



DRAFT  
SUBJECT TO PWG AGREEMENT

## TERMS OF REFERENCE

### **Project: Improving auction procedures under foreclosures for immovable collateral**

<b>Project Owner:</b>	<b>Mr. Seyhan PENCAPLIGIL, BKT.</b>
<b>Project Manager:</b>	<b>Ms. Veronika Prifti, Legal Affair Department, BKT.</b>
<b>Deputy Project Managers:</b>	<b>Ms. Rudina Gorishti, Legal Department Bank of Albania Ministry of Justice – the Enforcement Department</b>
<b>Technical Anchor (TAN):</b>	<b>Kimmo Vikman, Expert on Enforcement of Ruling, Euralius.</b>
<b>Project Working Group:</b>	<b>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.</b>

#### **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

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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 74<sup>th</sup> 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<sup>1</sup>. 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 practice<sup>2</sup>.

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

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

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

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 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.

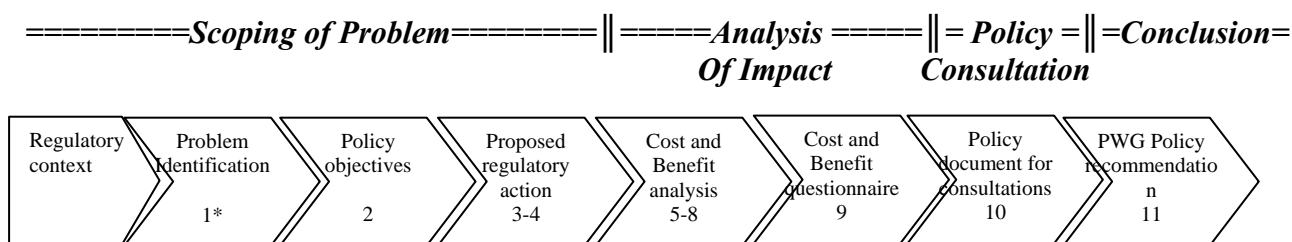
Pending on MoJ reply (mandate) PWG will:

- (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 1<sup>st</sup> 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 1<sup>st</sup> 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**

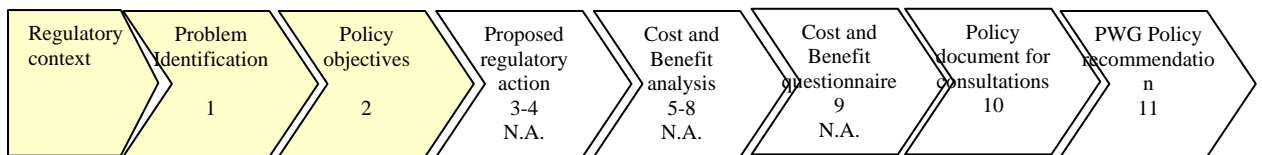
### ***Preparation of PWG 2nd meeting (PM/DPM and SPI Secretariat)***

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**:

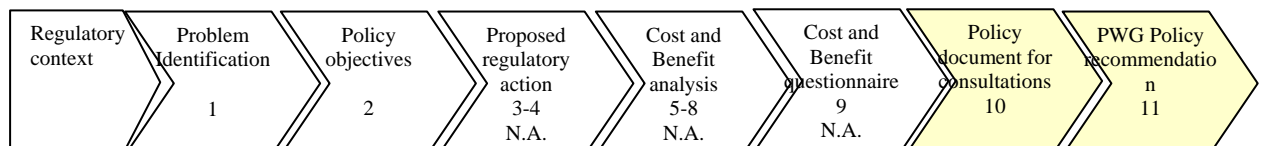
- SPI Secretariat: will prepare the minutes of the meeting, will run through AAB the survey, will aggregate and analyze the results of the survey.
- PWG members will provide other international experience for the note.

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 Euralius 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.

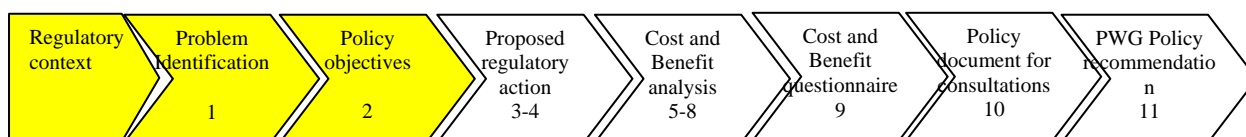
PM/DPM establishes **homework**:

- 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.

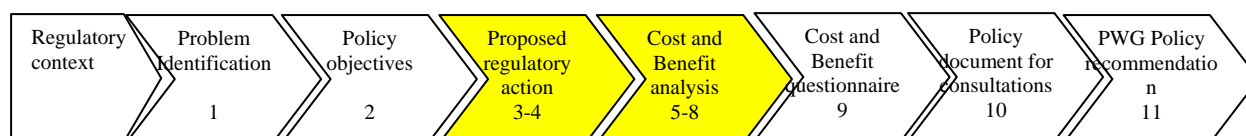
#### **D. Fourth PWG meeting**

##### ***Preparation of PWG 4<sup>th</sup> 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:
- To understand the current context and the policy goals;
  - 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;
  - To identify the impact for users, regulated firms and regulators.

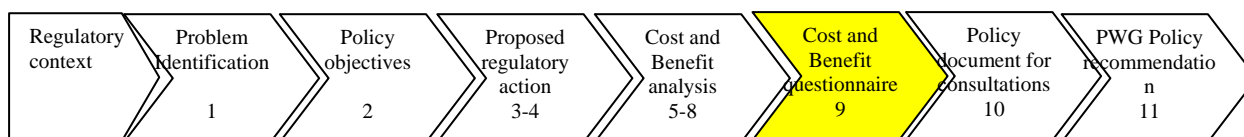
Output: Information to complete a document comprising the Scoping of the Problem and the Impact Assessment (Impact Assessment Analysis Document - IAAD) to be endorsed in PWG 2<sup>nd</sup> meeting. The IAAD covers steps 1-8 of the Better Regulation Template.

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 5<sup>th</sup> meeting**

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

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

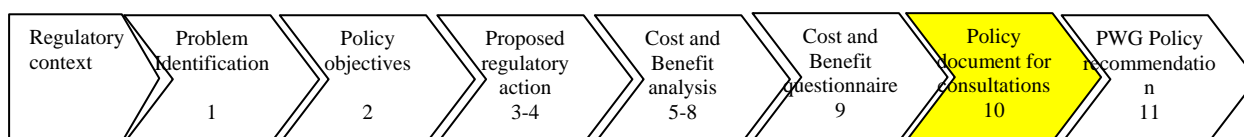
**F. Sixth PWG Meeting**

***Preparation of PWG 3<sup>rd</sup> 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 6<sup>th</sup> 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**

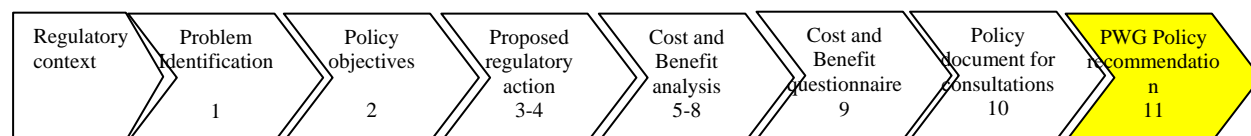
***Preparation of PWG 7<sup>th</sup> meeting (PM/DPM and SPI Secretariat):***

PM/DPM and SPI Secretariat to:



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

### **PWG 7<sup>th</sup> 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 7<sup>th</sup> 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

<b>The EU Better Regulation Approach</b>	
<b>Steps</b>	<b>Purpose</b>
<b>Scoping of problem</b>	
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”).
<b>Analysis of impact</b>	
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
<b>Consultations</b>	
10. Policy Document	To learn market participant opinions on various policy options
<b>Conclusion</b>	
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.