



DRAFT
SUBJECT TO PWG AGREEMENT
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TERMS OF REFERENCE

Project: Revising Public Procurement Law

Project Owner: Ministry of Finance, Debt Department

Project Manager: Ministry of Finance, Debt Department

Deputy Project Managers: Public Procurement Agency and
Banking Community

Technical Anchor (TAN): SIGMA or TAIEX (TBD)

Project Working Group: MoF– MoF Debt Department, Public
Procurement Agency and
representatives of banks

I. - Background - Problem Identification

Public procurement is the process of using public funds by certain public body, for the purpose of acquiring external resources, generally from commercial bidders. In order to regulate this process, as the part of public sector reform and in relation to future EU membership, Albania has adopted a modern public procurement Law no. 9665 dated 18.12.2006 in line with the Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.

The public procurement law regulates all main aspects of government and public bodies purchasing activities and provides them with the tools to be able to achieve “value for money” when procuring goods, services and works. It defines the main methods of public procurement, and steps to be used when applying them.

In Albania, foreign and domestic borrowing is governed by the Law no. 9665 dated 18.12.2006 on “State borrowing, state debt and state guarantee loans in the Republic of Albania”. According to article 26 of this law, in cases when Ministry of Finance obtains loans from private banks for financing public investments projects, creditor’s selection is made through public procurement procedures.

Recently foreign borrowing has gained momentum due to the access the country has to borrowing on the international financial markets, based on an improvement in 2007 of the country rating by Moody's. It is also the Government strategy to reduce domestic borrowing and increase foreign borrowing for financing investment projects and fiscal deficit, as outlined in the Public Debt Strategy for 2008-2010.

When contracting complex international loans, Ministry of Finance would need financial and other supporting services (eg. legal services) in order to better assess costs, risks and to increase its negotiating capabilities. The acquisition of such services should be treated as public procurement.

Article 7 of the Law no. 9643 dated 20.11.2006 excludes from the jurisdiction of the law financial services related to purchase, sale or title transfer or other financial instruments. This provision restrains Ministry of Finance's possibility to improve the contracting skills and power and it hampers banks to offering the necessary financial services.

This situation may have negative consequences for the Ministry of Finance in contracting international loans such as:

- Delays in contracting foreign loans, as the analysis is to be handled with internal limited resources, with results on liquidity and costs;
- Increase in the transaction cost risk due to limited analytics capabilities.

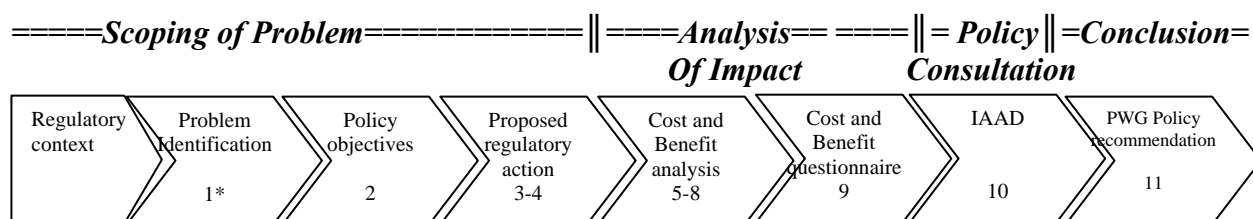
In this context, there is a need to revise the public procurement law to include clear provisions on financial services.

By regulating environment for procuring financial services, the access to foreign borrowing improves, thus facilitating Government financing needs. Also, including clear provisions on financial services reduces the transaction costs for the Government and increases transparency. On macro level, the investments could increase and therefore economic development would be stimulated.

II. - Project Objective

To improve Government debt contracting process by reviewing the current law on Public Procurement in order to cover the acquisition of financial and other supporting services.

III.- Intended Strategy-Description of the Better Regulation



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 review the public procurement law in order to include clear provisions on financial and other supporting services for debt contracting activity.

The project working group (PWG), with the support of SPI Albania Secretariat will analyze other countries' experience in relation to financial services procurement, in order to understand and apply them in the current Albanian regulatory framework.

Planned steps to achieve project's objective:

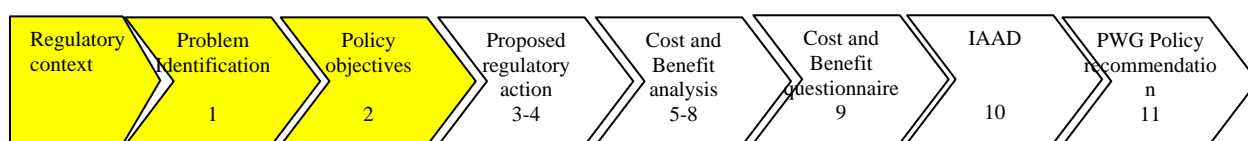
1. To identify the current legal framework that regulates foreign borrowing contracting and procurement processes.
2. To acquire a clear understanding on experiences in other European Countries in procuring financial and other supporting services associated to foreign borrowing.
3. Based on the analyzed documents, to formulate the regulatory amendment proposal.
4. To assess the possible impact of regulatory amendment proposals and run consultations on the proposed amendment/s.

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

The Project Owner will appoint PM and DPMs. SPI Secretariat will draft the invitation letters when necessary. The project working group members will be appointed by PM and by banks, following the invitation sent through AAB.

A. First PWG meeting

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



Preparatory works

PMG and SPI Secretariat to prepare: **a.** a background note on current regulatory framework; **b.** a note on European experience in regulating public acquisitions of financial and other supporting to debt contracting services.

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

1. Draft TORs;
2. Draft of “Scoping of Problem” document;
3. Background note on current regulatory framework;
4. Note on international experience

Objectives: To understand the current context and the policy goals

To acquire knowledge on other European countries' experience in regulating

financial and other supporting services associated to foreign debt contracting process.

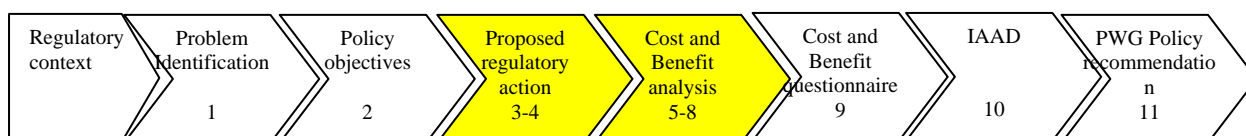
Outputs: Final ToRs

Final “Scoping of Problem” document

Approved note on international experience

SPI Secretariat will prepare the minutes of the meeting

B. PWG 2nd meeting



Preparatory works

A core of the PWG, with SPI Secretariat support, will prepare a proposal for potential PWG recommendations to amend the current regulatory framework.

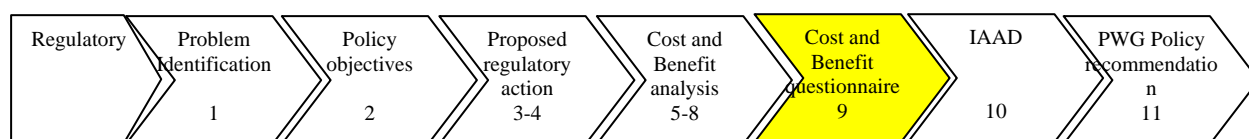
SPI Secretariat will prepare the draft qualitative analysis of the potential PWG amendment proposal/s.

Objectives: To formulate recommendations on policy implementation;
To analyze the qualitative impact for users and regulators.

Output: Proposed regulatory action (amendment/s)
Approved IAAD document up to qualitative impact assessment

SPI Secretariat will prepare the minutes of the meeting

C. PWG 3rd meeting



Preparatory works

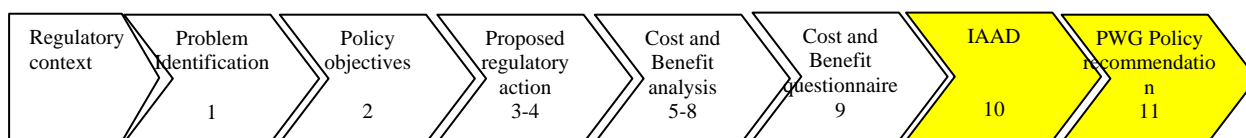
PMG will decide on the opportunity of having performed the quantitative impact assessment based on data provided by the Ministry of Finance – Debt Department. SPI Secretariat, with PMG support, will draft the questionnaire for data collection.

Objective: To discuss and agree on the cost and benefit questionnaire for assessing the quantitative impact of the regulatory amendment/s

Output: Final questionnaire.

SPI Secretariat: will prepare the minutes of the meeting.

D. PWG 4th meeting



Preparatory works

SPI Secretariat will collect data from MoF participating members and will summarize questionnaire results, preparing the draft “summary impact assessment” for PWG discussion and endorsement.

PMG and SPI Secretariat: to draft PWG recommendations on regulatory amendment proposal/s.

Objectives: To endorse Impact Assessment Analysis Document including “Summary Impact Assessment”;
To finalize PWG recommendations.

Output: IAAD
Final PWG recommendations.

Following PWG 4th meeting:

Preparation of the SPI Committee paper that will be approved by PMG.

VI - Project Team

The team is composed of:

- Ministry of Finance
- Public Procurement Agency
- Banks

Consulted documents:

1. Public procurement law no. 9665 dated 18.12.2006
2. Law no. 9665 dated 18.12.2006 on “State borrowing, state debt and state guarantee loans in the Republic of Albania
3. Public Debt Strategy for 2008-2010

Attachment

| The EU Better Regulation Approach | |
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| 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.