

RUSSIA'S POLICY OF AGRICULTURAL LAND PRIVATIZATION: A TOTAL LACK OF COHERENCE

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When the issues of land privatization are considered from the point of view of the situation existing in agriculture, it becomes evident that the currently practiced approaches to privatization are not properly geared to such factors as the actual state of the objects of privatization or the need to address directly a certain economic issue, and do not rely on international best practices. We believe it is absolutely counterproductive even to talk about land privatization in Russia until its mechanisms and the risks associated with its implementation are made clear, and until a special body for managing this country's land resources is created.

Privatization of agricultural lands belongs to the first group of measures that were to be implemented in the course of structural transformations in Russia planned in the early 1990s. In fact, this was the beginning and the end of land privatization in this country, as the State still owns approximately 92% of all Russian lands. Thus, the government owns 67% of all agricultural land, and 78.4% of the land in the territory of inhabited localities (of these, the relevant land plots are situated predominantly in the territories of rural communities). Land plots occupied by industrial and communications companies and other property entities also belong to the State, with very few exceptions (98.9%). Among the other four out of seven categories of Russia's lands,¹ government property still constitutes 100%.

However, among arable lands the government currently owns only 23.4%, which means that the bulk of lands considered to be most valuable for agricultural uses has already been privatized. So, should privatization of such lands be continued any further? If the answer is yes, then should this be done by applying the same methods as have been introduced from 2001 onwards? Is there any sense for the government, in conditions of unformed market, to continue getting rid of state-owned lands, especially arable lands? At present in Russia, anyone may buy agricultural land – it depends on the ability to pay a higher price, and not on the intention to become an agricultural producer – the law imposes no restrictions on the range of potential buyers. In fact, Russia does not restrict the degree of land concentration, either: people may

buy as much as they want². Will the government be able to influence in any way the lease rates and selling prices for land, if it no land remains in its possessions?

The government's ability to control the 'appetites' of big land owners whose land is needed by agricultural producers is a factor relevant for the entire population of a given country. If agricultural producers must pay a high price for their access to land, the cost of their produce will also increase. Will Russian citizens be able to afford it? And how will this then influence the ability to achieve the minimum self-sufficiency targets set in Russia's Food Security Doctrine³?

Another threat associated with large-scale sale of land in the absence of any strategy or tactics is the increased government expenditure on the purchase of land if land plots should be needed for state or municipal purposes. The government must have public lands earmarked for construction projects if it seriously intends to provide people with affordable housing. For this purpose, 'agriculturally worthless' land plots may well be used⁴. One rare example of such use is Belgorod

¹ Under the RF Land Code (Chapters XIV–XVIII) there exist 7 land categories: 1) lands of agricultural designation; 2) lands of settlements; 3) lands of industry, electric power, transport, communications, radiobroadcasting, television, information, lands for ensuring outer space activity, lands of defense and security, and lands of other special designations; 4) lands of specially-protected territories and objects; 5) forestry fund lands; 6) water fund lands; 7) reserve lands.

² Shagaida N. I. *Oborot sel'skokhozaistvennykh zemel': transformatsiia institutov i praktika* [Agricultural Land Turnover: Institutional Transformation and Practice] / Shagaida N. I. – M.: Gaidar Institute, 2010. – 332 p. (Nauchnye trudy [Scientific Works] / Ye. T. Gaidar Institute for Economic Policy; No 142P).

³ RF President's Decree of 30 January 2010, No 120 'On the Approval of the Food Security Doctrine of the Russian Federation'. See ConsultantPlus, www.consultant.ru

⁴ These categories of land – forestry fund lands, water fund lands, and lands of specially-protected territories and objects – are even less available for implementing construction projects. The lands belonging to the categories 'Lands of Settlements', and 'Lands of Industry [...] and Land of other Special Designation' have a limited potential for being used for construction purposes. Reserve lands, as a rule, are situated far from inhabited localities. In this connection, agricultural lands appear to be very attractive for builders. It is for this reason – and also considering the fact that these lands represent the main agricultural produce resource – that it is necessary to thoroughly elaborate adequate mechanisms for their involvement in such projects, at the same time restricting the use for this purpose of arable land.

Oblast where the oblast government has bought land plots formerly belonging to collective farms and state farms for individual housing construction projects. The plots are sold at a low price, they are numerous, and so there is no potential for land speculation. There is only one requirement for the buyer – to erect a house within a period of five years. This circumstance coupled with absence of any fertile ground for construction monopolization gave rise to an individual housing construction boom among people with very modest incomes. Can the government actually ensure expansion of housing communities if all agricultural lands are sold out without any distinct purpose or any sense altogether? Or will it only contribute to the well-being of a very small group of people by ensuring high selling prices for speculators who have bought out all agricultural lands in the vicinity of towns and settlements exactly for that purpose?

To crown it all, public land ownership has not so far been fully defined as a concept. There exists a norm, stipulated in the Federal Law 'On the Entry into Force of the Land Code of the Russian Federation': until the completion of land division, the relevant land plots are to be disposed of by municipalities. In actual practice, this function is performed by district municipal offices. However, if they are not real owners of the land, how high will be the probability of their disposing of those plots with maximum efficiency?

Thus, when making the decision that the process of land privatization should be continued, one must clearly determine its ideology, strategy, methods, and understand why this privatization is actually needed, so that goals would not be confused with the means employed in their achievement. Privatization is a means of achieving a certain goal, and not a goal *per se*. In this connection it should be borne in mind that the mechanisms of privatization must be geared to a variety of cases, for example: (1) land has not been allotted to anyone, (2) land has been allotted to certain users, who already enjoy certain rights to the relevant land plot, (3) land has been allotted and is actually being used, but the transfer of the right to a land plot has not been properly formalized by the owner (the government), and so on. All these cases in the 'so on' category must be identified in the course of privatization, and adequate solutions provided to each of them. So, the process must be properly monitored. It is this spectrum of various cases that must serve as a base for developing privatization mechanisms acceptable for all the participants, and land will be gradually transferred into private ownership in such a way that will provide adequate solutions at least to some of the existing social problems.

Besides, privatization must be undertaken with due regard for the fact that this country has no plots ac-

tually suitable for privatization: there is some land, but no plots in the sense determined by Article 11.1 of the RF Land Code. At present, it is not the government that prepares land plots to be disposed of, but the persons interested in their disposal. In this connection, the selling prices or the leasing rates for the relevant plots does not incorporate such costs, which is by no means conducive to transparency in the relations between the owner of land and the interested person, with all the inevitable consequences. As a rule, no zoning procedure is applied to lands situated beyond the borders of inhabited localities, while the Real Estate Cadastre and the Single State Register of Rights to Real Estate (SSRR) contain no indicators for determine the type of arable land and its soil value. The forms used in compiling these cadastres and registers have been elaborated simply in order to provide some written reference to the property entities in respect of which a certain right is registered, or entities that simply need to be entered into the records. One gets the impression that nobody has actually given a thought to the issue as to what information these documents should contain in order to provide solutions to some relevant social problems. From the available land statistics one can only learn how much land is currently in public ownership. However, it cannot be known which (and how much) public land is suitable for agricultural uses. Earlier we have already mentioned the fact that it is not clear which type of land ownership is mean in each case federal, regional or municipal. However, the question as to how much arable land is actually owned by the government is by no means an idle one. Arable land is going to be used for housing development projects, and so it would be reasonable to designate for this purpose the least valuable plots, if Russia aspires to become a source of food grains. Below is a tentative list of possible situations, with estimated plot sizes.

State-owned agricultural lands not allotted for anybody's use. Such lands do exist, as demonstrated by the difference in the estimated total area of arable land (220.3m ha) in this country and that of arable land consolidated to organizations or individuals involved in agricultural production (196.3m ha)¹. However, it is difficult to say how much of that land has not been granted for use to anyone, and that kind of arable land it is. In any case, in accordance with the RF Land Code this 'unused' land must be put on records as reserve land. At present, the total area of reserve land is 8.5m ha. However, this rule is not observed when applied to agricultural land. On the contrary, such land remains in the category of land intended for agricultural use and is included in the so-called 'redistribution fund'. At pre-

1 As of 1 January 2012. Rosreestr [Federal Service for State Registration, Cadastre and Cartography].

sent, this fund consists of 12m ha of arable land, part of which (and it is not known how much) is being used, by some unspecified right, and it remains unknown if that right is recognized by the law or not.

A formal redistribution of agricultural land between different categories gives rise to certain privatization specificities. Lands from the redistribution fund (belonging to the category 'Lands of Agricultural Designation') must be privatized only on the basis of provisions stipulated in the Federal Law 'On Turnover of Lands of Agricultural Designation' – that is, via an auction and without any preferences for any participants. However, the existing Federal Law 'On Peasant (Farming) Enterprises' allows free-of-charge allotment of land without an auction. This gives rise to the question: 'Will land privatization take the course towards protecting, first of all, the interests of farmers?'

Besides, the plots of land designated for agricultural use are subject to restrictions (if only formally) imposed on the size of plots to be created as a result of privatization, as well as on the possibility of their transfer to foreigners and foreign companies. No such restrictions are applied to other categories of land. It is interesting that these restrictions – on the size of plots and their transfer to foreigners – are applied both to agricultural land and plots of land designated for agricultural use but without true agricultural value. At the same time, no restrictions concerning the size of plots created as a result of privatization and their use by foreigners are established with regard to agricultural land belonging to other land categories. In other words, it is necessary to eliminate the existing discrepancies between the laws and establish similar procedures for land plot privatization and sale in respect of agricultural lands belonging to different land categories, with the exception of land situated in the territory of inhabited localities, where agricultural use is not a priority.

Land redistribution funds. These consist of 46m ha, including 12m ha of agricultural land. These funds were created in the early 1990s on the basis of land formerly belonging to collective and state farms in order to provide land to new farmers and co-ops. According to the rules that so far have not been abolished, the legal successors of reorganized collective and state farms could continue to use that land until the moment when it would be needed by a new farmer or organization¹. However, at present these users are not granted any preference in an event of sale or lease of relevant land plots. On the contrary, they are threatened with sanctions for unlawful land takeover. Evidently, the unoccupied land included in the fund can be privatized

in the same procedure as the land in public ownership that has not been allotted to anybody. As for the land plots being used on the basis of documents issued in the early 1990s, preference should be granted to those users who are now using these plots openly and honestly.

There exist agricultural lands in public ownership that have been granted to organizations for permanent (in perpetuity) use. As of 1 January 2012, the area granted to organizations registered by *Rosstat* as agricultural producers amounted to more than 167m ha. This land consists of arable land actually used by state agricultural companies, plots occupied by their numerous buildings and structures, their private roads, and some swamp areas. Their land use rights are often very complicated. Thus, sometimes a land plot is used by a field study center of an agricultural higher educational establishment (HEE) or a research institute of the Russian Agricultural Academy, while officially it is assigned to the HEE or the research institute itself. It is obvious that, prior to being privatized, the right of use should be registered in accordance with the actual use of relevant plots, and privatization must be accomplished in such a way that private organization could be interested in providing their facilities for student field studies or scientific research.

The total area of non-agricultural plots granted by the right of permanent (or in perpetuity) land use to private agricultural organizations (as well as other legal entities) is considerable, but its size in hectares is unknown. Since 2001, the government has been trying, without success, to sell or lease out that land to potential users. However, the existing institutions make it difficult to properly formalize the transfer of each land plot in the form of buyout or leasing. In this case, bad institutions make a good job in the eyes of the government. If suddenly it were to become very easy to lease or buy out a plot of land, the users would have gotten rid of some of their plots (non-usable, infertile, without easy access by road). This would have meant less tax-generated revenue and less rental payments for the local budget. It is unlikely that such plots scattered among other land plots used by other owners might be needed by anybody else for any other purpose. Evidently, the mechanisms of privatization must be adapted with all these circumstances in view, in order to minimize the risk of creating such unwanted land plots.

There are instances when the right of use in respect of land plots occupied by buildings has never been formally granted by the State to the owners or users of those buildings. For example, it may be so that, in a field study center, the building is federal property, while the right of use to the land plot on which it is situated is not granted to anyone. There is a special decree that

¹ *Temporary Provision on the Procedure for Creating Land Redistribution Funds*. Council of Ministers of the RSFSR, 29 January 1992, No 32-10/82.

plots in federal ownership must be leased out. Preferential leasing conditions are envisaged for land plots of agricultural designation (outside of the borders of populated localities) and agricultural lands (inside the territories of inhabited localities) in an event of renewal of the right of for permanent (in perpetuity) use of land. However, in cases when (1) no renewal of right of use takes place because formally such right has even been granted with regard to a given land plot used by a field study center, (2) a plot is situated within the borders of an inhabited locality where no zoning has been conducted, and no zone for agricultural use is designated, no preferences can be granted. The amount of lease rental is determined without taking in account the fact the buildings are kept on the balance sheet of an agricultural organization. As shown by existing practices, the lessee may smoothly progress into the state of bankruptcy due to inability to pay rental out of agricultural proceeds¹. Similarly, there is no mechanism whereby land can be privatized if a FSUE has been privatized, and its building is going to be sold. If it is sold similarly to the current practice of leasing agricultural organizations, it is clear that the FSUE can be bought by anyone except an agricultural producer: their business simple cannot generate enough income for them to buy out an office building. Evidently, if an FSUE is privatized for purposes other than the liquidation of a given business, the existing approach to land leasing, and then those to privatization must be revised.

If we look at existing world privatization practices, in the developed countries, for example in the USA, the cultivated agricultural land is almost 100% private. But this situation has been emerging gradually. There are also newer examples of privatization of public lands in Germany. There, a special body was created more than two decades ago to tackle the issue of privatization of land that had not been included in the restitution program. This is a very slow process, land is transferred selectively and gradually. Both in the USA nearly two centuries ago and in Germany at present, land designated for agricultural use is at first transferred under a lease agreement. And only when it is recognized that a given land plot is indeed being used by the lessee and nobody else, and as declared, it is transferred into ownership (sold) – that is, agricultural land is handed over to an agricultural producer. In Germany, a strictly limited amount of publicly owned land is offered for sale – no more than 20,000 ha of arable land per annum. In this connection, only part of that land is sold at a market price; preferential right belongs to long-term lease by

an agricultural producer, with the right to subsequently buy out the relevant plot at a reduced price. The buyer is subject to restrictions: land cannot be bought if, as a result of such a transaction, the share of his own land is going to exceed 50% of the total area of his cultivated land². The buyer must refund the difference between the price of land paid to the government and its subsequent selling price if the relevant land plot is sold less than 20 years after its acquisition. The buyer cannot purchase more than 140 ha of land. The selling prices of land sold to the lessee by the government is determined not on the basis of current market prices, but on the potential crop yield. That is, land privatization is implemented with a view towards preserving the existing structure of Germany's agriculture and making land accessible to agricultural producers and nobody else, while at the same time preventing any additional pressure on the agricultural land market.

By way of summing up, it can be said that, in order to adequately accomplish land privatization in Russia, it would be reasonable first to complete the process of land division between the federal government, RF subjects and municipalities. The existing incentives are insufficient for speeding up that process. Evidently it will be worthwhile to officially set the deadline for the Federation and its subject to properly register their right to each relevant land plot. Then, after the expiry of the established period, it will be feasible to grant to municipalities the right to register their rights to those land plots which, by their indicia of ownership, cannot be defined as federal or RF subject's property. For simplicity's sake, it would be useful also to introduce special cadastral registration rules for such plots, bearing in mind that the full scope of documentation with full description of their boundaries will be drawn up later, at the stage of disposing of the plots.

Prior to the privatization of unclaimed plots of land it will be feasible to complete the zoning of territories and determine the permitted types of land use with due regard for the long-term development plans of the relevant territories (subordinated to rural settlement and district municipal offices). It is necessary to change the attitude to territorial planning only as to an instrument for construction development, and treat it instead as a foundation for the comprehensive multi-sectoral medium-term development of territory infrastructure, expansion of the existing urban area and creation of new ones – within a period of 8–10 years. Territorial planning can help to better understand the need for additional

1 Shagaida N. I. *Zachem gory bumag, instruktsii, esli vse naperkosyak?* [Why the mountains of papers, instructions are needed if everything goes astray?] http://www.agronews.ru/news/detail/125862/?sphrase_id=241396

2 Such a transaction poses a threat to the existing agrarian structure, because the share of a farmer's own land in the old agricultural plots amounts to no more than 50%. So, the transactions creating a similar property structure in the new land plots are also approved.

land in order to expand the inhabited localities to suit their residents, and to estimate the opportunities for planning recreation areas for city residents in conjunction with the development of their transport and social infrastructure. It would be useful to adopt a methodology for determining the category of least valuable arable land on the basis of soil properties and plot sizes¹. On the basis of their valuation and with due regards for construction projects, it is feasible to designate those areas of agricultural land that can be built over with the least negative impact on agricultural production. From the point of view of economics, it is most reasonable to form land plots designated for different uses prior to their privatization. Otherwise the margin between the price of land plot designated for agricultural use and that of the plot designated for construction development will be illegally appropriated by government officials and the intermediaries lobbying for the adoption of most suitable government decisions concerning the category and permitted use of a given plot. However, if during the process of privatization the relevant land plots are offered for sale after their permitted use has already been determined or, better still, with the rules for their construction development already elaborated, the entire amount of the resulting income will be transferred as revenue to the relevant budget, the buyer will be spared the unofficial cost of lobbying for the necessary decision to be made, and the territory will be developed in accordance with the established territorial planning projects. The more 'in-depth' the preparation phase preceding the transfer of a land plot to the end consumer – an individual homeowner, a construction company planning to erect a residential building or trade center, and other entities included in a territory development plan – the higher the amount of money transferred via transparent channels to the budget (and the lower the cost of residential construction).

As for the land plots earmarked 'for agricultural use', it is feasible to map them within the already existing natural or artificial boundaries. The bigger the land plot the lower the probability that it can actually be obtained by a farmer. So, in order to support small businesses, it is necessary to form compact land plots and allot them free of charge to new farmers in accordance with the procedures stipulated in the Federal Law 'On Peasant (Farming) Enterprises'. If farmers de-

sire to obtain more land in excess of the established norm, they can buy it elsewhere and pay for it. Privatization of plots for agricultural uses, as shown by the experience of Germany, is feasible only through the phase of leasing. If three years later it becomes obvious that a land plot's fertility has not deteriorated², and the lessee is using the plot for agricultural purposes, its buyout can be permitted³.

In the instances of privatization of agricultural land from the land redistribution fund, when it is used openly and honestly by the legal successors of former collective and state farms, these entities should be granted a preferential right of buyout of the relevant land plots.

In both cases, the selling price of land plots must be coordinated with the income that can be derived as a result of their use for agricultural production. In this connection, restrictions can be imposed on the total area of land to be acquired, in order to avoid the concentration of a lot of land in one owner's hands. Besides, it is feasible to add the requirement for the buyer to refund the difference between the price of land paid to the government at the moment of acquisition and its subsequent selling price, if the relevant land plot is sold less than 20 years after its acquisition. In order to accomplish all this, it will be necessary to adopt a government decree on privatization of land plots in public ownership, representing a specific type of property.

The formation of land plots for subsequent sale will require the allocation of substantial amounts of money; in the case of agricultural land, the money will be allocated in the main from municipal budgets, because the bulk of the plots, in accordance with their formal indicia, will be transferred into municipal ownership. Due to the specificity of Russia's tax system, municipalities – especially rural ones – will not be able to afford these expenses. In this connection, it will be necessary to envisage the possibility of transfers from the federal budget to cover the subsidizing of municipalities in order to enable them to determine the boundaries of public land plots and prepare them for privatization. The resulting budget losses can be covered by the revenue generated by the lease and sale of the already prepared land plots. Evidently, it will also be necessary to legally settle the issue of granting subsidies from the federal or regional budgets and that of their sub-

1 In US practices, on the contrary, valuable and most valuable lands are distinguished. Valuable land is understood as currently cultivated land plots (for growing grains, industrial crops, etc.) or those that can be used for such agricultural purposes due to their soil properties. Most valuable land is understood as land plots used for growing plants that are native to a certain limited area (citrus, tea, etc.). In Russia, it is possible to define as most valuable land the plots occupied by the field study facilities of HSEs and research institutes.

2 At present, land fertility monitoring is envisaged in the *State Program for Development of Agriculture and Regulation of Markets for Agricultural products, Raw Materials and Food Markets Regulation in 2013–2020*.

3 The possibility of buying off a leased land plot after a period of 3 years is already envisaged by the Federal Law 'On Turnover of Lands of Agricultural Designation', but as far as privatization of agricultural land is concerned, there is no requirement of a mandatory period of lease of a land plot prior to its purchase.

sequent compensation by revenue from their lease or sale.

To speed up the process of renewal of the right of permanent (unlimited) land use, it will be feasible to introduce the mechanism of transforming it into the right of lease, without any expenses for the user. In this connection, for a period of 3–5 years, the amount of rental must be kept at the same level as that of land tax. To create incentives for land plots to be bought out, the lease rate may, later on, be raised. To minimize the risk that some land plots, unsuitable for any uses, that have been held by the right of permanent (unlimited) land use since the 1990s, might be rejected by potential buyers, incentives like their sale as part of bigger land plots sold in bulk, without specific subdivision of their boundaries, can be introduced. By applying this approach, privatization can be accomplished very quickly. At some later date, the land owner may need to undertake land subdivision in order to mortgage or sell some of the land, formally register the right of ownership to part of the bigger plot, etc.

A special procedure is also needed for privatization of FSUEs, as a result of which the new owner will be granted the right of ownership to a relevant land plot.

Our incomplete overview of the specific cases and possible approaches to land privatization points to the necessity of a lot of time-consuming, systematic work. It is needed in order to generate more revenue for the budget from the sale of land plots, or to lower the existing barriers – for example those preventing individuals from building their homes at an affordable cost. Besides, it is necessary to remove unnecessary barriers that prevent agricultural producers from easy

acquisition of more land for cultivation, to introduce some better-defined systems of land use and land ownership applicable to those plots the right of use to which has already been granted, and so on. However, Russia still lacks a separate government agency for performing such functions (management of the public land fund, systematic land privatization, etc.). The staff of the RF Federal Agency for State Property Management (*Rosimushchestvo*) and the municipal property management bodies alone cannot tackle this task, because it is too small and overburdened with other duties.

The practice of mass-scale land privatization in the field of agriculture has shown that its success depends on the actual organization of the privatization process – well-defined goals, the presence of a special agency dedicated to the achievement of those goals, etc. Although the discussion as to whether privatization in agriculture was done rightly or not has been going on for many years, one can hardly deny the fact that the State Committee of the Russian Federation for Land Resources and Land Management (*Roskomzem*) successfully accomplished the task assigned to it: over the period of 3 years, it transferred more than 124m ha of agricultural land into individual ownership. Latter attempts at privatization, for example the duty to buy out or lease the land plots in the course of renewal of the right of permanent (unlimited) use (introduced from 2001), were unsuccessful. In this connection, it is altogether unreasonable to raise the land privatization issue until its goals are made clear, its mechanisms and risks are properly considered, and a special body for managing the available land resources across the country is created. ●