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Regarding the agricultural land turnover in Ukraine

Ukraine has been confronting with the issue of reforming the land relations since its independence [3]. Even now, changing of the ownership form is not always de-facto thruthworthy. Some forms of ownership (in particular, collective ownership) have essentially gone into the shadows. There have been several attempts to reform land relations since the very beginning of Ukrainian statehood formation; however, even now, one can notice practically only legislative and methodological stupor that makes it impossible to form an exhaustive list of rules capable of effective regulation of land relations.

The Land Code of Ukraine, in the redaction of year 2012, contains in its ideology legislative features of the Soviet era. Furthermore, this Code has lost its integrity and logic due to the adoption of more than a hundred amendments. Part of the articles of the Land Code of Ukraine [1] either contradicts with each other, or does not correspond to modern realities at all. In addition, the majority of the documentation types on the land management is either not being drafted or lost its urgency. Moreover, in the current conditions, the Law of Ukraine “On Land Management” [4] has become a ceremonial document reflecting the composition and the content of various types of land management documentation. This all is happening during the withdrawal of the moratorium on the sale of the agricultural land. Legislative and methodological uncertainty can lead not only to the conflict in the society and to the public resonance but also can cause the loss of the state control over land circulation processes already at the very start of market opening.

Above all, it should be noted that amending certain legislative acts of Ukraine does not solve the extensive list of issues. These issues should be resolved by adopting a new, comprehensive law, which would clearly specify the tasks and mechanisms of land regulation and land use, describe the risks and tools for preventing these risks through environmental, social, economic and legal aspects.

However, instead of composing such law, it is proposed to adopt a draft “On Amendments to Certain Legislative Acts of Ukraine Concerning the Agricultural Land Turnover” (it should be noted that it is different from the draft law “On the Land Turnover”). This draft contains changes to several articles of the Land Code of Ukraine, as well as of the Law of Ukraine “On the State Land Cadastre” and “On State Registration of Corporeal Rights to Real Estate and Their Encumbrances”. In addition, the draft law provides separate instructions to the Government; these instructions do not take into account the real state of informational completeness of the State Land Cadastre and, therefore, cannot be fulfilled.

This draft law does not regulate a number of provisions that should settle the minimum selling price of the agricultural land. According to the project proposals, it is envisaged to amend Article 136 of the Land Code of Ukraine [1]. In particular, the word combination “expert monetary valuation” is offered to change into “normative monetary valuation” in the context of process of preparing the state or communal land for auction sale (sub-clause “d”, clause 4). However, it should be emphasized that the normative monetary valuation, by its very nature, is calculated for tax purposes and does not reflect market value. Although, it is the very market value that should be the core of the land market, as well as of the acquisition of land rights. The use of normative monetary valuation of land in determining the starting price for the land sale distorts existing market indicators. These indicators are already 40% - 60% higher than the normative valuation indicators. Furthermore, the order of purchase of the state, communal, and private land (personal equities or so-called “pai” and territorial community’s land) is not determined; the concept of family agreements is not introduced and defined as well.

This draft law does not introduce the concept of monitoring of purchase and sale prices; however, such monitoring should exist and be conducted with consideration of the quality of soils, administrative divisions, presence of territories with special regime of land use (e.g. in zones of restriction, in sanitary and protective zones, on eroded and slope lands, on especially valuable lands, on lands with restrictions, burdens and easements etc).

This draft law also does not make amendments to the Law of Ukraine “On the State Land Cadastre” [2] in the crucial sections. These amendments shall be made in articles considering the procedure of submitting information about land valuation into the Land Register Book. Furthermore, sub-clause “и” of clause 1 of Article 25, clause 4 of Article 26 and Article 21, which deal with the reflection of the expert evaluation data in the State Land Cadastre, need to be amended as well; a new attribute – a registration of the land on the basis of the “purchase agreement” – shall be added to these articles above. Article 15 and Article 36, both considering types of data, shall be changed in order to add “expert valuation” and issues on new types of data disclosure (disclosure restrictions). Article 37 shall be changed in order to facilitate the procedure of errors correction in the State Land Cadastre (the area limit, type of land, spatial position, cadastral number, crossing the boundaries of neighborhoods, areas, administrative divisions) in respect to the land being prepared for sale.

This draft law does not specify such changes as well:

- a mandatory list of annexes to the land purchase agreement, for example: expert report, cadastral plan of the land plot on the map of the State Land Cadastre, document on the qualitative status of the land being purchased, etc.;

- the role and importance of the data from the Public Cadastral Map in the preparation of the agreement on the purchase and sale of land;

- the market mechanisms (exchanges, valuation, insurance, organization of land management works in the partition or consolidation of land plots and their implementation and correction of errors, financial institutions, protection of sellers (and the funds they are supposed to receive) residing in rural areas, market monitoring, etc.);

– the procedural terms of preparation of state and communal property land for sale and responsibility for violation of such terms.

Article 130 of the Land Code of Ukraine [1] governing the acquisition of ownership of agricultural land must be added with the words “granted for commercial agricultural production”.

In this draft law, boundary aggregate areas of agricultural land owned by a citizen and his related persons, having a common final beneficiary (controller), are calculated in percentage of the areas of regions and territories of Ukraine; and these calculations are unreasonably overstated. The region and the country are not the only objects of the administrative territorial structure of Ukraine, and in this sense it is logical to add the district and the united territorial community as well. The area of some united territorial communities already exceed the area of the statistical average district. Reflection of the area limits in percentage will not be applicable within the meaning of Article 130, clause 1 (new version), since such land is not recorded. In addition, such lands include lands, occupied by collective and individual gardening, lands provided for personal peasant farming, lands granted for horticulture, and lands provided for scientific and research purposes. Therefore, it is correct to define: firstly – the absolute values (in numbers) of the area, and secondly, in clause 1 and 2 – the definition of the term “agricultural production land” instead of the term “agricultural land”. In sub-clause “b”, clause 1 of Article 130, the norm dealing with acquiring of the ownership of land plots by legal entities, created under the legislation of Ukraine, shall be excluded. And in Article 130, clause 2, it is necessary to delete references to legal entities and legal entities created under the legislation of Ukraine, which have a common beneficial owner (controller).

Article 130, clause 3, gives preferential right to a tenant to purchase an agricultural land; this norm is not justified, since it does not take into account the interests of the members of the territorial community on whose territory the land plots for sale are located, possibly willing to purchase such land. The state (community) should be the first in order, since the law does not regulate the issue of protection of land upon acquisition. There are no requirements for compliance with the regime of

use of agricultural land in case of land acquisition, in particular, carrying out anti-erosion, reclamation measures, requirements for use of non-agricultural lands: maintenance and operation of reclamation systems, forest strips, access to field roads, etc.

Therefore, shaping the direction of the country's development during the withdrawal of the agricultural land sale moratorium, one should rely not only on the directions of development of the relevant industry and provide short-term claims, but to think of the mechanisms and solutions in consideration with the environmental, social and economic aspects while shaping the land market in Ukraine.

References:

1. Land Code of Ukraine: Code of Ukraine from 25.10.2001 № 2768-III. Information of the Verkhovna Rada of Ukraine. 2002. № 3-4. page 27.
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4. On Land Management: Law of Ukraine from May 22, 2003 No. 858 – IV. Information of the Verkhovna Rada of Ukraine. 2003. № 36. Page 282.