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## Experience of EU countries in legal regulation of agricultural land turnover between agricultural producers

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The article examines the peculiarities of legal regulation of agricultural land turnover among agricultural producers in the EU countries and identifies the areas for improvement of national legislation in this area. The study finds that international experience indicates that there are various models of legal regulation of land turnover among agricultural enterprises which can be effective if they take into account the specific features of a particular country and national interests. Almost every country in the world regulates such turnover in one way or another. There are countries with “hard” and “soft” regulation of land transactions between agricultural producers. However, almost every developed

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EU country gives priority to farmers who live in the area and run their own farms, as opposed to large agricultural holdings. Despite the fact that in the EU countries the legislation on the turnover of agricultural land between agricultural producers is based on different models of legal regulation, the positive experience of these countries should be used to improve the national legislation in this area. In the area of legal support for the use of land by agricultural producers, the national land legislation should pay special attention to granting pre-emptive rights to purchase agricultural land to farms, territorial communities, tenants, etc; provide for the establishment of a preferential procedure for the acquisition of such land and the granting of tax benefits; and define the limits of land concentration at the level of regions and united territorial communities or establish a permit procedure for the acquisition of land plots with an area larger than that established in a particular region or united territorial community

**Keywords:** agricultural land, turnover of agricultural land, agricultural producers, agricultural holdings, farms

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### **Introduction**

In the context of modern agrarian transformations, EU agriculture is facing new challenges and tasks. The family farming model, which has long been a benchmark for EU countries, is now under threat of slowing down. The inflow of foreign capital into agriculture through the purchase of shares in agricultural enterprises has led to the ownership of land by large agricultural holdings with foreign investments, which are not engaged in agriculture but see it as a regular investment project and a source of enrichment. The main reason for this was the “softening” of the mechanisms for regulating access to agricultural land, which led to the rapid emergence of agricultural holdings.

Given that the change in the legal forms of agricultural enterprises directly depends on the mechanisms for regulating access to land, in some EU countries there is a need to revise the models of legal regulation of

land relations [1]. And the experience of the EU countries is valuable for Ukraine, as it makes it possible to avoid numerous problems in building not only a mechanism for legal support of the creation and operation of agricultural holdings, but also an effective and transparent market turnover of agricultural land.

The legal status of agricultural producers has been studied by many scholars in the field of agrarian law, in particular: A. Bakytzhan, S. Saule and S. Sholpan [2], A.E. Dankevych [3], V.V. Dudarenko [4], O.Y. Yermakov and A.V. Kravchenko [5], I.T. Kishchak and S.V. Rachkovskiy [6], O.V. Khodakivska [7], T.M. Churylova [8] and other scholars.

The purpose of the article is to study the peculiarities of legal regulation of agricultural land turnover between agricultural producers in the EU countries and to identify

areas for improving domestic legislation in this area.

### **Results and Discussion**

International experience shows that there are various models of legal regulation of land turnover among agricultural enterprises, which can be effective if they take into account the specific characteristics of a particular country and national interests. Almost every country in the world regulates such turnover in one way or another. There are countries with “hard” regulation of land transactions between agricultural producers, such as Denmark, or “soft” regulation, such as Germany [7]. However, almost every developed EU country gives priority to local farmers who live in the area and run their own farms, as opposed to large agricultural holdings.

Family farms in Western Europe account for 85% of all agricultural enterprises, cultivate 68% of agricultural land (compared to 25% in Eastern Europe) and produce 71% of the food in the old EU member states (EU-15). Of course, there are significant differences between countries: Italy and Austria focus on small and medium-sized family farming; Spain and France (to a lesser extent) on large-scale agricultural production by both agroholdings and large family farms; Germany on large family farms (100-250 hectares). However, even large farms in Germany are much smaller than those owned by agroholdings in Eastern Europe [7].

By contrast, agribusinesses dominate the agriculture of the vast majority of Eastern European countries. Agricultural producers with an area of more than 100 hectares own 75% of the region’s agricultural land. They

usually have corporate ownership, although individual ownership is also present, on a smaller scale. Bulgaria is the most exemplary embodiment of this concept – 80% of the country’s land resources are owned by 4 thousand companies, mostly corporate structures. Poland and Greece are the exceptions. The basis of agriculture in these countries is family farms, small (Poland) and small (Greece) agriculture. Thus, with the exception of Poland and Greece, agriculture in Eastern Europe is focused on large-scale agricultural production conducted by agroholdings [7].

Under EU legislation, agroholdings are primarily recognized as two or more related legal entities, one of which has a decisive influence on the will of other business entities in the course of agricultural production and economic activities. According to the European model, agroholdings are formed mainly in the organizational and legal form of a joint-stock company, where the parent (holding) company is given the opportunity to decisively influence the controlled companies by owning a block of shares (stakes). Such organizational and legal forms of agroholdings have proven to be the most stable (suitable) for the unification of large capital, which has made it possible to better diversify and modernize the entire technological cycle of agricultural production, as well as to establish a mechanism for processing and marketing agricultural products [4].

Legal support for the formation of land holdings by agricultural holdings in the EU countries has its own specifics, depending on the peculiarities of legal regulation of land relations in a particular country,

acquisition, registration and exercise of real rights to land in the form of ownership and use rights, primarily on a lease basis. EU countries apply different regulatory mechanisms based on national interests, the need to ensure food security, and the specifics of their economies and the organization of sustainable agriculture.

In Germany, there is no specific legislation on agroholdings, and the process of their establishment and operation is regulated by the Stock Corporation Act (1965) and the Limited Liability Company Act (1992). Thus, in accordance with paragraph 15 of the Stock Corporation Act, related companies are legally independent companies that are, in relation to each other, companies owned by a majority shareholder and companies with majority participation, dependent and dominant companies, and companies of a concern.

German law recognizes several types of such related companies. The closest to an agricultural holding by its legal nature is a concern. The main feature of a concern is the unification of one or more enterprises under the unified management of another enterprise. At the same time, German law defines the concept of an agricultural holding company as the dominant enterprise of a concern [4].

Germany's legal system is one of the most efficient systems of legal regulation of land relations, having been formed in view of the rapid growth in demand for land resources and the desire of the government to preserve the country's agricultural potential. German land legislation is quite developed and includes a large number of legislative acts. At the same time, unlike the land

legislation of Ukraine, it does not contain a codified legislative act that would specialize in regulating land relations. However, its role is successfully fulfilled by the German Civil Code, which was adopted in 1898.

The right to property is one of the fundamental rights guaranteed by the German Basic Law (Article 14). It also states that the use of property must simultaneously serve the common good. The subjects of land ownership in Germany are the Federation, federal states, communities, individuals and legal entities. At the same time, property relations, including land, are regulated in Germany exclusively under private law, primarily by the provisions of the German Civil Code, which defines general provisions on land rights, the content of property rights, acquisition and termination of land ownership, etc.

The German Basic Law combines the protection of property and the associated freedom to dispose of land with the social responsibilities that come with ownership. Given the impossibility of expanding the existing land area and its irreplaceability as a means of agricultural production, German law has established a not entirely free format for the circulation of agricultural land. The purpose of legal regulation of land relations of agricultural producers in Germany is to prevent threats to the optimal institutional structure of the agricultural sector.

In view of this, the German Act on Measures to Improve the Structure of the Agricultural Sector and to Protect Agricultural and Forestry Organizations of 28 July 1961 introduced the right of pre-emption for land to be held by those who live and work on the land, and introduced a rather complex and

detailed procedure for issuing permits for transactions involving the alienation of land plots. Permits for transactions with land plots are issued by local government authorities. Most often, such authorities are district (county) agricultural authorities [9].

The German Law on Measures for the Improvement of the Agrarian Structure and the Protection of Agricultural and Forestry Enterprises provides that a potential buyer who does not meet the established requirements may be denied the purchase of agricultural land in the event of:

- if the sale of land will lead to “undesirable” redistribution of land (in most cases, this rule applies when the buyer is not a farmer);
- if the structure of the farm is deteriorating due to a decrease in the size of land use, which may lead to a decrease in its efficiency, parcelization or the formation of land masses inconvenient for cultivation;
- the sale price of a land plot differs from the average sale price in a particular region by more than 50%. However, other thresholds may be set at the level of individual federal states [9].

In most cases, the refusal is explained by the fact that the agricultural land plot is sold to a person who is not a farmer (“unfavourable” land distribution).

An acute problem with the market turnover of agricultural land faced by Germany is that the sale of shares and other securities of agricultural enterprises and cooperatives, which are legal entities, is not subject to any control and does not require any permits. As a result, shares are bought up by non-farmers, and land acquisition is seen as

a way of preserving capital and speculative enrichment. Therefore, the question of the need to introduce control over the sale of shares and securities of agricultural companies has now arisen.

The organizational and legal form of an agricultural holding under French law has certain specifics. French law contains special rules on entities that are economically united but legally independent, but legal regulation in this area is fragmented, as there is no full integration of these rules with the 1966 Law and the 1967 Decree on Trading Companies [10].

According to French law, one company controls another if it directly or indirectly owns a portion of the authorized capital that gives it a majority of votes at the latter’s general meeting. This is also the case if it has a majority of voting rights in the company based on agreements with other co-owners, as this gives it the ability to determine the content of the decisions of its general meeting. In particular, such a situation arises if one of the co-owners (which is a legal entity) has directly or indirectly more than 40% of all votes in the company [10].

Currently, in France, the process of forming agroholdings covers mainly sectors that belong to the agro-industrial sector, i.e. agriculture, food industry and food distribution. At the same time, the main initiators of the integration of agriculture and food production were large non-agricultural enterprises that produce more than half of the country’s food products [11].

French agriculture is based on freedom of enterprise and the right of private ownership of land and other means of agricultural production. The main production structure

of the agricultural sector of this country is farms. At the same time, the French agricultural land market is regulated by the state. However, the state has entrusted the function of regulating this market to a non-governmental, non-profit legal entity, the SAFER Society, which has been operating since 1960. In fact, in French agriculture, the canons of a free market economy are combined with rather strict state intervention in the distribution and redistribution of agricultural land.

Land ownership relations in France are primarily regulated by the French Civil Code (Napoleon Code), which was adopted in 1804. Although it has been amended and supplemented for more than 200 years, it still remains the main legislative act that defines the content of ownership of land and other real estate. In addition, the right of private ownership of land is regulated by the Law on Agricultural Orientation of August 5, 1960, which enshrines the doctrine of the social function of land ownership [11].

According to French land law, individuals and legal entities can own land plots in private ownership. The right of private ownership of land by legal entities has specific features, such as the obligation to use the land in accordance with its main purpose, carefully, rationally, etc.

The main objective of agricultural land turnover in France is to stimulate the development of farming. It is realized by limiting the area of land that can be owned by one land user (by right of ownership or use). The maximum area of land owned by one person varies from province to province. If an agricultural producer has expressed an intention

to purchase a land plot put up for sale, but already owns agricultural land that exceeds the maximum allowable size in the province, such a company will be rejected. Instead, a farmer who owns a smaller area of land or a young farmer who wants to start his own business will be given preference [1].

The owner is not entitled to sell the land plot to anyone of his or her choice. To do so, he must first offer to purchase the land plot to the tenant (exercise of the so-called pre-emptive rights). If the tenant finds the price offered by the landlord too high, he has the right to apply to the court for a lower price [11].

Poland, having gone through a rather long way of reforming land relations, has become convinced that state regulation should be quite significant in this area, and the turnover of land among agricultural producers should be carried out according to the rules that reliably protect the farmer who actually works on the land [8].

According to Article 21 of the Constitution of the Republic of Poland, agriculture in this country is based on the family form of management – the family farm. Thus, the family form of management in Poland has a constitutional status, which is also implemented in the legislation on the market turnover of agricultural land: the dominant business entity in the country's agriculture is a family farm. Family farms are considered to be farms where economic activity is carried out by an individual farmer (or his family) and the total area of agricultural land does not exceed 300 hectares.

In Poland, agricultural producers can operate on owned or leased agricultural land with an area of 1 hectare or more, but the

total area of which does not exceed 300 hectares. In the case of inheritance of agricultural land, the total area of land may increase, but may not exceed 500 hectares [12].

Family farms are granted a pre-emptive right to acquire ownership of agricultural land put up for sale. If no farm does not exercise its pre-emptive right to purchase them, the pre-emptive right to purchase agricultural land for sale is granted to a state legal entity – the Agricultural Real Estate Agency [13].

Since Poland's accession to the EU, the country has had the longest twelve-year moratorium among other new member states on the right of foreigners and foreign legal entities to acquire agricultural land. At the end of the moratorium, the Polish parliament adopted a new version of the Law on Improvement of the Agricultural System, which came into force in May 2016. Such changes are aimed at preventing massive buyouts of agricultural land by foreigners and foreign legal entities and increasing the qualification requirements for those wishing to become farmers.

Foreigners and foreign legal entities are now required to obtain permission to acquire agricultural land from the Minister of Internal Affairs and the Minister of Agriculture. The new version of the Law on Improvement of the Agricultural System also establishes a number of very important restrictions. Thus, agricultural land may be acquired only by those who:

- is really going to process them;
- reside in the municipality (rural area) where the land plot for sale is located, or in a neighbouring municipality, for 5 years (by the way, the same legal requirement applies

not only to foreigners but also to Polish citizens);

- subject to compliance with the above conditions, a foreigner may acquire ownership of an agricultural land plot if none of the family members of the seller of such a plot or farmers registered with the local agricultural chamber has expressed a desire to purchase the said land plot [13].

Thus, this Law establishes legal preferences for those persons who are farmers and who wish to increase their family farming. The law also aims to prevent the concentration of agricultural land in one owner and the creation of large agricultural estates. In this regard, Polish citizens and foreigners will be subject to a ban on the acquisition of land by individuals and legal entities that own 300 hectares of agricultural land and a ban on the sale and purchase of land acquired from state-owned land. Violation of this prohibition will result in a stiff administrative fine. All these measures are aimed at minimizing the risks that may be caused by granting foreigners the right to acquire agricultural land.

In Lithuania, buyers of agricultural land were required to have been employed in agriculture for ten years for individuals and three years for legal entities. The European Commission qualified such requirements as restrictive and discriminatory in terms of attracting investment in rural development, and therefore demanded their abolition [14].

In November 2017, the Lithuanian Law on Acquisition of Rights to Agricultural Land [15] of 2003 was amended to bring national legislation in line with EU

requirements. According to these innovations, land purchasers can now be individuals who have professional skills and competence and have obtained a permit to purchase agricultural land from the National Land Service unit under the Ministry of Agriculture. Legal entity buyers must have income from agricultural activities exceeding 50 percent of total income, and economic efficiency can be demonstrated in accordance with the procedure established by the Ministry of Agriculture in assessing the prospects of such companies.

Additionally, in Lithuania, individuals and legal entities are obliged to use the acquired land plots for agricultural use for the next five years and to carry out agricultural production in the amount of the minimum amount established by the Ministry [15].

Article 3 of the Lithuanian Law on Acquisition of Rights to Agricultural Land stipulates that national and foreign individuals and legal entities and their related parties may acquire up to 300 hectares of agricultural land, but must not concentrate more than 500 hectares of land in Lithuania and abroad. This restriction does not apply if the agricultural land is acquired for the development of livestock farming and the amount of acquired agricultural land does not exceed the corresponding number of hectares per livestock unit (1 hectare – 1 livestock unit) [15].

Access to agricultural land is strictly regulated in Denmark, which has a permit-based procedure for acquiring agricultural land. Before obtaining a permit to acquire a land plot, the buyer must submit documents confirming his financial, technical

and professional ability to conduct agriculture, cultivate land, and preserve soil fertility and other natural resources. Before entering into a land sale and purchase agreement, a potential owner must submit a written commitment that he will farm the purchased land for at least eight years. Danish law also stipulates that the owner of such a land plot must “properly conduct agricultural production”, otherwise he will be deprived of the right to the land plot [7].

Denmark has an upper limit of 150 hectares of agricultural land for both owned and leased land use. An exception is made if the agricultural producer proves that the specifics of its production require more land and none of the villagers are against it. Certain requirements are imposed on those wishing to purchase additional land [16].

The legislation of this country pursues a fairly consistent line in support of relatively large family farms, not allowing either the creation of latifundia or the purchase of land by legal entities and its transformation into an object of speculation. Such a land policy is one of the factors that ensure Denmark’s leading position in the EU in terms of agricultural efficiency [17].

Thus, under the laws of the EU countries, land plots are usually purchased by individuals, including foreigners (Poland, Hungary, Denmark), or by national and foreign individuals and legal entities (Slovakia, Bulgaria, Lithuania, Latvia, Bulgaria). At the same time, most of these countries have established requirements for residency (residence or business) in the country or in a certain administrative-territorial unit, experience in agriculture, agricultural education, the

obligation not to alienate the land plot and to farm it independently for several years from the date of acquisition of land ownership, etc.

The legislation of EU countries establishes different rules for the turnover of agricultural land between agricultural producers. The most common are the establishment of minimum and maximum sizes of agricultural land that can be acquired by a person. Establishing the maximum size of land that can be acquired by one person may serve as a means of counteracting excessive concentration of land in the hands of one person and limiting competition in the land market. At the same time, there is a clear trend in the practice of legal regulation of land relations in the EU countries: the larger the territory of the state and, accordingly, the area of its arable land, the larger the area of land that can be acquired by one person, for example, in Denmark – 150 hectares, in Poland – 300 hectares or up to 500 hectares in case of inheritance.

Land lease in the EU agricultural sector is one of the main components of the land use system. In the EU, the acquisition of the right to lease agricultural land has its own specifics, which depend on the country in which the leased land is located.

Recently, the EU countries have seen an increase in the area of leased agricultural land compared to that cultivated by their owners. For example, in Germany, France and Belgium, more than 60% of agricultural land is leased, in Luxembourg – 53%, in Sweden – 46%, and in the EU as a whole – 48% [18].

The analysis of agricultural land lease terms indicates the prevalence of long-term leases (90% of contracts) and the

establishment of minimum lease terms at the legislative level [2; 5]. For example, in Luxembourg, the minimum lease term is 6-9 years, in Sweden – 10 years, in Belgium – 9-18-27 years, in France – 9 years, in Italy – 6-15 years, in Austria – 5-15 years, in Portugal – 10 years [3].

Long-term lease of agricultural land in the EU allows for more rational use of land, helps to raise funds for conservation measures, and improves its quality. In turn, short-term leases do not allow the lessee to recover the funds spent on preserving and improving soil fertility, as the payback of these measures requires a certain period of time. Under a long-term lease, the funds spent are returned to the lessee, not the lessor, which is the case with a short-term lease.

Based on this, we believe that the experience of long-term lease of agricultural land in the EU is positive and acceptable for use in Ukraine.

Analysing the rent for agricultural land in the EU countries, it can be noted that it is usually determined as a percentage of the market price of the land plot. Thus, in Sweden, it is 118 euros/ha or 5-8% of the land price, in England it is on average 230 euros/ha or 5.2% of the market value of land, in Germany – 230 euros/ha or 6.7%, in Hungary – 300 euros/ha or 7%, in Scotland 160 euros/ha or 5.7%, in Italy – 328 euros/ha or 8% [6; 19].

In general, the EU countries can be divided into those with more liberal regulatory policies on land lease and those with legally established rents. In Germany, Greece, and Denmark, for example, rents are determined by the market under the influence of supply and

demand. At the same time, in Belgium, Italy, Spain, Portugal, the Netherlands and France, the amount of rent is regulated by law [20].

Thus, although the EU countries are developing their economies as market economies, in land relations, in particular in determining the amount of rent for agricultural land, the majority of them directly control the rent by setting minimum or maximum payment amounts and contract terms at the legislative level.

### **Conclusions**

Despite the fact that in the EU countries the legislation on the turnover of agricultural land between agricultural producers is based on different models of state regulation, the experience of these countries gives rise to some general conclusions.

None of the countries restricts the rights of owners to dispose of their land (purchase and sale). In most EU countries, legislation grants both individuals and legal entities the right to acquire agricultural land. Regardless of the “depth” of regulation of land relations by EU legislation, the number of

administrative prohibitions in each country is minimal and mainly concerns the establishment of a minimum lease term, a ban on the acquisition of certain types of agricultural land by foreigners and the maximum area of agricultural land that can be acquired in private ownership. None of these countries favours one type of agricultural land right, such as leasehold. Market participants can acquire such land both as property and lease.

All other legal means of influencing the development of agricultural land turnover are means of “soft” law, i.e., law that gives market participants the right to choose. Moreover, such means of legal regulation of agricultural land turnover are applied in a certain proportion, which is optimal for each country. They include granting preferential rights to purchase agricultural land to farms and local rural communities; granting preferential rights to tenants to extend land lease agreements; establishing a preferential procedure for the acquisition of agricultural land (instalment payments for long periods); granting tax benefits for the acquisition of agricultural land by farms, etc.

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## **Досвід країн ЄС у правовому регулюванні обігу земель сільськогосподарського призначення між сільськогосподарськими товаровиробниками**

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### **Анотація**

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У статті досліджено особливості правового регулювання обігу земель сільськогосподарського призначення між сільськогосподарськими товаровиробниками у країнах ЄС і визначено напрями удосконалення вітчизняного законодавства у цій сфері. За результатами дослідження встановлено, що світовий досвід вказує на існування різноманітних моделей правового регулювання обігу земель серед сільськогосподарських підприємств, які можуть бути ефективними, якщо враховують конкретні особливості тієї чи іншої країни та національні інтереси. Практично кожна країна світу в той чи інший спосіб регулює такий обіг. Є країни з «жорстким» та «м'яким» регулюванням земельних трансакцій між сільськогосподарськими товаровиробниками. Але практично кожна розвинута країна ЄС віддає пріоритет фермерам, що проживають на даній території й ведуть господарство, на відміну від великих агрохолдингів. Не зважаючи на те, що в країнах ЄС законодавство про обіг земель сільськогосподарського призначення між сільськогосподарськими товаровиробниками базується на різних моделях правового регулювання, позитивний досвід цих країн має бути використано для удосконалення вітчизняного законодавства у цій сфері. У сфері правового забезпечення використання земель сільськогосподарськими товаровиробниками, необхідно у вітчизняному земельному законодавстві особливу увагу приділити наданню переважних прав на придбання земель сільськогосподарського призначення фермерським господарствам, територіальним громадам, орендарям тощо; передбачити

встановлення пільгового порядку придбання таких земель і надання податкових пільг; а також визначити граничні межі концентрації землі на рівні областей та об'єднаних територіальних громад або встановити дозвільний порядок придбання земельних ділянок площею більше ніж встановлена на території певної області або об'єднаної територіальної громади

**Ключові слова:** землі сільськогосподарського призначення, обіг земель сільськогосподарського призначення, сільськогосподарські товаровиробники, агрохолдинги, фермерські господарства

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