



Draft prepared by
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“Scoping of Problem” Document

Project: Revising Public Procurement Law

Section 1 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: The public procurement law in Albania excludes from its jurisdiction the financial services related to purchase, sale, or title transfer or other financial instruments. This provision creates difficulties to the Ministry of Finance when contracting complex loans because financial and supporting services (eg. legal services) associated to the loan contracting process lack coverage in the law causing additional costs. This hampers banks and law firms and consulting companies to offer their services related to foreign borrowing to the Ministry of Finance.

Stakeholder proposing the project: Ministry of Finance (MoF)

Other Stakeholders involved (sponsors): Public Procurement Agency(PPA), Banks, Consulting Companies, Law Firms

Project objective:

To improve Government debt contracting process by reviewing the current law on Public Procurement in order to cover the acquisition of financial and other supportive services.

Description of the project contribution toward financial modernization: By regulating environment for procuring financial services, the access to foreign borrowing improves and investments increase, facilitating economic development. For the financial and consulting industry, a regulated environment for financial services related to foreign borrowing means business development. For consumers as taxpayers for debt repayment,

regulated foreign borrowing financial services means transparency and better use of their taxes.

Project Working Group:

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Representative from Tirana Bank

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. “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”).

Section 1: Scoping the problem

1.1. Problem identification

Public procurement is the process of using public funds by certain public body, for the purpose of acquiring external resources, generally from commercial bidders. In order to regulate this process, as the part of public sector reform and in relation to future EU membership, Albania has adopted a modern public procurement Law no. 9643 dated 20.11.2006 in line with the Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.

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. It defines the main methods of public procurement, and steps to be used when applying them.

In Albania, foreign and domestic borrowing is governed by the Law no. 9665 dated 18.12.2006 on “State borrowing, state debt and state guarantee loans in the Republic of Albania”. According to article 26 of this law, in cases when Ministry of Finance obtains loans from private banks for financing public investments projects, creditor’s selection is made through public procurement procedures.

Recently foreign borrowing has gained momentum due to the access the country has to borrowing on the international financial markets, based on an improvement in 2007 of the country rating by Moody’s. It is also the Government strategy to reduce domestic borrowing and increase foreign borrowing for financing investment projects and fiscal deficit, as outlined in the Public Debt Strategy for 2008-2010.

When contracting complex international loans, Ministry of Finance would need financial and other supporting services (eg. legal services) in order to better assess costs, risks and to increase its negotiating capabilities. The acquisition of such services should be treated as public procurement.

Article 7 of the Law no. 9643 dated 20.11.2006 excludes from the jurisdiction of the law

financial services related to purchase, sale or title transfer or other financial instruments. This provision restrains Ministry of Finance's possibility to improve the contracting skills and power and it hampers banks to offering the necessary financial services. This situation may have negative consequences for the Ministry of Finance in contracting international loans such as:

- Delays in contracting foreign loans, as the analysis is to be handled with internal limited resources, with results on liquidity and costs;
- Increase in the transaction cost risk due to limited analytics capabilities.

In this context, there is a need to revise the public procurement law to include clear provisions on financial services.

By regulating environment for procuring financial services, the access to foreign borrowing improves, thus facilitating Government financing needs. Also, including clear provisions on financial services reduces the transaction costs for the Government and increases transparency. On macro level, the investments could increase and therefore economic development would be stimulated.

1.1.2 Market Analysis

General market: Financial market

Specific segment: Foreign borrowing

1.1.3 Legal framework

Law No.9643 dated 20.11.2006, article 7 on Public Procurement law

Law no. 9665 dated 18.12.2006, article 26 on "State borrowing, state debt and state guarantee loans in the Republic of Albania"

International benchmark: Directive 2004/18/EC of the European Parliament and of the Council of March 31,2004 on the coordination of procedures for the award of public works, contracts, public supply contracts and public service contracts.

1.1.4 Stakeholders - Institutional framework

- **Ministry of Finance:** The Ministry of Finance is the most important Government institution whose role is to mobilize and use effectively and efficiently public financial resources in order to reach goals and objectives set out in the Government program. According to the Law no. 9665 dated 18.12.2006 "On State borrowing, state debt and state guarantee loans in the Republic of Albania", the Minister of Finance has the exclusive authority to manage government borrowing to meet essential financial needs (eg. finance budget deficit etc) of the government with the lowest cost.
- **Public Procurement Agency:** PPA is the central and highest body entrusted with the supervision and coordination of the public procurement system in Albania. PPA's main objectives are enforcing current public procurement legislation and bringing it to EU standards, providing transparency and rigorous implementation of tendering procedures etc.
- **Commercial banks.** The Albanian banking system consists of 16 commercial banks having as main area of activity lending to individuals, companies and Government.

1.2. Market/regulatory failure analysis (nature and evidence)

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 financial and other supporting services that are associated to the process of contracting international loans. This regulatory failure might determine delays, higher risks and costs in contracting foreign loans. There is no evidence of the occurrence of these effects, but the potential difficulties and risks are recognized by the authorities.

1.3. Policy Goal(s) threatened by the failure [e.g. financial stability, market integrity, market confidence, consumer protection, facilitating innovation, enhancing competition]

General Objectives:

- To enhance economic development

Specific objectives:

- To facilitate the access to the international markets
- To increase transparency in using public funds

Operational:

- To improve Government debt contracting process regarding the acquisition of financial and other supporting services.

1.4. “Do nothing” option

1.4.1 Possible medium-term (max 2 years) self – corrective market actions (e.g. mechanisms through which the “Do Nothing” option would address the market/regulatory failure).

The non-revision of the public procurement law with regard to acquisition of financial and other supporting services could cause delays for the Ministry of Finance in contracting international loans as the analysis is to be handled with internal limited resources. This has impact on liquidity and costs. Such situation would involve increase in the transaction cost risk and would threaten Government’s transparency in using public funds.

1.4.2. Impact of the “Do Nothing” option to the various stakeholders

Impact on authorities:

- exposure to liquidity and transaction cost risk

- lower economic development
 - lower transparency on the usage of public fund
- Impact on banks:**
- missed opportunities for business
- Impact on consulting companies:**
- Lower business

1.5. Alternative policy option(s)
<p>1.5.1. Description of Option 1:</p> <p>To amend the current Public Procurement Law to include clear provisions on financial services and treat the acquisition of such services as public procurement</p>
<p>1.5.2. Description of Option 2</p> <p>To amend the current foreign and domestic borrowing law to include clear provisions on financial services</p>
<p>1.5.3. Description of Option 3</p> <p>To issue another legal act that would regulate the issue of financial services and other supporting services associated to foreign loans</p> <p>Option 1 is the most comprehensive and feasible to address the problem.</p>

Summary Problem Scoping			
Revising Public Procurement Law			
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			