but is conditioned by legal formalism.

Legal formalism is based on the idea that rules are produced by an authority and are then subject to interpretation in accordance with the rule thus issued; this is, however, a first-level reading of legal data relating to a legal system, the knowledge of which must be completed with the observation of how that system operates as a whole.

Formalism describes an elementary grammar of legal systems, the composition of which is much more complex. This simplification is based on an implied principle, the "principle of unity", according to which, given a certain legal question (legal matter) there is a general tendency to see within the legal system one single solution, based on the will of the legislator formulating the

norm and the courts and legal scholars interpreting that will. Accordingly, the norms – originating from legislation, legal scholarship or case law – should all provide the same answer to a given legal question. If a discrepancy exists, this must be attributed to an error by the interpreter or, at best, to a minority opinion in case law or legal scholarship.

This approach is not useful to comparative scholars since their activity is aimed at searching for data in the pursuit of knowledge – similarities and differences between models – in order to compare legal systems. From the comparative scholar's point of view, all data pertaining to a legal question must be considered in the analysis and, as "components" of a system, are independent of the positivist classification of the sources of law. Any solution that exists within a system with reference to a certain (legally relevant) problem is a datum, a formant. Thus, Formants are groups of norms sharing the same characteristics in providing solutions to a specific legal problem (or legal matter, question of law). As the solution to a question of law can be found in legislation (legislative formant), in case law (judicial or case law formant) and in the work of scholars (doctrinal formant), these groups of rules are the three main formants.

The discovery of formants is based on observation, an idea already present in classical empiricism, which goes back to Hume and Locke and concerns the knowledge of the world for what it really is. However, this research method

of Oslo.

⁵ E. Ioriatti, *EU legal language and comparative law. Towards a European Restatement?*, in *Global Jurist*, 2021.



is rarely applied in legal studies. In fact, Rodolfo Sacco's discovery of formants⁶ in the 1960s was such a simple idea that it astonished the scientific community. The obviousness of the discovery, the fact that the formants have always been hiding in plain sight, has always been the strength and the weakness of this theory. Its strength derives from acknowledging reality: it is clear that every legal question on which a given legal system expresses itself can receive at least three solutions – legislative norm, case law norm, scholarly norm – which not infrequently differ.

Its weakness stems from its very simplicity: recently a German scholar, Uwe Kischel, author of an important book entitled *Comparative Law*, in the section dedicated to formants states that “it is precisely the obviousness of this theory that represents its main objection⁷”.

As we shall see in the next paragraph, it is the application of the legal formants theory that proves its own complexity, hidden behind its apparent obviousness. As we will see, this became clear when formants theory was used to construct the legal-semantic structure of the land registry sheet model.

It is undeniable that from the moment Sacco presented the formants to the scientific community, the world of law changed forever, as the opposition between reality and appearance was

revealed. It has indeed emerged that the legal system does not have clear-cut boundaries, those determined by the sources of law, but there is a whole legal reality that may conflict with or even disapply the sources of law. It can go so far as to be implicit, not verbalised. The effect is similar to that caused in classical physics by quantum theory, a theory that is still partly unexplained, which forces a more realistic view of the world, albeit less reassuring than that hitherto shown by classical physics.

The existence of formants also challenges the idea that, in order to know a legal system and to enable the scholar to acquire data on that system, it is sufficient to know the specific legal terminology; the formants show that it is instead necessary to know the operational rule. In comparative law terminology the operational rule is the final solution, in practical terms, of a legal matter. Those rules are often similar in the different legal systems, regardless of the provisions formulated in the legislative and case law (and even the scholarly opinions) formant. In fact, written or otherwise verbalised rules are expressed using taxonomies – terminologies – that are peculiar to the various legal systems, which are often different from system to system but underlie similar operational rules.

As stated in the fourth Trento thesis: “Comparative knowledge of legal systems has the specific merit of checking the coherence of the various

⁶ R. Sacco, *Définitions savantes et droit appliqué dans les systèmes romanistes*, in *Revue Internationale de Droit Comparé*, vol. 17, 4 (1965), p. 827 ss. R. Sacco, *Contratto e negozio a formazione bilaterale*, Studi in onore di Paolo Greco, II, Padua (1965), p. 953. R. Sacco, *Les buts et les méthodes de la comparaison du droit*, in *Rapports nat. italiens au IX congrès intern. de droit comp.* (Theran) Giuffrè, Milan (1974). R. Sacco, *Introduzione al diritto comparato*, first ed., Giappichelli (1980).

⁷ U. Kirschel, *Comparative Law*, 2019, Oxford University Press, pp. 106 -110.



elements present in each system after having identified and understood these elements. In particular, it checks whether the unrationalized rules present in each system are compatible with the theoretical propositions elaborated to make the operational rules intelligible.”

The lack of a direct link between the definition and the application of the rule means that the definition is declamatory in nature⁸. This became evident during the development of IMOLA III project.

COMPARATIVE LAW AND THE IMOLA PROJECTS

As already seen, comparative law, understood as a science, mainly aims at the better understanding of legal data. However, the first Trento thesis establishes that this science can also have other objectives, which are only a tangential purpose of comparative research: “Comparative law, understood as a science, necessarily aims at the better understanding of legal data. Further tasks such as the improvement of law or interpretation are worthy of the greatest consideration but nevertheless are only secondary ends of comparative research⁹”.

An example of the additional task performed by comparative law is precisely the support that comparative

methodology has given to the IMOLA projects. The problems and questions raised by the interconnection among the European land registries proved from the outset to be new and to require the identification of a specific methodology.

Legal formants theory, in particular, was fundamental. Indeed, with regard to the land registry system, from a comparative law perspective the legal formants have been qualified as the legal basis (legal ground) of an inscription in the land registry.

To give just one example¹⁰, the IMOLA project was based on the drafting of land registry sheets concerning individual inscriptions for each legal system. For that purpose, general definitions of concepts – called pivot terms – such as “property”, “possession”, and “real servitude” were formulated. The first problem was therefore to create the relationship between the pivot terms – i.e. between the general definitions – and the national concepts of institutions subject to land registry inscription that refer to those categories.

As is evident, the mere indication of the theoretical national concept (in the case of Italy, “servitù reale”) would have limited the information to a purely declamatory level.

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⁸ SACCO, *Introduzione al diritto comparato*, cit. (partial translation in R. Sacco, *Legal Formants: A dynamic Approach to comparative Law*, in *The American Journal of Comparative Law*, XXXIX (1991): 1-34 and 343-402).

⁹ Translation of the five Trento Theses by Prof. Giuditta Cordero Moss, University of Oslo.

¹⁰ The application of the comparative law methodology to the IMOLA projects was also useful in defining the attributes of the legal concepts in a more complete and systematic way and collecting data in a structured framework; filling the general definitions with a more accurate and detailed legal meaning; contributing to the data collection; updating (and keeping updated) the template with all the innovations and changes that can affect a legal system (and which can be brought by either the legislative or the case law formant); identifying differences and similarities among several legal systems and the operational rules of those systems.

ELRN Contact Points

⋮

IMOLA's role in EU information interconnection

Article by **Paula Gallharda, IRN, Paulo Vieira, IRN, Fátima Ferreira, ASCR from Portugal**

In the current age of the fourth industrial revolution, we are living in a more intelligent and connected world taking advantage of technological progress, such as artificial intelligence (AI), the Internet of Things (IoT), Distributed Ledger Technology (DLT), 5G technology, cloud computing and other technologies.

Those technological advances are no longer ingredients of science fiction books and movies. They are reshaping existing ways we perform many activities and daily interactions. Society and economy progressively become to be based on science, technological development, and innovation, including the outbreak of numerous data lakes designed to collect, process, and store massive amounts of structured and unstructured data.

In this context, countries, including Portugal, are strongly committed to digital transformation, which has to be faced in a broad perspective, not only by

citizens and companies but also by public administrations.

We speak of an era in which information and data take on particular relevance, becoming imperative to make them accessible to all, by faster and more efficient means. Therefore, forcing to shift the way of thinking or doing the publicity of the registries to new information-delivery paradigms.

However, data accessibility, even if combined with other dimensions of data quality like consistency, validity, integrity and precision is not enough. For data to become useful and really a cornerstone of our world, it must be, widely and accurately understood, so that citizens and authorities can fully take advantage of it, in close connection with the ability to solve everyday problems and demands.

Looking at the EU setting, we see a borderless single market based on the

assumption of the free movement of persons, goods, services and capital, which leads to increased mobility. We are about to require better conditions to improve supra national land register transactions, predicting that they will arise from most common cross-border commercial and personal relationships, such as financial investments, marriage or inheritances. This reality will place the land registry at the heart of such interests.

Land Registration must create conditions and tools to provide a more efficient public service and, hence, a better quality of life for citizens. Bearing in mind that for the interconnection is fundamental to evaluate whether, who, when and according to which conditions is authorized the access to search and retrieve land register data.

In such scenario of growing relationships within and between countries, sharing information emerges as an absolute imperative, establishing a privileged stage for interoperability. Underlining the importance of being alert to obstacles due to the organisational complexity. From the definition of governance models and policies to the allocation of vital funds.

Recognizing the crucial importance of land registry information in the socio-economic framework of the European single market and the advantages of land registries interconnection should make us more sensitive and aware of the emerging challenges. In particular, the challenges related to the need for symmetry in information. We highlight specially a set of keywords that give us a perception of the extent, such as harmonization, transparency, trust or accessibility.

At this respect, we also must be conscious of heterogeneity. It is clear that member states have different legal systems, legal concepts are diverse, distinct technological architectures and data sources, levels of transparency are not the same, and in the absence of EU harmonized rules on land registration, mistrust may arise.

These facts made it evident that having a standard template (ELRD) and a repository containing a central vocabulary (KM) provides the foundation to services with added value for citizens and for private and public entities, that need access to land registry information and, to that extent, enhances IMOLA's role in support European development.

In addition, to increase the perception of the elements that constitute the land register law, practice and information of each country and consequently to a more comprehensive template document we must outline the role of using legal formants for the thesaurus terms. In Portuguese legal tradition, we have three main types to improve the quality of the information: Legislation – Mainly the Civil and Land Registry Codes; Case Law – Judicial decisions from the Courts; Doctrine – The body of principles, instructions and rules issued by IRN.

In such complex knowledge area, having access to information and tools that made it understandable is something that we shall highlight and salute as a significant achievement of IMOLA. The accomplishment of the goals not only ensure the technological exchange of data, in itself, but that the result is meaningful for those who consume it.

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The Spanish vision of the IMOLA project

Article by **Francisco J. Gimeno, Pedro Pernas** and **M^a Teresa Touriñán**, Colegio de Registradores (Spain)

The Covid pandemic outlined the importance of digital transformation in all areas and Land Registries are no exception. Land registries are well-known for its important level of digitization achieved and the interoperable solutions already implemented but nevertheless new steps must be taken to adapt them to the new societal needs. The Single Market demands new European tools that overcome the barriers that still exists. These barriers are not legal limitations but obstacles arising from the different languages and the lack of knowledge of the different legal systems in force in the various member states. To overcome these barriers, we believe it is necessary to develop a European registry system that will involve the implementation of a single portal and harmonized registry publicity for which the European Land Registry Document (ELRD) is an essential element.

TECHNOLOGICAL ADVANCES IN THE LAND REGISTRIES

The pandemic has highlighted the need to develop IT tools in all public administrations. In the field of land registries, the electronic access of documents to the registry must be developed, as well as the forms of telematic request of registry publicity. In this context, the LRI appears as a fundamental tool to reach the next step of this digitalization process, which is to achieve the integration of the registry systems in the field of publicity to favour the realization of cross-border operations and to develop the credit market at European level. In this sense, the work developed by the European institutions in the framework of the interconnection both in the LRI MS 2 and IMOLA projects has allowed further progress in the European construction within the framework of the Land Registers.



As we have pointed out, important steps have been taken in the development of the European Land Registry Interconnection system (Land Registry Interconnection or LRI).

This development has been compatible with the European system of competence that recognizes the competence of the Member States in both property rights and land registries. Notwithstanding this national competence, the important role that the LRI is called to develop must be recognized, favouring through the IMOLA project the digital transformation of the Land Registers and the attention of both European and national institutions to the need for cross-border registry publicity that considers the regulatory diversity but that, at the same time, favours the understanding of the registry publicity by agents located outside the Member State that issues it.

It is also worth highlighting the great progress that has been made in the IMOLA project. IMOLA I led to the birth of a common schema (the European Land Registry Document or ELRD). IMOLA II began to develop, from the national point of view, this scheme, favouring its understanding by the national Land Registries. IMOLA III has taken a new leap in this evolution using Artificial Intelligence tools, a web environment of the application and numerous improvements that make the work of the contact points much more productive. All these elements have enabled the development of the European Land Registry Network (ELRN) allowing the transfer of knowledge.

Recently, the scope of the Knowledge Organization System (KOS) has been

extended to include the numerous questionnaires that have been completed over many years by the European Land Registry Network (ELRN).

DEVELOPMENTS IN THE COMPARATIVE LAW ANALYSIS

All these elements will facilitate the knowledge of the institutions of Private Law, which will undoubtedly facilitate the development of the Single Market which, in the field of Private Law, still has too many barriers, since the understanding of the specialized language is not easy and, in many cases, there are confusions derived from the existence of “false friends”.

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THE CONNECTION BETWEEN THE LRI MS AND IMOLA PROJECTS

Spain has participated in the last two years in the Land Register Interconnection 2 project, which aims to establish a connection of the participant Member States to a common Land Registers Interconnection Platform hosted at the e-Justice portal.

At the first stage of this project, Austria and Estonia effectively established their connection to the platform. At the just



finished second stage of the project, four new Member States have been added to the project: Hungary, Latvia, Portugal and Spain. All four of them have made an status quo analysis of their national systems to find the gaps that would be needed to fulfil to reach and effective connection, both from the perspectives of technical requirements and legal aspects. Furthermore, Latvia has also made a step forward to connect themselves to the common platform too.

THE SPANISH ANALYSIS OF THE ELRD

At this matter of study or analysis, from the Spanish perspective we have found it interesting to make a comparative analysis of our current national system and the ELRD, so as to find the existing gaps that our system suffers in order to assume a future ELRD model. We have also enhanced the other partners to make this analysis, which we think will be very useful in the future, and we of course make available our analysis and conclusions to any other partners that would need or want them.

THE IMPORTANCE OF THE LAND REGISTRY IN SPAIN

From the Spanish perspective, the Land Registry is the only institution that can publish the ownership and encumbrances of properties and it is advisable that the legislation facilitates the publication of all encumbrances and limitations, even if these are not directly recorded in the Land Registry. The publication of statutory or environmental information can be achieved through the

associated registry information which implies the interoperability of real estate information. It is advisable to configure the Land Registry as the main access point to the information that citizens require to celebrate transactions of immovable property. We believe that the incorporation of environmental pivot terms in the ELRD will facilitate the knowledge of this information and the interoperability of the Land Registry, helping the better functioning of the Single Market for real estate.

THE ENVIRONMENTAL RESTRICTIONS

In Spain, the Spanish legal system allows the registration of environmental restrictions through an environmental notice which must be included in the Land Registry Information. Information on the environmental limitations resulting from the location of the property within or next to a protected natural area, must be included in the registry publicity. An a specific application to link registered properties with environmental restrictions is used and Environmental limitations can be considered encumbrances because they result in restrictions on the right of disposal and use of proprietorship (re-emption rights, crops limitations...). It was common that as environmental limitations were not usually recorded in the Land Registry books for them to have an effect, they could act as hidden charges when the connection between the registered statutory property Registry and environmental limitations is not disclosed in Land Registry information.



IMOLA I led to the birth of a common schema (the European Land Registry Document or ELRD). IMOLA II began to develop, from the national point of view, this scheme, favouring its understanding by the national Land Registries. IMOLA III has taken a new leap in this evolution using Artificial Intelligence tools, a web environment of the application and numerous improvements that make the work of the contact points much more productive. All these elements have enabled the development of the ELRN allowing the transfer of knowledge

THE IMPORTANCE OF MONEY LAUNDERING PREVENTION

One of the novelties in the ELRD document has been the development of terminology related to money laundering. In Spain, the organization of the Land Registry has an Anti-Money Laundering department called CRAB ("Centro Antiblanqueo Registral") to intensify and channel the collaboration of the registrars with the judicial, police and administrative authorities in charge of the prevention and repression of money laundering and the financing of terrorism, without prejudice to the direct responsibility of the registrars, and allowing a higher level of specialization in these tasks within the collective.

As for the Register of Beneficial Ownership, it was created with Order JUS/319/2018, of March 21, approving the new models for the submission to the Commercial Registry of the annual accounts of the parties obliged to publish them. The Association of Registrars has developed the RETIR, which provides the data registered in the Mercantile

Registries at any given time and has signed agreements for its use with the Court of Auditors, the Public Prosecutor's Office, the Civil Guard, the National Police, the Bank of Spain, the National Securities Market Commission, the General Council of the Judiciary and other official bodies involved in the fight against money laundering.

This intense objective of the EU commission has been addressed in IMOLA III, as new pivots to tackle AML have been introduced in the KM, training of registrars listening to experts and authorities in this field has been carried out and best practices have been shared within the ELRN. First achievements have been made in terms of reuse of KM information in the field of AML, and perhaps further achievements can be made with a new IMOLA IV to deepen this area.

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The Swedish Real Property Register and the IMOLA II project

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

The IMOLA's role for Land Registry Interconnection as LRI complementary project 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. Land register information is also essential for environmental issues and in the process of anti-money laundering.

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.

The European Land Registry Document -ELRD- as an essential artifact for the harmonization of Land Registers information within the European Interoperability Framework -IEF-

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.

THE USE OF A COMMON VOCABULARY AND A BASIC VOCABULARY

The development of the European Land Register Document (ELRD) requires the

use of a common vocabulary from the European registration systems.

Similar vocabulary is sometimes used with different meaning. It has been necessary for each country to define each concept and identifying the characteristics.

During the work of IMOLA III, new pivot terms have been added, particularly in areas concerning environmental information and anti-money laundering, which has provided added value.

Value of work deployed by the Contact Points of the European Land Registry Network

The contact points participating in the IMOLA III Project have familiarised themselves with the real rights and property law concepts from a pan European perspective. The relevance of this knowledge has grown its importance in the IMOLA III workshops. The workshops

have included important information from the European union in various areas. Workshops have also included training on practical management of the Knowledge Manager database and break out sessions with each respective member state.

Participating in the IMOLA III project has been educational and enriching on many different levels. We have not experienced any significant problems and have managed to work systematically with the Knowledge Manager. Whenever questions or technical problems have arisen, they have been resolved swiftly by the project team.

We hope that the pan-european cooperation will continue and that it will make it easier to access understandable cross-border information about properties and land register information in Europe.

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IMOLA III overall management vision, results, and future

A summary based on images

By **Jesús Camy**, Project Manager and **Anabel Fraga**, Technical Director



Editors: Anabel Fraga, Elena Ioriatti

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