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COMMITTEE ON ECONOMIC COOPERATION AND INTEGRATION

Team of Specialists on Public-Private Partnership

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Item 5 of the provisional agenda

Implementation plan for the rest of 2014 and proposals for the work plan for 2015: Development of international PPP standards

Conference room paper submitted by the Secretariat¹

Summary

This paper explains the importance of developing international PPP standards and describes in its attached Annexes the process by which the standards will be developed. As a guiding principle member States lead this process and have final approval on the standards. At the same time, the active participation of the private sector and civil society is encouraged.

The Team of Specialists on PPPs is requested to: 1) endorse the process for developing international standards in PPPs in Annexes I-III for implementation; 2) endorse the Intellectual Property Rights policy in Annex IV for submission to the UN Legal Office; 3) request the Bureau to revise - if required - Annexes I-III on the basis of the experience of first project groups and Annex IV on the basis of any comments from the UN Legal Office; 4) invite the Bureau to develop a Code of Conduct in consultation with the secretariat for PPP experts in Project Teams involved in the development in UNECE PPP standards; and 5) submit these documents to the next session of the Committee on Economic Cooperation and Integration for consideration and approval.

¹ The paper has the support and endorsement of the TOS PPP Bureau.

INTRODUCTION: GOVERNMENT CREATED INTERNATIONAL STANDARDS IN PUBLIC-PRIVATE PARTNERSHIPS (PPPs)

The Executive Committee of the UNECE in February 2012 agreed to establish the UNECE International PPP Centre of Excellence to develop international PPP best practices and standards. The objective of this work is to assist Governments with the implementation of the United Nations Millennium Development Goals (MDGs) and the emerging Sustainable Development Goals (SDGs) by providing comprehensive information on models and procedures that can be used to undertake PPPs that are consistent with these goals. The development of the standards is done under the auspices of Governments with the involvement of the private sector in an advisory capacity.

The Committee on Economic Cooperation and Integration (CECI) - the parent body of the Team of Specialists on PPPs (TOS PPP) – at its eighth session in February 2014, decided that the focus for developing international standards on PPPs should be on sectors and processes with strong links to UN development objectives, including: health; renewable energy; water and sanitation; ICT; roads; and good governance in PPPs, including transparency and accountability in procurement and zero tolerance to corruption.²

THE IMPORTANCE OF PARTNERSHIPS FOR THE POST-2015 UNITED NATIONS DEVELOPMENT AGENDA

Creating and maintaining partnerships will be critical to progress towards sustainable development under the emerging United Nations development framework. In 2015, the MDGs will be replaced by new and even more ambitious targets - the SDGs. Public-Private Partnerships (PPPs) have the potential to be a highly effective instrument for engaging the private sector and identifying resources for long-term financing in key sectors for sustainable development. One of the key features of the SDGs will be improving access to basic services that contribute to poverty alleviation such as: sustainable and affordable energy; healthcare; education; affordable Internet and broadband; and safe drinking water.

These important targets will require enormous investments. In the area of water alone, it is estimated that USD 20 trillion will be required to meet a target of universal access to safe drinking water by 2025. In the case of universal access to modern energy, various studies put the cost at around USD 1000 billion or just over 60 billion per annum from now through 2030. The challenge is huge: 2.6 billion people do not have clean cooking facilities and 1.4 billion are without electricity. In education, UNESCO calculates that to achieve the MDG 2015 target of 'education for all', there is a short fall of USD 26 billion. In the SDGs, it is likely that not just access, but the quality of education and good learning outcomes will be stressed, enabling children to become citizens with strong employment potential. These added goals will raise the costs even higher.

Achieving these goals is, without doubt, beyond the resources that can be provided by donors and the majority of governments. Partnerships with the private sector through PPPs offer opportunities to enhance governmental capacity and increase the likelihood of success in reaching the SDG goals.

² See report of the Committee on Economic Cooperation and Integration on its eighth session contained in document ECE/CECI/2014/2 dated 27 March 2014.

THE CHALLENGE

The Rio+20 Summit stated “that the implementation of sustainable development will depend on active engagement of both the public and private sectors” and recognized “that the active participation of the private sector can contribute to the achievement of sustainable development, including through the important tool of public-private partnerships”.³ PPPs have therefore a strong potential to support sustainable development and achieve the United Nations development goals. At the same time, there are challenges to realizing this potential. Three important challenges are:

- ***No readily available information on models that could result in successful PPPs for sustainable development*** – profit is a primary private sector motivation and the UN development goals may not lend themselves to PPPs when they are low return/high risk projects, so new models and legal principles are needed. These models should provide both profit to the private sector and affordable public services, including to vulnerable populations. Quality and affordable services to vulnerable populations may involve substantial business risks and this needs to be well addressed in pro-Poor legal principles and models. Guidelines, PPP models and standards that could support the achievement of the emerging SDGs will be critical tools for implementation.
- ***Governance and transparency***: Without strong, enforceable and transparent rules in all phases of the project cycle, including the procurement phase, private operators and lenders will not make investments in PPPs in countries that desperately need them. A commitment to zero tolerance to corruption is a strong requirement, which also requires guidelines and support for its implementation. Without effective transparency in PPPs, end-users, tax payers and citizens will not provide the necessary collective support required for PPPs.
- ***Legal and regulatory frameworks***: Companies will not invest in PPPs without a strong enabling and implementing environment, including legal and institutional frameworks that provide a ‘level playing field’ and are transparent, strong, robust, enforceable and convince investors that they will have adequate security and the right to fair redress in the case of disputes. Governments need to identify legal best practices (e.g. in procurement, dispute resolution etc.) that can be used as benchmarks and develop these into international standards.

HOW THE CHALLENGES MIGHT BE OVERCOME

A number of strategies for addressing these challenges are being developed by the UNECE in cooperation with its partners.

- ***Finding the best PPP models***: the UNECE International PPP Centre of Excellence (ICoE) was set up as an initiative of the UN Regional Commissions and is, first of all, a structure for collecting information on international PPP best practices with an emphasis on sectors which could have a major impact on the SDGs. PPP Specialist Centres, linked to the ICoE, have been established or are in the process of being established, in the Philippines (health), France (law, policy and institutions), the Netherlands (flood water management), Azerbaijan (ICT and broadband); Morocco (renewable energy); India (roads) and a Specialist Centre on water and sanitation is also in the pipeline.

³ See outcome document of the United Nations Conference on Sustainable Development, Rio de Janeiro, 20-22 June 2012, available at: <http://www.unosd.org/index.php?menu=242>

- ***Aligning best practices in PPPs with the requirements for SDGs through international standards:*** based on the information and best practices gathered and formulated by the ICoE and its affiliated Specialist Centres, the United Nations will develop international PPP recommendations or standards based on stakeholder comments and peer reviews. A special focus will be placed on ensuring that these standards are appropriate for meeting the future SDGs.
- ***Supporting National Implementation:*** these international PPP standards will provide the basis for strong evidence-based education and implementation practices based on successful PPP models that support the emerging SDGs and can be tailored in defined ways to meet national circumstances.

In order to put this agenda into operation, considerable effort will be required - notably by the ICoE – in order to: develop international guidelines, models and standards for PPPs as well as ‘pro poor’ PPPs that are applicable across critical sectors; expand the coverage of PPPs; mainstream them into national practices; and allow them to be implemented on a wider scale. In particular, a strong United Nations advocacy role – supported by member States and other international partners - is needed in order to develop this agenda and obtain the support that it requires.

PRINCIPLES UNDERLYING THE DEVELOPMENT OF INTERNATIONAL PPP STANDARDS

An inclusive and transparent process

The process of developing international PPP standards should allow and encourages the widest possible participation of key stakeholders (see Annex I) under the UNECE intergovernmental process. Stakeholder consultation will be tripartite in nature gathering input from representatives of (i) the public sector (national and local authorities, and multilateral institutions), (ii) business (corporations and consultancy, financial institutions), and (iii) PPP users (end-users, tax-payers, civil society). Project Teams representing the various stakeholders will be formed to develop the first draft of the standards for consideration by the intergovernmental process represented in TOS PPP. The start of the work of TOS PPP in the setting of international standards puts a premium on the quality of advice the secretariat will receive from a wider number of experts - some of whom have not had contact with the UNECE before - and to ensure the continuity of the quality that experts provide UNECE in the area of PPP it would be useful to prepare a code of conduct for member of Project Teams to be read together with the intellectual property rights policy contained in Annex IV. The intellectual property rights policy was added by the secretariat at the request of the experts participating in the Project Teams and it has the support of the TOS PPP Bureau.

The critical role of Governments in decision taking

International standards are designed primarily to assist governments and the targeted users are government policy makers (in Ministries of Finance, Ministries of Economy, PPP Units, National and regional governments, PPP authorities, etc.) and the intergovernmental process should be used in the development of these international standards. Therefore, the latter can only be developed with the agreement, support and input of representatives of governments,

who need to play an active role. Accordingly, the international standards will be a part of a process where the governments will take the lead, as described below:

- Specialist Centres are established under the auspices of Governments. Their task is to collect best practices in PPPs in their specific sector. This information is designed to be made available to other Governments as a public good.
- All ‘project proposals’ (see Annex II) will need to receive support by three member States before being submitted to the Bureau of the Team of Specialists on PPPs (TOS PPP) in order to have approval for work to start.
- The Bureau of TOS PPP should give its final approval to the standard and recommendations before it is considered by TOS PPP: the membership of the Bureau is made up of Government-nominated officials.
- The final decision for the standards rests with the member States: TOS PPP will make a recommendation to the Committee on Economic Cooperation and Integration for final approval.

Role of the private sector

While standard setting is led by the member States, the private sector’s global spread, vast expertise and wealth of knowledge is a critical source of knowledge and assistance in the development of international PPP standards. The UNECE PPP Business Advisory Board (BAB) has been established to provide advice on the standards.

Role of international partners

International organizations and, particularly, international financial institutions (IFIs) have a key role through the provision of expert input and expertise during the UNECE PPP standard-setting process.

Role of PPP users

PPP users (end-users, tax-payers, civil society) also need to play a key role in the development of the international standards. With their in-depth knowledge of end-user needs and their experience, organizations such as public service associations, consumer associations, and institutions representing tax-payers or citizens, will be a critical source of information in the development of international PPP standards.

CONCLUSION

Public-Private Partnerships can become a key delivery mechanism for the emerging SDGs and have the capability of extending basic services to those in real need. They open up innovative financial mechanisms where public institutions can leverage private capital. Countries, and within countries, individual ministries or agencies with limited or no PPP experience, typically take a very long time and make slow progress on each step of what they

need to do in order to implement PPPs. It can take many years before a country moves from deciding to support PPP mechanisms to a fully-fledged PPP programme that delivers actual projects.

Thus in order to realize the desired objective of having the SDGs, countries need universally accepted and applied international standards and recommendations in PPPs. These need to be carefully developed with input from all stakeholders and properly implemented. To accomplish this objective, the process and involvement of governments and other key partners will be critical.

ACTION REQUIRED BY THE TEAM OF SPECIALISTS ON PPPs

The Team of Specialists on PPPs is requested to: 1) endorse the process for developing international standards in PPPs in Annexes I-III for implementation; 2) endorse the Intellectual Property Rights policy contained in Annex IV for submission to the UN Legal Office; 3) request the Bureau to revise - if required - Annexes I-III on the basis of experience of the first project groups and Annex IV on the basis of any comments from the UN Legal Office; 4) invite the Bureau to develop a Code of Conduct in consultation with the secretariat for PPP experts in Project Teams involved in the development in UNECE PPP standards; and 5) submit the resulting document(s) to the next session of the Committee on Economic Cooperation and Integration for consideration and approval.

Annex I - Process for developing international standards in PPPs

This Annex presents the process through which PPP standards and/or recommendations are developed. This is referred to as the “Open and Transparent Standard Development Process” (OTSDP). Through this process, all stakeholders will be given opportunities to contribute throughout the UNECE PPP standard development process. The guiding principles under which PPP standards are developed are: 1) a process led by member States who make the final decisions for approval; 2) the active participation of the private sector and other stakeholders; and 3) support for the SDGs.

The seven stages of the Open and Transparent Standard Development Process are as follows:

1. Project initiation

A ‘project’ (i.e. the preparation of a UNECE standard in a mandated sector or process) officially starts when the project proposal has been approved by the Bureau of the TOS PPP, and it has received explicit support (written expressions of support or oral interventions during TOS PPP sessions) of at least three Governments. The Bureau of TOS PPP can approve a project proposal in-between sessions of TOS PPP, as long as the proposal is supported by at least three Governments. The Project Proposal must include the purpose, a clearly defined scope, a list of deliverables, geographical focus (which is ‘global’ by default), a list of team members including the Project Leader (where appropriate), resource requirements, and estimated development schedule and the final deliverable (see project proposal template in Annex II). The Bureau of TOS PPP will report regularly to the TOS PPP on projects approved and under development.

2. Stakeholder mobilization

Once a project proposal is approved, the UNECE secretariat will start mobilizing a network of all key stakeholders in order to set up a Project Team to prepare the draft of the standards. Project Leaders are also encouraged to name one or more Editors to assist the Project Leader in his or her work. If there is no Editor, the responsibility for project drafting and the recording of comments and responses to comments will fall upon the Project Leader. All participants in the Project Team must agree to the intellectual property rights policy contained in Annex IV.⁴ The UNECE secretariat provides administrative and technical support to the Project Teams tasked with developing an initial draft of the standard.

3. Developing the initial draft

The first project draft, using the project template in Annex III,⁵ will be prepared by the Project Team and it will be reviewed by the PPP Business Advisory Board (BAB). Following feedback from the BAB the draft will be circulated for a public review. Before the public review stage, the UNECE secretariat will invite key stakeholders for their feedback on the initial draft, including other UN Regional Commissions and international organizations such

⁴ The underlying policy is that all UN standards are public goods that can be used freely and without restrictions by all member States.

⁵ The Project Template in Annex III only refers to PPP sectors (health, water and sanitation, renewable energy) and not to PPP processes (procurement, risk allocation, policy). This template will be adapted by the secretariat in consultation with the Project Teams and the Bureau to accommodate specific processes.

as the World Bank, the ADB, the EBRD, the EIB/EPEC, the OECD, UNCITRAL, UNCTAD, IPFA, and CICA (key stakeholders). Sufficient time, not exceeding one month, would be given for input from the BAB and key stakeholders.

The involvement of the private sector in the process is crucial considering its vast expertise and knowledge on PPPs projects in different countries.

4. Public review

After taking into account the feedback received from all key stakeholders the UNECE secretariat will place the draft of the standard on the UNECE website for a 60 day period. A notification that the draft is available for public review, with the deadlines and description of the public review process will be sent to all TOS PPP and CECI delegates as well as their networks of experts.

The draft standard needs to be inclusive, representing the general interests of the largest possible number of countries and stakeholders. Therefore, all the comments received during the public review stage need to be taken into account, be properly logged in and registered, with the Project Team's responses, on a public website.

If significant changes are made to the draft as a result of comments made during the public review, then the revised standard must be posted again for public review, for an additional 30 days. This cycle should be repeated as many times as is necessary to develop a consensus standard of high quality. The definition of "significant" is to be decided by the Project Team, in consultation with the TOS PPP Bureau and the secretariat.

5. Endorsement

Once the public review is over the Project Team, through the UNECE secretariat will, submit the draft standard to the TOS PPP Bureau for review and endorsement. The TOS PPP Bureau will either endorse the draft or identify the next steps for the Project Team. If endorsed by the TOS PPP Bureau, the draft standard will be sent to the TOS PPP for its review with a recommendation for endorsement.

6. Approval

The final draft will be reviewed by TOS PPP and if endorsed, the draft will be submitted to CECI with a recommendation to approve it. After approval by CECI, the document can be published for distribution and voluntary implementation by member States.

7. Maintenance

After publication, the recommendations/standards can be reviewed to take account of new developments. Guidelines for maintenance procedures will be prepared by the Bureau of TOS PPP.

Annex II –Project Proposal Template

A project proposal is a short document that describes a concept that will lead to a PPP ‘standard’ and will be developed by a Project Team. The Project Proposal must include the purpose, a clearly defined scope, a list of deliverables, geographical focus (which is ‘global’ by default), a list of team members (where appropriate), resource requirements, and an estimated schedule for developing the final deliverable.

Project Name

1. Project purpose

The purpose of the project is to develop a UNECE standard on.... [what does the Project Team aim to achieve]

2. Project scope

The scope of the project is.... [what is included and what is excluded in the proposed project]

3. Project deliverables

The project deliverables are:

[name of deliverable 1] – [description of deliverable 1]

[name of deliverable 2] – [description of deliverable 2]

...

4. Geographical focus

The focus is global.

5. Project Team membership and required functional expertise

Membership is open to experts with broad knowledge in the area of [...] especially in low and middle income countries. [name of the Project Leader]

7. Resource requirements

Participants in the project shall provide resources for their own participation. The existence and functioning of the project shall not require any additional resources from the UNECE secretariat.

8. Timetable

Detailed description of key milestones with dates from project initiation to submission for approval by the intergovernmental process.

Annex III –Project Template for PPP Sectors

This Annex contains a standard of a Project Template to be used for all PPP sectors. The Project Template consists of a model PPP project that has been developed on the basis of an analysis of best practices from case studies (good and bad) and experience. It contains information that public sector officials at all levels – and especially in countries that lack a track record in PPP – ask for, or need to know, evaluating the PPP options. This project template was developed and used by the Team of Specialists on PPPs in its advice to the United Nations Office at Geneva on the feasibility of using PPPs for the renovation of the Palais des Nations (see [study](#)⁶ prepared in May 2013 by the UNECE secretariat under the auspices of the TOS PPP Bureau).

1. Acknowledgements
2. Background and Purpose
3. Executive Summary
4. Section I: Evaluation and Analysis of the PPP Models in [a Sector]
 - 4.1. Recent international trends in the use of PPP in [a sector]
 - 4.2. Advantages and disadvantages of the various PPP models in [a sector]
 - 4.3. The PPP model chosen for [a sector]
5. Section II: Feasibility of the PPP Model within the Socio-Economic Context
 - 5.1. Legal perspective
 - 5.2. Business case using the ‘Five-Case Models’ framework⁷
6. Section III: Optimal Allocation of Risks
 - 6.1. Risk matrix
7. Section IV: Financing Model
 - 7.1. Sources of funding
 - 7.2. Payment agreements
8. Preliminary Recommendations and Conclusion
9. Annexes
 - 9.1. Comparison table of the different PPP models
 - 9.2. Relevant literature

⁶ The study is available at:

http://www.unece.org/fileadmin/DAM/ceci/documents/ICoE_PPP/ICoE/Report_PPP_option_for_PdN_FINAL.pdf

⁷ The Five Case Model comprises the Strategic Case, the Economic Case, the Financial Case, the Commercial Case and the Management Case. It was first developed by the United Kingdom and its use has spread to other countries.

Annex IV – Intellectual Property Rights Policy governing the development and use of UNECE PPP Standards

Background

It is an important UN principal that its work much be made available for use by member States free of charge. The guiding principle under which PPP standards are developed is that the main beneficiary of the standards and recommendations are the member States. Intellectual property rights (IPRs), mainly copyright, are generated throughout the development of PPP standards, third party IPRs may also be used, and this intellectual property rights policy (IPR policy) is aimed at managing the use and ownership of this IPR.

UNECE PPP standards as public goods

In order to promote the widest adoption of the PPP outputs, they can be implemented freely and without any restrictions. The Bureau of the Team of Specialists on PPPs will not recommend the approval of a standard if it is aware that third parties' IPRs exist in the draft standard or other output that are not freely available for use without any restrictions.

Intellectual Property Ownership and Waiver

All new intellectual property generated throughout the development of the PPP standards belongs to the UNECE. As a condition for participating in the Project Teams, Project Team members agree to waive their rights to enforce any prior IPRs used in the PPP standards and other outputs against any party using the standard or output.

Transparency and Confidentiality

The UNECE and the members of the Project Teams have no duty of confidentiality with respect to any information transferred between them. No information transferred that is subject to any requirement of confidentiality or any restriction on its dissemination will be considered for inclusion in any part of the PPP Open Standard Development Process (described in Annex I), and there must be no assumption of any confidentiality obligation with respect to any contribution.

Disclaimer

The following disclaimer must be included in the publication, on the website and in any other form of presentation of UNECE PPP outputs covered by the IPR policy.

The UNECE draws attention to the possibility that the practice or implementation of its outputs (which include but are not limited to standards, recommendations, norms, guidelines and technical specifications) may involve the use of a claimed intellectual property right. Each output is based on the contributions of participants in the PPP standard development process, who have acknowledged that all new intellectual property rights generated belongs to the UNECE and have also agreed to waive enforcement of their existing intellectual property rights used in the PPP standards against any party using the outputs.

The UNECE takes no position concerning the evidence, validity or applicability of any claimed intellectual property right or any other right that might be claimed by any third parties related to the implementation of its outputs. The UNECE makes no representation that it has made any investigation or effort to evaluate any such rights.

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