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**PUBLIC-PRIVATE PARTNERSHIP AND PROVIDING OPEN ACCESS  
TO LAND INFORMATION**

Introductory paper for the in-depth discussion

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**Background**

1. In accordance with the decision of the Working Party on Land Administration at its first session to organize an exchange of views on land administration trends and policies at its next session (HBP/WP.7/1999/2, annex IV), the Bureau of the Working Party discussed this issue at its meeting in April 2001 and agreed that the discussion should deal with the following two topics: (a) public-private partnership; and (b) public access to land information.

I. PUBLIC-PRIVATE PARTNERSHIP – INSTITUTIONAL AND ECONOMIC ASPECTS

2. Land administration, including land registry services, as well as the real estate cadastre enable a healthy land market to develop and are therefore vital for the market economy

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infrastructure of a country. It became particularly evident in the process of developing new landownership structures and land markets in central and eastern Europe - a process that is continuing and that remains fraught with problems.

3. The official registers have to guarantee ownership and other rights in land and have to support security mechanisms for the transfer of real estate. They are the basis for sustainable land management and thus justify considerable investment of financial and human resources in land administration systems, in order to perform the practical work needed for the establishment, maintenance and use (e.g. transactions, environment and physical planning in urban or rural areas) of land-related databases.

4. Besides the traditional users of land information, such as governmental departments and local authorities, the private sector also provides important customer groups for land administration data, including surveyors, engineers, banks, lawyers, notaries or economists. This begs the question as to whether the private sector should also take a proactive role within the organizational set-up for developing land administration systems in a country. Because of the need for efficient and streamlined institutional arrangements for land administration, the involvement of the private sector in these arrangements is considered to be important for the ongoing work within the Working Party on Land Administration.

5. Data from land registers, such as information on ownership (freehold, leasehold), encumbrances and easements, or cadastral data showing, for instance, the unique identifier, the location or surface of a land parcel, or the results of soil valuation, have in many countries traditionally been collected and maintained by government authorities, as they have to take a leading role in establishing and maintaining the information infrastructure for State purposes and for creating the basis of a market economy. At the same time, establishing and maintaining a land administration system engenders a substantial workload. First registration of land within an appropriate time frame is of major concern to countries in transition, which are therefore considering involving the private sector. However, the involvement of the private sector raises questions about public access to data, data protection and pricing.

6. Tasks related to land administration within the organizational framework of a public-private partnership raise some legal, technical, organizational and economic problems. The liability and guarantee of the State for the contents of the land records should remain unaffected. In addition, the provision of an infrastructure for land administration, including the development of the legal framework, standards and information-exchange procedures, remain government responsibilities.

7. Land reform in central and eastern Europe often includes a transfer of government functions (e.g. land administration) to the private sector. Usually, private institutions involved in land administration are granted official licences by the State. This official status, together with the need for quality management and the legal implications of the work carried out by these private institutions, implies that much attention must be paid to the licensing regulations.

8. The private sector's services are mostly directed to the process of data gathering. Support from the private sector for data management is often regarded as a more critical issue. The initial step (data collection) could consist of contributions from the legal and administrative systems and/or the private sector (e.g. lawyers, real-estate agents, notaries). The next step (data management, including legally relevant decisions and registration of rights in land) could either also be carried out by State authorities (public offices), publicly owned private companies or, theoretically, by fully private bodies. Land administration is usually managed by public organizations in most ECE countries, the question remains how far the private sector should give support and be involved.

9. The range of tasks to be carried out by private companies can vary from a complete exclusion from participation in data collection (technical aspects) and making legally relevant decisions (legal aspects), to an active involvement in the maintenance and updating of the core databases, such as the land register or the real estate cadastre (aspects of privacy, data protection, commercial use of data, etc.). A particular problem for the economies in transition is that land administration systems are under constant pressure because of the lack of an organizational framework and of financing. In some cases, some data collection simply needs to be allocated to government-owned or private companies operating on sound business practices, as the State authorities lack the necessary resources and expertise. The governmental bodies merely add and integrate captured data in their core databases after the necessary scrutiny and quality checks.

10. Land records have a very high economic value for the State, and land administration is increasingly becoming a system with a two-way information flow. With State budgets getting tighter, the questions arise how to improve efficiency in land administration and how to eliminate and/or recover at least some of its costs. This could be achieved by making better use of the core land administration data within the State ministries and agencies (uniform data infrastructure, avoidance of redundant work). It could be done also by outsourcing some of the work to the private sector and by selling some data (which do not fall under data protection regulations or data privacy (geospatial basic data)) for business applications to interested customers. Those customers (e.g. municipalities, local authorities, utilities) often want to deal with operational companies at hand, so that these companies could provide planning services to them. Thus, the private companies involved in data capture for land records could possibly identify a chance for offering value-added services to a variety of customers. By such arrangements, mutual benefits for the State and the private sector could be generated. In general, tendering procedures are seen as an efficient way of awarding contracts. However, in countries in transition, newly established private entrepreneurs often have to compete against well established, large government-owned or recently privatized companies. The tradition and culture of professional associations and chambers are often still lacking.

11. There is a need to have common guidelines for the participation of the private sector in the traditionally statutory tasks of land registration and cadastre, to overcome obstacles in setting up the relevant institutional framework for the maintenance of land records in countries in transition and possibly help to reduce substantially backlogs in the first registration process. Moreover, it could help western countries to maintain their land records in a more customer-oriented and efficient way and to recover costs. In countries in transition, the

relationship between private and public sectors is a relatively new phenomenon that needs to be further explored and developed. Considering the different legal environments in the ECE member States and the importance of a well functioning land administration, the Working Party on Land Administration should pay due attention to the implementation of a model for public-private partnership in land administration.

12. Issues for discussion:

(a) To what extent should/could the private sector be involved in statutory tasks dealing with official, personal and confidential data, such as the establishment and maintenance of the land register and the real estate cadastre (monopoly of the State, data protection, privacy)?

(b) Who has to pay for the land services of private companies, the State or the customers? Should land services be subject to competition or should both State authorities and licensed private companies have to apply established fees and charges?

(c) How should such guidelines be structured and what should be the average level of fees for land administration (registration, cadastre, queries, etc.)?

(d) How can the involvement of the private sector in land registration generate mutual economic benefits for the State and the private sector? Can the private sector better facilitate and promote the use of geospatial data by customers such as local authorities or utilities (value-added reselling) or offer value-added services (e.g. integration of geospatial basic data with user-specific data)?

(e) Which major issues should be included in a licensing law and/or licensing regulations? Could a uniform approach towards regulations for public-private partnership in land registration matters serve as a basis for a streamlined and more efficient performance in land registration?

(f) How should educational and training issues (professional qualification of persons working for the public or private sector) be dealt with?

(g) Given the involvement of the private sector, how can quality management and data protection be guaranteed and organized by the State?

(h) Are land administration data a public good for commercial use (e.g. by private companies that signed a user agreement with the State) or must the State strictly protect its investment?

## II. PROVIDING OPEN ACCESS TO LAND INFORMATION WHILE PROTECTING PERSONAL PRIVACY

13. The effect of publicity on land registration has always been very important as a way to facilitate the operation of a land market. By making details on ownership, transactions and encumbrances open for inspection, transaction costs are reduced, while the level of security is increased. Without this publicity it is hard to see how property market could be efficient.

14. Open access to land information has been dealt with in different ways in different jurisdictions at different times. Even though records have been open for inspection, the possibilities for the public to actually access them have not always been good. Records might have been centralized in remote offices, certain restrictions might have been imposed, or records

have been hard to interpret. New methods for keeping the registers have changed the ways to access the information.

15. With the growth of the Internet, entirely new possibilities for accessing government records, including the land register, have been opened up. Demands for totally open access to all kinds of public information are very frequent today. In many countries there is also a strong political will to make public records easily accessible to citizens as a way of strengthening democracy and the public's trust in the administration.

16. At the same time, the issue of privacy (data protection) is regarded to be of great importance. By making information easily available, e.g. through the Internet, many fear that it becomes too easy to "map an individual". All the details about each person's property and circumstances become available to others, without knowing who looks at that and why.

17. There are various ways of preventing unintended negative consequences of the open information society. Privacy has become an issue, and restrictions are imposed on the processing of personal information. Many countries have signed the Convention on the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981 of the Council of Europe. The EU issued a directive on data protection (95/46/EC), which has now been incorporated into national legislation in all its member States.

18. The EU directive deals with all processing of personal data, including land information, and stipulates that personal information can be used only for specific purposes. However, what this actually means is not very clear. When implementing the directive the EU member States have interpreted it in different ways. Some countries have put in place a number of restrictions on how information can be used, whereas others allow almost all kinds of use. This means that open access to land records – via various search keys – through the Internet might be allowed in one country but not in a neighbouring country. Certain groups, e.g. government administration, journalists, researchers or professionals, might receive preferential treatment. At the same time the general public is not allowed to use the Internet to access the information, and is left to use traditional ways, such as the telephone (often during very restricted opening hours) or actually visiting a land registration office.

19. The two trends – open access through the Internet and protection of personal privacy – obviously come into conflict with each other. It is impossible to provide unrestricted access to all kinds of land information while at the same time providing total protection of the privacy of the individual.

20. Different interests have to be measured against each other, and reasonable compromises reached. The specific nature of land records, the fundamental purpose of registration really being to make the records public, is often neglected in the very general discussions on the need for privacy protection. The result might be that a general interest in protecting privacy could determine the position of the legislators.

21. This would of course limit the possibilities for land registration and land information organizations to provide services that meet the expectations of the general public. Another result is that the possibilities for financing operations through revenue from the use of information are reduced. This could create a bigger burden on the taxpayer or on those applying for registration. In the worst case, it could lead to a registration service that lacks the resources to provide swift and accurate registration.

22. It would be appropriate to study and compare the situation in different countries and to discuss possible approaches and solutions to the issue. How is access to land information provided? How is privacy protected? Should publicity always go before privacy, or vice versa?

23. The discussion of the Working Party will focus on the following questions:

- (a) Should land information be accessible to everyone?
- (b) Is there, or should there be, any difference between accessing such information at, for instance, a land registration office, and via the Internet?
- (c) What land information can be regarded to be the most sensitive from a privacy point of view?
- (d) Is there any specific legislation in place that deals with land information from a privacy perspective?
- (e) Is there, or should there be, any control to protect personal data from unauthorized or accidental alteration?
- (f) Will European Union policies force a change in legislation with regard to access to land information?