

Response to the Green Paper on Mortgage Credit in the EU

This response addresses the issues raised in section IV Mortgage Collateral, Land Registers.

Consideration 44 of the Commission states that an understanding of the contents and operation of Land Registers as well as easy access to them is crucial for cross-border mortgage credit activity of any kind.

One example showing how crucial this is, is the reluctance of most financiers to finance real property in countries other than the country they are residing in. The differences in systems of land administration are difficult to understand and explain. As a result, foreign financiers have difficulty to assess the risk of their investment and limit their focus to the national market.

The certainty about the legal status of the property directly depends on the efficacy of the Land Register to show who is the owner of a piece of land and how it is charged. However, not every registration works in the same way. According to the effect of the registration there are several registration systems in Europe, which provide different levels of legal certainty. Harmonisation of Land Register law, and law of contracts and obligations and rights in land is difficult, if not impossible.

It is clear that the mortgage market highly values the transparency and certainty of rights in real estate. Although a Euromortgage as such will provide a European instrument to secure loans, it doesn't resolve the problems of the diversity of the national systems of land law and land registry. In short: a bank won't lend money under a Euromortgage if it has no certainty about the legal status of the property or properties encumbered. It is therefore that the need for standard procedures and meta information has been stressed in literature (Wehrens, 2004).

The European Mortgage Federation, representing the mortgage bankers in the EU, asked for improving transparency and security of Europe's land registers. On-line access to national land and mortgage registers should be made possible on a cross-border basis in all Member States (EMF, 2003). The report of the Forum Group to the Commission supports this view by recommending (nr 30-33):

- all charges affecting real estate must be registered in a Public Register to be binding on and take effect against third parties, regardless of their nature;
- the creation, modification or extinction of a charge on real property shall become effective vis-à-vis third parties only at the point of registration in the Public Register; and
- registered charges on real property in relation to the same estate shall rank in the order of priority disclosed in the Public Register.
- public registers make all relevant information available to all parties or their representatives.

EULIS, the *European Union Land Information Service*, brings together the computerised information on land of several European countries in one portal. In this way it provides access to cross-border information about the rights on real estate, using the existing information in the computerized databases of the participating land registries. This is also the limitation, because the legal value of that information is not at the same level in the participating countries. For example, some Member States have a registration of title, guarantying the absence of unregistered rights, others have a registration of deeds, which may be incomplete and without any guarantees (Ploeger and Van Loenen, 2004).

According to Nasarre-Aznar (2004) an excellent partner for the Euromortgage would be a common European Land Register. The EULIS project is seen in this light as a start, an 'useful tool to increase transnational land conveyancing and charging, which should evolve to a true European e-conveyancing relating to land in future.' In this light we foresee the necessity of the introduction of a common way of registration of land, an alternative to the existing national land registrations.

The requirements of a common European mortgage market for both transparency and certainty can be met by the introduction of the EuroTitle (Ploeger and Van Loenen, 2005). This will be a title registration based on (newly developed) European standards. It is a common way of land registration within Europe,

an alternative to the existing national land registrations, but not replacing it. Also this system does not need the introduction of a European Land Registry as such. Member states in the EU should support registration of such a title in the national registry and the national land registry can issue a EuroTitle within its jurisdiction. The EuroTitle may be guaranteed by the (national) organisation that registers this title.

An owner can choose to have his land registered as EuroTitle, or keep his national title. Land registered under EuroTitle guarantees certainty about rights, but also provides easy access to the information. Such a title for land would provide the necessary uniform legal certainty of the rights on land in all Member States of the EU. Moreover, the use of standard registration procedures all over Europe provides a reliable basis for e-conveyancing.

Combining two types of registration in one land registry is not uncommon. In the US state Minnesota, for example, Torrens title (registration of title) and Abstract title (based on the recording of deeds) are part of one system of land registration and integrated in one information system.

Conclusions

An increase in cross-border transactions of immovable property within the European Union puts a demand for easy access to the information of the national land administrations of the Member States. Euromortgage and EULIS are first steps.

In addition, a common European Land Market requires a uniform system of land registration to promote cross-border transactions. We sketched the introduction of a common way of land registration complementary to the existing national land registrations: the EuroTitle system. This may bring the required uniformity of land registration in Europe. This approach is in the beginning stages of development and the legal and organisational consequences need to be further developed to assess the feasibility of introducing such a concept in the world of European land administration.

We would recommend the Commission to continue to play an active role in stimulating the European mortgage market. Although lenders and investors would benefit from a transparent and uniform European land registration, they are not in a position to change necessary legislation to allow for a land registration complementary to national systems. Further, research in assessing the feasibility of one common way of land registration throughout Europe is unlikely to be stimulated or financed by national land registries. Therefore, we recommend that the Commission continues to invest in a crucial element in reaching a transparent European mortgage market: the unification of European land registries.

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