

Hearing on the determination and implementation of the Essential Level of Services (LEP) for civil and social rights

Summary

1 February 2024 | PBO board member Giampaolo Arachi today spoke at a hearing before the Parliamentary Committee on Regional Issues. The hearing concerned the determination and implementation of the Essential Level of Services (*Livello essenziale delle prestazioni*, LEP).

The meeting focused on the evolution of the definition of Essential Level of Services (LEP), on the determination of the related standard expenditure needs and standard costs, on the relationship between the LEPs and symmetrical and asymmetrical federalism, and, lastly, on the monitoring of their provision.

General framework

The LEPs, which are essential for applying the principles of Title V of the Italian Constitution, **are key to combining the financial autonomy of local authorities with a guaranteed access to uniform services for citizens throughout the national territory.** The LEPs refer to the services connected with the protection of civil and social rights to be guaranteed throughout the territory. **The State shall guarantee their financing and ensure their effective provision including by taking over the administration of resources.**

The definition of LEP assumes different significance depending on whether the services fall under the remit of territorial authorities or concerns the new, special forms of autonomy (differentiated autonomy). In the first case, the historical levels of service provision do not follow uniform criteria throughout the territory and are usually differentiated. The introduction of the LEP in this context requires the enhancement of service provision in the most under-served areas. In the event of Regions being granted special forms of autonomy, the LEP will initially concern services provided by the State, with criteria that tend to be uniform throughout the territory. In this case, it is unlikely that the introduction of the LEP will reveal the need to significantly adjust the provision of services unless the LEP are changed or the current criteria for quantifying expenditure prove to leave room for inefficiency.

The introduction of the LEP entailing an increase in the levels of services provided in the most under-served realities necessarily requires finding resources to finance such improvements. Due to budgetary constraints, funding may be provided by redistributing existing resources among the entities concerned using equalisation mechanisms, or by cutting central government spending or, finally, by increasing the tax burden. For this reason, the introduction of a new LEP has generally been combined with the allocation of

dedicated resources aimed mainly at those entities that need to strengthen their services and foresees an incremental alignment process. **Besides adequate current resources, suitable infrastructures and equipment are also needed.**

Developments in determining the LEP

In the past, LEP **identification has been impaired by** several factors, starting with **the lack of a clear definition of their nature and characteristics. Even today, the whole scenario is fragmented and heterogeneous.** The only field where the essential levels have been systematically defined is health care, where the Essential Levels of Assistance (*Livelli essenziali di assistenza*, LEA) have been established. In the social assistance field, a number of different formulations have been adopted over time; in many cases, they did not allow for a precise identification of the services needed to be provided on the territory. The 2022 Budget Law saw an attempt to reorganise the social LEP (LEPS), albeit with some uncertainty of interpretation. The latter introduced LEPs for nurseries and service targets for the transport of disabled students. Several LEPs are also present in the active labour market policies and training sector, and legislation provides for the establishment of additional LEPs concerning disability, non-self-sufficiency and environmental protection (LEPTA), which, however, are awaiting implementation measures. Finally, the 2023 Budget Law, responding to new policy priorities, intervened by establishing an expedited procedure for the determination of LEPs regarding only those subjects for which differentiated forms of autonomy may be granted.

In addition to being technically complex to define the essential core of the benefits, which are often a combination of goods or services with different qualitative characteristics, **the main obstacle in defining the LEPs for the activities performed by the territorial authorities is on the financial side:** the LEP is in fact used to determine the expenditure threshold needed to provide social benefits of a fundamental nature; this threshold must be financed throughout the territory, respecting the public finance budgetary balance.

LEPs and standard expenditure needs are closely connected and cannot be determined independently: coordination between the two processes and collaboration between the technical structures and the political bodies are necessary. The former have the task of selecting the most appropriate calculation methods according to the characteristics of the services and the information available and of quantifying the financial burdens in a clear and transparent manner; taking these elements into account, political bodies are responsible for choosing the priorities and the level of standard expenditure needs, based on the resources available.

Implementation of the LEPs

For an effective implementation of the LEPs, infrastructural equalisation, a careful monitoring and an efficient system of corrective measures for non-compliant entities are essential. Within these priorities, **coordination between the levels of government** involved in the provision of services **must also be strengthened**, identifying individual responsibilities, also for the purpose of sanctions.

More specifically, with regard to the first point, it is underlined **a serious delay in the implementation of infrastructure equalisation.** Originally envisaged by Law No. 42/2009, the equalisation process was restarted with Decree Law No. 121/2021 to focus more on the performance and quality aspects of infrastructures, i.e. on the services actually offered to citizens and businesses. **Two years after the date set for concluding the reconnaissance, this has still not been presented. Moreover the financial endowment of the Infrastructure Equalisation Fund (*Fondo per la perequazione infrastrutturale*, FPI), originally amounting to 4.6 billion, has been largely revised downwards:** following the applications set forth in Decree Laws No. 13, 44, and 145 of 2023 and the 3.5 billion cut in funding set forth in the 2024 Budget Law, the Fund currently amounts to 900 million. Although no official documents have been published, inter-institutional contacts suggest that the infrastructural reconnaissance has nevertheless been completed and that evidence shows that the Regions of Southern Italy have greater infrastructural needs.

Relaunching the activities initiated by Decree Law No. 121/2021 would be advisable. Although the FPI endowment was limited both in terms of quantity and duration, the fund adopted an approach to infrastructural equalisation that went beyond the quota-based criterion of resource allocation – which follows a negotiation-type approach – to a more objective criterion, based on indicators, that exclusively reflects the infrastructural gaps to be bridged.

The new approach could be more effective in directing interventions to the most underserved realities, which also have greater difficulty in accessing the funds allocated on a competitive basis, as shown by the PBO analysis on the outcomes of the Nursery Plan contained in the National Recovery and Resilience Plan (NRRP) before its reshaping.

The infrastructural gap also affects healthcare, limiting the capacity to deliver LEAs and fostering the phenomenon of patient mobility, leading to social and financial repercussions.

Moreover, in order to guarantee the protection of social and civil rights, it is necessary that the definition and financing of the LEPs be accompanied by monitoring and correction procedures that ensure their effective delivery, under appropriate and efficient conditions. At present, monitoring mechanisms are specifically envisaged for the Regions in the health field, with reference to the provision of the LEAs, and for the

municipalities with reference to social services, nurseries and school transport for disabled students.

The monitoring of the LEAs, which began some time ago and is currently under review, shows the complexity of the monitoring process regarding the delivery of the LEPs and the need to improve the information and refine the tools used, also for an effective measurement of the adequacy of the service.

As for the social assistance LEP (expressed as number of social workers in relation to the population), the PBO found critical issues with respect to the lack of coordination between fund allocation rules and monitoring, as well as on corrective mechanisms.

With regard to the latter, **Constitutional Court ruling No. 71/2023 highlighted that the central administration of resources intended for LEPs imposed on non-compliant authorities is more appropriate than the mere return of them. If applied to all LEPs, this represents a significant innovation that could have positive effects to strengthen and standardise the guarantee system for fundamental services.**

However, two critical issues should be overcome. First, conditions must be created so that the number of non-compliant authorities is not too high, otherwise the external administration would become impossible. In order to be effective, the corrective mechanism should be applied on a case-by-case basis, according to the specific circumstances. **Secondly, a clear assignment of competences between the levels of government involved in the provision of LEPs is needed.**

Finally, it is necessary to ensure closer coordination between the different levels of government and to precisely define accountability. PBO analyses published in a previous focus highlighted how, with regard to the interventions for increasing the number of social workers, the overlapping of two distinct sources of funding, one aimed at municipalities and the other at the social districts (*Ambiti Territoriali Sociali*, ATS), each with different timing, resource disbursement methods and reporting rules, resulted in a diminished equalising effect of the intervention. Despite resources being available, the increase in the number of social workers was in fact very gradual and the majority of positions still to be covered remained concentrated in particularly lacking ATS.

Centrality of the LEPs in the case of differentiated autonomy

The determination of the LEPs has also taken on a central role in the differentiated autonomy bill, as they serve to guarantee the equity and unity of public intervention and to provide the necessary benchmark for determining the resources to be allocated to the Regions that request greater autonomy (*Regioni ad autonomia differenziata*, RAD) and for their subsequent updating, in order to protect them and other Regions.

The procedures for determining the LEPs, introduced by the 2023 Budget Law and revised in the differentiated autonomy bill, **appear to be essentially oriented towards systematising existing provisions by identifying as LEPs obligations already present in the legislation either explicitly or implicitly**. Also the survey carried out by the Technical and Scientific Committee responsible for the identification of LEPs (CLEP) developed in this perspective.

Following this approach, **the determination of standard expenditure needs related with LEPs concerning State matters that could be subject to differentiated autonomy will probably have different financial outcomes than that related with any LEP set on the services provided by the territorial authorities**.

In the case of services provided by the State, expenditure is determined according to provision criteria that tend to be uniform throughout the territory. It is therefore plausible to expect that the standard expenditure needs will not deviate significantly from the expenditure currently incurred by the State in each Region.

An example is offered by the education sector, the most relevant in terms of volume of State expenditure among those that can be subject to differentiated autonomy. The CLEP has identified a series of rules that govern how the service is to be provided, essentially establishing personnel requirements and, consequently, expenditure needs. The application of the current criteria, already in use to allocate historical expenditure, should allow for the identification of standard costs and expenditure needs, with a result not differing from the past unless in the presence of inefficiencies or a strengthening of certain services.

Following the implementation of the agreements, **any possible establishment of new LEPs for services on which the current rules do not guarantee uniformity throughout the territory** (as is the case, for example, for full-time education in schools) **will instead require an increase in expenditure in the Regions with lower levels of supply**. In this case, a revision of revenue-sharing rates will be necessary to ensure that RADs cover increased expenditure needs and, at the same time, contribute to the financing of under-served Regions.

The PBO also analysed some specific aspects of the differentiated autonomy bill approved by the Senate on 23 January 2023.

The bill introduced a new procedure for the identification of LEPs (Article 3), which is based on the approval of legislative decrees and provides for its passage through Parliament (but not the *agreement* in the Unified Conference, which is replaced by an *opinion*). This procedure is **in addition to the one already provided for in the 2023 Budget Law**, which is carried out by Prime Minister's Decree without parliamentary involvement. **The two different procedures, the latter transitional, the other permanent, do not**

appear to be adequately coordinated. In particular, the moment of transition from one procedure to the other does not seem to be clearly identified.

The determination and updating, at least every three years, of the standard costs and standard expenditure needs will have to be carried out on the basis of the technical assumptions of the Technical Committee for Standard Expenditure Needs (CTFS), as provided for in the 2023 Budget Law, thus excluding a parliamentary step, unlike what is provided for the revision of the methodology for calculating the standard costs and standard expenditure needs of local authorities.

The differentiated autonomy bill approved by the Senate defines the field of identification of the LEPs, excluding some matters from those potentially subject to a request for greater autonomy (Article 116, paragraph 3 of the Constitution), following the indications that emerged in the CLEP final report. The non-definition of the LEPs does not, however, prevent requests for special forms and conditions of autonomy in such matters. **Any requirements to comply with international standards and treaties and EU legislation, as well as to guarantee the protection of the legal and economic unity of the Italian Republic, will necessarily have to be safeguarded during the agreement definition phase. The Prime Minister is in fact empowered to delimit the agreements with respect to the Regions' requests and, subsequently, the Government can activate the substitute powers provided for in Article 120 of the Constitution.**

According to the PBO, particular attention should be paid to the **potential exclusion of the area concerning the coordination of public finance and the tax system from the LEP determination field** which raises a number of critical issues and potential inconsistencies, also in relation to the guaranteed provision of the LEPs.

LEPs and symmetrical federalism

The LEPs are also a crucial benchmark for the full implementation of symmetric federalism. The delay in their definition has been identified by the Constitutional Court as the main cause behind the failed federalist reform (ruling No. 220/2021). The Court's emphasis on the central role played by LEPs for the implementation of fiscal federalism with reference to Municipalities appears even more relevant in the case of Regions, for which no step has yet been taken.

Among the factors that may explain the different state of progress of the federalist reform are the different role played by the LEPs in quantifying the resources to be allocated to the Regions and to local authorities, and the different importance given to the conversion of transfers into taxes in the case of the Regions.

It should be noted that without the LEPs there is a lack of benchmarks for quantifying the necessary resources, which are to be secured through revenues and specific quotas of the

equalisation fund. In fact, in implementation of Law No. 42/2009, Legislative Decree No. 68/2011 envisages that expenditure incurred by the Regions to finance the LEPs, for which full coverage is guaranteed (similarly to what is envisaged for expenditure concerning the fundamental services of local authorities), be distinguished from other expenditure, the financing of which is based on partial equalisation based on tax capacity (similarly to what is envisaged for the non-fundamental services of local authorities).

Consequently, **in the absence of LEPs, the conversion of transfers into taxes could generate significant reallocations of resources between Regions.** For example, current expenditure for local public transport – which Legislative Decree No. 68/2011 does not regard among those referable to the LEP – is currently financed by the National Fund for Local Public Transport. Should the LEPs not be defined, the same resources will be partially equalised based on fiscal capacity, after the conversion of transfers into taxes. The new distribution of resources among the Regions may not be consistent with actual needs, with possible repercussions on the Regions' ability to meet transport service obligations.

The replacement of State transfers to the Regions with their own revenues and with an equalisation fund will also have **consequences on the role of central government: the allocation constraints would be removed and** those central governments that currently determine the allocation of funds **would be given a more active role in monitoring** the actual implementation of the LEPs.

The procedural misalignment between the fast track defined by the 2023 Budget Law for the definition of the LEPs on matters falling under State competence that could be subject to special forms of autonomy and the less rapid route to be taken for those already under regional competence is critical.

Firstly, **there is a risk of slowing down the implementation of the reform of the financing of Ordinary Statute Regions (RSOs), which is included as an 'enabling reform' in the NRRP** and is to be completed by the first quarter of 2026. This reform, already envisaged by Legislative Decree No. 68/2011, has remained unimplemented also due to the absence of LEPs and related expenditure needs, which are a cornerstone of the equalisation mechanisms.

Secondly, **it is likely that also in the case of RSOs, as was the case for local authorities, the identification of the LEPs will require a rebalancing of services between territories, to be financed with new resources.**

Thirdly, **the joint determination of the LEPs for differentiated autonomy and for regional federalism, through the coordination of the two reforms, seems appropriate,** given the complementarity between the services currently provided by the State that fall under the areas covered by the third paragraph of Article 116 of the Constitution and those already falling under regional competence, such as active labour and training policies in relation

to social assistance and general education standards in relation to education. **Moreover, this would allow an overall assessment of the financial needs related to the two areas.**

LEP implementation monitoring and differentiated autonomy

At present, monitoring mechanisms are explicitly provided for in the health field, with reference to the delivery of LEAs, and in the social field, for nurseries and school transport for disabled students with regard to the respective service objectives and LEPs. **Similar mechanisms should be extended to all LEPs, together with effective corrective systems** in the case of poor outcomes emerging from monitoring. This requires a **clear attribution of responsibility between the different levels of government and an appropriate design of the monitoring mechanism** to detect non-compliant authorities as accurately as possible. This aspect is relevant both in the case of differentiated autonomy and symmetrical federalism.

With reference to differentiated autonomy, **the procedures envisaged by the bill present a potentially uneven picture**, as they seem to envisage different approaches for agreements entered into before and after the approval of the legislative decrees. Moreover, there are no indications on monitoring for the Regions that remain under State provision and the LEPs that will fall under symmetrical federalism. Finally, no uniform procedures for assessing the adequacy of revenue-sharing rates for functions on which LEPs are not defined seem to be envisaged.

For the Regions that enter into the agreements, the monitoring is entrusted to a Joint Committees which include representatives of the State, the involved Region and the local authorities.

As already noted by the PBO in previous hearings, **it cannot be excluded that differentiated autonomy will evolve towards a highly fragmented scenario**, with a significant number of Regions acquiring different functions, which have a different financial weight and a different distribution between expenditure relative to LEPs and expenditure on other services. In this perspective, **a management of revenue sharing rates entrusted exclusively to bilateral negotiations within the Joint Committees might not guarantee uniformity of assessments and adequate coordination with budget planning**. Therefore, there seems to remain a need for a single institutional body for coordinated and comprehensive evaluations and decisions. The same body should also be involved to make assessments and decisions on the revenue-sharing that, according to Legislative Decree No. 68/2011, should finance the regional equalisation fund under symmetric federalism.