

LEGAL PROVISIONS REGARDING THE ACQUISITION OF FARMLAND IN CERTAIN COUNTRIES IN CEE

The large-scale acquisition of farmland in CEE countries has been a highly debated topic for some time. This is mainly due to the relatively low price of land in comparison to that in other parts of Europe as well as the good quality of the soil. However, there has also been a constant tendency to restrict farmland acquisition to an individual country's nationals (legal entities and individuals), and to put up limitations to the acquisition of farmland by EU/European Economic Area individuals or companies.

Recently, in Poland and Romania, such tendencies have begun to take shape as proposed legal provisions. Please find below an overview of the key elements of such legal provisions.

POLAND

Farmland in Poland is among the cheapest plots of land in Europe despite a steady increase in prices since joining the European Union in 2004. One reason for this was that European Economic Area nationals and companies had to obtain a permit issued by the Minister of the Interior and Administration in order to purchase farmland until the 12th anniversary of Poland's accession. This requirement ceased to apply on May 1, 2016.

Many Polish farmers preferred the limitation to remain in effect, hoping that prices would stay at comparatively low values, enabling them to expand their farms at a relatively low cost. The main concern was that the end of the 12-year protection period would enable large-scale acquisition of farmland by foreign investors, threatening the interests of family farms.

To address these anxieties, a number of amendments have been introduced to the Act of 11 April 2003 on Shaping of the Agricultural System (the "Act on Shaping") which provide for restrictions related to acquisition of farmland through either asset or share deals.

As a rule, only an individual farmer being a natural person with agricultural qualifications may acquire farmland. Acquisition by other entities is possible only under certain strict conditions subject to a permit issued at the discretion of the National Centre for Support of Agriculture (the "National Centre"). The acquirer of farmland is obliged to operate the farm for at least ten years from the date of acquisition, and the land cannot be transferred to other entities during that period. The sale of farmland (directly or by way of stock ownership) is also subject to a purchase pre-emption right of the National Centre. The restrictions apply not only to acquisition on a contractual basis, but to all kinds of transfers, including acquisitions through mergers or done by way of a sale agreement. A transfer of the shares of a listed company would not be affected, however.

The new regulations have been a revolutionary change and have become a hot topic for discussion among the real estate community in Poland. This has severely diminished the trade of farmland, which has had an adverse effect on different sectors of economy, e.g., warehouse projects and farmers' activities (farmland value became less attractive for banks so it has been more difficult for farmers to receive financing). As a result, certain issues have been identified in the Act on Shaping and a number of proposals for its amendment have been submitted. Currently, the Ministry of Agriculture and Rural Development (the "Ministry") has decided to announce a new legislative proposal (the "Proposal") to address some of the issues.

One of the most important amendments included in the Proposal provides for the exclusion of the National Centre's right of pre-emption of shares with respect to companies which are owners of farmland with an area of less than 1 ha. The National Centre's right to submit a statement of acquisition in cases of a change of partner or a new partner joining a partnership would also be excluded with respect to companies which own less than 1 ha of farmland.

Another relevant amendment provides that in the case of any transfer (excluding again the transfer of shares of a listed company) parties may neither terminate, amend or withdraw from a transfer deed nor undertake any legal acts encumbering the shares or affected farmland until the deadline has lapsed for the National Centre to execute its pre-emption right.

The Proposal also intends to amend the Act of 19 October 1991 on Management of the Farmland of the State Treasury (the "Act on Management") which lays down rules concerning farmland under the management of the National Centre (the "Property Stock"). The Proposal would, in particular, exclude the requirement to (i) first conclude tenancy agreements or contracts of sale in order to establish or enlarge family farms, and (ii) limit the list of participants in the case of sale under a tender procedure, with respect to management of farmland of the Property Stock with an area of less than 0.3 ha. The proposed amendment in this respect would align the Act on Management with the Act on Shaping, which does not apply to farmland of such area. However, the suspension of sale with regard to the Property Stock for the period of 5 years from 30 April 2016 (which applies, in particular, to farmland with an area exceeding 2 ha) would still be applicable.

The Proposal aims to facilitate real estate transactions of Polish farmland. Certain restrictions would be limited and other provisions clarified. However, most of the existing restrictions would not be significantly changed leaving a very narrow opportunity for the free transfer of farmland.

Currently, the Proposal is subject to public consultation. There may be further changes to the Proposal, but it is difficult to predict the duration and outcome of the legislative process at this stage. However, given that the Proposal is advocated by the Ministry, it is probable that it will be submitted to the Parliament in something very close to its current form.

ROMANIA

The acquisition of Romanian farmland has been under constant debate for a number of years-ever since Romania joined the EU in 2007. Two opinions have emerged from such debates: (i) Romanian farmland should be acquired freely by Romanian and EU citizens alike, be they legal entities or natural persons; and (ii) restrictions should be adopted favoring the acquisition of Romanian farmland exclusively by Romanian nationals.

The latter opinion appears to have gained momentum recently.

Currently, Law 17/2014 regulates the acquisition of farmland in Romania and applies equally to Romanian nationals, EU citizens, citizens of European Economic Area member states, and citizens of the Swiss Confederacy.

One of the most important amendments proposed to be brought to Law 17/2014 provides that farmland can only be sold no sooner than fifteen (15) years after being acquired. More importantly, it also provides that after the passing of the fifteen (15) year period, the owner is entitled to sell the farmland exclusively to the Romanian state.

Another relevant amendment is the one stating that companies (no distinction on whether it is a Romanian company or an EU member state/third party state company) can acquire farmland only if all of the following conditions are met:

- (i) the company's main/secondary headquarters have been established in the same administrative unit as the land to be acquired, at least one (1) year prior to the acquisition;
- (ii) the company has been performing agricultural activities in the same administrative unit as the land to be acquired, for at least five (5) years prior to the acquisition;
- (iii) at least 75% of the company's income in the last three (3) fiscal years has been generated by agricultural activities.

The amendment could be viewed as a means to limit the acquisition of Romanian farmland to Romanian nationals. This is done indirectly, since the free movement of capital and freedom of establishment are some of the key principles set out in the *Treaty on the Functioning of the European Union*, and restrictions based on citizens' nationality could give rise to infringement procedures.

Presently, the proposed amendment to Law 17/2014 follows the legislative process, meaning that it is not yet applicable. Moreover, the current version of the amendment may not be the final one. Given the strong bias that this amendment would introduce to limit the acquisition of farmland in Romania to Romanian nationals, we can anticipate further debates and modifications to the amendment will take place before it may be ultimately adopted.

December 2017

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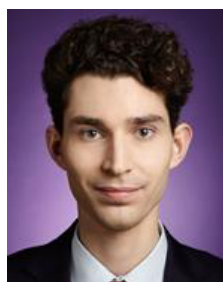


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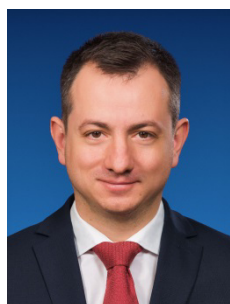


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