

# THE PREEMPTION RIGHT REGARDING THE TRANSACTIONS OF AGRICULTURAL LANDS LOCATED OUTSIDE THE BUILT-UP AREAS

Lecturer **Simona CHIRICĂ**<sup>1</sup>

## Abstract

*The sale of agricultural lands located out-side the built-up areas has been recently limited through the obligation to follow the preemption procedure based on Law no. 17/2014, as subsequently amended ("Law 17")<sup>2</sup> on the regulation measures for sale of agricultural lands located out-side the built-up areas and for the amendment of Law no. 268/2011 on the privatization of companies holding in administration public or private State owned agricultural lands and the establishment of the State Domains Agency. The preemptors are: (i) the joint owners, (ii) the lessees, (iii) the neighboring owners, (iv) Romanian State, through State Domain Agency. The preemption procedure commence with posting by the seller of its sale offer at the competent city hall and ends with the issuance of the positive/negative sale approval or, as the case may be, the conclusion of the sale agreement with one of the pre-emptors.*

**Keywords:** sale agreement, sale offer, preemption right, agricultural lands

**JEL Classification:** K11, K12

## 1. Preliminary considerations

The preemption can be seen as a benefit for the preemptors or as a limitation of right regarding the land's owner possibility to select the buyer in a sale agreement. Therefore, regarding the preemption right, the seller is not forced to sell, but to respect the prior right to purchase regarding the persons determined by law or conventionally, if the owner decides to sell.

The preemption right can be legal or conventional and refers to the preemptor's right to prior purchase a property<sup>3</sup>. Therefore, the preemption right is determined (i) according to the law, and in this case the preemption right refers to a general interest, but can also refer to a private interest or (ii) according to the parties' will, namely a conventional preemption right, regarding a private interest.

From the object's point of view, the preemption right can refer to a movable or immovable property. The provision under the New Civil Code ("NCC")<sup>4</sup> there are two characteristics of the preemption right, namely:

- **the indivisibility character** of the preemption right, according to which the preemptor exercises its right unitarily without having the possibility to fraction it;
- **the non-assignability character** of the preemption right, according to which the preemptor cannot assign its right granted to him according to the law or conventionally.

## 2. The preemption right regarding the agricultural lands located outside the built-up areas

### 2.1. Short presentation of the development of Law 17

Currently, the transaction of agricultural lands, located outside the built-up areas is performed by observing the legal provisions under Law 17. In the year Law 17 was adopted, several amendments have been brought through Law no. 68/2014 regarding the amendment of paragraph (1) of article 29 of the cadaster and real-estate publicity Law no.7/1996 of Law no. 17/2014 regarding some measures for the regulation of sale-purchase regarding the agricultural lands located outside the built-up area and regarding the amendment of Law no. 268/2001 regarding the privatization of companies that hold

<sup>1</sup> Simona Chirică - Law Department, Bucharest University of Economic Studies, s.chirica@schoenherr.ro .

<sup>2</sup> Published in the Official Gazette of Romania, Part I, no. 178 dated 12.03.2014.

<sup>3</sup> *Noul Cod Civil, Comentarii, doctrină și jurisprudență*, Vol. III, Hamangiu, Bucharest, 2012, p. 86.

<sup>4</sup> Romanian Civil Code, published in the Official Gazette of Romania, no. 511 dated 24.07.2009.

in administration lands that are public and private property of the state, designated as agricultural lands and regarding the Agency for State Domains establishment ("**Law 68**"<sup>5</sup>).

Although Law 17 is a relatively a new legal act, it has already caused several debates:

- (i) First of all, although Law 17 entered into force on 11 April 2014, the Govern did not adopt the methodological methods for the applicability of Law 17 in the 7 days term, calculated from the date that Law 17 entered into force;

As a consequence, all transactions concluded until these methodological norms were passed, should have been concluded according to the common right, namely the provisions of the NCC. Nevertheless, in practice, the city halls, as well as the public notaries refused to issue/ conclude any type of documents regarding the transaction of agricultural lands located outside the built-up area, by arguing that the methodological norms for the application of Law 17 were not adopted. As a result, the land registries of these types of properties were affected by a bureaucratic blockage until the moment the methodological norms were adopted;

- (ii) Secondly, the passing of Law 68 also aimed the alteration of applicable sanctions regarding the selling of agricultural lands located outside the built-up areas, namely if the selling is performed **without observing the preemption right** of the preemptors according to Law 17 or without obtaining the approvals issued by the National Defense Ministry, Culture Ministry and Agricultural and Rural Development Ministry;

Currently, due to the amendment of Law 17, the applicable sanction for the non-observance of these legal provisions is **relative nullity**. The initial version of Law 17 sanctioned the non-observance of these provisions with absolute nullity.

- (iii) Moreover, according to Decision no. 755/2014 rendered by the Constitutional Court of Romania, the provisions under article 20 paragraph (1) of Law 17 that made a difference between the authenticated promises and those non-authenticated have been acknowledged as non-constitutional.

In these conditions, according to Law 17, many investors that had a right of claim regarding these lands have been excluded from the preemptors category. Basically, although the investors that did not have preliminary sale agreements and options to acquire deeds authenticated before Law 17 entered into force, were similar to those authenticated, the provisions under article 20 paragraph (1) created a gap between the two types of investors.

## 2.2. Future legislative alterations of Law 17 regarding the exclusion of certain selling documents regarding the preemption procedure

We estimate that Law 68 will not be the only law that will bring amendments to the provisions of Law 17, given that currently there is a draft of law that aims to change the provisions under article 20 of Law 17 (the "**Draft of law**").

According to the Draft of law, the provisions of Law 17 will no longer be applicable to the persons that have a right of claim regarding the agricultural lands located out-side the built-up areas based on agreements concluded before Law 17 entered into force. In this regard, the provisions under the Draft of law create equality between the rights of claim of the investors, not only for those that holds a right of claim based on preliminary sale agreements or options to acquire deeds, but also for any other documents that confirm the existence of a right of claim. Moreover, the Draft of law does not make any difference between the documents that confirm the right of claim in authenticated form or under private signature, both types of documents being valid.

In this regard the Draft of law (i) shall give effect to the Decision no. 755/2014 rendered by the Constitutional Court of Romania, that declared article 20 paragraph (1) as non-constitutional and (ii) shall implicitly abolish the provisions of article 20 paragraph (1), and therefore the provisions under Law 17 will not be applicable regarding the third parties that have a right of claim over the agricultural lands located outside the built-up area.

---

<sup>5</sup> Published in the Official Gazette of Romania, Part I, no. 352 dated 13.05.2014.

Therefore, the third parties that have a right of claim regarding the agricultural lands located outside the built-up area will be exempted from the observance of the provisions of the preemption procedure under Law 17.

### 2.3. Transaction of the agricultural lands located outside the built-up areas before Law 17 entered into force

#### a) Law no. 16/1994

Initially, based on the provisions under article 7 letter m) of Law 16/1994 regarding the agricultural lease ("**Law 16**")<sup>6</sup>, the agricultural lessee had a preemption right regarding the agricultural lands located outside the built-up areas. Law 16 established a legal frame-work regarding the lease of agricultural lands as well the right of the lessee of the agricultural land to buy the with priority the agricultural land that was abject to the agricultural lease agreement concluded between the owner and the lessee. Law 16 provided a preemption right for the lessee of the agricultural land only regarding the alienation of the land by concluding sale agreements. Currently, the provisions under article 1849 NCC mention a preemption right of the lessee of the agricultural land.

#### b) Law no. 54/1998

Prior to Law 17, the transaction of agricultural lands located outside the built-up areas was performed according to Law 54/1998 regarding the civil transaction of lands ("**Law 54**")<sup>7</sup>. According to article 3 paragraph (1) of Law 54, foreign citizens and stateless persons, could not be owners of agricultural lands in Romania, regardless if these lands were agricultural or had any other category of use, located outside or inside the built-up area.

If the owner of an agricultural land located outside the built-up area intended to sell that land, Law 54 stated the right of prior acquirement for (i) the joint owners, (ii) neighboring owners and (iii) lessee of the agricultural lands.

The preemption right regarding the acquisition of the ownership right over the agricultural lands located outside the built-up area is applicable only for sale agreements and in this regard, the observation of the preemption procedure can be avoided by signing other types of legal documents that imply a transfer of ownership title, by onerous or gratuitous legal documents.

According to Law 54 the seller was obliged to observe the information procedure of the preemptors regarding the selling offer, namely (i) the registration of the sale offer at the local council of the locality where the land is located, (ii) to display the sale offer at the city hall headquarters, during 45 days term, this period being period calculated from its registration, (iii) the exercise of the preemption right by the preemptors throughout a purchase offer.

In contrast with the current legal framework, Law 54 did not provided that the seller must determine in the sale offer the price of the agricultural land located outside the built-up area. The notification of the purchaser regarding the selling of the land by displaying the offer was sufficient. The preemptor was required to determine the purchase price offer and if this offer was convincing for the seller, than they would conclude the sale-purchase agreement, regarding the agricultural land located outside the built-up area.

Nevertheless, if the preemptor's purchase price did not please the seller, than the seller had the right to refuse the purchase offer and therefore the seller was free to conclude a sale-purchase agreement with any another purchaser, only if the purchaser offered and payed a price that was higher than the one offered by the preemptor. The applicable sanction for the non-observance of the preemption right was the relative nullity.

#### c) Law no. 247/2005

Law 54 was expressly abolished by Law 247/2005 regarding the property and justice reform, as well as other adjoin measures ("**Law 247**")<sup>8</sup>, according to which foreign citizens, stateless persons

<sup>6</sup> Abolished by Law 71/2011, for the applianc of Law 287/2009 regarding the Civil Code, published in the Official Gazette of Romania, Part I, no. 409, dated 10.06.2011.

<sup>7</sup> Published in the Official Gazette of Romania, Part I, no. 102 dated 22.07.2005.

<sup>8</sup> Published in the Official Gazette of Romania, Part I, no. 653 dated 04.03.1998.

and foreign legal persons could acquire the ownership right over the lands located in Romania, in the special law's conditions.

### 3. The procedure regarding the preemption right according to Law 17

#### 3.1. The preemptors right

According to the provisions under article 4 paragraph (1) of Law 17, the sale of agricultural lands located outside the built-up areas is performed by observing the preemption right of:

- (i) Joint owners;
- (ii) Lessees of the agricultural lands;
- (iii) Neighboring owners;
- (iv) Romanian State, through State Domain Agency.

According to the provisions under article 20 paragraph (2)<sup>9</sup> of Law 17, the provisions regarding the observance of the preemption right are not applicable for the **joint-owners, spouses, relatives** and the **in-laws until the third degree including**.

As per the Draft of law, the third parties that have a right of claim over the agricultural lands located outside the built-up area will also be exempted from the observance of the provisions regarding the preemption procedure under Law 17.

If there are more preemptors regarding the sale of the land, than the order from above shall be observed.

Regarding the agricultural lands located outside the built-up area, where there are archaeological sites located, than the sale will be performed according to the provisions of Law no. 422/2001 regarding the protection of historical monuments and not according to Law 17.

#### 3.2. The display of the sale offer

The sale offer and the acceptance of the sale offer regarding the agricultural lands located outside the built-up area must be concluded in the written form. However the law provisions fail to specify the necessity to issue and to accept this offer in the form requested by law for the valid signing of the sale agreement, namely the authentic form. From this point of view, we can observe the derogation from the general rule provided by article 1187 NCC according to which, the offer and the acceptance of the offer must be issued in the form requested by law for the valid signing of the agreement. Therefore, the provisions under Law 17 shall prevail over the provision under the NCC, regarding the form of the offer and the acceptance of the sale of agricultural lands located outside the built-up area.

Also, Law 17 settles an extended transparency regarding the information of the preemptors and, due to this reason, the obligation of displaying the sale offer encumbers to (i) the city hall of the territorial and administrative division where the land is located, as well as (ii) the structure of the central body of the Agricultural and Rural Development Ministry.

In order to inform the preemptors regarding the sale of the land, the seller must register a request for the displaying of the sale offer of the land, at the city hall of the territorial and administrative division where the land is located.

After one day from the registration of the request, the sale offer shall be mandatory displayed for 30 days at the city hall's headquarters and, if necessary, also on the city hall's internet page.

The city hall has also the obligation to submit to the structure of the central body of the Agricultural and Rural Development Ministry, in 3 days from the registration of the request, a file than comprises (i) the preemptors list, (ii) copies of the display requests, (iii) the sale offer, as well as (iv) the copies of any other supporting documents. In 3 days from the file's registration, the central body, namely the centralizing bodies have the obligation to display the sale offer on their own sites for 15 days.

---

<sup>9</sup> Amended by point 1 of Law 138/2014 starting with 19.10.2014.

### 3.3. The exercise of preemption right

The preemptors have 30 days from the display of the sale offer in order to express their right for the priority purchase of the agricultural land located outside the built-up area.

If there are more preemptors that state in writing their intention to purchase the land, namely **(i) if the preemptors have different ranks**, the seller shall choose one of them, by observing the order provided under point 3.1 from above, **and (ii) if the preemptors have the same ranks**, then the seller shall choose any one of them. In both cases, if the seller chooses one of the preemptors, the seller must send the city hall the preemptor's name.

### 3.4. Reopening of the procedure

The seller has the right to reopen the procedure in 30 days from the display of the sale offer, if the preemptor with an inferior rank gives a superior price in comparison with (i) the price from the sale offer or (ii) the price offered by the other preemptors with an superior rank.

In this case, the seller can register again the sale offer, at the price offered by the preemptor with an inferior rank. This procedure shall be reopened only once and in 10 days term from the completion of the term regarding the offer's display, the seller shall choose one of the preemptors and shall be obliged to inform the city hall about the preemptor's name.

### 3.5. The land's price

The transaction of the land must be performed at the same price and in the same conditions as those displayed in the sale offer. Thus, if at the expiration of the 30 days term for the displaying of the offer, no preemptor has expressed in writing its intention to purchase the land, then the sale of the land will be considered free.

In this case, if the sale is performed (i) at a lower price or (ii) under better conditions than those provided in the sale offer, then the sale will be sanctioned with **absolute nullity**.

### 3.6. The control regarding the applicability of the preemption right

In order to conclude the sale agreement it is necessary to obtain the positive approval of the central body, namely the territorial body from where the land is located, in 5 working days term, calculated from the receiving of the dates and documents under article 6 of Law 17.

The final positive/ negative approval is valid for 6 months from the date of its communication to the seller. However, the approval is valid even after this period, if the parties have concluded a preliminary sale agreement or an option to acquire deed regarding the agricultural land located outside the built-up area for which a positive approval has been issued.

### 3.7. The preemption right regarding the lessee of the agricultural land

In order for the lessee of the agricultural land to acquire the ownership title over the land, certain validity conditions must be observed at the moment of the sale's offer display regarding the lease agreement between the lessee and the owner of the land, namely:

- (i) The agreement must be validly concluded, according to the provisions under article 1828 paragraph (1) NCC, namely the agreement must be concluded in written form under the sanction of absolute nullity and
- (ii) The agreement must be registered in the special register of the local council where the land is located.

#### 4. Applicable sanction for the non-observance of the preemption right

##### 4.1. Non-observance of the preemption right

One of the main amendments brought by Law 68 refers to the applicable sanction regarding the sale of agricultural lands located outside the built-up area without observing the preemption right according to Law 17 or without obtaining the approvals issued by the National Defense Ministry, Culture Ministry and Agricultural and Rural Development Ministry.

Currently, as a result of the amendment brought to Law 17, the applicable sanction for the non-observance of these provisions is the relative nullity. The initial form of Law 17 applied the absolute nullity sanction in these cases.

Article 16 of Law 17 states that the sale of agricultural lands located outside the built-up areas without observing the preemption right under article 4 of Law 17 or without obtaining the approvals under article 3 and 9 is forbidden and is sanctioned with relative nullity.

Therefore, as a result of the amendment of Law 17 by Law 68, the absolute nullity sanction provided under article 16 was replaced with the sanction of relative nullity. This sanction will be applicable to all sale agreements concluded without observing the conditions for the exercise of the preemption right regarding the agricultural lands located outside the built-up areas, acknowledged by Law 17 to the lessee of the agricultural lands, neighboring owners and to the Romanian state through the State's Domain Agency, in this order, at equal price and conditions.

Therefore, if a sale agreement regarding an agricultural land located outside the built-up area, is concluded by the seller without observing the procedure provided under Law 17, in order for the preemptors to exercise their preemption right regarding the purchase of the land or if the imperative order of the preemptors is not observed when choosing the purchaser (e.g. a lessee and a neighboring owner offer the same price for the land and the vendor sells the land to the neighbor without observing the imperative order of the preemptors provided under Law 17), the sale agreement will be sanctioned with **relative nullity**.

##### 4.2. Absolute nullity vs. relative nullity

In order to better understand the consequences of absolute and relative nullity, we consider necessary to mention certain main aspects regarding the absolute and relative nullity.

Both types of nullity have the same effect, namely the termination of the agreement and all of its subsequent legal documents. As an effect of the agreement's termination, the contracting parties shall be required to return in nature or in equivalent all the services received on the basis of the terminated agreement.

The absolute nullity of the agreement is applicable when the agreement is concluded with the non-observance of the legal provisions stated in order to protect a general interest, as well as when the law expressly indicates that the applicable sanction for the non-observance of certain legal provisions is the absolute nullity. In contrast with the absolute nullity, the relative nullity is applicable for the non-observance of the legal provision regarding the protection of an individual interest.

The absolute nullity may be invoked by any interested person, without any limitation in time, by way of action or by way of exception. In addition to this, the court of law has the obligation to invoke the absolute nullity *ex officio*. The relative nullity can be invoked only by the person whose interest has been breached, by way of action, in a 3 years prescription term or anytime by way of exception. The relative nullity cannot be invoked *ex officio* by the court of law.

##### 4.3. Considerations regarding the nullity sanction

According to the aspects mentioned above, it is clear that the absolute nullity is usually applicable as a result of the non-observance of the legal provisions intended to protect a general

interest, while the relative nullity is applicable as a result of the non-observance of the legal provisions intended to protect an individual interest.

Therefore, the interest protected under article 7 paragraph (7) of law 17 belongs to the preemptors that are interested in the purchase of the land, who would have wanted to purchase the land if the sale would have been performed at a lower price or in other conditions than those mentioned in the sale offer displayed at the city hall. In order to protect this interest, we consider that the relative nullity of the sale agreement concluded at a lower price or in better conditions than the seller's initial offer would have been sufficient.

#### **4.4. The action for annulment regarding the non-observance of the preemption right**

Whereas (i) the preemption right is a right opposable *erga-omnes* and (ii) the applicable sanction for the non-observance of the preemption right is the relative nullity of the sale agreement, than:

- The annulment request regarding the sale agreement can be filed only by the person whose interest is protected by Law 17, namely the preemptors, although they are not parts in the sale agreement;
- The annullable sale agreement can be expressly or tacitly confirmed by the preemptor, by ceasing to invoke the nullity of the sale agreement;
- The court of law cannot invoke *ex officio* the non-observance of the preemptors' right;
- The exercise of the annulment action is subject to the general prescription term of 3 years, calculated from the date when the preemptor knew or according to the circumstances should have known his preemption right was applicable.

#### **4.5. Effects regarding the admission of the annulment request**

If the annulment request of the sale agreement concluded without observing the preemption right is admitted, than the sale agreement shall be terminated and considered to have never existed. The termination of the sale agreement will also determine the termination of the legal documents subsequent to its signing.

As a consequence, the contracting parties shall be placed in the position before the signing of the agreement and the agricultural land shall return in the seller patrimony. In this case, the preemptor has no guarantee that the land will be attributed to his patrimony by way of a sale purchase because the seller can renounce to sell the land or can conclude another type of legal document and transfer the ownership title without having to observe the preemption procedure.

### **5. Current reality regarding the transaction of agricultural lands located outside the built-up area**

Important transaction regarding agricultural lands located outside the built-up area are usually performed based on legal operations that do not require to follow Law 17, namely the lands are indirectly sold by way of share deal transactions, meaning that the controlling package of the participants of companies that include the agricultural lands are sold<sup>10</sup>.

Moreover, in practice, the majority of medium and big transactions are performed by foreigners (third parties), through legal persons who are controlled by them. The legal documents that are exempted from the observance of the preemption procedure under Law 17 are for example: the donation agreement, the forced execution procedure, merger or dissolution deeds, exchange operations, payment in nature or capital contribution in nature having as object the agricultural lands located outside the built-up area.

<sup>10</sup> <http://jurnalul.ro/bani-afaceri/constructii-proprietati/attractia-terenurilor-agricole-comasate-688730.html>

To the extent to which these operations are particularly used in order to avoid the preemption procedure under Law 17, we consider that there is the risk that the deed concluded in order to avoid the applicability of the preemption procedure is categorized as a law fraud. According to the provisions of article 1237 NCC, *law fraud represents the situation when the agreement is only the mean used to avoid the applicability of an imperative legal provision*. From this point of view, the cause shall be considered as illicit.

By analyzing the scope of signing the legal documents mentioned above, namely in order to avoid the preemption procedure according to the imperative provisions of Law 17 regarding the sale of agricultural lands located outside the built-up areas, the cause can be considered as illicit and as a consequence, the legal documents will be sanctioned with absolute nullity. However, according to the provisions under article 1238 paragraph (2) NCC, the absolute nullity will be applicable in this case only if the illicit cause is commune, or if the other party had knowledge of its existence, or according to the circumstances, should have known about it.

Regarding the absolute nullity sanction regarding legal documents considered to be concluded in order to avoid the applicability of the preemption procedure according to Law 17, we draw attention to the following aspects:

- (i) The absolute nullity can be invoked by any interested person, namely by the parties of the legal document, the preemptors, or by any other person that did not participate at the signing of the legal document that however justifies its own interest;
- (ii) The court of justice has the obligation to invoke the absolute nullity of the legal document *ex officio*;
- (iii) The annulment of the legal document is imprescriptible and therefore can be invoked anytime, by way of action as well as exception;
- (iv) In contrast with the relative nullity, the absolute nullity in general cannot be confirmed, except for the cases provided by law.

In order to avoid these situations, it is necessary to comply with all the validity conditions of an agreement, namely the essential content and form conditions regarding the agreement, and carefully observe the conditions regarding the cause of the agreement, in order to avoid a possible assumption that the legal operation is a law fraud.

Therefore, one must observe all the conditions regarding the validity of the agreement's cause, namely the cause must exist, must be licit and moral.

## 6. Duration of the preemption procedure

Also, it is noticeable that the procedure regarding the selling of the agricultural land located outside the built-up area implies a minimum 45 days term. In addition to this, due to the fact many of the agricultural lands are not polled, the preemption procedure needs to be observed for every single agricultural land.

## 7. Conclusions and *de lege ferenda* proposals

### 7.1. Amendments regarding the applicable sanctions

Regarding the applicable sanctions, it is not clear why the lawmaker sanctioned with absolute nullity the sale of agricultural lands located outside the built-up area to third parties at a lower price or in better conditions than those comprised in the sale offer [article 7, paragraph (7)] and with relative nullity the sale that is concluded without observing the rules regarding (i) the compliance of the preemption right for the purchase of the agricultural lands located outside the built-up area; (ii) the obtaining of the specific approval of the National Defense Ministry; (iii) the obtaining of the approval issued by the Agricultural and Rural Development Ministry's structures [art. 16]. Was this a simple error of the lawmaker at the moment Law 68 was drafted? Was the real intention of the lawmaker to



amend the absolute nullity with the relative nullity regarding article 7 paragraph (7) instead of article 16?

From this point of view, we consider necessary that the legislative body should revise the amendments brought to Law 17 by Law 68, regarding the applicable sanctions for the signing of sale agreements with respect to the agricultural lands located outside the built-up area, without observing the provisions under Law 17. It is necessary to clarify the inconsistency and the applicability of the sanctions proportionally with the nature of the breached obligations, of the protected interests, and the potential damages and consequences caused as a result of failing to comply with the imperative provisions under Law 17. From our point of view, on the one hand, the applicability of the relative nullity sanction for failing to comply with these conditions regarding the agricultural lands located outside the built-up area in general and, on the other hand, the applicability of the absolute nullity sanction regarding the agricultural lands located outside the built-up area in particular, that requires to obtain the specific approvals from the National Defense Ministry, namely the Culture Ministry.

## **7.2. The necessity to introduce additional legal provisions**

### **(i) Lien encumbrance regarding the agricultural lands**

It is noticeable that the lack of legal provisions regarding the case when the agricultural land located outside the built-up area is encumbered with liens. In this case, the persons who have rights of claim are not included in the preemptors category and from this point of view, we can state that there is a legislative gap that must be covered. In this regard, we support the legislative initiative under the Draft of law, according to which, the sale of agricultural lands located outside the built-up areas will be free regarding the third parties that have a right of claim over the lands.

### **(ii) The conventional preemption right**

Also, it is necessary to analyze the case when legal preemptors, as per Law 17 and conventional preemptors, request their right for priority acquisition of the agricultural land. According to article 1734 paragraph (1) letter a) NCC, the legal preemption right prevails over the conventional preemption right. In this regard, the conventional preemption rights regarding the agricultural lands located outside the built-up area are considered to be secondary from the legal preemption right as per Law 17. From this point of view, it can be stated that the conventional preemptors' rights have been limited due to the entering into force of Law 17.

Therefore, if the seller decides to sell the land, then is it possible for the conventional preemptor to request the seller to observe his preemption right and in what conditions?

First of all, according to the provisions of article 7 paragraph (10) of Law 17, the sale of the land is free, if no legal preemptors have expressed their intention to purchase the land in the legal term and in this regard, the issuing of the final approval will no longer be necessary, as per article 9. The sale agreement shall be concluded based on the certificate issued by the city hall.

Secondly, the free sale of the land is also possible when, after the necessary examinations, the preemptor does not comply with the conditions under Law 17 and a negative approval is issued. In this regard, if there is no other offer to purchase from the other preemptors that have expressed their acceptance of the offer, then the sale of the land shall be free and the agreement shall be concluded based on the certificate issued by the city hall.

From this point of view, it is incorrect to state that the entering into force of Law 17 implicitly abolished the legal conventional preemption rights prior to Law 17. From this point of view, it can be observed that a limitation of the conventional preemption right is applicable and not the non-existence of the right.

Therefore, if the sale of the land is free, the seller is not free to sell the land to whoever it may want. The seller must observe the conventional preemption right. In this regard, the conventional preemptor can exercise its preemption right and to conclude the sale agreement. However, the parties must comply with the obligation not to conclude the sale agreement at a lower price or in better conditions than those mentioned in the sale offer registered at the city hall, under the sanction of absolute nullity of the sale agreement.

## (iii) The used terminology

Also, it is noticeable that the lawmaker used at article 4 paragraph (3) of Law 17, the term *land registry certificate* (Romanian *certificat de carte funciară*), and this term is not found in the legislation, in practice or in the doctrine regarding the land registry.

In addition to this, the lawmaker is inconsistent regarding the necessity to submit legalized copies that must be enclosed to the sale offer request of the land. According to the methodological norms<sup>11</sup> pursuant to Law 17, it is necessary to submit the ownership deed regarding the land in copy (i) legalized by the notary or by the court of law or (ii) certified for conformity by the city hall's representatives. Nevertheless, according to the same methodological norms, in the model regarding the display requests for sale offer, it is mentioned the necessity to submit a legalized copy of the ownership deed regarding the land.

From this point of view, there is a contradiction regarding the form of the ownership deed that must be enclosed to the request to display the offer. In practice, there were cases when the county halls requested to submit the documents in copies legalized by the notary regarding the preemption procedure. In this case we consider that a possible refuse from the city hall's representatives who receive the documents in order to display the sale offer, can be considered as abusive and may be challenged based on the provisions of Law 554/20014 regarding the contentious administrative matters, including the subsequent amendments and additions<sup>12</sup>.

Therefore, in order to avoid the possible bureaucratic blockages and unnecessary additional costs, we propose that the lawmaker clarifies if it is necessary to submit these documents in a legalize form or not, in order to display the request of the sale offer.

## (iv) The identification of the neighboring owners

Regarding the possibility to identify the neighboring owners of the land, who according to the provisions of Law 17 are preemptors, Law 17 fails to determine the criteria's necessary in order to exactly identify them. From this perspective, the question is if by neighboring owners one can understand owner of the land that has a joint side regarding the land that will be sold?

Therefore, the lawmaker must detail the identification criteria regarding the neighboring owners of the agricultural lands, in order to avoid possible abuses caused by legislative gaps in this regard.

## Bibliography

1. *Noul Cod Civil, Comentarii, doctrină și jurisprudență*, Vol. III, Hamangiu, Bucharest, 2012, p. 86.
2. *Civil Code of Romania*, published in the Official Gazette of Romania, Part I, no. 511 of 24.07.2009.
3. <http://jurnalul.ro/bani-afaceri/constructii-proprietati/attractia-terenurilor-agricole-comasate-688730.html> (accessed in 20 October 2015)
4. Methodological Norms for the application of Law 17/2014, published in the Official Gazette of Romania, Part I, no. 401 dated 05.30.2014.

<sup>11</sup> Methodological norms pursuant to the application of Law 17/2014, published in the Gazette of Romania, Part I, no. 401 dated 30.05.2014.

<sup>12</sup> Published in the Official Gazette of Romania, Part I, no. 1154, dated 07.12.2004.