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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
STEERING GROUP ON CORPORATE GOVERNANCE**

Working Group on Privatisation and Corporate Governance of State Owned Assets

12th Meeting of the Working Group on Privatisation and Corporate Governance of State Owned Assets

Draft Summary Record

**18-19 November 2008
OECD Conference Centre
2, rue André-Pascal, Paris 75016**

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12th Meeting of the Working Group on Privatisation and Corporate Governance of State-Owned Assets

DRAFT SUMMARY RECORD

Item 1: Opening of the Meeting

The incumbent Chair, Mr. Cederlund (Sweden) opened the meeting and welcomed ad-hoc observers from the accession countries Chile, Estonia, Israel, Russia and Slovenia.

Item 2: Designation of the Chair and the Bureau

The Working Group agreed to designate Mr. Pekka Timonen (Finland) to Chair the Working Group in 2009. Mr. Timonen accepted the designation and thanked the outgoing Chair, Mr. Cederlund (Sweden), who did not stand for re-election because of retirement, for his services to the Group. The meeting also designated a bureau for 2009, which will include Mr. Petr Musil (Czech Republic); Ms. Lucie Muniesa (France); Mr. Amilios Stasinakis (Greece); Mr. Kyungho Choo (Korea); Mr. Morten Kallevig (Norway); Mr. Juan Munguira (Spain); and Mr. Lars-Erik Fredriksson (Sweden).

Item 3: Adoption of the Agenda

The agenda (DAF/CA/PRIV/A(2008)2/REV1) was adopted without change.

Item 4: Adoption of the Draft Summary Record of the 11th Meeting of the Working Group on Privatisation and Corporate Governance of State-Owned Assets

Delegates approved the draft summary record of the 11th meeting (DAF/CA/PRIV/M(2008)2) without change.

Item 5: Consultation with BIAC and TUAC

BIAC's comments focused on two issues. Regarding the report on the role of SOEs in the world economy (DAF/CA/PRIV(2008)9), BIAC thanked the Secretariat for gathering a large amount of information and welcomed the focus on China, India, Brazil and Russia. Going ahead, BIAC encouraged the Secretariat to go beyond statistics and document the actual, effective implementation of the SOE Guidelines, including in SOEs investing abroad, and highlighted the importance of ensuring a level playing field between SOEs and other companies. BIAC also encouraged the Secretariat to further develop the awareness of the Guidelines around the world, both in governments and the SOEs themselves. Against this background, BIAC fully supported the recommendation in the draft Policy Brief on Corporate Governance of SOEs in Asia that calls for increasing SOE boards' competencies (DAF/CA/PRIV(2008)10).

BIAC complemented the Secretariat for the paper on temporary government control over financial institutions (DAF/CA/PRIV(2008)7) and drew attention to two emerging concerns in this area. First, where the state appoints some board members this should not impair on boards' collegiality nor change the fact that boards must focus on the interest of the company and represent the interests of all shareholders. Secondly, authorities need to be mindful that there is a market for executives. Any discussion of executive compensation must take account of the necessary search for talents and the competition between institutions receiving support from the government and others. Unsupported companies should not be subject to governance rules beyond what exists already, nor should there be an automatic cap on executive

pay. Greater state control or more regulation is to be avoided unless absolutely necessary. BIAC further argued that it is necessary to think, from the outset of rescue operations, about an exit strategy.

TUAC commented on the paper on temporary government control over financial institutions (DAF/CA/PRIV(2008)7). It reminded the Working Group of the Joint TUAC / ITUC “Evaluation of the G20 Summit Crisis on Financial Markets”, proposing it as background information for the Working group’s discussion. It also cited a speech by the OECD Secretary General in an ILO summit in Geneva on November 17, 2008, calling the current crisis a “colossal failure of corporate governance”. TUAC supports government measures to recapitalise and when necessary take ownership on the grounds that some institutions are “too big to fail” in view of the systemic implications for the real economy. However, it also cautioned that times are exceptional, and that an assumption of business as usual would be a mistake.

TUAC raised four main questions. First, within the remits of the Steering Group, where exactly did the failures of corporate governance that led to the current crisis take place? Secondly, within the remits of the Working Group, how should the government exercise its ownership function in partly nationalised commercial entities? Thirdly, how are governments expected to handle the interface between ownership and regulatory functions in a situation of temporary nationalisation? TUAC opined that, at a minimum, governments temporarily departing from normal regulatory practices need to be transparent about such measures and the way they are exercised. Fourthly, should temporary government control with financial institutions be used an opportunity to impose some sanity on past excesses” including in the area of executive pay? More generally, in view of the financial crisis TUAC called for enhancing the visibility and relevance of OECD work on corporate governance.

Regarding the paper on good practices in privatisation (DAF/CA/PRIV(2008)8), TUAC advised that the discussion of changing employment conditions should not be limited to staff that have a civil servant status. Other issues would be relevant in this section, including successor rights, where applicable, and employee rights in the broader context of disclosure and stakeholder consultation. Regarding items 10 and 11 of the agenda, TUAC supported non-member activities and re-emphasized the need to ensure a high visibility for the OECD Guidelines. It called for a balanced treatment of the different chapters of the Guidelines, and called for greater synergies with other OECD instruments including the MNE Guidelines.

Item 6: Temporary government control over financial institutions in response to the current financial crisis

The current financial crisis has led several OECD governments to temporarily assume control over, or take ownership interests in, certain financial institutions. As many of the government agencies involved have little prior experience as “owners” this situation gives rise to a host of corporate governance challenges. These are briefly described in DAF/CA/PRIV(2008)7. and include the issues of separation of ownership from regulatory functions; ensuring a level-playing field between institutions that have received government support and those that have not; the equitable treatment of non-government shareholders; the role of government as shareholder in imposing corporate governance reforms, and: the role of government-appointed directors.

Officials from OECD countries who have in the past been involved in taking temporary control with financial institutions were invited to share their experiences. Norway kicked off the discussion with an overview of their handling of a banking crisis in the early 1990s (DAF/CA/PRIV/RD(2008)11) and, in particular, the institutional arrangements that were adopted when the government assumed ownership of the country’s largest commercial banks between 1991 and 1992. This included the establishment of two new entities: a government bank insurance fund that initially held interested in the troubled banks, and a longer term holder, the government bank investment fund, which later managed the investments on a commercial basis.

As follow-up, delegates agreed to establish an Expert Group to help gather information and facilitate the exchange of experience. A number of countries volunteered to participate in the task force and/or to provide further information. Delegates asked the Secretariat to develop of a brief report on practices and experiences for the next meeting in April 2009.

Item 7: Recent experiences in privatisation

The Chair invited Sweden to present its experience from the privatisation of the real-estate company Vasakronan, which was trade-sold following a competitive bidding between two interested buyers (DAF/CA/PRIV/RD(2008)12). Comments from other delegates evolved around the fact that the ultimate purchaser of Vasakronan belongs to the public pension system, which could bring the word “privatisation” in doubt. There was also some discussion about the decision to sell the company as a whole rather than solicit highest-bids for individual parts of its real estate portfolio.

Item 8: Best practices in privatisation

a) The use of external advisors

The Chair invited Finland to present its experience regarding the use of external advisors in privatisation (DAF/CA/PRIV/RD(2008)13). The Finnish practice of inviting competitive bids from a “long list” of prequalified advisory companies as a way of combining the needs for confidentiality and competition evoked interest among Delegates. Some Delegates voiced doubts about the maintenance of a level playing field and the need to safeguard transparency in such a process.

b) Best practice report

The Secretariat presented an advanced draft of the best practice report “Privatisation in the 21st Century: Recent Experiences of OECD Countries” (DAF/CA/PRIV(2008)8). Delegates discussed the shape of the document, the veracity of national information in the various sections and, in particular, the normative findings suggested at the end of each sub-section. It was agreed that the latter will form the basis for drafting guidelines for privatization, which will be discussed at a later meeting of the Working Group.

Delegates agreed to finalize the report by written procedure. Delegates were given three weeks following the meeting to send written comments to the Secretariat. A revised version would then be circulated and derestricted a “no objections basis”.

c) The road ahead

In accordance with the Programme of Work delegates asked the Secretariat, subject to available resources, to prepare a set of draft guidelines for privatization for their consideration at the next meeting in April 2009.

Item 9: The role of SOEs in the world economy

a) A “primer” on the economic weight of SOEs

The Working Group has identified "The Role of SOEs in the World Economy" as a priority output for 2009-2010. To support a discussion on this topic and orient future work in this area, the Secretariat presented a draft synthesis on the role of SOEs in the world economy (DAF/CA/PRIV(2008)9). The paper was based on earlier work by various OECD forums as well as a first collection of consultant papers covering non-member economies. Two of these reports were tabled as room documents (DAF/CA/PRIV/RD(2008)14, DAF/CA/PRIV/RD(2008)15).

Based on these reports, the Working Group re-iterated its firm support for this work.

b) Work in other OECD forums

The Chair reminded Delegates that he sent a letter to Chairman Schekulin of the Investment Committee prior to the last Roundtable on Freedom of Investment, suggesting a cooperative approach. Mr. Schekulin responded positively (DAF/CA/PRIV/RD(2008)18) and invited a representative of the Working Group or its secretariat to address the Committee's next Roundtable on 17 December.

Delegates were briefed by a representative of the OECD Investment Division about the discussions in the 8th "Freedom of Investment" (FoI) Roundtable (held October 8, 2008 under the auspices of the OECD Investment Committee) of the benefits and perceived risks arising from foreign government-controlled investments, including state-owned enterprises, and the role of other policy communities (e.g. competition and governance) in addressing these risks, with a revised version of a report discussed in the Investment Committee (DAF/INV/WD(2008)14/REV1). The Investment Committee does not plan to address broader issues related to cross-border activities of SOEs beyond the remits of its FoI project. Rather, the Committee is interested in the views of the Working Group on the governance arrangements of SOEs as they apply to the concerns raised in the context of FoI.

c) The road ahead

The Working Group agreed that priority should be given, resources permitting, to developing a taxonomy to delineate SOEs; a data collection exercise; an analysis of the main economic consequences of SOE activities, including cross-border issues, and the ramifications thereof for public policy and regulation. It was also agreed to aim at a "companion document" to the SOE Guidelines that would highlight any corporate governance issues that announce themselves when SOEs operate a cross-borders.

Item 10: Work with non-members

a) Asia

The Chairman of the OECD Asia Network on Corporate Governance of SOEs, Mr John Lim, President of the Singapore Institute of Directors, presented the Network and a draft of their Policy Brief on the Corporate Governance of SOEs in Asia [DAF/CA/PRIV(2008)10]. Mr. Lim underlined the importance and intensity of the exchanges among the Network members who all are drivers of reforms in their respective countries. His comments on the main recommendations of the Policy Brief were illustrated with examples of good practices. He also explained how problem have been addressed in various jurisdictions covered by the Asia Network. He highlighted the priorities for improvement that are set out by the report: ,including: better clarity on non commercial objectives; improving the competence of board members, ensure independence and a transparent nomination process; avoiding political interference; developing ownership policies and aggregate reports. He also stressed the need for effective implementation and enforcement, which should be the focus of the Network's future work.

Working Group delegates who have participated meeting of the Asia Network confirmed the quality of discussions and the high level of participation. There is also a strong demand from for further exchange of experience both in the Asian region and at a more global level on the way to push forwards reforms in the area of SOE governance. In terms of impact, the Secretariat provided the Working Group with examples of how the OECD SOE Guidelines are being used in a number of Asian countries undertaking reform. It also informed that final version of the Network's Policy Brief will include examples of good practices and identify reform priorities for individual countries. This will allow the Network to monitor progress in terms of implementation.

b) Africa and MENA

The Secretariat presented a brief summary of the work programme to date (DAF/CA/PRIV/RD(2008)16) and the future plans for the African SOE Network. The African SOE Network was established in 2007 and the first meeting was held in Cape Town in May, 2008. SOEs are of significant economic importance in sub-Saharan Africa and improvements in the governance would substantially contribute to improved performance. The first meeting focussed on the key corporate governance challenges faced by governments in the Southern African Development Community (SADC) in managing their State Owned Enterprises. These include effective operation of SOE Boards, effective structures for government ownership control in a regional context, and the need to improve transparency and accountability. A second meeting is scheduled for Spring 2009 when the Network plan to issue a regional policy brief that will guide the implementation of reforms in countries in the region.

In MENA, the OECD-MENA Investment Program has set up a specific Task Force to address the challenges of SOE Governance in the MENA region. Given the important role of state ownership in MENA countries, successful enterprise reform needs to include improved corporate governance of SOEs. The Task Force, established in 2008, comprise around 15 experts from the region and is served by both the Hawkamah Institute for Corporate Governance and the OECD Secretariat. It will develop a policy brief on SOE governance in the MENA region, identifying priorities and proposing concrete recommendations for reform. This Policy Brief will be finalised in 2009.

Item 11: The Global Network on Privatisation and Corporate Governance of SOEs

The Secretariat presented a roadmap for the future work of the Global Network on Privatisation and Corporate Governance of SOEs, covering both substance and format (DAF/CA/PRIV(2008)11). It also presented the main items of the preliminary agenda for the next meeting of the Global Network and its main outputs 2009. This will include a progress report on SOE corporate governance reforms, a comparative review of existing board practices and a short policy brief identifying priorities for improving SOE boards.

Delegates expressed their support for the roadmap and provided useful comments on the draft agenda for the next meeting of the Global SOE Network. There was general agreement that the agenda was very ambitious, covering a lot of issues during a short period of time. The Secretariat was encouraged to review the agenda and make sure that it provided enough time for open floor discussions and networking among participants. The World Bank expressed its willingness to co-operate for the organisation of the next meeting.

Item 12: Other business

The Secretariat agreed to inform delegates in writing about any developments in the work of the International Working Group of Sovereign Wealth Funds, hosted by the IMF, in the area of corporate governance or otherwise within the remits of the Working Group.

Item 13: Dates for the next Working Group meeting

The next meeting of the Working Group is scheduled for 21-23 April 2009. The meeting will include a joint session with the Steering Group on Corporate Governance to discuss accession reviews.

**Participants list for The 12th Meeting of the Working Group on Privatisation
and Corporate Governance of State-Owned Assets/Liste des participants pour
12ème Réunion - Groupe de travail de l'OCDE sur la privatisation et le
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18/11/2008

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