

“Advantages and risks of opening the land market in Ukraine”

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ADVANTAGES AND RISKS OF OPENING THE LAND MARKET IN UKRAINE

Abstract

The relevance of the study is due to the abolishment of the moratorium on the sale of agricultural land and the risks arising from the land market opening in Ukraine. The paper aims to identify the effectiveness of land mortgages for the agricultural sector of the economy and determine the mechanisms of state policy aimed at legal groundwork to guarantee rights of landowners. The comparative analysis of the land market development in the Central European states contributed to identifying system-based state management of land market formation processes, which had a positive effect on the land reform outcomes in these states. The analysis results confirmed the timeliness of the land market opening in Ukraine, which is related to the chosen economic and political course. The investment attractiveness of the Ukrainian agro-industrial complex is due to high productivity of lands and is supported with the possibility of mortgaging agricultural land. Neutralization of factors hindering the foreign investment attracted to agricultural business will contribute to the attraction of efficient technologies and highly productive use of the agricultural land in Ukraine. Some measures aimed at the land relations transformation in Central Europe do not consider the peculiarities of the Ukrainian agricultural sector. In particular, it is not reasonable to sell agricultural land to foreigners. Assessment of certain provisions of the Law of Ukraine 'On Amendments to Certain Legislative Acts of Ukraine on the Conditions of Agricultural Land Transactions' No. 552-IX shows the inevitability of abuse by foreign-owned banking institutions of the possibility to alienate the lands pledged under any loan agreements. Criminalization of evasion from the alienation of agricultural land as collateral will prevent the risks of acquiring Ukrainian agricultural lands by foreign-owned banking institutions. It is concluded that the banking system will only perform the functions of an investor in the agricultural sector of the economy, so there is a need to strengthen the state regulation of the land market in Ukraine.

Keywords

land plots, moratorium, banking institutions, foreign capital, pledge, ownership, alienation, state budget

JEL Classification

G28, H61, Q15

INTRODUCTION

Agricultural land is one of the unique natural resources of the state. Its value is stipulated with its resistance to devaluation, inflation and with stable profits gained by its owners from its use. The territory of Ukraine lies in the temperate climatic zone with a temperate continental climate, which allows using highly productive agricultural lands to the fullest. One way to ensure the effective development of agricultural enterprises, as evidenced by the experience of highly developed countries, is to use the land as the main resource in market turnover. Agriculture plays an important role in the Ukrainian economy, as it is one of its largest sectors. Among the positive consequences of the adoption of the Law of Ukraine 'On Amendments to Certain Legislative Acts of Ukraine on the Conditions of Agricultural Land Transactions' No. 552-IX (hereinafter – the Law of Ukraine "On Land Market"), the market turnover of agricultural land and constitutional rights citizens of Ukraine for free disposal of their property are provided, and the features of legal regulation of the agricultural land

transactions are determined based on the market mechanisms for the transfer of titles to land. Along with it, a separate high-impact provision of this Law provides for the possibility of loans granted by banking institutions upon the security of agricultural land in Ukraine on terms of alienation of such plots within the next two years after the foreclosure. This necessitates the analysis of risks associated with a possible acquisition of titles to agricultural land by foreign banking institutions in Ukraine. Due to the fundamental importance of land for any state as its strategic asset, all developed legal systems of the world give a special place to the regulation of property relations and land use.

1. LITERATURE REVIEW

The establishment of private ownership of land and the development of market land relations contribute to the growing land value, which increases the demand among the land users for opportunities to acquire titles to agricultural land. In the context of the land market opening in Ukraine, mortgage legislation should provide the landowners with freedom for land transactions, including the use of pledged land. In case of default, a lender has the right to demand the fulfillment of obligations at the expense of collateral (for example, land plot). Although, in theory, under Art. 133 of the Land Code of Ukraine, any land owned by the citizens as their property can be pledged, and only banks can be the pledgee. In practice, the Ukrainian banks avoid giving loans secured by land. This is due, first of all, to the gaps in the current legislation on state regulation of land relations, which are expected to be remedied when the Law of Ukraine "On Land Market" will take effect in 2021. However, this raises questions about the efficiency, security, and risks of mortgage lending in agricultural production in the near future in Ukraine. The scholars have studied certain issues of land mortgage lending and public administration of land market regulation processes, but they did not touch the issues of risks of agricultural land title acquisition by the banks. In particular, Demyanenko, Aleksyichuk, and Hudz (2005) are convinced that the development of mortgage lending in agriculture will allow obtaining positive results of this type of lending for economic development owing to a larger investment in the industry on a long-term basis, increasing capitalization of financial resources and acceleration of production rates, redistribution of land resources and allocation to more efficient owners, and stronger investment orientation of the domestic financial market. The processes of state support to farms and the mechanisms for the mortgage

lending development in the agricultural sector of the economy (particularly agricultural production) were also studied by Kardash (2010). In the opinion of Kovalishyn (2008), lending secured by land is an absolutely real economic phenomenon, provided that the moratorium on the sale of this asset is abolished. The existence of the gray land market and the non-receipt of the appropriate taxes by the state budget indicate the need to abolish moratorium on the agricultural land disposal. An argument in favor of land pledge as a source of financial support for the economic growth of agriculture is that the loans secured by land account for 95% of the farmers' investment resources globally, and only 5% are the funds from the land sale. According to the findings of the research by the National Research Center 'Institute of Agrarian Economics', mortgaging will enable the agricultural enterprises to increase loans 6-9 times – up to UAH 120 billion, to extend lending 7-11 times up to 35 years at significantly lower interest rates (up to 5%) and significantly (up to 100%) expand the availability of lending (Kovalishyn, 2008). During the analysis of credit relations in the agricultural sector of Ukraine, Nepochatenko and Chekalyuk (2015) found out that the banks do not take into account the specific seasonality of agriculture. Thus, they artificially create conditions for borrowers' insolvency, providing short-term loans (Nepochatenko & Chekalyuk, 2015). During the study of mortgage lending models taking into account world practice analysis, Savich (2012) found out that state support takes place in all countries with developed mortgage lending systems. State support is especially strong at the stages of forming the national mortgage systems and transformation of public relations; it can be provided to both lending institutions and borrowers (Savich, 2012). At the same time, according to Shane (2012), the agricultural enterprises face difficulties when they need to get approval for access to mortgage lending due to uneven movement of funds in ag-

riculture, unresolved issues of land ownership, non-transparency of the land market, lack of sufficient stabilization funds, foreign or international investment resources, as well as the risk insurance. In his research on the banking system, Fisher (2017) emphasized the importance of banks as financial intermediaries that are very competent in assessing credit risk. The financial system plays a big role in delivering a more sustainable economy, and banks are a special part of that. There is a need to raise awareness of the risks and opportunities to encourage the banks to do what is their own best interest and make sure that the opportunities in the real economy can be grasped (Fisher, 2017). Schmitt (1991) stated the dominance of family farms in the industrialized non-socialist countries, the organizational unity of which he explained as the result of a limited economy in terms of families' working capacity. Along with these studies, the scientists have also proposed the key principles for developing all types of lending to business entities in the agricultural sector of the economy and credit support for agricultural companies in particular. However, the issue of determining the basic principles of mortgage lending in the agricultural sector of Ukraine in the context of the transformation of socio-economic relations takes into account the European integration processes and foreign experience of mortgage lending in agriculture, and its application in modern conditions of Ukrainian economy remains unresolved.

If 10% of land were attracted to the mortgage lending system with a loan amount of 75% of the collateral value, it would increase the financing potential of the agricultural sector by USD 3 billion (Shane, 2012).

The general strategy for the development of mortgage lending for agricultural production in most EU countries is aimed at creating an extensive institutional infrastructure, which is integrated into a comprehensive system of land relations through the specialized institutions – the Fund of Land Credit Institute and the Land (Mortgage) Bank, which aim to develop a legislative framework required for the formation of a civilized land market and the revival of mortgage lending (Chepka, 2015).

The land market in Central Europe is functioning; however, it is characterized by certain features of

the historical development of states. In particular, it is different even in terms of the system of mortgage lending to agriculture. Meanwhile, the common feature is that the term of loans secured by agricultural land is long. Furthermore, firm quality and growth opportunities are related negatively to long-term debt usage (Karadeniz et al., 2009).

In particular, in the Republic of Bulgaria, since 2010, the land market has been characterized by stability and predictability. Since 2014, the EU citizens who have been residing in the country for at least 5 years are allowed to purchase land. Land pricing policy tends to grow by an average of 8% per year (Republic of Bulgaria National statistical institute, 2020).

The EU citizens are allowed to buy land in the Republic of Estonia. A precondition for this is the further use of land for agricultural purposes for at least 5 years. Other foreigners are allowed to possess no more than 10 hectares per person. It should be noted that about 60% of the land fund is under lease. This hinders the development of the agricultural land market and the possibility of land pledging. Overregulation of the agricultural land price is relatively low compared to other lands in the EU (Ministry of Environment of the Republic of Estonia, 2015).

The new Latvian law "Law on Land Privatisation in Rural Areas" came into effect on July 1, 2017. The Law introduces limitations on how much agricultural land you can buy/own as a company or private individual in Latvia. The Law is related to agricultural land only (HD Forest, 2017). In 2017, certain restrictions on the sale of land to foreigners in the Republic of Latvia took effect. This is because in 2017, more than half of agricultural land in some regions of the country belonged to foreign-owned companies.

Since 2014 (European Commission, n.d.), in the Republic of Lithuania, foreigners have been allowed to buy land from NATO, the EU member states, and the EU associate members. The prerequisite is farming and registration of a farming enterprise for 10 years, availability of agricultural education. However, low land productivity failed to cause any significant inflow of investment in agriculture in the Republic of Lithuania.

In the Republic of Poland, since 2016, foreign investors who have lived for at least 5 years or are married to a Polish citizen are allowed to buy land. 12 years after the accession of the Republic of Poland to the EU on May 1, 2016, new legal rules for agricultural land trade came into force. The agricultural land market in Poland is divided into two parts: privately owned farms and land owned by the State Treasury (Marks-Bielska, 2016). Land reform in the Republic of Poland is considered one of the most successful.

In Romania, the EU citizens have been allowed to buy land since 2014. Due to land ownership restrictions, agricultural land prices are among the lowest in the EU. Approximately 900,000 hectares of agricultural land in the country belong to foreign-owned companies. On August 14, 2020, Romanian lawmakers passed an amendment to Law 17/2014 "On the sale and purchase of agricultural land", imposing significant restrictions on the sale and purchase of extra muros agricultural land for foreign nationals (CMS Law-Now, 2020).

In the Slovak Republic, since 2014, both business entities and individuals have been allowed to buy land. According to the Act No. 140/2014 Coll on the acquisition of the ownership to the agricultural land, which entered into force on June 1, 2014, the owner of the agricultural land in Slovakia may, without further restrictions, transfer the agricultural land only to (a) a buyer who has been active in the food business or exercises agricultural activity ("farmer") in the municipality where the agricultural land is situated for at least three years before the transfer (Lazíková & Bandlerová, 2015). The prerequisite is living and doing business in the country for at least 10 years. Approximately 550,000 hectares of agricultural land belong to the owners who lease out their land to agricultural holdings. Due to the overregulation of the agricultural land price, its value is relatively low among the EU countries.

In Hungary, since 2011, the EU citizens who have been engaged in agricultural business for 3 years and have an agricultural education have been allowed to buy land. Legal entities may not buy land. To purchase land, a buyer must have been a local resident for at least three years and must be officially registered as a farmer. Those who have been leasing the land that is auctioned off for at least three years en-

joy a right of pre-emption, but the maximum limit of 300 hectares per person still applies (Boros, 2015).

In particular, in the Czech Republic, in accordance with Art. 16 of the Law of the Czech Republic 'On Public Land Management' No. 503/2012 of 01.01.2013 (Global-Regulation, 2016), a purchase/sale contract for agricultural land owned by the state may be concluded with any legal entities and individuals who are nationals of the Czech Republic or another EU member state, or any state being a Contracting Party to the Agreement on the European Economic Area. The average annual increase in the market price for agricultural land in the Czech Republic is 11%.

In the Republic of Croatia, foreigners may not buy agricultural land. As a result, agricultural land prices are among the lowest in the EU, and 1/3 of the land is not cultivated at all. The Croatian government is working to extend by another three years a provisional restriction that prevents non-nationals from purchasing agricultural lands in the newest EU member (Fortuna, 2020).

Application of the system-based approach allowed achieving positive results of land use in the Central European countries, where the process of land relations transformation took into account certain social, economic, and environmental factors. The predominant effectiveness of land reforms in Central Europe was due to the possibility of private ownership of agricultural land. Accordingly, the land trade and lease market was formed to privatize state-owned lands with their subsequent return to previous owners and their heirs. In the process of the agricultural land market being formed in Ukraine, it is problematic to focus only on the experience of an individual state since each of such countries is characterized by its advantages and disadvantages. On the other hand, the relevant experience of developed European countries confirms that it is impossible to establish a completely public or private form of land ownership.

Historical features of private ownership formation concerning agricultural land in certain Central European countries are close to the Ukrainian, in particular, in the Republic of Bulgaria, the Republic of Estonia, the Republic of Latvia, the Republic of Lithuania, the Republic of Poland, Romania, and Hungary. Land relations in these states have been transformed in stages depending on the peculiari-

ties of the private ownership formation in each of them and socio-economic development. The private ownership of agricultural land in Central Europe and Ukraine was formed by converting some state farms into market-type enterprises. The practice of land market development in Europe shows the need for public management of its formation, as the market mechanisms only do not ensure its effective functioning. The land market functioning in the state depends on the guarantees of ownership regulated at the legislative level, stability of the state policy on land tenure, use, and disposal. The factors of effective transformation of land relations in Central European countries are presented in the Figure 1.

2. GENERALIZATION OF THE MAIN STATEMENTS

According to Art. 13 and 14 of the Constitution of Ukraine: 'Land, its subsoil, atmospheric air, water and other natural resources located within the territory of Ukraine, natural resources of its con-

tinental shelf, exclusive (marine) economic zone are the items of property owned by the Ukrainian people. The state ensures the protection of the rights of all subjects of property rights and management, the social orientation of the economy. All subjects of property rights are equal before the law. Land is the main national wealth, which is under special protection of the state' (Verkhovna Rada of Ukraine, 1996).

Using legal measures, the state forms the appropriate mechanisms and rules for interaction with the information government because the information is currently becoming a decisive factor in the organization of power and its effectiveness (Antoshina, 2019). Summing up the above, the functions of the state include the creation of good conditions for the land market functioning. A full-fledged land market is a necessary condition for the development of agricultural mortgages. According to international financial organizations, the value of agricultural land in Ukraine is estimated at USD 40 billion (Kardash, 2010). Thus, the land market in Ukraine is an aggregation of social relations developing concerning land dis-

1. Transparent legal framework for regulating land relations	<ul style="list-style-type: none"> gradual formation of private ownership of agricultural land
2. State funding of measures to improve agricultural land	<ul style="list-style-type: none"> measures of economic incentives and legal liability in the field of land protection
3. Activation of production intensification processes	<ul style="list-style-type: none"> adherence to efficient production methods, high social standards; consistent restriction of the impact of economic activity on land resources
4. Long-term strategies for the development of the agricultural sector of the economy	<ul style="list-style-type: none"> stability of state policy on land tenure, disposal and use
5. Control over compliance with land law on the efficient land use	<ul style="list-style-type: none"> formal and material guarantees of land and property transactions; priority of environmental safety requirements in the use of land as a spatial basis, natural resource and main means of production

Figure 1. Factors of effective transformation of land relations in Central European countries

posal acquisition processes. In the process of the land market turnover, competitive change of land users or landowners occurs. Measures to regulate economic relations in the country, including the agricultural sector, should aim at protecting the interests of the vast majority of citizens. The introduction of the full-fledged land market is also one of the requirements set by the international creditors of Ukraine, particularly the International Monetary Fund (Dzhus, 2020).

The analysis of the applicable Law of Ukraine “On regulation of land relations”, in particular, the provisions of paragraphs 14 and 15 of Section X ‘Transitional Provisions’ of the Land Code of Ukraine (Verkhovna Rada of Ukraine, 2002) allowed clarifying the prohibition (moratorium) on sale and disposal of agricultural land (however, before the entry into force of the Law “On the agricultural land transactions”, but not earlier than January 1, 2020). This meant that the landowners did not have the opportunity to dispose of it freely, and the best way to transfer land to others was to enter into a land lease agreement. Therefore, it is possible to state that Ukraine does not have an appropriate model for introduction, maintenance, and functioning of the market for the agricultural land trade. The moratorium covered 96% of agricultural land, 68% of which was owned by peasants. Analysis of foreign studies and legislation has revealed that a similar moratorium has also been imposed in some countries, including the Republic of Belarus, Cuba, North Korea, and some other countries. The largest landowner in other countries, including Australia and Canada, is the state. Abolition of the moratorium and introduction of a transparent land market is beneficial for all stakeholder groups, as it ensures respect for constitutional property rights, creates new opportunities, improves land use efficiency, provides access to finance and credit, contributes to replenishing the state budget (Kurylo et al., 2020).

The practice of international courts evidences the expediency of opening the land market in Ukraine. For instance, on May 22, 2018, the European Court of Human Rights issued a decision in the case of Zelenchuk and Tsytsyura v. Ukraine. The court acknowledged the land moratorium as a violation of the human right to

dispose of their property guaranteed by Article 1 of the Protocol to the European Convention on Human Rights, as well as Article 41 of the Constitution of Ukraine, in the absence of an efficient market for agricultural land (European Court of Human Rights, 2018). Thus, based on this decision, the Ukrainian courts make decisions on the legality of the agricultural land disposal by the citizens of Ukraine before the Law “On agricultural land transactions” takes effect.

The possibility of loans secured by agricultural land is efficient for the land market development in Ukraine. It is projected that this will encourage small businesses to use mortgage lending opportunities for agriculture. Opening of the land market in Ukraine will help attract foreign investors, as the abolishment of the moratorium will serve as an additional factor to raise more investment in Ukraine’s economy and increase competition, stimulating the development of the agricultural sector of the economy. Ukrainian agricultural lands have always been interesting to foreign investors as a means of production and an investment object due to their high quality and productivity. This interest keeps growing for a while.

Summing up the outcomes of the land reform in Ukraine, it is necessary to outline the associated social risks, in particular:

- growing social discontent due to the feeling of ‘unfair’ purchase and sale of land, particularly among the opponents of the land market opening. Public protests and unrest can accompany social tensions;
- abuses caused by gaps in the current and newly adopted law (evasion of banking institutions, in particular, foreign-owned banks from the disposal of agricultural land pledged as collateral within the period prescribed by law);
- monopoly position taken by certain business entities in the land market;
- development of the ‘gray land market’ due to the high level of corruption in the state, loss of budget revenues.

Table 1. State land value in some regions of Ukraine in 2020

Region	Average lease price	Area of agricultural lands	Arable land	Soil composition	Number of farming enterprises	Agricultural share in the regional GDP
Vinnitsia	UAH 6324.4/ha	2,014,000 ha	1,725,500 ha	Podzolic soils, in the north and south – black soils	4,535 (6.7% of the number of enterprises in the region)	40%
Dnipropetrovsk	UAH 2355.1/ha	2,581,500 ha	2,127,400 ha	Mostly black soil	4,211 (14.5% of the number of enterprises in the region)	8%
Kirovohrad	UAH 8108.4/ha	2,045,000 ha	1,470,000 ha	Mostly black soil	3,377 (42% of the number of enterprises in the region)	37%
Poltava	UAH 7139.2/ha	2,100,000 ha	1,800,000 ha	Mostly black soil	3,993 (6.6% of the number of enterprises in the region)	65.6%

In 2020, Landlord magazine compiled a rating of Ukraine's regions based on agricultural land lease price. It should be noted that the highest value of state land is currently in Kirovohrad, Poltava, Vinnytsia, and Dnipropetrovsk regions. The estimation took into account such indicators as the area of state land and the cost per one hectare (Landlord, n.d.). The state land value in some regions of Ukraine in 2020 is presented in Table 1.

The above data demonstrate that the land prices may vary significantly depending on the region, indicating the impossibility of determining a universal price. Each region has its unique features, a certain type of soil, which requires applying individual methods of appraisal.

On March 31, 2020, the Parliament (Verkhovna Rada) of Ukraine adopted the Law 'On Amendments to Certain Legislative Acts of Ukraine on the Conditions of Agricultural Land Transactions', which will enter into force on July 1, 2021. The relevant document, informally, the Law of Ukraine "On Land Market" provides for a legislative environment formation that will ensure the introduction of market turnover of agricultural land. As can be stated from the content of the relevant Law, the creation of conditions for the agricultural land acquisition by the citizens of Ukraine will contribute to the enforcement of the constitutional rights given to the citizens of Ukraine to dispose freely of their property.

Summarizing the positive innovative provisions of the Law of Ukraine "On Land Market", the

ownership of agricultural land with an area not exceeding 100 hectares can be acquired by citizens of Ukraine starting from July 1, 2021. Along with this, under Art. 145 of the relevant Law of Ukraine, legal entities will be allowed to purchase agricultural land, particularly up to 10 thousand hectares, from January 1, 2024, if their owners are citizens of Ukraine. Ownership of agricultural land by legal entities incorporated and registered under the laws of Ukraine, members (founders) or ultimate beneficial owners of which are non-citizens of Ukraine, may be acquired from the date and subject to the approval of such decision by referendum (Verkhovna Rada of Ukraine, 2020). The analysis of the content of the Law of Ukraine on Land Market revealed that its separate innovative provision enables a lessee to pledge their 'land lease right' in a banking institution. This means that if a borrower fails to default toward the bank, the lender receives the right to use the land on the same terms as the lessee (borrower).

3. DISCUSSION

The creation of the land market in Ukraine has long provoked much discussion among the supporters and opponents of this process. However, the opening of the land market is a logical result of private ownership of land, which enables to raise funds for the development of agricultural production on a mortgage basis. Obviously, given the participation of Ukraine in the international integration processes, its refusal to create the full-fledged land market would stipulate a change in the country's

economic and political course. Lack of incentives for foreign investment in agricultural production, including on the terms of agricultural land mortgage, is already reducing the investment attractiveness of Ukraine's agro-industrial complex. The issue of selling agricultural land to foreigners cannot be reviewed unilaterally; however, it is also debatable at various levels. On the one hand, the exclusion of foreign investors from the agricultural land market in Ukraine restricts foreign investment, which is obviously unfavorable for the economy. On the other hand, this opportunity causes a significant public response and protests from the Ukrainian farmers. It is impractical to sell agricultural land to foreign citizens at this stage of the land reform in Ukraine. This is primarily due to the obvious unpredictability of the land market opening outcomes for the Ukrainians. Therefore, the possibility of ownership of agricultural land by foreigners will not be considered in the near future. It is necessary to improve the mechanisms for efficient management of land resources, particularly on the terms of mortgage lending, and for mitigation of legal risks of appropriation of Ukrainian lands by foreigners.

Public policy, implemented through certain public administration mechanisms, plays a crucial role in the formation of mortgage lending systems in the agricultural sector of foreign countries. Such mechanisms are functional and ensure targeted governmental influence on economic processes in the state. Some directions of public policy, which aim at improving the conditions of mortgage lending in the agricultural sector of Ukraine's economy, are as follows:

- state regulation of creditors' operation and assistance in the formation of the additional infrastructure required;
- formation of institutional units to ensure economic turnover of agricultural land;
- supporting the liquidity of banking institutions by providing consumers with long-term loans at low rates;
- development and adoption of a legal framework that would enforce and regulate the turnover of agricultural land and the use of ad-

ministrative methods, if necessary, at the initial stage of the relevant law implementation.

The necessary level and conditions for the development of the agricultural sector of the Ukrainian economy are being formed in the economic policy of the state. The latter is considered a system of specially developed and implemented measures to influence the economic processes taking place in the national economy to develop them in a certain direction. Economic policy is implemented through appropriate tools, which are used to achieve certain goals by the economic system of society, and to ensure the necessary mode of its functioning (Melnichuk, 2006).

The state directly influences the agricultural sector of the economy through certain levers of management, particularly through the implementation of economic functions, the introduction of monetary, budgetary, fiscal, foreign economic, and other directions of economic policy. The new challenges facing Ukraine since 2014 and the crisis caused by the spread of the COVID-19 pandemic have led to the application of new mechanisms for regulating international trade relations for domestic law enforcement practice (Koval & Luchenko, 2020).

In the authors' opinion, adoption of the Law of Ukraine 'On Amendments to Certain Legislative Acts of Ukraine on the Conditions of Agricultural Land Transactions' No. 552-IX will have a positive impact on the opportunities of ownership of agricultural land for the citizens of Ukraine and other entities. Land turnover mechanisms will take effect on July 1, 2021. However, they will relate to privately owned land. State-owned agricultural land is usually leased to fill the budget. For example, large agricultural holdings Kernel and Myronivskyi Khliboproduct (MKhP) cultivate but do not own the land in Ukraine (Kovalishyn, 2008).

Against the background of all advantages, which make the Ukrainian agricultural land attractive for the foreign investors, there is a range of problems that hinder the foreign investment flow to agricultural business in Ukraine, and they need, above all, regulation at the state level.

Since the adoption of the Law of Ukraine "On Land Market" until it enters into force on July 1,

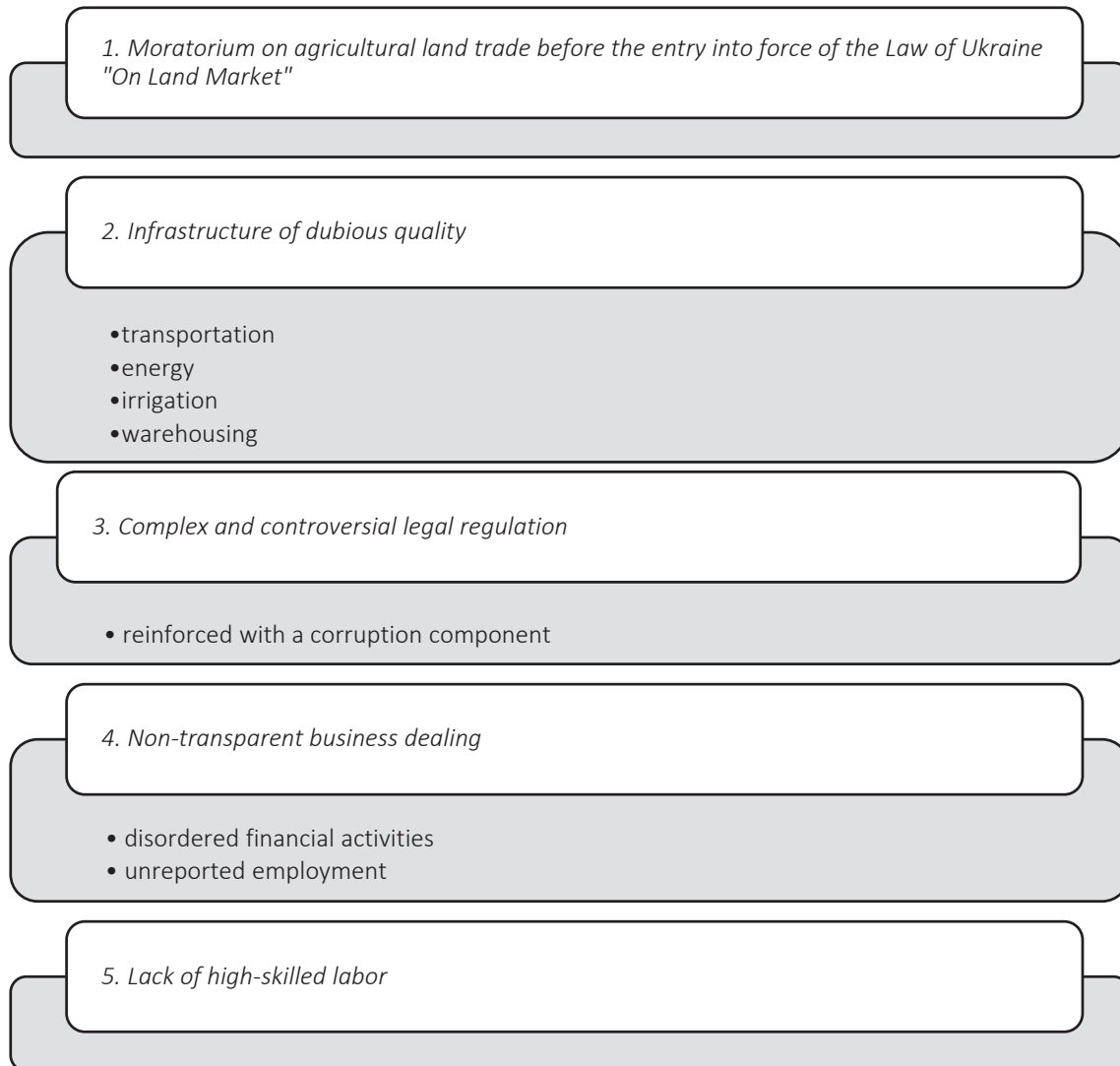


Figure 2. Factors hindering the attraction of foreign investment in the agricultural business in Ukraine

2021, the moratorium on land plots allocated from land shares, whole land shares, and all public sector lands and any change in their purpose is still effective. The quality of transport infrastructure, energy, irrigation, and warehousing is low. Power and natural gas supply are risky due to political tensions. Ways of agricultural products transportation are also problematic. Lack of proper infrastructure adversely affects foreign investment attraction in the agricultural sector of the Ukrainian economy. Other problematic issues include complex and controversial legal regulation, manifesting in high costs of permits and licenses, and the related corruption component. Non-transparent business dealing with disordered financial activities also adversely affects foreign investors' confi-

dence in agricultural business in Ukraine. A separate problem is the unreported employment of workers and inadequate level of labor. There is a need to hire highly qualified specialists with appropriate skills; however, it is reported that their skills acquired during the education do not meet the employer's expectations in the labor market. The factors that hinder the attraction of foreign investment in the agricultural business in Ukraine are presented in Figure 2.

It is an interesting fact that the banking institutions join the range of entities that may acquire ownership of agricultural land along with the citizens of Ukraine, business entities incorporated and registered under the laws of Ukraine, the members

of which must be the nationals of Ukraine and/or the state, and/or territorial communities; territorial communities and the state. However, restrictions have been introduced against the banking institutions as for the conditions and procedure for acquiring land ownership only to apply for foreclosure purposes. Moreover, banks at the land auctions must dispose such land plots within two years from the day of ownership acquisition.

It should be noted that there are many foreign-owned banks in Ukraine. A foreign-owned bank is a bank where the share of capital owned by at least one foreign investor is at least 10 percent (Verkhovna Rada of Ukraine, 2001). According to the data provided by the Ministry of Finance of Ukraine, as of October 1, 2020, 74 banks are operating in Ukraine, 33 of which are foreign-owned and 21 are 100% foreign-owned (Ministry of Finance of Ukraine, n.d.). Forinsurer (2020), which systematically publishes insurance market news, exclusive ratings of Ukrainian banks based on official statistics of Ukrainian banks developed by the National Bank of Ukraine, provides a rating of the most reliable banks in Ukraine in 2020. The rating of the largest Ukrainian banks took into account the bank's ability to repay deposits on time, availability of any financial problems, loan redemption problems, growing customer debt, and the level of support from the shareholders and the state. The owner plays an important role in replenishing capital and liquid resources, which ensure resilience in stressful conditions. None of 16 banks included in the rating and owned by the state or any international financial holdings was declared insolvent.

With the entry into force of the Law of Ukraine on Land Market on July 1, 2021, the foreign-owned banks will have the opportunity to acquire agricultural land ownership by way of foreclosure. However, such land plots must be alienated by the banks at land auctions within two years of acquisition of ownership. This means that a foreign-owned bank can issue a loan secured by land, and then foreclose it in case of non-repayment of the loan and own it for two years.

Analysis of Part 1 of Art. 130 in the relevant law states that the foreigners, stateless persons, and legal entities may not acquire shares in the au-

thorized (composed) capital, shares, units, membership in legal entities (except in the authorized (composed) capital of banks), who own agricultural land. That is foreigners in the authorized (composed) capital of banks can acquire agricultural land ownership in Ukraine.

Simultaneously, the applicable law of Ukraine does not have appropriate mechanisms to control compliance by the banking institutions with the requirements for the sale of the foreclosed land within the established two-year period. A provision in part 1 of Art. 130 of the relevant Law of Ukraine "On Land Market", in fact, allows for the uncontrolled acquisition of agricultural land in Ukraine by foreign-owned banking institutions, which entails no liability for them. It is considered a significant gap in the newly adopted law, which necessitates developing the appropriate enforcement rules before this law enters into force on July 1, 2021. In the context of such legislation, mortgage lending in the agricultural sector is dangerous and threatens the build-up of land owned by the foreign-owned banks. In particular, some methods are presented that foreign-owned banks can use to create artificial conditions to acquire agricultural land.

For example, a foreign-owned banking institution aims to resell agricultural land. For this purpose, an amount of the principal of the loan and interest monthly payable is set. When the borrower fails to repay the loan, the lender receives the right to charge penalties. Accruing the interest, the bank significantly increases the book value of the borrower's debt, secured with the pledged agricultural land. During the year, the amount of debt, including penalties and interest, can double. Thus, the bank, which has registered the ownership of agricultural land due to foreclosure, will seek a buyer and offer a price much higher than the market price. Most likely, no one will buy the land at such an inflated price, and it will remain the property of the foreign-owned banking institution or become the property of individual stakeholders of this banking institution.

Another possible way for the foreign-owned banks to abuse the mortgage lending secured by agricultural land is to own land and receive rental income from letting the land out to third parties. The loan agreement can be concluded for a long term with

the payment of the principal debt and the interest. The agreement terms and conditions may provide that the creditor satisfy its claims with the collateral only, without any additional recovery from the borrower. If the mortgaged property's value is lower than the accumulated financial requirements, the banking institution will incur losses. Subject to the terms of the loan agreement, the foreign-owned bank obtains the borrower's permission to use the land (Kusch, 2020). Such use may involve the lease of land to any third parties. By the expiry of the loan agreement, the bank's claims will exceed the market value of the land. As a result, the borrower will not need to return its property.

The right to acquire ownership of agricultural land by the citizens of Ukraine as established in Part 1 of Art. 130 of the Law of Ukraine "On Land Market" will lead to forming a large segment of intermediaries who will buy land for fictitious owners, including foreign ones.

There is no doubt that mortgage lending is a promising area and a powerful fundraising source in agricultural production. An effective mortgage mechanism should become a lever and an incentive for the financial and economic growth of the agro-industrial complex of Ukraine, contributing to the social development of rural areas at the same time. In this regard, Ukraine has adopted enforcement laws that will allow the citizens of Ukraine to dispose of their land freely in the future. However, there are obvious risks borne by the entry into force of the Law of Ukraine 'On Amendments to Certain Legislative Acts of Ukraine on the Conditions of Agricultural Land Transactions' No. 552-IX, associated with the lack of control over the alienation of the pledged agricultural land by the banks during two years at land auctions. This enables for the banks, in particular the foreign-owned ones, to appropriate the relevant land plots, which in general threatens the integrity of Ukraine's territory and the ability of Ukrainian citizens to dispose freely of their land resources. There is a possibility of socially dangerous consequences to the interests of Ukrainian people as owners and users of land resources. This necessitates the criminalization of alienation evasion of foreclosed agricultural land within the period prescribed by law. In this case, the offender must be the head of a banking institution. The object of the act pro-

posed for criminalization is agricultural land. The wording 'period prescribed by law' is understood as the two-year term set out in Part 1 of Art. 130 of the Law of Ukraine 'On Amendments to Certain Legislative Acts of Ukraine on the Conditions of Agricultural Land Transactions' No. 552-IX. In connection with this, it is proposed to supplement Art. 212 of the Criminal Code of Ukraine with 'evasion from alienation of agricultural land', and set it out as follows:

1. Intentional evasion from the alienation of foreclosed agricultural land within the period prescribed by law by a bank official, who is obliged to alienate it, entails a punishment with a fine of 3,000 to 5,000 tax-free minimum incomes or deprivation of the right to hold certain positions or engage in certain activities for up to three years or restriction of liberty for up to two years.
2. The same acts committed by a group of persons with prior conspiracy, or if they led to the actual acquisition of ownership of agricultural land by the foreign-owned banks entail punishment with a restriction of liberty for a term of two to five years or imprisonment for the same term, with deprivation of the right to hold certain positions or engage in certain activities for up to three years or without such.

Practice shows that the method of crime prevention requires new scientific approaches and modern knowledge about the ways of committing acts that occur in society due to the development of social relations and those that may be the result of inconsistent and improper adoption of certain regulations. Criminalization is one of the criminal legal measures aimed at crime prevention, a necessary preventive measure to minimize its signs. Crime prevention is a combination of legislative, economic, ideological, social, educational, cultural, and other actions aimed at mitigating, eliminating, or neutralizing the conditions and causes of crime (Klochko et al., 2020). Criminalization of evasion from the alienation of agricultural land aims to neutralize criminogenic factors in both the agricultural and banking sectors, which is also due to the need to eliminate the causes and conditions of criminal offenses after the Law of Ukraine "On Land Market" enters into force.

CONCLUSION

Market transformations in Ukraine were accompanied by optimizing the land fund structure, its purpose, and types of ownership. The organizational structure of land use management has changed; however, land market formation has not been completed yet. Its full functioning can be ensured by creating a competitive environment that will not be limited exclusively to land lease relations in agriculture. The development of specialized infrastructure and the improvement of the mortgage system in Ukrainian agriculture will help raise funds for domestic use. Minimization of external threats as an adverse consequence of the land market opening in Ukraine, which include the illegal sale of land combined with corruption of officials, evasion of alienation of foreclosed agricultural land within the period prescribed by law and other socially dangerous acts, require state control in the field of land use in Ukraine and regulation at the level of criminal law. The positive consequences of the land market opening in Ukraine are the gradual formation of the market price for land, the growing budget revenues, improved efficiency of state land use, and capital raising in the agricultural sector of the economy. However, the land market opening in Ukraine must create an appropriate and effective system of control over foreign investment. Enforcement of national security requires mandatory verification of a foreign investor and the impact made by the agreement on the national interests of the state. The banking system of Ukraine will be able to perform the functions of an investor in the agricultural sector of the economy only in the long term. In this regard, the need for state regulation of the mortgage system in Ukraine that benefits the entities engaged in the agricultural sector is stipulated with the special conditions of their operation. Formation of the agricultural land market in Ukraine requires aligning with Central European countries' experience, which have successfully reformed the land relations through land redistribution, its rational use, and protection, development of mechanisms for social protection of the rural population.

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