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 Document approved by PWG
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SPI Project on: Improving Auction Procedures for Immovable Collateral under Foreclosure

Main findings of the Impact Assessment Analysis of the proposed amendments to the Civil Procedure Code

Summary findings of the Impact Assessment Analysis

The bank survey

In order to assess the cost and benefits generated by the changes in the current legal framework as proposed by the Project Working Group, SPI Secretariat run a bank survey based on a questionnaire. The Regulatory Impact Assessment (RIA) seek to provide an estimate of the possible incremental costs and benefits generated by each individual provision, trying to identify as well the area where the major part of underlying costs and benefits will be concentrated.

The **Impact Assessment Questionnaire** was focused on:

- The actual duration of the enforcement process, divided in 5 phases;
- The estimated time reduction of the process due to amendment proposals;
- Qualitative Impact Assessment analysis;
- Individual bank information regarding collateral backed loans, share of doubtful and lost loans, loans in foreclosure process;
- Other bank individual information related to loans in foreclosure process.

As no complete data could be obtained on loans, bad loans, loans under foreclosure, etc, SPI Secretariat used **assumptions and secondary data sources (shown in Annex 3)**.

Main findings of the analysis

The most immediate and visible effect of the amendment proposals will be a **lower number of days for the enforcement process** (as presented in Table 1). Currently the foreclosure process, in average, lasts 390 working days; the 18 proposed amendments could lead to a decrease in this period by 120 working days, increasing thus the efficiency of the enforcement process.

Table 1. **Present and estimated detailed impact of the proposed changes on the length of the enforcement process** (Note: - reduction; + increase; *Minimum number of days saved for each of the provisions).

Days	Total	Phase I Court		Phase II Preparatory Bailiff office		Phase III 1 st auction Bailiff office		Phase IV 2 nd auction Bailiff office		Phase V Proceedings Bailiff office	
Present	390	45		130		90		95		30	
Estimate	270	30		100		60		55		25	
Difference* (impact in days by article)		Article 141	- 15 days	Article 511	-10 days	Article 564	-5 days	Article 577	-40 days	Article 574	+10 days
				Article 515	-10 days	Article 567	-15 days			Article 575	-15 days

		Article 522	-10 days	Article 560	-10 days		
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The enhanced efficiency of the enforcement system will have positive ramifications on the assessment performed by various international institutions to measure and compare the business climate of large pools of countries regarding their economic and legal efficiency. A very important assessment of this kind is the one prepared by the World Bank on the easiness of doing businesses - the Doing Business report. This report investigates the regulations related to the business activity and assesses whether the legal structure in place enhances or constrains it.

In the 2009 Doing Business, through a set of quantitative indicators on 10 stages of the business cycle, 181 countries were analyzed, compared and ranked. For 2009, Albania was ranked 86th on the overall business environment, while in the section of Contract Enforcement was ranked 89th. According to our calculations, **if the Civil Procedure Code revision process and the consequent improvement of the foreclosure process was undertaken and finalized during 2008, Albania would have improved its rank in the Contract Enforcement section by 7 (seven) places.** These improvements would have made more resilient all the achievements made by Albania thus far.

Annex 1. Summary of the Impact Assessment Analysis

The quantitative impact assessment analysis aimed at assessing the economic impact on banks / creditor, consumers / debtor and authorities.

The impact on banks / creditors was measured based on a scenario analysis. In this analysis there are compared the outcomes of (i) the current situation, (ii) the situation improved with reference only to time and (iii) the situation (slightly) improved with reference to other improvements in the efficiency of the process.

The conclusion is **the recovery rate** of the bad debt will improve as follows:

(i) Under the current situation, for a five year period, banks recover 61.7 million euro or 80% of the amount of debt under foreclosure.

(ii) In the improved situation, with reference only to lower number of days, for a five year period, banks would recover 77.2 million euro or 87% of the amount of debt under foreclosure. The net difference due to regulatory change: a benefit of 15.5 million euros.

(iii) Under a slightly improvement of efficiency during the enforcement process (the process for small share of the portfolio under foreclosure is terminated in the auction organized by the bailiff office), banks would recover 80.2 million euro, or 90% of the amount of debt under foreclosure. Net difference due to regulatory change: a benefit of 18.5 million euros.

Table 1. Summary of the scenario analysis (Euro million)

	2009	2010	2011	2012	2013	Total
New Doubtful & Lost loans under foreclosure	11.7	14.3	17.5	21.4	26.2	123.3
Loans under foreclosure as %of total new doubtful & lost loans	20	20	20	20	20	
Loans under foreclosure as % of total loans	0.4	0.4	0.4	0.4	0.4	

Current situation – Foreclosure process 390 days						
Amount recovered in euro	9.3	10.6	12.1	13.9	15.9	61.7
Recovery ratio (Total amount recovered / Loans under foreclosure)	69%	69%	69%	69%	69%	

Scenario 1 – Foreclosure process for a lower number of days, 270 days						
Amount recovered in euro	11.6	13.3	15.2	17.4	19.8	77.2
Recovery ratio	87%	87%	87%	87%	87%	
Difference – benefit	2.3	2.7	3.0	3.5	4.0	15.5

Scenario 2 –Other improvements in the efficiency of the foreclosure process						
Amount recovered in euro	12.0	13.8	15.8	18.0	20.6	80.2
Recovery ratio	90%	90%	90%	90%	90%	
Difference – benefit	2.8	3.2	3.6	4.2	4.7	18.5

In terms of the costs related to the enforcement process and the costs of accrued interest to be paid to the creditor, the main findings of the Impact Assessment Analysis showed that a more efficient enforcement process would save costs and generate benefits to both debtors and creditors:

- **Benefits or cost savings for the creditor** would be achieved through the increased debt recovery ratio and the earlier usage of “frozen” funds i.e. bad loans under foreclosure. The benefits for the banking community would vary from **15.5 million to 18.5 million euros**. In an annual basis **these benefits amount to 5 - 7% of banks’ operational expenses** depending on the recovery moment (in the first or in the second auction).

- **Benefits and cost savings for the debtor** would be achieved firstly, through benefit transfers from banks / creditors to consumers / debtor. Over a five year period a sustainable portion of these benefits will be transferred to consumers in the form of lower interest rates or higher funds available for loans. Secondly, debtors will benefit from the improved enforcement system through reduced fees and other payments and accrued interest paid to the creditor. A slight improvement in the efficiency of the process would save **0.4 million euros for the debtors**. Cost saved through reduced fees and payments would be in addition to the costs saved in the form of accumulated accrued interests (the interest accrued until the debt is recovered).

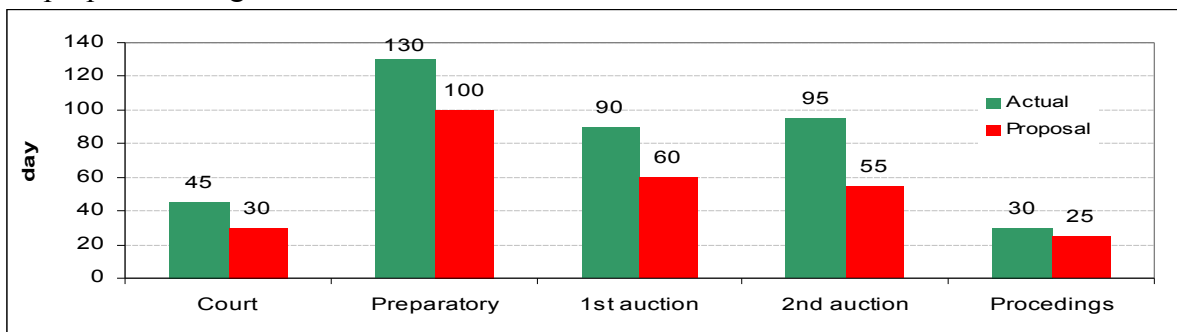
Annex 2. Detailed Impact Assessment Analysis

The amendments proposed by PWG members will result in:

1.1. Lower number of days for the enforcement process.

The duration of process, from an average of 390 working days is reduced to an average of 270 working days. The process will be shorter in each of its 5 components. The chart below present the time saved by adopting the proposed amendments, by phases of the process.

Chart 1. The present and the estimated duration of the enforcement process following adoption of the proposed changes



1.2. Increased benefits and cost savings for the banking system.

The quicker recovery of the funds previously engaged in loans under foreclosure would generate benefits for the banking system.

1.2.1 Current situation

In the current situation, the process rarely is terminated during the first or the second auction (confirmed by the banking survey). Almost always, banks (the creditor) have to take possession of the property and undertake the re-selling procedures.

The project working group members have identified two main typologies of foreclosure cases:

- A. when the loan is secured by collateral(s) located in one district;
- B. when the loan is secured by collaterals located in more than one district.

The assumption in this case is that the first typology makes up 80% of the foreclosure portfolio and the second typology makes up 20% of the portfolio. The distinctive feature of the second group is that according to the current provisions (article 513, the executive order is issued in one copy), if the loans are secured by collaterals located in more than 1 district, first the procedures in one bailiff office have to end and only after that the procedures in another bailiff office can start.

Assuming that banks (the creditor) recovers 80% of the debtor's liability, table 1 presents the calculations of the amounts recovered from the foreclosure process, under the current situation.

Table 1. Current Civil Procedural Code, Receipts from the collateral execution (million ALL)

Current situation	2009	2010	2011	2012	2013	Total
New Doubtful loans	3,652	4,469	5,470	6,694	8,192	
New Lost loans	4,926	6,028	7,378	9,029	11,049	
Total	8,578	10,498	12,847	15,722	19,241	
D & L under foreclosure						
As %	20%	20%	20%	20%	20%	
As amount of debt	1,715.6	2,099.6	2,569.5	3,144.5	3,848.2	
I. Recovered amount 1st auction						
	-	-	-	-	-	
II. Recovered amount 2nd auction						
	-	-	-	-	-	
III. The creditor takes possession of the property						
A. Amount of debt A collateral in 1 districts						
80%	1,372.5	1,679.7	2,055.6	2,515.6	3,078.6	
Recovered amount	80%	1,098.0	1,343.7	1,644.4	2,012.5	2,462.9
Present value	7%	923.4	1,056.1	1,207.9	1,381.5	1,580.1
						6,149.0
B. Amount of debt B collaterals in 2 districts 20%						
	343.1	419.9	513.9	628.9	769.6	
Recovered amount	80%	274.5	335.9	411.1	503.1	615.7
Present value*	7%	189.2	216.4	247.5	283.1	323.8
						1,260.0
Total amount recovered						
I + II + III	1,112.6	1,272.5	1,455.4	1,664.6	1,903.9	7,408.9
In euro equivalent						
	9.3	10.6	12.1	13.9	15.9	61.7
Recovery ratio (Total amount recovered / Loans under foreclosure)						
	69%	69%	69%	69%	69%	

Note: * During the discounting of the flows it is taken into consideration that actually the process in average lasts 390 working days or 1.6 years for the cases with collateral in one district and 735 working days or 2.9 years for the cases with collateral in more than one district.

1.2.2. Scenario 1 – Benefits to the banking system due to an earlier recovery of the debts

The most immediate effect of the revision of the Civil Procedure Code will be a faster enforcement process that will enable banks to recover earlier their funds. Banks might use these funds in profitable projects to generate additional income.

A. Cost savings for the share of portfolio under foreclosure, secured by collateral(s) located in one district

Table 2 below presents the detailed calculations, based on the assumptions presented in the first section of the documents, for 80% of the portfolio under foreclosure.

Table 2. Proposed Civil Procedural Code modifications, Costs saved for the banking system

Scenario 1 - Part 1	2009	2010	2011	2012	2013	Total
New Doubtful & Lost loans Total	8,578	10,498	12,847	15,722	19,241	
D & L under foreclosure	20%	20%	20%	20%	20%	
Amount of debt that will benefit	1,715.6	2,099.6	2,569.5	3,144.5	3,848.2	
% of loans that will benefit by these changes	80%	80%	80%	80%	80%	
Amount of debt that will benefit	1,372.5	1,679.7	2,055.6	2,515.6	3,078.6	
Estimated lending rate	9%	9%	9%	9%	9%	
Creditor takes the possession of the property						
a. Cost saving – Due to the reduction in days						
Estimated reduction, in days	120	120	120	120	120	
Annual benefit	59.3	72.6	88.8	108.7	133.0	
Present value in All	7%	51.8	59.2	67.8	77.5	94.8
						369.0
b. Recovered loans						
Annual benefit, recovered loans	80%	1,098.0	1,343.7	1,644.5	2,012.5	2,462.9
Present value in All	7 %	1,026.2	1,173.7	1,342.4	1,535.3	1,756.0
						6,833.5
Amount recovered (a+b)	1,081.6	1,237.0	1,414.8	1,618.2	1,850.8	7,202.5
In euro equivalent	9.0	10.3	11.8	13.5	15.4	60.0

B. Cost savings for the share of portfolio under foreclosure, secured by collaterals located in more than one district

PWG has suggested the execution order to be issued in two copies, so that the execution process can start simultaneously in two Bailiff Offices.

Economic driver: to reduce the duration of the process (for the cases when the collaterals are located in more than 1 district).

Current situation

Duration in bailiff: 345 days for one collateral + 345 days for the second collateral;

Proposal: to issue the executive order in 2 copies.

Duration in bailiff¹: simultaneous execution in 2 bailiff offices, time needed 245 days.

Total reduction in days: 120 days (due to the reduction of the whole process)
+ 345 days (due to the simultaneous execution process)

¹ Assuming that all other proposals are accepted.

Chart 2. The actual and the estimated duration of the enforcement process if amendments adopted, for the two typologies of the loans in foreclosure

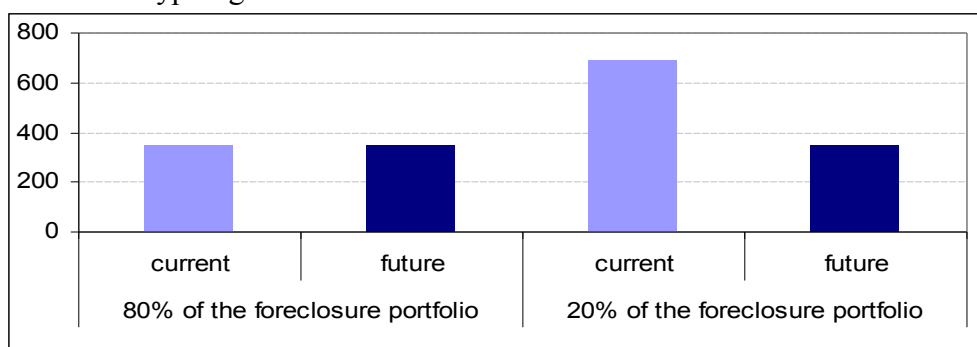


Table 3. Costs saved for the banking system, 2009 -2013

Scenario 1 - Part 2	2009	2010	2011	2012	2013	Total
New Loans in Foreclosure	1,715.6	2,099.6	2,569.5	3,144.5	3,848.2	
Part affected by this proposal	20%	20%	20%	20%	20%	
Amount of debt that will benefit	343.1	419.9	513.9	628.9	769.6	
Estimated lending rate	9%	9%	9%	9%	9%	

Creditor takes the possession of the property						
c. Cost saving – Due to the reduction in days						
Estimated reduction, in days		465	465	465	465	
Annual benefit		57.4	70.3	86.0	105.3	128.8
Present value in All	7%	50.2	57.4	65.6	75.1	91.9
						3,57.5
d. Recovered loans						
Annual benefit, recovered loans	80%	274.5	335.9	411.1	503.1	615.7
Present value		256.5	293.4	335.6	383.8	439.0
						1,708.4
Amount recovered (c+d)		310.2	354.8	405.8	464.1	530.9
In euro equivalent		2.6	3.0	3.4	3.9	4.4
						17.2
Total benefit (Part 1 + Part 2)		1,391.8	1,591.9	1,820.7	2,082.4	2,381.7
In euro equivalent		11.6	13.3	15.2	17.4	19.8
Recovery ratio		87%	87%	87%	87%	87%
						77.2

The termination of the enforcement process within more reasonable time limits would generate benefits by making the funds earlier available to the bank, to be used in profitable projects. **Banks would yield almost 9.2 billion ALL or 77.2 million euro in a five year time period. Out of this outcome:**

- **726.5 million ALL or 6.1 million euros are due to the interests from investing previously “frozen” fund, and**
- **8.5 billion ALL or 71.2 million euros are due to recovered loans.**

1.2.3. Scenario 2 – Benefits to the banking system due to the reduction in days of the process and improvements in efficiency

Under the situation that all the proposed amendments to CPC are accepted and the efficiency of the enforcement system is enhanced, is expected that the benefits generated to the banking system would be to in table 4 there are presented the calculations of the results that will be generated.

Assumptions:

- Enforcement process terminated in the first auction: 10% of the loans in foreclosure;

- ii) Enforcement process terminated in the second auction: 20% of the loans in foreclosure;
- iii) Recovery rate for the resale process 80% (as in the “current case”).

Table 4. Receipts from the collateral execution in million ALL, period 2009 – 2013, CPC with accepted changes

Scenario 2	2009	2010	2011	2012	2013	Total
New Doubtful loans	3,652	4,469	5,470	6,694	8,192	
New Lost loans	4,926	6,028	7,378	9,029	11,049	
Total	8,578	10,498	12,847	15,722	19,241	
D & L under foreclosure						
As %	20%	20%	20%	20%	20%	
As amount of debt	1,715.6	2,099.6	2,569.5	3,144.5	3,848.2	
Estimated lending interest rate	9%	9%	9%	9%	9%	
I. First auction - 10% of the loans in foreclosure executed						
Amount of debt that will benefit 10%	171.6	210.0	256.9	314.4	384.8	
a. Cost saving – Due to the reduction in days						
Estimated reduction, in days	80	80	80	80	80	
Annual benefit	4.94	6.05	7.40	9.06	11.08	
Present value	4.62	5.28	6.04	6.91	7.90	30.75
b. Benefit - Increased incidence of selling in the first auction, recovered loans						
Annual benefit, recovered loans	171.6	210.0	256.9	314.4	384.8	
Present value	160.3	183.4	209.7	239.9	274.4	1,067.7
II. Second auction - 20% of the loans in foreclosure executed						
Amount of debt that will benefit 20%	343.1	419.9	513.9	628.9	769.6	
c. Cost saving – Due to the reduction in days						
Estimated reduction, in days	120	120	120	120	120	
Annual benefit	14.8	18.1	22.2	27.2	33.2	
Present value	13.9	15.8	18.1	20.7	23.7	92.3
d. Benefits - Increased incidence of selling in the second auction, recovered loans						
Annual benefit, recovered loans	343.1	419.9	513.9	628.9	769.6	
Present value	320.7	366.8	419.5	479.8	548.7	2135.5
III. Creditor takes the possession - 80% of the amount is recovered						
Collateral sold by the creditor						
Amount of debt 70%	1200.9	1469.7	1798.6	2201.1	2693.8	
e. Cost saving – Due to the reduction in days						
Estimated reduction, in days	120	120	120	120	120	
Annual benefit	51.9	63.5	77.7	95.1	116.4	
Present value	48.5	55.5	63.4	72.5	83.0	322.88
f. Recovered loans						
Recovered amount 80%	960.7	1175.8	1438.9	1760.9	2155.0	
Present value	897.9	1027.0	1174.6	1343.4	1536.5	5979.3
Total amount recovered (a+b+c+d+e+f)	1,445.9	1,653.7	1,891.4	2,163.3	2,474.2	9,628.4
In euro equivalent	12.0	13.8	15.8	18.0	20.6	80.2
Recovery ratio	90%	90%	90%	90%	90%	

Note: In this scenario is considered only one typology of loan, without making distinction between loans with collateral in 1 district or in more than one district.

The termination of the enforcement process in its early stages would generate benefits by making earlier available to the bank funds previously “frozen” in problem loans.

Banks will benefit almost 9.6 billion ALL or 80.2 million euro in a five year time period, for every 30% of the loans that the foreclosure process is terminated in the first and second auction. These benefits are:

- **445.9 million ALL or 3.7 million euros, interest from investing previously “frozen” fund, and**
- **9.1 billion ALL or 76.5 million euros, recovered loans.**

1.2.4. Comparison of the situations

In Table 5 below the yield of the present situation (the execution process is terminated with the bank taking possession of the property and engage in private selling process) is compared with the yield of scenario 1 situation (reduction in days) and scenario 2 situation (reduction in days and enhanced efficiency, for 10% of the portfolio the process is terminated in the first auction, for 20% of the portfolio the process is terminated in the second auction and for 70% of the portfolio banks take possession of the property and engage in private selling process).

Table 5. Comparison of the Current situation with the Scenario 1

Net effect	2009	2010	2011	2012	2013
Operational expenses of the banking system PV*	5,886.1	6,436.2	7,037.7	7,695.4	8,414.6
Current situation	1,112.6	1,272.5	1,455.4	1,664.6	1,903.9
Scenario 1	1,391.8	1,591.9	1,820.7	2,082.4	2,381.7
Scenario 2	1,445.9	1,653.7	1,891.4	2,163.3	2,474.2
Difference					
Current situation – Scenario 1 <i>ALL</i>	279.2	319.4	365.3	417.8	477.8
<i>EUR</i>	2.33	2.66	3.04	3.48	3.98
Benefit / Op. expenses ratio	4.7%	5.0%	5.2%	5.4%	5.7%
Current situation – Scenario 2 <i>ALL</i>	333.3	381.2	436.0	498.7	570.3
<i>EUR</i>	2.78	3.18	3.63	4.16	4.75
Benefit / Op. expenses ratio	5.7%	5.9%	6.2%	6.5%	6.8%

Note: * Assumption: For the period 2009 – 2013, operational expenses growth rate is assumed as 17%, based on the historical growth rate.

As expected, a shorter and more efficient enforcement process would generate benefits to the banking system.

As preliminary estimate, the effect of having a shorter process is translated in increased benefits that range from 5 to 6% of operational expenses of the banking system. While the effect of having just a slight improvement in the efficiency of the process² is translated in extra benefits that make up from 6 to 7% of the operational expenses.

1.3. Increased access to finance and more funds available for investment or lower interest rates in the real economy

The termination of the enforcement process in its early stages will positively affect the consumers / debtors as well. The debtor is affected by these changes through the reductions on the costs related to the process and the accrued interest cost that is to be paid to the creditor.

² The foreclosure process for 30 % of the portfolio is terminated in the first or second auction

According to article 525 in the Civil Procedure Code, the debtor is responsible for all the expenses of the enforcement process. The enforcement costs (court costs, expert fee, attorney fee, cost for the public sale) amount up to 38.7%³ of the claim. Some of the costs, e.g. the attorney cost, are strictly related to the length and complexity of the enforcement process. A shorter and simpler enforcement process will be reflected in lower costs for the debtors⁴.

In the Table 6, are compared the costs of the current situation, (almost 100% of the portfolio terminates the process in or after the 2nd auction), with scenario 1 situation (10% of the portfolio terminates the process in the 1st auction, 90% of the portfolio terminated the process in or after the 2nd auction). As shown by the calculations, by increasing merely with 10% the share of portfolio under foreclosure terminated in the first auction, the cost of the debtors decrease by 47 basis points. In monetary terms, this slight improvement of the foreclosure process is translated in 50 million ALL or 0.4 million euros, costs saved for the debtors, for a five years period.

Table 6. Cost structure of the enforcement process

	Total	Court	Preparatory	1st auction	2nd auction	Proceedings
Procedures in days	270	30	100	60	55	25
Current structure - 100% of the portfolio terminates the process in or after the 2 nd auction						
Process costs %	38.70			-	38.7	
Fixed (40%)				15.5		
Variable (60%)		2.6	8.6	5.2	4.7	2.2
Scenario 1 - 10 % of the portfolio terminates the process in the 1 st auction, 90% of the portfolio terminates the process in or after the 2 nd auction						
Process cost	38.23***			34.0*	38.7**	
Difference (reduction)	-0.47					

Note: * Costs incurred with the collateral executed in the first auction are calculated as the sum of the costs for the procedures in court, preparatory, first auction and proceedings.

** Cost incurred with the collateral executed in and after the second auction are calculated as the sum of the costs for the procedures in court, preparatory, first and second auction and proceedings.

*** The costs for the process are calculated as a weighted sum of the costs until the first auction (weight 10%) and the cost for the second auction (weight 90%), weights reflect the portfolio composition.

In addition, the reduction of the number of the days in the foreclosure process generates benefits to the debtors through cost savings on the accrued interest that is to be paid to the creditor. Anyhow, in the aggregated economic perspective the effect in this case is zero due the netting of the debtor's cost savings with the creditor's lost incomes.

1.4. Increased revenues for the government, in the form of higher revenues from taxes, due to increased activity in the real economy. Increased economic stability.

³ From the World Bank's Doing Business Report 2009. Some of the cost related to the process are fixed, in the meaning that have to be paid in proportion to the amount of the debt despite the length of the process, e.g. the tax for the public sale, while some costs are related to the length of the process, e.g. the attorney fee. In this case is assumed that 40% of the costs are fixed and 60% of the costs are depended to the length of the process.

⁴ In addition to lower costs, the debtor will benefit by the termination of the process in the first auction through higher receipts from the sale. According to article 579 in the Civil Procedure Code, when the receipts from the sale are higher than the debtor's obligation, after extracting enforcement expenses, the creditor has to return to the debtor the difference. Due to lack of data and information on this typology of cases is very difficult to assess the cost and benefit for creditors and debtors generated by this provision.

Annex 3. Data sources

Bank of Albania – aggregated for the whole banking system:

- Outstanding loans balance at the banking system level, annual end year-stock, period 2000 - 07, in million ALL;
- Quality of the loan portfolio, in percentage to the total amount, quarterly, Quarter1 2004 – Quarter 2 2008.
- Government bonds yield rates.

Albanian Association of Banks:

- Outstanding real estate loan balance, annual end period stock, period 2007 – Half 1 2008.
- New loans interest rates, for ALL, USD and EUR, period 2007 – Half 1 2008.

ii) Assumptions for the period 2009 - 2013:

1. Estimated average annual growth rate of the loans to economy portfolio **22%**. This estimation is based on the loans portfolio growth trend of the past eight years;
2. Share of doubtful loans to the total loan portfolio **0.9%**. This estimation is based on the past average share of doubtful loans during the last 4 years;
3. Share of lost loans to the total loan portfolio **1%**. This estimation is based on the past average share of doubtful loans during the last 4 years;
4. Estimated share of doubtful and lost loans that go in foreclosure procedures **20%** of the total portfolio - based on the discussion during PWG meetings;⁵
5. Loans under foreclosure are kept in bank's financial statements for one year. The figures presented are considered as yearly flows of loans under foreclosure.
6. Estimated real estate lending interest rate **9%**. This estimation is based on the on the past average interest rate on real estate lending, during the last 2 years;
7. Estimated discount rate flat at **7%**. This estimation is based on the on the past average interest rate on government yield rate, during the last 3 years.

⁵ For the Assumptions 2, 3 and 4, the analysis was supposed to rely on the information collected through the bank survey. Maybe due to the limited time, banks were not able to fill in the questionnaire with all the requested information.