

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

1

OTB Research Institute, Section Geo-information and Land Development



Land goes cross-border

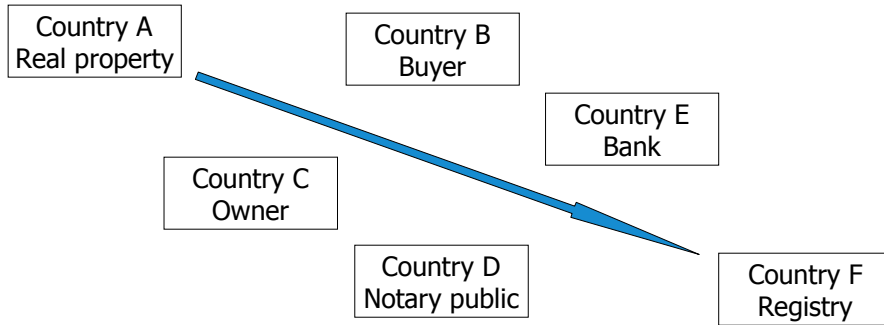
- Free movement of capital, goods, services and persons
- Cross-border land market within the EU
 - sale
 - Mortgage

June 17, 2008

2



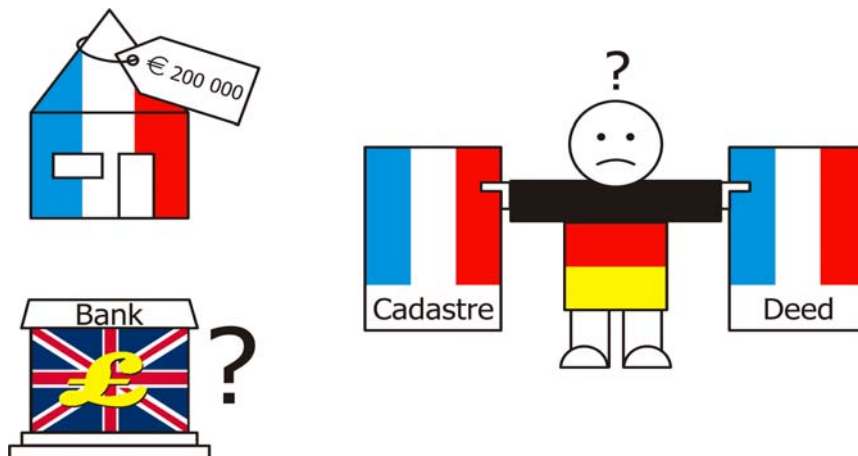
The future in Europe?



June 17, 2008

3

In reality



June 17, 2008

4

Action by the European Commission

- Forum Group on Mortgage Credit (2004)
- Green Paper on Mortgage Credit (2005)
- White Paper on the Integration of the Mortgage Markets (2007)

June 17, 2008

5

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)

June 17, 2008

6

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

June 17, 2008

7

The answers

Transparency of mortgage products: *Eurohypothec*

Transparency of land information: *EULIS*

Uniform level of certainty concerning rights and interests in real property: ????

June 17, 2008

8

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.

June 17, 2008

9

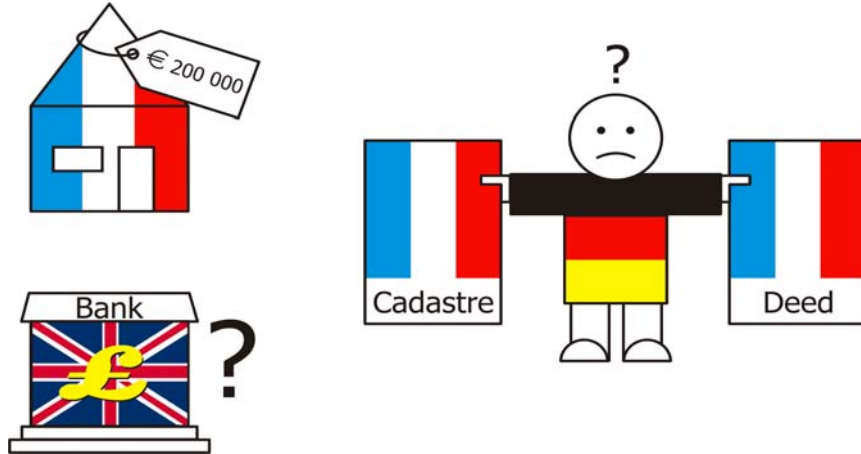
A standard by EuroTitle?

- 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

June 17, 2008

10

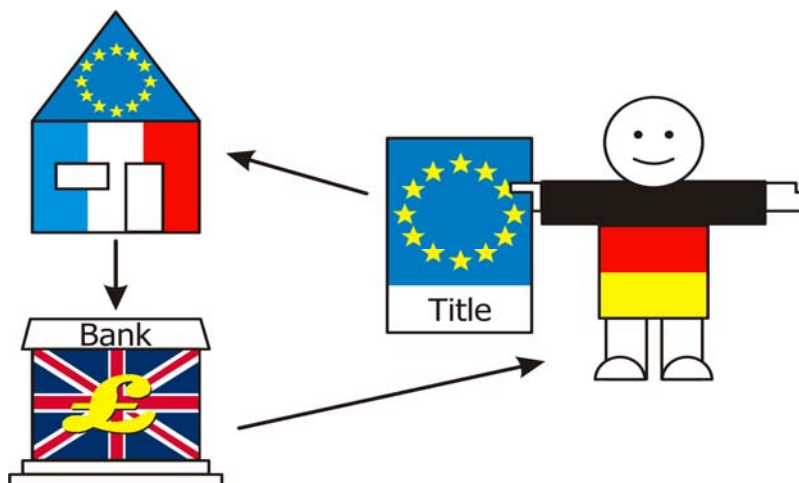
The problem



June 17, 2008

11

The solution



June 17, 2008

12

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.

June 17, 2008

13

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"

June 17, 2008

14

The answer from the Title Industry?



HELPING
YOU
TO HAVE "SECURE" HOME OWNERSHIP

15

TU Delft

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

June 17, 2008

16

Mind the title industry!

Or

Title industry welcome!

you choose!

June 17, 2008

17