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ROMANIAN LAND MARKET REGULATORY FRAMEWORK: THE LEGISLATIVE CORRECTIONS IN 2014

ABSTRACT

The paper investigates the way in which a land market in its early stage, like the Romanian land market, can affect food security at national level. Starting from the official registrations of agricultural land transactions after the accession to the EU, the paper analyzes the elements with potential disturbing effects upon the land market in Romania. The end of the transitory restriction on the acquisition of agricultural land areas by foreigners, starting with January 1, 2014, is investigated in the context of the specific Romanian farm structures, including the farms that are already owned by foreigners. The evaluation of the legislative regulatory proposal on the sale-purchase of agricultural land had in view the different stages of the draft law, from its early forms up to the version promulgated by the President.

Key words: land market, transitory restriction, regulatory law.

JEL Classification: Q 15, Q18.

1. INTRODUCTION

The interaction between the agricultural policies and food security is first manifested at the agricultural production level of each state, even though food security is finally measured at the household or individual level. The effects of the agricultural policies upon the food security of a country are multiple, both direct and indirect, determining both the market equilibrium and the individual consumption. The category of the first factors includes the aggregate food supply (which can be influenced by the increase of agricultural yields or utilized land), the aggregate food demand (influenced by the increase of incomes, which leads to changes in the diet through the consumption of foodstuffs that are richer in proteins), or the evolution of global prices, compared to domestic prices (the liberalization of trade with agri-food products improving the consumers' food security, but lowering the farmers' food security), as synthesized in (Pangaribowo, Gerber and Torero, 2013). In the second category, we can find indicators such as the level of household incomes, of food prices or the population's educational level.

The increase of the domestic agricultural production represents the main factor through which the agricultural policies influence the food security of a country (Alexandri, 2001). The farm structure adjustment measures are the instruments that

have the potential to bring about a durable solving up of the agricultural supply problems, through the support to the increase of the physical and economic farm size, according to the evolution of the technologies used in agricultural production. In this context, the land market has a decisive role in farm consolidation, both by the sale-purchase transactions of agricultural land and by the land lease transactions.

2. STATE OF KNOWLEDGE

Recent studies on Romania's agriculture and the agriculture of the other EU member States highlight the wide variation of the farmland prices and of the rent values across the EU countries, under the impact of the EU subsidies and of their allocation modalities in different countries. Among the determinants of the farmland value, the following can be mentioned: agricultural commodity prices, infrastructure development, the urban pressure, as well as the land market regulations, i.e. the period of the leasing contracts, the level of taxes on land and on land transactions and last but not least, the subsidies granted under the Common Agricultural Policy (CAP) (Swinnen *et al.*, 2013). As a tendency, certain analysts consider that maintaining the present agricultural subsidy system in the EU is responsible for the strong increase of farmland prices, at least in the countries that joined the European Union in 2004. In this context, the role of the transitory restrictions benefiting these countries, in general for a period of 7 years from the moment of accession, is rather considered as a non-determining factor in the evolution of land prices after the accession, as the specific conditions for land acquisition by the local physical and legal entities has proved to be more important (Swinnen and Vranken, 2010).

3. MATERIAL AND METHOD

The main difficulty in the analysis of the land market evolution in Romania is the scarcity of data on the agricultural land transactions (Luca, 2011), which turn into a challenge the activity of data collection necessary for the assessment of some essential indicators of the land market, such as the volume of transactions and the agricultural land prices, in the absence of official data that would make it possible the realization of this kind of analysis.

The analysis of the estimated evolutions of the land market in Romania is completed in the present paper by an analysis of the legal provisions referring to the regulation of the land sale-purchase activity.

4. RESULTS AND DISCUSSIONS

The discussion about the Romanian land policy efficiency cannot overlook that generally, the land policy must be correlated with the farm structure policy. If the farm structure policy has established one objective (for example, reaching an

equilibrium between the large and small farms), the establishment of a land management agency would prove to be necessary, so as to correct the effects of the simple operation of the land market. For an efficient intervention on the land market, it is necessary that such an agency is given the pre-emption right on the purchase of the agricultural land areas put up for sale by their owners. By the pre-emption right utilization, the agency can contribute to the setting up or maintaining the farmers, to farm size increase, to maintaining the equilibrium between different types of farms and to discouraging land speculation (through applications for price re-examination in the case in which it is too high compared to the market value).

However, a land management agency, which would have the right for intervention on the land market, represents a sophisticated institution, which could be successful only if the state's interests and those of the farmers converge, as expressed in the debates and decisions between the interested parties in the land distribution, through the participation of the Government (representatives of the agricultural and fiscal sectors), of local public authorities (representatives of the mayors' associations and county councils), of farmers' associations (Agricultural Chambers eventually) and of the environment protection associations.

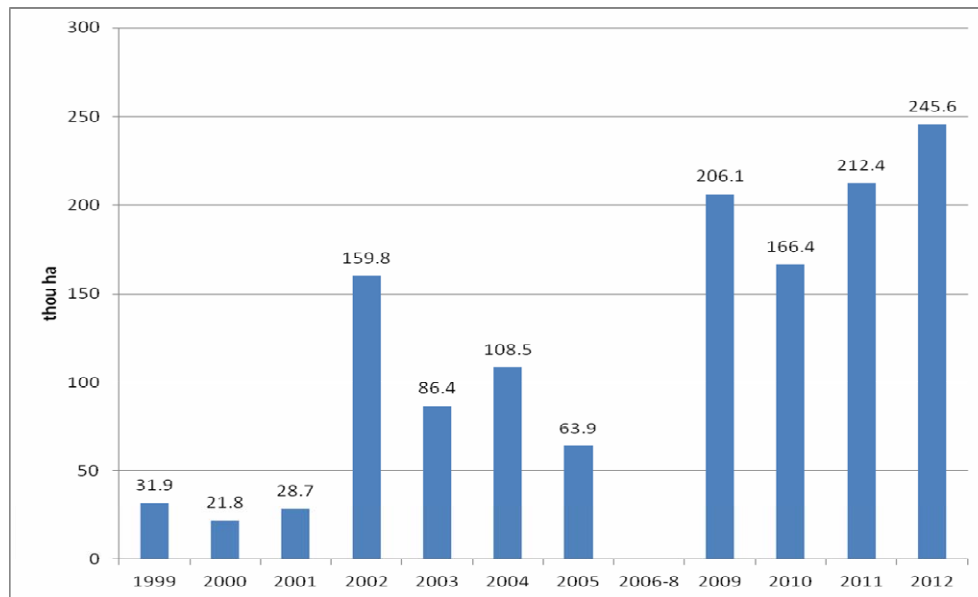
4.1. The Romanian land market operation

The Romanian land market started its official operation with the reforming of the whole agricultural sector in the second half of the 1990s, when Law 54/1998 on the juridical circulation of land was adopted. The data collected in the period 1998-2005 represent, for the moment, the only official data on the land market in Romania. According to these data, 308 thousand contracts for land sale – purchase outside the built-up areas of localities were registered in the period 1998-2005. The total sold land areas reached 513 thousand ha (Luca, Cionga and Giurca, 2013). Law no. 247/2005 on the reform in ownership and justice repealed Law 54/1998, replacing it by the provisions of Title X – The juridical land circulation.

After a three-year break, the centralization of data on agricultural land transactions was resumed in the year 2009 by the National Cadastre and Land Registration Agency (NCLRA). Thus, the situation of transactions presented in Figure 1 puts into evidence the increase of the volume of transactions after the accession to the EU, initially facilitated by the optimism of the years of the real estate boom and subsequently stimulated by the land purchase by foreign capital firms.

The land prices for the land outside the built-up areas of localities (agricultural land with different utilizations – arable, pastures, hayfields, vineyards, orchards) doubled on the average in the year 2005 (from 427 euro/ ha in 2004 to 884 euro/ha in 2005).

Starting with the year 2008, the only official information source on the agricultural land prices is represented by the expertise studies on the assessment of the circulation value of immovable assets, realized by local evaluators at the order of the National Union of Public Notaries from Romania (NUPNR).



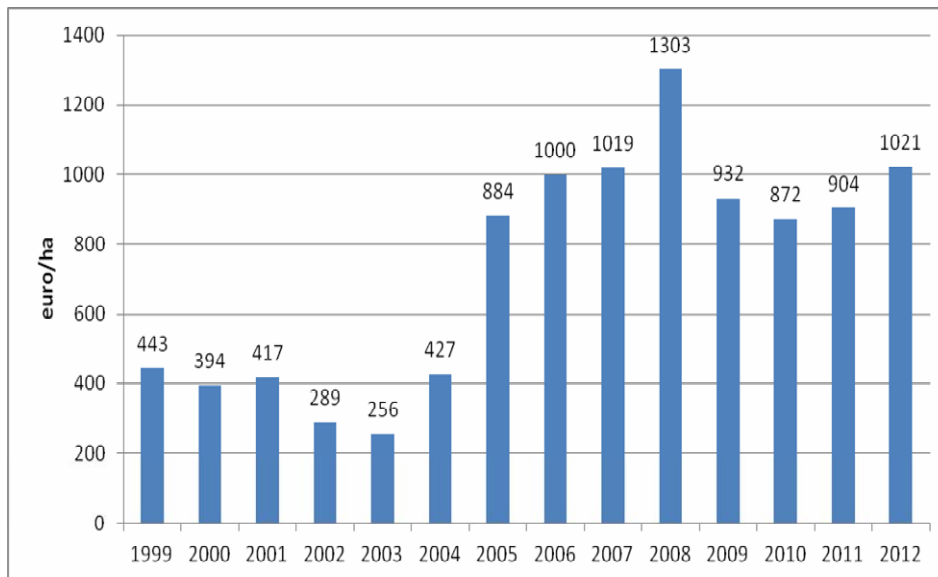
Source: For 1999-2005, MARD; 2006-2008, lack of data; 2009-2012 NCLRA.

Figure 1. The volume of agricultural land transactions from the outside areas of Romanian localities.

The comparison of these estimative prices with the average prices effectively registered in 2005 shows that in this period the agricultural land prices significantly increased mainly in the Western part of the country. The data of evaluations ordered by NCLRA, weighted with the transactions volume at the level of each region, completed with data obtained from own surveys for the period 2006-2008, reconstitute the evolution of agricultural land prices, as presented in Figure 2.

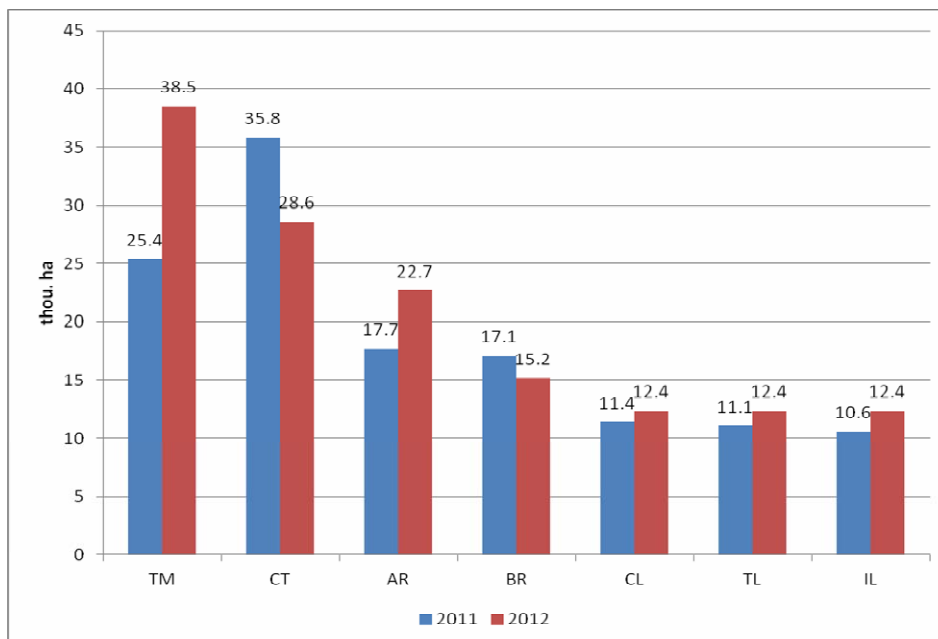
The analysis of data collected from official sources and from special surveys reveals a better operation of the land market in Romania in the post-accession period, compared to the pre-accession period; this is due to the continuous liberalization of the legislation on the juridical circulation of land, as well as to the conjuncture of the strong economic growth in the period 2004-2008 (which also generated certain speculative actions). Thus, the volume of agricultural land transactions grew from an annual average of about 100 thousand ha, in the period 2002-2006, to an annual average of about 200 thousand ha, in the period 2007-2012, with an increasing trend in the last three years (245 thousand hectares were transacted in the year 2012).

Under continuous growth from the year 2003 until 2008, the prices of land areas outside the localities, in euro, were down in 2009 and 2010, but they resumed their growth in 2011 and 2012, when they averagely reached over 1000 euro/ha. This average hides the great differences between prices, generated by the soil quality, land proximity to the access ways or to towns and the location in certain counties where the investors' interest was great (in general, in the country's West zone or in the South-East, as shown in Figure 3).



Source: For 1999-2005, MARD; 2006-2012, assessments on the basis of NUPNR data, NCLRA and from own surveys.

Figure 2. Evolution of estimated agricultural land prices in Romania.



Source: NCLRA.

Figure 3. The counties land with transactions over 10 thousand ha per year in the outside built-up area of localities.

The assessments of the real estate agencies also show an increase of the agricultural land prices starting with 2011, a strong increase in the year 2013, when the lowest prices negotiated prices by the agencies (we speak about relatively large areas) were 1500-1800 euro/ha, while the higher prices amounted to 3800-4200 euro/ha.

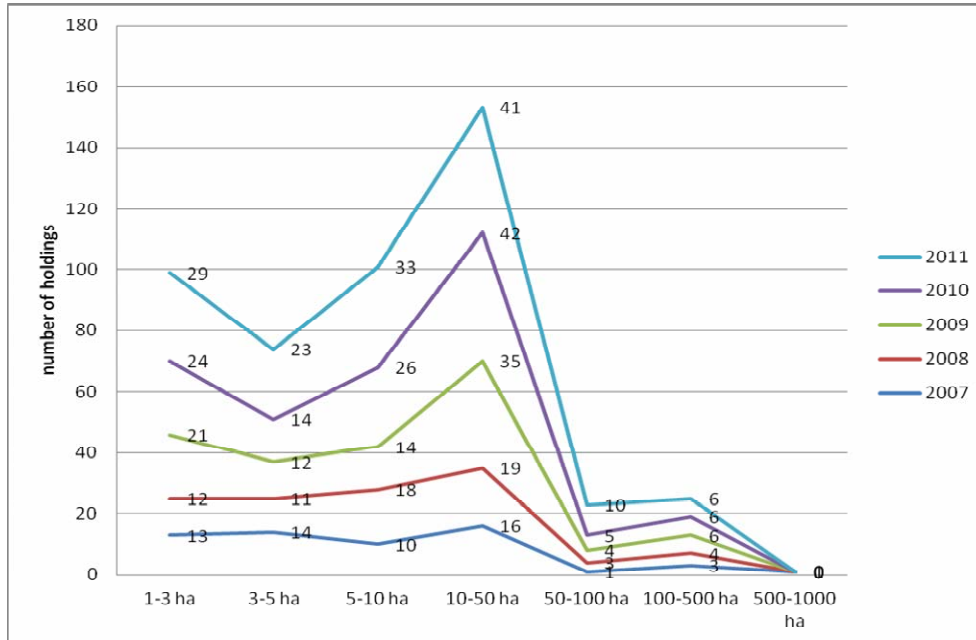
4.2. Agricultural land acquisition by foreigners

In many countries, land acquisition by foreign investors was severely restricted by the transitory regulations that were enforced in the New Member States, as a derogation from the EU legislation on the domestic market. Yet there were no restrictions on land use (through land lease) by foreign investors. The percentage of leased land largely differs, reflecting the existing agricultural farm structures in different countries (in Slovakia and Czech Republic it represented more than 90%, while in Poland about 30%). The restrictions on the agricultural land transactions had a negative influence upon development, the land ownership laws having an impact upon efficiency. As regards the direct foreign investments, it was considered that they would largely have positive consequences for the receiving countries, due to the capital and technology inflows; as a consequence, a complete liberalization of the land markets in the New EU Member States was recommended.

After the accession, a foreign citizen of a EU Member State could own agricultural land if he established his residence in Romania and if he had previously been a farmer in the Member State, as an exception from the restrictions on acquiring agricultural land ownership by the Member States nationals, valid for seven years from the moment of Romania's accession. The number of foreigners who used this right was relatively low (see Figure 4).

However, the most common form of farm organization by a foreign farmer, both before and after the accession, was the commercial company registered in Romania (Romanian legal entity, yet with foreign capital) that can purchase and use agricultural land as any other commercial company with autochthonous capital. According to the evidence of the Ministry of Agriculture and Rural Development (MARD), the agricultural area owned by the foreign citizens in Romania totalled 700 thousand hectares in 2011, a quarter of this being owned by firms with Italian capital, followed by those with German, Arabian, Hungarian, Spanish, Austrian, Danish capital. It should be mentioned that these data most probably refer both to land into ownership and to leased in land (yet MARD does not specify this).

The prolongation of the restriction on land purchasing by foreigners after January 1, 2014 would have presupposed the modification of the Accession Treaty (a quasi-impossible operation). On the other hand, the economic and social situation that motivated this restriction introduction at the moment of accession negotiations has not essentially changed. Even if the land restitution process is almost completed, the land disputes that emerged following its application are still numerous, and their settling up needs a complex corrective intervention (Rusu, 2012).



Source: APIA (Agency for Payments and Interventions in Agriculture).

Fig. 4. Distribution of farms owned by foreigners (according to the APIA payments to natural persons).

By comparing the land ownership regime in Romania with that in Hungary and Poland, countries that are also close to the restriction ending, reveals how different the situation in these countries is (Steriu and Otiman, 2013). In the Accession Treaty, Hungary had foreseen a provision by which at the end of the 7 years of restriction application, it could ask the European Commission for the prolongation for maximum 3 years; the prolongation was asked for and approved, but in Hungary the legal entities (of Hungarian or foreign nationality) cannot buy agricultural land. Poland negotiated a transition period of 12 years that has not ended yet, but in this country, the Polish legal entities can buy agricultural land, on the condition they do not have majority foreign capital.

4.3. The partial solutions provided by Law no. 17 of 2014

Confronted with a rather mediatic pressure, in relation to the end of the restriction on land acquisition by foreigners, in the year 2013 MARD initiated a draft law on the regulation of agricultural land transactions in the outside areas of localities, with the goal to discourage eventual speculative land acquisitions (not necessarily by foreigners). It seems that the proposed legislative solutions were inspired by the measures listed in (Popescu, 2013, pp. 64-66). Unfortunately, the draft law tried to find solutions to several problems that had remained unsolved in

the Romanian agricultural sector, which led to the design of a confused draft law. Its debating in the Parliament in emergency regime permitted only a partial correction of the contradictory or limitative approaches, which subsequently entitled resubmitting the law into the Parliament for re-examination by the country's President¹.

The first goal of the draft law regulating the sale-purchase of agricultural land, which remained unchanged in the variant of the law promulgated by the President, is "ensuring food security" (Art. 1, Law 17/2014). This subordination of the land market regulation to a complex and important goal is justified by the different approaches to food security, which is differently regarded at the national level and at household level. At the same time, other concepts specific to food security are also influenced by the situation of the country's land resources of the country, directly or indirectly (through the agricultural prices), namely: food consumption availability, share of food expenditures in household consumption, self-consumption. On the other hand, the national, European and global conjunctures create differences between reaching food security under normal economic conditions compared to the situations of crisis, or within the national agricultural market versus overall European common market. However, inside the EU, the role of the markets in ensuring food supply is decisive, the result being the stability specific to a large market.

In reference to the possible threats on the food security, generated by the potential control of foreigners upon a part of the Romanian agricultural production, these could become reality in the conditions of not ensuring the domestic supply and of the increase of food prices. An even more concrete threat would be represented by foreigners' taking possession of the Romanian agricultural land, who could thus become important beneficiaries of the EU subsidies. The consequences of this situation could be of concrete agricultural nature (soil degradation risk) and also symbolical (impact upon the national sovereignty).

The main new provisions of the law approved in the Parliament in December 2013 refer to: i) the extension of the pre-emption right from the lessee to the co-owners and land neighbours; ii) introduction of the pre-emption right of the State on the purchase of agricultural land through the Agency of State Domains (ASD), which has passed into the subordination of the General Secretariat of the Government; iii) MARD involvement in the process of approving the sale-purchase of agricultural land from the areas outside the localities, at the central structure level (for the transactions over 30 ha) or at the level of county structures (for the transactions under 30 ha).

¹ On this occasion, together with the suggestions for the correction of the confused approaches, the President made a proposal for introducing the reciprocity principle in agricultural land acquisition in the law (President of Romania, 2014); the proposal was fast adopted in the Parliament and it contravened the provisions on the free capital circulation from the accession treaty, being also in contradiction with Law 312 of 2005, which stipulated that the citizens and legal entities in a Member State "can acquire the ownership right upon land under the same conditions with those provided for in the law for the Romanian citizens and for the Romanian legal entities" (Art. 3, Law 312/2005). That principle of reciprocity was subsequently eliminated by Law 68/2014.

The MARD proposals that the Parliament gave up were the following: i) limitation of the agricultural land properties of natural persons to 100 ha; ii) the requirements that the buyer must have agricultural skills (agricultural education/ 5-year expertise in agriculture); iii) the restriction on the subsequent land re-sale for up to 10 years; iv) the obligation to farm the acquired land areas.

Overall, Law 17/2014 contributes to increased bureaucracy in the process of agricultural land sale-purchase in the areas outside the localities (also through the necessity to obtain certain authorizations from the military or cultural structures) and it imposes too complicated requirements regarding the cadastre documents. Among the provisions with positive potential we could be mentioned the creation of a database with agricultural land transactions (that will prove to be useful if all the transactions are centralized) and the creation of the framework for the state's intervention on the land market (however the law should explicitly stipulate the conditions in which the land will be purchased or sold by the state).

5. CONCLUSIONS

Taking into consideration that the efficiency of the land markets is measured through their ability to transfer the land from the less productive to the more productive users, an evaluation of the agricultural land market, based on the volume of transactions and the level of the sale-purchase prices, reveals an increase of transacted areas in the post-accession period, under the background of higher prices, by comparison to the pre-accession period. The acquisition of a significant agricultural area by the foreign firms, which normally should have positive consequences for Romania's agriculture, could have negative consequences on the country's food security, in the context of a high volatility of agricultural prices.

Law 17 of 2014 creates the framework for the state's intervention on the land market and provides certain facilities to some categories of natural persons in Romania, yet it is quite difficult to anticipate a positive effect on the agricultural farm structure, as long as there is no policy for the farm structure orientation in reality.

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