

DI5: Depository database of the philosophical background and understanding of property in the participating countries.

WG1: Philosophical background, understanding of property

Review the existing definitions and approaches => database of the philosophical background and understanding of property in the participating countries => database of good examples and best practices => research gaps and needs

[1] Existing definitions and approaches

definition	approaches	references	countries
Property rights as a fundamental human right	Full and absolute rights	<p>Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms; (1952) European Convention on Human Rights, art. 1 https://www.echr.coe.int/documents/convention_eng.pdf</p> <p>Country constitutions</p> <p>Gosewinkel, D. (2014) "Introduction. The History and Functions of Property", <i>Revue d'histoire moderne & contemporaine</i>, vol. 61-1, no. 1, 2014, pp. 7-25. https://doi.org/10.3917/rhmc.611.0007</p> <p>The Roman Law (Epsein, R., 2022, Property Rights: Long and Skinny, in Falque, <i>Property rights for the environnement</i>, Bruylant, Bruxelles</p>	Most european countries except UK and Malte

The possession rights tradition	ownership is a relative concept, which gives a presumption of right to those who occupy and use the land	Panesar, S. (2003) The importance of possession in the common law tradition. <i>Coventry Law Journal</i> , volume 8 (1): 1-13.	In the UK “common Law” tradition, and in some overseas territory (for instance in France)
The freehold estates regime	The rights are shared between the land owner and the freeholder or the leaseholder and guarantee by the common Law	Kevin Gray, 2011, <i>Land Law</i> , Oxford University Press, Oxford, GB	UK, Malta
The collective property rights (State – ownership)	The ownership belongs to the state and the use is allocated among private people	Demsetz H. (2000) Toward a Theory of Property Rights, In: Gopalakrishnan, C. (eds) <i>Classic Papers in Natural Resource Economics</i> . Palgrave Macmillan, London.	Soviet regim, does not apply anymore after 1990 in EU countries

[2] Understanding of property in the participating countries

countries	philosophical tradition (in 2020)	historical philosophical tradition	legal tradition	key revisions	protection for private property rights
Austria	property is inviolable		the cadastral system		legislation and jurisdiction (no case-law system)
Belgium	liberalism with a great respect for property right	1797: sales of national assets structured the land ownership for the benefit of capitalism and large families/ - a key historical cause (integration of the industrial business community with land property)	the jurisprudence and courts, inspired by the fundamental human rights and freedoms	1962: Planning Act, taxation is integrated into the Flemish legislation in 2000 and in the Walloon legislation in 2017	jurisprudence

Croatia		until 1991: social ownership rules and private ownership for social legal entities or social enterprises	cadastre registre	From 1990 to 1997 (the Ownership and Other Real Rights Act) social ownership disappeared expect from socio political organization, socially owned enterprises and legal entities subject to Act on Conversion of Socially Owned Enterprises	constitution (art 48) and other regulations
Czechia	since 1989 led by the market forces and market actors: laissez-faire approach and libertarian philosophy.	In 1948-1989 (during state socialism) property rights regime has been almost fully driven and controlled by state (Marx-Leninist philosophy)		In 2012 a new Civil Code was approved (in force since 2014), including changes in property rights, a new building code planned to be passed in 2021 may change some rules	The law, as defined in constitution
Estonia	Indispensable foundation for market-led and economic sound development	an history of private right before the societ regime, and a will to reestablish this system with the restoration to former owners of land "unlawfully expropriated" during the Soviet regime, and the treatment of land as a valuable and scarce economic resource	land consolidation act (1926) formed the basis for the organization of private land and regulated the exchange of state and private land	1940 (annexion od Estonia by the Soviet) and 1991 (independence)	the land board is responsible for the cadastre and the courts maintain the title book (the land register)
Finland	liberalism with the possibility for the State to determine the public interest		German-style based cadastral system	separate reliction areas have been abolished	the constitution of Finland
France	liberalism	the Napoleonic code(1807)	fiscal cadaster	2015- community Land trust are put in the law, but still experimental	constitution and court
Germany (including ex-	liberalism with a role of State as a protector of individual rights	Roman-German system	the Basic Law for the Federal Republic of Germany		the German constitution



RFA until 1990)					
Greece	liberalism		civil law, constitution, cadaster under development	2011: right of usufruct for state-owned real property	constitution and civil code
Italia	liberal derive from Roman tradition	the Napoleonic Code, with a period of social property during the fascism regime	The Land Registry and the cadastral register for tax purpose, as written in the code civil revised in 1943 after the end of the fascist regime		the Property Registry Office
Latvia	market-led and state-controlled to limit property rights for aliens (agriculture land)		Cadaster	Agrarian reform in Latvia in 1920–1937, Nationalization of the USSR in 1940-1941, Denationalization in Latvia in 1991	Package of laws : the civil law, law on the entering of immovable property in land registers, state and municipal land property,...
Luxembourg	based on Roman law and liberalism		civil law derived from Roman Law	law 22/10/2008 introduced a tax for unoccupied or vacant development land	constitution and civil code deriving from it
Malta	Inspired by Greek and Roman humanism, fostered by the Judaic Christian message and invigorated by the right philosophy of enlightenment, which teaches that fundamental human rights and freedoms are not derived from the political and legal order but are rather antecedent to it		The 1964 Constitution of Malta in Chapter 4 contains an extensive and judicially enforceable Bill of Rights largely based on the European Convention of Human Rights	act X of 2009 and Act XXVIII of 2019: changes to rent law towards free market laws, transfer of government owned land, changes to the public domain legislation	the law, jurisprudence,..
Moldova	market-led and regulated by the State		cadaster	2007: creation and distinction between public and private property	the Constitution, law of ownership and real property cadaster



North Macedonia	after 1990, conception of individual rights		cadaster	no	Constitution and jurisprudence
Norway	liberal with a strong public control: full ownership as long as it does not oppose land use plan (by law)		1814 constitution 1964: compulsory comprehensive planning	1985: the Planning and building law became national wide /strong public support to home ownership (price regulation, tax advantages)	the mirror principle: Owners are free to utilize their property as they wish, as long as the use is within compliance with the land-use plan.
Poland	liberalism	The Communist Manifesto (1848), which assumed 'abolition of property in land and application of all rents of land to public purposes' turns (after 1990) to the holy property rights paradigm "a key to democracy and capitalism"	Polish constitution of 1997	1994 : Act on Spatial Development - 2003: The Land Use Planning and Development Act	the constitution art 64
Portugal	liberal derive from Roman tradition	the Napoleonic code(1807)	Civil code - title II (1967)	1974 emphyteusis was extinguished, 1991: clarification of the regime of lease building, 1994: liability of the builder	the universal declaration of human rights
Serbia	market-led and controlled by the State	since 2006 : in the constitution	cadaster	2006: redefinition of private property rights - privatisation - 2011: restitution	constitution and the law on Basis of Ownership and property relations
Slovakia	natural development without professional support		the fundamental human rights and freedoms enshrined in the Constitution of the Slovak Republic	1995: cadastre act (an effort to adapt the cadastre to a new state order) in order to record of ownership (no guarantee)	The law and general legal regulations
Slovenia	liberalism	influence of Roman -German law	The land book registers social ownership with a right of use / inspired from The German citizens code (ABGB)	1990 process of transition toward an allocation of property to private or public hands under a new regime of private property rights	by the Constitution of the Republic of Slovenia in Article 33 (wider than the civil law since it protects the freedom of the

					individua in the society/ confirmed by the Slovenian Constitutional Court
Switzerland	liberal derive from Roman law		the constitution (1969 - art 16)		
Turkey	After the 1980s, liberal economic transformation also dominated the property rights regime, and it is led by the market with moderate government intervention		Cadastral records, especially on fiscal cadastre, date back to the Ottoman period, however modern cadastral works have been carried out since the establishment of the Turkish Republic in the 1920s and today it is 100% complete. It provides the legal basis of the real property ownership.		The main piece of real estate legislation in Turkey is the Law of Property of the Turkish Civil Code. The Code of Obligations also includes provisions in relation to the sale and lease of real estate.
United Kingdom	market-led	common property and privatisation with enclosure (1840)	English land law is based on common law and regulation via Acts of Parliament		

countries	political transformations	key revisions	how did they affect the property regime
Austria	Austria has been occupied from 1945- 1955, after 1955 the parliament can decide freely, based on 1st republic and civil code	1955, the constitution came back to the fundamental law and civil code derives from 1812	in 1850, the feudal system was abolished. Private and public ownership were defined, many commons were created for agricultural purposes
Belgium			
Croatia	1991 independence of Croatia from the former Yugoslavia		
Czechia	After the end of WW II property of Germans living in Czechoslovakia has been confiscated by the state in a decree from	new civil code from 2012 pays attention to lost, hidden and abandoned properties. It also aims to harmonize	it liberalized rules for co-owned properties or cooperatives



	1945. After Communist coup in 1948 the nationalization accelerated. The end of state socialism (1989) saw most of state properties privatized, restituted, or bought by foreign investors.	ownership of plot of land and of the building that sits on it.	
Estonia	1991: independence after Soviet regime	1991: restitution/ 1994: the land cadastre act adoption	more than 90% of parcels are registred
Finland	-	enabling of 3D properties since the begining of 2000	no visible impact
France	No	no	not applicable
Germany (including ex-RFA until 1990)	the Agricultural Reform (1810) that followed the French Revolution (privatising of property, fragmentation of land, need for land readjustment)	federal building act (1960) urban development funding law (1971) Land consolidation act (1960)	Development Law and Remediation Law intervene more deeply in ownership than allocation of funds
Greece	a dictatorship from 1967 to 1974 and constitutional monarchy from 1945 to 1973. The dictatorship abolished the institution of the monarchy in 1973 although the king actually fled the country in 1967. Greece was declared a presidential parliamentary republic in 1974 following a referendum	Introduction the right of usufruct for state owned real property	
Italia		policy for agriculture	
Latvia	Nationalization of the USSR in 1940-1941. Denationalization in Latvia in 1991	1991: Denationalization and restitution of properties; 1993(entry into force), land reform in the urban areas of the Republic of Latvia (Entry into force: 20.11.1991.): Land Register Law ,1990 (entry into force) land on land reform in the rural areas	The changes are related to the transition of the system of property rights from the Soviet time system (command economics) of "state owned property" to private property.
Luxembourg	no	no	na
Malta	Malta became independant in 1964, a republic in 1974	rent laws	Post 1995 the previous restrictions related to renewal of leases and "fair rents" are no longer in place
Moldova	1991: independance of the Republic of Moldova; proclaimed private property rights	land privatisation, land parceling (1992) land consolidation(2006)	formation and development of Property market
North Macedonia	Before 1945, Macedonia was a part of other countries (Serbia, Croatoa, Bulgaria...) The property was owned by the Society and used by those who needed	no	not applicable
Norway	due to economic transformation (price rise, land agencies bakrupt)	1985: planning and building act became national - 2006: law amendment for the provision of public	a shift from collective use of land toward a privately use of the land



		infrastructure (predictability, proportionality and relevance, 2000: no social service)	within the limit of a land useplan. no public involvement in land, strong support to home ownership
Poland	1989 : end of the soviet regim	In 1997 a new constitution guarantee the private property (art 20, 21, 64)	
Portugal	1974 : end of dictatorial regime and new constitution in 1976		
Serbia	in 1992, dissolution of Yugoslavia and transition economy in Serbia, 2000: redefinition of property rights	2010 and 2011 (the Law on Property Restitution and Compensation)	diversification of the market (compared to the period of socialism) and gave a much more significant role and importance to private property
Slovakia	Austro-Hungarian monarchy: too many small land co-owners/ 1945: Eastern block - 1990: fall of the socialist regime and change to democracy	massive privatisation of land in agriculture and apartments ownership	restitution of land ownership, updating land ownership registers, substitute uses, consolidation
Slovenia	1990 creation of Slovenia on the territory of Yugoslavia	since 1990: the Code of Obligations and the Law of Property Code	
Switzerland	obligation to build (since 2012)	1980/ 2014: federal planning act: no all landowners can build but those who can must build within 15 years multiple PR/ otherwise they lose their building roghtd	only the right to build is concerned
Turkey			
United Kingdom		in the late 1990s, emergence of devolved parliament for Scotland and devolved Assemblies for Wales and N. Ireland, leading to different regimes in the 4 countries of the UK	Limited impact so far. English land law covers property rights and applies in England and Wales, with different but similar systems in Scotland and N Ireland.

countries	Social function of property via expropriation	Other social function of property	Common ownership
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Austria	very narrow restrictions: expropriation, land-use decision	no social obligation	commons of cooperative; long term leasehold; building lease; long term leasehold; co-ownership; condominium
Belgium	Expropriation is restricted for the purpose of public interest. Compensation has been introduced in 1962.		
Croatia	art 50 constitution: restriction or deprivation of property may be exceptionally restricted by law for the purposes of protecting the interests and security of the Republic of Croatia, nature and the human environment and human health		
Czechia	Expropriation exists in Human rights act. Social function of property is inferred from a vague formulation "ownership obliges".		As of 2011: co-ownership (8%), cooperative (2%).
Estonia			
Finland	expropriation act for a public need (land use and building act). Compensation is then determined according to the expropriation act	according to the land use and building act , landowners may have to contribute to urban costs, infrastructure costs ...	shares of common
France	in case of public interest		co-ownership
Germany (including ex-RFA until 1990)	only for the common good	property duties and obligations (private utility and social commitment - social security) art 14 constitution	
Greece	Constitution (Art. 17) states the conditions when expropriation is allowed. Real property can be expropriated only for public benefit purposes. Compensation is due. The rights stemming out of the use of the property cannot be exercised to the detriment of public benefit.		
Italia	when public interest, also derelicted land for economic purpose	code civil art 42: the owner cannot cause some inconvenient or harm to others/consolidation/	
Latvia	in exceptional cases based on a separate law against fair compensation	Yes, Article 105 of the Constitution (Satversme)	

Luxembourg	Law 15 mars 1979 modified in 2018, "real estate property can be expropriated only for public benefit purposes. The rights stemming out of the use of the property cannot be exercised to the detriment of public benefit." Compensation is due.		Public real estate property; Corporate real estate property; Individual real estate property Co-ownership of property Land leasehold
Malta	clause 32 of constitution: the enjoyment of property rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest. Compensation is due.		72,4% of properties are owned freehold, mainly by private land lords
Moldova	Expropriation or enforced restriction of the ownership right is possible only to the necessary extent and in the public interest, on the basis of law and for adequate compensation	from 1918 - private property;; from 1940 - State property (1946-1949 - nationalisation); from 1991 - private property	
North Macedonia	The law of nationalization prescribes compensation		co-ownership mostly within family
Norway	art 105 constitution guarantee compensation when transfer property to the state for the benefit of society		
Poland			
Portugal	for public calamity or internal security, with compensation for public utility for social welfare		
Serbia	art 52 of the constitution, restriction of property rights are possible in case of harm to the environment, to prevent violations of rights and legally based interest of the others		
Slovakia	Expropriation or enforced restriction of the ownership right is possible only to the necessary extent and in the public interest, on the basis of law and for adequate compensation	Ownership is binding. It may not be misused to the detriment of the rights of others, or in contravention with general interests protected by law. The exercising of the ownership right may not harm human health, nature, cultural monuments and the environment beyond limits laid down by law/	joint ownership and co-ownership



Slovenia	According to the Art. 76 of the Constitution, the manner in which property is acquired and enjoyed shall be established by law so as to ensure its economic, social, and environmental function		
Switzerland	only building rights might be expropriated for building purpose		
Turkey	According to the Article 35 of the Turkish Constitution, "Everyone has the right to own and inherit property. These rights may be limited by law only in view of public interest. The exercise of the right to property shall not contravene public interest". Therefore, the Article 35 of the Constitution defines right to property as a human right and states that it may be limited by law in view of public interest. In addition, the Article 46 of the Constitution is about expropriation which implies special provisions on limitation of the property rights. For instance the State and public corporations shall be entitled, where the public interest requires, to expropriate privately owned real estate wholly or in part and impose administrative servitude on it, in accordance with the principles and procedures prescribed by law, provided that the actual compensation (market value) is paid in advance.	According to the Article 35 of the Turkish Constitution, the State shall take measures to meet the need for housing within the framework of a plan that takes into account the characteristics of cities and environmental conditions, and also support community housing projects.	Co-ownership by shares, joint ownership, and common parts of condominium ownerships refer to the common ownership of immovables
United Kingdom			freehold and leasehold

[3] Share of property in participating countries

countries	population (2018 - eurostat)	owners (% pop 2018 source EU)	Comments	Largest ownerships	% of land owned by the largests
Austria	8 822 267	55,4	ownership is common in rural areas, while tenancy prevails in larger cities with a strong regulation	The federal republic (Austrian federal forests), City of Vienna, The catholic church, Former noble families	10% of the territory is owned by the federal republic
Belgium	11 398 589	72,3		nd	nd
Croatia	4 105 493	90,1		nd	nd



Czechia	10 610 055	78,7	56% live in privately owned house or flat and 22% live in rented property, 22% in cooperative property which is in Czechia similar to private property	In the top ten list is seven state companies and other public bodies, two Churches and one big businessman (more detailed in the country document)	Radovan Vitek's CPI Property Group is, among other markets, the biggest owner of agricultural land and retail buildings in Czechia. In 2014 CPI PG bought firm United Farms, which specializes in organic livestock (poultry, beef, lamb) and arable (corn, fruits) farming. It farms 20,000 ha (0.5% of total Czech arable land) in the north of Czechia.
Estonia	1 319 133	82,4			
Finland	5 513 130	71,6	the trend has changed in largest cities where 50% properties are tenants	the State, municipalities and the Church	the State 30%, municipalities and the Church 10% together
France	66 918 941	65,1	65% owners, ownership is supported by the State strategy	nd	nd
Germany (including ex-RFA until 1990)	82 792 351	51,5			
Greece	10 741 165	73,4	74% owners, as a repository of family wealth	public institutions, utility companies, land development cooperatives, banks and the Church	3% of land is owned by public bodies
Italia	60 483 973	72,4	81,5% (in Cittalia, 2010)		
Latvia	1 934 379	81,6	Residential owners prevail comparing to renters in Latvia. 62.8% of Latvians live in an apartment or flat in a building with 10 or more dwellings but 26.6% in a detached house	top 10 of land owners are commercial society	The largest landowner owns approx. 0.3% ha of the territory of Latvia The largest forest owner owns approx. 0.8% ha of the territory of Latvia
Luxembourg			69% owners		physical persons: 64%, legal persons 16%, corporations 10%, public: 11%



Malta	475 701	81,6	76% own property: either freehold (60%) or pay ground rent (16%). Circa. 17% rent out.	government, ecclesiastical institutions	nd
Moldova	3 547 539	nd	approx 5 millions of real property, including 94 % private property	state ownership on forest and national parks	nd
North Macedonia	2 075 301	88,3	87-91 of owners, the ideology of ownership has a long tradition and is supported by the government (for young couples)	nd	nd
Norway	5 295 619	81,3	80% home owners	nd	nd
Poland	37 976 687	84,0		nd	nd
Portugal	10 291 027	74,5		nd	nd
Serbia	7 001 444	84,4	84,4% owners, as a result of 1990 laws and as a secure investment for the life	the state, private companies	nd
Slovakia	5 443 120	91,3	90,5% owners (no clear ownership)	state forests and national parks (16%), churches (1,7%)	
Slovenia	2 066 880	75,1		nd	nd
Switzerland	8 484 130	42,5			
Turkey	80 810 525	nd	59% ownership	nd	nd
United Kingdom	66 273 576	65,2	70% ownership	public bodies and aristocratic titled families including the Queen	

[4] Brief presentation of the outcomes (Sonia Guelton and Nikos Karadimitriou– 16 August 2020)

The understanding of property across European countries, especially in relation to land value capture, varies according to the circumstances of each country. Overall, the WG members' approach reflects a trend which is also encountered in the literature, to understand property through the lens of property rights and subsequently to analyze property from a legal point of view, either considering the historical process of how property rights were



established or the treatment of those rights by the courts. Part I propose a general overview of the political philosophy of property rights in participating countries, while part II identifies others elements to understand the property rights.

Part I: The political philosophy of property rights in participating countries

Considering the legal tradition, we came up with the following classifications for the 24 European countries which have shared this information within the WG. Local understandings also vary according to the political philosophy and tradition underpinning the historical struggles over property rights in each country, and we spotted two major traditions: liberal and socialist/communist.

In the vast majority of the European countries surveyed, the legal understanding of property draws from Roman law whereas the right to property is explicitly considered as a fundamental human right. This understanding is foundational to legal systems which are based on Civil Law. In such systems, 'harms' to private property rights can occur only in the public interest (whichever way this is understood). This tradition sits comfortably within the broadly liberal political philosophy which, at present, is dominant in all 24 countries for which there is information.

Several countries' systems are rooted in the Napoleonic Code and the French Civil Code tradition. Broadly speaking, such systems do have a focus on safeguarding public property and public benefit more broadly. The systems influenced by the German civil code, are a variant of the Roman/ civil law tradition where the role of the State is to safeguard individual rights while orienting the management of private property rights.

The common law tradition is another way to consider land property rights. Only the UK follows this legal tradition out of the 18 countries for which information is available.

Insofar as political philosophy is concerned, several Central and Eastern European countries had been governed under a communist system where property was "socialised". In the post-communist era, these countries have adopted a market economy and thus re-instituted (and restituted) private property rights. In some cases, very stringent safeguards to protect private property rights have been put in place and/or the urge to protect private property rights permeates every aspect of public policy relating to land development. This often makes it very cumbersome to pursue public benefit (for example, provide public goods) in land development via value capture.



Overall, only a handful of countries from the 24 for which we have information, have a formal definition of land value capture while in most countries private property rights are safeguarded via a written constitution and a cadastral system. Broadly speaking, in most countries expropriation is allowed for public benefit purposes and compensation is foreseen but land value capture is rarely, if ever, very high on the policy agenda in all countries, especially when it comes to private property.

Part II: understanding the philosophy of property rights

Our WG believe that other elements also contribute to how property and property rights are understood.

- a. First, the historical and social context is a crucial such factor.

Notwithstanding the communist era, our survey identified historical components which have a strong influence on property rights. Here are some of them, which the network could investigate in the future

- The situation of the country before the communist era: some countries already had a strong property administration they want to recover while others do not want to go back to the former regime and organized a new market-led system, which sometimes heavily engages international investors
 - The European Union's, or other international organisations' ie World Bank, IMF, influence on state administration
 - The influence (political, legal etc.) of the distribution of land ownership and especially the existence of large land owners
 - The social understanding and practice of land ownership.
- b. The philosophical understanding of property could also be reflected in urban development patterns. The relative importance of cities in a country, compared to smaller settlements and the rural economy and landscape can also have an influence. During the WG meetings, property rights organization has been identified as a key factor affecting the patterns and the scale of urban sprawl .
- c. The development process and the actors' strategies in this process interfere in the property rights management and the potential implementation of LVC instruments;

We begun to investigate these questions and our WG members described how some development projects are organized. It is not possible to include this "story telling" in our excel database and this topic will need further analysis .

