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TOWARDS EU PROPERTY LAW?
THE CASE OF TIME-SHARING CONTRACTS ON IMMOVABLE GOODS

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Abstract: negli ultimi decenni si è affermata, in particolare nelle aree a vocazione turistica, una modalità innovativa di utilizzo dei beni immobili, rappresentata dai contratti di multiproprietà. Sebbene il Trattato di Roma del 1957 non fosse espressamente finalizzato alla disciplina del diritto di proprietà – ambito tradizionalmente riservato alla competenza degli Stati membri – l'evoluzione successiva della legislazione dell'Unione europea evidenzia una progressiva apertura verso l'armonizzazione di alcuni profili del diritto reale. Il contributo analizza l'approccio gradualmente sviluppatosi in ambito europeo in materia di ravvicinamento dei regimi nazionali di proprietà, con particolare riferimento al principio del *numerus clausus*, cardine dei sistemi di *civil law*. Se da un lato tale principio assicura certezza giuridica, limitando i diritti reali a quelli espressamente previsti dalla legge, dall'altro una sua applicazione rigida può ostacolare il riconoscimento giuridico di nuove forme di godimento dei beni. In questo contesto, il lavoro esamina la disciplina giuridica dei contratti di multiproprietà aventi ad oggetto beni immobili, valutandone il ruolo quale possibile strumento di sviluppo progressivo di un diritto europeo della proprietà. A tal fine, vengono altresì analizzate le principali criticità connesse a tale modello contrattuale.

Keywords: diritto dell'Unione europea – diritto nazionale – principio del *numerus clausus* – contratti di multiproprietà immobiliare – turismo

Abstract: in recent decades, a novel modality for the use of immovable property in tourist areas has emerged in the form of time-sharing contracts. Although the Treaty of Rome of 1957 did not explicitly seek to regulate property law—a domain traditionally reserved to Member States—subsequent developments in EU legislation suggest a gradual opening toward the harmonization of certain aspects of property law. This paper examines the eventual European Union's evolving approach to the approximation of national property regimes, with particular emphasis on the principle of *numerus clausus*, a cornerstone of property law in continental legal systems. While the *numerus clausus* principle ensures legal certainty by limiting property rights to those expressly recognized by law, its rigid

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application may hinder the legal recognition of emerging forms of property use. Against this background, the paper investigates the legal framework governing time-sharing contracts involving immovable property, assessing their role as a potential vehicle for the incremental development of a common European property law. In doing so, it also addresses key challenges associated with it.

Keywords: EU law – national law – principle of *numerus clausus* – time-sharing contracts involving immovable property – tourism

Introduction

Since 1957, when Italy, France, Germany and Low Countries signed the Treaty establishing European Community and the Treaty and the European Atomic Energy Community, the EU primary law has passed several modifications.

Although Art. 345 Treaty on the Functioning of the European Union (TFEU) states *the Treaties shall in no way prejudice the rules in Member States governing the system of property ownership*, it seems that the four fundamental freedoms are also applied in the case of immovable goods[1].

Based on this legal background, EU property law can be found in different regulations and directives[2]. While the majority of them focus on private international law, some of these instruments contain substantive property rules. The typical example can be taken by art. 31 Reg. 650/2012 (EU Succession Regulation) which demands «adaptation» if a Member State shall recognize a foreign right *in rem*, or Art. 32 Reg. 650/2012, which establishes that in the case of *commorientes*, none of the deceased persons shall have any rights to the succession of the other or others[3].

This paper examines time-sharing contracts on immovable property as a potential manifestation of a common European property law framework. It explores whether the development of such contracts represents a missed opportunity for the European Union to advance integration in the field of property law, or whether it instead reflects an effort by the EU to promote legislative harmonization in this domain.

In 1994, in order to underline the importance of tourism, the EU (at that time, the European Community, EC) published Directive 94/47/EC. In 2009, the EC abrogated Dir. 94/47/EC since the modern economy saw the need to introduce new holiday products that aim to regulate the right to use immovable properties on a timeshare basis (Premise

[1] For clarity purposes, according to the EU Court of Justice (Joined Cases C-105/12, C-106/12, C-107/12), Art. 345 TFEU does not prevent a Member State from requiring public ownership of certain companies (e.g., electricity grids). However, Article 345 TFEU does not exempt such national rules from scrutiny under the fundamental freedoms of the Treaty, especially the free movement of capital.
[2] S. van Erp, B. Akkermans, 2012, 1017 ff; S. van Erp, B. Akkermans, 2010, 173 ff.
[3] D. Veshi et al., 2024, 135-150; D. Veshi et al., 2023, 141-146.

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1 Dir. 2008/122/EC). In addition, the new Directive established further mechanisms for consumer protection. While Sect. II examines the principle of *numerus clausus* in property law, Sect. III examines some examples when its implementation in different EU Member States.

So, according to the legal scholarship[4], there is, at least regarding continental Europe[5], a clear distinction between property law and law of obligations. While property law limits parties' autonomy by establishing the so-called principle of *numerus clausus*[6], the law of obligations underlines the parties' autonomy[7], also known as the principle of *libertas contractuum*.

In other words, the paper examines the application of the principle of *numerus clausus* in continental Europe. It highlights the contrast between *libertas contractuum* – which allows parties to freely define their rights and obligations – and *numerus clausus*, a principle of property law under which the legislator predetermines the categories of rights and duties, thereby restricting the parties' ability to shape them according to their needs[8]. By introducing the case of South Africa, the section also briefly illustrates a more flexible alternative to the rigid application of *numerus clausus*.

In conclusions, the paper, answers the research question by summarizing the findings and uncovering the importance of time-sharing contracts as important step towards EU property law. Although does not it uncovers that there is no unified EU property law, it argues that under certain conditions, in the case of time-sharing contracts in immovable goods, there is a high similarity between co-ownership, as part of property law, and time-sharing contracts.

The numerus clausus *in property law: A contrary argument to EU property law?*

This section examines one of the primary arguments that hinders the harmonization of property law at the EU level. The *numerus clausus* in property law, or the closed catalogue of property rights, is an essential principle of national property laws of continental Europe[9]. Examples of *numerus clausus* in property law at national levels have been established in France, Germany, the Netherlands[10], Poland[11], and Italy[12].

[4] T.W. Merrill, H.E. Smith, 2000, 1–70; Y.-c. Chang, H.E. Smith, 2014, 2275 ff.; A. Di Robilant, 2014, 367-416; P. Sparkes, 2012; E. Ramaekers, 2015, 23(3) ff.
[5] M. Ossowska, 2020, 211-226.
[6] B. Akkermans, 2008, 6 et seq.; Id., 2017, 100-120; S. van Erp, 2003.
[7] B. Akkermans, 2017, 100-120; A. Natucci, 2011, 319; F. Mezzanotte, 2022, 2734-2765; E. Calzolaio, 206, 1080-1095.
[8] C. von Bar, U. Drobnig, 2009; C. S. Rupp, 2017, 6(1), 87 ff.
[9] E. Vargas Weil, 2024, 330-359.
[10] B. Akkermans, 2017, 100-120; J. Ghanavati, P. Shirkhani, 2017, 125-150.
[11] B. Akkermans, 2017, 100-120.
[12] A. Natucci, 2011, 319.

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The main characteristic of property law is the application of the principle of *erga omnes*. Thus, these rights are enforceable against everyone, also third parties that were not part of the contract. Third parties have a passive role. They just have to be informed about the fact of ownership of the object. While for movable goods, the possessor is presumed to be the owner[13], for immovable goods, the system of transcription has been established, which might have constitutive or declarative effects. While in the case of constitutive, registration is an element for the validity of legal transaction, in the case of declarative, registration is fundamental for third parties.

Due to the application of the principle of *erga omnes,* a property right in continental Europe is only a right that is explicitly recognized by law[14]. Thus, in property law, only the lawmakers can decide which rights have the qualities to become a right enforceable against everyone, where the principle of *erga omnes* is applied. This has created the principle of *numerus clausus*. While parties' autonomy is limited in property law, the list of *numerus clausus* is not definitive since the legislator can expand it.

It is believed that the origin of *numerus clausus* comes from Roman law, even before the traditional Roman law[15]. With the expansion of the Roman Empire, this principle was extended to all continental Europe. However, during the feudal system, the unitary concept of ownership was divided[16]. Without going into the details of ownership during the feudal system, it can be generally simplified that there was a distinction between the owner, typically the king, and the possessor or tenant, referred to as vassals. During the Revolution, the unitary concept of ownership reappeared. It seemed that the *numerus clausus* was also a reaction to the previous feudal system, which citizens desired to prevent[17]. On the contrary, in England, where the Revolution did not abolish the feudal system, land law continued to be developed based on feudalism: while all the lands belonged to the Crown, the tenant was entailed to the estate it[18]. This is the reason why the *numerus clausus* in property law is applicable only in continental Europe and not in England.

While continental Europe is – in general[19] – based on *numerus clausus,* South Africa[20] is typical considered as an example where this principle is not applicable. There, individuals can establish new property rights, if the land registry believes that this new property right passes the so-called «subtraction from the dominium test», which is based on the form of dominium of the right as well as binding also their successors in title[21].

[13] S. van Erp, 2003.
[14] E. Drozd, 263-264.
[15] B. Akkermans, 2017, 100-120; S. van Erp, 2019, 1032; J. Smits, 2002, 245; H. Kötz, 1963.
[16] F. Parisi, 2005, 32; C. von Bar, U. Drobnig, 2002, B. Lurger, 2006, 167 ff.
[17] F. Parisi, 2005, 32.
[18] T. W. Merrill, H. E. Smith, 2000; H. Hansmann, R. Kraakman, 2002.
[19] For clarity purposes, the literature suggests that in Spain, the concept of *numerus clausus* is not strictly applicable. D. Hanoch, 2021; B. Akkermans, 2017, 100-120.
[20] B. Akkermans, 2017, 102; C. von Bar, 2014, 447.
[21] B. Akkermans, 2017, 100-120.

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Key benefits of the *numerus clausus* include, among others, avoiding the creation of unnecessary new rights, ensuring transparency for third parties affected by existing rights, and preventing excessive layering of obligations through successive encumbrances. Limiting fragmentation of ownership and relying on a predefined set of statutory rights further promotes legal certainty, predictability, and stability in property relations.

In addition, another important critical advantage of *numerus clausus* relates to economic reasons: an object will circulate faster rather than a good where third persons have *iure in re aliena* over it. In addition, although parties have the right to access the registration of property rights, new property rights will increase information costs about the content of a given new property right that is not listed in a law[22]. Furthermore, foreign buyers will quickly become familiar with the content of a property right when this type of property right is codified in a catalogue of rights.

On the contrary, if *numerus clausus* is applied too narrowly, it raises the risk of to slow the evolution of property law. In the era of globalization, traditional and rigid legal institutions of the past may pose a threat to the economy[23]. As a result, when the tension between the (fast) circulation of goods, especially in cross-border, and *numerus clausus* in property law becomes too high, it would mean that the lawmaker would intervene. For instance, in the case of succession law, or in particular in the case of *legatum per vindicationem*[24]*,* which is recognized only by some countries[25] rather than all EU Member States, national lawmakers – such as in the Netherlands[26] or Poland[27] – have included new rights *in rem* that were recognized only in other EU countries, such as Germany[28]. Otherwise, if the lawmaker remains passive, the judicial system will intervene by resolving it case by case. For instance, in the case of Trust[29], the Italian case-law has

[22] H. Hansmann, R. Kraakman, 2002, 39-40.
[23] B. Akkermans, 2017, 100-120.
[24] Since Roman times, testators could leave gifts to third parties without naming them as heirs. The classic example is the *legatum* (bequest), the earliest form of limited gift, which was only possible through a *testamentum*, not intestate succession. Testators could choose between *legatum per vindicationem*, granting the legatee immediate ownership and a real action (*rei vindicatio*), and *legatum per damnationem*, which provided only a personal claim against the heir. The key difference lay in the remedy: *in rem* for the former, *in personam* for the latter, making the first significantly stronger.
[25] A. Makowiec, 2024, 244-262.
[26] Art. 27a of the Kadasterwet, 2005.
[27]Act of 18 March 2011 amending Art. 1034 of the Polish Civil Code.
[28] J.P. Schmidt, 2013, 1-30.
[29] For clarity, the trust is a legal concept rooted in common law and shaped by the principle of equity. It is governed internationally by the 1985 Hague Convention on the Law Applicable to Trusts and their Recognition. According to Article 2, a trust may be established *inter vivos* or *mortis causa*, and arises when assets are transferred to a trustee to manage for a beneficiary or a specific purpose over a defined period. The trust involves three key roles: the settlor (who transfers the property), the trustee (who administers the assets according to the settlor's instructions and must eventually transfer them), and the beneficiary (who ultimately receives the assets); D. Muritano, 2007, 323.

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recognized the trust created by national or foreign law, unless it violates national imperative norms[30].

In order to underline the importance of a flexible property law, the legal scholarship has found two possible solutions regarding the future non-application of the *numerus clausus.* The distinction between property law and contract law should be blurry and less pronounced[31]. Additionally, some authors consider the possibility of introducing new property rights that parties can enforce against third parties[32]. The second solution establishes a *numerus quasi-clausus*, which grants courts the authority to create new property rights in exceptional situations[33].

To sum up, this Section studied the principle of *numerus clausus,* as the main principle that does not allow – at least in the majority countries of the continental Europe – the introduction of new forms of right *in rem*. Although this principle includes several advantages, globalization or the free circulation with the EU has led to the creation of new legal institutions by national lawmakers or by recognizing foreign legal institutions, if they do not contracts with national normative norms.

Time Sharing Contracts as a Potential Form of EU Property Law

In recent decades, a new way to utilize vacation properties has become quite prevalent in many countries of Europe, known as «time-sharing». In a non-technical language, it means that an individual or a group of people has the right to use an immovable good for one or a few weeks a year, usually during the same period every each year. These contracts are usually long-term and can last for many years, sometimes even several decades.

Initially, this type of model was promoted as a more economical solution compared to buying a permanent vacation property. It offered people the opportunity to enjoy a favorite place every year, without having to deal with the high costs of buying and maintaining a complete property[34]. However, over time and with the increase in the use of this model, major difficulties also emerged. Contracts were often complicated, there was a lack of transparency, and many consumers didn't have a clear understanding of the rights they actually gained through these agreements[35].

In response to these issues, the EU took important steps to establish a protective framework for consumers. The first major step was taken with the adoption of Directive 94/47/EC, which focused on establishing some minimum rules for time-sharing contracts,

[30] Italian Cassation Court, Civil Section I, 9 May 2014, no. 10105.
[31] J.T. Füller, 2006; B. Akkermans, 2008.
[32] J. Smits, 2002.
[33] F. Eichel, 2014, 5, 807 ff, S. van Erp, 2003; S. van Erp, 2006, 14(3), 327 ff.
[34] M. Korcok, 1980, 932.
[35] L. A. Weixelman, 1981, 302; A. Micovic, 2012, 132.

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such as the minimum duration of the contract (at least three years) and the right of annual use for a certain period[36]. Considering the increased use of this product as well as the absence of consumer protection[37], the EU adopted Directive 2008/122/EC, which entered into force in 2009 and marked a significant improvement of the regulatory framework for time-sharing contracts[38].

Directive 2008/122/EC was not limited only to regulating classic contracts for the temporary use of an immovable property but also extended its protection to other similar products such as long-term tourist clubs, holiday exchange agreements, or products of a flexible time nature (with a points or credit system). The essence of this directive was to set a higher standard of transparency and guarantee certain fundamental rights for the consumer[39].

Although the *acquis communautaire* has made several progresses on consumer protection, within the EU, national lawmakers have used various definitions. While some have treated it as a right *in rem*, others have considered it as part of law of obligations.[40] Consequently, if the model is part of property law, consumer have higher protection. In other words, the legal framework of time-sharing contracts faces a profound challenge to civil law dogmatics. It operates in an intermediate area where the contractual form masks a function that by nature is very close to rights *in rem*.

So, different national lawmakers can take dissimilar approaches. For instance, in Italy, following the transposition of Directive 2008/122/EC, the legal framework for time-sharing has become much clearer and more consumer friendly. In some cases, especially when the contract is in notarial form and is registered in the register for immovable goods, it can create a right *in rem* that can be registered, known as the right to temporary enjoy the use of immovable goods (*the diritto reale di godimento a tempo parziale su cosa immobile*)[41].

In a decision of the Tribunal of Bologna (Italy), time-sharing contract on an immovable good corresponds to a «right *in rem* of various owners of a property in which the cadastral thousandths of the property are specified, the period of rotational enjoyment of no less than a week, in which the details of the regulation of communion and the temporal portions with the relative indications regarding the modalities of the law[42]» [author's translation]. In this case, the consumer acquires a right similar to ownership for a specific period and it is protected against third parties. But in most

[36] Directive 94/47/EC, 1994, L280/83.
[37] Y. Mupangavanhu, L.F. van Huyssteen, 2017, 657-678.
[38] Directive 2008/122/EC, 2009.
[39] European Commission, 2007.
[40] T. Josipovic, 2003, 671.
[41] Decreto Legislativo 23 maggio 2011, n. 79, 2011. «situazione corrispondente a un diritto reale di comproprietà di un bene immobile in cui siano specificati i millesimi catastali dell'immobile, il periodo di godimento turnario non inferiore alla settimana, nonché disciplinati e chiaramente indicati gli estremi del regolamento di comunione e le porzioni temporali con le relative modalità del diritto».
[42] Trib. Bologna, 13 maggio 2011, n. 1315.

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practical cases, contracts continue to be part of law of obligations, where the right of use stems only from the contract and not from any real registration.

For clarity purposes, it shall be underlined that according to the majority of the Italian case-law[43], following the decision of the Court of Cassation (Decision no. 6352 of 16 March 2010), agree that although certain analogies between time-sharing contracts and co-ownership can be identified – particularly with regard to common parts and shared services – it is nevertheless inaccurate to construe time-sharing as an autonomous right *in rem* created by private autonomy, since this would conflict with the principle of *numerus clausus* of property law under Italian law. Furthermore, time-sharing contract cannot be considered as a form of temporary ownership, given that turn-based enjoyment does not amount to ownership limited in time, but rather to a cyclical form of enjoyment, structured on a periodic basis.

Still, Italian scholarship remains divided: some authors instead classify time-sharing among atypical right *in rem*[44], or a form of temporary or cyclical ownership[45], or as an atypical form of condominium, in which enjoyment is realized through rotation among several subjects[46], and others Italian legal scholars[47] situates time-sharing contracts on immovable goods within the framework of ordinary co-ownership, while nevertheless acknowledging certain structural and functional peculiarities.

On the other hand, Romanian legislation has taken a more restrictive approach[48]. There, time-sharing contract is considered only a contractual relationship, with no effect beyond the parties to the contract. Romanian law deliberately avoids any mixing with co-ownership or rent, and prohibits the registration of these contracts in the register of immovable goods. This creates doctrinal clarity, but exposes the consumer to fewer guarantees, especially in case of change of ownership or bankruptcy of the operator.

These two opposite models show the tension between the need for economic flexibility within law of obligations and legal certainty, part of the property law. While Italy tries to create a balance by recognizing, in some cases, the real nature of time-sharing contract; Romania maintains a firmer contractual stance, maintaining traditional dogmatics.

The cultivation of time-sharing contracts as part of the law of obligations, rather than as rights *in rem*, has direct consequences for consumers in some sensitive legal circumstances, especially in matters related to inheritance, operator bankruptcy and relations with third parties.

[43] G. Genchi, 2011, 3, 639 ff.
[44] G. Caselli, 1999; E. Quadri, 1984, V, 226 ff.
[45] A. C. Pelosi, 1983, II, 463-466.
[46] G. Benacchio, 1982.
[47] D. Pastore, A. Re, 2000, I, 851 ff; F. Santoro Passarelli, 1984, 19 ff.
[48] COM (2005) 650 final, *Proposal for a Regulation of the European Parliament and the Council on the Law Applicable to Contractual Obligations (Rome I)*, 2005, 7.

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First, in the absence of a registration in a public real estate registry, the consumer does not benefit from the traditional protection that property rights offer. If the property related to the time-sharing contract is sold to a third party, or passes to another entity through bankruptcy, the consumer may lose the right of use acquired through the contract, because it has no legal effect against the new entity. This uncertainty runs counter to the legitimate expectation of the consumer who believes they have gained a «temporary ownership»[49].

Second, the issue of inheritance raises new problems. In jurisdictions where time-sharing is not a registrable right, courts are not unanimous: some decisions treat the right of use as a financial obligation that is inherited, while others consider it as a right personally linked to the consumer, which does not automatically pass to the heirs[50]. This lack of unification creates confusion for consumers' families, who often face requests for maintenance payments from operators.

Third, the legal protection in case of bankruptcy of the operator remains uncertain. If the right is not registered and does not have a special right *in rem* status, it disappears with the cessation of the legal existence of the company that issued it. In this case, the consumer is left without any means to request a return on investment or continuation of the use of the property he has contracted.

In addition, considering the lack of a clear supranational definition, companies use new forms of contracts to avoid implementing the EU directive. They create contractual structures that don't look like classic time-sharing contracts, but that in practice work the same. The most common are points or credit systems, where the consumer is not entitled to a specific date or place, but can book on the network of properties offered by the company. Although they seem more flexible, these systems carry the same limitations as traditional contracts[51]: obligations for annual payments, difficulty existing the agreement, and the lack of an open market. Because these contracts are not officially classified as time-sharing, they might not, at first glance, be protected by EU law, leaving the consumer vulnerable even if the actual content of the agreement is identical to that regulated by the directives.

Another problem directly related to legal uncertainty and lack of effective oversight is the very length of time-sharing contracts. In many cases, these contracts are not simple or short-term, but are concluded for very long periods, sometimes 20 or even 30 years[52]. At first glance, this may seem like an advantage for the consumer that will provide a vacation for a long time at a lower cost. But in practice, after a few years, this agreement often turns into a burden[53]. Indeed, over time, the consumer may face personal or economic changes, lower income, change of priorities, or lifestyle change, but the

[49] E. Gjonçaj, 2021, 85-99.
[50] E. Hoxha, 2020, 63-78.
[51] F. Cafaggi, A. Nicita, 2018, 397-421.
[52] European Commission, 2007; J. Stuyck, E. Terryn, T. Van Dyck, 2006, 107-152.
[53] G. Howells, S. Weatherill, 2017; European Union Committee, 2007, 20; European Commission, 2007.

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contract remains unchanged. Often, payment obligations continue regardless of whether the consumer still has an interest in taking the vacation or not. In some cases, the contracts also include clauses that automatically renew the agreement or that prohibit its termination without the consent of the operator[54].

Moreover, it should be underlined that companies that sell these contracts have no interest in creating a «second» market (meaning the market where the consumer can sell their time-sharing contracts to other consumers) because these will increase competition by decreasing the prices[55]. Therefore, companies selling time-sharing contracts often complicate the transfer process by imposing additional fees, unclear conditions, or tight deadlines. In some cases, they require the new buyer to meet unreasonable criteria, which makes the transition almost impossible[56]. As a result, many consumers face permanent liabilities and are unable to recoup even partially the investment they have made. In some cases, these obligations are also inherited from descendants, turning contracts into a family burden that continues beyond their will[57].

Precisely for this reason, many experts and consumer protection organizations have proposed that the law provide for the obligation to create a regulated and transparent market for these contracts[58]. Such a system would enable consumers who are no longer interested in enjoying anymore time-sharing contracts in offering for sale or transfer their right, ensuring that this process was done with clear rules and on fair terms. Without such a mechanism, many people end up stuck in deals they no longer want and that only bring them costs and stress, even for future generations.

A third weakness related to time-sharing contracts is the lack of an administrative body to control the implementation of contracts. Although the directive requires Member States to supervise the implementation of the law[59], in practice this burden is left to the consumer himself[60]. Thus, consumers should understand the violation, know how to act, and have financial resources to initiate legal proceedings, something most people cannot easily manage.

In addition to the lack of a common supervisory mechanism, another major problem is that the EU directive does not set out mandatory ways for Member States to control its implementation. It leaves it up to the states themselves to decide how to implement and control it in practice[61]. This brings a big difference between countries. For example, in Germany and the Netherlands, where the administration works well and the laws are

[54] European Union Committee, 2007, 20.
[55] BEUC, 2016.
[56] European Parliament, 2017.
[57] G. Howells, C. Twigg-Flesner, Th. Wilhelmsson, 2017.
[58] J. Niemi-Kiesiläinen, 2021; K.P. Purnhagen, 2020.
[59] Directive 2008/122/EC, 2009, art. 10(1).
[60] Article 10(1) of Directive 2008/122/EC, as it only requires Member States to ensure that «adequate and effective means» exist — typically meaning that consumers must initiate action themselves through courts or other channels. No proactive oversight mechanism is mandated.
[61]Directive 2008/122/EC, 2009, art. 10(1)-(2).

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meticulously enforced, the authorities are stricter against companies that offer time-sharing[62]. But in other countries, especially in some parts of Eastern Europe or the Balkans, control is very weak, and this gives room for dishonest operators to abuse[63].

Another problem is the lack of a common European system where time-sharing contracts are registered, the operators who offer them, as well as reported cases of violations or fraud. Without such a registry, the consumer has no means of verifying whether a company is trustworthy or whether it has had problems before. This facilitates manipulation and enables dishonest operators to hide behind new identities, avoiding any responsibility[64].

For this reason, some researchers have suggested the creation of a joint authority at the EU level, which would have competence to oversee this sector[65]. This institution can establish a common register of time-sharing companies, monitor the implementation of the rules, and cooperate with national authorities to ensure equal protection for all EU citizens.

To sum up, this Section briefly examined some of the main problems of time-sharing contracts on immovable goods by focusing on the absence of unified supranational legal definition and all its consequences. In addition, it focused on the problems related to the lasting contract and to the absence of national or supranational authority to control its implementation.

Conclusions

This contribution examined the case of time-sharing contracts on immovable goods by arguing if this might be considered as a new type of right *in rem* within the EU property law system. In other words, it questioned if the EU might also have competence on property by challenging the principle of *numerus clausus,* which underlines that in the case of right *in rem* there is a closed catalogue of property rights.

On the one hand, the European Union promotes the free movement of goods, services, capital, and people as fundamental principles of the internal market. In the context of time-sharing contracts involving immovable property, all four freedoms appear to be engaged. These contracts often involve the cross-border use of real estate or tourism-related services by non-residents, foreign investments in immovable property or in companies managing such assets, and the right to enjoy a holiday home in another Member State. On the other, Art. 345 TFEU states *the Treaties shall in no way prejudice the rules in Member States governing the system of property ownership.* While the 1957

[62] European Parliament, 2017; H.-W. Micklitz, 2004, 605-623.
[63] European Commission, 2019.
[64] L. Pop, L.M. Harosa, 2006.
[65] H.-W. Micklitz, 2004, 605-623.

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EEC Treaty did not intend to regulate substantive property law, the current primary and secondary *acquis communautaire* appear to be more receptive to developments in this area.

The primary obstacle to the harmonization of property law at the EU level lies in the application of the principle of *numerus clausus*. Under this principle, rights *in rem* operate *erga omnes*, meaning they are enforceable against third parties who were not party to the original contractual agreement. In the continental legal tradition, this necessitates that property rights be limited to those expressly recognized by law, thereby ensuring legal certainty and predictability. However, such a restrictive interpretation of the *numerus clausus* principle may hinder the dynamic development and modernization of property law across Member States.

The EU legislation on time-sharing contracts involving immovable goods appears to engage with the broader debate on the codification of a EU property law, yet without taking a definitive stance. While EU consumer protection has increased, the absence of a clear definition has created three main problems. First, the absence of definition as part of property law or law of obligations creates uncertainty for the consumer. So, it is unclear if consumer have the right to register time-sharing contracts on immovable goods or the right to inherit it. In addition, the absence of a clear and unified EU definition of time-sharing contracts has stimulated operators, based on the principle of *libertas contractuum*, to construct complex legal models that avoid regulatory oversight, leaving consumers inadequately protected in different EU Member States.

Second, time-sharing contracts on immovable property are lasting contracts. However, there is a lack of a functional market where consumers can sell or pass on to others the right they have bought. Although on paper many contracts allow transfers, in practice this seems almost impossible. Very few people are interested in buying a right of use that is complicated, expensive, and with long-term obligations. This means that the consumer remains «trapped» in a relationship from which he cannot easily exit, even when he no longer uses the property and also when economic conditions have changed.

Third, there is an absence of national or supranational control through a registered list of operators dealing with time-sharing contracts on immovable property. The lack of an EU register of licensed and certified operators creates a huge gap in market transparency. A potential consumer who wants to sign a time-sharing contract has no simple and reliable way to check whether the provider company has been involved in legal disputes, whether it has been penalized for fraudulent practices or whether it meets basic standards of transparency and contractual obligations. This lack of information puts the consumer in a weak position from the first moment of interaction with the offer.

Time-sharing contracts on immovable goods represent a new form of legal relationship, born from economic practice, but which often finds no place within the narrow confines of civil law dogmatics. The traditional legal system clearly divides relationships into two categories: right *in rem*, registrable and protected rights regarding

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third parties; and contractual relationships, which are valid only between the contracting parties. Time-sharing seems to share both these branches of law. Thus, although it seems that time-sharing contracts involving immovable property involves land law, which does not move across international borders, the application of the four freedoms also impacts on it. Although through not a definitive stance, it seems that the EU legislation on time-sharing contracts on immovable goods represents a step towards EU property law. Indeed, the EU has chosen the adoption of a directive rather than a regulation.

In conclusion, despite the reliance on a directive and the numerous divergences and challenges arising from its implementation across Member States, the regulation of time-sharing contracts on immovable goods should be considered as a representation of a significant step toward the harmonization of property law at the supranational level.

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