

## ACCESS TO AGRICULTURAL LAND: CASE OF UKRAINE

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Following a 20-year moratorium, the Verkhovna Rada of Ukraine adopted the Law No. 552-IX on 31.03.2020 “On Amendments to Certain Legislative Acts of Ukraine regarding the Conditions of Turnover of Agricultural Land” (hereinafter, “Law 552-IX”) on terms and conditions of agricultural land mobility, which entered into force on July 1, 2021. In the beginning, the agricultural land market will be quite conservative and limited. The land moratorium restrictions will be abolished gradually following the timeline provided by Law 552-IX. It can be safely considered one of the most important reforms of the decade in Ukraine.

The land market will according to the adopted legislation be opened gradually. From the summer of 2021, citizens of Ukraine have been able to purchase agricultural land plots, but not more than 100 ha per person. The second stage of the land market is planned to begin on January 1, 2024. Apart from natural persons, the agricultural land can from 2024 also be purchased by legal entities established and registered under the laws of Ukraine, by the citizens of Ukraine, the State, or amalgamated territorial communities. The total area of agricultural land owned by a citizen of Ukraine, or a legal entity may not exceed 10 000 ha. Foreign legal entities and natural persons will be able to buy agricultural land plots only after approval of such a decision at a national referendum. The dates for a national referendum are still not on the agenda.

Until January 1, 2030, the sale price of private agricultural land (shares) plots fixed by the boundary marks in the field cannot be less than its normative monetary value. The average normative monetary value of agricultural land in Ukraine is UAH 27 500 or EUR 686 per hectare (for April 2023). It is worth noting

that during martial law, the agricultural land market is functioning with several restrictions. According to the Ministry of Agrarian Policy, 153,659 land transactions have been concluded since the launch of the land market until March 2023 with a total area of agricultural land of 344,061 hectares. It should be noted that more than a third of the deals were concluded after the start of the full-scale war. As of April 2023, the average price per hectare of agricultural land is UAH 39,000 or EUR 973. Since the beginning of the full-scale Russian invasion in Ukraine, the agricultural land in the West of the country has become the most expensive compared to the pre-war period, when the highest land prices had in the Central part.

The government adopted an important package of complementary legislation to support the agricultural land market, such as (1) the prevention of raiding, (2) change of state land management, (3) the transfer of authority to amalgamated territorial communities, (4) spatial planning and land management by amalgamated territorial communities, (5) public access to land data, (6) provision of a credit guarantee for small agricultural enterprises, (7) establishing interoperability of the land and property registry, (8) piloting electronic land auction platforms; and (9) transfer of state land to amalgamated territorial communities.

Despite all these positive steps, due to the weak “rule of law” in Ukraine in general and the slow adoption of an accompanied wider package of complementary land reform legislation, as noted by farmers in interviews, the local elite capture benefits from opening the land market and the breakdown in accountability of local authorities is resulting in the reinforcing of hierarchies and exclusion access of smallholders, small and medium farmers to the land.

The government's expectation that Ukrainian smallholders, small and medium farmers, and landowners, who were supposed to be the main beneficiaries of the “first stage” of land market opening (01.07.2021-31.12.2023), could satisfy their demand for land, proved unrealistic. Small and medium farmers, landowners and smallholders are facing enormous difficulties when trying to access the agricultural land market.

Considering that 56% of private agricultural land was leased out to large agricultural holdings for many years, their purchase by smallholders will be of little probability and rather complicated or even impossible. This is because the leaseholders (which are represented usually by large agricultural holdings) have pre-emptive rights to buy land. After the lifting of the restrictions in 2024, agricultural holdings can easily win the competition for land because the priorities for smallholders, small and medium farmers are not established.

The Law 552-IX enshrines that leaseholders can sell or pass pre-emptive rights to buy land from other parties. There are significant risks related to this legal norm that can be used for speculative purposes or passing the right to affiliated parties to keep control over land. Leaseholders are obliged only to inform the landowner about their decision. This legal norm makes natural persons and smallholders less competitive as potential buyers on the land market.

Small and medium farmers are interested in buying agricultural (arable) land to preserve their current landholdings. However, three factors hold them back: a) not enough “free” funds for buying land; b) the landowners are in no hurry to sell land plots because they understand that the land will become more expensive in the future; c) lack of cheap and affordable loans for farmers with interest rates of 5% to 10% (current interest rates are 20%–25%).

There are no provisions in place to avoid land concentration within the territory of territorial communities (hromadas), and in many rural communities, especially the small ones, agricultural holdings can have monopolistic control over agricultural land. Together with the pre-emptive rights provisions, these all together create a huge obstacle to access land for smallholders, farmers, and natural persons in the long run. This is the first attempt to investigate the access to agricultural land for smallholders in the framework of opening the agricultural land market in Ukraine. The most obvious finding to emerge from the research is that significant procedural challenges encoded in the law legislation and realized in practice are the main obstacles to getting access to land for natural persons, smallholders, and small farmers.