

THE ECONOMIC ROLE OF LAND REGISTRATION

A GENERAL ASSESSMENT

Jan Moerkerke



- **The economic role of land registration**
 - Hernando De Soto -“The Mystery 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 proces
 - 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



- **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

- <https://www.elra.eu/wp-content/uploads/2018/03/Gabriel-SimaDG-Just-LRI.pdf>

» 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!

jan.moerkerke@elra.eu

