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WORKING PARTY ON INTERNATIONAL LEGAL AND COMMERCIAL PRACTICE

Note by the secretariat

This paper reviews the activities of the Working Party on International Legal and Commercial Practice (WP.5) and its various sub-groups since the third session of the Committee for Trade, Industry and Enterprise Development (7-10 June 1999). At that session, the Committee endorsed the programme of the Working Party and approved its proposals, namely to:

- (a) change the name of the Working Party to the above-mentioned title and endorse new terms of reference for the Working Party
- (b) establish an advisory group on the protection and implementation of intellectual property rights for investment
- (c) establish an expert advisory group to consider possible revisions to the European Convention on International Commercial Arbitration of 1961

The paper also draws lessons from the work of the Working Party for the rest of the UN/ECE, and particularly those programmes which focus on fostering links with the business community. It concludes with future proposals and suggestions for further developing this collaboration.

Forum on New Trends in Competition Law and their Implications for Business in Central and Eastern Europe and the Commonwealth of Independent States, Brno, Czech Republic, December 3-5 1999

1. The Forum took place on the first day and a half of the forty-eighth session of the Working Party. Its purpose was to bring together representatives of competition authorities, the business community, lawyers and experts from international organizations and academia to identify the areas where improvements could be made in implementing competition rules to foster a better business environment. It was organized in cooperation with the Ministry of Industry and Trade and the Office for the Protection of Competition of the Czech Republic. Five issues were selected as the focus of discussion: Mergers and acquisitions; harmonisation of domestic legislation with European Union competition legislation; State aids; public procurement; and the implementation of competition laws. The competition authorities and anti-monopoly committees of the following countries were represented: Austria, Belgium, Bulgaria, Croatia, Cyprus, Georgia, Hungary, Israel, Kyrgyzstan, Norway, Romania, Slovakia, Slovenia, Spain and Turkey. The European Commission was represented. The United Nations Conference on Trade and Development (UNCTAD) also participated and there were many experts from the legal community and from academia.

2. The level of expertise among speakers and participants was very high, and the objectives of the Forum were met. Several competition authorities, notably Bulgaria, Georgia and Slovakia, were represented by their presidents. The Working Group sessions on each of the five topics provided good opportunities for in-depth discussions. The Forum produced a set of principles for best practices in competition that will assist policy makers. Such an exchange between competition authorities from EU Member States and EU applicant States was judged by participants to have been very fruitful.

3. One of the recommendations of the Forum was that the UN/ECE should hold an annual meeting of competition authorities in cooperation with UNCTAD, the Organisation for Economic Co-operation and Development (OECD) and the EU to review progress on the issues and points raised. It was further suggested that the Central European Initiative (CEI) could be a vehicle for implementing the recommendations of the Forum. Participants also identified some problem areas for future attention. These included: the independence of the competition authority or anti-monopoly office in the face of political pressures; the challenge of controlling State aids at the national and at local levels; the difficulties in establishing effective independent regulators for recently privatized utilities; and the still rather low priority given to competition by many Governments.

4. The participants highly appreciated the financial contribution which the CEI made to the development of the Guidelines, which will help CEI countries to develop fairer business environments in the region.

Follow-up

5. The secretariat informs the Committee that it has received the following invitations for follow-up events:

- The CEI has offered to host a round table in Budapest at the next CEI Summit, on “Competition and
- The President of the Slovak anti-Monopoly Office has offered to host a follow-up Forum in the first quarter of 2001 in Bratislava. In addition, UNCTAD and the EU have offered support in organizing this event, while the OECD has informed the secretariat that, although it was unable to participate in the Brno Forum, it would welcome being involved in this proposed activity.

Build-Operate-Transfer (BOT) Group

5. The Build-Operate-Transfer (BOT) Group has made substantial progress towards finalizing its Guidelines and has held meetings in Paris, in Sofia, (twice) and Dhaka (twice) (October 1999 and February 2000). In addition, a small working group meeting was held in Paris to discuss the drafting of Part II of its Guidelines:

6. BOT Group's Guidelines: The Group raised funds (US\$ 20,000) to hire two editors, who are leading experts on concessions and Private Finance Initiatives (PFI), to finalize the draft and edit the contributions of the members of the Group. A meeting is to be held in April in Geneva to review the final version. The Group has informed the secretariat that it will be pleased to use every opportunity to present its Guidelines at meetings and conferences. An invitation has already been received by the United Nations Industrial Development Organization (UNIDO) in Vienna to present the Guidelines to local missions.

Negotiating Platform

7. In collaboration with the Economic and Social Commission for Asia and the Pacific (ESCAP), the BOT Group has undertaken a two-stage mission to provide high-quality advice to Bangladesh authorities on implementing public-private partnerships. The funding support was used to hire two consultants, from Sweden and the United States, to prepare a "negotiating platform" to help civil servants negotiate concession contracts with foreign investors. The document is of importance because experience has shown that poorly informed civil servants can delay the implementation of projects and/or agree to clauses which turn out to be unduly favourable to foreign investors. The platform can be used to serve all countries, developed and developing.

Project development and southeast Europe

8. The Group has received requests for assistance in developing pilot projects, which could demonstrate the value of Private Public Partnerships (PPPs) in a tangible way to national constituencies. The Government of Belarus has submitted to the Group a sub-regional, border-crossing facilitation project (a customs point between the Belarus and Polish border) for advice. At the suggestion of the UN/ECE, the Belarus Government has established a special inter-ministerial group of experts on BOT, the first in the CIS. The CIS secretariat has expressed its interest in the Belarus project which they believe could be of use as a model project for further activities in the CIS countries.

9. In addition, the Group has offered to assist with reviewing infrastructure projects for the reconstruction of southeast Europe to determine whether these can be done on a private public partnership basis. It has also submitted a project proposal to help implement infrastructure projects on a PPP basis in Stability Pact countries. It is working already with countries in southeast Europe.

10. The following projects have been proposed:

- A regional conference for southeast Europe on "negotiating public-private partnerships for civil servants" involved in developing public-private partnership projects
- A regional conference with ESCAP in 2001 for south Asian countries on building national capacities in BOT management
- A regional project to promote wider use of PPP options in the UN/ECE region including a seminar in May in the Czech Republic with the Ministry of Transport.

Real Estate Advisory Group (REAG)

11. The mission of REAG is to organize meetings in countries, at their request, in order to provide advice on how to promote real estate investments and how to remove unnecessary regulatory mechanisms that impede private investment. More recently, the Group has decided to place more emphasis on one of the agreed mechanisms for achieving the general objective, this mechanism being the promotion of specific public/private real estate projects. Targets of this advice and project development will be regional and local authorities and financial institutions.

12. Because, ordinarily, REAG missions take place over a period of 7 to 10 days, funding is required for this activity. Accordingly, in an effort to raise funding from the private sector and other sources, the Terre Initiative was launched in London in 1998 by the Executive Secretary of the UN/ECE and the Secretary General of the EBRD. This initiative has been successful in promoting the concept although funding for REAG missions has not, as yet, been forthcoming. Nevertheless, provided funds can be raised, REAG proposes to undertake a mission to Lithuania in the second half of 2000.

13. REAG also held a round table, in November 1999, as part of the CEI Forum in Prague, entitled "Promoting public-private partnerships for real estate development". The Mayor of Prague, Mr. Jan Kasl, opened the seminar. Presentations were made on social housing, mortgage banking, valuation and legal services related to real estate transactions. A representative of the Croatian Tourism Ministry gave a presentation on sustainable tourism projects.

14. In early March 2000, a Seminar entitled "Trade and Investment Promotion from a Local and Regional organized jointly by the UN/ECE and the Foundation for the Economy and Sustainable Development of the Regions of Europe (FEDRE), to which local authorities from transition economies were invited. The Seminar emphasized the role of real estate in developing local economies.

15. REAG plans to hold a Conference in May 2000 to examine international efforts at providing assistance in developing real estate markets in the transition economies. In March 2000, the secretariat sent a questionnaire to all identified, appropriate international organizations with an interest in this subject. The results of the questionnaire will be discussed at the Conference and could form the basis of a useful guidance note for transition economies.

16. A forum on real estate markets in transition economies is planned for October, to present the evolving situation of real estate markets in the transition economies as well as to attempt to develop contact networks between potential investors and delegation from transition economies.

17. REAG is seeking to promote specific public-private projects in the transition economies as well as to improve the general environment for the development of real estate markets. These projects should be carried out in consultation with interested regional authorities. Government assistance is further required to identify those regions which might be interested in participating.

Advisory Group on the Implementation of Intellectual Property Rights for Investment

18. After its approval by the Committee for Trade, Industry and Enterprise Development in June 1999. The Advisory Group held its first meeting in September 1999 and was quick to implement its programme of work. It appointed a Steering Group: Ms. Irina Savalyieva (Russian Federation) was elected Chairwoman; Ms Irena Sterbova (Czech Republic) and Mr. Dominico Sindico (Italy) were elected vice-chairs. The World Intellectual Property Organization (WIPO) and the EU participate in the meetings of the Steering Group regularly and the World Trade Organization (WTO) receives all the documentation and participants in meetings on an ad hoc basis. The rest of the Steering Group consists of representatives from each of the

four sub-groups of the advisory group. The International Chamber of Commerce (ICC) established a fund in Paris to pay for the activities of the Group. A project manager was recruited for two years, which covers the initial mandate approved by the Committee for Trade, Industry and Enterprise Development.

Consultative meetings

19. It has been agreed that the first consultative meeting will be held with the Government of Estonia in Tallinn on 6 and 7 April 2000. Consultants have prepared an extensive report for the meeting on the implementation of intellectual property rights in Estonia. Five rapporteurs have been appointed to prepare the report on these consultations.

20. The Group has also prepared the agenda for a meeting on Sustainable Implementation in Poland during 2000 aimed at identifying the training needs of Polish IPR enforcement officials and developing the appropriate training modules.

21. The Group also plans to organize Latvian and Lithuanian consultative visits within the framework of respective support projects, in September 2000 and, depending upon interest and available funding, a regional meeting on intellectual property rights in the Baltics

Cooperation and coordination

22. As mentioned above, representatives of WIPO, the WTO and the EU are invited to and frequently attend Steering Group meetings. The Project Manager attended the Eighth Meeting of the World Customs Organizations' Joint Customs/Business Working Group on the Protection of IPRs (14 December 1999). Her participation contributed to a better delineation of responsibilities between the UN/ECE Advisory Group and the WCO, WIPO, the WTO and the EU and reinforced the potential of their collaboration in training government officials. In this area it is noted that the UN/ECE Executive Secretary has agreed to address the Anti-Counterfeiting Group (ACG) at its 20th Anniversary Conference in London on 17-18 May 2000.

Information dissemination

23. The Advisory Group is currently constructing a website, which will serve as a first point of information on the scope of the Group's activities. It will have links with the main public and private sector organizations with whom the Group is actively cooperating.

24. Initial research is also now being carried out to determine what existing resources are available for creating and maintaining a database of information on the protection and enforcement of intellectual property rights in the 26 transition economies. This research will look at legislation, international treaties, and developments in these countries.

Advisory Group to consider possible revisions to the European Convention on International Commercial Arbitration

25. The Advisory Group has begun a detailed programme to determine whether and how the 1961 Convention might be revised. Under the chairmanship of William Pisoni (Belgium), the group drafted and then sent out a detailed questionnaire to signatories of the Convention. This exercise successfully solicited replies from 24 countries as well as from a number of international organizations and recognized arbitration experts. The results were presented to a meeting of the group in Vienna at the headquarters of UNCITRAL (February 2000).

26. At the end of the meeting the Group reached a consensus that the 1961 European Convention on

International Commercial Arbitration:

- (1) Remains useful;
- (2) Provides a utility beyond that of existing conventions, in particular as a common set of minimum standards to be observed in international arbitration;
- (3) Could be made even more useful to both existing and potential new signatories if it were updated.

A consensus was also reached that article IV and the related annex should be modified and two explanatory footnotes drafted. No consensus was reached as to whether or not any additional changes should be made.

27. The Group also agreed to provide advice to the arbitration project of the Southeast European Cooperative Initiative (SECI) whose purpose is to improve the dispute resolution environment in SECI member countries.

28. The Group will hold its next meeting in the autumn of 2000.

Recent trends in Public-Private Partnerships

29. Within UN/ECE, the Working Party on International Legal and Commercial Practice (WP.5) has been in the forefront of involving the business community in its work. This involvement is seen at its large annual international forums and in the active support which the business community provides to its various sub-groups.

30. The results from this partnership between Governments and the business community continue to be highly positive. The active involvement of the business community has stimulated the wider dissemination of the Working Party's Guidelines and standards. Its contribution in terms of time, expertise and materials has increased the output and raised the profile of the Working Party. The value of the BOT Group is now well recognized even outside the UN/ECE region. ESCAP has collaborated with the BOT Group in advising the Government of Bangladesh on implementing public-private partnerships in infrastructure. These Groups provide detailed, practical advice on contracts and negotiations that are invaluable to the transition economies and to other UN/ECE countries.

31. The involvement of the private sector must, however, be mutually beneficial. The UN/ECE is, first and foremost, an inter-governmental body. It cannot become a forum for the private sector, a service that other international bodies already provide the business community. Its real value and role arises where there are projects like PPPs in infrastructure, which the public and private sectors must undertake jointly or where private sector input is important in ensuring effective government policy such as in matters affecting the investment environment. The United Nations can assist these processes by bringing these groups together.

32. A further example is REAG, which promotes investment in real estate, a sector where investment in the transition economies is very limited for a variety of reasons. To date real estate investment in the transition economies has tended to be concentrated in a narrow range of projects and sectors, such as five star hotels, modern offices, filling stations and hypermarkets serving the demand of multinational companies and higher paid citizens. While this brings benefits, it is not enough to make real estate markets sustainable. REAG has thus decided to foster public and private sector partnership in social housing, business parks for SMEs, mortgage banking for low income groups, sustainable tourism projects, etc. The UN/ECE thus is important because it can actively encourage the public and private sectors to come together in projects that otherwise would not take place.

33. The Working Party thus perceives its role as fostering concrete public and private sector partnerships that can generate new investment. It is interested to receiving proposals from member States that can further develop these concepts in mutually beneficial ways.

Future work

34. In conclusion, the Working Party has in a practical way, developed public-private partnerships and at the same time developed Guides, norms, and best practices for creating the institutions, practices and environments required for promoting trade and investment. The wider the activities and the more they are undertaken outside Geneva, the more external funding and offers of support will be required. Interested Governments should contact either the secretariat or the office bearers listed in the Annex for further details on collaborating with these groups or participating in their activities.

Forum on Public-Private Partnerships for Infrastructure Development: The Next Steps, Palais des Nations, Geneva, 4-5 December 2000

35. This Forum will examine best practices for public-private partnerships in infrastructure in the light of prevailing barriers to their more widespread use in the UN/ECE region. It will consider new techniques for extending private financing to non-infrastructure projects as practised by the Private Finance Initiative in the United Kingdom. The Forum will also discuss at a high level the economic, social and environmental principles on which public and private partnerships should be implemented within the region. Experience in Asia and other regions will be discussed. The Forum will also provide an opportunity to showcase PPPs to prospective investors.

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