Caveat Emptor
A Comparative Study of Swedish and Irish Real Property Law

Bachelor’s Thesis in Commercial and Tax Law
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Abstract

With the advent of the EULIS project, the purpose of which was the unification of national real property registers, it is particularly interesting to study the differences between European legal systems in respect of real property registry law. This thesis compares Sweden and the Civil law system with Ireland and the Common law system. The purpose of this comparison is to illustrate the complications that might arise in transactions between different systems, and it will argue that future cooperation will benefit from being subject to one unified European Real Property Law.

Sweden and Ireland differ in their definition of real property and land. Whereas the Swedish legislature defines land as a unit of earth surface that is registered in the Real Property Register, the Irish definition is broader and more abstract. This can cause confusion as to what is really purchased when a buyer from one country wishes to operate within the other.

Both systems emphasise the necessity of form, not only in the actual purchase but also when registering the sale. Whereas registering the sale gives right of ownership over previous buyers, it is sufficient to present a contract of sale to establish right of ownership over any third party who might have a claim towards the seller. Registering the property also serves the purpose of having the transaction recognised by the state. The Irish system, however, has two systems of registration, where only one grants the buyer such recognition. This double registration system creates confusion for foreign actors on the Irish property market.

EULIS has been developed to provide a single register to facilitate cross-border purchases. As of today it is simply a merged database consisting of information provided by each national real property register. As a consequence, units of property defined according to different legal definitions are presented as if they were similar, which might cause confusion.
We propose that EULIS be accompanied by a single code of European real property law to avoid unnecessary bureaucracy and misunderstanding.
## Table of Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>EAA</td>
<td>Estate Agent Act (SFS 1995:400)</td>
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<td>EEIG</td>
<td>European Economic Interest Group</td>
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<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>EULIS</td>
<td>European Land Information Service</td>
</tr>
<tr>
<td>LCLRA of 2009</td>
<td>Land and Conveyancing Law Reform Act 2009</td>
</tr>
<tr>
<td>LRR (No.2) 2009</td>
<td>Land Registration (No.2) Rules 2009(S.I. No.456 of 2009)</td>
</tr>
<tr>
<td>PRA</td>
<td>Property Registration Authority</td>
</tr>
<tr>
<td>RDTA of 2006</td>
<td>Registration of Deeds and Title Act 2006</td>
</tr>
<tr>
<td>RPRA</td>
<td>Real Property Register Act (SFS 2000:224)</td>
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<tr>
<td>RPRO</td>
<td>Real Property Register Ordinance (SFS 2000:308)</td>
</tr>
<tr>
<td>RTA of 1964</td>
<td>Registration of Title Act 1964</td>
</tr>
</tbody>
</table>
# Table of Contents

1 **Introduction** .................................................................................. 1  
1.1 Background .................................................................................. 1  
1.2 Purpose and Delimitations ................................................................. 2  
1.3 Method and Material ...................................................................... 4  
1.4 Disposition .................................................................................... 5  

2 **Real Property Purchase** .................................................................. 6  
2.1 General Disposition ....................................................................... 6  
2.2 Real Property Purchase in Sweden .................................................. 6  
2.3 Land Purchase in Ireland ................................................................. 8  

3 **Swedish and Irish Property Registers** ............................................ 10  
3.1 General Disposition ...................................................................... 10  
3.2 Function of the Real Property Register .......................................... 10  
3.2.1 Title Application for Real Property Register ............................. 11  
3.2.2 Validity of Registration .............................................................. 12  
3.3 Land Registry and Registry of Deeds .............................................. 12  
3.3.1 Application for Land Registry and Registry of Deeds ................. 14  
3.3.2 Registered and Unregistered Land ............................................ 15  

4 **Damages Due to Error in the Registry** ......................................... 17  
4.1 General Disposition ..................................................................... 17  
4.2 Error in Real Property Register ..................................................... 17  
4.3 Error in Land Registry and Registry of Deeds ................................ 18  

5 **European Land Information Service** ........................................... 20  
5.1 General Disposition ..................................................................... 20  
5.2 Function and Purpose ................................................................... 20  
5.3 Development within Europe .......................................................... 21  

6 **Conclusion** .................................................................................... 23  
6.1 Disposition in the Conclusion ....................................................... 23  
6.2 Legal and Practical Differences in the Purchase ............................ 23  
6.3 Difficulties within Property Registers ............................................ 25  
6.3.1 Registry Systems .................................................................... 25  
6.3.2 Registered Purchase Document ............................................... 26  
6.4 Law under Development ............................................................... 27  

7 **List of references** ........................................................................... 29  

8 **Appendix** ....................................................................................... 32  
8.1 Appendix 1 .................................................................................... 32
1 Introduction

1.1 Background

Real property law has always been an important field within tort law, as it affects as well legal as natural persons over a wide spectrum of contexts. Over the past years, globalisation has had a great impact on the property market, which has created the opportunity for investments of property in other countries. The European Union (hereinafter referred to as EU) has given citizens in the Member States the opportunity to move, work and be established freely within the Union. This has opened many new doors for native and foreign persons to invest in property and gain economic and social benefits.

Real property law is not always easy to interpret for a layperson and the complexity of the legislation in the acquisition process can create unexpected complications. It is important that actors on the property market understand the legislation, in case of future disputes, but also in order to safeguard their respective rights. The legislation in the property market is different in each country, which might appear intimidating for a person who operates from another country.

In Sweden real property is simply land, which refers to horizontal areas of land surface, divided into units of property.\(^1\) The property unit is defined in the negative, that is, it is any sum of land, fixtures and other assessments which can be registered.\(^2\) Sweden has almost 3.2 million units and almost all of them are registered in the Real Property Register. When a real property\(^3\) purchases has been completed, it is compulsory that the buyer register the ownership in the Real Property Register. If everything in the registration transaction is in order, the buyer receives a certificate of the registered title. If there are any questions in case of ownership application adjudication might take place. The adjudication can be made by the County Administration Board or cadastral authority.\(^4\)

The Swedish National Land Survey is a governmental agency and controlled by the Ministry of Health and Social Affairs. The National Land Survey participates in different international project which creates opportunities to increase information about properties and

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\(^1\) Land Code Chap. 1 Section 1.


\(^3\) Land Code Chap. 4 Section 1; In case of purchase, it called real property purchase.

land across borders. An important domestic task for the National Land Survey is to provide natural and legal persons with reliable information about the property unit. The registered information is expected to serve as the basis for a wide range of decisions made by different creditors, banks et cetera.

Irish legislation defines land as an estate or interest over land, house or other buildings, or structures, any substratum below surface, land of any tenure, land covered by water, incorporeal hereditaments. In the event of land purchase, a deed of transfer/conveyance is required. A deed is defined as a document by which an estate or interest in land is created, transferred, charged or otherwise affecting land. The purpose of a deed is to give proof of ownership to the buyer.

Ireland has two systems in case of registration of a title: the Land Registry and the Registry of Deeds. Both are controlled by the Property Registration Authority (hereinafter the PRA). Together, the two Irish registry systems create a complete register of land and titles. However, the registration of titles in the Land Registry is superior to that of the Registry of Deeds.

The PRA and the Swedish Land Survey are both involved in different international projects. A joint activity for these organizations is the European Land Information Service (hereinafter referred to as EULIS). The main goal for EULIS is to provide and increase access to reliable registered real property/land information in different countries all over Europe. The access to information in EULIS is aimed towards various professional customers who operate on real estate market.

1.2 Purpose and Delimitations

The purpose of this thesis is to investigate and compare the real property legislation in Sweden and Ireland in the case of registration of ownership in the land register. The thesis will focus in particular on the implications of differences between the systems for the layperson, in his capacity as actor on the real property market. The aim is to answer the following questions.

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6 LCLRA of 2009 Section 3.
7 RDTA of 2006 Section 32(1).
8 RDTA of 2006 Section 9.
1) What differences in Swedish and Irish legislations might cause practical and legal difficulties in the case of real property purchases?

2) What complications might appear in the processing of a real property transaction and how do these relate to each country’s system of real property registration?

3) What aspects of European legal development can be implemented in order to remedy the analysed dilemmas?

These questions will answer if the legislation might need more clarification in case of how the registration procedure in practice can affect the applicant and what is required in order to protect the acquisition of real property. In doing so, it will argue that there is a need for development of the EULIS project. It will also argue that EULIS will not reach full efficiency as long as it is based on several legal systems, rather than one unified EU code of real property law.

In order to avoid overstepping its primary objective, this thesis will not delve into any discussion regarding other connected and pending countries within EULIS. Sweden and Ireland have been selected partly because they use different legal systems, as described in the above, but also because of their varying role within EULIS. In order not to go further in public administrative law, the main issue to be discussed in this thesis is the registration authority’s activity in case of application for titles in the land register section and the process for the registration. The other authorities which are involved in activity of property registration will only be discussed briefly.

The delimitation in case of receiving a title has been made to full individual ownership in Sweden and in case of Ireland to full ownership of freehold land and the distribution of absolute titles. The purpose for choosing this specific ownership is that they are the most common categories of ownership in Sweden and Ireland. The regulations and situations that are close to family law and are related to the very action of purchase will not be developed further in the thesis.

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9 http://eulis.eu/service/countries/; The connected countries are today Austria, Ireland, Lithuania, Sweden and Netherlands.
1.3 Method and Material

In this essay, a comparative method will be employed to investigate differences in the real property purchases in Swedish and Irish legislation, as well as in the process of acquisition and the registration of ownership.\(^{10}\) When presenting the primary material from the Swedish and Irish systems, the text will be mainly descriptive. The thesis will attempt to maintain the larger part of the analysis on the objective level, focusing primarily on the wording of laws and other relevant material, rather than the implied or interpreted message.

The hierarchy of the represented material is first the primary legislation in Sweden and statutes in Ireland.\(^ {11}\) Secondly has the preparatory works been used in order to understand the primary legislation. Statement from different Swedish, Irish and European authorities had to been used due to lack of information represented in higher hierarchy material in case of EULIS.\(^ {12}\) Last in the hierarchy has doctrine been used.\(^ {13}\) In order to obtain a translation of Swedish primary legislation a book by Hans Mattson and Tommy Österberg, Swedish Land and Cadastral Legislation has been used. This translation has been used due to lack of legal English translation on Swedish legislation on real property law.

Historically, Sweden employs the Civil law system, which means that the primary legal source to be used will be legislation. Irish law is based on the Common law system. Within Common Law, precedents are of greater importance than within Civil law. In this thesis, however, the investigation will mainly focus on relevant primary legislation and statutes.

In order to answer the first question in the purpose Swedish Land Code Chap. 4, 19, and 20 are going to be used. These chapters describe the legislative frame in case of the real property purchase, registration of ownership and the handling of title registration matters. In order to compare the real property purchase in Sweden with land purchase in Ireland, Irish statutes will be used. Main legal framework in case of purchase and registration in Ireland which are going to be used are; Land and Conveyancing Law Reform Act 2009 and Registration of Deeds and Title Act 2006.


In order to answer the second question as expressed in the previous chapter the following material will be consulted: the Real Property Register Act, the Real Property Register Ordinance and the Land Register Ordinance. The choice of this selection of primary Swedish legislation will help to answer and explain the function of the Real Property Register and the ownership registration process and activity of the land registration authority. In the case of Irish registration procedures, the statutes which are going to be used are the Registration of Title Act (1964), the Registration of Deeds and Title Act (2006), the Registration of Deeds Rules (2008 and 2009), the Land Registration (No. 2) Rules (2009) and the Land and Conveyancing Law Reform Act (2009). These statutes will illustrate the legal process and create a deeper understanding for the Irish double registry system in case of title registration.

With regard to last question, following material will be used; EULIS, which is yet in its earlier stages of implementation, provides very little primary legislations, as it is still primarily an administrative service, rather than the administrative manifestation of EU-law. Therefore the research has had to be made from secondary Swedish legislation and other data provided by EULIS and related authorities.

1.4 Disposition
This thesis will be distributed over six chapters, each divided into sub-chapters. In the first chapter the parameters of the thesis will be presented and the choice of method and material will be developed. The analysis begins in the second chapter, where the basic principles of real property purchase is described, beginning with the Swedish system and continuing with Irish law. This respective order will be used throughout the analysis. In the third chapter, focus will be given to the respective systems for registering property and the legal code supporting each register. This will be developed further in the fourth chapter, which discusses errors that might appear and the solution to these. The fifth chapter discusses the role of EULIS and its current status. Finally, the last chapter summarises the previous four, contributes with an analysis and a comparison of the findings in these, and presents a solution to the problems presented in the purpose.
2 Real Property Purchase

2.1 General Disposition

In order to clarify the real property purchase, the drawing of the document of purchase is particularly important. The form of the document has historically always been important, as it creates a uniform manner of proving ownership. Even in systems where there is no explicit requirement as concerns the form of titles and deeds, a certain amount of uniformity has developed autonomously in order to satisfy that need. Due to the documents and the witnesses for involved parties in the purchase, the acquisition of the property will be apparent. The acquisition becomes public when the document of purchase has been registered in the land registry.\(^\text{14}\) It will now briefly be explained how the purchase process is carried out in Sweden and Ireland.

2.2 Real Property Purchase in Sweden

The regulation of real property purchases in Sweden can be found in the Land Code, which stipulates that the purchase is concluded through the drawing of a document of purchase, which is signed by the seller and the buyer.\(^\text{15}\) The form requirement is mandatory for the parties and cannot be waived by agreement. The document minimum requirements in the document are that it shall contain the price of purchase and a statement from the seller that the property is transferred to the buyer.\(^\text{16}\) The legal benefits pass over to the buyer on the date of drawing the purchase document. These requirements are few and easy because the legislature does not want to burden the parties more than necessary when drawing the document of purchase.\(^\text{17}\) The seller has an obligation to provide the buyer with all information about any relevant deficiency in the unit of property. The risk for deficiencies is transferred to the buyer when he assumes possession of the unit.\(^\text{18}\)

Upon completion of the purchase, a deed of purchase should be drawn.\(^\text{19}\) If the seller and buyer choose to draw a deed of purchase, it is required to have the content of the first pur-

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\(^{15}\) Land Code Chap. 4 Section 1.

\(^{16}\) Ibid.


\(^{19}\) Land Code Chap. 4 Section 2.
chase document in order to be valid.\textsuperscript{20} If documents do not have same contents, the second document becomes more like a receipt of the purchase, as it becomes technically invalid at the drawing of the first document.\textsuperscript{21} When the buyer has acquired the land unit, he has to apply for registration of the transaction. Registration of the ownership should take place in the land register section of the Real Property Register.\textsuperscript{22} The application has to be made within three months.\textsuperscript{23} If the registration is not made within the prescribed time limit, the buyer can be fined by the registration authority.\textsuperscript{24}

It is not required that the purchase document be witnessed in order to be valid.\textsuperscript{25} It is, however, considered important for the registration. If the document is not witnessed by two witnesses, the registration process remains dormant.\textsuperscript{26} The seller can bring action to the Court, within specific prescribed time, if he wants to make the purchase null and void.\textsuperscript{27} If the seller has not brought any action of the purchase to the court, there is then no obstacle to approving the registration of ownership.\textsuperscript{28}

The purchase can be made by private persons alone, but in most cases there is an estate agent involved. The estate agent assists the seller and buyer in drawing the documents.\textsuperscript{29} He should observe the general principle of estate agent and thus act as impartial intermediary between seller and buyer.\textsuperscript{30} Should the real estate agent overstep his capacity, he becomes liable for damages both to the seller and the buyer.\textsuperscript{31}

\begin{itemize}
\item \textsuperscript{20} Land Code Chap. 4 Section 2.
\item \textsuperscript{21} Grauers, Folke, \textit{Fastighetskäp}, 7\textsuperscript{th} ed., Juristförlaget, Lund, 2006, p. 54.
\item \textsuperscript{22} Land Code Chap.19 Section 1.
\item \textsuperscript{23} Land Code Chap. 20 Section 1.
\item \textsuperscript{24} Land Code Chap. 20 Section 3.
\item \textsuperscript{25} Grauers, Folke, \textit{Fastighetskäp}, 7\textsuperscript{th} ed., Juristförlaget, Lund, 2006, p. 59.
\item \textsuperscript{26} Land Code Chap. 20 Section 7.
\item \textsuperscript{27} Land Code Chap. 20 Section 8.
\item \textsuperscript{28} Ibid.
\item \textsuperscript{29} EAA Section 11.
\item \textsuperscript{30} EAA Section 12.
\item \textsuperscript{31} EAA Section 22.
\end{itemize}
2.3 Land Purchase in Ireland

Unlike Sweden, land purchases in Ireland are typically executed by a solicitor. The solicitors for both parties generally work in communion in order to complete the purchase, as is shown in the schematic overview in Appendix 1. The seller’s solicitor is responsible for the pre-contractual stage of the purchase, such as drafting documents, redeeming mortgages for the seller et cetera. The buyer’s solicitor ensures that all legal requirements in the document are in order. An important task for the solicitor is to ensure that the ownership chain is in order, thus making certain that the buyer can later fully receive his title. In order to enforce the contract there must be evidence in writing, such as witness, a memorandum or other notes. The contract contains a description of the land and is signed by the seller and buyer.

When all papers are in order, the buyer’s solicitor contacts the seller and his solicitor to find a date for the completion (signing and closing) of the transaction. When the contract has been exchanged, the agreement is binding for both parties. The beneficial interest for the land passes from the seller to the buyer on the day of completing an enforceable contract. When all transactions are in order, the buyer’s solicitor registers the deed in the Registry of Deeds or the Land Registry. A deed which is registered in the Registry of Deed is called a deed of conveyance or mortgaging. The deed which is registered in the Land Registry is called deed of transfer, due to transfer of ownership. When the registration has been completed in the Land Registry, the buyer receives his proof of title. If any person suffered any loss as a consequence of how authorised solicitors exercise their powers of sale or due to

33 Ibid.
34 LCLRA of 2009 Section 86 (1)(b).
35 LCLRA of 2009 Section 64(2).
36 Ibid.
38 LCLRA of 2009 Section 52(2).
misrepresentation of the seller, the person is entitled to damages.\textsuperscript{41} Such complaints and similar matters are brought to the Circuit Court or the High Court.\textsuperscript{42}

Within the purchase process there are many other important actors, in addition to the seller and buyer.\textsuperscript{43} This picture is an example of how many procedures there can be in the purchase.

**SCHEMATIC OVERVIEW OF THE RELATIONS BETWEEN PROFESSIONALS\textsuperscript{44}**

It is important that the parties have investigated the process in order to facilitate the communication between the different organs. If any question or issues regarding responsibility appear during the process, the parties will know whom to address.

\textsuperscript{41} LCLR of 2009 Section 105(2), 60.

\textsuperscript{42} LCLR of 2009 Section 121(2).

\textsuperscript{43} The Irish Institution of Surveyors, *Green Paper Proposing Reform of Boundary Service*, 2008, p. 16.

\textsuperscript{44} Ibid.
3 Swedish and Irish Property Registers

3.1 General Disposition
In this section the function of Swedish and Irish real property and land registers will be introduced. The Irish systems of registration still have many concepts from the feudal system, but many things have happened in order to develop and clarify the legislation. The real property law and registration of ownership is being adjusted in order to conform better to today’s society and modern requirements of efficient and trustworthy property registration.

3.2 Function of the Real Property Register
The Swedish Real Property Register is administered by the State. The register is divided into the following five sections: general section, land register section, addresses section, building section and tax assessment data section. The register can also contain other supplementary information about property units, which, as opposed to the remainder of the register, is not public.

The general section contains information about the property unit, such as co-ordinates, plans, joint facilities, cadastral indices. The land and registration section contains information concerning the ownership, mortgage, earlier conditions et cetera. The address section contains the address of the property unit. The building section has information about buildings on the unit and the tax section contains information related to the taxation. Information from the land registration authority shall be processed before information from the cadastral authority. The land register section was previously controlled by the National

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45 LCLRA of 2009 Explanatory Memorandum pp. 3-4.
46 RPRA Section 3.
47 Ibid.
48 RPRO Section 3.
49 RPRO Section 42.
50 RPRO Section 56.
51 RPRO Section 61-64.
52 RPRO Section 71.
Court Administration, but as of 1 January 2008 the control went over to National Land Survey.\footnote{Land Code Chap. 19 Section 3, Prop. 2007/08:54 p. 33.}

\subsection*{3.2.1 Title Application for Real Property Register}

In order to get a registered title in Sweden the application has to be in accordance with the provisions in the Land Code. The registration of ownership has to been made within three months after the document of purchase has been drawn.\footnote{Land Code Chap. 20 Section 2.} In Sweden it is compulsory to register all purchases of land in the Real Property Register. In the case of a late registration, as mentioned previously, the registration authority may set a fine.\footnote{Land Code Chap. 20 Section 3.}

The application could be applied by a private person or a professional who deal with property purchases. The application has to be applied in right form content in order to be registered. The application form can be found at the National Land Survey website but it has to be submitted by post service. The legislature has proposed a development for ownership which can be done completely online but this has not yet been made legislative.\footnote{Prop. 2005/06:28 Elektronisk ansökningsförfarande i inskrivningsäranden m.m. pp. 25-26.} The development of using online application have left question as regards how the applicant can send in all needed documents and how this can be secure investigated by the registration authority.\footnote{Ibid.} More development has to be made within the technical support that can create due process for the applicant with regard to paperless free application.\footnote{Ibid.}

The applicant shall send acquisition documents and other important document which effect the acquisition in order to prove his ownership.\footnote{Land Code Chap. 20 Section 5.} An application which is incomplete can be refused or be declared dormant.\footnote{Land Code Chap. 20 Section 6-7.} The applicant has to present the application with other needed document or information in other to complete the application. If the applicant cannot produce the document of acquisition or other necessary information, it is possible to request that the registration authority investigate the title.\footnote{Land Code Chap. 20 Section 10.}

The cost of the meeting
in such cases is paid by the applicant.  

3.2.2 Validity of Registration

A registered title creates further protection for the buyer. Furthermore, registration gives the buyer the opportunity to use his acquisition for other additional use such as mortgages. In the event of a duplicate transaction, the law is designed to protect the interests of the buyer whose transaction is registered in the Land Register. Under the premise that the purchase has been made in good faith, any purchase that has been registered is considered superior to others, regardless of the order in which the purchases were made. Thus, a buyer cannot make a claim to property based on having made his purchase first, as would be the case in other aspects of property law, if his purchase has not been registered. Nonetheless, the buyer is not required to have registered the deed in order to be protected from claims from the seller’s debtors. Granted that the buyer can produce a contract of sale, he is protected from any third party who might have a claim against the seller, even if the deed is still in the seller’s possession.

3.3 Land Registry and Registry of Deeds

The Irish Land Registry which handles register land and the Registry of Deeds which handles unregistered land are controlled by the PRA. The purpose of the PRA is to establish and secure a legal framework for ownership of a property. The two registry systems in Ireland create complete information of the titles.

The Registry of Deeds is currently reducing and the main goal for the PRA is that the registration of a title will be administered within a single system of title registration. The PRA

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62 Land Code Chap. 20 Section 12 a.
63 Land Code Chap. 17 Section 1-3.
64 Enforcement Code Chap.4 Section 24.
65 RDTA of 2006 Section 10 (1)(a), LCLRA of 2009 Explanatory Memorandum p. 22.
66 RDR of 2009 Section 1(3).
have stated in their mission statement that the Land Registry is the superior system when it comes to the registration of titles.\textsuperscript{68}

The Deed Registry can contain the following information about the deed such as the name and date of the deed, grantors, description of property, serial number and date of registration.\textsuperscript{69} When a deed has been registered, it receives a serial number which shows its priority within the registry. The registered deed becomes one in a chain of other deeds.

The Land Registry contains four sections; name index, folio, map and instrument. The name index section is ordered by countries. Listed within the name index are the addresses to all registered owners and in what folio number they have registered their name. The folio section is divided in three sections.\textsuperscript{70} The first part contains information about the land, address, any relevant rights, information about previous transactions et cetera. The first part should also include references to the title plan, which contains information about the property’s surroundings. The second part contains information about the title class, owners name, owners address and devolution of property. The last section contains different information about property burden, transfers, charges and other financial obligations that surround it. The map sections contain information about the property’s geographical location. The instrument section contains the completed lodged title documents (instrument), where each instrument has its own specific number.

When ownership has been registered in the registry it is distinguished by its folio or title number.\textsuperscript{71} The information in the registry is public and can be accessed by folio number, owners’ name or other searchable properties.\textsuperscript{72} In order to protect the documents in the folio and the persons therein, public access is limited.\textsuperscript{73}

\textsuperscript{68} http://www.ria.irlgov.ie/ga/JELR/Pages/PR07000396.

\textsuperscript{69} RDR of 2008 Section 5.

\textsuperscript{70} LRR (No.2) 2009 Section 7.

\textsuperscript{71} Ibid.

\textsuperscript{72} LRR (No.2) 2009 Section 198.

\textsuperscript{73} LRR (No.2) 2009 Section 188.
3.3.1 Application for Land Registry and Registry of Deeds

The registration of title in the Land Registry is compulsory. The purchase is usually executed by a solicitor who knows in which register the title should be registered and what information is compulsory to register.

The legal effect of a registered title deed is that the deed has priority through its serial number. A new registered deed has priority before an older deed and a non-registered deed. There are no requirements in the legislation that ownership has to be registered in the Registry of Deed, but the buyer may lose priority to the deed.

A main difference between registrations in the land or deed registry is that the latter does not guarantee registry by the State. The registration of a deed title or the validity of the documents is not supported by the State.

An application for a title in Ireland is usually submitted by the buyer’s solicitor but can also be sent in person. The application of the Registry of Deeds has to be in appropriate form, in accordance with the regulation. The following can be necessary in the application: serial number, name and date of the deed, grantors/grantees in the deed, description of property etc. If the application is not clearly expressed or improper in form, the registration may be refused. The application to Registry of Deed cannot be submitted in electronic form. It is possible to move a registered deed from the Registry of Deeds to the Land Registry. This action is known as first registration. Consequently, in some cases the register deed can be part of both the Registry of Deed and the Land Registry.

The application to the Land Registry has to be made in the prescribed form in order to be registered. This application may be lodged by hand, post or in electronic form.

74 RDTA of 2006 Section 32; Definition of land; house or other buildings, or structures, mines, minerals, land of any tenure, land covered by water, incorporeal hereditaments.
75 RDTA of 2006 Section 38.
77 RDR of 2008 Section 6(1).
78 RDR of 2008 Section 6(2).
79 RDR of 2008 Section 6(5).
80 LRR (No.2) 2009 Section 6.
81 RDTA of 2006 Section 35, RDR of 2008 Section 5.
When a person application has been completed, he receives a land certificate as proof of his title. The application for the title, partly or in full, can be submitted electronically. There are different definitions in stages of registration which are important to distinguish; eApplications, eLodgement and eRegistration. eApplications are where the document can be found at PRA’s online page, different documents in the Land Registry are open to public distribution and perusal. eLodgement is when the title application can been made online, but other important deeds and documents which were involved in the purchase are lodged separately. eRegistration is the where every document is lodged online. Documents can be scanned or signed electronically. These digital services are developed to facilitate eConveyancing, which is a paperless method for real property transactions.

### 3.3.2 Registered and Unregistered Land

All property units in Sweden are registered in the Real Property Register, which is not the case in Ireland. If a purchase is not registered in the Land Registry, it becomes unregistered and falls into the Registry of Deeds system. In the case of registered land, certain rights must be registered and the application has to be completed in the Land Registry in order for the ownership to be legally protected and enforceable. The Minister for Justice has extended the compulsion to register land in Ireland from 2008, in order to have a more efficient registry, which would benefit the consumer and improve eConveyancing. Registration has to be done within six month after the conveyance, or the title will be lost for the buyer. When a title for land has been lost, it is returned to the seller.

In these cases it is compulsory to register the title with the Land Registry.

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82 RTA of 1964 Section 28.


84 Ibid.

85 Ibid.


87 RDTA of 2006 Section 53, RTA of 1964 Section 24.

88 RDTA of 2006 Section 54, RTA of 1964 Section 25.

a) Where land had been or is deemed to have been at any time sold to or vested in any pursuant to the provisions of Land purchases Acts and the Labourers Acts;
b) Where land is acquired by a statutory authority;
c) Freeholds purchased by way of Vesting Certificates, where the freehold is already registered in the Land registry.

The most common title available to the applicant is full ownership of freehold. In the event of first registration it is instead an absolute title, which is the most common class of title. Nevertheless, there is also a qualified title and possessory title. The applicant receives one of the other titles if the purchase has any certain reservation or is made for a limited period. It is up to the applicant to prove in the application the possession of a title. When the evidence has been examined by the PRA, he receives the title, if the evidence is sufficient.

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90 RTA of 1964 Section 27.
91 RDTA of 2006 Section 56, RTA of 1964 Section 33(1).
92 RDTA of 2006 Section 56, RTA of 1964 Section 33(6-7).
93 RDTA of 2006 Section 56, RTA of 1964 Section 33(8-9).
4 Damages Due to Error in the Registry

4.1 General Disposition

This section will explain the errors which may occur within the registry and how the applicant can be affected thereof. Additionally, it will illustrate cases where the register authority may rectify the error and how the applicant can claim damages due to the error.

4.2 Error in Real Property Register

The Swedish National Land Survey, which is the main authority responsible for the Real Property Register, is not the only actor to use information from the register. Many other authorities are affected by and have access to the Real Property Register. The National Tax Board, National Building authority, different municipal authority and banks to mention some, use the Real Property Register on a daily basis. Nevertheless, these authorities contribute with important information which the National Land Survey registers, thus creating symbiosis between the different actors that use the register.

In the event of obvious inaccuracies, comparable oversights or technical faults in the land register section, the registration authority is obliged to rectify the entry. In case NJA 2007 p. 396, the Supreme Court stated that in order to rectify information in the land registry, the error has to be obvious and easy to distinguish. The Court stated that it is economically advantageous if the registration authority rectifies its own mistakes, although mistakes may also be rectified by a supreme authority. As of 1 July 1990, the law was modified to include mistakes that were caused by other parties than the registration authority. A correction can be made after a complaint has been submitted or ex officio by the registration authority. Errors can include wrong names, wrong quota of ownership et cetera. Before a rectification is made ex officio, the party who has been affected by rectification is given the opportunity of making a statement.

95 Ibid.
96 Land Code Chap. 19 Section 22.
97 NJA 2007 p. 396.
100 Land Code Chap. 19 Section 24.
A decision made by the registration authority when amending the land register, can be appealed by the person concerned to the District Court where the real property is located. An applicant can seek damages from the State, if he suffered from errors in relation to a rectification. This is illustrated in the following case, in which an owner of property had a registered title, which she shared with her husband in the land register section. In the tax assessment section, it was not shown why she alone was registered as owner of the house. When her husband passed away, she wanted to transfer the ownership of the property to herself and her deceased husband’s son. When the son subsequently tried to register his ownership, it was found that land register section and tax assessment section were not consistent. Therefore the ownership to the son could not be transferred. The transfer could not be made because the mother was not the only owner of the house, due to an erroneous registration in the tax assessment section. She claimed damages from the State, due to fault in the Real Property Register.

The close connection between different sections in the register as regards errors may affect the applicant in the future if he wants to enforce his rights, such as mortgages, future sales and acquisition. It is always desirable that the various authorities involved in real property transactions work in close communion with friction free communication between different departments.

4.3 Error in Land Registry and Registry of Deeds

If there is any error in the Land Registry, the PRA may rectify it with the consent of the owner. The types of errors that can be rectified if they occur in the register or map register include any kind of misstatement, misdescription, omission et cetera. If the error was made without any loss to the person it concerns, the Authority may rectify without the consent of the person, although notice of the rectification must be given to the person it concerns.

101 Land Code Chap. 19 Section 32.
102 Land Code Chap. 19 Section 38.
104 RDTA of 2006 Section 55, RTA of 1964 Section 32.
105 Ibid.
106 Ibid.
The claim for compensation should be made to the registrar within six years of when the right to compensation was accrued and notice of the claim should be given to the Ministry of Finance.\textsuperscript{107}

If an error in the affidavit is made by the solicitor in case of the registration, the person whom it concerns can claim damages from that solicitor. Legal practise regarding this issue has stated that errors might occur without the implication of negligence or fraud. The errors on the part of the solicitor for which damages can be claimed, must be caused by carelessness or intentional deceit.\textsuperscript{108}

If any error occurs in the Registry of Deed, it may be rectified by the PRA on such terms as may be agreed to in writing by the parties.\textsuperscript{109} An applicant in the process of registration who knows that material in any deed is false is guilty of an offence.\textsuperscript{110} The applicant cannot claim any compensation in the case of a rectification, as the Registry of Deed is guaranteed by the State. Compensation may however be claimed from the applicants in case of misconduct by the solicitor, if he administered the registration of the deed.

\textsuperscript{107} RTA of 1964 Section 120(5)(a).
\textsuperscript{108} Breen -v- Solicitors Disciplinary Tribunal 2010 37 SA.
\textsuperscript{109} RDTA of 2006 Section 40.
\textsuperscript{110} RDTA of 2006 Section 41.
5 European Land Information Service

5.1 General Disposition

Sweden and Ireland are both involved in various international projects and activities with the purpose of expanding the possibility for public authorities to have access to the property registers of other countries. The principal shared activity of the National Land Survey and PRA is EULIS. EULIS, which is supported by European Commission, is as of today still under development. One main mission for EULIS is to include a large number of Member States.

5.2 Function and Purpose

EULIS is an operating activity with the purpose of increasing the online information in the public sector of the European real property market. The mission of EULIS is to facilitate cross border property purchases, transparency for the public sector in other countries register, information of property, mortgage transaction, transfers and similar data.\(^{111}\)

The project started in 2002 and was launched in 2006, with financial support from the EU program, e-Content.\(^{112}\) When EULIS became operational it was managed by the European Economic Interest Group (EEIG).\(^{113}\) The Swedish government has stated that it is important for the future that the Swedish National Land Survey, which was the initiator of the project, be part of the EEIG.\(^{114}\) The European Commission has urged that other countries within EU connect to EULIS, in order to increase a better and more trustworthy property and financial market.\(^{115}\) Today five countries are connected to EULIS and many more are pending.\(^{116}\)

The difficulties for EULIS have been to produce and explain systems and terminology in the legal framework of the property market in other European countries.\(^{117}\) This task has

\(^{111}\) SOU 2003:111, p. 73.

\(^{112}\) Prop. 2008/09:1 Annex 25 p. 44.

\(^{113}\) Ibid.

\(^{114}\) Ibid.


\(^{116}\) SOU 2003:111, p. 73.

\(^{117}\) Ibid.
not been easy. The main language in the glossary has been English, on account of it being the language of communication between participants. From then on, the participants have come to common definitions of legal expressions in order to understand and interpret each other’s registers and legislative systems.

Sweden and Ireland are two of five connected countries in EULIS. EULIS is a European land information service which provides the connected countries with important information in the Land Registry.118 The activity for EULIS is still under development and much of the activity is on the level of political discussion. In order to use the service within a country, more marketing is a necessity, in order for companies to start using the service.119 In Sweden, this service is unknown for many in the public sector due to the lack of marketing. Nonetheless, EULIS activity is important for the development of the real estate market and cross border information between companies and professionals who work in the real estate market.120

The EULIS service is not made for natural persons, as the member countries’ respective legislations have not yet evolved to a point where that would be possible.121 Hence, it still only possible for professionals in the real estate market to use EULIS's service.

5.3 Development within Europe

The EU Parliament has stated in a recommendation to the EU Commission that citizens within the EU should be able to have a more developed judicial website for guidance in the event of a legal problem.122 This site should allow the people to access necessary unified cross-border judicial information in different legislative areas. In order to strengthen the coordination through e-judicial communication within the EU, the Member States should work together and facilitate cross-border information, similarly to how they already do now, in order to create a common internal market.123 The Commission should establish procedures and expand the use of civil law legislation online for the citizens within the EU.

118 http://eulis.eu/.
120 Ibid.
122 E-juridik Europaparlamentets resolution av den 18 december 2008 med rekommendationer till kommissionen om e-juridik (2008/2125(INI))BILAGA.
123 Ibid.
There should also be established a program for online information which offer good translation and simplification of legislative terminology. Finally they have decided to initiate a feasibility investigation by 2011.

EULIS is not yet an integrated service within the EU. In March 2011, representatives from EULIS were invited to a meeting with the Council of EU, where it was discussed that in the future, EULIS activity should be integrated in the e-Justice Portal.\footnote{http://eulis.org/news-and-events/story/e-justice-high-on-the-agenda-for-eulis/}
6 Conclusion

6.1 Disposition in the Conclusion

This section will discuss the information presented in the previous chapters. A comparison will be made between Swedish and Irish legislation and the field of practice within property registration. Finally, it will be ended with a conclusion of the work that has been presented.

6.2 Legal and Practical Differences in the Purchase

The investigation of Swedish and Irish legislative systems in the case of purchasing real property indicates similarities and differences. The drawing of the contract of purchase within the purchasing process is important in both countries. The documents become proof of terms as may be agreed by the parties. Additionally, benefits and rights of the property are transferred from the seller to the buyer on the date of drawing the purchase document.

The contract is bound by legal requirements as regards formality. The contents of purchase documents in Sweden and Ireland have no distinct differences. Swedish legislatures had the purpose of making the legislation as regards formality easy for the parties to understand, whereas the Irish system with its habitual use of solicitors in real property transactions has not shown the same need. The requirement of formality that permeates both systems, while appearing overly bureaucratic, ensures due process and transparency for both the seller and the buyer.

The Swedish and Irish legal systems stipulate that one who has registered the ownership in the register has priority, although the Swedish legislation is more explicit in this regard. The registration gives the applicant priority in ownership before others. This could be seen as the legislation fills it purpose to protect the purchaser when the registration has been made. The protection of buyer’s purchase and title is necessary with regard to duplicate purchase and seller’s creditors.

In order to complete the purchase it is essential that the legislatures make the legislation clear, precise and understandable for persons who want to carry out the purchase in practice. After all, the purpose with the legislation is to reduce stress and anxiety for people involved in property transactions. In case of any complications appear due to the purchase it is practically hard and stressful to a natural person to manage the situation. They should
not have to worry about understanding a difficult legislation on top of the purchase process.

Differences in terminology in Swedish and Irish legislation of real property and land might cause confusion. There are distinctive differences in the definition between property unit and land. The definition of land has more extended meaning in Ireland, as it includes abstract in the airspace above the delimited earth surface. It is vital that during the purchase the buyer and seller understands the definition, this give a more legal security what should be concluded and what is not in the purchase. Sweden’s definition is clearer in that matter. It is easy to distinguish what is land and part of the property unit.

The drawing and proceeding of the purchase in Sweden and Ireland is a first proceeding part which is important. This has to been made in the correct order for the purchase to be valid. The legislation is clear and understandable, in the event of form and content of the document. This indicates that the legislature want that the purchase action can be maid secure for the parties. This can still have risk that person can go through with the purchase very easy and later not agree with it. The transfer document might not have enough information on what parities may agree on. In case of any later disputes the interpretation of documents may not have all relevant information needed which parties can of evidence point present. If the legislation had too many requirements of the document this could lead to misunderstanding and misinterpretation for the laypersons involved. It could not be said with certainty that the seller and buyer need any expertise, such as an estate agent or a solicitor to help them draw the suitable documents. The complexity in the legislation and many compulsory requirements could have negative legal and financial consequences. The purchase procedure can take long time and difficult to go through with. This does not guarantee due process for the layperson. Furthermore, when the documents have to be registered, the right form and content of the document is doubtlessly important if the ownership/title can be registered completely. The definition of land can be confusing for the layperson, though Ireland’s definition is much broader. This can create uncertainty in meaning of what is included in the purchase of land. The differences in how the purchase process is carried out in practice in Sweden and Ireland is expected. Two different legislative systems and historical development has made the legislation requirements what there is today. What can certainly be said is that the practise of purchase in Ireland is significantly more complex.
6.3 Difficulties within Property Registers

6.3.1 Registry Systems

All property units in Sweden are registered in the Real Property Register. Most of the land in Ireland’s countries is registered, but it is not to an equal extent to that in Sweden. Nevertheless, it is important to state that the PRA is working towards the registration of all land in the Land Registry and they have come long way with that process. The compulsory requirement to register the ownership is more widespread in Sweden than Ireland. But the regulation in Ireland regarding compulsory registration of land in the Land Registry has expanded.

It is legitimate to question whether the Irish double registry system is better in practise. The investigation of Irish registry function and purpose indicates that these two systems are in the process of becoming one. Ireland’s two systems of the registration are under a modifying stage, PRA’s proposes to move over from two registration system to only one. Nevertheless, Land Registry is the superior system in Ireland. A comparison of the Swedish and Irish systems shows that Ireland’s systems are more complex and can be confusing for a layperson to understand. Nevertheless, almost all purchases are handled by solicitors, which is an indication that it is difficult for a natural person to understand all the procedures and documents of a land purchase.

In Ireland Registry of Deeds and Land Registry differ from each other as regards value and protection of the deed. If the title is registered in the Registry of Deeds, which is not a system guaranteed by the State, it becomes one in the chain of the title deeds which have been registered earlier. The title usually passes over to the buyer when the enforceable contract of purchase has been made. If the deed is registered in the Land Registry, system which is guaranteed by the State, ownership and the title is recorded in a public register. The owner receives a folio, which have all information about the property and relevant deed of the purchase. In case of registered land, the title is passing over when the registration has been made and is completely registered in the registry.

The information in the Real Property register and Land Registry is completely reliable due to the guarantee of the State. In the case of the Registry of Deeds the buyer should be more observant of the information disclosed by the seller about his ownership and documents of the purchase. In order to obtain full ownership of real property it is vital that the ownership chain is complete and leads to the seller. If the chain is not complete there will
probably appear issues when attempting to obtain full ownership. The seller may not be the legitimate owner and does not have any right to dispose the property or carry through the purchase.

It is positive from a legal perspective that registration is a compulsory requirement in Sweden and Ireland. This allows for a transparent system and forces the buyer to register the ownership. Registration authority’s responsibilities in Sweden and Ireland do not differ in practice. Both propose to deliver a secure and trustworthy register system, which can be used by natural and legal persons.

It could not be said that with certainty whether Swedish system or Irish system is the best alternative for a due process registration. Systems have there on weaknesses and strength. Even though Ireland double systems may cause difficulties, they still fill their purpose of protection of ownership.

### 6.3.2 Registered Purchase Document

The application for the registers in Sweden and Ireland has to be made in the requested and legible form, as the legislation prescribes. From the registrar authority’s perspective it is easier to inspect the application if they have same formality. Nonetheless, if there are any errors or questions in the document it is become easier to detect it. If we instead investigate the perspective of natural person, the requirements for formality have many positive aspects. The application, when completed, becomes a public document. In order to use the filed documents in practice and to make key decisions due to these documents, they have to be understandable by others. Nonetheless, the documents have to be easy to search for and inspect. When the buyer registers his ownership, it gives him the public title and open up other opportunity to use the title. It could be anything from receiving a mortgage, obtaining loan on the real property or other rights he would want to enforce.

To be able to send in the application in electronic form is possible for Land Registry. Real Property Register and the Registry of Deeds is an exception from application in electronic form. Development and use of internet within the society has significantly increased. Natural and legal persons are using daily different legal online information, the public authority’s websites and online communication. Paperwork within authorities and forms application sent by postal service has gradually been reduced. It is important that the registers develop according to the need of society. It should be easy for the applicant to find the necessary property information, inspect important purchase documents and send the application for
registration online. Therefore it is important for the legislature to devote attention to ensuring that the legislation in case of registration application be easy to understand and execute.

Ireland’s online registration opens up a faster and more economically beneficial registration. Sweden which has not yet reaches to a complete online application can possibly learn from the Irish systems, with regard to further development. On the other hand, unexpected complications can appear during fast online applications such as sight errors and typos. There could also be problems with the administration of the application for the authority if part of the application is sent online and some of the documents are sent by post. The authority has to find a technical solution for the investigation of the application that ensures due process for the applicants. Applications that are signed by hand and sent by post may open up for additional investigations to ensure that all information is in order. With regard to errors, it is beneficial for the applicant that the authority rectifies errors caused by its own actions so a superior body does not have to be involved. As unnecessary administration is avoided if an error is remedied by the same authority that caused it, this course of action is generally to be preferred.

In Sweden and Ireland the party that applies for the ownership of the title can claim damages from the State it case any error in the registry. Ireland’s Registry of deeds is an exception from that rule. Due to lack of prejudice case law in Sweden and Ireland, errors which might appear are rectified by the authority. This definitely benefits the applicant, as he does not have to go through with appealing to a higher instance. This indicates also that although the registry systems are prone to pitfalls, the errors can be rectified effectively.

6.4 Law under Development
The investigation in these thesis shows that the differences in Swedish and Irish legislations are obvious. In spite of the current systems practical usability, there are certain points of friction. There is an unbreakable link between the registers and the legislation surrounding it.

In order for cross border purchases to be effective it is vital that the legislature is clear and prices in the purpose with the legislation. It is important that more countries participating in international and European cooperation. Therefore is EU Parliament recommendation to the EU Commission in event of developing e-Justice welcoming.
In order to approximate the legal property market and the legislation within Member States, EU law have to develop more and adjust to the society today. The digitalization and use of electronic means of communication between authorities and availability for citizens have to develop. The regulations and available cross-border information has to be easier and welcoming so that natural and legal persons achieve an understanding for legislative framework and process in different countries. In Europe the process to harmonise and facilitate Member States legislation has been successful in many legal areas. It is therefore important that more attention is brought to the EULIS project and work has to be done towards approximating real estate law between Member States. EULIS has still many deficiencies because the service is not fully developed nor used by the authorities in the connected countries. EULIS must be developed to further facilitate cross border transactions and information, in accordance with the principles of the EU. There is nothing to lose from unification.

The efforts made by EULIS to this point, as regards the unification of terminology is indeed commendable, as this creates a transparent and accessible system that allows for comparisons between different systems; a prerequisite for cross border trade. Still, it must be noted that in unifying the language within the EULIS project, one simply moves the point of friction from within EULIS to between EULIS and the member states, as the EULIS definitions have not yet been incorporated into the national legislations. There might be many linguistic complications, such as the definition of land, which could create future complications.

It is therefore the belief of this thesis that further cooperation is not enough. As the authors of recommendation for e-law note, any development of EULIS must be accompanied by appropriate legislation. As long as efforts are made to unify registers that stem from different legal systems, use different definitions and are subject to different restraints, it is clear that resources will be wasted in the interpretation of the different systems, which will make the system very inaccessible for laypersons. Instead, the legislatures of the EU must accept that the European property market inexorably is becoming one and that it must therefore be regulated on a more central level. EULIS will only reach completion if it is founded on a unified code to which all member states subscribe. Only then will agents on the property market be able to operate effectively and interact across national borders.
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Appendix

8.1 Appendix 1