

Management and Privatization of State-Owned Agricultural Land – Case Studies from Eastern Germany and Ukraine - lessons learned for countries in transition -

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Key words: Management of agricultural land in state-ownership; lessons learned in Eastern Germany; best practices for countries in transition

SUMMARY

The reunification of Germany required the transformation of the ownership structure of land in Eastern Germany. Regarding state-owned agricultural land new laws were introduced governing restitution, allocation and privatization of land. In 1992 the BVVG Bodenverwertungs- und -verwaltungs GmbH was established as implementing agency, responsible for the management and the privatization of agricultural land in state-ownership, which was organized in three phases, i.e. 1) leasing, 2) selling at reduced prices under the so called *Land Purchase Program* and 3) selling to market prices via tender. As a result, so far 0.3 m ha of agricultural (and forest) land have been restituted, 1.2 m ha have been allocated and 1 m ha have been privatized (by selling).

Many Eastern European and Central Asian states in transition continue to face similar questions regarding the restructuring of ownership relations and privatization of agricultural land. Despite the land reforms initiated in the nineteen-nineties, in some of the countries a considerable amount of agricultural land is still in state-ownership, e.g. around 11 m ha in Ukraine, 276.5 m ha in Russia, 290,000 ha in Bulgaria, 85.5 m ha in Kazakhstan, 112.4 m ha in Mongolia and 400,000 ha in Serbia. A clear vision of how to manage this land is often lacking. However, there are also some promising approaches for effectively managing state-owned agricultural land. Ukraine's governmental institutions have recently started to pay more attention to the requirements of effective state land management. This has long been neglected. Agricultural land in state-ownership in Ukraine is managed rather passively. The granting of large amounts of land for permanent use blocks effective management. The process of leasing is bureaucratic and selling state-owned agricultural land was not common before 2007 and is prohibited since.

Managing state-owned agricultural land requires certain framework conditions, i.e. a national policy and program, a coherent legal frame, a transparent land market, a functioning cadastre and land register and institutions displaying market information. Necessary activities supporting effective management of agricultural land in state-ownership can be summarized as follows: conducting an inventory, creating a privatization institution, allocating funds, setting-up an IT-system to support the management, tendering lease or sales objects, and organizing the contract management.

1. INTRODUCTION

After the reunification of Germany in the year 1990 a major task was to facilitate a smooth transition from an initially centrally planned Socialist economic system to a market oriented economy in the new Federal States of the unified Germany. This required, inter alia, a transformation of the structure of land ownership in the area of the former German Democratic Republic (GDR), i.e. in Eastern Germany. Drafting new laws, implementing the legal framework that already existed in Western Germany, setting up institutions to deal with privatization, allocating and restituting property and implementing a state property management and privatization strategy were paramount assignments to be tackled in this context.

Many Eastern European and Central Asian states in transition faced and continue to face similar questions regarding the restructuring of ownership relations, which also implicates the management and privatization of former state-owned land.

This paper focuses on agricultural land, and will describe the German path of restructuring ownership of land by restitution, allocation and privatization. It will point out promising approaches and shortcomings in the management of state-owned agricultural land in Eastern European and Central Asian countries with a special focus on Ukraine. In its conclusion the paper will summarize recommendations for the effective management of state-owned (agricultural) land.

2. CASE STUDY EASTERN GERMANY - MANAGEMENT AND PRIVATIZATION OF STATE-OWNED AGRICULTURAL LAND

In the beginning of the nineteen-nineties the ownership structure of agricultural land started to be reorganized with the aim of returning a large share of the 2.1 m ha of agricultural land, which were in state-ownership in 1990, into private hands. This required an interim administration of the land as well as a privatization strategy for state-owned agricultural land. The following subchapters will briefly summarize the legal framework governing the restructuring of ownership of agricultural land in Germany and the institutions involved in the implementation process. A special focus will lie on the assignments of the state-owned *BVVG Bodenverwertungs- und -verwaltungs GmbH*, the agency responsible for the interim management and subsequent privatization of state-owned agricultural land and buildings.

2.1 Legal Framework and Institutional Setting

The reorganization and management of state-owned agricultural land raised different questions, which required clear political decisions: would former owners receive their property back, and if so, who would be entitled and how would the restitution process be organized? How could the ownership structure of agricultural land be altered without risking a temporary breakdown of the agricultural production and without hampering economical activities? Would land need to be allocated to statutory authorities and if so, how could the

process be organized? How should the interim management and subsequent privatization be designed and which institution would be responsible for its implementation?

2.1.1 Restitution and Allocation of Land

It was decided that expropriations of land that had occurred between 1949 and 1989 GDR law, and expropriations (or forced sales) of (e.g. Jewish) property between 1933 and 1945 would be subject to restitution, or - if restitution in kind was not possible - to compensation. However, the restitution of expropriated property under Soviet occupation from 1945 – 1949 was generally ruled out by the *Unification Treaty of August 31, 1990* (see 2.1.2.).

The restitution of owners expropriated in the periods from 1933 - 1945 and 1949 - 1989 or their heirs is governed in the “*Law Governing Unresolved Property Issues (Property Settlement Law)*”. The precondition for restitution was the submission of an application by the rightful owner before December 31, 1992. The newly established *Offices for Unresolved Property Issues* on the federal and state level were responsible for processing restitution claims and deciding on the reassignment of property.

Aside from private persons or legal entities, statutory authorities such as the federal states or the municipalities could be former owners of property. While during GDR times this property was regarded as state or publicly owned land, after the reunification it had to be reallocated to the statutory bodies. Furthermore, the statutory authorities as part of the public sector needed property to fulfill their administrative tasks. This allocation to regional administrative bodies (statutory bodies) is governed by the *Law on Allocation*.

2.1.2 Indemnification and Compensation for Lost Property

As mentioned above, it was decided that expropriations of land executed under Soviet occupation were not to be restituted. Unsurprisingly this decision provoked a controversy between the individuals concerned and the German State, which is still ongoing today. But despite several court cases including a complaint at the European Court of Human Rights in Strasbourg (rejected by the ECHR in 2005), the decision was not reversed.

However, the *Indemnification and Compensation Act (EALG)* passed in September 1994 aimed at compensating the losses experienced by the owners (or their heirs) expropriated in the period from 1945-1949 by offering the chance of buying back a certain amount of agricultural (and/or forest) area at reduced prices (the so called *land purchase program*). Moreover, the law also aimed at benefiting former GDR citizens active in agriculture by offering them agricultural land at reduced prices.

In 1998 the law was subject to scrutiny by the EU because of the suspicion of hidden state-aid measures. As a result of this EU-audit the *land purchase program* was opened to all citizens active in agriculture and holding a lease contract with the state agency that manages state-owned agricultural land (i. e. BVVG, see below). *The Land Purchase Ordinance (FlErwV)* based on the *EALG* governs the sale of agricultural (and forestry) land at reduced prices.

2.1.3 Priority of Investments over Restitution Claims

Generally, state-owned agricultural land that was burdened with restitution claims could not be sold until a decision on the claim had been made by the responsible authority. However, this procedure could take several years and therefore hamper any economical use of such land. In order to prevent this, an exception was made in the case of investment projects, which promised new economical activities, and in consequence the creation of new jobs.

The *Law on Priority of Investments (InVorG)* governs the procedure of applying for investment priority and the compensation measures for the eligible owner according to the *Property Settlement Law*.

2.1.4 Unifying Separate Ownership of Land and Buildings

In the German Democratic Republic private buildings were commonly built on land belonging to third parties (either privately or publicly owned) based on use rights. Moreover, buildings of collective farms (LPG) or state farms were often built on third-party private or state land. In Western Germany, as in most Western economies, land ownership and the ownership of buildings or facilities located on this land are neither common nor desired. The rights to ownership of land and buildings were merged via the *Property Law Adjustment Act (SachenRBERG)*. This law equally considers the interests of the land owner and the owner of the building. Moreover it facilitated the formalization of use rights, e.g. easement of access, by transferring them into servitude rights registered in the land register.

2.1.5 Implementing Institution

The above mentioned legal regulations required an implementing agency, which on the one hand was responsible for the interim management of state-owned agricultural land until a decision on restitution or allocation was made, and on the other hand organized the privatization process of land not subject to restitution or allocation.

Initially, the *German Treuhandanstalt* (THA-Privatization Agency) founded in 1990 on the basis of the *Trustee Act (TreuHG)*, was also responsible for the management and privatization of publicly owned agricultural and forest assets - aside from being assigned the privatization of former publicly owned industrial and commercial companies of the former GDR. The THA's directive was to sell off the state-owned assets in its portfolio rapidly, with the aim of finishing the privatization process until the end of 2004.

While this was manageable in respect to industrial and commercial privatization, it was soon recognized that restructuring the ownership of agricultural and forest assets would require far more time. In consequence, the *BVVG Bodenverwertungs- und -verwaltungs GmbH* was established as affiliate of the THA in 1992. All agricultural and forest assets were transferred to this new company, which was assigned the long term task of managing and privatizing these assets.

2.2 Assignments of the BVVG

2.2.1 Involvement in the Restitution and Allocation Process

As demonstrated above, the *BVVG* was not directly in charge of restitution or allocation decisions. Nevertheless, due to the fact that it was responsible for the interim management of the areas subject to restitution or allocation, it was involved in the process.

In case of existing restitution claims the *BVVG* was eligible to lease out the land but not to sell the land (exception demonstrated in chapter 2.1.3). In order to secure that a property was actually returned in case of positive restitution decisions, lease contracts with the *BVVG* contained a special clause stipulating the exclusion of parcels subject to restitution from the lease contract. This had two major advantages: the land did not lie fallow but was utilized for agricultural production, and revenues gained through the interim administration of this land could be handed over to the owner.

In the administrative procedure of allocating property to the statutory bodies, the *BVVG* played an active role in securing state property. In other words, if the statutory bodies such as the federal states or the municipalities could not prove that a respective land parcel (of agricultural or forest use) was indispensable for the fulfillment of their administrative tasks, or that it had formerly belonged to them, the *BVVG* claimed the legal ownership on behalf and in favor of the German Federation.

2.2.2 Management and Privatization Phases

In the beginning of the nineteen-nineties the ownership situation of agricultural land was mostly unclear. Title books were incomplete, and land formerly used by state companies, cooperatives or statutory bodies regardless of its legal ownership status had to be reorganized. Furthermore, restitution issues had to be handled and solutions for indemnification had to be found. While the legislative and institutional level dealt with these issues, it was the task of the *THA* and later of the *BVVG* to secure the management of the assets in their (provisional) portfolio. Because of all the uncertainties regarding the reorganization of ownership, it was decided not to sell agricultural land (apparently) in state ownership at this early stage. Another reason for not realizing a fast privatization via land sales was the influence that such a large scale privatization could have on the land market. Experts predicted a severe drop in prices on the European land market due to the large supply. The *BVVG*'s management activities therefore concentrated on the leasing of agricultural land, first on a short term, later on a long term basis, i.e. 6-12 years. This not only provided time for the necessary ownership clarifications but also allowed the agricultural companies and farmers to consolidate their businesses and to invest into machineries and facilities rather than binding capital by purchasing land.

The second phase of management and privatization was characterized by the designing and implementing of the *Land Purchase Program*. One assignment in this context was the drafting of guidelines based on the *Indemnification and Compensation Act* and the *Land Purchase Ordinance* (FlErwV) governing the implementation in detail. For example, main issues that required company internal guidelines were the exact determination of eligible

persons, the application procedure, contractual obligations, the procedure of determining prices and the procedure of monitoring the obligations of the purchasers within the land purchase program. Then, certainly, the program had to be executed, which was (and still is) the task of the sales and lease units of the BVVG branch offices. Due to a decision by the EU, the land purchase program will end by the end of the year 2009.

The last phase on the road to privatization is to sell agricultural land at the full market value by tender.

2.3 Management and Privatization – Lessons Learned

In the year 2008 it is legitimate to ask why the process of privatizing state-owned agricultural land, which is still ongoing today, has taken so long. Certainly, one of the main reasons was the clarification of ownership rights. Also, the drafting and constant amendment of transitional legislation governing privatization and restitution was a tedious process. Another reason was the fact that the *Land Purchase Ordinance* (FlErwV) stipulates an application deadline for participation in the program, but not for realizing the purchase option. Finally, the scrutiny of the land purchase program by the EU led to a complete sales stop under the land purchase program in the years 1998 - 2000.

But, despite the fact that the process took longer than predicted the results are notable. A total of 0.3 m ha of agricultural and forest land have been restituted, 1.2 m ha have been allocated and 1 m ha have been privatized (by selling). By 2012 more than half of the remaining 600,000 ha still in the BVVG's portfolio are expected to be privatized. From 1992 to 2007 approx. 3.3 billion EUR have been transferred to the federal budget by the BVVG.

A major achievement of the privatization process can be seen in the fact that despite reorganization of the ownership structure, state-owned agricultural land was kept in production throughout the process by active management of a state agency. The three-phase privatization has led to a stable agro-structure in Eastern Germany, with a widespread ownership and farm structure, ranging from medium scale family farms to large farming enterprises organized as limited companies or farmers' cooperatives.

The establishment of one state agency for managing all agricultural (and forest) land in state ownership proved right for various reasons. The BVVG's structure allowed a uniform and turn-over oriented privatization which was fairly independent from the influence of daily politics. By establishing the BVVG as a limited company, transparency of its activities was guaranteed in two ways. As a limited company it has to comply with the commercial code, which implies the auditing of the financial and revenue situation by an independent auditing company and the publishing of an annual balance sheet. As a state agency it has to follow the "Federal Government Directive Concerning the Prevention of Corruption" and is subject to scrutiny by the Federal Court of Audit. Furthermore, the administrative costs for BVVG are not financed by the state budget, as would have been the case with a federal authority, but are directly subtracted from the gross revenues earned by the company. This allows a rapid implementation of management decisions such as the establishment of a GIS system. The BVVG's yearly business plans include detailed information on planned land sales, administrative costs, number of staff, and expected revenues, which serve as benchmarks for the company's performance.

Another success within the privatization procedure certainly was its support with appropriate IT-instruments. In the early stages one major accomplishment in this context was the development of the company's Land Information System which contains all necessary land parcel information of the BVVG portfolio, including - inter alia - location, size, type of use (arable, pasture, other), ownership, restitution claims, restrictions (e.g. environmental site, contaminations, subject to land consolidation), valuation data and land register information. Moreover, it supports the entire lease and sales procedure including the processing of applications, parcel selection and object forming, contract preparation, keeping record of the contract status, valuation data supply for identifying the market value or orientation price, etc. In the mid nineties this instrument was complemented by a BVVG-own GIS system, which delivered additional cadastral, spatial and geographical data, and which delivers and visualizes all information the sales and lease officers require for making privatization and management decisions in combination with the BVVG-land information system.

3 MANAGEMENT OF STATE-OWNED AGRICULTURAL LAND IN EASTERN EUROPEAN AND CENTRAL ASIAN COUNTRIES WITH A SPECIAL FOCUS ON UKRAINE

3.1 Overview

Following the political changes starting in 1990 many of the former Socialist states in Eastern Europe and Central Asia initiated land reforms with the aim to restructure land tenure and to introduce private ownership of agricultural land. The implementation of these reforms differed from country to country. Often agricultural land was redistributed on the basis of former ownership. But land was also allocated to former users of the land or to certain beneficiary groups. In Lithuania the main focus lay on the restitution of property to former owners or their heirs. Land remaining after implementation of the land reform (estimated 500,000 ha) was designated for further privatization via land sales. The same is true for Croatia where agricultural land was subject to restitution and remaining state-owned agricultural land was meant to be given into private hands by means of lease, concession or sale via public announcements.

Ukraine and Russia decided not to retribute property to former owners but instead to distribute land shares - certificates of entitlement to a certain amount of land in an unspecified location - to former workers of collective farms. This 'paper' privatization did not involve the immediate distribution of land plots to the new owners.

Mongolia has decided to privatize only arable land, which can be purchased for a price according to existing governmental regulations by Mongolian citizens only. Since these prices are extremely high in comparison to the prices for a long term lease, no significant privatization has taken place so far. Pastures are regarded as public good and use rights are only allocated to certain user groups (herders). As a result approx. 704,500 ha of arable land and 111.7 m ha of pastures have to be managed by the state authorities.

In Kazakhstan agricultural land in state-ownership is only sold in case of change of use, i.e. for building or commercial purposes. Only 500,000 ha of agricultural land are in private ownership, approx. 85.5 m ha of agriculturally used land are in state-ownership and distributed for use via long term use rights and lease.

Serbia's government also decided not to privatize state-owned agricultural land at the current stage and has started to lease out the approx. 400,000 ha of agricultural land in state ownership via a lease program, implemented by the municipalities.

Despite the initiated land reforms, in some of the countries a considerable amount of agricultural land is still in state-ownership, e.g. around 11 m ha in Ukraine, 284.6 m ha in Russia, 290,000 ha in Bulgaria and as mentioned above 85.5 m ha in Kazakhstan, 112.4 m ha in Mongolia and 400,000 ha in Serbia.

The figures show that an active management by the state authorities is required to ensure an effective use of agricultural land in state-ownership. However, it seems as if a clear vision of how these state assets can be used and the awareness of their potential value are often lacking. The positive impact sound land policy and land management measures can have on land market development are often not recognized. State assets in many cases are still regarded as free commodities that can be distributed for little or no money.

However, there are some promising approaches for effective state land management. Mongolia, for example, that is supported by a GTZ financed land management project, is working on the establishment of a national land information system (NLIS), which - when established - will be a valuable instrument for supporting state land management measures. Furthermore, in the scope of the project a working group deals with the aspects of land valuation with the aim to implement land valuation methods as basis for determining market oriented land use fees.

The approach chosen by Serbia is also promising: because it has not yet been decided whether state-owned agricultural land will be subject to restitution, it is prohibited to sell this land by law. Instead, the land is leased out on a 3 to 5 year basis. This allows for effective use of the land until ownership rights have been clarified. The decision to offer land for lease via public tenders or auctions secures transparency in the process and is expected to lower the potential of conflicts. However, the restitution question should not be delayed much longer. In the long run the focus should lie on the full privatization of state-owned agricultural land.

The initiated land reforms, especially those based on restitution, have often caused severe land fragmentation. Bulgaria's Ministry of Agriculture has recognized the problem and is also aware that agricultural land in state-ownership needs active management. With the aim to facilitate both, the management of state-owned agricultural land and land consolidation measures, it is planning to install a respective state agency.

Recently, Ukraine has put much effort into preparing the opening of its agricultural land market, which has also lead to a greater awareness of the country's need for an appropriate legal and institutional setting that facilitates active management of state-owned agricultural land. This was long neglected in the past.

3.2 Case Study Ukraine – Management of State-owned Agricultural Land

As mentioned above, in Ukraine around 11 m ha of land classified as agriculturally used are still in state-ownership. The following subchapters illustrate how the management is organized. The relevant information was gained within a study commissioned by GTZ and conducted by BVVG in 2006.

3.2.1 Legal Framework and Institutional Setting

The *Land Code of Ukraine (2001)* is the key law concerning land relations. It provides extensive regulations concerning the competencies of different state bodies (e.g. the *Parliament of Ukraine* and the *Cabinet of Ministers*), local executive bodies (*Oblast State Administrations* and *Rayon State Administrations*) 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.

The *Land Code* foresees four ways of dealing with state-owned agricultural land, i.e. lease, permanent use, sale as well as gratuitous privatization within the scope of land reform. While state-owned agricultural land can be leased out to any natural person or legal body if there is in some way a commitment to agriculture or agricultural production, including foreigners and international agricultural enterprises, it can only be sold (up to 100 ha) to Ukrainian citizens or companies committed to agriculture. Foreign companies as well as joint ventures are not entitled to purchase agricultural land.

State-owned agricultural land allocated for permanent use equals the right to possess and use communal or state-owned land without an established time limit and without charge aside of land tax payment. Following the *Land Code*, the permanent use of state-owned agricultural land and communally-owned land is reserved for state-owned or communally-owned enterprises, institutions and organizations.

While the *Rayon (district) State Administrations*, subordinated to the *Oblast (regional) State Administrations*, are the institutions directly responsible for the management of state-owned agricultural land outside the boundaries of settlements, i.e. where most of the agricultural land is situated, municipalities are entitled to manage all agricultural land that is in communal (municipal) ownership. However, a separation between state and communal land, as stipulated by the *Land Code* 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. To solve this problem, a provisional regulation foresees that municipalities should manage state-owned agricultural land within the boundaries of settlements.

The *Divisions of Land Resources* on the district level, subordinated to the *Departments of Land Resources* of the oblasts and belonging to the structure of the *State Committee of Ukraine for Land Resources* also play an active role in managing state-owned agricultural land. In cooperation with the *Rayon State Administrations* they are responsible for the allocation of state-owned agricultural land. Moreover, they carry out the monetary valuation of land, are responsible for land monitoring and take part in the organization and carrying out of land auctions.

The *State Inspection for Control on Use and Protection of Land* monitors the use of land according to its designated purpose, and fines users where land is being utilized illegally. The *Oblast and Rayon Cadastre Offices* are responsible for the registration of land parcels, land titles and lease contracts and provide state bodies and branches of local self-government, 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.

While payments of land tax and lease are directly made to the *Rayon Division of the State Treasury*, information on payments is delivered to the *Rayon Tax Offices* belonging to the structure of the State Tax Administration. The Tax offices check the amount and timely manner of payments.

3.2.2 Management of State-owned Agricultural Land

In Ukraine, approx. 29.5 m ha of land are still in state-ownership, which adds up to 49% of the total area of Ukraine. Around 11 m ha of this state-owned land are classified as land for agricultural use, which equals approximately 25% of the total agricultural land of Ukraine.

While only approx. 2 m ha of this state-owned agricultural land is leased out, almost 4 m ha are distributed for (so called) permanent use free of charge to numerous groups of users such as state-owned agricultural enterprises, institutions and organizations. These organizations 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. Furthermore, approx. 1 m ha of state-owned agricultural land is allocated to private households for permanent use, and mainly used for personal peasant farming.

For obtaining permanent use rights the interested parties are required to submit an application to the responsible authority. The application is processed in various administrative steps, involving the different departments of the *Rayon State Administration* and the *Divisions of Land Resources*. The permanent user receives a certificate and the use right is registered in the cadastre. If the executive bodies responsible (either the *Rayon State Administrations* 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.

Land in permanent use is often underutilized or not utilized at all. According to the *Land Code* land can be taken back from (permanent) users by the responsible authority if the land tax is not paid, the enterprise holding the use right goes bankrupt, or the land is not used according to the purpose it was granted for. Although it is the task of the *Rayon State Administration* to take back land under permanent use and put it under its administration, the authorities are reluctant to do so.

By law, the leasing of state-owned agricultural land must be organized on a competitive basis if there is more than one applicant. In practice however, it is not offered in a tender procedure, but is allocated according to the procedure used for the allocation of land for permanent use. The process of preparing a lease contract, including all necessary approvals, surveying the land plot, and drawing up and registering the contract can take up to one year, and the transaction costs for the lessees are rather high. This might partly explain why only a fairly small percentage of state-owned agricultural land is leased out.

Aside from the registration of lease contracts in the cadastre, the *Rayon State Administrations* and municipalities keep records of concluded contracts, either in paper or in electronic files (Excel tables). Since payments for lease rents are controlled by the tax authorities, data on

payments is registered there. There is no integrated databank containing all data related to lease contracts.

Sales of state-owned agricultural land were not common even before 2007 due to a lack of awareness that the “moratorium on land sales” stipulated in the Land Code did not affect state-owned agricultural land. Since January 2007 sales are prohibited, because the land reform and - related to it - the gratuitous privatization have still not been accomplished.

It is notable that a considerable portion of state-owned agricultural land – according to the records, almost 5 m ha - is apparently not in any use. However, it is questionable whether these 43% of state-owned agricultural land are actually lying fallow. It can be presumed that irregularities in data recording have occurred. It is also likely that a proportion of land officially not in use is actually being 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 land is lying fallow cannot be excluded. This is also in line with the fact that a large proportion of private land is also lying fallow due to generally unfavorable conditions for agricultural production for small agricultural businesses or private farmers. Another reason is the lack of active management of this state-owned agricultural land.

3.2.3 Evaluation of the Management of State-owned Agricultural Land in Ukraine

With regard to state land management, a striking feature is that regulations stipulated in the core law, the *Land Code 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 for 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 *Land Code* could easily be governed via bylaws or internal administrative orders. If it purely consisted of “core regulations”, the *Land Code* would probably be much clearer.

It must be acknowledged, though, that the pressing issue of finally lifting the “moratorium on land sales” (laid down in the Land Code) has resulted in a great effort currently being made to draft a new legislation. For example, the draft “Law on Land Market” provides many regulations concerning the handling of state-owned agricultural land such as the procedure of auctions for selling state-owned agricultural land.

Despite the fact that governmental institutions are dealing with the question of managing (agricultural) land in state-ownership within the context of opening and developing the land market, so far a national program or concept governing the use and handling of state-owned agricultural land is still lacking.

As mentioned, it is currently managed in a decentralized manner with the *Rayon State Administration* as executive bodies. Generally, this can be assessed positively, since decentralization is one of the keywords in modern land administration. Still, the management of state-owned agricultural land requires a nationwide program that can be followed and realized. It cannot be the task of local executive bodies to develop such a program at the local level.

In consequence, the management of state-owned agricultural land by the *Rayon State Administrations* can be characterized as rather passive. No management objectives have been defined and no proper guidelines exist to aid the authorities in monitoring and accomplishing their management tasks. In addition, the *Rayon State Administrations* do not seem well-equipped or trained for the task of state land management, and are often dependent on the *Divisions of Land Resources*, which gather all the information concerning land issues and which in general have a better overview concerning land-related questions.

The distribution of state-owned agricultural land 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 and free of charge), is virtually blocked for any adjustments in the scope of effective state land management. Looking at agricultural land in state-ownership as an asset to be used in order to generate revenues for the state budget, permanent use is not the most effective instrument.

A major constraint in the procedure of leasing is that information on state-owned agricultural land for lease is rarely accessible to the public. Leasing occurs at the initiative of an applicant, active management would require the opposite: available land for lease should be published, especially because a notable proportion of it is not in use.

Selling procedures for state-owned agricultural land stipulated in the *Land Code* and regulations concerning the “moratorium on land sales” are misleading and have resulted in hesitant selling behavior of local executive bodies. Meanwhile, sales of agricultural state land are prohibited.

It is questionable whether responsible authorities have a clear overview of the total amount of state-owned agricultural land in their administration. The last overall land inventory was made more than ten years ago. An integrated IT system uniting all relevant data for the management of state-owned agricultural land is missing. Relevant data such as contract records, cadastral data, data on rent and tax collection are all collected by different institutions. IT linkages between them are missing, and each body only oversees its own area of work.

4 RECOMMENDATIONS FOR MANAGEMENT OF STATE-OWNED AGRICULTURAL LAND

From a fiscal policy point of view, the major objective for managing state-owned agricultural land should be to maximize 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 maximizing profits.

Apart from this main objective, managing state-owned agricultural land 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 program would need to be drawn up and implemented that should also comprise the handling of state-owned agricultural land.

Effective management of state-owned agricultural land requires certain framework conditions which are briefly summarized in Box. 1.

Favorable preconditions for the effective management of state-owned agricultural land (SOAL)	
1.	A consistent policy for managing state-owned agricultural land that is embedded in an overall policy for state land management and agro-structural policy <ul style="list-style-type: none">• Facilitating maximum revenues for the state budget• Incorporating agro-structural measures.
2.	A coherent legal frame <ul style="list-style-type: none">• Providing transparent provisions with regard to land relations• Governing a program for the management of state-owned agricultural land• Providing the rule of law.
3.	A transparent land market <ul style="list-style-type: none">• Facilitating the lease and sale of state-owned agricultural land.
4.	A functioning cadastre and land register <ul style="list-style-type: none">• 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 <ul style="list-style-type: none">• Collecting lease and purchase prices• Making price information accessible to the public• Improving valuation standards.

Source: Dells et al., State Land Management of Agricultural Land in Ukraine (2008)

Considering best practices in the management of state-owned agricultural land, the following activities for effective management of state-owned agricultural land are recommended:

1. Conducting of an inventory of state-owned agricultural land including an update of land classifications
2. Registration of state-owned agricultural land in the cadastre and land register
3. Creation of a separate administrative unit/institution (under the technical supervision of a government institution, e.g. Ministry of Finance or Ministry of Agriculture) for the management of state-owned agricultural land with:
 - a lean administrative headquarters at the national level, responsible for drafting guidelines for the management of state-owned agricultural land in line with a national policy and program, and for supervising and monitoring uniform implementation of this policy within the regions
 - dynamic operational units / institutions responsible for practical implementation at the regional or district levels.
4. Allocation of adequate funding for management tasks.
5. Set-up of 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.
6. Publication of state-owned agricultural land available for lease or sale.

7. Facilitation of tenders on lease and sale for well-designed land objects for agricultural use (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).
8. Facilitation of tenders for former agricultural land designated for commercial or building purposes in line with spatial planning regulations
9. Set-up of a Dispute Resolution Board which customers (applicants, lessees and purchasers) can appeal to.
10. Implementing of lease and sales contract management, including the supervision of payments and other obligations defined in the contract.
11. Facilitation of the monitoring and management of contaminated sites on state-owned agricultural land and promotion of re-cultivation projects.
12. Allowing of mechanisms in lease agreements that give farmers incentives to make investments (e.g. a time frame without lease payments in return for investments made to improve the condition of land).

In order to implement the above mentioned framework conditions and activities for active and dynamic management of state-owned agricultural land in transition countries a national effort is required. Programs 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 should play an active role in this procedure.

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