

The organisation of agricultural activity through its register

La organización de la actividad agraria a través de su registro

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In the different legal Registers of laws there are numerous matters registered, annotated, or recorded by marginal note relating to institutions and legal figures closely related to agricultural law and which should be used for the purpose of streamlining the agri-food market and the rural sector in general.

Thus, the Land Register contains a great deal of information on the existence of Priority Agricultural Holdings (or family holdings, depending on the time they were set up) in relation to the farms linked to them, mainly because of the real tax implications of the subsidies granted to them and because registration also provides them with legal security in multiple relations (for example, in terms of exercising the special right of withdrawal¹, control of the legality of the requirements of the contributors/partners for their constitution, etc.). Without prejudice to a more exhaustive list, this Register will also include the mortgages that have been constituted on the same properties to obtain financing, the type of cultivation that is carried out on the property, the existence of installations on the property and their legal configuration - solar panels by means of a surface right in favour of the installer on occasions -, as well as the possibility of completing the literary description of the property by georeferencing it, including not only the property but also the possibility

¹ Article 27 of Law 19/1995 of 4 July 1995 on the Modernisation of Agricultural Holdings.

of georeferencing constructions or even plantations (mainly trees) by specifying their coordinates in the space within the property itself.²

However, it is not only the properties in the Land Registry that belong to this type of structure, but also in those cases in which movable guarantees have been constituted on assets related to the farm, such as agricultural machinery, equipment and production goods, pledges on specific fruits or harvests, movable guarantees on PAC rights, etc., which also appear in the Register of Movable Goods, which is often the case when the guarantee covers the entire production unit.

Likewise, in those cases in which a corporate form is chosen through which the agricultural or livestock farming activity is carried out, it will logically take the form of a specific type of company, either a limited liability company, public limited company, agricultural processing company, With regard to civil companies, it should be noted that the legislator, aware of the need for legal protection and information in the Company Register, has made it possible to register civil companies in the Company Register by means of the recent law on the creation and growth of companies. This register will contain their name, registered office, directors and data relevant to their business activities (bankruptcy status, limitations on directors, appointments and electronic powers of attorney, closure of the company's registered office or other applicable sanctions, etc.), as well as information relating to their filing of accounts, in terms of their accounting information, their actual ownership, together with the environmental information included in their non-financial information.

The relevance of the Land, Mercantile and Movable Property Register for the provision of structured statistical data as well as homogeneous taxonomies in a country with an idiosyncrasy of autonomous regions such as Spain, has been seen on numerous occasions as a window of opportunity by the legislator when it comes to standardising certain requirements for access to the Register, which is the exclusive competence of the State by application of the Spanish Constitution; a competence endorsed in multiple rulings by the Constitutional Court in different matters such as urban planning, housing and tourism.³

² Article 202 of the Mortgage Law, following the reform introduced by Law 13/2015.

³ In this sense, **Judgment 4/2014 of the Plenary of the TC**, of 16 January 2014. Appeal of unconstitutionality 1017-2010; **Ruling 61/1997 of 20 March 1997**. Appeals of unconstitutionality 2.477/1990, 2.479/1990, 2.481/1990, 2.486/1990, 2.487/1990 and 2.488/1990 (joined). Moved, respectively, by the Parliament of Navarre, the Governing Council of the Regional Council of Cantabria, the Executive Council of the Generalitat

A recent example in this area can be found in the *Law on Waste and Contaminated Land for a Circular Economy*, approved this year, which takes up the work that was already being done in this area through the Land Registries in terms of recording the declaration of having carried out a potentially polluting activity outside the property on the occasion of its transfer, as well as the record of the declaration by an Administration of contaminated land and also the decontamination activities that can be carried out on a property.

The law establishes this obligation for any transfer and in any document, specifically for new works under any title, in the interests of speed and processing of new works, in accordance with the digitalisation of processes, the elimination of obstacles and the technical guarantees of the operators involved (architects and technical engineers) and coordination with the Cadastre.

de Cataluña, the Diputación General de Aragón, the Junta de Castilla y León and the Government of the Canary Islands against Law 8/1990, on the Reform of the Urban Planning Regime and Land Valuations, and in the appeals of unconstitutionality, joined to the previous ones, 2.337/1992, 2.341/1992 and 2.342/1992, brought, respectively, by the Governing Council of the Autonomous Community of the Balearic Islands, the Diputación General de Aragón and the Executive Council of the Generalidad de Cataluña, against the revised text of the Law on the Land Regime and Urban Planning, approved by Royal Legislative Decree 1/1992, of 26 June; **Ruling 141/2014, of 11 September 2014**. Appeals of unconstitutionality 6963-2007, 6964-2007, 6965-2007 and 6973-2007 (joined). Lodged, respectively, by the Governing Council of Madrid, the Governing Council of La Rioja, more than fifty members of the Popular Parliamentary Group in Congress and the Government of the Canary Islands in relation to various precepts of Law 8/2007, of 28 May, on land, and appeals of unconstitutionality 7020-2008 and 7231-2008, accumulated to the previous ones, filed, respectively, by the Governing Council of Madrid and the Governing Council of La Rioja with respect to different precepts of the revised text of the Land Law, approved by Royal Legislative Decree 2/2008, of 20 June. Powers over town planning: nullity of the legal precept limiting the upward correction of the value obtained by the actual or potential capitalisation of rural land (SSTC 61/1997 and 164/2001). **Plenary. Ruling 143/2017, of 14 December 2017**. Appeal of unconstitutionality 5493-2013. Lodged by the Government Council of the Generalitat of Catalonia in relation to various precepts of Law 8/2013, of 26 June, on urban rehabilitation, regeneration and renovation. Powers over urban planning: partial nullity of the regulation of the evaluation report on buildings, as well as the execution of actions on the urban environment; interpretation in accordance with the Constitution of the legal precept that establishes the requirement of express authorisation, with a regime of negative silence, for new installations and the location of prefabricated houses (SSTC 61/1997, 141/2014 and 5/2016).

This regulation is completed with the communications ordered by the Law to the Registrars for the preparation of the National Inventory of Contaminated Soil, in which, in addition to the marginal notes, the certifications issued and the declarations made must be communicated, together with the temporality of the same, by sending a structured file of this information on an annual basis.

In the same way, the legislator, following the path initiated by the Public Hydraulic Domain Regulations⁴, now requires in this new Waste Law the need for a record of the marginal note of a land declared as contaminated by an Administration, which must be required prior to the start of work by any promoter. This results in transparency in the real estate traffic, giving the private individual the effective possibility of being aware of this situation, which previously weighed as a hidden burden if it was not recorded.

Continuing with the legal publicity of these situations in the Land Registry, the Law⁵ also establishes the obligation to notify the competent Administration of the situation of the express and official declaration of contaminated land, determining that the way to cancel this marginal note is expressly the declaration of decontaminated land by the same Administration, to which the individual will have to accredit the activities carried out for said decontamination together with the corresponding reports. This publicity is a legal publicity and not a mere de facto publicity, being a consequence of express acts of the competent Administration for both its creation and its extinction.

⁴ Thus the RDPH articles 9 ter, 9 quáter and 14 bis that "Prior to the start of the works, the developer must have a certificate from the Land Registry accrediting that there is a registry entry indicating that the construction is located in a preferential flow zone or flood zone". And in the same sense, Article 98.4 in fine of the aforementioned Draft Law on Waste and Contaminated Soil for a Circular Economy establishes that: "any action in an area located on land declared or delimited as contaminated land by the corresponding autonomous community shall require that, prior to the start of the works, the developer must have a certificate from the Land Registry accrediting that there is a registry entry indicating that the construction is located on land declared contaminated."

⁵ Article 99.5 of the Draft: "The declaration of contaminated land shall be the subject of a marginal note in the Land Registry, at the initiative of the respective Autonomous Community in the terms determined by regulation by the Government. This marginal note will be cancelled when the corresponding Autonomous Community declares that the land has ceased to be considered as such, after verifying that the decontamination and recovery operations have been properly carried out".

On the other hand, communication will also be made to individuals when the marginal note is the result of an express administrative action declaring the land to be contaminated, in which case it will be made either to the address that for notification purposes is recorded in the margin of the page of the property. However, in addition to this record, in line with the digitalisation of procedures and the information age in which society is involved, there is the possibility for any individual with an electronic signature and via the website www.registradores.org to obtain, by means of a system of alerts, information in real time on any document presented to the Land Registry relating to a property they own. We thus have access to digital alerts available to any person in real time, but the law also provides for the individualisation of communication in order to bridge the digital divide, using this dual channel through the Registrar's communications, thus creating a system of justice and equality in the opportunities for citizens to obtain information. This is a circumstance derived as a consequence of the capillarity of the Land Registry offices spread throughout the national territory and with face-to-face service to citizens, thus balancing and offering both digital access and relations with the same, as well as face-to-face access and service in the same.

We can end our reflection on the new law by also praising the technical precision of the legislator in determining the collaboration between the Ministry of Transition and the Association of Registrars, to provide the Registrars' Geoportal with the information of the State Inventory so that it can be included as associated information, both in the Registrars' Geoportal and in the registry publicity and in the notes of qualification and dispatch of documents. Currently the Registrars' Geoportal⁶ created by the Law seven years ago and recognised in numerous subsequent regulations contains a catalogue of more than two hundred WMS (web maps service) corresponding to administrative, environmental and town planning limitations that any individual can use to analyse a geometry in the territory, either by selecting a combination of all those that affect them or just one of them; and also recently used as a legal aid tool for the management of natural disasters, the La Palma volcano, large fires and floods. Making this type of information available enriches the catalogue of associated information and brings individuals and administrations closer to a better knowledge of the land environment.

⁶ <https://geoportal.registradores.org/>

It is noteworthy how the legislator on this occasion has taken up the work carried out by the Registrars to strengthen legal security in this area, using a national resource such as the Land Registry to guarantee compliance with the Law, encourage homogeneous information and standardised taxonomic indicators, linking the Land Registry, the Administration and individuals, strengthening legal security and increasing the guarantees for security in the property market, avoiding hidden charges and determining the value of land through effective knowledge of it and taking a further step to avoid *greenwashing*. It has not had to resort to new inventions, nor to ad hoc administrative registers, it has not wasted public funds, nor the human, spatial and technical resources of the administration to carry out a task that was already being carried out successfully and which is reinforced in the new Law, facilitating access for all persons, all documents and multiple situations in relation to potentially polluting activities.

The Spanish recovery plan is structured around ten driving policies⁷, including the following policies that have a direct impact on the agricultural, livestock, forestry and food industry sectors: Urban and rural agenda and the fight against depopulation, resilient infrastructures and ecosystems, fair and inclusive energy transition, modernisation and digitisation of the ecosystem of our companies, modernisation of the tax system for inclusive and sustainable growth.

The Taxonomy is to be used in this context with the aim of mobilising private capital, through public-private collaboration and in the case of Spain under the supervision of the IGAE, which, in order to ensure compliance with the requirements of the Plan, the Responsible Authority will have access to the information residing in other systems, in particular the National Subsidies Database, the Public Sector Procurement Platform and the Register of Real Estate Ownership, as well as the Companies Register, being empowered to incorporate into the system the documentation it deems appropriate in accordance with the scope of its competence.⁸

⁷ https://www.lamoncloa.gob.es/temas/fondos-recuperacion/Documents/160621-Plan_Recuperacion_Transformacion_Resiliencia.pdf

In this line of compliance and in order to facilitate and expedite the processing and verification of the solvency of the recipients of funds, CORPME (the Spanish Association of Registrars) has already entered into multiple agreements to promote transparency and financial information on companies registered in the Commercial Register, and in relation to the Register of Real Estate Ownerships with entities and administrations directly involved in the analysis of corporate solvency and anti-fraud, such as the Official Credit Institute, the Bank of Spain, the Treasury, the Treasury, the General State Administration, the National Securities Market Commission, the National Markets and Competition Commission and the State Attorney General's Office, among other leading operators in the supervision and pursuit of the solvency of companies, Bank of Spain, Treasury, Treasury, General Intervention of the State Administration, National Securities Market Commission, National Markets and Competition Commission and the State Attorney General's Office, among other leading operators in supervising and pursuing effective compliance not only with the aims pursued by the plan but also with the requirements for accessing it. Thus, failure to file accounts with the Company Registry or their discrepancy with the net results of the fiscal years with the Tax Agency will determine the reduction and/or exclusion of companies from access to the aforementioned funds, guaranteeing the legal certainty and transparency required by the EU for their allocation.

Along these lines, the Insolvency Act passed last month also provides for a system of early warnings of states of insolvency to be detected through the Public Insolvency Register and the Commercial Register.

It should be noted that the Business Register itself is interconnected with Europe through the BRIS Platform⁹, which is the mechanism used by legal operators in the European and international market to find out which companies are contracting in the common territory; The information contained in the Companies Register is decisive when it comes to parameterising a company as a candidate for the allocation of external public or private investment, and has already been included in the Climate Change Act¹⁰, which requires it to publish an annual report in its management report assessing the financial impact on the company of the

⁹ [Business Registers Interconnection System](#)

¹⁰ Article 32 Law 7/2021 of 20 May on climate change and energy transition. https://www.boe.es/diario_boe/txt.php?id=BOE-A-2021-8447

risks associated with climate change generated by its exposure to its activity, including the risks of the transition to a sustainable economy and the measures adopted to address these risks in order to streamline their treatment and classification. Thus, the Companies Register is the obligatory access point for sustainability reporting at European level.

Furthermore, it should be borne in mind that the Administrative Registers of the Autonomous Communities of Agricultural Processing Companies, as well as the central administrative register of the same, do not send any information to the Public Insolvency Register¹¹, thus configuring dispersed systems of publicity and lacking the effect of legal publicity of the latter, the Public Insolvency Register being the competent body for the publicity of situations of company insolvency as we have mentioned.

Furthermore, it is worth highlighting the interconnection of the Public Insolvency Register with the insolvency resolution registers of the other Member States of the European Union, which is carried out in accordance with the European rules that regulate it. In this way, the role of these registers is recognised in the European context as an essential source of legal information to facilitate the procedures of citizens, lawyers, public administrations, companies and other interested parties. These registers enable banks, creditors, business partners and consumers to access official and reliable information on insolvency cases, ensuring transparency and legal certainty in the European Union markets. This provision is also reflected in the regulation of the first section of the register, which provides for publicity of the opening of insolvency proceedings opened in another Member State when so requested by the insolvency practitioner.

This clamour for access for absolutely all legal persons to the commercial world, with protection for its members from personal limitation of capital and risk, regulating markets and economic transactions, interconnected with Europe, coordinated with the main

¹¹ The Public Insolvency Register depends on the Ministry of Justice, which entrusts its management to the Association of Property, Mercantile and Movable Property Registrars of Spain.

It is the **Commercial Courts, Solicitors, Commercial Registrars, Notaries, Insolvency Administrators, Chambers of Commerce and the public registers of persons** who provide the information on the different **insolvency proceedings and out-of-court settlement files to be** included in the Register. Royal Decree 892/2013, of 15 November, which regulates the Public Insolvency Register. https://www.boe.es/diario_boe/txt.php?id=BOE-A-2021-8447

evaluators, supervisors and in line with fraud and money laundering prevention policies, in a world that for the sake of transparency needs to know its structures in order to focus on the risks of NATO allies' enemies, complying with supranational limitations and prohibitions on contracting and holding assets derived from the invasion of Ukraine, is being addressed and taken up by the legislator as we can see in the last two laws mentioned.

Continuing with the possibility of improving the agri-food legal environment through legal registers, it is worth highlighting the legislator's lack of success with the creation of a Register of food contracts signed with primary producers and their groups.¹² This register was created mainly to try to avoid the sales at a loss that occur in the primary sector in the sale of products such as milk, grapes, etc. The practices of large buyers and cooperatives in these contracts consisted of adding a general clause stating that the selling price was higher than the production costs. This has led to legal uncertainty in the sector, as it is difficult to prove in the contract itself. Thus, attempts are being made to make specific "calculators" of these costs by parameterising them, which is a *diabolical probatio* in the present day, as has been demonstrated with the invasion of Ukraine and the cutting of the supply chain, together with the closures of farms, as on many occasions the price of electricity, animal feed, fertilisers, herbicides, etc., have determined that the cost is greater than the benefit, producing a national paralysis. As the National Securities Market Commission has estimated in a fierce criticism in its report on this administrative register, calculating an annual cost of 17 million euros.

In Europe the protective function in systems with legal registers like ours, such as Germany and Switzerland, qualifies the entire document for which registration is sought. The superiority of the system of maximum protection of the Land Register has been highlighted in the document Guidelines of the United Nations Commission for Europe, with key criteria followed by the General Conditions Register itself, when it considers that the ideal system of Registration must meet what it calls the principles of mirror, curtain and guarantee, according to which the Register must

¹² Law 16/2021 of 14 December amending Law 12/2013 of 2 August on measures to improve the functioning of the food supply chain .
https://www.boe.es/diario_boe/txt.php?id=BOE-A-2021-20630

faithfully reflect reality; it must be sufficient to consult it, without the need to make extra-registrar enquiries and the Register must guarantee the accuracy of what it publishes.

Taking up the relationship of the Land Registry now in terms of environmental protection and improving the classification of properties and estates (thus determining the classification and labelling of the same, constituting the basis on which mortgage portfolios are built for subsequent issues of mortgage bonds and mortgage bonds through the securitisation of the same and being the main exponent of avoiding the dreaded *greenwashing*), and contributing directly to a green transition of real estate assets, it should be noted that following the reform of the Mortgage Law seven years ago, Land Registrars have taken on a fundamental task for the protection and safeguarding of the environment and biodiversity: the registration of the graphic base of the properties in the Land Registry. The access of the coordinates of the perimeter of the property in the Land Register, in addition to the strong legal effects of this graphic inscription, entails an exhaustive examination by the Registrar of the territory affected by this inscription. The computer file of the plan is introduced into the graphic system of the Registrar, which is equipped with the associated environmental information, to see what may be affected. Let us look at some examples today of the information that the Registrar checks on the territory when admitting the property or the rights over it, and which directly affect Sustainable Development Objectives: Thus, in relation to Protected Natural Spaces it allows the visualisation and consultation of the information of the different figures of protection (Parks, Nature Reserves, Marine Protected Areas, Natural Monuments, Protected Landscapes); Sites of Community Importance (SCI), Special Areas of Conservation (SAC), which together with the Special Protection Areas for Birds (SPA) make up the Natura 2000 Network; Biosphere Reserves, which are areas belonging to terrestrial or coastal ecosystems proposed by the different Member States and recognised at international level by the "Man and Biosphere" programme. They include a wide variety of natural environments and seek to integrate the protection of existing natural elements with the protection of traditional forms of sustainable exploitation of natural resources. The digital layer is harmonised by the Nature Data Bank with the information provided by the different competent authorities. The Ramsar Convention, or Convention on Wetlands of International Importance especially as Waterfowl Habitat,

establishes at international level a network of wetlands known as the Ramsar List.

Maps of Areas of Significant Potential Flood Risk that allow the visualisation and consultation of the set of data representing the watercourses designated as Areas of Significant Potential Flood Risk, which have become so important in recent times; The cartography of the Public Hydraulic Domain, defined in a series of studies carried out by the competent water authorities, as well as the Easement and Police Zones associated with each area. It is the area of land corresponding to the alvee or natural channel of a continuous or discontinuous stream covered by water at maximum ordinary floods, determined according to its geomorphological and ecological characteristics and taking into account existing hydrological, hydraulic, photographic and cartographic information, as well as available historical references. The data set of the Public Maritime Terrestrial Domain includes cartographic and alphanumeric information on beaches, wetlands, vertical cliffs and determines the protection and sustainable use of the coastline. Due to the sensitivity and fragility of the coasts, their conservation and protection is preserved by the Registrar in order to guarantee their public use, regulate the rational use of the assets and achieve an adequate level of quality of the waters and the seashore. Also the Specially Protected Areas of Mediterranean Importance, which allows us to visualise and consult the set of data on protected coastal and marine areas that guarantee the survival of the biological values and resources of the Mediterranean; contain ecosystems typical of the Mediterranean area or habitats of endangered species, or that are of special scientific, aesthetic or cultural interest. They are declared under the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (Barcelona, 1976) and in the same sense the Cartography related to the Water Framework Directive. This is about the specific protection of biodiversity and water by the Registrar as an example, although a more in-depth study could be carried out in other areas in which it intervenes in the same way in relation to issues such as mountains, counties and activities that may have a direct impact on people's health.

This protection of the public domain and qualification of environmental legality by the Registrar is necessary for the effective knowledge of all those people who want to start a project on any type of land. In the same way that nobody would think of buying or acquiring a property or estate without knowing the state of encumbrances (mortgages,

embargoes, etc.) that may weigh on the property, we must also know the existing administrative and environmental limitations on the same in this regard.