

Peculiarities of the Privatisation of Agricultural Land in Ukraine²

Abstract

In 1992, private and collective forms of land ownership were introduced to create conditions for privatising agricultural lands in Ukraine. According to Ukrainian legislation, there were two main methods of land privatisation, designed for conducting commercial agricultural production. First, the state initiated the transfer of agricultural lands for farming to citizens from reserve and reserve funds. Second, the state implemented a series of measures to grant the members of agricultural enterprises the status of land-owners for the lands they had been using. By the time the state monopoly on land was abolished in 1992, almost all lands suitable for agricultural production had been put into operation by collective agricultural enterprises created on the basis of former state farms and collective farms. Therefore, privatising the land holdings of collective agricultural enterprises became a primary focus. The privatisation of land that was under the use of agricultural enterprises is the most complex, time-consuming, and phased process of land reform that a country can undergo.

Keywords: Nationalisation, Collectivisation, Agricultural Land, Land Reform, Privatisation, Land

1. Introduction

The experiences of European countries show that the introduction of a land market is necessary for the successful development of the state's agricultural sector. Such markets operate in every EU country and bring significant benefits to both

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budgets and landowners. Therefore, for Ukraine to join the European Union, the moratorium on attracting investors from other countries has been lifted, and the development of a sustainable economy has been initiated. Additionally, a land market has been created in Ukraine.

2. Material and legal issues regarding privatisation in Ukraine

Ukraine is among the countries that have not implemented the restitution institute; the only relevant issue remaining is privatisation carried out within the framework of the first land reform (1991–2000).

The privatisation of state property is a socially significant process during which state-owned assets are transferred into private ownership, addressing matters concerning the preferential participation of collective labour members in its acquisition, as well as their social protection.³

At the adoption of the Basic Legislation of the Union of Soviet Socialist Republics and the Union Republics on Land (1991), it was established that land, its subsoil, waters, and forests could be provided to joint enterprises for both paid and free use.⁴

As such, the privatisation of agricultural lands began with the adoption of the Resolution by the Verkhovna Rada of the Ukrainian Soviet Socialist Republic 'On Land Reform' on 18 December 1990.⁵ The aim was to redistribute land by simultaneously transferring it into private and collective ownership, as well as granting its use to enterprises, institutions, and organisations. This was done to create conditions for the equal development of various forms of economic activity on the land.

The Land Code of Ukraine was adopted for the implementation of this resolution.⁶ Therefore, agricultural land is provided: 1) to citizens for personal farm management, individual gardening, and gardening; 2) to citizens cooperatives for collective gardening and horticulture; 3) to citizens, collective farms, state farms, other agricultural states, cooperative, public enterprises, and organisations for commercial agriculture; 4) to agricultural scientific and research institutions, educational and other institutions, rural production, and technical and secondary schools for research, educational purposes, promotion of best practices, and for agricultural management; and 5) to non-agricultural enterprises, institutions

3 | Rishennia Konstytutsiinoho Sudu Ukrainy u spravi za konstytutsiinym podanniam Prezydenta Ukrainy shchodo vidpovidnosti Konstytutsii Ukrainy (konstytutsiinosti) Postanovy Kabinetu Ministriv Ukrainy "Pro zapobihannia kryzovym yavyshcham u vuhilnii promyslovosti" (sprava pro vidchuzhennia maina derzhavnykh vuhledobuvnykh pidpriemstv) 2009, 24.

4 | On Amending and Recognising Legislative Acts of the USSR as Invalidated in Connection with the Fundamentals of Legislation of the Union of Soviet Socialist Republics and Union Republics on Land 1991.

5 | On land reform 1990.

6 | Land Code of Ukraine 1990 (no longer in force).

and organisations, religious organisations for the management of auxiliary agriculture.

The members of collective farms and other agricultural cooperatives, as well as the employees of agricultural enterprises (excluding research farms) who wished to leave these entities and operate rural (farm) households, were granted land plots that were withdrawn from the lands of the collective farms, cooperatives, and enterprises. Other citizens intending to operate rural (farm) households were provided land plots from reserve lands.

The allocation of lands for rural (farm) households to citizens of the Ukrainian SSR was carried out based on their applications and at the recommendation of the respective rural or settlement Councils of People's Deputies, according to the decision of the district or city Councils of People's Deputies. The land plots allocated for rural (farm) households should not exceed 50 hectares of agricultural lands or 100 hectares of all lands.

The Law of Ukraine on Property provided citizens with the right to own land plots in cases such as inheritance, obtaining a share of land in joint ownership between spouses, purchase, sale, gift, or exchange.⁷ The subjects of private property rights in Ukraine include the citizens of Ukraine, citizens of other Soviet republics, foreign citizens, and stateless persons. The law also ensured the protection of land property rights. Specifically, a citizen cannot be deprived of the right to ownership of a land plot against their will, except by a court decision in cases provided for by Ukrainian legislation. In the event of a court-ordered withdrawal of a land plot for satisfying state or public needs, the former owner is provided with another land plot of equivalent quality in exchange, and damages caused to the landowner are subject to compensation. The landowner has the right to compensation related to the degradation of land quality caused by the activities of enterprises or organisations that led to a decrease in the ecological safety of the territory. The disputes regarding the grounds for the right to compensation and its amount are to be resolved by the court.

In compliance with the law dated 30 January 1992⁸ on establishing equality among all forms of land ownership – state, collective, and private – a new version of this law was adopted.⁹

Therefore, the entities formed on the basis of state farms and other state agricultural enterprises became subjects of collective ownership rights, including collective agricultural enterprises, agricultural cooperatives, horticultural associations, and agricultural joint-stock companies. The members of these entities had the right to obtain their share of land in kind (in its actual location) upon exiting.

7 | On Property 1991 (no longer in force).

8 | On Forms of Land Ownership 1992 (no longer in force).

9 | On Amendments and Supplements to the Land Code of the Ukrainian SSR 1992 (no longer in force).

The transfer of land into collective ownership was conducted by the rural, settlement, and city Councils of People's Deputies based on the location of the land plot upon petitions submitted by these enterprises, cooperatives, or associations. The confirmation of collective ownership rights was done through a state act listing the citizens of these enterprises, cooperatives, or associations.¹⁰

Lands designated for agricultural purposes under the revision could be transferred into ownership. The members of collective agricultural enterprises, agricultural cooperatives, and employees of agricultural enterprises (excluding research farms) who expressed a desire to operate rural (farm) households were granted ownership or provided usage rights for plots from reserve lands. In the absence of such lands, suitable agricultural lands from these enterprises could be allocated without disrupting the integrity of other farms.

The Land Code also established (although not typical for communism) the right of ownership over produced agricultural products and income from their sale, as well as over crops and plantings of agricultural crops and plantations for landowners and land users.

Land plots for running rural (farm) households were granted to citizens upon their request for lifelong inheritance, private ownership, or lease. The right to private ownership of a land plot for a rural (farm) household could be acquired after six years of possession.¹¹ The allocation of land plots for lifelong inheritance, private ownership, or lease was conducted from reserve lands, which included lands previously owned by bankrupt collective agricultural enterprises.¹²

With the new revision of the Land Code, the Ukrainian Parliament adopted a resolution 'On Accelerating Land Reform and Land Privatisation',¹³ which stipulated that the devitalisation and privatisation of lands belonging to agricultural enterprises and organisations, as outlined in the third paragraph of point 3 of the resolution, would begin from 15 May 1992. This process was to be carried out according to projects developed by the management (administration) of these enterprises and organisations, with the involvement of experts and state land management organisations. These projects were to be approved by the labour collectives and endorsed upon submission by the rural (township) Council to the district (city) Council of People's Deputies.

The right of private ownership by citizens over land plots allocated to them for personal subsidiary farming was certified by the respective Council of People's Deputies. This certification was recorded in land cadastral documents, followed by the issuance of a state act confirming the right to private land ownership. Ukrainian citizens were granted the right to sell or otherwise alienate these land plots

10 | On Forms of State Acts for Land Ownership and the Right to Permanent Land Use 1992 (no longer in force).

11 | On Rural (Farming) 1991 (no longer in force).

12 | About the collective agricultural enterprise 1992.

13 | On accelerating land reform and land privatisation 1992.

without altering their designated purpose. The sale or other forms of alienation of a land plot required notarisation and registration in the rural, township, or city Council of People's Deputies within the territory where the land plot was situated.¹⁴ The sale of land plots was conducted at a price agreed upon by the parties, provided that this price did not fall below the normative land price.¹⁵

The procedure for issuing state acts and maintaining the Land Ownership Registration Book was approved by the respective Instruction.¹⁶

A significant directive during the land privatisation process was the Presidential Decree of Ukraine, 'On Urgent Measures to Accelerate Land Reform in Agriculture', dated 10 November 1994.¹⁷ This decree tasked land management organisations with dividing the lands transferred to collective ownership into land shares (shares), without physically allocating them (in situ). Each member of the enterprise, cooperative, or association was to be issued a certificate confirming their private ownership right to a land share (share) that specified the size in conditional cadastral hectares and the monetary value of the share. The right to a land share (share) could be subject to buying and selling, gifting, exchange, inheritance, or collateral. Every member of a collective agricultural enterprise, agricultural cooperative, or agricultural joint-stock company had the unobstructed right to exit and receive their land share (share) free of charge into private ownership (in situ). This was certified by a state act confirming the right to private land ownership.¹⁸ Landowners had the voluntary option to establish joint agricultural enterprises, associations, unions, joint-stock companies, other cooperative enterprises, or organisations based on their land plots. They could also pass these plots by inheritance, gift, exchange, use them as collateral, lease, and sell them to Ukrainian citizens without altering the designated purpose of these land plots.

3. Privatisation of agricultural land

Privatisation of a land plot is the process of changing the ownership status of the land from communal or state ownership to private ownership. It involves a series of legally significant actions, including applying to authorised entities for permission, approving technical documentation for land management, and completing the registration process for the new owner. The new owner will then have the right to own, use, and manage the land in accordance with its designated use and purpose.

14 | On the privatisation of land plots 1992.

15 | The Methodology for Normative Monetary Valuation of Land in Settlements 1995 (no longer in force).

16 | On Approval of the Instruction on the Procedure for Preparation, Issuance, Registration and Storage of State Acts for Land Ownership and Permanent Land Use, Agreements for Temporary Land Use (including Lease) 1993 (no longer in force).

17 | On urgent measures to accelerate land reform in the agricultural sector 1994.

18 | On forms of state acts for land ownership and the right to permanent use of land 1992.

The Presidential Decree of Ukraine dated 8 August 1995,¹⁹ which initiated the land share privatisation process, is crucial. This process applies to lands transferred to collective agricultural enterprises, agricultural cooperatives, and agricultural joint-stock companies, including state farms and other state agricultural enterprises. Consequently, during the privatisation of land designated for share privatisation, land transitioned from state ownership to collective ownership. Share privatisation involved determining the size of each member's share in the agricultural enterprise, cooperative, or agricultural joint-stock company. However, it did not entail the allocation of individual land plots in kind. The certificate confirmed the right to the share. In the event that the owner of a land plot, also known as a share, left the enterprise, he could apply for the allocation of the land plot in kind and receive a state act confirming the ownership of the plot.

Therefore, the allocation of a land plot essentially meant replacing the existing virtual right to the land plot with obtaining real private ownership of the plot with defined boundaries. The mechanism for acquiring ownership rights by a Ukrainian citizen under point g of Part 1 of Article 81 of the Land Code (allocation in kind (on-site) of a land plot (share)) does not contain any prohibitions in the context of the Transitional Provisions of the Land Code of Ukraine. There is a specific interest in determining "land plots transferred for use before the entry into force of this Code", to which the prohibition does not apply.

Considering the clarification of the State Geocadaastre dated 3 June 2021 and the legislation norms that were in force before, the documents confirming that a citizen has the right to use a land plot can be:

- | contracts for the indefinite use of a plot of land for the reconstruction and operation of buildings (the resolution of the Ukrainian SSR RSC and the Central Committee of the CP(b)U dated 10 November 1944 'On regulating the use of state buildings of the residential and non-residential fund and the land plots that serve them'). In accordance with the Instruction on the Procedure for Registration of Houses and Homesteads in Cities and Towns of the Urban Type of the Ukrainian SSR dated 31 January 1966, the specified contracts were documents on the basis of which the registration of houses and homesteads in the cities and towns of the Urban Type of the Ukrainian SSR is carried out);
- | entries in the land-cord books of agricultural enterprises and organisations, in the farm books of village councils, and in the register books of the executive committees of city and village councils (Article 20 of the Land Code of the Ukrainian SSR of 1970);
- | state acts on the right to use/own land (Article 23 of the Land Code of the Ukrainian SSR of 1990);

19 | On the Procedure for Sharing Land Transferred to Collective Ownership of Agricultural Enterprises and Organisations 1995.

- | land lease agreements (Articles 8, 24, 50 of the Land Code of the Ukrainian SSR of 1990);
- | state acts on the right to the permanent use of land (Article 23 of the Land Code of Ukraine as amended in 1992).

Privatisation through the allocation of a land share (share) in kind can be conditionally divided into several stages, in particular:

I Preparatory works

1. Owners of land certificates submit applications to the relevant council with a request to allocate land plots in kind and issue state acts instead of land certificates.
2. Local councils:
 - a) based on the results of consideration of such applications, they decide on the allocation of land shares (shares) in kind (in the area);
 - b) specify the location, boundaries, and areas of agricultural land to be distributed among the owners of land shares (shares);
 - c) conclude contracts with land management organisations for the performance of land management works regarding the allocation of land shares (shares) in kind (in the area) and the production of technical documentation and/or assist in the conclusion of such contracts if such works are performed at the expense of persons who have the right to a land share (share), or at the expense of the funds of enterprises, institutions and organisations that lease land shares (shares), technical assistance projects etc.;
 - d) clarify the lists of persons who have the right to a land share (share) and transfer them to land management organisations.

II Field geodetic works

1. Reconnaissance of the area. The land management organisation clarifies the land massifs in the area that are to be divided and determines the places of installation of boundary signs.
2. Geodetic works. The land management organisation establishes boundary marks on the terrain. The boundaries of land massifs and boundary marks are defined in the state coordinate system.
3. Cadastral mapping. The land management organisation performs the cadastral survey of land massifs to be privatised.

III Development of a project for the organisation of the territory of land shares (shares)

On the basis of the completed cadastral survey, the land management organisation develops a project for the organisation of the territory of land parcels in the territory of the relevant council. The project is developed considering soil fertility,

topography, road network, etc. The boundaries of the planned land plots, their cadastral numbers, areas in physical hectares, forest protection strips, protective hydro-technical structures, etc., are indicated on the territory organisation project.

IV. Allocation of land plots in kind and issuance of state documents

The developed project of the organisation in the territory is approved by the decision of the meetings of the owners of land shares. The land management organisation prepares state acts, which, after registration, are transferred to the relevant council for handing over to citizens.

With the adoption of the Law of Ukraine dated 28 April 2021, 'On Amendments to Certain Legislative Acts of Ukraine to Improve the Management and Deregulation in the Field of Land Relations',²⁰ a so-called decentralisation of land management occurred, simplifying land management documentation and reducing the number of approvals and permits.

As of 27 May 2021, an individual no longer needs to apply to the local self-government body to obtain permission for the development of land documentation if this person is already using a respective land plot within the territorial community and intends to privatise it.

According to the new version of Article 118 of the Land Code of Ukraine, a citizen interested in the privatisation of a land plot within the norms of free privatisation, which is in their use, including a land plot where residential houses, outbuildings, or structures owned by them are located, submits a request to the local self-government body representing the corresponding territorial community for the transfer of such a plot into their ownership.

This norm also applies to land plots where the right arose earlier. This is logical in cases where the right arose earlier or constructions and structures owned by the applicant are located on the land plot, as the permission itself has a formal character.

Henceforth, an individual submits a request accompanied by technical documentation on land management developed in accordance with the law 'On Land Management'²¹ for the establishment (or restoration) of land plot boundaries in nature (on-site), which, under the new rules, is ordered by the citizen without requiring permission for its development. Within a month from the receipt of the technical documentation on land management for the establishment (or restoration) of land plot boundaries in nature (on-site), the respective local self-government body decides to approve it and transfer the land plot into ownership or provides a reasoned decision for refusal.

20 | On Amendments to Certain Legislative Acts of Ukraine on Improving the System of Management and Deregulation in the Field of Land Relations 2021.

21 | About land management 2003.

However, the procedure for local councils adopting decisions regarding the alienation of land plots from the ownership of territorial communities has somewhat changed. Part two of Article 59 of the law 'On Local Self-Government in Ukraine' was supplemented by a new paragraph, according to which the council's decision on the gratuitous transfer of a communal land plot into private ownership (except for land plots in the possession of citizens and cases of transferring a land plot to the owner of a residential house, another building, or structure located on it) is adopted by no less than two-thirds of the total number of council deputies.

The provision requiring a 2/3 majority vote of local council deputies for the gratuitous transfer of communal lands into private ownership is aimed at preventing corrupt practices at the local level.

Henceforth, when making such decisions, it is necessary to clearly distinguish land plots into two categories:

1. land plots that are gratuitously transferred from communal to private ownership and are in the possession of citizens; land plots where a residential house, another building, or structure belonging to the citizen who has applied for the transfer of the land plot is located; or land plots where the right arose earlier (in these cases, a simple majority is sufficient to decide on the transfer of ownership);
2. other land plots that are gratuitously transferred from communal to private ownership (in these cases, the council needs to gather a 2/3 majority vote of all council deputies to make the decision).

As for the unused land shares (shares of land), according to the law,²² until 2025, citizens have the right to claim such shares, that is, to complete the realisation of their previously arisen right. In case the potential owners do not claim the respective property within the period prescribed by law (i.e., until 1 January 2025), these land shares (shares of land) will revert to communal ownership after undergoing the procedure for recognising the property as ownerless. Therefore, if citizens currently apply to the local government bodies for claiming their land shares (shares of land), the decision regarding the transfer of such land plots is made by a majority vote of the local council deputies. Other decisions related to land issues continue to be made by a simple majority.

Due to the onset of the war, the gratuitous privatisation of land has been temporarily prohibited. Many Ukrainians lost their homes due to the war – some had their homes destroyed or severely damaged, while others simply left their houses in temporarily occupied territories and wished to start a new life far from the occupation and the front line.

22 | On Amendments to Certain Legislative Acts of Ukraine to Address the Issue of Collective Ownership of Land, Improve the Rules of Land Use in Agricultural Land, Prevent Raiding and Stimulate Irrigation in Ukraine 2018.

4. Emphyteusis

The emphyteusis of agricultural land is possible and expedient for the state as the owner. One of the most convenient tools of the market mechanism is the contract of emphyteusis, as the moratorium on the sale of agricultural land in Ukraine is being lifted gradually, but still has many restrictions. One of the oldest methods of land use is emphyteusis, which originates from Ancient Greece, where, in the 3rd century BC, it began to be called the lease of land for the cultivation of gardens and vineyards.

Chapter 33 of the Civil Code of Ukraine and Chapter 161 of the Land Code of Ukraine regulate emphyteusis in Ukrainian legislation. These provisions provide that the owner transfers ownership and use of the agricultural land to the land user while retaining land ownership. A land user who uses a plot under these conditions can create a farm at their discretion and grow products in compliance with the norms and requirements of the legislation, as well as the terms of the contract regarding production methods that do not deteriorate the condition of the land plot or the general ecology. In addition, the land user may dispose of any agricultural produce he grows at his own discretion. The main interest of the owner of this plot of land is to ensure the permanent cultivation of the land, improve its useful properties, and receive the fee stipulated in the contract.

The agreement between the landowner and a person wishing to use a land plot for agricultural purposes (Part 1 of Article 407 of the Civil Code of Ukraine, Part 1 of Article 1021 of the Land Code of Ukraine) serves as the legal basis for the emergence of emphyteusis. Therefore, an emphyteutic contract is an agreement between the landowner and the person utilising the land, granting the latter the right to possess and use the land solely for agricultural purposes. The parties to the contract are both the owner and the person desiring to use the land for agricultural purposes (land user, emphyteut). The land can be state-owned or under any other form of ownership. Exceptionally, Chapter 21 of the Land Code defines the competitive principles for acquiring the right to emphyteusis, which must be known to land users utilising state or municipal land. Additionally, legal restrictions are established for foreigners or stateless persons. The Land Code of Ukraine provides these individuals with the right to lease land for individual or collective gardening purposes only (Part 2 of Article 35 of the Land Code of Ukraine). A similar limitation is set for legal entities according to Part 2 of Article 35 of the Land Code of Ukraine.

The object of the emphyteutic contract is agricultural land, as stipulated in Part 2 of Article 22 of the Land Code of Ukraine, including agricultural lands such as arable land, perennial plantings, hayfields, pastures, and fallow lands. It also encompasses non-agricultural lands, which consist of farm roads and driveways, protective forest strips, and other protective plantings (excluding those classified under other land categories), lands under farm buildings and yards, lands under

the infrastructure of wholesale agricultural produce markets, and lands under temporary conservation measures, etc.²³

The emphyteutic contract can be either for a fixed term or without a specified term. For state or municipal land plots, the period of use cannot exceed fifty years, and the right of use cannot be alienated, included in the statutory fund, or pledged. The sale of emphyteusis for state land is carried out through auctions. According to amendments introduced in 2019, the duration of this contract should be determined for lands of all ownership forms and should not exceed 50 years. The Civil Code of Ukraine does not provide for the possibility of extending emphyteusis and does not establish an obligation for the landowner to extend its validity at the request of the land user. While the legislation does not specify particular requirements regarding the form of this contract, it mandates its obligatory state registration, which requires the submission of a confirming document (the contract itself). Therefore, the emphyteutic contract must be executed in written form. Notably, the notarial certification of this contract is not obligatory, yet according to Article 209 of the Civil Code of Ukraine,²⁴ the emphyteutic contract can be notarised by the mutual agreement of the parties.

The emphyteut can independently alienate the right to use the land plot and transfer it through inheritance. However, an exception is established by the legislator for land plots belonging to state and communal ownership. Therefore, the right to their use by land users cannot be alienated, nor can it be included in the statutory capital of legal entities or pledged (Part 3 of Article 407 of the Civil Code of Ukraine and Part 3 of Article 1021 of the Land Code of Ukraine).

Emphyteusis terminates in the following cases: when the owner of the land plot and the land user are the same person; when the term of the contract expires; with the alienation of privately owned land for public necessity; with the decision of the executive authority or local self-government body regarding the use of state or communal land for public needs; with the termination of a contract concluded under conditions of public-private partnership; by a court decision etc.

On the one hand, emphyteusis is sometimes preferable to a lease agreement. First, this is the case when it is necessary to transfer agricultural land for free use, unlike a lease agreement, which is always paid. Second, it is also preferable when a fee for using the land plot is established, regardless of the normative monetary valuation. Third, Ukrainian legislation guarantees the possibility of alienating the right to emphyteusis, while changing the lessee under a land lease agreement may be explicitly prohibited. However, restrictions on the alienation of land by its users apply to land belonging to communal and state ownership. Currently, emphyteusis is quite often used for moratorium lands. Therefore, signing an emphyteusis agreement grants the right to legally use agricultural land for 50 years. Meanwhile,

23 | Land Code of Ukraine 2001.

24 | Civil Code of Ukraine 2003.

the emphyteut acquires autonomy from the land plot owner and, in certain cases, the right to terminate emphyteusis without the consent of the land plot owner. Nevertheless, parties entering into an emphyteusis agreement must understand and consider the risks associated with the conclusion and performance of this agreement. In particular, the users must know that they do not acquire ownership rights to the land; instead, they only use it under the terms of the agreement, which can be terminated or declared invalid by the court. On the other hand, landowners must consider that their ownership rights to the land do not cease, meaning they must pay land tax annually. The absence of a specific prescribed form for the emphyteusis agreement allows the practical application of a significant number of legal instruments, the risks and benefits of which depend more on the text of the agreement than on the norms of existing legislation.²⁵

5. Land reform in Ukraine

On 31 March 2020, a law was adopted, which established the cancellation of the moratorium on the sale of agricultural land in Ukraine, except for state-owned lands, starting from 1 July 2021. According to the provisions of this law, the sale of agricultural land plots owned by the state and municipalities is still prohibited, and its impact on lease relations concerning state-owned lands will be exerted through the influence on the formation of lease prices.²⁶ Since the launch of electronic land auctions in October 2021 on the ProZorro.Sales platform, auctions for the purchase and lease of agricultural land have already been completed for over 1.2 billion UAH.²⁷

In 2021, Ukraine concluded 66 thousand land purchase and sale agreements covering a total area of 153 thousand hectares. In 2022, there were 53 thousand such agreements, despite the market effectively not operating for almost six months due to restrictions on access to registries.²⁸ Since the opening of the land market, more than 152 thousand purchase and sale agreements have been concluded, encompassing a total area of over 338 thousand hectares. This represents 0.82% of all agricultural land in Ukraine within its 1991 borders and 0.95% of the total area of agricultural land in the territories under Ukraine's control. For comparison, in economically developed countries, this indicator fluctuates around 1%.²⁹

25 | Moskaliuk 2021, 346–348.

26 | On Amendments to Certain Legislative Acts of Ukraine Regarding the Terms of Turnover of Agricultural Land 2020.

27 | Agricultural land in Ukraine went up by 20% in 2023.

28 | The government is advised to pay attention to the fact that land in Ukraine is sold at deliberately low prices 2023.

29 | Land market in Ukraine 2023, 10.

On 1 July 2021, the Law of Ukraine No. 552-IX, 'On Amendments to Certain Legislative Acts of Ukraine Regarding the Conditions of Circulation of Agricultural Land', came into effect, according to which:

1. from 1 July 2021 to 31 December 2023, the circulation of agricultural land in Ukraine will take place among Ukrainian citizens, with an individual being able to control no more than 100 hectares. This restriction does not apply to land owned by citizens. Specifically, land owned by citizens designated for commercial agricultural production and land allocated in-kind to the owners of land shares for personal rural farming cannot be bought, sold, or alienated by legal entities. Transactions (including powers of attorney) concluded during the prohibition on the sale or other alienation forms of land plots and land shares are void if they involve the sale of these plots and land shares to legal entities or the transfer of rights to alienate these plots and land shares.
2. from 1 January 2024, legal entities, created and registered under Ukrainian law, whose participants (shareholders, members) are only Ukrainian citizens, and/or the state, and/or territorial communities, will be able to purchase land alongside individuals. The maximum amount of land that can be acquired in this case is 10,000 hectares. However, the sale of state and municipal agricultural land, as well as the purchase of agricultural land by foreigners, remains prohibited. A minimum purchase price for agricultural land has been established, not lower than the normative monetary valuation. Foreigners, stateless persons, and legal entities are prohibited from acquiring shares in the statutory (authorised) capital, shares, shares, or membership in legal entities (except in the statutory (authorised) capital of banks) that own agricultural land.

Agricultural land can be used by citizens of Ukraine, legal entities established and registered under the legislation of Ukraine, and participants (shareholders, members) who are only citizens of Ukraine, the state, territorial communities, or the state. At the same time, if a citizen of Ukraine owns a share in the statutory (composite) capital, in a unit fund of a legal entity, or only on individual shares, shares, it is considered that such a citizen, in addition to the land plots owned, also owns the ownership right to agricultural land plots with a total area equal to the area of agricultural land plots owned by the legal entity of which he is a participant (member, shareholder) multiplied by the size of the share of such a citizen, expressed as a percentage, in the statutory (composite) capital, the mutual fund of this legal entity (part two of Article 130 of the Civil Code of Ukraine).

The ownership of agricultural plots of land can also be acquired by banks only in the order of foreclosure on them as collateral. Such plots of land must be alienated by banks at land auctions within two years from the date of acquisition of ownership.

The acquisition of ownership rights to agricultural land plots by legal entities created and registered under the legislation of Ukraine for which the participants (founders) or ultimate beneficial owners are not citizens of Ukraine, may be carried out from the date and subject to the approval of such a decision in a referendum.

Under any conditions, in case of approval of the decision in a referendum, it is prohibited to acquire the right of ownership of agricultural land plots by:

1. Legal entities, participants (shareholders, members) or ultimate beneficial owners of which are persons who are not citizens of Ukraine – for agricultural land plots of state and communal ownership, agricultural land plots allocated in kind (on-site) to land owners shares located closer than 50 km from the state border of Ukraine (except for the state border of Ukraine, which runs along the sea);
2. Legal entities, participants (shareholders, members), or ultimate beneficiary owners of which are citizens of a state recognised by Ukraine as an aggressor state or an occupying state;
3. Persons who belong or have belonged to terrorist organisations;
4. Legal entities whose participants (shareholders, members) or ultimate beneficial owners are foreign states;
5. Legal entities in which it is impossible to establish the ultimate beneficial owner;
6. Legal entities whose ultimate beneficial owners are registered in offshore zones included in the list of offshore zones approved by the Cabinet of Ministers of Ukraine;
7. Individuals and legal entities, in respect of whom and/or in respect of participants (shareholders, members) or ultimate beneficiary owners to which special economic and other restrictive measures (sanctions) have been applied in accordance with the Law of Ukraine 'On Sanctions' in the form of a ban on concluding acquisition transactions in the ownership of land plots, as well as persons connected with them;
8. Legal entities created under the legislation of Ukraine that are under the control of individuals and legal entities registered in countries included by the Financial Action Task Force on Money Laundering (FATF) in the list of countries that do not cooperate in the field of combating money laundering.
9. Banks are allowed to be the owners of land plots within the limits of collateral recovery. The bank must sell such plots at auctions within two years.

The conclusion of civil contracts involving the transfer of ownership rights to land plots, as well as the acquisition of ownership rights to land plots under such contracts, is carried out in accordance with the Civil Code of Ukraine, considering the requirements of the Land Code of Ukraine.

The sale-purchase of a land plot is conducted with the observance of the preferential right to purchase it. The preferential right to purchase a land plot can be transferred to another person by its subject, who must inform the owner of the land plot in writing. The minimum selling price of allocated on-site land shares will be abolished by 1 January 2030. This means that the sale price of land shares of agricultural land on-site to owners cannot be lower than their normative monetary valuation. The evaluation will be conducted by the State Geocadastré and will include a study of composition, climatic conditions, and soil location. An open database will be created containing all information about the normative monetary valuation of land in all regions. The sale-purchase agreement is notarised when the data of the new owner is entered into the cadastre. Additionally, the possibility of the buyer acquiring certain land sizes will be assessed, and the transactions will be monetary. The buyer needs to open a bank account for this purpose. In the absence of documents confirming the source of the funding or other assets through which ownership rights to land plots are acquired, the acquisition of ownership rights to land plots under underpaid contracts is considered illegal. Current tenants may have a preferential right to purchase land.

When certifying an agreement for the alienation of an agricultural land plot, compliance with the established requirements of the Land Code of Ukraine by the acquirers of ownership rights to agricultural land plots is verified using information from the State Register of Real Rights to Immovable Property, State Land Cadastre, and Unified State Register of Legal Entities, Individual Entrepreneurs, and Public Formations. If non-compliance with these requirements is identified as a result of the verification, the notary refuses to certify the agreement.

The sale-purchase agreement for a land plot is subject to mandatory notarisation. The document package that needs to be submitted to the notary when concluding an agreement between citizens includes the following: documents confirming their identity and Ukrainian citizenship; registration numbers of tax identification cards; a state act on the right of ownership of the land, an agreement, a certificate of inheritance rights, or another document confirming the right of ownership of the land plot; and documents on the monetary valuation of the alienated land plot.

Moreover, to determine the total area of plots that one person is entitled to acquire, the notary will need to provide information and documents about the acquirer's marital status, including marriages registered abroad and the acquisition of agricultural land on the basis of joint ownership of the spouses.

At the same time, the notary, acting as the primary financial supervisor, has the right to request from the potential buyer information and documents confirming the source of the funds for the purchase of the land plot or hectares. Funding sources may include salary as financial support; fees and other payments under civil contracts; income from entrepreneurial or independent professional activities; income from the alienation of property, dividends, interest, royalties,

insurance payments; winnings (prizes) in gambling, lotteries, or other contests; and bets, among others. Until the notarisation of the land alienation agreement, it will be necessary to pay a personal income tax at a rate of 5% of the price specified in the sale–purchase agreement, as well as a military fee of 1.5%. The calculated price for taxation will be determined in the sale–purchase agreement. This price cannot be lower than the appraised value of the land calculated by the authorised body. Until 1 January 2030, the sale price of agricultural land plots on location to owners of shares cannot be lower than their normative monetary evaluation. The sale of agricultural land plots owned by the state and municipalities is prohibited. The alienation of agricultural land plots located in temporarily occupied territories in Donetsk and Luhansk regions, the Autonomous Republic of Crimea, and the city of Sevastopol, except for inheritance, is also prohibited.

A Supreme Court resolution dated 21 May 2021,³⁰ pointed out that the legislatively established temporary ban on the purchase-sale or other forms of alienation of agricultural land plots does not apply to all agricultural land plots in private ownership of individuals and legal entities, but only to specific types, including land plots for conducting commercial agricultural production and land plots allocated in-kind (on-site) to owners of land shares (shares) for personal rural farming.

6. Legal status of land in Ukraine during martial law

After the full-scale invasion of Russia into the territory of Ukraine, lawmakers passed the law³¹ ‘On Amendments to Certain Legislative Acts of Ukraine Regarding the Regulation of Land Relations in the Conditions of Martial Law’. Its purpose is to promptly lease land plots of state and municipal property for the placement of production facilities of enterprises relocated from the combat zone without conducting land auctions and with restrictions on lease conditions. Additionally, it aims to provide land plots for the placement of facilities for the temporary residence of internally displaced persons and the sustainable operation of power supply, gas distribution, water supply, heating, sewerage networks, electronic communication networks, and objects of trunk gas pipelines.

The public cadastral map of Ukraine, available on the StateGeoCadastre website,³² remains inaccessible to citizens due to these circumstances. This is a necessary measure to preserve confidentiality and prevent potential misuse of data to the detriment of Ukraine and its citizens. As long as some territories remain under the control of occupiers, the public cadastral map will not be available for

30 | The resolution of the Supreme Court, 21.05.2021.

31 | On Amendments to Certain Legislative Acts of Ukraine Regarding Peculiarities of Regulation of Land Relations under Martial Law 2022.

32 | State Service of Ukraine for Geodesy, Cartography and Cadastre 2023.

widespread use. This decision will be reviewed and changed only after the cancellation of the martial law regime and the full restoration of the territorial integrity of Ukraine. Therefore, to choose a plot of land, one can submit a request for access to information to the relevant authorities of state power or local government.

The land market, as a secondary redistribution of property rights to land resources (after privatisation), is not an end in itself and should take place in accordance with a long-term strategy for the development of agriculture and rural areas as a whole.³³

During a state of war, there is a prohibition on the free transfer of state and municipal land into personal ownership, as well as a ban on obtaining permits for the development of land management documentation for such transfer (sub-paragraph 5 of paragraph 27 of Chapter X of the Land Code of Ukraine). In fact, before the war, Ukrainian citizens had the right to the free transfer of land plots from state or municipal ownership to them (the procedure for such transfers is defined in Article 118 of the Land Code of Ukraine). During the state of war, the formation of land plots within the framework of free privatisation, including the determination of their area, boundaries, and registration in the State Land Cadastre, is prohibited according to current legislation. However, there are exceptions. The free transfer of land is allowed during the transfer of land plots into private ownership for owners of real estate objects (buildings, structures) located on such land plots.³⁴

As a result of the amendments to the Land Code of Ukraine, which entered into force on 7 April 2022, Paragraph 5(27) of Section X 'Transitional Provisions' stipulates that during martial law, the free transfer of state and municipal land to private ownership, the granting of permits for the development of land management documentation for the purpose of such free transfer, and the development of such documentation are prohibited. The Law of Ukraine No. 2698-IX amended the Land Code to allow the free transfer of land plots into private ownership to owners of real estate (buildings and structures) located on such land plots. The amendments unblocked the free privatisation of land plots under residential buildings, individual summer cottages and garages, the rights to which are certified by the relevant documents. It is also allowed to privatise land plots that were granted to citizens (allocated) before 1 January 2002 (usually these are old decisions on the transfer of land into ownership or use).

33 | Romanovska 2013, 9.

34 | The norms of free privatisation are determined by Article 121 of the Land Code for different categories of land (the maximum size of a land plot for free privatisation is divided by the area and purpose of the land plot): 1) for personal farming up to 2 hectares; 2) for gardening up to 0.12 hectares; 3) for individual summer cottage construction up to 0.10 hectares; 4) for construction and maintenance of a residential building on the basis of a construction passport or project – in villages up to 0.25 hectares, in towns up to 0.15 hectares, in cities up to 0.10 hectares; 5) for construction of individual garages 0.01 hectares.

7. Conclusions

Since the beginning of the land reform, 85,247 sales contracts have been concluded. A total of 275,157 hectares of agricultural land were sold and donated in two years, which represent 1% of all agricultural land. The amount of agricultural land is 27.5 million hectares. In the first year of the opening of the land market, 27,696 contracts were concluded, and in the second 23,000. However, in 2022, the market did not operate for almost four months. For the first half of 2023, there are already 18,000 contracts. Regarding the area of land sold and purchased, in 2021, there were 100,000 hectares and in 2022, 69,000 hectares. Since the beginning of 2023, more than 50,000 hectares have already been sold. People continue to sell and buy land. The average price per hectare is UAH 39,000, but prices are very dynamic. In 2024, when the second stage of the reform begins and legal entities are admitted to the market, the price of land will increase even more. The land reform had a positive effect on the entire agricultural sector.³⁵

Table 1. Data on agricultural land in Europe³⁶

	GDP per capita (USD)	Land under cultivation for grains (hectares)	Irrigated agricultural land (% of total agricultural land)	Agricultural land (% of total land area)	Rural population (% of total population)	Arable land per capita (hectares/person)	Exports of agricultural raw materials (% of total merchandise exports)	Yield index
Ukraine	4,534.0	15,649,490	1.1	71.3	30	0.75	2	121.7
Hungary	18,463.2	2,361,650	2.2	55.3	28	0.43	1	85.9
Slovakia	21,258.1	717,690	1.4	38.6	46	0.24	1	99.8
Czech Republic	26,822.5	1,345,840	0.6	45.7	26	0.24	2	92.3
Poland	18,321.3	7,451,270	0.9	47.4	40	0.29	1	107.9
Romania	15,892.1	5,356,960	2.6	56.8	46	0.45	1	115.9
Serbia	9,393.6	1,778,823	1.5	41.4	43	0.38	2	103.3

Land reforms were also carried out in the Baltic, Eastern, and Central Europe, primarily in Latvia, Lithuania, Bulgaria, Estonia, Poland, Romania, and Hungary, due to similar historical circumstances regarding the formation of private ownership of agricultural land. All these countries, including Ukraine, share a commonality in establishing private land ownership through the gradual transformation of state farms and cooperatives into market-oriented enterprises. Depending on the

³⁵ | Press conference: "Land reform: the second anniversary of the land market" 2023.

³⁶ | Agricultural land (% of land area) 2023.

historical specifics of land privatisation in each country and the level of socio-economic development, the transformation of land relations occurred in several stages. The land reforms aimed to return land to former owners and conduct auctions for distribution, gradually opening access to foreign capital.³⁷ However, the foundation of the land reforms in these countries was based on principles that defined the essence of each reform. These principles included ensuring high levels of agrarian production, creating mechanisms for social protection of landowners and rural populations, as well as progressively liberalising the land market (see Table 1). The primary goals of the land reform implemented in these states were to free the market from significant regulatory constraints concerning the conditions of buying and selling agricultural land, establish an effective mechanism for concentration and auctions, and provide state assistance for land conservation.³⁸

The war in Ukraine has affected all spheres of life, including land relations. The initial laws enacted at the onset of the war were focused on ensuring food security. Concurrently, registries and cadastres were closed, and the free transfer of land ownership was prohibited. On 19 November 2022, the law 'On Amendments to Certain Legislative Acts of Ukraine Regarding the Restoration of the Land Lease Rights Registration System for Agricultural Land Plots and Improvement of Legislation on Land Protection' came into effect. This law introduced changes, particularly to Clauses 5 and 27 of Chapter X of the Land Code of Ukraine concerning the free transfer of state and communal lands into private ownership. According to this provision, the law now prohibits the free transfer of communal and state-owned lands to private individuals and the issuance of permits for land management documentation for the purpose of such gratuitous transfers. This provision does not apply to the free transfer of land plots to private ownership for the owners of buildings or structures located on these land plots, nor does it apply to the free transfer of land plots into private ownership for Ukrainian citizens who obtained them for use before the Land Code came into effect. Consequently, during the state of war, the only individuals entitled to receive land plots free of charge are the Ukrainian citizens who have property ownership rights to immovable property such as residential houses, garages, garden houses, and other buildings according to the current legislation. Additionally, citizens to whom land plots were granted for use before 1 January 2002, have the right to acquire them without cost. In this case, the documents confirming the right of use may include, among others, state deeds for permanent land use rights (Article 23 of the Land Law of Ukraine in the 1992 version, original version of Article 126 of the current Land Law), state deeds for land ownership rights (Article 23 of the Land Law of the Ukrainian SSR of 1990), entries in land survey books of agricultural enterprises and organisations, entries in land-use books of village councils, records in registration books of executive

37 | Tarasovskyi 2023; Zinchuk 2016, 89.

38 | Babchenko 2017, 99.

committees of city and village councils (Article 20 of the Land Code of the Ukrainian SSR of 1970), state deeds for perpetual inherited land ownership, agreements on providing land plots for indefinite use for building individual residential houses, and acts on land allocation in kind. The transfer of land plots free of charge continues. According to Article 118 of the Land Code of Ukraine, a person can apply to the relevant executive authority or local self-government body that transfers state or communal land plots for privatisation within the norms of free privatisation, including land plots with residential houses, economic buildings, and structures located on them.

According to the law 'On Land Management', along with the application, the technical documentation on land management related to the establishment or restoration of land plot boundaries in kind (on-site) ordered by a citizen without a permit for its development is submitted. Within a two-week period from the date of receipt of the land management project regarding the allocation of the land plot, the respective executive authority or local self-government body decides to grant ownership of the land plot. The final step involves assigning a cadastral number to the land plot. In accordance with Article 21, item 11 of the law 'On the State Land Cadastre',³⁹ information on the measures for land and soil conservation (e.g. land development for agricultural and forestry needs, improvement of agricultural and forestry lands, reclamation of disturbed lands, conservation of degraded, low-productivity, and technogenically polluted lands) is entered into the State Land Cadastre based on land management schemes and techno-economic justifications for the use and conservation of lands within administrative-territorial units, as well as working land management projects.

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