

# Facilitating cross-border real estate transactions in Europe

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## 2.10 Impact Statement

Real estate transactions are complex legal transactions. When European citizens acquire a plot of land in a foreign European country or from a seller, who resides in a different EU Member State, these real estate transactions constitute cross-border transactions, which considerably surmount the complexity that is already inherent in real estate transactions that occur within the boundaries of a single Member State. Statistics indicate that the frequency with which cross-border real estate

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<sup>23</sup> Website English Oxford Living Dictionary, 'Using `They` and `Them` in the Singular' (<https://en.oxforddictionaries.com/grammar/using-they-and-them-in-the-singular>), as consulted on 19.01.2018.

transactions occur, will keep increasing in the future. After all, it must be realized that EU citizens do not only acquire real estate as primary residences when exercising their free movement rights to establish themselves in a different Member State, but also as secondary residences (e.g. holiday homes) or buy-to-let investments. It is against this background that this doctoral thesis presents different strategies to reduce the complexity of cross-border real estate transactions, thereby facilitating the exercise of free movement rights of EU citizens and consequently contributing to the proper functioning of the EU internal market.

The development of such strategies is the result of a four-step procedure. For the purpose of gaining an in-depth understanding of the divergences and commonalities underlying national land registration systems, the first step consisted of the description and comparison of the land registration systems of the Netherlands, Germany, and England. Hereby, careful attention was not only accorded to the discussion of the applicable theoretical legal frameworks but also to the understanding of how these theoretical frameworks unfold in day-to-day legal practice. Based on this analysis, the challenges that European citizens and legal professionals find themselves confronted with in the context of cross-border real estate transactions were distilled, described, and divided into the categories of administrative, cultural, legal, and technological challenges. In a third step, it remained to be assessed whether these challenges have already been addressed by existing initiatives. To this end, an inventory of all relevant European and international projects, which have the potential to contribute to the reduction of the number or intensity of these challenges, was taken. After having analyzed these projects, it could be determined which of these challenges have already been (partly) addressed and which challenges still need attention. Based on this analysis, strategies for the further reduction of these challenges were developed to effectuate a decrease in complexity inherent to cross-border real estate transactions.

The impact of the formulation of these strategies, constituting the final product of this dissertation, as well as of the underlying body of research depends on the specific interest group. From an academic perspective, it is intriguing that despite the high interest in facilitating cross-border real estate transactions, academic studies that systematically approach this topic are still rare. This doctoral thesis intends to help fill this void by aiming to expressly provide relevant insights for the various policy and decision-makers active in the field. In some instances, European or international projects aiming to facilitate cross-border real estate transactions are set up without realizing that another organization has already conducted valuable work in the same area. As a result, and this is

one of the main findings of this dissertation, there is a noticeable tendency on both European and international level to re-invent the wheel when setting up new projects. The reduplication of efforts is not only inefficient and financially disadvantageous but can in turn – almost paradoxically – even add another level of complexity. To provide just one example, it can be observed that several organizations have independently worked on thesauri in the field of comparative land (registration) law. In the absence of cooperation among those institutions, these thesauri will not be compatible with each other and if two or more of them are linked to a central database, such as the e-Justice Portal, difficulties are preprogrammed. The systematic account of the existing initiatives in the field in combination with the identification of challenges that are inherent in cross-border real estate transactions helps decision-makers to identify in which areas the phenomenon of re-inventing the wheel occurs and creates an invitation to foster a spirit of increased cooperation between the individual organizations. In addition, it also highlights those challenges that have not yet been (sufficiently) addressed and suggests strategies for further action. On national level, knowledge about foreign land registration systems can benefit cadastres, land registries, notarial occupation groups, and other stakeholders in various ways. For instance, when deciding on new national policy questions, valuable lessons can be learned from foreign experience. But even in day-to-day legal practice, legal practitioners are already confronted with cross-border cases, such as in the areas of succession and insolvency law, whereby a solid understanding of a foreign land registration system can navigate the practitioner like a GPS system. Yet oftentimes, descriptions of land registration systems are often either available only in the official language of the *lex registrationis*, which necessarily limits their accessibility by foreigners, or are limited to merely one or more aspects of the land registration system. Therefore, legal practitioners as well as the corresponding head organizations can greatly benefit from descriptions of foreign land registration systems that are both extensive and drafted in a language that is widely understood in Europe. Last but not least, on a micro level, European citizens, who are involved in future cross-border real estate transactions, will be able to indirectly benefit from this research if this doctoral thesis succeeds in making a contribution to the facilitation of cross-border real estate transactions.