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COMMITTEE FOR TRADE, INDUSTRY AND
ENTERPRISE DEVELOPMENT

Working Party on International Legal
and Commercial Practice

Fiftieth session, 11–13 March 2002

Report of the Fiftieth Session

HIGHLIGHTS

- The terms of reference of the PPP Alliance programme are presented. The UNECE REAG “Land for Development Programme” is launched to promote valuation standards, mortgage banking and social housing in the transition economies.
- A new sub-group on conflict prevention and the business community is proposed.

Introduction

1. The Working Party on International Legal and Commercial Practice held its fiftieth session in Geneva, Switzerland from 11 to 13 March 2002.
2. The fiftieth session was attended by representatives from Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, France, Georgia, Germany, Hungary, Ireland, Israel, Italy, Latvia, Netherlands, Norway, Poland, Romania, Russian Federation, Slovenia, Sweden, Switzerland, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America and Federal Republic of Yugoslavia.
3. The session was attended by representatives of the European Community.
4. The representative of the Holy See participated under article 8 of the Commission's terms of reference.
5. Representatives of India and South Korea participated under article 11 of the Commission's terms of reference.
6. Representatives of the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), United Nations Development Programme (UNDP), United Nations Industrial Development Organisation (UNIDO), United Nations Habitat, United Nations Department of Economic and Social Affairs (UNDESA), Office of the High Representative (OHR) and the following specialized agencies and intergovernmental organizations were in attendance: Organization for Security and Cooperation in Europe (OSCE), North Atlantic Treaty Organization (NATO), Organization for Economic Cooperation and Development (OECD), International Telecommunications Union (ITU), World Intellectual Property Organisation (WIPO), Public Services International (PSI), International Confederation of Free Trade Unions, European Investment Bank (EIB) and European Bank for Reconstruction and Development (EBRD).
7. The session was attended by a representative from the Central European Initiative (CEI).

Item 1: Adoption of agenda

8. The Working Party adopted its agenda (TRADE/WP.5/2002/1).

Item 2: Election of Officers

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

Item 3: Forum on Implementing Public-Private Partnerships for Infrastructure Development in the countries of central and Eastern Europe and the CIS.

10. An International Forum was held on 11 March 2002 at the Palais des Nations. Over 170 participants took part from 30 countries, from both the public and private sectors. Member States prior to the Forum had submitted a number of proposed pilot public-private partnership projects. (Document ECE/TRADE/NONE/2002/14). Experts reviewed some of these proposals in the areas of transport (motorways and ports), municipal services and social services. In addition, representatives of the Public Services International (PSI) and the International Confederation of Free Trade Unions gave comments from the perspective of the trade unions. The delegates agreed that the number and quality of these proposals demonstrated the importance with which

Governments attach to private finance initiatives. They also agreed that the UNECE Public-Private Partnership Alliance had a key role to play in assisting governments to bring projects forward and in attracting support from donors and the private sector.

11. The Working Party congratulated the secretariat on its organization of the Forum. It encouraged Governments and representatives of the private sector to join the Public-Private Partnership Alliance programme so that the projects discussed during the Forum could be brought to fruition.

Item 4: Inaugural Meeting of the UNECE PPP Alliance Programme

12. The first meeting of the PPP Alliance programme was held on the second day of the fiftieth session. Senior representatives of most of Europe's national PPP units, government representatives from over 20 countries, and senior representatives of the EBRD, the EIB, the OECD and EU participated. The topic of the First Meeting of the Alliance Programme was: How to create successful and dynamic PPP Units? There was agreement on the need when considering to establish PPP Units within governments for: a clear line of responsibilities between government departments and Ministries as well as with local authorities; a focus on pilot projects; consistent, long-term, high level political support; and close contact with social partners and civil society. It was agreed that the critical challenge for many member States is the need to develop the necessary awareness and skills in PPPs. The establishment of a Central Coordinating National PPP Unit, it was agreed, could be an important mechanism for raising the awareness and bringing together these skills.
13. During the discussion, a consensus emerged that to address the lack of knowledge and skills within Governments the Alliance programme will aspire to be a high level, state of the art, European centre of excellence on PPPs with an immediate focus on:
 - Communication of best practices;
 - Training and experience sharing for public and private sectors; and
 - Capacity building and project support.
14. It was further agreed that a Steering Group would service the programme. The Steering Group will consist of government representatives, the EBRD and EIB and key sponsors. Three task forces would be formed to provide assistance directly to governments on legal issues, training and education, and economics and finance. It would work with other regional and international bodies involved in promoting PPPs.
15. The meeting elected Mr. Eamonn Kearns, Head of the PPP Unit of Ireland and Ms. Corinne Namblard Bouverot, Chairwoman of the UNECE BOT Group as co-Chairs of the UNECE PPP Alliance programme. Professor Wim Timmermans (Netherlands) was elected as Chair of the group on legal issues and Mr. Michael Dymacek (Czech republic) was elected chair of the group on finance and economics. The meeting requested that the two co-Chairs revise the terms of reference of the Alliance programme (Document TRADE/WP.5/2002/6). The UNECE, it was further requested, should invite Governments to join the alliance programme and to make further comments on the terms of reference (see attached as annex 1).
16. The Working Party warmly congratulated the secretariat on the success of the first meeting of the alliance programme and urged Governments to join. Approved the preliminary terms of reference.
17. Several delegates asked if the UNECE BOT Group would continue to operate as before in light of the establishment of the PPP alliance programme. The Chairman of the Working Party informed the experts that the Chairwoman of the BOT Group was currently consulting the members of the Group to determine their views and would report back once a clear view had emerged.

Item 5: Work of the Advisory Groups

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

18. Mr. Michael Dymacek, on behalf of Corinne Namblard Bouverot, Chairwoman, reported on the activities of the BOT Group. He said that the Group in cooperation with the Stability Pact had held a special session on PPPs at the Regional Conference of the Stability Pact, Bucharest, Romania, 19-20 November 2001. He said that a request had been received to hold a special Seminar on "Economic convergence and the role of PPPs" to be held in the Czech Republic. He also informed the Working Party that the group planned to increase its activities in the countries of South East Europe as a part of the Group's Regional Flagship Initiative on PPPs under the Stability Pact programme.
19. The Working Party requested the CTIED to give its support for the work of the Group for the Stability Pact and for the establishment of the Public-Private Partnership Alliance programme. Such an Alliance, the Working Party agreed, was important for countries that wanted to establish links with strong and experienced private companies with a view to raise private capital for their infrastructure projects.

(b) Real Estate Advisory Group (REAG)

20. 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, such as RICS, TEGOVA, etc. and in raising awareness of the critical importance of the subject amongst Governments. These activities, he said, had led to the launch of the 'Land for Development' programme, at the last REAG Expert Meeting on 13 September 2001. This programme would then focus on key elements of land markets, valuation, social housing, and mortgage banking, etc. He said that REAG members were willing to support this programme and the forthcoming Land for Development Summit in Rome. Mr. Gianluca Sambucini, secretary of the UNECE REAG, made a presentation on the Land for Development programme. He said that thanks to the generosity of Tecnoborsa, an Italian association of the Rome stock exchange dealing in the real estate business, the UNECE would be in a position to pay the costs of over 40 representatives from governments of the transition economies to attend the Summit in Rome. This meeting will take place on 19-20 September 2002. The REAG will, he said, continue to work with sub-regional activities such as the CEI.
21. The Working Party thanked Mr. Hall for his contribution to the development of REAG and congratulated him on the success of raising new resources that will allow governments to participate in REAG activities.

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

22. Mr. David Winter on behalf of the Chairman of the Group, Mr. Tim Trainer, reported on the activities of the IPR Group. He outlined the success of the Group in undertaking valuable activities in the Russian Federation. The Group, he said, was currently organizing the following meeting of the IP Group in Poland. This meeting would include a special one-day conference on the valuation of intellectual property.
23. The Working Party expressed its appreciation at the efforts of its Chairperson and its impressive work.

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

24. Mr. David Winter, Chairman, informed the experts that this group, had, it appeared, been transferred from the Working Party to the Trade Committee. He said that he, as Chairman, personally had not been consulted about this transfer. He reminded the delegates that the decision of the Executive Secretary in December 2000 had been to transfer the whole of WP.5 including the arbitration group to the Coordinating Unit. Some concern was expressed about this situation.

Item 8: Work Programme

25. The Chairman of the Working Party reported on the International Colloquium on the economic aspects to conflict prevention, Villars, Switzerland 19-20 November, 2002, organized by the UNECE and the OSCE with experts from NATO. In the light of the threat to security from international terrorism and in view of the WP 5's expertise in working with the business community, the Chairman proposed to create a task force on conflict prevention that would investigate and how the business community could make an effective contribution to peace keeping and stability in the region. He announced that he was in close contact with the OSCE and NATO, which were immensely interested in this activity.
26. The representatives of the Working Party discussed the concept and underlined the importance of responding to new threats to security in concrete ways. It was argued that such a group could focus on regions such as Central Asia and South Caucuses. It was thus agreed that a new task force on conflict prevention and the business community be created in cooperation with the OSCE, whose purpose would be to bring the business community into the work of conflict prevention. Mr. David Winter, the Special Advisor to the UNECE on conflict prevention, was elected Chairman of the new task force.

Item 9: Other business

(a) *Future topics*

27. 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 proposed that the next Forum might deal with issues on conflict prevention and the role of the business community. The delegate from Turkey reminded the Chairman that the Trade Committee should review the proposal for a Forum along with the proposal to establish a new task force related to conflict prevention at its next session.

(b) *Date for next meeting*

28. It was agreed that the next session of WP.5 will take place in March 2003.

Item 10: Adoption of the report

29. The Working Party adopted the report of its fiftieth session, subject to approval of the final text by the Chairman.

Annex 1

Terms of Reference

The Public-Private Partnership Alliance Programme

Mission

A high level, centre of excellence for information on Public Private Partnerships; supporting the creation of a pan-European network of government officials and private sector for the exchange of experience and support to raise awareness and standards. Promoting the objectives of the United Nations for the goals of poverty alleviation, social development and environmental sustainability, and using its neutrality to determine the scope for PPPs; bringing together key regional and international partners in PPPs.

Background

There is a tremendous interest in Public Private Partnerships (PPPs) for infrastructure development. The benefits from partnerships – increased project efficiency and enhanced resources for development, transfer of technology, environmental sustainability, poverty alleviation, etc. – are widely recognised. The United Nations Global mandates, particularly in the areas of poverty alleviation and sustainable development, call for more partnerships between public and private sectors to address these critical concerns. The Monterrey Consensus of the UN Financing for Development Process, for example, supported new public-private sector financing and consultation mechanisms that enhance the ease of access, accuracy timeliness and coverage of information on countries and financial markets. Increasingly, governments are establishing national PPP units to improve their capacity for improving the quality of their infrastructure services. The progress is thus positive and Europe is on the brink of a dynamic new era for PPPs.

However, the awareness and knowledge of PPPs within many governments is still at a very low level. PPPs are complex. The fundamental need is for objective information on PPPs and the mechanisms, methods and instruments for their successful implementation. There is a need to support the general language and support for PPPs by a concrete actionable framework to enhance the prospects that the objectives of PPPs can be achieved. To date there is no training of officials on a systematic basis, little institutional mechanisms for exchanging experience, and many ad hoc efforts, but no follow up programmes. There is furthermore a waste and overlap in support efforts that increases the costs of developing projects.

The UNECE has worked with many partners including the EIB, EBRD, EU and UNIDO UNCITRAL etc. and to this end are putting forward a specific proposal for endorsement by governments and the private sector. The terms of reference for this proposal have been prepared following the first meeting of the PPP alliance meeting, which was held at the Palais des Nations Geneva on March 12 2002.

Purpose of the PPP Alliance programme

The overall goal is to improve the capacity of all governments in PPPs, to build their own ‘ownership’ of a PPP policy, to give them the support to advance their own development plans, to create their own performance targets for PPPs, to identify the needed support from the private sector as well as the regional development banks, to develop effective consulting mechanisms with the private sector on PPP initiatives and to develop mechanisms within governments that can give creditors and investors assurances that their rights are respected.

The main purposes within this overall goal are:

- Communication of best practices;
- Training and experience sharing for public and private sectors;
- Capacity building and project support

Communication of best practices

The programme will undertake the following:

- A clearing house of information for knowledge and information with respect to public-private partnership projects and developments in Europe and the rest of the world
- An information exchange promoting dialogue between the public and private sectors
- An advocate for public-private partnership development with decision-takers at all levels of government
- A sponsor of conferences, events and seminars designed to increase awareness on the benefits of public-private partnerships

The main instrument for communication and access will be a dedicated interactive website and a list of members, services, projects, sources of finance.

Training and experience sharing

The Public-Private Partnership Alliance Programme will provide training and experience sharing with and between governments and in intergovernmental programmes such as the Central European Initiative, the Stability Pact and others. It will be a two way street. Members of the programme will share experiences with governments in the countries concerned. At the same time representatives of governments will come to countries which have experience to share, and will visit projects and learn first hand the methods from the contractors, local and national authorities, bankers, social partners and the consumers about the best ways of implementing Public –Private Partnerships

Training programmes will employ the latest techniques with the objective of bringing the benefits of training to the largest possible number of participants. Cost-effective methods for conducting research and distance learning will be sponsored and results evaluated with the intention of identifying what works best in the region then building on success and applying the lessons learned.

Capacity building and policy support

The aim is to:

- i. Assist governments in establishing effective and dynamic PPP Units and similar bodies within public administrations;
- ii. Promote and develop understanding and cooperation on Public–Private Partnerships for infrastructure development amongst national PPP Units or similar bodies and between them and civil society, trade unions and employers;

- iii. Assist PPP Units and other similar bodies in advising their respective governments in the formulation of appropriate PPP policies and strategies.
- iv. Examine and support if feasible proposals to establish special insurance programmes that can lower risk and make projects more acceptable and less costly

Steering committee

The Steering Committee will coordinate the development of the centre of excellence and the work of the advisory groups. It will be composed of the two chairs of the Alliance Programme, the chairs of the three advisory groups, sponsor members, advisors that are selected by the two chairs on an ad hoc basis, and the representatives of international bodies which provide active support either financial or in kind such as the EU, the regional devolvement banks and the OECD. The representatives of donor governments will also be the members of the steering committee. The Committee will also include the heads of European PPP Units or their nominees who have agreed to join the Public-Private Partnership Alliance Programme. The Chairman of the UNECE Working Party 5 will be a member of the Steering Committee. Steering Committee members will be appointed on the basis of their experience at the highest levels in the field of public-private partnerships.

Advisory groups

Advisory groups will provide a continuing source of information and expertise to governments and the private sector with respect to these key issues in the field of public-private partnerships.

The Legal facilitation and arbitration group will:

- *Provide legal advice to governments especially to transition economies, in particular, with regard to PPP related legislation (concession laws, sector laws providing for concessions, etc.), PPP agreements, negotiations, etc.*
- *Offer Arbitration services: an arbitration tribunal for settling disputes regarding PPPs in Geneva;*
- *Supply all relevant legislation of ECE countries and relevant contracts with all documentation to be placed on the Alliance's website;*

Training and education group will

- *Help train government officials and site visits and meetings with governments and local authorities*
- *Identify models and case studies of successful PPPs*
- *Provide objective information on impact of PPPs on society, the economic and the quality of public services.*
- *Organise training and site visits*

Economics and financial group will:

- *Give advice on the projects that can be undertaken privately*
- *Prepare economic comparators to evaluate private sector versus public sector options*
- *Give guidance about the tariff or fee structure in PPP contracts and the kinds of indexation that can be used*
- *Provide advice on how grants can be incorporated into PPP contracts and the bidding process without creating distorting incentives for the private partners*

Consultative visits

Consultations with member governments will assess with governments how their infrastructure policy can incorporate PPP initiatives; encourage governments to adopt PPP strategies, determine their objectives for using PPPs and to prepare benchmarks for success.

Conferences and seminars

The PPP alliance programme will help members to organize conferences and seminars. Bringing together numerous participants, these conferences in association with the UNECE Public-Private Partnership Alliance Programme will address the entire spectrum of public-private partnership opportunities, issues, innovations and techniques – in areas such as transportation, financing labor, water and sewage, energy and health care and social housing. Seminars with a local and regional focus such as with Central European Initiative, Black Sea Economic Cooperation, and Stability Pact with politicians and government officials assist alliance members in all aspects of public-private partnerships.

Trust fund

The UNECE will establish a trust fund to finance the programme. It will designate a programme manager to carry out this work, if resources raised for this activity through extra budgetary means are obtained. Government members are however expected to attend annual meetings of the Alliance.

Membership of the Public-Private Partnership Alliance Programme

All UNECE member states are eligible to join the programme at no cost. Governments who wish to be represented will be invited to send the nominations of government officials to the Executive Secretary of the UNECE.

The private sector can join as Sponsor members as the highest membership category. Sponsor members are willing to make a significant contribution to the activities of the programme and to the furtherance of its purposes. They receive full benefits from membership plus the opportunity to:

- Serve on the steering committee
- Participate in any of the advisory groups
- Lead advisory groups
- Receive recognition on alliance programmes and activities

Corporate members share in programmes of the Alliance and are entitled to access the Alliance's resources. Corporate members range from general contractors and other large businesses to professional law firms and organisations. They can participate in advisory groups and to speak at conferences and at promotional activities.

Public and not-for profit members, local regions and municipal governments can join the alliance. As with governments they pay no charge. Benefits of advice, assisted conferences and visits of the alliance will be charged if the service involves substantial expenditure in terms of time and expertise. Under this category of membership will include NGO's.

All members are encouraged to participate in a range of alliance activities, attend conference and seminars and share the expertise in the area of public - private partnerships.