

## LAND CONSOLIDATION THROUGH EXCHANGE OF AGRICULTURAL LEASE LAND IN THE CONTEXT OF PRESENT REGULATION OF THE LAND LEASE

Emil MUŞAT

Faculty of Agro-Food and Environmental Economics, The Bucharest University of  
Economic Studies; email: emilmusat@yahoo.com, Str. Mihail Moxa, nr.5-7, Sector 1,  
Bucharest, Romania

### **Abstract**

*The agricultural lease is defined as "the contract by which one party, called the lessor, gives the other party, called the lease, the right to use and exploit agricultural goods, for a determined period of time, in exchange for a price called rent". Given that in 2014 about 30% of the national agricultural land is rented farmland, regulation lease, is a priority to meet the economic interests of the lessee and lessor. Leasing is currently regulated by Civil Code, an important element in this regulation is the prohibition of subleasing, which in practice, can improve the economic performance of farming of the land lessors by farming on compact extensive lands. The knowledge of such regulations and their effects in practice, it is necessary in order to identify ways for agricultural lease to fulfill the role, as desired by both, the lessor and the lessee.*

### **Keywords**

*agricultural lease, land exchange, Călăraşi*

One of the challenges of the territorial market in the last 10 years is to include the unused land in the productive agricultural activity. This can be achieved in many ways, the easiest of which is to lease the lands, especially the unused ones, so that it may be used by the active farmers.

Renting is a very useful tool not only for including the wastelands in the productive agricultural activity, but also for expanding the agricultural exploited farming land. This is an important condition for achieving a competitive economic agriculture.

In this case, the legal regulation of the lease appears as an extremely important aspect in the functioning of the land market segment occupied by the lease.

Recent studies pointed out an increasing tendency in the share of agricultural areas leased, from 17% in 2007 to approx. 27% in 2010 (Presidential Commission of Public Policy for Agricultural Development) and around 30% in 2014. However, the share of leased agricultural areas is still considered to be low compared to other EU countries, where the average is between 40% and 60% of the used agricultural areas.

According to the same studies, leasing is more frequent in medium and large farms. Thus, the percentage of the leased lands from farms under 100 hectares totals 8%, and it grows up to 48% in the farms over 100 hectares.

The average surface of an individual agricultural exploit is 1.94 ha, the one managed by physical persons, individual enterprises, family enterprises is 58.58 ha, while that managed by a legal person is 193.7 ha. Of the agricultural exploits which are managed by legal persons, the biggest surfaces are those of the city councils/city halls (an average surface of 575.8 ha/exploit), followed by the agricultural companies (averaging 403.76 ha/exploit) (Petrescu, 2013). From these data, collected after the agricultural census in 2010, we conclude that the professional economical structures tend to extend the exploited surface so that the activity is more efficient and, moreover, seek to exploit larger surfaces of massed

agricultural fields, in order to cut the expenses of moving the machinery and creating the conditions to have monocultures on large surfaces.

In Romania, there are significant unutilized agricultural lands in Romania (577 000 ha in 2010), especially within farms under 10 hectares, probably due to some owners being too old to work the fields or urban landowners who are not interested in agriculture anymore.

Merging these areas with functional farms, especially those that are currently managing under 100 hectares of agricultural land can be one of the Romanian agricultural policy objectives to increase and sustain the profitability of farming nationwide. In this regard, it is necessary to identify methods to increase land market by encouraging the supply and demand of agricultural land in as many areas of the country.

Having in mind that, as I said, in 2014, about 30% of the national agricultural area is leased farmland and that this rate has a tendency to grow by over 40% (EU average), regulating the lease so that it meets the economic interests of both the lessee and the lessor comes as a priority.

The knowledge of these regulations by linking them to the effects they produce in practice is necessary in order to identify methods of intervention so that the lease fulfills the role that both the lessor and the lessee aim at.

Following the same vein, the literature specifies that "rent is the most dynamic segment of the Land Market". That is to say that the current legislative conditions offer the lease opportunity to hasten the transition of agricultural goods, from the smallest to the largest agricultural holding.

(...) One of the basic elements of the Lease is the potential of land supply. Certain conditions of Romanian agriculture reveals that the supply is an expression of some special economic circumstances, where the references points are the following: the age of the owners, the increased number of people residing in rural reference land, precarious operating capital and so on." (Popescu, 2013)

Presidential Commission for Public Policies for Agricultural Development in the "***National Strategic Framework for Sustainable Development of agri-food sector and rural areas in the period 2010-2020-2030***" sees the proposal as it "may consider encouraging various forms of the phenomenon of lease, especially for land owned by elderly farmers who can no longer work their lands. Given the situation, we point out that 55% of the unused agricultural land is owned by farms smaller than 10 hectares, and it could be brought into production by stimulating policies of the lease."

Călărași is a standard county in terms of land market dynamics and practice of a high quality agriculture, agriculture being the main economic activity.

By analyzing the lease contracts concluded in Călărași County by farms organized as trading companies (S.C. ILDU S.R.L, S.C. CHIREA 2000 S.R.L) or as freelancers (PFA SULTAN VIOREL, PFA MORARU VALENTIN, PFA MILIȚĂ IULIAN) located in the administrative territory towns of Vilcelele, Dragoș Vodă, Ștefan Vodă, the contractual clauses were tracked. They lead to fulfilling the role of the Lease as agreed by both Contracting Parties.

Lease analysis is mainly conducted in terms of conditions of the contract, focusing on lessee analysis and its role in the land market but also on influencing rural development. The reason for choosing the analysis of these elements is given that they are the main aspects influencing the land market.

The lease contract is defined as "the contract by which one party, called the lessor, send the other party, called the lessee the right to use and exploit agricultural goods for a specified period, for a price called the lease" (Belu Magdo, 2012).

### **Characteristics of the lease contract according to the doctrine:**

- reciprocal contract, both parts taking up reciprocal and interdependent obligations. The main obligations of the lease contract are the obligation of the leaser to give the field to the one who rents and the obligation of the one who rents to use the field as a good owner and to pay the price of the contract, which is the rent, within the dates set in the contract.
- onerous contract, each part following a patrimonial interest, which is the counterperformance of the other part.
- commutative contract, the existence and extent of the obligation of the other part being known from the moment the signing of the contract. Therein, the parts can't add any clause that leaves the rent level to chance. The legal stipulation regarding calamities is not included within this characteristic of the contract.

Also

- it has a successive character, the obligations being executed in time. If there is no time set in the contract, the lease is not perpetual but is considered active for all the time required to harvest the production of the respective agricultural field from the agricultural year when the contract was signed.
- Untransferable ownership contract. The lease contract only transfers the use (right to exploit) of the rented good.
- solemn contract, because the written form of the contract is required *ad validitatem*. This request is completed in the law by that of filing a copy of the contract to the local administration of the area where the rented agricultural goods are, to be filed in a special register, a fact that doesn't, still, give the contract an authentic character, because the requirement to file the contract at the local administration can't influence its validity.
- the lease contract has an *intuitu personae* character, which means it is signed with consideration to the person who rents. This aspect results from the legal stipulations which ban renting offices (lease mediators), and also total or partial sublease (art. 1847 of the Civil Code). The practical implications, and also conditions, of this characteristic are essential to the way the practical exploiting of the rented agricultural fields take place.

In the previous legal regulation of the leasing contract, it was easier to justify the "intuitu personae" character of the leasing contract, because the law stipulated conditions that the leaser must meet in order to be part of a leasing contract. Thus, in article 3 paragraph 3 of the Law no. 16 of 1994, the leaser was required to have "...agricultural studies or a diploma on agricultural knowledge or agricultural practice...". Also, the legal leasers' objective had to be the exploit of agricultural goods.

Given the abovementioned, regarding contracts with legal persons as leasers, we notice that the "intuitu personae" character is less obvious, as well as the situation where physical persons who are leasers permanently or temporarily employ other persons to conduct the activities required by the specific exploit of the agricultural field which is the object of the contract.

This is why we could share the opinion that the *intuitu personae* character is not of the essence, but of the nature of the leasing contract (Toader, 2003), "but in a broader and maybe unusual sense of the usual consequence of this distinction. That is, in the sense that the lease is always signed with regard to the person of the leaser, but, when determining the leaser to give his accord, the specific weight of the qualities of whoever is to exploit the agricultural goods is sometimes bigger, and other times less significant" (Pătrașcu and Berindei, 2009).

Noticing the above, we can conclude that the rent is concluded only with respect to the qualities of the leaser, the person who leases seeing him as the only one competent to manage and exploit his agricultural field in efficient conditions so that it ensures him the

established rent (the payment of the contract) with as little risk as possible, the leaser being obligated not just by contract but also by law (article 74 of the Law no. 18 of 1991 of the territorial fund) to cultivate the field and ensure the protection of the soil.

### **The mass of the rented fields**

In kind, within the lease contract, the person who leases has the obligation to exploit the agricultural field as a good owner, to exploit the field that belongs to the leaser, being prohibited from alienating it in any way. In fact the lease is a tool that is not just useful to attracting the fields that are not exploited in the productive agricultural activity, but also for the expansion of the surface of agricultural exploits. *All the persons who rent and were analyzed appealed to signing the lease contracts having the objective to expand the surface of agricultural exploits, thus seeking the streamlining of the activity and the proper use of the professional agricultural machines they have.* This is only possible through the exploit of some compacted agricultural surfaces of large dimensions, meaning at least 100ha.

In order to secure the necessary compacted surfaces, the people who lease appeal to an artifice, which is making some field changes between the leasers, by signing some "verbal field change contracts" (all the leasers who participated in the study used this kind of an operation, these verbal records being filed and recorded at city hall - Stefan Voda, Vilcele, Dragos Voda). The appeal to such an operation requires the leaser to rule the leased field, but the law clearly forbids the sublease and lease offices (in this sense the doctrine also consider the lease as being *intuitu personae*). Because of similar reasoning, the legislator being able to surrender the lease contract only with the written accord of the leaser, as an exceptional case, and only by the husband or his major descendents. Also, seeing (Law 16/1994) the lease was defined as the "contract between signed by the owner, the user or other legal owner of agricultural goods and loaner, regarding the exploit of agricultural goods (...)" As a result, it is clear that the lease has the objective of exploiting the leased property but not the right of usage other than that by exploiting itself.

To cover this deficiency due to decoupling the legal regulation of rent from the concrete needs of the business environment in agriculture, respectively to cover the unlawful exchange of land that disregards character *intuitu personae* of lease, some tenants (S.C. Chirea 2000 S.R.L, PFA Sultan Viorel) insert a clause in the contract wording that tenant would be entitled to use the land given on lease in land exchanges. In turn this clause contravenes the principle that lies in Article 1847 of the Civil Code, which makes it null and void.

The aspect analyzed has the ability to influence major leasing market as the tenant, lackings possibility, resorts to land consolidation which he means to exploit, believing that this way they will increase operating expenses and that the equipment can not be used for maximum performance yield would feel entitled to reduce the amount of rent, in this way diminishing supply.

### **Conditions of validity of the contract of lease**

(parties to the contract, consent form, subject, rented property insurance, cause)

#### *Parties lease*

Lessors - can be natural or legal person, must have ownership or usufruct (art. 715 Civil Code) or legal owner of the goods (persons holding agricultural land under a provisional title, such as a certificate issued by the local committee for the implementation of the land law, agricultural companies set up under Law no. 36/1991) rented and the ability to contract.

Lessee - according to new legal regulations, in principle, any natural or legal person can act as the lessee, Romanian or citizen of an EU member state. According to the old regulation,

it requires the tenant to have farming specialization training or knowledge certified by agricultural or agricultural practice.

Article 74 of Law 18/1991 stipulates that "all landowners are obliged to ensure their cultivation and soil protection." The lessee being a holder of farmland has, in turn, the obligation imposed by the legal text quoted, but this requirement is interpreted to provide land cultivation and soil protection and by entrusting this work to skilled people which only him can coordinate, not just as it was in the old regulation of rent, to ensure achievement of personal obligations.

In the absence of legal provisions governing the possible use of legal instruments necessary for the consolidation of agricultural land, The function to increase surface lease farms to optimize production may be affected, thus influencing the leasing market.

In circumstances in which any natural or legal person may be tenant, the necessary freedom for optimal functioning of the market lease is provided, but this can create difficulties by providing conditions for fragmentation of agricultural exploitations. The lessee is established by law a right of first refusal to purchase the land on which they operate. **We consider necessary the establishment by law for a right of first refusal to lease land that adjoins land used.** Of course, this right of preemption can only take place considering that the leaser is offered a rent that is at least at the same level of that offered by another person who leases, in this way protecting the lease owner's right to negotiate and obtain an advantageous rent, but also creating the conditions to mass the agricultural fields so that the free market agricultural farms grow.

Consent - to come from a person with discernment, to be expressed with the intention of producing legal effects and to be not altered by vices. To be valid, the lease must be a consensus on the essential elements of the contract parties: the leased asset well defined, rights and obligations of the parties, rent, terms and manner of payment of rent, lease duration, etc.

Form - the written form of the contract is required *validitatem ad*. This requirement is therefore completed by law to submit a copy of the contract to the local council in whose jurisdiction the property is leased agricultural, to be recorded in a special register, which, however, does not give the contract and authentic character, contract requirement for the local council is not likely to affect its validity, but only for the purpose of enforceability. According to art. 1838 Civil Code, "the relevant provisions in terms of land registry remain applicable ". Although the law does not require this as a condition, the lease contract may be concluded also in authentic form, in this regard gaining the strenght of an enforceable contract to pay rent according to contractual requirements. The same strenght is gained also by the contract registered with the local council contract.

Failure to regist the contract at the local council attracts the penalty of a civil fine payment nature, for each day of delay, as the court determines. In practice, the provision of sanctions is still insufficiently cleared, local authorities surveyed (Vilcelele, Stefan Voda Dragos Voda) failing yet to adopt the measure requested of enforcing the sanctions, not being clear who has the capacity to bring proceedings, which is the interest harmed, which is the date by which the contract must be submitted. This is not able to affect market rent.

*The Object* - the object of the lease is accounted for by the leased property, in this case well-defined agricultural land and rent.

In terms of assets, in this analysis we only examine agricultural land that can be leased, which must meet the following conditions: - to exist at the time of concluding the contract and be owned, usufruct or lawful possession of the lessor; to exist in the civil circuit; to be determined (limited).

In the sense of the present research, in order to ensure that the leaser brings together, by means of exploit lease, all the areas he has been given rights of, through the leasing contracts, into a single great area, whose surface would be that of all the leased fields, we consider that the object of the leasing contract should be the very right, to be proved by any legal document.

*The rent* is the price the tenant owes for operating the lessor's leased assets. The new legal regulation leaves it to the discretion of the parties the establishment of rent (in money, fruit, mixed, or the benefits), the modality of payment and the amount of rent that can be determined or determinable. The leases entered into by some tenants who were surveyed (PFA and PFA militants Iulian Moraru Valentin) has the rent set in fruits, namely the quantity of wheat (700 respectively 800 kg of wheat per hectare leased). As for the other tenants (SC Ildu Ltd Chirea 2000 SRL and Viorel Sultan PFA), the rent is set in fruit rent or a specified quantity of wheat (SC Ildu Ltd - 1200 kg / ha, SC Chirea 2000 SRL - 1000 kg / ha, PFA Sultan Viorel - 900 kg / ha) is stipulated as the date of payment renter can opt for the equivalent in lei at the price the day the amount of wheat due. Contract theory states that "the rent, as any costs, must be honest, meaning it is done with the intention of being paid and serious, that is located in a relative balance with the use of the leased asset" (Belu Magdo, 2012).

The place and time of payment of rent specified in the contract and in the absence of such provisions or if they can not be determined by the nature of the benefit, practices or practice established between the parties, payment is made under Art. 1494 Civil Code, as the place and date of fruit collection in terms of time.

This element of the contract (the object) is one that can greatly influence leasing market, and we are referring here to the leased asset, in this case land subject to the lease but also the amount of rent. In areas with high fertility class agricultural land, demand for rent is increased, and so is the amount of rent. The lease offer is influenced especially by the amount of the lease provided, and other benefits, or facilities which the legislature creates or may create (eg life annuity - in the localities surveyed there were identified 180 beneficiaries of the stimulus). In turn, the demand can be influenced by the intervention of the legislature and we are referring here to the subsidy per hectare paid by APIA.

Leased Property insurance for the risk of crop loss due to natural disasters is a clause that should be included in the contract, being by law valid even in the absence of stipulation (article. 1840 Civil Code). Therefore providing leased assets is treated as an element of validity of the contract of lease.

#### **Effects of the lease**

Being a mutually binding contract with a sinalagmatic character, the lease creates rights and obligations for both lessee and the lessor.

Most are the rights and obligations recognized in the literature, with a legal basis or principles governing civil right. In addition, the parties may establish other rights and obligations by the contractual terms, the only condition being that they are not contrary to the legal provisions in force, as it would be ineffective *ab initio*. An example of legal consecration clause is a contract clause establishing the tenant required to maintain the productive potential of the land leased.

The duration of the lease - is left to the discretion of the parties, the minimum time is the time necessary harvesting fruit that will produce agricultural goods in the agricultural year in which the contract was concluded (stipulated in art. 1837 Civil Code and refers especially to where length is not determined in the contract) and the maximum term is 49 years. If the contract is determined withdrawal is not allowed. parties may agree, however, with continued contract, to terminate the agreement.

Art.1848 of the Civil Code provides that where land if neither party notified the contracting party in writing, the refusal of the renewal contract with at least 1 year before the deadline, it renews by right for the same duration as that specified in the contract. Termination of the lease contract can occur before the death of the tenant in the event of incapacity or bankruptcy of the lessee or if the estrangement through acts between the living of the leased property only if it has been expressly stipulated in the contract. This element, the duration of the lease, is one of the factors that can significantly influence the leasing market.

### **Conclusions**

Following the analysis of the lease is found that although the role of leasing as economic and legal operation should be to determine the insurance practice agriculture on large areas under legal conditions, in reality, given the entire economy of legal regulation on the lease, this is questioned by tenants need to use practical tricks to ensure desired purpose, circumventing some imperatives of the law which are provided as features the lease contract.

Tenants who resorted to end lease contracts were aimed at including increasing farm area, aiming to improve the efficiency of this type and use the appropriate parameters of machinery and agricultural machinery performance available. But this is only possible through the exploitation of large agricultural areas, of at least 100 ha. One way to have such surfaces composed of pooled agricultural land is in practice, the exchange of land held in lease by the tenant. This operation, however, is inconsistent with the law and with the principles governing the lease as a legal operation because of the express provisions of the law (Civil Code) that the lease is a contract in consideration of the person, *intuitu personae*, any operation outside exploitations the operation being prohibited to the lessee on leased land. Therefore, for the role of the lease to be fulfilled as desired by the lessor and the lessee, it is required a legislative intervention to regulate agricultural land consolidation of farm land in as larger surfaces as possible to ensure the conditions for practicing an agriculture as economically performant as possible. In this sense, for economical reasons, we think that we should consider ruling the lease as a contract which ensures the leaser only gets the right to exploit an agricultural field, with the right to use and exploit as the object of the leasing contract, and the delimitation of the massed surfaces in physical parts of terrain should be established by the leasers who operate in a certain town, based on criteria set by law or regulations of the local council.

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