



Project: Improving auction procedures under foreclosure for immovable collaterals

Time: Tuesday, 28 October, 2008, 10:00 am

Location: Albanian Association of Banks

Fourth Working Group Meeting

AGENDA

- Project Activity Brief
- Project Document on CPC PWG recommendations (Discussion and Approval)
- Project Document on Bailiff Improvement PWG recommendations (Discussion and Approval)
- Impact Assessment Questionnaire on CPC amendment proposals (Discussion)
- Conclusions and distribution of tasks
- Closing Remarks

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Improving Auction Procedures for Immovable Collateral under Foreclosure:
Supporting the enactment of law amendment proposals
www.spi-albania.eu/en/2008-program/improving-auction-procedures-for-immovable-collateral-under-foreclosure

Project information

PUBLIC-PRIVATE FINANCIAL SECTOR MODERNIZATION MATRIX					
Italian Banking Association CRITERIA	European Central Bank CRITERIA				
	Asymmetric information reduction	Completeness of the market	Increased opportunities to engage in financial transactions	Reduced transaction costs	Increased competition
Business development				X	
Industry competitiveness					
Industry reputation					

Short description of the context: Banks complain that the foreclosure procedures are too long and cumbersome and result in increased uncertainties, costs and impairment of the collateral value. Actually the process is rarely successfully completed. Banks are indirectly forced to take possession of the immovable when it is offered in a public auction and, due to the ceiling in the fixed assets to total assets ratio, the immovable has to be sold in a short time and sometimes in unfavorable conditions.

Stakeholder proposing the project: AAB

Other Stakeholders involved (sponsors): BoA, MoJ – Bailiff Department, Appraisers’ Association

Project objectives:

General: To undertake analytical activities that would support the enactment of law amendment proposals.

Specific: To support the Ministry of Justice in its initiative to amend the Civil Procedure Code - CPC.

Operational: To provide proposals on specific provisions of CPC;

Description of the project contribution toward financial modernization:

By reaching the project’s objectives, the recovery process of the bad debts under foreclosure procedures would be facilitated and banks’ costs with foreclosing the immovable collateral would decrease. These effects will be reflected in the cost of the bank products and services (loans) and in more loans granted due to the quickly recovery and to the decrease in the risk of loss.

Project Working Group:

- Banka Kombetare Tregtare
- Banka e Shqiperise
- Banka Nder - Tregtare
- Tirana Bank
- Emporiki Bank
- Banka e Bashkuar
- Raiffeisen Bank



- Banka Credins
- Banka Alpha
- Ministria e Drejtesise
- IFC
- EURALIUS

PWG meetings:

1st meeting – July 4, 2008; Output: Project ToRs, Note on the impact of the current legal framework on enforcement, on banks and on consumers;
 2nd meeting – July 30, 2008; Output: Comparative table - the current provisions of CPC compared to the latest version of CPC amend proposal approved by the Council of Ministers (in 2007), the individual contributions of the PWG members, Euralius’ recommendations and extracts from the Romanian CPC as illustrative example.
 3rd meeting – September 26; Output: PWG proposals for CPC amendment
 4th meeting – October 27; Output: Document on the PWG Recommendations on CPC amendment proposal;

Contributions:

PWG members: participation in PWG meetings and discussions; individual contributions and comments on the suggested amendments; answers to the Impact Assessment questionnaire.

PMT [Ms. Veronika Prifti, BKT and Ms. Rudina Gorishti, Bank of Albania]: in addition to the above mentioned, formulated draft PWG amendment proposals.

PM [Ms. Veronika Prifti, BKT]: in addition, participated in the discussions with the Ministry of Justice; and, was the person responsible to present to the Legal Affairs Parliamentary Commission the comments and the PWG amendment proposal.

SPI Secretariat: drafted Project ToRs; Note on the impact of the current legal framework on enforcement, on banks and on consumers; comparative table and aggregation of the individual contributions; Impact Assessment Questionnaire; collection of individual contributions and draft Summary of Impact Assessment Questionnaire; draft Document on the PWG Recommendations on CPC amendment proposal; participation in the discussions with MoJ and in the Legal Parliamentary Commission.

Other contributions: Euralius – peer reviewer; AAB - Legal Committee and support for bank survey running.

Other Supportive Activities:

June – July Request for collaboration letters to the Ministry of Justice.
July PM called for an out-of-agenda meeting the AAB Legal Committee, to inform and establish collaboration with the SPI project.
July Meeting with the three representatives of the Enforcement Department, MoJ.
September Preliminary PWG discussions on CPC amendment proposal
 First negotiation round – meeting with the Ministry of Justice
October Second negotiation round – participation in the discussions of the Commission of Legal Affairs, Public Administration and Human Rights

Methodology: EU Better Regulation (Annex 8)



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1. Summary of PWG analysis

In Albania, the current legal framework on collateral execution is covered by the provisions of Civil Procedure Code (CPC), Chapter 3, Art.560-580 “The enforcement on immovable property, ships and airplanes”.

Despite the fact that there are no statistical data available on how many cases ended with the bidder paying the fixed price in an auction and became the new owner, bailiffs confirm that this number is extremely low¹. It happens very seldom that after the second auction the creditor takes the immovable against the price designated for the second auction. In case the immovable has been appraised by the experts contracted by the Bailiff Offices at a value higher than the debt, the creditor has to pay to the debtor the difference between the appraised value and amount of the debt. Due to the ceiling in the fixed assets to total assets ratio, banks have to sell the immovable in a short time and sometimes in unfavorable conditions.

In addition to the above mentioned, there are other problems generated by the legal framework, and particularly the CPC, as the pivotal pillar of the enactment system, related to:

- unclear provisions, which result in inadequate and/or subjective application of the law by the bailiff;
- undefined time periods for most of the procedures;
- long time periods and cumbersome auctions procedures. According to the 2009 Doing Business report an enforcement process has to go through 39 procedures vs. 20 as the best practice and lasts 390 days vs. 120 days as the best practice².

The above mentioned problems faced by the banks result in increased cost, wasted time in complicated procedures and impairment of the value of the collateral. A more detailed analysis on the impact of the current legal framework on collateral execution on banks and on consumers is presented in Annex 4.

PWG identified the problem and analyzed the market context, assessing that the low efficiency in the current enforcement system is the result of a **regulatory failure**. The current regulation is not appropriately prescribed for the market, resulting in cumbersome procedures, work inefficiency, subjectivity and unequal treatment of parties. This regulatory failure threatens the policy objectives on improving the competitiveness of the market and on better access to finance, and generates additional uncertainty and costs, directly and indirectly, to all economic agents. PWG appreciated that the correction of the existing situation needs a regulatory initiative and identified three alternative options for actions. For more details, please see **Annex 2- Scoping the Problem**.

SPI Albania with the support of the Albanian Association of Banks (AAB) undertook a survey on the economic impact that the CPC amendment proposals would have in the banking community. **Annex 5** presents the questionnaire prepared for the bank survey.

Consultations and negotiations were also performed with the Ministry of Justice and with the Commission for Legal Affairs, Public Administration and Human Rights, Albanian Parliament on

¹ EURALIUS, Proposal for Improvements of the Civil Procedure Code (EURALIUS Activity 8.5), Part I: Enforcement on immovable assets, 2006.

² Anyhow, developments in the enforcement of the contract section in Albania are similar to other comparable economies in the region.



the identified alternative policies options and the amendment proposal. The statistics and the main results of the consultation process are presented in **Annex 3 – Consultation process**.

2. PWG Policy Recommendations

The Project Working Group Members, based on the draft proposal approved by the Council of Ministers in 2007, the documents prepared by SPI Secretariat, EURALIUS' recommendations, the Romanian CPC and their professional and practical experience in the foreclosure process, have discussed and agreed on 18 amendment proposals to the CPC. The purpose of these proposals is to achieve:

- fairness and equal treatment of parties during the foreclosure process;
- better use of resources and better regulated process;
- enhanced efficiency of the enforcement system.

In order to achieve the project objective a strong collaboration with the Ministry of Justice (MoJ) has been considered crucial. A team representing the SPI project has met and discussed with representatives from MoJ three times. In the last meeting, October 13, the PM, SPI Secretariat and AAB legal advisor met with the advisor of the Minister of Justice and with the Head of the Enforcement Department to discuss on the draft proposals prepared under SPI Albania project framework.

The draft proposal prepared by Ministry of Justice, in which is embodied the SPI Albania PWG proposal is currently under discussions in the Parliamentary Commission of Legal Affairs, Public Administration and Human Rights. This procedure proceeds the plenary session in the Parliament.

The detailed PWG amendment proposal is presented in **Annex 1**.

The financial effect of the amendment proposal will be assessed through the Impact Assessment Questionnaire.

3. Proposed SPI Committee Decision

SPI Committee endorses the PWG recommendations for further presentation to the Legal Parliamentary Commission.

SPI Committee recommends that the PWG Proposal is forwarded for comments to the General Regulatory Directorate in the Market Surveillance Department part of the Ministry of Economy, Trade and Energy.

Annex 1.

PWG recommendations to amend the Civil Procedure Code

No.	Current Provision (no)	Proposed amendment
Package 1 - Core changes that increase the efficacy of the enforcement system		
1	<p><u>Article 511</u> The executive title is executed on the request of the creditor. For this purpose the order of execution is issued which is given :</p> <p>a. by the court which has taken the decision in cases stipulated in letters a and b of the preceding article;</p> <p>b. by the Court of Appeals with regard to decisions by courts of foreign countries and of foreign arbitration courts which have been given implementation power in conformity with the provisions of this Code;</p> <p>c. by the court of the place where decision has been issued in cases stipulated in letter ç of the preceding article;</p> <p>ç. by the court of the place where it has been determined to make the execution in cases stipulated in letters d, dh and e.</p>	<p><u>Article 511</u> The first paragraph is changed as follows: “For this purpose the executive title is issued within 5 days from the date of the creditor’s, which is given:”</p> <p>The last paragraph is changed as follows: “For the sigurimin e padise and the fines written by the court are not issued executive orders, which are executed directly from the bailiff office, after the notification of the decision.”</p>
Stance of the MoJ		Agrees with the proposal
2	<p><u>Article 513</u> The executive order The execution order is issued in only one copy. When separate properties must be handed over or when the execution title has been issued to the benefit or against several persons separate execution order may be issued making a note as which part of the title must be executed for each execution order.</p>	<p><u>Article 513</u> The first sentence is changed as follows: “The execution order is issued in two copies.”</p>
Stance of the MoJ		MoJ agrees with the problem identified, but the solution will be further discussed internally
3	<p><u>Article 515</u> Commencement of the execution</p> <p>The execution title is executed by the bailiff on request by the creditor as well as by the prosecutor in cases when he has sued.</p>	<p><u>Article 515</u></p> <p>For the execution of the executive titles the creditor should prepare the file containing: The request for execution, the executive title, the executive order, the receipt of paid tax, if necessary the act of procurement. If the bailiff considers the file is not adequately complied the creditor has 5 days to fill in the file correctly. The request for execution is considered as registered from the date presented in the bailiff office. The bailiff should execute the executive order</p>

No.	Current Provision (no)	Proposed amendment
		<p>within 15 days from the submission of the request. Court orders on masen e sigurimit te padise / charge of securing the lawsuit and the penalties issued by the court are executed within 5 days from the day of announcement. The tax for the execution process is not prepaid in the cases defined by the law.</p>
Stance of the MoJ		MoJ did not agree to reduce time periods
4	<p><u>Article 564</u> Valuation of the property The seized immovable asset is appraised by the bailiff on basis of the value registered in the registers of immovable property or of the financial organ and in absence of such registration by experts. When the debtor or any other person having interest claims a higher value of the asset in comparison with the one existing in the registers of immovable property or of the financial the bailiff performs an other appraising process with an expert.</p>	<p><u>Article 564</u> Valuation of the property The article 564 is changed as follow: “If the debtor and the creditor do not reach an agreement, the bailiff officer determines within 15 days the value of the property based on the expertise act presented by a <i>licensed</i> expert based on the market value, in the moment of seizure. The bailiff should notify the debtor and the creditor on the appraised value within 10 days from the appraisal process. Against the value both parties might appeal.”</p>
Stance of the MoJ		<p>Agreed on the time periods; Not agreed on the initial value of the auction (PWG liquidation value vs. MoJ market value)</p>
5	<p><u>Article 567</u> Auction procedures After placing the seizure the bailiff send to the debtor a notice that the asset shall be sold if he does not fulfill his obligation within 10 days from the notification. On the expiry of the above term the bailiff announces the sale of the asset by auction.</p>	<p><u>Article 567</u> The article 567 To be abrogated</p>
Stance of the MoJ		Agreed
6	<p><u>Article 577</u> Repetition of the auction When in the first auction no additional amount above the price at which sale started is offered, or there is no bidder, a new auction for the sale of the asset is held, applying the rules for the first auction. The new auction is held after three months have passed from the end of the first auction and on basis of a new price not lower than 20% of the first price designated by the bailiff in agreement with the debtor. When the asset is not sold even by the second auction the bailiff suggests to the creditor to take the asset against the claim/loan at the price designated for the new auction and when he refuses raises the seizure on the asset. When the creditors that request to take the asset against credit are several the bailiff declares as</p>	<p><u>Article 577</u> The article 577 is changed as follows: If in the first auction no bidder has offered a higher price than the initial price, or there has been no bidder the sale continues with a second auction. The bailiff officer within 10days from the first auction determines the price, which is <u>20%</u> lower than the initial price. The second auction should start not later then 15 days after the price is set. Within 30 days from the payment of the price from the buyer or from the acceptance of the property form the bank, the bailiff places the property under the possession of the buyer / creditor.</p>

No.	Current Provision (no)	Proposed amendment
	buyer the creditor who within three days from the suggestion gives a higher price than the one designated for the new auction.	
Stance of the MoJ		MoJ agrees with the problem identified, but the solution will be further discussed internally
Package 2 - Other changes that further improve the efficacy of the enforcement system		
7	<p><u>Article 141</u> Notification to institutions, enterprises and other legal persons is made by means of delivering the copy to the office of the chief executive officer and to the persons responsible for receiving acts. Notification to non-state legal persons is made to their headquarters by means of delivering the copy of the act to the representative or person responsible to receive notification and in their absence to another person who works in those headquarters of that legal person.</p>	<p><u>Article 141</u> The article 141 is changed as follows: The notification process for the legal persons is the same as for the private persons (art.133). The last sentence of article 133 is changed as follows: The notification is posted in district court, district commune or birthplace or last known location</p>
Stance of the MoJ		Agreed
8	<p><u>Article 517</u> The voluntary execution At the start of the execution, the bailiff sends to the debtor a notice to execute voluntarily the obligation contained in the execution order designating for this a term of 5 days when its subject is salary or obligation for sustenance and of 10 days in all other cases. On request by the debtor, the first level court of the execution place, in special cases, taking into consideration other circumstances of the case may postpone the term of execution of the obligation in cash or may divide such an obligation in installments. The decision is given in court session, after the parties have been notified and a special appeal may be made against such decision.</p>	<p><u>Article 517</u> In the second paragraph is added: “Upon the debtor’s request and after the creditor is expressed the court might postpone the time of the payment” The last sentence is changed as follows: “Against the decision parties might appeal.”</p>
Stance of the MoJ		Agreed
9	<p><u>Article 522</u> The execution if the debtor’s address in not known When the residence of the debtor is not known, the court of the district of the place of execution, on request by the bailiff, after being directly clarified on this circumstance, nominates a representative of the debtor.</p>	<p><u>Article 522</u> In the article 522 after the works “...on this circumstance...” is added “...within 10 days...”.</p>
Stance of the MoJ		Agreed
10	<p><u>Article 560</u> The sequester order The execution of the decision of the court or of other executive titles on immovable assets of the debtor is made by placing seizure on them. Seizure is placed by its registration in the office of</p>	<p><u>Article 560</u> In the second paragraph of the article 560 is added a sentence, as follows: “The act issued by the bailiff is registered by the</p>

No.	Current Provision (no)	Proposed amendment
	the register of immovable property of the act of the bailiff in which are noted the kind, nature and at least three borders of the immovable asset, its location as well as the mortgages and real rights which may be held on it. A copy of the act of the bailiff is communicated to the debtor bindingly.	Immovable Property Registry Office within 10 days after it has arrived. The last sentence of the article 560 is changed as follows: “A copy of the registry is forwarded to the debtor.”
Stance of the MoJ		Agreed
11	<u>Article 573</u> Notification of the winner The last paragraph of the article 573 is changed as follows: “The specific rules on the auction procedures are defined / set with a directive of the Council of Ministers.”	<u>Article 573</u> The last paragraph of the article 573 is changed as follows: “The specific rules on the auction procedures are defined / set with a directive of the Council of Ministers.”
Stance of the MoJ		Agreed
12	<u>Article 574</u> Time limit to pay the price The buyer must pay the price of the asset within 5 days from the end of the auction. On payment of the price of the asset and the tax on the acts of sale of the asset the bailiff issues the decision for the transfer of the asset in ownership of the buyer. From that day the buyer gains all the rights that the debtor had on the asset.	<u>Article 574</u> In the first paragraph of the article 574, words “...5 days...” change in “...15 days...”
Stance of the MoJ		Agreed
13	<u>Article 575</u> Taking the possession The buyer is given possession of the asset by the bailiff officer against the debtor or the person to whom it is left in custody as well as against any other person who has the asset in possession. The third person may be defended against the removal of the asset from possession only by means of the suit on recognizing the right of ownership on the asset.	<u>Article 575</u> In the first sentence of the article 575, after the words “...the bailiff officer ...” is added “...within 10 days...”
Stance of the MoJ		Agreed
Package 3 - Changes that achieve fairness and equal treatment		
14	<u>Article 144</u> The court may order by decision also other means of notification than those stipulated by the law such as by a telegram, facsimile, when the reception is confirmed in writing, by a written notice delivered by hand and other means which guarantee a regular notification, when required by special circumstances or by the necessity of a fast notification.	<u>Article 144</u> Following the article 144 is added the article 144/a: “The rules in this chapter on notifications are applied by the public and private Bailiff Service.”
Stance of the MoJ		Agreed
15	<u>Article 152</u>	This provision to remain as it is.
Stance of the MoJ		Not agreed



No.	Current Provision (no)	Proposed amendment
16	<u>Article 525</u> Execution expenses The costs incurred for the execution of each action are initially paid by the creditor and then are withheld from the ensuing amount and returned to the creditor.	<u>Article 525</u> A paragraph is added at the end of article 525, as follows: “The creditor has to pay only for the initial fees of the procedures”
Stance of the MoJ		Agreed with the concept, banks will pay only the fees
17	<u>Article 528</u> The sequester order on a different property On request by the debtor, seizure may be placed also on another property other than the one indicated by the creditor when the bailiff estimates that it fulfils the request of the creditor.	<u>Article 528</u> At the end of article 528 is added, as follows: “...apart the case when both parties with an act have defined the wealth (properties) that will secure the claim in which execution is requested.”
Stance of the MoJ		Agreed
18	<u>Article 569</u> The premises for the auction The auction of the immovable property is held in the office of the bailiff. It continues for 15 days and ends at the end of the official working hours of the last day which is indicates in the announcement for the sale by auction.	<u>Article 569</u> In the article 569 after the works “...in the bailiff office...” is added “...in the lodgment of the immovable property or in any other appropriate public place...”
Stance of the MoJ		Agreed

Annex 2.

Scoping the Problem

1.1. Problem identification
<p>1.1.1. Background information</p> <p>In Albania, the procedures for the foreclosure of the collateral are regulated by the Civil Procedure Code, Chapter 3, Art.560-580 “The enforcement on immovable property, ships and airplanes”. The acts of the loan are executive titles (art. 510) and the execution of the executive titles is within the bailiff’s exclusive competences (art. 527). At present, the enforcement on immovable property is very rarely a success. In the World Bank’s Doing Business 2009 Report, Albania is ranked 89th on the Enforcing Contracts section, this being attributable to all involved institutions and to the regulatory framework. Some of the problems related to the legal framework, and especially to the Civil Procedure Code, are related to the vagueness of the legal provisions that leaves room for subjectivity, and even inappropriate, application of the law and undefined time periods for most of the procedures.</p>
<p>1.1.1.1. Analysis of the market</p> <p><i>General market:</i> Banking, lending activity. <i>Specific segment:</i> Secured lending, lending secured by immovable collateral – mortgage loan. <i>Sub segment:</i> Default loans in the lending secured by immovable collateral segment.</p>
<p>1.1.1.2. Legal framework</p> <p>a) The <u>enforcement activity</u> is governed by the following: Law no. 8417, dated 21.10.1998 “The Constitution of The Republic of Albania”, Chapter “On human rights”; Law no. 8036, dated 22.11.1995 “On mutual court support in the civil and commercial sphere”; Law no.9443 dated.16.11.2005 “Ratification of the Hague Convent, October 19, 1996, “On the protection of basic human rights”; Law no. 8688, dated 14.05.2001 “On the organization and function of the Ministry of Justice”; Law no. 8730, dated 18.01.2001 “On the organization and the function of the Bailiff Service”; Law no. 8812, dated 17.05.2001 “Civil Procedure Code of Republic of Albania”, changed; Law no.7850 dated 29. 07.1994.”Civil Code of Republic of Albania”; Law no. 8435, dated 28.12.1998 “On the tax system in the Republic of Albania”; Law no. 8894, dated 14.05.2002 “On the Agency that treats default loans”.</p> <p>Other laws and convents related to the fair treatment of different groups.</p> <p>b) The <u>lending activity</u> is governed by: Law no. 9662 dated 18.12.2006 “On commercial Banks”; Regulation no.52, dated 14.07.2004 “On credit risk administration”.</p>
<p>1.1.1.3. Stakeholders - Institutional framework</p>

The **main stakeholders** of the enforcement process are:

- **The Bailiff Service** is a centralized **public** service with national - wide coverage under the competences of the Ministry of Justice. Its functions are performed through the bailiff officers who are responsible to execute the executive titles in full compliance with the provisions of the Civil Procedure Code
- **Commercial banks.** The Albanian banking system consists of 16 commercial banks having as main area of activity lending to individuals and companies. In December 2007 lending to economy reached 30.2% of GDP; out of this amount of outstanding loans, almost 37% of the credit portfolio is real estate lending. Regarding the quality of the loan portfolio, in December 2007, 92% of the portfolio are standard, good quality loans and nearly 9% of portfolio are problematic loans (including special attention loans - 5% of the portfolio, substandard loans - 2% of the portfolio, doubtful loans - 1% of the portfolio and lost loans - 1% of the portfolio).
- **Courts.** The judges in district courts issue the executive title that serves as the main legal document for the bailiff officers to start the execution process of the immovable collateral.
- **Consumers**

Other stakeholders involved in the enforcement process:

- **Ministry of Justice** - The ministry defines the organizational structure, functions and responsibilities of the General Directorate of Enforcement and Bailiff Offices.
- **Bank of Albania** – Supervisor of the banking activity and guardian of the financial stability.
- **Ministry of Public Order – State order Police**
- **Immovable Property Registry Office**
- **Regional Directory of Transport**
- **Tax office**

1.2. Market and Regulatory Failure Analysis

In the 2009 Doing Business Report by the World Bank, in the section of Contract Enforcement, Albania is ranked 89th. In Albania, in order to enforce a contract, the involved parties have to pass through 39 procedures that last on average 390 days and the costs of the process amounts to 38.7% of the claim. With these indicators, Albania is far behind other Eastern European and Central Asia countries in terms of the number of procedures and cost of the process.

In 2006 EBRD has assessed as well the secured transactions legal framework in transition countries. According to this assessment, the secured transactions legal framework (covering also mortgages) in Albania, generally, is **appropriate** and **sound** but its effectiveness is hampered by the **slow enforcement system** and flaws in the administrative system. The enforcement system is characterized by relatively long and cumbersome procedures that result in a moderate recovery of the initial amount by the secured creditor. Compared to other developing economies in Europe, Albania is considered to have an enforcement system less than median efficient and creditor-friendly

In additions to the international institutions, banks – the largest users of the enforcement system in Albania - complain on the effectiveness of the enforcement system and enforcement institutions.

EURALIUS, the European assistance mission to the Albanian Justice System has envisaged the elaboration of a large list of gaps in need for improvements to the CPC to achieve an effective and timely enforcement of judicial decisions.

The deficiencies in the legal framework combined with problems in the Bailiff Service produce an inefficient enforcement system.

Under these circumstances, we assess that the low efficiency in the current enforcement system is result of a **regulatory and administrative / management failure**. The current regulation is wrongly described for the market, resulting in cumbersome procedures, work inefficiency, subjectivity and unequal treatment of parties.

This regulatory failure generates additional uncertainty and costs to all the users of the enforcement system.

1.3. Policy Objectives at Risk due to regulatory failure

General Objectives:

- To improve the economy competitiveness;
- To increase the opportunities to engage in transactions.

Specific objectives:

- To improve the efficiency of the enforcement system;
- To stimulate the development of lending activity;
- To decrease in the cost of bank products and services.

Operational:

- To steady increase the execution rate of court orders;
- To secure the timely execution of the court orders;
- To ensure rapid recovery of bad debts.

1.4. “Do nothing” option

1.4.1 Possible medium-term (max 2 years) self – corrective actions

To deal with the regulatory failures described above, banks already have taken several corrective actions. They apply conservative loan-to-collateral ratios. They could also establish real estate subsidiaries in order to diminish the loss registered from the transactions they are forced to enter in. There is no guarantee, however, that this would solve the problem, while it is certain that costs will be covered from the “good” consumers and that the too conservative measures decrease the consumers’ access to finance and hampers the market development. Therefore, a legal intervention is necessary in order to address the regulatory failure which created a market distortion by overprotecting one category of consumers (bad debtors) and thus



transferring the generated costs to other category of consumers (the good debtors or loan applicants).

1.4.2. Impact of the “Do Nothing” option to the various stakeholders

The low rate of court orders executions and the inefficiency of the enforcement system negatively affect all the stakeholders involved in the enforcement process.

➤ Regulated firms / Banks:

- Operate in an unsecure environment;
- Pay additional costs to enforce respective contractual rights or to recover bad debts;
- Transfer (part) of the cost to consumers to cover for the additional expenses;
- Follow a less ambitious strategy (loosing business opportunities) in the lending activity.

➤ Consumers:

- Have less access to finance – mortgage loans / have fewer opportunities to engage in financial transactions because of banks’ more prudent attitude;
- Pay additional costs/interest due to the process of cost transfer by banks from bad customers to good customers.

➤ Authorities:

- Forgo growth opportunities, due to less business and less financing to investment activities.

1.5. Alternative options

1st Alternative Policy Option: To amend a core package of articles in CCP that will tackle the fundamental problems created by the current framework.
This package refers to the provisions on: The executive order (art. 511); The execution (art. 515); Evaluation of property (art. 564); Auction procedures (art. 567); Repetition of the auction (art. 577).

2nd Alternative Policy Option: To amend a more extensive package than package 1, that, in addition to fundamental issues, will achieve a better use of resources and better regulated process –increase in efficacy.

In addition to the provisions in Package 1, this package refers to: Notification for the legal entities (art. 141); The voluntary execution (art. 517); The execution if the debtor’s address is not known (art. 522); The sequester order (art. 560); Notification of the winner (art. 573); and Time limit to pay the price (art. 574); Possessing the purchased property (art. 575).

3rd Alternative Policy Option: To amend a comprehensive package that will ensure a just and effective process of collateral enforcement.

In addition to the provisions in Package 1 and Package 2, this package contains: Article 144; Article 152; Execution expenses (art. 525); The sequester order on a different property (art. 528); The premises for the auction (art. 569).

The Ministry of Justice has accepted all the proposals part of Package 2, the largest number of the proposals in Package 3 and some of the proposals in Package 1, mostly was agreed with the raised problem but not with the identified solution.

Summary Problem Scoping			
Bailiff service			
Market failure			
Asymmetric information	Market power	Positive externalities	Negative externalities
(Existing) Regulatory failure			
Regulation wrongly prescribed for the market	Regulations succeeded in addressing the failure; a different market failure (e.g. side effect)	Regulation made it worse	Regulation so far has failed to work; maybe in due course
X			

Annex 3

Consultation with Stakeholders

1. Consultation process	
1.1 Consultations with banking community on improving the Civil Procedure Code – Impact Assessment Questionnaire	
<p>In order to assess the cost and benefits of the current legal framework and of the amendment proposal SPI Secretariat drafted an Impact Assessment Questionnaire. The questionnaire was delivered to the AAB’s Legal Committee members³ and the Project Working Group Members. The purpose of this survey was to assess the economic impact that these amendment proposals will have in the banking community. The Regulatory Impact Assessment (RIA) seek to provide an estimate of the possible incremental costs and benefits generated by each individual provision, trying to identify as well the area where the major part of underlying costs and benefits will be concentrated.</p>	
<i>Summary of Consultation Process Statistics</i>	
Total members of AAB (no.):	16 banks
Total respondent banks (no.):	xx banks
Respondent ratio:	xx %
Market share of the respondent banks: (reference indicator: total loans)	xx %
Size of the respondent banks:	small, medium, large
1.2 Summary of the consultation feedback with the banking community	
<p>The Report on the Findings of the Impact Assessment survey, prepared by SPI Secretariat will be presented and discussed in the 5th meeting of the Project Working Group – PWG.</p>	
1.3. Consultation with Ministry of Justice and the Parliament	
<p>In order to achieve the project objective a strong collaboration with the Ministry of Justice (MoJ) was considered as crucial. MoJ was firstly approached by Bank of Albania, as an SPI Committee member, in order to establish a relation on the initiative prompted by the banking community to improve the enforcement system. As a second step, the Project Owner of SPI Albania Project in its communication with MoJ, further clarified the contribution that this project intended to provide to the ministry on the legal initiative to improve the enforcement system through the liberalization of the bailiff activity. As a response, MoJ appointed a representative of the Enforcement Department to be part of the PWG.</p>	

³ AAB Legal Committee is gathering Legal Departments’ representatives of all bank.

Initiation of the negotiations

Following the developments in the enactment process for amendments to the CPC, on October 03, 2008, PO sent the draft proposals prepared by the PWG to the Chairman of AAB for further forwarding to the Head of the Commission for Legal Affairs, Public Administration and Human Rights, Albanian Parliament, to the Head of the Commission for the Economy and Finance, Albanian Parliament and to the Prime Minister. PM of the project delivered the draft proposals to the Ministry of Justice.

First round of negotiations

On October 13, 2008, PM, SPI Secretariat and AAB legal advisor met with the advisor of the Minister of Justice and with the Head of the Enforcement Department in order to discuss on the draft proposals prepared under SPI Albanian project.

1.3.1. Summary of the consultations with the Ministry of Justice

No.	Proposed article (no)	MoJ Agreed / Not agreed	Comment
Package 1 - Core changes that increase the efficacy of the enforcement system			
1	Article 511	Agreed	
2	Article 513	Partially agreed	MoJ agrees with the problem identified, but the solution will be further discussed internally
3	Article 515	Partially agreed	MoJ did not agree to reduce time periods
4	Article 564	Partially agreed	Agreed on the time periods; Not agreed on the initial value of the auction (PWG liquidation value vs. MoJ market value)
5	Article 567	Agreed	
6	Article 577	Partially agreed	MoJ agrees with the problem identified, but the solution will be further discussed internally
Package 2 - Other changes that further improve the efficacy of the enforcement system			
7	Article 144	Agreed	
8	Article 517	Agreed	
9	Article 522	Agreed	
10	Article 560	Agreed	
11	Article 573	Agreed	
12	Article 574	Agreed	
13	Article 575	Agreed	
Package 3 - Changes that achieve fairness and equal treatment			
14	Article 144	Agreed	
15	Article 152	Not agreed	The right for the other party to be present in the process is considered as normal
16	Article 525	Agreed with the concept	Banks will pay only the fees
17	Article 528	Agreed	
18	Article 569	Agreed	



1.3.2. Summary of the consultations with the Legal Parliamentary Commission

Second round of negotiations

On October 27, 2008, Ms. Veronika Prifti, lawyer and PM of the project on the foreclosure procedures, Ms. Elona Bollano, SPI Secretariat, Mr. Elvin Meka the General Secretary of AAB and Ms. Brunilda Kostare Legal advisor of AAB, took part in a hearing session of the Parliamentary Commission of Legal Affairs, Public Administration and Human Rights.

Ms. Prifti presented before the chairman, Mr. Rusmaili, and the members of the commission the PWG amendment proposals and the rationality behind each proposal. In the hearing session was present as well a group representing the Ministry of Justice.

In the next meeting the commission is going to discuss in details on amendment proposal.



Annex 4.

Note on the impact of the current legal framework on collateral execution on banks and on consumers

1. Current legal framework on and process of collateral execution.
2. Impact on banks.
3. Impact on consumers.

1. Current legal framework on and process of collateral execution

The current legal framework on collateral execution is given by the provisions of Civil Procedure Code, Chapter 3, Art.560-580 “The enforcement on immovable property, ships and airplanes”.

According to the legal provisions, upon a debtor’s default, the chargeholder has an automatic right to obtain a court order, which will empower an execution officer (bailiff) to take possession of the charged assets. Realization can then take place through public auction, as a whole or in commercial units or part. Table 1 bellow presents the detailed process of enforcement. However, execution officers proved not to be as reliable and efficient as needed. Courts are also reported to be slow and not very experienced in handling enforcement cases, with a high risk of corruption issues.

According to the EBRD’s (2006) assessment, the secured transactions legal framework (covering also mortgages), generally, is **appropriate** and **sound** but its effectiveness is hampered by the **slow enforcement system** and flaws in the administrative system. The enforcement system is characterized by relatively long and cumbersome procedures that result in a moderate recovery of the initial amount by the secured creditor. Compared to other developing economies in Europe, Albania is considered to have an enforcement system less than median efficient and creditor-friendly (Annex I, chart 2). In the complex of issues related to the enforcement system, the process of enforcement of the immovables, with regard to simplicity and certainty for the charge over immovables, is one of the weakest points that should be tackled with special attention.

2. Impact of the current foreclosure procedures on banks

Despite the fact that there are no statistical data available on how many cases ended with the bidder paying the fixed price in an auction and became the new owner, bailiffs confirm that this number is extremely low⁴. It happens very seldom that after the second auction the creditor takes the immovable against the price designated for the second auction. In case the immovable has been appraised by the experts contracted by the Bailiff Offices at a value higher than the debt (even after it was reduced by 20% in the second auction), the creditor has to pay to the debtor the difference between the appraised value and amount of the debt . Due to the ceiling in the fixed assets to total

⁴ EURALIUS, Proposal for Improvements of the Civil Procedure Code (EURALIUS Activity 8.5), Part I: Enforcement on immovable assets, 2006.



assets ratio, banks have to sell the immovable in a short time and sometimes in unfavorable conditions.

In addition to the above mentioned the successful enactment of the foreclosure procedures is hindered also by:

- Undefined time periods for the bailiff to notify the debtor;
- Subjectivity in determining the value of the collateral for the first auction and redefining the value of the collateral for re-auction, in the case that the first auction has failed, as there are no commonly set standards for real estate property valuation;
- Long time periods and cumbersome auctions procedures. According to the 2008 Doing Business report an enforcement process has to go through 39 procedures and lasts 390 days.

3. Impact of the current foreclosure procedures on consumers

The non-execution of the foreclosure has negative ramification in the domestic economy as well, influencing the consumers' access to loans. Due to the difficult process of recovering a debt, banks might be reluctant in approving some clients' applications. The financial consequences of the foreclosure procedure for collaterals are reflected in the price of banks' products and services and thus the "good" clients are bearing the costs produced by the "bad" clients.

By enhancing creditors' confidence that they can recover real value from mortgaged or charged assets, the availability of credit should increase and the terms (typically, the amount of the loan, the period for which it is granted, the loan to collateral ratio and the interest rate) on which it is available should improve.



Annex 5. Impact Assessment Questionnaire

I. Context

The procedures for the foreclosure of the collateral in Albania are regulated by the Civil Procedure Code, Chapter 3, Art.560-580 “The enforcement on immovable property, ships and airplanes”. The Bailiff Office is in charge with organizing the foreclosure procedures (Art. 527 CPC).

At present, the enforcement on immovable property is very rarely a success. In the World Bank’s Doing Business 2009 Report, Albania is ranked 89th on the Enforcing Contracts section. Despite the fact that there are no statistical data available on how many cases ended with the bidder paying the fixed price in an auction and became the new owner, bailiffs confirm that this number is extremely low. It happens very seldom that after the second auction the creditor takes the immovable against the price designated for the second auction. In case the immovable has been appraised by the experts contracted by the Bailiff Offices at a value higher than the debt (even after it was reduced by 20% in the second auction), the creditor has to pay to the debtor the difference between the appraised value and amount of the debt. Due to the ceiling in the fixed assets to total assets ratio, banks have to sell the immovable in a short time and sometimes in unfavorable conditions.

In addition to the above mentioned the successful enactment of the foreclosure procedures related to the bailiff service is hindered also by:

- Undefined time periods for the bailiff to notify the debtor;
- Subjectivity in determining the value of the collateral for the first auction and redefining the value of the collateral for re-auction, in the case that the first auction has failed, as there are no commonly set standards for real estate property valuation;

These problems faced by the banks, largest users of the enforcement system, result in increased cost, wasted time in cumbersome procedures and impairment of the value of the collateral.

SPI Albania is running a project on improving the procedures for the foreclosure of the immovable collateral with three objectives:

1. **To undertake analytical activities that would support the enactment of law amendment proposals.**
2. To support the improvement of the Bailiff Office activity.
3. To improve the quality of the buildings evaluation.

The Albanian Government is strongly determined to make deep reforms in the Legal System. Part of the agenda is the improvement of the legal framework of the enforcement system.

Under these circumstances, and with the confirmation of the Ministry of Justice on the revision of the Civil Procedure Code, the PWG members discussed and agreed to make another effort and to prepare a new proposal on the necessary amendments to CPC to be sent to MoJ.

The PWG based on their professional experience, on the studies and proposals prepared by EURALIUS and the Romanian experience discussed and with the support of SPI Secretariat prepared a Draft Proposal on CPC. On October 06, 2008, the draft proposal was delivered by the Chairman of AAB to the Head of the Commission for Legal Affairs, Public Administration and Human Rights, Albanian Parliament, to the Head of the Commission for the Economy and Finance, Albanian Parliament and to the Prime Minister. The PM of the project delivered the draft proposal to the Ministry of Justice.

On October 13, 2008, the PM of the project, a representative from SPI Albanian and the legal advisor of AAB met with the advisor on the Minister of Justice and the Head of the Directory of Enforcement to discuss on the draft proposal prepared under SPI Albanian support.

This meeting is the first activity that SPI Albania undertook in order to support the enactment of the amendment proposal.



II. Purpose of the banking survey

The banking community is one of the largest users of the enforcement system. The purpose of this survey is to assess the economic impact that these amendment proposals will have in the banking community. This Regulatory Impact Assessment (RIA) seeks to provide an estimate of the possible incremental costs and benefits generated by each individual provision, trying to identify as well the area where the major part of underlying costs and benefits will be concentrated. This will help regulators and banks in the forthcoming negotiations to better acknowledge the costs and the benefits that these amendment proposals, in individual and in aggregate level, will produce.

Type of Regulatory Optimization

All provisions contained in this document fall into in the following taxonomy of Regulatory Optimization:

- Strategic objective: Opportunities to engage in financial transactions;
- Strategic area: Rule of law and contract enforcement;
- Value creation driver: Civil regulations affecting costs of the banking activity.

III. Procedures to run the banking survey

You are kindly requested to support our assessment by answering this questionnaire. Please send your answers to SPI Secretariat who stands ready to offer you more details. Your answers will be treated in strict confidentiality. The results of the banking survey will be disclosed only at aggregate level. Please send your answers by xx/xx/2008.

The SPI Secretariat estimates that the filling of the questionnaire will take about 60 - 90 minutes broken down as follows: a) "PWG proposals": 10 minutes; b) "Qualitative Cost and Benefits": 10 minutes; c) "Detailed Analytical Approach": 40 – 70 minutes.

Content

1. General Description of the Amendment Proposals
2. PWG Proposals
3. Output of the First Round of Negotiations with Ministry of Justice
4. Validation of the Qualitative Cost and Benefit Analysis, for regulated firms
5. Detailed Analytical Approach
 - 5.1 General information
 - 5.2 Analysis on Additional Costs and Time on Non-Accepted Proposals by Ministry of Justice

Annex 1. Detailed presentation of the selected articles, existing version and the proposed version

Annex 2. Detailed description of the foreclosure process



1. General Description of the Amendment Proposals

The Project Working Group has prepared a set of proposals, divided, for methodological purposes, in three packages:

Package 1. Core changes that increase the efficacy of the enforcement system

Objective: To amend a core package of articles in CCP that will tackle the fundamental problems created by the current framework. This package refers to the provisions on: The executive order (art. 511); The execution (art. 515); Evaluation of property (art. 564); Auction procedures (art. 567); Repetition of the auction (art. 577).

Package 2. Other changes that further improve the efficacy of the enforcement system

Objective: To amend a more extensive package than package 1, that, in addition to fundamental issues, will achieve a better use of resources and better regulated process –increase in efficacy. In addition to the provisions in Package 1, this package refers to: Notification for the legal entities (art. 141); The voluntary execution (art. 517); The execution if the debtor's address is not known (art. 522); The sequester order (art. 560); Notification of the winner (art. 573); and Time limit to pay the price (art. 574); Possessing the purchased property (art. 575).

Package 3. Changes that achieve fairness and equal treatment

Objective: To amend a comprehensive package that will ensure a just and effective process of collateral enforcement. In addition to the provisions in Package 2, this package contains: Article 144; Article 152; Execution expenses (art. 525); The sequester order on a different property (art. 528); The premises for the auction (art. 569).



2. PWG Proposals

Question 1. What is your assessment, will the following respective proposals save time in the execution process (column 4)? Yes No

Question 1.1 If Yes, by how many days? Please select one of the options (column 5): A. 10 days; B. 20 days; C. 30 days; D. 40 days E. Other (please specify)

1	2	3	4	5
No.	Article (no)	Proposed amendment	Yes / NO	Option A B C D E
Package 1 - Core changes that increase the efficacy of the enforcement system				
1	Article 511 The executive order	The executive order is issued within 5 days from the date of creditor's request. For the signature and the fines written by the court are not issued executive orders, which are executed directly from the bailiff office, after the notification of the decision.		
2	Article 513	The executive order to be issued in two copies		
3	Article 515 Commencement of the execution	For the execution of the executive titles the creditor should prepare the file containing: The request for execution, the executive title, the executive order, the receipt of paid tax, if necessary the act of procurement. If the bailiff considers the file is not adequately complied the creditor has 5 days to fill in the file correctly. The request for execution is considered as registered from the date presented in the bailiff office. The bailiff should execute the executive order within 10 days from the submission of the request. Court orders on mortgage signature / charge of securing the lawsuit and the penalties issued by the court are executed within 3 days from the day of announcement.		
4	Article 564 Valuation of the property	If the debtor and the creditor do not reach an agreement, the bailiff officer determines within 15 days the value of the property based on the expertise act presented by a <i>licensed</i> expert based on the forced sale value , in the moment of seizure. The bailiff should notify the debtor and the creditor on the appraised value within 10 days from the appraisal process. Against the value both parties might appeal.		
5	Article 567 Auction procedures	Abrogated		
6	Article 577 Repetition of the auction	If in the first auction no bidder has offered a higher price than the initial price, or there has been no bidder the sale continues with a second auction. The bailiff officer within 10 days from the first auction determines the price, which is <u>20%</u> lower than the initial price. The second auction should start not later than 15 days after the price is set.		



1	2	3	4	5
No.	Article (no)	Proposed amendment	Yes / NO	Option A B C D E
		Within 30 days from the payment of the price from the buyer or from the acceptance of the property form the bank, the bailiff places the property under the possession of the buyer / creditor.		
Package 2 - Other changes that further improve the efficacy of the enforcement system				
7	Article 141	The notification process for the business entities is the same as for the private entities. The notification is posted in district court, district commune or birthplace or last known location		
8	Article 517 The voluntary execution	Upon the debtor's request and after the creditor is expressed the court might postpone the time of the payment		
9	Article 522 The execution if the debtor's address in not known	The judge with the request of the bailiff assigns a representative, within 10 days		
10	Article 560 The sequester order	Immovable Property Registry Office has to register the act of the Bailiff officer within 10 days after it has arrived. A copy of the registry is forwarded to the debtor.		
11	Article 573 Notification of the winner	The specific rules on the auction procedures are defined / set with a directive of the Council of Ministers		
12	Article 574 Time limit to pay the price	The buyer should pay the price within 15 days from the termination of the auction		
13	Article 575 Taking the possession	The buyer might take possession of the property within 10 days		
Package 3 - Changes that achieve fairness and equal treatment				
14	Article 144	The rules in this chapter on notifications are applied by the public and private Bailiff Service.		



1	2	3	4	5
No.	Article (no)	Proposed amendment	Yes / NO	Option A B C D E
15	Article 152	This provision to remain as it is.		
16	Article 525 Execution expenses	If an extra procedure is requested by the debtor, he/she has to bear the expenses		
17	Article 528 The sequester order on a different property	Apart the case when both parties with an act have defined the wealth (properties) that will secure the claim in which execution is requested.		
18	Article 569 The premises for the auction	The auction can take place in the Bailiff Office, the lodgment of the immovable property or in any other appropriate public place.		

3. Output of the First Negotiation Round with Ministry of Justice

No.	Proposed article (no)	MoJ Agreed / Not agreed	Comment
Package 1 - Core changes that increase the efficacy of the enforcement system			
1	Article 511	Agreed	
2	Article 513	Partially agreed	MoJ agrees with the problem identified, but the solution will be further discussed internally
3	Article 515	Partially agreed	MoJ did not agree to reduce time periods
4	Article 564	Partially agreed	Agreed on the time periods; Not agreed on the initial value of the auction (PWG liquidation value vs. MoJ market value)
5	Article 567	Agreed	
6	Article 577	Partially agreed	MoJ agrees with the problem identified, but the solution will be further discussed internally
Package 2 - Other changes that further improve the efficacy of the enforcement system			
7	Article 144	Agreed	
8	Article 517	Agreed	
9	Article 522	Agreed	



10	Article 560	Agreed	
11	Article 573	Agreed	
12	Article 574	Agreed	
13	Article 575	Agreed	
Package 3 - Changes that achieve fairness and equal treatment			
14	Article 144	Agreed	
15	Article 152	Not agreed	The right for the other party to be present in the process is considered as normal
16	Article 525	Agreed with the concept	Banks will pay only the fees
17	Article 528	Agreed	
18	Article 569	Agreed	



4. Validation of the Qualitative Cost and Benefit Analysis, for regulated firms

SPI Secretariat, based on the discussions during the PWG meeting and the rationale of the proposals prepared by the various PWG members, prepared the following qualitative cost and benefit analysis for the aggregated CPC's amendment proposal.

We would very much appreciate if you could validate our assessments by ticking in the respective boxes. In case you don't agree with the stated impact/rational, please state there your reasons.

Qualitative Cost and Benefit Analysis - Regulated firms

Costs / Benefits	Assessed Impact	Rationale	Validation/ Comments	Rejection/ Comments
Costs	Lower			
One-off	Slightly higher			
Human resources				
New staff	=	No additional staff needed to comply with the new legal provisions		
Trainings for existing staff	=+	Due to the amendments in CPC, there might be the need to spend some time to acknowledge them.		
Infrastructure	=	No additional costs on infrastructure		
On going	Lower			
Human resources	=			
Expenses				
Procedural	-	Under the art. 525 the creditor should pay for each procedure (when required by the law) and will be reimbursed at the end of the process by the proceedings of the sale. Given the low rate of successful auctions and the low price that the bank is very often forced to liquidate the property, in the end of the process if might happen that the bank is not able to recover all the payables. The amendment of art.525 on expenses by adding– the creditor will pay only for the initial fee, is expected to reduce the number of		

		appeals by the debtors and reduce the expenses paid.		
Finalization of the process	-	The rate of success is expected to rise		
“Purchase” costs	-	More transparent and objective selecting rules and procedures for the appraisers would end in more realistic market value for the foreclosed immovable, diminishing thus banks’ losses from exchanging the good for the loan within auction procedures and re-selling them for a lower price.		
Tax on income (sale)	+	The decrease in the loss as explained above would increase the taxable income.		
Benefits	Higher			
Additional loans – immovable property backed	+	The more rapid recovery of bad debts would give the possibility to re-place those sources in additional loans. Furthermore, banks would be more willing to enter into mortgage-backed transactions.		
Cost saving / + revenues	+	By increasing effectiveness and fairness in the procedures more third parties will be willing to enter in the auction and bid to purchase the immovable property, accordingly banks will not be obliged to take the property in exchange of the loan		
Equity relief	=			
Total impact	Less costs more benefits	A more effective foreclosure process will generate direct and indirect benefits.		

Legend:
 + increase
 - decrease
 = no effect

5. Detailed Analytical Approach

The questions in this questionnaire refer to values at the end of 2006 and 2007 or to shares of the collateral backed loans and the foreclosure procedures for the period of 2006 and 2007.

5.1. General Information

Question 1. Please state the stock of loans backed by mortgages in your bank balance sheet (in million Lek):

- as of December 2006
- as of December 2007

Question 2. Out of the above mentioned category, please state the share (%) of doubtful loans and lost loans (Bank of Albania's categorization of loans), in your bank:

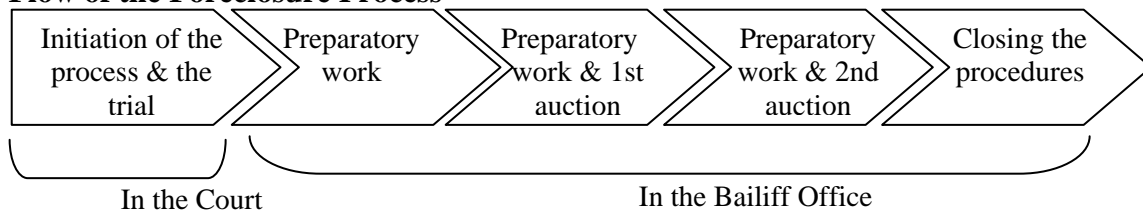
- as of December 2006
- as of December 2007

Question 3. Out of the above mentioned category, please state the share (%) of the loans in your bank that were under foreclosure process:

- as of December 2006
- as of December 2007

5.2 Analysis on Additional Costs and Time on Non-Accepted Proposals by Ministry of Justice

Flow of the Foreclosure Process⁵



Question 1. According to your experience, in average how much time is spent for the procedures in the Court? _____ days

Question 2. According to your experience, in average how much time is spent for the foreclosure procedures, in days?

In the Bailiff Office

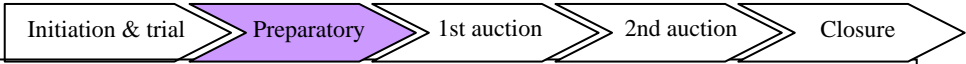
- I. For initial preparatory work _____
- II. For preparatory work for the first auction and the first auction _____
- III. For preparatory work for the second auction and the second auction _____
- IV. For closing the process _____

⁵ A more detailed description of the foreclosure process is presented in Annex A.

In the Bailiff in the Bailiff Office

- I. Preparatory work (articles 510 – 526)
- II. Preparatory work for the first auction and the first auction (articles 560 – 572, 578)
- III. Preparatory work and the second auction (articles 577)
- IV. Closing the process (articles 573 – 576, 579, 580)

I. Preparatory work



1. PWG has suggested that the execution order to be issued in two copies (or to be identified an alternative to deal with the cases when the collateral is located in more than one district) (article 513).

MoJ agrees with the problem identified, but the solution will be further discussed internally.

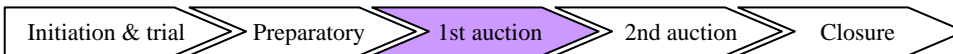
Question 3. In average during the last two years, what is the share of the loans under foreclosure in your banks that is affected by this amendment (collateral located in more than 1 district)?
_____ %

2. PWG has suggested that for the execution of the executive titles the creditor should prepare the file containing: The request for execution, the executive title, the executive order, the receipt of paid tax. If the bailiff considers the file is not adequately complied the creditor has 5 days to fill in the file correctly. The request for execution is considered as registered from the date presented in the bailiff office. The bailiff should execute the executive order within **10** days from the submission of the request. Court orders on masen e sigurimit te padise / charge of securing the lawsuit and the penalties issued by the court are executed within **3** days from the day of announcement. (article 515).

MoJ has suggested that the bailiff should execute the executive order within 15 days and Court orders on masen e sigurimit te padise / charge of securing the lawsuit and the penalties issued by the court are executed within 5 days from the day of announcement.

Question 4. According to your experience, could there be any negative implications of this proposal?

II. Preparatory work for the first auction and the first auction



Question 5. In average, what is the share of the loans under foreclosure in your banks that are ended (bidder paying the price) during the first auction? _____ %

3. PWG has suggested that if the debtor and the creditor do not reach an agreement, the bailiff officer has to determine within 15 days the value of the property based on the expertise act presented by a *licensed* expert based **forced sale price** on the, in the moment of seizure. The bailiff should notify the debtor and the creditor on the appraised value within 10 days from the appraisal process. Against the value both parties might appeal (article 564).

MoJ has suggested that the appraisal's act to be based on the market value.

Question 6.1 According to your experience, which are the rationale and costs and benefits of using the forced sale price as reference price?



Rationale -----

Costs / Negative implications

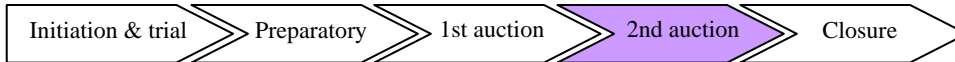
Benefits / Positive implications

Question 6.2 According to your experience, which are the costs and benefits of using the market price as reference price?

Costs / Negative implications

Benefits / Positive implications

III. Preparatory work and the second auction

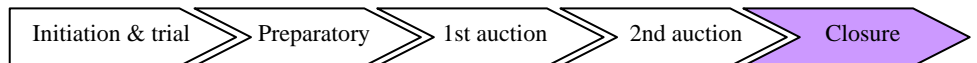


Question 7. In average, what was the share of the loans under foreclosure during the last two years in your bank that are ended (bidder paying the price) during the second auction?
_____ %

4. PWG has suggested that if in the first auction no bidder has offered a higher price than the initial price, or there has been no bidder, the sale continues with a second auction. The bailiff officer within 10days from the first auction determines the price, which is 20% lower than the initial price. The second auction should start not later then 15 days after the price is set.
 Within **30 days** from the payment of the price from the buyer or from the acceptance of the property form the bank, the bailiff places the property under the possession of the buyer / creditor (article 577).
MoJ agrees with the problem identified, but the solution will be further discussed internally.

Question 8. According to your experience, which are the main negative implications of not having a specified time period for the transfer of possession from the debtor to the buyer / creditor?

IV. Closing the process



Question 9. In average, what is the share of the loans under foreclosure (in %) that your bank had to take the possession in exchange of the debtor's liability?

Question10. In average, what is the share of loans for which the price in the second auction (the value of taking the property in possession) is:

1. Lower than the value of amount to be recovered from debtor?
_____ %



2. Higher than the value of amount to be recovered from debtor?
_____ %

Question 11. What is the average share of loans for which the re-selling mortgage price (by the banks) was lower than the price set for the second auction? _____ %

Question 12. What is the share of loans under foreclosure that your bank decided not to take the property in exchange of the debtor's liability? _____ %

Annex A. Flow of the Foreclosure Process

Grouping of the procedures

A. In the court

1. The creditor files the request to obtain the executive title;
2. The court secretary registers the request;
- 3 -5. The judge is selected; the trial date is set and are performed other preparatory acts;
6. The trial;
- 7-8. Zbardhja of the ruling and recording the decision for the executive title;
9. The decision is given to the party that filed the request.

B. In the Bailiff in the Bailiff Office

- I. Preparatory work
- II. Preparatory work for the first auction and the first auction
- III. Preparatory work and the second auction
- IV. Closing the process

I. Preparatory work

- 10 -12. The creditor prepares and delivers the file in Bailiff Office, pays the tax and requires the commencement of the execution process;
13. The secretary registers the request;
14. The bailiff officer is selected;
15. The bailiff officer reviews the file;
16. The bailiff officer sends a request for voluntary execution;
17. The bailiff officer starts the forced execution;
- 18-22. The bailiff officer issues the sequester order and notifies the commercial banks; the Regional Directory of Transport; the Tax office; the Immovable Property Registry Office;
23. The bailiff officer issues the conservative sequester order on the exact property that is mortgaged;
24. The RPR office records in the registry, in the file of the debtor and/or warrantor, the sequester order;
25. The sequester order information from RPR is collected from the bailiff officer or the creditor;

II. Preparatory work for the first auction and the first auction

- 26 - 28. The bailiff appraises the property based on the value register or hires an expert. The expert deposit in the Bailiff office the expertise on the property
- 29 – 30. The bailiff notifies both the debtor and the creditor on the settled value and announces the sale
31. Bidders pay the guaranty for the auction
32. First Auction is held

III. Preparatory work and the second auction



- 33. The bailiff set the price and the date of the second auction
- 34. Second auction is held

IV. Closing the process

- 35. The ownership is transferred only after is paid the whole price, less the initial deposit- guaranty.
- 36- 37. After the payment of the price and the taxes on sale the bailiff officer announces / delivers the transfer of ownership and the guaranties deposited by the other persons are turned back
- 38. If the sale price is higher than the debt then the creditor has to return back to the debtor the excess amount, after subtracting the expenses for the auction and other incurred expenses.
- 39. If the property is not sold, the bailiff proposes to the creditor that against the loan to take possession on the property with the new price. If the creditor refuses the sequester order on the property if removed.

Annex 6. SPI Albania Methodology

The EU Better Regulation Approach	
Steps	Purpose
Scoping of problem	
1. Problem identification	To understand if a market/regulatory failure creates the case for regulatory intervention.
2. Definition of policy objectives	To identify the effects of the market /regulatory failure to the regulatory objectives.
3. Development of “do nothing option”	To identify and state the status quo.
4. Alternative policy options	To identify and state alternative policies (among them the “market solution”).
Analysis of impact	
5. Costs to users	To identify and state the costs borne by consumers
6. Benefits to users	To identify and state the benefits yielded by consumers
7. Costs to regulated firms and regulator	To identify and state the costs borne by regulator and regulated firms
8. Benefits to regulated firms and regulator	To identify and state the benefits yielded by regulator and regulated firms
9. Data Questionnaire	To collect market structure data to perform a quantitative cost and benefit analysis
Consultations	
10. Policy Document	To learn market participant opinions on various policy options
Conclusion	
11. Final Recommendations	Final report to decision-makers, based on Cost Benefit Analysis and market feedback





Document prepared by Elona Bollano,
SPI Director for Analytics and Policy
Document Approved by PWG

Improving Auction Procedures for Immovable Collateral under Foreclosure:
Supporting the improvement of the Bailiff Office's activity
www.spi-albania.eu/en/2008-program/improving-auction-procedures-for-immovable-collateral-under-foreclosure

Project information

PUBLIC-PRIVATE FINANCIAL SECTOR MODERNIZATION MATRIX					
Italian Banking Association CRITERIA	European Central Bank CRITERIA				
	<i>Asymmetric information reduction</i>	<i>Completeness of the market</i>	<i>Increased opportunities to engage in financial transactions</i>	<i>Reduced transaction costs</i>	<i>Increased competition</i>
Business development				X	
Industry competitiveness					
Industry reputation					

Short description of the context: Banks complain that current foreclosure procedures are too long and cumbersome. In addition the process might be prone to subjectivity in the phase of the appraisal expert selection and building appraisal as there are no commonly accepted standards for the valuation of the real estate.
Actually the process is rarely successfully completed. Banks are indirectly forced to take possession of the immovable when it is offered in a public auction and, due to the ceiling in the fixed assets to total assets ratio, the immovable has to be sold in a short time and sometimes in unfavorable conditions.

Stakeholder proposing the project: AAB

Other Stakeholders involved (sponsors): BoA, MoJ - Bailiff Office, Appraisers' Association

Project objectives:
General: To support the improvement of the Bailiff Office activity.
Specific: To support the Ministry of Justice in its initiative to increase the efficiency of the bailiff service.
Operational: To provide recommendations for improving the Bailiff Office activity;
 To provide feedback to the legal initiative to liberalize the Bailiff Service.

Description of the project contribution toward financial modernization:
By reaching the project's objectives, the recovery process of the bad debts would be facilitated and banks' costs with foreclosing the immovable collateral would decrease. These effects will be reflected in the cost of the bank products and services (loans) and in more loans granted due to the quickly recovery

and to the decrease in the risk of loss.	
Project Working Group:	
<ul style="list-style-type: none"> - Banka Kombetare Tregtare - Banka e Shqiperise - Banka Nder - Tregtare - Tirana Bank - Emporiki Bank - Banka e Bashkuar - Raiffeisen Bank - Banka Credins - Banka Alpha - Ministria e Drejtesise - IFC - EURALIUS 	
PWG meetings:	
1 st meeting – July 4, 2008; Output: Project ToRs	
2 nd meeting – July 30, 2008; Output: Note on international experience with the Bailiff Service; Questionnaire on banks’ difficulties in dealing with Bailiff Service	
3 rd meeting – September 26; Output: Summary of bank survey findings; PWG comments on MoJ initiative for Bailiff Service’s liberalization	
4 th meeting – October 27; Output: Document on the PWG Recommendations on Improving Bailiff.	
Contributions:	
PWG members: participation in PWG meetings and discussions; feedback on MoJ initiative for Bailiff Service’s liberalization; answers to the questionnaire on banks’ difficulties in dealing with the Bailiff Service; participation in the discussions with MoJ.	
SPI Secretariat: draft Project ToRs; Note on international experience with the Bailiff; draft Questionnaire on banks’ difficulties in dealing with Bailiff Service; collect individual contributions and draft Summary of bank survey findings and draft document on PWG comments on MoJ initiative for Bailiff Service’s liberalization; draft Document on the PWG Recommendations on Improving Bailiff; participation in the discussions with MoJ.	
Other contributions: Euralius – peer reviewer; AAB - Legal Committee and support for bank survey running.	
Other Supportive Activities:	
June – July	Request for collaboration letters to the Ministry of Justice.
July	Project’s PM called for an out-of-agenda /emergency meeting the AAB Legal Committee, to inform and establish collaboration.
July	Meeting with the three representatives of the Enforcement Department, MoJ.
August	Consultative hearing on draft proposal law on Liberalizing the Bailiff Service, 2 nd round.
September	Recommendations on the bailiff service and comments on the draft proposal law
Methodology: EU Better Regulation (Annex 5)	

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1. Summary of PWG analysis

In Albania, the Bailiff is the central enforcement institution authorized for the enforcement of rulings based on civil law and on penal law if the obligation is a penal fine. The execution of the immovable property executive titles is within the bailiff's competences. At present, the enforcement on immovable property is very rarely a success.

World Bank, EBRD and other international institutions have assessed the effectiveness of the legal and enforcement system. In Albania, the general legal framework is **appropriate** and **sound** but its effectiveness is hampered by the **slow enforcement system** and flaws in the administrative system. To enforce a contract, the involved parties have to pass through 39 procedures that last on average 390 days and the costs of the process amounts to 38.7% of the claim. With these indicators, Albania is far behind other Eastern European and Central Asia countries in terms of the number of procedures and cost of the process.

PWG identified the problem and analyzed the market context, assessing that the low efficiency in the current enforcement system is the result of a **regulatory and administrative / management failure**. The current regulation is not appropriately prescribed for the market, resulting in cumbersome procedures, work inefficiency, subjectivity and unequal treatment of parties. This regulatory failure threatens the policy objectives on more competitiveness and more access to finance and generates additional uncertainty and costs, directly and indirectly to all economic agents. PWG appreciated that the correction of the existing situation needs a regulatory initiative and identified three alternative options for actions. For more details, please see **Annex 3- Scoping the Problem**.

In order to assess the main difficulties encountered by the banking community, SPI Albania with the support of Albanian Association of Banks – AAB, undertook a survey in the banking community targeting at supporting Ministry of Justice in choosing the right policy option to address all the negative aspects. Consultations were also performed for the alternative policy options preferred by the Ministry of Justice – the liberalization of the private service by allowing the co-existence of the private –owned bailiff with the public one (main provisions of the draft law are presented in **Annex 5**). The statistics and the main results of the consultation process are presented in **Annex 4 – Consultation process**.

2. PWG Policy Recommendations

The Project Working Group Members, based on the draft proposal law on Liberalizing the Bailiff Service, the documents prepared by SPI Secretariat on the international experience with the Bailiff Service (**Annex 6**), the Report on Finding of the survey on Bank's difficulties in dealing with the Bailiff Service and the long professional and practical experience in the foreclosure process, have discussed and agreed on the following recommendations to be forwarded to the authorities as they consider enacting the proposed Law on Liberalizing the Bailiff Service in order to:

- improve the efficiency of the current Public Bailiff Service by enhancing the soundness of the legal framework, rationalizing the tax and fee system in order to put in place incentives for a successful conclusion of the process and ensuring the uniform application of the law;
- providing an accurate definition and establishment of the newly proposed Private Bailiff Service.

2.1 Recommendations on the Public Bailiff Service

PWG has formulated the following recommendations on how to improve the efficiency of the activity of the Public Bailiff Service, by addressing the high and medium importance difficulties resulted from the bank survey.

A. General recommendations

PWG considers that regulators should develop a more efficient legislative framework that regulates the enforcement process by:

- Enhancing the soundness of the legislative framework through:
 - revising and harmonizing the primary and secondary legislation in order to define better the procedures and the general time line of the process;
 - defining more accurately the mutual obligations and responsibilities of the state institutions involved in the enforcement process (the Immovable Property Registry Office, Regional Directory of Transport, the State Police etc)
 - providing an equal and fair treatment of all parties involved in the enforcement process;
- Rationalizing the tax and fee system in order to put in place incentives for a successful conclusion of the process;
- Improving the uniform law application.

B. Specific recommendations

The Bailiff Service activity should be improved through more transparent and clear internal procedures and rules, and by developing better practice by:

- building up strong control and supervisory structures responsible for the full compliance with the ethical, disciplinary and professional requirements;
- improving human resources management, with special attention to the process of recruitment, motivation, professional evaluation and reward;
- organizing more intensively workshops with senior experts in the field of law enforcement in order to agree on common interpretations on primary and secondary legislation;
- establishing long-term training strategies for the bailiff officers to enhance their level of professional expertise;
- building up specialized expertise by case typologies establishing a Code of Best Practices of the enforcement system (required for both private and public bailiffs);

- f. setting up a transparent and fair selection process of the appraisal experts;
- g. using more effectively the information collected by banks on debtors in order to trace the debtor or sources of debtor's income or property.

Annex 1 presents a synthesis of the banks' suggestions and comments on the public bailiff service.

2.2. Recommendations on the Private Bailiff Service

The largest part of the consulted stakeholders considers the establishment of the private bailiff service as **premature** given the state of the development of the society and institutions.

Regarding the proposed draft law, PWG's recommendations are:

A. General recommendations:

- a. To better align the proposed legal initiatives to the existing legislative framework that regulates the enforcement process;
- b. To establish a sound legal structure for the private bailiff officers so that within this structure all the necessary professional expertise, logistics and financial are assured;

B. Specific recommendations:

- a. To define accurately the functional and territorial competences of the public and private bailiff offices;
- b. To design an impartial fee system to achieve a fair treatment of all parties involved in the process and to set up a level playing field for both private and public bailiff.

The detailed PWG comments and suggestions on the draft proposal law are presented in Annex 2.

3. Proposed SPI Committee Decision

SPI Committee discussion and endorsement of PWG recommendations for further presentation to the Legal Parliamentary Commission.

Annex 1

Synthesis of the bank survey findings

Evaluation Criteria	Identified problems
High importance	
Fees and taxes level	Fees and taxes to be paid are high, especially when the debtor is a legal entity. The whole amount of the fee has to be paid by the creditor in the first phase of the process. When the auction is ended with the bank taking possession on the property, the creditor has to bear all the cost related to the process. This term of payment does not create incentives for the bailiff officers to finalize successfully the case by having a third party buying the property.
Internal procedures in the bailiff office	There are deficiencies in the legal framework regarding the time limits <ul style="list-style-type: none"> - on most of the steps and procedures to be followed. - on the interaction with other institutions very important on the enforcement process.
Uniformity in applying the law in the bailiff offices	Practice has shown that there is <ul style="list-style-type: none"> - a lack of uniformity in the application of the law - incorrect interpretation of the law
Quality of service	The quality of services offered by the bailiff in most of the cases is not satisfactory. In banks' opinion this is due to the lack of expertise and their professional inefficiency.
Treatment of parties	In most cases the bailiff officers do not treat equally both parties. There is a tendency to favor the debtors despite the fact that in the law both parties are and should be treated equally and fairly.
Standards used in the selection process of the professional experts	<ul style="list-style-type: none"> - Bailiff officers do not follow an objective selection of the experts, rather selection is based on personal acquaintances or recommendations. - Bailiff officers have such a power on this phase of the process due to the room created by the legislation - CCP. In the article of CCP related to the appraisal process there are no criteria to be followed for the selection of the experts. The lack of criteria in this regard generates different interpretations and accordingly leaves room for a "personalized" application of the law.
Level of professional expertise of the selected professional experts	The real estate appraisal experts are licensed by the Ministry of Public Affairs Transport and Telecommunication. In general the level of expertise is satisfactory. Anyhow in practice there have been cases of incompetence or cases of overpricing the appraising service - the level of prices does not correspond (in some cases are significantly higher) to the commitment showed and the quality of the appraisal process.
Cooperation with other state institutions	Bailiff Offices' interface with other institutions, important during the execution process, is not as effective and sound as it should be. Some of the problematic areas are: <ul style="list-style-type: none"> - lack of cooperation with the Immovable Property Registry Office. - lack of state policy availability to assist during the process of freeing the objects and delivering them to the creditor. - lack of collaboration with the Street Patrol Commissariats / Road Police to

	<p>freeze the vehicles, in the cases when the bailiff has issued a sequester order on a vehicle.</p> <p>lack of collaboration with the office – gjendjes civile – to identify the proper address of the debtors.</p>
Medium importance	
Assignment of cases	<p>Practice has shown that:</p> <ul style="list-style-type: none"> - work load is not distributed equally among the bailiff officers, resulting with some officers being overloaded; - debtor's files circulate among bailiffs, without legal justification; - - lack of specialization among bailiff officers to deal with typical cases e.g. the collateral enforcement cases; - confusion due to the high rate of circulation of bailiff officer's working staff.
Ethic of conduct	<p>The level of ethic of conduct of the bailiff officers is satisfactory. In general, misconduct is a sporadic phenomenon and is a common problem only for those bailiff officers without a proper level of expertise.</p>
Information management system of debtor's files	<p>Efficiency in managing the information from the debtors' files is considered low. Banks claim that:</p> <ul style="list-style-type: none"> - The file of the debtor might circulate within the bailiff office to several bailiff officers without notifying the parties. <p>Bailiff officer(s) do not use the information collected by the bank(s) to trace the debtor or to trace the debtors' sources of revenues.</p>
Low importance	
Conflict of interest	<p>According to the banks' opinion this is not a problematic issue in the bailiff service. There are only rare occasions of politicians' interventions (when large enterprises are involved in the execution process).</p>
Confidentiality	<p>In general the confidentiality of the information is adequately preserved by the bailiff officers. Anyhow there are a few cases when the sale of the collateral in the auctions is corrupted due to the infringement of the confidentiality by the bailiff officer. In these cases the law and law enforcement has been very tolerant with the bailiff officers that have displayed such attitude.</p>
Territorial competence	<p>In general banks consider that the territorial competences of the Bailiff Offices are correctly established in the legal framework and correctly applied by the bailiff officers. Anyhow in the cases that the debtor resides in one district while the movable properties are located in another district the territorial competences are considered as unclear. The Bailiff Offices have no clear rules on the competence in this case, and this could generate conflicts between offices or refusal to handle a request for executions as being outside a Bailiff Office territorial competences.</p>

Annex 2

PWG specific comments on draft proposal law “On liberalizing the Bailiff Service”

	Article	Comment
1	The legal basis	As for the legal basis, PWG suggests to modify the reference to article 81, letter “a” in the Constitution, as this constitutional provision serves as base to the law proposals that foresee the organization and the functions of constitutional institutions, while the Bailiff Office is not a constitutional institution.
2	Competences	The points 4 and 5 in the MoJ cover letter suggest a division of competences in the executive titles between the public and private bailiffs, but the law doesn’t have any specific provision related to the executive titles defined by article 510 (changed) in CPC. In this regard, PWG suggests adding a paragraph in article 3, in order to avert possible conflicts between the public and private bailiffs.
3	Title of the law	The title of the draft law sent for consultations is “On the liberalization of the Bailiff Service”. PWG notes that this wording is expressing MoJ’s objective, but it doesn’t reflect properly the content of the draft law. PWG suggests changing the title of the law in “On the organization and functioning of the Private Bailiff Service”.
4	Article 3 Application area	<p>1. Regarding the area of application, PWG believes that it should cover the whole range of juridical relations and not only the cycle of subjects that might bend from its application. For this reason, PWG suggests that the first sentence of the article 3 is reworded as follows:</p> <p style="text-align: center;"><i>“This law is applicable to the foreclosure of the executive titles through the Private Bailiff Service, for the cases defined in the Civil Procedure Code”.</i></p> <p>2. The public institutions that deal with the execution have a different organic law.</p>
5	Article 5 Jurisdiction	In PWG’s opinion, the private service should have defined territorial competences., as in the public service’s case.
6	Article 6 The Subjects that practice the Private Bailiff Service	<p>1. Related to the point “a” of the article 6, PWG expresses doubts on the private entities’ capabilities (such as logistics, cooperation of other institutions) to fulfill their contractual obligations.</p> <p>2. In addition, article 12 defines that no private bailiff can practice its functions without being licensed by the Ministry of Justice. PWG believes that the law proposal should clarify whether the license is issued to individuals or to companies. This clarification is important for the penal and civil responsibilities in case the bailiff is a business entity.</p>
7	Article 7	The function of the private service is defined as a public function;

	The functions of the Private Bailiff Service	meanwhile, article 11 presents the situations that might be considered as conflicts of interest. PWG recommends, since the law proposal foresees that the private bailiff service is a public function, to make reference to the definitions of the law no. 9367, dated 07.04.2005 “On the prevention of the conflict of interest on the public functions”, changed, especially to the article 5 in this law. PWG suggest adding a point, “h”, that makes reference to the article 5 in the law no. 9367.
8	Article 8 The legal status of the private bailiff	The same comments as for the article 6.
9	Article 9 Incompatibles	The law proposal does not set who deals with the incompatibilities. PWG considers that cases of limitation should be clearly defined, otherwise there will be a conflict with the individual rights. By leaving this issue vague, room is created for abusive behavior, subjectivity and denial of the right to exercise the bailiff service.
10	Article 10 The responsibilities of the Minister of Justice	The law proposal foresees the right of the Minister of Justice to start the disciplinary procedures for a private bailiff and its right of final decision. PWG appreciates that, since the Minister of Justice, at the same time, proposes and sets the disciplinary decision, this cannot give guaranties for a non biased and objective disciplinary process. PWG suggests also that the last sentence should specify which General Council is referred to.
11	Article 11 The conflict of interest	<ol style="list-style-type: none"> 1. PWG considers that, having in view the legislative techniques, article on Conflict of interest should follow the article on Incompatibilities. 2. In point “b” to add “...or representatives...”. 3. In point “e” to express “...is a partner...”, since the private person might be partner in an enterprise.
12	Article 13 Conditions to exercise the profession of private bailiff	<ol style="list-style-type: none"> 1. PWG suggests that in the first sentence the alternative as a private entity be deleted. PWG considers that, for the business entities, is very important adding the prerequisites that the business entity has to fulfill in accordance with the law “On merchants and on commercial enterprises”. 2. At point “e”, PWG suggests that some of the professions that might be eligible to practice the bailiff service such as lawyers of the private entities, bailiffs etc. be included. 3. As it is presented, in PWG’s opinion, the periods provided at points “d” and “e” lead to a very long time period for eligibility. PWG suggests only one of the above be considered. 4. PWG thinks that point “g” should provide as mandatory the professional specialization for the business entities (as in the case of the technical supervisors for the building enterprises). 5. PWG suggesst adding a new point with content:

		To have worked as a lawyer in the private sector, for a period of 7 years;
13	Article 17 The application for registration	PWG suggests to add at the second point of the applications for registration of a business entity the formal documents of the technical supervisors (who will lead professionally this entity).
14	Article 18 Registration of the private bailiffs	PWG suggests that, for transparency reasons and for facilitating the access of the private bailiff service, the registration be published and made available to the public for consultation. PWG recommends adding a sentence in article 18: <i>Cit:” the registration of the private bailiffs has to be published and might be consulted by the public”.</i>
15	Article 21 Accreditation of the business entities	PWG suggests that the law requires that the leading team in a business entity be licensed. (as in the case of the building enterprises).
16	Article 23 The banks account of the bailiff	In PWG’s opinion, the opening of a bank account by the bailiff should be an obligation rather than a right. Currently the Government has strategies to fight informality and this paragraph should be aligned with this important initiative.
17	Article 24 Delivery of the documents	PWG considers that Article 24 should be more clear whether there will be sanctions in case the creditor’s interests are harmed (as it might happen that the bailiff is making a private deal with the debtor in order to maintain the file as being in process, and return later the file to the creditor without achieving any result).
18	Article 25 Deletion of the record from the registry of the private bailiffs	<p>1. PWG suggests that at the point “b” of the article be added “...or is limited the ability to act...”</p> <p>2. Point “d” foresees that the business commercial entities are deleted from the registry if they have filed for bankruptcy. Given that the articles 43; 47; 99 and 187 of the law no. 9901, dated 14.04.2008, “On merchants and commercial enterprises” foresee that bankruptcy is only one of the formal reasons of closing the business commercial entity, PWG suggests that point “d” is re-worded as follows: <i>Cit: “For every legitimate reason of the closure of the commercial enterprises, in case it is a business entity”</i></p> <p>3. PWG considers that point “f” should specify that, if the suspension is done by MoJ, this institution should be the one to allow for the commencement of the work. This is not the case of recommencement. The situation is completely different in the case that the bailiff by himself has requested for a suspension.</p>

19	Article 27 National Chamber of Bailiffs	In the second sentence is foreseen that the National Chamber of Bailiff is a private juridical person, but it is not specified the lergal form of organization. For this reason, PWG suggests to define its organizational form in accordance to the article 26 in the Civil Code.
20	Article 29 Duties of the National Chamber of Bailiffs	PWG suggests that point “e” changes as follows: “...related to MoJ, other public administration institutions, national institutions and third parties...”
21	Article 36 The rights of the private bailiffs	Point “e” foresees the right of the bailiff to put fines to the subjects that delay the execution. It is foreseen that the fines are in accordance with the CPC, but in CPC there is not such a wide definition, in exception to article 588. In addition, PWG appreciates that it is an excessive right for a private bailiff to put fines (administrative sanctions) that normally are set by state authorities that have also the obligation of collecting them. The fine is an institution of the public right and a prerogative of the public administration. PWG considers that by permitting the private bailiffs to put fines is in conflict with the notions / principles of right. The rights in point “b”, “c”, “d” and “e” are in the CPC that the bailiff or third parties should apply.
22	Article 37 The duties of the private bailiffs	PWG suggests that point “f” to changes as follows: “...except when to give information is legal obligation...”.
23	Article 38 Prohibited practices for the private bailiffs	PWG suggests to add at point b “...or psychological pressure ...”.
24	Article 40 Confidentiality	PWG suggests that at point “c”, the parties in the process should be mentioned first, then the rest.
25	Article 43 The relations with the creditor	<p>1. PWG appreciates that the definition of the relation given in the first sentence is not sufficient because prior being a contractual relation, the relationship between the private bailiff and the creditor is a relation between procedural subjects in the foreclosure processs. This relation is primarily regulated in the CPC. Based on the above, PWG suggests that the first sentence to be reworded as follows:</p> <p><i>Cit: “The relation between the private bailiff and the creditor is regulated in accordance to this law, CPC, other legal provisions in laws or bylaws in power, and also in accordance to the contact between the parties.”</i></p> <p>2. PWG recommends that “the documentation as set by CPC” be added.</p> <p>According to the current practice, given that the public bailiffs might refuse the execution if the creditor has objectively no mean to provide information on the wealth situation of the debtor, PWG considers that the current wording might create the ground for the private bailiff ‘s refusal for starting the execution in these cases. Under these circumstances, PWG suggests to re-word the second sentence as</p>

		<p>follows:</p> <p><i>Cit: “The creditor informs the bailiff on the wealth situation of the debtor, but the lack of information or the inability to provide information should not constitute ground for the refusal of undertaking enforcement acts and/or the execution process.”</i></p>
26	Article 44 Annulment of the contract	<p>In the first paragraph (after “...even when the case...”), PWG considers that it is not clear who decides for this case and that there is room for abusive behavior, harming the creditor.</p> <p>In the last sentence, PWG appreciates that there is need for revision, particularly for the financial section of the contract.</p>
27	Article 46 Resignation from the case	<p>PWG considers that it should be added “for the non impairment of the debtor”. In addition, the last sentence leaves room for abusive behavior.</p>
28	Article 47 The relations with the debtor and other third parties	<ol style="list-style-type: none"> 1. PWG suggests that in the title be added “...and other persons equal with the debtor...” in order to include the warrantor, the mortgagor, and the expression “...on movable and immovable properties...” be deleted, as it might affect the rights that the debtor might have on other party. 2. PWG considers that in the second paragraph, the second sentence, is in conflict with the principles of CPC, because the private bailiff might be called for judgment every time, but is the debtor who raised claim to go in court and to start a procedure based on the claim. To sum up, the private bailiff can not be called in court in the vest of the debtor.
29	Article 49 Relations with third parties	<ol style="list-style-type: none"> 1. This article regulates the relations of the private bailiffs with the institutions of the public administration and private subjects, setting obligations for the later to give information on the wealth situation of the debtor. PWG considers that the law should take into account that some institutions are prevented by the law to disclose information on third parties. At the same time, some institutions, and even private entities, have the obligation to preserve the confidentiality. The second is too subjective as it leaves room for interpretation related to the “particularity” of the execution cases and for the assistance that might be requested. 2. In the end of the first paragraph PWG suggests to add “...according to the specification of the CPC.”
30	Chapter V	<p>PWG understands that in chapter V, there are provided the institutions, the competences and the functions of the National Chamber of Private Bailiffs. According to the provisions, the chamber is composed of two bodies: the General Assembly and the General Council. PWG considers that the content of the disposition in this chapter has the following unclear issues:</p> <ol style="list-style-type: none"> a. There is a confusion in the terms of “general meeting” and “extraordinary assembly” (article 33, 35, point “h”).

		<ul style="list-style-type: none"> b. the majority (quorum) for the first meeting of the General Assembly and for the other consecutive meetings c. the decision being taken with the simple majority d. The selection of the chairman of the Chamber, the chairman of the meetings, the chairman of the General Council, the initiative for the council meetings.
31	<p>Article 50 Fees</p>	<p>The Article 50, second paragraph determines that the private executors should not pay the executor tax according to the tax law, while the third paragraph determines that they have to pay a fee. In PWG's opinion, the above provisions are confusing because according to the tax law actually the execution tax is paid by the creditor that requires the title execution and not by the executor. For this reason, PWG suggests that the second paragraph may not be an exception from the tax law as long as they are considered different. Regarding the fee,, it should be determined by the institution where the fee should be paid.</p> <p>The article 50, the specification of the fee, we think that the provisions are confusing, because according to the tax law , actually, the bailiff tax is paid by the creditor that wants the execution and not by the bailiff. For this reason, PWG considers that the second section cannot be expulsed from the tax law as far as those are two different things. With regard to the fee, PWG appreciates that it is necessary to define the institution where the tariff will be paid. And the two last sections are unclear and need to be revised and to be specified in what cases the bailiff tax will not be paid. Same in the last section.</p>
32	<p>Article 51 Extra fees</p>	<p>PWG considers that by allowing the private bailiff to require for extra fees is abusive (what will happen with these fees when the bailiff does not achieve any result?). PWG suggests this article be revised.</p>
33	<p>Article 52 Non refund of the fee</p>	<p>PWG appreciates that the cases of "non refund" should be revised, given that the private bailiff has the right "to select" the files / cases.</p>
34	<p>Article 53 Commencement of the procedure</p> <p>Article 54 Procedure</p>	<p>PWG suggests that the institution starting the disciplinary procedure and its competences be clarified: the Ministry of Justice or the Disciplinary Commission. The Minister of Justice has the competence to suspend the license in the case of disciplinary infringement, but the manner on how the bailiff will restart the activity after the fulfillment of this disciplinary measure .is not foreseen</p>

Annex 3

Scoping the Problem

1.1. Problem identification

1.1.1. Background information

In Albania, the Bailiff is the central enforcement institution authorized for the enforcement of rulings based on civil law and on penal law if the obligation is a penal fine. The execution of the immovable property executive titles is within the bailiff's exclusive competences. At present, the enforcement on immovable property is very rarely a success. In the World Bank's Doing Business 2009 Report, Albania is ranked 89th on the Enforcing Contracts section, this being attributable to all involved institutions and to the regulatory framework. Some of the problems linked to the bailiff service are related to the vagueness in the legal provisions, subjectivity in following the procedures by the bailiff's, prolongation without legal basis of the procedures.

1.1.1.1. Analysis of the market

General market: Banking, lending activity.

Specific segment: Secured lending, lending secured by immovable collateral – mortgage loan.

Sub segment: Default loans in the lending secured by immovable collateral segment.

1.1.1.2. Legal framework

a) The enforcement activity is governed by the following:

Law no. 8417, dated 21.10.1998 "The Constitution of The Republic of Albania", Chapter "On human rights";

Law no. 8036, dated 22.11.1995 "On mutual court support in the civil and commercial sphere";

Law no.9443 dated.16.11.2005 "Ratification of the Hague Convent, October 19, 1996, "On the protection of basic human rights";

Law no. 8688, dated 14.05.2001 "On the organization and function of the Ministry of Justice";

Law no. 8730, dated 18.01.2001 "On the organization and the function of the Bailiff Service";

Law no. 8812, dated 17.05.2001 "Civil Procedure Code of Republic of Albania", changed;

Law no.7850 dated 29. 07.1994."Civil Code of Republic of Albania";

Law no. 8435, dated 28.12.1998 "On the tax system in the Republic of Albania";

Law no. 8894, dated 14.05.2002 "On the Agency that treats default loans".

Other laws and convents related to the fair treatment of different groups.

b) The lending activity is governed by:

Law no. 9662 dated 18.12.2006 "On commercial Banks";

Regulation no.52, dated 14.07.2004 "On credit risk administration".

1.1.1.3. Stakeholders - Institutional framework

The **main stakeholders** of the enforcement process are:

- **The Bailiff Service** is a centralized **public** service with national - wide coverage under the competences of the Ministry of Justice. Its functions are performed through the bailiff officers who are responsible to execute the executive titles in full compliance with the provisions of the Civil Procedure Code

Organizational chart

Central level

- The General Directorate of Bailiff. The Directorate is responsible to manage, coordinate and control the full compliance of the Bailiff Service with the regulatory framework and professional ethics; to draft laws, bylaws and internal regulations on the enforcement issues; to enhance the professional capabilities of the bailiff officers.

- The Bailiff Council consists of the General Secretary of the Ministry of Justice - MoJ, the General Director of the Bailiff's Directorate, the Director of Human Resources, Organization and Services, the Head of Tirana's Bailiff Service and a counselor in the MoJ. The Council organizes the competition / test for the appointment of the bailiffs and annually evaluates the professional capabilities and performance of the bailiffs.

Regional level – Bailiff Offices in each district court. A local Bailiff Office is a legal entity, under a Head management, responsible to undertake all the necessary procedural measures for the effective execution of the executive titles.

- **Commercial banks.** The Albanian banking system consists of 16 commercial banks having as main area of activity lending to individuals and companies. In December 2007 lending to economy reached 30.2% of GDP; out of this amount of outstanding loans, almost 37% of the credit portfolio is real estate lending. Regarding the quality of the loan portfolio, in December 2007, 92% of the portfolio are standard, good quality loans and nearly 9% of portfolio are problematic loans (including special attention loans - 5% of the portfolio, substandard loans - 2% of the portfolio, doubtful loans - 1% of the portfolio and lost loans - 1% of the portfolio).
- **Courts.** The judges in district courts issue the executive title that serves as the main legal document for the bailiff officers to start the execution process of the immovable collateral.
- **Consumers**

Other stakeholders involved in the enforcement process:

- **Ministry of Justice** - The ministry defines the organizational structure, functions and responsibilities of the General Directorate of Enforcement and Bailiff Offices.
- **Bank of Albania** – Supervisor of the banking activity and guardian of the financial stability.
- **Ministry of Public Order – State order Police**
- **Immovable Property Registry Office**
- **Regional Directory of Transport**
- **Tax office**

1.2. Market and Regulatory Failure Analysis

In the 2009 Doing Business Report by the World Bank, in the section of Contract Enforcement, Albania is ranked 89th. In Albania, in order to enforce a contract, the involved parties have to pass through 39 procedures that last on average 390 days and the costs of the process amounts to 38.7% of the claim. With these indicators, Albania is far behind other Eastern European and Central Asia countries in terms of the number of procedures and cost of the process.

In 2006 EBRD has assessed as well the secured transactions legal framework in transition countries. According to this assessment, the secured transactions legal framework (covering also mortgages) in Albania, generally, is **appropriate** and **sound** but its effectiveness is hampered by the **slow enforcement system** and flaws in the administrative system. The enforcement system is characterized by relatively long and cumbersome procedures that result in a moderate recovery of the initial amount by the secured creditor. Compared to other developing economies in Europe, Albania is considered to have an enforcement system less than median efficient and creditor-friendly

In additions to the international institutions, banks – the largest users of the enforcement system in Albania - complain on the effectiveness of the enforcement system and enforcement institutions.

Euralius, an European assistance mission to the Albanian Justice System has analyzed the situation and has identified all areas the bailiff's service that require improvement. Some of the issues identified are related to insufficient professional expertise, scarce infrastructure and working conditions, lack of professional and financial incentives etc.

The problems identified in the Bailiff Service combined with the deficiencies in the legal framework produce an inefficient enforcement system.

Under these circumstances, we assess that the low efficiency in the current enforcement system is result of a **regulatory and administrative / management failure**. The current regulation is not appropriately prescribed for the market, resulting in cumbersome procedures, work inefficiency, subjectivity and unequal treatment of parties.

This regulatory failure generates additional uncertainty and costs to all the users of the enforcement system.

1.3. Policy Objectives at Risk due to regulatory failure

General Objectives:

- To improve the economy competitiveness;
- To increase the opportunities to engage in transactions.

Specific objectives:

- To improve the efficiency of the enforcement system;

- To stimulate the development of lending activity;
- To decrease in the cost of bank products and services.

Operational:

- To steady increase the execution rate of court orders;
- To secure the timely execution of the court orders;
- To ensure rapid recovery of bad debts.

1.4. “Do nothing” option

1.4.1 Possible medium-term (max 2 years) self – corrective actions

Regarding the efficiency of and the confidence in the bailiff service, the only market action would be to organize private bailiff service, but a new law is necessary to grant legal permission to undertake these activities. Anyway, in case banks would establish their own bailiff services, this could generate other market distortions: creating a special case for banks compared to other creditors and raising suspicions on the independence and correctness of the private service.

1.4.2. Impact of the “Do Nothing” option to the various stakeholders

The low rate of court orders executions and the inefficiency of the enforcement system negatively affect all the stakeholders involved in the enforcement process.

- Regulated firms / Banks:
 - Operate in an unsecure environment;
 - Pay additional costs to enforce respective contractual rights or to recover bad debts;
 - Transfer (part) of the cost to consumers to cover for the additional expenses;
 - Follow a less ambitious strategy (losing business opportunities) in the lending activity.
- Consumers:
 - Have less access to finance – mortgage loans / have fewer opportunities to engage in financial transactions because of banks’ more prudent attitude;
 - Pay additional costs/interest due to the process of cost transfer by banks from bad customers to good customers.
- Authorities:
 - Forgo growth opportunities, due to less business and less financing to investment activities.

1.5. Alternative options

1st Alternative Policy Option: To improve the existing public Bailiff Office.

2nd Alternative Policy Option: To privatize the bailiff service.

3rd Alternative Policy Option: To liberalize the bailiff service and to introduce the two track system with public and private bailiff service.

The Ministry of Justice decided to follow the third alternative policy option – to liberalize the bailiff service and, as complementary to the public service, to introduce the private service.

Proposed legal framework – Additional law(s):

Law on “Liberalizing the Bailiff Service”. The main provisions of the draft law are presented in Annex 1.

Proposed institutional framework

- Public Bailiff Service (current set up)
- Private Bailiff Service

The institutional set-up of the Private Bailiff Service

The private bailiff service will be practiced by licensed private or legal entities with national wide coverage. The functions of the private service are the same as those of the public service.

The private bailiffs are independent bodies that perform duties on personal behalf (name) and under its own responsibilities the obligations. The law provides for the establishment of self-regulatory structures within the Private Bailiff Service. Ministry of Justice will have regulatory powers – to license, control and supervise the activity of the private bailiff officers.

Summary Problem Scoping			
Bailiff service			
Market failure			
Asymmetric information	Market power	Positive externalities	Negative externalities
(Existing) Regulatory failure			
Regulation wrongly prescribed for the market	Regulations succeeded in addressing the failure; a different market failure (e.g. side effect)	Regulation made it worse	Regulation so far has failed to work; maybe in due course
	X		

Annex 4

Consultation with Stakeholders

Consultation process	
2.1.1 Consultations with banking community on improving the Bailiff Office activity	
<p>In order to assess the main difficulties encountered by the banking community, SPI Albania with the support of Albanian Association of Banks – AAB, undertook a survey in the banking community.</p> <p>SPI Secretariat, in collaboration with the Project Working Group Members, prepared a questionnaire, in which were identified 14 indicators, grouped in 5 criteria, to evaluate the performance of bailiffs officers. The questionnaire was delivered to AAB’s Legal Committee members¹.</p> <p><i>Summary of Consultation Process Statistics</i></p>	
Total members of AAB (no.):	16 banks
Total respondent banks (no.):	15 banks
Respondent ratio:	93.7%
Market share of the respondent banks: (reference indicator: total loans)	99.8%
Size of the respondent banks:	small, medium, large
2.1.2 Summary of the consultation feedback on improving the Bailiff Office activity	
<p>The Report on the Findings (attached in Annex 2) of the survey on Bank’s difficulties in dealing with the Bailiff Offices, prepared by SPI Secretariat was presented and discussed in the 3rd meeting of the Project Working Group – PWG.</p>	
Identified Problems	Importance
Difficulties arising due to the ambiguity or incompleteness of the regulatory framework	
High level of fees and commissions	High
Long internal procedures	High
Lack of uniformity in the application of the law, due to some vague or missing provisions	High
Lack of criteria for the selection of the professional experts	High
Unequal treatment of the parties	High

¹ AAB Legal Committee is gathering Legal Departments’ representatives of all bank.

Lack of cooperation with other state institutions	High
Unclear territorial competences	Low
Lack of confidentiality	Low
Difficulties arising due to the internal organisation and human resources management:	
Quality of service	High
Lack of proper management of the information on the files of the debtors;	High
Low level of expertise from the professional experts;	Medium
The process of cases assignment to the bailiff officers	Medium
Difficulties arising due to ethical issues:	
Misconduct	Medium
Conflict of interest	Low

2.2.1 Consultations on MoJ legal initiative to liberalize the Bailiff Service

In order to achieve the objective of the project which is a strong collaboration with the Ministry of Justice – MoJ was considered as crucial. MoJ was firstly approached by Bank of Albania – is the vest of a founding partner of SPI Albania, to inform and to establish a relation on the initiative prompted by the banking community to improve the enforcement system. As a second steps the Project Owner of SPI Albania Project in its communication with MoJ further clarified the contribution that this project intended to provide to the ministry on the legal initiative to improve the enforcements system through the liberalization of the bailiff activity.

As response, MoJ appointed a representative of the Enforcement Department to be part of the PWG and invited Project Management Group and SPI Secretariat to be part of the consultations hearings on their initiative to liberalize the Bailiff service.

Consultations hearing organized by MoJ on the draft proposal law.

The first round of consultations was held in May 2008.

The second round of consultations was held on August 2008. In this round took part the Project Manger of SPI Albania Project and the SPI Albania Secretariat.

By end September 2008, in an emergency situation, MoJ requested to its consultants all comments and suggestions on the draft law proposal. Under this emergency SPI Secretariat was in the position to aggregate already received individual comments and consult them within its internal management structures. This emergency situation prevented SPI Secretariat to undertake a wider range of consultations with all stakeholders as initially planed and as a prerequisite of the EU Better Regulation methodology. The [document](#) presented to MoJ on the draft law proposal was sent to PWG members and discussed in the next PWG meeting.

Summary of Consultation Process Statistics

Total members of PWG:	8 banks
Total respondent banks (no.):	5 banks
Respondent ratio:	62.5 %
Market share of the respondent banks - PWG: (reference indicator: total loans)	52.9 %

Size of the respondent banks:	small, medium, large
Other institutions	Bank of Albania Euralius

2.2.2 Summary of the consultation feedback on MoJ legal initiative to liberalize the Bailiff Service

The consultations with the PWG members revealed mainly that the new private Bailiff Service is likely to produce distortions on the market rather than solving the current problems faced by banks in dealing with the public bailiff service.

Territorial competences

The private bailiffs do not have limits to their territorial competences, while the public bailiffs have specified and limited territorial competences. As consequence, there is not an equal treatment to the private and to the public bailiffs and there is not a complete coverage of the rural and remote areas of the country.

Functional competences

The proposed draft law (misses to) does not define the categories of executive titles to be executed by the private and/or the public structures, necessary to avert possible conflicts between the existing structures.

Legal form

The proposed draft law defines two possible legal forms for the private service: the private entity (a form similar to the notary service) and the business entity. A private entity might not have the large infrastructure and large financial resources needed for undertaking properly a bailiff activity.

The fee structure

The fee level of the private bailiff service will be approved by the Ministry of Justice, but they are free to set extra fees for complex and prolonged procedures. At the same time, even in case the debtor voluntarily settles the debt with its creditor, without any bailiff's action, the prepaid fee is not refundable (the fee paid to start the procedures). These provisions are considered as very unfavorable for the creditor, creating room for abusive behavior from the private bailiffs.

Annex 5

Main provisions of the Draft law proposal on Liberalizing the Bailiff Service

The **private** bailiff service will be practiced by licensed private or legal entities (legal entities in the form of commercial enterprise) with national wide coverage. Private service bailiffs will have the same functions as the public service bailiffs. Full compliance with the provisions of the CPC and other laws or convents in this regard remains the pivotal prerequisite.

The role and responsibilities of the Ministry of Justice – Article 10:

- gives, suspends and revokes the licenses of the private bailiffs;
- organizes the qualification test and approves the Qualification Committee;
- controls the compliance with the legal framework and supervises the bailiffs;
- drafts and approves bylaws related to the functions of the private bailiff service;
- starts the disciplinary process;
- assigns a delegate to take part in the General Council, with no voting right.

Self-regulatory structure of the industry – Chapter V.

All the private bailiff entities are represented in the National Chamber of Private Bailiffs - NCPB. The NCPB is a private business entity independent from the state.

The role (duties) of the National Chamber of Private Bailiffs – Article 29:

- ensures the compliance of the private bailiff acts with the legal framework;
- selects the leading bodies of the Chamber;
- sets the membership quotas;
- collects information on the bailiffs that will start the disciplinary process;
- represents the Private Bailiff Service in international organizations.

The governing body of the NCPB is the General Meeting (Assembly) and the General Council.

The General Assembly – GA is the highest decision making body of the MCPB, were all the licensed private bailiff take part. The competences of the GA – Article 32:

- selects the General Council – GC, its chairman and vice-chairman;
- represents and protects the interests of the private bailiffs
- approves the Code of Ethics of the Private Bailiffs; etc

GA selects 15 bailiffs in the General Council. GC has the following competences – Article 35:

- drafts the Code of Ethics of the Private Bailiffs;
- approves the training plans for bailiffs and coordinates the initiatives with regard to professional enhancement capabilities; etc

Rights of the bailiffs – Article 36:

- To accept the request of a private and of a business entity to execute the executive titles;

- To request collaboration from public or private institutions including the state police;
- To fine the private and the business entity who impede non legally the execution process.

Responsibilities of the bailiffs – Article 37:

- to act honestly, fairly and with professionally;
- to ensure full compliance with the legal framework;
- To undertake all the necessary measures to full successfully the process;
- To register in accordance with predefined standards all the acts and procedures undertaken during the enforcement process; etc

Fees – Chapter VIII. The fees to be paid for the private bailiff services are defined with a normative act by the Ministry of Justice, after consulting the NCPB.

Annex 6

Main Findings of the Research in International Experience on the Bailiff Service

Based on the information presented in the annexes of EURALIUS STUDY ON THE PRIVATISATION OF THE ENFORCEMENT SERVICE IN ALBANIA, SPI Secretariat performed an analysis on the international experience on the bailiff service in some countries: Czech Republic, France, Greece, Holland, Hungary and Poland.

The main findings of this analysis are presented below. The table in annex details all the legal provisions in selected countries.

Area	Findings
Bailiff's competences	The most common bailiff's competences refer to enforcement of court decisions and executive titles, notifications for different acts, selling in auctions. Preparation of reports and credit collection are quite spread among bailiffs' practice. Evaluations, legal advice and hearing in courts are not very spread.
Legal status	In all targeted countries, the bailiffs are independent professionals who can perform their activities in a free way, but with very in detail regulated profession and hiring procedures. In the major part of the countries they have ethical, disciplinary and professional rulings. In all cases they are appointed by the Minister of Justice, but only in some cases they might be public ministerial employees.
Organization	In all researched countries, bailiff can exercise his profession individually but in some cases they can also exercise profession in professional associations. In all the cases they have a national professional organization. Generally, bailiffs use additional staff in performing their duties and there is a national coverage of the bailiff service. In most cases, bailiffs have territorial limited competencies.
Eligibility	Generally there are very high professional and moral standards in order to qualify as a bailiff. Previous experience in a bailiff office and professional exams are a must. The major part of the countries has created facilities for continuous professional training and the trend is to make it obligatory. In some case the bailiffs are required to produce evidence on their financial capability to exercise profession. In all cases, bailiffs are appointed by the Minister of Justice.
Enforcement of court decisions	Bailiffs are in all countries in charge with the enforcement of court decisions.
Assignment of cases	In all targeted countries with one exception the creditor can choose the bailiff. In part of the cases, the choice is limited by the territorial competencies.
Enforcement of debtor's	In all countries the bailiff can apply obligatory enforcement on

properties	movable, immovable, physical and unphysical properties of the debtor. In some countries the bailiff can apply conservative seizure (in one case an hierarchy is provided).
Responsibility for enforcement	In 3 out of 6 analyzed cases, bailiff has clearly the entire responsibility of the process. Czech case is relevant, as now the judge has to authorize all bailiffs' actions, but the reform undertaken will bring freedom to the bailiff. An opposite case is Poland, where the creditor has the leading part.
Right to collect information on debtor's assets	Yes, the bailiff has access to different/all kind of information on the debtor
Remuneration	In all cases, the debtor pays for enforcement expenses. If the bailiff is executing and the debtor is not able to pay, then the creditor pays.
Obligation to notify	Yes
Notification procedure	In most of the cases, notification can be done in various ways: physically to debtor or to family, friend, neighbours, employees, by mail, posted on the addressee's door, published in the newspapers, left with the municipality, police or prosecutor offices.
Juridical validity of a notification	In order to give juridical validity of a notification, the bailiff has to keep a record on the notification. The notification is valid unless mistakes are proven.
Application of regulations (CE) n°1348/2000 of the Council on notifications for juridical or non-juridical acts in civil and commercial matters?	The judicial officers in these countries do not yet proceed according to the regulations (CE) n°1348/2000 of the Council on notifications for juridical or non-juridical acts in civil and commercial matters.
Credit collection by bailiff	In half of the sample countries the bailiff can collect credits through voluntary and obligatory execution.
Addressing credit collection requests	In the countries allowing bailiffs to collect credits, the client can approach directly the bailiff. As a rule, the bailiff first attempts to apply voluntary enforcement.
Cost of credit collection	The cost for collecting credits is paid by the creditor. Fee system differs from country to country.
Right to sell in auction	The bailiff sells in auction, in some countries only for obligatory purposes only.
Other competencies	In major part of analyzed countries the bailiff prepares reports. Providing legal representation for parties is either forbidden or allowed only in some cases (mostly related to enforcement). Providing legal advice is forbidden in some countries and allowed in others, but in some of the latest cases limited to the execution process. In most analyzed countries, the bailiff is not allowed to have other functions.

Annex 8. SPI Albania Methodology

The EU Better Regulation Approach	
Steps	Purpose
Scoping of problem	
1. Problem identification	To understand if a market/regulatory failure creates the case for regulatory intervention.
2. Definition of policy objectives	To identify the effects of the market /regulatory failure to the regulatory objectives.
3. Development of “do nothing option”	To identify and state the status quo.
4. Alternative policy options	To identify and state alternative policies (among them the “market solution”).
Analysis of impact	
5. Costs to users	To identify and state the costs borne by consumers
6. Benefits to users	To identify and state the benefits yielded by consumers
7. Costs to regulated firms and regulator	To identify and state the costs borne by regulator and regulated firms
8. Benefits to regulated firms and regulator	To identify and state the benefits yielded by regulator and regulated firms
9. Data Questionnaire	To collect market structure data to perform a quantitative cost and benefit analysis
Consultations	
10. Policy Document	To learn market participant opinions on various policy options
Conclusion	
11. Final Recommendations	Final report to decision-makers, based on Cost Benefit Analysis and market feedback



SPI Albania Project

Improving auction procedures for immovable collateral under foreclosure

Impact Assessment Questionnaire

Prepared by
SPI Albania Secretariat

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I. Context

The procedures for the foreclosure of the collateral in Albania are regulated by the Civil Procedure Code, Chapter 3, Art.560-580 “The enforcement on immovable property, ships and airplanes”. The Bailiff Office is in charge with organizing the foreclosure procedures (Art. 527 CPC).

At present, the enforcement on immovable property is very rarely a success. In the World Bank’s Doing Business 2009 Report, Albania is ranked 89th on the Enforcing Contracts section. Despite the fact that there are no statistical data available on how many cases ended with the bidder paying the fixed price in an auction and became the new owner, bailiffs confirm that this number is extremely low. It happens very seldom that after the second auction the creditor takes the immovable against the price designated for the second auction. In case the immovable has been appraised by the experts contracted by the Bailiff Offices at a value higher than the debt (even after it was reduced by 20% in the second auction), the creditor has to pay to the debtor the difference between the appraised value and amount of the debt. Due to the ceiling in the fixed assets to total assets ratio, banks have to sell the immovable in a short time and sometimes in unfavorable conditions.

In addition to the above mentioned the successful enactment of the foreclosure procedures related to the bailiff service is hindered also by:

- Undefined time periods for the bailiff to notify the debtor;
- Subjectivity in determining the value of the collateral for the first auction and redefining the value of the collateral for re-auction, in the case that the first auction has failed, as there are no commonly set standards for real estate property valuation;

These problems faced by the banks, largest users of the enforcement system, result in increased cost, wasted time in cumbersome procedures and impairment of the value of the collateral.

SPI Albania is running a project on improving the procedures for the foreclosure of the immovable collateral with three objectives:

1. **To undertake analytical activities that would support the enactment of law amendment proposals.**
2. To support the improvement of the Bailiff Office activity.
3. To improve the quality of the buildings evaluation.

The Albanian Government is strongly determined to make deep reforms in the Legal System. Part of the agenda is the improvement of the legal framework of the enforcement system.

Under these circumstances, and with the confirmation of the Ministry of Justice on the revision of the Civil Procedure Code, the PWG members discussed and agreed to make another effort and to prepare a new proposal on the necessary amendments to CPC to be sent to MoJ.

The PWG based on their professional experience, on the studies and proposals prepared by EURALIUS and the Romanian experience discussed and with the support of SPI Secretariat prepared a Draft Proposal on CPC. On October 06, 2008, the draft proposal was delivered by the Chairman of AAB to the Head of the Commission for Legal Affairs, Public Administration and Human Rights, Albanian Parliament, to the Head of the Commission for the Economy and Finance, Albanian Parliament and to the Prime Minister. The PM of the project delivered the draft proposal to the Ministry of Justice.

On October 13, 2008, the PM of the project, a representative from SPI Albanian and the legal advisor of AAB met with the advisor on the Minister of Justice and the Head of the Directory of Enforcement to discuss on the draft proposal prepared under SPI Albanian support.

This meeting is the first activity that SPI Albania undertook in order to support the enactment of the amendment proposal.

PWG composition

Project Owner: Mr. Seyhan Pencapligil, General Director, BKT
Project Manager: Mrs. Veronika Prifti, Legal Department Manager, BKT



Deputy Project Manager: Mrs. Rudina Gorishti, Legal Department Deputy Director, Bank of Albania
Technical Anchor (TAN): Kimmo Vikman (peer reviewer)

Project Working Group Members: Andin Jakova, BNT (member)
 Ermanl Dobi, Tirana Bank (member)
 Yllka Majko, Tirana Bank (observer)
 Altin Hysi, Emporiki, (member)
 Arta Taipi , UBA (member)
 Rudina Ziu, RZB (member)
 Petrit Qarri, MoJ (member)
 Odeta Hyseni, EURALIUS, (observer)
 Dorina Mehmeti, IFC (member)

II. Purpose of the banking survey

The banking community is one of the largest users of the enforcement system. The purpose of this survey is to assess the economic impact that these amendment proposals will have in the banking community. This Regulatory Impact Assessment (RIA) seeks to provide an estimate of the possible incremental costs and benefits generated by each individual provision, trying to identify as well the area where the major part of underlying costs and benefits will be concentrated. This will help regulators and banks in the forthcoming negotiations to better acknowledge the costs and the benefits that these amendment proposals, in individual and in aggregate level, will produce.

Type of Regulatory Optimization

All provisions contained in this document fall into in the following taxonomy of Regulatory Optimization:

- Strategic objective: Opportunities to engage in financial transactions;
- Strategic area: Rule of law and contract enforcement;
- Value creation driver: Civil regulations affecting costs of the banking activity.

III. Procedures to run the banking survey

You are kindly requested to support our assessment by answering this questionnaire. Please send your answers to SPI Secretariat who stands ready to offer you more details. Your answers will be treated in strict confidentiality. The results of the banking survey will be disclosed only at aggregate level. Please send your answers by **10/24 /2008**.

The SPI Secretariat estimates that the filling of the questionnaire will take about 60 - 90 minutes broken down as follows: a) "PWG proposals": 10 minutes; b) "Qualitative Cost and Benefits": 10 minutes; c) "Detailed Analytical Approach": 40 – 70 minutes.

For eventual further clarification needs, please indicate below the contacts of the person who completed the questionnaire:

Name.....
Position.....
Bank.....
Email address:.....
Tel/Fax.....

Thank you for participating in this survey!



Content

1. General Description of the Amendment Proposals
2. PWG Proposals
3. Output of the First Round of Negotiations with Ministry of Justice
4. Validation of the Qualitative Cost and Benefit Analysis, for regulated firms
5. Detailed Analytical Approach
 - 5.1 General information
 - 5.2 Analysis on Additional Costs and Time on Non-Accepted Proposals by Ministry of Justice

Annex 1. Detailed presentation of the selected articles, existing version and the proposed version

Annex 2. Detailed description of the foreclosure process

1. General Description of the Amendment Proposals

The Project Working Group has prepared a set of proposals, divided, for methodological purposes, in three packages:

Package 1. Core changes that increase the efficacy of the enforcement system

Objective: To amend a core package of articles in CCP that will tackle the fundamental problems created by the current framework. This package refers to the provisions on: The executive order (art. 511); The execution (art. 515); Evaluation of property (art. 564); Auction procedures (art. 567); Repetition of the auction (art. 577).

Package 2. Other changes that further improve the efficacy of the enforcement system

Objective: To amend a more extensive package than package 1, that, in addition to fundamental issues, will achieve a better use of resources and better regulated process –increase in efficacy. In addition to the provisions in Package 1, this package refers to: Notification for the legal entities (art. 141); The voluntary execution (art. 517); The execution if the debtor's address is not known (art. 522); The sequester order (art. 560); Notification of the winner (art. 573); and Time limit to pay the price (art. 574); Possessing the purchased property (art. 575).

Package 3. Changes that achieve fairness and equal treatment

Objective: To amend a comprehensive package that will ensure a just and effective process of collateral enforcement. In addition to the provisions in Package 2, this package contains: Article 144; Article 152; Execution expenses (art. 525); The sequester order on a different property (art. 528); The premises for the auction (art. 569).



2. PWG Proposals¹

Question 1. What is your assessment, will the following respective proposals save time in the execution process (column 4)? Yes No

Question 1.1 If Yes, by how many days? Please select one of the options (column 5): A. 10 days; B. 20 days; C. 30 days; D. 40 days E. Other (please specify)

1	2	3	4	5
No.	Article (no)	Proposed amendment	Yes / NO	Option A B C D E
Package 1 - Core changes that increase the efficacy of the enforcement system				
1	Article 511 The executive order	The executive order is issued within 5 days from the date of creditor's request. For the sigurimin e padise and the fines written by the court are not issued executive orders, which are executed directly from the bailiff office, after the notification of the decision.		
2	Article 513	The executive order to be issued in two copies		
3	Article 515 Commencement of the execution	For the execution of the executive titles the creditor should prepare the file containing: The request for execution, the executive title, the executive order, the receipt of paid tax, if necessary the act of procurement. If the bailiff considers the file is not adequately complied the creditor has 5 days to fill in the file correctly. The request for execution is considered as registered from the date presented in the bailiff office. The bailiff should execute the executive order within 10 days from the submission of the request. Court orders on masen e sigurimit te padise / charge of securing the lawsuit and the penalties issued by the court are executed within 3 days from the day of announcement.		
4	Article 564 Valuation of the property	If the debtor and the creditor do not reach an agreement, the bailiff officer determines within 15 days the value of the property based on the expertise act presented by a <i>licensed</i> expert based on the forced sale value , in the moment of seizure. The bailiff should notify the debtor and the creditor on the appraised value within 10 days from the appraisal process. Against the value both parties might appeal.		
5	Article 567 Auction procedures	Abrogated		
6	Article 577 Repetition of the	If in the first auction no bidder has offered a higher price than the initial price, or there has been no bidder the sale continues with a second auction. The bailiff officer within 10 days from the first auction determines the price, which is		

¹ A detailed presentation of the selected articles, existing version and the proposed version, is presented in Annex 1.



1	2	3	4	5
No.	Article (no)	Proposed amendment	Yes / NO	Option A B C D E
	auction	20% lower than the initial price. The second auction should start not later than 15 days after the price is set. Within 30 days from the payment of the price from the buyer or from the acceptance of the property from the bank, the bailiff places the property under the possession of the buyer / creditor.		
Package 2 - Other changes that further improve the efficacy of the enforcement system				
7	Article 141	The notification process for the business entities is the same as for the private entities. The notification is posted in district court, district commune or birthplace or last known location		
8	Article 517 The voluntary execution	Upon the debtor's request and after the creditor is expressed the court might postpone the time of the payment		
9	Article 522 The execution if the debtor's address in not known	The judge with the request of the bailiff assigns a representative, within 10 days		
10	Article 560 The sequester order	Immovable Property Registry Office has to register the act of the Bailiff officer within 10 days after it has arrived. A copy of the registry is forwarded to the debtor.		
11	Article 573 Notification of the winner	The specific rules on the auction procedures are defined / set with a directive of the Council of Ministers		
12	Article 574 Time limit to pay the price	The buyer should pay the price within 15 days from the termination of the auction		
13	Article 575 Taking the possession	The buyer might take possession of the property within 10 days		
Package 3 - Changes that achieve fairness and equal treatment				
14	Article 144	The rules in this chapter on notifications are applied by the public and private Bailiff Service.		



1	2	3	4	5
No.	Article (no)	Proposed amendment	Yes / NO	Option A B C D E
15	Article 152	This provision to remain as it is.		
16	Article 525 Execution expenses	If an extra procedure is requested by the debtor, he/she has to bear the expenses		
17	Article 528 The sequester order on a different property	Apart the case when both parties with an act have defined the wealth (properties) that will secure the claim in which execution is requested.		
18	Article 569 The premises for the auction	The auction can take place in the Bailiff Office, the lodgment of the immovable property or in any other appropriate public place.		

3. Output of the First Negotiation Round with Ministry of Justice

No.	Proposed article (no)	MoJ Agreed / Not agreed	Comment
Package 1 - Core changes that increase the efficacy of the enforcement system			
1	Article 511	Agreed	
2	Article 513	Partially agreed	MoJ agrees with the problem identified, but the solution will be further discussed internally
3	Article 515	Partially agreed	MoJ did not agree to reduce time periods
4	Article 564	Partially agreed	Agreed on the time periods; Not agreed on the initial value of the auction (PWG liquidation value vs. MoJ market value)
5	Article 567	Agreed	
6	Article 577	Partially agreed	MoJ agrees with the problem identified, but the solution will be further discussed internally
Package 2 - Other changes that further improve the efficacy of the enforcement system			
7	Article 144	Agreed	
8	Article 517	Agreed	
9	Article 522	Agreed	
10	Article 560	Agreed	
11	Article 573	Agreed	



12	Article 574	Agreed	
13	Article 575	Agreed	
	Package 3 - Changes that achieve fairness and equal treatment		
14	Article 144	Agreed	
15	Article 152	Not agreed	The right for the other party to be present in the process is considered as normal
16	Article 525	Agreed with the concept	Banks will pay only the fees
17	Article 528	Agreed	
18	Article 569	Agreed	

4. Validation of the Qualitative Cost and Benefit Analysis, for regulated firms

SPI Secretariat, based on the discussions during the PWG meeting and the rationale of the proposals prepared by the various PWG members, prepared the following qualitative cost and benefit analysis for the aggregated CPC's amendment proposal.

We would very much appreciate if you could validate our assessments by ticking in the respective boxes. In case you don't agree with the stated impact/rational, please state there your reasons.

Qualitative Cost and Benefit Analysis - Regulated firms

Costs / Benefits	Assessed Impact	Rationale	Validation/ Comments	Rejection/ Comments
Costs	Lower			
One-off	Slightly higher			
Human resources				
New staff	=	No additional staff needed to comply with the new legal provisions		
Trainings for existing staff	=+	Due to the amendments in CPC, there might be the need to spend some time to acknowledge them.		
Infrastructure	=	No additional costs on infrastructure		
On going	Lower			
Human resources	=			
Expenses				
Procedural	-	Under the art. 525 the creditor should pay for each procedure (when required by the law) and will be reimbursed at the end of the process by the proceedings of the sale. Given the low rate of successful auctions and the low price that the bank is very often forced to liquidate the property, in the end of the process it might happen that the bank is not able to recover all the payables. The amendment of art.525 on expenses by adding- the creditor will pay only for the initial fee, is expected to reduce the number of appeals by the debtors and reduce the expenses paid.		
Finalization of the process	-	The rate of success is expected to rise		
"Purchase" costs	-	More transparent and objective selecting rules and procedures for the appraisers would end in more realistic market value for the foreclosed immovable, diminishing thus banks' losses from exchanging the good for the loan within auction procedures and re-selling them for a lower price.		

Tax on income (sale)	+	The decrease in the loss as explained above would increase the taxable income.		
Benefits	Higher			
Additional loans – immovable property backed	+	The more rapid recovery of bad debts would give the possibility to re-place those sources in additional loans. Furthermore, banks would be more willing to enter into mortgage-backed transactions.		
Cost saving / + revenues	+	By increasing effectiveness and fairness in the procedures more third parties will be willing to enter in the auction and bid to purchase the immovable property, accordingly banks will not be obliged to take the property in exchange of the loan		
Equity relief	=			
Total impact	Less costs more benefits	A more effective foreclosure process will generate direct and indirect benefits.		

Legend:

- + increase
- decrease
- = no effect

5. Detailed Analytical Approach

The questions in this questionnaire refer to values at the end of 2006 and 2007 or to shares of the collateral backed loans and the foreclosure procedures for the period of 2006 and 2007.

5.1. General Information

Question 1. Please state the stock of loans backed by mortgages in your bank balance sheet (in million Lek):

- as of December 2006
- as of December 2007

Question 2. Out of the above mentioned category, please state the share (%) of doubtful loans and lost loans (Bank of Albania's categorization of loans), in your bank:

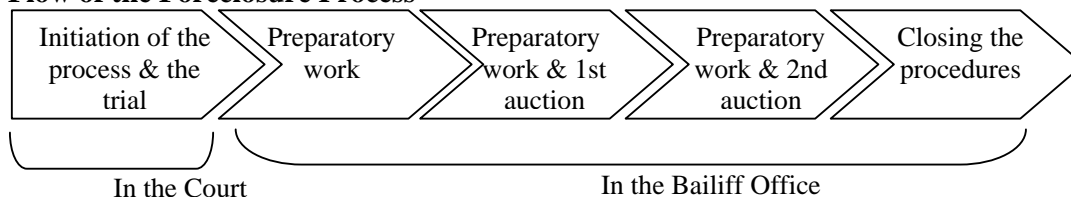
- as of December 2006
- as of December 2007

Question 3. Out of the above mentioned category, please state the share (%) of the loans in your bank that were under foreclosure process:

- as of December 2006
- as of December 2007

5.2 Analysis on Additional Costs and Time on Non-Accepted Proposals by Ministry of Justice

Flow of the Foreclosure Process²



Question 1. According to your experience, in average how much time is spent for the procedures in the Court? _____ days

Question 2. According to your experience, in average how much time is spent for the foreclosure procedures, in days?

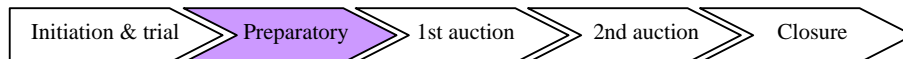
In the Bailiff Office

- I. For initial preparatory work _____
- II. For preparatory work for the first auction and the first auction _____
- III. For preparatory work for the second auction and the second auction _____
- IV. For closing the process _____

In the Bailiff in the Bailiff Office

- I. Preparatory work (articles 510 – 526)
- II. Preparatory work for the first auction and the first auction (articles 560 – 572, 578)
- III. Preparatory work and the second auction (articles 577)
- IV. Closing the process (articles 573 – 576, 579, 580)

I. Preparatory work



1. PWG has suggested that the execution order to be issued in two copies (or to be identified an alternative to deal with the cases when the collateral is located in more than one district) (article 513).

MoJ agrees with the problem identified, but the solution will be further discussed internally.

Question 3. In average during the last two years, what is the share of the loans under foreclosure in your banks that is affected by this amendment (collateral located in more than 1 district)? _____%

2. PWG has suggested that for the execution of the executive titles the creditor should prepare the file containing: The request for execution, the executive title, the executive order, the receipt of paid tax. If the bailiff considers the file is not adequately complied the creditor has 5 days to fill in the file correctly. The request for execution is considered as registered from the date presented in the bailiff office. The bailiff should execute the executive order within **10** days from the submission of the request. Court orders on masen e sigurimit te padise / charge of securing the lawsuit and the penalties issued by the court are executed within **3** days from the day of announcement. (article 515).

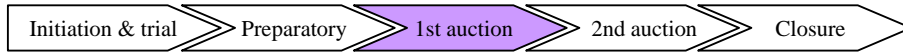
*MoJ has suggested that the bailiff should execute the executive order within **15** days and Court orders on masen e sigurimit te padise / charge of securing the lawsuit and the penalties issued by the court are executed within 5 days from the day of announcement.*

² A more detailed description of the foreclosure process is presented in Annex 2.



Question 4. According to your experience, could there be any negative implications of this proposal?

II. Preparatory work for the first auction and the first auction



Question 5. In average, what is the share of the loans under foreclosure in your banks that are ended (bidder paying the price) during the first auction? _____%

3. PWG has suggested that if the debtor and the creditor do not reach an agreement, the bailiff officer has to determine within 15 days the value of the property based on the expertise act presented by a *licensed* expert based **forced sale price** on the, in the moment of seizure.
 The bailiff should notify the debtor and the creditor on the appraised value within 10 days from the appraisal process. Against the value both parties might appeal (article 564).
MoJ has suggested that the appraisal's act to be based on the **market value**.

Question 6.1 According to your experience, which are the rationale and costs and benefits of using the forced sale price as reference price?

Rationale

Costs / Negative implications

Benefits / Positive implications

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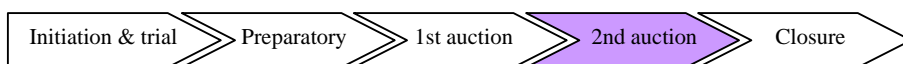
Question 6.2 According to your experience, which are the costs and benefits of using the market price as reference price?

Costs / Negative implications

Benefits / Positive implications

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III. Preparatory work and the second auction



Question 7. In average, what was the share of the loans under foreclosure during the last two years in your bank that are ended (bidder paying the price) during the second auction? _____%



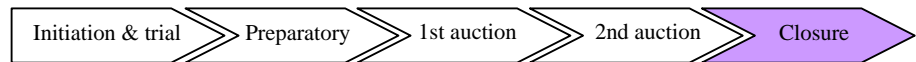
4. PWG has suggested that if in the first auction no bidder has offered a higher price than the initial price, or there has been no bidder, the sale continues with a second auction. The bailiff officer within 10 days from the first auction determines the price, which is 20% lower than the initial price. The second auction should start not later than 15 days after the price is set.

Within **30 days** from the payment of the price from the buyer or from the acceptance of the property from the bank, the bailiff places the property under the possession of the buyer / creditor (article 577).

MoJ agrees with the problem identified, but the solution will be further discussed internally.

Question 8. According to your experience, which are the main negative implications of not having a specified time period for the transfer of possession from the debtor to the buyer / creditor?

IV. Closing the process



Question 9. In average, what is the share of the loans under foreclosure (in %) that your bank had to take the possession in exchange of the debtor's liability?

Question 10. In average, what is the share of loans for which the price in the second auction (the value of taking the property in possession) is:

1. Lower than the value of amount to be recovered from debtor? _____ %
2. Higher than the value of amount to be recovered from debtor? _____ %

Question 11. What is the average share of loans for which the re-selling mortgage price (by the banks) was lower than the price set for the second auction? _____ %

Question 12. What is the share of loans under foreclosure that your bank decided not to take the property in exchange of the debtor's liability? _____ %

Annex 1.

Nr.	Current Civil Procedure Code	PWG Alternative
1	<p><u>Article 141</u> Notification to institutions, enterprises and other legal persons is made by means of delivering the copy to the office of the chief executive officer and to the persons responsible for receiving acts. Notification to non-state legal persons is made to their headquarters by means of delivering the copy of the act to the representative or person responsible to receive notification and in their absence to another person who works in those headquarters of that legal person.</p>	<p><u>Article 141</u> The article 141 is changed as follows: The notification process for the legal persons is the same as for the private persons (art.133). The last sentence of article 133 is changed as follows: The notification is posted in district court, district commune or birthplace or last known location</p>
2	<p><u>Article 144</u> The court may order by decision also other means of notification than those stipulated by the law such as by a telegram, facsimile, when the reception is confirmed in writing, by a written notice delivered by hand and other means which guarantee a regular notification, when required by special circumstances or by the necessity of a fast notification.</p>	<p>Following the article 144 is added the article 144/a: “The rules in this chapter on notifications are applied by the public and private Bailiff Service.”</p>
3	<p><u>Article 511</u> The executive title is executed on the request of the creditor. For this purpose the order of execution is issued which is given :</p> <ul style="list-style-type: none"> a. by the court which has taken the decision in cases stipulated in letters a and b of the preceding article; b. by the Court of Appeals with regard to decisions by courts of foreign countries and of foreign arbitration courts which have been given implementation power in conformity with the provisions of this Code; c. by the court of the place where decision has been issued in cases stipulated in letter ç of the preceding article; ç. by the court of the place where it has been determined to make the execution in cases stipulated in letters d, dh and e. 	<p><u>Article 511</u> The first paragraph is changed as follows: “For this purpose the executive title is issued within 5 days from the date of the creditor’s, which is given:” The last paragraph is changed as follows: “For the sigurimin e padise and the fines written by the court are not issued executive orders, which are executed directly from the bailiff office, after the notification of the decision.”</p>
4	<p><u>Article 513</u> Execution order for separate assets and persons The execution order is issued in only one copy. When separate properties must be handed over or when the execution title has been issued to the benefit or against several persons separate execution order may be issued making a note as which part of the title must be executed for each execution order.</p>	<p><u>Article 513</u> The first sentence is changed as follows: “The execution order is issued in two copies.”</p>
5	<p><u>Article 515</u> Commencement of execution The execution title is executed by the bailiff on request by the creditor as well as by the prosecutor in cases when he has sued.</p>	<p><u>Article 515</u> For the execution of the executive titles the creditor should prepare the file containing: The request for execution, the executive title, the executive order, the receipt of paid tax, if necessary the act of procurement. If the bailiff considers the file is not adequately complied the creditor has 5 days to fill in the file correctly. The request for execution is considered as registered from the date presented in the bailiff office. The bailiff should execute the executive order within 15 days from the submission of the request.</p>

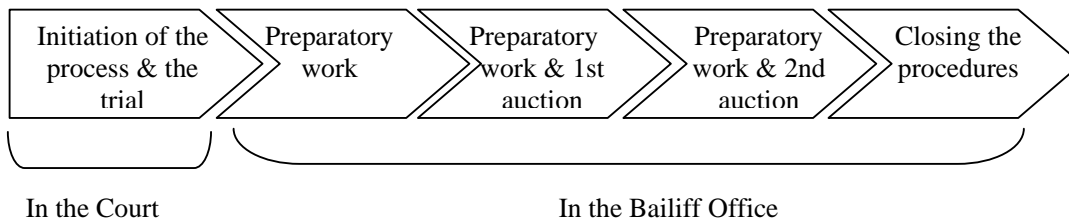
Nr.	Current Civil Procedure Code	PWG Alternative
		<p>Court orders on masen e sigurimit te padise / charge of securing the lawsuit and the penalties issued by the court are executed within 5 days from the day of announcement. The tax for the execution process is not prepaid in the cases defined by the law.</p>
6	<p><u>Article 517</u> The voluntary execution</p> <p>At the start of the execution, the bailiff sends to the debtor a notice to execute voluntarily the obligation contained in the execution order designating for this a term of 5 days when its subject is salary or obligation for sustenance and of 10 days in all other cases. On request by the debtor, the first level court of the execution place, in special cases, taking into consideration other circumstances of the case may postpone the term of execution of the obligation in cash or may divide such an obligation in installments. The decision is given in court session, after the parties have been notified and a special appeal may be made against such decision.</p>	<p><u>Article 517</u></p> <p>In the second paragraph is added:</p> <p>“Upon the debtor’s request and after the creditor is expressed the court might postpone the time of the payment”</p> <p>The last sentence is changed as follows: “Against the decision parties might appeal.”</p>
7	<p><u>Article 522</u> The execution if the debtor’s address in not known</p> <p>When the residence of the debtor is not known, the court of the district of the place of execution, on request by the bailiff, after being directly clarified on this circumstance, nominates a representative of the debtor.</p>	<p>In the article 522 after the works “...on this circumstance...” is added “...within 10 days...”.</p>
8	<p>Article 525 Execution expenses</p> <p>The costs incurred for the execution of each action are initially paid by the creditor and then are withheld from the ensuing amount and returned to the creditor.</p>	<p>A paragraph is added at the end of article 525, as follows: “The creditor has to pay only for the initial fees of the procedures”</p>
9	<p>Article 528 The sequester order on a different property</p> <p>On request by the debtor, seizure may be placed also on another property other than the one indicated by the creditor when the bailiff estimates that it fulfils the request of the creditor.</p>	<p>At the end of article 528 is added, as follows: “...apart the case when both parties with an act have defined the wealth (properties) that will secure the claim in which execution is requested.”</p>
10	<p><u>Article 560</u> The sequester order</p> <p>The execution of the decision of the court or of other executive titles on immovable assets of the debtor is made by placing seizure on them. Seizure is placed by its registration in the office of the register of immovable property of the act of the bailiff in which are noted the kind, nature and at least three borders of the immovable asset, its location as well as the mortgages and real rights which may be held on it. A copy of the act of the bailiff is communicated to the debtor bindingly.</p>	<p>In the second paragraph of the article 560 is added a sentence, as follows:</p> <p>“The act issued by the bailiff is registered by the Immovable Property Registry Office within 10 days after it has arrived.</p> <p>The last sentence of the article 560 is changed as follows: “A copy of the registry is forwarded to the debtor.”</p>
11	Article 564	Article 564

Nr.	Current Civil Procedure Code	PWG Alternative
	<p>Valuation of the property</p> <p>The seized immovable asset is appraised by the bailiff on basis of the value registered in the registers of immovable property or of the financial organ and in absence of such registration by experts.</p> <p>When the debtor or any other person having interest claims a higher value of the asset in comparison with the one existing in the registers of immovable property or of the financial the bailiff performs an other appraising process with an expert.</p>	<p>Valuation of the property</p> <p>The article 564 is changed as follow:</p> <p>“If the debtor and the creditor do not reach an agreement, the bailiff officer determines within 15 days the value of the property based on the expertise act presented by a <i>licensed</i> expert based on the market value, in the moment of seizure. The bailiff should notify the debtor and the creditor on the appraised value within 10 days from the appraisal process. Against the value both parties might appeal.”</p>
12	<p><u>Article 567</u> Auction procedures</p> <p>After placing the seizure the bailiff send to the debtor a notice that the asset shall be sold if he does not fulfill his obligation within 10 days from the notification.</p> <p>On the expiry of the above term the bailiff announces the sale of the asset by auction.</p>	<p>The article 567 To be abrogated</p>
13	<p>Article 569 The premises for the auction</p> <p>The auction of the immovable property is held in the office of the bailiff. It continues for 15 days and ends at the end of the official working hours of the last day which is indicates in the announcement for the sale by auction.</p>	<p>In the article 569 after the works “...in the bailiff office...” is added “...in the lodgment of the immovable property or in any other appropriate public place...”</p>
14	<p><u>Article 573</u> Notification of the winner</p> <p>At the end of the auction, the bailiff announces the winner. Buyer is the bidder who has given the highest price.</p> <p>Ownership to the asset passes on to the buyer only after he has paid the whole price, deducting from it the amount left as guarantee.</p> <p>The guarantees left by other persons who participated at the auction are returned to them immediately after the end of the auction.</p> <p>Detailed rules on the holding of auction are determined by a separate law.</p>	<p>The last paragraph of the article 573 is changed as follows: “The specific rules on the auction procedures are defined / set with a directive of the Council of Ministers.”</p>
15	<p><u>Article 574</u> Time limit to pay the price</p> <p>The buyer must pay the price of the asset within 5 days from the end of the auction.</p> <p>On payment of the price of the asset and the tax on the acts of sale of the asset the bailiff issues the decision for the transfer of the asset in ownership of the buyer. From that day the buyer gains all the rights that the debtor had on the asset.</p>	<p>In the first paragraph of the article 574, words “...5 days...” change in “...15 days...”</p>
16	<p><u>Article 575</u> Taking the possession</p> <p>The buyer is given possession of the asset by the bailiff officer against the debtor or the person to whom it is left in custody as well as against any other person who has the asset in possession. The third person may be defended against the removal of the asset from possession only by means of the suit on recognizing the right of ownership on the asset.</p>	<p>In the first sentence of the article 575, after the words “...the bailiff officer ...” is added “...within 10 days...”</p>
7	<p><u>Article 577</u></p>	<p><u>Article 577</u></p>



Nr.	Current Civil Procedure Code	PWG Alternative
	<p>Repetition of the auction</p> <p>When in the first auction no additional amount above the price at which sale started is offered, or there is no bidder, a new auction for the sale of the asset is held, applying the rules for the first auction. The new auction is held after three months have passed from the end of the first auction and on basis of a new price not lower than 20% of the first price designated by the bailiff in agreement with the debtor. When the asset is not sold even by the second auction the bailiff suggests to the creditor to take the asset against the claim/loan at the price designated for the new auction and when he refuses raises the seizure on the asset.</p> <p>When the creditors that request to take the asset against credit are several the bailiff declares as buyer the creditor who within three days from the suggestion gives a higher price than the one designated for the new auction.</p>	<p>The article 577 is changed as follows:</p> <p>If in the first auction no bidder has offered a higher price than the initial price, or there has been no bidder the sale continues with a second auction. The bailiff officer within 10days from the first auction determines the price, which is <u>20%</u> lower than the initial price. The second auction should start not later then 15 days after the price is set.</p> <p>Within 30 days from the payment of the price from the buyer or from the acceptance of the property form the bank, the bailiff places the property under the possession of the buyer / creditor.</p>

Annex 2. Flow of the Foreclosure Process



Grouping of the procedures

A. In the court

1. The creditor files the request to obtain the executive title;
2. The court secretary registers the request;
3. The judge is selected;
- 4 - 5. The judge sets the date of the trial and performs other preparatory acts (such notifications etc);
6. The trial;
7. Zbardhja of the ruling;
8. The secretariat records the decision for the executive title;
9. The decision is given to the party that filed the request.

B. In the Bailiff in the Bailiff Office

- I. Preparatory work
- II. Preparatory work for the first auction and the first auction
- III. Preparatory work and the second auction
- IV. Closing the process

I. Preparatory work

- 10 -12. The creditor prepares and delivers the file in Bailiff Office, pays the tax and requires the commencement of the execution process;
13. The secretary registers the request;
14. The bailiff officer is selected;
15. The bailiff officer reviews the file;
16. The bailiff officer sends a request for voluntary execution;
17. The bailiff officer starts the forced execution;
- 18-22. The bailiff officer issues the sequester order and notifies the commercial banks; the Regional Directory of Transport; the Tax office; the Immovable Property Registry Office;
23. The bailiff officer issues the conservative sequester order on the exact property that is mortgaged;
24. The RPR office records in the registry, in the file of the debtor and/or warrantor, the sequester order;
25. The sequester order information from RPR is collected from the bailiff officer or the creditor;

II. Preparatory work for the first auction and the first auction

- 26 - 28. The bailiff appraises the property based on the value register or hires an expert. The expert deposit in the Bailiff office the expertise on the property
- 29 – 30. The bailiff notifies both the debtor and the creditor on the settled value and announces the sale
31. Bidders pay the guaranty for the auction
32. First Auction is held

III. Preparatory work and the second auction

33. The bailiff set the price and the date of the second auction
34. Second auction is held



IV. Closing the process

35. The ownership is transferred only after is paid the whole price, less the initial deposit- guaranty.

36- 37. After the payment of the price and the taxes on sale the bailiff officer announces / delivers the transfer of ownership and the guaranties deposited by the other persons are turned back

38. If the sale price is higher than the debt then the creditor has to return back to the debtor the excess amount, after subtracting the expenses for the auction and other incurred expenses.

39. If the property is not sold, the bailiff proposes to the creditor that against the loan to take possession on the property with the new price. If the creditor refuses the sequester order on the property if removed.



SPI Project

Improving auction procedures for immovable collateral under foreclosure

Minutes

Fourth meeting

October 28, 2008—AAB premises

10:00 – 12:30

Project Objectives

1. To undertake analytical activities that would support the enactment of law amendment proposals.
2. To support the improvement of the Bailiff Office activity.
3. To improve the quality of the buildings evaluation.

Project Management Team

Project Owner (PO): Seyhan Pencapligil, General Director, BKT
Project Manager (PM): Veronika Prifti, Legal Department Manager, BKT
Deputy Project Manger (DPM): Rudina Gorishti, Legal Department Deputy Director, Bank of Albania

Attendees:

Kimmo Vikman, EURALIUS (peer-reviewer)
Odetta Hyseni, EURALIUS (observer)
Andin Jakova, BNT (member)
Andon Daka, Credins Bank (member)
Arta Taipi, UBA (member)
Ylli Kaceli, UBA (observer)
Petrit Qarri, MoJ (member)
Elona Bollano, SPI Albania Director of Analysis and Policy
Anuela Ristani, SPI Albania Director of Operations

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AGENDA

- I. Project Activity Brief
- II. Project Document on CPC PWG recommendations (Discussion and Approval)
- III. Project Document on Bailiff Improvement PWG recommendations (Discussion and Approval)
- IV. Impact Assessment Questionnaire on CPC amendment proposals (Discussion)
- V. Conclusions and distribution of tasks
- VI. Closing Remarks

I. Project Activity Brief

- As a response to the decision of the Council of Ministers to forward to the parliament legislative initiatives on contract enforcement, SPI Project Owner of the project on Auction Procedures forwarded on October 3 to SPI Committee members the up-to-date documents prepared by PWG for further actions and support. The documents under the SPI Project will be finalized by the end of October.
- SPI Committee member and AAB Chairman, Mr. Edvin Libohova, sent on October 6 the package on Auction Procedures to the Albanian Legal Parliamentary Commission to consider changes on the Draft Law on Bailiff Services Liberalization and on the Civil Procedure Code. The SPI Project Manager sent the same documents to MoJ for consideration.
- SPI Secretariat and the PMT discussed the proposals of the PWG on the CPC with Mr. Pal Metaj, Director of Foreclosure Department and Mr. Enid Minarolli, Adviser to the Minister of Justice. The representatives from MoJ agreed to include a major number of the PWG recommendations in the package to be forwarded to the Legal Parliamentary Commission
- SPI Secretariat has met with the Delegation of European Commission in Albania. As a follow up to Auction Procedures Project Owner correspondence to several institutions to map all related activities in this field, SPI Secretariat met with Mr. Aneil Sing, Head of Justice and Home Affairs Section and Ms. Ledia Muco, Economic and Trade Adviser.
- SPI Albania participated in the Parliamentary Hearings. SPI Secretariat and PMT participated in the hearing session of the Parliamentary Commission of Legal Affairs, Public Administration and Human Rights on the amendment proposals to the Civil Procedure Code. The PM presented to the Chairman, Mr. Rusmaili, and the members of the commission the Project Working Group amendment proposals and their respective arguments.

- SPI Secretariat has drafted the Project Document on CPC PWG recommendations.
- SPI Secretariat has drafted the Project Document on Bailiff Improvement PWG recommendations.
- SPI Secretariat has drafted the questionnaire for impact assessment and delivered it to the all the banks after approval by the PMT.

II. Project Document on CPC PWG recommendations (Discussion and Approval)

SPI Secretariat has drafted the project document on CPC PWG recommendation. This document represents all PWG work done so far with regards to the CPC changes. This document is structured accordingly to the EU Better Regulation approach and will be presented to the SPI Committee for endorsement.

The document is highlighting the project objectives and the importance of the PWG composition that represented all main stakeholders, giving thus more legitimacy to the project outcomes.

The Project Working Group Members, based on the draft proposal approved by the Council of Ministers in 2007, the documents prepared by SPI Secretariat, EURALIUS' recommendations, the Romanian CPC and their professional and practical experience in the foreclosure process, have discussed and agreed on 18 amendment proposals to the CPC. The purpose of these proposals is to achieve:

- fairness and equal treatment of parties during the foreclosure process;
- better use of resources and better regulated process;
- Enhanced efficiency of the enforcement system.

The document presents also the consultation process with banks and with MoJ. The financial effect of the amendment proposal will be assessed through the Impact Assessment Questionnaire.

The PWG members present in the meeting approved the document. However they recommended to SPI Secretariat to re-send the documents for the rest of the PWG to review before they are finally presented to the SPI Committee.

III. Project Document on Bailiff Improvement PWG recommendations (Discussion and Approval)

SPI Secretariat presented the project Document on Bailiff Improvement PWG recommendations for approval. The document is structured accordingly to the EU Better Regulation approach and will be presented to the SPI Committee for endorsement.

PWG recommendations refer both to the existing Public Bailiff Service and to the projected Private Bailiff Service as proposed by MoJ draft law:

- Recommendations on the Public Bailiff Service:

A. General recommendations

PWG considers that regulators should develop a more efficient legislative framework that regulates the enforcement process by:

- a. Enhancing the soundness of the legislative framework through:
 - i. revising and harmonizing the primary and secondary legislation in order to define better the procedures and the general time line of the process;
 - ii. defining more accurately the mutual obligations and responsibilities of the state institutions involved in the enforcement process (the Immovable Property Registry Office, Regional Directory of Transport, the State Police etc)
 - iii. providing an equal and fair treatment of all parties involved in the enforcement process;
- b. Rationalizing the tax and fee system in order to put in place incentives for a successful conclusion of the process;
- c. Improving the uniform law application.

B. Specific recommendations

The Bailiff Service activity should be improved through more transparent and clear internal procedures and rules, and by developing better practice by:

- a. building up strong control and supervisory structures responsible for the full compliance with the ethical, disciplinary and professional requirements;
- b. improving human resources management, with special attention to the process of recruitment, motivation, professional evaluation and reward;
- c. organizing more intensively workshops with senior experts in the field of law enforcement in order to agree on common interpretations on primary and secondary legislation;
- d. establishing long-term training strategies for the bailiff officers to enhance their level of professional expertise;
- e. building up specialized expertise by case typologies establishing a Code of Best Practices of the enforcement system (required for both private and public bailiffs);
- f. setting up a transparent and fair selection process of the appraisal experts;
- g. using more effectively the information collected by banks on debtors in order to trace the debtor or sources of debtor's income or property.

- Recommendations on the Private Bailiff Service

The largest part of the consulted stakeholders considers the establishment of the private bailiff service as premature given the state of the development of the society and institutions.

Regarding the proposed draft law, PWG recommendations are:

A. General recommendations:

- a. To better align the proposed legal initiatives to the existing legislative framework that regulates the enforcement process;
- b. To establish a sound legal structure for the private bailiff officers so that within this structure all the necessary professional expertise, logistics and financial are assured;

B. Specific recommendations:

- a. To define accurately the functional and territorial competences of the public and private bailiff offices;
- b. To design an impartial fee system to achieve a fair treatment of all parties involved in the process and to set up a level playing field for both private and public bailiff.

The PWG members present in the meeting approved the document. However as in the CPC case, they recommended to SPI Secretariat to re-send the documents for the rest of the PWG to review before they are finally presented to the SPI Committee.

IV. Impact Assessment Questionnaire on CPC amendment proposals (Discussion)

The SPI Secretariat presented the Impact Assessment Questionnaire to the PWG. The questionnaire was approved by the PMT and was sent to the banks for their feedback due to time restrictions introduced by the legislative procedures taking place for the CPC. The purpose of this survey is to assess the economic impact that these amendment proposals will have in the banking community. This Regulatory Impact Assessment (RIA) seeks to provide an estimate of the possible incremental costs and benefits generated by each individual provision, trying to identify as well the area where the major part of underlying costs and benefits will be concentrated. This will help regulators and banks in the forthcoming negotiations to better acknowledge the costs and the benefits that these amendment proposals, in individual and in aggregate level, will produce.

The PWG members analyzed some of the questions in terms time savings - how much time the proposed changes will save for the banks compared to the previous provisions. SPI Secretariat took note of the suggestions and will reflect them on the document highlighting the main findings of the survey.

V. Conclusions and distribution of tasks

- SPI Secretariat will send the Project Documents for the CPC amendments and the Bailiff Improvement PWG recommendations to the PWG members for their final approval before presenting the document to the SPI Committee.
- SPI Secretariat will collect individual contributions on the Impact assessment questionnaire, aggregate the results and prepare report on the findings. The report will be presented to the PWG during the next PWG meeting.

VI. Closing Remarks

The fifth meeting is planned to focus on appraising standards - and is preliminarily scheduled to take place in the last week of November, 2008.