Slovakia: New rules for acquisition of agricultural land

On 1 May 2014, the transitional period during which Slovakia, following the country’s accession of the EU, was granted an exception for keeping in place legal limitations regarding the acquisition of agricultural land and forests expired. With the passing of this transitional period, Slovakia was obliged to bring its legislation in line with EU laws and abolish restrictions applicable to EU foreigners. The necessary law was adopted, but - largely due to the concerns of the public that foreign nationals and entities will start buying up the country - a new set of limitations was introduced that will likely complicate the acquisition of agricultural land for everyone (both Slovak and foreign entities).

Until 1 June 2014, foreign entities were not entitled to acquire ownership of agricultural land and forests. Nevertheless, these restrictions were easily circumvented, e.g. through the acquisition of shares in a Slovak company owning the land. Based on available statistics, some 30,000 hectares of agricultural land are already in the hands of foreign entities.

New regulation

Effective from 1 June 2014, a new regulation enters into force that abolishes the restrictions that were aimed at preventing the acquisition of agricultural land and forests by foreigners. However, the regulation will also introduce a new set of rules for acquiring agricultural land that will apply to any purchaser, regardless of their residency or corporate seat ("New Regulation"). No new rules will be introduced with respect to acquisition of forests; therefore, foreign nationals / companies will be able to directly acquire forests in Slovakia.

In general, the New Regulation applies to agricultural land that is (i) situated beyond the border of the built-up area of a municipality; (ii) determined by applicable regulations for agricultural use; and (iii) has an area of at least 2,000 square meters.

New procedure for agricultural land transfer

Under the New Regulation, the owner of the agricultural land may, without further restrictions, transfer the agricultural land only to (a) a buyer who has been active in the food business or exercises agricultural activity1 ("Farmer") in the municipality where the agricultural land is situated for at least three years prior to the transfer; (b) the existing co-owner of the agricultural land; or (c) persons related to the owner, in the event that the owner is a natural person.

If the buyer does not fulfill any one of these three conditions, the seller must follow the procedure set out below.

The owner of the agricultural land is obliged to publish an offer, which shall inter alia include the requested price, for transfer of the agricultural land in a register of publication of offers (Register zverejňovania ponúk) kept by the Ministry of Agriculture and also on the official municipality board in the municipality where the agricultural land is situated.

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1 Article 3 Section 3 of the regulation (EC) No. 178/2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety and Article 4 Section 1 lit. a) of the regulation (EU) No. 1307/2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy.
The law requires the owner to transfer the agricultural land only to a buyer with permanent residency or a registered seat in Slovakia for at least 10 years before the transfer. In addition, the owner is obliged to give preference to such interested buyers in the following order:

(i) a buyer who has been a Farmer in the municipality where the agricultural land is situated for at least three years, or;

(ii) if there is no buyer fulfilling the criteria under (i), to a buyer who has been a Farmer in a neighboring municipality for at least three years;

(iii) if there is no buyer fulfilling the criteria under (i) or (ii), to a buyer who is a Farmer anywhere in Slovakia;

(iv) if there is no buyer fulfilling the criteria under (i) to (iii), the land may be sold to any buyer who has had residency or a seat in Slovakia for at least 10 years, but only for a price that is not lower than the price published in the offer.

The fulfillment of these conditions will have to be confirmed by the respective District Authority, otherwise the transfer will not be registered in the Slovak Land Register (and thus, the ownership will not be transferred).

**Conclusion**

Whether the New Regulation will have the desired effect is questionable and it remains to be seen how it will be implemented into practice. The exact meaning of several of the terms it introduced is unclear and it also did not fully address the possibility of circumventing the restrictions by means of a share deal. In addition, concerns have been raised (even by the Ministry of Interior) about its conformity with the Slovak constitution, in particular due to its excessive restriction of the constitutional right on ownership. Several MPs have already indicated that they will challenge the New Regulation at the Constitutional Court.