

## New category of pre-emptors involved in the purchase of extra muros farmland?

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A new legislative change to Law no. 17/2014 on certain measures regulating the sale of extra muros agricultural land, which also amends Law no. 268/2001 on the privatisation of companies that manage public and private state-owned land for agricultural use and the establishment of the State Domains Agency ("**Law 17**"), has been proposed in the Romanian Senate with the aim of introducing a new category of pre-emptors: owners of land adjoining extra muros arable land, regardless of the emplacement thereof within or without the city limits and regardless of the category of use of such lands.

The draft is subject to debate and approval and will be sent to the Chamber of Deputies, which is the decision-making chamber.

Although the legislator presented the change as a clarification to the existing legal framework, the proposed amendment appears to deviate from the law's purpose, which is to consolidate agricultural land to further facilitate farm growth and establish economically viable holdings, not to artificially regulate additional pre-emptor categories.

It remains uncertain whether the legislative proposal will be vulnerable to criticism, but it is likely, as the proposal does not seem to address the current social concerns underpinning Law 17 in its present form. This specifically refers to the latest amendments to Law 17, which have generated a transactional deadlock by overly restrictive interpretations that inhibit the free sale of farmland. This is contrary to the spirit of the law, which implicitly prohibits the unrestricted sale of extra muros agricultural land.

Over-regulation of pre-emptor categories may negatively impact the law's purpose, potentially causing further practical difficulties in applying Law 17, thus signalling a move away from legislative stability and efficiency.

The proposed amendment artificially extends the categories of pre-emptors. Existing categories are regulated based on subjective criteria, such as family relationships, along with objective criteria, such as favouring agricultural investments and holdings for farmland investors, owners of neighbouring farmland, public authorities/institutions involved in the farmland sector and encouraging agricultural activities/production among young people.

Granting a pre-emption right to the anticipated category (neighbours of farmland, irrespective of Intramuros ownership or neighbouring land use category) within the proposed legislative change does not align with these criteria. If the owner of the intra muros non-agricultural land adjacent to the extra muros arable land seeks to purchase the farmland, it is unclear how such an acquisition would benefit agricultural development.

The law already provides sufficient mechanisms for neighbours to obtain ownership rights over extra muros plots of land, either by exercising the pre-emption right, through acquisition as potential buyers or if no pre-emptor or potential buyer expresses interest, through a free sale to a non-pre-emptor nor potential buyer.

If we were to accept that owners of neighbouring intra muros land should have a pre-emption right, these beneficiaries would find themselves in a superior position compared to potential buyers, who face more restrictive conditions when acquiring ownership of extra muros arable land.

*De lege ferenda*, owners of neighbouring intra muros land may benefit from a pre-emption right if, for instance:

- (a) they undertake the obligation to include the neighbouring land into the extra muros plot and/or to use said land for agricultural activities or agricultural investments permitted by law; or
- (b) they fulfil similar criteria to the category of potential buyers or young farmers, thus reducing any potential discrimination.

Furthermore, for the sake of legislative transparency and harmony, the amendment should explicitly address the permitted use of extra muros arable land following acquisition by intra muros neighbours, in order to avoid a legislative void that may generate confusion and multiple interpretations.

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