

LEGAL REGULATION OF THE LAND MARKET: EUROPEAN EXPERIENCE AND UKRAINIAN REALITIES

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Abstract: The concept of land relations covers a wide range of economic, industrial, and legal issues. The change and development of land relations must be associated with the change and development of land ownership. The land market should be understood as a system of legal, organizational, and economic relations that are established in the process of commodity circulation of land plots based on the determination of the market value of these plots. The article highlights the state of the use of agricultural land in Ukraine. The experience of such European countries as France, Germany, Latvia, Romania, and Poland in the regulation of the agricultural land market is analyzed. The historical stages of the formation of the market, the features of state policy in this area are considered. After analyzing the experience, the general elements of an effective mechanism for regulating the land market in European countries were highlighted, and conclusion was made that it is possible to introduce the mechanism in Ukraine. Attention is focused on the need to improve legislation in the land area, organizational and informational conditions for land reform. Legislators should take into account the experience of European countries, which is analyzed in the article.

Keywords: Agricultural purpose, Europe, Land market, Land relations, Legal regulation, Ukraine.

1 Introduction

The land is the largest national wealth of Ukraine – in our country, there are about 800 types of soils, most of which are chernozems, which occupy 27,800,000 hectares, that is 8.7% of their world area and is the main fund for crop production. They constitute the main area of agricultural land in Ukraine 67.7% [51]. However, today we can observe that land use is ineffective and irrational, the legislation in this area is not sufficiently regulated. The land issue is very topical in Ukraine [18].

For a long time, there has been a moratorium on the free sale of agricultural land in the country, however, according to the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Concerning the Turnover of Agricultural Land”, adopted on March 31, 2020, the formation of the agricultural land market will take place in stages. The purpose of the article is to summarize the experience of some European countries for borrowing and introducing an optimal and effective model for the use of agricultural land and the formation of a market turnover of land in Ukraine [49].

The issues of legal regulation of the market turnover of agricultural land in European countries are studied in the works of domestic and foreign authors. The very concept of “land market” is quite controversial among scientists. Some authors consider the agricultural land market as a system of economic, legal, organizational, and managerial relations between subjects of private, state, and communal forms of ownership with the aim of transferring or selling property rights under certain conditions.

2 Literature Review

The market is an agreement for the purchase and sale, lease and mortgage of land plots. In turn, this is the process of determining the value of land and including it as capital in economic circulation [66], making civil transactions regarding the transfer

of ownership of a land plot or its use in accordance with the procedure established by law, taking into account supply and demand [49].

As noted earlier, the issue of opening a market for agricultural land is covered in the Law of Ukraine “On Amending Certain Legislative Acts of Ukraine Concerning the Turnover of Agricultural Land” [18]. In accordance with it, starting from July 1, 2021, only citizens of Ukraine individuals with a restriction of up to 100 hectares, have the right to purchase agricultural land. Agricultural lands of state and municipal property will not be sold. Legal entities registered in Ukraine will be able to buy agricultural land starting from January 1, 2024 [57]. Until January 1, 2030, the sale price of agricultural land plots allocated in kind (on the ground) to the owners of land shares cannot be less than their normative monetary value.

Settlements related to the payment of the price of agricultural land plots under civil law contracts are carried out in a non-cash form [2-9]. Banks can be owners of land plots only in order to collect collateral, which are sold at auction for two years. A nationwide referendum will decide the issue of allowing foreigners to buy land in Ukraine [53]. This Law provides for a list of persons, both individuals and legal entities, who, under any conditions, including if approved in a referendum, are prohibited from acquiring ownership of agricultural land plots, namely: foreign citizens in a 50 km zone from the state the borders of Ukraine, legal entities, the participants of which are citizens of the aggressor state, individuals against whom sanctions have been applied, and the like [52].

The total area of agricultural land plots owned by a citizen of Ukraine cannot exceed ten thousand hectares. However, it is worth noting that there is a risk that the agricultural land market will not start functioning from July 1, 2021. Thus, it is noted that all Ukrainians expect that in July there will be an opportunity to sell or buy land [59]. Instead, we will get a time bomb, since the law does not provide for a clear procedure for the valuation and sale of land. This is the main gap in the document. Therefore, the next six months after the opening of the market, the Rada, together with the Cabinet of Ministers, will be obliged to urgently finalize the legislation, adopt those bills that we recommended last year [54]. Only in this format is it possible to fully launch the land market. According to forecasts, this will not happen until 2022.

3 Materials and Methods

The article used statistical data to process information. Almost all countries that have passed the stage of the formation of the market turnover of land have had long-term targeted programs, which, among other things, provide for the provision of concessional loans for the purchase of land to local farmers. So, in Poland, a loan for the purchase of land can be obtained for 15 years at 2% per annum, in Latvia – for 20 years at 3%. The interest rate on loans in Germany is 3% per annum. It becomes obvious that Ukrainian farmers conduct their economic activities in unequal economic conditions with their Western competitors, which in the future, with the hasty introduction of the market turnover of agricultural land, may adversely affect the results of their management [36].

Returning to our realities, it should be noted that every year the average rent in Ukraine is growing, and the forms of its payment and the terms of payment are improving.

The average annual rent for agricultural land in Ukraine, which was analyzed at the Institute of Agrarian Economics, for state-owned land reached 120 euros/ha, private – 100-105 euros/ha. This amount exceeds the payment for leased land in Slovakia (€ 50/ha), Latvia (€ 57/ha), Estonia (€ 58/ha), Croatia (€ 69/ha), Lithuania (€ 99/ha) and the Czech Republic (104 euros/ha), and is also approaching the level of the corresponding indicator in

Slovenia (134 euros/ha), Spain (148 euros/ha), Hungary (160 euros/ha) [10].

In some regions of Ukraine, in particular, in Khmelnytsky (278 euros/ha), Vinnytsa (255 euros/ha) and Poltava (237 euros/ha), - for state-owned lands, as well as in Cherkasy (250 euros/ha) for private lands, the rent for agricultural land has already exceeded the level in France (215 euros/ha), Luxembourg (244 euros/ha) and is approaching the indicators of Austria (288 euros/ha) and Ireland (295 euros/ha). As noted by scientists, the share of rent in the structure of the prime cost of Ukrainian agrarians remains relatively high and amounts to 11-13% [17].

4 Results and Discussion

4.1 European Union

A key component of the infrastructural support for the market turnover of agricultural land should be a land auction, which must be supplemented with the procedure for introducing electronic trading using blockchain technology, that will allow transparently, on-line, collect, visualize and store information for authorizing land tenders [11]. The electronic auction mechanism will speed up the process of entering the market turnover and increase the level of capitalization of agricultural land [35].

Taking into account the territorial affiliation of Ukraine to the European continent and the European integration prospects of the agrarian economy determined at the state level, as a positive example, it is necessary to study the long experience of the formation and functioning of the land market in the United States and EU member states [12, 14-16]. At the same time, as the practice of land reform in these countries proves, the creation of a land market cannot be considered an end in itself.

It should be noted that, of the total area of agricultural land in private ownership, 61% is cultivated by owners, 31% by tenants, and 8% of the area is owned by persons who consider land as an investment object (they buy and then sell the ownership of land or the rent right, etc.) [17, 18].

When selling an agricultural land plot, the majority of landowners use the land auction for this. Moreover, the interests of the owner of the land plot are represented by a licensed broker who operates on a commission basis.

Selling land with the help of a broker is absolutely justified, because he has access to information that is not available to landowners, knows the market well and is guided by it. A land plot, as a rule, is sold by a broker at a price 10-30% higher than its initial cost.

As for foreign citizens who buy land not from state property, but from private individuals, there are no prohibitions here. However, the situation is not as straightforward as it might seem at first glance.

When a foreigner buys a land plot, the latter is obliged to submit reports to state bodies on investments and profits from agricultural production, and if a non-resident is a citizen of an unfriendly country, then the purchase of land is prohibited [23, 32]. At any time, the state can take away a land plot, motivating it by social necessity. In addition, every agreement on the transfer of ownership with the participation of non-residents must be agreed with the Ministry of Agriculture.

Each country is unique in this respect, since there is no unified model for regulating land relations [28-30]. Thus, Poland's policy to regulate the market turnover of agricultural land is also aimed at the development of family farms. This situation is enshrined in Art. 23 of the Constitution of Poland, according to which the basis of the agrarian structure of this state is the family economy (family farms).

To control the transfer of ownership and other property rights in relation to state property, in particular, agricultural land, the Agricultural Real Estate Agency (Agencja Nieruchomosci Rolnych) was established in Poland [20].

In Poland, a list of persons entitled to acquire ownership of agricultural land plots is legally enshrined and clearly defined.

Buyers of agricultural land can be:

- An individual (farmer) with a limited area of land owned by one person 300 hectares;
- Close relatives of the farmer and heirs;
- Local government bodies;
- State Treasury or Agricultural Real Estate Agency;
- Any person if the land plot does not exceed 0.3 hectares.

After Poland's accession to the EU (2004), a moratorium was introduced on the sale of agricultural land to foreigners for a period of 12 years. After the end of this period, amendments to the Polish law "On the formation of the agricultural system" were adopted.

Currently, Polish legislation does not contain a direct prohibition on the acquisition of agricultural land by foreigners, but the legal requirements for foreign buyers make such agreements too burdensome and complicated.

State regulation of the agricultural land market in Germany takes place through a specialized state institution, the Agency for the Management and Realization of Lands (Bodenverwertungs- undverwaltungs GmbH – BVVG) [13]. The main goal of the agency is to manage the market turnover of state-owned agricultural land. Its key tasks are the following: ensuring the privatization of state-owned agricultural land; restitution and distribution of land rights. The BVVG is supervised by the Federal Ministry of Finance and the Ministry of Agriculture.

In Germany, there are no regulated requirements for buyers of agricultural land, including foreigners. However, according to the law "On measures to improve agricultural structures and provide agricultural and forestry associations", a person who intends to acquire an agricultural land plot with an area of more than 1 hectare must obtain a special permit from local authorities [38-44]. According to Art. 6 of this law, within one month from the date of application, such permission will be granted or denied. It depends on how well-reasoned is the buyer's justification of the need to purchase such a land plot and whether he confirmed the availability of appropriate professional training (education).

It is not prohibited for foreigners to acquire ownership of agricultural land in Germany, however, in accordance with the law, they must obtain permission from the local authorities at the location of the land plot.

France's policy to regulate the market turnover of agricultural land is aimed at the development of farming. The country created the Agency for Land Management and Rural Development (Societe d'amenagement foncier et d'etablissement rural SAFER), which has three main tasks: increasing the efficiency of agriculture and supporting young farmers, protecting the natural environment, landscapes and natural resources, support and development of the rural economy. SAFER is a limited liability company, a non-profit organization that is subordinate to the Ministry of Agriculture and the Ministry of Finance of France [19].

The purchase of agricultural land by foreigners in France is not prohibited. However, if the price of the land plot exceeds 38 million euros or the subject of the purchase agreement is vineyards, he must obtain permission from SAFER.

In the regulation of the market turnover of agricultural land, an economic incentive mechanism is used, which consists in the fact that when buying a land plot through the SAFER company, the buyer is exempt from paying tax. Otherwise, land acquisition transactions are taxed on a general basis.

The regulation of the market turnover of agricultural land in France is more stringent than in Poland or Germany, which is

due to the significantly broader powers and capabilities of the SAFER society.

Despite the existence of different models of government in Poland, Germany, and France, the regulation of the market turnover of agricultural land in these countries has common features and is aimed at protecting the national producer.

In addition, the studied countries have a fairly high level of budgetary support to farmers, which makes them more competitive both in the domestic and foreign markets. In particular, in Germany, direct budgetary support is 346 euros/ha, support for the development of territories – 82 euros/ha. The total amount of support for farmers in Germany is 428 euros/ha, in France – 357, in Poland – 317 euros/ha [21].

In the light of Ukrainian history, Cabinet decrees and software development for their implementation, including automatic verification of the ownership limit, Matti Maasikas, Head of the EU Delegation to Ukraine, made it clear that “it is important to take 5 steps by July 1 (it was about 2021) to make the reform a success story”, namely:

- Communication campaign for land owners;
- Decrees of the Cabinet of Ministers and development of software for their implementation, including automatic verification of the ownership limit for 100 hectares;
- Development of a monitoring system for the sale/lease of land;
- Anti-corruption audit of the State Geocadastre;
- Access to loans for farmers immediately after the opening of the market [18].

4.2 Ukraine

Having analyzed the norms of Ukrainian legislation on the regulation of the agricultural land market, we consider it appropriate to consider the experience of European countries, such as France, Germany, Romania, Latvia, and Poland, in order to borrow the experience of state regulation of the market turnover of land [1]. Thus, in Romania, the land market was developing at a fairly rapid pace, especially after joining the European Union. It should be noted that the area of agricultural land is 14,700,000 hectares, of which 64% is arable land. One of the goals of the land reform in Romania was to increase the production and productivity of the agricultural sector. The land market in this country is open with restrictions. Citizens of the European Union, as well as Iceland, Liechtenstein, and Norway have the right to buy agricultural land, provided that this land is used for its intended purpose. It should be noted that foreign enterprises own agricultural land plots, the area of which is 11% of the total arable land [66].

Buyers who are local residents have the right to purchase agricultural land of up to 100 hectares. They should also have agricultural knowledge or experience. Each land agreement must be published and registered with the local or central authorities of the Ministry of Agriculture and Rural Development. Regarding the preemptive right to purchase land, it is worth noting that it is used by co-owners, tenants, owners of land plots, located near the plot that is being sold, as well as by the Romanian Public Property Agency. The opening of the land market became the basis for the rapid rise in average prices for agricultural land. Thus, in 2004, the price was \$360, and already in 2005 the price has tripled up to \$1,145.

According to 2019 data, in the country, the price for agricultural land, depending on the region, varies from 2,700 euros to 8,700 euros. In turn, in Latvia, the purpose of the land reform was to return the ownership of agricultural land to the heirs of those families who had been doing business on this land before July 21, 1940. According to this reform, these persons received the right to buy land in private ownership and change its purpose, and the communities had the opportunity to plan territories in accordance with the needs of society, protection and rational use of land [57]. Since the end of 2008, Latvian citizens have received full rights to buy and sell agricultural land. The land

market in the country was fully open without restrictions until 2017.

After the opening of the land market, more than half of agricultural land belonged to foreign companies, and local residents were forced to lease land from foreign owners; according to the Latvian Land Fund, not all land suitable for cultivation was used. In 2017, the Seimas adopted amendments to the Law “On the Privatization of Land in Rural Areas”, according to which the conditions for acquiring land for Latvian citizens – local residents, were simplified, and at the same time, the conditions for foreigners were made more difficult [26, 60]. In particular, the legislation provided for a prohibition on buying land plots if they are not living in Latvia. If the buyer has an intention to acquire land, he must be able to speak Latvian and submit a land use plan in Latvian, answer all questions of the commission of a special self-government body in Latvian [46]. An equally important change is the foreseeable pre-emptive right to redeem the land in accordance with this, if the owner wants to sell the land, this right belongs to the land lessee, the local government body and the Latvian Land Fund.

In order to prevent the concentration of land in the ownership of one person or related persons, there is a limitation that one natural or legal person can get ownership of 2000 hectares. Agricultural production in Poland employs 11.2% of the active labor force. Agricultural lands occupy 47.1% of the country's territory, 35.2% is arable land. Land reform in Poland began in 1991 with the adoption of the Law “On the Management of State Agricultural Lands”, according to which, unlike in Latvia and Romania, it was decided to refuse restitution; however, claims for the return of lost property rights were considered within the framework of civil law on an individual basis.

The main goal of the land reform was the formation of a transparent agricultural land market, the creation of family-type farms, the protection of agricultural land. By 2016, foreigners were not allowed to buy agricultural land. Today, they have the right to do so if they are married to a citizen of Poland and have lived in Poland for the last 2 years, or if they have lived in Poland for 5 years, after obtaining permanent resident status. Only entities that will conduct economic activities can be landowners; individuals must have an agricultural education (secondary or tertiary level) or work experience in this area (on a farm). There is also a limitation that one person can own an agricultural land plot with an area of not more than 500 hectares. Regarding the preemptive right to purchase agricultural land, it is worth noting that it belongs to the tenants, if it was rented for at least three years, and to the National Center for Agricultural Support [33].

In Germany, 53% of the total area of this country is used as agricultural land, half of which is classified as less favorable for growing crops. The agro-industrial complex of the country employs about 20% of the population, while directly in agriculture only 1.3% are engaged. Now almost 100% of agricultural land is privately owned. The privatization of German land was carried out in three stages. At first, the land was leased for up to 12 years, then the laws “On unresolved issues of property” and “On compensation and reimbursement” were adopted, which were included in the program of land redemption at a reduced price for citizens who lost their land in 1945, and citizens, who were engaged in agricultural production. Subsequently, the country adopted the laws “On the appraisal of agricultural land” and “On the further development of the market structure in the field of agriculture”, according to which the lands that remained in the state fund are sold at market prices on a competitive basis [22].

The land market is open, no restrictions have been established for German citizens (individuals and legal entities) and for foreigners (individuals and legal entities), however, the future landowner must provide a plan for the development of the economy [24]. There are also no restrictions on the maximum area of land, however, federal law may establish a minimum area. It is worth noting that former landowners can buy land, depending on the quality of the soil, at a lower price, but the

owner then undertakes to use this land in agriculture for at least 20 subsequent years [25, 50]. Germany has a system of control over the sale and purchase of agricultural land. So, specially authorized organizations operate in the country, whose powers include the possibility of stopping the process of buying and selling land if they suspect that this agreement is speculative, if the future landowner is not going to use the land for the purpose of agricultural activities, or the price is too low and does not correspond to reality.

In France, agricultural production is considered to be highly productive and intensive, so it is not surprising that the country ranks first in Europe in terms of output, and second in the world in terms of agricultural exports. According to BBC News Ukraine, agricultural production in France in 2018 amounted to 73 billion euros, while in Germany – 56 billion euros, and in Italy – 51 billion euros. France has the largest fund of agricultural land among the EU countries – 27,800,000. The land market in the country is open with restrictions. So, the purchase of agricultural land by foreigners in France is allowed, but when the price of a land plot exceeds 38 million euros and when the subject of the purchase agreement is vineyards, additional permission from Societies of Land Plotting and Agriculture (SAFER) must be obtained [27, 56]. Citizens of the country have a pre-emptive right to purchase neighboring land plots, but they also have obligations for the personal use of the acquired land for 15 years with a prohibition on leasing.

It should be noted that the country has a complex system of control over the land turnover market. Consequently, land purchase transactions in France are under the control of the SAFER, which is subordinate to the Ministry of Agriculture and the Ministry of Finance of France. The main function of SAFER is to stimulate the development of farming while setting limits on the area of land plots owned by one user. The Land Plotting and Agricultural Societies have a technical committee composed of representatives of agricultural organizations and trade unions, local authorities, and representatives from the ministries of finance and agriculture, whose purpose is to review the dossiers of potential buyers of agricultural land. If the landowner decides to sell the land, he is obliged to inform SAFER, who has the pre-emptive right to purchase this land, provided that the regulator decides that the land will be of great benefit to France, and he must publicly justify his decision on the pre-emptive purchase. SAFER also has the right to stop the process of buying and selling agricultural land if it suspects that the price of the land is not true and is too low, or a new landowner buys a land plot for speculative purposes or to change its purpose. In addition, there is a limitation according to which the new landowner must necessarily have an appropriate (agricultural) education or experience in agricultural activities [31].

After analyzing the experience of regulating the agricultural land market in some European countries, we can identify common elements of state regulation of the land market, namely:

- No moratorium on the sale and purchase of agricultural land;
- The establishment of requirements for the citizens of the country, namely the availability of special education and work experience in the field of agriculture [55, 58];
- Establishment of restrictions on the maximum area of agricultural land given to the ownership of one person;
- Creation of a special body, the main function of which is to control the purchase and sale operations;
- Granting a pre-emptive right to a lessee, local government body, or a specially created body;
- Establishing control over the purpose of acquiring agricultural land and the price of the contract [34].

Having considered the European experience in this area, we believe that it expedient to present our own proposals for improving Ukrainian legislation in this area. First, the land market must be open with restrictions, namely:

- a) By the area of land provided for ownership for legal entities registered in Ukraine – up to 2000 hectares, and for citizens of Ukraine 200 hectares;
- b) For citizens of Ukraine, experience in agricultural activities;
- c) For foreigners, the residency requirement is 5 years, and the future owner of the land must provide a plan for the development of the economy [37].

Secondly, a supervisory body should be created that will monitor the sale and purchase transaction and prevent market speculation and monopolization. It is also worthwhile to regulate in detail the rights and obligations of this body; the presence of territorial bodies; the process of the sale and purchase of agricultural land with the participation of this controlling body, including the timing, inspections, grounds for interfering with this agreement and stopping it, the grounds on which this body has a pre-emptive right to purchase land. Thirdly, it is worth foreseeing in the legislation the existence of a pre-emptive right to purchase land to tenants, owners of land plots, which is located near the plot that is being sold, as well as to the supervisory authority [45]. Thus, the introduction of a market for agricultural land in Ukraine should be carried out taking into account the European experience in regulating land issues, since the market turnover of these countries is well developed and functions at the proper level [49].

Summarizing the above, it is possible to outline the key directions for completing the land reform with the introduction of agricultural land turnover in Ukraine, namely:

- It is necessary to involve specialists in the agricultural sector of the economy in the development of mechanisms for the functioning of the agricultural land market and introduce the appropriate infrastructure of this market;
- To sell the right to lease on lands of state and communal ownership in order to obtain land rent – income from property by the state and territorial communities [61-63];
- To solder the lands of research farms of the Agrarian Academy of Sciences (with the allocation of reserve and reserve lands) between the workers of these research farms and transfer them to private ownership;
- Introduce free circulation of private land with a 10-year moratorium for the sale of land to foreigners and persons with dual citizenship [64, 65];
- To determine the optimal size of agricultural land owned by up to 4000 hectares as enterprises (at this time) – the largest taxpayers in terms of 1 hectare of arable land, no more than one per district, which will induce the direct owner to live and be registered in this territory, that is, to take a direct part in the production process (as a rule, these are the territories of the former village councils) [47];
- To determine the optimal amount of lease of agricultural land in one person (for one and related persons) within the region no more than 5%, the county – no more than 7%, Ukraine – 0.1%, which will not allow monopolization in this market;
- Sale of agricultural land, lease to be carried out in order to determine the market price only through the established agency for land management – an electronic auction, which will ensure budget receipts in accordance with the norms developed by the Tax Code of Ukraine [18].

5 Conclusion

Considering the features of global agricultural production, it is important to understand that Ukraine, integrating into the world community, takes a leading position in a number of indicators and can, with the maximum use of available land resources, increase its influence on the world food market. It is extremely important, when building a transparent market turnover of agricultural land, to take into account the positive experience of foreign countries [18]. Ukrainian agrarian and economic science, based on the experience of other countries, develops its own model of market turnover of land, which will take into account national characteristics and interests, and will also meet the

needs of farmers. Subject to the normal operation of organizational and economic mechanisms, such a turnover should ensure the distribution of land, in which the movement of the land resource will be carried out to an effective owner, independently managing the land, living in the territory where the land plot is located, contributing to the development of local infrastructure and filling local budgets [10].

A fairly common condition for the purchase of agricultural land in European countries is the professional training of the buyer, the availability of the means of production and the necessary capital, which should also be taken into account for Ukraine.

The introduction of the agricultural land market requires the introduction of legislative and regulatory acts to form the economic principles of competitive agricultural production, the investment attractiveness of the sphere and the preservation of the positive achievements obtained. It should be noted that the objective condition for the development of agricultural production is the desire for an equivalent exchange, and ultimately making a profit, as in any other business.

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