

PUBBLICO REGISTRO IMMOBILIARE AND CADASTER IN ITALY: HARMONISATION THROUGH DIGITALISATION?

Geo Magri, Ph.D.

Department of Law

University of Turin

Turin, Italy

e-mail: geo.magri@unito.it

Abstract

In Italy, like in the most part of European countries, real estates are registered in two different registers. The first one is the *pubblico registro immobiliare* and its function is to make public and opposable *erga omnes* ownership and real rights on immovables. The second register is the *catasto*, which plays a crucial role for real estate taxation and an auxiliary role in the proof of the boundaries. In the last few years the Italian legislator has started to harmonise data registered into the *pubblico registro immobiliare* with data registered in the *catasto* in order to simplify the identification of the real estate and its owner. This harmonization process will be simplified by the digitalisation of both registers.

Key words: transcription; cadaster; preliminary agreement; pubblico registro immobiliare

Introduction

In Italy, like in the most part of European countries, real estates are registered in two different registers. The first one is the *pubblico registro immobiliare* and its function is to make public and opposable *erga omnes* ownership and real rights on immovables. The second register is the *catasto*, which plays a crucial role for real estate taxation and an auxiliary role in the proof of the boundaries in case of real estate (art. 950.3 c.c. "Missing other elements, the judge keeps to the boundary delineated by the cadastral maps"). In this paper I will examine the role and the function of the two different registers.

We can already say, that the common features of the two registers are accessibility by everyone and digitalisation, which also allows access to the register via the Internet.

Even if a peculiarity of the Italian system is the coexistence of two distinct systems of real estate publicity: the French and the Austrian one, the paper will be focused on the rules in force in the most part of the country. These rules follow the French model; the Austrian *Grundbuch* system is still in force only in the areas of Italy which were previously under the Austrian administration (approximately the provinces of Trento, Bolzano, Trieste and Gorizia). Registration in these provinces has a constitutive function and it is needed to transfer and to prove ownership on Real Estate (NICOLUSSI, SANTUCCI, 2016).

The *pubblico registro immobiliare*

The Italian civil code follows the so called *principio del consenso traslativo* provided by art. 1376 and inspired by the French Code Napoléon. According to this principle, the will of the parties, consolidated in the agreement, is able to transfer the property not only between the contractors, but also with *erga omnes* effect.

The transcription of the contract in the property register is useful only to make it knowable; in other words, the transcription of a deed in the register fulfils a declaratory function. According to Italian law, normally, the transcription of the deed does not influence transfer of property or real rights and it is not required for the validity of the transfer.

Deeds are usually filed with the register only to prevent possible conflicts with future buyers and third parties. The register records information relating to the property, including sales and purchases, mortgages, easements and rights of use, as well as any pending disputes (art. 2643 and 2644 c.c.).

The general rule according to whom registration has no effects on the validity of the transfer of ownership has a relevant exception in case of double selling of immovable (*doppia alienazione immobiliare*, art. 2644 c.c.). In this case the law foresees a kind of limitation to the principle of the "real consent" provided by art. 1376 c.c., because, according to art. 2644 c.c., transcription has a discriminatory function between conflicting real rights coming from the same predecessor in title (*dante causa*). The practical effect of the rule can be seen when the second acquirer from the same seller is the first to transcribe his deed. In this case transcription plays a role, rather than declarative, "constitutive", because the transmission of the right

to two different purchasers without transcription does not produce any real effect, nor between the parties (as acquiring a non domino) nor erga omnes: the first transcribing buyer is the only one who acquires property, even if his title is posterior (MAGRI, 2015; TRIOLA, 2012).

It seems easy to understand that the fundamental principles that inspire the Italian system of transfer of property and transcription are opposed to those that govern the German *Grundbuch*.

The Italian process of transcription is easier than the Registration in *Grundbuch* for the following reasons:

- a) Transcription has no probative value; therefore, the registrar (*conservatore*) is not requested to examine the validity and substantial efficacy of the title;
- b) Transcription does not transfer the ownership, but it has mainly declarative effects.

If it is true that the Italian real estate publicity system is easier as the German, it is also incontrovertible that the German system is better to ensure a high degree of legal certainty in case of transfer of property. To avoid the danger of gaps or mistakes in the register, Italian law provides some precaution:

- a) the notary (*notaio*), who receives or authenticates the deed, must apply for transcription in the shortest time possible (art. 2671 civil code)¹. The notary plays a very important role for the certainty of the transfer, not only because he is a public officer, but mainly because he has the duty to declare and register in the public registry of immovables and in the Cadastre any deed related to ownership and real rights. Furthermore, the notary activities usually include an investigation of the existence of any third-party rights as well as the seller's title to the property. The decisive role of guarantor played by the notary explains the reasons because title insurance in Italy are not very common, as in other States of the European Union.
- b) the Italian law foresees a widespread legitimation to apply for transcription, irrespective of the existence of a legitimate interest (art. 2658 and 2659 Civil Code)
- c) the *principio della continuità delle trascrizioni* (continuity of transcription principle, art. 2650 c.c.). According to this principle "Where [...] a deed of acquisition is subject to transcription, the following transcriptions or inscriptions against the acquirer will have no effect if the previous acquisition deed has not been transcribed. Once the previous acquisition is transcribed, the following transcriptions or inscriptions will produce effects according to their respective order, except for what is provided in art. 2644" (MAGRI, 2015).

According to Italian law even preliminary agreements relating to an existing property or a property under construction can be registered into the *pubblico registro immobiliare* (art. 2645 bis c.c.) to protect the buyer against any subsequent filing of third parties' rights (such as mortgages or law suits against the property) (CARRABBA, 1998). In this case transcription plays a reservation function. A further hypothesis of transcription with reservation efficacy is foreseen in case of legal claims (art. 2652 c.c.) and related to the effects of the judicial decision that is going to be issued: deeds transcribed and inscribed against the defendant during the course of judicial proceedings will be unenforceable to the victorious claimant (TRIOLA, 2012).

Digitalisation of the land registers

The legal bases of the land services digitalisation were provided in the 80s, by the law nr. 52 of the 27th February 1985.

Italy is considered a quite innovative country for the regulation of its digital land register system². The automation process was carried out in steps:

- a) In the 80's: The model for entering notations (*nota di trascrizione*) was mechanized. This means that since the 80's, even if the notation was in paper format, it was electronically transmitted by an operator to a central system, that recorded it.
- b) In the 90's: the model for entering notations had to be submitted in a device fit for computer processing. Searches via internet started.
- c) 2000 adoption of the so called single on-line model (*modello unico informatico*).
- d) 2012 introduction of the digital transcription of the deed (*trascrizione digitale dell'atto notarile*).
- e) 2013 The contract can be concluded in digital form and subscribed via digital signature, thanks the introduction of the on-line deed (*atto pubblico informatico*) (DELFINI, 2011).

¹ In case of delay in the transcription the law foresees a liability of the notary. See C. Cass. 21/06/2012, n. 10297, in Giust. civ. 2013, 2, I, p. 372.

² The Italian notary council describes in its website the digital evolution of Italian *pubblico registro immobiliare*, more information can be found at the following website: www.notariato.it/it/linformatizzazione-del-notariato.

The idea of digitalization of archives is connected with the need of their preservation.

Deeds submitted in digital format are kept in accordance with the Digital Administration Code (*Codice dell'amministrazione digitale*) and the law establishes if and when registries in electronic format have full legal value instead of paper ones.

In order to preserve current paper archives a project to computerize old registries, putting them in digital format has started. The digitalisation of land registry and cadaster makes also possible to use and integrate data, that before the Agency (cadastral and land registries) created, managed or maintained separately. This goal is meaningful for many aspects as for instance fiscal purposes, or to identify each real estate units, its owner and the owner of a real right on the estate.

The Cadastre Register

Cadaster data are managed by the Land Department of the Ministry of Finance through its *uffici del territorio* (local offices) that are located in every Province. Cadaster data are used to register lease contracts and to estimate taxes on real estates that are based on the cadastral value of the property.

In respect of the kind of real estate it is possible to distinguish between: the Land Cadastre (*catasto terreni*), in which undeveloped land is recorded, and the Building Cadastre (*catasto edilizio urbano*) in which buildings are recorded. Both land and buildings must be registered and after registration a "cadastral income" (*rendita catastale*) can be attributed to the real estate.

The Building Cadastre distinguishes between buildings according to their planning designation and use (such as office space, residential property, warehouses, parking lots, shops, etc) and attributes to them the *rendita catastale* (cadastral income), that forms the basis for calculating the municipal property tax. The *catasto* is quite often defined *geometrico* (geometric Cadastre), because it gives the geometric and spatial references for all kinds of land parcels. The Cadastre has maps with scales 1:1000, 1:2000 or 1:4000 and many of them are already in electronic form. The *catasto geometrico* gives the geo-referenced information and the *catasto terreni* or *fabbricati* gives the description of the land.

There are some important documents which are obtained from the land registry office. These documents are fundamental also during the house buying process and they can be gather directly by the Land Registry Office (also online).

1. Visura Catastale

This is one of the first documents that has to be examined before to buy a new property. It contains information about ownership and how a property is registered. The information noted on the *visura catastale* are:

- a) Ownership. The *visura* shows all the current owners of a property, including date and place of birth, tax code and the percentage of the property they own.
- b) Location. The correct address and location of the property.
- c) How the property is classified. It includes the details of the property as it has been recorded in the Cadaster (page of the land registry, parcels of land, how many rooms there are in total and so on).
- d) Categories. The Land Register divides properties into different categories depending on type, location and value. These distinctions serve primarily for fiscal purposes. The cadastral categories can be listed as follow:

Type of property

A – private homes
B – public buildings
C – commercial floor space
D – industrial space

Location of property

Zone A – old town
Zone B – residential area outside old town
Zone C – residential area not yet developed
Zone D – industrial area
Zone E – agricultural area
Zone F – area for public places -facilities
Zone G – vacant area
Zone H – nature reserve and landscape conservation area

Value of the property

A/1 – Exclusive
A/2 – Civil
A/3 – Economic
A/4 – Basic
A/5 – Very basic
A/6 – Rural
A/7 – Detached, small
A/8 – Detached
A/9 – Castles or buildings of immense historical or artistic significance
A/10 -Offices and studios
A/11 – Typical local buildings

- e) Tax Value. We have already mentioned the cadastral income (*rendita catastale*). As we said it is a tax value given to property, evaluated using many factors (size of the property, age of the building, place where it is located etc.) The *rendita* is also needed to calculate the amount of the annual council tax and the cadastral value (*valore catastale*) of a property, which is useful to fix the amount of taxes in case of sale.
- f) Additional Notes. If there have been any changes in the classification, or if there are any special conditions or constraints on the property, they are recorded on the *visura catastale*. For example, if a person has the right of *usufrutto* the person and the right are mentioned in the *visura catastale*.

2. Cadastral Plan

The *planimetria catastale* is the official floor plan of a building. The plans are drawn to scale, but the individual rooms sizes are not recorded on the plans. It is very important that the property corresponds as it is drawn on the plans; any structural change (either modifications or additions) needs the permission from the *comune* (city council). If changes are not registered in the cadastre an administrative fine is due to the *comune*.

3. Cadastral Map

The *mappa catastale* is the official map of the land which belongs to the property. Land is usually divided into lots. The map shows lots numbers and the size of each lot. In the cadastral map boundaries are precisely determined; according to art. 950 c.c., in case of doubts, cadastral maps can be used by the judge to fix boundaries between the different properties.

4. Mortgage certificate

The *visura ipotecaria* is a very important certificate, which in general is obtained by the notary, before the property is sold. The *visura ipotecaria* shows if the property is subject to mortgages, loans or any other financial constraint.

Closing remarks

Cadastre and land register are normally notified of any changes related to the ownership. Both systems are accessible nation-wide, through a Web-based interface. However, the function of the two registers is very different. Cadastre has mainly fiscal purposes and it is more suitable when objective data related to the property are needed. The cadastral system allows a decentralized management of cadastral data and permits to keep the coherence among distributed databases during updates.

The role of the *pubblico registro immobiliare* is to register the features of ownership; for this reason, it must be updated with every deed which transfers or affects ownership (for instance with a mortgage, or with a right in rem). If it is necessary to verify the owner of a real estate it is better to carry out an inspection in the database of the Conservatory.

Even if the two registers have different roles both are essentials in case of transactions related to real estate. For this reason, a high level of conformity between the two registers is desirable.

To ensure the conformity of the cadastral data with those contained in the *pubblico registro immobiliare*, the Italian legislator in 2010 (see art. 19 of the law decree 31 May 2010, nr. 78) has introduced the duty to declare the conformity of cadastral data in any deed having as object the transfer of ownership or the constitution of real rights on buildings. If the deed does not fulfil this requirement is void³. The declaration may be replaced by a certificate of conformity issued by an authorised technician. The notary must also check the conformity of the cadastral owner with the owner registered in the *pubblico registro immobiliare* (so called *conformità soggettiva*). It is important to specify that, according to the law, the notary has not only the duty to declare the conformity of cadastral data with the results of the land registers, but also the duty to check the conformity of every data registered in both registers (*conformità oggettiva*) (see PETRELLI, 2010).

The regulation refers to already existing buildings (even if not yet accomplished) listed in the buildings register, but it is not applicable to deeds concerning land property and it is intended to harmonise the cadastral data with those of the public register, in order to ensure a higher certainty of real estate transactions.

The harmonization between cadaster and *pubblico registro* will be simplified by the digitalisation of paper deeds. In order to preserve paper archives, a digitalisation project of old registries has already started and new deeds are already registered also in digital format. The digitalisation will help to integrate data registered in the public and cadastral registries. The goal is to certify, for fiscal purposes, the situation

³ According to art. 8.1 bis d.l. 24 April 2017, no. 50, converted by the law 21 June 2017, nr. 96 the nullity can be remedied by the subsequent rectification of the deed.

of the integration between the two data bases, to identify, for each real estate unit, the person holder of real estate rights.

The digitalisation allows an easier and quick access to the registry and a higher level of security of real estate publicity, with considerable advantages for the fiscal administration, private users and for every person that must rely on the registry efficiency.

However, digitalisation and harmonisation of the two registries have influenced the real estate publicity system in Italy, we cannot say that the Italian transcription system has changed its fundamental aspect, becoming similar to a system based on the *Grundbuch* principle. Publicity and transcription remain based on their tradition and principles.

References

- ASARO, S., COLLETTI, F., RECCO, D. 2011. *La trascrizione (the transcription)*, Giuffrè, Milano.
- CARRABBA, A. A. (Editor.), 1998. *La trascrizione del contratto preliminare (The transcription of the preliminary agreement)*. Edizioni scientifiche italiane, Napoli.
- DELFINI, F. (Editor) 2011. *L'atto pubblico informatico (the online deed)*. UTET, Torino.
- MAGRI, G. 2015. *Das dualistische Publizitätssystem in Italien: zwischen deklaratorischer und rechtsbildender Funktion (The dual publicity system in Italy: between declarative and constitutive function)*. IJVO Jahresheft 2014 – 2015, p. 51 – 70.
- NICOLUSSI, A., SANTUCCI, G. 2016. *Fiat intabulatio*, Editoriale Scientifica, Napoli.
- PETRELLI, G. 2010. *Conformità catastale e pubblicità immobiliare. L'art. 29, comma 1-bis, della legge 27 febbraio 1985, n. 52 (Cadastral conformity and real estate publicity. Art. 29. 1 bis of the law 27 February 1985, n. 52)*, Milano.
- TRIOLA, R. 2012. *La trascrizione (The transcription)*. Giappichelli, Torino, (p. 129 ff.; 197 ff.)