

Schoenherr: Romania clears the deadlock on the sale of farmland located outside buildable areas generated by this year's legislative changes

This year, Romania significantly changed its legislation on the sale of farmland, as detailed in this article. Widely criticised for creating restrictions on the access of foreigners to Romanian agricultural real estate, which could raise concerns about its compatibility with EU legislation, the new rules were enacted by Law no. 175/2020 for the amendment and completion of Law no. 17/2014 on the regulations regarding the sale-purchase of agricultural land situated outside buildable areas and for the amendment of Law no. 268/2001 on the privatisation of companies administrating the State's publicly- and privately-owned land with agricultural destination and for the creation of the Agency for the State's Domain ("Law 175/2020").

Law 175/2020 stipulates that its provisions apply to any sale-purchase of agricultural land situated outside buildable areas, irrespective of whether the process was ongoing on the date when the law came into force or was initiated afterwards. It came into force on 13 October 2020, while the methodological norms for its application have not been adopted yet.

With the competent public authorities faced with the genuine impossibility of finalising the process for assessing sale-purchase offers filed by land owners prior to 13 October 2020, transactions involving agricultural land situated outside buildable areas initiated under the old sale-purchase procedure stipulated by Law no. 17/2014 were deadlocked.

To resolve the situation, the Romanian Government enacted Emergency Ordinance no. 203/2020 on some measures aimed at regulating the sale-purchase of agricultural land situated outside buildable areas ("GEO 203"), which came into effect on 25 November 2020.

GEO 203 sets forth the rules that derogate from Law 175/2020, applicable to the sale-purchase of agricultural land situated outside buildable areas based on requests for the display of sale offers filed on or prior to 13 October 2020. The main provisions are:

- ◆ requests for the display of sale offers, together with their ancillary documentation, and of offer confirmations together with documentation ascertaining the capacity as pre-emptor, will be mainly assessed according to the rules set forth by Law no. 17/2014 applicable prior to the coming into effect of the amendments introduced by Law 175/2020;
- ◆ final permits or free sale certificates will be issued within at most 10 days as of the coming into force of GEO 203;
- ◆ final free sale permits and certificates will be valid between the date of their being communicated to the seller and 31 January 2021.

The provisions of GEO 203 will apply until 31 January 2021. Therefore, the sale-purchase process of agricultural land situated outside buildable areas for which requests for the display of sale offers had been filed on or prior to 13 October 2020 needs to be finalised by 31 January 2021. Otherwise, the sellers will need to reinstate the sale-purchase process regarding agricultural land in accordance with the new requirements set forth by Law 175/2020.

Given the limited applicability of GEO 203, the validity of final permits or free sale certificates issued prior to 13 October 2020 will be governed by the provisions of Law no. 17/2014 applicable on the date of their issuance.