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Improving Auction Procedures for Immovable Collateral under Foreclosure: Supporting the improvement of the Bailiff Office's activity

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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

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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 tfee,, 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