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Working Party on International Legal and Commercial Practice

Forty- ninth session, 4-6 December 2000

REPORT OF THE FORTY-NINTH SESSION

HIGHLIGHTS

- Working Party on International Legal and Commercial Practice (WP.5) approves the establishment of the Public-Private Partnership Alliance to promote private investment in infrastructure.
- A Regional Flagship Initiative to promote PPPs under the Stability Pact for South Eastern Europe is launched.
- The enforcement of intellectual property rights improves as a result of the work of UN/ECE IP Advisory Group.
- WP.5 moves to the UN/ECE Coordinating Unit for Operational Activities.

Introduction

1. The Working Party on International Legal and Commercial Practice held its forty-ninth session in Geneva, Switzerland from 4 December to 6 December 2000.
2. The forty-ninth session was attended by representatives from Albania, Austria, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Cyprus, France, Georgia, Germany, Hungary, Ireland, Israel, Italy, Kyrgyzstan, Latvia, Luxembourg, Netherlands, Poland, Portugal, the former Yugoslav Republic of Macedonia, Romania, Russian Federation, Slovenia, Sweden, Switzerland, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, and United States of America.
3. The session was attended by representatives of the European Community.
4. Representatives of the United Nations Conference on Trade and Development (UNCTAD), United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), United Nations Development Programme (UNDP) and the following specialized agencies and intergovernmental organizations were in attendance: Food and Agriculture Organization (FAO), Organisation for Economic Cooperation and Development (OECD), International Labour Office (ILO), International Telecommunication Union (ITU), International Road Federation (IRF), European Bank for Reconstruction and Development (EBRD), European Investment Bank (EIB) and the World Bank.
5. The session was attended by representatives of the following groupings and initiatives: Black Sea Economic Cooperation (BSEC) and Central European Initiative (CEI).

Item 1: Adoption of agenda

6. The Working Party adopted its agenda (TRADE/WP.5/2000/1).

Item 2: Election of Officers

7. Mr. David Winter (United Kingdom) and Mr. Dorel Colodeiciuc (Romania) were re-elected Chairman and Vice-Chairman, respectively.

Item 3: Proposals for the future work

8. Mr. Winter informed the Working Party that he had consulted with members on the future of the Working Party. In the light of these consultations and with the agreement of the Chairpersons of all of WP.5 subgroups, Mr. Winter had written to the Executive Secretary, requesting to move WP.5 from the Trade Division to the Coordinating Unit for Operational Activities.
9. Such a move, he said, reflected the growth of WP.5 Advisory Groups and the need to respond to increasing requests from Governments for assistance in the implementation of WP.5 guidelines. WP.5 various subgroups would need more support than the Trade Division could provide in order to meet this demand. Moving the Working Party to the Coordinating Unit, he said, would facilitate better and closer cooperation with the UN/ECE various sub-regional programmes, other UN/ECE Divisions and with prospective donors.

10. The Executive Secretary, he said, had agreed to their request. Accordingly, the Coordinating Unit for Operational Activities will service the Working Party and its various Advisory Groups as of 1 January 2001. The Working Party would continue to report to the Committee for Trade, Industry and Enterprise Development.

11. Mr. Winter expressed his pleasure at this decision, which, he said, was necessary in order to sustain progress and the innovative approaches, public-private partnerships, etc., that WP.5 had pioneered. He said he looked forward to working with Ms. Larissa Kapitsa the Chief of the Coordinating Unit for Operational Activities.

Item 4: Forum on Public-Private Partnerships for Infrastructure: The Next Steps

12. An International Forum was held on 4-5 December 2000 at the Palais des Nations. Over 220 participants attended from 37 countries, from both the public and private sectors. The Forum reviewed the Guidelines of the UN/ECE BOT Group, discussed the challenges and experiences of implementing Public-Private Partnerships (PPPs) and examined the mechanisms for promoting PPPs more effectively in the region. The Forum agreed on a Declaration (see annex attached) which called for new efforts to promote PPPs in the region, endorsed a special PPP programme under the auspices of the Investment Compact of the Stability Pact, and established a Public-Private Partnership Alliance to coordinate support for this initiative amongst donors and the private sector.

13. The Working Party congratulated the secretariat on its organisation of the Forum. It encouraged Governments and representatives of the private sector to join the Public- Private Partnerships Alliance, and to build a network of experts to exchange experience and views on PPP projects, which could bring benefits to all citizens.

Item 5: Guide to Financing Private Enterprises and Trade

14. The Working Party took note of new steps to develop the Guide.

Item 6: Conference on New Trends in Competition Law and Their Implications for Business

15. The Working Party, recalling its last successful Forum on New Trends in Competition Law and Their Implications for Business, held in Brno, Czech Republic, in December 1999 with the participation of the country's Competition Authorities, requested the secretariat to organise a follow-up Conference in Bratislava in cooperation with the Antimonopoly Office of Slovakia and with the relevant regional and international organizations.

Item 7: Work of the Advisory Groups

(a) *Build-Operate-Transfer (BOT) Group*

16. Mr. Michael Dymacek, on behalf of Corinne Namblard Bouverot, Chairman, reported on the activities of the BOT Group. He said that the Group had been active in several countries and that it had held important consultations with the Ministry of Transport for the Czech Republic on establishing a task force to review PPP projects. He argued that implementing PPPs was difficult in the Czech Republic as in other transition economies because of the low purchasing power of the population and that the Group was reflecting on the ways of overcoming such barriers to ensure that the benefits from PPPs could be enjoyed more widely.

17. The Working Party requested the CTIED support for the work of the Group in order to implement the Regional Flagship on Public-Private Partnerships for South-East Europe and to establish the Public-Private Partnership Alliance. Such an Alliance, the Working Party agreed, was very important for countries that wanted to establish links with reputable and strong private companies and to raise private capital for their infrastructure projects.

(b) *Real Estate Advisory Group (REAG)*

18. Mr. Robert Hall, Chairman of the Group, reported on the work of REAG to stimulate real estate markets in central and eastern Europe and the CIS. He said that the Group had made progress in building international cooperation, developing links with important international NGOs, RICS, TEGOVA, etc. and in raising awareness of the critical importance of the subject amongst Governments. These activities, he said, had led to the preparation of important studies on land and to the participation of REAG in sub-regional activities such as the CEI. He said that more needed to be done and more resources were required to undertake substantive change and development within transition economies.

19. The Working Party thanked Mr. Hall for his contribution to the development of REAG and agreed to request the CTIED to renew the mandate of REAG for a further two years.

(c) *Advisory Group on the Protection and Implementation of Intellectual Property Rights for Investment (IPR)*

20. Ms. Irina Savelyeva, Chairperson of the Group, reported on its activities during its first years of operations. She outlined the success of the Group in raising funding and in undertaking already three detailed and comprehensive consultative visits to Estonia, Latvia and Lithuania.

21. The Working Party expressed its appreciation at the efforts of its Chairperson and its impressive start.

(d) *Expert Advisory Group to consider Possible Revisions to the European Convention on International Commercial Arbitration of 1961*

22. Mr. William Pissoort reported on the progress, which the Advisory Group had made in revising the 1961 Convention. He said that their recommendations were almost completed and would be submitted shortly to WP.5 for its consideration. Mr. Pissoort also presented a proposal to extend the mandate of the Group to provide advisory services on promoting arbitration in the region.

23. The Working Party commended the Chairman for the excellent work and looked forward to reading the recommendations of the experts. It agreed to consider extending the mandate of the Group to provide advisory services on the basis of a proposal, which would be prepared jointly by Mr. Pisoort and Mr. Winter.

Item 8: Work Programme

24. The Working Party asked the secretariat to consolidate the work programme of all of WP.5 activities and Advisory Groups and to send it to Governments for action and support. It congratulated each of the Groups for creating their own websites. It requested that these websites be regularly updated and linked with that of the Coordinating Unit and other relevant UN/ECE sites.

Item 9: Other business

(a) *Future topics*

25. The Working Party agreed to consider topics for its next Forum related to already established programmes of WP.5, such as public-private partnerships. The Chairman requested members to submit to him and the secretariat their proposals on topics for the next WP.5 Forum.

(b) *Date for next meeting*

26. It was agreed that the next session of WP.5 will take place on 3-5 December 2001.

Item 10: Adoption of the report

27. The Working Party adopted the report of its forty-ninth session, subject to approval of the final text by the Chairman.

Declaration of the UN/ECE Forum on Public-Private Partnerships for Infrastructure Development

Preamble

During the course of the Forum the participants affirmed that:

- Revitalisation of the region will depend on the improvements of the infrastructure and the attraction of new resources. Improvements in infrastructure in the region will increasingly rely on the involvement of the private sector in the form of PPP projects;
- Improvement should take place consistent with commitments to social development, protection of the environment, support for local enterprise, and community mobilisation;
- An overall framework for PPPs should be built on policies promoting transparency, competition, sound governance and based on the rule of law;
- EBRD and other regional development banks have played an important role in funding private infrastructure projects both at the national and local levels, which set good standards in PPPs;
- While individual economies in the region are at different stages in the reform process, every economy can accelerate the process of reform, particularly in promoting an environment conducive to private investment in infrastructure. Economies which are advanced in the reform process are particularly suited to share their experiences with others in the region;
- More co-ordination amongst agencies involved in giving advice on PPPs is required. A new drive to encourage more active involvement into the region of private companies and commercial banks is needed. It was agreed that the private sector itself could become involved in such new initiatives;
- Exchange of information is necessary amongst governments and more international cooperation could be usefully developed by PPP units within governments;
- Information on best practices for developing PPPs should be shared with other regions of the world; and
- New initiative should be built upon the principles of the UN Global Compact. Further developing these in the context of specific infrastructure sectors should be encouraged.

Agreements

Therefore, the participants agreed the following:

◆ SOUTH EASTERN EUROPE AND THE STABILITY PACT

Participants highlighted the massive need to reconstruct infrastructure in the region. Given the limited financial resources, the private sector needs to become an important partner in this effort. First of all, to increase the presence of the private sector and attract foreign investment, the legal and regulatory environment must be improved. In addition, the capacity of officials to develop projects with foreign partners must be created. Incentives for the private sector are necessary in order for them to make significant and sizeable investments. In view of the relatively small size of the countries in South Eastern Europe, regional co-operation was considered to be essential. In addition, a more flexible approach of international financial institutions and bilateral donors in providing resources for PPP projects in the region would be welcomed.

The Stability Pact is an important instrument for cooperation in the region and has begun promisingly. The *Investment Compact of the Stability Pact* organised under the auspices of the OECD and the Government of the United Kingdom is a necessary instrument for raising legal and regulatory standards in the region as a whole.

The Forum agreed to launch as a *Regional Flagship Initiative* under the auspices of the Investment Compact of the Stability Pact for South Eastern Europe, a programme to promote public private partnership in infrastructure. This programme will have the following objectives:

- S to improve legal and regulatory frameworks;
- S to develop capacity at both the local and national levels in developing PPP projects;
- S to develop pilot projects with special task forces consisting of public and private representatives; and
- S to improve regional cooperation to build public/privately funded projects in South Eastern Europe.

It was further agreed to hold a Symposium on the Legal and Regulatory Needs for Private Financed Infrastructure Projects in Slovenia in the first half of 2001 with the cooperation of UNCITRAL and the EBRD.

◆ PUBLIC-PRIVATE PARTNERSHIP ALLIANCE

The Forum agreed to establish an *Alliance to promote PPPs*. Under this Alliance, the parties will work together to deliver high quality advice and assistance in a cost-effective way. By supporting the principles of the BOT Group as discussed at the Forum, private companies can become partners in a joint effort to encourage private funding in infrastructures and participate in the programmes. Greater cooperation creates a multiplier effect enhancing the impact of individual programmes. The European Union and the regional development banks such as the EBRD, were especially encouraged to join with UN and international agencies such as UNIDO, UNDP, OECD, and PPIAF, in order to work together and to present a united voice.

◆ **UN/ECE BOT GROUP**

The Forum agreed to support the work of the BOT Group in finalising and implementing its principles. Its role should be to support and service the initiatives agreed by the Forum and to service the PPP Alliance. It was agreed that the Group should continue to work closely with the EBRD, EU, UNCITRAL, UNIDO and OECD. The creation of its website (www.publicprivatepartnership.net) where the guidelines and negotiating platform would be placed, was welcomed.

◆ **COOPERATION WITH OTHER REGIONS OF THE WORLD**

It was agreed to work closely with other countries and regions of the world where assistance is needed to promote private financing. To this end it was proposed to set up a joint working team between UN/ECE BOT Group and UN/ESCAP to develop cooperation and to consider the development of the PPP Alliance concept in Asia.

◆ **PPP UNITS**

In view of the increasing interest by government to apply private finance and PPP solutions to financing their infrastructure needs, it was agreed to consider the setting up with interested agencies, parties and international organisations of a regional body of governmental PPP units within ECE region. Such a structure would make it possible to co-ordinate the exchange of experience among PPP units, to mobilise private investment and to support the Governments directly in their preparation of projects and their negotiation with private sector partners.