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This policy brief is intended for public policy makers and practitioners; it will also be useful for those groups and individuals seeking to influence the policymaking processes.

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# Overview of the 2020 National Programme on the Privatization of Arable Land and Hayfield

## Introduction

As it is known, in 2019, several important measures were taken in Georgia in the field of agricultural land management. Normative acts<sup>1</sup> were adopted which reformulated the issues of agricultural land categorization, change of ownership and purpose, introduced the decision-making rule for the implementation of investment projects in respect of agricultural land. In the same period, the National Agency for Sustainable Land Management and Land Use Monitoring<sup>2</sup> was created - a legal entity of public law under the Ministry of Environmental Protection and Agriculture, the competence of which includes a number of issues related to the agricultural land management.

In July 2020, these initiatives were followed by the adoption of a national programme by the Government of Georgia that concerns state-owned agricultural land. The title of the programme is "The National Programme on Access to Agricultural Land Resources" (approved by the Decree of the Government of Georgia #464 of July 23, 2020)<sup>3</sup>. From the title the reader may assume that the programme applies to all categories of agricultural land<sup>4</sup>, but this is not the case. As can be seen from the text of the

<sup>1</sup> Organic Law of Georgia dated 25 June 2019 on Agricultural Land Ownership and Law of Georgia dated 25 June 2019 on Determination of the Designated Purpose of Land and on Sustainable Management of Agricultural Land

<sup>2</sup> Agency for Sustainable Land Management and Land Use Monitoring <https://land.gov.ge/>

<sup>3</sup> Decree N464 of the Government of Georgia of July 23, 2020 on approval of the national programme for access to agricultural land resources.

<sup>4</sup> The Organic Law of Georgia on Agricultural Land Ownership distinguishes four categories of agricultural land: arable, hayfield, pasture and household land.

programme, this document concerns only two categories of agricultural land – arable land and hayfield<sup>5</sup>. It should also be noted that in the beginning, it only concerned arable land; Hayfield was included in the programme later in April 2021 through amendments made to the programme. The present paper discusses precisely this national programme and it is referred to here - ***the national programme on arable land and hayfield***.

The paper first discusses the purpose of the national programme on arable land and hayfield, its scope and the important terms set by the programme. The next chapter describes the preconditions for participation in the programme; next, it explains the procedural steps for making a decision on the privatization of a leased arable land and hayfield. The following chapter discusses the circumstances established by the programme due to which a person who wants to privatize arable land and hayfield may be denied land privatization. At the end of the paper, attention is drawn to some of the problematic issues related to the implementation of the programme.

## 1. The scope and terms of the national programme

As mentioned in the introduction, the national programme on arable land and hayfield land was adopted in July 2020 and initially it only applied to arable land. To date, the programme has been amended four times. It was first changed 9 months after its adoption (in April 2021) and this change was mainly due to the need to extend the national programme to pastures. The second time the programme was changed a month later (in May 2021). At this time the procedure for calculating the privatization amount when privatizing arable land and hayfield was specified. The programme was changed for the third time in September 2021; At the same time, specific norms were added to the programme that relate to the possibility of privatizing land leased under the “Georgian Tea” National Programme; The last change of January 2022 was technical in nature.

The purpose of the programme is to promote the transfer of ownership through direct sale, of state-owned and leased arable land and hayfield to leaseholders (both individuals and legal entities) in the form of direct sale. To achieve this goal, the programme establishes requirements that should be fulfilled by the leaseholders interested in land privatization; Administrative procedures for making decisions on the privatization of state-owned arable land or hayfield by the relevant authorities has also been determined.

As can be seen from the text of the programme, the programme is designed for three years (paragraph 1 of article 4). It entered into force immediately after its publication - on July 24, 2020. Thus, the programme will end on July 24, 2023, unless, of course, the Government of Georgia decides to extend it.

As to the terms, two more timelines set by the programme should be mentioned:

Initially, the programme applied to lease agreements concluded before January 24, 2020 (“at least 6 months before the programme came into operation”). As a result of the amendments made to the programme on

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<sup>5</sup> Later, in September 2021, the Government of Georgia adopted another national programme which concerns another category of agricultural land - pastures: [Decree #497 of the Government of Georgia dated October 6, 2021 on Approval of the National Programme on Access to State-owned Pastures](#)

April 8, 2021, this timeline was extended. Today, leaseholders who have concluded a land lease agreement before April 1, 2021, can benefit from the programme. In other words, if a person leased arable land or hayfield from the State from January 24, 2020 to April 1, 2021, then this national programme will also apply to him/her and he/she will be able to privatize the land through direct sale, without a competitor and not through an auction - on a competitive basis.

The programme also sets timelines for cases where a leased land plot is registered in the Public Registry with unspecified cadastral data and the leaseholder wishes to privatize it. A necessary condition for the privatization process is the specification of cadastral data. To do this, the leaseholder must apply to the National Agency of State Property. The deadline for applying to the Agency is set by the programme - January 24, 2023 (no later than 6 months before the expiration of the programme).

## 2. Preconditions for participation in the programme

Article 3 of the programme defines the preconditions for a leaseholder of state-owned arable land or hayfield to demand privatization of this land in the form of direct sale. These preconditions, among them, include following:

- There should be no litigation over the land plot;
- At the time of filing an application for privatization, the leased land plot must be registered in the Public Registry with already specified cadastral data;
- There should be no inheritance/leaseholder replacement procedures on the land.

Prior to introducing the change in the national programme in April 2021, the programme also set the maximum limit for the area of land subject to privatization - 10 hectares (subparagraph "b" of the first paragraph of Article 3). This restriction was annulled in April 2021. Thus, today it is possible to privatize any arable or hay land leased from the State.

It is worth noting that the programme considers the privatization of leased arable land or hayfield to be permissible only if an interested person buys the entire leased land and not a part of it. Here, an exception can be allowed only in the case of a negative position on the part of any state body, or if there is any restriction or prohibition established by law which does not apply to the entire land plot but to a part of it (below see possible grounds for refusing to initiate the process of privatization). In this case, the National Agency of State Property has the right not to initiate the process of privatization on this "problematic" plot of land; and apply the rules established by the law in respect of the remaining part of the land plot.

The programme has additional requirements in case of privatization of land leased under the National Programme "Georgian Tea"<sup>6</sup>; The national programme requires confirmation of the fulfillment of obligations

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<sup>6</sup> National programme for the rehabilitation of tea plantations "Georgian tea" (Approved by the Decree of the Government of Georgia #20 dated January 18, 2016) - the goal of the programme is rehabilitation of private and public wildered tea plantations. To this end, the programme provides for co-financing of the cost of rehabilitation works of tea plantations from the state budget.

(including both tea cultivation and financial obligations) taken under another national programme (“Georgian Tea”).

In case of non-compliance with the mandatory conditions established by the programme, the National Agency of State Property has the right not to initiate the procedure for privatization of the leased land plot, which is described in the following chapter.

### 3. Decision-making procedure on privatization of a leased arable land or hayfield

The procedure starts with the submission of an application to the competent authority determined by the programme by a person interested in the privatization of arable land or hayfield. According to the programme, such body is the National Agency of State Property (this agency is responsible for the implementation of the programme itself). Among other required documents, the applicant must submit to the Agency:

- In the case of arable land, a letter from the relevant municipality or the National Agency for Sustainable Land Management and Land Use Monitoring<sup>7</sup> confirming that the land is used for agricultural purposes;
- In case of hayfield, a letter from the relevant municipality which must confirm the fact that the land is used for agricultural purposes;
- In case of land lease under the National Programme “Georgian Tea” - consent from the Rural Development Agency on land privatization.

In addition to the fact that the applicant (leaseholder/person interested in privatization) needs to obtain the above consent/letters, the programme grants the National Agency of State Property the right to request from various state bodies to express a position on privatization of land plot (Article 5, paragraph 7).

The administrative procedures that follow submission of an application to the Agency are listed below:

1. The Agency considers the application, and if any of the preconditions are not met, the Agency gives the leaseholder 15 calendar days to correct the defects (to clarify, provide additional information);
2. If all preconditions are met, then the Agency addresses an independent auditor/expert to determine the price of the land.

According to article 7 of the Programme, the auditor/expert must determine the price of the land without taking into account the cost of the plants and/or infrastructure developed by the leaseholder. According to the same article, the final amount of land privatization must be 75 percent of the price of the land and the market price of the buildings existing on the land at the time of signing the lease. It is noteworthy that when the programme was adopted in July 2020, the privatization amount was

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<sup>7</sup> This agency is a legal entity of public law under the Ministry of Environmental Protection and Agriculture.

determined by the full market price of the land. The reduction in the privatization amount to 75 percent of the market price was the result of the amendments made to the programme in May 2021.

3. After determining the price, the Agency provides the person interested in the privatization of the land plot with information on the privatization amount and awaits its approval within 15 calendar days.

The programme does not allow for the possibility that a person may challenge a determined amount and, for example, submit an alternative price (or jointly select an auditor acceptable to both parties). The programme only allows for the possibility that a person interested in privatization may simply not give consent; According to the programme, this is considered a refusal on the part of the interested person from participation in the programme. At the same time, the refusal does not limit the right of a person to repeatedly apply to the Agency for privatization of the same land plot during the term of the programme.

Nor does the programme take into account that there may be other person interested in buying a leased land who can pay even more under competitive conditions. In general, the entire programme, during the three-year period of operation, by using the form of a direct sale of privatization, creates exclusive conditions for leaseholders of arable or hay land and gives them the opportunity to become land owners through procedures closed to the public.

4. If a leaseholder agrees to pay the amount proposed by the Agency, then the decision-making process shifts to the Government of Georgia. According to the programme, the National Agency of State Property must initiate the necessary procedure for raising with the Government of Georgia the issue of selling the land through direct sale for privatization purposes to the leaseholder/interested person. This procedure involves going through the standard procedural stages established by the legislation for issuing a decree of the Government of Georgia.

The programme notes that "the Government of Georgia makes individual decisions considering the relevant circumstances." Two things are not clear here: the first is why it is mentioned that the decision is made individually. This may imply obtaining an individual legal act for each application/applicant (this is natural and does not require clarification). Secondly, it is not clear what is meant by the phrase that the Government makes a decision "considering the relevant circumstances"; The programme does not define "relevant circumstances". Is there a possibility that the Government, "considering the relevant circumstances", refuse to alienate the land? If so, what could be the circumstances?

5. From the moment of issuance of a decree of the Government of Georgia on the land privatization in the form of a direct sale, the right of a person to lease this land shall be terminated.
6. After the issuance of a decree of the Government of Georgia, a purchase agreement is signed with a person interested in land privatization; But only if the person has fulfilled all due obligations, including financial, stipulated by the lease agreement.
7. A person must pay the privatization amount of a land plot within one year after signing the purchase agreement.

#### 4. Possible grounds for refusal to initiate the privatization process

The Agency may not initiate the process of land alienation if the above conditions are not met; However, apart from these preconditions, according to the programme, there may be other circumstances due to which the Agency can exercise the same right (paragraph 8 of Article 5). In particular, if:

- There is a restriction or prohibition pertaining to the privatization of land or the use of land provided for by legislation or an agreement concluded by a state body (however, the Agency must be informed about this);
- Land privatization may delay the implementation of an important infrastructure project; However, this must be confirmed by a letter from the Ministry of Regional Development and Infrastructure of Georgia or the Ministry of Economy and Sustainable Development of Georgia;
- The land plot is located in the 500-meter borderland<sup>8</sup>;
- The land plot is located in the border area. At the same time, the location of the land in the border area in itself cannot be the basis for the refusal of the Agency. For refusal, it is necessary that the Georgian Border Police submit to the Agency a negative position on land privatization (i.e., the Georgian Border Police may not at all be against land privatization);
- (a) the land is registered under subsoil fund and the National Agency of Mines submits a negative position to the National Agency of State Property regarding land privatization; and/or (b) a license for extraction and/or use of mineral resources has been issued and the respective licensee's negative opinion on land privatization has been submitted to the Agency;
- The land is located in the buffer zone for the protection of cultural heritage and the Ministry of Education, Science, Culture and Sports of Georgia has submitted a negative position to the Agency regarding the privatization of the land;
- The land plot is located in the roadside zone (100 meters from the axis of the road on both sides) and the Roads Department of Georgia has submitted to the Agency a negative position regarding the privatization of the land plot;
- An overlap of cadastral data on a land plot is recorded.

As stated at the beginning, in order for a leaseholder of state-owned arable or hay land to request the privatization of the land in the form of a direct sale, certain preconditions must be met (see the conditions for participation in the programme above). One of these necessary conditions is that at the time of filing an application for privatization, the leased land plot must be registered in the Public Registry with specified cadastral data. In other words, if the land was leased with unspecified cadastral data, it is necessary to specify these data.

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<sup>8</sup> It is worth noting that the Law on the State Border of Georgia, despite the fact that it prohibits activities within the 500-meter strip that are not related to its maintenance, checking border signs and measures to protect the state border of Georgia, allows an exception; In particular, an exception is allowed in cases where an international agreement of Georgia provides otherwise. The law grants the Prime Minister of Georgia the right to allow certain types of economic activity in the border zone "in certain cases" (Paragraph 5 of Article 25).

One of the last articles of the programme, article 10, concerns the issue of specifying land cadastral data. According to the programme, if a leaseholder plans to privatize the land, s/he has the right to apply to the National Agency of State Property to specify the cadastral data. This right, as mentioned above, must be exercised by the leaseholder until January 24, 2023. After expiration of this period, the leaseholder will not be able to participate in the programme.

According to the programme, specification of cadastral data means determination of cadastral boundaries and/or category of a land plot. Based on the request of a leaseholder, the National Agency of State Property applies to two state institutions - the relevant municipality and the Ministry of Environmental Protection and Agriculture: if specification of the boundaries is needed - to the municipality, and if determination of the category is needed - to the municipality and the Ministry. Both government agencies are required to provide the requested information to the Agency within one month.

## 5. Final remarks

In order that municipalities be able to implement municipal programmes similar to the national programme for leased arable and hayfield in their possession, in July 2020, the Government of Georgia instructed the Ministry of Economy and Sustainable Development to initiate relevant amendments to the Local Self-government Code<sup>9</sup>. To date the Ministry has not yet fulfilled this task.

It is necessary to note the issue of ensuring the transparency of the process of privatization of state-owned arable land and hayfield that are leased. As can be seen from the previous chapters, none of the stages of the decision-making process on privatization is public: the first stage is closed - the process of relationship between a leaseholder and the National Agency of State Property; The second stage - the decision-making process by the Government of Georgia is also completely closed: traditionally, not only draft decrees of the Government of Georgia but even adopted decrees are not published. Transparency International Georgia mentions this issue in its 2022 report<sup>10</sup> on the risks of corruption in the process of state property privatization adding that the public administration violates the law and does not issue government decrees even when public information is requested. This circumstance, according to the organization, makes it impossible to carry out effective external supervision of privatization through direct form.

The authors of the national programme thought about possible conflict with line agencies and mining licenses and, in order to avoid this, requested from them to state consent or a negative position; but they did not think at all about the public and the local communities who might have an interest in the leased arable or hayfield. The programme does not take into account the possibility of informing and consulting the public, local communities in the process of making decisions on privatization, thus creating the ground for the rise of acute conflicts.

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<sup>9</sup> Decree #464 of the Government of Georgia of July 23, 2020 on Approval of the national programme for access to agricultural land resources, Article 3, Preamble.

<sup>10</sup> Transparency International - Georgia, 22 June 2022, *Corruption Risks in the Process of State Property Privatization*, Transparency International - Georgia.

In conclusion, attention should be paid to the fact that the national programme on arable land and hayfield itself was developed and adopted without public consultations. Holding public consultations before the approval of a policy document is a necessary requirement of the “Rules for the development, monitoring and evaluation of policy documents”<sup>11</sup>, approved by the Decree #629 of the Government of Georgia dated December 20, 2019. This obligation was not fulfilled. It is highly likely that other requirements determined by the same rules will not be fulfilled either, according to which monitoring and evaluation of programme implementation should be carried out and the monitoring and evaluation reports should be published.

Lastly, it should also be recalled that the programme expires after 10 months and the possibility of an extension should not be ruled out. In such case, it becomes especially important that the National Agency of State Property - as the implementer of the programme and the Government of Georgia - as a decision maker, inform the public about the shortcomings identified during the implementation of the programme and its effectiveness.

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<sup>11</sup> [Decree #629 of the Government of Georgia of December 20, 2019 on Approval of the procedure for development, monitoring and evaluation of policy documents.](#)

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