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SPI Project on Revising Regulatory Act on Execution of Procedures on Bank Accounts

Final Project Working Group Recommendations

March 2010

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					
Industry competitiveness				X	
Industry reputation					

Short description of the context: Banks often face numerous difficulties while executing judicial orders, especially when executing monetary obligations (amounts) in the accounts of the state institutions due to executive titles/orders issued by the Bailiff Office. Furthermore, other authorities such as the local and national Tax and Customs Authorities have the right to invest the banks in similar activities. These state authorities request from the banks: 1) information regarding the financial position (the liquidity) of the persons, which are debtors due to the non execution of the tax or custom obligations and 2) the application of the conservative sequestration and than of the execution one in order to block the obligation amounts from the client's bank accounts.

In this framework, the banks' activity is regulated by the BoA's Guideline No. 43 "On the modalities of execution of obligations on amounts in bank accounts", which regulates the modalities on the execution of the obligation due to executive titles based on judicial decisions and executive orders issued by the Bailiff Office. This Guideline does not foresee special modalities in order to the execution of the Bailiff Office's executive orders issued against the state institutions. At the same time, there are not specifically regulated the modalities of the execution of the monetary obligations of the state institution and how they are obligated to act in such cases.

Furthermore, the Guideline No. 43 does not refer specifically to other executive

titles/orders issued by the local and national tax/custom authorities, because it refers to the executive orders issued by the Bailiff Office. Meanwhile, these authorities, in order to recover the tax debt or the custom obligation, have the right to act as self-executor bodies in regard to unpaid tax obligations, without the intervention of the Bailiff Office. So, the relations between the bank and the tax/custom authorities are regulated in analogy, based on the provision of the above-mentioned Guideline. However they still deserve specific regulation in order to create certainty for Banks while acting with these institutions as well as with clients.

Stakeholder proposing the project: Banks

Other Stakeholders involved (sponsors): Bank of Albania, Ministry of Finance, Ministry of Justice, General Directory of Bailiff Services, General Tax Directorate, General Customs Directorate, Ombudsman, etc.

Project objective:

1. To review and improve the regulatory framework on execution on bank accounts related to executive titles concerning budgetary institutions accounts, and other executive titles issued by public institutions.
2. To improve Banks' confidence when executing tax and customs' authorities orders, especially against debtors (private party) and promote consumer protection in the same time by determining appropriate procedures in this regard.
3. To reduce risks and costs for banks when enforcing executive titles on their clients' accounts.
4. To formulate recommendations for amending legal regulatory framework including Bank of Albania' Guideline "On the modalities of execution of obligations on amounts in bank accounts", and/or elements that should be included in the Guidelines of the Counsel of Ministers and implemented by budgetary institutions concerning the execution of their obligations against third parties, taking into consideration in this point the international experience.

Description of the project contribution toward financial modernization:

By determining proper procedures regarding execution of amounts on bank accounts, Banks will operate in a safer institutional environment, which protects them from penalties attributed to bank's actions which are not in accordance with the law, but to the uncertainty and the conflict between the legal acts such as the Guideline No. 43 of the BoA and the Minister of Finance's order to not touch any of the budget institutions' accounts. Also, the further regulations for the consolidation of the modalities regarding the relations between the bank and the local and central tax/customs authorities will help the bank fulfill their obligations for collaboration with these authorities, but at the same time the bank is obliged to take the necessary measures to not infringe the client's right. So, in this perspective, the banks will be able to operate in a much safer environment, protect the customers' rights and avoid the penalties, which are consequences of the appropriate legal regulation's lack, and not consequences of the illegal behavior of

the banks.

Reduced uncertainty might be reflected in lower costs, improved bank-client relationships and in more transparency with account operations.

Project Working Group:

National Commercial Bank (PO & PM)

Bank of Albania (CO-PM)

Ministry of Finance (CO-PM)

Ministry of Justice (member)

General Directory of Bailiff Services (member),

General Tax Directorate (member),

General Customs Directorate (member),

Ombudsman (member)

Representatives of banks (members)

PWG Meetings:

1st meeting – October 22, 2009; Output: Project ToRs, Scoping of Problem Document and Note on International Experience

2nd meeting – December 16, 2009; Output: Summary findings on the Banks' Questionnaire.

3rd meeting – March ____, 2010; Output: Draft Consultation Paper and the Consultation Feedback; Document on the PWG Recommendations on Execution of amounts in Bank Accounts.

Contributions: PWG members: participation in PWG meetings and discussions; analyzing the data of answered questionnaires, Note on International Experience; comments and feedback to the Consultation Paper. **SPI Secretariat:** Project ToRs; Scoping of the problem Document; Note on international experience; questionnaire and the respective consolidated document on assessing the situation and gathering in a standardizing manner the opinion on the most suitable recommendations for improving the situation in regard to execution of amounts in bank accounts; Consultation Paper and Consultation Feedback documents based on PWG meetings; Document on the PWG Recommendations.

Other Supportive Activities: Consultations with key actors such as with the Head of Legal Department of Bank of Albania for agreeing in principal on the amendments of the Regulation No. 43 of BoA on “Modalities on execution of amounts in bank accounts”.

Methodology: EU Better Regulation (Annex 4)

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1. Summary of PWG analysis

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 Guideline 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. In general, it has to be stressed that their situation is different of the other private entities and persons and in many foreign legislations are foreseen special regulations on the modalities of the execution of the state institutions obligations.

Furthermore, the 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.

The uncertainty and the above mentioned difficulties have raised the enforcement executions (not with the state will as a debtor). According to the information provided by the Bailiff Office, 1,111 new files of executive titles having the state as debtor have been registered in the Bailiff offices in 2008. 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.

The Guideline does not cover specifically the execution of amounts in bank accounts of these institutions and problems come out since their accounts are closely related to the public budget.

Another problem faced by banks is that of executing executive titles/orders issued by local and national tax/custom authorities, since the Guideline No. 43 does not include the executive titles/orders issued by such institutions, referring only to the orders of the Bailiff Office.

Furthermore, the uncertainty have had and must have a negative impact regarding the relations bank-client, because the lack of the regulatory legislation puts the bank in a very difficult position with the clients, even when they are state institutions or state authorities such as the Bailiff Office, local and national Tax/Custom Authorities. In this framework, the banks risk penalties, not due to their illegal actions but due to the uncertainty of the legal acts.

So, based on the above mentioned concerns related to the respective framework, the PWG objective was 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".

By determining proper procedures regarding execution of amounts on bank accounts, Banks will operate in a safer institutional environment, which protects them from unclear actions of bailiff offices, tax offices etc.

Reduced uncertainty might be reflected in lower costs, improved bank-client relationships and in more transparency with account operations.

Strategy followed by the PWG

The objective of this project was achieved through PWG discussions, informed by relevant analytical work prepared by the SPI Secretariat and the SPI consultant.

In order for all members in the PWG to have better information the consultant engaged by SPI have drafted the questionnaire on assessing the situation and gathering in a standardizing manner the opinion on the most suitable recommendations for improving the situation in regard to execution of amounts in bank accounts. The questionnaires were distributed to all members and (ten members). The data of answered questionnaires were aggregated and analyzed and a consolidated documents was drafted reflecting the situation, problems and eventual improvements needed dived in three main areas: 1. Execution of bailiff's orders against budgetary institutions; 2. Execution of executive titles/orders issued by other institutions such as General Tax Directorate, General Customs Directorate; 3. Request for information in regard to debtors and/or potential debtors. (Please see Annex 1)

To inform the deliberations of the project working group on the possible options to improve the execution procedure concerning budgetary institutions the SPI Secretariat consultant prepared a compilation of the international practices (please see details in Annex 2).

In order to validate the PWG proposal/s before submitting for SPI Committee approval, SPI Secretariat ran consultations with PWG members and circulated the prepared Consultation Document to get their feedback.

2. PWG recommendations

Based on the analysis of the questionnaires, distributed to 10 Banks, and the Note on Internatioanl expertise based on Italian model for the execution of amounts in bank accounts of budgetary institutions, PWG considers that the legal framework should be improved in the following areas:

1. Taking into consideration that the BoA's Guideline No. 43, which provides the modalities of the execution of amounts in bank accounts due to an executive order issued by the Bailiff Office, it is not complete and does not foresees specific regulations regarding the execution procedures against budgetary institutions, it is necessary to amend the above-mentioned Guideline. In more specific terms it is important to highlight that:
 - a) Based on the Art. 600 of the Civil Procedural Code (CPC), the Bank of Albania has the right to issue the necessary guidelines for the implementation of the provisions on the execution of amounts in bank accounts. Meanwhile, Art. 589 of the CPC determine that the Counsel of Ministers shall issue the necessary Guidelines to determine the modalities on the executions of monetary obligations in treasury accounts of budgetary institutions. Taking into consideration that the CPC has foreseen specific and separated competences for issuance of regulative acts, than it can be concluded that: Bank of Albania has the possibility to regulate and adjust the above-mentioned situation by amending the Guideline No. 43. More specifically, this Guideline must include specific articles in regard to the execution of amounts in treasury accounts of budgetary institutions, differentiating them from the practice with the private debtors. Moreover, amendments can be made in regard to notification terms from the bank to the budgetary institutions and/or the notification terms from the budgetary institutions to the bank related to the execution of the obligation. The notification formalities must release the bank from any responsibility due to the lack of budgeting or non-confirmation of the execution from the budgetary institution. The Italian legislation foresees such practice. Furthermore, this type of regulation takes due consideration of the fact that the budgetary institutions normally perform their activity based on approved budget including specific voices of their activity.
 - b) On the other hand, the Guideline No. 43 amendment shall be accompanied by other Guidelines issued by the Counsel of Ministers, which shall regulate the modalities within the state budgetary institutions regarding the fulfillment of their obligations arising due to the execution of the judicial decisions and eventually due to the executive orders issued by Bailiff Office.

2. The BA's guideline No.43 foresees the modalities on the execution of the amounts of bank account for the second level banks, but it does not foresees the modalities regarding the execution of other type of executive titles, more specifically the notification/orders issued by the local and national Tax Authorities and by the Customs Authorities. Thus, it is necessary to create the specific instruments or mechanisms, which will enable the filling of this legal gap.

- a) In a more detailed manner, it is recommended that this problem shall be solved through a specific Guideline of Minister of Finance. This act shall define the appropriate modalities, including the way how the information will be requested from the Banks regarding their clients, which are debtors of Tax Authorities and Custom Authorities and the way how the execution will be performed.
- b) The above mentioned guideline, can be used as a legal basis for signing the specific Agreements between the General Tax Directory and General Custom Directory regarding the execution of their clients obligations.
- c) The Guideline shall also foresee the modalities regarding the relations between the Local Tax Authorities and Banks.

3. Proposed SPI Committee Decisions

SPI Committee endorses PWG recommendations and the legal act.

Annex 1

Main Findings of the Survey with Banks

1. Summary findings of the survey and impact assessment

1. Respondent banks represent a large share of the banking market, therefore the results of the survey may be considered as relevant. To a large extent, the findings of this survey can be generalized to the entire banking system. For some of the questions, the answers were either not relevant or not uniform in order to allow extrapolations, analysis and conclusions.
2. The bank's practice evidences that 5-15% of the total requests for execution of amounts in bank accounts are execution's requests related to executive titles concerning budgetary institutions' treasury accounts.
3. The banks have always applied the terms and the conditions foreseen by the Guideline No. 43, Date 11.06.2003 of Supervisory Council of the Bank of Albania in executing execution orders against budgetary institutions touching their treasury accounts and obstacles have been encountered regarding the respect of deadline determined by the above-mentioned Guideline, because the confirmation process in case of budgetary institutions requires more that one institution approval, resulting a more lengthy process.
4. The banks' practice evidences as causes of the non-execution of the executive titles:
 - a) the impossibility to respect the deadline determined by Guideline No. 43, dated 11.06.2003 of the Supervisory Council of Bank of Albania and
 - b) the lack of active balances in the respective accounts.
 - c) another reason related to non-respect of deadline is due to the Minister of Finance Order, which foresees that the execution of these executive titles can't take place without the approval of the Treasury Department.
5. In general, no legal consequence has been evidenced against the banks in cases when the bank didn't execute the execution order against state budgetary institution.
6. The percentage of requests for execution of amounts in bank accounts related to executive titles issued by other state institutions that per law have a right to issue executive titles/orders is very low. Execution has been made only for account of General Tax Directorate, General Customs Directorate, Bailiff Office and the Local Government Tax Authorities. Approximately, 50 % of the case in which the execution has taken place was on executive titles/orders from the General Tax Directorate and/or General Customs Directorate, 30 % Bailiff's Office executive titles/orders and 20 % Municipality executive titles/orders.
7. The execution procedure upon the Bailiff's orders have been executed based on C.Pr.C and the Guideline No. 43, Date 11/06/2003of the Supervisory Council of

Bank of Albania on executing executive titles concerning budgetary institutions accounts, meanwhile the execution procedure upon the General Tax Directorate's and other authorities' orders has been conducted based on Art. 90 of the Law No. 9920, Date 19.05.2008 "On the tax procedure in the Republic of Albania" and Art. 4 and 17 of the Law No. 9632, Date 30.10.2009 "On the local taxes' system".

8. The main reasons of the non execution of the executive titles issued by other state institutions that per law have a right to issue executive titles/orders are as below mentioned:

- The incompleteness of the documentation sent by the competent authority (the lack of complete data in the Sequestration Orders issued by the tax administration) or because the order for the sequestration procedure have been issued without respecting the previous phase of the conservative sequestration;
- The bank's client have voluntary paid their obligation, so there was no need for the forced execution procedure;
- The subject hasn't had any active balance in his/her account and/or the client was a credit taker (bank debtor). In these cases the Bank informed the respective tax authorities in a written form.

9. Based on the banks' practice it is evidenced that there isn't any consolidated practice/form applied by the state institutions that per law have a right to check the financial situation of citizens/private entities in case they are tax debtors (such as General Tax Directorate, General Customs Directorate, Local Government Tax Authorities) in case of requests for information related to the banks clients.

- The legal basis for the banks in providing this kind of information to these institutions are: Law No.9920, Date 19.05.2008 "On the tax procedure in R.A", the Guideline No.24, Date 02.09.2008 of the Minister of Finance, Art. 511 and following of the C.P.C and Art. 245 of the C.C for the requests of the General Custom Directorate and
- legal basis for the bank in providing the requested information from the Local Government Authorities, are: the Law No. 9632, Date 30.10.2006 "On the local tax system" and Law No. 9920, Date 19.05.2008 "On the tax procedure in R.A".

2. The aggregated answers to the questionnaire

2.1. Execution of amounts in bank account against budgetary state institution

Conclusions:

- The banks' practice evidence that, although the Civil Procedure Code foresees the execution procedure of the amounts in the bank accounts for the budgetary institutions, however it does not foresee explicitly the instruments and the manner for their execution. Also, Art.589 of the C.P.C (newly amended) refers to the Guideline of the Council of Ministers for the execution of the monetary obligations that shall be approved upon this article. Apart from that it is suggested to complement the current Guideline Nr. 43, Date 11.06.2003 of Supervisory Council of the Bank of Albania. Concrete recommendations in this regard are: the amendment of Art. 2 where it is defined the concept of "account", reflecting in a more detailed manner the kind and the classifications and subsequently amending the other articles with the purpose of defining different kind of executions procedures for different kind of "accounts". The amendment of these articles has to be sustained with the possible Guidelines of the Council of Ministers.
- Suggestions in order to remedy the situation are provided in relationship with the deadlines for the budgetary institutions, that because of the special nature of their accounts; In this case the deadlines shall be longer than the execution's terms for the accounts of the other private debtors.
- General recommendation has been made emphasizing the need for collaboration between the Bank of Albania and the Ministry of Finance, to define the modalities for the execution of the amounts in bank account against state budgetary institution; the composition and the approval of the legal acts for the application of the Art 589 – 590 of the C.P.C and the approval of the Joint Guideline of the Ministry of Finance and the Ministry of Justice.

2.2. Execution of executive titles/orders issued by other institutions that are entitled to do so such as (General Tax Directorate, General Customs Directorate)

Conclusions:

- To have clear and determined execution procedure of executive titles, that can be achieved with the amendment of the Guideline No. 43 of the Supervisory Council of Bank of Albania and through drafting of new Regulations Acts determining the position of these institutions in relation with the Bailiff Office, and their relation with the Banks of second level.
- In regard to the executive/sequestration orders of the General Tax Directorate, it is necessary to amend the Guideline No.24, Date 02/09/2008, approved based on Art. 90/1 of the Law "On the tax procedure in the Republic of Albania", defining concrete steps and standard procedures (including the standard form of the orders sent to the Banks), as well as the specification of the deadlines on undertaking and concluding this procedure.
- According to the Law on Tax Procedure, the tax administration has the right to collect data for all subjects who have a bank account (An information requested every 3-months by the Banks to the taxpayers who open and close a bank account during that 3 months-period). This kind of information can be used not only by the administration, but also by the local government units with the purpose to limit the

unnecessary procedures, so that only sequestration orders for those subjects who are bank's clients would be sent to the banks.

- It is necessary to draft and approve a Guideline of the Ministry of Finance and a Regulation of the Bank of Albania, which can regulate and foresee all the situations and the modalities regarding to the request and availability of information from the local units addressed to the banks, in order to prevent the unnecessary work load and to protect the client's rights.

- In more concrete terms, it is recommended the review of the Guideline, specifically the part which regulates the sequestration orders of the taxpayers' bank accounts, in these main points:

a) The Guideline must include a template of the Sequestration Order, and the clear warning disposition that the Bank does not proceed with the execution in case that the Sequestration Order is not completed according to this template.

b) To define a maximum of Orders amount/number addressed to the Bank within a workday and a longer term (deadline) for the execution of the sequestration order and the transfer of the amount. This is due to the fact that in many cases the orders contain a list with a hundred names of subjects and their execution is practically impossible.

c) The orders have to be addressed to the banks as an order for each individual debtor or taxpayer and not as a list of debtors.

2.3. Request for information in regard to debtors and/or potential debtor

Conclusions:

- Taking into consideration the fact that special laws give the right to different authorities to issue executive orders and to require information regarding client's bank accounts, and also trying to establish the appropriate balance between the bank-state institutions and bank-clients, it is suggested that the current Guideline No. 43, Date 11.06.2003 of Supervisory Council of the Bank of Albania, shall include also specification on how and on what kind of information can be provided to such institutions, and also the limits in distributing these data.

- In the confidentiality framework, it is suggested that in the above mentioned amendments, the requests of these institutions sent to banks, must have a clear motivation on the reasons why this information is requested, avoiding the abusive requests, including the requests for a certain number of clients (not individual clients).

- Taking into consideration that another concern is that the requests do not have enough data in identifying the subject for whom the information is requested that is contrary the provisions of Art. 3.2 of the Guideline No. 43, Date 11.06.2003 of Supervisory Council of the Bank of Albania, it is suggested the amendment of this

article, which gives to the bank the right to refuse to provide the requested information, in case that the data are not requested in a clear form or in cases that the request for information is abusive and unjustified.

- Taking into consideration the fact that the banks send periodically the list of the new clients to the tax authorities, based on that information the tax authorities must do a preliminary selection of the Bank's clients consider as tax debtors and require based now on selected clients only the information and/or sequestration and/or execution of the bank accounts. So, it is necessary to make additional specific provisions to the Guideline No. 24 date 02/09/2008 "On the tax procedure in the R.Sh", in order to remedy the above-mentioned situation.

- More specifically, since that the major requests for information are requested by tax authorities, it is necessary to amend the Guideline of the Minister of Finance, specifying:

a) The cases in which the tax authorities have the right to request information regarding the taxable person;

b) The template of the request with the data contained in the request which is sent to the bank;

c) The cases in which the Bank does not give the requested information, because the request form is incomplete according to the above mentioned template.

3. Summary of the Impact Assessment Analysis

3.1. Current situation

The regulatory framework does not fully cover all elements related to execution of amounts on bank accounts, especially in relation to the execution of state obligations. With the current regulation, banks face many difficulties in executing bailiff orders or other executive titles issued by tax and customs authorities. It also has to be updated in compliance with the amendments in the Civil Procedure Code.

There is evidence of cases when banks have failed to execute these titles, becoming subject to penalties.

These conditions have raised the necessity to amend the regulatory framework in order to ease the financial intermediary role of banks and prevent the occurrence of these problems in the future.

3.1. Impact of the "Do nothing" option.

3.1.1 Possible medium-term (max 2 years) self – corrective market actions

The non-revision of the current regulatory framework with regard to execution of amounts in bank accounts will cause further confusion on banks positions and banks

mandatory and or discretionary actions to be taken when dealing with particular executive orders having state institutions as debtors.

3.1.2 Impact of the “Do Nothing” option to the various stakeholders

- Impact on regulated firms/ banks:

In case no action is taken in order to improve the legal framework, banks will continue to face the same or increasing difficulties to execute executive orders. This situation may involve sanctions on banks for obstructing the process.

The “do nothing” option will create a negative impact on banks performance; first by exposing those to risks of being subject of penalties in case they do not execute monetary obligation in their debtors’ bank accounts not due their lack of capacities or willingness but rather because of pure confusion created by a legal gap and different non-complying with each other legal acts; second toward their clients (state or private ones) with whom banks could breach contractual obligation, infringe consumers’ protection law and face eventual legal consequences (lawsuits and damages);

In conclusion, the “do nothing” option will result in further delays in the execution of court decisions, in legal risk that can lead to additional costs, in breaking the trust of clients toward banking institutions. An industry best practice could not be opposable to third parties.

- Impact on consumers:

Unless the regulatory framework is not clear and transparent, Banks’ clients will be unprotected from abusive or unclear actions of bailiff offices, tax offices etc.

Higher costs to banks in terms of fines and penalties could translate to higher prices for products and services charged to customers.

3.2 Impact of the alternative policy option(s)

3.2.1 Description of Option 1:

To update the current Guideline in accordance with the amended articles of the CPC, and in line with the needs of banks for more instructions and clarification on the procedures of execution on amounts on bank accounts.

3.2.2 Description of Option 2:

To issue other legal acts that would regulate the issue of execution of monetary obligation against the budgetary institutions, including the execution of other executive titles.

In more concrete terms: 1) Joint draft regulation of Ministry of Justice and Ministry of Finance on the criteria and procedures on execution of budgetary institutions obligations other than those that are directly covered by state budget; 2) Other draft regulatory acts that would provide guidance and procedures on executing other

executive titles such as Tax Authorities Orders and/or Decisions of Customs Administration, that have developed by law and practice a direct relationship with the banks, not through the Bailiff Office.

3.2.3 Description of Option 3:

A combination to a certain extent of both above-mentioned options, resulting in amending the BoA Regulation No. 43, date 11.06.2003, clarifying the procedures of execution on amounts on bank accounts and recommending on a joint draft regulation of Ministry of Justice and Ministry of Finance on the criteria and procedures on execution of budgetary institutions obligations other than those that are directly covered by state budget.

In this case the amendment of the BoA regulation on execution of amounts of bank accounts would encompass all the procedures including the one on judicial orders against budgetary institutions, Tax Authorities Orders and/or Decisions of Customs Administration.

This option will provide 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.

Annex 2

Note on the Italian Experience on Enforcement of Monetary Obligation due to Judicial Decision in the Bank Accounts

Summary of main findings on the Italian experience on enforcement of monetary obligation due to judicial decision in the bank accounts

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.

I. Italian model on the execution procedure of executive titles including the execution of amounts in the bank accounts

1.1 The conditions, according to the Italian Civil Procedure Code, under which an executive title or decision may be issued/taken.

On the basis of a principle to which there are no exceptions, **two conditions must be satisfied before decisions become enforceable, a) a formal condition and a b) a substantive condition. The formal condition is that an enforceable decision must have been taken, i.e. an act or judicial decision that must by law is foreseen to be enforceable. The substantive condition relates to the content of the decision, which must, by law, comply with three criteria which are “ to be certain, liquid and due”**. The need for certainty is obvious, as no enforcement can take place when it is uncertain whether a debt exists or what it consists of. The need for the content of the decision to be liquid and due is a initial prerequisite for enforcement, as an order cannot be executed if there is no practical way of implementing it if the amount of

money owed by the debtor to the creditor, or the nature of the item to be handed over, the conduct required, etc are not determined, Furthermore the established debt shall be due otherwise the creditor is not entitled to request its enforcement, i.e. in case another legal condition must be met.

The decision (i.e. the judicial instrument issued in accordance with the law) allowing enforcement may be of a judicial or non-judicial nature. Judicial decisions include all decisions and measures taken by a court in relation to trial proceedings that must be enforced by law. In a more detailed manner they are:

1. final judgments (to make a payment, transfer an asset or behave in a certain manner) that cannot be reviewed by a higher court or temporarily enforceable judgments (generally speaking, all judgments delivered at the first instance are enforceable unless the court of appeal has suspended enforcement);
2. orders to pay monetary obligation (sums of money) issued according to balance sheets upon the end of a financial term;
3. orders issued in the course of proceedings to pay sums that are not contested by the parties to the case;
4. interim enforcement orders, whereby the judge orders payment of monetary obligation (sums of money) or the transfer of assets on the basis of specific documentary evidence;
5. reconciliation agreements settling employment disputes;
6. injunctions to pay sums of money or transfer movable assets issued by the court on the basis of specific documents (which demonstrate the certainty of the debt in law) that become enforceable or are declared temporarily enforceable;
7. notices to quit on the expiry of a rental agreement or where payment of rent is late, if the notices are upheld by the court;
8. arbitration awards that become enforceable (i.e. decisions delivered by arbitrators, bodies that are not part of the judiciary and consist of people called upon to settle a dispute by obtaining an agreement between the parties);
9. orders issued to employers to pay sums of money to workers unlawfully dismissed.

Non-judicial decisions consist of acts/documents drafted/taken out of court which entitle persons/entities who assert their claims. These acts/documents have by virtue of the law a special enforcement power due to their nature and the rules governing their use in legal relationships, particularly with regard to the speed of procedures. So, in regard to their execution these acts are equivalent to the judicial decisions and the other enforcement court measures.

They are mainly bills of exchange and forms of credit that are expressly enforceable under the law (promissory notes, banker's drafts and instruments issued by certain

banks), tax demands rendered enforceable by the tax authorities, contractual documents received by a notary public expressing the will or obligation to pay a sum of money (but not obligations to act or refrain from acting), and, following the 2006 reform, parts of authenticated private documents relating to payment obligations.

1.2 The court authorization to enforce claims

It is not necessary to obtain the court's authorization to initiate enforcement proceedings, as the nature of the claim has been established in the decision or instrument. It is sufficient for the Clerk's Office at the court responsible for enforcement to check if the claim is formally in order and to proceed with issuing the “execution order”, i.e. a formula laid down by law requiring public bodies to act in accordance with their field of competence (judicial bodies and enforcement/execution bodies, which are called on to provide assistance if necessary). To this end the formula must be in the form required by law and must bear the Clerk's Office seal. Similar rules apply to other documents received by a notary public.

1.3 Rules on the status, role, responsibilities and powers of bailiff's agents

Forced execution of judicial decisions is entrusted to bailiffs, who are public officials, part of justice administration. Bailiffs are in charge of taking the necessary actions to enforce the decision, with assistance, whenever needed, of other subjects, such as experts in determining the value of assets or custodians/administrators of assets that need to be held in custody. However, any action assigned to public enforcement agents may be supervised and directed by the court. Therefore, wherever problems or conflicts emerge, the bailiffs, the notary public or the parties inform the court directing enforcement, which then summons the parties and issues the appropriate instructions.

Enforcement proceedings are structured in the same way as trial proceedings because a court orders them. They are conducted based on instruments, which are issued or authorized by the court that has heard the parties in adversarial proceedings and may give rise to actual trials. By the virtue of the nature of the enforcement proceedings **defense counsels are always required.**

1.4 The prerequisite/conditions that enable the court to enforce decisions

As mentioned in the previous sections there are formal and substantial conditions to be satisfied in order to enable a forced enforcement/execution. However, despite these conditions another one (condition) shall be met before the procedure of requesting the forced execution can take place. The creditor must send to the debtor a document, known as a *precetto* (writ), in which he/she calls on the debtor to voluntarily fulfill the obligation incumbent upon him/her in the decision (judgment etc.. He (the creditor) shall set a date and advise the debtor that failure to comply with it will result in a

forced enforcement/execution of the decision. The aim is to give the debtor a deadline by which to comply with the judgment voluntarily and thereby avoid the forced execution of the decision.

1.5 Recuperation of the amounts on bank accounts as executive title for the banks.

Based on Art. 50 of the legislative decree No. 385, date 1.09.2003, the bank can require the decree/court order, foreseen by Art. 633 of C.Pr.C, based on the statement of account, certified in conformity with entry accounting from one of the banking directors, which has to declare that the credit is certain and due.

Moreover, Art 633 of the C.Pr.C foresees that based on the request for fulfillment of a monetary obligation made by the creditor, the competent judge can pronounce the injunction for the payment of the amount of money (the monetary obligation), in case that the pretended right is proved by a written document. So, according to the Italian rules, the request for the injunction is based on written evidences in case of the above-mentioned Art. 50, there is an absolute autonomy of such a rule compared to the single hypotheses of written evidences foreseen by the C.Pr.C.

The bank account's statement is a document, which certify the account's balance, its actual liquidity, but also all the operations that have been taking place and have contributed to form it. This document have to indicate the result of all the lines of credits and debts realized during the considered period of time, including account's commissions, expenses, the fiscal retains as well as the active and passive interests, etc. The time period taken into consideration is the one between the date of the statement indicated in the last statement of account received by the client and the date of the issuance of the bank account's statement that will be exhibited in the trial.

The bank account's statement, can be used, also, against the guarantors, for example in case of a guarantor of bank credit provided to credit taker that result as a non-paying. In this case the bank have to issue a bank statement of the account covering all the period of guarantee/warranty. This kind of statement issued by the bank is considered to be self-certified, so that the bank to not need any further certification for the documents issued by itself.

II. EXECUTION AGAINST STATE INSTITUTION ON ITALY

The execution of monetary obligations (amounts in money), against budgetary institutions, on the amounts of their bank accounts, generally is on the form of the sequestration/cease of the amounts at third parties, so usually, the creditors can request the sequestration or the blocking of the debtor's accounts in all the banks that perform their activities in the Republic of Italy. We have to take into account that the banks here by playing the role of custodians are considered as third parties.

On the execution of monetary obligations (amounts in money) against budgetary institutions all the provisions that regulate the execution of obligations on the goods of the private debtors are applied, with the only change foreseen by Art 14 of the Law Nr. 30, Date 28.02.1997: “The public administration and the non-economic public entities shall complete the execution procedure of the court decision or arbitration’s decisions, which has come into force and determine the amount of the obligation in money, within 60 days starting from the day that they come into knowledge of the executive title. The creditor does not have the right to request a forced execution of the executive title against public administration or public entities prior to end of this term and as such no enforcement/execution order can be decided by the court. The Italian legislation has determined that the term of 60 days from the notifying day is an adequate term for the voluntary fulfillment of the obligation, suspending during this term the right of the private subjects to request the forced execution procedure.

The term of 60 days (foreseen by the Law Nr.180, Date 11.06.1998, modified with the Law Nr. 267, Date 08.08.1998) has been changed and prolonged in 180 days for the execution procedure of the court and arbitration decisions, this due the debates in relation to need of completion of the public work/investment including programs of reconstruction of the territory, stroked by natural calamity, whose completion might be in threat due to unforeseen debts and planned budget for such obligation against creditors.

Furthermore, the Italian jurisprudence has affirmed the application against State and Public Entities of the general principle that the debtor shall fulfill his obligations with all his present and future goods (Art. 2740 of the C.C), so stressing once again the exposure of State and of the Public Entities in the forced execution procedure in case of a non-voluntary execution of the execution’s order.

However, the exposure of State and of the Public Entities on the forced execution procedure of the monetary obligations or pecuniary credits has been denied in case that these amounts of money or pecuniary credits are part of the undisposable (which cannot be used) assets, i.e in case their destination is for accomplishment of public services. Another case is also when the obligation are arising due to execution of *potesta publica* of these entities.

The non-exposure of the state or public entities in relation to forced execution procedure for monetary obligations in regard to pecuniary credits, arises once again from the jurisprudence using the same principal that this credits cannot be touched and used to fulfill monetary obligation in case they constitute undisposable assets (art. 2740 of the C.C. has been used by Italian courts as legal basis).

The interpretation of the law by the Italian court in this regard has been as follows: “The State Budget, as far as it does not enable the link of single entries (credits) to single exits (debits), can not be considered as a ground to deny to condition the destination of particular amounts in the technical perspective, so that these amounts, would not be available for the executive action taken by the creditors against the State and public entities. Nevertheless, there exist special laws that consent the Public Administration to suspend the executive procedure (For example in case of the payment of the public services) or actually to limit the execution on some goods

(such as the amounts designated for the payment of the employers' salaries of the public entities)

To reduce the negative effects on the assets of the Public Entities, the Italian legislator has intervened with legislative initiatives, sometimes also by suspending the creditors' rights to act in "executives" or enlarging the category of the goods which can not be exposed to the execution procedure

Some examples of special legal provisions are: Art. 9 of the Law No. 96, Date 03.04.1993, which foresees the suspending of the forced execution procedure in order to make possible first the completion of the transaction, by paying only a reward amount of not more than 40% of the obligation as a reward, which is greater than the one that was foreseen in Art. 7, of the Law No. 244, Date 08.08.1995, that was amounting in limits of 35% of the pretended obligation as a reward. Another example is also the provision of Art. 113 of the Law No. 77, Date 25.02.1995, modified, which foresees the exclusion from the forced execution of monetary obligation, of the amounts from the budget of and in competence of the communes, provinces and of the local entities partnerships which are designated to cover payment of the employees' salaries.

The full version of the Note on the European Experience on the Cash and Non-cash Transactions can be accessed on the SPI Albania website:

Annex 3. Scoping of Problem

3.1 Problem identification

Background Information

- *Execution of amounts against budgetary institutions*

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.

- *Relationships between banks and other state institutions (Tax authorities, Customs administration, local government tax units)*

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.

○ **General**

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.

3.2 Market/regulatory failure analysis (nature and evidence)

The regulatory framework does not fully cover all elements related to execution of amounts on bank accounts, especially in relation to the execution of state obligations. With the current regulation, banks face many difficulties in executing bailiff orders or other executive titles issued by tax and customs authorities. It also has to be updated in compliance with the amendments in the Civil Procedure Code.

There is evidence of cases when banks have failed to execute these titles, becoming subject to penalties.

These conditions have raised the necessity to amend the regulatory framework in order to ease the financial intermediary role of banks and prevent the occurrence of these problems in the future.

3.3 Policy Goal(s) threatened by the failure

General Objective:

- To improve Banks' confidence when executing executive titles (judicial decisions, tax and customs' authorities orders), especially against state institutions and promote consumer protection in the same time by determining appropriate procedures in this regard.

Specific objective:

- To reduce risks and costs for banks when enforcing executive titles on their clients' accounts.

Operational objective:

- To formulate recommendations for amending legal regulatory framework

including Bank of Albania' Guideline "On the modalities of execution of obligations on amounts in bank accounts", and/or any other legal or sub-legal act supported by the international experience and impact assessment.

3.4 "Do nothing" option

3.4.1 Possible medium-term (max 2 years) self – corrective market actions

The non-revision of the current regulatory framework with regard to execution of amounts in bank accounts will cause further confusion on banks positions and banks mandatory and or discretionary actions to be taken when dealing with particular executive orders having state institutions as debtors.

3.4.2 Impact of the "Do Nothing" option to the various stakeholders

- Impact on regulated firms/ banks:

In case no action is taken in order to improve the legal framework, banks will continue to face the same or increasing difficulties to execute executive orders. This situation may involve sanctions on banks for obstructing the process.

The "do nothing" option will create a negative impact on banks performance; first by exposing those to risks of being subject of penalties in case they do not execute monetary obligation in their debtors' bank accounts not due their lack of capacities or willingness but rather because of pure confusion created by a legal gap and different non-complying with each other legal acts; second toward their clients (state or private ones) with whom banks could breach contractual obligation, infringe consumers' protection law and face eventual legal consequences (lawsuits and damages);

In conclusion, the "do nothing" option will result in further delays in the execution of court decisions, in legal risk that can lead to additional costs, in breaking the trust of clients toward banking institutions. An industry best practice could not be opposable to third parties.

- Impact on consumers:

Unless the regulatory framework is not clear and transparent, Banks' clients will be unprotected from abusive or unclear actions of bailiff offices, tax offices etc.

Higher costs to banks in terms of fines and penalties could translate to higher prices for products and services charged to customers.

3.5 Alternative policy option(s)

3.5.1 Description of Option 1:

To update the current BoA Guideline No.43 in accordance with the amended articles of the CPC, and in line with the needs of banks for more instructions and clarification on the procedures of execution of amounts on bank accounts.

Amend the above Guideline by broadening its scope of regulation including the modalities on relationships between Banks and Tax/Customs Authorities and by providing precise procedure in regard to implementation of executive titles other

than the one of Bailiff Office.

3.5.2 Description of Option 2:

To draft recommenadations for the Council of Minsiters’s Guidelines that should be issued based on Art. 589 of CPC on modalities of execution of monetary obligation against budgetary institutions. In more concrete terms: 1) Joint draft regulation of Ministry of Justice and Ministry of Finance on the criteria and procedures on execution of budgetary institutions obligations other than those that are directly covered by state budget; 2) Other draft regulatory acts that would provide guidance and procedures on executing other executive titles such as Tax Authorities Orders and/or Decisions of Customs Administration, that have developed by law and practice a direct relationship with the banks, not through the Bailiff Office.

3.5.3 Description of Option 3:

A combination to a certain extend of both above-mentioned options, resulting in amending the BoA Regulation No. 43, date 11.06.2003, clarifying the procedures of execution on amounts on bank accounts and drafting recommendations for the Council of Ministers Guidelines on modalities for the execution of monetary obligation against budgetary institutions.

In this case scenario the amendmends of the BoA regulation on execution of amounts of bank accounts would encompasses 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.

Summary Problem Scoping			
Revising regulatory act on Execution of Procedures on Bank accounts			
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			

Annex 4. SPI Albania Methodology

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. 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”).
Analysis of impact	
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
Consultations	
10. Policy Document	To learn market participant opinions on various policy options
Conclusion	
11. Final Recommendations	Final report to decision-makers, based on Cost Benefit Analysis and market feedback