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The moratorium on the sale of agricultural land is lifted in Ukraine

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The *Verkhovna Rada* (Ukrainian parliament) passed the Act on introducing an agricultural land market in Ukraine on 31 March at the second reading. The document envisages that the moratorium on the sale of agricultural land will be lifted on 1 July 2021. A transitional period will apply for two years – during this period only natural persons will be allowed to buy land, a maximum of 100 ha per person, and the ban on the sale of state-owned land (a total of 10.4 million ha) will still apply. Starting from July 2023, corporate entities will also be allowed to buy up to 10,000 ha of land each. Foreigners will have no right to buy land until a referendum concerning this issue is held. If the referendum result is positive (which is highly unlikely), a ban on buying land within a 50 kilometre border zone will apply. Whatever the referendum result, corporate entities registered in Ukraine owned by a foreign country, Russian citizens, companies registered in tax havens, companies based in FATF listed third countries which fail to take effective measures against money laundering, and companies whose owners cannot be identified will remain unable to purchase land. Banks will have the right to acquire land ownership rights only if they receive it as a pledge for an unpaid loan and will be obliged to sell it within two years. The pre-emption right will be vested in those leaseholders who leased the land in 2010 or earlier. They will be offered the opportunity to buy the land and successively repay it for ten years at a price determined in a regulated valuation.

The act concerns the 41.5 million ha of land covered by the moratorium. The vote took place in the presence of President Volodymyr Zelensky, who had previously appealed to the deputies to back the bill. The uniform text of the act has not been published as yet.

Commentary

- The fact that the act has been passed can be recognised as a milestone in Ukraine's agricultural policy and President Zelensky's success. The moratorium on the sale of agricultural land has been in force since 2001. None of the teams which governed the country so far dared to lift it mainly due to strong public resistance (according to a survey conducted by the Razumkov Centre in February this year, only 19.6% of Ukrainians wanted the moratorium to be lifted, with 64.4% opposed). Another reason was the fact that the *status quo* was beneficial to the giant agricultural holdings controlled by the oligarchs. The absence of land ownership rights was a barrier to the development of

Ukraine's agricultural sector and led to the predominance of grain and oilseed crops in the sector which are cultivated in a manner close to over-exploitation. It is expected that the introduction of land ownership will change the model and also trigger the development of sectors which require more intensive investment, such as fruit farming and animal husbandry.

- Shifting the date for lifting the moratorium from October 2020 to July 2021 will gain the government time to prepare a number of necessary executive acts, for example those regulating the principles of holding land sale auctions and land registration. The transitional period will enable the key players on the agricultural market (both farms and agricultural holdings) to prepare for a new reality. Furthermore, the expected economic crisis would pose a high risk that a significant section of the land bought on loans would be taken over by banks due to defaults on loans. It also needs to be noted that the act was passed contrary to the *Verkhovna Rada's* regulations and therefore can be invalidated by the Constitutional Court. However, it is common practice in Ukraine that this court's verdicts meet the government's expectations, so the likelihood that the reform will be thus invalidated in the future is quite low.
- It is currently difficult to assess how the 10,000 ha land ownership limit will affect the operation of the giant agricultural holdings in Ukraine. Nine of them currently lease areas in excess of 100,000 ha, and there are dozens of others whose areas exceed 10,000 ha. They might decide to buy land through a network of their subsidiaries. It is unclear whether a mechanism that will make this practice possible will be formed. The version of the act submitted for the second reading has already failed to impose a restriction on the concentration of land in one territorial entity to 33%. This means that in the case of smaller *hromada* (communes), a single entity will be able to buy all the agricultural land.
- Lifting the ban on the sale of agricultural land was one of the two main conditions on which the International Monetary Fund agreed to offer support to Ukraine. Considering the expected economic crisis linked to the need to repay previous loans, resuming co-operation with the IMF is critical for Ukraine. An initial deal was struck in December 2019 but the allocation of funds was withheld until the Land Market Act was passed. To receive support from the IMF, Kyiv must meet one further condition – it must pass the so-called 'Banking Act' that will make it more difficult for the previous owners to regain the banks that were nationalised in 2014–2016 (the act was passed at the first reading on 30 March). This concerns mainly PrivatBank owned by the oligarchs Ihor Kolomoysky and Hennadiy Boholyubov. Members of the *Verkhovna Rada* linked to Kolomoysky (also those from the governing Servant of the People party) over the past few weeks have actively opposed collaboration with the IMF and wanted Ukraine to declare bankruptcy.
- Only 206 deputies representing the governing Servant of the People party voted in favour of the act. The act would have been impossible to pass if not for the support from the European Solidarity and Voice parties and from independent deputies. The adopted variant is a compromise version that takes some demands voiced by the opposition into consideration. It is difficult to determine the price Zelensky had to pay for the support, especially from Petro Poroshenko's party. A similar situation was seen during three other important votes on 30 March (concerning the nominations of the ministers of Finance and Healthcare and the Banking Act). This means that even though the Servant of the

People formally still has a parliamentary majority (248 votes, while 226 are required), its fragmentation prevents it from governing the country on its own. It is difficult to predict whether the Servant of the People will decide to form a coalition or continue the practice of striking deals to get temporary support before each vote. Both of these variants make it impossible to resume the practice of adopting acts at an express rate (the so-called ‘turbo regime’) as was the case last autumn.