

Preconditions for lifting the Moratorium on Farmland Sales

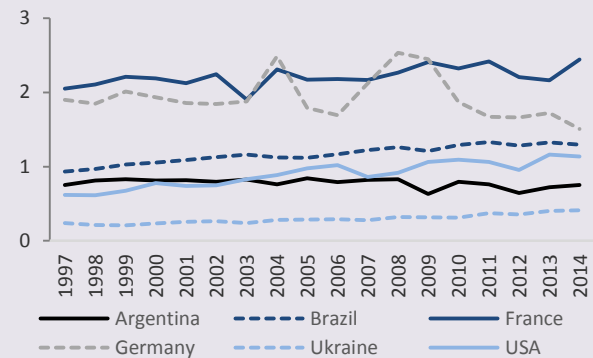
The Moratorium on Farmland Sales has been in place for 16 years in Ukraine. It affects close to 70% of the territory and 16% of the population that cannot freely dispose over their farmland plots. The majority of these owners live in rural areas and are of old age. The moratorium is also accountable for the fact that farms' productivity in Ukraine is only a fraction of that in competitive countries. Discussions about lifting the moratorium and its future design are still going on and there is a growing support to remove the moratorium, but the timing remains unclear. However, certain preconditions for a successful lifting of the moratorium are equally important along the future design of the farmland sales market. Three preconditions are particularly relevant: (i) protecting rights in a transparent rule-based environment; (ii) ensuring that state and communal land is used for the public benefit; and (iii) enabling banks to support sustained flows of capital to rural areas and agribusinesses.

Scale and effect of the Moratorium on Farmland Sales

The scale of the Moratorium on Farmland Sales impresses: Out of more than 42 m hectares (ha) of farmland (or 70% of Ukraine's territory), about 40 m ha or 93% of all farmland cannot be traded and used as collateral (including 10.5 m ha of state and communal farmland). Almost 7 m farmland owners (or 16% of Ukraine's population) cannot freely dispose over their private property. The majority of these owners live in rural areas and are of old age. The moratorium was introduced as a temporary measure in 2001 and was extended eight times since then. It is currently set to expire on January 2018, but not earlier than the adoption of the Law of Ukraine "On agricultural land turnover". The moratorium has a negative impact on:

- 1) farms' *productivity* by precluding flows of financial resources to the agriculture and rural sectors and preventing efficient allocation of farmland; farms' productivity in Ukraine is only a fraction of that in competitive countries despite better soil quality;
- 2) *equity* by allowing producers to realise high margins per hectare while paying extremely low rents;
- 3) *sustainability* as short or unregistered leases and policy uncertainty undermine incentives to invest in soil quality and land improvements; and
- 4) *transparency* as a significant share of public land is used without benefiting local communities and the state budget.

Agricultural value added (USD thsd. per hectare)



Source: World Development Indicators by World Bank

Current discussion

The political leadership continuously reassures that lifting the moratorium is on top of its reform agenda. But at the insistence of the authorities, the IMF put that step off the table as a structural benchmark for releasing the fourth tranche to Ukraine and moved it to the fifth tranche. Therefore, the odds of adopting the "Law on agricultural land turnover" are not clear at the moment. But unlike before, there is a growing support by the majority of relevant stakeholders to remove the moratorium.

However, in our view three preconditions are needed for lifting the moratorium: (i) protecting rights in a transparent rule-based environment; (ii) ensuring that state and communal land is used for public benefit; and (iii) creating the conditions for banks to support sustained flows of capital to rural areas and agribusinesses.

i. Protection of rights

Actions are needed in a number of areas. Thus, the use of an e-auction platform should be made mandatory, in order to make sales and rental transfers of state or communal land transparent. Also, the mandatory registration and publication of land rental and sales prices is a cornerstone of transparency that is needed for land owners and courts to determine a "fair" value; for banks to use land as collateral; and for the public sector to assess the success of the reform and properly plan land use and assess the tax base. Furthermore, establishing a regular and mandatory land governance monitoring will be essential to provide information on the quality of land governance in a transparent manner that allows specific measures for improvement to be taken. Currently, the monitoring is running in a 'pilot' mode.

Additionally, measures like enhanced access to justice and recourse in case of rights violations, roundtables to create awareness, training of judges, paralegals and land commissions, or a waiver of court fees for land cases to allow equitable access to courts will be essential to ensure that lifting the moratorium will allow land owners to consciously exercise their constitutional rights.

Finally, the capacity of the Ombudsman for human rights needs to be enhanced in order to address potential shortcomings of the existing court system with respect to protection of land rights, thus creating an additional layer of protection.

ii. Measures regarding state and communal farmland

It is necessary to complete the registration of state and communal land. Currently, only about 25% of state and communal agricultural land is registered in the land cadaster and registered lease contracts exist only for about 2.5 m ha (out of 4.7 m ha rented out by the state). Another 3.2 m ha is in permanent use (including 1 m ha used by various state enterprises and the National Academy of Agricultural Sciences). About 2.5 m ha is recorded as land in reserve. This creates a huge 'shadow economy', where land is used without documentation and thus limiting the benefit of state and rural communities.

The legal status of the formerly collective land has to be defined, for some 8% of all farmland (more than 2 m ha), particularly forest belts and field roads, has no owner. Most of it is cultivated illegally.

The Budget Code should be amended in order to provide resources for state land registration and error-correction in the land cadaster.

Another open issue are standards for the elaboration and publication of local land management plans. Setting such standards will ensure transparency by identifying communal or state land that can be made available for lease or sale, as not all state or communal land is fit for private use.

In order to address concerns about land acquisition for overly speculative rather than productive purposes, the tax and cadastral records for private and communal land are to be linked.

Another measure to be taken in this context is the registration of local administrative units' boundaries. As long as those units (rayons, amalgamated communities, settlements) lack clearly defined boundaries, authority for planning or tax collection remains a vague issue and transfer of state land to communal property remains virtually impossible. Although the normative base exists, implementation is lagging behind.

iii. Better access to finance

To improve access to finance, systematic error correction in the State Land Cadaster and the Registry of Rights (e.g. errors in coordinate systems or those created in the process of data transfers) should be finalised, since the current situation can threaten land owners' or users' rights and banks' ability to accept land as a collateral. Banks should be allowed to own foreclosed land for a limited time and mandate e-auctions for its disposal.

Finally, the out of court foreclosure in case of default should be simplified. This is related to clarifying the notary actions in case of foreclosure with disputes, and making specific provisions on the time for the law enforcement authorities to take actions on the foreclosed land as well as procedures for replacement of responsible law enforcement officers in case of non-satisfactory performance.

Final remark

The success of the land reform will depend not only on the careful design of the market and establishing the preconditions mentioned above, but also on the quality of the communication campaign about the nature and expected results of the reform.

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Note: This text is the sole responsibility of the author and does not necessarily reflect the opinion of the German Economic Team.

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