



Project Description The Round Table on Security Rights over Immovable Property

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A) The vdp Database on Security Rights over Immovable Property and the Round Table on Security Rights over Immovable Property – Goals and Methodology

The Round Table on Security Rights over Immovable Property is a scholarly project comparing the law on security rights over immovable property together with other areas of the law which are important for their existence, value and practical utilization. This is an area of immovable property law where the differences between legal systems are particularly large.

The Round Table on Security Rights over Immovable Property holds two workshops each year. However, between these workshops members are in contact and are able to revise, develop and update the database through its IT system. The first workshop took place in June 2005.

The Round Table aims to contribute to the scholarly discourse on comparative law but also to present information in a manner which is useful for both assessment of the value of security rights over immovable property in different market and for regulation and legislation.

The information is developed and updated by independent jurists ([Link vdpGrundpfandrechte/Mitglieder](#)). The basic principle is that each legal system is represented by one jurist. They are scholars, practitioners and others who are often among the leading specialists on immovable property and security in their jurisdictions.

Each member answers the questions developed by the Round Table for their system and enters them into the IT system. The content of the answers is at the sole discretion of the member. They work voluntarily and only receive reimbursement for expenses.

The answers to these questions are compiled in a clear, systematic and accessible manner. A separate chapter is allocated to each of the relevant areas of law and within that chapter, questions are developed which capture the legal treatment of a given situation. For each question, there are between two and seven answers which show the treatment of the case in question in each system. Thus the legal comparison is a functional one.

The answers are presented in a chart, which takes the form of a map of Europe with each country coloured according to its answer to the relevant question. The question and the answers are given in a key on the chart. Thus the system provides a comparative overview even for complex questions.

All questions and answers are approved by the members in workshops to ensure that each question can be answered meaningfully and accurately for each legal system.

The majority of the questions have additional explanatory notes. Answers can also be supplemented with comments which explain the relevant rules or point out specialities or variations which the answers on the chart cannot capture. The explanatory notes and comments are visible to users.

The comments show the legal basis for that answer, be that statute, regulations or case law. For certain questions, they also explain the various transactional arrangements which the law permits.

It must be noted that, while the Round Table's chart-based method has significant advantages in terms of accessibility and clarity, certain disadvantages must be accepted as inevitable corollaries:

- Questions and answers must be articulated concisely and therefore cannot express

complex situations of the type that are typically addressed in court judgments. The system does not permit more than seven answers and, in principle, these should cover multiple systems so that overarching structures can be discerned. This means that the answers will tend to reflect the general principle rather than every detail of the legal system's response. Some exceptions or particularities of the local law are not captured. Sometimes it must suffice for the basic concept of the rule to correspond with an answer.

- Each legal system can only give one answer to each question. If a country has more than one type of security over immovable property – for example Germany, which recognises both the *Hypothek* and the *Grundschuld*, the member must decide the basis upon which (almost) all of the questions will be answered. It is not permitted to move from one form the other other in order to give the most advantageous answer. Such an approach would does not reflect the reality of legal practice. Therefore, answers are given for the most flexible and most widely security right. The same approach is taken for systems with more than one approach to ownership of flatted properties, registered leases or building rights or other legal institutions subject to investigation.
- If there are local particularities within a country, they cannot be displayed on the chart. It can, however, be indicated in the comments.

The publicly available **vdp Database on Security Rights over Immovable Property** presents a selection of the results, explanations and comments of the Round Table which covers the core of the group's work. The Round Table works continuously to develop the results. This work takes place on another database which is only available to members. The public database will be regularly updated and possibly expanded on the basis of the private database.

The charts can be displayed with questions and answers in either German or English. The explanation and comments are in either German or English. Efforts will be made to make all of the material available in both German and English but the volume of information means that this is a significant challenge.

Public availability of the database will make the outputs from the Round Tables on Security over Immovable Property available to

- lenders, who make use of security rights in other legal systems as collateral,
- investors, who invest in foreign immovables,
- private individuals who own immovable property in other countries,
- all those who are concerned with EU legislation,
- all those who wish to bring the standards and progress in other countries to bear on development of domestic legislation in the relevant areas,
- regulatory authorities and
- legal scholars, who either engage in comparative work or who frame research into their national system by reference to other legal systems.

The information in the database is not intended for the resolution of particular cases. Despite its significant scope, the simplified nature of the information means that it is not suitable for such a purpose. It does, however, give an international overview which is often undervalued and which is (in this area of law) difficult to obtain.

B) The Evaluation Scheme of the Round Table on Security Rights over Immovable Property

In 2007, the Round Table on Security Rights over Immovable Property began to develop and evaluation scheme for the law related to security over immovable property on the basis of the series of charts.

I. Goals of the Evaluation Scheme

This scheme enables the comparative evaluation of immovable security rights in the various legal systems.

The Round Table pursues two goals in the development of this Evaluation Scheme:

1. Insights for further development of the law

The charts present the “lifecycle” of immovable security rights:

- Types of Security over Immovable Property
- Publicity Requirements and Protection of Reliance
- Accessoriness
- Protection of Owners
- Enforcement
- Insolvency
- Utilization in Practice

In addition to comparing the content of the rules governing these questions, the project seeks to facilitate a qualitative comparison. This provides insights for scholarly analysis, case law and legislative development.

2. Capital Requirements for Institutional Lenders (LGD-Grading)

Banks are required to hold capital in relation to all credit that they give. However, the capital requirement is smaller in relation to assets which are supported by security over immovable property.

If statistics which reflect the result of enforcement of security over immovable property in a given country in the past are available, they can form the basis of credit risk assessment and capital requirements. A subsidiary of the vdp – the vdpExpertise GmbH – is responsible for calculating the relevant quota.

However, such numbers are not available for many countries. In such cases, the evaluation scheme allows assessment of the risk of default for a loan secured with immovable property in a particular jurisdiction.

vdpExpertise GmbH has developed a system for the calculation of the likelihood of default on the basis of the results from the Round Table.

II. Operation of the Evaluation Scheme

The perspective from which a particular problem is examined affect the assessment of the quality of rules regulating it. Thus, from the bank's point of view, the optimal rule might facilitate enforcement in the quickest and most efficient manner possible. On the other hand, a consumer borrower or the owner of a residential property would prefer rules which protected against enforcement which is too quick or even unjustified and gave him or her mechanisms by which loss of ownership can be prevented.

1. Four Perspectives for Evaluation

For this reason, each question has been allocated a weighting and each answer a score from four perspectives. A bar chart is generated reflecting the weighting and scoring for each perspective.

- **Bank: Enforcement** (Exercise of the security right)

This perspective examines the effect of a legal solution on the creditor's ability to obtain payment quickly through enforcement of the security right and to obtain the proceeds corresponding to its ranking.

- **Bank: Utilization in Practice** (Flexibility in the use of the security right over immovable property)

This perspective investigates and examines the extent to which an immovable security right can be deployed for various claims and situations.

This can offer significant savings of both time and money to both the bank and the owner and facilitate innovation in financing.

- **Owner** (Protection of the owner)

The perspective of the owner stands in stark contrast to the first perspective:

The owner does not have an interest in rapid enforcement. Rather his interest is in constant protection of his rights and in enforcement and insolvency procedures which give him the opportunity to assert them.

However, the experience of the Round Table's evaluation scheme shows that legal systems which have good scores for the perspective of the bank enforcement also often have good scores for the owner's perspective.

This may be because the Round Table only considers protection of genuine interests rather the possibility for obstruction. Furthermore, the owner also has an interest in the reliability of the land register and the availability of a flexible security right over immovable property.

- **Legislature** (Legislative perspective)

The legislature's perspective evaluates whether the legal position on a given issue strikes an appropriate balance between the interests of all parties.

The legislature cannot favour the interests of one party over another. Rather, it must consider the interests of lower-ranking and unsecured creditors in addition to those of the owner and the secured creditor.

2. Significance of the question and evaluation of the answers

The Round Table has determined a weighting for each question and a score for each question from each of the four perspectives mentioned above. The weighting and score are revised whenever questions or answers are altered.

Consideration of the content of questions and answers and their weighting and scoring are carried out separately.

The **weighting of a question** is expressed with a number from 0 to 5 (or 10 in exceptional cases). Although a question is weighted 0 from one perspective it may be very significant from another. Therefore, each question is weighted from each of the four perspectives.

For evaluation of the **quality of the answer** (and thus of the solution applied by a given legal system) a spectrum from 0 to 10 points is deployed. As with weighting of the questions, a score is attributed reflecting each of the four perspectives. This spectrum is divided evenly around its mathematical mid-point, a score of 5. Otherwise, aggregation of the scores would give a distorted impression of the significance of the question.

For each perspective, the weighting of each question is **multiplied** by the score for the answer given. The results for each question are added together to give an overall score for each country from each perspective. Thus four values are generated (which correspond to the four perspectives), which enables assessment of the quality of the rules in the country under examination

It is important that the overall **weighting of the groups of questions** on which the Round Table works is kept consistent. That prevents a particular group of questions being given too great a weighting because a large number of questions have been developed. This would be problematic because not every question which is of scholarly interest has the same practical significance for the quality of security rights over immovable property. Therefore, the following weighting is applied to the groups of questions:

- Types of Security over Immovable Property: 1%
- Publicity Requirements and Protection of Reliance: 25%
- Accessoriness: 12%
- Enforcement: 25%
- Insolvency: 25%
- Utilization in Practice: 12%

The results of the evaluation scheme are continually kept up to date by the IT system of vdpExpertise GmbH. Thus, when a member alters one of the answer, the consequential changes in evaluation are evident within a few minutes. The four totals for a legal system are finally brought together in a bar chart with the aggregation of all the points. On this chart, the total valuation for each legal system is entered.

Chapter II Publicity Requirements	Perspective Bank / Enforcement	Perspective Bank / Utilization in Practice	Perspective Owner	Perspective Legislature
Question II.1 Who keeps the land register?	2	2	3	3

Table: Example of the weighting of the importance of the question

Value	Perspective Bank / Enforcement	Perspective Bank / Utilization in Practice	Perspective Owner	Perspective Legislature
3. Courts	6	6	6	6
2. An independent public authority	6	6	6	6
1. A public authority subject to instructions	3	3	3	3

Table: Example of the weighting of the answer variants for II.1

C) vdp Legal Monitoring

Legal Monitoring takes the form of continual monitoring of legal developments affecting security rights over immovable property by the Round Table.

vdp Legal Monitoring enables banks to fulfil the supervisory authority's requirement to provide evidence of continuous monitoring the legal framework within which security rights over immovable property operate insofar as they affect the effectiveness or enforceability of those security rights.

According to Art. 194(1), (2) and 6(b) as well as Art. 208(1) and (2) of the Capital Requirements Regulation Banks, banks which wish to rely on security rights over immovable property to reduce capital requirements must establish their effectiveness and enforceability. Further, both the effectiveness and enforceability of the security must be secured by ongoing assessment. For this, the development of the legal framework within which the security rights operate must be monitored continually. Banks must be able to provide evidence that such monitoring is taking place.

The members of the Round Table on Security Rights Over Immovable Property provide six monthly reports on recent developments in the law affecting these rights. The vdp database defines the legal matters on which to report. This ensures that the vdp Database is kept up to date. The reports are validated by the Center of Legal Competence – Forschung & Consulting GmbH and provided to subscribers to vdpExpertise GmbH, a subsidiary of the vdpExpertise GmbH.

In order to satisfy the requirements of the Capital Requirements Regulation vdp Legal Monitoring examines changes to legislation and new case law in the relevant countries to consider whether they make it necessary to

- re-examine existing immovable property financing,
- take particular account of them with regard to future lending, and/or
- undertake further research.

This enables the lenders to prove that continuous monitoring of legal developments affecting security rights over immovable property is being undertaken. The reports can be subscribed to individually from vdpExpertise GmbH - <https://www.vdpexpertise.de/>.

Publications:

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A Luckow, “Das System zur Bewertung der Antworten und Länderinformationen beim Runden Tisch Grundpfandrechte” in T. Lassen, A. Luckow and M. Thurner (eds.): *Grundpfandrechte 2016 in Europa und darüber hinaus*, Berlin 2016 (vol. 54 vdp publication series) p. 41 – 48;

T. Lassen and A. Luckow, “Entwicklung des Runden Tisches Grundpfandrechte” in T. Lassen, A. Luckow and M. Thurner (eds.): *Grundpfandrechte 2016 in Europa und darüber hinaus*, Berlin 2016 (vol. 54 vdp publication series) p. 19 – 31 (24, 25);

A. Luckow, “Security rights over immovable property: An international comparison of legal provisions at a glance” 2016 Housing Finance International Autumn p. 35 - 45

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