

Main problems with the new land law in Ukraine

Analysis by the Ukrainian Rural Development Network and Eco Action

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Context/current situation

In October 2001, Ukraine's Land Code (LCU) was updated. The revision consolidated the key principles of the land reform: expansion of private ownership of land; state's guarantee of land rights to citizens and legal entities; division of state and communal lands; increasing the economic potential of land in settlements; introduction of state management of land resources and land use on the basis of economic evaluations; improvement of the calculation of the rental rate; the development of lease relations. This Land Code also introduced a number of restrictions on the operation of the land market. One such restriction was a total moratorium on the sale of agricultural land.

The land moratorium - the moratorium includes a ban on the sale of land with a designated agricultural use. Such land cannot be sold through the transfer of land shares allocated to citizens during the land reform process. It is forbidden to sell land; to change its intended purpose (i.e. from an agricultural to a non-agricultural use); to transfer land to the assets of any business enterprise (for example as collateral for a loan); or to transfer it as a pledge. The only convenient and legal options available for transferring land include lease agreements (for legal and natural persons) and certain forms of gifts and inheritance (for natural persons).

Government representatives claimed that the moratorium was established as an interim measure, with follow up legislation aimed at developing a land market with "adequate" prices to be adopted at a later date. Amongst certain political and societal actors, fears existed that full-scale land privatisation would open the door for the accumulation of land by large private interests, to the detriment of the majority of Ukraine's farming and rural population.

Based on information from the State Service of Ukraine for Geodesy (Surveying), Cartography, and Cadastre (StateGeoCadastre) (2017), 41 million hectares of agricultural land are subject to a moratorium, of which 27.7 million hectares (68%) consist of citizens' private plots of land. There are 10.5 million hectares of state and communal land that are subject to the moratorium.

After the moratorium was introduced, land lease has become the main (although not the only) way to control land in Ukraine. Immediately after the privatization of land, a large rental market for land was formed. Due to the huge number of plots available, the rental cost was very cheap. Millions of owners were ready to rent their land for trifling sums as a lack of capital, combined with the spatial inaccessibility of the plots themselves - which were often located 5-10 km from the owners' homes - prevented many farmers/peasants from cultivating their plots of land themselves.

The new law.

The market will launch in a number of stages:

- From July 1, 2021, individual Ukrainian citizens, state and communities (created in result of decentralization process) will be allowed to purchase agricultural land in Ukraine, up to a limit of 100 hectares for individuals. This limit will stay in place until January 1, 2024.
- State and community-owned land will be banned from sale until 2023. This ban will be lifted on July 2023.

- As of January 1, 2024, the next phase of land reform starts – companies will be allowed to purchase agricultural land, and just Ukrainian legal entities. Restrictions on land sizes will be moved from 100 hectares to 10,000 hectares (which bring the market in line with the first version of the bill).
- People and companies who rent agricultural land will be given the priority right to buy it from its original owner - but these pre-emption rights can be transferred.
- Banks will also be able to own land, but only for short periods of time. Banks can seize land if it was seized as collateral for a loan. However, banks are required to sell any land obtained this way within a two-year span at auction.
- Foreigners, people without citizenship, foreign companies, and companies whose ownership is impossible to determine (for example, shell companies registered in offshore zones) will not be able to purchase land. Only an all-Ukrainian referendum can allow foreigners to purchase Ukrainian agricultural land.

Top problems and risks:

1. Lifting the moratorium on agricultural land sales by the Law of Ukraine on amendments to some legislative acts of Ukraine concerning the conditions of turnover of agricultural lands #2178-10 (the Law) was adopted in violation of the existing norms, rules and procedures.
 - 1.1. The Law is not a separate comprehensive one and only makes changes to other legislation. Due to the weak “rule of law” in Ukraine in general, some other legislation should be adopted soon to make the law more powerful/valuable.
According to the valid Ukrainian legislation, lifting the moratorium on agricultural land sales is only possible after a separate law on land market is adopted, not a law on amendments to other legislative acts.
 - 1.2. The Law was adopted under COVID-19 quarantine. It means the violation of the society’s right for protest.
 - 1.3. The Law was adopted under big pressure of the International Monetary Fund on Ukrainian authorities.
 - 1.4. The Law contributes to transforming land resources into commodity, speculative asset. It creates the preconditions and possibilities for financial and other non-agrarian institutions to control agricultural land.
Points 1.1-1.4 mean it is not possible to improve the Law instead of cancelling it and adopting a separate law on land market under regular existing rules and procedures, and without external pressure.
2. Ukraine is about to lift the land sale moratorium and launch the land market without clear strategic vision for the future of Ukrainian agriculture. It means that launching of the land market is an instrument not a goal. It is the instrument to achieve another strategic goal of the upper level that could be, for instance, development of the agrarian system based on the family farming like in the EU or countries conducted successful land reform aimed at improving quality of life in rural areas.
3. Risks related to acquisition of property rights for land by sides that are not citizens of Ukraine, neither territorial communities or state.
 - 3.1. As of January 1,2024, Ukrainian legal entities will be allowed to acquire the property rights for land at a concentration of no more than 10 thousand hectares. Such a norm creates risks for small family farming, and conditions for continuous expansion of large industrial farming in Ukraine.

3.2. Commercial banks are also allowed to acquire the property rights for agricultural land within the limits of collateral up to two years, until they dispose that land through auction. This norm also creates additional risks because the period allowed to own the land is too long and the mechanism of auction is still not developed, so it is unclear what are the conditions and restrictions for buyers. The more general problem is the fact that no a special institution was established (as State Land Bank) to conduct important regulating and inter mediating functions on the land market. Such an institution should provide the guaranties for commercial banks under their collateral credit agreements with farmers. It should also redistribute the land under such agreements if necessary.

3.3. The option to purchase agricultural land for foreign citizens is still open if the relevant decision is taken through a national referendum.

4. Real restrictions to prevent the land concentration and land grabbing are absent.

4.1. As of January 1, 2024, the sale of land in one hand will be limited to 10 thousand hectares and, at the same time, legal entities will be allowed to acquire the property rights to land. The expectation that Ukrainian small farmers and peasants could satisfy their demand for land within the period of restrictions for legal entities is unrealistic even with state financial support to compensate a part of interest rate on new commercial credits to buy land.

Small farmers have to service their current loans and have not financial resources enough to service additional ones. In addition, the most of private agricultural land remains under lease agreements with large commercial farms in coming years. It also makes impossible to buy land for small farms within the period when the limitations for legal entities are valid. When the limitations are lifted, legal entities can easily win the competition for land because the priorities for small local farmers, young farmers and new local farmers are not established. In addition, former leaseholders, which are represented usually by large agricultural holdings in Ukraine, have a priority to buy land.

4.2. No restrictions established to avoid land concentration within the territory of local communities established as a result of the decentralization reform in Ukraine. It means that monopolistic control over agricultural land is possible at the level of small territorial communities.

The previous draft of the Law had this norm about the concentration of no more than 35 percent of agricultural land within a local community but it was deleted before the second hearing of the Law at the Ukrainian parliament. For now, large agricultural holdings may control more than 35 percent of agricultural land area (monopoly in fact) within the territory of local communities through lease agreements. There is a big risk that one person/entity can buy all the land within a community whose total agricultural land area is less than 10 thousand hectares.

5. For new buyers of land, there no conditions established as education, experience in agriculture, or local residence. It opens the door for land concentration, for instance for shell buyers that will lease the land out to large agrarian companies.

6. Individuals and legal entities who rent agricultural land will be given the priority right to buy it from original owners. Leaseholders can sell or pass this right to other parties for speculative purpose or pass the right to affiliated parties to keep the control over land. At the same time, the priorities to buy land are not established for small local farmers, young farmers, new local farmers, local residents and other buyers that are important for sustainable agricultural and rural development.

There are significant risks related to the norm stating that former leaseholders, which are usually represented by large agricultural companies in Ukraine, can transfer their priority rights to buy land to third parties. Former leaseholders are only obliged to inform the actual owner about their decision, but it cannot prevent undesirable transactions, control land concentration in the interest of local economy and communities. This norm makes local small farmers less competitive as potential buyers on land market.

7. Absence of the real state support to SMEs in the land reform context.

Consequences for peasants and farmers

Farmers cannot be sure in effective state financial support to buy land.

Peasants (smallholders) can lose their land. Farmers can lose access to land or even land in result.

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Ukrainian Rural Development Network: www.urdn.org

Eco Action: www.ecoaction.org.ua

Other references: <https://longreads.tni.org/the-land-question-ukraine>