

Eastern Europe's lessons from the past and aspirations for the future: running to catch-up or blazing a new path?

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ABSTRACT

The Central- and Eastern European countries in the former communist block have very different historical political background and very different situation in cadastral and land registration system concerning the stage of development during the socialist period.

Since the fall of communism the CEE countries have been in transition towards the market economy. There was a very strong need for establishing or modernizing the cadastre and land registration systems and organizations, in order to develop an active land market supporting the sustainable development.

In the passed transition period countries have learned and experienced a lot during the implementation of cadastre and land registration projects. The question to catch up Western European land administration systems or to achieve a new unique approach.

It's quite obvious that a new approach to choose the multipurpose, unified land registration system is advantageous. According to experience, countries in transition that have single authorities land administration have proceeded projects more quickly for establishing an active land market.

Keywords and phrases: CEEC Central and Eastern European Country

INTRODUCTION

The Central- and Eastern European countries in the former communist block have very different historical, political, economical background.

The situation before the World War II. in the former socialist countries

1, There was political democracy and market economy in
Czechoslovakia, Poland, Hungary, Baltic states

2, Semi feudal countries
Rumania, former Yugoslav states, Bulgaria

3, Communist dictatorship
Majority of former Soviet states

The legal registry sector and cadastre in CEECs before the World War II and during the communist era

1, Traditional legal registry and cadastre, functioning systems during socialism.
Hungary, Czechoslovakia, partly Poland and Yugoslav states

2, Some legal registry and cadastre didn't work during socialism
Rumania, Baltic countries, Bulgaria

3, There was no any registry or cadastre during socialism
Majority of former soviet states

Introduction of the multi party political system and market economy transition in CEEC at the beginning of 90 s.

As we recognized the various situation and condition of land administration in CEEC at the beginning of 1990 when countries changed the one party political system and introduced the market economy. There were many differences comparing CEEC but one thing was common the needs of a modern, well functioning land administration which is one of the essential pillars of the market economy and the land market.

The market transition, introduced in 1990 was stimulated the land and property sector. The transition process has introduced mass privatization, increased individual home ownership and placed severe increases on the demands for land registration information and data. The demands for land registration activities and data has been increasing since when there was political and economical changes in CEEC introducing the free market economy and multiparty democracy.

The land registration sector is a key component of a free market economy whereby the safe and secure transfer of title can be freely conveyed in CEEC s as in many other developed countries.

The government acts as the guarantor of title through the act of property registration which records all required legal, administrative, financial and physical description, information within the system of the register and upon the cadastral map.

The way of implementation to fulfil requirements by new political and economical situation have been very different in CEEC depended on the historical inheritance and current situation concerning land administration organizations.

In some countries / former Soviet states/ they had to start from the beginning to establish the organizations, registers of land administration.

In some countries/ Poland, Czech and Slovak Republic, etc/ they had to reestablish land administration to make them fully operational and modernizing of organizational and technical /computerization/ conditions.

In some countries / Hungary/ where there was a fully operational land registry on paper base, the main task was to computerize and improve all of the technical conditions in the land administration sector and modernizing the organizational structure of it.

As we can recognize not only the task and the way of implementation is different in CEECs but the length of time what countries need to fulfil the demands by the market economy.

COMMON PAST – THE SOCIALIST ERA

The common features in most of CEECs were as follows:

By 1989, the State and the co-operatives had become the major owners / occupiers of land. This resulted in a dominance of the state sector and a lack of individual participants in the land market.

The separation of usage and ownership. The land records system under socialism reflected usage rather ownership rights, a practice that needs to be reversed if the full benefits of the land market (including the use of land as collateral) are to be realized.

The expropriation of property followed by later restitution. In several countries, it has been decided that property expropriated in the period after World War II will now be restituted to former owners who must first be identified.

The many changes in land ownership that have gone unrecorded. This is especially applicable in the cases of inheritance; tracking the heirs of the original landowners is difficult.

The overall accuracy and completeness of the records concerned with land administration but the records were not systematically updated and hence the present data are often of unknown reliability.

The separation of different responsibilities for land matters into different ministries, resulting in some conflicting decisions on land use strategies.

The perceived difficulties in reconciling planning and building development controls with free market forces. In particular the reaction against centralized decision-making and command control systems has hampered the implementation of building standards and environmental controls.

The lack of a market mechanism. Valuations were made unconnected to the market prices, and financing mechanisms were mostly absent or poorly understood. This has left a legacy of weak valuation skills and some increased risks associated with mortgages.

The absence of credit financing institutions and the general low level of savings achieved under the socialist system restricts the amount of credit and capital available for investment.

The creation of a culture identifying reasonable levels of personal wealth as normal and acceptable. There have been well-publicized cases of fraud and allegations of political leverage in connection with many cases of restitution and privatization.

The legacy of the socialist agricultural policy. This led to the creation of large field units under the socialization of agriculture and hence to the loss of the old ownership boundaries.

The transition to market economy requires the creation of a “framework”, which provides the legal basis for the secure ownership and transfer of property assets, affords legal protection (ultimately through the courts as the last resort), and introduces the idea of “market value” and credit financing (i.e. professional market valuation and mortgages) as the mechanism of facilitating exchange. The issues of justice, the demands of society and the economic possibility need to be carefully balanced in addressing the questions of restitution and compensation

But still the state is continuing its activities as a major player, stakeholder in agricultural land, i.e. the state uses the Land Fund as a way of continuing as a landowner

TRANSITION POLICIES - INSTRUMENTS OF TRANSITION

There are a number of instruments which can be used to transfer land and real estate property from the public to private sector, including restitution of the property compensation, and privatization. In all cases they require the establishment of explicit legislation, and the appointment of an executive body specifically empowered to carry out the land redistribution activity. Restitution and compensation normally involve the establishment of local committees who make decisions regarding cases. The responsibility for the associated technical activities must be assigned, and rules determined for how to deal with more complex cases. The legislation must consider under what conditions land and property can be restituted, how compensation can be assessed, and what are the terms and conditions for land grants or privatization of assets. It is also necessary to consider the appeal mechanisms, and responsibilities and procedures such as how the claims should be submitted, who is responsible for preparing them, who pays the costs of preparation, and who will decide concerning the different cases. It is also necessary to consider what happens in the case of several claimants, or no claimants, and also when the cadastre and the land registration records are to be updated.

Restitution.

This instrument is used to return land and property to an earlier owner, whose ownership right was removed, or curtailed, according to some Act or Decree issued by the previous socialist (or earlier) government. Extensive restitution has taken place in the Czech Republic and to a lesser extent, in the Slovak Republic and Slovenia. Key problems include:

Technical problems will exist in that there will be differences between the land units recorded in the old registers/cadastral, and the current situation on the ground.

The land unit may be contained in a larger unit, it may have no public access, and it may not be possible to locate the land unit within the larger unit.

The land may be returned as co-owners (undivided ownership) and this may result in difficulties with further disposal of the land.

The process of restitution may lead to increased fragmentation of the land, as the restituted plots are significantly smaller than the previous usage land blocks.

Where it is not possible to reconstitute a parcel of land, then an acceptable alternative procedure for restitution in kind must be provided for (see below).

Compensation

This instrument is used where claimants are to be compensated for past injustice, or where land claimed in restitution cannot be returned for some reason.

Complex Compensation. The process of compensation for past injustice involves a ruling concerning the claim followed by the issue of some compensation coupons or vouchers. This may or may not involve a bidding process, whereby compensation vouchers are converted to land. This kind of compensation is usually carried out over a larger area and may involve potentially hundreds of claimants. Where bidding is used, it is the number of bidders and the collective value of their bids that determines the new land pattern. This is likely to be highly fragmented. In Hungary, this process created more than 2.1 million new parcels during 1992-1995.

Simple Compensation or restitution in kind. Compensation may involve direct allocation of land owing to non-availability of a land parcel claimed by restitution. In this case a central reserve of land is held back by the government, pending resolution of all outstanding restitution claims. The main difficulty here is associated with the value estimation of the original asset, the level of compensation offered, and potential disagreement as to the suitability of the offered compensation land (location, access, quality, size and shape, etc.). This kind of compensation is usually executed on a case by case basis, and is connected with restitution in kind.

Privatization

This is used to transfer assets by sale from social or state ownership to the private sector. The privatization of state, social enterprises often involves real estate assets

and the mechanism usually involves either management buy-out, voucher privatization, public tender or preferred investor, or a form of voucher privatization. Much has been written about the merits of the various privatization methods. The following are some of the perceived key problems:

Management buy-outs are characterized by weak investment (no capital) and little or no restructuring. Asset stripping followed by liquidation or bankruptcy is not uncommon. On the plus side it is considered to keep control in local hands.

Voucher privatization has led to a lack of corporate governance, accountability; sometimes very close relationships between the institutional fund holders and the banking sector are established.

Public tender or the preferred investor may lead to foreign control of a sector. This, however, can be counterbalanced by strong FDI and restructuring.

Demands by the new political systems and the market economy in transition concerning land administration

Land administration organizations in countries in transition have not been prepared for the new challenges to fulfil all of the increasing demands by the policy and the market economy.

Some of the reasons and facts which effected the land administration organizations

- mass privatization
- compensation, restitution
- increased number of conveyancing
- demand for new products and services

Sources to establish, reestablish and modernizing the land administration infrastructure

1, Foreign projects

EU organizations, World Bank, national governments have given financial and technical support to establish institutional structures and modernizing (computerization) land administration infrastructure in CEECs.

2, Transitional measures by national governments to support the development of land administration infrastructure.

- establishment of a functioning land registry and cadastre
- establishment of institutions for registration of land and real estate property
- establishment of institutions concerning land and real estate property valuation
- establishment of institutions concerning financial services

Common Institutional Problems can be summarized as follows:

As described above the state in CEEC has created some intermediate (temporary) institutional structures (e.g. Land Funds) to provide interim land management functions until the land is fully passed into the hands of the private sector. There is a

danger inherent within this approach in that these temporary institutions tend to be outside direct ministerial responsibility, and may have unclear mandates, thus leading to a lack of accountability and the pursuit of narrow objectives which may not be consistent with government policy objectives.

A feature of the socialist economy is the „top down” planning approach, which does not allow for strong lateral and vertical information flows. The institutional structures can only work effectively if they have access to accurate information flows. Institutional structures need to be established with this in mind.

The institutional structures and responsibilities should be clear. Often there is a fragmentation of responsibility across several ministries which complicates matters.

The responsibility for land registration and cadastre is usually clear in the countries examined, but where a single agency is involved, the reforms have proceeded more quickly.

In multi-agency environments the primary records are distributed between two or more separate institutions. From a technical viewpoint, this is a more difficult situation to control. The information flows become critical and require special support. Inter-ministry co-operation is notoriously difficult.

The institutional responsibility for valuation is not clear in any of the countries examined, and all countries currently have some new initiatives under development.

The responsibility for the provision of credit is either with private mortgage and credit institutions, or else through government agricultural credit and subsidy schemes. In the event of the government schemes, the responsibilities are usually clear. However, the commercial credit and capital markets are underdeveloped, and often loosely regulated. Mortgage financing is still underdeveloped.

From the land market viewpoint, the mechanism to bring together buyers, sellers and financing tools is still not developed. The private sector has estate agency services, but knowledge of saleable plots is often held locally and not widely disseminated. Local government institutions are often new, and power is still being devolved from the centre (however this is seen as building democracy and hence is positive in the long run)

The introduction of new technology places demands on personnel for both short-term training, and also longer-term training. The development of long term sustainable training and education partners should be a priority.

Lessons and conclusions during the implementation of establishing land administration sector in CEECs in transition.

1. Land administration organizations have not been prepared for the new challenges required by the political and economical changes towards the market economy.

2, The implementation of projects concerning establishing, modernizing land administration infrastructure is a very expensive, long term task. Foreign aids, supports and loans have been single investment only. National governments have to be prepared for a long-term expensive investment and permanent costs of running the system.

3, The organizational and technical development requires educated staff. The lack of IT and English language knowledge has constrained the implementation of foreign supported projects.

4, The implementation of projects requires professional support and involvement by the local staff.

Low salaries of the local staff can hamper the good and effective cooperation with international experts, partners.

5, The expectations by foreign organizations concerning the progress and results of projects have been too much. The establishment and modernization of land administration infrastructure in countries in transition is more difficult task than in countries with developed market economy.

Land administration infrastructure as one of the most important pillars supporting the development of active land market and in the same time sustainable land development.

There is no doubt that the functioning land administration infrastructure is needed for the establishing an active land market and fulfil requirements by sustainable land development in CEECs. At the beginning of transition and during implementation of land administration infrastructure there was a question in the majority of countries to catch up with Western European systems or trying to achieve a new or not well known unique approach. The problem is quite difficult. I think we have to follow many ideas, elements what developed countries experienced during the past years to meet all of the requirements, demands and needs by the new challenges concerning sustainable land development but in the same time we have to avoid problems which many of the Western European countries inherited from traditions mainly institutional and legal problems, restrictions. The most important question is the one or multi authorization of land administration. According to experience and new world-wide trends prove that the single authority for running the land administration infrastructure can serve most efficiently the final aim the implementation of sustainable land development. Since the IT technology has been introduced it have not been technical difficulties to handle the multi purpose land administration and database.

Many countries in Central Eastern Europe have to start developing its land administration from the beginning and there is no sense not to follow the best, most effective and cheapest solution establishing land administration infrastructure using all of the experience from the past and present.

There is evidence that countries in Central Eastern Europe introduced the unified, multipurpose land registry, like Hungary and Czech Republic, could develop land market more quickly than others.

Developing a Model for Land Markets

There is a general consensus that in order for a land market to work, there must be

- a clear definition and sound administration of property rights;
- a minimum set of restrictions on property usage consistent with the common good;
- the transfer of property rights must be simple and inexpensive;
- there should be transparency in all matters;
- capital and credit must be available.

In order to try and understand the land market more clearly in CEECs, it is possible to develop a model that helps to identify those elements and policies that contribute to effective land market development that are consistent with the common good of society. More precisely, the aim should be to develop a model for those factors that inhibit or promote the efficient functioning of land markets, and it is based directly on the experiences.

The Land Market Model Proposal

There is a need to develop a land market model that can be used to analyse and compare the development of land markets in transition economies. It is not complete, and this approach should be taken as a first attempt to produce such a model.

Nevertheless, the approach outlined captures several of the important aspects of land market development, namely:

- 1, The importance of the regulating institutions as the engines that drive the initial reform process.
- 2, The necessity for the establishment of a range of participants who are able to use the services of the regulating institutions.
- 3, The importance of the credit and financing instruments.
- 4, The necessity for rights of ownership to include clear title, clear boundaries, and clear disposition to sell, lease, or otherwise dispose.
- 5, The necessity to create a critical mass that will then fuel further activities and development through market led demands.

Conventional economics proposes that markets can be described in terms of players, goods and services, and the means of exchange, according to the „rules of the game”. The land market is made up of the following elements:

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|------------------------------------|---|
| The legal basis | - The rules of the game |
| The regulating institutions | - The land register, the cadastre, valuation & financial institutions |

The participants	- The land owners and tenants
The goods and services	- The land and its use
The financial instruments	Mortgages, credit, capital revenue generation, tax raising

- the legal basis

1. A sound legal basis for ownership and trading of property rights.
2. All necessary legal structures in place, especially inheritance.
3. Bankruptcy and first charges on mortgages are supported.
4. Legal entities and physical persons have equal rights to own properties.

- the regulating institutions

1. Recording and registering systems are soundly implemented
2. Institutional structures are secure with well-regulated activities.
3. Planning and zoning controls are clearly understood and enforced.
4. There is no risk of unjustified expropriation. .
5. There is an understanding of how land and property taxes can affect land use.
6. Professionalism exists in all areas, with basic assent and public understanding.
7. Valuation is clear and well understood.
8. The quality of data held by regulators is good.

- the participants

1. Landowners and tenants exist and represent a range of different stakeholders.
2. There is a strong private sector including individuals, companies & family units.
3. Large corporate players exist (including investment funds, pension funds etc.).
4. All government held land is held for public purposes or for social housing.
5. The construction sector is established and healthy.

- the goods and services

1. There are a variety of assets available, apartments, residences (of various sizes), offices, commercial buildings and agricultural land holdings.
2. Land and buildings can be traded and leased.
3. Land and buildings can be used as security.
4. The mechanism for offering something for sale is clear.
5. The publication of assets available for sale is widely known and reliable.
6. Mechanisms exist to create new assets where needed, hence the market is able to respond to rising demand by building more houses, etc.

- the financial instruments

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1. Cash sales are clear and supported.
 2. Taxation regimes are not subject to sudden or dramatic change.
 3. Tax implications for investments are clear.
 4. Mortgages are available for residential property (up to a specified percentage of the value)
 5. Special mortgages are available for agricultural land (e.g. there are special credit schemes available for this sector).
 6. Financial products are linked to assets (e.g. pension funds can be used as security).
 7. Valuations are accepted and used as a basis for calculating asset values.
 8. Financing for investments exists and venture capital is available.
 9. Foreign Direct Investment (FDI) is encouraged, and there is a low assessment of risk.
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The state plays an important role in each of these sectors, it is responsible for establishing the legal basis, it provides the regulating institutions and it is also an important player in its own rights. It is also a major financier and revenue raiser and it defines the goods and services that can be traded through its rules concerning permitted usage, maximum and minimum land holdings, leasing arrangements and development controls. It is also responsible for the national land policy that defines the role and activities of the state within the land market.

In order to promote effective and efficient markets, the state must establish the regulatory framework and adopt policies that will support and stimulate the development of the land market.

These policies should identify and remove barriers to individual initiatives. They may also include the use of taxation as a land management incentive, the encouragement of development projects and the promotion of greater owner occupation. In addition they may stimulate land privatization and reconcile land reform activities with viable agricultural and other land use.

The Three Pillar Land Market Model can be based on **Goods and Services** the **Participants** and the **Financial Instruments**. These are related through three regulatory pillars that control and regulate land market activity according to the established **Legal Basis**. The model shows the legal basis as part of the overall **Policy Framework** adopted by the state, and that the dynamic behaviour of the whole defines the **Market** status.

Pillar One: Land Registration and Cadastre – the connection between land and people

Pillar Two: Land valuation – the connection between land and monetary value

Pillar Three: Financial Services- the connection between people and money

Transition to a Market Economy and completion of the transition process

The transition experiences of Central and Eastern European countries show that each country follows a policy of transition to a market economy, but in doing so have

experienced certain difficulties. Their aim has been to establish a framework that provides the legal basis for the secure ownership and transfer of property assets. The systems must provide legal protection and introduce the idea of „market value” and credit financing, through professional market valuation and mortgages, in the land market. These measures have only been partially successful, and certain reasons for this appear in several of the case studies, for example:

- Lack of a coherent land policy co-ordinating the efforts of different ministries.
- Uncertainties concerning possible future restitution and compensation programmes.
- Uncertainties about the role of the state as a landowner.
- Some continuing legal difficulties with fundamental land law and the definition of real estates
- Insecurity of mortgages.
- General macroeconomic position, high interest rates and lack of institutional investors.
- The re-establishment of a strong connection between land and people.
- The institutional structures adopted for the regulatory frameworks may not be the most suitable

With respect to the land market sector, this has the following implications:

Establishment of a functioning market economy. This requires the creation of an economically viable agricultural sector with viable farm units, the establishment of Land Administration Institutions that operate within both the urban and rural sectors, the development of a private sector financing, and efficient information services. Support for the internal market. There can be no discrimination in law between nationals of the member states with respect to property ownership, although some exemptions are possible, e.g. Austria (a legal issue).

The Common Agricultural Policy and the Integrated Agricultural Control System (IACS). The enactment of the CAP requires the development of a system for reporting on agricultural produce (for subsidies) based on the farm unit and areas under cultivation. This requires a comprehensive database, reporting system to be constructed.

Reform of public administration and institution building. This requires investment and development of structures able to apply fully the *acquis communautaire* (especially in agriculture and the environment)

Establishing the Regulatory Authorities - Institution Building

The traditional view within the State Administration is that government agencies are mandated with specific (usually administrative or technical) tasks, which must be carried out according to precise Government regulations, often spelling out in great detail the technical standards to be implemented. In the transition to a more business-oriented approach to land administration, the following issues arise:

- Costs of modernization. The costs of modernization of the technical infrastructure, data loading / validation / conversion, quality improvement and overall operational

costs are high. Governments, however, are increasingly cost conscious and are concerned to reduce the amounts of money spent on providing public sector services.

-Reassessment of core business activities. It is necessary to identify and concentrate on core activities, for instance the cadastre and title registration and the provision of basic geographic information.

-Determination of market needs. Market analysis and product research is needed to establish what the user really requires; from such knowledge it will then be possible to carry out a business assessment of production capabilities.

-Reduction of state contributions and increase of cost recovery. There is a need to reassess production costs for products, establish cost controls, protect copyright, and establish „the user pays” principle.

-Introduction of modern management practices, staff retraining and the introduction of IT.

-Staff and professional development. Many of the state organizations face a loss of staff to the private sector, but need to retain highly skilled technical staff.

-Public / Private sector cooperation. Alternative structural models need to be investigated, for instance the public agency status, the establishing of private sector partners for „added value” information services, public , private sector joint ventures, licensing of products for development of „added value” products, etc.

-Quality control and standards. There is a shift away from licensing of surveyors to quality assurance methods, increased adoption of „norms” and ISO 9000 series accreditation, and convergence upon European Standards (especially data interchange)

CONCLUSIONS

It is obvious, that developing an active land market to serve the sustainable land development, the most important pillar is the land registration and the cadastre. When we have to decide to follow Western European systems or to achieve a new and unique approach we have to take into consideration that for countries in transition are more effective to choose the multipurpose, unified land registry system. From legal point of view, there is little difference in the single agency or multi agency models for land administration. However, in the operation and management of the land registration and cadastre records, the single institutional model has advantages in that one organization has responsibility and therefore accountability and responsibility are clearer. The records are stored together and therefore there is a greater integration between the graphical and legal part.

Furthermore the workflow for updating and changes of entry is more efficient and the applicant can complete the transaction more quickly. Overall, there are less likely to be delays or losses and the provision and quality of information should be more efficient. Also the process of computerization will proceed more simply under the

control of a single authority, as it can be difficult to get inter- ministry co-operation for major investment projects because of lack of corporate governance and confusion as to who owns the project.

According to experience, countries in transition that have single authority land administration have proceeded projects more quickly for establishing an active land market.

REFERENCE

ACE project P2128R Land Markets in Central and Eastern Europe prepared by authors' team chaired by Richard Baldwin