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## **НОРМАТИВНЕ РЕГУЛЮВАННЯ ЗЕМЕЛЬНИХ ВІДНОСИН ОРГАНАМИ МІСЦЕВОГО САМОВРЯДУВАННЯ: ЗАКОРДОННА ПРАКТИКА**

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### **NORMATIVE REGULATION OF LAND RELATIONS BY LOCAL GOVERNMENTS: FOREIGN PRACTICE**

The article summarizes the experience of foreign countries, especially of the EU, as to the government influence on the mechanisms of land relations regulation, determines the best practices and outlines possible directions of their adaptation to Ukrainian realities. It is shown that the use of practices for effective regulation of land relations in the world depends on the regulatory bodies' powers defined by the legal system of a country. Implementation practices of various restrictions on the agricultural land market are examined: regulation of landownership size, restrictions for foreigners, priority right, regional and corporate restrictions, leases, diversion of land; use of appropriate tools for land registration and cadastre, land evaluation, registration agreements, resolving arguments and moot points, and monitoring land distribution of the territory.

**Key words:** land relations, world experience in land relation regulations, directions for adaptation of world experience in land relation regulations.

The use of the effective land relation regulations in the world depends on the regulatory bodies powers which are defined by the legal system of a country. This is, above all, the practice of introducing various restrictions on the agricultural land market, which means landownership size regulation, restrictions for foreigners, priority right, regional and corporate restrictions, leases, diversion of land; use of appropriate tools of land registration and cadastre, land evaluation, registration agreements, resolving arguments and disputes and monitoring the distribution of the land area of the territory. The effectiveness of the regulation of land relations in the EU countries and the leading countries of the world requires generalizing practices and outlining ways to use for its implementation in Ukraine, which is important at this stage of development.

There are following common limitations of the land plot size for individuals and legal entities – from 3 hectares (Korea, Japan (for Hokkaido – 12 hectares)) to 200 (Romania) or 300 hectares (Hungary). In Denmark, for example, limits on the size of a land plot (less than 30 hectares) are complemented by the requirement of a professional agricultural education and farmer experience.

Limitations for the land plot sizes (both minimum and maximum) are important means to prevent land fragmentation and excessive concentration of land in one owner. Such restrictions are more common in countries with transition economies and in countries with limited land resources. Typically, these restrictions are established at the municipal or regional level<sup>1</sup>.

The basic principles of the European Union concerning landownership, including agricultural land, are the right to free movement of capital for establishing and maintaining private sector and

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<sup>1</sup> Артюшин, В.І., Кобець, М.І., Пугачов, М.І. (2007). *Проблеми становлення та функціонування ринку земель сільськогосподарського призначення в Україні*. Київ: Аналітично-дорадчий центр Блакитної стрічки ПРООН, 29.

non-discrimination (Ch. 1, Art. 1 of Directive 88/361/EC)<sup>1</sup>. Therefore, in most EU Member States (especially the members of EU-15) there are no legal restrictions on ownership of agricultural land: any individual or legal entity may legally purchase and own agricultural land. In some countries, new EU member states, temporary restrictions on ownership of agricultural land to foreign citizens, legal entities and governments are introduced.

Restrictions for foreigners are also applied to a different extent, for example, in Brazil foreigners cannot own more than 25% of the agricultural lands of the administrative unit; in Hungary, if a foreigner has been living in the country for at least three years and is engaged in agricultural activities, he, like a Hungarian citizen may acquire ownership of agricultural land; in the Czech Republic foreigners can buy land if they are EU citizens permanently residing in the Czech Republic for more than 3 years and registered as farmers. Poland, Estonia, Latvia, Lithuania, Slovakia, Hungary, Czech Republic (2004), and later Romania, Bulgaria (2007) established a transitional period (up to 7 years from the time of accession to the EU), during which foreign individuals are not allowed to buy agricultural land (in Poland a transitional period of 12 years until 05.01.2016 is established)<sup>2</sup>.

In Bulgaria, which recently joined the EU, the right of foreigners to own land plots is limited by a special law "On Property and Land Use for Agricultural Purposes". Before entering the EU the Bulgarian government insisted on introduction of a 10-year transition period (from the date of accession to the EU), during which the right of foreigners to acquire landownership should be restricted due to the following considerations: the land market is still in its infancy; price of land in Bulgaria several times lower than those in the other EU countries; Bulgarian citizens have much lower incomes than citizens of the EU and therefore cannot compete on the land market; creation of the land cadastre and registration of real estate are not finished yet; after completion of the restitution process land consolidation process is possible<sup>3</sup>. These restrictions are primarily applied to the residents of those countries which are not the EU members. Citizens and legal entities of the Member States can acquire agricultural land in the property, subject to certain requirements (at least 3 years of legal residence in the country and agricultural activity on the leased land, registration as a legal entity and so on.).

Setting these restrictions for foreigners to own agricultural land in countries that have recently joined the European Union, are due to the fact that the land market in these countries is still in its infancy, the creation of land cadastre and registration of real estate is not finished. In addition, the price of land is several times lower than in other EU countries, and citizens have much lower incomes than in other EU countries, so they cannot compete with them on the land market.

In many countries there are legal provisions that aim to provide certain advantages regarding ownership of agricultural land. Preferential right is a priority given (usually legal) to a person (persons) or an institution (institutions) to purchase real estate or other property.

As for agricultural land, there are various situations where EU countries apply preferential rights. We can distinguish three main types of preferential rights:

- the right to benefits in processes concerning inheritance, which can be given to the heir (heirs) who wants (who want) to continue to farm;
- the right to benefits may be granted to one buyer compared to others because he/she is a tenant of the land plot which is being sold, or because he/she is a farmer whose farm borders the plot which is being sold, or if this land is jointly owned by this person;
- the right to benefits, which belongs to the state and (or) municipalities (refers not only agricultural land, but the sale of all assets and real estate). In most EU countries the notification of the state/municipality that it's decided whether it will use the right to benefits is one of the steps of the sales process of any type of property. States/municipalities can use the preferential right for various reasons, including: to develop roads and railways, to protect the environment (for example, to preserve important areas), as a part of planning work, which municipalities often create, taking into account housing

1 Директива 88/361/ЄС «Щодо імплементації статті 67 Договору» 1988 (Верховна Рада України).

Офіційний сайт Верховної ради України. <[http://zakon2.rada.gov.ua/laws/show/994\\_182](http://zakon2.rada.gov.ua/laws/show/994_182)> (2015, March, 4).

2 Сонін, О.М., (2001) Питання розвитку основних засад земельного законодавства. *Землепорядкування*, 2, 3–8.

3 Артюшин, В.І., Кобець, М.І., Пугачов, М.І. (2007). *Проблеми становлення та функціонування ринку земель сільськогосподарського призначення в Україні*. Київ: Аналітично-дорадчий центр Блакитної стрічки ПРООН, 30.

development or recreational objects establishment, and so on. The first two types of preferential rights are intended to facilitate association of farms and land, while the third type is directed more to the promotion of local development plans or environmental protection, adopted by the state or municipalities<sup>1</sup>.

During the regulation of agricultural land markets, priority is used by limiting the diversity and number of market participants. In Brazil, for example, restrictions on the size of landownership for citizens of Brazil are applied: a Brazilian individual/legal entity cannot own more than 40% of the land in an administrative unit; in the province of Saskatchewan (Canada) foreign citizens and corporations, citizens of Canada from other provinces are prohibited to possess more than 320 acres (130 hectares) of agricultural land; local corporations cannot own more than 320 acres of agricultural land; other Canadian corporations cannot own more than 10 acres (4 hectares) of agricultural land<sup>2</sup>.

The course of preferential right use in Europe is great: from the UK, where there are no preferential rights, to usage of all three types of preferential rights (France, Germany, Italy, Lithuania). The case of France in this respect is special because the right to the benefits is given to SAFER (Company for Property Planning and Rural Installation (France), which supplies them with a powerful tool of influence the operations with agricultural land, both in terms of the choice of the buyer and the price. On each occasion of agricultural land sale the appropriate local SAFER must be notified, and it in all cases can use its preferential right in favor of one customer and influence the final price of the transaction<sup>3</sup>.

In EU countries there are different conditions and opportunities for agricultural land owners, as for conversion of their land plots to the category of non-agricultural land. Typically, a landowner who wants to convert agricultural land to non-agricultural must send a request to the appropriate authority (administration). Then, due to applicable legal norms and (or) the usual practice he/she gets permission from the respective administrations, as noted by partner countries more or less easily.

In this respect we can contrast the situation in France, Germany and the UK, where it seems very difficult to convert agricultural land to non-agricultural land category (especially if it has high agricultural land quality) against the situation in Italy, Sweden, Czech Republic, Lithuania and Slovakia, where it is much easier to change the status of agricultural land.

Setting limits on land use rights reduce the number of potential buyers on the agricultural land market, narrowing its circle only to the farmers and at the same time reducing the price of agricultural land compared to the land that can be used for non-agricultural purposes (especially for industrial and civil construction). For Ukraine, where the law does not regulate the issue of obtaining agricultural landownership through inheritance it will be useful to adapt experience of some EU countries in this sphere.

To regulate the land market different countries use such a powerful tool as its evaluation, which target is to provide landownership with the monetary value. There are two main methods of land valuation. The first one is based on the performance (or income). In this case, the evaluation procedure consists of calculating the potential productivity of each land plot in order to determine its potential profitability. This usually involves creation of a formal classification system of land quality where the land classes (from very good to very poor soils) are determined according to the soil characteristics and agronomic conditions. Then, at the second stage, a performance index for each land class is estimated. Finally, this information allows us to calculate the potential productivity of each land plot and it is then used as a basis for the evaluation of its income potential. In Western Europe, such a method for estimating the value of the land was historically developed and introduced mainly for land tax purposes. Also, this practice was used in Central and Eastern Europe at the time of the Soviet Union. Obviously, the main goal at that time was not the land assessment, but determination of its potential performance as a basis for the land allotment<sup>4</sup>.

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1 Артюшин, В.І., Кобець, М.І., Пугачов, М.І. (2007). *Проблеми становлення та функціонування ринку земель сільськогосподарського призначення в Україні*. Київ: Аналітично-дорадчий центр Блакитної стрічки ПРООН, 32.

2 Кобець, М. Думки експертів щодо земельної реформи. Газета центральних органів виконавчої влади України. Урядовий кур'єр. <<http://ukurier.gov.ua/uk/articles/dumki-ekspertiv-shodo-zemelnoyi-reformi/>> (2015, March, 4).

3 Артюшин, В.І., Кобець, М.І., Пугачов, М.І. (2007). *Проблеми становлення та функціонування ринку земель сільськогосподарського призначення в Україні*. Київ: Аналітично-дорадчий центр Блакитної стрічки ПРООН, 38.

4 Закон про оцінку земель 2003 (Верховна Рада України). *Офіційний сайт Верховної Ради України*. <<http://www.portal.rada.gov.ua/>> (2015, March, 7).

Another method for agricultural land estimating is based on a market basis. It involves determining the fair market value of each land plot through an appropriate market sale price.

Theoretically, if all markets functioned perfectly and if profitable potential of each land plot was assessed and taken into stock correctly, both methods would give similar values. In practice, this rarely happens. In such EU countries as Germany, France and Italy land evaluation procedures based on performance were developed decades ago and, in most cases, they haven't experienced any significant changes recently. However, if the present value of cash flow (income) is probably a key determinant of the agricultural land price, then other factors such as accessibility, municipal services, distance to the city, etc. are more significant determinants of market prices of agricultural land. Moreover, changes in the activities of the Common Agricultural Policy (CAP) (including direct payments and quotas) are often not taken into account in the assessment procedures based on performance. Although it is widely accepted that such political changes actually affect the prices of land purchase/sale<sup>1</sup>.

However, in some countries the land value, determined on the basis of its performance, gradually became a "virtual" value completely separated from the market value. This refers, for example, to the cadastral value (valeur locative cadastrale) – in France, the book value (Buchwert) – in Germany and the cadastral value – in Italy.

In many countries, there are at least two values of agricultural land: the first one is determined by the assessment procedure based on performance (which is similar to normative monetary valuation of agricultural land in Ukraine), the second one is determined by assessment procedure on a market basis. In these countries (except Lithuania) "administrative" value (price) is still used as a basis for tax purposes. In Sweden and the UK, where there is no tax on agricultural land, the land evaluation is carried out only on a market basis. In France, Germany and Italy, however, for the purposes of any transactions with land, mortgages or compensations in the event of alienation of land exclusively market land prices are used. In the Czech Republic, Slovakia and Lithuania due to underdeveloped farmland market activity market based land valuation is only at an early stage. As a result, "administrative" prices are widely used for both administrative and commercial purposes. In countries such as the Czech Republic and Slovakia land value, determined on the basis of its performance is usually lower than the market value<sup>2</sup>.

World experience shows that the most common systems in the world are the systems based on the "document registration" (deeds registration) system and those where the footing is "rights or titles registration" (title registration).

In the conceptual apparatus of real estate market terms "land" and "real estate" are synonymous, signifying the real property in the form of land plot together with all buildings located on it.

Currently in Europe in order to bring the cadastre registration system to common standards cadastral reforms are going on, which are:

- maintenance of a system of real estate rights registration on the basis of land plot records (land and immovable property is considered as a single whole);
- registration of rights to land and immovable property is made in one registry;
- registration of rights and cadastral maps keeping are held by the same institution;
- registration of rights is an administrative function (state registration of rights has to be separated from the court and/or notaries);
- system services are primarily focused on the user;
- the registration system should be self-supporting<sup>3</sup>.

According to the world experience, cadastral and land registration systems play an important role in the management of real estate, taxation and mortgage loans, information and legal support of a real estate market and so on. Moreover, cadastral and registration systems are a mandatory attribute of any and all economically developed countries<sup>4</sup>.

1 Артюшин, В.І., Кобець, М.І., Пугачов, М.І. (2007). *Проблеми становлення та функціонування ринку земель сільськогосподарського призначення в Україні*. Київ: Аналітично-дорадчий центр Блакитної стрічки ПРООН, 41.

2 Паламарчук, Т.Г. (2014). Формування аграрної політики на регіональному рівні в умовах євроінтеграційних процесів. *Місьцеве самоврядування – основа сталого розвитку України*, 192-194.

3 Ференци, Т. (2005). *Ринки землі в країнах з переходною економікою*. *Електронний Університет Корвінуса*. <available at <http://www.basis.wisc.edu>>.

4 Кобець М. Становлення ринку сільськогосподарських земель в Україні: зміни, тенденції та світовий досвід. *Доповідь на засіданні земельної спілки України*. <<http://www.zcu.ord.ua>> (2015, March, 7).

Western European countries also widely use lease of agricultural land. For example, in Belgium about 70% of the land is leased, in France and Germany – over 60%, and an average of 15 EU countries (EU-15) leased land makes up to 40% of all agricultural land<sup>1</sup>. For example, in other countries this figure is much lower – 30% in Canada, 20% in Japan, 14 % in New Zealand, 12 % in the USA, 5% in Australia and Argentina<sup>2</sup>.

The other type of leases is based on reaching a bilateral agreement between a landlord and a farmer, and the lease term and price are determined solely by market conditions.

Thus, in foreign countries an interesting experience of state and local government regulation of land relations has been accumulated, it is advisable to introduce the best of it in our country. In our opinion, these should be setting limits and norms related to the size of land plots for individuals and businesses; introducing restrictions and prohibitions on non-residents of Ukraine; the introducing of preference rights, similar to those existing in the EU; bringing cadastre registration systems to unified EU standards.

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