THE ECONOMIC ROLE OF LAND REGISTRATION

A GENERAL ASSESSMENT

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• The economic role of land registration

  – Hernando De Soto - “The Mistery of capital”
    • Without an integrated formal property system, a modern market economy is inconceivable.

  – Registration creates a mirror to the asset itself
    • The special character of real estate, being immovable
    • Possession versus ownership
    • It becomes a marketable object
    • Possible to use as a collateral
• The role of cadastre and land registration
  – Cadastre
    • Collect geo spatial data
    • In order to inform the authorities
      – Basis for collecting taxes
      – Information for Policy making
    • Administrative role
  – Land registration
    • Private law
    • Deliver legal security to citizen on real estate
  – Both use the same data
    • Different goal
• The informing role of LR

• The security role onwards to “Rights in Rem”
  – Squating

• The effect on global national wealth
  – A good land registration system may increase the market value of real estate to some 30%

• The effect of LR on credit and investment market
  – The instrument of mortgage
• There is still a lot of work to do
  – 70% of the real estate at global scale is not yet registered
  – People in developing countries own assets in defective forms
    • Houses but no titles
    • Crops but no deeds
    • Businesses but no statutes of incorporation
  – Without formal representation, real estate is dead capital
• The traditional systems of land registration
  – Deed system
    – The deed is archived and indexed
    – Very little guarantees by the state
    – Avoiding double sales
    – Priority rules for mortgages
    – The need to go back to the root title for security
    – Inform third parties
  – Title system (Torrens system)
    – The act of registration causes legal consequences
    – The "Mirror" and "Curtain" system
• The instrument of Mortgages

  – A bit of history
    • “mort gage” = “dead pledge”
    • Known in ancient cultures already
  – The accessory nature
  – The extending nature
  – It follows the property merely than the owner
  – The role of LR in activating mortgages
  – The role of LR in documentation on mortgages
• Cross-border conveyancing and registration of Real estate on a European level

  – Markets are ready
  – Different legal systems cause problems for LR
  – State of the play at European level
    • EU legislation is restrictive (article 345 TFE)
    • Nevertheless there is a unifying legislative process
    • Markets clearly are in need of European Standards
    • There is no overall covering initiative facilitating cross-border transitions of real estate
EU Legislation

- The blocking effect of art. 345 –TFEU
  
  “The Treaties shall in no way prejudice the rules in Member States governing the system of property ownership”
  
  • No substantive EU property law
  • No European Registers

- If a positive EU competence
  
  • property law is not exempted from EU law making

- Negative integration
  
  • National legal provision in violation with EU law
  • Particularly freedoms of persons, services goods, capital

ELRA

European Land Registry Association
• **Intervention in property law by the EU**

  – Permitted when there is a recognised head for intervention

  – With regards to cross border transactions
    * Transactional competende based on freedom fo capital
    * Facilitation of movement to engage in economic activity
    * Facilitation of EU citizenship
    * Consumer protection
    * Free movement of data
Initiatives enhancing conveyancing at EU level

— Legal

— Practical

» Land Registers interconnection project

» European Land Registry Association (ELRA) - [WWW.ELRA.EU](http://WWW.ELRA.EU)
  • Imola projects
• New challenges

  – Internationalisation of the market

  • Cross border conveyancing

  • Demand for better information
    – More than most land registries actually deliver
    – Guaranteed as well as non-guaranteed
    – Geo-spatial
    – Always Up to date
• The organisation of land registries

– New technologies
  • Blockchain
  • Artificial intelligence
  • Big data
  • privacy

– Cost cutting initiatives
  • Privatisation
  • Upcoming sociological changes
Thank you!

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