



The Use of Conservation Easements in the European Union

REPORT TO NABU FEDERAL ASSOCIATION
INGA RACINSKA, SIIM VAHTRUS, SIA "BIOTA"



ELCN

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English summary

An easement is a nonpossessory right to use the real property of another legal person without changing its ownership. This legal mechanism, when applied to nature conservation, results in the “conservation easement” concept that has been first introduced and has now become the most widespread conservation tool in the USA. Land trusts in the USA now protect more land through conservation easements than through all other private land conservation tools combined. However, easements are not yet as widely used in the EU as they are in the USA, although in the most EU member states no explicit legal obstacle exists for the use of conservation easements.

This study was designed with a purpose to document the current situation in the EU member states as regards to the legislative basis for conservation easements. We have recorded the national legal mechanisms that are already in place that support or could potentially support the application of the conservation easement concept. To do so, we have engaged national experts from 25 EU countries, including Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and United Kingdom.

It was found that in 22 of 25 countries that were analysed, easements (or variations of this mechanism) can be used to dedicate the property to nature conservation purposes in principle. Only for a few countries experts reported a regulation that explicitly addresses the use of easements for conservation purposes (e.g. Belgium, Estonia, France, Ireland, the Netherlands), in other cases the experts found that traditional limited real property rights could be used, among others, for conservation purposes. In spite of an overwhelming number of affirmative responses about the applicability of the mechanism in principle, it remains to be seen whether its application also possible in practice. The most commonly used mechanism that to some extent could be adapted to the conservation easement concept is that of the “servitude”. Other mechanisms include land lease and various other contractual agreements.

The study confirms that many promising examples can be found in the EU, letting us conclude that most EU member states can apply the concept of conservation easements within the existing legal framework, with only minor adaptations or additions to existing laws. The main challenge is actually not the legal system themselves, but rather a lack of implementation practice and incentives for testing and wider application of this measure.

Fiscal provisions to encourage landowners to grant conservation easements already exist in some countries but they are not widespread. We believe that this aspect is crucially important for expanding the concept within the EU and testing it in action. Therefore, we recommend to incentivise the process of applying conservation easements as a specific nature conservation tool in EU countries. The LIFE programme and other EU funds could be a very strong mechanism for this purpose.

Although conservation easements have a rather long and successful history in the USA, the concept does not necessarily need to be copied to the full extent in the EU. In many continental systems, the legal approach to the extent of protection granted to land ownership rights and the possibilities to impose unilateral restrictions by the public authorities are significantly different. In simple terms, nature conservation in EU must not be based only on voluntary agreements, but they may prove a valuable addition to the existing system of protected areas and the unilateral restrictions imposed by the public authorities.

Catalan summary – Resum

Un easement és el dret no possessori de fer ús de la propietat real d'una altra persona legal sense canviar-ne la titularitat. Aquest mecanisme legal, quan s'aplica a la conservació de la natura, resulta en el concepte de conservation easement, l'eina de conservació més àmpliament utilitzada als EUA. Actualment, les land trusts dels EUA, equivalents a les entitats de custòdia de Catalunya, protegeixen més superfície de territori a través dels conservation easement que no pas a través de totes les altres eines de conservació privada juntes. En canvi, aquest mecanisme encara no s'utilitza tan extensivament a la Unió Europea (UE), tot i que la majoria dels seus estats membres no presenten obstacles legals explícits pel que fa al seu ús.

El present estudi es va dissenyar amb l'objectiu de documentar l'actual marc legal dels conservation easements en el sí dels estats membre de la UE. D'aquesta manera, s'han identificat els mecanismes legals nacionals que ja estan implementats i que faciliten, o que podrien potencialment facilitar, l'aplicació del concepte de conservation easement. Amb tal finalitat, s'ha implicat experts nacionals de 25 països de la UE, incloent Àustria, Bèlgica, Bulgària, Croàcia, la República Txeca, Dinamarca, Estònia, Finlàndia, França, Alemanya, Grècia, Hongria, Irlanda, Itàlia, Letònia, Lituània, els Països Baixos, Polònia, Portugal, Romania, Eslovàquia, Eslovènia, Espanya, Suècia i el Regne Unit.

Es detecta que, teòricament, en 22 dels 25 països analitzats, poden utilitzar-se easements (o variacions d'aquest mecanisme) per destinar la propietat a finalitats de conservació de la natura. Només en alguns països, els experts indiquen l'existència de regulacions que s'adrecen explícitament a l'ús dels easements com a eina de conservació (per exemple, a Bèlgica, Estònia, França, Irlanda o els Països Baixos). En altres casos, conclouen que els tradicionals drets reals limitats de propietat podrien ser utilitzats, entre d'altres, amb propòsits conservacionistes. Tot i el nombre aclaparador de respostes positives respecte la teòrica aplicabilitat del mecanisme, encara cal comprovar si aquest és factible a la pràctica. L'eina més habitualment utilitzada que, fins a cert punt, podria ser adaptada al concepte de conservation easement és la de la servitud. Possibles mecanismes alternatius inclouen l'arrendament o usdefruit i altres acords contractuals.

El present estudi confirma que a UE es troben molts exemples prometedors, permetent concloure que la majoria d'estats membre de la UE poden aplicar el concepte de conservation easements en el sí del seu marc legal actual, treballant només en adaptacions o addicions menors a les lleis existents. De fet, el repte principal no recau en el propi sistema legal, sinó més aviat en la manca de pràctica executiva, així com en la falta d'incentius per posar a prova i aplicar més àmpliament l'eina.

En alguns països existeixen provisions o incentius fiscals per fomentar que propietaris concedeixin conservation easements, però no es tracta d'un mecanisme generalitzat. Els responsables de l'estudi remarquen aquest aspecte crucial per disseminar el concepte de conservation easement i per passar finalment a l'acció. Per tant, recomanen incentivar el procés d'aplicació d'aquest mecanisme com una eina específica de conservació de la natura als països de la UE. En aquest sentit, l'instrument financer LIFE, així com altres fons de la UE, podrien ser una via potent.

Tot i que els conservation easements gaudeixen d'una trajectòria relativament extensa i exitosa als EUA, el concepte no ha de ser necessàriament copiat al peu de la lletra a la UE. En molts països continentals, l'enfoc legal respecte el nivell de protecció atorgat als drets de propietat és significativament diferent. També ho són les possibilitats, per part de les autoritats públiques, d'imposar restriccions unilateralment. En poques paraules, la conservació de la natura a la UE no ha de basar-se únicament en acords voluntaris, però aquests poden resultar ser un valuós complement a l'actual sistema d'àrees protegides i a les restriccions imposades unilateralment per les autoritats públiques.

Croatian summary – Sažetak

“Služnost” je ne-vlasničko pravo na korištenje nekretnine u nečijem vlasništvu bez stvarne promjene vlasništva. Kada se ovaj zakonski mehanizam primjenjuje u svrhu zaštite prirode nastaje „služnost u svrhu zaštite prirode“ – koncept je prvobitno razvijen u SADu, gdje je postao najrašireniji mehanizam zaštite. Udruge za zaštitu zemljišta (Land Trust) u SADu trenutno štite veće površine koristeći služnosti u svrhu zaštite prirode nego pomoću svih drugih mehanizama za privatnu zaštitu zemljišta zajedno. Nažalost, ove služnosti u Europskoj Uniji (EU) nisu još toliko raširene kao u SADu, iako u većini europskih zemalja nema konkretnih zakonskih zapreka za ovakav pristup.

Ova studija je dizajnirana na način da dokumentira trenutnu situaciju u zemljama članicama EUa u pogledu zakonske osnove za služnosti u svrhu zaštite prirode. Studija je zabilježila postojeće nacionalne zakonske mehanizme koji omogućuju, ili bi mogli omogućiti, širu primjenu ovog koncepta. Da bi prikupili ove podatke angažirali smo lokalne suradnike iz 25 zemalja članica: Austrije, Belgije, Bugarske, Hrvatske, Češke, Danske, Estonije, Finske, Francuske, Njemačke, Grčke, Mađarske, Irske, Italije, Litve, Letonije, Nizozemske, Poljske, Portugala, Rumunjske, Slovačke, Slovenije, Španjolske, Švedske i Ujedinjenog Kraljevstva.

Rezultati pokazuju da u 22 od 25 analizirane države služnosti u svrhu zaštite prirode (ili slični mehanizmi) bi se u principu mogle upotrijebiti za stavljanje zemljišta u funkciju zaštite prirode. Samo u nekoliko zemalja zabilježeno je specifično zakonodavstvo koje direktno regulira upotrebu služnosti u svrhu zaštite prirode (Belgija, Estonija, Francuska, Irska i Nizozemska). U ostalim slučajevima, ograničenja u okviru tradicionalnog zakonodavstva o vlasništvu bi se, između ostalog, mogla koristiti i u ovu svrhu. Unatoč mnogobrojnim pozitivnim odgovorima o mogućnostima primjene ovog mehanizma u principu, potrebno je testirati da li je to zaista moguće i u praksi. Najčešće primjenjivani mehanizam koji bi se mogao modificirati u svrhu zaštite prirode jest upravo mehanizam služnosti. Ostale mogućnosti uključuju najam zemljišta i razne druge ugovorne obveze.

Studija potvrđuje da postoje mnogi obećavajući primjeri širom EUa, dovodeći do zaključka da bi mnoge zemlje članice mogle početi primjenjivati koncept služnosti u svrhu zaštite prirode u okviru postojećeg zakonskog okvira, s minimalnim dopunama ili dodatcima postojećim zakonima. Najveći izazov nije sam zakonski okvir, nego nedostatak primjene u praksi i nedostatak poticajnih mehanizama za testiranje i širu primjenu ovog mehanizma.

Fiskalne odredbe koje ohrabruju vlasnike zemljišta da omoguće služnosti u svrhu zaštite prirode već postoje u nekim zemljama, ali nisu jako raširene. Uvjereni smo da je ovaj aspekt od presudne važnosti za širenje koncepta u EU i njegovo testiranje u praksi. Zbog toga predlažemo da se uspostave poticajni mehanizmi za primjenu služnosti u svrhu zaštite prirode kao specifičnog alata za zaštitu u svim zemljama članicama EUa. Program LIFE i ostali EU fondovi bi mogli igrati važnu ulogu u tom procesu.

Iako služnosti u svrhu zaštite prirode imaju dugu i uspješnu povijest u SADu, to ne znači nužno da ga doslovno moramo kopirati u EU. U mnogim europskim sustavima zakonski okviri i obim zaštite povezan s vlasništvom zemljišta, kao i mogućnosti jednostranog nametanja ograničenja od strane institucija su vrlo raznoliki. Pojednostavljeno, zaštita prirode u EU se ne smije bazirati samo na dobrovoljnim sporazumima, ali bi se oni mogli pokazati kao vrijedan dodatak postojećim sustavima zaštićenih područja i jednostranih ograničenja nametnutih od strane institucija.

Dutch summary – Samenvatting

Een gebruiksrecht is een recht om de eigendom van een ander natuurlijk persoon te gebruiken zonder het eigenaarschap te veranderen. Als dit wettelijke mechanisme wordt toegepast in natuurbescherming resulteert het in een concept genaamd “beschermingsgebruiksrecht”, een concept dat voor het eerst geïntroduceerd werd in de Verenigde Staten en daar is uitgegroeid tot het meest gebruikte concept in de natuurbescherming. Stichtingen voor natuurbehoud in de Verenigde Staten beschermen meer land door bovengenoemd concept dan door alle andere vormen van private landbescherming gecombineerd. Echter, in de Europese Unie wordt op veel kleinere schaal gebruik gemaakt van gebruiksrechten, terwijl er in de meeste lidstaten geen expliciete juridische obstakels zijn ten opzichte van het uitoefenen van deze vorm van natuurbehoud.

Deze studie is uitgevoerd met als doel de huidige situatie binnen de EU lidstaten vast te leggen en de wettelijke basis voor gebruiksrechten in kaart te brengen. We hebben de nationale wettelijke mechanismes die reeds gebruikt worden aangeduid. Deze hebben de potentie om breder en op meerdere plekken toegepast te worden. Om alle data te verzamelen hebben we nationale experts uit 25 EU lidstaten geraadpleegd. Experts kwamen uit: Oostenrijk, België, Bulgarije, Kroatië, Tsjechië, Denemarken, Estland, Finland, Frankrijk, Duitsland, Griekenland, Hongarije, Ierland, Italië, Letland, Litouwen, Nederland, Polen, Portugal, Roemenië, Slowakije, Slovenië, Spanje, Zweden, en het Verenigd Koninkrijk.

Er is aangetoond dat in 22 van de 25 landen gebruiksrecht (of variaties van dit mechanisme) kan worden gebruikt om private grond toe te wijzen aan natuurbeheerders ter bevordering van natuurbehoud. Slechts voor enkele landen rapporteerden experts voorschriften die het mechanisme met als doel natuurbehoud ook daadwerkelijk noemen (België, Estland, Frankrijk, Ierland en Nederland). In andere gevallen ondervonden de experts dat traditionele gelimiteerde eigendomsrechten gebruikt zouden kunnen worden voor onder andere natuurbeschermingsdoeleinden. Ondanks een overweldigend aantal reacties aangaande de toepasbaarheid van het gebruiksrechtprincipe dient er nog in kaart gebracht te worden of de toepasbaarheid ook in de praktijk mogelijk is. Het meest algemeen gebruikte principe dat in de buurt komt van het gebruiksrechtprincipe en dat zou kunnen worden aangepast naar het gebruiksrechtprincipe is dat van “erfdienstbaarheidsbehoud”. Andere mechanismes omvatten rentmeesterschap en overige contractuele overeenkomsten.

De studie bevestigt dat zich in de EU menig veelbelovende voorbeelden bevinden, waardoor we kunnen concluderen dat de meeste EU lidstaten het concept van gebruiksrecht ter behoud van de natuur kunnen toepassen binnen reeds bestaande wettelijke kaders met slechts enkele kleine aanpassingen of toevoegingen aan bestaande wetten. De grootste uitdaging zit hem niet in de wettelijke systemen zelf, maar in een gebrek aan implementatie en beloningen voor het testen en wijder verspreiden van deze maatregel.

In sommige landen bestaan fiscale bepalingen om landeigenaren aan te moedigen hun land beschikbaar te stellen voor het gebruiksrechtprincipe. Deze zijn echter niet wijdverspreid. Wij geloven dat dit aspect van cruciaal belang is in het uitbreiden van het concept binnen de EU, niet in het minst zodat het actief getest kan worden. We bevelen daarom aan om stimulatie te bevorderen door het landeigenaren die bereid zijn het gebruiksrechtprincipe in acht te nemen te belonen. Het LIFE-programma en andere EU-fondsen kunnen hier een grote, belangrijke rol in spelen.

Ondanks de lange en succesvolle geschiedenis van het gebruiksrechtprincipe in de Verenigde Staten hoeft het concept niet noodzakelijkerwijs in zijn volle omvang gekopieerd te worden naar de EU. In veel continentale systemen zijn de juridische benaderingen van de mate waarin bescherming wordt verleend aan grondrechten en de mogelijkheden om unilaterale beperkingen op te leggen door de overheid aanzienlijk verschillend. Simpel gezegd hoeft natuurbescherming in de EU niet slechts gebaseerd te zijn op vrijwillige overeenkomsten, maar kan het een waardevolle toevoeging zijn aan het bestaande systeem van beschermde gebieden en de unilaterale restricties opgelegd door overheidsinstanties.

Estonian summary – Kokkuvõtte

Easement ehk piiratud asjaõigus on õigus kasutada teisele isikule kuuluvat kinnisasja ilma selle omanikku muutmata. Selle õigusliku instrumendi kasutamine looduskaitstes on toonud kasutusele „looduskaitselise piiratud asjaõiguse“ („conservation easement“) kontseptsiooni, mis viidi esimesena sisse Ameerika Ühendriikides, kus sellest on saanud kõige enam levinud looduskaitseline tööriist. Maid haldavad trustid kaitsevad Ameerika Ühendriikides looduskaitseliste piiratud asjaõiguste abil suuremat ala kui kõigi teiste eraõiguslike looduskaitseliste mehhanismide abil kokku kaitstakse. Samas ELis ei kasutata hoolimata õiguslike takistuste puudumisest piiratud asjaõiguseid sama laialdaselt kui Ameerika Ühendriikides.

Käesolev uuring viidi läbi, et kaardistada EL liikmesriikides hetkel kehtivate õigusaktide poolt seatud raamistikku looduskaitseliste piiratud asjaõiguste rakendamiseks. Uuringu käigus tuvastati olemasolevaid siseriiklikke õiguslike mehhanisme, mis toetaks või võiks toetada looduskaitseliste piiratud asjaõiguste kontseptsiooni kasutamist. Sellel eesmärgil osalesid projektis 25 EL riigi eksperdid, sh Austriast, Belgiast, Bulgaariast, Eestist, Hispaaniast, Hollandist, Horvaatiast, Iirimalt, Itaaliast, Lätist, Leedust, Kreekast, Poolast, Portugalist, Prantsusmaalt, Rootsi, Rumeeniast, Saksamaalt, Slovakiast, Sloveeniast, Soomest, Suurbritanniast, Taanist, Tšehhist, Ungarist.

Uuringu käigus tuvastati, et 25-st analüüsitud riigist 22-s on põhimõtteliselt võimalik seada piiratud asjaõiguseid (või selle mehhanismi variatsioone) looduskaitselistel eesmärkidel. Vaid üksikutes riikides (nt Belgias, Eestis, Hollandis, Iirimaa, Prantsusmaal) andsid eksperdid teada reeglitest, mis otseselt adresseerisid piiratud asjaõiguste kasutust looduskaitselistel eesmärkidel. Teistel juhtudel leidsid eksperdid, et traditsioonilisi piiratud asjaõigusi saab muuhulgas kasutada ka looduskaitselistel eesmärkidel. Hoolimata suurest hulgast positiivsetest hinnangutest mehhanismi kasutamise põhimõttelisele võimalikkusele, ei ole mehhanismi rakendamise võimalused praktikas päris selged. Mehhanism, mida kõige sagedamini võiks kasutada looduskaitselistel eesmärkidel on servituudi instrument. Teiste põhimõtteliselt sobivate mehhanismide hulka kuuluvad maa liisimine ja erinevad lepingulised suhted.

Uuring kinnitab, et ELis võib leida paljulubavaid näiteid, mis annavad alust järeldada, et enamikes EL liikmesriikides on võimalik looduskaitseliste piiratud asjaõiguste kontseptsiooni rakendada kasutades olemasolevat õiguslikku raamistikku, tehes vajadusel vaid väiksema ulatusega muudatusi kehtivates seadustes. Peamine väljakutse ei seisne seega mitte õigussüsteemis, vaid piiratud rakenduspraktikas ning selle meetme katsetamiseks ja laiema kasutuseks motiveerivate mehhanismide puudumises.

Majandushoovad, mis julgustaks maaomanikke piiratud asjaõigusi kasutama, eksisteerivad juba mõnes liikmesriigis, ent need ei ole laialt levinud. Usume, et see on äärmiselt oluline aspekt kontseptsiooni ELis levitamise ja praktikas testimise jaoks. Seepärast soovime võtta kasutusele meetmeid, mis motiveeriks võtma kasutusele looduskaitseliste piiratud asjaõigusi kui spetsiifilist looduskaitselist tööriista. Selle eesmärgi saavutamisel võiksid oluliseks olla LIFE-programm ja teised EL fondid.

Kuigi looduskaitselistel piiratud asjaõigustel on pikk ja edukas ajalugu Ameerika Ühendriikides, ei ole seda kontseptsiooni tingimata vaja täies ulatuses ELis kopeerida. Paljudes kontinentaalse õigussüsteemiga riikides on õiguslik lähenemine maa omandiõiguse kaitsele ja riigi võimalustele ühepoolset piiranguid seada oluliselt teistsugused kui Ameerikas. Lihtsamalt öeldes: looduskaitse ei pea ELis tuginema vaid vabatahtlikele kokkulepetele, kuid viimased võivad olla olemasolevate kaitsealade süsteemile ja riigi poolt ühepoolset seatud piirangutele väärtuslikuks täienduseks.

French summary – Résumé

Une servitude est un droit non possessif d'utiliser les biens immobiliers d'une autre personne juridique sans en modifier la propriété. Cet outil juridique, quand il est utilisé pour protéger la nature, résulte du concept des "conservation easement" qui ont été créés aux États-Unis et y sont devenu l'outil de conservation le plus répandu. Fiducies foncières aux USA protègent, aujourd'hui, davantage de terres par le biais de servitudes de conservation que par le biais de tous les autres outils de conservation des terres privées combinés. Pourtant, les « conservation easement » ne sont pas encore aussi répandues en Europe qu'aux États-Unis, alors que dans la plupart des États membres, il n'existe aucun obstacle juridique pour l'utilisation.

Cette étude a été conçue pour pouvoir se documenter sur la situation dans les États membres au regard des dispositions législatives en matière de « conservation easement ». Nous avons étudié les mécanismes juridiques nationaux qui sont déjà en place qui soutiennent ou pourraient justifier l'application de la notion de servitude de conservation. Pour ce faire, nous avons engagé des experts nationaux des 25 pays de l'UE, y compris Autriche, Belgique, Bulgarie, Croatie, République tchèque, Danemark, Estonie, Finlande, France, Allemagne, Grèce, Hongrie, Irlande, Italie, Lettonie, Lituanie, Pays-Bas, Pologne, Portugal, Roumanie, Slovaquie, Slovénie, Espagne, Suède et Royaume-Uni.

Il a été constaté que dans 22 des 25 pays analysés, les servitudes (ou des variantes de ce mécanisme) peuvent servir à affecter une vocation environnementale à la propriété, en principe. Seulement pour quelques pays experts ont signalé un règlement qui traite explicitement l'utilisation des servitudes à des fins de conservation (Belgique, Estonie, France, Irlande, Pays-Bas). Dans les autres cas les experts trouvés que le droit de propriété traditionnel pouvait être utilisés, entre autres, à des fins de conservation. Malgré un nombre important de réponses affirmatives quant à l'applicabilité du mécanisme en principe, il reste à voir si son application l'est aussi dans la pratique. Le mécanisme plus couramment utilisé qui, dans une certaine mesure, pourrait être adapté à la notion de « conservation easement » est celle de la « servitude ». Autres mécanismes comprennent bail de terres et divers autres accords contractuels.

L'étude confirme que de nombreux exemples prometteurs peuvent être trouvés dans l'UE, en nous laissant conclure que la plupart des États membres de l'UE peuvent appliquer le concept de servitudes de conservation dans le cadre juridique existant, avec seulement des adaptations mineures ou des ajouts aux lois existantes. En fait le principal défi ne réside pas dans le système juridique eux-mêmes, mais plutôt un manque de pratique de mise en œuvre et d'incitations pour les tests et une application plus large de cette mesure.

Les dispositions fiscales visant à encourager les propriétaires fonciers à accorder des servitudes de conservation existent déjà dans certains pays, mais elles ne sont pas généralisées. Nous estimons que cet aspect revêt une importance cruciale pour l'élargissement du concept au sein de l'UE et pour le tester en action. Par conséquent, nous recommandons de stimuler le processus d'application des servitudes de conservation en tant qu'outil spécifique de conservation de la nature dans les pays de l'UE. Le programme Life et les autres fonds de l'UE pourraient constituer un mécanisme très solide à cet effet.

Bien que les servitudes de conservation aient une histoire assez longue et réussie aux États-Unis, le concept n'a pas nécessairement besoin d'être copié dans toutes ses dispositions dans l'UE. Dans de nombreux systèmes continentaux, l'approche juridique de l'étendue de la protection accordée aux droits de propriété foncière et les possibilités d'imposer des restrictions unilatérales par les pouvoirs publics sont sensiblement différentes. En termes simples, la conservation de la nature dans l'UE ne doit pas se fonder uniquement sur des accords volontaires, mais elles peuvent s'avérer un complément précieux au système existant d'aires protégées et aux restrictions unilatérales imposées par les pouvoirs publics.

German summary – Zusammenfassung

Eine Dienstbarkeit ist ein besitzloses Recht, ein Grundstück im Eigentum einer anderen juristischen Person zu nutzen, ohne dafür das Eigentum an dem Grundstück zu übertragen. Dieses Rechtsinstrument, wenn für Naturschutzzwecke eingesetzt, resultiert im Konzept der „Schutzdienstbarkeit“ (englisch: conservation easement), welches zuerst in den USA eingeführt wurde und dort nun ein weit verbreitetes Naturschutzinstrument ist. Land Trusts sichern heute in den USA mehr Land durch Schutzdienstbarkeiten als durch alle anderen Instrumente der nicht-hoheitlichen Flächensicherung zusammen. In der EU sind Schutzdienstbarkeiten jedoch noch nicht so weit verbreitet wie in den USA, obwohl in den Meisten EU-Mitgliedstaaten kein explizites rechtliches Hindernis für die Anwendung von Schutzdienstbarkeiten besteht.

Diese Studie wurde mit dem Ziel erstellt, die derzeitige Situation in den EU-Mitgliedstaaten hinsichtlich der Rechtsgrundlage für Schutzdienstbarkeiten zu dokumentieren. Es wurden jeweils die nationalen Gesetzesgrundlagen untersucht, die die Anwendung von Schutzdienstbarkeiten unterstützen oder potenziell unterstützen könnten. Dafür wurden Experten aus Belgien, Bulgarien, Dänemark, Deutschland, Estland, Finnland, Frankreich, Griechenland, Irland, Italien, Kroatien, Lettland, Litauen, den Niederlanden, Österreich, Polen, Portugal, Rumänien, Slowakei, Slowenien, Spanien, Schweden, Tschechien, Ungarn und dem Vereinigten Königreich konsultiert.

Wie sich herausstellte, können in 22 der 25 untersuchten Staaten Dienstbarkeiten (oder Variationen davon) prinzipiell dafür eingesetzt werden, Grundstücke Naturschutzzwecken widmen. Dagegen verfügen nur wenige Staaten über eine explizite Rechtsgrundlage für Schutzdienstbarkeiten (z.B. Belgien, Estland, Frankreich, Irland und die Niederlande). In manchen Fällen können diverse traditionelle Eigentumsrechte, Landpacht oder vertragliche Vereinbarungen in ähnlicher Weise für Naturschutzzwecke genutzt werden. Trotz der rechtlichen Voraussetzungen für den Einsatz von Schutzdienstbarkeiten in der ganz überwiegenden Mehrheit der Staaten, muss sich noch herausstellen, ob deren Einsatz auch in der Praxis möglich ist.

Die Studie bestätigt, dass bereits heute vielversprechende Beispiele für den Einsatz von Schutzdienstbarkeiten in der EU existieren. Daraus ergibt sich die Schlussfolgerung, dass die meisten EU-Mitgliedstaaten Schutzdienstbarkeiten innerhalb ihrer bestehenden rechtlichen Rahmenbedingungen anwenden können, bzw. dass dafür in anderen Staaten nur geringe gesetzliche Anpassungen nötig wären. Die größte Herausforderung sind daher nicht die Rechtssysteme selbst, sondern vielmehr ein Mangel an Vollzugspraxis und das Fehlen von Anreizen für Pilotversuche und für eine breitere Anwendung des Instruments.

Finanzielle Anreize, die Grundeigentümer dazu motivieren würden Schutzdienstbarkeiten einzurichten, existieren bereits in einigen Staaten, sind aber nicht weit verbreitet. Es kann davon ausgegangen werden, dass dieser Aspekt von zentraler Bedeutung für die Verbreitung dieses Ansatzes in der EU und seiner praktischen Erprobung ist. Die Autoren empfehlen daher, in den Mitgliedstaaten entsprechende Anreize für den Einsatz von Schutzdienstbarkeiten als spezifisches Naturschutzinstrument zu schaffen. Das LIFE-Programm und andere EU-Förderinstrumente könnten dafür während der Erprobungsphase eine wichtige Basis stellen.

Obwohl der Einsatz von Schutzdienstbarkeiten in den USA eine lange und erfolgreiche Tradition hat, muss der Ansatz nicht notwendigerweise vollständig für die EU kopiert werden. In vielen kontinentaleuropäischen Rechtssystemen unterscheidet sich der rechtliche Rahmen in Bezug auf die privaten Eigentumsrechte und die Möglichkeiten des Staates, Grundeigentümern einseitig Nutzungseinschränkungen aufzuerlegen, grundsätzlich von den USA. Der Naturschutz in der EU muss daher weniger als dort auf freiwilliger Basis umgesetzt werden. Derartige Instrumente können jedoch eine wertvolle Ergänzung zu bestehenden hoheitlichen Instrumenten (wie Schutzgebieten und Landnutzungsbeschränkungen) darstellen.

Latvian summary – Kopsavilkums

Servitūta (easement) pamatā ir labuma gūšana no citai personai piederoša īpašuma, neiegūstot tā īpašuma tiesības vai valdījumu. Piemērojot šo juridisko mehānismu dabas aizsardzības vajadzībām, ASV tika radīts “dabas aizsardzības servitūta” koncepts, kas šobrīd kļuvis par visizplatītāko dabas aizsardzības mehānismu ASV. Izmantojot šo mehānismu, zemes fondi ASV šobrīd aizsargā lielākas platības nekā visi pārējie privātie dabas aizsardzības mehānismi kopā. Tomēr Eiropas Savienībā šis mehānisms nav plaši izmantots, lai arī vairumā ES valstu nav juridisku šķēršļu dabas aizsardzības servitūta mehānisma ieviešanai. Piemērojot dabas aizsardzības servitūtu ASV izpratnē, zemes īpašnieki ir tiesīgi atteikties no kādām ar īpašumu saistītām tiesībām (piemēram, tiesības apbūvēt īpašumu, vai to sadalīt, vai lietot mēslojumu lauksaimniecības zemēs, utt.) par labu trešajai pusei, bez laika ierobežojumiem, ar iespēju par to saņemt kompensāciju, piemēram, nodokļu atvieglojumu formā. Trešā puse (kas visbiežāk ir kāds zemes fonds) pārņem šīs tiesības un uzrauga vienošanās ieviešanu.

Šī pētījuma mērķis bija dokumentēt situāciju saistībā ar ES dalībvalstu pašreizējo juridisko bāzi attiecībā uz dabas aizsardzības servitūta ieviešanu. Pētījuma ietvaros novērtējām spēkā esošos nacionālos juridiskos mehānismus, kas jau atbalsta vai potenciāli varētu atbalstīt dabas aizsardzības servitūta konceptu. Lai to paveiktu, iesaistījām 25 ES dalībvalstu nacionālos ekspertus no Austrijas, Beļģijas, Bulgārijas, Horvātijas, Čehijas, Dānijas, Igaunijas, Somijas, Francijas, Vācijas, Grieķijas, Ungārijas, Īrijas, Itālijas, Latvijas, Lietuvas, Nīderlandes, Polijas, Portugāles, Rumānijas, Slovākijas, Slovēnijas, Spānijas, Zviedrijas un Lielbritānijas.

Pētījuma rezultātā tika novērtēts, ka 22 valstīs no 25, kas tika analizētas, servitūti (vai to variācijas) principā var tikt pielietoti, lai īpašumu vai tā daļu veltītu dabas aizsardzības vajadzībām. Tikai dažās valstīs eksperti konstatēja regulējumu, kas specifiski norāda uz šādu iespēju izmantot servitūtus dabas aizsardzības vajadzībām (Beļģijā, Igaunijā, Francijā, Īrijā un Nīderlandē). Citos gadījumos tika konstatēts, ka dabas aizsardzības vajadzībām var tikt izmantotas tradicionālās īpašuma aprobežojumu metodes. Par spīti pozitīvajam vērtējumam par mehānisma plašajām pielietošanas iespējām, būtu jāpārlicinās par tā pielietošanas iespējamību praksē. Visbiežāk izmantotais juridiskais mehānisms, kas zināmā mērā var tikt pielāgots dabas aizsardzības vajadzībām ir klasiskais servitūta tiesību mehānisms. Kā citus mehānismus eksperti min arī zemes nomas un citu līgumisku attiecību pielāgojumus.

Pētījums apstiprina to, ka ES praksē atrodami vairāki daudzsoļi piemēri, ļaujot pētījuma autoriem secināt, ka vairums ES dalībvalstu varētu pielietot dabas aizsardzības servitūtus jau esošās likumdošanas ietvaros, veicot tikai nelielus pielāgojumus vai papildinājumus spēkā esošajai normatīvajai bāzei. Būtiskākais izaicinājums mehānisma ieviešanai ir nevis normatīvo aktu bāze, bet gan ieviešanas pieredzes un labākās prakses trūkums, kā arī stimulējošu mehānismu trūkums lai praksē pārbaudītu un plašāk ieviestu šo mehānismu.

Dažās valstīs jau pastāv stimulējoši finanšu mehānismi, lai atbalstītu zemes īpašniekus servitūtu ieviešanai dabas aizsardzības vajadzībām, bet tie nav plaši izplatīti. Pētījuma autori uzskata, ka šis ir kritiski svarīgs priekšnoteikums mehānisma plašākam pielietojumam un pārbaudīšanai praksē ES. Tāpēc pētījuma autori rekomendē ieviest stimulējošus mehānismus dabas aizsardzības servitūtu koncepta ieviešanai ES valstīs. LIFE programma un citi ES fondi varētu būt piemērots mehānisms šim mērķim.

Lai arī dabas aizsardzības servitūti ir veiksmīgi pielietoti un ļoti populārs mehānisms ASV, šim konceptam nav jātiek pilnībā pārnestam uz ES. Vairākās kontinentālajās tiesību sistēmās privātīpašuma tiesību aizsardzības pakāpe un valsts institūciju iespējas ieviest vienpusēji noteiktus īpašuma tiesību aprobežojumus ir būtiski atšķirīgas no ASV modeļa. Citiem vārdiem, dabas aizsardzību ES nav iespējams balstīt vienīgi uz brīvprātīgiem līgumiem, bet šādi līgumi var kalpot kā vērtīgs papildinājums jau spēkā esošajai īpaši aizsargājamo dabas teritoriju sistēmai un normatīvajos aktos noteiktajiem īpašuma tiesību aprobežojumiem.

Italian summary – Sommario

Un “easement” è un diritto non legato al possesso che permette di utilizzare un bene di un'altra persona giuridica senza modificarne la proprietà. Negli Stati Uniti, dove è nato, questo meccanismo legale nel caso in cui venga applicato alla conservazione della natura, viene denominato “conservation easement” ed è diventato lo strumento di conservazione più diffuso. Attualmente i Trust fondiari (Land Trust) negli Stati Uniti proteggono più territorio attraverso i “conservation easement” che attraverso tutti gli altri strumenti di conservazione del territorio privati messi insieme. Nell'Unione Europea invece, gli “easement” non sono ancora ampiamente utilizzati quanto negli Stati Uniti, sebbene nella maggior parte degli Stati membri dell'UE non esista un esplicito ostacolo legale al loro utilizzo.

Questo studio è stato progettato con lo scopo di documentare la situazione attuale negli stati membri dell'UE per quanto riguarda la base legislativa per i “conservation easement”. Sono stati dunque registrati i meccanismi legali nazionali già esistenti che supportano o potrebbero potenzialmente supportare l'applicazione di questo concetto. A tal fine, sono stati coinvolti esperti nazionali di 25 paesi dell'UE, tra cui Austria, Belgio, Bulgaria, Croazia, Repubblica ceca, Danimarca, Estonia, Finlandia, Francia, Germania, Grecia, Ungheria, Irlanda, Italia, Lettonia, Lituania, Paesi Bassi, Polonia, Portogallo, Romania, Slovacchia, Slovenia, Spagna, Svezia e Regno Unito.

È stato rilevato che in 22 dei 25 paesi analizzati, in linea di principio, sistemi simili agli “easement” (o le variazioni di questo meccanismo) possono essere utilizzati per destinare la proprietà a scopi di conservazione della natura. Solo per alcuni paesi gli esperti hanno riportato l'esistenza di norme che affrontano esplicitamente l'uso di “easement” per scopi di conservazione (ad esempio Belgio, Estonia, Francia, Irlanda, Paesi Bassi). In altri casi gli esperti hanno scoperto che i tradizionali diritti di proprietà reale limitati potrebbero essere utilizzati, tra gli altri, con propositi conservazionistici.

Nonostante un numero elevato di risposte positive sull'applicabilità di questo meccanismo in linea di principio, resta da vedere se la sua applicazione sia possibile anche nella pratica. Il meccanismo più comunemente usato che, in una certa misura, potrebbe essere adattato al concetto di servitù della conservazione è quello della “servitù”. Altri meccanismi includono la locazione di terreni e altri accordi contrattuali.

Lo studio conferma che nell'UE si possono trovare molti esempi promettenti, concludendo che la maggior parte degli Stati membri dell'UE potrebbero applicare il concetto di “conservation easement” all'interno del quadro giuridico esistente, con solo piccoli adattamenti o aggiunte alle leggi esistenti. La sfida principale non è in realtà il sistema giuridico in sé, ma piuttosto una mancanza di pratiche di attuazione e incentivi per i test e una più ampia applicazione di questa misura.

Disposizioni fiscali per incoraggiare i proprietari terrieri a concedere servitù per la conservazione esistono già in alcuni paesi, ma non sono diffuse. Riteniamo che questo aspetto sia di fondamentale importanza per espandere il concetto all'interno dell'UE e testarlo in azione. Pertanto, nello studio si raccomanda di incentivare il processo di applicazione di questo meccanismo come uno specifico strumento di conservazione della natura nei paesi dell'UE. Il programma LIFE e altri fondi dell'UE potrebbero essere uno strumento molto utile per questo scopo.

Sebbene i “conservation easement” abbiano una storia piuttosto lunga e di successo negli Stati Uniti, il concetto non deve necessariamente essere copiato in tutta la sua portata nell'UE. In molti paesi europei, l'approccio legale relativo al livello di protezione concesso ai diritti di proprietà e la possibilità di imporre restrizioni unilaterali da parte delle autorità pubbliche sono significativamente differenti. In termini semplici, la conservazione della natura nell'UE non deve basarsi solo su accordi volontari, ma questi possono rivelarsi un complemento prezioso al sistema esistente di aree protette e alle restrizioni unilaterali imposte dalle autorità pubbliche.

Portuguese summary – Resumo

Uma servidão é um direito não possessivo de utilização de uma propriedade legalmente pertencente a outra pessoa sem alterar a sua posse. Este mecanismo legal quando aplicado à conservação da natureza resulta no conceito de “servidões de conservação” que foi inicialmente introduzido e é atualmente uma das ferramentas de conservação de natureza mais difundidas nos EUA. Atualmente, a Land trust nos EUA protege mais terrenos através de servidões de conservação do que através do conjunto de todas as outras ferramentas privadas de conservação. No entanto, as servidões ainda não são um mecanismo tão utilizado na UE como nos EUA, apesar de a maioria dos estados membros da UE não terem obstáculos legais explícitos ao uso de servidões de conservação.

O presente estudo foi delineado com o propósito de documentar a atual situação dos estados membros da UE em relação à base legislativa das servidões de conservação. Deste modo, compilou-se informação sobre os mecanismos legais nacionais já em prática que suportem ou possam eventualmente suportar a aplicação do conceito de servidões de conservação. Com esta finalidade, reuniram-se especialistas nacionais de 25 países da EU, incluindo Alemanha, Áustria, Bélgica, Bulgária, Croácia, Dinamarca, Espanha, Eslováquia, Eslovênia, Estónia, Finlândia, França, Grécia, Holanda, Hungria, Irlanda, Itália, Letónia, Lituânia, Polónia, Portugal, Reino Unido, República Checa, Roménia e Suécia.

Verificou-se que em 22 dos 25 países que foram analisados, as servidões (ou mecanismos equivalentes) podem teoricamente ser utilizados para designar propriedades à Conservação da natureza. Apenas para alguns países foi reportada regulamentação que mencione explicitamente o uso de servidões como ferramenta para a conservação de natureza (p. ex. Bélgica, Estónia, França, Holanda e Irlanda). Nos restantes casos os especialistas concluíram que os direitos de propriedades tradicionais podem ser utilizados, entre outros, para a Conservação da Natureza. Apesar do número esmagador de respostas afirmativas sobre a aplicabilidade do mecanismo, resta saber se sua aplicação também é possível na prática. O mecanismo mais habitualmente utilizado e que em certa medida pode ser adaptado ao conceito de servidão de conservação é o de “servidão” tradicional. Outros mecanismos alternativos incluem o arrendamento de terrenos e vários outros acordos contratuais.

O presente estudo confirma que existem exemplos promissores na UE, que nos permitem concluir que maioria dos estados membros conseguiriam enquadrar o conceito de servidões de conservação no quadro legal já existente, apenas com adaptações menores ou adições às leis já existentes. O maior desafio não é de fato o sistema jurídico em si, mas sim a falta de implementação na prática e de incentivos para se testar a aplicabilidade mais abrangente destas medidas.

Incentivos fiscais para encorajar os proprietários de terrenos a conceder servidões de conservação já existem em alguns países, mas não estão difundidas de forma ampla. Acreditamos que este é um aspeto crucialmente importante na expansão do conceito na UE e para testar o mecanismo na prática. Assim, recomendamos o incentivo no processo de aplicação de servidões de conservação como ferramenta específica de conservação de natureza nos países da UE. O programa LIFE e outros fundos da UE poderiam ser fortes mecanismos para apoio a este propósito.

Apesar de as servidões de conservação terem um longo historial de sucesso nos EUA, o conceito não tem necessariamente de ser copiado em toda a sua extensão para a UE. Em muitos sistemas continentais, a abordagem jurídica às medidas de proteção concedida aos direitos de posse e as possibilidades de impor de restrições unilaterais pelas autoridades públicas são significativamente diferentes. Resumidamente, a conservação da natureza na UE não se deve basear unicamente em acordos voluntários, mas estes podem ser uma importante mais valia complementar ao sistema existente de áreas protegidas e às restrições unilaterais impostas pelas autoridades públicas.

Spanish summary – Resumen

Un easement es el derecho no posesorio de usar la propiedad real de otra persona legal sin cambiar su titularidad. Este mecanismo legal, cuando se aplica a la conservación de la naturaleza, resulta en el concepto de conservation easement, la herramienta de conservación más ampliamente utilizada en los Estados Unidos de América (EUA). Actualmente, las land trusts de los EUA, equivalentes a las entidades de custodia de España, protegen más superficie de territorio a través de los conservation easement que con las demás herramientas de conservación privada juntas. En cambio, este mecanismo todavía no se utiliza tan extensivamente en la Unión Europea (UE), aunque la mayoría de sus estados miembro no presentan obstáculos legales explícitos relacionados con su uso.

El presente estudio fue diseñado con el objetivo de documentar el actual marco legal de los conservation easements en el sí de los estados miembro de la UE. De esta manera, se han registrado los mecanismos legales nacionales que ya están implementados y que facilitan, o podrían potencialmente facilitar, la aplicación del concepto de conservation easement. Con tal finalidad, se ha implicado a expertos nacionales de 25 países de la UE, incluyendo Austria, Bélgica, Croacia, la República Checa, Dinamarca, Estonia, Finlandia, Francia, Alemania, Grecia, Hungría, Irlanda, Italia, Letonia, Lituania, los Países Bajos, Polonia, Portugal, Rumania, Eslovaquia, Eslovenia, España, Suecia y el Reino Unido.

Se detecta que, teóricamente, en 22 de los 25 países analizados, pueden utilizarse easements (o variaciones de este mecanismo) para destinar la propiedad a fines de conservación de la naturaleza. Solo en algunos países, los expertos indican la existencia de regulaciones que abordan el uso de easements como herramienta de conservación (por ejemplo, en Bélgica, Estonia, Francia, Irlanda o los Países Bajos). En otros casos, concluyen que los tradicionales derechos reales limitados de propiedad podrían ser empleados, entre otros, con propósitos conservacionistas. A pesar del abrumador número de respuestas positivas respecto a la teórica aplicabilidad del mecanismo, todavía hace falta comprobar que éste es factible a la práctica. La herramienta más habitualmente utilizada que, hasta cierto punto, podría ser adaptada al concepto de conservation easement es la de la servidumbre. Posibles mecanismos alternativos incluyen el arrendamiento o usufructo y otros acuerdos contractuales.

El presente estudio confirma que en la UE se encuentran muchos ejemplos prometedores, permitiendo concluir que la mayoría de estados miembros de la UE pueden aplicar el concepto de conservation easement en el sí de su marco legal actual, trabajando solo en adaptaciones o adiciones menores a las leyes existentes. De hecho, el reto principal no recae en el propio sistema legal, sino en la insuficiente práctica ejecutiva, así como en la falta de incentivos para poner a prueba y aplicar más ampliamente la herramienta.

En algunos países existen disposiciones o incentivos fiscales para fomentar que propietarios concedan conservation easements, pero no se trata de un hecho generalizado. Los responsables del estudio remarcan este aspecto crucial para diseminar el concepto de conservation easement y para pasar finalmente a la acción. Por eso, recomiendan incentivar el proceso de aplicación de este mecanismo como una herramienta específica de conservación de la naturaleza en los países de la UE. En este sentido, el instrumento financiero LIFE, así como otros fondos de la UE, podría resultar ser una vía potente.

Aunque los conservation easements lucen una trayectoria relativamente extensa y exitosa en los EUA, el concepto no tiene por qué ser copiado al pie de la letra en la UE. En muchos países continentales, el enfoque legal respecto al nivel de protección otorgado a los derechos de propiedad es significativamente distinto. También lo son las posibilidades, por parte de las autoridades públicas, de imponer restricciones unilateralmente. En pocas palabras, la conservación de la naturaleza en la UE no tiene que basarse únicamente en acuerdos voluntarios, pero éstos pueden resultar ser un valioso complemento al actual sistema de áreas protegidas y a las restricciones unilaterales impuestas por las autoridades públicas.

Swedish summary – Sammanfattning

Ett avtal eller servitut innebär en rättighet att använda en annan fysisk eller juridisk persons egendom utan att ändra ägandeförhållandena. När den här rättsliga möjligheten tillämpas på naturvård blir resultatet det vi i Sverige kallar för ett naturvårdsavtal. Avtalsformen infördes först i USA, där det nu har blivit det mest utbredda bevarandeverktyget. I USA skyddar frivilligorganisationer idag mer mark genom sådana avtal än vad som skyddas genom alla andra verktyg för bevarande på privat mark. Även om avtal inte används lika mycket inom EU som i USA så finns det i de flesta EU-länder inte något uttryckligt rättsligt hinder för att använda naturvårdsavtal.

Denna studie har utformats med syfte att dokumentera vilka rättsliga möjligheter som EU:s medlemsländer i dagsläget har för att använda naturvårdsavtal. Vi har sammanställt de nationella rättsliga mekanismer som redan finns och som stödjer eller som potentiellt kan stödja tillämpningen av konceptet med naturvårdsavtal. För att göra det har vi tagit hjälp av nationella experter från 25 EU-länder: Belgien, Bulgarien, Danmark, Estland, Finland, Frankrike, Grekland, Irland, Italien, Kroatien, Lettland, Litauen, Nederländerna, Polen, Portugal, Rumänien, Slovakien, Slovenien, Spanien, Storbritannien, Sverige, Tjeckien, Tyskland, Ungern och Österrike.

Det har visat sig att i 22 av de 25 länderna skulle naturvårdsavtal (eller varianter på konceptet) kunna användas för att avsätta fastigheter till naturvårdsändamål. Bara i några få länder rapporterade de tillfrågade experterna en förordning som uttryckligen tar upp användningen av avtal för naturvårdsändamål (t.ex. Belgien, Estland, Frankrike, Irland, Nederländerna, Sverige). I andra fall konstaterade experterna att man skulle kunna använda sig av mer traditionella begränsningar av de rättigheter som är kopplade till fast egendom, för att tillgodose naturvårdsändamål. Trots ett överväldigande antal bekräftelser på att det i princip borde vara möjligt att använda naturvårdsavtal återstår att se om det också är möjligt att tillämpa det i praktiken. Servitut är det vanligaste verktyget som i viss utsträckning kan anpassas till konceptet med naturvårdsavtal. Uthyrning av mark och andra sorters kontraktbaserade avtal är också möjliga.

Studien bekräftar att det finns många lovande exempel i EU, vilket gör att vi kan dra slutsatsen att de flesta EU-länder kan tillämpa konceptet med naturvårdsavtal inom befintlig lagstiftning, eller med mindre anpassningar eller tillägg till befintliga lagar. Den största utmaningen är egentligen inte själva rättssystemet, utan snarare bristen på rutiner för genomförande och incitament för att pröva och bredda användandet av det här verktyget.

Skattebestämmelser som uppmuntrar markägare att använda naturvårdsavtal finns redan i vissa länder men de är inte vanliga. Vi anser att denna aspekt är avgörande för om konceptet ska bli mer spritt inom EU och kunna användas i praktiken. Därför rekommenderar vi att man skapar incitament för att använda naturvårdsavtal som ett särskilt verktyg för naturvård inom EU. LIFE-programmet och andra EU-medel skulle kunna användas för att nå det syftet.

Trots att naturvårdsavtal har en ganska lång och framgångsrik historia i USA behöver konceptet inte nödvändigtvis kopieras fullt ut i EU. Möjligheterna för myndigheter att införa ensidiga begränsningar i markägares rättigheter att använda sin mark skiljer sig mycket mellan olika länder. Kort sagt, även om naturvården i EU inte behöver baseras enbart på frivilliga överenskommelser, kan sådana avtal visa sig vara värdefulla som tillägg till befintliga system där myndigheter ensidigt inför begränsningar för att skydda områden.

Chapter 1. Introduction

1.1. Conservation easements

Land ownership carries with it a range of rights—the right to occupy, lease, sell, develop, construct buildings, the right to farm, restrict access or harvest timber, among others. In most jurisdictions, a landowner can give up one or more of those rights for a purpose such as conservation while retaining ownership of the remainder of the rights. In ceding a right, the landowner "eases" it to another entity, be it government agency or NGO.

Conservation easements (also called conservation covenants, conservation servitudes, or conservation restrictions) are a tool of real property law. Private property subject to a conservation easement remains in private ownership, with only some of the use rights being restricted. Many types of land use can continue under the terms of a conservation easement, and owners can continue to live on the property. The agreement may require the landowner to take certain actions to protect land and water resources, such as fencing a stream to keep livestock out or harvesting trees in certain way; or to refrain from certain actions, such as developing or subdividing the land. In their most comprehensive form, those actions resemble detailed management plans, or refer to planning documents.

Conservation easements function similarly to regulatory restrictions on land use imposed unilaterally by public authorities, but result from direct contractual agreements between two private parties. Conservation easements are usually in gross (ownership of a neighbouring property, i.e. dominant tenement is not required) and they "run with the land" (are binding for the present and all future owners of the respective property). Although they can be altered and revoked under certain conditions, they are normally designed to remain effective in perpetuity. A conservation easement on a property is traditionally recorded in its title, which means that it has to be registered at the responsible land registry office.

1.2. Background

The concept of conservation easement has been first introduced and is now widely applied in the United States of America (USA). It is a good alternative to land purchase, as the easement selectively targets only those rights necessary to protect specific conservation values, such as water quality or migration routes; thus funds are used specifically to retire those targeted rights.

Conservation easements have become the most popular conservation tool in the USA. Land trusts in the USA now protect more land through conservation easements than through all other private land conservation tools combined¹. As summarised by Disselhoff (2015)², their unparalleled rise has been triggered by a combination of push- and pull-factors that are unique to the situation in the USA (e.g. the strength of the American civic/philanthropic sector combined with the corresponding weakness of public governments, in particular the environmental administrations after 1980). In this context, Disselhoff also points out that the USA private property has always played a central role as a symbol for political freedom and national identity, thus making it difficult to establish any regulatory non-voluntary mechanisms. In addition to that, two prerequisites paved the way for a widespread use of the conservation easements by land trusts in the USA: robust enabling legislation and advantageous tax policies. The most active work on setting the legislative basis started in the 1970s, when state legislations began passing conservation easement acts. In 1981, the National Conference of Commissioners published the Uniform Conservation Easement Act (UCEA). Today, all USA federal states have conservation easement enabling legislation, about half of which is based on the UCEA. Fiscal incentives were developed around 1980. In 1976, easement provisions were added to the Internal Revenue Code, codifying the deductibility of conservation and historic preservation easement donations for the first time. Those provisions allowed taxpayers to claim an income tax deduction for the donation of an easement to a charitable organisation or a public

¹ Land Trust Alliance (2015). The 2015 Land Trust Census Report, Washington: LTA.

² Disselhoff, T. (2015). Alternative Ways to Support Private Land Conservation. European Commission.

institution. The system has laid a stable foundation to the wide application of the conservation easements in the USA.

Although in the most EU member states no explicit legal obstacle exists for the use of conservation easements, they are not yet as widely used in the EU as they are in the USA. The provisions of most EU funding programmes (e.g. LIFE, RDP), stating that land acquisition for conservation is only eligible if the investment is adequately ensured in the long-term through adequate legal safeguards, has led to an increase in the use of easements for conservation purposes in some member states. However, conservation-related entries in the property title rarely go beyond general language dedicating the land to conservation purposes.

The idea of using conservation easements in Europe surfaced already in the 1990s. In 1998, the Standing Committee on the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention) adopted Recommendation No. 71 (1998) concerning “Guidelines for the protection and management of habitats through private or voluntary systems”. In this recommendation, it asked the Contracting Parties to “examine the possibility (...) of adopting (...) measures relating to conservation mechanisms for land owned by third parties”. It specifically pointed at “the use which can be made of property law instruments, such as easements and covenants, and contractual mechanisms (management agreements and payment schemes) to promote private conservation of habitats by individuals or associations”, and asked national governments to “develop mechanisms encouraging third parties to conserve their land, insofar as such mechanisms are cheaper than acquisition and have the added advantage of mobilising new sectors of society to contribute to conservation” and to “provide, where necessary, for an exception to legislation on easements and servitudes to remove the requirements of contiguity and benefit to the dominant tenement; authorise the donation of easements to approved conservation bodies; and support this reform by fiscal provisions to encourage individuals to grant nature conservation easements”.³

As concluded by Racinska, Barratt and Marouli (2015)⁴, easements and deed restrictions are tools that should be used much more widely for nature conservation purposes to pursue long-term nature conservation goals. However, the application of conservation easements in the EU is not widespread. Even in those countries where appropriate national legislation exists, this mechanism is not widely used for the nature conservation purposes. However, we note that the idea of a wider application of conservation easements is slowly taking root in the EU, and several national initiatives have been implemented to date that specifically focus on codifying the concept in the legislation of EU member states. The most notable in this regard are France and England.

In France, a new type of conservation easement has recently been introduced by the Biodiversity Law⁵ adopted on 8 August 2016. These easements are called in French «Obligations réelles environnementales», which can be translated literally as “real environmental obligations” or “in-rem environmental obligations”. Further detail can be found in the French Case Study chapter in this report.

A similar initiative is underway in England, where the Law Commission has issued a Consultation Paper in 2013⁶ that proposed the introduction of a statutory scheme enabling the establishment of “conservation covenants”. On 28 January 2016, the Secretary of State for Environment, Food and Rural Affairs committed to explore the part that conservation covenants could play in her Department's 25-Year Environment Plan. The 25 Year Environment Plan was published in 2018 and it includes the commitment to investigating further the application of conservation covenants. Further detail can be found in the UK and Wales Case Study chapter in this report.

³ From Disselhoff (2015), reference to Convention on the Conservation of European Wildlife and Natural Habitats - Standing Committee 1998, Recommendation No. 71 (1998) concerning guidelines for the protection and management of habitats through private or voluntary systems.

⁴ Racinska, I., Barratt, L., Marouli, C. (2015). LIFE and Land Stewardship: Current status, challenges and opportunities. Report to the European Commission

⁵ Loi n° 2016-1087 du 8 août 2016 pour la reconquête de la biodiversité, de la nature et des paysages

⁶ The Law Commission Report on Conservation Covenants (Report 349, 2014): Full report:

https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage1jsxou24uy7q/uploads/2015/03/lc349_conservation-covenants.pdf

1.3. Legal basis for conservation easements

Easements (or similar instruments such as covenants, servitudes, burdens etc.) represent a nonpossessory interest in land. They exist in various forms in all EU member states as part of the respective property law, which in civil law countries (all member states except the UK) is part of the civil code.

Although traditionally easements were meant to serve as a tool to reconcile interests of neighbouring real estates (e.g. to grant the right of passage over another person's land), they have developed into a wider set of rights, the aim of which is to grant partial ownership rights to third parties. Easements and similar instruments are usually entered into the land registry, based on a contract which is in most cases reviewed to a certain extent by a legal professional (notary public, court clerk or similar). Such real property rights have several advantages compared with rights based on merely contractual relations (e.g. rent contract):

- 1) Being related to the plot of land rather than a person, they are more stable and longer-lasting.
- 2) Due to their entry in the registry their enforcement between interested parties is easier and there are no issues with proving whether an obligation exists or not.
- 3) Public land registries ensure that they are also easier to enforce towards third parties.

Chapter 2. The scope and methodology of the study

2.1. The scope of the study

Thematic scope

This study focuses solely on one tool out of the wide variety of the tools available for nature conservation in the EU countries and globally – the conservation easement. The study was designed with the purpose to document

- a) the legal bases in national legislations of the EU member states for the application of conservation easements and
- b) the current use of easements for conservation purposes in these countries.

We have recorded the national legal mechanisms that are currently in place that support or could potentially support the application of the conservation easement concept. We have not compared conservation easements to other tools and have not attempted to draw any conclusions on the benefits of applying the conservation easement concept in various national contexts. Neither did our study assess the demand for conservation easements in the EU and the role that other legal tools play in ensuring the nature conservation goals in the EU.

Geographic scope

Our study spans over 25 EU member countries including Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and United Kingdom. Experts from 25 countries were engaged in compiling the national Case Studies and their reports are included in Chapter 5.

2.2. Methodology

To define the subject of our study, we applied the general characteristics of conservation easements, as summarised by Disselhoff (2015):

- A conservation easement is established by an agreement between a landowner and someone who is interested in the conservation of the property and is eligible to hold a conservation easement (normally a charitable conservation organisation or a public body).
- The contractual agreement to establish a conservation easement is voluntary on both sides.
- The conservation easement is registered in the title of the property. It has to be recorded at the land register in order to be valid.
- The conservation easement is a tool specifically designed for conservation purposes, which means that its scope is somehow defined in legislation.
- A conservation easement “runs with the land”, i.e. it burdens the current landowners and his/her successors in title. Unless explicitly specified, conservation easement usually last in perpetuity.
- A conservation easement may impose negative and positive obligations on the landowner.
- Easements can either be “*appurtenant*” or “*in gross*”, depending on who the dominant party is (not the servient estate, this is in any case always a property, for which use rights are specified/restricted in the deed title). For an *appurtenant easement*, the dominant estate is another property, almost always that adjacent to the servient property. For example appurtenant easements ensure rights of way over a (servient) property to reach another (dominant) property or they grant the right to build power lines across a (servient) property etc. An *easement in gross* benefits a (legal) person. It attaches a right to an entity or individual. In the case of *conservation easements*, these legal persons are usually either a

governmental organisation or a charitable nature conservation organisation, both of which are in principle immortal according to their by-laws.

The Country Case Studies in Chapter 5 often expand this definition and also report tools similar to conservation easements. For example, restrictions that are entered to the property title as part of regulatory, non-voluntary measures (for example protective zones around water bodies, prescribed by law, or zones for protected areas etc.) were not to be covered by this study, but some experts have made notes about them as well. In order to convey the expert opinions in their original form and not to lose any potentially valuable information, we have not edited the Case Studies and have kept them as written by national experts.

National experts were provided with a Background Document and a Template and Instruction Document. Initially, the study was designed to consist of two Phases, with 15 countries analysed in Phase I and three countries analysed in more detail in Phase II. However, when undertaking the study, it was considered more beneficial to cover a larger number of countries rather than to undertake a detailed assessment for a few. Thus, the study was re-designed with only one Phase, and its geographical scope expanded to 25 countries. Part of the national reports (Finland, Germany and Sweden) were contributed by LIFE ELCN project.

To undertake the national Case Studies, 25 national experts were tasked with checking the legislation prescribing the easement categories in their country that can be recorded in the title of the property held in the Land registry office. They provided a citation of the legislative basis (wording of relevant §§ in property law, civil code etc. - in the original language and with English translation). They answered four questions (see Template and Instructions for more detail).

Q.1: Can easements be used to dedicate property / or part of it to the nature conservation purposes (in principle)?

Q.2: In which form may the easement be described in the title?

Q.3: In cases if the easements cannot be described in the title of the property, does legislation allow including this information in the annex to the title, or notary deed?

Q.4: If conservation easements may be entered in the land title, experts checked if they can be entered on the basis of a voluntary agreement, or between the land owner and a third party “in gross”.

Restrictions that are entered to the title as part of the regulatory, non-voluntary measures (for example protective zones around water bodies, prescribed by law, or zones for protected areas etc.) were not systematically covered by this study.

Experts performed the analysis of their national legislation between February and May 2018, and the consolidated report was drafted in May – June 2018. It was presented at the International Workshop: Legal Tools for Private Land Conservation organised by LIFE ELCN project (elcn.eu) on 14-15 June 2018 in Rovaniemi, Finland.

Chapter 3. Analysis

The following chapter presents our findings on the current situation in the EU member states regarding the legal bases in national legislations for the application of conservation easements and their current use in these countries. Our analysis is based on the main questions that were asked of national experts, with an emphasis of some aspects that we deemed important. The full national responses can be found in Chapter 5 of this report.

3.1. Can easements be used to dedicate property or part of it to the nature conservation purposes, in principle?

22 of 25 countries have confirmed that easements can best used for conservation purposes under existing national legislation. Only three countries (Bulgaria, Greece, and Hungary) have responded that easements cannot be used to dedicate the property to the nature conservation purposes in their countries. In most countries, there are some legal tools in place that could in principle be applied for the nature conservation purposes.

However, it should be noted that many of our experts have applied a rather loose definition of the conservation easement when responding to the question and not all criteria for conservation easements are always met, in the strict sense of its definition (see Chapter 2). Most often the reason for deviations were limitations of the duration of the easement (not in perpetuity) or its origin (not voluntary). Only in a few countries the experts referred to regulation that explicitly addresses the use of easements for conservation purposes (e.g. Belgium, Estonia, France, Ireland, the Netherlands), in other cases the experts concluded that traditional limited real property rights could be used, among others, for conservation purposes. As indicated in Chapter 2, we have included the unedited responses from the experts in Chapter 5, in order to better illustrate the situation and allow the reader to make his/her own conclusions.

Furthermore, in spite of the overwhelming number of confirmative responses, for a number of countries the easement mechanism has not yet been applied for nature conservation purposes and it remains to be seen whether it is possible in practice. The most commonly used mechanism is servitudes, other mechanisms include land lease (not strictly easements, due to limited duration), and various other contractual agreements. We have analysed servitudes and other contractual agreements below.

Servitudes

Most of the legislations recognise servitudes as a tool to limit the rights of the landowners. Servitudes exist in Civil Code and Common Law countries. Usually two types of servitudes are recognised: real servitudes⁷ and personal servitudes⁸. Both types can be used for conservation purposes, but the personal servitude is less limiting, especially in those cases when national legislation defines “person” as “individual or legal entity” rather than a natural person only. In some countries the legislation clearly states nature conservation among the purposes for the use of servitudes. In other countries (e.g. Austria, Estonia, Slovakia, Spain Germany), the purpose of this mechanism is not defined specifically by property law (it is up to the parties of a contract to decide what the purpose of a servitude should be) and thus, in theory, servitudes can also be used for nature conservation. There are also countries where the use of servitudes is limited by legislation and if nature conservation is not among the purposes explicitly listed in the law, servitudes cannot be used for conservation unless the legislation is amended. This is the case for Greece and Hungary, for example, where nature conservation is not listed among the purposes of the tool. The *numerus clausus* principle is also applied in other countries and significantly limits

⁷ **Real servitude:** A real or predial servitude is a right granted to an owner of an estate (whoever they may be in any given time) for the purpose of use and/or utility of another estate belonging to another proprietor. Therefore, a real servitude is a right which is grants rights to any (subsequent) owner of an estate rather than a specific person.

⁸ **Personal servitude:** A personal servitude is a servitude granting rights in property to a particular person.

their application, however the respective national experts have reported that there might be a way around this obstacle (e.g. Croatia, Latvia etc.).

Servitudes have one very positive aspect - they are already widely used and accepted in practice. Among the negative aspects we would like to emphasise their limited character (in most jurisdictions they can be used to oblige the owner to refrain from some activities, but not stipulate positive obligations), their limitations in purpose and lack of flexibility. These shortcomings have to do with the historic background of this tool (enabling the use of another property for someone's personal benefit rather than providing public benefits). Due to their wide application and long legal tradition, it seems unlikely that the shortcomings could be overcome by fundamentally amending the nature of this limited property rights tool in the Civil Codes or similar general property laws just for one specific area of application (nature conservation). Specific norms on conservation easements that supplement or replace the existing legislation would rather be needed to ensure their wider use for conservation purposes.

Personal servitudes seem to be most promising mechanisms to be adapted to serving specifically the nature conservation purpose. The Estonian concept of "key forest habitats" that is based on a voluntary notarised contract can be regarded as an example of such approach. From a property law perspective, key forest habitats are protected by entries into the title of a property with the related entry in the land registry, just as for any other servitude, based on a contract which is (partly) specifically regulated in the Forest Act. For any other servitude, a notarised contract would also be needed, the only difference being that in this particular case, some key aspects regarding this contract are provided specifically in a law concerning biodiversity protection.

Other contractual agreements

National experts have listed various forms of contractual agreements that are used for nature conservation purposes. The difficulty often arises with their registration in the land register that is either not mandatory or not foreseen under national legislation at all. As a consequence, the transfer of a deed from one owner to another is rarely possible in case of voluntary agreements that are not registered in the title of the property.

However, there are some examples that could be further explored and assessed for their replication potential. For example, the Swedish "naturvårdsavtal" (nature conservation agreement) can last for 1-50 years and is registered in the land title, in Sweden. In Belgium, agreements between landowners and the nature conservation authorities for the implementation of the Natura 2000 management plan can also be registered in the land title. The Danish concept of "fredning" foresees that private land is dedicated to nature conservation in perpetuity. Section 18 of the Irish 1976 (Wildlife) Act also governs the management of the land for the benefit of wildlife. The Dutch have several good measures in place, the most promising being called "qualitative obligation".

The French "real environmental obligations" still remains the only mechanism in EU that fully fits the US definition of conservation easements. The tool was introduced in France rather recently, so that its application has just started, with only one recorded case so far. However, there are other good examples that are definitely worth sharing and exploring further, even if they do not fit the definition perfectly. Therefore, we have described the French, Belgian, Irish and Dutch cases mentioned above in more detail below. Please see the full details for all cases that are highlighted in this paragraph in the Case Studies in Chapter 5.

France, real environmental obligations

In France, a new type of conservation easements has recently been introduced by articles 72 and 73 of the Biodiversity Law adopted on 08/08/2016 (the exact title of the law being "Loi n° 2016-1087 du 8 août 2016 pour la reconquête de la biodiversité, de la nature et des paysages"). These easements are called in French « Obligations réelles environnementales », which can be translated literally as "real environmental obligations" or "in-rem environmental obligations".

The obligations/easements are described in a contract, signed by both the landowner and a co-contracting entity (either a public body or a legal person whose mission includes nature conservation). This contract must be published in the so-called “fichier immobilier” (land register), which includes historical information on each property (successive landowners, possible rural lease contracts attached to the land, etc.) and will now include the contract describing the real environmental obligations. These obligations will be recalled in future notarial deeds. For instance, if the property is sold, the easement will be mentioned in the deed of sale, which is the property title of the new owner. To date, only one contract has been drafted, for ecological compensation purposes.

Belgium (Flanders), implementation of the management plan

In Flanders a new decree and ministerial decision provide the possibility to dedicate property to nature conservation purposes under certain conditions (see details in the Country Study). It states that every landowner can participate in a management plan to achieve certain nature conservation goals, on a voluntary basis. The parcel can be managed by the landowner, a third party (another private person or organisation) or a public authority. Once the management plan is approved by the competent authority, the instrumenting official (notary, public body) has to mention in the title deed that the parcel is part of a nature conservation management plan in case the parcel is subject of a land transaction. This should be regarded as a nature conservation easement but it is only written in the title deed when the parcel is subject of a sale or lease. The landowner has the right to cease the participation in the management plan but this is not yet clear what impact this will have because this depends on the type of management plan as well.

Once the management plan is approved by the competent authority (Agency for Nature and Forests) and published in the national gazette, the land owner can receive subsidies to implement the management plan. In principle, the plan remains in place for 24 years and is binding for all successive managers. After this term, the managers must at least maintain a stand-still (no net loss of biodiversity). The notary is obliged to mention the existence of the management plan and will thus be enrolled in the national land register. This will be regarded as an ‘erfdienstbaarheid van algemeen nut’ (easement of public importance).

Ireland, Section 18 agreements

The most promising option for creating “conservation easements” under Irish law is Section 18 of the 1976 (Wildlife) Act, which provides for the Minister or any other person with his approval, to enter into an agreement with a person having an interest in or over land to ensure that the management of the land will be conducted in a manner specified in the agreement which will not impair wildlife or its conservation.

“Management” is defined as the use of the land for agriculture or forestry, the carrying out of works on, in or under the land, the making of any change in the physical, topographical or ecological nature or characteristics of the land and the use of the land for educational or recreational purposes. A Section 18 Agreement may also provide that the land owner is paid a lump sum or periodic payments. A Section 18 Agreement may provide that it is enforceable against successors in title and it may be registered as a burden affecting registered land. Therefore, on the face of it, Section 18 Agreements are property rights that can exist in gross.

Netherlands, the qualitative obligation

A qualitative obligation is the commitment to tolerate or not to do anything that would interrupt the peace of the owner of a registered property (regarding land and housing). It is characteristically that the obligation arises from an agreement between parties. But it is also binding to other users of the registered property and if the property is being sold. Qualitative obligation is based on Civil Law. This is an obligation for perpetuity in which the spatial status of the land is changed from (mostly) farmland to nature.

Contrary to the easements that in Netherlands are limited by a requirement for a neighbouring property, the qualitative obligation does not have this restriction and is therefore often called easement without “the

prevailing property”. There are limitations to this mechanism, as well, please see them listed in the Case Studies in Chapter 5.

3.2. In which form may the easement be described in the title?

Given the fact that in most countries the only legal mechanism for implementing the conservation easement concept is servitudes, there is usually no problem with registering restrictions in the land title. The level of detail for those restrictions varies, from stating the general purpose only to allowing more specific entries.

In some cases the land register accepts more detailed entries or even positive obligations. Of the 22 countries analysed in this regard, only 12 reported the option to enter the allowed or required activities (positive obligations) in the land title. As highlighted before, this is one of the characteristic shortcomings of using traditional servitudes for nature conservation purposes which can most likely be overcome by providing specific rules.

3.3. If conservation easements may be entered in the land title, can they can be entered on the basis of a voluntary agreement, and between the land owner and a third party “in gross”?

Of 22 countries analysed (those where easements could be created for conservation purposes in principle), all 22 responded that entries in the property title as the result of voluntary agreements are possible. There were 21 responses confirming that agreements “in gross” are possible as well. Therefore, we conclude that this particular aspect is not a problem in the EU, in those cases where the use of “traditional” limited property rights is not precluded due to a *numerus clausus* list of possible rights.

Table 1. Overview of the national responses

Country	Can easement be used for nature conservation, in principle?	Is it possible to register positive obligations in the land title?	Can easement be entered on the basis of voluntary agreement?	Can easement be entered “in gross”?	Interesting country cases described in our report
Austria	Y	Y	Y	Y	
Belgium (Flanders)	Y	Y	Y	Y	Management plan implementation obligation that gets registered in the land title
Bulgaria	N	n/a	n/a	n/a	
Croatia	Y	N	Y	N	
Czech Republic	Y	N	Y	Y	
Denmark	Y	Y	Y	Y	Fredning – permanent nature agreements
Estonia	Y	Y	Y	Y	Forest key habitat protection contracts
Finland	Y	Y	Y	Y	
France	Y	Y	Y	Y	Real environmental obligations
Germany	Y	Y	Y	Y	
Greece	N	n/a	n/a	n/a	
Hungary	N	n/a	n/a	n/a	
Ireland	Y	Y	Y	Y	Section 18 agreements
Italy	Y	N	Y	Y	
Latvia	Y	N	Y	Y	
Lithuania	Y	N	Y**	Y**	
Netherlands	Y	Y	Y	Y	Qualitative obligation
Poland	Y	Y	Y	Y	
Portugal	Y	N	Y	Y	
Romania	Y	N	Y	Y	
Slovakia	Y	N	Y	Y	
Slovenia	Y	***	Y	Y	
Spain	Y	Y	Y	Y	
Sweden	Y	Y	Y	Y	Nature conservation agreements that get registered in the land title
UK	Y	N	Y	Y	
	22	12	22	21	

** It should be noted that in Lithuania there can be easements that are based on voluntary agreements but NOT “in gross”, or the other way around (non-voluntary AND “in gross”) – there is no option for voluntary AND “in gross” easement.

*** It has not been tested yet.

Chapter 4. Conclusions

A study by Korngold (2010)⁹ concluded that the main barriers to global implementation of the conservation easements concept are the rejection of positive obligations, the *numerus clausus* principle and the prohibition of in property interests in gross. While we agree with this conclusion in general, our study proves that many promising examples can be found in the EU, proving that countries can nevertheless implement the concept of conservation easements within the existing legal framework, with only minor adaptations or additions to their existing laws. The main challenge is actually not the legal systems in the countries, but rather a lack of implementation practice and incentives for testing and wider application of this tool.

Existing legal systems in most EU member states allow for an application of some sort of conservation easements approach. However, in many cases their use for nature conservation purposes has not been tested yet. Some minor adjustments might be needed (for example, removing the requirement of a dominant estate, a wider definition of the eligible purposes of servitudes, explicitly allowing positive obligations to be put on landowners etc.), but the creation of the legal basis for conservation easements would not need fundamental changes to the property law of most member states. Servitudes are available as legal mechanism in all countries investigated in this study. They may not have been used for nature conservation yet, but are nevertheless strongly embedded in national legislation.

Basing the conservation easement concept on the existing system of servitudes would have several benefits. Most of all, it would make use of the existing legal and institutional framework and build on established procedures (e.g. regarding the content and form of contracts that need to be concluded, entries to be made to the land registry etc.), therefore creating less need for new precedents and avoiding questions regarding the application of the tool. Clarity and predictability of the system would in turn reduce the risks related to using public funds for such purposes.

In some countries, there may not be a need to change the legislative framework at all, but rather positive precedents need to be created. To achieve this aim, the awareness of conservation authorities and landowners of this tool needs to be increased. In other cases, however, shortcomings of traditional servitudes (inability to put positive obligations on the owner, limitations of purpose and lack of flexibility) have to be overcome by changing and/or supplementing the legal basis with some specific provisions on servitudes dedicated specifically to conservation purposes. The regulations from Belgium, Estonia, France, Ireland and the Netherlands can all serve as positive examples in this regard. Comparative in-depth studies of these mechanisms, taking into account national specificities would help to successfully replicate these systems in other member states.

Fiscal provisions to encourage landowners to grant conservation easements already exist in some countries, but they are not widespread. We believe that this aspect is crucially important for expanding the concept in the EU. Therefore, we recommend to incentivise the process of applying conservation easements in the national legislation in EU countries. The LIFE programme and other EU funds could be a very important mechanism for this purpose.

Although conservation easements have a rather long and successful history in the USA, the concept does not necessarily need to be copied to the full extent in the EU. In many continental European systems, the legal approaches differ significantly from the US system in their extent of protection granted to land ownership rights and the possibilities to impose unilateral restrictions by the public authorities. In simple terms, nature conservation in the EU must not be based as much on voluntary agreements as in the US, but they may nevertheless prove a valuable addition to the existing system of protected areas and the unilateral restrictions imposed by the public authorities.

⁹ Korngold, Gerald, *Globalizing Conservation Easements: Private Law Approaches for International Environmental Protection* (September 21, 2010). *Wisconsin International Law Journal*, Forthcoming; NYLS Legal Studies Research Paper No. 10/11 #2. Available at SSRN: <https://ssrn.com/abstract=1680487>

Easements and other voluntary agreements are especially important in those cases where an active contribution from the landowner (e.g. fencing of pastures or maintaining valuable grasslands) is needed for conservation purposes.

Our study, however, did not assess the demand for conservation easements in the EU. It may well be that the main reason for the scarce use of conservation easements in the EU is that we routinely use other tools for the same purposes (e.g. agri-environmental subsidies, lease agreements etc.). Secondly, there may be less of a desire among conservationists to create perpetual protection regimes. Therefore, we recommend an assessment of the need and potential fields of application of conservation easements in the EU subsequent to this study. Such an assessment could be done in a simplified form of a questionnaire to the nature conservation sector (NGOs and governmental institutions) to understand the range of tools the organisations currently in use and the needs for new tools.

Chapter 5. Case Studies

The country studies are organised in sub-chapters in alphabetical order with Annex containing legal acts (in their original language and in English) that were analysed in the process of completing the studies.

The following case studies have been included in this chapter, compiled by the following experts:

- 5.1. Austria – Volker Mauerhofer
- 5.2. Belgium (Flanders) – Tom Andries
- 5.3. Bulgaria – Stoyan Yotov
- 5.4. Croatia – Enes Cerimagic
- 5.5. Czech Republic – Vojtech Maca
- 5.6. Denmark – Bent Jepsen
- 5.7. Estonia – Siim Vahtrus
- 5.8. Finland – Sari Sivonen, Ari Neuvonen, Pirkko Posio, Saana-Kaisa Ylitalo and Jouni Rauhala, ELCN
- 5.9. France – Maud Latruberce
- 5.10. Germany – Dr Tilmann Disselhoff, NABU Bundesverband - ELCN
- 5.11. Greece – Elias Demian
- 5.12. Hungary – Csaba Kiss
- 5.13. Ireland – Jonathan Moore
- 5.14. Italy – Iva Rossi
- 5.15. Latvia – Inga Racinska and Girts Baranovskis
- 5.16. Lithuania – Gintaras Riauba and Zymantas Morkvenas
- 5.17. Netherlands – Patrick Nuvelstijn
- 5.18. Poland – Marta Kaczynska
- 5.19. Portugal – Ana Marta Paz
- 5.20. Romania – Catalina Radulescu
- 5.21. Slovakia – Ivana Figuli
- 5.22. Slovenia – Damijan Denac and Tomaz Petrovic
- 5.23. Spain – Ana Barreira, Hernan Collado Urieta, Jofre Rodrigo and Miquel Rafa Fornieles
- 5.24. Sweden – Johanna Ehlin and Helena Ringblom, ELCN
- 5.25. United Kingdom – John Houston

Chapter 5.1. Case study: Austria

Report compiled by Volker Mauerhofer

Question No.1: Can easements be used to dedicate property / or part of it to the nature conservation purposes (in principle)?

Answer No.1: Yes, easements can be used to dedicate property / or part of it to the nature conservation purposes

The general norms regulating the content and the registration of easements are in particular the Paragraphs (§§) 472 and 473 General Civil Act [Allgemeines Bürgerliches Gesetzbuch - ABGB] and in the Paragraphs (§§) 9 and 12 Land Registry Act [Grundbuchsgesetz – GBG].

A major distinction is made into “servitudes” (“Servituten” in Austrian legal language in §§ 472-73 ff) and “real duties” (“Reallasten” in Austrian legal language, § 12 GBG and § 530 ABGB).

“Servitudes” take according to § 473 ABGB the form of entitling another person (“personal servitude”) or owner of “dominant” immovable (“real servitude”) to either use “servient” immovable or obliging the owner of the “servient” immovable to refrain from particular exercises of ownership rights (e.g. not build new constructions any new buildings, not to cut hedges or similar).

The law adopts for real servitudes a principle of Freedom of Contract – all servitudes which are possible, and not in contradiction to cogent (mandatory) private or public norms, are admitted. Consequently, such servitudes aimed at nature conservation, are admissible under these provisions.

For personal servitudes, § 478 ABGB exhaustively lists three types: Usufruct (the right to the fruits/products of a thing), Right of use (the right to use a thing in a specified manner), and Habitation (the right to use a real-estate or its part for housing).

Personal servitudes on behalf of juridical persons are possible and last as long as that person exists (§ 529 last sentence ABGB).

In comparison to servitudes, “real duties” (§ 12 GBG and § 530 ABGB) require a positive action from the owner for the benefit of another person or of the respective owner of another immovable good. § 530 ABGB mentions only annual personal actions in connection with the retirement. But the jurisdiction has developed a wide range of other possible real duties.

Similar to real servitudes, the law does not preclude any purpose for which the real duties may be used, i.e. this type of easement can also be used for nature conservation purposes.

However, easements in Austria have their basis in Civil Law and are registered in the public land register (“Grundbuch”). But there are certain rights granted in public laws to every person with regard to the use of land (e.g. a general right to walk – with some exemption – in forests or walk in public rivers) which are not affected by easements.

Some conservation laws explicitly entitle the nature conservation authority to enter into contracts with private persons (such as the Article 33 of the Nature conservation Act of the province of Styria). But they do not lay down a duty to make these contracts apparent in the public land register (“Grundbuch”). These contracts can contain similar content such as easements, but do not necessarily need be registered. In comparison, such a duty to make apparent is laid down for the legal and public designation of certain protection areas (such as the Article 25 of the Nature conservation Act of the province of Styria). This public designation by means of regulation, but not the pure registration in the public land register, also restricts the public general rights mentioned above.

In practice - especially in the agricultural sector - contracts are applied that contain similar content such as servitudes and real duties but they are only binding the two contractors for a limited period and are not registered in the public land register.

Question No.2: If the answer to the first question is “Yes”, then in which form may the easement be described in the title?

- 2.1. It can be made only in general (e.g. by stating the purpose of the easement is nature conservation), without further specification;
- 2.2. More specified entries regarding the objective of the easement could be made in the land title, specifying which natural features (habitats, species, scenery etc.) of the property are protected;
- 2.3. Specific restrictions (i.e. negative obligations – prohibitions) to land use on the property could be listed in the land title (forfeiting some of the land use rights, for example the right to subdivide or develop the land);
- 2.4. In addition to restrictions, the land title can also list the allowed or required activities (positive obligations/instructions) and by whom these activities may or should be carried out;
- 2.5. Easement can be described in a very comprehensive manner, resembling detailed management plans, or refer to planning documents that are not registered with the deed and that can thus be updated more easily;
- 2.6. Other options not described above.

Answer No.2:

Options 2.3 and 2.4 can be respectively implemented by “servitudes” and “real duties” such as described above (and both can also include the information mentioned in Option 2.2.).

In combination, these “servitudes” and “real duties” can also impose duties in a very comprehensive manner such as described in option 2.5.

However, when it comes to conservation interests regarding habitats affected by such general public rights like forests and rivers (such as described above), “servitudes” and “real duties” could only have limited conserving effect but need to be backed by restrictions founded in public law which restrict those general rights also founded in public law.

Besides these “servitudes” and “real duties” based on contracts, there exist certain forms of “legal servitudes” which have their basis in the law as such and serve the implementation of public interests on behalf of public authorities (e.g. the right of the competent authority to establish servitudes to access land for the improved use of water or for flood protection measures in § 63 WasserrechtsG – Water Act or the right to access land for certain officials and conservation researchers in § 38 of the Tyrolean Nature Conservation Act). These “legal servitudes” have effect without the precondition of registration in the Land Register.

Servitudes and real duties may be registered according to § 9 GBG in the Land Register with specific restrictions for the owner of the servient property and this registration is a constituent part of its acquisition.

In relation to servitudes and real duties it is prescribed that “the substance and scope of such rights shall be entered as specifically as possible whereas the indication of a monetary value is not necessary” (§ 12/1GBG). If servitudes should be restricted to specific spatial limitations, these restrictions have to be precisely indicated (§ 12/2 GBG).

According to § 8 GBG exhaustively prescribes three types of registration – also available to conservation easements - in the public land register, namely

1. Unconditioned ones (“Einverleibung” in Austrian legal language),
2. Registrations with enter into force upon a certain precondition is fulfilled (“Vormerkung” in Austrian legal language), and
3. Annotations (“Anmerkung” in Austrian legal language).

Question No.3: In cases if the easements cannot be described in the title of the property, does legislation allow including this information in the annex to the title, or notary deed?

Answer No.3: N/A

Question No.4: If conservation easements may be entered in the land title, please check if they can be entered:

4.1. On the basis of a voluntary agreement.

4.2. Between the land owner and a third party “in gross”.

Answer No.4:

Ad. 4.1.: Yes, conservation easements may be entered in the land title on the basis of a voluntary agreement.

Ad. 4.2.: Yes, regarding servitudes and “real duties” respectively concluded not on behalf of a certain natural person.

Chapter 5.2. Case study: Belgium (Flanders)

Report compiled by Tom Andries

Question No.1: Can easements be used to dedicate property / or part of it to the nature conservation purposes (in principle)?

Answer No.1: Yes

Conservation easements in sensu stricto are not foreseen in Belgian legislation (Civil code). However, in Flanders a new decree and ministerial decision provide the possibility to dedicate property to nature conservation purposes under certain conditions (see question 2). The Belgian Civil code (Federal law) foresees certain easements such as servitudes which are the most common ones. No specific easements about nature conservation are explicitly foreseen in legislation. Of course, a landowner and third party can add a specific clause in a title deed (e.g. land purchases or long term land leases in the framework of the EU LIFE programme). However, no specific Belgian (federal) regulations exist to transfer easements dealing with nature conservation from one title deed to the other.

The long term land lease – emphyteusis, provides a legal basis to the land user to use and build on the property in return of an annual rent or payment to the landowner. These kind of land leases are granted for a minimum of 27 years and a maximum of 99 years. Since the land lease can be inherited, this is registered in the title deed and registered in the Mortgage register (hypothek kantoer). This is contained in the Belgian Civil Code. This legislation also deals with farm leases but for farm leases, no specific document must be drafted, even an oral agreement between the landowner and the farmer is legal. In jurisdiction, payments between the farmer and the landowner are considered as sufficient proof that a lease exists. Farm leases do not allow to erect any construction on the land (e.g. building, stable) unless a written agreement between land owner and land user is made, which is necessary to apply for a building permit. Only an active farmer can conclude a farm lease. This type of lease is to my knowledge not applicable to nature conservation.

Spatial planning and environmental regulations (e.g. soil, waste, water, cultural heritage, etc.) are governed by Flemish, Walloon or Brussels regional legislation. These restrictions and obligations are not discussed in this study, but are included in the title deed according to Belgian legislation. Most often these regulations deal with specific restrictions or prohibitions (e.g. prohibition to erect buildings, flood plains, etc.).

Question No.2: If the answer to the first question is “Yes”, then in which form may the easement be described in the title?

Answer No.2: Yes, there are two different ways to include the easement in the title deed:

- A) An important recent new legislative act (decree nature conservation 9 May 2014 and Ministerial decision of 14 July 2017) in Flanders foresees new possibilities regarding nature conservation. This decree and ministerial decision states that every landowner can participate in a management plan to achieve certain nature conservation goals. This is done on a voluntary basis. The parcel can be managed by the landowner, a third party (another private person or organisation) or a public authority. Several landowners can participate in the same management plan. Once the management plan is approved by the competent authority, the instrumenting official (notary, public body) has to mention in the title deed that the parcel is part of a nature conservation management plan in case the parcel is subject of a land transaction like a land purchase or a long term lease (at least 9 years) (Flemish decree Artikel 16 novies §2.). This should be regarded as a nature conservation easement but it is only written in the title deed when the parcel is subject of a sale or lease (thus after the approval of the management plan). More details can be found in the annexed article. The landowner has the right to cease the participation in the management plan but this is not yet clear what impact this will have because this depends on

the type of management plan as well. There are four types of management plans (article 16 ter §1 of the decree):

- Type 1: to preserve the present conservation status
- Type 2: to achieve a better conservation status
- Type 3: to achieve the highest possible conservation status
- Type 4: designated nature reserve.

When a parcel is located in Natura 2000 or other protected zone (VEN – Vlaams Ecologisch Netwerk ‘Flemish Ecological Network’), at least a management plan of Type 2 must be drafted. When terrains are acquired with the objective to achieve the nature conservation objectives (Natura 2000 objectives), the manager should at least do all efforts possible to request a type 3 or type 4 management plan.

Once the management plan is approved by the competent authority (Agency for Nature and Forests) and published in the national gazette, the land owner can receive subsidies to implement the management plan. In principle, the plan remains in place for 24 years and is binding for all successive managers. After this term, the managers must at least maintain a stand-still (no net loss of biodiversity). The notary is obliged to mention the existence of the management plan and will thus be enrolled in the national land register. This will be regarded as an ‘erfdienstbaarheid van algemeen nut’ (easement of public importance).

- B) The long term land lease – emphyteusis – provides a way to arrange nature conservation easements between a landowner and the land user, the site manager. This is done quite often by nature conservation organisations (non-profit and public bodies). To achieve the long term nature objectives in a certain site, a long term land lease is preferred after land purchases. The interesting part is that in such long term land lease (minimum of 27 years and up to 99 years), specific easements are inherited by the acquirer of the real property. Such easements can describe in detail what can or cannot be done by the manager (land user). Nature conservation NGOs have to mention in the title deed that nature conservation is the main purpose of the acquisition of certain land rights (e.g. management of the land). This clause in the title is necessary to obtain subsidies of the Flemish region.

Question No.3: In cases if the easements cannot be described in the title of the property, does legislation allow including this information in the annex to the title, or notary deed? You only need to answer this question in case if you answered “No” to the 2nd question

Answer No.3 (if applicable): Not applicable

Question No.4: If conservation easements may be entered in the land title, please check if they can be entered:

4.1. On the basis of a voluntary agreement.

Management plans are drafted on a voluntary agreement between landowners, land users and third parties (e.g. nature conservation NGO). There is no obligation for land owners to apply for a management plan or to take measures in favour of certain nature conservation objectives.

Only for management plans of type 1, the manager can apply to withdraw the management plan (article 16 decies §2). For all other types, this can only be allowed when a motivated request is submitted due to force majeure and the manager is not in the possibility anymore to implement the management plan. After consulting the manager, the competent authority (Agency for Nature and Forest) can decide to take over the management for the remaining term of the management plan and insofar the terrain is essential to achieve the nature conservation objectives and insofar the management cannot be done by another manager.

4.2. Between the land owner and a third party “in gross”.

As explained above, different landowners in one or more sites can group their parcels into one management plan. Even a third party like a NGO, can be responsible to carry out the management (regular management and restoration activities). It is the manager that receives subsidies. One management plan can also be carried out by more than one manager.

Chapter 5.3. Case study: Bulgaria

Report compiled by Stoyan Yotov

Question No.1: Can easements be used to dedicate property / or part of it to the nature conservation purposes (in principle)?

Answer No.1: No

Comments:

The current Bulgarian legislation does not allow the usage of easements for nature conservation purposes. According to Art. 92 and 93 of the Law for the Ownership, the owner of an immovable property also has in possession all the benefits of it. According to Art. 8 and 9 of the Law of Obligations and Contracts, each owner of an immovable property may grant rights through a contract to third parties, but these rights will not last in perpetuity and, in the case of a change of ownership, these may be challenged. According to Art. 55 of the Law for the Ownership, third parties may acquire or establish limited real rights over foreign immovable property insofar as they are provided for by law or by a legal deal or by other means legally specified.

In Bulgaria, there is no practice in the use of easements for nature conservation purposes, but also of the easements in general. Art. 55 of the Law for the Ownership is the basis only for the existence of a limited number of servitudes defined by law (see the answer to Question 2 below). Indeed, this definition of the Law for the Ownership is very broad, but the texts indicating a connection with the existence of adopted special legislation create legal ambiguity and a variety of possible interpretations to the detriment of the option of enjoying easements for nature conservation purposes.

Despite the existence of a fully liberal legislation on the right of private owners to conclude deals and assign rights, it remains problematic, in the light of this text, that such a contract should be reflected in a notary deed (see Question 3 below) and duly entered in the registrar by a registering judge, to ensure the durability of the deal and its attachment as a permanent feature of the property.

In conclusion, in order to ensure the functioning of easements for nature conservation purposes, it is necessary to create a new special legal norm in the specialised national legislation – the Biological Diversity Act, or the Forestry Act, or the Law on the Conservation of Agricultural Land.

Question No.2: If the answer to the first question is “Yes”, then in which form may the easement be described in the title?

Answer No.2: n/a

Comments: At present, there is no specific legislation in Bulgaria to regulate the easements. According to Art. 55 of the Law for the Ownership, limited real rights may be transferred to other persons in only the specific forms regulated by the law.

Such a right is, for example, the right to "use the property". In Art. 56-62, the Law for the Ownership regulates the limited real right for the use of the property to be rented to persons other than the owner. This right does not change the owner and can last in perpetuity if it is attributed to a legal person because, according to the law, it is extinguished by termination of the existence of the legal person. This right differs from the definition of easements and servitudes in that only benefits can be attributed to it, and in that after its creation the property can be used only by the user but not by the owner (in the annex, see the Decision of 20 March 2015 of the Supreme Court of Cassation of Bulgaria interpreting Article 56 of the Law for the Ownership).

In Bulgaria, there are a limited number of servitudes related to construction of common technical networks and facilities of the technical infrastructure, rights to pass through properties, and water transfer rights. All of them are defined by specific laws (see the annex) as follows:

- According to art. 103-107 of the Law for the Waters, general provisions and concepts for land servitudes are laid down. Article 108-111 of the Law for the Waters establishes servitudes arising from the property situation. Articles 112-125 of the Law for the Waters set up the right of water transfer, i.e. a servitude which is established by a contract between the owners of the two properties.
- Servitudes for energy facilities according to the Energy Sector Act (Art. 64-68).
- Servitudes for infrastructure and energy facilities under the Forestry Act (Art. 61-68).
- Servitudes for electronic communications networks and facilities in the Electronic Communications Act (Article 287, paragraph 1).
- The right to pass through neighbouring properties under Art. 35-38 of the Agricultural Property Protection Act.
- Art. 190 of the Spatial Planning Act regulates the servitudes in constructing temporary access roads to properties. The right to pass through a foreign landed property is regulated by Art. 192 of the Spatial Planning Act. The right to construct deviations from common networks and facilities of the technical infrastructure is provided by Article 193 of the same law.

The lack of a common, unified and comprehensive arrangement of servitudes in the existing Bulgarian law often creates problems in practice, which should be solved. In a limited number of practical cases, they are solved by interpretation and analogy.

Question No.3: In cases if the easements cannot be described in the title of the property, does legislation allow including this information in the annex to the title, or notary deed? You only need to answer this question in case if you answered “No” to the 2nd question

Answer No.3: Yes.

The answer given here now concerns the available cases of granting limited real rights. According to Art. 18 of the Law of Obligations and Contracts, the contracts for the transfer and establishment of real rights on immovable properties must be executed by a notary deed. According to Art. 580, para. 4 and 5 and Art. 586, para. 1 and 3 of the Code of Civil Procedure, the notary official checks the grounds for the execution of the deal, and certifies and refers in the notary deed the documents with which it has been executed. According to Art. 112 of the Law for the Ownership, the acts for the establishment and transfer of real rights on immovable property shall be entered in registrars.

Question No.4: If conservation easements may be entered in the land title, please check if they can be entered:

4.1. On the basis of a voluntary agreement

4.2. Between the land owner and a third party “in gross”

Answer No.4:

4.1. No.

4.2. No.

There is no specialised legislation regulating the subject.

Chapter 5.4. Case study: Croatia

Report compiled by Enes Cerimagić

Question No.1: Can easements be used to dedicate property / or part of it to the nature conservation purposes (in principle)?

Answer No.1: Yes, easements can be used to dedicate property / or part of it to the nature conservation purposes

Easements are in Croatian legislation known as *servitudes* (cro. služnosti). There are different types of servitudes in Croatian legislation. It is important to distinguish between **statutory servitudes** (Act on Ownership and Other Real Rights, Art. 185) and servitudes proscribed in the Croatian Act on Ownership and Other Real Rights (hereinafter: servitudes). The main feature of the statutory servitude is that it exists as an integral part of the ownership title, it is, so to say, internal or intrinsic to ownership. Servitudes, on the other hand, exist as part of a legal relationship in which one's right of ownership co-exists with other's subjective right on the same thing. From the instructions provided in the supporting documents and this questionnaire, statutory servitudes do not seem to fall under the scope of interest of this study so they will not be further elaborated.

Servitudes are further divided into Real Servitudes (appurtenant easement) and Personal Servitudes (easements in gross). **Real servitudes** (Act on Ownership and Other Real Rights, Art. 186) are connected to properties- they enable the owner of the dominant property to use the servient property in a specified manner whilst the owner of the servient property must allow such usage and/or restrain from exercising rights otherwise implied in ownership title to repudiate such usage. The rights arising from them are connected to property, i.e. they are independent of owner (they belong to, so called, *everyday owner*). The law adopts a principle of Freedom of Contract – all servitudes which are possible, and not in contradiction to cogent (mandatory) norms, are allowed. Consequently, servitudes aimed at nature conservation, would be admissible under these provisions.

Personal Servitudes (Act on Ownership and Other Real Rights, Art. 199) are connected to persons entitled to use the rights granted to them by personal servitude in relation to the servient thing (movable or immovable). For personal servitudes the law adopts a *numerus clausus* principle- the types of personal servitudes are exhaustively listed in the law. They are: *Usufruct* (the right to the *fruits/products* of a thing), *Right of use* (the right to use a thing in a specified manner), and *Habitation* (the right to use a real-estate or its part for housing).

Acquisition of real servitude may be effected through legal transaction, court decision or a decision of another competent authority, and based on legal provisions (Act on Ownership and Other Real Rights, Art. 218, paragraph 1). Personal servitudes are acquired through a legal transaction made by the owner of the servient property in favour of the benefactor of the personal servitude (Act on Ownership and Other Real Rights, Art. 218, paragraph 2).

Question No.2: If the answer to the first question is “Yes”, then in which form may the easement be described in the title?

- 2.1. It can be made only in general (e.g. by stating the purpose of the easement is nature conservation), without further specification;
- 2.2. More specified entries regarding the objective of the easement could be made in the land title, specifying which natural features (habitats, species, scenery etc.) of the property are protected;
- 2.3. Specific restrictions (i.e. negative obligations – prohibitions) to land use on the property could be listed in the land title (forfeiting some of the land use rights, for example the right to subdivide or develop the land);
- 2.4. In addition to restrictions, the land title can also list the allowed or required activities (positive obligations/instructions) and by whom these activities may or should be carried out;

- 2.5. Easement can be described in a very comprehensive manner, resembling detailed management plans, or refer to planning documents that are not registered with the deed and that can thus be updated more easily;
- 2.6. Other options not described above.

Answer No.2: Servitudes may be registered in the Land Register with specific restrictions for the owner of the servient property

Registering a property servitude in the Land Registry is a constituent part of its acquisition (Act on Ownership and Other Real Rights, Art. 220, paragraph 1). Benefactors of the property servitudes acquired by means of court decision or decision of another competent authority (Act on Ownership and Other Real Rights, Art. 223, paragraph 4), and of property servitudes acquired by the force of law (Act on Ownership and Other Real Rights, Art. 228, paragraph 1), are authorised to request its registration in the Land Register.

In relation to servitudes (easements) Land registration Act prescribes that “the substance and scope of such rights shall be entered as specifically as possible” (Land Registration Act, Art. 33, paragraph 1). Supporting documents on the content of servitude are explicitly prescribed only for the purposes of determining the spatial scope for consuming rights granted by the property servitude (Land Registration Act, Art. 33, paragraph 1). However, since the determination of the spatial scope of property servitude rights are submitted as part of the document “based on which registration is requested” (Land Registration Act, Art. 33, paragraphs 2 and 3), implicitly, this document could be used to specify other (non-spatial related) elements of the property servitude (e.g. those pertaining to nature conservation).

It is hard to determine which of the above mentioned categories Croatian nature conservation servitudes would fall under (no info about application of them in Croatia for nature conservation was available to the authors). Our understanding is that the legal framework is wide enough to allow nature conservation servitudes described under points 2.1, 2.2 and 2.3, but not 2.4, because servitudes impress upon the owner of the servient property an obligation only to refrain from fully exercising her ownership rights by way of allowing third party's subjective, servitude granted, rights on its property. The scope and level of detail at which servitudes will be described in the Land Register will depend on the practice of those registering property servitudes.

Question No.3: In cases if the easements cannot be described in the title of the property, does legislation allow including this information in the annex to the title, or notary deed? *You only need to answer this question in case if you answered “No” to the 2nd question*

Answer No.3 (if applicable): N/A

Question No.4: If conservation easements may be entered in the land title, please check if they can be entered:

- 4.1. On the basis of a voluntary agreement**
- 4.2. Between the land owner and a third party “in gross”.**

Answer No.4:

- 4.1. Yes. Servitudes (easements) can be based on the voluntary agreement and rights so created can be registered in the Land Register (provided they refer to property servitude).
- 4.2. No. Servitudes in gross (easements) can be concluded for specific, exhaustively listed, reasons which do not include nature conservation *per se*. However, insofar as nature conservation goals can be achieved through *Usufructu* and *Right of use* institutes it could be maintained that nature conservation servitudes can also be concluded as servitudes in gross.

Chapter 5.5. Case study: Czech Republic

Report compiled by Vojtěch Máca

Question No.1: Can easements be used to dedicate property / or part of it to the nature conservation purposes (in principle)?

Answer No.1: Yes, pursuant to Section 39 of Nature and Landscape Protection Act of 1992 (as amended) easements can be established for the protection of Sites of Community Interests (within the meaning of the Habitats Directive), noteworthy trees and other land with accumulated natural values. However, these easements are rather rare in practice (only for some SCIs).

Question No.2: If the answer to the first question is “Yes”, then in which form may the easement be described in the title?

- 2.7. It can be made only in general (e.g. by stating the purpose of the easement is nature conservation), without further specification;
- 2.8. More specified entries regarding the objective of the easement could be made in the land title, specifying which natural features (habitats, species, scenery etc.) of the property are protected;
- 2.9. Specific restrictions (i.e. negative obligations – prohibitions) to land use on the property could be listed in the land title (forfeiting some of the land use rights, for example the right to subdivide or develop the land);
- 2.10. In addition to restrictions, the land title can also list the allowed or required activities (positive obligations/instructions) and by whom these activities may or should be carried out;
- 2.11. Easement can be described in a very comprehensive manner, resembling detailed management plans, or refer to planning documents that are not registered with the deed and that can thus be updated more easily;
- 2.12. Other options not described above.

Answer No.2: 2.1. The registration of the easement described sub answer #1 in the Cadastre of Real Estate takes a form of an entry on the request from the nature protection authority (the one who signed the contract). The entry in the Cadastre says that there is an easement and that real estate concerned is protected as a small protected area (and Site of Community Interest). Yet, the contract between the land owner and nature protection authority – which stipulates the easement – shall contain conservation conditions and measures (see the excerpt from Nature and Landscape Protection Act below). Also, if such contract involves state-owned land (roughly majority of these contracts so far) there is no easement stipulated (and no any entry to the Cadastre).

Question No.3: In cases if the easements cannot be described in the title of the property, does legislation allow including this information in the annex to the title, or notary deed? *You only need to answer this question in case if you answered “No” to the 2nd question*

Answer No.3 (if applicable): n/a

Question No.4: If conservation easements may be entered in the land title, please check if they can be entered:

- 4.1. On the basis of a voluntary agreement
- 4.2. Between the land owner and a third party “in gross”.

Answer No.4:

- 4.1. Yes

4.2. Yes, the nature protection authority is either a representative of the state, region or municipality, hence the easement benefits legal (public) person. Even though that Section 39 of Nature and Landscape Protection Act is not explicit on this, the few such easements that are in place are stipulated in the name of the Czech Republic or a region (as a contractual party). See the excerpt from Nature and Landscape Protection Act below.

Question No.1: Can easements be used to dedicate property / or part of it to the nature conservation purposes (in principle)?

Answer: Yes, easements can be used to dedicate property / or part of it to the nature conservation purposes.

According to Danish law easements in principle can be used to dedicate property to nature protection purposes. The easements ('servitutter') may be described in a text directly entered in the title, or in a document that is attached and thus becomes part of the title.

Question No.2: In which form may the easement be described in the title?

- 2.13. It can be made in general (e.g. by stating the purpose of the easement is nature conservation), without further specification;
- 2.14. More specified entries regarding the objective of the easement could be made in the land title, specifying which natural features (habitats, species, scenery etc.) of the property are protected;
- 2.15. Specific restrictions (i.e. negative obligations – prohibitions) to land use on the property could be listed in the land title (forfeiting some of the land use rights, for example the right to subdivide or develop the land);
- 2.16. In addition to restrictions, the land title can also list the allowed or required activities (positive obligations/instructions) and by whom these activities may or should be carried out;
- 2.17. Easement can be described in a very comprehensive manner, resembling detailed management plans, or refer to planning documents that are not registered with the deed and that can thus be updated more easily;
- 2.18. Other options not described above.

Answer:

- More specified entries regarding the objective of the easement could be made in the land title, specifying which natural features (habitats, species, scenery etc.) of the property are protected.
- Specific restrictions (i.e. negative obligations – prohibitions) to land use on the property could be listed in the land title (forfeiting some of the land use rights, for example the right to subdivide or develop the land) - the right to conduct intensive agriculture, use of pesticides, fertilisers etc.
- In addition to restrictions, the land title can also list the allowed or required activities (positive obligations/instructions) and by whom these activities may or should be carried out; In the case of nature protection decisions (*fredninger*) the full decision is entered to the land title, this can include prescriptions for management, etc. this will also define who has the right/obligation to conduct these activities.

- Easement can be described in a very comprehensive manner, resembling detailed management plans, or refer to planning documents that are not registered with the deed and that can thus be updated more easily.
- Attention should be paid to the specific Danish system of establishing protection regimes, which is clearly defined in Legislation and has well established specific courts etc. See below.

The following easements (*servitutter*) can be mentioned as examples (please see original Danish text in the Annex):

Different limited rights over real estate, such as rights of movement, hunting, waiver and pre-emption are litigated as easements. Easements can be divided into private and public rights.

- Private right is when private individuals have entered a right of property over the property in the title document.
- Publicly-owned rights are when it is an authority that has been given a litigation right over the property. For example, it may be in the form of a conservation of buildings on the property. These rights may apply without registration. The reason why the authorities nevertheless choose to have them litigated is that enrollment has a great information value for the citizens.

An agreement between the owner of the property and others can be registered in the land registry if it establishes (changes or repeals) a right over the property which commits the property beyond the owner's ownership. For example, an agreement that causes others to share in a proceeds from the owner's sale of the property could not be registered as an easement.

For most documents, one or more attorneys must be stated in the document. It is the person entitled to approve changes, twists or cancellations.

The possibility to enter easements in the Land Register is regulated by the Land Registration Act, please see in Annex.

The concept of **designating land to permanent nature conservation** is central in Danish nature protection and the basis for establishing a number of existing easements on protected areas this concept is established based on the Law on Nature conservation.

Conservation declaration by ,fredning' is the name of a special protection of valuable natural areas, landscapes and ancient monuments. A conservation may relate to preservation of the current state or provision of a particular state, which must then be preserved. There may also be rules on public access to the area.

Fredning legally limits the rights of a landowner over his property. The Conservation Institute is characterised by the fact that once and for all, the scope of application of a particular geographic area is limited and that the restrictions on accessibility imposed thereby are implemented against compensation.

Question No.3: In cases if the easements cannot be described in the title of the property, does legislation allow including this information in the annex to the title, or notary deed? *You only need to answer this question in case if you answered "No" to the 2nd question*

Answer: N/A

Question No.4: If conservation easements may be entered in the land title, please check if they can be entered:

4.1. On the basis of a voluntary agreement

4.2. Between the land owner and a third party “in gross”.

4.1. Yes. It follows from the above mentioned that easements can be entered on the basis of a voluntary agreement.

4.2. Yes. Easements between land owner and a third party “in gross” are possible.

Chapter 5.7. Case study: Estonia

Report compiled by Siim Vahtrus

Question No.1: Can easements be used to dedicate property / or part of it to the nature conservation purposes (in principle)?

Answer: Yes, easements can be used to dedicate property / or part of it to the nature conservation purposes

According to the general norms regulating easements (“servitudes” in Estonian legal language) in the Law of Property Act, these may take the form of entitling another person or owner of “dominant” immovable to either use “servient” immovable or obliging the owner of the “servient” immovable to refrain from particular exercises of ownership rights (e.g. not construct any new buildings, cut trees or similar). Also, certain actions may be required from the owner for the benefit of another person as part of a servitude called “real encumbrance”. The law does not preclude any purpose for which the easements may be used, i.e. it can also be used for nature conservation purposes.

Question No.2: In which form may the easement be described in the title?

- 2.19. It can be made in general (e.g. by stating the purpose of the easement is nature conservation), without further specification;
- 2.20. More specified entries regarding the objective of the easement could be made in the land title, specifying which natural features (habitats, species, scenery etc.) of the property are protected;
- 2.21. Specific restrictions (i.e. negative obligations – prohibitions) to land use on the property could be listed in the land title (forfeiting some of the land use rights, for example the right to subdivide or develop the land);
- 2.22. In addition to restrictions, the land title can also list the allowed or required activities (positive obligations/instructions) and by whom these activities may or should be carried out;
- 2.23. Easement can be described in a very comprehensive manner, resembling detailed management plans, or refer to planning documents that are not registered with the deed and that can thus be updated more easily;
- 2.24. Other options not described above.

Answer:

According to the Law of Property Act, land register shall only contain information prescribed by the law. However, documents which are the basis for the making of the land register entry may be referred to in order to specify the content of the right (unless this has been forbidden by a specific norm).

The entries that can be made in the title related to an immovable in the land register are in more detail regulated by the Land Register Act. Servitudes are described in the third division of the register part. According to the Act, **entries must contain the content of the servitude, including the person whom it benefits and reference to source documents and documents which prove the more detailed information on the content of the servitude.**

The content of the servitude as it is described in the title held in the land register varies according to the type of servitude:

- 1) Real servitude – certain use of the „servient“ immovable by „dominant“ immovable or a particular extent to which the owner of „servient“ immovable refrains from the exercise of their ownership;

- 2) Personal right of use – same as real servitude (the main difference being that the servitude is not tied to another immovable property but instead to a person);
- 3) Real encumbrances – performance of particular acts for the benefit of a person.

There are **no specific provisions on how detailed the entries can be**; however, as there is a possibility to reference to other documents that may specify/detail the in the entry, in practice it would be reasonable to list restrictions or activities (allowed or required) in the title in a more general manner and add very detailed descriptions, including maps etc. in the documents that are referred to in the title (e.g. the agreement between the land owner and state authority or nature conservation organisation based on which the entry is made).

In addition to easements that may be created based on the general norms, there are specific norms regarding servitudes made in favour of the Republic of Estonia for protection of valuable forest areas (so-called „key habitats“). In practice, this is the main type of nature conservation easements used in Estonia. According to the specific norms found in the Forest Act, such servitudes (personal rights of use) may be set based on a voluntary notarised contract in favour of the state represented by the Ministry of Environment for a term of 20 years. The contract can only be concluded to protect areas outside protected natural objects (which are protected in accordance with the Nature Conservation Act). The servitude may take the form of prohibiting or restricting economic activities and the owner of forest must ensure preservation of the key habitat. Yearly compensation is paid to the owner, based on a detailed methodology.

Question No.3: In cases if the easements cannot be described in the title of the property, does legislation allow including this information in the annex to the title, or notary deed? *You only need to answer this question in case if you answered “No” to the 2nd question*

Answer: N/A

Question No.4: If conservation easements may be entered in the land title, please check if they can be entered:

4.1. On the basis of a voluntary agreement

4.2. Between the land owner and a third party “in gross”.

Answer:

All conservation easements described above (both general as well as the specific one in forests) can be entered into on the basis of a voluntary agreement only. As described, they may be agreed between land owner and a third party “in gross” in case of personal rights of use or real encumbrances (real servitudes are related to another immovable, not a specific person).

Chapter 5.8. Case study: Finland

Report compiled by Ari Neuvonen, Jouni Rauhala, Pirkko Posio, Saana-Kaisa Ylitalo and Sari Sivonen - ELCN

Question No.1: Can easements be used to dedicate property / or part of it to the nature conservation purposes (in principle)?

Answer No.1: Yes

In Finland the private nature conservation areas are not established as easements, but the nature conservation actions are entered into the Real Estate Register as regulatory decision made by decision-making authority (**Authority Decision**). However, this is more like a conceptual difference; the Authority Decision can be used to limit an estate or part of the estate for nature conservation purposes so that the land ownership stays the same. Finnish definition of easement and land data bank system are explained in the comments.

Comments:

In Finnish real estate and property law the definition of an easement means a right / entitlement to use someone else's land or water area. The right is usually based on decision made by a public authority and the right is restricted to a certain area. The easement, information on its contents and changes are entered into the Real Estate Register.

However, in Finnish legislation the conservation areas are established through regulatory authority decision, and they are not considered as easements. The Authority Decision that establishes the conservation area, is entered into the Real Estate Register and the regulatory decision is shown in the cadastral certificate.

Conservation areas founded on a state-owned area in accordance with the Nature Conservation Act (1096/1996) or the legislation in force prior to it; (448/2000) are entered into the Real Estate Register as real estates. Also the private conservation areas that are established by Authority Decision are entered into the Real Estate Register. This applies to all conservation decisions; voluntary conservation agreements initiated by the land owner as well as the one-sided conservation decisions made the authority. The entry refers to the Authority Decision and attached to this document (Authority Decision) can be for example a management plan for the area in concern. These Authority Decisions are not entered into the Title and Mortgage Register. The Authority Decisions can be obtained from the decision-making authority or the landowner.

Finnish land data bank system includes the Title and Mortgage Register (Register of Land Ownership and Mortgage) and Real Estate Register. The Title and Mortgage Register includes information of the real estate's owner (registered title), mortgages on the real estate and special rights (for example leasehold and division of possession). The title certificates, abstract of the register of mortgages and leasehold certificate can be obtained from the Title and Mortgage Register. The *title certificate* is a document that shows the ownership of the register unit; it does not include easements or the conservation areas established through the regulatory authority decision. The easements are shown in the *abstract of the register of mortgages* which can be obtained from the Title and Mortgage Register. The easement formation is done in the cadastral procedure.

The Real Estate Register includes information on the locations of the estates (i.e. cadastre index map) and following property data:

- basic information, like property identifier, name, area and archive reference
- formation of the estate
- unseparated parcels and interests in a joint property unit
- land use plans and prohibitions on building
- easements, use rights and restrictions of use

- information on legal cadastral survey and regulatory authority decisions concerning the register unit (for example decisions on private land conservation areas).

Question No.2: If the answer to the first question is “Yes”, then in which form may the easement be described in the title?

- 2.25. It can be made only in general (e.g. by stating the purpose of the easement is nature conservation), without further specification;
- The regulatory Authority Decision is entered into the Real Estate Register (not the Register of Title), and the title certificate does not show the conservation status of the area. Instead the cadastral certificate (from the Real Estate Register) describes the nature conservation purpose only in general; that the area is conservation area (or there is a conservation area within the estate), reference number, name, location, authority who has made the decision and decision date.
- 2.26. More specified entries regarding the objective of the easement could be made in the land title, specifying which natural features (habitats, species, scenery etc.) of the property are protected;
- The regulatory Authority Decision that establishes the conservation area can be done in order to protect for example a certain habitat or species under strict protection. The Authority Decision for establishing nature conservation areas can be made in perpetuity (most commonly they are permanent) or for certain period. The authority can cancel (lift) the protection order in some cases (see Nature Conservation Act Section 27).
- 2.27. Specific restrictions (i.e. negative obligations – prohibitions) to land use on the property could be listed in the land title (forfeiting some of the land use rights, for example the right to subdivide or develop the land);
- The title itself does not include restrictions, but the restrictions are set in the Authority Decision. Examples of forbidden actions:
 - cutting trees and other forest management actions;
 - picking up or damaging alive or dead plants, part of plants or mushrooms;
 - digging ditches and otherwise damaging, changing and picking up soil and bedrock;
 - building houses, structures, roads and paths;
 - using motor vehicles (except provisions mentioned in Off-Road Traffic Act (670/1991) 4§)
 - capturing, killing or harassing wild vertebrates or destroying their nest and capturing or collecting invertebrates, and;
 - any other kind of activities that changes the landscape of the area or has a disadvantageous effect on the natural conditions or survival of the species.
- 2.28. In addition to restrictions, the land title can also list the allowed or required activities (positive obligations/instructions) and by whom these activities may or should be carried out;
- The title itself does not include allowed activities, but those can be set in the Authority Decision. Examples of allowed actions:
 - Finnish everyman’s rights;
 - hunting and fishing, including hunting the small predators;
 - picking up berries and gathering edible mushrooms;
 - implementing a forest or mire restoration.
- The authority decision can include required activities that support the conservation and they can be assigned to certain actor. For example the landowner can be obligated to move/tear down a building.
- 2.29. Easement can be described in a very comprehensive manner, resembling detailed management plans, or refer to planning documents that are not registered with the deed and that can thus be updated more easily;

- The Authority Decision can have enclosures like for example management plan for the area. The management plans are not shown in the register (or cadastral certificate), but they can be enclosed to the authority decision that has been entered into the Real Estate Register.

2.30. Other options not described above.

- Conservation can also be done by making a conservation agreement for a fixed period. This conservation is also entered into the Real Estate Register.

Question No.3: In cases if the easements cannot be described in the title of the property, does legislation allow including this information in the annex to the title, or notary deed?

Answer No.3 (if applicable): Yes

Comments:

The easements or easement formation is not regulated in the Finnish Nature Conservation Act. The conservation areas are not shown in the Real Estate Register as an easement; they are entered into the Real Estate Register as Authority Decision. However, these Authority Decisions are entered into the Real Estate Register (not the decision itself, but a notation / entry of it). This entry refers to the authority decision document which can have enclosures like for example management plan for the area. This means that management plans are not shown in the register (or cadastral certificate), but they can be enclosed to the Authority Decision that has been entered into the Real Estate Register. This kind of decisions are not entered into the Register of Land Ownership and Mortgage. This applies to both voluntary conservations that are initiated by the land owner and also the coercive decisions made by the authority.

Question No.4: If conservation easements may be entered in the land title, please check if they can be entered:

4.1. On the basis of a voluntary agreement.

4.2. Between the land owner and a third party “in gross”.

Answer No.4:

4.3. Yes/No. Not as easements, but as Authority Decisions on the basis of a voluntary agreement. See answer No. 3.

4.4. Yes.

Chapter 5.9. Case study: France

Report compiled by Maud Latruberce

Prior notice:

In France, a new type of conservation easements has recently been introduced by the Biodiversity law adopted on 08/08/2016 (the exact title of the law being “Loi n° 2016-1087 du 8 août 2016 pour la reconquête de la biodiversité, de la nature et des paysages”), more precisely in articles 72 and 73 of this law. These easements are called in French « Obligations réelles environnementales », which can be translated literally as “real environmental obligations”. This is this new tool that is described hereunder.

Until 2016, there was only one type of conservation easement, which still exists and is called “servitude environnementale” (environmental servitude literally) but it has rarely been used mainly because it necessitates the benefit to a neighbouring property in order to be established. There needs to be a “servient tenement”, where restrictions/requirements are applied and a “dominant tenement” which benefits from these restrictions (from the environmental point of view). Moreover, such servitudes did not make it possible to add “positive obligations” (e.g. creating grass strips), which is now possible with the new tool. This is why a new type of conservation easement was introduced in 2016. Unfortunately, the tool is too new to get any substantial feedback. A project officer; Julie Babin, has just been hired by the Federation of the conservatoires d’espaces naturels to promote the tool (especially to the CENs) and act as a referent for any upcoming contract. In order to get up-to-date information on this new tool and its implementation, a phone meeting with Julie Babin was arranged.

It seems that up to now, only 1 contract has been signed for ecological compensation purposes (or perhaps it was only suggested and not yet even signed). Unfortunately, there is no system to gather information on these real environmental obligations, so it is impossible to know where this contract was signed nor to get a copy of it.

Question No.1: Can easements be used to dedicate property / or part of it to the nature conservation purposes (in principle)?

Answer No.1: Yes

Reference: Code de l’environnement, article L132-3, first §: « dès lors que de telles obligations ont pour finalité le maintien, la conservation, la gestion ou la restauration d’éléments de la biodiversité ou de fonctions écologiques. » In English: « as long as such obligations aim at maintaining, preserving, managing or restoring elements of biodiversity or ecological functions ».

Comments:

The obligations/easements are described in a contract, signed by both the landowner and a co-contracting entity (either a public body or a legal person acting for nature conservation). This contract must be published in the so-called “fichier immobilier” (land register), which includes historical information on each property (successive landowners, possible rural lease contracts attached to the land, etc.) and will now include the contract describing the real environmental obligations. These obligations will be recalled in future notarial deeds. For instance, if the property is sold, the easement will be mentioned in the deed of sale, which is the property title of the new owner. But if there is no change in property, the property title is not modified because of the creation of a conservation easement. There is no use in fact, because the information is published in the land register, which is a very reliable system.

Question No.2: If the answer to the first question is “Yes”, then in which form may the easement be described in the title?

Answer No.2: See above regarding where the easement may be described. There is no legal obligation regarding the way the easement is described. This will be decided between the two co-contracting parties. Contrary to the previous easement tool (the “servitude environnementale”), the new tool can include both restrictions and positive instructions/obligations. Reference: article L 132-3 in the Code de l’environnement. Then it is up to the notary to describe it in the notary deeds, or just specify that such plot(s) is subject to a conservation easement with the reference of the contract. Each time there is a change in property, the notary consults the land register and reports on the deed what is included in the land register. So, if there is a conservation easement attached to the property, the notary will mention it in the deed.

Comments:

Nothing is specified in the legal texts, except that owners can include in the contract “any real obligation they want” and that real obligations should be published to land register services. Ms Julie Babin confirmed that the content of the easement would be defined by the two signing parties.

Question No.3: In cases if the easements cannot be described in the title of the property, does legislation allow including this information in the annex to the title, or notary deed? You only need to answer this question in case if you answered “No” to the 2nd question

Answer No.3: N/A

Comments:

Actually, even though it is possible to describe the easement in the title of property/notary deeds, it can also be described in annex to the notary deeds. This was confirmed by Julie Babin. In the legislation, there is no mention of how the easement should be described, meaning that all options are possible.

Question No.4: If conservation easements may be entered in the land title, please check if they can be entered:

- 4.1. On the basis of a voluntary agreement**
- 4.2. Between the land owner and a third party “in gross”.**

Answer No.4:

- 4.5. Yes. Article L132-3 of the environment Code clearly mentions that landowners CAN sign an agreement [...] to create real obligations on their property (in French “Les propriétaires de biens immobiliers peuvent conclure un contrat [...] en vue de faire naître [...] les obligations réelles que bon leur semble »).
- 4.6. Yes. Article L132-3 of the environment Code stipulates that real obligations are created via the signature of an agreement between a landowner and a public body or a legal person legal person governed by private law (in French “un contrat avec *une collectivité publique, un établissement public ou une personne morale de droit privé*”).

Chapter 5.10. Case study: Germany

Report compiled by Tilmann Disselhoff, ELCN

Question No.1: Can easements be used to dedicate property / or part of it to the nature conservation purposes (in principle)?

Answer No.1: Yes

Comments:

There are two types of easements in German law: appurtenant easements and easements in gross. To my knowledge, only the latter form has been used for conservation purposes. Easements in gross are called “restricted personal easements” in German law. They are codified in §§ 1090-1092 of the German Civil Code (see annex). Although they have not been designed for conservation purposes, they can also be used for nature conservation.

Question No.2: If the answer to the first question is “Yes”, then in which form may the easement be described in the title?

- 2.31. It can be made only in general (e.g. by stating the purpose of the easement is nature conservation), without further specification;
- 2.32. More specified entries regarding the objective of the easement could be made in the land title, specifying which natural features (habitats, species, scenery etc.) of the property are protected;
- 2.33. Specific restrictions (i.e. negative obligations – prohibitions) to land use on the property could be listed in the land title (forfeiting some of the land use rights, for example the right to subdivide or develop the land);
- 2.34. In addition to restrictions, the land title can also list the allowed or required activities (positive obligations/instructions) and by whom these activities may or should be carried out;
- 2.35. Easement can be described in a very comprehensive manner, resembling detailed management plans, or refer to planning documents that are not registered with the deed and that can thus be updated more easily;
- 2.36. Other options not described above.

Answer No.2:

Yes to 2.1, 2.2, 2.3, 2.4 (not 100% sure), and 2.5.

Comments:

A restricted personal easement can limit the purpose of the servient property to nature conservation. This limitation can be defined in general terms or can be more specific and be linked to particular natural features (e.g. target habitats or species). Land use restrictions can also be specified in the easement. Moreover, the easement can refer to external planning documents, such as site management plans or the bylaws of a nature reserve. The legally possible scope and content of each easement will be decided by the notary and the land registry on a case-by-case basis – there is no common definition of what level of detail is acceptable. Some notaries are known to be more flexible in this regard and hence more popular among conservation NGOs.

Question No.3: In cases if the easements cannot be described in the title of the property, does legislation allow including this information in the annex to the title, or notary deed?

Answer No.3: n/a

Question No.4: If conservation easements may be entered in the land title, please check if they can be entered:

4.1. On the basis of a voluntary agreement.

4.2. Between the land owner and a third party “in gross”.

Answer No.4:

4.7. Yes

4.8. Yes

Comments:

The use of restricted personal easements for nature conservation is not very common in Germany, but not exotic either. Most “conservation easements” are registered due to stipulations of public funding programmes (e.g. for properties purchased with LIFE funding), but also increasingly as part of the compensation requirements pursuant German conservation legislation, e.g. for properties subject to obligatory environmental compensation measures linked to a construction permit.

Chapter 5.11. Case study: Greece

Report compiled by Elias Demian

Question No.1: Can easements be used to dedicate property / or part of it to the nature conservation purposes (in principle)?

Answer No.1: No

The existing property legislative framework does not foresee any easement for conservation purposes. Easements, however, are part of the real property rights (“Pragmatikes doulies” in Greek). In the Greek law it is mentioned that real property right may be acquired on a property for the benefit of the current owner of a third property, securing a benefit to the latter (real property easement). By virtue of a real property easement, the owner of the servient tenement shall bear the burden either of accepting some use of his property by the owner of the dominant tenement, or abstaining from certain acts which he would have been entitled to base on his right of ownership. Real property easements are constituted by means of a contract or by continuous possession. The provisions governing continuous possession of real property and the conveyance of property by agreement, apply also in regards to the real property easements.

Based on the Civil code for the real property (articles 1118 – 1141) easements between property owners are foreseen. There are two types of easements: Easements on real estate and personal easements. For the easements on real estate, the beneficiary of the easement is the owner of the benefiting real estate (International real estate handbook: acquisition, ownership, and sale of real estate, John Willey, 2005). The creation of any type of easement on real estate requires a legal transaction conducted by a notary and the registration to the Greek Land registry (“Ipothikofilakio” in Greek or “Ktimatologio”). Greek law also provides for the subscription of easement through usucaption (after 10 years of possession of real estate in good faith and after 20 years in bad faith).

Examples of easements:

- Right of passage or transit through a neighbouring area
- Right of transmission of electricity/water/energy through a neighbouring area
- Prohibitions/restrictions on construction etc.

The right of property to property is fundamental, as provided in the Greek constitution article 17 (Greek text available: <http://www.hellenicparliament.gr/Vouli-ton-Ellinon/To-Politevma/Syntagma/article-17/>). This article identifies the primary right of property and defines the framework under which the State can expropriate land for the cases of wider economic and social benefit. Other elements of the property law exists in articles 1118 – 1141 of the Greek civil code.

Question No.2: If the answer to the first question is “Yes”, then in which form may the easement be described in the title?

Answer No.2: As it was mentioned under question 1, above, no conservation easements are foreseen in the Greek law.

Question No.3: In cases if the easements cannot be described in the title of the property, does legislation allow including this information in the annex to the title, or notary deed?

Answer No.3 (if applicable): Yes.

In case of easements (and not conservation easements, which are not foreseen in the Greek legislation), the legislation requires the recording of the legal transaction with a notary deed. This is then registered to the Greek Land registry (“Ipothikofilakio” in Greek or “Ktimatologio”).

Question No.4: If conservation easements may be entered in the land title, please check if they can be entered:

4.1. On the basis of a voluntary agreement

4.2. Between the land owner and a third party “in gross”.

Answer No.4:

4.9. No

4.10. No

Chapter 5.12. Case study: Hungary

Report compiled by Csaba Kiss

Question No. 1: Can easements be used to dedicate property / or part of it to the nature conservation purposes (in principle)?

Answer No. 1: No

Comments:

Based on a research of the applicable laws of Hungary, it can be concluded that easements cannot be used to dedicate a property or a part of it to nature conservation purposes, not even in principle.

According to Art. 5:160 of the Civil Code of Hungary, the reasons for which an easement can be established are *quasi* listed. There are a number of reasons listed already in the Civil Code itself (see Annex). The additional reasons that are not spelled out should comply with the requirement set by the Civil Code as “*any other similar purpose beneficial for the actual possessor of the land*”. This quite restrictive approach that in fact requires that a purpose for an easement should be beneficial for the possessor (not necessarily the owner) of a dominant tenement excludes the establishment of an easement in gross for conservation purposes on a contractual basis.

There is another legal instrument in domestic law called “*közérdekű használat*” that can be best translated as right of use for public purpose. Such right of use can stem from law (as regulated by Art. 5:27 of the Civil Code) or from an individual decision of a public authority (as regulated by Art. 5:164 of the Civil Code). However, none of these legal bases are sufficient to create an easement in gross for conservation purposes.

There are (mostly appurtenant) easements that are regulated by such aforementioned specific laws (Acts of Parliament) that define obvious obligations for landowners. These laws contain detailed arrangements of such easements but given that their purpose and functioning does not relate to conservation objectives, in our understanding there is no need to provide a detailed national language and / or an English language citation in the Annex.

As an exemplary listing, these laws and respective easements are the following:

- Act No. 38 of 1993 on Mining: easement for mining (Art. 38)¹⁰
- Act No. 57 of 1995 on Water Management: easement for water flow and easement for water use (Art. 20)
- Act No. 53 of 1996 on Nature Conservation: easement for accessing caves (Art. 50)¹¹
- Act No. 100 of 2003 on Electronic Communication: easement for placing electronic communication installations (Art. 94/A)
- Act No. 86 of 2007 on Electric Energy: easement for installing transport or transmission structures connected to power plants (Art. 131)
- Act No. 89 of 2007 on State Border: right of use for public purpose of all lands within a 60 meter distance from the state border (Art. 5)¹²
- Act No. 40 of 2008 on Gas Supply: easement for accessing underground gas storages (Art. 124/B)¹³

¹⁰ It is an easement in gross whose beneficiary is the mining rights holder.

¹¹ This is an easement in gross given that it does not require an adjacent property and the beneficiary is the nature conservation agency and not a dominant tenement's owner.

¹² This is also an easement in gross, but its beneficiary is subsequently defined by the Government in a government decree and registered in the Land Register.

¹³ This easement is slightly different from all other traditional easements because it is not a classical appurtenant but a quasi in gross easement. It does not require that an adjacent surface land be owned by the beneficiary, so there is no traditional surface dominant tenement, only a servient tenement. Its beneficiary is defined by the law and it is always the Hungarian

- Act No. 37 of 2009 on Forests, the Protection of Forests and Forestry: easement for accessing forest parcels if not connected to roads (Art. 88)
- Act No. 127 of 2011 on Emergency Protection: easement for installing public alarm devices (Art. 21)¹⁴
- Act No. 102 of 2013 on Fishery and the Protection of Fish: easement for accessing fishing waters (Art. 36)¹⁵

Out of this list, the only one easement that resembles the easement in gross for conservation purposes the most is the one regulated by the Act on Nature Conservation (Art. 50). However, that section of the law does not define any purpose of the easement and its only objective is to ensure access of the nature conservation public authority to caves (see Annex). Therefore, following the qualification of the research framework, such an easement does not fall under the category of easements we are searching for.

Question No. 2: If the answer to the first question is “Yes”, then in which form may the easement be described in the title?

Answer No. 2: N/A

Comments:

Given that there is no legal possibility to establish an easement in gross for conservation purposes in Hungary, this question is not applicable. Indeed, traditional appurtenant easements and also rights of use for public purpose can be registered in the Land Register. For the detailed rules of registering appurtenant easements in the Land Register, please see the Annex.

Question No. 3: In cases if the easements cannot be described in the title of the property, does legislation allow including this information in the annex to the title, or notary deed?

Answer No. 3: N/A

Comments:

There are three sections for every piece of land in Hungary in the Land Register: Section I includes the natural data of the land including its address (if applicable), size, agricultural category, etc. and easements (in case of a dominant tenement); Section II includes rights related to the land including property right; Section III includes legally relevant facts, such as mortgage or easement (in case of a servient tenement). As can be seen from this system, the title of the property can include easement and such entry is either displayed in Section I or Section III, depending on whether it is the dominant or the servient tenement, respectively. This nevertheless does not alter our initial statement that easements for conservation purposes cannot be established for lands in Hungary in our understanding.

Question No. 4: If conservation easements may be entered in the land title, please check if they can be entered:

4.1. On the basis of a voluntary agreement.

4.2. Between the land owner and a third party “in gross”.

Answer No. 4: N/A

Comments: Given our initial statement that easements for conservation purposes cannot be established for lands in Hungary in our understanding, this question is not applicable.

State. This stems from the fact that the underground gas storage facility can only be owned by the State and thus the dominant tenement is in fact underground.

¹⁴ This is an easement in gross given that it does not require an adjacent property and the beneficiary is the emergency protection agency and not a dominant tenement’s owner.

¹⁵ Again it is an easement in gross whose beneficiary is the natural or legal person having fishery rights.

Chapter 5.13. Case study: Ireland

Report compiled by Jonathan Moore

Question No.1: Can easements be used to dedicate property / or part of it to the nature conservation purposes (in principle)?

Answer No.1: Yes, in principle, there is an appropriate instrument in Ireland that could be used to dedicate property or part of it to nature conservation purposes. Section 18 of the Wildlife Act, 1976 (as amended) (“the 1976 Act”) permits persons with the Minister’s approval to enter agreements with land owners to ensure that the management of their land will be conducted in a manner which will not impair wildlife or its conservation (“Section 18 Agreements”). The use of Section 18 Agreements as between private individuals is untested in Ireland, but appears to be well suited to creating rights equivalent to the “conservation easements” described in the background document. The traditional conveyancing instruments such as easements and covenants are not suited to such a purpose in Ireland largely because they cannot be used to create rights in gross and may be difficult to enforce against present or future owners of the land.

Comments:

The suitability of Section 18 Agreements in creating “conservation easements”, and the reasons why traditional easements or covenants are not suitable, are discussed in detail below and in Annex. Any reference herein to “conservation easements” is to the type of instrument used in the United States, as described in the background document (i.e. a right held by a public body or a charitable conservation organisation to restrict the use of land not in their ownership for a conservation purpose) and should not be confused with the traditional easement under Irish law, which is a much more restrictive instrument, as explained below. Needless to say, these advices are only general in nature and much depends on the precise purpose that is intended to be created by the “conservation easement”, therefore, the legal instrument used to create any such rights should be assessed on a case by case basis.

Management Agreements under the Wildlife Acts

The most promising option for creating “conservation easements” under Irish law is Section 18 of the 1976 Act, which provides for the Minister or any other person with his approval, to enter into an agreement with a person having an interest in or over land to ensure that the management of the land will be conducted in a manner specified in the agreement which will not impair wildlife or its conservation. “*Management*” is defined as the use of the land for agriculture or forestry, the carrying out of works on, in or under the land, the making of any change in the physical, topographical or ecological nature or characteristics of the land and the use of the land for educational or recreational purposes. “*Wildlife*” is defined as including flora and fauna. Specified Ministers and the relevant local authorities must be consulted prior to a Section 18 Agreement being made. A Section 18 Agreement may also provide that the land owner is paid a lump sum or periodic payments by the Minister or other person approved by the Minister. A Section 18 Agreement may provide that it is enforceable against successors in title and it may be registered as a burden affecting registered land. Therefore, on the face of it, Section 18 Agreements are property rights that can exist in gross.

Section 18 Agreements have been used by Irish statutory authorities with responsibility for ensuring compliance with European legislation in relation to environmental protection (e.g. protecting the integrity of land in or adjacent to designated Special Areas of Conservation under the Habitats Directive or Special Protection Areas under the Birds Directive). This may be because Regulation 12 of the European Communities (Natural Habitats) Regulations, 1997, provides a statutory basis for Section 18 Agreements between the State authorities and land owners in or adjacent to protected European sites. In this context, there is scope in section 18 of the Wildlife Act for such agreements to be made with landowners that are not on or adjacent to European sites (i.e. in a private law context). It is suggested by learned authorities that Section 18 Agreements have the potential to provide

something like the “conservation easements” used in the United States, but this has never been properly explored.

It is not clear from the legislation or commentary what “other persons” would be entitled to make these agreements with land owners. The only statutory restrictions on a third party (such as a charitable nature conservation organisation or individual) from entering such an agreement seems to be getting the Minister’s prior approval and engaging in a consultation with three other public bodies (the Minister for Agriculture and Fisheries, the Commissioners for Public Works and the planning authority in whose area the relevant land is situate). This would probably entail a representation to the Minister prior to entering a Section 18 Agreement, with details of the person obtaining the interest in the lands in question pursuant to the Agreement, in other words a demonstration of the credentials and motivations of that person. This would have to be followed by or carried out in tandem with a consultation with the three other public bodies mentioned in the Section with details of the lands, the parties, the conservation purpose, the proposed duration, etc. As stated, Section 18 Agreements between private individuals appear to be untested, so these are assumptions as to the process.

While it is clear from the background document that “*regulatory restrictions on land use*” are not the subject of this study, rather the focus is on “*direct contractual agreements between two private parties*”, it is worth discussing another regulatory provision in order to shed light on how Section 18 Agreements could operate if made between private individuals.

Ireland has a scheme under section 47 of the Planning and Development Act, 2000 (as amended) (“the 2000 Act”) that allows a planning authority to enter into an agreement (“Section 47 Agreements”) with any person interested in land in their area, for the purpose of restricting or regulating the development or use of the land, either permanently or for a specific period, and any such Agreement may contain such incidental and consequential provisions as are necessary or expedient for the purposes of the Agreement. Section 47 Agreements “run with the land”, such that the planning authority can enforce the Agreement against subsequent owners of the land as if the planning authority were possessed of adjacent land and as if the Agreement had been expressed to be made for the benefit of the land. However, the Courts have decided that if the proper planning and development of an area changes, these agreements may be overturned and development contrary to the original agreement permitted.

Section 18 Agreements entered into between private individuals could operate in the same way as Section 47 Agreements, so that they run with the land and are enforceable against subsequent owners of the land as rights in gross. However, if the owner of the land (being a party to the original agreement or a successor in title to the lands) that is subject to the Section 18 Agreement decides in future to challenge the Agreement, they might successfully argue that a Court should consider changes to the proper planning and development of an area in order to overturn a Section 18 Agreement (e.g. if a new local authority development plan showed that the need for housing in the area had become much greater since the Section 18 Agreement was entered into, a Court might take the view that it should permit development to facilitate the development plan, despite it being contrary to the Section 18 Agreement). This potentially poses a risk to the permanence of a Section 18 Agreement.

Similarly, planning authorities in Ireland have very wide-ranging powers to make a compulsory acquisition order (CPO) of land for the purpose of performing their statutory functions in the public interest either now or in the future. Therefore, in theory, a planning authority could acquire an interest in lands by CPO that are subject to a Section 18 Agreement and use them for development that is in pursuit of their statutory function but contrary to the Section 18 Agreement (e.g. they could CPO lands that are preserved by a Section 18 Agreement in order to develop a motorway through the lands in pursuit of the aims of the local development plan). Whilst the beneficiaries of the interest in the land might receive compensation for the CPO, there is very little that can be done to prevent the CPO process, so long as the planning authority can demonstrate that the CPO is in the public interest. It is another risk to the permanence of the protection that could be afforded by a Section 18 Agreement.

Easements

In the Irish Land and Conveyancing Law Reform Act, 2009 (“the 2009 Act”), an easement is recognised as a legal interest in land that can be created or disposed of and may be registered as a burden affecting registered land. However, Ireland is a Common Law jurisdiction where the law is established by legislation *and* by caselaw. Caselaw has decided that there are four essential features of an easement, as follows:

- (i) An easement can only exist if it is appurtenant or annexed to some piece of land so as to benefit that land, therefore it cannot exist in gross. The “dominant tenement” is the land benefitted by the easement and the “servient tenement” is the land over which the easement exists.
- (ii) The easement must benefit the dominant tenement (not just the owner of the dominant tenement lands) and therefore the dominant and servient tenement must be neighbouring lands.
- (iii) The dominant and servient tenements must be owned or occupied by different persons.
- (iv) The right conferred by an easement must be capable of forming the subject-matter of a grant (i.e. of a category of property right that is regarded as capable of being transferred by deed from one person to another). Typical easements include the right to light, rights of way, rights of support or rights of water. However, rights which do not fall into these well-known categories can be claimed and recognised by the courts. There are no known easements for conservation purposes established in Ireland, but it is accepted that the known categories must adapt over time and changed circumstances. However, the Courts have tended to look more favourably on novel claims for positive rights (i.e. something that the dominant owner is entitled to do on the servient owner’s land) and not so favourably on negative rights (i.e. something that the servient owner is not entitled to do). For example, the Irish Courts have held that there is no right to “shade and shelter” from a hedge, in other words the dominant owner was not entitled to prevent the servient owner from removing the hedge (*Cochrane v Verner* (1895) 29 ILT 571). Similarly, it has been found that there is no right to protection of a building from wind and weather, in other words the owner of a building has no right to prevent the removal of a neighbouring building to protect his own building from wind and weather. This represents a difficulty if the purpose of the covenant is to restrict certain activities or development on the servient lands. It is quite possible to envisage the Irish Courts refusing to recognise an easement for conservation purposes if it is a negative construction that operates to restrict certain activities or development on the servient lands.

Given that an easement must fulfil these four essential ingredients in Irish law, it is considered to be an unsuitable instrument to use for trying to create “conservation easements” of the type described in the background document.

Covenants

In Ireland, a covenant is a promise under seal of a deed and is enforceable as between the parties under contract law rules. Whereas leasehold land is typically subject to covenants entered into between the lessor and the lessee (e.g. to pay the rent, to undertake maintenance work, etc.), covenants relating to freehold land were not common in Ireland until recently. However, this is changing and freehold covenants are relevant to the question at hand, since the land concerned would most probably be rural (i.e. not urban) and therefore likely to be freehold in tenure. Whilst there are difficulties concerning the enforceability of freehold covenants at Common Law, this has been resolved by the 2009 Act, which now makes freehold covenants enforceable against successors in title to the original owner. The provisions of the 2009 Act only apply to freehold covenants, whereas the Common Law Rules still apply to leasehold land.

There is no limiting distinction between positive and negative covenants, and a covenant is enforceable against successors in title to the lands. Freehold covenants are recognised as legal interests under the 2009 Act and may be registered as burdens affecting registered land. The main problem with using freehold covenants to create “conservation easements” is that they can only be created for the benefit of dominant lands over neighbouring servient lands.

Therefore, whilst freehold covenants are slightly more suitable than easements for imposing restrictions on development of land, it is still only possible to create covenants as “appurtenant” rights. Furthermore, the 2009 Act makes an express exception that tenants of less than 5 years on the lands will not be subject to the covenant, which may jeopardise the purpose of the covenant. It may be possible for separate agreements to be agreed as

between the servient owner and the short-term tenant to ensure that the tenant does not undertake activities that contravene the purpose of the covenant, but this is an added complication. The other feature of the 2009 Act is that such covenants are capable of being modified or discharged in future, which would undermine the objective of long-term protection of the land.

Briefly, leasehold covenants could be used to create a positive or negative obligation on a user of land for conservation purposes, for example in the following manner:

1. A landowner could transfer his/her freehold interest into a trust with a charitable purpose, the beneficiary of which is a company with objects that are charitable in nature;
2. A long-term lease could then be created over the land (the company being the lessor), which contains a covenant for a conservation purpose;
3. The leasehold interest is sold (probably at a reduced value reflecting the restriction placed on the land) and the lessee becomes subject to the conservation covenant and therefore prohibited from undertaking any activity or development in conflict with that covenant.

As can be seen, this type of arrangement would be complicated to establish and potentially unreliable in the long-term (e.g. if the company became insolvent, the lease could fall into the wrong hands and be surrendered, merged or forfeited to unlock the “development potential” of the lands for financial gain). Furthermore, it is questionable whether the aims of a charitable conservation organisation or individual would qualify as a “charitable purpose” as defined by section 3 of the Charities Act, 2009.

Question No.2: If the answer to the first question is “Yes”, then in which form may the easement be described in the title?

- 2.37. It can be made only in general (e.g. by stating the purpose of the easement is nature conservation), without further specification;
- 2.38. More specified entries regarding the objective of the easement could be made in the land title, specifying which natural features (habitats, species, scenery etc.) of the property are protected;
- 2.39. Specific restrictions (i.e. negative obligations – prohibitions) to land use on the property could be listed in the land title (forfeiting some of the land use rights, for example the right to subdivide or develop the land);
- 2.40. In addition to restrictions, the land title can also list the allowed or required activities (positive obligations/instructions) and by whom these activities may or should be carried out;
- 2.41. Easement can be described in a very comprehensive manner, resembling detailed management plans, or refer to planning documents that are not registered with the deed and that can thus be updated more easily;
- 2.42. Other options not described above.

Answer No.2:

Assuming the “conservation easement” is being created by a Section 18 Agreement, it can be described in as much detail as required in the Agreement, since the entry in the Land Registry only refers to the burden and the detail is contained in the instrument itself (e.g. the deed, agreement or assent). However, it is not considered practical to refer to management plans or such like that are subject to change over time.

Comments:

The procedure for registering a burden in the Land Registry is that the owner of the lands or any person entitled to or interested in the burden with the concurrence of the registered owner of the lands can apply to the Land Registry by making an application in a form prescribed by the Land Registry and by submitting documentary evidence as to title (e.g. a stamped deed or Section 18 Agreement, and/or an assent by the registered owner to the creation of the burden). It is possible that the Land Registry would also require written approval from the Minister for the making of a section 18 Agreement prior to registering same as a burden. If the land Registry is satisfied it will make an entry on the title of the lands the subject matter of the Agreement. The entry on the register will be made by reference to or as an extract from the instrument showing title.

A Section 18 Agreement is likely to be very comprehensive as to the allowed or required activities on the land, therefore, all or any of the matters set out in 2.2 to 2.4 above could be set out in the wording of the deed, agreement or assent, depending on the purpose. However, an original or certified copy of the instrument would be filed in the Land Registry, therefore, it is difficult to envisage how the option described at 2.5 above would be possible without requiring a new instrument to be filed each time the “management plan” required updating. This would be cumbersome, probably incurring legal expenses and delay. If the instrument that was filed was general enough to allow a “management plan” to be updated without filing a new instrument, then it might not be robust enough to maintain the spirit of the original Agreement over the course of time (e.g. the strength of the management plans could be diluted over time). Therefore, 2.5 is not considered to be a practical option in terms of how the burden is registered on the title.

Question No.3: In cases if the easements cannot be described in the title of the property, does legislation allow including this information in the annex to the title, or notary deed?

Answer No.3:

As described in answer no. 2 above.

Question No.4: If conservation easements may be entered in the land title, please check if they can be entered:

4.1. On the basis of a voluntary agreement

4.2. Between the land owner and a third party “in gross”.

Answer No.4:

4.11. Yes.

4.12. Yes in the case of Section 18 Agreements.

Comments:

Section 69(2) of the Registration of Title Act, 1964 (as amended) requires the concurrence of the registered owner of the land for the registration of any burden (which includes Section 18 Agreements). Therefore, Section 18 Agreements can be entered into on a voluntary basis between a land owner and a third party. Section 69(1)(rr) Registration of Title Act, 1964 (as amended) permits a Section 18 Agreement to provide that it is enforceable against successors in title and allows it to be registered as a burden affecting registered land. Therefore, Section 18 Agreements would be a property right that can exist in gross.

For the avoidance of doubt, as stated above, the caselaw in Ireland follows that in England & Wales in that easements cannot exist in gross¹. Sections 48 and 49 of the 2009 Act, as referred to above, make it clear that it is only possible to create covenants as appurtenant rights that benefit a “dominant” piece of land. Therefore, the traditional conveyancing instruments of easements and covenants cannot exist in gross in Ireland.

Chapter 5.14. Case study: Italy

Report compiled by Iva Rossi

Question No.1: Can easements be used to dedicate property / or part of it to the nature conservation purposes (in principle)?

Answer: Yes.

According to the Italian law, easements in principle can be used to dedicate property to nature protection purposes.

The right of an owner are regulated by the Civil Code (art. 832 and successive) and by the Art. 42 of the Italian Constitution. The limits to the use of the right of property can be subdivided into:

- 1) limits in the public interest, aimed to subordinate the private interest to the public one in relation to the different categories of goods, which are included in the Civil Code and in numerous special legislations (expropriation, requisition, imposition of limits for public, environmental needs, etc.), and
- 2) limits to the private interest, disciplined by the Civil Code.

Easement (“servitù” in Italian language) is one of the main real rights of enjoyment on other people’s property, and it is defined by art. 1027 of the Civil Code, as the weight imposed on a given real estate, named “servant”, for the usefulness of another real estate, named “dominant”, belonging to a different owner. Easements can be distinguished between coercive easements (“servitù coattive”) and voluntary easements (“servitù volontarie”). The voluntary easements in line with art. 1058 of Civil Code, can be established for contract or will, followed by their transcription in the public Land Register (“Conservatoria dei Registri Immobiliari”). The coercive easements are established (art. 1032 c.c.) regardless the consensus of the owner of the servant, such as the easement of passage (art. 1051 c.c.), the passage of water (art. 1033 c.c.), the easement of telephone/power lines etc. They are established by a sentence of the judge or an administrative act.

Question No.2: If the answer to the first question is “Yes”, then in which form may the easement be described in the title?

- 2.43. It can be made only in general (e.g. by stating the purpose of the easement is nature conservation), without further specification;
- 2.44. More specified entries regarding the objective of the easement could be made in the land title, specifying which natural features (habitats, species, scenery etc.) of the property are protected;
- 2.45. Specific restrictions (i.e. negative obligations – prohibitions) to land use on the property could be listed in the land title (forfeiting some of the land use rights, for example the right to subdivide or develop the land);
- 2.46. In addition to restrictions, the land title can also list the allowed or required activities (positive obligations/instructions) and by whom these activities may or should be carried out;
- 2.47. Easement can be described in a very comprehensive manner, resembling detailed management plans, or refer to planning documents that are not registered with the deed and that can thus be updated more easily;
- 2.48. Other options not described above.

Answer: 2.1, 2.2., 2.3.

Both the voluntary easements and the coercive easements are to be transcribed in the Land Register (“Conservatoria dei Registri Immobiliari”) in order to be made public, accordingly to the art. 2643 of the Civil Code. But easements do not require the transfer of registration in the Cadastre.

The servant real estate is obliged by a negative obligation, that is not do something, whereas for the dominant real estate the obligation on the servant real estate corresponds with a right, that can be to do or to receive something as well as the right that the owner of the servant real estate does not do something.

Question No.3: In cases if the easements cannot be described in the title of the property, does legislation allow including this information in the annex to the title, or notary deed?

Answer: N/A

Question No.4: If conservation easements may be entered in the land title, please check if they can be entered:

4.1. On the basis of a voluntary agreement

4.2. Between the land owner and a third party “in gross”

Answer:

4.1: YES

4.2: YES

The LIFE project LIFE10 NAT IT 000241 TIB TRANS INSUBRIA BION carried out about 280 agreements with private landowners. In particular, in order to facilitate the achievement of agreements with private landowners, the Coordinating Beneficiary (Varese Province) declared the works of "public interest". Direct contacts with private landowners were established and in case of unknown landowners coercive measures (coercive easements) were used. Successful results were achieved because a total of 279 agreements (conservation easements) were signed between the Varese Province and private landowners, according to the art. 11 of law n. 241/1990. Specific decrees were issued and then transcribed and registered at the competent Land Registry Office (the rights acquired by the Varese Province on the lands becomes enforceable against third parties). In most of the easements, the Varese Province paid a compensation to the owners, as established by law (DPR 327/2001), using extra-LIFE funds.

Two types of easements were achieved: one for the restoration of ponds, with the obligation for the owner to allow the implementation of the works, to not damage the carried out works and to permit the access of the competent authorities for the implementation of the monitoring and maintenance works. The Varese Province paid an indemnity to the owner for subservience and occupation. Similar easements were established for the implementation of underpasses for amphibians: the owner has the permanent obligation to not implement any activity where the project works were carried out, to not damage the undertaken works and to permit the access to the area. The Varese Province paid an indemnity to the owner for subservience and occupation.

In case of forest works, because of their own nature, the owners subscribed, on a voluntary basis, specific voluntary agreements ("accordi bonari") with the commitment for the owner not to remove the tagged specimens, the willows and the log pyramids (installed by the project) for 20 years. The Varese Province paid a compensation to the owners also in these cases.

Chapter 5.15. Case study: Latvia

Report compiled by Inga Racinska and Girts Baranovskis

Question No.1: Can easements be used to dedicate property / or part of it to the nature conservation purposes (in principle)?

Answer: Yes, easements can be used to dedicate property or part of it to the nature conservation purposes, but there are some restrictions to the type of information that can be registered in the Land Register.

The Latvian Civil Law prescribes that owner has a right to alienate and give to others the certain rights of the property included in the ownership. Among others, it can be done by private volition on the basis of a contract. The Law also defines the term „servitude“, and distinguishes between personal servitudes (established for a benefit of a person) and real servitudes (established for a benefit of a specific property). However, the more specific legislation that applies to Land Register refers to “encumbrances” and “restricted territories”, not servitudes. See the section below for the types of information that can be entered. Please see Annex for Latvian Civil Law.

Question No.2: In which form may the easement be described in the title?

- 2.1. It can be made in general (e.g. by stating the purpose of the easement is nature conservation), without further specification;
- 2.2. More specified entries regarding the objective of the easement could be made in the land title, specifying which natural features (habitats, species, scenery etc.) of the property are protected;
- 2.3. Specific restrictions (i.e. negative obligations – prohibitions) to land use on the property could be listed in the land title (forfeiting some of the land use rights, for example the right to subdivide or develop the land);
- 2.4. In addition to restrictions, the land title can also list the allowed or required activities (positive obligations/instructions) and by whom these activities may or should be carried out;
- 2.5. Easement can be described in a very comprehensive manner, resembling detailed management plans, or refer to planning documents that are not registered with the deed and that can thus be updated more easily;
- 2.6. Other options not described above.

Answer: Options 2.1, 2.2, 2.3.

2.4 and 2.5 only as part of rental contracts

According to the Land Register Law (§ 44), those entries that are based on lawful transactions, judgement or a decision of a court, or which exist on the basis of Law itself, shall be corroborated in the form of entries. The security and restrictions of rights shall be corroborated in the form of notations. § 45 chapter 8 defines that the restrictions of rights and the security of rights for which the form of notations has been specified in other laws shall be entered in the form of notations.

Therefore, we conclude that the Land Register shall only contain information prescribed by the law.

The Land Register Law prescribes what type of information can be entered into Land Register in terms of entries (articles) and notations. National Real Estate Cadastre Law rules that the categories for encumbrances (apgrūtinājumi) in Latvia shall be determined by issuing a Rule on classification of encumbrances. The Law on Law On the Information System of Restricted Territories defines the term „restricted territories“ (apgrūtinātās teritorijas) – “a territory, to which restrictions in relation to the rights of use have been imposed in accordance with the law“. Following that Law, the Rule on the Information System of Restricted Territories establishes the categories for restricted territories for the benefit of entries into the Land Register. Those are listed in the extended list in Annexes 2 and 3 to the Rule. It includes a wide range of categories for protective zones (restricted

territories) in protected nature territories, their zones and forest protective belts (chapter 21). However, the list is limited to negative obligations (prohibitions), only.

Therefore, we conclude that it is possible to enter the following information into the Land Register:

- General restrictions for nature conservation purposes
- Specific restrictions for natural features, if such category is prescribed by the Law
- Specific restriction to the land use rights, if such category is prescribed by the Law

In practice, it might be possible to include a bit wider scope of information. The rental contracts are being used for entering a wider scope of restrictions into the Land Cadaster. According to the Civil Law (§ 1082), the restrictions on rights of use regarding ownership may be provided for by law, by court decision or **by private volition through a will or contract**, and such restriction may apply not only to the granting of various property rights to other persons, but also to the case where an owner must refrain from **certain rights of use**, or must suffer the use of such rights by others. § 2126 of the Civil Law prescribes that upon registering a lease or rental contract in the Land Register, the lessee or a tenant shall acquire property rights, which are valid also with respect to third persons.

Question No.3: In cases if the easements cannot be described in the title of the property, does legislation allow including this information in the annex to the title, or notary deed? *You only need to answer this question in case if you answered “No” to the 2nd question*

Answer: N/A

Question No.4: If conservation easements may be entered in the land title, please check if they can be entered:

4.1. On the basis of a voluntary agreement

4.2. Between the land owner and a third party “in gross”.

Answer:

4.1. Yes

4.2. Yes, but restricted

Yes, in theory, the entries to the Land Register can be based on voluntary agreements (by private volition on the basis of the contract). It should be possible to do it between land owner and third party “in gross” (benefitting another legal person), but it is not a common practice in Latvia. The only known cases are when the restrictions to certain land use rights are attached to the land rental contract, which is then registered in the Land Register.

Chapter 5.16. Case study: Lithuania

Report compiled by Gintaras Riauba and Zymantas Morkvenas

Question No.1: Can easements be used to dedicate property / or part of it to the nature conservation purposes (in principle)?

Answer: Yes

According to the Civil Code of the Republic of Lithuania, in principle easements (lit. "servitutai") can be used to dedicate property / or part of it to the nature conservation purposes. However, requirements related to the conservation of natural values (e.g. restrictions on economic activity) are established on the basis of the Government decision on "Special land and forest use conditions" and they are not voluntary. Servitudes, as well as Special Land and Forest use Conditions obligatory shall be entered into the Real Estate Cadastre and Real Estate Register in compliance with the provisions of the Law of the Republic of Lithuania on Land and the Real Estate Cadastre of the Republic of Lithuania. In this way, these requirements are always included in proprietary documents.

Question No.2: If the answer to the first question is "Yes", then in which form may the easement be described in the title?

- 2.7. It can be made only in general (e.g. by stating the purpose of the easement is nature conservation), without further specification;
- 2.8. More specified entries regarding the objective of the easement could be made in the land title, specifying which natural features (habitats, species, scenery etc.) of the property are protected;
- 2.9. Specific restrictions (i.e. negative obligations – prohibitions) to land use on the property could be listed in the land title (forfeiting some of the land use rights, for example the right to subdivide or develop the land);
- 2.10. In addition to restrictions, the land title can also list the allowed or required activities (positive obligations/instructions) and by whom these activities may or should be carried out;
- 2.11. Easement can be described in a very comprehensive manner, resembling detailed management plans, or refer to planning documents that are not registered with the deed and that can thus be updated more easily;
- 2.12. Other options not described above.

Answer: Option 2.1.

Comments:

The proprietary documents shall indicate only the code and the name of the servitude, the area of the territory where the servitude is applied, and the reference to the legal act on the basis of which the servitude is registered. For the owner of the servient thing the servitude only limits the right to freely dispose of the property. The obligation to ensure the functioning of the dominant thing (and the proper use of servitudes) lies with the owner of the dominant thing.

The Article 4.113. (3) of the Civil Code can be applied to the owner of dominant thing only.

Question No.3: In cases if the easements cannot be described in the title of the property, does legislation allow including this information in the annex to the title, or notary deed? *You only need to answer this question in case if you answered "No" to the 2nd question*

Answer No.3: N/A

Question No.4: If conservation easements may be entered in the land title, please check if they can be entered:

4.1. On the basis of a voluntary agreement.

4.2. Between the land owner and a third party “in gross”.

Answer LT:

4.13. Yes

4.14. Yes

Comments:

The statements are based on the statement of Civil Code, according which the grounds for establishing a servitude are 1) laws, 2) transactions (agreements) and 3) a court judgement while in cases stipulated by laws – 4) an administrative act. It is also important to note that the plotting of a servitude, predicted by transaction, in a land plot does not mean setting the servitude. In this way, only the exact area in which the proposed servitude would be applied are noted. The emergence of the rights and obligations arising from the servitude is related to two legal facts: 1) the existence of a contract, law, court decision or administrative act imposing a servitude; 2) the registration of a servitude in accordance with the procedure established by law, except in cases where the servitude is prescribed by law.

There can be easements that are based on voluntary agreement but NOT „in gross“ or the other way around (non-voluntary AND „in gross“) – no option exists for voluntary AND „in gross“ easements.

Chapter 5.17. Case study: the Netherlands

Report compiled by Patrick Nuvelstijn

Question No.1: Can easements be used to dedicate property / or part of it to the nature conservation purposes (in principle)?

Answer No.1: Yes

There are different forms, but in this study we name three most common forms:

- A. **Easement** - “Erfdienstbaarheid” in Dutch. It is based on civil law art. 5:70 lid 1 BW (BW =Civilian Codebook).

An easement is a burden, with which an immovable property – the property with easement – for the benefit of another immovable property – the prevailing property – is encumbered (art. 5:70 lid 1 BW). The immovable property stands for the land itself, it can therefore neither entail unused natural minerals/resources or sustainable objects related to the land (e.g. vegetation, buildings, etc.), nor water plots (MvA II, PG Boek 5, p. 253.). “Inheritance” thus entails more than just plots. Please see a more detailed explanation in Annex.

- B. **Qualitative obligation** - ‘Kwalitatieve verbintenis’ in Dutch. Qualitative obligation is also based on civil law art. 6:252 BW. This is an obligation for perpetuity in which the spatial status of the land is changed from (mostly) farmland to nature.

A qualitative obligation is the commitment to tolerate or not to do anything that would interrupt the peace of the owner of a registered property (regarding land and housing). It is characteristically, that the obligation arises from an agreement between parties. But it is also binding to other users of the registered property and if the property is being sold. So, the qualitative obligation is also binding to other users and to new acquirers (art. 6:252 BW).

A chain class generally has less legal enforcement than a qualitative obligation. It is a clause as part of an agreement that imposes obligations to A for the benefit of B. A is also obliged to impose these obligations (for the benefit of B) on his legal successors for example when selling the registered property. A penalty clause is often attached to such chain clauses with the purpose of enforcing the agreed upon commitments, meaning that A would need to pay a fine to B in case of violation. A major disadvantage of chain conditions is that if A fails to pass on the obligations to the legal successor, then B will have no legal rights towards said successor and won’t, therefore, be able to enforce the chain clause any longer. The chain is then broken. The chain would also be broken in case of bankruptcy and executorial mortgage sale (e.g. by a bank). The following will focus on qualitative obligations due to these mentioned major drawbacks. However, a noteworthy advantage of chain clauses is the great freedom to regulate mutual rights and obligations including the execution of a specific “action” by a party.

Please see a more detailed explanation for qualitative obligation and chain class in Annex. An example of qualitative obligation agreement is also available in Annex.

- C. An **agri-envi agreement** based on a simple legal agreement, based on Dutch civil law art.217 lid 1 BW. Yet here is also a chain clause in place. So that until the (fixed) end-time of the agreement (mostly six years) the legal successors are also bound to the agreement. Please see an example of the agreement in English in the Annex.
- D. **Comparison of easements and qualitative obligations:**

Legal Remedy	Suitable for	Example	Advantages	Disadvantages
Easement	Imposing the landowner with the obligation to tolerate or to not do something.	To be obliged to leave a piece of the forest as it is. To tolerate that NM is planting/growing a forest.	Legal successors are also bound by the obligation, for example when the property gets sold. There are limited possibilities to repeal the easement, which provides high security to NM.	The main responsibility cannot implicate an action (e.g. planting forest). NM needs to be in the possession of an adjacent land.
Qualitative obligation	Same as easement.	Same as easement.	Obligation also applies to legal successors. Unlike the requirement of an easement, NM does not need to be in the possession of an adjacent property.	The main responsibility cannot implicate an action. It is somewhat less complicated to determine the obligations of an easement in comparison to a qualitative obligation

The further analysis is provided for each of the above categories (A-C).

Question No.2: If the answer to the first question is “Yes”, then in which form may the easement be described in the title?

Answer No.2: the answer differs per categories A-C, please see below.

- 2.1. It can be made only in general (e.g. by stating the purpose of the easement is nature conservation), without further specification;
 - A. No, there must be written down what has to be done or what must not be done.
 - B. No, the specific habitat type must be written down. After that it varies, sometimes the measures are written down in detail and sometimes not.
 - C. No, to the agreement belongs a handbook with management measures. In the annex of the agreement is a suited management package which the farmer has to follow.
- 2.2. More specified entries regarding the objective of the easement could be made in the land title, specifying which natural features (habitats, species, scenery etc.) of the property are protected;
 - A. No
 - B. Yes, Habitats & management
 - C. Yes, focussed on measures.
- 2.3. Specific restrictions (i.e. negative obligations – prohibitions) to land use on the property could be listed in the land title (forfeiting some of the land use rights, for example the right to subdivide or develop the land);
 - A. Yes
 - B. Yes (also the spatial status is changed in the communal spatial plan).
 - C. Yes, for instance no meadow mowing until June.

2.4. In addition to restrictions, the land title can also list the allowed or required activities (positive obligations/instructions) and by whom these activities may or should be carried out;

- A. Yes
- B. Yes
- C. Yes

2.5. Easement can be described in a very comprehensive manner, resembling detailed management plans, or refer to planning documents that are not registered with the deed and that can thus be updated more easily;

- A. No
- B. Yes
- C. Yes

Question No.3: In cases if the easements cannot be described in the title of the property, does legislation allow including this information in the annex to the title, or notary deed? *You only need to answer this question in case if you answered “No” to the 2nd question*

Answer No.3: not applicable

Question No.4: If conservation easements may be entered in the land title, please check if they can be entered:

4.1. On the basis of a voluntary agreement

- A. Yes
- B. Yes
- C. No, nothing changes in the land title but legal successors are bound during the duration of the agreement (mostly 6 years)

4.2. Between the land owner and a third party “in gross”.

- A. No. These are appurtenant easements. The dominant estate is another property, almost always that adjacent to the servient property. For example appurtenant easements ensure rights of way over a (servient) property to reach another (dominant) property or they grant the right to build power lines across a (servient) property etc.
- B. Yes, the dominant party being the provinces.
- C. Yes, the dominant party being a so called ‘Collective’, an organisation of (mostly) farmers where this organisation has an agreement with the provincial government and these collectives in turn closes agreements with individual farmers/land-users/-owners.

Chapter 5.18. Case study: Poland

Report compiled by Marta Kaczynska

Question No.1: Can easements be used to dedicate property / or part of it to the nature conservation purposes (in principle)?

Answer No.1: Yes, easements can be used to dedicate property / or part of it to the nature conservation purposes.

Comments:

According to the Polish law, easements (pl. służebność - iac. servitus) are limited property rights, encumbering the serviced property in order to increase the usability of another property called “dominant property” (land easement), or to ensure satisfaction of specific needs of a natural person (personal easement). As with any limitation of property law, the easement restricts the availability of a landowner with his encumbered property.

The easement (servitude) is regulated in the Civil Code (The Act of 23 April 1964 - Civil Code - pl. Ustawa z dnia 23 kwietnia 1964 r. - Kodeks cywilny) in articles from 285 - 305 and as a limited property right in art. 244 - 251. The Civil Code regulates three types of easements:

- land easements (articles 285 - 295);
- personal easements (Articles 296 - 305);
- transmission easement (Articles 3051 - 3054).

The Civil Code also contains provisions on the easement of the necessary road (Article 145) and building easement (Article 151). However, these are not separate kinds of easements, because the easement of the necessary path is established as a land or personal easement, and the building easement as a kind of land easement.

In principle nature conservation purpose could be used to dedicate property as “servitude”, though there is no practice in this matter as far as now (except land purchase within the EU LIFE programme) as nature conservation is not clearly listed in the Civil Code as one of the easements.

Thus the concept of easement in the current law order can be used in a very limited extent. The transmission easement concerns a strictly defined issue of transmission, the personal easement is entitled to a designated natural person and expires at the latest with death; it is non-transferable and the right to exercise it cannot be transferred, so these easements are impractical for the purposes. The land easement does not fully correspond to the concept of conservation easement, because it can only be aimed at increasing the usability of the property that is dominant or its designated part, which significantly limits the possibility of using this legal instrument.

Question No.2: If the answer to the first question is “Yes”, then in which form may the easement be described in the title?

Answer No.2: The easement can be described in the title in general (e.g. by stating the purpose of the easement is nature conservation).

The easement can be described in a text directly entered in the title, or in a document that is attached and thus becomes part of the title. However, as regards the nature conservation purpose the only practice at the moment is to include it in the notary deed (e.g. when the nature conservation institution/organisation purchases a plot). The new owner needs to apply to the court (at the county level) to include the same text in the land registry (so called the third book of the land registry). As the courts are independent they do not have to approve it so in some cases the text is included in the land registry, while in other cases it is rejected.

Legal acts regulating the system of land and mortgage registers (texts related to easements are quite marginal):

- The Act of 6 July 1982 on Land and Mortgage Registers and Mortgage (Journal of Laws of 2001 No. 124, item 1361 with later amendments) - pl. Ustawa z 6 lipca 1982 o księgach wieczystych i hipotece (Dz. U. z 2001 r. Nr 124, poz. 1361 z późn.zm.),
- Regulation of the Minister of Justice of September 17, 2001 on keeping land and mortgage registers and collections of documents (Journal of Laws of 2001 No. 102, item 1122 with later amendments) – Rozporządzenie Ministra Sprawiedliwości z 17 września 2001 w sprawie prowadzenia ksiąg wieczystych i zbiorów dokumentów (Dz. U. z 2001 r. Nr 102, poz. 1122 z późn.zm.),
- -Art. 626 of the Code of Civil Procedure – pl. Art. 626 Kodeksu postępowania cywilnego (Dz.U. 1964 nr 43 poz. 296 - Ustawa z dnia 17 listopada 1964 r. - Kodeks postępowania cywilnego). This article, however, refers only to transmission easement.

Practically the easement is being described in general (e.g. by stating that the purpose of the easement is nature conservation). There can be additional texts to specify what happens to the plot in case the new owner (institution or organisation) wants or has to get rid of the plot (e.g. it may be written that the plot will be transferred to another institution or organisation dealing with nature conservation to ensure continuity of the easements).

It is possible to include more specified entries regarding the objective of the easement, specifying which natural features (habitats, species, scenery etc.) of the property are protected, listing specific restrictions (i.e. negative obligations – prohibitions) to land use on the property (forfeiting some of the land use rights, for example the right to subdivide or develop the land). In addition to restrictions, the land title can also list the allowed or required activities (positive obligations/instructions) and by whom these activities may or should be carried out.

Question No.3: In cases if the easements cannot be described in the title of the property, does legislation allow including this information in the annex to the title, or notary deed?

Answer No.3 (if applicable): Not applicable.

Question No.4: If conservation easements may be entered in the land title, please check if they can be entered:

4.1. On the basis of a voluntary agreement.

4.2. Between the land owner and a third party “in gross”.

Answer No.4:

4.15. Yes

4.16. Yes

Yes, entries to the land title for nature conservation purposes can be based on voluntary agreements, between land owner and third party “in gross”.

The voluntary, civil-law agreement between the parties can be confirmed in a form of a notary deed. One of the forms of the easement arrangement (apart from the land purchase) can be a gratuitous loan agreement (pl. użyczenie), where the lender agrees to allow the user, for a fixed or unspecified period, to use the land or goods given to him for that purpose free of charge. The lending agreement may be concluded in any form. However, if a reverse decision is necessary for the lender, for reasons not anticipated at the time the contract was concluded, the lender may request the return of the rights, even if the contract was concluded for a definite period. After the lending period if finished, the user is obliged to return the plot in a non-deteriorated condition.

It is worth stressing that subscriptions about easements may appear in wills, donation agreements, and other notarial deeds. However, if such a record does not have the form of a property owner's declaration, best confirmed by an entry in the land and mortgage register, a person who wants to buy a property does not have to be afraid that he or she will have to fulfill an obligation undertaken by someone else. Moreover, the mention

of easement in the act of ownership of land is not always enough for an entry in the land and mortgage register (these are independent decisions of individual county courts). In this case some nature conservation organisations include the text related to the purpose of purchasing or leasing land not only in the notary deed but also in the organisation's status.

To summarise, one could consider the usefulness of land easement (as defined in the Polish law), or a gratuitous loan agreement, but they are so limited that for the purpose of environmental protection they are almost impractical and none of these options fully corresponds to what is defined as conservation easement in the reference document. In order to better use the conservation easement concept in Poland, amendment to the Polish legal acts (e.g. the Civil Code) would be recommended to clearly include this aspect.

Chapter 5.19. Case study: Portugal

Report compiled by Ana Marta Paz

Question No.1: Can easements be used to dedicate property / or part of it to the nature conservation purposes (in principle)?

Answer: Yes

Yes, if the easement is a result of an administrative act, which is done by virtue of its public utility. This is, for instance, the case of private land located in designated protected areas. But the definition of easement in the Civil Code is somehow restrictive, as explained below.

The Portuguese Civil Code defines easement (*servidão*) as a right of a property over another property, belonging to a different owner (art. 1543). The Civil Code does not establish that the properties have to be neighbouring, but that there must be two properties and two owners.

The Civil Code also says that easements can be made voluntary or result from an administrative decision (art. 1547). The definition has evolved in the Portuguese doctrine, and that easements can be made on a property, as a result of its public utility, on benefit of a governmental entity. In this case there is no need for “two properties and two owners”. The easement is imposed on the property by the public body for the public benefit. In this is the case, an easement “in gross” occurs, in practice.

Question No.2: If the answer to the first question is “Yes”, then in which form may the easement be described in the title?

Answer:

The Property Registration Code defines that easements on a property must be registered (art. 2). It further says that, the servitude has to be described, along with its duration, if temporary and its cause (art. 95). There are no further provisions about how detailed this could be.

Question No.3: In cases if the easements cannot be described in the title of the property, does legislation allow including this information in the annex to the title, or notary deed? *You only need to answer this question in case if you answered “No” to the 2nd question*

Answer (if applicable): n/a

Question No.4: If conservation easements may be entered in the land title, please check if they can be entered:

- 4.1. On the basis of a voluntary agreement
- 4.2. Between the land owner and a third party “in gross”.

Answer:

- 4.17. Yes
- 4.18. Yes

The Civil Code (art. 1547) states that easements can be established by a voluntary agreement. The same article also establishes that easements can be done by an administrative decision, and, as described in answer 1, this is

done by the law in the case of several environmental servitudes (water resources protection, arable soil protection, biodiversity, etc.).

Chapter 5.20. Case study: Romania

Report compiled by Catalina Radulescu

Question No.1: Can easements be used to dedicate property / or part of it to the nature conservation purposes (in principle)?

Answer No.1: Yes

Comments:

Easements and encumbrances are regulated in the Civil Code, and they must be written in the Land Registry. They could be used for conservation purposes in certain conditions:

Private property right is an absolute, exclusive and perpetual right. The right of property is an absolute right because its owner has the freedom of any action or inaction in connection with his good. Legal limits are established either by law, by a court or by the owner, by a legal act concluded by the latter. They are a way of limiting the absolute exercise of the right to property in a way that reconciles the private interest of the owner with the general or the interests of other individuals.

Examples of such legal limitations (which are usually presented in the form of the right to servitude are: the obligation to enclosure houses, courtyards and gardens, the obligation to observe a minimum distance from neighbouring property in the case of planting or construction, passage on the neighbouring property in case of lack of access to the public road, etc.

Other legal limitations to the exercise of the right of ownership are the regulations relating to construction discipline, forestry and agricultural land regimes, the possibility of applying, under certain conditions, measures of requisition, expropriation or confiscation of goods.

The easements are a real, main, perpetual and indivisible real estate property a dismantling of the property, conferring to its holder certain strictly limited prerogatives on the property of another. Under the Romanian law “the easements in gross” are not regulated.

Encumbrances can be established by the owner regarding their own property through legal acts, such as: donations, legacy, sale, where any conditions encumbrances or easements can be established, if they are not illegal. They must be written in the Land Registry either as easements or encumbrances each to the correspondent chapter of the registry, and they must be respected by the successors, in certain conditions. However, the courts decided in some cases, that they represent personal obligations and the future owners might not have to respect them, or, at some point the owners that established or inherited them might decide to revoke them. That means they do not “run with the land”, but they are rather connected with the will and person of the owner/s that established them.

Another dismemberment of the property law is the right of usufruct. According to the Romanian Civil Code, this right concerns young forests and tall forests, the usufructuary must respect the order and the size of the cut, as established by the owner, the owner’s usual use, and of course the provision of the law. The usufruct can be established for exploitation of land and it could be also used for natural conservation purposes according to a contract between the owner and the usufructuary. However, I am not aware, and I could not identify any such situation.

Question No.2: If the answer to the first question is “Yes”, then in which form may the easement be described in the title?

- 2.6. It can be made only in general (e.g. by stating the purpose of the easement is nature conservation), without further specification;
- 2.7. More specified entries regarding the objective of the easement could be made in the land title, specifying which natural features (habitats, species, scenery etc.) of the property are protected;
- 2.8. Specific restrictions (i.e. negative obligations – prohibitions) to land use on the property could be listed in the land title (forfeiting some of the land use rights, for example the right to subdivide or develop the land);
- 2.9. In addition to restrictions, the land title can also list the allowed or required activities (positive obligations/instructions) and by whom these activities may or should be carried out;
- 2.10. Easement can be described in a very comprehensive manner, resembling detailed management plans, or refer to planning documents that are not registered with the deed and that can thus be updated more easily;
- 2.11. Other options not described above.

Answer No.2: 2.1-2.3

Comments, if applicable: the legislation does not prescribe in detail, how the usufruct obligations must be described in the land registry. They are described in the 3rd part of the land registry, which includes:

- a) the right of superficies, usufruct, use, abridgement, servitude in the charge of the fund, the mortgage and the real estate privileges, as well as the lease and assignment of the receivable;
- b) legal acts, personal rights or other legal relationships, as well as actions concerning the real rights enlisted in this part;
- c) seizure, tracking the property or its income;
- d) Any changes, remarks or notes that would be made regarding the entries made in this part

The details of obligations may be described as “remarks or notes” regarding the usufruct.

Question No.3: In cases if the easements cannot be described in the title of the property, does legislation allow including this information in the annex to the title, or notary deed? *You only need to answer this question in case if you answered “No” to the 2nd question*

Answer No.3 (if applicable): N/A

Please provide references to the citations from the applicable legal acts confirming your statements. Please add excerpts from the legislation (in national language + official translations in English) in the Annex.

Question No.4: If conservation easements may be entered in the land title, please check if they can be entered:

- 4.1. On the basis of a voluntary agreement**
- 4.2. Between the land owner and a third party “in gross”**

Answer No.4:

- 4.19. Yes
- 4.20. Yes

Chapter 5.21. Case study: Slovakia

Report compiled by Ivana Figuli

Question No.1: Can easements be used to dedicate property / or part of it to the nature conservation purposes (in principle)?

Answer No.1: Yes, easements can be used to dedicate property / or part of it to the nature conservation purposes.

Comments:

In Slovak legal order easements are regulated under the Civil Code (Law no. 40/1964 Coll.) in its Sections 151n-151p. Easements according to the Section 151n *“restrict the owner of an immovable in favour of another person to the extent that the owner is obliged to tolerate, to refrain from or to do something. The rights corresponding to easements are either connected with the ownership of a certain real estate or belong to a certain person.”*

The law does not stipulate any purpose for which the easements may be used, i.e. it can also be used for nature conservation purposes.

Pursuant to the Civil Code and its Section 151o the easements may be established also by a written contract. According to legal commentary (IURA commentary in the legal soft-wear ASPI) to mentioned provision, easements in Slovakia are predominantly established by written contracts. These contracts are governed by general provisions related to contracts in the Civil Code (Section 43 - 46). Case law of Slovak general courts stipulates that rights and obligations arising from contractually established easements can be very diverse, and that the law in this respect does not provide any examples. However, according to this case-law the content of the easements cannot be every right or obligation. For example, the content of the easement cannot be a pre-emptive right.

Question No.2: If the answer to the first question is “Yes”, then in which form may the easement be described in the title?

Answer No. 2: According to the Section 151o par. 1 of the Civil Code an acquisition of a right corresponding to an easement is subject to registration in the Land Register.

Registering procedure commences before a competent Land Register Authority upon a proposal of one of the contractual parties. Proposal is to be made in written form. Such proposal shall contain in its annex the contract where contractual parties agreed upon the establishment of the easement. The contract should be the most detailed possible in relation to the definition of the scope and content of the rights and obligations arising from the easement and equally in relation to the manner of its execution (Legal commentary IURA in legal soft wear ASPI to the provision of Section 151o of the Civil Code). This is very important because the content of the contract defines what information will be registered in the Land Register and will figure in the property title.

Section 8 par. 1 letter b) 2 defines what information the property title shall contain. Property title contains three parts – A, B, C. **C part relates to the information on easements.** According to this provision the C part related to easements contains the **information on the content of the easement, the identification of the person entitled to easement, including the registration of the easement in the property title of the entitled person.** So in this part shall be specified what the easement consists in. And here all the specification of right and obligations and their execution defined in the contract should be reflected.

According to Section 2 of the Law. no. 162/1995 Coll. on Land Register, the **Land Register also serves as an information system, in particular for the protection of property rights, for tax and fee purposes, for the valuation of real estate, especially land, for the protection of agricultural land and forest soil, for the creation**

and protection of the environment, the protection of mineral wealth, to protect national cultural heritage and other cultural heritage as well as protected areas and natural creations and to build further information systems on real estate. In order to fulfil this purpose of the register declared in the Section 2 the information contained in the register has to be the most complete possible in order to effectively protect, in our case, the environment. So in case the easement is established in order to protect the environment this information should figure in the property title.

Section 7 of the Land Register Law further provides that among information to be included in the Land Register figures also **data on the types of protected real estate, data on the use of real estate and selected data on the creation and protection of the environment and selected data for other real estate information systems.**

More details concerning the content of the property title are regulated in the Decree no. 461/2009 Coll. of the Office of Geodesy, Cartography and Land Register Office of the Slovak Republic.

Section 9 paragraph 1 letter e) of this decree stipulates that property title in its part A in relation to a C type* parcel shall contain **the code related to the type of the protected property according to Annex no. 3 of present decree. Mentioned annex offers a list of codes related to different types of protections of properties (e.g. Protected landscape area, Protected nature area, National Park etc.).** These codes are predominantly related to officially protected properties. Though, code 801 permits that also “other type of protection” may be inscribed into property title. We see here a space for such interpretation according to which a protection on the basis of contractually established easement could fall under “other protection” and be inscribed in the property title.

*In Slovakia there exist two types of land plots- C and E parcels. C parcels are clearly delimited and identifiable within the Land Register maps. E type plots do not have identifiable boundaries in the terrain and these are other small plots which form part of a bigger C parcels. E parcels are relict of ancient forms of registering the land. E parcels can be converted into C parcels.

Question No.3: In cases if the easements cannot be described in the title of the property, does legislation allow including this information in the annex to the title, or notary deed? *You only need to answer this question in case if you answered “No” to the 2nd question*

Answer No.3 not applicable

Question No.4: If conservation easements may be entered in the land title, please check if they can be entered:

4.1. On the basis of a voluntary agreement.

4.2. Between the land owner and a third party “in gross”.

Answer No.4:

4.21. Yes

4.22. Yes

Comments:

As it was already mentioned in previous parts easements in Slovak legal order can be established on the basis of a contract, i.e. voluntary agreement. Even though the Civil Code under which the easements are regulated does not establish special purposes of the establishments of easements nothing impedes that these are created for nature conservation purposes. Contractual parties have freedom to put such purpose explicitly in the contract. Content of the contract- special rights and obligations arising from the easement and its manner of execution- are to be defined in the contract. Land register office will insert this information into the property title, in its part C, dedicated to easements related to the property. Nature protection purposes could be inscribed in the part A of the property title pursuant to the special codes established by the Decree no. 461/2009 Coll.

According to Slovak Civil Code we distinguish two types of easements:

Easement *in rem*:

- establishes a right towards an alien property- servient property on the basis of a narrow definition concerning the extent and purpose
- such easements are linked to the real estate
- generally for an unlimited period of time
- it passes with the ownership of the property to the purchaser of the property
- it serves usually for better use of real estate

Easements *in personam*:

- serve for a wider use of servient property
- serve for a benefit of an individually designated natural or legal person
- it obliges only those owners of the property who agreed on the establishment of the easements
- If a right corresponding to an easement belongs to a specific person, such an easement shall cease to exist at the latest upon the person's death or dissolution.

Chapter 5.22. Case study: Slovenia

Report compiled by Damijan Denac and Tomaž Petrovič

Question No.1: Can easements be used to dedicate property / or part of it to the nature conservation purposes (in principle)?

Answer No.1: Yes

Land register in Slovenia is regulated by the Land Register Act (Official Gazette of the Republic of Slovenia, No. 58/03 as amended, *Slovene: Zakon o zemljiški knjigi (ZZK-1), Uradni list RS, št. 58/03 s spremembami*) <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3603>.

Land Register Act in §13 defines the rights in property and claims under the law that can be entered into the Land register.

Under the point 4 in part (1) of the §13 “easement” is listed. However, easement is further defined in §210 – §248 of the Law of Property Code (Official Gazette of the Republic of Slovenia, No. 87/02, as amended, *Slovene: Stvarnopravni zakonik (SPZ), Uradni list RS, št. 87/02 s spremembami*) <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3242>. Relevant are §214 & §215 which define types of easements to be recorded in the Land register. Easement for conservation purpose is not mentioned as a separate type.

Two categories of easements can be generally recorded in the Land register – (1) “real easements” and (2) “personal easements”.

(1) Real easements (Law of Property Code §213 – §226) are based on law, legal transaction or decree of state authority. Examples are building of sewage system, placing of electricity or optical cable – activities in the public interest – on the land of private owner. Also way of necessity.

(2) Personal easements (Law of Property Code §227 – §248) are usufruct, use, and housing easement. Usufruct is personal easement giving right to use foreign assets, use is right to use foreign assets following their economic purpose, and housing easement is right to use part or whole housing (e.g. right to live in a flat for life). Subject of personal easements can only be non-expendable matters.

In principle, these easements may be used for conservation purposes. However, so far no such practice exists in Slovenia.

Question No.2: If the answer to the first question is “Yes”, then in which form may the easement be described in the title?

Answer No.2: As there is no existing practice of real easement for nature-conservation purpose there are some open dilemmas and answer to this question is difficult or too hypothetical at the moment. We should test it in the practice.

Question No.3: In cases if the easements cannot be described in the title of the property, does legislation allow including this information in the annex to the title, or notary deed? You only need to answer this question in case if you answered “No” to the 2nd question

Answer No.3: Yes

In the Land register there is the “additional description” category where conservation clauses can be included. This however does not imply that the clause is obligatory – it can only be entered. It is always the contract which is obligatory but part of the contract can be entered as additional description in the Land register to emphasise specific obligations. When purchasing or leasing land for conservation purposes in the past with LIFE funds in Slovenia, conservation obligation in the purchase or lease contract was defined, and after the contract was notary endorsed, conservation clause from the contract was included in the Land register. Please see example of such a case in the annex.

Question No.4: If conservation easements may be entered in the land title, please check if they can be entered:

4.1. On the basis of a voluntary agreement

4.2. Between the land owner and a third party “in gross”

Answer No.4: Both options are possible in principle, but there is complete lack of any practice.

Comments:

It is worth mentioning that different types of contractual agreements between landowners and organisations interested in the nature-conservation do exist. We give three examples illustrating the potential of contracting conservation services containing regulatory restrictions on land use rather than easement in Slovenia and on the other side difficulties that organisations interested in nature-conservation face in such agreements.

1. Nature Conservation Act (Official Gazette of the Republic of Slovenia, No. 96/04 as amended, *Slovene: Zakon o ohranjanju narave (ZON), Uradni list RS, št. 96/04 s spremembami*) <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1600> states in §47 that conservation contract can be signed between the owners of natural assets and the Ministry of the Environment and Spatial Planning in case the conservation of the assets can be assured through the contract. Such contracts are signed in cases where natural assets are owned by private owners and they can assure conservation either through positive or negative obligations. E.g. contract for conservation of Ormož Basins Nature Reserve between DOPPS-BirdLife Slovenia and the Ministry. The Nature Reserve is owned by DOPPS, a private NGO, and the Ministry signed a contract with DOPPS to carry out proper conservation of the site, habitats and species.

2. Within project LIFE Corncrake (LIFE2003NAT/SLO/000077), 45.7 ha of meadows were leased by DOPPS-BirdLife Slovenia from the Farmland and Forest Fund of the Republic of Slovenia in order to assure long-term suitable management of the Corncrake (*Crex crex*) habitat. Yearly, the rent amounts to app. 4,000 EUR. It seems unusual that an NGO is forced to pay rent to the state to be allowed to perform nature conservation measures on state-owned land, even though the state itself is obliged by the European and national legislation to maintain a favourable conservation status of the Corncrake. Moreover, National Farmland and Forest Fund Act (Official Gazette of the Republic of Slovenia, No. 19/10 as amended, *Slovene: Zakon o Skladu kmetijskih zemljišč in gozdov Republike Slovenije (ZSKZ), Uradni list RS št. 19/10 s spremembami*) <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO253> in §4 states that the Fund manages the state farmlands in a way to follow goals of nature conservation, too. Unfortunately, in reality, the Fund is strictly business-oriented and is not willing to reduce the rent to favour nature conservation on the state land.

3. Goričko Nature Park (<http://www.park-goricko.org/en/prvastran.asp>) is starting a series of different voluntary agreements with local farmers to conserve endangered species, their habitats and structures. E.g. Park has signed

contracts with app. 150 land owners to maintain old orchard trees – it is mandatory for owners to remove mistletoe from trees and they should not cut down the trees for the following 10 years. In this way, 950 old orchard trees were protected. Similarly, contracts will be signed with the farmers/owners to carry out conservation management on 40 hectares of meadows for the Natura 2000 qualifying butterfly species – the Marsh Fritillary (*Euphydryas aurinia*). Late mowing after 20th August, and removing of biomass are the foreseen management. Farmers will receive up to 500 EUR/ha for conservation management. This conservation measures are very specific, funds are project ensured (ERDF), and are not included in general scheme of agri-environmental measures and subsidies.

Chapter 5.23. Case study: Spain

Report compiled by Ana Barreira, additional information on Cataluña by Hernan Collado Urieta, Jofre Rodrigo and Miquel Rafa Fornieles

Question No.1: Can easements be used to dedicate property / or part of it to the nature conservation purposes (in principle)?

Answer No.1: Yes

The Spanish Civil Code includes a series of rights *in rem* which can be used to dedicate property to nature conservation purposes. The main ones are easements or servitudes (appurtenant and in gross), usufruct, emphyteutic lease and leasehold.

This analysis focuses on easements in gross (servidumbres personales in Spanish) although civil laws in Spain also provide for appurtenant easements. It will briefly mention other existing figures useful for land conservation. A short introduction into Spanish legal system is included in Annex.

Article 531 of the Spanish Civil Code allows the possibility to create easement in gross for any purpose. Easements can be also established for the benefit of one or more persons or of one community who do not own the servient (encumbered) land. However, easements in gross are not common in the Spanish legal culture, and there are even very few references, doctrinal comments or precedents regarding them in Spain.

In addition, civil laws of certain autonomous communities include a figure equivalent to easement in gross. These are estate rights for partial use or exploitation (derechos reales de aprovechamiento parcial). These are found in the civil laws of Aragón (Legislative Decree 1/2011, of 22 March of the Government of Aragón approving the Consolidated Text of the Civil Laws of Aragón under the title of Code of traditional charters of Aragón) Cataluña (Law 5/2006¹⁶, of 10 May, on the Fifth Book of the Civil Code of Cataluña related to estate rights) and Navarra (Law 1/1973, of 1 March, approving the compilation of Navarra Civil Law). The Cataluña legislation provides explicitly for the constitution of these estate rights to dedicate property for nature conservation purposes.

Question No.2: If the answer to the first question is “Yes”, then in which form may the easement be described in the title?

Answer No.2: According to Spanish Law, specifically the Decree of 8 February 1946 approving the new text of the Law on Mortgages, it is necessary to register the deed establishing, passing, modifying or extinguishing easements in the property registry.

The Directorate General for the Registries and Notaries has stated that to be valid an easement title has to include the identification of the land, the title holders of the land and of the easement, the dimensions, limits and extension and any other characteristics of the easement. Taking into consideration that the Spanish Civil Code allows the establishment of easements in gross for any purpose, it is important to include in its title its characteristics. As said, the title or deed must be registered to be valid towards third parties. Then, the easement can be described in the title in any form which is allowed by the Spanish legal order. This implies that easements in gross titles can describe:

¹⁶ Law 3/2017 introduced amendments to Law 5/2006 which are relevant for conservation easement purposes. <https://www.boe.es/buscar/act.php?id=BOE-A-2006-11130>.

- 2.1. It can be made only in general (e.g. by stating the purpose of the easement is nature conservation), without further specification, although in this case it could not be able to register it because one cannot identify the content;
- 2.2. More specified entries regarding the objective of the easement could be made in the land title, specifying which natural features (habitats, species, scenery etc.) of the property are protected;
- 2.3. Specific restrictions (i.e. negative obligations – prohibitions) to land use on the property could be listed in the land title (forfeiting some of the land use rights, for example the right to subdivide or develop the land);
- 2.4. In addition to restrictions, the land title can also list the allowed or required activities (positive obligations/instructions) to the extent that they are needed to the existence of the use granted by the easement, and by whom these activities may or should be carried out;
- 2.5. Easement can be described in a very comprehensive manner, resembling detailed management plans, or refer to planning documents that are not registered with the deed and that can thus be updated more easily.

The more detailed the title the better.

Question No.3: In cases if the easements cannot be described in the title of the property, does legislation allow including this information in the annex to the title, or notary deed? *You only need to answer this question in case if you answered “No” to the 2nd question*

Answer No.3 N/A

Question No.4: If conservation easements may be entered in the land title, please check if they can be entered:

- 4.1. On the basis of a voluntary agreement
- 4.2. Between the land owner and a third party “in gross”.

Answer No.4:

- 4.23. Yes. The Spanish civil code provides for legal and voluntary easements (Article 536). The Aragón (article 561), Navarra (Law 423) and Cataluña (article 563.-2 and 623-34) specific civil laws also provide for voluntary estate rights for partial use or exploitation.
- 4.24. Yes. As previously explained Spanish Civil Code and Aragón, Cataluña and Navarra civil laws provide for easements in gross and estate rights for partial use- these are easement in gross- allowing the establishment of a conservation easement in the land title between the land owner and a third party.

Chapter 5.24. Case study: Sweden

Report compiled by Johanna Ehlin and Helena Ringblom

Question No.1: Can easements be used to dedicate property / or part of it to the nature conservation purposes (in principle)?

Answer: Yes, easements can be used to dedicate a property or a part of it to nature conservation purposes.

According to the Swedish Land Code (Jordabalken, JB), written agreements between a land owner and the State or a municipal authority that regulate what the land owner agrees to allow or tolerate in terms of nature conservation within a certain area, are considered a right of use (7:3 2 st. JB). Rights of use can be registered in the real property register (7:10 JB) which means it gets described in the title of the property. The Swedish name for such agreements is “Naturvårdsavtal”, nature conservation agreements. The duration of the agreements is between one and 50 years (7:5 1 st. JB).

Question No.2: If the answer to the first question is “Yes”, then in which form may the easement be described in the title?

- 2.12. It can be made only in general (e.g. by stating the purpose of the easement is nature conservation), without further specification;
- 2.13. More specified entries regarding the objective of the easement could be made in the land title, specifying which natural features (habitats, species, scenery etc.) of the property are protected;
- 2.14. Specific restrictions (i.e. negative obligations – prohibitions) to land use on the property could be listed in the land title (forfeiting some of the land use rights, for example the right to subdivide or develop the land);
- 2.15. In addition to restrictions, the land title can also list the allowed or required activities (positive obligations/instructions) and by whom these activities may or should be carried out;
- 2.16. Easement can be described in a very comprehensive manner, resembling detailed management plans, or refer to planning documents that are not registered with the deed and that can thus be updated more easily;
- 2.17. Other options not described above.

Answer: Several of the suggested answers are possible, but alternative 2.3 and 2.4 are considered the most applicable descriptions of the Swedish easements.

Comments:

In general, the Swedish conservation easements, “naturvårdsavtal” can restrict land use on the property. This can for example mean that the land owner agrees to refrain from forestry within the area and the duration of the agreement. The agreement also describes the purpose and target of the agreement. To fulfil the purpose of the agreement, the land owner may also agree to tolerate certain activities, like markings of the border of the area and certain conservation measures. Such regulations are listed in the agreement between the land owner and the State/municipality, or in an appendix to the agreement.

The easement is registered in the real property register, where not much more than the existence of the agreement is noted, together with a reference to the act where the signed agreement, including any appendices, can be found.

Question No.3: In cases if the easements cannot be described in the title of the property, does legislation allow including this information in the annex to the title, or notary deed? *You only need to answer this question in case if you answered “No” to the 2nd question*

Answer: N/A

Question No.4: If conservation easements may be entered in the land title, please check if they can be entered:

4.1. On the basis of a voluntary agreement.

4.2. Between the land owner and a third party “in gross”.

Answer:

4.25. Yes conservation easements may be entered in the land title on the basis of a voluntary agreement.

4.26. Yes, conservation easements may be the result of an agreement between the land owner and a third party “in gross”. Only the third party has to be the State, either the Swedish Forest Agency or a County Administrative Board, or a municipal authority (7:3, 2 st. JB).

Chapter 5.25. Case study: England and Wales (United Kingdom)

Report compiled by John Houston

Question No.1: Can easements be used to dedicate property / or part of it to the nature conservation purposes (in principle)?

Answer No.1: Yes, covenants can be added to the Land Register. Covenant is a legal agreement that is tied to the land, not the owners. Restrictive covenants are the more usual practice. They are divided into positive (obligation to perform some action) and negative (restrictive) covenants (obligation not to do something), please see more detailed definitions in the Annex.

Comments: The Law Commission report on Conservation Covenants (see link in Annex) highlights the weaknesses in the current system of covenants which are (in most cases) created i) for the benefit of neighbouring land and ii) is a promise not to do something (a restrictive obligation) rather than a promise to do something (a positive obligation). There is growing interest in landowners being able to create binding positive and restrictive obligations for conservation and public benefit. As a result people have started to develop unwieldy ways to circumvent the restrictive rules about covenants. It is from this interest that the Law Commission launched its study into conservation covenants.

The UK government will consider the recommendations of the Law Commission for the introduction of a statutory scheme for the establishment of Conservation Covenants. In its 25 year Plan for the Environment (2018, see the link in Annex) the Government has given its intention to assess the demand and potential for conservation covenants to secure long-term benefits in nature conservation and will take forward the Law Commission's proposals for a statutory scheme of conservation covenants in England.

Question No.2: If the answer to the first question is "Yes", then in which form may the easement be described in the title?

Answer No.2: The restrictions can be made in general, without further specification (restrictive covenant). Some examples of more specific entries regarding the objective of the covenant made in the land title can also be found, e.g. National Trust covenants. Specific restrictions are also possible to be listed, possibly in Forestry Commission covenants.

Question No.3: In cases if the easements cannot be described in the title of the property, does legislation allow including this information in the annex to the title, or notary deed? *You only need to answer this question in case if you answered "No" to the 2nd question*

Answer No.3 (if applicable): N/A

Question No.4: If conservation easements may be entered in the land title, please check if they can be entered:

- 4.1. On the basis of a voluntary agreement.
- 4.2. Between the land owner and a third party "in gross".

Answer No.4:

- 4.1. Yes
- 4.2. Yes

Comments: Additional information is provided in the Annex.

Annex 1. Legal acts regulating conservation easements

This Annex contains the legal acts (in their original language and in English) that were analysed in the process of completing the studies. For those countries where the official translations to English were available, the experts have included those in their reports (with reference to the source). In cases when official translations were not available, experts have performed the translation by themselves. The only exception is Austria, where legal acts are available only in the original language.

The chapters in this Annex are organised by country, in the alphabetical order.

Annex 1.1.	Austria
Annex 1.2.	Belgium (Flanders)
Annex 1.3.	Bulgaria
Annex 1.4.	Croatia
Annex 1.5.	Czech Republic
Annex 1.6.	Denmark
Annex 1.7.	Estonia
Annex 1.8.	Finland
Annex 1.9.	France
Annex 1.10.	Germany
Annex 1.11.	Greece
Annex 1.12.	Hungary
Annex 1.13.	Ireland
Annex 1.14.	Italy
Annex 1.15.	Latvia
Annex 1.16.	Lithuania
Annex 1.17.	Netherlands
Annex 1.18.	Poland
Annex 1.19.	Portugal
Annex 1.20.	Romania
Annex 1.21.	Slovakia
Annex 1.22.	Slovenia
Annex 1.23.	Spain
Annex 1.24.	Sweden
Annex 1.25.	United Kingdom

Annex 1.1. Austria. Legal acts regulating conservation easements

Please note that no translation to English is available for this section.

Allgemeines bürgerliches Gesetzbuch für die gesammten deutschen Erbländer der Oesterreichischen Monarchie, JGS Nr. 946/1811 in the version of Federal law Gazette I no. 161/2017 (short „ABGB“)

Siebentes Hauptstück

Von Dienstbarkeiten (Servituten)

Begriff des Rechtes der Dienstbarkeit

§ 472. Durch das Recht der Dienstbarkeit wird ein Eigenthümer verbunden, zum Vortheile eines Andern in Rücksicht seiner Sache etwas zu dulden oder zu unterlassen. Es ist ein dingliches, gegen jeden Besitzer der dienstbaren Sache wirksames Recht.

Eintheilung der Dienstbarkeiten in Grunddienstbarkeiten und persönliche;

§ 473. Wird das Recht der Dienstbarkeit mit dem Besitze eines Grundstückes zu dessen vortheilhafteren oder bequemeren Benützung verknüpft; so entsteht eine Grunddienstbarkeit; außer dem ist die Dienstbarkeit persönlich.

§ 474

.....

Erlöschung der persönlichen Servituten insbesondere.

§ 529. Persönliche Servituten hören mit dem Tode auf. Werden sie ausdrücklich auf die Erben ausgedehnt; so sind im Zweifel nur die ersten gesetzlichen Erben darunter verstanden. Das einer Familie verliehene Recht aber geht auf alle Mitglieder derselben über. Die von einer Gemeinde oder einer andern moralischen Person erworbene persönliche Servitut dauert so lange, als die moralische Person besteht.

Unanwendbarkeit auf beständige Renten.

§ 530. Beständige jährliche Renten sind keine persönliche Servitut, und können also ihrer Natur nach auf alle Nachfolger übertragen werden.

**Bundesgesetz vom 2. Feber 1955 über die Grundbücher (Allgemeines Grundbuchsgesetz 1955 – GBG. 1955).
Federal law Gazette no. 39/1955 in the version of Federal law Gazette I no. 87/2015**

ZWEITES HAUPTSTÜCK.

Von den bücherlichen Eintragungen.

ERSTER ABSCHNITT.

Von den Eintragungen im allgemeinen.

1. Arten der Eintragung.

§ 8. Die grundbücherlichen Eintragungen sind:

1. Einverleibungen (unbedingte Rechtserwerbungen oder Löschungen Intabulationen oder Extabulationen), die ohne weitere Rechtfertigung oder
2. Vormerkungen (bedingte Rechtserwerbungen oder Löschungen Pränotationen), die nur unter der Bedingung ihrer nachfolgenden Rechtfertigung die Erwerbung, Übertragung, Beschränkung oder Erlöschung bücherlicher Rechte bewirken, oder
3. bloße Anmerkungen.

2. Gegenstand der Einverleibung oder Vormerkung.

§ 9. Im Grundbuch können nur dingliche Rechte und Lasten, ferner das Wiederkaufs- und das Vorkaufsrecht (§§ 1070 und 1073 ABGB.) sowie das Bestandrecht (§ 1095 ABGB.) eingetragen werden.

Besondere Bestimmungen in Ansehung

.....

b) der Dienstbarkeiten und Reallasten:

§ 12. (1) Bei Dienstbarkeiten und Reallasten muß Inhalt und Umfang des einzutragenden Rechtes möglichst bestimmt angegeben werden; einer Angabe des Geldwertes bedarf es nicht.

(2) Sollen Dienstbarkeiten auf bestimmte räumliche Grenzen beschränkt sein, so müssen diese genau bezeichnet werden.

.....

Gesetz vom 16. Mai 2017 über den Schutz und die Pflege der Natur (Steiermärkisches Naturschutzgesetz 2017 – StNSchG 2017) Styrian Provincial Law Gazette no. 71/2017

§ 25

Ersichtlichmachung im Grundbuch

Unverzüglich nach dem Inkrafttreten von Verordnungen gemäß § 7 Abs. 2 Z. 2 und 3 hat die Landesregierung und nach der Rechtskraft von Erklärungen gemäß § 11 Abs. 1 und § 12 Abs. 1 die Bezirksverwaltungsbehörde dem Grundbuchsgericht eine Ausfertigung auf Ersichtlichmachung in der Einlage der betroffenen Grundstücke zu übermitteln; das Gleiche gilt nach Aufhebung der Verordnungen bzw. Erklärungen für die Löschung. Das Grundbuchsgericht hat die entsprechenden grundbücherlichen Eintragungen vorzunehmen.

§ 33

Vertraglicher Naturschutz

(1) Das Land kann zur Erreichung der angestrebten Schutzziele mit natürlichen oder juristischen Personen Vereinbarungen abschließen und Förderungen gewähren.

(2) Gegenstand solcher Vereinbarungen sind insbesondere Pflegemaßnahmen und Maßnahmen zur Verbesserung landschaftsökologischer Verhältnisse im Rahmen von Pflege- bzw. Gestaltungsprogrammen (z. B. die Erhaltung extensiver Nutzungsformen, charakteristischer Landschaftselemente und ökologisch bedeutsamer Strukturen oder die Schaffung eines Biotopverbundes).

(3) Vertragliche Vereinbarungen im Sinn des Abs. 1 sind vom Land mit den Nutzungsberechtigten zur Pflege und Erhaltung dieser Lebensräume oder zur Einschränkung bzw. Unterlassung der Bewirtschaftung und Nutzung von Grundflächen zu treffen.

Wasserrechtsgesetz 1959 - WRG 1959, Federal Law Gazette no. 215/1959 in the version of Federal Law Gazette I no. 54/2014

§ 63. Um die nutzbringende Verwendung der Gewässer zu fördern, um ihren schädlichen Wirkungen zu begegnen, zur geordneten Beseitigung von Abwässern und zum Schutz der Gewässer kann die Wasserrechtsbehörde in dem Maße als erforderlich

a) Dienstbarkeiten begründen, die den Zugang zu einem öffentlichen Gewässer eröffnen oder erheblich erleichtern;

b) für Wasserbauvorhaben, deren Errichtung, Erhaltung oder Betrieb im Vergleich zu den Nachteilen von Zwangsrechten überwiegende Vorteile im allgemeinen Interesse erwarten läßt, die notwendigen Dienstbarkeiten einräumen oder entgegenstehende dingliche Rechte einschließlich Nutzungsrechte im Sinne des Grundsatzgesetzes 1951 über die Behandlung der Wald- und Weidenutzungsrechte sowie besonderer Felddienstbarkeiten, BGBl. Nr. 103, einschränken oder aufheben, damit die genehmigte Anlage mit den zu ihr gehörigen Werken und Vorrichtungen hergestellt, betrieben und erhalten sowie der Vorschreibung sonstiger Maßnahmen entsprochen werden kann;

c) Liegenschaften und Bauwerke, ferner Werke, Leitungen und Anlagen aller Art ganz oder teilweise enteignen, wenn in den Fällen der unter lit. b bezeichneten Art die Einräumung einer Dienstbarkeit nicht ausreichen würde;

d) wesentliche Veränderungen der Grundwasserverhältnisse gestatten, wenn diese sonst nur durch unverhältnismäßige Aufwendungen vermieden werden könnten und die Voraussetzungen von lit. b zutreffen.

Kundmachung der Landesregierung vom 12. April 2005 über die Wiederverlautbarung des Tiroler Naturschutzgesetzes 1997, Tyrolean Provincial Law Gazette no. 26/2005 in the version Tyrolean Provincial Law Gazette no. 32/2017

§ 38

Betreten von Grundstücken, Auskunftspflicht

(1) Den behördlichen Organen ist zum Zweck amtlicher Erhebungen in Vollziehung dieses Gesetzes, der Verordnungen aufgrund dieses Gesetzes oder der in der Anlage zu § 48 Abs. 1 genannten Gesetze ungehinderter Zutritt zu den in Betracht kommenden Grundstücken zu gewähren und auf Verlangen Auskunft zu erteilen. Den Mitgliedern des Naturschutzbeirates, der Landesumweltanwältin bzw. dem Landesumweltanwalt und den Naturschutzbeauftragten stehen diese Rechte mit der Maßgabe zu, dass sie ihr Erscheinen rechtzeitig anzumelden haben. Eine Auskunft darf nur verweigert werden, wenn es sich um eine eigene Sache der Auskunftsperson handelt oder wenn die Auskunftsperson von der Ablegung eines Zeugnisses nach § 38 VStG befreit wäre. Zur Erwirkung des Zutrittes ist die Ausübung unmittelbarer behördlicher Befehls- und Zwangsgewalt zulässig.

(2) Die im Abs. 1 genannten Organe haben bei der Durchführung amtlicher Erhebungen einen Dienstausweis mit sich zu führen und diesen auf Verlangen dem Eigentümer des Grundstückes oder dem sonst hierüber Verfügungsberechtigten vorzuweisen.

(3) Die im Abs. 1 genannten behördlichen Organe sind von der Dienstbehörde, die Mitglieder des Naturschutzbeirates, die Landesumweltanwältin bzw. der Landesumweltanwalt und die Naturschutzbeauftragten sind von der Landesregierung mit einem Dienstausweis auszustatten, der mit einem Lichtbild versehen ist und aus dem ihre Befugnisse hervorgehen.

(4) Den vom Land Tirol nach § 1 Abs. 4 mit Forschungsaufgaben oder naturkundefachlichen Erhebungen beauftragten Personen ist zur Durchführung der erforderlichen Untersuchungen ungehinderter Zutritt zu den in Betracht kommenden Grundstücken zu gewähren. Sie haben bei der Durchführung ihrer Tätigkeit eine von der Landesregierung auszustellende Bestätigung, aus der sich die Beauftragung ergibt, und einen zur Feststellung ihrer Identität geeigneten Lichtbildausweis mitzuführen. Die Bestätigung und der Lichtbildausweis sind dem Eigentümer des Grundstückes oder dem sonst hierüber Verfügungsberechtigten auf Verlangen vorzuweisen.

Annex 1.2. Belgium (Flanders). Legal acts regulating conservation easements

Source of translations to English: unofficial translation by the expert

Decreet betreffende het natuurbehoud en het natuurlijk milieu (decree concerning nature conservation and the natural environment) (ing. decr. 9 mei 2014, art. 18, I: 28 oktober 2017)]

Artikel 16bis. (28/10/2017- ...)

§ 1. Voor een terrein dat beheerd wordt of zal worden ten behoeve van het natuurbehoud kan een natuurbeheerplan worden opgemaakt.

Een natuurbeheerplan bevat:

- 1° een beschrijving van de bestaande toestand;
- 2° een globaal kader voor de ecologische, de sociale en de economische functie;
- 3° de beheerdoelstellingen;
- 4° de beheermaatregelen die genomen zullen worden om de beheerdoelstellingen te realiseren;
- 5° de wijze waarop de realisatie van de beheerdoelstellingen wordt opgevolgd en geëvalueerd.

Free translation:

§ 1. For a terrain that is or shall be managed for the purpose of nature conservation, a site management plan can be drafted.

A site management plan consists of:

- 1° a description of the current state
- 2° a global frame for the ecological, social and economic function;
- 3° de management goals
- 4° the management measures that shall be taken to achieve the management goals;
- 5° the monitoring method how the management goals will be followed up and evaluated.

Artikel 16novies. (28/10/2017- Datum te bepalen door Vlaamse Regering)

§ 1. De goedkeuring van het natuurbeheerplan houdt voor de beheerder van het terrein een verbintenis in tot de uitvoering van de in het natuurbeheerplan opgenomen beheermaatregelen, voor zover de financieringsverbintenis wordt nageleefd.

De goedkeuring van het natuurbeheerplan, ander dan dit van type één, houdt voor het Vlaamse Gewest een verbintenis in tot financiering, binnen de perken van de begroting van de in het natuurbeheerplan opgenomen maatregelen, die voor subsidie in aanmerking komen met toepassing van artikel 16sedecies, § 1, 2°.

....

Een goedgekeurd natuurbeheerplan is bindend voor de opeenvolgende beheerders.

De overname van het beheer van een terrein met een goedgekeurd natuurbeheerplan door een nieuwe beheerder wordt binnen een termijn van dertig dagen na de overname door de vorige beheerder aan het agentschap gemeld.

1\$ With the approval of the management plan, the manager agrees to carry out the foreseen management measures as described in the management plan insofar the financial commitment is followed.

By approving the management plan, other than type 1, the Flemish region commits itself to financing the management insofar the budget allows and the measures are included in the management plan, that can be subsidised according to article 16sedecies, §1,2°.

....

An approved management plan is binding to successive managers.

The management takeover of a terrain with an approved management plan by a new managers must be notified to the agency within 30 days.

§ 2. De instrumenterende ambtenaar vermeldt in alle akten van verkoop of van verhuuring voor meer dan negen jaar van een onroerend goed, van een inbreng van een onroerend goed in een vennootschap, en ook in alle akten van vestiging of overdracht van vruchtgebruik, erfpacht of opstal, en in elke andere akte van een eigendomsoverdracht ten bezwarende titel, met uitzondering van huwelijkscontracten en hun wijzigingen, dat geheel of gedeeltelijk is gelegen binnen een terrein waarop een goedgekeurd natuurbeheerplan van toepassing is:

1° de datum waarop het natuurbeheerplan werd goedgekeurd, de duur waarvoor het werd goedgekeurd en de verplichtingen die het meebrengt voor de verwerver van het onroerend goed;

2° het bestaan van de erfdiensbaarheid, vermeld in artikel 16quater decies, § 2.

§2. The instrumenting official mentions in the notary deed of a land sale or land lease of at least 9 years of a real property, the transfer of real property into a company and also in all title deeds dealing with the right of usufruct, emphyteusis, building rights and in any other deed of real property transfer with the exception of marriage contract and their modifications, that is located or partially located in a terrain that is subject of an approved management plan:

1° the date on which the management plan has been approved, the duration of the management plan and the obligations to the acquirer of the real property.

2° the existence of an easement, as mentioned in art. 16 quater decies, §2.

Artikel 16quater decies. (28/10/2017- ...)

§ 2. De erkenning als natuurreservaat vestigt een erfdiensbaarheid tot algemeen nut op het terrein, meer bepaald een publiekrechtelijke erfdiensbaarheid van duurzaam gebruik en langdurig beheer van het terrein als natuurreservaat.

§2. The recognition as a nature reserve establishes an easement of public use on the terrain, more specific a public law easement of durable use and durable management of the terrain as nature reserve.

§ 3. De Vlaamse Regering of haar gemachtigde kan, na de beheerder gehoord te hebben, de erkenning als natuurreservaat van een terrein opheffen vanaf het ogenblik dat niet meer aan de voorwaarden van erkenning wordt voldaan. De opheffing van het natuurbeheerplan van een als natuurreservaat erkend terrein houdt van rechtswege de opheffing van de erkenning als natuurreservaat in. In dat geval kan de Vlaamse Regering of haar gemachtigde, na de beheerder gehoord te hebben, beslissen om de verleende subsidies geheel of gedeeltelijk terug te vorderen.

De opheffing van de erkenning als natuurreservaat wordt bij uittreksel bekendgemaakt in het Belgisch Staatsblad.

§3 The Flemish government or its representative can, after hearing the manager, cancel the recognition as nature reserve from the moment that the conditions of the recognition are not fulfilled anymore. The cancellation of the management plan of a nature reserve stops the recognition as nature reserve. In that case, the Flemish government or its representative can, after hearing the manager, decide to recover (partially) the granted subsidies.

The cancellation as a recognition as a nature reserve will be published in the national gazette.

Artikel 16ter. (28/10/2017- ...)

§ 1. Bij het opstellen van een natuurbeheerplan, als vermeld in artikel 16bis, worden, afhankelijk van de doelstellingen die gekozen worden voor de realisatie van de ecologische functie, de volgende types terreinen onderscheiden:

- 1° type één: behouden van de aanwezige natuurkwaliteit;
- 2° type twee: bereiken van een hogere natuurkwaliteit;
- 3° type drie: bereiken van de hoogste natuurkwaliteit;
- 4° type vier: erkend natuurreservaat.

§1. By drafting the management plans, as mentioned in article 16bis, will be, depending on the goals which are selected for the realisation of the ecological function, the following types of terrains are recognised:

- 1° type 1: maintaining the present nature quality (conservation status)
- 2° type 3: achieving a higher nature quality
- 3° type 3: achieving the highest possible nature quality
- 4° type 4: recognition as nature reserve

Artikel 16decies. (28/10/2017- ...)

§ 2. De beheerder van een terrein kan het agentschap verzoeken om het natuurbeheerplan op te heffen.

Het agentschap kan het verzoek tot opheffing van een natuurbeheerplan type twee, drie of vier voor een privaat terrein alleen toestaan als uit het gemotiveerd verzoek van de beheerder blijkt dat de opheffing wordt gevraagd omwille van gevallen van overmacht waardoor de beheerder in de onmogelijkheid verkeert om het beheerplan uit te voeren.

Als het verzoek tot opheffing van een natuurbeheerplan type twee, drie of vier betrekking heeft op een openbaar terrein kan het agentschap het verzoek tot opheffing alleen toestaan als uit het gemotiveerd verzoek van de beheerder blijkt dat het verzoek tot opheffing noodzakelijk is voor maatregelen die een maatschappelijk belang dienen.

Het agentschap kan, na de beheerder gehoord te hebben, voorstellen aan de Vlaamse Regering om te beslissen dat het agentschap het beheer van het terrein overneemt gedurende de resterende looptijd van het natuurbeheerplan, voor zover het beheer ervan van belang is voor het realiseren van de instandhoudingsdoelstellingen en voor zover het beheer van het terrein op voorstel van de beheerder niet kan overgenomen worden door een andere beheerder die aantoonbaar of aangetoond heeft op een deskundige manier aan natuurbeheer te kunnen doen. De beslissing over de overname wordt genomen nadat een advies is gevraagd aan een door de Vlaamse Regering aan te wijzen adviesinstantie.

§2 The manager of a terrain can request the agency to cancel the management plan.

The agency can only approve such cancellation request of a management plan of type two, three or four of a private terrain only when the manager calls in a motivated force majeure where the manager is no longer capable to implement the management plan.

The agency can, after consulting the manager, propose to the Flemish Government to decide that the agency takes over the management plan for the duration of the concerned plan, insofar the management cannot be done by another manager who is capable to implement the management plan in a competent way. The decision for the takeover will be taken after an advice is requested of an organisation, appointed by the Flemish government.

Annex 1.3. Bulgaria. Legal acts regulating conservation easements.

Source of translations to English: unofficial translation by the expert or official translations (as indicated in each title).

The applicable excerpts of these acts which were used for and/or referred in the country study are following below, with their original Bulgarian texts accompanied by English translations. In brackets next to the acts' titles in each translation, it is duly mentioned whether the given translation is official or not. Under each law title, there is an active link to its full text in the Bulgarian legal acts database www.lex.bg.

The following Bulgarian national legal acts apply to the subject of this study:

1. LAW FOR THE OWNERSHIP
2. LAW FOR THE WATERS
3. ENERGY SECTOR ACT
4. FORESTRY ACT
5. ELECTRONIC COMMUNICATIONS ACT
6. THE AGRICULTURAL PROPERTY PROTECTION ACT
7. SPATIAL PLANNING ACT
8. LAW OF OBLIGATIONS AND CONTRACTS
9. CODE OF CIVIL PROCEDURE

1. ЗАКОН ЗА СОБСТВЕНОСТТА / LAW FOR THE OWNERSHIP

<https://www.lex.bg/laws/ldoc/2122102787>

Чл. 55. Вещни права върху чужда вещ, доколкото те са предвидени в законите, могат да се придобиват или учредяват с правна сделка, по давност или по други начини, определени в закона.

Чл. 56. Правото на ползуване включва правото да се използва вещта съгласно нейното предназначение и правото да се получават добиви от нея без тя да се променя съществено.

Ползувателят не може да отчуждава своето право.

Чл. 57. Ползувателят е длъжен да плаща разносните, свързани с ползуването, включително данъците и другите такси, да поддържа вещта в състоянието, в което я е приел, и да я върне на собственика след прекратяване на правото на ползуване.

При предаване на имота се съставя опис. При липса на опис предполага се, до доказване на противното, че имотът е предаден в добро състояние.

Ползувателят не отговаря за овехтяването и изхабяването на вещта, които се дължат на обикновената употреба.

Той е длъжен да застрахова вещта в полза на собственика и да плаща премиите за застраховката, ако не е постановено или уговорено друго.

Чл. 58. Ползувателят е длъжен да съобщава на собственика за всяко посегателство върху собствеността.

Чл. 59. Правото на ползуване се погасява със смъртта на ползувателя, ако то не е учредено за по-кратък срок.

Правото на ползуване, учредено в полза на юридическо лице, се погасява с прекратяването му, ако не е установен по-кратък срок.

Правото на ползуване се погасява и с погиването на вещта, а също и ако не се упражнява в продължение на 5 години.

Чл. 60. Сключените от ползувателя договори за наем на полски имоти остават в сила до края на текущата стопанска година, ако правото на ползуване се прекрати преди това.

Чл. 61. Собственикът може да иска от съда да прекрати правото на ползуване, ако ползувателят, въпреки отправеното му предупреждение, продължава да си служи с вещта по начин, който застрашава същата с разрушаване или със значително повреждане, ако нарушава своите съществени задължения или ако съществено променя вещта.

Чл. 62. (Изм. - ДВ, бр. 31 от 1990 г., изм. - ДВ, бр. 33 от 1996 г.) Относно правото на ползуване върху държавен или общински имот се прилагат разпоредбите на този раздел, освен ако в закон или в акт за учредяване на това право е предвидено друго.

Чл. 92. Собственикът на земята е собственик и на постройките и насажденията върху нея, освен ако е установено друго.

Чл. 93. Добивът от вещта, като плодове, прираст от добитък, наем и други такива, принадлежи на собственика и.

Чл. 112. Вписват се:

а) всички актове, с които се прехвърля правото на собственост или се учредява, прехвърля, изменя или прекратява друго вещно право върху недвижими имоти, както и актове, с които се признават такива права;

Реален пример за съдебно решение, позоваващо се на чл. 56 от този закон: Решение № 14 от 20.03.2015 г. на Върховен касационен съд по гражданско дело № 5426/2014 г., II г. о., Гражданска Колегия: „Съгласно разпоредбата на чл. 56 Закона за собствеността ограниченото вещно право на ползване на недвижим имот включва правото да се ползва вещта според нейното предназначение и право да се получават добивите, без тя да се променя съществено. Ограниченото вещно право на ползване е противопоставимо като абсолютно субективно материално право на всеки, в т. ч. и на собственика на имота. Когато собственикът на един недвижим имот учреди в полза на друго лице ограниченото вещно право на ползване по предвидения за това ред, той се лишава от всяка възможност да ползва вещта.“

English translation of the LAW FOR THE OWNERSHIP (a non-certified, non-official translation)

Art. 55. Real rights over another's property, to the extent that they are provided for by laws, may be acquired or created through legal transaction, prescription or other methods provided for by law.

Art. 56. The right of use includes the right to use the property in accordance with its purpose and the right to the benefits thereof without causing any essential changes to it.

The user cannot transfer his right.

Art. 57. The user must pay the expenses related to the use, including taxes and other charges, maintain the property in the state in which it was received, and return the property to the owner after the termination of the right of use.

An inventory must be taken when handing over the property. In the absence of such inventory it shall be deemed, until proven otherwise, that the property was handed over in a good condition.

The user shall not be held liable for the wear and tear of the property which are due to normal use.

The user must insure the property in favour of the owner and pay the insurance premiums unless otherwise decreed or agreed.

Art. 58. The user shall inform the owner of any trespass on the ownership.

Art. 59. The right of use shall be terminated with the death of the user if a shorter period is not agreed upon.

The right of use created in favour of a legal entity shall be terminated with its winding up if it is not created for a shorter period.

The right to use shall be terminated with the perishing of the property or if it is not exercised for five years.

Art. 60. Contracts concluded by the user for leasing fields shall remain in force until the end of the current agricultural year if the right of use is terminated earlier.

Art. 61. The owner may request from the court that the right of use be terminated if the user, despite being warned, continues to use the property in a way which threatens it with destruction or significant damage, constitutes a fundamental breach of obligations or fundamentally alters the property.

Art. 62. Concerning the right of use of a state or municipal property, the provisions of this section shall apply unless otherwise provided in an act of legislation or in a specific act for the creation of such right.

Art. 92. The owner of the land is the owner of the buildings and plants on it except where something else has been agreed upon.

Art. 93. The benefits from the property, such as fruits, increase of cattle, rent payments, etc. shall belong to the owner.

Section

Art. 112. The following shall be recorded:

a) all acts with which the right of ownership is transferred or another real right is created, transferred, altered or terminated for immovable property, as well as acts with which are recognised such rights;

A real example of a court decision based on the provisions of Art.56 of this law: Decision No. 14 of March 20, 2015 of the Supreme Court of Cassation in civil lawsuit No. 5426/2014, II., Civic College: "According to the provision of Art. 56 of the Law for the ownership the limited real right to use immovable property includes the right to use the property according to its purpose and the right to receive yields without changing it substantially. The limited real right is opposable as an absolute subjective material law of everyone, including the owner of the property. Where the owner of a real estate establishes for the benefit of another person the limited real right of use in accordance with the procedure laid down for that purpose, he shall be deprived of any opportunity to use the property."

2. ЗАКОН ЗА ВОДИТЕ / LAW FOR THE WATERS

<https://lex.bg/bg/laws/ldoc/2134673412>

Глава седма.

ПОЗЕМЛЕНИ СЕРВИТУТИ, СВЪРЗАНИ С ВОДНИТЕ ОБЕКТИ

Раздел I.

Общи положения

Чл. 103. (1) Поземленият сервитут е тежестта, наложена върху един недвижим имот, наречен служещ имот, в полза на друг недвижим имот, наречен господстващ имот, който принадлежи на друг собственик.

(2) Поземленият сервитут произтича от закона или от правна сделка.

(3) Поземлен сервитут може да се придобива по давност чрез 10-годишно упражняване.

Чл. 104. (1) Сервитутите, които са установени от закона, имат за предмет обществена или частна полза.

(2) Сервитутите, установени за обществена полза, се отнасят до осигуряване на достъп за общо ползване на водните обекти - публична собственост, и до изграждане на необходимата за това инфраструктура, както и за поддържане в изправност на водностопански системи и съоръжения, предназначени за осигуряване на услугата за доставяне на вода за населението и за напояване.

Чл. 105. Законните поземлени сервитути за частна полза са тези, които произхождат от положението на земите и правото на преминаване и водопрекарване.

Чл. 106. При упражняване на сервитутите се спазват следните правила:

1. промяната на собствеността на имота не прекратява действието на сервитутите нито по отношение на господстващия, нито по отношение на служещия имот;
2. ако собственици на служещия имот са няколко лица, сервитут чрез правна сделка може да се учредява само със съгласието на всички съсобственици;
3. отстъпеният сервитут чрез правна сделка е задължителен за правопримниците на собственика на служещия имот;
4. титулярът на сервитута е длъжен при извършване на необходимите действия за упражняването му да причини възможно най-малкото неудобство за собственика на служещия имот и да поеме необходимите за това разноски, освен ако не е уговорено друго;
5. сервитутите са неделими права; те могат да се упражняват изцяло в полза на всяка част от господстващия имот и тежат изцяло върху всяка част от служещия имот, дори ако имотите бъдат разделени;
6. сервитутът може да се използва само за нуждите на господстващия имот;
7. собственикът на служещия имот няма право да премества сервитута;
8. сервитутите, учредени чрез правна сделка, се погасяват:
 - а) при обективна невъзможност за упражняването им;
 - б) при обединяване на двата имота в резултат на правна сделка;
 - в) след изтичане на срока на договора;
 - г) след неупражняване в срок 10 години.

Чл. 107. (1) Местната подсъдност на споровете по упражняване на сервитутите по тази глава се определя от местонахождението на господстващия и служещия имот.

(2) Обезщетенията по тази глава се определят според текущите пазарни цени.

Раздел II.

Сервитути, произтичащи от положението на имотите

Чл. 108. (1) Собствениците на разположените по-горе имоти нямат право да възпрепятстват естественото оттичане на водите и да утежняват понасяните във връзка с това ограничения от по-ниските имоти.

(2) Собствениците на по-ниските имоти са длъжни да приемат водата, която се оттича естествено от по-горните имоти.

Чл. 109. (1) Ако бреговете или съоръженията за задържане на води в господстващия имот са в състояние, което не осигурява защита от влиянието на водите, собственикът му е длъжен да извърши необходимите строителни работи така, че собственикът на служещия имот да не претърпи никаква вреда.

(2) (Изм. - ДВ, бр. 81 от 2000 г.) Ако задълженият собственик не извърши нужните строителни работи, собствениците на служещия имот, ако търпят вреда или ако са в опасност да претърпят вреда, могат да извършат необходимите работи в господстващия имот на свои разноски с предварително разрешение на съда след изслушване на заинтересуваните лица.

(3) Правилото по ал. 2 се прилага и когато в имот в резултат на изграждане на хвостохранилище, шламоохранилище или насипище станат натрупвания, които променят течението на водите, и в резултат на това водата причинява или може да причини вреда на съседни недвижими имоти.

(4) Собствениците, участвали в разноските за извършване на необходимите работи за укрепване на брегове, ремонт на съоръжения или изчистване на натрупвания, имат право на обезщетение за вреди срещу лицето, което е причинило разрушаването на бреговете или съоръженията или образуването на натрупвания.

Чл. 110. (1) Собственикът, през недвижимия имот на който минава водно течение, може да го ползва според изискванията на закона, без да нарушава същото право на собственика на по-ниско разположения недвижим имот.

(2) (Изм. - ДВ, бр. 65 от 2006 г., в сила от 11.08.2006 г.) В случая по ал. 1 собственикът на по-ниско разположения имот може да извършва работи, с които се влияе върху естественото състояние на водния обект, според условията на разрешителното за водовземане и без да нанася вреда на собственика на по-високо разположения имот.

Чл. 111. Собственикът на воден обект разполага с водите му, без да нанася вреди на съседни недвижими имоти.

Раздел III.

Право на водопрекарване

Чл. 112. (1) Всеки собственик е длъжен да даде право на водопрекарване през своя имот на всички, които имат постоянна или временна нужда от това.

(2) Ако се налага изграждане на тръбопроводи или съоръжения за водопрекарване, се определят сервитутни ивици с размер не по-голям от диаметъра на водопровода или размера на съоръженията, увеличен с 60 см, върху който не се разрешават строежи и засаждане на трайни насаждения.

(3) (Изм. - ДВ, бр. 61 от 2010 г.) Правото на водопрекарване през чужд имот се учредява със споразумение на собствениците на господстващия и служещия имот, а ако такова споразумение не може да бъде постигнато - с акт на органа по чл. 52, ал. 1, т. 4 при спазване на процедурата на чл. 34 и 36, без да се постановява отчуждаване на засегнатия имот.

(4) (Изм. - ДВ, бр. 61 от 2010 г.) Изпълнението на правата по акта на органа по чл. 52, ал. 1, т. 4 е допустимо само след заплащане на определеното обезщетение.

Чл. 113. (1) Водопрекарването през чужд имот се осъществява по начин, съответстващ на релефа, при отчитане на съществуващи сгради и трайни насаждения.

(2) Собственикът на господстващия имот, в случая по ал. 1, е длъжен да заплати цената на земята, която ще се заеме, увеличена с една пета част, в допълнение към преките вреди и тези, които произтичат от разделянето на земята, ако се прокарява повърхностно течение. За частта от земята, която ще се заеме от събирането на изкопаните земни маси, се заплаща половината от цената, увеличена с една пета.

Чл. 114. Ако не е уговорено друго, за правото на водопрекарване се спазват и следните правила:

1. титулярът на правото на водопрекарване се задължава след изтичане на срока да възстанови първоначалното положение в съответния имот;

2. (изм. - ДВ, бр. 65 от 2006 г., в сила от 11.08.2006 г.) ако е необходимо да се извършат нови работи или да се измени количеството на протичащата вода поради изменение в разрешителното за водовземане, измененията по отношение тежестта на служещия имот не могат да се направят преди заплащане на дължимата сума за това;

3. собственикът на служещия имот има право да иска да се определи леглото на водата с поставяне на постоянни граници за сметка на титуляря на сервитута; последният е длъжен да изгради и необходимите съоръжения, ако собственикът на служещия имот няма свободен достъп до имота си вследствие на водопрекарването.

Чл. 115. Собственикът, през имота на който преминават чужди води в резултат на упражняване на сервитут, може да си служи с тях според изискванията на закона, като поема припадащата се част от разноските за изграждане и поддържане на съоръженията, ако друго не е уговорено.

English translation of the LAW FOR THE WATERS (a non-certified, non-official translation)

Art. 103. (1) The land servitude shall be the encumbrance imposed on an immovable property called subservient property in favour of another immovable property called dominant, belonging to another owner.

(2) The land servitude shall ensue from the law or from a legal contract.

(3) Land servitude shall be possible to be acquired in prescription after exercising it for 10 years.

Art. 104. (1) The servitudes provided by law shall have as subject public or private benefit.

(2) (suppl. SG 34/2001) The servitudes established for public benefit shall refer to ensuring access for common use of the water sites - public ownership, and to construction of the infrastructure necessary for this, as well as for maintenance water economy systems and facilities designated for ensuring the service water supply for the population and for irrigation.

Art. 105. The land servitudes for private benefit by law shall be these ensuing from the location of the land and the right of way and to transfer water.

Art. 106. At exercising the servitudes the following rules shall be observed:

1. the change of the ownership of a property shall not terminate the effect of the servitudes neither with regard to the dominant nor with regard to the subservient property;

2. if the owners of the subservient property are several persons an servitude with legal transaction could be established only with the consent of all owners;

3. the servitude granted with a legal transaction shall be obligatory for the legal successors of the owner of the subservient property;

4. the titular of the servitude shall be obliged at implementing the activities necessary for exercising it to cause the possible least disturbance for the owner of the subservient property and to take the expenses necessary for this except otherwise agreed;

5. the servitudes shall be inseparable rights; they could be exercised entirely in favour of each part of the dominant property and shall encumber entirely each part of the subservient property even if the properties are separated;

6. the servitude could be used only for the needs of the dominant property;

7. the owner of the subservient property shall not have the right to move the servitude;

8. the servitudes established with a legal transaction shall be extinguished:

a) at objective impossibility to be exercised;

b) at amalgamation of the two properties as a result of a legal transaction;

c) after the expiry of the term of the contract;

d) after non exercising for a term of 10 years.

Art. 107. (1) The local suability of the disputes about exercising the servitudes under this chapter shall be determined by the location of the dominant and the subservient property.

(2) The indemnifications under this law shall be determined according to the current market prices.

Section II.

Servitudes ensuing from the location of the properties

Art. 108. (1) The owners of the properties located higher shall not have the right to hamper the natural runoff of waters and to encumber the restrictions suffered by the lower properties in connection with this.

(2) The owners of the lower properties shall be obliged to accept the water running off naturally from the upper properties.

Art. 109. (1) If the banks or the facilities for withholding water in the dominant property are in condition which does not ensure protection from the impact of waters its owner shall be obliged to make the necessary construction works in such way that the owner of the subservient property does not suffer any damage.

(2) (amend., SG 81/00) If the obliged owner does not implement the necessary construction works the owners of the subservient property, if suffering a damage shall be able to implement the necessary works in the dominant property for their account with preliminary permission by the court after hearing the interested persons.

(3) The rule of para 2 shall be implemented also when in a property as a result of the construction of a sludge pond or tailings pond or solid waste deposit occur accumulations changing the water flow and as a result of this the water causes or could cause damage to neighbouring immovable properties.

(4) The owners participated in the expenses for implementing the necessary works for

fortification of banks, repair of facilities or cleaning up of sediments shall have right to indemnification for damages from the person caused the demolishing of the banks or the facilities or the accumulation of sediments.

Art. 110. (1) The owner through which property runs a water flow shall be able to use it according to the requirements of the law without impairing the same right of the owner of the immovable property situated below.

(2) (amend. - SG 65/06, in force from 11.08.2006) In the cases of para 1 the owner of the lower property shall be able to implement works with which is influenced the natural state of the water site according to the conditions of the water taking permit and without causing damage to the owner of the higher situated property.

Art. 111. The owner of a water site shall dispose with its waters without causing damages to neighbouring immovable properties.

Section III.

Right of water conveyance

Art. 112. (1) Each owner shall be obliged to grant water conveyance rights through his property to all who have permanent or temporary need to do this.

(2) If the construction of pipelines or facilities for transferring water is necessary to be constructed servitude strips shall be determined with extent not bigger than the diameter of the pipeline increased with 60 cm on which shall not be permitted construction and planting of perennial plantations.

(3) (amend. -SG 61/10) The water conveyance right through other's property shall be established with an agreement of the owners of the dominant property and of the subservient property and if such an agreement cannot be reached - with an act of the body of art. 52, para 1, item 4 observing the procedure of art. 34 and 36 without ruling the alienation of the property concerned.

(4) (amend. - SG 61/10) The exercising of the rights of the act of the body of art. 52, para 1, item 4 shall be admissible only after the payment of the determined indemnification.

Art. 113. (1) The conveyance of water through other's property shall be implemented in a way corresponding to the terrain accounting for the existing buildings and perennial plantations

(2) The owner of the dominant property in the case of para 1 shall be obliged to pay the price of the land which will be occupied, increased with one fifth in addition to the direct damages and these ensuing from the subdivision of the land if surface water is conveyed. For the part of the land which will be taken by the gathering of the dug up land shall be paid half of the price increased with one fifth.

Art. 114. Unless otherwise agreed the following rules shall apply to the water conveyance right:

1. the titular of the water conveyance right shall be obliged after the expiry of the term to restore the initial state of the respective property;

2. (amend. - SG 65/06, in force from 11.08.2006) in case it is necessary to carry out new works or to change the quantity of the flowing water due to a change in the water taking permit, the changes in the encumbrance of the subservient property may not be carried out before payment of the sum due for this;

3. The owner of the subservient property has a right to require the determination of the water bed by placing permanent boundaries at the expense of the titular of the servitude; the latter is obliged to construct the necessary facilities if the owner of the subservient property does not have free access to his property resulting from the water conveyance.

Art. 115. The owner of the property, through which other's waters flow as a result of the exercising of an servitude may use them in accordance with the requirements of the law, thereby taking over part of the costs of construction and maintenance of the facilities if not agreed otherwise.

3. ЗАКОН ЗА ЕНЕРГЕТИКАТА / ENERGY SECTOR ACT

<https://lex.bg/bg/laws/ldoc/2135475623>

Раздел II.

Сервитути

Чл. 64. (1) При разширение на съществуващи и при изграждане на нови въздушни и подземни електропроводи, на надземни и подземни хидротехнически съоръжения за производство на електрическа енергия, топлопроводи, газопроводи, нефтопроводи и нефтопродуктопроводи в полза на лицата, които ще изградят и експлоатират енергийния обект възникват сервитути.

(2) Сервитутите по този закон са:

1. право на преминаване на хора и техника в полза на лицата по ал. 1;
2. право на прокарване на въздушни и подземни електропроводи, на надземни и подземни хидротехнически съоръжения за производство на електрическа енергия, топлопроводи, газопроводи, нефтопроводи и нефтопродуктопроводи в полза на лицата по ал. 1;
3. ограничаване в ползването на поземлени имоти, прилежащи към енергийните обекти.

(3) При упражняване на сервитутите:

1. титулярят на сервитута придобива право:

а) на прокарване на въздушни и подземни електропроводи, топлопроводи, газопроводи, нефтопроводи и нефтопродуктопроводи;

б) негови представители да влизат и да преминават през служещите имоти и да извършват дейности в тях, свързани с изграждането и/или експлоатацията на енергийните обекти, включително право на преминаване на техника през служещите поземлени имоти във връзка с изграждането и обслужването на въздушни и подземни проводи и наземни съоръжения;

в) да извършва кастрене и рязане на дървета в сервитутните ивици на електропроводите и хидросъоръженията за отстраняване на аварии при уведомяване на управляващите органи на горските стопанства и националните паркове;

2. в служещите поземлени имоти не се допускат:

а) извършване на застрояване или трайни насаждения в сервитутната ивица, определена в наредбата по ал. 9;

б) прокарване на проводи на други мрежи на техническата инфраструктура, с изключение на случаите, когато това е допустимо с нормативен акт, при спазване на съответните технически изисквания и след писмено съгласуване с титуляря на сервитута;

3. промяната на собствеността на имота не прекратява действието на сервитутите по отношение на господстващия и по отношение на служещия имот;

4. сервитутите са неделими права; те могат да се упражняват изцяло в полза на всяка част от господстващия имот и тежат изцяло върху всяка част от служещия имот и когато имотите бъдат разделени;

5. сервитутът може да се използва само за нуждите на господстващия имот;

6. собственикът на служещия имот няма право да премества сервитута.

(4) Сервитутите по ал. 2 възникват, когато:

1. има влязъл в сила подробен устройствен план, с който се определя местоположението на съответните имоти, и

2. титулярят на сервитута изплати еднократно обезщетение на собственика на имота, върху който е възникнал сервитутът, и на носителите на други вещни права върху засегнатия имот.

(5) (6) Определянето на размера на обезщетенията по тази глава се извършва по реда на чл. 210 и 211 от Закона за устройство на територията или по взаимно съгласие на страните с оценка от лицензиран оценител.

(7) Упражняването на сервитутното право се извършва от титуляря на сервитута съобразно техническите изисквания на наредбата по ал. 9.

(8) В случай че сервитутната зона попада в имот, за който в полза на титуляря на сервитута е учредено право на строеж, сервитутът върху имота се уговаря в акта за учредяване право на строеж.

(9) Размерите, разположението и специалният режим за упражняване на сервитутите са индивидуални за различните видове енергийни обекти и се определят по ред и начин, предвидени в наредба на министъра на енергетиката, министъра на земеделието, храните и горите и министъра на регионалното развитие и благоустройството.

(10) При учредяване на ограничени вещни права по ал. 1 върху имоти - публична собственост, за национални обекти се прилага съответно редът за частна държавна или частна общинска собственост, доколкото друго не е предвидено в закон.

Чл. 64а. (1) Влязъл в сила акт на компетентен орган за одобряване на подробен устройствен план по чл. 64, ал. 4, т. 1 с приложена извадка от графичните и текстовите материали относно служещия имот, титуляря на сервитута и собственика/носителя на вещно право в този имот и документ за изплатено или депозирано в търговска банка на разположение на собствениците и носителите на други вещни права върху служещия имот еднократно обезщетение, представляващо цената на сервитутното право, се вписва в имотния регистър по молба на титуляря на сервитута.

(2) До откриване на производство по създаване на имотен регистър по чл. 70, ал. 1 от Закона за кадастъра и имотния регистър вписването на актовете и документите по ал. 1 се извършва по партидата на собственика на служещия имот по реда на Правилника за вписванията (Изв., бр. 101 от 1951 г.; изм., бр. 30 от 1955 г., ДВ, бр. 82 от 1996 г., бр. 86 от 1997 г., бр. 14 от 2000 г., бр. 5 и 16 от 2001 г., бр. 69 от 2004 г., бр. 67 от 2005 г. и бр. 22 от 2008 г.).

Чл. 65. (1) Размерът на обезщетението по чл. 64, ал. 4, т. 2 се определя при прилагане на следните критерии:

1. площта на чуждия поземлен имот, включена в границите на сервитута;

2. видовете ограничения на ползването;

3. срок на ограничението;

4. справедливата пазарна оценка на имота или на частта от него, която попада в границите на сервитута.

(2) Независимо от обезщетението по ал. 1, титулярят на сервитута дължи възстановяване на всички причинени вреди на имота или съответно парично обезщетение.

Чл. 66. Видът и местоположението на енергийните обекти и на площите на служещи поземлени имоти, включени в границите на сервитутите по този закон, се определят в общи и подробни устройствени планове.

Чл. 67. (1) Представителите на лицата по чл. 62, ал. 1 и чл. 64, ал. 1 и длъжностните лица, които осъществяват контрол по този закон, могат да влизат и да преминават през чужди имоти и да извършват дейности в тях, свързани с експлоатацията на енергийните обекти или за контрол върху тях.

(2) Лицата по чл. 62, ал. 1 и чл. 64, ал. 1 имат право безвъзмездно да използват мостове, пътища, улици, тротоари и други имоти - публична собственост, за прокарване, скачване, преминаване и поддържане на въздушни и подземни електропроводи, газопроводи, топлопроводи, водопроводи за енергийни цели, нефтопроводи и нефтопродуктопроводи, като осигуряват техническата безопасност и предприемат мерки за недопускане на щети.

(3) Операторите на преносни и разпределителни мрежи ползват безвъзмездно части от сгради и прилежащите им поземлени имоти за монтиране на средства за измерване и други съоръжения, свързани с доставката на електрическа и топлинна енергия и природен газ.

(4) Собствениците на имотите по ал. 1 - 3 имат право на обезщетение за нанесени щети.

Чл. 68. (1) Когато собственикът, ползвателят или наемателят на имота извърши неразрешено застрояване, заграждане, засаждане или друго нарушение на режима за упражняване на сервитута, титулярят на сервитута има право да сезира компетентните органи с искане за премахване на незаконните строежи за сметка на собственика, ползвателя или наемателя, ако последният не ги отстрани в срока, даден му от титулярят на сервитута.

(2) В случаите по ал. 1 титулярят на сервитута не дължи обезщетение за причинените вреди.

English translation of the ENERGY SECTOR ACT (a non-certified, non-official translation)

Section II.

Servitudes

Art. 64. (1) In expanding the existing, and in constructing new air and underground electric power lines, over-ground and underground hydro-technical installations for production of electric power, heat pipelines, gas pipelines servitudes, oil and oil products pipelines in favour of the person, who will construct and operate the energy site.

of the energy enterprises shall occur. The servitudes under this Act shall be entered in the cadastre and shall be entered under the conditions and by the order of the Cadastre and Property Register Act.

(2) Servitudes under this Act are:

1. right of passing by people and equipment in favour of the persons under para. 1;
2. right of laying air and underground electric power lines, over-ground and underground hydro-technical installations for production of electric power, heat pipelines, gas pipelines, oil and oil products pipelines in favour of the persons under Para. 1;
3. restriction of the using of land properties adherent to the energy sites.

(3) In using the servitudes:

1. the holder of servitude shall acquire a right:
 - a) of laying air and underground electric power lines, heat pipelines, gas pipelines, oil and oil products pipelines;

b) of his representatives to enter and pass through the servient estate and carry out activities on them related to construction and/or operation of the energy sites, including the right of passing equipment through the servient land properties in connection with the servicing of air and underground lines and ground facilities;

c) carry out trimming and cutting of trees in the servitude lines of the electric lines and hydro-facilities for removal accidents with notifying the governing bodies of the forestry holdings and national parks;

2. not admitted in the service land properties shall be:

a) construction or planting perennial plants in the servitude strip determined by the ordinance under para 9;

b) laying trunks of other networks of the technical infrastructure, with exception of the cases where it is admissible by a normative act, in observance of the respective technical requirements and after written coordination with the holder of the servitude;

3. the change of the ownership of the property shall not terminate the effect of the servitudes regarding the dominant and regarding the servient property;

4. the servitudes are inseparable rights; they may be exercised in full in favour of each part of the dominant property and also charges entirely every part of the servient property when the properties are separated;

5. the servitude may be used only for the needs of the dominant property;

6. the owner of the servient property shall not have the right to move the servitude.

(4) The servitudes under para 2 shall occur where:

1. there is a detailed development plan in effect which determines the location of the respective properties, and

2. the servitude holder pays one-time compensation has been paid to the owner of the property on which the servitude has occurred, and to the holders of other real rights on the property concerned.

(5) (6) The determining of the size of the compensation under this chapter shall be carried out by the order of art. 210 and 211 of the Spatial Development Act or by mutual consent of the parties with an assessment by a licensed appraiser.

(7) The exercising of the servitude right shall be implemented by the servitude holder, according to the technical requirements of the ordinance under para 9.

(8) In the event that the servitude zone falls within a property for which right of construction has been vested in favour of servitude holder, the servitude on the property shall be stipulated by the act for vesting right of construction.

(9) The sizes, the location and the special regime of exercising the servitudes are individual for the different types of energy sites and shall be determined by an order and in a way stipulated by an ordinance of the Minister of Economy and Energy, the Minister of Agriculture and Food and the Minister of Regional Development and Public Works.

(10) In case of establishing limited real rights under Para. 1 on properties – public ownership, for national sites shall apply the procedure for private state or private municipal property, unless otherwise provided by an act.

Art. 64a (10) An enforced instrument of a competent body for approval of a similar territory plan under Art. 64, Para. 4, p. 1 with an attached summary of graphic and text materials on the relevant property, the servitude holder and owner/holder of real right in the property and a document for paid or deposited in a trade bank at disposal of the owners and holders of other real rights on the property one time compensation, representing the price of the servitude right, shall be entered in the property register upon request of the servitude holder.

(2) By opening a procedure on creation of a property register under Art. 70, Para. 1 of the Cadastre and Property Register Act, the entering of the acts and documents under Para. 1 shall be carried out on the owner's lot of the relevant property under the Rules on Entries (N101/1951; amend. 30/1955, SG, 82/1996, 86/1997, 14/2000, 5 and 16/20012, 69/2004, 67/2005 and 22/2008).

Art. 65. (1) The size of the compensation under art. 64, para 4, p. 2 shall be determined by applying the following criteria:

1. the size of the another's land property included within the boundaries of the servitude;
 2. the types of restrictions of the using;
 3. the term of the restriction;
 4. the fair market assessment of the property or of the part of it, falling within the boundaries of the servitude.
- (2) Regardless of the compensation under para 1 the servitude holder shall owe indemnification of all damages caused to the property or a respective monetary compensation.

Art. 66. The type and the location of the energy sites and of the area of servient land properties included within the boundaries of the servitudes under this Act shall be determined by general and detailed development plans.

Art. 67. (1) The representatives of the persons under Art. 62, Para. 1 and Art. 64, Para. 1 and the officials exercising control under this Act may enter and pass through another's property and carry out activities there related to the operation of the energy sites or to the control over them.

(2) The persons under Art. 62, Para. 1 and Art. 64, Para. 1 shall have the right to use free of charge bridges, roads, streets, sidewalks and other real estate – public property, for laying, connecting, passing and maintaining of air and underground electric power lines, gas supply pipelines, heat pipelines, water pipelines for the purposes of the energy sector, oil and oil products pipelines, providing the technical safety and taking measures for non-admission of damages.

(3) The operators of transmission and distribution networks shall use gratuitously parts of buildings and the attached land properties for fitting measuring devices and other equipment related to the supply of electric and heat power and natural gas.

(4) he owners of the real estate under para 1 – 3 shall be entitled to indemnification for caused damages.

Art. 68. (1) Where the owner, user or tenant of the property carries out unauthorised construction, fencing, planting or other violation of the regime of exercising the servitude the servitude holder shall have the right to approach the competent bodies with a request for removal of the illegal constructions for the account of the owner, user or tenant if the latter does not remove them by a deadline set by the servitude holder.

(2) In the cases of para 1 the servitude older shall not owe indemnification for the caused damages.

4. ЗАКОН ЗА ГОРИТЕ / FORESTRY ACT

<https://www.lex.bg/laws/ldoc/2135721295>

Чл. 61. (1) Сервитут върху поземлени имоти в горски територии може да се учреди за изграждане и/или обслужване на:

1. надземни и подземни проводни за хидротехнически съоръжения, водопроводи и канализации с диаметър под 1500 мм, включително на прилежащите към тях хидротехнически съоръжения (шахти) с площ до 15 кв. м, както и въздушни и подземни електропроводи, кабели и други довеждащи и отвеждащи проводни на техническата инфраструктура;
2. телефонни, телеграфни, радиосъобщителни и други линии;
3. лифтове и влекове - за срок до 30 години;

4. обхвата на съоръжения от ветрогенераторни и фотоволтаични паркове.

(2) Сервитут върху поземлени имоти в горски територии може да се учреди за обслужване на надземни и подземни проводни за хидротехнически съоръжения, водопроводи и канализации с диаметър над 1500 мм, нефтопроводи, топлопроводи, газопроводи, нефтопродуктопроводи, надземни и подземни хидротехнически съоръжения за производство на електрическа енергия.

(3) Сервитут върху поземлени имоти в горски територии се учредява безсрочно или за определен срок:

1. от Министерския съвет - за поземлени имоти в горски територии - публична държавна собственост;
2. от министъра на земеделието, храните и горите - за поземлени имоти в горски територии - частна държавна собственост:
 - а) за въздушни електропроводи над 20 kV;
 - б) за лифтове и влекае;
 - в) за обектите по ал. 1, т. 4;
3. от изпълнителния директор на Изпълнителната агенция по горите - за поземлени имоти в горски територии - частна държавна собственост, извън тези по т. 1 и 2;
4. от кмета на общината след решение на общинския съвет - за поземлени имоти в горски територии - общинска собственост;
5. от собственика - за останалите поземлени имоти в горски територии.

Чл. 62. (1) За учредяване на сервитут върху поземлени имоти в горски територии инвеститорът прави искане за предварително съгласуване пред:

1. министъра на земеделието, храните и горите - за поземлените имоти в горските територии - публична държавна собственост, както и за обектите по чл. 61, ал. 3, т. 2;
2. изпълнителния директор на Изпълнителната агенция по горите - за поземлените имоти в горски територии - частна държавна собственост, по чл. 61, ал. 3, т. 3;
3. кмета на общината - за поземлени имоти в горски територии - общинска собственост;
4. собственика - за останалите поземлени имоти в горски територии.

(2) За учредяване на сервитут върху поземлени имоти в горски територии, свързани с националната сигурност и отбраната на страната, искането за предварително съгласуване се прави от съответните министри и ръководители на ведомства.

(3) Искането за предварително съгласуване за учредяване на сервитут върху поземлени имоти в горските територии - държавна и общинска собственост, се придружава от следните документи:

1. скица на имота или извадка за група поземлени имоти от кадастралната карта или от картата на възстановената собственост, извадка от кадастралния регистър на недвижимите имоти или от картата на възстановената собственост с данни за имотите и партиди за тях;
2. задание за изработване на подробен устройствен план, изготвено в съответствие с разпоредбите на Закона за устройство на територията;
3. становище от съответната регионална дирекция по горите, издадено въз основа на документите по т. 1 и 2.

(4) В едномесечен срок от постъпване на искането лицата по ал. 1 се произнасят по него. Решението на лицата по ал. 1, т. 1, 2 и 3 се съобщава по реда на Административнопроцесуалния кодекс и може да се обжалва при условията и по реда, определени в него.

(5) Когато искането е за поземлен имот в горска територия - държавна собственост, органът по ал. 1, т. 1 и 2 преди произнасяне по него служебно изисква становище от съответното държавно горско стопанство или държавно ловно стопанство.

(6) Не се изисква предварително съгласуване за учредяване на сервитут върху поземлени имоти в горски територии за:

1. национални обекти и общински обекти от първостепенно значение по смисъла на Закона за държавната собственост и Закона за устройство на територията;
2. обекти на техническата инфраструктура на територията на повече от една община или една област, когато няма друга техническа възможност или когато друго техническо решение е явно икономически нецелесъобразно.

Чл. 63. (1) За учредяване на сервитут върху поземлени имоти в горски територии се подава заявление по образец до:

1. министъра на земеделието, храните и горите - за поземлени имоти в горски територии - публична държавна собственост, както и за обектите по чл. 61, ал. 3, т. 2;
2. изпълнителния директор на Изпълнителната агенция по горите - за поземлени имоти в горски територии - частна държавна собственост, извън посочените в т. 1;
3. кмета на общината - за поземлени имоти в горски територии - общинска собственост;
4. собственика - за горската територия, частна собственост.

(2) Към заявлението по ал. 1 се прилагат:

1. скица на имота от кадастралната карта или от картата на възстановената собственост, извадка от кадастралния регистър на недвижимите имоти или от картата на възстановената собственост с данни за имотите и партиди за тях или комбинирана скица, съдържаща същите данни;
2. одобрен подробен устройствен план и удостоверение, че актът за одобряването му е влязъл в сила, издадено от органа, който го е одобрил;
3. документ за определяне на цената за сервитута;
4. влязъл в сила административен акт, издаден по реда на глава шеста от Закона за опазване на околната среда и/или по реда на Закона за биологичното разнообразие или становище на компетентния орган по околна среда.

(3) Когато за изграждането на обект или съоръжение в горски територии е необходимо учредяване право на строеж и сервитут, заявленията се разглеждат едновременно.

(4) Органът по ал. 1, т. 1 - 3 се произнася по заявлението в едномесечен срок от датата на постъпването му, като учредява сервитут или постановява отказ. Когато искането е за поземлени имоти в горски територии - държавна собственост, органът по ал. 1, т. 1 и 2 преди произнасяне по него служебно изисква становище от съответното държавно горско стопанство или държавно ловно стопанство.

(5) За учредяване на сервитут върху поземлени имоти в горски територии - държавна и общинска собственост, се заплаща цена, определена с наредбата по чл. 86, ал. 2. Цената за учредяване на сервитута се посочва в акта за учредяването му.

(6) Актовете по ал. 4 се съобщават и могат да се обжалват по реда на Административнопроцесуалния кодекс.

(7) Цената по ал. 5 се заплаща в тримесечен срок от влизането в сила на акта за учредяване на сервитут. В случай че цената не бъде заплатена в определения срок, правата на лицето, в чиято полза е учреден сервитутът, се погасяват.

(8) Въз основа на влезлия в сила акт за учредяване на сервитут и извършеното плащане на дължимата цена се сключва договор между заявителя и изпълнителния директор на Изпълнителната агенция по горите, съответно кмета на общината. Договорът се вписва от лицето, в чиято полза е учреден сервитутът, в службата по вписванията по местонахождение на имота и копие от вписания договор се изпраща в съответната регионална дирекция по горите.

(9) Цената за учредения сервитут постъпва:

1. в бюджета на Изпълнителната агенция по горите - за горските територии - държавна собственост;
2. в съответната община - за горските територии - общинска собственост.

(10) Определената по реда на чл. 86, ал. 3 и 4 стойност на дървесината от горските територии - държавна собственост, върху които е учреден сервитут или такъв възниква по силата на специални закони, постъпва в приход на съответното държавно предприятие по чл. 163.

(11) Учредяването на сервитути върху поземлени имоти - горски територии, които са предоставени за нуждите на националната сигурност и отбраната на страната, се извършва след разрешение от ръководителя на съответното ведомство, на което са предоставени. Разрешението се изисква от заявителя и се прилага към документите по ал. 2.

Чл. 64. (1) За сервитутите, които възникват по силата на специални закони в горските територии, се прилагат разпоредбите на съответните закони.

(2) Приемането на подробен устройствен план за сервитутите по ал. 1 се разрешава след уведомяване на лицата по чл. 62, ал. 1.

(3) Алинея 2 не се прилага за обекти с национално значение или общински обекти от първостепенно значение по смисъла на Закона за устройство на територията.

(4) Определянето на обезщетението за сервитута по ал. 1 се извършва по реда на наредбата по чл. 86, ал. 2.

Чл. 65. (1) Сервитутът върху поземлени имоти в горски територии, които не са държавна или общинска собственост, се учредява от собственика в нотариална форма.

(2) Начинът на плащане за учредяване на сервитут в имот - собственост на физическо или юридическо лице, се определя в договора по ал. 1.

Чл. 66. Когато собственикът на обектите по чл. 61, ал. 1 и 2 и на горската територия, върху която са разположени - частна собственост, е едно и също лице, не се учредява сервитут за изграждане и/или обслужване на обектите.

Чл. 67. Титулярят на сервитута е длъжен за своя сметка да поддържа територията, върху която е учреден сервитутът, в състояние, което да гарантира безопасната експлоатация на обекта по чл. 61, ал. 1 и 2.

Чл. 68. Собствеността върху дървесината от поземлени имоти в горски територии - държавна и общинска собственост, върху които са учредени сервитути или такива възникват по силата на специални закони, е на титуляря на сервитута, като добивът и разпореждането с дървесината се организира от него и за негова сметка по реда на този закон.

English translation of the FORESTRY ACT (a non-certified, non-official translation)

Art. 61. (1) Servitude over land properties in forest territories may be established for construction and/or servicing of:

1. air and underground electric lines, ground and underground hydro-technical equipment for production of electric energy, petrol pipelines, heat pipelines, gas pipelines, petrol product pipelines, water pipe lines, drainages, cables and other elements of the technical infrastructure;
2. telephone, telegraph, radio broadcasting and other lines;

3. lifts and tow-lifts;
4. the scope of equipment of wind generator and photo-voltaic parks.

(2) Servitude over land properties in forest territories shall be established termless or for a certain term:

1. by the Council of Ministers – for land properties in forest territories – public state ownership;
2. by the Minister of Agriculture and Food –for land properties in forest territories – private state ownership:
 - a) for air electric lines above 20 kV;
 - b) for lifts and tow-lifts;
 - c) for the objects under Para. 1, p. 4;
3. by the Executive director of the Executive Forest Agency –for land properties in forest territories – private state ownership apart from those under p. 1 and 2;
4. by the Mayor of the Municipality after a Municipal council decision – for land properties in forest territories – Municipal ownership;
5. by the owner – for the rest of the land properties in forest territories.

Art. 62. (1) For establishing servitude over land properties in forest territories, the investor shall make a request for preliminary cooperation before:

1. the Minister of Agriculture and Food – for the land properties in the forest territories – public state ownership, as well as for the objects under Art. 61, Para. 2, p. 2;
2. the Executive director of the Executive Forest Agency –for the land properties in forest territories – private state property under Art. 61, Para. 2, p. 3;
3. the Mayor of Municipality – for land properties in forest territories – Municipal ownership;
4. the owner – for the remaining land properties in forest territories.

(2) For establishing servitude over land properties in forest territories, related to the national security and the defence of the country, the request for preliminary coordination shall be made by the relevant Ministers and heads of institutions.

(3) The request for preliminary coordination for establishing servitude over land properties in forest territories - state and Municipal ownership, shall be accompanied by the following documents:

1. plans of the properties from the cadastre map and an excerpt of the cadastre register with data about the properties or plans of the properties from the map of the restored ownership and lots for them, coordinated by the relevant regional Directorate of Forests on location of the properties;
2. task for development of a detailed territory plan, drawn up in compliance with the provisions of the Spatial Development Act.

(4) Within one month term after receiving the request, the persons under Para. 1 shall pronounce on it. The decision of the persons under Para. 1, p. 1, 2 and 3 shall be announced under the Administrative-procedure Code and may be appealed under the conditions and procedure, determined by it.

(5) Where the request is for a land property in a forest territory – state ownership, the body under Para. 1, p. 1 and 2 before pronouncing on it, officially shall request an opinion from the relevant state forestry or state hunting reserve.

Art. 63. (1) For establishing servitude over land properties in forest territories, an application according to a form shall be submitted to:

1. the Minister of Agriculture and Food – for land properties in forest territories – public state ownership, as well as for the objects under Art. 61, Para. 2, p. 2;
2. the Executive director of the Executive Forest Agency –for land properties in forest territories – private state ownership, apart from the ones, indicated in p. 1;

3. the Mayor of Municipality – for land properties in forest territories – Municipal ownership;
4. the owner – for forest territories, private ownership.

(2) The application shall have attached:

1. plans of the properties from the cadastre map and an excerpt of the cadastre register with data about the properties or plans of the properties from the map of the restored ownership and lots for them, coordinated by the relevant regional Directorate of Forests on location of the properties;
2. approved detailed territory plan and a certificate, that the act for its approval has been enforced, issued by the body, who has approved it;
3. a document for determining the price for the servitude;
4. an enforced administrative act, issued under Chapter Six of the Environmental Protection Act and/or under the Biological Diversity Act and an opinion of the competent body on the environment.

(3) Where for building an object or equipment in forest territories it is needed establishment of right to construction and servitude, the application shall be examined together.

(4) The body under Para. 1, p. 1 –3 shall pronounce on the application within 1-month term after the date of its receiving, by establishing a servitude or ordering a refusal. Where the request is for land properties in forest territories, - state ownership, the body under Para. 1, p. 1 and 2 before pronouncing on it, shall officially request an opinion by the relevant state forestry or state reserve.

(5) For establishing servitude over land properties in forest territories – state and Municipal ownership, a price shall be paid, determined by the ordinance under Art. 86, Para. 2. The price for establishing servitude shall be indicated in the act for its establishing.

(6) The acts under Para. 4 shall be announced and may be appealed under the Administrative-procedure Code. The acts for establishing servitude over forest territories – state and Municipal ownership, shall be published on the internet site of the Executive Forest Agency or of the relevant Municipality.

(7) The price under Para. 5 shall be paid within three month term after the enforcement of the act for establishing servitude. In case that the price is not paid within the determined term, the rights of the person, in whose favour the servitude has been established, shall lapse.

(8) On the basis of the enforced act for establishing servitude and the payment made of the owed price, a contract shall be signed between the applicant and the Executive director of the Executive Forest Agency, respectively, the Mayor of the Municipality. The contract shall be registered by the person, in whose favour the servitude has been established in the Registry office on location of the property and a copy of the registered contract shall be sent to the relevant regional Directorate of Forests.

(9) The price of the established servitude shall come into:

1. the relevant state enterprise under Art. 163 – for the forest territories – state ownership;
2. the relevant Municipality – for the forest territories – Municipal ownership.

(10) Establishing servitudes over land properties- forest territories, which have been provided for the needs of the national security and the defence of the country, shall be made after permit by the head of the relevant institution, to which they have been submitted. The permit shall be requested by the applicant and shall be attached to the documents under Para. 2.

Art. 64. (1) For the servitudes, occurred under special laws in the forest territories, the provisions of the relevant laws shall be applied.

(2) The development and adoption of a detailed territory plan for the servitudes under Para. 1, shall be permitted after preliminary voting under the terms and conditions of this Act.

(3) The determination of the compensation for the established servitude under Para. 1 shall be made under the Ordinance of Art. 86, Para. 2.

Art. 65. (1) The servitude over land properties in forest territories, which are not state or Municipal ownership, shall be established by the owner of the notary form.

(2) The way of payment for establishing a servitude in a property – ownership of natural or legal person, shall be determined in the contract under Para. 1.

Art. 66. Where the owner of the objects under Art. 61, Para. 1 and of the forest territory, on which they are situated –private ownership, is one and the same person, servitude shall not be established for building and/or servicing the objects.

Art. 67. The holder of the servitude shall be obliged on his account to maintain the territory, on which the servitude has been established, in a state which should guarantee the safe exploitation of the object under Art. 61, Para. 1.

Art. 68. The ownership over the timber from land properties in forest territories – state and Municipal ownership, on which servitudes have been established, shall belong to the holder of the servitude, where the production and disposal of the timber shall be organized by him and on his account, under this Act.

5. ЗАКОН ЗА ЕЛЕКТРОННИТЕ СЪОБЩЕНИЯ / ELECTRONIC COMMUNICATIONS ACT

<https://www.lex.bg/laws/ldoc/2135553187>

Раздел III

Сервитути

Чл. 287. (1) При изграждане на нови и/или разширение на съществуващи въздушни и подземни електронни съобщителни мрежи и съоръжения за постигане на целите по чл. 4 и в обществен интерес, в полза на предприятия, предоставящи обществени електронни съобщителни мрежи и/или услуги възникват сервитути. Сервитутите по този закон се отразяват в кадастъра и се вписват при условията и по реда на Закона за кадастъра и имотния регистър.

(2) Сервитутите по ал. 1 възникват за всички имоти публична и частна собственост, с изключение на тези, посочени в раздел IV на тази глава.

(3) Сервитутите по ал. 1 възникват, когато:

1. има влязъл в сила подробен устройствен план, с който се определя местоположението на съответните имоти, и

2. (изм. - ДВ, бр. 17 от 2009 г.) само за имоти частна собственост, на собственика на имота е изплатено от титуляря на сервитута еднократно обезщетение.

(4) (Изм. - ДВ, бр. 17 от 2009 г.) Определянето на размера на обезщетенията по ал. 3, т. 2 се извършва по взаимно съгласие на страните или въз основа на оценка от лицензиран оценител, а при имоти публична собственост обезщетения не се дължат.

(5) Начинът на плащане на обезщетението по ал. 3, т. 2 се договаря между страните.

Чл. 288. Сервитутите по този закон са:

1. право на преминаване и прокарване на мрежи в полза на предприятия, предоставящи обществени електронни съобщителни мрежи и/или услуги, включително на отклонения от тези мрежи до сгради и други поземлени имоти;

2. ограничаване в ползването на поземлени имоти, където е упражнено правото на преминаване и/или правото на прокарване.

Чл. 289. (1) Сервитутите по този закон са неделими права, като те могат да се упражняват изцяло в полза на всяка част от господстващия имот и тежат изцяло върху всяка част от служещия имот и в случаите, когато този имот е обект на разпореждане по всякакъв законен начин след възникване на сервитута.

(2) Промяната на собствеността на служещия имот не прекратява и/или променя действието на сервитутите нито по отношение на господстващия, нито на служещия имот.

(3) Сервитутът се използва само за нуждите на господстващия имот.

(4) Собственикът на служещия имот няма право да премества сервитута, освен ако лицата не са договорили друго.

Чл. 290. (1) При упражняване на сервитутите:

1. предприятието, предоставящо обществени електронни съобщителни мрежи и/или услуги, придобива право негови представители да влизат и преминават през служещите имоти и да извършват в тях дейности, свързани с изграждането, развитието, поддръжката и експлоатацията на електронната съобщителна мрежа, съоръжения и свързаната с тях инфраструктура, включително право на преминаване на техника през служещите поземлени имоти във връзка с изграждането и обслужването на мрежата;

2. в служещите поземлени имоти не се допуска:

а) извършване на застрояване или трайни насаждения в сервитутната ивица, определена в наредбата по чл. 292, освен ако собственикът и предприятието не договорят друго;

б) прокарване на проводни мрежи на техническата инфраструктура, с изключение на случаите, когато това е допуснато с нормативен акт, при спазване на съответните технически изисквания и след писмено съгласуване с предприятието, предоставящо обществени електронни съобщителни мрежи и/или услуги.

(2) Упражняването на правата по ал. 1, т. 1 се извършва по реда на чл. 299 при спазване на правилата за обществения ред.

(3) Титулярят на сервитута е длъжен да осигурява съвместно ползване на сервитутната ивица при обосновано искане от друго предприятие, предоставящо обществени електронни съобщителни мрежи и/или услуги, когато е налице техническа и физическа възможност и срещу възнаграждение.

(4) Възнаграждението по ал. 3 не може да превишава общата стойност на обезщетението по чл. 287, ал. 3, т. 2.

Чл. 291. (1) Упражняването на сервитута се извършва от предприятието, осъществяващо електронни съобщения съобразно този закон и техническите изисквания, посочени в наредбата по чл. 292.

(2) В случай че сервитутната ивица попада в имот, за който се учредява право на строеж, сервитутът върху имота се посочва в акта за учредяване на право на строеж.

Чл. 292. Размерите, разположението и специалният режим за упражняване на сервитутите са индивидуални за различните видове електронни съобщителни мрежи и съоръжения и се определят по ред и начин, определени в наредба на министъра на регионалното развитие и благоустройството, министъра на земеделието, храните и горите и министъра на транспорта, информационните технологии и съобщенията.

Чл. 293. (1) Размерът на обезщетението по чл. 287, ал. 3, т. 2 се определя при прилагане на следните критерии:

1. площ на служещия поземлен имот, включена в границите на сервитута;

2. видове ограничения на ползването на служещия имот;

3. срок на ограничението;

4. пазарна оценка на имота или на частта от него, която попада в границите на сервитута.

(2) Независимо от обезщетението по ал. 1 предприятието, осъществяващо електронни съобщения, дължи на собственика на поземления имот по споразумение възстановяване на всички причинени вреди в имота или съответно парично обезщетение.

Чл. 294. Когато собственикът, ползвателят или наемателят на служещия имот извърши неразрешено застрояване, заграждане, засаждане или друго нарушение на режима за упражняване на сервитута, предприятието, осъществяващо електронни съобщения, има право да сезира компетентните органи с искане за премахване на незаконните строежи за сметка на собственика, ползвателя или наемателя, ако той не ги отстрани в срока, даден му от предприятието, осъществяващо електронни съобщения.

English translation of the ELECTRONIC COMMUNICATIONS ACT (a non-certified, non-official translation)

Section III

Servitudes

Article 287. (1) Upon establishment of new and/or extension of existing overhead and underground electronic communications networks and facilities, for attainment of the purposes covered under Article 4 herein and in the public interest, servitudes shall arise in favour of undertakings providing public electronic communications networks and/or services. The servitudes under this Act shall be plotted on the cadastre and shall be entered under the terms and according to the procedure established by the Cadastre and Property Register Act.

(2) (Amended, SG No. 105/2011, effective 29.12.2011) The servitudes referred to in Paragraph (1) in respect of all corporeal immovables constituting public and private property, with the exception of corporeal immovables specified in Section IV of this Chapter.

(3) The servitudes referred to in Paragraph (1) shall arise where:

1. there is an effective detailed plan whereby the location of the relevant corporeal immovables is determined; and

2. (amended, SG No. 17/2009) solely applicable to corporeal immovables constituting private property, the servitude holder has paid the owner of the immovable a lump-sum compensation.

(4) (Amended, SG No. 17/2009) The amount of compensations under Item 2 of Paragraph (3) shall be determined by mutual consent of the parties or on the basis of a valuation by a licensed appraiser, and in respect of corporeal immovables constituting public property, compensations shall not be due.

(5) The mode of payment of the compensation referred to in Item 2 of Paragraph (3) shall be agreed between the parties.

Article 288. There shall be the following servitudes under this Act:

1. a right of way and a right to install networks in favour of undertakings providing public electronic communications networks and/or services, including branches from such networks to buildings and other lots;

2. restriction on the use of lots where the right of way and/or the right to install has been exercised.

Article 289. (1) The servitudes under this Act shall be undivided rights, exercisable entirely in favour of each and any part of the dominant estate and burdening entirely each and any part of the servient estate, even in cases where the said estate is subject to disposition in any lawful manner after the servitude has arisen.

(2) Transfer of ownership of the servient estate shall not terminate and/or modify the effect of the servitudes, either in respect of the dominant estate, or in respect of the servient estate.

(3) A servitude may be used solely for the needs of the dominant estate.

(4) The owner of the servient estate shall not have the right to relocate the servitude, unless the parties have agreed otherwise.

Article 290. (1) Upon exercise of the servitudes:

1. the undertaking providing public electronic communications networks and/or services shall acquire a right for representatives of the said undertaking to enter and pass through the servient estates

and to perform there activities related to the establishment, development, maintenance and operation of the electronic communications networks, facilities and the related infrastructure, including a right of passage of equipment through the servient lots in connection with the establishment and servicing of the network;

2. the following shall be inadmissible in the servient lots:

(a) performance of building development or planting of perennial crops in the servitude strip, as determined in the ordinance referred to in Article 292 herein, unless the owner and the undertaking agree otherwise;

(b) installation of lines of other physical-infrastructure networks, with the exception of the cases where this is admitted by a statutory instrument, in compliance with the relevant technical requirements and after a written coordination with the undertaking providing public electronic communications networks and/or services.

(2) The rights referred to in Item 1 of Paragraph (1) shall be exercised according to the procedure established by Article 299 herein observing the rules of public order.

(3) The servitude holder shall be obligated to ensure a joint use of the servitude strip upon a reasoned request by another undertaking providing public communications networks and/or services, where this is technically and physically feasible and in consideration of a reward.

(4) The rewards referred to in Paragraph (3) may not exceed the total amount of the compensation referred to in Item 2 of Article 287 (3) herein.

Article 291. (1) The servitude shall be exercised by the undertaking implementing electronic communications in conformity with this Act and the technical requirements specified in the ordinance referred to in Article 292 herein.

(2) In case the servitude strip falls into a corporeal immovable in respect of which a building right is created, the servitude to the said immovable shall be indicated in the instrument creating a building right.

Article 292. (Amended, SG No. 36/2008, SG No. 17/2009, SG No. 66/2013, effective 26.07.2013, SG No. 98/2014, effective 28.11.2014) The extents, location and special regime for use of servitudes shall be specific to the various types of electronic communications networks and facilities and shall be determined according to a procedure and manner established in an ordinance of the Minister of Regional Development and Public Works, the Minister of Agriculture and Food and the Minister of Transport, Information Technology and Communications.

Article 293. (1) (Supplemented, SG No. 105/2011, effective 29.12.2011) The amount of the compensation referred to in Item 2 of Article 287 (3) herein shall be fixed applying the following criteria:

1. space of the servient lot, enclosed within the boundaries of the servitude;

2. types of restrictions on the use of the servient estate;

3. period of the restriction;

4. market value of the lot or of the part thereof which falls within the boundaries of the servitude.

(2) Notwithstanding the compensation referred to in Paragraph (1), the undertaking implementing electronic communications shall owe the owner of the lot by agreement elimination of all damage inflicted on the lot or commensurate pecuniary compensation.

Article 294. Where the owner, user or tenant of the servient estate performs unauthorized building development, fencing, planting or another breach of the regime of exercise of the servitude, the undertaking implementing electronic communications shall have the right to approach the competent authorities with a request for removal of the illegal construction works for the account of the owner, user or tenant if the said owner, user or tenant fails to remove the said works within a time limit set thereto by the undertaking providing electronic communications.

6. ЗАКОН ЗА ОПАЗВАНЕ НА СЕЛСКОСТОПАНСКОТО ИМУЩЕСТВО / THE AGRICULTURAL PROPERTY PROTECTION ACT

<https://www.lex.bg/laws/ldoc/2128112642>

Чл. 35. (1) Забранено е да се преминава през чужди земи, засадени със селскостопански култури, трайни и цветни насаждения, освен при установено право на преминаване.

(2) Прокарването на инсталации и съоръжения през чужди селскостопански земи се допуска само когато това се извършва по законоустановения ред и при пълно обезщетяване на причинените вреди.

Чл. 36. (1) Собственик или ползувател на селскостопанска земя, която няма изход на обществен път, може да поиска от кмета на района или кметството по местонахождението на имота да му разреши право на преминаване през съседните земи.

(2) Кметът на района или кметството възлага на комисия от длъжностни лица да определи мястото за преминаване, като се спазва изискването да се причинява най-малка вреда на служещата земя, а също така да определи размера на обезщетението за вредите, които се причиняват на тази земя.

(3) За предоставеното право на преминаване и размера на обезщетението кметът на района или кметството издава заповед, която може да се обжалва по реда на Гражданския процесуален кодекс пред районния съд в 14-дневен срок от съобщението.

(4) Районният съд разглежда делото по същество и се произнася с решение, което не подлежи на обжалване.

Чл. 37. Когато селскостопанската земя се окаже без достъп вследствие на продажба, замяна, делба или тя е предоставена за лично ползуване, продавачът, заменителят, съделителят или предоставилият земята е длъжен да осигури достъп, без да има право на обезщетение за вредите.

Чл. 38. Правото на преминаване се прекратява по реда на чл. 36, когато отпадне нуждата от преминаване.

English translation of the AGRICULTURAL PROPERTY PROTECTION ACT (a non-certified, non-official translation)

Art. 35. (1) It is forbidden to pass through foreign lands, planted with agricultural crops, permanent and flower plantations, except for established right of passage.

(2) The passing of installations and equipment through foreign agricultural lands shall be allowed only when this is done in accordance with the law and with full compensation of the damages caused.

Art. 36. (1) The owner or user of agricultural land, which has no access to a public road, may ask the mayor of the region or town hall on the location of the property to grant him the right to pass through the neighboring lands.

(2) The mayor of the district or city hall shall instruct a commission of officials to determine the place of passage by observing the requirement to cause the least damage to the service land and also to determine the amount of the compensation for the damage caused to the this land.

(3) For the granted right of passage and the amount of the compensation, the mayor of the district or town hall shall issue an order which may be appealed according to the Code of Civil Procedure before the district court within 14 days of the announcement.

(4) The District Court shall hear the case on the merits and shall pronounce in a judgment which is not subject to appeal.

Art. 37. When agricultural land is not accessible as a result of sale, replacement, partition, or it is made available for private use, the seller, the replacement, the divisor or the land supply is obliged to provide access without being entitled to damages.

Art. 38. The right of passage is terminated in accordance with Art. 36, when there is no need to pass.

7. ЗАКОН ЗА УСТРОЙСТВО НА ТЕРИТОРИЯТА / SPATIAL PLANNING ACT

<https://www.lex.bg/laws/ldoc/2135163904>

Чл. 190. (1) Когато съгласно подробен устройствен план някои урегулирани поземлени имоти имат лице само по проектирани нови улици, преди тези улици да са открити, общината може да прокарва временни пътища, които осигуряват достъп до съответните имоти.

(2) При нужда временни пътища се прокарват в урегулирани части на населени места и селищни образувания, за които ще бъдат създадени нови подробни устройствени планове, както и в неурегулирани още части, включени в общ устройствен план.

(3) Временните пътища трябва по възможност да следват новите улици по подробния устройствен план, съответно улиците по проектоплана или по извършените проучвания. Временните пътища се прокарват по такъв начин, че да не засягат заварени сгради и постройки, както и дълготрайни декоративни дървета.

(4) Собствеността върху частите от поземлени имоти, заети за временни пътища, се запазва. Временни пътища се използват до откриване на новите улици съгласно подробния устройствен план.

(5) Когато няма друга техническа възможност, временни пътища се прокарват и за да се осигури достъп до законно разрешени строежи извън границите на урбанизираните територии до разрешаване ползването на строежите, заедно с предвидените за тях постоянни пътища.

(6) Временни пътища се прокарват въз основа на писмен договор между заинтересуваните собственици на поземлени имоти с нотариална заверка на подписите, а при липса на съгласие - въз основа на заповед на кмета на общината.

(7) Временни пътища при бедствия, аварии и катастрофи се прокарват въз основа на заповед, издадена от компетентни органи, определени със специален закон.

Чл. 191. (1) Обезщетенията на правоимащите за вредите, причинени от прокарването на временни пътища, са за сметка на собствениците на поземлени имоти, които ще се обслужват от временните пътища.

(2) Обезщетението за частите от поземлени имоти, използвани за временни пътища, се определя за съответната година и се изплаща на равни месечни вноски. Обезщетението за подобренията, които се унищожават във връзка с временните пътища, се изплаща в брой преди заемане на поземлените имоти.

(3) Обезщетенията за временни пътища при бедствия, аварии и катастрофи се извършват по реда на специален закон.

(4) Размерът на обезщетенията се определя по реда на чл. 210.

Чл. 192. (1) Право на преминаване през чужд поземлен имот се учредява с писмен договор с нотариална заверка на подписите.

(2) Когато не е постигнато съгласие между собствениците на поземлените имоти и друго техническо решение е явно икономически нецелесъобразно, правото на преминаване през чужди поземлени имоти се учредява със заповед на кмета на общината.

(3) Правото на преминаване през държавни или общински поземлени имоти се учредява, когато друго техническо решение е явно икономически нецелесъобразно, със заповед на областния управител, съответно със заповед на кмета на общината.

(4) С правото на преминаване не могат да се влошават условията за застрояване на поземлените имоти, да се препятства установеният начин на трайно ползване на поземлените имоти и да се засягат разрешени строежи или съществуващи сгради, освен ако това не е изрично уговорено между собствениците с договора по ал. 1.

(5) Влошаване в условията за застрояване и ползване на държавни или общински поземлени имоти при учредяване право на преминаване към други имоти може да се допусне по изключение, поради липса на друга техническа възможност или когато друго техническо решение е явно икономически нецелесъобразно, с разрешение на министъра на регионалното развитие и благоустройството - за държавните поземлени имоти, съответно с решение на общинския съвет - за общинските поземлени имоти.

(6) Цената на правото на преминаване по ал. 2 и 3 се определя по реда на чл. 210 и се заплаща преди издаване на заповедите по ал. 2 и 3.

(7) Договорът по ал. 1 и заповедта по ал. 2 се вписват в имотния регистър по партидата на поземления имот, който се обслужва от учреденото право на преминаване, и по партидата на поземления имот, върху който е учредено правото на преминаване.

(8) Заповедта по ал. 3 се вписва в имотния регистър по партидата на поземления имот, който се обслужва от учреденото право на преминаване, по партидата на държавния или на общинския поземлен имот, върху който е учредено правото на преминаване, и в акта за държавна или за общинска собственост.

Чл. 193. (1) Правото на прокарване на отклонения от общи мрежи и съоръжения на техническата инфраструктура през чужди имоти се учредява с писмен договор между собствениците на поземлените имоти с нотариална заверка на подписите.

(2) С договора по ал. 1 се придобива правото да се изгради и придобие собствеността върху отклонението от общата мрежа на техническата инфраструктура в чуждия имот.

(3) Когато не е постигнато съгласие между собствениците на поземлените имоти и друго техническо решение е явно икономически нецелесъобразно, правото на прокарване се учредява със заповед на кмета на общината.

(4) Правото да се прокарат отклонения от общи мрежи и съоръжения на техническата инфраструктура през държавни или общински поземлени имоти се учредява, когато друго техническо решение е явно икономически нецелесъобразно, със заповед на областния управител, съответно със заповед на кмета на общината.

(5) С прокарването на отклонения от общи мрежи и съоръжения на техническата инфраструктура не могат да се влошават условията за застрояване на поземлените имоти, да се препятства установеният начин на трайно ползване на поземлените имоти и да се засягат разрешени строежи или съществуващи сгради, освен ако това не е изрично уговорено между собствениците с договора по ал. 1.

(6) Влошаване в условията за застрояване и ползване на държавни или общински поземлени имоти поради прокарване на отклонения от общи мрежи и съоръжения на техническата инфраструктура към други имоти може да се допусне по изключение, поради липса на друга техническа възможност или когато друго техническо решение е явно икономически нецелесъобразно, с разрешение на министъра на регионалното развитие и благоустройството - за държавните поземлени имоти, съответно с решение на общинския съвет - за общинските поземлени имоти.

(7) Разрешение за строеж на отклоненията от общи мрежи и съоръжения на техническата инфраструктура се издава на титуляря на учреденото право по ал. 1, 3 и 4.

(8) Цената на учреденото право по ал. 3 и 4 се определя по реда на чл. 210 и се заплаща преди издаване на заповедите по ал. 3 и 4.

(9) Договорът по ал. 1 и заповедта по ал. 3 се вписват в имотния регистър по партидата на поземления имот, който се обслужва от учреденото право да се прокарат отклоненията от общи мрежи и съоръжения на

техническата инфраструктура и по партидата на поземления имот, през който са прокарани отклоненията от общите мрежи и съоръжения на техническата инфраструктура.

(10) Заповедта по ал. 4 се вписва в имотния регистър по партидата на поземления имот, който се обслужва от учреденото право да се прокарат отклоненията от общи мрежи и съоръжения на техническата инфраструктура, по партидата на държавния или на общинския поземлен имот, през който са прокарани отклоненията от общите мрежи и съоръжения на техническата инфраструктура, и в акта за държавна или за общинска собственост.

(11) При бедствия, аварии и катастрофи отклонения от общи мрежи и съоръжения на техническата инфраструктура до отделни обекти могат да се прокарат временно - до преодоляване на последствията от бедствието, аварията или катастрофата, през чужди недвижими имоти въз основа на заповед, издадена от компетентни органи, определени със специален закон. В този случай разрешение за строеж не се издава.

(12) За вредите по ал. 11 собствениците на засегнатите имоти се обезщетяват непосредствено след овладяване на бедствието, аварията или катастрофата при условията и по реда на специален закон.

English translation of the SPATIAL PLANNING ACT (a non-certified, non-official translation)

Art. 190. (1) When according to a detailed development plan some regulated landed properties have face only on designed new streets before these streets have been opened, the municipality can make temporary roads ensuring access to the corresponding properties.

(2) Temporary roads, if necessary, shall be made in regulated parts of settlements and settlement formations for which new detailed development plans will be created as well as in not yet regulated parts included in a general development design.

(3) The temporary roads must if possible follow the new streets according to the detailed development plan, respectively the streets of the design plan or the implemented investigations. The temporary roads shall be made in such a way so that existing buildings and constructions as well as long term decoration trees are not affected.

(4) The ownership of the parts of landed properties taken for temporary roads shall be preserved. Temporary roads shall be used till the opening of the new streets according to the detailed development plan.

(5) When there is no other technical opportunity temporary roads shall be made also for ensuring the access to lawfully permitted constructions out of the boundaries of the urbanised territories till the permission for using the constructions together with the permanent roads provided for them.

(6) (suppl. –SG 103/05) Temporary roads shall be made on the ground of written agreement between the interested owners of land properties with a notary certification of the signatures, and in event of lack of consent – on the ground of order by the mayor of the municipality.

(7) Temporary roads in case of disasters, accident and catastrophes shall be made on the ground of an order issued by the competent bodies defined with a special law.

Art. 191. (1) The indemnification of the rightful claimants for the damages caused by the making of temporary roads shall be for the account of the owners of landed properties which will be serviced with the temporary roads.

(2) The indemnification for the parts of the landed properties used for temporary roads shall be determined for the corresponding year and shall be paid with equal monthly instalments. The indemnification for the improvements that will be destroyed in connection with the temporary roads shall be paid in cash before the taking of the landed properties.

(3) The indemnification for temporary roads at disasters, accidents and catastrophes shall be made by the order of a special law.

(4) (amend. SG 65/03) The extent of the indemnification shall be determined by the order of art. 210.

Art. 192. (1) Right to pass through other's landed property shall be established with written contract with signatures, certified by a notary.

(2) When consent is not reached between the owners of the landed properties and other technical solution is obviously economically inexpedient, the right to pass through other's landed properties shall be established with an order by the mayor of the municipality.

(3) The right to pass through state or municipal landed properties shall be established when other technical solution is obviously economically inexpedient, with an order by the regional governor, respectively with order by the mayor of the municipality.

(4) with the right to pass cannot be impaired the conditions for building up in the landed properties, to be hindered the established way of durable use of the landed properties and to affected permitted constructions or existing buildings unless this is not explicitly agreed between the owners with the contract of para 1.

(5) Impairing of the conditions for building and use of state or municipal landed properties at establishing of right to pass to other properties can be admitted as exception, due to lack of other technical possibility or when other technical solution is obviously economically inexpedient, with permission by the Minister of Regional Development and Public Works – for the state landed properties, respectively with decision of the municipal council – for the municipal landed properties.

(6) The price of the right to pass of para 2 and 3 it shall be paid before the issuing of the orders of para 2 and 3.

(7) The contract of para 1 and the order of para 2 shall be entered in the property register in the file of the landed property, which is served by the established right to pass and in the file of the landed property, on which is established right to pass.

(8) The order of para 3 shall be entered in the property register in the file of the landed property, which is served by the established right to pass, in the file of the state or the municipal landed property, on which is established the right to pass and in the act for state or municipal ownership.

Art. 193. (1) The right to lay branches of common networks of the technical infrastructure through other's properties shall be established with written contract between the owners of the landed properties with signatures, certified by a notary.

(2) with the contract of para 1 shall be acquired the right to construct and acquire the ownership in the branch of the common network of the technical infrastructure in the other's property.

(3) When agreement between the owners of the landed properties has not been achieved and other technical solution is obviously economically inexpedient, the right to lay shall be established with an order by the mayor of the municipality.

(4) The right to lay branches of common networks and facilities of the technical infrastructure through state or municipal landed properties shall be established when other technical solution is obviously economically inexpedient, with an order by the regional governor, respectively with an order by the mayor of the municipality.

(5) With laying of branches from common networks and facilities of the technical infrastructure cannot be impaired the conditions for building up in the landed properties, be hampered the established way of durable use of the landed properties and be affected permitted constructions or existing buildings unless this is explicitly agreed between the owners with the contract of para 1.

(6) Worsening of the conditions for building and use of state or municipal landed properties due to laying of branches from common networks and facilities of the technical infrastructure to other properties can be admitted as exception due to lack of other technical possibility or when other technical solution is obviously economically inexpedient, with permission by the Minister of Regional Development and Public Works –for the state landed properties, respectively with decision of the municipal council – for the municipal landed properties.

(7) Permission for construction of the branches from common networks and facilities of the technical infrastructure shall be issued to the titulary of the established right of para 1, 3 and 4.

(8) The price of the established right of para 3 and 4 shall be determined by the order of art. 210 and shall be paid before issuing of the orders of para 3 and 4.

(9) The contract of para 1 and the order of para 3 shall be entered in the property register in the file of the landed property, which is served by the established right to lay the branches from common networks and facilities of the technical infrastructure and in the file of the landed property, through which are laid the branches from the common networks and facilities of the technical infrastructure.

(10) The order of para 4 shall be entered in the property register in the file of the landed property, which is served by the established right to lay the branches from common networks and facilities of the technical infrastructure, in the file of the state or the municipal landed property, through which are laid the branches from the common networks and facilities of the technical infrastructure and in the act for state or municipal ownership.

(11) At disasters, accidents and catastrophes branches from common networks and facilities of the technical infrastructure to separate sites can be laid temporary –till overcoming of the consequences of the disaster, the accident or the catastrophe, through other's immovable properties on the basis of an order, issued by the competent bodies, determined with special law. In this case permission for construction shall not be issued.

(12) The owners of the affected properties shall be indemnified for the damages of para 11 immediately after control is achieved over the disaster, the accident or the catastrophe under the conditions and by the order of special law.

8. ЗАКОН ЗА ЗАДЪЛЖЕНИЯТА И ДОГОВОРИТЕ / LAW OF OBLIGATIONS AND CONTRACTS

<https://lex.bg/laws/ldoc/2121934337>

Чл. 8. Договорът е съглашение между две или повече лица, за да се създаде, уреди или унищожи една правна връзка между тях.

Лицата се ползват от правата си, за да задоволяват своите интереси. Те не могат да упражняват тези права в противоречие с интересите на обществото.

Чл. 9. Страните могат свободно да определят съдържанието на договора, доколкото то не противоречи на повелителните норми на закона и на добрите нрави.

Чл. 18. Договорите за прехвърляне на собственост или за учредяване на други вещни права върху недвижими имоти трябва да бъдат извършени с нотариален акт.

English translation of the LAW OF OBLIGATIONS AND CONTRACTS (an official translation is used)

Art. 8. A contract is an agreement between two or more persons for establishing, settling or terminating a legal relationship between them.

Persons shall use their rights to satisfy their interests. They shall not be entitled to exercise these rights if they contravene the interests of society.

Art. 9. The parties are free to determine the content of the contract insofar as it does not contravene the mandatory provisions of both the law and good morals.

Art. 18. Contracts of ownership transfer and those of establishing other property rights on immovable property must be executed through a notarial deed.

9. ГРАЖДАНСКО-ПРОЦЕСУАЛЕН КОДЕКС / CODE OF CIVIL PROCEDURE

<https://lex.bg/bg/laws/ldoc/2135558368>

Чл. 580. Нотариалният акт съдържа:

1. годината, месеца, деня, а когато е необходимо - и часа и мястото на издаването му;
2. името на нотариуса, който го издава;
3. (изм. и доп. - ДВ, бр. 50 от 2008 г., в сила от 30.05.2008 г.) пълното име, единния граждански номер на лицата, които участват в производството, както и номера, датата, мястото и органа на издаване на техния документ за самоличност;
4. съдържанието на акта;
5. кратко обозначение на документите, удостоверяващи наличността на изискванията по чл. 586, ал. 1;
6. подпис и изписано пълно име на страните или техни представители и подпис на нотариуса.

Чл. 586. (1) При издаването на нотариален акт, с който се прехвърля право на собственост или се учредява, прехвърля, изменя или прекратява друго вещно право върху недвижим имот, нотариусът проверява дали праводателят е собственик на имота и дали са налице особените изисквания за извършване на сделката.

(2) Правото на собственост се удостоверява със съответните документи. Когато праводателят не разполага с такива документи, правото на собственост се проверява по реда на чл. 587, ал. 2.

(3) Нотариусът удостоверява в акта и извършването на проверката по ал. 1, като посочва документите, удостоверяващи правото на собственост, и другите изисквания.

(4) Когато документът за собственост на праводателя не е вписан, нотариалният акт не се издава, докато този документ не бъде вписан.

English translation of the CODE OF CIVIL PROCEDURE (an official translation is used)

Art. 580. The notary act shall contain:

1. the year, month, day and where it is necessary - also the hour and the place of its execution;
2. the name of the notary public, executing it;
3. (amend. and suppl. – SG 50/08, in force from 01.03.2008) the full name and the unified civil number of the persons who participate in the procedure, as well as the number, the date, the place and the body issued their identity document;
4. the substance of the act
5. short denotation of the documents, certifying the presence of the requirements under Art. 586, Para 1;
6. signature and written in full the name of the parties or their attorneys and a signature of the notary public.

Art. 586. (1) Upon the execution of a notary act, by which ownership is being transferred or another real right over a real estate is being established, transferred, altered or terminated, the notary public shall check if the assignor is owner of the estate and whether the special requirements which the laws envisage for the conclusion of such transactions are present.

(2) The ownership shall be certified by the relevant documents. Where the assignor does not have such documents at his disposal, the ownership shall be checked following the procedure of Art. 587, Para 2.

(3) The notary public shall certify in the act also the execution of the check under Para 1 by indicating the documents certifying the ownership and the other requirements.

(4) When the document for ownership of the assignor has not been entered, the notary act shall not be executed, until that document is being entered.

Annex 1.4. Croatia. Legal acts regulating conservation easements.

Source of translations to English: unofficial translation by the expert or official translations (as indicated in each title).

ZAKON O VLASNIŠTVU I DRUGIM STVARNIM PRAVIMA (Narodne Novine, br. 91/96, 68/98, 137/99, 22/00, 73/00, 129/00, 114/01, 79/06, 141/06, 146/08, 38/09, 153/09, 143/12, 152/14)

Eng: **Act on Ownership and Other Real Rights**

Source of translation: EU-project: Support to the Judicial Academy: Developing a training system for future judges and prosecutors

„Please note that the translation provided below is only provisional translation and therefore does NOT represent an official document of Republic of Croatia. It confers no rights and imposes no obligations separate from does conferred or imposed by the legislation formally adopted and published in Croatian language.“ (from the translation)

Zakonske služnosti

Članak 185.

Određuje li neki posebni zakon da pod određenim pretpostavkama neke služnosti terete one stvari glede kojih su te pretpostavke ispunjene (zakonske služnosti), to su zakonska ograničenja prava vlasništva, pa se na njih ne primjenjuju pravila o služnostima, ako zakonom nije drukčije određeno.

Statutory Servitudes

Article 185

If a particular piece of legislation provides that under certain conditions certain servitudes encumber those things regarding which the conditions are met (statutory servitudes), such limitations are statutory limitations to the right of ownership, and they are not governed by the rules on servitudes, unless provided otherwise by law.

Povlasna nekretnina i služnost

Članak 186.

(1) Stvarna služnost je stvarno pravo svagdašnjega vlasnika određene nekretnine (povlasna nekretnina) da se za potrebe te nekretnine na određeni način služi nečijom nekretninom (poslužna nekretnina), čiji svagdašnji vlasnik to mora trpjeti ili mora propuštati određene radnje glede svoje nekretnine koje bi inače imao pravo činiti.

(2) Stvarna služnost osnovana u korist neke nekretnine kao povlasne ne može se razdvojiti od vlasništva te nekretnine, te je njezin pripadak, prenosiv samo zajedno s tom nekretninom.

(3) Stvarna služnost može postojati i u korist nekretnina koje su javna dobra u općoj ili u javnoj uporabi, ako se tome ne protivi njihova pravna narav.

(4) Kad je povlasna nekretnina u vlasništvu više suvlasnika ili zajedničkih vlasnika, svaki od njih ima jednako pravo izvršavanja stvarnih služnosti u korist povlasne nekretnine; a kad je poslužna nekretnina u vlasništvu više suvlasnika ili zajedničkih vlasnika, svaki od njih mora trpjeti da se ovlaštenik služnosti koja tereti njihovu nekretninu njome služi na način na koji ga ovlašćuje njegovo pravo, odnosno svaki mora propuštati radnje glede poslužne nekretnine koje bi bile suprotne tuđem pravu stvarne služnosti.

Dominant Tenements and Servitudes

Article 186

(1) A real servitude is a real right of the everyday owner of a piece of real property (dominant tenement) to use the real property of another in a specified manner (servient tenement) for the purposes of his own real property, and the everyday owner of which has to endure the sufferance or omit to take certain actions regarding his real property that he would otherwise be entitled to do.

(2) A real servitude established in favour of a piece of real property as dominant may not be separated from the ownership of the real property, and it is its appurtenance, transferable only with such real property.

(3) A real servitude may also exist in favour of real properties that are public things subject to common use or public use, unless contrary to their legal nature.

(4) If a dominant tenement is owned by several co-owners or joint owners, each of them is entitled to an equal right of enforcement of real servitudes in favour of the dominant tenement, and if a servient tenement is owned by several co-owners or joint owners, each of them has to suffer that the person having the servitude burdening their real property use such real property in the authorised manner, that is, each of them has to omit to do actions regarding the servient tenement that would be contrary to the right of real servitude of such other person.

Služnosti osobne naravi

Članak 199.

(1) Osobna služnost je stvarno pravo koje ovlašćuje pojedinačno određenu osobu da se na određeni način služi tuđom stvari (poslužna stvar), čiji svagdašnji vlasnik to mora trpjeti.

(2) Osobne služnosti su: pravo plodouživanja, pravo uporabe i pravo stanovanja.

Servitudes of Personal Nature

Article 199

(1) Personal servitude is a real right granting a specific person the right to use the property of another in a specific manner (servient property), and obliging the everyday owner to such use.

(2) There are three sorts of personal servitudes: usufruct, right of use, and habitation.

Osnivanje prava služnosti

Članak 218.

(1) Na temelju pravnoga posla vlasnika poslužne nekretnine, odluke suda ili druge vlasti, ili samoga zakona, osniva se pravo stvarne služnosti kao pripadak povlasne stvari za njezina svagdašnjega vlasnika, a na teret određene stvari kao poslužne.

(2) Na temelju pravnoga posla vlasnika poslužne nekretnine osniva se pravo osobne služnosti u korist određene osobe na teret određene stvari kao poslužne, a isto vrijedi i za osnivanje nepravilnih služnosti.

(3) Pravo služnosti je osnovano kad se ispune sve pretpostavke određene zakonom.

Establishing Servitudes

Article 218

(1) A real servitude may be established in a legal transaction made by the owner of a servient tenement, a court decision or a decision by another authority, or by the operation of law, as an appurtenance of the dominant tenement for its everyday owner, being a charge on the servient tenement.

(2) A personal servitude in favour of a particular person as a charge on a particular thing as servient is established on the basis of a legal transaction made by the owner of the servient tenement, and the same applies to the establishment of irregular servitudes.

(3) A servitude is established upon the fulfilment of all conditions provided by law.

Način osnivanja služnosti na nekretninama

Članak 220.

(1) Pravo služnosti na nekretnini osniva se uknjižbom toga prava u zemljišnoj knjizi kao tereta na poslužnoj nekretnini, osim ako zakon omogućuje da se služnost osnuje drukčije.

(2) Ako nisu ispunjene sve pretpostavke koje zemljišnoknjižno pravo zahtijeva za uknjižbu, a zatražena je uknjižba prava služnosti, predbilježbom će se osnovati to pravo pod uvjetom naknadnoga opravdanja toga upisa, ako su ispunjene barem pretpostavke pod kojima pravila zemljišnoknjižnoga prava dopuštaju predbilježbu.

(3) Na nekretninama koje nisu upisane u zemljišne knjige pravo služnosti osniva se polaganjem u sud ovjerovljene isprave sposobne za upis prava u zemljišnu knjigu, kojom vlasnik nekretnine dopušta uknjižbu služnosti na njoj. Za to polaganje uzima se da je uknjižba, odnosno predbilježba i na odgovarajući se način primjenjuju pravila o stjecanju tim upisom u zemljišnu knjigu.

(4) Odredbe ovoga Zakona o osnivanju prava služnosti na nekretninama upisom u zemljišnu knjigu na odgovarajući se način primjenjuju i na promjene i prestanak služnosti na temelju pravnih poslova.

Method of Establishing Servitudes on Real Properties

Article 220

(1) A servitude on a piece of real property is established by entry of the right in the land register as a burden on the servient tenement, unless provided by law that the servitude is to be established differently.

(2) If not all conditions for registration laid down by land registry law are met, and an application to register a servitude has been filed, the right shall be established in the form of a conditional registration under the

condition of subsequent justification of the entry, provided that the conditions under which land registry law permits conditional registrations are met.

(3) Servitudes on real properties that are not registered in the land register are established by depositing with the court a legalised document suitable for registration of the right in the land register, stating that the owner of real property permits the servitude to be registered; the deposition is regarded as a registration or conditional registration, and the rules on acquisition by entry in the land register apply accordingly.

(4) The provisions of this Act on establishing servitudes on real properties by entry in the land register apply accordingly to any changes and termination of servitudes based on legal transactions.

Osnivanje odlukom suda ili druge vlasti

Osnivanje odlukom

Članak 223.

(1) Služnost može svojom odlukom, pod pretpostavkama određenim zakonom, osnovati sud u postupku osnivanja nužnoga prolaza, odnosno nužnoga osnivanja služnosti vodova ili drugih uređaja u postupku diobe i u ostavinskom postupku, a i u drugim slučajevima određenim zakonom.

(2) Stvarnu služnost može, pod pretpostavkama određenim zakonom, osnovati nadležno tijelo upravne vlasti u postupku izvlaštenja, komasacije, kao i u ostalim slučajevima određenim zakonom.

(3) Pravo služnosti osniva se u trenutku pravomoćnosti sudske odluke iz stavka 1., odnosno konačnosti odluke druge vlasti iz stavka 2. ovoga članka, ako što drugo nije određeno zakonom, niti proizlazi iz cilja radi kojega se odluka donosi.

(4) Onaj u čiju je korist na nekretnini osnovano pravo služnosti odlukom suda ili drugoga tijela ovlašten je ishoditi upis stečenoga prava u zemljišnoj knjizi.

Establishment by Decision of the Court or Another Authority

Establishment by Decision

Article 223

(1) The court may establish a servitude in its decision under the conditions laid down by law, in a proceeding of establishing necessary way or necessary establishment of the servitude of conduits or other equipment in the procedure of partition and in probate proceedings, as well as in other cases provided by law.

(2) A real servitude may be established under the conditions laid down by law by a competent administrative authority in a proceeding of expropriation and land consolidation, and in other cases provided by law.

(3) A servitude is established at the moment the court decision referred to in paragraph 1 of this Article becomes legally effective, that is, at the moment the decision by another authority referred to in paragraph 2 of this Article becomes final, unless provided otherwise by law or arising otherwise from the purpose of adopting the decision.

(4) The person having the right of servitude based on a court decision or a decision of another authority is authorised to obtain entry of the right in the land register.

Osnivanje na temelju zakona

Članak 228.

(1) Neposredno na temelju zakona pravo služnosti osnovat će se kad se ispune sve zakonom predviđene pretpostavke za dosjelost služnosti; inače samo kad tako odredi posebni zakon.

(2) Tko stekne pravo služnosti nekretnine na temelju zakona, ovlašten je ishoditi upis stečenoga prava vlasništva u zemljišnoj knjizi.

Establishment by the Operation of Law

Article 228

(1) A servitude shall be established by the operation of law if all conditions laid down by law to establish a servitude by occupancy are met; otherwise, it may be established by the operation of law only if so provided in a particular piece of legislation.

(2) Any person having acquired a servitude on a piece of real property by the operation of law is authorised to obtain an entry of the acquired right in the land register.

ZAKON O ZEMLJIŠNIM KNJIGAMA (Narodne Novine br. 91/96, 68/98, 137/99, 114/01, 100/04, 107/07, 152/08, 126/10, 55/13, 60/13, 108/17)

Source of translation:

http://digured.srce.hr/arhiva/263/69875/www.vsrh.hr/CustomPages/Static/HRV/Files/Legislation_Land-Registration-Act.pdf

Land Registration Act of the Republic of Croatia-incomplete txt*

„Please note that the translation provided below is only provisional translation and therefore does NOT represent an official document of Republic of Croatia. It confers no rights and imposes no obligations separate from does conferred or imposed by the legislation formally adopted and published in Croatian language.“ (form the translation)

* Please note that this version does not include the latest changes and amendmends to the Criminal Code which were published in Official Gaze tte no 114/2001 and 100/2004 .

>> not relevant for the cited Article

Posebne odredbe glede služnosti i stvarnih tereta

Članak 33.

(1) Kod služnosti i stvarnih tereta moraju se sadržaj i opseg prava što određenije upisati, ali nije potrebno navesti njihovu novčanu vrijednost.

(2) Ako se želi izvršavanje služnosti ograničiti na određene prostorne granice, te se granice moraju točno odrediti.

(3) U slučaju iz stavka 2. ovoga članka smatra se da su prostorne granice izvršavanja služnosti točno određene ako su ucrtane u nacrtu koji je priložen ispravi na temelju koje se zahtijeva upis.

(4) Ako se osniva pravo služnosti ili stvarni teret uz ograničenje rokom ili uvjetom, to se zabilježuje zajedno s upisom sadržaja toga prava, a naknadno ograničenje već postojećega prava zabilježiti će se.

Specific provisions pertaining to easements and encumbrances

Article 33

(1) In case of easements and encumbrances, the substance and scope of such rights shall be entered as specifically as possible, but their monetary value needs not be indicated.

(2) If the exercise of easement is to be restricted to any area limited by specific boundaries, such boundaries shall be clearly defined.

(3) In the event referred to in Paragraph (2) of this Article 33, the area of easement limited by specific boundaries shall be deemed clearly defined if such boundaries are indicated in a drawing attached to the document based on which registration is requested.

(4) If any easement or encumbrance is created, but is restricted by a time-limit or condition, such time-limit or condition shall be recorded together with other elements of such right. Any subsequent restriction on an already existing right shall also be recorded

Annex 1.5. Czech Republic. Legal acts regulating conservation easements.

Source of translations to English: unofficial translation by the expert or official translations (as indicated in each title).

Zákon České národní rady č. 114/1992 Sb., o ochraně přírody a krajiny (ve znění pozdějších předpisů)

§ 39

Smluvní ochrana

(1) Ochrana evropsky významných lokalit je zajišťována přednostně v součinnosti s vlastníky pozemků. Pro evropsky významné lokality lze namísto vyhlášení národní přírodní rezervace, národní přírodní památky, přírodní rezervace, přírodní památky nebo památného stromu, včetně jejich ochranných pásem, prohlásit území za chráněné nebo strom za památný, pokud již nejsou zvláště chráněny podle tohoto zákona, na základě písemné smlouvy uzavřené mezi vlastníkem dotčeného pozemku a příslušným orgánem ochrany přírody. Smluvně lze dále chránit i stromy nebo jiná území se soustředěnými přírodními hodnotami, kde jsou zastoupeny významné či jedinečné ekosystémy v rámci příslušné biogeografické oblasti nebo stanoviště vzácných či ohrožených druhů živočichů a rostlin, pokud již nejsou zvláště chráněny podle tohoto zákona. Smlouva musí obsahovat zejména

- a) vymezení ochranných podmínek chráněného území nebo památného stromu,
- b) způsob péče o chráněné území nebo strom.

Takto zřízená ochrana je na základě smlouvy vázána k pozemku formou věcného břemene, o jehož zápis do katastru nemovitostí požádá příslušný orgán ochrany přírody. Náležitosti obsahu smlouvy upraví Ministerstvo životního prostředí prováděcím právním předpisem.

(2) Chráněné území označí, nestanoví-li to smlouva jinak, na svůj náklad orgán, který je oprávněn k jejich vyhlášení. Způsob označení chráněného území a památného stromu v terénu i v mapových podkladech stanoví Ministerstvo životního prostředí prováděcím obecně závazným právním předpisem. Označené chráněné území nebo označený památný strom je zakázáno poškozovat.

Nature and Landscape Protection Act, no. 114/1992 Coll. (as amended) free translation

Section 39

Contract protection

(1) The protection of Sites of Community Interests shall be ensured primarily in cooperation with the landowners. For Sites of Community Interests, instead of declaring a national nature reserve, national nature monuments, nature reserve, natural monument or noteworthy tree, including their protective zones, the area may be declared as protected or a tree as noteworthy, unless they are already specially protected under this Act, on the basis of a contract concluded between the owner of the land concerned and the competent nature conservation authority. Trees or other areas with concentrated natural values, where significant or unique ecosystems are represented within the respective biogeographical region or habitats of rare or endangered species of fauna and flora, unless they are already specially protected under this Act, may also be contractually protected. The contract shall include, in particular

- (a) definition of protective conditions of the protected area or noteworthy tree,
- (b) mode of care for the protected area or tree.

The protection thus established is tied to the land in the form of an easement on the basis of the contract, the registration of which is requested by the competent nature conservation authority. The requirements for the content of the contract shall be regulated by the Ministry of the Environment by an implementing legal regulation.

(2) Unless otherwise stipulated by the contract, the protected area shall be designated by the body which is authorized to declare it at its expense. The way of designation the protected area and the memorable tree in the field and in the maps shall be determined by the Ministry of the Environment by a generally binding legal regulation. The designated protected area or the designated noteworthy tree is forbidden to damage.

Zákon č. 256/2013 Sb., o katastru nemovitostí (katastrální zákon), ve znění pozdějších předpisů

Vklad

§ 11

(1) Vkladem se do katastru zapisuje vznik, změna, zánik, promlčení a uznání existence nebo neexistence těchto práv:

- a) vlastnické právo,
- b) právo stavby,
- c) věcné břemeno,
- (...)

§ 12

Vklad lze provést na základě pravomocného rozhodnutí katastrálního úřadu o jeho povolení.

§ 13

Účastníkem řízení o povolení vkladu (dále jen „vkladové řízení“) je ten, jehož právo vzniká, mění se nebo se rozšiřuje, a ten, jehož právo zaniká, mění se nebo se omezuje.

§ 14

(1) Návrh na zahájení vkladového řízení se podává na stanoveném formuláři a musí obsahovat

- a) označení katastrálního úřadu, kterému je návrh určen,
- b) označení účastníků vkladového řízení, a to u fyzických osob jménem, popřípadě jmény, a příjmením, adresou místa trvalého pobytu nebo u cizozemců adresou bydliště v cizině, rodným číslem, nebo, není-li přiděleno, datem narození, a jsou-li navrhovatelé, též číslem elektronicky čitelného identifikačního dokladu, pokud se jim vydává; u právnických osob názvem, sídlem a identifikačním číslem, pokud je přiděleno,
- c) označení nemovitostí a práv, která k nim mají být zapsána do katastru nebo z něj vymazána,
- d) podpis navrhovatele.

(2) Vkladové řízení je zahájeno také tehdy, pokud příslušnému katastrálnímu úřadu došlo od soudu nebo soudního exekutora jeho rozhodnutí nebo potvrzení o právu, které se do katastru zapisuje vkladem.

§ 15

(1) Přílohou návrhu na zahájení vkladového řízení je

- a) listina, na jejímž základě má být zapsáno právo do katastru (dále jen „vkladová listina“),
- (...)

Act No. 256/2013 Coll., on Cadastre of Real Estate (Cadastral Law) as amended (free translation)

Entry

Section 11

(1) By entering into the cadastre the occurrence, modification, extinction, limitation and recognition of the existence or non-existence of these rights shall be recorded:

- (a) ownership,
- (b) right to construct,
- (c) easement,
- (...)

Section 12

The entry can be made on the basis of a final decision of the cadastral office on its authorization.

Section 13

A participant in the entry procedure (the "entry procedure") is the one whose right arises, changes or expands, and the person whose right is terminated, changes or is restricted.

Section 14

(1) The application for the opening of the entry procedure shall be submitted on the prescribed form and shall contain

- a) identification of the cadastral office to which the proposal is addressed,
- (b) designation of the parties to the entry procedure, in the case of natural persons, by their name or their surname, by the address of the permanent residence or by the foreigners by address of residence abroad, by the

birth number or, if not, the date of birth, also the number of the electronically readable identification document, if issued; in the case of legal persons, the name, registered office and identification number, if assigned,
(c) the designation of the real estate and the rights to be entered in or deleted from the register,
(d) signature of the petitioner.

(2) The entry procedure shall also be commenced if a decision or a confirmation of the right entered in the cadastre by the entry has been made by the court or executor in the relevant cadastral office.

Section 15

(1) The annex to the application for the opening of the entry procedure is

a) the document on the basis of which the right to register in the Cadastre (hereinafter referred to as "entry deed") is to be registered,

(...)

Zákon č. 89/2012 Sb., občanský zákoník

Oddíl 2

Věcná břemena

Pododdíl 1

Obecná ustanovení o služebnostech

§ 1257

(1) Věc může být zatížena služebností, která postihuje vlastníka věci jako věcné právo tak, že musí ve prospěch jiného něco trpět nebo něčeho se zdržet.

(2) Vlastník může zatížit svůj pozemek služebností ve prospěch jiného svého pozemku.

§ 1258

Služebnost zahrnuje vše, co je nutné k jejímu výkonu. Není-li obsah nebo rozsah služebnosti určen, posoudí se podle místní zvyklosti; není-li ani ta, má se za to, že je rozsah nebo obsah spíše menší než větší.

§ 1259

Kdo je oprávněn ze služebnosti, může se domáhat ochrany svého práva; § 1040 až 1043 se použijí obdobně.

Pododdíl 2

Nabytí služebnosti

§ 1260

(1) Služebnost se nabývá smlouvou, pořízením pro případ smrti nebo vydržením po dobu potřebnou k vydržení vlastnického práva k věci, která má být služebností zatížena. Ze zákona nebo rozhodnutím orgánu veřejné moci se služebnost nabývá v případech stanovených zákonem.

(...)

Civil Code, Act no. 89/2012 Coll. (official translation, <http://obcanskyzakonik.justice.cz/images/pdf/Civil-Code.pdf>)

Easements

Subdivision 1

General provisions on servitudes

Section 1257

(1) A thing may be encumbered with a servitude, which affects the owner of the thing as a right in rem in a way that he has to tolerate or abstain from doing something in favour of another.

(2) An owner may encumber his tract of land with a servitude in favour of another of his tracts of land.

Section 1258

A servitude includes everything which is required for its exercise. If the content or scope of a servitude is not determined, it is assessed in accordance with local usages; in their absence, it is presumed that there is rather less than more scope or content.

Section 1259

A person entitled under a servitude may seek protection of his rights; Sections 1040 to 1043 apply by analogy.

Subdivision 2

Acquisition of servitude

Section 1260

(1) A servitude is acquired by contract, disposition mortis causa or acquisitive prescription for the period required to acquire by prescription the right of ownership in the thing which is to be encumbered with a servitude. A servitude is acquired on the basis of a statute or by a decision of a public body in cases provided by law.

Annex 1.6. Denmark. Legal acts regulating conservation easements.

Source of translations to English: unofficial translation by the expert.

The following easements (servitutter) are mentioned as examples:

Danish text: Servitutter

Forskellige begrænsede rettigheder over fast ejendom, for eksempel færdselsret, jagtret, aftægtsret og forkøbsret tinglyses som servitut.

Servitutter kan opdeles i privatretlige rettigheder og offentligretlige rettigheder.

Privatretlige rettigheder er, når privatpersoner har tinglyst en ret over ejendommen.

Offentligretlige rettigheder er, når det er en myndighed, der har fået tinglyst en ret over ejendommen. Det kan for eksempel være i form af en fredning af bygninger på ejendommen. Disse rettigheder kan være gældende uden tinglysning. Grunden til, at myndighederne alligevel vælger at få dem tinglyst, er, at tinglysning har en stor informationsværdi for borgerne.

.....

En aftale mellem ejeren af ejendommen og andre kan blive tinglyst. Hvis den stifter (forandrer eller ophæver) en ret over ejendommen, som forpligter ejendommen ud over den pågældende ejers ejertid. For eksempel vil en aftale, som medfører, at andre skal have del i et provenu ved ejerens salg af ejendommen, ikke kunne blive tinglyst som en servitut.

Der skal for de fleste dokumenters vedkommende være angivet en eller flere påtaleberettigede i dokumentet. Det er den påtaleberettigede, der skal godkende ændringer, rykninger, eller aflysning.

Translation: easements

Different limited rights over real estate, such as rights of movement, hunting, waiver and pre-emption are litigated as easements.

Easements can be divided into private and public rights.

Private right is when private individuals have entered a right of property over the property in the title document.

Publicly-owned rights are when it is an authority that has been given a litigation right over the property. For example, it may be in the form of a conservation of buildings on the property. These rights may apply without registration. The reason why the authorities nevertheless choose to have them litigated is that enrollment has a great information value for the citizens.

An agreement between the owner of the property and others can be registered in the land registry if it establishes (changes or repeals) a right over the property which commits the property beyond the owner's ownership. For example, an agreement that causes others to share in a proceeds from the owner's sale of the property could not be registered as an easement.

For most documents, one or more attorneys must be stated in the document. It is the person entitled to approve changes, twists or cancellations.

The possibility to enter easements in the land register is regulated by the:

Tinglysningsloven Law nr 1075 af 30/09/2014

Tinglysning vedrørende fast ejendom.

Kapitel 1.

Rettigheder, der skal tinglyses.

§ 1. Rettigheder over fast ejendom skal tinglyses for at få gyldighed mod aftaler om ejendommen og mod retsforfølgning.

Stk. 2. Den aftale eller retsforfølgning, der skal kunne fortrænge en utinglyst ret, skal selv være tinglyst og erhververen ifølge aftalen være i god tro.

English translation:

Land Registration Act nr 1075 of 30/09/2014

Litigation concerning real estate.

Chapter 1.

Rights to be litigated.

Section 1. Rights of immovable property shall be registered in order to be valid for agreements on the property and against prosecution.

PCS. 2. The agreement or prosecution which is intended to prevent a constitutional right shall be declared a litigation in itself and the part receiving the right shall be in good faith.

The more specific procedure, as always the case in Danish law is described in a bylaw:

Bekendtgørelse om adgang til tinglysningssystemet og om tinglysningsmåden

I medfør af § 7, stk. 5, § 8, stk. 3, § 14, stk. 3, § 42 f, stk. 4, § 42 l, stk. 4, § 45, stk. 2, § 49 b, stk. 5 og 6, § 49 c, stk. 5, § 49 d, stk. 5, 2. pkt., og stk. 6, § 50, stk. 1, og § 50 f, stk. 2, i lov om tinglysning, jf. lovbekendtgørelse nr. 158 af 9. marts 2006, som ændret ved lov nr. 539 af 8. juni 2006, fastsættes:

Kapitel 1

Tinglysningssystemet

§ 1. Tinglysningssystemet består af tingbogen, bilbogen, andelsboligbogen og personbogen, som føres elektronisk ved Tinglysningsretten.

Stk. 2. Hver bog består af et register over aktuelle dokumenter og et historisk register over slettede og aflyste dokumenter.

Stk. 3. Reglerne i denne bekendtgørelse gælder for hele ting-lysningsystemet.

§ 2. Dokumenter vedrørende fast ejendom tinglyses i tingbogen, dokumenter vedrørende biler mv. i bilbogen, dokumenter vedrørende andelsboliger mv. i andelsboligbogen og dokumenter, der angår en persons rådighed

over løsøre eller over dennes formue i almindelighed, og som er omfattet af tinglysningslovens kapitel 7, i personbogen.

English translation:

Executive Order on Access to the Land Registration System and the Landlord Procedure

Pursuant to section 7 5, § 8, para. Section 3, section 14 3, § 42f, subsection 4, § 42 1, subsection 4, § 45, paragraph 1 Paragraph 2, section 49b, subsection 5 and 6, section 49c, subsection 5, § 49d, subsection 5, 2nd paragraph and paragraph. Section 6, section 50 1, and section 50f, paragraph. 2 of the Act on Proclamation, cf. Legislative Decree No. 158 of 9 March 2006, as amended by Law No. 539 of 8 June 2006, states:

Chapter 1

Land Registration system

§ 1. The registration system consists of the bill of contents, the car book, the tenancy book and the personal book, which are electronically submitted to the Tinglysningsretten.

PCS. 2. Each book consists of a register of current documents and a historical record of deleted and cancelled documents.

PCS. 3. The rules of this Executive Order apply to the entire property information system.

§ 2. Documents relating to real estate are listed in the register, documents relating to cars, etc. in the bill, documents relating to cooperative housing etc. in the housing register and documents relating to a person's disposal of movable property or of his assets in general and which are covered by Chapter 7 of the Danish Public Data Act, in the personal book.

As the concept of designating land to permanent nature conservation is central in Danish nature protection and the basis for establishing a number of existing easements on protected areas this concept is also described below.

This kind of easement is established based on the **Law on Nature conservation**.

Naturfredning

Conservation declaration by ‚fredning‘ is the name of a special protection of valuable natural areas, landscapes and ancient monuments. A conservation may relate to preservation of the current state or provision of a particular state, which must then be preserved. There may also be rules on public access to the area.

Fredning legally limits the rights of a landowner over his property. The Conservation Institute is characterized by the fact that once and for all, the scope of application of a particular geographic area is limited and that the restrictions on accessibility imposed thereby are implemented against compensation.

LBK nr 934 af 27/06/2017 (Naturbeskyttelsesloven)

Offentliggørelsesdato: 05-07-2017

Miljø- og Fødevareministeriet

Kapitel 6

Fredning

Oversigt

§ 33. Fredningsnævnet kan til varetagelse af de formål, der er nævnt i § 1, gennemføre fredning af landarealer og ferske vande efter reglerne i dette kapitel.

Stk. 2. Fredningsnævnets beslutning om fredning kan efter reglerne i § 43 indbringes for Miljø- og Fødevareklagenævnet, som behandler sagen i den læge afdeling, jf. § 3, stk. 1, nr. 9, i lov om Miljø- og Fødevareklagenævnet. Miljø- og Fødevareklagenævnets beslutning om erstatning kan indbringes for Taksationskommissionen efter reglerne i § 45.

Stk. 3. En fredningssag kan rejses af miljø- og fødevareministeren, kommunalbestyrelsen eller Danmarks Naturfredningsforening.

Stk. 4. Miljø- og fødevareministeren yder efter anmodning bistand til fredningsnævnet, Miljø- og Fødevareklagenævnet og Taksationskommissionen under disse myndigheders behandling af sager efter dette kapitel.

Stk. 5. For det tab, som en fredning påfører en ejer, bruger eller indehaver af en anden rettighed over en fredet ejendom, ydes der erstatning efter reglerne i § 39.

English translation:

LBK No. 934 of 27/06/2017 (Nature Conservation Act)

Publication date: 05-07-2017

Ministry of Environment and Food

Chapter 6

Conservation

Overview

Section 33. For the purposes of section 1, the Peace Board may carry out the conservation of land and fresh waters in accordance with the provisions of this chapter.

PCS. 2. In accordance with the provisions of section 43, the Peace Committee's decision on conservation may be referred to the Environment and Food Appeals Board, which will consider the case in the medical department, cf. section 3 1, No. 9, of the Act on the Environment and Food Appeals Board. The Environment and Food Complaints Board's decision on compensation may be submitted to the Taxation Commission in accordance with the provisions of section 45.

PCS. 3. A conservation case may be raised by the Minister for the Environment and Food, the municipal council or the Danish Nature Conservation Association.

PCS. 4. The Minister for the Environment and Food shall, upon request, provide assistance to the Conservation Board, the Environment and Food Complaints Board and the Taxation Commission in the course of these authorities' handling of cases under this chapter.

PCS. 5. For loss suffered by a proprietor from an owner, the owner or proprietor of another right over a protected property is entitled to compensation in accordance with the provisions of section 39.

Annex 1.7. Estonia. Legal acts regulating conservation easements.

Source of translations to English: official translations (as listed in each title).

1. Asjaõigusseadus/Law of Property Act

§ 51. Kinnistusraamatu mõiste

(1) Kinnistusraamatut peetakse kinnisasjade ja nendega seotud asjaõiguste kohta

§ 53. Kinnistusraamatusse kantavad andmed

(1) Kinnistusraamatusse kantakse ainult seaduses ettenähtud andmed.

§ 172. Reaalservituudi mõiste

(1) Reaalservituut koormab teenivat kinnisasja valitseva kinnisasja kasuks selliselt, et valitseva kinnisasja igakordne omanik on õigustatud teenivat kinnisasja teatud viisil kasutama või et teeniva kinnisasja igakordne omanik on kohustatud oma omandiõiguse teostamisest valitseva kinnisasja kasuks teatavas osas hoiduma.

§ 178. Reaalservituudi teostamise viis

(1) Reaalservituut annab õiguse teha üksnes neid tegusid, mis servituudi sisust tulenevalt on valitseva kinnisasja huvides vajalikud. Reaalservituudi sisu määratakse poolte kokkuleppega, kui seaduses ei ole sätestatud teisiti.

(2) Reaalservituuti tuleb teostada viisil, mis on teenivale kinnisasjale kõige vähem koormav.

§ 225. Isikliku kasutusõiguse mõiste

(1) Isiklik kasutusõigus koormab kinnisasja selliselt, et isik, kelle kasuks see on seatud, on õigustatud kinnisasja teatud viisil kasutama või teostama kinnisasja suhtes teatud õigust, mis oma sisult vastab mõnele reaalservituudile.

§ 228. Reaalservituudi ja kasutusvalduse sätete kohaldamine

Lisaks §-des 225–227 sätestatule kohaldatakse isiklikule kasutusõigusele reaalservituudi vastavaid sätteid. Kui isiklik kasutusõigus on seotud valdamisega, kohaldatakse kasutusvalduse vastavaid sätteid.

§ 229. Reaalkoormatise mõiste

(1) Kinnisasja võib koormata selliselt, et kinnisasja igakordne omanik peab tasuma isikule, kelle kasuks reaalkoormatis on seatud, perioodilisi makseid rahas või natuuras või tegema teatud tegusid.

(2) Reaalkoormatist võib seada ka teise kinnisasja igakordse omaniku kasuks.

§ 231. Reaalkoormatise tekkimine

(1) Reaalkoormatise seadmiseks sõlmitav asjaõigusleping peab olema notariaalselt tõestatud.

English translation- Law of Property Act, an official translation from

<https://www.riigiteataja.ee/en/eli/ee/504012018002/consolide/>

§ 51. Definition of land register

(1) A land register shall be maintained concerning immovables and related real rights.

§ 53. Information entered in land register

(1) Only information prescribed by law is entered in the land register.

§ 172. Definition of real servitude

(1) A real servitude encumbers a servient immovable for the benefit of a dominant immovable such that the actual owner of the dominant immovable is entitled to use the servient immovable in a particular manner or that the actual owner of the servient immovable is required to refrain to a particular extent from the exercise of the owner's right of ownership for the benefit of the dominant immovable.

§ 178. Manner of exercise of real servitude

(1) A real servitude grants the right to perform only those acts which in view of the content of the servitude are necessary in the interests of the dominant immovable. The content of a real servitude shall be determined by agreement of the parties unless otherwise provided by law.

(2) A real servitude shall be exercised in a manner which is least cumbersome to the servient immovable.

§ 225. Definition of personal right of use

(1) A personal right of use encumbers an immovable such that the person for whose benefit it is established is entitled to use the immovable in a particular manner or to exercise with respect to the immovable a particular right which in substance corresponds to a real servitude.

§ 228. Application of provisions concerning real servitude and usufruct

In addition to the provisions of §§ 225–227, the corresponding provisions for a real servitude apply to a personal right of use. If a personal right of use is related to possession, the corresponding provisions concerning usufruct apply.

§ 229. Definition of real encumbrance

(1) An immovable may be encumbered such that the actual owner of the immovable must pay periodic payments in money or in kind to the person for whose benefit the real encumbrance is established, or perform particular acts.

(2) A real encumbrance may also be established for the benefit of the actual owner of another immovable.

§ 231. Creation of real encumbrance

(1) A real right contract entered into for the establishment of a real encumbrance shall be notarially authenticated.

2. Kinnistusraamatuseadus/Land Register Act

§ 10. Kinnistusraamatu koosseis

Kinnistusraamatu koosseisu kuuluvad:

- 1) kinnistusregister;
- 2) kinnistuspäevik;
- 3) kinnistustoimik.

§ 11. Kinnistusregister

(1) Kanded tehakse kinnistusregistrisse.

(4) Kinnistusregistriosal on pealkiri ja neli jagu.

§ 15. Registriosa kolmas jagu

(1) Kinnistusregistriosa kolmandasse jakku «Koormatiseid ja kitsendused» kantakse:

1) kinnistut koormavad piiratud asjaõigused, välja arvatud hüpoteek, kinnisomandi kitsendused ja märked nende kohta;

2) kinnistu omaniku käsutusõiguse kitsendused, samuti muud märked omandi kohta;

3) käesoleva paragrahvi punktides 1 ja 2 nimetatud kannete muudatused, sealhulgas puudutatud isikute kitsendused oma õiguste käsutamisel;

4) käesoleva paragrahvi punktides 1–3 nimetatud kannete kustutamine.

§ 24. Kande tekst

Kande tekst sisaldab:

1) kinnistatud asjaõiguse või märke sisu, sealhulgas isikut, kelle kasuks kande tehakse;

2) viidet algdokumendile ja dokumendile, mille alusel soovitakse asjaõiguse sisu täpsemalt tõendada;

3) viidet järjekohale, kui samal päeval tehakse samasse registriosas mitu kandet (§ 49).

§ 26. Kande vormistamine

(1) Kanded tuleb teha selgelt ja lühenditeta, välja arvatud üldkasutatavad lühendid.

English translation – Land Register Act, an official translation from

<https://www.riigiteataja.ee/en/eli/510102017001/consolide>

§ 10. Composition of land register

A land register is composed of:

1) a register;

2) a land registry journal;

3) a land registry file.

§ 11. Land register

(1) Entries are made in a land register.

(4) A register part has a title and four divisions.

§ 15. Third division of register part

(1) The following is entered in the third division “Encumbrances and Restrictions” of a land register part:

1) restricted real rights encumbering the registered immovable, except a mortgage, restrictions on immovable property ownership and notations concerning the restrictions;

2) restrictions on the right of disposal of the owner of the registered immovable and other notations concerning ownership;

3) amendments of entries specified in clauses 1) and 2) of this section, including restrictions on disposal of the rights of persons concerned;

4) deletion of entries specified in clauses 1)-3) of this section.

§ 24. Text of entry

The text of an entry includes:

1) the content of a registered real right or notation, including the person for whose benefit the entry is made;

2) a reference to the source document and the document on the basis of which more precise proof of the content of the real right is desired;

3) a reference to ranking if several entries are made in the same register part on the same day (§ 49).

§ 26. Formulation of entry

(1) Entries shall be made clearly and without abbreviations, except commonly used abbreviations.

3. Metsaseadus/Forest Act

§ 23. Vääriselupaik ja selle kaitse

(1) Vääriselupaik on ala, kus kitsalt kohastunud, ohustatud, ohualdiste või haruldaste liikide esinemise tõenäosus on suur.

(2) Vääriselupaiga klassifikaatori ja valiku juhendi kehtestab valdkonna eest vastutav minister määrusega.

(3) Avalik-õigusliku juriidilise isiku omandis olevas metsas korraldab vääriselupaiga kaitset maa omanik või tema volitatud esindaja, riigimetsas riigimetsa majandaja valdkonna eest vastutava ministri määrusega kehtestatud korras. Nimetatud määrusega võib vääriselupaigas piirata või keelata majandustegevust vääriselupaiga kaitse-eesmärgi alusel.

(4) Vääriselupaiga kaitseks võib sõlmida eraomandis kinnisasja omanikuga notariaalse lepingu (edaspidi leping), mille alusel koormatakse kinnisasi isikliku kasutusõigusega riigi kasuks Keskkonnaministeeriumi kaudu tähtajaga 20 aastat. Lepingut saab sõlmida väljaspool kaitstavat loodusobjekti asuva keskkonnaregistrisse kantud vääriselupaiga kaitseks.

(5) Isiklik kasutusõigus on riigi õigus kasutada kinnisasja vääriselupaiga kaitseks. Riigil on õigus vääriselupaigas keelata või piirata majandustegevust vääriselupaiga kaitse-eesmärgist tulenevalt ja metsaomanik on kohustatud tagama vääriselupaiga säilimise.

(6) Vääriselupaiga kaitseks riigi kasuks isikliku kasutusõiguse seadmisel ja lepingu sõlmimisel on riigi volitatud esindaja erametsanduse arendamiseks ja toetamiseks asutatud sihtasutus, mille asutajaõigusi teostab Keskkonnaministeerium.

(7) Vääriselupaiga omandiõiguse üleminekul lähevad üle kõik vääriselupaiga kaitseks sõlmitud õigused ja kohustused. Vääriselupaiga omandi üleminekul ei ole omandajal õigust lõpetada lepingut ennetähtaegselt ühe aasta jooksul omandamisest arvates.

(8) Vääriselupaiga metsakasutuse kitsendustega põhjustatud kahju ja vääriselupaiga hooldamise kulu hüvitis (edaspidi vääriselupaiga kasutusõiguse tasu) makstakse kinnisasja omanikule riigi kasuks isikliku kasutusõigusega koormamise perioodil iga-aastaste võrdsete maksetena.

(9) Vääriselupaiga kasutusõiguse tasu arvutamisel kasutatakse käesoleva paragrahvi lõike 10 alusel kehtestatud meetodikat.

(10) Vääriselupaiga kasutusõiguse tasu arvutamise täpsustatud alused, menetluse ja lepingu sisu kehtestab valdkonna eest vastutav minister määrusega.

English Translation – Forest Act, an official translation from
<https://www.riigiteataja.ee/en/eli/504092017014/consolide>

§ 23. Key habitats and protection thereof

(1) A key habitat is an area where the probability of the occurrence of narrowly adapted, endangered, vulnerable or rare species is high.

(2) The classifications of key habitats and the guidelines for the selection of key habitats will be established by a regulation of the minister responsible for the field.

(3) In the forest owned by a legal person governed by public law, the land owner or its authorized representative and, in the state forest, the manager of the state forest organises the protection of key habitats in accordance with the procedure established a regulation of the minister responsible for the field. The regulation may restrict or prohibit economic activities in a key habitat on the basis of the key habitat protection objective.

(4) For the protection of a key habitat a notarised contract (hereinafter contract) may be concluded with the owner of a privately owned immovable, on the basis of which the immovable is encumbered with a personal right of use in favour of the state via the Ministry of the Environment for a term of 20 years. The contract can be concluded for the protection of a key habitat located outside a protected natural object, which has been entered in the environmental register.

(5) The personal right of use means the right of the state to use the immovable for the protection of a key habitat. The state has the right to prohibit or restrict economic activities in a key habitat arising from the objective of the protection of the key habitat and the forest owner must ensure preservation of the key habitat.

(6) Upon establishment of a personal right of use in favour of the state and conclusion of a contract for the protection of a key habitat, the authorised representative of the state is the foundation established for the development and support of private forestry and whose founder's rights are exercised by the Ministry of the Environment.

(7) All the rights and obligations arising from the contract concluded for the protection of a key habitat will transfer upon the transfer of the right of ownership of the key habitat. Upon transfer of ownership of a key habitat, the transferee does not have the right to terminate the contract prematurely within one year after the acquisition.

(8) Compensation for the damage caused by the restrictions on forest use in a key habitat and for the costs of maintenance of a key habitat (hereinafter fee for the right to use a key habitat) is paid to the owner of the immovable in equal yearly instalments during the period of encumbrance with a personal right of use for the benefit of the state.

(9) The fee for the right to use a key habitat is calculated by the method established on the basis of subsection (10) of this section.

(10) The detailed bases and procedure for the calculation of the fee for the right to use a key habitat and content of the contract will be established by a regulation of the minister responsible for the field.

Annex 1.8. Finland. Legal acts regulating conservation easements.

Source of translations to English: unofficial translation by the expert or unofficial translations by other entities (as indicated in each title).

Luonnonsuojelulaki 1096/1996

21 §

Luonnonsuojelualan rajojen määrittäminen ja merkitseminen

Luonnonsuojelualueesta muodostetaan kiinteistö noudattaen, mitä kiinteistönmuodostamislainsäädännössä (554/1995) säädetään. Tarkemmat ohjeet kiinteistön muodostamisesta ja rajojen määrittämisestä antaa maanmittauslaitos.

Luonnonsuojelualue on merkittävä maastoon selvästi havaittavalla tavalla. Alueen rajat vesialueilla voidaan merkitä vain karttaan. Ympäristöministeriö antaa tarkemmat määräykset luonnonsuojelualan rajojen merkitsemistavoista.

Nature Conservation Act 1096/1996

Section 21

Demarcation and boundary-marking of a nature reserve

The formation of a nature reserve into a real estate unit is governed by the Real Estate Formation Act (554/1995). (13.12.2013/913)

A nature reserve shall be marked in the terrain in a clearly visible fashion. Water boundaries shall be marked on maps only. The Ministry of the Environment shall issue more detailed regulations on means of marking the boundaries of a nature reserve.

Luonnonsuojelulaki 1096/1996

24 § (22.12.2009/1587)

Luonnonsuojelualan perustaminen

Elinkeino-, liikenne- ja ympäristökeskus voi maanomistajan hakemuksesta tai suostumuksella perustaa 10 §:n 1 momentin 3 kohdassa tarkoitetun muun luonnonsuojelualan 10 §:n 2 momentissa tarkoitetulle alueelle. Harkittaessa alueen perustamista on otettava huomioon myös muut yleiseen etuun liittyvät näkökohdat. Luonnonsuojelualan perustamispäätöstä ei saa antaa, elleivät maanomistaja ja elinkeino-, liikenne- ja ympäristökeskus ole sopineet alueen rauhoitusmääräyksistä ja aluetta koskevista korvauksista. (18.3.2016/195)

Päätökseen 1 momentin mukaisen luonnonsuojelualan perustamisesta on otettava tarpeelliset määräykset alueen luonnon suojelemisesta ja tarvittaessa sen hoidosta. Päätökseen voidaan sisällyttää 18 §:n 2 momentissa tarkoitettu kielto tai rajoitus edellyttäen, että alueen eläimistön tai kasvillisuuden säilyminen sitä vaatii. (18.3.2016/195)

Elinkeino-, liikenne- ja ympäristökeskus voi ilman maanomistajan hakemusta tai suostumusta perustaa luonnonsuojelualueeksi myös muun yksityisen alueen, jos alue sisältyy valtioneuvoston hyväksymään luonnonsuojeluohjelmaan. Alueen rauhoitusmääräykset eivät saa rajoittaa maankäyttöä enemmälti kuin

aluetta koskevasta suojeleuhjelmasta johtuu, ellei maanomistaja ole muuhun suostunut. Maanomistajalle ja kunnalle on varattava tilaisuus tulla kuulluiksi ennen päätöksen antamista.

Elinkeino-, liikenne- ja ympäristökeskus voi yksittäistapauksessa myöntää poikkeuksen luonnonsuojelualuetta koskevista rauhoitusmääräyksistä, jos poikkeaminen ei vaaranna alueen perustamistarkoitusta ja on tarpeen alueen hoidon, käytön tai tutkimuksen kannalta. (18.3.2016/195)

Luonnonsuojelualan merkittämisestä säädetään 21 §:ssä. Tieto luonnonsuojelualan perustamisesta on myös tallennettava kiinteistötietojärjestelmään. (13.12.2013/913) (18.3.2016/195)

Nature Conservation Act 1096/1996

Section 24 (22.12.2009/1587)

Establishment of a nature reserve

The centre for economic development, transport and the environment may, on application or with the consent of the landowner, establish a nature reserve, referred to in section 10, paragraph 1, subparagraph 3, on land referred to in section 10, paragraph 2. Other public interests shall also be taken into account when deciding to establish the reserve.

The decision on establishing the nature reserve, referred to in paragraph 1, shall include the necessary provisions on the protection of the reserve and, as necessary, on its management. The decision may also include provisions prohibiting or restricting free passage in the reserve or part thereof, provided this is deemed necessary for the conservation of plant and animal species within the area. The decision cannot be issued until the landowner and the centre for economic development, transport and the environment are agreed on the protection provisions for the reserve and the landowner's compensation.

The centre for economic development, transport and the environment may establish a nature reserve on private land without the landowner having applied for it or given consent to it, if the land in question falls within the bounds of a nature conservation programme adopted by the Government. Protection provisions instituted in such a reserve are not to restrict land use to any greater degree than is entailed by the nature conservation programme, unless agreed otherwise with the landowner. The landowner and the local authority shall be given an opportunity to state their case before the decision is made.

In special cases, the centre for economic development, transport and the environment is authorised to grant a derogation from protection provisions for the nature reserve, if the derogation does not jeopardise the purpose for which the reserve was established and which is necessary for the management and use of the site and research. (18.3.2016/195)

What is provided in section 21 applies, as appropriate, to the boundary-marking of nature reserves on private land. The establishment of a new nature reserve shall be entered in the Real Estate Register. (13.12.2013/913) (18.3.2016/195)

Luonnonsuojelulaki 1096/1996

25 §

Alueen määräaikainen rauhoittaminen

Elinkeino-, liikenne- ja ympäristökeskus ja maanomistaja voivat luonnon- tai maisemansuojelun edistämiseksi tehdä sopimuksen 10 §:n 2 momentissa tarkoitetun alueen määräaikaisesta rauhoittamisesta joko kokonaan tai tiettyjen toimenpiteiden osalta. Sopimus voidaan tehdä enintään 20 vuodeksi kerrallaan. (22.12.2009/1587)

Edellä 1 momentissa tarkoitettu sopimus on voimassa, vaikka alue siirtyy uudelle omistajalle.

Tieto sopimuksesta on tallennettava kiinteistötietojärjestelmään. (13.12.2013/913)

Nature Conservation Act 1096/1996

Section 25

Temporary protection order

For the purpose of nature and landscape conservation, a contract can be concluded between the centre for economic development, transport and the environment and the landowner on the temporary protection, either complete or partial, of land referred to in section 10, paragraph 2. The term of the contract is not to exceed 20 years. (22.12.2009/1587)

The contract referred to in paragraph 1 remains in effect even if the land passes to a new owner.

The contract shall be entered in the Real Estate Register. (13.12.2013/913)

Luonnonsuojelulaki 1096/1996

27 §

Luonnonsuojelualueen rauhoituksen lakkauttaminen

Elinkeino-, liikenne- ja ympäristökeskus voi alueen omistajan tai sen, jolla asiassa on intressi, hakemuksesta taikka ympäristöministeriön esityksestä kokonaan tai osittain lakkauttaa yksityisen omistaman alueen suojelun tai lieventää sen rauhoitusmääräyksiä, jos alueen luonnonarvot ovat oleellisesti vähentyneet tai jos alueen rauhoitus estää yleisen edun kannalta erittäin tärkeän hankkeen tai suunnitelman toteuttamisen. (22.12.2009/1587)

Hakemuksesta on hankittava ympäristöministeriön lausunto. Jos asia on tullut vireille ympäristöministeriön esityksestä tai sen hakemuksesta, jolla asiassa on intressi, alueen omistajalle on varattava tilaisuus tulla kuulluksi.

Jos suojelu alueen omistajan hakemuksesta lakkautetaan tai alueen rauhoitusmääräyksiä olennaisesti lievennetään, voidaan tällaisen päätöksen ehdoksi asettaa, että omistaja maksaa takaisin hänelle maksetun korvauksen kokonaan tai osittain.

Tieto suojelun purkamisesta on tallennettava kiinteistötietojärjestelmään. (13.12.2013/913)

Nature Conservation Act 1096/1996

Section 27

Lifting a protection order

On application of the landowner or any other interested party, or by proposal of the Ministry of the Environment, the centre for economic development, transport and the environment is authorised to fully or partly lift a protection order on private land, or to grant derogations from it, provided that the ecological value of the site has declined substantially or its protection prevents the implementation of a project or plan of overriding public interest. (22.12.2009/1587)

The Ministry of the Environment shall state its opinion on all such applications. If the matter is instigated by the Ministry of the Environment or any other interested party, the landowner shall be given an opportunity to state his case.

If a protection order is lifted or its provisions substantially weakened on application of the landowner, the decision can be made subject to the condition that the landowner returns the sum originally paid to him as compensation, either in part or in full.

The decision to lift a protection order shall be entered in the Real Estate Register. (13.12.2013/913)

Luonnonsuojelulaki 1096/1996

29 §

Suojellut luontotyypit

Seuraaviin luontotyyppeihin kuuluvia luonnontilaisia tai luonnontilaiseen verrattavia alueita ei saa muuttaa niin, että luontotyypin ominaispiirteiden säilyminen kyseisellä alueella vaarantuu:

- 1) luontaisesti syntyneet, merkittävältä osin jaloista lehtipuista koostuvat metsiköt;
- 2) pähkinäpensaslehdot;
- 3) tervaleppäkorvet;
- 4) luonnontilaiset hiekkarannat;
- 5) merenrantaniityt;
- 6) puuttomat tai luontaisesti vähäpuustoiset hiekkadyynit;
- 7) katajakedot;
- 8) lehdesniityt; sekä
- 9) avointa maisemaa hallitsevat suuret yksittäiset puut ja puuryhmät.

Asetuksella annetaan tarkempia säännöksiä 1 momentissa tarkoitetuista luontotyypeistä.

Nature Conservation Act 1096/1996

Section 29

Protected habitat types

It is prohibited to alter any of the following natural habitat types or comparable habitats in such a way as to jeopardise the preservation of the characteristic features of the area in question:

- 1) wild woods rich in broad-leaved deciduous species;
- 2) hazel woods;
- 3) common alder woods;
- 4) sandy shores in their natural state;
- 5) coastal meadows;
- 6) treeless or sparsely wooded sand dunes;
- 7) juniper meadows;
- 8) wooded meadows; and

9) prominent single trees or groups of trees in an open landscape.

More detailed provisions on natural habitat types referred to in paragraph 1 shall be issued by decree.

Luonnonsuojelulaki 1096/1996

47 §

Lajien esiintymispaikkojen suojelu [\(29.5.2009/384\)](#)

Asetuksella voidaan säätää erityisesti suojeltavaksi lajiksi sellainen uhanalainen eliölaji, jonka häviämishuhtka on ilmeinen. Ympäristöministeriön on tarvittaessa laadittava ohjelma erityisesti suojeltavan lajin kannan tai kantojen elvyttämiseksi.

Erityisesti suojeltavan lajin säilymiselle tärkeän esiintymispaikan hävittäminen tai heikentäminen on kielletty.

Edellä 2 momentissa tarkoitettu kielto tulee voimaan, kun elinkeino-, liikenne- ja ympäristökeskus on päätöksellään määritellyt erityisesti suojeltavan lajin esiintymispaikan rajat ja antanut päätöksen tiedoksi alueen omistajille ja haltijoille. Kielto annetaan julkipanon jälkeen, ja siitä on kuulutettava kunnan ilmoitustaululla siten kuin julkisista kuulutuksista annetussa laissa säädetään. Päätös on voimassa mahdollisesta valituksesta huolimatta, jollei valitusviranomaisen toisin päätä. [\(22.12.2009/1587\)](#)

Erityisesti suojeltavan lajin esiintymispaikan suojelun lakkauttamisesta on vastaavasti voimassa, mitä 30 §:n 3 momentissa säädetään suojeltuun luontotyyppiin kuuluvan alueen suojelun lakkauttamisesta.

Edellä 5 a §:n 1 momentin 2 kohdassa tarkoitettujen lajien suotuisan suojelutason saavuttamisen tai säilyttämisen kannalta merkittävien esiintymispaikkojen hävittäminen tai heikentäminen on kielletty. Kiellon voimaantuloon ja lakkauttamiseen sovelletaan, mitä tämän pykälän 3 ja 4 momentissa säädetään. [\(29.5.2009/384\)](#)

Nature Conservation Act 1096/1996

Section 47 (29.5.2009/384)

Species under strict protection

Any species at imminent risk of extinction can be placed under a strict protection order by decree. The Ministry of the Environment shall, as necessary, prepare a programme for reviving the populations of such species.

The deterioration and destruction of a habitat important for the survival of a species under strict protection is prohibited.

The prohibition referred to in paragraph 2 shall take effect as of when the centre for economic development, transport and the environment has set the boundaries of a site hosting a species under strict protection and has notified the site's owners and holders of its decision. The prohibition is not valid until a public announcement is made and is posted on the municipal notice board, as stipulated in the Public Announcements Act. The decision remains in force irrespective of appeal, unless decided otherwise by the appellate authority. [\(22.12.2009/1587\)](#)

What is provided in section 30, paragraph 3, regarding the lifting of a protection order on a site belonging to a protected natural habitat type shall also apply to the lifting of a protection order on the habitat of a species under strict protection.

The deterioration and destruction of habitats significant for reaching or maintaining the favourable conservation status of a species referred to in section 5 a, paragraph 1, subparagraph 2 is prohibited. What is prescribed in paragraphs 3 and 4 of this section shall apply to the entry into force and the lifting of the prohibition. (29.5.2009/384)

Luonnonsuojelulaki 1096/1996

71 §

Rasite- ja vastaavat oikeudet

Tämä laki tai sen nojalla tehdyt päätökset eivät rajoita sellaisen oikeuden käyttämistä, joka ennen rauhoitusmääräysten voimaantuloa perustettuna rasitteena, vuokraoikeutena tai muuna vastaavana oikeutena kohdistuu luonnonsuojelualueeseen. Tällainen oikeus voidaan kuitenkin lunastaa valtiolle.

Nature Conservation Act 1096/1996

Section 71

Easement and other special rights

This Act, and decisions made by virtue of it, shall not impose constraints on easement, leasehold or other corresponding rights existing on a piece of property before the site is designated a nature reserve. The State is nevertheless authorised to expropriate such rights.

Kiinteistörekisterilaki 16.5.1985/392

1 § (19.5.2000/448)

Kiinteistöistä ja muista maa- ja vesialueiden rekisteriyksiköistä pidetään kiinteistörekisteriä. Kiinteistörekisteri sisältää tietoja yksiköiden ominaisuuksista ja sijainnista sekä yksiköitä koskevia muita tietoja sen mukaan kuin tässä laissa säädetään.

Kiinteistörekisteri on osa kiinteistötietojärjestelmää. Kiinteistörekisteriin merkittäväksi säädetty tieto katsotaan kiinteistörekisteriin merkityksi silloin, kun tieto on tallennettu kiinteistötietojärjestelmään. (31.5.2002/454)

Real Estate Register Act

(392/1985; amendments up to 454/2002 included)

NB: Unofficial translation © Ministry of Agriculture and Forestry, Finland

Section 1 (448/2000)

(1) A Real Estate Register is kept of real estate and other register units in land and water areas. The Real Estate Register contains information about the characteristics of the units and their location as well as other information concerning the units, as provided in this Act.

(2) The Real Estate Register is part of the Land Information System. The information to be entered into the register is considered to have been entered into the Real Estate Register when it has been recorded in the Land Information System. (454/2002)

Kiinteistörekisterilaki 16.5.1985/392

2 § ([12.4.1995/559](#))

Kiinteistörekisteriin merkitään kiinteistöinä:

- 1) tilat;
- 2) tontit;
- 3) yleiset alueet;
- 4) valtion metsämaat;
- 5) valtion omistamalle alueelle luonnonsuojelulain ([1096/1996](#)) tai sitä ennen voimassa olleen lainsäädännön mukaisesti perustetut suojelualueet (*suojelualue*); ([19.5.2000/448](#))
- 6) lunastuksen perusteella erotetut alueet (*lunastusyksikkö*); ([19.5.2000/448](#))
- 7) yleisiin tarpeisiin erotetut alueet;
- 8) erilliset vesijätöt; sekä
- 9) yleiset vesialueet. ([9.4.1998/274](#))

Muina rekisteriyksikköinä merkitään kiinteistörekisteriin yhteiset alueet sekä yleisistä teistä annetussa laissa ([243/1954](#)) ja maantielain ([503/2005](#)) 58 §:n 2 momentissa tarkoitettut tieoikeudella hallittavat liitännäisalueet. ([20.5.2016/375](#))

Real Estate Register Act (392/1985; amendments up to 454/2002 included)

NB: Unofficial translation © Ministry of Agriculture and Forestry, Finland

Section 2 (559/1995)

The following are entered into the Real Estate Register as real estates:

- 1) estates;
- 2) plots of land;
- 3) public areas;
- 4) State-owned forest lands;
- 5) conservation areas (conservation areas) founded on a State-owned area in accordance with the Nature Conservation Act (1096/1996) or the legislation in force prior to it; (448/2000)
- 6) areas partitioned based on redemption (redemption units); (448/2000)
- 7) areas partitioned for public needs;
- 8) separate reliction areas; and
- 9) public water areas. (274/1998)

Common areas and roads and areas surrounding a road referred to in the Act on Public Roads (243/1954) and governed by the right of way, as well as areas claimed on an equivalent basis before 1 January 1958, provided the road is still used as a public road, are entered into the Real Estate Register as other register units. (448/2000)

Kiinteistörekisterilaki 16.5.1985/392

7 §

Rekisteriyksikköä koskevana tietoina kiinteistörekisteriin merkitään rekisteriyksikön sijaintikunnan nimi ja kunnanumero sekä, jos sellainen on annettu, rekisteriyksikön nimi. (20.12.2013/1135)

Kiinteistörekisteriin merkitään lisäksi rekisteriyksikköä koskevana tietoina yksikön rekisteröimisajankohta sekä yksikön pinta-ala, laatu, rasitteet ja osuus yhteiseen alueeseen samoin kuin muita yksikköön kohdistuvia tietoja sen mukaan kuin asetuksella tarkemmin säädetään.

Real Estate Register Act (392/1985; amendments up to 454/2002 included)

NB: Unofficial translation © Ministry of Agriculture and Forestry, Finland

Section 7

(1) The information on a register unit entered into the Real Estate Register includes the name of the municipality, village, local district or other equivalent area in which the register unit is located and, if such has been given, the name of the register unit and the name of the quarter in which it is located. (274/1998)

(2) Furthermore, the registration date of the unit, its area, type, easements, and share of joint property as well as other information concerning the unit are entered into the Real Estate Register as information on the register unit in accordance with further provisions issued by Government decree.

Kiinteistörekisteriasetus 5.12.1996/970

6 § (30.1.2014/62)

Kiinteistörekisteriin merkittävät tiedot

Kiinteistörekisterilain (392/1985) 7 §:ssä tarkoitettujen tietojen lisäksi kiinteistörekisteriin merkitään kiinteistönmuodostamisviranomaisten ja kuntien tielautakuntien tuottamina kutakin rekisteriyksikköä koskevana tietoina:

- 1) entinen kiinteistötunnus tai niiden rekisteriyksiköiden kiinteistötunnukset, joista kiinteistö on muodostettu;
 - 2) niiden määräalojen tunnuksset, joista rekisteriyksikkö on kokonaan tai osaksi muodostunut;
 - 3) niiden yhteisalueosuuksien määräalatunnukset, joista tila on muodostunut tai jotka on kiinteistöön siirretty;
 - 4) rekisteriyksiköstä luovutetut tai muulla saannolla saadut määräalat ja yhteisalueosuudet;
 - 5) rekisteriyksikön muodostamista tai muuttamista tarkoittava taikka muu vastaava yksikköä koskeva toimenpide;
 - 6) rekisteriyksikön toimitusmerkki, jos yksiköllä on kiinteistötoimituksessa ollut yksikkötunnuksesta poikkeava toimitusmerkki;
 - 7) kiinteistönmuodostamislain (554/1995) 21 §:n 2 momentissa tarkoitettu merkintä kantakiinteistöstä;
 - 8) erityiset etuudet sekä osuudet yhteisiin erityisiin etuuksiin;
-

- 9) niiden yhteisten alueiden kiinteistötunnukset, joihin kiinteistöllä on osuus, samoin kuin osuuden suuruus, jos osuus ja sen suuruus on kiinteistötoimituksessa lainvoimaisesti ratkaistu;
- 10) yhteisen alueen osakskiinteistöt ja niiden osuuksien suuruudet, jos asia on kiinteistötoimituksessa lainvoimaisesti ratkaistu tai jos osuuksien rekisteröinti on tarpeen väliaikaisen osakasluettelon ylläpitämisen vuoksi;
- 11) rekisteriyksikön kokonaispinta-ala sekä lisäksi tonttia ja yleistä aluetta lukuun ottamatta myös yksikön maa- ja vesipinta-alat erikseen;
- 12) rasitteisiin rinnastettavat kiinteistötoimitukseen verrattavassa toimituksessa perustetut käyttöoikeudet ja -rajoitukset;
- 13) rasitteiden sekä 12 kohdassa tarkoitettujen oikeuksien ja rajoitusten voimassaoloaika, jollei se ole pysyvä, sekä tarpeen mukaan muita tietoja rasitteista, oikeuksista ja rajoituksista;
- 14) alueet, joiden rajat on kalastusasetuksen (1116/1982) 11 §:n tai 51 §:n 2 momentin mukaisesti määrätty;
- 15) kalastuslain (286/1982) 124 §:ssä tarkoitettussa toimituksessa määrätty ulkosaariston raja; sekä
- 16) muita kiinteistönmuodostamisviranomaisen tuottamia tietoja sen mukaan kuin muualla lainsäädännössä merkittäväksi säädetään tai määrätään.

Jos 1 momentin 9 kohdassa tarkoitettun osuuden suuruutta ei ole lainvoimaisesti ratkaistu, kiinteistörekisteriin merkitään, kuinka suuri osuus kiinteistöllä on sen emäkiinteistön tai muodostajakiinteistön osuuteen yhteisestä alueesta.

Yksityiset tied, joiden asioiden hoitamista varten on perustettu tiekunta, merkitään kiinteistötietojärjestelmään käyttöoikeusyksikköinä. Muut rasitealueet ja 1 momentin 12 kohdassa tarkoitettut käyttöoikeuden alaiset alueet voidaan merkitä kiinteistörekisteriin käyttöoikeusyksikköinä.

Real Estate Register Decree, of 5 December 1996 (5.12.1996/970)

No official translation available

Section 6 (30.1.2014/62):

Information to be entered in the Real Estate Register

In addition to the information required by Section 7 of the Real Estate Register Act (392/1985), the following information must be entered in the Real Estate Register for each register unit, as produced by the authorities forming real estate and municipal road boards:

- 1) The previous reference number or, if the real estate has been formed from several register units, the reference numbers of those units
- 2) The reference numbers of all parcels included either fully or partially in the register unit
- 3) The parcel reference numbers for all joint property shares of which the real estate is formed or that have been transferred to the real estate
- 4) The joint properties and joint property shares assigned from the register unit or received by other means
- 5) Details of any action involving the forming or changing of a register unit, or a similar action related to the unit
- 6) The delivery indicator of the register unit, if during real-estate delivery the unit had a delivery indicator differing from the unit number

7) Indication of the residual property unit involved, as referred to in Section 21, subsection 2 of the Real Estate Formation Act (554/1995)

8) Any special interests and shares in common special interests

9) Reference numbers of the joint properties of which the real estate includes a share, along with the extent of that share if it was determined in a legally valid manner during the real-estate delivery

10) The property units encompassed by the joint property, along with the extent of the shares if the matter was resolved in a legally valid manner during the real-estate delivery or if registration of the shares must be performed for purposes of maintaining a temporary list of participants

11) The total area of the register unit, in addition to separate specification of the unit's land and water areas, excluding the plot and joint property

12) Usufructs and use restrictions that are comparable to easements, when grounds for these have been provided during a delivery comparable to real-estate delivery

13) The term of validity, if not indefinite, of all easements, usufructs, and other restrictions referred to in item 12, along with any other information required on those easements, usufructs, and other relevant restrictions

14) Areas with borders defined in accordance with Section 11 of the Fishing Decree (1116/1982) or Section 51, subsection 2 of that act

15) The border of the outer archipelago as defined in an operation referred to in Section 124 of the Fishing Act (286/1982)

16) Other information produced by the authorities forming real estate, as required or specified elsewhere in the law

If the extent of the share referred to in item 9 of Subsection 1 has not been determined in a legally valid manner, the entry in the Real Estate Register shall include the extent of the real estate's share of the original property unit or forming property unit's share of the joint property.

Where a road maintenance association has been formed for managing matters related to private roads, those roads shall be entered into the Real Estate Register as usufruct units. Other easement areas and areas subject to usufruct as referred to in subsection 1, item 12, above, may be entered in the Real Estate Register as usufruct units.

Maakaari 12.4.1995/540

7 LUKU Lainhuuto- ja kiinnitysrekisteri

1 § (24.7.2009/572)

Lainhuuto- ja kiinnitysrekisteriin merkittävät tiedot

Lainhuuto- ja kiinnitysrekisteriin merkitään kirjaamishakemukset, tietoja hakemusten käsittelystä sekä kirjaamista koskevat ratkaisut.

Lainhuuto- ja kiinnitysrekisteriin merkitään ilmoituksesta myös tiedot:

- 1) kiinteistöön kohdistuvasta ulosmittauksesta;
- 2) turvaamistoimesta ja kiinteistön omistajan konkurssista;
- 3) 12 luvun 5 §:n mukaisesta vallintarajoituksesta;

- 4) lakisääteisestä panttioikeudesta;
- 5) kirjallisen panttikirjan saajasta;
- 6) lainhuudatuksen ulkopuolelle jäävän kiinteistön omistajasta ja kiinteistöä hallinnoivasta viranomaisesta;
- 7) kiinteistöön kohdistuvista oikeuksista ja rasituksista, jos ne ovat tämän tai muun lain nojalla ilmoitettava kirjaamisviranomaiselle tai jos ne ovat tarpeellisia rekisterin käyttötarkoituksen kannalta.

Lainhuuto- ja kiinnitysrekisteriin merkitystä hakijasta tai oikeudenhaltijasta talletetaan henkilötietoina tunniste- ja yhteystietoja sekä tieto henkilön kuolinajasta rekisteröityjen yksiselitteiseksi yksilöimiseksi. Rekisteriin talletetaan lisäksi näitä tietoja koskevat muutokset. Lainhuuto- ja kiinnitysrekisterin henkilötietojen käsittelyyn sovelletaan henkilötietolakia (523/1999), jollei tässä laissa toisin säädetä.

Lainhuuto- ja kiinnitysrekisteriin merkittävät tiedot säilytetään pysyvästi, jollei lailla erikseen toisin säädetä. Jos rekisterin tiedot ovat muuttuneet, aikaisempien tietojen säilyminen ja käytettävyys on varmistettava tiedot erikseen arkistoimalla tai tietotekniikan mahdollistamalla muulla tavalla.

Code of Real Estate (540/1995; AMENDMENTS UP TO 964/1998 INCLUDED)

NB: Unofficial translation © Ministry of Justice, Finland

Chapter 7 – Title and Mortgage Register

Section 1 – Information Entered into the Title and Mortgage Register

(1) The applications for registration, information on their consideration and the registration decisions shall be entered into the title and mortgage register.

(2) In addition, information on execution, precautionary measures and the bankruptcy of the titleholder of the real estate, as well as other information on rights to and encumbrances over the real estate, if they by virtue of this Code or another Act or Decree are to be notified to the register authority, shall be entered into the title and mortgage register when notified.

Laki kiinteistötietojärjestelmästä ja siitä tuotettavasta tietopalvelusta (31.5.2002/453)

3 §

Kiinteistötietojärjestelmän tietosisältö

Kiinteistötietojärjestelmä käsittää kiinteistörekisterilain (392/1985) mukaiset tiedot ja lainhuuto- ja kiinnitysrekisteriin merkittävät tiedot sekä muita tietoja sen mukaan kuin muualla laissa säädetään.

Act on the Land Information System and Related Information Service (453/2002)

NB: Unofficial translation © Ministry of Agriculture and Forestry, Finland

Section 3 - Data content of the Land Information System

The Land Information System comprises data referred to in the Cadastre Register Act (392/1995) and data entered into the land register as well as other data as laid down in other legislation.

Laki lainhuuto- ja kiinnitysrekisteristä 353/1987

1 § Yleiset säännökset

Lainhuuto ja kiinnitys, joka kohdistuu kiinteistörekisterilain (392/85) mukaisessa kiinteistörekisterissä olevaan kiinteistöön, merkitään lainhuuto- ja kiinnitysrekisteriin sen mukaan kuin tässä laissa säädetään.

Kiinnityksestä kiinteään omaisuuteen annetun asetuksen 2 §:n 1 momentissa tarkoitettu kiinnitys, joka kohdistuu kiinteistöä koskevaan vuokra- tai muuhun käyttöoikeuteen ja alueella oleviin oikeudenhaltijan rakennuksiin, merkitään lainhuuto- ja kiinnitysrekisteriin asianomaisen kiinteistön kohdalle. Sama koskee kiinnitystä silloin, kun vuokra- tai käyttöoikeuden kohteena on muu maa- ja vesialueiden yksikkö.

Lainhuuto- ja kiinnitysrekisteriin merkitään myös ne asianomaista kiinteistöä ja 2 momentissa tarkoitettua kiinnityksen kohdetta koskevat oikeudet, vallintaoikeuden rajoitukset ja muut näihin verrattavat tiedot, jotka muussa laissa tai asetuksessa on säädetty merkittäviksi lainhuutorekisteriin, kiinnitysrekisteriin tai kiinnitysasiain pöytäkirjaan.

Act on register of land ownership and mortgage (353/1987)

No official translation available

Section 1: General regulations

Titles and mortgages on real estate listed in the Real Estate Register accordant with the Real Estate Register Act (392/1985) shall be listed in the Register of Titles and Mortgages as defined in this Act of law.

Easements referred to in Section 2, subsection 1 of the government decree on mortgages on fixed assets, on any lease or any other usufruct related to a property, and the right-holder's buildings in the area are to be entered in the Register of Titles and Mortgages under the property in question. This applies also to mortgages wherein the object of the usufruct or lease is another land or water-area unit.

Also, rights, restrictions on property administration rights, and comparable information required by another Act of law or government decree to be entered in the Register of Titles and Mortgages or a record of mortgage matters addressing the property in question and the object of mortgage referred to in subsection 2 are to be entered in the Register of Titles and Mortgages.

Annex 1.9. France. Legal acts regulating conservation easements.

Source of translations to English: unofficial translation by the expert

The new type of conservation easement (called real environmental obligations) recently introduced in France in the Biodiversity law adopted on 08/08/2016 is described in a new article of the environmental code (“**Code de l’environnement**” in French), **article L132-3, introduced by article 72 of the Biodiversity law.**

This is the most important legal article regarding the real environmental obligations.

This article (article L132-3 of the Code de l’environnement) stipulates that owners of real property can sign a contract with public bodies or a legal person governed by private law working for the protection of the environment, in order to include, at their own costs and at the costs of the future owners of the property, any “real obligations” they want, as long as these requirements aim at maintaining, preserving, managing or restoring biodiversity elements or ecological functions.”

In addition, the article specifies that:

- the “real environmental obligations” can be used for ecological compensation purposes,
- the duration of the obligations, the reciprocal commitments, the possibilities of revision and cancellation, should be mentioned in the contract,
- a landowner who signed a long-term lease contract on his property (“bail rural”) can only implement a real environmental obligation if the tenant agrees with it,
- the implementation of a real environmental obligation cannot question hunting rights,
- the contract including the real environmental obligations is exempt from land registering tax.

The third and last paragraph of article 72 of the Biodiversity law adds an interesting element: it allows municipalities to exempt landowners who signed a real environmental obligation from the tax for non-built property. In French « *III. Les communes peuvent, sur délibération du conseil municipal, exonérer de la taxe foncière sur les propriétés non bâties, les propriétaires ayant conclu une obligation réelle environnementale.* »

In addition, article 73 of the Biodiversity Law mentions a report assessing the implementation of this new system will have to be submitted two years after the law was adopted, at the latest.

Extracts from the legal texts in French

1. Biodiversity law, articles 72 and 73

Exact title of the law : **LOI n° 2016-1087 du 8 août 2016 pour la reconquête de la biodiversité, de la nature et des paysages (1)**

Chapitre II : Mesures foncières et relatives à l'urbanisme

Section 2 : Obligations réelles environnementales

Article 72

I. et II. - A modifié les dispositions suivantes :

- **Code de l'environnement Art. L132-3 – the most important article describing the new tool**
- Décret n°55-22 du 4 janvier 1955 Art. 28

III. - A partir du 1er janvier 2017, les communes peuvent, sur délibération du conseil municipal, exonérer de la taxe foncière sur les propriétés non bâties, les propriétaires ayant conclu une obligation réelle environnementale.

Article 73

Dans un délai de deux ans à compter de la promulgation de la présente loi, le Gouvernement dépose sur les bureaux de l'Assemblée nationale et du Sénat un rapport sur la mise en œuvre du mécanisme d'obligations réelles environnementales prévu à l'article L. 132-3 du code de l'environnement. Ce rapport porte aussi sur les moyens de renforcer l'attractivité, notamment au moyen de dispositifs fiscaux incitatifs, du mécanisme d'obligations réelles environnementales.

2. Environmental code article L132-3

Code de l'environnement Article L132-3 Créé par LOI n°2016-1087 du 8 août 2016 - art. 72 (V)

Les propriétaires de biens immobiliers peuvent conclure un contrat avec une collectivité publique, un établissement public ou une personne morale de droit privé agissant pour la protection de l'environnement en vue de faire naître à leur charge, ainsi qu'à la charge des propriétaires ultérieurs du bien, les obligations réelles que bon leur semble, dès lors que de telles obligations ont pour finalité le maintien, la conservation, la gestion ou la restauration d'éléments de la biodiversité ou de fonctions écologiques.

Les obligations réelles environnementales peuvent être utilisées à des fins de compensation.

La durée des obligations, les engagements réciproques et les possibilités de révision et de résiliation doivent figurer dans le contrat.

Etabli en la forme authentique, le contrat faisant naître l'obligation réelle n'est pas passible de droits d'enregistrement et ne donne pas lieu à la perception de la taxe de publicité foncière prévus, respectivement, aux articles 662 et 663 du code général des impôts.

Le propriétaire qui a consenti un bail rural sur son fonds ne peut, à peine de nullité absolue, mettre en œuvre une obligation réelle environnementale qu'avec l'accord préalable du preneur et sous réserve des droits des tiers. L'absence de réponse à une demande d'accord dans le délai de deux mois vaut acceptation. Tout refus doit être motivé. La mise en œuvre d'une obligation réelle environnementale ne peut en aucune manière remettre en cause ni les droits liés à l'exercice de la chasse, ni ceux relatifs aux réserves cynégétiques.

NOTA : Conformément au III de l'article 72 de la loi n° 2016-1087 du 8 août 2016, à partir du 1er janvier 2017, les communes peuvent, sur délibération du conseil municipal, exonérer de la taxe foncière sur les propriétés non bâties, les propriétaires ayant conclu une obligation réelle environnementale.

3. Décret n°55-22, article 28

This legal text lists the deeds that need to be communicated to the service responsible for land register, specifying that the real environmental obligations should also be published (but no land registration tax is applied). However, it does not provide any details as to how the real environmental obligations can be / should be established in the land title.

Article 28, Modifié par LOI n°2016-1087 du 8 août 2016 - art. 72 (V)

Sont obligatoirement publiés au service chargé de la publicité foncière de la situation des immeubles :

1° Tous actes, même assortis d'une condition suspensive, et toutes décisions judiciaires, portant ou constatant entre vifs :

a) Mutation ou constitution de droits réels immobiliers, y compris les obligations réelles définies à l'article L. 132-3 du code de l'environnement, autres que les privilèges et hypothèques, qui sont conservés suivant les modalités prévues au code civil ;

b) Bail pour une durée de plus de douze années, et, même pour un bail de moindre durée, quittance ou cession d'une somme équivalente à trois années de loyers ou fermages non échus ;

c) Titre d'occupation du domaine public de l'Etat ou d'un de ses établissements publics constitutif d'un droit réel immobilier délivré en application des articles L. 34-1 à L. 34-9 du code du domaine de l'Etat et de l'article 3 de la loi n° 94-631 du 25 juillet 1994 ainsi que cession, transmission ou retrait de ce titre.

2° Les actes entre vifs dressés distinctement pour constater des clauses d'inaliénabilité temporaire et toutes autres restrictions au droit de disposer, ainsi que des clauses susceptibles d'entraîner la résolution ou la révocation d'actes soumis à publicité en vertu du 1° ; de même, les décisions judiciaires constatant l'existence de telles clauses ;

Les décisions judiciaires arrêtant ou modifiant le plan de redressement de l'entreprise rendu en application des chapitres II ou III de la loi n° 85-98 du 25 janvier 1985 relative au redressement et à la liquidation judiciaires des entreprises qui prononcent en application des articles 70 ou 89-1 de la loi précitée l'inaliénabilité temporaire d'un bien immobilier compris dans le plan.

3° Les attestations notariées, établies en exécution de l'article 29 en vue de constater la transmission ou la constitution par décès de droits réels immobiliers ;

4° Les actes et décisions judiciaires, énumérés ci-après, lorsqu'ils portent sur des droits soumis à publicité en vertu du 1° :

a) Les actes confirmatifs de conventions entachées de causes de nullité ou rescision ;

b) Les actes constatant l'accomplissement d'une condition suspensive ;

c) Les demandes en justice tendant à obtenir, et les actes et décisions constatant, la résolution, la révocation, l'annulation ou la rescision d'une convention ou d'une disposition à cause de mort ;

d) Les décisions rejetant les demandes visées à l'alinéa précédent et les désistements d'action et d'instance ;

e) Les actes et décisions déclaratifs ;

5° (abrogé) ;

6° Les conventions d'indivision immobilière ;

7° La décision du tribunal donnant acte du délaissement hypothécaire, prévue à l'article 2174 du code civil ;

8° Les actes qui interrompent la prescription acquisitive conformément aux articles 2244 et 2248 du code civil, et les actes de renonciation à la prescription acquise ;

9° Les documents, dont la forme et le contenu seront fixés par décret, destinés à constater tout changement ou modification du nom ou des prénoms des personnes physiques, et les changements de dénomination, de forme juridique ou de siège des sociétés, associations, syndicats et autres personnes morales, lorsque ces changements intéressent des personnes physiques ou morales au nom desquelles une formalité de publicité a été faite depuis le 1er janvier 1956.

Annex 1.10. Germany. Legal acts regulating conservation easements.

Source of translations to English: unofficial translation by other entities (as indicated in each title).

Bürgerliches Gesetzbuch¹⁷

Buch 3 - Sachenrecht (§§ 854 - 1296)

Abschnitt 4 - Dienstbarkeiten (§§ 1018 - 1093)

Titel 3 - Beschränkte persönliche Dienstbarkeiten (§§ 1090 - 1093)

§ 1090 Gesetzlicher Inhalt der beschränkten persönlichen Dienstbarkeit

(1) Ein Grundstück kann in der Weise belastet werden, dass derjenige, zu dessen Gunsten die Belastung erfolgt, berechtigt ist, das Grundstück in einzelnen Beziehungen zu benutzen, oder dass ihm eine sonstige Befugnis zusteht, die den Inhalt einer Grunddienstbarkeit bilden kann (beschränkte persönliche Dienstbarkeit).

(2) Die Vorschriften der §§ 1020 bis 1024, 1026 bis 1029, 1061 finden entsprechende Anwendung.

§ 1091 Umfang

Der Umfang einer beschränkten persönlichen Dienstbarkeit bestimmt sich im Zweifel nach dem persönlichen Bedürfnis des Berechtigten.

§ 1092 Unübertragbarkeit; Überlassung der Ausübung

(1) 1Eine beschränkte persönliche Dienstbarkeit ist nicht übertragbar. 2Die Ausübung der Dienstbarkeit kann einem anderen nur überlassen werden, wenn die Überlassung gestattet ist.

(2) Steht eine beschränkte persönliche Dienstbarkeit oder der Anspruch auf Einräumung einer beschränkten persönlichen Dienstbarkeit einer juristischen Person oder einer rechtsfähigen Personengesellschaft zu, so gelten die Vorschriften der §§ 1059a bis 1059d entsprechend.

(3) 1Steht einer juristischen Person oder einer rechtsfähigen Personengesellschaft eine beschränkte persönliche Dienstbarkeit zu, die dazu berechtigt, ein Grundstück für Anlagen zur Fortleitung von Elektrizität, Gas, Fernwärme, Wasser, Abwasser, Öl oder Rohstoffen einschließlich aller dazugehörigen Anlagen, die der Fortleitung unmittelbar dienen, für Telekommunikationsanlagen, für Anlagen zum Transport von Produkten zwischen Betriebsstätten eines oder mehrerer privater oder öffentlicher Unternehmen oder für Straßenbahn- oder Eisenbahnanlagen zu benutzen, so ist die Dienstbarkeit übertragbar. 2Die Übertragbarkeit umfasst nicht das Recht, die Dienstbarkeit nach ihren Befugnissen zu teilen. 3Steht ein Anspruch auf Einräumung einer solchen beschränkten persönlichen Dienstbarkeit einer der in Satz 1 genannten Personen zu, so ist der Anspruch übertragbar. 4Die Vorschriften der §§ 1059b bis 1059d gelten entsprechend.

English translation

German Civil Code¹⁸

Book 3 Law of Property

Division 4 Servitudes

Title 3 Restricted personal easements

Section 1090 Statutory definition of the restricted personal easement

¹⁷ <https://dejure.org/gesetze/BGB>

¹⁸ https://www.gesetze-im-internet.de/englisch_bgb/index.html

(1) A plot of land may be encumbered in such a way that the person for whose benefit the encumbrance is made is entitled to use the plot of land in individual respects, or that he is authorised in another way that may form the subject of an easement (restricted personal easement).

(2) The provisions of sections 1020 to 1024, 1026 to 1029 and 1061 apply with the necessary modifications.

Section 1091 Scope

The scope of a restricted personal easement is determined in case of doubt by the personal need of the person entitled.

Section 1092 Non-transferability; permission of exercise

(1) A restricted personal easement is not transferable. The use of the easement can be ceded to another only if the ceding of the use is permitted.

(2) If a restricted personal easement or the right to be granted a restricted personal easement is owed to a legal person or a partnership having legal personality, the provisions of sections 1059a to 1059d apply with the necessary modifications.

(3) If a legal person or a partnership having legal personality has the right to a restricted personal easement that entitles the holder to use a plot of land for facilities to conduct electricity, gas, district heating, water, sewage, oil or raw materials including all associated installations that directly serve the conducting, for telecommunications installations, for installations to transport products between places of management of one or more private or public enterprises or for tram or railway installations, the easement is transferable. The transferability does not include the right to divide the easement according to the elements it authorises. If one of the persons named in sentence 1 has a claim to the grant of such a restricted personal easement, the claim is transferable. The provisions of sections 1059b to 1059d apply with the necessary modifications.

Annex 1.11. Greece. Legal acts regulating conservation easements.

Source of translations to English: official translation.

Article 17 of the Greek Constitution.

Official translation by the Greek parliament available at <http://www.wipo.int/edocs/lexdocs/laws/en/gr/gr220en.pdf> Please refer to pages 29-31.

Greek Constitution, official translation:

Article 17

1. Property is under the protection of the State; rights deriving there from, however, may not be exercised contrary to the public interest.

** 2. No one shall be deprived of his property except for public benefit which must be duly proven, when and as specified by statute and always following full compensation corresponding to the value of the expropriated property at the time of the court hearing on the provisional determination of compensation. In cases in which a request for the final determination of compensation is made, the value at the time of the court hearing of the request shall be considered. If the court hearing for the final determination of compensation takes place after one year has elapsed from the court hearing for the provisional determination, then, for the determination of the compensation the value at the time of the court hearing for the final determination shall be taken into account. In the decision declaring an expropriation, specific justification must be made of the possibility to cover the compensation expenditure. Provided that the beneficiary consents thereto, the compensation may be also paid in kind, especially in the form of granting ownership over other property or of granting rights over other property.

...6. In the case of execution of works serving the public benefit or being of a general importance to the economy of the country, a law may allow the expropriation in favour of the State of wider zones beyond the areas necessary for the execution of the works. The said law shall specify the conditions and terms of such expropriation, as well as the matters pertaining to the disposal for public or public utility purposes in general, of areas expropriated in excess of those required.

Greek Civil code, articles 1118-1141. No translation available. The relevant articles refer to the definition of property easement, the definition of the responsibilities, examples of easements, easements between more than 2 owners and cases of usucaptions.

Annex 1.12. Hungary. Legal acts regulating conservation easements.

Source of translations to English: unofficial translation by the expert.

I. Polgári Törvénykönyv (Civil Code)

5:27. § [A közérdekű használat]

(1) Az ingatlan tulajdonosa tűrni köteles, hogy az erre jogszabályban feljogosított személyek - a feladataik ellátásához szükséges mértékben - az ingatlant időlegesen használják, arra használati jogot szerezzenek vagy az azon fennálló tulajdonjogot egyébként korlátozzák. Ebben az esetben az ingatlan tulajdonosát a korlátozás mértékének megfelelő kártalanítás illeti meg.

5:160. § [A telki szolgálat fogalma]

(1) Telki szolgálat alapján az ingatlan mindenkori birtokosa átjárás, vízellátás, vízvezetés, pince létesítése, vezetékoszlopok elhelyezése, épület megtámasztása céljára vagy az ingatlan mindenkori birtokosa számára előnyös más hasonló célra más ingatlanát meghatározott terjedelemben használhatja, vagy követelheti, hogy a másik ingatlan birtokosa a jogosultságából egyébként folyó valamely magatartástól tartózkodjék.

(2) Ha valamely föld nincs összekötve megfelelő közúttal, a szomszédok kötelesek tűrni, hogy az ingatlan mindenkori birtokosa földjeiken átjárjon.

5:164. § [A közérdekű használati jog]

(1) Ingatlanra közérdekből, a jogszabályban feljogosított személyek javára - hatóság határozatával - szolgalmat vagy más használati jogot lehet alapítani. A használati jog alapításáért a korlátozás mértékének megfelelő kártalanítás jár.

II. Civil Code (free translation)

5:27. § [right of use for public purpose]

(1) The owner of a real estate property is obliged to tolerate persons authorized by other legislation to use his property for a period of time, obtain the right of use or restrain ownership rights in other ways to the extent that is necessary for the performance of their duties. In such cases, the owner of the real estate property shall be entitled to compensation according to the extent of the hindrance.

5:160. § [notion of easement]

(1) Easement may be granted to and held by the possessor of a real estate property on another person's real estate property to use such property to a specific extent for right-of-way, or for the installation of water lines or water conduits, basement, poles for aerial lines, building abutment, or for other similar purposes to the benefit of the dominant tenement, or to demand the holder of the servient tenement to refrain from otherwise rightful conduct proceeding from his entitlement.

(2) If a piece of land is not connected to a suitable public road, neighbors shall tolerate the holder of dominant tenement to pass through their land.

5:164. § [right of use for public purpose or public easement]

(1) Public easement or other rights of access may be imposed upon a real estate property by decision of the relevant authority in the public interest, to the benefit of agencies authorized under specific other legislation. For said rights of use compensation shall be provided as commensurate with the degree of constraint.

III. 1997. évi CXLI. törvény az ingatlannyilvántartásról

16. § Az ingatlan-nyilvántartásba az ingatlanhoz kapcsolódó következő jogok, illetőleg annak jogosultjai jegyezhetők be:

- a) tulajdonjog, illetőleg állami tulajdonban álló ingatlan esetében az állam tulajdonosi jogait gyakorló szervezet és a vagyonkezelői jog,
- b) a lakásszövetkezeti tagot megillető állandó használati jog,

- c) megállapodáson és bírósági határozaton alapuló földhasználati jog,
- d) haszonélvezeti jog és használat joga,
- e) termőföld haszonbérleti jog,
- f) telki szolgalmi jog,
- g) állandó jellegű földmérési jelek, földminősítési mintateretek, valamint villamos berendezések elhelyezését biztosító használati jog, továbbá vezetékjog, vízvezetési és bányaszolgalmi jog, (közérdekű használati jogok),
- h) elő- és visszavásárlási, valamint vételi jog,
- i) tartási és életjáradéki jog,
- j) jelzálogjog (önálló zálogjog),
- k) végrehajtási jog,
- l) halászati jog, és annak haszonbérleti joga.

IV. Act No. 141 of 1997 on the Land Register (free translation)

Art. 16

The following property-related rights, and the holders of such, may be recorded in real estate registers:

- a) ownership rights, and, in respect of state-owned real estate, the organization exercising the state's ownership rights and asset management rights,
- b) permanent right of use for members of housing cooperatives,
- c) land use on the basis of agreement or court decision,
- d) usufruct and the right of use,
- e) lease of arable land,
- f) easement rights,
- g) permanent geodetic markings, land survey pilot areas, right of use for the placement of power supply equipment, furthermore, cable rights, water line and mining easement rights (right of use for public purpose),
- h) right of first refusal and right of repurchase and purchase,
- i) right of support and life annuity,
- j) mortgage right (independent lien),
- k) right of execution,
- l) fishing rights, and the right to lease such.

V. 109/1999. (XII. 29.) FVM rendelet az ingatlan-nyilvántartásról szóló 1997. évi CXLI. törvény végrehajtásáról

12. § (1) Az ingatlant terhelő telki szolgalmi jogot egész ingatlanra, illetőleg annak természetben vagy területi mértékben meghatározott részére lehet bejegyezni.

(2) A bejegyzésben meg kell jelölni a szolgalmi jog tárgyát (átjárási, vízmerítési, vízvezetési, pinceszolgalm stb.).

13. § (1a) Az állandó jellegű földmérési jelek, valamint a földminősítési mintateretek elhelyezését biztosító használati jogok bejegyzésénél meg kell jelölni azt a kormányhivatalt, illetve járási hivatalt, amelyen keresztül - a külön jogszabályban meghatározottak alapján - a jogosult a használati jogát gyakorolja.

VI. Ministerial Decree No. 109 of 1999 (29 December) of the Ministry of Agriculture and Rural Development on the implementation of Act No. 141 of 1997 on the Land Register (free translation)

Art. 12

(1) An appurtenant easement can be registered for the entire land, or for its portion defined by natural characteristics or area size.

(2) The purpose of the easement (crossing, water supply, water flow, access to cellar, etc.) must be indicated in the registry.

Art. 13

(1a) In case of registering rights of use for permanent geodetic markings and rights of use for land qualification sample areas those public authorities must be indicated that exercise the rights of use as regulated by separate norms.

VII. 1996. évi LIII. törvény a természet védelméről

50. § (1) Az ingatlan tulajdonosa (vagyonkezelője, használója) túrni köteles, hogy az igazgatóság, a természetvédelmi hatóság, illetve az általuk erre feljogosított személyek, továbbá az állam tulajdonosi jogait gyakorló szerv felhatalmazásával eljáró személyek a barlangot megközelítsék, az idegenforgalom számára kiépített barlangot meglátogassák. Az e tevékenység során okozott tényleges kárt az ingatlantulajdonos (vagyonkezelő, használó) részére meg kell téríteni.

[...]

(4) Az (1) bekezdésben foglaltak biztosítására az igazgatóságot szolgálmi jog illeti meg, illetve annak az ingatlan a tulajdonosát (vagyonkezelőjét, használóját), amelyről a barlang nyílik, szolgálmi jog terheli (szolgáló telek). Ennek tényét az ingatlan-nyilvántartásba - az igazgatóság kezdeményezésére - be kell jegyezni.

VIII. Act No. 53 of 1996 on Nature Conservation (free translation)

Art. 50

(1) The proprietor, trustee and user of the property shall tolerate that the National Park Directorate, the nature conservation authority or any person entitled by them, or any person entitled by the authority exercising the property rights of the State approach the cave or visit the cave developed for tourism. The actual loss caused by this activity shall be compensated for to the proprietor, trustee or user.

[...]

(2) For the purpose of ensuring the performance of activities under paragraph (1) above, the National Park Directorate holds the right of easement over the land to which the cave opens (servitude parcel) falling upon its proprietor, trustee and user. The right of easement shall be registered in the Land Registry at the initiative of the National Park Directorate.

Annex 1.13. Ireland. Legal acts regulating conservation easements.

It has been assumed for the purpose of this overview study that the title to any lands on which a “conservation easement” is established would be rural agricultural land and that it is registered in the Land Registry (“registered land”). Most agricultural land in Ireland is registered land, because it was registered under a land purchase scheme under the Local Registration of Title (Ireland) Act, 1891. Indeed, it is thought that approximately 96% of the landmass and over 92% of the title in Ireland is now registered land. In theory the title registered in the Land Registry should mirror the title of the land, however, registered freehold title may be subject to unregistered leasehold title, it may be “subject to equities” (e.g. mortgages, charges, family interests, etc.) or subject to unregistered burdens. Furthermore, the title to the land may not be registered at all (“unregistered land”) and the only record of title will be the title deeds themselves (which should be held by the owner) and in that case only a record of the documents themselves will be held by a body called the Registry of Deeds. Some of the principles set out in this document only apply to registered land and, suffice to say, the title to any lands being considered for a “conservation easement” would have to be investigated thoroughly in each individual case.

Section 18 of the Wildlife Act, 1976 (as amended) states as follows:

“18. – (1) The Minister or, with his prior approval, any other person, may enter into an agreement with a person having an interest in or over land ensuring that the management of the land shall be conducted in a manner (to be specified in the agreement) which will not impair wildlife or its conservation.

(2) An agreement under this section shall be entered into only after consultation with the Minister for Agriculture and Fisheries, the Commissioners and any planning authority in whose area the relevant land or any part thereof is situate.

(3) An agreement under this section may provide for the payment by the Minister or any other person who is a party to the agreement of consideration, either by way of a single payment or by way of payment of an annual sum, to a person having, or claiming to be entitled to, an interest in or over the land to which the agreement relates.

(4) An agreement under this section may provide that the agreement shall be enforceable against persons deriving title to the land under the person having the interest in or over the land, and, in case such provision is included in the agreement, subject, where appropriate, to the agreement’s being registered under section 69 of the Registration of Title Act, 1964, as amended by section 66 of this Act, and to compliance with any rules made under section 126 of that Act which are relevant, it shall be so enforceable in respect of the person’s former interest as if the Minister, or the person who with the Minister’s approval entered into the agreement, was possessed of adjacent land and as if the agreement had been expressed to be made for the benefit of that land.

(5) The Commissioners, the Board and any planning authority within whose area the land, or any part of the land, to which an agreement made under this section relates, shall be notified by the Minister of the agreement, and if the agreement is terminated and the Minister is aware thereof, of the termination.

(6) Where an agreement under this section to which the Minister is not a party is terminated, the parties to the agreement shall cause notice of the termination to be given to the Minister.

(7) In this section “management” in relation to land means use of the land for agriculture or forestry, the carrying out of works on, in or under the land, the making of any change in the physical, topographical or ecological nature or characteristics of the land and the use of the land for educational or recreational purposes.”

Section 2 of the Wildlife Act, 1976 (as amended).

Section 69(1)(rr) Registration of Title Act, 1964 (as amended), which states as follows:

“69. – (1) There may be registered as affecting registered land any of the following burdens, namely – ...

(rr) an agreement under section 18 of the Wildlife Act, 1976, which provides that it shall be enforceable against persons deriving title to the relevant land under a party to the agreement;”

As described in the background document, and defined in the template as follows: “An easement in gross benefits a (legal) person. It attaches a right to an entity or individual. In the case of conservation easements, these legal persons are usually either a governmental organisation or a charitable nature conservation organisation, both of which are in principle immortal according to their by-laws.”

Environmental and Land Use Law, Scannell, Y., 2006, p. 255 and p. 272.

Regulation 12 of the European Communities (Natural Habitats) Regulations, 1997 (as amended) states as follows:

“12. (1) The Minister may enter into a management agreement in accordance with section 18 of the Principal Act with any owner, lessee or occupier of land forming part of a European site or land adjacent to such a site for the management, conservation, restoration or protection of the site or of any part of it.

(2) Any agreement previously entered into under section 18 of the Principal Act in relation to land which on or after the coming into force of these Regulations becomes part of a European site or is near such a site shall also have effect as if entered into under this Regulation.

(3) A management agreement, whether entered into before or after the making of the European Communities (Natural habitats and birds) (Sea-fisheries) Regulations 2009, does not have effect in relation to sea-fishing that is carried out in accordance with a fisheries Natura plan or a fisheries Natura declaration within the meaning of those Regulations.”

Environmental and Land Use Law, Scannell, Y., 2006, p. 278.

The Minister for Culture, Heritage and the Gaeltacht is the current Minister with responsibility under the Wildlife Act, 1976 (as amended).

Section 47(1) of the Planning and Development Act, 2000 (as amended) (“the 2000 Act”) states: “A planning authority may enter into an agreement with any person interested in land in their area, for the purpose of restricting or regulating the development or use of the land, either permanently or during such period as may be specified by the agreement, and any such agreement may contain such incidental and consequential provisions (including provisions of a financial character) as appear to the planning authority to be necessary or expedient for the purposes of the agreement.”

Section 47(3) of the 2000 Act states: “An agreement made under this section with any person interested in land may be enforced by the planning authority, or any body joined with it, against persons deriving title under that person in respect of that land as if the planning authority or body, as may be appropriate, were possessed of adjacent land, and as if the agreement had been expressed to be made for the benefit of that land.”

Langarth Properties Ltd v Bray Urban District Council, unreported, High Court, Morris P., 25 June 2001, where it was held that when a planning authority was considering applications for future development of land it was limited to considering the proper planning and development of the area and was precluded from relying solely on the fact that there was a statutory agreement in existence.

Section 213 of the 2000 Act states as follows: “(2) (a) A local authority may, for the purposes of performing any of its functions (whether conferred by or under this Act, or any other enactment passed before or after the passing of this Act), including giving effect to or facilitating the implementation of its development plan or its housing strategy under section 94 , do all or any of the following:

(i) acquire land, permanently or temporarily, by agreement or compulsorily,

(ii) acquire, permanently or temporarily, by agreement or compulsorily, any easement, way-leave, water-right or other right over or in respect of any land or water or any substratum of land,

(iii) restrict or otherwise interfere with, permanently or temporarily, by agreement or compulsorily, any easement, way-leave, water-right or other right over or in respect of any land or water or any substratum of land, and the performance of all or any of the functions referred to in subparagraphs (i), (ii) and (iii) are referred to in this Act as an “acquisition of land”.

Section 11 of the 2009 Act states as follows: “(4) The only legal interests in land which may be created or disposed of are – (a) an easement...”. Section 33 of the 2009 Act defines “dominant land” as “land benefited by an easement or profit à prendre to which other land is subject, or in respect of which a relevant user period has commenced; and “dominant owner” shall be read accordingly and includes that owner’s predecessors and successors in title” and defines “servient land” as “land subject to an easement or profit à prendre, or in respect of which a relevant user period has commenced; and “servient owner” shall be read accordingly and includes that owner’s predecessors and successors in title”. Note that a “profit à prendre” is the right to take something (e.g. minerals, turf, wild game, fish, etc.) from another person’s land.

Section 69(1)(j) of the Registration of Title Act, 1964 (as amended) states as follows: “(1) There may be registered as affecting registered land any of the following burdens, namely – ... (j) any easement, profit à prendre or mining right created by express grant or reservation after the first registration of the land”.

A precedent set by English courts in *London and Blenheim Estates Ltd v Ladbroke Retail Parks Ltd* [1993] 4 All ER 157, but cited with approval in *Irish Land Law*, Wylie, JCW, (5th Ed.), 2013, at p. 366, where it is noted that “Although it has been queried from time to time where this requirement [to have both a dominant and servient tenement] is strictly necessary it is probably too late now to question it and has recently been affirmed by the English courts.”

Dyce v Lady James Hay (1852) 1 Macq 305 at 312-3.

Phipps v Pears [1965] 1 QB 76, followed in Ireland by *Treacy v Dublin Corporation* [1993] 1 IR 305.

At Common Law the burden of the lessee’s covenants passes to his assignees, and this is confirmed by section 11 of the Conveyancing Act, 1881, although section 14 of Deasy’s Act indicates that the lessee may absolve himself of such liability by giving written notice of his assignment to his landlord.

The main problem suffered by freehold covenants at Common Law was their enforceability against successors in title, which was only possible in certain cases. The House of Lords in England called for legislation to resolve this difficulty in *Rhone v Stephens* [1994] 2AC 310, and the Irish High Court in *Cardiff Meats Ltd v McGrath* [2007] IEHC 219 (Murphy J) drew attention to the Law Reform Commission’s recommendations, which were subsequently implemented by the 2009 Act.

Section 48 of the 2009 Act states:

“In this Chapter, unless the context otherwise requires –

“developer” means the person who creates a scheme of development and that person’s successors in title;

“dominant land” means freehold land with the benefit of a covenant to which other freehold land is subject; and “dominant owner” shall be read accordingly and includes persons deriving title from or under that owner;

“freehold covenant” means a covenant attaching to dominant land and servient land which has been entered into after the commencement of this Chapter;

“persons deriving title” include –

(a) a person who has acquired title to the land by possession under the Act of 1957;

(b) a mortgagee, or receiver appointed by a mortgagee, in possession of the land;

“scheme of development” means a development of land under which –

(a) the land is, or is intended to be, subdivided into 2 or more parts for conveyance in fee simple to each owner of a part;

(b) there is an intention as between the developer and the owners of parts to create reciprocity of covenants in accordance with section 49 (3) ;

(c) that intention is expressed in each conveyance to the owners of parts or implied from the covenants in question as they relate to the parts and the proximity of the relationship between their owners;

“servient land” means freehold land which is subject to a covenant benefiting other freehold land; and “servient owner” shall be read accordingly and includes –

(a) persons deriving title from or under that owner, but not a tenant for a period less than 5 years,

(b) in the case of a covenant which is restrictive in substance, a licensee or other person in occupation of the land with or without the consent of that owner.”

Section 49 of the 2009 Act states:

“(1) Subject to subsection (6), the rules of common law and equity (including the rule known as the rule in *Tulk v. Moxhay*) are abolished to the extent that they relate to the enforceability of a freehold covenant.

(2) Subject to subsections (3) to (6), any freehold covenant which imposes in respect of servient land an obligation to do or to refrain from doing any act or thing is enforceable –

(a) by – (i) the dominant owner for the time being, or (ii) a person who has ceased to be that owner but only in respect of any breach of covenant occurring during the period when that person was such owner,

(b) against – (i) the servient owner for the time being in respect of any breach of covenant by that owner or which occurred before and continued unremedied after that person became the servient owner, or (ii) a person who has ceased to be that owner, but only in respect of a breach of covenant which occurred during the period when that person was such owner.

(3) Where there is a scheme of development subsection (2) applies so as to render covenants which are capable of reciprocally benefiting and burdening the parts of land within the scheme enforceable by and against the owners for the time being of such parts or persons referred to in subsection (2)(a)(ii) and (2)(b)(ii).

(4) Where the servient land has been subdivided any obligations, whether to do or to refrain from doing any act or thing, relating to that land –

(a) are apportioned, as appropriate to the subdivided parts of the land, between those parts,

(b) are enforceable accordingly by or against the persons in whom the subdivided parts are vested,

as if those obligations had originally been entered into separately in respect only of each such part.

(5) Any dispute as to the application of subsection (4) to a particular case may be referred to the court for determination and, on such application, the court may order such apportionment as it thinks fit.

(6) This section –

(a) does not affect – (i) the enforceability of a covenant under the doctrine of privity of contract or a covenant for title under section 80 , or (ii) the application to a freehold covenant of the Act of 1957,

(b) takes effect subject to the terms of the covenant or the instrument containing it.”

Section 49(2) of the 2009 Act (as above).

Section 69(1)(kk) of the Registration of Title Act, 1964 (as amended) states as follows “(1) There may be registered as affecting registered land any of the following burdens, namely— ... (kk) a freehold covenant within the meaning of section 48 of the Land and Conveyancing Law Reform Act 2009”.

Section 48 of the 2009 Act (as above).

Section 48 of the 2009 Act (as above).

Section 50 of the 2009 Act states as follows:

“(1) A servient owner may apply to the court for an order discharging in whole or in part or modifying a freehold covenant (whether created before or after the commencement of this Chapter) on the ground that continued compliance with it would constitute an unreasonable interference with the use and enjoyment of the servient land.

(2) In determining whether to make an order under subsection (1) and, if one is to be made, what terms and conditions should be attached to it, the court shall have regard as appropriate to the following matters –

(a) the circumstances in which, and the purposes for which, the covenant was originally entered into and the time which has elapsed since then,

(b) any change in the character of the dominant land and servient land or their neighbourhood,

(c) the development plan for the area under the Act of 2000,

(d) planning permissions granted under that Act in respect of land in the vicinity of the dominant land and servient land or refusals to grant such permissions,

(e) whether the covenant secures any practical benefit to the dominant owner and, if so, the nature and extent of that benefit,

(f) where the covenant creates an obligation on the servient owner to execute any works or to do any thing, or to pay or contribute towards the cost of executing any works or doing any thing, whether compliance with that obligation has become unduly onerous compared with the benefit derived from such compliance,

(g) whether the dominant owner has agreed, expressly or impliedly, to the covenant being discharged or varied,

(h) any representations made by any person interested in the performance of the covenant,

(i) any other matter which the court considers relevant.

(3) Where the court is satisfied that compliance with an order under subsection (1) will result in a quantifiable loss to the dominant owner or other person adversely affected by the order, it may include as a condition in the order a requirement by the servient owner to pay the dominant owner or other person such compensation as the court thinks fit.

(4) An order under subsection (1) shall be registered in the Registry of Deeds or Land Registry, as appropriate.”

The trust would have to have a charitable purpose in accordance with section 3 of the Charities Act, 2009, which states as follows:

“(1) For the purposes of this Act each of the following shall, subject to subsection (2), be a charitable purpose:

(a) the prevention or relief of poverty or economic hardship;

(b) the advancement of education;

(c) the advancement of religion;

(d) any other purpose that is of benefit to the community.

(2) A purpose shall not be a charitable purpose unless it is of public benefit.”

Section 69(2) of the Registration of Title Act, 1964 (as amended) states as follows: “(2) A burden may be registered under this section on the application of the registered owner of the land or of any person entitled to or interested in the burden but, if the application is made without the concurrence of the registered owner of the land or such other person as may be prescribed, the burden shall not be registered except in pursuance of an order of the court.”

Land Registry Form 21 is for the transfer of part of a property by a registered owner.

Rule 96(1)(d) of the Land Registry Rules, 2013, requires that the Land Registry (“the Authority”) concurs with the registration of a burden created under statute. However, because section 18 of the Wildlife Act, 1976 (as amended) requires the Minister’s “prior approval”, the land Registry might require same in writing before concurring to the registration of a Section 18 Agreement. Rule 96(1)(d) of the Land Registry Rules, 2013 states as follows: “(d) concurrence in the registration of the following burdens shall be given by the Authority;

(i) a burden created under a statute or statutory power or under a power registered as a burden or under a trust for securing money registered as a burden”.

Rule 98 of the Land Registry Rules, 2013, states as follows: “Where an instrument or a copy thereof authorised by these Rules is filed in the Registry and the instrument creates, or assents to the registration of, a burden, the entry of the burden in the register may be made by reference to the instrument or by setting out an extract therefrom or the effect thereof.”

As stated in *London and Blenheim Estates Ltd v Ladbroke Retail Parks Ltd* [1993] 4 All ER 157, and cited with approval in *Irish Land Law*, Wylie, JCW, (5th Ed.), 2013, at p. 366.

Annex 1.14. Italy. Legal acts regulating conservation easements.

Source of translations to English: unofficial translation by the expert.

CODICE CIVILE:

Libro III - Della proprietà

Titolo II - Della proprietà

Art. 832 - Contenuto del diritto.

Il proprietario ha diritto di godere e disporre delle cose in modo pieno ed esclusivo, entro i limiti e con l'osservanza degli obblighi stabiliti dall'ordinamento giuridico.

Libro III - Della proprietà

Titolo VI - Delle servitù prediali

Art. 1027 - Contenuto del diritto.

La servitù prediale consiste nel peso imposto sopra un fondo per l'utilità di un altro fondo appartenente a diverso proprietario.

Art. 1028 - Nozione dell'utilità.

L'utilità può consistere anche nella maggiore comodità o amenità del fondo dominante. Può del pari essere inerente alla destinazione industriale del fondo.

Art. 1029 - Servitù per vantaggio futuro.

È ammessa la costituzione di una servitù per assicurare a un fondo un vantaggio futuro.

È ammessa altresì a favore o a carico di un edificio da costruire o di un fondo da acquistare; ma in questo caso la costituzione non ha effetto se non dal giorno in cui l'edificio è costruito o il fondo è acquistato.

Art. 1030 - Prestazioni accessorie.

Il proprietario del fondo servente non è tenuto a compiere alcun atto per rendere possibile l'esercizio della servitù da parte del titolare, salvo che la legge o il titolo disponga altrimenti.

Art. 1031 - Costituzione delle servitù.

Le servitù prediali possono essere costituite coattivamente o volontariamente. Possono anche essere costituite per usucapione o per destinazione del padre di famiglia.

Art. 1032 - Modi di costituzione.

Quando, in forza di legge, il proprietario di un fondo ha diritto di ottenere da parte del proprietario di un altro fondo la costituzione di una servitù, questa, in mancanza di contratto, è costituita con sentenza. Può anche essere costituita con atto dell'autorità amministrativa nei casi specialmente determinati dalla legge.

La sentenza stabilisce le modalità della servitù e determina l'indennità dovuta.

Prima del pagamento dell'indennità il proprietario del fondo servente può opporsi all'esercizio della servitù.

Art. 1058 - Modi di costituzione.

Le servitù prediali possono essere costituite per contratto o per testamento.

Libro VI - Della tutela dei diritti

Titolo I - Della trascrizione

Art. 2643 - Atti soggetti a trascrizione.

Si devono rendere pubblici col mezzo della trascrizione:

- 1) i contratti che trasferiscono la proprietà di beni immobili;

- 2) i contratti che costituiscono, trasferiscono o modificano il diritto di usufrutto su beni immobili, il diritto di superficie, i diritti del concedente e dell'enfiteuta;
- 2-bis) i contratti che trasferiscono, costituiscono o modificano i diritti edificatori comunque denominati, previsti da normative statali o regionali, ovvero da strumenti di pianificazione territoriale (1);
- 3) i contratti che costituiscono la comunione dei diritti menzionati nei numeri precedenti;
- 4) i contratti che costituiscono o modificano servitù prediali, il diritto di uso sopra beni immobili, il diritto di abitazione;
- 5) gli atti tra vivi di rinuncia ai diritti menzionati nei numeri precedenti;
- 6) i provvedimenti con i quali nell'esecuzione forzata si trasferiscono la proprietà di beni immobili o altri diritti reali immobiliari, eccettuato il caso di vendita seguita nel processo di liberazione degli immobili dalle ipoteche a favore del terzo acquirente [c.c. 2853, 2889, 2896; c.p.c. 574, 590];
- 7) gli atti e le sentenze di affrancazione del fondo enfiteutico;
- 8) i contratti di locazione di beni immobili che hanno durata superiore a nove anni ;
- 9) gli atti e le sentenze da cui risulta liberazione o cessione di pigioni o di fitti non ancora scaduti, per un termine maggiore di tre anni;
- 10) i contratti di società e di associazione con i quali si conferisce il godimento di beni immobili o di altri diritti reali immobiliari, quando la durata della società o dell'associazione eccede i nove anni o è indeterminata;
- 11) gli atti di costituzione dei consorzi che hanno l'effetto indicato dal numero precedente;
- 12) i contratti di anticresi;
- 12-bis) gli accordi di mediazione che accertano l'usucapione con la sottoscrizione del processo verbale autenticata da un pubblico ufficiale a ciò autorizzato;
- 13) le transazioni che hanno per oggetto controversie sui diritti menzionati nei numeri precedenti;
- 14) le sentenze che operano la costituzione, il trasferimento o la modificazione di uno dei diritti menzionati nei numeri precedenti.

English translation – The Civil Law –FREE TRANSLATION

Book III - Of the ownership

Title II - Of the ownership

Art. 832 - Content of the right.

The owner has the right to enjoy and to have the property in full and exclusive way, within the limits and with the observance of the obligations established by the juridical arrangement.

Book III - Of the ownership

Title VI - Of the predial servitudes

Art. 1027 - Content of the right.

The predial servitude consists in the imposed weight above a real estate for the utility of another belonging real estate to different owner.

Art. 1028 - Notion of the utility.

Utility can also consist in the greatest convenience or amenity of the dominant real estate. It is able some peer to be inherent to the industrial destination of the real estate.

Art. 1029 - Servitude for future advantage.

The constitution of a servitude is acknowledged for assuring a future advantage to a real estate. You/he/she is admitted in favour also or to load of a building to build or of a real estate to be purchased; but in this case the constitution doesn't have effect if not from the day when the building is built or the real estate is purchased.

Art. 1030 – Accessory performances.

The owner of the serving real estate is not kept to complete some action for the exercise of the servitude to make from the holder possible, except that the law or the title prepares otherwise.

Art. 1031 - Constitution of the servitudes.

The predial servitudes can be constituted forcibly or voluntarily. You/they can also be constituted for usucapion or for destination of the father of family.

Art. 1032 - Ways of constitution.

When, in strength of law, the owner of a real estate has the right to get from the owner of another real estate the constitution of a servitude, this, lacking contract, you/he/she is constituted with sentence. You/he/she can also be constituted with action of the administrative authority in the cases especially determined by the law. The sentence establishes the formalities of the servitude and determines the due indemnity. Before the payment of the indemnity the owner of the serving real estate can oppose to the exercise of the servitude.

Art. 1058 - Ways of constitution.

The predial servitudes can be constituted for contract or for will.

Book VI - Of the guardianship of the rights

Title I - Of the transcript

Art. 2643 - Actions transcript subjects.

You/they must be made with the mean of the transcript public:

- 1) the contracts that transfer the ownership of immovable goods;
- 2) the contracts that constitute, transfer or they modify the right of usufruct on immovable goods, the right of surface, the rights of the grantor and the emphyteuta;
- 2-bis) the contracts that transfer, constitute or they modify the rights of building however denominated, foreseen by national or regional rules, or by tools of territorial planning;
- 3) the contracts that constitute the communion of the rights mentioned in the preceding numbers;
- 4) the contracts that constitute or they modify predial servitudes, the right of use above immovable goods, the right of residence;
- 5) the actions among alive of renunciation to the rights mentioned in the preceding numbers;
- 6) the provisions with which move the ownership of goods immovable or other real estate real rights to the forced execution, excepted the case of sale following the process of liberation of the immovable properties from the mortgages for the third buyer [c.c. 2853, 2889, 2896; c.p.c. 574, 590];
- 7) the actions and the sentences of postage of the deep enfiteutico;
- 8) the contracts of location of immovable goods that have lasted superior to nine ;
- 9) the actions and the sentences from which liberation or transfer of rents or not yet expired rents, for a great term of three years;
- 10) the contracts of society and association with which the enjoyment of immovable goods or other real estate real rights is conferred, when the duration of the society or the association exceeds the nine years or it is indefinite;
- 11) the actions of constitution of the consortia that have the effect pointed out by the preceding number;
- 12) the contracts of antichresis;
- 12-bis) the accords of mediation that verify the usucapion with the signature of the oral trial authenticated by an authorized official public;
- 13) the transactions that have for object controversies on the rights mentioned in the preceding numbers;

14) the sentences that operate the constitution, the transfer or the modification of one of the rights mentioned in the preceding numbers.

Annex 1.15. Latvia. Legal acts regulating conservation easements.

Source of translations to English: official translations available on www.likumi.lv.

The Civil Law prescribing that owner has a right to alienate and give to others the certain rights of the property included in the ownership. Among others, it can be done by private volition on basis of the contract. The Law also defines the term „servitute“ and distinguishes between personal servitudes (established for a benefit of a person) and real servitudes (established for a benefit of a specific property).

Civillikums: <https://likumi.lv/doc.php?id=225418>

Ceturtā apakšnodaļa Īpašnieka tiesības

I. Vispārīgi noteikumi

1037. Īpašnieks, kā dzīvojot, tā arī nāves gadījumam, var atsavināt un atdot citam savu īpašumu, pilnīgi vai daļai, vai tikai zināmas īpašumā ietilpstošas tiesības.

III. Īpašuma lietošanas tiesības aprobežojumi

1082. Īpašuma lietošanas tiesības aprobežojumu noteic vai nu likums, vai tiesas lēmums, vai arī privāta griba ar testamentu vai līgumu, un šis aprobežojums var attiekties kā uz dažu lietu tiesību piešķiršanu citām personām, tā arī uz to, ka īpašniekam jāatturas no zināmām lietošanas tiesībām, vai arī jāpacies, ka tās izlieto citi.

Piezīme. Daži citi, šajā nodalījumā neparedzēti īpašuma lietošanas tiesības aprobežojumi, kā piemēram, par minerālūdeņu avotiem, radiostaciju ierīkošanu un lietošanu, gaisa satiksmi, zemes gabaliem gar dzelzceļu līnijām un izrakumiem, paredzēti sevišķos likumos.

CETURTĀ NODAĻA Servitūti

Pirmā apakšnodaļa Vispārīgi noteikumi

1130. Servitūts ir tāda tiesība uz svešu lietu, ar kuru īpašuma tiesība uz to ir lietošanas ziņā aprobežota kādai noteiktai personai vai noteiktam zemes gabalam par labu.

1131. Servitūts, kas nodibināts par labu noteiktai fiziskai vai juridiskai personai, ir personālservitūts; servitūts, kas nodibināts par labu kādam noteiktam nekustamam īpašumam, tā ka to izlieto katrreizējais tā īpašnieks, ir reālservitūts.

ČETRPADSMITĀ NODAĻA Nomas un īres līgums

PIRMĀ APAKŠNODAĻA Nomas un īres līguma noteikumi

2126. Ierakstot nomas vai īres līgumu zemes grāmatās, nomnieks vai īrnieks iegūst lietu tiesību, kas ir spēkā arī pret trešām personām.

**SUB-CHAPTER 4
Rights of an Owner**

I. General Provisions

1037. Owners, during their lifetime and also upon their death, may alienate and give to others their ownership, as a whole or in parts, or with respect only to certain rights included in ownership.

III. Restrictions on Rights of Use regarding Ownership

1082. Restrictions on rights of use regarding ownership may be provided for by law, by court decision or by private volition through a will or contract, and such restriction may apply not only to the granting of various property rights to other persons, but also to the case where an owner must refrain from certain rights of use, or must suffer the use of such rights by others.

Note. Various other restrictions on rights of the use of property not provided for in this Part - for example, regarding mineral water springs, the installation and operation of radio stations, air traffic, parcels of land along railway lines and excavations - shall be provided for in specific laws.

**CHAPTER 4
Servitudes**

**SUB-CHAPTER 1
General Provisions**

1130. A servitude is such right in respect of the property of another as restricts ownership rights regarding it, with respect to utilisation, for the benefit of a certain person or a certain parcel of land.

1131. A servitude established for the benefit of a specific natural or legal person is a personal servitude; a servitude established for the benefit of specific immovable property, so that it is enjoyed by each successive owner, is a real servitude.

**CHAPTER 14
Lease and Rental Contracts**

**SUB-CHAPTER 1
Provisions of Lease and Rental Contract**

2126. Upon registering a lease or rental contract in the Land Register, the lessee or a tenant shall acquire property rights, which are valid also with respect to third persons.

The Land Register Law prescribing what type of information can be entered into Land Register in terms of entries (articles) and notations. As a notation, it is possible to enter anything which may be corroborated in the form of entries (with the consent of the owner), and the restrictions of rights and the security of rights for which the form of notations has been specified in other laws.

Zemesgrāmatu likums: <https://m.likumi.lv/doc.php?id=60460>

OTRĀ APAKŠNODAĻA. NODALĪJUMA IERAKSTU VEIDI UN SATURS

1. Ierakstu veidi

43. Nostiprinājumus zemesgrāmatas nodalījumā izteic ierakstos (pantos) un atzīmēs.

44. Ierakstu veidā uz nekustamu īpašumu nostiprina tiesības, kam pamatā ir tiesisks darījums, tiesas spriedums vai lēmums vai administratīvu iestāžu akts vai kas pastāv uz paša likuma (5. p.) pamata; tāpat nostiprina minēto tiesību pārgrozījumus un dzēsumu.

Atzīmju veidā nostiprina tiesību nodrošinājumus un aprobežojumus.

45. Atzīmju veidā ieraksta:

...

7) ar īpašnieka piekrišanu – visu, ko varētu nostiprināt ierakstu veidā, līdz to šķēršļu novēršanai, kuru dēļ šāds nostiprinājums nav iespējams; šīs atzīmes ieraksta tajā daļā un iedaļā, kurā nāktu nostiprinājums ieraksta veidā;

8) tiesību aprobežojumus un tiesību nodrošinājumus, kuriem citos likumos noteikts atzīmju veids.

English translation - Land Register Law – OFFICIAL TRANSLATION

SUB-CHAPTER TWO. FORM AND CONTENT OF THE ENTRIES OF A DIVISION

1. Forms of Entries

43. Corroboration in a division of a Land Register shall be expressed in entries (articles) and notations.

44. Rights to immovable property which are based on a lawful transaction, a judgment or a decision of a court or a statement of administrative institutions, or which exist on the basis of the law itself (Section 5) shall be corroborated in the form of an entry; changes and extinguishing of the referred to rights shall be corroborated in the same way.

The security and restrictions of rights shall be corroborated in the form of notations.

45. The following shall be entered in the form of notations:

...

7) with the consent of an owner – everything which may be corroborated in the form of entries until the elimination of such obstacles due to which such corroboration is not possible; such notations shall be entered in the part and section in which the corroboration would be written in the form of an entry;

8) the restrictions of rights and the security of rights for which the form of notations has been specified in other laws.

National Real Estate Cadastre Law ruling that the categories for encumbrances in Latvia shall be determined by issuing a Rule on classification of encumbrances

Nekustamā īpašuma valsts kadastra likums: <https://m.likumi.lv/doc.php?id=124247>

28.pants. Nekustamā īpašuma objekta apgrūtinājumu klasifikatoru nosaka Ministru kabinets.

English translation - National Real Estate Cadastre Law – OFFICIAL TRANSLATION

Section 28. The classification of the encumbrances of the object of real estate shall be determined by the Cabinet.

The Law on Law On the Information System of Restricted Territories defining the term „restricted territories“ and setting the rules for establishing the data management system for them

Apgrūtināto teritoriju informācijas sistēmas likums: <https://m.likumi.lv/doc.php?id=187927>

1.pants. Likumā lietotie termini

Likumā ir lietoti šādi termini:

- 1) **apgrūtinātā teritorija** – teritorija, kurai atbilstoši likumam ir noteikti lietošanas tiesību aprobežojumi;

3.pants. Informācijas sistēmas dati un darbība

(1) Informācijas sistēma ir valsts informācijas sistēma, kurā iekļauj datus par:

- 1) apgrūtinātajām teritorijām un to robežām;
- 2) objektiem un to robežām.

(2) Datus par objektiem Informācijas sistēmā iekļauj, lai:

- 1) Informācijas sistēmā automātiski attēlotu apgrūtināto teritoriju robežas;
- 2) uzturētu, aktualizētu un precizētu Informācijas sistēmā iekļautos datus par objektiem un to robežām, kā arī apgrūtināto teritoriju robežām.

(3) Datus par apgrūtināto teritoriju robežām un objektu robežām Informācijas sistēmā iekļauj elektroniskā veidā vektordatu formā Latvijas 1992.gada ģeodēzisko koordinātu sistēmā.

(4) Informācijas sistēmas darbības nodrošināšanai izmanto šādus kartogrāfiskos materiālus:

- 1) aktuālākās topogrāfiskās kartes, topogrāfiskos plānus un ortofotokartes;
- 2) datus par administratīvo teritoriju un to teritoriālo vienību robežām;
- 3) Nekustamā īpašuma valsts kadastra informācijas sistēmas datus.

(5) Ministru kabinets nosaka Informācijas sistēmas izveides, uzturēšanas un informācijas aprites kārtību, tajā skaitā ietverot prasības par:

- 1) iesniedzamo datu apjomu, formātu un precizitāti, specifiku un klasifikāciju;
- 2) Informācijas sistēmas datu saturu;
- 3) kārtību, kādā Informācijas sistēmas darbības nodrošināšanai iesniedzami un izmantojami kartogrāfiskie materiāli;
- 4) Informācijas sistēmas datu iesniegšanas, glabāšanas, aktualizācijas, pieprasīšanas un izsniegšanas kārtību.

English translation - Law On the Information System of Restricted Territories – OFFICIAL TRANSLATION

Section 1. Terms Used in this Law

The following terms are used in this Law:

- 1) **restricted territory** – a territory, to which restrictions in relation to the rights of use have been imposed in accordance with the law;

Section 3. Data and Operation of the Information System

(1) The Information System is a State information system, which includes data regarding:

- 1) restricted territories and their borders;
- 2) objects and their borders.

(2) Data regarding objects shall be included in the Information System in order to:

- 1) automatically show the borders of restricted territories in the Information System;
- 2) to maintain, update and specify the data included in the Information System regarding objects and their borders, as well as borders of restricted territories.

(3) The data on borders of restricted territories and borders of objects shall be included in the Information System electronically in the form of vector data in the geodetic co-ordinate system of Latvia (1992).

(4) The following cartographic materials shall be used for ensuring the operation of the Information System:

- 1) the most current topographic maps, topographical plans and orthophoto maps;
- 2) data on borders of administrative territories and their territorial units;
- 3) data of the Immovable Property State Cadastre Information System.

(5) The Cabinet shall determine the procedures for establishing, maintaining of and circulation of information in the Information System, also including requirements regarding:

- 1) the amount, format and accuracy of the data to be submitted, specification and classification;
- 2) the content of the data of the Information System;
- 3) the procedures, by which cartographic materials shall be submitted and used for ensuring the operation of the Information System;
- 4) the procedures for submitting, storing, updating, requesting and issuing data of the Information System.

(6) The data of the Information System shall be compatible with data of the Immovable Property State Cadastre Information System.

Rule on the Information System of Restricted Territories establishing the categories for restricted territories

Noteikumi par Apgrūtināto teritoriju informācijas sistēmas izveidi un uzturēšanu un apgrūtināto teritoriju un nekustamā īpašuma objekta apgrūtinājumu klasifikatoru:
<https://m.likumi.lv/doc.php?id=264305#p27&pd=1>

The extended list is provided in Annexes 2 and 3. It includes a wide range of categories for protective zones (restricted territories) in protected nature territories, their zones and forest protective belts (chapter 21). However, the list is defined and does not allow any positive commitments. No official English translation available.

Annex 1.16. Lithuania. Legal acts regulating conservation easements.

Source of translations to English: official translations from the Register of Legal Acts, <https://www.e-tar.lt/portal/en/index>

LIETUVOS RESPUBLIKOS CIVILINIS KODEKSAS

VII SKYRIUS. SERVITUTAS

4.111 straipsnis. Servituto sąvoka

1. Servitutas – tai teisė į svetimą nekilnojamąjį daiktą, suteikiama naudotis tuo svetimu daiktu (tarnaujančiuoju daiktu), arba to daikto savininko teisės naudotis daiktu apribojimas, siekiant užtikrinti daikto, dėl kurio nustatomas servitutas (viešpataujančiojo daikto), tinkamą naudojimą.

4.113 straipsnis. Servituto teisių įgyvendinimas

3. Nustatant servitutą, gali būti nustatyta prievolė statyti statinius, sodinti augalus ar atlikti kitus darbus, kurie yra būtini servituto teisėms įgyvendinti.

4.123 straipsnis. Kiti servitutai

Gali būti nustatomi servitutai, suteikiantys teisę tiesti požemines ir antžemines komunikacijas, aptarnauti jas bei jomis naudotis, taip pat kiti servitutai.

4.124 straipsnis. Servituto nustatymo pagrindai ir momentas

1. Servitutą gali nustatyti įstatymai, sandoriai ir teismo sprendimas, o įstatymo numatytais atvejais – administracinis aktas.
2. Iš servituto kylančios teisės ir pareigos subjektams atsiranda tik įregistravus servitutą, išskyrus atvejus, kai servitutą nustato įstatymai.
3. Nustatant servitutus, visais atvejais turi būti ir dėl servitutų nustatymo viešpataujančiuoju tampančio daikto savininko valia, išskyrus atvejus, kai servitutą nustato įstatymai ar teismo sprendimas.

4.128 straipsnis. Daiktai, kuriems gali būti nustatomas servitutas

1. Servitutas gali būti nustatomas nekilnojamajam daiktui, kuris savo pastoviomis savybėmis neterminuotam laikui gali užtikrinti viešpataujančiojo daikto tinkamą naudojimą.

English translation – The Civil Law – OFFICIAL TRANSLATION

CHAPTER VII

A SERVITUDE

SECTION ONE

GENERAL PROVISIONS

Article 4.111. Concept of a Servitude

1. A servitude is a right in respect of an immovable thing of another that is granted for the use of that thing (the servient thing) or a restriction of the right of the owner of that thing in order to ensure a proper utilisation of the thing in favour of which the servitude is established (the dominant thing).
2. When the subject of the right of ownership of the servient or dominant thing changes, the established servitude remains due.

Article 4.113. Exercise of Servitude Rights

3. In establishing a servitude, the obligation to build construction works, install plants or perform other works that are necessary for the exercise of servitude rights may be imposed.

Article 4.123. Other Servitudes

Servitudes may be established that grant the right to lay down underground or aboveground communications, servitudes to maintain and use them thereof as well as other servitudes.

Article 4.124. Grounds and Time for the Establishment of a Servitude

1. A servitude may be established by laws, transactions and by a court judgement while in cases stipulated by laws – by an administrative act.
2. Rights and obligations arising from a servitude in respect of subjects become effective only after the registration of the servitude except when the servitude is established by laws.
3. In establishing servitudes in all cases the will of the owner of the thing to become the dominant thing must be present except when a servitude is established by laws or by a court judgement.

Article 4.128. Things in Respect of which a Servitude May be Established

1. A servitude may be established in respect of an immovable thing that by its permanent characteristics may ensure a proper usage of the dominant thing for an indefinite period.

LIETUVOS RESPUBLIKOS ŽEMĖS ĮSTATYMAS

I SKYRIUS BENDROSIS NUOSTATOS

13. Žemės servitutas – teisė į svetimą žemės sklypą ar jo dalį, suteikiama naudotis tuo svetimu žemės sklypu ar jo dalimi (tarnaujančiuoju daiktu), arba žemės savininko teisės naudotis žemės sklypu apribojimas siekiant užtikrinti daikto, dėl kurio nustatomas servitutas (viešpataujančiojo daikto), tinkamą naudojimą.
14. Žemės sklypas – teritorijos dalis, turinti nustatytas ribas, kadastro duomenis ir įregistruota Nekilnojamojo turto registre.

REPUBLIC OF LITHUANIA LAW ON LAND – OFFICIAL TRANSLATION

Article 2. Definitions

13. Land easement shall mean the right to a land parcel, or a part thereof, belonging to someone else who is granted to use this land parcel, or a part thereof (the servient object) or a restriction of the land owner's right to use the land parcel to ensure proper utilisation of the object in favour of which the easement is established (the dominant object).
14. Land parcel shall mean a part of an area having fixed boundaries, cadastral data and registered with the Real Property Register.

Annex 1.17. The Netherlands. Legal acts regulating conservation easements.

Source of translations to English: unofficial translation by the experts.

Easement

Definition

An easement is a burden, with which an immovable property – the property with easement – for the benefit of another immovable property – the prevailing property – is encumbered (art. 5:70 lid 1 BW). The immovable property stands for the land itself, it can therefore neither entail unused natural minerals/resources or sustainable objects related to the land (e.g. vegetation, buildings, etc.), nor water plots (MvA II, PG Boek 5, p. 253.). “Inheritance” thus entails more than just plots.

Purpose and content

The encumbered burdens of the immovable property include the following obligations:

1. To tolerate or not to do something on, above or below the ground
2. The installation of buildings, plantations and other functions required for the execution of the easement, which need to be partly or fully located on the “property with easement”. These are secondary obligations.
3. To maintain the “property with easement” or buildings, plantations and other functions which are or will be partly or fully located on the land.

(art. 5:71 BW)

The deed of establishment documents the content. The deed is explained on the basis of objective measures considering the entire content (HR 13 Juni 2003, NJ 2004, 251). Note: A accurate description of the content is of high importance as the parties’ intentions, unlike in contract law, are not decisive. Local costumes serve as a supplement where the deed is unclear and become decisive if the easement has been practiced in a certain way over a longer time period (art. 5:73 lid 1 BW).

The easement can be changed by the owner of the “property with easement” without the consent of the owner of “the prevailing property” (Art. 5:73 lid 2). Provided that the indulgence of the owner of “the prevailing property” is not lessened, however, very minor effects are permitted (HR 24 September 1999, NJ 1999, 754). So, displacement, which would affect nature protection in relation to the easement negatively, is not permitted.

Book 5. Property rights/ Rights in rem

Title 6. Easement

Article 70

1.

An easement is a burden, with which an immovable property – the property with easement – for the benefit of another immovable property – the prevailing property – is encumbered.

2.

A deed of establishment of an easement might oblige the owner of the prevailing property to pay a fee to the owner of the serving property on a (un)regular basis.

Article 71

1.

The encumbered burdens from the easement on the immovable property consist of the obligation to tolerate or not to do something on, above or below the grounds. The deed of establishment may also stipulate obligations which require an action, such as the installation of a building, plantation or other works necessary for the execution of the easement, provided that they are wholly or partly located on the serving property.

2.

The burden placed by an easement on the serving property may also consist of the obligation to maintain the servient property and buildings, plantations or other works located wholly or partly on the serving property.

Boek 5. Zakelijke rechten

Titel 6. Erfdienstbaarheden

Artikel 70

1.

Een erfdienstbaarheid is een last, waarmede een onroerende zaak - het dienende erf - ten behoeve van een andere onroerende zaak - het heersende erf - is bezwaard.

2.

In de akte van vestiging van een erfdienstbaarheid kan aan de eigenaar van het heersende erf de verplichting worden opgelegd aan de eigenaar van het dienende erf op al dan niet regelmatig terugkerende tijdstippen een geldsom - de retributie - te betalen.

Artikel 71

1.

De last die een erfdienstbaarheid op het dienende erf legt, bestaat in een verplichting om op, boven of onder een der beide erven iets te dulden of niet te doen. In de akte van vestiging kan worden bepaald dat de last bovendien een verplichting inhoudt tot het aanbrengen van gebouwen, werken of beplantingen die voor de uitoefening van die erfdienstbaarheid nodig zijn, mits deze gebouwen, werken en beplantingen zich geheel of gedeeltelijk op het dienende erf zullen bevinden.

2.

De last die een erfdienstbaarheid op het dienende erf legt, kan ook bestaan in een verplichting tot onderhoud van het dienende erf of van gebouwen, werken of beplantingen die zich geheel of gedeeltelijk op het dienende erf bevinden of zullen bevinden.

Qualitative obligation (and chain clauses)

Definition

A qualitative obligation is the commitment to tolerate or not to do anything that would interrupt the peace of the owner of a registered property (regarding land and housing). It is characteristically, that the obligation arises from an agreement between parties. But it is also binding to other users of the registered property and if the property is being sold. So, the qualitative obligation is also binding to other users and to new acquirers (art. 6:252 BW).

A chain class generally has less legal enforcement than a qualitative obligation. It is a clause as part of an agreement that imposes obligations to A for the benefit of B. A is also obliged to impose these obligations (for the benefit of B) on his legal successors for example when selling the registered property. A penalty clause is often attached to such chain clauses with the purpose of enforcing the agreed upon commitments, meaning that

A would need to pay a fine to B in case of violation. A major disadvantage of chain conditions is that if A fails to pass on the obligations to the legal successor, then B will have no legal rights towards said successor and won't, therefore, be able to enforce the chain clause any longer. The chain is then broken. The chain would also be broken in case of bankruptcy and executorial mortgage sale (e.g. by a bank). The following will focus on qualitative obligations due to these mentioned major drawbacks. However, a noteworthy advantage of chain clauses is the great freedom to regulate mutual rights and obligations including the execution of a specific "action" by a party.

Purpose and content

The qualitative obligation is often called easement without "the prevailing property". An easement requires, as discussed in section 1, NM to be in the possession of an adjacent land. So, an easement is not an option, if NM wants to assure nature protection in an area which is further not connected to an area owned or used by NM. In such cases, qualitative obligations can provide the solution.

Like an easement, a qualitative obligation is imposing the landowner with the obligation to tolerate or to not do something. The obligation to execute a specific "action" cannot be enforced by the means of a qualitative obligation. However, a chain class can then provide the solution, yet earlier mentioned disadvantages under section 2.1 will then need to be taken into consideration.

Kwalitatieve verbintenis

Boek 6. Algemeen gedeelte van het verbintenissenrecht

Titel 5. Overeenkomsten in het algemeen

Afdeling 4. Rechtsgevolgen van overeenkomsten

Artikel 252

1.

Bij een overeenkomst kan worden bedongen dat de verplichting van een der partijen om iets te dulden of niet te doen ten aanzien van een haar toebehorend registergoed, zal overgaan op degenen die het goed onder bijzondere titel zullen verkrijgen, en dat mede gebonden zullen zijn degenen die van de rechthebbende een recht tot gebruik van het goed zullen verkrijgen.

2.

Voor de werking van het in lid 1 bedoelde beding is vereist dat van de overeenkomst tussen partijen een notariële akte wordt opgemaakt, gevolgd door inschrijving daarvan in de openbare registers. Degene jegens wie de verplichting bestaat, waarop het beding betrekking heeft, moet in de akte ter zake van de inschrijving woonplaats kiezen in Nederland.

3.

Ook na inschrijving heeft het beding geen werking:

- a. jegens hen die voor de inschrijving onder bijzondere titel een recht op het goed of tot gebruik van het goed hebben verkregen;
- b. jegens een beslaglegger op het goed of een recht daarop, indien de inschrijving op het tijdstip van de inschrijving van het proces-verbaal van inbeslagneming nog niet had plaats gevonden;
- c. jegens hen die hun recht hebben verkregen van iemand die ingevolge het onder a of b bepaalde niet aan de bedongen verplichting gebonden was.

4.

Is voor de verplichting een tegenprestatie overeengekomen, dan gaat bij de overgang van de verplichting het recht op de tegenprestatie mee over, voor zover deze betrekking heeft op de periode na de overgang en ook het beding omtrent deze tegenprestatie in de registers ingeschreven is.

5.

Dit artikel is niet van toepassing op verplichtingen die een rechthebbende beperken in zijn bevoegdheid het goed te vervreemden of te bezwaren.

Qualitative obligations

Book 6. General part of contract law

Title 5. Agreements in general

Section 4. Legal effects of contracts

Article 252

1.

An agreement can oblige one of the parties to tolerate or not to do something with respect to the registered property and that this obligation will be passed on to those who may obtain the property under a special title. These obligations are also binding to anyone who has the right to use to property.

2.

In order for the stipulation referred to in paragraph 1 to be effective, a notarial deed of the agreement between the parties must be drawn up, which then must be registered in the public register. The person to whom the obligation applies or who is affected by it, must have his residence legally within the Netherlands.

3.

Even after registration, the stipulation has no effect:

- a. against those who have obtained a right to use the land before the registration;
- b. against confiscation of the land or a right thereon, if the registration had not yet taken place at the time of the registration of the official record of confiscation;
- c. against those who have obtained their rights from a person who was not bound by the stipulated obligation under a or b.

4.

If for the stipulated obligation a compensation was agreed upon, then with the transfer of the obligation to a new party also the right to the compensation is being transferred, insofar as it relates to the period after the transfer and the stipulation concerning this consideration is entered into the register.

5.

This article does not apply to obligations that limit a right holder in his authority to alienate or encumber the land.

Overeenkomsten

Boek 6. Algemeen gedeelte van het verbintenissenrecht

Titel 5. Overeenkomsten in het algemeen

Afdeling 2. Het tot stand komen van overeenkomsten

Artikel 217

1.

Een overeenkomst komt tot stand door een aanbod en de aanvaarding daarvan.

TRANSLATION

Agreements

Book 6. General part of contract law

Title 5, Agreements in general

Section 2. The establishment of agreements

Article 217

1.

An agreements is established by an offer and the acceptance thereof.

EXAMPLE: qualitative obligation Green Development Fund Brabant B.V.

Final version 10 September 2015

Agreement to establish a qualitative obligation

Involved parties:

1. The Green Development Fund Brabant (GOB), represented by the director, whose position is currently taken by M. Fiers, living in 5622CJ Eindhoven, Pastoor van Arsplein 27, born in Bladel/Netersel on October 5th nineteen sixty-eight and passport number NUBD8C795. The director, which is based on the provisions of the Director's decision legally representing the Green Development Fund Brabant and in this case also the Province of Noord-Brabant, will hereinafter be referred to as the "Fund",.
2. Mr. / Mrs. [possibly title, initials, last name], residing [postcode, place of residence, address], born in [place of birth] on [date of birth; written in full], passport number [number], who will hereinafter be referred to as the "landowner".

Taking into account that:

- The Fund wants to further realize the Nature Network Brabant through partnerships with landowners and possible leaseholders
- The Fund and the landlord together defined how the Nature Network will be realized. The attached design plan captures these agreements.
- The Fund and the landlord have agreed upon the way in which the landlord will be compensated for his engagement and contribution to the realization of the Nature Network Brabant. The attached design plan captures these agreements.

- With the decision from "Date", the subsidy with reference number "Cxxxxx / xxx" has been granted based on the Investment Regulations Green Development Fund Brabant BV. This comprises the compensation of the landowner for the conversion of agricultural land to natural habitat;
- The design plan, with the purpose of the realization and subsequent maintenance of the Nature Network Brabant, must be carried out and maintained for, for an indefinite period of time;
- The Fund and the landowner agree to establish a qualitative obligation in favor of the Fund and upon/after its absence in favor of the province of Noord- Brabant. This is in the form of maintenance obligations of the area which is part of the Nature Network Brabant for an indefinite period of time
- The landowner accepts the obligations which arise from the partnership with the Fund and hence from the Investment Rules Green Development Fund Brabant BV and wishes to have a qualitative obligation on the concerning land(s) established;

The following was agreed upon:

Article 1

Used terms are understood as defined by the Investment Regulations of the Green Development Fund BV published under "Zie beschikking", hereinafter referred to as the "Regulation". (attach or record)

Article 2

The land, consisting of "xxx" ha, which is registered in the land register of the "see project plan" municipally, is owned by the landowner. The qualitative obligation will concern "xxx" ha of said land. These "xxx" ha on "plot number" and "possible additional plots and sizes" conform with the project plan submitted to the Fund and the attached cadastral map hereinafter referred to as the "site".

Article 3

- a. The landowner is using the land for nature purposes and tolerates the development or maintenance of the natural development type for which the subsidy was granted on the basis of the regulation, for an indefinite period. This includes "nature target types", or the development and the maintenance of another nature management type as long as it is approved by the GOB or through a written permission from provincial executives of the province of Noord-Brabant.
- b. The landowner avoids what would impede, complicate or prevent the state described under a.
- c. The landowner does not use the site for other purposes than the management and maintenance practices as described in the attached design plan for which the subsidy has been granted on the basis of the regulation. Unless another granted through a written permission from provincial executives of the province of Noord-Brabant nature management type requires actions for its development or maintenance.
- d. The landowner tolerates effects on his land created by hydrological measures for the purpose of nature conservation, the Natura2000 and the Water Framework Directive.

Article 4

The landowner establishes a qualitative undertaking in accordance with article 6: 252 of the Civil Code, as indicated in article 3 above, at the expense of the (part of the) land as shown on the attached map, for the benefit of the Fund and in his absence the Province of Noord-Brabant.

Article 5

1. If the landowner fails to comply with one or more of the provisions of article 3 of this deed, the Fund may demand compliance. In the event of a permanent attributable shortcoming, it can annul the agreement.

2. Before the Fund can annul the agreement as a result of non-compliance with one or more provisions of article 3 of this deed by the landowner, it must inform the landowner in writing by registered letter or through a bailiff of non-compliance and request that the landowner shall comply to and achieve his obligation(s) within a set time period. The time period needs to be at least eight weeks.
3. If the Fund demands compliance with the agreement, the landowner is obliged to stop the non-compliance with one or more of the provisions of article 3 of this deed on first notification and to restore the site in the state in which it was before the non-compliance with one or more of the provisions of article 3 of this deed. At the discretion of the Fund, penalty payments as stated in the fourth paragraph can be given.
4. After the term referred to in the second paragraph, the Fund may, if the landowner has not yet fulfilled the obligations of one or more of the provisions of article 3 of this deed:
 - A. Proceed the collection of a penalty payment amounting to a maximum of € 500, multiplied by the number of hectares referred to in article 2, for each week that the landowner, after receipt of the remainder described in the second paragraph, has not met one or more of the provisions of article 3 of this deed;
 - B. If after imposing and collecting the penalty payment mentioned under 4.A. the landowner remains in default or dissolves the agreement as a result of non-compliance with one or more provisions of article 3 of this deed, then the landowner is legally liable to pay an immediately due fine. Which however doesn't exceed the subsidy amount. If agreed upon under the decision of "Date of decision" with the attribute "Cxxxxxx / xxxxxxx", then the amount has to be increased by stator interest, for the benefit of the Fund. The statutory interest is at most 50% of the enforceable fine.
5. The statutory interest referred to in the fourth paragraph shall be calculated from the date of the subsidy payment onwards.
6. In determining the amount of both the penalty payment and the fine, as referred to in the fourth paragraph, the seriousness of the non-compliance with the agreement must be taken into account.

Article 6

The parties will evaluate, at the initiative of the owner, after the qualitative obligation has been established for at least 10 years, whether and to what extent in the last 10 years or less the design measures of the attached design plan for which the qualitative obligation was established have led to the desired results. Afterward, the Fund and the landowner can additionally agree whether and to what extent the management should be adjusted.

These possible adaptations must then also be adjusted by means of a notarial deed in the qualitative obligation. The deed and registration costs will need to be covered by the Fund.

Article 7

All disputes in connection with or arising from this deed will be settled by the civil court.

Article 8

The Fund and the landowner agree that the set obligations to tolerate or not to do something on site shall be passed on to those who will obtain the relevant property and that parties who are entitled to use the property are also bound to these rules. The Fund and the landowner mutually authorize each other to register the contents of this deed as a provision on the grounds of Article 252 of Book 6 of the Civil Code in the relevant (public) registers as prescribed by applicable laws.

The costs of drawing up this notarial deed(s) and of its registration(s) in the public registers shall be covered by the Fund. Costs arising from changing the lands purpose/function are also directly paid for by the Fund. The initiator of additional land acquisition is expected to pay for it with subsidy money allocated under the 5% extra costs (see Investment Regulations).

The authorization given as part of this agreement to the Fund is irrevocable and does not become void due to the death or incompetence of the landowner or restricted owner.

Signature

EXAMPLE: Management contract for agrarian nature and landscape management - NFW and administrator Framework

Agricultural nature and landscape management decisions issued by the government are given to the collective association Noardlike Fryske Wâlden (NFW), and not individual site managers. Such arrangements between the government and collectives (front door arrangements) are made at area level. It is important that these front door agreements (decision) give the collective the necessary space to match (back door) arrangements with individual site managers to local circumstances. This is done to increase the effectiveness and efficiency of agricultural nature management. Which is important when striving for a greater biodiversity. The management contract gives mutual guaranty of the agreement to the collective NFW as well as to the site manager. This is required in order to be able to realize the agreement with the by the government minimally expected 85%. Site managers (contractors) are obliged to become members of the collective to be able to participate in agricultural nature and landscape management. Upon signing this management contract, participants will therefore automatically become a member. This provides the managers with direct control and gives them responsibility in the implementation of the agricultural nature and landscape management.

Parties

1) The association Noardlike Fryske Wâlden, the collective, with its registered office in Buitenpost, in this case, legally represented by A. v.d. Ploeg hereinafter called association NFW.

Post and visiting address: Bureau NFW, Kuipersweg 5 9285 SN Buitenpost

2)

Site Manager	
Contact person	
Address	
Zip code and address	
Telephone/mobile number	
E-mail address	
Company relation number (BRS)	
Chamber of Commerce number (for companies)	
Citizen Service number (BSN) (for individuals)	
IBAN number	
Bank account	

Hereinafter referred to as the site manager.

Association NFW and the manager jointly called 'parties'.

Whereas

- That the site manager through his/her registration is expressing interest in participating in agricultural nature and landscape management;
- That the parties wish to make arrangements now in the context of the maintenance and strengthening of a habitat, as elaborated in the area application and based on the objectives in the provincial nature management plan of the province of Fryslân;
- That the collective receives a subsidy decision based on the submitted area application;

- That the manager will implement agricultural nature and/or landscape management packages as under the in this management contract, stated conditions;
- That the content of these conditions is listed in the five appendices of this management contract;
- That the association NFW (among others) aims to realize a sustainable structural and high-quality management of the agricultural landscape, nature, and water within its working areas;
- That the association NFW encourages actions which stimulate related management activities
- That the parties are prepared to enter into reciprocal obligations.

Agreement:

Point 1. Definitions

Collective: A group of farmers who, possibly together with other land users (in accordance with Art 29 2 'of the concept of rural regulations), are organized to act as a recipient of agro-environmental climate payments and fulfills the requirement of a collective.

Front door arrangement: Agreements on goals set by the collective and the government achieved by means of performance and the necessary budgets at the area level.

Backdoor arrangement: Agreements (contract) between the collective and its site managers to collectively realize the agreements set between government and collective. The management contract can be seen as a backdoor arrangement.

Handbook: The Noardlike Fryske Wâlden Handbook of methods, protocols, and procedures for the implementation of the agricultural nature and landscape management in the Noardlike Fryske Wâlden

Point 2. Purpose and application of the agreement

The purpose of this agreement is to record the rights and obligations of the parties concerning the delivery of agricultural nature and landscape management, as set out in this agreement and/or indicated in its annexes.

Point 3. Obligations

- The site manager obliges himself to management practices as indicated in the package requirements, additional management requirements and associated attachments.
- The site manager is responsible to overlook compliance to the management agreements on the agreed surface of the land used for agricultural purposes. And ensures proper processing of this in the Combined Data Recovery (GDI).
- The site manager obliges to make an effort to jointly with fellow site managers achieve the agreed upon goals of the collective as laid down in the front door arrangement

Point 4: Compensation

- The site manager receives an annual fee for his provided managerial activities. The compensation is paid out after the management activities have been completed and within one month from when the collective has received the governments declaration. The payment will be made via bank transfer to the provided account number of the site manager, if the bank is located in the Netherlands. The minimum amount of the reimbursement is included in the appendix (s) attached to this agreement.
- By means of this contract, the site manager authorizes the NFW Association to pay a percentage of the reimbursement to the NFW Association.
- The percentage payment is determined annually at the general members meeting. This percentage is at least 2.5% but can be increased by 0.5%, which will be decided at the general members meeting NFW.
- In order to pay the percentage payment, the site manager upon signing authorizes the association to account the annual payment with the management fee he/she would receive.

- If the site manager intends to request other forms of subsidies or allowances with a similar goal as described in point 2, the site manager must report this to the association NFW. If the site manager is reimbursed for a similar purpose as the goal mentioned in point 2, then the association NFW can decide to reduce the compensation or unilateral dissolve this agreement.

Point 5: Compliance

- The site manager is obliged to cooperate with the supervision by or on behalf of the association NFW concerning the compliance of his obligations under the agreement.
- The site manager is obliged to provide access to the locations indicated in enclosed forms and maps to the NFW association and to through the association appointed people, in order to confirm whether the management sites are managed and maintained in accordance with the conditions. An appointment will be arranged in advance by or in the name of the NFW association.
- In case of one-off installation/management work, the site manager is obliged to report when the work has been carried out.
- If the site manager fails to meet his obligations, the association may, without explicitly notifying the site manager beforehand report his notice of default. The inspection and sanction protocol is added to this management contract.
- The Netherlands Enterprise Agency (RVO) imposes a sanction on the collective when during checks it turns out that the site manager has not or not fully complied to what has been agreed upon in the management contract, in respect to the area of the management sites and /or the implementation of the management packages. The financial consequences of the sanction will then be passed on by the collective to the site manager.

Point 6: Alienation

- If the site manager intends to alienate, to establish property rights or to grant other rights to a third party on land affecting the agricultural nature and/or landscape management and therefore affecting the performance of this agreement, then the NFW association must be informed about it at least 1 month in advance before entering into such a agreement.
- The site manager has the obligation to inflict a chain clause in case of the transfer of ownership or when ending a lease relationship, meaning that the obligations of this management contract will be transferred to the new user, who must oblige to the agreement until the end of the contract period.

Point 7: Change

- No amendment, addition or adjustment of the management contract will be binding between the parties unless recorded and signed by both parties in writing.
- Modifications of the appendices of this management contract are also seen as an amendment to the management contract.
- Changes by the site manager to crop plot on his land can lead to adjustments of the surface and/or subscriptions in SCAN-GIS. The site manager agrees in advance with this amendment, without it requiring any additional written commitment and signature of both parties.

Point 8: Duration and dissolution

- This agreement and the accompanying appendices apply for a time period of 6 years: from 1 January 2016 until 31 December 2021.
- In case the manager cannot comply with the execution of the contract, he/she will be charged with the financial consequences of non-compliance with the agreed obligations. This point does not apply if there is a failure to comply with obligations by operation of law.
- This agreement can by means of a registered letter be terminated in the following cases:
 - a) By a joint decision of the parties.
 - b) By the association NFW, in case of repeated non-fulfillment of the obligations by the site manager if the site manager was informed about this by the association NFW in advance.
 - c) By the site manager, if the compensation referred to in point 4 is reduced as a result of a decision of the NFW board.
 - d) By the site manager, if by the government the preconditions for participation in agrarian nature and landscape management change during the term of this management contract.

- e) By operation of law, if payment of the fee referred to in point 4, or parts of the compensation must be discontinued as a result of a decision by the government.
- f) By operation of law, upon the death of the site manager. In that case, for the benefit of heirs, a final statement will be drawn upon the basis of the work actually carried out in the period prior to the date of death by the site manager.
- g) By the association NFW, if the site manager is reimbursed for a comparable purpose to the goals mentioned in point 2.
 - All parties have the right to terminate this contract immediately by means of a registered letter if the other party cannot meet the agreed upon obligations.
 - The association NFW has the right to demand correction and to receive a written warning if the agricultural nature and/or landscape management will not meet the set requirements. Guidelines for this are laid out in the NFW inspection and monitoring protocol.
 - When the association NFW ends the agreement as a result of changes to the inspection control protocol, then the NFW Association is not responsible for incurring management costs made by other parties after the date of termination. However, the association Noardlike Fryske Wâlden on the basis of the inspection and sanction protocol is responsible for paying management costs incurring due to the cancellation, which potentially can be reduced by a fine not exceeding the management fee already received during the total contract period.

Point 9: Disputes

- The disputes arising in connection to this management contract will be dealt with in accordance to the control and inspection protocol.

Point 10: Save documentation

- This agreement has been drawn up and signed twice.
- All relevant documentation, including this agreement, must be retained (digitally) by the site manager for a period of 5 years after the end date of the agreement.
- All relevant documentation, including this agreement, must be retained (digitally) by the NFW Association for a period of 5 years after the end date of the agreement.

Point 11: Final provisions

- The parties have taken note of the content of the agreement, including the associated appendices and commit to the Association NFW, insofar as this can be reasonably asked of, to ensure proper compliance to this agreement.
- In the event of nullity or voidability of one or more provisions in/of this agreement, the parties will replace said provisions with appropriate ones as close as possible to the originals in terms of content and/or scope.
- The nullity or voidability of one or more provisions of this agreement does not affect the (legal) validity of the other provisions of this agreement.
- Dutch law applies to this agreement.
- This management contract is entered into under the suspensive condition of formal approval of the area application by the Provincial Executive of the Province of Fryslân.

Point 12: Annexes

The following annexes are attached to this management contract. Parties declare to have taken notice of them and are agreeing to the following appendices.

- a) Appendix 1: Management requirements and additional management guidelines for the management package
- b) Appendix 2: General conditions
- c) Appendix 3: Monitoring and inspection protocol NFW
- d) Appendix 4: ANLb Agreement and Map Attachment (s)
- e) Appendix 5: Explanation of tariffs management allowance for the landscape (only applicable for dry siding)

Thus drawn up in duplicate,

End of an example text.

Annex 1.18. Poland. Legal acts regulating conservation easements.

Source of translations to English: unofficial translation by the expert.

Ad. Answer No. 1: The easement (servitude) is regulated in the Civil Code in articles from 285 - 305 and as a limited property right in art. 244 - 251. Below there are Articles regulating land easements (articles 285 - 295) – no official English translation is available.

Dz.U. 1964 nr 16 poz. 93 – Ustawa z dnia 23 kwietnia 1964 r. - Kodeks cywilny (The Act of 23 April 1964 - Civil Code)

DZIAŁ III Służebności

Rozdział I Służebności gruntowe (Land easements)

Art. 285. § 1. Nieruchomość można obciążyć na rzecz właściciela innej nieruchomości (nieruchomości władnącej) prawem, którego treść polega bądź na tym, że właściciel nieruchomości władnącej może korzystać w oznaczonym zakresie z nieruchomości obciążonej, bądź na tym, że właściciel nieruchomości obciążonej zostaje ograniczony w możliwości dokonywania w stosunku do niej określonych działań, bądź też na tym, że właścicielowi nieruchomości obciążonej nie wolno wykonywać określonych uprawnień, które mu względem nieruchomości władnącej przysługują na podstawie przepisów o treści i wykonywaniu własności (służebność gruntowa). § 2. Służebność gruntowa może mieć jedynie na celu zwiększenie użyteczności nieruchomości władnącej lub jej oznaczonej części.

Translation: The real estate can be charged to the owner of another real estate (property that he/she owns) by the law, the content of which states either that the owner of the dominant property (the one that is controlling) can use in the marked range from the encumbered property, or the fact that the owner of the encumbered property is limited in the ability of acting in relation to specific activities, or the fact that the owner of the encumbered property is not allowed to exercise certain rights, which he/she is entitled to in respect of the property that he/she owns under the provisions on the content and execution of property ownership (land easement). § 2. The easement of the land can only be aimed at increasing the usefulness of the dominant property or its designated part.

Art. 286. Na rzecz rolniczej spółdzielni produkcyjnej można ustanowić służebność gruntową bez względu na to, czy spółdzielnia jest właścicielem gruntu.

Art. 287. Zakres służebności gruntowej i sposób jej wykonywania oznacza się, w braku innych danych, według zasad współżycia społecznego przy uwzględnieniu zwyczajów miejscowych.

Art. 288. Służebność gruntowa powinna być wykonywana w taki sposób, żeby jak najmniej utrudniała korzystanie z nieruchomości obciążonej.

Art. 289. § 1. W braku odmiennej umowy obowiązek utrzymywania urządzeń potrzebnych do wykonywania służebności gruntowej obciąża właściciela nieruchomości władnącej. § 2. Jeżeli obowiązek utrzymywania takich urządzeń został włożony na właściciela nieruchomości obciążonej, właściciel odpowiedzialny jest także osobiście za wykonywanie tego obowiązku. Odpowiedzialność osobista współwłaścicieli jest solidarna.

Art. 290. § 1. W razie podziału nieruchomości władnącej służebność utrzymuje się w mocy na rzecz każdej z części utworzonych przez podział; jednakże gdy służebność zwiększa użyteczność tylko jednej lub kilku z nich, właściciel nieruchomości obciążonej może żądać zwolnienia jej od służebności względem części pozostałych. § 2. W razie podziału nieruchomości obciążonej służebność utrzymuje się w mocy na częściach utworzonych przez podział; jednakże gdy wykonywanie służebności ogranicza się do jednej lub kilku z nich, właściciele pozostałych części mogą żądać ich zwolnienia od służebności. § 3. Jeżeli wskutek podziału nieruchomości władnącej albo nieruchomości obciążonej sposób wykonywania służebności wymaga zmiany, sposób ten w braku porozumienia stron będzie ustalony przez sąd.

Art. 291. Jeżeli po ustanowieniu służebności gruntowej powstanie ważna potrzeba gospodarcza, właściciel nieruchomości obciążonej może żądać za wynagrodzeniem zmiany treści lub sposobu wykonywania służebności, chyba że żądana zmiana przyniosłaby niewspółmierny uszczerbek nieruchomości władnącej.

Art. 292. Służebność gruntowa może być nabyta przez zasiedzenie tylko w wypadku, gdy polega na korzystaniu z trwałego i widocznego urządzenia. Przepisy o nabyciu własności nieruchomości przez zasiedzenie stosuje się odpowiednio.

Art. 293. § 1. Służebność gruntowa wygasa wskutek niewykonywania przez lat dziesięć. § 2. Jeżeli treść służebności gruntowej polega na obowiązku nieczynienia, przepis powyższy stosuje się tylko wtedy, gdy na nieruchomości obciążonej istnieje od lat dziesięciu stan rzeczy sprzeczny z treścią służebności.

Art. 294. Właściciel nieruchomości obciążonej może żądać zniesienia służebności gruntowej za wynagrodzeniem, jeżeli wskutek zmiany stosunków służebność stała się dla niego szczególnie uciążliwa, a nie jest konieczna do prawidłowego korzystania z nieruchomości władnącej.

Art. 295. Jeżeli służebność gruntowa utraciła dla nieruchomości władnącej wszelkie znaczenie, właściciel nieruchomości obciążonej może żądać zniesienia służebności bez wynagrodzenia.

Ad. Answer No. 2:

Dz.U.2001.102.1122 - Rozporządzenie Ministra Sprawiedliwości z dnia 17 września 2001 r. w sprawie prowadzenia ksiąg wieczystych i zbiorów dokumentów

(Regulation of the Minister of Justice of September 17, 2001 on keeping land and mortgage registers and collections of documents (Journal of Laws of 2001 No. 102, item 1122 with later amendments) - no official English translation is available:

Oddział 3. Dział III księgi wieczystej

§ 42. Dział III księgi dla nieruchomości

1. W dziale III księgi wieczystej prowadzonej dla nieruchomości wpisuje się:

- 1) łam 1 "Wzmianka o wniosku" - wzmiankę o wniosku, o skardze na orzeczenie referendarza sądowego, o apelacji i o kasacji,
- 2) łam 2 "Numer bieżący wpisu" - kolejny numer wpisu dokonanego w księdze wieczystej,
- 3) łam 3 "Prawa, roszczenia, ciężary i ograniczenia" - wszelkie ograniczone prawa rzeczowe obciążające nieruchomość lub użytkowanie wieczyste, z wyjątkiem hipotek, spółdzielczego własnościowego prawa do lokalu, ograniczenia w rozporządzaniu nieruchomością lub użytkowaniem wieczystym, prawa osobiste i roszczenia, z wyjątkiem roszczeń dotyczących hipotek; w przypadku łącznego współobciążenia wpisuje się dane dotyczące numeru ksiąg wieczystych prowadzonych dla nieruchomości współobciążonych oraz sąd właściwy do ich prowadzenia,
- 4) łam 4 "Do numeru bieżącego wpisu" - numer bieżący wpisu z łamu 2, którego dotyczy zmiana,
- 5) łam 5 "Wpis" - zmiany praw, roszczeń, ciężarów i ograniczeń wpisanych w łamie 3, a w szczególności zmiany pierwszeństwa, późniejszego łącznego obciążenia prawem innej nieruchomości, przeniesienia części obciążonej nieruchomości do innej księgi wieczystej, przyłączenia się kolejnego wierzyciela do toczącej się egzekucji,
- 6) łam 6 "Wykreślenie" - wykreślenie zmian wpisanych w łamie 5,
- 7) łam 7 "Do numeru bieżącego wpisu" - numer bieżący wpisu z łamu 2, którego dotyczy wykreślenie praw, roszczeń, ciężarów lub ograniczeń,
- 8) łam 8 - wykreślenie praw, roszczeń, ciężarów lub ograniczeń.

2. W łamach 3, 5, 6 i 8, poza danymi wymienionymi w ust. 1 pkt 3, 5, 6 i 8, wpisuje się dane, o których mowa w § 10 ust. 1 pkt 1, 3-6.

3. Uprawnionych z tytułu ciężarów i ograniczeń oznacza się według zasad określonych w § 41.

4. W przypadku dokonywania wpisu służebności gruntowej w dziale III księgi wieczystej prowadzonej dla nieruchomości obciążonej, dokonuje się równocześnie wpisu w dziale I-Sp księgi wieczystej prowadzonej dla nieruchomości władnącej.

Translation: In the case of making an easement entry in Section III of the land and mortgage register maintained for a encumbered property, an entry in the I-Sp section of the land and mortgage register maintained for a dominant property is made at the same time.

Oddział 5

Inne sposoby dokonywania wpisów w księdze wieczystej

§ 49. 1. W księdze wieczystej prowadzonej dla nieruchomości, z której wyodrębniono lokale stanowiące przedmiot odrębnej własności, wpisuje się. **Translation:** In the land and mortgage register kept for the property, from which the premises constituting the object of separate ownership were separated, the following shall be entered:

1) dział I-O:

- a) łam 1 "Wzmianka o wniosku" - wzmianki o wniosku, o skardze na orzeczenie referendarza sądowego, o apelacji i o kasacji,

- b) łam 2 "Numer bieżący nieruchomości" - dalszy numer bieżący,
 - c) łam 4 "Mapa i opis" - części budynku i urządzenia, które nie służą wyłącznie do użytku właścicieli lokali,
 - d) łam 5 "Sposób korzystania" - oznaczenie budynku i liczby samodzielnych lokali,
 - e) łam 7 "Do numeru bieżącego nieruchomości" - numer bieżący nieruchomości, z której lokale wyodrębniono,
 - f) łam 8 "Stan w czasie założenia, przyłączenia i odłączenia" - wszystkie wyodrębnione lokale według ich numerów i oznaczenia w księdze wieczystej,
- 2) w dziale II w łamie 3 wpisuje się "właściciel lokalu numer wyodrębnionego w księdze wieczystej nr ..." oraz wielkość udziałów w nieruchomości wspólnej,
- 3) dział III:
- a) łam 2 "Numer bieżący wpisu" - dalszy numer bieżący,
 - b) łam 3 "Prawa, roszczenia, ciężary i ograniczenia" - napis "Wszelkie prawa, roszczenia, ciężary i ograniczenia ciążące na lokalach wyodrębnionych z nieruchomości ciążą na przynależnych do nich udziałach we współwłasności lub współużytkowaniu wieczystym",
 - c) łam 8 "Wykreślenia" - wykreślenie wszystkich obciążeń, z wyjątkiem służebności gruntowych (8 "Deletions" - **deletion of all encumbrances, except for land easements**),
- 4) dział IV:
- a) łam 2 "Numer bieżący wpisu" - dalszy numer bieżący,
 - b) łam 4 "Hipoteki" - napis określony w pkt 3 lit.b),
 - c) łamy 10 i 11 "Wykreślenia" - wykreślenie wszystkich obciążeń.
2. Przepisy ust. 1 stosuje się odpowiednio, jeżeli przedmiot odrębnej własności stanowią lokale w budynku znajdującym się na gruncie oddanym w użytkowanie wieczyste.
3. W dziale I-O w łamie 8, w dziale II w łamie 3, w dziale III w łamie 8 i w dziale IV w łamie 11 poza danymi wymienionymi w ust. 1 wpisuje się dane, o których mowa w § 10 ust. 1 pkt 1, 3-6.
4. (uchylony).

Annex 1.19. Portugal. Legal Acts regulating conservation easements.

Source of translations to English: unofficial translation by the expert

Legislation extracts:

Código Civil (Decreto-Lei 47344/66)

Art.1543

Servidão predial é o encargo imposto num prédio em proveito exclusivo de outro prédio pertencente a dono diferente; diz-se serviente o prédio sujeito à servidão e dominante o que dela beneficia.

Art. 1547

- 1. As servidões prediais podem ser constituídas por contrato, testamento, usucapião ou destinação do pai de família.*
- 2. As servidões legais, na falta de constituição voluntária, podem ser constituídas por sentença judicial ou por decisão administrativa, conforme os casos.*

English (free translation)

Civil Code (Decree-Law 47344/66)

Art. 1543

Property servitude is the burden imposed on a property for the exclusive benefit of another property belonging to a different owner; the property subject to servitude is said to be servile and the one which has the benefits, is the dominant.

Art. 1547

- Easements may be constituted by contract, testament, or destination by the family.
- Legal easements, in the absence of a voluntary constitution, may be constituted by judicial decision or administrative decision, as the case may be.

Código do Registo de Predial (Decreto-Lei 224/84)

Art. 2

Estão sujeitos a registo:

- a) Os factos jurídicos que determinem a constituição, o reconhecimento, a aquisição ou a modificação dos direitos de propriedade, usufruto, uso e habitação, superfície ou servidão;*

Art. 95

O extrato da inscrição deve ainda conter as seguintes menções especiais:

[...]

- c) Na de servidão, o encargo imposto, a duração, quando temporária, e a causa;*

In English (free translation)

Property Registration Code (Decree Law 224/84)

Art. 2

Are subject to registration:

a) Legal facts that determine the constitution, recognition, acquisition or modification of property rights, usufruct, use and housing, surface or easement;

Art. 95

The extract of the inscription must also contain the following special mentions:

[...]

c) In servitude, the burden imposed, the duration, when temporary, and the cause;

Annex 1.20. Romania. Legal acts regulating conservation easements.

Source of translations to English: unofficial translation by the expert

The legal provisions described in this study are provided by the Romanian Civil Code.
There is no official English translation of the Civil Code.

Art. 555

Conținutul dreptului de proprietate privată

(1) Proprietatea privată este dreptul titularului de a posedea, folosi și dispune de un bun în mod exclusiv, absolut și perpetuu, în limitele stabilite de lege.

(2) În condițiile legii, dreptul de proprietate privată este susceptibil de modalități și dezmembrăminte, după caz.

Art. 703. Notiunea. Uzufuctul este dreptul de a folosi bunul altei persoane și de a culege fructele acestuia, întocmai ca proprietarul, însă cu îndatorirea de a-i conserva substanța.

Art. 704. Constituirea uzufuctului. (1) Uzufuctul se poate constitui prin act juridic, uzucapiune sau alte moduri prevăzute de lege, dispozițiile în materie de carte funciara fiind aplicabile.

(2) Uzufuctul se poate constitui numai în favoarea unei persoane existente.

Art. 717. Exploatarea padurilor tinere. (1) Dacă uzufuctul cuprinde paduri tinere destinate de proprietarul lor unor taieri periodice, uzufuctuarul este dator să păstreze ordinea și catimea taierii, potrivit regulilor stabilite de proprietar în conformitate cu dispozițiile legale, fără ca uzufuctuarul să poată pretinde vreo despăgubire pentru partile lasate netaiate în timpul uzufuctului.

Art. 718. Exploatarea padurilor înalte. (1) Uzufuctuarul poate, conformându-se dispozițiilor legale și folosinței obișnuite a proprietarului, să exploateze partile de paduri înalte care au fost destinate taierii regulate, fie ca aceste taieri se fac periodic pe o întindere de pământ determinată, fie ca se fac numai pentru un număr de arbori aleși pe toată suprafața fondului.

Art. 755

(1) Servitutea este sarcina care grevează un imobil, pentru uzul sau utilitatea imobilului unui alt proprietar.

(2) Utilitatea rezultă din destinația economică a fondului dominant sau constă într-o sporire a confortului acestuia.

Art. 756 Constituirea servituții

Servitutea se poate constitui în temeiul unui act juridic ori prin uzucapiune, dispozițiile în materie de carte funciara rămânând aplicabile.

Art. 885 Dobândirea și stingerea drepturilor reale asupra imobilelor

(1) Sub rezerva unor dispoziții legale contrare, drepturile reale asupra imobilelor cuprinse în cartea funciara se dobândesc, atât între părți, cât și față de terți, numai prin înscrierea lor în cartea funciara, pe baza actului sau faptului care a justificat înscrierea.

Art. 1169 - Libertatea de a contracta

Părțile sunt libere să încheie orice contracte și să determine conținutul acestora, în limitele impuse de lege, de ordinea publică și de bunele moravuri

Art. 1027 - Acțiunile în caz de neexecutare a sarcinii

(1) Dacă donatarul nu îndeplinește sarcina la care s-a obligat, donatorul sau succesorii săi în drepturi pot cere fie executarea sarcinii, fie revocarea donației.

Translation

Article 555

Content of the private property right

(1) Private property is the right of the holder to possess, use and dispose of a property exclusively, absolutely and perpetually, within the limits established by law.

(2) Under the terms of the law, the right of private property is susceptible to ways and dismantling, as the case may be.

Art. 703. The notion. Usufruct is the right to use the good of another person and to reap the fruits of it, just as the owner, but with the duty to conserve the substance.

Art. 704. Constitution of the usufruct. (1) Usufruct may be constituted by legal act, usucapion or other means provided by law, the provisions in the field book being applicable.

(2) Usufruct may only be in favor of an existing person.

Art. 717. Exploitation of young forests. (1) If the usufruct comprises young forests designated by their owner for periodic cuts, the usufructuary is obliged to keep the order and the size of the cut, according to the rules established by the owner in accordance with the legal provisions, without the usufructuary claiming compensation for the parts left unchecked during the usufruct.

Art. 718. Exploitation of high forests. (1) The usufructuary may, in accordance with the legal provisions and the usual use of the owner, exploit the high forests that have been destined for regular cutting, whether cuts are made on a defined area or periodically a number of trees selected on the entire surface of the fund.

Article 755

(1) Servitude is the burden borne by a building for the use or utility of the property to another owner.

(2) Utility results from the economic purpose of the dominant fund or consists in an increase in its comfort.

Art. 756 Establishment of easements

The easements may be done on the basis of a legal act or by usucapion, but the Land Registry provisions remain applicable.

Article 885 Acquiring and extinguishing real estate rights

(1) Subject to contrary legal provisions, the real rights over the immobile contained in the Land Registry shall be acquired, both between the parties and third parties, only by their inclusion in the land registry on the basis of the act or fact which justified the enrolment.

Art. 1169 Freedom to contract

The parties are free to conclude any contracts and to determine their content, within the limits imposed by law, public order and good morals

Article 1027 - Actions in the event of failure to perform the task [encumbrance]

(1) If the donor fails to perform the task to which he is bound, the donor or his successors may claim either the execution of the task or the revocation of the donation.

Art. 1073 Conditional legacy

Except as provided in Article 1071 f) the caducity or judicial revocation of a conditional legacy in favour of a third party does not attract the ineffectiveness of the latter. Heirs who benefit from the ineffectiveness of the legacy are required to perform the conditional legacy.

Annex 1.21. Slovakia. Legal acts regulating conservation easements.

Source of translations to English: unofficial translation by the expert or official translations (as indicated in each title).

1. CIVIL CODE, LAW NO. 40/1964 Coll. (Občiansky zákonník - Zákon č. 40/1964 Zb.)

§ 151n

(1) *Vecné bremená obmedzujú vlastníka nehnuteľnej veci v prospech niekoho iného tak, že je povinný niečo trpieť, niečo sa zdržať alebo niečo konať. Práva zodpovedajúce vecným bremenám sú spojené buď s vlastníctvom určitej nehnuteľnosti, alebo patria určitej osobe.*

(2) *Vecné bremená spojené s vlastníctvom nehnuteľnosti prechádzajú s vlastníctvom veci na nadobúdateľa.*

(3) *Pokiaľ sa účastníci nedohodli inak, je ten, kto je na základe práva zodpovedajúceho vecnému bremenu oprávnený užívať cudziu vec, povinný znášať primerane náklady na jej zachovanie a opravy; ak však vec užíva aj jej vlastník, je povinný tieto náklady znášať podľa miery spolužívania.*

151o

(1) *Vecné bremená vznikajú písomnou zmluvou, na základe závetu v spojení s výsledkami konania o dedičstve, schválenou dohodou dedičov, rozhodnutím príslušného orgánu alebo zo zákona. Právo zodpovedajúce vecnému bremenu možno nadobudnúť tiež výkonom práva (vydržaním); ustanovenia § 134 tu platia obdobne. Na nadobudnutie práva zodpovedajúceho vecným bremenám je potrebný vklad do katastra nehnuteľností.*

(2) *Zmluvou môže zriadiť vecné bremeno vlastník nehnuteľnosti, pokiaľ osobitný zákon nedáva toto právo aj ďalším osobám.*

(3) *Ak nie je vlastník stavby zároveň vlastníkom prilahlého pozemku a prístup vlastníka k stavbe nemožno zabezpečiť inak, súd môže na návrh vlastníka stavby zriadiť vecné bremeno v prospech vlastníka stavby spočívajúce v práve cesty cez prilahlý pozemok.*

§ 151p

(1) *Vecné bremená zanikajú rozhodnutím príslušného orgánu alebo zo zákona. K zániku práva zodpovedajúceho vecnému bremenu zmluvou je treba vklad do katastra nehnuteľností.*

(2) *Vecné bremeno zanikne, ak nastanú také trvalé zmeny, že vec už nemôže slúžiť potrebám oprávnenej osoby alebo prospešnejšiemu užívaniu jej nehnuteľnosti; prechodnou nemožnosťou výkonu práva vecné bremeno nezaniká.*

(3) *Ak zmenou pomerov vznikne hrubý nepomer medzi vecným bremenom a výhodou oprávnenej osoby, môže súd rozhodnúť, že sa vecné bremeno za primeranú náhradu obmedzuje alebo zrušuje. Ak pre zmenu pomerov nemožno spravodlivo trvať na vecnom plnení, môže súd rozhodnúť, aby sa namiesto vecného plnenia poskytovalo peňažné plnenie.*

(4) *Ak právo zodpovedajúce vecnému bremenu patrí určitej osobe, vecné bremeno zanikne najneskôr jej smrťou alebo zánikom.*

Official English translation

Section 151n

(1) Easements restrict the owner of an immovable in favour of another person to the extent that the owner is obliged to tolerate, to refrain from or to do something. The rights corresponding to easements are either connected with the ownership of a certain real estate or belong to a certain person.

(2) The easements connected with the ownership of a real estate shall pass together with the ownership of the property to the acquirer.

(3) Unless the parties agree otherwise, the person who is entitled to use the property of another on the basis of the right corresponding to an easement is obliged to bear the reasonable costs of the maintenance and the repairs of the property. If the property is also used by the owner, the person is obliged to bear the costs according to the proportion of the joint use.

Section 151o

(1) Easements are established by a written contract, on the basis of a will in connection with the outcome of inheritance proceedings, by an approved agreement of the heirs, by a decision of a competent authority or by law. A right corresponding to an easement may be also acquired through the exercise of a right (positive prescription); the provisions of Section 134 shall apply accordingly. Acquisition of a right corresponding to an easement is subject to registration in the Land Register.

(2) An easement may be established by a contract by the owner of the real estate, unless special Act confers this right also to other persons.

(3) If the owner of a structure that is not also the owner of the adjacent land, and the owner's access to the structure may not be secured otherwise, the court may upon the petition of the owner of the structure establish an easement in favour of the owner of the structure, which consists of the right of way across the adjacent land.

Section 151p

(1) Easements shall cease to exist by a decision of a competent authority or by law. The termination of a right corresponding to an easement by means of a contract is subject to registration in the Land Register.

(2) An easement shall cease to exist if such permanent changes arise that the property may no longer serve the needs of the entitled person or no longer enables the beneficial use of the real estate. A temporary inability to exercise the right shall not result in the termination of the easement.

(3) If a change in circumstances results in a gross disproportion between the easement and the benefit of the entitled person, the court may decide that the easement shall be limited or terminated subject to adequate compensation. If, due to a change in the circumstances, it is not possible to fairly insist on material performance, the court may decide that monetary consideration shall be granted instead of material performance.

(4) If a right corresponding to an easement belongs to a specific person, such an easement shall cease to exist at the latest upon the person's death or dissolution.

2. Law no. 162/1995 Coll. on Land Register (Zákon č. 162/1995 Z.z. o katastri nehnuteľností a o zápise vlastníckych a iných práv k nehnuteľnostiam – katastrálny zákon)

§ 2 Informačný systém

Kataster slúži aj ako informačný systém, najmä na ochranu práv k nehnuteľnostiam, na daňové účely a poplatkové účely, na oceňovanie nehnuteľností, najmä pozemkov, na ochranu poľnohospodárskeho pôdneho fondu a lesného pôdneho fondu, na tvorbu a ochranu životného prostredia, na ochranu nerastného bohatstva, na ochranu národných kultúrnych pamiatok a ostatných

kultúrnych pamiatok, ako aj chránených území a prírodných výtvorov a na budovanie ďalších informačných systémov o nehnuteľnostiach.

§7 Obsah katastra

Kataster obsahuje tieto údaje:

- a) geometrické určenie a polohové určenie nehnuteľností a katastrálnych území,
- b) parcelné čísla, údaje o parcelách registra "C" evidovaných na katastrálnej mape, údaje o parcelách registra "E" evidovaných na mape určeného operátu, druhy a výmery pozemkov, súpisné čísla stavieb, údaje o príslušnosti pozemkov k zastavanému územiu obce, 2) údaje o druhoch chránených nehnuteľností, o cenách poľnohospodárskych a lesných pozemkov a údaje o využívaní nehnuteľností, vybrané údaje na začlenenie pozemkov do poľnohospodárskeho pôdneho fondu alebo do lesného pôdneho fondu, údaje o bonitovaných pôdnoekologických jednotkách, vybrané údaje na tvorbu a ochranu životného prostredia a vybrané údaje pre iné informačné systémy o nehnuteľnostiach,
- c) údaje o právach k nehnuteľnostiam, údaje o vlastníkoch nehnuteľností (ďalej len "vlastník") a o iných oprávnených z práv k nehnuteľnostiam (ďalej len "oprávnená osoba"), ak ide o fyzickú osobu, meno, priezvisko, rodné priezvisko, dátum narodenia, rodné číslo a miesto trvalého pobytu, ak ide o právnickú osobu, názov, sídlo a identifikačné číslo, ako aj údaje o skutočnostiach súvisiacich s právami k nehnuteľnostiam,
- d) údaje o základných a podrobných polohových bodových poliach alebo údaje o bodových poliach,
- e) sídelné a nesídelné geografické názvy.

§ 8 Katastrálny operát

(1) Katastrálny operát tvoria dokumentačné materiály potrebné na spravovanie katastra a obnovu katastrálneho operátu. Katastrálny operát sa vedie v papierovej podobe alebo v elektronickej podobe. Katastrálny operát obsahuje tieto časti:

- a) súbor geodetických informácií, ktorý tvoria katastrálne mapy, mapy určeného operátu, geometrické plány, záznamy podrobného merania zmien, zoznamy súradníc, údaje o spojení lomových bodov a ďalšia geodetická dokumentácia;
- b) súbor popisných informácií, ktorý tvoria
 1. údaje o katastrálnych územiach, parcelách, právach k nehnuteľnostiam, vlastníkoch a iných oprávnených osobách, a to, ak ide o fyzickú osobu, meno, priezvisko, rodné priezvisko, dátum narodenia, rodné číslo a miesto trvalého pobytu, ak ide o právnickú osobu, názov, sídlo a identifikačné číslo, ak ho má pridelené, prípadne iné identifikačné údaje o skutočnostiach súvisiacich s právami k nehnuteľnostiam, o ohlásených zmenách, ako aj o zmenách zistených pri prešetrovaní zmien, pri revízii údajov katastra a pri obnove katastrálneho operátu,
 2. vybrané údaje o nehnuteľnostiach, údaje o vlastníkoch alebo iných oprávnených osobách a iné údaje, ktoré sa zapisujú do listu vlastníctva. List vlastníctva obsahuje číslo listu vlastníctva, názov okresu, názov obce a názov katastrálneho územia a skladá sa z časti "A - majetková podstata", ktorá obsahuje všetky nehnuteľnosti, ktoré sú predmetom práv k nehnuteľnostiam (majetkové teleso), a údaje o nich, a to výmeru, druh pozemku, kód spôsobu využívania pozemku, príslušnosť k zastavanému územiu obce a iné údaje obsahujúce bližšie vysvetlenia časti A, z časti "B - vlastník alebo iná oprávnená osoba", ktorá obsahuje meno, priezvisko, rodné priezvisko alebo názov vlastníka nehnuteľnosti alebo inej oprávnenej osoby, dátum narodenia, rodné číslo alebo identifikačné číslo organizácie, spoluvlastnícky podiel, titul nadobudnutia podľa verejnej listiny alebo inej listiny, miesto trvalého pobytu alebo sídlo, iné údaje obsahujúce bližšie vysvetlenia časti B, byty a nebytové priestory, nájomné práva k pozemkom, poznámky o skutočnostiach súvisiacich s nehnuteľnosťami alebo s právami k nehnuteľnostiam, z časti "C - ťarcha", ktorá obsahuje vecné bremeno (obsah vecného bremena, označenie oprávneného z vecného bremena vrátane zápisu vecného bremena v liste vlastníctva oprávneného), záložné práva (označenie záložného veriteľa), predkupné práva, ak majú mať účinky vecných práv (označenie oprávneného z predkupného práva), iné práva, ak boli dohodnuté ako vecné práva, a iné údaje obsahujúce bližšie vysvetlenia časti C; v časti C sa výška dlhu neuvádza,
 3. údaje o sídelných a nesídelných názvoch;
- c) zbierku listín, ktorá obsahuje najmä písomné vyhotovenia zmlúv, dohôd a písomných vyhlásení vkladateľov o vložení nehnuteľnosti do majetku právnických osôb (ďalej len "zmluva"), písomné vyhotovenia rozhodnutí štátnych orgánov a notárskych

osvedčení 3) (ďalej len "verejná listina") a iných listín, ktoré podľa zákona potvrdzujú práva k nehnuteľnostiam (ďalej len "iná listina"), a dokumentáciu sídelných a nesídelných geografických názvov;

d) sumárne údaje katastra o pôdnom fonde;

e) pozemkové knihy, železničnú knihu a ich operát; pozemkové knihy a železničná kniha slúžia ako zdroj údajov o katastrálnych územiach, parcelách, vlastníkoch a o právach k nehnuteľnostiam;

f) zrušené od 1.9.2009.

(2) Duplikát katastrálneho operátu alebo jeho časti možno vyhotoviť len z dôvodov uvedených v tomto zákone. Duplikát obsahuje všetky údaje a náležitosti platného katastrálneho operátu a možno ho vyhotoviť len z platného katastrálneho operátu.

(3) Neplatný katastrálny operát je dokumentom s trvalou dokumentárnou hodnotou. Na neplatnom katastrálnom operáte musí byť vyznačené, z akého dôvodu a od ktorého dňa sa stal neplatným.

(4) Pozemkové knihy a železničná kniha sú dokumenty s trvalou dokumentárnou hodnotou.

3) § 63 zákona Slovenskej národnej rady č. 323/1992 Zb. o notároch a notárskej činnosti (Notársky poriadok).

No official english translation of Land register law is available so we translated only relevant parts of the legislation.

3. Decree no. 461/2009 Coll. of the Office of Geodesy, Cartography and Land Register Office of the Slovak Republic (Vyhláška č. 461/2009 Z. z. (Vyhláška Úradu geodézie, kartografie a katastra Slovenskej republiky, ktorou sa vykonáva zákon Národnej rady Slovenskej republiky č. 162/1995 Z. z. o katastri nehnuteľností a o zápise vlastníckych a iných práv k nehnuteľnostiam (katastrálny zákon) v znení neskorších predpisov)

Section 9 of this decree specifies the information which shall be stipulated in the property title in relation to a C type¹⁹ parcel in the part A of the property title.

§ 9

(1) Údaje o pozemku evidovanom ako parcela registra „C“ obsahujú

- a) parcelné číslo,
- b) výmeru parcely,
- c) druh pozemku a kód druhu pozemku podľa prílohy č. 1,
- d) kód spôsobu využívania pozemku podľa prílohy č. 2,
- e) kód druhu chránenej nehnuteľnosti podľa prílohy č. 3,
- f) kód právneho vzťahu podľa prílohy č. 4,
- g) kód umiestnenia pozemku podľa prílohy č. 5,
- h) kód spoločnej nehnuteľnosti podľa prílohy č. 6,
- i) číslo listu vlastníctva,
- j) ďalšie identifikačné údaje.

¹⁹ In Slovakia there exist two types of land plots- C and E parcels. C parcels are clearly delimited and identifiable within the Land Register maps. E type plots do not have identifiable boundaries in the terrain and these are of other small plots which form part of a bigger C parcels. E parcels are relict of ancient forms of registering the land. E parcels can be converted into C parcels.

Príloha č. 3

KÓD DRUHU CHRÁNENEJ NEHNUTEĽNOSTI	
Kód	Druh chránenej nehnuteľnosti
101	Chránená krajinná oblasť
102	Národný park
103	Chránený areál
104	Prírodná rezervácia (národná prírodná rezervácia)
105	Prírodná pamiatka (národná prírodná pamiatka)
106	Chránený krajinný prvok
107	Ochranné pásmo chráneného územia
108	Chránené vtáčie územie
109	Chránený strom a jeho ochranné pásmo
110	Územie európskeho významu
201	Nehnutelná kultúrna pamiatka (národná kultúrna pamiatka)
202	Pamiatková rezervácia
203	Pamiatková zóna
204	Ochranné pásmo nehnuteľnej kultúrnej pamiatky, pamiatkovej rezervácie alebo pamiatkovej zóny
205	Lokalita svetového dedičstva UNESCO
301	Kúpeľné územie
302	Prírodný liečivý zdroj alebo prírodný zdroj minerálnej stolovej vody
303	Ochranné pásmo kúpeľného územia
304	Ochranné pásmo prírodného liečivého zdroja alebo prírodného zdroja minerálnej stolovej vody (I. – III. stupeň)
401	Chránené ložiskové územie
501	Chránená vodohospodárska oblasť
502	Ochranné pásmo vodárenských zdrojov (I. – III. stupeň)
503	Ochranné pásmo vodnej stavby
601	Chránená značka geodetického bodu
602	Ochranné pásmo geodetického bodu
701	Ochranné pásmo letiska a leteckých pozemných zariadení
801	Iná ochrana

Section 9

1) The data on the land registered as "C" plot contains

- (a) a parcel number,
- b) parcel size,
- c) the type of land and the code of the type of the land according to Annex no. 1
- d) the code of the land use according to Annex no. 2
- e) the code of type of the protected property according to Annex no. 3**

The Annex no. 3 provides a list of types of protected properties:

101 Protected landscape area
102 National Park
103 Protected area
104 Nature Reserve (National Nature Reserve)
105 Natural Monument (National Natural Monument)
106 Protected Landscape Element
107 Buffer zone of the Protected Area
108 Protected bird area
109 Protected tree and its buffer zone
110 Territory of European significance
201 Immovable Cultural Monument (National Cultural Monument)
202 Monument reservation
203 Monument zone
204 Protected area of immovable cultural heritage, monument reservation or monument zone
205 UNESCO World Heritage Site
301 Spa area
302 Natural healing source or natural source of mineral table water
303 Buffer zone of the spa area
304 Buffer zone of a natural medicinal source or natural mineral water source
(1st - 3rd grade)
401 Protected deposit area
501 Protected water management area
502 Buffer zone of water resources (level I - III)
503 Buffer zone of the water structure
601 Protected mark of the geodetic point
602 Buffer zone of the geodetic point
701 Buffer zone of the airport and aircraft ground equipment
801 Other protection

Annex 1.22. Slovenia. Legal acts regulating conservation easements.

Source of translations to English: unofficial translation by the expert.

Land Register Act (Official Gazette of the Republic of Slovenia, No. 58/03 as amended)

Slovene: Zakon o zemljiški knjigi (ZZK-1) (Uradni list RS, št. 58/03 s spremembami)

Pravice, ki se vpisujejo v zemljiško knjigo

13. člen

(1) V zemljiško knjigo se vpisujejo stvarne pravice na nepremičninah:

1. lastninska pravica,
2. hipoteka,
3. zemljiški dolg,
4. služnostna pravica,
5. pravica stvarnega bremena,
6. stavbna pravica.

(2) V zemljiško knjigo se vpisujejo tudi naslednje obligacijske pravice na nepremičninah:

1. pravica prepovedi odtujitve oziroma obremenitve, če je nastala na podlagi pravnega posla lastnika in
- če so izpolnjeni pogoji za vpis te prepovedi v zemljiško knjigo po SPZ, ali
- če je nastala na podlagi pogodbe o dosmrtnem preživljanju,
2. zakupna in najemna pravica,
3. predkupna oziroma odkupna pravica, če je nastala na podlagi pravnega posla,
4. posebna pravica uporabe javnega dobra,
5. druge pravice, za katere zakon določa, da se vpišejo v zemljiško knjigo.

Rights entered in the Land register

Article 13

(1) Real rights in immovable property entered in the Land register:

1. ownership right,
2. mortgage,
3. land debt,
4. easement,
5. charge on property,
6. building title.

(2) Obligation rights on immovable property entered in the Land register:

1. right of prohibition of alienation of goods or burdening, if originated by legal transaction of the owner and:
- if conditions for entering the prohibition in Land register after SPZ have been complied or,
- if originated by contract on life livelihood,
2. lease right,
3. pre-emptive right, if originated by legal transaction,
4. special right of use of public good,
5. other rights, for which the law defines, to be recorded in the Land register.

Law of Property Code (Official Gazette of the Republic of Slovenia, No. 87/02, as amended)

Slovene: Stvarnopravni zakonik (SPZ) (Uradni list RS, št. 87/02 s spremembami)

Nastanek stvarne služnosti

214. člen

Stvarna služnost nastane z zakonom, na podlagi pravnega posla ali z odločbo državnega organa.

Nastanek stvarne služnosti na podlagi pravnega posla

215. člen

(1) Za nastanek stvarne služnosti se poleg veljavnega pravnega posla, iz katerega izhaja obveznost ustanoviti služnost, zahteva še zemljiškoknjižno dovolilo in vpis v zemljiško knjigo.

(2) Pogodba o ustanovitvi služnosti mora vsebovati ime lastnikov gospodujoče in služeče nepremičnine, zemljiškoknjižno oznako obeh nepremičnin, natančen opis služnosti in morebitno nadomestilo, ki ga mora plačati lastnik gospodujoče nepremičnine. Nadomestilo se lahko določi v enkratnem znesku ali v periodično zapadlih obrokih.

Creation of real property easement

Article 214

Real property easement is created by the law, legal transaction or decree of state authority.

Creation of real property easement by the legal transaction

Article 215

- (1) For creation of real property easement, legal transaction in force, from which easement obligation results, land registry permission, and land registration are required.
- (2) Easement contract must include names of owners of dominant estate and servient estate, land register reference of both estates, detailed description of easement and potential compensatory allowance that is to be paid by owner of dominant estate. Compensatory allowance can be one-off payment of by instalments.

Nature Conservation Act (Official Gazette of the Republic of Slovenia, No. 96/04 as amended)

Slovene: Zakon o ohranjanju narave (ZON) (Uradni list RS, št. 96/04 s spremembami)

47. člen

(pogodba o varstvu)

(1) Če se varstvo naravne vrednote lahko zagotovi s sklenitvijo pogodbe, se sklene pogodba o varstvu naravne vrednote z lastnikom naravne vrednote ali nepremičnine na zavarovanem območju.

(2) V pogodbi iz prejšnjega odstavka se določijo zlasti:

- naravna vrednota, ki je predmet pogodbenega varstva,
- opustitve ali aktivnosti lastnika, s katerimi se doseže namen varstva naravne vrednote, in
- višina sredstev za opustitve ali aktivnosti lastnika iz prejšnje alineje.

(3) Pogodbo iz prvega odstavka tega člena sklene ministrstvo ali pristojni organ lokalne skupnosti.

Article 47

(conservation contract)

- (1) If conservation of natural asset can be assured with the contract agreement, contract for conservation of natural asset is signed with the owner of natural asset or immovable property on protected area.

- (2) In the contract is specially defined:
- Natural asset being subject of conservation contract,
 - positive or negative owner actions by which conservation of natural asset is achieved, and
 - amount of financial compensation for positive or negative actions of the owner.
- (3) Contract is awarded by the ministry or competent local authority.

National Farmland and Forest Fund Act (Official Gazette of the Republic of Slovenia, No. 19/10 as amended)

Slovene: Zakon o Skladu kmetijskih zemljišč in gozdov Republike Slovenije (ZSKZ) (Uradni list RS št. 19/10 s spremembami)

4. člen

Skład gospodari s kmetijskimi zemljišči in kmetijami v lasti Republike Slovenije v skladu s sprejeto razvojno politiko Republike Slovenije, predpisi in svojimi akti ter pri tem opravlja zlasti naslednje naloge:

- skrbi za trajnostno gospodarjenje s kmetijskimi zemljišči in kmetijami na način, da se zasledujejo cilji prilagajanja podnebnim spremembam, ohranjanja narave in ohranjanja dobrega stanja voda;
- razpolaga in upravlja s kmetijskimi zemljišči in kmetijami v skladu s predpisi;
- upravlja in vodi evidenco o pravnih in stvarnih lastnostih nepremičnin, s katerimi gospodari po tem zakonu, za namene učinkovitega izvrševanja upravnih nalog sklada ter drugih organov ali organizacij po tem zakonu;
- upravlja finančna sredstva, ki jih dobi z gospodarjenjem s kmetijskimi zemljišči in kmetijami;
- opravlja druge naloge, ki se nanašajo na kmetijska zemljišča in kmetije v lasti Republike Slovenije, določene v predpisih in aktih sklada.


Article 4

Fund is managing agricultural land and farms owned by Republic of Slovenia in compliance with approved development policy of Republic of Slovenia, regulations and own documents and is performing in particular following duties:

- cares for sustainable management of agricultural land and farms in a way that climate change adaptation, nature conservation and good water status goals are met;
- have power of disposal and management with agricultural land and farms in compliance with regulations;
- manage and keep a register of legal and real characteristics of immovable property that is managed by the Fund after this law for the purpose of effective execution of administrative duties of the Fund and other bodies or organisations by this law;
- manage finances obtained by managing of agricultural land and farms;
- executes other duties, related to agricultural land and farms owned by Republic of Slovenia, defined in regulations and documents of the Fund.

Example of Land register record for the parcel leased within the LIFE project.

Conservation clause is entered under "additional description" (Slovene: *dodatni opis*).
English translation: "Lease right for the 25-years period, until 31.12.2039, for nature-conservation purposes in the frame of LIVEDRAVA project "Riparian ecosystem restoration of the lower Drava river in Slovenia", No. LIFE11 NAT/SI/882, for the purpose of the integrated Ormož Basins Nature Reserve management.

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Annex 1.23. Spain. Legal acts regulating conservation easements.

Source of translations to English: unofficial translation by the expert or official translations (as indicated in each title).

LEGAL SYSTEM IN SPAIN

To better understand the context to the responses in the study above, it is important to comment on the legal system in Spain.

The main piece of legislation providing for easement categories is the Spanish Civil Code. Nevertheless, the Spanish Civil Code does not apply with the same force in all the Spanish Autonomous Communities or regions- there are 17-. The existence of different civil legislation in some Spanish Autonomous Communities comes from ancient history. In the field of civil law, the 1978 Spanish Constitution has recognized the fact that in some Autonomous Communities there is a “specific” civil law that applies in their territories (Article 149.1.8):

“1. The State holds exclusive competence in the following areas:

(8) Civil legislation, without prejudice to the preservation, modification and development by the Self-governing Communities of their civil law, or special rights and traditional charters (fueros), whenever these exist. In any event, rules for the application and effectiveness of legal provisions, civil relations arising from the forms of marriage, keeping of records and drawing up to public instruments, bases of contractual liability, rules for resolving conflicts of law and determination of the sources of law in conformity, in this last case, with the rules of traditional charters (fueros) or special laws.”

1. El Estado tiene competencia exclusiva sobre las siguientes materias:

(8) Legislación civil, sin perjuicio de la conservación, modificación y desarrollo por las Comunidades Autónomas de los derechos civiles, forales o especiales, allí donde existan. En todo caso, las reglas relativas a la aplicación y eficacia de las normas jurídicas, relaciones jurídico-civiles relativas a las formas de matrimonio, ordenación de los registros e instrumentos públicos, bases de las obligaciones contractuales, normas para resolver los conflictos de leyes y determinación de las fuentes del Derecho, con respeto, en este último caso, a las normas de derecho foral o especial.

The Autonomous Communities having their own civil laws or codes are: Aragón, Balearic Islands, Basque Country, Cataluña, Galicia, Navarra and Valencia. Nevertheless, it is important to point out that the Spanish Civil Code applies as supplementary to the special civil regimes.

The Spanish Civil Code as well as the specific civil laws provide for appurtenant easements. In addition, that Code and some autonomous communities’ “civil legislation include not only the „easement in gross“ but also other civil law institutions or figures which could be used for land conservation.

It is necessary to emphasise that during the last fifteen years the introduction and development of land stewardship following the land trust model of the US and some EU countries has taken place in Spain. Land stewardship was introduced by Law 42/2007, of 13 December on Natural Heritage and Biodiversity (Spanish OJ no 299 of 14.12.2007). Article 3.9 of this law defines land stewardship as *a collection of strategies or legal techniques through which land owners and users are involved in the preservation and use of values and natural, cultural and landscape resources.*

Custodia del territorio: conjunto de estrategias o técnicas jurídicas a través de las cuales se implican a los propietarios y usuarios del territorio en la conservación y uso de los valores y los recursos naturales, culturales y paisajísticos. (Spanish original text version of the definition on land stewardship as contained in article 3.9 of Law 42/2007).

This analysis focuses on easements in gross (servidumbres personales in Spanish) although civil laws in Spain also provide for appurtenant easements. It will briefly mention other existing figures useful for land conservation.

Spanish State or national laws

Real Decreto de 24 de julio de 1889 por el que se publica el Código Civil. 1889 Spanish Civil Code

Article 531 of the Civil Code provides for easement in gross:

Easements can be also established for the benefit of one or more persons or of one community who do not own the servant (encumbered) land.

Artículo 531 Código Civil

También pueden establecerse servidumbres en provecho de una o más personas, o de una comunidad, a quienes no pertenezca la finca gravada.

Article 536 Civil Code

Easements can be established by law or by the will of owners. The firsts are called legal easements and the latter voluntary easements.

Artículo 536 Código Civil

Las servidumbres se establecen por la ley o por la voluntad de los propietarios. Aquéllas se llaman legales y éstas voluntarias.

Ley 42/2007, de 13 de diciembre, del Patrimonio Natural y de la Biodiversidad.

Law 42/2007, of 13 December on Natural Heritage and Biodiversity

This law contains the definition of land stewardship and other provisions to promote this figure but it does not regulate easements.

It is available at: <https://www.boe.es/buscar/act.php?id=BOE-A-2007-21490>

Decreto de 8 de febrero de 1946 por el que se aprueba la nueva redacción oficial de la Ley Hipotecaria

Decree of 8 February 1946 approving the new text of the Law on Mortgages

It is available at: <https://www.boe.es/buscar/act.php?id=BOE-A-1946-2453&p=20151006&tn=1#a36>

Article 2 of Law on Mortgages

In the Registries listed in the previous article the following deeds shall be registered:

(...) Second. The deeds establishing, recognizing, passing, modifying or extinguishing rights of usufruct, use, room, lease, mortgage, census, easements and any other estate rights.

Artículo 2, Ley Hipotecaria.

En los Registros expresados en el artículo anterior se inscribirán:

(...) Segundo. Los títulos en que se constituyan, reconozcan, transmitan, modifiquen o extingan derechos de usufructo, uso, habitación, enfiteusis, hipoteca, censos, servidumbres y otros cualesquiera reales.

Autonomous Communities laws

Aragón

Decreto Legislativo 1/2011, de 22 de marzo, del Gobierno de Aragón, por el que se aprueba, con el título de «Código del Derecho Foral de Aragón», el Texto Refundido de las Leyes civiles aragonesas.

Legislative Decree 1/2011, of 22 March of the Government of Aragón approving the Consolidated Text of the Civil Laws of Aragón under the title of Code of traditional charters of Aragón.

Available at: http://noticias.juridicas.com/base_datos/CCAA/ar-dleg1-2011_14t2.html#a551

Article 555 estate rights for partial use (or exploitation)

The estate rights for partial use established for the benefit of one or several persons or a community on a third party land, independently of any relation among lands, are regulated by its deed title and by the general regime on appurtenant easements in those matters not included in its deed as far as compatible.

Artículo 555 derechos reales de aprovechamiento parcial

Los derechos reales de aprovechamiento parcial establecidos a favor de una o varias personas o de una comunidad sobre una finca ajena, con independencia de toda relación entre fincas, se rigen, en todo aquello que no determine su título constitutivo, por el régimen general de las servidumbres, en lo que sea compatible.

Catalunya

Llei 5/2006, de 10 de maig, del llibre cinquè del Codi civil de Catalunya, relatiu als drets reals

Ley 5/2006, de 10 de mayo, del libro quinto del Código Civil de Cataluña, relativo a los derechos reales.

Law 5/2006, of 10 May, on the Fifth Book of the Civil Code of Cataluña related to estate rights.

Available at: <https://www.boe.es/buscar/act.php?id=BOE-A-2006-11130&p=20170222&tn=1#ciii-3> (Spanish) and http://portaljuridic.gencat.cat/ca/pjur/ocults/pjur_resultats_fitxa/?action=fitxa&documentId=422359&language=ca_ES&textWords=llibre%2520sis%25C3%25A8%2520codi%2520civil&mode=single (Catalan)

Article 563-1.- Concept and legal regime of the estate right for partial use (or exploitation)

The real estate rights for partial used established in the benefit of a person on a third party land independently of any relation between lands, including the right to manage and obtain forestry uses in exchange of restoring or preserving natural and landscape resources, or preserving its fauna or ecosystem, the right to feed stock or cattle, the right to prune trees and cut bushes, to install billboards, rights (... it includes other not relevant rights for this work) , those rights are regulated by this chapter and by its deed if not oppose to these provisions, by costume and rules on usufruct as far as compatible.

Article 563-1 -Concepte i règim jurídic

Els drets d'aprofitament parcial establerts amb caràcter real a favor d'una persona sobre una finca aliena amb independència de tota relació entre finques, que inclouen el de gestionar-ne i obtenir-ne els aprofitaments forestals a canvi de refer i conservar els recursos naturals i paisatgístics o de conservar-ne la fauna i l'ecosistema, el de pasturar bestiar i ramats, el de podar arbres i tallar mates, el d'instal·lar-hi cartells publicitaris, el de llotja, el de balcó i altres de semblants, es regeixen per les normes d'aquest capítol i, en allò que no s'hi oposin, pel seu títol de constitució, pel costum i per les normes que regulen el dret d'usdefruit, en allò que hi sigui compatible.

(Spanish translation) Artículo 563-1. Concepto y régimen jurídico.

Los derechos de aprovechamiento parcial establecidos con carácter real a favor de una persona sobre una finca ajena con independencia de toda relación entre fincas, que incluyen el de gestionar y obtener sus aprovechamientos forestales a cambio de rehacer y conservar los recursos naturales y paisajísticos o de conservar su fauna y su ecosistema, el de apacentar ganado y rebaños, el de podar árboles y cortar matas, el de instalar carteles publicitarios, el de palco, el de balcón y otros similares, se rigen por las normas del presente capítulo y, en lo que no se opongan, por su título de constitución, por la costumbre y por las normas que regulan el derecho de usufructo, en aquello que sea compatible.

Article 563.-2. - Establishment

1. Owners of a servient land and holders of tenure rights on the servient land can establish an estate right for partial use. In the latter case, the estate right for partial use has the same dimension and timeline as the hold tenure rights.

2. *The establishment of estate rights for partial use shall take through a written legal agreement and only can be claimed to third parties if it is in a deed issued before a public notary and registered in the property registry.*
3. *The timeline of an estate right for partial use is of thirty years unless the parties agree a different extension.*
4. *The timeline of estate rights for partial use cannot overcome a period of ninety nine years in any case.*

Article 563-2. - Constitució

1. Poden constituir un dret d'aprofitament parcial els propietaris de la finca gravada i els titulars de drets reals possessoris constituïts sobre aquesta. En aquest darrer cas, el dret d'aprofitament parcial té l'abast i la durada dels drets reals possessoris.
2. La constitució per mitjà d'un negoci jurídic dels drets d'aprofitament parcial ha de constar necessàriament per escrit i només es pot oposar davant de terceres persones si consta en una escriptura pública i s'inscriu en el Registre de la Propietat.
3. S'entén que la durada del dret d'aprofitament parcial és de trenta anys, llevat que les parts fixin un termini diferent.
4. La durada dels drets d'aprofitament parcial no pot superar en cap cas els noranta-nou anys.

(Spanish translation) Artículo 563-2. Constitución.

1. *Pueden constituir un derecho de aprovechamiento parcial los propietarios de la finca gravada y los titulares de derechos reales posesorios constituidos sobre esta. En este último caso, el derecho de aprovechamiento parcial tiene el alcance y duración de dichos derechos reales posesorios.*
2. *La constitución mediante negocio jurídico de los derechos de aprovechamiento parcial debe constar necesariamente por escrito y solo puede oponerse ante terceras personas si consta en escritura pública y se inscribe en el Registro de la Propiedad.*
3. *Se entiende que la duración del derecho de aprovechamiento parcial es de treinta años, salvo que las partes fijen un plazo diferente.*
4. *La duración de los derechos de aprovechamiento parcial no puede superar en ningún caso los noventa y nueve años.*

In Catalonia, the land stewardship contract regulation can also derive in personal conservation in rem rights in the following regulation:

Llei 3/2017, del 15 de febrer, del llibre sisè del Codi civil de Catalunya, relatiu a les obligacions i els contractes.
Ley 3/2017, de 15 de febrero, del libro sexto del Código civil de Cataluña, relativo a las obligaciones y los contratos, y de modificación de los libros primero, segundo, tercero, cuarto y quinto.

Law 3/2017, of February 15, of the sixth book of the Civil Code of Catalonia, regarding obligations and contracts, and modification of the first, second, third, fourth and fifth books.

Available at:

<https://www.boe.es/buscar/doc.php?id=BOE-A-2017-2466> (Spanish)

http://portaljuridic.gencat.cat/ca/pjur_ocults/pjur_resultats_fitxa/?action=fitxa&documentId=777422&language=ca_ES&textWords=llibre%2520sis%25C3%25A8%2520codi%2520civil&mode=single (Catalan)

Article 623-34 – Land Stewardship contract

1. *In the Land Stewardship contract, which is temporary and whose purpose is land property, the grantor partially or totally allows the use or management of the land to the holder, which must be a legal entity having Land Stewardship among its purposes, in exchange for carrying out advisory, dissemination, planning or management and improvement activities, in order to conserve biodiversity, natural and cultural heritage and landscape or to make a sustainable management of its natural resources.*
2. *The rights established in favour of the holder may be in personam or in rem, whenever they satisfy the requirements stated by law in the latter case.*
3. *The legal regime of the Land Stewardship contract, as to the determination of the obligations of the parties and their failure to comply with, its duration or guarantees, is the one freely agreed by the contractual parties.*

Article 623-34 - Contracte de custòdia del territori

1. En el contracte de custòdia del territori, de caràcter temporal i que té per objecte béns immobles, el cedent en permet totalment o parcialment l'ús o la gestió a canvi que el cessionari, que ha d'ésser una entitat que tingui entre les seves finalitats la custòdia del territori, hi acompleixi activitats d'assessorament, de divulgació, de planificació o de gestió i millorament, amb la finalitat de conservar la biodiversitat, el patrimoni natural i cultural i el paisatge o de fer una gestió sostenible dels recursos naturals.

2. El dret constituït a favor del cessionari en el contracte de custòdia del territori pot ésser de naturalesa obligacional o real, si en compleix, en aquest cas, els requisits que estableix la llei.

3. El règim jurídic del contracte de custòdia del territori, pel que fa a la determinació de les obligacions de les parts i llur incompliment, la durada o les garanties, és el que determinen lliurement les parts contractuals.

(Spanish translation) Artículo 623-34. Contrato de custodia del territorio.

1. En el contrato de custodia del territorio, de carácter temporal y que tiene por objeto bienes inmuebles, el cedente permite total o parcialmente el uso o la gestión a cambio de que el cesionario, que debe ser una entidad que tenga entre sus fines la custodia del territorio, realice actividades de asesoramiento, de divulgación, de planificación o de gestión y mejora, con el fin de conservar la biodiversidad, el patrimonio natural y cultural y el paisaje o de hacer una gestión sostenible de los recursos naturales.

2. El derecho constituido a favor del cesionario en el contrato de custodia del territorio puede ser de naturaleza obligacional o real, si cumple, en este caso, los requisitos establecidos por la ley.

3. El régimen jurídico del contrato de custodia del territorio, en cuanto a la determinación de las obligaciones de las partes y su incumplimiento, la duración o las garantías, es el que determinan libremente las partes contractuales.

Navarra

Ley 1/1973, de 1 de marzo, por la que se aprueba la Compilación del Derecho Civil Foral de Navarra.

Law 1/1973, of 1 March, approving the compilation of Navarra Civil Law.

Available at: http://noticias.juridicas.com/base_datos/CCAA/l1-1973.l3t4.html

Law 394 Differentiation

The following cannot be considered easements:

(...) 2) the estate rights on use or exploitation established in the benefit of a person on a third party land independently on any relation among lands. These rights shall be under the regime established in chapter II of title IV of this book.

Ley 394 Distinción

No son servidumbres:

(...) 2) Los derechos de uso o aprovechamiento establecidos en favor de una persona sobre finca ajena, con independencia de toda relación entre predios, los cuales se registrarán por lo establecido en el capítulo II del título IV de este libro.

Law 423 establishes the legal regime of those rights including its constitution, expenses and extinction.

Annex 1.24. Sweden. Legal acts regulating conservation easements.

Source of translations to English: unofficial translation by the expert or official translations (as indicated in each title).

Jordabalken (1970:944)

7 kap. Allmänna bestämmelser om nyttjanderätt, servitut och rätt till elektrisk kraft

Bestämmelsernas tillämpningsområde

1 § Detta kapitel avser arrende, hyra, tomträtt och annan nyttjanderätt samt servitut och rätt till elektrisk kraft, om rättigheten upplåtits genom avtal. Om vissa rättigheter som anges i första stycket finns bestämmelser även i 8-15 kap. Förekommer eljest i lag eller annan författning särskilda bestämmelser om rättighet som avses i detta kapitel, äger de tillämpning.

2 § Detta kapitel gäller i tillämpliga delar även hyresrätt i hus, som ej hör till fastighet.

3 § Av fastighetsägaren åt annan upplåten rätt att avverka skog på fastigheten eller att tillgodogöra sig andra alster av fastigheten eller dennas naturtillgångar eller att jaga eller fiska på fastigheten är att anse som nyttjanderätt, även om med rättigheten icke är förenad rätt att i övrigt nyttja fastigheten. Vad fastighetsägaren enligt en skriftlig överenskommelse med staten eller en kommun angående naturvården inom ett visst område (naturvårdsavtal) förbundit sig att tillåta eller tåla skall vid tillämpningen av denna balk och andra författningar i sin helhet anses som en nyttjanderätt. Lag (1998:861).

4 § Bestämmelserna i denna balk om nyttjanderätt avser icke gravrätt, vägrätt eller bostadsrätt.

Upplåtelsestiden

5 § Avtal om upplåtelse av annan nyttjanderätt än tomträtt är inte bindande längre än femtio år från det avtalet slöts. Upplåtelse av fast egendom inom detaljplan och upplåtelse av jordbruksarrende är dock inte bindande längre än tjugofem år. Upplåtelse av annan nyttjanderätt än jordbruksarrende för någons livstid gäller utan begränsning till viss tid.

Avser upplåtelsen endast eller huvudsakligen rätt att avverka skog för annat ändamål än husbehov, är avtalet ej bindande längre än fem år. Första och andra styckena gäller ej nyttjanderätt som upplåtes av staten. Första stycket inverkar ej på nyttjanderättshavares rätt till förlängning av avtal på grund av lag. Har arrende eller hyra upplåtits på längre tid än den i första stycket föreskrivna längsta tiden för nyttjanderättsbestånd och vill fastighetsägaren eller nyttjanderättshavaren fråntråda avtalet sedan denna tid gått ut, skall uppsägning ske. Lag (1987:132).

6 § Upplåtelse av servitut eller rätt till elektrisk kraft får ske utan begränsning till tiden.

Förlängning av tiden för upplåtelsen samt ändringar i och tillägg till upplåtelseavtalet

7 § Överenskommelse om förlängning av upplåtelsestiden gäller som ny upplåtelse. Förlängning på grund av lag eller med tillämpning av bestämmelse i upplåtelseavtalet innebär ej att ny upplåtelse kommer till stånd.

8 § Överenskommelse om ändring i eller tillägg till upplåtelseavtalet gäller som ny upplåtelse i förhållande till ny ägare av fastigheten eller innehavare av rättighet i denna, om ej annat följer av andra stycket. Ändring i eller tillägg till nyttjanderättsavtal med tillämpning av bestämmelse i lag om rätt till förlängning av sådant avtal innebär ej att ny upplåtelse kommer till stånd. Sker ändring i eller tillägg till upplåtelseavtal som upprättats skriftligen, skall detta anmärkas på handlingen, om fastighetsägaren eller rättighetshavaren begär det.

Hinder mot andelsupplåtelse

9 § Avtal som innebär att i detta kapitel avsedd rättighet skall gälla i andel i fastighet eller i fastighets andel i mark, som är samfällad för flera fastigheter, har ej verkan som upplåtelse av nyttjanderätt, servitut eller rätt till elektrisk kraft.

Rätt till inskrivning

10 § Nyttjanderätt som upplåtits genom skriftlig handling samt servitut får inskrivas. Förbehåll som strider häremot är utan verkan utom i fråga om arrende eller hyra.

Rätt till elektrisk kraft får inskrivas, om ägaren av den fastighet i vilken rättigheten upplåtits medgivit skriftligen att inskrivning får ske.

[A translation of the Land Code/Land and Cadastral Legislation from the Royal Institute of Technology, \(with amendments up to and including SFS 2006:928\). Online source: https://www.kth.se/polopoly_fs/1.476821!/Land_Code.pdf](https://www.kth.se/polopoly_fs/1.476821!/Land_Code.pdf)

Land Code (SFS 1970:994)

Chap. 7. General provisions on right of user, easement and right to electric power

Scope of the provisions

Section 1. This chapter refers to leasehold, rental tenure, site leasehold and other rights of user, easement and right to electric power, if the right has been granted by agreement.

Provision on certain rights indicated in the foregoing is also made in Chaps. 8-15.

If special provisions are otherwise made, by statute or statutory instrument, concerning rights referred to in this chapter, those provisions shall apply.

Section 2. Where relevant, this chapter also applies to the tenancy of a building not belonging to a property unit.

Section 3. The right granted by the property owner to another part of felling timber on the property unit or taking other produce from the property unit or its natural assets or of hunting or fishing on the property unit is to be deemed a right of user, even if that right is not combined with the right of otherwise using the property unit.

Whatever the property owner, in a written agreement with the state or a municipality concerning nature conservation within a certain area (a nature conservation agreement), has promised to permit or tolerate shall, for the purposes of this Code and other statutory instruments, be regarded in its entirety as a right of user.

Section 4. The provisions of this Code concerning rights of user do not refer to right of burial, public road right or tenant-ownership.

Duration of the grant

Section 5. An agreement on the grant of a right of user other than site leasehold is not binding for more than fifty years from the date on which the agreement was concluded. A grant of real property within a detailed development plan and a grant of an agricultural lease, however, are not binding for more than twenty-five years. The grant of a right of user other than an agricultural lease for a person's lifetime is valid without limitation to a certain length of time.

If the grant refers solely or mainly to the right of felling timber for other than domestic needs, the agreement is not binding for more than five years.

The first and last of these subsections do not apply to a right of user granted by the State. Subsection one does not affect the right of a usufructuary to the renewal of an agreement on statutory grounds.

If a lease or tenancy has been granted for longer than the maximum time prescribed in subsection one for the endurance of a right of user and if the property owner or the usufructuary wishes to withdraw from the agreement after that time has expired, notice of cancellation shall be given.

Section 6. The grant of an easement or of the right to electric power may be made indefinitely.

Prolongation of the grant and amendments and additions to the agreement

Section 7. An agreement to prolong the duration of the grant is valid as a new grant.

Prolongation on statutory grounds or in accordance with a provision of the agreement does not imply that a new grant has come into being.

Section 8. An agreement on amendment or addition to the agreement applies as a new grant in relation to a new owner of the property unit or a holder of a right in the same unless otherwise indicated by subsection two.

An amendment or addition to a right of user agreement applying a statutory provision concerning the right to prolongation of such an agreement does not imply that a new grant has come into being.

If an amendment or addition is made to an agreement drawn up in writing, this shall be noted on the document if the property owner or usufructuary so requests.

Impediments to partial grants

Section 9. An agreement whereby a right referred to in this chapter shall apply in share of a property unit or within a property unit's share in land jointly owned by several property units is of no effect as a grant of right of user, easement or right to electric power.

Right of title registration

Section 10. A right of user granted through a written document and an easement may be registered. A proviso to the contrary is of no effect except with regard to a lease or tenancy.

A right to electric power may be registered if the owner of the property unit in which the right has been granted has consented in writing to registration taking place.

Annex 1.25. United Kingdom. Legal acts regulating conservation easements

COVENANTS

Law of Property Act 1925 is the main legislation (which, with updates, remains extant) defines a burden of covenants relating to land:

Section 79

„1) A covenant relating to any land of a covenantor or capable of being bound by him, shall, unless a contrary intention is expressed, be deemed to be made by the covenantor on behalf of himself his successors in title and the persons deriving title under him or them, and, subject as aforesaid, shall have effect as if such successors and other persons were expressed.

This subsection extends to a covenant to do some act relating to the land, notwithstanding that the subject-matter may not be in existence when the covenant is made.

(2) For the purposes of this section in connexion with covenants restrictive of the user of land “successors in title” shall be deemed to include the owners and occupiers for the time being of such land.

(3) This section applies only to covenants made after the commencement of this Act.“

The Land Registration Rules 2003 (entering the covenant in the Land Registry)

Positive covenants

64. – (1) The registrar may make an appropriate entry in the proprietorship register of any positive covenant that relates to a registered estate given by the proprietor or any previous proprietor of that estate.

(2) Any entry made under paragraph (1) must, where practicable, refer to the instrument that contains the covenant.

(3) If it appears to the registrar that a covenant referred to in an entry made under paragraph (1) does not bind the current proprietor of the registered estate, he must remove the entry.

Indemnity covenants

65. – (1) The registrar may make an appropriate entry in the proprietorship register of an indemnity covenant given by the proprietor of a registered estate in respect of any restrictive covenant or other matter that affects that estate or in respect of a positive covenant that relates to that estate.

(2) Any entry made under paragraph (1) must, where practicable, refer to the instrument that contains the indemnity covenant.

(3) If it appears to the registrar that a covenant referred to in an entry made under paragraph (1) does not bind the current proprietor of the registered estate, he must remove the entry.

Further background information

England & Wales Land Register

Title Deeds: documents showing ownership, as well as rights, obligations or mortgages on a property

The Title Register contains 3 sections (A, B & C), which together include a complete description of the property title owned (including information to identify who owns it, where it is, the extent of land owned, rights that benefit the land and rights that burden it).

- A. The A (property) register contains the property description and any rights that the land/property may have the benefit of. If the land/property is leasehold it will contain details of the lease.
- B. The B (proprietorship) register contains details of: the current registered owner the price paid for the property (if sold since 1st April 2000) any *restriction* which limits the powers of the registered owner to deal with or dispose of the land/property

C. The C (charges) register contains details of mortgages or other rights or interests to which the land/property is subject.

Covenants

Covenant: A legal agreement that is tied to the land, not the owners.

Restrictive Covenant: a promise by one person to another, (such as a buyer of land and a seller) not to do certain things with land/property. It binds the land and not an individual person and therefore "runs with the land". This means that the covenant continues even when the buyer sells the land on to another person.

Covenants are rules which regulate the way land can be used, or impose obligations on the land owner, and are in addition to the rules created by statute, such as planning law. The covenants affecting a title will either be listed in the C (charges) Register of the Land Registry or else an entry will appear which refers to the document that originally imposed them, in which case that document will be lodged at Land Registry.

Covenants can be split into two basic types - Positive and Negative. If you have to perform some action then it is positive. If you do not have to do anything, it is negative.

Positive Covenants: impose an obligation to perform some action (e.g. to maintain a boundary fence or to make an annual contribution to an estate service charge fund).

Case law has shown that positive covenants can only be enforced against the original covenantor, and not against anyone who purchases the property in future but they can still be enforced against a person even after they have parted with the land. This obviously creates a problem for a seller who has given a covenant and it is dealt with by putting an indemnity covenant in the transfer to the buyer. By imposing an indemnity covenant, the seller, should action be taken against him for a breach of covenant after he has parted with the property, has the right to take action against the buyer in order to recover his losses.

Negative Covenants: are covenants to not do a particular thing, for example "Not to make any alterations or additions" or "Not to use the property otherwise than as a private dwelling house".

Negative covenants run with land and are enforceable against whoever owns the land at the time. Additionally, they may benefit the successors in title of the person who originally imposed the covenant, but if so then this must be expressed in the original covenant.

Covenants (whether positive or negative) are generally only enforceable where the person with the benefit has a reasonable reason to enforce them.

Restrictions

Restriction: An entry in the land register which restricts what dispositions can be registered against the title

Disposition: The transfer of land from one party to another

It is possible to enter *Restrictions* in the Land Registry to: prohibit the making of an entry *in respect of any disposition*, or a disposition of a kind specified in the restriction this can be *indefinitely*; for a specified period or until the occurrence of a specified event

A person may apply to the registrar for the entry of a restriction if he is the relevant registered proprietor, or a person entitled to be registered as such proprietor, the relevant registered proprietor, or a person entitled to be registered as such proprietor, consents to the application, or he otherwise has a sufficient interest in the making of the entry

For the entry of non-standard restrictions (as in the case for the restriction required by the LIFE Common Provisions/General Conditions) the registrar can approve the application for entry provided the terms of the proposed restriction are reasonable and that applying the proposed restriction would be straightforward, and not place an unreasonable burden on the registrar.

Where a restriction is entered in the register, no entry in respect of a disposition to which the restriction applies may be made in the register other than in accordance with the terms of the restriction.

The Law Commission Report on Conservation Covenants (Report 349, 2014):

Full report: https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jxou24uy7q/uploads/2015/03/lc349_conservation-covenants.pdf

Summary: https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jxou24uy7q/uploads/2015/03/lc349_conservation-covenants_summary.pdf

Making Land Work: Easements, Covenants and Profits à Prendre (Report 327, 2011)

Full report: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/229064/1067.pdf

Further information:

Some information on the use of restrictive covenants in the UK has already been contributed in a 2012 study for the European Commission on compliance with the requirement under LIFE to include a restriction in the Land Registry when land is purchased with EU co-financing.

For LIFE land purchase the England and Wales legislation (Land Registration Act 2002; Land Registration Rules 2003) allows for non-standard restrictions to be entered into the land register to restrict the transfer or lease, other than a lease for a term expiring less than 7 years after the date of the lease, of the registered estate without a guarantee being provided that the land will continue to be used indefinitely for conservation purposes.

Information on the situation in the UK is also reported in the LIFE study on land stewardship: Racinska, I., Barratt, L., Marouli, C. (2015). LIFE and Land Stewardship: Current status, challenges and opportunities. Report to the European Commission.

The report highlighted the special status of the National Trust (England, Wales and Scotland) which through the National Trust Act 1937 can acquire land and property, and declare it inalienable (i.e. in perpetuity). The National Trust can create statutory covenants with landowners for the purposes of conserving land, even where the National Trust does not hold neighboring land²⁰.

On easements the report makes the following recommendation:

Promoting the use of easement concept in LIFE

The practice of applying nature conservation easements in the EU is not widespread. Even in countries where appropriate national legislation exists this mechanism is not used for nature conservation purposes. We conclude that easements and deed restrictions are tools that should be used much more widely for nature conservation purposes to pursue long-term nature conservation goals. Easements need not encumber the whole property as they can be applied to limited areas within the property boundary as necessary.

As we see from the LIFE experience with land purchase and formalizing the nature conservation clause in the land registers, it requires persistence and time, for changing practices to transfer into national legislation; but

²⁰ Law Commission: Conservation Covenants (Executive Summary) Law Com No 349 (Summary)

it is possible. With its resources and long-term planning approach, the LIFE programme is well placed to contribute towards implementing the easement concept into nature conservation in the EU.

Recommendation: To integrate gradually a requirement for nature conservation easements/deed restrictions to be established for areas restored with substantial co-financing from the LIFE programme.

Proposal to introduce Conservation Covenants

The background note to this study makes reference to moves in England and Wales to introduce Conservation Covenants.²¹

An initiative is pending in England, where the Law Commission has issued a Consultation Paper in 2013 that proposes the introduction of a statutory scheme enabling the establishment of "conservation covenants". The legislation would remove the obstacles in English law currently impeding the use of covenants for conservation purposes, namely their limitation to burdens benefiting neighbouring land, the difficulties in passing obligations on to subsequent owners, and the limitation of the covenant to negative obligations. The proposal is currently considered by the government.

On 28 January 2016, the Secretary of State for Environment, Food and Rural Affairs thanked the Law Commission for its "excellent work, thorough analysis and thoughtful recommendations" and committed to explore the part that conservation covenants could play in her Department's 25-Year Environment Plan.

The 25 Year Environment Plan was published in 2018²² and includes the following commitment to investigating further Conservation Covenants.

Exploring how to give individuals and organisations the chance to deliver lasting conservation

We will assess the potential role of conservation covenants to enable landowners to create a legally-binding obligation with respect to their land that delivers lasting, conservation benefits for future generations. Covenants would be overseen by a responsible body to maintain standards, and could allow landowners to protect treasured features on their land such as trees or woodland for purely altruistic reasons. In some cases, they might also be used in a business context to secure the long-term maintenance of existing or newly created wildlife or heritage assets. Actions we will take include:

- Following the Law Commission report into conservation covenants, assessing the demand and potential for these to secure long-term benefits from investment in nature conservation and other environmental outcomes, as well as the need for safeguards
- Working with landowners, conservation groups and other stakeholders we will review and take forward the Law Commission's proposals for a statutory scheme of conservation covenants in England

At present there is a difference here between the Law Commission's recommendations for a new statutory scheme of conservation covenants in England and Wales and the text in the Government Response of January 2016 and the 25 Year Environment Plan which only refers to England.

What are the essential components of the Law Commission proposals?

Extract from Law Commission website:

A conservation covenant is a voluntary agreement between a landowner and responsible body (charity, public body or local/central Government) to do or not do something on their land for a conservation purpose. This might be, for example, an agreement to maintain woodland and allow public access to it, or to refrain from using certain pesticides on native vegetation. These agreements are long lasting and can continue after the landowner has parted with the land, ensuring that its conservation value is protected for the public benefit.

²¹ <https://www.lawcom.gov.uk/project/conservation-covenants/>

²² <https://www.gov.uk/government/publications/25-year-environment-plan>

Conservation covenants are used in many other jurisdictions, but do not exist in the law of England and Wales. Instead, landowners and responsible bodies are relying on complex and expensive legal workarounds, or the limited number of existing statutory covenants that enable certain covenants to be enforced by specified bodies (for example, the National Trust).

The Law Commission recommendations – extract from website

The final Report sets out and explains our recommendations for reform, which would introduce a new statutory scheme of conservation covenants in England and Wales. In this scheme, a conservation covenant would:

- be formed by the agreement of two parties: a landowner (a person with a freehold estate or leasehold estate of more than seven years), and a responsible body drawn from a limited class of organisations;
- be able to contain both restrictive and positive obligations;
- be capable of binding the landowner's successors in title (that is, all subsequent owners) after he or she has disposed of the land; and
- be made for the public good.

Our Report includes a draft Conservation Covenants Bill, which would introduce the conservation covenant scheme into the law of England and Wales.

THIS DEED OF COVENANT BETWEEN:

- (1) XXXXXXXXXXXXXXXX (the “Covenantor”) as statutory successor to the XXXXXXXXXXX (the “Council”);
and
- (2) THE EUROPEAN COMMUNITY represented by THE COMMISSION OF THE EUROPEAN COMMUNITIES itself represented for the purposes of this deed by the Head of Unit, DG ENV, E-4, BU-9 2/1, B-1049 Brussels (the “Covenantee”)

AND IS MADE to satisfy certain conditions of Grant Agreement LIFEXX NAT/UK/000XXX made between the Council and the Covenantee (the “Grant Agreement”)

NOW THIS DEED WITNESSETH

1. The following definitions and rules of interpretation apply in this Deed:
 - a. **Convey** shall have the meaning given to it by section 205(1)(ii) of the Law of Property Act 1925 as it is in force at the date of this Deed;
 - b. **Property** means the property referred to in the Schedule to this Deed and reference to “Property” shall include any part or parts of it;
 - c. Any reference to the Covenantor, the Council or the Covenantee shall include that party’s successors in title or assigns;
 - d. This Deed is entered into with the intention that the covenants contained in it will bind the Property into whoever’s hands it may come and that, in consideration of the funding provided by the Covenantee pursuant to the Grant Agreement, the Covenantor and its successors in title shall at all times observe and perform the covenants herein contained.
2. the Covenantor **HEREBY COVENANTS** with the Covenantee that it will not:
 - a. use the Property for any purpose other than for nature conservation
 - b. convey the Property without procuring that the party to which the Property is conveyed has first entered into a deed of covenant with the Covenantee containing covenants in the same terms as those given by the Covenantor in this Deed.
3. The Covenantor shall apply for the entry of the following restriction against the titles to the Property at HM Land Registry as soon as reasonably practicable following the completion of this Deed in standard form L:

“No disposition of the registered estate by the proprietor of the registered estate , or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by a conveyancer that the provisions of clause 2b of a deed of covenant dated [] 2014 and made between XXXXXXXXXXX(1) and The European Community represented by The Commission of the European Communities itself represented for the purposes of this deed by the Head of Unit, DG ENV, E-4, BU-9 2/1, B-1049 Brussels (2) have been complied with”

4. A person who is not a party to this deed shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999.

Annex 2. Explanatory notes on the tool of “Real Environmental Obligations” in France

Les Obligations réelles environnementales (ORE) : où en est-on ?

*Julie Babin, Fédération nationale des Conservatoires d'espaces naturels et Véronique Rioufol,
Terre de Liens, juillet 2018*

Les ORE, kezaoko ?

Dispositif créé par la Loi Biodiversité de 2016 pour introduire un mécanisme permettant à un propriétaire de mettre en œuvre de manière volontaire des mesures de protection de l'environnement sur son terrain, par le biais d'un contrat avec une personne morale garante de l'intérêt environnemental. Autre intérêt : ces mesures de protection sont attachées directement au terrain, et sont donc pérennes, par-delà les changements de propriétaires du bien (vente, succession).

Fondement juridique :

Loi n° 2016-1087 du 8 août 2016 pour la reconquête de la biodiversité, de la nature et des paysages¹ qui modifie l'article **L132-3 du code de l'environnement** comme suit :

Les propriétaires de biens immobiliers peuvent conclure un contrat avec une collectivité publique, un établissement public ou une personne morale de droit privé agissant pour la protection de l'environnement en vue de faire naître à leur charge, ainsi qu'à la charge des propriétaires ultérieurs du bien, les obligations réelles que bon leur semble, dès lors que de telles obligations ont pour finalité le maintien, la conservation, la gestion ou la restauration d'éléments de la biodiversité ou de fonctions écologiques.

Les obligations réelles environnementales peuvent être utilisées à des fins de compensation.

La durée des obligations, les engagements réciproques et les possibilités de révision et de résiliation doivent figurer dans le contrat.

Établi en la forme authentique, le contrat faisant naître l'obligation réelle n'est pas passible de droits d'enregistrement et ne donne pas lieu à la perception de la taxe de publicité foncière prévus, respectivement, aux articles 662 et 663 du code général des impôts.

Le propriétaire qui a consenti un bail rural sur son fonds ne peut, à peine de nullité absolue, mettre en œuvre une obligation réelle environnementale qu'avec l'accord préalable du preneur et sous réserve des droits des tiers. L'absence de réponse à une

¹https://www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=1E8FA4783F446C28AEA15D6CDD18740F.tpdila11v_2?idArticle=JORFARTI000033016419&cidTexte=JORFTEXT000033016237&dateTexte=29990101&categorieLien=i

demande d'accord dans le délai de deux mois vaut acceptation. Tout refus doit être motivé. La mise en œuvre d'une obligation réelle environnementale ne peut en aucune manière remettre en cause ni les droits liés à l'exercice de la chasse, ni ceux relatifs aux réserves cynégétiques.

A partir du 1er janvier 2017, les communes peuvent, sur délibération du conseil municipal, exonérer de la taxe foncière sur les propriétés non bâties, les propriétaires ayant conclu une obligation réelle environnementale.

Principales caractéristiques :

- Une ORE doit concerner :
 - * le maintien, la conservation, la gestion ou la restauration
 - * d'éléments de la **biodiversité** ou de **fonctions écologiques**
- Une ORE porte sur un **bien immobilier** : foncier et/ ou de biens immeubles portés par le foncier : arbres, plans d'eau, etc.
- Une ORE peut :
 - * concerner la biodiversité **remarquable** et **ordinaire**
 - * porter sur les espaces **naturels, agricoles ou forestiers**
- les parties sont :
 - * un propriétaire foncier
 - * une personne qualifiée, qui doit relever d'une des trois catégories suivantes :
 - collectivité publique,
 - établissement public,
 - personne morale de droit privé agissant pour la protection de l'environnement
- Durée : toutes les durées de contrats sont possibles, jusqu'à 99 ans. L'ORE peut faire l'objet d'un renouvellement.
- Les deux parties ont des obligations précisées dans le contrat, qui peuvent être des **obligations de faire** (obligations positives) ou de **ne pas faire** (obligations négatives) quelque chose afin de maintenir, conserver, gérer ou restaurer des éléments de biodiversité ou fonctions écologiques – exemples :
 - * obligations du propriétaire foncier : ne pas construire de bâtiments, ne pas porter atteinte aux espèces de faune et de flore ni aux habitats, restaurer la qualité des sols, entretenir des infrastructures écologiques, pratiquer l'agriculture bio, etc.
 - * obligations du cocontractant : apporter conseil et assistance (ex : réaliser des inventaires), verser un soutien financier pour la réalisation du plan d'action, aider à la réalisation de travaux d'aménagement, etc.

Nature juridique : une innovation

- **contrat privé** entre au moins 2 personnes (physiques ou morales) (= droit des personnes) par lequel le propriétaire d'un bien immobilier promet d'affecter certaines utilités de son bien au profit d'une personne morale garante de la protection de l'environnement.
- une **obligation réelle** : on dit de l'ORE qu'elle est une obligation réelle (= droit réel) parce que, comme les servitudes, elle est attachée à la propriété foncière : on dit que « l'ORE suit le fonds », d'un propriétaire à l'autre, c'est-à-dire que les propriétaires successifs vont en bénéficier ou la subir.

- l'ORE est donc un **dispositif hybride** : « l'obligation réelle lie en effet des personnes, mais en considération d'un bien (*intuitus rei*), qu'elle accompagne automatiquement à travers ses différentes mutations de propriété »². En cela, elle se différencie des *conservation easements* et des servitudes (voir encadré).

- En rupture avec les modalités habituelles de protection de l'environnement en France (protection par gestion publique et police administrative limitant la capacité des propriétaires privés d'user et disposer de leurs biens), les ORE reposent sur l'idée « *de mettre la liberté contractuelle et la propriété au service du projet écologique* » (ibid)

ORE, Servitudes, Easements :

- Easement :

En droit anglo-saxon, c'est l'acte légal volontaire par lequel un propriétaire foncier restreint ses droits d'usage sur sa propriété au bénéfice d'une autre personne. Ce dispositif a été particulièrement utilisé en matière de protection de la nature sous la forme de *Conservation Easement*, par lequel un propriétaire privé place une restriction sur certains usages de son bien immobilier au profit d'une fondation de protection de la nature (Land Trust) ou d'une organisation publique. Par exemple : ne pas construire sur ses terres, ne pas couper certains arbres, préserver des habitats ou des écosystèmes d'intérêt environnemental, etc.³ Les *easements* sont attachés au bien immobilier, et donc transmis d'un propriétaire à l'autre. Inspiration importante pour la création des ORE, les *conservation easements* sont véritablement créateurs de droits réels. Ne nécessitant qu'un seul propriétaire et un seul bien immobilier, ils sont particulièrement bien adaptés à l'initiative privée en matière de protection de l'environnement.

Très utilisé aux États-Unis, au Canada ou en Australie, ils ont été un levier majeur pour la protection de l'environnement, en s'appuyant sur l'engagement volontaire des propriétaires privés. Les *conservation easements* peuvent être donnés ou vendus au Land Trust ou à l'agence publique bénéficiaire. La création d'un easement s'accompagne d'une forte décote de la valeur du bien (le plus souvent car les droits à construire sont limités). Les *easements* bénéficient donc en général de dispositifs fiscaux avantageux pour les propriétaires. L'agence publique ou le Land Trust bénéficiaire de l'*easement* est garant du respect de sa mise en œuvre, et peut saisir les tribunaux en cas de non-respect. Le propriétaire privé est alors tenu de remettre les terres en l'état prévu par le *conservation easement*.

- Servitude :

Une servitude, en droit français, est « *une charge imposée sur un héritage pour l'usage ou l'utilité d'un héritage appartenant à un autre propriétaire* » (Code civil, article 637). Traduction habituelle de *easement* en français, la servitude est en fait un type particulier d'*easement* (appelé en anglais *easement appurtenant*). Elle implique en effet l'existence de deux biens fonciers appartenant à deux propriétaires différents : l'un des fonds met à disposition un de ses attributs (ex : servitude de passage) ou limite l'usage de certains de ses attributs (ex :

² Rebol-Maupin et Grimonprez. L'obligation réelle environnementale : chronique d'une naissance annoncée. Dalloz 2016

³ Voir Land Trust Alliance, plateforme rassemblant la plupart des Land Trusts américains : <http://www.landtrustalliance.org/what-you-can-do/conservation-land/questions>

servitude de vue) au profit de l'autre. Une servitude impose donc des obligations au propriétaire d'un bien (fonds servant) au bénéfice d'un propriétaire voisin (fonds dominant). La servitude constitue un droit réel. Elle peut être établie à perpétuité.

Reposant sur l'existence de deux fonds distincts et de deux propriétaires distincts, ce dispositif n'était pas adapté pour permettre le développement d'obligations volontaires au bénéfice de l'environnement émanant d'un seul propriétaire. Le dispositif spécifique des ORE a donc été inventé pour répondre à ce besoin particulier, et situe donc au croisement entre droit personnel et droit réel.

Quelles différences ?	Easement	Servitude	ORE
Obligation négative	X	X	X
Obligation positive	X		X
Exige un fonds dominant et un fonds servant		X	
Droit réel	X	X	Mixte : obligation réelle (attachée au bien) découlant d'un droit personnel ⁴
Durée maximum	Perpétuité	Perpétuité	99 ans (renouvelables)

Modalités de contractualisation et d'enregistrement :

- liberté et souplesse dans la rédaction du contrat (*contenu, forme, durée*) propre au droit des contrats privés
- enregistré par un notaire (acte authentique)
- inscrit au service de la publicité foncière
- exonéré de droits d'enregistrement et de taxe de publicité foncière. A l'initiative des communes, l'ORE peut aussi être exonérée de la taxe foncière sur les propriétés non bâties

ORE et agriculture :

- Une ORE peut concerner des terres agricoles
- Un principe général du droit des contrats veut que tout nouveau contrat doit respecter tous les contrats préexistants. Il en découle qu'une ORE ne peut être conclue entre le propriétaire de terres agricoles et un tiers garant que si le fermier (locataire) est d'accord. Le fermier doit exprimer son accord ou son refus dans un délai de 2 mois ; tout refus doit être motivé. En cas d'absence de réponse dans le délai, la loi considère qu'il y a accord tacite. Si le fermier n'est pas consulté, ou n'a pas donné son accord (écrit ou tacite), le contrat établissant l'ORE sera frappé de nullité.
- A noter : l'ORE doit aussi respecter les droits des tiers usagers (ex : chasseurs)

⁴ Sur le caractère mixte des ORE, voir : Reboul-Maupin et Grimonprez. 2016, *ibid.*

- La mise en œuvre d'une ORE sur des terres agricoles en fermage pose des questions juridiques et pratiques⁵:

° Prévoit-on de rétribuer le fermier qui concourt, à titre principal ou secondaire, à mettre en œuvre les obligations prévues par l'ORE ? Si oui, sous quelle forme (baisse de loyers, subventions publiques ou par le tiers garant, autre) ? Et comment formaliser cette contrepartie (ex : dans le plan de gestion) ?

° Dans le cas où l'ORE n'est pas compatible avec le bail existant, comment procéder : en signant un BRE ? ou en signant un contrat complémentaire, en sus du bail, entre le propriétaire et le fermier ?

° Comment amener le propriétaire et le fermier à bien cerner leurs responsabilités respectives, et, en cas de litige, comment les amener prendre en charge les mesures de remédiation ou les pénalités qui leur incombent ?

- Parce qu'elle s'accompagne d'un plan de gestion, l'ORE peut venir renforcer la mise en œuvre d'un bail rural environnemental (BRE)⁶. Dans les cas où cela est possible et où propriétaire et fermier sont d'accord, la mise en place d'une ORE sur des terres en fermage serait optimisée par la signature (ou l'actualisation) simultanée d'un BRE.

Mise en œuvre des ORE :

- au 15 juin 2018, 3 ORE ont été signées (à notre connaissance) :

- une entre la Commune de Yenne (Savoie) et le CEN Savoie dans le but de maintenir, conserver et gérer la fonction écologique, notamment du réservoir biologique du marais des Lagneux (voir encadré)
- une entre une communauté de communes et une commune
- une entre une communauté de communes et une entreprise privée

Ces deux dernières ORE ont été signées à des fins de compensation.

- Les CEN, avec l'appui de la Fédération des Conservatoires d'espaces naturels, sont particulièrement actifs pour déployer et expérimenter ce nouveau dispositif :

* d'autres ORE sont actuellement en préparation : en Savoie (2), en Aquitaine (2) et en Bourgogne

* l'objectif est de d'expérimenter la diversité des situations de contractualisation d'ORE : sur des terres agricoles, naturelles et forestières ; avec des propriétaires privés, des entreprises, etc. ; dans des buts de maintien, conservation, gestion ou restauration ; etc.

* les Conservatoires d'espaces naturels sont attachés à ce que leurs obligations, au titre du contrat, soient prioritairement d'une nature non-financière : apport d'expertise, réalisation d'inventaires, appui à la réalisation de travaux d'entretien ou de restauration (*notamment par l'intervention de bénévoles, etc.*).

⁵ Pour une première exploration de cette question, voir CEREMA, 2018, fiche de synthèse n°8 : Comment articuler l'ORE avec un bail rural ?

⁶ <http://www.accesstoland.eu/Environmental-rural-lease>

Signature de la première ORE de préservation de l'environnement par un Conservatoire d'espaces naturels⁷ :

En mai 2018, le Conservatoire d'espaces naturels (CEN) de Savoie a signé une ORE avec la commune de Yenne, en vue de préserver une zone humide. Depuis 30 ans, la commune acquiert des terrains, parcelle après parcelle, dans cette zone humide sensible classée *Natura 2000*. En signant aujourd'hui une ORE avec le CEN de Savoie, la commune confie au CEN une co-responsabilité pour gérer et valoriser ce site à des fins écologiques, pédagogiques et touristiques.

Par cette ORE, la commune, propriétaire des terres, s'engage à :

- * Ne pas construire sur les parcelles (hormis les équipements pédagogiques prévus) ;
- * Ne pas porter atteinte aux espèces de faune et de flore et habitats du site ;
- * Mettre tout en œuvre pour éviter le dérangement de la faune.

En contrepartie, le CEN de Savoie s'engage à :

- * Assurer une gestion écologique du site conformément au plan de gestion écologique défini et approuvé par les deux parties ;
- * Réaliser des inventaires et un suivi de l'évolution des habitats et des espèces.

Signée pour 30 ans renouvelable (par période de 10 ans), cette ORE va permettre d'inscrire dans la durée la préservation de ce site et de ses fonctions écologiques remarquables. Le plan de gestion a été annexé au contrat. A notre connaissance c'est la première ORE qui n'est pas signée à des fins de compensation de dommages environnementaux, mais à des fins de préservation volontaire d'un site naturel.

Éléments d'analyse :

- Le texte est flou sur la question des « *personne(s) morale(s) de droit privé agissant pour la protection de l'environnement* ». Nos organisations considèrent que l'intérêt général ne peut pas être garanti, a priori, par toutes les personnes morales de droit privé et appellent donc à limiter les cocontractants aux seuls établissements publics, collectivités publiques et personnes morales de droit privé agréées pour la protection de la nature et de l'environnement.
- Des risques de dérives existent avec la création d'ORE à des fins de compensation. Nous appelons à une réflexion sur cette finalité du dispositif, l'encadrement de sa mise en œuvre, et son articulation.
- Le soutien financier est une des formes possibles de contreparties fournies par le tiers garant. Il ne doit pas devenir la motivation unique, ni même principale des ORE.
- Les incitations fiscales sont insuffisantes et nous appelons, dans certains cas, à leur renforcement, par exemple en étendant l'exonération de la taxe sur la propriété non bâtie.

⁷ Sur la signature de ce premier ORE de préservation, voir : <https://www.cen-savoie.org/node/213> et <https://www.afbiodiversite.fr/fr/actualites/les-obligations-reelles-environnementales-en-savoie> et <http://www.reseau-cen.org/fr/actualites-agenda/signature-de-la-premiere-obligation-reelle-environnementale-patrimoniale-en-france-par-le>

Ressources complémentaires :

- CEREMA, Obligation réelle environnementale : fiches de synthèse, juin 2018, <https://www.cerema.fr/fr/actualites/qu-est-ce-qu-obligation-reelle-environnementale-ore>
- Nadège Reboul-Maupin, Benoît Grimonprez. L'obligation réelle environnementale : chronique d'une naissance annoncée. Recueil Dalloz, Dalloz 2016, 2016, p. 2074.
- le Ministère doit présenter à l'Assemblée nationale et au Sénat un rapport d'étape sur la mise en œuvre des ORE en 2018 (2 ans après l'adoption de la loi) (à paraître)
- Guide de la Fédération nationale des Conservatoires d'Espaces naturels – octobre 2018 (document interne)

Real Environmental Obligations (ORE): Where are we now?

*Julie Babin, Fédération nationale des Conservatoires d'espaces naturels (NFCEN)
and Véronique Rioufol, Terre de Liens, July 2018*

What is an ORE?

An instrument created by the French Biodiversity Law of 2016 to allow a landowner to voluntarily implement legally-binding environmental protection measures on their land via a contract with a legal person who becomes the guarantor of the environmental interest. In addition, as these protection measures are directly attached to the parcel of land, they are lasting, remaining in effect beyond future changes in ownership of the property (e.g. sale or succession).

Legal basis:

Law No. 2016-1087 of 8 August 2016 on the recovery of biodiversity, nature and landscapes¹ which amends Article L132-3 of the French Environmental Code as follows:

Owners of real property can enter into a contract with a public authority, public establishment, or legal person in private law acting in the interest of environmental protection, in order to stipulate the real obligations they deem appropriate, which shall be binding for themselves as well as for subsequent owners of the property, inasmuch as the aim of these obligations is to ensure the maintenance, conservation, management or restoration of elements of biodiversity or ecological functions.

*Real environmental obligations can be used for environmental compensation.
The term (duration) of the obligations, the reciprocal commitments, and the possibilities for revising or terminating the obligations must be specified in the contract.*

The contract creating the real obligation must be drawn up and duly certified; it is not subject to registration fees nor does it give rise to collection of the cadastral tax, respectively provided for by Articles 662 and 663 of the French General Tax Code.

¹https://www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=1E8FA4783F446C28AEA15D6CDD18740F.tpdila11v_2?idArticle=JORFARTI000033016419&cidTexte=JORFTEXT000033016237&dateTexte=29990101&categorieLien=i

Under sanction of absolute nullity, a property owner whose land is leased through a rural lease can only implement a real environmental obligation with the prior consent of the tenant and subject to the rights of third parties. Lack of response to a written request for consent within the stipulated period of two months is tantamount to acceptance. Any refusal must be justified. The implementation of a real environmental obligation cannot in any way infringe on rights relating to hunting or hunting reserves.

As from 1 January 2017, municipalities can, if decided by the municipal council, waive the property tax on land for property owners who have established a real environmental obligation.

Key characteristics:

- An ORE must concern:
 - * *the maintenance, conservation, management, or restoration*
 - * *of elements of **biodiversity** or **ecological functions***
- An ORE pertains to a **real property**: land and/or immovables contained on the property: trees, bodies of water, etc.
- An ORE can:
 - * concern **remarkable** and **ordinary** biodiversity
 - * pertain to **natural, farm or forested areas**
- the parties are:
 - * a landowner
 - * a qualified entity falling under one of the following categories:
 - public authority,
 - public establishment,
 - legal person in private law acting in the interest of environmental protection
- Term: the term can be any duration, up to 99 years. The ORE is renewable.
- The two parties have obligations specified in the contract, which may be **obligations to do** (positive obligations) **or not to do** (negative obligations) something in order to maintain, conserve, manage or restore elements of biodiversity or ecological functions. Examples include:
 - * landowner's obligations: not to build buildings, not to disturb or jeopardise fauna, flora or habitats, to restore soil quality, to maintain ecological infrastructures, to use organic farming methods, etc.
 - * co-contractor's obligations: to provide counsel and assistance (e.g. take inventories), to provide financial support for the implementation of the action plan, to help carry out improvements/developments, etc.

The legal aspect: an innovation

- a **private contract** between at least two persons (natural or legal persons) (= law of persons) through which the owner of a real property promises to grant certain interests in their property to a legal person acting as the guarantor of the environmental protection.
- a **real obligation**: it is said that the ORE is a real obligation (= real right) because, like easements, is attached to the specific piece of property. This means that "the

ORE stays with the land”, following it from one owner to another. In other words, subsequent owners will also benefit from or suffer this obligation.

- the ORE is therefore a **hybrid instrument**: “the real obligation binds the persons, but with regard to a specific property (*intuitus rei*), to which it automatically remains attached through any changes in ownership”². In this respect, it is different from conservation easements and *servitudes* (French instrument, explained below) (see box).

- Breaking with the usual environmental protection practices in France (protection through public management and administrative policing that limits private landowners’ ability to use and dispose freely of their property), OREs are based on the idea of “using contractual freedom and ownership to serve ecological objectives” (ibid).

OREs, Easements and Servitudes:

- Easement:

In Anglo-Saxon law, an easement is the voluntary legal act by which a landowner limits their own rights on their land by granting an interest in the land to another person. This instrument has been widely used for nature conservation purposes in the form of the Conservation Easement, by which a private owner places a restriction on certain uses of their property in the interest of a nature conservation foundation (land trust) or public organisation—for example: not to build on their land, not to cut down certain trees, to protect natural habitats or ecosystems of environmental interest, etc.³ Easements are attached to the specific property and are therefore transferred from one owner to another. The conservation easement, which creates real rights, was a key inspiration for the ORE. Requiring only one owner and one property, a conservation easement is particularly well-suited to private initiatives in the area of environmental protection.

Widely used in the United States, Canada and Australia, conservation easements have played a major role in environmental protection, based on the voluntary commitment of private landowners. They can be given or sold to the beneficiary Land Trust or public agency. Because the creation of an easement significantly decreases the property value (in most cases, because it limits the building rights), easements generally give rise to tax incentives for the owner. The public agency or Land Trust that is the beneficiary of the easement is the guarantor of its implementation and can bring proceedings before the courts in the event of non-compliance. In this event, the private owner is required to restore the land to the condition stipulated by the conservation easement.

- Servitude:

A *servitude*, in French law, is “a charge imposed on an immovable for the use and utility of another immovable belonging to another owner” (French Civil Code, Article 637). Often translated in English as “easement”, a *servitude* is in fact a specific type

² Reboul-Maupin and Grimonprez. *L'obligation réelle environnementale : chronique d'une naissance annoncée*. (Real environmental obligation: chronicle of an announced birth.) Dalloz 2016

³ See Land Trust Alliance, a platform grouping together most American Land Trusts: <http://www.landtrustalliance.org/what-you-can-do/conserving-your-land/questions>

of easement, what is referred to in English as an *easement appurtenant*. It can only exist between two separate properties belonging to two different owners: one of the immovables grants access to one of its attributes (e.g. right-of-way) or limits the use of some of its attributes (e.g. right-of-air) for the benefit of the other immovable. Thus, a servitude imposes obligations on the owner of a property (servient tenement) for the benefit of a neighbouring property (dominant tenement). A *servitude* constitutes a real right. It can be established in perpetuity.

Based on the existence of two separate properties and two separate owners, this instrument was not suited to the development of voluntary environmentally-minded obligations at the initiative of a single landowner. The specific ORE instrument was therefore invented to meet this particular need, and lies at the intersection between a personal right and a real right.

What are the differences?	Easement	Servitude	ORE
Negative obligation	X	X	X
Positive obligation	X		X
Requires a dominant tenement and a servient tenement		X	
Real right	X	X	Hybrid: real obligation (attached to the property) arising from a personal right ⁴
Maximum term	Perpetuity	Perpetuity	99 years (renewable)

Contractualisation and registration rules:

- freedom and flexibility in the drafting of the contract (*content, format, term*) as in the law of private contracts
- registered by a notary (certified document)
- submitted to the land register service
- exempt from fees for entry in the land register and from the cadastral tax. At the initiative of the governing municipality, the ORE can also give rise to an exemption from the property tax on land.

ORE and farming:

- An ORE can pertain to farmland
- A general principle of contract law is that any new contract must comply with all pre-existing contracts. Consequently, an ORE cannot be established between a farmland owner and a third-party guarantor without the consent of the farmer (tenant). The farmer must express their consent or refusal within a period of two months; any refusal must be justified. Lack of response within the allotted period is, by law, considered tacit consent. If the farmer has not been consulted or has not given their (written or tacit) consent, the contract establishing the ORE will be disallowed.

⁴ On the hybrid nature of OREs, see: Reboul-Maupin and Grimonprez. 2016, *ibid*.

- Note: the ORE must also uphold the rights of third-party users (e.g. hunters)
- Implementing an ORE on farmland leased under the tenant farmers statute raises legal and practical issues⁵:
 - Is the farmer compensated for their role, whether primary or secondary, in implementing the obligations stipulated by the ORE? If yes, in what form (lower rent, subsidies from a public agency or the third-party guarantor, etc.)? And how is this compensation formalised (e.g. in the management plan)?
 - How to proceed if the ORE is not compatible with the existing lease: by establishing an ERL? Or with a supplementary contract, in addition to the lease, between the landowner and the farmer?
 - How to ensure that the landowner and the farmer clearly define their respective responsibilities, and if a dispute arises, how to ensure that they fulfil the remedial measures or assume the penalties imposed?
- Because it includes a management plan, an ORE can reinforce the implementation of an environmental rural lease (ERL)⁶. Where possible and when the landowner and farmer are in agreement, setting up an ORE on farmland leased under the tenant farmers statute would be optimised by also simultaneously establishing (or updating) an ERL.

Implementation of OREs:

- As of 15 June 2018, three OREs had been signed (to our knowledge):
 - One between the municipality of Yenne (Savoie) and CEN Savoie (Savoie Natural Area Conservatory) aimed at maintaining, preserving and managing the ecological function of, notably, the biological reservoir of the Lagneux marsh (see box).
 - one between a community of municipalities and a municipality
 - one between a community of municipalities and a private company
- These last two OREs were established to offset environmental impact.

- The Natural Area Conservatories (CEN), with the support of the NFCEN, are especially active in deploying and testing this new instrument:
 - * other OREs are currently being prepared: in Savoie (2), in Aquitaine (2) and in Burgundy.
 - * the goal is to test the wide range of contexts in which OREs can be set up: on farmland, natural areas and woodlands; with private landowners, companies, etc.; aimed at maintenance, conservation, management or restoration; etc.
 - * Natural Area Conservatories (CENs) prefer for their obligations under the contract to be non-financial in nature: providing expertise, taking inventories, assistance in carrying out maintenance or restoration tasks (*notably by volunteers, etc.*).

⁵ For a preliminary exploration of this question, see CEREMA, 2018, summary sheet no. 8: *Comment articuler l'ORE avec un bail rural ?* (How to combine an ORE with a rural lease?)

⁶ <http://www.accesstoland.eu/Environmental-rural-lease>

The first environmental conservation ORE entered into by a Natural Area Conservatory (CEN)⁷:

In May 2018, CEN Savoie entered into an ORE with the municipality of Yenne, with the aim of preserving a wetland. For the past 30 years, the municipality has been acquiring, one by one, parcels in this sensitive wetland area, a classified *Natura 2000* zone. By signing this ORE with CEN Savoie, the municipality entrusts the CEN with joint responsibility for managing and enhancing this site for ecological, educational and tourism purposes.

With this ORE, on the one hand, the municipality (the owner of the land) commits:

- * Not to build on the parcels in question (except the planned educational facilities);
- * Not to cause harm to or jeopardise the plant and animal species and the habitats on the site;
- * To make every possible effort not to disturb the fauna.

On the other hand, CEN Savoie commits:

- * To ensure ecological management of the site in accordance with the ecological management plan defined and approved by the two parties;
- * Taking inventories and keeping track of changes in habitats and species populations.

This ORE, signed for 30 years renewable (for 10-year periods), establishes a lasting framework for the preservation of this site and its remarkable ecological functions. The management plan is an addendum to the contract. To our knowledge, this is the first ORE that has been established not to offset environmental damage, but as a voluntary initiative aimed at preserving a natural site.

Points for consideration:

- The text is ambiguous on the question of “*legal person(s) in private law acting in the interest of environmental protection*”. Our organisations consider that general interest cannot be guaranteed, a priori, by all legal persons in private law, and therefore advocate for the co-contractors to be limited to public establishments, public authorities, and legal persons in private law authorised for the protection of nature and the environment.
- There are risks of misuse in allowing the creation of OREs to offset environmental damage. We are calling for new reflection on this use of the instrument, how its implementation is managed, and its articulation.
- Financial support is one possible form of compensation provided by the third-party guarantor. It must not become the sole motivation for, or the principle behind, OREs.
- The tax incentives are insufficient and we are calling for them to be increased, in some cases, for example by expanding the exemption from the property tax on land.

⁷ On the signature of this first conservation ORE, see: <https://www.cen-savoie.org/node/213> and <https://www.afbiodiversite.fr/fr/actualites/les-obligations-reelles-environnementales-en-savoie> and <http://www.reseau-cen.org/fr/actualites-agenda/signature-de-la-premiere-obligation-reelle-environnementale-patrimoniaire-en-france-par-le>

Additional resources:

- CEREMA, Real environmental obligation: summary sheet, June 2018, <https://www.cerema.fr/fr/actualites/qu-est-ce-qu-obligation-reelle-environnementale-ore>
- Nadège Reboul-Maupin, Benoît Grimonprez. L'obligation réelle environnementale : chronique d'une naissance annoncée. Recueil Dalloz, Dalloz 2016, 2016, p. 2074.
- the Ministry is to present a progress report on the implementation of OREs in 2018 (two years after the law was passed) (pending)
- Guide de la Fédération nationale des Conservatoires d'Espaces naturels (Manual of the National Federation of CENs) – Octobre 2018 (internal document)

