



# LAND REGISTRY SYSTEMS AND THE ITALIAN TRANSCRIPTION SYSTEM

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Wednesday 11<sup>th</sup> June

## Systems for the transfer of immovable property in Italy

### 1. In most of the country:

#### **consensual principle + transcription**

*consensual principle*: ownership passes at the conclusion of the contract (art. 1376 civil code)

*transcription* = registration of deeds/contracts (e.g. purchase agreement) is necessary in order to prevail against third parties (registration with “declarative” function: art. 2643 ff civil code)

exception: mortgage (registration has constitutive character)

## Systems for the transfer of immovable property in Italy

2. In the former Austrian provinces (Trentino-Alto Adige/South Tyrol, Friuli-Venezia Giulia):

**tavolare system: decree n. 499/1929**

tavolare = *tabulae terrae* - *Landtafeln*

model: Austrian land register (*Grundbuch*)

registration has constitutive character for *inter vivos* acts  $\Rightarrow$  registration of rights (e.g. property)

## Comparison

### 1. *Transcription*: personal-based register

*Tavolare system*: register is based on immovables  $\Rightarrow$  cadastre and land register are closely connected

## Comparison

**2. *Transcription system*:** does not affect the existence of the right (“declaratory” registration)

*Tavolare system*: registration in the land register is necessary to acquire ownership  $\Rightarrow$   
deed (titulus) + registration = transfer of property (or other real rights/rights *in rem*)

unlike in Austria, there is no separate property transfer agreement

## Comparison

**3. *Tavolare system*:** principle of continuity of registration is of the utmost importance:

registration is permitted only if the seller is recorded as the owner in the land register at the time of sale

## Comparison

### 4. *Tavolare system*: principle of public faith

Cornerstone of the system: purchaser of good faith is entitled to trust that the right *in rem* resulting from the land register is correct and complete

Protection against:

- inaccuracy /
- incompleteness of the land register

## Comparison

5. *Tavolare system*: registration gives rise to the presumption of ownership

*Transcription system*: proof of property as *probatio diabolica* (devil's proof)



## Comparison

6. *Tavolare system*: registration of rights in under the control of judicial authority:  
principle of legality

Court of Justice of the European Union, Judgment of 9 March 2017, Piringer:

“Maintaining the land register thus constitutes an essential component of the **preventive administration of justice** in the sense that it seeks to ensure proper application of the law and legal certainty of documents concluded between individuals, which are matters coming within the scope of the tasks and responsibilities of the State”

## Comparison

### 7. Similarities:

- in both systems (transcription and tavolare) registration has no constitutive effect in relation to successions *mortis causa* or to original (no derivative) acquisition of property (e.g. usucapion)
- passing of risk



*tavolare system as model for a European common core for the transfer of immovable property*

Thank you!