

THE IMPACT OF LIBERALIZATION ON THE ROMANIAN LAND MARKET SALES

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Abstract

The purchase of agricultural land holdings leads to farming efficiency and performance. Because agricultural land is one of the main strategic resources in land market, the state must act with great caution and responsibility. In this context 2014 marks the liberalization of agricultural land market in Romania for potential investors from Europe under the Common Agricultural Policy. Therefore, as a revealing and in this article, there are quite a few reasons to believe that the acquisition of agricultural land is at least a subject of great interest both for farmers Romanian, and especially for foreign investors. What I proposed to a further importance it is the identification of the correct functioning of the land market and the impact they have certain basic elements of which the most relevant is the lack of land register. It also will draw attention to the negative impact that can be generated socially, through irresponsible sale of land to new owners who will not first take account of cultural, crop rotation, environmental zoning and overall production. At the end of the paper I have reserved the right to outline some proposals that I hope they are going to improve the current situation. The present paper analyses the impact of liberalization on the Romanian land market sales. The goal is to identify the effect of land liberalization in the context in which foreign buyers are allowed to purchase land in Romania, since 2014. In order to achieve this goal, an analysis of Romanian legislation is done in the contents of this paper, in particular an analysis of the law 17/2014.

Keywords

land market, free movement, cadastre

Introduction

The land market is an objective component of the free and democratic market economy. Operating rules of the land market are broadly similar to those of any other economic good market, but there are specific elements. In the first place it is national, the land, as a material good is special which cannot be territorial deployed, multiplied or manufactured and it is a vital element in the existence of a nation. In the second place it is no price of land in general, each field or plot with its price.

„The land as principal and irreplaceable agricultural good requires special attention” (Popescu, 2014).

The importance and value of land increases as the development of the economy is higher. Under this criterion the land market in our country behave as such, because the development of the Romanian economy is lower compared to developed European economies.

The main problem of the land market in Romania is the lack of cadastre or an owners database and lots of coordinates and other. In Romania there are a few common cadastres where all the work is completed, and those are in Transylvania and Banat, but never in Moldavia and Wallachia.

Currently in Romania there is no updated situation onto the unincorporated land cadastre, although in the last 20 years there have been a number of fundamental changes in the structure of land.

Last cadastre made before 1989 are worthless because they targeted agricultural lands owned by the state farms and the collective farms disbanded after 1990 once with the restitution by the former owners.

A main cause regarding the cadastre failure and the automatic tabulation land and their commercialization is the lack of heirs documents who received land under the restitution laws.

Cadastre corrects "facts on the ground with the facts on paper" because the ownership from the property titles is not always the same as the real one.

The agricultural fund cadastre objectives are those of providing information on the quantity and quality of agricultural land in order to guide agricultural activities and to solve financial problems, namely the establishment of taxes, the insurance, renovations, investments, protection etc.

Some of the most important issues facing our country in terms of property is the encroaching and overlapping of titles.

Cadastre recognizes the ownership and determines the size of each plot in terms of borders, positions, neighbors, helping to establish the category of use, taxes and a fair price of each parcel. Cadastre is the most important economic and non-economic action of which is the movement of land ownership, namely: buying, cooperation, association, leasing, renting, etc. Lack of cadastre maps hampers the consolidation and concentration of land ownership, and the selling of the land.

1. The evolution in time of the agricultural land transactions

After 1990 the first actions taken on land movement was temporarily prohibiting the alienation of land between living persons. (according to Law no.9/1990).

In 1991 the Law 18 founded the legal circulation of land. So the private land can be acquired and disposed of by any of the ways established by civil legislation thus remaining in the civil circuit. According to this the private land can not exceed 100 ha of agricultural land in arable equivalent, per family, under penalty of nullity of the act of alienation.

In a new political context, starting with year 1996 the law 18/1991 was improved. First by approval of law 54/ 1998, which implies increasing the limit on land ownership to 200 ha.

Adopting law no 247/2005 brought benefits consisting in approaching the land transactions on a unitary basis, regardless of their destination: agricultural or forest land. Also the pre-emption right is completely eliminated.

After these legislative changes the town halls were no longer obliged to keep the evidence of transactions with extravilan agricultural land areas, and the Ministry of Agriculture could no longer centralize the data on the land market.

To reduce fragmentation properties the law provides exemption from stamp duty for land alienation made to strengthen plots and also for the persons entitled to obtain the agricultural life annuity.

2. Legal framework

In the Treaty of Accession to the EU land as market liberalization has provided the law which was enacted this year in the law 17/2014.

This law opened doors to individuals who can buy land in the country the same conditions as Romanian citizens without any restrictions.

In this context, the law does not facilitate the acquisition of agricultural land by Romanian citizens towards European investors.

Moreover European buyers benefit of other credit terms with much lower interest rates, which encourages and provides competitive advantages to potential investors in Romania, with a priority to purchase and it exceeds the pre-emption legislation.

Freedom to land has a major impact on the functioning of the market land mechanisms because the generous offers of the European buyers far outweighs the financial resources of Romanian farmers, especially people living in rural areas.

According to Law 17/2014, which entered into force on April 11th, the ones who can buy agricultural land outside the city in our country are:

- Romanian citizens;
- Citizens of EU countries;
- Citizens of countries who are part of the European Economic Area Agreement (EEAA; includes Norway, Liechtenstein and Iceland) or the Swiss Confederation;
- Stateless people residing in Romania, an EU member state, in a state of ASEE and the Swiss Confederation;
- Legal people having Romanian nationality;
- Legal people having the nationality of an EU Member State, of the states who are part of the EEAA and the Swiss Confederation.

Citizens and legal people belonging to an EU Member State or States which are party to the EEAA or the Swiss Confederation can purchase agricultural land in Romania in terms of reciprocity.

According to MARD Order no. 719/2014, for the sale of lands, the seller submits the request for the display hall offered for sale along with other supporting documents. Then the town hall transmits to the main structure or to the territorial structures, if appropriate, fill all documents mentioned above and the list of pre-emptors within 3 days from completion date.

Within 30 days from the posting of the sale offer at the town hall, under penalty of forfeiture, any pre-emptive holders wishing to exercise this right at the town hall should record the offer according to law no 17/2014.

The seller chooses pre-empt potential buyer in accordance with the procedures from art. 7 and communicates to the town hall. The town hall transmit to the main structure or territorial structures, if applicable, an identification of a potential pre-empt chosen by the seller, together with documentation.

According to Law no. 17/2014, if the land is purchased by a pre-emptor, we need a final opinion in order signed the contract to be signed. This opinion is issued by the ADS's territorial structures for lands with an area up to 30 hectares and the ADS for lands with an area over 30 hectares.

Specifically, ADS verifies if the pre-emptor meets legal requirements within 5 working days of receiving data and documents on sale, under the new law to purchase land outside the city. The control result is communicated by a notice, positive or negative, within 2 working days from the deadline .

According to the application of Law no. 17/2014, the main structure or territorial structures, issued its final opinion / adverse opinion.

If no pre-emption purchase not its intention, in legal terms, the sale is free, according to the application of Law no. 17/2014.

Land transfer both by sale and the rent is made difficult because over 50% of agricultural land is not registered in the cadastral register, the land law was applied incorrectly, generating occurrence of several types of property documents for the same parcel of land

but with different owners, and not least because of high costs to achieve cadastre for smallholders.

At present the total area of 13.5 million ha of agricultural land that it owns Romania, about 9 million ha is arable. These lands are generating the most interest from buyers. For this reason all agricultural policies that measures in this field, must follow and focus primarily on agricultural land use.

According to INS statistics held by the end of 2011 the agricultural area owned by foreign legal persons was about 470,000 ha area and at the end of 2013 amounted to about 800,000 ha owned.

This fact raises a question mark and this is that the areas are not known exactly legal basis considering that transactions must take account of the fundamental provisions of the Constitution, namely:

-Art 1, paragraph 1: „Romania is a national, sovereign, independent, unitary and indivisible”

-Art. 3 paragraph 1: „territory of Romania is inalienable, we can not sell or mortgage”.

Or, purchase of agricultural land and forestry, judgment within the boundaries of constitutional provisions may result and cause a risk of loss of national identity independent of the rule of law.

So as not to be affected by the general principles of the existence of the Romanian state, rendered in Article 1, paragraph 1, the Constitution should have priority in developing any internal normative act or other state or group of states, especially when it comes to concluding treaties or agreements.

At the same time the European Commission has warned EU member states expressly that the law does not permit the introduction a maximum of sale and purchase of agricultural land.

In recent years the economic and social impact of the share sale and purchase of agricultural land in Romania was manifested both by affecting social and national security and also the emergence of globalization increasingly often which caused increasing existing discrepancies between states of the world.

The massive sale of land to foreigners has generated various litigation and conflicting states, many offenses are based on the violation of the law, which clearly weakened the productive capacity of farmers.

A negative impact on the quality aspect of agricultural land can be determined that the new owners will not take into account cultural, crop rotation, environmental zoning and overall production.

There are potential dangers and social event since small properties will disappear, rural areas are depopulated and poverty will increase due to increased degree of aging of the population.

However, land can not be moved in the land him that they buy, as such the owner - foreign individuals can just enjoy the freedom to produce. The real problem is that foreigners can divert profits from agriculture to their home countries.

3. Legal framework of sales land in other EU Member States

Romania is the only country in Europe that has not made any notification to the EU for the imposition of restrictions on the purchase of land by foreigners.

Thus, unofficial data, 40% of the arable land of 10 million hectares is owned by foreigners with or without papers. According to APIA, 800,000 hectares of arable land are owned by foreigners.

In this area there are other several million hectares owned by foreign tenants with right of first refusal to purchase. Interestingly, the Romanians do not have even one hectare of

arable land in any EU country, according to the confederation of farmers. Accession Treaties concluded by the EU countries left to the discretion of each issue the sale of land to foreign countries, it is one that keeps the food safety of each state. In this context, the issue of land sales is a national, not a community.

In the EU accession treaty concluded by Romania stated that farmland is a capital, while Hungary, said that the land is a national asset.

In Poland the maximum distance from the border at which foreigners can start buying land is 150 km and also buyers must prove that they have 12 years residency in this country. In Romania this distance hardly increased from 10 to 20 km through pressures brought by the Ministry of National Defense

In Bulgaria was voted that until 2020 the land can't be sold to foreigners. The European Commission has warned that it is a violation of the international commitments and Bulgaria could be liable for financial penalties.

In Hungary the government is trying to protect farmland through some drastic measures. Thus, people in Hungary who has been found to be involved in the sale of farmland to foreigners can be punishable by up to five years in prison.

The Hungarian government decided to offer for lease 200,000 hectares of arable land to farmers under a new program that applies to parcels of land that are currently leased under contracts that expire until 31 May 2017. The goal of the program is to strengthen family farms as well as small and medium enterprises. Hungary plans to reduce the share of large farms to 20 percent of total arable land, compared to 50 percent today. Through these measures, the Hungarian legislation seeks to protect agriculture speculation and "foreign capital".

Estonia has made notification to the EU, but has now introduced a bill which states that you can not buy land unless you own Estonian citizenship. In Germany you can not buy land unless proof the payment of taxes in federal republic. Germany protects its farmers and land resources by national legal instruments pre-emption of local community in favor of the public interest, taxation and financial instruments, tools structural planning public land.

French law provides that the owner can do what he wants on the land owned by it, because it is part of the national heritage. In France, no less than five ministries must give consent for concluding a land transaction. After obtaining the central authorities follow the same procedure for obtaining the local authorities. Thus, all these measures are almost impossible to sell land to foreigners.

4. Evolution of prices of arable land in Romania and other countries in Europe

In the year 2014 there is no official data regarding the evolution of prices of agricultural land, but it talks about a real boost with the liberalization of the sale price of agricultural land by foreigners, so the price of a hectare of land reaching and 4000 Euro per hectare.

A significant increase is observed in the case of agricultural land price in Romania, it doubled in the past years. However, our country continues to be one of the areas where agricultural land prices are 3 to 7 times lower than in the rest of European countries. In Romania, land prices vary depending on the area. In North-East and South-East, the average selling prices of land are approximately 2000 Euro per hectare, while in other areas located near Bucharest, the average prices are approx. 3,500 Euro per hectare.

The sales price for agricultural land can be freely negotiated between sellers and buyers in Belgium, Finland, West Germany, Greece, Italy, Ireland, the Netherlands, Spain, Sweden, United Kingdom, Romania. In competitive land markets with free sales prices for agricultural land, buyers and sellers mutually interact and bargain over the terms of the sale with each other.

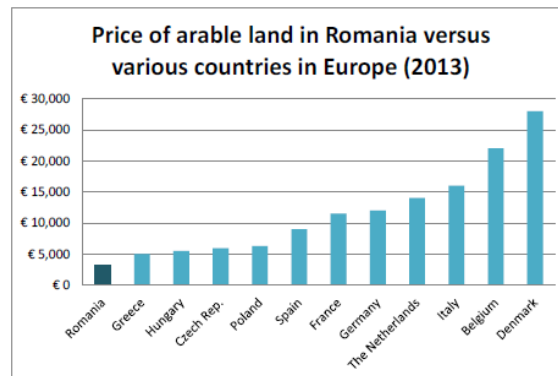


Fig. 1 Price of arable land in Romania versus other countries in Europe (2013)- different articles

“The two most important sales price regulations for agricultural land are minimum and maximum sales prices” (Ciaian, 2010). Their implications on seller and buyer behaviour are rather different. A minimum price reduces land demand, if the ‘unregulated’ market price is lower than the regulated price. In contrast, a maximum price reduces land supply, if the unregulated market price is higher than the price ceiling imposed. In both cases, a black market for agricultural land sales may arise, where in addition to the regulated sales market price, the difference between the equilibrium price and the regulated sales price is paid under the table.

Conclusions

Given the arguments made in the literature and in accordance with the above outlined these proposals can improve the current situation:

- absolute pre-emption for the ground access to the local community and the state;
- mineral resources related to land sold to remain in state ownership;
- rational use of technological factors;
- training specialist buyers of agricultural land - foreign individuals
- treating the land as a national asset;
- facilitate obtaining loans for acquisition of land by individuals;
- clarification of legally agricultural properties by making cadastre.

The sale of land is opposite the targeted land reform agrarian reform and land restoration of property rights.

Agrarian reforms had the effect of reducing the large peasant farms in favor because the owners were forced to sell land not derived from restitution for 15 years, which has prevented the Romanian agriculture to perform.

Land is a strategic resource and the most important source of income and the safest for any state. For this reason, the state must act responsibly and prudently in this direction.

To have an effective land market should be considered transferring land from less productive users the most productive.

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