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# STATE LAND POLICY IN UKRAINE: STATE AND STRATEGY OF DEVELOPMENT

Ukraine possesses vast land resources. As of January 1, 2009, its land stock amounted to 60,354.8 thousand hectares, or almost 6% of the European territory<sup>1</sup>. In particular, farming land accounted for nearly 19% of the European, arable land – almost 27%. Per capita area of farming land in Ukraine is the highest among the European countries – 0.9 hectares, including 0.7 hectares of arable land (against the European average of 0.44 and 0.25 hectares, respectively). Black soil in Ukraine, according to different estimates, occupies from 15.6 to 17.4 million hectares, or nearly 8% of the world stock.

By and large, at the beginning of 2000s, the standard monetary value of land resources in Ukraine was estimated at UAH 330 trillion<sup>2</sup>.

Meanwhile, the structure of the land resources and land use shows rather serious disparities whose deepening may pose a threat to the quality of the natural and life environment, and the effectiveness of the business activity, i.e., sustainable development of the national economy.

For instance, Ukraine demonstrates an extremely high rate of development of the life environment: over 92% of its territory is involved in economic circulation, and only some 8% (4.5 million hectares) is in its natural state. The tillage rate of the territory is similarly high – over 54% (in developed European countries – no more than 35%). The actual forest rate of the Ukrainian territory is only 16%, which is insufficient for the environmental balance (European average – 25-30%). The territory under surface waters steadily goes down (from 1991 – by 12.5 thousand hectares), further aggravating the problem of shortage of water resources in Ukraine.

There are problems in land relations, whose reformation, commenced in 1991, is not over. Respectively, creation of the land legislation, registers and databases necessary to ensure land ownership rights and effective control of observance of the norms and rules of proper land use remain unaccomplished.

In such situation, the quality of the state land policy, its effectiveness, professionalism, correspondence to principles of proper management of the national land resources acquire particular importance.

Discussed below are some features of the state land policy and its main problems hindering effective use of the main national wealth – land, free access to that wealth for individuals and legal entities, unconditional respect for ownership rights. The quantitative data of Ukraine's land stock are summed up in tables and diagrams cited in Insert *"Ukraine's land resources"*, pp.3-5.

## I. MAIN PROBLEMS OF THE STATE LAND POLICY

As a rule, state land policy is defined as activity of state authorities and local self-government bodies in the field of land relations pursuing rational use and protection of land, provision of food security of the country and creation of environmentally safe conditions for business activity and human life.

Some idea of the quality of the state land policy in Ukraine may be produced from the comparison of its actual state with the criteria (requirements) of "proper state management of land resources" contained in recommendations of the UN Food and Agricultural Organization (FAO)<sup>3</sup>.

As one may see from *"Comparative table..."*, actually none of the FAO recommendations has been fully

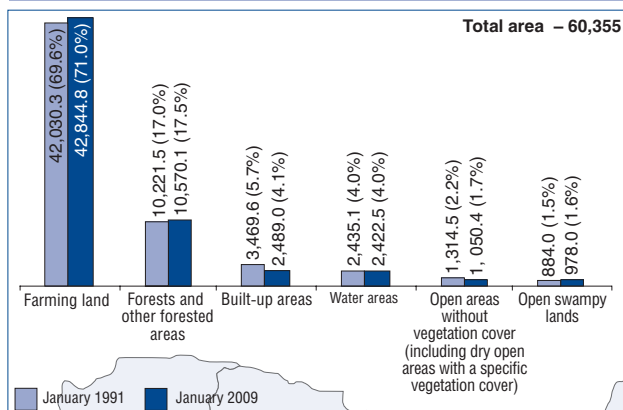
<sup>1</sup> Unless specified otherwise, data of Ukraine's land stock are cited hereinafter as of January 1, 2009, after the State Committee of Ukraine for Land Resources.

<sup>2</sup> See: Horbulin V.P., Hrekov L.D., Yurchenko A.D. Land relations, land resources and food security: Analytical operational materials. – Kyiv, 2005, p.4. Recently, proposals of revaluation of land have been made.

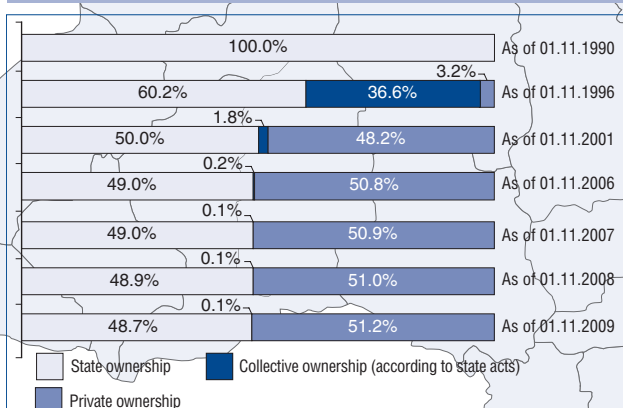
<sup>3</sup> Food and Agriculture Organization of the United Nations, FAO. See: UN Food and Agricultural Organization "Good governance in land tenure and administration". – FAO's Land Tenure Studies, Issue 9, Rome, 2008, pp.9-11, <http://www.fao.org/docrep/010/a1179r/a1179r00.HTM>

## UKRAINE'S LAND RESOURCES, as of January 1, 2009

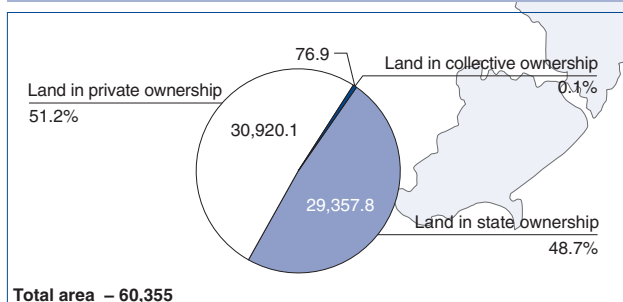
Ukraine's land stock,  
thousand hectares



Ukraine's land stock by form  
of ownership in 1990-2009,  
% total



Ukraine's land stock by form of ownership,  
thousand hectares



Land stock by owner and user,  
thousand hectares

Individuals (24,803 916 persons)	20,192.6 (33.5%)
Agricultural enterprises (19,331 entities)	17,787.2 (29.5%)
Lands of the reserve stock and lands not granted in ownership and permanent use within populated localities	10,567.3 (17.5%)
Forestry enterprises (802 entities)	8,582.5 (14.2%)
Institutions, establishments and organisations (166,604 od.)	722.0 (1.2%)
Transport and communications enterprises and organisations (12,283 entities)	645.6 (1.1%)
Промислові та інші підприємства (51,829 entities)	608.7 (1.0%)
Nature conservation, healthcare, recreational, historic and cultural enterprises, institutions and organisations (9,518 entities)	477.1 (0.8%)
Military units, enterprises, organisations, institutions and educational establishments (5,922 entities)	404.5 (0.7%)
Waterworks (1,036 entities)	265.8 (0.4%)
Joint ventures, international associations and organisations involving Ukrainian and foreign legal entities and individuals (1,224 entities)	96.2 (0.2%)
Enterprises fully owned by foreign investors (244 entities)	5.3 (0.01%)
<b>Total (25,072 709 legal entities and individuals)</b>	<b>60,355.0</b>

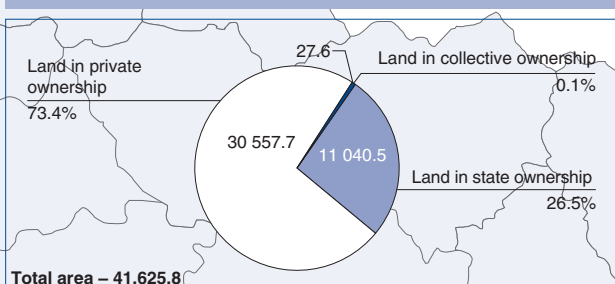
Agricultural land by main kinds of land,  
thousand hectares

	01.01.1991	01.01.2009
<b>Agricultural land, in that:</b>	–	<b>42,844.8</b>
<b>farming land</b>	<b>42,030.3</b>	<b>41,625.8</b>
including: arable land	33,582.2	32,473.4
pastures	1,050.8	5,501.8
haylands	2,185.6	2,416.2
perennial plantations	5,211.7	899.9
fallow	–	334.5
<b>other farming land</b>	–	<b>1,219.0</b>

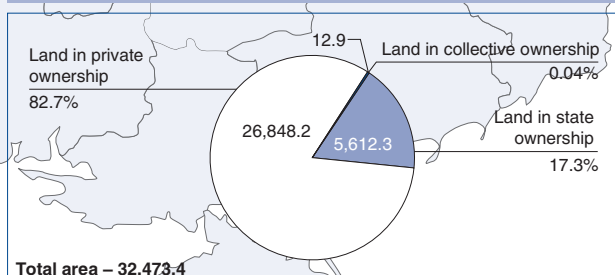
Agricultural land by destination,  
thousand hectares

Farming land	41,625.8
Utility structures and yards	593.9
Utility roads and passes	435.8
Polluted farming land not used in agricultural production	126.0
Lands subject to ameliorative construction, restoration of fertility	55.8
Lands in temporary conservation	3.4
Other (dry ditches, mounds, piles, trenches, cattle mortuaries)	4.1
<b>Total</b>	<b>42,844.8</b>

Farming land by form of ownership,  
thousand hectares



Arable land by form of ownership,  
thousand hectares

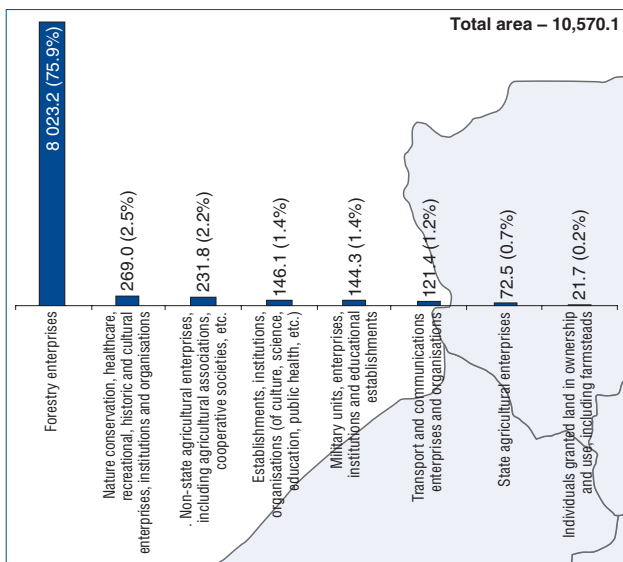


Agricultural land used by manufacturers  
(agricultural enterprises),  
thousand hectares

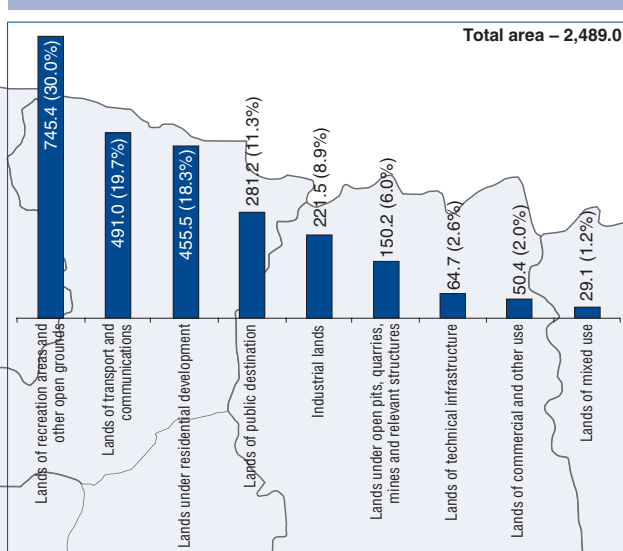
Limited liability companies	8 771.2 (28.1%)
in that, farming land	8 648.4
Lands falling on uncalled certificates, of public use, transferred to other categories of lands	7 908.8 (25.4%)
in that, farming land	5 940.2
Private (individual) enterprises (without establishment of a legal entity)	4 052.7 (13.0%)
in that, farming land	4 036.8
Private (private-leased) enterprises	3 494.8 (11.2%)
in that, farming land	3 424.4
Farmsteads	2 862.0 (9.2%)
in that, farming land	2 810.4
Other agricultural enterprises	1 930.2 (6.2%)
in that, farming land	1 908.5
Agricultural cooperative societies, total	1 204.8 (3.9%)
in that, farming land	1 176.4
Agricultural joint-stock companies,	892.1 (2.9%)
in that, farming land	868.8
Unreformed collective agricultural enterprises and other agricultural enterprises	66.3 (0.2%)
in that, farming land	60.0
<b>Total</b>	<b>31 182.9</b>
<b>in that, farming land</b>	<b>28 873.9</b>



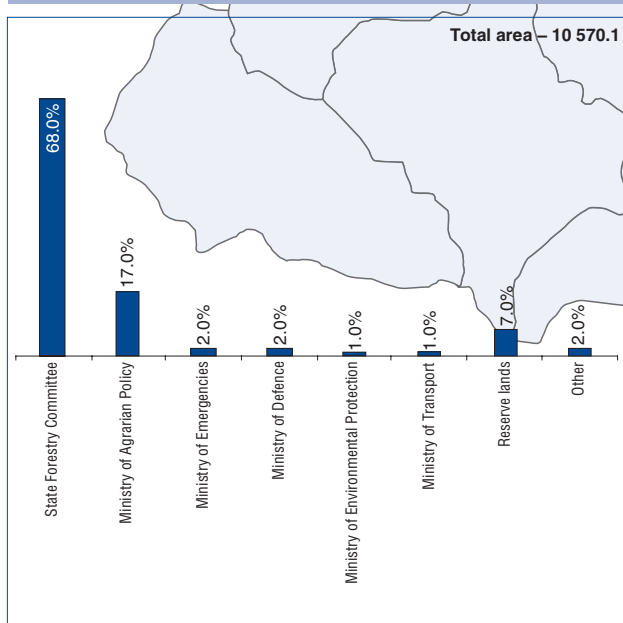
### Forests and other forested areas by main owners and land users, thousand hectares



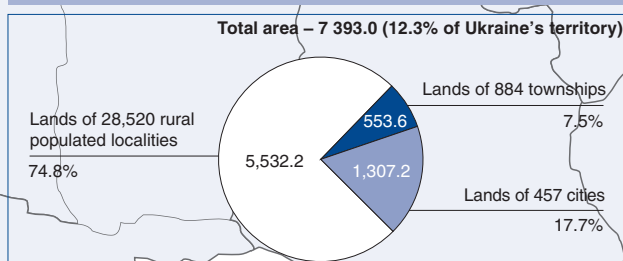
### Built-up areas by main kinds of land and economic activity, thousand hectares



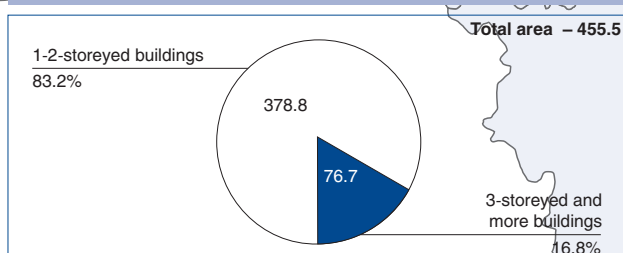
### Lands of Ukraine's forest stock by departmental subordination, %



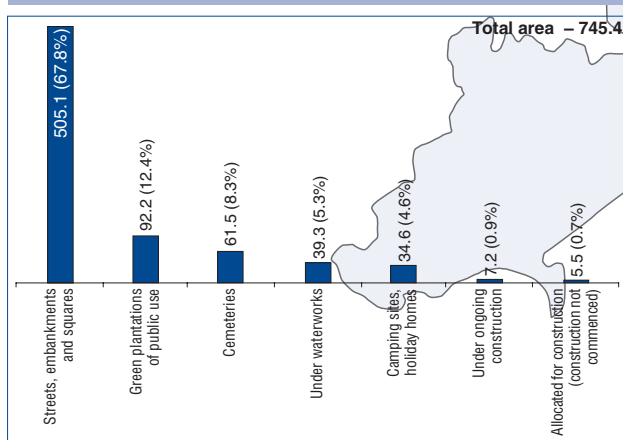
### Lands of populated localities, thousand hectares



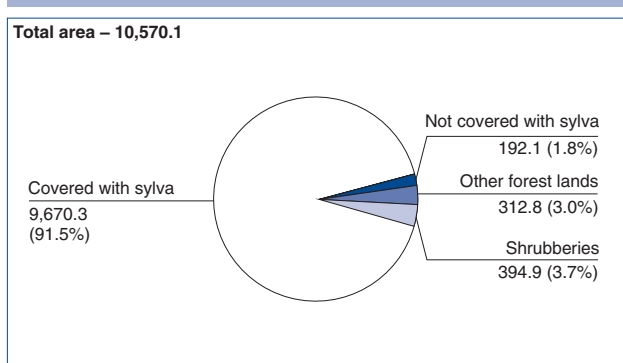
### Lands of residential development, thousand hectares



### Lands of recreation areas and other open grounds, thousand hectares

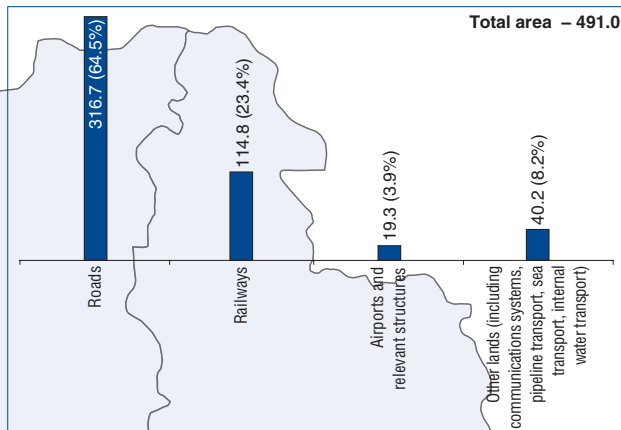


### Forests by main kinds of vegetation, thousand hectares

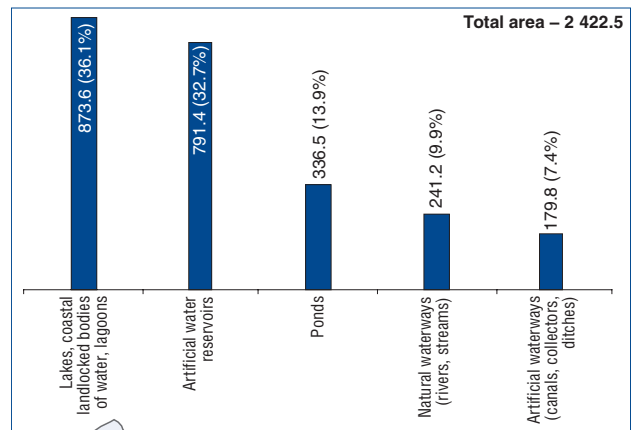




### Lands of transport and communications of Ukraine, thousand hectares



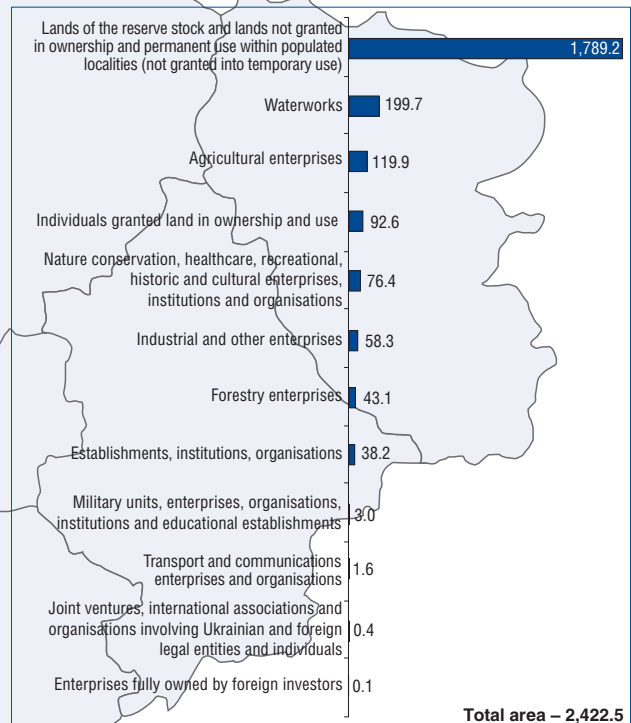
### Internal water areas, thousand hectares



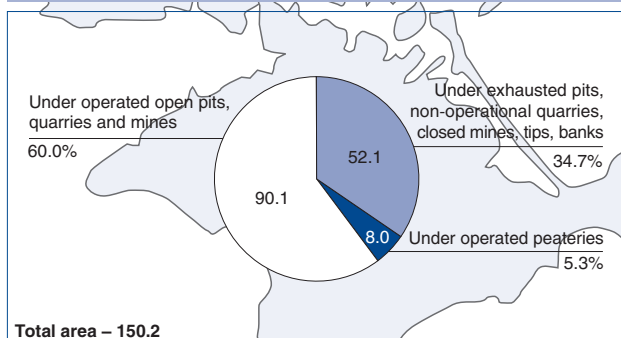
### Industrial lands, thousand hectares

Industrial and other enterprises	187.8
including enterprises of extracting industry	37.5
enterprises of food industry and processing of agricultural produce	34.2
metallurgical and metalworking enterprises	21.7
enterprises producing construction materials	16.8
power generating and distributing enterprises	2.7
enterprises of other branches of industry	74.9
Lands of the reserve stock and lands not granted in ownership and permanent use within populated localities	13.8
Establishments, institutions, organisations	5.9
Military units, enterprises, organisations, institutions and educational establishments	4.2
In individual ownership and use	3.5
Transport and communications enterprises and organisations	1.7
Agricultural enterprises	1.5
Joint ventures, international associations and organisations involving Ukrainian and foreign legal entities and individuals	1.1
Waterworks	0.9
Forestry enterprises	0.8
Enterprises fully owned by foreign investors	0.3
<b>Total</b>	<b>221.5</b>

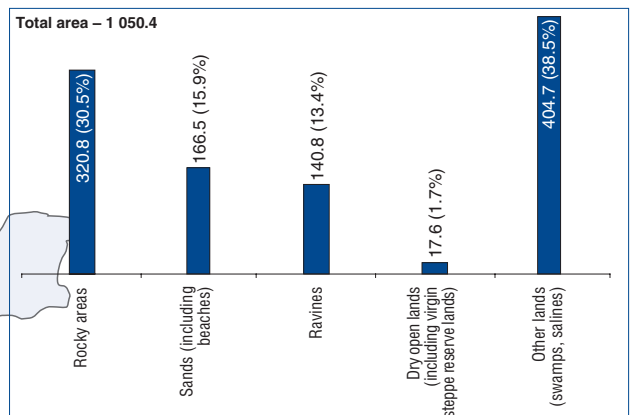
### Areas under internal waters by land user, thousand hectares



### Lands under open pits, quarries, mines and relevant structures, thousand hectares



### Open areas without vegetation cover (including dry open areas with a specific vegetation cover), thousand hectares







implemented in the practice of the Ukrainian state policy, beginning from the development of the land legislation – logical and coordinated with legislative acts regimenting activity and relations in other sectors of public life, and ending with transparency and controllability of land resources management bodies.

It also makes sense to cite recommendations of the UN Economic Commission for Europe on land resources management, requiring provision of the following conditions for proper state management of land resources.

1. The law should define the nature of land, the form and nature of ownership, the legally recognized forms of tenure and the rights, restrictions and obligations that must be registered.

2. The land administration system should be run on business lines with a long-term financial model and an appropriate regulatory framework and management system that focuses on meeting customer demands.

3. The operations of the land administration system must be transparent, with safe and easy access to the land market and low cost for all participants.

4. The efficiency, integrity and transparency of the land administration system must be constantly measured and monitored, through performance indicators relating for example to the time and cost of each transaction, and consumer satisfaction.

Even a brief analysis of the actual situation in Ukraine shows that only the first condition may be considered partly met, the other three are not met even now.

So, the state land policy in Ukraine is in the making, not fully meeting European and world criteria and requirements of proper management of land resources. The improper state of the state land policy is also witnessed by its negative assessment by the country citizens, well aware, in particular, of the progress and results of the ongoing land reform (Insert “*Public opinion*”). Therefore, it makes sense to outline the main problems of formulation and implementation of the state land policy in Ukraine – to work out proposals for its perfection on the basis of such review.

#### Public opinion

A negative assessment of the state land policy was produced by 34.8% of those polled (positive – only 5.5%). The land policy is more criticised by village residents, where a negative assessment was reported by 40.5% (among city residents – 32.3%). Almost half (48.7%) of citizens (including 53.5% of villagers) believe that in the result of the agrarian reform the material standing of villagers deteriorated (improved – 3.3%).

Meanwhile, only 3.2% of those polled reported good knowledge of norms of the effective land legislation, 41.4% has some idea of them, more than half (51.8%) are totally unaware. So, it is no wonder that 27.7% of those polled has no idea of the state land policy<sup>4</sup>.

#### Problems of institutional and resource support for the land policy

Institutional support for the state policy in primarily covers the regulatory-legal framework (programme documents, legislative and other regulatory acts) and organisational structure (state bodies of different level vested with the relevant managerial functions). Financial support for the measures envisaged by the mentioned programme documents is also of priority importance.

Institutional fundamentals for formulation and implementation of the land policy have generally been created in Ukraine. However, there is a number of problems in this field.

**1. Absence of a strategy of land relations development, use and protection of land.** So far, Ukraine has no legislatively approved overall strategy of development of land resources and land relations. Meanwhile, prepared strategic documents remain not passed for years. For instance, in 2005-2006, the State Programme of Use and Protection of Land was drafted and submitted to the Verkhovna Rada. However, its review went no further than the first reading. Only in June, 2009, the Cabinet of Ministers approved the Concept of the State Target Programme of Development of Land Relations in Ukraine through 2020.

The main reason for such situation lies beyond the land policy alone and stems from the absence of a general system of state strategic management in Ukraine. On one hand, this complicates the process of development, coordination and implementation of systemic conceptual, strategic and programme documents. On the other – enables appearance of numerous “strategies” and “programmes”<sup>5</sup> in different sectors and branches that by their quality, mutual coordination and budget support in principle cannot be considered working documents. They only reflect the lobbyist potential and desire of ministries and agencies to have tools in the fight for budget funds. In such conditions, even legislative support for those programmes does not guarantee their proper budget funding, and therefore – attainment of the goals they set.

**2. Problems of the Land Code of Ukraine.** Dispersion of land law norms in different legislative acts is becoming common. Meanwhile, such important for development of the land relations issues as the issue of the state land cadastre, land market, land mortgage bank, etc. remain legislatively unregulated. Regulation of those issues is every time indefinitely delayed – despite their urgency stated by the President, the Government and Parliament itself.

As a result, the land legislation remains incomplete and controversial, and the very process of its development, on one hand, proves the above-mentioned absence of a strategy of land relations development, on the other – witnesses inconsistency of the state land policy. Specific of that process is frequent amendment of the wording of legislative acts, lack of logic in their passage, etc. (see Annex “*Normative-legal base of land relations in Ukraine*”, pp.18-31).

<sup>4</sup> Upon the results of a public opinion poll held by the Razumkov Centre Sociological Service in March 2009. 2,012 respondents above 18 years were polled in all regions of Ukraine. Sampling's theoretical error – 2.3%. For more detail see the material “Land policy as seen by the public”, published in this magazine.

<sup>5</sup> According to some estimates, there were nearly 260 state programmes in Ukraine as of 2009.



COMPARATIVE TABLE OF FAO REQUIREMENTS AND PRACTICE OF FORMULATION AND IMPLEMENTATION OF THE STATE LAND POLICY IN UKRAINE

Requirements of good state governance	Practice of formulation and implementation of the state land policy in Ukraine
The land legislation should be logical, firmly tied to legislative acts in other sectors of public and state life	<p>Today, Ukraine has no concepts, strategies and programmes of reformation and development of land resources and land protection approved by the Verkhovna Rada. Passage of necessary laws is intentionally delayed.</p> <p>Ukraine's legislation in the field of land relations cannot be termed full, integral and uncontroversial. The current Land Code needs to be supplemented with many provisions of valid regulatory-legal acts. Some processes of land ownership and use (mechanisms of management of lands of state and communal ownership, mortgage and investment activity, land protection, land evaluation, etc.) are not sufficiently regulated legislatively.</p> <p>On the other hand, there are attempts to substitute economic market mechanisms with administrative bans, which seriously undermines the effectiveness of regulation of land relations.</p>
Elected bodies of all levels should be an effective element of the system of the state policy, providing its publicity through mechanisms of consultations with all concerned parties	<p>Interaction between branches of power remains one of the key problems in Ukraine. Elected bodies of all levels have not become an effective element of the system of the state policy.</p> <p>Personal and corporate interests of a large part of the Ukrainian political elite, including MPs, prevail over national<sup>6</sup>.</p> <p>The effectiveness of local self-government bodies is low due to irrational division of functions and powers between them and state administrations, as well as the lack of resources.</p> <p>Public consultations and involvement of the public sector in decision-making and expert examination take place, but their influence on final decisions is low.</p>
The system of formulation and implementation of the land state policy should be effectively integrated into the national system of state governance, ensuring its integrity and balance along all lines	<p>State and regional programmes and plans of activity in the sectors of industry, power engineering, city planning, etc. are not always coordinated with plans of the land reform, norms of land use and environmental norms.</p> <p>Disparities in the land stock are aggravated by the absence of a comprehensive programme of action and lack of budget support, in their turn, stemming from the absence of state strategic management, including in the field of land resources and relations.</p> <p>One of the reasons for the low effectiveness of state governance lies in drawbacks of staffing the authorities on all levels. This process suffers from extreme political influences. Assumption of power by another political force results in change of not only the political leadership on the level of ministries and agencies, but also of managers and experts down the whole hierarchy of power (such changes often undermine the professionalism of managerial bodies<sup>7</sup>).</p> <p>Because of the practice of political quotas of ministerial portfolios, political forces seize separate branches of the economy, including land resources management.</p>
The system of state management and use of land resources should be technological, closed on the level of procedures of decision-making and horizontal interaction of bodies of power	<p>Gaps in the process of decision-making and implementation, aggravated by the lack of budget support, lead to irregularity and fragmentariness of the state land policy, nullify effects of many plans and initiatives of the land reform. There is no closed, regular sequence of processes: identification of needs → substantiation of goals and required results → identification and algorithm of the ways of goal attainment → identification and provision of resource support → management of achievement of required results → achievement of end results, control of implementation → new needs.</p> <p>There is no single body for management of state-owned land. Responsibility for effective use of state-owned land is divided among different executive authorities and local self-government bodies. Coordination of activity and interaction of those bodies are ineffective or entirely absent.</p> <p>Meanwhile, the State Committee for Land Resources concentrated functions of management, implementation and control, contrary to principles of democratic governance, causing monopoly of power in the given domain and growth of corruption.</p>
The system of information support should be complete, integral, sufficiently detailed, regular, accessible and convenient for both management bodies and other actors of the land law	<p>Elements of the cadastre and registration systems have been developed, meeting international norms and practical needs, but remain not fully introduced due to the lack of funding and promotion of personal, corporate and departmental interests.</p> <p>Automation of information support for management bodies of all levels takes place dependent on the availability of funds, irregularly, mainly covering purely informational rather than functional aspects of administration.</p> <p>All-round automation (regimenting administrative activity and making it transparent) is intentionally hindered by representatives of the state authorities due to fear of structural and functional changes, introduction of control and raising responsibility.</p> <p>Cadastre and registration databases are closed and inaccessible for individuals and legal entities.</p>
Bodies of land resources management should be subject to effective and transparent control and audit systems	<p>Audit of bodies of land resources management is conducted by the Accounting Chamber under a general plan, mainly at inspection of the state budget implementation. Special inspections are rarely conducted.</p> <p>Control of land resources and land use is concentrated in management bodies themselves (state committees for land resources, institutions of water and forest management).</p> <p>State control mainly concentrates on reaction to abuses in the field of land use, but not their prevention and, moreover, correction of the state land policy.</p> <p>Reports of inspections of land resources management bodies are published in a summarised form, irregularly. Results of reaction to concrete violations are not always published, mainly without analysis of the reasons and identification of those guilty.</p> <p>Control of activity in the field of land use did not turn into an effective mechanism of fighting corruption.</p>
Services of management bodies should be drawn closer to concrete users and provided on the conditions of non-discrimination	<p>Given the incompleteness of implementation of the cadastre and registration systems, all the burden of documentation of ownership rights to land and immovable property is shifted to individuals and legal entities.</p>

<sup>6</sup> For more detail see answers to questions of the Round-table by correspondence by the President of the National Agricultural Chamber of Ukraine M.Hladiy published in this magazine.

<sup>7</sup> For more detail see answers to questions of the Round-table by correspondence by Chairman of the Board of the "Land Union of Ukraine" M.Kalyuzhnyi published in this magazine.



### 3. Drawbacks in organisational support for formulation and implementation of the land policy.

As we noted above, Ukraine has a system of bodies of state power vested with functions of land resources management, land use and land relations (Chart “*System of state management of land resources and land use*”).

Meanwhile, that system has drawbacks barring implementation of good governance in the field of land relations. The main of them include:

- concentration of executive and controlling functions in one executive body – the State Committee for Land Resources – and its structural divisions, which limits independence of regions in solution of local land issues and naturally creates preconditions for abuses and corruption;
- extreme politicisation of appointments of executives, resulting in their drain, lack of professionalism of the management bodies, ruination of their institutional memory and continuity in implementation of the land policy<sup>8</sup>.

Due to those and other drawbacks, despite the branched structures of the State Committee for Land Resources, the state cadastre and registration system are still absent, as is a scientifically based strategy of the land policy.

**4. Absence of an adequate system of registration of land and immovable property.** The above-mentioned recommendations of the UN Economic Commission for Europe read that establishment of a system of land resources management is an internal affair for every country, but “**every country should have a formal system of registration for land and property rights in order to facilitate good governance and to provide secure ownership of land, investments and other private and public interests in real estate** (bold type - *Ed.*)”<sup>9</sup>. Availability of an official system of registration of land and immovable property is also seen as a precondition necessary to minimise abuses and corrupt acts in land relations and introduce proper taxation.

Therefore, not having created such system, the state not only deprives itself of reliable information, but compromises guarantees of ownership rights and in that way reduces the attractiveness of the investment climate, at the same time enabling the above abuses, corrupt acts and practice of mass violation of the effective land legislation. The sector of land relations is now seen as the most corrupt, with the land market circulation of over UAH 800 billion, or \$90 billion – more than 60 times exceeding budget revenues from sale of land plots and lease rights<sup>10</sup> (Insert “*Observance of effective land legislation in Ukraine*”).

### OBSERVANCE OF EFFECTIVE LAND LEGISLATION IN UKRAINE

In May 2008, Ukraine's Prime Minister Yu.Tymoshenko, reporting on “another stage of monitoring of legality of land and forest management by the previous Government” that involved 25 thousand inspections of allotment of land and forest in private ownership or lease, said that “Ukraine is a unique country by the scale of theft of land and forest”<sup>11</sup>. Those inspections revealed 17 thousand serious violations of laws employing corrupt schemes. Materials of 1,602 cases bearing signs of crimes were passed to the General Prosecutor's Office.

Loyalty of corrupt judges to bribers also poses a problem. The law envisaged penalisation of bribes with 3-7 years of imprisonment, but such penalty is adjudged to only 30-40 out of 1,500 accused.

#### Results of inspections in 2008

**State Land Inspection**<sup>12</sup>. Discovered more than 69.3 thousand violations of the effective land legislation. 41.7 thousand reports of administrative infringements were drawn up, 61.1 thousand writs issued, requiring termination of violations and removal of their effects. 386 thousand individuals and officials were brought to administrative responsibility, fines imposed on them exceeded UAH 6.5 million (some 53% collected). The rest of executive documents were transferred to the State Executive Service for exaction of fines.

11,235 applications were filed to state executive authorities and local self-government bodies demanding compliance of their decisions on regulation of land relations, use and protection of land with the law.

Passed to public prosecutor's offices:

- 4,600 materials of violation of requirements of the land legislation and forced collection of inflicted losses, in that: 469 materials of violations of the land legislation bearing signs of crimes (200 criminal cases initiated);

- 205 applications for submission of claims to court for reimbursement of damages to the agricultural and forestry sectors;
- 712 applications for forced reimbursement of damages caused by non-target use of land plots and removal of the fertile layer of soil without a special permit (damages exceeded UAH 155.9 million, voluntarily reimbursed – 2.4 million, UAH 123.5 million are to be forcibly exacted);
- 3,222 applications for surrender of squatted or temporarily seized plots.

**Ministry of Internal Affairs**<sup>13</sup>. Detected more than 3,000 cases of bribery. Over 1,600 persons were charged with bribery, 367 of them – officials of executive bodies, 374 – of controlling bodies, 19 – judges. Bribes totalled UAH 245 million (in 2007 – UAH 34 million). In particular, officials demand bribes from \$20 thousand to \$42 million for allotment of land plots.

Upon the results of inspections of the State Committee for Land Resources, 35 thousand hectares of illegally circulated land were discovered, 1,333 officials suspected of embezzlement of UAH 2.3 billion revealed, including over 150 officers of state administrations, 230 – local self-government bodies, 89 – the State Committee for Land Resources.

**Main Control and Audit Department.** In 2007-2008, 4,000 hectares of land of the forest stock were alienated by decisions of local authorities (schemes of alienation of lands of the forest stock and their subsequent privatisations are illegal), 700 hectares arbitrarily seized. Alienation of land is facilitated by the absence of state acts of the right to permanent use of land plots. As of January 1, 2009, such acts were issued only for 2,026 thousand hectares (27% of areas, for which acts were to be executed). Inspections also revealed substantial differences in registration of lands of the forest stock by the State Committee for Land Resources and the State Forestry Committee of Ukraine. For instance, in Kharkiv region alone, the latter recorded 943 hectares of forest lands more than the State Committee for Land Resources<sup>14</sup>.

<sup>8</sup> E.g., after the establishment of the State Committee for Land Resources (1992), nine of its heads were changed, only three of whom had land management education; on the average, each of them worked in that position for two years; over the three recent years, heads of the State Committee for Land Resources have been changed annually. Furthermore, the change of the leader usually involves change of up to a third of heads of the regional bodies and central staff of the land service. See also the interviews by M.Hladiy, M.Kalyuzhnyi, P.Kulynych in the materials of the Round-table by correspondence` published in this magazine.

<sup>9</sup> Land Administration in the ECE-region - Development. Trends and Main Principles (ECE/HBP/140). – UN Economic Commission for Europe, Geneva, 2005, p.8, [www.uncece.org/env/documents/2005/wpla/ECE-HBP-140-r.pdf](http://www.uncece.org/env/documents/2005/wpla/ECE-HBP-140-r.pdf)

<sup>10</sup> See: Tretyak A. Some aspects of management of state-owned lands. – “Zemlevporyadnyi Visnyk”, 2009, No.1, p.20.

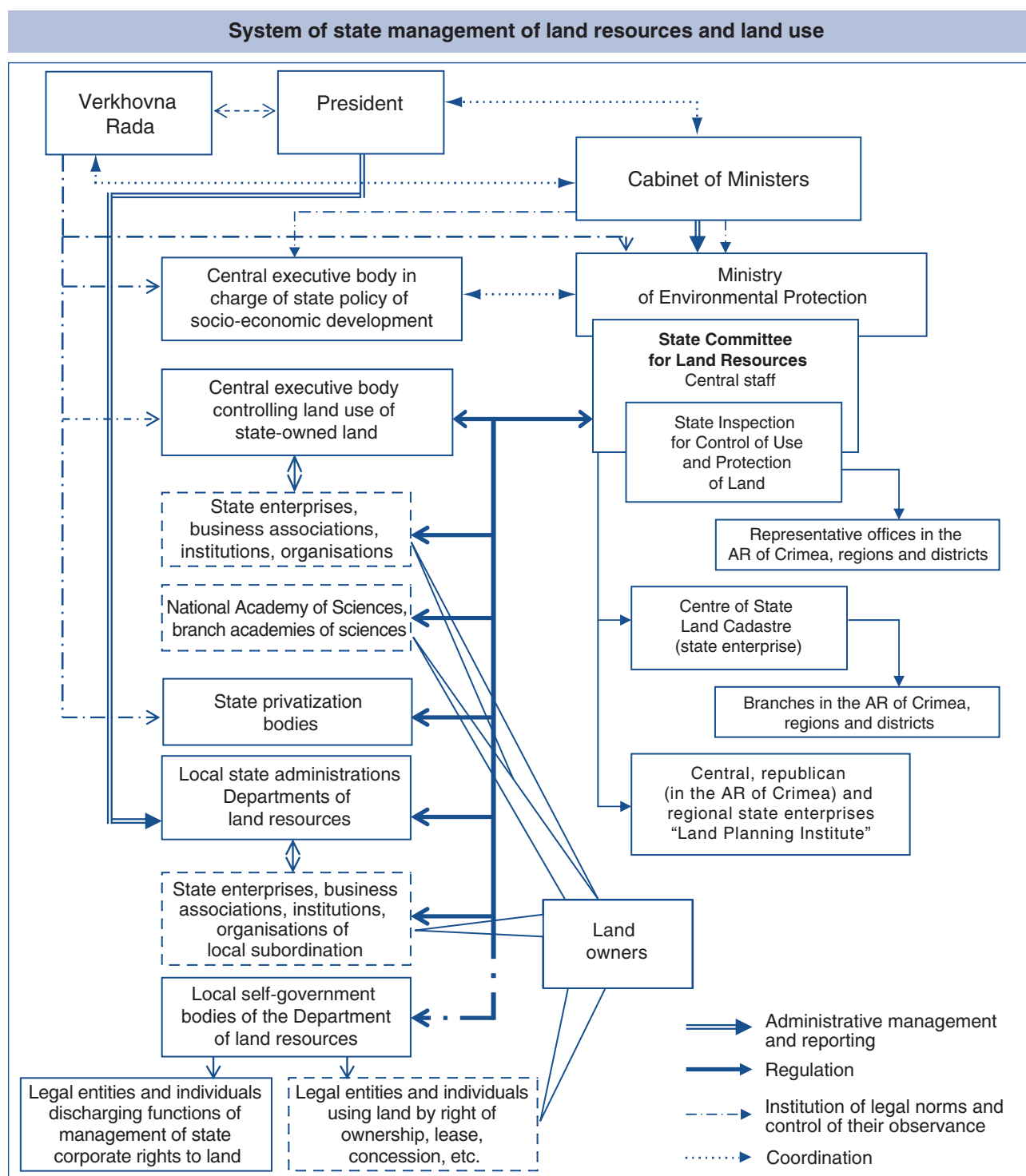
<sup>11</sup> See: Tymoshenko wants to take from Pinchuk 100 hectares of land? – “Ukrayinska Pravda” Internet publication, May 7, 2008, <http://pravda.com.ua>

<sup>12</sup> Source: Memorandum of progress of inspection activity of the State Land Inspection and its territorial bodies in 2003-2008. – Official web site of the State Land Inspection, [www.dzi.com.ua/inf-4.rtf](http://www.dzi.com.ua/inf-4.rtf)

<sup>13</sup> Source: Public report of Minister of Internal Affairs Yu.Lutsenko. – Official web site of Administration of Ministry of Internal Affairs of Ukraine in Mykolayiv region, March 17, 2009, <http://www.umvs.mk.ua>

<sup>14</sup> See: Sereda E. You cannot chop woods without banknotes flying. – “Biznes”, July 20, 2009, p.72.





It should be added that along with the absence of a registration system, the situation stems from the incompleteness of inventory of land, delimitation of lands of the state and communal ownership, establishment of boundaries of populated localities, delay of renovation of standard evaluation of land and cartographic materials.

**5. Shortage of budget funding for implementation of the land reform measures.** For instance, the total value of the set of land use and protection activities in 2009-2013 amounts to UAH 55.8 billion, in that, funds of

the state budget – UAH 4.1 billion, or UAH 400 million a year, on the average<sup>15</sup>. However, the 2009 budget allocated to the land reform only UAH 7,288.5 thousand – almost 10 times less than in 2008 (UAH 69,634.6 thousand), including for conservation, reproduction and rational use of land resources – UAH 470 thousand (more than 20 times less), or only 0.1% of the need. Meanwhile, expenses on salaries of employees of the State Committee for Land Resources were reduced by only 10% (in 2008 – UAH 244,111.1 thousand, in 2009 – UAH 225 251.2 thousand)<sup>16</sup>.

<sup>15</sup> Bill "On State Programme of Use and Protection of Land", <http://gska2.rada.gov.ua>

<sup>16</sup> See: laws on State Budget of Ukraine for 2008 and 2009.



**6. Ineffective use of budget funds.** The Accounting Chamber's inspection of the use of budget funds intended for measures at the land reform and protection of land resources by the State Committee for Land Resources in 2004-2005 revealed facts of use of funds:

- for non-target purposes – UAH 624.3 thousand;
- ineffectively – UAH 934 thousand;
- in violation of requirements of the Law "On Procurement of Goods, Works and Services for State Funds" – UAH 9,221 thousand (including by the central staff – UAH 5,701.6 thousand, local bodies – UAH 3,519.4 thousand)<sup>17</sup>.

Audit of the use of funds allocated to implementation of the project "Issue of state acts of right to ownership of land in rural areas and development of cadastre system" in 2003-2006 revealed that

- budget funds in the amount of 15.1 million were used in violation of the legislation (in August, 2008, returned by the Centre of State Land Cadastre to the State Treasury of Ukraine account);
- the amount equivalent to \$9.4 million was used ineffectively (project goal not achieved).

The project was implemented under an agreement of a \$195 million loan with the International Bank for Reconstruction and Development (IBRD). Due to poor organisation, in 2004-2008, only \$13 million used were for its implementation, or less than 7% of the earmarked funds. As a result, in 2006, IBRD suspended funding of development of the cadastre system in Ukraine<sup>18</sup>. Funding was resumed only after removal of organisational drawbacks.

## II. MAIN PROBLEMS IN THE SPHERE OF LAND RESOURCES AND LAND USE

Now, Ukraine faces rather acute problems of conservation, rational use and expanded reproduction of land resources as the basis for sustainable development. The above-mentioned disparity among areas of specific categories of land resources (excessive area of farming land, insufficient area of forests, reduction of the area of water resources) and many entities granted large land areas in management lead to irrational, often excessive anthropogenic and technogenic load on land, deterioration of the environment.

### Ineffective use of land resources

#### *Farming land*

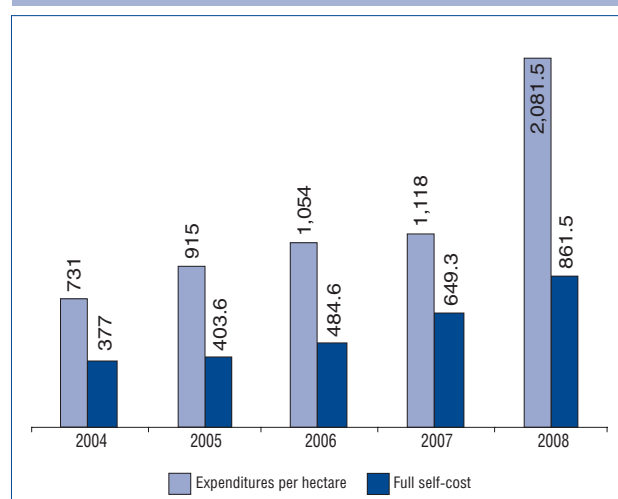
**1. High rate of agricultural development and tillage of the territory.** The average rate of agricultural development of the country's territory is 71.9% – while in the European countries, that index does not exceed 60%, in the USA – 36%. Agricultural development of land is the highest in Zaporizhya region – 88.3% of its territory, Mykolayiv – 86.3%, Kirovohrad – 85.6%, Odesa – 83.2% and Dnipropetrovsk regions – 82.8%.

### **2. Deterioration of structure of farming land.**

As of January 1, 2009, compared to 1991, the area of arable land decreased by 1,108.8 thousand hectares (3.3%), the area under perennial plantations – by 4,321.3 thousand hectares (5.8 times). 334.5 thousand hectares of land (0.8% of farming land) are officially not ploughed and moved from the category of arable land to fallows.

**3. Extensive model of agricultural production.** As we noted above, the area of arable land in Ukraine makes 26.9% of the European total, and the index of per capita area of arable land exceeds the European average three-fold (0.7 against 0.25 hectares)<sup>19</sup>. But while in the EU-25 the average yield of cereals is 54.8 quintal/hectare<sup>20</sup>, in Ukraine – 34.3 quintal/hectare. Nearly a third of arable land in Ukraine lies on steep slopes with low-productive and degraded soil. Profitability of agricultural production shows a negative trend (Diagram "Cost of cultivation of 1 hectare of arable land and self-cost of 1 ton of cereals and leguminous plants").

**Cost of cultivation of 1 hectare of arable land and self-cost of 1 ton of cereals and leguminous plants\*, UAH**



\* Data of the State Statistic Committee the National Scientific Centre "Institute of Agrarian Economy" [http://www.minagro.gov.ua/files/00007163/Pidsumki\\_roboti\\_z\\_2008\\_rik.ppt](http://www.minagro.gov.ua/files/00007163/Pidsumki_roboti_z_2008_rik.ppt)

Those problems cause excessive resource-intensity of agricultural production<sup>21</sup>, high rate of soil erosion (nearly 36% of the total area of farming land), degradation of black soil (up to 60% of its area). Up to 100 thousand hectares of fertile land are lost annually<sup>22</sup>.

#### *Forests and other forested areas*<sup>23</sup>

**1. Relatively low forest rate of the territory.** Forests and other forested areas occupy 10,570.1 thousand hectares. Despite a positive trend – compared to 1991 (10,221.5 thousand hectares, or 17%), the territory of forests and other forested areas increased by almost

<sup>17</sup> Accounting Chamber Board Resolution of June 6, 2006 – Official web site of the Accounting Chamber, <http://www.ac-rada.gov.ua>

<sup>18</sup> See: Report of Accounting Chamber of Ukraine for 2007, press release of the Accounting Chamber Press Service – Official web site of the Accounting Chamber.

<sup>19</sup> Semchyk V.I., Andreitsev V.I., Kulynych P.F., Shemshuchenko Yu.S. *et al.* Land law. – Kyiv, 2001.

<sup>20</sup> Data of AGRICULTURE analytical agency; [www.agriagency.com.ua](http://www.agriagency.com.ua)

<sup>21</sup> Scientific substantiation of full value of energy intensity of work at crop growing. – Kyiv, "Ukragropromproductyvni" Scientific Research Institute, 2006.

<sup>22</sup> Yurchenko A.D. Problems of perfection of land relations in agro-industrial sector. – Kyiv, 2008.

<sup>23</sup> Data of the State Forestry Committee of Ukraine; <http://dklg.kmu.gov.ua/forest/control/uk/index>



348.6 thousand hectares (making 17.5% of the national land stock) – the area of forests proper, i.e., territory covered with forest vegetation, is much smaller and makes only 9,670.3 thousand hectares, or 16% of the country's territory.

**2. Regional disparity of forests.** Forests are spread across the country's territory very unevenly. The share of forests and forested areas is the highest in Transcarpathian (57.6%), Ivano-Frankivsk (46.5%), Rivne (40.8%) regions, the lowest – in Zaporizhzhya (4.6%), Mykolayiv (5.2%), Dnipropetrovsk and Kherson (6.3% each) regions. Such unevenness, in the conditions of intense use of the rest of land resources, reduces environmental stability of separate territories. The situation is aggravated by the lack of funds on the central and regional levels for implementation of measures at increase of the forest rate and better protection of forests.

**3. Specific features of forests demanding large maintenance costs.** Such specific features include: man-made nature of many (nearly 50%) forests, requiring intense care; mainly environmental significance of forests, limiting (normatively, not actually) the scale of their economic use and reducing the investment attractiveness of forestry; situation of vast forest areas in the zone of radioactive pollution from the Chornobyl NPP catastrophe.

**4. Ill practice of allocation of forests to numerous permanent users** – forests are granted for forestry business into permanent use to enterprises, institutions and organisations of over 50 ministries and agencies.

In the conditions of heavy budget limitations, those specificities slow down growth of forest areas and limit the scale and effectiveness of forest protection measures.

#### *Developed lands*

**1. Irrational use of land in populated localities.** Specific of Ukraine is the mainly low density of residential development, low rise of residential buildings and infrastructure facilities in populated localities (1-2-storeyed building occupy 378.8 thousand hectares, or 83.2% of the territory of populated localities). Combined with ineffective use of adjacent territories and slow pace of removal of industrial facilities from populated localities, this leads to social and environmental problems, complicates release of territories for nature conservation, recreational zones, cultural and sports facilities.

**2. Ineffective use of land in industrial regions.** In the structure of built-up land, lands of transport and communications occupy 491 thousand hectares (19.7%), industry – 221.5 thousand hectares (8.9%), lands under open pits, quarries, mines and relevant structures – 150.2 thousand hectares (6%). Allotment of land plots for those branches (plus power engineering) 2.5-2.7 times exceed the norms adopted in Western European countries<sup>24</sup>. At that, over 35% of land under quarries, mines and other extracting enterprises is withdrawn from operation and

used to stockpile their waste (tips, banks, dumps, etc.), witnessing mismanagement and ineffective use of land.

**3. Environmental pollution.** Due to soil pollution with industrial waste (heavy metals, hazardous chemical substances, their compounds), developed and adjacent lands suffer significant environmental damage. Much damage is caused by irrational use of chemicals and some kinds of agricultural activity. Over 40% of organic substances generated in the result of activity of big livestock farms and poultry factories turn into sources of environmental pollution, instead of potential organic fertilisers.

According to Ukraine's Ministry of Emergencies, a strong risk for the territory and population is posed by possible accidents at industrial facilities situated in or near populated localities (in many cases, town-forming enterprises). For instance, ruination of all Ukrainian dams can result in flooding of the territory of 10 regions with the total area over 8,000 square kilometres and population of almost 1.8 million people. The total area of pollution in the result of accidents at large chemically hazardous facilities can reach 54.7 thousand square kilometres with the population of nearly 7 million people<sup>25</sup>.

Pollution of territories aggravated after the Chornobyl NPP catastrophe. An accident at each of the five Ukrainian NPPs (with 50% discharge of radioactive substances) is fraught with creation of a zone of radiation pollution with an area of 38.4 thousand square kilometres and population of nearly 5 million people.

#### *Waters (land under internal waters)<sup>26</sup>*

**1. Reduction of the area of surface waters, shoaling of medium and disappearance of small rivers of Ukraine's steppe and forest-steppe zones.** Compared to 1991, area under internal waters decreased by 12.6 thousand hectares, to 2,422.5 thousand hectares (4% of the territory). Such reduction stems from: limited scale of forest plantation on banks of small and medium rivers; large scale of industrial water intake; low pace of introduction of resource-saving technologies; poor technical state of waterworks and canals, etc. As a result, Ukraine ranks among the poorest for water in Europe: its per capita reserves are close to 1,000 m<sup>3</sup>, while in Great Britain – 5,000, France – 3,500, Germany and Sweden – 2,500 m<sup>3</sup> of water.

**2. Unsatisfactory environmental state of water bodies in Ukraine.** The problem of the environmental state of water bodies is pressing for all water bodies in Ukraine. Provision of Ukraine's population with water is complicated by its low quality in water bodies and imperfection of purification technologies. The quality of waters in most water bodies by the level of chemical and bacterial pollution is classified on the international scale as "polluted" and "dirty". The environmental situation is the worst in the basins of the rivers Dnieper, Siverskyi Donets, rivers of the Sea of Azov, some tributaries of the

<sup>24</sup> Tretyak A.M. Land management planning: theoretical fundamentals and territorial land planning. – Kyiv, 2008, p.16.

<sup>25</sup> Official web site of the Ministry of Ukraine of Emergencies and Affairs of Population Protection from the Consequences of Chornobyl Catastrophe, <http://www.mns.gov.ua/index.ua.php?m=0>. See also: State of technogenous and natural safety in Ukraine y 2001 – Kyiv, Ukraine's Ministry of Emergencies, National Academy of Sciences of Ukraine, 2002.

<sup>26</sup> Data of the State Committee of Ukraine for Water Management (<http://www.scwm.gov.ua>) and State Committee of Ukraine for Land Resources (<http://dkzr.gov.ua>).



Dniester, Zakhidnyy Buh, where the quality of water is classified as “very dirty”. Environmental systems of most water bodies in Ukraine show signs of environmental and metabolic regress.

#### *Open marshy lands*

**Growth of area of marshy lands.** Since 1991, the area of swamps increased by 94 thousand hectares, or 0.15%, to 978 thousand hectares (1.6% of the country’s territory). Swamps occupy an important niche in Ukraine’s environmental system. So, from the environmental viewpoint, this trend may be termed positive.

On the other hand, especially with account of regional specificities of agricultural land, this results in the loss of farming land. Lands fit for agricultural use are swamped, including (let alone the natural factors of cyclic rise of underground waters) in the result of ruination of the ameliorative system, breakage of irrigation systems after thoughtless sharing of irrigated land.

So, the benefits of increase of the area of marshy lands are disputable.

#### *Open lands without vegetation cover*

**Reduction of the area of land without vegetation cover as the basis for development of nature conservation and recreational zones.** Compared to 1991, the area of stony territories (rocks), sands (including beaches), ravines decreased by 264.1 thousand hectares (0.4% of the territory) and now equals 1,050.4 thousand hectares (1.7%). The overwhelming majority of open lands belongs to the reserve and other land not granted in use (679.3 thousand hectares), and land transferred in use to forestry enterprises (177.5 thousand hectares). Those territories can be used for development of zones of nature conservation (preserves, national parks, etc.) and recreational destination (mountaineering and tourist camps and routes, sports facilities, etc.). From this viewpoint, the trend towards their reduction is negative.

### III. PROBLEMS OF ESTABLISHMENT OF LAND MARKET RELATIONS

Market principles were to be practically introduced in land relations in Ukraine by the land reform initiated, as noted above, in 1991. Its main goal was to introduce private land ownership, and to document and guarantee ownership rights. Some steps in this direction have been made at implementation of the land reform measures (Insert “*Current results of the land reform...*”). However, the reform is not completed and has not reached its main goals.

In fact, incompleteness of the land reform may be seen as the main problem of establishment of land market relations in Ukraine. However, it is hindered by a number of factors, the main of which are discussed below.

#### CURRENT RESULTS OF THE LAND REFORM as of January 1, 2009

**Delimitation of land of state and communal ownership.** 30,143.89 thousand hectares of land are subject to delimitation. 1,349 decisions were passed on delimitation of land of state and communal ownership with the area of 2,988.20 thousand hectares (less than 10% of the target).

**Inventory of land in populated localities.** In Ukraine, inventory is to cover 7,393.0 thousand hectares of land in populated localities and 10,907.0 thousand hectares of non-farming land beyond their borders. Inventory was, respectively, conducted on 4,513.6 and 7,652.4 thousand hectares. Therefore, areas must be verified and land plot limits set on some 18,300.0 thousand hectares (30.3% of Ukraine’s territory).

**Privatisation.** 12.2 million persons, or 26.5% of Ukraine’s population, exercised their right to free privatisation of land plots. They got 16.9 million land plots with the total area of 3,979.2 thousand hectares. 6.917 million persons obtained the right to a land share (lot) of farming land, which makes 46.4% of the rural population and only 15% of the total population of Ukraine. In that, 6.822 million people (98.6%) got certificates of the right to ownership of a land share (lot). 94 thousand villagers did not exercise their right to get a certificate of a land share (lot) for different reasons (left the country, died, did not enter upon their fortune, and so on). Given the average size of a land lot – 4.0 hectares – 376 thousand hectares of farming land remained unclaimed. Nearly 1 thousand persons refused from their shares (4,000 hectares).

**Documentation of ownership rights.** 6.474 million state acts of land plot ownership were executed for Ukraine’s citizens; 5.072 million state acts have been issued. 3,140 persons unlawfully got state acts.

**Introduction of the system of registration of ownership rights to land plots and immovable property.** Land books were executed for 4,040,050 land plots. 10,179,211 land plots and 94,347 items of immovable property located on land plots got cadastre numbers.

**Sale of non-farming land on the primary market.** Sold on the primary market were 43,850 non-farming land plots and rights of their lease, total area – 25.6 thousand hectares, value – UAH 8,873.0 million. Furthermore, 1,578 land plots for construction of immovable property with the total area of 1,321.8 hectares and value of UAH 2,017.3 million were sold by land auction.

#### *Establishment of private land ownership*

**1. Sharing of farming land without proper support (financial, scientific, etc.).** Mistakes at the beginning of the land reform with transfer of farming land into private ownership caused adverse effects that, in turn, gave rise to the current problems.

##### Effects:

- **division of farming land tenures.** 6.917 million citizens (46.4% of the rural population and 14.8% of the total population of Ukraine) obtained rights to shares (lots) of farming land. 6,822 million of them (98.6%) got relevant certificates. Today, 30,557.7 thousand hectares, or 73.4% of all farming land, are in private ownership. The average size of a land lot is 4 hectares<sup>27</sup>;
- **reduction and decrease of the effectiveness of large-scale market-oriented agricultural production.** The area of agricultural enterprises

<sup>27</sup> At that, some 1,000 persons refused from land plots (4,000 hectares). Nearly 376 thousand hectares of farming land remained unclaimed. Owners of 98,695 plots died, leaving no heirs.





decreased from 40.8 million hectares in 1994 to 17.8 million hectares in 2009 (from 67.6% to 29.7%). After sharing of lands of 11,942 collective agricultural enterprises, 32,545 new market-type agricultural entities were established on the principles of private land ownership<sup>28</sup>.

Enterprises (below 400 hectares of arable land) turn out 2-3.5 times more produce than big ones (3,000-5,000 hectares of arable land) but sustain 20 times greater losses per hectare of arable land in crop growing and up to 3 times – in cattle growing. Ukrainian enterprises yield to foreign 10-40 times by the index of “area of arable land per worker” (3-15 hectares). To be competitive on the domestic and foreign markets, those enterprises (with the present technologies and low productiveness) should offer wages 30-50 times lower than in the developed countries<sup>29</sup>;

- **ineffective use of many shared land plots.** Almost 1.4 million shared land plots are not used. Over 1 million people neither cultivate their plots nor lease them out. As a result, land shares (lots) with the total area of 4.8 million hectares are not used (nearly 12% of the total area of farming land).

**2. Ineffectiveness of lease relations.** Given the scanty material resources of lot owners and impossibility of their sale, lease of land plots actually remains the only way of survival of small owners in the countryside. Tenants make use of the situation, setting the terms and value of lease (the average annual rental rate is UAH 219.3 per hectare).

As of January 1, 2009, owners of the right to a land share (lot) certified with a certificate or state act made 4,559.3 thousand **agreements of lease of land shares (lots), which accounts for 65% of obtained certificates and state acts.** The area of land leased out by owners of lots is 17.4 million hectares (**nearly 42% of all farming land**). 2,414.8 thousand agreements (53%) were made by villagers in the pension age, many of whom have no heirs.

By the validity term, the agreements distributed as follows:

- for 1-3 years – 480.4 thousand (10.5%);
- 4-5 years – 2,294.8 thousand (50.3%);
- 6-10 years – 1,321.4 thousand (29%);
- more than 10 years – 462.7 thousand (10.2%).

#### Effects:

- concentration of farming land in the hands of tenants at the expense of impoverishment of a large part of the rural population;
- the risk of rapid exhaustion of a large part of the most fertile lands leased for short and medium term (over 60% of all lease agreements);
- the risk of loss of their ownership by villagers in the pension age (leasing out land plots for 10 years and more).

### *Hindrance of delimitation of lands of state and communal ownership*

Legal principles of delimitation of lands of state and communal ownership and powers of the state authorities and local self-government bodies were set by the Law “On Delimitation of Land of State and Communal Ownership” (2004). However, that Law is actually not implemented.

As of January 1, 2009, 30,143.89 thousand hectares of land were to be delimited – nearly 50% of the country’s territory. 1,349 decision of delimitation of lands of state and communal ownership with the area of 2,988.2 thousand hectares were passed (less than 10% of the area subject to delimitation). None of them has been implemented.

404 land delimitation projects for an area of 1,402.27 thousand hectares (4.7% of the total need) were ordered to the amount of UAH 10,972.49 thousand. In that, UAH 2,830.38 thousand (nearly 26%) are to be allocated from the state budget, UAH 8,142.11 thousand (74%) – from local budgets. Out of all projects, 36 were approved (for 156.19 thousand hectares). However, the 2009 budget provides no funds for those activities. The situation with local budgets is very much the same.

#### Effects:

- ineffective management of state-owned lands;
- containment of development of local self-government;
- slowdown of the pace of delimitation of administrative-territorial units;
- difficulties with the exercise of the right of citizens to land plots free of charge.

### *Establishment of the land market*

**1. Moratorium on sale of farming land.** The long ban on sale of farming land leads to containment of development of the land market and investment in agricultural production.

There are two opinions on the rationale of the moratorium. While adherents of the moratorium see the ban on sale of land as a panacea against seizure of farming land by speculators and dealers, its opponents – as a violation of rights of citizens to free disposal of their property, and in the conditions of the grey land market – an additional factor favouring dishonest business entities. Recently, a third opinion appeared – to continue the ban on sale of land till the end of the economic crisis, since during a crisis prices of farming land go down, and their purchase and effective use are complicated by the terms of lending. Solution of that problem depends on the political will and consensus in society.

#### Effects:

- **containment of mortgage of land and investments in agriculture.**

Ukraine’s land stock includes 32.5 million hectares of arable land, whose value, according to expert estimates, is close to **UAH 367 billion** (as of January 1, 2009,

<sup>28</sup> By the organisational form, those agricultural entities are divided into: limited liability companies – 7,611 (23.4%); private (private-leased) enterprises – 5,317 (16.3%); joint-stock companies – 682 (2.1%); agricultural cooperative societies – 1,187 (3.7%); farmsteads – 11,388 (35%); other business entities – 6,360 (19.5%).

<sup>29</sup> Preconditions for formation of multiform agricultural production. – Agrarian Sector of Ukraine portal, <http://www.agroua.net/economics/documents/category-17/doc-76>



the average standard monetary evaluation of 1 hectare of arable land in Ukraine equalled UAH 11,284<sup>30</sup>). The experience of the developed countries shows that **land mortgages bring nearly a third of all investments to agriculture**. In the result of delay in introduction of mortgage for farming land plots (banks not unreasonably refuse to extend credits against mortgage of land that, in the conditions of a ban on sale, cannot be sold in case of the borrower's default), agriculture, according to rough estimates, **will miss over UAH 10 billion a year**, reducing the already scanty investment base of the agricultural sector;

- inability of setting fair prices of farming land;
- growth of inter-sector disparity of prices due to the price of land not included in the prime cost of agricultural produce;
- violation of the constitutional right of citizens to freely dispose of their immovable property;
- growth of the land market and accumulation of grey capital;
- risk of drop of land prices, growing with every new year of the moratorium, since the number of potential sellers (pensioners, heirs, etc.) goes up;
- loss of state budget revenues from transactions of purchase and sale of farming land plots.

**2. Legislative unsettlement of conduct of land auctions**, which led to suspension of sale of land plots in 2008.

**Effects:**

- hindrance of sale non-farming land plots and rights to their lease;
- loss of additional revenues of state and local budgets.

*For reference:*

- ♦ Before the suspension of land auctions, 43,850 non-farming land plots and rights of their lease with the total area of 25.6 thousand hectares were sold for UAH 8,873 million. Furthermore, 1,578 land plots for construction with the total area of 1,321.8 hectares were sold by land auction for UAH 2,017.3.
- ♦ According to the Accounting Chamber, proceeds from sale of non-farming land plots make some 7% of the target. In particular, absence of such revenues in 2008 (against planned UAH 1,245 million) barred implementation of 14 budget programmes of social and economic development of the countryside<sup>31</sup>.

**3. Ineffective legislation on the cadastre registration system.** The registration system exists and is maintained in Ukraine. Its hard- and software are gradually improving, new data appear.

*For reference:* Registered in Ukraine as of January 1, 2009 were:

- ♦ 12,182.966 state acts of the right to individual ownership of a land plot;
- ♦ 47,774 state acts of the right of legal entities to land ownership;
- ♦ 416,349 state acts of the right to permanent use of a land plot;
- ♦ 5,644.523 land lease agreements.

Land books were executed for 4,040.050 land plots. 10,179.211 land plots and 94,347 items of immovable property located on land plots got cadastre numbers.

Meanwhile, the absence of the Law “On State Land Cadastre” and limitations of access to information ensuing from the Law “On State Registration of Ownership Rights to Immovable Property and Their Limitations” bring the following **effects**:

- reduction of effectiveness of the registration system;
- inaccessibility of information of land plots and rights to them for the overwhelming majority of individuals and legal entities;
- emergence of preconditions for corruption on the land market.

#### **IV. PROPOSALS: MAIN LINES OF PERFECTION OF THE STATE LAND POLICY**

The above gives grounds to note stockpiling of many unresolved problems in the field of land relations that deadlocked reformation processes. So, it is high time to introduce new approaches to formulation and implementation of the state land policy, begin a new, final stage of the land reform, effective use of land on the principles of sustainable development.

Noteworthy, prerequisites of effectiveness of the state land policy measures include a strong political will, socio-political stability, solidarity of political forces and society, effective fighting corruption, radical changes in the forms and quality of state governance with observance of democratic norms and principles of the market economy. The land reform should be an integral element of reformation of Ukraine's administrative and economic systems.

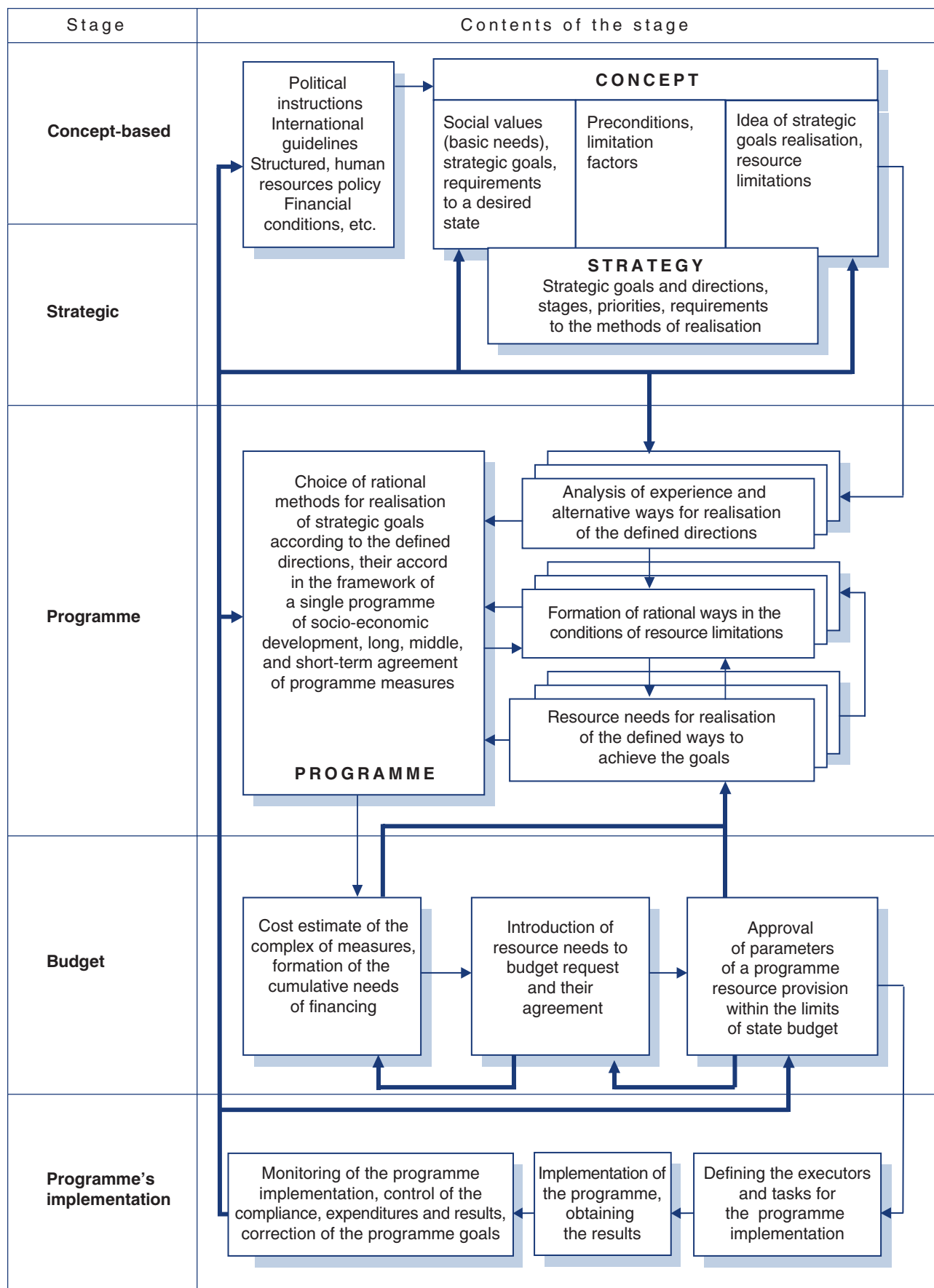
Implementation of complex reforms is a difficult task that requires coordination of goals and priorities, creation of a technological chain of interrelated measures in different sectors, rational management of cash flows. Therefore, formulation and implementation of the state policy requires introduction of strategic planning methods (Chart “*Stages of formulation and implementation of the state land policy*”). This requirement applies to the entire system of state governance in Ukraine and goes beyond the limits of perfection of the land policy alone.

<sup>30</sup> Materials of the XI Annual Assembly of All-Ukrainian Congress of Scholars Agrarian Economists, February 26-27, 2009. – Kyiv, Ukrainian Academy of Agricultural Sciences, 2009, p.109

<sup>31</sup> Report of implementation of the State Budget of Ukraine over nine months of 2008. – Official web site of the Accounting Chamber.



## STAGES OF FORMULATION AND IMPLEMENTATION OF THE STATE LAND POLICY



Round-table, May 21, 2009



Transition to the final stage of the land reform should rest on unbiased, thorough analysis of the gains and losses of its previous stages, changes in the structure and quality of land resources, land relations, economy as a whole, effects and prospects of Ukraine's integration into the European and world economic space.

Priority strategic lines and tasks of the following phase of the land reform should include:

**1. Introduction of principles of strategic management to the system of management of land relations, development and protection of land resources:**

- before the end of 2011, to work out and approve an entirely new wording of the Land Code of Ukraine – utmost codified and full, coordinated with concerned parties, harmonised with the European standards. The Code should review the functions and powers of central and local state executive authorities, local self-government bodies in the field of land relations and land use; regiment issues of introduction of the land market, creation and operation of the State Mortgage Bank, state land stock, management of state-owned lands, creation of protected zones and other issues of land relations, land protection and land use currently not regulated by the legislation;
- before the end of 2010, to coordinate on the inter-departmental level and approve by a law the strategy of land policy till 2020; the mid-term (till 2015): state programme of land reform and target programmes in separate sectors; beginning from 2011, to draw up relevant annual programmes within their framework (incorporated into the Government's programmes of action), effectively backed with budget funds;
- ensure compliance of regional programmes and plans of development, general plans of development of populated localities with the goals and norms of the state land policy, their coordination with the state programme of land reform; to secure adjustment of inter-budget relations for the benefit of local budgets;
- set up at the Cabinet of Ministers a permanent interdepartmental commission for development, perfection and control of implementation of the land legislation;

- consider the expediency to concentrate the functions of formulation of the state land policy (to consider the options of institution in the Cabinet of Ministers of the post of Vice Prime Minister for Land Policy and Agro-Industrial Complex and establishment of the Ministry of Land Relations), delimitation and decentralisation of managerial, executive and controlling functions among the existing and newly established (on as-needed basis) state authorities;
- reorganise the central executive body for ecology and natural resources, for delimitation of its controlling functions at environmental protection and use of natural resources, to set up for that purpose a ministry (or a state committee) for ecology with the functions of supervision of the environment and environmental safety, and to unite committees for water, forest, land resources, together with the geological service and the service of geodesy, cartography and cadastre, in the Ministry of Land Relations, which will allow not only to reduce the number of state servants but to avoid inter-branch contradictions in natural resources management, and remove duplication of controlling functions by different executive bodies;
- subordinate regional divisions of the State Committee for Land Resources of Ukraine to local self-government bodies, and the controlling body (State Land Inspection of Ukraine) – directly to the Cabinet of Ministers, to enable more effective control of not only the legitimacy of land plot use but also fulfilment by officers of the State Committee for Land Resources of their duties with respect to land owners and land users;
- develop the concept and commence creation of an integral geological information system combining functions of administrative management, record and registration, monitoring of land resources, monitoring of the land market; the database of that system should be reliably protected but accessible (in the appropriate segments) for individuals and legal entities;
- pay particular attention to staffing management bodies at all levels with highly qualified specialists; to minimise the influence of political factors on that process;
- introduce principles of public policy, mechanisms of public control in the practice of formulation and implementation of the state land policy.

**2. Optimisation of the land stock and the system of land use:**

- make inventory and certification of all land, water resources, land interior, lands in populated localities;
- identify the rational structure of land resources (by category, destination, form of ownership, region) with account of the current situation, social and economic needs and prospects of development, requirements of food security, investment



attractiveness, norms of environmental stability of territories; to perform with its account zoning of the territory of Ukraine, regions, populated localities;

- identify scientifically based models, systems of norms and standards of use of farming lands, forest and water resources, land interior, built-up lands, recreational areas, etc, to provide for steadfast observance of those norms and standards;
- ensure integral land planning throughout of Ukraine, with emphasis on rural territories;
- perform delimitation of lands of state and communal ownership, identify effective mechanisms of delegation of rights to management and use of state-owned lands;
- establish the State Land Fund – an organisation responsible for the state, structure and use of state-owned land; that institution is to present one of the main tools of implementation of the state land policy, performing transactions of purchase-sale of land plots, their lease, buyout of mortgaged plots, etc. on behalf of the state; creation of the State Land Fund will enable: (a) monitoring of the condition and use of state-owned land; (b) creation of bodies of farming land at the expense of purchase of small land plots, which will raise their attractiveness and market value; (c) rational use of degraded and low-productive lands by means of their buy-out from owners and, after reclamation, sale to the most effective land user; (d) accelerated development of land mortgage by means of buy-out of mortgaged plots in case of their forced sale;
- study foreign experience and consider the expediency of establishment of community land stocks, mechanisms of their interaction with the State Land Fund;
- legislatively introduce a system of economic incentives for growth of nature conservation and recreational areas, encouragement of forest plantation on territories unfit for agricultural production, reduction of the area of land in intense agricultural use, by means of their transfer to natural forage lands and lands of the natural preserve stock for their more rational use and conservation.

### 3. Development of the land market:

- prioritise the tasks of completion of execution of state acts of the right to land ownership with simultaneous encouragement of enlargement of farms and collective business entities;
- after legislative regulation of establishment of the land market, creation and operation of the State Mortgage Bank, to introduce a system and mechanisms of mortgage of land, including farming land;

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- initiate reformation of the taxation policy in the field of land ownership through differentiation of taxes dependent on destination, size, quality of land, with account of the need of encouragement of the nature conservation activity and observance of land use norms;
- provide incentives for creation of branched land market infrastructure (exchanges, auctions, mortgage banks, etc);
- incorporate a policy pursuing inter-branch price parity, economic incentives for agricultural producers, enhancement of antimonopoly control of prices of agricultural produce, material and technical resources and services for producers;
- cancel the moratorium on sale of farming land;
- simplify execution of rights of land ownership, land transactions, raise their transparency and convenience for individuals and legal entities, make them friendly for investors, including foreign;
- systematise procedures of land assessment (including monetary) with account of the dynamic of development of market relations;
- introduce primary sale of land plots, including farming plots, solely by land auction;
- introduce an effective system of the land market monitoring (this task, backed with appropriate budget support, may be vested in the National Agricultural Chamber).

**The main end goals of the proposed measures lie in effective exercise of constitutional rights of Ukraine's citizens to land ownership, transformation of land and land relations into a weighty factor of economic growth, enhancement of the investment attractiveness of the agricultural sector and introduction of the innovative model of its development.**

**Implementation of those measures will contribute to improvement of the state land policy, acceleration of the land reform, civilised solution of problems in the land sector.** ■



NORMATIVE-LEGAL BASE OF LAND RELATIONS IN UKRAINE			
Item	Regulatory-legal act / title	Brief content	Comment
<b>1990</b>			
1.	<b>Law</b> On Priority of Social Development of the Countryside and Agro-Industrial Sector of the National Economy 17 October	<b>Priorities include:</b> <ul style="list-style-type: none"> <li>• free choice of forms of ownership and lines of business activity;</li> <li>• parity pricing in the agricultural and industrial sectors;</li> <li>• creation of a system of agrarian legislation</li> </ul>	Invalidated from May 15, 1992, due to passage of the second wording of the Law
2.	<b>Land Code of the Ukrainian Soviet Socialist Republic</b> 18 December	<b>Establishes</b> in particular: <ul style="list-style-type: none"> <li>• objectives of the land legislation;</li> <li>• equality of the state, collective and private forms of land ownership;</li> <li>• division of lands by target purpose (seven categories)</li> </ul>	Invalidated from January 1, 2002 The Code laid down principles of the land reform in Ukraine.
3.	<b>Verkhovna Rada Resolution</b> On Land Reform 18 December	<b>Specifies key objectives of the land reform:</b> redistribution of lands of state ownership with their transfer into private and collective ownership <b>Provides for</b> establishment of a body for control of implementation of the land reform	Effective, except item 6, invalidated in pursuance of the Constitutional Court Ruling No.5 of September 22, 2005 The Resolution officially commenced the land reform.
<b>1991</b>			
1.	<b>Law</b> On Protection of Natural Environment 25 June	<b>Establishes</b> the main principles and categories of protected items	Effective as amended The first law in Ukraine to regiment state nature conservation activity.
2.	<b>Law</b> On Peasant Holdings (Farmsteads) 20 December		Invalidated due to passage of a new wording on June 19, 2003
3.	<b>Verkhovna Rada Resolution</b> On Forms of State Acts of Right to Possession or Use of Land and Regulations of Procedure of Provision and Withdrawal of Land Plots No.889 of 27 March	<b>Approves</b> forms of state acts of the right to: life inherited possession; permanent possession; permanent use of land	Invalidated in pursuance of Resolution No.2201 of March 13, 1992
<b>1992</b>			
1.	<b>Law</b> On Forms of Land Ownership 30 January	<b>Regiments</b> introduction of collective and private land ownership	Invalidated from December 11, 2003
2.	<b>Law</b> On Collective Agricultural Enterprise 14 February	<b>Specifies</b> legal, economic, social and organisational conditions of activity of collective agricultural enterprises, <b>provides</b> for their complete independence and exercise of possibilities as business entities.	Effective as amended (currently, there are some 60 collective agricultural enterprises active in this country).
3.	<b>Land Code of Ukraine</b> (second wording) 13 March		Invalidated in connection with passage of a new wording of the Land Code on October 25, 2001
4.	<b>Law</b> On Priority of Social Development of the Countryside and Agro-Industrial Sector of the National Economy (second wording) 15 May	<b>Reiterates priorities</b> established by the previous wording of the Law. Pays more attention to creation of the proper social infrastructure of the village.	Effective as amended A more perfect and consistent with the status of an independent state with a market economy wording of the Law of 1990
5.	<b>Law</b> On Natural Preserve Stock of Ukraine 16 June	<b>Specifies</b> legal principles of organisation, protection, effective use of lands of the natural preserve stock, restoration of its natural complexes and sites	Effective as amended
6.	<b>Law</b> On Payment for Land 3 July	<b>Establishes:</b> <ul style="list-style-type: none"> <li>• the size and procedure of payment for the use of land resources;</li> <li>• responsibility of payers;</li> <li>• the procedure of control of correctness of calculation and collection of the land tax;</li> <li>• 30% of funds paid for land is allocated to implementation of the land reform measures, including land protection</li> </ul>	Effective (with numerous changes that actually turned the Law into a list of enterprises released from payment for land). In 2008, the norm of 30% was removed. It seems expedient to move norms of the Law to a new wording of the Land Code.
7.	<b>Verkhovna Rada Resolution</b> On Acceleration of Land Reform and Privatisation of Land No.2200 of 13 March	In particular, <b>obliges</b> concerned state authorities, local self-government bodies: <ul style="list-style-type: none"> <li>• identify the needs of individuals and legal entities for land plots and to work out schemes of meeting those needs;</li> <li>• work out state and regional (city) programmes of the land reform for 1992-1995, to provide for their support with resources;</li> <li>• draw up the list of agricultural enterprises whose lands are to be transferred into collective and private ownership</li> </ul>	Effective as amended Most assignments not accomplished, the rest are of a permanent character and remain relevant
8.	<b>Cabinet of Ministers Resolution</b> On Some Issues of Development of Peasant Holdings (Farmsteads) No.133 of 14 March	<b>Tasks</b> concerned state authorities, local self-government bodies to provide material and technical support for peasant holdings (farmsteads) and their cooperative societies (unions, associations)	Invalidated (except the first paragraph of item 2) in pursuance of Resolution No.478 of April 14, 2004 Obligations were not and could not be implemented for economic reasons.



9.	<b>Cabinet of Ministers Decree</b> On Privatisation of Land Plots No.15 of 26 December	<b>Instructs</b> councils of all levels to transfer to citizens in private ownership land plots for personal use in 1993 <b>Implements</b> the procedure of execution of the right to private ownership of said plots	Invalidated in pursuance of the Law of September 14, 2006
<b>1993</b>			
1.	<b>Law</b> On Peasant Holdings (Farmsteads) 22 June	<b>Specifies</b> economic, social and legal principles of creation and activity of peasant holdings (farmsteads)	Invalidated in pursuance of the Law "On Farmstead" of June 19, 2003
2.	<b>Cabinet of Ministers Resolution</b> On Procedure of Keeping State Land Cadastre No.15 of 12 January	<b>Establishes</b> that the Cadastre is kept using a uniform system, on the basis of regulatory documents approved by the State Committee for Land Resources	<i>Effective as amended</i> The main document regimenting the procedure of keeping of the Land Cadastre
3.	<b>Cabinet of Ministers Resolution</b> On Priority Measures at Preparation and Implementation of Land Reform No.334 of 7 May	Among the measures planned for 1993-1995: • completion of verification of boundaries and areas of territories of village and settlement councils, rural populated localities; • inventory of lands of all categories (except farming); • identification of state-owned lands that cannot be transferred into collective and private ownership; • transfer of land plots into private ownership to 13 million citizens; • issue of acts of the right to private land ownership or use to individuals and legal entities; • development of 40 thousand projects of land allocation for peasant holdings (farmsteads). <b>Specifies</b> the procedure and terms of funding those activities, amendment of the legislation, establishment of the land bank of Ukraine, an automated land information system, a system of control of the progress of the land reform, scientific and methodological support <b>Approves</b> a commission for drafting of the State Programme of Land Reform	<i>Effective</i> The pace of the land reform was evidently overstated. The real period of implementation of the planned measures might take 10-15 years. The overwhelming majority of measures were not implemented; implementation of some of them continues (issue of acts to the right of private ownership). Planned funds were not allocated.
4.	<b>Cabinet of Ministers Resolution</b> On Form of Agreement of Right to Temporary Use of Land (including on lease terms) No.197 of 17 March	Ensues from the title.	Invalidated in pursuance of Resolution No.220 of March 3, 2004
5.	<b>Cabinet of Ministers Resolution</b> On Procedure of Assessment and Reimbursement of Losses to Land Owners and Land Users No.284 of 19 April	<b>Specifies:</b> • cases where land owners and land users are reimbursed for damages; • parties for reimbursement	<i>Effective as amended</i> Effectiveness of the approved Procedure can be enhanced by incorporation of its norms into a new wording of the Land Code.
6.	<b>Cabinet of Ministers Resolution</b> On Approval of Regulations of Land Monitoring No.661 of 20 August	<b>Specifies</b> sources of funding of monitoring activities: • state budget funds within the limits of allocations to the land reform; • part of payment for land going to local budgets	<i>Effective as amended</i> Requires coordination with the Land Code (Article 192 "Tasks of Land Monitoring").
<b>1994</b>			
1.	<b>Code of Ukraine on Land Interior</b> 27 July	Regulates relations dealing with possession, use and management of the land interior, activities at protection, restoration and sustainable use of the land interior with account of environmental, economic, social and other interests of society. In particular, <b>specifies:</b> • the procedure of allotment of land plots for needs related with the use of the land interior – in pursuance of special permits to use the land interior or mining claims; • the right of owners and users to extract mineral resources of local importance for their business and utility needs on plots allotted to them without special permits and mining claims	<i>Effective as amended</i> Presence of provisions dealing with land use in the Code enables their adjustment through amendments that, in the conditions of imperfect mechanisms of inter-departmental interaction and coordination of actions of different branches, may run contrary to the Land Code norms.
2.	<b>Forest Code of Ukraine</b> 21 January	<b>Regulates</b> relations dealing with possession, use and management of forests, activities at protection, restoration and sustainable use of forest resources with account of environmental, economic, social and other interests of society. <b>Specifies</b> , in particular: • the category of forestry lands; • rights of individuals and legal entities to obtain in ownership forest land plots, procedures and rules of their use	<i>Effective as amended</i> The above comment refers to this Code as well.
3.	<b>Presidential Decree</b> On Immediate Measures at Acceleration of Land Reform in the Field of Agricultural Production No.666 of 10 November	<b>Establishes</b> , in particular: • the right of members of agricultural enterprises to get a land share in kind or in cash and certificates of the right to private ownership of a land lot (share). <i>As a result, the right to a land lot (share) for some time became subject to purchase, sale, gift, exchange, inheritance, pledge</i>	Invalidated (except Article 3 on the right to free disposal of a land share certificate) in pursuance of Decree No.650 of July 20, 2007
<b>1995</b>			
1.	<b>Water Code of Ukraine</b> 6 June	<b>Specifies:</b> • the category and items of the water stock; • rules of lease of water bodies by Ukrainian individuals and legal entities	<i>Effective as amended</i> The above comments concerning the Forest Code and the Code of Land Interior apply to this Code as well.
2.	<b>Presidential Decree</b> On Privatisation and Lease of Non-Farming Land Plots for Conduct of Business Activity No.608 of 12 July	<b>Specifies</b> rules of privatisation of non-farming land plots by individuals and legal entities, their sale, use and disposal	Invalidated in pursuance of Decree No.650 of July 20, 2007



Item	Regulatory-legal act / title	Brief content	Comment
3.	<b>Presidential Decree</b> On Procedure of Sharing Lands Transferred into Collective Ownership to Agricultural Enterprises and Organisations No.720 of 8 August	<b>Specifies:</b> • objects, actors, procedure of sharing and evaluation of land transferred into collective ownership; • the procedure of use of the reserve stock created at transfer of land into collective ownership	<i>Effective</i> Enabled acceleration of the land reform in the field of agricultural production.
4.	<b>Cabinet of Ministers Resolution</b> On Methods of Standard Monetary Evaluation of Farming Land and Land of Populated Localities No.213 of 23 March	Ensues from the title	<i>Effective as amended</i> Norms of standard evaluation of land should be moved to the Law "On Evaluation of Land", to raise their legal status.
5.	<b>Cabinet of Ministers Resolution</b> On Additional Measures in Support for Development of Personal Subsidiary Holdings of Citizens and Peasant Holdings (Farmsteads) No.381 of 31 May	<b>Provided for</b> removal of artificial restrictions of the size of land plots for peasant holdings (farmsteads), including in violation of Article 6 of the Law "On Peasant Holdings (Farmsteads)", setting the minimum size of land plots allotted to farmers	<i>Invalidated</i> in pursuance of Resolution No.478 of April 14, 2004
6.	<b>Cabinet of Ministers Resolution</b> On Approval of Form of Certificate of Right to Land Lot (share) and a standard book of registration of certificates of the right to land lots (shares) No.801 of 12 October	Ensues from the title	<i>Effective</i> The process of registration and records of certification of the right to land lots (shares) was regimented.
<b>1996</b>			
1.	<b>Presidential Decree</b> On Creation of a Single System of State Bodies of Land Resources No.34 of 6 January	The system was made up of the State Committee for Land Resources and subordinated State Committee of the Autonomous Republic of Crimea for Land Resources, and the single cadastre, regional, Kyiv and Sevastopol city main departments, district divisions, city departments (divisions) of land resources and land planning engineers in villages and settlements	<i>Effective as amended</i>
<b>1997</b>			
1.	<b>Law</b> On Agricultural Cooperation 17 July	<b>Specifies</b> legal, organisational, economic and social conditions of activity of cooperative societies (and their associations) in agriculture	<i>Effective as amended</i> The Law does not apply to consumer cooperative societies.
2.	<b>Cabinet of Ministers Resolution</b> On Methods of Standard Monetary Evaluation of Non-Farming Land (except lands of populated localities) No.525 of 30 May	Ensues from the title	<i>Effective as amended</i> The norms should be removed to the Law "On Evaluation of Land", raising their legal status.
3.	<b>Cabinet of Ministers Resolution</b> On Size and Procedure of Assessment of Losses of Agricultural and Forestry Production Subject to Reimbursement No.1279 of 17 November	Ensues from the title	<i>Effective as amended</i>
<b>1998</b>			
1.	<b>Law</b> On Transfer of State and Communal Property 3 March	<b>Specifies</b> principles of transfer of state property into communal ownership and transfer of communal property into state ownership free of charge or in exchange	<i>Effective as amended</i>
2.	<b>Law</b> On Lease of Land 6 October	Regulates relations dealing with lease of land plots	<i>Effective as amended</i>
3.	<b>Presidential Decree</b> On Regulation of Some Issues Dealing with Processes of Management of State Property No.736 of 4 July		The Decree did not enter into effect due to the bill "On Management of State Property" voted down (Verkhovna Rada Resolution No.86 of September 8, 1998), but was not cancelled.
<b>1999</b>			
1.	<b>Presidential Decree</b> On Sale of Non-Farming Land Plots No.32, 19 January	<b>Introduces</b> sale of non-farming land plots of state or communal ownership hosting immovable property	<i>Invalidated</i> in pursuance of Decree No.650 of July 20, 2007
2.	<b>Presidential Decree</b> On Additional Measures at Satisfaction of Needs of Citizens for Land Plots No.765 of 28 June	<b>Instructs</b> the Council of Ministers of the Autonomous Republic of Crimea, regional, Kyiv and Sevastopol city and district state administrations to organise before January 1, 2000, transfer of land plots from the stock and reserve fund into ownership or use to workers (and pensioners) of the social sector and repatriates	<i>Invalidated</i> in pursuance of Decree No.650 of July 20, 2007



3.	<b>Presidential Decree</b> On Measures at Further Development of Gardening and Vegetable Growing No.1204 of 29 September	<b>Instructs</b> CMU, the Council of Ministers of the Autonomous Republic of Crimea, regional, Kyiv and Sevastopol city and district state administrations to meet citizens' demand for land plots for gardening and vegetable growing	<i>Effective</i> Nobody ever reported about implementation of the Decree.
4.	<b>Presidential Decree</b> On Immediate Measures at Acceleration of Reformation of Agricultural Sector of Economy No.1529 of 3 December	The Decree <b>planned</b> : • reform collective agricultural enterprises on the principles of private ownership of land and property in December 1999 - April 2000; • oblige persons using land for agricultural purposes to execute agreements of lease of land and/or property shares with their owners, with payment of rent in kind or cash (not less than 1% of the value of a leased land share); • transfer separate buildings, structures, equipment, etc. to members of collective agricultural enterprises - owners of land lots (shares) who filed applications for allotment of land plots in kind, towards repayment of their property shares	<i>Effective</i> The Decree actually started the land reform. Central executive bodies are still reporting about implementation of measures stipulated thereby.
5.	<b>Cabinet of Ministers Resolution</b> Procedure of Submission of Application (Request) for Sale of Non-Farming Land Plots and Form of State Act of Right to Land Ownership No.440 of 24 March	Ensues from the title	<i>Invalidated</i> in pursuance of Resolution No.832 of August 31, 2005
6.	<b>Cabinet of Ministers Resolution</b> On Expert Monetary Evaluation of Non-Farming Land Plots No.1050 of 16 June	Ensues from the title	<i>Invalidated</i> in pursuance of Resolution No.1531 of October 11, 2002
<b>2000</b>			
1.	<b>Law</b> On Land Amelioration 14 January	<b>Regulates</b> relations arising in the process of land amelioration, use of ameliorated land and amelioration systems	<i>Effective as amended</i>
2.	<b>Law</b> On Planning and Development of Territories 20 May	<b>Establishes</b> legal and organisational principles of planning, development and other use of territories <b>Intended</b> to ensure sustainable development of populated localities with account of public and private interests	<i>Effective as amended</i> Most articles should be moved to a new wording of the Land Code.
3.	<b>Law</b> On Specificity of Privatisation of Uncompleted Construction Projects 14 September	<b>Specifies</b> specificity of privatisation of uncompleted construction projects staying in state ownership and in the books of enterprises not subject to privatisation	<i>Effective as amended</i>
4.	<b>Presidential Decree</b> On Measures at Development and Regulation of Market of Land of Populated Localities, Other Non-Farming Land No.168 of 4 February	<b>Approves</b> the key lines of development and regulation of the market of land of populated localities, other non-farming land and sets out measures at their attainment. In particular – soonest passage of the laws "On Mortgage", "On State Registration of Rights to Immovable Property", "On Planning and Development of territories", etc.	<i>Invalidated</i> in pursuance of Decree No.650 of July 20, 2007
5.	<b>Presidential Decree</b> On Guarantee of Economic Interests and Social Protection of Workers of Village Social Sector and Solution of Some Issues that Arouse in Course of Land Reform No.584 of 12 April	<b>Instructs</b> the Cabinet of Ministers, the Council of Ministers of the Autonomous Republic of Crimea, regional, Kyiv and Sevastopol city and district state administrations to take necessary measures for allotment of land plots out of the stock and reserve fund and their transfer to workers (and pensioners) of the social sector of villages for personal subsidiary holdings before November 1, 2000	<i>Invalidated</i> in pursuance of Decree No.650 of July 20, 2007
6.	<b>Cabinet of Ministers Resolution</b> On Approval of Procedure of Performance of Land Cadastre Work and Extension of Paid Services by State Bodies of Land Resources No.1619 of 1 November	Ensues from the title	<i>Effective as amended</i>
7.	<b>Cabinet of Ministers Resolution</b> On Procedure of Buy-out of Land Plots by Citizens (above Norm Privatised Free of Charge) for Peasant Holdings (Farmsteads) or Personal Subsidiary Holdings No.118 of 24 January	<b>Establishes</b> that: • payment of the land plot value may be effected by instalments, upon the parties consent; • authorised bodies should take a decision on sale within a month term; • possible grounds for refusal of sale: (a) failure to present necessary documents; (b) discovery of untrue information in presented documents	<i>Effective with technical amendments</i>
8.	<b>Cabinet of Ministers Resolution</b> On Approval of Procedure of Registration of Land Lot (Share) Lease Agreements No.119 of 24 January	<b>Establishes</b> that: • lease agreements are registered by the executive committee of the concerned council (at the place of location of the land lot (share)); • the agreement is registered free of charge in the Book of registration of land lot (share) lease agreements	<i>Effective</i>
9.	<b>Cabinet of Ministers Resolution</b> On Indexation of Monetary Evaluation of Land No.783 of 12 May	<b>Establishes</b> : • indexation term – as of January 1 of the current year; • the formula of the indexation coefficient	<i>Effective</i>



Item	Regulatory-legal act / title	Brief content	Comment
<b>2001</b>			
1.	<b>Land Code of Ukraine</b> (new wording) 25 October, effective from January 1, 2002	<b>Establishes:</b> <ul style="list-style-type: none"> <li>principles of the land legislation;</li> <li>powers of state authorities and local self-government bodies in land relations;</li> <li>composition and target purpose of lands;</li> <li>acquisition, exercise and guarantees of rights to land, management in the field of land use and protection;</li> <li>responsibility for violation of the land legislation;</li> <li>principles of delimitation of land of state and communal ownership and management of state-owned land;</li> <li>criteria of free extension of land plots to citizens into ownership</li> </ul> <b>Norms of the Code:</b> <ul style="list-style-type: none"> <li>promoted private land ownership;</li> <li>provided guarantees of the right of land ownership to individuals and legal entities;</li> <li>promoted development of market-oriented agricultural enterprises;</li> <li>enhanced responsibility of local self-government bodies for use and protection of land</li> </ul>	<i>Effective as amended</i> At the time of passage, the Code was the most advanced and closest to European legislative norms. Meanwhile, it covered not all issues dealing with regulation of land relations. It needs to be supplemented with a number of laws (on the land market, use of lands of the natural preserve stock, nature conservation, recreational, sanative, historic and cultural destination, etc.). Some norms contained in the draft Code were not supported by Parliament, so, some of them were removed, some – deferred. This strongly undermined the quality of the Code, its logic and sequence of norms. All this puts development of a new wording of the Land Code of Ukraine on the agenda.
2.	<b>Law</b> On Agreements of Alienation of Land Lot (Share) 18 January	<b>Establishes that:</b> Before regulation of the procedure of exercise of rights of individuals and legal entities to a land lot (share) in the Land Code, owners of land lots (shares) cannot make agreements of their alienation in any way, except transfer as heritage and buyout for state and public needs	<i>Invalidated</i> in pursuance of the Law of December 11, 2003 Initiated a moratorium on sale of farming land and in that way entailed free disposal of property by citizens, contrary to the Constitution (Article 22).
3.	<b>Presidential Decree</b> On Key Lines of Land Reform in Ukraine in 2001-2005 No.372 of 30 May	<b>Specifies:</b> <b>lines</b> of the state policy in the field of land relations, in particular: <ul style="list-style-type: none"> <li>development of the land market;</li> <li>development of crediting against mortgage of land;</li> <li>improvement of monitoring of land, procedure of keeping the State Land Cadastre and evaluation of land;</li> <li>enhancement of effectiveness of state management of land resources;</li> </ul> <b>tasks</b> at perfection of the land legislation, in particular: <ul style="list-style-type: none"> <li>effective management of land resources, rational use and protection of land;</li> <li>delimitation of lands of state and communal ownership;</li> <li>creation of legal principles of the land market regulation</li> </ul>	<i>Effective</i> The Decree may be seen as the first attempt to systematise the issue of development of the land policy for subsequent reformation of land relations. Most of the set tasks were not accomplished, nobody reported of the progress of their attainment.
4.	<b>Cabinet of Ministers Resolution</b> On Procedure of Use of Land in Areas of Their Possible Flooding in the Result of Overflow and High Water No.87 of 31 January	<b>Establishes</b> requirements to the use of lands flooded every 2, 4, 10, 20 and 100 years, causing damage to public production	<i>Effective as amended</i>
5.	<b>Cabinet of Ministers Directive</b> On Establishment of Coordinating Council for Development of Proposals of Transfer of Land from State into Communal Ownership in Cities of Kyiv, Sevastopol and Dnipropetrovsk No.145 of 23 April	Ensues from the title	<i>Invalidated</i> in pursuance of Resolution No.142 of January 29, 2003 Terms of completion were not set, concrete results of the Coordinating Council's work are absent.
6.	<b>Cabinet of Ministers Directive</b> On Conduct in Lviv Region of Experiment of Creation of Single Information System for Registration of Land Plots, Immovable Property and Rights to Them No.355 of 9 August	With the Directive, the Cabinet of Ministers supported the proposal of the Lviv Regional State Administration and the State Committee for Land Resources, agreed with the Lviv Regional Council, the State Construction Committee and the State Property Fund	The experiment was conducted but not continued. Gave an impetus to creation of local registration systems that could not be combined into a national system because of their non-uniformity.
7.	<b>Cabinet of Ministers Directive</b> On Approval of Measures at Implementation of Guidelines of Land Reform in Ukraine in 2001-2005 No.446 of 26 September	Ensues from the title The Directive was issued in pursuance of the President's Decree No.372 of May 30, 2001	<i>Effective</i> The measures might present the first state programme of land reform, but most of them were not implemented, in particular, due to continuous underfunding.
<b>2002</b>			
1.	<b>Presidential Decree</b> On Perfection of System of State Management of Land Resources and Control of Their Use and Protection No.720 of 19 August	<b>Instructs</b> the Cabinet of Ministers to set up, within the State Committee for Land Resources, the State Inspection for Control of Use and Protection of Land as a governmental body of state governance	<i>Effective</i>
2.	<b>Cabinet of Ministers Resolution</b> On Approval of Form of State Act of Right of Ownership to Land Plot and State Act of Right to Permanent Use of Land Plot No.449 of 2 April	Ensues from the title <b>Provides</b> that state acts issued previously remain effective and shall be replaced in case of voluntary application of individuals or legal entities	<i>Effective as amended</i>



3.	<b>Cabinet of Ministers Resolution</b> On Approval of Regulations of Technical Passport of Land Plot Offered for Land Auction No.648 of 16 May	Ensues from the title A technical passport is used by the auction manager for preparation and notification of the qualitative and quantitative features of the land plot offered for land auction	Effective as amended
4.	<b>Cabinet of Ministers Resolution</b> On Measures at Creation of System of Registration of Rights to Ownership of Immovable Property No.661 of 16 May	<b>Approves</b> the Ministry of Justice as the holder of the state register of rights to immovable property, except land plots, and the State Committee for Land Resources as the holder of the State Land Register	Invalidated in pursuance of Resolution No.689 of May 15, 2003 Initiated the known dispute between the State Committee for Land Resources and the Ministry of Justice, not over even now.
5.	<b>Cabinet of Ministers Resolution</b> On Expert Monetary Evaluation of Land Plots No.1531 of 11 October	<b>Approves</b> the Policy regimenting expert monetary evaluation of land plots of all categories at conclusion of civil law agreements and revaluation of fixed assets for accounting purposes	Effective
6.	<b>Cabinet of Ministers Resolution</b> On Establishment of State Inspection for Control of Use and Protection of Land No.1958 of 25 December	State inspection for Control of Use and Protection of Land established within the State Committee for Land Resources as a governmental body of state governance (in pursuance of Presidential Decree No.720 of August 19, 2002).	Effective as amended
2003			
1.	<b>Law</b> On Personal Farmstead 15 May	<b>Specifies</b> legal, organisational, economic and social principles of personal farming; <b>Guarantees</b> the right of citizens to voluntary establishment of such enterprises, independence of their business activity, equality with other forms of business, and of employees of those enterprises – with employees of other sectors of the economy; <b>Sets</b> the maximum area of land plots (50 hectares of arable land and 100 hectares of other land) that may be transferred into private ownership or use; in areas with hard-to-access populated localities – 100 hectares of arable land	Effective as amended One of the best laws regulating economic and social relations in the countryside. Importantly, members of a personal farmstead act at their discretion and risk as provided by the law, while their activity is not categorised as business.
2.	<b>Law</b> On Land Planning 22 May	<b>Specifies</b> legal and organisational principles of activity in the field of land planning	Effective as amended Norms of the Law should be incorporated in Chapter 31 of the Land Code.
3.	<b>Law</b> On Procedure of Allotment in Kind (on Ground) of Land Plots to Owners of Land Lots (Shares) 5 June	<b>Specifies</b> organisational and legal principles of allotment of land plots in kind (on ground) to owners of land lots (shares) out of land that belonged to collective agricultural enterprises, agricultural cooperative societies, joint-stock companies by the right of collective ownership, and the procedure of exchange of those land plots	Effective The rationale of the Law is disputable, some its norms might supplement some articles of a new wording of the Land Code. Article 14 of the Law is poorly formulated, enabling abuses at exchange of land plots.
4.	<b>Law</b> On Protection of Land 19 June	<b>Specifies</b> legal, economic and social principles of land protection for its rational use	Effective Norms of the Law should be incorporated in the "Land Protection" Section of a new wording of the Land Code.
5.	<b>Law</b> On State Control of Use and Protection of Land 19 June	<b>Specifies</b> legal, economic and social principles of organisation of state control of use and protection of land to ensure rational use and reproduction of natural resources and conservation of the environment	Effective as amended State control is exercised: of use and protection of land – by the State Land Inspection (within the State Committee for Land Resources); of observation of the legislation on protection of land – by the Ministry of Environmental Protection and the environmental inspection subordinated to it; monitoring of soil fertility – by the authorised executive body in charge of agricultural policy.
6.	<b>Law</b> On Farmsteads 19 June	<b>Specifies</b> legal, economic and social principles of establishment and activity of farmsteads as a progressive form of individual business activity in the agriculture	Effective as amended Does not apply to personal farmsteads, homesteads and use of land plots for gardening, vegetable growing, haying and pasturing of cattle.
7.	<b>Law</b> On Amendment of Article 82 of Land Code of Ukraine 10 July	The amendments allowed joint ventures established with participation of foreign individuals and legal entities to acquire ownership rights to non-farming land plots in cases and in accordance with the procedure established by the Code for foreign legal entities	Effective To some degree regulates the issue but does not equate Ukrainian citizens and foreigners in the rights to land, which hinders inflow of investments.
8.	<b>Law</b> On Amendment of Law of Ukraine "On Lease of Land" (new wording) 2 October	<b>Specifies</b> legal, economic and social principles of lease of land plots irrespective of the form of ownership and business	Effective One of the most effective laws in the field of land relations, given the moratorium on sale of farming land. Norms of the Law should be incorporated in the "Right to Land Use" Chapter of a new wording of the Land Code.



Item	Regulatory-legal act / title	Brief content	Comment
9.	<b>Law</b> On Use of Defensive Lands 27 November	<b>Specifies</b> categories of defensive lands and zones of special procedures of their use	<i>Effective as amended</i>
10.	<b>Law</b> On Evaluation of Land 11 December	<b>Specifies:</b> • legal principles of land evaluation; • professional activity in the field of land evaluation	<i>Effective as amended</i>
11.	<b>Law</b> On Amendment of Some Legislative Acts of Ukraine 11 December	In connection with the passage of the Land Code the laws "On Forms of Land Ownership" (1992); "On Agreement of Alienation of Land Lot (Share)" (2001) were invalidated; • the Code of Administrative Infringements and 13 laws dealing with land use were amended	<i>Effective</i>
12.	<b>Presidential Decree</b> On Measures at Creation of Single System of State Registration of Land Plots, Immovable Property and Rights to Them within State Land Cadastre No.134 of 17 February	Functions of state registration of land plots, immovable property and rights to them within the State Land Cadastre were vested in the State Committee for Land Resources, also provided with the necessary scientific basis (subordinated Institute of Land Planning with branches in each region of Ukraine)	<i>Effective as amended</i> Закон України Про плату за землю
13.	<b>Cabinet of Ministers Resolution</b> On Approval of Standard Regulations of Territorial Bodies of Land Resources No.200 of 24 February	Ensues from the title	<i>Invalidated</i> in pursuance of Resolution No.43 of January 28, 2009
14.	<b>Cabinet of Ministers Resolution</b> On Creation of Single System of State Registration of Land Plots, Immovable Property and Rights to Them within State Land Cadastre No.1088 of 17 July	<b>Provides for</b> creation of the State Register of Rights to Land and Immovable Property before January 1, 2005, on the basis of the state land register and the state register of ownership rights to immovable property <b>Appoints:</b> • the State Committee for Land Resources as the holder of the State Register of Rights to Land and Immovable Property; • the Centre of State Land Cadastre at the State Committee for Land Resources as the database administrator; • "Information Centre" state enterprise of the Ministry of Justice as the administrator of the database of the state register of ownership rights to immovable property.	<i>Effective as amended</i> A commercial structure was established – the Centre of State Land Cadastre – possessing the state database (land register). The single database was torn into pieces. Confrontation between the State Committee for Land Resources and the Ministry of Justice on database maintenance was resumed.
15.	<b>Cabinet of Ministers Resolution</b> On Approval of Minimum Sizes of Land Plots Formed in the Result of Division of Land Plot of Inherited Farmstead No.1908 of 10 December	<b>Establishes</b> minimum sizes in all regions: from 2 hectares in Sevastopol to 9 hectares in Luhansk region	<i>Effective</i> The established norms may with time lead to fragmentation of land plots owned by farmers.
<b>2004</b>			
1.	<b>Law</b> On Delimitation of Lands of State and Communal Ownership 5 February; effective from July 14, 2004	<b>Specifies:</b> • the notion, principles and procedure of delimitation of lands; • the list of holders of lands of state and communal ownership; • lands that cannot be transferred into communal ownership; • procedure of demarcation of lands of state and communal ownership; • powers of executive bodies at delimitation of land; • the document certifying communal land ownership <b>Establishes the procedures of:</b> • funding activities dealing with delimitation of land; • settlement of disputes arising in the process of delimitation of land	<i>Effective as amended</i> The Law is actually ineffective: first, due to continuous underfunding of delimitation activities; second, due to lack of interest in delimitation of land on the part of councils of different levels managing land in populated localities, and state administrations (mainly on the district level) managing land beyond populated localities.
2.	<b>Law</b> On Amendment of Article 92 of Land Code of Ukraine Concerning Identification of Right to Permanent Use of Land Plots of Public Organisations of Handicapped Persons 12 May	The Article (part 2) is formulated as follows: "Rights to permanent use of land plots from lands of state and communal ownership go to: ... (b) public organisations of handicapped persons of Ukraine, their enterprises (associations), institutions and organisations"	<i>Effective</i>
3.	<b>Law</b> On Ratification of Loan Agreement (project "Issue of State Acts of Right to Land Ownership in Rural Areas and Cadastre System Development") between Ukraine and International Bank for Reconstruction and Development 15 June	Ensues from the title  <i>For reference:</i> The Agreement was signed on October 17, 2003. The Bank's credit is \$195.13 million for 20 years at 2.5% per annum. The project is to be implemented by December 31, 2011.	<i>Effective</i> Currently, the project is implemented by 30%. Reasons for non-implementation: absence of a law on the State Land Cadastre and obstruction of the Law "On Registration of Rights to Immovable Property and Their Limitations" by the Ministry of Justice. Contrary to the Law, the Ministry of Justice keeps the Register of Rights and Encumbrances of Immovable Property, breaking unity of the information system.
4.	<b>Law</b> On State Expert Examination of Land Management Documentation 17 June	<b>Specifies</b> legal, organisational and financial principles of state expert examination of land management documentation and procedure of its conduct	<i>Effective as amended</i>



5.	<b>Law</b> On State Registration of Ownership Rights to Immovable Property and Their Limitations 1 July	<b>Specifies:</b> • legal, economic, organisational principles of creation in the State Land Cadastre of a single system of state registration of ownership rights to land plots and other immovable property, limitations of those rights; • the notion and structure of the State Register of Ownership Rights to Immovable Property and Their Limitations; • immovable property; • the holder of the State Register of Rights – the central executive body in charge of land resources <b>Establishes</b> that till the creation of a single system of bodies for registration of rights and formation of the State Register of Rights within the State Land Cadastre, immovable property shall be registered by communal enterprises – Bureaus of Technical Inventory (BTI) The Law continues the moratorium on alienation of farming land plots till January 1, 2007	<i>Effective as amended</i> The Law will not be effective till the passage of the Law "On State Land Cadastre", as it is a derivative of the latter.
6.	<b>Law</b> On Amendment of Land Code of Ukraine 6 October		<i>Effective</i> (moratorium remains valid)
7.	<b>Cabinet of Ministers Resolution</b> On Amendment of Procedure of Assessment and Reimbursement of Losses to Land Owners and Land Users No.21 of 14 January	Brought the Procedure in compliance with the Land Code of 2001	<i>Effective</i> <b>Закон України Про плату за землю</b>
8.	<b>Cabinet of Ministers Resolution</b> On Organisation of Work and Methods of Division of Land Plots among Owners of Land Lots (Shares) No.122 of 4 February	<b>Establishes:</b> • the sequence of actions and measures, organisation and conduct of village meetings dividing land plots; • the procedure of execution and approval of documents, settlement of disputes	<i>Effective</i> Issued pursuant to the Law "On Procedure of Allotment in Kind (on Ground) of Land Plots to Owners of Land Lots (Shares)"
9.	<b>Cabinet of Ministers Resolution</b> On Approval of Standard Agreement of Land Lease No.220 of 3 March	Ensues from the title	<i>Effective as amended</i>
10.	<b>Cabinet of Ministers Resolution</b> On Approval of Standard Agreement of Development of Project of Land Planning for Allotment of Land Plot No.266 of 4 March	Ensues from the title	<i>Effective</i>
11.	<b>Cabinet of Ministers Resolution</b> On Approval of Procedure of Selection of Land Plots for Placement of Facilities No.427 of 31 March	Ensues from the title	<i>Effective</i>
12.	<b>Cabinet of Ministers Resolution</b> On Approval of Procedure of Development of Projects of Land Planning for Allotment of Land Plots No.677 of 26 May	In particular, <b>specifies</b> that: • the project is developed by individuals and legal entities holding a relevant license; • a project may be ordered by a village, settlement, city council, district, Kyiv or Sevastopol city state administration, land owner or land user; • the project is subject to state expert examination	<i>Effective</i>
13.	<b>Cabinet of Ministers Resolution</b> On Approval of Procedure of Conduct of Natural-Agricultural, Environmental-Economic, Erosion-Preventive and Other Kinds of Division into Districts (Zoning) of Lands No.681 of 26 May	In particular, <b>specifies</b> that: • zoning of land is performed with account of natural conditions, agrobiologic features of crops, lines of business activity and requirements of environmental safety; • upon the results of land zoning activities, relevant charts (maps) are made	<i>Effective</i> Mechanism of land zoning is rarely used – due to continuous deficit of funds. The budget does not envisage those works, while commercial structures are not interested in their conduct.
14.	<b>Cabinet of Ministers Resolution</b> On Approval of Procedure of Development of Land Planning Projects for Organisation and Delimitation of Territories of Natural Preserve Stock, Other Nature Conservation, Sanative, Recreational, Historic and Cultural Destination No.1094 of 25 August	Ensues from the title <b>Establishes</b> in particular, that a land planning project may be ordered by a village, settlement, city council, district, regional or district state administration, a land owner or land user	<i>Effective</i> Local authorities and local self-government bodies got a mechanism of land planning of territories and delimitation of said territories. However, that mechanism is rarely used because of the above reasons.
15.	<b>Cabinet of Ministers Resolution</b> On Approval of Regulations of State Fund of Land Planning Documentation No.1553 of 17 November	Ensues from the title <b>Establishes</b> , in particular, that land planning documentation presented to the State Fund belongs to the state and cannot be transferred into private ownership	<i>Effective as amended</i>
16.	<b>Cabinet of Ministers Directive</b> On Approval of Plan of Measures at Enhancement of Effectiveness of State Regulation of Land Relations No.374 of 16 June	The measures included, in particular: • drafting bills on amendment of the Land Code, the Laws "On Capital of Ukraine – Hero City of Kyiv", "On Payment for Land", "On Lease of Land"; • sooner passage of the laws "On Land Market", "On Amendment of Code of Administrative Infringements" (enhancing responsibility for violation of the land legislation requirements); • development of the land planning project for delimitation of Kyiv, inventory of land in Kyiv, establishment of coastal protective belts along water bodies in Kyiv, delimitation of territories adjacent to buildings in Kyiv, etc.	<i>Effective</i> Measures not implemented (except raising fines for violation of the land legislation requirements). Attempts of delimitation of Kyiv fail due to conflicts between Kyiv city and Kyiv regional administrations over territories around Kyiv, intensely built up without documents of title. Delay of implementation of the other measures causes irreparable harm to the historic-cultural and natural landscape of the city and living environment of its residents.



Item	Regulatory-legal act / title	Brief content	Comment
2005			
1.	<b>Law</b> On Protection of Constitutional Rights of Citizens to Land 20 January	<b>Specifies</b> financial principles of the exercise of rights to land ownership by citizens. In particular: the value of execution of documents certifying ownership of land plots allotted in kind cannot exceed five tax-free minimum incomes; documents certifying ownership of the land plot transferred into ownership to citizens free of charge – nine tax-free minimum incomes	<i>Effective</i> However, on the land management market, the cost established by the Law is exceeded more than 10-15 times.
2.	<b>Law</b> On Accomplishment of Populated Localities 6 September	<b>Specifies</b> legal, economic, environmental, social and organisational principles of accomplishment of populated localities for creation of favourable conditions for human life	<i>Effective as amended</i> The Law actually does not work, since accomplishment of populated localities primarily depends on the budget.
3.	<b>Law</b> On Ratification of European Landscape Convention 7 September	Ensues from the title <i>For reference:</i> Ukraine signed the Convention in 2004. Goal of the Convention – to promote protection, regulation and planning of landscapes, organise European cooperation in landscaping.	<i>Effective</i> However, some provisions of the Convention are not implemented in Ukraine: for instance: new construction on Kyiv hills with historic architectural structures of the XII-XVIII centuries
4.	<b>Law</b> On Motorways 8 September	<b>Specifies</b> legal, economic, organisational and social principles of motorway operation, construction, reconstruction, repair and maintenance in the interests of the state and motorway users <b>Establishes</b> the priority of development of a network of public motorways.	<i>Effective as amended</i>
5.	<b>Verkhovna Rada Resolution</b> On Recommendations of Parliamentary Hearings "Modern State and Prospects of Development of Land Relations in Ukraine" No.2897 of 22 September <i>For reference:</i> the Parliamentary Hearings were held on September 13, 2005	In particular, it notes that: • <b>before regulation of the entire set of issues in the field of introduction of free land market, proposals of cancellation of the moratorium on sale of farming lands are premature;</b> • the main reason for violation of the land legislation lies in improper exercise of powers by bodies of land resources; local state administrations and local self-government bodies; passage of unlawful decisions by those bodies led to social tension; • imperfect regulation of land relations, organisation of land use, other problems of the sector are also caused by the non-funding of the fundamental land management science and lack of true professionals; • state funding of the land reform remains totally unsatisfactory, since the law on the state budget annually suspends Articles 21 and 22 of the Law "On Payment for Land" concerning allocation of the land tax proceeds to fund measures at rational use and protection of land <b>Recommends</b> , in particular: the President of Ukraine – to toughen control of full-scale implementation of the norms of the Constitution, the Land Code and other regulatory-legal acts on land relations; the Verkhovna Rada – consider as a matter of priority draft laws on: the land market; the State Land Cadastre; the state land (mortgage) bank; the Cabinet of Ministers – before January 1, 2006, submit for consideration to the Verkhovna Rada a draft state programme of use and protection of land; before July 1, 2006, submit for consideration to the Verkhovna Rada draft laws envisaged by the Land Code. Also: • draft laws on: state inventory of lands; zoning of lands; management of state-owned lands; guarantee stock of the State Register of Rights to Immovable Property and Their Limitations; • complete creation of the system of the State Land Cadastre and ensure proper state control of use and protection of land; • introduce a single state system of registration of ownership rights to immovable property and their limitations; • <b>work out proposals of codification of the land legislation by merger of norms of the effective laws regimenting land relations in one regulatory-legal act – the Land Code of Ukraine.</b>	Recommendations remain relevant, since little has been done after their passage: the State Land Cadastre is not introduced, the State Programme of Development of Land Relations in 2006-2010 not worked out, priority laws not passed; the land legislation not codified. Articles 21 and 22 of the Law "On Payment for Land" were deleted by the Law of 2008.  Nobody reported on implementation of the Recommendations.
6.	<b>Presidential Decree</b> On Territories and Sites of National Preserve Stock of State Importance No.1238 of 12 September	<b>Provides for</b> announcement of territories of particular nature conservation, scientific, aesthetic and educational value as preserves of state importance	<i>Effective</i> 11 new preserves have been created on the territory of Dnipropetrovsk, Kirovohrad and Khmelnytskyi regions with the total area over 9,700 hectares



7.	<b>Presidential Decree</b> On Decision of National Security and Defence Council of Ukraine of June 29, 2005 "On State of Observance of Requirements of Legislation and Measures at Enhancement of Effectiveness of State Policy in the Field of Regulation of Land Relations. Use and Protection of Land" No.1643 of 21 November	<b>Instructs</b> the Government to work out the Concept of Improvement of Land Relations in 2006-2015 before January 1, 2006; <b>Approves</b> the plan of preparation of priority bills and drafts of other regulatory-legal acts for enhancement of the effectiveness of state regulation of land relations, use and protection of land	<i>Effective as amended</i> The measures envisaged by the Decree and the Plan met Recommendations of the Parliamentary Hearings (September 13, 2005), but were not implemented. The plan was invalidated in pursuance of Decree No.121 of February 14, 2008
8.	<b>Presidential Decree</b> On Decision of National Security and Defence Council of Ukraine of December 9, 2005 "On State of Agro-Industrial Sector and Measures to Guarantee Food Security of Ukraine" No.1867 of 28 December	<b>Specifies</b> guidelines of the state policy in the field of food security. <b>Instructs</b> the State Committee for Land Resources, in particular: • jointly with the Ministry of Agricultural Policy within a month term to take measures to ensure proper control of conservation, reproduction and enhancement of soil fertility; • to provide for issue before April 1, 2006, of state acts of the right to land ownership in response to applications from owners of certificates of the right to a land lot (share) submitted earlier	<i>Effective</i> The mentioned measures are not implemented even now. Issue of acts continues. <i>Про плату за землю</i>
9.	<b>Constitutional Court of Ukraine Ruling</b> On Compliance to Constitution of Ukraine (constitutionality) of Provisions of Article 92, Item 6 of Section X "Transitional Provisions" of Land Code of Ukraine (the case of permanent use of land plots) No.5-pn of 22 September	<b>Rules</b> that item 6, Section X "Transitional Provisions" of the Land Code ordering to have documents of the right to permanent use of a land plot substituted with documents of the right to ownership or the right to lease, without appropriate legislative, organisational and financial support, is unconstitutional and invalidated from the date of passage of this Ruling by the Constitutional Court.	<i>Effective</i> Makes documentation of the right to ownership or lease instead of the right to permanent use of land unnecessary.
2006			
1.	<b>Law</b> On Amendment of Land Code of Ukraine 9 February	<b>Supplements</b> item 15 of Section X "Transitional Provisions" of the Land Code with the following paragraph: "Agreements (including powers of attorney) executed during the effective term of the ban on alienation of land plots and land lots (shares)... in the future shall be invalid from the time of their execution (certification)".	<i>Effective</i> The introduced norm ruled out circumvention of the moratorium on transfer of ownership of farming land plots.
2.	<b>Law</b> On Amendment of Land Code of Ukraine Concerning Ban on Sale of Farming Land Till Passage of Relevant Legislative Acts 19 December	Till January 1, 2008, <b>bans</b> contribution of the right to a land lot (share) to authorised funds of business companies; <b>prohibits:</b> purchase and sale of farming land plots of state and communal ownership; any alienation of land plots owned by individuals and legal entities for market-oriented agricultural production, land lots (shares) allotted in kind for personal farmsteads, except their inheritance, exchange of land plots and taking (buyout) for public needs. <b>Provides</b> that purchase, sale or other alienation of land plots and land lots (shares) are introduced from January 1, 2008, on the condition of effectiveness of laws describing the specificity of circulation of lands of state and communal ownership and land used for market-oriented agricultural production	<i>Effective</i> Moratorium on sale of farming land extended till January 1, 2008 Moratorium supplemented with a ban on change of the target purpose of land plots granted to owners of land lots (shares) for personal farmsteads. From now on, cancellation of the moratorium is conditional not only on the date but also on the effectiveness of the laws on the state land cadastre and the land market.
3.	<b>Presidential Decree</b> Issue of Commission for Study and Comprehensive Solution of Issues of Implementation of State Policy in the Field of Rational Use and Protection of Land No.133 of 14 February	Establishes said Commission, approves its Regulations and membership. The main task is to work out proposals for perfection of the state land policy and present them to the President.	<i>Effective as amended</i> The Commission has long been not renewed, it includes many retired officials. This indirectly illustrates the true weight and influence of that auxiliary body.
4.	<b>Presidential Decree</b> On Some Issues of Organisational-Legal Support for Establishment and Regulation of Land Market and Protection of Rights of Land Plot Owners No.644 of 25 July	<b>Instructs</b> the Government within four months, with account of international experience and with participation of representatives of parliamentary committees and factions, to prepare and submit for consideration to the Verkhovna Rada bills aimed at institution of proper legal principles of creation and regulation of the land market.	<i>Effective</i> Instruction not fulfilled.
5.	<b>Cabinet of Ministers Resolution</b> On Approval of Procedure of Registration of Subjects of State Expert Examination of Land Management Documentation and Standard Form of Its Conclusion No.974 of 12 July	<b>Establishes</b> that subjects of state expert examination of land management documentation are registered by the State Committee for Land Resources, the Republic Committee for Land Resources of the Autonomous Republic of Crimea, regional, Kyiv and Sevastopol city main departments of land resources.	<i>Effective</i>
6.	<b>Cabinet of Ministers Resolution</b> On Measures at Perfection of State Control in the Field of Protection of Natural Environment No.997 of 19 July	Functions of state control of protection, defence, use and reproduction of forests are vested in the State Environmental Inspection – a governmental body of state governance set up within the Ministry of Environmental Protection	<i>Effective</i>



Item	Regulatory legal act / title	Brief content	Comment
7.	<b>Cabinet of Ministers Resolution</b> On Approval of Procedure of Collection, Use, Dissemination of Information about Desertification and Degradation of Land No.998 of 19 July	Ensues from the title <b>Provides</b> , in particular, that the State Committee for Land Resources grants relevant information for the calendar year by March 25 of the following year	Effective
<b>2007</b>			
1.	<b>Law</b> On Amendment of Some Legislative Acts of Ukraine Toughening Responsibility for Squatting 11 January	Introduces amendments to the Administrative and Criminal Codes In the specified cases, squatting involves criminal responsibility (deprivation of liberty for two to four years or imprisonment for up to two years)	Effective For reference: previously, norms of criminal punishment for those crimes were removed from the Criminal Code.
2.	<b>Law</b> On Amendment and Invalidation of Some Legislative Acts of Ukraine in Connection with Approval of Civil Code of Ukraine 27 April	In particular, <b>introduces the notions</b> of emphyteusis and superficies (removed during passage of the Land Code in 2001) <b>specifies the procedure</b> of establishment of servitude, provides for personal servitude	Effective
3.	<b>Law</b> On State Budget of Ukraine for 2008 and on Amendment of Some Legislative Acts of Ukraine 28 December	Introduces changes, in particular, to the land legislation (Land Code, On Payment for Land, On Lease of Land, etc.), later ruled unconstitutional and cancelled by the Law of 3 June 2008	The Law for six months stalled the mechanism of land lease, confused land taxation, extension of land plots in use, etc. Caused extreme damage to the land legislation.
4.	<b>Cabinet of Ministers Resolution</b> On Approval of Policy of Assessment of Damage Caused by Squatting, Use of Land Plots Not for Target Purpose, Removal of Soil Cover (Fertile Layer of Soil) without Special Permit No.963 of 25 July	Ensues from the title	Effective
5.	<b>Cabinet of Ministers Resolution</b> On Approval of State Target Programme of Development of Ukrainian Village through 2015 No.1158 of 19 September	In particular, for integral land planning of rural areas and agricultural land tenures and land uses, perfection of the State Land Cadastre, <b>provides for</b> : • inventory of agricultural land tenures and land uses; • development of recommendations for rational placement of agricultural production dependent on soil quality; • organisation of land tenures and land uses by agricultural enterprises, farmsteads and peasant holdings with account of their optimal size and requirements of environmental and landscape organisation of territory; • assessment of land resources, the recreational and sanative potential; • enlargement of land plots through merger of land lots (shares), creation of cooperative societies and other partnerships; • creation of the regulatory-legal framework and a system of automated keeping of the State Land Cadastre; • perfection of the procedure of land accounting with account of quantitative and qualitative indicators and its target use	Effective So far, there were no public reports of the progress of the Programme implementation
<b>2008</b>			
1.	<b>Law</b> On Amendment of Some Legislative Acts of Ukraine Toughening Responsibility for Violation of Requirements of Land Legislation 15 April	Increases penalties for violation of the land legislation In particular, the Administrative Code is supplemented with Article 53-3, establishing penalties for removal of the soil cover of land plots without special permit, as well as for violation of conditions of removal, conservation and use of the fertile layer of the soil	Effective
2.	<b>Law</b> On Amendment of Some Legislative Acts of Ukraine 3 June	<b>Establishes</b> , in particular: • that the right to lease land plots of state or communal ownership is acquired solely by auction (with exceptions from this norm); • norms of annual rent for land plots of state or communal ownership; • that state-owned land plots are sold to foreign states and foreign legal entities by CMU upon coordination with the Verkhovna Rada or by state privatisation bodies upon coordination with CMU; • that land plots of state or communal ownership intended for sale to business entities are to be sold on a competitive basis, except buyout of land plots hosting immovable property owned by buyers of the plots without state-owned shares (lots)	Effective





3.	<b>Law</b> On Amendment of Some Legislative Acts of Ukraine for Promotion of Construction 16 September	Introduces amendments to the Code of Administrative Infringements, Land and Civil Codes, and 10 laws dealing with construction	<i>Effective</i> Greatly expands the norms regulating competitive sale of land plots, leaving however the issue of licensing of legal entities arranging auctions unsettled.
4.	<b>Presidential Decree</b> On Decision of National Security and Defence Council of Ukraine of January 18, 2008, "On Progress of Implementation of President of Ukraine Decree of November 21, 2005, No.1643 "On Decision of National Security and Defence Council of Ukraine of 29 June 2005 "On State of Observance of Requirements of Legislation and Measures at Enhancement of Effectiveness of State Policy in the Field of Regulation of Land Relations, Use and Protection of Land" No.121 of 14 February	The Cabinet of Ministers was given instructions: • of reorganisation of the State Agency of Land Resources of Ukraine; • of expansion of functions and powers of the body established in the result of such reorganisation, direction and <b>coordination of its activity immediately by the Cabinet of Ministers;</b> • of drafting, employing the Commission for Study and Comprehensive Solution of Issues of Implementation of State Policy in the Field of Rational Use and Protection of Land, and <b>approval of the Concept of Development of Land Relations in Ukraine;</b> • to take immediate measures for submission of bills on the land market and the State Land Cadastre for consideration to the Verkhovna Rada before March 1, 2008	<i>Effective</i> So far, <b>the instructions remain unaccomplished.</b> <i>Закон України Про плату за землю</i>
5.	<b>Presidential Decree</b> On Additional Measures to Guarantee Observance of the Right of Citizens Living on the Territory of the Autonomous Republic of Crimea to Land No.435 of 14 May	Instructs the Cabinet of Ministers to take immediate measures for solution of problem issues arising as citizens living in the Autonomous Republic of Crimea get rights to land. Proposes the Council of Ministers of the Autonomous Republic of Crimea within a month term to work out and approve a programme of provision of repatriates who previously did not get land plots for construction and maintenance of residential buildings land plots for their needs of the size established by the land legislation.	<i>Effective</i>
6.	<b>Presidential Decree</b> On Suspension of Cabinet of Ministers of Ukraine Resolution of April 17, 2008, No.394 No.639 of 21 July	The Resolution was suspended as inconsistent with the Constitution of Ukraine	<i>Effective</i>
7.	<b>Presidential Decree</b> On Immediate Measures at Protection of Owners of Land Plots and Land Lots (Shares) No.725 of 19 August	<b>Establishes</b> rent for farming land plots, land lots (shares) not less than 3% of the value of a land plot, land lot (share)	<i>Effective</i> Therefore, the rent increased two-fold.
8.	<b>Cabinet of Ministers Resolution</b> On Amendment of Standard Agreement of Land Lease No.780 of 3 September	Supplements a standard agreement with items describing qualitative features of land by composition and kind of holdings, and qualitative features of immovable property – the state of buildings, structures, other facilities and infrastructure, the state of transportation, communications and utility lines, including roads located on leased land plots	<i>Effective</i> Changes substantially expand the subject of the agreement and give grounds to demand that tenants bring those features and the infrastructure in their prior state after the expiry.
9.	<b>Cabinet of Ministers Resolution</b> On Amendment of Regulations of State Inspection for Control of Land Use and Protection No.927 of 16 October	<b>Provides that:</b> • the Chairman of the State Committee for Land Resources is the Main State Inspector of Ukraine controlling land use and protection; • the State Land Inspection is led by the head appointed and dismissed by CMU on a proposal of the Main State Inspector; • the head of the State Land Inspection is the first deputy of the Main State Inspector and a member of the Board of the State Committee for Land Resources	<i>Effective</i> Changes substantially expand the subject of the agreement and give grounds to demand that tenants bring those features and the infrastructure in their prior state after the expiry.
10.	<b>Cabinet of Ministers Resolution</b> On Amendment of Cabinet of Ministers of Ukraine Resolution of April 2, 2002, No.449 No.1019 of 12 November	<b>Establishes</b> that state acts of right to private land ownership, state acts of right to land ownership, state acts of right to ownership of land plot and state acts of right to permanent use of land issued previously remain effective and shall be replaced in case of voluntary application of individuals or legal entities <b>Approves</b> a new form of the state act of the right to land plot ownership	<i>Effective</i> The changes enable due regard of limitations (encumbrance) of use of a land plot or its part and registration of co-owners of the land plot.
11.	<b>Cabinet of Ministers Resolution</b> On Assessment of Losses Caused by Non-Performance of Work for Reclamation of Disturbed Land No.1098 of 17 December	<b>Establishes</b> that such losses caused to owners and users are reimbursed in pursuance of decisions of commissions established according to CMU Resolution "On Procedure of Assessment and Reimbursement of Losses to Land Owners and Land Users" No.284 of April 19, 1993	<i>Effective</i> The Resolution was passed pursuant to Article 157 of the Land Code and NSDC Decision of January 18, 2008. One of few instances of fulfilment of an NSDC decision.



Item	Regulatory-legal act / title	Brief content	Comment
2009			
1.	<b>Law</b> On Amendment of Article 6 of Law of Ukraine "On Delimitation of Lands of State and Communal Ownership" 15 January	<b>Establishes</b> that during delimitation of land, land plots allocated to public vocational schools and public higher educational establishments cannot be transferred into communal ownership	Effective
2.	<b>Law</b> On Amendment of Some Legislative Acts of Ukraine Concerning Right of Religious Organisations to Permanent Use of Land Plots 15 January	<b>Establishes</b> the right of religious organisations to permanent use of land plots for construction and maintenance of houses of prayer and other structures necessary to support their activity At the same time – <b>bans</b> use of those land plots for business activity	Effective Закон України Про плату за землю
3.	<b>Presidential Decree</b> On Decision of National Security and Defence Council of Ukraine of November 21, 2008 "On Fulfilment of Decisions of National Security and Defence Council of Ukraine on Regulation of Land Relations, Use and Protection of Land" No.5 of 12 January	Terms the Government's activity at fulfilment of NSDC decisions on land relations, use and protection of land unsatisfactory. <b>Instructs</b> the Cabinet of Ministers: <ul style="list-style-type: none"><li>• take measures for fulfilment of NSDC decisions dealing with land relations, support for official investigation with respect to persons who regularly failed to fulfil said NSDC decisions within set terms, and take proper disciplinary measures against such persons;</li><li>• within a month term, take measures for strengthening the leadership of the State Committee for Land Resources and its territorial bodies, improvement of material and technical support for the system of state bodies of land resources;</li><li>• take measures for establishment and development of the land market, including cancellation of the moratorium on alienation of farming land, to ensure proper support for bills on the land market and the State Land Cadastre in the Verkhovna Rada;</li><li>• accelerate passage of the Concept of Development of Land Relations in Ukraine in 2009-2015 and development till the end of 2009 of the State Target Programme of Development of Land Relations in Ukraine through 2015 on its basis;</li><li>• accelerate development and submission for consideration to the Verkhovna Rada of bills of:<ul style="list-style-type: none"><li>- land zoning;</li><li>- amendment of the Land Code for introduction of obligatory public discussion of drafts of decisions of change of the target purpose of lands of natural preserves and other nature conservation stock, historic-cultural and forestry destination and lands of the water stock; of the Law "On Payment for Land" for introduction of a progressive scale of payment for land dependent on the time when a land plot is not used for the target purpose;</li><li>• study the expediency of allocation of 30% of the land tax revenues, in particular, to measures at rational use and protection of land, enhancement of soil fertility, land planning and monitoring;</li><li>• take immediate measures for:<ul style="list-style-type: none"><li>- completion of issue of state acts of the right to land ownership to owners of certificates of the right to ownership of a land lot (share);</li><li>- acceleration of inventory and monetary evaluation of land, delimitation of lands of state and communal ownership;</li></ul></li><li>• toughen requirements to candidates for executive positions in state bodies of land resources to prevent appointment of persons who, according to the Law "On State Service", cannot be appointed to positions in state bodies, and persons without the relevant education.</li></ul>The Main Department of State Service is instructed to check compliance of executives and specialists employed at state bodies of land resources to requirements of the Law "On State Service" within a two-month term;</li><li>• instruct the General Prosecutor's Office, jointly with the Security Service of Ukraine and the Ministry of Internal Affairs, to take measures to bring to account officials of state bodies of land resources who, using official powers, commit unlawful acts in the field of land relations</li></ul>	Effective So far, there have been no public reports of the progress of implementation of the Decree.
4.	<b>Law</b> On Amendment of Article 18 of Law of Ukraine "On Evaluation of Land" 5 February	Formulates Part 2, Article 18 of the Law "On Evaluation of Land" in the following wording: "standard monetary evaluation of land plots is performed: <ul style="list-style-type: none"><li>• in populated localities, irrespective of their target purpose – not less than once every 5-7 years;</li><li>• farming land plots beyond populated localities – not less than once every 5-7 years, non-farming – not less than once every 7-10 years"</li></ul>	Effective



5.	<b>Law</b> On Amendment of Article 12 of Law of Ukraine "On Payment for Use of Land" 5 March	The changes supplement the list of enterprises, institutions and organisations released from payment of the land tax. The list includes institutions of culture, science, education, public health, physical culture and sports (including public organisations) maintained at the expense of the state or local budgets. Those institutions are released from the land tax on the condition of allocation of the relevant amounts to development of physical culture and sports according to the lines and procedure specified by the Cabinet of Ministers	<i>Effective</i>
6.	<b>Law</b> On Amendment of Some Legislative Acts of Ukraine Concerning Documents Certifying Right to Land Plot, and Procedure of Division and Merger of Land Plots 5 March	Introduces amendments to the Land Code and the Laws "On Land Planning" and "On State Registration of Ownership Rights to Immovable Property and Their Limitations", to simplify the procedure of documentation and registration of land plots acquired on the secondary market (purchase of land plots from owners holding executed acts of right to land ownership)	<i>Effective</i>
7.	<b>Cabinet of Ministers Directive</b> On Approval of Comprehensive Plan of Measures at Reformation of Land Relations, Deregulation and Removal of Corruption in That Field in 2009 No.535 of 8 April	Ensues from the title	<i>Effective</i> So far, there were no public reports of implementation of measures envisaged by the by the Comprehensive Plan
8.	<b>Cabinet of Ministers Directive</b> On Approval of Concept of State Target Programme of Development of Land Relations in Ukraine through 2020 No.743, 17 June	<p>Ensues from the title</p> <p>The Concept identifies the problems to be solved by the mentioned State Programme. The most acute problems include:</p> <ul style="list-style-type: none"> <li>•incompletion of reformation of economic and legal relations of ownership;</li> <li>•imperfection of the system of state governance in the field of land use and land relations;</li> <li>•backwardness of the automated system of maintenance of the Land Cadastre.</li> </ul> <p>Mentioned among the reasons for those problems were:</p> <ul style="list-style-type: none"> <li>•absence of a considerate state land policy and a mechanism of its implementation;</li> <li>•insufficient funding of the fundamental and applied land management science;</li> <li>•lack of logic at solution of problems of the land reform;</li> <li>•neglect of an integral approach to the development of rural territories in course of the land reform.</li> </ul> <p>The mentioned reasons are to me removed and the problems solved, in particular, through:</p> <ul style="list-style-type: none"> <li>• identification of the organisational, economic and land management mechanism of development of land relations;</li> <li>•support for creation of a system of guarantee of ownership rights to land and the land market infrastructure;</li> <li>•creation of an effective system of enhancement of effectiveness of state regulation of land relations and management of land use</li> </ul>	<p><i>Effective</i></p> <p>The Concept actually admits that after 17 years of the land reform its main goals were not achieved, and few of the objectives were fully met.</p> <p>As a result, the Concept in fact reiterates provisions of many documents passed earlier.</p>

# LAND POLICY AS SEEN BY THE PUBLIC

Choosing and implementing the strategy of the state land policy, one cannot but take into account the public opinions and perceptions shaped by many factors: historic traditions and experience, mentality, ideological influences. At the same time, the public opinion is formed on the basis of assessments of the authorities' actions in the field of implementation of the land policy, their success and effectiveness (or, vice versa, absence of achievements and results).

To find out the public opinion on that subject, Razumkov Centre Sociological Service conducted several public opinion polls whose results are presented here<sup>1</sup>.

## Attitude to private land ownership

By and large, Ukrainian citizens have no dominant opinion of private land ownership: although 40.2% gave a positive answer to the question whether private land ownership should exist, and only 15% – negative, another 29.8% believe that there should be ownership of only small plots of land. The stand of those who stick to the latter opinion may be deemed closer to that of opponents of private land ownership than of its adherents. After all, private ownership of only small plots of land makes fully fledged development of the land market rather problematic. It should also be noted that compared to 2001, the number of staunch supporters of the idea of private land ownership noticeably decreased – from 47% to 40.2% – at the expense of growth of the share of those undecided – the percentage of those standing for private ownership of only small land plots and of opponents of private land ownership remained actually unchanged (Diagram “*Should private land ownership exist in Ukraine?*”).

While among village and city residents, the shares of staunch supporters of private land ownership are actually the same (respectively, 39.5% and 40.4%), in the countryside, the share of adherents of private ownership of only small plots of land is somewhat higher (respectively, 33.8% and 28.1%), and fewer people stand against private land ownership (respectively, 11.9% and 16.4%).

Younger respondents are more disposed to the idea of private land ownership – with age, their share falls from 46.8% in the age of 18-29 years to 34.9% in the age of 60 and over. Respectively, with age, the

share of opponents goes up. Hence, the attitude to that issue depends on what historic period shaped people's perceptions.

Regional differences are mainly statistically unimportant, only in the East a bit more people than in the West and South believe that there should be no private land ownership in Ukraine<sup>2</sup>.

Concerning the attitude to private ownership of farming land, few people stick to extreme opinions: “private land ownership is totally inadmissible” – 14.7%, “private ownership should exist without any limitations” – 7.8%. At that, compared to 2002, the share of adherents of the latter opinion somewhat declined (from 10.2% to 7.8%, Diagram “*What is your attitude to private ownership of farming land?*”). The share of those who believe that private ownership should be allowed only to Ukrainian citizens also decreased (from 34.2% to 24.8%), mainly at the expense of growth of the share of those undecided (from 6% to 14.1%). By and large, the majority of Ukrainians believe that there should be some limitations on private ownership of farming land – of its scale, for those who cultivate land with their hands, or only for Ukrainian citizens.

Villagers are more disposed to private ownership of farming land for those who cultivate it, compared to city residents (respectively, 40.3% and 35.8%), and less oppose it (respectively, 12% and 15.9%).

Younger respondents more tend to believe that private ownership of farming land should exist without any limitations, and less – that it is totally inadmissible.

<sup>1</sup> Building on the results of polls held by the Razumkov Centre Sociological Service in May 2001 (2,000 respondents polled), February 2002 (2,012) and March 2009 (2,012). All polls were held under a multi-stage sampling with quota selection of respondents at the final stage, representative of the adult population of Ukraine in terms of the key social and democratic indicators (area of residence, settlement type and size, age, gender). The samplings' theoretical error at all polls does not exceed 2.3%.

<sup>2</sup> Hereinafter, the regional division is as follows: the **West**: Volyn, Transcarpathian, Ivano-Frankivsk, Lviv, Rivne, Ternopil, Chernivtsi regions, the **South**: the Autonomous Republic of Crimea, Odesa, Kherson, Mykolayiv regions, the **East**: Dnipropetrovsk, Donetsk, Zaporizhzhya, Luhansk, Kharkiv regions, the **Centre**: city of Kyiv, Vinnytsia, Zhytomyr, Kyiv, Kirovohrad, Poltava, Sumy, Khmelnytskyi, Cherkasy, Chernihiv regions.





Regarding regional differences, the opinion of Southerners more differs from the Ukrainian average. There, most of all (45%) people believe that private ownership of farming land is admissible only on a small scale, for those who cultivate land with their hands, and least of all 7.6% consider that right totally inadmissible. The latter opinion is also less shared in the West (10.7%), while Easterners more often than Ukrainians in general consider private ownership of farming land totally inadmissible (18.6%).

### Attitude to free purchase and sale of land

Compared to 2001, the shares of those who reported extreme positions on that issue declined: “land should be traded without limitations” (from 15.7% to 8.6%) and “there should be not trade in land” (from 37% to 28.5%), while an increase was observed among those who believe that only small land plots should be traded (from 24.8% to 29.1%), those who believe that only non-farming land should be traded (from 3.7% to 8.8%), and those undecided (from 8.6% to 16.2%, Diagram “*Should free purchase and sale of land be introduced in Ukraine?*”).

Quite expectedly, the attitude to purchase and sale of land depends on the attitude to private land ownership. Among those who believe that there should be private land ownership in Ukraine, more people than among all those polled stick to the opinion that trade in land should be introduced without limitations. However, in absolute figures, their share is still not too high – 20.5%. In that group, people more often chose the answer “trade should be introduced only in small land plots” (26.8%). The latter opinion is more (52.6%) supported by respondents who believe that ownership of small plots of land should be allowed. Among opponents of private land ownership, 85.4% are against its purchase and sale.

Villagers are more cautious than city residents about purchase and sale of land. They more than citizens tend to believe that land should not be traded, and fewer people support trade in land without limitations and trade in small plots. The probable reason is that village residents, whose incomes are lower than in cities, are afraid of being non-competitive on the land market.

Regarding differences among regions, one should in the first place note a higher than in other regions share of those polled in the South standing for trading only in small land plots (40.6%), and a higher share of opponents of trade in land in the Centre and in East, compared to the South and West.

The younger respondents are, the more they tend to support “unlimited” trade in land, and less – to strongly oppose it.

Those who oppose the possibility of purchase and sale of farming land slightly outbalance those who suggested that there should be no trade in land (respectively, 34.5% and 28.5%). At that, their number somewhat increased compared to 2002 (from 31.4% to

34.5%). The share of those who admit such possibility after the creation of a broad stratum of well-to-do people in Ukraine went down (from 11.5% to 6.4%), as did the share of those who believe that purchase and sale of land should be introduced immediately and without limitations for Ukrainian individuals and legal entities (from 14.9% to 8.1%), against the background of a substantial increase in the number of those undecided (from 7.9% to 18.3%, Diagram “*What is your attitude to the possibility of purchase and sale of farming land?*”). Younger respondents more welcome purchase and sale of farming land.

The share of those who negatively assess the possibility of purchase and sale of farming land is the highest in the East, while in the West, a positive attitude was usually reported, on the condition of creation of an adequate regulatory-legal framework for land appraisal (39.5%); Southerners more often than Ukrainian average reported a positive attitude, on the condition of emergence of a broad stratum of well-to-do people.

As regards the moratorium on sale of farming land, quite many respondents have no definite opinion on that problem: 19.7% of those polled had no idea whatsoever, 12.3% were undecided, and 14.8% reported a neutral stand (Diagram “*What is your attitude to the moratorium (ban) on sale of farming land plots, now effective in Ukraine?*”). However, the share of those who hail the moratorium more than two-fold exceeds the share of its opponents (respectively, 36.6% and 16.6%). At that, villagers are more positive about it than city residents (respectively, 41.1% and 34.6%).

A more positive attitude to the moratorium is reported in the East and South, compared to the Centre and West. Young people less welcome it than representatives of elder and middle age groups.

Those polled more tend to believe that transfer of land in ownership (including sale) within city boundaries should be banned (32.9%), while the opposite opinion is shared by 27.5% (Diagram “*Should allocation of city land in ownership (including sale) be allowed or prohibited?*”). At that, opponents of allocation of city land in ownership are in a majority exactly among city residents, while in the countryside, the shares of opponents and supporters statistically do not differ. Such spirits of the city population, most probably, are prompted by problems arising from allocation of land plots in cities and mainly associated with dense development of residential city quarters, attempts of developers to get land plots at the expense of the natural reserve stock and other public facilities (including recreational areas and sports grounds).

In the West and East, the shares of those who support a ban and those who stand for transfer of city land in ownership statically do not differ; in the South, more people stand for transfer of city land in ownership, while in the Centre, adherents of a ban are in a clear majority.



The younger the respondents, the more they tend to support transfer of city land in ownership.

### Public perception of the state land policy

The land policy of the authorities arouses much criticism, since the land relations remain in chaos. Land reform measures announced by Ukraine's President, Government and Parliament are being implemented rather slowly. The Laws "On Land Market", "On State Land Cadastre", "On State Mortgage Bank" and many others are not passed.

Given the generally negative public assessment of the authorities' activity in all sectors, one could hardly expect a positive assessment of their land policy. Positive assessments were reported by only 5.5% of those polled, negative – by 34.8% (Diagram "How do you assess the present land policy in Ukraine?"). 27.7% of those polled have never heard of such policy, which is not surprising, given that the Verkhovna Rada has not approved a single State Programme in the field of land relations, and the State Budget allocated to the State Committee for Land Resources for the land reform only UAH 7.3 million in 2009.

Villagers assess the land policy of the authorities worse than city residents (respectively, 40.5% and 32.3%).

The land policy of the state was more criticised by residents of the country's West and South (respectively, 40.5% and 38.7%), compared to the Centre and East (31.8% and 32.6%). Young people are less critical in their assessments of the state land policy.

Nearly half (48.7%) of respondents believe that the material standing of villagers deteriorated in the result of the land reform. Their share increased, compared to 2001, by 10% (Diagram "Did the material standing of

villagers change in the result of the agrarian reform?"). This opinion is more spread in the Centre (59%), less – in the West (37.1%).

The share of those who believe that the material standing improved decreased almost three-fold (from 9.2% to 3.3%). At that, the majority (53.5%) of villagers believe that their material standing deteriorated in the result of the land reform.

Quite expectedly, respondents assess the land policy in Ukraine dependent on the perceived effect of the land reform on villagers. For instance, 46.2% of respondents convinced that the material standing of villagers deteriorated in the result of the land reform assessed the land policy in Ukraine negatively, while among those who believe that their standing improved or at least did not change, they make 27.7%. Although even among those who believe that the standing of villagers improved, only 18.5% positively assessed the land policy (among those who saw no change – 5.2%, among those who consider it to have deteriorated – 4.6%).

### Situation on the land market and knowledge of norms of the effective legislation

The situation on the land market is also illustrated by the fact that 11.4% of all those polled reported that they used land plots without execution of documents (Diagram "With respect to land as an economic object, you are...?"). Among villagers, they made 16.1%, among city residents – 9.3%. The shares of people using land without proper execution of documents are roughly the same in all groups of respondents by the income level.

At that, acts of land ownership are mainly held by representatives of the group with relatively high incomes (those who reported that their family generally did well), while the share of "permanent users of land plots", vice versa, goes up with a decline in incomes. So, it may be assumed that low incomes present a factor hindering privatisation of land staying in permanent use (especially of land plots attached to private houses).

Despite rather wide use of land without documents, only 11.4% of respondents reported that they knew cases of imposition of penalties for use of land plots in violation of the land law (Diagram "Do you know cases of imposition of penalties for use of land plots in violation of the land legislation?"). At that, among those who use land without proper execution of documents, that share is equally small (13.2%).

The knowledge of the effective land legislation norms remains rather low – only 3.2% of those polled reported good knowledge of the land legislation, 41.4% had some idea, and more than half (51.8%) – no idea of the land legislation (Diagram "Are you familiar with the norms of the effective land legislation of Ukraine?").



Proceeding from the above, the following conclusions can be made.

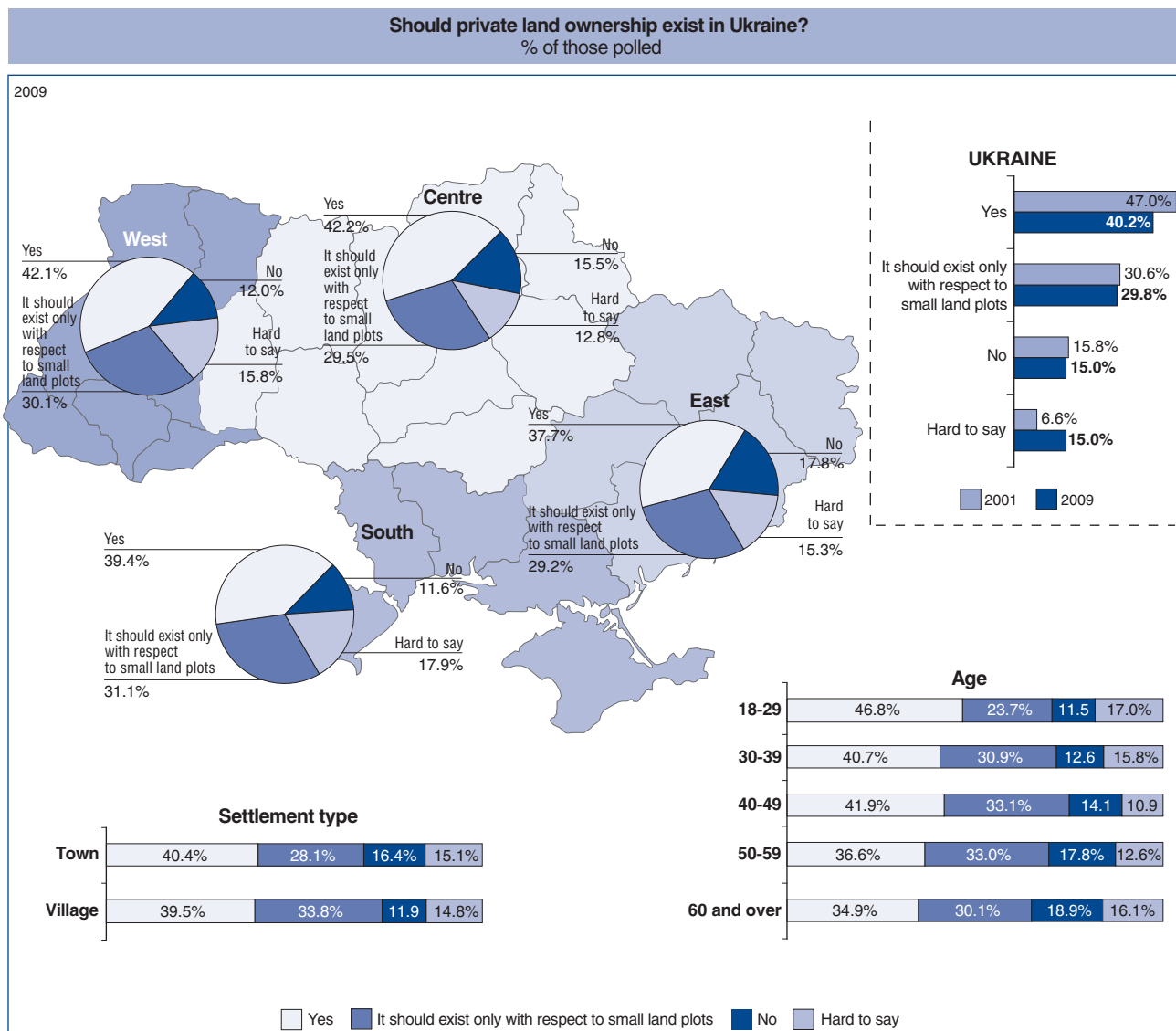
The public opinion is divided on the problems related with the land policy, fully in line with the controversy of the processes taking place in that field. At that, it may be assumed that it is the deficiencies in pursuance of the land policy that resulted in the decrease in support for market reforms in the land sector in the recent years.

By and large, one may note a “cautious” attitude of Ukrainians to big land tenure, largely because of fears that big land owners may have strong influence and dictate their terms not only to residents of the area where their property is situated but also to local authorities. This is witnessed, in particular, by strong support for some limitations of private ownership of farming land – either only on a small

scale, for those who cultivate land on their own, or only for Ukrainian citizens.

Villagers are more cautious than city residents to land purchase and sale. The probable reason is that village residents, whose incomes are lower than in cities, are afraid of being non-competitive on the land market. The perceptions of the strategy of the land policy are largely shaped by stereotypes that were and continue to be formed under ideological influences. This is proven by differences in the opinions of the younger and elder generations whose consciousness was formed in different social conditions.

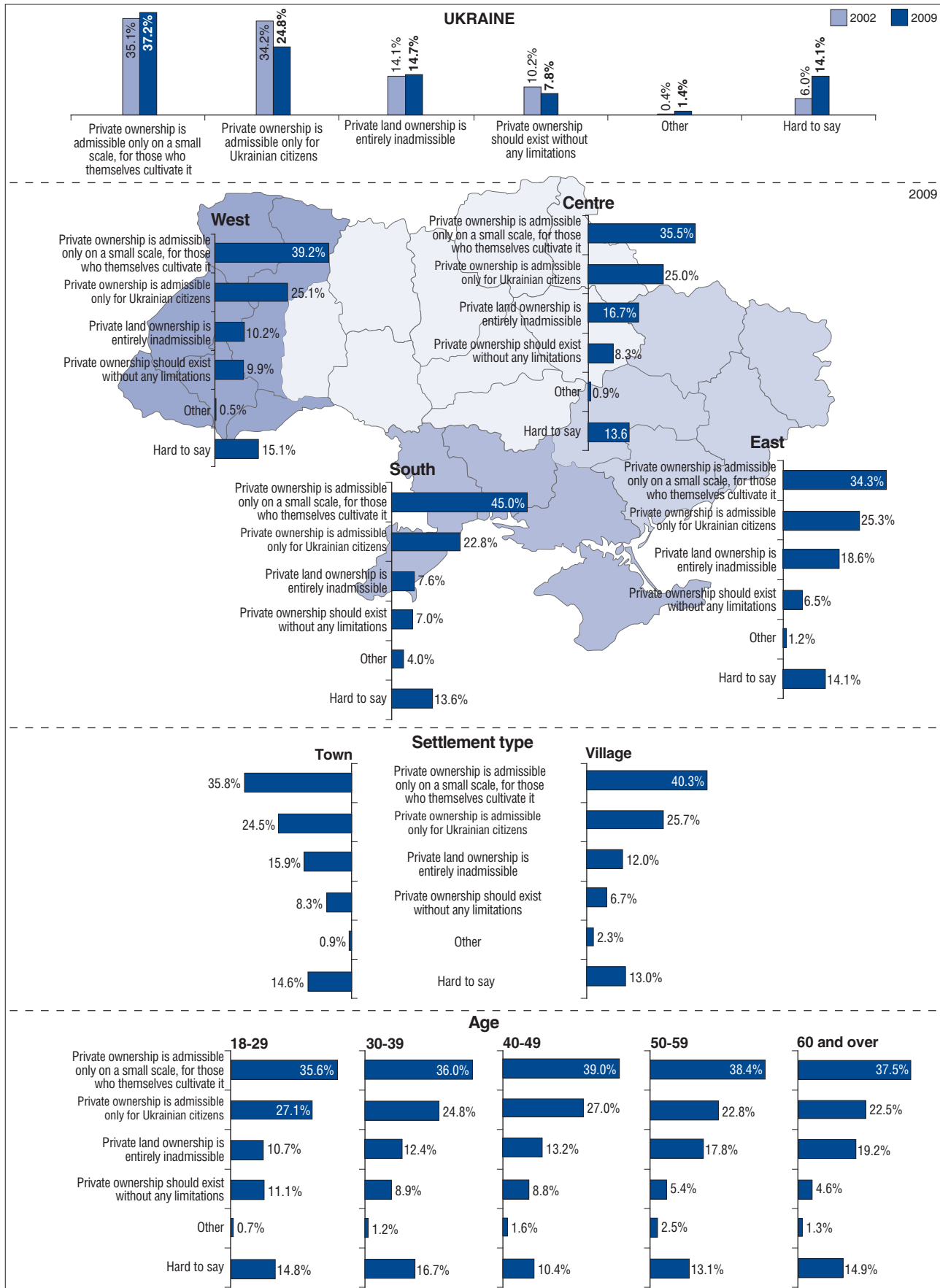
By and large, the survey results let us assert that public perceptions of the problems of land market development are largely shaped and will continue to be shaped by the consistency, transparency and success of the authorities’ activity in this field.







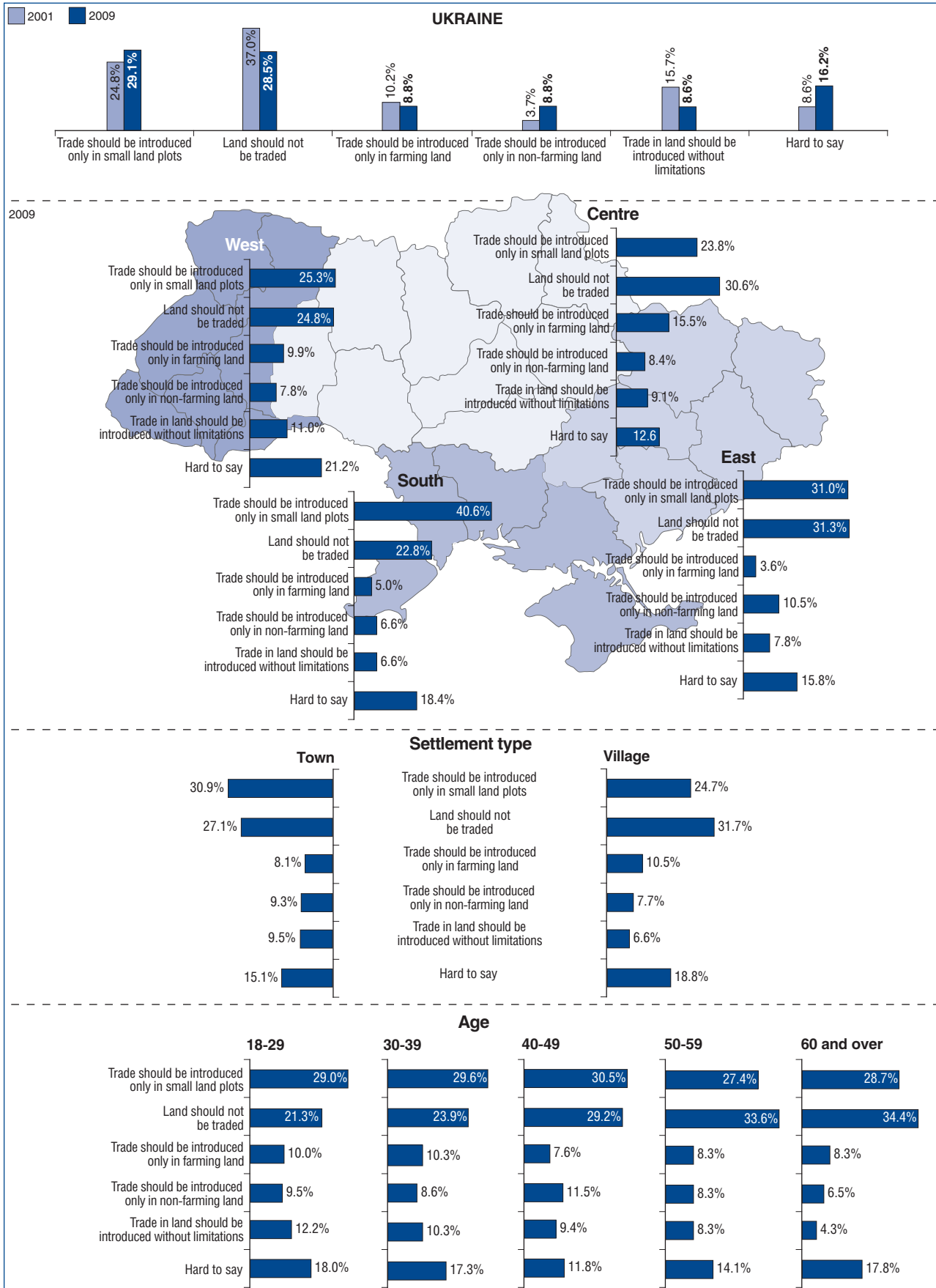
**What is your attitude to private ownership of farming land?**  
% of those polled





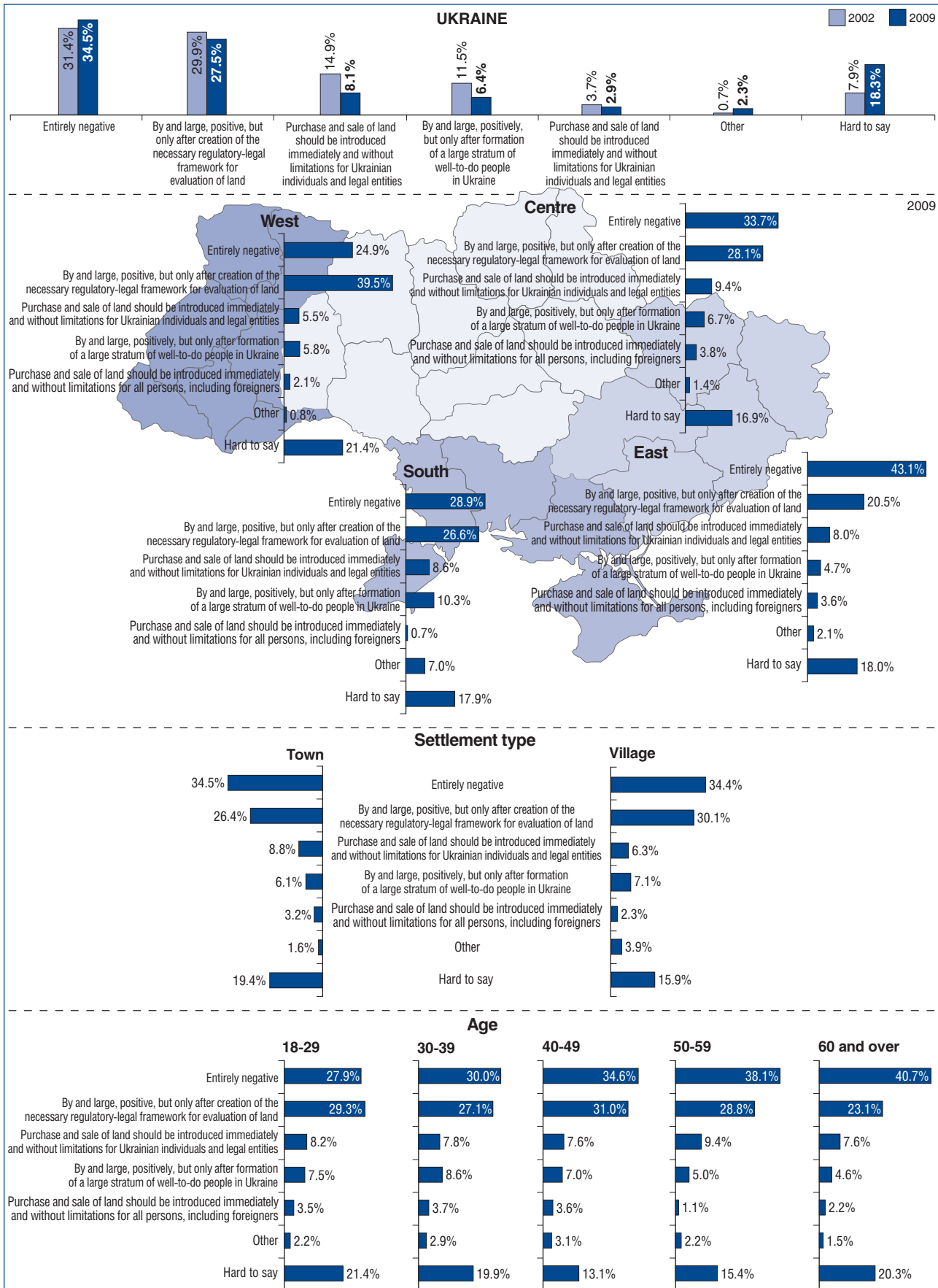
### Should free purchase and sale of land be introduced in Ukraine?

% of those polled





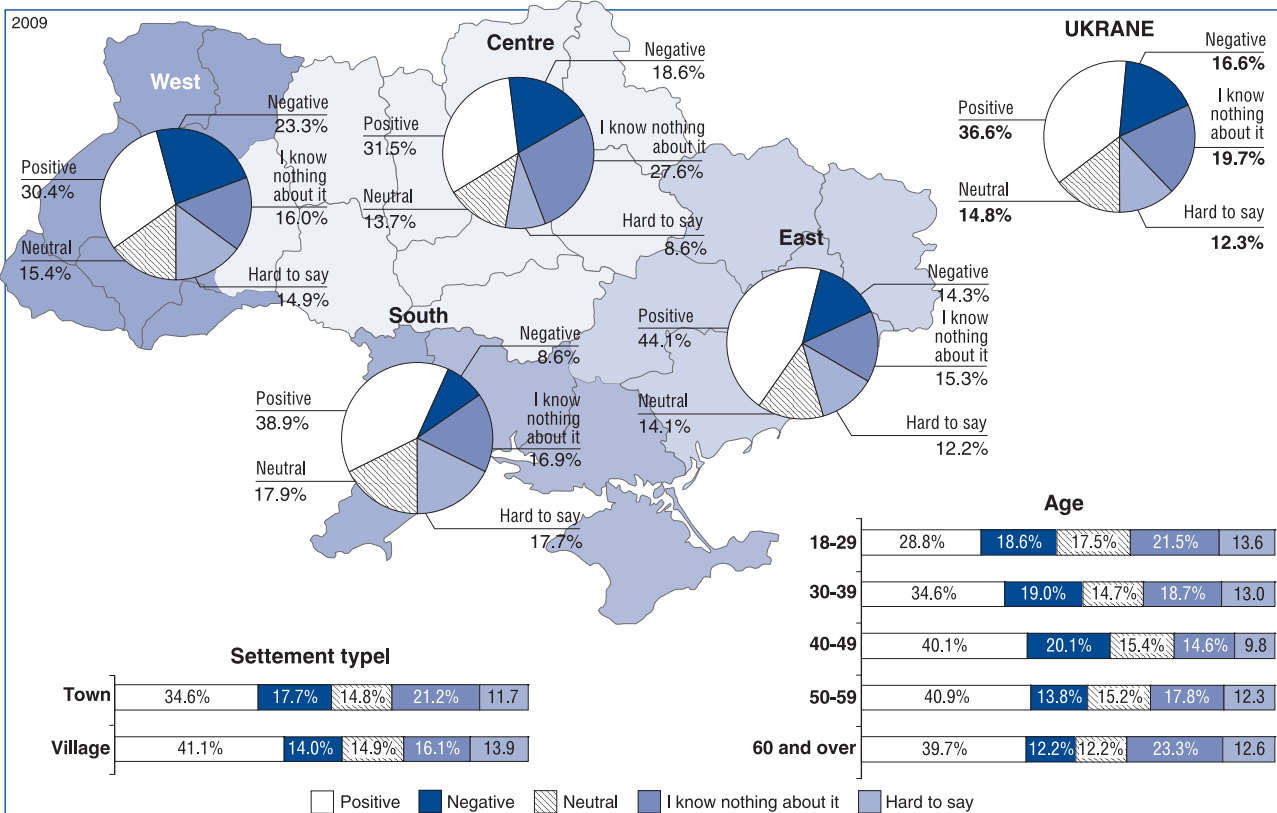
**What is your attitude to the possibility of purchase and sale of farming land?**  
% of those polled



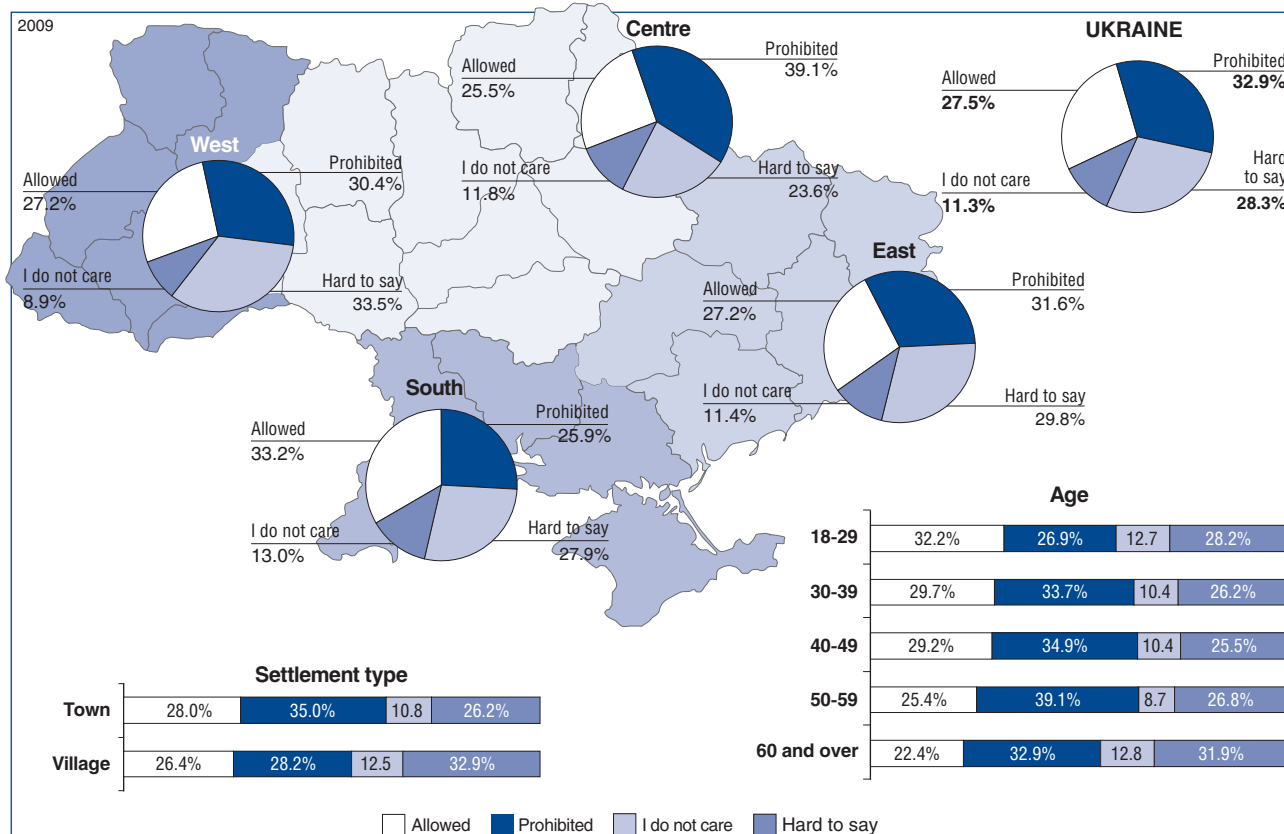




**What is your attitude to the moratorium (ban) on sale of farming land plots, now effective in Ukraine?**  
% of those polled

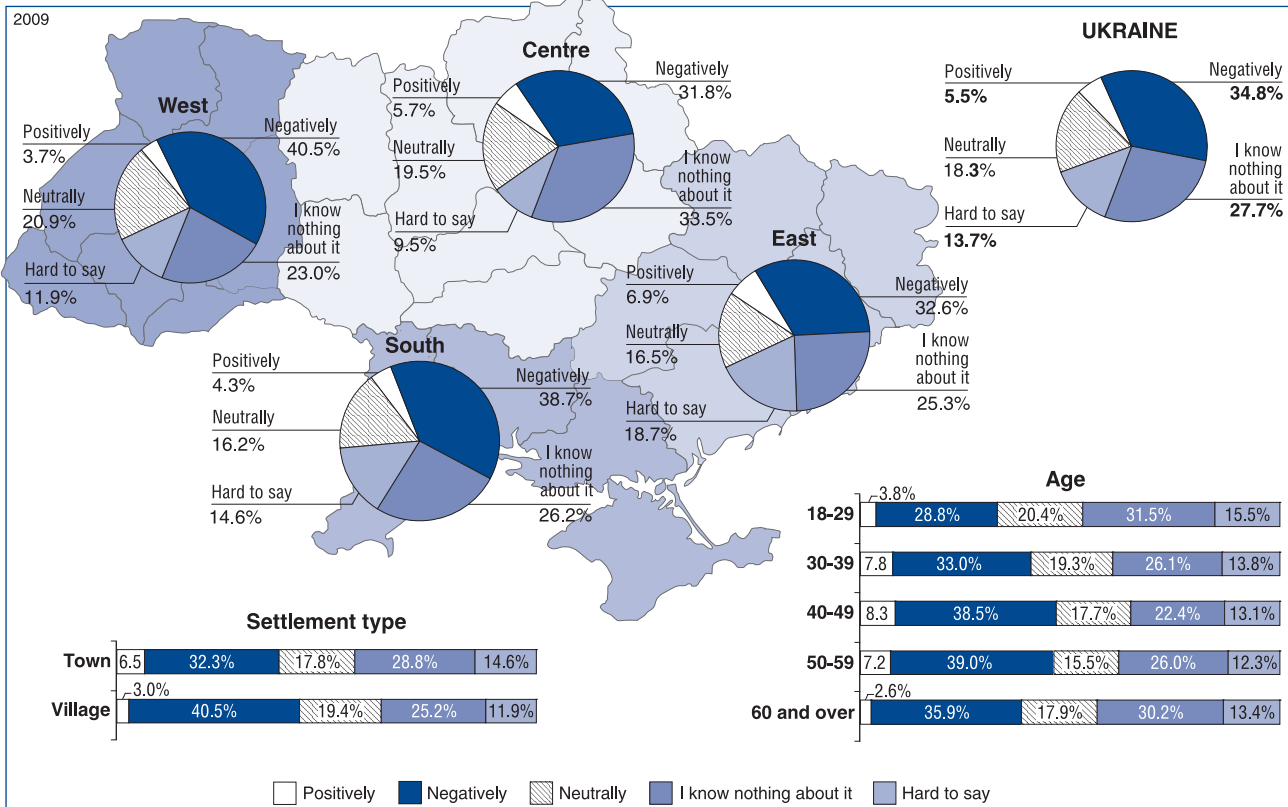


**Should allocation of city land in ownership (including sale) be allowed or prohibited?**  
% of those polled

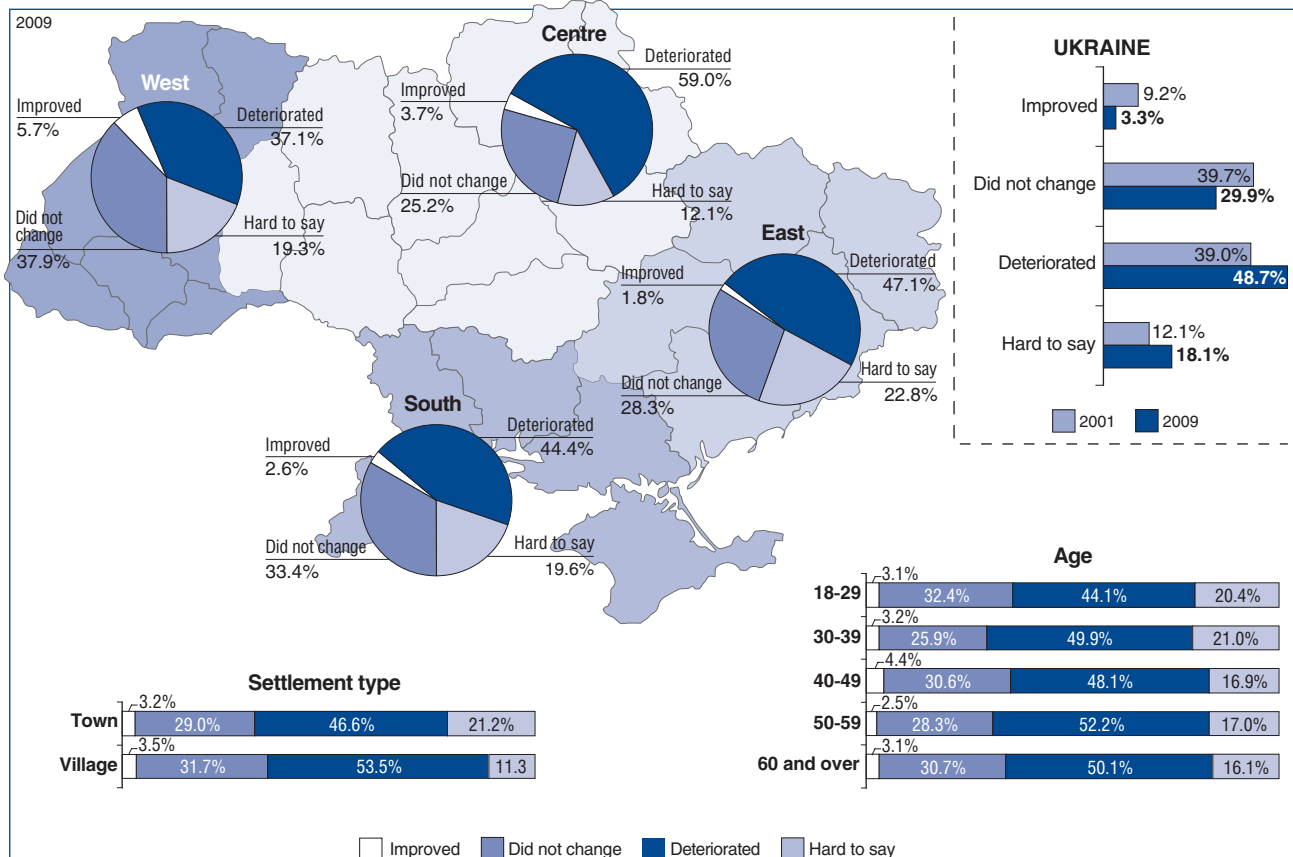


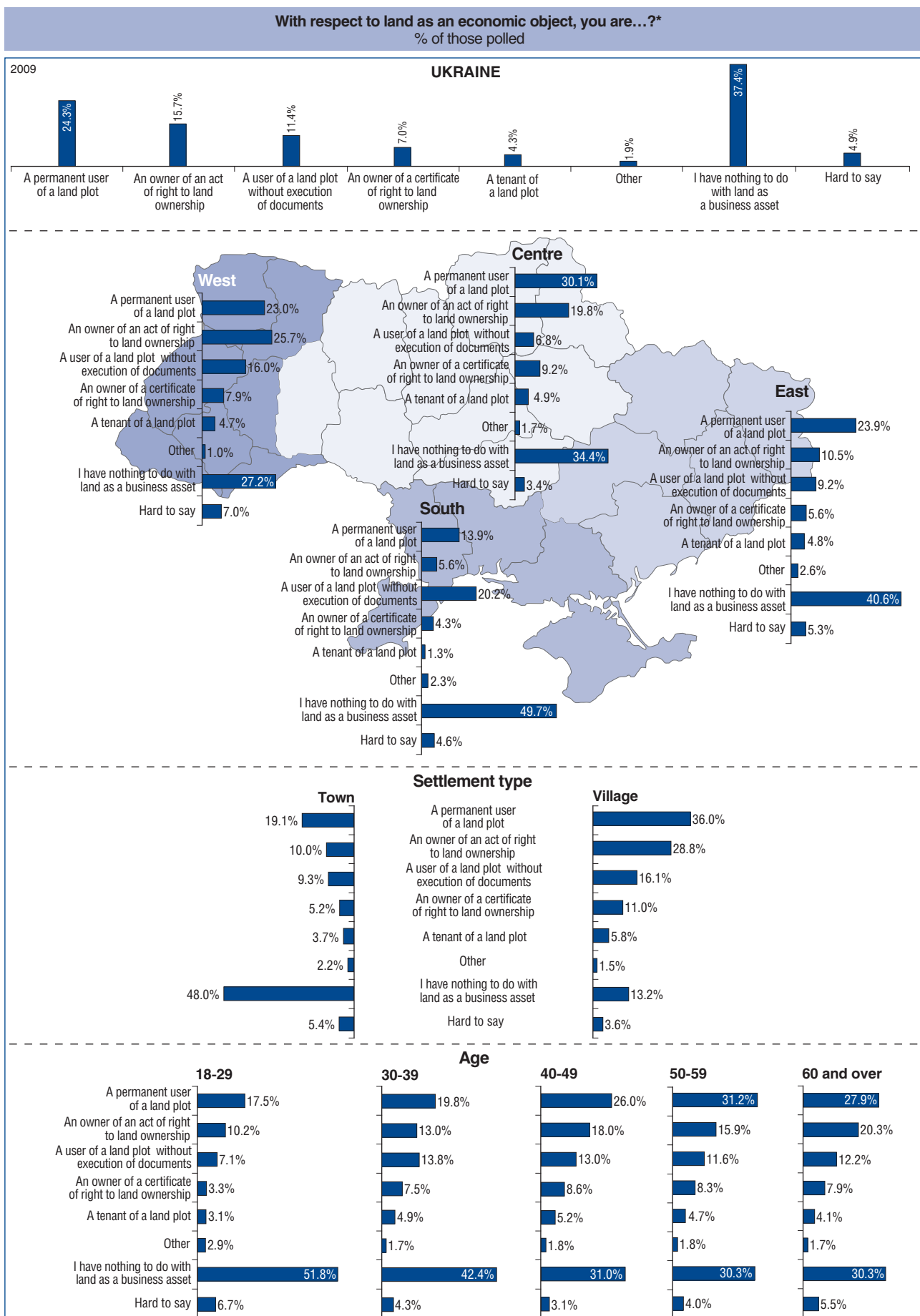


How do you assess the present land policy in Ukraine?  
% of those polled



Did the material standing of villagers change in the result of the agrarian reform?  
% of those polled



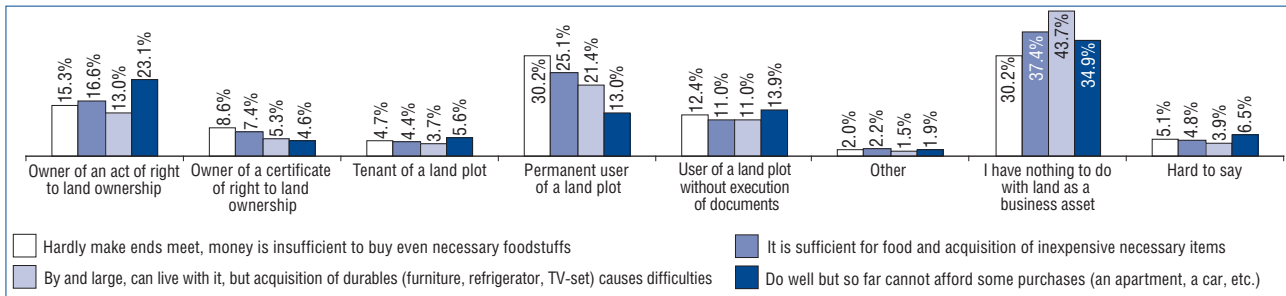


\* Respondents were supposed to mark all possible answers.



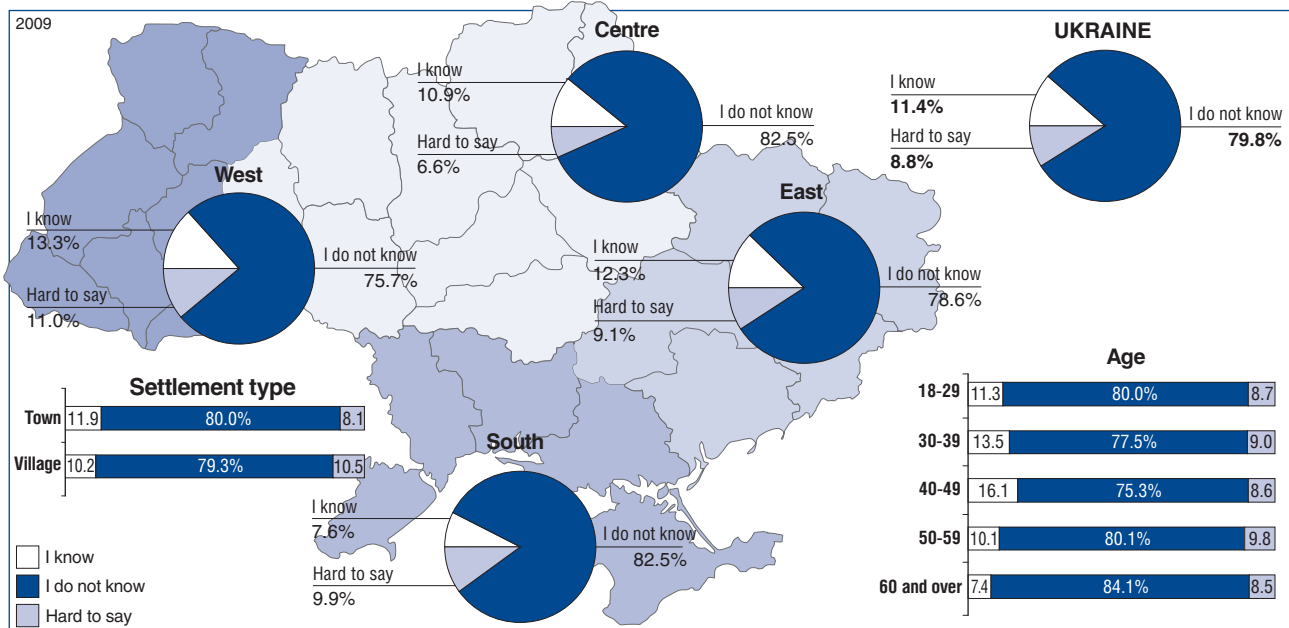


**With respect to land as an economic object, you are...?\***  
% of those polled, dependent on the respondent's well-being

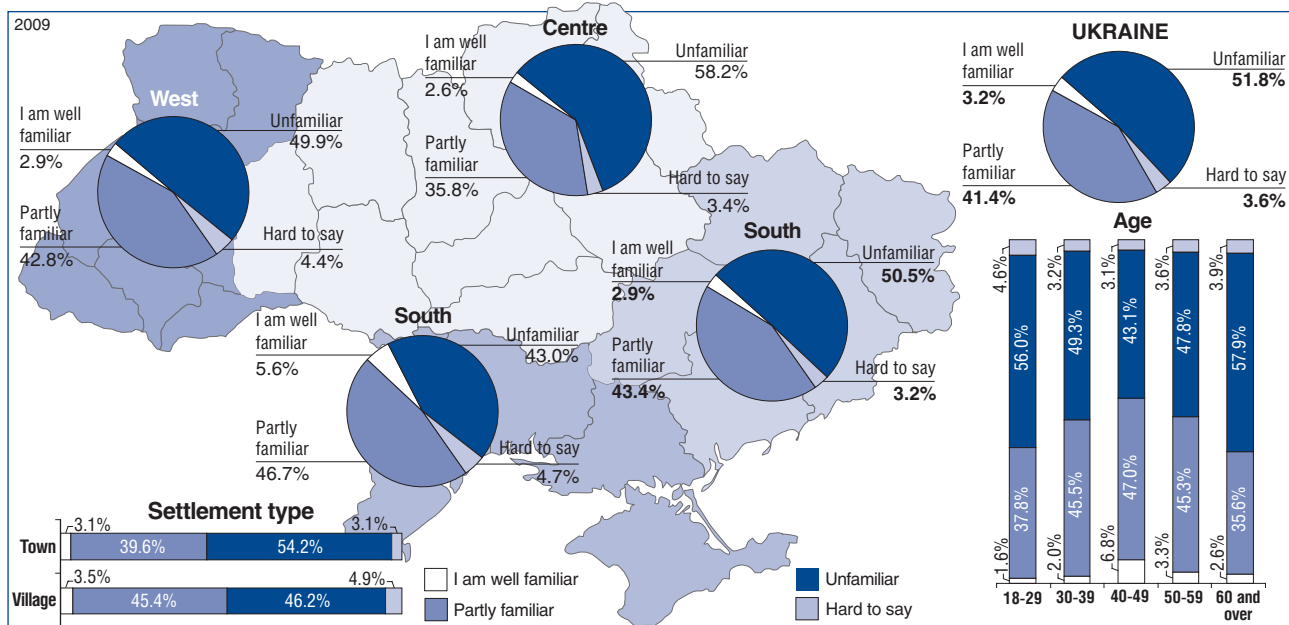


\* Data of those who gave the answer "can afford actually anything we want" is not cited due to the extremely small size of that group (four respondents).

**Do you know cases of imposition of penalties for use of land plots in violation of the land legislation?**  
% of those polled



**Are you familiar with the norms of the effective land legislation of Ukraine?**  
% of those polled



# PROBLEMS OF UKRAINE'S LAND POLICY AND WAYS OF THEIR SOLUTION: EXPERT OPINIONS

For unbiased assessment of Ukraine's land policy, Razumkov Centre asked practitioners to answer a few questions about the present status of the state land policy, legislative support, possible ways of improvement of the situation in the field of land relations.

The summary of the obtained answers shows that experts mainly negatively assess the current land policy of the state. There is an urgent need to develop an integral, consistent, scientifically-based strategy of development of land relations and effective use of Ukraine's land stock, optimisation of legislative support, introduction of proper management of the Ukrainian land resources.



**Oleksandr BOROVYK,**  
Director, Agroindustrial farm  
"Avangard A", Korop district,  
Chernihiv region

*Are you satisfied with the present state of the state land policy? In particular, is the legislative support for land relations sufficient in Ukraine?*

In course of the land reform, contrary to common sense and the saying "look before you leap", in Ukraine, big fields were divided into almost seven million pieces, including slopes, protected swamp lands, and reserve land – land for the future generations. The main thing – land still does not belong to those who cultivate it, while the grey market of land is growing by leaps and bounds.

It makes sense to mention "equal" members of the supposedly "free" land market, from the viewpoint of their ability to buy land. First of all, this refers to able-bodied villagers, including those who own land shares or personal farmsteads, and the overwhelming majority of small farmers eager to enlarge their farms to make them effective and to maintain and develop agricultural production – all of them will hardly be able to buy land and in that way promote business. The second category – private business structures established by heads or specialists of collective agricultural enterprises living and working in the countryside – few of them can buy extra land. The third category – so-called investors, including foreigners or fronts already leasing most

shares and impatiently waiting for cancellation of the moratorium on purchase and sale of farming land, and many other dealers, including bankers. In such conditions, introduction of market land relations, effective in Europe or America often mentioned by our "reformers", without creation of workable systems and mechanisms of protection of national interests, is not just harmful but criminal.

The fever of lease relations in agricultural production went out of control. Such "leases", nourishing hopes for easy acquisition of land ownership rights under grey schemes, often turn seizures.

By and large, it may be said that Ukraine has not yet identified the goal of the land policy, and therefore, the priority measures at furtherance of the land reform.

*What should the strategy of Ukraine's land policy be?*

Being aware of the opinions and spirits of villagers, taking into account the deficit of funds and the absence of the proper legislative and regulatory-legal framework, the All-Ukrainian Union of Agricultural Enterprises considers imposition and artificial pushing of the market of farming land premature.

Its introduction should be preceded by the following:

- implementation of comprehensive and systemic radical measures intended to stabilise land market relations and the market of specialised land plots;
- creation of a system of protection of rights of all parties entitled to own, use and manage land, including the state and territorial communities;
- regulation of ownership relations with correction of mistakes made in the process of reformation;
- creation of conditions for rational and effective use of nature, sound regulation of state executive

authorities and local self-government bodies dealing with land resources and enhancement of criminal responsibility for violation of the effective legislation, especially requirements of the moratorium on land alienation during its validity term and a number of other measures that only in combination will give answer to the problems, including tasks set by the Government;

- introduction of mechanisms whereby sale of farming land plots and change of their target use passes a concerned state institution.

Now, villagers are in a difficult financial situation, their lack of funds for acquisition of farming land after cancellation of the moratorium will lead to collapse of national agricultural manufacturers.

**In this connection, the moratorium on purchase and sale of farming land should be extended till the creation of the proper regulatory-legal framework, an appropriate institution for regulation of the land market, favourable conditions and practical possibilities for peasants and agricultural enterprises for priority acquisition of land plots.**

To improve the situation, the Government together with self-governing associations of villagers should work out and submit for consideration to Parliament proposals on creation of preconditions for priority acquisition of farming land plots by domestic enterprises, envisaging extension of long-term – up to 20 years – interest-free credits with a three-year deferment of repayment. The laws “On State Land Cadastre”, “On State Land Mortgage Bank”, “On Land Market”, etc. should be passed promptly.

#### ***What should be done to improve land relations in Ukraine?***

*First*, to begin all-round state land planning and land management simultaneously throughout Ukraine by working out the state land cadastre, registration and geo-information systems; *second*, to implement large-scale measures at rational use and protection of soil and amelioration of land.

**For that, one authorised executive body in charge of farming land resources should be established at the Ministry of Agricultural Policy of Ukraine.**

The legislation should introduce mechanisms to effectively counter grey sale of farming land.

To avoid understatement of the true value of fertile land at sale and in the first place defend citizens granted land shares, extraordinary systemic efforts of all branches are needed. Methods of expert evaluation of land plots should be adjusted by a special working group of experts, to work out the necessary proposals with account of the above. We believe that expert evaluation of land plots should set the value of the Ukrainian land on a par with the European, or maybe even higher.

In Ukraine, practical conditions and mechanisms should be created for the activity of owners to rest on high moral and cultural values, and to adopt advanced highly effective technologies of production of environmentally clean (organic) produce.

At that, the Cabinet of Ministers should in the first place solve the issues of:

- formation of a special land data bank, creating geo-information systems;
- state registration of land plots, associated immovable property and ownership rights (a single state registration system), as well as backing and guarantee of ownership rights on behalf of the state;
- coordination and control of land use and protection from the viewpoint of the national interests;
- receipt and processing of necessary information, its storage, confidentiality and use in the national interests, as well as in the interests of individuals and legal entities;
- ownership, use and management of proceeds from ground rent as an element of the economic mechanism of implementation of a new strategic national policy of nature conservation and economic relations;
- implementation of the state policy of privatisation of land and establishment of property relations to the benefit of Ukraine's citizens. ■



**Mykhaylo HLADIY,**  
President,  
National Agricultural  
Chamber of Ukraine

#### ***Are you satisfied with the present state of the state land policy? In particular, is the legislative support for land relations sufficient in Ukraine?***

To put it briefly, you will hardly find in Ukraine a politician, official, executive of any level, let alone land owners, satisfied with the present land policy. More exactly, how can one be satisfied with anything actually absent? The heaps of legislative acts and even the Land Code, in addition to the multitude of presidential decrees, governmental resolutions, orders, various programmes, projects (some of them involving foreign experts and international financial structures) developed, passed, approved and issued in that field cannot be termed a balanced and stable policy. A clear-cut, financially sound, professionally calculated, balanced and thought-over in all details and terms – such strategic document is absent. There is no political will in sight to pass it, either.

That is why the land policy for many years remains a hostage to the supreme authorities in the triangle of the President – the Verkhovna Rada – the Government. It cannot break free from it. That is why all decisions, starting from almost annual reorganisation of the main





coordinator of the land policy – the State Committee for Land Resources, and ending with different personal appointments both in the capital and in the regions, seem situational, rather than logical and state-minded. Passed political decisions, including senseless personnel reshuffling, rested not on professionalism but on partisan expediency, or, rather, affiliation with one or another party structure. At that, as specialists in the sector who gave decades to land issues justly note, not only the top managerial level is “reshuffled” to please one or another high-ranking official but the very system is changed, with executive positions taken by persons who have neither special education nor experience of work in land management bodies. This inflicted irreparable damage to that vital structure.

This is on one hand, while on the other – due to those senseless reorganisations it became the most corrupt, lost trust of citizens because of open bribery, non-transparency and intricacy of different schemes of solution of land issues. As a result, today, courts are flooded with claims. Among the main culprits, the claimants point to politicians and officials who turned the land issue into their own or corporate political business.

This is the main impediment for the progress of the land legislation. Over the past two years, not a single serious law has been passed at least coming close to untying Gordian knots. The same refers to the two laws critical not only for the change of the state land policy but for its approximation to the world and European standards: the laws “On Land Market” and “On State Land Cadastre”. There is an impression that it was easier to pass the Constitution than to submit drafts of those laws for consideration to Parliament. The reason is evident – the provisions laid down in those documents do not coincide with personal ambitions of many politicians.

#### *What should the strategy of Ukraine's land policy be?*

Every strategic programme should first of all set a concrete goal, not just pool together various figures and facts. **The main goal of the land policy should be the stability and effectiveness of the system of agricultural land use, pursuing solution of issues of the food security of the country and well-being of village communities and rural areas.** The current land policy pursues, figuratively speaking, casting stones away, rather than gathering them together. More exactly – land squandering, instead of defence, protection, effective use, enhancement of fertility, etc.

The goal I mentioned influences the main objectives. There should be a continuous long-term process planned by year and region, since it deals with land – our main wealth. Unfortunately, today, it may be termed as such only declaratively and politically, because the state budget so far sees no economic benefit from Ukraine's land stock of 60.4 million hectares (in that, 41.8 million, or 69.2% – farming land, including 32.5 million hectares of arable land, or 53.8% of the country's total area). All this – despite by the per capita area of farming land

(0.85 hectares), Ukraine yields only to Canada, the USA and Russia. Under a rational structure of land use and proper scientific and resource support, our state can produce food for 140-150 million people. Today, the average profit per hectare of arable land in the EU countries is close to €500. Effective use of Ukrainian arable land might bring total profit of €16 billion.

It is not accidental that I mentioned those figures. This is our goal for 5-10 years ahead. The state land policy should promote attainment of those targets. This includes a set of interrelated objectives: from land allotment to environmental safety and food security.

In brief, the **main strategic objectives should include:**

- (1) rationalisation of agricultural land use for enhancement of the effectiveness of the return of the land resources;
- (2) completion of land involvement in economic circulation as a factor of stabilisation of the agribusiness;
- (3) accomplishment of transformation of land relations in the agribusiness in line with the requirements of the market economy;
- (4) all-round state support for measures aimed at land protection and restoration of soil fertility;
- (5) enhancement of environmental stability of rural areas.

Those should be the five main pillars of the would-be national programme (doctrine) in the land policy.

#### *What should be done to improve land relations in Ukraine?*

Continuing the previous thesis, I wish to say that **in the first place, land should be withdrawn from the political market and brought to the commercial one.** We already have one kind of political merchandise – gas. This is enough. On the commercial market, land will be, *first*, more safe than now; *second*, everything should be done to reduce the relish for land among politicians and officials, and to awaken the feeling on the owner among peasants – the main producers for whom the land reform was implemented.

Is it not alarming that 4.8 million hectares of land plots (shares) are not used, while they have legitimate owners? It appears that in this country, the owner and the farmer seem to be two opposite categories. This predetermines the result. While, for instance, in the Netherlands one hectare brings produce worth \$8,900, in Ukraine – \$272. One agricultural worker in those countries feeds, respectively, 60 and 15 people. A question arises, how many years it will take us to at least come close to the Dutch indices? Now, there is no answer to this question, proceeding from the present state of our land sector. I will tell you one thing: in the years of independence, several hundred working delegations of different levels from Ukraine visited the Netherlands. Let me ask you, why we keep on going there for almost 20 years now?



Regarding legislative support, *first*, in the field of regulation of land relations and organisation of use and protection of land alone, 26 laws and 75 other regulatory-legal acts should be passed.

*Second*, to begin and accomplish involvement of land into economic circulation, new standard monetary evaluation and other evaluation of land with account of market factors should be performed, along with the assessment of the book value of land plots, to record the land resources' potential in accounting.

On the legislative side, favourable conditions should be created for introduction of mortgage of land, legislative-regulatory and infrastructural preconditions formed for cancellation or mitigation of the moratorium on sale of farming land, including establishment of village associations for regulation of farming land circulation. The relevant bill is waiting for consideration in Parliament for four years now.

State scientific-technological programmes of land planning in rural areas, use of farming land, restoration and use of ameliorated land are badly needed. **Establishment of the State Service of Soil Protection is long on the agenda.** There was a hope that that service would start operation this year. However, in view of the difficult financial and economic situation, it was suspended. Let us hope it would not be forgotten. By and large, the system of management in the field of land resources, not only land relations, requires serious reformation.

***To what extent does the land policy in Ukraine meet the European standards?***

Above I compared the Netherlands and Ukraine. Such is the difference between the land policy in this country and in the European states. First of all – there is no EU country that has no free market of land, including farming land. This is fully in line with the principles of the market economy, exercise of rights of private ownership and enterprise.

On the other hand, the EU states are aware that farming land is especially valuable, its effective use is critical for their food security and to a large extent – for the well-being and standard of life of their citizens. That is why the EU has certain prescriptions, economic tools and mechanisms aimed at protection, conservation and effective use of farming land, that ensure compliance of such use with environmental requirements and demands of effective agriculture. Those mechanisms may be different, they were formed in each country on the basis of its historic experience and national traditions, but they exist and present an integral part of the state land policy, although most functions of its implementation are vested in local administrations and local self-government bodies.

New EU member states also use other means for regulation of farming land circulation. For instance, those countries have introduced transitional periods (of 7-12 years) when foreign individuals cannot buy farming land.

I.e., some EU countries have already stabilised their land relations, land markets, and are only improving them, while others are gradually building that system. Nobody sits on his hands. As regards Ukraine, there is an opinion that many associate the land market with a minefield. This refers both to politicians and land owners. Both are afraid of losing: the former – their control of land, the latter – land as such. Instead of making legislative acts to rule out various “explosions”, first of all, social, on that imaginary minefield, they found a way out – a moratorium. Meanwhile, land resources in the conditions of the food crisis, by the way, not over in the world, can give Ukraine another chance to solve its economic problems. ■



**Mykola KALYUZHNYI,**  
Chairman of the Board,  
“Land Union of Ukraine”

***Are you satisfied with the present state of the state land policy? In particular, is the legislative support for land relations sufficient in Ukraine?***

Is there a land policy in this state? It may be said for sure that it has been absent. Similarly, there is no state policy of all-round development of the land legislation. Instead of creating an effective legislative framework, the supreme bodies of state power – the Parliament, the President, and the Government – compete in “perfection” of mechanisms to regulate land issues. In 2008 alone, each of those actors of the legislative initiative made a separate contribution to the land legislation<sup>1</sup>. Probably, amendments to legislative acts were introduced for regulation of a transparent mechanism of land sale and lease. The idea was good but its implementation was bad.

The year of 2008 passed, 2009 came, but auctions and competitions for sale of land and transfer of lease rights have not appeared. The state loses hundreds of millions of hryvnias not collected by the budget, businessmen cannot get land plots. Lease and sale of state-owned land plots for business activity is entirely

<sup>1</sup> This is proven by the passage of amendments to the Land Code of Ukraine and other laws dealing with land relations by the Verkhovna Rada in 2008. The Law “On State Budget of Ukraine for 2008 and Introduction of Amendments to Some Legislative Acts of Ukraine” (December 27, 2007) amended the Land Code, the Law “On Lease of Land” and other laws. Furthermore, the Government passed Resolution “Some Issues of Conduct of Land Auctions” No.90 of February 22, 2008. Presidential Decree No.309 of April 7, 2008, cancelled that resolution. With account of the Presidential Decree, the Cabinet of Ministers passed Resolution “On Approval of the Procedure of Conduct of Land Auctions in 2008” No.394 of April 17, 2008, Presidential Decree No.639 of July 21, 2008, cancelled that Resolution, too.

The Constitutional Court of Ukraine in its Ruling No.10 of May 22, 2008, termed some provisions of the Law “On State Budget of Ukraine for 2008...” unconstitutional. The amendments introduced to the Land Code, the Law “On Lease of Land” and other laws by the Law “On State Budget of Ukraine for 2008...” were inconsistent with Ukraine's Constitution.

To get out of the difficult situation, the Government submitted to Parliament for consideration the Bill “On Introduction of Amendments to Some Legislative Acts of Ukraine” that carried all articles of legislative acts from the Law “On State Budget of Ukraine for 2008 ...” termed unconstitutional by the Constitutional Court. Parliament approved that Law on June 3, 2008.



frozen. Nearly 3 million hectares of land are unlawfully used by businessmen.

So inconsiderate is the state policy with respect to land resources.

The HR policy of the State Committee for Land Resources is beyond comprehension and deprived of any logic. At appointment to executive positions on the state, regional, and even district levels, special training and experience of work in the field of land planning and land relations are not decisive. What matters is evidently the party-political (or clan) affiliation. Say, since 2005, four heads of the State Committee for Land Resources were dismissed, as were 18 out of 26 heads on the regional level. In some regions (e.g., Kyiv, Kharkiv, Chernihiv) such changes take place almost every year, involving scandals and complete suspension of operation of the concerned units. Few newly-appointed heads of the regional level have land-planning education. Furthermore, regional and district heads of departments of land resources are appointed without coordination with the concerned heads of regional and district state administrations, in direct violation of the Law "On Local State Administrations", which seriously impairs coordination and interaction of all bodies of governance.

***What should the strategy of Ukraine's land policy be?***

Ukraine's land policy **should rest on such key principles as publicity, transparency and decency. Bodies in charge of land resources should employ experts – land planners who can solve complex tasks.** We hope that as soon as in 1.5-2 years, the market of farming land will be open, but this will require dozens of regulatory-legal acts.

As soon as this year, the Verkhovna Rada might pass a law paving the way for auctions. For that, Article 137 of the Land Code of Ukraine should be amended, or a special Law "On Auction Activity on Land Market" passed. The laws "On Land Market", "On State Land Cadastre", "On Management of State-Owned Land" will not be passed before 2010. Further, everything will depend on the activity of the State Committee for Land Resources that should promptly pass relevant by-laws.

We believe that **in the forthcoming years, the State Committee for Land Resources and the Ministry of Agricultural Policy should concentrate on land protection.** There are all opportunities for that, including financial. Special accounts of local administrations keep tens and hundreds of million hryvnias for reimbursement of losses of agricultural and forestry production that may be used only for land protection and land planning.

***What should be done to improve land relations in Ukraine?***

Corruption in the bodies of land resources management is exorbitant. The new leadership of the State Committee for Land Resources should promptly restore trust in that once respected central executive body.

For that, a few simple things must be done: reemploy unlawfully dismissed experts on land planning; always coordinate appointment of executives with local

authorities; simplify and cheapen the procedure of citizens getting documents of title; make officers follow laws; get rid of executives who compromised the system.

One of the most acute problems in land relations includes imperfection of the land legislation and state management of land resources.

Opinions as to the number and quality of laws and regulatory acts to be passed have split. If the market of farming and non-farming land is non-operational, state-owned land cannot be leased out, the moratorium on sale of farming land is in force, the registrar of title to land and other immovable property is not appointed, the stock of state-owned land is not created and its subordination is undecided, along with many issues of land protection and conservation. No step has been made towards standardisation of land management and regulatory documentation.

At present, there is only a draft of the Concept of the State Target Programme of Development of Land Relations in Ukraine through 2005 and drafts of the relevant laws. Nobody knows, however, when Parliament will be able to review them. ■



**Pavlo KULYNICH,**  
Deputy Head of Department for  
Problems of Agrarian, Land  
and Environmental Law,  
Institute of State and Law  
named after V.M. Koretskyi

***Are you satisfied with the present state of the state land policy? In particular, is the legislative support for land relations sufficient in Ukraine?***

No, I am not satisfied. I see the main drawbacks of Ukraine's present land policy in its extreme politicisation and focus on the State Committee for Land Resources.

**Extreme politicisation** is seen in attempts of different political forces that control different branches of state power to use powers not to defend national interests in the field of use and protection of land resources but to meet the interests of representatives of the political force that "controls" the relevant branch. As a rule, peaks of politicisation of the state land policy fall on the periods of the national history immediately preceding presidential or parliamentary elections. Extreme politicisation bars passage of reasonable, from the viewpoint of national interests, strategic decisions on use and protection of land resources, development of the land legislation meeting the needs and challenges of the time, and hinders the development of the necessary institutional framework governing land relations. For instance, implementation of the *Plan of preparation of priority bills and drafts of other regulatory-legal acts dealing with enhancement of the effectiveness of state regulation of land relations,*





*use and protection of land* approved by the President of Ukraine Decree (No.1643 of November 21, 2005) almost entirely failed and was cancelled by Decree No.121 of February 14, 2008.

**Focus on the State Committee for Land Resources** as a serious drawback in Ukraine's land policy is manifested in the evident trend towards concentration of all powers in the field of state regulation of land relations in the concerned body – the State Committee of Ukraine for Land Resources, including those that by virtue of their public nature and legal content cannot be exercised by the same body because of the danger of emergence of a legal situation expressly termed in the legislation of the Western states as the “conflict of interests”. The conflict of interests in the field of state governance is seen in the dependence of the exercise of some function of the body on its another function, or subordination to it to the extent that, in the best case, impairs the effectiveness of the managerial activity of that body, in the worst – paralyses that activity, does not ensure the achievement of the goals set by state decisions for the concerned body.

The State Committee for Land Resources was established in 1991 as the State Committee of Ukraine for Land Reform. Respectively, its tasks covered only the issues of the land reform implementation in Ukraine, started by the Supreme Council of the Ukrainian SSR Resolution “On Land Reform” of December 18, 1990. However, as soon as in 1993, long before the completion of the land reform, unaccomplished even now, the State Committee of Ukraine for Land Reform was reorganised into the State Committee of Ukraine for Land Resources, which gave it additional powers in the field of state regulation of land relations. It gained most of all powers in 2002-2004, when the State Committee for Land Resources took an active part in the development and passage of the laws of Ukraine “On Land Planning” (2003), “On Protection of Land” (2003), “On State Control of Use and Protection of Land” (2003), “On Evaluation of Land” (2003), “On State Expert Examination of Land Planning Documentation” (2004), “On State Registration of Ownership Rights to Immovable Property and Their Limitations” (2004), and some other legislative acts. Each of the mentioned laws added something to the set of powers of the State Committee for Land Resources, so that that body got kind of “controlling block” in the development of land relations in the country.

E.g., using the laws “On Land Planning” and “On State Expert Examination of Land Planning Documentation”, **the State Committee for Land Resources solely controls, through the powers granted in the field of land planning, the process of formation of land plots as property**, issuing and, where necessary, taking back licences of land planning institutions, approving drafts of land planning prepared by them and performing state expert examination of the relevant land planning documentation.

**Exercising powers in the field of state registration of land plots, even through the state enterprise “Centre of State Land Cadastre” established at the State Committee for Land Resources, that body controls the process of emergence of rights to land plots formed with its participation. Using the Law “On Evaluation of Land”,**

**the State Committee for Land Resources controls market circulation of land plots, i.e., transfer of the title to land from one person to another. Finally, through the State Inspection for Protection and Use of Land created at the State Committee for Land Resources, it performs state (i.e., not departmental) control of observance of the land legislation, using powers provided by the Law “On State Control of Use and Protection of Land” and actually controlling itself.**

In the result of the legislative activity of 2002-2004, the State Committee for Land Resources became an ideal place for employment of politicians who used to live by the principle “you keep what you guard”. Quite evidently, such concentration of powers in the State Committee for Land Resources creates legal preconditions for abuses in the field of land relations, so, the level of corruption in this field is one of the highest in Ukraine.

We believe that **the focus on the State Committee for Land Resources in the state land policy can be removed with transfer of functions of state regulation of land relations vested in the State Committee for Land Resources to other authorities: the Ministry of Environmental Protection, the Ministry of Agrarian Policy, the State Service of Geodesy, Cartography and Cadastre, etc.** Finally, such body as the State Committee for Land Resources is not indispensable in the structure of the state executive authorities. This is witnessed by the fact that West European countries have never had such executive body. Meanwhile, in actually all post-Soviet states where such a body existed, it was liquidated or fundamentally reorganised, and its functions – transferred to other bodies. However, in Ukraine, this experience seems to be ignored, since the State Committee for Land Resources not only continues to exist but proposals are heard to even reorganise it into the Ministry of Land Policy.

#### ***What should the strategy of Ukraine's land policy be?***

In my opinion, **Ukraine's strategy of the state land policy should part with unilateral orientation to solution of problems of establishment of the land market**, beyond doubt, important and not ultimately resolved. Continuing the establishment of the land market, Ukraine should also incorporate in the state land policy solution of such extremely important issues of development of land relations as: (1) optimisation of the structure of land areas through optimisation of the area under forests and nature conservation territories; (2) optimisation of the share of farming land in the national land stock and farming land structure, with a decrease in the area of destructive (arable) land and corresponding increase in the area of stabilising grounds (hayfields and pastures).

Furthermore, **the strategy of Ukraine's state land policy should take into account the food situation on the world market**, with its booming demand for agricultural produce and growth of prices, and the significant share of land with potentially the most fertile black soil in the structure of Ukraine's farming land stock, which for known reasons did not suffer such systemic degradation with loss of valuable properties of production means as it happened in the Western countries with a developed agriculture. Said factors give Ukraine an opportunity to encourage the development of organic husbandry that can solve two key tasks: to market environmentally clean,



organic agricultural produce for domestic and foreign consumers, and to provide for conservation and extended reproduction of fertility of the soil cover in the country, since organic land cultivation rules out application of chemicals, etc.

I guess that **one of the key strategic tasks of the state land policy should include formation of a steady agro-environmental image of Ukraine** as a country turning out high-quality agricultural produce using nature conservation technologies.

***What should be done to improve land relations in Ukraine?***

The land legislation is an important means of implementation of the state land policy. Unfortunately, its formation, started with the passage of the effective Land Code on October 25, 2001, is not over, and the potential of the Code is not fully implemented. Moreover, some provisions of the Land Code have never come into effect. For instance, the moratorium invalidates articles regimenting sale of farming land. And unaccomplished delimitation of land of the state and communal ownership invalidates articles defining the competence of territorial communities of villages, settlements and cities and relevant councils as communal owners of land.

In connection with the complexity of the legislative process, recently, proposals have been made regarding codification of the land legislation through the development of a new Land Code, containing all land law norms and not requiring passage of other land laws to supplement or elaborate it.

We consider such proposals a bit premature. The thing is that codification in the first place means systematisation of all available legal norms of the land legislation, with removal of discrepancies and gaps, their merger and introduction, where necessary, of a few new norms. In other words, already existing legal norms can be codified. However, the system of the land legislation still has huge legislative “gaps” – for instance, the laws on the state land cadastre, on alienation of private land for public needs and other laws have not been passed. Therefore, not all legal norms of the land legislation necessary for its codification have been created in Ukraine. That is why the issue of preparation of a new comprehensive Land Code of Ukraine will be on the agenda only after the completion of development of the land legislation on the basis of the effective Land Code.

**The main efforts at development of Ukraine’s land legislation in the near future should be concentrated on the development and passage of laws, either directly ensuing from the Land Code text, or necessary for elaboration of some of its provisions.** They include laws: on state land cadastre, on market of farming land, on alienation of private land for public needs, on land zoning, on farming land and agricultural landscape, on land reclamation, on land conservation.

Additionally, it seems expedient to pass a new version of the Law “On Delimitation of Land of State and Communal Ownership”, since the current Law has drawbacks barring creation of the stock of land to

be owned by territorial communities of villages, settlements and cities at the expense of state-owned land. *First*, the effective Law “On Delimitation of Land of State and Communal Ownership” provides for delimitation of actually all state-owned land plots, including those not adjacent to lands of communal ownership. That is why the model of delimitation of land provided in the Law requires huge efforts of land planning and therefore indefinitely postpones the completion of that process. *Second*, the Law gives no legal mechanism of registration of the time of completion of delimitation of land of state and communal ownership on the territory of populated localities, districts and regions associated with the expiry of Article 12 of Transitional Provisions of the Land Code and effectiveness of the Land Code norms that determine the competence of state authorities and local self-government bodies managing, respectively, lands of the state and communal ownership.

Finally, the **state programme of land use and protection should be approved**, to outline the state and prospects of development of the national land stock, to set targets for the legislative activity of the Verkhovna Rada, law-making activity of the Cabinet of Ministers, ministries and agencies in the field of regulation of land relations, and to provide the criterion of effectiveness of the activity of executive authorities and local self-government bodies managing use and protection of land.

***To what extent does the land policy in Ukraine meet the European standards?***

By and large, the land reform implemented in Ukraine, as an important element of the state land policy, at the present stage aims to bring Ukraine’s land legislation in compliance with advanced international standards, in particular, of the EU member states. As a result of the land reform and associated reformation of the land legislation, the latter witnesses development of the institutes of private, communal and state land ownership, the institute of land market, the institute of state registration of rights to land immovable property, etc., similar to those used in the land legislation of the EU countries.

However, **formation of the new land legislation in Ukraine is far from completion, so, it largely continues to rest on legal institutes inherited from the Soviet land law that served the interests of the command-administrative economy. In particular, such Soviet-style legal institutes include the institute of target purpose of land plots and the institute of state acts to land as documents certifying the title thereto.**

The institute of target purpose of land plots rests on the state setting the limits of permitted use of every land plot, including privatised, by passage of administrative decisions by the authorities. Such limits are rather narrow. So, if the owner or user of a land plot needs to change the character of its use into another, even a similar one, he has to file a relevant application to the authorities and pass a long and expensive procedure of change of the target purpose of land plots involving numerous approvals, permits, etc. That is why the institute of target

purpose of land plots hinders development of business activity that, in line with the market demand, should have an opportunity to promptly respond to changes in the market environment and vary the character of land use within wider limits.

The experience of the EU countries proves that **an alternative to the institute of target purpose of land plots is presented by the institute of land zoning**, resting not on setting the limits of permitted use of every land plot but on establishment of such limits for large territories that may include many land plots. In case of zoning, the territory of a populated locality or another administrative-territorial unit is divided into zones with rather a wide choice of possible uses of land plots located within their borders. Such zones may be industrial, commercial, residential, recreational, law conservation, etc. That is why owners and users of land plots, choosing the character of their use, are guided by the general legal regime of the zone where the land plot is situated, which is rather convenient for business planning and enables consideration of public interests in land use.

The institute of state acts to the right of ownership and the right of permanent use of land plots is also obsolete. In the conditions of formation of a single state register of rights to land and non-land immovable property, an entry in which means official recognition of the fact of emergence, change or termination of rights to land plots, **it is an extract from the state register that should be the main document certifying the title to land plots, not a state act**. Meanwhile, despite the passage and entry into force, yet in 2004, of the Law of Ukraine "On State Registration of Ownership Rights to Immovable Property and Their Limitations" that envisaged introduction of the single state register of rights to land and non-land immovable property, certification of rights to land with state acts has not been cancelled.

Finally, in the context of the European experience of the state land policy implementation, it should be noted that some lines of the land reform in Ukraine draw us not closer to but further from the EU standards in the field of use and protection of land. This refers, in particular, to sharing of farming land resulting in disastrous fragmentation of the farming land stock, so that it mainly consists of small plots of farming land with the average area of 4 hectares. Respectively, the use of such land plots for crop growing causes great many organisational, legal and technical problems hampering effective use of farming land. Meanwhile, next to all EU countries in the XX century initiated and are successfully implementing programmes of consolidation (enlargement and improvement) of farming land, resting on special legislative acts on land consolidation. So, **the programme of the land reform in Ukraine should be seriously amended to provide for the change of its vector towards fragmentation of land to its consolidation**. We consider it expedient to work out and adopt the Law of Ukraine "On Consolidation on Land". ■



**Volodymyr NOSIK,**  
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Chair of Labour,  
Land and Environmental Law,  
Department of Law,  
Taras Shevchenko  
National University of Kyiv

***Are you satisfied with the present state of the state land policy? In particular, is the legislative support for land relations sufficient in Ukraine?***

No, I am not satisfied, because since the declaration of Ukraine's independence, Ukraine has never had a considerate, scientifically-based state policy aimed at establishment of a new land order specific of a democratic, law-ruled state, guarantee of exercise and protection of the right to land for everyone, establishment of law in land relations, guarantee of progressive socio-economic development of the country, protection of land as the territorial basis of state sovereignty and the main national wealth.

What land policy of the state can we talk about, when Ukraine, as no other Eastern European, Baltic, or CIS state, for 18 years was legislatively introducing and implementing at least five legal models of reformation of land relations, none of which was led to a logical end, and transformations proposed in every following model often cancelled changes made earlier? That is why among all those states, Ukraine alone not only failed to implement the land reform but made it a permanent process with an uncertain term of completion.

Now, we see the result of that policy – the land reform and legal regulation of land relations are deadlocked, land plots are not privatised, alienation of land plots for business activity is suspended, local budgets get no proceeds from state-owned land, foreign investors leave Ukraine not as much because of the financial crisis as because of the chaotic, complex, corrupt state legal system in the field of exercise of rights to land plots, courts are flooded with land cases, social tension on land issues is growing, along with other negative developments.

Any legal system rests on legislation. And if a state has no considerate socially-oriented sovereign policy in the field of land relations, what legislative support for such policy can we talk about? Since 1990, Ukraine has created the legislative and regulatory-legal framework whose effectiveness is illustrated by mainly negative socio-economic and legal results.

The analysis of the effective Land Code of Ukraine, some laws passed in its pursuance, other regulatory-legal acts of the land legislation shows that it did not





properly take into account and develop provisions of Ukraine's Constitution of the legal nature of the right of the Ukrainian people to land ownership, definition of the legal procedures of land as the main national wealth enjoying particular protection of the state, identification of the list and legal status of land owners, guarantee of exercise of rights to land plots, identification of the place and role of the state authorities and local self-government bodies in regulation of land relations, etc.

Meanwhile, norms of the Civil and Business Codes of Ukraine, some nature conservation codes reproduce and specify said norms of the basic law. In practice, that inconsistency causes problems with application of norms and methods of public and private regulation, norms of the civil, land, constitutional, administrative and other branches of the law to solution of concrete issues of the exercise of the right to land.

**Specific of legislative support for land relations is inconsistency of legislative and other regulatory-legal acts regulating land, property, business, agrarian, nature conservation, tax and other relations, it is chaotic, irregular, incomplete, creates legal problems in the exercise of land rights, tempts citizens and legal entities to break or search possible ways of bypassing legislative imperatives and norms, gives rise to corruption in the field of land relations and social conflicts, bears other negative implications.**

#### *What should the strategy of Ukraine's land policy be?*

The present-day state policy of Ukraine in the conditions of the world globalisation and integration processes should rest, *first*, on methodological and doctrinal fundamentals of functional use of land; *second*, on constitutional provisions and principles of regulation of land relations; *third*, on the norms of the international public and private law, the EU *acquis* on land protection and use within the state borders.

In particular, **during the work on a modern Concept of the state policy of land relations development, methodological fundamentals of land use ensuring progressive economic and social development of the state should be taken into account:** (a) land with its upper fertile layer of soil is the main wealth of the nation and the people; (b) publicly recognised land ownership and guaranteed rights of private land ownership make the economic and legal basis of freedom; (c) progressive development of society is possible in a democratic, law-ruled state that recognises and guarantees the right of land ownership, the right to free business activity, independent generation and free employment of capital; (d) land (soil) is a national wealth and should belong to the people, not to the state, by the right of ownership; (e) land has its value and is subject to evaluation in the process of production, distribution and redistribution of capital; (f) the land owner and grain grower should be the same person; (g) agricultural produce generated on land should

belong to its manufacturer and may be freely sold by it on the domestic and foreign markets; (h) the state should not assume the functions of a mediator in sale of the grown harvest; (i) fertility of land consistently goes down, if the state deprives manufacturers of absolute and supplementary rent generated by them; (j) fertility of soil goes up, and production grows progressively, if the state taxation system envisages no other taxes except ground rent in the monetary form.

Not all of the above methodological fundamentals of land use are now taken into account in the land legislation norms and recognised as principles of legal regulation of land relations.

**The present-day state policy in the field of land relations should rest on the following constitutional fundamentals:** (a) land belongs to the Ukrainian people; (b) land is the main national wealth enjoying special protection of the state; (c) on behalf of the Ukrainian people, ownership rights are exercised by state authorities and local self-government bodies; (d) every citizen has the right to land as the people's property pursuant to the law; (e) land ownership imposes obligations; (f) property should not be used to the detriment of humans and society; (g) the state guarantees protection of rights of all owners and business entities, social orientation of the economy; (h) equality of all owners before the law; (i) guarantee of ownership rights; (j) acquisition and exercise of rights of land ownership by individuals and legal entities, state and territorial communities solely in accordance with the law; (k) inviolability of the right of private land ownership.

#### *What should be done to improve land relations in Ukraine?*

*First*, review the entire system of land legislation for correspondence to the Constitution of Ukraine; *second*, refuse from further development and passage of a codified land law in the form of a Code, since in the period of reformist transformations that law does not perform its codifying function; *third*, refuse from adoption of laws proposed to be drawn up and adopted pursuant to the Land Code; *fourth*, pursuant to the Constitution, draw up and pass the following priority laws: on land ownership of the Ukrainian people, on use of land as the main national wealth of the Ukrainian people, on protection of land as the main national wealth of the Ukrainian people, on state regulation of land relations in market conditions. At that, some institutional laws regulating land relations may also be passed on as-needed basis, for instance, on land evaluation, on the state land cadastre, on state registration of title to land, etc. Such laws should not be many.

Only after that, Concepts, Programmes, Measures, etc. dealing with the use and protection of land may be drawn up and approved on the state level, since society will have clear, transparent, accessible rules on the land law issues. ■



**Ivan TOMYCH,**  
President,  
Association of Farmers  
and Private Land Owners

*Are you satisfied with the present state of the state land policy? In particular, is the legislative support for land relations sufficient in Ukraine?*

The land reform in Ukraine began in 1990, but for 18 years now, the Ukrainian society has no answers about the market of farming land, arrangement of rural areas, prospects of development of agribusiness as a whole – as the main condition for enhancement of the well-being of Ukraine's citizens.

**The world's richest black soil accommodates the poorest Ukrainian peasants. Who may be satisfied with such land policy?** And was there any? Unfortunately, it was absent. It reminded of the words by a known classic (Lenin – *Ed.*): “one step forward – two steps back”.

Here is one example of development of farmsteads in the modern Ukrainian history. In 1991, the Law of Ukraine “On Peasant Holdings (Farmsteads)” established the right of citizens to get up to 50 hectares of arable land and 100 hectares of farming land in eternal use, and in six years that land was to pass in their private ownership free of charge. However, as soon as 1992, changes to the Land Code deprived citizens of the previously granted right to get those land plots in private ownership, and the new Land Code of 2001 deprived all 36 thousand farmers of the right to use land plots (dispossession).

Attempts of introduction of land shares, and later Presidential Decrees on sharing land of collective farms, in absence of the national cadastre, land planning, and, generally, guiding principles of the agricultural and land policy, in the conditions of political confrontation in the end result were confined to one question: to sell, or not to sell?

**The land legislation was created irregularly.** This refers both to the 2001 Land Code and regulatory acts passed in its pursuance. A number of critical laws, namely: “On Land Cadastre”, “On Land Market”, “On State (Mortgage) Land Bank”, have not been passed. Meanwhile, laws already passed by the Verkhovna Rada are not fully implemented (“On Land Planning”, “On Delimitation of Land of State and Communal Ownership”, “On Protection of Land”, etc.).

**The central executive body in charge of land relations is totally defunct;** permanent reorganisations, ousting of professionals, ruination of the Institute of Land Relations as a scientific institution, unlawfulness, grey land relations compromised the idea of private land ownership in Ukraine – this is the saddest result of 18 years of land experiments.

So, in the result of introduction of the market of farming land in the present conditions, in particular, legislative, big financial speculators can buy up land and rapidly resell it for big money. This will influence the cost of agricultural produce and cause inflation. There may also be negative social effects caused by the lack of experience of trade in farming land for many decades.

*What should be done to improve land relations in Ukraine?*

**To get out of the deadlock, the following should be done in the first place:** (1) inventory of land in Ukraine; (2) steadfast observance of the effective land legislation; (3) passage of basic laws on the land cadastre, land market and state (mortgage) land bank; (4) proper legislative and HR support for operation of the central executive body in charge of land relations in Ukraine; (5) political will of all branches and institutes of power to implement the land reform for the benefit of society, not separate clans. ■



**Ihor YATSYUK,**  
Deputy Secretary,  
National Security and Defence  
Council of Ukraine

*Are you satisfied with the present state of the state land policy? In particular, is the legislative support for land relations sufficient in Ukraine?*

It seems that the **main deficiency of the current land policy lies in the absence of set priorities of the land reform**, announced almost two decades ago, and as remote from completion now as in 1990. The state is still undecided as to the end goal of the reform. According to Article 14 of the Constitution of Ukraine, “Land is the fundamental national wealth that is under special state protection”. Given that in this country it is one of the main resources for GDP generation, we pay insufficient attention to it. To ensure the proper attitude to the main wealth, the level of the State Committee that has even no vote in the Cabinet of Ministers seems not enough, there should be at least a specialised ministry. Now, the



Government has no position of the Vice Prime Minister for agriculture – in a state with the largest stock of black soil (although I guess that such a position should bear a more global title, for instance, vice prime minister for land policy and agribusiness). Such reinforcement is vital at the current stage.

In due time, equal redistribution of farming land through sharing was announced. Today, it becomes clear that the goal was set wrong. Sharing resulted in creation of a great number of unfit for effective agriculture land plots with the average size of a bit more than 4 hectares. Optimisation of the structure of land remains frozen by the moratorium on alienation of the bulk of farming land – being another proof of the improper attitude to land. Evidently, redistribution of land by itself (through privatisation, sharing, etc.) cannot be the goal of the reform. Rather, the goal of the reform should enhance the effectiveness of land use.

Furthermore, the policy of land relations should be formulated in Ukraine.

***What should the strategy of Ukraine's land policy be?***

Ukraine's future land policy **should pursue enhancement of the effectiveness of land use.**

Such enhancement can be achieved through land planning activities. This is witnessed, in particular, by the historic experience: all successful land reforms (including so-called Stolypin's reform) were connected with land planning.

Effective use of land should also be backed with creation of preconditions for proper circulation of land: cancellation of the moratorium on alienation of farming land, creation of a system of registration of rights to immovable property and their limitations, which will make it possible to refuse from burdensome procedures of registration of deeds with land plots and certification of land plot ownership rights with state acts.

At that, one should not neglect environmental considerations, the need of protection of land. Along with the enhancement of the effectiveness of land use, vast areas should be withdrawn from agricultural production. The shares of forest land and land of the natural preserve stock should be substantially increased.

***What should be done to improve land relations in Ukraine?***

We erroneously believe that to solve the problem, a relevant law should be passed – and the problem will go away. The very event of passage of some act makes it possible to put a "tick" in some list, to report of the efforts made. Instead, we forget that passage of most of new regulatory acts changes little in legal regulation. That is why acts are passed but problems persist.

Proceeding from the above, I consider incorrect the very statement of the question, that to achieve some positive changes in the land relations, some regulatory acts should be passed. If necessary, the existing legal regulation should be amended, but this not always

requires passage of some new acts. Emphasis on the form overshadows the substance.

For instance, a lot is said today about the need of passage of the Law of Ukraine "On Land Market". Meanwhile, relations on the land market are already basically regulated by the legislation, first of all, the Land Code. Of course, not everything is perfect in the existing legal regulation – then, the existing norms should be changed. We should speak about concrete things, not abstract "laws that should be passed".

Similarly much is said about the necessity of the Law "On State Land Cadastre". Parliament has already considered several variants. Or let us take maybe the most important element of the state land cadastre – registration of title to land plots. Yet in 2004, the Law of Ukraine "On State Registration of Ownership Rights to Immovable Property and Their Limitations" was adopted. Paradoxically, the Law passed by the Verkhovna Rada, signed by the President and published, formally effective for four years now, still does not work. Will the situation improve with the passage of the Law "On State Land Cadastre"? I think, vice versa.

***To what extent does the land policy in Ukraine meet the European standards?***

The EU legislation gives the member states much freedom in regulation of land relations. The EU regiments rather a short list of issues immediately dealing with land relations. First of all, it sets minimum requirements regarding land protection against pollution, and some other environmental requirements. In this respect, Ukraine has achieved rather a high degree of harmonisation of the national legislation with the EU legislation, although a lot, of course, remains to be done.

Meanwhile, there is a very serious problem of inconsistency of the land relations and land policy in Ukraine with the fundamental EU principle of free movement of capital. That principle, in particular, envisages the possibility of capital investment in real estate, including land plots. The current land policy almost entirely defies this principle. ■





# LAND POLICY OF UKRAINE: STATE, LEGISLATIVE SUPPORT, STRATEGIC PLANNING



**Mykola PRYSYAZHNYUK,**  
Chairman,  
Committee on Agrarian Policy  
and Land Relations of the Verkhovna Rada of Ukraine

*Land never returns what it received without a surplus.  
Cicero*

The “land issue” has always been on the agenda, getting ever more acute and painful. Social and political changes, often inconsiderate and ill-planned, failed to contribute to the solution of that issue, while challenges of the crisis make it even more urgent.

Such a state of affairs is primarily caused by the ineffectiveness and inefficiency of the land policy pursued in Ukraine and logical incompleteness of the land reform, started yet in 1991. Evidently, in the field of land relations, Ukraine has no comprehensive strategy of action, thought-over methodology of reforms, rational management infrastructure, regular legislative framework, and even a clear, systematic – just adequate! – idea of the existing problems. Meanwhile, all of those should be elements of a single strategy of the state land policy.

That is why it makes sense to outline the key problems of the present land policy in Ukraine and the ways of their solution.

## Land relations nowadays: overview of the problems

Analysing the present state of the land relations in more detail, one should note the existence of a number of problem issues that require urgent solution. All of them deserve fixed attention of the state and require prompt practical actions – sometimes tough, bordering on “surgical intervention”. Those problems include: irregular economic and legal relations of land ownership, ineffective state management of land resources and land use, imperfect land legislation and infrastructure of the market of land, especially farming land, absence of a system of management of the state land cadastre, registration of rights to land, division of land, land management.

We should admit that **reformation of the land relations began without the required foundation:**

professional definition of stages and their terms; environmental, economic and social substantiation of each stage; planning of a set of land management measures, establishment of state and public control of its quality and results; establishment of responsibility of actors implementing the land reform for negative results and damage inflicted to the state and the people. Unfortunately, in due time, there was no reasoned state scientific-theoretical programme of fundamental reformation of land and agricultural relations in Ukraine. It is absent even now, despite some progress in this domain, made both by state structures and concerned NGOs. This seriously influenced the forms, methods and substance of the land and agricultural reforms, made them spontaneous and, in the end result, ineffective.

Sharing of farming land produced more questions than answers. Having transferred land shares in



ownership to individuals, the state never established proper conditions for real effective management, as envisaged in the early years of the reform. Owners of shares might either become its true masters, cultivating land, or get decent rent for it. Execution of documents of title to land shares in many cases was conducted without delimitation in kind (on ground), as a result – tenants use land plots of other owners without lease agreements.

The further the worse: having shared all farming land, we faced the issue of management of land as the basic means of production in agriculture. This in the first place refers to consolidation of shared land. A special state policy – comprehensible and commonly accepted – in the sector is also absent. Consolidation takes place in three ways. *First*, lease of land by big business entities of different forms of ownership. *Second*, lease of land by farmers. *Third*, enlargement of personal private small farms at the expense of lease. Such land plots are often leased out for a song, which results in owners losing the right of their ownership and management.

Such approaches to land use, in turn, inevitably lead to another painful problem. Evidently, now, the state is losing control of crop rotation. For instance, sunflower and rape far exceed scientific norms in the structure of sown areas (14%), which finally results in intense ruination and degradation of soil. We also witness annual reduction of sown areas, that has become elemental, and loss of land fertility. A huge negative effect is caused by the extremely extensive nature of land management under the very low level of application of organic and mineral fertilisers and other modern means of intensification. Land is cultivated in Ukraine in the conditions of continuous exhaustion of soil, which affects the quality of foodstuffs.

All those negative trends are further aggravated by the fact that the state (first of all, concerned executive bodies) do not perform one of the main tasks of the land reform – rational use and protection of land. I.e., unimplemented remain such measures as withdrawal of part of land from cultivation (the share of ploughed up farming lands in Ukraine is the highest in the world – 78%) and conservation of degraded land; implementation of soil conservation and forest reclamation measures; amelioration, modernisation of drainage and irrigation systems; expansion of forest lands and nature conservation areas to the European average, etc. All those negative trends produce a cumulative effect and extremely complicate the situation. So, the regulatory policy of rational land use is ineffective.

One should keep in mind that all those processes are further aggravated by spontaneous uncontrolled circulation of land, its unlawful seizure and speculation. Corrupt acts in the field of land relations reached an unprecedented scale. Statistics speaks for itself: in 2008,

law-enforcement bodies revealed 1,333 officials involved with corrupt acts in the field of land relations, and the Security Service of Ukraine initiated 145 criminal cases following such unlawful acts.

One cannot but mention another vital aspect – social. Unfortunately, today, it is suppressed rather than solved. Against the background of effects of the economic crisis, not adequately regulated land relations, decline of productiveness of use of farming land, underdevelopment of the rural infrastructure pose difficult social problems. Social tension is growing in the countryside, let alone the deep social depression and ruinous marginalisation of all sides of the rural life. For instance, the recent years have brought rapid reduction of the able-bodied rural population, mass unemployment in the countryside, drain of villagers to cities and abroad. In the end, all this leads to social devastation in the country. It appears that trying to grow, bring up agricultural producers, we forget that the Ukrainian village should be developing. This primarily refers to its social sector and infrastructure. Today, village communities do not have the required – at least minimal – resources for development of their territories. More than that, we should admit that today, unfortunately, **village communities in Ukraine are too weak, immature, i.e., those who live and work on land are not consolidated.** Maybe, the reason for the **helplessness of the state land policy is that its immediate actor – the Ukrainian peasant – is barred from its formulation...**

#### **Market of farming land: to be or not to be!?**

As we see, pending problems in the field of land relations are many. They may well be resolved – through active accomplishment of reforms, involvement of the land capital in economic circulation. Indeed, **establishment of the market of farming land is an extremely important, necessary and responsible step on the path to implementation of the land policy.** Otherwise, the country loses billions of UAH, because the value of land is not returned in the form of payment for the land, not included in the prime-cost of produce, etc. The world practice proved that solution of those problems lies in transformation of land into a practical item of economic circulation. However...

However, there is one critical reservation. Today's world financial crisis pitilessly adjusted formulation of some economic issues, having shifted overall management priorities. Before the crisis painfully hit all sectors of the Ukrainian economy, especially agriculture, the Committee for Agricultural Policy and Land Relations and I personally had stood for immediate passage of the law on the land market. Now, the situation changed, and introduction of the land market in the period of crisis is inexpedient, even harmful, especially in absence of the appropriate legislation.



By the way, at the end of December 2008, the Verkhovna Rada amended some laws to prevent negative effects of the world financial crisis for the development of agribusiness. In particular, it banned sale of farming land till January 1, 2010. However, the President vetoed down the relevant law and returned it for improvement.

The long-term task of the land policy is to establish the market of farming land with utmost preservation of the rural population and the existing number of holdings. It is short-sighted to view the land market as a panacea that will under any circumstances save Ukraine's economy. On the contrary, inconsiderate steps on that road may harm the village and villagers.

Meanwhile, extension of the moratorium means extension of the existing – grey – land market. The state cannot “release” the land market and abstain from that process. We should estimate the duration of the crisis, its effects, and then pass the required bills, make numerous procedural steps and technical details, etc.

### Legislative framework for the land policy

The Land Code of Ukraine effective since January 1, 2002, generally provides rather a balanced legislative framework for solution of problems in land relations. However, it covers not all issues related with operation of the land market. That is why it was planned to pass some laws elaborating that Code and solving all land issues (nearly 30 laws).

As of present, the Verkhovna Rada has passed 10 laws in pursuance of the Code, namely: on land management, on land evaluation, on land protection, on state control of use and protection of land, on personal farmstead, a new wording of the law on land lease, on the procedure of allotment in kind (on ground) of land plots to owners of land shares, on mortgage, on state registration of ownership rights to immovable property and their limitations, on delimitation of land of state and communal ownership.

**The main legislative problem for the establishment of the land market is presented by the absence of legislative acts whose passage was envisaged by the Code, namely, the laws on the state land cadastre and the land market.**

Ukraine has no law on the state land cadastre. The main “problem” of that law is the delimitation of functions of the State Committee for Land Resources and the Ministry of Justice. The discussion focuses on what institutions may discharge the functions of maintenance of the cadastre and registration of rights. This is an invented problem, because the experience of European countries gives an answer to this question. Only in 13 European states (e.g., Albania, Armenia, the Czech Republic, the Netherlands, Greece, Italy, Lithuania, Luxembourg), the register of rights and the cadastre are kept by the same body.

In other countries, rights are registered by courts, notaries, ministries of justice, specialised institutions (for instance, in the Russian Federation – the real estate agency), while cadastres are kept by institutions subordinate to different ministries or even local self-government bodies. Such is the practice in France, the Scandinavian countries, Poland, Slovenia, Croatia, Estonia and Bulgaria.

Division of the cadastre and registration systems minimises the conflict of interests, since responsibility for institution of immovable property and registration of rights to it rests with different bodies. This approach well works in countries with transitional economies, where the risk of corruption is rather high.

By and large, **the success of the cadastre registration system is determined** not by its legal or technical perfection, not by its administrative design but by whether it supports **“an active land and real estate market by permitting land to be bought, sold, mortgaged and leased efficiently, effectively, quickly and at low cost”** (UN Bogor Declaration, 1996). The mechanisms of achievement of those goals have been more than once formulated internationally, but we in Ukraine still argue which institution should get that function.

Regretfully, Ukraine remains the only country in the post-Soviet space that has not passed a law on cadastre. After all, its main goal lies in creation of the legal framework for the land cadastre operation, maintenance of the state land cadastre, an effective mechanism of state management of land resources.

As noted above, the law on land market has not been passed either. Meanwhile, exactly that law is to regiment the specificities of circulation of farming land. For instance, circulation of farming land for market-oriented agricultural production is allowed only on the following conditions:





- target use of land plots;
- observance of requirements of the law regarding the pre-emptive right of the land market actors to buy farming land for market-oriented agricultural production in accordance with the law;
- creation of conditions for rational and effective use of farming land.

The document should also specify the persons enjoying the pre-emptive right to buy farming land plots, the area of those plots, setting sales prices, existing limitations, etc.

It may be argued that **the land market, when instituted, should be regulated with account of the best experience of developed countries, in particular, regarding limitations imposed on sale of farming land.** Many states in that way (through limitations) managed to avoid some problems and collisions. For instance, Denmark legislatively established the maximum size of land plots owned by one family. This restricts monopoly on the land market. France, Spain and the USA ban sale of obtained land over a certain period. The USA employs a mechanism whereby acquisition of land by banks may be subject to the requirement of sale of the debtor's land acquired in the result of non-repayment of an obtained credit within two years. In Sweden, farming land may be bought only with the government's permit. In Australia, sale of land requires a permit of special bodies to enter into land agreements.

There is also vast foreign experience of prevention of non-target use of land resources: in some states, the legislation envisages land zoning – agricultural, urban, and suburban. At that, land may be carried from one category to another only with permission from concerned state bodies.

Hence, **if the required legislative framework is introduced, we may speak of establishment of a fully-fledged market of farming land.** This, in turn, will become the driving force of implementation of an effective state policy, create preconditions for full-scale involvement of the land relations in Ukraine in the market environment, introduction of mortgage lending in a stable post-crisis situation, which will, respectively, greatly improve funding of agricultural production, enable its technical and technological modernisation, enhance competitiveness of the sector's produce on the domestic and foreign markets.

### Strategy is not just legislation. Instead of conclusions

For fully-fledged reformation of the land relations in Ukraine, the legislative framework alone is not enough. Proper and effective legislative support for the land reform is only one of the goals of the national land strategy. The Ukrainian political practice proves that the technology of implementation of doctrines, strategies, concepts and programmes of the state policy must integrate all elements of political activity of the state. It should rely

on the principle of all-inclusiveness and regularity. The sector of land relations is no exception.

Due to the absence of such integral strategy of the land policy, Ukraine has no systemic approach in the field of state management of land resources. Only separate elements of the system are in place, but due to the lack of coordination of those elements, the system does not work and, respectively, does not produce a notable effect. **Instead of strategic reformist thinking, agriculture is swept over by free improvisation, intuition, irresponsibility.**

What should the strategy of the land policy be like? Apparently, effective and efficient, resting on the following conceptual principles:

- support for the socio-political and social functions of land as the state territory and property of the Ukrainian people;
- state guarantee of protection of the rights of land ownership and land use for individuals and legal entities;
- involvement of land in market circulation;
- guarantee of social justice at redistribution of farming land and its involvement in market circulation;
- prioritisation of environmental requirements of land protection, restoration of soil fertility and rational use of productive land;
- unconditional observance of norms of the effective legislation regimenting land relations by all land owners and land users;
- provision of equal conditions for development of different forms of land management through creation and perfection of the mechanism of agricultural and land policy.

To sum up, I wish to stress that land is an eternal value, true national wealth of this country. The raised problems are pressing. But in the current situation of non-transparency of legal relations in the land sector and ineffectiveness of the very system of management, joint efforts, thought and will of all concerned parties are needed – with obligatory decent representation of those who live and work on land.

**The land policy cannot be viewed or formulated in isolation from the set of associated problems, first of all – socio-political, legal and social. There are all preconditions – and an urgent need! – for achievement of serious positive changes in the field of land relations. A systemic view of the national strategy of land reforms (as well as a clear idea of national priorities in agribusiness development) and the political will to implement that strategy are needed. Evidently, this can come true only after deep changes in the system of governance and removal of the macro-political crisis in the country, especially in the highest echelons of power. But this is another subject.** ■

# MAIN LINES OF ADJUSTMENT AND PERFECTION OF THE STATE LAND POLICY IN UKRAINE



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The land policy is of priority importance for sustainable development, rational government, well-being of the population, economic capabilities of village and city residents, and for the removal of poverty. That is why studies in the field of land policy and analysis of specific measures at solution of land-related problems are always topical and attract interest of society and scholars. However, the materials of such studies not always have been brought to the attention of governmental policy makers and other concerned parties, to ensure the best results. As a consequence, discussion of the issues of land policy making mainly concentrated on ready concepts and ideologemes and did not rest on all-round analysis of the potential role of the land policy in society development, possibility of state interference in that sector, and the mechanisms that might be used for the attainment of the fairest socio-economic goals. In absence of results of such analysis, the potential of the land policy as a catalyser of social and economic transformations is usually not employed in full.

This article is intended to survey the influence of the state policy in land relations on the enhancement of the effectiveness of use of land and the human potential for promotion of sustainable development of the national economy and curbing impoverishment through presentation of the result of these studies to policy makers, non-governmental organisations, scholars, and the broad public, a wider circle of persons that care or at least should care about the problems of development of rural territories and entire society.

## Current results of the land reform

In course of almost 18 years after the beginning of the land reform, Ukraine has passed a difficult path of denationalisation and privatisation of land, establishment of a new land system. That goal was pursued by numerous legislative and regulatory acts, including three land codes of Ukraine developed and passed in that timeframe, updated as time demanded. Insufficiency of the legislative framework was made up with presidential decrees intended to push the land reform. But in practice, **its fundamental end goal – rational, effective and environmentally safe use of land resources and protection of land – has not been achieved.**

Due to the lack of funds for land management and protection of land against negative natural, anthropogenic and technogenic effects, restoration of fertility of soil, its quality is deteriorating, the productiveness of farming land at most enterprises remains low, land consumption in non-agricultural sectors is still high. Funds allocated by the state to land protection are miserable, state activities in that field have been stalled. For instance, in 2000-2008, revenues from payment for the land increased from UAH 1.4 billion to UAH 6.7 billion. Pursuant to Article 22 of the Law of Ukraine “On Payment for Land”, those funds are to be used solely for such goals as land protection and land planning measures, the land cadastre



keeping, arrangement of infrastructure. But in reality, over those years, only 1.2-2.0% of that sum was spent on land reform and land protection activities.

The right to land ownership is not ensured in full volume. The Constitution of Ukraine guarantees the right of land ownership (Article 14). Everyone has the right to possess, use and dispose of his ownership (Article 41). However, the absence of the system of guarantee of land ownership rights and institutional support for circulation of land plots prompted a moratorium on purchase and sale of farming land for market-oriented production, which effectively impairs land ownership rights.

The Bill "On State Land Cadastre" remains not passed since 1999; as a result, no automated system of the state land cadastre, as the documentary information framework for the system of guarantee of ownership rights by the state, has been created.

Meanwhile, according to the theory of ownership, obligatory conditions for effective ownership in economic relations include: (1) certification of ownership rights; (2) free circulation of ownership rights; (3) existence of a system of guarantee of ownership rights. None of those mandatory conditions has been provided in Ukraine, which directly affects the employment of land as capital in the national economy.

**Hence, the situation in the field of land relations, use and protection of land remains tangled and requires urgent steps for its improvement.** The most acute problems include:

- absence, in the 18<sup>th</sup> year of the land reform, of a concept for development of land relations;
- incompleteness of the land legislation;
- underdevelopment of economic and legal relations of ownership;
- low effectiveness of state management of land resources and land use;
- imperfection of the infrastructure of the market of land, especially farming land;
- absence of an automated system of maintenance of the state land cadastre as an indispensable element of guarantee of land ownership rights;
- imperfection of the procedures of redistribution of land;
- absence of a national programme of use and protection of land, territorial land planning, differentiated taxation, etc.

Activities at rationalisation of the use and protection of land go on slowly, crop rotation on lands of agricultural enterprises is not promoted, which results in critical degradation of soil on some territories. The negative trend towards a sharp decrease in the content of humus in Ukrainian soils continues (annually, by 0.5-0.6 tons/hectare).

There is no long-term planning of use of lands by recreational, industrial, transport, power engineering,

defence and other facilities, no optimal model of agricultural use of land has been designed. The effectiveness of land use in agriculture remains low, economic circulation of land capital has not been introduced.

The land reform in Ukraine mainly resulted in structural changes in land distribution by the forms of ownership and business, the number of land owners and land users. The state ceased to be the land monopolist. It remains in possession of less than half of the total area of lands in the country. A great deal of productive land was transferred in private ownership, some 7 million people got certificates to land shares (tenures). Most certificates have been replaced with State Acts of private ownership of land plots. Entirely new land relations are being formed, resting on private land ownership, enabling its lease, inheritance, donation, exchange, etc.

All in all, the state owns 29.6 million hectares (49%), 30.6 million hectares (50.8%) stay in private and 117 thousand hectares (0.2%) – in collective ownership.

Even deeper changes took place in the farming land ownership structure. Out of 41.7 million hectares of total farming land, 11.4 million hectares remained in state ownership (27.3%), 30.3 million hectares were transferred in private ownership (72.7%), 42.8 thousand hectares remained in collective ownership (0.1%).

*Therefore, Ukraine has passed the most difficult stage of the land reform – denationalisation and privatisation of farming land. Market circulation of land plots among land owners and land users has been started, not fully-fledged though, as there is a ban on alienation of land plots for market-oriented farming and land shares (tenures), except inheritance and taking in public domain. This in fact created initial conditions for effective farming in the market economy.*

Meanwhile, **during the land reform** and reformation of the agricultural sector, **some trends gained momentum**, producing controversial effects. They include the following.

1. *Concentration of the Government's activity at redistribution of land on separate plots in separate branches, rather than on long-term territorial planning on land use* (at least through 2020). Therefore, there are no forecasts of use of land of territories, due to the absence of land zoning, non-farming land plots are underpriced. Shift of the Government's attention from redistribution of separate land plots to development of used and owned land plots (within territories) can additionally bring to the budget some UAH 1 billion.

2. *Parcelling of land tracts and establishment of many small-sized inefficient enterprises.* Legislative provision of the exercise of the citizens' right to demand allotment of a land tenure in kind (on ground) created conditions for emergence of great many small-sized market-oriented enterprises (the average area of land used by market-oriented agricultural enterprises is 31.8 hectares – there are 70 thousand of them on the area of 22 million hectares).





As of July 1, 2008, there remained 405 collective agricultural enterprises with the average land area of 345 hectares per enterprise. The number and area of state agricultural enterprises gradually go down.

Against the background of the general trend towards the reduction in the number of big market-oriented enterprises and reduction of the average area of their land, the number and area of farmsteads are steadily growing (now, they number 49.7 thousand and occupy 4.1 million hectares, the average area of an enterprise is 82 hectares). The number and area of so-called “plots for market-oriented agricultural production” are growing rapidly. In 2000s, the number of those plots reached 2.5 million. As of the beginning of 2009, almost 9% of farming land was used by those small enterprises with the average area of 3.6 hectares. By and large, farms from 500 to 5,000 hectares make only 45%.

3. *Formation of “market-oriented tracts of farming land” on the basis of lease of land from small owners.* In the result of the land reform, denationalisation and privatisation, 27 million hectares of farming land passed in ownership of 6.9 million people, with the average area of a land tenure of some 4 hectares. Most land shares were transferred in temporary use (mainly on the conditions of lease) to big agricultural enterprises. Now, such enterprises use 18.8 million hectares of farming land, 90% leased from individuals.

The process of division of individually-owned land plots goes on due to the exercise of succession rights. According to land records, as of January 1, 2009, there were 893 thousand notarised transfers of land ownership rights with respect to land tenures through inheritance, or almost 13% of all allocated tenures. At that, in most cases, land plots are inherited by several heirs. This means that the number of land owners is already

much greater than at the beginning of the public land stock sharing.

Lease of land from small owners has some negative implications for collective agricultural manufacturers.

- *First*, lease agreements need to be made with many owners of land tenures, including heirs, most of who live in cities or even beyond the country borders. Most lease agreements are executed for a short term (mainly, five years). Frequent renewal of agreements, rental payments to many lessors complicate formalities related with land lease.
- *Second*, farming on leased land rules out long-term mortgage crediting of agricultural manufacturers, barring technical and technological re-equipment of agricultural production.
- *Third*, in practice, land tenures are often separated for establishment of farmsteads, transfer to another tenant or addition to personal farmsteads, leading to the breach of integrity of land tracks, disruption of crop rotation, and even strip farming. All this is not conducive to the enhancement of effectiveness of market-oriented production.

**The way out of the situation is associated, first of all, with a state policy of land planning with respect to the land of agricultural producers and concentration (merger) of land, using civilised mechanisms of the land market<sup>1</sup>.**

4. *A sharp decrease in the productiveness of lands, deterioration of their quality.* In the period of sharing and privatisation of land and reformation of the organisational structure of the agricultural sector, miserable funds were provided for the restoration of fertility of soil and protection of land against negative natural, anthropogenic and technogenic effects. This resulted in large-scale degradation of soil, decline of its productiveness.

The state of lease relations described above is not conducive to improvement of the situation either. As we noted, most (some 87%) land lease agreements are executed for the term below five years. This is inconsistent with technological requirements of crop rotation, does not encourage tenants to invest in long-term projects of land protection and restoration of the fertility of soil. Now, tenants invest in assets that annually transfer their value to the new product – mineral fertilisers and pesticides that, in turn, when applied in big doses, cause further exhaustion and contamination of soil. That is why **it is important to establish effective control by state land protection bodies over the observance of the effective legislation on environmentally safe, rational use of productive land** by land owners and land users, applying all practicable incentives and coercive measures.

<sup>1</sup> For instance, in foreign countries that introduced mechanisms of intensification of the processes of land concentration in the hands of effective producers (Bulgaria, Poland, Hungary, the Czech Republic), specialised funds were created, buying out scattered plots of farming land and leasing out prepared (merged) land areas. This prompts cheapening of operational costs of land lease and cultivation of merged tracts.



The strategic line of use of the national land stock should envisage its *optimisation by setting an economically and environmentally sound balance among different factors and forms of land use*. Given that in the result of the land reform over two-thirds of farming lands, including almost four-fifths of arable land, stays in private ownership, a mechanism of their transformation should be designed, providing for buyout of land by the state (if it is transferred, for instance, to the State Forest Fund), reimbursement of lost profit to owners and land users, where arable land goes for conservation or is converted into pastures. With the consent of owners of land plots planned to be withdrawn from intense cultivation, those plots may be left in their ownership as forest lands or pastures, specifying the land type in the state act of private land ownership.

To improve farming land use, enhance its effectiveness and create conditions for competitive agricultural production, radical steps should be taken for *optimisation of the structure of sown areas* with account of environmental factors and requirements of environmental safety in agricultural business. In particular, it makes sense to introduce serious penalties for excess of admissible norms of land use and degradation of soil.

For the attainment of those tasks, it is necessary to:

- complete inventory of farming land and commission the automated system of the state land cadastre;
- work out a mechanism of compensation to land plot owners in case of withdrawal from intense cultivation;
- legislatively bar unreasonable transfer of farming land to other categories, especially for development, since under certain conditions, after the restoration of its fertility and adoption of new technologies of environmentally safe use of land, some part of such land may be returned for tillage.

Although there is an effective moratorium on purchase and sale of farming land in Ukraine, the legal practice witnesses *continuing operations of alienation under tested legitimate schemes*. In particular, the following such schemes may be mentioned.

- *First* – resting on Article 244 of the Civil Code of Ukraine, whereby disposal of a land plot may be conducted by power of attorney. The norm of the effective Land Code on moratorium bans sale or other alienation of owned land plots (tenures) only to land plots owners, but if the owner engages a third party, such party may effect a purchase/sale deal in line with the Civil Code.
- *Second* – resting on Article 635 of the Civil Code that allows use of agreements similar to the one described above for land transactions. At that, the would-be buyer of a land plot makes a preliminary agreement with the owner, whereby

the land owner undertakes to enter into the basic agreement of purchase and sale of his land plot after the end of the moratorium.

- *Third* – resting on the conditions of a land lease agreement incorporating a clause of unconditional sale of the land plot to the tenant right after the cancellation of the moratorium. In such cases the value of the land is paid to the lessor simultaneously with the execution of the lease agreement, and he, in his turn, undertakes in writing to return the money if such sale fails, for any reason.

The most popular way to bypass the introduced moratorium presumes conclusion of preliminary purchase and sale agreements, coming into effect after the end of the moratorium. It is enabled by gaps in the effective land legislation.

The main danger now is that nobody in Ukraine has reliable information about the scale of such “grey transactions” of purchase and sale of farming land and of their threat to villagers and the national economy in the future (near and strategic).

In 2000-2008, the number of enterprises possessing over 10 thousand hectares of farming land increased by 44%, while the number of those holding from 500 to 5,000 hectares was steadily decreasing. In that group of enterprises, vertically integrated holding-type structure prevail.

Creation of too large organisational structures of latifundium type in the mid and long run poses a number of threats, from the viewpoint of their competitiveness, both for themselves and for the agricultural sector as a whole. **There are environmental, social and legal threats.**

The mechanism of land concentration through lease needs perfection with account of economic, social and environmental factors. **To prevent monopoly, it is proposed to set the maximum allowed area leased by one individual or legal entity, taking into account regional specificities of agricultural production.** Capital investments in land use by processing enterprises should be allowed only on the conditions of land lease, also with a limitation of the total area of leased land and obligatory participation of such investors in socio-economic development of rural territories. Enterprises whose main business is not agricultural (except processing) should be banned from lease (and, later, sale) of farming land. Such limitations exist in other countries, while the state by all means encourages employment of villagers in agriculture.

### Further progress of the land reform

The retrospective analysis of the progress of the land reform, assessment of its gains and shortcomings witness the huge amount of work performed for transformation of land ownership and transfer of the bulk of land, especially farming land, in individual ownership. **Meanwhile, the end goal of the land reform has not been attained yet:** (1) highly effective, environmentally safe use of



land resources is not ensured; (2) land relations are not fully compliant with the requirements of the market economy.

So, after the most difficult stage of the land reform – denationalisation of farming land, institution of private land ownership, a critical task in this field is presented by regimentation and perfection of land relations with account of transformation of all social relations, the local economic situation, national and world trends in the land and nature use. At that, one should note the prospects of Ukraine's entry to the world market and the need to ensure competitiveness of domestic agricultural production, which will require optimisation of land use in terms of economic effectiveness, protection of the entire land stock and provision of its environment-friendly use.

**Further progress of the land reform, perfection of economic relations of land ownership, regulation of land relations should rest on the following conceptual principles:**

- exercise of socio-political and social functions of land as public territory belonging to the Ukrainian people – consideration of the functions of land as a production resource of the territory, an element of the natural environment, when engineering land relations;
- state protection of land ownership and land use rights for individuals and legal entities, including lease of farming land plots;
- prevailing involvement in market circulation of title to land, rather than land as such;
- prioritisation of social justice at redistribution of farming land;
- consideration of priority environmental requirements regarding the protection of land as an element of the ecosystem, reproduction and rational use of productive land;
- unconditional observance of norms of the effective legislation, provisions of other regulatory-legal acts regimenting land relations by all land owners and land users;
- organic combination of legal, environmental, economic and administrative aspects of regulation of land relations for the attainment of the main goal: creation of conditions for highly effective, rational use of the national land stock, especially of valuable land.

The main task of the current **state policy in the field of agricultural use of land**, as before, envisages improvement of land relations to guarantee rational use and protection of productive land on the basis of greening, conservation and protection of land as an element of the natural environment, conservation, multiplication and reproduction of its productive power of a natural resource.

Proceeding from the above, **the priority lines** of further progress of the land reform and perfection of land relations are deemed to include:

(1) perfection of the system of state management of land resources; continuation of formation of the

necessary legislative and regulatory framework on the issues of land use and functioning of the market of land, especially farming;

(2) perfection of the economic mechanism of regulation of land relations (price regulation of market circulation of land plots; perfection of methods and continuous updating of the reference appraisal of land; introduction of an automated system of record of the land tax and land lease payment; economical incentives for rational use of productive land and land protection; effective application of sanctions for violation of the effective legislation on land relations and land use and for actions causing deterioration of the quality and degradation of land, etc.);

(3) land planning of rural territories and newly established agricultural enterprises in line with the requirements of the concept of sustainable development and the need of contour ameliorative arrangement of territory of agricultural enterprises of all forms of ownership and land business;

(4) perfection of the procedure and system of introduction of the land cadastre and monitoring of land; information of land owners and land users about the fitness and quality of their land, to be used in course of economic activity, purchase and sale deals, land lease, economic incentives for rational use and protection of land;

(5) creation of legal and socio-economic mechanisms for effective exercise of the right of ownership of farming land (completion of issue of State Acts of private ownership of land plots; measures at acquisition and exercise of land ownership rights in line with the Constitution of Ukraine; delimitation of land of different forms of ownership and use);

(6) state promotion of concentration and merger of farming land in the hands of effective agricultural managers, first of all, through cooperation of small land owners and land users, as well as arrangement of a transparent, controlled market of land plots, to offer better conditions for creation of competitive enterprises. The state land policy at creation of a forward-looking structure of use of agricultural land in Ukraine should promote the establishment of:

- *1,000-2,000 state scientific research agricultural enterprises on the area of up to 1 million hectares of farming land. In this case, the main form of land ownership should be state, although participation of private capital is admissible;*
- *6,000-8,000 production cooperatives, corporate associations, joint-stock and other companies and private enterprises on the area of up to 13-15 million hectares of farming land. Main form of land ownership – joint share, as a variety of private;*
- *25 thousand farmsteads on the area of 3-5 million hectares. Main form of land ownership – private;*
- *13-15 million personal subsidiary holdings, collective and personal gardens, dachas on the area of 8-10 million hectares. Main form of land ownership – private;*





(7) establishment of regional limitations on concentration of land to prevent monopolisation of land use, establishment of superb latifundia-type enterprises;

(8) creation of an effective mechanism of operation of a fully-fledged, state-regulated market of farming land and title thereto;

(9) perfection of land lease in agriculture through the creation of a competitive environment among potential tenants of land, all-round protection and guarantee of rights of peasant lessors, in particular, employment of effective mechanisms of responsibility for breach of provisions of lease agreements by contracting parties, an increase and differentiation of land rent, as well as greening of the use of leased land, envisaging implementation of promotional and regulatory measures, introduction of environmental monitoring and controls pursuing more effective use of land by tenants;

(10) passage of a state programme of use and protection of land, and its steadfast implementation, using funds provided by the State and local budgets;

(11) enhancement of controlling and incentive functions of the state at rational use and protection of farming land, observance of environmental requirements by every agricultural producer.

Among all those priority lines of further progress of the land reform and perfection of land relations in agriculture, **particular attention should be paid to the solution of the problems to form the market of title to farming land.**

The measures that should be taken to ensure the transparency and democracy of the market of title to land, its functioning in the interests of villagers, include, in particular:

(1) urgent passage of the Laws “On State Land Cadastre” and “On Market of Farming Land” – separately from the general law “On Land Market”, to regiment in detail the movement of farming land plots and title to them, rule out ambiguous interpretation of rules of market circulation of farming land;

(2) formation of the purchase and sale price of farming plots by means of establishment of reference regional minimum and maximum prices of land, taking reference appraisal of farming land as the basis. Appraisal of land of all categories should be updated on the new methodological basis, with account of the changes that took place in the structure the land use, productiveness of land, prices, costs, etc.;

(3) introduction of state and self-government regulation of the market of farming land through creation of a special fund of state-owned land and village associations for regulation of circulation of farming land.

By and large, formulation of the land policy of early XXI century should rest on the following three principles.

**First:** guarantee of reliable protection of land ownership rights, promoting enhancement of the wellbeing of the population, including through the expansion of the resource base of the rural population whose title to land in many cases is limited or not recognised. At the same time, such protection creates socio-economic conditions and incentives for investments, of priority importance for sustainable economic growth.

**Second:** the top state leadership support for the promotion of socially-oriented distribution and use of land. The country leaders should care about incentives to reduce poverty through effective use of land, prevention of negative environmental impacts and avoidance of irreversible loss of non-renewable natural resources and cultural heritage. The main mechanisms of solution of those problems include the culture of land use, taxation and village-minded regulation and planning of land use.

**Third:** streamlining of the process of exchange of land plots and their distribution (including as immovable property) by state-regulated channels. This is important for equal access to land for the effective land users (especially agricultural) who need it. In the event of creation of appropriate economic conditions, land and rights thereto are of huge importance for the development of financial markets, creation of a favourable investment climate and all-round development of economy, especially of the non-agricultural sector in rural areas<sup>2</sup>.

**Summing up, it may be argued that the reform lasting for 18 years now failed to solve the basic task of reformation of land relations – achievement of rational, effective and environmentally safe use of land. On the contrary, the state of protection of the land stock over the years of reforms worsened. Due to the unsettled issue of delimitation of state and communal lands, reformation in populated localities stalled, the term of reform completion can hardly be predicted. No proper measures are implemented for the development of use of land of cooperative farms and farmsteads. Meanwhile, creation of organisational structures of latifundium type in agriculture causes ruination of the social structure in the countryside, exhaustion of productive arable land, alienation of peasant owners from their property.**

**Problems should be resolved through implementation of a State Programme providing organisational, economic and land planning mechanisms and ways of improvement of the state land policy at development of land relations and stable use of land in urban and rural areas, conduct of land management as a tool of state regulation of land relations, completion of creation of a system that guarantees land ownership rights and the land market infrastructure, reformation of the system of payments for land and development of the institute of land ownership, and therefore – improvement and development of the land legislation.** ■

<sup>2</sup> It should be admitted that such non-market mechanisms as transfer of land free of charge or transfer of state-owned land in permanent use, forced taking of land by the state in public domain, etc., always played an important role, on one hand, promoting wider access to land and its rational use, on the other – barring effective land users from land, which should be taken into account at passage of political decisions.

# ROAD TO UKRAINIAN LAND FOR A FOREIGN INVESTOR: IMPEDIMENTS AND WAYS THROUGH



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**A**vailable rights to land, procedures of their exercise, limitations going with execution of land rights in Ukraine – such are the key issues that worry the investors. While domestic investors are more or less disposed to get terminal rights to land use (lease, superficies, emphyteusis), foreign investors always seek ownership rights.

Unfortunately, the Ukrainian legislation contains quite a few limitations of rights to land for investors. Furthermore, for any investor, the procedure of exercise of rights to land is rather costly and time-consuming, since Ukraine has no clear and transparent rules of acquisition of such rights. Many “land” issues are not regulated or regulated on the level of “interpretations”. The system of registration of rights to land (the state land cadastre) does not work properly. Nevertheless, the practice shows that many foreign investors do not give up the idea of obtaining the right to land in Ukraine.

Discussed below is the list of legal models of acquisition of rights to land in Ukraine, with the analysis of their pros and contras.

Analysis of the Ukrainian legislation and practice reveals nine legal models of acquisition of rights to land, acceptable for both Ukrainian and foreign investors.

## Model 1 – Right of ownership

Certain obstacles for foreign investor ensue from Article 82 of the Land Code of Ukraine. “Legal entities (**founded by Ukrainian citizens or legal entities**) may get in ownership land plots for business activity in case of:

- acquisition by an agreement of purchase-sale, lease, gift, exchange, other civil law agreements;
- contribution of a land plot by founders to an authorised fund;
- acceptance of heritage;
- emergence of other grounds envisaged by the law.

**Foreign legal entities** may get the right of ownership of **non-farming** land plots:

- within the borders of populated localities in case of acquisition of immovable property and for construction of facilities related with conduct of business activity in Ukraine;
- beyond the borders of populated localities in case of acquisition of immovable property.

Joint ventures established with participation of foreign individuals and legal entities may get the ownership right to non-farming land plots in cases provided by parts one and two of this Article, and **in accordance with the procedure established by this Code for foreign legal entities**”.

By contrast to the Land Code, the Business Code uses the term “**foreign enterprises**” instead of “**foreign legal**



entities”. According to Article 117, a foreign enterprise is a unitary or corporate enterprise **established under the legislation of Ukraine** acting solely on the basis of ownership of foreigners or foreign legal entities, or an active enterprise fully acquired in ownership by such persons.

Meanwhile, the State Committee for Technical Regulation and Consumer Policy Order No. 97 of May 28, 2004<sup>1</sup> reads that a joint venture is an enterprise resting on integration of property of different owners. Founders of a joint venture, according to the legislation Ukraine, may be citizens and legal entities of Ukraine and other states.

However, the effective legislation does not envisage establishment and state registration of new enterprises with such organisational-legal forms, so, part 3 of Article 82 of the Land Code of Ukraine in fact does not work.

Next, let us consider in detail the procedure of acquisition of rights to land by foreign legal entities.

According to provisions of the Land Code of Ukraine, the procedure is as follows: foreign legal entities willing to buy land plots file applications to the Council of Ministers of the Autonomous Republic of Crimea, regional, Kyiv or Sevastopol city state administration or a village, settlement, city council and the state privatisation body. An application is accompanied with a document certifying the right of ownership of immovable property (buildings, structures) located on that land plot, a copy of a certificate of registration of a permanent representative office by a foreign legal entity with the right to engage in business activity on the territory of Ukraine.

State-owned land plots, except land plots housing facilities subject to privatisation, are sold to foreign states and foreign legal entities by the Cabinet of Ministers with approval of the Verkhovna Rada. Applications are reviewed and land plots are sold by village, settlement, city councils after coordination with the Cabinet of Ministers. Review of applications and sale of land plots staying in state ownership housing facilities subject to privatisation are executed by state privatisation bodies after approval by the Cabinet of Ministers.

Sale itself is performed by the concerned councils. Noteworthy: sale of land plots owned by the state and territorial communities to foreign legal entities is allowed only on the condition of registration by the foreign legal entity of a **permanent representative office with the right to engage in business activity** on the territory of Ukraine.

Here lies the main problem, since the Law of Ukraine “On Taxation of Enterprise Property” of December 28, 1994 provides that a foreign enterprise established according to the legislation of Ukraine (resident) cannot open a permanent representative office, since it may be opened only by a non-resident.

It is necessary to consider limitations envisaged by part 1 of Article 82: the right of land plot ownership may be granted only to legal entities founded by Ukrainian citizens or legal entities. Hence, resident legal entities founded with involvement of foreign legal entities do not fall under Article 82 of the Land Code of Ukraine and cannot own land. To evade those limitations of the land legislation, foreign legal entities (or those founded with their participation) have to set up a “clean” resident company. The process looks as follows: first, a firm sets up a Ukrainian company (resident), then, that resident company founds another company (legal entity) falling under part 1 of Article 82.

Limitations envisaged by Article 82 of the Code are absolutely unclear for foreign investors, since such an asset as a land plot cannot be carried or moved beyond Ukraine.

Legal entities that may get a land plot in ownership, as a rule, buy it. In case of purchase of a land plot from a private owner, the procedure of acquisition of its ownership is quite simple: the parties make an agreement, notarised and registered; on the basis of the agreement, a legal entity obtains a state act of the right of ownership of a land plot.

Land plots bought out of lands of state or communal ownership are to be bought on a competitive basis (by land auction).

Land plots of state or communal ownership or rights to them cannot be sold on a competitive basis (by land auction) in case of:

- location on land plots of immovable property owned by individuals and legal entities that have no shares owned by the state, except if the owner of immovable property located on the land plot refuses from its buy-out or conclusion of a lease agreement;
- use of land plots for exploitation of the land interior and special use of water in line with obtained special permits (licenses);
- use of land plots occupied by houses of prayer by religious organisations legalised in Ukraine;
- use of land plots or located there structures of enterprises, institutions and organisations of state and communal ownership by enterprises and public organisations in the fields of culture and arts (including national artistic unions);
- accommodation of diplomatic and similar missions of foreign states and international organisations according to international treaties of Ukraine;
- construction and maintenance of transport and energy infrastructure facilities;

<sup>1</sup> State Committee for Technical Regulation and Consumer Policy Order “On Approval of National Standards of Ukraine, State Classifiers of Ukraine, National Amendments to Interstate Standards, Amendment of the State Committee of Ukraine for Technical Regulation and Consumer Policy Order of March 31, 2004, No. 59 and Cancellation of Regulatory Documents”.





- all-round reconstruction of blocks (microdistricts) of obsolete residential stock according to the law;
- construction of social and affordable housing, if a contest for its construction is over<sup>2</sup>.

The right of ownership is the most “comprehensible” for foreign investors. *First*, because western investors are brought up on private ownership. *Second*, because land ownership is one of the most important assets of any company that may be pledged to get necessary credits.

### Models 2 and 3 – Right of lease (sublease)

The right to lease land is one of the most common rights to land. According to the land legislation norms, the right to land lease means contractual terminal paid possession and use of a land plot needed by a tenant for business and other activity.

An agreement of land lease is concluded on the basis of either a decision of the concerned authority or local self-government body, or a civil law agreement (in case of alienation of the right to lease), or by inheritance.

A lease agreement enters into force upon its state registration. Unfortunately, state registration of such agreements is conducted twice, due to “ill” legislative regulation. *First*, according to the Cabinet of Ministers Ukraine Resolution “On Approval of Procedure of State Registration of Land Lease Agreements” No.2073 of December 25, 1998, an agreement of land lease is to be registered by the executive committee of a village, settlement, city council or Kyiv or Sevastopol city state administration. *Second*, according to the State

Committee for Land Resources of Ukraine Order No. 174 of July 2, 2003, it is to be recorded in the state land register.

According to the Ukrainian legislation, the right to lease of a land plot (except land of state and communal ownership) may be alienated, including sold by land auction, inherited, contributed to the authorised fund by a land plot owner for up to 50 years.

Previously, the right to lease was the most common right exercised by foreign investors coming to Ukraine. After deep changes in the legislation envisaged by the Law of December 28, 2007 (introduction of the procedure of acquisition of the right to lease by auction), the desire to lease land plots wend down. This especially refers to those investors who wanted to take land plots on long-term lease. The reason is economic. Along with introduction of auctions, the rates of lease of state and communal land were raised to the level not exceeding 12% of their standard evaluation. Of course, local authorities used that provision of the law and raised rental rates to said 12%. Therefore, a person leasing a land plot for more than eight years in fact pays its double value. That is why long-term lease of land plots lost its attractiveness for investors.

**The model of sublease**, in principle, is similar to the one described above. A leased land plot or its part may be subleased by a tenant without the change of the target purpose, if so envisaged by a lease agreement, or with a written consent of the landlord.

Conditions of a land plot sublease agreement should be subordinate to the conditions of the agreement of lease of a land plot and not contradict it.

The term of sublease shall not exceed the term set by the agreement of land lease.

In case of termination of a lease agreement, the agreement of sublease of a land plot is terminated.

An agreement of sublease of a land plot is subject to state registration.

With the parties’ consent, an agreement of sublease of a land plot is notarised.

It is banned to sublease land plots housing integral estates of enterprises, institutions and organisations of state or communal ownership, of the Autonomous Republic of Crimea, and their structural units.

Lease and sublease of land are similarly available to residents and non-residents. The main advantage of lease and sublease of land for non-residents is that by contrast to the right of ownership, non-residents do not need to register a 100% Ukrainian enterprise.

<sup>2</sup> Land auctions are also not held in cases envisaged by Articles 34, 36 and 121 of the Land Code of Ukraine (privatisation of land by Ukrainian citizens).

Mentioned as a shortcoming of those models may be the long duration of the procedure of execution.

#### Model 4 and 5 – Superficies and Emphyteusis

According to provisions of the Land Code of Ukraine, *superficies* is the right to use a land plot of another owner for development.

*Emphyteusis* is the right to use a land plot of another owner for farming.

Those rights arise from an agreement of a land plot owner and a person willing to use that land plot for the states purpose. Superficies may also arise on the basis of a testament.

Both superficies and emphyteusis are transferable rights; they may be inherited, contributed to the authorised fund of an enterprise, pledged, except land plots staying in state or communal ownership<sup>3</sup>.

Sale of land plots of state and communal ownership or rights to them (lease, superficies, emphyteusis) on a competitive basis, by auction, is executed in cases and in accordance with the procedure specified in Chapter 21 of the Land Code.

Banks alone may be mortgagees of farming land plots and rights to them (lease, emphyteusis).

Grounds for termination of agreements of superficies and emphyteusis include:

- combination of the plot owner and land user in one person;
- expiry of the term for which the right to use was granted;
- buy-out of a land plot in public domain in case of use of a land plot of another owner for farming;
- non-use of a land plot for construction for three years, in case of use of a land plot of another owner intended for development;
- a court ruling

There are no other conditions and limitations on conclusion of agreements and use of a land plot of another owner for development or farming, which makes emphyteusis and superficies rather attractive for foreign investors.

What are the shortcomings of emphyteusis and superficies for investors?

According to the Law of Ukraine “On State Registration of Ownership Rights to Immovable Property and Their Limitations” of July 1, 2004, both types of agreements need to be registered. However, officers of

local centres of the State Land Cadastre sometimes refuse to register such agreements, referring to the absence of the necessary legislative regulation. This often makes parties to the agreement apply to courts demanding enforcement of actions (registration of an agreement).

#### Model 6 – Investment agreement

The model is usually used when a legal entity possessing documents required for beginning of construction is short of funds and desires to involve an investor for the project implementation. In such case, one entity contributes the official right to a land plot and licensing documentation, another one – money. As a rule, this model is used for implementation of complex large-scale construction projects, the main arguments for the investor in that case being economic return of the project and available risks.

Such model is acceptable for both residents and for non-residents. However, to choose that model, the relations between would-be co-owners after the facility commissioning and registration of ownership rights thereto need to be accurately prescribed.

#### Model 7 – Acquisition of corporate rights by a legal entity possessing rights to land

One of the most advantageous models of acquisition of the right to land. The concerned legal entity gets an indirect right to land by acquisition of corporate rights of another legal entity, remaining the owner/user of the land plot. Such model is especially profitable and spread for acquisition of rights to land for extraction of mineral resources: a beneficiary legal entity does not need to reregister all licensing, legal and technical documentation in its name, reserving the right to direct management of assets.

Furthermore, acquisition of corporate rights usually takes much less time than acquisition of a land plot. This is one of the “favourite” legal models for



<sup>3</sup> Now, according to the Ukrainian legislation, the term of use of a land plot of state or communal ownership for farming or construction cannot exceed 50 years.



non-resident investors. But it is acceptable only for those investors who have sufficient own funds for project implementation and do not need to draw funds of other persons.

#### Model 8 – Conclusion of an agreement with the land owner/user (Article 97 of the Land Code of Ukraine)

Article 97 of the Land Code of Ukraine says that enterprises, institutions and organisations **engaged in geological survey, prospecting, geodetic and other exploration work** may perform such work on the basis of an agreement with the land owner or with consent of the land user. The terms and place of exploration are set in an agreement between the parties. At that, enterprises, institutions and organisations engaged in exploration work are obliged to reimburse to land owners and land users all losses, including lost profit, and at their own expense return used land plots to their previous state<sup>4</sup>.

Among the advantages of that legal mechanism, there is no other legal regulation for conclusion of such agreements, except said norm, so, the parties are absolutely free regarding the agreement conditions. Furthermore, the legislation envisages no special procedure of their conclusion, registration, or other limitations.

Among its drawbacks, agreements made pursuant to Article 97 of the Land Code are often contested

by public prosecutor's offices as inconsistent with requirements of the land legislation. However, the judicial practice shows that courts side with the parties to such agreements.

#### Model 9 – Right of permanent use of land

Unfortunately, the right to permanent use of land may only conventionally be attributed to the model of acquisition of the right to land by a foreign investor, since according to the norms of the Land Code of Ukraine, the right to permanent use of land is given solely to enterprises, institutions and organisations of the state and communal ownership, and public organisations of handicapped persons in Ukraine, their enterprises (associations), institutions and organisations.

**So, despite the common opinion that rights to land are confined only the classic right of ownership, rights of permanent use or lease, foreign investors enjoy rather wide choice of models. The most attractive are models 1, 2, 3, 6 and 7. By and large, the model of acquisition of the right to land is chosen by the investor with account of its own advantages and capabilities, general legal norms and requirements, the local specificity and, last but not least, the risks going with each project. Furthermore, the ability to exercise the right to a land plot as security of obligations for subsequent drawing of funds is important for investors.** ■

SUMMARY OF LEGAL MODELS OF ACQUISITION OF RIGHTS TO LAND

	Right of ownership	Lease of land	Sublease of land	Superficies	Emphyteusis	Investment agreement	Acquisition of corporate rights by a legal entity possessing rights to land	Conclusion of an agreement with owner/user (Article 97 of the Land Code)	Right to permanent use of land
Possibility of alienation	+	+	-	+	+	-	+	-	-
Possibility of pledge of the right	+	+	-	+	+	-	-	-	-
Need of registration of the right	+	+	+	+	+	-	-	-	+
Is acceptable for:	Any cases	Any cases	Any cases	Solely for construction on a land plot	Solely for farming	The most advantageous for construction on a land plot	For any cases	Solely for geological survey, prospecting, geodetic and other exploration work	Solely for enterprises, institutions and organisations of state and communal ownership; public organisations of handicapped persons of Ukraine, their enterprises (associations), institutions and organisations
Effective term of the right	Unlimited	Up to 50 years	Not longer than the lease agreement effective term	Up to 50 years	Up to 50 years	-	-	For the period of geological survey, prospecting, geodetic and other exploration work	For the period of existence of the legal entity
Acceptability for a foreign investor (non-resident)	+	+	+	+/-	+/-	+	+	+/-	-

<sup>4</sup> Such an agreement may be concluded solely for geological survey, prospecting, geodetic and other exploration work.



# CONTEMPORARY LAND POLICY IN UKRAINE: SOME PROBLEMS AND WAYS OF THEIR SOLUTION



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Ukraine has entered a new phase of socio-economic development characterised by the growing role of market mechanisms regulating economic activity, first of all, in non-agricultural branches. By and large, preconditions for the market land system have been created in the country: the state land monopoly removed; multiform, paid use of land introduced. Pursuant to the law, land has become immovable property subject to civil relations.

However, the ineffective land policy of the state aggravates the problem of organisation of rational use and conservation of land. Market transformations of land relations dragged on. Many of them are irregular, chaotic, formal, costly, lack proper scientific substantiation.

As a result, most issues of “entry to the market” are solved by the “trial and error” method. The land reform has begun and is actually ending in absence of a Programme of land transformations, without set socio-economic and environmental goals, a forecast of consequences, provision of appropriate favourable legislative, financial, institutional, human, political, moral and psychological preconditions.

Drawbacks of the land policy, hastiness and ill planning of the land reform most of all hit the Ukrainian village and the domestic agricultural sector. The problems that arose there in the result of the hasty, not properly prepared land reform require separate discussion. This article briefly outlines the problems of the land legislation, establishment of the land market and use of non-farming land.

## Land legislation: quality and observance

Formation of the land legislation is far from completion. Since 1990, Parliament has passed a number of laws, the majority of whose provisions have been either amended, or not elaborated in bylaws, or cancelled<sup>1</sup>. Due to internal collisions in the legislation, the legal environment of land relations often lacks certainty. Furthermore, application of cancelled or amended legal procedures actually continues.

The complexity of provisions of the key law – the Land Code of 2001, in particular, regarding the management of state-owned land – is striking and hinders effective management of those lands. Some aspects of land resources management have been regimented in detail, while others suffer from its insufficiency or vagueness. For instance, the procedure of allotment of plots for permanent use is elaborated, while the procedures of lease and sale of public land were unclearly regimented,

the relevant legal acts contain cross references or references to non-existing yet laws. Many norms of the Land Code may be replaced with regulatory-legal acts or by-laws of the relevant bodies. “Overregulation” is the main reason why the Land Code has been amended many times. However, in many cases, those amendments only aggravated the problem.

Meanwhile, the key issues of land relations are often regimented by provisions from different segments of the law, e.g., forest, water, town-planning. The legal framework of land relations should be optimised to make it harmonious and clear.

Not less striking than the state of the land legislation is the practice of its application.

The Land Code envisaged the development of a number of laws aimed at full implementation of its provisions within six months from its effective date. Many of those laws have never been passed. For instance, there are no

<sup>1</sup> See Annex “Normative-legal base of land relations in Ukraine” published in this magazine – Ed.



laws and by-laws regimenting the legal procedures of some categories of land, establishment and amendment of boundaries of settlements, land zoning, etc. Although the Verkhovna Rada passed the Law “On Delimitation of Land of State and Communal Ownership”, its provisions are actually ineffective. During the transitional period, such delimitation presents an extremely important task designed to provide local self-government bodies with sufficient assets for the discharge of their organic functions; delimitation might also promote privatisation of public lands unnecessary for the discharge of functions of state governance or for public needs. Delimitation might reduce the area of land that requires state management.

Similarly ineffective are the Land Code provisions regarding the right of permanent use of land plots of state (communal) ownership. In line with the Land Code, all persons that lost such right (individuals, non-state enterprises, institutions, organisations) were to lease or buy out used plots. This would have been a step towards better management of public land and an increase in revenues from their use. Pursuant to the Land Code, transition to lease (buy-out) was to be over by January 1, 2005, but that provision was adjudicated unconstitutional, with no alternative way out of the situation proposed.

Unofficial use of land without execution of documents of title, non-target use and concealed lease by permanent users are banned by the law but not barred and eradicated in practice.

### Problems of establishment of the land market

In the present conditions, the issue of barring free (but regimented by the law) circulation of farming land gets ever more politicised. Meanwhile, **the arguments of the miserable state of villagers in this country, discomfort of their life after the state, having deprived them of social protection in collective farms, left them adrift, are disregarded. The problem of stagnation of economic and food security of the country in the result of ill reforms is hushed up.** Except political demagogic slogans, there are no socio-economic arguments in favour of continuation of the moratorium.

One cannot seriously take as an argument references to the absence of the laws “On Land Cadastre” and “On Land Market” as the main reason for extension of the moratorium on sale of privatised land plots. Relevant bills have been lying idle in the Verkhovna Rada for years, while they might have been passed long ago with the good will of MPs and the Parliament leadership.

The modern history of economic development of market economies convincingly proves the need of enhancement of the regulatory role of the state that should be performed, in particular, by means of creation of appropriate legislation, perfection of economic methods of influence on business entities in the issues of market circulation of land.

The effectiveness of state influence on optimisation of the agrarian structure ruined during the years of the land reform may be raised through:

(a) granting the state or territorial communities a pre-emptive right to buy land plots, in the event of detection of unfair arrangements dealing with conclusion of purchase and sale agreements at understated prices;

(b) demand of early repayment of a credit extended by the state for acquisition of a land plot, if the seller sells that plot before the time-limit established by the law;

(c) imposition of a state duty on conclusion of purchase and sale agreements of land plots before the time-limit established by the law in the amount equal to the difference between the value of purchase and the price of sale of land plots;

(d) legislative elaboration of requirements to the parties allowed to acquire farming land in ownership (the age fit for agricultural work; ability to commit legal actions required in the agrarian law relations; ability to properly do agricultural work – special training for concrete operations).

The ban on state-controlled circulation of farming land plots has been doing harm to millions of peasants since the very first day of the moratorium, since most of them do not possess the necessary professional knowledge, experience, physical capabilities to work on land. Heirs of that category of village residents mainly live in other areas, including in cities, or even in other former Soviet republics and foreign countries and will never work on small scraps of land on their own. **Inability to dispose of owned land at one's discretion means that millions of the country citizens will again be defrauded. Their land ownership is a modern *fata morgana*.**

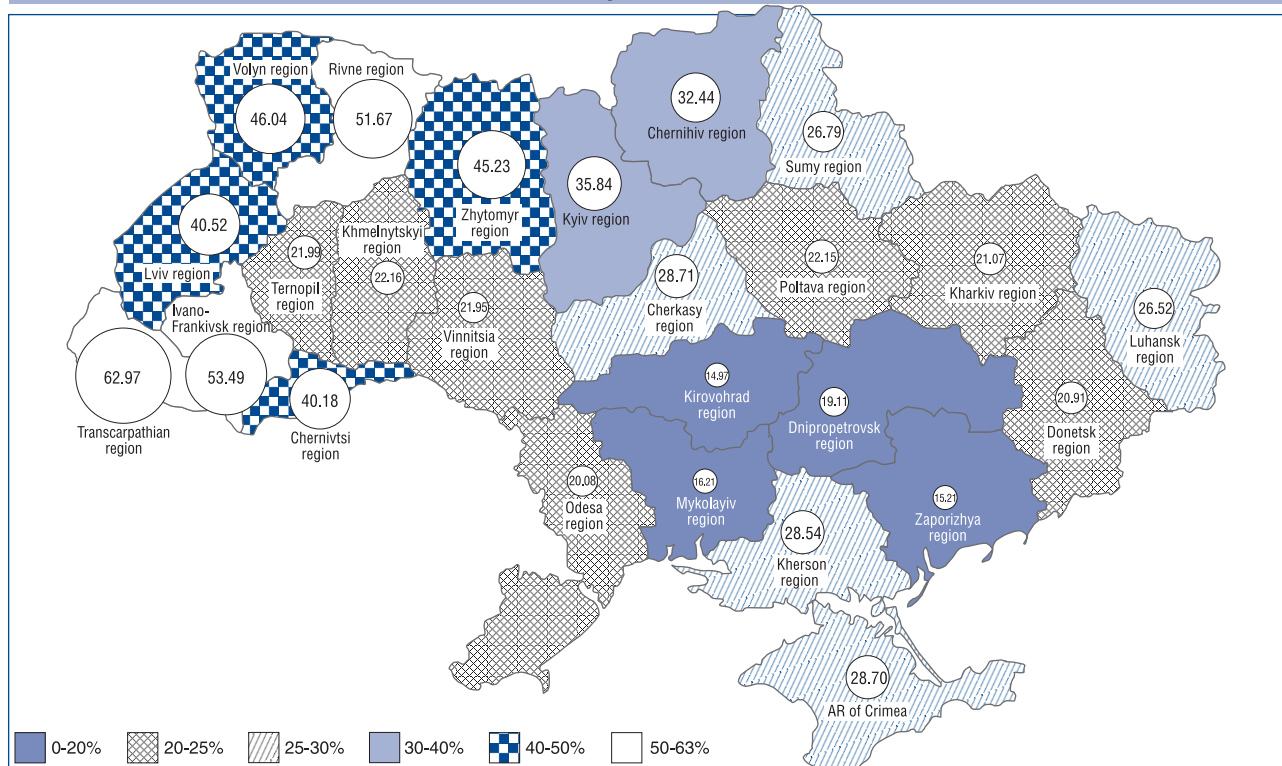
### Use of non-farming land

The socio-economic significance of non-farming use of land, conducted on 28.8% of Ukraine's territory (17.4 million hectares), is growing.

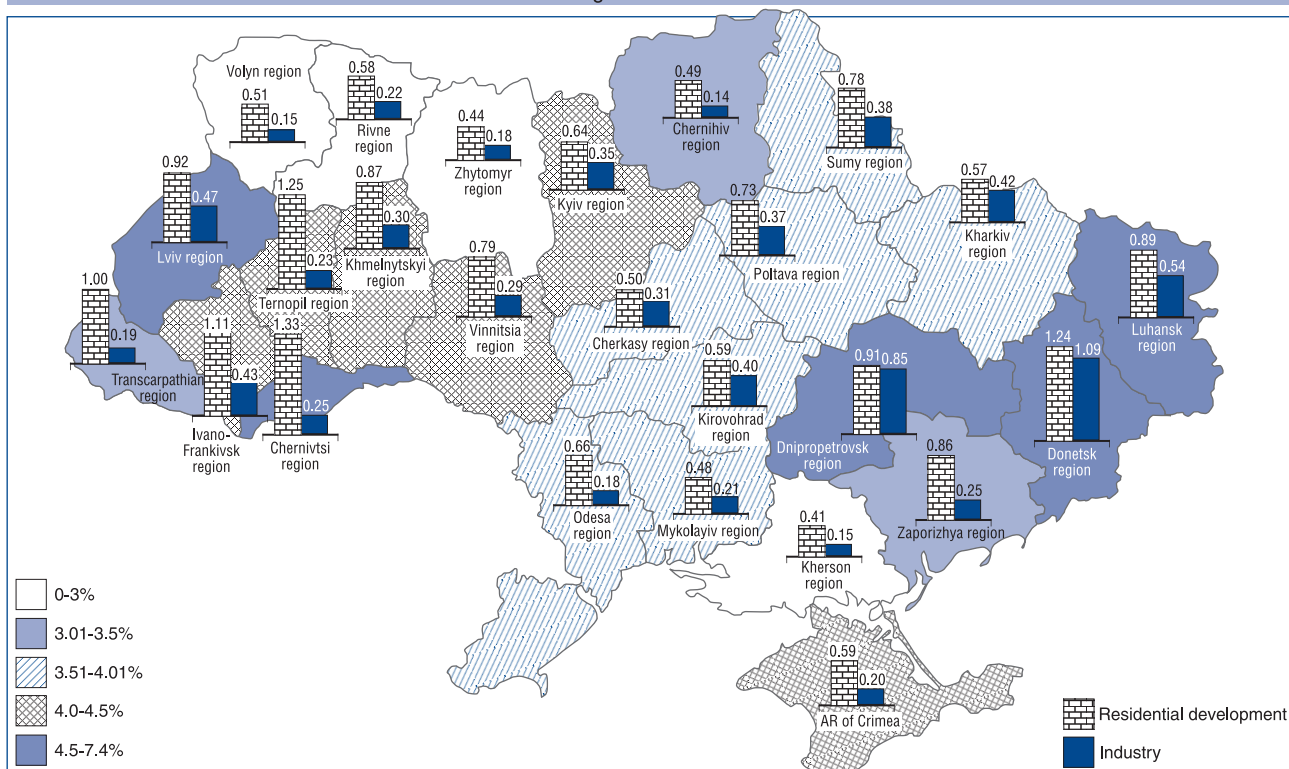
Forests account for the bulk of non-farming land – 10.5 million hectares (60.5%). Built-up areas occupy 2.5 million hectares (14.4%), open swampy land and water areas – 3.4 million hectares (19.5%). Other non-farming lands usually have little or no vegetation cover (flinty areas, sands, ravines, as well as dry open areas with a specific vegetation cover), occupying some 1 million hectares.

As we know, environmental stability of a territory is provided by lands staying in their natural state, first of all, forests, open swampy lands and water areas. There are 13.9 million hectares of such land in Ukraine, or 23% of the country territory. From the environmental viewpoint, this is extremely low. One should note the uneven distribution of such lands across the country's territory. The Carpathians and Polissya have a more balanced living environment, with non-farming land occupying 40-63% of the total area of those regions. At that, in the Carpathians and Polissya, only 3-5% of territory is built up, while in Dnipropetrovsk region – 6%, in Donetsk region – 7.4% (Maps “Non-farming use of land in Ukraine's regions”, “Built-up land in Ukraine's regions”).

**Non-farming use of land in Ukraine's regions,  
% total region's land area**



**Built-up land in Ukraine's regions,  
% total region's land area**



The location of housing development is of interest. The percentage of housing development ranges from 1.33% in Chernivtsi region to 0.49% in Chernihiv region. By the share of territory built up with industrial facilities, Donetsk region takes the lead – 1.09% of total lands in

the region, while in Chernihiv, Kherson and Volyn regions, the relevant index does not exceed 0.15%. 65.9% of built-up land lies within the limits of populated localities.

So far, cities are not properly using the huge potential of public land, growing need of investors for land plots.





The town-planning and land policy in cities do not properly take into account the economic value of land, and concerned municipal authorities do not work consistently to enhance the effectiveness of land use, do not identify sources and mechanisms of enhancement of the value of urban territories, flexible application of incentives and penalties as economic tools of land use management in cities, in particular, for organisation of redevelopment of territories attractive for investors.

The absence of zoning of urban territory gives rise to kind of legal uncertainty in its development. The legal regulations and management of municipal land located beyond city boundaries (healthcare and recreational establishments, detached enterprises, cemeteries, dumps, water intakes and waste disposal facilities, etc.) also need improvement.

The present density of development of urban territory in Ukraine yields to that in European and world cities comparable by their size. The density of microdistricts built up with 5-storey buildings in 1960s is 40% below norm. City areas built up with cottages are still used ineffectively. The population density on that territory in most cases does not exceed 40-60% of the norm.

Over the years of independence, the structure of land use in big cities changed fundamentally. Some industrial enterprises and other above-mentioned facilities actually closed down or changed the production technology, which substantially reduced their need of land resources. The number of defence and scientific establishments decreased, numerous research, development, design and other institutions ceased operation.

Meanwhile, vast areas of the most valuable land in central districts of cities with developed infrastructure remain occupied by numerous small workshops, warehouses, maintenance depots that do not provide enough jobs, pay miserable taxes to the city budgets and other social payments. Environmentally hazardous facilities continue operation in central and densely populated city districts. Their operation is not even considered through the prism of effectiveness of land use and environmental safety of life environment.

Cities so far do not give investors a wide and public choice of state and municipally-owned land plots. The effectiveness of land use in cities should be raised through the merger of land plots and preparation of the concerned territories by municipalities for redevelopment, rather than building up parks, squares, etc.

The world experience proves that the most effective measures at regulation of the demand for land in big cities include:

- (a) territorial planning and functional zoning by line of land plot use;
- (b) reservation of vast peripheral reserve territories;
- (c) development of the city infrastructure on spare reserve territories;
- (d) demolition of overworn buildings and structures, ineffective industrial facilities in historic centres of

cities and engineering treatment of released areas for redevelopment;

(e) differentiation of the size of payments for lands of state and communal ownership in different city districts, with different aggregate effectiveness of land use and scale of discharge and exhaust of pollutants;

(f) preferential crediting of entities that agree to move their operation on the outskirts or beyond city boundaries;

(g) setting the rates of compensation of losses of agricultural and forestry enterprises in case of movement of ineffective users of land to farming and forest plots, with account of the costs of redevelopment of sparsely built-up land plots, overworn and dilapidated buildings, and with account of their demolition and resettlement of residents.

## CONCLUSIONS

The difficult situation in land relations and use was mainly caused by:

- absence of a reasonable state land policy and mechanisms of its implementation;
- underestimation of the complexity, scale and specificity of land transformations at the time of economic reforms;
- critical low effectiveness of executive and local self-government bodies in the field of land relations;
- neglect of the problems of a resource-based comprehensive approach to the development of rural areas in the process of land transformations;
- an insufficiently consistent state policy of comprehensive development of the land legislation, arrangement and funding of land management and the land cadastre, promotion of a land use attractive for investors;
- absence of a comprehensive approach and neglect of historic factors at reformation of the state land cadastre system and creation of a state system of registration of title to immovable property and its limitations;
- absence of a reasonable state policy for creation and development of the farming land market;
- inadequate funding of fundamental and applied science of land management;
- duplication of functions and lack of effective cooperation of the central executive body in charge of land resources with other central executive bodies, local executive and self-government bodies.

**Hence, today, there is no alternative to resolute changes in the land relations on the basis of strategic planning of land relations, coordination of measures of the national economic, environmental, social and food policies, their concentration on positive social and economic results.** ■