



Project: Improving auction procedures under foreclosure for immovable collaterals

Time: Friday, 4 July, 2008, 10:00 am

Location: Albanian Association of Banks

First Working Group Meeting

AGENDA

- Welcome Note—SPI Regional Director and Project Manager
- Introduction of the Participants
- Project Terms of Reference presentation (Discussion and approval)
- Presentation of the Draft Note on Enforcement of Collateral
- Conclusions and distribution of tasks
- Closing Remarks

SPI Albania Secretariat

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TERMS OF REFERENCE

Project: Improving auction procedures for immovable collateral under foreclosure

Project Owner:	Mr. Seyhan PENCAPLIGIL, BKT.
Project Manager:	Ms. Veronika Prifti, Legal Affair Department, BKT.
Deputy Project Managers:	Ms. Rudina Gorishti, Legal Department Bank of Albania Ministry of Justice – the Enforcement Department
Technical Anchor (TAN):	Kimmo Vikman, Expert on Enforcement of Ruling, Euralius.
Project Working Group:	Representatives of banks, BoA, representative of the MoJ, representatives of the General Directory of Bailiff Services (second phase), IFC, representatives of the Ministry of Public Affairs Telecommunication and Transportation, Association/Federation of Appraisers (second / third phase), etc.

I – Background - Identification of the problem.

The procedures for the foreclosure of the collateral in Albanian 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). These procedures refer to the selling method – public auctions -, the schedule of the auctions and the evolution of the price for each auction. The law allows only for two auctions to be organized under a foreclosure procedure and if no buyer qualifies, the creditor can take possession of the immovable, at the given price in exchange of its receivables, or, in case it refuses, the foreclosure procedure is considered as ended and the creditor has to identify other ways to recover its claims. Therefore, banks are indirectly forced to take possession of the immovable when it is offered in a public auction.

At present, the enforcement on immovable property is very rarely a success. In the World Bank's Doing Business 2008 Report, Albania is ranked 74th 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 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 (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 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 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 cumbersome procedures and impairment of the value of the collateral. According to EURALIUS 2006 assessment, the bailiff's officers also criticize the process as they must follow a procedure which is likely to fail and they feel like doing something useless.

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. In addition to financial effects, the non-execution of a court order influences negatively the image of the state institutions in general and of the legal system in particular.

To tackle the problems with the current legal framework several initiatives have been undertaken.

AAB, in collaboration with a foreign expert, has undertaken in 2005 an initiative to propose improvements in the foreclosure procedures for collateral. Ministry of Justice came up in 2006 with a legislative initiative in this respect and banks protested it. Following this feedback, 60 – 70% of the banks' proposals were taken in consideration by the Ministry and the new version of the law amendment proposal was sent by the beginning of 2007 to the Parliament for enactment. Due to the political context, the proposal was rejected and withdrawn from the

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.

Parliament and although it should have been re-discussed 6 months later (by the beginning of 2008), nothing has been done until now.

In addition to the initiatives undertaken by the Ministry of Justice with the Albanian institutions another area of collaboration in this issue is built with Euralius, the European Assistance Mission to the Albanian Justice System. Euralius has published a full set of recommendations for the improvement of the Civil Procedure Code with focus on enforcement on immovable assets. They have performed also studies and recommendations on how to improve the organization and functioning of the bailiff service.

Other international institutions, such as World Bank, IFC and others, have addressed the issue of collateral execution in Albanian as well. The problems encountered by debtors and creditors during the foreclosure procedures are considered as an important factor that has hold back mortgage loan development in the country.

II - Project Objectives - Definition of policy goals

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.

III – Intended Strategy

The project management group (Project Owner, Project Manager, Deputy Project Manager, supported by the SPI Secretariat) will act based on the mandate received from the SPI Committee to support improvement of the auction procedures for buildings.

1. First Stage of the Project:

The project management group (PMG), with the support of SPI Albania Secretariat, will work on raising the awareness on the importance of promoting the law amendment proposals by:

- a. Preparing a note on the impact of the current situation on banks and on consumers, (taking as reference the previous communication sent to the Parliament) by MoJ and Euralius study and recommendations;
- b. Preparing the SPI Committee members' letters to the Ministry of Justice and to the Head of the Legal Parliamentary Commission having attached the note;
- c. Building up an advocacy campaign so that the final draft of the Civil Code amendment proposal is presented / discussed in plenary session in the Albanian Parliament (by asking individual banks and other institutions to support the action).

2. Second Stage of the Project:

The project management group (Project Owner, Project Manager, Deputy Project Manager, supported by the SPI Secretariat) will seek to acquire a mandate to discuss in a public-private working group possible ways to improve the efficiency of the Bailiff Office activity, particularly in the context of the new collateral enforcement law, by preparing a

letter to the Ministry of Justice offering SPI Albania support in their initiatives related to the Bailiff Office. This second stage of the project is following generally the Better Regulation approach, without the quantitative assessment of the costs and benefits, given that, according to SPI Secretariat knowledge, MoJ is already working on privatizing the Bailiff Office and SPI is intending to support only this initiative.

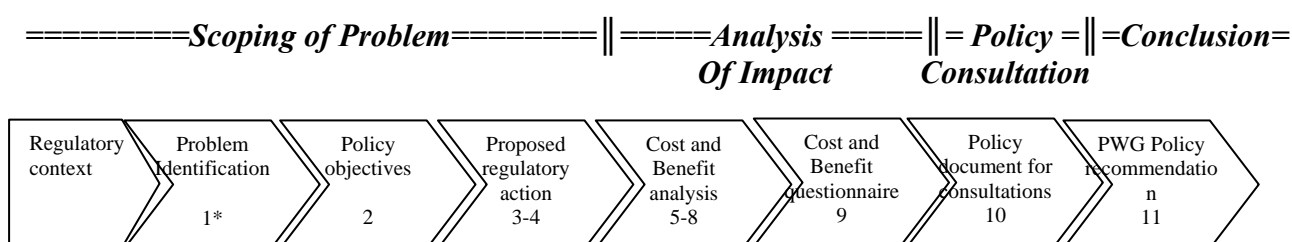
Pending on MoJ reply (mandate) PWG will:

- (i) ask to the MoJ to appoint its representative in the PWG;
- (ii) conduct through AAB a survey in the banking community on the difficulties in cooperating with the Bailiff Office.

Based on the survey results and on the international experience SPI Secretariat will prepare an issue paper for the PWG discussions. PWG should identify possible solutions to the raised problems and should formulate the recommendations/proposals for improving the Bailiff Office activity.

After consultations with AAB and BoA, the solutions addressing all stakeholders' concerns should be presented for SPI Committee endorsement and forwarded to the Ministry of Justice.

3. Third stage of the project:



*See attachment

For this third stage, as promoting appraising standards would be an SPI initiative, the Better Regulation approach is fully applicable. In order to understand the problem and to identify the possible regulatory/self regulatory measures, PWG with SPI Secretariat support will prepare a study on the international experience and on the importance of having objective and uniform evaluations standards of buildings.

In addition, PMG will work on raising the awareness of the public on the value and impact that the common set of standards for property evaluation.

The document presenting the draft law proposal on the compulsoriness of standardizing the appraisals as an alternative to the industry's initiative, backed by the background study, will be presented for SPI Committee endorsement and forwarded to the Ministry of Justice/Ministry of Public Affairs, Transportation and Communication and to the Appraisers' Association.

PMG and SPI Secretariat should follow the implementation of the proposals and inform accordingly SPI Committee, PWG members and stakeholders.

IV- Methodology: from kick off to the accomplishment of the project

A. First PWG Meeting

Preparation of PWG 1st meeting (PM/DPM and SPI Secretariat)

The Project Owner will appoint PM and ask BoA and MoJ to appoint the DPMs. SPI Secretariat will draft the invitation letters.

SPI Secretariat will draft an action plan with the necessary steps to be undertaken by the PWGs.

SPI Secretariat, based on the information collected from AAB, BoA, Euralius and other sources will prepare the draft note on the impact of the current situation on banks and on consumers.

PMG, with the support of SPI Secretariat, will prepare the draft letters to be addressed by SPI Committee members to the Ministry of Justice and to the Head of the Legal Parliamentary Commission accompanied by the note. The letter to MoJ will make reference to SPI Albania support in their initiatives related to the Bailiff Office.

PMG, with the support of SPI Secretariat, will prepare a draft action plan on the advocacy campaign with the list of activities and parties that will be involved in order to achieve the re-discussion of the draft-law in Parliament.

After PMG clearance and before the 1st meeting, SPI Secretariat will send to PWG members the following documents:

1. Draft TORs prepared by SPI Secretariat and endorsed by PO and PM/DPMs.
2. Draft note on the impact of the current situation on banks and on consumers.
3. Draft SPI Committee letters to MoJ and Parliament
4. Draft action plan for the advocacy campaign.

PWG 1st meeting

Objectives: a) to agree on TORs; b) to discuss the note prepared by the SPI Secretariat; c) to discuss the content of the letters that will be addressed to the Ministry of Justice and to the Head of the Legal Parliamentary Commission; d) to outline possible actions, measures and parties that will be involved in the advocacy campaign.

Output: a) final ToRs; b) background note; c) letters to the Ministry of Justice and to the Head of the Legal Parliamentary Commission; d) action plan.

PM/DPM establishes **homework**:

- PWG members: provide input on the documents prepared and sent by SPI Secretariat.
- SPI Secretariat will run through AAB a consultation process with the banks on the documents.
- SPI Secretariat will ask for BoA Legal Department endorsement.
- SPI Secretariat: will prepare the minutes of the meeting, will prepare the final note and letter and the list of identified actions – individual contributions that will be followed in the advocacy campaign;

SPI Secretariat will integrate the results of the consultation process and BoA opinion and will send the documents for approval to the SPI Committee.

PMG and SPI Secretariat will follow up with the implementation of the advocacy campaign.

B. Second PWG meeting

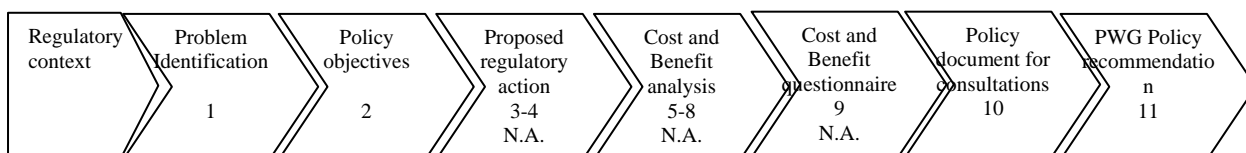
Preparation of PWG 2nd meeting (PM/DPM and SPI Secretariat)

PMG, with the support of the SPI Secretariat, drafts the questionnaire for the banking survey on the difficulties in cooperating with the Bailiff Office.

SPI Secretariat and PMG prepare a note on the international experience with regard to the functioning of the bailiff service.

SPI Secretariat will send the draft questionnaire and the note to PWG members before the second meeting.

PWG 2nd meeting



Objectives: a) to discuss and agree on the questionnaire; b) to discuss and improve the note on international experience.

Output: a) final questionnaire; b) final note on international experience.

PM/DPM establishes **homework**:

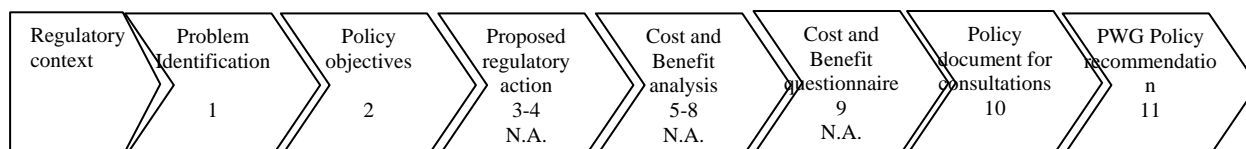
- SPI Secretariat: will prepare the minutes of the meeting, will run through AAB the survey, will aggregate and analyze the results of the survey.
- PWG members will provide other international experience for the note.

SPI Secretariat will send the results of the survey (issue paper) and the final note on international experience to PWG members before the third meeting.

SPI Secretariat prepares PMG's letter to Eurailus asking for assistance in defining possible solutions.

C. Third PWG meeting

PWG 3rd meeting



Objectives: a) to discuss and validate the findings of the survey; b) to discuss and identify possible solutions to the raised problems and for improving the Bailiff Service.

Output: a) survey summary; b) letter to TAN.

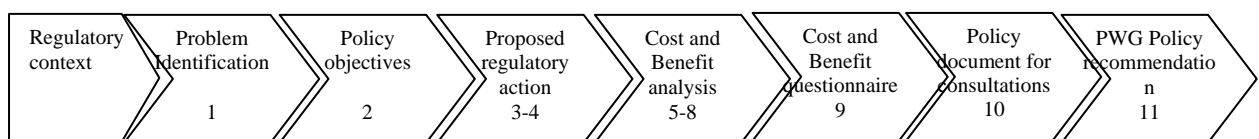
PM/DPM establishes **homework**:

- SPI Secretariat: will prepare minutes of the meeting, will integrate individual contributions and Euralius recommendations and will draft the document on PWG recommendations for SPI Committee endorsement.

SPI Secretariat will send to PWG members, AAB and BoA the draft document for agreement. After incorporating the received feedback, SPI Secretariat will send the document to SPI Committee for approval. The document will be accompanied by a draft letter to MoJ to be signed by SPI Committee members.

D. Fourth PWG meeting

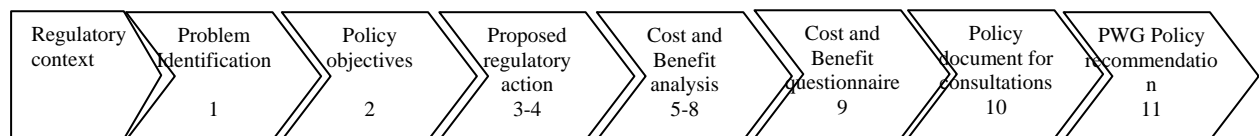
Preparation of PWG 4th meeting (PM/DPM and SPI Secretariat)



SPI Secretariat drafts the invitation letter to invite the Ministry of Public Affairs Telecommunication and Transport representative and the Appraisal Association representative. SPI Secretariat and PMG will prepare a background note on current situation and on the international practice on the buildings’ appraisal and on the importance of having uniform practices in evaluating buildings.

Output: First Draft of “Scoping of Problem” for PWG discussion.

PWG 4th meeting



- Objectives:
- a) To understand the current context and the policy goals;
 - b) To formulate recommendations on policy options and to identify the regulation to be amended or issued in case Appraisers’ Association will not agree with the idea of having evaluation standards;
 - c) To identify the impact for users, regulated firms and regulators.

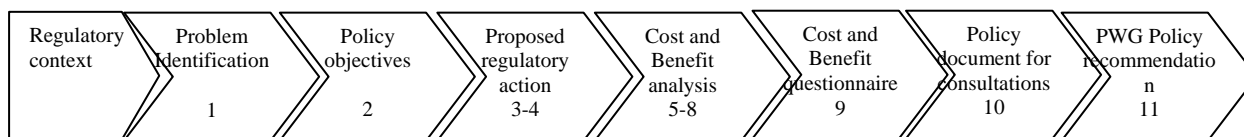
Output: Information to complete a document comprising the Scoping of the Problem and the Impact Assessment (Impact Assessment Analysis Document - IAAD) to be endorsed in PWG 2nd meeting. The IAAD covers steps 1-8 of the Better Regulation Template.

PM/DPM establishes **homework**:

- SPI Secretariat: will prepare minutes of the meeting, will integrate the individual contributions to the note on international experience;
- SPI Secretariat will prepare and send a letter to Euralius asking for their opinions on this issue;
- SPI Secretariat will incorporate Euralius’s opinions and recommendations.

E. Fifth PWG Meeting

Preparation of PWG 2nd meeting (PM/DPM and SPI Secretariat)



PMG and SPI Secretariat to draft the questionnaire for data collection.

PWG 5th meeting

Objective: To discuss and agree on the cost and benefit questionnaire.

Output: (a) Endorsement of IAAD (1-8) and (b) Final questionnaire

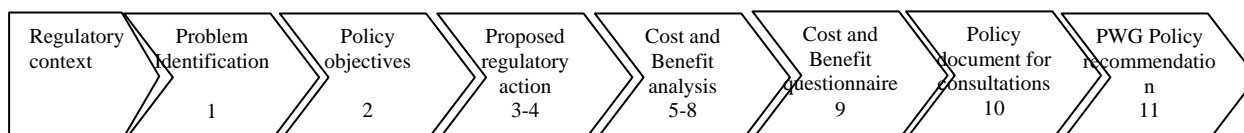
F. Sixth PWG Meeting

Preparation of PWG 3rd meeting (PM/DPM and SPI Secretariat)

SPI Secretariat to: collect data from PWG participating banks analyzing; summarize questionnaire results and prepare draft “Summary Impact Assessment” for PWG discussion and endorsement.

PMG and SPI Secretariat to draft policy option consultation paper and will follow up with the implementation of the advocacy campaign

PWG 6th meeting



Objectives: (a) To endorse Impact Assessment Analysis Document including “Summary Impact Assessment”; b) To finalize policy option consultation paper; c) To finalize the advocacy campaign.

Output: a) IAAD; b) final policy option consultation paper; c) advocacy campaign.

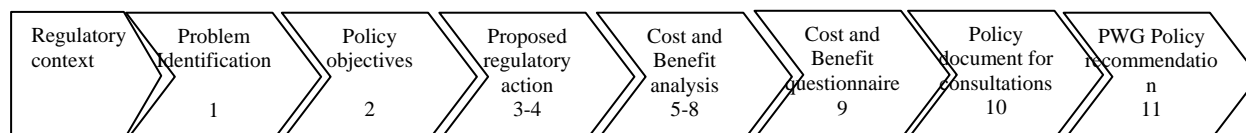
G. Seventh PWG Meeting

Preparation of PWG 7th meeting (PM/DPM and SPI Secretariat):

PM/DPM and SPI Secretariat to:

- a. Run consultations with stakeholders based on the policy option consultation paper;
- b. Draft feedback document;

PWG 7th meeting



Objective:

- a) To discuss the consultation feedback document and the policy document; and
- b) To agree on the policy recommendations.

Output: Policy recommendations.

Following PWG 7th meeting: Preparation of the SPI Committee paper.

After getting PWG agreement on the SPI Committee paper, SPI Secretariat will send the document for SPI Committee endorsement. The final document approved by the SPI Committee will be forwarded to the Appraisers' Association, Ministry of Justice and Ministry of Public Affairs, Transportation and Communication.

VI - Project Team

The team is composed of:

- Banks
- Bank of Albania.
- Ministry of Justice (MoJ) – starting with second stage.
- Directory of Bailiff Services - starting with second stage.
- Ministry of Public Affairs Telecommunication and Transportation– starting with third stage.
- Association/Federation of Appraisals Business Associations.

The team will be chaired by the Project Manager (a manager from a bank) and co-chaired by a Deputy Project Manager.

SPI Secretariat will report periodically to PO on the project progress.

VII – Tentative PWG meeting schedule

- First meeting June 2008
- Second meeting July 2008
- Third meeting July 2008
- Fourth meeting September 2008
- Fifth meeting September 2008
- Sixth meeting October 2008
- Seventh meeting October 2008

VIII - Consulted documents:

- Law N0.7850, date 29.7.1994, Civil Procedure Code, Republic of Albania.

- Euralius 2006, “Proposal for Improvement of the Civil Procedure Code (Euralius Activity 8.5) Part I; Part II, Part IV”, 2006.
- Euralius 2007, “Study on the Privatization of the Enforcement Service in Albania”, 2007.
- World Bank, Doing Business in Albania, 2008 Report.

Attachment

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

Source: CESR-CEBS-CEIOPS 3L3 Guidelines, adjusted by the Convergence Program based on experience.



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

**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; study cases
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.

Table 1. Detailed Process of Enforcement and Related Issues

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Conditions to start enforcement	In order for a charge to be valid, Albanian Law requires a written charge agreement which must be registered with the Registry of Securing Charges. Once registered, the agreement constitutes an immediately enforceable instrument, which can be enforced without further procedure.
Method of enforcement Creditor ability to control / lead	First, the charged asset is seized by the bailiff office and handed over to the charge holder. The chargeholder can then sell the charged asset as he chooses to do so.
Steps to enforcement Simplicity	The chargeholder must deliver a notice inviting the debtor to cure the default and warning that failure to do so within 10-day period will trigger enforcement. The charge agreement gives the right to have: - an enforcement order issued by court; and - an execution carried out immediately by the bailiff office. The procedure is simple and formal, without the court reviewing issues. The Bailiff office can then act immediately upon receipt of the enforcement order (without prior notice to the debtor). The charged asset is finally handed over to the chargeholder.
Costs of enforcement	The Bailiff office requires a non-refundable flat fee of 10% of the claim (not recoverable in practice).
Time involved Problems encountered	It seems that it is difficult for the debtor to delay or prevent the enforcement process. The courts are advised to postpone the enforcement procedure only in exceptional circumstances.
Third party priority	Claims to the proceeds of the sale of charged assets rank as follows: - Purchase money securing charges have priority over all other claims. - State budget obligations have super priority on all claims.
Scope of collateral and secured debt	It is possible to create charges over inventory. This type of charge would also include new acquired goods. However, the law is not clear as to what extent new/replaced assets are automatically included.
Insolvency	Insolvency has no impact on the method of enforcement and the priority of the secured claims.
Immovable assets / Receivables	<u>Immovable</u> : Charges require registration with the Immovable Property Registry. Mortgages can be only enforced through a public auction sale conducted by the bailiff office. Receivables: The same procedure as for movable assets applies.
Practical experience to support findings	Charge enforcement is not a common practice. The relevant legislation is still recent and secured transactions are still a new market instruments.
Institutional framework	Courts can be slow and not very experienced in handling enforcement cases.

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.

Annex 1 refers extensively of the results of the studies performed on the enforcement system in Albania.

EBRD underlines as core principle for formulating a mortgage law (see Annex 2) the prompt realization of the mortgaged property at market value and the low costs for taking, maintaining and enforcing a mortgage.

2. Impact of the current foreclosure procedures on banks; study cases

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 (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 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.

Case Studies

Xxx

3. Impact of the current foreclosure procedures on consumers

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

The non-execution of the foreclosure has negative ramifications 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 collateralists 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.

Glossary

Enforcement – the process of exercising the right to recover the secured debt out of the mortgaged property, including establishing the right to enforce, realising the mortgaged property and distribution of the proceeds from the realisation.

Mortgage – an ancillary right in immovable property entitling a creditor to recover his claim out of the mortgaged property. In legal terms it is important to make the distinction between the mortgage and the loan that it secures.

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EBRD 2001, Law in Transition, Contract Enforcement, Autumn 2001.

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The enforcement system in Albania

Why contract enforcement matters

Enforcement is central to commercial exchange, and therefore to economic and industrial development. Good enforcement procedures enhance the predictability of exchange, and reduce uncertainty by restraining destructive opportunistic behaviour among contracting parties. This, in turn, reduces transaction costs and promotes exchange.

If good enforcement procedures are lacking, economic agents will seek to minimise the risk of non-compliance by resorting to alternative structures² which hampers exchange and affect the economic and industrial growth of a country. The reluctance of economic agents to deal with strangers in a low contract enforceability environment entails a significant cost.

Security of transactions in Albania

Under the Albanian legal framework, security over immovable assets (mortgage) is governed by the Civil Procedure Code (art. 560-607). Charges over immovable property must be registered in the local registry for immovable property. Security over movable assets in Albania is governed by the 1999 Law on Securing Charges, which was fully implemented in 2001.

Table 2: Doing Business in Albania, selected indicators.

Ease of...	Doing Business 2008 rank	Doing Business 2007 rank
Doing Business	136	135
Registering Property	82	77
Getting Credit	48	45
Protecting Investors	165	165
Enforcing Contracts	74	76
Closing a Business	178	178

Table 2/A: Doing business – contract enforcement detailed information.

Enforcing Contracts	Albania	Region	OECD
Procedures (number)	39	35.9	31.3

² Alternative structures comprise spotmarket transactions or vertical integration, for a detailed review on the negative impact of these alternative structures see EBRD, Law in Transition, Contract Enforcement, Autumn 2001.

Duration (days)	390	443	443.3
Filing and service	30		
Trial and judgment	180		
Enforcement of judgment	180		
Cost (% of claim)*	31.8	22.7	17.7
Attorney cost (% of claim)	21.6		
Court cost (% of claim)	1		
Enforcement Cost (% of claim)	9.2		

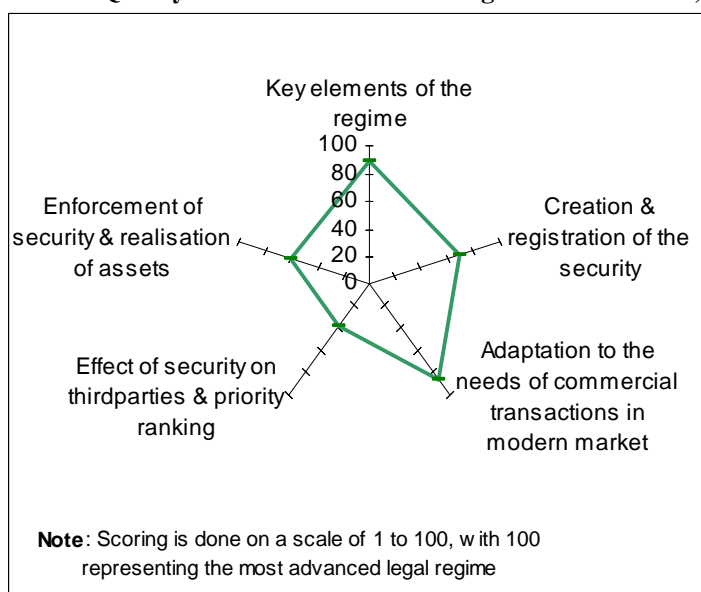
* Claim assumed to be equivalent to 200% of income per capita.

Note: The ease or difficulty of enforcing commercial contracts is measured below. This is determined by following the evolution of a payment dispute and tracking the time, cost, and number of procedures involved from the moment a plaintiff files the lawsuit until actual payment.

Source: World Bank.

Chart 1 depicts the results of the EBRD Regional Survey of Secured Transactions Legislation 2004 providing a glimpse on quality and major shortcomings and achievements of the legal framework on secured transactions.

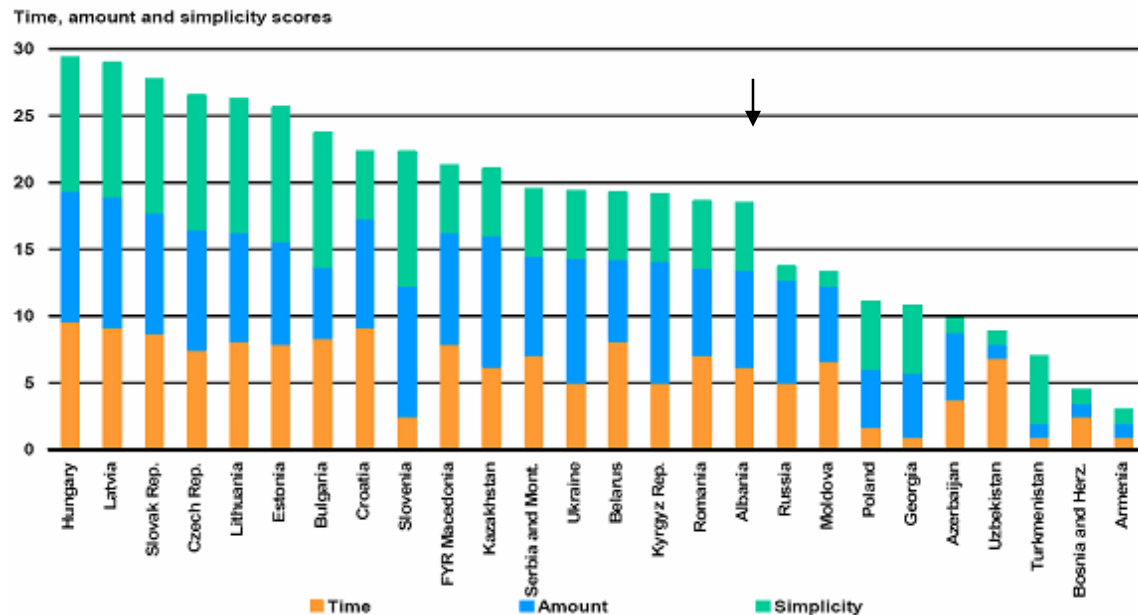
Chart 1. Quality of secured transactions legislation – Albania, 2004



Source: EBRD 2006.

As shown by the chart, the legal framework is generally clear, comprehensive, and provides the right flexibility to accommodate relatively sophisticated transactions. Users report positive experiences associated with the perfection of a charge at the Central Registry. A drawback lies with the priority of secured creditors as priority may be lost to some employee, social security and state claims. However, **the weakest point of the regime is found in enforcement.**

Chart 2. Effectiveness of the Charge Enforcement Process – Albania 2003



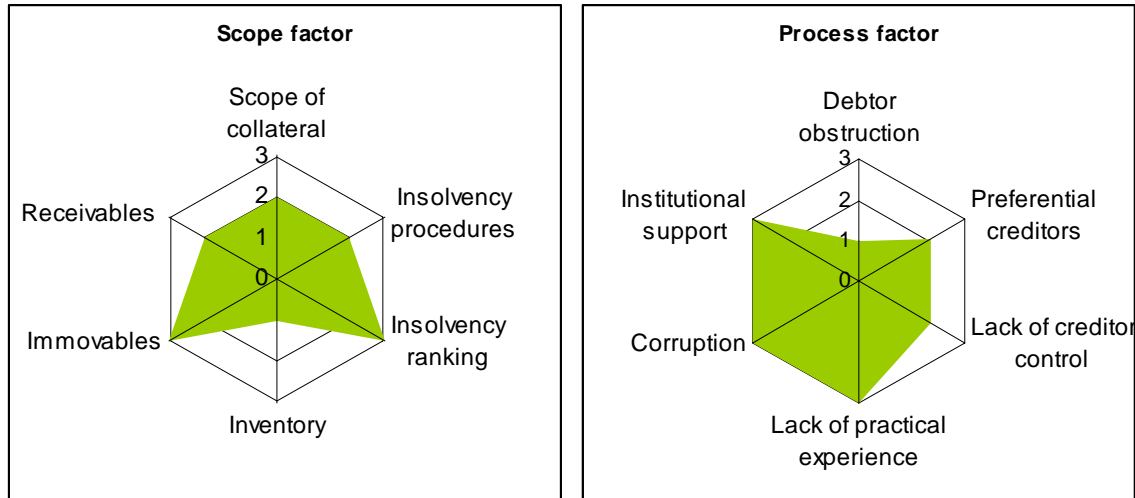
Note: The chart shows how much a secured creditor can expect to recover (amount), how quickly (time), and how simply (simplicity). The higher the bar, the more efficient and creditor-friendly the system is. Source: EBRD 2006.

The amount indicator reflects the likely return on the realization of the assets minus the enforcement costs (since the costs will be recovered out of the sale price and will therefore diminish what the secured creditor will recover from the collateral). The amount has been adjusted on a scale of 0-10 where 10 equals the maximum possible return. The time indicator reflects the estimated length of the process necessary for successful enforcement, from the commencement of the enforcement procedure to the collection of the proceeds of sale. The time has been adjusted on a scale of 0-10 where 0 equals the longest estimated time (24 months) and 10 the shortest (one month). The simplicity indicator summarizes a range of factors, including the number of procedural steps to be taken, the number of places to visit or persons to contact, the availability of information, clarity of the law and regulations, uniformity of practice, the adoption of necessary implementing regulations and the ease of ascertaining the existence of competing claims. To simplify the scoring, countries were given a 10 where the enforcement process was considered overall clear and with only a minor level of complexity; 5 where there was a significant likelihood of complexity or uncertainty which might prejudice the enforcement process; and 1 where there was a major level of complexity or uncertainty which could deter creditors from commencing enforcement.

These results, based only on the predicted return, timing and simplicity in a single situation, are not comprehensive. The efficiency of the enforcement process may be influenced by many other factors, or “qualifiers”, that add nuance to the ‘raw’ results on amount, time and simplicity. Twelve qualifiers were taken into account here. Six of these qualifiers account for difficulties which can be encountered in the process of enforcement, especially by involved parties or institutions being able to affect this

process. While, the rest of qualifiers relate to the scope of enforcement. Such factors include insolvency procedures and ranking of creditors under insolvency (a more detailed information on the qualifiers is presented in Annex I).

Chart 3. Qualifying Factors in the enforcement Process – Albania (2003).



Note: “Process” factors measure the impact that specific obstacles would have on the enforcement proceedings. “Scope” factors give an indication of how effective enforcement would be when conducted on various types of collateral and in the context of debtor insolvency. Scale: 3 (problematic area) to 1 (not problematic), the fuller the colored area, the more serious the problems are.

Source: EBRD 2006

The Process Factors qualifiers account for difficulties which can be encountered in the process of enforcement, especially by involved parties or institutions being able to affect this process. While some of these process-related factors may be reflected in the raw scoring (e.g., a high likelihood of debtor obstruction would have influenced the assessment of the time of the enforcement process), it is useful to assess them separately to gain a better understanding of the practical situation in a given country.

The Scope Factors include insolvency procedures and ranking of creditors under insolvency. The relevance of insolvency is self-evident. A creditor’s assessment of his security will change if, on examination, it appears that the relatively good enforcement that might be expected would be radically curtailed should the debtor be declared insolvent. Limitations on the kinds of assets that can be pledged, and variations in the legal procedures relating to different classes of assets.

Process Factors	Scope Factors
<p>Debtor obstruction: possibility for the debtor to prevent, slow down or otherwise obstruct the enforcement proceedings to the detriment of the chargeholder. Legitimate exercise of right of defense or appeal is not included.</p>	<p>Insolvency procedure: the impact of the debtor's insolvency on the enforcement process.</p>

<p>Preferential creditors: impact of claims of other creditors (other than prior-ranking secured claims) on the satisfaction of the secured creditor's claim.</p>	<p>Insolvency ranking: the priority of the secured creditor's claim upon insolvency of the debtor.</p>
<p>Creditor control: ability of the creditor to control or influence the conduct of the enforcement procedure.</p>	<p>Receivables: an assessment of the simplicity and certainty of the enforcement process for a charge over receivables.</p>
<p>Institutions: reliability of the courts and other institutions necessary to support the enforcement process.</p>	<p>Immovables: an assessment of the simplicity and certainty of the enforcement process for a charge over immovables.</p>
<p>Practical experience: the general level of practical experience with the enforcement process in the country in question.</p>	<p>Inventory: an assessment of the simplicity and certainty of the enforcement process for a charge over inventory.</p>
<p>Corruption: the impact of corruption within the court system on the enforcement process.*</p>	<p>Scope of collateral: the possibility to enforce against replacement and subsequently acquired assets included in the general description of the collateral.</p>

EBRD Core Principles for a Mortgage Law

The principles are drawn on the assumption that the role of a mortgage law is economic. It is not needed as part of the essential legal infrastructure of a country: its only use is to provide the legal framework which enables a market for mortgage credit to operate. The principles do not seek to impose any particular solution on a country – there may be many ways of arriving at a particular result – but they do seek to indicate the result that should be achieved. As with any set of general principles of this nature they must be read within the context of the law and practice of any particular country and they do not aim to be absolute; exceptions inevitably have to be made.

1. A mortgage should reduce the risk of giving credit, leading to an increased availability of credit on improved terms.

The first principle is overriding: If the legal framework for mortgage does not lead to a reduction in the risk of giving credit and an increased availability of credit on improved terms, then there is no point in the law providing for mortgage at all. This goes to the basic assumption made by EBRD on all its work on mortgage law reform. Every element of the legal framework should be analyzed against this basic principle.

2. The law should enable the quick, cheap and simple creation of a proprietary security right without depriving the person giving the mortgage of the use of his property.

The second core principle relates specifically to creation. It is more prosaic than the first but it permeates many aspects of the law on mortgage. The trio of simplicity, speed and inexpensiveness is fundamental and ties in directly with the concept of legal efficiency: formal requirements should be kept simple and the costs low. Every cost, irrespective of who bears it, that is involved in the creation of mortgage detracts from the benefits that mortgage provides. Any delays or complexities translate into cost.

3. If the secured debt is not paid the mortgage creditor should be able to have the mortgaged property realized and to have the proceeds applied towards satisfaction of his claim prior to other creditors.

This principle is also at the core of the mortgage's economic purpose. The exact nature of the proprietary right that arises when security is granted has to be defined in the context of the relevant laws, but if it is to be effective it must link to the creditor's claim the remedy of recovering from the property given as security.

The mortgage creditor should maintain a prior claim on the proceeds of realization of the property (subject to the right of any pre-existing, prior-ranking creditor).

4. Enforcement procedures should enable prompt realization at market value of the mortgaged property.

What gives a mortgage its value, and therefore enables borrower and lender alike to derive benefit from it, is the confidence that it can be used, if necessary, to repay the

creditor's claim. The greater the doubts of the creditor as to his ability to enforce or the conditions under which he would do so, the less will be the influence of the mortgage when he decides whether to lend and on what terms. When a creditor comes to enforce he needs to be able to realize the property rapidly. Delays in realization are likely to be a source of uncertainty and cost. The property should be realized at the same value as on any other sale in the market. Any surplus proceeds beyond those needed for satisfying the secured claim returns to the mortgagor, and there is no justification for penalizing him by a realization at below market value.

5. The mortgage should continue to be effective and enforceable after the bankruptcy or insolvency of the person who has given it.

The position against which the creditor most wants protection is the bankruptcy or insolvency of the debtor. Any reduction of rights or dilution of priority upon bankruptcy or insolvency will reduce the value of security. The validity of the mortgage should not be affected by insolvency (with the exception of fraudulent or preferential transactions or those carried out in the suspect period, but the same rules should apply as for other pre-insolvency transactions). Any rules permitting a moratorium or reorganization of the debtor's assets should aim to strike a fair balance between the interests of the mortgage creditor and other parties.

6. The costs of taking, maintaining and enforcing a mortgage should be low.

The mortgage creditor will usually ensure that all costs connected with the mortgage are passed on to the debtor. High costs of creation of mortgage (mortgage agreement, registration and so on) will increase the cost of borrowing and thus diminish the efficiency of the secured credit market. Enforcement costs will reduce the proceeds on realization and will influence a mortgage lender's assessment of the value of his security. Simple and fast procedures for creating and enforcing mortgage will help to reduce costs.

7. Mortgage should be available (a) over all types of immovable assets (b) to secure all types of debts and (c) between all types of person.

This principle covers a multitude of issues that may arise from legal tradition, the way the law is applied and the needs of commercial reality. A mortgage should be available over all types of immovable assets. There is little justification to allow mortgage over some properties and not over others. Similarly a mortgage should be capable of securing all types of debts, present and future, specifically or generally defined, that can be expressed as a money amount. Any physical or legal person (whether in the public or private sector) who is permitted by law to transfer property should be able to grant security over it to any other person.

8. There should be an effective means of publicising the existence of a mortgage.

Publicity is needed to ensure that any person can be alerted to the existence of the mortgage. When taking a mortgage the creditor will want to discover whether any pre-existing mortgages have a prior claim. And once his mortgage is created he will want to be sure that anyone subsequently claiming a right in the property is made aware of his claim. Without a reliable system for publicity a creditor is unlikely to have sufficient certainty in his rights in the mortgaged property.

9. The law should establish rules governing competing rights of persons holding mortgages and other persons claiming rights in the mortgaged property.

Certainty in his rights over the mortgaged property is key to the mortgage creditor. He needs to know what rights of other persons may take precedence over his right of mortgage, for example, other mortgages, tax liens, rights of occupation or rights of spouses, in order to be able to assess and value his security. The political or social justification for any right of a third party which dilutes or compromises the ability of the mortgage creditor to recover his claim out of the mortgaged property should be balanced against the loss of credit opportunity which may result.

10. As far as possible the parties should be able to adapt a mortgage to the needs of their particular transaction.

The law is there to facilitate the operation of the mortgage market and to ensure that necessary protections are in place to prevent the debtor, other creditors or third parties being unfairly prejudiced by the existence of the mortgage. Parties should be allowed wide contractual flexibility. There are few cases which justify the law, or the institutions that implement it, creating rules or barriers which limit the manner in which parties can structure their transaction principally at directing the manner in which parties to secured credit should structure their transaction.

EBRD, Focus on Secured Transaction, Ten Years of Secured Transaction Reforms



SPI Project

Improving auction procedures for immovable collateral under foreclosure

Minutes

First meeting

July 4, 2008—AAB premises

10:00 – 11:30

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:

Veronika Prifti, BKT (PM)
Rudina Gorishti, BoA (DPM)
Kimmo Vikman, EURALIUS (peer-reviewer)
Andin Jakova, BNT (member)
Ermanl Dobi, Tirana Bank (member)
Rezarta Bitri, MoJ (member)
Altin Hysi, Emporiki, (member)
Dorina Mehmeti, IFC (member)
Arta Taipi , UBA (member)
Odetta Hyseni, EURALIUS, (observer)
Yllka Majko, Tirana Bank (observer)
Ramona Bratu, SPI Regional Operations Director
Elona Bollano, SPI Albania Director of Analysis and Policy
Anuela Ristani, SPI Albania Director of Operations

SPI Albania Secretariat

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I. Welcome Note and Introduction of the Participants.

SPI Regional Director of Operations welcomed all the PWG members and introduced the PMT, and the SPI Albania Secretariat. All members introduced themselves and the institutions they were representing.

PM summarized the purpose of this project and the importance of the timing for the state authorities. In the past there have been 5 draft amendment proposals with regards to improvement of Civil Code on collateral execution procedures prepared by the banking community. None of them has been finalized. The banks, being the most interested party for this initiative, should commit themselves by contributing with their best expertise in order to maintain the momentum to register some progress before summer vacations.

II. Project Terms of Reference presentation

SPI Secretariat identified during the preparatory works three issues that could be tackled in order to improve the collateral enforcement procedures. Based on these, the SPI Secretariat has proposed three main objectives to be followed under this project:

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 project ToRs were developed following EU Better Regulation approach based on the two pillars: quantitative assessment on the impact of banks, consumers and authorities and on extensive consultations.

After the parliament rejected the proposed draft changes on the Civil Code, beginning of 2007, it was sent back to the Ministry of Justice (MoJ). MoJ will have to redo the entire process, part of which is running consultations with the main stakeholders. The project output should provide a common position of the Banking community to be presented during these consultations. The consultation process is expected to start in September.

Meanwhile, SPI Secretariat was informed that the MoJ has initiated a project on improving the bailiff office by “liberalizing” the activity. There is no clear reference as to what “liberalization” will entail for the bailiff office.

Given the new development the SPI Secretariat proposed to change the sequence of the project phases (to start with the bailiff office issue). However, the PWG members emphasized that it is important to be prepared for the upcoming consultation process by

2

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preparing the new amendment proposals. Therefore, the project will tackle both issues in parallel:

- a. Formulating the Civil Code amendment proposals
- b. Running a banking survey on the challenges that the current bailiff office services provide.

PWG members agreed on the timing and methodology to be followed, but demanded some more specific information on the changes for the bailiff services the MoJ is working on. SPI Secretariat has already contacted the Enforcement Department in the MoJ through Mr. Metaj (General Director) and will follow up with him on this issue.

In addition SPI Secretariat will collect the individual contributions from the banks in reviewing the last version of the amendment proposal. Together with their amendment proposals, PWG members will provide supporting comments and arguments.

EURALIUS (European Assistance Mission to the Albanian Justice System) introduced the principles to be followed in re-shaping the entire enforcement system.

- I. Making the collaterals more attractive for buyers through internet announcements; no compulsory initial deposits in auctions; introduction of the concept of liquidation prices.
- II. Fair treatment for all stakeholders.

The WG considers the current auction mechanism does not function since the prices are high (comparable with the market prices) and there are no warranties.

Some examples in support of the possible solutions to consider include the Romanian case where the Banks have their own bailiff officers. In Macedonia bailiff services are completely privatized.

Another principle is that all creditors and all debtors should be treated equally. The information should be provided to private creditors similarly to the information available to public authorities.

III. Presentation of the Draft Note on Enforcement of Collateral

The SPI Secretariat presented the draft Note on Enforcement of Collateral and asked the banks to provide study cases from real life experience. The logic is that banks working in an insecure environment will transfer the costs to the customers.

3

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IV. Conclusions and distribution of tasks

The main decisions and task are as following:

- Banks to send study cases on the impact of the current situation on the banks;
- Banks to make proposals for a new amendment to the Civil Code;
- SPI Secretariat to ask MoJ on the sense of the liberalization concept in respect of Bailiff Office;
- SPI Secretariat to provide them with the current MoJ legislative proposal and with the European Council recommendation on bailiff activities;
- SPI Secretariat to gather individual contributions and to send the aggregated document to all PWG members;
- Euralius will assess the possibility to disclose some excerpts from their internal Memorandum on collateral enforcement
- SPI Secretariat with PMG support to draft a questionnaire on the impediments perceived by banks in working with the Bailiff Office;
- PWG members to provide feedback on the note regarding the impact of the foreclosure procedures.

V. Closing Remarks

Next Meeting is suggested to take place during the last week of July 2008.

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