



Land Registry's Response to Call for Evidence

Civil Judicial Cooperation –
Balance of Competences



Background to response

The principal function of HM Land Registry for England and Wales is to keep a register of title to freehold and leasehold land and charges throughout England and Wales and to record dealings with land once it is registered. On behalf of the Crown we guarantee title to registered estates and interests in land. We serve a population of more than 55 million and facilitate one of the most active property and mortgage markets in the world. Our business strategy sets out how we intend to develop a proactive presence in the UK economy, using our role and expertise in ways that support economic growth. Among the key areas we focus on are helping to provide assurance and confidence in the property market, and improving the efficiency of the conveyancing system.

HM Land Registry is also an active member of the European Land Registry Association (ELRA), and our Director of Legal Services is currently the President. ELRA considers matters of international concern, particularly EU directives that may impact on our work. ELRA also promotes mutual knowledge of the different Land Registry Systems throughout Europe and cooperates with European institutions where it can assist as a tool for progress and change in the field of real property rights.

In recognition of the imperative for the free movement of trade and labour, ELRA is working on a pilot project with the help of funds from the European Commission. The project aims to develop a process to assist citizens of EU member states with the purchase of immovable property (land and buildings) in other member states. The project is called CROBECO – Cross Border Electronic Conveyancing. The project relies on the principles set out in Rome I and Rome II¹.

Call for evidence

We note in particular that the review of the competences between the UK and the EU aims to deepen public and Parliamentary understanding of our EU membership, and provide a constructive and serious contribution to the national and wider European debate about modernising, reforming and improving the EU in the face of collective challenges. You ask for objective, factual information about the impact or effect of the competence in respondents' area of expertise. On this basis, Land Registry is responding to the call for evidence in relation to our membership of ELRA, and in particular, our participation in the CROBECO pilot.

Response to call for evidence

We do not think it is appropriate for Land Registry to respond to all the questions raised in the Call for Evidence. We think that our focus should be on questions 1 and 2—

1. What are the advantages and/or disadvantages to businesses and/or individuals in the UK of EU civil judicial cooperation? You may wish to focus on a particular instrument.
2. What is the impact of EU civil judicial cooperation on UK civil and family law?

As stated in the Call for Evidence, UK citizens are increasingly studying, working and settling in other countries. Many UK citizens are also buying land and property in other countries, particularly in other EU

¹ EU Regulation 593/2008 and EU Regulation 864/2007



member states. Spain seems to be the most popular country for UK citizens to buy property, but of course there are many other EU member states where UK citizens are buying immovable property.

Buying land and buildings in another country, even another EU member state, can be problematic. There may be hidden charges, limitations and overriding interests which are hard to discover, particularly for the foreign buyer who does not know their way round the legal system of another country, and may not speak the language well, if at all. Some of the serious difficulties that can arise are described in the book by Diana Wallis MEP and Sara Allanson in “*European Property Rights & Wrongs*”, available on the internet.²

Partly as a result of concerns raised with our Director of Legal Services by Diana Wallis when she was an MEP and Vice President of the European Parliament, Land Registry has become actively involved in the CROBECO pilot project.

The project aims to establish a relatively simple process for buying immovable property in another member state, in a way that will give the foreign buyer more confidence and assurance. The procedure will be mainly conducted electronically, and will enable the buyer and seller to agree that the legal jurisdiction for the purchase contract will be that of the buyer. The contract and transfer deed will also be bi-lingual. Thus the conveyancing documents can be prepared by a conveyancer or notary in the buyer’s home country, relying on the contractual provisions and pre-contractual rights that are prevalent and familiar in the home country of the buyer. This part of the transaction relies on Rome I and Rome II, which enable the parties to choose the applicable law of the contract and any non-contractual matters.

These contractual provisions cannot alter the need for the final transfer deed to comply with the legal and registration requirements of the country in which the land is situated. The principle of *lex rei sitae* will apply to the purchase deed and its registration. Thus the process respects the national laws and processes of member states.

Many other member states have notarial systems, and the involvement of a notary is mandatory to prepare and attest the transfer document. In the UK notaries are not generally involved in the national conveyancing process, which is usually conducted by solicitors or licensed conveyancers. Land Registry, by virtue of its involvement in ELRA was in an ideal position to liaise between the Registrars of Spain and the Notaries of England and Wales to enable their participation in the pilot project. The first meeting was held in January this year. As a result, already one transaction, between two English nationals for the transfer of a property in Spain has been completed based the CROBECO principles.

These CROBECO principles are set out in its Common Conveyancing Reference Framework, the fundamental principles of which are—

1. The parties are free to choose the applicable law for the contractual and non-contractual obligations, in accordance with Rome I and Rome II.
2. The buyer can choose a notary from within their own home state to draft the documents and conduct the conveyancing transaction.
3. There is respect for existing legal systems – *lex rei sitae* will apply to the transfer and registration deeds.
4. The contract and transfer deed are bi-lingual, prepared in both the language of the buyer and the language of the member state in which the plot is situated.
5. CROBECO will provide a toolkit of appropriate clauses for use in the contract, to assist participating notaries/conveyancers and registrars. These will be available from an on-line repository of clauses.

² <http://cdn.cyprus-property-buyers.com/wp-content/uploads/2011/12/EUROPEAN-PROPERTY-RIGHTS-new.pdf>



6. Internationally acceptable forms of electronic signature for notaries will be identified and obtained by participating notaries/conveyancers.
7. Applications will be made electronically, with provision for the electronic application to be followed (where necessary for national law) by the sending of paper documents.
8. Registrars in the member state in which the land is situated will assist foreign notaries as far as possible to make direct applications for registration on-line, with information and access.
9. Registrars in the home state of the buyer will also assist the Registrar in the member state in which the land is situated if requested, by advising on the authority of the notary/conveyancer, and if necessary, clarifying any legal points which might arise from the bi-lingual deeds.

It is intended that ultimately the use of CROBECO principles, based on Rome I and Rome II, will assist with the free flow of trade and labour by not only increasing the confidence of buyers of immovable property in other member states, but also extending the market for a seller. This may be important in areas of collapsed housing markets. And when things do go wrong, it will be easier for the foreign buyer to seek and find a remedy due to the choice of national law, and also the various provisions for the mutual recognition and enforcement of civil and commercial judgements across Member States.

For instance, if an English buyer of a Spanish property subsequently discovers a public limitation that should have been disclosed by the Spanish seller in accordance with pre-contractual obligations, they could ask a court in England to decide on any compensation that may be payable by the seller. Likewise, a breach of contract can be established in the English courts and if compensation is payable, the judgement may be enforced under the mutual recognition and enforcement provisions.

We do not think it appropriate for Land Registry to comment on EU versus UK competences, but we are pleased to be able to offer factual information about the impact of particular EU instruments, and how they appear to be advantageous to UK individuals.

Alasdair Lewis
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