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**Peculiarities of creation of extra large agricultural companies under
conditions of insufficient legislative regulation in Ukraine**

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Peculiarities of creation of extra large agricultural companies under conditions of insufficient legislative regulation in Ukraine

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Abstract

Agricultural transformations in Ukraine resulted in division of tracts of land and creation of large number of small private land owners. Since December 1999 these processes were developing with especially high speed after adoption of Presidential Decree “On emergency actions aimed at acceleration of reorganization of agricultural sector of economics”, which has become fundamental legislative act in conducting land and agricultural reforms. During the first year after adoption of the abovementioned decree, there started development of land market, which ought to have included: private property for land, legislative protection of land rent, possibilities of free transfers of ownership rights for land from one market subject to another (purchasing and selling of land), as its components. Namely for solving this task, which is important for completion of land reform, Ukrainian Parliament has imposed moratorium that is still in force. First of all in this context, it is necessary to develop institutional background for ownership and selling of land and its main components – cadastre and register of land plots. The task of cadastre – description of physical characteristics of land plots, the register – description of their legal status. It is impossible do develop land market that is civilized and understandable for society without introduction of unified system of land registration. Incompleteness of agricultural transformation led to development of land market under conditions of insufficient legislative regulation. In Ukraine processes purchasing and selling of agricultural lands are developing spontaneously, enlargement and consolidation led to development of extra large agricultural companies that are increasingly influencing situation in agricultural sector, but also in social and economic situation in the country.

Keywords: Ukrainian agriculture, agricultural transformations, land market, land latifundia, state agricultural policy.

Introduction. Despite of the moratorium for purchasing and selling of agricultural lands is in force in Ukraine, operations on alienation of agricultural lands are conducted in legal practice based on well-established schemes (Kulinich P., 2006; Rudchenko Y., 2006; Kobylanskiy V., 2005). Existing imperfections of legislative base, which allow conducting such operations despite of the moratorium, are used for making such deals. Part of them is based on article 244 of the Civil Code of Ukraine, according to it land plot could be disposed based on letter of attorney. Land Code's norm concerning moratorium prohibits only owners of land plots (land shares) from selling or alienating by any other way their own land plots (shares), but in case the owner attorns it to the third party, than operations on purchasing and selling will be conducted by this party in accordance to the Civil Code.

For purchasing agricultural lands there's also used article 635 of the Civil Code, which allows making interim contract. In accordance to the interim contract buyer is purchasing the land plot (paying its value at this stage of deal) and land owner is committed to make principal contract for purchasing and selling his own land plot, which has been preliminary sold, after lifting the moratorium.

Operations on purchasing and selling are also based on application of the article 15 of the Transitional provisions of the Land Code, which envisages application of moratorium for purchasing and selling lands intended only for commercial farming or any other commercial agricultural activities. But if the owner has hand plot for his own farming, than prohibition on selling is not applied for such lands.

Conditions of land tenancy contract are also used as legal background for land deals. In practice, tenancy contract includes article for unconditional selling of land plot to tenant instantly after the moratorium is lifted, based in agreements of parties. Generally in such cases, price of land plot is paid to the lessor when

signing specific contract of tenancy, and in his turn he gives to the buyer written obligation to return funds in case such sale won't take place for some reason or other.

The most dangerous is that nobody in Ukraine has reliable information on scale of such shady operations in the field of buying and selling agricultural lands and what threats are posed for peasants and national economics by these negative phenomena in the future (recent and strategic one). Based on the pace and scale of agricultural land concentration in the hands of big producers and adoption of the Decree of the President of Ukraine No 644/2006 of July 24, 2006 "On some aspects organizational and legal provisions of development and regulation of land market and rights' protection of land plots' owners", such land deals have significant scale.

Research results. There was increasing numbers and areas of land utilization by small and medium enterprises – new legal entities: agricultural cooperatives, partnerships, farmers against a background of transformation of large collective agricultural enterprises in Ukraine during reorganization period since the beginning of 90-th. Giving away land shares to peasants and creation of private enterprises without the status of legal entity has introduced new definition into practice – "plots provided for conducting market-oriented agricultural production". According to the interpretation of the State committee on land resources, such plots are created based on land shares given out to peasants, registering them in state act on private ownership for land; plots leased from other citizens; plots of family members united on voluntary basis, inherited, granted, provided for use from lands of reserve fund, etc. In documents identifying legal status of such organizational form of agricultural production it is stated that the land is used for commodity production. Since the beginning of the year 2000 the number of such plots has increased by almost 12 times and currently there are 2,2 mln. of them. At the beginning of 2006 32,5% of agricultural lands of commodity producers are used by these small enterprises (table 1).

Table 1. Characteristics of agricultural producers based their numbers, types of management, land areas*

	Number of enterprises		Area of agricultural lands, th. ha.		Share of agricultural lands in total area of agricultural producers, %		Area of agricultural lands per one enterprise, ha.	
	2000	2006	2000	2006	2000	2006	2000	2006
Collective agricultural enterprises	10465	575	26281	130	77,4	0,5	2510	226
Agricultural cooperatives	362	1838	313	1943	0,9	7,5	863	1057
Agricultural companies	1995	8665	3728	10467	11	40,7	1869	1208
State agricultural enterprises	3309	2410	1998	1230	5,9	4,8	604	510
Farmers	38782	46592	1178	3591	3,5	14	30	77
Plots used for commodity agricultural production	132037	2127334	427	8351	1,3	32,5	3,2	3,9
Total, agricultural producers	186950	2187414	34476	25712	100	100	x	x

* Calculated based on data of the State Committee on land resources of Ukraine.

Currently over 60% of gross agricultural produce is produced by small commodity peasant farms. Small commodity farms are not only holding their niche in agricultural economics but also in rural lifestyle assisting in overcoming unemployment in rural area, decreasing level of poverty and increasing of peasants' welfare.

Division of tracts of land as the result of agricultural transformation cannot be evaluated unambiguously. On the one hand, reorganization of land relations was intended for creation of conditions for development of real land owner and multifactor farming in rural areas. On the other hand, division resulted in currently uncontrolled processes of concentration and consolidation of tracts of land in hands of certain legal entities and individuals, who often have no direct relation to agriculture.

Based on our estimations (data in the table 2) in the period from 2001 until the beginning of 2006 number of enterprises, which have in tenure and rent over 10 thousands hectares of agricultural lands has increased by 44% (during the period until the beginning 2005 by 32%, i.e. 12 percent points for one single year). At the same time number of enterprises, which have from 500 to 5000 thousand hectares is constantly decreasing during this period. Total land area, which falls on the last group of farms (over 10 th. ha.) during the same period, has increased almost by 61% (at the beginning of 2005 – by 40%). Average size of land area per one farm also increased and currently it's 18,5 th. ha. (accordingly for the previous period – 16,5 th. ha.).

Table 2. Classification of enterprises based on area of agricultural lands *

Area of enterprise, ha	2001			2005			Changes ± 2005 compared to 2001,%		
	Number of enterprises in group	Total area of agricultural lands in group th. ha.	Average size of lands, ha.	Number of enterprises in group	Total area of agricultural lands in group th. ha.	Average size of lands, ha.	Number of enterprises in group	Total area of agricultural lands in group th. ha.	Average size of lands, ha.
No land	480			154			-67,1		
1-500	1943	476,1	245	1411	368,1	260,9	-27,4	-22,7	6,5
501-2000	6095	7321,2	1201,2	4076	4857,7	1191,8	-33,1	-35,6	-0,8
2001-5000	3764	11325,6	3008,9	2408	7286,6	3026,0	-36	-35,7	0,6
5001-10000	497	3141,7	6321,4	412	2651,5	6435,6	-18	-15,6	1,8
>10000	41	678	16537,7	59	1090,4	18481,6	43,9	60,8	11,8
Total	12820	22942,7	1789,6	8520	16254,3	1907,8	-33,5	-29,2	6,6

*Groupings are presented based on statistical materials according to the form No 50-cr that is submitted by agricultural enterprises of all organizational forms, which have over 100 ha. of agricultural land and (or) over 50 workers.

Among large enterprises which own land there are dominating vertically integrated structures of holding model. For instance LLC JC “Nibulon” currently farms around 50 th. ha. of arable land. The enterprise is one of the biggest producers and exporters of cereal and oil-bearing crops in Ukraine, maintain control in all sections of chain “field-port”: growing and harvesting yields by its own machinery on rented land – transportation of produce using own transport – storage and reprocessing of grain in grain elevators – shipping produce through

own trans-shipping terminal in Nikolaev sea port.

Agricultural complex of industrial plants named after Illich – JSC “Mariupol metallurgical plant named after Illich” – the largest diversified agricultural enterprise in Ukraine, which unifies over 70 structural divisions (daughter enterprises) in Donetsk and Zaporozhie oblasts and also in Autonomous Republic of Crimea. Agricultural enterprise farms over 230 th. ha. of agricultural lands. There are 182 settlements located on its territory and 180 thousand people live here. Priority sectors for ilichevsk agricultural complex are: plant production (cereals occupy 50% of arable lands – 100 th. ha.; sunflower – 12% of arable lands – 24 th. ha.; feed crops 23% of arable lands – 46 th. ha.; gardens – 1087 ha.; vegetables – 800 ha.; vineyards – 173 ha.), seed-growing, animal husbandry (cattle, pigs, sheep, poultry, horse breeding, beekeeping), fish-breeding (over twenty ponds and fishing enterprises on the Sea of Azov), repair and construction works, processing of agricultural produce.

Processing capacities of agricultural complex of industrial plant include the network of foodstuff production enterprises. The largest processing enterprise is fish cannery. Its production capacity is 14520 fish cans in assortment per annum. Main raw material is fish from the Sea of Azov. Flour production is 6300 tons per annum, its sold in retail chains and is used for baking bread – 4600 tons per annum. There's produced 2200-2400 tons of sunflower oil per annum. There are operating capacities for production of canned fruits and vegetables. During the last year over 4 million of conventional cans have been produced. Special division is dealing with production of soft pickle cheeses and brynza, there are operating mini shops producing of 10 tons of cooked meats per month, line of broiler slaughtering and packing its meat with the capacity up to 10 th. heads per shift, produced 80 th. t. feedstuffs for animals for poultry per annum.

There have been organized sewing of working clothes and furs valued 2,5 mln. hryvnas per annum, blinders for working horses. The list of produce of illichevsk agricultural complex also includes: bricks, slag stone, foundation blocks, joinery, metal ware, mirrors and other types of produce.

Since the beginning 2000, JSC “MMK im. Ilicha” has increased volume of its total output by almost 30 times and in 2005 it was 352,1 mln. hryvnas (over 70 mln. USD). All produce processed by agricultural complex is certified and has its own trademark. It’s marketed by shops of JSC “MMK im. Ilicha” and through marketing outlets of agricultural shops. Due to financial support of biggest metallurgical plant in Ukraine, the agricultural complex has developed its own system of pricing and subsidies.

The company “Astarta-Kyiv” is one of the largest Ukrainian producers of sugar that has produced 87,5 th.t. of sugar in 2005 and now is controlling five sugar plants in different regions of Ukraine. During only first six months of 2006 the company has increased total area of rented lands from 73,5 th. ha. to 86 th. ha. by purchasing four agricultural enterprises in Poltava oblast. The increase of area of rented land by more than 10 th. ha. corresponds to the general strategy of the company, which is intending for purchasing new sugar enterprises and increasing of land areas under sugar beet. By the end of 2006 the company is planning to increase area of rented land up to 90 th. ha. In addition to sugar beet “Astarta Kyiv” is also dealing with production of cereals and oil-bearing crops, meat and milk, feedstuffs, canned fruits and vegetables.

Auxiliary agricultural enterprise of coal mine named after Zasyadko agrofirm “Shakhter”, which unites nineteen former kolkhozes and sovkhoses, has around one hundred thousands hectares of agricultural lands on the territory of Donetsk and Kharkiv oblasts, it was initially created for supplying miners with cheap foodstuffs, especially with meat produce. For instance, by 2005 agricultural firm has produced 2,5 th.t. of beef , 3248 t. of pork, 1876 t. of poultry. Agricultural firm has unique agricultural pig breeding complex in Ukraine for 7200 heads of pigs of big Ukrainian black breed, which is famous for increased fat content. Poultry farms keep around one million hens, ducks and geese. In addition to meat, poultry farms are satisfying demands of rural population of eastern Donetsk region in pedigree young stock of geese. There is special pheasant farm, its produce – pheasant eggs are sold in own trading network; stud-farm is breeding meat and

sport horse species. Produce of “Shakhter” agricultural firm is marketed through its own trading network, which includes sixty supermarkets and shops in big cities and rural area.

Processes of land concentration and development of latifundia in Ukraine cannot be evaluated unambiguously. From the point of view of their competitiveness this phenomenon could be considered as positive one. After all purely from economic point of view they significantly took the lead over other groups of enterprises based on indicators of their production and financial activities. Our researches show that group of such enterprises, first of all, is dealing with plant production, sales proceeds of which comprise over 80% in total revenue. They have high level of capitalization and effectiveness. Their revenue per 1 ha. of agricultural lands overcomes levels other groups almost by half. Production process is highly mechanized, average annual number of workers calculated per 100 ha. of agricultural lands is the lowest one in comparison with other groups of enterprises and salary level per one worker is the highest one. But it's significantly lower compared to the average value in economics.

Thus from the point of view competitive advantages, group of such enterprises is quite successfully developing them, despite of imperfect legislation regulating processes of land concentration in agriculture. It's understandable that to a certain extent shady schemes of buying and selling are used for creation of big tracts of land.

According to our opinion, creation of such structures bears a number of threats from the point of view of their competitiveness both for themselves and agricultural sector in general in medium- and long-term perspective. Danger lies within ecological, social and legal field.

In ecological context there are already witnessed monoculturization of production, impossibility and unwillingness to use organic fertilizers, which leads to loss of natural soil fertility and destruction of certain branches, in particular animal husbandry (in group of big enterprises specific weight of animal husbandry is only 12%). Because servicing ecosystems mostly falls out of market relations,

the Government must take leading role in combating degradation not only soils but environment in general. It should act as guardian of natural resources, setting rules concerning implementation of programs intended for decreasing excessive ploughing of lands in such way voicing readiness of community to pay for renewal of ecosystems; support conducting scientific researches and provide technical assistance; coordinate activities in different sectors on administrative level; provide access to modern technologies; assisting community's participation in these processes; balancing interests of stakeholders; providing organizational support; developing legislative base; ensuring obedience of ecological norms; developing general legal field; conducting monitoring of implementation process and estimate performance of governmental programs. In social aspect, concentration of tracts of land and creation of large-scale production units leads to decrease of employment and increase of unemployment on significant number of rural territories. According to our evaluations the average annual number of workers per 100 ha. of agricultural lands in group of enterprises with land area above 10 th. ha. is 3 persons (on average in all groups – 5 persons). Additionally, concentration of significant tracts of land in “single hands” will lead to decay in development of rural territories and social infrastructure. Threats concerning rural development are related to the fact that large land tenants are registered as legal entities in large cities predominantly oblast (sometimes rayon) level. Thus, tax revenues from their activities are staying in cities that predetermines outflow of funds, which ought to have been used for rural development. There should be remembered social conflicts between management of agricultural firms and local population, which are not unique during the recent time and could even transform into the open confrontation. Surveys show that big agricultural structures often facing lack of highly skilled personnel are going to the direction of minimization of costs intended for investing into the human capital, neglecting possibility and necessity of retraining local workforce, increasing level of its qualification. On territories controlled by them there is gradually visualizes new employment model in agriculture – mobile, managerial and production teams, which are not formed

from local labour, but usually from cities, are operating in rural areas using watch method. Ignoring local human capital is the problem not only in the context of increasing unemployment level but also is the reason for “depopulation” of rural territories.

In the legal context, attention should be paid to the fact that extra large agricultural enterprises are getting biggest preferences from the budget. In 2005 among thirty largest farms, which received most of budget subsidies and grants, these payments comprised 15, 23, 28 and even 41 percent of their revenues. It's the evidence that distribution of budget subsidies is conducted in “manual mode” under non-transparent schemes, which significantly complicates access of small and medium enterprises to state support (Borodina 2006). As the rule large-scale commodity farms have powerful lobby, which gives them access to redistribution of budget funds, in the Parliament and governmental structures.

On the other side certain legal threat comes from legislative incompleteness of land privatisation process and the field of ensuring functioning of land market. The third edition of the Land Code of Ukraine, which has been adopted during reorganisation process, sketched only development of legislative base for reorganisation of land relationships. Concretization of provisions of new Land Code of Ukraine required adoption the set of laws and other regulatory acts of methodological nature, which was accordingly consolidated by the Regulation of the Cabinet of Ministers of Ukraine No 6 of January 10, 2002. It was envisaged that it will create civilized conditions for market circulation of agricultural lands, but exceptionally for political reasons this process is excessively protracted. Delaying adoption of the complete package of documents regulating land relations leads to spreading of shady market of buying and selling lands, illegal self-seizure of lands, depriving peasants of their lands through different semi-legal operations. As it was mentioned, despite of moratorium for buying and selling agricultural lands in force in Ukraine, operations on agricultural lands alienation are being constantly conducted in legal practice. From legal point of view, purchasing land plots using semi-illegal method could lead to their loss in accordance with changes

in the legislation, intended to be initiated by the President, particularly by the Decree No 644/2006 of July 24, 2006, which was mentioned earlier. It could lead to significant regional conflicts and new forms of political confrontation in the country.

Conclusion. Process of concentration of agricultural lands could be considered as the new stage of development of land relations in Ukraine. Indeterminate situation and absence of legislative support of these proceedings after 15 years of reform is the evidence of the certain threats to Ukrainian peasants and national interests of Ukraine. Delays in solving the set of legal, institutional and organizational problems concerning regulation of land market in Ukraine are largely resulting in current unsatisfactory condition of agricultural sector.

When further solving this issue and taking into account Ukraine's orientation towards European integration, it's important to take into account experience of land market development and mechanisms of its buying and selling in EU countries in legislation in force but also in developed but not adopted draft laws. Domestic experience shows that the state must play key role in this issue, but it doesn't mean applying strict measures, which would hold back development of land market in general. It leads to development of shady schemes and large scale semi-legal operations with land, which creates certain threats to society.

Development of the legislative base is grounded on single principle of functioning of land relations in agriculture: land should either be owned or rented directly by agricultural producer and no outside business organizations should have access to agricultural lands. In reality, firstly, it'll mean that individuals or legal entities, which are not connected to agricultural production, have no right to purchase agricultural lands at that national legislation should have very clear definition about it. Secondly, existence of private property for land should not be in conflict with public interests, which requires strict limitations on concentration of agricultural lands in single hands and also on possibilities for abuses and negative processes, for instance, land speculation, monopoly powers of big land owners, division of land plots during their inheritance, etc.

Experience of developed European countries, which have highly productive agriculture, shows that there shouldn't be overemphasized any form of land tenure and land utilization, each of them has its own advantages and disadvantages and the same production results could be achieved using any of them. Any form of land tenure and land utilization should have equal rights for getting subsidies, participation in state investment projects, crediting on preferential terms, etc. Yields of crops, quality of land tillage, productiveness of animals and other production and financial indicators doesn't depend on form of land tenure and land utilization, but on quality of human capital (farmer's qualification and diligence) and volume of resources applied. Widespread idea that only private land tenure gives possibility for intensive and confident agricultural production is not supported by Western European experience. Vice versa, this experience shows that agricultural production could be equally successful on private, rented and state lands. In any type of land utilization allows efficient agriculture and there are no ideological, legal or economic limitations or advantages of its specific types. Especial meaning has legislative assurance of rights for land tenure and land utilization.

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