

MUNICIPALITIES SHOULD NOT BE AUTHORIZED TO CREATE LEPLS WITHOUT A LEGAL REFORM

The Parliament of Georgia is discussing amendments to the Local Self-Government Code, which would provide municipalities with the right to create legal entities of public law (LEPL).

DRAFT LAW, INITIATOR

Legislative Initiative: [Local Self-Government Code](#) and accompanying laws

Initiator: Government of Georgia

Author: Ministry of Regional Development and Infrastructure of Georgia

ESSENCE OF THE DRAFT LAW

All municipalities in the country are going to be authorized to establish an LEPL. Municipalities will be able to exercise this power for a period of 10 years, until 2030. According to the explanatory note of the draft law, some of the settlements have become very attractive to the public not only for residence purposes, but for tourism and recreation purposes as well. Moreover, there has been an increase in the willingness to invest in change and provide an additional mechanism for municipalities to effectively implement its powers and to contribute to its own development.

1. WHICH MUNICIPALITIES WILL HAVE THE RIGHT TO CREATE LEPLS AND FOR WHAT PERIOD?

EXISTING PROVISION

Only the Tbilisi Municipality has the right to create LEPLs

PROPOSED AMENDMENTS

- All municipalities will have the right to create an LEPL until 2030
- Municipalities will have the right to transfer some of its powers to the LEPLs

2. WHAT POWERS CAN BE TRANSFERRED FROM THE MUNICIPALITIES TO THE LEPLS

EXISTING PROVISION

Except for Tbilisi, no other municipality has the right to create or transfer powers to a LEPL

PROPOSED AMENDMENTS

- The municipalities will be able to transfer the following powers to the LEPLs:
- Collection of local fees;
 - Development of the area and development of relevant engineering infrastructure;
 - Cleaning of streets, parks, squares and other public places, municipal waste management;
 - Driving highways of local importance, providing parking spaces for vehicles;
 - Issuance of construction permits, implementation of public supervision efforts over construction;
 - Administration of outdoor advertising placement;
 - Providing outdoor lighting;
 - Organizing traffic on local roads;
 - Organizing municipal transport services for the population;
 - External trade administration;
 - Organizing exhibitions, markets and fairs;
 - Planting of streets, parks, squares and other public places;
 - Addressing issues related to stray animals;
 - Developing appropriate infrastructure for people with disabilities, children and the elderly at local facilities, including proper adaptation and equipping of public places and municipal transport.

★ ASSESSMENT/RECOMMENDATION

There are a number of issues that are vague in the initiated draft law, namely: 1) Why has it become necessary for municipalities to be granted the right to create LEPLs and why cannot the municipality itself perform the same functions?; Is the purpose of the law to replace existing opaque and inefficient N(N)LEs?; How consistent are the proposed amendments with the decentralization strategy?; There is no substantiated justification on why it has become necessary to grant these powers for 10 years; To what extent is it advisable to create municipal LEPLs when the existing legislation of the LEPLs itself is in need of reform; There is no unified database/registry of LEPLs that would provide the list of existing LEPLs and their powers.

• Regulatory Legislation Issues of LEPLs

The expansion of the practice of using LEPLs is problematic in municipalities when the legislation governing LEPLs contains many pitfalls (there is no categorization of LEPLs, the preconditions for the establishment of LEPLs and the scope of authority are unclear, [etc.](#)) and in need of substantial reform. The government had an obligation to initiate a new law on LEPLs in the Parliament before September 1, 2016, which has not yet been implemented. Moreover, the Law on Public Service in relation to LEPLs has not yet been fully enforced¹ - in December 2019, its enactment was postponed for the fourth time, until 2021.

• Why cannot the municipal N(N)LEs fulfill the same functions?

Municipalities establish municipal N(N)LEs to which they can transfer some powers. The explanatory note does not provide information on why N(N)LEs cannot fulfill the powers provided by the draft law. During the first reading of the draft law at the Regional Policy and Self-Government Committee, the rapporteur, Deputy Minister of Regional Development and Infrastructure, Mzia Giorgobiani, argued that only an organisation with a legal form of an LEPL can impose and enforce sanctions. The argument is not correct because, for example, the enforcement of parking regulations in Tbilisi has been delegated to a private LLC for years, and the legality of this delegation has never been put under question.

In this case, the Deputy Minister has not mentioned that in addition to construction permits, according to the draft law, it will be possible to delegate 16 more powers to LEPLs, including the regulation and management of parking. Moreover, at the moment, there are N(N)LEs and LLCs in the municipalities that have delegated the following powers: utilities, tourism and protection of monuments, sports and culture, pre-school education, etc.

As such, we haven't heard a substantiated argument neither from the explanatory note nor from the committee discussion that would justify the need for municipal LEPLs in the presence of N(N)LEs and LLCs that could perform the same functions.

• Municipal N(N)LEs Will Be Transformed into LEPLs?

It would be a positive development if the purpose of the draft law was to transform municipal N(N)LEs into LEPLs, as LEPLs are part of the public service - their management is much more strictly regulated and, consequently, the degree of their transparency and publicity is noticeable higher in comparison to N(N)LEs. The lack of transparency in N(N)LEs cannot be underestimated: the rules on employment, dismissal, and promotion of human resources do not apply to regulations in the public service system, and decisions are often made for political reasons. There are also issues around the appropriateness and effectiveness of their costs; In the run-up to the elections, the ruling party's administrative resources are actively used in favor of the ruling party. It is not clear from the explanatory note, the committee hearings or the content of the draft law if the existing municipal N(N)LEs will be replaced by LEPLs.

• Why for a Period of 10 Years?

According to the draft law, municipalities will have the right to establish LEPLs until 2030, which is explained by the explanatory note that LEPLs will be used as an additional tool of public governance in the face of growing challenges. It is unclear why a 10-year period was chosen as the period of enactment of the law and what calculations will change in regard to the growing challenges specifically in 2030.

Therefore, the authority to establish LEPLs for municipalities should be exercised only in the framework of a fundamental change in the laws governing LEPLs. Legislative change should go in line and become part of the decentralization [strategy](#). In the absence of regulatory legislation reform of LEPLs and effective monitoring mechanisms, including the creation of a unified registry of LEPLs, it is unreasonable for municipalities to be authorized with the right to set up LEPLs.

It is necessary to carry out a Regulatory Impact Assessment (RIA) on the draft law. The submission of the draft law was part of the government's legislative plan for the autumn session of 2019, and the government has had enough time to carry out a RIA.

1 At the moment, only one rule of law applies to LEPLs: a person can be appointed to a vacant position in LEPLs through a competition, although this is not an obligation under the law. Moreover, the transitional provision of the law establishes the list of LEPLs, which are fully affected by the law, these are: LEPLs within the system of the Ministries of Foreign Development; Also, LEPL Emergency Management Agency; LEPL Financial Monitoring Service of Georgia, LEPL National Agency for Execution of Non-Custodial Sentences and Probation.