

Establishment of a land market in Ukraine: current state and prospects

More than 25 years have passed since the adoption of the first resolution of the Verkhovna Rada "On Land Reform." Despite such a long time, the reform is still far from being completed. On December 31, 2017 moratorium on the sale of agricultural land in Ukraine was extended again, now for the ninth time. The following article provides information on the current state and prospects of the land market establishment in Ukraine.

Agricultural land in Ukraine

Land fund of Ukraine makes 5.7% of the territory of Europe. About 71% of the Ukrainian territory (42.7 million hectares) falls under the category of agricultural land. Over 10 million hectares of these land are owned by the state, which makes around 25% of the total amount of agricultural lands in Ukraine. Ukraine has about 23 million private landowners and land users (about 90% of them are private persons) and around 4.9 million users of the public lands. Almost 21.5 million hectares of agricultural land are cultivated by around 45.000 commercial producers (36.000 of whom cultivate land of less than 200 hectares).

Moratorium on the sale of agricultural land

At the beginning of the 2000s there was a land reform in Ukraine. 7 million people gained the right to privatize 28 million hectares of land shares. However, the privatization was held in a way that the land share owners remained the owners only on paper. Most of them could not use their land with full rights due to introduction of the moratorium on the sale of agricultural land as of January 01, 2002.

The moratorium was introduced as a temporary measure – until the regulatory basis of land transfer and its conversion into a market asset is balanced enough. However, the moratorium has been held for already 15 years.

The states, which had an economic model similar to the Ukrainian one based on collectivization or state farms, introduced land reform at the beginning of the 1990s. The reform is based on either full or partial restitution, or auction distribution of lands with further access of foreign funds. There is no alternative example among the countries of Central and Eastern Europe, the Baltics and the Balkans. There is not a single moratorium anywhere else other than in Ukraine which for 15 years deprived villagers of the right to market development of their assets.

Status of land relations regulation in Ukraine

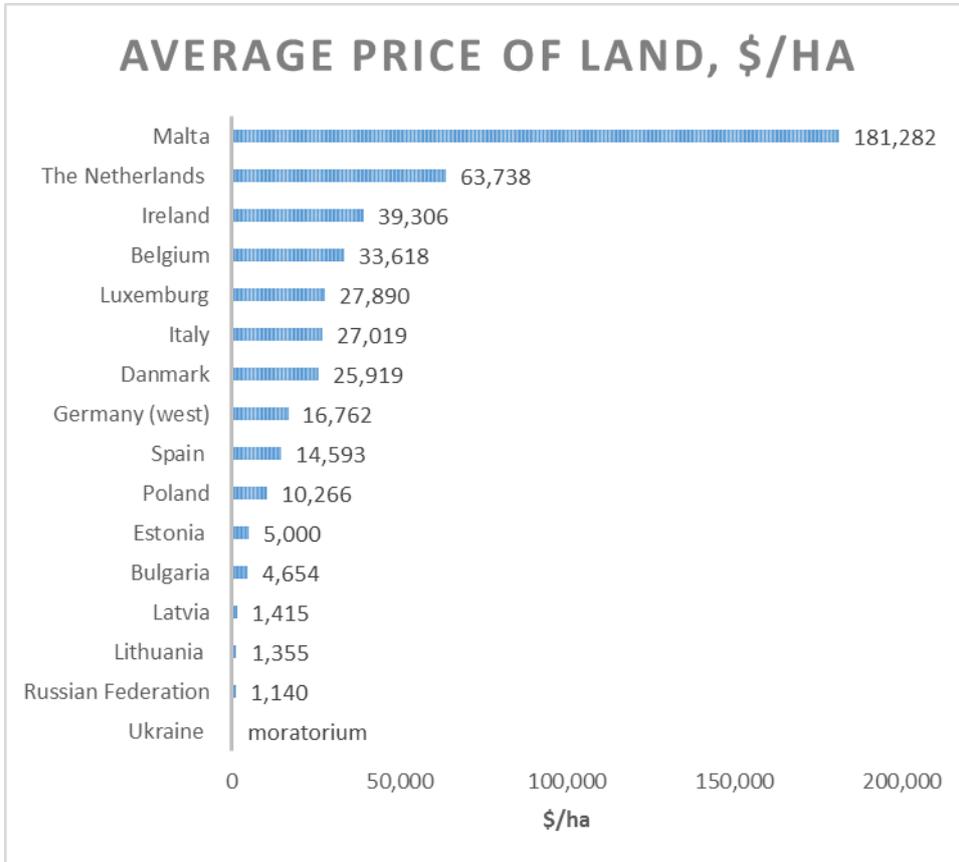
World Bank's Report on Management of Land Resources in Ukraine for 2013 stated the following: regulation of land relations in Ukraine was criticized for a low dynamic of reforms, restriction of land owners' rights, corruption and inefficiency.

Results of a Land Relations Monitoring which was established in 2015 by the project "Supporting reforms in Agricultural and Land relations in Ukraine" financed by the World Bank and launched in cooperation with the Ministry of Agricultural Policy of Ukraine, State Land Cadaster Center of Ukraine, Ministry of Justice of Ukraine, State Fiscal Service of Ukraine and a number of state authorities, show the current status of management of land resources at local (district/city) level:

- public land registration is considerably lower than the figure for private lands (24% vs. 71%) which is the source of non-transparent activities. The State Register of Property Rights shows even lower number and includes 21% of the number of entries in the land cadaster;
- lease payment for agricultural land is one of the lowest in Europe and the CIS (about USD 37 in 2015) which negatively affects the well-being of rural landowners and causes inefficient use of land resources;
- land market (for the lands which are not subject to the moratorium on the sale of agricultural lands) is very poor mainly due to the lack of financial instruments and the complexity of using land as collateral. The main way of transferring property rights to agricultural land is to lease (around 4.7 million lease agreements were concluded with an average duration of 7.6 years) where there is a big shadow (illegal) market;
- number of land tax payers (about 7.3 million) is much lower than the number of private land owners and land users.

Land value: comparison with other countries

Land price regulated by the basic market principles in the countries of the former Soviet Union and the Baltics, with much worse climate conditions in comparison to Ukraine, exceeds the Ukrainian index several times.



The rental price in Ukraine in comparison with other countries

Rental payment for agricultural land in Ukraine is one of the lowest in Europe and the CIS (around USD 37 in 2015) which negatively affects the well-being of rural landowners and causes inefficient use of land resources. It is estimated that the rental price would amount to USD 455 per hectare (11 times more) if the markets and production factors were efficient.



Key problems of land rights' protection and transfer

The regulation area of privately-owned land faces the following problems:

- Moratorium for selling agricultural land limits the private land transferability, violates constitutional rights of land owners, limits access to funding, reduces the land rental price and, therefore, limits the development of rural areas (both agricultural and non-agricultural sectors).
- Incompleteness of the land cadaster and errors in cadastral records complicate land transactions and expose ownership rights to extra risks.
- The minimum lease term was limited to 7 years for all lands and up to 10 years for the meliorated lands. In practice, it transferred short-term lease relations into the shadow (illegal) sector which restricts the rights of tenants and landlords.

According to data of the Ministry of Justice, the number of the registered lease agreements decreased from 150,000-200,000 registrations per quarter before 2015 to 35,000-40,000 registrations per quarter immediately after these norms were settled.

The state of the public land management can be described as follows:

- The fact that registration and management functions regarding public land were covered by the State Service on Geodesy, Cartography and State Cadaster results in the conflict of interests. Such a combination of functions creates possibilities for a non-transparent activity and discourage to register and manage the public lands efficiently.
- The low level of public land registration in the Cadaster raises the possibility to possess and use lands illegally which lays the basis for corruption. However, the low level of public land registration is mainly preconditioned by the non-arable lands (in particular, forests, pastures). As for the agricultural land, 5.5 million hectares of public lands of 10.5 million hectares are arable. Around 2.5-3 hectares are leased (mainly without auctions), around 1 million hectares are permanently used by the state enterprises and the National Academy of Sciences. But it remains unclear how the other public agricultural lands are used.
- The land was provided for permanent use to the state enterprises and some former collective farms, which preconditioned shadow lease through the agreements of joint cultivation etc. The state agricultural enterprises report on the losses and receive support while the lease and sublease payments remain unaccounted.

Municipal land ownership is a form of ownership which is becoming more and more important with enhancing decentralization in Ukraine. However, there is a number of important issues connected with such lands:

- The registration of the borders of the cities, villages and other residential areas has not been completed (as of the late 2015 only 50 residential areas out of 29,772 formally registered their borders), which undermines lawfulness of any decisions taken by the local councils regarding assignment of land plots. This worsens the investment climate and lays the ground for land conflicts in several regions. Creation of new administrative units – communities – only makes it more difficult to settle borders.
- The low level of municipal land registration in the cadaster creates conditions for non-transparent activity and results in a lack of possibilities of economic development and profitability for the local budgets. All the public lands in residential areas (except for the lands which are permanently used by the state enterprises) have already been transferred into municipal ownership, however, they are still not registered in the cadaster, which weakens the rights of the tenants and the land users, makes lease relations non-transparent and the local authorities unaccountable for the decisions taken.

Collective land ownership is an unconstitutional form of ownership which has its origins in kolkhoz (collective farm) times. Unavailability of formal operations or registration for this land category contributes to creating conditions for shadow (illegal) use of defined land. Moreover, the unregulated legal status of the land in question distracts a clear demarcation of the surrounding land plots, which increases transaction costs and enables abuse of their limits. This category includes several types of land. Among them are field roads (4.8% of agricultural land have been allocated for field roads during privatization, which is about a 1.3 million hectare), farm yards, unclaimed privatization shares (approximately 5% of the shares are unclaimed), and forest shelterbelts. Thus, about 2.3 million hectares (of the total rental cost of 70-150 million dollars per year) remain outside the formal economic circulation and provide the shadow economy with resources.

Land of indeterminate legal status includes unclaimed property. This is an increasing problem which leads to illegal or inefficient use of land. This category is represented by two property types – unclaimed heritage (the overall area of such land reaches 1-3 million hectares) and land owned by non-operating enterprises. In September 2016 the Verkhovna Rada adopted a law which partially regulates this issue but practical implementation will require some time and resources.

In combination, these issues create a vicious circle of shadow turnover, unprotected rights, loss of income and decreasing agricultural productivity.

Measures taken on the way of the land market regulation

Over the last years the following measures have been taken for the land market regulation:

1. A comprehensive strategy and a development plan for agriculture and rural lands for 2015-2020. In which the land reform approved by the National Reforms Council plays a significant role.
2. Agrarian sector “3+5” development strategy. In which the land reform is one of the priorities.
3. An improved procedure of acknowledging land areas of unclaimed heritage (the law on the land shares of unclaimed heritage). The Law of Ukraine “On amendments to the Land Code of Ukraine and other legislative acts on the legal perspective of the land plots the owners of which died” #1533-VII
4. An obligatory lease of public agricultural lands through auctions procedure, according to the Law of Ukraine “On amendments to the Land Code of Ukraine on conducting land sales” # 1012-VIII
5. The introduction of an interdepartmental group aimed at monitoring the land reform and land relations, and publishing reports and the relevant data at the regional level
6. The free public access to the State Register of the Property Rights and the State Land Cadaster
7. The function of lease and property rights registration is taken by notaries.
8. The launch of electronic services to provide extracts from the Land Cadaster and land evaluation
9. The State Service of Ukraine for Geodesy, Cartography and Cadaster has been subordinated to the Ministry of Agrarian Policy (which solved a long-standing issue of the limited possibilities of the Ministry of Agrarian Policy to implement the land reform)
10. The approving of the method of conducting the normative monetary evaluation of agricultural lands
11. The pilot implementation of monitoring of land relations has been completed, the relevant draft resolution has been approved

12. A group of experts from the State Service of Ukraine for Geodesy, Cartography and Cadaster and the Innovation and Development Foundation has completed an elaboration of the software for conducting electronic land auctions

Main obstacles for land reform in Ukraine

The following particularities of land reform in Ukraine are slowing down the process:

- A divergence of land market understanding among the process participants.
- The politicized nature of the field to be reformed.
- A lack of communication and trust among the interested parties

Key risks of a land turnover introduction

Introduction of a free market for agricultural land turnover involves the following risks:

- A concentration of agricultural lands in the ownership of financial institutions, through a transition of pledged lands to the ownership of pledge holders.
- A monopolization of the market by agricultural holdings in certain regions.
- The purchase of land by foreign legal entities and private individuals.
- A concentration of land ownership by persons who do not intend to perform agricultural activities.

Options of opening the agricultural land market

The following launching options are considered for land market in Ukraine:

Staged	1 st stage: implementation of state and municipal land ownership 2 nd stage: implementation of private land ownership in 1-3 years
Liberal	All-national and simultaneous cancellation of moratorium for all ownership types
Decentralized	Local government bodies within the transition period independently set up time frames for moratorium cancellation
Hybrid	State, municipal and private lands (inheritance; detached land plots; acquired at land auctions; land acquired upon the Law entering into force; land not covered by the current moratorium)

Forecasts and plans

According to market experts' forecasts, the issue of implementation of a fully-featured land market will be on hold for several years, as it may harm to ratings of some political parties just before the parliamentary elections. In addition, cancelling moratorium without an appropriate legal framework for the land market is impossible. As for now, there is no respective legal framework yet. According to experts, the establishment of an appropriate regulatory framework may take up to 5 years pursuant to efficient cooperation of interested parties.

References:

World Bank project "Supporting reforms in Agricultural and Land relations in Ukraine"

Strategic group of advisors of the Prime Minister (SAGSUR)

State Land Cadaster Center of Ukraine

Project USAID ARDS

Cabinet of Ministers of Ukraine

Land Matrix initiative

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