

CZU 349.41

## STATE REGULATION OF THE AGRICULTURAL LAND MARKET IN MODERN RUSSIA

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**Rezumat.** Reforma din anii '90 a dus la eliminarea monopolului de stat asupra proprietății funciare și la privatizarea majorității terenurilor agricole. În cadrul micului sector auxiliar circulația terenurilor agricole a fost inițiată la începutul reformei, însă reglementarea juridică privind circulația terenurilor în sectorul agro-industrial a apărut abia în anul 2003 (cu peste 10 ani mai târziu decât privatizarea în masă a acestor terenuri). O parte semnificativă a mecanismelor de reglementare a circulației terenurilor a fost împrumutată de la experiența străină, pentru că experiența internă lipsea. În Rusia modernă, cele mai importante reglementări privind piața terenurilor agricole sunt legate de dreptul prioritar al statului de a achiziționa terenuri destinate vânzării, concentrarea limitată a suprafețelor mari de teren deținute de un cetățean sau persoană juridică și interdicția pentru persoanele străine de a avea teren în proprietate. Practica din ultimii zece ani a permis de a identifica o serie de aspecte discutabile asociate cu aceste mecanisme. Acestea sunt examinate în prezentul articol. De asemenea, au fost luate în considerare mecanismele care pot suplimenta sistemul actual de reglementare al pieței funciare, dar care, din diverse motive, nu sunt utilizate.

**Cuvinte cheie:** Terenuri agricole; Circulația terenurilor; Piață funciară; Legislație; Privatizare; Proprietate; Reglementări

**Abstract.** The reform of the '90s led to the elimination of state's monopoly of landownership and to the privatization of most agricultural lands. Within the small auxiliary sector of agricultural land the turnover arose in the early reform. But in the large agro-industrial sector, the turnover of lands received the necessary legal regulation only in 2003 (more than 10 years later than the mass privatization of these lands). For this type of turnover, a significant part of the regulatory mechanisms was borrowed from foreign experience, because the domestic experience was absent. In modern Russia, the major regulators of the agricultural land market became the priority right of the state on the purchase of lands at their sale, the limited concentration of large land area owned by a citizen or legal person and the prohibition for foreign persons to have land in ownership. The practice of past decade has enabled to identify a number of disputable issues associated with these mechanisms. They are examined in this article. Also, there were considered the mechanisms which can supplement the current regulation system of the land market, but which, for various reasons, are not used.

**Key words:** Agricultural land; Turnover of land; Land market; Law; Privatization; Property; Regulation

### INTRODUCTION

Most of the twentieth century, the market turnover of land was absent in our country. Under the conditions of planned and administrative economy such a turnover didn't have economic sense and it was impossible legally (all lands were in the exclusive property of the state). The reform of the '90s led to the elimination of state's monopoly of landownership, to the privatization of most agricultural lands and to the involvement of land in market turnover.

The agricultural production (and the corresponding land) concerns two fundamentally different sectors:

1. A small auxiliary sector. These are the land plots used by the population for agricultural production and other purposes (personal subsidiary plots, garden plots);
2. A large agro-industrial sector. It is the agricultural land which is used by the agricultural companies (economic partnerships and companies, production cooperatives, unitary enterprises, including research organizations and agricultural farms).

Currently the turnover of these lands is regulated by a special law "On the turnover of agricultural land". During its preparation the legislator took into account, primarily, the regulatory mechanisms which are implemented in other countries. These mechanisms were researched and recommended by a number of domestic scientists (Komov, N. V., 1995; Leppke, O. B., 1998; Lipski, S. A. 2001; Loyko, P. F., 2001). Next, we considered the process of agricultural land privatization. Also we analyzed how now the mechanisms, stipulated in this law, are working.

## MATERIAL AND METHODY

The author of this article collected and analyzed the materials on this topic during all the period of land reform in modern Russia (he began in the late '80s). The author used abstract-logical, comparative-legal, formal-legal and historical methods. The materials for this research were normative legal acts, official and other reports and works of other scientists. To a certain extent, the findings and results are based on the experience of the author (more than 20 years he was directly involved in preparing relevant decisions and their correction).

This article generalizes and systematizes the results published by its author in various scientific editions (Lipski, S.A. 2005, 2011, 2013 and others). Also it received many responses from a number of scientists and specialists.

## RESULTS AND DISCUSSIONS

### *I. General questions of privatization of agricultural land*

In the Soviet period, the state was the owner of all land in our country. In that period the citizens and legal persons could only be users of the land. They had right of perpetuity (permanent) use or temporary use (short-term use - up to 3 years and the long-term use - from 3 to 10 years).

In order to create a land market it was necessary to carry out the privatization of at least some part of the land.

The permission of private land ownership was aimed at solving current economic problems, and namely a more efficient land use and land's redistribution in a market-oriented way. It means the possibility to transfer land by inheritance, fact that should foster a more caring attitude to it. This is also the establishment of the equilibrium market price of land meaning to replace the assessment method of land resources which was distorted during the period of planned economy. Finally, the private landownership had to become the most reliable insurance of credit resources attracted in agriculture.

In terms of land reform the exclusivity of state's landownership was abolished. Also the new kinds of rights to land appeared. They were not peculiar for the soviet land law: lifetime inheritable possession, lease and also servitude (it is a specific subsidiary of the right to land).

However, the question of landownership was the main. The private landownership is a necessary condition for the further development of a civil society and formation of the middle class. It is the basis of market economy. The movement to market economy required the permission of the private ownership of land. In the laws adopted at the beginning of the land reform (1990) there were installed a variety of landownership forms. But, the formation of private landownership in Russia was not easy. Land privatization was carried out very differently in various sectors of the land use.

Now the proportion of private ownership for any category of land is different. The greatest share of private ownership of land is in the agricultural sector (96.5% out of all privatized land in the country). This is explained by the fact that land privatization in agriculture had a mass character. And in agribusiness it was earlier than in other sectors of the economy (while some categories of land - forest and water fund - are still almost exclusive in federal ownership).

The creation of private ownership of agricultural land was the result of the following processes.

1. The agricultural land of state and collective farms was transferred into common ownership of their employees (mass privatization).
2. The rights on land plots were subject to re-registration (privatization actually).
3. The granting of new land plots to citizens and legal persons to ownership was another way (individual privatization).

### *II. Land plots of the population*

Private property in the sector of land plots of the population appeared as a result of restructuring the former rights on the land use and individual privatization. At present, the private land ownership is about 73.8% in the individual agricultural farms, while among gardeners - 70.3% (Rosreestr, 2012).

The turnover of land in this sector of agricultural land use formed early in the '90s. The legal framework necessary for such a turnover was founded at the beginning of the land reform. Also, the economic prerequisites for the purchase and sale of the individual plots, gardens and other sections of land plots of

the population appeared immediately along with the formation of market relations. Currently, the land turnover in this sector is regulated by the civil legislation and therefore, special regulators are not required.

### ***III. Mass privatization of agricultural land (land shares)***

The mass privatization of agricultural land was held in 1992-1993. But the problem, arisen in this period (land shares), was not solved until now. Such a privatization aimed at solving three tasks:

- create (quickly) a private land property;
- stimulate the reorganization of collective and state farms;
- encourage the concentration of land by the most efficient owners.

As the result of the formation of land shares almost 12 million people became private owners. The privatization covered more than 115 million hectares of agricultural land (61.8 % - Rosreestr, 2012).

In the '90s the rules concerning the use of land shares was regulated not by laws, but by regulations that didn't have the necessary legal force. However, in 1993 the Constitution of the Russian Federation had decided that the procedure and conditions of land use can be determined only based of the Federal law. In that period the Government has sought to simplify any transactions with land shares. This had to lead to a concentration of shares. However, this didn't happen - the most common transactions in the '90s were connected to land rental (more than 40% of land was in leasing). The lessees of land were, usually, the collective and state farms (Lipski, S.A. 2005).

Land rental was banned in 2002 after the adoption of the Federal law "On the turnover of agricultural land". The contracts of trust management came to replace the rent. The adoption of this law and especially its change in 2005 substantially restricted the rights of landowners to transactions (Lipski, S.A. 2011). This was one of the reasons stimulating the emergence of the so-called "unclaimed land shares". Basically these are the plots, the owners of which took no action on the orders of their land property, inherited by them as a result of mass privatization (according to various estimates their total area is about 25 million hectares - Hlystun, V.N., Volkov, S.N., 2012). Different suggestions were offered to solve this problem, such as: the ransom to state property or the free of charge transfer of them to the federal property (as unnecessary property) and others.

Thus, in the period 2006-2009, scientists and experts had actively discussed the possibility to apply to the plots the procedure provided to an escheated property. However, this proved to be difficult. Decedent's estate is considered escheat only if there are no heirs, or they have no right to inherit, or they debarred from the inheritance, or they refused from the inheritance or none of the heirs has received the inheritance.

At first glance, the situation with land shares is exactly the failure of the inheritance procedure. Meanwhile, their passivity is not enough for uniquely classifying the relevant land shares as escheated property, because, until proven otherwise, legislation considers that the heir has accepted the inheritance. He could take possession of the other property of the testator. He could make measures for its conservation, for the payment of its content or to obtain cash owed to the testator from third parties, etc. All these actions demonstrate the actual acceptance of the inheritance.

Thus, there is a high probability that such acts may be committed only with respect to the other property of the testator, and not of the land shares. But, as we know, the estate passes to the heirs in the order of universal legal succession as a whole. Therefore, the adoption of the heir though of the least part of the inheritance means the acceptance of the whole inheritance due to him.

At present (after 2010), the legislation allows to recognize these shares as the municipal property (by the court decision). Currently, the number of private owners of land shares already decreased from 12 to 9 million people (Rosreestr, 2012).

### **Summary about the question of land shares**

Generally, the formation of land shares was a correct decision, as it allowed to create a private land property and to start reforms in agriculture. However, this process had a series of errors:

1. Volatility. The rules changed several times during the creation of shares.
2. The priority of the social aspects doesn't allow achieving the desired economic effect.
3. The absence of the necessary legislation for over 10 years didn't allow starting in the '90s the market of land share. Later, the rules appeared, but they were not optimal. The inertia that formed

earlier became an obstacle to obtain turnover up to the present times. Also the difficult financial situation of the '90s held back the turnover of land shares.

4. The right to shares was difficult to register because not the whole land of former agricultural enterprises was transferred into the category of private property, but only the productive land, which according to the prevailing order of land registration was not separated from other lands. This was done to protect the rights of future owners, but in reality, it is just complicating the procedure of land rights registration for such owners.

#### *IV. Land plots in the agro-industrial sector*

Within the agro-industrial sector, the market turnover of land plots, which became private property as a result of individual privatization or land share allocation, has received the necessary legality since 2002.

Such a turnover goes in two directions. The agricultural organizations buy or lease land from the state and from other agricultural organizations. Also they seek to accumulate land shares.

The farmers are specific participants in this sector. At present, the private landownership of these farmers is about 40.7%. Since 2011 the state compensates to farmers the costs related to cadastral operations at the property rights registration. This measure should increase the share of the privatized lands of farmers.

Currently, the state uses the following mechanisms in regulating the turnover of land plots in this sector.

1. An important task was and still remains the preservation of agricultural land in the sphere of agricultural production. This is achieved by establishing compulsory categories of land-use planning at the state level. Such an approach is peculiar to the soviet and abroad practice. The need to maintain the targeted use of land plots is one of the basic principles of the law "On the turnover of the agricultural land". Procedural aspects related to the transfer (in exceptional cases) of these lands into other categories are defined by the special Federal law "On the transfer of land or land plots from one category to another".

2. The law is protecting these lands from foreign capital. It takes into consideration the dangers of the mass purchase of agricultural land by foreign persons, and the suppression of domestic agricultural producers by foreign competitors. The principle of the law stipulates a special procedure for granting land to foreigners (renting only). Even if a foreign person became the owner of agricultural land legally (for example, as a result of inheritance) this owner should sell this land during a year.

However, currently the domestic agro-industrial complex can become a very attractive sector for investments. The possible ease of restrictions for foreign entities with respect to agricultural land needs to consider its impact on attracting foreign investment. The admission of foreign capital in the domestic agribusiness would also entail new technologies (not only the advanced ones but also those able to deteriorate the quality of lands). This step could be achieved only if we have a reliable, understandable and transparent mechanism of the compulsory termination of rights to land in case of its misuse. Also, there is the need to have a competitive environment in the agricultural production, both at the micro and macro levels.

3. At the turn of the XX-XXI centuries, the domestic market of agricultural land was in the formative stage, when the disadvantages of growth and the distortions were inevitable. Therefore, the state needed a mechanism to prevent the economically wrong transactions. This mechanism is the priority right of the state (or of the municipality) to redeem agricultural land if this is put up for sale. This procedure provides that the seller of a land plot shall inform the public authorities about the intention to sell the land plot indicating the price and other significant terms of the contract. Only if the authorities refuse to purchase it (or do not respond), then it is possible to sell this land to a third party.

The public authority adopts the decision on the priority right of purchase (or refusal from this right) not taking into account the personality of the buyer. This reduces the risks of corruption. But the absence of levers to influence on a potential buyer does not guarantee that the buyer of land will be the most effective user. Therefore, the state must establish some measures affecting any owner of agricultural land in order to ensure their proper use.

But this mechanism is not ideal. It does not apply for the gratuitous alienation of land. It can be bypassed.

This mechanism is not valid when land is sold to a co-owner. For example, the part of a land plot was sold. And then, after the division, it merged with the remaining part. Thus the original plot is in common ownership.

Also this mechanism requires to have money in the budget in order to establish the right for primary purchase.

Besides, in the period 2002-2005, the preferential right of the state to purchase the land that is sold, also extended to land shares. But in 2005 the state withdrew from the regulation of the process of their civil turnover. As a result the problem of unclaimed land shares worsened (Lipski, S.A., 2005).

4. A land plot may be forcibly taken away from its owner by a court order in case of misuse. For a long period of time the implementation of forced removal was difficult, first of all, because the concept of "misuse" was vague. In 2011-2012, an important step became Government adoption of indicators measuring the substantial decrease of soil fertility. Now the owners of land plots pay fines if they use improperly the land. If it does not give the desired effect, then the land will be withdrawn in a judicial procedure (sale on trades). The proceeds from the trade will be paid to the former owner of land (excluding the expenses on the organization and holding of trades).

5. An important regulator of land turnover is to limit the excessive concentration of areas. This regulator suppresses the monopolistic manifestations (an owner, concentrating in his hands a great part of the agricultural land, can dictate the prices on the local market; also he can influence the level of workers' wage in the field of agricultural production). Therefore, these limits are set only for the owners. Such limits do not apply for the tenants of land. Meanwhile, in the land sphere the private property and the lease are identical from the position of monopolistic manifestations.

6. The law "On the turnover of agricultural land" established that a land plot may not be less than the minimum size permitted by the state. This allows to avoid the unnecessary fragmentation of land plots and other inconvenience in land use. Such a minimum size is regulated by the laws of the subjects of the Russian Federation given the substantial regional differences.

7. An important issue is to ensure the rights of the tenants. They should not feel themselves as "temporary users". On the contrary, they should show a more careful attitude towards the land. So the lessee, on the expiration of the agreement shall have a preferential right to conclude the lease for a new term. Also the lessee may purchase the public land at market value after the expiration 3 years of lease.

8. The necessary condition for the turnover of agricultural land is the information support. In the Soviet period and at the beginning of the land reform the state land cadastre was the main information system, which contained the information about land. It included the following components: the registration of specific land plots reflecting the legal aspects of land use; the accounting of the quantity and quality of land; soil bonitation according to its natural properties reflecting the production aspects of land use; the economic valuation of land.

In the '90s, land cadastre developed into a multi-purpose information system about land which included land accounting, its registration, insurance of land taxation and land management. Then, the cadastral specialists tried to integrate other real estate into this system. But it was unsuccessful (Lipski, S.A. 2001). This integration succeeded after the adoption in 2007 of the law on the transition of real estate to the united cadastre. As a result, the united cadastre and the system of rights registration concerning the immovable property are adequate to the legal and economic aspects of the land market.

But real estate cadastre doesn't include information about farmland in the structure of land plots, about certain productive specifications and other information. It doesn't reflect the specifics of land as a natural resource used as the main means of production in agriculture (Hlystun, V. N., 2010).

In the early '90s, another land information system was introduced in addition to land cadastre. This was state monitoring of lands, which became a part of the state environmental monitoring.

However, it didn't ensure the full-fledged observation of land plots as a production resource. This monitoring was not performed for a range of parameters characterizing which are essential for agriculture, such as soil fertility, for example.

Along with the state monitoring of land the other observations are being implemented in the land and in the agrarian sector too. The monitoring of agricultural land fertility is part of the state monitoring of land (Zaharova N. I., 2012). Also the state monitoring of land includes as a component part the monitoring of reclaimed land. The Doctrine of food security of the Russian Federation provides for the

monitoring such type of security. Some important directions in ensuring food security are the increase of soil fertility and crop yield, the expansion of fields sown with agricultural crops at the expense of unused arable lands, the construction and reconstruction of drainage systems (Lipski, S.A. 2013).

Thus, there are several types of observations of land used for agricultural purposes. But these disparate observations do not give a synergy effect. There is the lack of systematization. In this regard, quite big expectations are connected with the formation of the unified system of agricultural land monitoring.

In 2010, the Government of the Russian Federation approved the development of state monitoring of the agricultural land and the formation of state information resources about these lands. Such a monitoring should provide the participants of land market with the information on the land as a natural resource, which is the main means of production in agriculture.

Summary on the current regulatory mechanisms of the agricultural land market

Generally, the mechanisms of land market regulation have received the necessary development in the past decade. They are effective enough and in the nearest future they should be maintained entirely. In the longer term there is the possibility to refuse the right of primary purchase of land by public authorities.

#### *V. Possible regulators of the land market*

Other regulators of the agricultural land market used in other countries were implemented only partially or not implemented at all in modern Russia.

Thus, the priority right of agricultural land purchase applies for the persons residing in this area and for the “professional farmers”.

There is no need to have a special state permission on the land transaction. Although in Austria, Norway, Finland and Germany the regulatory mechanism includes this procedure. In modern Russia, its alternative is the priority purchase right of the plot which is assigned to the state or to the municipality.

The law “On the turnover of agricultural land” does not set any requirements about the age, qualification and other requirements for purchasers of land plots (as, for example, it is in Norway, Sweden and Germany).

In 1992-1993, in Russia, there was adopted the moratorium on the sale of land received from the state (10 years for free receipt and 5 years in the case of purchases from the state). Such measures were justified only in the early stages of land market formation. Now the land market and the set of measures for its regulation are already formed. Therefore, it is not practical to impose such a regulator.

Russian legislation partially implemented the principle of one heir of farmer’s land (land ownership of one person). This principle exists in Germany, France, Switzerland and other countries. From a formal point of view, it is not implemented in Russia. Other model is actually implemented in Russia - the property belongs to the members of the farm on the right of joint ownership. However, in very deed, according to Federal law “On peasant farm” when the members of the farm leave it, the land plot is not divided.

## CONCLUSIONS

At present, in modern Russia the surface of private land is about 128.3 million hectares. It is sufficient for the implementation of their market turnover at large scale. The main problem of the agro-industrial sector is connected to the fact that in the ’90s the land was divided by land shares.

The legislation provides the necessary mechanisms to regulate the market of agricultural land which are also used in other countries. The basic requirement for the subsequent improvement of the existing regulators is to strengthen their integration in order to ensure a more rational use of available land resources and to create conditions for sustainable and effective development of the domestic agro-industrial complex.

Also, in the near future, the priority will be given to the privatization of the agricultural land that previously was not privatized. It concerns the land of specialized farms (tribal, greenhouses) and unproductive land.

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Data prezentării articolului: 12.01.2014

Data acceptării articolului: 14.03.2014