

Hammond Partnership: Nobody will be able to buy agricultural land in Romania

As Romania is moving towards re-opening, Hammond Partnership hopes that you are all well and have not been ill with the virus. As the world moves to re-opening business will continue to pick up and we look forward to meeting you if you come to Romania whether for business or pleasure.

During this period, an interesting new law regarding agricultural land has been passed by the Romanian Parliament and we set out below our initial review and comments.

Nobody will be able to buy agricultural land in Romania

On 3rd June 2020, the Romanian Parliament passed a law meant to modify and amend the current Law no. 17/2014 on the sale and purchase of agricultural lands in Romania located outside the built-up area (extravilan), "Law no. 17/2014".

The new Law has been sent on 9th June 2020 to the President of Romania for promulgation who in 20 days must either send it back to the Parliament for review and additional amendments or to promulgate it and send it for publication in the Official Gazette.

If it is promulgated and published in the Official Gazette, it will enter into force in 60 days upon publication. This new law although it has been sent to the President for promulgation, we believe he will raise objections to the law in its current form.

Although no one in the media appears to have thoroughly analyse and to present to the public the modifications proposed by this new Law our own review reveals changes that we consider bring major implications and changes to the legal framework of the agricultural real estate market that need to be brought to the public attention since it refers to major changes to the conditions for buying and selling agricultural land in Romania.

The most important amendments provided by the project relate to art. 4 of the Law no. 17/2014, regulating the conditions of selling agricultural lands located outside the built-up area in Romania.

The new version of the article proposed by the new law extends the category of persons who have right of pre-emption in buying such land to a wider category of persons and institutions.

The form of the new Law currently in force provides that agricultural lands can be sold to other people only with the observance of the preference right of co-owners, agricultural tenants, owners of the neighbouring land and the Romanian State, through the State Domains Agency, in this specific order, at the same price and on the same contractual conditions.

The new Law changes completely this list of persons with pre-emption rights adding new entities and persons entitled to have a preference. The list in the new law is as follows, in this specific order:

- Co-owners, relatives, spouses, and in-laws up to and including the third degree.
- Owners of agricultural investments over agricultural land for tree, vines, hops, exclusively private irrigation and or tenants. If on the land is located agricultural investments for tree crops, vines, hops and for irrigation, priority to the purchase of these lands have the owners of these investments.
- Landlords and/or tenants of the neighbouring lands.
- Young farmers as provided by the EU regulations.
- The Academy of Agricultural and Forestry Sciences and research and development units in the fields of

agriculture, forestry, and food industry, as well as educational institutions.

- Individuals with domicile/area where the land is located or in the neighbouring areas.
- The Romanian State.

The new Law also provides that two new articles will be introduced into Law no. 17/2014 regulating what happens if the persons with the pre-emption rights above do not intend to exercise their rights.

In this respect, we note that the most important change brought by this new Law is that no foreign individual will be able to buy directly agricultural land in Romania.

According to this new article, if the pre-emption rights mentioned above are not exercised the selling of agricultural land located outside the built-up area can be done only to individuals who meet the following cumulative conditions:

- have their domicile/residence located in Romania for a period of at least 5 years prior to the registration of the selling offer.
- perform agricultural activities in Romania for a period of at least 5 years prior to the registration of the selling offer.
- Are registered with the Romanian fiscal authorities for at least 5 years before the registration of the selling offer of the agricultural lands.

For companies, the conditions are even more severe:

- to have their headquarters/secondary office located in Romania for a period of at least 5 years prior to the registration of the selling offer.
- to have performed agricultural activities in Romania for a period of at least 5 years prior to the registration of the selling offer.
- to present documentation showing that from the total income of the last 5 fiscal years a minimum of 75% represents income from agricultural activities as classified by the NACE code.
- the controlling shareholder of the company must have had their domicile in Romania for a period of at least 5 years prior to the registration of the selling offer.
- if the controlling shareholders are other legal entities, then their controlling shareholders must have their domicile located in Romania for at least 5 years before the registration of the selling offer.

From the interpretation of these new proposed regulations, it seems that the only persons entitled to buy lands in Romania after the new Law enters into force are the individuals or the companies that are currently performing agricultural activities in Romania and have done so for at least the previous 5 years.

Another modification is represented by an indirect obligation of not selling agricultural lands for a period of at least 8 years from the date of their purchase. There is a new article which provides that if a landlord sells any of his agricultural lands bought less than 8 years before, he has to pay a tax of 80% of the difference between the selling price and the purchase price. This will in our view allow for a distortion in the market regarding the price for agricultural land.

If the new law as passed in its current form, we believe that it will block the sale and purchase of agricultural land in Romania as well as being unconstitutional. It should be noted that the law was originally proposed in 2014 when a different legal atmosphere was present.