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“Experiences with developing land consolidation legislation in Ukraine”

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EMBRACING OUR SMART WORLD WHERE THE CONTINENTS CONNECT:
ENHANCING THE GEOSPATIAL MATURITY OF SOCIETIES

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Country context

- Land reform not fully implemented – moratorium on land market.
- Neither landownership, nor land use are fragmented.
- Farm structures dominated by agro-holdings.
- Integrity of the fields and the break-out tendency.
- A “problem” of a “parcel in the middle”.
- LC is seen as a tool by many stakeholders to solve the problems and preserve the integrity of the field.

Project background

- “Technical Assistance to the Ministry of Agrarian Policy and Food of Ukraine in Agricultural Support Policy, Exports of Horticultural Products and Land Consolidation” (TCP/UKR/3601)
- Project period 1 ½ from January 2017
- StateGeoCadaastre and Ministry of Agrarian Policy and Food are the main beneficiaries of the project
- Technical Working Group established to ensure participation and consultation with stakeholders

Project outputs

Output 1: Assessment of the current legal and institutional framework as it relates to land consolidation and development of the rural land market

Output 2: Feasibility study of the options for land consolidation in two potential pilot areas in Kyiv and Kherson Oblast

Output 3: Formulation of a detailed concept note for subsequent donor-funded land consolidation project with two pilots

Project context

- Initially the draft Law on Land Consolidation was expected to be part of the legal package for opening the land market from 2018.
- FAO has screened existing legal and institutional framework related to land consolidation for compliance with VGGT
- Interaction between feasibility study and policy recommendations. Building on results of feasibility study in Fastiv and Belozerskii Rayons.
- The project contributes to VGGT implementation in the country.

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Legal assessment

- Revise the methodological aspects of LC process and analyse for compliance with the VGGT.
- All legitimate tenure rights must be protected.
- Land consolidation instruments to follow guidelines in VGGT Section 13 on land consolidation.
- Land consolidation implies changes in registered property rights, therefore its important to deal with due diligence, and in the framework of clearly defined principles and safeguards to protect the legitimate tenure rights of all stakeholders.

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Principles and safeguards

- Need for certain safeguards to ensure transparency and accountability and prevent loss of legitimate tenure rights, manipulation, fraud, corruption and other malfeasance.
- All participants should **be at least as well off** after the land consolidation project compared with before.
- In **majority based land consolidation**, even stronger safeguards needed to properly protect these rights, including administrative appeals in addition to the possibility of judicial recourse.
- Equal involvement of all stakeholders through a participatory and inclusive land consolidation process.
- A system of safeguards and appeal mechanisms for the land valuation and for approval of the re-allotment plan.

Proposed regulatory mechanisms

- The draft law assumes that land consolidation is a type of land management plan/ning, falling within the domains of the Land Code and the Law on Land Management Planning.
- Missing procedures for adoption and approval of the projects.
- Recommended to have decision-making bodies in land consolidation projects and no bodies of participants.
- No provisions that can ensure registration and implementation of the new land ownership and land use as one comprehensive and coherent plan (efficient and cost-effective procedures).



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Voluntary vs majority-based

- The draft Law introduces land consolidation in both a voluntary and a majority-based approach.
- Introduce land consolidation only in a voluntary approach.
- The safeguards for infringement of tenure rights in case of majority-based LC in the draft law are weak.
- It is strongly recommended that in case of majority-based LC, that 75 % of the legitimate landowners representing at least 75 % of agricultural land in the project area should agree before approval and implementation.

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Implementation of the re-allotment plan

- Implementation through compulsory alienation of land plots.
- The challenge to demonstrate public purpose of this forced transaction, of transferring land from one private party in favor of another private party.
- The Land Re-allotment Plan should be regulated by the law on land consolidation and not fall within the domain of expropriation legislation.
- Application of expropriation to remove land rights from the middle of the filed will be contradicting VGGT and probably the national law.

Land valuation

- Reference to general regulations on valuation
- The recommendation to develop special valuation provisions in land consolidation.
- Open up for both relative valuation in points and monetary valuation methods.

Conclusions

- The second draft is under preparation and is expected to be submitted to FAO for comments.
- The project allowed to mainstream the implementation of the VGGT through the revision process.
- Use of VGGT in our work to safeguard legitimate tenure rights.