



TRACECA: International Road
Transport Transit Facilitation
Legal Report
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1. Introduction

This is the legal assessment report of the TRACECA project "International Road Transport Transit Facilitation".

One of the specific objectives of this project is to identify and give priority to development of the legislative base for transport operator licensing with particular emphasis on the legal requirement for operators to have internationally recognised qualifications. This will encourage greater professionalism in the industry. It is therefore important to make an assessment of the existing legislation on admission to the occupation of international road haulage operator in the TRACECA countries.

Besides "access to the profession" the project involves identification of and assistance in revising the national legislation on the international movement of dangerous goods by road to be more compatible with the ADR Agreement.

Another important project objective is to assist in introducing the TIR Convention in non-signatory countries by developing transport and guaranteeing associations, and assisting in the process of accession to and implementation of the Convention.

This legal report therefore, deals with the status of ADR and TIR in the TRACECA countries. Brief details are also given of the situation concerning implementation of the CMR Convention, which regulates the transport contract between the owner of the goods and the carrier, and the ATP Agreement which sets constructional and operational standards in the movement of perishable foodstuffs. Most attention is, however, devoted to Access to the Profession for international road transport operators but brief details are also shown in relation to relevant aspects of national operations. Counterparts will need to develop parallel CPC courses for national transport, based on their unique national legislation, to complement the international CPC courses developed by this project.

The first chapter of the report deals with the European Rules concerning Access to the Profession. The following chapter highlights the "Access to the Profession" situation for each TRACECA country as described to the consultant by counterparts. As the process of information gathering in each country is continuing, and a project legal blueprint will follow, definitive conclusions and recommendations for each country have not been made in this report but the final chapter sets out some general conclusions drawn from the similar situations found in many of the TRACECA countries.

1.1 The European Union Rules concerning Access to the Profession

Council Directive 96/26/EC (CD 96/26/EC), last amended by CD 98/76/EC, on admission to the occupation of road haulage operator and road passenger operator (and mutual recognition of diplomas, certificates and other evidence of formal qualification intended to facilitate for these operators the right to freedom of establishment in national and international transport operations), is one of the most important pieces of European road transport legislation. This single Directive covers several topics that have an important impact on the road haulage industry and the passenger transport sector.

The Directive lays down minimum standards for:

- Good repute
- Financial standing
- Professional competence

required of transport operators. A certificate valid in one Member State is equally valid in other Member States. In a recent assessment of EU countries it was evident that there were varying standards of minimum requirements between Member States. However now both within Member States and in the accession candidate countries the laws on admission to the occupation of road transport operator are being updated to take account of Directive 98/76 with the aim of raising standards and harmonising the three qualitative criteria.

The next section deals with the general requirements stipulated in CD 98/76/EC. The following 3 sections highlight the requirements of Good Repute, Financial Standing and Professional Competence. The final section is about rejection and revocation of licences, and about enforcement and offences.

1.1.1 General Requirements

1. The law must apply at least to all undertakings transporting passengers or goods for hire and reward by means of motor vehicles constructed for more than nine persons and for motor vehicles with a permissible payload of more than 3,5 tonnes respectively.
2. “the occupation of road haulage operator” means the activity of any undertaking transporting goods for hire or reward by means of either a motor vehicle or a combination of vehicles.
3. “the occupation of road passenger transport operator” means the activity of any undertaking operating by means of motor vehicles so constructed and equipped as to be suitable for carrying more than nine persons - including driver - and intended for that purpose, passenger transport services for the

public or for specific categories of users against payment by the person transported or by the transport organiser.

4. Member states may exempt undertakings from application of the rules if they use vehicles of which the maximum authorised weights are between 3,5 and 6 tonnes, and if these undertakings are engaged exclusively in local transport and have only a minor impact on the transport market because of the short distances involved.

1.1.2 The Requirement of Good Repute

The good repute requirement is not satisfied, or is no longer satisfied, if the natural person or persons who are deemed to satisfy the triple requirements

1. Have been convicted of serious offences, including offences of a commercial nature
2. Have been declared unfit to pursue the occupation of road transport operators under any rules in force
3. Have been convicted of serious offences against the rules in force concerning:
 - the pay and employment conditions in the profession
 - drivers' driving and rest periods
 - the weights and dimensions of commercial vehicles
 - road safety and vehicle safety
 - the protection of the environment
 - other rules concerning professional liability.

1.1.3 The Requirement of Financial Standing

1. Appropriate financial standing consists in having available sufficient resources to ensure proper launching of the undertaking
2. For the purposes of assessing financial standing, the competent authority shall have regard to:
 - annual accounts of the undertaking; if any
 - funds available, including cash at bank, overdraft and loan facilities
 - any assets, including property, which are available to provide security for the undertaking
 - costs, including purchase costs initial payment for vehicles, premises, plant and equipment and working capital

3. The undertaking must have available capital reserves of at least EUR 9000 when only one vehicle is used and at least 5000 EUR for each additional vehicle.
4. The competent authority may accept or require, by way of proof, the confirmation or assurance provided by a bank or other properly qualified institution. Such confirmation or assurance may be given by a bank guarantee, possibly in the form of a pledge or security, or by any other similar means.

1.1.4 The Requirement of Professional Competence

1. The condition relating to professional competence consists in the possession of specified knowledge for the topics:
 - Civil law
 - Commercial law
 - Social law
 - Fiscal law
 - Business and financial management of the undertaking
 - Access to the market
 - Technical standards and aspects of operation
 - Road safety
2. It shall be established by means of a compulsory written examination (Multiple choice questions with 4 possibilities, or open questions or a combination of both and Written exercises/case studies which may be supplemented by an oral examination).
3. The minimum duration of each test is two hours. If an oral examination is organised, it may be stipulated that participation is subject to successful completion of the written examination.
4. Weighting of marks of the tests:
 - written and oral test: each of the three tests a minimum of 25% and a maximum of 40% of the total number of marks to be given
 - written test: each of the two tests a minimum of 40% and a maximum of 60% of the total number of marks to be given
 - with regard to all tests, applicants must obtain an average of at least 60% of the total number of marks given
 - in any test not less than 50% of the total number of marks to be obtained. In one test the pass mark may be reduced from 50% to 40%.

5. Member States may exempt from examination applicants who provide proof of at least five years practical experience in a transport undertaking at management level, provided such applicant sits a test, arrangements for which shall be determined by Member States in accordance with the compulsory subjects for examination.
6. Member States may exempt the holders of certain advanced diplomas or technical diplomas, which provide proof of a sound knowledge of the compulsory subjects for examination, from sitting an examination in the subject covered by the diplomas.
7. Member States may exempt undertakings engaging solely in national transport operations from having to study international subjects, as long as the certificate mentions that the operator is solely qualified for national transport.
8. A certificate issued by the authority or designated body, drawn up in accordance with the form of certificate set out in Annex Ia of Council Directive 96/26/EC (as amended by 98/76/EC), shall be produced as proof of professional competence.

1.1.5 Rejection, Revocation and Offences

1. Rejection of an application for an operators licence (accession to the profession) shall state the grounds on which it is based.
2. The competent authority should carry out a check at least every five years to ensure compliance with all three qualitative criteria. Competent authorities must withdraw licences, after first allowing sufficient time for appointment of a suitably qualified substitute, if the triple requirements are no longer satisfied.
3. Interested undertakings must be able to defend their interests.
4. Where offences against the rules governing either road haulage or road passenger transport, as appropriate, have been committed by non-resident road transport operators and might lead to withdrawal of the licence to practice as a road transport operator, the Member States shall provide the Member State in which such a road transport operator is established with all the information in their possession concerning those offences and the penalties they have imposed.
5. If the requirement of financial standing is not fulfilled at the time of checking, the authorities may, where the undertaking's other economic circumstances give grounds for assuming that the requirements of financial standing will again be fulfilled within the foreseeable future on the basis of a financial plan, give further notice of not more than one year before revoking the licence.

2. Legal Report : Armenia

2.1 Overall legal framework for transport

The Law on Transport sets out the main obligations of the state in relation to the management of transport including programmes for development of individual modes of transport, reforms relating to the transfer of the transport complex to the market economy, forecasting of state and defence demands for cargo carriage and other transport services, limitation of monopolistic activity, development of competition, determination and improvement of standards, and protection of the legitimate interests and rights of transport enterprises and users.

2.2 Sources of Law

- Civil Code of the Republic of Armenia
- Law on Transport of the Republic of Armenia of 03-02-1998
- Decree 116-0003 of 17-04-1997 on Establishing Licensing Rules for Road Transport Operations issued by Ministry of Transport of the Republic of Armenia
- Law of Republic of Armenia on Enterprises and Entrepreneurial Activities
- Order No 681 of the Government of Armenia of 23-12-1991

2.3 The Institutional Framework and Bodies Responsible for Implementation

2.3.1 Operator licensing

The Ministry of Transport (MOT) is the authority responsible for access to the profession and the responsible authority for policy development and law making in this field. The MOT also has certain powers of control and enforcement. A Transport Inspectorate is in the process of being established.

Some transport activities are implemented under state licensing. These activities are mentioned in a special list of the Government of the Republic of Armenia (unfortunately not available to the consultant).

The majority of enforcement is carried out by the Traffic Police (Ministry of Internal Affairs) but the Tax department and customs also have significant responsibilities. Only the Traffic Police have the power to stop a moving vehicle on the road. Ministry of Transport inspectors may visit offices and ask to see documents.

Passenger transport is operated under route licences to manage competition.

2.3.2 Exchange of information

Apart from a committee of enforcement agencies, there is no formal system of information exchange. For example, if a driver or operator is fined for using a vehicle in poor technical condition or for overloading, it is unlikely that this will be reported to the Ministry of Transport.

Further co-operation should be encouraged at the highest level. Co-operation will be of benefit to the Ministries as it will improve the efficiency of tax collection and the standards of enforcement of laws for which they are responsible.

2.4 Operator Licensing (also known as “Access to the Profession”)

2.4.1 Types of Operator Licence

There is a system of operator licensing in Armenia, which applies only to hire and reward operations. There is no licensing of own account operations, but the enterprise must be registered.

State enterprises carrying both goods and passengers are exempt, but these organisations are a declining species. There is a state programme of privatisation which aims to privatise fully both industries by the end of year 2000. The process is currently 70% complete.

There is no distinction made between national and international operations, other than the obvious requirements to carry a drivers licence, TIR documentation, a letter of authority to use the vehicle, a contract for the work and a green card when abroad.

There is no limit on the number of vehicles which may be operated or their size, provided there is sufficient capital and the vehicles are in good technical condition.

Licensing applies to vehicles irrespective of weight or carrying capacity.

2.4.2 Licence Documentation

The Minister of Transport is responsible for the issue of licences. Licences are valid for three to five years depending on the period requested by the applicant and the technical condition of the vehicle(s). The applicant receives one licence and one permit per vehicle for each vehicle listed in the application for the licence. This permit must be affixed to the windscreen of the vehicle during operation.

When applying for the permits, which are obtained from the Ministry of Transport, the operator must supply details of the vehicle's technical condition and an annual test certificate.

2.4.3 Application Procedure

Firstly, any enterprise must be registered. This is done by a separate state body, the State Registration Committee. The information to be supplied varies according to whether the operator is a natural person or a legal person.

A natural person must supply the following information with an application form:-

- Name of enterprise (which must be approved to avoid imitation of other enterprises)
- Address for service of documents and inspections
- Receipt for paying the registration fee

A natural person is not permitted to employ other drivers. There is no minimum capital requirement.

A legal person must supply the following information with an application form:-

- Charter of company (stating that the object is transportation)
- Contract of founders (together these two documents are equivalent to the British Memorandum and Articles of Association)
- Name of company, which must be approved
- Address for service of documents and inspections
- Receipt for payment of state fee (DR 50,000)
- Demonstration of minimum capital in bank account (for two trucks the figure is DR 50,000 (US\$ \$100))

Capital assets, such as trucks, can be taken into account when assessing the level of capital of the business.

The enterprise will be registered with the tax authorities at the same time as its legal identity is registered. The enterprise will be given a tax code number which must appear on its seal.

An enterprise must then apply to the Ministry of Transport for an operators licence, giving details of:-

- state registration document of legal or natural person and attachments
- List of vehicles to be used and their technical passports (if leased must supply letter of authority from leasing company or certified copy of leasing agreement)

- Copy certificate of vehicle's gas emissions issued by State Standards Department in accordance with Order no 681 of the Government dated 23/12/91
- Copy of drivers licence
- Copy of permission to use gas powered vehicles (if appropriate)
- Copy of results of medical examination
- Tax registration number

2.5 Standards to be met by the holder of a licence : Good Repute, Professional Competence and Financial Status

2.5.1 Good repute : Application to Armenia

There is currently no investigation of good repute in the EU sense of the term. However, some checks are made and the existing system could be developed in the future.

The law prevents persons who have been convicted of certain crimes from practising certain professions. The commission of serious or repeated traffic violations (such as the involvement of a dangerously defective vehicle in an accident causing injury) could be added to the list.

2.5.2 Financial Status of the operator

European Union law requires holders of a hire or reward licence to demonstrate that they have a minimum level of assets (currently about \$2000 per vehicle operated). In Armenia the current system does include *some* checks about financial status.

When applying for his licence, an operator must register his enterprise and obtain a tax registration number. Tax for goods vehicle operators is charged according to the number of days of operation during the period, not according to levels of income or profit. Therefore, tax inspectors rarely perform detailed studies of trading accounts. The department can and does perform spot checks.

The operator must demonstrate a minimum level of capital. This varies according to the size of the fleet but for two vehicles it is approximately DR 50,000 (\$100) which the consultant considers inadequate to provide sufficient resources for vehicle maintenance.

2.5.3 Professional Competence

There is currently no enforcement of a requirement of professional competence in the EU sense ie that that one or more directors or managers employed by the enterprise must hold a recognised qualification demonstrating that they have a minimum level of

knowledge about the operation of vehicles and the principles of commerce. However Article 3(a) of Decree No 116 stipulates that the applicant should submit documents of "professional competence" to the Ministry.

The applicant declares that he will observe the laws of Armenia, but there is no requirement that he successfully completes an approved course to prove that he knows about them. Neither is there special compulsory training for international operations.

The technical university provides a number of courses which could be modified to comply with European requirements.

One of the aims of this project is to provide a pilot training course and training materials so that experts in the participating countries may receive instruction in the content and presentation of a CPC (Certificate of Professional Competence) course.

2.6 Issue of Licence or Rejection of Application

A decision about granting or refusing a licence has to be made within 15 days from submitting the application or, in case of the need for detailed examination by experts of the attached documents, within 10 days after the results of the examination are received. The licence is to be issued to the applicant within three days after a positive decision is made.

The application for a licence can be rejected in the following cases:

- the application form or attached documents contain false or misleading information
- the vehicle for which the licence is requested does not meet the standards required for certain types of operation
- the vehicle has not passed the state technical certification
- the person who will work under the licence does not possess the qualifications required for operation
- expiry of the driver's medical examination validity period

A decision to reject an application must contain a reason for the rejection and must refer to legislative or regulatory acts that served as a basis for the rejection. The decision to reject must be provided to the applicant within three days after the decision is made.

2.7 Suspension, revocation or curtailment of the licence

The Ministry of Transport can withdraw a license or a vehicle specific permit in the following cases:

- violations of the present regulations by the licensee

- where the legal or natural person stops operating
- expiry of the driver's medical examination validity period

The legal or natural person is notified about such a decision and is given a certain period of time for eliminating the conditions that served as the reason for suspending the licence. If the problem is not resolved within "the certain period of time", the suspended licence can be revoked. The legal or natural person has the right to submit an appeal on a decision to revoke a licence within a thirty-day period.

It is also possible for a licence to be suspended or revoked if the directors commit criminal offences (or pay their drivers to do so). This mechanism may be used if a vehicle has caused a serious accident.

The main ground for enforcement action is the non registration for, or non- payment of, tax. This can result in the closure or suspension of the business. Similar powers are given to Customs.

The main enforcing authorities are the Traffic Police, Tax Department, Customs and the Ministry of Transport. These have set up a Working Group which could be the basis of a disciplinary committee managing legal requirements for good repute.

2.8 Other aspects of vehicle operation relevant in the context of development of a CPC exam and training centres

The CPC course gives basic training in company and business law, accountancy, taxation, contract and liability, operator licensing, driver licensing, the transport of dangerous goods and the technical condition of vehicles. The present situation in Armenia in relation to some of these is briefly considered below.

2.8.1 Enforcement of Technical standards

Elements of a European monitoring system are in place, such as roadside checks, some environmental controls and annual testing. There is also some co-operation between various enforcement agencies.

The main problems are:-

- Insufficient funds to install or replace outmoded testing equipment
- Insufficient equipment such as weigh pads for roadside control
- Testing by visual examination and not by an impartial machine

Technical examination of vehicles is performed by the Traffic Police. There are 8 test stations in Yerevan and 42 more in the Provinces. It is compulsory to submit all

vehicles for test prior to registration and then each year, except buses and vehicles used for the carriage of hazardous cargo. These are inspected every 6 months.

Most examinations are visual, conducted by experienced staff. The test is conducted according to a standard checklist. There is a shortage of reliable modern automated equipment. The consultant was advised that the examination takes about 10 minutes per vehicle.

It is not compulsory for the annual test to include a smoke analysis, but this will be done on request particularly for operators wishing to travel to the EU, who require EURO II certification. The consultant was advised that a new law governing emissions is being drafted. The test includes a check that the operator has paid the vehicle pollution tax.

The Traffic Police can conduct roadside examinations and can impose an order prohibiting the movement of a dangerous vehicle. This is rarely done - roadside checks tend to concentrate on documentation.

There is no system of weight control, nor is there a requirement that vehicles be weighed after loading. Customs do check weight at the border and will impose a tax on overweight vehicles. At the time of the consultant's visit, the weigh bridge at the border appeared to be out of order. Traffic Police can and do stop vehicles if the load appears to be insecure.

The law prohibits structural modifications to vehicles without the approval of the manufacturer. This is designed to prevent (mainly Iranian) operators from constructing vehicles themselves using parts from a number of different wrecks.

2.8.2 Drivers Hours of work and rest, tachographs

There is no regulation of drivers hours of work, nor is there a requirement to use a tachograph. The only requirement is that a vehicle must be fitted with a working speedometer.

It will be advisable to implement EU type laws governing driving time, rest time and the recording of hours of work for the following reasons:-

1. Fatigue is a major cause of road accidents
2. The use of a tachograph on international journeys and the control of driving / rest time will be essential if vehicles are to visit EU /AETR countries, or if Armenian is to accede to the AETR Agreement
3. An operator who presently requires his drivers to work for excessive periods is competing unfairly with one who does not require drivers to work when they are excessively tired

CPC training will begin to deal with the problem as the EU directive requires that the course covers drivers hours of work and records but legislation will also be required.

2.8.3 Driver licensing

Rules are contained in the Road Traffic law and Administrative Code
The system of driver licensing is broadly aligned with that of the EU. The categories are the same, i.e.:-

- A motorbike
- B car, van up to 3.5 tonnes maximum permissible weight / 8 passenger seats
- C goods vehicle over 3.5 tonnes
- D bus with more than 8 passenger seats
- E trailer e.g. articulated or draw bar goods vehicle

Drivers must hold a car licence for 1 year before taking a test in categories C and D. A further test is then required for category E.

The current design of the licence is a photocard with Armenian text. This is being redesigned and will probably include both Armenian and English text. It was originally proposed to replace the old design of licence by 1st March 2000 but this has slipped.

In Soviet times, there was a system of recording traffic violations on a card accompanying the licence, but this is no longer done. If a motorist is stopped for committing a traffic violation, his licence will be confiscated by the Police. He will be given a temporary permit to drive. He must then visit the Police station to retrieve his licence and pay a fine. There is no system of penalty points, nor are traffic violations recorded on the licence. However, the Traffic Police maintain a database of tickets issued. Fines are paid at the Police Station and a check is made of this list. Repeated offences cause the fine to double. Fines are specified in the Administrative Code. In serious cases (e.g. drink - driving) the vehicle may be impounded. Repeated drink - driving may result in criminal prosecution.

In the case of serious offences such as drink - driving, refusing to obey an order of the traffic police, dangerous driving or causing a serious accident, the code prescribes periods for the suspension of the licence. Most periods are of 3 months, drink driving can be 12 months. It is also possible for a driver to be required to take a re-test.

Driving schools have been privatised and must be licensed by the State Regulation Committee, with whom the Traffic Police have a right to lodge an objection. Driver training consists of theory and practical elements. The classroom training consists of traffic rules, basic mechanics and maintenance.

Driving tests are conducted by the Traffic Police, who issue the licence. The candidate must produce a certificate from his driving school stating that they believe he is able to take the test. The Traffic Police also check that test candidates have received the legal minimum level of training and experience before accepting candidates for test. For example, they will ask to see the driving school's records of fuel used. The consultant was advised that the Traffic Police perform 3-4 such inspections per week. It is possible for the Police to close a driving school that does not follow the legal training programme.

The consultant was advised that the Police have a database of licences issued and revoked and that this will be checked before issuing a licence. Candidates for examination must produce their passport (to prevent impostors taking the examination) and must sign an official form.

All drivers must have a medical certificate, which is renewed every 3 years. Truck and bus drivers must renew their certificates every year. There are additional checks for drivers aged over 50. The certificate must also be renewed if a driver applies to upgrade or replace his licence.

2.8.4 Motor Vehicle Insurance

Third party insurance is not yet compulsory in Armenia, but attempts are being made to introduce it. There are a number of private insurance companies.

There is a bilateral treaty between Armenia and Georgia which requires passenger vehicles used on international journeys to be covered by third party insurance.

When compulsory insurance is introduced, it is recommended that insurers should be adequately regulated to ensure that they keep proper accounts, pay when contractually obliged to do so and are solvent.

2.8.5 Domestic Carriage of Dangerous Goods

The law on transport contains a categorisation system for hazardous substances. A new law is being drafted for carriage of dangerous goods by all modes. In the meantime, old Soviet laws are used. Enforcement is by customs and the Traffic Police who do not seem to receive any special training. There is no formal system of special driver training. Most transportation of dangerous goods is undertaken by the Military or the Government.

The largest category of dangerous goods transport is petrol for use in motor vehicles. This is performed exclusively by a state enterprise, to which private customers must apply.

2.9 ADR

Armenia is not a contracting party to the ADR Agreement. If legislation concerning dangerous goods exists in Armenia, it is probably of USSR origin.

Domestic transportation of dangerous goods is not often required by the market. Most is by the military or state enterprises.

It is compulsory to obtain a special permission for each journey from each relevant Ministry when transporting dangerous goods abroad, for example the Ministries of Energy, Transport and Customs for oil and gas products.

2.10 TIR and international transit

Armenia became a contracting party to the TIR convention in June 1994. The Armenian International Carriers Association (AIRCA) has been established as a national guaranteeing association for the issue of carnets but its organisation and administration are at an early stage of formation and it presently remains an integral part of the Ministry of Transport.

There are very few Armenian carriers operating under Armenian licence plates, due to problems in crossing borders.

Customs discharge about 1,200 incoming loads a year at their office in Yerevan. After discharge the carnet is returned to the driver and IRU is advised by post. There are 4 TIR customs clearance points in Armenia.

Armenian customs have implemented the ASYCUDA computerised clearance system, so implementation of SAFETIR should not present great technical problems. One difficulty is the poor quality of telephone communications, which may require investment in land lines or satellite technology for the transmission of information. Currently, customs data is downloaded on to tapes and is collected by car.

2.10.1 International permits

There are bilateral agreements covering international passenger transport with several states.

2.11 International Convention on the Contract for the International Carriage of Goods by Road 1956 (CMR)

Armenia is not yet a contracting party to CMR. However, CMR documents are used.

2.11.1 Agreement on Carriage of Perishable Goods by Road 1970 (ATP)

It is thought that Armenia is not a contracting party to the ATP Agreement.

3. Legal Report : Azerbaijan

3.1 Overall legal framework for transport

The Law on Transport sets out the main obligations of the state in relation to the management of transport including programmes for development of individual modes of transport, reforms relating to the transfer of the transport complex to the market economy, forecasting of state and defence demands for cargo carriage and other transport services, limitation of monopolistic activity, development of competition, determination and improvement of standards, and protection of the legitimate interests and rights of transport enterprises and users.

3.2 Sources of Law

- Civil Code
- Law on transport of 11.06.99
- Decree no 637 about licensing of certain activities which cause danger to humans
- Resolution of Cabinet of Ministers about permit system signed on 11.06.99 No. 683 IQ
- Decree No, 165 from 27.07.99 (instruction of Cab. Min. No.136 from 10.08.99)
- Law about state road fund No.363 -1QD from 01.07.97
- Resolution of cabinet of Ministers about licensing No.6 from 12.01.98.
- Resolution of Cabinet of Ministers about permit system No.141 from 14.10.96 and No.6 from 10.01.97

3.3 The Institutional Framework and Bodies Responsible for Implementation

3.3.1 Operator licensing

Operator licensing of both goods and passenger vehicles is currently regulated by the state organisation “Azerautonagliyyat”, hereafter referred to as “AAT” under the supervision of the Cabinet of Ministers.

There is currently no Ministry of Transport, but plans for the development of such a Ministry are well advanced and being supported by another TACIS project. It is understood that AAT will become the goods and passenger vehicle licensing department within the new Ministry.

AAT employs 81 inspectors who monitor compliance with the system at the roadside and by visiting the premises of licensed operators. There are another 125 staff employed in the management and administration of the licensing system.

AAT has 10 subdivisions corresponding to the 10 regions of Azerbaijan. The consultant was advised that its biggest problem is record keeping and communication. In particular, if disciplinary action has been taken against an operator, such as the suspension of his licence due to non payment of tax, it is difficult for the central administration to advise the regions of this fact. Therefore, illegal operation is not always detected.

Apart from the AAT, enforcement is also performed by the Traffic Police (a division of the Ministry of Internal Affairs) and other departments such as Customs (e.g. regarding TIR and other international documentation). AAT officials can impose penalty sanctions such as fines and the suspension or withdrawal of an operators licence.

3.3.2 International transport permits

AAT is also responsible for international permit distribution in Azerbaijan and is empowered to develop and enforce:

- permit documentation for international carriage
- bilateral treaties relating to international road transport
- information for representative offices of foreign countries concerning the system

3.3.3 Exchange of information

At the moment in Azerbaijan, international information exchanges occur only in relation to states with which Azerbaijan has a bilateral treaty and the use of TIR carnets.

However at a domestic level the authorities in Azerbaijan do conduct joint roadside checks. For example, officials of the AAT and the ecological police occasionally work together. The authorities must be congratulated for doing so. It is recommended that such checks be performed regularly in different parts of the country and that many different agencies be invited to participate.

Improved exchange of information should be encouraged at the highest level. Co-operation will be of benefit to the Ministries as it will improve the efficiency of tax collection and the standards of enforcement of laws for which they are responsible.

3.4 Operator Licensing (also known as “Access to the Profession”)

3.4.1 Types of Operator Licence

The operator licensing system applies both to natural persons e.g. owner – drivers and to legal persons eg limited companies.

Three categories of licence are issued by AAT:-

- a) National operators licence (for inter-city carriage)
- b) International operators licence
- c) Freight forwarders licence

Buses are subject to a similar licensing system.

Licensing applies to vehicles irrespective of weight or carrying capacity.

No licence is required if goods are transported only on own account i.e. the carrier owns the vehicle and the only goods transported are owned by the carrier or are products made by him or are items used in his production process. It is suspected that there is widespread abuse of the own account exemption.

3.4.2 Licence Documentation

It is necessary to obtain both a licence document and cards to be carried in each vehicle used under the licence. The latter enable the driver to show an enforcement official that the vehicle is being operated legally.

Licence documents are valid for 2 years. The cards are valid for periods ranging from 1 month to 2 years. Fees vary according to the period of validity of the card. For example a company like Coca Cola, with a fleet of modern reliable vehicles and an adequate supply of funds will probably buy a two year card. A company whose main business is in the carriage of agricultural products will have seasonal variations in the demand for its trucks. Therefore, some of the fleet may be redundant for several months of the year. These vehicles will be covered by cards of a shorter duration.

A vehicle may be covered by more than one licence – e.g. one for international and one for domestic operations.

3.4.3 Application Procedure

The following information must be supplied to AAT on an official form:-

- a) By a natural person
 - Name and Address
 - Registration number of truck(s)
 - Parking place
 - Place of repair and details of licensed repairer

- Drivers licence category
- Carrying capacity of truck(s)
- If application is for a passenger vehicle operators licence, the applicant must demonstrate that the driver has a minimum of 3 years experience driving professionally (e.g. taxi driver, truck driver).

No questions are asked about financial assets, bank accounts or references or the payment of tax. The only finance related question is that the applicant must show that he is registered with the tax authority.

b) By a Legal Person (e.g. company)

- The above required information for natural persons plus
- Details of the registration and constitution of the company (e.g. articles of association)
- A set of accounts
- Details of its banking arrangements.

If a truck is hired, it is possible for either the rental company or the user of the vehicle to obtain the licence.

3.5 Standards to be met by the holder of a licence : Good Repute, Professional Competence and Financial Status

3.5.1 Good repute : Application to Azerbaijan

There is currently no investigation of good repute in the EU sense of the term.

However if the operator breaks the licensing rules, for example he operates unlicensed vehicles or fails to pay tax, it is possible for his licence to be suspended. Also, if he is under criminal investigation it is possible for the prosecuting authorities to apply for his licence to be suspended.

The Consultant considers this insufficient. The risk of accidents will be increased significantly if the truck is not properly maintained, if it is overloaded or it is driven by an inappropriately qualified driver. If a person has committed serious or repeated violations of this type in the past, it is likely that he will do so again. The same is true in relation to theft of cargo.

Therefore it is suggested that the traffic police should pass on details of all serious violations to the AAT which, if repeated, should be a ground for suspension or revocation of the operators licence, in addition to any fine which is imposed. Given

the high financial and human cost of accidents and crime there is justification for high level discussions to ensure effective co-operation.

3.5.2 Financial Status of the operator

European Union law requires holders of a hire or reward licence to demonstrate that they have a minimum level of assets (currently about \$2000 per vehicle operated). There is currently no requirement of adequate financial standing in this sense of the term in Azerbaijan but the current system does include *some* checks about financial status.

Legal persons (companies) are subject to checks that they have a bank account and must submit a set of business accounts.

Natural persons (owner–drivers) are subject only to a check that they have registered their business with the tax authorities but not whether they have a bank account, or at least a minimum reserve of money. The Consultant is concerned about the present lack of checks on owner–drivers who have income and capital reserves which are considerably less than those available to a larger enterprise and may be less able to afford to maintain their vehicles properly.

Owner drivers should be asked questions about their financial status and bankrupt owner – drivers should be unable to continue to trade. The standard required should be at least as high per vehicle as for a limited company. Though a new enterprise will not be able to produce trading accounts until it has carried goods and earned money, it will be possible to ask to see evidence of a business plan, source of funds to buy a truck and to check that the person is not bankrupt. If the licence is issued, the owner–driver should be inspected regularly in his first year and should be asked to produce a set of accounts at the end of his first year.

For the same reasons as outlined above, it is also important that minimum requirements for available capital should be set for limited companies. Though the levels demanded cannot be as high as those in the EU, the Government should nonetheless agree on a figure that reflects an ability to buy tyres, to pay drivers and tax.

3.5.3 Professional Competence

There is currently no requirement of professional competence in the EU sense of the words, ie that that one or more directors or managers employed by the enterprise must hold a recognised qualification demonstrating that they have a minimum level of knowledge about the operation of vehicles and the principles of commerce.

One of the aims of this project is to provide a pilot training course and training materials so that experts in the participating countries may receive instruction in the content and presentation of a CPC (Certificate of Professional Competence) course. It

is understood that Azerbaijani authorities wish to implement a law requiring managers of a transport enterprise to hold a CPC.

3.6 Issue of Licence or Rejection of Application

After registration of the application and required documents in a special register of the AAT, these will be examined. If there are no impediments and/or no grounds for rejection, a decision about the issue of a licence will be made after a 15-day period. If impediments are disclosed in submitted documents a written notice is presented to the applicant with an indication of the grounds for rejection.

Rejection of the application for an Operator Licence can take place on the following grounds:

- if any of the required information is not supplied
- if the data on the documents are incorrect and/or in a distorted form
- if an applicant did not accomplish necessary terms and conditions envisaged in the Regulations for realisation of the type of activity
- if an applicant and/or involved specialists have no corresponding speciality to realise the activity
- if no more than a two year period has passed after the withdrawal of a licence of an applicant
- if an applicant has applied for a licence during the period in which his licence was already suspended
- on any other grounds envisaged by legislation

3.6.1 Suspension, revocation or curtailment of the licence

In Azerbaijan, the main ground for suspension is a pending investigation by the tax authorities. Revocation of the licence will normally occur if problems are found or the licence holder is convicted.

It is recommended that the range and use of disciplinary sanctions be developed alongside the requirement of good repute. It will be essential to give the licence holder the opportunity to explain himself before a decision is taken, to give him the right of appeal if he believes that the decision was unnecessarily harsh or the procedure was unfair and for the licensing authority to give reasons for his decision in writing to the operator.

3.7 Other aspects of vehicle operation relevant in the context of development of a CPC exam and training centres

The CPC course gives basic training in company and business law, accountancy, taxation, contract and liability, operator licensing, driver licensing, the transport of dangerous goods and the technical condition of vehicles. The present situation in Azerbaijan in relation to some of these is briefly considered below.

3.7.1 Enforcement of Technical standards

Elements of a European monitoring system are in place, such as roadside checks, some environmental controls and annual testing. There is also some co-operation between various enforcement agencies. However, it is currently impossible to undertake comprehensive checks on vehicles due to a lack of modern equipment. The biggest drawback is the lack of smoke meters.

Every vehicle has a technical passport. This document is like a type approval certificate, listing the technical standards to which it was originally constructed. This passport will list, for example, the weight limits for the individual axles, the maximum permissible weight, the emissions of various gases and the engine capacity. Vehicles are tested and inspected at the roadside in order to monitor compliance with these standards.

When an operator applies for a card to use a vehicle under the authority of an operators licence, he must produce its certificate of annual testing. Serious mechanical defects are a ground for suspension or revocation of the licence. Vehicles are examined by the AAT when the licence card expires, typically every year, in addition to the annual test.

The annual test consists of a visual examination, for example to check that the lights work and that there is no free play in the steering mechanism. There is no smoke test.

The Azerbaijani Ecological Police, a separate department from the AAT and Traffic Police, have smoke meters and conduct regular checks at the borders and at the city limits of Baku but there are presently not enough meters.

The AAT and ecological Police do occasionally conduct joint roadside checks (7 in 1999). This enables an inspection to be made of all the vehicle and drivers documents, the vehicle's technical condition and its emissions. However, the percentage of the overall vehicle-park which is subjected to such a thorough check is very small.

3.7.2 Drivers Hours of work and rest, tachographs

There is no restriction of drivers hours of driving and rest in the EU sense of the term though labour laws do contain restrictions on working time. There is no requirement that drivers hours of driving and rest be recorded.

Tachographs fitted to vehicles sold in Azerbaijan are not used unless the vehicle visits EU / AETR territories.

It will be advisable to implement EU type laws governing driving time, rest time and the recording of hours of work for the following reasons:-

- 1) Fatigue is a major cause of road accidents
- 2) The use of a tachograph on international journeys and the control of driving / rest time will be essential if vehicles are to visit EU /AETR countries other than CIS
- 3) An operator who presently requires his drivers to work for excessive periods is competing unfairly with one who does not require drivers to work when they are excessively tired

CPC training will begin to deal with the problem as the EU directive requires that the course covers drivers hours of work and records but legislation will also be required.

3.7.3 Driver licensing

Azerbaijan uses a system of photocard drivers licences similar to the EU. Article 15 of the Law on Transport states that "The right to drive a transport vehicle is granted to a natural person with appropriate qualifications and whose health conditions satisfy appropriate standards. The right to drive a transport vehicle is confirmed by a document issued according to corresponding legal and regulatory statements in established order and form"

The licensing categories are aligned with those of the EU, for example :-

- B Passenger vehicle up to 8 passenger seats, truck up to 3.5 tonnes maximum permissible weight
- C Larger rigid truck
- D Larger passenger vehicle
- E Trailer entitlement e.g. articulated lorry

There is compulsory theory and practical training.

The applicant for a licence must produce a doctor's certificate indicating that he is medically fit to drive. The medical examination is repeated every 2 – 3 years.

In theory, Azerbaijani standards of driver licensing are broadly aligned with those of the EU. However, if Azerbaijani licences are to be recognised in EU states (which will require bilateral treaties), the various EU authorities will have to be satisfied that the standard of difficulty of the test and the security of the licence issuing procedure is sufficiently good.

3.7.4 Motor Vehicle Insurance

It is compulsory to have third party cover for damage to another person's vehicle and personal injury compensation.

The consultant was advised that it is virtually impossible to obtain insurance against losses due to theft or fire.

The Law on Transport provides that civil liability insurance of passengers and transport vehicles is compulsory but other insurances, eg of cargo, are realised according to international legislation or on a voluntary basis.

Azerbaijan is currently establishing an office to enable recognition of green cards. The Ministry of Justice is currently preparing the necessary regulations. 16 Azerbaijani insurance companies will be licensed to issue green cards. At the moment, foreign drivers must pay \$2- \$3 at customs to obtain an Azerbaijani national insurance policy when entering the country.

The Traffic Police check insurance documents.

When entering Europe, Azerbaijani drivers purchase insurance at the point of entry. No questions are asked at the border with Iran.

In the event of an accident, the claimant must notify their own insurance company within 24 hours, who will then administer the handling of the claim.

Premiums for compulsory insurance are fixed at \$15 / yr for a car, \$20 for a truck and \$30 for a bus.

The consultant was advised that the premium is not affected by the making of claims, but that there is a 20% no claims bonus scheme.

3.7.5 Domestic Carriage of Dangerous Goods

Article 22 of the Law on transport provides...."persons accepting and dispatching explosive, inflammable, radioactive poisonous and other dangerous cargo must guarantee safety, inform about accident during transportation and must possess necessary means and labour force for liquidation of consequences of accident. Corresponding executive bodies determine rules of transport of dangerous goods.....Transport of radioactive and toxic wastes from foreign countries is prohibited.."

Decree no 146 of the Cabinet of Ministers dated 10/8/99 requires that the following organisations-Ministry of Economy, State Mining Supervision Committee, Ministry of Internal Affairs, State Railroad, State Caspian Shipping Company, State Oil Company, Azerbaijan Airlines and AAT-must jointly with other concerned organisations after agreement with the Ministry of Justice prepare the following:-

- 1) List of important transport objectives and special cargo and draft rules for their protection
- 2) Draft rules for transportation of dangerous cargo

Dangerous goods transport is regulated by AAT with the exception of some explosives. If explosives are for military use the Ministry of Defence is the responsible authority. If they are for mining use the mining committee is the responsible authority. These bodies authorise the movement of the goods. AAT authorises the operation of the trucks on which they are carried.

3.8 ADR

Azerbaijan is not yet a contracting party to ADR. Copies of the ADR agreement are held by AAT. Steps are being taken to enable accession to the treaty.

It is important to note that two of the volumes of ADR seen by the consultant were out of date, one extremely so (1993). The ADR agreement is reviewed and updated every two years, the last update being in 1999. It is **strongly** recommended that old editions of ADR be disposed of immediately. They are legally redundant. Training and information must be based upon the 1999 edition.

3.9 TIR and international transit

Azerbaijan has been a contracting party to the TIR Convention since August 1997 and has been issuing carnets since November 1997. The system is managed by the State Customs Committee and the Association of International Carriers of Azerbaijan, ABADA.

3.9.1 International permits

According to decree of the Cabinet of Ministers, no 6 of 10/1/97 a special document, known as a permit, regulates rights of entry and exit, loading and transit on Azerbaijani territory. It must be presented to AAT officials who have offices at border posts.

Foreign trucks, unless they are merely transiting Azerbaijan, may not enter its territory empty if they have no documented right to load during the journey.

A Permit may be purchased from representatives of AAT. Fees for the permits are set by bilateral treaty or by AAT and the Ministry of Finance. They must be stamped by AAT to be valid. The following details must be supplied:-

- a) country of registration
- b) number of form
- c) name and address of carrier

- d) place and date of issue of form
- e) sign and stamp of body issuing form
- f) route
- g) border control point
- h) name, registration number, make and maximum gross weight of vehicle

The power of enforcement in relation to international permits is given to AAT, the Ministry of Internal Affairs, customs and the National Security Service.

3.10 CMR

Confirmation of accession is not available but procedures to become a contracting party have been underway for some time.

3.11 ATP

Azerbaijan is not thought to have become a contracting party to the ATP Agreement

4. Legal Report : Georgia

4.1 Overall legal framework for transport

The Civil Code is believed to provide the overall framework for transport businesses together with the more specific sources set out below.

4.2 Sources of Law

- Civil Code
- Road Traffic Safety Law of 26/06/99.
- Law on Insurance (2/5/97 no 690)
- Law on obligatory insurance of Civil Responsibility for vehicle owners (27/07/97 no 824)
- Law on Entrepreneurs (in force 1/3/95)
- Law on Certification of Products and Services

4.3 The Institutional Framework and Bodies Responsible for Implementation

4.3.1 Operator licensing

The ministry with overall responsibility for road transport is the Road Transport Department of the Ministry of Transport of Georgia.

Enforcement is carried out by several agencies according to their areas of responsibility notably the State Control Division of Road Transport Activities (Ministry of Transport), the Traffic Police (Ministry of Internal Affairs), the Tax Department and Customs

The State Control Division is relatively small with 34 employees. The Traffic Police has many officers, but their main concern is checking drivers' licences and the documents carried by truck drivers. Fines for routine offences range from 5 to 700 GEL. The widest powers are given to Customs and the tax authority, which can enter premises, seize documents, arrest and detain staff and ultimately close the enterprise.

4.3.2 Exchange of information

There are various intergovernmental agreements which require the exchange of information regarding offences committed by foreign transport operators. Only data concerning criminal violations is considered relevant. Traffic violations are not reported unless the vehicle has caused a serious personal injury accident. However, there is no formal mechanism for exchange of information between the various ministries concerning Georgian operators.

Improved exchange of information should be encouraged at the highest level. Co-operation will be of benefit to the Ministries as it will improve the efficiency of tax collection and the standards of enforcement of laws for which they are responsible.

4.4 Operator Licensing (also known as “Access to the Profession”)

4.4.1 Types of Operator Licence

The current licensing law, which came into force in 1999, covers the licensing of 12 separate activities, including passenger transport, medicines and banks. Registration is required irrespective of weight or carrying capacity of vehicles.

Because of a Government desire to reduce the level of bureaucracy, only passenger transport is subject to a system of operator licensing. Passenger transport is regulated by contract and operators of routes are selected by competitive tender.

Apart from the need to register the enterprise, to pay the correct rate of tax and for vehicles to comply with relevant traffic / constructional laws, there is no quality - driven system of operator licensing for trucks like the systems of Western Europe. There is at present no basis for introducing quality licensing of freight transport operators in Georgia other than through a modification of the registration requirements for enterprises. This may affect the sustainability of the project objectives.

4.4.2 Licence Documentation

Registration will continue in perpetuity if taxes are paid and the business remains solvent. It is not necessary to renew the registration. Re- registration will be necessary if there is a change to the company's constitution or its directors.

If food products are to be carried, a certificate must be obtained from the Ministry of Health.

4.4.3 Application Procedure

Both natural and legal persons are subject to registration, which involves:

- Application to the court and the tax authority for a Certificate of Registration with the tax authority. The tax authority will issue a registration number which must appear on the enterprise's stamps and invoices
- Application to open a bank account.
- Demonstrating the availability of appropriate vehicles and qualified drivers to commence trading.

4.5 Standards to be met by the holder of a licence : Good Repute, Professional Competence and Financial Status

4.5.1 Good repute : Application to Georgia

There is currently no investigation of good repute in the EU sense of the term but questions are asked about the applicant's criminal past at the time of application for registration of an enterprise.

Convictions must be declared for 5 years after completion of the penalty awarded. Only economic crimes are considered relevant, such as tax evasion, smuggling and fraud. Crimes of violence and traffic violations are not considered relevant.

It is not possible to obtain a Georgian passport if the applicant has a criminal record. Convicted criminals may obtain only a national identity card.

4.5.2 Financial Status of the operator

European Union law requires holders of a hire or reward licence to demonstrate that they have a minimum level of assets (currently about \$2000 per vehicle operated). There is currently no requirement of adequate financial standing in this sense of the term in Georgia but the current system does include *some* checks about financial status.

The applicant must demonstrate a minimum level of capital resources of \$1000 per enterprise. Joint stock companies must show a minimum of \$10,000 capital.

The capital must be recorded in a bank statement or set of accounts. It may be in the form of a physical asset, such as a new Mercedes truck. If the capital is invested in physical assets, they must be valued by a licensed auditor.

Registered enterprises must submit a set of trading accounts to the tax authority every month. An integrated set of accounts must be submitted each year. Businesses are inspected by the tax authority at least twice a year. A failure to keep proper accounts or to pay taxes will result in the registration of the enterprise being cancelled.

A foreign carrier operating in Georgia (as opposed to merely transiting) must register and will be required to make a bank deposit or to obtain a suitable bank guarantee.

4.5.3 Professional Competence

There is currently no requirement of professional competence in the EU sense of the words, ie that that one or more directors or managers employed by the enterprise must hold a recognised qualification demonstrating that they have a minimum level of knowledge about the operation of vehicles and the principles of commerce.

The main source of relevant qualifications is the Technical University, which offers a variety of higher education courses including transport engineering, forwarding, safety and economics. Although there is no formal requirement to hold a particular qualification, managers and directors of transport enterprises are expected to hold such a qualification, which will follow 4.5 - 5 years of successful study.

The Technical University's diploma courses are quite general in scope, including studies of physics, chemistry, history, foreign languages, vehicle construction, principles of engineering, mechanics and computer science. Examinations are a mixture of multiple choice, written answer and dissertation.

The only regulation is the licensing of course programmes and teachers by the Ministry of Education. The Ministry of Transport does not have control over the programme.

Other institutes also provide training acceptable to operators, such as the agricultural academy and the Gori Economic Institute. The consultant was advised that about 5 or 6 institutes are in the market.

4.6 Issue of Licence or Rejection of Application

Registration will be rejected if the applicant fails to supply or obtain:-

- relevant information
- a driver with relevant licence
- tax registration number
- additional certification for carriage of dangerous goods and foodstuffs.

4.7 Suspension, revocation or curtailment of the licence

Registrations may be cancelled by order of the court.

There is an effective mechanism for a creditor to seek a court order requiring the payment of a debt. If the enterprise fails to comply with the court order, the business can be closed and assets will be sold to pay the debt. It will be necessary to hire a lawyer and the procedure is slow. The claimant will have to produce good evidence of his entitlement to the money.

The Police, tax authorities and customs may conduct investigations. It is possible to order that the business stops work until their enquiries are completed. These authorities may impound vehicles, for example if they are involved in a serious accident or are found to be in very poor technical condition, if it is suspected that vehicles have been used for smuggling or have been stolen.

4.8 Other aspects of vehicle operation relevant in the context of development of a CPC exam and training centres

The CPC course gives basic training in company and business law, accountancy, taxation, contract and liability, operator licensing, driver licensing, the transport of dangerous goods and the technical condition of vehicles. The present situation in Georgia in relation to some of these is briefly considered below.

4.8.1 Enforcement of Technical standards

Elements of a European monitoring system are in place, such as roadside checks, some environmental controls and annual testing.

It is compulsory to have a maintenance contract, but there is no need to produce a maintenance plan or evidence of repair facilities when applying to register the enterprise.

As vehicles are checked several times a day by the traffic police, obvious defects may be spotted. These checks do not, however, involve a detailed examination of the vehicle unless a personal injury accident has occurred.

Emissions standards are more generous than European standards and to impose EURO I/II rules would close the industry. Georgian limits are shown below with EU limits in brackets:

- CO 9.5 (4.5)
- CH_x 3.4 (1.1)
- NO_x 18.35 (11)
- Particulate 0.8 (0.35)

There are roadside checks of vehicle emissions. Georgia is planning to phase out the use of leaded petrol.

Vehicles are subject to technical inspection every year. Buses are inspected every 6 months. There are also roadside checks.

The annual (or 6 monthly) technical inspection consists of two stages. Firstly, the operator must take the vehicle to a commercial garage for an inspection and diagnostic check. The garages performing this work are licensed by the Traffic Police. The check includes a test of exhaust emissions. The certificate from the technical check must then be taken to the Traffic Police.

It is believed to be possible to obtain a certificate without the vehicle being examined fully. The Traffic Police do not check the vehicle themselves. The system of technical inspection by a licensed garage is satisfactory, but it would be worthwhile to improve the security of the test certificate issuing procedure and to introduce stringent quality monitoring of the licensed garage's work. In the U.K. garages which issue pass certificates for defective vehicles can be prosecuted and will lose their testing licence.

There is no control of the quality of imported vehicles before they are put into service, so there is nothing to stop the sale of poor quality second hand vehicles in Georgia.

The limits for vehicle dimensions are similar to those in Europe, i.e.:-

- Height limit 4m
- Width limit 2.5m
- Overall length limit 20/24m (longer than UK which is 16.5m/18.35m)

There are no maximum gross weight limits but there is an axle weight limit of 7 or 8 tonnes. If this is exceeded the driver must pay a penalty tax (to compensate for additional road wear and tear) of \$24/tonne. This limit produces overall weight limits broadly in line with European standards, i.e.

- 2 axle vehicle 16 tonnes
- 3 axle vehicle 24 tonnes
- 4 axle vehicle 32 tonnes
- 5 axle vehicle 40 tonnes

Enforcement is carried out by the Ministries of Transport and Internal affairs. Customs charge penalty taxes for overweight and oversize vehicles entering the country.

4.8.2 Drivers Hours of work and rest, tachographs

Drivers hours of work are regulated by a rule of the Road Transport Department. The consultant was advised that this rule follows standards agreed at the ECMT conference.

The limits are different from EU standards but the pattern of limits is similar:-

- Driving time limit 4 hours
- Daily driving limit 8 hours
- Rest after 38 hour week

The driving times are recorded in a log book. There is no use of tachographs unless the vehicle visits an EU or AETR signatory country.

4.8.3 Driver licensing

The driver licensing system is aligned with EU standards, using categories A, B, C, D and E. These have similar definitions to those used in the EU.

Driving tests are conducted by the Traffic Police and there are theory and practical elements. The theory test is conducted using a computer program.

All drivers must obtain a medical certificate when first applying for a licence and then every 5 years.

The age limits are as follows:-

- Motorbike 16
- Car 18
- Truck and bus 21

It is necessary to hold a licence with category C before a driver can take a category E test.

If mutual recognition and exchange of Georgian licences is to be permitted in the EU, it will be necessary to investigate security of the drivers licence issuing procedure, the quality of tuition and the standard of the driving test.

Enforcement is by the Traffic Police, part of the Ministry of Internal Affairs.

4.8.4 Motor Vehicle Insurance

It is compulsory for drivers of cars, trucks and motorbikes to obtain third party insurance covering liabilities in respect of personal injury and property damage. A valid insurance Certificate must be carried on the vehicle.

The insurance industry has been privatised and cover is available from state, private and joint venture companies. The insurance industry is regulated by a state committee independent from any Ministry and directly answerable to the President. It deals with licensing of insurance companies and checks on the keeping of records and accounts. It has powers to close down an insurance company in the event of fraud, but its actions are subject to judicial review.

It is compulsory for foreign drivers to purchase Georgian insurance at the border. These certificates are valid for one year.

Representative offices of European insurers may sell green cards but Georgia is not a signatory to the system. It is likely that local insurance will also be required. It is recommended that Georgia joins the scheme and recognises the cards to avoid double charging of operators.

4.8.5 Domestic Carriage of Dangerous Goods

If hazardous cargoes are carried, a special permit must be obtained. This requires the approval of both the Road Police and the Ministry of Ecology.

4.9 ADR

Georgia is not yet a contracting party. The Government is considering accession. An existing Soviet law covers driver training, certification of vehicles, documentation and classification.

4.10 TIR and international transit

The TIR convention has been ratified by the Parliament. It has force of law from 24/09/94. Its provisions are also implemented by the Decree of the Cabinet of Ministers number 461 of 18/6/94 and the Decree of the State Customs Department number 123 of 30/06/99.

The Georgian International Road Carriers Association (GIRCA) was founded in March 1992 and has been a full member of the IRU since November 1993 and has the status of TIR issuing Association. It is issuing about 600 TIR Carnets on annual basis now where 2 years ago it issued 500 a month.

A number of problems remain:-

- Customs insist on escorting TIR vehicles, which causes delays.
- Clearance is only possible at designated customs premises. Inspections are very slow and frequent.
- The company Intertec Testing Services has a contract to inspect the cargo, documentation and to check its value. This causes delays. There is a minimum charge of \$350 per inspection +1.19% of value.
- A vehicle cannot be unloaded without the permission of customs.
- There is a parking fee of \$25 per day while awaiting clearance

It is not possible to accelerate the procedure

The relevant authority is the State Customs Department of Georgia.

Vehicles must have a valid type approval certificate for an international journey. This is issued by GIRCA, the carrier's association, and validated by customs. The

certificate demonstrates, among other things, that the vehicle is suitable for the application of a TIR seal and meets EURO II emissions standards.

The following documents must be carried in the vehicle on international journeys:-

- CMR consignment note
- Log book listing places journey started and ended, odometer readings and fuel used
- Drivers licence
- Registration certificate of vehicle or hire contract
- Tachograph and charts if transiting or going to a country that requires one.

These documents may be inspected by the Traffic Police.

4.11 International permits

Unless exempted by a bilateral treaty, international transport of goods to, from or through Georgia is subject to authorisation by the Ministry of Transport. The driver must produce his passport, visa and drivers licence. A letter of authorisation to use the vehicle and its registration certificate must also be produced. There must be a TIR carnet and a customs declaration covering the cargo.

4.12 International Convention on the Contract for the International Carriage of Goods by Road 1956 (CMR)

The Georgian Government is said to be a contracting party to CMR, accession having been ratified by Parliament. It has force of law from 02/11/99. Principles of the treaty were included in domestic law prior to ratification. The relevant Ministry is the Ministry of Justice.

4.13 Agreement on Carriage of Perishable Goods by Road 1970 (ATP)

Georgia is thought not to be a contracting party and it is not believed that its vehicles generally comply with its constructional standards.

5. Legal Report : Kazakhstan

5.1 Overall legal framework for transport

The Law on Transport sets out the main obligations of the state in relation to the management of transport including programmes for development of individual modes of transport, reforms relating to the transfer of the transport complex to the market economy, forecasting of state and defence demands for cargo carriage and other transport services, limitation of monopolistic activity, development of competition, determination and improvement of standards, and protection of the legitimate interests and rights of transport enterprises and users.

5.2 Sources of Law

- Law on Transport of the Republic of Kazakhstan of 21-12-94
- Decree 1621 of 25-12-1996 on Approval of Regulations concerning the procedure and terms of licensing of international road transport, road transport of passengers and road transport of dangerous goods. Amended by Decree 251 (23-03-1998) and Decree 277 (19-03-99) which are incorporated in the present Decree 1621
- Instructions 1621 for implementation of regulations concerning the procedure and terms of licensing of international road transport, transport of passengers and road transport of dangerous goods in the Republic of Kazakhstan
- Edict No 2200 of 17-04-1995 on licensing
- Edict No 2201 of 17-04-1995 on licensing
- Decree No 1894 of 29-12-1995 concerning the implementation of Edict 2201 of 17-04-1995
- Decree No 1322 of 23-12-1998 on the Establishment of the Committee of Transport Control of the Ministry of Transport and Communications of the Republic of Kazakhstan
- Highway code approved by Decree of 25-11- 97, 1650
- Road traffic safety law 15 July 1996
- Road traffic Regulations of 25-11-97 Number 1650
- Decree of President on Insurance of 3-10- 95 Number 2475- U 952475
- Decree of 31-10-96 Number 1319 on “Obligation for Insurance for owners of vehicles”

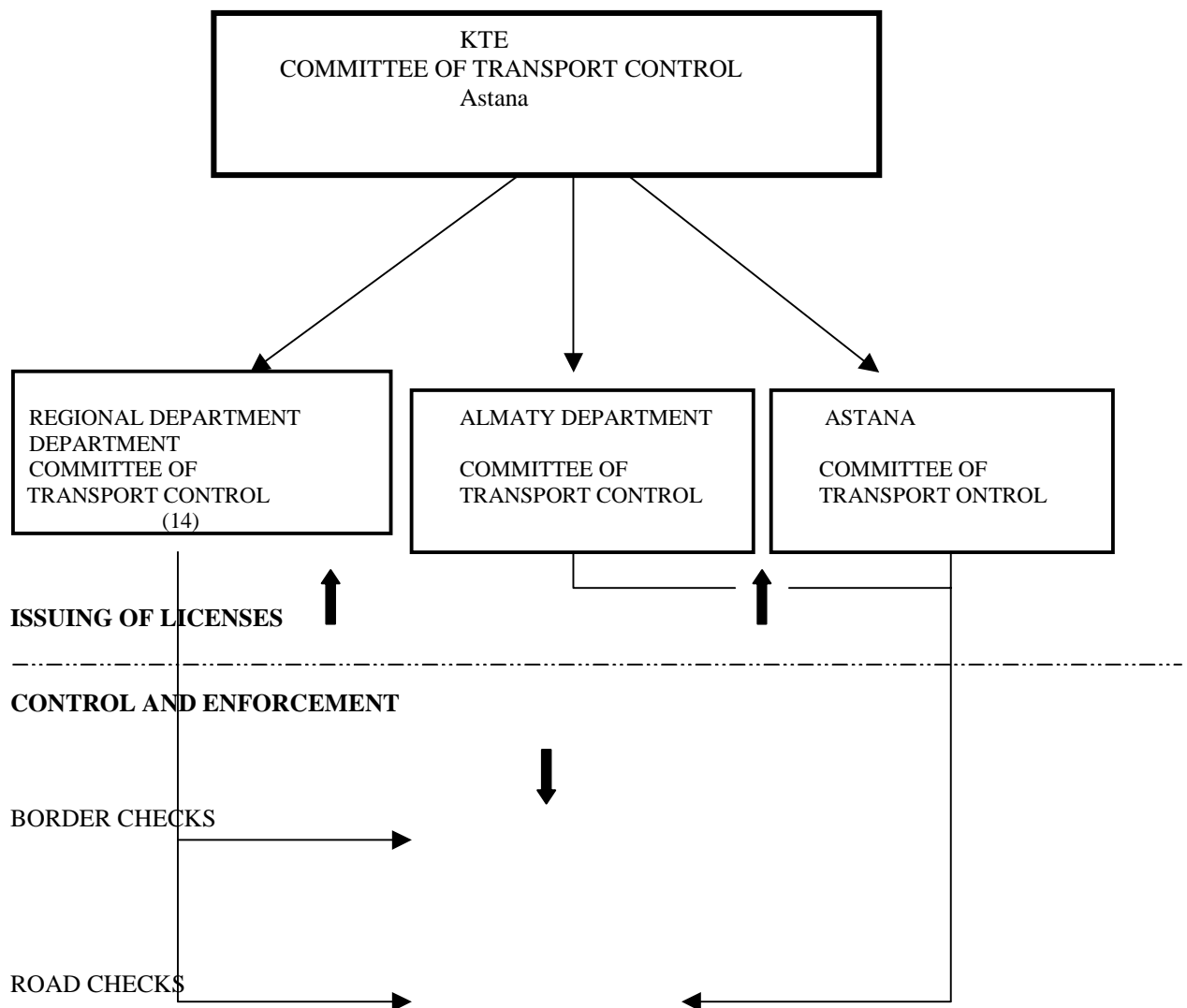
5.3 The Institutional Framework and Bodies Responsible for Implementation

5.3.1 Operator licensing

The Ministry of Transport, Communications and Tourism in Kazakhstan is the authority with final responsibility for access to the profession. The Ministry of State Incomes also has competence in policy development and law making in international road transport because, for the last two years, the Customs Committee of this Ministry has had controlling powers over all border crossing activities.

The Committee of Transport Control (KTE) of the Ministry of Transport, Communications and Tourism is responsible for the issuing of licences and also for control and enforcement. KTE is a newly reformed organisation established on 01 January 1999. Between 1993 and 1999 this organisation was mainly responsible for traffic inspection.

Figure 1 The Regional Organisation of KTE



Besides the KTE Headquarters in Astana there are 14 regional departments, one city department for Almaty and one city department for Astana. The city departments are only responsible for the territory of the cities and not for the surrounding region, which is covered by regional departments. Nevertheless some uncertainties in responsibilities between the City Departments and the Regional Departments exist. Some tasks, like administration, are performed jointly.

5.3.2 International transport permits

The KTE is also responsible for the issuing of foreign permits, for bilateral treaties relating to international road transport and providing information for representative offices of foreign countries concerning the system.

5.3.3 Exchange of information

Improved exchange of information should be encouraged at the highest level. Co-operation will be of benefit to the Ministries as it will improve the efficiency of tax collection and the standards of enforcement of laws for which they are responsible.

5.4 Operator Licensing (also known as “Access to the Profession”)

5.4.1 Types of Operator Licence

According to the Law on Transport, a road transport operator is a legal entity or natural person possessing one or more motor transport vehicles by right of ownership or on other legal foundation and providing services of carriage of passengers, luggage and freight by road transport for hire and reward, possessing for this purpose the appropriate licence issued in accordance with the established procedure.

Own account road transport comprises all road transport vehicles used for transport inside a specific plant, for delivery of raw materials and semi-finished goods for its needs or of the finished output to places of transshipment or sale. It does not have to be licensed.

A road transport enterprise is a corporate body engaged in economic and commercial activity for the organisation of road transport of passengers, luggage and freight, for carrying out specialised operations using road transport vehicles in the municipal economy, health service, law enforcement bodies and for the garaging, technical servicing and repair of the stock of road transport vehicles operating in accordance with the legislation of the Republic of Kazakhstan.

According to Edict No 2201 an operator's licence is required only for international transportation, passenger transportation and the transportation of dangerous goods.

There are two types of licences in Kazakhstan: general licences, which are issued without a limitation of the licence period and licences that are valid for one occasion only.

Licensing applies to vehicles irrespective of weight or carrying capacity.

A licensee is permitted to carry out only the activity that is indicated in the licence and using only those vehicles for which registration documents are issued in the territorial area and for the period indicated.

5.4.2 Licence Documentation

Licence discs are issued for specific types of vehicle and details of discs issued must be recorded on the reverse of the licence, copies of which are retained by KTE.

5.4.3 Application Procedure

The following information must be supplied to KTE on an official form:-

a) By Natural Persons

- technical passport of the vehicle(s)
- passport of the applicant
- tax registration number and tax inspection form
- document confirming payment to KTE
- (copy of the state registration certificate (registration of an individual entrepreneur))
- (insurance documents)
- (copy of sanitary and epidemiological resolution concerning permission for transport vehicles to carry out international transportation of passengers and goods)

c) By a Legal Person (e.g. company)

- technical passport(s) of the vehicle(s)
- statute of the company
- document confirming payment to the KTE
- (a list of transport vehicles with indications of model, type, tonnage and declared zone of use and activity of each transported vehicle)
- (insurance documents)

- (copy of sanitary and epidemiological resolution concerning permission for transport vehicles to carry out international transportation of passengers and goods)

The items in brackets are required by law, under Decree 1621, but do not, in practice, seem to be required by KTE.

5.5 Standards to be met by the holder of a licence : Good Repute, Professional Competence and Financial Status

5.5.1 Good repute : Application to Kazakhstan

There is currently no investigation of good repute in the EU sense of the term.

5.5.2 Financial Status of the operator

European Union law requires holders of a hire or reward licence to demonstrate that they have a minimum level of assets (currently about \$2000 per vehicle operated). There is currently no requirement of adequate financial standing in this sense of the term in Kazakhstan..

It is recommended that minimum requirements for available capital should be set. Though the levels demanded cannot be as high as those in the EU, the Government should nonetheless agree on a figure that reflects an ability to buy tyres, to pay drivers and tax.

5.5.3 Professional Competence

There is currently no enforcement of professional competence in the EU sense of the words, ie that that one or more directors or managers employed by the enterprise must hold a recognised qualification demonstrating that they have a minimum level of knowledge about the operation of vehicles and the principles of commerce. This seems to conflict with the Instructions for Implementation of Decree 1621 which stipulate that "persons engaging in international road transport of goods must have professional skills determined by the requirements of the rules of goods transportation".

The competence of a driver transporting dangerous goods is, however tested.

One of the aims of this project is to provide a pilot training course and training materials so that experts in the participating countries may receive instruction in the content and presentation of a CPC (Certificate of Professional Competence) course. It will be necessary for KTE to implement the present instructions properly once the course has become available.

5.6 Issue of Licence or Rejection of Application

The licence will be issued if the required information and documents accompanying the application form are in good order.

5.7 Suspension, revocation or curtailment of the licence

A license ceases to be valid in the following cases:

- expiry of the licence period (in case of a licence for one occasion)
- termination of the business activity of a natural person, or the reorganisation or liquidation of a legal person
- revocation of a licence
- if the type of activity for which the licensee has a licence is prohibited to him by the courts
- if the licensee fails to eliminate causes for which the licensor has suspended the license

KTE may suspend the validity of a licence for a period of up to six months, because of violations of the rules of carrying out licensed transportation. KTE must clearly indicate the reason to the licensee. A decision to suspend can be taken by the Heads of the Regional/City Departments of KTE only after detailed consideration of the circumstances of the committed violation. The licensee has the right to be present when these circumstances are considered and must be notified of the decision within 3 days.

A licensee has the right to challenge a decision for suspension or revocation in accordance with court procedures.

A licence may be revoked in accordance with court procedures if:

- the activities of the licence holder are not in conformity with his licence
- the activities of the licence holder went beyond the zone mentioned in the licence
- the licence has been transferred to another person
- there has been licence fraud such as transfer of a registration document from one vehicle to another

5.8 Other aspects of vehicle operation relevant in the context of development of a CPC exam and training centres

The CPC course gives basic training in company and business law, accountancy, taxation, contract and liability, operator licensing, driver licensing, the transport of dangerous goods and the technical condition of vehicles. The present situation in Kazakhstan in relation to some of these is briefly considered below.

5.8.1 Enforcement of Technical standards

Elements of a European monitoring system are in place, such as roadside checks, some environmental controls and annual testing. There is also some co-operation between various enforcement agencies.

5.8.2 Drivers Hours of work and rest, tachographs

In 1995 Kazakhstan took steps to accede to the AETR agreement for international transport but has yet to comply with the requirement to fit tachographs.

There is no restriction of national drivers hours of driving and rest in the EU sense of the term.

CPC training will begin to deal with the problem as the EU directive requires that the course covers drivers hours of work and records but legislation will also be required.

5.8.3 Driver licensing

No detailed information was collected.

5.8.4 Motor Vehicle Insurance

The Law on Transport provides that civil liability insurance of passengers and transport vehicles is compulsory but other insurances, eg of cargo, are realised according to international legislation or on a voluntary basis.

The system of compulsory insurance is thought not to be fully effective yet.

5.8.5 Domestic Carriage of Dangerous Goods

In order to obtain a licence for the transportation of dangerous goods an applicant is obliged additionally to submit the following documents to KTE:

- certificate of conformity of transport vehicles to carry out the transport of specific types of dangerous goods
- registration certificate of calibration of tank vehicles from the bodies of Gosstandart and Metrology

- documents issued by the bodies of technical supervision (the State Inspectorate on Supervision of Safety Operations in Industries, Mining Supervision and Emergencies)
- copy of the permission certificate for a driver to carry out dangerous goods transportation
- list of dangerous goods that are to be transported

5.6 ADR

Kazakhstan is not a contracting party to the ADR Agreement. The Law of USSR on Dangerous Goods of 16-02-1963 is still the most important law in force. Preparations are ongoing however, for a new law on dangerous goods, which might be finished this year.

5.7 TIR and international transit

Kazakhstan has been a contracting party to the TIR Convention since January 1996 and has been issuing carnets since March 1996. Unfortunately, due to irregularities at the Guaranteeing Association - the Union of Individual Road Carriers of the Republic of Kazakhstan (KAZATO) - they were suspended by the IRU. These difficulties have now been resolved and a new management is in charge, so they are again issuing carnets.

The Union of International Road Carriers of the Republic of Kazakhstan (KAZATO) is a non-governmental body and the only IRU representative body in Kazakhstan. It has 92 member companies representing 900 Western built trucks (Volvo, Man, Scania etc).

5.8 CMR

Kazakhstan is a contracting party to the Convention but many carriers are thought to be unaware of the effect on their potential liabilities.

5.9 ATP

Kazakhstan is a contracting party to ATP, the ministry with overall responsibility for implementation being the Ministry of Agriculture (Committee of Veterinary Control). It is not clear to what extent ATP standards are enforced in practice.

6. Legal Report : Kyrgyzstan

6.1 Overall legal framework for transport

The Law on Transport sets out the main obligations of the state in relation to the management of transport including programmes for development of individual modes of transport, reforms relating to the transfer of the transport complex to the market economy, forecasting of state and defence demands for cargo carriage and other transport services, limitation of monopolistic activity, development of competition, determination and improvement of standards, and protection of the legitimate interests and rights of transport enterprises and users.

6.2 Sources of Law

- Civil Code
- Law on Transport of 16-07-98
- Decree No 655 of 01-09-94 on licensing transport activities and services providing transport in the Kyrgyz Republic
- GOST (State Standards) No. 25478-91: Vehicles. Vehicle Condition for Traffic Safety. Test Procedures;
- Regulations on Drivers' Working Hours and Rest Time
- Regulations on Examination Procedure and Issue of Driving Licences No 420 of 4-8-98
- Law No 99 on Accession of the Kyrgyz Republic to the Customs Convention on the International Transport of Goods under cover of TIR Carnets of 19-12-97
- Law No 98 on Accession of the Kyrgyz Republic to International Convention on the Contract for the International Carriage of Goods by Road and the Protocol of 19-12-97

6.3 The Institutional Framework and Bodies Responsible for Implementation

6.3.1 Operator licensing

The Ministry of Transport and Communications (MOTC) is the authority with final responsibility in the field of access to the profession. The Auto Licensing Department of the MOTC physically issues the licences. However, the responsibilities for the initial approval, monitoring, checking and enforcement of the licensing system lie with the Transport Inspectorate, which is also a Department of the MOTC. In practice the work is undertaken at Regional/Oblast level through Regional Departments, rather than nationally.

6.3.2 International transport permits

MOTC also has responsibility for negotiation of bilateral agreements on permits with other states.

6.3.3 Exchange of information

The main enforcement agency is the State Automobile Inspectorate (GAI) under Ministry of Internal Affairs of the Kyrgyz Republic. The Transport Inspectorate is responsible for enforcement of provisions on operator licensing. GAI has the legal power to levy a fine ranging between 1 and 2 minimum salaries for a breach of vehicle technical regulations such as defects in brakes, steering wheel, transmission.

Improved exchange of information should be encouraged at the highest level. Co-operation will be of benefit to the Ministries as it will improve the efficiency of tax collection and the standards of enforcement of laws for which they are responsible.

6.4 Operator Licensing (also known as “Access to the Profession”)

6.4.1 Types of Operator Licence

The operator licensing system applies both to natural persons e.g. owner – drivers and to legal persons eg limited companies.

A licence is necessary for the following activities:

- city, regional, inter-city and international transport of freight
- transport related services of legal and natural persons such a garaging and servicing
- National and international passenger services

The following activities do not require a licence:

- transportation inside location of plant, industry, etc
- agricultural transportation
- transportation related to national disasters
- transportation carried out by vehicles of the Government

No distinction is made between transport for own account and transport for hire and reward.

Licensing applies to vehicles irrespective of weight or carrying capacity.

6.4.2 Licence Documentation

The duration of the Licence is:

- 1 year for passenger transport
- 3 years for freight traffic

A licence card is issued for each vehicle and must be displayed on the windscreen.

6.4.3 Application Procedure

The following information must be supplied to MOTC on an official form:-

a) By Natural Persons

- copy of the document certifying state registration of natural person
- a document certifying the payment of the licence fees;
- information on the vehicle(s): condition fitness and maintenance

d) By a Legal Person (e.g. company)

- copy of the document certifying state registration of legal person
- the same information required from natural persons

6.5 Standards to be met by the holder of a licence : Good Repute, Professional Competence and Financial Status

6.5.1 Good repute : Application to Kyrgyzstan

There is currently no investigation of good repute in the EU sense of the term. However criminal offence do seem to be taken into consideration in decision making processes.

6.5.2 Financial Status of the operator

European Union law requires holders of a hire or reward licence to demonstrate that they have a minimum level of assets (currently about \$2000 per vehicle operated). There is currently no requirement of adequate financial standing in this sense of the term in Kyrgyzstan but the current system does include a check that the applicant has sufficient funds to enable it to carry out the activity licensed. No precise criteria were available as to how adequacy of funds is evaluated.

Minimum requirements for available capital should be set. Though the levels demanded cannot be as high as those in the EU, the Government should nonetheless agree on a figure that reflects an ability to buy tyres, to pay drivers and tax.

6.5.3 Professional Competence

There is currently no requirement of professional competence in the EU sense of the words, ie that that one or more directors or managers employed by the enterprise must hold a recognised qualification demonstrating that they have a minimum level of knowledge about the operation of vehicles and the principles of commerce.

However the consultant was informed that a Diploma in Road Transport is in practice required either from a secondary technical educational establishment or higher education establishment (or in some cases 5 years' practical experience). No difference is made between national and international transport operations.

The level of professional competence is examined by the State Board of Examiners chaired by the Head of the undertaking.

Training establishments require a licence from the Ministry of Education, Science and Culture of the Kyrgyz Republic.

One of the aims of this project is to provide a pilot training course and training materials so that experts in the participating countries may receive instruction in the content and presentation of a CPC (Certificate of Professional Competence) course, but additional legislation will be required.

6.6 Issue of Licence or Rejection of Application

A decision for the issue of a licence or rejection of an application for a licence must be made within one month of the application day provided that the required documents are attached. If a decision is not made within this period the applicant can complain to a court.

Rejection of the application for an Operator Licence can take place on the following grounds:

- incorrect data in the provided documents
- vehicle(s) or trailer(s) do not meet the environmental standards, traffic safety standards or other technical requirements
- An applicant is considered unlikely to respect the rules in carrying out its/his activities
- A particular type of activity is prohibited for a particular type of undertaking
- A court decision prohibits an applicant from carrying out a particular type of activity

6.7 Suspension, revocation or curtailment of the licence

The licence can be suspended for up to three months for breach of the requirements set out in the licence after due warning has been given. As soon as the reasons for which the authorisation was suspended have been eliminated, the licence will be restored.

The licence can be revoked on the following grounds:

- An undertaking has not eliminated the reasons for which the licence was suspended;
- A licensee does not comply with requirements set out in the licence;
- A court decision prohibits a licensee from carrying out the licensed activity
- The licence holder has ceased activities, for example through death or insolvency

Decisions to suspend or revoke a licence are taken by the Transport Inspectorate and can be challenged by an appeal to the court.

The holder of a licence must be informed about revocation of a licence within 3 days after the decision is made and is obliged to return the licence within 10 days to the Auto Licensing Department.

6.8 Other aspects of vehicle operation relevant in the context of development of a CPC exam and training centres

The CPC course gives basic training in company and business law, accountancy, taxation, contract and liability, operator licensing, driver licensing, the transport of dangerous goods and the technical condition of vehicles. The present situation in Kyrgyzstan in relation to some of these is briefly considered below.

6.8.1 Enforcement of Technical standards

Elements of a European monitoring system are in place, such as roadside checks, some environmental controls and annual testing. There is also some co-operation between various enforcement agencies.

6.8.2 Drivers Hours of work and rest, tachographs

There is no restriction of drivers hours of driving and rest in the EU sense of the term though regulations do contain restrictions on working time. Full details were not available to the consultant.

It will be advisable to implement EU type laws governing driving time, rest time and the recording of hours of work for the following reasons:-

- 1) Fatigue is a major cause of road accidents
- 2) The use of a tachograph on international journeys and the control of driving / rest time will be essential if vehicles are to visit EU /AETR countries, or if Kyrgyzstan is to accede to the AETR Agreement
- 3) An operator who presently requires his drivers to work for excessive periods is competing unfairly with one who does not require drivers to work when they are excessively tired

CPC training will begin to deal with the problem as the EU directive requires that the course covers drivers hours of work and records but legislation will also be required.

6.8.3 Driver licensing

New Regulations were introduced on 4-8-98 and are intended to bring harmonisation with international standards. Full details were not available.

6.8.4 Motor Vehicle Insurance

There is not yet any requirement for compulsory insurance against third party risks.

6.8.5 Domestic Carriage of Dangerous Goods

Carriage of dangerous goods is believed to be subject to former USSR Regulations of 1985.

6.9 ADR

Kyrgyzstan is not a contracting party to the ADR Agreement.

6.10 TIR and international transit

While Kyrgyzstan has taken steps to implement TIR in conjunction with IRU, the present status with regard to formal accession is unclear.

6.11 CMR

Kyrgyzstan has introduced legislation to implement CMR but it is unclear whether it has actually become a contracting party to the CMR Convention.

6.12 ATP

Kyrgyzstan is not a contracting party to the ATP Agreement.

7. Legal Report : Moldova

7.1 Overall legal framework for transport

The Law on Transport sets out the main obligations of the state in relation to the management of transport including programmes for development of individual modes of transport, reforms relating to the transfer of the transport complex to the market economy, forecasting of state and defence demands for cargo carriage and other transport services, limitation of monopolistic activity, development of competition, determination and improvement of standards, and protection of the legitimate interests and rights of transport enterprises and users.

7.2 Sources of Law

- Civil Code
- Law on Transport No 1194 -XIII of 21/5/97
- Decree on approving Transport Code No 116-XIV of 29/7/98
- Decree on Licensing different types of activity No 332- XIV of 26/3/99
- Law on Insurance 15/6/93 no 1508-XII
- Law on obligatory insurance against civil liability of carriers to passengers No 1553-XIII of 25/2/98
- Government resolution approving the Ministry of Transport and Communications, no 1237 of 23/12/98).
- Technical testing rules for vehicles and trailers
- Government resolution 713 of 27/07/99 approving Highway code
- Government resolution "on transformation of automated information search system"
- Law on the Road Fund

7.3 The Institutional Framework and Bodies Responsible for Implementation

7.3.1 Operator licensing

The authority responsible for access to the profession is the Ministry of Transport and Communications (referred to here as “Ministry of Transport”). The Ministry Inspectors and the Traffic Police (no longer known as the GAI) carry out roadside enforcement.

Licensing decisions are made by the State Licensing Commission, appointed by the Ministry of Transport. Operator licensing documents are issued by the Ministry of

Transport. Enterprise registration is performed by the Ministry of Finance in collaboration with the Ministry of Transport.

The Ministry of Education licenses training centres and programmes.

7.3.2 Dangerous goods

Regulation of the transportation of dangerous goods is done by the Department of Standards.

The Department of Civil Defence and extraordinary situations also has responsibilities - such as the control of transport in the event of natural disasters. See Annex N2 to the law of licensing.

7.3.3 Exchange of information and enforcement

The Traffic Police carry out enforcement at the roadside. The Ministry of Transport also has an inspection department, which often works in collaboration with the Traffic Police. It controls both trucks and buses and its officers have the power to stop a vehicle. If a fine is imposed, the vehicle may be impounded as a security. The Transport Inspectorate is concerned only with administrative matters. Only the Traffic Police are allowed to examine a defective vehicle.

7.4 Operator Licensing (also known as “Access to the Profession”)

7.4.1 Types of Operator Licence

The operator licensing system applies both to natural persons e.g. owner – drivers and to legal persons eg limited companies, but only in respect of international operations. Domestic carriers need only register the enterprise and pay the appropriate taxes.

It is not known whether the legislation makes a distinction between transport for own account and transport for hire and reward or whether licensing applies to vehicles irrespective of weight or carrying capacity.

7.4.2 Licence Documentation

Licences are valid for one year.

The operator must obtain a licence card for each vehicle from the Ministry of Transport by producing the vehicle's registration document or a certificate stating that the vehicle is on hire. The card must be carried in the vehicle.

The registration document, sometimes referred to as the vehicle's Passport, must also be carried. It is a plastic coated card, about three times the size of an EU photocard drivers licence and contains written and bar-coded data.

7.4.3 Application Procedure

The following documents must be submitted with an official application form specifying type of business activity:

- a) By Natural Persons
 - Registration certificate from State Registration Chamber
 - Order specifying appointment of competent person and details of his qualifications
 - Leasing agreement if vehicle is hired
 - Passenger insurance certificate
 - Approvals that are necessary for special transport e.g. dangerous goods
 - Certificate from tax authority indicating payments to date

- b) By a Legal Person (e.g. company)
 - The requirements for natural persons plus
 - Memorandum and articles of association of enterprise

Documents must either be originals or notarised copies.

There is no requirement for operators to submit a vehicle maintenance plan.

Foreign enterprises must register a subsidiary in Moldova. They are then subject to the same requirements as a local operator.

7.5 Standards to be met by the holder of a licence : Good Repute, Professional Competence and Financial Status

7.5.1 Good repute : Application to Moldova

There is currently no requirement of good repute in the EU sense of the term, in that most vehicle related violations are not taken into account. However, criminal convictions for offences such as smuggling will lead to a refusal to grant a licence or disciplinary action. It is not necessary for the applicant to produce a certificate from the court demonstrating a lack of convictions.

Safety-related traffic offences such as the use of a truck with defective tyres or brakes, are only relevant to the continuance of an operators licence if the vehicle is involved in a personal injury accident.

7.5.2 Financial Status of the operator

European Union law requires holders of a hire or reward licence to demonstrate that they have a minimum level of assets (currently about \$2000 per vehicle operated). There is currently no requirement of adequate financial standing in this sense of the term in Moldova but the current system does include *some* checks about financial status.

The applicant must produce a certificate from the tax authority demonstrating that the enterprise has been registered and that no debts are owed to the state. The applicant must also have submitted an annual tax return.

As a next step, it is suggested that applicants to renew a licence should be required to submit a detailed, audited set of trading accounts. It will then be possible to set standards for minimum capital requirements in the future, as the health of the economy improves.

7.5.3 Professional Competence

The requirements for professional competence are not presently aligned with EU standards. Only international operators are affected by the requirement to employ competent managers who must successfully complete a course covering documentation, customs and other relevant laws. A variety of academic qualifications are acceptable, from universities or technical institutes (such as "CIPTI" the special centre for international carrier training) but it is believed that not all of these ensure a satisfactory level of knowledge about the operation of vehicles and the principles of commerce.

The Ministry of Education licenses training centres and programmes, but there are no written standards specifying which qualifications must be held. It is also necessary for the manager to demonstrate that he has relevant experience. A person with much experience may be able to persuade the Licensing Committee that he is sufficiently competent without holding formal qualifications.

In the case of a large enterprise, or one with operating centres in towns that are some distance apart, the licensing authority may require that more than one manager be appointed, but there are no published requirements for this.

All employees have a work history book which documents their employers, training, promotions, disciplinary record and references.

Examinations are set and held by the training provider and security may not always be guaranteed. At the University in Chisinau an examination committee supervises the setting and holding of examinations. Papers are kept so that problems may be investigated. Elsewhere, there is no outside control over the setting of examinations nor the manner in which the examination is conducted.

In Moldova, there is no requirement for further re- training once an acceptable qualification has been obtained.

7.6 Issue of Licence or Rejection of Application

Rejection of the application for an Operator Licence can take place on the following grounds:

- Incorrect or defective information supplied
- Inadequate facilities of the operator
- Previous revocation of the licence

7.7 Suspension, revocation or curtailment of the licence

The law covering the licensing of operators is vague when referring to exercising disciplinary powers. There are no specific provisions which state under what circumstances action may be taken, or what penalties should be imposed in a given situation.

However the consultant was advised that licences may be revoked or suspended in these circumstances:

- Request of licence holder
- Liquidation of operator
- Incorrect information supplied in application
- Breach of licence rules or instructions of licensing commission
- Smuggling, carrying stolen goods or tax evasion
- Serious accidents causing personal injury

The operator must be advised that action is being contemplated. He has a right to a meeting with the Licensing Commission in order to explain the situation and he may appeal to the courts if he believes that he has been treated unfairly or unduly harshly.

It is believed that there are internal guidance notes for the Licensing Commission when dealing with disciplinary hearings, but the consultant was unable to obtain a copy. It is recommended that the Licensing Commission should give reasons for its decision in writing to the operator.

If the irregularity concerns tax payment or the keeping of accounts, the tax inspection service may prosecute the directors of the enterprise and close the business.

7.8 Other aspects of vehicle operation relevant in the context of development of a CPC exam and training centres

The CPC course gives basic training in company and business law, accountancy, taxation, contract and liability, operator licensing, driver licensing, the transport of dangerous goods and the technical condition of vehicles. The present situation in Moldova in relation to some of these is briefly considered below.

7.8.1 Enforcement of Technical standards

Elements of an EU monitoring system are in place, such as roadside checks, some environmental controls and annual testing. There is also some co-operation between various enforcement agencies. Though the laws are not yet aligned with EU standards, improvements were evident.

All vehicles must be tested, cars and trucks every year, buses and vehicles used for carrying dangerous goods every 6 months. The latter are subject to a special testing system.

The consultant visited a vehicle testing station in Chisinau. This was a very impressive facility, with test lanes for cars and buses. It is operated by the Traffic Police. Equipment was very new and manufactured by Bosch. Test certificates and data were generated electronically and the information is passed to the database of the vehicle registration department of the Ministry of Transport.

The test monitors compliance with Soviet GOST standards, but it will be possible to upgrade the test using the current equipment. Until last year the test consisted of a Soviet style visual examination. The Government has resolved to install new automated testing facilities, of which one has been completed and It is planned that all testing will be by modern equipment from 2003.

A new computer database is planned, containing information on every vehicle registered in Moldova. Police checkpoints at the borders and other locations will be able to access the information. The Ministry of Transport is awaiting Finance Ministry Approval for the project.

The car test takes about 15 minutes, a truck or bus test takes about 30 minutes. The test consists of:-

- Smoke test
- Brake test using rolling road
- Tracking test
- Light adjustment and function
- Shock absorber test

- Condition of brake discs, lines and fluid level

It is compulsory to submit a newly imported vehicle for test, even if it is brand new and of European manufacture. It is illegal to import vehicles which are more than 15 years old.

The law of vehicle emissions is based on Soviet GOST standards. Annual tests and roadside checks monitor compliance with those standards. The law does not currently recognise the Euro I and II standards, nor can test stations monitor compliance with them. However, the consultant was advised that a Euro I/II line will be installed shortly at the modern test station in Chisinau. This will enable the issue of certificates that vehicles comply with these standards, often necessary when travelling abroad.

7.8.2 Drivers Hours of work and rest, tachographs

Moldova is a party to the AETR Agreement so international transport vehicles must respect AETR drivers hours and tachograph rules but there is no regulation of national operations. Bus operators must keep copies of their timetables and crew rosters.

It will be advisable to extend EU type laws governing driving time, rest time and the recording of hours of work to national transport.

7.8.3 Driver licensing

The driver licensing law is broadly aligned with EU standards. The categories are the same:-

- A for a motorcycle
- B for cars, goods vehicles up to 3.5 tonnes maximum permissible weight and minibuses with up to 8 passenger seats
- C for larger rigid trucks
- D for larger buses
- E for trucks towing large trailers, i.e. articulated and draw bar vehicles.

The licence is in the style of an EU photocard, with text in English and Romanian in the Latin alphabet not Cyrillic.

Driving tuition is conducted by private driving schools, which have both classrooms and practical instructors. It is not compulsory for a car or motorcycle driver to have professional lessons. The training programme is specified by the Ministries of Transport and Education. The car driving course takes 2.5 months. It is possible to study the theory test material at evening classes.

Examinations are conducted only at licensed centres. The driving test consists of a theory test and a practical test. The theory test fee is 350 lei. The practical training fees vary according to the price of petrol. The practical training consists of 28 hours of on road driving, 14 lessons of 2 hours. The theory element consists of a computerised questionnaire. There are 10 questions, each with 4 or 5 choices of

answer. The pass mark is 9/10. A special department of the traffic police conducts the practical driving test. Licenses are issued on the day of the test. Candidates who fail the test must wait at least 15 days before re-sitting. If the candidate fails 3 times, he must start the course again.

The consultant was impressed by certain aspects of the training. Students are taught, using cut away models, how a vehicle works - the operation of its engine, brakes and critical parts. They are taught basic maintenance, including precautions against winter weather. They are also taught how to drive in snow and how to deal with skids and other foreseeable emergencies.

In the case of a large goods vehicle or bus driver's licence the driving school must be specially licensed. 204 hours training with a mix of theory and practice is necessary for Category C. For Category D, 3 years previous experience with categories B and C is required with a mix of 116 hours of theory and practice. For Category E 3 years' experience with categories B and C is required with a mix of 78 hours of theory and practice.

Minor traffic violations are dealt with by on the spot fine and ticket. Serious violations are recorded at the Police station. The administrative code specifies the level of traffic penalties. Fines are expressed as a multiple of the minimum wage. If a serious offence is committed, such as drink - driving, failing to stop at a Police check or driving an unregistered vehicle with no number plates, the drivers licence may be suspended. In worst or repeated cases, the Police may confiscate the licence and order the driver to re-sit his training and test.

7.8.4 Motor Vehicle Insurance

Third party motor insurance is compulsory, covering personal injury and property damage. Moldova joined the Green Card system on 4/6/99. Green cards will be issued in the near future. The insurance industry is regulated by the State Insurance Inspectorate from Ministry of Finance.

7.8.5 Domestic Carriage of Dangerous Goods

The Transport Ministry has devised new rules aligned with ADR.

7.9 ADR

Moldova has signalled its intention to accede to ADR by resolution no 44-XIV of 4/6/98 "On Joining the Republic of Moldova to ADR" but it is believed that Parliament had not yet ratified the law implementing the treaty so a state of limbo exists. Although there is a special test standard for vehicles used for carrying dangerous goods, it will be advisable for an engineering audit to confirm that it meets the requirements of ADR.

7.10 TIR and international transit

Moldova acceded to TIR by resolution no 21 of 27/01/93 and became a contracting party to the Convention in November 1993. It has been issuing carnets since 1994 but the consultant was advised that there are requirements for escorting certain vehicles which breach TIR rules.

The SAFETIR system has already been implemented.

7.11 International Convention on the Contract for the International Carriage of Goods by Road 1956 (CMR)

Moldova is said to be a contracting party to CMR. It is incorporated into national law by Resolution no 21 of 27/01/93. The consultant has not established whether carriers' liability insurance is adequate to meet CMR obligations.

7.12 Agreement on Carriage of Perishable Goods by Road 1970 (ATP)

Moldova is not yet a signatory to ATP. There is a domestic law on the carriage of perishable goods by road. The consultant was advised that this is aligned with international standards.

8. Legal Report : Mongolia

8.1 Overall legal framework for transport

The Civil Code provides the overall framework for transport businesses together with the more specific sources set out below.

8.2 Sources of Law

- Civil Code
- Law on Automobile transport

8.3 The Institutional Framework and Bodies Responsible for Implementation

8.3.1 Operator licensing

The principal authority in relation to road transport policy and relevant legislation lies with the Cabinet of Ministers as directed by the Grand Hural (Parliament).

The Ministry of Infrastructure Development (“MID”), is the State Central Administrative Body in charge of auto transport. It has two divisions –

- Integrated Policy and Strategic Planning
- Road Transport and Tourism.

Enforcement is the responsibility of the Transport Inspectorate, which reports directly to the Minister of Infrastructure Development, and the Traffic Police, which reports to the Ministry of Internal Affairs. The Transport Inspectorate is also responsible for supervising periodic testing of vehicles. It is not known how many staff are employed.

8.3.2 International transport permits

The road transport division of MID is responsible for administration of permits, principally for transits to Russia and China.

8.3.3 Exchange of information

Article 22 of the Law on Auto Transport empowers the Transport Inspectorate to detain vehicles and temporarily to confiscate drivers licences and transport documents pending the investigation of violations. If a problem is found, Inspectors are empowered to take steps to correct infringements.

Improved exchange of information should be encouraged at the highest level. Co-operation will be of benefit to the Ministries as it will improve the efficiency of tax collection and the standards of enforcement of laws for which they are responsible.

8.4 Operator Licensing (also known as “Access to the Profession”)

8.4.1 Types of Operator Licence

Article 15 of the Law on Auto Transport provides that “ a special permit shall be issued to the business entities, organisations and to the citizens who are to be in charge of inspection work for technical supervision of auto transport vehicles and for engaging in public transport and postal service.” It is not clear to what extent operation of goods vehicles is licensed.

The operator licensing system is believed to apply both to natural persons e.g. owner – drivers and to legal persons eg limited companies.

There would appear to be a power to ration the issuing of licences, taking into account the demand for transport services.

It is not clear how many actual types of operators licence e.g. national / international are issued, nor is it clear if special rules apply to own account operations. However, licences appear to be issued according to geographical categories for example for public and postal transport between the capital city and the provinces.

Licensing is thought to apply to vehicles irrespective of weight or carrying capacity.

Licences are also issued for organisations conducting annual testing of vehicles.

8.4.2 Licence Documentation

Licences are issued initially for one year and are renewed every two years thereafter.

It is not clear whether it is necessary to obtain both a licence document and cards to be carried in each vehicle used under the licence.

8.4.3 Application Procedure

The Law on Automobile transport appears to refer to regulations or rules dealing with specific procedures for applications. It is understood that 13 sets of regulations will be made under the Automobile Transport Law and that 11 of these are close to being made/implemented. More specific provisions on operator licensing procedures will no doubt soon be published and obtained. The Law on Automobile Transport appears to require rules to be made for consideration of the following matters by MID in assessing applications:-

- Financial resources
- Capacity (competence) of professional personnel directing activities
- Adequacy of vehicles, drivers, parking and servicing provision
- Technical supervisory inspection of applicants
- Selection of suitable licence recipients from a number of applicants, taking into account the criteria to be met **and the demand for their services.**

8.5 Standards to be met by the holder of a licence : Good Repute, Professional Competence and Financial Status

8.5.1 Good repute : Application to Mongolia

There is currently no investigation of good repute in the EU sense of the term.

The law on the registration of enterprises and companies legislation may prevent persons with particular criminal records from registering an enterprise or from becoming a director.

8.5.2 Financial Status of the operator

European Union law requires holders of a hire or reward licence to demonstrate that they have a minimum level of assets (currently about \$2000 per vehicle operated). There is currently no requirement of adequate financial standing in this sense of the term in Mongolia but the current system does include *some* checks about financial status.

Applicants for an operators licence must prove that working capital is at least 3% of the capital worth of the company. This will not be sufficient to ensure that vehicles are maintained in a roadworthy condition.

It is recommended that higher minimum requirements for available capital should be set. Though the levels demanded cannot be as high as those in the EU, the Government should nonetheless agree on a figure that reflects an ability to buy tyres, to pay drivers and tax.

8.5.3 Professional Competence

There is currently not thought to be a requirement of professional competence in the EU sense of the words, ie that that one or more directors or managers employed by the enterprise must hold a recognised qualification demonstrating that they have a minimum level of knowledge about the operation of vehicles and the principles of commerce.

The law on Automobile Transport does say, however, that the “capacity of professional personnel” will be taken into account, but no further guidance is given. It is helpful that some provision for professional competence already exists in the law. It is possible that regulations / decrees contain, or will contain, more specific requirements.

It is not clear whether training providers must be licensed by the Ministry of Education.

One of the aims of this project is to provide a pilot training course and training materials so that experts in the participating countries may receive instruction in the content and presentation of a CPC (Certificate of Professional Competence) course. It is understood that Mongolian authorities are enthusiastic about developing the law on professional competence.

The school of mechanical engineering does undertake some basic transport – related courses such as load and route planning. The Training Institute of Construction has also been suggested as a possible venue. It provides short vocational courses but not at present on transport. Mongolia has a technical university which might also be suitable as the new transport training centre. Alternatively, the Ministry of Infrastructure Development may bid to house the training centre in their own building. A decision will be made next year.

8.6 Issue of Licence or Rejection of Application

Decisions on issue of a licence are made by the Minister.

Licences are issued by the State Central Administrative Body in charge of automobile transport matters. Regional Administrations issue inter – province and city transport licences.

Information upon which a decision to issue a licence is based must be attached to the licence. Rejection of the application for an Operator Licence will take place if the criteria for application are not met.

8.7 Suspension, revocation or curtailment of the licence

It is not clear whether licences can be suspended but it is understood that they can be revoked. It is recommended that the licence holder should have the opportunity to explain himself before a decision is taken, to give him the right of appeal if he believes that the decision was unnecessarily harsh or the procedure was unfair and for the licensing authority to give reasons for its decision in writing to the operator. No doubt these matters will be more comprehensively set out in the implementing rules/regulations currently being made.

8.8 Other aspects of vehicle operation relevant in the context of development of a CPC exam and training centres

The CPC course gives basic training in company and business law, accountancy, taxation, contract and liability, operator licensing, driver licensing, the transport of dangerous goods and the technical condition of vehicles. The present situation in Mongolia in relation to some of these is briefly considered below.

8.8.1 Enforcement of Technical standards

Elements of a European monitoring system are in place, such as roadside checks, some environmental controls and annual testing. There is also some co-operation between various enforcement agencies.

Vehicles are currently inspected by the Transport Inspectorate annually between 15th April and 15th May but this is soon to be adjusted to an all-year basis. Vehicles not meeting required standards are prohibited from use but the operator licence is not affected.

Regulations are being prepared dealing with standards for dimensions and weights of vehicles in use.

8.8.2 Drivers Hours of work and rest, tachographs

There is no restriction of drivers hours of driving and rest in the EU sense of the term though it is believed that legislation based on former USSR provisions may contain restrictions on working time.

It will be advisable to implement EU type laws governing driving time, rest time and the recording of hours of work for the following reasons:-

- 1) Fatigue is a major cause of road accidents
- 2) The use of a tachograph on international journeys and the control of driving / rest time will be essential if vehicles are to visit EU /AETR countries other than CIS
- 3) An operator who presently requires his drivers to work for excessive periods is competing unfairly with one who does not require drivers to work when they are excessively tired

CPC training will begin to deal with the problem as the EU directive requires that the course covers drivers hours of work and records but legislation will also be required.

8.8.3 Driver licensing

The Law on Auto Transport (article 19) empowers members of the Government in charge of transport and training matters jointly to approve a training programme for training and upgrading the qualifications of professional drivers, rules for the

conducting of professional examinations, the design of a drivers licence card and the issuing of licences

It is believed that new regulations / decrees are currently being prepared on the basis of this authority. The existing practice appears to be that:

- Drivers licences are issued jointly by the Ministry of Infrastructure Development, the Ministry of Education and the Traffic Police.
- There are several driving schools and the licensing system follows the EU model very closely.

It will be advisable to consider:-

- The quality of driver training and the difficulty and impartiality of the examination system
- The circumstances in which a driver's licence may be suspended or withdrawn, e.g. following the commission of serious or repeated traffic offences.

8.8.4 Motor Vehicle Insurance

There is not yet a developed system of compulsory insurance against third party risks.

8.8.5 Domestic Carriage of Dangerous Goods

It is thought that former USSR statutes still apply.

8.9 ADR

Mongolia is not yet a contracting party to ADR. There is an existing law covering the transport of dangerous goods This law is being revised. It is believed that Mongolia wishes to become a contracting party to the ADR agreement.

8.10 TIR and international transit

Mongolia is not a party to TIR but is keen to join. Instructions were given by the Ministry of Foreign Affairs in May 1998 instructing Customs to investigate how Mongolia could operate the TIR system.

A problem exists in that Customs has insufficient funds to arrange translation of the convention. Only 1/3 of the document has been translated so far. The consultant points out that an authentic text of TIR in the Russian language is published by the UN and would recommend that this should be used by Mongolia, perhaps with a summary attached in the national language, if so required by Parliament.

Customs is considering who should be the guaranteeing association. No direct negotiations have taken place yet with the IRU.

There is a customs law which was implemented in 1996. Customs authorises 3 carriers to carry bonded goods. There is a problem due to a lack of suitable, sealable vehicles.

There is a volet type system of documentation for international traffic. A form is filled in and stamped at the border and then again at the final destination.

For transit traffic goods must be cleared and duty paid on entry. The duty is recovered on exit.

8.10.1 International permits

For international transport, a system of bilateral permits is operated. On average, 9,000 permits are issued each year for Russia and 6,000 per year for China. These are issued by the transport division of the MID.

8.11 CMR

Mongolia is not a contracting party to the CMR convention.

8.12 ATP

Mongolia is not a contracting party to the ATP Agreement.

9. Legal Report : Tajikistan

9.1 Overall legal framework for transport

The Civil Code is thought to provide the overall framework for transport businesses together with the more specific sources set out below.

9.2 Sources of Law

- Civil Code
- Decree No 286 of 01-07-1995 on International Road Haulage
- Decree No 123 of 26-03-1997 concerning measures on development and improvement of organisation of international road transport
- Decree 23 of 06.01.97 on TIR
- Decree 364 of 12.9.98 establishing freight forwarding policy

9.3 The Institutional Framework and Bodies Responsible for Implementation

9.3.1 Operator licensing

The authority with responsibility for access to the profession is the Ministry of Transport and Road Economy.

The Ministry delegates its powers over international transport to ABBAT (Tadjik Association of International Road Operators). ABBAT were given authority to manage such activities in Tadjikistan by decrees 23 of 15 Nov 96 and 286 of 1 July 96.

9.4 Operator Licensing (also known as “Access to the Profession”)

9.4.1 Types of Operator Licence

Access is thought to be currently unrestricted for both natural persons e.g. owner – drivers and legal persons e.g. limited companies, provided they comply with the operational requirements set out in a number of recent decrees.

It is not known whether the requirements apply both to hire and reward and own account operations nor whether they apply to vehicles irrespective of weight or carrying capacity.

9.4.2 Licence Documentation

Not applicable

9.4.3 Application Procedure

Not applicable

9.5 Standards to be met by the holder of a licence : Good Repute, Professional Competence and Financial Status

9.5.1 Good repute : Application to Tajikistan

There is currently no investigation of good repute in the EU sense of the term.

9.5.2 Financial Status of the operator

European Union law requires holders of a hire or reward licence to demonstrate that they have a minimum level of assets (currently about \$2000 per vehicle operated). There is currently no requirement of adequate financial standing in this sense of the term in Tajikistan.

It is recommended that minimum requirements for available capital should be set. Though the levels demanded cannot be as high as those in the EU, the Government should nonetheless agree on a figure that reflects an ability to buy tyres, to pay drivers and tax.

9.5.3 Professional Competence

There is currently no requirement of professional competence in the EU sense of the words, i.e. that that one or more directors or managers employed by the enterprise must hold a recognised qualification demonstrating that they have a minimum level of knowledge about the operation of vehicles and the principles of commerce.

One of the aims of this project is to provide a pilot training course and training materials so that experts in the participating countries may receive instruction in the content and presentation of a CPC (Certificate of Professional Competence)course.

9.6 Issue of Licence or Rejection of Application

Not applicable

9.7 Suspension, revocation or curtailment of the licence

Not applicable

9.8 Other aspects of vehicle operation relevant in the context of development of a CPC exam and training centres

The CPC course gives basic training in company and business law, accountancy, taxation, contract and liability, operator licensing, driver licensing, the transport of

dangerous goods and the technical condition of vehicles. The present situation in Tajikistan in relation to some of these is briefly considered below.

9.8.1 Enforcement of Technical standards

There is a Transport Inspectorate numbering 110 inspectors.

9.8.2 Drivers Hours of work and rest, tachographs

There is no restriction of drivers hours of driving and rest in the EU sense of the term.

It will be advisable to implement EU type laws governing driving time, rest time and the recording of hours of work for the following reasons:-

- 1) Fatigue is a major cause of road accidents
- 2) The use of a tachograph on international journeys and the control of driving / rest time will be essential if vehicles are to visit EU /AETR countries, or if Tajikistan is to accede to the AETR Agreement
- 3) An operator who presently requires his drivers to work for excessive periods is competing unfairly with one who does not require drivers to work when they are excessively tired

CPC training will begin to deal with the problem as the EU directive requires that the course covers drivers' hours of work and records but legislation will also be required.

9.8.3 Driver licensing

No details were available

9.8.4 Motor Vehicle Insurance

No details were available

9.8.5 Domestic Carriage of Dangerous Goods

Vehicles moving dangerous goods have to have a GAI certificate. It is thought that former USSR rules still apply.

9.9 ADR

Tajikistan is not a contracting party to the ADR Agreement. In the medium term Tajikistan would like to accede to ADR in order to work internationally particularly with Iran.

9.10 TIR and international transit

Tajikistan has been a contracting party to the TIR Convention since March 1997 but it has not so far been implemented. The carriers' association ABBAT became an IRU member in 1996. It is a non-governmental organisation. There is ongoing correspondence between IRU and ABBAT who are waiting to find out what else they need to do to comply in order to issue carnets.

Drivers involved in international work are required to undergo additional training. The driver training course is mostly theoretical and lasts 28 hours. It includes International transit regulations, Customs procedures, local conditions in CIS countries and TIR. They also have 6-8 hours on dangerous goods handling, all to former Soviet standards, for those involved with such cargo.

Decree 123 26 March 97 gave ABBAT the right to establish safe parking terminals for international vehicles. There are 11 established with Customs, hotel, food and freight forwarders offices.

9.10.1 International permits

There is a transit system for foreign drivers that requires a permit to be issued on the border and a defined route. Customs will accompany loads for which a charge is made.

Decree 321 16 July 97 (in addition to 123) imposes a road tax for transit cargo with the cost depending on the weight. Carriers have 8 days to transit. A penalty of \$50 a day overstay time is charged, depending on the reason for delay.

9.11 CMR

Tajikistan is a contracting party to the CMR Convention. Insurance is said to be covered by decree 547 31 Dec 98 with agreement between ABBAT and the insurance company Tadjik Invest (Underwritten by Lloyds).

9.12 ATP

Tajikistan is not a contracting party to the ATP Agreement

10. Legal Report : Turkmenistan

10.1 Overall legal framework for transport

The Civil Code is thought to provide the overall framework for transport businesses together with the more specific sources set out below.

10.2 Sources of Law

- Civil Code
- Law on Insurance
- Decree number 3361 dated 17.10.97.
- Decree No 1977 of 03/11/94 on Licensing
- Highway Code
- Presidential Decree on Passenger Transportation
- Decree no 2606 on licensing of 01/05/96

10.3 The Institutional Framework and Bodies Responsible for Implementation

10.3.1 Operator licensing

The Law of Turkmenistan on Licensing for determined types of activities (general licensing law) states that the following are general principles for licensing performance:-

- Protection of freedoms rights interests morals and health of citizens
- Provision of common economic space and equal opportunity
- Publicity and openness of licensing
- Observance of legality while performing licence
- Protection of state interests and security

There is currently no Ministry of Transport. The authority responsible for access to the profession is the Ministry of Motor Transport (MMT), within which there is a transport inspection department.

Operator's licences are issued centrally by an office of MMT. Applications are submitted to local offices. It is possible to obtain a licence quickly - for example within one or two days if the operator has the offer of a valuable contract.

The functions of MMT bear a greater similarity to those of a former Soviet ministry than one in Western Europe. The Ministry has its own transport enterprises carrying goods and passengers. It has interests in freight forwarding and publications and owns the Turkmentrans inspection service. Taxes on its income earning activities are paid to the state treasury.

It is planned to privatise many of these operations, leaving only urban passenger transport in state hands. The Ministry officials do not believe that this loss of income would present a problem as it has only a small administrative staff (approximately 30 persons) and would continue to receive income from annual testing, the sale of operator licences and from the state treasury.

The Ministry currently owns the international carriers association THADA. TACIS expects the training centre for this programme to be managed by THADA. The IRU Academy will update the materials. Membership of THADA is compulsory for state enterprises and voluntary for private enterprises.

MMT has powers to withdraw or suspend an operator's licence in the event of breaches of the licensing rules.

All training providers, courses and teachers must be licensed by the Ministry of Education. It will be necessary to license the CPC course in this way if it is introduced.

10.3.2 Exchange of information

There is limited co-operation with the GAI - for example GAI officers performing a roadside check do check with the MMT whether a licence is valid and genuine. Also, if an operator is found to be in breach of the special licensing rules (e.g. international operations, illegal carriage of explosive or radioactive materials) this will be reported.

Customs and the immigration authorities will co-operate with foreign Police forces in order to prevent the commission of certain crimes. Road traffic violations are not included. GAI, MMT officials and Customs check Customs documentation.

There is no exchange of information in relation to traffic offences such as the operation of overloaded or defective vehicles if no personal injury is caused.

Improved exchange of information should be encouraged at the highest level. Co-operation will be of benefit to the Ministries as it will improve the efficiency of tax collection and the standards of enforcement of laws for which they are responsible.

10.4 Operator Licensing (also known as "Access to the Profession")

10.4.1 Types of Operator Licence

There are three types of licence, presently required only for international transport:-

- Freight traffic (no distinction is made between own account and hire or reward transport)
- Conveyance of Passengers
- Forwarding services

Licensing applies to vehicles irrespective of weight or carrying capacity.

Decree 1977 of 3/11/94 contains a list of exemptions (paraphrased) :-

- Vehicles not designed for road use such as mine and quarry vehicles, factory internal vehicles
- Transportation of enterprise's workers, including agricultural workers
- Transportation and forwarding activities performed under special decrees of the Government
- Forwarding activities concerned with tackling natural disasters and accidents
- Transport and forwarding activities performed by various Ministries

10.4.2 Licence Documentation

Licences are normally issued for 5 years. The minimum duration is 3 years.

The licence covers each vehicle being used by the enterprise to which it is issued. The vehicles must carry a card, coloured green for international transport, issued with the licence, which gives details of the licence and its holder.

10.4.3 Application Procedure

The applicant must submit a letter of application. MMT then sends him an official form asking for the following information:

- a) By Natural Persons
 - Details of the owner
 - Funds (and the source thereof)
 - Details of the registration of the enterprise with the tax authority (a certificate must be enclosed with the form confirming this)
 - Type of business activity proposed
 - Involvement in serious road accidents. (Owner-drivers may be asked about their driver licensing history).

- c) By a Legal Person (e.g. company)
- The above required information for natural persons plus
 - Details of the registration and constitution of the company (e.g. articles of association) A notarised copy of the Certificate of Incorporation must be provided
 - Details of Directors

No questions are asked about financial assets, bank accounts or references or the payment of tax. The only finance related question is that the applicant must show that he is registered with the tax authority.

No questions are asked about maintenance plans but the operator must submit details of the garage that will perform his maintenance work. The GAI may check that this facility exists and is used.

10.5 Standards to be met by the holder of a licence : Good Repute, Professional Competence and Financial Status

10.5.1 Good repute : Application to Turkmenistan

There is no rule of good repute in the EU sense of the term but it is possible for the licensing authority, the tax service or customs to close down a company committing serious violations. Licences, once granted, may be suspended or revoked.

10.5.2 Financial Status of the operator

European Union law requires holders of a hire or reward licence to demonstrate that they have a minimum level of assets (currently about \$2000 per vehicle operated). There is currently no requirement of adequate financial standing in this sense of the term in Turkmenistan but the current system does include *some* checks about financial status.

There is no minimum level of funds which must be held, but questions may be asked about how the applicant proposes to obtain a truck and whether he has work for it.

The requirements for enterprises to keep accounts are enforced strictly. Tax authorities can and do check declared details with bank records. Accounts must be audited and only licensed firms may offer auditing service. This is true of sole traders and registered companies. Legal persons are not allowed to receive cash payments. This may be done only via a bank. All payments must be receipted. Petty cash expenditure is exempted.

There is a law governing insolvency. The tax authority will require the production of a list of assets and a list of debtors. There is a mechanism for stopping the trading activities of insolvent companies and for striking them off the register.

10.5.3 Professional Competence

There is currently no requirement of professional competence in the EU sense of the words, ie that that one or more directors or managers employed by the enterprise must hold a recognised qualification demonstrating that they have a minimum level of knowledge about the operation of vehicles and the principles of commerce.

However, all managers running a transport business must have had an appropriate education. The precise qualifications and course programmes are not specified. The operator must also demonstrate to the licensing authority that his managers have appropriate experience. International operators must complete a special 12 hour training programme.

Turkmenistan has a Transport Institute for the training of managers and a Polytechnic for the training of engineers. The course programme varies with the qualification e.g. "Operation of Motor Transport", "Economics and Organisation of Motor Transport." Training courses and tutors are licensed by the Ministry of Education. As far as the consultants are aware, there is no monitoring of the quality of teaching once a course is licensed. It is common for examinations to be set and marked by the same people who taught the students. Therefore, if in the future Turkmen CPC qualifications are to be accepted in Europe, it will be necessary to investigate (and possibly modify) the security of the examination system.

There is nothing to stop Turkmenistan from imposing additional requirements or from modifying existing courses to include all the necessary contents and safeguards.

One of the aims of this project is to provide a pilot training course and training materials so that experts in the participating countries may receive instruction in the content and presentation of a CPC (Certificate of Professional Competence) course. It is recommended to support this with a law requiring managers of a transport enterprise to hold a CPC.

10.6 Issue of Licence or Rejection of Application

If there are no impediments and/or no grounds for rejection, a decision about the issue of a licence will be made after a 30-day period. If impediments are disclosed in submitted documents a written notice is presented to the applicant with an indication of the grounds for rejection.

The criteria for deciding whether an applicant has met the required standards - and therefore will be granted a licence - are not made public. There are internal guidance notes in the MMT.

If an application is refused and the applicant believes that he has been treated unfairly or is the victim of bias, he asks the MMT to agree with him on the name of an independent arbitrator, who will examine the case. If the matter is still not resolved, the applicant may appeal to the court. There are strict time limits.

In the event of a change in the identity of the legal entity or a change in title of the licence holder, the licence must be re-registered.

The Licensing law provides that licence registers are to be available for public inspection, though a fee may be charged.

10.7 Suspension, revocation or curtailment of the licence

If a licence holder ceases to comply with the rules, his licence will be suspended or revoked. Examples of failure to comply with the rules include:

- Incorrect documents submitted
- Error in information supplied
- No suitably qualified driver
- Inadequate financial compliance

The licensing law and Decree 1977 allows the MMT to suspend the licence in the event of infringements of the vehicle or carriage rules until the violation is rectified. It is not possible to suspend a licence for more than 6 months. Serious or repeated violations can lead to revocation of the licence. It is also possible for a licence to be revoked following an unsatisfactory official report or for causing a serious personal injury accident. Revocation is automatic should the enterprise be liquidated.

It is also possible for a licence to be withdrawn if the activities of the operator "conflict with the interests of the state" which could include competing with state enterprises in the distribution of cotton, a major export crop.

MMT officials can and do visit operators' premises at any time. In the event of breaches of the rules, the operator will be given a warning letter and time limit to rectify the situation. The licence may be suspended. In the case of "serious or repeated" breaches, it may be revoked.

It is recommended that the range and use of disciplinary sanctions be developed alongside the requirement of good repute. It will be advisable to give the licence holder the opportunity to explain himself before a decision is taken, to give him the right of appeal if he believes that the decision was unnecessarily harsh or the procedure was unfair and for the licensing authority to give reasons for his decision in writing to the operator.

10.8 Other aspects of vehicle operation relevant in the context of development of a CPC exam and training centres

The CPC course gives basic training in company and business law, accountancy, taxation, contract and liability, operator licensing, driver licensing, the transport of

dangerous goods and the technical condition of vehicles. The present situation in Turkmenistan in relation to some of these is briefly considered below.

10.8.1 Enforcement of Technical standards

Elements of a European monitoring system are in place, such as roadside checks, some environmental controls and annual testing. There is also some co-operation between various enforcement agencies.

If a vehicle is stopped on the road and is found to have a serious mechanical defect, the driver will be taken to the GAI office. He will have to pay a penalty, surrender his drivers licence and the vehicle will be impounded until the driver makes arrangements for its proper repair.

The GAI perform the technical inspection of vehicles. If the vehicle is used under an operators licence, MMT are advised and may attend.

The consultants visited a testing station for cars close to Ashgabat. The equipment was German, modern and computerised. The test consisted of:

- a computerised emissions check (the pass standard is that contained in the vehicle's technical passport. This can be quite a low standard in the case of a 15 year old Lada.)
- a test of the brakes using a rolling road, including the parking brake
- a test of headlamp adjustment, using a meter
- a test of the shock absorbers using vibrating / bouncing test beds
- a visual examination of the steering mechanism using a vehicle hoist

The machine prints out the test result, so in theory the test is reliable.

10.8.2 Drivers Hours of work and rest, tachographs

Turkmenistan is a contracting party to the AETR agreement so its vehicles visiting AETR signatory countries must be fitted with a tachograph and the driver must comply with driving and rest time requirements.

There is thought to be no effective regulation of national operations. It will be advisable to implement EU type laws governing driving time, rest time and the recording of hours of work

CPC training will begin to deal with the problem as the EU directive requires that the course cover drivers' hours of work and records but legislation will also be required.

10.8.3 Driver licensing

The Turkmenistan driver licensing system has been broadly aligned with EU standards. The licence is a plastic photocard, similar to the EU design.

The licence vehicle categories are:-

- A motorcycles (no training provided)
- B cars and vans up to 3.5 tonnes maximum permissible weight, minibuses up to 8 passenger seats (2.5 months training course)
- C larger goods vehicle
- D larger passenger vehicle
- E goods vehicle towing trailer over 750 kg e.g. articulated truck

A driver must have one year's experience of driving vehicles in category C before he may advance to category E. International drivers receive an extra 12 hours training. The minimum age restrictions are aligned with EU norms -B,C, 18; D,E 21. There is no upper age ceiling.

Student drivers must undergo a medical examination before they start the training course. This includes a test for drug addiction and a psychological examination. There is no need for repeated medical examinations in the case of categories B and C. Category D drivers must undergo a repeat medical examination every 6 months. Category E drivers must undergo a medical examination every three years.

The driving tuition consists of theory and practical tuition. The driving school then conducts theory and practical tests. The theory test consists of a 10 question multiple choice paper. It is not clear whether the same examination questions are used every time. The example shown to the consultants looked as if it had been in circulation for some time. If the student passes, he or she will be allowed to take the final stage, a practical test with the GAI, who issue the licence if the candidate is successful. It takes three days to issue the licence. It takes about 2.5 months to train a car driver. This may be accomplished by a full time course or evening classes. There is no need to take a further theory test - the first one covers all categories

Dangerous goods driver training takes 2 hours.

It is recommended that the content of the training programmes and the security of the licence issuing process should be further compared with EU standards.

10.8.4 Motor Vehicle Insurance

Third party motor insurance is compulsory, covering personal injury and property damage as is insurance for passenger transport operations.

There is no free market in the provision of commercial insurance. The insurance law provides that (article 34) "The legal and physical entities of Turkmenistan conclude the insurance agreements only with Turkmen insurance companies."

There is a state insurance company "TURKMENGOSSTRAKH" which was created by presidential decree number 3001 of 29/01/97 and has equity of approximately Manat 35,000,000. It is licensed and audited by the Turkmenistan Ministry of Economy and Finance. It has offices all over Turkmenistan. The company offers 45 types of voluntary insurance e.g. life, fire, goods in transit, civil and professional liability, as well as compulsory motor and passenger transport insurance. The company is protected by reinsurance on the London market, using reputable brokers. The consultants were advised that liabilities are also underwritten by the state. The insurance law makes it compulsory for insurers to reinsure liabilities not covered by their equity.

The Turkmen insurance law (article 26) excludes the liability of the insurance company to indemnify its insured in the event of "performance of actions by the insurant or the insured person in the state of alcoholic, narcotic or toxic intoxication." This offers no protection to innocent pedestrians and drivers if the offending motorist has insufficient assets to honour a civil claim for compensation. This defeats the object of compulsory third party insurance and requires reconsideration.

Currently, Green Cards are not recognised in Turkmenistan and Turkmenistan lies beyond the intended zone of application of the system. Therefore, drivers must purchase special insurance at the border. For trucks, the premium is \$70 for 15 days cover.

10.9 ADR

Turkmenistan has not signed the ADR Agreement.

It is suggested that accession to ADR should be a priority in order to facilitate international trade particularly in the petrochemical industry.

10.10 TIR and international transit

Turkmenistan acceded to the TIR Convention in March 1997. Presidential Decree No 1847 dated 02.03.99 incorporates TIR into Turkmen law. When it is implemented, THADA will be the guaranteeing association and IRU will help THADA to prepare documentary material. Membership of THADA comprises state and private companies. Membership is compulsory for the former. The main outstanding problem presently preventing practical implementation appears to be the lack of a guarantee insurer at arm's length from the Government.

Turkmengostrakh provides insurance against liabilities associated with undischarged TIR carnets. The level of cover is \$50 000 per carnet, to a maximum of \$4 million per year.

10.10.1 International permits

An operator wishing to take a vehicle abroad must, in addition to obtaining a licence, obtain a special permit. This is obtained by writing a letter to the international department of MMT. The operator must supply the full name of the legal entity, the operator's licence number, the driver's name and licence number and details of the goods. Authorisations are signed by the chief of the International department under the supervision of the Minister. The operator must inform the Ministry of the dates of departure and return. Non - specific time - based permits are not available. The MMT consults with the GAI and customs before granting such a permit.

10.11 International Convention on the Contract for the International Carriage of Goods by Road 1956 (CMR)

Turkmenistan has not yet become a contracting party to CMR but Parliament has made resolutions concerning accession to CMR, dated 18.06.96. It is necessary to develop a regulatory framework for implementation.

10.12 Agreement on Carriage of Perishable Goods by Road 1970 (ATP)

Turkmenistan has not yet acceded to ATP.

11. Legal Report : Ukraine

11.1 Overall legal framework for transport

The Law on Transport sets out the main obligations of the state in relation to the management of transport including programmes for development of individual modes of transport, reforms relating to the transfer of the transport complex to the market economy, forecasting of state and defence demands for cargo carriage and other transport services, limitation of monopolistic activity, development of competition, determination and improvement of standards, and protection of the legitimate interests and rights of transport enterprises and users.

11.2 Sources of Law

- Civil Code
- Law on Transport of 10-11-1994
- Law on Entrepreneurship
- Resolution No 1020 of the Cabinet of Ministers of 03-07-1998 concerning procedures for licensing
- Order No (..) of the Ministry of Transport on instructions for the issue of licences

11.3 The Institutional Framework and Bodies Responsible for Implementation

11.3.1 Operator licensing

The State Licensing Committee is appointed by the Ministry of Transport. Its members come from a number of interested organisations, such as ASMAP, GAI and the Ministry of Transport. There is a licensing department, staffed by civil servants, which deals with the routine processing of operator licensing applications. If a question arises concerning the suitability of an applicant, or the conduct of the holder of a licence, the matter will be referred to the committee for consideration. The committee also deals with disciplinary proceedings against licence holders.

The state licensing committee may prohibit an operator going abroad or to specified countries in the event of illegal activities.

11.3.2 Exchange of information

The state enterprise “Ukrainteravtoservice (“Uvto”)", under the control of the Ministry of Transport, monitors documentation at the border. Uvto checks operator licence documents and the drivers licence. Documents must be valid before a vehicle

is allowed to cross the border. Traffic Police (GAI, controlled by Ministry of Internal Affairs), have the power to stop vehicles and to inspect documents with the exception of TIR carnets. Customs have powers to check vehicles and documents, including TIR

11.4 Operator Licensing (also known as “Access to the Profession”)

11.4.1 Types of Operator Licence

The operator licensing system applies both to natural persons e.g. owner – drivers and to legal persons eg limited companies, but only in respect of international operations.

There is one category of operators licence, covering both own account and hire or reward operations. Journeys to other CIS states, such as Belarus and Russia, are exempted.

The same rules apply to passenger vehicles.

Licensing applies to vehicles irrespective of weight or carrying capacity.

11.4.2 Licence Documentation

Licences are valid for 3 years.

Each vehicle used under an operators licence is issued with a card specifying the licence number. The cards are renewable annually. This gives the opportunity to check the vehicle’s test certificate, that it still exists and is in use, and that it is still owned by the operator.

The licence fee is approximately G 2-300.

11.4.3 Application Procedure

The following information must be supplied with the official application form:-

a) By Natural Persons

- Personal passport
- Copy of Certificate of state registration of the subject of entrepreneurial activity (certified by notary)
- Copy of Certificate of Tax Office to prove the allocation of a tax code
- Copies of documents certifying the level of training and competence including:-
 1. Copy of drivers' licence(s) of required category, including those of employed drivers

2. Copy of documents to certify that the entrepreneur and employed drivers have passed the training courses for international carriers.
 3. Evidence of work experience. Bus drivers (category D) must have at least three years experience, drivers of large trailers (category E) must have at least one year's experience of driving vehicles in category C.
- Information to prove the ability of an applicant to operate internationally
 1. List of vehicles signed by entrepreneur
 2. registration numbers, make, model, year, load, date of last technical inspection
- b) By a Legal Person (e.g. company)
- copy of certificate of state registration certified by notary
 - copy of foundation documents (equivalent to memorandum and articles) certified by notary
 - copy of certificate of statistics body to prove receiving of statistical codes
 - copy of certificate registering the VAT payer
 - information to prove the ability of an applicant to operate internationally
 1. List of vehicles approved by traffic police
 2. Manager's signature and stamp of enterprise
 3. Number(s) on vehicle registration plates
 4. Make, type, year of manufacture
 5. Carrying capacity
 6. Date of last technical inspection or copy of certificate
 7. Copy of order appointing somebody as responsible for observation of the conditions and rules of the licensed activity eg selection of drivers, compliance with safety requirements, timely medical tests for drivers and copies of documents demonstrating his competence
 - Bank details

In both cases, the TIR inspection certificate and export certificate (if vehicle is to be used abroad) must be submitted in addition to the above.

In the case of foreign enterprises, the business must be registered in the Ukraine before a licence can be granted.

11.5 Standards to be met by the holder of a licence : Good Repute, Professional Competence and Financial Status

11.5.1 Good repute : Application to Ukraine

There is no formal system of enquiry concerning good repute in the EU sense of the term, but important steps have been made towards its development.

Individuals are issued with a work record book, which summarises the details of their various employers throughout their working life. This includes employer references and details of criminal convictions. The licensing committee may ask to examine this book but only in the event of a disciplinary problem concerning the licence.

In the Ukraine a director or engineer can be personally liable in the event of a serious accident caused by his action or neglect. In a worst case, the court can order that the enterprise ceases to trade in addition to imposing a personal penalty.

The State Security service monitors individuals and companies which have been or are suspected to be involved with smuggling or other serious crimes. Finally, if the irregularity concerns tax payment or the keeping of accounts, the tax inspection service may prosecute the directors of the enterprise and in worst cases close it down.

11.5.2 Financial Status of the operator

European Union law requires holders of a hire or reward licence to demonstrate that they have a minimum level of assets (currently about \$2000 per vehicle operated). There is currently no requirement of adequate financial standing in this sense of the term in Ukraine but the current system does include *some* checks about financial status.

Until recently an applicant for a licence had to produce a bank statement, not more than 1 month old, showing a minimum level of financial resources. This is no longer required, due to the economic difficulties facing all enterprises.

No financial questions are asked of natural persons. Even when financial standing was regulated, the level for a natural person was very low, arguably insufficient to demonstrate that the person would be able to implement safety related repairs. Companies are asked only to submit bank and tax registration details.

The Consultant is concerned about the present lack of checks on owner–drivers who have income and capital reserves which are considerably less than those available to a larger enterprise and may be less able to afford to maintain their vehicles properly.

Owner drivers should be asked questions about their financial status and bankrupt owner – drivers should be unable to continue to trade. The standard required should be at least as high per vehicle as for a limited company. Though a new enterprise will not be able to produce trading accounts until it has carried goods and earned money, it

will be possible to ask to see evidence of a business plan, source of funds to buy a truck and to check that the person is not bankrupt.

It is also important that minimum requirements for available capital should be set for limited companies. Though the levels demanded cannot be as high as those in the EU, the Government should nonetheless agree on a figure that reflects an ability to buy tyres, to pay drivers and tax.

11.5.3 Professional Competence

An applicant wishing to set up a transport company must show that drivers and managers have received appropriate training. Drivers of vehicles operating abroad must receive training in addition to holding a valid drivers licence. This requirement does not apply to natural persons.

The manager must hold a diploma from the transport university or another recognised institution. The precise nature of the qualification is not specified. There is nothing to stop the manager being a transport economist, an engineer or an expert in logistics but ASMAP is lobbying for the cabinet of Ministers to pass a resolution that all managers must be appropriately qualified. There is currently no requirement that the number of appropriately qualified managers be proportionate to the size of the fleet.

Training providers and courses must be licensed by the Ministry of Education. They must demonstrate the qualifications of their teachers and the contents of the course. The state education commission assesses the adequacy of the syllabus.

While such controls are to be applauded, there is one significant omission. Examinations are not controlled, nor is the manner in which the examination is conducted. Examinations are written and held by the training providers themselves, a system which is potentially open to abuse. If the examination system is to be mutually recognised by EU countries, an independent examination system will need to be introduced.

There is no requirement for continuing education or refresher courses after obtaining the recognised qualification. In the old USSR, it was compulsory for managers to be re-trained every five years.

11.6 Issue of Licence or Rejection of Application

Rejection of the application for an Operator Licence can take place on the following grounds:

- if any of the required information is not supplied
- if the data on the documents are incorrect and/or in a distorted form
- if an applicant did not accomplish necessary terms and conditions envisaged in the Regulations for realisation of the type of activity

- if an applicant and/or involved specialists have no corresponding speciality to realise the activity
- if no more than a two year period has passed after the withdrawal of a licence of an applicant
- if an applicant has applied for a licence during the period in which his licence was already suspended
- on any other grounds envisaged by legislation

11.7 Suspension, revocation or curtailment of the licence

If a licence holder– either a natural or legal person– incurs serious or repeated convictions or traffic violations, the matter will be reported to the Licensing Committee for consideration. The Committee may suspend or revoke the licence. Suspension periods vary with the severity of the violation, but range from 1-6 months.

The action taken will vary according to the severity of the offence and past history of the offender. In the case of a first or minor offence, a warning letter will be sent by the licensing committee to the operator. If disciplinary action is contemplated, he may be asked to appear before the committee and to answer questions. If the operator is involved in serious offences, such as smuggling, he can be prevented from visiting certain foreign countries, may face prison and the closure of his business.

If the accused person / organisation believes that he has been treated unnecessarily harshly or unfairly by the committee, he may appeal to the courts.

It is also possible for action to be taken against a garage which fails to maintain vehicles properly. Following an investigation by the GAI, its licence may be revoked

11.8 Other aspects of vehicle operation relevant in the context of development of a CPC exam and training centres

The CPC course gives basic training in company and business law, accountancy, taxation, contract and liability, operator licensing, driver licensing, the transport of dangerous goods and the technical condition of vehicles. The present situation in Ukraine in relation to some of these is briefly considered below.

11.8.1 Enforcement of Technical standards

Elements of a European monitoring system are in place, such as roadside checks, some environmental controls and annual testing of goods vehicles and buses. There is also some co-operation between various enforcement agencies.

A problem arises in that some old Soviet laws (GOSTstandards) have not been replaced. The Ministry of Internal Affairs (GAI) has made a new resolution concerning emissions, but only for petrol vehicles.

There are three categories of goods vehicle in connection with emissions:-

- 1) Compliant with Ukrainian law – old GOST Standard
- 2) Compliant with EURO 1 (“Green Vehicle”)
- 3) Compliant with EURO II (“Supergreen vehicle”)

The new EURO standards also contain criteria for anti lock brakes and speed limiters. The certificates are issued by Gossavtoinspectproekt.

Roadside checks monitor only compliance with GOST Standard. The traffic police has a roadside emission checking division with 100 vehicles. There are no checks of emissions at the borders. Ukraine has bilateral agreements with some other European states as to recognition of certificates and acceptable standards – for example Euro I is the minimum standard for Germany and for France it is Euro II.

Cars are tested every two years by GAI. Trucks and buses are inspected every year. There are testing stations in each region. The consultant was advised that most checks have been computerised. Testing centres offer a pre – test inspection and rectification service. The standards of emission tolerated for each vehicle will be those contained in its type approval certificate.

While the most important EU standards, concerning exhaust emissions, have been recognised and are applied to international traffic, the age of the vehicle-park will make it impossible to harmonise all domestic laws with European laws for the foreseeable future.

The law now prevents the importation of vehicles which are over 5 years old, but this is having limited effect as operators are buying second hand vehicles within the Ukraine.

The law on the financing of the economy of the Ukraine (tax law) specifies maximum weights and dimensions. For example:

- Overall maximum gross weight limit 36 tonnes
- Maximum single axle weight limit 10 tonnes
- Maximum double bogie weight 16 tonnes
- Maximum triple bogie weight 22 tonnes
- Height limit 4m
- Width 2.5m (in practice refrigerated vehicles are tolerated up to 2.6m)
- Length 24m

In 1998 the cabinet of ministers passed a resolution increasing the maximum gross weight to 38 tonnes and maximum width to 2.6m. However, the old law was not revoked and legally is still in force. The highway code (traffic rules) stipulate a maximum gross weight of 36 tonnes. To add further inconsistency, Uvto rules limit maximum weight to 33 tonnes and Ukravtodor (Highways Agency) rules impose a maximum gross weight of 36 tonnes for domestic traffic and 38 tonnes for international traffic.

11.8.2 Drivers Hours of work and rest, tachographs

Since 1995 it has been compulsory for vehicles travelling to the EU to be fitted with a calibrated tachograph and for the EU drivers hours rules to be observed. Many Eastern European countries are signatories to the AETR Agreement, which imposes similar standards. The state organisation “Intertransservice” operates facilities for inspecting and calibrating tachograph machines at the borders. German equipment is used and installed (e.g. Kienzle).

There is currently no regulation of domestic operations but the organisation Gossavtotransniiproekt is developing a domestic law, thought to be aligned with EU standards.

11.8.3 Driver licensing

The driver licence categories are aligned with EU standards, e.g. B for car and vehicle up to 3.5 tonnes maximum gross weight, C for truck, D for bus, E for large trailer.

The licence document consists of a plastic card with a photograph. The licence document is soon to be re-issued using a design compliant with the European second directive, using Latin characters.

It takes about 3 months to train a car driver, using “European type” programmes. There is about 100 hours of theory training and 26 hours of practical training. Simulators are used at the start. Driving schools register their classes with the Traffic Police.

The theory test consists of 10 questions with multiple choice (of 3) answers. The test is conducted using a computer and the pass mark is 8/10. Practical tests are conducted by the GAI.

To upgrade a car licence, the driver must undergo additional training – 48 hours for a truck and 96 for a bus. There is no requirement for a further theory test.

Ukraine is a signatory to the Vienna Convention on Road Traffic. The only possible divergence from EU standards might be the standard of training and difficulty of the test and the reliability of the driver licence issuing procedure.

In the event of serious or repeated road traffic offences, it is possible for a driver's licence to be suspended or confiscated by the GAI. Details are recorded on a card accompanying the licence. If a Ukrainian driver commits an offence abroad, the matter will be noted on his driver licence documents. This will be checked at the border on his return.

11.8.4 Motor Vehicle Insurance

It is compulsory to have third party cover for damage to another person's vehicle and personal injury compensation. State vehicles are currently exempt and proposals to extend insurance to them are on hold. Comprehensive insurance is optional.

Green cards are compulsory for international operations. Insurance documents are checked at the vehicle's technical inspection. Foreign drivers can demonstrate insurance by producing a green card or by purchasing an insurance certificate at the border.

Insurance companies have been privatised and are regulated by the Motor Bureau. The number of insurance companies has been reduced from 500 to about 250 due to regulatory intervention, forcing the merger or closure of companies which are insufficiently capitalised. Ukrainian insurance companies reinsure their liabilities abroad, e.g. at Lloyds

11.8.5 Domestic Carriage of Dangerous Goods

1 year ago the Cabinet of Ministers passed a resolution requiring the drafting of vehicle and driver requirements for the transportation of dangerous goods.

There are 5 GOSS standards identifying the various classes, packaging, marking, labelling and vehicle requirements. The consultant was advised that operators comply with ADR in practice.

There is currently no other national law, apart from specific regulations, for example covering the transport of alcohol.

11.9 ADR

Ukraine is not yet a signatory to ADR. Copies of the ADR agreement are held by ASMAP. Steps are being taken to enable accession to the treaty.

The Cabinet of Ministers resolution makes the GAI responsible for enforcement. By 2002, it will be compulsory for drivers to receive ADR training and certificates even though Ukraine is not yet a contracting party. It will be essential to ensure shadow alignment with ADR training requirements (marginal 10 315 and 10316 of Annex B).

11.10 TIR and international transit

11.10.1 TIR

Ukraine is a signatory to TIR. ASMAP is the guarantee Association. ASMAP have an agreement with customs for the exchange of information and general co-operation in connection with TIR. Ukraine is one of the largest issuers of TIR carnets.

Unusually, all vehicles, whether or not they are used for international transport, must be constructed to TIR specification and have accompanying certification. In particular, it must be possible to apply a TIR security seal to the vehicle to prevent access to the load. If the load is a bulk cargo, the cover must be capable of being sealed. Customs monitors the suitability of vehicles.

Also, if vehicles travel abroad, an export certificate must be obtained from customs on which the operator declares that it will return to Ukraine. The certificate will be stamped on departure and return. The document is similar to a multi-entry visa capable of being stamped on several occasions. Documents are valid for one year. Records must be kept.

11.10.2 Permits

The operator must supply the driver with a document authorising the international movement, which will state the route, the name of the driver, dates of the journey, declare the driver's medical fitness and licence details, confirmation that the vehicle has received relevant technical inspections, odometer readings and fuel consumed. These documents are numbered. They are supplied by customs at the border and at local offices. All vehicles used commercially, even cars, must use them. The document must be kept safely after the journey has finished.

Ukraine is losing revenue because its low weight limits deter transiting foreigners. Therefore the President has passed a resolution reducing transit fees, with a view to increasing traffic and the total tax take.

There are a number of bilateral treaties which mutually exempt transit fees.

11.11 CMR

Ukraine is not a contracting party to CMR but CMR documents are sold and recognised for international transport. Goods in Transit insurance is optional and available.

CMR documents must be used for international transport. It is no longer necessary to use CMR documents for domestic carriage.

11.12 Agreement on Carriage of Perishable Goods by Road 1970 (ATP)

Ukraine has not yet acceded to ATP.

12. Legal Report : Uzbekistan

12.1 Overall legal framework for transport

The Civil Code is thought to provide the overall framework for transport businesses together with the more specific sources set out below.

12.2 Sources of Law

- Civil Code
- Law on Road Transport of 29-08-1998
- Decree No 175 of 12-05-1996 on Licensing of the Activity in the Field of Transport and Communications
- Decree No 215 of 19-04-1994 on the Improvement of the procedure on issue of special permits (licences) to carry out individual types of activity
- Decree No 11 of 11-01-1995 on the Procedure of entry, stay, transit and exit of foreign road carriers from the territory of the Republic of Uzbekistan
- Decree No 483 of 23-10-1997 on the Regulation of collection of taxes and fees charged from physical persons involved in entrepreneurial activity
- Decree No 296 of 11-07-1998 on the Establishment of the Uzbek Agency of Automobile and River Transport

12.3 The Institutional Framework and Bodies Responsible for Implementation

12.3.1 Operator licensing

There is presently no Ministry of Transport in Uzbekistan though creation of such a ministry is under discussion. The authority with final responsibility for transport policy is the Cabinet of Ministers of the Republic of Uzbekistan and the Uzbek Agency of Automobile and River Transport (AART) has responsibility in the field of access to the profession

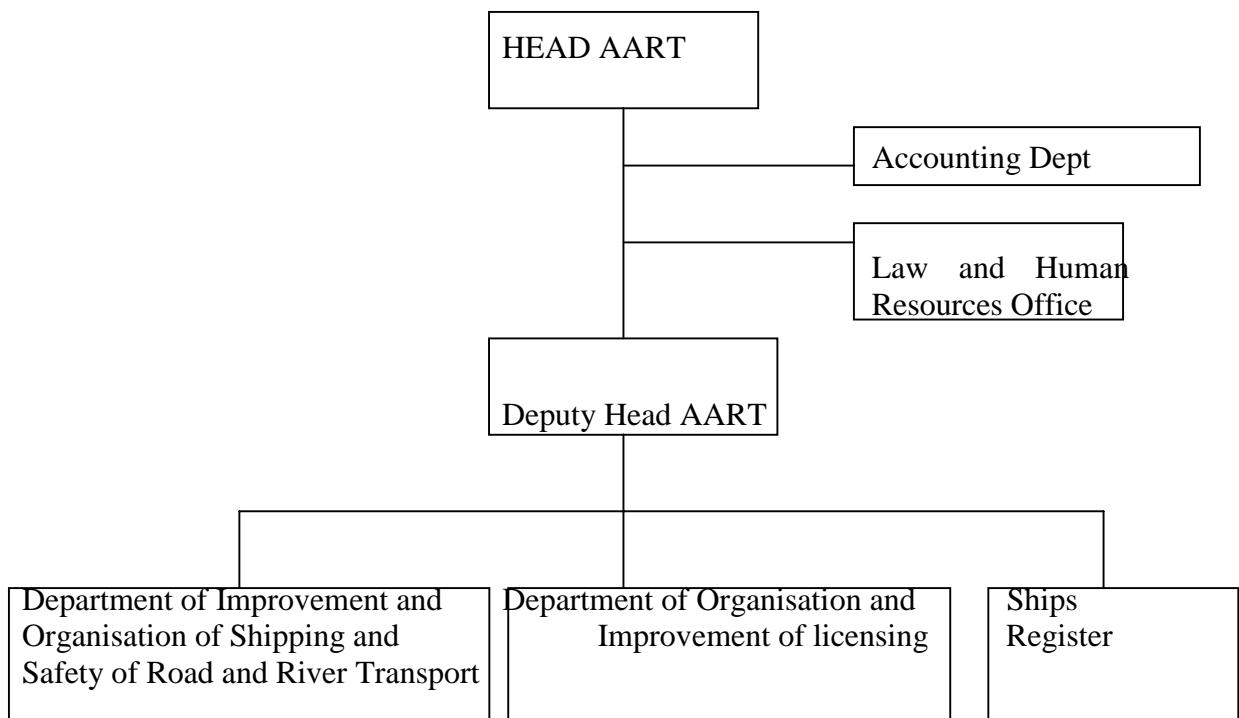
This is a new organisation established by Decree No 296 of 11 July 1998 having the status of a regular ministry. It has the following tasks:

- working out legal regulations on the organisation and improvement of road transport
- organising and developing licensing activities
- certifying motor vehicles and services in the transportation of goods and passengers

- participating in activities concerning road traffic safety and decreasing of traffic incidents in road transport
- ensuring the observance of ecological norms
- acting as a representative of the road transport sector for the Republic of Uzbekistan in international organisations.

Figure 1 presents an organisation scheme of the AART. The Department of Organisation and Improvement of Licensing is the most relevant department in matters of access to the profession. AART is a regional organisation having 16 regional branches, 1 branch in Tashkent and one in the Republic of Karakalpakistan. (See figure 2)

Figure 1 Organisation scheme of the AART



12.3.2 International transport permits

Another task of the AART is the negotiation and distribution of permits to foreign transport markets.

12.3.3 Exchange of information

The AART is responsible for control and enforcement concerning licensing with a staff of approximately 70 persons. It maintains a schedule to check the proper use of

licences by road transport operators. There is also an agreement with the Traffic Police, GAI

GAI has in its structure a road-patrol service, technical inspection, departments on traffic organisation, vehicle safety and environmental impact. GAI is responsible for road checks but does not make any inquiries concerning licences.

Improved exchange of information should be encouraged at the highest level. Co-operation will be of benefit to the Ministries as it will improve the efficiency of tax collection and the standards of enforcement of laws for which they are responsible.

12.4 Operator Licensing (also known as “Access to the Profession”)

12.4.1 Types of Operator Licence

The Law on Road Transport divides types of road haulage by geographical character into urban, suburban, long-distance and international carriage. The operator licensing system applies to the commercial operations of both natural persons e.g. owner – drivers and legal persons eg limited companies. It applies to freight and passenger transport.

According to article 2(b) of Decree No 175 the following types of road transport of goods are subject to licensing:

- urban transport
- national transport
- international transport

Exemptions apply to haulage carried out on the basis of special legislative acts of the Republic of Uzbekistan and haulage related to the clearing up of the aftermath of natural calamities, epidemics and major crashes, which threaten the life and health of the population and which require emergency rescue operations and rehabilitation works.

No distinction is made between transport for own account and transport for hire and reward.

Licensing applies to vehicles irrespective of weight or carrying capacity.

12.4.2 Licence Documentation

Licences are valid for a period of 5 years. Should an applicant submit a justified request, the period of validity of a licence can be extended for the same period of time. This extension has to be confirmed in writing.

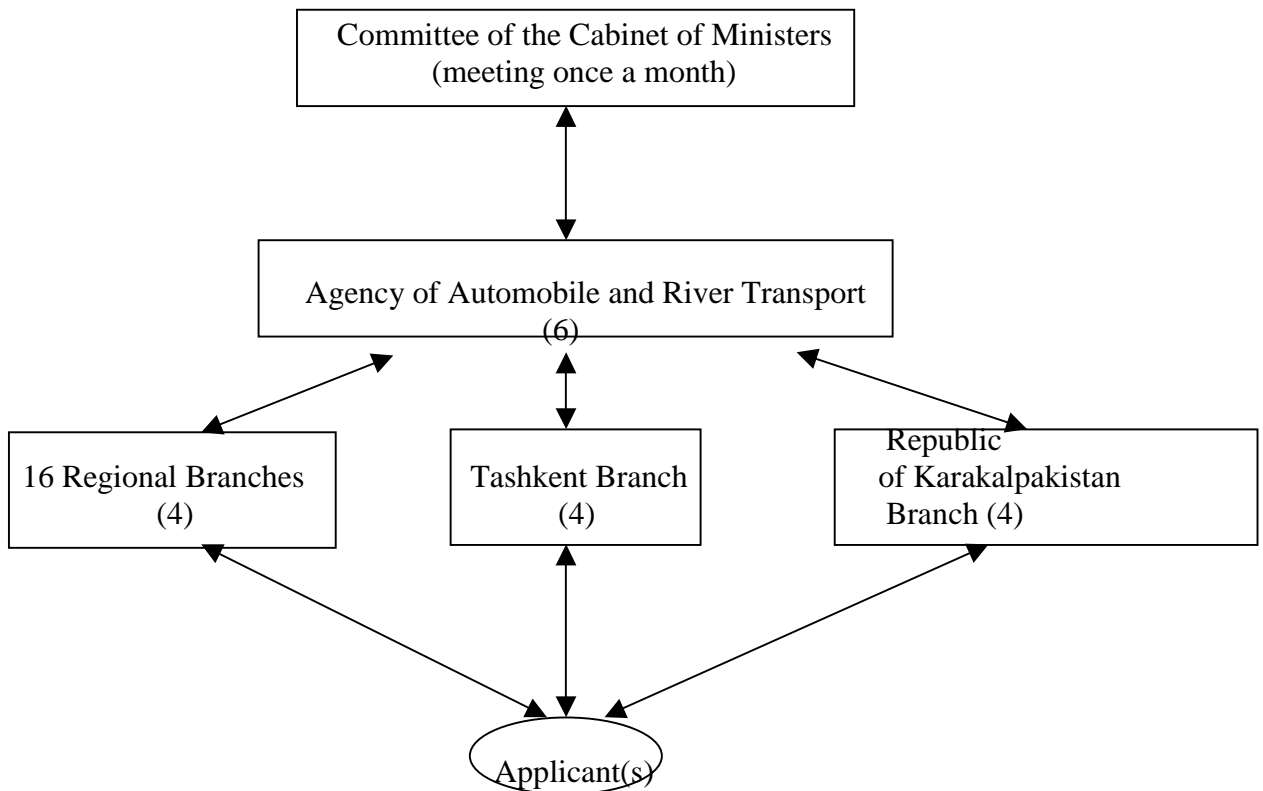
There is no control on the number of vehicles under a licence.

Licence cards are issued for each vehicle and each type of activity. A fee is payable. Often transport companies have several licence cards for each vehicle permitting, for example, urban, inter-town cargo transportation inside Uzbekistan and international cargo transportation.

The relevant licence card must be displayed in the right lower corner of the windscreen. These cards have a different colour depending on zone of licence activity, i.e. international, republican, and urban transportation.

12.4.3 Application Procedure

Figure 2 Organisation of the application for a licence in Uzbekistan



The following information must be supplied to AART on an official form:-

a) By Natural Persons

- Registration document for certain types of activity, issued by city halls and regional municipality offices.
- technical passport of the vehicle and proof of satisfactory vehicle condition additional to annual inspection
- certificate of professional competence (for international transport)
- Approval of the Ministry of Foreign Economic Activity (for international transport)
- document certifying that a fee for issuing a licence has been paid
- proof of membership and the approval of the International carrier's association AIRC

b) By a Legal Person (e.g. company)

Documents as above except that

- membership of AIRC is not obligatory plus
- Constituent documents or their attested copy, in place of the registration document required from natural persons
- Evidence of maintenance facilities, apparently in place of proof of specific vehicle condition

12.5 Standards to be met by the holder of a licence : Good Repute, Professional Competence and Financial Status

12.5.1 Good repute : Application to Uzbekistan

There is currently no investigation of good repute in the EU sense of the term.

However under Article 7 (e) of Decree No 175 an applicant for a licence who has been criminally convicted because of unfair competition in the licensed activity will be refused when he applies for a licence. It is not clear what this provision means in practice, nor why unfair competition is a criminal matter.

12.5.2 Financial Status of the operator

European Union law requires holders of a hire or reward licence to demonstrate that they have a minimum level of assets (currently about \$2000 per vehicle operated). There is currently no requirement of adequate financial standing in this sense of the term in Uzbekistan.

It is recommended that minimum requirements for available capital should be set. Though the levels demanded cannot be as high as those in the EU, the Government should nonetheless agree on a figure that reflects an ability to buy tyres, to pay drivers and tax.

12.5.3 Professional Competence

There is currently a requirement for professional competence to be demonstrated by operators of international transport wishing to renew their licences. The qualification itself must be renewed at least every five years and presently each enterprise must have at least one professionally qualified person. It is eventually intended that drivers as well as managers should be qualified.

In order to show competence it is necessary to submit to AART a certificate of professional competence (SPK) in international transport. The Ministry of Education and AART jointly approve courses.

The only approved SPK-course is given at the Training Centre (UNTS SPKAT) attached to the Tashkent Road Construction Institute (TADI). For access to this two-week training course it is necessary to show knowledge acquired from 2-3 years of education at a special school for management of transportation or 3-5 years of management experience in a transport company.

The examination is a test containing 50 questions. Those persons capable of answering 40 or more questions correctly in one hour and 15 minutes will pass the exam and receive the certificate. Those not capable of doing so are entitled to one re-examination. The Uzbek CPC is based on EU requirements and was developed with the assistance of a previous TACIS project.

One of the aims of this project is to provide a pilot training course and training materials so that experts in the participating countries may receive instruction in the content and presentation of a CPC (Certificate of Professional Competence) course. The present Uzbek SPK course will be updated as part of this process.

12.6 Issue of Licence or Rejection of Application

A decision on whether or not to issue a licence must be made not later than 10 days after the properly registered documents are received. In practice however this period can become somewhat longer due to the fact that the Cabinet of Ministers Committee only has a meeting on this subject once a month.

Rejection of the application for an Operator Licence can take place on the following grounds:

- the vehicle fleet is not in conformity with ecological norms or the requirements for safe transportation or type of activity
- the submitted documents contain faulty information
- an applicant has been convicted for unfair competition in activities concerning licensing
- any other grounds provided for in legislation

12.7 Suspension, revocation or curtailment of the licence

Revocation of a licence by the Committee can take place on the following grounds:

- upon the request of a licensee
- if it is discovered that documents submitted to obtain a licence contained false information
- if a transport company does not perform the activity specified by the licence
- In other cases provided by the legislation of the Republic of Uzbekistan.

Before doing so, the Committee will give the company in question instructions to eliminate the violation. Should it fail to do so within 30 days after the instructions are received, the Committee will withdraw the licence and specify a period within which the company has to stop its activity. The law does not provide a procedure for suspending a licence for the road transport of goods.

If a licence is revoked, the licensee has the right to appeal to a court within 30 days after the copy of the decision is received.

Licences and licence cards must be returned to ARRT within 10 days of receiving the decision of the Committee.

12.8 Other aspects of vehicle operation relevant in the context of development of a CPC exam and training centres

The CPC course gives basic training in company and business law, accountancy, taxation, contract and liability, operator licensing, driver licensing, the transport of dangerous goods and the technical condition of vehicles. The present situation in Uzbekistan in relation to some of these is briefly considered below.

12.8.1 Enforcement of Technical standards

Elements of an EU monitoring system are in place, such as roadside checks, some environmental controls and annual testing. There is also some co-operation between various enforcement agencies.

The State Automobile Inspection (GAI) of the Ministry of Internal Affairs. conducts inspections of trucks and buses on the basis of the rules agreed for CIS countries in GOST 25478-91. Unfortunately tests do not presently meet the GOST standard 25478-91, due to the absence of modern diagnostic equipment.

In the Republican division of GAI there is a special department on ecological safety of vehicles equipped with mobile diagnostic stations for a control of vehicle emission toxicity.- gas analysers for a control of petrol vehicles, and smoke density indicators for a control of diesel vehicles. Also many Traffic Police Stations on highways are equipped with this equipment. Officials of this Service have power to fine drivers if they breach ecological standards and to withdraw their driving licence until faults are put right.

12.8.2 Drivers Hours of work and rest, tachographs

Uzbekistan resolved to accede to the AETR agreement for international journeys on August 1998 by Decree of Oliy Majlis and is said to have become a contracting party on 20.4.99.

About 750 modern articulated trucks such as Mercedes-Benz 1935, 1838 and other types of European trucks are used for international cargo transportation to the European countries. These vehicles are equipped with tachographs, which are successfully used. Iran and Turkey do not require installation of tachographs. Uzbekistan and Russia signed an Agreement on reciprocal recognition up to year 2001 of Drivers Personal Record Books for vehicles on which tachographs are not installed. “Uzavtotrans” is currently investigating the possibility of equipping MAZ and KamAZ articulated trucks with EU recommended certified tachographs so that drivers of such vehicles can use tachographs instead of Record Books.

There is, however, no restriction of drivers hours of driving and rest in the EU sense of the term for national journeys though labour laws do contain restrictions on working time. There is no requirement for written records. It will be advisable to implement EU type laws governing driving time, rest time and the recording of hours of work for national as well as international work.

CPC training will begin to deal with the problem as the EU directive requires that the course covers drivers’ hours of work and records but legislation will also be required.

12.8.3 Driver licensing

GAI issues driving licenses.

Driving licences meet the requirements of the Vienna Convention on Road Traffic 1968 and its annexes.

Driving tuition is conducted by schools of motoring which have been authorised to operate by GAI.

Examinations for driving licences of all categories are taken in specialised Republican, Regional and District examination centres of GAI. They usually serve 3-4 regions of the Republic. There is one such GAI Examination Centre in the city of Tashkent. In such centres examinations are conducted by GAI officers.

12.8.4 Motor Vehicle Insurance

According to the Law on Insurance of 06.05.93, state insurance companies have a right to implement obligatory insurance. “Uzbekinvest” insurance company provides cargo insurance, vehicle insurance, health insurance of drivers, and from 01.10.99 they started to offer Green Card insurance.

It is not clear to what extent third party insurance is presently effective. There is no identifiable law making it compulsory.

12.8.5 Domestic Carriage of Dangerous Goods

Order 181 of 23-09-1985 on Dangerous Goods of the USSR Ministry of Internal Affairs is still in force in Uzbekistan. This Order has been implemented in the Instruction on Safety of Hazardous Goods by Road Transport for which the AART is the responsible agency.

A certificate for a vehicle to transport hazardous goods is issued by divisions of GAI after technical inspection of the vehicle. Special divisions of GAI supervise hazardous goods transport and have powers of enforcement during such transport.

Consignors or consignees must get a permit from a local Traffic Police Authority for transportation of “specially hazardous goods” by road transport by submitting an application specifying chemical name, weight, route, persons responsible for transportation, and/or persons guarding cargo.

A permit may be issued for one or for a number of identical transports being carried on a stated route, over a 6 month term.

Permits for carriage of radioactive substances are issued by Gosatomnadzor.

12.6 ADR

Uzbekistan is not a party to the ADR Agreement. However, the parliament of Uzbekistan is said to be working on the preparation of a resolution for adherence to the ADR agreement.

12.7 TIR and international transit

Uzbekistan has been a contracting party to the TIR Convention since March 1996 and has been issuing carnets since December 1996.

The responsibility for implementation and supervision of regulations, and adherence to terms of issue of TIR Carnets lies with the Customs Committee of RU and the Association of International Road Carriers of Republic of Uzbekistan (AIRC RU), established in 1993. AIRC RU is a member of IRU. There are 12 specialists in the AIRC RU.

Drivers who take trucks abroad are required to undergo an additional training programme which includes acquaintance with TIR, CMR Conventions, customs procedures, drivers’ work schedule during international transportation, tachographs, international highways, border crossings and other issues.

12.8 CMR

Uzbekistan is a contracting party to the CMR Convention. Not all carriers or their customers are aware yet that there are much higher liabilities for loss of cargo under CMR than is the case with national transport operations.

12.9 ATP

Uzbekistan resolved to accede to the ATP Agreement by a Resolution of Parliament dated 24.12.98. It will be necessary to establish a certification and testing centre for testing and regular inspections of isothermal vehicles, refrigerators, and heated vehicles in accordance with the requirements set in the ATP Agreement.

The responsibility for making implementing regulations is placed on the Uzbek Agency of Road and River Transport. It has not yet been decided which organisation will control the inspection of special equipment on vehicles designed for transportation of perishable goods.

13. Conclusions

13.1 Similarities between the situation of the different TRACECA countries

Set against the criteria for operator licensing (accession to the profession) set out in the chapter on existing European Union law, none of the countries surveyed have legislation which is fully compatible with EU standards. Most, however, have made some progress in moving towards a qualitative system of licensing. This will be further improved by the development of an international CPC course to ensure professional competence of managers, which will be the main outcome of this project.

In the course of research carried out with counterparts a number of trends emerged:

- Much of the existing legislation is still based on statutes of the former USSR, which were themselves seeking to establish a certain degree of harmonisation with international standards, particularly as embodied in UN Conventions and Agreements.
- The CIS is active in the harmonisation of standards, particularly in the area of vehicle technical standards, taking into consideration the present state of physical infrastructure and equipment in the region. It would be advantageous to co-operate closely with those involved in this work. CIS committees seem to be aware of relevant EU regulations and some useful comparisons are set out later in this chapter.
- Counterparts have been beneficiaries of previous projects which recommended the adoption of EU standards of good repute, financial standing and professional competence for access to the profession. Counterparts were provided with model drafts to incorporate such legislation but the consultant found little evidence that these had been taken forward even though local drafts are understood to have been submitted to Parliaments. The consultant would appreciate some feed-back on the reasons why such legislation is not already more further advanced. If there are political impediments to implementation, the consultant would be pleased to assist counterparts in overcoming any lack of understanding which may exist as to the benefits which could flow from adoption of qualitative licensing along similar lines to present EU legislation. To that end, the reasons for the requirements applied in the EU are discussed later in this chapter with some concrete examples.
- In some instances counterparts are working with out of date texts of the ADR Agreement. It is vital that once ADR is implemented, counterparts should only work with the latest edition. Steps will need to be taken at governmental level to ensure that sufficient copies of the text are regularly replaced. The ADR agreement is reviewed and updated every two years, the last update being in 1999. The updating procedure follows after the two yearly updating of the United Nations Orange Book – an international set of guidance notes upon which most

dangerous goods laws (including ADR) are based. It is dangerous to rely upon out of date texts, for the following reasons: -

- A substance may be reclassified – for example the status of diesel fuel, which has a flash point above the level which is the normal threshold of regulation, has been changed several times. It is currently regulated by ADR.
- The limited quantity thresholds can and do change, for example following the review of an accident or the receipt of new scientific data
- New items or substances may be added to the regulations – for example the widespread use in Europe of car safety airbags (which are activated by a small explosive charge, too insignificant to be regulated as an explosive substance) has led to their inclusion in class 9 – miscellaneous substances

13.2 Reasons why EU standards for Accession to the Profession are based on qualitative criteria: Suggestions for application in the TRACECA countries

The principal reason for qualitative licensing in the EU is to help to reduce the cost of accidents on human life and the economy, based on the premise that an operator of good repute, with adequate financial standing and professionally competent managers and drivers is less likely to have vehicles causing safety hazards than one who does not. A truck has the potential to cause serious injury or death in a road traffic accident. The risk of such an accident will be increased significantly if the truck is not properly maintained, if it is overloaded or it is driven by an inappropriately qualified driver. Many of the costs of accidents are direct and quantifiable. The British Royal Society for the Prevention of Accidents supplied research data published in 1994 concerning the average cost per road accident. The figures are reproduced below. All figures quoted in USD \$.

Lost output = average lost GDP to economy from non availability of worker

Human cost = average lost wages to worker

1) Fatality

Lost output	488 496
Medical cost	6560
Human cost	954 656
Police cost	1632
Insurance admin	256
Property cost	9408
Total cost	1 461 024

2) Severe accident (e.g. disablement)

Lost output	21856
Medical cost	13104
Human cost	133248
Police cost	224
Insurance cost	160
Property cost	4336
Total cost	172 928

3) Minor injury

Medical cost	1072
Human cost	10736
Police cost	48
Insurance cost	96
Property cost	2544
Total cost	17008

4) Damage only

Medical cost	0
Human cost	0
Police cost	3.2
Insurance cost	48
Property cost	1632
Total cost	1680

Though a relatively small proportion of those losses can be attributed to goods vehicles, their larger size and weight means that if they are involved in an accident, the consequences will be many times more severe. Where health care is funded by the state, costs are met through the diversion of Government resources from other important projects, such as Education, Defence and routine health care provision. Where the costs of health care are met by insurance policies, the cost is recovered in increased premiums from other policy holders. While in absolute terms the cost of accidents will be lower in TRACECA countries, the relative costs to the economies of those countries are likely to be similar.

13.2.1 Good repute

Good repute is required in the EU to ensure that operators who regularly operate vehicles in an unsafe way, or operators who fail properly to control their drivers, are prevented from operating vehicles. In the case of a first or minor offence, the operator may be given a written warning. If the violation is repeated or is more serious, the licence may be suspended or the number of vehicles allowed by the licence may be reduced. Convictions for serious or repeated violations can lead to the suspension or withdrawal of the licence.

The list of violations which may be taken into account can include safety related traffic offences (e.g. bad speeding, overloading, using a mechanically defective vehicle on the public road, tachograph / drivers hours and rest violations and vehicle related tax evasion). The licensing authority can also take into account violations which indicate that the operator is dishonest or that he is likely to pose a risk to other road users and passengers / consignors.

In some Eastern European countries, such as Romania and Bulgaria, the applicant must apply to the criminal court for a certificate stating that he has never, or not recently, been convicted of a criminal offence. This could be applied in the TRACECA countries thus avoiding the need for the licensing department to spend time and money making enquiries. It would also dissuade dishonest applicants from applying in the hope that inadequate checks will be made.

A record of offences and penalties should be passed to the licensing authority so that it may be taken into account in deciding whether to renew a licence, or whether to bring disciplinary proceedings during its period of validity. TRACECA countries might consider following the recent UK initiative: A number of official bodies have combined their information about goods vehicle operators to form a joint computer database for enforcement purposes. The information includes operator licence details, information concerning disciplinary processes by the Licensing Authority, the pass rate of vehicles at annual test, criminal convictions and the number of 'prohibition notices' (i.e. orders prohibiting the movement of an unsafe vehicle) which have been served on the operator. Traffic penalties should become a way of encouraging law abiding behaviour, not merely an opportunity to earn revenue.

13.2.2 Financial standing

European law requires holders of a hire or reward licence to demonstrate that they have a minimum level of assets (currently about \$2000 per vehicle operated). The reasons for this requirement are so that the licensing authority may be satisfied that:-

- the operator will be able to afford to operate a programme of preventative maintenance and will be able to repair safety related defects promptly. It is no use requiring the driver or operator to note and report mechanical defects if there is no money to pay for parts or for an engineer to repair the vehicle.
- there are sufficient funds to pay the drivers and to meet the vehicle's running costs in the short term. A transport enterprise which has insufficient financial resources will not be able to afford to maintain its trucks properly, creating a possible danger to road safety.
- the operator will be able to pay other creditors (such as equipment suppliers) and will be able to continue to trade (i.e. successfully complete the delivery of other peoples' goods consigned to him) in the short term. A business which is technically insolvent and does not pay its private debts competes unfairly with one

that does. Non payment of bills indicates a risk that the operator will not account for all his debts, and this in turn increases the risk of tax evasion.

13.2.3 Professional competence

The importance of professional competence is already well recognised in most TRACECA countries with some sort of training required to engage in international transport operations. It will be important to ensure that uniform standards apply in the new International CPC to be set in the various countries and to guarantee the impartiality of the examination process.

To this effect it is recommended that examination questions should be set by a body completely independent from the training providers. Examinations could be conducted on the training provider's premises, but with an impartial referee present, such as an inspector appointed by the examination body, to ensure that the examinations are conducted properly. The examination body could be an existing reputable organisation, such as a University or Institute.

The consultant is concerned to avoid peaks and troughs in demand for training services. If a requirement to hold a particular qualification or qualifications is introduced universally in one year, there will be a huge demand, followed by a slump in demand once the existing managers have all received the training. There will then be another peak when any deadline for refresher training is reached. This would make it very difficult for training centres to pay their staff and meet their costs.

It is suggested that new training requirements could be introduced progressively, for example requiring that the qualification be held by newly qualified staff by the end of year 1 and by all international operators by the end of year 4.

13.3 Former USSR Statutes still in force and proposals for transition

A number of former USSR statutes remain in force in some countries in relation to social and safety issues such as:

- Regulations on Drivers' Working Hours and Rest Time ratified by the USSR Council of Ministers State Commission on Labour and Social Security, 16-8-77 No 255/16
- Order 181 of 23-09-85 on Dangerous Goods

In relation to vehicle technical standards some former USSR statutes are also still in force or are being replaced by CIS standards (see below). The age of the vehicle- park will not allow EU standards concerning weights and dimensions, emissions or other technical parameters to be retrospectively implemented for all vehicles in the immediate future.

Some former Soviet Bloc countries, such as Romania, have adopted a policy of requiring EU standards for vehicles imported on or after a certain date, thus preventing the import of ageing vehicles which produce high levels of pollution.

This would allow a phased improvement of the vehicle-park with dates to be set in the future, taking account of the performance of individual economies, by which all remaining non-compliant vehicles must be replaced.

The following immediate key improvements are recommended:-

- Installation of new technology at all test stations
- More detailed road side checks
- Requirement that operators should have a maintenance plan / schedule for vehicles and keep records to show that they observe it.

13.4 Comparison of EU/CIS standards for road transport

13.4.1 Dimensions and weight parameters of motor vehicles in CIS Countries

1 Length

Type of motor transport

Maximum allowable value, m

Single truck	12,0
Tractor and trailer or tractor and one trailer	20,0
Tractor and trailer with 2 trailers or semi-trailer and trailer	24,0

2 Height

For all categories of motor transport 4,0

3 Width

For all categories of motor transport 2,5
 For refrigerator motor transport 2,6

Maximum allowable loads on motor transport axles

Distance between adjacent axles	Axle load, kH	
	A group	B group
2,5 m and more	100	60
Above 1,39 up to 2,5	90	55
Above 1,25 up to 1,39	80	50
From 1,0 up to 1,25	70	45

Maximum allowable vehicle mass

Type of motor transport	Axle load, kH	
	A group	B group
Single truck		
Bi-axle	17,5	10,5
Tri-axle	25,0	15,0
<i>Tractor with semi-trailer:</i>		
Triaxle	28,0	16,0
Four-axle	33,0	20,0
Five-axle	40,0	30,0
Six-axle	52,0	34,0
<i>Tractor with trailer</i>	40,0	30,0

TECHNICAL REGULATIONS THAT REQUIRE HARMONIZATION WITH INTERNATIONAL STANDARDS

#	Regulations applied in some Traceca countries including the Republic of Uzbekistan	International Regulations
1.	Requirements for the certification of vehicles - approval of vehicle type (in Russian Federation (RF) since 1998 there was a change for Rules of UN EEC + National requirements. Central Asian and Caucasian countries don't have strict system of certification and normative requirements for vehicles)	Rules of UN EEC + National requirements
2.	Requirement of safety of vehicle in operation GOST 25478-91	Rules of UN EEC EU Directives 92/54 EU Directives 96/96
3.	Rules of control of vehicle technical conditions against terms of safety (partly represented in GOST 25478-91)	EU Directives 92/54 EU Directives 96/96
4.	External noise – GOST 27435	Rule # 51 UN EEC; EU 81/334, EU94/424
5.	Weight and geometrical parameters of vehicles for international transportation (GOST 9314-59 was annulled in 1975. CIS Intergovernmental Economic Committee is elaborating an “Agreement on Weights and Dimensions of Vehicles Implementing International Transportation in CIS countries”)	EU 85/360, 15/218, 89/338, 89/460, 89/461, 91/60, 96/53
6.	Vehicle pollutant emissions Petrol engines – GOST 17.2.2.03 Diesel engines – GOST 21393	Rule #24, #49, #83 UN EEC; EC 88/77, Euro-1, Euro-2

7.	Heavy bulk cargo transportation rules of 1977	Unification within CIS
8.	Rules of international road transportation of hazard goods (in the Russian Federation new rules have been adopted. These are “Rules” of 1996 harmonized with ADR, not yet adopted in most other CIS states which continue with rules dated 1985)	European Agreement ADR
9.	Drivers work and rest regime Some but not all TRACECA states have adopted AETR. Others continue with USSR 1977 rules.	AETR Agreement
10.	Requirements for barriers, preventing noise on highways	European Regs

On July, 4th, 1999 the Intergovernmental Agreement on Weight and Dimensions of Road Vehicles for CIS Traffic was signed. The Agreement will enter into force as soon as the three notices regarding implementation have been deposited by the signatories with the depository.

ACCESS TO THE PROFESSION AND OPERATOR LICENSING

Council directive 96/26/EC of 29 April 1996, including amendments

The National Legal Framework for the Access to the Profession

In what legislation is the access to the occupation of road haulage operator and road passenger transport operator for undertakings, regulated?

What are the names of the regulations (parliamentary laws and bylaws), including reference numbers and dates of enactment and publication?

Can you provide a translated copy of the regulations or, if this is not available, a translation of the key provisions?

The Responsible Bodies for the Implementation

What is the final responsible authority for the access to the profession?

What is the responsible authority for the policy development and law making in relation to the regime on the access to the profession?

What is the responsible authority for the enforcement and control of the regime on the access to the profession?

How is the enforcement organised, what are the legal powers of the enforcing authority (including penalties) and how many personnel are involved in this work?

The Scope of the Regulations on Access to the Profession

What is the scope of the regulations on access to the profession (e.g. nature of goods and passengers, distances involved, maximum weight or number of passengers, national and international, non-commercial and commercial, minor impact on the transport market, etc.) and what are the specific exemptions?

In the context of question 1, what is the national legal definition of;

- a. The occupation of road haulage operator?
- b. The occupation of road passenger transport operator?
- c. Undertaking?

The Conditions that have to be fulfilled

What conditions have to be fulfilled by an undertaking wishing to engage in the occupation of road transport operator?

Who should fulfil these conditions (undertaking and/or natural persons)?

If something like “good repute” is a condition that should be fulfilled

If something like “appropriate financial standing” is a condition that should be fulfilled

If something like “professional competence” is a condition that should be fulfilled

What skills and knowledge on specific subjects should be possessed to gain professional competence (indicate whether a difference for national and international transport operation exists, and if so please describe it). What preparatory training is required?

How can these skills and knowledge be obtained and which organisations and institutes are responsible for the training?

How can you become authorised to provide the training for the professional competence and issue the certificate of professional competence (please add a copy of a certificate)?

How is the quality of the training monitored and which is the responsible authority?

What practical experience and which advanced diplomas may be taken into account? To what extent can the professional experience be satisfied by this means?

What is the level of training acquired after receiving the certificate of professional competence?

How is the professional competence tested and examined and which is the responsible authority?

For all other conditions that should be fulfilled

What are the circumstances under which an undertaking may be operated while not satisfying certain conditions and what are the terms for continuation?

Which authorities check and ensure that undertakings still fulfil the above mentioned requirements and how does this take place and how often?

The Application for the Authorisation/Licence, Rejection, Withdrawal and Suspension Procedures

Which organisation decides on the application for the access to the profession?

What is the application procedure and what should be submitted?

How and on what grounds does a rejection of the application for admission to the occupation of road transport operator take place?

What organisation withdraws the authorisation to pursue the occupation of road transport operator and on what grounds may this withdrawal take place?

What organisation suspends the authorisation to pursue the occupation of road transport operator and on what grounds may this suspension take place?

How can the undertaking defend their interests in case of the above mentioned rejection, withdrawal and suspension?

If any, what exchange of information on offences committed by non-resident undertakings that might lead to withdrawal of the above-mentioned authorisation is taking place, with what states?

If exchange of information takes place, what type of data is exchanged?

The Authorisation/License

What is the duration of the authorisation/license?

If they are, how are the activities that may be undertaken with the authorisation/licence limited (e.g. type of activities, number of vehicles, total tonnage)?

To what extent does the authorisation/license give the undertaking access to the transport markets (e.g. national, international, type of goods, and passengers)?

How does the driver of the vehicle prove the undertaking he is working for possesses the necessary authorisation/licence?

Weight and Dimensions of Vehicles and Loads

Council directive 96/53/EC of 25 July 1996 laying down the maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic for certain road vehicles circulating within the Community.

In what legislation is the weight and dimensions of vehicles and loads regulated?

Vehicle Condition, Fitness and Maintenance

Council Directive 96/96/EC of 20 December 1996 on the approximation of the laws of the Member States relating to roadworthiness tests for motor vehicles and their trailers.

In what legislation is the vehicle condition, fitness and maintenance regulated?

What are the names of the regulations (parliamentary laws and bylaws), including reference numbers and dates of enactment and publication?

Have the relevant international standards been fully implemented in national law (see screening information)?

What are the areas of outstanding action required, to meet the international standards?

What is the final responsible Ministry and what is the responsible authority for the enforcement and control of the regulations in this area, how is the enforcement organised, what are the legal powers of the enforcing authority (including penalties) and how many people are involved with this task?

Drivers Hours and Records

Council Regulation No 3820/85 on the harmonisation of certain social legislation relating to road transport and Council Regulation 3821/85 on recording equipment in road transport.

In what legislation are the drivers' hours and records regulated?

What are the names of the regulations (parliamentary laws and bylaws), including reference numbers and dates of enactment and publication?

Have the relevant international standards been fully implemented in national law (see screening information)?

What are the areas of outstanding action required, to meet the international standards?

What is the final responsible Ministry and what is the responsible authority for the enforcement and control of the regulations in this area, how is the enforcement organised, what are the legal powers of the enforcing authority (including penalties) and how many people are involved with this task?

Driving Licenses and Training

Council Directive 91/439/EC of 29 July 1991 on driving licenses and Council Directive 76/914/EC on the minimum level of training for some road transport drivers

In what legislation is the driving license regulated?

What are the names of the regulations (parliamentary laws and bylaws), including reference numbers and dates of enactment and publication?

Have the relevant international standards been fully implemented in national law (see screening information)?

What are the areas of outstanding action required, to meet the international standards?

What is the final responsible Ministry and what is the responsible authority for the enforcement and control of the regulations in this area. How is the enforcement organised, what are the legal powers of the enforcing authority (including penalties) and how many people are involved with this task?

Speed Limits and Speed Limiters

Vienna Convention on Road Traffic and Council Directive 92/6/EC on the installation and use of speed limitation devices for certain categories of motor vehicles in the community

In what legislation are the speed limits and speed limiters regulated?

Insurance

Council Directive 72/166/EC of 24 April 1972 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and to the enforcement of the obligation to insure against such liability and Council Directive 90/618/EC of 8 November 1990 on vehicle liability insurance

In what legislation is the third party insurance regulated?

Vehicle Marking and Lighting

Vienna Convention on Road Traffic

In what legislation is the vehicle marking and lighting regulated?

What are the names of the regulations (parliamentary laws and bylaws), including reference numbers and dates of enactment and publication?

Have the relevant international standards been fully implemented in national law?

What are the areas of outstanding action required, to meet the international standards?

What is the final responsible Ministry and what is the responsible authority for the enforcement and control of the regulations in this area, how is the enforcement organised, what are the legal powers of the enforcing authority (including penalties) and how many people are involved with this task)?

International Conventions

of International Convention on the Contract for the International Carriage of Goods by Road 1956 (CMR)

In what legislation is the CMR incorporated?

Agreement on Carriage of Perishable Goods by Road 1970 (ATP)

In what legislation is the ATP Incorporated?

Customs Convention on the International Transport of Goods under cover of TIR Carnets 1975 (TIR)

In what legislation is the TIR incorporated?

What are the names of the regulations (parliamentary laws and bylaws), including reference numbers and dates of enactment and publication?

Have the relevant international standards been fully implemented in national law?

What are the areas of outstanding action required, to meet the international standards?

What is the final responsible Ministry and what is the responsible authority for the enforcement and control of the regulations in this area, how is the enforcement organised, what are the legal powers of the enforcing authority (including penalties) and how many people are involved with this task?

European Agreement concerning the International Carriage of Dangerous Goods by Road 1957 (ADR)

Including Council Directive 74/55/EC on the approximation of the laws of the Member States with regard to the transport of dangerous goods by road, including amendments and Council Directive 95/35/EC of 3 June 1996 on the appointment and vocational qualification of safety advisers for the transport of dangerous goods by road, rail and inland waterway

In what legislation is the ADR incorporated?

Environmental Issues

Council Directive 92/97/EC amending Council Directive 70/157/EC on the approximation of the laws of the Member States relating to permissible sound level and the exhaust system of motor vehicles and Council Directive 88/77/EC on the approximation of the laws of the Member States relating to the

measures to be taken against the emission of gaseous pollutants from diesel engines for use in vehicles, including amendments

In what legislation are the engine standards in relation to air pollution and noise emissions regulated?

What are the names of the regulations (parliamentary laws and bylaws), including reference numbers and dates of enactment and publication?

Have the relevant international standards been fully implemented in national law (see screening information)?

What are the areas of outstanding action required, to meet the international standards?

What is the final responsible Ministry and what is the responsible authority for the enforcement and control of the regulations in this area, how is the enforcement organised, what are the legal powers of the enforcing authority (including penalties) and how many people are involved with this task?

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