

# Land registration and SDGs

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## A. Introduction

A global topic calls for a global reference, which is why this presentation is entitled “*Land registration and SDGs*”. It should be checked whether there are similarities between SDGs and the land register concept, that means the register-related sustainability. As far as we can see, there are eight SDGs related to land registry matters, namely, number 1 (no poverty), number 6 (clean water), number 7 (affordable and clean energy), number 8 (decent work and economic growth), number 9 (industry, innovation and infrastructure), number 10 (reduced inequalities), number 11 (sustainable cities and communities) and number 16 (peace, justice and strong institutions). According to the Eurostat report “Sustainable development in the European Union...”, progress in the justice sector is particularly significant. That is why SDG number 16 (peace, justice and strong institutions) comes first in the Eurostat report, which will especially *please* the land registries which belong to the justice department, including Germany, Estonia, Austria, Poland and Slovenia. Progress towards individual SDGs is summarised in a chart. It looks like this. However, the Eurostat report provides no reasons for complacency. Five years have already passed since the SDGs were adopted, and the Covid-19 pandemic is affecting all areas, including that of land registries. *Is the disruptive potential of the Covid-19 pandemic so great as to induce resignation?* My answer is a resounding *no*. Therefore, I will focus on seven major issues concerning register- related sustainability:

- first, the fundamental task of land registry
- second, land register creating resilient economic structures
- third, the ordering principle of real folia
- fourth, the principle of legality and title registration
- fifth, the publicity of the land register
- sixth, interconnection and cooperation
- seventh, at last, the new focus on heritable building rights, the building leases.

Let’s start with *sustainability as the fundamental task of the land registry*.

## B. Land registration and SDGs

### I. Sustainability as the fundamental task of the land registry

In 2015, the global community took up the major problems with the SDGs. When facing major issues, *we must rely on lists*, said *Pierre Bourdieu* in his lecture on 15 February 1990, at the Collège de France. Let us adapt Bourdieu’s statement to our purposes: *when facing major issues, we must rely on the registry concept, the land register, and the cadastre*, to reach a solution. It seems to me that the concept of sustainability arose from the register concept. This is supported by the fact that both

concepts, are equal and congruent. Both seek to maintain the functionality and economic usability in the long term. Land book entries neither serve an ephemeral purpose nor are a disposable product. They serve to organise the past and the present for the future. Data whereby the land registry operates are not deleted but updated, so that the past remains current and shapes the present. Real estate data should be functionally usable in the long term, whereby the land book contributes to the prosperity of nations. Not unlike the sustainability concept, land register management does not come to an end, does not reach a static, final state. Something quite paradoxical becomes reality: the register *mobilises real estate*, archiving makes *real estate mobile* and accessible to market events. Circulation is the key word here. This not only satisfies the needs of the present generation, but also those of the following ones, who can fall back on secure land information, order, and legal security. Thus, the land book's fundamental task is to provide permanent security to society as a whole, in fact, by creating reliable entries. Along those lines, the land register contributes to the safeguarding and development of the standard of living by archiving and mirroring the rights in rem. The motto is: *to conserve and to protect*. This is the *DNA of land registration*. In the SDG context, we can therefore count the land register and the cadastre among the "*instruments for the construction of social reality*", which Bourdieu had in mind in his lecture from 28 November 1991 at the Collège de France. In other words, a means of constructing reality that is committed to the *innermost core* of the sustainability agenda. So much about the first point. Second issue: *a strong land book creates resilient economic structures*.

## II. Register-related sustainability: a strong land register creates resilient economic structures

In these dire times of the Covid-19 pandemic, the global community seems to be receiving a lesson about the "*fragility of the global economy*". This also concerns another element to which the land book and cadastral concepts can make a significant contribution: *the creation of resilient economic structures*. *Resilience* means ability to withstand or resist, the ability of a society to deal with external disturbances, to withstand shock waves. This trait is particularly connected to SDGs number 1 (no poverty), number 8 (economic growth), number 9 (industry, innovation, infrastructure), number 11 (sustainable cities and communities) and number 16 (peace, justice, strong institutions). In this SDG context, the land book and the cadastre prove to be *special resilience factors*. On the one hand, we should highlight the publicity effects attributed to the land register. In German law, these are the far-reaching effects arising from Articles 873, 891, 892 German Civil Code, which state that entries in the land book have a constitutive effect, and trust in the correctness and completeness of the register is particularly protected. What is meant are the far-reaching *bona fide effects* from which the parties involved can benefit because they can trust the entries and can also trust the silence of the register. As we consider the German land book against its French and British counterparts, the former appears as a particularly strong and a resilient register. Register-based resilience may also arise from the absoluteness that real rights in the land book have, in fact, *erga omnes*, towards everyone. To use the British terminology: the *mirror principle* ensures that the land book reflects all real rights to real estate. Sometimes, there is even talk of the "*claim to eternity*", which is inherent in every right. *Land register - an eternal flame*. The absolute effect can be attached to registered rights because registration is mandatory under German law. Here, the transposition of *leave no one behind*, an important sustainability goal, means: *leave no real right behind*. If, conversely, *hidden charges* erode the land register, it cannot exploit its systemic relevance and hardly contributes to the establishment of resilient economic structures. Overriding interests - *well-known to the British land registry* - prove fatal in this respect, as they apply even *without registration* and hang over transactions like a sword of *Damocles*. Publicity is of little value in a context of overriding interests and must give way to appraisals or personal inspections. On the other hand, the fight against money laundering and terrorist financing in the land register procedure ensure register-based resilience. In Germany, this takes the form of the Money

Laundering Act, which applies when buying real estate and establishing heritable building rights and, above all, affects the certifying notary. Notaries must conduct a risk analysis. If the notary realises a higher risk of money laundering, certain reporting obligations may even prevent the acknowledgement itself. Thus, money laundering issues should be clarified beforehand so as not to reach the land registry. The aim is *clean ownership*, not *contaminated ownership*. *No green kryptonite*, which weakens the land book. *No Lex Luthor* at all. Finally, the German land registry applies the European Regulation No. 881/2002 of the European Council and the judgment of the European Court of Justice of 9 September 2010. As a result, the land registry observes the prohibition of disposals and acquisitions concerning listed persons. The land registry may not make entries contrary to the prohibition. It avoids *the green kryptonite* of money laundering and does not open the gates to *Lex Luthor*. The land book can only preserve resilience and sustainable development if it commits to combating and suppressing crime and terror. Let's now turn to the third point.

### **III. Register-related sustainability: the ordering principle of the real folia**

The ordering principle of the real folia is another aspect in the concept of register-related sustainability. According to German Law, each property receives a special land register sheet, an own book. In this respect, the land register is a *property-related register*, a land-related main register. The concept of real folia was implemented in Germany, Spain, Poland, Scotland, and Austria, among others. Compared to the *personal folia*, the real folia can claim to be *more sustainable* and *resilient*. The higher degree of register-related sustainability stems from the fact that a glance at the land book is enough to get a complete picture of the legal position of the property. This approach stands in contrast to land book systems which are constructed as document collections. The personal folia approach cannot be described as sustainable, nor can the pure document collection, or registration systems, which only record the documents in a chronological way. Such registration systems always lead to new research and to endless reinterpretations. This refers to the term "recording" under US law. In addition, the real folia allow the *interconnection* with the cadastre to be less problematic. The land book can thus build on the cadastre and achieve higher integrity levels. It takes care of resources, because real estate cannot always be traced back to *Wilhelm the Conqueror*. Linked to the real folia system is the question of the complete recording of all parcels in a given territory. Gaps in the territory prove to be a real bad thing, because they prevent sustainable development. The danger of a *res extra commercium* cannot be dismissed out of hand. Avoiding *terra incognita* must be the goal of any land registry that is committed to the SDGs. My Madrid colleague *Javier Gómez Gállico* described this in a study as follows:

*"A property buyer will pay nearly twice as much for registered real estate as for unregistered real estate...."*

True words from Javier.

### **IV. Register-related sustainability: principle of legality, the land registry verification procedure before registration, title registration**

Sustainable development does not materialise out of thin air but is a process initiated and supported by people and institutions. The same applies to register-related sustainable development, which is not heaven-sent, but the result of a verification procedure conducted by the *registrar*. Only through verifications performed by the registrar there is any legal value added, upon which the integrity of the register can be built. The effect is the creation of *clean ownership* and *clean real rights*. Part of this verification procedure is also the principle of certainty, which can be described as particularly

sustainable. The register, the land register, counteracts the *uncertainties* associated with the pandemic with legal *certainty*. Entries in the land book may only be made if all entry requirements are met. The land registry acts as a Guardian of real rights. The land registry must not allow any incorrectness into the land book. The *eternal flame* is to be kept permanently. Once again, it becomes obvious that sustainable development is one of the fundamental tasks of land registration. We're talking about the *DNA of land registration*. *Title registration*, the registration of real rights, which are extracted from the documents and then presented in the register, proves to be the more practical. On the opposite end, we find systems which perform no verification, but merely collect certificates or documents, running a recording system with certificates and uploading. This is the case in some US states. Sustainable development is alien to such register systems, where law-seeking citizens are pushed back into the *Orcus* of uncertainties and imponderables, striving to interpret facts established ages ago. Legal certainty: Nothing to report, since title insurance only guarantees payment of money, but can never provide real estate property. *Money for nothing*.

As *brothers in arms*, land register and cadastre, let's move to the next topic.

## **V. Register-related sustainability: the publicity of the land register**

The question at hand is the extent to which the land register's publicity contributes to the realisation of the SDGs. This question is connected to SDG number 1 (no poverty), number 8 (economic growth), number 9 (industry, innovation, infrastructure), number 11 (sustainable cities and communities) and number 16 (peace, justice, strong institutions). The answer must be sought among the publicity effects attributed to the land register. As far as the German land register is concerned, far-reaching effects can be noted. The trust in the correctness and completeness of the land register is protected. We had to face two presumption effects, a *positive* and a *negative presumption*. If a real right pertaining to a certain person is entered in the Land Register, it is assumed that this person is entitled to this right (this means positive assumption). On the other hand, if a real right is discharged it is assumed that this real right does no longer exists (this means negative assumption). To quote *Bourdieu* again: Bourdieu would have recognized such a material publicity of the register as a *social resource*, an *inestimable good*. Acquisitions in good faith are *sustainable acquisitions*. They contribute to legal security. The goal of ensuring the contracting process can be thus achieved. The certainty that any purchase made in good faith is indestructible creates the most valuable asset: *trust*. The opposite is represented by registration systems that allow *rectification* or *eviction*. These entries are not indestructible, which permanently disrupts trust in the register. The Spanish and Polish law have also far-reaching presumption of correctness. A comprehensive, universal interpretation of publicity saves time and money. *Time*, because no title research is necessary, no chain of title, no analysis and evaluation of the legal relationships in the property. *Money*, because no title insurance coverage is required, as the land registry guarantees that the land book is correct and complete. In 2014, for example, title insurance companies in the United States recorded USD738 million in damage caused by legal defects, an unbelievable amount. The fact that transactions must be supplemented by title insurances cannot be described as sustainable development. The opposite it's true. A real *bumpy road*, the *road of title insurances*, so let's get back on track. It's about

## **VI. Register-related sustainability through connection and cooperation**

Another point is the *sustainable development* arising from the connection of the cadastre and land register. Today's conference alone is proof of how beneficial cooperation can be. This, however, cannot be taken for granted, as shown on the other side of the Atlantic. In the United States, the seller and

buyer are responsible for describing the property. Often this is the *metes and bounds method*. There is no legal link between the cadastre and the land register, even though both cadastre and land register are *not of disparate origin*. And there is also *no wall* between both concepts. A land book that is *not* based on the cadastre can only fulfil the register's purpose *in part*. How is the land register supposed to prepare action if it is not resting on *Atlas'* shoulders? In this case, the cadastre plays *Atlas'* part. Both registers, the cadastre and land register, must be kept in harmony over the long term. *The land register concept stands or falls with the cadastre*. Moreover, there is another interesting issue:

## **VII. Register-related sustainability and the new focus on heritable building rights**

Part of the debate about the SDGs is the supply of affordable housing, meaning number 11 of the SDGs. The aim is to ensure access to appropriate, safe, and affordable housing. SDG number 1 (no poverty) and number 16 (peace, justice, strong institutions) are also relevant. As a result, the focus in Germany is increasingly on *heritable building rights*, which can deliver a transformative contribution. The reason is the ground rent, the hereditary lease, which had to be paid by the leaseholder, an amount that lies *below* the local rent. With the heritable building right, special social objectives can be pursued, such as the allocation to large families or covering the housing needs of population groups with special supply problems. The housing policy action programme of the Bavarian capital, *Munich*, provides that urban areas are given *preference* as heritable building rights, and parcels are only sold in justified exceptional cases. In Germany, heritable building rights can boast a market volume of around €50 billion. This can offer an *essential contribution* to sustainable cities and communities and the fight against poverty. *More than a drop in the ocean, but not enough to put out the fire*.

## **C. Conclusion**

This brings me to the end of my presentation on land registration and SDGs. The discourse and implementation will continue over the next few years. The *invaluable* contribution made by the land book and the cadastre should be a great sign of *hope* for all of us.

Thank you for your attention.