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The European systems of real estate registration: an overview

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Abstract This paper shows an overview of the land registration systems in Europe.
The comparative analysis starts from the distinction between the legal systems of the property transmission within the two large families of "Civil Law" and "Common Law". On these basis, in fact, the legal institutions and national organizations, that supervise the real estate registration, are built. Therefore the various systems of "Land Registration" were examined with reference to the main typical factors, such as the organization of the Register, the contents of the recording, its substantial effects, the protection of good faith and the effects to third parties.

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INTRODUCTION

This contribution is born from the experience gained over the past five years as a referent and contact point of the European Land Registry Association ELRA,[1] to which the Agency has belonged since 2011. The association operates at the European level for the diffusion of legal culture and best practices in the vast sphere of "Property Registration", in that sector that we Italians call "Mortgage Law" and which has its main regulatory reference in Book VI of our Civil Code entitled "Protection of rights".

At the level of the European institutions, the matter falls within the sphere of activity of the Justice Department of the European Commission[2] which finances and relies on the contributions and projects of associations and interest groups to promote the free and safe movement of rights in the common European space.[3]

The intention is to describe the European landscape in the sector of Land Registration, in order to make a humble and partial contribution to the knowledge of one of the most sensitive areas (and also one of the most specialised ones) of property law, that rests on legal principles and institutional traditions among the most variegated but that everywhere pursues the same public interest: that of the protection of property, of credit and of their safe circulation.

The first part of the article examines and compares the main European systems of transmission of property and the constitution, modification and transmission of other real rights, their origins and their evolution, in order to summarise the legal principles underpinning the institutes and the technical rules of real estate registration (Land Registration Systems) in Europe.

In the following paragraphs there is a brief examination of the property registration systems, highlighting their common characteristics as well as their fundamental differences on the basis of five criteria for comparison:

1. The organisation of the Registry;
2. The contents of the registration;
3. The substantial effects of registration;
4. The protection (or non-protection) of good faith;
5. The effects toward third parties.

FOREWORD

Real estate property has always played a fundamental role in the economy of a country. Land not only constitutes an important resource in itself, but it also performs an essential function as a guarantee of credit, thereby reducing transaction costs in the context of lending and making it possible on a large scale and without the need to resort to further personal guarantees. This undeniable assertion has led the main international aid and cooperation organisations to the promotion of projects of land management and formalisation of its deeds and titles, both in developing countries

1 www.elra.eu

2 See the portal www.ejustice.eu and the page http://ec.europa.eu/justice/civil/index_en.htm

3 One of these projects, which today is in a pilot phase, concerns the interconnection of European Land registers, in order to create cross-border access to the same and therefore easier circulation of real estate information for professionals and citizens.

and in the countries of the former Communist regime.[4] In a parallel way, in developed countries, the systems for transferring real estate, with their complex baggage of legal institutions and structural organisation, are now the subject of disputes and reforms in their respective countries. There is the reinforcement, on the one hand, of the conviction that some of the professional figures traditionally engaged in the processes of management and transfer of real estate properties have become obsolete, as a result of the transformations in the markets and as regards technology. On the other hand, it seems that a certain forgetfulness is happening as regards the organisational bases of the legal institutions that had been created with considerable effort during the second half of the nineteenth century. A vacuum has also been created between the needs of the reformers and administrators and the scientific world, called to offer them some possible solutions.

Unlike credit rights, having "relative" effectiveness and operated exclusively in respect of the obligated person, rights *in rem* (*jura in rem*), among which the right of property is the widest, have the characteristic of conferring the owner an absolute power over the property, and can be affected or limited only with the consent of the owner. Other conditions being equal, rights *in rem* (and in particular those of real estate property) enjoy greater certainty as regards their realisation. In economic terms, the parties pay lower costs for their enforcement. Bear in mind, for example the reduced guarantee that ensures a personal credit right with respect to a mortgage. The greater force of the right *in rem* stems from its exclusiveness that obliges the whole world to respect it, (effectiveness *erga omnes*) and not only the transmitter.

This requirement guarantees the undisturbed exercise of the right; however, when on the same property there is a concurrent right or the intention to constitute further real rights, the need to obtain the necessary consent of the owner can be costly.[5]

4 See the most recent publication of the World Bank Group "Hilhorst, Thea and Frederic Meunier, eds 2015, *How Innovations in Land Administration Improve Reform on Doing Business: cases from Lithuania, the Republic of Korea, Rwanda and the United Kingdom.* Washington DC. World Bank.

5 In his valuable work entitled *"La contratación de derechos de propiedad: Un análisis economico"*, Madrid, 2004, Benito ARRUÑADA, Business professor at the Pompeu Fabra University of Barcelona, starting from the economic analysis of the legal institutions and organisations that govern, throughout the world, the property law and its legal circulation, the reader is thus introduced to the complex world of Real Estate Law:

- "The specialisation of productive resources increases their productivity and is the main engine of economic development. However, specialisation is useful only on the condition that the economic agents exchange their resources. But exchanges involve costs and these costs hinder specialisation and development. To reduce them, human beings use many legal institutions and institute organisations, adapting them to the characteristics of each activity. The work analyses a part of these institutional and organisational solutions: those which make possible the existence and the negotiation at low cost of ownership rights and of other real rights on property. Their function is to protect such rights and reduce the information asymmetries that may arise between those who exchange such property. These solutions are, on the one hand, what is called Property Law both in Anglo-Saxon jurisdiction and in ours; on the other hand there are organisations that provide various types of professional, administrative and judicial services, through which such Law is applied, ensuring rights and enabling the transactions.
- The legal institutions that distinguish modern Property Law from Law regarding Obligations and Contracts, are based fundamentally on three principles. The first is that of the greater effectiveness of real rights (*ius in rem*) compared to personal rights or obligations (*ius in personam*); secondly, the rule of priority establishes real rights at the moment of their public notice, compared to the general principle (*prior in tempore potior in jure*) that regulates the hierarchical order of personal rights on the basis of the date of completion of the contract. Lastly, in the awarding of disputed rights, it accords protection to the purchaser in good faith even in respect to the actual owner, which occurs mainly in those jurisdictions that have a "rights register", but also, in a more general way, in other areas, such as that of commercial negotiation.
- Regarding the organisations, there are various areas of professional activities, of considerable importance, characterised in each country due to the different modes of negotiation (notaries, lawyers, *licensed conveyancers,* etc., and insurers of titles), responsible for preparing the private contracts or equipping the title with insurance coverage.
- As regards property registers, these are understood in their dual nature of "documents registers" and "rights registers", with the task of making a public notification of the titles and protecting the real rights of third parties."

When this happens, some of these rights may be incompatible, unless the parties obtain the consent of the concerned owners, thus incurring however in considerable costs in transaction which could endanger the legal traffic on the property itself. As a compromise between the benefits of a more simple embodiment of the law (enforcement), on the one hand, and the economic costs of transactions necessary for liberating it (purging it) from conflicting third-party rights on the other hand, various legal solutions are adopted, whose main function is to make it possible, at a low cost, to reach consensus between potential conflicting rights holders. To achieve this, the modern legal systems require that private contracts or real rights to which they give rise are made public. The public notice of the contracts is obtained simply by storing them in a register of documents (Deed system), without prejudice to the possibility for the parties to provide ancillary and bond issues as guarantee of the title. The public notice of the rights (Title system) instead requires impartial intervention, which in practice has a "judiciary" *lato sensu* character, having the main purpose to verify that no pre-existing right conflicts with the new right generated by the last transaction.

The history of Land registration system is therefore the history of the evolution of the legal systems toward forms of protection of property rights and other rights *in rem* capable of satisfying, by establishing a balance, the need to ensure the owner from potentially detrimental actions to his right and the need to protect third parties extraneous to the agreement, who could claim conflicting rights on the same property, all in function of the pursuit of the collective interest to expeditiousness, economy and safety of real estate purchases.

TRANSMISSION OF PROPERTY RIGHTS AND CONSTITUTION, MODIFICATION AND TRANSMISSION OF OTHER REAL RIGHTS: LEGAL SYSTEMS COMPARED

Two dominant legal traditions are currently represented in Europe (and in the entire world): that of Civil Law, prevalent in continental Europe, and that of Common Law, of the Anglo-Saxon type.[6] Within these macro groupings quite a few differences can be found, that make the comparative examination somewhat complicated. The analysis which follows will attempt to distinguish, within the framework of the two different legal traditions that have marked the development of European law, the different solutions adopted by the individual legal systems to implement concrete protection of property rights and other *jura in rem,* establishing detailed procedures for their constitution, modification and transmission.

Area of Civil Law

Civil Law draws its main inspiration from classical Roman law and in particular from Justinian rights (6th century A.D.) then obtaining considerable development in the Middle Ages through Canon law. An important characteristic of *Civil Law*, apart from its origins in Roman law, was the codification of Roman law passed down, *i.e.*, its inclusion in civil codes. Between the 6th and 7th century the first Germanic Codes appeared, clearly delineating the law in force for the Germanic classes, privileged in respect to their Roman subjects, and harmonising those laws with popular law. Thus were recorded the habits, the customs and the most important decisions of the feudal courts. These collections were then adopted as the official laws by some European monarchs in order to consolidate their

6 Curiously, however, there is no absolute correspondence between the legal tradition in force in a given country and the technical solution adopted for the management of the property registers. For example in England and Wales, Common Law countries, a title register is in force, just as in Spain, a Civil Law country.

power, thus contributing to the birth of the great codifications of the modern era.[7] The concept of codification was further developed during the 17th and 18th centuries, as an expression of both the natural law doctrine and the ideas of the Enlightenment. The political ideal of that era was expressed by the concepts of democracy, protection of property and principle of legality. It required for its implementation the certainty of the law and its uniform application.

At the end, despite the resistance to it by the detractors of written law, who emphasised that there was a danger of its crystallisation, which would have strayed it from living law, the codification of European private law progressed[8] and brought about, in many countries, a comprehensive *corpus* of rules, which has remained up to this day, albeit with various transformations.

Within the vast territory that remained under the influence of Civil Law, various legal systems were formed, each one characterised through the transposition of Roman law together with the customs and habits of the population present in that particular country or region. In this way, the major legal families that represent the continental panorama of civil law were established. For each of these, we are going to summarise the solutions adopted by substantive law to achieve the translative effect when the object of the contract is immovable property.

Countries of Central Europe, Spain and the Netherlands

The first legal family includes those systems in which the transmission of rights *in rem* takes place in two phases: the agreement, with the effect of creating the obligation, and the *traditio* itself, *i.e.*, the deed of transfer that follows it. The first stage takes place between private parties with the assistance of the Latin Notary, and has the function of regulating the relationship between the seller and the buyer in relation to the transfer being put into effect. The second stage requires, in addition to the consent of the parties, the *imprimatur* of the power of the State that enshrines, through inclusion in the register, the passage of the real estate or of the right from one subject to another with a public faith value.

The central European systems of Germany, Austria, Switzerland, Croatia, Slovenia and Rhodes lie within this scheme. Also in the so-called new Italian Provinces, for which the R.D. 28 March 1929, n. 499 has maintained the former Austrian system, there is still a "tavolare" (land book type) system in force.

But also in the Netherlands, which historically are heirs - as Italy, Belgium and Luxembourg - of Napoleonic law, the purchase of property requires more steps in order to be completed. The distinction is valid also in Spain. In these countries Roman law has influenced the way of purchasing property under derivative title. In fact, in the Roman law there was a distinction between "*titulus*" and "*modus*" of the transfer and both were required for its completion.

7 Some examples are: the Coutume de Paris (written in 1510; revised in 1580), which served as the basis for the Napoleonic Code, and the Sachenspiegel (approx. 1220) of the diocese of Magdeburg and Halberstadt, which was used in northern Germany, in Poland and in the Netherlands.

8 The codifications were completed by Denmark (1687), Sweden (1734), Prussia (1794), France (the Napoleonic Code, 1804) and Austria (Civil Code, 1811). The French codes were imported in the areas conquered by Emperor Napoleon and later adopted with modifications in Poland (Duchy of Warsaw/Kingdom of the Congress; *Kodeks cywilny*, 1806/1825), Louisiana (1807), *Canton Vaud* (Switzerland; 1819), Netherlands (*Burgerlijk Wetboek*, 1838), Italy and Romania (1865), Portugal (1867) and Spain (1888). Germany (*Bürgerliches Gesetzbuch*, 1900) and Switzerland (Civil Code, 1912) adopted their own codifications. These codifications were in turn imported in the colonies at some time or another by most of these countries. The Swiss version was adopted in Brazil (1916) and Turkey (1926).

The distinction, easily applicable as regards movable property (where the *modus* is represented by the *traditio i.e.*, by the passage of possession), made it necessary to implement different legal instruments for immovable property. Thus the *traditio* was replaced in a manner that has not been consistent in the various countries.[9]

The countries of the "Code Napoléon"

The second legal family present in the area of Civil Law is the one that gathers the countries of Napoleonic tradition and whose paradigm is represented by the French Civil Code. Included in it, together with France,[10] are Italy (with the exception of territories in which the land registration system of Austrian derivation is in use),[11] Belgium and Luxembourg.

We will see further on how these "basic" systems have however given rise to diverse property registration systems, to forms of registers that can be considered as hybrid, which do not reflect perfectly and consistently the substantive legal system that supports them.

With regard to the transmission of property and other rights *in rem*, the "pure" systems of Napoleonic origin are based on the substantive legal principle of the constitutive effect of the consent expressed in the deed. In other words, the transfer of property rights does not require more than the mere consent of the parties legitimately expressed in writing. This principle is enshrined in the current art. 1376 of the Italian Civil Code of 1942, which reproduces, with some clarifications, art. 1125 of the Civil Code of 1865, which in turn was inspired by the "Napoleonic Code". This principle, an expression of the natural law ideal of the primacy of the individual and of his will as a reaction to the feudal domain, led to the affirmation of private will, transfused into the agreement, capable by itself of producing effects not only between the parties but also *erga omnes*.[12]

9 In Germany, the contract relating to the transfer of property is abstract with respect to the underlying agreement concerning the conditions of the sale. The subsequent entry in the Grundbuch replaces the traditio (typical of movable property):

- in Austria the land registration has today become the modus;
- in Spain, the traditio of the property has been replaced by the transmission of the formal title (the "escritura" or authentic deed that contains the contract) so that in practice, in order to have a valid transfer, the only requirement is a valid contract drawn up in public form (as in the systems of the Napoleonic type), but from a dogmatic point of view, this is considered both as titulus and as modus;
- in the Netherlands the modus is twofold since it comprises both a separate agreement on the transfer of property and its registration.

10 With the partial exception of Alsace and Moselle, in which a real estate registration system inspired by the German Grundbuch is in force, but with the exclusion of the constitutive principle and the protection of good faith in registers, as in the rest of France.

11 The "unredeemed" territories following the First World War, *i.e.*, the current provinces of Trieste, Gorizia, Trento and Bolzano, some municipalities of the province of Udine (Aiello del Friuli, Aquileia, Campolongo al Torre, Cervignano del Friuli, Chiopris-Viscone, Fiumicello, Malborghetto-Valbruna, Pontebba, Ruda, San Vito al Torre, Tapogliano, Tarvisio, Terzo di Aquileia, Villa Vicentina and Visco), in the town of Pedemonte and the former municipality of Casotto (Province of Vicenza), in the municipalities of Magasa and Valvestino (Province of Brescia) and in three municipalities of the province of Belluno (Cortina d'Ampezzo, Colle Santa Lucia and Livinallongo del Col di Lana).

12 The dogmatic strength of the principle was so strong that the "Napoleonic Code" was totally disinterested in protecting the confidence of third parties against possible hidden alienations and therefore in the legal circulation of property; to the point that it abolished the system of transcriptions introduced during the French Revolution (the Code hypothécaire of 9 Messidor, year III, or 27 June 1795) with law 11 Brumaire of year VII (1 November 1978). But the need to protect the confidence of third parties and to ensure a system of rules for the proper circulation of property finally forced the French legislator to review this choice, by adopting a comprehensive legislation on real estate transcription with the law of 23 March 1855.

In Italy, the principle of real consent, transposed by the Civil Code of 1865 through the category of the contract with real effects, was balanced by a system of rules for the transcription of the real contracts inspired by the French legislation of 1855. But the doctrine didn't avoid its criticism, and attempts to overcome this principle emerged until the time of the reform of the Civil Code. A revolutionary proposal was offered at that time: the return to the distinction between *titulus* and *modus adquirendi*: the transfer act, amending or terminating a real right, would not have produced effects until it had been transcribed. However in the final draft of the new code a choice was made to remain anchored to the rigorous and coherent application of the principle of real consent, the whole issue of transcription, although widely innovated with respect to the old code, remained always the one of French inspiration, especially as regards the effects of the transcription, which was conceived as a means for opposability of the purchase against third parties and not for the purpose of completion of the transfer *inter partes,* too.

Area of Common Law

On the other side, the so-called Common Law is the legal system initially developed in England, and later among the other English-speaking people. Similarly to what happened for Civil Law, that adopted the traditions and customs of the populations concerned, fusing them with the principles of Roman law, English law evolved from the Norman and Anglo-Saxon customary law, further improved by jurisprudence and legislation.

However there are two fundamental differences that characterise the process of formation of the two systems:

1. Roman law had crystallised many of its legal principles in Justinian codification, which was enriched with the contribution of case-law and with the commentators of senatorial laws;
2. the case-law of Civil Law has an authority that is not binding whereas Common Law has a binding value equal to the law.

The expression Common Law refers to a not codified legal system,[13] that is based on a model of a "legal precedent", through which the judgements are formed on the basis of earlier sentences delivered in cases that are very similar to each other, by consolidating and stabilising over time the basic legal principle. The systems of Civil Law, on the contrary, are based on encoded rights, *i.e.*, on a system of rules divided into categories and subcategories, which regulate the relationships between individuals and between each of them and the public authority (civil code, criminal code, code of civil procedure, code of criminal procedure).

The structural reasons which have allowed such a different development of Common Law with respect to Civil Law are to be found not only in the absence of general codification in Great Britain but in a complex of circumstances such as:

- non-transposition of Roman law, excepting some marginal influence on doctrinal works;
- the different formation of the jurist of Common Law with respect to the jurist of Civil Law (practical training in the first, university in the second);

13 The codification, however, is not a defining characteristic of a Civil Law system. For example, written laws that govern the systems of Civil Law in Sweden and in the other Scandinavian countries or Roman-Dutch countries are not grouped into larger codes, as vast as those found in France and Germany.

- the diversity in the system of sources of law (case-law is the main source of law in systems of Common Law, with reduced intervention of a legislative source, which vice versa is prevalent in the countries of Civil Law);
- the mandatory nature of the principle of *stare decisis* (starting from the middle of the 19th century);
- the lack of Notaries of the Latin type, whose functions are carried out by lawyers;
- the selection of Judges among the best higher court lawyers, the barrister (bureaucratic selection of judges of *Civil Law*);
- the early centralisation and high prestige of higher English Courts (fragmentation of continental Courts until absolutism);
- the reduced role of academic legal theory in the training of law (elevated role of continental doctrine);
- the ancient affirmation of the Rule of Law (analogous concept to the constitutional state).

With regard to the protection of property and other real rights on immovable property, a preliminary remark is that Common Law, in a very practical way, highlights the use value of the asset, *i.e.*, the value resulting from the utilities that can be drawn directly from the property, and especially the exchange value, *i.e.*, the value that the property takes in the legal circulation in the market.

In Common Law the term Real Property does not have an unequivocal meaning because it sometimes refers to a wide range of rights linked to an asset, other times to the property itself as object of the right: the origin of this plurality of meanings is the peculiarity of real-world situations known to Common Law.

In principle, land is the property of the Crown or State, and private individuals are holders of rights of use, different for content of powers and duration, which may not be qualified either as rights of ownership in the traditional sense or *iura in re aliena*, but as grants of use. This is a legacy of the feudal tradition in which the Sovereign Lord - Lord of all lands, granted the use to his vassals, called Tenants, which could then sub-grant the land to third parties, becoming Mesne Lords.

Once freed from feudal obligations, real rights over immovable property acquire an overall duration corresponding to that of the *dominium* in continental countries: distinguished as *Estate for life*, concession limited to the life of the holder, *Estate in fee tail*, concession extended up to the last descendant of the original proprietor, *Estate in fee simple*, concession extended to the last heir of the heirs. In this way the feudal regime, although subject to dissolution, has never been entirely abolished and the various types of Estates make available to individuals a very wide range of use rights, able to satisfy in the best possible way all their needs and give full protection to the different nuances of the will of the concerned parties.

In Common Law systems, therefore, the property right is identified with the ownership of subjective legal situations having a patrimonial content, directly or indirectly connected to an asset and involving a relevant economic value.

The Anglo-Saxon model, both in relation to the transfer procedure, and to the procedure for its registration, aims at ensuring, as all systems pretend to do for the fundamental economic reasons mentioned in the introduction, the certainty of the transfer on one hand, and its rapidity on the other.

In the Anglo-Saxon world, once the formalities provided for the transfer have been set in place, this transfer was (and is now) to be considered definitely implemented.[14]

Under a more strictly procedural profile - and if we make a comparison with the Civil Law system - with wide approximation, one could say that today the English model approaches the German model in the sense that it has maintained the distinction between the contract of sale (regulated by the law of obligations) and the formal transfer deed (regulated by the "law of property"). There are in fact three distinct phases:

- The "Contract", *i.e.*, the agreement between the parties which however does not correspond exactly to the Italian contract, having both the effect of an obligation for "common law" (at law) but already real, with a transferring effect, for "equity", as a result of the application of the so-called "conversion rule" and the consequent creation of a legal "constructive trust". This implies the recognition to the future buyer of the "equitable ownership" and of the consequent remedy of "tracing" (*i.e.*, the possibility to obtain what is due to him even against the third purchaser).[15]
- The "investigation of title". It is the intermediate period dedicated to the assessment of the legitimacy of the seller and to the determination of the exact configuration of the rights transferred by him. This is the most insecure, complex and costly phase of the Anglo-Saxon procedure, whose difficulties seem to be traced, essentially, a) to the number of "rights over immovable property" that tends to be unlimited, which makes exhausting the searches on the actual content of the transferred right, for the protection of the buyer and third parties; b) to the lack of the "binding nature" of titles that can be accepted in the real estate registers (*i.e.*, to the lack of detailed and exclusive legal identification of the titles/documents and of the content of the transferred rights); as well as c) to the lack of a centralised register having a "public faith", whose completeness, accuracy and precision fall under the responsibility of a "public" subject;
- The "Conveyance", *i.e.*, the formal act of transferring the right "at law" ("legal estate") compulsorily implemented through a "deed" (formal act so-called "under seal"); unilateral act whose delivery - at least in the traditional system - transfers the "estate".

14 This entails, theoretically, albeit with considerable mitigations:

a - an absolute value of the formal procedure, that although remaining exclusively private, at least in the traditional English system and also in the American system, is rigidly regulated;
b - an almost non-existent relief of the will and of its defects;
c - a prevalence of the principle "caveat emptor", therefore a liability of the seller, configured in terms of an obligation to "transparency" (disclosure), but only for the legal defects of the title that are not apparent, with the corresponding burden of the purchaser to carry out the verification of all the rest. The substantial lack of concern for the protection of the contractor that the Civil Law considers "weak" is still today, in fact, a characteristic trait of the entire Anglo-Saxon system, where there is the complete absence of the thought that the "State" (*i.e.*, a central authority) is concerned about protecting the individual in the conduct of his or her private transactions. While the Italian purchaser, even in the absence of clearly expressed assumptions of responsibility on the part of the seller, is protected by the rules established by the Civil Code in matters of guarantees for defects and eviction, the Anglo-Saxon purchaser must - independently and individually - seek to protect himself for such profiles.

15 One could compare the effects to those of a sale with reservation of title.

To achieve each of these steps, the intervention of various professionals is essential.[16]

With regard to the systems of making knowable or giving public awareness to real estate transactions in the Common Law world, in England and Wales a legislative reform of 2002 has radically modified, as a matter of fact, the above mentioned procedure, bringing the current English system - at least as a trend - much closer to the continental system and especially to the German model. This system will be discussed more thoroughly in the following two paragraphs, as we will pass through the differences and similarities between the current English system and other systems of Common Law of the European area (Scotland, Ireland), leaving apart, in this work, the American system (which is essentially a kind of deed registration system (Deed recording) and the Torrens system, especially in force in Australia.

THE VARIOUS SYSTEMS OF REAL ESTATE REGISTRATION

For the purposes of a comparative analysis between the various systems of real estate registration in Europe, many reports on the subject[17] show the distinction between five basic "legal families":

1. Common Law;
2. Civil Law of the countries of the Napoleonic Code;
3. Civil Law of Germany (or of Central Europe);
4. Civil Law of the former Communist countries;
5. Law in the Scandinavian countries. This allows one to identify a given real estate registration system within a specific legal family on the basis of some typical characteristics that cannot be found in another family.

Numerous are the distinguishing factors between the five families listed above, but there are five that most readily facilitate the comparison:

1. The organisation of the Registry;
2. The content of the registration;
3. The substantial effects of registration;
4. The protection (or non-protection) of good faith;
5. The effects toward third parties.

16 www.landreg.gov.uk

• Land Registration Act 2002 – a brief guide, Taylor Wessing (www.taylorwessing.com/topical/private_client/land_registration_act2002.html

On e-conveyancing in England:
• government site: www.e-conveyancing.gov.uk
• www.propertylawuk.net/conveyancing.html (Land registry and e-conveyancing)

17 See, among the most complete, although dating back to 2005, the study conducted by the European University Institute (EUI) Florence/European Private Law - www.iue.it - Forum Deutsches Notarinstitut (DNotI) Würzburg: "Real Property Law and procedures in the European Union- General Report", 31/5/2005.

In addition to the research referred to above, extremely useful for any comparative approach is also the site of the European Association of Real Estate Registers - European Land Registry Association - ELRA (www.elra.eu) and its network, European Land Registry Network, in which the network of contact points of the association provides a constant and always updated framework of the various institutes of real estate registration in a European context.

Each of these factors in turn brings about several characterising elements which will be given only a brief mention herein. It is also important to note that among the various factors for the classification of the different categories or legal families, there are correlations that better clarify the nature and functioning of a given system.

The organisation of the registry

All the European States entrust the matter of registration of ownership and other real rights over immovable property to a national authority. With the terminology now established at a European level, the term "land registers"[18] is used to indicate the various public institutions responsible.[19] It also should be noted that within some national legal systems there are different types of registers: In Italy, as is known, in the "unredeemed" territories belonging to Austria before the First World War, and in France in the departments of Haut-Rhin, Bas-Rhin and Moselle, were Land Register systems were maintained (*Livre Foncier* and *Grundbuch*), while in a large part of the national territory the "Mortgage Register" system shall remain applicable. In Greece, in some islands of the Dodecanese, the system of *Landbuch* of Austrian-German origin was introduced during the Italian domination, and it is still in force in those territories.

Lastly, In Ireland and Scotland, the old systems of the Register of Deeds and Register of Sasins coexist with a new system of registration of rights ("Land Registry" in Irish terminology and "Land Register" in the Scottish). Finally, in England, in one and the same register there are two methods of recording: the old system of registration of deeds and the new system of registration of rights.

Relations between Registry and Cadastre ("land survey" in the European terminology)

In general, two different authorities have competence in the field of property: the Cadastre and the Land Register. Even if there is only one agency to hold both functions, these are still clearly distinct according to law.

18 There is also mention of "Public Register" to signify the necessarily public nature of the register institution. Specifically regarding this, se, the report published by the European Commission in 2004: http://ec.europa.eu/internal_market/finservices-retail/docs/home-loans/2004-report-integration_en.pdf

19 In the various legal systems such authority assumes different names:

- in Austria "Grundbuch",
- in Belgium "conservation des hypothèques",
- in the Czech Republic "katastrunemovitostí",
- in Denmark "tinglysningskontoret",
- in England and Wales the "Land Registry",
- in Finland "lainhuutorekisteri" (title register) and "kiinnitysrekisteri" (mortgage register),
- in France "conservation des hypothèques" (in the Alsace-Moselle "bureau foncier"),
- in Germany "Grundbuchamt",
- in Greece "Ypothicofilakia",
- in Hungary, "földhivatala",
- in Ireland "Registry of Deeds" (the old type) and "Land Registry" (the new type)
- in Italy "registri immobiliari",
- in Luxembourg "conservation des hypothèques",
- in Holland "kadaster",
- in Poland "księga wieczysta",
- in Portugal "Conservatória do Registro Predial",
- in Scotland "Land Register" (in addition to the older type of "Register of Sasins", which was gradually replaced),
- in Slovakia "katastru nemovitostí",
- in Slovenia "zemljiške knjige"
- in Spain "Registro de la Propriedad",
- in Sweden, "inskrivningsmyndigheter",
- in Switzerland "Grundbuch".