



State Land Management of Agricultural Land in Ukraine

Authors:

Katja Dells, Maxym Fedorchenko, Oksana Frankewycz, Pieter Steffens



Im Auftrag von



Table of contents

List of Boxes

List of Figures

List of Abbreviations

Acknowledgement

Executive Summary	9
1 Introduction	12
1.1 Purpose of the Study	12
1.2 Methodology	12
2 Background Information	15
2.1 General Information	15
2.2 Land Reform in Ukraine	17
2.2.1 Pre-reform Structure of Land Use	18
2.2.2 Land Reform: Major Steps	18
2.2.3 Results of Land Reform	20
3 Legal Framework	21
3.1 Land Code of Ukraine of 25 October 2001	21
3.1.1 Lease	23
3.1.2 Permanent Use	23
3.1.3 Sale	24
3.2 Law on Lease of Land of 6 October 1998	25
3.3 Law on Payment of Land of 3 July 1992	26
3.4 Law on Fixed Agricultural Tax of 17 December 1998	26
4 Institutional Setting	28
5 Management of State-Owned Agricultural Land in Ukraine	33
5.1 Analysis of Statistical Records	33
5.1.1 Agricultural Land in Permanent Use	34
5.1.2 Agricultural Land in Lease	36
5.1.3 Reserve Pool of Agricultural Land	36
5.2 Management of Agricultural Land in Permanent Use	37
5.2.1 Procedure	37
5.2.2 Management	38
5.3 Lease of Agricultural Land	40
5.3.1 Procedure and Management	40
5.3.2 Lease Rent Prices	42
5.4 Sale of Agricultural Land	42
5.5 Management of Contaminated Sites	44
6 Analysis of Findings	46
6.1 Policy, Legal and Administrative Framework	46
6.1.1 Policy Framework	46
6.1.2 Legal Framework	47

6.1.3 Administrative Framework	49
6.2 Management Strengths and Weaknesses	50
6.2.1 Permanent Use Rights	50
6.2.2 Sale and Lease	51
6.2.3 Technical Constraints	52
7 Recommendations	43
7.1 Favourable Preconditions for the Management of State-owned Agricultural Land	53
7.2 Recommendation for the Effective Management of State-owned Agricultural Land	54
7.3 Outlook	59
Bibliography	60
List of Institutions Interviewed	63
Annex	65

List of Boxes

Box 1	Administrative structure of Ukraine	15
Box 2	Annual average crop production in Mykolaiv oblast	16
Box 3	Crop production in Poltava Oblast	17
Box 4	Main provisions of the LCU that govern the management, or have to be observed when managing SOAL	22
Box 5	Tasks and competencies of the SCLR	29
Box 6	Leased hectares of SOAL in the three pilot regions	36
Box 7	Main steps in the procedure of granting SOAL for permanent use	37
Box 8	Reasons for low demand for lease of SOAL	41
Box 9	Procedure of sale of state- or communally-owned land plots to citizens and legal entities	43
Box 10	The main reasons why SOAL is presently not sold as agricultural land	44
Box 11	Favourable preconditions for effective management of SOAL	54
Box 12	Best practices in management of SOAL in transition countries	56

List of Figures

Figure 1	Structure of SCLR and subordinated institutions	32
Figure 2	State-owned agricultural land	34
Figure 3	Management of state-owned agricultural land in 3 phases	58

List of Abbreviations

ARC	Autonomous Republic of Crimea
BYUT	Block of Yulia Tymoshenko
CAE	Collective Agricultural Enterprises
CEE	Central and Eastern European Countries
CMU	Cabinet of Ministers of Ukraine
CSLC	Center of State Land Cadastre
DLR	Divisions of Land Resources
FAT	Fixed Agricultural Tax
GAO	Gross Agricultural Output
GDP	Gross Domestic Product
GSPTU	General Scheme for Planning of the Territory of Ukraine
GTPS	General Town Planning Schemes
GVA	Gross Value Added
KhOMDLR	Kharkiv Oblast Main Department of Land Resources
LLL	Law on Lease of Land
LPL	Law on Payment of Land
MAP	Ministry of Agricultural Policy
NANU	National Academy of Sciences of Ukraine
NU	Nasha Ukraina
OSA	Oblast State Administration
OTO	Oblast Tax Office
POUL	Projects for Organization of the Use of Land
PPF	Personal Peasant Farm
PU	Permanent Use
RSA	Rayon State Administration
RTO	Rayon Tax Office
SCLR	State Committee on Land Resources of Ukraine
SICPL	State Inspection for Control and Protection of Land
SOAL	State Owned Agricultural Land
UAAN	Ukrainian Academy of Agrarian Sciences
UAH	Ukrainian Hryvnia
UCEUL	Ukrainian Classificatory of End-Use of Land
USD	US-Dollar
VAT	Value Added Tax

Acknowledgement

We would like to thank Jana Orphal and Christian Graefen from Gesellschaft für Technische Zusammenarbeit (GTZ GmbH), Sector Project Land Management, on behalf of the German Ministry for Economic Cooperation and Development (BMZ) for assigning BVVG Bodenverwertungs- und –verwaltungs GmbH with the preparation of this study.

Furthermore we would like to express our gratitude to all interview partners who have offered their time and patience and have provided very valuable information. Part of the data and information has been derived from interviews of technical key persons, still to be validated by official statistical data not currently available.

Also we would like to thank Stefan Kresse from the German Embassy in Kyiv for his hospitality and support as well as Natalia Korchakova, Roman Kalibaba, Yuriy Perekupskyj and Dirk Garloff for their kind assistance.

Berlin, 06.09.2006

Executive summary

Starting in 1991, Ukraine initiated a land reform which, along with other objectives, aimed at introducing private ownership of agricultural land. As a result of land reform, 30.3 million hectares of agricultural land, including 27.7 million hectares of land for agricultural commodity production, have been transferred into private ownership free of charge; approx. 46,000 private farms and around 18,000 non-state agricultural enterprises have developed; 6.79 million citizens (of 6.91 million entitled) have received a land certificate as result of land sharing of former collective farms (5.7 million of these land certificates have already been transferred to land titles); and 16.4 million land plots with a total area of 3.6 million hectares have been allocated to 11.7 million citizens of Ukraine for various purposes (whereby so far only 3.7 million land titles have been issued).

Due to a moratorium on land sales of agricultural land in private ownership, this land has not yet become a marketable object.

Presently, approx. 11 million hectares of agricultural land are still in state ownership. The legal and institutional setting for management of the remaining state-owned agricultural land, as well as the 'status quo' in management, is discussed within the scope of this study. The study closes with an analysis of findings and recommendations.

Several laws are of importance regarding the legal frame governing state land management.

The Land Code of Ukraine (2001) is the key law concerning land relations. With regard to management of state-owned agricultural land, the Land Code governs the responsibilities and competencies of administrative bodies and regulates the handling of state-owned agricultural land. The Law on Lease of Land (1998) provides regulations for lease of land in all categories. It regulates the rights and duties of the respective parties and builds the legal framework of their relationship. The "Law on Payment of Land" (LPL) regulates land tax payments and lease rents. The Law on Fixed Agricultural Tax (2003) governs payments of several taxes (including the land tax) as a package (FAT) with the aim of supporting agricultural commodity producers by granting relief tax.

The main institutions that are directly involved in the management of state-owned agricultural land are the Rayon (District) State administrations, bodies of Local Self Governance, Divisions of Land Resources on the Rayon level and the Rayon Tax Offices. Indirectly involved are the Oblast (Regional) State Administrations, the State Committee on Land Resources and the Cadastre Offices.

In Ukraine, 29.59 million hectares of land are still under state ownership, thereof approx. 38% is agricultural land. 3.87 million hectares of state-owned agricultural land have been granted to numerous groups for permanent use (use for an indefinite time), 1.9 million hectares have been leased out and around 4.9 million hectares are considered reserve, whereby it is not clear, how or if this reserve is in use.

The current management of state-owned agricultural land is based on three allocation instruments, i.e. the leasing and sale of state-owned agricultural land and its allocation for permanent use. Regarding permanent use, it could be observed that certain management tasks (stipulated by law) like e.g. the withdrawal of land under permanent

use and subsequent reallocation have not been executed. It was observed that no legal provisions govern the lease of state-owned agricultural land. The leasing of parcels in practice is exercised during application of a potential lessee. The decision-making procedure is bureaucratic and may hamper effective management. The lessee concluding a lease contract faces numerous expenses. The demand to lease state-owned agricultural land is low, due to the following reasons: the quality of the land is poor, the land is fragmented, there are high transaction costs and bureaucratic hurdles, as well as the general economical constraints in agricultural production for private farmers.

The sale of state-owned land for agricultural purposes is infrequently executed for the following reasons: no interest in low-quality and fragmented plots and they lack access to credits, managing bodies' lacking awareness that the moratorium on land sales only applies to agricultural land in private ownership, lacking guidelines for procedure, limited area of agricultural land that can be owned by individuals and companies, purchased land becoming subject to the moratorium.

The management of contaminated sites is governed by the Land Code of Ukraine; nevertheless the practical implementation seems to lag behind.

Analysing the main findings of the study results in the following conclusions:

- A national policy which defines agro-structural aims and could serve as a basis for more concrete programmes (including a programme for the management of state-owned agricultural land) is missing.
- The legal regulations with regard to management of state-owned agricultural land are too complex, which leads to “overregulation” and lacking clarity and can hamper effective management. Furthermore, legal provisions often are not implemented.
- Local bodies entrusted with the management of state-owned agricultural land seem rather passive and do not seem well-equipped or trained for executing management tasks. In general, too many different institutions are involved in the decision-making process.
- Granting agricultural land for permanent use is not the most effective instrument of state land management so that in the long run a decision has to be made on how to allocate this land more effectively.
- The procedure for leasing is not favourable for potential lessees and contributes to an overall low demand. Information on state-owned agricultural land available for lease is not published.
- Misleading legal provisions regarding the selling procedure, lacking information on how much land is needed for accomplishing the land reform and the complicated procedure of the “change of use purpose” result in local executive bodies hesitating to sell.
- Technical constraints hamper effective management.

Recommendations given with regard to effective management of state-owned agricultural land can be summed up as follows:

- Create favourable frame conditions for the management of state-owned agricultural land, which comprises the development of a respective policy, the creation of a coherent legal frame, the development of a transparent land market, the build-up of a functioning cadastre and land register and the implementation of an institution monitoring price developments and improving valuation standards.
- Implement best practices in management of state-owned agricultural land, i.e. take inventory of land, set up a managing institution / unit including a small guiding and monitoring unit on the central level and decentralised operative units, create transparent leasing and selling procedures and create a user-friendly and flexible IT-system with all data relevant for management of an agricultural land parcel.
- Organise management in steps with a leasing phase and a subsequent selling phase.

1 Introduction

In 1991 Ukraine has initiated a land reform with the main aim of introducing private ownership of agricultural land. While initially the process developed quite slowly, significant progress has been made since 1999¹.

Nevertheless, approximately 11 m ha² of agricultural land are still in state ownership, which adds up to around 25% of all agricultural land in Ukraine. This rather impressive figure leads to the question as to how this state-owned agricultural land (SOAL) could be most effectively used in order to maximise revenues for the state, while at the same time considering agro-structural needs such as the development of a land market and the creation of economically viable farm structures.

1.1 Purpose of the Study

This study was commissioned by the Land Management Sector Project of the Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH, on behalf of the German Federal Ministry for Economic Cooperation and Development (BMZ).

The Land Management Sector Project has chosen state land management as its *key topic of the year* for 2006, and has assigned BVVG Bodenverwertungs- und -verwaltungs GmbH to conduct a case study on the state land management of agricultural land in Ukraine. The study is meant to display the current management of SOAL, to point out its strengths and weaknesses, and to provide recommendations for managing SOAL transparently and effectively in the future.

Following an overview of the methodology used in this study and relevant background information (including information on the land reform in Ukraine), the study describes the current legal, institutional and organisational setting for the management of SOAL in Ukraine. This comprises the description of all major laws governing the use and management of SOAL, as well as an introduction to all the relevant institutions involved.

Subsequently, the status quo with regard to managing SOAL in Ukraine will be displayed, and the major findings within the scope of the study will be analysed.

The last chapter outlines recommendations for effective and transparent management of SOAL, including the option of privatising any agricultural land still in state ownership after completion of the land reform.

1.2 Methodology

The term *land management* can be defined as “*the process whereby the physical resources of land are put into good effect regardless of the fact that the land may be owned by the State, a legal entity or a private individual. It covers all activities concerned with the management of these physical resources including farming, mineral extraction, property and estate management, and the physical planning of towns and the countryside. It includes the development and management of utilities and services;*”

¹ OECD/World Bank (2004): “Achieving Ukraine’s Agricultural Potential”.

² Державний комітет України по земельних ресурсах (2005): Сучасний стан земельної реформи в Україні. Київ. [State Committee on Land Resources of Ukraine (2005): “The Status Quo of the Land Reform in Ukraine”. Kyiv.].

*the management of land resources such as forestry, soils or agriculture; the implementation of land-use policies; environmental impact assessment, and monitoring activities that affect good land use*³.

State land management can be defined as *“Matching the legal status of public property with land use and identifying the best land use options for sustainable development”*⁴.

Based on these definitions, the management of SOAL in the scope of this study can be understood as the *“effective organisation of the present and future sustainable use of agricultural land in state ownership which requires the existence of a sound policy for management of SOAL, a coherent legal frame and institutional setting as well as the implementation of effective management measures”*.

In order to assess how SOAL is currently managed in Ukraine, the study team (comprising two Senior International Experts, one Senior Local Expert and one Junior International Expert) prepared an extensive review of currently valid legislation and policy documents. In addition, the literature in this field was examined, including a review of studies and reports on land reform, land market development and agricultural sector assessment.

In a second step, interviews with governmental authorities and non-governmental organisations (NGOs) were conducted in Kiev, and three field trips lasting three to four days each were made to three different pilot regions, Poltava, Kharkiv and Mykolaiv (see sub-section 2.1).

The pilot regions were chosen according to their relevance for agricultural production and the amount of SOAL available in the region. An important factor for the selection was also the willingness of state authorities to provide information.

In the pilot regions, interviews were held with state authorities at the regional (oblast state administrations (OSAs)) and the district levels (rayon state administrations (RSAs)), as well as with representatives of the Departments and Divisions of Land Resources (DLR) under the State Committee of Land Resources (SCLR), the Center of State Land Cadastre (CSLC), municipalities, farmers' associations and different users of SOAL such as scientific academies, universities, private farmers and state-owned farms.

Two detailed questionnaires were drafted (see Annexes 18, 19) and sent to the interview partners in advance: the first for authorities dealing with state land management, and the second for farmers' representatives and users of SOAL. An annex listing the statistical data needed was attached to both questionnaires (see Annex 20).

Unfortunately, only two of the interview partners actually filled out the questionnaire, and therefore interviews were used to obtain the information asked in the questionnaires.

³ United Nations (2005): “Land Administration in the ECE Region. Development Trends and Main Principles”, New York and Geneva

⁴ Zimmermann, W. (2006): “Good Governance in State Land Management”, Presentation at Expert Meeting on Good Governance in Land Tenure and Administration, 25-27 September, FAO, Rome, Italy.

While NGOs and municipal representatives were willing to provide information and also allowed a critical view to be taken of the current situation of management regarding SOAL and related subjects, the state authorities sometimes seemed to provide only the official version concerning the procedure of management of SOAL or, in one case, were not willing to provide any information at all.

It was mostly impossible to access official statistical data. Much of the data and information described in the study was therefore derived from interviews with key technical persons, and still has to be validated by official statistical data. Therefore, all statistical records must be assessed carefully and their accuracy should not be overestimated.

2 Background Information

This chapter provides a brief overview of the geographical and administrative structure as well as some information on the agrarian sector of Ukraine, together with a brief summary of the status of land reform in Ukraine.

2.1 General Information

The territory of Ukraine covers an area of 603,700 km², making it the second largest country in Europe. About 95% of its surface forms part of the East European Plain. The remaining 5% of the surface area comprises the Carpathian mountains and the Panonian plain in the south-western part of Ukraine, and the Crimean mountains in the south.

The coastal region south of the Crimean mountains is very fertile. Because of its favourable climatic conditions, wine and fruit production is widespread⁵. The south and south-east of the country encompass extensive fertile black soil plains, but the north-west of the country suffers from low-quality agricultural land and furthermore is still negatively affected by the consequences of the Chernobyl nuclear disaster in 1986..

Box 1:
Administrative structure of Ukraine
Source: Derzhkomstat 2006⁶

Area of Ukraine:	603,700 sq km
Oblast:	24
Autonomous Republic of Crimea	
Municipalities with special status:	Kiev and Sevastopol
Rayons ⁷ :	490
Towns:	457
Townships:	885
Villages:	28,562
Village councils:	10,281
Population:	46.6 m
	(68% living in towns, 32% in villages)

Ukraine comprises 24 regions (*oblasts*), the Autonomous Republic of Crimea, and two cities with special status, Sevastopol and Kiev.

More than 40 m ha in Ukraine are classified as agricultural land (80% arable), and about 50% of agricultural land consists of rich black soil⁸.

The share of agriculture in GDP currently stands at around 10% of the total GDP of Ukraine (206,099 m UAH). Approximately 5.175 m people (25% of the Ukrainian population) are economically active in the agricultural sector. 3 m of these are engaged in so-called informal labour relations, i.e. they are mainly occupied with subsistence farming on their household plots⁹.

More than half of the agricultural output in Ukraine is produced on household plots¹⁰.

The regions visited in the scope of this study (Mykolaiv oblast, Poltava oblast and Kharkiv oblast) are situated in southern, central, and eastern Ukraine respectively.

⁵ Ibid.

⁶ Compiled from State Statistics Committee of Ukraine (2006): <http://www.ukrstat.gov.ua> and State Statistics Committee of Ukraine in respect of the All-Ukrainian Population Census 2001 (2006): <http://www.ukrcensus.gov.ua>.

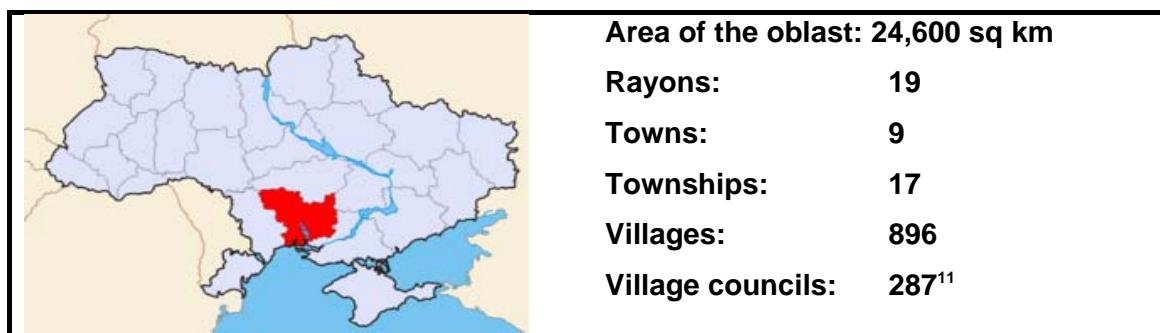
⁷ *Rayon* = district.

⁸ OECD/World Bank (2004): *Achieving Ukraine's Agricultural Potential*.

⁹ Household plots: "include individual or family households with land estates, forms of agricultural production when an individual or a family manufactures commodities to satisfy the family needs in foods or with other purposes". In: United States Agency International Development (USAID) (ed.) (2005): *Farm Reference Handbook for Ukraine*. Data taken from State Statistics Committee of Ukraine (2006): <http://www.ukrstat.gov.ua>.

¹⁰ Organisation for Economic Co-operation and Development and the Environmentally and Socially Sustainable Development Unit (OECD), Europe and Central Asia Region; World Bank (2004): *Achieving Ukraine's Agricultural Potential. Stimulating Agricultural Growth and Improving Rural Life*.

Mykolaiv oblast



Mykolaiv oblast has 1.2 m citizens, of which 67% live in cities and 33% in rural areas¹³.

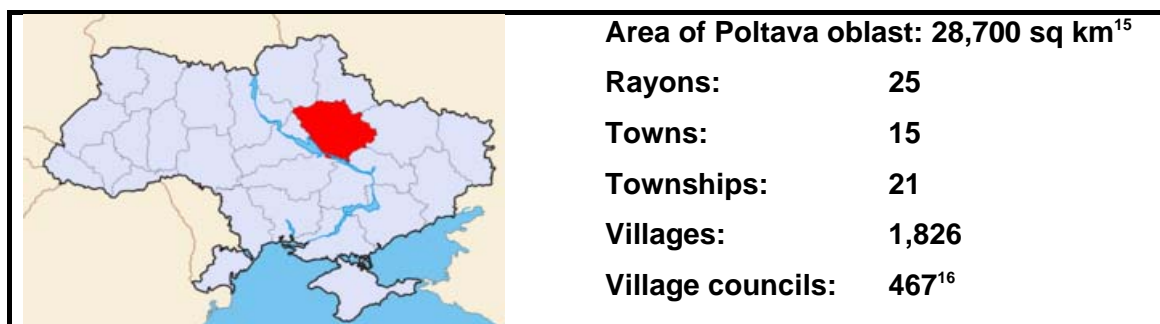
Agriculture is the second largest economic branch of the oblast, and the majority of its citizens are engaged in agricultural production, with 600 agricultural enterprises and about 4,300 private farms registered in the oblast¹⁴.

The total area of agricultural land in the oblast comprises 2.06 m ha, of which 1.7 m ha is considered as arable land. 193,000 ha are irrigated. .

Box 2: **Annual average crop production in Mykolaiv oblast¹²**

Annual average production in Mykolaiv:
Grain: 2 m tonnes
Sunflowers: 200,000 tonnes
Sugar beets: approx. 800,000 tonnes
Vegetables: 250,000 tonnes

Poltava oblast



In April 2006, 1.5 m citizens were registered in Poltava oblast, of which 60% live in cities and 40% in rural areas¹⁷.

¹¹ State Statistics Committee of Ukraine (2006): <http://www.ukrstat.gov.ua>.

¹² Mykolaiv Oblast State Administration (2006): <http://www.mykolayiv-oda.gov.ua/>.

¹³ State Statistics Committee of Ukraine in respect of the All-Ukrainian Population Census 2001 (2006): <http://www.ukrcensus.gov.ua>.

¹⁴ Cabinet of Ministers of Ukraine (2006): Mykolaiv oblast. http://www.kmu.gov.ua/control/uk/publish/article?art_id=82817&cat_id=31432.

¹⁵ Cabinet of Ministers of Ukraine (2006): Poltava oblast. http://www.kmu.gov.ua/control/uk/publish/article?art_id=84593&cat_id=31432.

¹⁶ Compiled from State Statistics Committee of Ukraine (2006): <http://www.ukrstat.gov.ua> and State Statistics Committee of Ukraine in respect of the All-Ukrainian Population Census 2001 (2006): <http://www.ukrcensus.gov.ua>.

¹⁷ Ibid.

**Box 3:
Crop production in Poltava oblast¹⁸**

Production in Poltava oblast (2005):
Grain: 2.9 m tonnes
of which: Maize: 1 m tonnes
Sugar beets: 1.5 m tonnes
Sunflowers: 287,500 tonnes
Soy: 85,700 tonnes

The agricultural sector forms a major part of the economy. Box 3 shows the main crop production of the oblast. Dairy production is a major production area in addition¹⁹.

533 agricultural enterprises and 1,527 private farmers have emerged since land reform began, whereby each private farmer farms on average 97.3 ha of arable land. Finally, 89 seed-producing enterprises are registered in the region²⁰.

In total, 2 m ha of land are used for agricultural purposes, 1.7 m ha of which as arable land.

Kharkiv oblast



In April 2006 Kharkiv oblast had 2.8 m registered citizens, 79% of which live in cities and 21% in rural areas²³. Only 8% of citizens are engaged in agricultural production²⁴.

2.2 Land Reform in Ukraine

Land reform in Ukraine started with the Resolution of the Verkhovna Rada (Ukrainian Parliament) "On Land Reform" of 18 December 1990, which declared all land in Ukraine subject to land reform beginning on 15 March 1991. According to the preamble of the Resolution, land reform is understood as a part of the large-scale economic reform in Ukraine related to the shift towards a market economy. The task of land reform is described as the redistribution of land with simultaneous transfer of land into collective and private ownership as well as for the use of enterprises and organisations with the purpose of a) creating conditions for equal development of all economic activities using land, and b) securing the rational use and protection of the land.

Restitution of land within the scope of land reform was not considered to be an option²⁵.

¹⁸ Ibid.
¹⁹ Poltava Oblast State Administration (2006): <http://www.adm-pl.gov.ua/ua>.
²⁰ Ibid.
²¹ Cabinet of Ministers of Ukraine (2006): Kharkiv oblast. http://www.kmu.gov.ua/control/uk/publish/article?art_id=82213&cat_id=31432.
²² State Statistics Committee of Ukraine (2006): <http://www.ukrstat.gov.ua>.
²³ State Statistics Committee of Ukraine in respect of the All-Ukrainian Population Census 2001 (2006). <http://www.ukrcensus.gov.ua>.
²⁴ Kharkiv Oblast State Administration (ed.) (2005): Kharkivska oblast. <http://www.kharkivoda.gov.ua/region/>.

The following sub-sections will focus on the redistribution of agricultural land within the scope of land reform.

2.2.1 Pre-reform Structure of Land Use

All agricultural land before the land reform was state-owned and distributed between two major groups of land users: collective farms (*kolkhozes*) and state farms (*sovkhoses*). While within collective farms all outputs and assets were collectively owned by its members, the latter receiving a share of farm income as their personal income, state farms were state-owned agricultural enterprises, in which output and assets belonged to the state, and employees received fixed salaries. Both collective and state farms held user rights for SOAL.

In April 1985 collective farms occupied 35.88 m ha of SOAL (including 24.00 m ha of arable land, 0.40 m ha of perennial plantations, 1.50 m ha of hayfields and 3.20 m ha of pastureland), and state farms 11.57 m ha (including 7.53 m ha of arable land). Another 2.54 m ha were also used by non-agricultural enterprises in order to carry out supply farming²⁶ and by citizens²⁷.

2.2.2 Land Reform: Major Steps

1990-1992

In the period 1990-1992, the principal legal basis for land reform was created with the Land Code (LCU) of 1990 (see Chapter 3). Laws passed at this stage initiated the land reform process. However, they soon became outdated and subject to revision and amendment.

The creation of private farms was permitted in 1990. The Government initiated a programme to establish private farms²⁸, thereby supporting the development of those private individual farms that still exist today.²⁹

1991-1994

Within the period 1991-1994 an inventory of land was carried out, and the so-called Reserve Fund³⁰ was created using 12% of the agricultural land formerly used by collective and state farms (in total 3.3 m ha of agricultural land). Land from this Reserve Fund was meant to be distributed to Ukrainian citizens (i.e. those living and working in rural areas) for purposes of gardening, housing, "personal peasant farms"³¹,

²⁵ No legal act concerning Ukrainian land reform refers to any form of restitution.

²⁶ Supply farms are defined as farms organised by non-agricultural enterprises and organisations to meet the needs of these enterprises and organisations and their employees in terms of agricultural goods.

²⁷ Report on the Availability and Use of Land in the Ukrainian Soviet Socialist Republic as of 1 November 1985, approved by Resolution of the Soviet of Ministers of UkrSSR of 1 April 1986, No 114.

²⁸ Private farms can be classified as small farms (USAID Ukraine (2005): "Farm Reference Handbook for Ukraine".)

²⁹ OECD/World Bank (2004): "Achieving Ukraine's Agricultural Potential".

³⁰ The LCU 2001 stipulates the creation of the reserve fund consisting of up to 15% of land subject to gratuitous privatisation (cf. Art. 25(9,10) LCU and Section IX (4e) LCU). The current share of land attributed to the reserve fund is 12%: State Committee on Land Resources of Ukraine (2006): http://www.dkzr.gov.ua/terra/control/en/publish/article.jsessionid=BF07547E801C60ED829E7A5DD9742E EB?art_id=37841&cat_id=36139.

³¹ According to the editor of the English translation of the LCU, a personal peasant farm is a new form of farm organisation (an expanded household plot) which was invented by the authors of the LCU.

recreation, etc. (this was also referred to as the distribution of household plots to households).

1995-1999

Between 1995 and 1997 the conversion of collective farms into so-called collective agricultural enterprises (CAEs) and the introduction of collective ownership with a mass transfer of SOAL into the collective ownership of CAEs (26.7 m ha in all³²) took place³³. According to the concept of collective ownership, the land belonged to groups of owners on the basis of “collective ownership”, but the subjects of “collective ownership” (quasi land title holders) were CAEs. It hardly needs to be stressed that the concept of “collective ownership” was not suitable for overcoming the weaknesses of Soviet-era structures concerning land distribution. In fact, it was barely more than a new title for an old structure.

At the same time, a Decree by the President of Ukraine in 1995³⁴ allowed land transferred into collective ownership to be shared among “collective owners”. The distribution of land shares started in 1996 and had mostly been completed by 1998. As a result, CAE members were given “land certificates” confirming the right of allocation of a land plot of a certain size. Citizens working in rural areas who were not members of CAEs received household plots (see above).

1999-2005

In December 1999 Presidential Decree 1529/99 “On Immediate Measures for Speeding up Reforming of the Agricultural Sector of the Economy” restructured CAEs into agricultural enterprises of a new type, built upon private ownership of assets and land. By the end of 2000, practically all collectively owned land had become privately owned through the issuing of land certificates, the average size of land shares being 4.2 ha³⁵. Most private owners leased back their land shares to the CAEs from which they received their shares.

Shortly afterwards the process of land titling, i.e. the transfer of land certificates to land titles for a defined parcel of land, commenced, but has still not yet been completed³⁶.

³² Center of Land Reform Policy in Ukraine (2005): “Ukraine: Effective Land Resources Management at the Local Level”, Kiev.

³³ President of Ukraine (1994): “Decree on Immediate Measures for Speeding up Land Reform in the Sphere of Agricultural Production”, 10 November.

³⁴ President of Ukraine (1995): “Decree on the Procedure for the Sharing of Land Transferred into Collective Ownership of Agricultural Enterprises and Organisations”, 8 August, No 720/95.

³⁵ OECD/World Bank (2004): “Achieving Ukraine’s Agricultural Potential”.

³⁶ In order to facilitate this process, the World Bank launched the “Rural Land Titling and Cadastre Development Project”. In parallel, a USAID project (the Ukraine Land Titling Initiative) aims at issuing 1.8 m land titles.

2.2.3 Results of the Land Reform

During the period 2000-2005, 30.3 m ha of agricultural land, including 27.7 m ha of land for agricultural commodity production, were transferred into private ownership at no charge³⁷ (see Annexes 5 and 6). This created approximately 46,600 private farms and around 18,000 non-state agricultural enterprises³⁸. At present 6.79 m citizens (out of 6.91 m entitled) have received a land certificate as result of the land-sharing of former collective farms, and about 5.7 m of these have already received land titles³⁹.

Besides privatising land for the production of agricultural commodities (by distributing land shares), 16.4 m land plots with a total area of 3.6 m ha were allocated to 11.7 m Ukrainian citizens for various purposes (see sub-section 2.2.2 on the previous period 1991-1994). So far, only 3.7 m land titles have been issued for this category of land users.

Although the majority of agricultural land has been turned into private hands, this land has not yet become a marketable object, since the selling of agricultural land in private ownership is prohibited by law (Section X 15 LCU 2001). Originally this moratorium on land sales was only valid until 2005, but this deadline has since been extended until January 2007 through amendments to the LCU.

On 3 August 2006 a signed Universal of National Unity (signed by the President, Prime Minister and Leaders of Parliament) provided for the introduction of a fully fledged land market for agricultural land no later than 1 January 2008. This can be interpreted as consensus in respect of a further prolongation of the moratorium on land sales for another year.

³⁷ Center of Land Reform Policy in Ukraine (2005): "Ukraine: Effective Land Resources Management at the Local Level", Kiev, p. 19; Державний комітет України по земельних ресурсах (2005): Сучасний стан земельної реформи в Україні. Київ. [State Committee on Land Resources of Ukraine (2005): The Status Quo of the Land Reform in Ukraine. Kiev]; unpublished official data.

³⁸ Unofficial data collected during the study.

³⁹ State Committee on Land Resources of Ukraine (2006): http://www.dkzr.gov.ua/terra/control/en/publish/article;jsessionid=BF07547E801C60ED829E7A5DD9742EEB?art_id=37841&cat_id=36139.

3 Legal Framework

Following the decision of the “First All-Ukrainian Congress of Radas” from 12 December 1917 and the Land Codes of the Ukrainian Soviet Socialist Republic (UkrSSR) of 1920 and 1970, all land was owned by the state⁴⁰. As a consequence, in 1990 there was no privately owned land in Ukraine. In 1991 Ukraine gained independence. As a successor of the rights and obligations of the UkrSSR, it acquired ownership in respect of all lands within its borders⁴¹. After independence, the ownership pattern of land started to change from 1991 onwards, as already described in sub-section 2.2. Different patterns of ownership in respect of land resources were established on the grounds of the Resolution of the Parliament “On Land Reform” (18 December 1990), the LCU (1990) and the Law of Ukraine “On Patterns of Ownership in Respect of Land” (30 January 1992). Guaranteed property rights on land are confirmed in Article 14 of the Constitution of Ukraine passed in 1996.

According to Articles 2(1) and 2(2) of the 2001 LCU⁴², land relations are defined as “social relations with regard to the possession, use and disposal of land”. These land relations cover citizens, legal entities, local self-government bodies and state institutions (also see Article 13 of the Constitution of Ukraine).

The main laws and regulations governing land relations in respect of the utilisation and management of SOAL in Ukraine at the present stage will be described in the following sub-sections. A detailed list of laws and regulations governing land relations in Ukraine can be found in Annex 14.

3.1 The Land Code of Ukraine of 25 October 2001

The 2001 LCU is the key law in respect of land relations. Besides listing the objectives and principles of land legislation, it also comprises inter alia provisions ruling the competencies of state legislative bodies and state administrations, as well as the distribution of its assignments. Furthermore, it contains provisions regulating the classification of land ownership rights, the right to use land, limitations on the right to land, the disposal of land plots, and the resolution of land disputes.

The LCU recognises private, communal, and state ownership (Art. 78(3) LCU). All land, except land in communal and private ownership, is state-owned (Art. 84(1) LCU). Land in communal (municipal) ownership is land within the boundaries of settled areas, except for privately or state-owned land (Art. 83 LCU). The ownership rights of the state are exercised by relevant bodies of state power, while those regarding land in communal ownership are exercised through local self-government bodies (Art. 80 LCU).

In this context it must be mentioned that the division of land into state ownership and municipal ownership through allocation to either of the two administrative levels was de facto never executed. Therefore, the separation of responsibilities between the two

⁴⁰ Decree on Land of 26 October (8 November) 1917, adopted at the Second All-Russia Congress of Radas. This Decree cancelled private ownership for land and converted all land into state property. The Decree became applicable in the UkrSSR according to the decision of the First All-Ukrainian Congress of Radas which took place December 12, 1917. The UkrSSR Land Codes of 1920 and 1970 also declared all land to be state property.

⁴¹ Law of Ukraine on the Succession of Ukraine of 12 September 1990.

⁴² The 2001 LCU can be found in: VERKHOVNA RADA (2001):

Land Code of Ukraine: [ukr.] <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2768-14>.

administrative bodies lacks clarity. From a strictly legal point of view, communal ownership is effectively non-existent.

The LCU stipulates that the management of SOAL is an exclusive task of the RSAs (Art. 149(5) LCU). At the same time, a provisional regulation (Section X (12) LCU) makes the RSAs responsible for managing state land located outside settlements and local administrations' state land within the boundaries of settlements. Reading the two provisions together shows the temporary separation of competencies between the RSAs and the municipalities, which in practice leads to the management of SOAL through municipalities when land lies within the boundaries of settlements, and through RSAs when land is located outside settlements. However, the precise boundaries of settlements are often not yet defined.

Box 4: The main provisions of the LCU that govern the management of SOAL, or have to be observed when managing SOAL

According to the Article Arts 17, 20, 25, 116, 118, 122, 123, 124, 127, 128, 149 and 151 of the LCU, the RSAs are responsible for the management of SOAL. Their competence comprises the following:

- to dispose of SOAL (Art. 17);
- to change the purpose of use (Art. 20)⁴³;
- to take decisions on the privatisation of land used by state agricultural enterprises (Art. 25);
- to transfer land parcels to citizens within the course of gratuitous privatisation (Arts 116, 118);
- to allocate land parcels for permanent use by state and municipal agricultural enterprises (Arts 122, 123);
- to lease out land parcels to agricultural enterprises, farmers and citizens (Arts 92, 124);
- to sell land parcels to persons entitled to acquire plots of land for purposes of agricultural use (Arts 127, 128);
- to take land parcels back from permanent users (Arts 149, 151).

Land for “purposes of agricultural use” is, according to the classification of land provided in the LCU, land granted for the production of agricultural products, conducting of agricultural scientific research and training activities, the placing of relevant production infrastructure, or land designated for these purposes. This also includes farm roads, trails, field shelter belts and – with some restrictions – other protective plantings (Art. 22 LCU).

The LCU foresees four ways of dealing with SOAL: lease, permanent use, sale as well as gratuitous privatisation within the scope of land reform. The latter has already been explained in sub-section 2.2; the next sub-section describes the provisions of the LCU regarding the permanent use, lease and sale of SOAL.

⁴³ For details regarding the procedure of changing the purpose of use, see Annex 17.

3.1.1 Lease

The lease of land is defined as the contractually based, time-limited right to possess and use a plot of land for a stipulated purpose, in order to carry out entrepreneurial or other activities (Art. 93(1) LCU). A land lease contract for one to five years is considered a short-term contract, while a contract with a period between 5 and a maximum of 50 years is considered to be a long-term lease contract (Art. 93(3) LCU). SOAL can be leased out to any natural person or legal body if there is in some way a commitment to agriculture or agricultural production (Art. 22(3) LCU). Possible leaseholders include Ukrainian citizens, citizens with foreign or no citizenship, national and international agricultural enterprises, national agricultural scientific and research institutions and educational establishments as well as non-agricultural enterprises⁴⁴. SOAL can be leased out upon the decision of the respective executive power body (RSA) or local self government body (Art. 124 LCU). Relations with regard to lease of land are regulated by the “Law on Lease of Land” (LLL) (see sub-section 3.2).

The lease rent of SOAL shall be revised in a three-year period in a manner decided upon by the parties or defined by law (Art. 23(1) LLL).

3.1.2 Permanent Use

Permanent use, which can also be translated as “perpetual use”, is the right to possess and use communal or state-owned land without an established time limit. The permanent user is obliged to pay land tax, but is not bound to pay any lease rent. Following the LCU, the permanent use of SOAL and communally owned land is reserved for state or communally owned enterprises, institutions and organisations⁴⁵.

At an early stage of land reform, before the distribution of land shares became effective and before the LCU was amended, workers of collective farms had the option to leave their collective farms in order to build up their own private farm business. They were granted up to 50 ha of the collective farm for permanent use. Although according to the new LCU (2001) both agricultural enterprises and private sector farms do not belong to

⁴⁴ Art. 22(3), 93 LCU: Possible tenants are:

- commodity producers or subsistence farmers, institutions/establishments dedicated to agricultural science, research and/or education;
- natural persons if the purpose of use is personal truck farming, gardening, mowing and pasturing, running a personal peasant farm as well as organising the production of agricultural commodities;
- adult citizens of Ukraine with the necessary level of professional skills as attested by a commission comprised of representatives of local state administrations, local governments, farmers' associations and private landowners in Ukraine and NGOs for farming - Arts 22, 31 LCU, Arts 1, 5, 6 of the Law of Ukraine “On Farming“;
- non-state agricultural enterprises (including Ukrainian and foreign companies, joint ventures for carrying out agricultural commodity production) – Art. 22 LCU;
- non-agricultural non-state enterprises, establishments, organisations (including religious organisations, civic organisations, etc. for carrying out supply farming) – Art. 22, 37 LCU.

⁴⁵ Art. 22, 24, 92 LCU. This includes:

- agricultural enterprises (for production of agricultural commodities);
- 3rd/4th level agricultural educational establishments (universities, academies, vocational schools with an agrarian profile for experimental and educational purposes, for promoting advanced experience of agriculture, and for assisting farming);
- primary educational establishments (schools providing a general education for educational purposes, for the promotion of advanced experience of agriculture, for assisting farming);
- scientific, research and experimental establishments and organisations (academies of science, scientific and research institutes, etc. for experimental and educational promotion of advanced agricultural experiences, for producing agricultural commodities and assisting farming).

the beneficiaries of SOAL in permanent use⁴⁶, there has been no attempt to reclaim land in permanent use from these groups and to issue lease agreements instead. While at first a transitional provision ruled that private agricultural enterprises and farms with land in permanent use should buy or lease the respective parcels (Section X (6) LCU), and some permanent land users were forced to do so, later on in September 2005 the Constitutional Court of Ukraine rescinded this transitional provision for violating the constitutional right to land. Since then no other legislative attempt to adjust the recent legal situation of land under permanent use for private enterprises or organisations has been made.

Systematic non-payment of the land tax for land in permanent use, bankruptcy of an enterprise or not using the land according to the purpose it was granted for entitles the responsible state or municipal body to withdraw land from the user (Art. 141 LCU). Valuable land in particular may be reclaimed for public needs if the issue meets particular legal requirements (Art. 150 LCU).

3.1.3 Sale

Land, which is recognised as a fundamental national wealth in general, and agricultural land particularly so, enjoys a special legal protection regime. Agricultural land for the purpose of commodity production can only be purchased by Ukrainian citizens with an agricultural education, or with experience in agriculture, or who are producing agricultural commodities, as well as by domestic legal entities (companies set up by Ukrainian citizens) whose statutory documents envisage agricultural production (Arts 22(4), 82(2) and 130(1) LCU). Ukrainian affiliates of foreign companies as well as joint ventures are not entitled to purchase agricultural land. In case such entities acquire property rights to a parcel of agricultural land (as a gift or inheritance), they are obliged to sell the parcel within a year (Art. 82(3) LCU).

Due to the moratorium on land sales (Sect. X (15) LCU), agricultural land in private ownership cannot be subject to transfer of ownership on a contractual base until 1 January 2007. As the moratorium does not apply for SOAL, for the period up to 1 January 2015, Ukrainian citizens and domestic legal entities can purchase up to 100 ha of SOAL (Sect. X. No 13 LCU).

Priority purchase-rights are given to a prospective buyer who, as a Ukrainian citizen, resides permanently in the territory of the respective rada⁴⁷ where the land plot for sale is located (Art. 130(2) LCU).

Although in general the sale of state-owned land plots should be carried out on a competitive basis (auction/tender) (Art. 127(2) LCU), there is as yet no Ukrainian law on land auctions (according to the Closing Provisions of LCU, this should have been adopted a long time ago). Thus all land auctions taking place in Ukraine are not fully legal.

⁴⁶ Instead, members of private farms are entitled to receive a land plot equal in size to that of the land share of members of agricultural enterprises located on the territory (Art. 32 (1)).

⁴⁷ According to the procedure for resolving issues related to the administrative and territorial division of UkSSR (passed by the Supreme Soviet in 1981), the rada was a unit of administrative and territorial division; boundaries of the radas do not coincide with the boundaries of settlements where the radas themselves (as bodies of local government) are located.

3.2 Law on Lease of Land (LLL) of 6 October 1998

The LLL provides regulations for leasing land in all categories. It defines the rights and duties with regard to the respective parties, and builds the legal framework for their relationship. The provisions of the LLL are fully applicable to the lease of SOAL. The leasing procedure comprises the following steps:

- An interested party submits its application to the RSA with the request for a land parcel to be allocated in order to produce agricultural commodities (Art. 16(1) LLL). (Regarding the procedure of leasing out land, neither the LLL nor the LCU provide detailed regulations. In practice, the procedures for allocating land parcels for permanent use as described in Arts 122, and 123 LCU are applied; see next bullet point);
- If the boundaries of the parcel are defined and there is no change in use, the Head of the RSA takes a decision on whether to lease the parcel. This decision forms the basis for the conclusion of the lease contract. If the boundaries of the parcel are not defined or subject to any change and/or if the use or purpose of the parcel is to be changed, the Head of the RSA gives permission for the development of the so-called Project for Organisation of the Use of Land (POUL)⁴⁸. If the POUL is approved by all bodies involved, the Head of the RSA may take a decision on leasing out the parcel;
- If more than one applicant applies for the same parcel of land, its allocation shall be realised through a land auction (Art.16 LLL). (The procedure for auctions shall be ruled by legislation (Art. 137(5) LCU), yet nevertheless a respective law is still missing; see sub-section 3.1).

The level of rent is defined by the agreement of the parties (Art. 21 (2) LLL). In case SOAL is leased, the rent shall not be lower than the land tax or higher than 10% of the normative value⁴⁹ of the land parcel. In case a land parcel is leased out in the course of an auction, the lease rent may exceed the 10% rate (Art. 21 (4) LLL).

⁴⁸ Within this complex procedure, the interested person needs to conclude a contract with a land surveyor for the development of a POUL “for allocation of a land parcel” or “for change of use purposes”. This POUL shall be agreed upon by the rayon division for land resources, for environmental protection, the rayon sanitary and epidemiology station, the rayon division of town planning and architecture, and the rayon body for the protection of cultural heritage. For further information with regard to the POUL, see Annex 17.

⁴⁹ According to the procedure for the monetary normative valuation of land of agricultural use/purpose and of settlements approved by the Joint Order of the State Committee of Ukraine on Land Resources, Ministry of Agrarian Policy of Ukraine, Ministry of Construction, Architecture and Housing Complex, Ukrainian Academy of Agrarian Sciences No 18/15/21/11 dated 27 January 2006:

The calculation of the normative value of land for agricultural uses (hereafter ‘land’) is based upon rental income, which is generated by the production of grain crops and defined according to data of economical evaluation of land done in 1988. Under conditions of inflation rental income shall be calculated in natural units (in centner of grain); to define its monetary value, it shall be recalculated monetarily according to current prices valid at the date of evaluation. “Normative value” is defined as the multiplication of annual rental income by the term of its capitalisation (33 years). This is applied to arable land, perennial plantations, pastures and hayfields (though special factors are applied). The average normative value of agricultural ground for the whole of Ukraine is UAH 8,733.2 per ha, and for arable land UAH 9,204.8. Normative value of arable land in regions: Cherkassy – UAH 11653.6; ARC – UAH 10814; Donetsk – UAH 10201.4; Poltava – UAH 10158.3; Kherson – UAH 10127 per ha of arable land.

Source: State Committee on Land Resources of Ukraine (2005): “The Status Quo of the Land Reform in Ukraine”. Kiev.

3.3 Law on Payment of Land of 3 July 1992

According to the 1970 LCU of the UkrSSR, land use was free of charge. In 1992 the “Law on Payment of Land” (LPL) put an end to this surviving relic of Soviet times. Today permanent users have to pay land tax if they want to use SOAL, while tenants paying rent. The rate of tax to be paid is defined in Art. 6 LPL:

- for arable land, hayfields and pastures: 0.10% of the normative value of land;
- 0.03 % of the normative value for perennial plantations

Ukrainian experimental farms (e.g. scientific and research institutions), educational establishments with an agricultural profile and vocational schools as well as newly created farms for the initial period of three years are exempt from paying land tax (Art. 12 LPL).

Moreover, the following categories of areas are exempt from taxation: radioactively polluted agricultural grounds; chemically polluted agricultural grounds in respect of which limitations and restrictions of agricultural production are applied; lands in preservation or in the stage of agricultural claiming; land of state-owned seed-trial stations and seed-trial stripes used for testing seeds; land of state and collective agricultural enterprises and of farmers with young gardens and vineyards until the period of fructification and for parcels with hybrid plantations, gene pool collections and seed-plots of perennial fruit plantations.

The lease rent is adjusted annually according to the inflation rate with the help of a special coefficient (Art. 23(2) LPL)

3.4 Law on Fixed Agricultural Tax of 17 December 1998

The Law on Fixed Agricultural Tax (LFAT) will stay effective until 31 December 2009.

The Fixed Agricultural Tax (FAT) can be understood as a sort of subsidy supporting agricultural commodity producers by granting tax relief. By paying FAT, beneficiaries are exempt from paying the following itemized taxes:

- Value-added tax (VAT)
- Land tax
- Tax from owners of means of transport
- Communal tax
- Geology research and exploration performed on account of budget funds
- Trade patent (= to carry out trade activities).
- Special use of water.

The FAT is directed into the local budgets of territories where the land is located (Art. 6 LFAT). State tax administrations register as “agricultural commodity producers” all agricultural enterprises of any legal form acknowledged by Ukrainian law, personal peasant farms and other farms including fishing enterprises⁵⁰, provided that more than 75% of their gross income of the previous year resulted from the sale of self-produced agricultural goods (Art. 2 LFAT). With reference to the amount of taxpayer land used

⁵⁰ Fishing enterprises if the fish are bred and caught in inland waters.

for agriculture, the FAT is calculated on the basis of the normative value of this area. The rates are stipulated as follows (Art. 4 LFAT):

- for arable land, hayfields and pastures: 0.15 % of the normative value;
- for perennial plantations – 0.09 % of the normative value;
- for water fund lands used by fishing enterprises for breeding, growing and fishing in inland waters – 0.45 % of the normative value of arable land established in the respective oblast.

4 Institutional Setting

The LCU provides extensive regulations concerning the competencies of different state bodies (e.g. the Parliament of Ukraine and the Cabinet of Ministers), local executive bodies (OSAs and RSAs) and local representative bodies (e.g. village, town and city councils) with regard to state land management. Responsibilities are separated between the different bodies according to the pattern of ownership (state-owned or municipal), the location of the land (e.g. within or outside village or city boundaries), the categories of the land, and its special features. Below the main institutions involved in the management of SOAL are described.

Oblast state administrations (OSAs)

The OSAs are led by the respective governors of the oblasts (appointed by the President of Ukraine⁵¹). Each OSA consists of various departments, such as the Departments of Agricultural and Industrial Development, Finance, Transport and Communications, the Economy, etc. In principle the different departments act as local agencies of the respective ministries at the state level and are subordinate to them. The OSAs are not actively involved in the management of SOAL, but nevertheless have monitoring and supervising functions.

Rayon state administrations (RSAs)

The RSAs are the institutions most actively involved in the management of SOAL outside the boundaries of settlements, i.e. where most of the agricultural land is found. The RSAs are subordinated to the OSAs and comprise various divisions (e.g. divisions of the economy, agriculture, town planning, treasury, etc.).

The Head of each RSA (appointed by the President of Ukraine) takes decisions on the allocation of SOAL through permanent use, lease, sale or – within the scope of land reform – granting ownership at no charge. Various divisions of the RSAs are involved in the process of management by delivering recommendations and preparing necessary documentation, etc. Lease contracts and decisions on the allocation of SOAL are signed by the Head of each RSA.

Local government bodies

Municipalities are entitled to manage all agricultural land that is in communal (municipal) ownership. Since a separation between state and communal land, as stipulated by the LCU and the Law of Ukraine “On Demarcation of State and Municipal Land”, has not yet taken place, meaning that all land (except for privately-owned land), is still in state ownership, a provisional regulation foresees that municipalities should manage SOAL within the boundaries of settlements (see sub-section 3.1).

Decisions on the lease or sale of SOAL or the granting of SOAL for permanent use within village boundaries are taken by the village council.

⁵¹ Schneider, E. (2005): *Das politische System der Ukraine. Eine Einführung*. Wiesbaden.

Rayon tax offices (RTOs)

The RTOs are the local divisions of the oblast tax offices (OTOs), which are subordinate to the State Tax Administration. While payments of land tax and lease are directly paid to the Rayon Division of the State Treasury, information on payments is delivered to the RTOs (by the lessees or permanent users). The RTOs check the amount and timely manner of payments.

State Committee on the Land Resources of Ukraine (SCLR)

The SCLR plays a significant role in all aspects of land use and land management and, regarding its importance as a state body, is comparable with the central level ministries (although the Head of the SCLR, although appointed by the President of Ukraine, is not a member of the government). He or she is also the State Chief Inspector for Control on Use and Protection.

The SCLR is responsible for bundling and processing all data regarding land use.

Box 5: Tasks and competencies of the SCLR
Source: Cabinet of Ministers of Ukraine, official webpage⁵².

1. Coordination and implementation of the land reform:
 - Securing conditions for the equal development of all forms of land ownership and land use;
 - Organising tasks regarding the “de-nationalisation” of land;
 - Supporting the process of transforming share certificates on land into ownership titles on land;
 - Supporting the development of private farms.
2. State control on land use and protection:
 - Land monitoring;
 - Developing and implementing state and regional programmes for the rational use and protection of land, for increasing soil fertility, for improving the natural environment, and setting up mechanisms and defining steps for the implementation of these programmes;
 - Implementing land consolidation.
3. Management of the state cadastre and land registry⁵³
 - Building up of a unified cadastre and land registry.

Subordinated to the SCLR are:

- Main departments on land resources at the oblast level and the Committee on Land Resources of the Autonomous Republic of Crimea (ARC);
- Kiev and Sevastopol city main departments on land resources;
- Rayon divisions on land resources;

⁵² Cabinet of Ministers of Ukraine (2006): “About SCLR”.

http://www.kmu.gov.ua/control/uk/publish/article?art_id=159002&cat_id=43161.

⁵³ Discussions on whether to have a unified state cadastre and land registry have not ended. According to the government’s latest decisions, it is likely that the land register will be subordinated to the Ministry of Justice. The SCLR is still struggling to combine land cadastre and land registry in one system.

- Town departments on land resources (in some towns).

The SCLR also includes the State Inspection for Control on Use and Protection of Land, which was created in December 2002 (territorial divisions of the Inspectorate were only created at the end of 2005). Nowadays, the Inspectorate consists of the central office in Kiev and regional offices in oblasts, in the ARC, and in Kiev and Sevastopol.

The SCLR comprises the “Centre of State Land Cadastre”, a state enterprise entrusted with the task of compiling and keeping cadastral and land registry data. It comprises:

- a central office in Kiev;
- regional departments in the ARC and oblasts (24);
- Kiev and Sevastopol city departments;
- 665 local offices, including 557 registration offices (at rayon level and in towns).

Divisions of land resources

The local divisions of land resources have numerous tasks as defined by the Resolution of the Cabinet of Ministers of Ukraine dated 24 February 2003.

In the context of the management of SOAL, their tasks are:

- to carry out a monetary valuation of land plots in reference to the normative value of land⁵⁴;
- to prepare and issue land titles;
- to register land plots;
- to conduct land monitoring;
- to help allocate SOAL (together with the divisions of RSAs);
- to take part in the organisation and carrying out of land auctions;
- to define starting prices for land auctions;
- to make sure that surveyors observe licence conditions;
- to take part in the drafting and implementation of state programmes for the protection and effective use of land.

State Inspection for Control on Use and Protection of Land (SICPL)

SICPL monitors the use of land according to its designated purpose, and fines users where land is being utilised illegally. SICPL controls the legality of land use and proposes that illegally seized land plots revert to the RSAs and local bodies of self-government. It submits information on any violations of the (land) law to the local offices of the Public Prosecutor, which can lead to criminal prosecution.

⁵⁴ For a definition see sub-section 3.2.

Oblast and rayon cadastre offices

Within the scope of SOAL management, the cadastre offices register land parcels, land titles and lease contracts. They keep current cadastral plans, and provide state bodies and branches of local self-government, enterprises, organisations, establishments and citizens with necessary cadastral information. Furthermore, they keep records of the quantitative and qualitative properties of land resources and perform various types of land surveying, land engineering and geodetic work.

Figure 1 shows the structure of SCLR and its subordinated institutions.

Other state and local representative bodies

Parliament of Ukraine (Verkhovna Rada)

Though the Parliament of Ukraine is involved in the management of state-owned agricultural land, it does not have extensive powers. It can approve the alienation of state-owned land to foreign states and foreign legal entities⁵⁵ (Art. 129(1) LCU). It also decides on cases of removal (with regard to permanent users, tenants) or buyout (with regard to owners) of “especially valuable lands” (Art. 150(2) LCU).⁵⁶

Cabinet of Ministers

The Cabinet of Ministers has to approve any removal of arable land and perennial plantations from “permanent land users” for non-agricultural purposes.

City councils of Kiev and Sevastopol

The city councils are entitled to manage municipal lands within the boundaries of settlements. In practice, until a strict demarcation of state and municipal land has been made, the city councils are entitled to manage all state-owned land within their city boundaries, which can also comprise agricultural land.

⁵⁵ Since agricultural land according to the LCU may not be sold to foreign citizens or legal entities, this provision has no influence on the management of SOAL.

⁵⁶ “Especially valuable land” is a category of land with exclusive properties, and is listed in Art. 150(1) LCU.

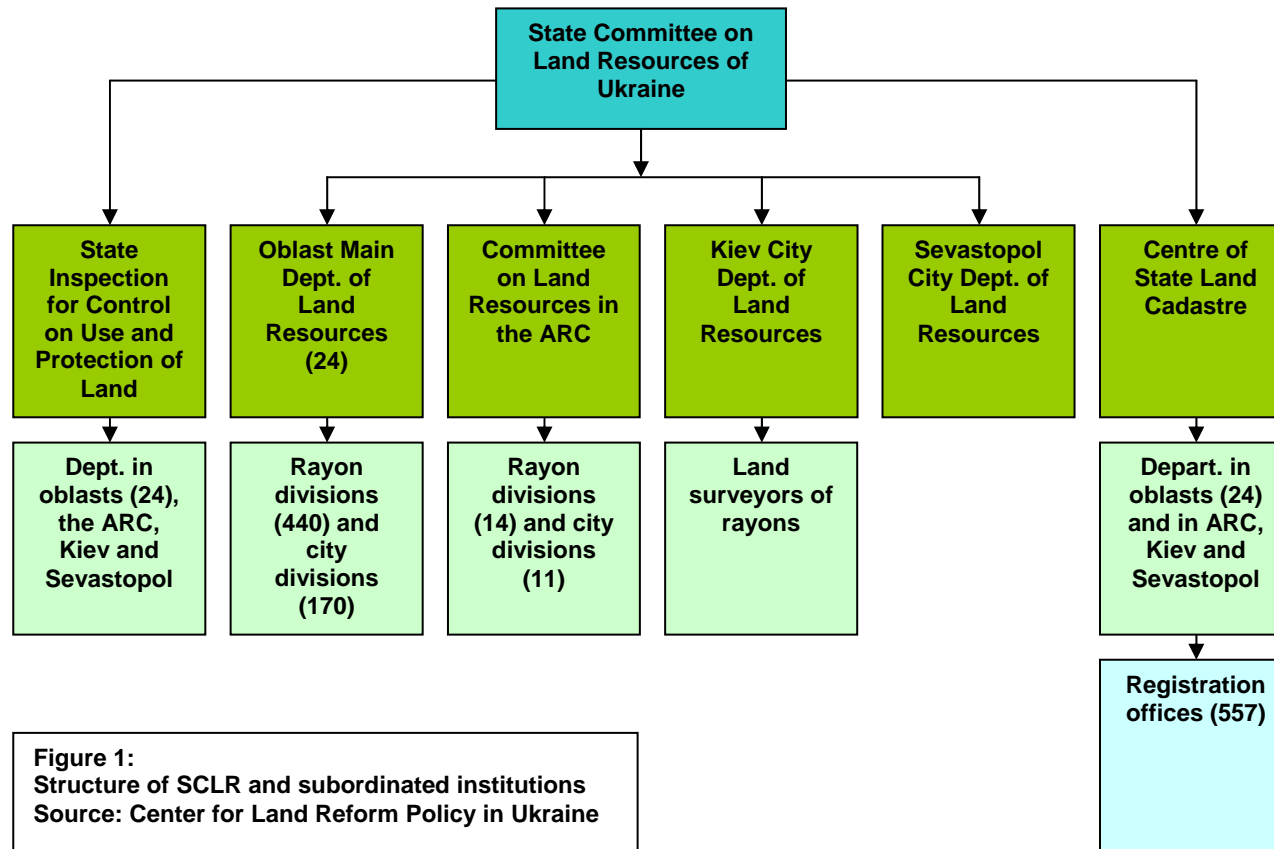


Figure 1:
 Structure of SCLR and subordinated institutions
 Source: Center for Land Reform Policy in Ukraine

5 Management of State-owned Agricultural Land in Ukraine

To highlight the relevance of SOAL management, this chapter starts with an analysis of the statistical records accessed during this study. It continues with a description of the current state of management of SOAL, focusing on three main administrative tools: the distribution of SOAL into permanent use, and the leasing and selling of SOAL.

As mentioned in sub-section 1.2, all statistical data must be interpreted with some caution. All data were received on an informal basis and originate from different sources. Furthermore, complex and at times incomplete databases were provided by interview partners, including data on numerous groups of land users, modes of land use and different categories of land, all of which may have been subject to misinterpretation.

5.1 Analysis of Statistical Records

In Ukraine, 29.59 m ha⁵⁷ of land are still in state ownership, which adds up to 49% of the total area of Ukraine. 11.37 m ha⁵⁸ of this state-owned land are classified as land for agricultural use, which equals approximately 25% of the total agricultural land of Ukraine.

The following diagram shows the distribution of SOAL in permanent use, leased, and in common use (for public purposes within the boundaries of settlements)⁵⁹. It also shows the amount of SOAL of the reserve fund, the land in stock⁶⁰ and SOAL within the boundaries of settlements not in permanent use or leased out, in its total described by the study team as the “reserve pool of SOAL”⁶¹. No data could be obtained on how much SOAL was sold in 2005.

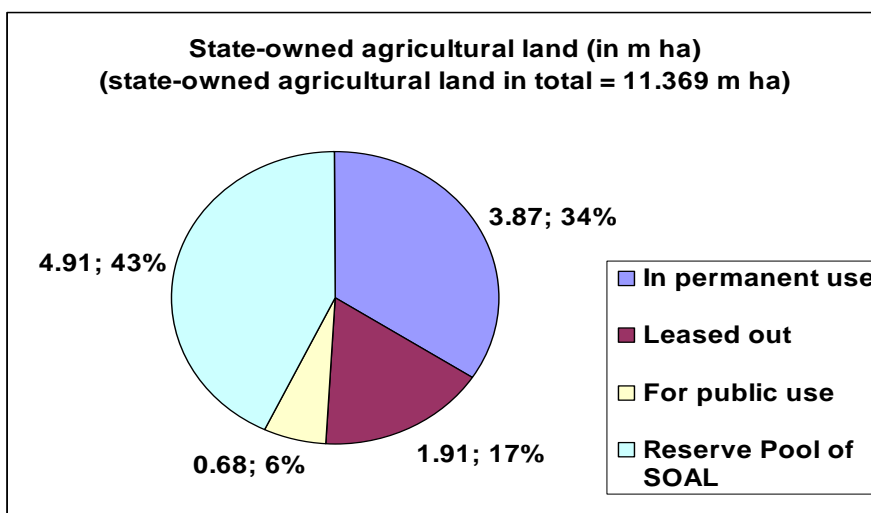
⁵⁷ According to published data, in 2005 there were 29,600,800 ha of state-owned land. See: State Committee on Land Resources of Ukraine (2005): The Status Quo of the Land Reform in Ukraine. Kiev.

⁵⁸ 2005 published data = 11,414,800 ha SOAL; *ibid*.

⁵⁹ SOAL for common use is defined as agricultural land within settlements which is under the administration of local councils and not allocated to property or in use, and is instead being used as squares, streets, passages, pastures, hayfields, quays, parks, boulevards, cemeteries, dumps, water reservoirs and rivers; as well as internal farm routes, field-protecting forest strips, other ground-protecting plantations, water management structures of agricultural enterprises which are being wound up or have gone bankrupt. It is doubtful if these 0.68 m ha can still be classified as agricultural land according to the definition provided in the LCU.

⁶⁰ For a definition, see sub-section 5.1.3.

⁶¹ Reserve land: Land in stock as defined in LCU Arts 19(2), 24(3), 30(2) not granted for permanent use or lease, plus land of the reserve fund as defined in the LCU Art. 25(4), 25(9), 25(10) not granted for permanent use or lease, plus land within the boundaries of settlements not granted for permanent use or lease.



Source: Unpublished data, 2006. Collected during interviews.

Figure 2: State-owned agricultural land

5.1.1 Agricultural Land in Permanent Use

As Figure 2 shows, a considerable amount (3.87 m ha) of SOAL land is allocated to permanent use. The listing below illustrates how many different user groups have benefited from the allocation of SOAL to permanent use.

SOAL in permanent use of state-owned agricultural enterprises

State-owned agricultural enterprises, institutions and organisations are not entitled to own agricultural land. Instead, agricultural land is permanently allocated to them for scientific research and educational purposes or for conducting agricultural commodity production (see sub-section 3.1).

In Ukraine there are 2,410 state-owned agricultural enterprises, with approximately 1.1 m ha SOAL in permanent use, including state farms for the production of agricultural commodities and state farms under the Ministry of Defence (418,700 ha), supply farms⁶² for state-owned enterprises, organisations and public authorities (149,800 ha), other state-owned agricultural enterprises⁶³ (85,400 ha) and 727 agricultural science, research and educational institutions (468,600 ha).

The most prominent of the agricultural science, research and educational institutions are the National Academy of Sciences of Ukraine (NANU) and the Ukrainian Academy of Agrarian Sciences (UAAN). However, agrarian universities also have a notable share of SOAL for research and study purposes⁶⁴.

⁶² For a definition, see sub-section 2.2.

⁶³ Experimental farms on stations for testing agricultural machinery, state-owned seed-trial stations and departments, inter-rayon and rayon drying installations for silk cocoons, state-owned breeding stations, hippodromes, fish farms and other state-owned agricultural enterprises.

⁶⁴ The UAAN comprises eight departments, each with a different profile. Each has scientific and experimental institutes, with scientific and experimental farms attached to them. They develop, produce and test new breeds and sorts, make selection work, produce elite seeds and elite bloodstock on their experimental farms, which are then sold to agricultural enterprises for the production of agricultural commodities.

In Poltava oblast, for example, there are about 35,000 ha in use of such scientific and experimental farms under the Poltava Oblast Center for the Scientific Support of Agro-industrial Production, a subordinate research institute of UAAN. 600 ha are used directly by the research institute.

SOAL in permanent use of agricultural enterprises⁶⁵ and farms of the private sector

With the new LCU in 2001, the right to receive land for permanent use was restricted. According to Art. 93(2), only state or communally-owned enterprises, institutions, and organisations shall acquire the right to receive state or communally owned land for permanent use.

Nevertheless, non-state agricultural enterprises are still holding 299,600 ha of SOAL distributed to them for permanent use before the new LCU came in effect (see sub-section 3.1).

Private farms still have SOAL in permanent use (in total 855,700 ha) which was given to them at an early stage of land reform (before the distribution of land shares became effective, workers of collective farms had been given the option to leave the collective farm in order to build up their own private farm business. They received up to 50 ha of land belonging to the collective farm for permanent use).

SOAL in permanent use with citizens of Ukraine

Within the scope of land reform, land was also distributed to Ukrainian citizens (this was not an absolutely new phenomenon – during Soviet times, citizens had 2.4 m ha of SOAL in use for their individual households).

950,000 ha of SOAL were allocated to private households for permanent use, and mainly used for personal peasant farming (as household plots). About 280,000 ha were distributed to citizens for various needs, e.g. for individual and collective orchards and horticulture, individual housing construction, etc. It must be argued whether the latter should still be considered as land for agricultural use.

SOAL in permanent use of other users

130,000 ha of land classified as agricultural have been granted to forestry enterprises and some 200,000 ha of SOAL has been allocated to numerous different state-owned and private scientific institutions, religious organisations, industry and transport enterprises, institutions of the Ministry of Defence, environmental organisation and water resource enterprises for permanent use.

Regarding this land, it can also be presumed that the classification as agricultural land is outdated unless the land is actually used for agricultural purposes by the named organisations.

In Poltava oblast as well, the Agrarian State Academy (University) has a breeding section for elite seeds as well as cattle and pig breeding. In total the Agrarian Academy has five research enterprises and six state owned seed breeding enterprises with 500 ha each, testing the quality of seeds.

In Kharkiv and Mykolaiv scientific research institutes subordinated to UAAN are dedicated to breeding seeds including experimental farms with a total of approximately 16,500 ha (Kharkiv) and 27,500 ha (Mykolaiv).

⁶⁵ Referring to legal entities, such as Ltd, JSC, and agricultural cooperatives.

5.1.2 Agricultural Land Leased out

Approximately 1.9 m ha SOAL are leased out to private farm businesses, agricultural enterprises, personal peasant farms or collective farms (CAEs).

This category of SOAL originates partly from the “reserve fund” and the “land in stock”. A proportion of land now leased also originates in land under permanent use that was formerly distributed to private agricultural enterprises and farms. At some stage these personal use rights were converted into lease rights, before this procedure was declared as being incompatible with the Constitution (see sub-section 3.1).

The following Box shows the amount of SOAL leased out in the three pilot areas⁶⁶:

Box 6: Leased hectares of SOAL in the three pilot regions	
Source: Unpublished data from 1 January 2006, collected during the interviews	
Kharkiv region	76,310 ha
Mykolaiv region	89,080 ha
Poltava region	236,950 ha

5.1.3 Reserve Pool of Agricultural Land

It is notable that a considerable portion of SOAL – according to the records, 43% of the total amount - – is apparently not in any use.

This amount comprises an effective “reserve pool of SOAL”. SOAL in this “pool” partly originates from the so-called reserve fund, which was created within the scope of land reform (see sub-section 2.2), and exclusively consists of agricultural land. Land in this national reserve fund was meant to be distributed among different beneficiaries within the scope of land reform (see Art. 25(9, 10) LCU; Section IX; Concluding Provisions 4(e) LCU). It can be assumed that a proportion of this land has not yet been used accordingly and, if not leased out, is officially not used for agricultural or other purposes.

Additionally, the “reserve pool of SOAL” contains agricultural land from the so-called land in stock. This is defined as all other state-owned land which has not been privatised within the scope of land reform, which has not been allocated for permanent use or lease (see Art. 19(2) LCU), or which has fallen back into state ownership for various reasons. Furthermore, the pool of SOAL contains land within the boundaries of settlements which has not been distributed for ownership or use.

It is questionable if 43% of SOAL is de facto really not in use, i.e. lying fallow. It can be presumed that irregularities in data recording have occurred. If so, land from the “land in stock” and the “reserve fund” which has been privatised or granted for use would need to be removed from these sub-categories of the data records and listed as either private land or land in permanent use or lease. It is questionable if in practice this is always done in a timely manner.

Moreover, the classification as agricultural land might be outdated, e.g. former agricultural land through degradation or natural re-afforestation often turns into wasteland or forest respectively, and though still classified as such, can no longer be

⁶⁶ Figures for all regions in Ukraine can be found in Annex 3.

used for agricultural purposes. It must be presumed that an update of the land classification would lead to a lower percentage of land in this reserve pool.

With reference to the results of the interviews, it is also likely that a proportion of SOAL which is officially not in use is actually used on an informal basis, meaning without any kind of written agreement (i.e. contract).

Still, taking the above-mentioned facts into consideration, the possibility that a large amount of SOAL land is lying fallow cannot be excluded, and this is in line with the fact that a large proportion of private land is also lying fallow because of the generally unfavourable conditions for agricultural production for small agricultural businesses or private farmers. Another reason is the lack of active management of this SOAL by the RSAs⁶⁷.

5.2 Management of Agricultural Land in Permanent Use

This sub-section describes the procedure for granting SOAL for permanent use. It also points out the management tasks to be fulfilled as well as the status quo of current management.

5.2.1 Procedure

The right of permanent use regarding SOAL entitles the holder of such a right to possess and use this land with no time limit. The decision to grant an agricultural land plot for permanent use can be taken by the local executive bodies (RSAs or municipalities) according to an extensive administrative procedure described in the LCU (see Art. 123 LCU) (see Box 7).

Box 7: Main steps in the procedure of granting SOAL for permanent use

- The party interested in receiving SOAL submits an application to the RSA or municipality, including a petition for the allocation of a land plot for permanent use, specifying its size, purpose/designation and location.
- The RSA or municipality considers this request within a month and consents to the development of a land plot allocation plan⁶⁸.
- A plan for land plot allocation is agreed with the land user, the agency responsible for land resources, the environmental and sanitary/epidemiological bodies, and the architecture and cultural legacy protection authorities.
- State land survey authorities provide an expert summary⁶⁹.
- The plan is submitted to the RSA or a municipality which makes a decision on whether to grant SOAL for permanent use within a month.

⁶⁷ It is typical for post-Soviet States that significant areas of agricultural land are (at least officially) lying fallow. According to data from Rosnedvizhimost, the Federal Real Estate Cadastre Agency of the Russian Federation, for example, 40 m ha of agricultural land that belong to the so-called Fund for Redistribution are laying fallow.

⁶⁸ Which comprises text and visual information necessary for the allocation of a parcel of land, including plans, existing limitations of use, adjacent areas, etc. This procedure is also described as POUL (see sub-section 3.1 and Annex 17).

In case a land plot is granted for permanent use, the permanent user receives a certificate stating this right (see Annex 15) and its state registration in the cadastre. If the executive bodies responsible (either the RSA or the municipalities) refuse to grant a plot of land or fail to consider an application for permanent use, the user can appeal in court.

There is no payment other than land tax for the permanent use of SOAL. The land tax for arable land is calculated as 0.10% of the normative value⁷⁰ of the land, and is paid directly to the account of the respective local budget (village, town, city or rayon) in the local department of the State Treasury (of the RSA). In case a permanent user has elected to pay FAT instead, a rate of 0.15% is due; finally, some permanent users are exempt from paying land tax (see sub-sections 3.4 and 3.5 respectively).

5.2.2 Management

Interview partners of the RSA have stated that much of the land under permanent use in the hands of agricultural enterprises is either underutilised or not utilised at all. This can be attributed to the frequent bankruptcy of enterprises and the ineffective management of land because of a lack of (or outdated) machinery, insufficient production and investment means, and limited marketing possibilities.

According to Art. 141 of the LCU, reasons for taking back land from users include systematic non-payment of land tax for land in permanent use, the bankruptcy of an enterprise, or land that is not being used according to the purpose it was granted for. However, although it is the task of the RSA to take back land under permanent use and put it under its administration, the authorities are reluctant to do so.

Furthermore, “permanent users” are not allowed to sub-lease or sell land in permanent use. In order to bypass this provision, permanent users sometimes conclude agreements on joint economic activities with commercial enterprises, which can be assessed as hidden sub-leases. In the normal course of events, these land parcels, subject to joint economic activities, should be taken back from permanent users and leased out to an interested party by the RSA (or the municipalities).

Reasons why these management tasks have not been executed might well be that RSAs are not adequately staffed and technically equipped to manage land that is returned to their administration, which according to the LCU is to be put back into use either through the issuing of lease arrangements, through a sale, or within the scope of land reform through gratuitous privatisation, which has still not been accomplished (see the provisions in the LCU, Section IX, 4e).

In addition, the lack of linkages between the administrative bodies has led to a lack of information needed to start such a procedure (e.g. information on tax payments is collected at the tax offices, there is no integrated databank, etc.).

⁶⁹ The state expertise for land surveying documentation is the responsibility of the DLRs, which check whether a land plot allocation plan complies with the law and applicable standards and rules; complies with the requirements of rational land use and protection of land; secures the rights of owners of adjacent parcels; serves the state and society; and is sufficiently ecologically and economically effective in respect of preventing a negative influence on land resources, adjacent land plots and the landscape.

⁷⁰ For a definition, see sub-section 3.2.

It is also unclear what happens to land in case of death of someone owning land in permanent use. Theoretically this land would also need to be taken back into the administration of the RSAs or municipalities.

As seen above, numerous different types of users have been granted SOAL for permanent use. In many cases it is questionable if this land can still be considered as agricultural land (see Art. 22(2) LCU). Nevertheless, it is still classified as such. It is the responsibility of the RSA to initiate the “change of use” procedure, i.e. to earmark the land for the appropriate use category as defined in Art. 19 LCU.

A notable amount of SOAL has been distributed to agricultural science, research and educational institutions for permanent use. During interviews with some of these institutions (e.g. UAAN, universities) it could be observed that different institutions are engaged in similar research fields, i.e. seed and stock breeding. On top of the fact that these so-called research farms are not only engaged in research but also produce commodities, e.g. seeds, a task that could also be performed by the private sector.

The LCU (Section IX, 4 g) foresees that within six months of the publication of the LCU, the Cabinet of Ministers should identify the needs of research and academic institutions concerning land for research purposes, and decide whether the land allocated to research and academic institutions should be reassigned for other purposes. Looking at the large amount of SOAL still under permanent use with these institutions, there is the suspicion that this has not come into effect.

5.3 Lease of Agricultural Land

The lease of SOAL, if exercised effectively, can contribute considerably to increasing state revenues. This sub-section shows the current management practices used, and provides a brief overview of lease prices.

5.3.1 Procedure and Management

The procedure of leasing SOAL and the managing of contracts is realised by the RSAs or municipalities within their competencies. SOAL may be leased out to different parties according to the regulations and restrictions defined in the LCU (see sub-section 3.1).

There are no normative acts governing the procedure of allocating SOAL for lease. According to the LLL, which applies not only to agricultural land, the allocation should be organised on a competitive basis if there is more than one applicant. In practice, SOAL is not offered in a tender procedure, but rather is allocated according to the procedure used for the allocation of land for permanent use.

According to information gained from interview partners of RSAs, applicants interested in a land parcel can hand in an application. In case of more than one applicant for a land parcel, the bids are evaluated according to the following criteria and given a respective ranking:

- Capability of financial means;
- Lease price offered;
- Agrarian education.

A special commission consisting of representatives of the DLRs (under the SCLR), the tax offices, the Department of State Treasury and the Department of Agriculture of the RSAs checks the application and then makes a recommendation. The decision of the Head of the RSA is based upon the recommendation of the Commission and the rayon council (elected body of self-government).

Decisions on leasing SOAL within village boundaries are taken by the village council. This forms the basis for concluding lease contracts, which are drafted by the DLR. The lease contract must be in written form, registered and stamped by the SCLR. A model contract exists for leasing SOAL, and is applied equally in all oblasts (see Annex 16).

The procedure of preparing a lease contract including all approvals needed, the survey of the land plot with the necessary expertise done by the SCLR (the whole procedure described as POUL; see sub-sections 3.1 and 5.2), the contract drawing and the registration of the contract can take up to one year.

The lessee faces with numerous expenses:

- costs for the registration of the contract in the cadastre, which are prescribed by the LCU (up to 100 UAH per contract);
- costs for state expertise (UAH 20 at least);
- costs for notarisation which is mandatory (0.01 % of the normative value or 1 % of the sum of a lease contract, if the normative value is not defined).

In addition, a separate lease contract needs to be drawn up for every parcel of land that is leased out, even though this would prove excessive if several land parcels are leased simultaneously to the same lessee.

The whole procedure can cost up to 3,000-4,000 UAH. Transaction costs for the lessees are therefore rather high. It must be added, though, that in case that the parcel of land in question already has properly marked boundaries, the costs involved are reduced to notarisation and registration costs (the procedure of drafting of POUL is not required).

All interviewed members of RSAs in the pilot regions stated that SOAL under RSAs (mostly originating in the reserve fund) is usually fragmented and of poor quality⁷¹. This results in low demand for leased parcels of land. Furthermore, they also stated that there is a significantly high supply of agricultural land for lease from the state but also private individuals at very low prices.

By contrast, farmers' representatives stated that demand for SOAL for lease purposes does exist, but due to the administrative hurdles set by the RSAs, it is hard to access it.

Box 8: Reasons for low demand for lease of SOAL

- Poor quality of land
- Fragmentation of land
- High transaction costs
- Bureaucratic hurdles
- General economic constraints regarding agricultural production for private farmers:
 - High interest rates for credits
 - Limited access to input resources
 - Limited marketing possibilities.

Although the average lease period for SOAL was reported to last between one and ten years, there are cases where lease contracts were drawn for a period of up to 49 years.

Non-payment of the lease rent is grounds for cancelling the lease contract through the RSAs. However, in practice this option is not always exercised. Also, leasing this land that has reverted to the state administration is difficult due to low demand (see Annex 3).

Aside of the registration of lease contracts in the cadastre, the RSAs and municipalities keep records of concluded contracts, either in paper-based form or in electronic files (Excel tables) which are also passed to the SCLR via the DLRs. Since payments for lease rents are controlled by the tax authorities, data on payments are registered there. There is no integrated databank that contains all data related to lease contracts.

⁷¹ The reserve fund was created in the course of privatisation, and comprises 12% of agricultural land of former collective farms. Land for the reserve fund was selected following the agreement of all actual and former employees of the concerned enterprise, while the remaining land was subject to privatisation. Fairly obviously, land with the lowest quality went into the reserve fund.

The lease of SOAL for other purposes than agricultural activities requires the procedure of “change of use purpose” (see Annex 17). Little information was gained on the extent to which SOAL is leased out for other purposes, such as building, commercial or industrial purposes. The same counts for leasing SOAL to concessionaires. Concerning the latter, it must be mentioned that, although according to Art. 94 of the LCU land plots can be given to a concessionaire to carry out concessionary activities, in practice concessions are not granted in Ukraine. Even if concessions were provided, the land needed to carry out the concessionary activity would be allocated through leaseholds.

Revenues generated for municipalities from leasing are paid into the accounts of local budgets at the rayon divisions of the State Treasury. 85% of these revenues are earmarked for the municipal budget, while 15% go to the rayon budget for financing “joint social, economic and cultural programmes” (Art. 66.2.2 of the Budgetary Code of Ukraine).

5.3.2 Lease Rent Prices

The prices for leases deviate from the normative value of agricultural land. According to the LLL, the lease price can range from 1 to 10% of the normative value for agricultural land. In general, 1 to 1.5% of the normative value is calculated as lease rent for SOAL, although there are also examples where higher rates are applied (e.g. in Mykolaiv oblast, where rates are 5.66% of the normative value for pastures).

Examples for lease rents stated from farmers and the RSAs ranged from as low as 7 UAH (Kharkiv oblast) up to 220 UAH (Mykolaiv oblast).

The lease rent is adjusted annually according to the rate of inflation, and is additionally reviewed by the parties once every three years (see sub-section 3.2).

5.4 Sale of Agricultural Land

SOAL is sold by the RSAs or by the local government bodies (the municipalities) within their responsibilities (i.e. by RSAs when considering land outside settlements; and by the municipalities when considering land inside the boundaries). The parties entitled to purchase SOAL are listed in the LCU (compare chapter 3.1).

Art. 128 of the LCU lists the procedure for selling land (see also Box 9). There are no special regulations for selling SOAL, which leads to the assumption that this procedure also applies to SOAL.

If applied, this procedure would signify that SOAL is not sold on a competitive basis but is instead based on individual allocation decisions. This clashes with the principal regulation that municipal or state-owned land must be sold on a competitive basis (Art. 127(2) LCU). The LCU regulations are therefore misleading.

In practice, the procedure displayed in Box 9 is only applied when a building in private ownership is situated on state-owned land. In such a scenario, the owner of the building can hand in an application. In all other cases, and this also applies to SOAL, land is sold on a competitive basis.

Box 9: Procedure of sale of state- or communally-owned land plots to citizens and legal entities (Art. 128 LCU)

- Party interested in purchasing land hands in an application including information on the desired location, the designated purpose and the size of land plot. Additionally, the party must also send as an attachment:
 - A state document (land title) to the right of permanent use or a lease agreement for the land plot;
 - Or, if not in use of the party, the land plot plan and a document certifying its allocation (survey documents);
 - A certificate on the registration of the subject of business activity.
- The responsible administrative body considers the application within a month and takes a decision on whether to sell or refuse to sell, indicating the reasons for refusal in the case of the latter.
- In case of a positive decision, the applicant for a land plot that was not held in his/her use shall purchase the land plot within 30 days after a land engineering organisation has surveyed the land plot.
- The land plot will not be sold if:
 - documents necessary to decide whether or not to sell the land plot have not been submitted;
 - inaccurate information is discovered in the submitted documents;
 - a bankruptcy or liquidation lawsuit has been filed against the subject of entrepreneurial activity.
- The decision to refuse the sale of land can be appealed against in court.
- Upon a positive decision by the responsible administrative body, the sales contract will be concluded.
- The land plot is valued on the basis of an expert pecuniary appraisal conducted in compliance with the methodology approved by the Cabinet of Ministers of Ukraine.
- The contract must be notarised.
- Payments can be made in instalments.
- The payment of the purchase price is a precondition for registration in the land register and issuing of the ownership title.

With regard to the sale of SOAL, only one case took place within the course of the study, when 200 ha of SOAL were sold in Odessa via auction (although, as pointed out before, there is not yet any law that governs the procedure of auctions).

Interview partners also stated that SOAL is hardly ever sold for agricultural purposes. The main reason named was the lack of awareness of the fact that the moratorium on land sales does not affect SOAL. Moreover, the administrative bodies are themselves uncertain as to how to handle the issue owing to misleading legal provisions (as demonstrated above) and the lack of internal administrative guidelines on the procedure of selling SOAL. Political discrepancies within the central state authorities on whether or not to sell SOAL are also hampering the process.

Box 10: The main reasons why SOAL is presently not sold as agricultural land

- No interest from the farmers for low quality and fragmented land plots.
- No access to financing for purchase of land through farmers.
- No awareness among the administrative bodies that the “Moratorium on Land Sales” only applies to private agricultural land, and not to SOAL.
- No detailed administrative orders or guidelines that govern the procedure of selling SOAL.
- The limited area of agricultural land allowed to be owned by individuals and companies (100 ha).
- Purchased SOAL is then classified as privately owned agricultural land and becomes subject to the moratorium (i.e. the purchaser cannot resell it).

The sale of SOAL for other purposes than for agricultural use, as in the case of lease or permanent use, is subject to the procedure of “Change of use purpose”. SOAL which is foreseen for commercial and building purposes has to be sold on a competitive basis which signifies either an auction or a tender (Chapter 21 LCU).

Revenues gained through the sale of state-owned land by municipalities (within the boundaries of settlements) are distributed as follows: 90% are allocated to the budget of the municipality (i.e. of the respective settlement), while 10% go into the State Budget of Ukraine. This regulation may be subject to change, as rules on distribution of revenues from sales of state owned land are only defined by the laws of Ukraine on the State Budget for one year.

5.5 Management of Contaminated Sites

The LCU dedicates a whole chapter to the regulation of land protection (Section VI LCU). Regarding damaged land⁷², it stipulates that such land shall be subject to recultivation (Art. 166 LCU). In January 2004, 154.500 ha of agricultural land were classified as damaged. It is envisaged to withdraw from use in total 3 m ha of degraded, low-productive and polluted agricultural land.⁷³

Soil scraped at extraction, exploration, construction and other works shall be used to recultivate damaged and degraded land by placing such soil at sites without soil or degraded sites (Art. 166(3) LCU). The realisation of this concept has already created problems in former times, e.g. it was reported that in 1986 that 60 m cubic meters of fertile soil scraped while exploring deposits of minerals had accumulated.⁷⁴ Currently, recultivation plans are focusing on the recultivation of land damaged before 1990⁷⁵.

Contaminated sites are used with limitations and restrictions related to the protection of humans and environment. The level of soil contamination is taken into consideration

⁷² Damaged land is defined as land which has suffered changes in structure of relief, ecological condition of soil and bedrock and in hydrology regime as a result of extraction, exploration, construction and other works.

⁷³ Cabinet of Ministers of Ukraine (2004): Draft State Programme “for use and protection of land”. Kiev. Submitted by CMU to the VRU on 3 July 2004.

⁷⁴ Report on the availability and use of land in the Ukrainian Soviet Socialist Republic as of 1 November 1985, approved by Resolution of the Soviet of Ministers of UkrSSR of 1 April 1986, No 114.

⁷⁵ Cabinet of Ministers of Ukraine (2004): Draft State Program “for use and protection of land”. Kiev.

when deciding upon the allocation of land for use, withdrawing it from use or changing the character and regime of land use (Art. 167(3, 4) LCU).

Agricultural land which suffers from contamination (e.g. radioactive or chemical pollution) to an extent which endangers safe agricultural production shall be withdrawn from use and put into conservation (Arts 169, 170 LCU). In total, 534,500 ha of land in Ukraine are radioactively polluted, including 126,700 ha of former agricultural land (which are no longer in use)⁷⁶.

The LCU also foresees the development of national and regional programmes for land use and protection. Respective drafts of national programmes for the use and protection of land and for the restoration of soil fertility for the period 2006-2015 were submitted to the Parliament in 2004. The costs of measures within the framework of these two draft programmes exceed 75 billion UAH.

Land protection and land monitoring are core competencies of the SCLR, its regional departments and local divisions (see Chapter 4). At present, SCLR is still in the stage of formulating national and regional programmes for land use and protection. The implementation of measures, which also comprises the recultivation of contaminated sites, is lagging behind.

Within the scope of the study, no information regarding recultivation projects for SOAL could be obtained. Considering the overall current stage of management of SOAL, the missing implementation of protection measures and the envisaged costs of measures that would need to be taken, it can be doubted that actions regarding the re-cultivation of contaminated SOAL have been taken on a large scale.

⁷⁶ Ibid.

6 Analysis of Findings

After demonstrating the legal and administrative framework for management as well as the current state of management of SOAL, this chapter will analyse the major findings of the study with regard to the overall framework conditions concerning the management of SOAL as well as its practical realisation, and will draw conclusions based on the above.

6.1 Policy, Legal and Administrative Framework

This first sub-section analyses the present policy framework as well as the legal and administrative framework with respect to the management of SOAL.

6.1.1 Policy Framework

From a fiscal policy point of view, the major objective of the management of state-owned land should be to maximise state revenues through effective management. The managing body should act as a trustee for the state and take decisions as if it were a private owner managing its assets with the aim of maximising profits. This also applies to the management of SOAL.

Apart from this main objective, the management of SOAL can also be used as a tool for accomplishing agro-structural goals and objectives of rural development. Target groups can be provided with land (through lease or sale) with the aim of facilitating and enlarging their economic activity in the sphere of producing agricultural commodities. Nevertheless, a key precondition for this is the formulation of a national policy which defines agro-structural goals and the way they should be accomplished. Building on such a policy, a programme would need to be drawn up and implemented that could also comprise the handling of SOAL.

Analysis of the election manifestos of the main Ukrainian political parties (Nasha Ukraina (NU), Block of Yulia Tymoshenko (BYUT), Party of Regions, the Socialist Party and the Communist Party), which were drafted before the elections in March 2006, reveals that agro-structural or land issues were not high on the agenda. Although the parties positioned themselves on the issue of land sales, either seeking to prolong (the Socialist and Communist Parties) or to end (NU/BYUT) the moratorium on land sales, no party presented a programme for agro-structural development and/or rural development.

Nevertheless, in 2005 and 2006 several different expert working groups drafted various concepts for rural development and development of the agrarian sector, of which the most prominent were:

- The DAR (Welfare through Agrarian Development) concept, promoted by the National Chamber of Agriculture (an NGO), which was assigned by Yulia Tymochenko (the then Prime Minister) to deal with questions of rural development⁷⁷;

⁷⁷ This concept was widely presented and discussed in July 2005, and a special website was set up (<http://www.dar-ukraine.com.ua>). However, since July 2005 the National Chamber of Agriculture (www.agrichamber.org.ua) has not been heard of. The DAR text is available on the webpage of the Ministry of Agrarian Policy of Ukraine, at: <http://test.minagro.gov.ua/zvr/showdoc1.php?id=1>.

- “The Concept for the Development of the Agrarian Sector and of the Ukrainian Countryside”, presented by the Ukrainian Agrarian Confederation, which proposed a complex set of measures concerning the development of rural territories, agricultural production, and offered a legal, infrastructural and management framework⁷⁸;
- A Draft State Programme for the “Support of Farmers for the Period 2006-2015” by the Ministry of Agrarian Policy⁷⁹;
- A concept for a “Programme for Development of Farming for the Period 2005 – 2015” by the Association of Farmers and Private Land Owners (a non-governmental farmer organisation)⁸⁰.

Although not all the concepts explicitly deal with the handling of SOAL, they could, if a political decision were taken, be used as the basis for the creation of more concrete programmes, including a programme for managing SOAL.

However, so far – certainly due to the unstable political situation in Ukraine – no political consensus on any of these concepts has been reached, and no programmes building upon these concepts have been developed.

The only sign of improvement of the situation at the policy level was the approval of the “Concept for a Complex Programme for Supporting the Development of the Ukrainian Countryside for the Period of 2006-2010” by the Cabinet of Ministers of Ukraine in December, 2005. On the basis of this concept, a programme is to be drafted⁸¹.

It remains to be seen, however, whether this concept is followed and implemented by the newly appointed government.

6.1.2 Legal Framework

Content and Structure

Although land legislation in Ukraine has always been a major issue, the process is still far from complete. Since 1990 many laws have passed Parliament, but a large amount of these new provisions have already been amended, lack detailed secondary legislation or have even been abrogated. Because of partly contradicting regulations within the laws, the legal situation sometimes is unclear. Furthermore, although abrogated or substituted by new provisions, some former legal regulations are still applied.

The constitutionally determined distinction between private and state property is difficult to understand from a “Western” perspective. In capitalist legal systems the regime of property rights is neutral with respect to the owner. Even though the state owns

⁷⁸ Ukrainian Agrarian Confederation (2006): The Concept for the Development of the Agrarian Sector and of the Ukrainian Countryside. Kiev. www.agroconf.org.

⁷⁹ Ministry of Agrarian Policy of Ukraine (2006): Draft State programme for “Support of Farmers for the Period 2006-2015”. Kiev. www.minagro.gov.ua.

⁸⁰ Association of Farmers and Private Land Owners (2005): Concept for a “Programme for Development of Farming for the Period 2005 – 2015”. Kiev. www.farmer.org.ua.

⁸¹ Resolution of 21 December 2005, No 536. The concept in particular analyses the reasons for the deterioration of rural areas and agriculture; provides a comparative analysis of possible solutions; lists a set of measures in respect of rural development, land relations and forms of agricultural activities, the development of agrarian production and agrarian market, finance and investments, the development of agrarian science and education, the improvement of the management of agrarian territories (following EU standards); and lists the expected results.

property, the legal relations regarding its rights and duties as an owner do not differ from those of private owners. It is to be expected that the Ukrainian legal system will at some stage also evolve in a similar direction when it passes the transition stage and develops into an open market economy.

With regard to state land management, one striking feature is that regulations stipulated in the core law, the LCU 2001, are too complex and can hamper effective state land management. Moreover, while some issues are governed in great detail, others lack clear regulations. For example, while the procedure granting land for permanent use is described in detail, the procedures for sale and lease lack clarity and are partly governed by cross-references to other existing laws or laws not yet drafted. Many of the regulations provided in the LCU could easily be governed via bylaws or internal administrative orders. If it purely consisted of “core regulations”, the LCU would probably be much clearer. “Over-regulation” is certainly a main reason why the LCU has been subject to so many amendments since its adoption in 2001. In many cases, though, these amendments have merely exacerbated the problem of over-regulation.

Furthermore, major land relation issues are governed by different laws. For example, provisions on leasing can be found in the LCU, the LLL and the LPL as well as in the Economic Code. Streamlining the legal framework would be advisable in order to make it coherent and understandable.

Certain provisions defined in laws are too rigid and sometimes unnecessary. A good example of this is the necessity of registering lease contracts in the cadastre and land register, as stipulated in the LCU, as this in practice hampers the leasing of land.

Provisions on managing SOAL would perfectly fit into a separate new law. In a first attempt to restructure the management of state-owned land, the SCLR has introduced a bill⁸² aimed at the concerned ministries. The draft envisages the establishment of a fund for all state-owned lands, managed by a state agency and monitored by SCLR.

Implementation

Another striking issue when looking at land legislation in Ukraine is the question of implementing legal provisions.

The LCU stipulates the drafting of laws within six months of the LCU coming into effect in order to support the implementation of regulations stipulated in the LCU. Many of these are however still missing. For example, there are no laws or bylaws regulating the legal regime of categories of land, land auctions and tenders and the demarcation and change of boundaries of settlements.

Moreover, as demonstrated in the proceeding chapters, regulations in the LCU provide a separation between communal and state ownership. However, even though a “Law on Demarcation of Land of State and Communal Property” exists which governs this separation, it has not yet been implemented. Within the scope of moving from a socialist to a market-oriented economy, this represents one of the key tasks to be accomplished in order to give local self-government bodies the property they need to fulfil their administrative assignments and, in a second step, to privatise state land not

⁸² Draft Law of Ukraine “On the Fund of State-owned Land and the State Agency for Management of State-owned Land”.

needed for administrative assignments of the state or for public purposes. The procedure, if implemented, would naturally influence the amount of SOAL to be managed.

Another example of legislation that has not yet been implemented is the regulation concerning private persons and private legal entities holding land in permanent use. According to the LCU, permanent use rights granted to these groups were to be transferred to lease agreements and/or ownership. This transfer clearly represented a sound step towards better management of SOAL, and would have contributed towards raising the revenues of SOAL. According to the LCU, this transfer should have been completed by 1 January 2005; however, meanwhile this was ruled unconstitutional, although no alternative to solve the problem was provided (see sub-section 3.1).

The informal use, misuse and camouflaged lease of SOAL by permanent users are all prohibited by law, but are not prevented and eliminated in practice⁸³.

Regarding the protection of land, which if exercised would also have an influence on the management of SOAL, implementation also continues to lag behind.

6.1.3 Administrative Framework

The management of SOAL in Ukraine is realised in a decentralised manner by the RSAs as executive bodies. In principle this can be assessed positively, as decentralisation is one of the keywords in modern land administration. Still, as pointed out above, the management of SOAL lacks a nationwide programme that can be followed and realised. It cannot be the task of local executive bodies to develop such a programme at the local level.

In consequence, the management of SOAL by RSAs can be characterised as being rather passive. No objectives for the management of SOAL are defined and no proper guidelines exist to aid the RSAs (and also the OSAs as supervising bodies) in monitoring and accomplishing their management tasks. In addition, the RSAs do not seem well-equipped and trained for the task of state land management and are often dependent on the DLRs, which gather all the information concerning land issues and which in general have a better overview concerning land-related questions.

Local government bodies presently entrusted with the task of managing SOAL within the boundaries of settlements are in an even worse position, because their cooperation with the DLR and the local cadastre offices lacks a proper legal basis.

Generally speaking, it can be said that too many different institutions are involved in the procedure of allocating SOAL through lease, sale or permanent use, which leads to ineffective management.

⁸³ According to a report by the State Land Inspection, during six months of 2006 the Inspection performed 45,000 checks and uncovered 31,000 violations of land law, although there are still 19,000 violations which have not been stopped or eliminated, the vast majority of which referred to informal use of state-owned land (i.e. illegal seizure).

6.2 Management Strengths and Weaknesses

The following sub-sections evaluate the management of SOAL, focusing on permanent use, lease as well as sale and technical constraints.

6.2.1 Permanent Use Rights

When assessing the management of SOAL in Ukraine, special focus has to be put on the instrument of granting SOAL for permanent use, which in western European countries does not exist.

The distribution of SOAL for permanent use to numerous different groups of land users illustrates the extremely large amount of land which is state-owned but, due to the legal provisions regulating permanent use (i.e. use for indefinite use), is virtually blocked for any adjustments in the scope of effective state land management.

Since only land tax is to be paid by the permanent users, which equally has to be paid by any private owner as well, the distribution of land for permanent use equals a use right free of charge. Moreover, some permanent users are even exempt from paying land tax (see sub-section 3.3). Looking at SOAL as an asset to be used in order to generate revenues for the state budget, permanent use is not the most effective instrument.

Nevertheless, the granting of permanent use rights has to be assessed within the historical background of land reform. The granting of permanent use rights to private persons for farming purposes but also for personal needs was executed at an early stage of land reform, when the granting of land for private ownership was not yet an issue. Although the new LCU has severely restricted the group of users entitled to land under permanent use, at present no legal provision or transitional arrangement regulates how to proceed with permanent use rights that were granted during the early stage of land reform (and before). An important task within the completion of land reform would therefore be to take a decision on a mechanism to transfer these permanent use rights into ownership or lease rights, or to withdraw them from the users with a subsequent reallocation of land. This mechanism should support a smooth and fast transformation of permanent use rights while simultaneously guaranteeing the rights of both the permanent users and the state. The legislator should also consider related compensation regulations.

In the long run it should also be decided how to use SOAL granted for permanent use to state enterprises or agricultural research institutions more effectively in order to maximise state revenues. Nevertheless, it must be pointed out that according to the study findings, in many cases the land of such institutions is put to more effective use than the land of former collective farms that have been split up and privatised.

To sum up, it can be stated that within the scope of the transition of the agricultural sector, the granting of permanent use rights can be accepted as an interim solution. In the long run, however, a decision has to be taken on whether to privatise this type of

SOAL within the scope of land reform⁸⁴, or to take it back from its users and reallocate it more effectively through lease or sale.

6.2.2 Sale and Lease

During the interviews it became clear that officers of the RSAs or the mayors of villages were well aware of their responsibilities and competencies in regard to the management of SOAL as stipulated in the LCU and other related laws. It was notable that village councils were very interested in putting agricultural land in their administration into use through lease, presumably primarily because 85% of the revenues go to their local budget. However, the share of SOAL under their administration is limited (i.e. only SOAL within the boundaries of their settlement).

Still, leasing procedures are not favourable for potential lessees, mainly because of extensive administrative procedures that are time-consuming and costly. To take one example, the surveying of plots of land in the case of changing boundaries is not essential when leasing out a parcel of land, when a map marking its boundaries (oriented to natural boundaries) attached to the lease contract would suffice. The whole procedure of the development of a POUL (applied only in certain cases) should be simplified in the case of leasing SOAL.

A major constraint in the procedure of leasing SOAL is that information on SOAL for leasing is not accessible to the public. Leasing occurs at the initiative of an applicant, who has to hand in an application and provide information on the parcel of land in question himself/herself. Active management of SOAL would require the opposite: available land for lease should be published, above all because a notable proportion of SOAL is not in use.

Selling procedures for SOAL stipulated in the LCU and regulations concerning the moratorium on land sales are misleading and result in hesitant selling behaviour by local executive bodies. Another reason for delay is that the land reform is not yet accomplished and no clear vision exists as to how much SOAL is still needed to be handed over to new owners at no charge (within the scope of the land reform). Furthermore, as mentioned before, there is no legal basis for executing land sales in a competitive manner.

The extensive “change of use purpose” procedure (see Annex 17) in case SOAL is to be leased out or sold for non-agricultural purposes also inhibits the effective allocation of SOAL. Although the “change of use purpose” has to be regulated and monitored in order to avoid illegal building or commercial activity, the procedure should be simplified, making sure it is closely linked to spatial planning, which requires sound land management plans for rural areas.

⁸⁴ The LCU also allows the land of state and municipal agricultural enterprises, organisations and establishments to be shared among the workers. Nevertheless, this has not been executed in practice, see Art. 25 of the LCU. One of the hindering factors is that experimental fields of scientific and research establishments are “especially valuable land”, and therefore their disposal lies with the Verkhovna Rada of Ukraine.

6.2.3 Technical Constraints

With regard to information gained during the interview, it is questionable whether RSAs have a clear overview of the total ha of SOAL in their administration. The last overall land inventory was performed ten years ago, for example. Nevertheless, cadastral records (according to their officers) are outdated and often incorrect. No separate land inventory has been made for SOAL. Many cadastral offices do not have maps and data digitalised and integrated in an IT system.

While SCLR has a detailed IT system for recording all land in Ukraine, including state-owned land, there is still no integrated IT system uniting all relevant data for the management of SOAL and divided into land categories and user groups (defined by their principal economical activity). Relevant data such as contract records, cadastral data, data on rent and tax collection are all collected by different institutions (i.e. RSAs, DLRs, tax offices). IT linkages between them are missing, and each body only oversees its own area of work.

Only recently (back in August 2006) the Cabinet of Ministers of Ukraine adopted a Resolution prescribing the SCLR and its regional departments, the State Tax Administration of Ukraine and the State Property Fund of Ukraine (responsible for the privatisation of industrial enterprises) to establish a regular exchange of information about allocation of land parcels, collection of lease rent and land tax, cases of illegal seizure of land parcels, etc. This can be seen as a step in the right direction.

To paint a complete picture of the management of SOAL, a separate IT system is needed, which also allows statistical analysis.

7 Recommendations

With regard to the analysis of findings and respective conclusions, this chapter summarises the main recommendations for the effective management of SOAL that can be drawn.

7.1 Favourable Preconditions for the Management of State-owned Agricultural Land

A major precondition for the management of SOAL is the de facto separation of municipal and state-owned property, which includes the allocation of SOAL to either one of the administrative levels.

The importance of a policy for SOAL management, including a programme that can be implemented at the national level and is governed by respective legal provisions, has already been mentioned in Chapter 6. Such a policy should define the main objectives to be achieved by the effective use of SOAL (which also comprises its privatisation through sale). Within the scope of policy development, decisions would need to be taken on how revenues gained should be allocated. This requires sound budget planning at the national level.

In order to allocate SOAL through leasing and sales, a functioning land market is needed. Since the moratorium on sales for agricultural land is scheduled to end on 1 January 2007⁸⁵, currently one of the top priorities defined by the President of Ukraine is to facilitate an institutional and legal frame for land market development⁸⁶.

One necessary instrument for a functioning land market and also for SOAL management is a fully functioning cadastre and land register. This would guarantee not only ownership registration of private property, but also of the property of the state and the municipalities. Cadastral records are also needed to manage SOAL effectively. So far, Ukraine has taken little advantage from the support provided by the World Bank for the building up of an integrated cadastre and land register (see sub-section 2.2). The registration of SOAL in the cadastre and land registry should be facilitated.

A transparent market for agricultural land also needs an institution capable of displaying market information and making it accessible to the public. Effective management of SOAL requires information on prices for the sale and lease of agricultural land. In Ukraine, a price range for leasing is stipulated by law (oriented to the normative value of land), and in some cases is remarkably low. Because of the moratorium on land sales, no reliable information on market prices for the purchase of agricultural land is available. There is still a lack of institutions displaying market information, setting up purchase price collections and implementing international valuation standards, similar to so-called Public Expert Committees or Valuation Boards in western countries.

In the special case of Ukraine, the speeding up and completion of land reform would also contribute to the effective management of the remaining SOAL.

⁸⁵ The latest information suggests that this will probably now take place in 2008.

⁸⁶ Decree of the President of Ukraine, No 644/2006, 25 July 2006.

Box 11: Favourable preconditions for the effective management of SOAL

1. A consistent policy for SOAL management that is embedded in an overall policy for state land management and agro-structural policy
 - Facilitating maximum revenues for the state budget
 - Incorporating agro-structural measures.
2. A coherent legal frame
 - Providing transparent provisions with regard to land relations
 - Governing a programme for the management of SOAL
 - Providing the rule of law.
3. A transparent land market
 - Facilitating the lease and sale of SOAL.
4. A functioning Cadastre and Land Register
 - Facilitating inventory of state-owned land
 - Facilitating ownership registration
 - Providing legal certainty.
5. Institution monitoring price developments on the land market and improving valuation standards
 - Collecting lease and purchase prices
 - Making price information accessible to the public
 - Improving valuation standards.

To sum up, the following recommendations can be made in order to create favourable conditions for the management of SOAL:

- Implement the “Law on the Demarcation of State-owned and Municipal Land”;
- Develop a policy and programme for the management of SOAL;
- Facilitate the development of a functioning land market;
- Speed up the establishment of a fully functioning cadastre and land register, allowing the registration of private, communal and state property;
- Build up an institution displaying market information and creating valuation standards;
- Speed up the completion of land reform.

7.2 Recommendations for the Effective Management of State-owned Agricultural Land

In accordance with the conclusions drawn in Chapter 6, and considering best practices in the management of SOAL, the following recommendations for effective management of SOAL can be made:

1. Execute an inventory of SOAL
2. Update classifications of land within the scope of inventory
3. Register SOAL in the cadastre and land register
4. Define the amount of SOAL needed to accomplish land reform.

5. Create a separate administrative unit/institution (under the technical supervision of the Ministry of Finance and the Ministry of Agrarian Policy or SCLR) for the management of SOAL with:
 - a lean administrative headquarters at the national level, responsible for drafting guidelines for the management of SOAL in line with a national policy and programme, and for supervising and monitoring uniform implementation of this policy within the regions;
 - effective operative units/institutions responsible for practical implementation at the regional or district levels.
6. Allocate adequate funding for management tasks.
7. Create an IT system that bundles all information with regard to management, including:
 - parcel information (cadastral records, use restrictions, servitude rights);
 - contract information (parties, duration, obligations put down in the contract);
 - information on payments.
8. Make information accessible to the public regarding SOAL available for lease or sale.
9. Facilitate tenders on lease and sale for well-designed land objects (whereby tender evaluation procedures may also consider the qualifications of bidder and business plans and/or other defined criteria, in addition to the offered price).
10. Set up a Dispute Resolution Board which customers (applicants, lessees and purchasers) can appeal to.
11. Implement contract management, including the supervision of payments and other obligations defined in the contract.
12. Facilitate the monitoring and management of contaminated sites (SOAL) and promote re-cultivation projects together with the DLR, which is responsible for land protection.
13. Initiate “change of use purpose” for land that is unsuitable for agricultural purposes (e.g. degraded land, naturally re-afforested land).
14. Initiate “change of use purpose” in order to sell SOAL for commercial or building purposes in line with spatial planning regulations.
15. Allow mechanisms in lease agreements that give farmers incentives to make investments (e.g. a timeframe without lease payments in return for investments made to improve the condition of land).

Box 12: Best practices in the management of SOAL in transition countries

- Make an inventory of SOAL.
- Set up a management institution/unit with a lean guiding and monitoring unit at the central level, plus decentralised operative units.
- Create transparent leasing and selling procedures.
- Create a user-friendly and flexible IT system with all the necessary data for managing an agricultural land parcel, i.e. cadastral information, contract data, payments, restrictions on the parcel, servitude rights, physical data, use purpose, etc.

Figure 3 shows a possible three-phase path for the management of SOAL. The upper squares display the frame conditions in the respective phase, while the lower squares list tasks for the management of SOAL. The phases within a time span can of course overlap.

The path depicted suggests that SOAL in the long run should be transferred into private ownership, based on the opinion that state-owned land in the final transition stage should be reduced to simply the amount needed to fulfil state tasks.

Moreover, the above presumes that fiscal policy aims at maximising revenues for the state budget, and that land policy includes the agro-structural goal to support the economical viability of small⁸⁷ and medium-sized agricultural farms or legal entities.

The suggested implementation of a leasing phase before large-scale privatisation through sale (i.e. a second wave of privatisation of remaining SOAL after land reform has been accomplished) is based on the following assumptions:

- Land prices **are** expected to rise within the scope of land market development; selling SOAL at a later stage will therefore generate higher revenues for the state;
- At present farm businesses in Ukraine, especially small and medium enterprises, need time to consolidate economically. They often do not have access to capital to purchase land (there is no mortgage market, and interest rates for credits are high). Rental leasing payments tie up less capital, which keeps farmers liquid and allows other investments to be made.

⁸⁷ Within the scope of farm restructuring, it is recommended to “recognize the significant role of household plots and individual private farms in the Ukrainian agricultural sector, particularly in rural employment, and institute policies that meet the needs of this segment of the sector. Improving market access, encouraging the development of marketing and input supply cooperatives, providing extension services... are all important ways in which the Government could assist. This should be a priority for the Government, because household plots and individual private farms are the most viable option for absorbing surplus labour that will result from agricultural enterprises reducing labour requirements as they become more efficient. Encouraging small-holder farming could be a solution to a growing unemployment problem”. In: Organisation for Economic Co-operation and Development and the Environmentally and Socially Sustainable Development Unit (OECD), Europe and Central Asia Region; World Bank (2004): Achieving Ukraine’s Agricultural Potential. Stimulating Agricultural Growth and Improving Rural Life.

The execution of tenders as recommended in the diagram comprises a procedure which contains the following steps:

- Public call for tender with information on:
 - The object for tender;
 - Documents that must be handed in by the bidder (e.g. bank confirmation, business plan) in a sealed envelope;
 - Minimum price (optional);
 - Deadline of the Call for Tender;
 - Information on the evaluation procedure of the tender.
- Unopened bids are collected in a tender box that is not accessible to the public.
- Bids are opened after the expiration of the deadline according to a strictly stipulated procedure⁸⁸.
- Evaluation procedure (evaluation by set criteria, not necessarily only the highest price; the definition of criteria has to be clear and transparent).
- Awarding (if the result is unsatisfactory, the seller can withdraw from the tender).

⁸⁸ The procedure should guarantee that more than one person/institution takes part: persons taking part are not directly involved in the leasing or selling procedure; all bids and annexes are documented in a written protocol; the protocol is signed by two persons taking part in the opening of the bids; bids are not opened before the deadline for the submission of bids.

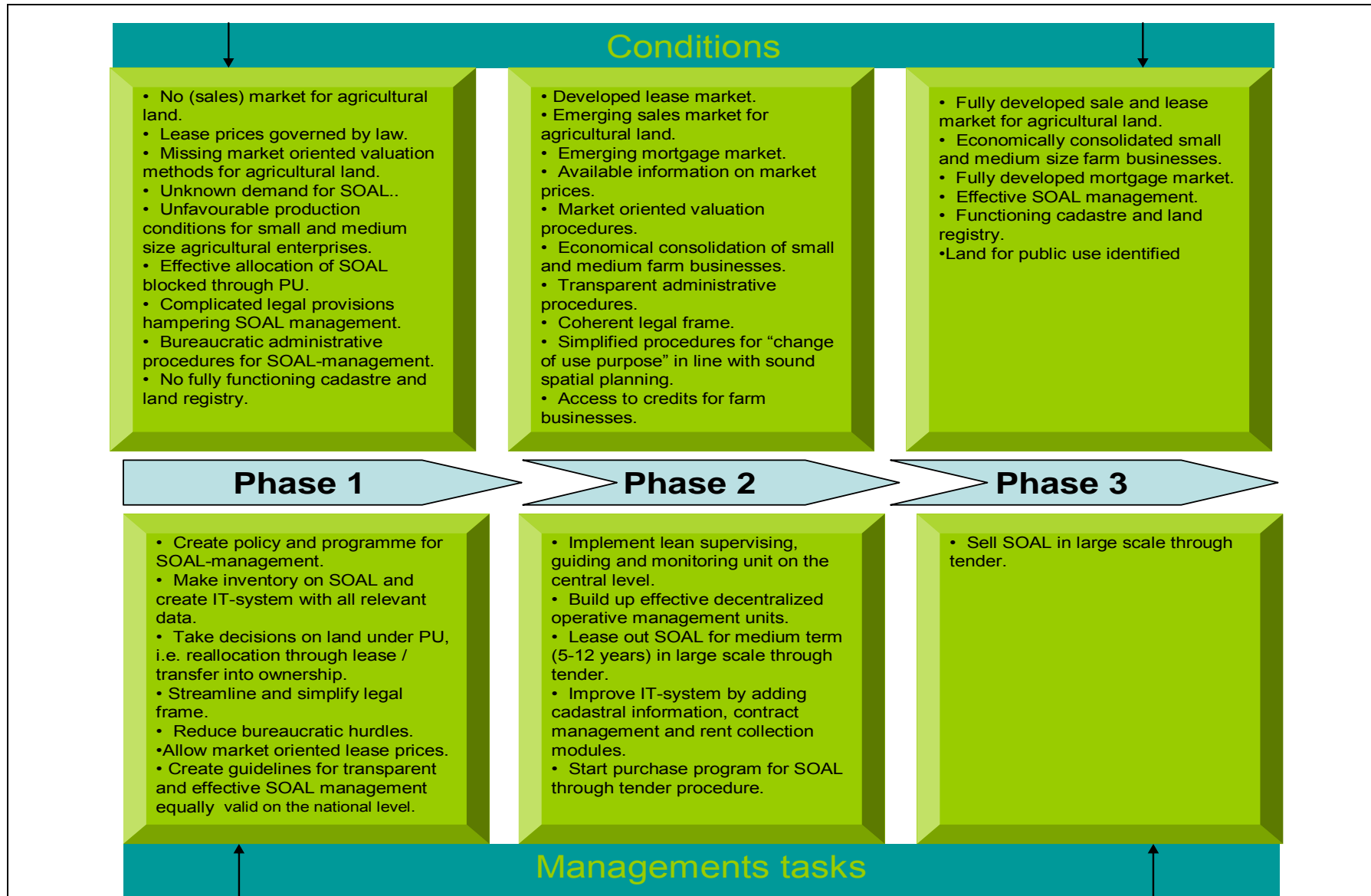


Figure 3: Management of state-owned agricultural land in three phases

7.3 Outlook

A notable share of agricultural land in Ukraine is still in state ownership. During the course of the study it became clear that this SOAL is not adequately managed in order to guarantee maximum revenues for the state budget or to support agro-structural goals. Management practices were observed as rather passive and ineffective. Especially the distribution of SOAL for permanent use prevents the allocation of land to where it is used most efficiently. But also missing clarity and bureaucratic hurdles within the lease and sales procedures contribute to an inefficient utilization of agricultural land in state ownership.

The very complex and in some respect incoherent legal framework governing land relations and state land management is inhibiting effective management rather than serving as a solid basis. Moreover, many legal provisions have not been implemented in practice. Various institutions are involved in the management of SOAL, while a body responsible for guiding and monitoring the complete procedure of SOAL management on the national level is lacking. Also technical constraints, such as the lack of an IT-data base for exclusively recording data on SOAL, reduce the effectiveness of state land management. Last but not least important preconditions for modern state land management like the separation of state and municipal land, a functioning cadastre and land register as well as the existence of a transparent land market are not fulfilled.

It can be presumed that SOAL as a valuable asset has not yet received the amount of attention it deserves. Instead of recognising it as *a national treasure* which, if managed adequately, can contribute to accomplishing agro-structural and fiscal objectives, no clear vision on how to utilise this land seems to exist.

In order to initiate changes in this respect, decision-makers in Ukraine need to formulate a political strategy for the future management and use of SOAL. This strategy should be embedded in an overall policy regarding land and agro-structural issues as well as regarding state land management in general. As an indicator of success, continuity of the political direction is a key momentum.

Moreover, generally speeding up the process of restructuring land relations, which includes accomplishing the land reform, is required. Establishing a cadastre and a land register cannot be postponed any longer. This is equally true for organising and opening the land market.

This requires a national effort. Programmes regarding land issues need to be set up and followed within a defined time line. The full potential of international advisory should be unlocked by streamlining international projects and coordinating donor activities. Political decision makers in Ukraine should play an active role in this procedure.

The specific and profound experience Germany has gained throughout the course of transition in East Germany after unification can contribute to solving similar questions arising in Ukraine with regard to land relations in general and state land management in particular. The option of benefiting from this specific know-how should not be left unnoticed.

Bibliography

- ASSOCIATION OF FARMERS AND PRIVATE LAND OWNERS (2005):
Concept for a "Programme for Development of Farming for the Period 2005 – 2015".
Kiev. www.farmer.org.ua
- CABINET OF MINISTERS OF UKRAINE (2004):
Draft programme for the use and protection of land, submitted by CMU to the VRU on
3 July 2004
- CABINET OF MINISTERS OF UKRAINE (2004):
Draft state programme "for the use and protection of land". Kiev.
- CABINET OF MINISTERS OF UKRAINE (2006):
About SCLR.
http://www.kmu.gov.ua/control/uk/publish/article?art_id=159002&cat_id=43161
- CABINET OF MINISTERS OF UKRAINE (2006):
General articles about Ukraine.
http://www.kmu.gov.ua/control/uk/publish/article?art_id=31304&cat_id=31295
- CABINET OF MINISTERS OF UKRAINE (2006):
Kharkiv oblast.
http://www.kmu.gov.ua/control/uk/publish/article?art_id=82213&cat_id=31432
- CABINET OF MINISTERS OF UKRAINE (2006):
Mykolaiv oblast.
http://www.kmu.gov.ua/control/uk/publish/article?art_id=82817&cat_id=31432
- CABINET OF MINISTERS OF UKRAINE (2006):
Poltava oblast.
http://www.kmu.gov.ua/control/uk/publish/article?art_id=84593&cat_id=31432
- CENTER FOR LAND REFORM POLICY IN UKRAINE (2002):
Land Reform in Ukraine. Kiev
- CENTER FOR LAND REFORM POLICY IN UKRAINE (2005):
The Perspectives of Rural Communities Development in the Context of the Opening of the
Agricultural Land Market in Ukraine. Kiev
- CENTER FOR LAND REFORM POLICY IN UKRAINE (2005):
Ukraine: Effective Land Resources Management at the Local Level. Kiev
- DEMYANENKO, S. I. (2005):
Activating the Land Market, In: William Meyers (2005): *Refocusing
Agricultural and Rural Development Policies in Ukraine: Action Plan for the Road Ahead*.
USAID, Washington, DC, pp. 39-61
- INSTITUTE FOR ECONOMIC RESEARCH AND POLICY CONSULTING (2003):
Development of Domestic Markets in Ukraine. Welfare through Competition. Kiev
- INSTITUTE FOR ECONOMIC RESEARCH AND POLICY CONSULTING (2004):
Towards Higher Standards of Living. An Economic Agenda for Ukraine. Kiev
- INSTITUTE FOR ECONOMIC RESEARCH AND POLICY CONSULTING (2004):
Institutional Aspects of Land Market Development in Ukraine. Kiev
- INSTITUTE FOR ECONOMIC RESEARCH AND POLICY CONSULTING (ed.) (2006):
Macroeconomic Forecast Ukraine (05 2006). http://www.ier.kiev.ua/English/mfu/mefu_9_eng.pdf
- KHARKIV OBLAST STATE ADMINISTRATION (ed.) (2005):

Ecological Atlas of Kharkiv Oblast.
http://www.kharkivoda.gov.ua/catalog_files/Atlas_ECO_BLOC_2005.pdf

KHARKIV OBLAST STATE ADMINISTRATION (ed.) (2005):
Kharkivska oblast.
<http://www.kharkivoda.gov.ua/region/>

KHARKIV OBLAST STATE ADMINISTRATION (ed.) (2005):
Kharkivska oblast. Socio-economic Development.
<http://www.kharkivoda.gov.ua/show.php?page=4231>

KONRAD ADENAUER STIFTUNG (2006):
Arbeitspapiere zum Runden Tisch: Moratorium auf den Verkauf landwirtschaftlicher Flächen. Verlängern oder abschaffen? [Konrad Adenauer Foundation: Working Papers of the Round Table – Moratorium on the Sale of Agricultural Land. Extend or Abolish?], 28 February

MELNYCHUK, V. & A. LISSITSA (2005):
Creation of an Agricultural Market as the Strategic Goal of Land Reform Implementation in Ukraine. Paper

MELNYCHUK, V., S. PARKHOMENKO & A. LISSITSA (2005):
Creation of Agricultural Land Market in Ukraine: Current State of Development, In: Institut für Agrarentwicklung in Mittel- und Osteuropa (ed.): Discussion Paper No 86

MINISTRY OF AGRARIAN POLICY OF UKRAINE (2005):
Draft State Programme “Welfare through Agrarian Development”. Kiev.
www.minagro.gov.ua

MINISTRY OF AGRARIAN POLICY OF UKRAINE (2006):
Draft State Programme for “Support of Farmers for the Period 2006-2015”. Kiev.
www.minagro.gov.ua

MYKOLAIV OBLAST STATE ADMINISTRATION (2006):
<http://www.mykolayiv-oda.gov.ua/>

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT AND THE ENVIRONMENTALLY AND SOCIALLY SUSTAINABLE DEVELOPMENT UNIT (OECD), EUROPE AND CENTRAL ASIA REGION; WORLD BANK (2004): Achieving Ukraine’s Agricultural Potential: Stimulating Agricultural Growth and Improving Rural Life

POLTAVA STATE REGION ADMINISTRATION (2006):
<http://www.adm-pl.gov.ua/ua>

PRESIDENT OF UKRAINE (1994):
Decree on Immediate Measures for Speeding up Land Reform in the Sphere of Agricultural Production, 10 November, # 666/94

PRESIDENT OF UKRAINE (1995):
Decree on the Procedure for the Sharing of Land Transferred into Collective Ownership of Agricultural Enterprises and Organizations, 8 August , # 720/95

SCHNEIDER, E. (2005):
Das politische System der Ukraine. Eine Einführung. Wiesbaden

STATE COMMITTEE ON LAND RESOURCES OF UKRAINE (2006):
http://www.dkzr.gov.ua/terra/control/en/publish/article;jsessionid=BF07547E801C60ED829E7A5DD9742EEB?art_id=37841&cat_id=36139

STATE STATISTICS COMMITTEE OF UKRAINE (2006):
<http://www.ukrstat.gov.ua>

STATE STATISTICS COMMITTEE OF UKRAINE IN RESPECT OF THE ALL-UKRAINIAN POPULATION CENSUS 2001 (2006):

<http://www.ukrcensus.gov.ua>

UKRAINIAN AGRARIAN CONFEDERATION (2006):

The Concept for the Development of the Agrarian Sector and of the Ukrainian Countryside. Kiev. www.agroconf.org

UNITED NATIONS (2005):

Land Administration in the ECE Region. Development Trends and Main Principles. New York/Geneva

UNITED STATES AGENCY INTERNATIONAL DEVELOPMENT (USAID) (ed.) (2005):

Farm Reference Handbook for Ukraine

VERKHOVNA RADA (2001):

Land Code of Ukraine:

[ukr.] <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2768-14>

[engl. translation] http://www.ulti.kiev.ua/download/landlaw1_new_en.pdf#search=%22land%20code%20ukraine%22

ZIMMERMANN, W. (2006):

Good Governance in State Land Management, Presentation at Expert Meeting on Good Governance in Land Tenure and Administration, 25-27 September, 2006 at FAO, Rome, Italy

ДЕРЖАВНИЙ КОМІТЕТ УКРАЇНИ ПО ЗЕМЕЛЬНИХ РЕСУРСАХ (2005):

Сучасний стан земельної реформи в Україні. Київ. [State Committee on Land Resources of Ukraine (2005): The Status Quo of the Land Reform in Ukraine. Kiev]

КОРИНЕЦЬ, РОМАН (2006):

Земельні проблеми та шляхи їхнього вирішення у передвиборчих програмах політичних партій та блоків. Презентація. Київ. [Korinets, Roman (2006): Problems Concerning Land Issues and Possible Solutions Mentioned in the Party Programmes of the Election Campaign. Presentation at a Round Table organised by the Konrad Adenauer Foundation in Kiev, 28 February]

УКРАЇНСЬКИЙ ДЕРЖАВНИЙ ФОНД ПІДТРИМКИ ФЕРМЕРСЬКИХ ГОСПОДАРСТВ (2006):

Науково практичний коментар до Закону України «Про фермерське господарство». Київ. [Ukrainian State Foundation for the Support of Agricultural Enterprises (ed.)

(2006):

Scientific Practical Review of the Law on Agricultural Enterprises. Kiev]

List of Institutions Interviewed

Agrarian State Academy (university), Poltava

“Agrolis” State Enterprise, Kharkiv oblast

Association of Farmers and Private Landowners of Ukraine, Kiev

City Department of Land Resources, Kharkiv

Center of State Land Cadastre, Kharkiv oblast

Division of Land Resources, Poltava rayon (Poltava oblast)

Dokuchaev National Agrarian University, Kharkiv

EU Delegation to Ukraine, Moldova and Belarus, Kiev

Institute for the Development of Agrarian Markets, Kiev

Institute of Agricultural and Industrial Production

Center for Scientific Support of Agricultural and Industrial Production (UAAN), Mykolaiv oblast

Laboratory for Legume and Cereals Crops Genetic Resources, Yurjev Plant Production Institute of Ukrainian Academy of Agrarian Sciences (UAAN), National Center for Plant Genetic Resources of Ukraine, Kharkiv oblast

Land Market Department of Oblast Main Department of Land Resources, Kharkiv oblast

Land Relations Department of Oblast Main Department of Land Resources, Kharkiv oblast

Mayors of villages, Mykolaiv oblast

National Association of Advisory Services (Dorada), Kiev

National Economic University,
Department of Agrobusiness Economics, Kiev

NIBULON Company (non-state agricultural enterprise), Mykolaiv

Oblast Main Department for Land Resources, Poltava oblast

Oblast Main Department of Land Resources, Kharkiv oblast

Oblast State Administration,
Department of Agro-industrial Production and Department of External Economic Relations, Poltava

Oblast State Administration,
Department of Agriculture and Food, Mykolaiv oblast

Oblast State Administration,
Department of Agriculture and Department of Agrarian Markets and Systems of Agriculture, Kharkiv oblast

Office of Center of the State Land Cadastre, Zhovtnevy Rayon (Mykolaiv oblast)

A Ph.D student of the National Agricultural University of Ukraine, Educational and Research Institute of Agro-Business, Banking Department, Kiev

Rayon Division of Land Resources, Valky rayon (Kharkiv oblast)

Rayon State Administration, Mykolaiv oblast

Rayon State Administration, Poltava rayon (Poltava oblast)

Regional Department of the Association of Farmers and Private Landowners of Ukraine, Poltava oblast

State Committee on Land Resources of Ukraine, Kiev

UAAN: Oblast Center for Scientific Support of Agro-industrial Production, Poltava

Ukrainian Agrarian Confederation, Kiev

Ukrainian State Fund for the Support of Farmers, Kiev

US Embassy Ukraine, Department of Agriculture, Foreign Agricultural Service, Kiev

World Bank Ukraine, Kiev

Annex

- Annex 1 Total amount of land, share of agricultural land, share of state-owned land and state-owned agricultural land in the territorial administrative units(2002)
- Annex 2 State-owned land in permanent use by groups of users
- Annex 3 Leasehold of state-owned agricultural land in Ukraine (June 2006)
- Annex 4 Lease of state-owned land (all categories*) in the territorial administrative units of Ukraine (in ha)
- Annex 5 Changes of land* ownership structure, 1991-2005
- Annex 6 State-owned and state-owned agricultural land of Ukraine from 1991-2006
- Annex 7 Land resources of Kharkiv region by categories
- Annex 8 Land resources of Kharkiv region by types of terrain / grounds 2000 – 2005
- Annex 9 State-owned agricultural land in Kharkiv region
- Annex 10 Land resources of Mykolaiv region by categories
- Annex 11 Land resources of Mykolaiv region by types of terrain / grounds´
- Annex 12 Land resources of Poltava region by categories
- Annex 13 Land resources of Poltava region by types of terrain / grounds
- Annex 14 Legal basis for land relations in Ukraine
- Annex 15 Land Title – Permanent use
- Annex 16 Lease contract
- Annex 17 Change of use-purpose of land plots. A report by Maxym Fedorchenko, Center for Land Reform Policy in Ukraine
- Annex 18 Questionnaire for Institutions responsible for management of agricultural land in state or municipal ownership on the regional and local level
- Annex 19 Questionnaire for representatives / advisors of agricultural commodity producers or members of associations of agricultural commodity producers
- Annex 20 Statistical data - Annex to the questionnaires

Annex 1: Total amount of land, share of agricultural land, share of state-owned land and state-owned agricultural land in the territorial administrative units (2002)

Territorial administrative unit (Oblast)	Total amount of land			Land in ownership of the state					
	Total amount of land, thsd. ha	Share of agricultural land		Total		Share of agricultural land		Share of arable land	
		Total thsd. ha	Share of arable land, thsd. ha	thsd. ha	% of total amount of land	thsd. ha	% of share of agricultural land (total)	thsd. ha	% of total share of arable land
Autonome Republik Krim	2.608,1	1.801,9	1.243,2	1.423,4	54.6	640,7	35.60	300,5	24.20
Cherkasy region	2.649,2	2.018,9	1.730,6	1.281,9	49.7	670,8	28.20	418,3	22.30
Chernihiv region	2.014,4	1.056,3	674,5	1.266,9	49.7	321,0	24.30	156,3	18.70
Chernivtsi region	3.192,3	2.512,3	2.121,0	1.443,7	55.4	779,0	25.30	424,8	14.80
City of Kyiv	2.651,7	2.050,1	1.660,3	1.109,9	97.4	562,5	71.40	359,2	90.90
City of Sevastopol	2.982,7	1.599,8	1.076,3	1.745,0	88.3	370,7	69.70	182,4	57.30
Dnipropetrovs'k region	1.275,3	462,2	200,9	982,6	45.2	193,3	31.00	37,1	20.00
Donets'k region	2.718,3	2.247,8	1.904,3	983,2	41.8	537,4	27.40	370,5	21.70
Ivano-Frankivs'k region	1.392,7	635,4	406,1	966,8	69.4	224,5	35.30	56,5	13.90
Kharkiv region	2.812,1	1.675,9	1.366,7	1.612,1	43.5	500,8	27.13	289,5	23.13
Kherson region	2.458,8	2.042,0	1.769,7	1.000,2	50.1	597,7	28.70	384,9	24.30
Khmelnyci region	2.668,3	1.920,3	1.347,7	1.120,5	41.2	448,7	23.90	265,5	18.13
Kirovohrad region	2.183,1	1.270,6	799,7	1.384,8	40.7	486,3	29.30	193,4	21.80
Kyiv region	2.458,5	2.012,7	1.700,3	1.043,9	57.3	613,2	29.90	372,7	21.20
Luhans'k region	3.331,3	2.592,7	2.073,4	1.442,5	42.1	720,5	23.40	425,6	19.70
Lviv region	2.875,0	2.185,7	1.763,4	1.377,8	63.4	709,5	38.30	350,9	24.20
Mykolajiv region	2.005,1	937,0	648,1	1.289,9	42.5	231,3	30.40	119,8	21.90
Odesa region	2.383,2	1.709,2	1.246,7	1.154,5	43.3	494,4	27.80	277,2	20.50
Poltava region	1.382,4	1.054,9	855,0	524,1	47.9	245,5	32.40	137,8	19.90
Rivne region	3.141,8	2.423,5	1.942,8	1.366,8	64.3	657,8	24.70	448,6	18.50
Sumy region	2.846,1	1.968,8	1.773,3	1.425,1	48.4	564,6	29.90	430,5	22.20
Ternopil region	2.062,9	1.570,7	1.254,1	850,6	37.9	375,2	23.30	227,2	16.13
Vinnycya region	2.091,6	1.456,9	1.279,7	1.038,5	48.4	411,4	33.20	285,1	24.20
Volyn region	809,6	473,7	339,4	448,9	62.9	119,9	30.40	50,3	23.20
Zakarpatya region	3.190,3	2.105,7	1.347,8	1.585,8	77.1	511,9	41.80	252,9	18.50
Zaporizhya region	83,6	5,6	1,1	81,4	36.2	4,0	23.90	1,0	19.50
Zhytomyr region	86,4	26,4	11,0	76,3	54.5	18,4	23.20	6,3	16.90
Ukraine in total	60.354,8	41.817,0	32.537,1	30.027,1	49.7	12.011,0	28.70	6.824,8	21.00

Source: Unpublished data 2002.

Annex 2: State-owned land in permanent use by groups of users (in thsd. ha)

Land users with land under permanent use	Number of land owners and/or land users	Area in total	Share of state-owned land given into permanent use			
		In total	Number of the land users (with land under permanent use)	In total	Area in total	
					Share of agricultural land	
					In total	Share of arable land
Agricultural enterprises*	20.556	19.507,9	4.394	1.915,3	1.441,3	1.135,0
Private Persons / Farmers	24.677.343	19.064,9	5.449.366	2.192,6	2.082,2	1.832,0
Institutions, authorities, organisations	162.137	747,2	132.738	606,6	47,6	38,9
Industry	49.715	760,0	39.759	385,7	16,8	9,3
Transportation and shipping	10.864	654,7	9.682	641,4	45,8	12,7
Defence	6.056	432,3	5.663	432,2	70,8	33,7
Organisations, enterprises and authorities for nature protection, health-improving and recreational and historical-cultural use	6.909	420,2	4.479	413,5	21,8	1,9
Forestry Enterprises	670	8.540,0	666	8.537,9	130,4	33,1
Water supply and distribution	898	391,1	893	383,7	9,6	1,0
Joint Ventures with foreign companies	1.061	52,1	464	4,0	2,8	2,4
Foreign enterprises	158	1,3	56	0,3	X	X
Total	24.936.367	50.571,7	5.648.160	15.513,2	3.869,1	3.100,0

Source: Unpublished data 2006.

* state and non-state agricultural enterprises.

Annex 3: Leasehold of state-owned agricultural land in Ukraine (June 2006)

Oblast	Number of tenants	Area, ha	Number of users with whom lease contracts were cancelled because of indebtedness	Area of lands by cancelled contracts, ha	Area of land granted in leasehold on competitive basis upon cancellation of contracts, ha	Reference data	
						Total area of oblast, ha	Area of agricultural land, ha
Autonome Republik Krim	766	66.790	10	1.200	0		
Vinnytsya region	2504	104.520	34	1.780	10		
Volyn region	849	21.600	0	0	0		
Dnipropetrovs'k region	3813	158.170	7	460	230		
Donets'k region	1900	88.300	3	180	0		
Zhytomyr region	848	16.560	0	0	0		
Zakarpattya region	450	7.980	2	10	0		
Zaporizhyya region	1624	74.300	7	1.310	810		
Ivano-Frankivs'k region	211	9.920	11	820	100		
Kyiv region	1301	94.000	3	40	0		
Kirovohrad region	2488	139.530	4	460	0		
Luhans'k region	1642	67.200	35	2.230	0		
Lviv region	386	9.190	1	300	0		
Mykolajiv region	1887	89.080	8	790	410	2.459.000	2.060.120
Odesa region	2562	131.100	22	1.320	90		
Poltava region	3689	236.950	14	1.540	1.380	2.875.000	2.242.600
Rivne region	403	6.380	0	0	0		
Sumy region	822	119.400	15	5.000	0		
Ternopil region	593	12.500	34	230	0		
Kharkiv region	1156	76.310	1	120	0	3.141.800	2.482.400
Kherson region	2008	141.900	20	2.900	200		
Khmelnyci region	1232	44.200	28	1.860	0		
Cherkasy region	1182	131.100	40	8.200	8.200		
Chernivtsi region	917	3.480	8	10	10		
Chernihiv region	837	57.200	1	1.000	0		
Ukraine	36070	1.907.660	308	31.760	11.440	60.354.800	41.722.200

Source: Unpublished data 2006.

Annex 4: Lease of state-owned land (all categories*) in the territorial administrative units of Ukraine (in ha)

Territorial administrative units	Leased out by local self government (municipalities)	Leased out by RSA
Autonome Republik Krim	0	80.933
Vinnycya region	62.869	85.636
Volyn region	5.425	77.712
Dnipropetrovs'k region	0	186.858
Donets'k region	29.710	61.264
Zhytomyr region	12.339	41.898
Zakarpattya region	5.854	20.380
Zaporizhyya region	35.440	67.004
Ivano-Frankivs'k region	0	15.779
Kyiv region	23.232	26.398
Kirovohrad region	0	197.493
Luhans'k region	3.231	84.620
Lviv region	8.913	6.482
Mykolajiv region	0	144.099
Odesa region	3.343	147.157
Poltava region	88.065	265.712
Rivne region	8.698	67.797
Sumy region	12.832	145.480
Ternopil region	145	15.254
Kharkiv region	14.852	145.858
Kherson region	2.386	120.544
Khmelnyci region	19.646	70.414
Cherkasy region	9.066	172.270
Chernivtsi region	8.405	12.247
Chernihiv region	12.602	94.182
City of Sevastopol	254	3.540
City of Kyiv	3.634	0
Ukraine in total	370.941	2.357.011

Source: Unpublished data 2005.

* According to land classification of LCU 2001.

Annex 5: Changes of land* ownership structure, 1991-2005

As of the beginning of the year	Pattern of ownership					
	State		Private		Collective**	
	thsd. ha	%	thsd. ha	%	thsd. ha	%
1992	60.354,8	100	0	0	0,0	0
1993	60.199,2	99,7	13,8	0,02	141,8	0,2
1994	57.822,6	95,8	910,6	1,5	1.621,6	2,7
1995	55.148,5	91,4	1.488,6	2,4	3.717,7	6,2
1996	36.310,5	60,2	1.925,4	3,2	22.118,9	36,6
1997	33.141,6	54,9	2.446,6	4,1	24.766,5	41
1998	30.701,2	50,9	3.090,3	5,1	26.563,3	44
1999	30.097,0	49,9	3.393,8	5,6	26.864,0	44,5
2000	29.265,5	48,5	4.327,3	7,2	26.762,0	44,3
2001	30.166,5	50	29.109,2	48,2	1.079,1	1,8
2002	30.027,1	49,7	29.807,0	49,4	520,7	0,9
2003	29.872,2	49,5	30.178,0	50	304,6	0,5
2004	29.796,8	49,4	30.326,3	50,2	231,7	0,4
2005	29.671,4	49,2	30.542,8	50,6	140,6	0,2

2005	In total	In state property		In private property		In collective property		In municipal property	
								ha	%
agricultural land	41.763,8	11.491,1	27.5%	30.217,9	72.4%	54,8	0.1%		
thereof arable land	32.482,2	6.162,0	19%	26.290,5	80.9%	29,7	0.1%		

Source: Unpublished data 2005.

*Considering land of all categories according to the classification by LCU 2001.

**Collective ownership was a form of ownership realized by collective agricultural enterprises, agricultural cooperatives and other similar enterprises which acted as title owners of land, while actual ownership belonged to collective of natural persons who created that collective enterprise. This form of ownership existed in 1992-2001.

Annex 6: State-owned and state-owned agricultural land of Ukraine from 1991-2006

Year	Total area of state-owned land, thsd. ha	Total area of agricultural land, thsd. ha	Agricultural state-owned land, thsd. ha	Structure of all agricultural land	
				Type of ground	Share, %
1991	60.354,8	42.030,3	42.030,3	arable	79,9
				fallow	0
				perennial plantations	2,5
				hayfields	5,2
				pastures	12,4
01.07.2000	29.978,5	41.829,5	12.401,4	arable	78,1
				fallow	0,9
				perennial plantations	2,3
				hayfields	5,8
				pastures	13,1
01.01.2002	30.027,1	41.817,0	12.011,0	arable	77,8
				fallow	1
				perennial plantations	2,2
				hayfields	5,8
				pastures	13,2
01.01.2004	29.796,8	41.788,5	11.663,3	arable	77,8
				fallow	1
				perennial plantations	2,1
				hayfields	5,8
				pastures	13,3
01.01.2005	29.600,8	41.763,8	11.414,8	arable	77,8
				fallow	1
				perennial plantations	2,2
				hayfields	5,8
				pastures	13,2
01.01.2006	29.595,6	41.722.200,0	11.369,3		

Source: Unpublished data.

Annex 7: Land resources of Kharkiv region by categories*

	Category	2000	2001	2002	2005	
		Area, thsd. ha	Area, thsd. ha	Area, thsd. ha	Area, ha	To the total area of Oblast, %
	Land of agricultural use,	2.484,1	2.484,3	2.482,4	2.419.234	79,01
including	agricultural grounds	2.423,8	2.423,5	2.422,5		
	non-agricultural grounds	60,3	60,8	59,9		
	Land of residential and public building-up	28,4	29,1	28,9	81.688	2,60
	Land of natural reserve fund and land of other nature protection use,	34,9	43,2	43,8	43.671	1,39
including	biosphere reserves					
	nature reserves					
	national natural parks					
	regional landscape parks	4,9	7,0	7,0		
	reserves	30,0	34,9	35,6		
	reserve tracts	1,4	1,4	1,5		
	others	0,9	0,9	0,5		
	Land of health-improving use	0,5	1,2	1,2	7.540	0,24
	Land of recreational use	2,3	2,1	2,1	1.257	0,04
	Land of historical and cultural use	0,1	0,2	0,2	314	0,01
	Land of forestry	415,1	415,1	416,0	372.700	11,86
	Land of water fund	90,5	90,6	90,9	92.999	2,96
	Land of industry, transport, communications, energy, defence and others,	85,9	77,1	76,3	71.006	2,26
including	land of industry	13,1	13,1	13,2		
	land of transport	26,4	26,5	26,7		
	land of communications	0,3	0,3	0,4		
	land of energy	1,2	1,2	1,2		
	land of defence	16,0	15,9	15,8	14.600	0,05
	others	28,9	20,0	19,0		

Source: Compiled data: Ministry of environmental protection of Ukraine (2000-2002) and Kharkiv Region Main Department of Land Resources (2005).

*Categories according to land classification by LCU 2001.

Annex 8: Land resources of Kharkiv region by types of terrain / grounds 2000 - 2005

	Types of land and grounds	2000		2001		2002		2005	
		Area, thsd. ha	To the total area of Oblast, %	Area, thsd. ha	To the total area of Oblast, %	Area, thsd. ha	To the total area of Oblast, %	Area ha	To the total area of Oblast, %
	Land of agricultural use	2.484,1	77,1	2.484,3	79,07	2.482,4		2.419.234	77
including	non-agricultural grounds	60,3		60,8		59,9		9.192	
	agricultural grounds	2.423,8		2.423,5		2.422,5		2.410.042	76,7
including	arable land	1.953,4	62,2	1.942,8		1.941,2		1.922.884	
	fallow land	1,1		5,5		6,0		9.677	
	perennial plants	50,1		50,1		50,0		49.567	
	hayfields	116,3		117,7		117,9		427914	
	pastures	302,9		307,4		307,4			
	Forests and areas covered with forests	415,1	13,2	415,1		416,0		361.000	11,49
	covered with forest plants	368,8		369,2		378,2			
	not covered with forests plants	6,1		6,1		6,7			
	other areas covered with forest	26,5		25,9		14,0			
including	protecting forest stripes	25,4		26,0		26,1			
	other protecting forest plants	111,7		111,3		105,6			
	bushes	13,7		13,9		14,0			
	Land with building-up	118,3	3,8	118,9		118,9		119.390	3,8
	Open swamp land	30,7	1,0	30,7		30,6		31.419	1
	Open land with insignificant or absent vegetation	33,8	1,1	33,9		33,6		34.560	1,1
including	sands	3,4		3,3		3,1			
	ravines	12,9		12,8		12,8			
	rocks, detritus, pebble	17,5		17,8		17,7			
	LAND in total	3.082,0	98,1	3.081,9		3.081,5		3.082.154	98,1
	WATER in total	59,8	1,9	59,9		60,3		59.695	1,9
	AREA in total	3.141,8	100,0	3.141,8	100,0	3.141,8	100,0	3.141.849	100

Source: Compiled data: Ministry of Environmental Protection of Ukraine (2000-2002) and Kharkiv Region Main Department of Land Resources (2005).

Annex 9: State-owned agricultural land in Kharkiv region

Category of user	State agricultural enterprises		Private agricultural enterprises and farmers		TOTAL
TOTAL	127		2245		2327
Category of use	number units	area, ha	number, units	area, ha	area, ha
Permanent use	127	119.346	1089	20.059	139.405
Lease	0	0	1156	76.310	76.310
TOTAL		119.346		96.369	215.715

Source: KhOmDLR.

*According to the data of KhOMDLR, universities, scientific and research institutions, experimental farms and other public establishments have in permanent use 83470 ha of state-owned land. The share of agricultural lands is unknown.

Annex 10: Land resources of Mykolaiv region by categories*

	Category	2000		2002		2004	
		Area, thsd. ha	To the total area of Oblast %	Area, thsd. ha	To the total area of Oblast %	Area, ha	To the total area of Oblast %
	Land of agricultural use	2.062,8	83,9	2.061,4	83,8	2.060.120	
including	agricultural grounds	2.013,3	81,9	2.011,6	81,8	2.010.770	
	non-agricultural grounds	49,5	2,0	49,8	2	49.350	
	Land of residential and public building-up	43,5	1,8	43,6	1,8		
	Land of natural reserve fund and land of other nature protection use	0,7	0,0	0,8	0,033		
including	biosphere reserves	0,7	0,0	0,7	0,028		
	nature reserves						
	national natural parks						
	regional landscape parks						
	reserves						
	reserve tracts						
	others	0,0	0,0	0,1	0,005		
	Land of health-improving use	0,1	0,0	0,2	0,008		
	Land of recreational use	1,5	0,1	1,2	0,05		
	Land of historical and cultural use	0,4	0,0	0,3	0,01		
	Land of forestry	120,4	4,9	120,2	4,9	120.480	4,9
	Land of water fund	127,4	5,2	127,4	5,2	127.330	5,2
including	natural currents	20,3		20,0			
	artificial currents	4,3		4,3			
	lakes and estuaries	87,9		87,8			
	ponds	11,0		11,2			
	artificial reservoirs	3,9		4,1			
	Land of industry, transport, communications, energy, defence and others	96,0	3,9	100,8	4,1		
including	land of industry	5,0		5,3			
	land of transport	14,5		14,9			
	land of communications	0,5		0,5			
	land of energy	1,7		1,9			
	land of defence	49,8		53,1			
	others	24,5		25,1			

Source: Ministry of Natural Resources and Environmental Protection of Ukraine. Unpublished data 2004.

* Categories according to land classification of LCU 2001.

Annex 11: Land resources of Mykolaiv region by types of terrain / grounds

	Types of land and grounds	2000	2001	2002	2003	2004
		Area, thsd. ha	Area, thsd. ha	Area, thsd. ha	Area, thsd. ha	Area, thsd. ha
	Land of agricultural use land	2.062,8	2.062,0	2.061,4	2.060,7	2.060,1
including	non-agricultural grounds	49,5	49,3	49,8	49,6	49,4
	agricultural grounds	2.013,3	2.012,7	2.011,6	2.011,1	2.010,8
including	arable land	1.698,0	1.700,3	1.699,4	1.698,1	1.696,4
	fallow land	5,7	1,4	1,5	2,2	2,2
	perennial plants	36,5	37,0	36,4	36,3	36,2
	hayfields	4,5	4,2	4,3	4,0	4,0
	pastures	268,6	269,8	270,0	270,5	270,5
	Forests and areas covered with forests	120,4	119,9	120,2	120,3	120,5
	covered with forest plants	95,2	96,9	97,7		
	not covered with forests plants	7,6	7,8	7,8		
	other areas covered with forest	16,4	14,0	13,4		
including	protecting forest stripes	34,1	34,3	34,6		34,7
	other protecting forest plants	7,4	8,8	12,5		
	bushes	1,2	1,2	1,3		
	Land with building-up	96,0	97,1	96,6	97,2	97,3
	Open swamp land	21,0	20,7	20,9	21,0	21,0
	Open land with insignificant or absent vegetation	31,0	31,3	32,0	31,8	32,3
including	sands	2,0	2,1	2,0		
	ravines	6,6	6,8	7,1		
	rocks, detritus, pebble	16,7	16,5	16,8		
	LAND in total	2.331,1	2.331,0	2.331,1	2.331,0	2.331,2
	WATER in total	127,4	127,5	127,4	127,5	127,3
	AREA in total	2.458,5	2.459,0	2.459,0	2.459,0	2.459,0

Source: Ministry of Natural Resources and Environmental Protection of Ukraine (MNREPU) and by Mykolaiv Oblast Department of MNREPU.

Annex 12: Land resources of Poltava region by categories*

	Category	Area, thsd. ha	To the total area of Oblast, %
	Land of agricultural use	2.242,6	78
including	agricultural grounds	2.185,0	76
	non-agricultural grounds	57,6	2
	Land of residential and public building-up	35,3	1,2
	Land of natural reserve fund and land of other nature protection use	115,0	4
including	biosphere reserves	0,0	
	nature reserves	0,0	
	national natural parks	0,0	
	regional landscape parks	40,2	1,39
	reserves	69,8	2,4
	reserve tracts	5,0	0,17
	others	0,0	0
	Land of health-improving use	0,5	0,01
	Land of recreational use	0,4	0,01
	Land of historical and cultural use	1,5	0,05
	Land of forestry	272,7	9,48
	Land of water fund	148,3	5,2
including	waters		
	islands		
	coastal protecting stripes along seas, rivers and water reservoirs		
	coastal stripes of waterways		
	others		
	Land of industry, transport, communications, energy, defence and others	93,3	3,24
including	land of industry	52,9	1,8
	land of transport	35,9	1,2
	land of communications	0,1	0,003
	land of energy	0,4	0,013
	land of defence	3,8	0,13
	others	0,2	0,007

Source: Ministry of Natural Resources and Environmental Protection of Ukraine. Unpublished data 2003.

* According to land classification by LCU 2001.

Annex 13: Land resources of Poltava region by types of terrain / grounds

	Types of land and grounds	Area, thsd. ha	To the total area of Oblast, %
	Agricultural land	2.242,6	78
including	arable land	1.760,3	61,2
	fallow land	44,6	1,6
	perennial plants	30,0	5,5
	hayfields	158,2	5,5
	pastures	191,9	6,67
	Forests and areas covered with forests	272,7	9,48
	covered with forest vegetation	230,4	8,7
	not covered with forests vegetation	3,7	0,1
	other areas covered with forest vegetation		0,2
including	protecting forest stripes	20,0	0,69
	other protecting forest vegetation	49,7	1,7
	bushes	12,8	0,4
	Land with building-up	112,8	3,9
	Open swamp land	85,6	2,97
	Open land with insignificant or absent vegetation	13,0	0,45
including	sands	2,9	0,1
	ravines	2,1	0,07
	rocks, detritus, pebble	0,2	0,01
	LAND in total	2.726,7	94,8
	WATER in total	148,3	5,2
	AREA in total	2.875,0	100

Source: Ministry of Natural Resources and Environmental Protection of Ukraine. Unpublished data 2003.

Annex 14: Legal basis for land relations in Ukraine

I. Constitution of Ukraine of June 28, 1996;

I-1. Decision of the Constitutional Court of Ukraine of September 22, 2005 # 5-пр/2005 (case # 1-17/2005 on permanent use of land parcels);

II. Codes:

- 1) Land Code of Ukraine (LCU) of December 18, 1990, in force from January 1, 1991 till December 31, 2001;
- 2) LCU of October 25, 2001, in force since January 1, 2002;
- 3) Code of Ukraine on Waters of June 6, 1995;
- 4) Forestry Code of Ukraine of January 21, 1994, revised in 2005, new version became effective on February 9, 2006;
- 5) Code of Ukraine on Interior of July 27, 1994;
- 6) Civil Code of January 16, 2003, became effective on January 1, 2004;
- 7) Economic Code of Ukraine of January 16, 2003, became effective on January 1, 2004;
- 8) Code of Ukraine on Administrative Trespasses of December 7, 1984;
- 9) Criminal Code of Ukraine of April 2001, became effective on September 1, 2001;

III. Laws:

1. On Peasant (Farmer) Farm of December 20, 1991 (in force in 1992-2003);
2. On Patterns of Ownership In Respect of Land of January 30, 1992 (in force in 1992-2003);
3. On Property of February 7, 1992;
4. On Payment for Land of July 3, 1992;
5. On Foundations of Town-Planning of November 16, 1992;
6. On Local Self-Governance in Ukraine of May 21, 1997;
7. On Lease of Land of October 6, 1998;
8. On Local State Administrations of April 9, 1999;
9. On Planning and Building-Up of Territories of April 20, 2000;
10. On General Scheme for Planning the Territory of Ukraine of February 7, 2002;
11. On Expert Monetary Valuation of Land Parcels of October 11, 2002;
12. On Personal Peasant Farm of May 15, 2003;
13. On Organization of the Use of Land of May 22, 2003;
14. On Farming of June 19, 2003;
15. On Fixed Agricultural Tax of December 17, 1998;
16. On Protection of Lands of June 19, 2003;
17. On Use of Lands of Defence of November 27, 2003;
18. On Valuation of Lands of December 11, 2003;
19. On Demarcation of Land of State and Municipal Property of February 5, 2004;
20. On State Expertise of Documentation for Organization for the Use of Land of June 17, 2004;
21. On State Registration of Material Rights in Respect of Immovable Property and Limitations (Restrictions) Thereof of July 1, 2004.

IV. Decrees of the President of Ukraine

- 1) On Immediate Measures in Respect of Speeding up the Land Reform in the Sphere of Agricultural Production of November 10, 1994;
- 2) On Privatization and Lease of Land Parcels of Non-Agricultural End-Use for Carrying Out Entrepreneurial Activity of July 12, 1995;
- 3) On Simplified System of Taxation and Reporting of Subjects of Small Entrepreneurship of July 3, 1998;
- 4) On Sale of Land Parcels of Non-agricultural End-Use of January 19, 1999;
- 5) On Additional Measures for Meeting Needs of Citizens in Land Plots of June 28, 1999;
- 6) On Measures for Development of Gardening and Truck Farming of September 23, 1999;
- 7) On Measures for Development and Regulation of Market of Lands of Settlements, Of Other Lands of Non-Agricultural End-Use of February 4, 2000;
- 8) On Securing Economical Interests and Social Protection of Persons Employed in Social Sphere of Rural Areas and Solution of Certain Problems Which Appeared Within The Course of Land Reform of April 12, 2000;
- 9) On Main Directions of Land Reform in Ukraine for 2001-2005 of May, 30, 2001.

V. Resolutions of the Parliament

- 1) On Land Reform of December 18, 1990;
- 2) On Speeding Up Land Reform and Privatization of Land of March 13, 1992.



National emblem of Ukraine

LAND TITLE
TO THE RIGHT OF PERMANENT USE OF LAND

Series ПЛ (seal) (signature)

Державний акт на право постійного користування землею видано _____

(назва землекористувача та його місцезнаходження)

_____ Радю народних депутатів
_____ району _____ області України
у тому, що зазначеному землекористувачу надається у постійне користування _____ гектарів
землі в межах згідно з планом землекористування

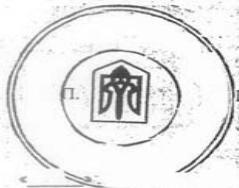
Землю надано у постійне користування для _____

(мета, призначення)

відповідно до рішення _____ Ради народних
депутатів від _____ року № _____

Цей державний акт складено у двох примірниках, з яких перший видано землекористувачу,
другий зберігається у _____ 'аді народних депутатів.

Акт зареєстровано в Книзі записів державних актів на право постійного користування
землею за № _____



Голова

Ради народних депутатів

підпис

(прізвище)

Серія ПЛ

Land title to the right of permanent use of land is issued to _____ (name of land user and his location) by the Rada of people's deputies of _____ Rayon of _____ Oblast of Ukraine to certify that the said land user is allocated into permanent use ... ha of land within boundaries according to the plan of estate.

Land is provided for educational and experimental work, promotion of advanced experience and carrying out of agricultural production according to the decision of _____ Rada of people's deputies dated _____ # _____.

This land title is produced in two copies, one of which is handed over to the land user, and the second is kept at _____ Rada of people's deputies.

Land title is registered in the Book for registration of land titles to permanent use of land under # _____.

(seal) Head of _____ Rada of people's deputies

(signature)

(name)

" _____ " 199_

Series ПЛ _____



ДЕРЖАВНИЙ КОМІТЕТ УКРАЇНИ ПО ЗЕМЕЛЬНИХ РЕСУРСАХ
обласне управління земельних ресурсів
районний відділ земельних ресурсів

"____" _____ 2006 р.

ДОВІДКА

Видана відділом земельних ресурсів в тім, що станом на _____ року згідно земельно – кадастрової документації за _____ на території Бричківської сільської ради, лічиться земельна ділянка загальною площею _____ га, з них :

- Рілля – _____ га
- Садів – _____ га
- Сіножаті – _____ га
- Пасовища – _____ га
- Під господарськими будівлями і дворами – _____ га
- Під господарськими шляхами і прогонами – _____ га
- Ліси та інші лісовкриті площі – _____ га
- Відкриті заболочені землі без рослинного покриву – _____ га
- Води – _____ га
- Яри – _____ га
- Землі, які перебувають у стадії меліоративного будівництва – _____ га

Начальник відділу
земельних ресурсів



STATE COMMITTEE OF UKRAINE ON LAND RESOURCES
_____ Oblast Administration on Land Resources
_____ Rayon Department on Land Resources

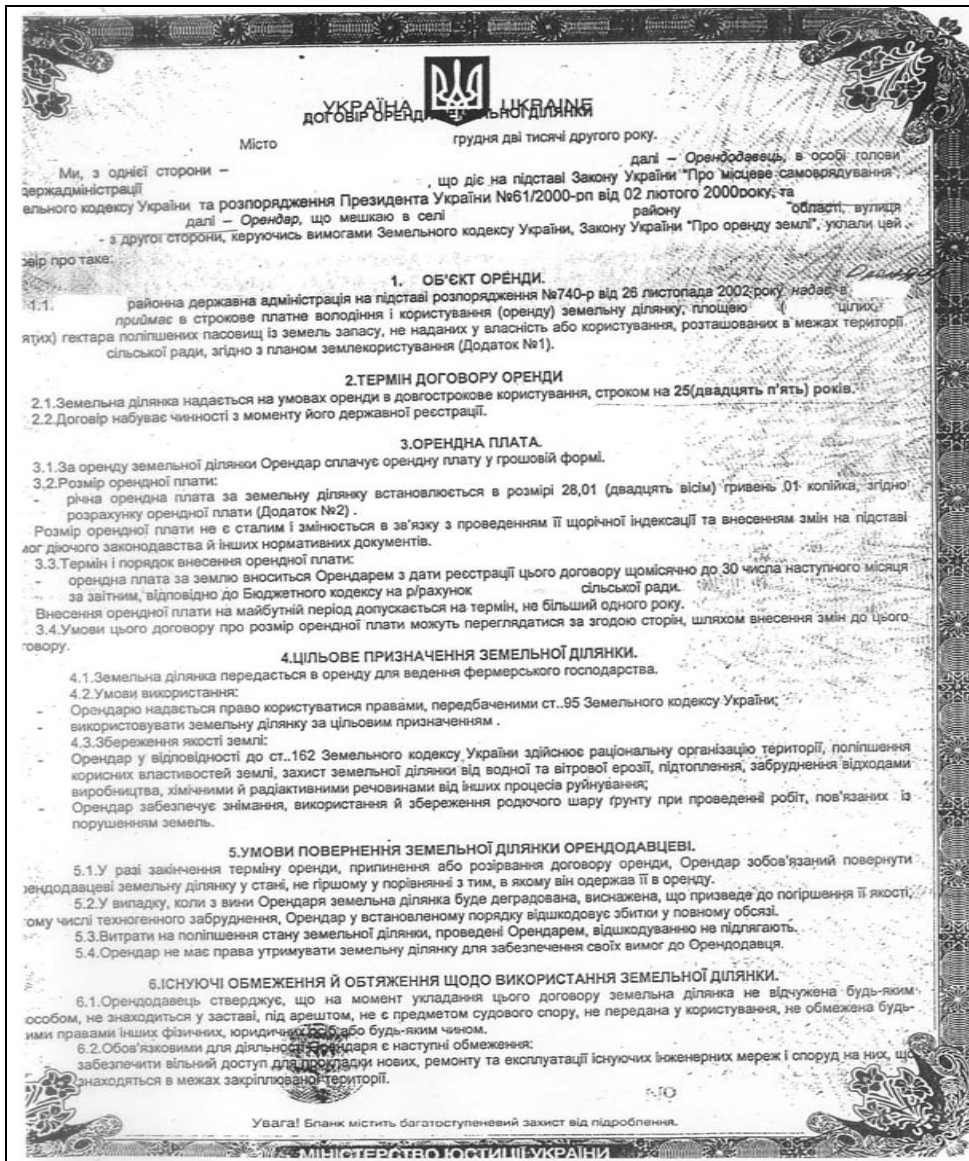
_____ 2006 _____

REFERENCE

This reference has been issued by the Department on land resources to prove that as of _____ of the year _____ and according to cadastral documentation _____ is a user of a land parcel with the total area of ... ha on the territory of _____ village rada, which parcel consists of the following grounds:

- arable land – ... ha;
- gardens – ... ha;
- hayfield – ... ha;
- pastures – ... ha;
- occupied with household buildings and yards – ... ha;
- occupied with household roads and passages – ... ha;
- forests and other areas with forest vegetations – ... ha;
- open swamp land without vegetation – ... ha;
- waters – ... ha;
- ravines – ... ha;
- lands under amelioration construction – ... ha

Head of department on land resources (stamp) (signature)



(the contract is on the official form of notaries of Ukraine)

UKRAINE (National Emblem of Ukraine) UKRAINE

Contract for lease of a land parcel

City of _____ on ____ of December of the year two thousand and two

We, on one side - _____ RAYON STATE ADMINISTRATION, hereinafter referred to as Landlord, represented by the Head of Rayon State Administration _____ acting on the basis of the Law of Ukraine "On local self-governance", Land Code of Ukraine and Order of the President of Ukraine # 61/2000-pn dated February 2, 2000, and _____, hereinafter referred to as Tenant, residing in the village of _____ of _____ Rayon of _____ Oblast, _____ street, on the other side, in pursuance of the requirements of the Land Code of Ukraine, Law of Ukraine "On lease of land", have concluded this contract on the following:

1. OBJECT OF LEASE

1.1. _____ Rayon State Administration on the basis of the Resolution # 740-p dated November 26, 2002, is providing, and Tenant is accepting into timed chargeable possession and use (lease) a land plot with the area of 4.2 (four point two) hectares of improved pastures out of land of stock, which not allocated in use or ownership, located within the territory of --- village rada, according to the plan of land tenure (Annex 1).

2. TERMS OF THE CONTRACT FOR LEASE

2.1. Land parcel is provided under conditions of lease for long-term use for the period of 25 (twenty five) years.
 2.2. The contract becomes valid from the moment of the state registration thereof.

3. GROUND RENT

3.1. For the lease of land parcel the tenant shall pay ground rent in cash.

3.2. The sum of ground rent:

- annual ground rent for the land parcel is 28 (twenty eight) hryvnya 01 kopiyyka, according to the calculation of ground rent (Annex 2);

The sum of ground rent is not fixed and may be changed as a result of its annual indexation and changes introduced on the basis of current legislation and other normative documents.

3.3. Terms and procedure for payment of ground rent:

- ground rent for land shall be paid by the Tenant from the date of registration of this contract on a monthly basis till the 30th day of the month which follows a respective month, according to the Budgetary Code, to the current account of _____ village rada.

Payment of ground rent in advance is allowed for a period not exceeding one year.

3.4. Conditions of this contract in respect of the sum of ground rent may be reviewed upon consent of the parties by way of introducing changes into this contract.

4. END-USE OF THE LAND PARCEL

4.1. Land parcel is leased out for the purpose of farming.

4.2. Conditions of use:

- Tenant shall have the rights stipulated by article 95 of the Land Code of Ukraine;

- [Tenant shall] use the land parcel according to the end-use.

4.3. Preservation of quality of land:

- Tenant pursuant to article 162 of the Land Code of Ukraine shall perform rational organization of the territory, improvement of useful properties of land, protection of the land parcel from water and wind erosion, underflooding, pollution due to industrial waste, chemical and radioactive substances, other processes of ruining;

- Tenant shall provide for removal, use and preservation of the fertile layer of ground during works related to ruining of lands.

5. CONDITIONS FOR RETURNING THE LAND PARCEL TO THE LANDLORD

5.1. In case of expiration, cancellation or termination of the contract for lease, the Tenant shall return the land parcel to the Landlord in the condition which is not worse comparing to that in the beginning of the lease.

5.2. In case Tenant's actions will cause for land parcel to be degraded, exhausted, what leads to deterioration of quality thereof, including man-caused pollution, the Tenant shall reimburse damages in full according to the established procedure.

5.3. Expenses incurred by the Tenant for the improvement of the condition of the land parcel shall not be reimbursed.

5.4. Tenant shall have no right to withhold land parcel for securing his claims towards the Landlord.

6. EXISTING LIMITATIONS AND ENCUMBRANCES IN RESPECT OF USE OF LAND PARCEL

6.1. Landlord holds that at the moment of conclusion of this contract the land parcel has not been alienated in favor of any persons, pledged, arrested, it is not under dispute, not transferred in use, not encumbered with rights of other natural, legal persons or by any other means.

6.2. The following limitations are mandatory for the activities of the Tenant:

- to grant free access for building new as well as repairing and exploiting the existing engineer communications and constructions thereupon, which are situated within the boundaries of allocated territory.

N _____

ATTENTION! Form contains multi-level protection against counterfeiting

MINISTRY OF JUSTICE OF UKRAINE

(end of page)



РОЗРАХУНОК

Орендної плати за земельну ділянку площею га поліпшених пасовищ наданої громадянину розпорядженням райдержадміністрації від 200 року № -р для ведення фермерського господарства, в оренду терміном на 25 років у земель запасу в межах сільської ради .

1. Грошова оцінка 4,23га поліпшених пасовищ складає :
4946,27грв.

3. Середня грошова оцінка 1га поліпшених пасовищ:
 $4946,27:4,23=1169,33$ грн. *8.2.151 = 29.05.2002*

3. Ставка земельного податку відповідно ст.6 Закону України "Про плату за землю" за 1га складає 0,1%:
 $1169,33 \times 0,1\% = 1,17$ грн. *= 1,17*

4. Орендна плата вноситься враховуючи рекомендації КРУ та розпорядження РДА №:355 від 29.05.2002 року за 1га складає:

$1,17 \times 5,66 = 6,62$ грн. *= 6,62*
за 4,23га

$6,62 \times 4,23 = 28,01$ грн. *= 28,01*

Начальник відділу
земельних ресурсів



(STAMP)

CALCULATION

of ground rent for a land plot with the area of 4.23 ha of improved pastures allocated to a citizen _____ by the decision of Rayon state administration dated _____ # 740-p for the purpose of farming, under conditions of lease for the term of 25 years out of lands of stock within the boundaries of _____ village rada.

1. Monetary valuation of 4.23 ha of improved pastures is:

UAH 4946.27

2. Average monetary valuation of improved pastures:

$4946.27 : 4.23 = \text{UAH } 1169.33$

3. Rate of land tax according to article 6 of the Law of Ukraine "On Payment for Land" per 1 ha is 0,1%:

$1169.33 \times 0.1\% = \text{UAH } 1.17$

4. Ground rent is paid taking into account recommendations of Control and Revision Department and resolution of Rayon State Administration # 355 dated 29.05.2002 and per 1 ha amounts to:

$1.17 \times 5.66 = \text{UAH } 6.62$

for 4.23 ha

$6.62 \times 4.23 = \text{UAH } 28.01$

Head of Department on Land Resources

(seal)

(signature)

Annex 17: Change of use-purpose of land plots

Excerpt from a report by Maxym Fedorchenko, Center for Land Reform Policy in Ukraine

1. Introduction

2. Procedure for changing the use-purpose of land plots

1. Introduction

The reform of Ukrainian land legislation started on December 18, 1990, when a new Land Code was approved by the Verkhovna Rada of Ukrainian Soviet Socialist Republic. The new Code replaced the code of 1970 but it was not something absolutely new and unprecedented - the Land Code of Ukraine of 1990 was shaped after the Law of the USSR "Foundations of Land Legislation of Republics of the Union" (1989). The most significant changes in land use and land market happened later on, in 1995 – when a Presidential Decree on sale and lease of land plots of non-agricultural use for purposes of entrepreneurship (# 608/95, dated July 12, 1995) was passed - and in 2002 – when a new Land Code of Ukraine (LCU 2001) became effective.

In the Soviet and post-Soviet period there were 4 land codes in Ukraine – of 1922, 1970, 1990 and 2001, and in every code the central object of regulation has been a land plot. It is a central basic notion of Ukrainian land legislation and basic unit of the cadastral system.

The main feature of a land plot in Ukrainian legislation is its use-purpose. Some experts were pointing out that because of the high significance attached by law to the use-purpose the regulation was too rigid and hindered investment activities. Land owners are obliged to utilize land plots according to the use-purpose and may dispose of them also according to the use-purpose (i.e. a land parcel for gardening may be sold for gardening only).

Others were underlining that in legal terms boundaries of a parcel are of higher importance than its use-purpose.

According to Article 19 of the LCU, all lands of Ukraine are divided into 9 categories on the basis of the main use-purpose. These categories are:

- Lands of agricultural use;
- Lands of residential and public building-up;
- Lands of natural reserves and of other environment protection use;
- Lands of health-improving use;
- Lands of recreational use;
- Lands of historical and cultural use;
- Lands of forestry (before 29/03/2006 – lands of forestry fund);
- Lands of water fund;
- Lands of industry, transport, energy, defence and of other use.

When the Parliament was working on the LCU, the State Committee on Land Resources of Ukraine (SCLR) was advocating the idea that there should be a separate law on every category of land because rules provided by the LCU were insufficient for effective regulation. The idea was not rejected though it has not been implemented – even its advocate SCLR – did not produce draft laws on every category of lands. There

is only one law on a separate category of land – On Use of Lands of Defence – but it is so “open-ended” that might be considered as a declaration.

The necessity of a separate law for every category was partly explained by the need to define all possible use-purposes for parcels of every category; the LCU divides lands into categories according to the main use-purpose; it suggests the idea that land plots of every category may have other, auxiliary use-purposes. This idea is also supported by the fact that the LCU established the procedure for changing use-purpose, not main use-purpose (by the way, LCU of 1970 applied term “transfer of land from one category to another” which was of course more comprehensive). Clear understanding of all possible functional utilizations of a parcel would support rights of land owners to choose the most effective and appropriate use for the land, it would restrict waste of time and money and to a certain extent – corruption.

SCLR tried to solve the problem and published in 1998 (i.e. under the LCU of 1990) a Ukrainian Classificatory of Use-Purpose of Land (UCUPL). UCUPL was based upon categories of the LCU of 1990 and therefore became inapplicable in 2002. We would also add that UCUPL in legal terms was just a letter of SCLR and according to the rules of Ukrainian legal system did not produce any legal consequences. It was a guiding manual, but not a rule.

Since then there is no document qualifying possible use-purposes within the framework of the main use-purpose, though certain details of possible functional use are included into the LCU.

As far as the lands of agricultural use are given priority over other categories (part 1 of Article 23 LCU), and shall be allocated first of all for the needs of agriculture, LCU provides the most detailed list of possible functional use-purposes of this category. Among possible use-purposes there are (Article 22 LCU):

- for carrying out personal peasant farms (household plots)⁸⁹;
- for gardening,
- for vegetable gardening (truck farming);
- for mowing and pasturing livestock;
- for carrying on commodity agricultural production (including farming⁹⁰);
- for research and teaching purposes, to promote advanced experience of agriculture;
- for supply farming.

Some practitioners suggested the use of other regulations of SCLR for the purposes of identifying possible use-purposes of a parcel within a certain category, for example, Regulation on normative monetary valuation of agricultural lands and lands of settlements dated January 27, 2006. This document indeed contains certain indicators

⁸⁹ Personal peasant farm is a separate legal regime regulated by the Law of Ukraine On Personal Peasant Farm (PPF). PPF is not a legal entity; it is a citizen allocated up to 2 ha of land of state or communal property for the purposes of meeting personal needs of that citizen.

⁹⁰ Farming shall be understood as a separate legal regime of carrying out agricultural commodity production which is regulated by the Law of Ukraine on Farming Business. Farming is entrepreneurial activity of citizens in the field of agriculture. A single citizen or a citizen together with his relatives may create a legal person – farming business – and be allocated a land parcel – free of charge. The size of a parcel depends on the size of a land share in the locality. Citizens may also buy (up to 100 ha) or lease additional land. One of the features of farming business is that citizens (members of farming business) are owners of the land, not farming business as a legal entity.

of possible use-purpose, but one must be very careful in being guided by the Regulation. First of all, it does not build up upon the categories listed by LCU; secondly, possible correspondence between categories of LCU and of that Regulation are misleading - for example, the latter lists “lands of defence” in the section “lands of public use”.

There have also been attempts to apply forms of state statistic reporting (so-called 2-zem and 6-zem) to identify possible functional use-purpose of categories. Those attempts were also futile, for the forms are building upon types of economic activity and not upon categories of land.

In this respect we would like to point out that LCU of 2001 declares that categories of lands are given “special legal regime”. In our opinion that rule means that all classifications, reports etc should have been building upon the categories listed in LCU. Then it would have been a nice and logic system, for example:

Category	Main functional use	Additional functional use
Lands of agricultural use	for carrying out personal peasant farms (PPF)	for carrying out PPF
		for building structures and buildings necessary for carrying out PPF
	for gardening	for individual gardening
		for collective gardening
		for building structures and buildings necessary for gardening
	for vegetable gardening (truck farming)	for vegetable gardening (truck farming)
	for mowing and pasturing livestock	for individual mowing and pasturing livestock
		for collective mowing and pasturing livestock
	for carrying on commodity agricultural production (CAP)	CAP of farming businesses
		CAP of agricultural enterprises
		CAP of non-agricultural enterprises
	for research and teaching purposes, to promote advanced experience of agriculture	for research purposes
		for teaching purposes
		for research and teaching purposes
		for promoting advanced experience
		for research and for promoting advanced experience
	for subsidiary (supporting) farming	

Today it happens the other way: reports are compiled on basis of a type of economic activity of a land user; in many cases that activity defines the use-purpose and category of land. This approach is not in line with LCU, but it signifies that Ukraine is truly a country in transition; certain transition is taking place in land use as well, i.e. the national structure of land use is changing and adapting to new economic reality. Accordingly, categories and functional uses of land are adapting to needs of enterprises and companies. While LCU declares that lands of agricultural use are given priority, economy of the country gives these lands its own mark – according to the

weight in the national GDP, to supply and demand. In economic terms agricultural lands are not of prevailing value.

2. Procedure for changing the use-purpose of land plots

LCU contains several general rules in respect of changing the use-purpose of land plots (Article 20, 21). The main feature of the procedure is that there are 2 types of changing use-purpose:

- 1) change of use-purpose of land of state and municipal property (done by bodies of executive power and local self-governance according to their own decision);
- 2) change of use-purpose of land of private property (done on the basis of initiative of private land owners by bodies of executive power and local self-governance).

The latter regime received more detailed regulation – there is a Resolution of the Cabinet of Ministers of Ukraine on changing the use-purpose of land parcels in property of natural and legal persons (dated April 11, 2002 # 502). This Resolution provides complete account of all stages of the process and defines competencies. In August 2006 SCLR published a draft resolution to substitute Resolution of April 11, 2002. It suggests significant changes in the procedure and also stipulates its application to land of private, municipal and state property (such broad application is not in full compliance with LCU). The draft also suggests transfer of the authority to change use-purpose from Rayon state administrations and bodies of local self-governance to Rayon departments of SCLR.

Change of use-purpose of lands of state property is an institute of land law of Ukraine which has already received a lot of critics. It is a very complex and important process which is not well-regulated. The main – and virtually the only – rule in LCU says:

“The change of use-purpose of lands is performed by bodies of executive power or by bodies of local self-governance who take decisions on transferring these lands into ownership or granting for use, on withdrawing (buying out) lands and approve projects for organization of the use of land or take decisions on creating objects of environmental protection use and historical and cultural use” (part 2 of Article 20).

Some explanations are required:

- 1) The rigid regulation of changing use-purpose is one of manifestations of special legal regime of categories of land as well as of special meaning attributed to land by the Constitution of Ukraine. According to the latter, land is a national treasure; therefore land ownership is not absolute and shall take account of public interests.

Special legal regime of categories of land appears here as impossibility for a land owner to change the use-purpose independently, at will, without involvement and active participation of public authorities. Private landowners are entitled to initiate changing use-purpose, but the final decision having legal consequences is taken by public bodies.

- 2) Change of use-purpose is related to and being performed within the course of managing land resources. Bodies entrusted with the task are managing land resources by means of transferring state and municipal plots into property (by way of gratuitous

privatization, selling through buy-out and auction/tender procedures), granting in use (in leasehold and permanent use); they are also empowered to buy out private land plots from their owners for public purposes and withdraw land parcels from permanent use for all kind of purposes.

They also may change the use-purpose of lands while approving projects for organization of the use of land (POUL). POUL is a “complex of legal, economic and technical documents which substantiate measures for use and protection of lands which measures are to be implemented within the next 5-10 or more years” (Article 1 of the Law of Ukraine “On Organization of Use of Land”).

There are the following types of POUL listed in Article 25 of the Law of Ukraine “On Organization of Use of Land”:

- i) POUL in respect of demarcation and change of boundaries of units of administrative and territorial division;
- ii) POUL in respect of organization and demarcation of boundaries of territories of natural reserve fund and of territories of other environmental protection use, of health-improving, recreational and historic and cultural use;
- iii) POUL in respect of forming lands of municipal property of territorial communes and POUL for demarcation of lands of state and municipal property for settlements;
- iv) POUL for allocation of land parcels;
- v) POUL in respect of creating new and putting in order existing estates (whether in ownership or in leasehold);
- vi) POUL for securing ecological and economical substantiation of crop rotation and regulating of grounds;
- vii) POUL for putting in good order territories of settlements.

Therefore taking decision on approval of the listed POULs which may be or may be not linked with transferring state (municipal) lands in ownership of private persons or granting in use, bodies of executive power or bodies of local-self-governance may also change the use-purpose of lands.

Bodies of executive power or bodies of local self-governance are also entitled to change the use-purpose of land when taking decisions on creation of objects of environmental protection use or historical and culture use. For example, somewhere in the fields (clearly lands of agricultural use, for agricultural commodity production) there was found an old burial place of Scythian times. According to section “a” of part 1 of Article 53 of LCU, such land plot shall be attributed to lands of historical and cultural use. Thus local state administration may take a decision on creation of historical and culture reserve “Scythian Hill”, withdraw (buy-out) plot from current user (owner), attribute it to lands of historical and cultural use and transfer in permanent use of a newly created reserve.

3) There is one type of POUL listed above under iv) - POUL for allocation of land parcels. This type of POUL is drafted every time when a land parcel is transferred into property, granted in leasehold, withdrawn from permanent user or bought out from private owner with the change of use-purpose and/or its boundaries (Article 50 of the Law of Ukraine “On Organization of Use of Land”, Resolution of the Cabinet of Ministers of Ukraine “Procedure for development of POULs on allocation of land parcels dated May 26, 2004 # 677).

Example of procedure of change of use

We have already noted that in every case of transferring land into property or granting in leasehold with the change of use-purpose, a POUL on allocation of land is developed. In order to demonstrate the complete picture of all procedural steps on this way, we would suggest following a businessman X willing to create a tourist camp near town N. Here we would also touch upon the issue of the influence which change of use may have on land-related revenues.

A land parcel Mr. X decided to use is state-owned and has been granted in permanent use of an agricultural enterprise Y. According to the Law of Ukraine On Fixed Agricultural Tax, Y pays fixed agricultural tax (FAT) at the rate of 0,09 % of normative value of land (arable lands). FAT substitutes:

- value-added tax (VAT);
- payment for land (land tax) – which tax applied alone would be 0,1% of normative value of land;
- tax from owners of means of transport;
- communal tax;
- payment for geology research and exploration performed on account of budget funds;
- payment for trade patent for carrying out trade activities;
- payment for special water use.

Mr. X submits his petition on choice of a land plot for placing an object (tourist camp) to the Rayon State Administration (RSA). RSA within 5 days transfers the petition to the permanent commission on choosing land plots. The commission within 2 weeks is considering documents, looking at the plot in question and then signing Act of choice of a land plot for placing an object. In working of the Commission the current permanent user and Mr. X are taking part. Mr. X then submits a petition on approval of a place for a object to RSA. RSA submits the petition to the consideration of Rayon department of land resources, Rayon department of environmental protection, Rayon sanitary and epidemiology station, Rayon department of town-planning and architecture, Rayon body for the protection of cultural heritage, Rayon department of forestry.

Within 2 weeks all the bodies shall produce their conclusions. There shall also be approvals of respective village and rayon councils (boundaries of administrative competence of councils are extending over boundaries of settlements which in fact limit the competence of councils in land relations – this paradox is explained by the fact that administrative and territorial division of Ukraine is regulated by some act of 1983 which does not take account of later developments, in particular in the sphere of land use).

Within 10 days RSA shall provide its decision on approval of place for an object. But in this case, because land parcel is a piece of arable lands, RSA shall transfer the case to the Oblast level – to Oblast State Administration (OSA). According to the recent amendments of LCU, arable lands may be withdrawn from users and allocated for non-agricultural purposes by the decision of the Cabinet of Ministers of Ukraine (Article 151). Therefore OSA shall pass the papers to SCLR; SCLR in turn passes the case with its recommendations to the Cabinet of Ministers which by its order approves the place for the object. If the Cabinet rejects the petition, Mr. X is entitled to go to the

court; if court decision is in favor of Mr. X, this decision is a basis for the development of POUL for allocation of land parcel.

If the Cabinet approves the decision in favour of Mr. X, he shall submit to RSA a petition on giving permission to develop a POUL for allocation of land parcel. This petition goes from RSA to the Cabinet again, and the Cabinet shall decide whether to provide such permission. If permission is provided, Mr. X signs a contract with a land surveying firm for development of POUL.

POUL shall be approved by Mr. X and by all those who have already been involved before - Rayon department of land resources, Rayon department of environmental protection, Rayon sanitary and epidemiology station, Rayon department of town-planning and architecture, Rayon body for the protection of cultural heritage, Rayon department of forestry.

Then POUL is submitted to the state expertise of documentation on organization of use of land. The expertise is performed by the SCLR (or its Oblast Department).

Upon the positive conclusion of the state expertise, the POUL along with the petition on allocation of a land parcel goes to the Cabinet of Ministers of Ukraine which takes final decision on:

- approval of POUL;
- withdrawal of land parcels from Y;
- granting of land parcel into leasehold of Mr. X;
- change of use-purpose (from “lands for agricultural commodity production” to “lands of recreational use”).

This decision shall become a basis for the conclusion of a lease agreement. The lease agreement is concluded between Mr. X and RSA.

The influence upon revenue may be demonstrated as follows: agricultural enterprise Y was paying FAT at the rate of 0,09% of normative value of land. Let us assume that the normative value of land was the highest in the country and made up UAH 11,000. That means that annual payment for 1 ha of land was UAH 9.9. Usual rate of ground rent for state and municipal land parcels for placing private recreational objects is 10 % of the normative value. Even if we do not recalculate normative value of land, the ground rent will make UAH 1100.

We are referring here to our words above in respect of transition in the national land use, and therefore we would make an assumption that the change of use-purpose is (1) aiming at redistribution of lands of agricultural, industrial, defence use to other – more demanded – categories (residential construction, recreational use, commercial use, transport and communication use) and (2) positively affecting revenues (changed use-purposes are usually taxed higher).

Another important fact about change of use is that very often change of use is not necessitated by needs for and considerations of rational and effective land use; in many cases change of use is performed in order to circumvent too rigid or prohibitive rules of the law on certain category of land. By changing use-purpose and placing a plot in different category, local authorities allows for a plot to avoid those rules and become a subject to another set of laws, more favourable for intended activity.

An example which is the most obvious and illustrative: there is a notorious prohibition to sell or alienate in other ways private land parcels for agricultural commodity production (a moratorium). By changing use-purpose – from “agricultural commodity production” to “personal peasant farming” – it is possible to escape the prohibition. Lands of PPF are allowed to be sold.

Another example which demonstrates grave losses, which the state and the nation – for land is a NATIONAL treasure – are suffering as a result of change of use-purpose: The most attractive lands of Crimea and other parts of Ukraine – with unique or exceptionally picturesque landscapes - which were included into boundaries of different reserves and protected areas (like coastal water protection zones) are being withdrawn from their categories (lands of natural reserves and of other environment protection use, land of water fund) and attributed to lands of “residential and public building up” or “lands of recreational use”. Thereupon land is given to individuals in long-term lease or in property (within the course of gratuitous privatization). Being in category of “lands of natural reserves and of other environment protection use”, land was a valuable resource for research, education, recreation, tourism, protection of environment; and it was available for attending. Once in private use, it becomes just a territorial basis for private activity; even if it were given back to the state upon the expiration of the lease contract – which is unlikely – it would never be as valuable and unique as it had once been.

In some cases change of use is performed through an informal way: land is given to individuals and companies for purposes which are not intended for its category. For example, Dnipro River has a coastal water protection zone 100 m wide (lands of water fund). It is not allowed to build in this zone any constructions not related to water protection or reinforcement of coasts. It is also forbidden for agriculture, gardening, truck farming, storage of pesticide, herbicides and hard and liquid waste, pasturing, washing of cars and trucks. Nevertheless, coasts of Dnipro at the section from Kyiv to Kaniv are covered with private residential houses erected in the last 3-4 years (i.e. under LCU 2001). The former Head of Kyiv Oblast State Administration even announced that there was no access to the river anymore (for those who is not in a possession of one of the said houses).

Annex 18: Questionnaire for Institutions responsible for management of agricultural land in state or municipal ownership on the regional and local level

Pilot Area: Poltava / Mykolaiv / Kharkiv

1. Legal frame for the administration of state-owned agricultural land / or land in municipal ownership

The administration (including privatization) of state-owned land according to the LCU is to be realized on the regional level.

- a. Do more laws or by-laws exist that govern this in more detail, i.e. laws or by-laws regulating the institutional set up, the rights and assignments of the institutions involved etc.?

2. Delimitation of state-owned and municipality-owned lands

- a. Has the delimitation of state-owned and municipality-owned lands been realized already (is being realized)?
- b. If yes, what were the criteria for delimitation?
- c. If not, what mechanisms concerning shares of state and municipalities, division of competences, monitoring etc. exist?
- d. How were conflicts settled, occurring during delimitation?

3. Institutional set up for management of state-owned agricultural land

- a. What institutions are involved?
- b. Which role/competency/rights/duties and assignments do they have?
(e.g. branches of the State committee of Ukraine on land resources, Ministry of Environmental Protection, district and oblast state administrations, Cabinet of Ministers, Verkhovna Rada of Ukraine)
- c. Do you have a "headquarters" on the regional level and branches in the districts / rayones / municipalities?
- d. How are the assignments divided?
- e. Are monitoring and supervising functions carried out by the involved institutions?
- f. If yes, how are they organized?
- g. Do legal regulations exist that govern these monitoring/supervising assignments?
- h. Do you have organigrams showing this division of assignments and responsibilities?
- i. How is your institution structured?

4. Portfolio built up and portfolio management: recording and management of the parcels /ha of agricultural land of state ownership in the administration of your institution

- a) Was an inventory made on agricultural land in state ownership/ municipal ownership that needs to be administrated by your institution?
- b) How was it done?

- c) Did cadastral data support the identification of port-folio under your administration?
- d) Is the cadastre sufficiently updated to deliver you the information you need on parcels under your administration?
- e) If not, are cadastral data from former Soviet times still basis for parcel identification of parcels under your administration?
- f) Do you use IT support for the administration of agricultural land in your portfolio?
- g) If yes, what software / programme, how does it work, what data is recorded and updated regularly?
- h) Does the IT system include a (sales / lease/ concession) contract management module?
- i) Does it facilitate rent collection control?
- j) If you do not have IT support, how do you organize the administration of land parcels and contracts in your portfolio?

5. Management strategy

- a) Does a use strategy for state-owned agricultural land/ communal land exist?
- b) If yes, is it based on legal regulations, on a current land policy?
- c) If yes, where are the legal regulations/land policy stated?
- d) Do you have administrative orders or internal guidelines that govern the strategy for the use of state-owned agricultural land?
- e) Are there certain groups of land users who are especially supported (family farm businesses, legal persons, investors, state or municipal enterprises etc.) by getting access to land resources?
- f) Do you have a future strategy for administration of agricultural land after the opening of the land market (Jan. 07), i.e. a strategy for sale and lease of state-owned agricultural land?
- g) Are there certain groups among the various types of agricultural enterprises that should be especially supported by this strategy?

6. Contracts

Sales contracts

- a) According to the LCU agricultural land of private property is not allowed to be sold on the land market. Are there exceptions to this rule, which allows the sale of agricultural land?
- b) Is your institution currently selling state-owned agricultural land (or agricultural land in municipal ownership)
- c) If yes, based on what regulation?
- d) How many sales contracts on agricultural land (with and without the change of use) have been concluded in 2005?

- e) How many ha in total?
- f) How was the average price?
- g) How are prices determined?
- h) Do sales contracts on agricultural land impose any duties on the purchaser (investment obligations)?
- i) Is the reselling excluded?
- j) How is the sales procedure organized (tender/auctions/direct purchase to customer)?

Lease contracts

- a) How many lease contracts does your institution manage?
- b) What is the average duration of a lease contract from ____years (min) to ____years (max.)?
- c) How is the land use paid for (ground rent, land tax, share of fixed agricultural tax)?
- d) Do you have mechanisms to augment or lower the lease price according to the current development of lease rents on the lease market? Or is the lease rent static?
- e) How is the leasing rent / land tax determined?
- f) What are the criteria to receive a lease contract?
- g) Have business plans served as a basis for decision making?
- h) Do planned or already realized investments influence the decision?

Permanent use

- a) How much land (in ha) in permanent use does your institution manage?
- b) Do you have mechanisms to augment or lower the annual price per ha for permanent use according to the current development of prices for land, e.g. on the lease market? Or is the price for permanent use static?
- c) How is the price for permanent use fixed?
- d) What are the criteria to receive agricultural land in permanent use?
- e) Have business plans served as a basis for decision making?
- f) Do planned investments influence the decision?
- g) Is the allocation of land in permanent use performed on competitive basis?
- h) Is there a mechanism for transfer from permanent use to leasehold and how does it function?
- i) Is it justified in your opinion to allocate land in permanent use to reorganized agricultural enterprises / to newly created agricultural enterprises / farmers?

General

- a) Where do you see advantages and disadvantages in permanent use compared to lease agreements?
- b) Which other institutions are involved in the process of choosing lessees or permanent users (like e.g. agricultural departments)?
- c) How do you organise the management of land in lease, permanent use or sold?
 - Registration of contracts / land titles?
 - Monitoring of land use and enforcement of contract agreements?
 - Rent collection control, including price augmentation?
 - Dealing with violation cases / breach of land use rules, dispute settlement?
- d) Do you work with model lease contracts? Could we see such a model contract for lease, sale as well as 1 or 2 actually concluded contracts?
- e) Where do the revenues collected through sales / lease / permanent use go?
- f) Is a controlling system monitoring flow of revenues?
- g) What kind of agricultural enterprises are leasing agricultural land or holding in permanent use from your institution? How is land distributed among them (in ha) – agricultural joint-stock companies, agricultural limited liability companies, agricultural private enterprises, agricultural cooperatives, farmers, personal peasant farms, agricultural state and municipal enterprises ?

7. Change of use

- a) What is the procedure in changing the “use-purpose” of agricultural land?
- b) What institutions are involved?
- c) Is the change of use related to existing spatial planning principles?
- d) Who takes the decision for change of use?
- e) Who monitors the decision?
- f) Is the procedure of change of use often linked with investment planning?
- g) How many ha of state-owned agricultural land, municipal-owned agricultural land, private agricultural land is changed in use per year?
- h) What area of state-owned, municipal-owned and private agricultural land changed its use-purpose in 2005?

8. Contaminated sites

- a. Do you have contaminated sites in your administration, e.g. areas of radioactive contamination, gas stations of former state farm, garbage deposal, polygons for hard waste, closed coal mines, sites of mineral extraction, sites (facilities) for waste storage etc.?
- b. Do you have a special unit managing and monitoring these sites?

- c. Do you have concepts for redevelopment / renewal of such sites?
- d. If yes, does the implementation of those concepts take place?

Thank you for your time and support!

Annex: Statistical data needed

Annex 19: Questionnaire for representatives / advisors of agricultural commodity producers or members of associations of agricultural commodity producers

1. The Moratorium on land sales will eventually run out at the end of 2006. Where do you see chances / risks for agricultural producers and the rural community?
2. What measures would need to be taken until the end of 2006 in order to facilitate the development of a fully-functioning and transparent market?
3. Do the different political parties (in Parliament or not) provide concepts or policies for land market development?
4. Do agricultural producers currently have access to agricultural land in state ownership through lease arrangements, permanent use or purchase?
5. Are specific groups of agricultural producers more privileged to obtain state land through lease /and or sale than others?
6. If yes, what are the reasons?
7. Do private agricultural enterprises have access to agricultural land in state ownership through *permanent use* (like remaining state farms get land in permanent use)?
8. Do you consider the administration of state-owned land as a transparent procedure?
9. Is lease and sale of state-owned agricultural land organized in a fair and *comprehensive manner*?
10. Do agricultural producers that want to lease or purchase agricultural land from the state, know which institution to approach?
11. Is state (agricultural) land usually leased in a short /mid term or long term basis?
 - a) What is the duration of lease contracts (fromyears (min) toyears (max))
12. Does the length of leasing agreements of a farm business have influence on the possibility to obtain credits (securities) or subsidies (if exist).
13. How are ground rent or land tax calculated?
14. Is the average amount of lease rent for state (agricultural) land appropriate?
15. Is there some institution gathering information on lease rents and agricultural land purchase prices?
16. Do lease contracts have to be registered at some institution?
17. Is there an institution which can mediate between parties in the case of land use conflicts?
18. How is the selling of state owned agricultural land organized (through auctions or tender, single distribution)?

Thank you for your time and support!

Annex: Statistical data needed

Annex 20: Statistical data. Annex to the questionnaires

We would be grateful if you could support us by providing statistical data on some or all of the points listed below:

Ukraine

1. Area of state-owned land in Ukraine divided into use categories according to the LCU (Land Code of Ukraine)
State-owned land of:
 - agricultural use _____ ha
 - housing and civil use _____ ha
 - natural reserves and of other environment protection use _____ ha
 - health-improving use _____ ha
 - recreational use _____ ha
 - historical and cultural use _____ ha
 - lands of forestry use _____ ha
 - water funds _____ ha
 - lands of industry, transport, communications, energy, defence and other end-use _____ ha
2. Agricultural land in state ownership distributed for permanent use: _____ ha (as of __/__/__)
3. Thereof how much agricultural land given into permanent use to Universities, research institutes and other public bodies _____ ha (as of __/__/__)
4. Agricultural land in state ownership leased _____ ha (as of __/__/__)
5. Agricultural land in state ownership sold as agricultural land in 2005 _____ ha
6. Agricultural land in state ownership sold for other purposes (change of use) in 2005 _____ ha
7. Agricultural land in state ownership lying fallow _____ ha (as of __/__/__)
8. Agricultural land in state ownership in stock _____ ha (as of __/__/__)
9. Agricultural land in state ownership of reserve fund _____ ha (as of __/__/__)
10. Number of state farms still existing _____ units
11. Number of ha (in total) these state farms have in permanent use _____ ha (as of __/__/__)
12. Information about sales and lease prices in different regions of Ukraine

13. Amount of farm businesses (enterprises and individual farmers) registered in Ukraine:

- Small scale _____ pcs
- medium scale _____ pcs
- large scale _____ pcs

14. Average size of a agricultural business in Ukraine

- Small scale _____ ha
- medium scale _____ ha
- large scale _____ ha

15. Information on farm sizes with respect to the composition of the land managed, i.e.

- Leased land from private owners _____ ha
- Leased land from the state _____ ha
- Land purchased from private owners _____ ha
- Land purchased from the state _____ ha
- Land use without lease or sales agreements (on abandoned land) _____ ha
- Private ownership of the enterprise (founder) _____ ha

Pilot Region: Kharkiv / Mykolaiv / Poltava

16. Surface area of the region of Poltava: _____ ha (_____ sq km)

17. Thereof how many ha agricultural land: _____ ha

18. Land in state ownership in Poltava in ha: _____ ha

19. In use categories according to the LCU

agricultural use _____ ha, inclusive of state-owned _____ ha

housing and civil use _____ ha, inclusive of state-owned _____ ha

natural reserves and of other environment protection use _____ ha, inclusive of state-owned _____ ha

health-improving use _____ ha, inclusive of state-owned _____ ha

recreational use _____ ha, inclusive of state-owned _____ ha

historical and cultural use _____ ha, inclusive of state-owned _____ ha

lands of forestry use _____ ha, inclusive of state-owned _____ ha

water funds _____ ha, inclusive of state-owned _____ ha

lands of industry, transport, communications, energy, defence and other end-use _____ ha, inclusive of state-owned _____ ha

20. Further subdivision of agricultural land in Poltava Oblast (as of __/__/__):

Arable land: _____ ha

Pastures and meadows: _____ ha

Perennial crops: _____ ha

21. Amount of agricultural land in municipal ownership (ownership of local communities) in Poltava Oblast (if allocation of land to municipal ownership has been realized) in ha _____ (as of __/__/__)
22. Agricultural land in state ownership distributed for permanent use: _____ ha (as of __/__/__)
23. Thereof how much agricultural land given into permanent use to universities, research institutes and other public bodies _____ ha?
24. Agricultural land in state ownership leased _____ ha (as of __/__/__)
25. Agricultural land in state ownership sold as agricultural land in 2005 _____ ha
26. Agricultural land in state ownership sold for other purposes (change of use) in 2005 _____ ha
27. Agricultural land in state ownership lying fallow _____ ha (as of __/__/__)
28. Agricultural land in state ownership in stock _____ ha (as of __/__/__)
29. Agricultural land in state ownership of reserve fund _____ ha (as of __/__/__)
30. Number of state farms still existing _____ units
31. Number of ha (in total) these state farms have in permanent use _____ ha
32. Information about sales and lease prices in different parts of Poltava oblast
33. Number of agricultural businesses (enterprises and individual farmers) registered in Poltava
- Small scale _____ units
 - medium scale _____ units
 - large scale _____ units
34. Average size of a farm business in Poltava oblast
- Small scale _____ ha
 - medium scale _____ ha
 - large scale _____ ha
35. Information on farm sizes with respect to the composition of the land managed, i.e.
- Leased land from private owners _____ ha
 - Leased land from the state _____ ha
 - Land purchased from private owners _____ ha
 - Land purchased from the state _____ ha
 - Land use without lease or sales agreements (on abandoned land) _____ ha
 - Private ownership of the enterprise or farmer _____ ha