

Open Land Market in Ukraine: Pragmatics of the Phenomenon Through the Lens of European Experience

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Abstract. The relevance of the study is conditioned by the fact that the violation of land ownership rights and the moratorium on the purchase and sale of land plots limit the development of the national economy in general and the land market in particular, contributing to the operation of shadow agribusiness. However, starting from 01.07.2021, all restrictions on the sale of agricultural land are lifted, and new opportunities and threats arise. The purpose of the study is to analyse the new legislation regulating the launch of an open land market in Ukraine. To obtain scientific results, the following methods are used: dialectical, comparison, analogies and comparisons, monographic, benchmarking, expert evaluation method, SWOT analysis, forecasting method, analysis and synthesis. In accordance with this, the current state of land in Ukraine and European countries is considered. The existing land market in Ukraine and the world is analysed. A historical retrospective inquiry of events related to the lifting of the land moratorium is carried out. The law that ensures the launch of an open land market is characterised. Significant additions are identified in the law between the first and second readings. The mechanism of regulating the launch of the Ukrainian open land market is clarified. This study considers the international experience of operation of the open-type land market and reflects competitive prices for 1 hectare of land in comparison with Ukraine. According to this, the positive impact of land reform in European countries is determined. The main factors of effectiveness of the open land market model in foreign countries are presented. The main opportunities and threats for an open land market in Ukraine are analysed. The findings of the study reflect both the positive and negative consequences of launching an open market in Ukraine, citing expert opinions of supporters and opponents of such a market transformation

Keywords: moratorium, liberal land market, investment, national economy, agricultural land plots

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Introduction

One of the most important sectors of the national economy is the development of agriculture. The totality of limited resources or factors of production (land and natural and material resources, labour, capital, entrepreneurship, technology) determine the general characteristics of the national economy of Ukraine. The economic efficiency of the state is determined by the level of satisfaction of citizens' needs, accumulation of national wealth, preservation of the environment and depends on the economic system. An important component of which is the establishment of ownership of production resources and the introduction of a transparent mechanism for regulating this activity. According to this, land, as the national wealth of Ukraine under state protection, should become a commodity.

According to the Constitution of Ukraine (Articles 13, 14) [1] and the Land Code (Article 1) [2], the right of ownership of land to the Ukrainian people is guaranteed. However, for 25 years now, Ukraine has had a moratorium on the purchase and sale of land, which is a world record. In the history of Mexico, the issue of introducing a land reform that would lift the moratorium on land lasted 23 years [3]. In accordance with this, first of all, two problems arise. The first is a violation of human rights, since a citizen has the right to property, but cannot fully use it due to certain restrictions by law. The second is the development of "shadow" land market and corruption schemes. With this in mind, it is necessary to develop mechanisms for regulating the open land market in Ukraine. In all European countries, except Venezuela, Cuba, North Korea, and Zimbabwe, there is an open land market model that determines the development of the agro-industrial complex and economy [4].

On March 31, 2020, the Verkhovna Rada of Ukraine adopted draft law No. 552-IX "On amendments to certain legislative acts of Ukraine concerning the conditions of turnover of agricultural land" [5], which provides for the lifting of the moratorium on land and the introduction of a limited land turnover market, which would last from 01.07.2021–01.01.2024. Accordingly, the right of purchase and sale belongs only to individual citizens of Ukraine, subjects of legal ownership are limited in the exercise of such a right.

The analysis of previous papers by Ukrainian and foreign researchers indicates the topicality of the issue of land relations in the system of the national economy. O.B. Anisenko and A.I. Kozak in their study [6] explored the basic meaning of the concept of moratorium, identify the object and subject of land relations. Two positions on the further development of the land market were analysed: the first is the extension of the moratorium, and the second is the introduction of an open land market, but under certain conditions, which are also determined by scientists. Authors N.V. Dombrovan and K.S. Izbash [7] studied the general mechanisms of the moratorium on the purchase and sale of agricultural land in Ukraine. The initial assessment of the draft law mentioned above [5] was carried out, its advantages and disadvantages were identified. The

consequences of the moratorium were considered from an economic standpoint. S. Zakirova [3] analysed the history of the moratorium on land in Ukraine and the reasons for its extension. The state of the land market was analysed using the example of European countries, a comparison of expert opinions of supporters and opponents of lifting the moratorium on Ukrainian lands was carried out. O.P. Radchenko and O.I. Konoplia [8] investigated the historical stages of the moratorium on agricultural land. The legal framework for regulating relations between the purchase and sale of these lands was reviewed. The positive consequences of lifting the moratorium on land, in particular the development of land relations and the national economy as a whole, were determined.

The purpose of the study consists in economic substantiation of the feasibility of introducing an open land market. The furtherance of this goal involves the implementation of the following *tasks*: 1) analyse the draft law No. 552-IX of March 31, 2020, and conduct a comparative analysis of the first and second readings; 2) characterise the pricing policy for land in European countries; 3) determine the economic prospects for the introduction of an open land market in Ukraine.

Materials and Methods

The methodology of the study provides an exhaustive disclosure of the subject matter through the use of theoretical methods. In the course of study, the main method of cognition was *dialectical*. Through the use of this method, the current state of agricultural land in Ukraine is determined. The main provisions of draft law No. 552-IX "On amendments to certain legislative acts of Ukraine concerning the conditions of turnover of agricultural land" were reviewed [5]. In accordance with this, four stages of introducing market turnover of land were analysed. The essence of this method is to increase economic efficiency, so the expediency of lifting the moratorium and its impact on the national economy of Ukraine was considered.

Using *comparison method* draft law No. 552-IX was analysed [5] between the first and second readings and significant amendments and additions after the second reading were identified. The use of the *monographic method* allowed the study to analyse the price of land in 23 European countries. Four countries with the highest price per 1 hectare of land have been identified – Switzerland, the Netherlands, Austria, and the Czech Republic. The impact of land reform on the economies of Austria, the Czech Republic, and the Netherlands was also determined. *Method of analogies and comparisons* allowed comparing the pricing policy for agricultural land in Europe and Ukraine. According to this and the use of *benchmarking method*, it was concluded that the lifting of the moratorium on land would lead to an increase in its prices and economic efficiency in general. Other than that, *method of expert assessments* allowed the study to represent the position of specialists in the field of land relations, the *SWOT analysis method* identified the

strengths and weaknesses of the open land market of the agro-industrial complex. Using the *forecasting method* the expected economic results and possible risks were considered.

Using *analysis and synthesis* the main regulatory documents were analysed: the Constitution of Ukraine [1], The Land Code [2], draft law No. 552-IX [5]. The main source database were papers in professional publications, information portals. To visually display and improve the readability of the research material, the *tabular and graphical methods* were used.

Results and Discussion

According to the State cadastre of Ukraine, the current state of the land has the following indicators: 60.3 mln ha is the total area of Ukraine, in global terms – 6% of the entire territory of Europe. Of these, 41.4 million ha are occupied by agricultural land, which for its part is 19% of the territory of Europe. The structure of agricultural land includes: arable land (32.7 mln ha), pastures (5.3 mln ha), hayfields (2.3 mln ha), perennial plantings (0.9 mln ha), neglected fields (0.2 mln ha) [4]. Ukraine has large reserves of chernozems, soils and arable land. For example, the study compares the following countries: Poland, Romania,

Germany, and Ukraine. The total area of chernozems in Ukraine – 28 mln ha, Romania – 2 mln ha, Poland and Germany – 1 mln ha. Soils in Ukraine cover 60 mln ha, Germany – 35 mln ha, Poland – 31 mln ha, Romania – 23 mln ha. Arable land in Ukraine covers more than 32 mln ha, in Poland – 14 mln ha, Germany – 12 mln ha, Romania – 9 mln ha. Admittedly, the land potential of Ukraine is much greater than in European countries, but the ecological state of the land and the price level are lower [4].

The main reason for curbing the development of the national economy is the moratorium on the purchase and sale of land. All lands are under a moratorium (96 %) and only 4% are not subject to a ban on the free use of a land plot, provided that this land is used for the introduction of its own agriculture (excluding shares), subsidiary agriculture, gardening [4]. The lack of the right to freely buy or sell agricultural land hinders investment in the agro-industrial complex, violates the rights of citizens, and reduces the rental price. Lifting the moratorium would lead to the creation of a new “transparent” land market. At the initial stages of development, the level of “shadowiness” and corruption would decrease. Ex-presidents of Ukraine have repeatedly tried to lift the moratorium on land (Table 1).

Table 1. Chronological sequence of attempts to lift the moratorium on land

Year	Event
2001	L. Kuchma signed the Land Code of Ukraine, which forbade the sale of land for five years According to this code, it was assumed that during 2005-2010 it would be possible to sell 100 ha to one citizen
2004	L. Kuchma tried to lift the moratorium, but the Verkhovna Rada, with the support of the following parties: Our Ukraine, the Yulia Tymoshenko Bloc, and the Socialist Party, extended the moratorium until 2007
2007	V. Yushchenko tried to veto the extension of the moratorium, however the Parliament approved the decision to extend the moratorium until 2009
2009-2010	V. Yushchenko twice vetoed the extension of the moratorium, but the Verkhovna Rada overcame the President's veto on the second attempt and extended the moratorium until 2012
2012	The moratorium has been extended by default until 2015
2015	The parliament postponed the issue of opening the land market until 2017, by introducing amendments to the transitional provisions of the Land Code
2016	The Verkhovna Rada extended the moratorium on land until 2018
2018	Extension of the moratorium on land sales until 2020
2020	V. Zelensky signed the Law of Ukraine № 552-IX on lifting the moratorium on land purchase and sale

Source: compiled by the author based on [9]

On March 30, 2020, V. Zelensky signed the Law of Ukraine № 552-IX “On Amendments to Certain Legislative Acts of Ukraine Concerning the Conditions of Circulation of

Agricultural Lands” [5], which enters into force on July 1, 2021. According to this law, it is planned to open the land market, which will be carried out sequentially in four stages (Table 2).

Table 2. Stages of implementing the open land market model

Term	Name	Purpose
31.03.2020-01.07.2021	Preparatory	Settlement of all regulatory documents in accordance with the new law. Development of a programme to support local farmers and a mechanism for providing loans at lower interest rates
01.07.2021-01.01.2024	Limited market	Individuals have the right to purchase a land plot of 100 ha per citizen
From 1.01.2024	Launch of the market	The right to purchase land is granted to legal entities, but only to those who are citizens of Ukraine. The total amount of land ownership can be 10,000 ha

Source: compiled by the author based on [10]

For a modern understanding of the situation with the land market, now, before the law comes into force, it is allowed to carry out the following operations: rent shares, exchange land plots, transfer shares by inheritance. It is forbidden to sell land, change its intended purpose, add rights to the land share to the authorized capital of the company, transfer land as collateral [11]. Next, the study takes a closer look at the main provisions of the law and compares

its first and second readings to determine the possibilities and limitations of this law. Land is a valuable material resource, which, first of all, should be freely disposed of by a citizen of Ukraine. Registration of land as a commodity would involve a rapid influx of foreign investment, which in turn caused discontent among the Ukrainian people [11]. Figure 1 shows a comparative description of the main provisions of the draft law between the first and second readings.



Figure 1. Mechanism for regulating the launch of an open land market

Source: compiled by the author based on [12]

According to Figure 1, the lift of the moratorium on the purchase and sale of land was supposed to take place on October 1, 2020, but the draft law did not resolve all issues, thus, according to the second reading, it was decided to launch the market on July 1, 2021. According to the law of Ukraine [5], only individuals who are citizens of Ukraine have the right to buy and sell agricultural allotments with a limit of 100 hectares from 01.07.2021-01.01.2024. Starting from 01.01.2024, Ukrainian agricultural holdings and partially foreigners can enter the land market with a limit of 10 thousand ha. According to the first reading, foreign citizens were allowed to buy agricultural land (subject to land lease for more than three years from 1.10.2020), in the absence of such a period, land could be purchased from 1.01.2024. In the second reading, the issue of selling land to foreign citizens is decided in a referendum, but even in case of a positive result, there are still restrictions (Fig. 1). Banks receive the implementation of the owner's rights to land only for two reasons: the first provides for the pledge of a land plot as collateral, and the second – the withdrawal of land through an outstanding loan. In any case, banks are required to sell these lands within two years from the

date of acquisition of ownership rights at land auctions. It is prohibited to sell state and municipal land until 1.01.2024.

Thus, in Ukraine, the establishment of an open land market begins, but with certain restrictions. For a comprehensive understanding of the specifics of the land market operation, the study will analyze world practices. There are four types of land markets: closed market, closed market for foreigners, open with restrictions, open market [4]. The closed land market includes the following countries: Venezuela, Congo, Cuba, North Korea, Tajikistan, Belarus, China, and Ukraine. The land market, which is closed to foreigners, operates in Azerbaijan, Albania, Armenia, the Republic of Kazakhstan, Kyrgyzstan, Iran, Macedonia, Moldova, Serbia, and Russia. Open market with restrictions – in Argentina, Bulgaria, Brazil, Greece, Georgia, Denmark, Canada, Latvia, Lithuania, Mexico, Poland, Romania, Slovakia, Turkey, Hungary, Finland, France, Switzerland, Sweden, Japan. The restriction mainly consists in different concentrations of land in the same hands. For example, in Romania, it is allowed to buy up to 200 hectares for individuals and legal entities. In Hungary, this figure is 300 hectares, while in Denmark it is only 30 hectares and only for people with special education

and farming experience. The open land market with no restrictions operates in the following countries: Australia, Austria, Belgium, Great Britain, Estonia, Ireland, Spain, Italy, the Netherlands, Germany, Portugal, the USA, the Czech Republic [4].

Lifting the moratorium on land sales in Ukraine would lead to an increase in the price per 1 ha of land (approximately USD 1.5-2 ths) and an increase in rents, at least this was the case in countries where land became a commodity [13]. Next, the study makes a comparative description of the price of a land plot in Europe and Ukraine. Figure 2 shows European prices for 1 hectare of land. Not

everyone can purchase an agricultural land plot, as there are requirements for compulsory education of a farmer, the place of residence and guarantees of compliance with environmental standards. In European countries, the open land market differs from the Ukrainian one (which is closed until the moratorium is lifted) in its high productivity, introduction of new technologies, and thrifty attitude to allotments.

Next, the study considers the price of land on the territory of Ukraine under the moratorium (Fig. 3). The low cost of land is conditioned by the imperfection of the legislative and economic sphere.



Figure 2. Average price for an agricultural land plot in European countries (thousand USD/1 ha)

Source: compiled by the author based on [14]

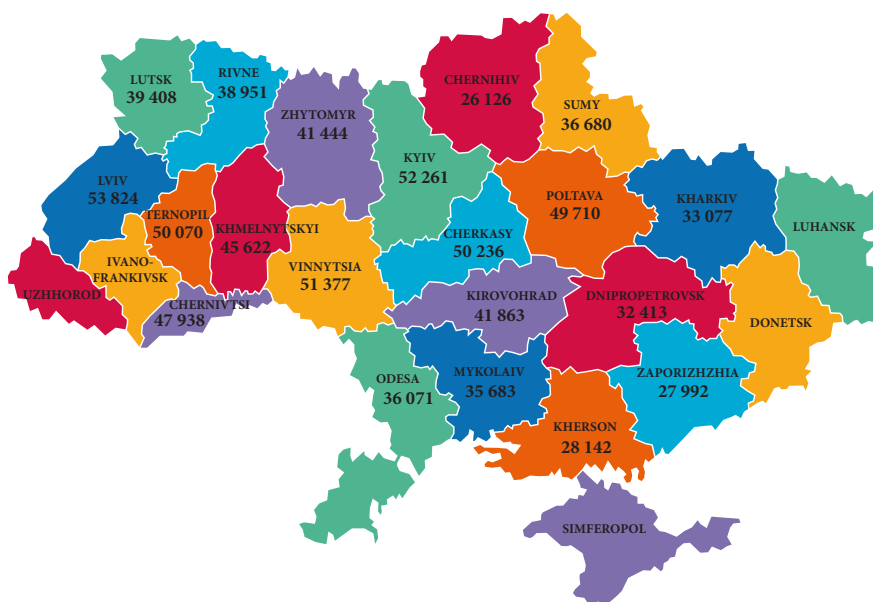


Figure 3. Average price for agricultural land on the territory of Ukraine (thousand UAH/1 ha)

Source: compiled by the author based on [3]

Next is the analysis of the open market regulation mechanism in Austria, the Czech Republic, and the Netherlands. Austria is a highly developed industrial country with an open land market with restrictions. Foreigners are allowed to buy land, but with the permission of the authorities. The minimum rental period is three years. The buyer pays a stamp duty of 3.5% of the transaction price. The buyer also pays for registration in the land register – 1.1% of the transaction price. The tax on income from the sale of land is 20% of the transaction price [14]. The land market in the Czech Republic is open. Foreigners can freely buy land, because the state does not regulate the price. Tax on the sale of agricultural land – 3% of the transaction price. No land tax is charged. In the Netherlands, there is an open market without restrictions. Foreigners can buy land in any size. Prices are set by the market. The size of the land owned is not regulated. The purchase tax is paid by the buyer in the amount of 6% of the transaction price. But the buyer

can be exempt from tax if guarantees are provided that the land would be used for agricultural purposes for at least 10 years. An additional notary fee is paid. The minimum lease term for a land plot – 6 years, and for a farm – 12 years. The lessee has the primary right to buy out the land plot if it is put up for sale [14]. In Ukraine, with the lifting of the moratorium, there will be an open market with restrictions, where only individuals of Ukraine are the first to have the right to purchase land, from 2024 legal entities of Ukraine. However, a controversial issue arises, as most Ukrainian agricultural holdings sell their shares on international exchanges, so the participation of foreigners in this process is not regulated. The tax on the land plot after the lifting of the moratorium is not determined.

Figure 4 shows the reasons for the effectiveness of land reform and the opening of the land market in European countries.

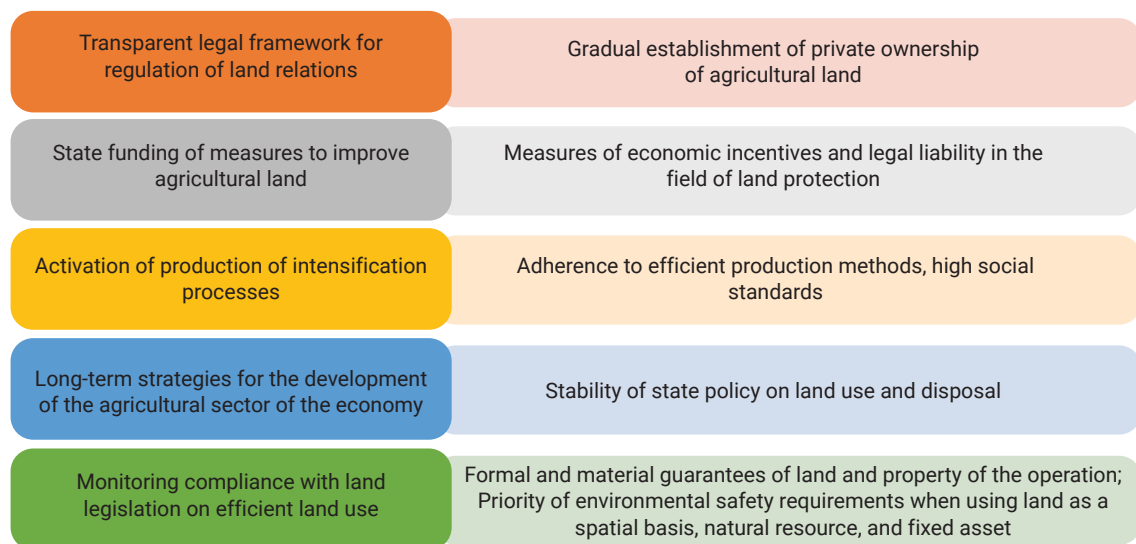


Figure 4. Main factors of the effectiveness of open land market model in foreign countries

Source: compiled by the author based on [15]

The lifting of the moratorium and the opening of a new land market caused a lot of discussion among experts. First of all, the introduction of this process would lead to the development of agricultural production, reduce the level of “shadow” practices due to an increase in land prices [16]. The lack of incentives for foreign capital investment in the agro-industrial complex reduces the level of the economy as a whole. The developed legislation only postpones the right to purchase a land plot by foreigners for three years, but does not include a decision on the amount of direct investment, economic efficiency, and tax rate. Therefore, the authors E. Dankevych, V. Dankevych, O. Chaikin [17] suggest that at the first stage of development of the land market should not sell land to foreigners. An interesting fact is that banks can own land, but in case of recovery due to an outstanding loan for up to two years from the date of acquisition of ownership, after which this land must be disposed at land auctions. Notably, most banking institutions in Ukraine are foreign-owned. A foreign bank

is an institution where the share of the capital of one investor is not less than 10% [18]. Therefore, foreigners can purchase agricultural land plots in Ukraine in the authorized (pooled) capital of banks. However, the draft law does not establish mechanisms for controlling the sale of land collected by the bank.

The primary right to buy agricultural land by individuals would lead to the emergence of a large number of intermediaries, including fictitious ones, who would buy land plots for Ukrainian agricultural holdings and foreigners. But it also makes no sense to extend the moratorium, because, firstly, it violates the rights of citizens, and secondly, it creates conditions for the development of corrupt land privatization schemes. Proponents of lifting the moratorium are O.V. Anisenko, A.I. Kozak [6], O.P. Radchenko and O.I. Konoplia [8], who suggest that the extension of the moratorium could lead to serious socio-economic decline. In contrast to this position, there are opponents of the opening of the land market, in particular

I.M. Gonak [19] argues that in the war between Russia and Ukraine, the imperfect mechanism of legal regulation of land relations, low incomes, it is not advisable to open a new land market. S. Zakirova [3] adheres to a neutral position,

putting forward “pros” and “cons” for opening of the land market. Next, the study considers the possibilities and threats of lifting the moratorium (Table 3).

Table 3. Prospects and threats of launching an open land market in Ukraine

Prospects	Threats
Launch of a competitive land market, similar to the European one	An increase in social tension due to the illegal distribution of the right to purchase a land plot by various subjects of this process
Establishment of a high market price for a agricultural land plot	Unreasonably high price
Land can become a powerful economic asset	Division of one land plot into parts, self-seizure, reduction of the efficiency of agro-industrial business
Implementation of rights guaranteed by the Constitution of Ukraine regarding land ownership rights	Purchase of land plots by major market players would lead to the decline of small businesses in Ukraine
Improvement of the efficiency of municipal and state-owned land use	Different conditions for the purchase and sale of public and private land
Gaining experience in conducting electronic land auctions	Determination of the winner by officials based on the submitted documents, not price offers. The winner should be determined by the system based on the analysis of the best offers

Source: compiled by the authors

The authors of this study suggests that it is necessary to open the land market. Land can be a powerful asset of the national economy of Ukraine, provided that transparent and understandable activities are introduced that bring profit to those who own and use it.

Conclusions

The land market in Ukraine differs in its type from European countries. Until June 1, 2021, a moratorium on the purchase and sale of agricultural land plots is automatically in effect. The Verkhovna Rada has adopted a corresponding law that lifts the land moratorium and creates a mechanism for launching and regulating an open, liberal land market, as happened in European countries following the land reforms. The process of forming a transparent system of land purchase and sale will create competition in the market, which would positively affect the development of the national economy and the structure of agribusiness in general. In accordance with this, such phenomena as illegal sale of land, corruption of officials would disappear.

The law defines all market participants who have the right to own land, the amount of land concentration per

individual, the minimum price, and the form of calculation. However, there is no clear mechanism for controlling the entry of foreign players and their investments into the land market. The advantages of opening the land market are the gradual establishment of a market price, replenishment of the state budget, increasing the efficiency of using land plots and capital in the agro-industrial complex. At the initial stage of launching the land market in Ukraine, it is necessary to focus on the experience of land reforms, the open type of markets (with or without restrictions) of Central European countries, which have implemented reforms through land redistribution, rational use and the development of effective legislation on land regulation and control.

There are both supporters and opponents of opening the land market, since the process of transformation from a closed to an open type of market has its own opportunities and threats mentioned above. However, the author of this study suggests that the introduction of an open land market model is necessary, since this will determine the correct distribution of land use resources and form the concept of “value land”, due to the high quality of chernozems and an increase in the level of environmental friendliness.

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Відкритий ринок землі в Україні: прагматика явища через призму європейського досвіду

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Анотація. Актуальність теми дослідження зумовлена тим, що порушення прав власності на землю, дія мораторію на купівлю-продаж земельної ділянки обмежують розвиток національної економіки загалом і ринку землі зокрема, сприяючи функціонуванню тіньового агробізнесу. Однак із 01.07.2021 року знімаються усі обмеження на продаж сільськогосподарських земель, згідно з цим виникають нові можливості та загрози. Метою статті є аналіз нового законодавства, що регулює питання запуску відкритого ринку землі в Україні. Для отримання наукових результатів були використані такі методи: діалектичний, порівняння, метод аналогій та зіставлень, монографічний, бенчмаркінг, метод експертних оцінок, SWOT-аналіз, метод прогнозування, аналіз та синтез. Відповідно до цього, було розглянуто сучасний стан землі в Україні та країнах Європи. Проаналізовано наявний ринок землі в Україні та світі. Проведена історична ретроспектива подій, пов'язаних із скасуванням мораторію на землю. Здійснена характеристика Закону, що забезпечує запуск відкритого ринку землі. Порівняно Закон між першим та другим читанням, визначені суттєві доповнення. З'ясовано механізм регулювання запуску українського відкритого ринку землі. Розглянуто міжнародний досвід функціонування ринку землі відкритого типу та відображено конкурентні ціни за 1 га землі у порівнянні з Україною. Згідно з цим визначено позитивний вплив земельної реформи у країнах Європи. Наведено основні чинники ефективності відкритої моделі ринку землі у зарубіжних країнах. Проаналізовано головні можливості та загрози запуску відкритого ринку землі в Україні. Результати дослідження відображають як позитивні, так і негативні наслідки запуску відкритого ринку в Україні, наводячи експертні думки прибічників і противників такого трансформування ринку

Ключові слова: мораторій, ліберальний ринок землі, інвестиції, національна економіка, земельні наділи сільськогосподарського призначення