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## EUROPEAN UNION PROPERTY LAW: REVIEW OF THE MAIN PROVISIONS AND PECULIARITIES

*European Union (EU) property law is a relatively new area of law that is developing rapidly in view of the challenges posed by time to the legislator and law enforcement practice. Today, EU property law lacks structure and a clear system, which indicates the absence of a clear policy underlying the construction of rules on property rights and other real rights. In fact, the European legislature has left the issue of property rights structure out of the proper level of attention. However, property law in the EU is also developing in the case law and legislation of the EU member states, as well as in academic circles and through private initiatives. Therefore, the vectors of development of EU property law are quite diverse and complex, often complicated by an interdisciplinary approach to understanding property and interpreting its content in law. For Ukraine, it is important to understand the peculiarities of EU property law in view of European integration processes and accelerated integration into the European trade area. In this regard, this topic is particularly relevant.*

*The article analyzes the peculiarities of the EU law of property and the main trends which influence the directions of improvement of legal categories within the institute of property law.*

*The author analyzes the peculiarities of legal regulation and interaction between property law and contract law, and on the basis of this study the author concludes that at present, EU property law is fragmented and lacks legal structure as compared to European contract law. The author substantiates that contract law and property law are two main branches of civil law, where contract law regulates the interaction of the parties to a contract, and property law concerns legal relations with respect to property. In practice, these branches closely interact with each other, primarily due to the fact that many contracts relate to the disposal of property.*

*It is found that most European civil law legal orders adhere to the numerus clausus principle, but in some countries the principle of an open list of real rights (numerus apertus) is used.*

*The author substantiates the view that the theory of property rights in science is considered through an interdisciplinary approach and analysis of its various aspects with due regard to globalization, digitalization and the environmental crisis. It is established that today the EU property law is being actively updated by improving its institutional structure and taking into account the peculiarities of ownership of various objects characterized by a specific approach to legal regulation. The author argues that modernization of property rights at the EU level contributes to the convergence of property rights systems at the level of EU Member States and contributes to their improvement through, in particular, expanding the content of property ownership.*

**Keywords:** *property law, property, ownership, contract law, contract, European Union private law, trust.*

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**Речове право Європейського Союзу: огляд основних положень та особливостей**

*Досліджено особливості речового права Європейського Союзу (ЄС) та основні тенденції, які вплива-*

ють на напрями удосконалення правових категорій в рамках інституту речового права. З'ясовано, що речове право ЄС є відносно новою галуззю права, якій бракує структурованості та чіткої системи. Однак речове право ЄС також розвивається в судовій практиці і в законодавстві держав-членів ЄС, і в академічних колах, і в рамках приватних ініціатив. Тому вектори розвитку речового права ЄС доволі різноманітні та складні, часто ускладнені міждисциплінарним підходом до розуміння власності та інтерпретації її змісту в праві. Актуальність обраної тематики підсилюється також і тим, що для України важливо розуміти особливості речового права ЄС та тенденції його розвитку з огляду на євроінтеграційні процеси та прискорену інтеграцію до європейського торговельного простору.

Досліджено особливості правового регулювання та взаємодії речового права та договірного права, на підставі чого зроблено висновок про те, що сьогодні речове право ЄС є фрагментованим та позбавлене правової структурованості, порівняно із європейським договірним правом. Обґрунтовано, що договірне право і речове право є двома основними галузями цивільного права, де договірне право регулює взаємодію сторін укладеного договору, а речове право стосується правових відносин щодо майна. На практиці ці галузі тісно взаємодіють передусім з огляду на те, що багато договорів стосуються розпорядження майном.

З'ясовано, що більшість європейських правопорядків цивільного права дотримуються принципу *numerus clausus*, однак в окремих країнах використовується принцип відкритого переліку речових прав (*numerus apertus*).

Обґрунтовано думку про те, що теорія права власності в науці розглядається через міждисциплінарний підхід та аналіз різних її аспектів з огляду на глобалізацію, діджиталізацію та екологічну кризу. З'ясовано, що на сьогодні речове право ЄС активно оновлюється через удосконалення його інституційної структури та з огляду на особливості права власності на різноманітні об'єкти, які характеризуються специфічним підходом до правового регулювання. Обстоюється думка, що модернізація права власності на рівні ЄС сприяє зближенню систем права власності на рівні країн-членів ЄС та сприяє їх удосконаленню через, зокрема, розширення змісту володіння майном.

**Ключові слова:** речове право, майно, власність, договірне право, договір, приватне право Європейського Союзу, траст.

**Formulation of the problem.** European Union (EU) property law is a relatively new area of law that is developing rapidly in view of the challenges posed by time to the legislator and law enforcement practice. Today, EU property law lacks structure and a clear system, which indicates the absence of a clear policy underlying the construction of rules on property rights and other real rights. In fact, the European legislature has left the issue of property rights structure out of the proper level of attention. However, property law in the EU is also developing in the case law and legislation of the EU member states, as well as in academic circles and through private initiatives. Therefore, the vectors of development of EU property law are quite diverse and complex, often complicated by an interdisciplinary approach to understanding property and interpreting its content in law. For Ukraine, it is important to understand the peculiarities of EU property law in view of European integration processes and accelerated integration into the European trade area. In this regard, this topic is particularly relevant.

**Analysis of resent research and publications.** Christian von Bar, Jan Felix Hoffmann, Siel Demeyere, Lutz-Christian Wolff, Shelley Hiller Margerath and others have studied EU property law in their publications. However, in the publications of the above-mentioned scholars, property law is considered either through the prism of national legislation of the Member States or to a greater extent relates to the factors that influenced the formation of the content and list of property rights. The issues of correlation between property law and contract law, types of property rights and trends in the development of EU property law with regard to current challenges remain unaddressed. Therefore, **the purpose of this study is** to determine the peculiarities of the EU law of property in the current context.

**Presentation of the main research material.** Today, EU property law is a rapidly developing area of law. By analyzing the *acquis communautaire*, it is evident that the contours of a European property law system are slowly emerging through the rules governing property rights. However, at the moment, EU property law is still very fragmented and has not been rooted in a clear legislative agenda for a long time. The need to develop this area of law is related to much weaker legal regulation and doctrinal developments compared to European contract law [1]. In addition, national rules of property law currently in force can and often do create obstacles to the free movement of property within the European internal market [2].

The fundamental changes in the socio-economic life of society that occurred at the end of the 20th century had a significant impact on the development of property law not only in Ukraine but also throughout the world. In recent years, the European Union has been persistently adopting regulations that have a direct and indirect impact on property law. In addition, real law forms the basis of legal regulation for such areas as tax law, environmental

law and inheritance law, so the proper level of legal regulation of real rights is the basis for the stability of not only the economic system, but also the entire political and legal system of a particular country or association of countries [3]. Property law is closely related not only to other branches of law, but also to legal institutions of private law. Therefore, it is interesting to first of all explore certain problematic issues of legal regulation of legal categories from the perspective of not only property law, but also contract law.

#### I. Property and contract law: at the intersection of legal regulation

The law of property and contract law are closely intertwined, even though contracts are the most common basis for the emergence of property rights. In common law scholarship, Jan Felix Hoffmann observes the formulation of a new theory of contract law based on property law, which assumes that it is not important to distinguish between relative and absolute rights between the parties [4], and therefore, a strict distinction between contract law and law in rem should be abandoned. This development in common law raises the question of whether a contract can directly give rise to absolute rights in the context of civil law. This question is considered against the background of German law. To this end, a brief overview of contractual property theories is provided before considering the anatomy of an obligation and thus the rights of a creditor towards a debtor. It then assesses how civil law systems distinguish between absolute and relative rights. This raises the question of whether a contract can directly give rise to absolute rights and what are their characteristics.

In his doctoral dissertation, Siel Demeyere conducts a study of real obligations, taking into account that real obligations are affected by both property law and contract law [5]. He analyzes the peculiarities of interaction of real obligations with other property rights, whether in «Real relations in respect of one single (non)movable thing» or in «Real relations between two immovable things».

Lutz-Christian Wolff believes that the distinction between these two branches of law is not as clear as it is traditionally thought. This analysis shows that special requirements are not limited to contract law, but also interact with property law [6].

In general, contract law and property law are two main branches of civil law, and they regulate different aspects of interaction between subjects and property. The main difference between them is the object of legal regulation and the methods and grounds for the emergence of legal relations. Contract law regulates the interaction between the parties to contracts, while property law deals with legal relations with respect to property, but in practice these branches closely interact with each other, given that many contracts relate to the disposal of property.

#### II. The problem of defining the concept and types of real rights

In general, in EU private law, property law is understood as a set of rules governing property relations in which authorized persons can exercise their property rights and do not require positive actions of other entities [7]. Everyone has the right to own, use, dispose of and bequeath his or her legally acquired property. No one shall be deprived of his or her property except in the public interest, in cases and under conditions provided for by law, subject to timely and fair compensation for its loss. The use of property may be regulated by law to the extent necessary for the general interest. These provisions are enshrined in Article 17 of the Charter of Fundamental Rights [8]. This article is based on the provisions of Article 1 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms: «Everyone has the right to peaceful enjoyment of his possessions. No one shall be deprived of his or her possessions except in the public interest and subject to the conditions provided for by law and the general principles of international law» [9].

The preceding provisions, however, in no way limit the right of the state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties. This is a fundamental right common to all national constitutions, which has also been repeatedly recognized by the case law of the European Court of Justice (for example, in the Hauer judgment (December 13, 1979, ECR [1979] 3727) [10].

Since EU property law reflects the common features of the European property law systems of all member states, the basic principles of European property law include the absoluteness and certainty of the list and content of property rights (*numerus clausus*) by law [7].

Most European civil law legal orders adhere to the *numerus clausus* principle. In some European countries, a soft form of the *numerus clausus* principle is used, and the issue of replacing it with the principle of an open list of rights in rem (*numerus apertus*; open catalogue) is being discussed (France, Spain, etc.). The system of an open list of rights in rem («*numerus apertus*») has been enshrined in Spanish law. For example, Art. 2 of the Spanish Mortgage Law (in fact, the law on registration of rights to real estate) provides that the register shall include entries on usufruct, usus, habitacion, emphyteusis, mortgage, censorship, easements and any other real rights. At the same

time, Article 7 of the Mortgage Regulations (rules for keeping the register) states that the register should include not only the named rights in rem, but also other rights of the same nature, even if they are not specified in the law.

DCFR deals with certain aspects of property law, but not all property law. In particular, there are separate rules on the transfer of rights in rem to movable objects, security rights in rem to movable property and trusts. In each of these areas, there is a clear link between contract law and property law (e.g., transfer of ownership for the purposes of securing and preserving ownership). Despite the fact that the DCFR does not have the status of an official legislative act, it may influence the further development of law in the EU. Its provisions and principles can be used as recommendations for harmonization of national legislation of the member states or for further formation of a unified European legal system [11].

The main place in the system of property rights is occupied by the right of ownership, which is the most complete property right in the system of property rights and, at the same time, does not deny the existence of limited property rights - rights to other people's property.

The European Union has various property rights that guarantee fundamental freedoms and protect the interests of citizens. In particular, the right to property guarantees individuals and legal entities the right to own, use, dispose of and transfer property. The peculiarity of property in the EU is the protection of property through legislation and the ability to go to court in case of violation of one's rights. The peculiarity of property rights in the EU is their mutual interaction and guaranteed protection at the EU level. This means that individuals and legal entities can exercise these rights in any EU country and have the opportunity to apply to the European Court of Justice to protect their rights. This approach contributes to the unity and integration of the EU internal market.

In general, European Union law regulates various aspects of the transfer of rights in rem to movable objects, security rights in rem to movable property and trusts.

The European Union also has relevant rules for the transfer of a security right over movable property. For example, Regulation (EU) No. 2015/848 on the procedures for the recognition and enforcement of judgments in civil and commercial matters between Member States sets out the rules relating to the transfer of a security right in rem to movable property within the European Union. In particular, this Regulation sets out the procedures for the recognition and enforcement of decisions on the transfer of a security right in rem to movable property from one Member State to another [12].

With regard to the transfer of trusts, the European Union does not have a single legal regulation, as this issue is mainly a matter of national law of the Member States. However, there are European rules on cooperation in the field of civil law, which include instruments for the recognition and enforcement of trust-related judgments between Member States. The specific rules and procedures for the transfer of rights in rem to movable objects, security interests in movable property and trusts may vary depending on the specific context and jurisdiction. Therefore, it is important to refer to the laws of the particular country in which the transfer is to be made.

With regard to the transfer of rights in rem to movable objects, European law establishes general principles and rules governing such transfers. For example, Directive 2008/48/EC on credit agreements for consumers sets out the rules for the transfer of rights in rem to movable objects acquired with credit. According to this Directive, the loan agreement must contain conditions under which the right to a movable object is transferred from the lender (e.g., bank) to the borrower (consumer) when the latter fulfills its obligations to repay the loan [13].

### III. Peculiarities of the development of the EU property law at the present stage

Today, the theory of property rights in science and law enforcement practice is considered through an interdisciplinary approach and analysis of its various aspects. For example, Rachael Walsh examines property rights through the prism of social justice and striking a balance between protecting property rights and promoting social justice [14]. In his turn, Jean-Philippe Robé, who studies property rights in the context of politics, analyzes the role of the property institution in the development of the state and democracy, justifying its special place in the formation of democratic institutions [15]. In addition, property rights have a significant impact on the environment, sustainable development, and the economy. Therefore, EU private law researchers often focus on sustainable development in the broader context of private law, justifying the need to reassess the existing legal system [16]. To do this, first of all, it is necessary to guarantee the right to private property in practice, to protect it with sufficient legal mechanisms in view of its social function [17]. The right of ownership should always be exercised with due regard to the need to protect the environment and comply with the rules of ecological operation [18]. Otherwise, property rights will lose their essence and will be used to the detriment of the public interest. In this context, the need to recognize waste as a special object of property rights at the EU level, the legal regulation of which is contained in the EU Waste Framework Directive, is substantiated.

Today, the field of digitalization requires special legal regulation, and especially the ownership of digital assets. One of the main problems is the legal classification of digital assets and the question of whether it is possible to “own” data and the status quo of «property» [19]. Currently, the European legal framework (e.g., data protection law and intellectual property law) does not regulate the legal classification of data, the specifics of its use and access. No less interesting are the issues of the possibility of inheriting a Facebook account [20], as they relate to the inheritance of data and the regulation of digital assets (for example, as a commodity or subject of ownership and inheritance) [21]. Particularly relevant is the issue of appropriation of modern technologies, including artificial intelligence, which have a significant impact on the legal system [22].

In order to reduce existing contradictions at the level of property law, the EU institutional structure is being updated. In particular, the classifications of ownership of various objects (land, property, data and digital assets, intellectual property, security interests, property priorities, etc.) are being clarified, which are characterized by a specific approach to legal regulation. In general, the structure of property rights systems at the level of EU member states is converging. In addition, the EU property law itself is actively developing in the direction of expanding the content of property ownership and protecting third parties [23].

A separate important place in the EU property law system is occupied by the issues of succession and matrimonial property arising from the provisions of the European Regulation of Succession (August 17, 2015) [24] and the EU Matrimonial Property Regulation (January 29, 2019) [25].

On August 17, 2015, the European Regulation on Succession was adopted, which regulates the recognition and enforcement of civil and commercial judgments between the member states of the European Union. The specifics of succession arising from this regulation include the following aspects. First, the Regulation is directly applicable in all EU member states without the need to incorporate it into national legislation. This simplifies and speeds up the processes of recognition and enforcement of judgments between member states. Secondly, the Regulation is based on the principle of mutual recognition of judgments between Member States, so judgments rendered in one Member State should be recognized and enforced in other Member States without additional procedures. Thirdly, the Regulation aims to ensure the uniformity of decisions on succession issues, so decisions made in one Member State should have the same legal status and effect as in the country where they were made. Fourth, the Regulation provides that decisions enforceable in another Member State are not subject to further review as to their merits. This means that the Member State where the judgment is enforced cannot re-examine the substantive issues that were decided in the judgment, except in limited cases. Fifth, the Regulation establishes simplified procedures for the recognition and enforcement of judgments between Member States. This contributes to the rapid and efficient administration of justice and enforcement of judgments [24]. In general, the European Succession Regulation simplifies and unifies the procedures for the recognition and enforcement of judgments between the Member States of the European Union, providing more efficient and faster access to justice for citizens and businesses.

On January 29, 2019, the European Union Regulation on matrimonial property (EU Regulation 2019/1104) was adopted, which sets out the rules for the recognition and enforcement of decisions on matrimonial property in international marriages and registered partnerships. This Regulation applies to property belonging to spouses or registered partners in international marriages or registered partnerships. It covers such issues as ownership, use, management and division of property.

Importantly, this Regulation is based on the principles of mutual recognition and enforcement of property decisions. This means that decisions made in one Member State should be recognized and enforced in other Member States without the need for additional procedures. Since the Regulation seeks to ensure the uniformity of decisions on marital property, a decision made in one Member State has the same legal status and effect as in the country where it was made. It is also important that the Regulation establishes simplified procedures for the recognition and enforcement of marital property judgments, which contributes to the rapid and efficient administration of justice and enforcement of judgments [25].

In general, this Regulation promotes mutual cooperation between Member States in matters relating to matrimonial property and provides for the exchange of information and cooperation between the competent authorities of different Member States. EU Regulation 2019/1104 on matrimonial property simplifies and unifies the procedures for the recognition and enforcement of decisions on matrimonial property and provides more transparent and predictable rules for spouses.

Since the right to real estate is one of the fundamental principles of property rights, the main novelties at the EU level primarily concern various aspects of real estate transfers, which are changing and evolving under

the influence of digitalization and globalization. For example, EU property law is currently actively working to integrate blockchain technology into the real estate sector [26].

**Conclusions.** This research shows that European property rights can be studied from different angles and perspectives. At the same time, there is a growing trend towards research that questions the basis of the current understanding of property and calls for a more creative thinking about what the concept of property should be in order to respond effectively to globalization, digitalization and the environmental crisis. In this regard, it is noticeable that property law is developing not only as a discipline, but is increasingly seeking to engage in dialogue with other fields of knowledge, such as philosophy, economics, politics and ethics, in order to formulate interdisciplinary responses to the most pressing issues of our time.

Today, EU property law is being actively updated by improving its institutional structure and the specifics of ownership of various objects characterized by a specific approach to legal regulation (land, data and digital assets, intellectual property, security interests, property priorities, artificial intelligence, etc.) Such modernization of property rights at the EU level contributes to the convergence of property rights systems at the level of EU member states and their improvement. Moreover, the detailing of certain institutions of EU property law helps to expand the content of property ownership and contributes to better protection of property rights of third parties.

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