

EVOLUTION OF THE PRE-EMPTION RIGHT IN THE PURCHASE OF AGRICULTURAL LAND IN ROMANIA: IMPLICATIONS AND REGULATIONS

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Abstract

In the context of the dynamics of the agricultural land market in Romania, the right of pre-emption is a crucial instrument for protecting both the state's economic and social interests and those of the local communities. This article analyses the evolution of this right in national regulations, from the first post-1989 regulations to the recent amendments to the European and national laws. Materials, data sources, and research methods used encompassed legislative texts, government and institutional reports, statistical databases on real estate transactions, and official publications from national and European institutions. First of all, it discusses the purpose of the pre-emption right in preventing speculative acquisitions and in protecting agricultural resources, which are vital for national food security. The article also addresses the economic and social implications of these regulations, including the impact on potential investors, but also the possible effects on rural area development. Finally, it presents the current legislative challenges to ensure a balance between protecting agricultural resources and stimulating investments in the agricultural sector. Main results and conclusions show that the development of the pre-emption right in Romania has been gradual, with significant legislative changes. Despite this, land fragmentation remains high, transaction volumes and land prices continue to rise, and challenges such as incomplete cadastral registration, ageing rural populations, and limited access to financing persist.

Key words: pre-emption right, agricultural land, regulations, rural area development

INTRODUCTION

The land fund as a resource is defined by FAO (Food and Agriculture Organisation) as the physical element of the environment, a socio-economic component of a natural terrestrial unit [8].

Agricultural land constitutes fundamental capital because it is intended for the production of food for people through growing plants and raising animals [19].

The land fund represents one of the most important resources of the country, as part of the country's economy, but also as a social aspect. After 1989, following the restoration of property rights, a significant portion of agricultural land was returned by the Romanian state to its rightful owners or their heirs [5]. As a result, the pre-emption right, defined as the priority right to purchase an asset, in this case, agricultural land, was established as an important principle considered in land

market transactions. Any legislative change to this rule can accelerate or slow down the dynamics of agricultural land purchases in Romania.

The purpose of the study is to trace the evolution of the pre-emption right in Romania from its inception until today, highlighting key legislative changes related to agricultural land transactions. The study aims to analyze the impact of these laws on the trading volume of agricultural land during the period 2017–2024. It also seeks to understand how the pre-emption right influences the dynamics of the land market, land fragmentation, and rural development in Romania.

MATERIALS AND METHODS

The first part of this article aims to trace the evolution of the pre-emption right from its inception to the present day, highlighting the changes introduced through land legislation

over time. For this purpose, the relevant legislation from the year 1989 to the present was studied.

In the second part of the article, we analysed the impact of applying the legislation to trading agricultural land in Romania, depending on the volume of such trading during the period 2017-2024, based on statistical data from professional institutions in Romania.

Data sources include official Romanian legislation from 1989 to the present, statistical data on agricultural land transactions collected from 2017 to 2024 by the specialized agency responsible for registering property rights and transfer deeds. Additional sources are reports and strategic documents from the Ministry of Agriculture and Rural Development, EU official documents, and cadastral registration data related to agricultural land.

Data processing and other methods used involved qualitative legal analysis to review changes in land legislation over time and comparative analysis of the evolution of the pre-emption right. Statistical methods were applied to analyze trends in land transaction volumes. The study also incorporated a review of strategic policy documents and cadastral records to assess their influence on market transparency and the exercise of pre-emption rights.

RESULTS AND DISCUSSIONS

In Romanian legislation, which follows the events of 1989, the right of pre-emption was established in 1991, upon the issuance of the law by which the land fund began its transformation and in the first phase, it was transferred from the property of the Romanian state to private property. Thus, article 48 of Law 18/1991, which was previously referred to, stated the following [11]: the alienation of agricultural land through sale-purchase is done by complying with the priority of purchase in the case of co-owners and then of neighbouring owners. This procedure was carried out through a specialized institution called the Agency for Rural Development and Planning. Thus, the owner of the land that was to be alienated was obliged to notify this institution of his intention, and the Agency transmitted to

the people information about the transaction that was to take place within 15 days. Holders of the pre-emption right were required to declare their intention to purchase the land within 30 days. If, upon expiry of this period, neither the Agency for Rural Development and Planning nor any co-owners or neighbouring landholders expressed interest, the land could be legally transferred to a third party. Moreover, the legal provision stated that non-compliance with the pre-emption right could result in the annulment of the transaction.

The problem of pre-emption rights in Romania was also approached from a historical point of view, in the view of the French doctrine and legislation, in the view of the new civil code in various domains by Foltis (2010) [9].

In 1998, the legislation governing the legal circulation of land was amended [12]. One of the newly introduced provisions established that the pre-emption right was extended to include tenants, ranked after co-owners and neighbouring landowners in the order of priority. The term in which pre-emptors could express their interest in purchasing the land was increased by another 15 days, and the document containing the details of the sale was registered within the town hall of the locality where the property was located.

In 2009, Law no. 287/2009 on the Civil Code [13] introduced the notion of the *pre-emptor*, referring to the holder of the pre-emption right, who may acquire an asset with priority, provided that the legal or contractual conditions are met. The law also established specific provisions regarding lease agreements. The Civil Code of July 17, 2009 (republished) [6], retained the same legal framework governing the right of pre-emption.

In the context of Romania's accession to the European Union and the implementation of the Common Agricultural Policy, foreign citizens were granted the right to purchase agricultural land in Romania. This development contributed to a reduction in land fragmentation but simultaneously led to an increase in land concentration, particularly in the southern regions of the country. The monopolization of agricultural areas and their excessive fragmentation are considered

sensitive points that could hurt the food security of our country [24].

The Ministry of Agriculture and Rural Development published in 2015 a proposal for the action plan for the period 2020-2030. The document was developed following prior consultations with a large number of people working in the field. The document lists the three highest priorities considered: land merging, increasing the capitalisation of agricultural potential and reducing poverty in rural areas (rural areas development). The limitations in the economic progress of rural areas are also mentioned here. These are: restricted access to financing, land fragmentation, an ageing population and lack of professional training [16].

In this context, Law no. 17/2014 [14] was adopted, establishing a separate legal framework from the Civil Code. As a special law, it plays a key role in clarifying and regulating the procedures for exercising the right of pre-emption. This is a key factor in the agricultural land market in Romania. Article 1 of Law 17/2014 states the purposes of this law: a) ensuring food security, safeguarding state interests, and managing natural resources in alignment with national priorities in these areas; b) establishing a dedicated legal framework for the sale and purchase of agricultural land located outside the built-up areas of localities; c) facilitating the consolidation of agricultural land through merging processes.

This law establishes the ranks of pre-emptors as follows:

1. co-owners;
2. tenants;
3. natural and legal persons who own land with a common side;
4. The State Domains Agency, as a representative of the Romanian State.

This law, along with its implementing regulations, establishes the procedure for obtaining the principal approval (endorsement) for the sale of agricultural land located outside the built-up areas. The approval is issued by the competent authority—either the Ministry of Agriculture and Rural Development or the County Directorates for Agriculture, depending on the size and location of the land. The process involves ensuring full

transparency by publishing the sale offer on the official website of the respective institution: at the national level for plots exceeding 30 hectares, and at the county level for those under 30 hectares. Additionally, the issuance of this approval is conditional upon verifying compliance with the legal provisions governing the exercise of the pre-emption right. It should also be stated that for the alienation of agricultural land, under certain legal conditions, specific endorsements issued by the Ministry of National Defence or the Ministry of Culture are required.

In 2017, the Official Journal of the European Union published the Commission's point of view on agricultural land transactions [7]. This document is issued in response to the European Parliament's request to publish guidelines on the regulation of agricultural land markets under European Union law. This document also notes that some European countries, including Romania, have adopted land laws after 2013 to counteract undesirable effects on their land markets (e.g. pressure on agricultural land due to the need to use it for non-agricultural purposes).

These guidelines have been incorporated into Romanian legislation through the substantial amendment of Law no. 17/2014, introduced by Law no. 175/2020 [15]. The new provisions include prior approval for transactions involving agricultural land, requirements for professional training in agriculture, and residency conditions for natural or legal persons intending to acquire agricultural land. Seven categories of pre-emptors are established:

- a) first-rank pre-emptors: co-owners, first-degree relatives, spouses, relatives and persons with legal affinity up to the third degree inclusive;
- b) the next pre-emption rank (II): natural or legal persons who own agricultural investments such as orchards, vineyards, hop plantations, private irrigation and/or tenants. Among the two categories of pre-emptors included in the second rank, priority is granted to the first category in the purchasing process.
- c) Third-rank pre-emptors include: owners of land sharing a common boundary with the land offered for sale, and natural or legal persons

who are tenants of extra-urban areas adjacent to the land in question.

d) fourth rank: made up of young farmers;

e) fifth-rank pre-emptors: specialised research and development institutions operating in the area where the agricultural land subject to sale is located;

f) sixth-rank pre-emptors: individuals residing or having their domicile in the locality where the land is situated or in neighbouring localities.

g) seventh rank of pre-emption: State Domains Agency, as representative of the Romanian State.

Law no. 175/2020 introduces the concept of the ‘potential buyer’, defined as a natural or legal person eligible to purchase agricultural land if the pre-emption right is not exercised, provided that specific legal conditions are met. As a result of the legislative amendments, the legal framework governing the exercise of the pre-emption right has become significantly more restrictive. The timeframe for exercising this right has been extended to 45 working days. Furthermore, a specialized buyer may express interest in acquiring the land within 30 calendar days following the conclusion of the pre-emption phase.

The procedure for selling agricultural land is characterized by a high degree of transparency, ensured by the institutions involved. Specifically, the sale offer is published online, thereby making the landowner’s intention to alienate the property publicly accessible to any interested party. The exercise of the pre-emption right and the endorsement obtained under the law are also made transparent in the same way.

Although clear rules for trading agricultural land (outside urban areas) have been implemented in Romanian legislation over the last 10 years, the number of transactions is still high.

To better understand the effect of implementing the pre-emption right in agricultural land transactions, we have made a synthesis of the evolution of their volume

during the period 2017-2024, data collected from the official website of the specialized agency whose purpose is to register real estate transfer deeds and register property rights [4]. Two reasons led to the choice of the above-mentioned period: since 2017 to the present, the data are centralized monthly and a symmetry can be established in terms of periods, having as reference the year 2021, when Law 175/2020 became fully functional (4 years before and 4 years after implementing Law 175/2020).

Below is the summary table with the above-mentioned data:

Table 1. Number of agricultural land transactions

Year	Number of transactions
2017	127,724
2018	117,293
2019	100,925
2020	107,610
2021	109,647
2022	142,891
2023	135,261
2024	125,632

Source: www.ancpi.ro [4].

The increasing trend in the annual number of agricultural land transactions indicates that the existing agricultural area in Romania is still quite fragmented.

Although the legislation regulating the right of pre-emption in the agricultural land market has been implemented, significant challenges remain in the development of rural areas in Romania.

While the number of agricultural land transactions continues to grow, a similar upward trend is observed in land prices [2], [23].

Fig. 1 shows the slightly increasing trend in the number of agricultural land transactions, a trend that began after 2021.

An additional indicator of the fragmented structure of agricultural land is the existence of a draft law currently under debate in the Romanian Parliament, which aims to facilitate land consolidation.

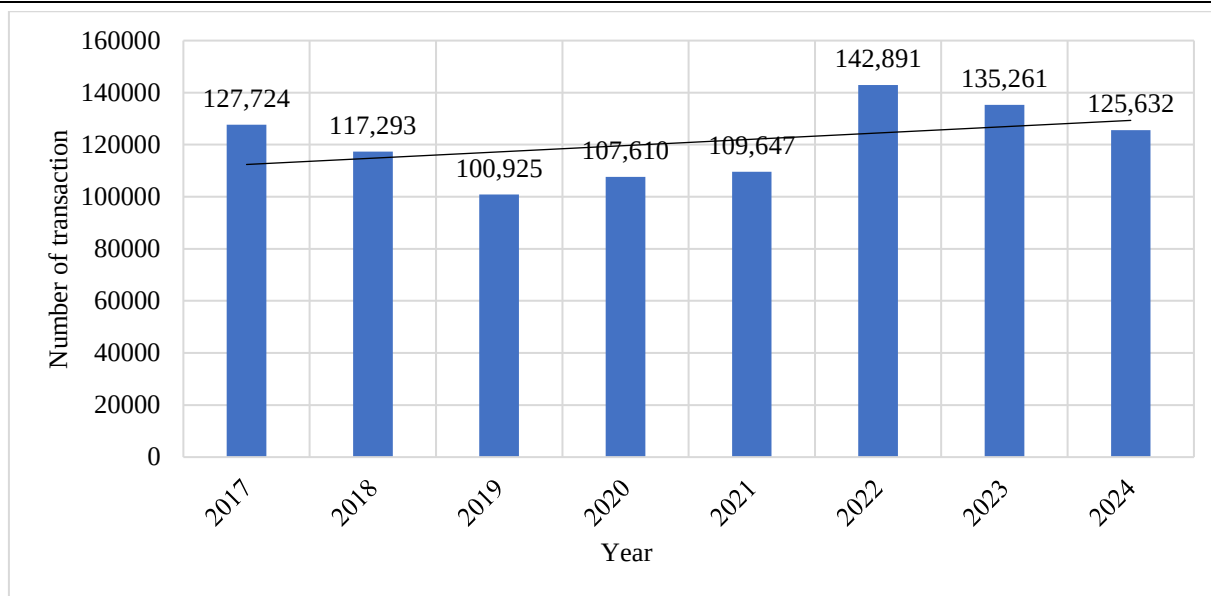


Fig. 1 Evolution of the volume of agricultural land transactions between 2017 - 2024
Source: www.ancpi.ro [4].

This process is intended to be applied only where necessary—namely, in regions with a high degree of land fragmentation—and is designed to support the development of the agricultural sector and, consequently, the advancement of rural areas [1]. Through this normative act, still in the draft stage, the merging of lands would imply an exchange of areas between two or more owners [18], therefore not a sale-purchase transaction. Nevertheless, land consolidation can already occur in practice when, during the sale of agricultural land located outside urban boundaries, the neighbouring owner or tenant exercises their right of pre-emption.

The legal procedure for the transfer of ownership through the sale of such land includes several mandatory steps. Specifically, the town hall in whose administrative jurisdiction the land is located, along with the county directorate for agriculture, are required to publicly display the sale offer as submitted by the landowner. Thus, the person interested in purchasing agricultural land is informed in real time about the offers that have appeared, to exercise their pre-emption right within the legal term (45 working days from the date of initiating the sale procedure). It is the farmer's choice whether he exercises his right of priority in purchasing agricultural land or not.

In turn, farmers, those who contribute essentially to the development of rural areas,

may face various difficulties in this process: the number of small farms is still high, there is insufficient technological equipment in agricultural holdings, the increasingly aging rural population, aspect highlighted in the document published by the relevant ministry, in the analysis of the National Strategic Plan 2021-2027 [17].

Another aspect worth mentioning is that less than 20% of farms need other financial resources to survive, as shown by a recent analysis of the situation in agriculture carried out by the National Council for SMEs. This study highlights the need to allocate financial resources for the purchase of agricultural machinery, farm management, digitalization process, research and development, and human resources. Moreover, the analysis emphasizes that self-financing remains the primary method of supporting agricultural activities in Romania [20].

Another significant factor influencing the effective exercise of the pre-emption right is the cadastral registration process of agricultural land, which is still incomplete. A criticism of this process emerges from the document drawn up following the consultations and opinions expressed during the second meeting on the merging of agricultural areas [10].

However, the national cadastre and land registry program is currently being

implemented, which aims to register properties in Romania free of charge. The measure was established by the Government through Emergency Ordinance 31/2018 [21], [22].

At this moment, out of an area of 9.54 million ha of agricultural land benefiting from subsidies from the Agency for Payments and Interventions in Agriculture, 8.17 million ha have been registered, i.e. a percentage of 86% [3].

CONCLUSIONS

The evolution of the pre-emption right in Romania was a slow process, without initially benefiting from special legislation, even after 2007. Indeed, an acceleration of the change in the rules for the acquisition of agricultural land occurred in 2014, and a major change in the land legislation was implemented 6 years later. The conditions for agricultural land transactions have become stricter to better respond to the 3 purposes of the law.

The current legal framework governing the pre-emption right in Romania provides investors with a genuine opportunity to gain priority access to the acquisition of agricultural land. At the same time, the fact that legislation on land acquisition is substantially revised every few years can have a stabilizing effect by establishing clearer and more predictable rules for the Romanian land market over longer periods.

An additional function of the pre-emption right is its potential to contribute to rural development—particularly through facilitating the consolidation of agricultural land—provided it is consistently exercised by eligible farmers who can fully benefit from this legal mechanism.

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