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
  • “mortgage” = “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
  
  \[\text{“The Treaties shall in no way prejudice the rules in Member States governing the system of property ownership”}\]
  
  • 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
• **Intervention in property law by the EU**

  – Permitted when there is a recognised head for intervention

  – With regards to cross border transactions
    • Transactional competence based on freedom of 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
  • 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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