



SPI Albania Project on Revising regulatory act on Execution of Procedures on Bank accounts

Project Objective

To review and improve the regulatory framework on execution on bank accounts related to executive titles concerning budgetary institutions consolidated accounts, and other executive titles issued by public institutions. In particular, to review the BoA's Guideline "On the modalities of execution of obligations on amounts in bank accounts".

Project Management Team

Project Owner (PO): Seyhan Pencapligil, General Director, National Commercial Bank

Project Manager (PM): Veronika Prifti, Head of Legal Department, National Commercial Bank

Co- Project Manger (CPM): Elvis Zaimi, Head of Section, Legal Department, Bank of Albania

Co- Project Manger (CPM): Isida Koka, Budget Department, Ministry of Finance

Minutes

First meeting

October 22, 2009—AAB premises

Attendees: Veronika Prifti, BKT (PM)
Elvis Zaimi, BoA, (CPM)
Isida Koka, MoF (CPM)
Redi Lamaj, FIB (member)
Kujtim Mare, RB (member)
Arben Gjoleka, Ombudsman (member)
Andin Jakova, ICB, (member)
Anuela Ristani, SPI Albania, Director of Operations
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SPI Albania Secretariat

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AGENDA

- I. Welcome Note and Introduction of Participants
- II. SPI Albania Presentation
- III. Project Terms of References (Discussion and approval)
- IV. Scoping of the Problem Document (Discussion and approval)
- V. International Experiences (Discussion)
- VI. Conclusions and Distribution of Tasks
- VII. Closing Remarks

I. Welcome Note and Introduction of the Participants

SPI Secretariat welcomed all the PWG members and introduced the PMT and the SPI Albania Secretariat. All members introduced themselves and the institutions they were representing.

II. Presentation of SPI Albania

In order for the PWG members to have a better understanding on the SPI work process and methodologies, SPI Secretariat held a short presentation focusing on the SPI Albania project management and methodologies.

SPI Albania is a partnership lead by a high level public private Committee with representatives from BoA , AAB (Chairman) and the Head of Convergence Program (World Bank) as well as MoF, AMF, Market Surveillance Department-METE. European University of Tirana and Italian Banking Association are Permanent Observers to the SPI Committee. SPI Secretariat orchestrates different working groups for each SPI Project.

SPI Secretariat presented the role and responsibilities of the PMT and PWG members as well as the role of the Secretariat throughout the entire project process from the start to enactment.

SPI Secretariat presented the methodology followed for every SPI Albania project. After the Terms of Reference are endorsed by the SPI Committee and reviewed / approved by the PMT, the PWG first target is identifying the problem and its causes (a market or a regulatory failure) in order to understand if it creates the case for a regulatory intervention or for self-regulatory

actions. PWG defines the policy objectives to be achieved with this project and considers if ‘do nothing option’ could be a solution and its costs. PWG identifies then the possible regulatory/self-regulatory policy options that could be envisaged for solving the problem.

Once the Scoping of the Problem is concluded as described above, the PWG is focused on the Analysis of the impact that is: to identify and state the costs borne and benefits yielded by consumers, by the regulator and regulated firms, and to collect market structure data to perform a quantitative cost and benefit analysis. SPI Albania work has created a significant impact on the regulatory financial reforms through projects of legal natures as the changes of Civil Procedure Code, Private Bailiff and Bank and several Bank of Albania regulations.

With the conclusion of the analytical work, the policy document is drafted and consultations are run with various stakeholders. PWG has to agree on the final PWG Recommendations document. The actual work of the PWG is concluded with the SPI Committee approval of the final PWG recommendation. However the PWG members, representing the professional experts for each respective project, will stand ready to participate in further consultations with the regulators or other authorities during the enactment process.

PWG members should evaluate, at the end of the project, SPI Secretariat’s performance based on a questionnaire that is presented at the first meeting in order to get acquainted with the criteria to follow for this evaluation.

III. Project Terms of Reference presentation (Discussion and approval)

SPI Secretariat presented the Project Terms of Reference as the outlining document that will guide the PWG through all the project steps.

The execution of obligations in money, against natural persons and legal entities, on the amounts of their bank accounts, is regulated by Articles 593 to 600 of the Civil Procedure Code (CPC). These articles define the modalities and procedures that should be followed by the bank for the seizure of the account of a debtor, starting from the moment of the issuing of the executive order.

Based on Article 600 of CPC and on the Law "On Bank of Albania", the latter has issued a directive, approved by the Supervisory Council with the Decision no. 43 dated 31.03.1999, that covers all legal persons that perform banking activities in the Republic of Albania, licensed by Bank of Albania. This guideline aimed to regulate banking procedures related to the execution of obligations considered as executive titled as defined under Article 510 of the CPC.

Another holdback of the current Guideline is that it was lastly amended in year 2003, and it does not reflect the amendments done to the CPC (on articles 589, 593, 595 and 596) in year 2008.

Therefore the objective of the PWG will be to review and improve the regulatory framework on execution on bank accounts related to executive titles concerning budgetary institutions, consolidated accounts or other executive titles issued by public institutions. In particular, to review the BoA’s Guideline “On the modalities of execution of obligations on amounts in bank accounts”.

IV. Scoping of the Problem Document

SPI Secretariat presented the Drafted Scoping of the Problem Document. The objective of this document is to help the PWG better understand if the cause of the problem is related to a market/regulatory failure and if this is the case for regulatory intervention.

As a result of several problems encountered in practice during the implementation of BoA's guideline on execution of amounts in bank accounts, commercial banks in cooperation with the Bailiff Offices and the Ministry of Justice, have promoted its amendment in year 2003. The new guidance has improved significantly the work and practice for the execution of judicial decisions; however, banks often face numerous difficulties, especially with executions against budgetary institutions.

The difficulty in this regard arises from the fact that although BoA Guideline has provided the modalities on execution of bank accounts it has not made any special reference to the execution versus state institutions, whose general state of liquidity is subject of different rules and regulation and thus their situation is different of the other private entities and persons. In this perspective BoA is entitled upon Art. 600 of the Civil Procedural Code (CPC) to issue guidelines on modalities for the implementation of legal dispositions in regard to execution of amounts in bank accounts. However, Art. 589 of CPC entitle the Council of Ministers to issue guidelines on execution of monetary obligations against the budgetary institutions and their respective treasury accounts. So although, BoA has some power to regulate in general the modalities for executing executive titles in general, it seems that this power remains at the Government when budgetary institutions are on the debtor's side.

Furthermore, there is a Government's Decision No. 335, date 2.6.1998 stipulates in principal that monetary obligation deriving from execution of judicial decisions/orders shall primary be covered by the own funds of the state budgetary institutions, however the criteria and procedures in this regard shall be determined by a common regulation issued by Ministry of Justice and Ministry of Finance, which it is still not drafted and eventually not approved yet.

In practice, an execution against the state is generally difficult. 1,111 new files of executive titles having the state as debtor have been registered in the Bailiff offices in 2008, according to the information provided by the Bailiff Office. Only 591 (53%) of them were executed, 389 (35%) are still within the procedural limits, and other 131 (12%) have exceeded those limits and have failed to be executed.

The Ombudsman also confirms the above: a considerable part of complaints that they receive relates to non-execution of final form rulings for the budgetary institutions debtors that are obliged to return certain amounts.

Banks are ultimately faced with a conflict that is not theirs. They have a custodial role and they do not have to be part of the conflict. There is a need for the regulatory framework to cover for the above issues and to update the current one with the amendments made recently to the Civil Procedures Code in regards to the execution of amounts in banks accounts and executions against the state.

Another problem faced by banks is that of lacking precise procedure when dealing with other state institutions that per law have a right to request information or execute executive titles by

the banks, such as General Tax Directorate, General Customs Directorate, local government tax units. Upon the law, these institutions have the right not only to ask for implementing an executive title but also they do have the right to check the financial situation of citizens/private entities in case they are tax debtors or when they seek financial aid. This increases tremendously the amount of work of the banks and communication traffic and the eventual modalities need to be regulated. In this perspective clear rules and standards need to be defined so that the banks do fulfill their obligation versus state institutions but also toward their client, to whom they own right of confidentiality.

In the above-mentioned context, the legal framework regulating the modalities on the relationship between banks and state institutions (Bailiff, Tax Authorities, local and national as well as the Customs Administration) shall be regulated in order to create certainty in the market and respect multilateral rights and obligations of actors involved. In more concrete terms there is a need to overcome the holdback of the current BoA Guideline No.43 that was lastly amended in year 2003, and it does not reflect the amendments done to the CPC (on articles 589, 593, 595 and 596) in year 2008 and to have in place the Council of Ministers Guideline on modalities for execution of amounts against state budgetary institutions.

PWG considers the scoping of the problem document as very accurate and important for a deeper understanding of the issue and welcomes the many alternatives outlined by SPI Secretariat by approving the document. PWG agrees that option three, consisting in a combination of amending the BoA Regulation and drafting a set of recommendations for the Council of Ministers are needed in order to tackle all aspects of the problem.

In this case scenario the amendments of the BoA regulation on execution of amounts of bank accounts would encompass all standard procedures on relationships between Banks and state institutions (Bailiff office, Tax and Customs authorities) regarding the request for information and orders to implement execution order upon execution titles.

This option will provide more certainty in the market, because it represents a more comprehensive approach to solve the problem of executing the amounts in bank accounts not only from the perspective of the banks but also from the point of view of budgetary institutions and as a consequence also from the consumer's perspective.

V. International Experiences

SPI Albania projects have typically emphasized on the importance of international experience as an important benchmark for the adequate solution to the problems tackled. International or regional best practices often provide for a very useful benchmark in building up PWG recommendations. However, this project is particularly challenging as there is no other country where this problem is so persistent.

SPI Secretariat has brought the Italian experience, due to the fact that Albanian legislation has many common features with the former.

The execution of amounts in bank accounts in Italian legislation is part of the enforcement process in civil and commercial matters. The enforcement enables a creditor (a private individual or company or public agency) to obtain what he/she/it shall have as owed to by

another person/entity as a result of a court decision (or of specific acts deemed by law to become parable to court decisions).

Enforcement is therefore a procedure, regulated by law in various ways, depending on the nature of the claim, i.e. of what is due to the person who invokes the procedure to enforce his/her/it claim on the debtor. By their nature enforcement procedures involve public bodies under the supervision of a court, which is asked by the parties concerned to ensure compliance with the rules of procedure laid down by law.

Depending on the content of the measures (court rulings or other measures that have the same value as rulings when it comes to enforcement), there are different methods of enforcement in the Italian legislation that must be implemented to enforce the creditor's claim.

SPI Secretariat, in close cooperation with the PWG individual members, is willing to research other countries experiences, however PWG members believe that the problem is specific to Albania and is due to a large extent on the wrong interpretation of the law and to the inequality of the subjects with its regards.

VI. Conclusions and Distribution of Tasks

For the next PWG meeting:

- SPI Secretariat will send the meeting minutes and the revised drafts of the documents for final approval to the PWG;
- SPI Secretariat will draft a questionnaire to identify the specific legal references in need of change and the proposed changes;
- PWG members will contribute with their comments on the questionnaire;
- SPI Secretariat will distribute the questionnaire and aggregate the answers;

VII. Closing Remarks

The second PWG meeting is preliminarily scheduled to take place in late November 2009, however PWG members are to be contacted individually or through group e-mails on the different stages of the questionnaire.