



## SPI Albania Project on Revising the Debt Contracting Regulatory Framework

### Project Objective

To improve Government debt contracting process by reviewing the relevant regulatory framework in order to cover the acquisition of advisory, technical and other supportive services

### Project Management Team

**Project Owner (PO):** Sheferedin Shehu, Deputy Minister, Ministry of Finance

**Project Manager (PM):** Xhentil Demiraj, General Director, Debt Department, Ministry of Finance (MoF)

**Co- Project Manger (CPM):** Anilda Sefgjini, Deputy Director, Public Procurement Agency (PPA)

**Co- Project Manger (CPM):** Elona Koci, Head of Public Corporate Section, Raiffeisen Bank

### Minutes

#### Second meeting

July 22, 2009—AAB premises

**Attendees:** Xhentil Demiraj, MoF (PM)  
Milbana Treska, MoF (member)  
Xhorlin Pojani, MoF (member)  
Adrian Ceco, ISPB, (member)  
Greta Minxhozi, WB (observer)  
Anuela Ristani, SPI Albania, Director of Operations  
Evis Gjebrea, SPI Albania, Financial Modernization

### AGENDA

#### SPI Albania Secretariat

Mrs. Anuela Ristani, Director of Operations, [anuela.ristani@spi-albania.eu](mailto:anuela.ristani@spi-albania.eu)  
Ms. Endrita Xhaferaj, Director Financial Modernization Program and Analytics, [endrita.xhaferaj@spi-albania.eu](mailto:endrita.xhaferaj@spi-albania.eu)  
Address: Twin Tower I, Kati 6, Apt. A3. Tirana, Albania. Tel. +355 42 280 359; Fax. + 355 42 280 371  
[www.spi-albania.eu](http://www.spi-albania.eu)

- I. Project Progress Brief
- II. Note on Advisory, Technical and other supporting services associated with Albania's debt borrowing
- III. Note on International Experience (Discussion and Approval)
- IV. Scoping of the Problem Document (Review and approval)
- V. Proposal to amend current regulatory framework in the framework of Sovereign Debt Borrowings
- VI. Draft Qualitative Analysis
- VII. Conclusions and Distribution of Tasks
- VIII. Closing Remarks

## **I. Project Progress Brief**

SPI Secretariat welcomed all the participating PWG members and introduced the work done after the first PWG meeting.

- SPI Secretariat sent the meeting minutes and the revised drafts of the documents for final approval to the PWG;
- SPI Secretariat maintained close contact with the PWG members in order to obtain more information on the legal and financial aspects of the project. Special gratitude goes to Kalo & Associates PWG members who provided a very well researched draft of findings and recommendation related to the legal aspects of the project.
- In addition SPI secretariat in cooperation with the Kalo & Associates Legal Studio has researched extensively the international and regional experience related to the definition of financial services on debt borrowing and has prepared a note reflecting the finding.
- SPI Secretariat finalized the TAIEX application and transmitted it to Ministry of Finance where it was signed and officially sent to the TAIEX headquarters in Brussels.

SPI Secretariat made a brief expose of the track that the PWG analytical work has been following with regards to the EU Better regulation steps, in order to clarify among the participants once more the methodology that SPI Albania follows in all of its projects. According to the EU Better regulation steps the project is currently finalizing the impact assessment stage with the qualitative assessment of the costs and benefits for each of the stakeholder parties.

## **II. Note on Advisory, Technical and other supporting services**

SPI Secretariat presented the note on advisory, technical and other supporting services associated with Albania's debt borrowing. In the current context foreign borrowing has gained momentum due to the access the country has gained to international financial markets. It is also part of the government strategy to reduce domestic debt and increase foreign borrowing as outlined in the Public Debt Strategy.

The purpose of this note is to provide information on advisory, technical and other supporting services related to debt contracting. The most important argument for providing such information is that the exemption clause of public procurement law regarding 'financial services related to the purchase, sale or title transfer or other financial instruments' does neither provide any definition for these services nor does it identify them. Obtaining a clear understating of the advisory, technical and other supporting services would help authorities determine the degree of regulatory intervention (amending the relevant legal framework) as well as provide a concise and clear clause on the services in question.

The SPI Albania Secretariat has identified some advisory, technical and other supporting services related to debt contracting relying on the literature and current experience of the Ministry of Finance and commercial banks acting as their agents, but the list could be longer. These services fall into three categories: (i) prior to debt contracting (ii) post debt contracting (iii) related to the Country Credit Rating. The Secretariat has also researched in the Albanian Legislation for any definition or list of said services.

The conclusion of the note identifies that the range of advisory, technical and other supporting services related to debt contracting is very diverse due to the fact that the financial sector is dynamic one with products which are becoming more and more sophisticated. The Albanian government having already entered the phase of contracting syndicated loans and allowed to issue Eurobonds, introduces the challenge of adapting its procedures to the sophistication of financial instruments which will only grow together with the sophistication and diversity of their related services. Consequently it may be difficult to determine accurately and exhaustively all the services associated to debt borrowing in addition to those mentioned in this note.

The note recommends that considering the fact that advisory, technical and other supporting services associated with debt borrowing are not provided for in any legislation in Albania and due to the very large range of these services, the relevant legal regulation should include a general provision covering their contracting procedures by the government.

The services listed by the note could be attached to the legal provision for illustrative purposes. It is recommended that the list of services be amended with new ones that will be introduced and identified in the course of activities by the respective authorities.

PWG members welcome the note and consider it very important and valuable for the problem at hand especially when reference is made to the Stabilization and Association Agreement where a financial service includes any service of financial nature offered from a financial service provider to a party. The MoF representatives in the PWG suggested to extend the concept not only to foreign debt but to debt in general, in order to prevent any similar problems in the future but that won't be necessarily related to foreign versus domestic debt.. PWG members consider this note to be very helpful in the identification of a better definition for

financial services which will contribute in the relevant legislative formulation in order to abide to the EU standards and incorporate the practicability for the efficient contractual debt processes.

### **III. Note on International Experience (Discussion and Approval)**

SPI Secretariat presented the note on International Experience which describes the experiences of other countries in dealing with advisory, technical and other supporting services in connection with debt borrowing. The aim of analysis of the international experience is to understand if the said services related to debt contracting are part of public procurement procedures and if not how other countries have solved the issue. The countries analyzed are: Bulgaria, Former Yugoslav Republic of Macedonia, Italy<sup>1</sup>, Romania, Slovenia, Turkey and Serbia<sup>2</sup>.

PWG members consider that the Slovenian and Italian experiences could be the most appropriate ones to take into consideration for future reference during the drafting of the regulatory proposals. PWG members suggested to the SPI Secretariat to further explore the formulation of their regulations (acts or procedures) in order to assess the concrete approach that applies their philosophy in debt contracting. The Ministry of Finances' representatives expressed their willingness to cooperate and support the SPI Secretariat through in contacting the IMF Regional representative.

SPI Secretariat will explore the possibility to include also data from Slovakia which was another interesting country to explore in the context of this project as recommended by the PWG members. The abovementioned additions will be provided to the PWG during the next PWG meeting and reflected in the possible regulatory proposals. PWG approved the note International Experience and welcomed its information.

### **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 principle, the public procurement law regulates all main aspects of government and public bodies purchasing activities and provides them with the tools to be able to achieve “value for money” when procuring goods, services and works. The current regulatory framework excludes from the jurisdiction of the law financial services related to purchase, sale of title transfer. Such provision makes it difficult for the Ministry of Finance to acquire advisory, technical and other supporting services that are associated to the process of debt contracting . This regulatory failure might determine delays, higher risks and costs in contracting debt.

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<sup>1</sup> The experiences of Bulgaria, Former Yugoslav Republic of Macedonia were prepared through interaction with the Ministries of Finances of the respective countries. The experience of Italy was prepared through interaction the Italian Banking Association.

<sup>2</sup> The experiences for Romania, Slovenia, Turkey and Serbia were extracted from the Memo prepared by the Albanian Legal Studio Kalo & Associates for SPI Albania.

There is no evidence of the occurrence of these effects, but the potential difficulties and risks are recognized by the authorities.

SPI Secretariat has outlined three possible options to consider while tackling this issue:

- To amend the current Public Procurement Law to include clear provisions on advisory, technical and other supporting services and treat the acquisition of such services as public procurement;
- To amend the current foreign and domestic borrowing law to include clear provisions on advisory, technical and other supporting services.
- To issue another legal act that would regulate the issue of advisory, technical and other supporting services associated to debt borrowing.

After the first PWG meeting, the international experience has shown that strictly defined laws are not the best alternative to provide for the regulation of debt contracting, thus leaving much space for the relevant authority to regulate this process through its insitutional legislation such as the foreign and domestic borrowing law. Based on this information the SPI Secretariat proposed to consider option 2 as the most suitable alternative given the context and analysis conducted so far. PWG members are invited to express their opinions backed by arguments and alternative options during the time given for the approval of the minutes.

#### V. **Proposal to amend the debt contracting regulatory framework**

SPI Secretariat presented the **first proposal** serving the purpose of the project, being the conflict created between the two laws (Public Procurement and State Borrowing Law) by regulating the environment for procuring advisory, technical and other services associated to debt contracting.

In order to have public procurement procedures applicable not only to the selection of a creditor as designated in Article 26 of the State Borrowing Law, but also to advisory, technical and other related supporting services, it is recommended that an addition be made to Article 26.

Accordingly the second sentence of Article 26 would read as follows: ***“When, for the financing of a public investment project, a loan is to be obtained from private bank/s and capital markets transactions that is issuance and placement of securities with investors take place, the creditor’s selection, the contracting of advisory, technical services in connection with such selection process and the other supporting services (including but not limited to the legal consulting services) are made through public procurement procedures, when the international agreement does not provide otherwise”.***

Given the generality of the concept of financial services, it is advisable that the State Borrowing Law avoids for any definition of such. On the other side, for purposes of flexibility but also to avoid any claims for discretionary abuse, it is recommendable that the Minister of Finance issues an Instruction stipulating for all those services that are meant to be included in the concept of advisory, technical and other supporting services under Article 26 of the State Borrowing Law. It will be of course much easier for the Minister of Finance to change the content of such Instruction from time to time.

PWG members appreciated the proposal but suggested that in the light of information that the SPI Secretariat will gather on international/ European experiences, the former to be amended and re-introduced for approval.

## **VI. Draft Qualitative Analysis**

SPI Secretariat presented the PWG with the draft a Qualitative Analysis that highlights the effects of improving procuring environment for said services

According to the analysis, the Ministry of Finance, Public Procurement Agency, banks and investors representing the regulated authorities will not incur any human resources or infrastructural costs. The only costs incurred for the Ministry of Finance and/or Public Procurement Agency will be transaction costs during the procurement process of advisory, technical and other supporting services.

In considering the benefits for the authorities the analysis shows that the access to debt borrowing will improve, investments increase and this way the Government can meet its financing needs on time. Another benefit for the Ministry of Finance is that its capacities are built as the contracting skills and power is improved. Also, the budgeting process management is improved due to allocation of the funds for procuring such service at the beginning when the draft budget is prepared.

Another benefit for the authorities is that the transparency on the usage of public funds will increase, building confidence among all interested parties. On a macro level as a result of investment increase the economic development is stimulated.

For the banks and investors a regulated environment translates into business development. It also helps stimulate the provision of more advanced financial services by local banks and professional service firms with positive spillover effects on activities with other bank clients.

For the consulting firms, regulating the procurement environment for said services, means higher competition making them improve their service product offering, leading to business development.

For consumers as taxpayers for debt repayment regulating the procurement environment of the services associated to debt borrowing means transparency and better use of their taxes.

Authorities according to the analysis might have to incur higher costs due to more resources allocated for the procurement of various services for meeting Government borrowing needs.

In total the benefits brought by regulating the procurement environment through amending relevant law for advisory, technical and other supporting services associated to debt borrowing contracting process would exceed the additional costs for authorities.

If in this model we consider all of the above main categories of the economy actors, then overall Albanian economy will have higher net benefits from the improvement of procurement environment for services related to debt borrowing.

The PWG considers the analysis accurate and well argued and approved it. .

## **VII. 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;
- PWG members not present in the meeting will review and send their written observations/suggestions or approval to the meeting documents;
- PWG members will send their approval/suggestion on the options defined by the scoping of the problem document as the best alternative for this project.
- SPI Secretariat will conduct further research on the selected countries' experiences suggested by the PWG members ;
- SPI Secretariat will continue coordinating the search for expertise with other donors in collaboration with Ministry of Finance;

## **VII. Closing Remarks**

**The third PWG meeting is preliminarily scheduled to take place in mid September 2009.**