Certainty of Title in Cross-Border Transactions

A goal for the public sector or an opportunity for the private sector?

Hendrik Ploeger and Bastiaan van Loenen
h.d.ploeger@tudelft.nl
June 17, 2008

Land goes cross-border

- Free movement of capital, goods, services and persons
- Cross-border land market within the EU
  - sale
  - Mortgage
The future in Europe?

Country A
Real property

Country C
Owner

Country D
Notary public

Country B
Buyer

Country E
Bank

Country F
Registry

In reality

Bank

Cadastre

Deed

€ 200 000

?
Action by the European Commission

- Green Paper on Mortgage Credit (2005)

A common European real property market requires:

1. Transparency of mortgage products
2. Transparency of information from national land registries
3. Uniform level of certainty concerning rights and interests in real property.

(Cf. report of the Forum Group on Mortgage Credit, 2004)
White paper on the Integration of EU Mortgage Credit Markets

Conclusions for area of land registration

Recommendations to Member States
- To adhere to EULIS (cross-border access)
- To reduce duration and cost of process of land registration
- More transparency and reliability in the registration

The answers

Transparency of mortgage products: *Eurohypothec*

Transparency of land information: *EULIS*

Uniform level of certainty concerning rights and interests in real property: ?????
Still a problem...

The Eurohypothec as such will provide a European instrument to secure loans, EULIS addresses the transparency. But both do not resolve the problems of the diversity of the national systems of land registry.

A standard by EuroTitle?

- Registration of title, alternative to national registration
- European standard
- Member states in the EU support registration of such a title in the national registry (*systems may already be EuroTitle proof*)
- An owner can choose to have his land registered as EuroTitle, or keep his national title. Land registered under EuroTitle guarantees certainty about rights, and provides easy access to the information
The problem

The solution
Or by the private sector?

- USA
- Problem: weak system of land registration (deed registry) and limited liability of lawyers giving legal opinions
- Answer: insurance against loss of title, boundary disputes, etc.

How does title insurance work?

- Insurance company keeps copy of local deed registries
- Insurance against legal defects
- One-time premium
- Use of standard policy forms
- ‘Product’ exported to Canada, and 60 other countries around the world
- “One product, same anywhere”
The answer from the Title Industry?

No need to upgrade your land registry (the French system will do…)
No need for legal specialists in the process (get rid of the notaries)
No need for uniform land law

Our conclusions

Lack of transparency hampers the development of an European land and mortgage market
Easy cross-border access to information is one step
Introduction of a Eurohypothec is another step
Harmonization of land registries and land law is a long (impossible?) way
EuroTitle, a common way of registration provides the needed certainty and uniformity
However: the private sector (Title Industry) may step in
Mind the title industry!

Or

Title industry welcome!

you choose!