

## Kinstellar: A Temporary Stop to Land Transfers in Romania? The Humble Soil Quality Certificate

**While market's attention has been drawn to the new pre-emption rights and the like introduced by the government to curtail sales of agricultural land, a far more ominous legislative change occurred with little fanfare: Law 246/2020 on soil use, conservation and protection was published in the Official Gazette no.1057 on 10 November 2020 and entered into force on 1 January 2021.**

While the law's title seems harmless, there is an article with very broad wording that could impact most land transfers in Romania involving an asset transaction:

*Article 36(2): Requesting and obtaining a soil quality certificate is required when there is a change in the holder of land/transfer of land with any valid title, that was affected by the following activities:*

- a) existing or new agricultural, forestry and zootechnical activities;
- b) existing or new industrial and economic activities with significant impact on the soil;
- c) military activities with significant impact on the soil.

*Article 36(3): The request and obtaining of a soil quality certificate is mandatory upon the finalisation of any works in which the soil shell is affected.*

By the article's plain wording, it seems that any transfers performed without the certificate can be deemed null and void. It is not clear that they would be pending publication of application norms (and any annulment would require court action, etc.), but it is a principle of Romanian legal interpretation that the law continues to produce effects even without the norms. Also, it is unclear what the third paragraph refers to in terms of works that affect the soil shell. By the broad wording this seems to indicate that construction works fall under this category as well. Thus, finalisation of construction works is also contingent upon obtaining a soil quality certificate.

So you should just get the certificate, right? Not so fast! Unfortunately, no further details are offered by the law. Relevant application norms have yet to be published, and we understand that it could be weeks or months until they are. The relevant public authority is the *National Research and Development Institute for Soil Science, Agrochemistry and Environment* (in Romanian, Institutul Național de Cercetare-Dezvoltare pentru Pedologie, Agrochimie și Protecția Mediului or "ICPA"). Unfortunately, it seems that ICPA at the date hereof has no further guidance available. Public notaries likewise have not received guidance. So no certificate.

So what should you do? At first, it would seem that one should ask if the land is actually subject to any of the restrictions above. This should be documented (such as any environmental studies, planning permissions, confirmations from other authorities, etc.). Article 37 of Law 246/2020 also refers to the need for a soil study to be performed in order to issue a certificate. If the study can confirm the absence of activities above, this may be another argument.

If documentation is available, a public notary may allow the transaction to proceed. This restriction should be clarified together with your public notary and lawyers. Unfortunately, it may be a case of wait-and-see. We will revert with updates and guidance as they become available.

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