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Articles

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Addressing the Spatial Shortcomings of Agricultural Land Use: Legal Aspects and Obstacles

Rozwiązywanie braków zagospodarowania przestrzennego w wykorzystaniu ziemi rolnej. Aspekty prawne i bariery

ABSTRACT

The article presents a multifaceted analysis of the legal norms of the Law of Ukraine No. 2498-VIII on the elimination of spatial shortcomings of agricultural land use through the procedure of formation of agricultural land. Solving the problem of farmland patchwork is relevant and very

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Data: 20/11/2026 11:40:12

important for agricultural producers. The problem of practical implementation of legal norms of the Law of Ukraine No. 2498-VIII was revealed through the analysis of the procedure for the formation of agricultural land, establishing the essence of legal norms on the exchange of land use rights within the relevant array and identification of legal gaps in the legislation on impossibility elimination of shortcomings in agricultural land use. It was found that the main legal gaps of the Law of Ukraine No. 2498-VIII are: the lack of guarantees of equal rights of ownership and use of land within the array of agricultural land; ignoring consultations and involving broad stakeholders in cross-border elimination; neglect of the principle of transparency in the formation of an array of agricultural land; lack of provisions on the responsibility and accountability of participants in this process. In the conditions of the agricultural land market, the legal norms of the Law of Ukraine No. 2498-VIII on the elimination of cross-strips and the organization of rational use of land have lost their relevance and are unviable. All this requires the development of new legislation on land consolidation.

Keywords: agricultural land; patchwork of farmland; land plot; land exchange; land use; exchange of rights

INT RODUCTION

The agricultural sector in Ukraine remains the biggest driver of economic growth in the country. Ukraine is endowed with 41.4 million hectares of agricultural land[1] covering 68.7% of the country (including 55% of arable land)[2] or about 25% of the world's most fertile black soil.[3] Agriculture is the third largest sector of the national economy, after industry and trade. In 2020, the share of gross value added in GDP was about 9.3%, declining from 24% in 1990.[4] The share of agriculture in the total export value was 45% in 2020.[5]

Almost half of the agricultural land in Ukraine is used through lease agreements by enterprises – 49% (including 46% of arable land), and a significant part is used personally by citizens – 37% (including 27% of arable land). Government enterprises account for only 5% of agricultural land (4% – cultivated land).

There are 6.9 million private landowners with an average physical land plot size of 4.2 hectares with fluctuations from 1.1–1.5 hectares in the western oblasts to 7.0–7.9

[1] Including farm land and non-farm land.

[2] State Service of Ukraine for Geodesy, Cartography, and Cadastre, *Zemelnyi fond Ukrainy stanom na 1 sichnia 2016 roku ta dynamika yoho zmin u porivnianni z danymy na 1 sichnia 2015 roku*, 13.5.2016, https://cherkaska.land.gov.ua/info/zemelnyi-fond-ukrainy-stanom-na-1-sichnia-2016-roku-ta-dynamika-ioho-zmin-u-porivnianni-z-danymy-na-1-sichnia-2015-roku (access: 10.10.2024).

[3] International Trade Administration, *Ukraine – Country Commercial Guide*, 11.1.2023, https://www.trade.gov/country-commercial-guides/ukraine-agribusiness (access: 10.10.2024).

[4] *Ibidem*.

[5] Grain Trade, *The Share of Agricultural Products in Ukrainian Exports in 2020 Reached a Record 45%*, 11.2.2021, https://graintrade.com.ua/en/novosti/chastka-agroproduktcii-v-ukrainskomu-eksporti-u-2020-r-syagnula-rekordnih-45.html (access: 10.10.2024).

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Data: 20/11/2026 11:40:12

hectares in the southern oblasts of Ukraine.[6] It is the consequence of land reform. Land reform began with the transfer of ownership and management of agricultural land from the state to collective farms and later to private individuals free of charge. It was carried out through the distribution of land shares to the employees of the collective and state farms and then by the allocation of land shares to individual plots with title deeds. The main idea was land socialization or fair land distribution among the rural population by the slogan: "Land for those who work it". Accordingly, a network of field roads was designed to access each land plot within an agricultural field. In addition, the boundaries of land parcels and field roads were not demarcated in the field.

Due to several objective factors (e.g. the moratorium on the sale of agricultural land) and subjective factors, about 90% of these private landowners lease out their land plots to agricultural enterprises (agroholdings).[7] These enterprises have signed thousands of individual leases agreements and, in some cases, land concentration reaches up to 500 thousand hectares. Therefore, the farm structures in Ukraine after the third stage of land reform did not change and continued to be dominated by large-scale agricultural farms (agroholdings).[8] The lease agreements have become a means of agricultural land concentrating in the hands of corporate farms.

However, as time has shown, all this led to violation of the integrity of agricultural fields due to the presence of separate use of land within the field. One of the reasons is that often the owners of land located within the same array, draw up lease rights with different tenants. This leads to the fragmentation of land users with different land lease terms. Another reason may be the presence in the array of agricultural land of citizens who individually cultivate their own land, the so-called individuals. As a result, land use, which consists of leased by one legal entity or individual, may not create a closed loop and acquires such shortcomings in its use as the interspersing of land of other landowners (land users), through strips and far land.

It should be emphasized that tenants try to solve the following spatial shortcomings of their land use in two ways:

1. The plowing of the network of designed field roads without any legal grounds and using the land under the roads as arable land. Accordingly, violating current land legislation.

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[6] Law of Ukraine No. 413 of 7 June 2017 – resolution of the Cabinet of Ministers "Some Issues of Improving the Management in the Field of Use and Protection of State-Owned Agricultural Lands and Their Disposal".

[7] AgroPolit, *"Zemelnyi dovidnyk Ukrainy 2020" – baza danykh pro zemelnyi fond krainy*, 11.6.2020, https://agropolit.com/spetsproekty/705-zemelniy-dovidnik-ukrayini--baza-danih-pro-zemelniy-fond-krayini (access: 10.10.2024).

[8] M. Hartvigsen, *Land Reform in Central and Eastern Europe After 1989 and Its Outcome in Form of Farm Structures and Land Fragmentation*, 2013, https://www.fao.org/docrep/017/aq097e/aq097e.pdf (access: 10.10.2024); A. Popov, *Economic Bases of Agricultural Enterprises Formation under Modern Land Tenure Conditions*, Kharkov 2006.

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Data: 20/11/2026 11:40:12

2. Concluding oral agreements between tenants on the proportional exchange of leased land for more convenient use within one field or even several fields. However, from a legal point of view, such tenants can be accused of unauthorized seizure of land.

The problem of violation of the integrity of the arrays becomes especially acute when using one array of irrigated lands by several tenants and individuals, because there are difficulties associated with watering the field and agricultural work for the dominant (significant) land user.

The Law of Ukraine No. 2498-VIII "On Amendments to Certain Legislative Acts on Resolving the Issue of Collective Land Ownership, Improving Land Use Rules in Agricultural Land, Preventing Raids and Promoting Irrigation in Ukraine" was adopted on 10 July 2018. The aim was to address most of the above problems of land use within agricultural fields and to become a safeguard against the violation of the rights and interests of landowners and land users. Representatives of the scientific community, practitioners and experts were very optimistic about this law as a mechanism for land consolidation.[9] Almost four years have passed since the entry into force of the rules on the peculiarities of the acquisition and exercise of the right to lease land within the agricultural land massifs, but the declared principles have not gained practical application to this day.

In today's domestic scientific literature on the development of consolidation of agricultural land in Ukraine and methods of its implementation has received attention from a large number of scientists, the main of which, in our opinion, are the works of A. Martyn and O. Krasnolutskyi,[10] M. Stupen and H. Dudych,[11] A. Shvorak and T. Yevsiukov.[12] In their works, they argue that long-term lease, exchange of land and their association are the main ways to consolidate agricultural land in modern conditions of land relations. However, with the entry into force of Law No. 2498-VIII, some theoretical developments and recommendations of these authors have lost their relevance, and the content of the relevant law to address the shortcomings of agricultural land use through the mechanism of exchange of rights of use has remained out of the scientific community.

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[9] O. Kulinich, *Zakon pro konsolidatsiiu zemel pidpysano. Yaki zminy nas chekaiut?*, 23.8.2018, https://www.epravda.com.ua/columns/2018/08/23/639841 (access: 10.10.2024); O.V. Ruden, *Konsolidatsiia zemel silskohospodarskoho pryznachennia – novi propozytsii zakonodavtsia*, "Molodyi Vchenyi" 2017, vol. 8, pp. 380–384; M. Maksymenko, *Consolidation of Agricultural Land*, 2019, https://pravo.ua/articles/consolidation-of-agricultural-land (access: 10.10.2024).

[10] A. Martyn, O. Krasnolutskyi, *Konsolidatsiia zemel silskohospodarskoho pryznachennia ta pravovi mekhanizmy yii zdiisnennia v Ukraini*, "Zemlevporiadnyi Visnyk" 2011, vol. 5, pp. 16–21.

[11] M. Stupen, H. Dudych, *Orenda yak forma konsolidatsii zemel*, "Ekonomist" 2015, vol. 7, pp. 34–37.

[12] A. Shvorak, T. Yevsiukov, *Sposoby ta metody konsolidatsii zemel silskohospodarskoho pryznachennia*, "Ekonomist" 2014, vol. 8, pp. 44–48.

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Data: 20/11/2026 11:40:12

The purpose of the research is a study of the procedure for forming an agricultural land massifs as a mechanism for eliminating the shortcomings of agricultural land use and ensuring the rational land use. This research problem will be solved in the following sequence: first, the procedure for the formation of the agricultural land massifs will be revealed; the essence of legal norms of formation of the agricultural land massifs for exchange of land use rights will be analyzed in the second part; obstacles to implementation of legislation on elimination of shortcomings of agricultural land use are given in the third part; in the fourth part there is a discussion of the results obtained and conclusions are drawn.

The research is mainly based on the use of quality methods, one of which is content analysis. This method was used for analysis textual information (publications of domestic and foreign authors, regulations) on relevant topics, which provided the formalization and measurement of the studied features and allowed to draw professional conclusions about the nature and features formation of agricultural land for the elimination of spatial shortcomings of land use and ensuring the rational use of land. The main direction of this work is empirical research to obtain empirical data.

RESEARCH AND RESULTS

1. Procedure formation of an agricultural land massifs

According to the provisions of Law 2498-VIII, landowner(s) and land user(s) who are interested in addressing the spatial shortcomings of their land tenure and land use by exchanging land and/or their right to use land, should form an agricultural land massifs. The agricultural land massifs (ALM) is a set of agricultural and non-agricultural land plots (such as land for field roads, reclamation systems, linear objects, engineering infrastructure facilities, wetlands, other lands located within the land massifs), which have common boundaries and are limited by natural and/or artificial elements of a landscape (e.g. public roads, shelterbelts and other protective plantations, water bodies, etc.).[13] For the formation of the ALM, stakeholders must first order an inventory of ALM. The decision to grant a permit or refuse to conduct an inventory provides: for state-owned lands – the body of executive power authorized to dispose of land; in other cases – village, settlement, city council, on the territory of which the array is located.

The inventory of state-owned lands is carried out by the State Geocadastre or its territorial body, and in other cases by legal or natural persons who have the necessary technical and technological support and who include certified land surveyors. Based on the results of the land inventory, the executors develop the relevant

[13] See Law of Ukraine No. 858-IV of 22 May 2003 "On Land-Use Planning".

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 11:40:12

technical documentation, which is agreed and approved in accordance with page 186 of the Land Code of Ukraine,[14] and enter information to State Land Cadastre (SLC) on the formed ALM (with the assignment of registration number) and land plots, information about which was not included in the SLC.

After the formation of the ALM, interested landowners and land users of all forms of ownership located in the relevant area can initiate the exchange of land and exchange of land use rights by mutual conclusion of lease (sublease) agreements between them for the duration of the lease agreement. When concluding a sublease agreement, the lessor's consent is not required, and the lessee remains liable to the lessor for the performance of the lease agreement. Termination of one of the lease or sublease agreements of the land plot concluded in the order of exchange of rights of use terminates the validity of another lease agreement, sublease agreement concluded in exchange, which must be specified in such agreements.

When exchanging a land plot of state or communal property located in the ALM for another plot of land located in the same massif, both land plots must have the same normative monetary value or not exceed 10% of the difference between normative monetary assessments.

Norm of the Law No. 2498-VIII allows with enamel plots of state or communal property under field roads designed for access to land plots located in the ALM (except for field roads delimiting the massif) should be leased for seven years without conducting land auctions to owners and/or users of land plots adjacent to land plots under such field roads. The lease of such plots is subject to the provision of free access to all landowners and land users of the ALM to the land plots belonging to them for their intended use. Also, it is allowed to use land plots under field roads located in the ALM (except for field roads that limit the massif), for passage to other land plots and for growing agricultural products.

A person who has the right to use a significant part of the ALM (hereinafter: significant land user) has the right to lease other agricultural land located in such massif, and if these land plots are leased – to receive them in sublease, provided transfer of them to the owner (tenant) for use (lease, sublease) of another land plot located in the same massif, for the same period and under the same conditions, if due to cross-stripe (patchwork of farmland[15]) non-use of such land plots creates obstacles in the rational use of land plots used by this person.[16]

Significant land user is a land user who has the right to use (lease, emphyteusis) land located in the massif of agricultural land, with a total area of at least 75% of all lands in the massif.

[14] Law of Ukraine No. 2768-III of 25 October 2001 "Land Code of Ukraine".

[15] Patchwork of farmland – location between several plots of land owned, used (lease, sublease, emphyteusis) by one person and located in one array of agricultural land, land owned, used, leased, sublease, emphyteusis, to another person.

[16] See Law of Ukraine No. 2498-VIII.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 11:40:12

A landowner or land user, whose land is leased (sublease) to a significant land user, has the right to compensation for property damage caused to him as a result of such transfer, in full, the amount of which is determined by appropriate assessment.

In order to eliminate patchwork of farmland and organize the rational use of their land use in exchange for land use rights, a significant land user applies in writing to other owners and users of land plots of the ALM with a proposal to enter into a lease agreement(s). In case of failure to reach an agreement on concluding a lease agreement(s) (sublease), such agreement(s) shall be deemed concluded by a court decision, except in certain cases specified on page 8-2 of the Law of Ukraine No. 161-XIV of 6 October 1998 "On Land Lease", which is the basis for state registration of the right to lease (sublease) land in the manner prescribed by the Law. It should be noted that at the same time the court may determine the amount of property damage caused by the conclusion of lease agreements (sublease), and the procedure for compensation.

Thus, the state registration of transactions (land exchange, leases, subleases) is the final stage in the formation of ALM for the amalgamation of land plots of such massif, the procedure of which is shown in Figure 1.

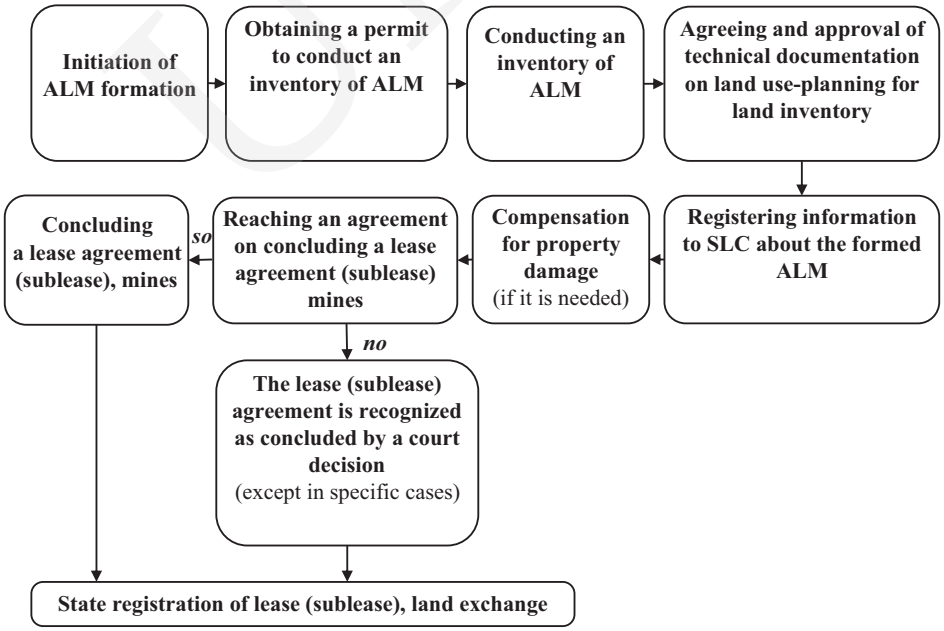


Figure 1. Algorithm for the formation of agricultural land massifs in relation to exchange of land plots and rights of their use

Source: A. Popov, S. Movchan, S., Kolomiiets, I. Lezhenkin, *Formuvannia masyviv zemel silskohospodarskoho pryznachennia yak alternatyva konsolidatsii zemelnykh dilianok*, "Ekonomichna ta Sotsialna Heohrafiia" 2020, vol. 84, pp. 42–54.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 11:40:12

2. Legal shortcomings during the formation of agricultural land massifs concerning exchange of land use rights

Law No. 2498-VIII enshrined that the significant land user, who has the right to use land plots with a total area of at least 75% of all lands within ALM, has the primary right to consolidate his land plots through the preemptive right to enter into new lease and sublease agreements within the massif and the right to carry out the forced exchange of such land plots for sublease. It means that only a small number of land users (even one land user) who control at least 75% of ALM can force (a large number of small) landowners who control the other 25% of the territory of the relevant massif, to participate in the exchange of land use rights.

This provision does not correspond to the fourth part of Article 13 of the Constitution of Ukraine,[17] which protects the rights of all subjects of property rights and management, the social orientation of the economy, and all subjects of property rights are equal to the law. Compulsory conclusion of new lease agreements and the right to carry out "compulsory" exchange of plots on sublease terms within the ALM in court will not ensure equal property rights of all landowners within such massif.

The above norm to contradict best international practices for land consolidation by majority principle, as only territory is taken into account. Threshold at 75% (qualified majority) will be in line with international best practice on land consolidation by a majority of at least 75% of legal landowners who have agreed to hold it and represent at least 75% of the area of the project array of agricultural land. Clear and transparent procedures for the exchange of rights of use and land plots on the principle of majority should be developed and defined directly by the law, and not remain for consideration by the bodies that implement them. However, the elimination of the shortcomings of one agricultural land use (farm) on the principle of majority (compulsory approach) should remain and be justified by general social needs in general and should not be carried out to meet the interests of one or more significant land users (agricultural holdings).

International experience shows that lessors consider land consolidation a good measure to improve the spatial structure of land use, but for them, it is not the best investment.[18] If the lessee directly benefits from land consolidation as a land user, the lessor's benefits are more indirect and may seem less justified to him. Although lessors are usually skeptical about land consolidation, they are not overtly negative, and their attitudes may change during land consolidation. However, Law No.

[17] Law of Ukraine No. 129-130 of 28 June 1996 – Constitution of Ukraine.

[18] K. Sulonen, S. Kotilainen, *Lessor's Status in Land Consolidation in Europe – Reports from Cyprus, Finland, France, Germany, the Netherlands, Latvia and Estonia*, "Baltic Journal of Real Estate Economics and Construction Management" 2015, vol. 3(1), pp. 56–71.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 11:40:12

2498-VIII does not contain a list and conditions for compliance with the principles of participation and consultation of all stakeholders to address shortcomings in agricultural land use within the ALM, and therefore will not raise awareness of direct and indirect legal, economic, social and environmental impacts measures.

Law No. 2498-VIII lacks rules for establishing communication between all landowners, land users, other stakeholders and communities at different stages of the formation of the ALM. Moreover, all procedures for the formation of the ALM, the exchange of rights of use and land plots take place without proper information of all landowners, land users and other stakeholders. For example, the conclusion of a sublease agreement between lessees of agricultural land located within ALM does not require the consent of the lessors. Lessees are only obliged to notify the lessors in writing about the exchange of their land use rights within five days from the date of state registration of the sublease right. Such a rule of law is unacceptable and does not correspond to the best international practices. According to the provisions of *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*,[19] it is important to ensure equal involvement of all stakeholders, women and men, in the form of participation and a comprehensive process of land consolidation.

Also, Law No. 2498-VIII does not contain a clear and transparent mechanism for appealing by the subjects (participants) of the ALM of actions and decisions of the initiator(s) of the ALM, executors of the ALM inventory. A clear definition of the powers of ALM participants should be a prerequisite for the transfer of land rights.

Another legal loophole of Law No. 2498-VIII is the lack of a system to ensure that the situation of all participants in the formation of the ALM after the implementation of measures to address shortcomings in agricultural land use should be at least not worse than before the implementation of project activities. A significant land user has the right to lease and sublease other agricultural land plots within the ALM, provided that they are transferred to the owner (lessee) for use (lease, sublease) of another land plot located in the relevant massif for the same period and for the same conditions. We are convinced that in practice this norm concerns the purely legal side of compliance with the terms of contracts (term of use, rent payment, etc.). However, in case of violation of the conditions of land use, deterioration of soil quality, the development of erosion processes or other damage to the lessee will not have serious consequences. Moreover, today there are no effective mechanisms for the lessor's liability for environmental damage to land.

[19] FAO, *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*, Rome 2022, http://www.fao.org/docrep/016/i2801e/i2801e.pdf (access: 10.10.2024).

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 11:40:12

The relevant law does not establish a clear and structured procedure for the circulation of land use and exchange rights within the ALM in order to eliminate shortcomings in land use (patchwork of farmland) and organize the rational land use. There are no stages of project activities, namely the feasibility study of the ALM formation, the plan of redistribution of rights of use and land plots and the implementation of project decisions. There is no requirement that the formation of the ALM is carried out only if its appropriateness and feasibility are established.

It should be noted that Law No. 858-IV provided that inventory of the mass of agricultural land can be carried out by a significant land user without a decision of the executive authorities or local governments. However, the legislation does not specify what evidence of the existence of a farmland patchwork should be provided by a significant land user.

Law No. 2498-VIII does not set requirements for the content of applications or approval of the initiation of the ALM inventory for the purpose of further exchange of land plots and the rights of their use to eliminate patchwork of farmland within the relevant massif. This means that the process of conducting the ALM inventory will not guarantee the interested landowners and/or land users further successful arrangement of the rational use of their land plots within the relevant massif. Also, the obligation to develop a plan for exchange of land plots and lease (sublease) of land plots is not established. And therefore, implementation of changes in land rights will take place through the conclusion of a large number of civil law transactions and agreements under the usual procedures of state registration of rights and with the use of traditional administrative fees.

Of concern is the legal norm, according to which the initiator of the exchange of land use rights determines appraiser to define the amount of property damage caused to the owner or user of the land as a result of such transfer. We believe that this provision contains a corruption component due to a conflict of interest. The initiator of the land use rights exchange selects the appraiser and pays the cost of its services, which may affect the objectivity and/or impartiality of the evaluation results. The most correct provision would be to give the right to choose appraiser to the owner or user of the land plot, which was damaged as a result of the exchange of rights of land use, and leave the payment for services to the initiator of such exchange.

At first glance, fixed by Law No. 2498-VIII procedure of exchange of existing land use rights may seem like a one-off measure to eliminate patchwork of farmland within the ALM. However, from a legal point of view, such a procedure may be time-consuming, especially when it comes to concluding sublease agreements. This is due to the fact that the expiration of the term for which the lease agreement was concluded entails the automatic termination of the agreements concluded in the order of exchange of rights of use. Given the situation of the existing fragmentation of land lease terms within the ALM, it will be necessary to periodically renew the lease agreements for each individual land plot. This in turn will lead to periodic

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 11:40:12

additional costs[20] for the state registration of the right of sublease, and in the case of absence of a significant land user within the ALM – to the struggle to preserve the integrity of land use.

3. Obstacles to the implementation of legal regulations on elimination of shortcomings in agricultural land use

One of the main tasks of adopting Law No. 2498-VIII is creation of an effective mechanism for the use of agricultural land by eliminating patchwork of farmland in the middle of the respective massif through the mechanism of voluntary and compulsory (by court decision) exchange of land use rights by mutual conclusion of lease and sublease agreements between landowners and land users. It was these measures that were supposed to deprive unscrupulous lessees who specifically lease land in the middle of the field of leverage for "land raiding". However, our research did not reveal any established ALM. In our opinion, this may be due to several major legal obstacles.

The first obstacle is this bureaucratically burdensome and not clearly defined procedure obtaining the status of a significant land user to eliminate patchwork of farmland and arrangement of rational land use by concluding lease and/or sublease agreements (including on terms of preemptive rights) with the rest of agricultural land plots in the ALM. Potential significant land user must initiate and conduct an ALM inventory in order to obtain the official status of such a land user. However, Law No. 2498-VIII does not contain clear provisions on the content and form of the application and approval of initiating the ALM inventory. Thus, it is not clear who can initiate the ALM inventory – the landowner, land user or group of landowners and/or land users, as well as the minimum interest threshold they can represent from the entire area of ALM. Also, there is no clear list of necessary documents that must be submitted by interested landowners and/or land users to the relevant executive authorities or local governments to obtain a decision on the ALM inventory.

The second obstacle is the legal conflict over the determining the customer for ALM inventory. Thus, in accordance with part one of Article 26 of the Law of Ukraine No. 858-IV, customers of land-use planning documentation may be public authorities, the Council of Ministers of the Autonomous Republic of Crimea, local governments, landowners and land users. In our case, the customer of land-use planning documentation will be the land user, who represents 75% of the ALM, and not all 100% of the massif. This makes it impossible to further conclude an agreement with the developer of land-use planning documentation on the development of land inventory documentation. Also, it is not specified who will be the

[20] A. Popov, I. Koshkalda, O. Kniaz, O. Trehub, *Land Fragmentation of Agricultural Enterprises in the Context of Administration of Land*, "Economic Annals-XXI" 2019, vol. 176(3–4), pp. 80–90.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 11:40:12

customer of technical documentation on land inventory of ALM in situations where it will be initiated by several landowners and/or land users.

Next is the presence of ALM, which may be an obstacle land plots that cannot be legally transferred for secondary use. This applies to land plots on the rights of emphyteusis and permanent land use.

The fourth obstacle is the ban on the exchange of land between different ALM. However, the existing case law and the judgment of the European Court of Human Rights in the case *Zelenchuk and Tsitsyura vs. Ukraine* may be in favor of the protection of agricultural land users/landowners and the agreements concluded by them.[21] It should be noted that the procedure for exchanging land use rights is the only more or less regulated provision of Law No. 2498-VIII. However, the difficulty of its implementation is that such a procedure is practically not confirmed by case law. A possible reason for this is that areas within the ALM are not of interest to third parties and issues are resolved mutually beneficially for exchange participants.

Another obstacle is the lack of a procedure for agreeing on the lease (without land auctions) of land plots of state or municipal property under field roads within the ALM between all stakeholders and the procedure for transferring these land plots for use. Moreover, there is a contradiction between the legal regulations on the minimum term of land plots lease of state or communal property under field roads. Thus, Law No. 2498-VIII stipulates that the minimum lease term for such land plots must be seven years for all lands. However, the Law of No. 161-XIV sets ten years as the minimum term of the land lease on reclaimed land.

The last but not less important obstacle is the lack of a legally established procedure for assigning a registration number to the ALM and registration information about it in the SLC. According to Law No. 2498-VIII, the registration number of the ALM must be assigned based on the results of the land inventory and the relevant technical documentation on land-use planning. Registration number is an individual, not repeated throughout Ukraine, sequence of numbers and signs, which is assigned to the object of the SLC (except land plots), part of the land, which is subject to restrictions on land use, easement, sublease agreement during the registration of information about it in the SLC and retains it throughout its existence.[22]

The structure of the registration number of the object of the SLC is as follows: CGO: TGO: ONO, where: CGO – code of the group of objects of the SLC (three numeric characters); TGO – a type of a certain group of objects of the SLC (six numeric characters); ONO – ordinal number of the object of the SLC (ten numeric characters).[23]

[21] Judgment of the ECtHR in Strasbourg of 22 May 2018, *Zelenchuk and Tsytsyura v. Ukraine*, applications no. 846/16 and 1075/16, https://laweuro.com/?p=7666 (access: 10.10.2024).

[22] Law of Ukraine No. 1051 of 17 October 2012 – resolution of the Cabinet of Ministers "On the Procedure for Conducting State Land Cadastre".

[23] See Article 28 of Law of Ukraine No. 1051.

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Data: 20/11/2026 11:40:12

However, the Law of Ukraine No. 1051 does not provide the existence of such a registration number, and the procedure for assigning of the registration number is not defined by modern land legislation. Therefore, even if there are landowners or land users who want to form an ALM, they will not succeed until the procedure for assigning a registration number to the ALM and the relevant documentation for registering the relevant information into the SLC is established. In addition, there is currently no technical capacity inclusion of information on ALM into the SLC.

CONCLUSIONS

Detailed analysis of Law No. 2498-VIII allowed us to evaluate the legal procedure of the formation of an ALM in order to eliminate patchwork of farmland and ensure the rational land use of at the by introduction of exchange of rights of land use and exchange of land plots. The evaluation identified the following main legal shortcomings of the law:

- equal rights of landownership and land use of land within the ALM are not provided (not guaranteed);
- the procedure for holding consultations and broad participation of stakeholders interesting in the formation of the ALM is not established;
- there is no principle of transparency in the formation of the ALM, especially there is the absence of a clear mechanism for appealing by the participants of the ALM actions and decisions of the initiator(s) of the formation of the ALM;
- loose provisions of responsibility and accountability of ALM participants.

The analysis of the existing obstacles that hinder the implementation of the legislation on improving the rules of land use within ALM allowed to identify key legal reasons for their occurrence, namely lack of legal regulations on:

- registering information into the SLC on the ALM and assigning it a registration number of the object of the SLC;
- exchange of land use rights within ALM, which cannot be transferred for secondary use (emphyteusis and permanent land use);
- definition the customer of the technical land-use planning documentation on the land inventory in the case when the initiator of the ALM inventory will be a group of landowners and/or land users;
- the procedure for agreement between all ALM stakeholders concerning the lease of land plots of state or communal property under field roads;
- clear list of necessary documents to obtain a decision on conducting ALM inventory;
- clear list of necessary documents to confirm the status of a significant land user;

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Data: 20/11/2026 11:40:12

- clear list of necessary documents to confirm the fact of the existence of a patchwork of farmland and the necessity for the formation of the ALM to eliminate it;
- development of a plan for the exchange and lease (sublease) of land plots;
- exchange of land plots located in different ALM.

Adopted under the moratorium on the sale and alienation of agricultural land, Law No. 2498-VIII, in our opinion, did not become an alternative to land consolidation. In addition, with the opening of the land market in July 2021, this law has not become and will not prevent the increase in the patchwork of farmland and land fragmentation. In the conditions of the market of agricultural lands legal regulations of Law No. 2498-VIII regarding the elimination of spatial shortcomings (patchwork of farmland) and the arrangement of rational use of land plots within the ALM have lost their relevance and are therefore unviable.

Today, it is very relevant to develop a National Land Consolidation Strategy for the integration of the land consolidation instrument into the general land policy of the country and a fully-fledged law in this area.

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ABSTRAKT

Artykuł zawiera wieloaspektową analizę norm prawnych ustawy Ukrainy nr 2498-VIII o eliminacji braków zagospodarowania przestrzennego w zakresie wykorzystania ziemi rolnej poprzez procedurę tworzenia ziemi rolnej. Rozwiązanie problemu struktury gruntów ornych jest istotne i ma wielką wagę dla producentów rolnych. Problem praktycznej realizacji norm prawnych ustawy Ukrainy nr 2498-VIII został ujawniony w drodze analizy procedury tworzenia ziemi rolnej, ustalenia istoty norm prawnych o wymianie praw do wykorzystania ziemi w danym zakresie oraz stwierdzenia luk prawnych w ustawodawstwie prowadzących do niemożności eliminacji braków w wykorzystaniu ziemi rolnej. Stwierdzono, że głównymi lukami prawnymi ustawy Ukrainy nr 2498-VIII są: brak gwarancji równości prawa własności i korzystania z ziemi w zakresie gruntów ornych; pominięcie konsultacji i zaangażowania szerokiego grona interesariuszy przy eliminacji pasów śródpolnych; zaniedbanie zasady przejrzystości przy tworzeniu siatki gruntów rolnych; brak przepisów dotyczących zadań i odpowiedzialności uczestników tego procesu. W warunkach rynku ziemi rolnej normy prawne ustawy Ukrainy nr 2498-VIII o eliminacji pasów zadrzewień śródpolnych i organizacji racjonalnego wykorzystania ziemi straciły swoje znaczenie i są niewykonalne. Wszystko to wymaga opracowania nowych przepisów o konsolidacji gruntów.

Słowa kluczowe: ziemia rolna; struktura gruntów ornych; działka gruntu; wymiana gruntów; wykorzystanie ziemi; wymiana praw