



**DRAFT**

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SPI Director, Financial Program Modernization and Analytics*

## **TERMS OF REFERENCE**

### **Project: Revising regulatory act on Execution of Procedures on Bank accounts**

**Project Owner: Mr. Toni Gogu, Bank of Albania.**

**Project Manager: Mr. Elvis Zaimi, Legal Department  
Bank of Albania**

**Project Co Managers: Ms. Veronika Prifti, Legal Affair  
Department, BKT.**

**....., Ministry of Finance  
(Budget Department),**

**Technical Anchor (TAN):**

**Project Working Group: Representatives of banks, MoJ,  
General Directory of Bailiff  
Services, General Tax Directorate,  
General Customs Directorate,  
Ombudsman**

### **I – Background - Identification of the problem.**

#### ***Execution on amounts in bank accounts***

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

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banking procedures related to the execution of obligations considered as executive titles as defined under Article 510 of the CPC.

As a result of several problems encountered in practice during the implementation of this guideline, commercial banks in cooperation with the Bailiff Offices and the Ministry of Justice, promoted an amendment to the guideline “On the modalities of execution of obligations on amounts in bank accounts”. This amendment proposal was approved with Decision No. 43, dated 11.06.2003 of the Supervisory Council of Bank of Albania.

The most important improvement of this Guideline was establishing deadlines for any action undertaken by the bank or by the Bailiff Office. It also contains clearly defined terms, conditions and steps to be taken by both sides in the case of suspension of the order of execution of bank accounts.

This 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 Guideline does not cover specifically for the execution of obligations of such institutions on amounts in bank accounts, and this might create some problems, since their accounts are particular and strongly related to the public budget.

Another problem faced by banks is that of executing executive titles issued by institutions and instances other than the Bailiff Office (e.g. General Tax Directorate, General Customs Directorate, etc.), since the Guideline is not very clear in regards to such executive titles.

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.

### ***Execution against the State***

The Albanian Constitution states that state organs must execute judicial decisions (Albanian Constitution, art. 142 sec. 3.)

The Civil Procedure Code contains special provisions for executions against the state. According to the Code, “execution of obligations in money against budgetary institutions is made only into a relevant bank account, into the credit they have with third parties or into treasury accounts. Enforced execution on the movable or immovable property of a budgetary institution is not permitted.”(CPC, art. 589). When the budgetary institution does not have money in its bank account and does not have credit with third parties or in the treasury, the “relevant superior financial organ is required to designate the necessary funds and the budget chapter of the juridical person from which the obligation shall be met or the special financing from the state budget.”

In addition, the Decision of the Council of Ministers No. 335, dated 2.6.1998 “On proceedings for executing a court decision for obligations impacting the state budget”, defines the modalities on how ministries and other public institutions should proceed with the execution of court orders. It established the provision of funds in each institution’s budget for the execution of obligations deriving from such orders. It also requires the issuance of a Guideline by the Ministry of Finance and Ministry of Justice (which is also required by the article 589 of the Code of Civil Procedure) for the procedures for execution of court decisions that has not been issued to date.

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 statistics from the Bailiff Office (website) show that at the end of 2008, the total state obligation amounted for ALL 934 million, and only ALL 384 million, or 41% were executed by the Bailiff Office.

Approximately 90% of the cases actually under enforcement procedures, having as debtor the state authorities, consist in obligations deriving from employment conflicts.

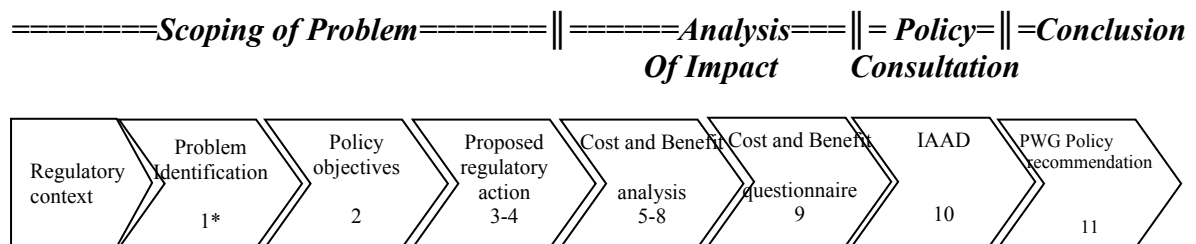
The above was also confirmed by the Ombudsman: a considerable part of complaints that they receive relates to non-execution of final form rulings for the budgetary institutions debtors that are obliged to return certain amounts. This problem has been carried forward year by year, often with the argument of missing funds and the financial impossibility of the state budget.

In the context of the above difficulties, the legal framework regulating the execution of court orders on individuals' or/and public institutions' bank accounts needs improvements.

## **II. - Project Objective**

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".

## **III.- Intended Strategy-Description of the Better Regulation**



The project management group (Project Owner, Project Manager, Project Co-Manager), supported by the SPI Secretariat, will act based on the mandate received from the SPI Committee to review the procedures of enforcement of executive titles with a special focus on the execution of amounts on bank accounts, aiming at finding ways to facilitate banks' activities in this field.

The project working group (PWG), with the support of SPI Albania Secretariat will analyze the current legal framework and the perceived obstacles, as well as other countries' experience, in order to identify improvements and amendments to be applied in the regulatory framework.

Planned steps to achieve project's objective:

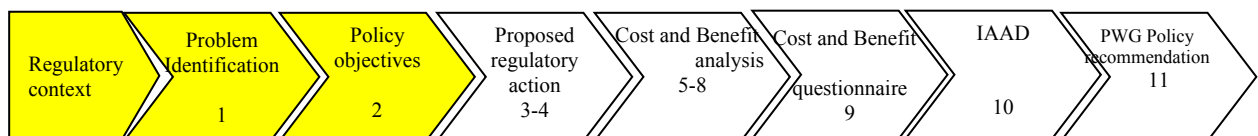
1. To identify the current legal framework that regulates execution of amounts on bank accounts for all institutions and all types of executive titles.
2. To acquire a clear understanding on experiences in other countries in execution of amounts on bank accounts and banks' implications (if needed), and on EU regulation concerned (if there is any).
3. Based on the analyzed documents, to formulate the regulatory amendment proposal.
4. To assess the possible impact of regulatory amendment proposals on banks and other regulated firms, on authorities and on consumers and to run consultations on the proposed amendment/s.

#### **IV- Methodology: from kick off to the accomplishment of the project**

The Project Owner will appoint PM and Co-PM. SPI Secretariat will draft the invitation letter. The project working group members will be appointed by PM and by the interested stakeholders, following the invitations sent.

##### **A. First PWG meeting**

##### ***Preparation of PWG 1<sup>st</sup> meeting (PM/DPM and SPI Secretariat)***



##### ***Preparatory works***

PMG and SPI Secretariat to prepare:

- a. a background note on current regulatory framework;
- b. a note on international experience with the procedures of enforcement of executive titles in relation to the execution of amounts in bank accounts. The note should be built on participant banks' experience in their mother companies' countries, on research performed by SPI Secretariat and on expertise provided through TAIEX by European experts. On PMT's request, SPI Secretariat will prepare the application for TAIEX assistance, to be sent by Bank of Albania.

After PMG clearance and before the 1<sup>st</sup> meeting, SPI Secretariat will send to PWG members the following documents:

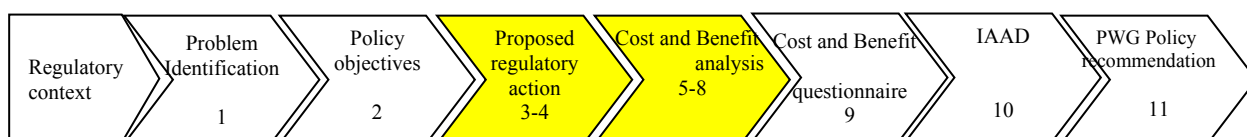
1. Draft TORs;
2. Draft of "Scoping of Problem" document;
3. Background note on current regulatory framework;
4. Note on international experience with execution of obligations on amounts in bank accounts.

- Objectives:**
- To agree on the presented TORs prepared by SPI Secretariat and endorsed by PO and PM/Co-PMs;
  - To understand the current context and the policy goals;
  - To acquire knowledge on other countries' experience in dealing with execution of banks accounts.

- Outputs:**
- Final ToRs
  - Final "Scoping of Problem" document
  - Approved background note on current regulatory framework
  - Approved note on international experience

SPI Secretariat will prepare the minutes of the meeting

### **B. PWG 2nd meeting**



#### **Preparatory works**

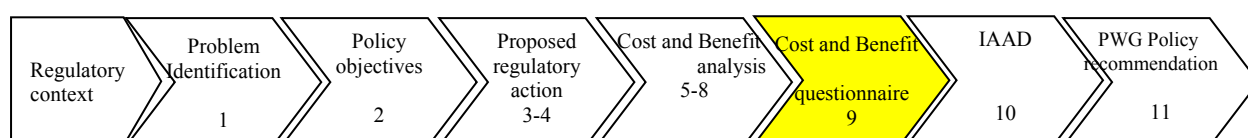
A core of the PWG, with SPI Secretariat support, will prepare a proposal for potential PWG recommendations to amend the current regulatory framework. TAIEX expert will provide advice in building up this regulatory proposal. SPI Secretariat will prepare the draft qualitative analysis of the potential PWG amendment proposal/s.

- Objectives:**
- To formulate recommendations;
  - To analyze the qualitative impact for banks, BoA and other stakeholders.

- Output:-** Proposed modifications / amendments of the guideline/regulation on execution of obligations on amounts in bank
- Approved IAAD document up to qualitative impact assessment

SPI Secretariat will prepare the minutes of the meeting

### **C. PWG 3rd meeting**



#### **Preparatory works**

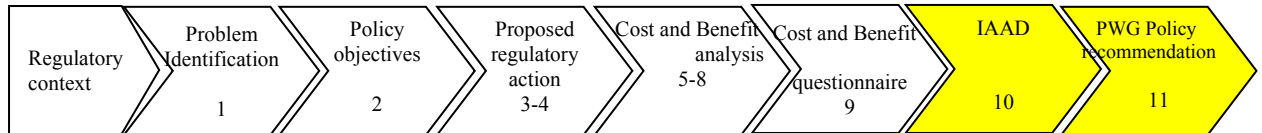
SPI Secretariat, with PMG support, will draft the questionnaire for data collection.

**Objective:** To discuss and agree on the cost and benefit questionnaire for assessing the qualitative and quantitative impact of the changes in the regulatory framework with the aim to facilitate banks' activity as financial intermediaries.

**Output:** Final questionnaire.

SPI Secretariat: will prepare the minutes of the meeting.

#### **D. PWG 4<sup>th</sup> meeting**



#### **Preparatory works**

SPI Secretariat will collect data from PWG participating members and will summarize questionnaire results, preparing the draft “summary impact assessment” for PWG discussion and endorsement.

PMG and SPI Secretariat: to draft PWG recommendations on reporting forms amendment proposals.

**Objectives:** - To endorse Impact Assessment Analysis Document including “Summary Impact Assessment”;  
- To finalize PWG recommendations.

**Output:** - IAAD  
- Final PWG recommendations.

#### ***Following PWG 4<sup>th</sup> meeting:***

Preparation of the SPI Committee paper that will be approved by PMG.

#### **VI - Project Team**

The team is composed of:

- Banks
- Bank of Albania
- Ministry of Justice
- General Directory of Bailiff Services
- General Tax Directorate,
- General Customs Directorate,

- Ombudsman

Consulted documents:

1. Civil Procedures Code;
2. Guideline “On the modalities of execution of obligations on amounts in bank accounts”, No. 43, dated 11.06.2003;
3. Other legal acts related to the execution of execution of obligations in money against budgetary institutions;
4. Experiences of other countries in the region.

Attachment

<b>The EU Better Regulation Approach</b>	
<b>Steps</b>	<b>Purpose</b>
<b>Scoping of problem</b>	
1. Problem identification	To understand if a market/regulatory failure creates the case for regulatory intervention.
2. Definition of policy objectives	To identify the effects of the market /regulatory failure to the regulatory objectives.
3. Development of “do nothing option”	To identify and state the status quo.
4. Alternative policy options	To identify and state alternative policies (among them the “market solution”).
<b>Analysis of impact</b>	
5. Costs to users	To identify and state the costs borne by consumers
6. Benefits to users	To identify and state the benefits yielded by consumers
7. Costs to regulated firms and regulator	To identify and state the costs borne by regulator and regulated firms
8. Benefits to regulated firms and regulator	To identify and state the benefits yielded by regulator and regulated firms
9. Data Questionnaire	To collect market structure data to perform a quantitative cost and benefit analysis
<b>Consultations</b>	
10. Policy Document	To learn market participant opinions on various policy options
<b>Conclusion</b>	
11. Final Recommendations	Final report to decision-makers, based on Cost Benefit Analysis and market feedback

Source: CESR-CEBS-CEIOPS 3L3 Guidelines, adjusted by the Convergence Program based on experience.