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“Scoping of Problem” Document

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

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					
Industry competitiveness				X	
Industry reputation					

Short description of the context:

Banks often face numerous difficulties when executing judicial orders, especially when accounts of budgetary institutions are involved. Bank of Albania’s current regulation on the implementation of execution of amounts on bank accounts is lacking appropriate legal provisions regarding public institutions’ accounts or consolidated accounts.

Another problem faced by banks is that of enforcing executive titles issued by institutions and instances other than the Bailiff Office (e.g. General Tax Directorate, General Customs Directorate, etc.), since the guideline does not cover for these types of titles specifically.

With the decentralization process, the local government units do have their tax offices in charge of gathering local taxes. Upon the law, they 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.

Moreover, there are not any specific regulations provided concerning executing judicial orders on normal bank accounts, deposits with and without maturity deadline and when the deposit or the account has co-owners (spouses/business partners etc).

Furthermore, there do exist also cases when banks receives orders from the Police

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Authorities not the Prosecution Office, requesting information on bank accounts and deposits of physical and legal persons. A specification on the relationship between banks – customers – police is not determined in the current regulation.

There is a need for the regulatory framework to cover for the above issues and to update the current one with the amendments made recently to the Civil Procedures Code in regards to the execution of amounts in banks accounts and executions against the state.

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: 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".

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 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.

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)

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 2: Scoping the problem

2.1. Problem identification

2.1.1. Background Information

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.

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.

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.

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.

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.

2.1.2. Market Analysis

General market: Banking Market

Specific segment: Customer service

2.1.3. Legal framework

- Execution on amounts in bank accounts

Articles 593 to 600 of the Civil Procedure Code (CPC) regulate the execution of monetary obligations, against natural persons and legal entities, on the amounts of their bank accounts. 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.

Article 600 of CPC stipulates that Bank of Albania has the authority to issue regulations on the implementation of executions of monetary obligations, which shall be mandatory for the banking system. Based on this and on the Law "On Bank of Albania", the latter has issued a Guideline "On the modalities of execution of obligations on amounts in bank accounts", approved by the Supervisory Council 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 was amended with Decision No. 43, dated 11.06.2003 of the Supervisory Council of Bank of Albania. Apart from defining the modalities and rules to be followed by banks when executing monetary obligations arising from judicial decisions, this guideline also regulates the relationship between banks and the Bailiff Office, including rules and procedures to be followed in order to facilitate the executions of bank accounts complying in the same time with the civil and civil procedural regulations.

- Execution against the State

The Albanian Constitution, Art. 142 sec. 3, states that state bodies must execute judicial decisions.

The Civil Procedure Code contains special provisions for executions against the state in the articles 589 to 592.

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.

This decision in general terms is in compliance with the legal framework, but it does not provide adequate and complete regulations regarding the executions of amounts in bank accounts against state in general including the one that are directly

related to state budget and the one related to budgetary institutions and as such only to the institution's budget.

This pecuniary is due to the fact that Government's Decision No. 335, date 2.6.1998, point (2), foresees different responsibilities regarding the execution of bank account according to nature of obligation separating those in two big classes in terms of what funds they will be paid off and which institutions will be held responsible. In a more detailed manner, based on this Government's Decision, MoF shall execute judicial decisions that are directly related to the state budget. In this perspective, MoF is the competent body to execute the budgetary funds approved by the parliament for the year in course. It has to be stressed that MoF is not responsible for the monetary obligation against individual state institutions. Moreover, this decision provides a detailed list of the kind of judicial decisions qualified to be paid directly from the state budget under the competence of MoF. The monetary obligation against state institutions other than the one considered to be directly covered by state budget (as mentioned above), shall be executed directly by the institutions from their annual approved fund upon criteria and procedures, which shall be determined in a joint regulation of MoJ and MoF. Although, the decision is dated in 1998, the regulation neither is drafted, nor is approved.

The pecuniary of executing of amounts in bank accounts against state institutions encompasses also the fact that these institutions do have different accounts such as normal bank accounts, third parties credits and in all the cases treasury accounts, which normally hold the funds that are transferred from the State Treasure Department based on the approved annual budget of those institutions. Based on Art. 589 of CPC the execution of their monetary obligations upon judicial decisions is made only on the funds they have in their bank accounts. When the budgetary institutions do not have funds in its bank account, do not have third parties' credits, do not have funds in treasury account, request is made to the next hierarchical financial institutions, for appointing necessary funds in the respective budget's chapter of this institution. Upon Art 589(2), paragraph 2, the Council of Ministers shall issue the necessary regulation on executing the monetary obligations in (from) the treasury accounts, which has not been drafted yet.

- *Execution of other executive titles*

Based on Article 510 of CPC the forced execution can take place only upon an executive title. A part of final judicial decisions are considered as executive titles also other acts that are explicitly determined as such upon other laws. According to Art. 2 of the Law No. 8730, date 18.1.2001 "On organization and functioning of the Bailiff service", the bailiff office is in charge of the forced execution also of all executive titles foreseen as such in the CPC.

○ *Orders of Tax authorities*

Based on the above-mentioned provision it is considered as executive title also the order issued from the tax authorities on unpaid tax obligations. According to Art. 90 of the Law No. 9920, Date 19.05.2008 "On tax procedures in Republic of Albania", the tax authorities can request through an written order to all the banks, in which the tax payer has its accounts, to cease monetary amounts up to the unpaid tax obligations. The order issued by the tax authorities is executed/paid first even though there are other payments orders pending.

○ *Orders of Custom Authorities*

Based on Art. 245 (4) of the Law No. 8449, Date 27.01.1999, “ The Custom’s Code of the Republic of Albania”, the decisions taken from the Customs administration on implementation of security (guarantee) measures and/or forced recovering of the custom’s debt are considered as executive titles at the time that they are made known to the debtor. The customs authority is entitled to use all the legal measures to secure the debt payment if the obligation amount is not paid in time. In this framework, the customs authority in order to recover the custom’s debt can seize monetary values, credits, valuable objects, documents through which payments are made, bank foreign currency deposits belonging to the debtor or to third parties or guarantors that have obligations against the debtor. The execution of the Customs Authorities decisions is accomplished according to Art 511 of CPC, which implies that as soon as the judicial authorities issue an order on the executing the customs authorities’ decision, the customs authorities itself can execute the decision on recovering the debt.

Note: Although the bailiff office is in charge of executing also the tax and customs executive titles, normally the practice has evolved in another direction and both authorities have created a direct relationship with banks acting as self-executor bodies in recovering the tax debt or the customs obligations.

- Consequences/sanctions/penalties

Based on Art. 598 of the CPC “Sanctions and its complaint procedure” and also upon point 7.1 of the Decision No. 43 of the BoA’s Supervisory Counsel “On the modalities of execution of obligations on amounts in bank accounts” the non execution of the executive title does impose responsibility for the bank, in case that the bailiff office has grounds to suspect that the bank without any reason:

- 1- Does not execute completely or partially the obligation;
- 2- Does not respect the terms of the execution ;
- 3- Does not respect the preference line;

Furthermore, based on Art. 598 of CPC the bailiff has the right to verify all the bank documents in the presence of the employer charged by the executive body of the bank, holding a report for this procedure. The non-execution of the bailiff’s order in case of ascertained infringements or irregularities could trigger sanctions versus the bank employer or its executive body that has ordered irregular actions. According to Art. 588 of CPC is applied in this case and a fine of 30.000 Lek can be imposed as a sanction.

2.1.4. Stakeholders - Institutional framework

- Commercial banks.

The Albanian banking system consists of 16 commercial banks. As financial intermediaries, they hold accounts of individuals, legal entities, as well as budgetary institutions. Banks are often required to execute judicial orders or other types of executive titles, by placing a seizure on the accounts of the debtor. In cases of failure to do so, they can be object to fines and penalties.

- Bank of Albania.

Bank of Albania based on Article 600 of CPC and on the Law "On Bank of Albania", issues the necessary regulatory acts and instructions on the modalities of applying the provisions of the CPC for execution of amounts on bank accounts, mandatory for the entire banking system.

- *Individuals and Ombudsman*

The problem of non-execution of court verdicts remains a big concern of the Albanian citizens. The main scope of numerous complains at the Ombudsman relates to non-execution of final judicial verdicts involving the state-budget institutions as debtors. In the Ombudsman's Annual Report for year 2008 it is stated that the reason of non-execution of final judicial decisions is due to the lack of funds in the budget of respective state institutions and due to the mechanism that needs the approval of the Minister of Finance.

- *Bailiff Offices*

Bailiff Offices are agents in the process of enforcement of judicial decisions and other acts. Their good collaboration with banks is very important for the accomplishment of their mission.

- *Ministry of Finance*

Government's Decision No. 335, date 2.6.1998 point 2, stipulates that the Ministry of Finance is held responsible to execute judicial decisions that are directly related to the state budget. In this perspective MoF is the competent body to execute the budgetary funds approved by the parliament for the year in course. It has to be stressed that MoF is not responsible for the monetary obligation addressed to the by judicial decision against individual state institutions.

- *Budgetary institutions*

Budgetary institutions (such as ministries, police, local government etc.) often fail to pay their financial obligations as decided by executive titles, mainly due to financial constraints. Although the funds provided for them by the state budget might be limited, the failure to pay the financial obligations at due time might cause further expenses to the state in the form of fees and penalties.

2.2. 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.

2.3. 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.

2.4. "Do nothing" option

2.4.1. 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.

2.4.2. 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.

2.5. Alternative policy option(s)

2.5.1. 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.

2.5.2. 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.

2.5.3. 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 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 amendmend of the BoA regulation on execution of amounts of bank accounts would encompasses 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.

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	Regulation made it worse	Regulation so far has failed to work; maybe in due course

	market failure (e.g. side effect)		
X			