

Romania introduces restrictions on sale and purchase of agricultural land



On 14 August, Romanian lawmakers passed an amendment to Law 17/2014 on the sale and purchase of agricultural land, imposing significant restrictions on the sale and purchase of extra muros agricultural land for foreign nationals.

A key amendment to the legislation is the extension of the categories of beneficiaries of legal pre-emption rights provided for the sale of agriculture land. The beneficiaries have been extended from four categories (co-owners, tenants, neighbouring owners, as well as the Romanian state through the State Property Agency) to thirteen categories with the following seven differentiating ranks:

- Rank 1: co-owners, first-degree relatives, spouses, relatives and in-laws up to and including the third degree.
- Rank 2: owners and tenants of agricultural investments for tree crops, vines, hops, exclusively private irrigation.
- Rank 3: owners and tenants of agricultural land adjacent to the land subject to sale. (In this category, proof of domicile or residence (or of a registered or secondary office in the case of legal entities) is necessary. The land must be located in the national territory, and ownership must be for a period for five years prior to the date of the publication of the sale offer.
- Rank 4: young farmers, up to 40 years as defined in art. 2 para. (1) lit. (N) of Regulation (EU) no. 1305/2013 of the European Parliament and Council of 17 December 2013 regarding the support for rural development granted from the European Agricultural Fund for Rural Development (EAFRD), who intend to carry out or are carrying out agricultural activities.
- Rank 5: Academy of Agricultural Sciences and Forestry Gheorghe Ionescu-Șișești and research-development units in the fields of agriculture, forestry and food industry that are organised and regulated by Law no. 45/2009.
- Rank 6: natural persons with domiciles or residences located in the administrative-territorial units where the

land is located or in the neighbouring administrative-territorial units.

□ Rank 7: the Romanian state through the State Property Agency.

New conditions have been introduced that must be met by potential buyers, other than those who are beneficiaries of a pre-emption right. If none of the beneficiaries of the pre-emption right intend to buy land, the sale of the agricultural land can be made to natural persons or legal entities subject to fulfilling certain cumulative conditions. The conditions appear to give preference to buyers having a domicile or residence in Romania for a period of at least five years, and buyers with past experience in farming in Romania prior to the date of the publication of the sale offer. Similar conditions have been introduced for a controlling shareholder who must have his domicile located in Romania for a period of at least five years prior to the date of the sale offer's publication.

In terms of successive sales, the amended law restricts the sale of agriculture land for a period of eight years after the purchase with a penalty of an 80% tax on the difference between the sale price and the purchase price. This current provision is applicable also in case of direct or indirect transfer of the controlling stock in companies that hold agricultural lands representing more than 25% of their assets. To avoid double taxation, the profit tax has been applied to a diminished base. Breach of these obligations will result in the absolute nullification of the deed by which the controlling stock was transferred.

In its current form, the amendment does not expressly repeal nor amend the procedure to withdraw land from agricultural use. It offers a mandatory procedure to be followed for any investments implying the alternative use of agricultural land other than for agriculture. All future legislative changes should be closely monitored in regard to any amendments to the secondary legislation potentially making declassification of agricultural land more restrictive or onerous.

Prior to promulgation by the Romanian President, the bill has raised several controversies for the business environment, including businesses in the oil and gas and renewables sectors, which claim that the legislation may negatively impact on-going projects and Romania's investment climate by introducing additional burdens for carrying out activities on previously designated agricultural lands.

For more information on this amendment and the use of agricultural lands in Romania, contact your regular CMS advisor or local CMS experts: **Varinia Radu, Roxana Fratila, Ramona Dulamea and Alexandru Dumitrescu.**