

## COMPARATIVE ANALYSIS REGARDING THE IMMOVABLE GOODS PUBLICITY AND THE LAND BOOK OF THE STATES OF THE EUROPEAN UNION

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### Abstract

*This paper is a brief analysis of the immovable publicity and land book systems used in each of the European Union countries. We designed the paper with the following structure: opinion on the concept of immovable publicity and the concept of land book in EU countries, comparative study on immovable publicity systems in EU countries and a final point of view on the elaborated study. The purpose I followed with the elaboration of this paper was to find out which of the models offered by the European states is more efficient, in order to improve the procedure for keeping the land records. The research method used mainly in the elaboration of this article was that of comparison. The novelty of this study is that so far there is no (comprehensive) work in which to make such a comparative analysis exclusively with respect to land book.*

**Keywords:** *goods publicity system, immovable publicity, land book*

### **1. Introductory point about the notion of immovable goods publicity and the notion of land registry**

Analysing the way in which goods publicity is maintained, two large publicity systems can be identified at the level of the Member States of the European Union: the personal publicity system of the immovable transcription and inscriptions registers and the immovable publicity system for land books. The first system is found in the civil laws that were influenced by the French Civil Code in 1804, where the records are kept on behalf of the owners, and the second system is inspired by the 1900 German civil code, and legal deeds are held on immovable property.

Romania has both real estate publicity systems, and the Romanian legislator has now preferred to apply publicity based on Land Register who names “carte funciară”<sup>1</sup>. I consider it interesting to remind that on the territory of Romania, other publicity systems have been applied over time. They were considered as

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<sup>1</sup> M. Nicolae, *Tratat de publicitate imobiliară*, vol. I, Universul Juridic Publishing House, Bucharest, 2011, p. 778.

intermediate publicity systems and were applied over short periods of time<sup>2</sup>. These systems were the following: the Land Publicity Book System, named “sistemul cărților de publicitate funciară”, for Bucharest and some neighbouring localities, and the land registry system for some neighboring localities and the Land Registry (Evidence) System, named “sistemul cărților de evidență funciară” for certain settlements from Transylvania<sup>3</sup>.

So we can observe there is a difference between the notions of *publicity* and *evidence*. If by *publicity*, we bring information to those who are interested; by *evidence* we keep the information to use them at some point.

As we will see below, other EU countries also apply different ways of achieving immovable publicity. I refer here to the immovable goods publicity registration system, but also to the country-specific immovable publicity registers.

## 2. Comparative study regarding the immovable publicity systems in EU countries<sup>4</sup>

In this section I try to make a brief presentation of all the immovable publicity systems known at the level of each Member State of the European Union, and then I come back with similarities and differences between these systems.

**2.1. Austria.** The Austrian immovable publicity system is based on the principles of the German system, which it adopted and subsequently improved them. This state has two basic systems for land management, respectively, *the cadastre* and *land book*. We can say this is a complex system, which is used throughout the entire country. *The cadastre* is kept by the supervisory offices, headed by the Federal Agency for Studies and Metrology, an authority that is subordinated to the Ministry of Economy, and *the land book* is kept at the land book units within the district courts.

**2.2. Belgium.** In Belgium there is an authority called the General Administration of Patrimonial Documentation subordinated to the Federal Ministry of Finance. Under the authority of this Administration lie the following divisions: *cadastre land registry*, *registration offices* and *mortgage records*. The rights of the immovable goods are made through the Mortgage Records, where only authentic papers, private signature documents and court judgments can be registered.

**2.3. Bulgaria.** In Bulgaria, immovable publicity is kept through the *Bulgarian Property Register*, owned and managed by the Recording Agency, created in 2004 under the “Personal Entry System”. This register records legal acts that recognize

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<sup>2</sup> G. Boroi, C.A. Anghelescu, B. Nazat, *Curs de drept civil. Drepturile reale principale*, Hamangiu Publishing House, Bucharest, 2013, pp. 241-242.

<sup>3</sup> S. Sztranyiczki, *Publicitatea imobiliară. Conform noului Cod civil*, C.H. Beck Publishing House, Bucharest, 2013, p. 72.

<sup>4</sup> <http://e-justice.europa.eu>

transfer, modify or revoke property right or other real rights of the immovable property; forced execution records and mortgages that encumberance the property.

**2.4. Czech Republic.** On the territory of the Czech Republic, there is *the system of integral and real publicity of land books* based on cadastral measurements. This system is the same with the German system. The cadastral register contains information about acts, deeds or property rights, as well as cadastral maps and other information regarding the owners of the buildings. Public registry entries are in line with the real status of the subscribed goods.

**2.5. Croatia.** The Croatian system of immovable publicity is implemented through two registers: *the land book of municipal land* under the jurisdiction of the ordinary law courts and *the cadastral register*. The cadastral register describes the technical characteristics of the immovable publicity and the land book contains data associated with the owners of the property rights and cadastral parcels.

**2.6. Cyprus.** The *land registry* of the Republic of Cyprus includes information on the topographical data of the plot or unit, location, description of the immovable property, area, tax value, as well as any real burdens, immovable publicity collateral, sale, purchase, servitude, contractual restrictions on the right to property. Also, the land register contains information about the owner or owners, the share held by each owner, as well as the manner and date of the acquisition of the property. Land registers are managed by the Department of Cadastre and Topographic Measurements within the Ministry of the Interior. This immovable publicity system consists of four databases: *the legal database*, *the tax database*, in which the immovable publicity of each person is registered according to the geographical area, mentioning the total value of the property in order to establish the land tax, *the cadastral database*, which contains the information and identification data of all immovable publicity and the *topographic database*, which includes the description of the immovable goods by surface, location and value of the real estate. The immovable publicity system is not public and information on the content of the registers can only be brought to the attention of the parties or persons who justify a legitimate interest in the registered immovable goods.

**2.7. Denmark.** In Denmark, *the land book system* has always pursued the registration and protection of property rights, mortgage loans and easements, provided by law. The registration of legal documents related to immovable property is not mandatory. The registration of legal acts relating to immovable property is not compulsory. If right holders agree to register the respective legal acts, they are operated in public registers that can be consulted by any interested person. The Danish Land Register system allows legal, fiscal and territorial monitoring of property, the main purpose of which is to collect taxes and duties due on agricultural land.

**2.8. Estonia.** Estonian immovable publicity is registered in the *Land Registry*, which is based on land books. Sometimes, exceptionally, the law may expressly provide that certain goods are not subject to registration. In Estonia, the Land

Registry comprises four parts and keeps track of all property titles and limited property rights, each property being individually registered.

**2.9. Finland.** *The Finnish Land Registry* belongs to the Cadastre Institute and is called the Register Securities and Mortgage Register, contains information about immovable publicity, property rights, and mortgages which encumbers ownership. The competent authority for making the entries in the register is the court in whose jurisdiction the real estate is located.

**2.10. Greece.** Greece has an electronic land registry called *cadastre* in the areas where the land registration is terminated. The role of land registers, on a provisional basis, is the offices of mortgage registers. The Greek cadastral system has replaced the previous registration system for property transfers and mortgages. After the creation of the *cadastre*, land transactions were recorded exclusively electronically. The electronic land registration system allows searches for personal data, the Greek *cadastre* code or the imovable good address. The land registry database is managed centrally for the entire territory and updated by the Land Offices, depending on the transactions they register. We also specify that there is an institutional framework in Greece for the study, development and operation of the Greek *cadastre* for imovable. This task has been assigned to a private company.

**2.11. Hungary.** Hungary has a legal and administrative system for managing the immovable goods register, called *the unified land registration system*. This system is unique because cadastral identification data as well as legal information are managed in a legally and institutionally integrated way, based on ownership titles. Hungary's unified land register, which guarantees the right and property titles, was the first of its kind in the European Union.

**2.12. Ireland.** The current Irish immovable publicity system is based on enrollment in the land book, thus replacing the document registration system. The Irish Land Book operates under the authority of the Property Registration Authority. The Irish Land Book is an open register where there are no restrictions on the use of this service where the publicity of acts, facts and legal situations is complete and integral.

**2.13. Italy.** Italy has taken over the French immovable publicity system based on *personal publicity of transcription registers*. However, there are also autonomous provinces such as Trento and Bolzano that manage their own registry, based on cadastral information on properties. The information held by the Land Registry in Italy is organized according to the natural or legal person as the holder of the ownership right over the immovable property entered. Land registers in Italy are managed by a public body, called the *Agenzia del Territorio*, which operates under the control of the Ministry of Economy and Finance. This body also performs cadastral functions. Transcripts are made in special registers.

**2.14. Latvia.** In Latvia, there are two types of registers under the administration of the courts, *the cadastral information system*, which is used for the registration of

immovable publicity, components and *the land register*, which is used after the immovable publicity data are entered in the cadastral information system, and consists of the registration of property rights. The cadastral information system is a unified immovable publicity system incorporating official data on publicity located in the Republic of Latvia, land, buildings, immovable groups and land plots that form a immovable goods, their owners and possessors and also legal users of them. The cadastral information system is built across the territory and the records are fully managed in digital format.

**2.15. Lithuania.** The immovable publicity system in Lithuania is a *real system of publicity* based on *cadastre*. The immovable register records immovable property as described in law, the real rights of access and its owners, litigation, restrictions on legal rights, acts and legal facts. The Registry functions within the Trade Register Office and is administered by the Ministry of Justice.

**2.16. Luxembourg.** The legislation of this state allows that property can be transmitted by consensus. For legal acts for consideration or free of charge, with the exception of the transfer of ownership of the cause of death, the law provides for the obligation to be fully registered in the official registers so that they can ensure the opposability to third parties. Registers can be consulted by anyone who justifies an interest. The Land Registry in Luxembourg is owned by the Land Registry and Topography.

**2.17. Malta.** Malta's immovable publicity system is a *real land based system*. The Land Book provides information on the property, the owner of the registered immovable goods, the rights and privileges imposed on the property. Any transfer of ownership is previously verified by the notary public in the land register and only if the immovable goods are entered in the records of the land book a certificate of title is issued. This register is not public, and only the employees are checked.

**2.18. Netherlands.** In the Netherlands, the immovable rights are transferred, acquired or modified only by *registering them in official registers*, which are public. The Dutch immovable publicity system is based on *land books*. The National Agency for Cadastre and Mapping is a public authority responsible for recording the rights and interests of any publicity and their specifications. It provides immovable publicity through two registers: the public register and the cadastral register.

**2.19. Poland.** The Property and Mortgage Register is a *public register* made by the departments of district courts, which we find in the Polish immovable publicity system. It is governed by the Law on Land Registers and Mortgages. Each goods property has its own file open in *the land register*. This file is divided into four sections, each of which refers to a different aspect of the legal status of immovable publicity. The content of land registers is stored in a central register of land registers within the Ministry of Justice.

**2.20. Portugal.** Portugal originally adopted the *French Transcription Publicity System*, based on the principle of consensus that the transfer of ownership of a immovable publicity was carried out without registration in the publicity register. Subsequently, through the Land Registry Code, *land books* were introduced on the basis of which ownership is presumed to exist and belong to the registered owner. Portugal has two special land registry services: *Predial Online* și *Casa Pronta*.

**2.21. Slovakia.** Slovakia has a unified computer system based on *cadastr*. *The land register* operates under the authority of the Geodesy, Cartography and Cadastre Authority of the Slovak Republic. The immovable cadastre contains data about publicity and rights related to immovable publicity. This register can be consulted by anyone who has a legitimate interest.

**2.22. Slovenia.** According to the land registry law in Slovenia, publicity rights are acquired when they are registered in the *Land Registry*. They also cease when they are erased from this registry. The Land Registry functions under the authority of the Supreme Court of the Republic of Slovenia and contains legal facts about properties such as mortgages, owners and servitudes. In addition to this register, *the land cadastre* also operates, focusing on the factual circumstances of the properties.

**2.23. Spain.** Spain has adopted the principle of consensus, which means that the transmission of immovable property is carried out on the basis of a notarial certificate, which takes the place of ownership. Property acts do not necessarily appear in the advertisement. Immovable publicity sytem has no constitutive effect of rights. *The Spanish Land Registry* is one of the safest in the world. It is a register of rights that, once registered, are protected by the courts. The Land Registry is a registry subordinated to the Ministry of Justice with the purpose of registering and publishing information on ownership of immovable property and related rights as well as court judgments that may affect such property. The Land Registry provides legal and economic security with the purpose of registering ownership and other property related property.

**2.24. Sweden.** *The Land Registry* is managed by the Registration and Mapping Authority and contains information on ownership, ownership and ownership rights. By enrollment the protection of the enrolled right is strengthened. At the same time, there is the obligation to register mortgages in the register.

**2.25. UK.** In England and Wales immovable publicity is made through *the Land Registry (land book)* of his Majesty, in which all property titles are registered. In England and Wales, HM Land Registry is responsible for immovable goods listings. The Northern Ireland Land Registry is divided into *the register of facts* and *the statutory tax register*. The register of facts ensures the existence of ownership titles, thus establishing the order of precedence in case of conflicts concerning the same immovable good. The statutory tax register records all data on legal restrictions that may affect property. Scotland has 18 registries, also called *Scotland registers*, whose main purpose is to ensure the legal performance of all legal

transactions. The most important registers are the land registry of the Scotland and the general register of houses. The House Registry is the world's oldest land registry, dating back to 1617. This register contains time records of legal facts about immovable publicity, based on the description of properties.

### Conclusions

Analysing the way in which immovable publicity is maintained two large publicity systems can be identified at the level of the Member States of the European Union: the personal publicity system of the transcription and inscriptions registers and the realistic publicity system for land books. The first system is found in the civil laws that were influenced by the French Civil Code in 1804, where the records are kept on behalf of the owners, and the second system is inspired by the 1900 German civil code, and legal deeds are held on immovable property.

Romania had both immovable publicity systems, and the Romanian legislature has now preferred to apply publicity based on Land Register registers. I consider it interesting to remind that on the territory of Romania, other immovable publicity systems have been applied over time. They were considered as intermediate systems and were applied over short periods of time. These systems were the following: *the land book publicity system*, for Bucharest and some neighboring localities, and *the land registry system* for some Transylvanian settlements.

As can be seen, the European states have chosen as a system of records of documents, one of the ones that our country has known throughout history, whether we are talking about personal publicity and the record on the person's properties (the register of transcripts and inscriptions) or about real publicity, based on land books. Each of these states justifies the system of immovable publicity chosen at least from a legal, social, economic point of view. At the level of the public administration, these ways of keeping records are exploited from the point of view of the legal relations between the individual/person and the state authority.

Thus, we notice that there is a difference between the notion of publicity and the evidence. If by publicity, we bring information to those who are interested, we keep the information to use them at some point. As we shall see below, different ways of realizing immovable publicity are also applicable in other EU countries. And here I refer to the publicity registration system, but also to the country-specific publicity registers.

An interesting situation to consider could arise when, as a result of the uniformity of legislation and the rearranging of EU borders, it would be up to the Member States to discuss whether there is a possibility to establish a single immovable publicity system. In our opinion, obviously, as long as there are different legal systems in the EU member states, we cannot pretend that the immovable publicity system can be uniform.

**References**

1. Boroi, Gabriel; Anghelescu, Carla Alexandra; Nazat, Bogdan, *Curs de drept civil. Drepturile reale principale*, Hamangiu Publishing House, Bucharest, 2013
2. Nicolae, Marian, *Tratat de publicitate imobiliară*, vol. I și II, Universul Juridic Publishing House, Bucharest, 2011
3. Sztranyiczki, Szilárd, *Publicitatea imobiliară. Conform noului Cod civil*, C.H. Beck Publishing House, Bucharest, 2013
4. [https://e-justice.europa.eu/content\\_land\\_registers-107-ro.do](https://e-justice.europa.eu/content_land_registers-107-ro.do)
5. <http://e-justice.europa.eu>