

# HOUSING FINANCE INTERNATIONAL

The Quarterly Journal of the International Union for Housing Finance



- ➔ **Housing and financial markets in Japan amid global inflation**
- ➔ **Ukraine's housing recovery forum – rebuilding a place to call home**
- ➔ **The two housing finance crises in Hungary – lessons for the housing policy transition**
- ➔ **Round Table on Security Rights over Immovable Property (Part 1) – Objectives and Working Methods**
- ➔ **Decarbonising Tenants**

# International Union for Housing Finance

## Housing Finance International

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# A brave new world?

While it would be an exaggeration to quote the song title “what a difference a day makes” as an indicator of the speed at which housing markets can change, the past few months have certainly been an illustration of the fact the overall climate can shift very rapidly and in particular that the move from boom to bust can overtake the public and housing commentators alike. No one likes to be the bearer of bad news, so pessimistic observations unfortunately usually tend towards the retrospective.

Here in the UK, house prices were down 1.1% year on year in February and are now down 3.7% since their peak in August 2022.<sup>1</sup> On the first of March the Bank of England announced that net mortgage lending was down by £0.6 billion while actual mortgage interest rates paid by individuals rose 21 basis points to 3.88% pa. At the same time consumer credit borrowing is sharply up, while those who can afford to are choosing to save, with monthly bank deposits by households up by £3.5 billion.<sup>2</sup>

If this picture was only emerging in the UK, one might simply blame a range of UK-specific factors such as BREXIT, the recent difficulties of the Truss Government and continuing splits in the governing party. However bad news about housing markets is certainly not confined to the UK as this issue of HFI demonstrates.

As Mark Weinrich points out in his Europe column, house prices have been falling in Sweden, Denmark, Finland, Germany, Italy and Romania. With predictions of a fall in construction rates; always a sign that developers smell bad news on the horizon.

From the US, Alex Pollock identifies the end of the house price booms in Canada and the US itself with prices falling from their peaks by 10% so far in Canada in 4.4% in the US.

As if that were not enough, our report from the Asia Pacific region highlights intervention by the Chinese government to attempt to prop up their housing market, falling prices in Korea and fears of a housing crash in New Zealand.

While none of this has occurred overnight the changes have happened rapidly enough that this global reversal requires serious analysis to identify underlying causes and likely future

outcomes. HFI will make its contribution to that analysis over the coming months.

Our first main article in this issue focusses on Japan and is aptly titled *Housing and financial markets in Japan amid global inflation*. Sadly, this will be the last article by Masahiro Kobayashi in his capacity as Executive Director of the Japan Housing Finance Agency as he is retiring after a 35-year career in housing finance. Mr Kobayashi has been an astute and regular contributor to HFI over many years and we hope for further contributions from him in a personal capacity. In this important article Mr Kobayashi examines recent policy changes in interest rate policy by the Bank of Japan in the context of global inflation and against the backdrop of long-term relative economic decline in Japan. In the course of the article Mr Kobayashi analyses a number of issues such as the impact of population decline in Japan and of changing household composition away from the “conventional family” of two parents and two children.

In Autumn 2022 HFI published an article on decarbonisation of the housing stock in Hungary.<sup>3</sup> In this issue of the journal we are pleased to follow this with an article by József Hegedüs *The two housing finance crises in Hungary – lessons for the housing policy transition*. In this fascinating historical analysis Hegedüs first provides an overview of the developments in the Hungarian housing market from 1979 to the present day, including the transition to a market economy post-1990 and the foreign currency denominated (FX) loan crisis of 2008. In the second part of his article Hegedüs examines the housing crisis of 1989-1990 in detail, highlighting the role played by previous state-backed lending in the inflationary period of transition. He then goes on to make an analysis of the causes and outcomes of the FX loan crisis of 2008. The article clearly demonstrates the impacts of two different and competing housing finance strategies of government during different periods.

In this issue we have taken a break from our regular series of articles on national approaches to decarbonising the housing stock. Instead, we present an article by Simone Abram of the Durham Energy Institute; *Decarbonising tenants*. The article looks at the way social housing tenants have too often not been actively or effectively involved in the

process of decarbonising their homes and how previous failures of tenant engagement have led to cynicism when attempts are made to engage tenants over decarbonising their homes. Abram offers examples of best practice and gives a clear warning in conclusion; “To be involved in decisions that affect your life means more than delivering your views. It means understanding the ways that decision-points have been reached, how agendas have been set, what the limitations are, and how other people’s views or conditions might affect future action.” Those with responsibility for transforming the energy efficiency of social housing stock should take note.

We are very pleased to present an update on our previous article on housing in Ukraine. This article, *Ukraine’s housing recovery forum – rebuilding a place to call home*, by Julie Lawson, Oleksandr Anisimov and Edwin Buitelaar takes the form of a report on the symposium “Ukraine’s Housing Recovery Forum,” hosted by the PBL Netherlands Environmental Assessment Agency.

Our final main article is by Otmar Stöcker, of the Verband Deutscher Pfandbriefbanken (vdp) is titled *Round Table on Security Rights over Immovable Property (Part 1) – objectives and working methods*. It forms part one of a two-part article with part two scheduled to appear in the Summer 2023 issue of the journal. The Round Table was formed in response to the increased amount of cross-border mortgage business now being undertaken in Europe. With such business confronting a patchwork of national legal systems there is a clear need for comparative analysis set out in a form that can be used in practice while being as accurate as practicable. It consists of both academics and practitioners with members able to bring to bear a high level of expertise. While such work is seldom glamorous, it is important and these two articles will be a valuable source of reference for those involved in secured lending across borders.

All in all, this issue of HFI presents information that is seldom brought together elsewhere and offer unrivalled analysis of some fundamental and usually topical issues. We trust that you will find it useful.

**Andrew Heywood, March 2023**

<sup>1</sup> Nationwide House Price Index

<sup>2</sup> Bank of England: *Money and Credit-January 2023*

<sup>3</sup> Decarbonising the Hungarian housing stock: the case of the multi-apartment buildings  
Éva Gerőházi, Hanna Szemző, Eszter Turai

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# Round Table on Security Rights over Immovable Property (Part 1) – Objectives and Working Methods

↳ By Dr Otmar Stöcker / Prof. Dr Dres. h.c. Rolf Stürner

Since 2005, the Association of German Pfandbrief Banks (Verband deutscher Pfandbriefbanken, vdp) has invited academics and practitioners in mortgage and land register law from over 30 countries to Berlin twice a year to discuss legal developments. The following article<sup>1</sup> explains the objectives and working methods of this comparative law project, whose database is progressively being made available to the public.

In an additional contribution (Part 2),<sup>2</sup> the authors present the similarities and differences of security rights over immovable property with regard to their accessoriness.

## 1. The need for information on comparative law

In 1989, the vdp<sup>3</sup> began to examine the legal framework for real estate financing in individual European legal systems. For this purpose, expert committees developed questionnaires dealing with the topics of mortgage and land register law, as well as with the fate of security rights over immovable property in compulsory enforcement and insolvency proceedings. In each case, the work related to one legal system and contained only occasional references to comparative law. Since the mid-1990s, there has been a strong increase in the need for multi-country or even

pan-European presentations on the law of immovable security. The reasons for this lie primarily in the growing cross-border mortgage business in Europe: This means that an increasing number of people have to deal with the associated legal questions and that the need for swift familiarisation with another legal system increases, which is easier with comparative presentations and overviews. In addition, the inclusion of foreign legal systems<sup>4</sup> in the credit process (and especially risk management) inevitably means that assessment procedures have to be developed in the individual credit institutions in order to evaluate the different rules.

Such procedures for the evaluation of legal structures first require a detailed presentation of the various legal systems according to a uniform basic model. Developing this presents a great challenge. On the one hand, the questions asked have to be so general that they make sense for all the legal systems included. On the other hand, the degree of detailed analysis has to be as fine-grained as possible in order to effectively capture the strengths and weaknesses of the individual legal systems – and this taking as precise as possible consideration of the frameworks of individual business models or types of business. For example, different legal issues come

into play in private housing finance than do in commercial real estate loans.

The need for studies on mortgage law also became clear in the 1990s due to the fact that in many countries (particularly in Central and Eastern Europe) the civil law systems as a whole were being put to the test and undergoing far-reaching modernisation;<sup>5</sup> security rights over immovable property very soon played an important role in this, and the academics and practitioners involved in this field were highly interested in the cross-national exchange of opinions and experience. Laws of immovable security were amended and supplemented in several Western European countries as well (e.g., by the expansion of the scope of application of the *hipoteca de máximo* in Spain (2007),<sup>6</sup> the introduction of the *hypothèque pour toutes sommes* in Belgium (1996), the *hypothèque rechargeable* (2006 and 2014)<sup>7</sup> and the *fiducie-sûreté*<sup>8</sup> in France – all changes in the direction of increased flexibility precisely in the three countries<sup>9</sup> whose security rights over immovable property had been the least flexible.<sup>10</sup>

Comparative presentations on the law of immovable security in Europe are rare. Some detailed works aim to deal with deliberations on a Eurohypothec – and present a few mortgage law systems for this purpose.<sup>11</sup> Other

<sup>1</sup> This article is the English translation of the publication: Stöcker/Stürner, *Runder Tisch Grundpfandrechte (Teil 1) – Zielsetzung und Arbeitsweise*, EuZW 3/2023, pp. 107 et seq.

<sup>2</sup> To be published in the summer 2023 issue of *Housing Finance International*.

<sup>3</sup> At the time, the vdp was named the Association of German Mortgage Banks (Verband deutscher Hypothekenbank-en, VdH).

<sup>4</sup> See Luckow/Stöcker, *Pfandbriefrechtlicher Insolvenzschutz und britische Deckungswerte*, EuZW 2021, pp. 1072 et seq.; 2022, pp. 13 et seq.; for the English translation thereof, see Luckow/Stöcker, *Insolvency protection according to Pfandbrief law, and how it relates to UK cover assets*, in *Housing Finance International* 2022/1, 45 – 52.

<sup>5</sup> For more on this development in property law, see Stürner, *Das deutsche Immobiliarsachenrecht und die Funktion des deutschen Notariats im Spiegel der Rechtsvergleichung*, DNotZ 2017, pp. 904 et seq.,

<sup>6</sup> See Simón Moreno, *La optimización de la hipoteca española*, 2011.

<sup>7</sup> See Fervers, *Hypothèque rechargeable und Grundschild*, 2013.

<sup>8</sup> See Fix, *Die fiducie sûreté*, 2014; on the further development in France, see Stürner, aaO DNotZ 2017, pp. 931 et seq.

<sup>9</sup> For parallel developments in Central and Eastern Europe, see Center of Legal Competence Wien/Drewicz-Tulodziecka (Editors), *Immobilien, Grundeigentum und Sicherheiten in Polen*,

2009; Stessl, *Real Property Rights in the Slovak Republic*, 2008; Illa, *Grundeigentum und Sicherheiten in Ungarn*, 2<sup>nd</sup> edition 2010; Sacalschi, *Grundeigentum und Sicherheiten in Rumänien*, 2<sup>nd</sup> Edition 2011; Center of Legal Competence/ Stoimenov/Ivanov, *Grundeigentum und Sicherheiten in Bulgarien*, 2008; Ebner, *Grundeigentum und Sicherheiten in Tschechien*, 2<sup>nd</sup> edition 2010.

<sup>10</sup> For more on the general tendency towards non-accessoriness, see Stürner, *Das Grundpfandrecht zwischen Akzessorietät und Abstraktheit und die europäische Zukunft*, Festschrift für Rolf Serick, 1992, pp. 377 et seq.

<sup>11</sup> See in particular Rupp, *Grundpfandrechte zwischen Flexibilität und Schutz. Ein kontinentaleuropäischer Rechtsvergleich und neue Gedanken zu einer "Eurohypothek"*, 2016; Kiesgen, *Ein Binnenmarkt für den Hypothekarkredit – Der Vorschlag zur Einführung einer Eurohypothek unter besonderer Berücksichtigung des Sicherungsvertrages*, 2004 – with a presentation of German, French, and Italian mortgage law; Kircher, *Grundpfandrechte in Europa – Überlegungen zur Harmonisierung der Grundpfandrechte unter besonderer Berücksichtigung der deutschen, französischen und englischen Rechtsordnung*, 2004; Stöcker, *Die Eurohypothek – Zur Bedeutung eines einheitlichen nicht-akzessorischen Grundpfandrechts für den Aufbau eines „Europäischen Binnenmarktes für den Hypothekarkredit“ mit einer Darstellung der Verwendung der Grundschild durch die deutsche Hypothekarkreditpraxis so-wie des französischen, spanischen und schweizerischen Hypothekenrechts*, 1992.

works only deal with individual countries<sup>12</sup> or give an overall presentation of property law in the form of country reports.<sup>13</sup>

As such, the vdp was quick to initiate and support academic exchange and the transfer of practice-oriented expertise at an early stage. Prompted by numerous requests, it has been involved in the modernisation of mortgage and land register law in many countries since 1993. The proposal it initiated for a non-accessory security right over immovable property for Central Europe<sup>14</sup> laid the foundation for not only a series of legislative works on security rights over immovable property in Central Europe, but also for the concretisation of efforts towards a Eurohypotheck,<sup>15</sup> the most important building block of which is the Basic Guidelines for a Eurohypotheck.<sup>16</sup>

## 2. Round Table on Security Rights over Immovable Property<sup>17</sup>

The vdp has set itself the goal of contributing to the transparency of the law of immovable security in Europe not only in the form of country-specific publications, but also in the development of cross-national charts that allow quick access to differentiated information and legal facts.

For this purpose, the Round Table: Flexibility of Security Rights over Immovable Property in Europe (Runder Tisch: Flexibilität der Grundpfandrechte in Europa)<sup>18</sup> was

established in 2005, in which academics and practitioners in security rights over immovable property from more than 30 countries now participate. The results of these comparative law discussions were first made available to the public in the vdp's publication series between 2006 and 2010.<sup>19</sup>

### 2.1. Development and working methods<sup>20</sup>

In the beginning, recognised academics and practitioners from several countries – on the basis of the issues examined in the Basic Guidelines for a Eurohypotheck (see Section I. above) – discussed the doctrinal foundations as well as the practicability of their national security rights over immovable property and wrote detailed country reports on these. The results of these workshops were then published.<sup>21</sup>

The discussions were continued with the inclusion of additional countries, and the results of these discussions were also published.<sup>22</sup> Again – on the basis of the list of issues used from *Flexibilität der Grundpfandrechte in Europa*, Band I – fundamental topics were covered (such as the form and scope of accessoriness or non-accessoriness and the protection of the owner) as well as issues relevant to practice (e.g., to what extent modern forms of credit can be secured by the respective security rights over immovable property and how security rights over immovable property can be adapted to the constant changes in economic circumstances). Later,

separate chapters on enforcement law and insolvency law were added.<sup>23</sup>

Even then, it became apparent that in many countries with an accessory design of security rights over immovable property it is mainly maximum amount mortgages that are used, some of which have a very high degree of flexibility, but only as long as the owner and creditor do not change. Furthermore, the comparative law study was expanded to include the constructive connection between the loan agreement and the creation of the security rights over immovable property, issues regarding the distribution of the burden of proof, bona fide purchasing, and the use of abstract acknowledgements of different kinds of parallel debts.

The legal systems covered were not selected according to academic criteria or legal policy objectives (e.g., with the intention of covering the legal systems of all EU member states). Rather, the contents of the charts are the result of an academic and practice-based exchange that has developed over many years, organised by the vdp within the framework of research, and the associated development of a network of contacts with academics and practitioners from many countries.

The Round Table members should not only be well-versed in their respective national security rights over immovable property, but should also have dealt intensively with at least one and usually several other legal systems, so that they have a deep understanding of comparative law and thus cross-border

<sup>12</sup> For example, Jaschinska, *Polnische und deutsche Grundpfandrechte*, 2004; Hofmann, *Mortgage and Charge. Gestaltungsmöglichkeiten im englischen Kreditsicherungsrecht*, 2002; Rink, *Die Sicherheit von Grundpfandrechten in Deutschland und England*, 2006; Schulz-Triegelaff, *Grundschuld und Floating Charge*, 1997; Steven, *Immobilienversicherungen im englischen und deutschen Recht*, 2002; Jungmann, *Grundpfandgläubiger und Unternehmensinsolvenz* (Deutschland – England – Schottland), 2004; Städtler, *Grundpfandrechte in der Insolvenz*, 1998; Stürner/Kern, *Grundsatzfragen des US-Hypothekenrechts, Festschrift Schlechtriem*, 2003, pp. 924 et seq. (USA); Böning, *Grundpfandrechte in Deutschland und den USA*, 2011.

<sup>13</sup> For example, Frank/Wachter, *Handbuch Immobilienrecht in Europa*, 2<sup>nd</sup> edition 2015; von Bar, *Gemeineuropäisches Sachenrecht. Band I: Grundlagen, Gegenstände sachenrechtlichen Rechtsschutzes, Arten und Erscheinungsformen*, Verlag Beck 2015; Band II: *Besitz, Erwerb und Schutz subjektiver Sachenrechte*, Beck 2019; von Bar (Ed.), *Sachenrecht in Europa*, Band 1: Dänemark, England, Finnland, Schottland, Schweden, Universitätsverlag Rasch 2000; Band 2: Polen, 1999; Band 3: Griechenland, 1999; Band 4: *Systematische Einführungen und Gesetzestexte*, 1999; Sparkes, *European Land Law*, 2007; Baur/Stürner, *Sachenrecht*, 18<sup>th</sup> edition 2009, § 64 sub B, marginal no. 7 et seq. (France, Italy, Spain, United States, Switzerland, etc.).

<sup>14</sup> Wolfsteiner/Stöcker, *Nicht-akzessorisches Grundpfand für Mitteleuropa*, ZBB 1998, pp. 264–270, and DNotZ 1999, pp. 451 – 467.

<sup>15</sup> For more detail on the various proposals, see Stöcker, *Die grundpfandrechtliche Sicherung grenzüberschreitender Immobilienfinanzierungen, Die Eurohypotheck – ein Sicherungsinstrument mit Realisierungschancen*, WM 2006, pp. 1941 et seq. (p. 1945 et seq.); Baur/Stürner, *Sachenrecht*, 18<sup>th</sup> edition 2009, § 64, marginal nos. 76 et seq.

<sup>16</sup> Drewicz-Tulodziecka/Polish Mortgage Credit Foundation, *Basic Guidelines for a Euro-hypotheck, Outcome of the Eurohypotheck workshop November 2004/April 2005*, Warsaw 2005

<sup>17</sup> For more on the Round Table on Security Rights over Immovable Property in general, see Las-sen/Luckow/Thurner, *Grundpfandrechte 2016 in Europa und darüber hinaus – Eine*

*Standortbestimmung zum XX. Workshop des Runden Tisches Grundpfandrechte*, Berlin 2016 (vdp publication series, Volume 54).

<sup>18</sup> The name of the Round Table working group has undergone a number of iterations since its founding, and is now known as the Round Table on Security Rights over Immovable Property (Runder Tisch Grundpfandrechte).

<sup>19</sup> Stöcker (Ed.), *Flexibilität der Grundpfandrechte in Europa, Band I*, Berlin 2006 (vdp publication series, Volume 23); Stöcker (Ed.), *Flexibilität der Grundpfandrechte in Europa, Band II*, Berlin 2007 (vdp publication series, Volume 32); Stöcker/Stürner, *Flexibilität, Sicherheit und Effizienz der Grundpfandrechte in Europa, Band III*, Berlin 2008 (vdp publication series, Volume 37); Stöcker/Stürner, *Flexibilität, Sicherheit und Effizienz der Grundpfandrechte in Europa, Band III*, 2<sup>nd</sup> revised and extended edition, Berlin 2010 (vdp publication series, Volume 43). English-language translations: Stöcker/Stürner, *Flexibility, Security and Efficiency of Security Rights over Real Property in Europe, Volume III*, Berlin 2009 (vdp publication series, Volume 39). Stöcker/Stürner, *Flexibility, Security and Efficiency of Security Rights over Real Property in Europe, Volume III*, 2<sup>nd</sup> revised and extended edition, Berlin 2010 (vdp publication series, Volume 44). During this phase and afterwards, several members of the Round Table on Security Rights over Immovable Property reported on the project in their countries and incorporated the results into their academic work.

<sup>20</sup> For more details, see Luckow, *20 Workshops des Runden Tisches Grundpfandrechte*, pp. 9 et seq., as well as Las-sen/Luckow, *Entwicklung des Runden Tisches Grundpfandrechte*, pp. 19 et seq., in: Lassen/Luckow/Thurner, *Grundpfandrechte 2016 in Europa und darüber hinaus – Eine Standortbestimmung zum XX. Workshop des Runden Tisches Grundpfandrechte*, Berlin 2016 (vdp publication series, Volume 54).

<sup>21</sup> Stöcker (Ed.), *Flexibilität der Grundpfandrechte in Europa, Band I*, Berlin 2006 (vdp publication series, Volume 23).

<sup>22</sup> Stöcker (Ed.), *Flexibilität der Grundpfandrechte in Europa, Band II*, Berlin 2007 (vdp publication series, Volume 32).

<sup>23</sup> Stöcker/Stürner, *Flexibilität, Sicherheit und Effizienz der Grundpfandrechte in Europa, Band III*, Berlin 2008 (vdp publication series, Volume 37).

issues. The original core of the group consisted of members who are or were actively involved and playing a leading role in the development of law in their countries and who contribute or have contributed to the deliberations on a Eurohypothec – at least in the sense of a benchmark for determining the position of their own national security rights over immovable property. In addition to good knowledge of the German language, a fairly high level of time commitment is required, which not every individual under consideration was able or willing to make. The team is made up of professors, notaries, lawyers, and bank lawyers, and thus combines the main interests of academia and practice.

The working language at the workshops is German, based on the original preferences of the participants. In practice, the German language is also better suited than English for dealing with the subject of security rights over immovable property. In most continental European legal systems direct German translations of technical terms related to real estate law can be found; this is terminologically more difficult in English, as it often depends on whether one is talking about England/Wales, Scotland, Ireland, or the United States.<sup>24</sup> An example of this is the German term “Grundpfandrecht”, for which the Round Table developed the formulation “security right over immovable property”<sup>25</sup> in order to cover all the English-language legal systems involved. It is thus very arduous to translate the individual questions and answers into English, and it sometimes becomes apparent that a readjustment of the German wording is also necessary in order to accurately describe the content under discussion in both languages.

In order to keep the answers in the database up to date, the members of the Round Table have to follow the development of their legal system. This gave rise to the idea of producing reports every six months.<sup>26</sup> This has resulted in a significant improvement to its usability, especially for banks as a basis for the ongoing

monitoring of the quality of their security rights and risk management.

## 2.2. Topics

The database of the Round Table on Security Rights over Immovable Property contains a wealth of topics:

Following some basic remarks on the types of security rights over immovable property (I.), central questions relating to the register systems are addressed, as they involve the public disclosure requirements for security rights over immovable property (II.). This is followed by an exploration of the effects of accessoriness (III.) that is as nuanced as possible so as to counteract the black-and-white division into accessory and non-accessory security rights over immovable property that is regularly encountered and that often leads to misconceptions, particularly with regard to the protection of the owner. Security rights over immovable property serve to secure payment claims and have to prove their value when the debtor is no longer able to pay. Therefore, the “legal security content” of a security right over immovable property in the context of enforcement proceedings (IV.) and insolvency or reorganisation proceedings (V.) is of paramount importance for the practice of the credit business. This is reflected in the large number of charts dealing with these issues. The practically important but theoretically oriented questions of the above-mentioned topics are supplemented by a chapter dealing with the utilisation in practice of security rights over immovable property (VI.) in some important groups of cases.

In the course of the work, special topics were covered in further chapters: Questions on security rights over immovable property in the context of the financing of equipment for the production of renewable energy (VII.), the use of property companies/SPVs for commercially used properties (VIII.), as well as building rights (IX.), and qualified common ownership (X.) as objects of a security right over immovable property.

A particularly exciting topic in terms of legal policy is the security of transaction with immovable property (XI.), which in the majority of countries is guaranteed in a special way by the compulsory or regular involvement specially trained and qualified professionals or state institutions in property-related transactions, while in other countries a compensatory arrangement is required in order to avoid gaps in legal security as far as possible (if one is not willing to accept them for overriding reasons, such as cost savings or the simplicity and speed of the transaction).<sup>27</sup>

Although the Round Table is focused on the law of immovable security, consumer protection in real estate loans is of such central importance that some regulations are considered from a comparative law perspective (XII.).

An additional chapter collects current political topics that are connected with security rights over immovable property. If it becomes apparent that the topic is of Europe-wide and lasting significance, it is assigned to one of the specialised chapters. Information was exchanged in this chapter on special national regulations that were introduced because of the Covid-19 pandemic and which have mostly expired since.

## 2.3. Charts

An important focus of the workshops is the creation and ongoing development of detailed charts in the form of maps, with countries marked in different colours depending on the answer to the question under consideration in order to vividly illustrate the diversity of security rights over immovable property.

The problem with any kind of overview is that it has to simplify in order to provide a more efficient perspective than a collection of detailed information. However, every simplification results in standardisation of varying degrees and thus slightly distorts the details, which is difficult to reconcile with an academic claim to the quality of the work

<sup>24</sup> Examples are provided in Luckow, *20 Workshops des Runden Tisches Grundpfandrechte*, p. 13, footnote. 27, as well as in: Lassen/Luckow/Thurner, *Grundpfandrechte 2016 in Europa und darüber hinaus – Eine Standortbestimmung zum XX. Workshop des Runden Tisches Grundpfandrechte*, Berlin 2016 (vdp publication series, Volume 54).

<sup>25</sup> Initially, the term “real property” was agreed upon, but this corresponds mainly with the terminology used in the United States, and was replaced by terminology independent of individual legal cultures.

<sup>26</sup> Lassen/Luckow, *Entwicklung des Runden Tisches Grundpfandrechte*, pp. 25 et seq., as well as Seeber, *Der Runde Tisch Grundpfandrechte und seine Bedeutung für die Praxis – Herausforderung Rechtsmonitoring*, pp. 33 et seq., in: Lassen/Luckow/Thurner, *Grundpfandrechte 2016 in Europa und darüber hinaus – Eine Standortbestimmung zum XX. Workshop des Runden Tisches Grundpfandrechte*, Berlin 2016 (vdp publication series, Volume 54).

<sup>27</sup> See in particular André-Pierre Resch, *Sicherungsinstrumente beim Grundstückserwerb*, 2016; Murray/Stürner, *The Civil Law Notary – Neutral Lawyer for the Situation. A Comparative Study on Preventative Justice in Modern Societies*, 2010 (comparative law for Germany, England, France, Sweden, Estonia and the United States); Murray/Stürner, *German Notaries in Real Estate and Corporate Law Matters*, 2020 (with a detailed comparative analysis of the German and U.S. legal systems in terms of legal certainty, costs for the parties involved, speed, simplicity and comprehensibility, transparency, the quality of legal advice, and the public interest). The latter publication also contains a critical examination of the World Bank’s Doing Business reports, which was presented by the authors at a World Bank event as part of the Law, Justice and Development Week in November 2018 (pp. 135 et seq., pp. 162 et seq., pp. 169 et seq., pp. 181 et seq.). The Doing Business reports were promoted by the World Bank and had a strong influence on the reports and recommendations of the OECD and economic institutes, as well as on discussions held in Europe. These have been discontinued in their previous form following the revelation of deficiencies and inconsistencies, as well as forms dishonest influence in certain cases.



itself. This is true for comprehensive tabular overviews – and even more so for charts, where the information that can be included is even more limited.

Nevertheless, after in-depth discussion in the workshops, this form of presentation was chosen in order to allow users to quickly grasp the concepts and to increase clarity through visualisation in view of the abundance of distinctions. Academics, too, have to recognise that it is sometimes preferable to be able to present information that is not entirely precise to the target audience than to run that risk that the central message is not conveyed at all. It is important that a balanced selection of topics and questions makes the potential “error rate” in the details transparent for experts, so that further work can present the desired differentiation in special works.

In order to deal with the extremely complex task, it is first necessary to identify the central questions for the assessment of security rights over immovable property and to formulate them in such a way that they make sense for each legal system covered here. Furthermore, the questions have to be posed in such a way that an accurate answer, at least in principle, can be given for each legal system, even if exceptions and deviations should occur in detail.

The whole task is made particularly challenging by the fact that, in principle, only one answer per country can be given in order to fit in with the map colour schematic. If more than one answer is applicable, the wording of the questions and answers have to be adjusted until, in principle, only one answer fits per country. With each jurisdiction that is added to the project, this means adapting often no fewer question and answer variables – and this in German and English. The implementation of two workshops per year, each lasting two full days in Berlin, shows that the effort required to achieve a high level of quality is not small.

### **2.4. From PowerPoint to an IT system**

The aim of the charts in the form of maps is to ensure that those legal systems that give the same answers appear on the map with the same colour. During the initial years of the project, PowerPoint slides were used for this purpose, however, as the number of questions and legal systems increased, this proved to be too difficult. In addition, the Round Table members had to wait a long time for the overall result.

As it was not possible to procure a ready-made program that could meet all the requirements of this project, a separate IT application was developed. This allows the individual members of the Round Table on Security Rights over Immovable Property to enter their responses via secure Internet access, whereupon they can immediately see the result of the country comparison on the coloured map. Later, a comments field was added so that the responses can be explained or exceptions and special cases noted.

The IT system has also made it possible to access the database directly during presentations and discussions, allowing its content to be included. This has been used not only at conferences, but also during legal policy discussions on the modernisation of mortgage and land register law in individual countries. Legal information compiled by the Round Table on Security Rights over Immovable Property has also been made available to European institutions through the granting of read access to the database.

### **3. Publication of the database**

Until recently, the findings of the Round Table on Security Rights over Immovable Property were not readily accessible to interested members of the public, and thus not widely known. This was mainly due to the fact that access to the expert database was limited to registered users and the data-base's website was primarily designed to facilitate cooperation between the members of the Round Table.

In the past – as previously mentioned – the contents of the database were published in the vdp publication series with detailed explanations in German and English. The printed format, however, has the disadvantage that it becomes out-of-date over time and the costs associated with print publication can be very high, especially as an effective overview can only be achieved with the use of coloured maps, which even today greatly increases the production costs of printing.

As such, the Round Table on Security Rights over Immovable Property started looking into how to increase the visibility of its work and thus make its valuable findings better known and accessible to the public.

In addition, there is the recurring question of how the charts can be used as a source for academic publications by Round Table members. This becomes even clearer when external authors, also of standard works on

mortgage and land register law, want to use and disseminate the findings of the Round Table in their publications. The restriction of access to the results also presents an obstacle to using the findings for legal policy work. If only because of normal staff turnover in administration, politics, and academia, it is almost impossible to grant individual read access to all interested members of these target groups.

Accordingly, the Round Table decided in autumn 2021 to open access to the online database of the Round Table on Security Rights over Immovable Property to the general public. For reasons of IT security alone, it was ruled out of the question to give the public direct access to the database into which the members of the Round Table enter their responses and comments. Instead, a parallel read-only database with the same content that had previously been set up for external users was used; from this, another parallel database was created that the public can access via the Internet. The Round Table decides from when on which questions with answers for which countries in chart form (as well as country comments) will be copied into this publicly accessible database. The data-base is updated several times a year.

From November 2021 to April 2022, the Round Table reviewed all the questions in the first six chapters to see if they were sufficiently comprehensible to external parties. Each chapter and individual question was accompanied by an explanation to illustrate the meaning of the question and its connection with other questions. In its mid-May 2022 workshop, the Round Table on Security Rights over Immovable Property made a decision on which questions should be transferred to this new public database as a first step. After this work was completed, the new database was set up, the content of the new website was developed, and the data migration was carried out. Since August 2022, the database has been publicly accessible at [www.vdpgrundpfandrechte.de](http://www.vdpgrundpfandrechte.de) and, since 2023, at [www.vdpmortgage.com](http://www.vdpmortgage.com) as well. The public launch of the website was announced in September 2022 following another review phase.

In upcoming workshops of the Round Table on Security Rights over Immovable Property, further questions and chapters are to be examined with respect to their suitability for transfer to the public database, and then released if appropriate. The decision to allow external users to download the country charts (free of charge) was also important for external use; this is the only way the charts can be used in publications.



#### 4. Round Table and evaluation system

An additional focus of the work of the Round Table on Security Rights over Immovable Property is the elaboration and further development of an appropriate evaluation system for the individual national designs of the legal frameworks of security rights over immovable property. This is intended to provide initial orientation as to how the “legal value” of security rights over immovable property can be “measured” in a comparative legal manner on a general, institution-specific, or differentiated basis according to the type of business. However, it does not lay claim to being a fully developed econometric country comparison.

As early as 2009, an evaluation system was developed, the results of which were published in book form on the basis of previously published works in German<sup>28</sup> and English.<sup>29</sup> No decision has yet been taken whether to publish these results in the public database, as the focus of the work so far has been on the presentation of comparative property law. In addition, the weighting indicators, which are an elementary component of the evaluation system,<sup>30</sup> are developed in a separate process, namely only when the relevant question and its answers have proven to be stable in their country-by-country entries; this often requires several workshops and thus several years. Nevertheless, it seems appropriate to briefly outline the systematics of the evaluation at its current stage of development in this article.

##### 4.1. Basic structural elements of the evaluation system for security rights over immovable property

The individual chapters of the evaluation analysis, structured according to the previously described context<sup>31</sup>, contain many questions on a large number (over 30) of legal systems, predominantly in European countries, but also including New York for the

United States, Turkey, and Japan – important examples of Germany’s economic partners outside Europe. In order to make a succinct comparative law statement in the sense of an evaluation, it seems reasonable to calculate a single figure for each country at the conclusion of the evaluation process. For this purpose, it is necessary to determine the weight of the individual questions and answer in relation to each other with regard to an overall evaluation. This weighting depends on the perspective from which the questions and answers are viewed. In the current state of development of the evaluation system, the following points of view are differentiated:

- the interests of the bank as the most important creditor from an economic perspective (good usability of the collateral, flexibility of the collateral, and breadth of usability);
- the interests of the owner (flexible and cost-effective usability, sufficient protection against unjustified seizure, foreclosure, and sale by the bank); and
- legislative preferences (balance in the interest of peace under the law and justice, public interest in a functioning credit industry and international competitiveness).

This differentiated perspective relates to the weight of the questions and answers in relation to each other, without the content of individual answers playing a role.<sup>32</sup> In an additional step, the same differentiated perspective is used to weight the content of the specific answers provided.<sup>33</sup> It can be seen from these examples that a difficult balancing act always has to be performed, because the evaluation of the interests and balance always takes several points of view into account. Questions or answers that are judged to be relatively unimportant from the point of view of the actor concerned can be weighted with low scores or even “zero” in very clear cases. In the end, the figures resulting from the described double weighting can be added up per country to obtain the evaluation figure – and this can then be compared with the evaluation figures of the other countries.

##### 4.2. Flexible sectoral evaluation as an important tool

Of course, an evaluation system set up in this way allows not only for an overall evaluation (which can only provide very limited and general information for most users), but rather also allows for sectoral evaluations, which limit the evaluation or assessment to the perspective of the respective actor, a specific legal system, a certain special conflict, or a particular field of business. The afore-mentioned forms of sectoral evaluation can also be broadly combined. For example, banks will often only be interested in an evaluation of the usability or utilisation efficiency of the legal system of one or more countries when they are preparing a loan. An evaluation may also only be sought for certain specific situations (e.g., in the event of compulsory enforcement or the insolvency of the debtor of the loan and/or owner of the property). Certain business areas, such as the collateralisation of renewable energy plants, the collateralisation of building rights or residential property, as well as collateralisation through the use of property companies in the financing of commercial projects, are also available for separate evaluation on demand for documentation purposes.<sup>34</sup>

The bank-oriented nature of the evaluation system is reflected in the particularly detailed query and evaluation of practically all key aspects of bank financing, which is clearly reflected in an overall assessment. However, it is of course also possible to make use of the evaluation from the owner’s and/or consumer’s point of view in isolation. This is especially relevant for consumer protection institutions but also for the banks themselves, because needless to say the question always arises whether sufficient consideration of these interests should not also be a concern of sustainable banking business practices. For the legislators of the countries involved, the comparative evaluation is a valuable resource in the service of maintaining legislative balance.

<sup>28</sup> Stöcker/Stürner, *Flexibilität, Sicherheit und Effizienz der Grundpfandrechte in Europa*, Band III., 2<sup>nd</sup> revised and extended edition, Berlin 2010 (vdp publication series, Volume 43).

<sup>29</sup> Stöcker/Stürner, *Flexibility, Security and Efficiency of Security Rights over Real Property in Europe*, Volume III, 2<sup>nd</sup> revised and extended edition, Berlin 2010 (vdp publication series, Volume 44).

<sup>30</sup> For more on the structure and development of the weighting indicators, see Luckow, *Das System zur Bewertung der Antworten und Länderinformationen beim Runden Tisch Grundpfandrechte*, pp. 41 et seq., in: Lassen/Luckow/Thurner, *Grundpfandrechte 2016 in Europa und darüber hinaus – Eine Standortbestimmung zum XX. Workshop des Runden Tisches Grundpfandrechte*, Berlin 2016 (vdp publication series, Volume 54). For earlier work, see Luckow, *Der Runde Tisch des Verbandes deutscher Pfandbriefbanken „Grundpfandrechte“, seine Arbeitsmethoden und Ergebnisse – Bericht aus der Praxis*, in: von Bar/Wudarski, *Deutschland und Polen in der euro-päischen Rechtsgemeinschaft*, Munich, 2012, pp. 379 et seq. (pp. 386 et seq.).

<sup>31</sup> See the topics listed above in II. 2.2.

<sup>32</sup> For example, low weighting of the number of different types of security rights over immovable property, higher weighting of the existence of total security rights over immovable property encumbering several properties at the same time.

<sup>33</sup> For example, in the case of the question whether the absence of a secured claim can be held against the bona fide purchaser of the security right over immovable property by the owner: The answer “yes” would result in a lower score from the point of view of the bank, a maximum score from the point of view of the owner, a favourable score from the point of the legislator, who can or should also take into account the interest in secure transferability in the interest of easier refinancing between banks.

<sup>34</sup> The Round Table on Security Rights over Immovable Property has developed evaluation weightings only for Chapters I – VI.

## 4.3. Experience to date and the limits of rights-based evaluation

vdpExpertise, a subsidiary of the vdp, has taken over the technical implementation of these evaluations. For vdpExpertise, the results of the Round Table have proven to be very usable for supporting banks in loss given default calculations,<sup>35</sup> because the evaluation system developed offers a high degree of transparency and is regularly updated. In addition, an expansion to include additional countries was possible at the suggestion of the Round Table; such an expansion has been carried out several times, although this has now reached certain limits in the interest of manageability and good quality. The results of the evaluation, with its rather prognostic character, harmonise well with the empirical assessments collected by vdpExpertise.

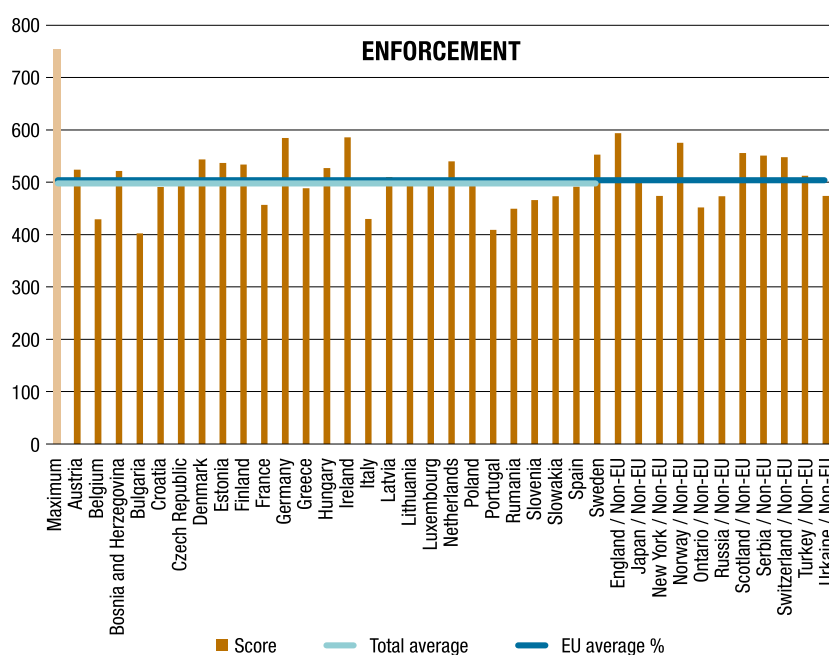
Procedures for quantifying quality are very common today in many areas for establishing rankings. If they are carried out as carefully as possible and with diversified weightings, reasonably useful statements are possible. However, such results should not be considered absolute, as the quantification of quality has too many fundamental weaknesses. Above all, when making decisions about financing, it is inadvisable to adopt a schematic approach without pragmatic consideration of the specifics of the individual case.

The described evaluation system weights the advantages and disadvantages that a functional legal system entails for the individual actors. Consequently, it excludes risks that may result from failure of the legal structure, such as risks from political instability or susceptibility to corruption. In individual cases, they require an additional special weighting based on extra-legal factors. This also corresponds to the procedure practiced by vdpExpertise.

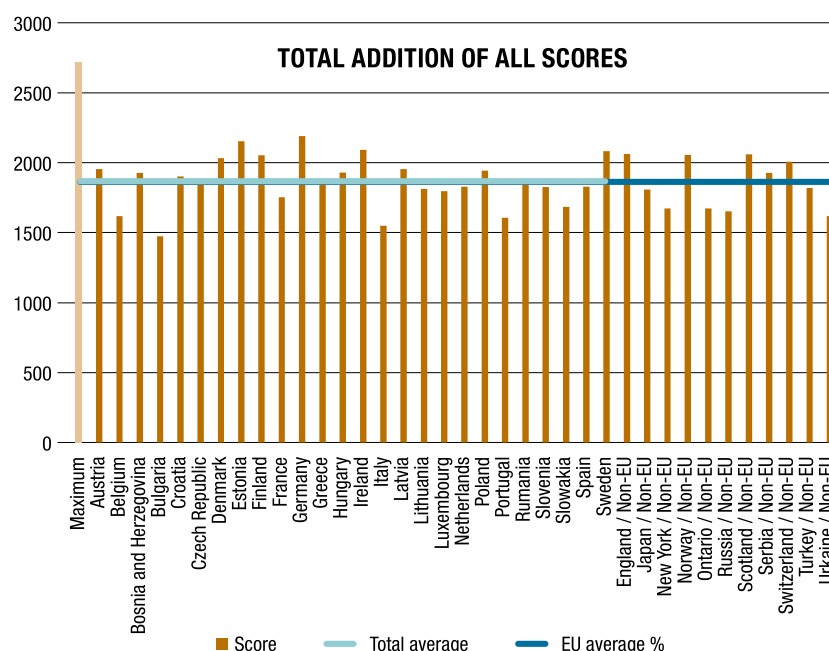
## 5. Part 1 conclusion

The law of immovable security is still largely national in character and is therefore extremely multi-faceted within the bounds of Europe alone. There are no comparative law presentations including as many legal systems as possible that are sufficiently detailed for practice while at the same time transparent and clear as well as meeting the minimum requirements for up-to-datedness

**FIGURE 1 Country-by-country results of the evaluation, based on the criterion of enforcement (as at November 2022)**



**FIGURE 2 Country-by-country results of the evaluation, total of all scores (as at November 2022)**



in analys-ing the legal situation in question. The vdp would like to contribute to reducing these deficits with the Round Table on Security Rights over Immovable Property

project. Following several publications on this project in book form, important parts of it have now been made available to the public in the form of a database.

<sup>35</sup> See Lassen/Luckow, *Entwicklung des Runden Tisches Grundpfandrechte*, in: Lassen/Luckow/Thurner, *Grundpfand-rechte* 2016, pp. 24 et seq.



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