

EULIS – At the Beginning of the Road to Harmonization of Land Registry in Europe

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Abstract: An increase in cross-border transactions of real estate within the European Union demands for easy access to the information of the national land registries of the member states. The EULIS project brings together the registrations of eight European countries in one portal. Thus it provides access to cross-border information about the rights on real estate, using the information in the computerized databases of the participating organizations. The EULIS project is the first step towards a more transparent system of real estate transactions in Europe. The next logical step, from the viewpoint of international accessibility of the information, is the harmonization or even integration of the national land registries within Europe in one European land registry.

Résumé: La croissance du nombre des transactions internationales en propriétés foncières dans l'espace européen exige un accès facile aux cadastres nationaux des états membres. Le projet EULIS rassemble les cadastres de huit pays européens dans un portail. Il donne ainsi accès à une information par-delà les frontières utilisant les banques de données des pays participants concernant les droits de la propriété foncière. Le projet EULIS est le premier pas vers plus de transparence dans les transactions foncières. L'étape suivante, du point de vue d'un accès international à l'information serait que les cadastres nationaux soient harmonisés voire intégrés à un cadastre européen.

Zusammenfassung: Die Zunahme der grenzüberschreitenden Transaktionen von Immobilien innerhalb der EU erfordert einen einfachen Zugang zu den nationalen Katastern der Mitgliedstaaten. Das Projekt EULIS bringt die Kataster von acht europäische Ländern in einem Portal zusammen. Auf diese Weise wird ein grenzüberschreitender Zugang zur Registrierung von Immobilienrechten geschaffen, unter Anwendung von Informationen aus den Datenbanken der teilnehmenden Kataster. Das Projekt EULIS ist ein erster Schritt auf dem Weg zur größeren Transparenz in Immobilientransaktionen. Der, aus dem Gesichtspunkt internationaler Zugänglichkeit von Informationen, nächste logische Schritt ist die Harmonisierung bzw. Integration der Nationalkataster in einen Europakataster

1 Introduction

In many ways the European Union (EU) works on the harmonization of Member States' legislation in order to facilitate the free movement of persons, capital and goods and so to make the economy of the Union as competitive as possible. In the current information age, including the e-government initiatives, increasingly attempts have been made to harmonize information policy in Member States. Improved access to government information also includes information within the land registries. Since there are an increasing number of international transactions of real estate within the Union, more and more citizens and companies and their financiers are involved in such transactions. For the national managements of land

registries the unification process within the EU has become a major point of discussion. One of the first results of this discussion is the project 'European Union Land Information Service' (EULIS).

The project brings together the computerized information on land of several European countries in one portal. Although the project's primary aim does not reach further than this, the authors foresee that this is the first step towards more harmonized systems of land administration throughout Europe. In this contribution the concept of cadastre and land registry is explained, the EULIS project and prototype described and analysed, and potential challenges for the future of the land registry in Europe summarized.

2 Legal information on real estate: cadastre and land registry

A very broad definition of a cadastre is found in the International Federation of Surveyors' (FIG) statement on the Cadastre.¹ A Cadastre is:

'A parcel based, and up-to-date land information system containing a record of interests in land (e.g. rights, restrictions and responsibilities). It usually includes a geometric description of land parcels linked to other records describing the nature of the interests, the ownership or control of those interests, and often the value of the parcel and its improvements. It may be established for fiscal purposes (e.g. valuation and equitable taxation), legal purposes (conveyancing), to assist in the management of land and land use (e.g. for planning and other administrative purposes), and enables sustainable development and environmental protection'.

Although this definition is useful for the surveying profession, in a legal context we would like to distinct between the cadastre and the land registry. Larsson provides a useful distinction.² He describes a cadastre as follows:

'[A] cadastre is a systematic description of the land units within an area. The description is made by maps that identify the location and boundaries of every unit, and by records. In the records, the most essential information is the identification number and the area of the unit, usually differentiated by land use class. [...] Furthermore, the classical cadastre provides information concerning owners, land classes and values or land taxes'.³

¹ FIG, *The FIG Statement on the Cadastre*, FIG publication No. 11, 1995 ISBN: 0-644-4533-1, available at <http://www.fig7.org.uk/publications/cadastre/statement_on_cadastre.html>.

² G. LARSSON, *Land registration and cadastral systems, Tools for land information and management*, Longman Scientific & Technical, 1991.

³ *Ibid*, p 16.

He further defines the land registry as:

‘The land register is a public register of deeds and rights concerning real property. Depending on the legal system, there may be a register of deeds or a register of titles. Under the system based on the registration of deeds, it is the deed itself that is registered. A deed is a record of a particular transaction and serves as evidence of this specific agreement, but it is not itself a proof of the legal right of the transacting parties to enter into and consummate the agreement. Under the alternative system based on the registration of title, this process of tracing the chain of deeds is unnecessary. Title registration is itself a proof of ownership and its correctness is usually guaranteed and insured by the State’.⁴

In theory the distinction between registration of title and registration of deeds is clear-cut, but in practice the differences are often not as evident. The Netherlands, for example, has a register of deeds, but in practice this operates with certain characteristics of the title system, due to the close cooperation between the registry and the notary involved in real estate transactions, and the strong internal link between the deed registry and the cadastre.⁵

3 Land registry within Europe: the need for better information

In a time where citizens of the EU are flexible to work and live anywhere they prefer in the Union, the practical questions as how to become the owner of a house in another country and how to finance it by a loan secured by mortgage is difficult to answer. In most cases the buyer (and his financier) is ignorant about the relevant rules of land law in the country concerned and if information is obtained about the owners and others having rights on the real estate, it is quite difficult to judge that information on its merits.

Let’s for example look at the case of Mr. Jones and Mr. Pietersen. Jones, from the English town of Walmington-on-Sea wants to buy a house from Pietersen in Den Haag, the Netherlands. Jones must at least know whether Pietersen is the lawful owner of this real estate. And if so, he wants to know whether there are others with a legal interest in the real estate concerned.

The first question for Jones is where he can obtain information about the house that Pietersen is offering for sale. Jones has to find his way in the Dutch system of land registry and learn how to contact the office of the Netherlands’ Kadaster.

⁴ *Ibid*, pp 17-18, based on United Nations, *Ad Hoc Group of Experts on Cadastral Surveying and Mapping*, 1973, New York.

⁵ See J. ZEVENBERGEN, *Systems of Land Registration; Aspects and Effects*, PhD thesis, Delft 2002, Netherlands Geodetic Commission (NCG) 2002, p 139.

Further, after he has an overview of the registered rights, what will he and his local banker make from the information that Pietersen is ‘erfpachter’, and the City Council of Den Haag is ‘eigenaar’? And if Jones understands the information that Pietersen is ‘erfpachter’, how does he know whether the registration in the Dutch *cadastre* implies that this right can be disputed or not? Does Jones realize that there may be other relevant interests in the land (for instance servitudes, public law restrictions) that cannot be known from this file, and require an investigation of the deeds in the Dutch *deeds registration*. And finally what is the accuracy and the legal value of the cadastral map showing the boundaries of the real estate of Pietersen?

The case of Jones and Pietersen is likely to be similar in other cross-border transactions in Europe. The practical solution is that a local advisor is hired. This specialist is expected to clarify the foreign legal terminology and to provide a sufficient and reliable overview of the legal status of the real estate concerned. That is time and money consuming.

In the near future, it is foreseen that the EULIS system can remove some of the barriers for Jones, and all the others who are party in cross-border land transactions within the EU.

4 What is EULIS

EULIS is a project within the eContent programme of the Directorate-General Information Society of the EU. It is collaboration between the organizations that provide computerized access to the legal information on real estate of eight European jurisdictions: Austria, England and Wales, Finland, Lithuania, the Netherlands, Norway, Scotland, and Sweden. Also, Lund University is involved in the project.⁶

It is important to note that the organization that participates in EULIS is not necessarily the same that is responsible for the deed or title registration. In some jurisdictions, the registry and the digital information are managed by the same organization (e.g., England and Wales, Scotland), while in others they are two separate entities. For instance, in Sweden the cadastre ‘Lantmäteriet’ provides the digital information, while the land registration itself (in this case an example of title registration) is the responsibility of local courts. Thus, both land registries and cadastres participate in EULIS. In this paper we indicate the organizations participating in EULIS as land registry and/or cadastre (LRC).

EULIS builds on previous efforts of the land registries and cadastres describing the characteristics of many national systems of land administration.⁷ It

⁶ See <<http://www.eulis.org>>.

⁷ See for example John Manthorpe, Study on Key Aspects of Land Registration and Cadastral Legislation Part 1 and Part 2, Printed and published on behalf of UNECE Working Party on Land Administration by Her Majesty’s Land Registry London, May 2000, at <http://www.unece.org/env/hs/wpla/docs/links/wpla_inv2_p1.pdf> and at <http://www.unece.org/env/hs/wpla/docs/links/wpla_inv2_p2.pdf>. See also <<http://www.cadastraltemplate.org>>.

will provide the means to ease the access to cross-border information about the rights on real estate, using the information in the computerized databases of the participating cadastres or land registries.

The project started in January 2002, and it is scheduled to finalize in July 2004. Its overall objective is the completion of a demonstrator that provides access to the computerized information within each of the national LRCs. The project aims at this point in time only at the professional users like notary public, solicitors, financial institutions, and real estate agents, among others. Ultimately the service may also be open for private individuals.

If successful, the partners in the project are likely to continue the service after July 2004. The project addressed a variety of issues, varying from the content of the service, and exploring the current national legislation applying to access and use of the data, to the design of a prototype (the demonstrator) including a secure billing system, and the development of a glossary on land law and cadastre: the so called 'EULIS glossary'.

5 How EULIS works

Simply said the system of EULIS links the essential information of the computerized databases of the participating organizations. For Austria the computerized system is the so called 'Grundstücksdatenbank', for England & Wales the 'Land Registry Direct', for Finland the 'Kiinteistötietojärjestelmä' (KTJ), for Lithuania the 'Real Property Register', for the Netherlands, the 'Automatisering Kadastrale Registratie' (AKR), for Norway the 'Norsk eiendomsinformasjon', for Scotland 'The Registers Direct', and for Sweden the 'Fastighetsdatasystemet' (FDS).

A professional customer connects digitally to their national LRC. The national website directs him to the EULIS portal, where the customer can choose to digitally access one of the other services. So the foreign customer gets on his computer the same screen the national service uses for its native customers (optionally with an English translation). In other words, EULIS, in this stage, doesn't offer a standardized and uniformed presentation of the land information.

The EULIS server counts the number of requests for cross-border data and based on this information, the national LRC bills the customer. Consequently, the national LRC pays its counterpart whose data was requested and provided. In this way, EULIS builds on the existing trust relationships between the professional customers and the national LRC, and on the trust between the participating national LRCs. The main benefits of the system are that customers only have to apply for this service once, with their national registry, instead of registering with all individual registries. The LRCs on the other hand, do not have to go into difficult procedures to accept an application of a foreign customer: they can fully rely on the other LRC for allowing access.

6 Content of EULIS

The service provides two types of information. First of all the information asked for, like the number of parcel or object, the name of the owners and holders of limited rights, date of the last transaction and – if digitalized and made accessible on-line – the cadastral map. Furthermore, the applicant will also receive the so-called ‘meta-information’. That is information about the information: e.g., a short overview of the legal description of the right of ownership of land, for example, in Sweden. Moreover, EULIS allows through the so called ‘EULIS glossary’ for the translation of legal expressions from the different countries in each of the other languages. An example may be the translation of the Austrian ‘Hypothek’ into the Scottish ‘standard security’, the Dutch ‘hypotheek’, or the English ‘mortgage’. In addition to this translation the user finds a short clarification of the legal expression. For mortgage that is ‘a right in property granted as security for the payment of a debt’.

From the point of harmonization of European (land) law, this glossary is a very interesting part of the project, because next to the expressions in each of the national languages, this glossary consists of ‘EULIS terms’. Although the registries of England and Wales, and Scotland participate in the project, and although the EULIS expression is in English, the expression is not necessarily the same as the common law English terminology. For example, the English ‘lessee, tenant’ is in the EULIS glossary described as ‘lessee’, ‘registered title’ is ‘register unit’, and finally the English ‘title, estate, tenure’ is in EULIS terminology ‘title’. This is the equivalent to ‘bewijs van eigendom’ in Dutch, ‘Lagfart’ in Swedish or ‘Eigentumstitel’ for Austria. At the best of our knowledge this EULIS glossary is the first attempt to develop a ‘pan European legal language’ on the subject of land law.⁸

7 Legal aspects

The EULIS project so far concentrates in the first place on the content of the information offered itself, the legal challenges, and the technical protection of the information exchanged. In this paragraph we focus on the legal aspects.

Although EULIS has accomplished significant improvements in the ease to access land registry information, it raises at least two legal questions. One is the knowledge of the value of the information provided, another is the way access to the

⁸ In the field of contract law a database in all Community languages has been mentioned in the Report on the approximation of the civil and commercial law of the Member States (COM(2001) 398 – C5-0471/2001 – 2001/2187(COS)) of the Committee on Legal Affairs and the Internal Market of the European Parliament, No. A5-0384/2001. This in order to find a common terminology in this field. The need for a common frame of references is further elaborated in the action plan of the Commission, COM(2003) 68 final. See B. POZZO, ‘Harmonization of European Contract Law and the Need of Creating a Common Terminology’, in *ERPL* (2003), p 754-767.

data is provided and the way the results are presented. What data can the user obtain, and is the amount and type of information the same for all countries?

7.1 *Value of information provided*

As mentioned above the basis of EULIS is the information in the computerized databases of the participating organizations. However, the legal value of that information is not on the same level in the countries. The system of land registration, and the starting point of the computerization of the registry itself can explain this difference. There are within Europe major differences in the systems, mostly the result of cultural and historical differences in background. Let's compare for instance Austria and the Netherlands.

Austria has a by the Government maintained *Grundbuch*, that is a registration of title. The *Hauptbuch*, the main registry in Austria is fully computerized and can be queried on-line (*Grundstücksdatenbank*). The registration of the right is in Austria decisive. It has so called *öffentliche glauben*, almost a full guarantee. Although the registration of deeds is also part of the land registry in Austria, and is the basis of the registration in the *Hauptbuch*, it is of neglectable importance.

In the Netherlands we will find a deed registration (*openbare registers*), which is held with the cadastre (*kadaster*) by one organization: the Netherlands' Kadaster. It is the cadastral registration that can be queried on-line in the so-called AKR. Although the cadastral database is in practise considered as very important, strictly it has no value from a legal point of view. It is merely the access to the deeds registration. The deeds registration, however, cannot be accessed on-line (yet). For protection of the good faith of the buyer in case of a failure in a transfer of ownership, the establishment of limited rights, or other transactions, the information from the deed registry is decisive. In this aspect it must be stressed that the deed registry is not complete. So the new owner can be confronted with rights that are not registered in deeds.

If we take a look at the organization of the LRC and the aspect of the accessibility to the public one could argue that the Dutch cadastral registration (*kadaster*) is very much functioning like the *Hauptbuch* in Austria. But from a legal point of view the fact that a right is registered in the *Hauptbuch* has a different value, than the registration in the *kadaster*.

Now for the EULIS system the Austrian *Grundstücksdatenbank* and the Dutch *kadaster* (AKR) will be the source of information for the user. This example shows clearly that the value of the information the user will get through EULIS differs. Most users, both layman and professionals, will probably not know this. The danger will be that they consider the offered information as complete and fully reliable. Therefore it is necessary that the meta-information provided together with the result of the query from the databases addresses this aspect prominently.

7.2 Access to information

A study by Van Loenen⁹ on the publication of land administration data found significant differences in the way the LRCs provide access to their information. In some countries one can search through the name of a person, while others only allow searches through object information, like an address. This has resulted in a situation where in some countries an overview of all the land that is registered to one person can be obtained, in others this information is only given to those with a demonstrated sufficient interest, while in certain countries one cannot get such an overview at all.

The research clarified that the cause of the differences may be found in the implementation in national legislation of the European privacy directive.¹⁰ Especially the interpretation of the term 'personal data' seems to be differently interpreted in the Member States.¹¹ The name of the registered owner of a parcel is without doubt 'personal data'. But in case of information like address, the existence of a right of mortgage or the sum of the loan secured by a right of mortgage, the survey demonstrated that there is no consensus in interpretation among the member states.

A special situation applies to Norway where the (paper, analogue) deed itself can be inspected at the local courts, but where the digital service (*Eiendomsinformasjon*) is only accessible for companies registered in Norway. Through EULIS, however, this may change. People in, for instance, Sweden can access through the Swedish cadastre service (*Lantmäteriet*) the EULIS portal, and as a consequence access the information in the Norsk *Eiendomsinformasjon*.

The differences in access regimes imply for EULIS that although it is possible to access information in the LRCs, the extent to which the information is provided, and the way it can be searched may vary. However, the task of a land registry is more to provide access to the information on real properties, than to provide an overview of one's property. Therefore, from the harmonization perspective, the issue of access to land registry information is not as pressing as long as at least access is provided through the object information.

8 Harmonization

The EULIS project is the first step towards a more transparent system of real estate transactions. The next logical step, from the viewpoint of international accessibility

⁹ B. VAN LOENEN, *Analysis report on the publication of land administration data in an EULIS setting*, Project acronym: EDC-11004 EULIS/27575 11-11-2002, 26 p, at <http://www.eulis.org/pdf/D61-2_Report_-_Final.pdf>.

¹⁰ Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data, Directive 95/46/EC OJ No L 281 p 31

¹¹ See also D. KORFF, *EC Study on Implementation of Data Protection Directive Comparative Summary of National Laws*, Study Contract ETD/2001/B5-3001/A/49) Cambridge (UK) September 2002, at <http://europa.eu.int/comm/internal_market/privacy/docs/lawreport/consultation/univessex-comparativestudy_en.pdf>.

of the information, and clarity about the legal implications of the provided information from the computerized systems, is the harmonization or even integration of the national land registries within the EU in one European land registry. In such a harmonized or integrated environment EULIS would be the European Cadastre online portal. Instead of directing the user to the individual national systems and its interface, as EULIS currently does, the future portal should provide one uniform interface. The data will be stored in the national systems, but presented in a uniform way in the portal. In this way the computerized systems do not need to be physically integrated in one European database. The national registries will continue to maintain their system the same way they are used to.

Technically the integration is not an issue. However, legally and organizationally the integration provides many challenges that need to be researched in more depth. For the feasibility of this integration we are of opinion that a choice for a technical standard and the legal basis of the land registry (very simply said: the choice between title registration or registration of deeds) is more important than the actual differences in land law among the member states of the EU.