

MINISTRY OF EDUCATION AND SCIENCE OF UKRAINE
ZAPORIZHZHIA NATIONAL UNIVERSITY

D. Fedchyshyn, I. Ignatenko, O. Bondar

**LEGAL PROVISION OF FOOD SECURITY
AND RATIONAL LAND USE
IN ORGANIC PRODUCTION IN UKRAINE
IN THE CONTEXT OF EUROPEAN
INTEGRATION**

Monograph



2022

UDC 349.414
F33

Authors:

Dmytro Fedchyshyn – Doctor of Law;
Iryna Ignatenko – Ph.D. in Law, associate professor;
Oleksandr Bondar – Doctor of Law, professor

Reviewers:

Ivan Kostyashkin, Doctor of Law, Professor, Leonid Yuzkov Khmelnytskyi University of Management and Law
Liudmyla Leiba, Ph.D. in Law, Associate Professor, Yaroslav Mudryi National Law University

Recommended for printing by the Academic Council
of Zaporizhzhia National University
(Record 12 dated the 12th of May, 2022)

Fedchyshyn D., Ignatenko I., Bondar O. Legal provision of food security and rational land use in organic production in Ukraine in the context of European integration : monograph. Riga, Latvia : “Baltija Publishing”, 2022. 250 p.

ISBN 978-9934-26-214-2

The monograph is devoted to the study of current legal issues of food security and rational land use in the implementation of organic production in Ukraine on the country's path to European integration.

The current state and trends in the development of organic agriculture in Ukraine are analyzed. Specific features and principles of normative regulation of land use in the process of organic production have been studied. The peculiarities of the legal regime and legal forms of land use for organic production are highlighted. The content of certification of organic production and labeling of organic products is revealed. The issue of improving state support for organic agriculture is considered. Proposals for improving the legal regulation of organic agricultural production in Ukraine have been formulated. Prospective directions of Ukrainian organic producers' entry into the European market are proposed, taking into account the EU requirements for environmental friendliness of products. Obstacles to the development of this area of agro-industrial complex are analyzed and practical recommendations for the development of national organic agriculture are developed.

The publication is intended for scientists, teachers, graduate students, students of law and economic institutions of higher education, practicing lawyers and economists, representatives of agribusiness, as well as anyone interested in the problems of organic production.

UDC 349.414

ISBN 978-9934-26-214-2

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INTRODUCTION

Food security is one of the global problems of the world economy in modern conditions. Ensuring food security is one of the most important components of public policy of every country. From these positions, it is important to form an effective model of food security of Ukraine, which should be aimed at creating a competitive food complex with an optimal production structure, capable to produce high quality competitive products, which correspond food needs of the population of the country and adequate food security.

At the present stage of development of the agricultural sector of the economy, the degree of food and environmental security is significantly determined by alternative technologies in the field of agriculture and conservation of natural resources of the agricultural sphere. Today, among such systems, organic agriculture has become as the most developed. However, despite the application of certain measures by the state and economic entities, Ukrainian organic agriculture and the market of organic agricultural products still need improvement.

The current situation in this area requires scientific substantiation of ecological and economic mechanisms of development of organic agricultural production, study of growth trends of sown areas occupied by organic production, the main reasons influencing the pace of organic farming, use of Ukraine's potential for growing environmentally friendly products, Ukraine's place among other countries, the feasibility of increasing

production volumes and the formation of a civilized domestic market for biological products.

Ukrainian agrarian business does not stand aside from world trends in agriculture. Agricultural producers are increasingly paying attention to the fact that ignoring environmental factors in agriculture undermines the natural resource potential of social production and negatively affects human health, disturbs the balance in the natural environment.

The safety of food and raw materials is one of the main factors that determine the health of the population, as about 70% of harmful substances enter our body with food. Governments around the world have taken an active stand to counter this destructive process. Therefore, it became clear that we should take into account global and dynamic changes in the world economy, which are closely linked to the growing demand in many countries for high-quality organic agricultural products. The latter, compared to the traditional production, has a number of economic, environmental and social benefits, serves as a basis of complete human nutrition, which eliminates any risks to their health, in addition, preserves and in some cases restores the environment.

That is why Ukraine must be an active participant in these processes. And there are all the prerequisites for this — Ukrainian agricultural sector has a wide range of opportunities for the development of organic farming, the formation of the domestic market of organic products, gaining and maintaining a stable position in the global organic agri-food market.

This monograph was published with the support of the Ministry of Education and Science of Ukraine within the project of scientific work of young scientists, which is carried out at the expense of the general fund of the state budget at Zaporizhzhia National University.

Section 1

THEORETICAL BASES OF FORMATION AND DEVELOPMENT OF AGRICULTURAL PRODUCTION OF ORGANIC PRODUCTS IN UKRAINE

1.1. GENERAL CHARACTERISTICS OF THE MARKET OF PRODUCTION AND CIRCULATION OF ORGANIC AGRICULTURAL PRODUCTS

Ukraine with its significant potential in increasing the land area suitable for organic production, as well as the availability of labor resources in rural areas can occupy its share in world markets for organic food and thus give a new impetus to agricultural development.

In this regard, it is necessary to take timely and comprehensive decisions in determining the range of organic products, the formation of mechanisms of state support for agriculture, focused on the production of organic products and the promotion of organic products in domestic and foreign markets.

For Ukraine, the development of the market of organic products is a priority in accordance with the National Economic Strategy for the period up to 2030, Strategy for the development of exports of agricultural products, food and processing industries of Ukraine for the period up to 2026, Strategy for the development of the agricultural sector of the economy for the period up to

2020, Medium-term plan of priority actions of the Government until 2020, the Concept of development of farms and agricultural cooperation for 2018–2020. In particular, it is proclaimed to stimulate the increase of the area of agricultural lands on which organic agricultural products are grown and/or produced and to stimulate the transition of farms to the production of organic products.

The development of the organic direction is promising not only in terms of commerce, but also the opportunity to improve and restore the condition of soils in Ukraine. Organic market experts confidently state that Ukraine has all the prerequisites to become an organic hub for the European market. Over the past 5 years, organic production has increased by 90 %, the area of organic agricultural land has increased from 260 thousand hectares to 468 thousand hectares and is 1.1 % of the total area of agricultural land in Ukraine.

Ukraine now ranks 20th in the world and 12th in Europe in the area of land occupied by organic agriculture¹. At the same time, every year Ukraine strengthens its position on the world market, which testifies to the positive dynamics of such development. It should be noted that in 2020 there were 722 operators of the organic market, 544 of which are certified organic producers². We observe a positive trend: the number of organic producers has increased almost 7 times compared to 2006 (80 certified

¹ Trofimtseva O. (2019). Ukraine ranks 20th in the world and 11th in Europe in the area of agricultural land under organic production. Retrieved from <https://minagro.gov.ua/ua/news/ukrayina-zajmaye-20-te-misce-u-sviti-ta-11-te-misce-v-yevropi-za-ploshcheyu-silskogospodarskih-ugid-zajnyatih-pid-organichnim-virobnictvom-olga-trofimceva> (Accessed at 20 February, 2022).

² Ministry of economy of Ukraine. (2021). Organic production in Ukraine. Retrieved from <https://www.me.gov.ua/Documents/Detail?lang=uk-UA&id=ed6463ce-f338-4ef0-a8a8-e778d3d0ffd1&title=OrganichneVirobnitstvoVUkraini> (Accessed at 20 February, 2022).

operators). A significant increase was recorded during 2018 (501 certified operators) and in 2020, which indicates the interest of Ukrainian producers to engage in organic production. In the context of European states, Ukraine occupies not the last positions, but with such a resource potential as our state has, it should occupy a leading position.

Analysis of the geographical map of organic producers in Ukraine shows that most Ukrainian farms engaged in the production of organic products are located in the south — Odessa, Kherson regions, in western Ukraine — Zakarpattya, Lviv, Khmelnytsky regions, as well as in Kiev, Vinnytsia and Kharkiv regions³.

In particular, it is connected with various international projects aimed at the production of organic products in Ukraine. Farms that choose this area receive financial assistance and cooperate with foreign companies.

According to the Federation of Organic Movement of Ukraine, in 2016 the volume of the domestic market of consumption of organic products increased 1.2 times compared to 2015 and almost 18 times compared to 2009, amounting to 21.2 million EUR. And in 2020, the domestic organic market of Ukraine grew by 3%⁴. These data indicate a rapid pace of development of the domestic market of organic products. In total accordingly 7,850 tons of organic products of own production worth about UAH 709 million were sold on the domestic market in 2020. (equivalent to USD 25.1 million at the National Bank of Ukraine exchange rate as of December 31, 2020).

³ FIBL (2016). Organic map of Ukraine. Retrieved from [http://www.ukraine.fibl.org/fileadmin/documents-ukraine/Booklets/Ukrainian Organic Map 2016-compressed.pdf](http://www.ukraine.fibl.org/fileadmin/documents-ukraine/Booklets/Ukrainian_Organic_Map_2016-compressed.pdf) (Accessed at 20 February, 2022).

⁴ IFOAM (2021) Organic in Ukraine. Retrieved from <http://organic.com.ua/ru/organic-v-ukraine/> (Accessed at 20 February, 2022).

Despite the slight growth of the market, Ukraine remains the lowest level of consumption of organic products per capita in Europe. For products of own production this indicator makes about 50 eurocents. The average per capita consumption of organic products in the EU is 84 EUR per year. Of course, there are countries that consume not much more than Ukrainians: Slovakia — 1 euro, Romania and Portugal — 2 EUR, Hungary — 3 EUR per capita per year⁵. There are objective reasons that hinder the development of the domestic consumer market. These include:

- unsatisfactory economic situation of the population;
- insufficient consumer awareness of organic products;
- low level of state support;
- insufficient legal support and so on.

Nevertheless, the organic trend in Ukraine is becoming more widespread and this is due to the export orientation of producers. The production of organic products is mostly export-oriented, as about 89% of producers work according to a standard equivalent to the EU Council Resolution NOP (USA) and Bio Swiss (Switzerland). The other 11% are focused on both domestic and foreign markets and work according to the standards developed by the International Public Organization of Organic Producers “BioLan”⁶.

As for the volume of exports of organic products, there is an active growth. According to the study of the organic market, exports of organic products from Ukraine in 2020 amounted to 204 million USD. In terms of value, exports increased by 7.9%,

⁵ ORGANIC.INFO. (2021). Infographics. Retrieved from <https://organicinfo.ua/infographics/> (Accessed at 20 February, 2022).

⁶ AGRAVERY. (2017). EU organic market grows by 10 % every year. Retrieved from <https://agravery.com/uk/posts/show/organicnij-rinok-es-zrostaе-soroku-na-10> (Accessed at 20 February, 2022).

although exports decreased by 30 % and amounted to 332 thousand tons, compared to 469 thousand tons in 2019.

The main European consumers of Ukrainian organic products are the Netherlands, Germany, Switzerland, Italy, the UK, Austria, Poland, Czech Republic, France, Hungary, Romania, Belgium, Bulgaria, Lithuania and Denmark. According to the results of 2020, Ukraine ranked 4th among the largest countries exporting organic products to the EU. The main export products are cereals, oilseeds, berries, mushrooms, nuts and fruits. Sunflower meal, flour, sunflower oil, sunflower meal, apple concentrate and birch sap are also exported.

In recent years, the geography of Ukrainian organic exports has expanded and key importing countries have changed. In general, if in previous years exports to European countries amounted to more than 85 %, then in 2020 it decreased to 73 %. At the same time, the share of exports to North America (the USA and Canada) expanded to 24 %. Exports to Asian countries, including China, Vietnam, India and Japan, are expanding, and the first deliveries of organic products to the Republic of Korea and Myanmar have taken place.

A significant role in the development of the Ukrainian market of organic products is played by public organizations and projects that focus their activities on various areas of this system of agricultural production. For example, the Federation of Organic Movement of Ukraine, the Union of Organic Agriculture Participants “Naturproduct”, the Association of Organic Agriculture and Horticulture, the association “BioLan Ukraine” are functioning successfully today.

In order to conduct research, promote the production and consumption of organic products in all regions of the country, it is planned to establish Centers for Organic Agriculture. Today such centers are actively working in Dnipropetrovsk, Poltava, Zaporizhzhia regions.

For a long time in Ukraine there are many international projects aimed at the development of the organic movement. Thus, in 2005 the first project “Development of the Organic Movement in Ukraine” was implemented. It was funded by the Swiss State Secretariat for Economic Affairs and implemented by the Research Institute of Organic Agriculture (Switzerland). This project was continued several times from 2012–2016 and 2016–2018. From 2011 to 2016, the AgroInvest technical assistance project (funded by the United States Agency for International Development) operated in Ukraine.

In 2016, two German-Ukrainian cooperation projects “Advising Ukraine on Agricultural Trade — under the Full and Comprehensive Free Trade Agreement between the EU and Ukraine” and “German-Ukrainian Cooperation in Organic Agriculture” were launched, supported by the Federal Ministry food and agriculture of Germany.

Until the end of 2023, the project “German-Ukrainian cooperation in the field of organic farming”, the EU project “Support to the implementation of agricultural and food policy in Ukraine” and the Swiss-Ukrainian program “Development of trade with higher added value in the organic and dairy sectors of Ukraine” continue to operate.

The organic sector of Ukraine is represented by the following key participants in the organic market:

- certification body “Organic Standard”,
- Information Center “Green Dossier”,
- Public Union of Producers of Certified Organic Products “Organic Ukraine”,
- Federation of Organic Movement of Ukraine,
- Lviv City Non-Governmental Organization “Ecoterra”,
- LLC “VIP Group”,
- Organic Business,

- LLC “Sib-Agro”, LLC NGO “Institute of Organic Production”,
- International Non-Governmental Organization “Association of Bioproduction Participants “BIOLan Ukraine”,
- Natur Boutique,
- public union “Ukrainian Organic Cluster”,
- as well as active organic producers, processors and traders.

In Ukraine, organic farming could develop more successfully if a balanced state organic policy is pursued. The implementation of such a policy is dictated by the need to fulfill Ukraine’s international obligations, in particular, the Association Agreement between Ukraine and the European Union. Issues of agricultural development are defined in Chapter 17 “Agriculture and Rural Development” of this Agreement, which, in particular, states that the parties cooperate to promote the development of agriculture and rural areas, in particular through the gradual convergence of policies and legislation (Article 403). Such cooperation should include the promotion of modern and sustainable agricultural production, taking into account the need to protect the environment and animals, in particular the dissemination of organic production methods and the use of biotechnology, including through the implementation of best practices in these areas (Article 404)⁷.

In general, the strategic goals of the development of the organic sector of the Ukrainian economy are:

- identification and implementation of the main directions of the state policy of development of organic agriculture,

⁷ Угода про асоціацію між Україною, з однієї сторони, та Європейським Союзом, Європейським співтовариством з атомної енергії і їхніми державами-членами, з іншої сторони: ратиф. Законом України від 16.09.2014 р. № 1678-VII. Офіційний вісник України. 2014. № 75. Ст. 2125.

aimed at ensuring the ecological safety of the agricultural sector of the economy;

- improving the quality of agricultural products;
- preservation and improvement of soil fertility;
- protection of the natural environment and preservation of biodiversity;
- creation of favorable conditions for balanced development of rural areas.

The advantages of organic production are significant compared to traditional agriculture: 1) there are commercial benefits, such as greater profitability through lower costs and higher revenue; 2) reducing the negative factors that harm the environment and human health; 3) production in the organic economy of such important eco-services as biodiversity conservation, local landscapes, as well as reduction of carbon emissions.

Ukraine as an agrarian country has great potential for the development of organic agriculture. A wave of interest in Ukrainian land is already rising, including from foreign investors, who are attracted by the unique ratio of the following favorable conditions for the development of organic agriculture:

- anthropogenic pollution is not continuous throughout Ukraine. There is still a share of lands is relatively “clean”, the level of pollution of which is much lower than in Western Europe;
- Ukraine has the highest employment in Europe in agricultural production (18% of workers), as well as relatively low wages, which can be attributed to the competitive advantages of the newly created industry;
- export attractiveness due to the proximity to the European Union market;

- the possibility of expanding the domestic market, as the actual area of organic agricultural land is not inferior in size to most European countries, and domestic consumption of organic products per capita lags far behind the European average;
- the possibility of accumulation of large tracts of land by concluding agreements on land (lease, emphyteusis, joint activities);
- low level of land rent payments.

In this regard, we believe that the development of domestic brands of certified organic products, their promotion on the national market, as well as exports to foreign countries is a strategically important task.

The development of agriculture focused on the production of organic products should be based on the following interrelated tasks:

- conducting land monitoring in order to determine the land potential suitable for the production of organic products;
- substantiation of methodological bases for the development of the mechanism of formation and development of agriculture, focused on the production of organic products at the state, regional and local levels;
- development and joint financing of programs aimed at preserving and restoring soil fertility of agricultural lands;
- implementation of programs aimed at improving knowledge and skills of organic land use systems of agricultural producers of various organizational and legal forms of ownership;
- development of national standards for certification of agricultural organic products, as well as the formation of conditions for international products to pass international environmental certification.

As the main purpose of the system of organic land use should be the development of incentives for the production and sale of organic products. The system of organic farming that is being formed should include the following activities:

- to formulate a consistent, balanced, targeted and effective legislation aimed at regulating land relations in the field of organic farming. This would not only correspond to a course on further reformation of land relations, but would also be a real factor for ensuring food and environmental security⁸;
- creating conditions for economically justified transition of certain agricultural organizations to organic farming, providing them with financial support, tax cuts, soft loans and other measures;
- development and implementation of a mechanism of state support for domestic agricultural producers of organic products. Indirect support can be provided in the form of assistance in passing the certification of organic products, conducting laboratory research, providing information and consulting services, funding research, insurance, measures to restore and increase soil fertility, environmental protection;
- providing at the legislative level of an effective control system, which consists in the introduction of an extensive system of control subjects at all stages of production, circulation and sale of organic products;
- ensuring control over the condition of soils and increase the responsibility of landowners and land users for the rational use and protection of land;

⁸ Fedchyshyn D., Ignatenko I., Bondar O. (2019). Legal issues of development of organic farming in Ukraine. *Juridical Tribune*. Vol. 9. Special Issue. P. 15–28.

- formation of a register of agricultural organizations that produce organic products that meet the necessary parameters of international environmental standards for food;
- organization of a centralized marketing service that promotes organic products of Ukrainian agricultural producers in domestic and international markets;
- creation of associations and unions of agricultural producers engaged in the cultivation and processing of organic products, organic clubs that bring together consumers and producers, qualified consultants and advisors;
- increasing the share of organic products of processing industries and diversification of production taking into account the situation in domestic and foreign markets in order to increase export potential and reduce import dependence;
- formation of the market of organic agricultural products.

In order to fulfill the set tasks, a consistent state policy is required, as well as the formation of a system of practical actions at each enterprise to improve the production process using a set of organizational, economic and social measures of economic incentives. Cooperation with international organizations in the field of organic production will allow to quickly adjust the existing legal framework.

In addition, when forming a mechanism to promote the development of the organic sector, it is important to rely on small and medium farms, their predominant location in remote, marginal agricultural areas with mosaic and vulnerable landscapes, to promote cooperation of organic farms and implement a cluster model of their development.

In order to create a demand for organic products, it is also necessary to constantly conduct educational and explanatory work among the population in order to make them aware of the value of their own health⁹.

However, despite the significant prospects for the expansion of this area, the domestic market has a number of obstacles that hinder the development of organic agriculture, respectively, they can be grouped into three major groups:

- socio-psychological;
- institutional and legal;
- financial and economic.

Socio-psychological are divided into external and internal. The external ones include: (a) low incomes; (b) existing stereotypes of human behavior and the existing culture of consumption of goods and services; (c) insufficient public awareness of the properties of organic products and their difference from traditional products. The internal ones include: (a) research, education and consulting on organic production in Ukraine are at an early stage; (b) the lack of a sufficient number of qualified specialists in the field of organic production.

Institutional and legal are also can be divided into external and internal. External ones include: (a) imperfection of the existing regulatory framework governing the activities of organic operators; (b) incomplete land reform and no transparent market for agricultural land; (c) the lack of a single certification system for producers of organic agricultural products; (d) a small number of elements of internal infrastructure (associations, unions);

⁹ Давиденко О.О. (2020). Функціонування та взаємодія суб'єктів правовідносин у сфері органічного виробництва: проблеми та шляхи їх вирішення. *Juris Europensis Scientia*. № 3. С. 62.

(e) difficulties in selling organic products on the domestic market due to the lack of processing and marketing enterprises. The internal one includes low level of cooperation of regional and local councils, research institutes and universities on organic production with organizations and state institutions at the state and local levels.

Financial and economic can also be divided into external and internal. The external ones include: (a) poorly developed domestic market of organic vegetables and fruits, livestock products; (b) a wide range of agricultural products grown according to the traditional scheme, as opposed to organic; (c) the lack of public financial support during the conversion period and the provision of benefits or subsidies to organic operators. As internal should be considered: (a) lack of sufficient marketing research for organic markets; (b) financial losses due to a decrease in output; (c) financial costs associated with the need to purchase special machinery and equipment; (d) the conversion period may last up to 3 years, which is a kind of risk for the organic producer and additional costs.

Solving these problems will allow to form an effective infrastructure of the organic market and improve state regulation of organic production, which, as a result, will ensure environmental safety of agriculture, improve product quality, preserve and improve soil quality, environmental protection and biodiversity, create favorable conditions for balanced development of rural areas.

Ukraine is an agrarian country with a developed agro-industrial complex. Involvement of organizational, economic and legal levers for the introduction of organic production in the agro-industrial sector is a guarantee of intensive development of this sector of the economy, as it will provide an opportunity to expand markets for environmentally friendly products. Organic production is one of the tools to improve the economic, social

and environmental situation in Ukraine, it will contribute to the integrated development of rural areas, improve the quality and safety of food.

The transition from traditional agricultural production to the production of organic agricultural products will be possible after the formation of a full-fledged market for organic products, which provides a direct proportional increase in both supply and demand for such products. This can be achieved through the implementation of a set of measures, including — improving legal support; formation of the infrastructure of the organic products market; ensuring adequate state support; improving the system of standardization and certification of production, processing, storage and transportation of organic agricultural products; introduction of an effective system of control, sale of organic raw materials, its processing, sale of finished organic products, etc.

1.2. METHODOLOGICAL AND ECONOMIC APPROACHES TO ASSESSING THE STATE AND DETERMINING THE PROSPECTS FOR THE DEVELOPMENT OF THE ORGANIC SECTOR OF AGRIBUSINESS

The feasibility of forming the theoretical foundations of economic relations that are determined in the process of interaction between human society and the natural environment, as well as the need to develop methods for regulating the rational use of natural resources, predetermined the emergence of a new scientific direction — environmental economics, which arose on the basic principles of the scientific theory of welfare and neoclassical economic theory.

The regulatory framework of environmental economics is the theory of external effects of economic production, which

have a positive or negative effect on the opposite side. The theory of external effects is based on the fact that environmental pollution causes economic damage, and this damage can be materially estimated and, if necessary, monetarily compensated. The English economist A. Pigou was one of the first to study the costs associated with external effects. The scientist proved that environmental pollution leads to an increase in external costs. At the same time, the main goal of any organization is to minimize production costs in order to increase profits, as a result — the desire to reduce environmental costs. In this case, environmental pollution is not considered as production costs and, accordingly, the cost of eliminating pollution is not included in the cost of production. With this approach, society, individual organizations, citizens will be forced to spend their additional material and financial resources on the elimination of environmental damage. Consequently, the total social costs and production costs will be formed from individual and external costs, expressed in monetary value¹⁰.

The representative of the neoinstitutional orientation in economic theory, R. Coase, believes that the root cause of external effects is the lack of clearly established ownership rights to natural resources and environmental objects. The author believed that if this shortcoming is eliminated, then optimality in the quality of the environment can be ensured in market conditions. In this case, the role of the state will be to establish such ownership rights¹¹.

Nevertheless, in spite of the achievements of scientists in the field of the theory of external effects, the main problems of taking

¹⁰ Пигу А. (1985). Экономическая теория благосостояния: пер. с англ. Москва : Прогресс. Т. I. С. 406.

¹¹ Coase R.H. (1990). The firm, the market and the law. Chicago : University of Chicago press.

into account external effects in the formation of the economic mechanism of environmental management have not yet been widely reflected in scientific research.

The further formation and development of social production dictates the need to take into account environmental factors and principles. It requires the search for new directions in the field of environmental management, based on maintaining the basic conditions that are important for human life and social production — clean air, water and soil resources, and neutralizing the possibility of depleting these resources. Objectively, there is a need of development of the concept of ecological-economic balance. Thus, the problems closest to those identified were those contained in the Concept of Sustainable Development of the World Community, presented at the United Nations conference in the early 90s, which was formed as an alternative to the prevailing stereotype of “consumer society” and the main economic development paradigms.

It is believed that the concept of “sustainable development” was first mentioned in 1987 at an annual report presented by the World Commission on Environmental Protection, as “a development process in which existing social needs are met without the risk of likely harm to the process of satisfying the needs of future generations”¹².

As theoretical studies show, the problems of sustainable development are often associated only with the state of the natural environment, not taking into account or underestimating the equally significant factors associated with sustainable development — political, social, economic, cultural, national-

¹² United Nations (1992). Report of the United Nations Conference on Environment and Development (Rio de Janeiro, 3-14 June 1992), Retrieved from <https://undocs.org/en/A/CONF.151/26/Rev.1> (Accessed at 20 February, 2022).

ethnic, etc. In the modern scientific environment, there is a position that is based on the principles of sustainable development. It is associated with the need to move from the consideration of the economic system in its pure form to the analysis of ecological and economic systems. Theoretical and methodological foundations of the sustainability of agricultural production in the ecological and economic aspect are investigated in the works of many economists. For example, A. Zhuchenko believes that a unilateral, mainly technogenic and chemical strategy for intensifying agricultural production, based on the application of ever-increasing costs of irreplaceable energy resources, has shown its failure to ensure sustainable, resource-energy-efficient and environmental development of agricultural production. As a result, the author proposed the use of a strategy of adaptive intensification, focused on the integrated use of chemical, technological and biological factors in order to increase the efficiency of agricultural production. This strategy includes: 1) elimination of environmental pollution and destruction when chemical fertilizers, plant protection products are applied, and gentle soil treatment is used; 2) bio-greening of technological processes of intensification; 3) reduction of energy costs; 4) production of quality and safe food and industrial raw materials¹³.

In partnership with other United Nations Member States, Ukraine has undertaken the obligation to adapt and implement the global goals and objectives of the “Sustainable Development Goals”, which were approved at the United Nations Summit on Sustainable Development¹⁴, taking into account national economic,

¹³ Жученко А. А. (1994). Стратегия адаптивной интенсификации сельского хозяйства: концепция. Пушино. 148 с.

¹⁴ United Nations (2015). “Transforming our world: the 2030 Agenda for Sustainable Development” (25 September 2015). Retrieved from <https://www.un.org/sustainabledevelopment/sustainable-development-goals/> (Accessed at 20 February, 2022).

environmental, social, legal and other specifics of the strategy of balanced (sustainable) development of Ukraine until 2030. In this regard, the President of Ukraine issued a Decree “On Sustainable Development Goals of Ukraine until 2030” of September 30, 2019, which names the goals and outlines tasks for organic production through the prism of solving problems to overcome poverty, prevent hunger, ecology, nature management, environmental protection, use of land and other natural resources in agriculture, investment attraction, etc.

It is rightly emphasized in the legal literature on the strategic importance of cooperation between Ukraine and the European Union in such areas of cooperation as promoting modern and sustainable agricultural production, taking into account the need to protect the environment, in particular, disseminating the use of organic production methods and the use of biotechnology through the introduction of best practices in these areas¹⁵.

Based on foreign experience in organic agricultural production, some Ukrainian organizations in the agricultural sector are starting to turn agricultural production to alternative and innovative methods. The land use of these organizations is based on the use of an ecological fertilizer system that allows the use of organic and green fertilizers instead of chemical natural ones. Agrotechnical soil cultivation in this management system is considered as energy-saving. It is based on the combination of plowing and surface soil cultivation in accordance with the requirements of the climatic and territorial

¹⁵ Уркевич В. Ю. (2015). Органічне сільськогосподарське виробництво: правові питання розвитку в аспекті євроінтеграції України. *Сучасні тенденції та перспективи розвитку аграрного, земельного та екологічного права* : матеріали Всеукр. наук.-практ. конф. (22-23 трав. 2015 р.), присвяч. 90-річчю від народж. акад. В. З. Янчука. Київ. С. 75–77.

landscape conditions of the area, as well as the use of combined units. Over the past two decades, Ukrainian agriculture has been trying to introduce organic farming methods into agricultural production and creating specialized companies for the cultivation and processing of organic agricultural products in various regions of Ukraine.

It should be noted that a significant share of these companies was formed with the financing and support of a number of European countries — Germany, Switzerland, Denmark. For example, a foreign investor is IFC, which provided 95 million USD to agro holding “Kernel” for working capital replenishment¹⁶.

Most of the products manufactured by these enterprises are supplied to the ecological markets of European countries, which make producers of ecologically clean products dependent on market conditions, hampering their orientation on the domestic market of ecological products.

Ukrainian land has always aroused interest from foreign investors as a means of production and an object of investment. The tendency to increase such interest has not changed for a long time, and in the near future there are no preconditions for reducing the interest of the land. Taking into account the fundamental importance of the land as a strategic asset for any country, the regulation of property relations and land use occupies a special place in all developed legal systems¹⁷.

It should be noted that according to the study “The world of agriculture. Statistics and emerging trends”, conducted in 2017 by IFOAM and the Research Institute of Organic Agriculture

¹⁶ Fedchyshyn D., Ignatenko I., Shvydka V. (2019). Economic and legal differences in patterns of land use in Ukraine. *Amozonia Investiga*, 8(18). 103–110.

¹⁷ Fedchyshyn D., Ignatenko I., Bondar O. (2019). Protecting the rights of foreigners to investment-attractive land plots in Ukraine. *Juridical Tribune*, 9(2). 317–329.

(German: Forschungsinstitut für biologischen Landbau – FiBL), there were 181 countries engaged in organic farming¹⁸ (table 1).

Table 1. Organic agriculture: key indicators and leading countries

Indicator	Quantity	Leading countries
Organic producers (countries)	181 countries	New countries (2019): Brunei, Cape Verde, Hong Kong, Monaco, Sierra Leone
Organic agricultural land	69.8 million ha	Australia (35.6 million ha) Argentina (3.4 million ha) China (3 million ha)
Organic producers	2.9 million	India (835000) Uganda (210352) Mexico (210000)
Organic market	90 billion euro	USA (40 billion euro) Germany (10 billion euro) France (7.9 billion euro)
Consumption of organic products per capita	10.8 euro	Switzerland (288 euro) Denmark (278 euro) Sweden (237 euro)

Source: FiBL survey 2019, based on national data sources and data from certifiers

In 2017, there were 2.9 million organic producers in the world, compared to 200 thousand in 1999. Moreover, 69.8 million hectares of certified agricultural land were allocated for organic farming (11 million hectares in 1999). There are only 93 countries in the world where the production and marketing of organic

¹⁸ Wilier H., Lernoud J. (2019). *The world of organic agriculture. Statistics and Emerging Trends 2019*. Research Institute of Organic Agriculture (FiBL), Frick, and IFOAM. Organics International, Bonn. Retrieved from <https://shop.fibl.org/CHen/mwdownloads/download/link/id/1202/?ref=1> (Accessed at 20 February, 2022).

products is legislatively fixed and regulated by legal acts. In other countries, due to the lack of a legislative framework for regulating issues in the organic agriculture industry, the production of organic products is limited to the choice of the manufacturer who refused to use mineral fertilizers and plant protection products.

The global market of organic products in 2017 amounted 90 billion euro. Moreover, an increase in the market can be traced every year, starting in 1999. The country with the largest market for organic products is the United States (40 billion euro), followed by Germany with a market size of 10 billion euro. The third and fourth places are occupied by France and China (7.9 billion euro and 7.6 billion euro, respectively)¹⁹ (figure 1).

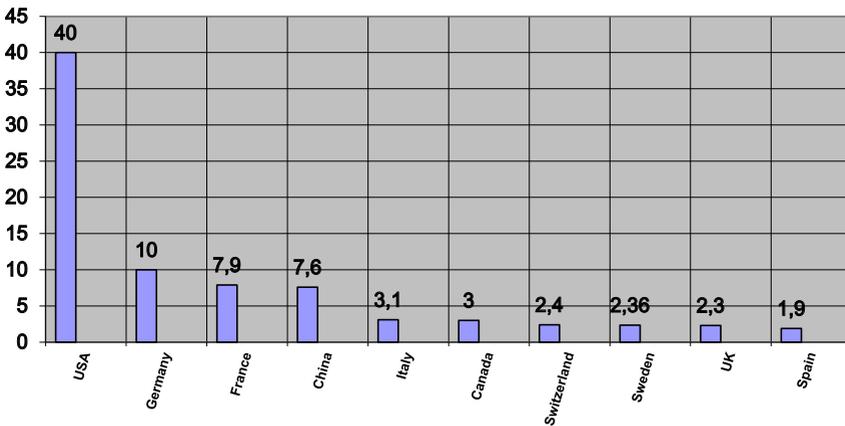


Figure 1. Countries with significant organic market volumes

Source: FiBL survey 2019, based on national data sources and data from certifiers

¹⁹ Wilier H., Lernoud J. (2019). *The world of organic agriculture. Statistics and Emerging Trends 2019*. Research Institute of Organic Agriculture (FiBL), Frick, and IFOAM. Organics International, Bonn. Retrieved from <https://shop.fibl.org/CHEN/mwdownloads/download/link/id/1202/?ref=1> (Accessed at 20 February, 2022).

Organic distribution channels in the world vary from country to country. In the past, the countries involved in the retail trade, showed a steady growth in their volumes of organic markets. As an example of such countries we can name Austria, Denmark, Switzerland, United Kingdom²⁰ (table 2).

Table 2. Sales of organic products through various sales channels in Western European countries, million EUR

Country	General retailers	Specialized retailers	Direct sales	Other channels
Austria	1398	325	–	–
Belgium	354	177	38	63
Denmark	1520	81	–	–
France	3652	2874	1006	390
Germany	5930	2910	–	1200
Italy	1595	865	–	677
Switzerland	1979	247	130	80
United Kingdom	1677	405	–	322

Source: FiBL-AMI survey 2019, based on national data sources

However, the financial crisis has shown that dependence on supermarkets is dangerous. Supermarkets, in turn, consolidated their position as a driving force in the market, so specialized sales channels are faced with huge competition.

It should be noted that there is a gradual increase in demand for organic agricultural products and in the domestic market of Ukraine.

²⁰ Wilier H., Lernoud J. (2019). *The world of organic agriculture. Statistics and Emerging Trends 2019*. Research Institute of Organic Agriculture (FiBL), Frick, and IFOAM. Organics International, Bonn. Retrieved from <https://shop.fibl.org/CHen/mwdownloads/download/link/id/1202/?ref=1> (Accessed at 20 February, 2022).

One of the most important channels of distribution and promotion of organic products in Ukraine are small specialized health food stores in major cities (for example, organic shops “Натур Бутик”, organic grocery store network “Eco-Chic”, etc.). Supermarkets are the most powerful organic distribution channel in Ukraine²¹. Supermarket “Good Wine” sells domestic and imported organic production, combining it in the “Good Food” section. Supermarket “Megamarket” represented to consumers separate sections with organic products. Certified organic products are also presented in supermarkets “Auchan”, “Delight”, “Billa”, “Furshet”, “Novus”, etc., with special attention on organic dairy and meat products, cereals, flour, bakery products, jams, juices, eggs, honey, teas, vegetables, fruits, etc.²². Consumer demand and the emergence of organic agricultural products in supermarkets have led to a significant increase in sales, even though its share is less than 1 % on store shelves²³.

There are different views on the demand for these agricultural products: some experts claim that a segment of consumers, which are ready to pay a higher price for ecologically clean agricultural food (especially in large cities), has already emerged in the country, while others believe that such products have not yet been consumed. However, as we can see, there is a trend of increasing demand in the organic agricultural market in the world and increased interest on the part of business entities. Therefore, it can be argued that production of such products has increased²⁴.

²¹ Безус Р. (2011). Ринок органічної продукції в Україні: проблеми та перспективи. *Економіка АПК*. № 6. С. 47–52.

²² Бойко Л. (2011). Передумови розвитку органічного виробництва в Україні. *Землепорядний вісник*. № 2. С. 30–35.

²³ Костин П. (2011). Проблемы развития «органического» земледелия в его культуре. *Настоящий хозяин*. № 6. С. 26–30.

²⁴ Чернишов І., Левченко М., Мазуркевич І. (2016). Стан і потенціал розвитку органічного свинарства України. *Вісник аграрної науки Причорномор'я*. № 2. С. 149–154.

At present, there are 69.8 million hectares of organic land worldwide. Only lands that have undergone a transitional period are considered. The region with the largest area of organic land is Oceania, with 35.9 million hectares certified for organic farming. This is followed by Europe with an area of 14.6 million hectares, Latin America — 8 million hectares, Asia — about 6.1 million hectares, North America — about 3.2 million hectares and Africa — 2.1 million hectares²⁵.

In Oceania, more than a half (51%) of the world's organic land is concentrated. Europe is a region that has shown fairly solid organic land growth over the past few years. The largest share belongs to countries such as: Spain (2.1 million hectares), Italy (1.9 million hectares), France (1.7 million hectares). In this rating, Ukraine occupies the 20th place with an area of organic land of 411.2 thousand hectares²⁶. Europe accounts for 21% of the world's organic land, followed by Latin America (11%).

The increase in the total area of agricultural organic land is due to the transformation of existing arable land and gardens in accordance with the standards of organic agriculture, as well as through the development of new territories. For example, in Europe, out of 12.7 million hectares of organic land, 8 million have already passed transitional period, and the others are in the transition to organic production. This trend indicates that in the near future we can expect an increase in the supply of organic products on the market.

²⁵ Wilier H., Lernoud J. (2019). The world of organic agriculture. Statistics and Emerging Trends 2019. Research Institute of Organic Agriculture (FiBL), Frick, and IFOAM. Organics International, Bonn. Retrieved from <https://shop.fibl.org/CHen/mwdownloads/download/link/id/1202/?ref=1> (Accessed at 20 February, 2022).

²⁶ Ляліна Н., Матвієнко-Біляєва Г. (2019). Механізм забезпечення розвитку органічного аграрного виробництва в Україні. *Agricultural and Resource Economics: International Scientific E-Journal*. № 5(2). С. 121–140.

On average, the area of agricultural land per capita in Europe is 0.43 hectares, in Ukraine — 0.90 hectares, arable land — 0.24 and 0.67 hectares respectively. The share of certified organic land in the total agricultural area of Ukraine is almost 0.7 %²⁷. Ukraine ranks first in the Eastern European region in terms of certified organic arable land, specializing mainly in the production of cereals, legumes and oilseeds²⁸.

It should be emphasized that Ukraine has all the necessary conditions for the production of organic products and their further development, which is able to meet not only domestic demand, but also to occupy a niche in the world market. Some steps have already been taken in this direction. The total area of agricultural land in Ukraine occupied by organic production in 2017 was 420 thousand hectares, which is 2.5 times higher than the corresponding figure of 2002²⁹.

According to official IFOAM data, the number of farms engaged in organic farming in Ukraine is increasing year by year. If in 2002 there were 31 such enterprises, then in 2017 there were 375 organic farms. As a result, there is an increase in organic production in the domestic market, increasing interest from the processing industry³⁰. If the general tendency of development of organic agro-production in Ukraine is maintained, in 2020 the area

²⁷ Кабінет Міністрів України (2017). Деякі питання удосконалення управління в сфері використання та охорони земель сільськогосподарського призначення державної власності та розпорядження ними: Постанова від 07.07.2017 р. № 413. Retrieved from <https://zakon.rada.gov.ua/laws/show/413-2017-%D0%BF#n12> (Accessed at 20 February, 2022).

²⁸ Чернишов І., Левченко М., Мазуркевич І. (2016). Стан і потенціал розвитку органічного свинарства України. *Вісник аграрної науки Причорномор'я*. № 2. С. 149–154

²⁹ International Federation of Organic Agriculture Movements (2019). Principles of organic agriculture. Retrieved from https://www.ifoam.bio/sites/default/files/poa_english_web.pdf (Accessed at 20 February, 2022).

³⁰ Ibid.

of organic crops can increase to 507 thousand hectares, and the number of certified organic farms will increase to 575.

However, a considerable part of organic agricultural production (about 80%) is exported abroad due to the lack of development of domestic markets. The main export market for Ukrainian organic products is the European Union. The Netherlands, Germany, Switzerland, the Czech Republic, Poland, Italy, Greece, Moldova and Norway are the main countries to which organic products are exported from Ukraine. Middle Eastern countries, such as the United Arab Emirates, are beginning to become interested in Ukrainian certified organic products³¹.

The development of organic agriculture strongly depends on economic factors, mainly including demand, prices of organic products and the level of producers' support³².

The practice of farming, focused on the production of organic products, proves that organic farmers do not earn more income due to their higher production costs including labor, insurance and marketing charges³³. Profitability of organic farms is very dependent on higher prices of production³⁴. According to Nieberg's and Offermann's research, it was easier for the organic farms to achieve higher prices for the crop production, but more difficult for the livestock production³⁵. So, consumers' preferences

³¹ Fedchyshyn D. (2020). Theoretical bases of formation and development of agricultural organic production in Ukraine in modern economic conditions. *Economics of Agriculture*. Vol. 67. № 3. P. 946.

³² Baer-Nawrocka A., Blocisz J. (2018). Efficiency of Polish organic and conventional farms. *Studies in agricultural economics*. № 120. P. 55–60.

³³ Uematsu H., Mishra A.K. (2012). Organic farmers or conventional farmers: where's the money? *Ecological Economics*. № 78. P. 55–62.

³⁴ Krause J., Machek O. (2018). A comparative analysis of organic and conventional farmers in the Czech Republic. *Agric. Econ*. № 64 (1). P. 1–8.

³⁵ Nieberg H., Offermann F. (2003). The profitability of organic farming in Europe. *Organic Agriculture: Sustainability, markets and policies*. OECD Workshop on Organic Agriculture, Washington, D.S. (September 23–26, 2002).

are the fundamental factor in the success of the market for organic products. Numerous studies have found that health benefits are the main motives for buying organic food products³⁶. The importance of health and environmental concerns reflects the growing affluence of consumers³⁷.

For example, according to the research conducted in Croatia³⁸, consumers are ready to spend more for fruit and vegetables from organic production (apples, tomatoes), if there is proof of organic production and because of the belief in health benefits of organic food. The same support we get from the research results conducted in Sweden³⁹.

Consumers mostly describe organic food as food that is ecologically acceptable, has a positive effect on health and has good sensory quality, while the main disadvantages are high price and insufficient representation on the market⁴⁰.

So, foreign markets of ecological food are mainly targeted at consumers who are able and willing to buy a quality product at a higher cost. In Ukraine a class of wealthy people has also formed, but it will be wrong to orient the organic food market only to wealthy people.

Ukrainian agricultural producers of organic products need an appropriate segment of the food market, aimed at consumers

³⁶ Wier M., Calverly C. (2002). Market penetration for organic food products in Europe. *British Food Journal*. № 10. P. 45–62.

³⁷ Ham M. (2019). Beliefs about effects of organic products and their impact on intention to purchase organic food. *Ekonomski vjesnik*. № 1. P. 69–80.

³⁸ Čagalj M., Haas R., Morawetz U.B. (2016). Effects of quality claims on willingness to pay for organic food: Evidence from experimental auctions in Croatia. *British Food Journal*. № 118(9). P. 218–223.

³⁹ Bosona T., Gebresenbet G. (2018). Swedish consumers' perception of food quality and sustainability in relation to organic food production. *Foods*. № 7(4). P. 1–17.

⁴⁰ Gajdić D., Petljak K., Mesić Ž. (2018). An exploration of distribution channels: challenges and opportunities for organic food producers in Croatia. *Economics of Agriculture*. № 4. P. 1461–1482.

who care about maintaining their health and the health of their loved ones. Consumers of organic products can be children (baby and diet food); people with poor health; patients undergoing rehabilitation, spa treatment; people with food allergies; agritourists and other organic products.

The importance should be given to scientific research in the direction of forming a strategy for the transition of a particular segment of agricultural producers to the organic way of farming.

When forming a methodological approach to the development of the system of land relations in the direction of agricultural production of organic products, there is a real opportunity to introduce important adjustments to land relations at the local level. This is due to the unevenness of the factors of natural and economic environment. In addition to the political orientation of the authorities, there are still quite objective reasons that have a serious impact on the level of development of land relations at the local level. A modern feature of agricultural lands is not only a general decrease in their area, but also deterioration in the quality of their land, and a decrease in the soil-biological and economic fertility of the land.

In addition, today, a number of reasons can be identified that slow down the development of organic agricultural production in Ukraine: 1) difficulties with investing in projects for the development of production and processing of organic products; 2) lack of a market for organic products; 3) lack of qualified specialists in the field of greening land use and certification of organic products.

The current situation in the agricultural sector of Ukraine does not imply a quick and widespread rehabilitation of it. As a result, it is required at the state level to define clear strategic and tactical goals for the systematic development of agriculture oriented towards the organic production. It is necessary to justify

specific ways to achieve these targets, clearly define measures of state support, and outline the sequence of stages of reforming the system of land relations with organic development guidelines.

It seems that the awareness of the importance and need for a gradual transfer of the agricultural land use system from traditionally developed to organic will give a new impetus to the development of the entire agricultural sector. A systematic analysis and assessment of the possibility of using the world experience in organic farming in conjunction with the established traditions of land use are a prerequisite for the strategic development and strengthening of the position of agriculture in the system of the national economy.

It should also be noted that due to the increasing growth in the consumption of organic products in the economically developed countries of the European Union, North America and Asian countries, and also taking into account the limited land resources suitable for the purpose of maintaining an organic land use system in these countries, it can be assumed that in subsequent years, developing countries will be able to take a leading place in the global production and export of organic food.

The development of agriculture in Ukraine, focused on the production of organic products should be based on solving a list of interrelated priorities:

- conducting land monitoring in order to determine the land potential suitable for the production of organic products;
- justification of methodological foundations for the development of a mechanism for the formation and development of agriculture, focused on the production of organic products;
- development and co-financing of programs aimed at the conservation and restoration of soil fertility of agricultural lands;

- implementation of programs aimed at improving knowledge and developing skills in maintaining organic land use systems for agricultural producers of various organizational and legal forms of ownership in order to overcome the deficit of economic thinking and to establish an adequate level of education;
- development of national standards for certification of agricultural organic products, as well as the creation of conditions for organic products to pass international environmental certification⁴¹.

The fundamental objective of the organic land use system is the development of incentives for the production and sale of organic food. The emerging system of organic farming should include the following activities:

- development and adoption of the regulatory framework necessary for the effective functioning of the system of organic agricultural production and markets for organic products;
- introduction of the necessary amendments to the current tax legislation aimed at supporting and economic stimulation of the developing organic sector of agricultural production;
- development of a set of measures and the adoption of a state program to support agricultural producers of organic products;
- providing consulting and information support to organic producers and the formation of an environmental culture

⁴¹ Fedchyshyn D. (2020). Theoretical bases of formation and development of agricultural organic production in Ukraine in modern economic conditions. *Economics of Agriculture*. Vol. 67. № 3. P. 948–949.

- of consumers;
- organization of an environmental management system in national agricultural production;
 - organization of a centralized marketing service promoting the organic production of Ukrainian agricultural producers in domestic and international markets.

The main condition for the effective functioning of the proposed system is the development of an economic mechanism for organizing agricultural production of organic products both in large agricultural organizations and in small organizational and legal forms of management.

Today, there are many parties willing to engage in organic production in Ukraine and invest in its development, but they need state support, especially during the conversion period. In Ukraine, there is no government strategy and program to support the development of organic farming, which hinders the formation of the organic agricultural market due to the uncertainty of investors, credit institutions, farmers themselves about the feasibility, effectiveness and absence of risks of such production. Therefore, first of all, it is necessary to introduce a state program for the development of production of organic agricultural products, which will anticipate the development of this sector of economy and create the necessary frameworks for the coordination and control of organic production, as well as contribute to the expansion of markets for organic products. The main financial and economic measures for implementing state support for the development of organic agricultural production in Ukraine should include: subsidizing interest rates on loans, subsidizing part of the costs of production and crop insurance for organic producers, preferential lending and taxation, as well as improving mechanisms for regulating regional markets.

Thus, the production of organic agricultural products, as a promising form of economy in Ukraine, depends on the method and extent of government support. Such support for organic producers abroad has become an effective tool for stimulating the development of organic farming.

Having considered the major global trends in the development and management of organic production and considering Ukraine's accession to the World Trade Organization and the association with the European Union, we can conclude that the Ukrainian market for organic products runs the risk of facing the expansion of foreign producers, which operate in much more favorable financial and legal conditions. Thus, in order to ensure that the Ukrainian market for organic products does not die as soon as it starts functioning, it needs to form and implement a national management model that will take into account both the interests of developing the domestic market and the interests of exporting organic products. Improving the legislation and structure of certification and supervisory organizations, drawing up a program of financial, informational and marketing support for domestic producers of organic products are those measures without which the development of Ukrainian market for organic products in the face of fierce international competition is almost impossible.

1.3. PRINCIPLES OF PRODUCTION OF ORGANIC AGRICULTURAL PRODUCTS IN UKRAINE

For a long time, Ukraine's agro-sphere has been suffering from a number of negative phenomena and processes that not only deplete it, but also does not give positive dynamics in the

economic aspect. Moreover, they have a negative impact on the quality of agricultural products.

Ukraine, being a country that supports the European vector of development and strives to become a full member of the European community, can in no way prevent the decline of the country's agri-environmental image and the competitiveness of agriculture in domestic and foreign markets. Today the issue of introduction of alternative technologies in the field of agriculture is quite relevant. Among such technologies, organic production deserves special attention, which is based on environmentally friendly agriculture. It aims to produce quality and safe products while maintaining soil fertility.

The progress of agricultural technologies is the cause of modern environmental problems: there is intense pollution of the planet with chemicals of various origins, which primarily pose a threat to the environment. Soil is the most valuable natural human heritage. Unfortunately, of all the natural ingredients, it is the most polluted. Acquired mutagenicity of the environment due to pollution impairs human health, its hereditary basis⁴².

Today there is a situation of intensification of agriculture, which is characterized by excessive use of natural resources, soil depletion, negative impact on the environment and the destruction of the agro-sphere as a whole.

The scientific principles of organic farming are quite well set out in the main provisions of the International Federation of Organic Agricultural Movement (IFOAM). According to its definition, organic agricultural production unites all agricultural systems that support environmentally, socially and economically feasible production of agricultural products. Such systems are based on

⁴² Дудар Т. Г. (2012). Стратегія формування системи органічного аграрного виробництва: моногр. Тернопіль : Астон. 292 с.

the use of locally specific soil fertility as a key element of successful production. They also use the natural potential of plants, animals and landscapes and aim to harmonize agricultural practices and the environment⁴³.

Council Regulation (EC) № 834/2007 of 28 June 2007 on organic production and labeling of organic products states that organic production is an integrated management system that combines best practices with regard to environmental protection, the level of biological diversity and the conservation of natural resources, the application of high standards of proper maintenance (welfare) of animals and a method of production that meets certain requirements for products manufactured using substances and processes of natural origin⁴⁴. First of all, environmental safety standards must be observed during the entire production process, which includes reduction of pollution of land, water, air resources, reduction of harmful emissions, preservation of forests, minimum tillage, etc. In addition, we are talking about the production of high quality and safe products without the use of synthetic fertilizers, GMOs, pesticides.

It is important to realize that the basis of organic agriculture is the suitability of land for the production of environmentally friendly products⁴⁵. As for Ukraine, unfortunately, today, agricultural lands are in unsatisfactory condition: they are depleted, suffer from erosion, deprived of nutrients, lose their fertility. All this, in turn, slows down the process of introducing organic production⁴⁶.

⁴³ Federation of Organic Movement of Ukraine: Official web page. Retrieved from <http://www.organic.com.ua> (Accessed at 20 February, 2022).

⁴⁴ Там само.

⁴⁵ Кисіль В. І. (2000). Біологічне землеробство в Україні: проблеми і перспективи. Харків : Вид-во «Штрих». 161 с.

⁴⁶ Ігнатенко І. В., Салюк І. О., Скорик К. В. (2020). Деякі аспекти органічного виробництва в умовах сталого розвитку. *Юридичний бюлетень*. № 15. С. 12.

It is an indisputable fact that by developing organic production and reducing the burden on natural resources and the environment, it is possible to increase the efficiency of agricultural production. Compared to other methods of agriculture, organic production involves the use of technologies that conserve natural resources, reducing mechanical and synthetic tillage. According to the literature, the priority for organic agriculture is the use of materials and technologies that improve the ecological balance in natural systems and contribute to the creation of sustainable and balanced agroecosystems⁴⁷.

It should be noted that organic production aims to maintain and improve the environment and meet the needs of society with quality products. In addition, organic production can implement the concept of sustainable development of the agricultural sector through the balance of resources.

IFOAM has established that organic farming should be based on the following principles:

- 1) health — organic agriculture should support and improve the health of soil, plants, animals, humans and the planet as an indivisible whole;
- 2) ecology — organic agriculture should be based on living ecological systems and cycles, coexist with them and support them;
- 3) justice — organic Agriculture must be built on a relationship that guarantees justice, taking into account the general state of the environment and living opportunities;
- 4) concern — the management of organic agriculture must be preventive and responsible and be focused on protecting

⁴⁷ Довгань О. М., Мандибура Я. В. (2013). Органічне виробництво: сутність, об'єктивна необхідність, ефективність. *Сталий розвиток економіки*. № 1.

the health and well-being of present, future generations and the environment⁴⁸.

These principles consider economic, environmental and social aspects. Significant attention is paid to the care of future generations, which makes it possible to consider organic agriculture, organic agri-food system as a whole as a factor of sustainable development.

Article 6 of the Law of Ukraine “On Basic Principles and Requirements for Organic Production, Circulation and Labelling of Organic Products” proclaims such core principles of state policy in the field of organic production, circulation and labelling of organic products as:

- rule of law — compliance with the Constitution and laws of Ukraine, and Ukraine’s international obligations;
- parity and equality — ensuring equal opportunities of the operators;
- transparency — ensuring free access to information on the development of organic production and circulation of organic products in Ukraine;
- coordination — coherence and consistency of long-term strategies, plans and programs for the development of organic production and the market of organic products in Ukraine;
- sustainable development — development of organic production and the market of organic products to meet the needs of the current generation, with regard to the interests of future generations;
- impartiality — development of all documents that shape state policies in the field of organic production,

⁴⁸ Organic Agriculture and Food Security. (2002). № 1. Retrieved from: www.ifoam.org (Accessed at 20 February, 2022).

- circulation and labelling of organic products, based on actual, achievable and assessable data;
- consistency of economic interests of operators, society and the state;
 - compliance with environmental safety requirements in the field of organic production and/or circulation of organic products;
 - recognition of freedom of economic activity in the field of organic production and/or circulation of organic products;
 - freedom to disseminate information on organic production and circulation of organic products⁴⁹.

However, it should be noted that the Law defines only the principles and directions of state policy in this area, and not the principles of production, circulation and labeling of organic products.

In scientific research it is proposed to envisage at the legislative level the following principles of organic production: the principle of environmental protection, the principle of justice⁵⁰, state support⁵¹, certification⁵², etc.

In addition, among the basic principles on which the efficiency of organic production is based, the following should be considered: 1) greening of cultivation technologies; 2) reduction of nutrient

⁴⁹ Про основні принципи та вимоги до органічного виробництва, обігу та маркування органічної продукції : Закон України від 10.07.2018 р. № 2496-VIII. *Відомості Верховної Ради України*. 2018. № 36. Ст. 275.

⁵⁰ Піддубна Д. С. (2015). Правовий захист органічної продукції від генетично модифікованих організмів в Україні: дис. ... канд. юрид. наук. Одеса. 215 с.

⁵¹ Курман Т. В. (2018). Сталий розвиток сільськогосподарського виробництва: проблеми правового забезпечення: моногр. Харків : Юрайт. 276 с.

⁵² Уркевич В. Ю. (2014). Принципи правового регулювання виробництва органічної сільськогосподарської продукції та сировини в аспекті сталого розвитку сільських територій. *Наук. вісн. Нац. ун-ту біоресурсів і природокористування України*. № 197. Ч. 1. С. 56–63.

losses in the soil; 3) reduction of chemical load due to the use of environmentally friendly fertilizers; 4) use of scientifically sound crop rotations; 5) use of technologies for waste disposal; 6) reduction of harmful emissions of enterprises into the air or water sources in order to prevent excessive anthropogenic pressure on the environment; 7) use of modern technologies of filtration and absorption of harmful substances.

It is also necessary to single out the principles of construction of tillage in organic farming: 1) preservation of soil fertility by minimizing tillage, taking into account its allowable level for different soil and climatic zones of the country; 2) control of weeds, pests and diseases; 3) laying organic fertilizers; 4) coordination of the treatment system with the biological characteristics of cultivated plants⁵³.

When producing organic products, producers must comply with special conditions provided by the standards: 1) refusal to use GMOs and products made using GMOs (feed, plant protection products, seeds, animals, etc.); 2) refusal to use hormones, artificial colors, antibiotics, flavor enhancers, flavors, growth enhancers; 3) refusal to use radioactive radiation for the processing of feed and raw materials used in the production of organic products; 4) abandonment of hydroponic production; 5) use of mechanical production methods; 6) the use of soil nutrition through its ecosystem.

Industrial production of organic products is realized exclusively from organic raw materials, which are created on suitable lands or in specially designated areas for the production of organic products. Assessment of soil suitability is carried out taking into account: 1) ecological and toxicological indicators of

⁵³ Ігнатенко І. В., Салюк І. О., Скорик К. В. (2020). Деякі аспекти органічного виробництва в умовах сталого розвитку. *Юридичний бюлетень*. № 15. С. 13.

the agrochemical passport of the land plot and 2) the results of chemical testing of plants grown on these lands during the survey.

In the literature, the benefits of organic production are formulated in the following areas: 1) environmental — minimizing the impact of production processes on the environment; promoting the conservation and restoration of biodiversity in agricultural landscapes; promoting the preservation and restoration of soil fertility; protection against water pollution; 2) economic — the gradual increase in natural productivity of agrocenoses and soils; reduction of production costs due to the rejection of the use of expensive chemicals and reducing the energy intensity of production; increasing the competitiveness of products; 3) social — the creation of additional jobs in rural areas; creation of new perspectives for small and medium agricultural formations, increase of viability of rural communities⁵⁴.

Among the principles on which the effectiveness of the introduction of organic production is based, we can highlight:

- greening of cultivation technologies. The main tasks of greening are the introduction of resource- and energy-saving, low-waste technologies in the processing complex, alternative farming systems with limited use of chemicals to increase yields and plant protection⁵⁵;
- reduction of nutrient losses in the soil. The main condition for ensuring the sustainable development of agriculture in Ukraine is compliance with the expanded reproduction of soil fertility. The latter should be based on differentiated regulation of the balance of nutrients and humus in

⁵⁴ Довгань О. М., Мандибура Я. В. (2013). Органічне виробництво: сутність, об'єктивна необхідність, ефективність. *Сталій розвиток економіки*. № 1.

⁵⁵ Царенко О. М. (1998). Экономические проблемы производства экологически чистой агропромышленной продукции: теория и практика. Киев : Аграрная наука. 256 с.

accordance with the data of ecological and agrochemical survey of soils, taking into account the biological characteristics of culture, variety or hybrid, their balanced macro- and micronutrients⁵⁶;

- reduction of chemical load due to the use of environmentally friendly fertilizers⁵⁷;
- use of scientifically sound crop rotations. Properly designed crop rotation has a number of advantages, the main of which are the prevention of accumulation and reproduction of diseases and pests, rational use of nutrients and moisture, as well as a significant reduction in pollution, improving the quality of products grown⁵⁸;
- use of modern technologies of filtration and absorption of harmful substances;
- use of technologies for waste disposal. One of the priority areas of utilization of these wastes is their use to obtain alternative energy. This method of utilization provides the most complex effect such as reducing the negative impact of waste on the environment, obtaining a substitute for natural gas and quality organic fertilizers, reducing the release of biogas (decomposition product of bioorganic waste) into the atmosphere and reducing the greenhouse effect⁵⁹.

⁵⁶ Шувар І. А. (2020). Органічні речовини на порятунок ґрунтів. *Інформаційно-аналітична газета «Агробізнес Сьогодні»*. Retrieved from <http://agro-business.com.ua/agro/ahronomiia-sohodni/item/16661-orhanichni-rechovyny-na-poriatunok-gruntiv.html> (Accessed at 20 February, 2022).

⁵⁷ Гринь С. О. (2015). Проблеми деградації ґрунтового покриву та шлях поліпшення якості ґрунтів. *Молодий вчений*. № 11 (26). Ч. 1. С. 58–62.

⁵⁸ Циліурік О., Десятник Л. (2018). Науково обґрунтовані сівозміни – запорука успіху. *Інформаційно-аналітична газета «Агробізнес Сьогодні»*. Retrieved from <http://agro-business.com.ua/agro/ahronomiia-sohodni/item/11015-naukovo-obgruntovani-sivozmini-zaporuka-uspikhu.html> (Accessed at 20 February, 2022).

⁵⁹ Маковецька Ю. М. Аналіз особливостей утворення та поводження з відходами на сільських територіях. *Ефективна економіка*. 2015. № 12.

According to world requirements, the organic system of agriculture and its products must meet certain standards of production processes aimed at maintaining the optimal state of the ecosystem at the social, environmental and economic levels⁶⁰.

In Ukraine, the area under organic production is only 411 thousand hectares. In the structure of certified organic agricultural lands, arable land occupies 206.5 thousand hectares or 76.4%. Pastures and hayfields account for 57.5 thousand hectares, which is 21.3%, fallow lands — 5.0 thousand hectares (1.5%) and only 1.3 thousand hectares or 0.5% for perennial crops⁶¹. At the same time, the existing soil and climatic conditions allow to expand the area under this production. However, the lack of infrastructure and state support for this type of management and the imperfect legal framework that regulates it, do not allow to quickly increase organic production.

Among the restraining factors that prevent organic production from developing are: underdeveloped domestic market; dominance of imported organic products in the market; insufficient development of the infrastructure of trade in organic products; the presence of unscrupulous producers in the market; imperfection of the regulatory framework; insufficient number of officially registered certification centers; weak development of integration with international structures and limited access to foreign markets for organic products; lack of state support⁶².

⁶⁰ Стоволос Н. Б. (2016). Концептуальні засади формування органічного сектору АПК. *Ефективна економіка*. № 5. Retrieved from <http://www.economy.nayka.com.ua/?op=1&z=4982> (Accessed at 20 February, 2022).

⁶¹ Federation of Organic Movement of Ukraine: Official web page. Retrieved from <http://www.organic.com.ua> (Accessed at 20 February, 2022).

⁶² Мамалига С. В. Розвиток ринку органічної продукції в Україні. *Зб. наук. праць Таврійського держ. агротехнологічного ун-ту*. 2012. № 2 (28). Т. 1. С. 270–279.

Ukraine has a significant economic and environmental potential for organic production, which is a priority for agricultural development. The availability of fertile soils and a sufficient amount of land contribute to the possibility of such production. The importance of the transition to organic production is due to the need to provide society with safe and quality food, as well as to preserve and improve the environment. But today there are many obstacles that hinder the effective development of organic production. Among them are: the existence of an unformed market for organic products, imperfect legislation and public policy, lack of a system of government incentives, regulation and control, etc.

Section 2

ORGANIZATIONAL AND LEGAL MEANS OF ENSURING AND IMPROVING THE EFFICIENCY OF DOMESTIC ORGANIC AGRICULTURAL PRODUCTION

2.1. CURRENT STATE AND PROSPECTS OF DEVELOPMENT OF ORGANIC PRODUCTION IN UKRAINE

According to IFOAM, organic farming combines all systems that support environmentally, socially and economically viable agricultural production. It also significantly reduces the use of external factors of production (resources) by limiting the use of chemically synthesized fertilizers, pesticides and pharmaceuticals. Instead, agrotechnological measures of a natural nature are used to increase yields and protect plants. Therefore, as an organic can be considered that production of agro-industrial complex which is grown, processed, transported, stored and sold in accordance with the laws of nature. These provisions should also be supplemented by national regulatory documents.

The development of organic agricultural production in Ukraine is a task that can be solved through proper legal regulation. For a long time, the production and circulation of organic agricultural products in Ukraine was not regulated at all. The beginning of legislative regulation of organic crop production is connected with the adoption of the Law of Ukraine “On

baby food” on September 14, 2006⁶³. This Law for the first time established legal requirements to reduce or even stop the use of agrochemicals on agricultural lands of those farms that produced agricultural products for baby food. In order to implement this Law, the Cabinet of Ministers of Ukraine adopted on October 3, 2007 Resolution № 1195 “On approval of the Procedure for granting the status of a special zone for the production of raw materials used for the manufacture of baby food and dietary food”⁶⁴. However, these legal acts did not provide a proper legal basis for the development of organic farming.

The basis for the development of organic production in Ukraine is the Sustainable Development Strategy “Ukraine — 2020”, which aims at the introduction of European standards of living in Ukraine and Ukraine’s moving to the leading position in the world. In particular, the vector of development of this strategy is to ensure sustainable economic growth in an environmentally sustainable way. The safety vector implies observance of the safe state of the environment and access to quality drinking water, safe foodstuffs, which are primarily organic⁶⁵. Moreover, the President of Ukraine issued a Decree “On sustainable development goals of Ukraine until 2030” of September 30, 2019⁶⁶. Organic production

⁶³ Про дитяче харчування : Закон України від 14.09.2006 р. № 142-V. *Відомості Верховної Ради України*. 2006. № 44. Ст. 433.

⁶⁴ Кабінет Міністрів України (2007). Про затвердження Порядку надання статусу спеціальної зони з виробництва сировини, що використовується для виготовлення продуктів дитячого та дієтичного харчування : Постанова від 03.10.2007 р. № 1195. *Офіційний вісник України*. 2007. № 76. Ст. 2819.

⁶⁵ Президент України (2015). Про Стратегію сталого розвитку «Україна – 2020»: Указ від 12.01.2015 р. № 5/2015. Retrieved from <http://zakon4.rada.gov.ua/laws/show/5/2015#n10> (Accessed at 20 February, 2022).

⁶⁶ Президент України (2019). Про Цілі сталого розвитку України на період до 2030 року: Указ від 30.09.2019 р. №722/2019. Retrieved from <https://www.president.gov.ua/documents/7222019-29825> (Accessed at 20 February, 2022).

is one of the ways to implement a sustainable development strategy as a basis for ensuring the environmental security of the industry through the integration of economic growth, social protection and environmental protection as complementary elements of effective strategic development of Ukraine.

In order to approximate Ukrainian agricultural legislation with EU legislation in the field of production and circulation of organic agricultural products and food products, the Law of Ukraine “On production and circulation of organic agricultural products and raw materials” was adopted on September 3, 2013. Subsequently, the Law of Ukraine “On basic principles and requirements for organic production, circulation and labeling of organic products” of July 10, 2018 was adopted instead.

In general, the Law “On production and circulation of organic agricultural products and raw materials” of September 3, 2013 contained a large number of instructions, that had to be adopted by the authorities of executive power. However, only 7 of the 23 regulations provided by law were actually approved, which was one of the reasons for the low effectiveness of this Law. In addition, the Law did not fully take into account the content of legal regulation of organic production in the main market of Ukrainian agricultural products — the European Union. All this necessitated the development of a new law on organic farming.

The entry into force of the new Law “On basic principles and requirements for organic production, circulation and labeling of organic products” provides for the intensification of the market of organic agricultural production in Ukraine and the expansion of exports. The following issues were on the agenda: 1) creation of institutional infrastructure, first of all, certification institutions, associations of organic producers and the relevant trade network; 2) integration into existing international structures to facilitate access to foreign markets; 3) improvement

of the system of information and consulting support and competent advisory services.

New principles and requirements for the legal provision of organic production were established with the adoption of this law in Ukraine. In particular, it defines the basic principles and requirements for organic production, circulation and labeling of organic products, the principles of legal regulation of organic production, the functioning of the market of organic products, the legal bases of activity of central executive bodies, subjects of the market of organic products as well as directions of state policy in these areas.

A number of provisions of the Law “On basic principles and requirements for organic production, circulation and labeling of organic products” need to be detailed and actually implemented through the adoption of government law-making acts. The Cabinet of Ministers of Ukraine must approve the Procedure (detailed rules) for organic production and circulation of organic products (part 2 of Article 13 of the Law), the Procedure for certification of organic production and circulation of organic products (part 9 of Article 24), the Procedure for maintaining the Register of Organic Seeds and planting material, the Register of Operators, the Register of Certification Bodies (Part 6 of Article 24, Article 31 of the Law). They should change those bylaws that were adopted on the basis of the previous law on organic production in 2013 and are currently in force, namely: Resolution of the Cabinet of Ministers of Ukraine dated August 8, 2016 № 505 “On approval of the Procedure for maintaining the Register of producers of organic products (raw materials)”, Resolution of the Cabinet of Ministers of Ukraine dated August 31, 2016 № 587 “On approval of detailed rules of production of organic products (raw materials) of crop origin”, Resolution of the Cabinet of Ministers of Ukraine dated March 30, 2016 № 241 “On approval of the Detailed rules of production of organic products (raw materials) of animal origin”, etc.

According to the Law of Ukraine “On the fundamental principles (Strategy) of the state environmental policy of Ukraine until 2020” dated December 21, 2010, one of the tasks in the field of integration of environmental policy and improvement of the system of integrated environmental management in agriculture is to create conditions for widespread implementation of farming technologies, which should be organic and environmentally friendly oriented. Also, the areas of the use of such technologies should be, at least, doubled⁶⁷.

Thus, the success of agribusiness development in the field of organic agricultural production largely depends on the quality of legal support, economic feasibility for both producers and consumers and proper government support for such production. All this should be considered as a single system, the main elements of which are the producer, consumer and the state as a whole.

In modern economic conditions, organic production is gaining global significance, partly addressing food security and contributing to the well-being of the population. In recent years, such production has become especially widespread in EU Member States. In particular, organic production dominates in Spain, with an area of almost 2 million hectares, Italy — 1.5 million hectares, France — 1.4 million hectares and Germany — 1 million hectares. The number of organic producers in Europe is increasing every year. The leader in the European rating on the number of producers of organic products is Turkey, which has about 70 thousand such enterprises. It is followed by Italy, with almost 53 thousand producers, and Spain is in the third place — 35 thousand producers⁶⁸.

⁶⁷ Про Основні засади (стратегію) державної екологічної політики України на період до 2020 року: Закон України від 21.12.2010 р. № 2818-IV. Retrieved from <http://zakon2.rada.gov.ua/laws/show/2818-17> (Accessed at 20 February, 2022).

⁶⁸ Yatsenko O. M., Zavadzka, Y. S. Formation of demand for organic products in the agro-food market. *Innovative Economy*. 2010. № 3 (17). P. 204–208.

The leading organic products organizations (IFOAM, FiBL, the Datamonitor Group) have estimated global market of organic products at 60 billion USD. About 1.8 million farms using 37.2 million hectares are involved in the ecological production of agricultural products and food⁶⁹. At the same time, over a third part of world manufacturers are in Asia, Africa and Latin America. Consumer demand for organic products is concentrated in North America and Europe — the two regions generate 97% of global revenue. Asia, Latin America and Australia are important producers and exporters of organic food⁷⁰. The biggest share of the organic market in the entire market is in Denmark, then Luxembourg, Switzerland, Sweden and Austria⁷¹.

The main trend of the world market is the increasing demand for organic products in most countries. The situation in the global organic market is characterized by: 1) concentration of demand in developed countries; 2) increasing demand in developing countries; 3) consolidation of market participants; 4) the development of distribution of organic products⁷².

Organic products have become the most popular in the US and Western Europe. Germany is the leader in organic consumption. This country began to adopt a healthy nutrition policy in the 1980s. Despite the fact that the cost of organic products compared to traditional ones is 40-50% higher, Italians spend an average of 25 EUR a year on organic products, Swiss — 105 EUR, Danes — 51 EUR, Swedes — 47 EUR. It is also should be noted that in

⁶⁹ Federation of Organic Movement of Ukraine: Official web page. Retrieved from <http://www.organic.com.ua> (Accessed at 20 February, 2022).

⁷⁰ Willer H., Lernoud J. (2018). The World of Organic Agriculture. Statistics and Emerging trends. *FiBL&IFOAM: Organic International*. Germany : Medienhaus Plump. 348 p.

⁷¹ Gajdić D., Petljak, K., Mesić Ž. (2018). An exploration of distribution channels: challenges and opportunities for organic food producers in Croatia. *Economics of Agriculture*. № 4. P. 1461–1482.

⁷² Ignatenko I. (2020). Legal aspects of development of organic agriculture in Ukraine in the context of European integration. *Economics of agriculture*. Vol. 67. № 3. P. 978.

most EU countries, main distribution channels for the producers (processors) of organic food are: direct sale, specialized organic food product stores and supermarkets^{73; 74}.

Most organic farming enterprises in Ukraine are located in the south of the country (Odesa, Kherson regions), in western Ukraine (Chernivtsi, Lviv, Ternopil regions), as well as Poltava region. Quite often these enterprises are participants in international projects (in particular with Switzerland and Germany) on the introduction of organic farming in Ukraine and cooperate with foreign companies. About 60% of areas of crops are occupied by wheat, barley, sunflower and corn. These cultures form the basis of the export offer of Ukrainian organic products. In addition, part of the acreage is allocated to peas, rapeseed, buckwheat, soybeans, rye, oats, sorghum, millet, mustard, sugar beets and others.

According to the Federation of Organic Movement, there are 130 farms in Ukraine that produce organic agricultural products, and their area is only 0.7% of agricultural land. More than 90% of the produced domestic organic products are exported: the sale of products within the country provides producers with a profitability of 70% per hectare, while sales to EU member states — 200%⁷⁵.

As it is known, the basis of organic agriculture is the suitability of land for growing environmentally friendly products. In this regard, organic agricultural production is strictly tied to ecologically clean natural lands, which, accordingly, is regarded

⁷³ Dovleac L. (2016). An overview on the supply chain for European organic food market. *Bulletin of the Transilvania University of Braşov*. № 9(58). P. 325–330.

⁷⁴ Enjolras G., Aubert M. (2018). Short food supply chains and the issue of sustainability: a case study of French fruit producers. *International Journal of Retail & Distribution Management*. № 46(2). P. 194–209.

⁷⁵ Wilier H., Lernoud J. (2018). The World of Organic Agriculture. Statistics and Emerging trends. *FiBL&IFOAM: Organic International*. Germany : Medienhaus Plump, 348 p.

as a spatial factor, as well as the subject of labor and the main means of labor.

In the current conditions of globalization of economic and social processes, agricultural lands due to the irrational use and impact on them of various environmental pollutants lose the quality properties of the soil. The quality of land improves if it is rationally used as a means of production. However, in order to maintain the required level of fertility, it is necessary not only to reimburse the consumed substances of the soil, but also to restore its quality indicators, which is associated with significant logistical and financial costs. At the same time, the return on major investments is stretched over time and measured in years, which hinders investment in environmentally friendly agriculture. In order to mitigate the impact of these objective factors, land in all countries — regardless of ownership — is considered a national asset, and funds for their preservation are allocated from national budgets. Consequently, the land factor is important for providing organic agriculture in the country and determining its specialization.

The world tends to increase the land area under organic agriculture, especially in EU countries, which is confirmed by the analysis of statistical information FAO. The total area of agricultural land is 11% of the world's land fund, which occupies 1.5 billion hectares, and more than 30 million hectares of which are allocated for organic farming. The largest areas of certified land are in the United States (400 thousand hectares), Argentina (300 thousand hectares) and Italy (120 thousand hectares). Establishing certified production allows not only to meet domestic needs, but also to form export of such products. Liechtenstein (26%), Austria (13%) and Switzerland (11%) are the leaders in the share of organic land in the total area of agricultural land. More than 558,000 farms in 108 countries operate on the basis of organic

farming. The annual growth of environmentally friendly products on the world market is 25 %⁷⁶. Accordingly, the area of organic land is increasing every year, due to the significant demand for these products.

In Ukraine, the area, used for organic production, is only 411 thousand hectares. In the structure of certified organic agricultural lands, arable land occupies 206.5 thousand hectares or 76.4%. Pastures and hayfields account for 57.5 thousand hectares, which is 21.3%, fallow lands — 5.0 thousand hectares (1.5%) and only 1.3 thousand hectares or 0.5% for perennials⁷⁷. At the same time, the available soil and climatic conditions allow to expand the areas under this production. However, the lack of infrastructure and state support for this type of business activity and the imperfect legal framework that regulates it, do not allow to quickly increasing organic production.

The scientific literature focuses on the need to develop and approve criteria for determining the suitability of agricultural land for use in organic farming, addressing issues related to soil conservation and protection of their fertility, development and approval of standards for their quality, which would meet requirements for growing organic products of plant origin, etc.⁷⁸.

The suitability of lands (soils) for the production of organic products and raw materials had to be established in accordance with the provisions of Article 23 of the Law of Ukraine “On production and circulation of organic agricultural products and

⁷⁶ Willer H., Lernoud J. (2018). The World of Organic Agriculture. Statistics and Emerging trends. *FiBL&IFOAM: Organic International*. Germany : Medienhaus Plump, 348 p.

⁷⁷ Milovanov E., Konyashyn A. (2019). Organic market of Ukraine: current state and prospects. *Problems of agrarian market*. № 1(3). P. 63-70.

⁷⁸ Fedchyshyn D., Ignatenko I., Bondar O. (2019). Legal issues of development of organic farming in Ukraine. *Juridical Tribune*. Vol. 9. Special Issue. P. 15–28.

raw materials”, which expired in August 2019. Therefore, the question of mandatory regulatory criteria for determining the suitability of agricultural lands (soils) for the production of organic products, including plant products, remains open.

Unfortunately, the current Law of Ukraine “On basic principles and requirements for organic production, circulation and labeling of organic products” also does not provide legal requirements that would determine the criteria to be used in deciding on the suitability of agricultural land for organic production. However, this Law (Part 3 of Article 25) provides that for organic crop production the duration of the transition period for land for growing annual crops may not be less than 24 months before sowing, and for perennial crops (except fodder) — not less than 36 months before the first harvest of organic products. Undoubtedly, the assessment of the suitability of agricultural land for the production of organic products of plant origin is a proper guarantee for the production of such products. The lack of legal regulation of such an assessment in Ukraine nullifies the guarantee itself.

It seems that when developing the Procedure for assessing the suitability of lands (soils) for the production of organic products of plant origin, it is necessary to take into account that the cultivation of such products can be carried out within agricultural lands used for commercial agricultural production and personal farming. The assessment of the suitability of land for the production of organic products of plant origin should be based not only on the quality of soils and plants to be grown, but also the remoteness of these lands from sources of pollution. The accumulated content of pollutants in the soil on the relevant land plots should also be taken into account. In addition, when developing criteria for assessing the suitability of land for the production of organic agricultural products, the data of agrochemical certification of agricultural land must be taken into account. Its task is to determine the quality of soils, their changes

in the process of economic activity, as well as conditions for the rational use of organic fertilizers, protection from pollution and restoration of soil fertility. Lands that will be assessed as suitable for organic farming, which will confirm the relevant certificate, should be recognized as object of special legal protection⁷⁹.

This means that the legal regime of agricultural land, which is intended or already used for growing organic products of plant origin, should be clarified in the Land Code of Ukraine. In addition, the “Procedure for assessing the suitability of lands (soils) for the production of organic products of plant origin” should be adopted at the level of the Cabinet of Ministers of Ukraine.

In order to make more efficient use of agricultural land for organic production, it is advisable to conduct their inventory, contour and reclamation organization of the territory. For modern organic production, it is necessary to streamline the structure of sown areas, fill crop rotations with legumes and legume mixtures, which, with the help of nodule bacteria, are able to fix atmospheric nitrogen. In the conditions of introduction of organic agriculture, it is important to include in crop rotation the cultivation of green manure crops, expansion of areas under fruits and vegetables.

The current state of the structure of sown areas in organic production shows that almost 200 thousand hectares, or 49 %, are cereals. Oilseeds are located on an area of 67 thousand hectares (16%). Only 19 thousand hectares, or 4.7 %, are occupied by legumes. At the same time, vegetables are grown only on 8.1 thousand hectares (2 %), fruits — 2.4 thousand hectares (0.6 %) ⁸⁰. Such structure of sown areas cannot ensure effective

⁷⁹ Ignatenko I. (2020). Legal aspects of development of organic agriculture in Ukraine in the context of European integration. *Economics of agriculture*. Vol. 67. № 3. P. 980.

⁸⁰ Milovanov E., Konyashyn A. (2019). Organic market of Ukraine: current state and prospects. *Problems of agrarian market*. № 1(3). P. 63–70.

organic farming, crop rotation, preservation of soil fertility. This structure of growing products is typical for the market, which is at the stage of formation with an underdeveloped product range.

According to the existing structure of sown areas, the production of marketable organic products needs to be transformed. In the structure of marketable organic products, the production of winter wheat is 31 %, sunflower — 27 %, corn for grain — 19 %, while soybeans — 5 %, and sugar beets only 2 %. At the same time, the range of potatoes, vegetables, fruits and berries is completely absent in marketable organic products⁸¹. In addition, the analysis shows that most of the manufactured products were sold as raw materials, without appropriate processing and formation of additional value added.

Significant potential opportunities for the development of the organic sector are concentrated in Ukraine, due to the availability of land potential that is suitable for the production of environmentally friendly products of organic origin.

On the basis of the analysis of ecological and toxicological condition of arable lands of Ukraine carried out by experts of the Institute of Agrochemistry and Soil Science of NAAS of Ukraine, zones of suitability for cultivation of ecologically pure production were allocated⁸². Researchers have shown that anthropogenic pollution of the territory of Ukraine has a local character. Ukraine still has a part of clean lands, where the level of pollution is much lower compared to Western Europe.

According to the Ukrainian scientists, there are four small regions left in Ukraine where soils are not yet polluted to dangerous limits and where it is possible to grow environmentally

⁸¹ Milovanov E., Konyashyn A. (2019). Organic market of Ukraine: current state and prospects. *Problems of agrarian market*. № 1(3). P. 63–70.

⁸² КИСІЛЬ В. І. (2000). Біологічне землеробство в Україні: проблеми і перспективи. Харків : Вид-во “Штрих”. 161 с.

friendly products at the level of the strictest world standards. These regions are: 1) the North Poltava — covers most of Poltava region (except for the regions adjacent to the cities of Kremenchuk and Komsomolsk), north-western districts of Kharkiv region, south-western districts of Sumy region, south-eastern districts of Chernihiv region and eastern districts of Kyiv and Cherkassy regions (left bank); 2) Vinnytsia-Prykarpattia — stretches a wide strip about 100 km from the town of Popelnya (Zhytomyr region) and extends to the north of Vinnytsia, Khmelnytsky and Ternopil regions in the direction of Lviv; 3) the Southern Podil — includes a small south-eastern part of Vinnytsia region, south-western part of Kirovohrad region, northern Mykolayiv region and northern half of Odessa region; 4) the Northeast-Luhansk — covers Milovsky and Novopskovsky districts of Luhansk region⁸³. But only the presence of areas potentially suitable for organic production is not enough. It should be clear that the transition from conventional (intensive) agricultural production technologies to organic farming is a rather long process and is accompanied by certain risks and the need to solve a number of problems.

Today, one of the most famous “organic” farms in the North-Western region of Ukraine is a private enterprise “Galex-Agro” based in Novograd-Volyn district of Zhytomyr region. This farm is specialized in the cultivation of cereals and industrial crops, milk and meat production. Due to the intensification of production at the farm it was possible to achieve more than 2000 kg/ha of yield of organic rye, and legumes — about 1500 kg/ha. The basis of the farm’s agriculture is the “Drevlyanska” system, which provides a four-field crop rotation: diaper-oat mixture, rye, oat mixture and winter (rye, wheat).

⁸³ Шикіла М. К. (1998). Відтворення родючості ґрунтів у ґрунтозахисному землеробстві. Київ : Оранта. 680 с.

Studies of current trends in the market of organic products on the example of the North-Western region of Ukraine allow us to identify the following trends: 1) interest of agricultural holdings in the development of organic production; 2) preferential conditions for land auctions for organic production; 3) cooperation of producers; 4) expansion of exports of organic products. These trends suggest the expansion of areas under organic products in the short term. In addition, a significant role in the development of the Ukrainian market of organic products is played by public organizations and projects that focus their activities on various areas of this system of agricultural production. The Federation of Organic Movement of Ukraine, the Union of Participants of Organic Agriculture “Naturproduct”, the Association of Organic Agriculture and Horticulture are functioning successfully today. In 2002, the Association “BioLan Ukraine” was established, which unites the efforts of producers, processors, scientists, and all stakeholders, and serves as a national platform for information exchange. In order to conduct research, promote the production and consumption of organic products in all regions of the country, it is planned to establish Centers for Organic Agriculture. Today such centers are actively working in Dnipro, Poltava, Zaporizhzhia regions⁸⁴.

For a long time in Ukraine there are many international projects aimed at the development of the organic movement. Thus, from 2011 to 2016, the technical assistance project “AgroInvest”, funded by the United States Agency for International Development (USAID), operated in Ukraine. In 2016, two German-Ukrainian cooperation projects “Advising Ukraine on Agricultural Trade — in the framework of the Full and Comprehensive Free Trade Agreement between the EU and Ukraine” and “German-Ukrainian

⁸⁴ Ignatenko I. (2020). Legal aspects of development of organic agriculture in Ukraine in the context of European integration. *Economics of agriculture*. Vol. 67. № 3. P. 982.

Cooperation in Organic Agriculture” were launched. These projects are supported by the German Federal Ministry of Food and Agriculture.

A foreign investor, who is really interested in working with such an asset as Ukrainian land, can implement such projects, effectively using the current legal field of Ukraine. However, this requires well-thought-out and balanced planning and corporate structuring of business, which takes into account the Ukrainian realities⁸⁵. A study of the current state of development of organic production in Ukraine has shown that the organic line of business is at an early stage of development, although it has great potential.

High demand for organic products in the EU and the limited capacity of its production make Ukrainian organic producers a chance to be a full player in the organic market of the EU. Moreover, global demand for organic products affects the development of this sector in Ukraine, as Ukraine cannot be separated from globalization processes, especially taking into account WTO membership and intentions for European integration.

However, despite the significant potential and prospects for the development of organic agriculture, there are gaps in the legislation of Ukraine. Today it is necessary to improve the legal framework, which would clearly define the state policy in the field of organic production, create conditions for legislative recognition and protection of organic products, the formation of a national certification system, approval of rules and standards. For example, the legislation of Ukraine lacks legal norms that should regulate relations in the field of transportation of organic products⁸⁶.

⁸⁵ Fedchyshyn D., Ignatenko I., Bondar O. (2019). Protecting the rights of foreigners to investment-attractive land plots in Ukraine. *Juridical Tribune*. № 9(2). P. 317–329.

⁸⁶ Луц Д. М. (2022). Правові аспекти перевезення органічної продукції за законодавством України. *Право і сусільство*. № 2. С. 93.

In particular, certain provisions of the Law of Ukraine “On basic principles and requirements for organic production, circulation and labeling of organic products” must be specified in the Ukrainian legislation. For example, there is a need to approve the procedure for maintaining the Registers, the procedure for certification of organic production and circulation of organic products, the procedure and requirements for labeling organic products, as well as requirements for material and technical base and other infrastructure necessary to perform functions of certification of organic production and circulation of organic products, so that the new mechanism of legal regulation of organic agricultural production will work in full.

In addition, the legal regime of agricultural land, which is intended or already used for growing organic products, should be clarified in the Land Code of Ukraine. It is also necessary to develop and approve criteria for determining the suitability of agricultural land for use in organic farming, addressing at the legislative level issues related to soil conservation and protection of their fertility, development and approval of standards for their quality, which would meet the requirements of organic production of plant origin.

2.2. ORGANIC PRODUCTION OF AQUACULTURE PRODUCTS IN UKRAINE: FEATURES AND PROSPECTS

Today, due to the growth of the population of our planet, the issues of its food supply are becoming more urgent, which necessitates the development of agriculture, increasing the production of such products. One of the ways to ensure this is the development of aquaculture. The latter can guarantee transparency

and controllability of production as a result of the use of aquatic bioresources, which is an important component for improving the safety and environmental friendliness of products.

Proper legal regulation of the use of aquatic bioresources is an important factor in ensuring food security of Ukraine, as it will not only increase the range and production of Ukrainian fishery products, meet the needs of domestic fisheries products, but also help ensure rational use of aquatic bioresources by users⁸⁷.

The main task of aquaculture is efficient production activities to provide the population with fish and fish products. The growing standard of living of the population requires an increase in the quality and volume of products. There is a need for economic research that would determine the rational directions, technologies and models of fisheries development as a whole and its individual components⁸⁸. The development of aquaculture in Ukraine will create a sustainable supply of fish products, seafood and a number of other aquatic living resources on both the national and world markets. In today's conditions, the sphere of fisheries is becoming increasingly important not only for supporting economic development, but also for ensuring food security of our country⁸⁹.

Unfortunately, in today's conditions, the development of aquaculture in Ukraine does not yet correspond to the potential natural resources of the country, or global indicators of

⁸⁷ Федчишин Д. В., Ігнатенко І. В. (2021). Органічне виробництво продукції аквакультури в Україні: особливості та перспективи. *Право і суспільство*. № 6. С. 138.

⁸⁸ Мазур Ю. П. (2007). Ефективність функціонування та перспективи розвитку підприємств рибного господарства : моногр. Умань. 237 с.

⁸⁹ Федчишин Д. В. (2022). Практичні правові проблеми використання водних біоресурсів в галузі рибного господарства. *Право і суспільство*. № 2. С. 129.

development of this industry. This is, in particular, due to the fact that the needs of the population in fishery products are largely covered by high volumes of products produced by fisheries as a result of the use of aquatic bioresources.

According to the Law of Ukraine “On Fisheries, Industrial Fisheries and Protection of Aquatic Bioresources” aquatic bioresources (aquatic biological resources) — a set of aquatic organisms, whose life is impossible without being in the water. Aquatic bioresources include freshwater, marine, anadromous and catadromous fish at all stages of development, round-mouthed, aquatic invertebrates, including mollusks, crustaceans, worms, echinoderms, sponges, intestinal, terrestrial invertebrates in aquatic development and other algae.

The use of aquatic bioresources is carried out through fisheries activities. The legislation of Ukraine defines the latter as the activity of legal entities and natural persons — entrepreneurs, related to the study of aquatic bioresources, their protection, reproduction, special use, processing, sale, etc.

In this context, it should be noted that fisheries activities belong to fisheries — an industry whose tasks are the study, protection, reproduction, cultivation, use of aquatic bioresources, their extraction (extraction, catch, harvesting), sale and processing for food, technical, fodder, medical and other products, as well as ensuring the safety of navigation of fishing vessels.

Article 27 of the Law of Ukraine “On Fisheries, Industrial Fisheries and Protection of Aquatic Bioresources” provides that the special use of aquatic bioresources is carried out by removing them from the natural environment and includes:

- industrial fishing;
- catching aquatic bioresources for research, scientific-industrial, research and development purposes, as well as to clarify their sanitary and epidemiological status;

- control catch of aquatic bioresources to determine their status and reserves;
- reclamation catch of aquatic bioresources in order to form their optimal species and age composition;
- catching aquatic bioresources in order to obtain biological material for artificial reproduction of their reserves and the implementation of aquaculture;
- recreational and sport fishing in public water bodies, which exceeds the established volumes of free catch.

Legislation may also determine other types of special use of aquatic bioresources. The latter includes, in particular, the regime of fishery operation of the water object — a set of requirements, conditions and measures for the scope of work on the reproduction of aquatic bioresources by their age and species characteristics, timing of fishing, types and quantities of gear and means of fishing, volumes of withdrawal, regulation of recreational and sport fishing, economical use of aquatic bioresources of the water object (or its part).

It is worth noting that the implementation of each type of special use does not happen without certain problems. In particular, the establishment of fisheries management regimes is a problematic issue. In accordance with the resolution of the Cabinet of Ministers of Ukraine dated October 23, 2019 № 1138, which for a period from January 1, 2020 to December 31, 2021 introduced a pilot project to introduce the procedure for artificial breeding, cultivation of aquatic bioresources and their use in special producing fishing entities and auctions bidding (hereinafter — the Temporary Order). This procedure provides for an auction to provide a regime of fishery operation. However, in 2020 no auction was held. Although at the beginning of 2020 in our country there were 398 regimes with a total area of 147.2 thousand

hectares of water glass⁹⁰. It seems that the introduction of this Temporary Order had a negative effect, and therefore there is every reason to hope that its effect will not be continued after the expiration of the experiment.

At the same time, the legislation of Ukraine provides for such activities as aquaculture. The legislator refers the latter to the field of agriculture, noting that activities in the field of aquaculture do not belong to the special use of aquatic bioresources (Part 2 of Article 5 of the Law of Ukraine “On Aquaculture”).

Aquaculture may be performed with the following purpose in accordance with activity directions:

- receiving of aquaculture commercial products and their further sale (commercial aquaculture);
- artificial breeding (reproduction), cultivation of aquatic bioresources;
- providing of recreational services.

Aquaculture can be carried out in intensive, semi-intensive and extensive forms in accordance with organisational and technological indicators.

The main directions to obtain commercial aquaculture can be pasture, pond and industrial aquaculture.

For performing pond aquaculture are applied fishery technologic reservoirs, as well as channel, beam and camped ponds, artificially separated from original aquatic objects (their parts), flooded peat quarries in terms of fish farming (fish farms, spawning and breeding, commodity, full-system farms). Pond and industrial aquaculture provides the cultivation of aquaculture

⁹⁰ Державне агентство рибного господарства України (2021). Публічний звіт голови Ганни Шишман за 2020 рік. Retrieved from https://darg.gov.ua/_publichnij_zvit_golovi_0_0_0_10694_1.html (Accessed at 20 February, 2022).

objects in conditions which are artificially created, completely or partially controlled by using semi-intensive and intensive forms of aquaculture.

For performing pasture aquaculture, fish farming aquatic objects are used (their parts), fish farming technologic reservoirs in this case are not used. Pasture aquaculture is performed by using extensive form without negative influence on environment.

For performing industrial aquaculture as well as mariculture, fishery ponds, aquariums are used, as well as parts of aquatic objects with the application of special technological devices — floating gardens, shellfish collectors, closed water supply installations, etc.

The organic trend has recently become more widespread within aquaculture. It is known that the consumption of organic products is an important component of a rational and healthy diet, which has a positive impact on ensuring the right to safe and healthy food. Organic aquaculture products are no exception.

Under EU law, organic production is seen as a holistic system of food management and production that combines best environmental and climatic practices, high levels of biodiversity, conservation of natural resources and the application of high standards of animal welfare and high standards of production that meet certain requirements for products manufactured using substances and processes of natural origin⁹¹.

In 2017, the Research Institute of Organic Agriculture (FiBL, Switzerland) and IFOAM (International Federation of Organic Agriculture Movements) for the first time published summary

⁹¹ Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) № 834/2007 Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3A0J.L_2018.50.01.0001.01.ENG (Accessed at 20 February, 2022).

information on the development of organic aquaculture in the annual report “World Organic Agriculture”. In particular, the volume of organic aquaculture production in 2015 was estimated at 400 000 tons (this is only 0.54% of global aquaculture production, excluding algae). Most organic products are produced in China — 304 000 tons (80%) and in Europe — 76 000 tons (19%), in particular in Ireland — 31 000 tons (mostly Atlantic salmon or salmon), Norway — 17 000 tons (salmon), Romania — 6 400 tons (carp, salmon), Italy — 5 500 tons (mollusks, trout, rainbow trout), Denmark — 4 100 tons (mollusks), Hungary — 3 500 tons, Spain — 2 700 tons (mollusks, sea bass, trout, rainbow trout). From other countries, the group of large producers includes Vietnam — 3 300 tons (shrimp), Cost Rica — 3 200 tons (shrimp), Lithuania — 2 700 tons (carp), Indonesia — 1 900 tons (shrimp), Ecuador — 1 800 tons (shrimp), Thailand — 1 500 tons. Significantly lower volumes of organic production in Croatia — 1 400 tons (mollusks, sea bass), in Greece — 1 100 tons (sea bass), in Germany — 1 000 tons (rainbow trout), as well as in Honduras — 600 tons (shrimp)⁹².

In total, there are about 1 000 producers of organic aquaculture facilities in the world today. Their number is constantly increasing. In particular, in China, the organic direction is considered as one of the most important in the development of aquaculture. It produces 80% of the world’s aquaculture facilities. This volume is generated by only 27% of the global number of producers — enterprises and farmers engaged in aquaculture⁹³. China’s aquaculture produces 540 species of fish, mollusks, crustaceans and other invertebrates, some species of amphibians

⁹² Лагуткина Л. Ю., Пономарёв С. В. (2018). Органическая аквакультура как перспективное направление развития рыбохозяйственной отрасли (обзор). *Сельскохозяйственная биология*. Том 53. № 2. С. 326–336.

⁹³ The state of world fisheries and aquaculture. (2016). Retrieved from <http://www.fao.org/3/a-i5555e.pdf> (Accessed at 20 February, 2022)

and aquatic reptiles, about 30 species of freshwater macrophytes, more than 50 species of microalgae and invertebrates. China remains the world leader in sturgeon caviar production. Experts predict that China's aquaculture market will grow to 103 billion USD by 2022, largely due to increased organic aquaculture production and demand for premium seafood. Organic aquaculture production in China uses 400 000 hectares of agricultural land (mainly in the provinces of Zhejiang, Hainan, Mongolia, Jiangsu, Xinjiang, Liaoning, Hunan, Anhui, Fujian, Shandong). The main production technology on China's organic aquaculture farms is growing into a multiculture. The most common objects of production are fish, shrimp, scallops, sea cucumber (trepane), crabs, mollusks, eel⁹⁴.

In Ukraine today, the production of organic aquaculture products uses common technological operations of growing aquaculture facilities. The latter must take into account the requirements established by the Laws of Ukraine "On Basic Principles and Requirements for Organic Production, Circulation and Labeling of Organic Products", "On Aquaculture", "On Fisheries, Industrial Fisheries and Protection of Aquatic Bioresources" and the Procedure (Detailed Rules) for Organic Production and circulation of organic products, approved by the Resolution of the Cabinet of Ministers of Ukraine dated October 23, 2019 № 970. Thus, it can be stated that today a regulatory framework has been formed that regulates the production and circulation of organic aquaculture products. In particular, the legislation establishes special conditions for the maintenance, feeding and treatment of aquaculture facilities in organic production.

⁹⁴ Xie B., Qin J., Yang H., Wang X., Wang Y.-H., Li T.-Y. (2013). Organic aquaculture in China: A review from a global perspective. *Aquaculture*. P. 243-253.

It should be noted that the basis for the production of organic aquaculture products are:

- appropriate planning and organization of biological processes based on ecosystems using their internal natural resources, using methods that ensure the use of living organisms and mechanical production methods, production of organic aquaculture products on the basis of rational use of aquatic bioresources, prohibition of the use of genetically modified organisms, derivatives of genetically modified organisms or products produced by genetically modified organisms, except veterinary drugs, and based on the results of risk assessment, as well as if necessary preventive measures, restrictions on the use of input products;
- minimizing the use of non-renewable resources and non-agricultural products;
- taking into account the local or regional environmental balance when choosing products for production;
- maintaining aquaculture facilities in a healthy state by stimulating natural immune protection, as well as choosing appropriate feeds and management methods;
- maintaining the biological diversity of natural aquatic ecosystems, ensuring the proper functioning of the surrounding aquatic and terrestrial ecosystems.

According to the current legislation, the production of organic aquaculture products is carried out in areas that are not subject to pollution (ingredients, components). However, in Ukraine most water objects belong to the category of polluted. Therefore, before starting organic production, aquaculture entities must invest heavily in a facility designed to produce organic aquaculture in order to improve its environmental status and bring it into line with the requirements for organic production.

Regulations also stipulate that aquaculture production facilities where organic and inorganic production is carried out must be separated. Measures for the separation of facilities where organic and inorganic production is carried out must take into account natural processes, separate water supply systems, observance of distances, flows and location of facilities in relation to it.

The choice of aquaculture species takes into account their ability to adapt to being in artificial conditions or in relevant fisheries water objects and fisheries technological reservoirs. Local species are used to breed breeds that will be better adapted to the living conditions of the farm, have good health and a well-developed digestive system. The certification body is provided with documentary evidence of the origin of aquaculture facilities entering the farm. Aquaculture species are selected for reproduction that will not cause significant damage to wild aquaculture species during care.

The maintenance of aquaculture facilities is carried out taking into account the peculiarities of cultivation technology and geographical location of the farm (aquaculture zone).

Entities engaged in the production of organic aquaculture products are prohibited from using hormones or similar substances, as well as the use of growth activators and synthetic amino acids is prohibited. At the same time, aquaculture facilities are fed with feed that meets their nutritional needs at different stages of development. The plant share of feed should come from organic production, and the share of feed obtained from aquatic bioresources — from natural fish populations that are caught in accordance with the law. Phytoplankton and zooplankton, traditional for these aquaculture objects, can be used as fodder in the process of growing organic youth of aquatic bioresources.

Unfortunately, the effective development of the organic direction of aquaculture in Ukraine is hampered by the lack of

organic feed and the lack of many producers of international organic certification. Organic aquaculture entities must use the methods of production of such products, which are defined in both the law and departmental rules, as well as comply with other imperatives, conditions, restrictions that do not comply with EU regulations.

It should be emphasized that despite the significant number of regulations on organic production, their efficiency and content need to be further improved. In particular, O. Gafurova emphasizes: “from the content of the Law of Ukraine “On basic principles and requirements for organic production, circulation and labeling of organic products” it is not clear for what purpose organic production is carried out and what is its important social significance⁹⁵”. At the same time, R. Marusenko emphasizes that this “law is aimed at forming only a market for a specific product, which does not necessarily have a positive impact on the consumer and his environment⁹⁶”.

The imperfection of the current legislation is also manifested in the fact that consumers are sold counterfeit products as organic, which distorts and discredits the domestic market of organic agricultural products. It also does not allow to bring the perpetrators to justice for such and other actions that result in property and moral damage to life and health of citizens⁹⁷.

⁹⁵ Гафурова О. В. (2021). Принципи органічного виробництва в Україні та ЄС. *Органічне виробництво: право і бізнес*: матер. наук.-практ. конф. (м. Запоріжжя, 17 червня 2021 р.). Запоріжжя : Вид. дім «Гельветика», С. 31–35.

⁹⁶ Марусенко Р. І. (2017). Виробництво органічної сільськогосподарської продукції та екологізація виробництва: співвідношення. *Правові засади ведення органічного землеробства*: зб. матер. міжнар. наук.-практ. конференції (м. Харків, 29-30 вересня 2017 р.). Харків : «Доміно». С. 161–164.

⁹⁷ Носік В. В. (2017). Право на органічне землеробство у контексті здійснення права на безпечне для життя і здоров'я довкілля в Україні. *Правові засади ведення органічного землеробства*: зб. матер. міжнар. наук.-практ. конференції (м. Харків, 29–30 вересня 2017 року). Харків : «Доміно». С. 177–181.

The state should focus its efforts on solving the problems of legal regulation of organic production of aquaculture products, taking into account world experience. At the same time, the subjects of such production must also take all actions to comply with the requirements of organic production, not to commit any illegal acts, falsifications. In this context, it is worth agreeing that “only by joint consolidated efforts of the state, communities and business self-regulatory institutions can the task of ensuring Ukraine’s active progress in domestic and foreign organic markets be implemented as efficiently as possible⁹⁸”.

Organic aquaculture is becoming more and more attractive all over the world. The investment projects within the latter include large global venture funds. These projects are taken into account when conducting research, etc. Innovative developments are supported by governments of many countries, international organizations, private investors. Ukraine is no exception. It can be stated that the sphere of production of aquaculture products is ready for the introduction of changes that will be associated with new formats of organic products. This will result in a change in the pattern of food consumption.

Prospects for the development of aquaculture are primarily related to the practical implementation of organic production technologies, the impetus for which is not only to address food safety and environmental threats, but also the growing popularity of organic food. For the effective development of the organic direction of aquaculture in Ukraine, it is necessary to overcome a number of barriers, such as significant water pollution, lack

⁹⁸ Бондар О. Г. (2021). Розвиток органічного сільськогосподарського виробництва і земельна децентралізація: питання кореляції. *Органічне виробництво: право і бізнес*: матер. наук.-практ. конф. (м. Запоріжжя, 17 червня 2021 р.). Запоріжжя: Видавничий дім «Гельветика». С. 20–24.

of organic feed and lack of international certification of organic aquaculture operators. All these factors must be taken into account and addressed in the strategy of domestic aquaculture development in order to assist domestic producers in overcoming and solving these problems as soon as possible to provide our population with organic aquaculture products and increase the competitiveness of domestic producers in the global market.

2.3. FEATURES OF CERTIFICATION OF ORGANIC PRODUCTION AND LABELING OF ORGANIC PRODUCTS

Ukraine is ranked 11th in Europe in the area of certified land for organic agriculture⁹⁹. Taking into account the fact that in Ukraine today the share of certified organic land in the total agricultural land of Ukraine is less than 1%, and it ranks 11th in Europe by area, it is possible to conclude there is the great potential for the implementation of this type of production.

Establishment of standards, control and certification of organic production are the most important elements of a system that guarantees the appropriate quality of organic products. The lack of certificates has a negative impact on the market for organic products, in particular, consumer confidence has been undermined by the presence of substandard products labeled as organic¹⁰⁰. So, the certificate must be obtained by all those involved

⁹⁹ Трофімцева О. (2017). Торгівля органічною продукцією вимагає уніфікованих та прозорих правил на всіх етапах. Retrieved from <https://www.kmu.gov.ua/ua/news/250294968> (Accessed at 20 February, 2022)

¹⁰⁰ Давиденко О. О. (2020). Правове регулювання сертифікації органічного виробництва та маркування органічної продукції. *Приватне та публічне право*. № 2. С. 53.

in the cultivation, processing and preparation for sale of organic products. That is, not only producers but also intermediaries involved in the delivery, packaging and storage of organic products.

According to the Law of Ukraine “On basic principles and requirements for organic production, circulation and labeling of organic products”, organic production and circulation of organic products in Ukraine is subject to certification (Verkhovna Rada, 2018).

This new law has radically changed the approach to the certification of organic production and circulation of organic products, taking into account the EU’s approaches to relevant activities. The key position of this law is the certification of the whole process of organic production, and not only the finished product, as it was provided in the previous legislation. The law defines in detail the grounds and procedure for certification of organic production and circulation of organic products; requirements for the content and terms of the certificate; requirements for the certification body and its functions; conditions for recognition of certificates certifying the production and circulation of organic products in accordance with legislation other than the legislation of Ukraine; requirements for the inspector for organic production and/or circulation of organic products; general principles of maintaining the Register of certification bodies.

The special nature of the above Law has limited the scope of the Law of Ukraine “On technical regulations and conformity assessment”. However, Article 45 of this Law establishes the basic principle of recognition of the results of conformity assessment carried out outside Ukraine: “The results of conformity assessment of technical regulations conducted in another state are recognized and accepted in Ukraine if conformity assessment procedures are applied in that state (even if they differ from Ukrainian procedures) ensure the same or higher level of compliance with the

requirements of the relevant technical regulations as the Ukrainian conformity assessment procedures”.

In particular, certification of organic production and/or circulation of organic products is interpreted as checking and establishing compliance of production and/or circulation of products with the requirements of legislation in the field of organic production, circulation and labeling of organic products. Such certification is carried out with an annual mandatory on-site inspection by the certification body in order to establish compliance of the production process and its circulation with the requirements of the legislation in the field of organic production, circulation and labeling of organic products. Certification bodies are those subjects of issuing certificates, which confirm compliance of the production process and its circulation with the requirements of the legislation in the field of organic production, circulation and labeling of organic products.

However, the lack of domestic standards and certification systems for organic products forces agricultural producers to use the standards developed in countries where the market for organic products is already formed and relations in this area are clearly regulated. International certification companies help agricultural companies to complete the entire process of certification of production as organic, including the development of a conversion plan, partial production, full conversion of the farm, recommendations for the production of organic crop and livestock products, processing and transportation, inspection, product certification, labeling, packaging and waste disposal.

The most authoritative certification and accreditation organization is the IFOAM, which in 1980 developed the “IFOAM Basic Standards for Organic Production and Processing”. Today, IFOAM standards and accreditation criteria are registered as “international ISO standards”, on the basis of which national standards of many countries have been developed.

There are more than 15 representatives of foreign certification companies in Ukraine, which carry out certification of agricultural production according to the rules of organic production adopted in accordance with EU Regulation № 834/2007. These companies include: ETKO, a Turkish certification company operating in accordance with the requirements of Council Regulations (EU) № 834/2007 and 889/2008 concerning organic production and labeling of organic products; Control Union Ukraine — representative office of a Dutch company, which provides certification according to the requirements of Regulation (EEC) № 2092/91 and some others.

Confirmation of compliance with the standards of a particular country is a necessary component of the product certification procedure, through which it is possible to ensure that products and their production process meet certain norms and standards of the country with which the certification body cooperates.

An example of Ukraine's successful international cooperation in the development of organic agriculture is the implementation of the project "Certification in Organic Agriculture and Development of the Organic Market in Ukraine" (2005–2011), as well as the implementation of its second stage "Development of the organic market in Ukraine" (2012–2018) with the financial support of the Swiss Confederation through the Swiss State Secretariat for Economic Affairs (SECO). The project was implemented by the Research Institute of Organic Agriculture (FIBL Switzerland) in cooperation with key players in the economic sector in Ukraine and the Ministry of Agrarian Policy and Food of Ukraine. As a result of the project, a certification company "Organic Standard" was created, which occupies a leading position in Ukraine. Thanks to the project, the organic market in Ukraine has significantly revived and the number of producers, processors and exporters of organic products has significantly increased.

It should also be noted that certain provisions of the Law of Ukraine “On basic principles and requirements for organic production, circulation and labeling of organic products” should have been to be specified by Resolutions of Cabinet of Ministers of Ukraine. The latter had to be adopted by August 2, 2019 — the date of entry into force of the Law (paragraph 4 of Section XII “Final Provisions” of the Law), so that the new mechanism of legal regulation of organic agricultural production will work in full. Unfortunately, as of June 1, 2020, the relevant acts have not been approved. As well as, the registers provided by law have not started to operate. Today, only drafts of some resolutions are available on the websites of state bodies, for example, the draft resolution “On approval of the Procedure for maintaining registers”. In addition, there are no requirements for the material and technical base and other infrastructure facilities required to perform the functions of certification of organic production and/or circulation of organic products, as required by law. Only the approval of the whole set of regulations detailing the requirements, procedure and features of certification of organic agricultural products will launch a new mechanism of legislative regulation in this area.

On June 25, 2020 the draft resolution of the Cabinet of Ministers of Ukraine “On approval of the Procedure for certification of organic production and/or circulation of organic products” was published on the website of the Cabinet of Ministers of Ukraine¹⁰¹. It is necessary to dwell on certain of its provisions that are relevant to our study.

¹⁰¹ Про затвердження Порядку сертифікації органічного виробництва та/або обігу органічної продукції : Проект постанови Кабінету Міністрів України. Retrieved from <https://www.me.gov.ua/Documents/Detail?lang=uk-UA&id=ea77d485-d139-49b4-95f5-e053c375723c&title=ProektPostanoviKabinetuMinistrivUkrainiproZatverdzen niaPoriadkuSertifikatsiiOrganichnogoVirobnitstvaTa-aboObiguOrganichnoiProduktsii> (Accessed at 20 February, 2022).

According to the draft Resolution, “The process of certification of organic production and/or circulation of organic products consists of the following stages:

- 1) conclusion of the Agreement between the person and the certification body;
- 2) determining the compliance of all stages of production and / or circulation of organic products with the requirements of the legislation by: a) conducting the first inspection and determining the start date of the transition period (if applicable); b) conducting subsequent inspections; c) monitoring and certification support of the operator’s economic activity;
- 3) adoption by the certification body of a reasoned decision on the issuance or refusal to issue a certificate”.

The person becomes an operator from the date of signing the Agreement, which is also the date of certification, and is entered in the State Register of operators engaged in production in accordance with the legislation in the field of organic production, circulation and labeling of organic products.

According to Article 1 of the Law of Ukraine “On Basic Principles and Requirements for Organic Production, Circulation and Labeling of Organic Products” operator is a legal entity or an individual entrepreneur engaged in the production and/or circulation of products following the legal requirements in the field of organic production, circulation and labelling of organic products.

It follows from the above that a person becomes a subject of legal relations in organic production from the moment of acquiring the status of “operator”. However, it should be borne in mind that organic production is defined as a certified activity. Therefore, we believe that a person becomes a full-fledged subject of legal

relations in organic production from the moment of receiving the relevant certificate¹⁰².

Nevertheless, as already mentioned, at present there is only a draft resolution of the Cabinet of Ministers of Ukraine “On approval of the Procedure for certification of organic production and/or circulation of organic products”. According to the website of the Federation of Organic Movement of Ukraine “Today, the production of organic products in the country is certified by representatives of foreign companies that operate in accordance with norms and standards applicable to EU countries, and sometimes — the United States and others. There are about twenty foreign certification bodies in Ukraine, representatives of the Netherlands, Switzerland, Italy, Germany, Hungary, Lithuania, Poland, Armenia, etc.¹⁰³”.

Today the system of certification of organic production is insufficiently regulated by the state. This is manifested both in the inadequate level of regulatory support and the absence of a special certification body. There are no adequate conditions for the development of private certification bodies. Lack of national standards for organic products stipulates Ukrainian agricultural producers are forced to use the services of foreign certification companies. That is why it is advisable to create an independent certification system for organic production. The efficiency of enterprises producing organic products and the development of all organic production depends on the level of development of its certification system.

Despite the fact that the introduction of the system of organic farming creates a number of problems, Ukrainian agricultural producers are ready and plan to partially or completely switch

¹⁰² Луц Д. М. (2020). Правове становище виробників органічної сільськогосподарської продукції за законодавством України. *Південноукраїнський правничий часопис*. № 2. С. 69.

¹⁰³ Federation of Organic Movement of Ukraine: Official web page. Retrieved from <http://www.organic.com.ua> (Accessed at 20 February, 2022).

to the production of organic products. As rightly noted in the literature, it is necessary today to accelerate the implementation of legislation, i.e. the actual formation of appropriate registers of operators, certification bodies and more¹⁰⁴.

Labeling is a key element of consumer confidence in organic products, as it is the main source of information for consumers. Labeling includes expressions, special marks, trademarks, manufacturer's names, graphics and symbols placed on any packaging, documents, leaflet, label, board or tag indicating that it is an organic product.

This procedure is regulated by Article 34 of the Law of Ukraine "On basic principles and requirements for organic production, circulation and labeling of organic products", as well as the order of the Ministry of Agrarian Policy and Food of Ukraine "On approval of the state logo for organic products" № 67 dated February 22, 2019. In 2014, the Ministry of Agrarian Policy and Food of Ukraine developed and published a draft Procedure and requirements for labeling of organic products, which had to define the requirements for labeling of organic products produced, imported and put into circulation in Ukraine¹⁰⁵. However, this project was never approved by the Government of Ukraine.

It should be noted that the Law of Ukraine "On basic principles (Strategy) of the State environmental policy of Ukraine for the period up to 2030" came into force on January 1, 2020, which regulates, in particular, the goals of sustainable land use and protection, improving environmental performance, including international certification and labeling systems, etc. However,

¹⁰⁴ Луц Д. М., Гречковський Д. В. (2021). Правове регулювання виробництва органічної сільськогосподарської продукції в Україні. *Право і суспільство*. № 5. С. 98.

¹⁰⁵ Ministry of Agrarian Policy and Food of Ukraine: Official web page. Retrieved from minagro.gov.ua/system/files/порядок%20на%20сайт.doc. (Accessed at 20 February, 2022).

there is no clear correlation with the field of organic production, which is, in our opinion, a significant shortcoming of this document.

As Ukraine does not have norms or standards that would regulate its own organic market, all domestic organic products are produced according to European standards and meet the requirements of EU regulations approved by the Council Regulation (EC) on organic production and labeling of organic products, or in accordance with NOP standards or the organic standards of any other country. General principles of labeling of organic products are described in the Law of Ukraine “On basic principles and requirements for organic production, circulation and labeling of organic products”, although most manufacturers choose the label described in the standard according to which certification was conducted.

In accordance with European standards, the logo is used when labeling organic products. This logo marks the products of those producers who comply with the requirements of EU standards on organic agriculture. The logo should be applied only to those goods that consist of at least 95 % of organic raw materials. Also, when labeling organic products, the certification body and the corresponding number of the manufacturer’s certificate must be indicated 2002¹⁰⁶.

On the territory of Ukraine, organic products may have certain types of labeling. In particular, 1) organic logo of the EU, valid in all EU countries; 2) labeling, which indicates the compliance of products with Ukrainian private standards of the Association of Organic Producers “BIOLan Ukraine”; 3) label

¹⁰⁶ International Federation of Organic Agriculture Movements. Organic Standards and Certification. Retrieved from www.ifoam.org/about_ifoam/standards/index.html (Accessed at 20 February, 2022).

indicating the compliance of products with the standards of the US National Organic Program (NOP); 4) “Eurolist” or “biolist”, which is the organic logo of the EU (came into force on July 1, 2010); 5) labeling indicating the conformity of products to the National Standards of Japan (JAS); 6) the sign of the first certification organization in Ukraine “Organic Standard”¹⁰⁷.

Labeling of organic products can be carried out depending on the percentage of organic components used in the production¹⁰⁸. If organic products contain 95 % of ingredients of organic origin, the remaining 5 % must be included in the “List of permitted substances” (this list is determined by the requirements of an organic standard). Under other conditions, the product contains ingredients of organic origin. All components must be indicated with their weight.

According to the Law of Ukraine “On Basic Principles and Requirements for Organic Production, Circulation and Labeling of Organic Products” the product may be labelled organic, if it has been produced following legal requirements in the field of organic production, circulation and labelling of organic products, and contains at least 95 % organic ingredients of agricultural origin (by weight, not including water and cooking salt), and not more than 5 % (by weight) of non-organic ingredients, included in the List of substances (ingredients, components) authorized for use in organic production, and which are allowed to be used in the maximum permissible amount. Organic production of such a product shall be confirmed by a certificate.

¹⁰⁷ The World of Organic Agriculture (2013): Key Indicators and Leading Countries / FiBL & IFOAM (2013). Retrieved from <http://www.organic-world.net/fileadmin/documents/yearbook/2013/web-fibl-ifoam-2013-25-34.pdf> (Accessed at 20 February, 2022)

¹⁰⁸ Sahota Amarjit. (2009). “The global market for organic food & drink”. The World of Organic Agriculture, Statistics and Emerging Trends.

Labelling of organic products should be subject to the written consent of the certification body whose registration code is stated on the labelling. Such consent shall be granted free of charge.

Specific provisions for labelling certain types of organic products are determined by the Procedure (detailed rules) of organic production and circulation of organic products.

Labelling with the state organic logo of products that have not been organically produced, as well as use for labelling such products any marks and inscriptions such as “organic”, “biodynamic”, “biological”, “ecological”, “natural” and/or any words that are their cognates and/or derived from them with prefixes “bio-”, “eco-”, etc. in any language shall mean a deception of buyers or customers. Such products have to be recalled under the law.

State supervision (oversight) in the field of organic production, circulation and labelling of organic products of the operators’ activities shall be exercised by the central executive authority implementing state policies in the field of safety and certain indicators of foodstuff quality, under the Law of Ukraine “On State Oversight of Compliance with the Legislation on Foodstuff, Fodder, Animal By-Products, Animal Health and Welfare”, and regarding the certification bodies’ activities it have to be exercised under the Law of Ukraine “On the Main Principles of State Supervision (Oversight) in the Area of Commercial Activity”.

According to the law, the producer of food products, including organic products, responsible for information about the food product, is obliged to ensure the availability and accuracy of information about the food product. Producers who are not responsible for such information are not allowed to handle foodstuffs for which they have information that these foodstuffs do not comply with the legislation on the provision of food information.

Food producers who violate the law are liable under the Law of Ukraine “On State Control over Compliance with the Law on

Food, Feed, Animal By-Products, Animal Health and Welfare”¹⁰⁹. This legislative act establishes that the provision of inaccurate, unreliable information about the product, the change of the market operator information about it entails the imposition of a fine in the amount prescribed by law.

The law also stipulates that food products that meet the requirements of the legislation on providing consumers with information about food products that were in force before the law came into force may be produced and/or put into circulation within three years after the law came into force. Such foods may be in circulation until the end of the expiration date.

That is, the law does not require immediate changes, it provides for a transition period of approximately 3 years, so that manufacturers do everything in accordance with the new requirements. During this time, businesses will be able to sell on the market those products that are labeled in accordance with current legislation. That there was no need to re-mark, withdraw, recall these products from the market, because it entails additional costs and, consequently, higher prices.

With the adoption of new laws in the field of regulation of organic production in 2019-2020 (such laws as “On consumer information on food”, “On state control over compliance with legislation on food, feed, animal by-products, health and animal welfare”) a new culture of informing consumers about organic products should be formed in our country. Until now, in this context, there was some basis for insufficiently responsible attitude to the consumer. Now every consumer in Ukraine

¹⁰⁹ Про державний контроль за дотриманням законодавства про харчові продукти, корми, побічні продукти тваринного походження, здоров'я та благополуччя тварин : Закон України від 13.02.2020 р. № 31. Retrieved from <https://zakon.rada.gov.ua/laws/show/2042-19#top> (Accessed at 20 February, 2022).

should feel the difference in the labeling of organic products and get concrete benefits from it. And each of its manufacturers should have more real tools and statutory regulations for the certification of their products.

2.4. MAIN DIRECTIONS OF IMPROVING STATE SUPPORT FOR ORGANIC AGRICULTURE: WORLD EXPERIENCE AND DOMESTIC PROSPECTS

The development of organic agricultural production plays an important role in the efficient use of land resources of rural areas and employment. In most foreign countries, the production of organic products has been developing for about 40 years, which is facilitated by public authorities, directly or indirectly supporting producers of such products. The experience of foreign countries shows that state support for organic production stimulates its development and increases the production of organic products.

Taking into account the growing demand for organic products, the EU legislator not only clearly regulates the procedure for conducting activities in this area, but also supports the producers of such products. Thus, measures of such support are provided by the EU Regulation № 1305/2013 dated December 17, 2013 on support for rural development by the European Agricultural Fund for Rural Development¹¹⁰ (which repealed the EU Regulation № 1698/2005) and Regulation № 1307/2013 dated December 17, 2013 on establishing rules for direct payments to farmers under

¹¹⁰ Регламент ЄС № 1305/2013 від 17.12.2013 р. щодо підтримки сільського розвитку Європейським сільськогосподарським фондом сільського розвитку і скасування Регламенту ЄС № 1698/2005. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R1305> (Accessed at 20 February, 2022).

support programs under the common agricultural policy¹¹¹ (which repealed EU Regulation № 637/2008 and EU Regulation № 73/2009). Assistance for the production of organic products is provided by a certain fund annually and compensates for all or part of the additional costs and lost income. Its size ranges from 450 to 900 EUR per hectare of agricultural land (Annex № 2 of EU Regulation № 1305/2013). Annual payments from the above-mentioned Fund may be received by farmers or a group of farmers who voluntarily undertake to switch to organic farming or to support its practices and established methods. These entities can also benefit from support in the quality system for agricultural products and food, which is provided in 2 areas, such as: (a) support for new participants in quality schemes; and (b) support for information and publicity activities by agricultural groups. Moreover, farmers who produce organic products are entitled to payment for agricultural practices that contribute to improving the climate and the environment (so-called “green payments”)¹¹².

According to the strategic goal 1 “Ensuring a stimulating and advisory agricultural policy” of the National Economic Strategy for the period up to 2030, approved by the Cabinet of Ministers of Ukraine № 179 of 03.03.2021, one of the tasks is to support organic production¹¹³. The latter consists in the implementation of programs to encourage producers of organic products, the

¹¹¹ Регламент ЄС № 1307/2013 від 17.12.2013 р. про встановлення правил прямої виплати фермерам за програмами підтримки в рамках спільної аграрної політики та скасування Регламенту ЄС № 637/2008 і Регламенту ЄС № 73/2009. Retrieved from https://zakon.rada.gov.ua/laws/show/984_023-13#Text (Accessed at 20 February, 2022).

¹¹² Гафурова О. В., Марченко С. І. (2019). Правове регулювання державної підтримки органічного сільськогосподарського виробництва за законодавством України та ЄС. *Право. Людина. Довкілля*. Вип. 10. С. 29–35.

¹¹³ Кабінет Міністрів України (2021). Про затвердження Національної економічної стратегії на період до 2030 року : Постанова від 03.03.2021 р. № 179 *Офіційний вісник України*. 2021. № 22. Ст. 1015.

implementation of measures aimed at raising their awareness of the benefits of such production.

According to Article 8 of the Law of Ukraine “On Basic Principles and Requirements for Organic Production, Circulation and Labeling of Organic Products” state support may be provided to operators within the framework of national and regional programs at the expense and within the scope of expenditures under budget programs aimed at supporting the development of agricultural producers.

State assistance to the activities of producers of organic agricultural products is provided for in the Law of Ukraine “On State Support of Agriculture of Ukraine”¹¹⁴. It is carried out by: (a) allocating budget subsidies per unit of arable land and / or one head of cattle; (b) reimbursement of up to 30 % of the cost of certification of organic production; (c) reimbursement of up to 30 % of the cost of purchasing authorized plant protection products and fertilizers, seeds, planting material and fodder. At the same time, the practical implementation of this norm would be possible only after the harmonization of other normative legal acts.

Thus, on April 7, the Government adopted a resolution expanding state support for agricultural producers in 2021 by supplementing it with six new programs. This decision was made in the framework of the Law of Ukraine on the functioning of the State Agrarian Register and improving state support for farmers. One of the areas is state support for producers of organic agricultural products¹¹⁵.

¹¹⁴ Про державну підтримку сільського господарства України : Закон України від 24.06.2004 р. № 1877-IV. *Офіційний вісник України*. 2004. № 30. Ст. 1987.

¹¹⁵ Уряд розширив державну підтримку аграріїв на 2021 рік. *Інформаційно-аналітичний портал АПК України*. Retrieved from <https://agro.me.gov.ua/ua/news/uryad-rozshiriv-derzhavnu-pidtrimku-agrariyiv-na-2021-rik> (Accessed at 20 February, 2022).

However, we must state that at the moment there is no procedure for using the funds provided in the state budget for state support of producers of organic agricultural products, which makes it impossible to obtain it.

The State Budget of Ukraine for 2021 provided 50 million UAH in subsidies for the program of financial support for producers of organic agricultural products. The funds were supposed to be distributed in 3 directions, namely: (1) partial reimbursement of the cost of certification of organic products in the amount of 30%; (2) budget subsidy for the maintenance of cattle identified and registered in accordance with the legislation in the amount of 5,000 UAH per head of cattle; (3) budget subsidy per unit of cultivated land (1 ha) — in the amount of 5,000 UAH, but not more than 100,000 UAH per operator. However, as of today, there is a lack of procedures for the distribution and use of funds in the area of “Support for producers of organic agricultural products”. Accordingly, no commissions have been set up at the regional level to form recipients of state support and no deadlines have been set for the use of funds. At the same time, many regions simply do not implement regional support programs, although they are essential for organic producers.

It should be noted that the support of organic production is possible in the framework of supporting the development of farms. In particular, in accordance with the procedure for using funds provided in the state budget to provide financial support for farm development, partial reimbursement of costs to farms related to agricultural advisory services (except new ones) in the field of organic production is provided at 90% of the cost, but not more than 10,000 UAH.

Financial support for newly established farms in the period of their formation (the first three years after the establishment) in order to obtain agricultural advisory services in the field of

organic production is provided once in the amount not exceeding 36,000 UAH. But the condition for this is the preliminary conclusion by the end of the current budget period of the contract and the act of work performed¹¹⁶.

As we can see, the procedure for using the funds in the state budget to provide financial support for the development of farms prescribes only compensation for the cost of advisory services.

Taking into account the difficulties in obtaining state support for the development of organic production, regional programs financed from local budgets can play an important role. As it is stated in the literature, the adoption of regional programs will contribute to the further development of the industry and its financial support¹¹⁷. However, the analysis of the relevant programs gives grounds to claim that only the Chernihiv region has an approved program of financial support for organic production in the Chernihiv region for 2015–2020. Its goal is to increase the share of organic products in the total gross agricultural output of the region and provide the population with food that is safe for health¹¹⁸.

Most regions envisage measures to support organic production within the framework of general programs to support the agro-

¹¹⁶ Кабінет Міністрів України (2018). Про затвердження Порядку використання коштів, передбачених у державному бюджеті для надання фінансової підтримки розвитку фермерських господарств : Постанова від 07.02.2018 р. № 106. Retrieved from <https://zakon.rada.gov.ua/laws/show/106-2018-%D0%BF#n10> (Accessed at 20 February, 2022).

¹¹⁷ Луц Д. М., Гречковський Д. В. (2020). Поняття та структура організаційно-правового механізму публічного управління в сфері виробництва органічної сілськогосподарської продукції. *Юридичний вісник*. № 6. С. 178.

¹¹⁸ Чернігівська обласна рада (2015). Про програму фінансової підтримки органічного виробництва в Чернігівській області на 2015–2020 рр. : Рішення від 29.04.2015 р. Retrieved from <https://chor.gov.ua/normativni-dokumenti/rishennya/item/2803-pro-prohramufinansovoi-pidtrymky-orhanichnoho-vyrobnytstva-v-cher> (Accessed at 20 February, 2022).

industrial complex. Under the programs, funds are directed to the following areas:

- financial support to economic entities in the field of organic production for partial reimbursement of the cost of certification of conformity of organic production;
- reimbursement of the cost of organic seed material;
- compensation in the amount of 20% of the cost of supplied organic products to children’s preschool, school, medical and social institutions of the region on public procurement, which is provided with co-financing from local budgets in the amount of at least 10% of the cost of delivered products¹¹⁹;
- providing organic enterprises with convenient and effective research support and training of specialists in organic production;
- reimbursement of expenses incurred by the business entity, which are related to the implementation of measures for agrochemical certification of agricultural land¹²⁰.

World practice shows that the pace of implementation of organic production is directly proportional to the level of state support for the agro-industrial complex. A number of scientific

¹¹⁹ Полтавська обласна рада (2017). Про Програму розвитку та підтримки аграрного комплексу Полтавщини за пріоритетними напрямками на період до 2020 року : Рішення від 12.10.2017 р. № 552. Retrieved from https://oblrada.pl.gov.ua/index.php?option=com_content&view=article&id=9397:1-plenarne-zasidannja-18-sesiyi-7-sklikannja-12102017-roku&catid=86:rishennja-sesij-oblasnoyi-radi-vii-sklikannja&Itemid=201 (Accessed at 20 February, 2022).

¹²⁰ Рівненська обласна рада (2018). Про Комплексну програму розвитку агропромислового комплексу Рівненської області на 2018–2022 роки : Рішення від 18.05.2018 р. № 937. Retrieved from <https://ror.gov.ua/rishennya-oblasnoyi-radi-7-sklikannya/937-pro-kompleksnu-programu-rozvitku-agropromislovogo-komple> (Accessed at 20 February, 2022).

studies indicate that the EU legislation (for example, compared to the US legislation) on the management of organic production has shown the highest efficiency, resulting in more efficient development of the organic sector. The comparison applies to relevant government approaches to promoting and encouraging organic agriculture: the United States relies on a free market approach and Europe offers government support for organic farmers¹²¹. The Ukrainian legislator should also adopt the positive experience of legislative settlement of the issue of state support of organic production in the European Union.

According to the opinion of Kh. Hrygorieva, who believes that it is expedient to introduce comprehensive state support for the development of organic production in Ukraine, which will include support for: (1) production, namely: (a) start-up — transition subsidy, reimbursement of certification costs and concessional lending, and (b) current — concessional taxation and soft loans; (2) infrastructure development — expanding the state order for organic products, promoting the construction of supply chains; (3) research and education: (a) funding for research in the field of organic agriculture, (b) involvement of agricultural advisory services on the terms of partial financing of activities related to the promotion of organic production, (c) informing the agricultural community about the specifics of the latter¹²².

¹²¹ Dimitri C., Oberholtzer L. (2005). Market-led versus government-facilitated growth: development of the US and EU organic agricultural sectors. Retrieved from https://www.researchgate.net/profile/Lydia-Oberholtzer/publication/43627843_Market-Led-Versus-Government-Facilitated-Growth-Development-of-the-US-and-EU-Organic-Agricultural-Sectors/links/004635274e4547c152000000/Market-Led-Versus-Government-Facilitated-Growth-Development-of-the-US-and-EU-Organic-Agricultural-Sectors.pdf (Accessed at 20 February, 2022).

¹²² Григор'єва Х. А. (2019). Державна підтримка сільського господарства України: проблеми правового забезпечення: моногр. Херсон : Вид. дім «Гельветика». 596 с.

Ukraine is at the initial stage of development of the organic sector and needs to take into account international experience in order to form its own effective mechanism for the development of organic agricultural production. To this end, it is advisable to analyze the experience of European Union member states, developed economies, as well as countries whose positions in the market of organic products are very similar to domestic, and, based on the above, propose appropriate measures and tools to promote development of the organic sector in Ukraine.

In the world 160 countries are engaged in the production of organic products. Calculations show that 78 % of all organic land in the world is concentrated in 13 countries. 32.43 % of the total area is located in Australia — the world's largest exporter of organic products, Argentina (11.35 % of the world's organic land), the United States (5.27 %), Brazil (4.78 %) and China (3.76 %), Uruguay (2.51 %), India (2.11 %). Among European countries, Spain, Italy, Germany, France and the United Kingdom play a significant role in world production of organic products. The largest European areas of organic agricultural land are in Spain (over 1.3 million hectares, 17 % of all organic farmland in the EU), Italy (more than 1 million hectares, 12.9 %), Germany (908 thousand hectares, 11.7 %) and Great Britain (726 thousand hectares, 9.4 %). This is due to the fact that these countries have large areas of agricultural land and highly developed agro-industrial economy. The greatest development of organic agriculture compared to traditional agriculture is observed in Austria (16 % of all agricultural land is organic), Sweden (10 %), the Czech Republic (8.5 %) and Latvia (8.5 %).

One of the features of the American model of governance may be of interest to Ukraine. In order to allow the development of organic agriculture as one of the types of additional income for the population, in the United States are required to be certified only those producers whose annual turnover exceeds 5 thousand

USD. They can call their products organic, but they cannot use national labels. When improving the legal framework of the Ukrainian market of organic products, it may be worth taking a similar step, which will allow domestic personal farms to earn extra income. In any case, it will be unprofitable for such manufacturers to pass official certification. However, it is likely that this additional income for the owner of a personal farm will eventually become the main, after which he will be required to carry out certification. This can be one way to attract new producers to the organic market.

The experience of Denmark, Great Britain and Italy is also interesting. In these countries, the state, as part of its social policy, supplies organic food to public institutions — primarily hospitals, kindergartens and schools. And in the UK, it happens on a private basis — in the interests of strategic business development.

Of course, the organic sector also needs government support through financial assistance, soft loans and taxation, and so on. Today in Ukraine there is an urgent need to legally define organic agriculture and take measures for its financial support. Because without state participation, this production area is either not developing at all, or is developing at a very slow pace. The establishment of a state order for the production of organic agricultural products can also be a significant support. Another option for state support is to provide interest-free loans or subsidize interest rates or to reimburse certification costs. In addition to producers of organic agricultural products, subsidies can be provided to processors and traders. According to international experience, such subsidies are usually provided in the form of investment aid for the construction of new facilities or the purchase of new processing equipment or points of sale (usually subsidies are up to 50% of the total investment). It is also very important to maintain a national database of certified producers of organic agricultural products, processors, traders, certification

bodies in order to track market trends and identify possible shortcomings.

Foreign experience also shows that regardless of the chosen model of management of the market of organic products, the level of production of organic products directly depends on state subsidies to producers and the availability of legislative support for this agricultural area. In Ukraine, producers of organic products currently operate in accordance with the legislation that applies to all agricultural producers, and have no advantages in receiving government subsidies.

As a result of Ukraine's accession to the World Trade Organization, the domestic market for organic products risks facing the expansion of foreign producers, which operate in much more favorable financial and legal conditions.

Thus, in order for the Ukrainian market of organic products not to perish as soon as it starts functioning, it needs to form and implement a national management model that will take into account both the interests of domestic market development and the interests of organic exports. Improving the legislation and structure of certification and supervisory organizations, drawing up a program of financial, informational and marketing support for domestic producers of organic products — these are the measures without which the development of the domestic market of organic products in fierce international competition is almost impossible. For Ukraine, whose structure of exports is raw materials, the formation of organic agriculture with a focus on sales in countries with developed national markets, but insufficient production base is particularly relevant.

Section 3

FEATURES OF THE LEGAL REGIME AND LEGAL FORMS OF USE OF LANDS FOR ORGANIC PRODUCTION

3.1. LEGAL FORMS OF USE OF LANDS FOR ORGANIC PRODUCTION

Today, the problem of spreading the use of land resources for organic production, which should replace traditional land uses, is relevant. Ukrainian chernozems should ensure prosperity for our country, because under conditions of excessive anthropogenic pressure, ecologically clean soils attract attention. They are the basis for the cultivation of agricultural raw materials and the production of organic and safe food. That is why domestic lands need careful treatment and proper use of intellectual potential in this area.

It should be noted that the peculiarity of the process of organic production is that it is based on systematic control, i.e. on the evaluation of production methods, and not only on the evaluation of the original product. The main idea of organic production is economic activity in harmoniously balanced interaction with nature and the least possible dependence on external input resources (fuel, synthetic fertilizers, plant protection products, etc.). The ideal model of organic production is a mixed, systemically closed (waste-free) organic farm with simultaneous production of crop and livestock products, with optimal and necessary for the needs of both areas of production, scientifically

sound combination of arable land, fields with perennial grasses and forage crops¹²³.

In science and practice, it is widely believed that the production of organic products is usually characterized by lower productivity. However, research conducted in about 160 field experiments found that the average yield of organic products was only 9% lower than in the cultivation of crops using chemicals¹²⁴. That is why, given the fact that the rapid development of organic production began not so long ago, the technology in this area has not yet reached its peak. Thus, we can conclude that in the near future the productivity of organic products may catch up with traditional production, and even surpass it. However, only if significant material and intellectual resources are invested in this industry. At the same time, the formation of a system of organic agriculture does not mean the need to abandon traditional agricultural production¹²⁵.

The main tasks of organic production are to obtain environmentally friendly products, protect the natural properties of soil, water and air, maintain soil fertility, create maximum conditions for conservation of energy and raw materials, both for current and future generations.

If an entity begins to switch to the production of “organic” products, it will not only have to give up pesticides, herbicides, etc., but first of all it will need to change its attitude to the production process itself. The producer must be motivated not only by the fact that he enters a new market in which you can

¹²³ Шарапатака Б., Урбан И. (2010). Органическое сельское хозяйство. Чешская Республика : Биоинститут, Оломоуц. С. 283.

¹²⁴ Харитонов С. А. (2011). Органическое сельское хозяйство как инновационное направление в аграрном развитии. *Аграрная Россия*. № 2. С. 54.

¹²⁵ Цилюрик Р. А. (2022). Правові аспекти розвитку органічного сільського господарства. *Приватне і публічне право*. № 1. С. 47.

make a profit. Motivation should be more fundamental and focused on caring for nature. It is necessary to put the quality of products above all. This is the main competitive advantage and content of such production. What can be meant by quality? First of all — this is the usefulness of products to them while the whole process must take place in harmony with nature. In this context, the land on which such activities will take place is important. It is the main means of organic production.

In the land and legal literature, lands for organic production are defined as agricultural land plots certified in accordance with the requirements for growing organic products, which are owned or used by economic entities, which grow (or intend to grow) and sell organic agricultural products, as well as are in a state of constant certification monitoring by the consumer through a system of certification organizations to ensure compliance of organic land quality with organic quality criteria¹²⁶.

In addition, there are proposals to amend the Land Code of Ukraine, according to which to introduce a separate section “Organic lands”. The latter is proposed to understand “defined by land and land documentation land plots within agricultural lands for the production, processing, storage of agricultural organic products using organic substances, which are characterized by high consumer quality and safety for human health and life, the environment and other material and spiritual values”¹²⁷. Holders of land rights engaged in organic production

¹²⁶ Кулинич П. Ф. (2011). Проблеми охорони і використання земель сільськогосподарського призначення в Україні: моногр. Київ : Логос. С. 540.

¹²⁷ Андрейцев В. І. (2017). Проблеми удосконалення правового режиму органічних земель сільськогосподарського призначення. *Правові засади ведення органічного землеробства*: збірн. матер. міжнар. наук.-практ. конф. (м. Харків, 29–30 вересня 2017 року). Харків : «Доміно». С. 4, 5.

must exercise their land rights within certain ecological limits, ensuring not only the preservation of soils, but also increase their fertility, increase the cycle of substances, preserve human health and biodiversity, minimize the impact of human economic activity on the environment¹²⁸.

Despite considerable attention to the land law aspect of organic production at the doctrinal level, the legislator has not yet resolved it. Unfortunately, the Law of Ukraine “On Basic Principles and Requirements for Organic Production, Circulation and Labeling of Organic Products”¹²⁹ does not define the procedure and features of the exercise of land rights by subjects of organic production. The Land Code of Ukraine also does not regulate this issue. However, based on the analysis of the provisions of the current Land Code of Ukraine, it can be concluded that the legal forms of land use for organic production can be: property rights, leases, rights of permanent use, emphyteusis, and some other titles of binding rights.

The doctrine of land law emphasizes that the efficiency of agricultural production (including organic) increases due to the exercise of private ownership of such land. It is private ownership of land that should give the landowner confidence that the product of his labor will not be taken from him, and the producer himself will have peace, desire to work constantly and diligently, to embody the results of their work in things not only material but also moral, spiritual and of another order. It is emphasized that the existence of private ownership of land together with a fair mechanism

¹²⁸ Федчишин Д. В. (2020). Реалізація та захист земельних прав в Україні: проблеми теорії та практики: моногр. Херсон : Гельветика. С. 183–184.

¹²⁹ Про основні принципи та вимоги до органічного виробництва, обігу та маркування органічної продукції : Закон України від 10.07.2018 р. № 2496-VIII. *Відомості Верховної Ради України*. 2018. № 36. Ст. 275.

for its economic and legal implementation is a factor in efficient production on land¹³⁰.

In this context, the opinion of Professor V. Nosik is correct. The scientist emphasizes that the owner of the land and the farmer must combine in one person, agricultural products produced on land must belong to its producer and can be freely sold by him in domestic and foreign markets¹³¹.

Indeed, the landowner is the first to be interested in maintaining the condition of the land plot that meets the requirements for organic production. This is due to the need in the future to use the land plot as a means of producing organic products. Therefore, the land plot will be a source of income for the business entity.

Another legal form of the use of lands for organic production is the right of permanent use. In the Land Code of Ukraine (Article 92) it is defined as the right to own and use the state-owned or municipal land plot, without setting a period. The Code also defines the range of entities that may acquire such a right by law: a) state-owned and municipal enterprises, institutions and organizations; b) public organizations of persons with disabilities of Ukraine, their enterprises (associations), institutions and organizations; c) religious organizations of Ukraine, the charters (provisions) of which are registered in the manner prescribed by the law, exclusively for the construction and maintenance of religious and other buildings necessary to ensure their activities;

¹³⁰ Статівка А. М. (2014). Правові засади сучасної аграрної реформи в Україні та роль селянина в її проведенні. *Науковий вісник Національного університету біоресурсів і природокористування України*. Вип. 197. Ч. 1. С. 53.

¹³¹ Носік В. В. (2013). Юридична природа принципів земельного права. *Актуальні проблеми юридичної науки: зб. тез міжнар. наук.-практ. конф. «Дванадцяті осінні юридичні читання»* (м. Хмельницький, 8–9 листопада 2013 р.). Хмельницький : Хмельницький ун-т упр. та права. Ч. 1. С. 148.

d) public joint-stock company of public railway transport, formed in accordance with the Law of Ukraine “On the Specifics of Establishing the Public Joint-Stock Company of Rail Transport of Public Use”; e) educational institutions regardless of the ownership form; f) co-owners of a multi-family residential building to maintain such a building and ensure the satisfaction of residential, social and domestic needs of owners (co-owners) and tenants (lessees) of apartments and non-residential premises located in the multi-family residential building; g) gas transmission system operator and transmission system operator.

The peculiarity of the right of permanent land use should be considered the lack of a predetermined period of use, which, on the one hand, gives this type of land use a sustainable nature, and on the other — increases the degree of stability of permanent land users. The essence of the right of permanent use is the ability to use land plot (including for organic production) without setting a specific term of such use. Permanent use of land for organic production is positively different from temporary use of land, because the land user is interested in maintaining the land in a condition suitable for organic production. However, considering the legal restrictions on the range of subjects of the right of permanent use of land, such a legal form of land use for organic production is rare in practice.

At the same time, for organic production can be carried out on land used on lease or on the basis of emphyteusis. They were the most common titles on which the relevant land plots were used under the moratorium on the alienation of agricultural land (paragraphs 14, 15 of Section X of the “Transitional Provisions” of the Land Code of Ukraine).

In today’s conditions of development of land relations, lease plays an important role as one of the dominant forms of ownership and efficient use of land. Currently, agricultural activities are

carried out mainly on leased land, which accounts for about 92 % of their total land use.

As it is known, the term of use of land on lease is always one of the most important issues of land lease for organic production. When concluding a land lease agreement, the parties are limited by the term of such an agreement. The term of use of land on lease is always one of the most important issues of lease of agricultural land. When concluding a land lease agreement, the parties are limited by the minimum and maximum term. The Land Code of Ukraine stipulates that the lease term of agricultural land plots for commercial agricultural production (including organic production) is at least 7 years today. At the same time, the Code stipulates that such a term may not exceed 50 years (Article 93).

Tenants engaged in organic production are interested in establishing the longest possible lease terms. Undoubtedly, longer lease terms allow tenants to invest in long-term land improvement, sustainable production, and conservation and protection of soils used for organic production. However, this is not always the case, so tenants of organic land are somewhat vulnerable, as they cannot be sure of the future. As rightly emphasizes A. Miroshnychenko, this is a significant, if not the main, reason for the relatively low level of development of organic farming in Ukraine¹³².

At the same time, in modern conditions, as evidenced by the study of land use practice, citizens and legal entities prefer to receive land ownership (for example, through privatization), rather than lease. Thus, as aptly noted by P. Kulynych, “in terms

¹³² Мірошниченко А. М. (2017). Мораторій на відчуження земельних ділянок сільськогосподарського призначення як перешкода для розвитку органічного землеробства в Україні. *Правові засади ведення органічного землеробства*: зб. матер. міжнар. наук.-практ. конф. (м. Харків, 29-30 вересня 2017 р.). Харків : «Доміно». С. 175.

of competition of land law institutions, the right to lease land is a good legal institution, and land ownership is better"¹³³.

Also noteworthy is the institute of emphyteusis introduced into the land legislation of Ukraine in 2007. Recently, it has become widespread and also is a significant competitor to the institution of lease law.

Emphyteusis as a long-term, alienable and inheritable right to use someone else's land for agricultural purposes has its significant advantages. This institute is quite relevant and has differences from lease. The importance of emphyteusis is also enhanced by the fact that with almost complete blocking of the secondary market of agricultural land, it is advisable to turn to an alternative institution that can ensure the interests of the user to obtain more reliable and stable rights than when concluding a lease agreement.

In accordance with Article 102-1 of the Land Code of Ukraine the right to use third party's land plot for agricultural purposes (emphyteusis) arises by virtue of the contract between the land plot owner and a person who has expressed a desire to use this land for such needs, in accordance with the Civil Code of Ukraine.

Until recently, in order to circumvent the moratorium on the alienation of agricultural land, the practice of concluding emphyteusis agreements on agricultural land for up to 200 years was widespread. However, with the amendment of the Land Code of Ukraine to limit the validity of land use of state, communal and private property for agricultural purposes to 50 years (Part 4 of Article 102-1 of the Land Code of Ukraine), this practice was terminated in 2018.

At the same time, it is worth emphasizing some positive characteristics of emphyteusis other than lease. First of all, it is an

¹³³ Кулинич П. Ф. (2014). Ринок сільськогосподарських земель в Україні: чи зможе він функціонувати на праві оренди. *Юридичний журнал*. № 4–5 (142–143). С. 51.

opportunity for the land user to alienate the right to use the land and contribute it to the statutory fund of a third party. In addition, under the emphyteusis agreement, the right to use the land may be transferred to another person without the prior consent of the landowner. The availability of such opportunities gives the land user the confidence that after concluding an emphyteusis agreement, the landowner actually loses the opportunity to influence the future share of the land used by the land user for organic production.

Secondly, the absence of essential conditions in the current legislation established for the emphyteusis agreement is of great importance. The parties to such an agreement must agree only on those conditions which they deem essential. This gives the parties much more freedom and allows them to agree on only those conditions that are important to them, which is especially important when exercising the right to use agricultural land for organic production.

When there was a moratorium on the alienation of agricultural land, the existence of such an institution as emphyteusis was economically attractive to land users. As a result, the practice of concluding emphyteusis contracts has become more common in modern conditions.

This urgency was due to the moratorium on the alienation of agricultural land. If the moratorium is completely lifted, it will be possible to acquire land for organic production. In this case, land users will be interested in concluding contracts of sale of land. This is due to the fact that the right of ownership is absolute, without any other conditions established by the emphyteusis agreement for the exercise of the right to use land for agricultural purposes. At the same time, public relations connected to the temporary transfer of land for use for agricultural purposes can be settled by concluding a land

lease agreement. The latter, in comparison with emphyteusis, is a simple and practical legal mechanism for the transfer of land use rights. That is why the opinion of P. Kulynych deserves support, who emphasizes that in the long run the right to lease land will completely displace archaic legal forms of transfer of rights to land (one of which is emphyteusis) from the practice of land relations regulation¹³⁴.

The exercise of rights on lands for organic production for both landowners and land users has its own characteristics. It should be noted that agricultural land, which is used for commercial agricultural production, is the basis of organic production. However, not all agricultural land can be used for such production. The condition of land for organic production must meet certain requirements. Bringing to such a state, and further its maintenance is crucial for landowners and land users in exercising their rights to the relevant land.

In order to produce organic products, the business entity (operator) must be certified in accordance with the requirements of organic production. Such requirements are determined by the Law of Ukraine “On Basic Principles and Requirements for Organic Production, Circulation and Labeling of Organic Products” (Article 14). Among them, in particular, are the following:

- separating production and storage of organic products in time or space, including keeping records of such products, from production and storage of non-organic and in-transition products;
- using technologies that meet legal requirements in the field of organic production, circulation and labelling of organic products;

¹³⁴ Кулинич П. Ф. (2004). Особисті земельні сервітути за законодавством України. *Юридичний журнал*. № 10. С. 27.

- using mainly renewable resources and own resources, including products from waste processing and byproducts of plant and animal origin, provided they meet the requirements on organic production;
- using technologies that do not harm human health, plants and animal welfare, prevent or minimize pollution of the environment;
- using the minimum necessary amount of food additives, trace elements and processing aids as determined by the legislation in the field of organic production, circulation and labelling of organic products;
- using water as an ingredient of organic products that meets the requirements of the legislation regarding drinking water;
- prohibition of mixing the same organic and non-organic ingredients in one organic product.

Also, according to the Law In the process of organic production it is prohibited to use:

- any unnatural or uncontrolled impact on the genome of agricultural plants and livestock (including poultry and insects), industrial microorganisms, by way of using for the production of genetically modified organisms and products that contain genetically modified organisms, consist of genetically modified organisms or are made of genetically modified organisms, except using medications for veterinary use, included into the List of substances (ingredients, components) authorized for use in organic production, and which are allowed to be used in the maximum permissible amount, in the cases set by this Law;
- synthetic substances, including agrochemicals, pesticides, antimicrobial substances for prevention purposes,

- hormonal drugs, growth-promoting agents and extra fodder for livestock (including poultry and insects);
- methods of electric or other stimulation for forcing that are painful for animals, as well as using tranquillizers;
 - ionising radiation;
 - hydroponic methods;
 - using artificially bred polyploid animals and plants;
 - substances and technological methods of production, the results of which may mislead the consumer about the nature (origin) of the product;
 - growth stimulators, hormones or similar substances, except using substances included into the List of substances (ingredients, components) authorized for use in organic production, and which are allowed to be used in the maximum permissible amount, in cases set by this Law.

Based on the analysis of these provisions of the legislation, it can be concluded that not all agricultural land in Ukraine was used in compliance with such requirements. Therefore, not all land plots are suitable for organic production.

Thus, it can be stated that as the most acceptable legal form of use of land for organic production should be considered the right of ownership, because the owner is interested in maintaining the state of the land, to further continue the implementation of organic production. The right of permanent use of land for organic production is not very widespread in practice. In turn, the right to lease land and emphyteusis today under the moratorium on the alienation of agricultural land are the most common legal forms of temporary use of land for organic production. It should be noted that when exercising land rights for organic production, owners and users of relevant land plots do not have the right to use

them at their own discretion. In order for the products to be truly organic, land rights holders must comply with the requirements of Ukrainian law, including the Law of Ukraine “On Basic Principles and Requirements for Organic Production, Circulation and Labeling of Organic Products” and other regulations. Based on the analysis of the provisions of these regulations, it can be argued that there are certain legal restrictions on the exercise of land rights for organic production.

3.2. EMERGENCE OF PROPERTY RIGHTS TO AGRICULTURAL LANDS

Formation of the market of agricultural land is one of the most controversial and politicized issues of the political life of Ukraine. A “land market” refers to a set of legal and economic relations that arise between the subjects of such a market in the process of market circulation of ownership of land, resulting in a change in their owners or land users. According to Ukrainian legislation, land may be owned or used. The use of land can be permanent (for state and communal property enterprises) or temporary (on a lease). Today, the bulk of agricultural land in Ukraine is processed not by owners, but by users of land plots (tenants). As stated in the literature, the land market’s “rental” arm has become the main farmland transaction channel for farmers and landowners in Ukraine¹³⁵.

¹³⁵ Nivievskiy O., Strubenhoff H. (2017). Where Will the Demand for Land Come From? Evidence from Farm Models. Retrieved from https://www.researchgate.net/publication/315807984_Where_Will_the_Demand_for_Land_Come_From_Evidence_from_Farm_Models. (Accessed at 20 February, 2022).

The legislation of most developed countries allows the sale of agricultural land. This is due to the fact that the land market is a powerful means of stimulating the growth of agricultural production. However, in order for land turnover to contribute to the concentration of land resources in the hands of the most efficient users, many countries, through the development of legislative norms, control land relations, impose restrictions on the acquisition of land into ownership. Among such restrictions, some countries set maximum and minimum sizes of acquired land in order to avoid fragmentation of farmland or the formation of estates, restriction or prohibition of foreigners' rights to purchase farmland. In general, countries such as Germany, France, or Italy, proceed from the principle that land should be provided to a potentially effective land user. In these countries there are rules and institutions that allow agricultural land to be in the hands of those who work it.

For example, the legal model of a moderately restricted agricultural land market (Germany, Italy) is characterized by rather strict requirements for buyers of land. Basically, as the buyers there can be natural persons, including foreigners, and national and/or foreign legal entities, for which the laws of each country have certain requirements. Such requirements are: (i) requirement of residency—living or providing a business activity in the country or location of a land plot in a certain administrative-territorial unit; (ii) experience in agriculture; (iii) obtaining agrarian education; (iv) the obligation not to alienate the land and keep it on its own for several years, etc. This model is characterized by restrictions on the area of land that can be farmed and which a person can acquire for ownership or use, as well as low rates of taxation of land expropriation agreements.

The legal model of a highly restricted agricultural land market (France) is characterized by the dominance of the

market of a special authority, which has the right to substitute the buyer's side in any land acquisition transaction, negotiate with the seller a reasonable price for land sale, grant permits for land acquisition transactions. Despite the formal absence of prohibitions on the subject composition or area of land that may be acquired by foreign natural or legal persons, access to the market through such an authority is severely restricted. For example, the broad range of powers of the SAFER (Sociétés d'Aménagement Foncier et d'Etablissement Rural) allows the state to distribute and redistribute land on the market in each region to support its own young farmers and national producers. The preferential taxation of transactions on alienation of land with the participation of SAFER is an important means of regulating the market, because in fact the person primarily wishes to acquire or alienate land plot involving this authority in order not to pay tax.

The legal model of a moderately restricted market with some elements of the free circulation model seems to be the most appropriate for Ukraine to implement. According to this approach, access to the land market may be restricted for foreigners and legal entities, but instead be free for Ukrainian citizens, which is inherent in the free market model. In addition, the legal model of moderately restricted circulation of such lands is characterized by: a) absence of a special authority (regulator); b) limiting the maximum area of land that can be acquired by one person; c) giving persons preferential rights to acquire land; and, d) regressive taxation of income from the alienation of agricultural land.

However, even with the launch of the land market on July 1, 2021, the need to extend the moratorium on the alienation of agricultural land remains controversial. The introduction of a moratorium on the alienation of land plots (shares) in

Ukraine has been practiced since 2001 with the adoption of the Law of Ukraine “On agreements on the alienation of land parcels (shares)” dated January 18, 2001. At that time, the law prohibited the conclusion of purchase and sale agreements, donation of land share, except for the transfer of their inheritance and in case of redemption of land for state and public needs. The moratorium should have acted to regulate the procedure for exercising the rights of citizens of land parcels (shares) by the Land Code of Ukraine. After the adoption of the Land Code of Ukraine on October 25, 2001, Section X “Transitional Provisions” prohibited the alienation of not only land parcels (shares), but also of land plots for the conduct of peasant (farmer) economy and other commodity agricultural production, i.e. the moratorium was expanded. The Laws of Ukraine from 2001 to 2020 consistently continued the moratorium.

By adopting a number of legislative acts since 2001, the state has deprived the owners of land parcels (shares) and land plots of agricultural land the right to dispose of them. The moratorium is explained differently by the government officials, in particular: it is not the sale of land, but the rules under which land turnover exists, the position of the right to sell land lease is maintained, and it is noted that there are many land turnover models and not all of them provide for land sale¹³⁶.

O. Litoshenko, studying the opinion of the supporters of the moratorium on the sale of agricultural land, submits, referring to their opinion, a number of negative socio-economic

¹³⁶ Зигрій О. (2016). Правові аспекти мораторію на продаж земель сільськогосподарського призначення. *Стратегічно-інноваційний розвиток суб'єктів економічної системи в умовах глобалізації*: зб. тез I Міжнар. науково-практ. інтернет-конф., (16–18 листоп. 2016 р.). Кременчук, КрНУ. С. 271–273.

phenomena that may arise when it is abolished¹³⁷. The main problems can be: a) the acquisition of a large number of arable land by financial-industrial groups, which can lead to the “landing” of peasants and the formation of “latifundia” of Latin American type with employees; b) peasants will be able to alienate agricultural land at a price that is substantially lower than economically justified; c) large areas of arable land can be concentrated in the property of financial institutions during the mortgage land transition into the property of the mortgagor; and, d) large tracts of agricultural land will be bought by financial speculators for the purpose of further resale at a higher price, which will lead to an increase in the value of agricultural products and thereby cause inflation.

Despite the fact that the constitutional majority of the Verkhovna Rada of Ukraine has continued the validity of the moratorium since 2001 till 2021, this issue was always discussed lively and keenly by lawyers, economists, politicians, and noted that the existence of a moratorium on alienation of agricultural land has a number of negative consequences. For example, A. Miroshnychenko repeatedly draws attention to the fact that the moratorium is a significant obstacle to the implementation of land reform, the successful exercising of which is not possible without the creation of legal preconditions for land circulation¹³⁸.

Honored Lawyer of Ukraine, Professor G. Balyuk focuses attention on the fact that “(...) almost all agricultural companies are created on the basis of lease relations, more than 80% of

¹³⁷ Літошенко О. (2014). Проблема мораторію на продаж земель сільськогосподарського призначення. *Правове регулювання економіки*. № 14. С. 284–293.

¹³⁸ Мірошниченко А. М. (2011). *Земельне право України : підручн. 2-ге видання, допов. і перероб.* К. : Алерта; ЦУЛ. 678 с.

shares are transferred to short-term use, under such conditions. There is the process of alienation of real landowners from of their holdings”¹³⁹.

Therefore, there is no consensus on the lifting of the moratorium today. It is clear that it is too difficult to find a format that can satisfy all stakeholders, and this is practically impossible. Since the best agricultural land is divided into shares (approximately 27 million hectares), the total area of private land is about 32 million hectares. Most of the agricultural land belongs to shareholders who are not able to cultivate it, so it must, first of all, go to those who want and can engage in agribusiness. Currently, there are 38.8 thousand farms in Ukraine, 72 % of which have uses land areas up to 100 hectares (for comparison, in smaller European countries their number is measured in hundreds of thousands). Today it is clear that the obstacle was the moratorium, since its existence lead to the following negative consequences:

- blocking the optimization of land ownership and land use, which are formed as a result of sharing of agricultural land, is blocked, leading to the stimulation of negative phenomena of land use — through marrows, inclusions, low lands, far lands, etc.;
- elderly peasants, their heirs residing in another locality couldn’t exercise their land ownership;
- the creditworthiness of agricultural producers was reducing due to the inability of mortgage lending; and,
- the absence of a land market significantly impeded the development of both the agrarian business and the inflow

¹³⁹ Балуєк Г. І. (2006). Дотримання вимог земельного законодавства як вимога забезпечення національної безпеки України. *Земельні відносини і просторовий розвиток в Україні*: матеріали Міжнар. наук. конф. (13–14 квітня 2006 р.). Київ. Ч. І. С. 157–160.

of investments in general, which negatively affects GDP and outflows of investments.

It should also be noted that the long-term effect of the moratorium has led to significant structural distortions in the agricultural sector. First of all, this is manifested in the formation of super-large agricultural units, “the ten largest of which have about 3 million hectares of land in their land use, receiving a monopoly rent, constantly increasing their land bank¹⁴⁰”.

In Ukraine, the legal regulation of the activities of agricultural holding structures is increasingly a subject of debate. Activities along these lines include, for example, the provisions set out in the Commercial Code (2003). In accordance with this law, the agricultural holding company (hereafter, agro-holdings) is considered as a joint-stock company that owns, uses, and disposes of the holding’s corporate stakes (shares) of two or more corporate enterprises. In other words, these are production structures created by leasing land by powerful industrial enterprises, financial and service organizations that invest in rural infrastructure development and typically cultivate more than 1,000 ha¹⁴¹.

Their composition necessarily includes subjects having agricultural land on the right of ownership or on the right of lease, which in turn leads to the monopolization of the land market. As of 2017, the land bank of agro-holdings amounted to 5.71 million hectares (Mha), representing 28 % of the land used by agricultural enterprises. At the same time, according to research conducted by

¹⁴⁰ Мартинюк М. П. (2017). Ринок земель сільськогосподарського призначення в Україні: стан та перспективи запровадження. *Економіка АПК*. № 3. С. 15-21.

¹⁴¹ Про холдингові компанії в Україні : Закон України від 15.03.2006 р. № 3528-IV. *Відомості Верховної Ради України*. 2006. № 34. Ст. 291.

the Association Ukrainian Agribusiness Club¹⁴², the land bank of agro-holding companies will grow by 2020 to 6.25 Mha.

Today Ukraine has finally abolished the moratorium on the sale of agricultural land. As a result, over the past 10 years, large agricultural companies have actively increased their land assets. The total land bank in processing by agricultural holdings from 2012 to 2017 has increased from 5.6 million hectares to 5.95 million hectares. However, these assets have been stable for the past two years. The leaders in the land bank are Kernel (550 thousand hectares), and UkrLandFarming (500 thousand hectares)¹⁴³.

Generally, agrarians benefited from a moratorium because the owner who was unable to cultivate his land on his own had to lease it. Such actions for both landowners and the state as a whole, and even more so for the development of the agrarian industry, were more likely to be a big systemic disadvantage than a plus.

Under such conditions, there is no land market, farmers and small landowners have no incentive to invest. As a consequence, a large part of the land is rented by large companies, which have a significant impact on the social structure of the village. Today land productivity is far from being in line with Ukraine's potential, so a long-term investment is needed to improve it. Foreign investors, companies with the necessary knowledge and equipment, hesitate to invest in Ukraine because of the lack of legal guarantees. A favorable legal climate is needed to improve the agricultural sector. So it is important to remember that the land issue is mostly political. The experience of foreign countries

¹⁴² Ukrainian Agribusiness Club. (2016). *Agro holdings of Ukraine*. Kyiv.

¹⁴³ Top 10 agricultural holdings of Ukraine. Retrieved from <http://agroportal.ua/publishing/infografika/top10-agrokhholdingov-ukrainyaktenty-2017-v-infografike/> (Accessed at 20 February, 2022).

offering a number of alternative methods is appropriate, in particular, by setting up pre-emptive right of purchase.

In the guidelines to Member States dated October 12, 2017 “On protecting agricultural land from threats such as excessive price speculation and concentration of property rights”, the European Commission stated that establishing by Member States of pre-emptive rights to purchase agricultural land was not in breach of European Union law¹⁴⁴. This right is available to state, tenant farmers, owners or users of adjacent land and co-owners of land.

In most cases, pre-emptive rights to purchase land are granted to the entities listed in the European Commission recommendations:

- co-owners of the land plot (Lithuania, Slovenia, Poland);
- tenants of land (Belgium, Hungary, Romania);
- owners of adjacent land plots (Italy, Latvia, Portugal);
- special institutions (France, Croatia, Latvia).

However, international experience shows that the pre-emptive rights may be given to other categories of persons, such as any farmers or agricultural entities (Slovenia); farmers who farm the land for sale (Lithuania) or the neighboring rural area (Slovakia). The above experience and recommendations of the European Commission may be useful to identify the range of entities with pre-emptive rights to purchase agricultural land in Ukraine.

Establishing pre-emptive rights to purchase land in Ukrainian legislation would facilitate the implementation of a policy of

¹⁴⁴ Sales of farmland: Commission issues guidelines to Member States. Press release. Retrieved from http://europa.eu/rapid/press-release_IP-17-3901_en.pdf (Accessed at 20 February, 2022).

support and development of farms, consolidation of land, and rational distribution and redistribution of agricultural land rights by the state, through authorized bodies. Such authorized bodies may be state bodies implementing the state's land policy, in particular, the StateGeoCadastre.

The European Court of Human Rights has also considered the problems of the land moratorium and the restriction of ownership of land of a large number of Ukrainian citizens in its judgment in *Zelenchuk and Tsytsyura v. Ukraine*¹⁴⁵ (European Court of Human Rights, May 22, 2018).

In particular, the European Court of Human Rights came to the conclusions that should be taken into account when implementing this judgment and preparing for the introduction of circulation of agricultural land in Ukraine: a) it is necessary to ensure a balance between the general interests of the state and society and the property rights of owners of agricultural land, which, in addition to the complete abolition of the prohibition of alienation of agricultural land, can be done by introducing certain means by which a court or public authority will grant an alienation permit; b) taking into account the experience of countries of the Council of Europe that have introduced market of agricultural land and provided various restrictions on it, opening up the agricultural land market in Ukraine should not deprive Ukraine of effective mechanisms for the protection of land resources, and therefore different restrictions and remedies may be imposed; c) European Court of Human Rights has not obliged Ukraine to adopt a law on the circulation of agricultural land within a specified period; and, d) if the state does not resolve

¹⁴⁵ *Zelenchuk and Tsytsyura v. Ukraine*, заява № 846/16 та 1075/16 від 22 травня 2010 р. Retrieved from <http://hudoc.echr.coe.int/eng?i=001-183128> (Accessed at 20 February, 2022).

the problem of the moratorium on the alienation of agricultural land, then European Court of Human Rights may award monetary compensation to each land owner who will turn to it for protection of property rights.

European Court of Human Rights has also noted that it does not require the creation of a market for agricultural land without restrictions, and that the state remains free to choose what measures to take. This guideline is formulated in paragraph 150 of the Judgment and it is evident from this that legislative changes as such are not binding. Therefore, the implementation of the decision can be taken by the courts. The only requirement is that these changes must be systemic in nature: it cannot be limited, for example, to allow only Mrs. Zelenchuk or only Mr. Tsytsyura to sell their land or pay them compensation from state funds.

Observance of the principle of legal certainty in order to preserve the stability of legal regulation and the predictability of legislative policy must be taken into account by the legislator both when adopting new laws and amending existing legislation. This also applies to the principles of legal regulation in the field of land relations, which should ensure that all features of the land as an object of property of the Ukrainian people and social relations that arise in connection with the citizens' realization of the land ownership are taken into account.

Articles 13 and 14 of the Constitution establish the equality of subjects of property right before the law and the state guarantee of land ownership. According to the Article 41: "everyone has the right to own, use and dispose of his property. Private property is inviolable".

In Ukraine, the range of subjects of the right of private ownership of agricultural land is legally restricted. Only citizens of Ukraine and legal entities of Ukraine can act as such subjects.

According to Article 22 of the Land Code of Ukraine agricultural land cannot be transferred to the ownership of foreigners, stateless persons, foreign legal entities and foreign states. At the same time, according to Article 81 of the Land Code of Ukraine agricultural land, inherited by foreigners, as well as stateless persons, during the year are subject to alienation. Issues concerning agricultural lands acquired by inheritance by foreign legal entities are resolved in the same way.

In March 2020, the Law of Ukraine № 552-IX “On Amendments to Certain Legislative Acts of Ukraine Concerning the Conditions of Circulation of Agricultural Land” was adopted. According to it the moratorium was canceled. That is, for the first time during the years of Ukraine’s independence, citizens have the right to directly enter into an agreement between them for the purchase and sale of agricultural land, which makes them the real owners of their land. This will allow owners of agricultural land who do not use it to strengthen their economic position. However, until January 1, 2024, only natural citizens of Ukraine will be able to buy land. From January 1, 2024, Ukrainian legal entities created and registered under the legislation of Ukraine, whose participants are only citizens of Ukraine and/or the state or territorial communities, will be allowed to purchase agricultural land. But legal entities will not be able to concentrate more than 10 thousand hectares. Banks will be able to become owners of land plots only when these plots are collected as collateral for the loan. But even after that, such plots must be alienated at auction within two years.

Foreigners will be able to buy Ukrainian lands only after a decision is made in a nationwide referendum. Even after the referendum, any foreign citizen will not be able to buy a plot of land if it is located closer than 50 km from the state border of Ukraine. As a result, foreigners and stateless persons cannot yet

acquire ownership of land for agricultural use, but there are no restrictions on the lease of these land plots.

Legal entities in which it is impossible to establish a beneficial owner or whose beneficial owners are registered in offshore zones will not be able to obtain a permit for the acquisition of agricultural land. But legal entities whose participants are citizens of the aggressor state, individuals subject to sanctions, will be prohibited from buying Ukrainian land even in the event of a referendum. Legal entities controlled by individuals and legal entities registered in countries included in the International Anti-Money Laundering Group (FATF) in the list of countries that do not cooperate in combating money laundering will not be able to acquire land.

In addition, it is established that from July 1, 2021 until June 2023 there will be restrictions on the purchase of land — no more than 100 hectares in one hand. And in 2023 the limit will be — up to 10 thousand hectares in one hand.

The new law on the land market also provided for the pre-emptive right of the tenant to purchase. Tenants who work on the land and have the right to use it no later than 2010 will be able to buy the land in installments of up to 10 years at the cost of regulatory monetary valuation of such plots and without land auctions. The buyer receives the right of ownership after the first payment. The tenant will be able to transfer the pre-emptive right to purchase the land to another person, but must notify the landowner in writing.

Payment for the purchase of plots will be made only in non-cash form. The price of agricultural land plots cannot be lower than their normative monetary value (such norm will be in force until January 1, 2030). If the buyer of the land does not have documents confirming the sources of funds or other assets for which the land is purchased, its sale will be prohibited. Only

private plots can be purchased. State and communal agricultural lands will not be sold.

On June 16, 2021, the Resolution of the Cabinet of Ministers of Ukraine № 637 approved the Procedure for verifying the compliance of the purchaser or owner of agricultural land with the requirements specified in Article 130 of the Land Code of Ukraine.

In accordance with the norms of this resolution, the verification of compliance of the acquirer of the right of ownership of agricultural land with the requirements specified in Article 130 of the Land Code of Ukraine (in particular regarding restrictions on the total area of land plots that one person has the right to acquire) is carried out by a notary. Based on the results of the purchaser's inspection, the notary will draw up a protocol of the inspection. In this case, the verification of compliance of the owner of the agricultural land with the requirements specified in Article 130 of the Land Code of Ukraine will be carried out by the body exercising state control over the use and protection of land.

It should be noted that the adoption of this law does not end everything, it will be necessary to adopt a number of additional documents from the "land package", which will also partially define the relationship between land market participants.

Therefore, the development of a civilized market for agricultural land should help land buyers to become businesses. To a large extent, this type of land turnover should ensure state regulation of the land market, which is based on the fact that the buyer of land should be someone who has the desire and ability to use it efficiently and rationally.

3.3. LAND LEASE AS A LEGAL FORM OF LAND USE IN ORGANIC PRODUCTION

The lands of Ukraine are one of the most valuable objects of civil circulation. Due to some restrictions on land circulation, in particular, the moratorium on the alienation of agricultural land, which was actual before 2021, the legal relationship of land lease as the most effective form of its use in a market economy has become particularly widespread.

According to the results of the Monitoring of Land Relations in July 2015 — June 2017, 3632.4 thousand transactions were made with agricultural land (89.5%) and 428.0 thousand — with non-agricultural land (10.5%). The structure of transactions of agricultural land was dominated by lease transactions — 76.1%; inheritance accounted for 18.3%, purchase and sale — 3.1%, land and donations — 1.6%, emphyteusis — 0.8% and only 0.05% — mortgage¹⁴⁶.

Due to the prohibition of the sale or other means of transfer of certain types of agricultural land according to P. 15 of Chapter X “Transitional Provisions” of the Land Code of Ukraine the land market in the form of sale was locked since 2002. So, the lease of agricultural land has become the main type of agreements on the acquisition of rights to land plots of this category¹⁴⁷. We can also conclude that in Ukraine there is a land market in fact in the form of lease of such land plots. In the foreign scientific literature, it

¹⁴⁶ Nizalov D., Dankevych V., Ivinska K. (2018). Monitoring of land relations in Ukraine. Statistical yearbook. September, 2018. Retrieved from <https://land.gov.ua/wp-content/uploads/2018/10/monitoring.pdf> (Accessed at 20 February, 2022).

¹⁴⁷ Шворак А., Євсюков Т. (2014). Способи та методи консолідації земель сільськогосподарського призначення. *Економіка природокористування*. № 8. С. 44–48.

is noted that the land market in the form of land lease develops faster and has more advantages than the land market in the form of purchase and sale¹⁴⁸.

In some countries, land lease is the main form of acquisition of agricultural land rights. Thus, in Belgium, tenants use 68 % of agricultural land, in France — 53 %. The popularity of land lease relations is mainly due to such economic factors as the cheapness of acquiring land rights, which makes it possible to save capital and invest it in agricultural production¹⁴⁹.

In general, in Belgium, France, Luxembourg, Great Britain, Germany farmers in expanding their economy traditionally prefer not to buy and sell land, but to lease it. Such economically successful states as the Netherlands and Israel, built their land relations on the right of lease¹⁵⁰.

In 2016 the government of Ukraine proposed to reform land relations by introducing a mechanism for selling the right to lease agricultural land.

The economic activity of modern agricultural enterprises, based on land lease, helps to increase the efficiency of agricultural production. Due to the functioning of the land lease mechanism there is an intensive development of entrepreneurial activity in the agricultural sector: market-type enterprises are formed, vertical integration processes are intensified, which together contributes to ensuring food security and increasing the export

¹⁴⁸ Prosterman R., Hanstad T. (1999). *Legal Impediments to Effective Rural Land Relations in Eastern Europe and Central Asia*. The World Bank. Washington. 325 p.

¹⁴⁹ Богач Л. В. (2014). Стан і тенденції формування земельно-орендних відносин сільськогосподарських підприємств. *Вісник Харківського нац. технічного ун-ту сільського господарства імені Петра Василенка*. Вип. 150. С. 82–90.

¹⁵⁰ Ступень М., Дума Ю. (2015). Ринок земель в Україні: основні проблеми та перспективи розвитку. *Економіка природокористування*. № 4. С. 40–41.

potential of organic products¹⁵¹. In addition, in a land market in the form of a lease, agricultural land will be distributed among the most efficient agricultural producers, and therefore they will be processed efficiently and rationally¹⁵².

In Art. 93 of the Land Code of Ukraine and the Law of Ukraine “On Land Lease” the concepts of “land lease right” and “land lease” are considered as identical. They are defined as a contract-based term paid possession and use of land required by the tenant to conduct business and other activities. We agree with the opinion proclaimed in land legal literature that such an interpretation of these concepts includes almost any paid use of land¹⁵³.

There is practically no legislative definition of the legal structure “lease of agricultural land”, but there are doctrinal definitions in the science of land law. Thus, N. Ilkiv defines this concept as a kind of contractual form of agricultural land use, the content of which is termed, paid possession and use of agricultural land within the limits established by law and the lease agreement, which provides for its transfer by the owner to the tenant with the requirements to provide mainly business and other activities using the natural properties of land taking into account its rational use¹⁵⁴. Given the specifics of the leased object,

¹⁵¹ Fedchyshyn D., Ignatenko I., Shulga M. (2018). Legal principles of organic production in Ukraine: realities and prospects. *Economics of agriculture*. Vol. 65. № 4. P. 1513–1528.

¹⁵² Юрченко Е. С. (2016). Розвиток ринку права користування землями сільськогосподарського призначення в Україні. Актуальні проблеми соціального права. *Еволюція правового регулювання аграрних, земельних та екологічних відносин*: матеріали міжнар. наук.-практ. конф. (м. Львів, 18 лист. 2016 р.) / за заг. ред. П. Д. Пилипенка. Львів. С. 150–152.

¹⁵³ Мірошниченко А. М., Ріпенко А. І. (2012). Зобов’язальні права користування земельною ділянкою. *Право України*. № 7. С. 40–49.

¹⁵⁴ Ільків Н. В. (2008). Оренда земель сільськогосподарського призначення в Україні: теоретичні та практичні аспекти: моногр. Львів : ЛьвДУВС. 296 с.

the above definition should include such a feature as the rational use of natural properties of the land.

Considering the content of the right to lease agricultural land, as a part of it P. Kulynych includes environmental aspect, which means the contract-based termed paid possession and use of agricultural land required for business and other activities, subject to restoration, preservation and systematic improvement quality of agricultural land¹⁵⁵.

The right to lease land is formalized by a special agreement. In Art. 13 of the Law of Ukraine “On Land Lease” land lease agreement is defined as a transaction under which the owner of the land plot is obliged to transfer it to the tenant land in possession and use for a period, and the tenant must use it in accordance with the terms of this agreement and land legislation.

Among the general features of the land lease agreement are:

- 1) the subject of the agreement is a land plot — an integral and main component of the environment, the main national wealth and at the same time real estate;
- 2) under the specified agreement not any needs of the lessee are satisfied, but only those which correspond to the purpose of the leased land plot;
- 3) such an agreement is bilateral, i.e. each of its parties (tenant and owner of the land plot) has certain rights and obligations to the other party;
- 4) the specified agreement belongs to the termed transactions;
- 5) a land lease agreement is a paid agreement;
- 6) under this agreement the tenant acquires the right of possession and use of the land plot;

¹⁵⁵ Кулинич П. Ф. (2013). Правове регулювання оренди сільськогосподарських земель на засадах публічно-приватного партнерства: шляхи вдосконалення. *Юридична Україна*. № 7. С. 76–81.

- 7) a land lease agreement has a written form and is subject to state registration in the manner prescribed by applicable law;
- 8) this agreement may be notarized at the request of one of the parties;
- 9) a land lease agreement serves as a legal basis for the tenant to have the right to lease land use;
- 10) a land lease agreement concluded in the prescribed form and registered is a document certifying the right to lease land use.

We can name specific features of the lease of agricultural land:

- the minimal term of the right to lease agricultural land for commercial agricultural production, farming or personal farming is 7 years, and the minimum lease term of reclaimed land — 10 years;
- the object of lease is an agricultural land plot, which can be in private, state or communal property;
- tenants have a special obligation to preserve soil fertility and to use rationally their natural properties;
- tenants acquire ownership rights to agricultural products and income from crops grown;
- there is a right to exchange agricultural land plots, which are the objects of lease agreements and are located in one land plot.

In recent years in Ukraine there have been positive changes in the deregulation of land lease relations, which contributes to the development of the land market¹⁵⁶. For example, the Law

¹⁵⁶ Юрченко Е. С. (2016). Реєстрація права оренди земель сільськогосподарського призначення нотаріусами. *Актуальні питання державотворення в Україні: матер. між нар. наук.-практич. конференції* (м. Київ, 20 трав. 2016 р.) / за заг. ред. І. С. Гриценко. С. 237–238.

of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on Simplification of Conditions for Doing Business (Deregulation)” dated February 12, 2015 reduced the list of essential terms of the lease agreement from 11 to 3, and abolished mandatory annexes to it. Currently Article 15 of the Law of Ukraine “On Land Lease” prescribes such essential conditions of the land lease agreement as the object of lease, the term of this agreement, the rent.

The object of lease agreement for agricultural land may be a land plot of the appropriate purpose. In order to identify it, it is necessary to indicate the cadastral number of the plot, its location and size. From the point of view of A. Miroshnychenko for identification of the land plot (as object of lease agreement) it is enough to specify only its cadastral number. But the mentioned Law requires to indicate in the lease agreement the location and size of the plot, and if they are not specified, there may be an unnecessary question about its validity¹⁵⁷. The cadastral number of a land plot is a unique code that allows to distinguish one land plot from another. But there is still a possibility lease only part of the land plot. After all, the law does not set the minimum possible size of land that is leased. In practice, the size of a part of such a land plot, of course, will not coincide with the size of the whole plot, which is assigned a separate cadastral number. Therefore, failure to indicate the location of part of the land plot in the lease agreement could potentially lead to litigation.

An essential condition of the land lease agreement is the rent with the obligatory fixing in it of the amount of the latter, indexation, method and conditions of calculations, terms, procedure of payment and its revision, responsibility for its

¹⁵⁷ Мірошніченко А. М. (2010). Напрями вдосконалення системи прав на земельні ділянки. *Бюлетень Міністерства юстиції України*. № 1(99). С. 102–112.

non-payment. As noted by the scientists the rent is an economic incentive that forces the owner to lease his land plot¹⁵⁸.

In Article 21 of the Law of Ukraine “On Land Lease” rent is interpreted as a payment that the tenant makes to the owner of the land plot for the use of it in accordance with the lease agreement. When a land plot of private property is leased amount, conditions and terms of payment of rent for the land plot have to be established with the consent of the parties to the agreement. If land plots of state or communal property are leased, the amount of such payment shall be prescribed in the lease agreement, and the annual amount of payment may not be less than 3 % and shall not exceed 12 % of the normative monetary value of the land plot. The exception to the maximum rent restriction is the case when the tenant is determined on a competitive basis (Article 288 of the Tax Code of Ukraine). The tax period for the payment of rent is 1 year (Article 285 of the Tax Code of Ukraine).

At the same time, in the scientific economic literature, the rent is proposed to be calculated considering the amount of profit per unit of leased land in the amount of 10–15 %¹⁵⁹.

According to the results of land auctions conducted by the territorial bodies of the State Geocadastre of Ukraine for 9 months of 2019, the amount of annual rent increased by 7.6 million UAH compared to the same period in 2018. In 2019, this figure is 153.4 million UAH, while in 2018 — 145.8 million UAH. Compared to this year, the average cost of rent for state-owned agricultural land also increased and became equal to 3.74 thousand UAH, while this figure in 2018 amounted to

¹⁵⁸ Сидор В. Д. (2009). Поняття і зміст земельних орендних правовідносин. *Часопис Київського ун-ту права*. № 1. С. 230–234.

¹⁵⁹ Дудич Г., Стойко Н. (2013). Розвиток процесу консолідації сільськогосподарських земель в Україні. *Вісник Львівського нац. аграрного ун-ту*. Серія: «Економіка АПК». № 20 (2). С. 3–9.

3.16 thousand UAH. It should be noted that the highest fee for land use is set in Poltava (44.14% of normative monetary value of the land plot), Lviv (33.63%), Chernihiv (31.26%), Sumy (31.02%) and Ivano-Frankivsk (30.42%) regions. For 9 months, the indicators of revenues to local budgets from the sale of lease rights to land plots in Vinnytsia (UAH 2.4 million — in 2018 and UAH 7.2 million — in 2019) increased significantly; Kirovohrad (UAH 8.8 million — in 2018 and UAH 16 million — in 2019) and Dnipropetrovsk (UAH 1.1 million — in 2018 and UAH 4.2 million — in 2019) regions¹⁶⁰.

Among scholars in the field of land law there are opinions that the maximum amount should be set, or even abolish the mandatory payment for land use. For example, O. Glotova considers it reasonable for public authorities to determine the maximum amount of rent in the form of a percentage of the value of the harvest per hectare of land on average in natural and agricultural areas for the current year. In her opinion, this measure will influence the formation of the value of agricultural products in the interests of the majority of the population¹⁶¹. However, the establishment of the maximum amount of rent contradicts the economic market and civil law principles of freedom of contract.

As of today, when regulating the payments in the land lease agreement, there are both the dispositive method of legal regulation of its definition (in the agreement between the tenant and the owner of the land plot — a private person) and the

¹⁶⁰ Сайти управлінь Держгеокадастру. Retrieved from <https://land.gov.ua/orendna-plata-za-peredani-u-2019-rotsi-na-zemelnykh-torhakh-dilianky-zrosla-na-76-mln-hrn-porivniano-z-analohichnym-periodom-2018-roku/> (Accessed at 20 February, 2022).

¹⁶¹ Глотова О. В. (2003). Правове регулювання правочинів щодо земельних ділянок в Україні: дис. ... канд.. юрид. наук. Ін-т держави і права ім. В.М. Корецького НАН України. Київ. 199 с.

imperative method (in the agreement between the tenant and the owner — the authorized body on behalf of the state or territorial community).

Cash and natural form of payments for land can be provided for land plots of all categories. Natural is especially appropriate in the case of lease of agricultural land. On such land plots, tenants may grow agricultural products, which may be of interest to owners of the land plots, who, being mostly residents of rural areas, use agricultural products in their own farms. However, it is difficult for agricultural enterprises to control natural rent payments. So, in order to provide more effective planning of economic activities, tenants switch to rent payments in cash form¹⁶².

Attention is also drawn to the inconsistency of the Law of Ukraine “On Land Lease” regarding the indexation of rent as an essential condition of the land lease agreement. In our view, it is impractical to indicate in paragraph 3 of Part 1 of Article 15 of the Law of Ukraine “On Land Lease” the legal norm about mandatory indexation of rent.

Firstly, the indexation of rent belongs to those conditions of the agreement, the need for which follows from other provisions of the Law. In particular, in accordance with Part 3 of Article 21 calculation of the amount of rent for land plot is carried out taking into account inflation indexes, unless otherwise provided by the lease agreement. Therefore, even if the parties do not specify in the agreement that the inflation index is taken into account when calculating the amount of rent, such a calculation is made with the mandatory indexation by virtue of Part 3 of Article 21 of the Law.

¹⁶² Беленков А. Управління земельним банком? Змінюється раніше ніж Вас змусять це зробити. Retrieved from <http://smartfarming.com.ua/news/na-chem-agrarii-teryayut-dengi-v-voprosah-upravleniya-zemelnyimi-aktivami/> (Accessed at 20 February, 2022).

Secondly, Part 2 of Article 21 of the Law is formulated by applying the dispositive method of legal regulation. According to its provisions, the parties to the lease agreement may eliminate the need for indexation. At the same time, the current version of paragraph 3 of Part 1 of Art. 15 of the Law stipulates that the condition of rent with the indication of indexation is essential. Thus, Part 2 of Article 21 of the Law dispositively offers the parties of the agreement as an alternative to take into account the inflation index, and paragraph 3 of Part 1 of Article 15 of the Law imperatively establishes the obligation to indicate in this transaction indexation in connection with inflation. It seems that there is a certain contradiction between these provisions of the Law on methods of civil law regulation.

It seems that lease agreements for agricultural land should be based on the principle “the longer the lease of land, the higher the level of rent”. It is also advisable to include gradually increasing rental payments in the lease contract of agricultural land, which will declare the serious intentions of the tenants to conduct agricultural production on the leased land. For a guaranteed business, the tenant must be sure of the long-term lease rights, otherwise he or she may not have sufficient incentives to maintain the fertility of the land and to pursue land use with a long-term. At the same time, landowners (especially owners of small land plots) will be sure in the benefits of transferring their property to a long-term lease¹⁶³.

As for the term of land lease agreements, there are currently restrictions in the current legislation on both the maximum and minimum duration of such agreements. The maximum lease term should not exceed 50 years. When leasing agricultural land plots for commercial agricultural production, farming or personal

¹⁶³ Fedchyshyn D., Ignatenko I., Leiba L. (2020). Land-use rights for agricultural land in Ukraine. *Ius Humani. Law Journal*. Vol. 9. № 1. P. 159–178.

farming, the minimum lease term is 7 years, and the minimum lease term of land plots of reclaimed lands and lands on which hydraulic reclamation is carried out to 10 years. Such a minimum lease term of land will attract investment in agriculture, construction of drainage systems, the use of extended crop rotation and reduce soil chemicals.

However, now citizens do not have the opportunity to acquire the right to lease agricultural land for a short period, for example, to house an apiary, graze cattle, harvest, and so on. Also, owners and land users are not able to transfer agricultural land for a short period for use by third parties in the event of circumstances that prevent their use for a certain period of time, which may lead to deterioration of land. Under such conditions, agreements on short-term agricultural land use are forced to be concluded, which form the so-called “gray” land market.

At one time, the scientific legal literature expressed views on the possibility of fixing the terms of lease of land depending on the timing of a particular event. P. Kulynych emphasizes that linking the terms of land lease agreements to crop rotation in general would be a justified step, as it aims to increase the responsibility of tenants of agricultural land for maintaining their productive properties. However, the scientist critically assessed the existing earlier in Article 19 of the Law, the norm of establishing the lease term taking into account the existing crop rotation system due to the impossibility of applying it in practice¹⁶⁴.

V. Churkin argues that in the sphere of lease of agricultural land mainly long-term agreements should be concluded, as stability and sustainability of land use is essential in agriculture.

¹⁶⁴ Кулинич П. Ф. (2013). Правове регулювання оренди сільськогосподарських земель на засадах публічно-приватного партнерства: шляхи вдосконалення. *Юридична Україна*. № 7. С. 76–81.

If the tenant gets the opportunity to carry out long-termed land use, then such lands will be operated more efficiently and without excessive depletion¹⁶⁵.

In the practice of lease relations, there are sometimes cases when the parties determine the expiration of the agreement due to “the beginning of reclamation” or “the moment of development of land for sowing”, meaning that over time the land plot will be demanded by its owner for a specific purpose. The mistake of the parties is that in accordance with Part 1 of Article 251 of the Civil Code of Ukraine, the term is a certain period of time, the expiration of which is associated with an action or event that has legal significance. The establishment of the term of the lease agreement with an indication of the “beginning of reclamation” or “the moment of development of the land plot for the purpose of sowing works” seems somewhat vague. After all, it can lead to controversial situations up to the recognition of contracts invalid. Reclamation means a set of agricultural and landscaping works aimed at restoring the productivity and economic value of lands disturbed by agricultural works. These measures do not have a clearly regulated time to start them. Therefore, one of the parties of the agreement may be interested in delaying the start of their implementation. Similarly, there are no clearly defined boundaries for the beginning and end of the agreement when there is used a concept “the development of land for sowing”. That is why the establishment of land lease terms in this way is considered quite risky.

Other conditions may be specified in the land lease agreement by agreement of the parties. Thus, if this agreement provides for the adoption of measures aimed at the protection and

¹⁶⁵ Чуркин В. Э. (2000). Правовое регулирование аренды земель сельскохозяйственного назначения в Российской Федерации: дис. ... канд. юрид. наук: 12.00.06. Москва. 160 с.

improvement of the leased object, an additional agreement on the reimbursement of the tenant for the costs of such activities is attached to the agreement. In addition, the lease agreement may provide for the lease of several land plots owned by the same owner (and for state and communal lands — plots governed by one state authorities or local self-government body). As we can see, other contractual terms also play a significant role in concluding a land lease agreement.

According to P. Kulynych, it is expedient to provide the agrochemical passport of the field (land plot) to be leased among the appendices to the land lease agreement. If it follows from this additional document that the leased agricultural land plot is too degraded and requires a radical improvement of the existing quality, the tenant must be obliged to enter into an agreement with the relevant state authorities on joint activities to restore, preserve and increase fertility and other soil properties of the leased land¹⁶⁶.

O. Marchenko suggests that the lease agreement for agricultural land must record the list of crops that will be grown by the lessee, and the existing at the time of the agreement the level of humus in the soil of the land¹⁶⁷.

According to L. Bogach, the parties should agree on maintaining the condition of the leased object. In the agreement:

- guarantees for the preservation of the land plot (land share) must be prescribed;
- the procedure for carrying out work to determine the quality of land before signing the land lease agreement and after its completion must be determined;

¹⁶⁶ Кулинич П. Ф. (2015). Поради з питань укладання та виконання договорів оренди земель сільськогосподарського призначення. Проект АгроІнвест. 57 с.

¹⁶⁷ Марченко О. (2008). Агроекологічні умови оренди земель сільськогосподарського призначення потребують уточнень. *Землевпорядний вісник*. № 4. С. 31–33.

- the terms of transfer of the land plot (land share) to the tenant must be clearly established;
- it must be determined who bears the risk of accidental damage of the leased object.

This agreement must also specify the amount of compensation to the landlord in case of deterioration of soil quality¹⁶⁸.

The legal relationship, to which the agreement was directed, arises after the state registration of the right to lease land. The Law of Ukraine “On Land Lease” is a special law that regulates relations related to land lease. According to Article 17 the object of the contract is considered to be transferred by its owner to the lessee from the moment of state registration of the lease right.

As of today, the improvement of legislative regulation of lease relations is in the direction of preserving the integrity of leased land by agricultural producers. In the list of essential conditions of the lease agreement the legislator left those without which it is impossible to conclude such agreement. Their reduction, of course, helps to solve the problems related to the numerous claims for the invalidation of lease agreements of agricultural land plots.

Given the stages of formation of the land market, tenants and owners of agricultural land plots must have a choice of favorable conditions for doing business or making a profit. Every landowner should be sure that after the tenant uses his land, the land will remain the same fertile and profitable for him. Every landowner should understand that there is competition in any market, which, in turn, allows you to choose the most favorable conditions for greater profits and more careful use of their leased property.

¹⁶⁸ Богач Л. В. (2013). До питання обліку оренди земель сільськогосподарського призначення. *Науковий вісник Національного університету біоресурсів і природокористування України*. Сер.: Економіка, аграрний менеджмент, бізнес. Вип. 181(3). С. 13–7.

3.4. FORMATION OF THE MARKET OF AGRICULTURAL LANDS AS A FACTOR IN THE DEVELOPMENT OF ORGANIC PRODUCTION IN UKRAINE

In recent years, research on improving the efficiency of agricultural enterprises and their competitiveness has become especially relevant. Living conditions in rural areas are deteriorating, and existing problems through the implementation of projects and programs for integrated rural development are not solved. The success of such projects and programs largely depends on how to solve the problems associated with the efficient use of land resources. Important in this context is the systematic study of the process of land consolidation.

Ukrainian economists note that today land lease is the most affordable and developed form of land consolidation, used for large and more rational land use, as well as for the development of rural areas and increase their environmental sustainability¹⁶⁹. V. Nosik's position is right, emphasizing that the solution of the issue of consolidation of agricultural lands is an objective necessity, because it will depend on the development or decline of agriculture and the social sphere of the village, as well as the economy as a whole¹⁷⁰.

Unfortunately, the current legislation of Ukraine does not contain a definition of "land consolidation". At the same time, in the scientific literature its content is interpreted differently. Land surveyors traditionally consider land consolidation as an integrated system of measures for the organization of

¹⁶⁹ Ступень М., Дудич Г. (2015). Оренда як форма консолідації земель. *Економіст*. № 7. С. 34–37.

¹⁷⁰ Носік В. В. (2006). Право власності на землю Українського народу: моногр. К. : Юрінком Інтер. 544 с.

land use (land tenure) by (a) combining fragmented land into compact arrays, (b) creating legal and institutional mechanisms to avoid land fragmentation, (c) the use of environmental protection measures to implement the necessary improvements in agro-formation, in particular, irrigation and drainage infrastructure, road network, ways to prevent erosion, as well as (d) improvement of natural landscapes based on the principles of rationality and economic efficiency¹⁷¹.

According to P. Kulynych, the consolidation of land as a legal category should be understood as regulated by the rules of land and some other branches of law activities of the subjects of land relations, aimed at forming optimal in size, other production characteristics, natural and ecological criteria of land and land tenure, which create favorable conditions for the subjects of rights to them for profitable agricultural production, preservation and increase of fertility of agricultural lands, ecological sustainability of rural areas and agricultural landscapes, as well as improving the quality of rural areas as a place of human habitation¹⁷².

A. Popov notes that the exchange of land plots, the cooperation of adjacent land plots, their lease and sale can be considered as ways to consolidate them. At the same time, the scientist states that the consolidation of agricultural land should be understood as the process of unification of land plots in order to larger land use in agriculture¹⁷³.

¹⁷¹ Ткачук А. В. (2009). Консолідація земель: ефективне використання та охорона в умовах трансформації земельних відносин: моногр. Львів : Вид-во Львівського НАУ. 249 с.

¹⁷² Кулинич П. Ф. (2011). Правові проблеми охорони і використання земель сільськогосподарського призначення в Україні: моногр. Київ : Логос. 688 с.

¹⁷³ Попов А. С. (2016). Критичний аналіз способів проведення консолідації земель сільськогосподарського призначення в Україні. Економіка. Управління. Інновації. № 2 (17). Retrieved from http://www.irbis-nbuv.gov.ua/cgi-bin/irbis_nbuv/cgiirbis_64.exe?C21COM=2&I21DBN=UJRN&P21DBN=UJRN&IMAGE_FILE_DOWNLOAD=1&Image_file_name=PDF/eui_2016_2_24.pdf (Accessed at 20 February, 2022).

Other researchers take a slightly different view on how to research ways of consolidation of land plots. For example, A. Martyn and O. Krasnolutsky identify 3 main ways to consolidate agricultural land: (a) exchange of land plots, (b) association of adjacent land plots for commercial agricultural production with the consent of the owners, (c) development of land management projects to streamline existing land tenure and land use¹⁷⁴.

Nevertheless, the above theoretical views on the legal nature of agricultural land consolidation in Ukraine give grounds to consider them as a means of legal regulation of land turnover, which directs market transactions to increasing of land holdings of agricultural producers.

In legal scientific sources it is proposed to divide the consolidation of lands into permanent and temporary¹⁷⁵. An example of permanent consolidation is the formation of a single land plot by combining several adjacent land plots, which belong to the subject on the relevant legal title permanently (on the right of ownership, the right of permanent land use, emphyteusis, etc.). Temporary consolidation is in the case of lease of land shares and land plots by agricultural producers in a single land area. This is precisely the temporary nature of land use.

In Ukraine (in contrast to Western Europe, as a result of the redistribution of agricultural land) land plots (shares) with an average area of 4 hectares were formed. Comparing with the EU, it roughly corresponds to the country with the smallest average area of agricultural land — Greece (4.3 hectares). But in France and

¹⁷⁴ Мартин А., Краснолуцький О. (2011). Консолідація земель сільсько-господарського призначення в Україні: механізм здійснення. *Землевпорядний вісник*. № 5. С. 16–21.

¹⁷⁵ Кулинич П. Ф. (2011). Правові проблеми охорони і використання земель сільськогосподарського призначення в Україні: моногр. Київ : Логос. 688 с.

Germany, the average size of farm is 24 hectares, and in the UK — over 65 hectares¹⁷⁶. Thus, the structure of the land fund in Ukraine cannot be considered satisfactory. It is clear that farms that use 4 hectares of land are much less competitive compared to farms in almost any EU country.

With this in mind, O. Kutsevych emphasizes that in order to create efficient agriculture (without which an efficient economy as a whole is impossible), Ukraine must, firstly, consolidate the fragmented land fund on the basis of ownership, and secondly — to consolidate land plots concentrated in the use of one entity. Moreover, this process should not be mechanical, but have to be accompanied by structural changes (construction of roads, reclamation systems, water supply systems, communications, creation of ecological network facilities, etc.). From the point of view of the scientist, the process of land consolidation in the Western European version inevitably awaits Ukraine¹⁷⁷.

Ensuring the consolidation of agricultural land is an important means of legal regulation of their circulation, which is carried out by approving programs (plans) of their association, which determine the grounds for land acquisition in order to consolidate land holdings of agricultural producers and eliminate existing shortcomings. Legislative regulation of land consolidation should be an integral part of the legislation of Ukraine on the market of agricultural lands.

It is advisable to fully support the position of P. Kulynych that land consolidation relations are a fundamentally new type of land

¹⁷⁶ Latifundist.com главный сайт об агробизнесе. Retrieved from <https://latifundist.com/193-efektivn-fermeri-chi-neefektivn-agroholdingi> (Accessed at 20 February, 2022).

¹⁷⁷ Куцевич О. П. (2013). Зарубіжний досвід правового забезпечення консолідації земель: можливості використання в Україні. *Науково-практичний журнал «Європейські перспективи»*. № 12. С. 114–119.

relations in Ukraine. The scientist convincingly proves that the current land legislation does not contain a sufficiently effective mechanism for land consolidation and needs to be improved. In order to ensure this process, today it is necessary to develop and adopt the Law of Ukraine “On Consolidation of Agricultural Lands”, which would comprehensively regulate the above social relations¹⁷⁸.

Taking into account the long-termed land moratorium, which includes a prohibition of disposal of ownership of agricultural land plots, in Ukraine there has been made an attempt to introduce measures to consolidate agricultural land. For this purpose, on July 22, 2018, the Law of Ukraine “On amendments to certain legislative acts of Ukraine on resolving the issue of collective land ownership, improving the rules of land use in agricultural land, preventing raids and promoting irrigation in Ukraine”¹⁷⁹ was adopted. This Law establishes a number of new rules and opportunities for tenants of agricultural lands, in particular:

- provides the possibility of exchanging rights to use land plots located in the array, by concluding sublease agreements between tenants without the consent of the owner of these land plots;
- granted the right to the land user, who has the right to use most of the land plots of the array (75 %), to use other land plots of the latter with the provision of their owners (tenants) other equivalent land in the same array by

¹⁷⁸ Кулинич П. Ф. (2007). Консолідація сільськогосподарських земель в Україні (правові проблеми). *Право України*. № 5. С. 45-50.

¹⁷⁹ Про внесення змін до деяких законодавчих актів України щодо вирішення питання колективної власності на землю, удосконалення правил землекористування у масивах земель сільськогосподарського призначення, запобігання рейдерству та стимулювання зрошення в Україні: Закон України від 10.07.2018 р. № 2498-VIII. Retrieved from <https://zakon.rada.gov.ua/laws/show/2498-19#Text> (Accessed at 20 February, 2022).

- agreement of the parties or in court by court recognition leases (subleases) concluded;
- the legal regime of land plots under field protective forest strips, as well as the conditions of their provision for use to individuals and legal entities have been established;
 - tenants of the majority of the land plots of the array have the right to receive for the use lands under field roads (with the obligatory establishment of land easements for access to other parts of it);
 - established the procedure for distribution of land remaining in the collective ownership of a collective agricultural enterprise, agricultural cooperative and agricultural joint-stock company between owners of land shares (units), which must be completed by January 1, 2025, otherwise the land will be automatically transferred to communal ownership.

It should be noted that this Law is aimed at consolidating land to solve the problem of cross-strip (the so-called “chessboard”) land plots in the land arrays, which is used for commercial agricultural production and farming¹⁸⁰.

However, the legal mechanism of this process does not depend on the moratorium and is in fact a means of legal regulation of the circulation of rights to land within the land (fields) used by agricultural producers.

In order to ensure the efficient conduct of agricultural production, agricultural entities are interested in consolidating agricultural land plots and increasing the size of arable land arrays. Enterprises exchange rights to use land plots within

¹⁸⁰ Зубрицький О. В. (2018). Зміни до земельного законодавства: що готує Верховна Рада. *Юридична газета*. № 32–33. С. 34–35.

one land plot or adjacent ones. In addition, to increase the volume of cultivated land, they enter into land relations for the acquisition of agricultural land use rights by concluding land lease agreements, sublease, emphyteusis. But quite often medium and large agricultural enterprises (such as agricultural holdings), interested in a significant increase in the amount of agricultural land they cultivate, enter into mergers and acquisitions, acquiring rights to other agricultural enterprises, as well as their real estate, means of production, and most importantly — their agricultural land plots and rights to them. Today in agribusiness there are several legally possible ways to acquire the right to agricultural land by concluding agreements on their merger and acquisition.

The first way is to conclude a land lease or emphyteusis agreements, the subject of which is the right to use land plot owned by the landlord. As for the land plots used on the right of lease, land sublease agreements are concluded, but this is possible if the land lease agreement enshrines the tenant's right to sublease the land plots (Part 1 of Article 8 of the Law of Ukraine "On land lease").

The second way of acquiring agricultural land use rights is directly related to the conclusion of a contract of sale of corporate rights of a legal entity, i.e. mergers and acquisitions. According to the transfer deed, all property and rights belonging to the legal entity being absorbed, including the rights of agricultural land use, but only to those lands to which the rights belong to the legal entity (Part 2 of Article 107 of the Civil Code of Ukraine) are transferred to the new legal entity. Land use rights for the remaining lands, which belong to the founders and / or participants (members) of the legal entity, must be acquired under separate agreements, the type of which will depend on the type of land right of the acquired entity.

The third way to increase the area of cultivated agricultural land is to conclude an agreement of purchase and sale of agricultural land use rights. The legislation does not provide for such a possibility. However, despite the gap in the regulation of the alienation of agricultural land use rights, in practice the conclusion of agreements on the sale of agricultural land use rights is one of the main types of agreements on the acquisition of rights to use large agricultural lands. We have to note that the procedure for concluding such agreements is quite long and complicated.

The fourth way to acquire rights to use agricultural land is purchase and sale of an agricultural enterprise as a single property complex. The constituent parts of a single property complex are land plots and rights, including agricultural land use rights (Part 2 of Article 191 of the Civil Code of Ukraine). Thus, the agricultural enterprise may include non-agricultural land under farm buildings, structures, yards, etc., as well as agricultural land necessary for providing economic activity. As a result of the acquisition of a single property complex, the purchaser also receives agricultural land owned by the company on the right of ownership, lease or permanent use.

In the practice of regulating land relations in the field of agricultural production in Ukraine, there are numerous cases when the landowner refuses to enter into a land lease or emphyteusis agreement with a new land user. Under such conditions, the land user and the person who intends to receive the land for use may enter into an investment agreement, a joint venture agreement or a land cultivation agreement. Also, in order to consolidate arable land owned by different persons with different legal titles, land users may enter into agreements to exchange rights to use them. However, these agreements are outside the legal field and are considered as “gray” agreements, because they form a “gray” land market. After all, the rights of agricultural land use, which

must arise under such agreements, cannot be registered in the State Register of real property rights and encumbrances, and therefore the acquirer does not legally have rights to this land (Part 2 of Article 3 of the Law of Ukraine “On state registration of real property rights and their encumbrances”).

These agreements are usually risky for agribusiness entities. In fact, they are fictitious agreements that conceal agreements for the acquisition of the right to use agricultural land. So, it is necessary to legislate the consolidation of the right of short-term agricultural land use and legal mechanisms for its acquisition and implementation. This will satisfy the interests of both entities that intend to acquire the right to agricultural land for a short period for apiaries, grazing, harvesting, consolidation of agricultural land until the possibility of acquiring the right to lease, sublease or emphyteusis for such land, and landowners and land users who for some reason cannot conduct economic activity on agricultural land during the agricultural production and economic cycle¹⁸¹.

Thus, the existence of different legal models of acquisition of agricultural land use rights should guarantee agribusiness entities the opportunity to choose the most effective way to consolidate land and increase the size of land legally, which, of course, will de-shadow the market of agricultural land use rights¹⁸².

The solution of many problems caused by land reform is possible through the consolidation of lands, which is relevant in terms of future development of the agricultural sector. Land consolidation, as one of the measures to improve the structure

¹⁸¹ Юрченко Е. С. (2017). Юридична природа права оренди та права короткострокового користування землями сільськогосподарського призначення в Україні. *Держава і право*. № 75. С. 298–305.

¹⁸² Юрченко Е. С. (2018). Сучасні тенденції розвитку ринку права сільськогосподарського землекористування в Україні. *Teorie și practică*. № 6 (34). С. 166–169.

of land tenure. It can also be considered as a new and almost unfinished concept for Ukraine.

However, due to the large fragmentation of land use and the growing importance of rural areas, this process is becoming an increasingly important element of strategies and projects aimed at improving the quality of life in rural areas through more efficient management in a globalized international economy and significant food shortages.

Having made an in-depth analysis of the peculiarities of the development of the market of agricultural land use rights in Ukraine and alternative ways of acquiring this right, we can conclude that the availability of different legal models of this procedure will provide agribusiness entities the opportunity to choose the most acceptable one. Moreover, it will also contribute to the de-shadowing of the market for agricultural land use rights. In order to ensure abovementioned, we propose to supplement the provisions of land legislation with rules: (a) on the purchase and sale of agricultural land use rights, (b) the mandatory right of short-term agricultural land use and (c) the exchange of land use rights.

3.5. RATIONAL USE AND PROTECTION OF AGRICULTURAL LAND: ENVIRONMENTAL AND LEGAL ISSUES

Land is the basis of human activity and life, the natural basis of production and creation of material goods of society. It is an invaluable reference wealth and the basis of sustainable development of any country. The most valuable component of the earth and the most important resource of mankind is the soil.

Agricultural land as an object of legal relations is a unique natural resource that is depleted by improper use and requires significant costs to restore their fertility. That is why the legal provision of the proper use of agricultural land should take into account the connection of such lands with private and public interests and ensure their balance. In any legal system in almost all states, the rights of individuals who use agricultural land are limited to the existing needs of society for this category of land. In such cases, the public interest is to ensure food security of the country, sustainable development of the agricultural sector, preservation of a favorable natural environment, the possibility of growing environmentally friendly and safe products.

In Ukraine, the solution of these problems became relevant as a result of agrarian and land reform of the 90s, namely the introduction of the institution of private ownership of land, the possibility of involving agricultural land in civil circulation. Thus, after the elimination of the monopoly of state ownership of land and the transition from a planned economy to market relations in agricultural land use there were a number of legal problems that required understanding and development of measures to solve them.

First of all, we are talking about numerous facts of acquisition of agricultural land without the purpose of further use, but in order to resale it for other purposes. Such lands are not cultivated, they are not subject to erosion and other soil protection measures. As a result, the quality of this invaluable natural resource is deteriorating. Another manifestation of improper use of agricultural land is their irrational use — as a result of violation of the rules of agricultural technology there is a decrease in soil fertility and deterioration of the ecological condition of lands¹⁸³.

¹⁸³ Fedchyshyn D., Ignatenko I., Shulga M., Danilik D. (2022). Legal problems of rational use and protection of agricultural land in Ukraine. *Justicia*. Vol. 27. № 41. P. 44.

It should be noted that the land market was introduced in order to ensure a more rational use of land, as land users who are unable to rationally and economically use the land, were able to profitably cede it to those who have the ability to organize such use. However, to date, appropriate legal mechanisms have not been properly developed.

It is worth emphasizing that on the basis of market land relations, mainly specialized, export-oriented commodity agricultural production is developing today. Modern Ukrainian agribusiness is dynamically adapting to the needs of national and world agricultural markets and abandoning non-profit crops and livestock industries. In order to grow high yields, agricultural lands are depleted, as a result of which the soil cover is destroyed and the ecological stability of agro-landscapes is reduced.

Extensive agricultural production causes significant damage to the productive potential of the land fund and significantly reduces the resilience of land to degradation processes. Soil degradation has recently become one of the most important industrial and environmental problems, without the solution of which it will be impossible to ensure high ecological and economic efficiency of land use by future generations. Solving the problem of preserving and restoring the fertility of agricultural lands in the process of economic activity is becoming one of the most important tasks in achieving global food security.

Considering the predatory attitude to land use, there is an urgent need to develop new and implement existing soil protection systems for agriculture to improve the condition of agricultural landscapes, protect soils from degradation and increase their fertility. Such systems should be based on environmental principles and adapted to specific natural and socio-economic conditions.

Today, agriculture largely determines the current state of use of agricultural land. At the same time, the peculiarities of their

use determine the level of agricultural development. Among all categories of land by purpose, agricultural lands have a special status.

Article 22 of the Land Code of Ukraine recognizes as agricultural lands those ones provided for agricultural production, agricultural research and scientific activities, location of relevant production infrastructure, including infrastructure of wholesale markets for agricultural products, or intended for these purposes. Agricultural lands include: (a) farmlands (arable land, perennial plantations, hayfields, pastures and fallow lands); (b) non-agricultural lands (economic paths and runs, protective forest belts and other protective plantings, except those classified as lands of other categories, lands under farm buildings and yards, lands under the infrastructure of wholesale markets for agricultural products, lands of temporary conservation, etc.).

The best and most valuable of them are farmlands, on which, in fact, agricultural products are grown. Therefore, the legislation establishes a special regime for their provision, use and withdrawal. The rest of the agricultural lands are ancillary to farmlands.

The total land fund of Ukraine is about 603.5 thousand square km, of which 70.8 % are agricultural lands, mainly farmlands, which occupy almost 68.80 % of the territory of Ukraine (including: arable lands — 53.9 %, perennial plantations — 1.5 %, hayfields — 4 % and pastures — 9.0 %). By structure of ownership of agricultural lands: 31 million hectares — private property, 8.7 million hectares — state property, 1.7 million hectares — communal property. According to the structure of agricultural land use: 56 % are leased from private owners, 29 % are cultivated by owners themselves, 8 % are leased from the state, 7 % are not cultivated. Ukraine accounts for almost a third of black soil reserves and 27 % of arable land in Europe. About 90 % of the territory of Ukraine is involved in the

use of the population, the rest (about 5 million hectares) is in its natural state¹⁸⁴.

Ukraine is one of the countries with a high level of land supply: 64 hectares of arable land per 100 people (for comparison — in the European Union — 24 hectares, including in France — 32 hectares, in Germany — 14 hectares)¹⁸⁵. We should also note that these countries not only meet their food needs in their own products, they are important exporters, including to Ukraine.

Land protection is an important condition for ensuring their long-termed and effective use. According to V. Andreytsev, land protection is a set of economic, soil protection, scientific and technical, organizational and state-legal measures aimed at increasing land productivity, restoring and increasing their fertility, carried out for the purpose of rational land use, ensuring its preservation due to compliance with the requirements of land legislation and obligations under land law agreements¹⁸⁶.

In the land legislation of Ukraine, along with the terms “land use” and “land protection”, the term “rational land use” is widely used. V. Nosik understands the rational use of land as a scientifically sound, comprehensive, most appropriate use of land for its intended purpose with mandatory compliance with scientific and technical systems of agriculture, which ensures the preservation and improvement of soil fertility while complying with environmental rules of natural resources and improving the

¹⁸⁴ Land Directory of Ukraine 2020. Retrieved from <https://agropolit.com/spetsproekty/705-zemelnyy-dovidnik-ukrayini--baza-danih-pro-zemelnyy-fond-krayini> (Accessed at 20 February, 2022).

¹⁸⁵ Таратула Р. Б. (2014). Проблеми формування та функціонування земельного ринку. *Вісник Львівського національного аграрного університету*. № 21(1). С. 416–421.

¹⁸⁶ Андрейцев В. І. *Екологічне право: Особлива частина: підруч.* Київ : Істина, 2001. С. 59.

environment for next generations¹⁸⁷. This definition accurately reflects the intended purpose of the land as one of the main conditions for its rational use.

Based on the above, it is appropriate to emphasize that the concepts of “land protection” and “rational use of land” should not be identified and distinguished. After all, they are in a characteristic relationship, which is that the rational use of land is one of the forms of their protection.

In recent years, there has been a steady trend in Ukraine to deteriorate the quality of land due to their degradation, as well as to reduce the area of agricultural land, including arable land. At the same time, the negative phenomena that occur with land not only reduce the land resource potential of the country or its individual regions, but also adversely affect the quality and quantity of other natural resources: water, forest, flora and fauna, etc. This necessitates the formation of restrictions on land use that would ensure an economically efficient and ecologically safe use.

Currently, the main reasons for the deterioration of the quality of land, especially agricultural, should be called:

- ignoring scientifically sound methods of agriculture, including non-compliance with tillage technologies for crops;
- predatory attitude of land users to land, the purpose of which is to make a profit in the early stages of the organization of agricultural production in the cultivation of mainly monocultures, which have the maximum selling market price;
- imperfection of the mechanism of state control over the quality of land;

¹⁸⁷ Носік В. В. (2006). Право власності на землю Українського народу: моногр. Київ : Юрінком Інтер. 544 с.

- lack of economic incentives for landowners and land users to preserve soil fertility, etc.

The most serious factor in reducing land productivity is their degradation. Among the developed lands, agricultural ones are most often subject to degradation, which is caused by deep, sometimes irreversible transformations of vegetation and soil cover in the process of agricultural production.

The causes of soil degradation in Ukraine are: (a) erosion, acidification and salinization of soils due to mechanical destruction by water and wind, improper implementation of reclamation measures; (b) desertification, aridization due to drying and compaction; (c) pollution by substances of anthropogenic origin; (d) direct losses due to diversion to urban buildings, roads, airfields, etc.; (e) soil depletion (dehumidification) due to irrational and inefficient agriculture.

The solution to the problem of soil protection from degradation processes should be provided by a set of measures:

- optimization of the structure of agricultural landscapes and land use systems;
- introduction of a system of anti-erosion measures of permanent action (water-regulating earth hydraulic structures on arable lands, soil-protective agrotechnologies, etc.) by ecologically justified organization of water protection, reserve and recreational zones;
- conservation of degraded and unproductive lands with their subsequent siltation or afforestation¹⁸⁸.

As already mentioned, one of the main reasons for the deterioration of agronomic properties of the soil is erosion. Soil

¹⁸⁸ Тараріко О. Г. (2013). Формування екологічно стійких агроландшафтів в умовах змін клімату. *Агроекологічний журнал*. № 4. С. 13–20.

erosion is the most common and most dangerous phenomenon of land degradation. Erosion accounts for 83 % of the total area of degraded soils. It causes great economic and environmental damage. As a result of soil destruction, its fertility is lost, crops are damaged or die, fertilizers are taken out of the field, the environment is polluted, the ecological balance is disturbed and natural systems are degraded. Therefore, the protection of soils from erosion is the most important problem, without the solution of which it is impossible to achieve sustainable development of agriculture and society.

Factors, which influence the occurrence and intensity of erosion processes are divided into two groups: a) natural (occurring under the influence of precipitation or wind) and b) anthropogenic (related to human economic activity). In Ukraine, for agricultural lands, the intensity of soil erosion averages more than 10 t/ha per year, reaching in some areas up to 50–100 t/ha per year and even more¹⁸⁹.

Today, 18 % of Ukraine's land is affected by erosion, and this figure is growing every year (on average by 100 thousand hectares), which causes soil degradation, thereby reducing the efficiency of land use. According to the State Geocadastr of Ukraine, the total area of agricultural lands that are adversely affected by water and wind erosion is 30.7 %, deflation-hazardous soils occupy 19.1 % of their total area.

Measures to protect soils from erosion are hampered by land reform, which has divided arable land into shares. The latter don't have boundaries in nature, so it's impossible legally to create new forest belts and embankments, and provide other measures. In addition, modern scientific advances are hardly

¹⁸⁹ Чорний С. Г. (2003). Методика оцінки ступеня змитості та величини ерозійних втрат степових ґрунтів. *Вісник аграрної науки*. № 3. С. 53–56.

used in production. The issue of establishing a single and self-governing state Soil Protection Service (or similar body) in the country is not sufficiently resolved. All these problems need to be solved immediately, because delays in their solution lead to inevitable losses of soil fertility, economic losses and deterioration of the environmental situation in Ukraine¹⁹⁰.

In order to overcome the negative degradation processes that occur with the land resources of Ukraine, it is also necessary to apply restrictions on land use. Restrictions on land use are special conditions for the use of land plots and the regime of economic activity on them, established by law or authorized bodies in the manner prescribed by law, compliance with which prevents damage to the land resource fund in whose interests the restriction is established¹⁹¹. Today there is a need to establish so-called soil protection restrictions for agricultural lands.

Soil protection restrictions in land use are a system of scientifically based conditions and requirements that limit the landowner or land user in land use, which ensure the preservation and reproduction of fertility and productivity of soils, their protection from degradation processes, as well as ecological sustainability of agricultural landscapes. The main purpose of soil protection restrictions is the regulation of certain forms of agriculture, compliance with limits on the scale and intensity of economic activity to prevent negative changes in soil quality, their ecological condition, as well as ensuring rational and environmentally friendly land use, increasing yields and improving its quality.

¹⁹⁰ Fedchyshyn D., Ignatenko I., Shulga M., Danilik D. (2022). Legal problems of rational use and protection of agricultural land in Ukraine. *Justicia*. Vol. 27. № 41. P. 47.

¹⁹¹ Каракаш И. И. (2004). *Право собственности на землю и право землепользования в Украине: научно-практич. пособие*. Київ : Истина. 216 с.

Conceptual provisions on soil protection restrictions are insufficiently detailed in the current norms of land legislation of Ukraine. Thus, according to the Law of Ukraine “On Land Protection” on agricultural lands it is possible to restrict activities on: intensive land use; plowing of hayfields, pastures; cultivation of certain agricultural crops, application of separate technologies of their cultivation or carrying out of separate agrotechnical operations; use of degraded, unproductive and polluted land plots. This law also regulates the responsibilities of landowners and land users, including tenants, who must implement soil protection measures to prevent the deterioration of land quality and the environment in general¹⁹².

Although the legislation of Ukraine imposes on the landowner and land user responsibilities for efficient use of land in accordance with the intended purpose based on a set of measures for land protection, but the mechanism for regulating land relations and solving environmental and economic problems in organizing rational use of land resources in land sphere is not clearly formed.

It should also be noted that in the process of land reform there is a problem that the owners do not use the land independently, and tenants are interested only in short-term business projects, which seek to maximize profits this year without implementing any soil protection measures. The consequence of this is an increase in the degradation of land, mainly for agricultural purposes, which in turn leads to their withdrawal from arable land.

One of the steps to solve this problem is the introduction of additional economic instruments to regulate land relations in the form of financial penalties, so-called sanctions, for those whose

¹⁹² Про оцінку земель : Закон України від 11.12.2003 р. № 1378-IV. Retrieved from <http://zakon1.rada.gov.ua/laws/show/1378-15> (Accessed at 20 February, 2022).

activities or inactions have caused or are causing land degradation, which loses soil fertility. After all, for example, if a certain land use for several decades will constantly degrade the land, then the time will come when there will be nothing to protect. Therefore, in order to stop land degradation and forcibly impose a high agricultural crop on landowners, financial sanctions should be applied, the amount of which should be determined by the method of calculating public losses from land degradation. But today in Ukraine there is no legally established and standardized methodology for determining losses from land degradation. Although in 2007 the Cabinet of Ministers of Ukraine adopted a Resolution “On approval of the Methodology for determining the amount of damage caused by unauthorized occupation of land, use of land for other purposes, removal of soil cover (fertile soil layer) without special permission”, but it does not make it possible to assess the degradation of land, because it is about the complete destruction of the fertile soil layer, rather than the deterioration of its properties¹⁹³. Earlier, in 2002, the Cabinet of Ministers of Ukraine adopted a Resolution “On approval of the Methodology for assessing losses from the consequences of emergencies of man-made and natural nature”, but it sets standards for losses only from the consequences of man-made and natural emergencies, not from economic activities of landowners and land users¹⁹⁴.

¹⁹³ Кабінет Міністрів України (2007). Про затвердження Методики визначення розміру шкоди, заподіяної внаслідок самовільного зайняття земельних ділянок, використання земельних ділянок не за цільовим призначенням, зняття ґрунтового покриву (родючого шару ґрунту) без спеціального дозволу : Постанова від 25.07.2007 р. № 963. Retrieved from <http://zakon3.rada.gov.ua/laws/show/963-2007-п> (Accessed at 20 February, 2022).

¹⁹⁴ Кабінет Міністрів України (2002). Про затвердження Методики оцінки збитків від наслідків надзвичайних ситуацій техногенного і природного характеру : Постанова від 15.02.2002 р. № 175. Retrieved from <http://zakon1.rada.gov.ua/laws/show/175-2002-п> (Accessed at 20 February, 2022).

Moreover, economic liability for violation of established regimes for protection and use of land should include:

- imposition of penalties for the use of land not for its intended purpose, reducing soil fertility, erosion development, the violation of land legislation;
- compensation for losses and lost profits to owners, land users and tenants;
- penalty for late payment for land.

Examining the foreign experience of imposing financial sanctions on those landowners whose activities lead to the deterioration of land quality and determining the amount of damage caused by them, it should be noted that in Europe there are no such financial sanctions for land degradation, as it is considered a landowner's business. It is also worth noting that in European countries there is no control over land fertility, because everything there is mostly subsidized. That is, if the state wants landowners to use the land in a certain way, then it stimulates them financially. This indicates that a certain culture of agriculture has developed in Europe a long time ago, because the farmer there knows that he will manage this land for ten years, so he does not want to worsen its quality.

The optimization of the structure of agricultural land use should begin with the conservation of degraded, unproductive and polluted lands. Relevant legal requirements are concentrated in chapter 28 of the Land Code of Ukraine. The emergence of the institute of land conservation is due to the significant spread of soils erosion processes, their physical and chemical depletion. In order to ensure the development of legislative provisions on this procedure, the Procedure for Land Conservation has been developed. According to this act, when classifying agricultural lands as degraded, unproductive, man-made contaminated or

radiation-hazardous, their conservation is carried out¹⁹⁵. Of course, the conservation of lands, as an agro-technical and organizational-legal measure for their protection and reproduction, will help reduce the area of agricultural land of intensive use, as well as increase soil fertility.

However, the obstacle to the implementation of the conservation procedure is the excessive fragmentation of agricultural land. The fact is that during the total privatization of the lands of collective agricultural enterprises, only agricultural lands were subject to share — arable land, perennial plantations, hayfields and pastures. At the same time, non-agricultural lands (previously transferred to collective ownership) were not involved in the distribution process. Collectively owned land is now divided between millions of individual owners, each of whom is independent in deciding whether to use the land owned by him. The best agricultural lands are distributed (approximately 27 million hectares), the total area of private lands is about 32 million hectares¹⁹⁶. According to the Procedure for land conservation, such land conservation is carried out at the initiative of their owners, land users, including tenants. At the same time, the law does not stipulate their obligation to initiate such a procedure. However, it is important to keep in mind that not everyone is aware of the need to temporarily decommission degraded and depleted land in order to further generate more profits without harming the environment.

Landowners should be offered conditions to optimize land use that would benefit them from temporarily conserving their land. To do this, it is necessary:

¹⁹⁵ Міністерство аграрної політики України (2013). Про затвердження Порядку консервації земель : Наказ від 26.04.2013 р. № 283. Retrieved from <https://zakon.rada.gov.ua/laws/show/z0810-13#Text> (Accessed at 20 February, 2022).

¹⁹⁶ Fedchyshyn D., Ignatenko I., Leiba L. (2020). Land-use rights for agricultural land in Ukraine. *Ius Humani. Law Journal*. Vol. 9. № 1. P. 159–178.

- to prepare a detailed mechanism for legal support for the withdrawal from agricultural use of land subject to this procedure;
- to clarify the procedure for financing this measure;
- to clarify the rights and obligations of land owners and users;
- to determine the conditions and mechanism of compensation for losses to land owners for restricting their land rights.

However, only the conservation of agricultural land, as a separate measure, cannot ensure the effectiveness of public policy in the field of legal support for improvement of soil fertility. To achieve this goal, there is a need to apply a complex set of measures, which are combined into a scientifically sound system of agriculture.

Correctly calculated system of agriculture should combine various organizational and economic, technological and technical measures and methods, namely: optimization of land use, reduction of plowing of agricultural lands, observance of crop rotation rules, correct use of pesticides and agrochemicals, land reclamation, measures to combat soil erosion, application of a landscape approach to solving the problem, etc. These methods of farming may vary depending on the intensity of operations with different measures and methods of agricultural production. But ultimately, they are all aimed at increasing the economic and natural fertility of soils. Thus, one of the important forms of legal support to increase their fertility is a correctly chosen and provided by the legislation of Ukraine agricultural system. Among the forms of agricultural production known today (extensive, intensive, conventional, integrated, etc.), the organic system of agriculture is considered to be the most successful. This is a very

promising area of agricultural development. Organic farming is able not only to stop soil degradation, but also to increase the fertility of unproductive lands. The problem of greening of agricultural production is relevant for all developed countries. Being included in the concept of organic production, it embodies the idea of a healthy lifestyle and healthy eating¹⁹⁷.

Ukraine has everything necessary for the formation of agriculture, focused on the production of organic products: long-term agricultural traditions, vast areas of agricultural land, as well as an insignificant level of intensification and chemicalization of the agricultural sector in comparison with industrialized countries. Taking into account the considerable resource potential of the country in the agricultural sector, it is of great importance to provide a mechanism that would contribute to the development of organic agricultural production in Ukraine and increase on the basis of this competitiveness of the national economy¹⁹⁸.

The close relationship between agriculture and the natural environment dictates the need to take into account the ecological laws of the organic world in the process of agricultural production. To ensure such accounting, it is necessary to proceed from the possibility of forming optimal structures of agro-ecological systems, appropriate to the relief, climate, soils and vegetation of the region. This approach allows to solve the problem of production of the required amount of agricultural products with minimal costs and at the same time prevent the development of negative processes and the preservation and reproduction of soil fertility.

¹⁹⁷ Fedchyshyn D., Ignatenko I., Shulga M., Danilik D. (2022). Legal problems of rational use and protection of agricultural land in Ukraine. *Justicia*. Vol. 27. № 41. P. 49.

¹⁹⁸ Fedchyshyn D. (2020). Theoretical bases of formation and development of agricultural organic production in Ukraine in modern economic conditions. *Economics of Agriculture*. Vol. 67. № 3. P. 939–953.

One of the options for solving this problem is to optimize the structure of land use by rationally allocating production and improving the structure of sown areas, as well as the introduction of restrictions on the use of degraded lands. In order to ensure the safety of agricultural land, it is necessary to systematically conduct a comprehensive survey to develop land use and protection schemes, land use management, soil protection measures, determine the area of degraded and unproductive land that is subject to temporary withdrawal from commercial circulation. Carrying out such a structural transformation of land use will increase the volume of agricultural production and reproduction of soil fertility, despite the reduction of arable land.

In assessing the prospects for solving the problem of rational and efficient use of land resources in agriculture, which will ensure the production of the required number of products with an intensity that does not cause environmental damage, we should proceed from structural transformations of land use in two directions:

- 1) application of intensive forms of land use on the best quality lands by carrying out soil improvement measures and application of soil protection technologies taking into account bioclimatic conditions of production;
- 2) reduction of arable land due to withdrawal from agricultural circulation (conservation) of unproductive lands and restoration of their fertility by siltation and further use as fodder lands.

Given the above, it can be argued that in modern agricultural development, land degradation is a fundamental basis for the loss or reduction of land productivity, which leads to negative environmental consequences and economic decline of the state. That is why in modern conditions, when the protection

of agricultural land has become an urgent and priority task, the scientific substantiation of economic assessment of losses caused by land degradation to agriculture. Moreover, there is also a need to develop methods for determining the economic efficiency of the most advanced soil protection measures, technologies and complexes based on their overall comparative assessment.

In order to rationally use and protect lands from depletion, degradation, pollution, as well as the preservation of landscape and biological diversity, there is an urgent need to develop in Ukraine a National Program of Land Use and Protection. The program should provide the following methods of protection of agricultural lands: protection of lands from erosion, waterlogging, secondary salinization, landslides, compaction, pollution by industrial, radioactive and chemical substances; reclamation of disturbed lands; improvement of agricultural lands. An important element of the program is the development of land management projects that will take into account the specific conditions of land use, its soil and climatic resources. On this basis, a set of balanced measures for land use and protection, increasing soil fertility, the formation of environmentally friendly agricultural landscapes should be determined.

A necessary measure to optimize the structure of the land fund should be the withdrawal from intensive cultivation of degraded and unproductive agricultural lands. The soils of these lands are characterized by negative natural properties, low fertility, and their economic use for its intended purpose is economically inefficient. As a result, it will be possible to reduce the level of plowed land to the optimal level and concentration of agricultural formations on productive lands in order to increase the level of competitiveness of domestic agricultural products and increase production.

Regulation of these processes is an important task of Ukrainian state, the solution of which will ensure environmental protection

of land, increase the efficiency of agricultural production and its competitiveness in world markets, preserve the most valuable part of the state land resources — agricultural land.

3.6. FEATURES OF ORGANIC PRODUCTION IN THE CONTEXT OF GREENING OF AGRICULTURE

Today, land resources are the subject of increased attention from the world community in the face of multinational corporations. Therefore, it is extremely important to ensure the preservation of land as a basis for national and food security, to carry out rational management of this unique natural resource.

Significant negative impact on the environment is caused by human production activities in the field of agriculture, which causes soil erosion, desertification, secondary salinization, air pollution, depletion of water sources, pollution of soils and other components of agrocenoses due to excessive and unbalanced use of agrochemicals — fertilizers and pesticides. Exhaustive agricultural land use is a leading factor in soil degradation and poses a real threat to food security.

Experts from the Food and Agriculture Organization of the United Nations, analyzing global trends in agriculture, concluded that there is intensive use of arable land in almost all countries. In addition, the use of chemicals and poisons is increasing, which contributes to increased water and wind erosion, leaching of nutrients from soils and increasing the number of natural disasters caused by such human activities.

The problem of active development of the agricultural sector with further preservation of the natural environment for future generations has posed an important task to mankind — to find

alternative solutions. Scientists and practitioners from Europe and the United States have suggested moving to organic farming to solve this environmental issue. Today the planned introduction of the organic sector of agricultural production is taking place in the USA, Canada, the European Union, Australia, China and Japan. According to the report of the IFOAM, agricultural producers in more than 130 countries, along with the traditional system of agriculture, are mastering the methods of organic farming¹⁹⁹.

“Organic agriculture can be more conducive to food security than traditional methods and more sustainable in the long run,” said the United Nations Environment Program (UNEP) and the United Nations Trade and Development Program (UNCTAD — United Nations Conference on Trade and Development).

According to the terminology of the United Nations Food and Agriculture Organization (FAO), organic farming is: “an integrated production management system that stimulates and enhances the well-being of the agricultural ecosystem, including biodiversity, biological cycles and soil biological activity, achieved through all possible agronomic, biological and mechanical methods as opposed to using synthetic materials to perform specific functions within the system”.

Based on the above definitions, the essence of the category of “organic agriculture” can be formulated as a concept that covers all systems of agriculture based on natural resources and resources that take into account the natural needs of flora and fauna, as well as the natural environment, the main purpose of which is the process of production of ecological (organic) products certified by international and national environmental

¹⁹⁹ Ігнатенко І. В. (2020). Деякі правові питання охорони земель для ведення органічного землеробства. *Правові новели*. № 11. С. 113.

certificates²⁰⁰. Thus, organic agriculture is not just a “green” project, but a real tool for the development of modern competitive agriculture in the global food market.

In the agricultural policy of the European Union, the development of programs to support organic production occupies a leading place. They cover the standards of environmentally friendly products, training of farmers, financial assistance to them in the transition from traditional to organic technology.

According to program documents such as the Government’s Medium-Term Priority Action Plan until 2020²⁰¹, the Concept of Farm Development and Agricultural Cooperation for 2018–2020²⁰², organic farming is also a priority for Ukraine. These regulations provide incentives to increase the area of agricultural land on which organic agricultural products are grown or produced, and all possible support for the transition of farms to its production.

The basis for the introduction of organic production in Ukraine is the Sustainable Development Strategy “Ukraine — 2020”, which aims to achieve European living standards and the state’s entry into leading positions in the world. The Strategy envisages ensuring sustainable economic growth in an environmentally friendly way, maintaining a safe state of the environment, access to quality drinking water and the use

²⁰⁰ Ігнатенко І. В. (2020). Деякі правові питання охорони земель для ведення органічного землеробства. *Правові новели*. № 11. С. 114.

²⁰¹ Кабінет Міністрів України (2017). Про затвердження середньострокового плану пріоритетних дій Уряду до 2020 року та плану пріоритетних дій Уряду на 2017 рік : Розпорядження від 03.04.2017 р. № 275-р. Retrieved from <http://zakon2.rada.gov.ua/laws/show/275-2017-p> (Accessed at 20 February, 2022).

²⁰² Кабінет Міністрів України (2017). Про схвалення Концепції розвитку фермерських господарств та сільськогосподарської кооперації на 2018–2020 роки : Розпорядження від 13.09.2017 р. № 664-р. Retrieved from <http://zakon2.rada.gov.ua/laws/show/664-2017-%D1%80> (Accessed at 20 February, 2022).

of harmless food products, which primarily include organic products²⁰³. Organic production is one of the ways to implement this Strategy. It will help ensure the environmental security of the food industry on the basis of its integration, economic growth, protection of social and environment as complementary elements of effective strategic development of the state.

Experts of the European market of agricultural products confidently state that Ukraine has all the prerequisites to become an organic hub for the organic market. According to the Ministry of Agrarian Policy and Food of Ukraine, over the past 5 years, organic production has increased by 90%, and the area of organic agricultural land has increased from 260 thousand hectares to 421.5 thousand hectares (1% of the total agricultural land of the country). Also, 550 thousand hectares of land are allocated for certified wildflowers (grasses, berries and mushrooms). Accordingly, the number of producers of organic products is growing. Thus, in June 2017, more than 420 producers were registered. Compared to 2011 (260 producers), they increased by almost 65%²⁰⁴. This statistical information indicates a significant increase in the interest of Ukrainians in this system of agricultural production.

One of the tasks under the strategic goal 1 “Ensuring a stimulating and advisory agricultural policy” of the National Economic Strategy for the period up to 2030, which was approved by the Cabinet of Ministers of Ukraine on 3 March 2021, is a support for organic production. It consists in the implementation of programs to support producers of organic products, the

²⁰³ Президент України (2015). Про Стратегію сталого розвитку «Україна – 2020»: Указ від 12.01.2015 р. № 5/2015. Retrieved from <http://zakon4.rada.gov.ua/laws/show/5/2015#n10> (Accessed at 20 February, 2022).

²⁰⁴ Ярошук О. (2017). Є чим пишатися – 7 перемог українських аграріїв. *Агрополіт*. Retrieved from <https://agropolit.com/spetsproekty/372-ye-chim-pishatisya-7-peremog-ukrayinskih-agrariyiv> (Accessed at 20 February, 2022).

implementation of measures aimed at raising awareness of producers about the benefits of organic production²⁰⁵.

Law of Ukraine “On Basic Principles and Requirements for Organic Production, Circulation and Labelling of Organic Products” determines organic production as certified activities related to the production of agricultural products, including all stages of the technological process, namely primary production (including harvesting), preparation, treatment, mixing and related procedures, filling, packaging, processing, regeneration and other changes of products state), which is carried out in compliance with the legal requirements in the field of organic production, circulation and labelling of organic products²⁰⁶.

Increasing the productivity and sustainability of agroecosystems is economically and environmentally feasible. But this is possible with the simultaneous improvement of all constituent elements that are part of it, including land resources, soil cover. The latter should be the subject of close attention during the transition to agricultural production of organic products. It should be noted that the transition to organic agriculture does not mean simplification, and does not preclude a comprehensive approach to solving problems using modern methods and tools. It only imposes some restrictions, such as the use of mineral fertilizers, pesticides, herbicides, GMOs, etc., the use of which harms the health of nature and man as part of it.

There are no alternatives to the development of agriculture in the organic direction today. Intensive use of the environment

²⁰⁵ Кабінет Міністрів України (2021). Про затвердження Національної економічної стратегії на період до 2030 року : Постанова № 179 від 03.03.2021 р. *Офіційний вісник України*. 2021. № 22. Ст. 1015.

²⁰⁶ Про основні принципи та вимоги до органічного виробництва, обігу та маркування органічної продукції: Закон України від 10.07.2018 р. № 2496-VIII. *Відомості Верховної Ради України*. 2018. № 36. Ст. 275.

ultimately leads to the destruction of nature. And this is the fundamental basis of the agricultural sector of the economy. Technical progress, penetrating the agricultural sector, on the one hand, increases the productivity of arable land, on the other hand, leads to a violation of ecological balance. Organic agriculture allows not only to avoid negative consequences, but also to restore damaged ecosystems through the use of biological methods to increase soil fertility and plant protection, as well as methods to increase biodiversity, which contributes to the processes of self-restoration of ecosystems. It can also be considered as a method of solving environmental problems in the agricultural sector.

The development of organic production in Ukraine is hampered by the lack of proper regulatory framework, insufficient support from government agencies, low awareness of consumers and potential producers, etc. In order to substantiate the directions of development of agriculture focused on the production of organic products, it is advisable to identify factors that will contribute to the development of the market of organic products at the following levels: state, regional and agricultural organization.

Thus, the greening of land use systems is potentially possible only through the creation of specialized agricultural organizations that produce products with the complete exclusion of chemicals in accordance with international standards of organic agricultural production. The formation of specialized agro-eco-farms and their integration associations will be a prerequisite for the formation of the domestic market of organic products and increase the competitiveness of Ukrainian organic food in international markets for organic products.

The determining factors in the development of agriculture in the direction of organic production at the level of agricultural organization will be: 1) choosing the direction of transition to the production of organic products, taking into account the available

resources of production and demand for organic products; 2) reproduction of land resources through the involvement of lands that are not used in agricultural circulation, restoration of soil fertility and the transition to greening of land use; 3) increasing the efficiency of agricultural production due to higher sales prices of organic products; 4) entry of the organization into the structure of the zonal agroecocluster.

In the formation of the methodological approach to the development of land relations in the direction of agricultural production of organic products at the regional level there is a real opportunity due to the uneven factors of natural and economic environment to make important adjustments to land relations. For example, in order to create favorable conditions for the development of organic agricultural production in the regions, it is necessary to develop and adopt a target program “Implementation of the biological system of agriculture in the region by 2030”, approve the Code of Conscientious Land Users.

Next, the Concept of Organic Agriculture Development should be developed. It should be based on the social and environmental significance of organic farming methods. As a result, clear strategic and tactical goals for the planned development of agriculture focused on the production of organic products will be defined at the state level. Specific ways of achieving these targets should also be justified. There is a need for a clear definition of state support measures. The indicated sequence of stages of reforming the system of land relations is based on organic guidelines for development.

Concentration of land, material, financial, labor resources in the direction of agricultural development, focused on the production of organic products, not only opens the possibility of increasing the production of domestic organic products, but also reduces dependence on imports. It will also contribute to

improving the quality and environmental safety of products, the development of diversification processes in agriculture and related industries.

According to the FAO, there are 130 farms in Ukraine that produce organic agricultural products, and their area is only 0.7 % of agricultural land. This is due to the fact that the sale of such products within the country provides producers with a profitability of one hectare of only 70 %, while its sales in EU member states — 200 %²⁰⁷.

The area under organic production in Ukraine is only 411 thousand hectares. In the structure of certified organic agricultural lands, arable land occupies 206.5 thousand hectares (76.4 %); pastures and hayfields account for 57.5 thousand hectares (21.3 %), fallow lands — 5.0 thousand hectares (1.5 %) and only 1.3 thousand hectares (0.5 %) — for perennial planting²⁰⁸. At the same time, the existing soil and climatic conditions in the country allow to expand the area under this production. However, the lack of infrastructure and state support for this type of management and the imperfect legal framework that regulates it, do not contribute to the rapid increase in the pace of organic production.

According to the current legislation, the production of organic agricultural products must be carried out in the process of organic production on suitable land plots, which are provided at the expense of agricultural land. Our state has favorable conditions for organic production due to the large area of agricultural land, among which a significant share belongs to fertile chernozems. In addition, the National Economic Strategy for the period up to 2030

²⁰⁷ Безус Р. (2011). Ринок органічної продукції в Україні : проблеми та перспективи. *Економіка АПК*. № 6. С. 47–52.

²⁰⁸ Federation of Organic Movement of Ukraine: Official web page. Retrieved from <http://www.organic.com.ua> (Accessed at 20 February, 2022).

provides for an increase in the area of land with organic status to at least three percent of the total area of agricultural land.

It should be noted that the Land Code of Ukraine²⁰⁹ does not separately allocate land for organic production as part of agricultural land. The classification of types of land use²¹⁰ also does not contain provisions on the possibility of using agricultural land for organic production.

In order to conduct organic production, agricultural lands must meet certain requirements regarding the level of their contamination with harmful substances, namely pesticides, radionuclides, heavy metals, etc. However, as evidenced by the practice of growing high quality, environmentally friendly products, in terms of soil quality of organic farms, they should not have unsatisfactory agrophysical parameters, unsatisfactory physical and chemical properties, low content of mobile forms of nutrients. The level of fertility of such soils should be such as to provide optimal conditions for the growth and development of cultivated plants and the formation of high yields of crops of appropriate quality.

The Law of Ukraine “On Production and Circulation of Organic Agricultural Products and Raw Materials” (repealed in August 2019) contained Art. 23 “Suitability of land (soil) for the production of organic products and raw materials”. According to this article, the Procedure for assessing the suitability of land (soil) for the production of organic products was to be approved by the Cabinet of Ministers of Ukraine. However, such an Order has not been approved yet. The current Law of Ukraine “On Basic

²⁰⁹ Земельний кодекс України від 25.10.2001 р. № 2768–III. *Відомості Верховної Ради України*. 2002. № 3. Ст. 27.

²¹⁰ Державний комітет України із земельних ресурсів (2010). Про затвердження Класифікації видів цільового призначення земель : Наказ від 23.07.2010 р. № 548. *Офіційний вісник України*. 2010. № 85. Ст. 3006.

Principles and Requirements for Organic Production, Circulation and Labeling of Organic Products”, unfortunately, also does not provide legal requirements that would determine the criteria to be used in deciding on the suitability of agricultural land for organic production.

The legal literature emphasizes that the assessment of the suitability of agricultural land for the production of organic products of plant origin is an appropriate guarantee for the production of such products. The lack of legal regulation of such an assessment in Ukraine nullifies the guarantee itself²¹¹.

The basis for establishing the criteria of land quality, which are used to assess their suitability for the production of organic products are indicators of soil quality, plants and the remoteness of land from sources of pollution. The latter include industrial enterprises and facilities that can pollute the environment with toxic and hazardous emissions (heavy metal compounds, pesticides, radionuclides, etc.). These indicators themselves should be taken into account when developing criteria for assessing the suitability of land for organic production. In addition, the data of agrochemical certification of agricultural lands must be taken into account. Its task is to determine the quality of soils, their changes in the process of economic activity, as well as conditions for the rational use of mineral and organic fertilizers, protection from pollution, reproduction of their fertility.

In the process of transition of agriculture to the production of organic products it is necessary to take into account the impact of qualitative characteristics of land on the efficiency of agricultural production. It is advisable to determine the degree of dependence of the volume of agricultural production per unit area on the

²¹¹ Органічне сільськогосподарське виробництво в Україні: правові засади ведення: монографія. За заг. ред. проф. М.В. Шульги. Харків : Юрайт, 2020. 308 с.

quality of the land, as well as other performance indicators. Based on the analysis of the obtained land monitoring data, it can be concluded that in most regions the negative trend of declining quality characteristics of agricultural lands continues. The most dangerous negative processes that occur intensively in these lands are: erosion, waterlogging, salinization, desertification, flooding, overgrowing of agricultural lands and other processes that cause loss of fertility of agricultural lands and their withdrawal from economic circulation.

For example, from 1961 to 2015, the area of eroded arable land in Ukraine increased from 8 to 10.6 million hectares and reached 32 % of the total arable land. Arable land, which is subject to wind erosion, is 6 million hectares²¹². Every year the growth of the area of eroded lands exceeds 80 thousand hectares. Total soil losses from water and wind erosion are 450–600 million tons, in particular, 11–12 million tons of humus annually²¹³. The consequence of these losses is a decrease in yield on low-, medium- and strongly-eroded soils by 15–20 %, 30–40 % and 50–60 % (respectively), and the total loss of crop production exceeds 9–12 million tons²¹⁴. As we can see, the problem of erosion in the country needs to be solved immediately.

Land desertification is also one of the most intensive and widespread processes, as a result of which natural pastures lose their productivity, soils are eroded and salinized, sands

²¹² Новаковський Л. Я., Новаковська І. О. (2017). Еколого-економічні та правові проблеми охорони земель. *Вісник аграрної науки*. № 11. С. 62–70.

²¹³ Тараріко О. Г., Москаленко В. М. (2002). Каталог заходів з оптимізації структури агроландшафтів та захисту ґрунтів від ерозії. Київ : Фітосоціоцентр. 64 с.

²¹⁴ Тараріко О. Г., Лобас М. Г. (1998). Нормативи ґрунтозахисних контурно-меліоративних систем землеробства. Київ : Інститут агроекології та біотехнології УААН, Аграрний інститут НБАТ Агроінком. 158 с.

are exposed. Significant areas of land are withdrawn from circulation due to the active development of minerals, exploration, construction and other types of work.

At the same time, in addition to the above, other undesirable land processes continue to take shape: (a) the total area of agricultural land is constantly declining; (b) the area of irrigated and drained agricultural lands is reduced, their reclamation condition is qualitatively deteriorated and the efficiency of economic use is reduced; (c) the process of reducing the humus content on arable land is increasing; (d) agricultural land is contaminated with pesticides, nitrates, heavy metals, radionuclides; (e) soils are dehumidified and lose their agronomic properties. Due to the marked intensification of these negative processes, the ecological stability of natural systems is gradually losing its strength. According to the NSC “Sokolovsky Institute of Soil Science and Agrochemistry”, the share of areas treated with organic fertilizers is now 1.1%. Therefore, over the past 20 years, the humus content in soils on average in Ukraine has decreased by 0.22% (in absolute terms)²¹⁵.

Today it is extremely necessary to have territorially generalized, spatially and regionally systematized and compared information on the quality of land. This should be done in order to create a more effective system of land management in Ukraine with a variety of its natural and climatic conditions. In addition, it will help determine the set of necessary soil protection measures and mechanisms of organizational and economic incentives for owners and users for the rational use and protection of land resources.

²¹⁵ Басанець О. (2017). «Задобрюємо» землю: органічні добрива для відтворення ґрунтів і підвищення родючості. Retrieved from <https://superagronom.com/articles/40-zadobryuyemo-zemlyu-organichni-dobryva-dlya-vidtvorennya-gruntiv-i-pidvischennya-rodyuchosti> (Accessed at 20 February, 2022).

Over the last 2 decades, in the vast majority of regions, special surveys to study the quality of the condition and use of land plots have been practically non-existent.

The tasks of effective land management have become significantly more acute due to the mass privatization of land plots, the emergence of a large number of new owners and agricultural producers of various organizational and legal forms. At the same time, the effective solution of these problems is impossible without constant monitoring of agricultural lands.

At first glance, Ukraine has an extremely extensive regulatory framework for land monitoring. In particular, the basis of such regulation are: Land Code of Ukraine; Laws of Ukraine “On Environmental Protection”²¹⁶, “On Land Protection”²¹⁷, “On Land Reclamation”²¹⁸, “On State Control over the Use and Protection of Land”²¹⁹; Resolution of the Cabinet of Ministers of Ukraine “Regulations on Land Monitoring”²²⁰; Order of the Ministry of Agrarian Policy of Ukraine “Regulations on monitoring of soils on agricultural lands”²²¹; order of the State Committee of Ukraine for Water Management “Instruction on the organization

²¹⁶ Про охорону навколишнього природного середовища : Закон України від 25.06.1991 р. № 1264-ХІІ. *Відомості Верховної Ради України*. 1991. № 41. Ст. 546.

²¹⁷ Про охорону земель : Закон України від 19.06.2003 р. № 962-IV. *Відомості Верховної Ради України*. 2003. № 39. Ст. 349.

²¹⁸ Про меліорацію земель : Закон України від 14.01.2000 р. № 1389-XIV. *Відомості Верховної Ради України*. 2000. № 11. Ст. 90.

²¹⁹ Про державний контроль за використанням та охороною земель : Закон України від 19.06.2003 р. № 963-IV. *Відомості Верховної Ради України*. 2003. № 39. Ст. 350.

²²⁰ Кабінет Міністрів України (1993). Положення про моніторинг земель : Постанова від 20.08.1993 р. № 661. Retrieved from <https://zakon.rada.gov.ua/laws/show/661-93-п#Text> (Accessed at 20 February, 2022).

²²¹ Міністерство аграрної політики України (2004). Положення про моніторинг ґрунтів на землях сільськогосподарського призначення : Наказ від 26.02.2004 р. № 51. *Офіційний вісник України*. 2004. № 13. Ст. 922.

and monitoring of irrigation and drainage lands”²²² and other legislative acts.

Regulations on land monitoring provide for systematic monitoring of the state of land (agrochemical certification of land and survey) to identify changes in the following parameters: the state of land use; processes associated with changes in soil fertility (development of water and wind erosion, loss of humus, deterioration of soil structure, waterlogging and salinization), overgrowing of agricultural lands, contamination of lands with pesticides, heavy metals, radionuclides and other toxic substances, etc.

However, today monitoring does not adequately ensure the process of monitoring individual land plots and crop rotations in the fields. When using land as a production and economic resource, a whole set of parameters that characterize soil fertility and are important for the process of organic production is not met.

In addition, the Procedure for assessing the suitability of land and establishing zones for the production of organic products and raw materials has not been implemented. At one time, only a draft resolution of the Cabinet of Ministers of Ukraine was developed. It was called “On approval of the Procedure for assessing the suitability of lands (soils) and establishing areas for the production of organic products and raw materials Criteria for land quality (soils), their suitability for the production of organic products and raw materials, suitability for production of certain crops”. This Procedure provided a nomenclature of indicators to determine the criteria for land quality, their suitability for the production of organic products and raw materials in accordance with applicable regulations in the field of soil quality and the environment.

²²² Державний комітет України по водному господарству (2008). Інструкція з організації та здійснення моніторингу зрошувальних та осушувальних земель : Наказ від 16.04.2008 р. № 108. Офіційний вісник України. 2008. № 54. Ст. 1812.

According to the degree of suitability for the production of organic products and raw materials, agricultural lands were allocated:

- (a) suitable — the ecological and agrochemical status of which does not prevent the production of high-quality agricultural raw materials for the production of organic products;
- (b) limited suitable — soil fertility and ecological and toxicological conditions which allow to obtain high quality raw materials for the production of organic products of only some crops that are most tolerant to toxic substances;
- (c) unsuitable — on which it is impossible to obtain raw materials for the production of organic products²²³.

The need for the adoption of a similar Procedure at the level of the Cabinet of Ministers of Ukraine as soon as possible still remains. It must take into account the natural and climatic zoning of land and regulate the relationship in the system of agrolandscape and organic production.

Assessment of the suitability of land (soil) for the production of organic products and raw materials should be based on the analysis of objective information on soil quality, determining the degree of anthropogenic pressure, the actual implementation of measures to preserve soil fertility, and establishing their suitability for crops. Criteria for land quality, assessment of their suitability for the production of organic products and raw materials are characterized by a set of interrelated requirements for the

²²³ Порядок встановлення критеріїв якості земель, оцінки їх придатності для виробництва органічної продукції і сировини та визначення зон такого виробництва: Проект Постанови Кабінету Міністрів України від 29.08.2014 р. Retrieved from <https://ips.ligazakon.net/document/NT2449> (Accessed at 20 February, 2022).

quality of agricultural soils, water resources, air and location of land according to sources of pollution, which together ensures appropriate quality of agricultural products and compliance rules of its production.

The specifics of accounting for agricultural land as a unique resource and the main means of production in the agricultural sector dictates the use of other approaches to monitoring and using a wider range of indicators that indicate the quality and soil fertility of agricultural land. For example, unlike European countries, land monitoring in Ukraine does not involve monitoring the biodiversity of pedobionts. Meanwhile, these criteria are the basis for identifying the suitability of soils for organic farming.

Organic farming should also be preceded by ecological and agrochemical assessment and certification of soils according to ecological and toxicological, sanitary and hygienic criteria, ecological stability and agrochemical soil fertility. These issues have not received regulatory support today. This circumstance does not allow to ensure the high quality of produced organic raw materials and products²²⁴.

Under the current conditions, information on the content and balance of humus in soils, obtained as a result of agrochemical certification of the latter, is proposed to be used as one of the key to a proper assessment of their condition and prevalence of degradation processes. In particular, in order to work out the prospects of achieving a neutral level of land degradation and Ukraine's commitment as a party to the UN Convention to Combat Desertification in Countries Suffering from Serious Drought and / or Desertification, especially in Africa.

²²⁴ Ігнатенко І. В. (2020). Деякі правові питання охорони земель для ведення органічного землеробства. *Правові новели*. № 11. С. 117.

The National Action Plan to Combat Land Degradation and Desertification²²⁵, developed and implemented in accordance with the Concept, should become one of the main tools aimed at overcoming the problem of land degradation in Ukraine, including improving the monitoring of land and soil.

Another important issue is the procedure for providing the results of monitoring observations on the condition of agricultural lands. Official and up-to-date information on the state of these lands is not freely available. However, reliable and complete information on changes in the quality of land is needed to assess the effectiveness of land protection programs and individual measures for land protection, as well as to ensure the efficient use of budget funds. With this in mind, the processes of remote and ground-based monitoring should be synchronized in order to obtain a quality result and organize the collection of information into a single information resource. This resource should be regularly updated and used to identify negative processes: land degradation and deterioration, as well as the irrational use of agricultural land. This will allow control over the use of these lands and their seizure from the owner in case of improper use or deterioration of their condition.

Based on the above, we can conclude that the proper organization of the land use system in the process of transition to the production of organic products must meet the objectives of improving its environmental and economic efficiency. This can be achieved by developing a set of measures to promote care

²²⁵ Кабінет Міністрів України (2014). Про схвалення Концепції боротьби з деградацією земель та опустелюванням : Розпорядження від 22.10.2014 р. № 1024. Retrieved from <http://zakon4.rada.gov.ua/laws/show/1024-2014-%D1%80> (Accessed at 20 February, 2022).

for the environment. Moreover, it will contribute to the creation of optimal conditions for the rational use of agricultural land and crop production, which are able to provide the agricultural producer with a corresponding profit while improving the quality of agricultural products.

Section 4

LEGAL ASPECTS OF THE DEVELOPMENT OF ORGANIC AGRICULTURE: GLOBAL TRENDS, PROBLEMS AND PROSPECTS

4.1. LEGAL ASPECTS OF THE DEVELOPMENT OF ORGANIC AGRICULTURE IN UKRAINE IN THE CONTEXT OF EUROPEAN INTEGRATION

Organic agriculture is developing rapidly in the world in response to the growing deterioration of the environment, reduced availability of natural resources and deteriorating food quality. In Ukraine, it is also becoming quite popular and economically important. However, if we look at the current situation in agriculture and related industries and compare it with the practice of the EU, it should be noted a fairly high degree of backwardness in almost all aspects of production. The dynamics of total agricultural production in Ukraine over the past 20 years has shown cyclical instability, stagnation and very slow growth.

As Ukrainian organic agriculture seeks to harmonize its structure with European and world standards, it is important for it to cooperate with foreign countries in the interests of local agricultural producers and expand the market for organic agricultural products. The same can be achieved only with the help of agricultural authorities, which must create a proper economic and legislative basis

for a functioning economy in general and organic products in particular²²⁶.

According to the Action Plan “Ukraine-European Union” approved by the Cabinet of Ministers of Ukraine on 12 February 2005, Ukraine has committed itself to improving food safety for consumers and facilitating trade through reforms and modernization of the sanitary and phytosanitary spheres by:

- accession to the Codex Alimentarius Commission and the International Plant Protection Convention;
- revising the list of measures to be taken to gradually approximate EU legislation in the field of sanitary and phytosanitary control and relevant institutions, while establishing timelines and a funding mechanism;
- accelerating the implementation of effective reforms in this area (for example, a clear division of powers between individual institutions, adherence to the principles of Directive 96/22 and Directive 96/23);
- conducting a comparative analysis of EU and Ukrainian legislation on food hygiene, including food processing;
- ensuring progress in the approximation of domestic legislation to EU legislation on field-to-table food chain monitoring; general principles and requirements for food safety (Regulation 178/2002/EU);
- effective implementation of the Hazard Analysis Critical Control Point system at domestic enterprises and control bodies.

Organic production is one of the ways to implement a sustainable development strategy as a basis for ensuring the

²²⁶ Ігнатенко І. В. (2021). Перспективи розвитку органічного сільського господарства України у процесі інтеграції в ЄС. *Правова позиція*. № 3(32). С. 70–71.

environmental security of the industry through the integration of economic growth, social protection and environmental protection as complementary elements of effective strategic development of Ukraine²²⁷.

The Association Agreement, ratified by the Verkhovna Rada of Ukraine and the European Parliament on September 16, 2014, entered into force on January 1, 2017. Ukraine has committed itself to harmonizing current domestic legislation, including in the field of organic production.

From the point of view of future EU members, the large internal market provides some protection against competition from third countries, but imposes significant requirements on them that must be met as part of the accession process. These requirements apply to the harmonization of all production, phytosanitary, sanitary and environmental standards. As for productivity, there are no formal requirements, and the national farms of these countries must recognize its improvement as their own interest, as a condition without which they cannot survive in the European single market. The fact that European agriculture is not a world leader is not a mitigating circumstance, because when joining the EU, these countries will face stiff competition, which is characterized by high quality and productivity. In fact, future EU members must look to role models and best practices for global adoption.

The European Union is not an ideal environment for the accelerated development of small open economies. But it is quite favorable for people like the Ukrainian economy. The main condition is to develop a clear development strategy in line with

²²⁷ Ignatenko I. (2020). Legal aspects of development of organic agriculture in Ukraine in the context of European integration. *Economics of agriculture*. Vol. 67. № 3. P. 973–990.

EU objectives. Ukraine's progress in the integration process directly affects the expansion of opportunities for agriculture, livestock and fisheries. This influence is multiple, which is primarily expressed in the harmonization of national legislation and standards with European ones and in their implementation. The introduction of harmonized rules and standards improves the quality of the production process and product quality, makes them more compatible with EU market requirements and facilitates access to European and other world markets²²⁸.

It should be noted that international legal systems combine different approaches to regulating the production of organic products. In world practice, there are currently 3 main international document systems: the Codex Alimentarius Commission Guidelines, the IFOAM Basic Standards (IBS) and the EU Regulations²²⁹.

These 3 systems are quite similar, but have a number of differences. First of all, it should be noted the difference in the purpose of these systems, namely:

- the Codex Alimentarius includes general guidelines for countries around the world wishing to develop national standards and implement their own regulatory system;
- IBS consists of a list of standards for the development of more detailed standards and requirements to be met by IFOAM-accredited certification companies;
- The EU is a system of standards for the production of organic products, the purpose of which is to standardize the EU market. It has the status of law.

²²⁸ Ігнатенко І. В. (2021). Перспективи розвитку органічного сільського господарства України у процесі інтеграції в ЄС. *Правова позиція*. № 3(32). С. 71.

²²⁹ Rana J. (2017). Consumer behaviour and purchase intention for organic food: A review a research agenda. *Journal of Retailing and Consumer Services*. Vol. 38. P. 157–165.

As we can be seen, Codex and IBS are more general, as they offer general principles and criteria to be followed, while the EU offers more detailed rules for EU countries.

At the international legal level, Codex Alimentarius standards are applied, which establish general directions of organic production. The Codex Alimentarius Commission is an intergovernmental organization established by the Food and Agriculture Organization of the United Nations (FAO) and World Health Organization. It develops common international standards for food, as well as guidelines, norms and rules designed to protect the health of consumers and ensure compliance with the rules of trade in the food industry. In addition, the Commission coordinates the activities of international public and private organizations involved in the development of standards for all food products.

Food safety and quality standard CAC/GL 32-1999 is designed to unify the rules concerning the production and labeling of organic food, as well as the accuracy of the information provided on them that enters the international market. It sets requirements for the cultivation of organic products on farms, for preparation, storage, transportation, labeling and sale of such products. It also provides rules limiting the permissible amount of drugs and elements allowed for fertilizers and soil preparation, for the control of pests and plant diseases, as well as those drugs that are used as technological food additives. It is prohibited to use labeling which stipulates that products obtained from producers under the supervision of a certification body have been subjected to organic production methods for this purpose.

CAC food safety and quality standards (although they are voluntary for member states) are often used as a basis for the adoption of national regulations recommended by the WTO. The reference to the Food Safety Standards of the Code in the

WTO Agreement on Sanitary and Phytosanitary Measures (SPS Agreement) means that the Code has far-reaching implications in trade disputes²³⁰.

UNECE quality standards contain common terminology and harmonized product quality requirements to promote fair trade and increase transparency in world markets. These standards also have the status of recommendations for national legislation and are in line with the WTO Agreement on Technical Barriers to Trade²³¹.

In the field of production, processing, labeling and sale of organic food, the rules of regulation of certain international industry organizations are also widespread. These include the IFOAM Basic Standards, designed as a guide for national organizations to develop their own standards. IFOAM has established and maintains the Participatory Guarantee Systems (PGS), which aims to unify standards and procedures for monitoring compliance and determining market identity in the field of organic production. This system includes the IFOAM set of standards, the Organic Production and Processing Standard (IBS), the IFOAM Community of Advanced Standards, the World Organic Label, as well as IFOAM accreditation and the Global Organic Systems (GOSA).

State norms and rules of organic food production in foreign countries are introduced on the basis of international standards systems. This allows to take into account the physical, geographical, social and economic characteristics of different states.

At the regional level, the EU has adopted special regulations governing organic production. Thus, on May 30, 2018, a new EU

²³⁰ Codex Alimentarius. 2017. Retrieved from <http://www.fao.org/fao-who-codexalimentarius/codex-home/en/> (Accessed at 20 February, 2022).

²³¹ UNECE. *Geneva Understanding on Agricultural Quality Standards*. UNECE Executive Committee. 2015. Retrieved from https://www.unece.org/fileadmin/DAM/trade/agr/AboutUs/GenevaUnderstanding_E.pdf (Accessed at 20 February, 2022).

Regulation № 2018/848 on the production and labeling of organic products was adopted, which entered into force on January 1, 2021. This document provides for: (a) strengthening control of the supply chain and import rules; (b) increasing the number of measures to prevent accidental contamination of products with pesticides; (c) expanding the list of products that can be certified as organic; (d) a ban on the use of the hydroponic method of production; (e) preventing the use of artificial nanomaterials during production; (f) the possibility of applying group certification for small enterprises.

This new Regulation provides for 2 schemes of import of products into the EU: 1) a trade agreement with third countries on the equivalence of organic production systems and 2) certification of products in authorized bodies, the list of which has not yet been formed. It should be emphasized that in the EU, organic agriculture is characterized as a long-term solution to the problem of conservation of natural resources, rural development and health promotion. In some countries, national regulations are also applied²³². Of course, we can conclude that the requirements contained in these documents on the rules of production of organic products, their processing, labeling, control and trade, should be reproduced as much as possible in national law.

There is no single legal basis for regulating the organic production market in Ukraine. Some measures of such market regulation still exist, but they are incompatible with the EU law. For example, the basis of domestic legislation in this area is the Law of Ukraine “On the basic principles and requirements for organic production, circulation and labeling of organic products”. In its structure and content, this legal act does not fully meet the

²³² Новый регламент ЕС на производство органической продукции. Основные акценты. Контроль качества продукции. 2018. № 10. С. 22.

requirements of EU Regulation № 2018/848. In addition, a number of bylaws must be adopted in pursuance of this Law. Unfortunately, not many of them yet been adopted yet. This fact, of course, does not contribute to the creation of a mechanism for implementing its provisions.

It should also be emphasized that global food producers and traders, driven by the need to develop a sustainable supply chain²³³, often require suppliers to apply the following private voluntary safety and/or quality standards:

- (1) GLOBALG.A.P. (a global standard of good agricultural practice) also known as the Integrated Farm Assurance Standard (IFA), V5 (2015). This is an internationally recognized standard of good agricultural practice for agricultural production. Its certification covers food safety and monitoring, the environment (including biodiversity), health, safety and welfare of farmers, and animal welfare and includes: (a) Integrated Crop Management (ICM), (b) Integrated Pest Control (IPC), (c) Quality Management System (QMS) and (d) Hazard Analysis and Critical Control Points (HACCP)²³⁴;
- (2) FSSC (certification scheme for food and feed safety/ quality management systems) 22000 V4.1 (2017) meets the requirements of ISO 22000/9001 Prerequisite Program (PRP) and additional requirements of the scheme. This scheme is designed to audit, certify and register food safety management systems for the following volumes and product categories: (a) the rearing of animals for

²³³ Lee J., Gereffi G., Beauvais J. (2012). Global value chains and agrifood standards: Challenges and possibilities for smallholders in developing countries. PNAS. № 109(31). P. 12326–12331.

²³⁴ GlobalG.A.P. 2017. Retrieved from http://www.globalgap.org/uk_en/what-we-do/globalg.a.p.-certification/globalg.a.p./ (Accessed at 20 February, 2022).

- meat, milk, eggs and honey; (b) production of food, (bio) chemicals, food packaging, and food for feeding livestock; (c) transport and warehousing services; (d) catering; (e) products both retail and wholesale²³⁵;
- (3) BRC (British Retail Consortium) is a global food safety standard based on HACCP and includes: (a) food safety management systems; (b) internationally recognized best practices for ensuring the safety and quality of products in the pre-treatment of plant products, the processing of perishable products of animal and plant origin and products that are environmentally sustainable; (c) production of (bio) chemicals and food packaging; (d) the provision of food storage and distribution services. The BRC Global Standard for Food Safety — Issue V7 (2015) — focuses on label and packaging management, transparency and traceability in the supply chain, and strengthening the system's resilience to possible fraud²³⁶;
- (4) the IFS Food Standard (V6, 2012) is used to audit food manufacturers for process safety and quality in such areas: (a) processing of perishable products of animal and plant origin, environmentally sustainable, processing of animals, (b) pre-treatment of plant products, (c) production of (bio) chemicals and provision of storage and distribution services²³⁷. This standard is particularly important for

²³⁵ FSSC 22000. 2017. Retrieved from <http://www.fssc22000.com/documents/graphics/version-4-1-downloads/part-i-scheme-overview-v4.1.pdf> (Accessed at 20 February, 2022).

²³⁶ British Retail Consortium – BRC. 2015. Retrieved from <https://www.brcglobalstandards.com/media/28653/brc-publish-revised-global-standard-for-food-safety.pdf> (Accessed at 20 February, 2022).

²³⁷ Global Food Safety Initiative – GFSI. 2017. Retrieved from <http://www.mygfsi.com/certification/recognised-certification-programmes.html> (Accessed at 20 February, 2022).

- producers of food products produced by private labels, as it contains a number of requirements related to compliance with consumer specifications²³⁸;
- (5) ISO 9001: 2015 is a leading global standard of quality management that can be used by any organization regardless of its size and field of activity, which seeks to ensure continuous improvement of the quality of its products. This standard is often introduced as a basic management system, which is relatively easy to update with other management systems such as ISO 14001: 2015 “Environmental Management”²³⁹.

In pursuance of the “Action Plan for the Implementation of the EU-Ukraine Association Agreement” approved by the Cabinet of Ministers of Ukraine on October 25, 2017 and the provisions of Chapter 17, on June 27, 2018, the Ministry of Agrarian Policy developed a “Plan of measures to approximate Ukrainian legislation to EU law in the agro-industrial complex”. It includes measures to implement 44 acts of EU law, namely: 6 on quality policy; 25 — on standards of trade in plants, their seeds, products derived from plants, fruits and vegetables; 4 acts on organic farming; 23 — on standards of trade in live animals and livestock products; one act concerns genetically modified cereals.

With the start of the EU accession negotiations in the field of agriculture and rural development, there is an urgent need to harmonize Ukraine’s national policy in this area with the rules and principles of the EU’s Common Agricultural Policy. The

²³⁸ International Featured Standards – IFS. 2017. Retrieved from <https://www.ifs-certification.com/index.php/en/standards/251-ifs-food-en> (Accessed at 20 February, 2022).

²³⁹ International Organization for Standardization – ISO. 2017b. Retrieved from <https://www.iso.org/home.html> (Accessed at 20 February, 2022).

EU provides support in the form of IPARD funds (Instrument for Rural Development Assistance before Accession to the EU) to help candidate countries adapt their agricultural and rural areas to the Common Agricultural Policy. These measures are supported only by organic farmers engaged in crop production — growing cereals and oilseeds, vegetables, fruits and grapes, aromatic/medicinal plants. At the same time, organic livestock and genetic resources of animals and plants must be supported by the National Rural Development Program. These tools are available after creating the institutional basis needed to implement IPARD.

As a result of a study of foreign practice of creating organic agriculture, it can be argued that it is based on regulatory support for the development of organic farming. That is why guaranteeing the safety and quality of food is the main condition for Ukraine's successful entry into domestic and foreign markets. It should be emphasized that the state is working intensively to harmonize food safety and quality rules with the EU²⁴⁰.

Despite the existing significant potential and prospects for the development of organic agriculture, Ukraine lacks a clear state policy on the directions of further development of the organic sector.

In order for the Ukrainian market of organic products not to perish as soon as it starts functioning, there is a need to form and implement a national management model. Such a model should take into account the interests of both the domestic market and the export of organic products. Today improving the legislation and structure of certifying and supervisory organizations, drawing up programs for financial, informational and marketing

²⁴⁰ Ігнатенко І. В. (2021). Перспективи розвитку органічного сільського господарства України у процесі інтеграції в ЄС. *Правова позиція*. № 3(32). С. 73.

support of domestic organic producers are important measures. Without them the development of the domestic organic market in conditions of fierce international competition is almost impossible. The guiding principles of organic production in Ukraine should be as close as possible to EU legislation.

In fairness, we must note that as of today, a significant part of the norms necessary for the adaptation of domestic legislation, which are provided by the Law on Organic Production, has been adopted. In particular, the Resolution of the Cabinet of Ministers of Ukraine “On approval of the Procedure for maintaining the State Register of operators producing products in accordance with legislation in the field of organic production, circulation and labeling of organic products, the State Register of certification bodies in organic production and circulation, the State Register of Organic seeds and planting material”, Orders of the Ministry of Economic Development, Trade and Agriculture of Ukraine “On approval of the Procedure for maintaining the List of foreign certification bodies”, “On approval of the List of substances (ingredients, components) that may be used in organic production and allowed for use in maximum quantities”, “On approval of the Procedure for consideration of appeals against decisions of certification bodies”, “On approval of the application form for inclusion in the State Register of certification bodies in the field of organic production and circulation of organic products”, “On approval of the Requirements to the material and technical base and other infrastructure facilities required to perform the functions of certification of organic production and/or circulation of organic products”, “Some issues of reporting in the field of organic production, circulation and labeling of organic products”, Orders of the Ministry of Agrarian Policy and Food of Ukraine “On approval of the Procedure for confirmation of special knowledge of the inspector on organic

production and/or circulation of organic products in the field of organic production”, “On approval of the state logo for organic products”.

This testifies to the readiness of our state to meet the requirements set for the adaptation of domestic legislation to the requirements for the production and circulation of EU organic products.

4.2. PROSPECTS FOR UKRAINIAN PRODUCERS TO ENTER THE EUROPEAN MARKET, TAKING INTO ACCOUNT EU REQUIREMENTS FOR ENVIRONMENTAL FRIENDLINESS

Analysis of global trends in organic production shows the growing interest of consumers in organic products, their awareness of their useful properties and benefits. That is why the production of such products is an important strategic direction of its development in many countries.

Ukraine has significant potential for the production of organic products, their exports, as well as consumption in the domestic market, because demand for it is only growing, so our country can be one of the world leaders in the production of organic food. There are all the necessary prerequisites for this: fertile chernozems, good natural and climatic conditions, favorable geopolitical location, as well as human and scientific resources. European benchmarks provide the field of organic production with the appropriate vector of development and open new opportunities for Ukrainian producers of organic products. European Union legislation in the field of organic production is very important for domestic implementation if Ukraine wants to become a full member of the European organic community

and develop market relations with EU countries. Without the creation of proper legal support and a clear system of state support at the national level, the further development of organic production will remain a problem.

Today, the countries of the European Union are the largest consumers of organic products in the world. It should be noted that the European consumer, who cares about his health and the state of the environment, is becoming more aware of the benefits of such products and prefers it²⁴¹.

Consumption of organic products in the European Union is increasing every year with the emergence of a significant number of its producers. Thus, in 2019, the EU imported 3.24 million tons of such agricultural products²⁴². As for the industry of its production in the European Union, in 2021 the area of agricultural land on which organic products are grown reached 16.5 million hectares²⁴³. The number of producers of the latter is about 250 thousand²⁴⁴. It should be noted that the market for the consumption of organic products is growing faster than its production. In Sweden, for example, institutions such as schools,

²⁴¹ Малохліб О. С. (2021). Актуальні питання розвитку органічного виробництва в Україні в умовах євроінтеграції. *Право і суспільство*. № 5. С. 101.

²⁴² European Commission (2020). Imports of organic tropical fruit increased in the EU, while imports of organic cereals declined in 2019. Retrieved from https://ec.europa.eu/info/news/imports-organic-tropical-fruit-increased-eu-while-imports-organic-cereals-declined-2019-2020-jun-03_en?fbclid=IwAR3alV0hTbKt8hK4ItAyTBaE7B_E8aTpPLbEkShkUHRtQD2o3egDCg7WSsg (Accessed at 20 February, 2022).

²⁴³ Wilier H., Travnicek J., Meier C., Schlatter B. (2021). The World of Organic Agriculture Statistics and Emerging Trends 2021. Research Institute of Organic Agriculture FiBL. P. 37. Retrieved from <https://www.fibl.org/fileadmin/documents/shop/1150-organic-world-2021.pdf> (Accessed at 20 February, 2022).

²⁴⁴ European Commission (2019). Organic farming in the EU – A fast growing sector. Retrieved from https://ec.europa.eu/info/sites/default/files/food-farming-fisheries/farming/documents/market-brief-organic-farming-in-the-eu_mar2019_en.pdf (Accessed at 20 February, 2022).

kindergartens and hospitals are required by law to provide 80 % of organic food to visitors. Sweden, like other Scandinavian countries, practically does not grow its own agricultural products and imports them from other countries, including Ukraine²⁴⁵.

In recent years, Ukraine has seen a positive trend in the development of organic production. However, it should be noted that most of Ukraine's organic production is export-oriented. In 2019, our country took 2nd place in terms of exports of environmental products to the European Union. According to the report of the European Commission "Imports of organic products to the EU" in 2018 the volume of such products exported from Ukraine to the EU amounted to 266,741 tons²⁴⁶, and in 2019 increased by 27 % to 337.9 thousand tons²⁴⁷. According to the Organic Standard certification body, the main organic products exported from Ukraine were: sunflower seeds, wheat, corn, soybeans, sunflower oil, rapeseed, apples, apple juice concentrate, frozen blueberries, spelled, barley, peas, millet, rye, oats, pumpkin seeds, flax seeds, lupines, frozen elderberries, etc. In 2017, the first export of Ukrainian organic honey took place, and in 2018 and 2019, its exports reached almost 300 tons annually. Over the past 3 years, the volume of exported frozen raspberries has increased significantly, and in 2019 it was exported almost 800 tons. In 2019, for the first time, about 800 tons of organic sugar (from sugar beet)

²⁴⁵ Литвин А. (2021). Як бізнесу налагодити експорт органічної продукції в ЄС. Retrieved from <https://www.epravda.com.ua/rus/columns/2021/07/30/676443/> (Accessed at 20 February, 2022).

²⁴⁶ ORGANIC.INFO (2020). Органічний ринок в Україні. Retrieved from https://organicinfo.ua/wp-content/uploads/2020/02/UAOrganic_fact_sheet_2020-UA-1.pdf (Accessed at 20 February, 2022).

²⁴⁷ Міністерство розвитку економіки, торгівлі та сільського господарства України (2020). Україна посіла перше місце в Європі за обсягами імпортованої органічної продукції та друге у світі. Retrieved from <https://www.kmu.gov.ua/news/ukrayina-posila-pershe-misce-v-yevropi-za-obsyagami-importovanoyi-organichnoyi-produktsiyi-ta-drughe-u-sviti> (Accessed at 20 February, 2022).

were exported²⁴⁸. The main EU countries that consume Ukrainian exported organic products are the Netherlands, Germany, Italy, Austria, Poland, the Czech Republic, France, Hungary, Romania, Belgium, Bulgaria, Lithuania and Denmark.

European Union legislation considers organic production as a holistic system of food management and production, which combines best practices in terms of conservation of the environment and natural resources, the level of biological diversity, the application of high standards of proper maintenance (welfare) of animals. It also provides a method of production that meets certain requirements for products derived from the use of substances and processes of natural origin. Organic products are considered to be manufactured in compliance with the relevant environmental standards at all technological and implementation stages. Technologies of maximum preservation of nutrients are used in the production of such products. This requires the complete abandonment of any flavors, dyes, preservatives and genetically modified organisms. Refining, mineralization and other technological operations that reduce the nutritional properties of the organic product are prohibited. In addition, materials for packaging the latter are made from natural raw materials²⁴⁹.

In the European Union, organic production is regulated by certain EU Regulations, the aim of which is to achieve it properly, based on the concept of sustainable development.

The basis of domestic legislation in the field of legal regulation of organic production is the Law of Ukraine of 10.07.2018 “On the basic principles and requirements for organic production,

²⁴⁸ ORGANIC.INFO (2020). Органічний ринок в Україні. Retrieved from https://organicinfo.ua/wp-content/uploads/2020/02/UAOrganic_fact_sheet_2020-UA-1.pdf (Accessed at 20 February, 2022).

²⁴⁹ Органічне сільськогосподарське виробництво в Україні: правові засади ведення: монографія / за заг. ред. М. В. Шульги. Харків: Юрайт, 2020. 308 с.

circulation and labeling of organic products”, which is based on the norms of the Regulation of the EU Council № 834/2007²⁵⁰. The need to adopt this Law was due to the need to adapt Ukrainian legislation on organic production to the legislation of the European Union to meet Ukraine’s obligations under the Association Agreement with the EU. In its structure and content, this Law really almost completely reproduces this Regulation. The adoption of this Law in Ukraine establishes new principles and requirements for the legal provision of organic production, circulation and labeling of organic products.

It should be noted that on January 1, 2021 the EU Regulation № 848/2018²⁵¹ dated May 30, 2018 on organic production and labeling of organic products and the repeal of EU Regulation № 834/2007, which aims to improve legislation on organic production and establishing common rules and standards for all participants in the organic sector. The requirements of Regulation № 848/2018 also apply to producers of organic products of those countries that are not members of the European Union, but export it to the European market.

This international legal act provides for a number of innovations concerning: (a) ensuring that third-country producers comply with the same set of rules that exist in the European Union; (b) strengthening the control system through tighter safeguards and supply chain inspections; (c) coverage

²⁵⁰ Регламент ЄС № 834/2007 від 28.06.2007 р. стосовно органічного виробництва і маркування органічних продуктів та скасування Регламенту ЄЕС № 2092/91. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32007R0834> (Accessed at 20 February, 2022).

²⁵¹ Регламент ЄС № 2018/848 від 30.05.2018 р. про органічне виробництво і маркування органічних продуктів і скасування Регламенту ЄС № 834/2007. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R0848> (Accessed at 20 February, 2022).

by organic rules of a wider range of organic products produced; (d) simplification of the latter certification procedure for small farmers through the introduction of a new group certification system. The requirements contained in the said Regulation on the rules of production of organic products, their processing, labeling, organization of its control, trade in it, etc., should be reproduced as much as possible in the national legislation of each country.

Ukraine has achieved some results in the development of its own organic production. Today there are more than 600 operators on the Ukrainian market, most of which are certified according to European Union standards. Ukrainian organic operators are also certified under the US National Organic Program (NOP) and/or the Canadian Organic Regime (COR). In addition, organic standards such as Bio Suisse (Switzerland), Naturland (Germany), Bioland (Germany), JAS (Japan) and KRAV (Sweden) are taken into account in Ukraine²⁵².

It should be noted that certification is one of the prerequisites for the export of organic products to the European Union. Its main purpose is to guarantee to the consumer that such products are actually produced in accordance with the norms of organic production. Certification of organic production is a way to confirm the status of the latter and prevent consumer fraud. About 2 dozen certification bodies accredited at the international level were included in the official list of certification bodies in the organic field for Ukraine in accordance with EU Regulation № 1235/2008, which set out detailed rules for the implementation of EU Regulation № 834/2008 on measures to import organic products

²⁵² ORGANIC.INFO (2020). Органічний ринок в Україні. Retrieved from https://organicinfo.ua/wp-content/uploads/2020/02/UAOrganic_fact_sheet_2020-UA-1.pdf (Accessed at 20 February, 2022).

from third countries²⁵³. At the same time, the only Ukrainian certification body is Organic Standard LLC, and all others are foreign or their local branches.

Certification of organic production corresponds to the resolution of the Cabinet of Ministers of Ukraine “On approval of the Procedure for certification of organic production and/or circulation of organic products and amendments to the resolution of the Cabinet of Ministers of Ukraine of October 23, 2019 № 970” № 1032 dated October 21, 2020, which was developed subject to the requirements of EU legislation. This document is based on the European model of control in the field of organic production, implemented the main provisions of EU Regulation 889/2008 and EU Regulation 2017/625 of 15.05.2017²⁵⁴. The introduction of its own certification system will undoubtedly help to increase the transparency of organic production and saturate the domestic market with organic products, as well as enhances Ukraine’s image at the global level. Recognition of Ukrainian certificates of organic product quality in the European Union will be possible after the signing of the Agreement on Conformity Assessment and Acceptance of Industrial Goods (ACAA), which is planned to be formalized in a protocol to the Association Agreement between Ukraine and the EU.

The main goal of certification is to provide assurance to all stakeholders that the object of certification meets environmental

²⁵³ Регламент ЄС № 1235/2008 від 08.12.2008 р. про детальні правила для імплементації Регламенту ЄС № 834/2008 стосовно заходів імпортування органічної продукції з третій країн. Retrieved from <https://eur-lex.europa.eu/eli/reg/2008/1235/oj> (Accessed at 20 February, 2022).

²⁵⁴ Регламент ЄС № 2017/625 від 15.05.2017 р. щодо офіційного контролю та іншої офіційної діяльності, що виконується для забезпечення застосування законодавства про харчові продукти та корми, правил щодо здоров’я та добробуту тварин, оздоровлення рослин та засобів захисту рослин. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32017R0625> (Accessed at 20 February, 2022).

criteria, which set indicators of improved environmental performance and are implemented as a standard of environmental certification system²⁵⁵.

Another condition for the export of organic products to the European Union is its labeling. According to the legislation the product may be labelled organic, if it has been produced following legal requirements in the field of organic production, circulation and labelling of organic products, and contains at least 95 % organic ingredients of agricultural origin (by weight, not including water and cooking salt), and not more than 5 % (by weight) of non-organic ingredients, included in the List of substances (ingredients, components) authorized for use in organic production, and which are allowed to be used in the maximum permissible amount. Organic production of such a product shall be confirmed by a certificate. It is also worth noting that the official European logo of organic food is a sign “Euroleaf” (12 stars on a green background). Our own state logo has been developed and registered for the labeling of Ukrainian certified organic products.

The Law of Ukraine “On Basic Principles and Requirements for Organic Production, Circulation and Labeling of Organic Products” has recently been amended²⁵⁶, according to which until July 1, 2024, businesses have the right to sell agricultural products as organic and use the inscription “organic product” in their own product names and brands, as well as the designations and inscriptions “Organic”, “Ecological”, “Biological”,

²⁵⁵ Давиденко О. О. (2021). Перспективи виходу українських виробників органічної продукції на європейський ринок з урахуванням вимог ЄС до екологічності продукції. *Juris Europens is Scientia*. № 2. С. 67.

²⁵⁶ Про внесення зміни до розділу XI «Перехідні положення» Закону України «Про основні принципи та вимоги до органічного виробництва, обігу та маркування органічної продукції»: Закон України від 14.07.2021 р. № 1649-IX. *Офіційний вісник України*. 2021. № 62. Ст. 3887.

“Biodynamic”, “Organic” and/or any monosyllabic and/or derived words from these designations with the prefixes “eco-”, “bio-” provided that there is a valid certificate certifying the production and / or circulation of organic products in accordance with legislation other than the legislation of Ukraine issued by a foreign certification body.

Thus, today the issue of reorientation of sales markets and opening of new markets in the EU is important for Ukraine. The process of reorienting markets has already begun. In recent years, exports of goods to the EU have increased.

Ukrainian business has gained expanded access to the European market as a whole since the conclusion of the Association Agreement between Ukraine and the European Union. Many entrepreneurs have already taken advantage of new opportunities — according to the results of 2019, the share of trade in goods and services with the EU amounted to more than 40 % of total trade in Ukraine. Thus, the EU has become the largest trading partner and the largest investor in the Ukrainian economy.

However, a significant number of producers, including organic ones, still believe that exporting to Europe is quite difficult and suitable only for large companies. And such opinions arise precisely because of the need to comply with certain quality standards and take into account the cultural characteristics of the 27 EU member states.

At the same time, Ukraine is gradually but surely harmonizing domestic legislation in line with European requirements, which allows Ukrainian companies to raise their standards and be potentially competitive in other international markets.

And among the clients of the state institution — the Export Promotion Office, which has been successfully operating to help and promote the export of Ukrainian producers since 2018, there are many successful companies that already use such

opportunities. Ukrainian entrepreneurs have the opportunity to contact the Export Promotion Office, which prepares Ukrainian companies to enter foreign markets. Educational programs, analytics, consulting and assistance in finding partners are just some of the activities of the Office.

Another important agreement, the so-called “industrial visa waiver” — the Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA) — is also being actively promoted.

The agreement should become a unique format of cooperation and will include, in particular, the following:

- the requirements of Ukrainian technical regulations for products should be identical to the requirements of the relevant EU directives;
- standards that provide a presumption of conformity with the requirements of technical regulations and their lists should be identical to the relevant European harmonized standards and their lists;
- requirements for notified bodies should be identical to the requirements for notified bodies in the EU;
- Ukrainian manufacturers will have the right to apply the European mark of conformity “CE”²⁵⁷.

And when this agreement is reached, the situation will change in the near future — Ukrainian certificates will be recognized in the EU without additional checks. The list of products covered by the ACAA will be gradually expanded to

²⁵⁷ Mission of Ukraine to the European Union (2021). Access of Ukrainian goods to the EU market. *ACAA Agreement*. Retrieved from <https://ukraine-eu.mfa.gov.ua/posolstvo/torgovelo-ekonomichne-spivrobitnictvo-ukrayina-yes/dostup-ukrayinskih-tovariv-do-rinku-yes-ugoda-asaa> (Accessed at 20 February, 2022).

cover one-fifth of all goods exported to the EU. This, of course, will also apply to organic production. Preparations are underway, and appropriate changes are being made to the laws, which will allow for the conclusion of the ACAA and provide an additional impetus to the export business. In addition, the agreement will help attract investment — placing in Ukraine the production of goods whose consumers are EU countries, will be attractive to companies around the world.

However, if the right conditions are created for doing business and attracting investment, it will be possible to achieve advantages in high-tech industries. The countries of Central and Eastern Europe should be considered as an example for Ukraine. After signing similar association agreements and subsequent accession to the EU, these countries increased their exports and at the same time changed their export structure towards increasing the share of high-tech products in total exports.

Today, one of the most important problems facing domestic manufacturers is laboratory testing and certification of products for the EU market. Currently, this issue is coming to the forefront for Ukrainian exporters. The possibility of business development in the target markets directly depends on it. To enter the EU market, products must comply with a quality certificate issued by accredited European certification centers. The “CE” mark on the product means that it meets the requirements and can be sold and used throughout the united Europe. Certain goods belong to the group of so-called goods of optional (voluntary) certification. But even in this case it is necessary to test the product in one of the accredited European laboratories and get the conclusion of laboratory tests.

As for the recognition of Ukrainian quality certificates in Europe, this will be possible after the parties sign the ACAA as a protocol to the Association Agreement between

Ukraine and the EU. In addition, this will also be possible after full harmonization of sectoral and horizontal legislation of Ukraine, institutions and standards with sectoral and horizontal legislation, institutions and standards of the EU.

With the entry into force of the Association Agreement, customs duties on goods will be abolished or reduced immediately, after some time or for a certain period of time. Tariff quotas also apply to certain goods. Quotas on agricultural products (meat, milk, honey, garlic, sugar, grain, food, etc.) will apply to imports into the EU. Tariff quotas are granted in accordance with the principle that the first person to apply for the use of a certain amount of quota in the EU import customs declaration will most likely be entitled to duty-free import of goods.

Today, domestic companies need to understand that exporting to new markets brings a number of special benefits. The first and foremost benefit is expanding markets and, as a result, increasing sales. It is believed that foreign markets are more profitable for a particular product and are in greater demand than in the domestic market.

For example, the Ukrainian juice producer “GALS LTD”, which was able to succeed in the European market of organic products. This company supplies birch sap to Germany, France, Great Britain and Poland. Therefore, the existing successful examples provide an opportunity to believe in the future prospects of Ukraine in entering the European market of organic products. The first deliveries were made without a certificate of organic producer. The company took advantage of the European Union’s SEED program, which supported the entry of Ukrainian companies into the European market. This producer participated in the specialized exhibition “Organics” in Nuremberg, and as a result, received the first customers. For two years, experts from the Austrian Institute

for Organic Synthesis inspected all aspects of production and, in accordance with European standards, issued a certificate certifying that the product meets all national and international standards and regulations based on ISO 22000 and ISO / TS 22002 (ISO certification scheme 22 000)²⁵⁸.

Exporting organic products to the EU is not the most difficult challenge. This is primarily opportunities and additional income, because the purchasing power and GDP per capita of European countries are among the highest in the world.

As for Ukraine's prospects in this direction, they are quite large. But for this, both the state itself and the producers of organic products must go a certain way. This is an even deeper harmonization of legislation with European standards, and of course the hard work of the manufacturers themselves to meet the requirements and standards set in the EU. Success in EU markets largely depends on the ability to position themselves, act confidently in an intercultural environment, effectively organize business processes. Entering the European market is undoubtedly a difficult task for Ukrainian companies of medium and small business in any field of production, including organic. But at the same time, companies that will be able to prove their professional suitability in the EU market will receive a new level of development and prospects, primarily due to reliable and civilized business conditions²⁵⁹.

Based on the analysis of the development of organic production in Ukraine, it can be argued that domestic producers

²⁵⁸ «GALS LTD» : Official web page. Retrieved from <http://galsltd.com.ua/blog/novyny/samyj-sik-yak-ukrayinskyj-vyrobnyk-vyjshov-u-elitnyj-segment-prodrynku-yes/> (Accessed at 20 February, 2022).

²⁵⁹ Давиденко О. О. (2021). Перспективи виходу українських виробників органічної продукції на європейський ринок з урахуванням вимог ЄС до екологічності продукції. *Juris Europens is Scientia*. № 2. С. 69.

of organic products have great prospects for entering the European market, as much has already been done in this direction. European countries have experience not only in the production of organic products, but also their effective promotion in domestic and foreign markets. This experience is useful for the creation of the Ukrainian organic market, as well as for exporters of organic products to foreign markets.

At the same time, it should be noted that today the process of adapting Ukrainian legislation to EU legislation in the field of organic production should be considered incomplete. In order to expand Ukraine's export potential, as well as to strengthen its image as a supplier of high-quality organic products at the global level, it is necessary to conduct state policy aimed at: 1) to further adapt Ukrainian legislation to EU requirements in the field of organic production; 2) to ensure proper state support for its producers; 3) to stop further deterioration of the quality of agricultural land and to restore their fertility. Such a state policy will increase the production of certified organic products and strengthen Ukraine's image at the global level.

4.3. ADAPTATION OF FOREIGN EXPERIENCE OF STATE REGULATION OF THE DEVELOPMENT OF ORGANIC AGRICULTURAL PRODUCTION TO UKRAINIAN REALITIES

All over the world, in parallel with traditional agriculture, organic farming is developing. Recent studies show that in the United States, the European Union and Japan, demand for organic products exceeds supply, and consumer interest and market growth are becoming more widespread. The regulatory and legal

framework for the production of organic products (developed in the United States and some European countries more than 30 years ago) has created a modern world market, which today occupies from 7% to 10% of the global agricultural market. In Ukraine, the market for organic products is currently in the process of formation, but there are all tendencies to its significant development. The studied market is attractive for Ukrainian farmers because it can provide them with access to profitable and stable markets in Europe, Asia and the United States. But for proper access to it you need to pass an internationally recognized certification²⁶⁰.

As of today, more than 700 organizations control and certify organic products. Most standards in this area have been adopted in the United States, Japan, China and Germany. Of the 179 countries that produce organic products, 87 have their own laws on their production and circulation, 17 are in the process of developing and adopting a legislative and regulatory system, 20 use standards without a legal framework, 55 operate according to international standards without special laws. In Ukraine, due to the imperfection of the legal framework and the lack of a clearly regulated certification institute, the production of organic products is still insignificant.

Currently, in the world a fairly large area of land is allocated for organic production: there are 50.9 million hectares of organic land. The region with the largest area is Oceania, where 22.8 million hectares are certified for organic agriculture, in Europe — 12.7 million hectares, in Latin America — 6.7 million hectares, in Asia — 4 million hectares, in North America —

²⁶⁰ Ігнатенко І. В. (2021). Правові аспекти розвитку органічного сільського господарства: світові тенденції, проблеми і перспективи. *Приватне та публічне право*. № 3. С. 38.

3 million hectares, in Africa — 1.7 million hectares. Oceania accounts for 45 % of the world's organic agricultural land. Europe is a region that has shown significant growth in organic land over the past few years. It is home to 25 % of the world's organic land, in Latin America — 13 %²⁶¹.

Austria is experiencing a significant increase in organic land, and is now the country with the largest area in the world. 97 % of agricultural lands of this country are extensively cultivated pastures. In second place in the world in terms of land suitable for organic farming is Argentina, third in the United States.

The increase in the total area of organic agricultural land is the result of the transformation of existing arable land and gardens in accordance with the standards of organic agriculture, as well as the development of new territories. For example, in Europe, out of 12.7 million hectares of organic land, 2.4 million hectares are in the process of transition to organic production.

This trend indicates that in the near future we can expect an increase in the supply of organic products on the market. In Ukraine, the market for organic products is currently under development. The main reasons for the weak development of organic agriculture are the underdevelopment of the legal framework, a clear lack of mechanisms of state support and a single system of labeling of organic products. However, these are not the only obstacles in this direction. There are a number of other reasons.

First, because environmentally friendly products are premium products, only a small number of Ukrainians can afford them.

²⁶¹ Willer H., Lernoud J. (2018). The World of Organic Agriculture. Statistics and Emerging trends. *FiBL&IFOAM: Organic International*. Germany : Medienhaus Plump, 348 p.

Secondly, the expansion of the market of organic products is possible only in conditions of oversaturation of the food market and a high level of income, which does not correspond to modern Ukrainian realities.

Third, domestic producers are uncompetitive with such a difference in state support for organic agriculture in our country and abroad. For example, EU authorities regulate the expansion of organic agriculture, oversee the certification, provide financial support to those producers, which wish to participate in it, etc. The EU government encourages the transition of farms to the production of environmentally friendly products, paying up to 900 EUR per hectare — depending on the type of agricultural product, and with subsidies for traditional agriculture — 300–400 EUR per hectare. Of course, Ukrainian farmers cannot rely on such support.

Fourth, the dynamic development of organic agriculture and its support will be opposed by the authoritative lobby of global producers of mineral fertilizers, GMOs, chemicals, growth hormones, antibiotics, chemical plant protection products and more²⁶².

However, despite these obstacles, organic agriculture in Ukraine can and should develop, and the state should fully promote this. The state policy in the field of organic production should be more aimed at creating the most favorable conditions for achieving: (a) competitive and highly efficient economic activities in this field of organic production; (b) reducing imports and increasing exports of organic products; (c) expanding its domestic market and meeting the needs of the Ukrainian population;

²⁶² Ігнатенко І. В. (2021). Правові аспекти розвитку органічного сільського господарства: світові тенденції, проблеми і перспективи. *Приватне та публічне право*. № 3. С. 39.

(d) protecting health, improving the quality of life of the population of Ukraine by providing quality and balanced organic nutrition.

As an important aspect of this case we can call the formation of a sufficient regulatory framework, harmonized with international standards of organic production, taking into account the need to establish certification institutes and control systems. Organic legislation should include technical regulations, which must contain unambiguous and clear terminology, clear requirements for production, processing and sale of products, a description of the process of checking its quality for compliance with established rules.

In this context, it should be noted that more and more states are creating their own laws and certifying systems. This is due to the existence of the national market, which is almost always key to the development of organic products. Certification of products in the EU countries is carried out at the national level. Authorized bodies may be private, public and public-private. Certification manufacturers of these products are inspected by these bodies at least once a year. In 2010, the EU introduced a single mark of certified products — the so-called “Euro-leaf”, which is mandatory for packaged organic products produced in any EU country. Such a mark may be accompanied by other national or private logos²⁶³.

The National Organic Program (NOP) of the United States is the federal legal framework that sets standards for the production of organic products, rules for their management, and procedures for monitoring the mandatory certification. According to the NOP, all organic producers and processors with annual sales of

²⁶³ Metera D. (2000). Organic farming in Poland. Retrieved from <http://www.agencebio.org/upload/pagesEdito/fichiers/dorotameteraenglishversion.pdf> (Accessed at 20 February, 2022).

more than 5,000 USD must be certified by a public, foreign or private body accredited by the US Department of Agriculture (USDA). The producer must submit to the certification body a detailed description of his agricultural practice and production plan after approval to pass a further inspection. Unlike the EU's system (which is production-oriented), certification system in the USA is more product-oriented. The official USDA Organic mark can be used to mark 2 product categories — “100 % Organic” and “Organic”. The manufacturer determines the percentage of organic raw materials by a special method. The information is checked by the certification body. For the 3rd category of products — “Made with Organic” — certification is not carried out²⁶⁴.

One of the features of the American model of governance is of interest for Ukraine. In order to obtain a permit for the development of organic agriculture as one of the types of side earnings for the population, the United States is required to certify only those producers whose annual turnover exceeds 5,000 USD. They may call their products organic, but may not use national labels. Similarly, such sales from personal subsidiary farms are practiced in small quantities in Ukraine. In any case, it will be unprofitable for manufacturers of these products to pass official certification. However, it is likely that such additional earnings for the owner of a personal farm will eventually become the main, after which he will be obliged to go through this procedure. This can be one way to attract new producers to the organic market.

In Japan, organic products are marked with the JAS (Japanese Agricultural Standard) mark on the basis of a quality

²⁶⁴ Schleenbecker R. (2013). Consumers' perception of organic product characteristics. A review. *Appetite*. Vol. 71. P. 420–429.

assessment carried out independently by the manufacturer, seller or a third party eligible for certification. The latter are accredited by the Ministry of Agriculture, Forestry and Fisheries of Japan. According to JAS standards, farmers and processors who have applied for certification must have independent staff — a process manager and a specialist in compliance with existing standards. The responsibilities of the process manager are to plan organic production, process control, keeping records and documentation for each production batch. The specialist acts as an internal auditor, checks the records of each production batch and marks the product with the official JAS mark. Combining these positions with one person is allowed only on small farms with the permission of the certification body. Entrepreneurs who pack organic products must also have a certificate if the containers and packaging prepared for sale will be marked “organic product”.

In China, the certification and control of organic agriculture is carried out by the Center for the Development and Certification of Organic Food (OFDC), which is a structural unit of the Nanjing Institute for the Environment. In 2003, OFDC became an accredited member of IFOAM. In 2005, the Center developed national CNOPS standards, meeting the requirements of IFOAM and the EU, according to which export products are certified. For the domestic market, the Center for Green Food Development (CGFDC) in 1995 developed the GreenFood standards, according to which organic products are divided into 2 classes — A and AA. Limited use of mineral fertilizers and synthetic pesticides is allowed for the production of Class A products. Class AA products are subject to more stringent requirements. The key difference between GreenFood AA standards and CNOPS standards is that the first ones focus on controlling the final product, not the production process.

Certification bodies may be private, but all must be accredited by the Certification and Accreditation Authority of China (CNCA)²⁶⁵.

As we can see, in the Chinese 2 standards model the production of organic products for the domestic and foreign markets is clearly demarcated. The foreign market uses internationally recognized CNOPS standards, while the domestic market uses GreenFood standards, which, thanks to a flexible approach, can reach a significant number of agricultural producers. Thus, the well-thought-out state policy of China has contributed, on the one hand, to the successful entry into the world market of products under its own brand, and on the other — to develop a high domestic market for organic products, despite low incomes among the vast majority of the population of the country.

Perhaps Ukraine should follow the example of China, which has introduced these 2 certification systems: one for the export of organic products, and the other for domestic consumption.

The Australian model is also focused on the export of these products under the national brand, but, unlike the Chinese, it does not provide statutory standards for the domestic market. There are 8 certification bodies in Australia, accredited by AQIS (Australian Quarantine and Inspection Service), which is part of the Department of Agriculture, Fisheries and Forestry (DAFF). Each of them has its own standards, which cannot be softer than national ones. These organizations have the right to affix both their own logo and the logo of the National Standard to certified products. They are differently perceived in foreign markets. Products certified:

²⁶⁵ Paull J. (2007). China's Organic Revolution. *Journal of Organic Systems*. № 2. Retrieved from <http://orgprints.org/10949/1/10949.pdf> (Accessed at 20 February, 2022).

- (a) under the ACO, OFC or NASAA standard can be freely exported to the EU, USA and Japan;
- (b) according to the BDRI standard, in the EU and Japan (but not in the USA);
- (c) according to SFQ and TOP standards, it cannot be exported to the above-mentioned countries without additional certification of the importing country.

In addition, in 2010 the common standards of the Pacific organic standards (POS) region were adopted. Products certified according to this standard can be sold in the EU. There is currently no strict certification system for organic products in the Australian domestic market, i.e. products sold domestically can be called organic regardless of whether they have the appropriate certificate. Strict certification rules apply only to exports²⁶⁶.

Thus, the Australian model for foreign markets can be considered as national, because any export product must be certified according to national standards in organizations controlled by the Ministry of Agriculture. At the same time, in the domestic market, organic products are not subject to mandatory certification, which is typical of the non-state model.

The spontaneous model of the export-oriented market of organic products takes place in countries that have significant land and labor resources. However, the state there is not involved in regulating the market for such products (for example, Brazil and underdeveloped countries in Africa).

In Brazil, for example, export-oriented organic products are not covered by relevant national legislation, and inspection and control functions are performed by importing countries or

²⁶⁶ Organic Federation of Australia : Official web page. Retrieved from <http://www.ofa.org.au/> (Accessed at 20 February, 2022).

international organizations (e.g. IFOAM). The feature of Brazilian agricultural production is the popularity of growing crops in forest conditions, which provides higher crop yields than in conventional organic farming²⁶⁷.

The situation in which all functions of control and certification of organic production are assumed by importers or international organizations is also observed in many African countries (Zimbabwe, Uganda, Kenya, etc.).

The regulated model of the organic market was formed in countries with transitional economies, such as India and Argentina, where national standards are recognized worldwide. In India, the organic market is regulated by NPOP (National Organic Program) standards developed by the APEDA Food Export Development Service. These standards are recognized by the EU and Switzerland as similar to their internal requirements. Certification is carried out by 20 organizations accredited by government agencies. Indian organic products are exported mainly to developed countries²⁶⁸.

Among the peculiarities of the certification procedure provided by Indian law is the increased attention to ensuring transparency and objectivity in the decision to issue a certificate to the manufacturer. In particular, paragraph 9.1 of the National Program on Organic Production stipulates that verification and decision-making on certification must be made by different

²⁶⁷ Marcelo C.C. Stabile, André L.Guimarães, Daniel S.Silva, Vivian Ribeiro, Marcia N. Macedo, Michael T.Coe, Erika Pinto, Paulo Moutinho, Ane Alencar (2020). Solving Brazil's land use puzzle: Increasing production and slowing Amazon deforestation. *Land Use Policy*. Vol. 91. Retrieved from <https://www.sciencedirect.com/science/article/pii/S0264837719309809> (Accessed at 20 February, 2022).

²⁶⁸ APEDA: Agricultural & Processed Food Products Export Development Authority. Retrieved from <http://www.apeda.gov.in/apedawebsite/index.asp> (Accessed at 20 February, 2022).

persons. Therefore, the manufacturer chooses the certification body, as well as organic standards, according to which he wants to test their products.

In Argentina, the production of organic products is regulated by law № 25,127, which approves the national SENASA standards. Because this country produces more organic products for export, it is certified by organizations accredited by the US Department of Agriculture, and some of them by IFOAM²⁶⁹.

So, we can conclude that the use of its own standards and brand is of strategic importance to any country. As a result, its national market is less dependent on international conditions, can independently form domestic demand, as well as the content and direction of export flows²⁷⁰.

It should be noted that the expansion of the market of organic food in the field where it is possible to ensure their sustainable marketing is promising. Examples are agro- and ecotourism, education (in the form of school lunches) and others. The experience of Denmark, Great Britain and Italy is interesting. In these countries, the state considers part of its social policy to supply organic food to public institutions, especially hospitals, kindergartens and schools. And in the UK in the interests of strategic business development, this is done on a private basis.

As we can see, a significant number of countries have actively picked up the organic relay, hoping to increase exports of their agricultural products to developed countries under the banner of “environmental friendliness”. They quickly adapted their national

²⁶⁹ Wilier H., Lernoud J. (2018). The World of Organic Agriculture. Statistics and Emerging trends. *FiBL&IFOAM: Organic International*. Germany: Medienhaus Plump, 348 p.

²⁷⁰ Ігнатенко І. В. (2021). Правові аспекти розвитку органічного сільського господарства: світові тенденції, проблеми і перспективи. *Приватне та публічне право*. № 3. С. 42.

laws to the requirements of developed countries and certified agricultural land as organic. This must be taken into account in Ukraine, which wants to become a full participant in the “organic” market. However, simply copying the approaches of foreign countries to this process is a dead end, because they allocate a significant part of the budget for agriculture in the form of direct and indirect subsidies, which is not yet available for developing countries. Since Ukraine is at the initial stage of forming a national market for organic products, the pace of its development largely depends on the choice of an effective path. The international experience should be also considered in Ukraine.

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Izdevniecība “Baltija Publishing”
Valdeķu iela 62 – 156, Rīga, LV-1058
E-mail: office@baltijapublishing.lv

Iespiests tipogrāfijā SIA “Izdevniecība “Baltija Publishing”
Parakstīts iespiešanai: 2022. gada 16. maijs
Tirāža 155 eks.