

Potential new prohibitive regime regarding sale of *extra muros* agricultural lands in Romania

As of June 3rd, 2020, both chambers of the Romanian Parliament voted favorably on amending Law no. 17/2014 regarding the sale of *extra muros* agricultural lands (the "**Law**"). The amendment provides, *inter alia*, for: (i) additional ranks and categories of right of first refusal holders, (ii) more restrictions pertaining to sales of agricultural lands and (iii) new sanctions for failing to observe the prescribed agricultural land sale procedure (the "**Proposal**").

Overview

The Law provides the general guideline to be followed and the conditions in which sales of *extra muros* agricultural lands may be concluded. It states that co-owners, tenant farmers, neighboring owners and the Romanian state have a right of first refusal, exercisable in this order, to acquire agricultural lands being sold in Romania.

According to the Proposal's explanatory note, the new amendments seek to: *prohibit speculative sales, consolidate divided agricultural lands, restrict the use of agricultural lands only to agricultural activities and to stimulate young farmers.*

Additional right of first refusal holders

The Proposal provides for new right of first refusal holders, such as: (i) the sellers' relatives, including spouses, (ii) owners of agricultural investments into fruit trees, vines, hops, private

irrigation systems, (iii) young farmers (up to and including the age of 40 and subject to other criteria provided by EU Regulation no. 1305/2013) and (iv) individuals that have their domicile or residency in the administrative unit in which the land being sold is located. Additionally, the Proposal now classifies the rights of first refusal holders in seven different ranks, each rank being first preferred as to the subsequent ranks.

Further restrictions regarding the free sale of agricultural lands

According to the Law, sellers are free to sell the agricultural land to any interested third-party, if none of the right of first refusal holders have expressed their intent to acquire the land, following the prescribed procedure. The seller is free to sell the land under the same terms and conditions made to the right of first refusal holders and for the same consideration.

The Proposal however provides an *additional category of entitled persons* to purchase the land before the seller is allowed to freely sell it to an interested third-party. This specific additional category refers to individuals or companies that must observe certain criteria prescribed by the Proposal. The criteria which a company must observe in order to fall within this *additional category of entitled persons* are:

- to have its corporate seat and/or secondary place of business registered in Romania five years prior to the sell offer being made.
- the controlling shareholder of the company interested in the acquisition must have his domicile in Romania five years prior to the sell offer being made. If the controlling shareholder is an undertaking itself, then the shareholder of this entity must have his

domicile in Romania five years prior to the sell offer being made.

- 75% of the company's total income must come from agricultural activities.
- the company must have performed agricultural activities five years prior to the sell offer being made.

Discouraging tax charges for selling agricultural land or shares eight years prior to the land acquisition

According to the Proposal, if agricultural lands are sold eight years prior to their initial acquisition, an 80% tax must be paid on the sum comprised as the difference between the sell price and the purchase price, based on public notary regulated values.

Also, the Proposal now prohibits direct or indirect disposals of shares in a company which has more than 25% of its assets in agricultural lands, if the disposal is being made eight years prior to the acquisition of the lands, without payment of an 80% tax on the sum comprised as the difference between the value of the agricultural lands on the date

of their initial acquisition and the value of the agricultural lands on the date of the disposal of shares, based on public notary regulated values.

Exclusive use of agricultural lands for agricultural purposes

The Proposal states that owners of agricultural lands must use such lands exclusively for agricultural purposes and if investments have been made into fruit trees, vines, hops, private irrigation systems, then the agricultural purpose of such investment must be kept.

New sanctions

Disregarding the specific provisions regulated by the Proposal pertaining to the right of first refusal for sales of agricultural land triggers the agreement to be null and void (in Romanian: *nulitate absoluta*).

The same sanction is applicable to agreements disregarding rights of the above-mentioned *additional category of entitled persons* which are preferred, as opposed to third-parties, for

conclusion of agricultural lands sales.

Agreements selling agricultural lands or shares in companies owning agricultural lands (and subject to the above-mentioned conditions), eight years prior to their initial acquisition, without payment of the specific tax, are also considered null and void.

Status of the Proposal

The Proposal has been adopted by both chambers of the Romanian Parliament as of June 3rd, 2020 and can be challenged by the appropriate public body, in front of the Constitutional Court, within five days of being sent to promulgation, followed by publication in the Official Gazette.

The Proposal will enter into force 60-days after its publication in the Official Gazette. The ancillary legislation will have to be amended to reflect the changes made by the Proposal within 15-days of the Proposal's entry into force.

This article does not deal with every topic or cover every matter it deals with. It is not intended to provide and does not represent legal advice.

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