

Schoenherr: Concerned about food security? Buy farmland in Romania while you still can



With growing expectations of a global recession generated by the COVID-19 pandemic, avoiding disruptions to the food supply chain and food production continues to be a priority. One of the key measures for ensuring food availability is to maintain and support agricultural activities and markets.

The EU agri-food sector has proven largely resilient, and with measures taken so far, the health crisis has not evolved into a food crisis. To respond to the expected future challenges, the European Commission has adopted a package of measures to support the agricultural and food sectors most affected by the coronavirus crisis.

Romanian agriculture, appealing for foreign investors

Romania, which ranks seventh in the EU by largest utilised agricultural land area and accounts for one-third of the EU's farms, is well positioned to contribute to the achievement of food production objectives. As one of the most important agricultural producers in the EU, in the past years the country has seen record yields for cereals, ranking third among Member States in total cereal production and first in maize and sunflower in 2018.

Also, the price of farmland remains attractive when compared to elsewhere in the EU. However, the price and attractiveness of consolidated "strip farms" are higher.

In addition, the Romanian climate is largely favourable for agriculture, though the irrigation system is a key element to be further developed. According to the Romanian Ministry of Agriculture, a total surface of around 2m hectares from 88 viable irrigation facilities are expected to be rehabilitated in Romania.

Against this background, Romania has seen an increasing wave of agricultural investments during the past years, when major players entered the market via large-value acquisitions.

Entering the market doesn't come easy

This trend is expected to continue post-pandemic, as the focus on ensuring food availability remains a priority. Still, investors need to find ways to navigate the particularities of the country's farmland and the various local laws.

While major agri-business players mostly look for large deal sizes, these are not easy to find in Romania. Although

the consolidation of fragmented farmland increased in Romania during the last years, the country has the highest share of small farms (i.e. farms with land less than 5 hectares) in the EU.

Investors usually enter the Romanian agriculture market by acquiring local players holding consolidated farmlands. But this is only the first step for investors, who are usually interested in growing the surface area of the farm, as larger consolidated farmlands ensure considerably increases in proceeds due to economies of scale and the application of modern agricultural techniques.

Depending on the business model chosen, a potential investor may acquire the right to use the land by purchase, swap, agricultural lease or, if the owner is a public entity, by concession. If the investor has sufficient economic power, the preferred option will most likely be to acquire the ownership right, which would allow long-term investments and easier access to credit facilities.

Under Romanian law, to purchase agricultural lands a potential investor must comply with Law 17/2014, which regulates the sale and purchase of such real estate assets ("Law 17"). Among other things it aims to ensure food security, the exploitation of the country's resources in accordance with the national interest, the consolidation of agricultural lands and the establishment of economically viable farmland.

To reach these objectives, Law 17 sets a pre-emption right in favour of the co-owners of the land, lessees, neighbours of the land and the Romanian State (in this order of preference). For this right to be observed, any owner of agricultural land intending to sell that property must follow a specific legal procedure by which specific public authorities approve the sale towards either an interested party who exercised its pre-emption right or allows the sale to any other person if no such interest was expressed.

For certain lands, other authorities come into play, as additional approvals are needed for the sale of properties, such as those located near state borders or national security objectives, in or near archaeological sites or areas with archaeological value or potential. Even if the criteria that may trigger a denial of the sale by these authorities are not entirely clear, the good news is that in practice, in most cases, the only drawback appears to be a delay of the transaction.

The plot thickens

Law 17 is set to be drastically amended by a new law recently adopted by the Parliament and sent for promulgation by the President of Romania. Much debated, this piece of legislation seems likely to slow down foreign investment in local agriculture, as it imposes major restrictions on the sale of agricultural land to foreign nationals and on the right of an owner to sell its land.

The new law sets forth no less than seven categories of pre-emptors, new conditions to be met by the lessor exerting the pre-emption right, as well as a lengthier duration for the publication of the sale offer.

Also, an interdiction is introduced for the land to be sold for a period of eight years, under penalty of an 80 % tax on the difference between the sale price and the purchase price. There is no "but" here, as this 80 % tax may not be avoided by entering a share deal. The tax applies to sellers in case of direct or indirect transfer of the controlling stock in companies that hold agricultural lands representing more than 25 % of their assets. However, to avoid double taxation, the profit tax is applied to a diminished base. Also, breach of these obligations is sanctioned with the absolute nullity of the deed by which the controlling stock was transferred.

As for the restrictions on the sale of land to foreigners, under the new law, to qualify as pre-emptors lessors need to have their domicile/corporate seat in Romania for at least five years at the moment the sale offer is published. In addition, if the holders of the pre-emption right do not exert their right, after a time the sale is restricted to natural or legal persons having their domicile/corporate seat in Romania and carrying out agricultural activities for at least

five years.

The good news is that these new provisions are not yet set in stone. The recently adopted law has already been submitted to the Constitutional Court for a constitutionality check. It is reasonably expected that this would result in at least part of these changes being discarded.

Outlook

Romania is well positioned to benefit from the growing general concern for increased food security by continuing to attract and support investments in the country's agriculture sector. But it remains to be seen how the recently announced legislative changes will impact investors' interest. In addition, the country still needs to work towards meeting investors' expectations for legislative stability and reduced red tape. Without a consistent legal framework that would ensure long-term predictability, the country will not be able to take advantage of the current momentum.