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Publication date

2005

Document Version

Accepted author manuscript

Published in

GIM International: the worldwide magazine for geomatics

Citation (APA)

van Loenen, B., Ploeger, HD., & Nasarre-Aznar, S. (2005). EuroTitle: land registry standard; paving the way to a common property market. *GIM International: the worldwide magazine for geomatics*, 19(12), 34-37.

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EuroTitle: Paving the road to a common real estate market

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Introduction

The European Union's "four freedoms", the free movement of people, capital, services and goods provide a good basis for an increase of real estate transactions, and – more specific – to open the mortgage market in Europe. But currently there are a limited number of cross-border transactions, and transnational mortgage lending represents not more than 1% of the whole mortgage business in Europe (EU COM (2005) 327 final). Although the single market for banking has been established in 1993 by the Second Banking Directive (89/646/EEG), a real European mortgage market seems still far away. The mortgage is still a domestic product.

In 2003 the European Commission established the Forum Group on Mortgage Credit with a mandate to:

- identify the barriers to the smooth functioning of the Internal Market for mortgage credit;
- assess the impact of such barriers on the functioning of the Internal Market; and
- recommend to the Commission to tackle these barriers.

The Forum Group published its report in 2004 (EU 2004). Based on this report we conclude that a common European real estate market requires:

- 1) transparency of mortgage products;
- 2) transparency of information from national land registries; and
- 3) uniform certainty about rights and interests in real property.

Two existing initiatives, the Eurohypotheec and the EULIS project, address the first two issues. The third issue remains unaddressed. This paper introduces the EuroTitle, a European standard for land registration complementary to the existing national systems, as a mean to provide the transparency and certainty users require.

A practical problem

The lack of a common real estate market in the EU may be explained by differences in land law and land registration between the Member States and the lack of cross-border transparency of the national registries. Indeed, the practical question 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 general, the buyer and his local banker will be ignorant about the relevant rules of land law in the country concerned. Further, if information is obtained about the owners and others with interests in the real estate, it is quite difficult to judge that information on its merits; what does it, for example, really mean that Pierre Le Grand is registered in France as "propriétaire" (owner) of a certain plot? Can a third party rely on this information? Are there any hidden claims? Mortgage banks have difficulties in assessing the value of the information, and do not risk supporting a loan for real estate in another Member State (figure 1).

How to overcome those barriers?

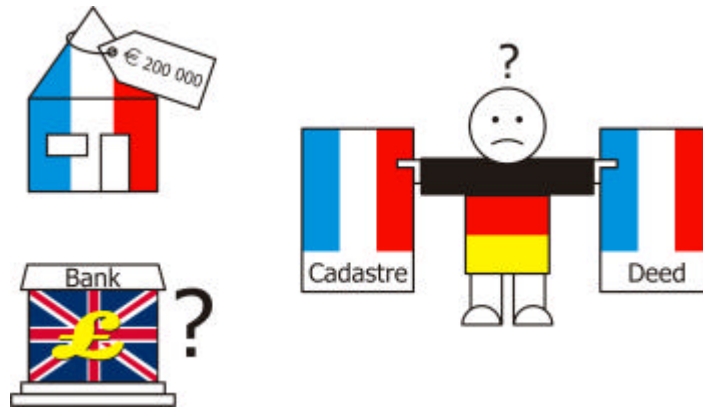


Figure 1: The lack of transparency of national land registries and uncertainty about the value of the information provided hampers the development of a cross-border real estate and mortgage market within the European Union (figure by Axel Smits).

Establishing a European real estate market

The Green Paper on Financial Services Policy (2005-2010) of the European Commission (EU COM (2005) 177) stated that mortgage credit is one area where further retail integration might be beneficial. More recently the Green Paper on Mortgage Credit (EU COM (2005) 327 final) addresses this subject in more detail, taking in account the recommendations of the Forum group on Mortgage Credit. In this Green Paper, the Commission stresses the importance and impact of mortgage lending on the Union's economy. Intervention of the Commission to integrate the mortgage markets would be aimed at making them more efficient and competitive.

Transparency of mortgage products

The Eurohypotheec Research Group offers with its model for a common mortgage a solution to overcome the differences between the mortgages within the European Union offers (see www.eurohypotheec.com). In 2005, based on the works of the Eurohypotheec Research Group, the Mortgage Credit Foundation published the "Basis Guidelines for a Eurohypotheec", providing the outlines for a Eurohypotheec as a non-accessory land charge, opposable against third parties after registration in the competent national register (Mortgage Credit Foundation, 2005). In this model the formal requirements such as the declarations of the parties and registration of the security right are identical for other real estates under national law. This model doesn't intend to replace the around 25 different types of legal frameworks for mortgages and hypothecs in Europe. The Eurohypotheec is an extra tool for lenders and borrowers (Nasarre-Aznar, 2005).

Transparency of information from national land registries

Although the Eurohypotheec 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. It is therefore that the need for standard procedures and meta information has been stressed in literature (Wehrens, 2004).

Indeed, the European Mortgage Federation, representing the mortgage bankers in the EU, asked for the improvement of 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 supports this view.

EULIS, the European Union Land Information Service seems to give the answer. This project brings together the computerised information on land of several European countries in one portal (Gustafsson, 2003, Tiainen, 2004). 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 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).

Uniform level of certainty

The Eurohypotheque as such will provide a European instrument to secure loans, so addresses the first requirement of a common European mortgage market. EULIS addresses the second requirement. But both do not resolve the problems of the diversity of the national systems of land registry. From the recommendations of the Forum Group on Mortgage Credit it is clear that the mortgage market highly values the transparency and certainty of rights in real estate. In short: a bank won't lend money under a Eurohypotheque if it has no certainty about the legal status of the property or properties encumbered. The Forum Group made the following recommendations:

- 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.

Further the Group recommended that Member States provide that the responsible Public Register certifying authority should have state indemnity. If such responsibility is delegated to a third party, such party shall be covered by appropriate professional liability insurance for an adequate sum.

Systems of Land Registration: seeking the most transparent one

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 worldwide, which provide different levels of legal certainty.

Here, we only conclude that generally the register (even in the Torrens system) can never guarantee the real legal situation of a piece of land for 100% as they work on the basis of presumptions that may be challenged in Courts by an owner of a contradictory title; for example, because the contract of sale is void. In Europe there is no unification of the causes that may affect the validity of a registered title. Harmonisation of Land Register law, law of contracts and obligations and rights in land is difficult.

According to Nasarre-Aznar (2004) an excellent partner for the Eurohypotheque 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 introduction of a common way of registration of land, an alternative to the existing national land registrations.

EuroTitle

The requirements of a common European mortgage market for both transparency and certainty can be met by the introduction of the EuroTitle (figure 2).

A EuroTitle will be a title registration based on (newly developed) European standards. It is a common way of land registration within Europe, complementary to the existing national land registrations; it does not need to replace current registration. Also this system does not introduce a new European Land Registry. 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.

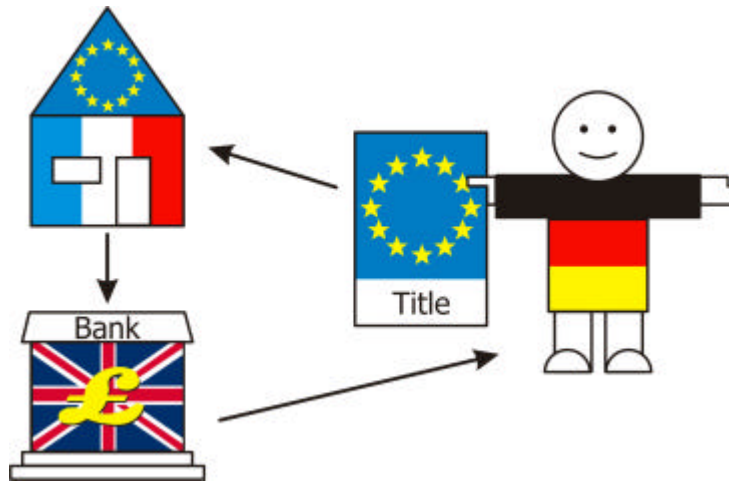
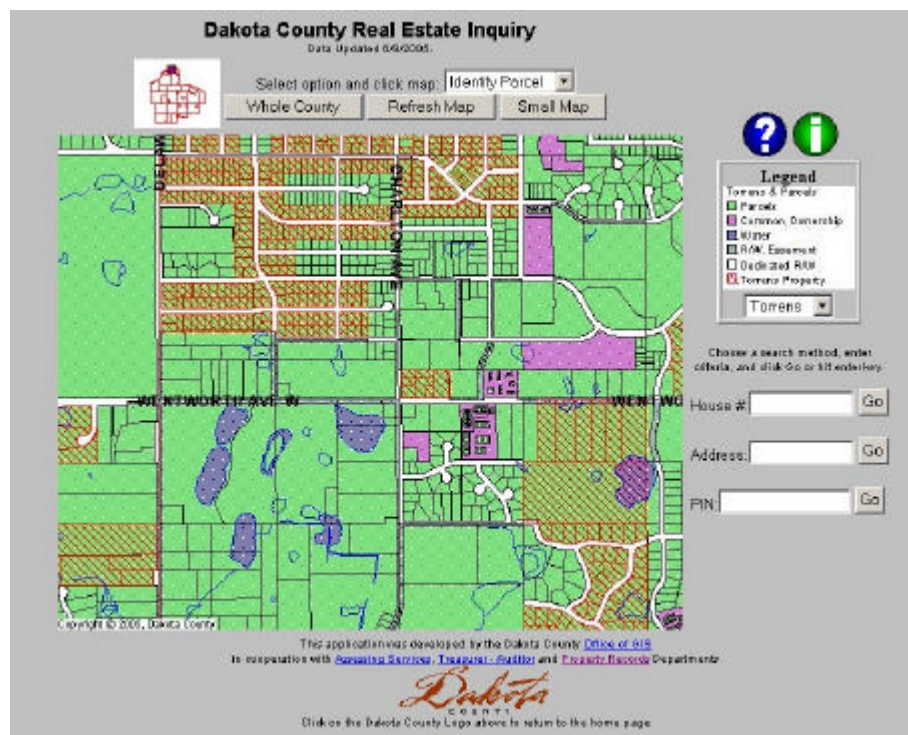


Figure 2: Registration of land under EuroTitle will provide the certainty needed by land owners, buyers and bankers and therefore boost the development of a common real estate market (figure by Axel Smits).

The EuroTitle is 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, and because it uses standard procedures all over Europe, as such provide a reliable basis for e-conveyancing (Ploeger and Van Loenen, 2005).

Some idea how Europe will look like in the future, with two types of registration in one land registry, offers Minnesota, USA. In Minnesota, Torrens title (registration of title) and Abstract title (based on the recording of deeds) are integrated in one information system (figure 3a and 3b).



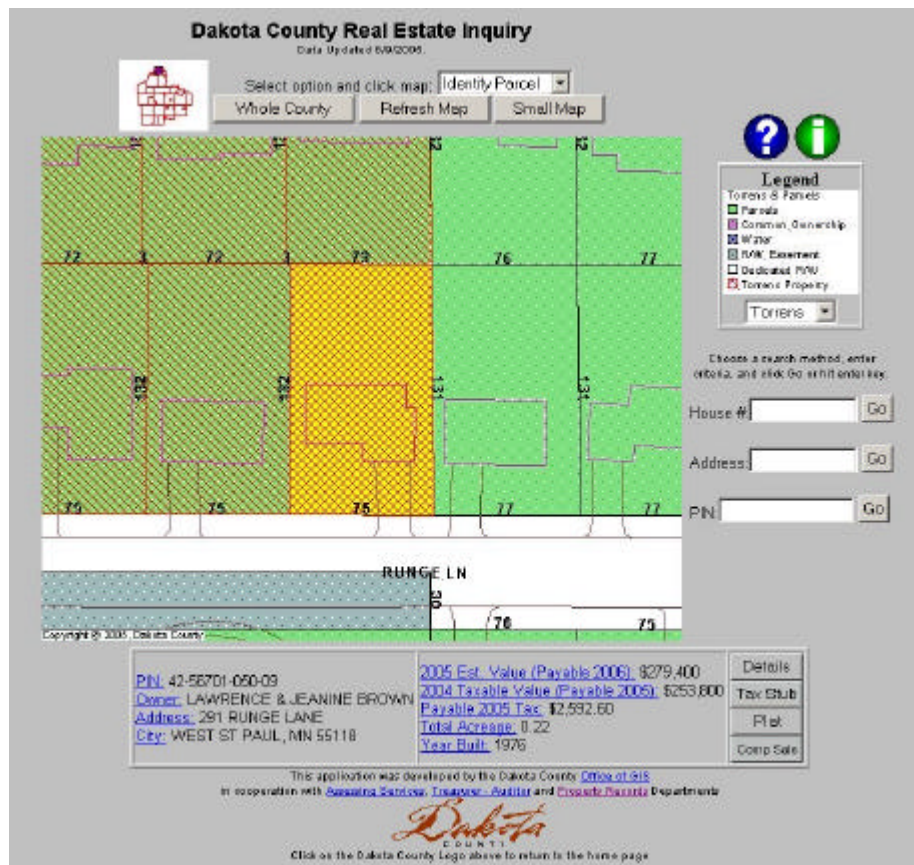


Figure 3a/b: Information about real estate in Dakota County, Minnesota, USA. Parcels registered under Torrens title (shaded in red) and Abstract title are integrated in one Geo-Information System (GIS).

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. Eurohypotheque 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 suggest to introduce 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.

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Dr. Hendrik Ploeger studied law at the Universities of Amsterdam and Leiden. He is assistant-professor at OTB Research Institute, Delft University of Technology (the Netherlands) and published on several subjects of land law and land registration. He is also chairman of the working group on 3D-Cadastres of the International Federation of Surveyors, FIG

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Bastiaan van Loenen, MSc is a PhD candidate at OTB Research Institute, Delft University of Technology (the Netherlands) researching the impact of access policies of large-scale geographic information on the development of SDIs. He is co-editor of the GSDI publication "Spatial data infrastructure and policy development in Europe and the United States".

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