

Transparency in the EU's Residential Housing Market: A Theoretical Framework

Sylwia Lindqvist

Department of Urban Studies, Faculty of Culture and Society
Malmö University
SE-205 06, Malmö
sylwia.lindqvist@mah.se

ABSTRACT

Purpose – The purpose of this paper is to give a theoretical framework for an analysis of the concept of transparency in residential real estate transactions within the EU's Internal Market. In this way, it is possible to identify the essential factors that need to be addressed with respect to transparency.

Design/methodology/approach – The study is based on a review of the literature on the general concept of transparency, as well as other related sectors.

Findings – Based on this study, five dimensions of transparency are identified: transparency in transaction procedure, legal information, financing, taxation and transaction costs. The essential points are that an increase in cross-border transactions increases demand for easy access to information in other countries. The studied literature focuses on the coordination of legal systems, making systems more uniform and legally secured, and on broadening of the mortgage market. The study indicates that reaching transparency will be both complex and take time.

Originality/value – The paper identifies different dimensions of transparency in residential real estate transactions and brings into focus the issues that are important for increasing transparency.

Keywords Residential housing market, property transaction real estate, real, transparency

Paper type Research paper

1 INTRODUCTION

Cross-border transactions are an important part of the European Union's (EU) real estate market, and as Ploeger and Van Loenen (2007) remark, the EU's "four freedoms" seem to provide a good basis for expanding the transaction market and opening the mortgage market. Those four freedoms represents the principle of the free movement of the EU's fundamental production factors, i.e. free movement of *goods*, *services*, *persons* and *capital* (Bernitz & Kjellgren 2007). Three of those freedoms are direct linked to property purchase issues.

An effective and secure operation of cross-border transactions requires transparency. Clarification of the structure of the transaction market and real estate services is of decisive importance, since despite the expanding cross-border transaction market, there remain structural differences between markets and different regulatory systems. Furthermore, the

differences can be found in agent and client relations, the transaction process and costs, as well as mortgage design.

The aim of this paper is to discuss the concept of transparency in relation to residential housing issues of EU's Internal Market, as well as identify the essential factors that need to be addressed with respect to transparency. The theoretical discussion on what should be included in the concept of transparency follows, as well as general discussion on the concept of transparency. The main thesis is that increasing transparency is complex and can be expected to take time.

The methodology consists of a literature study on the theory of transparency, globalisation and market operation. This framework is used as a background for identifying the dimensions of transparency in relation to real estate transactions. Since there is little research in the area of transparency in relation to residential transactions, this study looks at other related sectors, e.g. financial markets and taxation topics.

This paper is structured as follows: Section 2 defines the general concept of transparency and gives an overview on concept of transparency in a broad sense. Section 3 outlines the concept of transparency in real estate market, and Section 4 discerns five dimensions of transparency. The conclusions are given in Section 5.

2 GENERAL CONCEPT OF TRANSPARENCY

2.1 The definition and the origin of the term

Transparency is a qualitative concept that is difficult to measure (Gnabo & Lecourt 2005; Eijffinger & Geraats 2006). The concept is often unclear and has different meanings, and various aspects of transparency can be found in different areas. As Williams (2003) argues, the precise definition on transparency can be somewhat illusive. Florini (2007) also remarks that the reason for lack of consensus on how to define and measure transparency can be referred to broad use of the term. The term however is related to openness, communication and accountability. In physical science, transparency is defined as something that can be seen through (NE 2008). However, this description can be used metaphorically in other areas, where seeing through means to reveal how something really is or works.

According to Florini (1998), transparency is the opposite of secrecy and is consistent with intentionally revealing actions, which means opening up decision-making processes; she writes: "Transparency refers to the degree to which information is available to outsiders that enables them to have informed voice in decision and/or to assess the decisions made by insiders" (Florini 2007, p. 5). A similar definition is given by the Working Group on Transparency and Accountability (WGTA) (1998). In this way, people from the outside can assess that information and be a part of those actions and decisions. Affected people are enabled to evaluate the impact of performance (Nelson 2001). Transparency is used to hold others accountable for their policies and performance (Williams 2003; Florini 2003). Sharing of information can be, according to Williams (2003), a way of fostering the empowerment and responsible decision-making.

Just as transparency refers to information equivalency, opacity, according to Schulte et al. (2005), is the opposite of transparency, and can be related to information asymmetry of market participants (as market participants cannot observe information about the trading process) (Madhavan et al. 2005). Thus, according to Nijhof et al. (2009), transparency should be understood "as a mean to build trust between market parties and improve the efficiency of the market operation" (p. 254). Market transparency can for example increase buyers' knowledge of supply pricing, though it has however different implications for society's well-

being; while some believe that price transparency leads to price competition resulting in higher efficiency, others found that price transparency under some conditions increases prices, by for example making prices more uniform (Kyle & Ridley 2007).

2.2 Transparency and global integration

The term transparency is often associated with democratization and globalization (Florini 1998) and the transparency phenomenon is driven by social, political, technological and economic forces. Interdependence among the World's societies forced by globalization creates a need for transparency as global interdependence is a defining feature of cross-border transactions and social exchanges (Williams 2003). According to Williams (2003), global production, trade and finance are three interlinked processes which stimulate a demand for transparency. Gelos and Wei (2005) argue that transparency is the way for countries to attract capital, reduce capital market volatility and lessen the severity of financial crises.

2.3 Need for transparency and problems connected to it

According to the WGTA (1998), transparency helps to improve economic performance by contributing to the efficient allocation of resources and reducing uncertainty. Nijhof et al. (2009) also remarks that information can be used to limit the risks, create trust between the parties of a transaction and allow the parties to make optimal choices yielding benefits.

The disclosure should however be comprehensive, timely and accurate to enable the appropriate identification of the information and to enable the market participants to compare the performance. The information should be made available on a periodic and timely basis using acceptable standards, and the disclosure should cover all relevant information and be consistent over time (WGTA 1998). According to Fung et al. (2007), accuracy is coherent with understanding of the priorities and capacities of diverse audience. However an alert and engaged public, ready to participate, is also required. Another key dimension mentioned in Nelson (2001) is accessibility, which focuses on the place where the information should be available, the languages in which the information should be available and the costs for that information. It is also noticed that the cost of acquiring and using the information must justify users' efforts in relation to the expected benefits (Fung et al. 2007). A greater amount of information requires a greater effort to check it or make it controllable (Nijhof et al 2009).

More information is not always positive; in some circumstances confidentiality may be warranted (WGTA 1998; Florini 1998). According to Florini (1998), even if all the conditions of transparency are right, there is no guarantee that it will work, as the information can easily be misused or misinterpreted. Even small imperfections in information can have behavioural consequences, which can lead to misallocation of resources (Fung et al. 2007).

2.4 Three generations of transparency

According to Fung et al. (2007), three generations of transparency policies can be discerned: right-to-know, targeted transparency, and collaborative transparency.

The right-to-know transparency is described in Florini (2007) where the goal is to create a more informed public by making information more available. In targeted transparency the information is required to be standardized and comparable, and is aimed at allowing informed choices (Fung et al. 2007). Hence, Fung et al. (2007) argues that policies should focus on the needs and interests of both users and disclosers as well as the comprehension ability of users and capacities of disclosers.

In the third generation transparency “users become more active, initiating searches for customized information and often becoming information disclosers themselves, empowered by technology ” (ibid., p. 166).

2.5 Summary

The need for transparency was created as a result of global interdependence, a defining feature of cross-borders transactions, and a demand for transparency is stimulated by interlinked processes like global production, trade and finance. The concept of transparency is however somewhat elusive since different aspects of transparency exist. In general, transparency refers to the degree to which the information that allows informed choices is available. In connection with the property transaction market, the term can be referred to the ability of transaction participants to observe information concerning the transacting process, increasing their knowledge to make informed decisions.

3 TRANSPARENCY AND THE REAL ESTATE MARKET

3.1 Market transparency

Transparency in the context of the real estate market is not clearly defined as a way of measuring transparency. According to Schulte et al. (2005), who studied the degree of real estate market transparency in Germany, successful investment in real estate is based on market transparency. Transparency also matters to occupiers and tenants since it provides certainty and risk reduction (Hagkull in BI-ME et al. 2008). The working definition of market transparency that Schulte et al. (2005) establishes is as follows: “Real estate markets can be described as transparent when it becomes clear how the market mechanisms and the variables behind these mechanisms work, i.e. when there is as much information as possible available at any point in time” (p. 91). A transparent market supplies as much information as possible to all market participants, and thus, the information advantages of other market participants are minimized. According to Schulte et al., transparency in the real estate market requires access to the variables as: the rental market with average and top rents, lease rents and demand and supply of space; the investment market with property rents and yields, purchase and selling prices; the property and construction market with building costs; and the capital market with lending conditions. Other variables of interest are, for example, financial information from central banks, transparency on valuation statements and transactions costs.

3.2 Measuring transparency

Jones Lang LaSalle’s five transparency sub-indices in Real Estate Transparency Index (RETI) 2008 are as follows: Performance Measurement, Market Fundamentals, Listed Vehicles, Legal and Regulatory Environment and Transaction Process. The research considers, among others, consistently applied and interpreted laws and regulations, the respect of private property rights, the access to and time series of investment performance indices and market fundamentals data, and ethical standards of professionals in the commercial real estate market.

The highest score reached by European markets, based on the index, concerns the transaction process, which is related to the high levels of cross-border transactions, the presence of multinational advisors and consistent professional standards. However, the degree of transaction process transparency is high around the world. The variables considered in this

case are: the availability of asset-specific information for properties on the market for sale or lease, the enforcement of professional standards for agents and real estate advisors, facilities and project management service and fees, occupier service charges, and debt financing commitments, terms and fees. The results imply that the information on the transaction, for example, the specifications of buildings for sale, service providers' charges and financing terms, can also be obtained in low transparency markets with less complete information about the broader market. It should, however, be noted that it is not exactly clear how Jones Lang LaSalle measures the transparency.

3.3 Summary

Summing up, the importance of transparency is clearly emphasized by different actors in the real estate market. However, in the context of the real estate market, there is no clear definition of transparency and no clear way of measuring it either.

4 TRANSPARENCY IN RELATION TO RESIDENTIAL REAL ESTATE TRANSACTIONS: THE FIVE DIMENSIONS OF TRANSPARENCY

4.1 Transparency in residential real estate

In step with globalisation, more interrelated markets and rising mobility, transparency has become an important issue in residential real estate. Efforts are taken to make global real estate transactions more transparent and less complicated, with more standardized transaction practices and legible and transparent regulations. Higher transparency and the disclosure of information on the transaction market can contribute to better bases for decision-making by the concerned market participants. It can lead to higher awareness among market participants of market supply, issues which are connected to the purchase or sale decisions, as well as the different challenges the market players are confronted with, including risks. It can also lead to a better understanding of the range of services available on the market and the costs connected to the transactions and cross-border investment. According to Nijhof et al. (2009), transparency in transactions can be associated both with openness about risks and costs of the transaction, and with providing insights into matters that are relevant for the parties involved.

4.2 Hindrances

Unification and comparability across countries require however that obstacles are identified. Although the internal market offers consumers the possibility to buy properties in other EU-countries without major legal constraints, there are still some hindrances which need to be eliminated. Besides the direct barriers in the form of transitional periods and exceptions negotiated by some countries when entering the EU, for example, purchase of holiday homes or secondary residencies (EUROPA 2007), significant differences in transaction procedures, legal formalities, regulation levels, ways of financing and taxation, as well as different conditions, many unexpected costs can be mentioned. Country of origin principle, ownership attitudes, land registration systems, tax structure and rates, and financing are considered (beside nationalism, regionalism and ethnic claims of supremacy) as some of the unification barriers (NAR, CIPS Europe 2006).

However, several international professional networks can be found, such as CEPI (European Council of Real Estate Professions), which promote standards for real estate professions; CEN (European Committee for Standardization), a European project on

standardization of real estate broker services; EULIS (European Land Information Service), providing access to land registers in Europe and with aim to provide the world with European property information; TEGoVA (European Group of Valuers' Associations) promoting harmonisation of European valuation standards; RICS (Royal Institution of Chartered Surveyors) bringing together professionals from different spheres of the property sector, and maintaining and regulating standards; and FIABCI (International Real Estate Federation), a business club of real estate professional in 60 countries, helping to provide businesses with an international dimension.

4.3 Dimension of transparency

This chapter attempts to identify dimensions that should be included in the concept of transparency surrounding residential property transactions. This will later be used to identify the degree of transparency in EU-countries. Five aspects are distinguished: (1) Transparency in transaction procedure (including access to information and assistance in the process), (2) Transparency in legal information (including national legislation on ownerships forms, permissions and land registry), (3) Transparency in financing, (4) Transparency in taxation, and (5) Transparency in transaction costs.

4.4 Dimension 1: Transparency in transaction procedure

4.4.1 Openness and design

As Lisec et al. (2007) remarks, demand for a secure, transparent and efficient real estate market raises an issue on the optimization of transaction procedures. Transparency on transaction procedure concerns openness about regulatory systems and models in respectively countries. Furthermore, the design of the models affects the timescale of the transaction and the variation in legal fees between different countries, and consequently, this affects the cost of the transactions (Griffiths 2007). Variations across the countries can, for instance, be found in the content of professional services, terms and conditions for market access and in the degree of regulation for real estate professionals. The role that the real estate professionals play in the transaction process differs across the countries. Lawyers, notaries, conveyancers, banks, title registrars and real estate brokers/agents are some of the actors with different roles and levels of importance in the property transaction process.

4.4.2 Procedural differences

Focusing on the broker/agent, it can be established that there is no existing EU-standard for real estate broker services, and the content of broker commission varies. In some of the member states, such as Ireland or England, the broker acts as a representative, while in others, like Sweden, as an impartial middleman. However, many other models can be found too. In countries such as Germany or Poland, the professional can chose to work either as representative for one party or as impartial middleman for both, while in countries like Denmark or Finland, the broker/agent looks out for his/her client's needs and interest, but with consideration for the other party in the transaction.

The other aspect is differences in requirements in the process. The majority of countries require mandatory participation of a notarius publicus (e.g. Germany, Poland), solicitor or licensed conveyancer (e.g. England) while in other countries buyers and sellers are able to carry out the transaction by themselves (e.g. Sweden or Norway). Additionally, the role of conveyancers and the extent of their tasks differ between the countries. Furthermore, in some

countries permission to be involved in real estate transactions can also be given to banks, building companies, solicitors or other lawyers. To what extent national legislation is applicable at cross-border activity is often unclear. However, this should be an important issue, bearing in mind the interest in consumer protection.

4.4.3 Harmonization attempts

As stated above, CEN is one of the attempts for convergence between the European countries. All national standardization institutes within the EU have been invited to the project on harmonisation of real estate broker/agent services, with the European Commission (EC) as observers. Decisions made by CEN on harmonisations can thereafter be binding through EU-directive, although only after it has been taken up by the national governments (SOU 2008:6).

4.5 Dimension 2: Transparency in legal information

4.5.1 Openness and certainty

Transparency on legal information refers to openness of information from national land registries, openness on rights and interests in real property, forms of ownership and other relevant information on national legislations. At the same time, it refers to a level of certainty on those rights and interests. Reliability and accessibility of the information affects the functionality of the real estate market (Nummelin 2003). According to Ploeger and Van Loenen (2007), transparency of information from national land registrations and uniform levels of certainty concerning rights and interests in real property are necessary for a common European housing market. It can, however, be observed that national systems of land registration in member states provide different levels of legal certainty (Van Loenen et al. 2005) and have reached different stages of development (Ollén 2002) as a result of historical influences, organizational differences, legal and technical points of view (Ploeger & Van Loenen 2007).

In general, the field of Land Registration law, law of contracts and obligations, and rights in land are considered to be difficult to harmonize (Loenen et al. 2005). Ollén (2002) argues that despite the fact that “land law is, and will for a foreseeable future remain so, a national issue, there is good reason for improving the availability of and access to information in order to, among others things, taking away obstacles that might exist for financial institutions” (p. 214).

4.5.2 Coordination efforts

Among the attempts toward a more transparent system of real estate transactions is the establishment of the Permanent Committee on Cadastre in the European Union (PCC) in 2002 with the task of coordinating the cadastres in Europe and their users (Ploeger & Van Loenen 2005). Another project, EULIS, brings together several European land registries in one internal portal, providing access to the information in the computerised databases of the participating organisations. An extensive presentation can be found on their website or in Ploeger and Van Loenen (2004; 2005; 2007). As a further attempt towards a harmonisation of information and description of legal issues, Paasch (2005) mentions UNECE’s guidelines (United Nations Economic Commission for Europe) on real property units and identifiers with focus on land registration systems.

4.5.3 Legal, organisational and technical issues

The next step in the process can be, according to Ploeger and Van Loenen (2005), the harmonization of land registries. They emphasise that a choice for technical standards and the legal basis of the registration system is actually of greater importance than differences in land law. Conversely, in Ploeger and Van Loenen (2007), integration of legal and organisational issues is considered to be the greater challenge compared to technical issues. European uniformity, in the respect of the divergences between the systems (as classification of national systems from a comparative point of view can be difficult), is believed by Remien (2005) to be somewhat utopian. One possible solution for a common method of land registration is, according to Ploeger and Van Loenen (2005), the EuroTitle system: a standard for land registration, which would be complementary to existing national systems, on voluntary basis, and would not replace them (Ploeger & Van Loenen 2005, p. 9; Van Loenen et al. 2005). Another direction may be a guarantee of title based on the concept of private title insurance (Ploeger & Van Loenen 2007).

4.5.4 Property legislation

When discussing the solutions for a common land registry in Europe, the issues of real property legislations arise. Legal aspects of real property transaction are of significance for the transaction procedure, for example, in the validity, smoothness and costs of the transaction. Paasch (2005) writes: “The internationalisation (i.e. standardization or harmonisation) of law is an old dream, leading to visions of legal integration or even unification of legal systems” (p. 2). According to Paasch, the real property domain can be introduced to the methodology of comparative law by the use of standardized terms and definitions describing the legal content of national real property legislations and the use of a classification model. Furthermore, a better understanding of legal issues through a standardized approach makes it possible to reduce real property transaction costs (ibid.).

4.6 Dimension 3: Transparency in financing

4.6.1 Accessibility of financial products

Transparency in financing focuses on the accessible information for a wide range of mortgage products, both national and cross-border, as well as the costs associated with them. The full liberalisation of capital movement for most member states came into effect in 1990 by the Directive 88/361/EEC and later by the Maastricht Treaty in 1993. Countries joining the EU progressively removed barriers, although some exceptions and transitional periods with regard to the right to purchase second homes or agricultural land can still be found (EC 2009). In some areas, free movement of capital is working smoothly and efficiently, but there is still much development needed in other areas, such as financial services. The vision of the Single Market is to offer consumers a wide choice of financial products, such as loans, with the possibility of purchasing products anywhere in the EU, consequently making transactions easier and cheaper (EC 2009).

4.6.2 Uncertainty over legal information

According to Ploeger and Van Loenen (2005), despite the Second Banking Directive 89/646/EEG, which established the EU’s single market for banking, the real European mortgage market is still remote, and Nasarre-Aznar (2004) remarks that transnational

mortgage lending represents only one percent of the whole mortgage business. As discussed earlier in this paper, difficulty to export national mortgage products is linked to uncertainty over legal information on the property. Van Loenen et al. (2005) remarks: “Mortgage banks have difficulties in assessing the value of the information they receive and so do not risk supporting a loan for property in another Member State” (p. 1). Nasarre-Aznar (2004) states that the legal difficulties which foreign lenders experience leads to a lack of concurrence among European lending institutions, and as a result, two essential objectives of the EU are not accomplished: “free movement of capital – because lenders behave on national-based market – and free movement of workers – because borrowers need to refer to local lending institutions to finance their homes instead of continuing using their own” (p. 2). Even though a home bank has a partner bank or a representative office in another country, the local home office cannot help with the transaction as usually a particular department needs to be contact separately. Furthermore, the costs are usually higher when taking a loan for a property in another country. For instance, a person in Sweden wishing to take a loan in Sweden for a property in Spain must pay an arrangement fee of €1000 (October 2008), whereas no such fee is charged for loans concerning properties in Sweden (April 2009).

4.6.3 Towards mortgage market integration

Among the attempts towards an integrated mortgage market, the Report by the Forum Group on Mortgage Credit (a group created by the EC in 2003) should be noted as it resulted in the EC’s Green Paper on Mortgage Credit in the EU (COM (2005) 327) and White Paper on the Integration of EU Mortgage Credit Markets (COM (2007) 807). As the Forum Group’s mandate was to identify and assess the impact of the barriers to the smooth functioning of the Internal Market for mortgage credit, the report consists of the recommendations for tackling these barriers (EU 2004). The Green Paper brings up the possible benefits of and obstacles to the further integration of European mortgage markets (see COM (2005) 327) while the White Paper is a summary of the review on the functioning and level of integration in credit mortgage markets, identifying a package of proportionate measures designed to improve the competitiveness and efficiency of cross-border lending (see COM (2007) 807). All the documents address the issues of land register transparency. The discussion of the report and papers can be found in Ploeger and Van Loenen (2007; 2008).

4.6.4 Common mortgage for Europe

Project Eurohypotheq is suggested, amongst others, by Nasarre-Aznar (2004) as a way to achieve a common mortgage market for Europe that is beneficial for both consumers and lenders. The model, which can be found on www.eurohypotheq.com, is proposed by The Eurohypotheq Research Group (a group of experts launched in Spain with members from Spain, the United Kingdom, Sweden, Germany and Poland), but the project is the result of long discussions and has its origin in the 1966 report, “The Development of a European Capital Market”, for the EC. The model is intended to be an alternative tool to facilitate the transfer of mortgages without substantial changes to existing legal systems of the member states, and would operate under the rule of “lex rei sitae” which stands for “the law where the property is situated” (MCF 2005). But as Ploeger and Van Loenen (2005) remark, the Eurohypotheq does not resolve the problems of diversity between the national systems of land law and land registry. In 2005, the Mortgage Credit Foundation (MCF) (a Polish foundation with representatives from the Ministry of Finance, Ministry of Justice, the National Bank of Poland, research institutions and banks) published “Basic Guidelines for a Eurohypotheq”. One of the outcomes states that “The transferability and the economic value not only of the

Eurohypotheek, but of all mortgages, depends on its legal environment, in particular a transparent land registration system, where all relevant charges on the land can be checked by the prospective creditor, and effective enforcement procedures” (p. 8). Some descriptions of the function of the Eurohypotheek, advantages and disadvantages of the model as well as basic configuration can be found in Nasarre-Azar (2004). Information on the subject can also be found in Van Loenen et al. (2005), Ploeger and Van Loenen (2005; 2007). According to Nasarre-Aznar (2004), the main implications of a common mortgage for Europe, which the Eurohypotheek represents, would be: “easier access to a dwelling, better land development, more concurrence among lending institutions, better mortgage funding, allowance of more and more diversified types of trans-national businesses and, generally speaking, a wider and more open housing and mortgage markets in Europe” (p. 2).

4.7 Dimension 4: Transparency in taxation

4.7.1 National tax sovereignty versus coordination and harmonisation needs

Cnossen (2002) and Joumard (2001) state that, together with the progress of integration within the EU, international taxation issues (as issues of interactions between the tax systems of the member states and harmonisation or coordination of member states’ tax policies) has been brought up for discussions. The design of the taxation system is of decisive importance as it can either stimulate the purchase of goods and services or prevent consumption by making products or services more expensive (Bernitz & Kjellgren 2007).

According to Bernitz and Kjellgren (2007), there is a clear conflict in the tax area between the member states’ desire to keep national tax sovereignty and the need of coordination and harmonisation at EU-level in order to carry on the economical integration. Sørensen (2001) remarks: “Although the ‘Europe-builders’ in the European Commission have presented numerous proposals for tax coordination and tax harmonisation over the years, member states have jealously guarded their sovereignty in matters of tax policy, and so far only a limited amount of coordination has been achieved” (p. 2). The treatment of different taxes in connection to the property or property transactions varies considerably across the EU. National tax legislations have been brought down in a big number of EC-court settlements, on the basis that special treatment of people or companies is considered to be a discriminatory act in relation to other countries (Bernitz & Kjellgren 2007). In an example from Sweden (which has a clear limitation of free movement of both persons and capital), a person could be given the right to (under some conditions) defer payment of capital gains tax on the sale profit, favouring those buying or selling a property within Sweden. This limitation was however changed on 1 February 2007, and today, under the current Swedish rules, payment of tax can even be deferred when using the money to buy a home in another member state or other country included in the EES-agreement, without restrictions on ownership form.

4.7.2 Intertwinedness of fiscal laws

Brown and Hepworth (2002) have done research on property taxation systems in 42 European countries; however, this was based on research carried out in 1999/2000. The types of housing taxation they researched included annual property taxes, income taxes, inheritance and gift taxes, capital gains taxes, value added taxes, and property transfer taxes. According to the report, the housing taxation policies have many variants, although a number of common structures for taxation can be found. Some of the findings show that the treatment of capital gains tax from property varies considerably, and in some countries capital gains are not taxable at all being simply treated as part of the taxpayer’s normal income and assessed as

part of their income tax liability. While some countries have adopted a specific capital gains tax approach, other countries tax it as part of a separate capital gains tax system or by income and corporation tax. Income taxes are mainly levied by central government; however, a number of countries allow the government to levy their own income tax either as a separate tax or as an additional rate levied in addition to the national rate. Additionally, most countries levy some form of inheritance and gift taxes. In most cases, the property tax is a local one, but it can also be a central governmental tax. The tax burden on the transfer of property can be significant in some countries (ibid.). However, the important observation is that taxation on properties, in respect to forms and levels, can never be seen as isolated from each country's tax system. This is why property taxation can never be evaluated free-standing from other tax forms, the structure for taxation and the total tax burden (Lind & Lundström 2007).

Despite the report being obsolete on some points today, as many changes have been introduced since then, it can be established that, there are still significant differences between the countries' tax systems, which makes it difficult for the European consumer to get an overview. Taxation as a component of the consumer's housing costs may affect his or her capital allocation, and consequently, it may affect residential mobility across countries. In addition, the values of the properties can be affected.

4.8 Dimension 5: Transparency in transaction costs

4.8.1 Variations in costs

Transparency in transaction costs is an important objective within the transparency issue when the transaction process is considered. According to the Global Property Guide (GPG) (2009), the cost of buying and selling residential property varies considerably across EU-countries. Roundtrip transaction costs, i.e. the total cost of buying and selling a residential property (which includes legal fees, sales and transfer taxes, registration fees, and real estate agents' costs and fees), reaches from as little as 3.35 percent of the property value in Lithuania to as much as 24.88 percent in Bulgaria.

4.8.2 Difficulties in comparison

The comparison between countries is, however, based on some assumptions concerning the property value, type of property and location. It should also be taken into consideration that price levels vary significantly between the countries, as do incomes. In addition, different forms of ownership for apartments exist in different countries, which can make the comparison difficult and can affect prices and transaction taxes. It can be argued that this kind of comparison should rather be done on comparable objects with prices corresponding to price levels for respectively countries. However, significant differences in transfer taxes, registration fees, agents' fees, notaries' fees and other direct and indirect costs can be established. It must also be noted that some costs can vary depending on the complexity of the transaction or negotiations between the parties, and furthermore, the costs of both energy labelling and property condition surveying can be added as well. It is also hard to decide which party is a cost bearer as what the law states is not always what is common in practice: even if, according to law, there is an equitable tax duty, in practice only one of the parties bears the cost.

4.9 Summary

Transparency is considered to be an important issue in residential real estate transactions. A better basis for decision-making process presupposes information disclosure, more standardized transaction practices and both legible and transparent regulations. This section identifies the five aspect of transparency which could be used to measure the degree of transparency through the European countries.

Transparency on *transaction procedure* concerns openness about regulatory systems and models since the design of the models affects transactions in many different ways. Transparency on *legal information* refers to openness about information from national land registries, openness on rights and interests in real property, forms of ownership and other relevant information on national legislations. At the same time, it also refers to a level of certainty on those rights and interests as reliability and accessibility of the information affects the functionality of the transaction.

The free movement of capital is another essential condition for the proper functioning of the Internal Market and cross-border transactions. Transparency on *financing* concerns access to a wide range of mortgage products, both national and cross-border ones, as well as costs associated with them. The *taxation system* as a component of consumers' housing costs has a significant role in the property market. The way the system is designed can have crucial importance for transactions as it can either stimulate or prevent them, and this results in residential mobility across the countries being affected. It is, however, a problematic issue since economical integration creates a conflict between the European countries' desire to keep national tax sovereignty and the need for coordination and harmonisation. The final aspect is that of *transaction cost* transparency, which involves significant differences in both direct and indirect costs, and this can be of decisive importance for the transaction.

5 CONCLUSION

The effectiveness of the real estate market and transparency as one of the factors that are important for efficiency are considered to be essential aspects of the global competitive market since economic and social development of countries are connected to the real estate market. An effective operation of the real estate market is believed to be associated with a carefully synchronized legal system that provides transparency, simplicity and legal security. The importance of the real estate market is linked with the key investments such as saving and consumption choices of households and businesses, as well as banking and equity market performance. However, the state of the housing market and the effects of foreign investment cannot be measured without comprehensive information on transactions within the market. In addition, foreign investment in the housing market can be associated with benefits, even if the costs of adjustment are high.

The EU's "free movement" is not only a basic principle, but also a fundamental right linked with European identity, the core of the EU and a starting point for the other rights. Thus, limiting this right could have a significant impact on the functioning of the EU. Examples of this limitation can be seen in the European court's settlements in cases such as the case C-370/05 on the restrictions on the acquisition of agricultural property, where they required that the acquirer take up fixed residence on the agricultural property.

An increase in cross-border transactions brings demands for easy accesses to information, for uniform systems and broader mortgage markets. Despite more developed technology and growing importance of the Internet, the help of local experts who are familiar with local systems is still inevitable in many countries as the mortgage market is still

considered to be local. In Ploeger and Van Loenen (2007), a picture of a current transaction process can be found that highlights a potential buyer hiring a local advisor to clarify the foreign legal terminology and provide a sufficient and reliable overview of the legal status of a property. This process is both time and money consuming, and moreover, uncertainty of the legal situation affects the range of the mortgage products. Hence, improving the legislative framework and administrative procedures would lead to clean titles and more efficient cadastres, which could bring many new buyers to the market.

As illustrated earlier in this paper, a new generation of transparency can be both beneficial but is also associated with risks. Effective policies are not about an increase of information, but about an increase of knowledge for more informed choices. In the housing market, safe choices (on the basis of e.g. comparable information) are particularly important, as out-of-date or incomplete information can confuse or mislead potential buyers, who, without data for decision-making, can refrain from purchase or risk a complex and problematic transaction deal. Transparent and neutral legislations and procedures could contribute to an increase in cross-border home ownership.

Transparency is, however, difficult to measure. Three dimensions, identified by Fung et al. (2007), which characterise a sustainable system with lasting changes and which increases in advance are: expanding scope of information relative to the scope of the problem addressed, increasing accuracy and quality of information, and increasing use of information by the involved parties. Despite advanced communication technology and the information age we live in at present, Fung et al. remarks that there is still much to do to reduce serious risks or improve important services, and nonetheless, “those who benefit from transparency – whether investors, consumers, or employees – remain separated by language, location, and cultural traditions” (p. 134). Hence, the design of a transparency system is of decisive importance. Since disclosures are associated with improved decision making and enable actors to coordinate their action, in order to design a good system it is important to understand why the system is wanted and what its goal is, and subsequently, the assessment of those goals can suggest what changes are needed.

This paper presents a theoretical framework on the issues of transparency in the residential real estate market where the following dimensions are identified:

- transparency in transaction procedure
- transparency in legal information
- transparency in financing
- transparency in taxation, and
- transparency in transaction costs

The next step is more detailed empirical studies on transparency and neutrality between citizens in different countries within the EU when they want to carry out cross-border housing transactions. The hypothesis is that the EU is far from transparent in this respect, and that the road to transparency will be long and winding.

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