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Legal recognition of family farming in Ukraine: challenges and relevance

Abstract. In the past two years many political and scientific discussions with a focus on the importance of family farms' legal recognitions took place in Ukraine. The main idea is to provide a legal base for the family farms to become equal participants on the agricultural market. Although the Draft Law of Ukraine «On Amendments to Certain Laws of Ukraine on Stimulating the Establishment and Operations of Family Farming Enterprises» (No. 1599 as of 23 December 2014) was introduced to Ukrainian Parliament, there are still debates on the efficiency of such an initiative.

The author of this article has analysed world practice of family farming and showed how the introduction of the term «family farms» into national legislation has influenced the development of rural areas and agri-business. The article presents an approach to recognize family farmers in Ukraine as legal and equal players in the agricultural market. Based at international researches and practices, the author has conducted a comparative analysis and provided a clear example of how legal recognition of family farms can positively influence the country's rural development and its national economy. A SWOT analysis of strengths and weaknesses that Ukrainian family farms may face after implementation of Draft Law No. 1599 was made.

Keywords: Family Farming; Sustainability; National Economy; Rural Development

JEL Classification: O18; O44; Q01; Q13; Q15; Q17; Q18

DOI: <http://dx.doi.org/10.21003/ea.V158-05>

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Законодавче визнання сімейного фермерства в Україні: виклики та доцільність

Анотація. У статті проведено порівняльний аналіз міжнародної практики запровадження на законодавчому рівні поняття «сімейні фермерські господарства» та його вплив на регіональний розвиток, розвиток агробізнесу різних країн та їхніх національних економік. Проведено SWOT-аналіз доцільності визнання сімейних фермерських господарств повноправними учасниками ринку.

Ключові слова: сімейні фермерські господарства; сталий розвиток; національна економіка; регіональний розвиток.

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Законодательное признание семейного фермерства в Украине: вызовы и целесообразность

Аннотация. В статье проведен сравнительный анализ международной практики введения на законодательном уровне понятия «семейные фермерские хозяйства» и его влияние на региональное развитие, развитие агробизнеса и национальной экономики. Проведен SWOT-анализ целесообразности признания семейных ферм полноправными участниками рынка.

Ключевые слова: семейные фермерские хозяйства; устойчивое развитие; национальная экономика; региональное развитие.

1. Introduction

Ukraine has been a bread-basket of Europe and one of the main world producers and exporters of corn, seeds and other agricultural products. Despite the war and the crisis in Ukraine, agriculture is one of the main industries that is growing and bringing benefits to the national economy. It composes 10.2% of GDP in Ukraine.

There are several challenges that the Ukrainian agricultural sector has faced in the past three years. The war and the loss of part of Donbas region and Crimea, as well as sanctions against Ukrainian producers implemented mainly by the Russian Federation have lead to a decrease in agroproduction and to a loss of one of the biggest food markets. Ukrainian producers were unprepared to challenge European and world standards, especially those that concern the quality of their products. Despite the signing the Association Agreement and new contracts with Asian, African and Latin American countries, it has led to losses rather than benefits. The third problematic issue is a lack of legal possibilities for small and medium-sized farmers to enter international markets.

2. Brief Literature Review

Although there exist plenty of works and scientific researches on the development of the agricultural sector in Ukraine, little attention is paid to the role of small family farms in regional development of the country.

Theoretical, practical and judicial aspects of family farming have been topics of scientific discussions in recent years. Scholars such as V. Demianchuk, I. Kyrylenko, T. Kropyvko, P. Kulynych, O. Pogribnyi, V. Rossokha, Y. Samsonova, N. Usata, M. Vaschchychyn, J.-F. Belieres (2015), S. Davidova and K. Thomson (2014), A. P. de la O Campos (2014), E. Garner (2014), W. Goldschmidt (1998), B. E. Graeub (2015), B. Jezynska (2014), R. Zimdahl (2012) and others have devoted their researches to the mentioned subject.

3. The purpose of this article is to study legal, financial and social conditions that stimulate the development of local family farming and local agribusiness and discover how the above-mentioned aspects contribute to the achievement of objectives of the regional agricultural policy.

The key question to be researched and answered in this article is: «What impact does state registration and legal recognition of family farms in Ukraine have on rural development?»

The research will be conducted following the positivistic approach. A comparative analysis will be used to show the significance of family farming in the rural development in various countries. A SWOT-analysis will be used to discuss challenges and possibilities that legal recognition of family farms can bring. The empirical approach will also help to conduct the study in question.

4. Results

According to FAO statistics, there are more than 570 m farms in the world, 500 m of which are dedicated to family farm production. The latter produce approximately 56% of all agricultural products [3]. The world farming community consists of approximately 2.6 billion people (i.e. 40% of the total population).

Family farming covers a great amount of arable land in the world. The percentage of the arable land operated by family farms in North and Central America equals to 83%, whereas it is 68% in Europe, 85% in Asia and 62% in Africa [4]. In most of the countries that are located on the mentioned continents family farms have legal definition. Their activities are regulated and protected by the state. In some countries, e.g. Poland, definition of family farms is included in the Constitution of the country.

Family farms play a crucial role in agroproduction in all the EU member states. Their percentage equals to 99% in Greece and to 72.8% in France. Other farms that are not operated by families have only 2.4% in the total amount of all agro enterprises in most of the EU countries [8].

Not only do officially registered family farms in the EU receive social benefits, but also they get direct financial support from the state. According to EU Directive No. 1307/2013 and Council Regulation (EC) No. 73/2009, in order to receive financial support in the frames of the Common Agricultural Policy (CAP) agricultural enterprises could be registered either as a legal entity or a natural person [6].

According to FAOSTAT and OESD.Stat, direct state support for agricultural producers in the EU member states in 2013 equalled to 406 Euros per 1 ha of arable land (e.g. 812 Euros/ha in the Netherlands, 772 Euros/ha in Belgium, 292 Euros/ha in Poland; 158 Euros/ha in Lithuania; 452 Euros/ha in Germany). At the same time, state support for agro-producers in Ukraine (mainly indirect) was 40 Euros/ha [12].

As mentioned by R. Zimdahi, family farms are seen as «the backbone of valuable rural communities in many European countries» [13]. He also adds that in comparison to European agricultural tradition in American tradition family farms are treated more like production units; whereas in the European one they are mostly seen as «essential components for maintenance of rural communities and rural life» (Goldschmidt, 1998). In the EU member states family farms also receive additional financial support (CAP) as they are considered to be key players promoting sustainable development of agriculture.

The development of the agricultural sector highly depends on the development of its key players, namely: big agrarian companies and small family farms. In Ukraine, 10-12 m ha of all arable land is operated by big agro holdings, whereas 39,563 small farms (most of which are family farms) function on 4.3 m ha of arable land [12]. Family farms have great potential which may provide rural and agricultural development in Ukraine.

More than 56,000 enterprises are involved in agriculture in Ukraine. Most of such firms are located in Odessa, Mykolaiv, Dnipropetrovsk, Kherson and Kirovograd regions. The fewest number of them is in Chernivtsi, Ivano-Frankivsk and Rivne regions. Most of such companies operate on less than 100 ha of arable land [12].

According to the State Statistics Service of Ukraine [12], in 2014 98,6 thousand people were working in agriculture. Among them: 40,1 thousand (41%) were employees on farms; 59,4 thousand people were temporary employed and 39,2 thousand people were full time employees.

Family farms are legally defined at the highest international level. In the definition given by the European Parliament family farms are described as «*share of farm labour, on ownership and control (and thus succession between generations), on legal status (sole holders) or on who bears the business risk*» [6], while FAO defines family farms as «*a means of organizing agricultural, forestry, fisheries, pastoral and aquaculture production which is managed and operated by a family and predominantly reliant on family labour, both women's and men's. The family and the farm are linked, co-evolve and combine economic, environmental, reproductive, social and cul-*

tural functions» [3]. However, they have no legal recognition in Ukrainian legislation.

Such a situation causes several basic problems that remain obstacles for proper regional development (e.g. a decrease in employment in the agricultural sector of the economy, cash outflow and an increase in the shadow economy respectively; 50-55% of peasants that are involved in agriculture contribute to the shadow economy).

Now every producer that operates on the agricultural market faces such problems as the lack and limitation of bank loans for agricultural enterprises, high interest rates and the absence of pledge for small and medium-sized farmers. Most of the banks prefer to give loans to agricultural producers that operate on more than 500 ha.

A good example and a comparative analysis of definitions of family farms in various countries is given by B. E. Graeb, et al. [4]. We have enlarged the proposed table of definitions by adding Poland, Austria, Italy, Lithuania, Hungary, Romania, Macedonia, Bulgaria, Slovakia [10] and Ukraine (see Table 1).

As seen from the Table 1, there is no unique definition for family farms either in European or in North or Latin American legislation. However, the fact is that in order to secure the rights of peasants and farmers who work in agriculture, almost every country implements a legal definition for this group of both family and one-person businesses.

Introducing and granting family farms the status of official producers (both as a natural person and a legal entity) will provide the title holder social benefits that other entrepreneurs already possess. Besides, they will receive more access to bank loans, additional financial support (including EU grants, state support, etc).

A positive outcome for family farms being granted a legal definition could be seen illustrated by the example of Brazil. According to Saulo Araujo [11] and Paolo Groppo (FAO) and Carlos Guanziroli [5] the biggest problem for rural development in this South American country was in the legislation. Nevertheless, after the corresponding Law No.11326 was adopted in Brazil in 1995, it became much easier for family farms to receive bank loans, improve employment in rural areas and provide food security in the whole country. Such an impact could be demonstrated by the share of family farms (agriculture) that accounts for 9% of the Brazilian GDP. Family farming makes up to 38% of the gross value of production and 32% of national agricultural GDP [9, 9-10].

In order to reform the Ukrainian agricultural sector, the example of Poland could also be taken into account. This neighbouring country has faced three main periods of transformation (during the «Solidarnosc» times in 1980s; during economic reforms by Balcerowicz in 1990s; and during EU integration in 2000s) and has much more in common with Ukraine, including historical circumstances that affected the economic, social and political spheres. Therefore, its example could be much more easily implemented in Ukraine, if compared with examples of any other country, especially in reforming the agricultural sector. Poland's economic success depends mainly on family farming. The export of 1/5 of all agricultural production and the positive balance (3.5 billion euro) is provided by family farms [6]. According to the Central Statistical Office of Poland, in 2011 more than 2,304,000 people were engaged in agriculture. Total amount of family farms in Poland equals to 2.4 m enterprises. Only Romania has more of such enterprises. Poland has a share of 18% of all family farms in the EU [8].

In Poland, a legal definition of family farms was introduced in Article 23 of the Constitution of the Republic in 1997 (see Table 1). Before that time, there was no legal recognition of this type of players on agricultural production market. It belonged to the so called quasi-legal instruments (soft law) that had had no place in the Polish legislation. Nowadays, family farms have also received a definition of innovation clusters and become part of European Innovation Partnership [6].

Based on the previous researches and international experience mentioned above [1; 3-7; 11; 13] we have conducted a SWOT analysis of introduction of the definition «family farms» into Ukrainian legislation (see Table 2).

Tab. 1: Definitions of family farmers in various countries

| | | |
|--|---|--|
| <p>ARGENTINA: The producer works directly on the farm. The producer does not employ non-family permanent labour. The producer may hire temporary non-family labour. The farm is not registered as a joint stock company or other type of commercial company. Upper limits of «capital level» that vary by region: farm size, cultivated size of the farm, and size of cattle herd, machinery assets, planted area with fruit trees and irrigated area. (Obschatko, Foti, & Romañ, 2007 cited in HLPE, 2013)</p> | <p>URUGUAY: Farms are less than 500 hectares under any form of land tenure; employ no more than 2 permanent full-time workers who live on or near the farm; total gross income is not above a certain level. (Ministerio de Ganaderia, 2007)</p> | <p>MEXICO: Family farming or smallholder agriculture is composed of «agriculture and livestock producers, foresters, and artisanal fishermen with limited resources, despite their heterogeneity, have the following main features: – limited access to land and capital, – predominant use of family labour, with the head of the family being directly involved in the production process; which means that, even though there may be some division of labour, head of the family does not exclusively assume managing functions, but rather is a further worker from the family». (FAO, 2013c)</p> |
| <p>CHILE: Farmers who manage fewer than 12 hectares under basic irrigation, with a total farm value of less than 3,500 investment units (US\$158,000), with income primarily from farm activities and that work directly on the land. Law N_ 18.910—Modif. Law N_ 19.213 (1993) cit. in FAO, 2013c)</p> | <p>BRAZIL: Landholdings less than four fiscal modules I; Predominantly utilizes its own family labour; Most household income originates in the family farm; The family manages the farm. 2006 Family Farming Law (Law 11,326)</p> | <p>UNITED STATES OF AMERICA: All farms except those that are «organized as non-family corporations, as well as farms operated by hired managers» (USDA, 2009, pp. B-8). 2007 Census.</p> |
| <p>HUNGARY: Family farms are to comprise active agricultural production on less than 300 ha agricultural land ownership, lease or usage whereby (next to the farmer) at least one family member is full-time employed. Other family members also can contribute to family farm's operation. (family agricultural enterprise: independent and social unit based on ownership or use of production resources Law on Agriculture, Official Gazette no. 66/2001 (www.nn.hr), governmental regulation 326/2001 (XII.30.)</p> | <p>BULGARIA AND SLOVAKIA: Family co-ownership of spouses is presumed in the case of self-employment or sole proprietorship unless there are contractual agreements determining otherwise or otherwise proved in litigation.</p> | <p>MACEDONIA: One-person enterprises/self-employed are seen as family businesses if they are active in agriculture, wholesale and retail trade, tourism or similar economic sectors in which family members are often involved in operating activities without being officially employed. Another important criterion (that can also be found in other countries) is the pre-condition that the self-employed person has the main supporting role regarding the financial assets of the family.</p> |
| <p>AUSTRIA: An agricultural family business is an 4 AT autonomous agricultural business which provides on a regular basis or in combination with a related business an adequate and sustainable income for the agricultural residential regulation in the region of Vorarlberg (Bäuerliches Siedlungsgesetz LGBl.Nr. 37/1970, 20/1977) operating farming family.+)</p> | <p>ITALY: The Italian Civil Code describes family businesses as enterprises in which members of the family unit (husband, wife, high degree of kinship) work and have the ownership.</p> | <p>LITHUANIA: The Lithuanian Supreme Court (decision of 4 June 2007) states that if an enterprise is established during the marriage period, it is a family business by its nature. Family farms are small and medium-sized farms where both assets and management of the farm are in the hands of family members and most of the work is done or managed by the family.</p> |
| <p>POLAND: Article 23. The basis of the agricultural system of the State shall be the family farm. This principle shall not infringe the provisions of Articles 21 and 22. (The Constitution Of The Republic Of Poland Of 2nd April, 1997)</p> | <p>ROMANIA: The Romanian law defines family businesses as enterprises established at the initiative of an individual and comprising his/her family members (husband, wife, children over 16 years as well as their relatives, including relatives four times removed).</p> | <p>UKRAINE: Farm could be defined as a family farm (either legal entity of natural person if this enterprise is organised and managed solely by family members (according to Article 3 of the Family Code of Ukraine proposed in draft law No.1599)</p> |

Source: Own research based at [1; 2; 4; 10]

In order to diminish threats and weaknesses mentioned in Table 2, a law that will regulate the process of registration of family farms as equal players on the market should be adopted. Draft law No. 1599 «On Organisation and Management of Family Farms» was introduced and reviewed by the Ukrainian Parliament in 2015 [2]. The proposed draft law is aimed to improve working conditions for small agricultural producers (individual, small and medium-sized farmers) turning them into full-

fledged participants of the agricultural market, and receive all the benefits (mainly in taxing) that big agro-enterprises usually get. This could be another big step in giving such producers an opportunity to create value-added products.

Besides the above mentioned benefits of the development of small family farms, granting them a status of small enterprises (legal entities) will increase the demand on the technical support/devices, etc. in domestic production and reload the Ukrainian industry which is suffering from the war and the temporarily lost territories.

Solely agrarian countries are top-listed in ranking of failed states. However, those, who manage to develop agricultural sector in the way that it stimulates other sectors, especially industry (production of a value-added products, export of finished products instead of resources), are top-listed among well-developed countries.

Therefore, in case of receiving legal recognition in Ukraine, family farms will become a driving force for several economic sectors, especially the agricultural and industrial sectors. Moreover, their activities (production of value-added products) could contribute to their access to international markets, the increase of the Ukrainian export, ensure food security

Tab. 2: SWOT analysis of introduction of the definition of family farms into Ukrainian legislation

| STRENGTHS | OPPORTUNITIES |
|---|---|
| <ul style="list-style-type: none"> Secure farmers rights; Provide employment in rural areas; Social, financial and economic benefits for family members that operate the family farm; Regional sustainability. | <ul style="list-style-type: none"> Disclosure of the economic potential; Access to bank loans, international financial programs, grants and other programs; Access to international markets. |
| WEAKNESS | THREATS |
| <ul style="list-style-type: none"> Unwillingness to register the family farm as a legal entity – human factor; New challenges to compete in frames of innovations and efficiency (productivity); As they are originally small enterprises in order to gain scale economies and negotiating power on markets and for policy they have to organise themselves into cooperatives. | <ul style="list-style-type: none"> Possible legal collision, especially in terms of taxation; Difficulties in arranging fair and smooth succession of farms from one generation to another. |

Source: Own research

and assure sustainable development of the agricultural sector and improvement of the national economy. That is essential in times of war and economic crisis (see Figure 1).

Therefore, at the first stage of recovering from the economic crisis, the development of small family farming will bring benefits for Ukraine such as:

- legalisation of billions of UAH;
- stimulation of production of machinery for agriculture;
- sustainable development of rural areas;
- a decrease in unemployment rate, provision of basic social security to the families that lead their own business;
- an increase in export potential through the production of a unique products (e.g. organic products).

Legal definition of family farms will also give an opportunity for the state to form a proper policy for the improvement of regional development processes and growth of these small and medium enterprises.

5. Conclusions

The analysis conducted in this article gives a clear vision of how effective the introduction of the term «family farms» into national legislation could be. Legal recognition of family farming will provide financial, social and legal conditions to secure rights of peasants who manage their own family farms and stimulate the local agribusiness. The re-

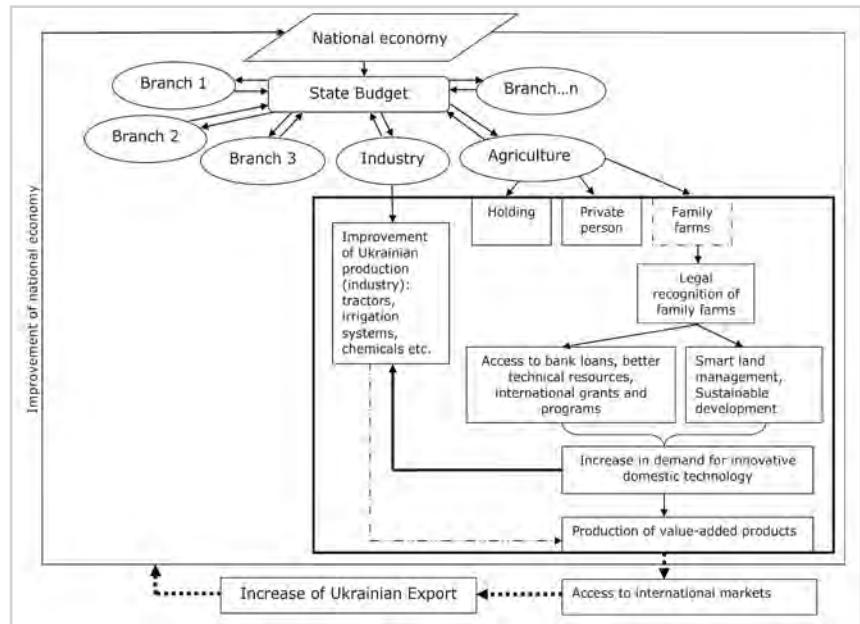


Fig. 1: Influence which legal recognition of family farms may have on national economy
Source: Own research

search shows that family farms could be key players on the agricultural market, securing employment and sustainable development of the sector creating value-added products and influencing the development of allied industries/sectors of the national economy.

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Received 20.02.2016

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Стаття надійшла до редакції 20.02.2016