



TRACECA: International Road
Transport Transit Facilitation

Legal Blueprint

Access to the Profession of
Road Haulier

January 2001



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Part A Executive Summary

The Legal Report, published in May 2000, shows that the scope of the regulatory framework in TRACECA States often does not match the scope of the EU legislation regarding access to the profession of road haulier. In those cases where the scope of application of the domestic legislation does not match with minimum EU requirements the Consultant recommends changes to the law. In some cases a part or all of the law is in place so that all that is required is the full implementation of the law or decree to meet the requirements.

For own account transport, where a licence is not presently required, it is recommended to introduce a special operator's licence in order to be able to prevent own account operators providing services for financial reward without the correct licence, thereby creating unfair advantage.

Good Repute

Most of the TRACECA states do not have any kind of Good Repute system in place. It is advisable to align the system with latest requirements on the basis of Council Directive 98/76.

It is important that the fulfilment of this obligation is not limited to a single moment in time such as the processing of a letter of 'good behaviour' or something similar, when an application for a licence is made. The good repute requirement should be linked to actual behaviour of operators and their drivers during the validity period of the licence. Failure to maintain the required standards should result in sanctions being taken.

Emphasis has therefore been placed in presenting systems that will implement good repute as an ongoing issue.

Financial Standing

Although some TRACECA States make an attempt to establish a minimum financial requirement, the level is considered to be too low to provide proof of adequate funds being available to ensure proper financial responsibility and to maintain vehicles in a safe condition. The level of financial standing required under EU legislation should be seen to be a target at this time to be worked towards. Implementation now would be unrealistic.

It is also crucial that for the actual check of the financial requirement, an independent third party unconnected with the carrier (bank, insurance company or accountant) is involved, otherwise the system will not be convincing.

Professional Competence

Most TRACECA States have agreed to introduce the latest International CPC examination rules to meet the requirements of Council Directive 98/76/EC.

For some States it was important to advise a shift from a system mainly based upon experience towards a system of examinations that are managed to European standards and not subject to financial inducement to achieve a pass grade. The full significance of the level of knowledge required was not always appreciated until the training had been completed.

Many States have also been advised to set up an examination body, seen to be independent of those who offer courses and of the trainers who teach on the courses. This concept has been difficult to establish in an educational environment unused to such practices. Naturally this subject touches the core of this project as the aim has been to establish training that can be comparable with that delivered in any European country.

All Training managers have been given information for setting up a system of examinations and have been advised on the generally accepted rules of tasks and requirements for any examination body. CPC courses are now being offered by a range of training institutes that are (in principle) in a competitive market.

Although the project established a model training centre in each State, other training centres are now being discussed, and in some States are operational. By linking the model training centres with the IRU Academy in Geneva (through the National Road Carriers Association) it is anticipated that the examination standards that are now being set will establish a standard that other training providers will have to match. This will help to regulate the level of knowledge and understanding that all participants must reach to achieve a pass mark.

Rejection, Withdrawal and Offences

TRACECA States are aware of the need to introduce a system for professional competence in International and National operations and also to have procedures for rejection, withdrawal and for dealing with offences, in order to provide effective control and improve safety.

Mutual Recognition of Diplomas, certificates and other evidence of formal qualification

Once the training is fully established and the standards are seen to be maintained each State will need to insert explicit provisions in the legislation concerning the mutual recognition of certificates.

Conclusions

The awareness of the EU rules on access to the profession and the need to revise the domestic legislation (in some cases) is clearly understood. In most TRACECA States, the revision of the legislation to encompass any changes needed is progressing, based on the advice given.

The key features of improving access to the profession are:

- Good repute - establish and manage **what happens in practice** after the licence is issued.
- Financial Standing – increase the minimum level of funds for operating International and Domestic Transport and involve third parties in the application procedure.
- Examination – establish independent examination bodies, based on an examination system through approved, quality course providers.

Part B Introduction to all countries

This Blueprint is a focussed guide for each country on how it could work towards the implementation of a rational approach to Operator Licencing and Access to the Profession of Road Haulier. The detail was initially gathered from information provided in the Legal Questionnaires that were distributed in October 1999. In response to the detail obtained the Consultant's legal specialists discussed the information obtained with legal representatives of each country. The outcome of these discussions was the Legal Report, published in both English and Russian in May 2000.

This Blueprint Report contains the Consultant's assessment and recommendations for improvements to the present system (based on European precedents) which could be the basis of amendments to the local legislation, as required, when ministerial and parliamentary time permits.

To help operators comply with the law and the requirements of their licences, we recommend that the Ministry of Transport, or the equivalent body in each country, should publish for the benefit of Traders, Freight Forwarders, Road Hauliers, Shippers and Cargo Agents, practical guides on:

- Maintaining vehicles in a roadworthy condition
- Safety of loads on or in vehicles
- Complying with drivers' hours rules
- Taking your vehicle abroad
- International Conventions by road
- Domestic legislation by road
- Signed Bilateral or Multilateral agreements relevant to road transport

Such publication production (for a small fee to cover production costs) could be delegated to National Road Carriers Associations, Freight Forwarding Associations and other agreed regulatory bodies.

Part C Country reports

1. ARMENIA

1.1 Introduction

Special focus of attention is given to Decree 116-0003 of 17th April 1997 on road transport licensing.

1.2 Applicability of Operator Licensing in Armenia

1.2.1 Whether Operator Licensing applies to International and National operations

Operator Licensing applies both to National and International operations and is to a certain extent compatible with the EU licensing system. We recommend that it should be more closely aligned with **actual** EU standards particularly by introducing separate National and International licences with appropriately differentiated entry standards.

1.2.2 Whether Operator Licensing applies to hire and reward only or also to own account

The system of operator licencing in Armenia applies only to hire and reward operations (companies that offer a transport service for any other company [third party], in return for payment). Although this is compatible with the EU system, the own account (companies that only provide for their own transport requirements) sector accounts for much of the heavy traffic on the roads in Armenia. It should therefore be regulated, unless the Ministry of Transport (MOT) is satisfied that it can adequately supervise own account transport operations through other parts of the enforcement system such as vehicle testing, and criminal sanctions against overloading, speeding and excessive drivers' hours.

In the UK, own account operators are subject to licensing with a separate category of licence. This is done so that it allows the state to know how many vehicles are used by the own account sector and for what purpose. It can then more easily check that companies found carrying goods for third parties are not abusing the own account exemption. If the present exemption were to continue, we would strongly recommend that there should be severe penalties for any own account operator who is found to be carrying goods for hire and reward, without an operators' licence.

In financial terms it makes sense for all vehicles to be used in the most efficient manner. We therefore suggest that MOT should encourage own account operators in appropriate business sectors to widen their activities in a legitimate way by applying for licences that would enable

them to carry goods for other businesses. In this way, road transport would become a secondary, but profitable, activity for them. They could then seek to carry goods on their return journeys rather than travelling empty. Such backloading may be particularly important in rural areas where the total supply of transport is presently inadequate and on major trunk routes.

1.2.3 Whether exemptions exist for vehicles under 3.5 tonnes gross and certain passenger vehicles

There are currently no exemptions for goods vehicles under 3.5 tonnes maximum gross weight. In the view of the Consultant this is a lost opportunity to simplify the process and we would recommend that such an exemption should be introduced for the following reasons:

- Vehicles under 3.5 tonnes are small and represent no more danger in their operation to other road users or to the public than private cars
- Vehicles under 3.5 tonnes gross require maintenance procedures that are no more complicated than for private cars
- Such vehicles are found in large numbers and subjecting them to operator licensing creates considerable extra costs for government in terms of administration and enforcement, for very marginal benefits in terms of safety or income
- The cost for operators to comply with the regulations is high, in relation to the business they do, and can act as an impediment to the development of a new business
- It would release more time for the regulatory authorities to focus on goods vehicles over 3.5 tonnes to ensure their compliance with the law

If such an exemption is put in place, a decision would be needed as to whether the weight of any trailer towed by the vehicle should be taken into account in calculating the maximum gross weight. We suggest that a trailer with an **unladen** weight of up to one tonne could be disregarded. There would be few safety repercussions.

For passenger vehicles we recommend that the exemption from Operator Licensing found in the EU for vehicles constructed and equipped to carry no more than 9 persons, including the driver, would be suitable in Armenia. Again this would reduce the administrative burden facing both the state and operators without having any significant safety repercussions.

1.2.4 Whether exemptions exist for specific vehicle types

There are no exemptions reported from Operator Licensing for certain types of vehicles. We would suggest that exemptions could be introduced for vehicles that either cover only short distances on public roads or are in the hands of specialist state agencies. These exemptions could include:

- agricultural machines
- police, fire, ambulance and military vehicles

- road construction, maintenance and cleaning and snow clearing vehicles

1.3 Preconditions for obtaining a licence

There are 3 main pre-conditions to obtaining a licence within the EU, each regarded as essential to ensure safe and reliable operations:

1. Good repute
2. Adequate financial resources-capital and reserves
3. Professional competence.

We recommend that these pre-conditions should also become the main criteria to be satisfied in obtaining a licence in Armenia, though specific conditions will need to be tailored to the local situation.

1.3.1 Good repute

According to EU Directives the requirement of Good Repute is not satisfied, or is no longer satisfied if the relevant individual in the business:

- has been convicted of serious offences including offences of a commercial nature, or
- has been declared unfit to pursue the occupation of a road transport operator under applicable rules, or
- has been convicted of serious offences against applicable rules concerning pay and employment conditions in the profession or road transport legislation particularly rules relating to:
 - drivers' driving and rest periods
 - weights and dimensions of commercial vehicles
 - road safety and vehicle safety (including maintenance)
 - protection of the environment
 - professional liability

As established in the Legal Report, Armenia does not currently examine the good repute of relevant managers or owners in this way. We recommend that the decree on licensing should be amended to introduce a requirement that the manager and/or owner of a business should not have lost good repute at the time of a first application or application to renew a licence. Also if good repute is lost during the currency of a licence there should be a requirement to nominate a specified individual or individuals to replace that person. Failure to do so should lead to suspension or revocation of the licence. It is suggested that 2 categories of defined offences should be taken into account:

- serious crimes such as fraud, violence and theft, and

- specified breaches of road traffic and transport rules such as operating a vehicle in an unroadworthy condition, without a valid test certificate, overloading a vehicle or failing to ensure that drivers respect the limits on drivers' hours

It will be necessary to ensure that the relevant enforcement agents such as GAI and criminal courts inform the MOT that relevant offences have taken place, and to establish a system for storing and acting on such information. This exchange of information would be vital for this law to be enforceable.

1.3.2 Adequate Financial Resources – Capital and Reserves

According to EU Directives, an undertaking must have available capital reserves of at least 9,000.00 EUR (approximately \$9,000.00) when only one vehicle is used and at least 5,000.00 EUR (approximately \$5,000.00) for each additional vehicle.

The competent authority will need to consider what the level should be for Armenia. Our minimum recommendation would be \$1,000.00 for the first vehicle (the present level of \$100.00 for 2 vehicles is considered to be inadequate) and \$500.00 for each subsequent vehicle. This is primarily to ensure the operator has enough money to maintain the vehicles in a safe condition.

1.3.3 Professional competence

There is currently no clear requirement for professional competence, evidenced by examination, though Decree 116 does require some evidence of professional competence to be submitted to MOT. We recommend that an International Certificate of Professional Competence examination system (**International CPC**) based on the materials and systems provided and initiated by the present project should be given legal force before the end of 2001.

A National Certificate of Competence examination system (**National CPC**) should also be introduced for holders of new National licences within 5 years. There is an urgent need to improve management and safety standards in domestic transport as this represents the majority of traffic on Armenian roads. In introducing a National CPC, guidance can be taken from EU norms, but the precise content will have to be tailored to reflect actual Armenian national transport legislation. The framework for this process is contained within this Takis TRACECA programme, International Road Transport Transit Facilitation.

We recommend that one professionally competent person should normally be employed at each centre from which vehicles are operated. This requirement might exceptionally be relaxed if the applicant for a licence could demonstrate that one professionally competent person could exercise “continuous and effective supervision” over more than one centre. This could be the case where an operator split its operations between 2 depots in the same town.

1.4 Application Procedures that need to be considered

1.4.1 Whether applications should be published or advertised.

We recommend that applications for licences should be published in an official gazette.

1.4.2 Whether there should be a right of objection by state organs/associations.

Although rights of objection exist in Europe, we are concerned that such "safeguards" could be misused and be seen as anti-competitive in the wrong hands in Armenia. We recommend that for a period of 5 years from the introduction of our recommended changes to the licensing system there should be an absolute right to a licence if quality pre-conditions are met.

Subsequently it may be appropriate to give the right to certain institutions such as Local Planning Authorities, Carriers' Associations (such as AIRCA) and GAI to object to the grant of a licence on defined public policy grounds. Such objections should not be by way of a veto.

It should always be the responsibility of the MOT to reach a final decision having considered all material factors, including any objections and replies made by the operator to those objections.

1.4.3 Whether licences should be for authorised or specified vehicles or both.

We recommend that the required number and type of vehicle(s) should be stated on the licence application. This will mean the operator can only operate up to the maximum number of vehicles **authorised** on his licence and if he wants more he will need to apply for more. The details (e.g. registration number) of each vehicle actually operated should be specified in a notice to MOT.

There should continue to be a requirement to display an individual licence disc in the windscreen specific to the particular vehicle.

Using a combination of vehicles authorised by numbers and type only on the licence itself and individually specified vehicles subsequently issued with a display disc should result in both flexibility for the operator and administrative simplicity for the MOT.

The licence itself will not need to be amended each time a vehicle is replaced but MOT will always be aware of the precise details of each vehicle which is actually operated, even if it is in the fleet for only a short time, for example if a vehicle is temporarily hired.

1.4.4 Whether there should be controls over operating centres.

Although subject to potential abuse in the wrong hands, we recommend that the bases from which vehicles operate should be approved by the MOT as suitable in practical and environmental terms for use as such.

A plan of each centre and details of how and when it will be used will therefore need to accompany each application for an operators' licence.

A centre should be defined as any place owned or occupied by the operator at which vehicles are normally kept when not in use on the road. MOT may wish to control the number, type or size of vehicles which may be kept at any centre and any other aspects of the use of the centre which are relevant (for example the storing of fuel or hazardous products at the centre).

1.4.5 The making of the decision, by whom and in what time.

We recommend that the MOT should establish within itself an autonomous division or branch to deal with the issuing of licences once the State Registration Committee has given basic approval for business registration purposes.

This division should be required to act in a quasi-judicial manner in deciding applications according to the principles established by law.

It should not be under the direct influence of the MOT or any other government organ or official. The present timescale for issue of a licence seems broadly satisfactory.

1.4.6 Whether or not conditions can be applied to licences and if so what type.

The present system seems to result in a licence application either being granted or rejected.

We recommend that it should be possible for negotiations to take place where the MOT is not satisfied with some aspect of the proposed operation. It could then grant the application in part or subject to conditions and the operator would have the choice between abandoning its application, accepting the proposed modifications, or appealing against them.

Conditions might be proposed as to the number, type or size of vehicles to be kept at a centre, the nature of the maintenance arrangements to be made for the vehicles etc.

1.4.7 The procedure for appeals from refusal.

We recommend that a specialised appellate body should be developed to hear appeals from decisions made by the MOT.

1.4.8 Duration of the licence, what information shown, type and colour of discs.

The present arrangements for a licence with a 3-5 year validity seem satisfactory, as does the system of individual licence discs.

1.4.9 Fees for licences, payable to whom and fee levels set how and by whom.

We recommend that licence fees should be set by the MOT under powers delegated by Parliament and subject to review by that body on public policy grounds. The fees should be payable to the MOT and should at least cover all the costs of administration of the entire operator licensing system including appeals.

It will therefore be necessary for an economist to review the costs of the system and propose appropriate fee levels.

By way of guidance only, relative fee levels in the UK are:

- application fee 16 units
- issue fee 25 units
- renewal fee 25 units
- fee to specify each vehicle 2.8 units per year (or pro-rata)

The unit figure in the UK is £10.00 Sterling.

1.4.10 Procedures for changed circumstances of the operator.

We recommend that a procedure be introduced to allow fairly rapid variation of a licence, subject to the same rules as apply to the issue or renewal of a licence.

An operator may obtain a large new contract that will require him to buy and operate more vehicles. Such a contract should not be jeopardised by the absence or slowness of a mechanism for amending the licence to allow such operation.

1.5 Enforcement procedures

1.5.1 Who is responsible for enforcement?

Enforcement of licensing matters is the responsibility of the MOT and the newly created Transport Inspectorate will play a key role, while GAI carry out checks on moving vehicles.

We recommend that MOT should be better informed by GAI of offences related to vehicle safety, and that this should affect the licence of the operator concerned.

1.5.2 Practical structure of the enforcement system within the MOT.

There is currently a procedure for “**revocation**” (withdrawal) of licences usually following “**temporary suspension**” of the licence but not for “**curtailment**” (cutting back on the number of vehicles). Revocation of the licence will normally lead to the failure of the business and sale of its assets with probable loss of employment of its employees.

This is a very drastic measure that will also have adverse repercussions for the state in terms of lost tax revenues from the failed business. We therefore support the temporary suspension procedure and think it could be used as an **alternative** to revocation rather than as a measure merely pending revocation.

We would consider a maximum of one month, or at most two, to be satisfactory. This would represent a severe sanction against the operator and the mere threat of suspension should have a deterrent effect. A short cessation of activities would, however, not normally be fatal to the business and could be used to put in place better systems of maintenance or supervision (for example) to remedy whatever situation led to the suspension.

We also recommend that consideration should be given to a procedure for **curtailment** of the licence. This would require the operator to reduce the number of vehicles originally permitted if there was evidence suggesting that the operator was operating beyond its current competence. This could be used as a realistic way of enforcing standards without totally destroying the business in question.

1.5.3 Definition of grounds for revocation or suspension of licences

There are already a number of grounds for revocation set out in the legislation but these are more related to breaches of administrative procedure than to relevant safety considerations concerning the operation of vehicles. We recommend that there should be some **mandatory** grounds for revocation and also **discretionary** grounds where the seriousness of the particular circumstances would be taken into account but revocation would not be automatic.

Revocation or suspension should be mandatory if:

- There is no longer a professionally competent person as required by the licence and this situation has continued for more than 12 months without a replacement being found
- The good repute of the nominated professionally competent person has been lost because of offences for which that person is responsible and no replacement has been found within 12 months of the loss of good repute
- The requisite financial standing of the company is not maintained

There should be a case to answer and the possibility of revocation, suspension or curtailment if:

- The operator has been prosecuted for using vehicles in an unroadworthy or overloaded condition or has breached rules on drivers' hours of work or undertakings given in the application on maintenance of vehicles
- The operator has used an operating centre which has not been declared to the MOT
- The application for the licence contained false information

- The operator has become bankrupt or gone into liquidation

1.5.4 The procedure for appeals

If a licence is revoked in Armenia there is a right of appeal to a court within 30 days. (It is not clear to what extent there is a right of appeal against the failure to issue a licence in the first place).

It is unlikely that many courts have regular experience of dealing with road transport licensing matters. We therefore recommend that an appellate body should be established composed of persons experienced in law and/or in road transport operations and should operate under a legally qualified chairman.

The appellate body could draw some of its members from the existing working group set up by the MOT, Customs etc but would have to operate according to judicial rules. It would develop its own case law over a period of time which should be published and would give guidance to operators and their legal representatives on licensing matters.

The right of appeal to a court from the decisions of this body would be necessary only in exceptional circumstances where it was alleged that the body had made a mistake of law rather than fact.

2. AZERBAIJAN

2.1 Introduction

Special focus of attention is given to Decrees Number 637 and Resolution Number 6 of 12th January 1998.

2.2 Applicability of Operator Licensing in Azerbaijan

2.2.1 Whether Operator Licensing applies to International and National operations

Operator Licensing applies both to National and International operations and is to a certain extent compatible with the EU licensing system but we would recommend that it should be more closely aligned with **actual** EU standards.

2.2.2 Whether Operator Licensing applies to hire and reward only or also to own account

Licensing does not apply to “own account” (companies that only provide for their own transport requirements) as opposed to “hire and reward” (companies that offer a transport service for any other company [third party], in return for payment). This is compatible with the EU system. However, the own account sector still accounts for the majority of heavy traffic on the roads in Azerbaijan and therefore should be regulated unless the Cabinet of Ministers is satisfied that it can adequately supervise these operations through other parts of the enforcement system such as vehicle testing, and criminal sanctions against overloading, speeding, excessive drivers' hours etc.

This is the case in some parts of Europe though in the UK own account operations are subject to licensing with a separate category of licence. The argument in favour of licensing would be that it allows the state to know how many vehicles are used by the own account sector and for what purpose. It can then more easily check that companies found carrying goods for third parties are not abusing the own account exemption.

Should the present exemption continue, we would strongly recommend that there should be severe penalties for any own account operator who is found to be carrying goods for another business without an operators' licence. In economic terms it makes sense for vehicles to be used in the most efficient manner.

We therefore suggest that Azerautonağliyyat (AAT) should encourage own account operators in appropriate business sectors to widen their activities in a legitimate way by applying for licences that would enable them to carry goods for other businesses. In this way, road transport would become a secondary, but profitable, activity for them. They could then seek

to carry goods on their return journeys rather than travelling empty. Such backloading may be particularly important in rural areas where the total supply of transport is presently inadequate and on major trunk routes.

2.2.3 Whether exemptions exist for vehicles under 3.5 tonnes gross and certain passenger vehicles

There are currently no exemptions for goods vehicles under 3.5 tonnes maximum gross weight. In the view of the Consultant this is a lost opportunity and we would recommend that such an exemption should be introduced for the following reasons:

- Such vehicles are small and represent no more danger in their operation than private cars
- Vehicles under 3.5 tonnes gross require maintenance procedures no more complicated than for private cars
- Such vehicle are found in large numbers and subjecting them to operator licensing creates considerable extra costs for government in terms of administration and enforcement, for very marginal benefits in terms of safety or income
- The cost for operators to comply with the regulations is high, in relation to the business they do, and can act as an impediment to the development of new business
- Regulatory authorities would have more time to concentrate on goods vehicles over 3.5 tonnes to ensure their compliance with the law

If such an exemption is put in place, a decision would be needed as to whether the weight of any trailer towed by the vehicle should be taken into account in calculating the maximum gross weight. We suggest that a trailer with an **unladen** weight of one tonne or below could be disregarded. There would be few safety repercussions.

For passenger vehicles we recommend that the exemption from Operator Licensing found in the EU for vehicles constructed and equipped to carry no more than 9 persons, including the driver, would be suitable in Azerbaijan. Again this would reduce the administrative burden facing both the state and operators without having any significant safety repercussions.

2.2.4 Whether exemptions exist for specific vehicle types

No exemptions from Operator Licensing were reported for specific types of vehicles. We would suggest that exemptions could be introduced for vehicles that either cover only short distances on public roads or are in the hands of specialist state agencies. These exemptions could include:

- agricultural machines
- police, fire, ambulance and military vehicles
- road construction, maintenance and cleaning and snow clearing vehicles

2.3 Preconditions for obtaining a licence

There are 3 main pre-conditions to obtaining a licence within the EU, each regarded as essential to ensure safe and reliable operations:

1. Good repute
2. Adequate financial resources-capital and reserves
3. Professional competence.

We recommend that these pre-conditions should also become the main criteria to be satisfied in obtaining a licence in Azerbaijan, though specific conditions will need to be tailored to the local situation.

2.3.1 Good repute

According to EU Directives the requirement of Good Repute is not satisfied, or is no longer satisfied if the relevant individual in the business:

- has been convicted of serious offences including offences of a commercial nature, or
- has been declared unfit to pursue the occupation of a road transport operator under applicable rules, or
- has been convicted of serious offences against applicable rules concerning pay and employment conditions in the profession or road transport legislation particularly rules relating to:
 - drivers' driving and rest periods
 - weights and dimensions of commercial vehicles
 - road safety and vehicle safety (including maintenance)
 - protection of the environment
 - professional liability

Azerbaijan does not currently examine the good repute of relevant managers or owners in the above manner. We recommend that the decree on licensing should be amended to introduce a requirement that the manager and/or owner of a business should not have lost good repute at the time of a first application or application to renew a licence. Also if good repute is lost during the currency of a licence there should be a requirement to nominate a specified individual or individuals to replace that person. Failure to do so should lead to suspension or revocation of the licence. It is suggested that 2 categories of defined offences should be taken into account:

- serious crimes such as fraud, violence, theft, and

- specified breaches of road traffic and transport rules such as operating a vehicle in an unroadworthy condition, without a valid test certificate, overloading a vehicle or failing to ensure that drivers respect the limits on drivers' hours.

It will be necessary to ensure that Azerautonagliyyat (AAT) is informed by relevant enforcement agents such as the Traffic Police and criminal courts of relevant offences and to establish a system for storing and acting on such information. Already the Traffic Police and AAT conduct some joint roadside checks but exchange of all relevant information would be vital for this law to be enforceable.

2.3.2 Adequate Financial Resources – Capital and Reserves

According to EU Directives, an undertaking must have available capital reserves of at least 9,000.00 EUR (approximately \$9,000.00) when only one vehicle is used and at least 5,000.00 EUR (approximately \$5,000.00) for each additional vehicle. The competent authority will need to consider what the level should be for Azerbaijan. Our minimum recommendation would be \$1,000.00 for the first vehicle and \$500.00 for each subsequent vehicle. This is to ensure the operator has enough money to maintain the vehicles in a safe condition.

2.3.3 Professional competence

There is currently no requirement for professional competence, evidenced by examination. We recommend that an International Certificate of Professional Competence examination system (**International CPC**) based on the materials and systems provided and initiated by the present project should be given legal force by the end of 2001.

A National Certificate of Competence examination system (**National CPC**) should also be introduced for holders of National licences within 5 years. There is an urgent need to improve management and safety standards in domestic transport, which represents the majority of traffic on Azery roads. In introducing a National CPC, guidance can be taken from EU norms, but the precise content will have to be tailored to reflect actual Azery national transport legislation. The framework for this process is contained within this Tacis TRACECA programme, International Road Transport Transit Facilitation.

We recommend that one professionally competent person should normally be employed at each centre from which vehicles are operated. This requirement might exceptionally be relaxed if the applicant for a licence could demonstrate that one professionally competent person could exercise continuous and effective supervision over more than one centre. This could be the case where an operator split its operations between 2 depots in the same town.

2.4 Application Procedures that need to be considered

2.4.1 Whether applications should be published or advertised.

We recommend that applications for licences should be published in an official gazette.

2.4.2 Whether there should be a right of objection by state organs/associations.

Although rights of objection exist in Europe (for example in the UK), we are concerned that such "safeguards" could be misused and be seen as anti-competitive in the wrong hands in Azerbaijan. We recommend that for a period of 5 years from the introduction of our recommended changes to the licensing system there should be an absolute right to a licence if quality pre-conditions are met. Subsequently it may be appropriate to give the right to certain institutions such as Local Planning Authorities, Carriers' Associations (such as ABADA) and the Traffic Police to object to the grant of a licence on defined public policy grounds. Such objections should not be by way of a veto. It should always be the responsibility of AAT to reach a final decision having considered all material factors, including any objections and replies made by the operator to those objections.

2.4.3 Whether licences should be for authorised or specified vehicles or both.

We recommend that the required number and type of vehicle(s) should be stated on the licence application. This will mean the operator can only operate up to the maximum number of vehicles **authorised** on his licence and if he wants more he will need to apply for more. The details (e.g. registration number) of each vehicle actually operated should be specified in a notice to AAT. There should continue to be a requirement to display an individual licence disc in the windscreen specific to the particular vehicle. Using a combination of vehicles authorised by numbers and type only on the licence itself and individually specified vehicles subsequently issued with a display disc should result in both flexibility for the operator and administrative simplicity for AAT. The licence itself will not need to be amended each time a vehicle is replaced but AAT will always be aware of the precise details of each vehicle which is actually operated, even if it is in the fleet for only a short time, for example if a vehicle is temporarily hired.

2.4.4 Whether there should be controls over operating centres.

Although subject to potential abuse in the wrong hands, we recommend that the bases from which vehicles operate should be approved by AAT as suitable in practical and environmental terms for use as such. A plan of each centre and details of how and when it will be used will therefore need to accompany each application for an operators' licence. A centre should be defined as any place owned or occupied by the operator at which vehicles are normally kept when not in use on the road. AAT may wish to control the number, type or size of vehicles which may be kept at any centre and any other aspects of the use of the centre which are relevant (for example the storing of fuel or hazardous products at the centre).

2.4.5 The making of the decision, by whom and in what time.

We recommend that AAT should establish within itself an autonomous division or branch to deal with the issuing of licences. This division should be required to act in a quasi-judicial manner in deciding applications according to the principles established by law. It should not be under the direct influence of AAT or any other government organ or official. The present timescale for issue of a licence seems broadly satisfactory.

2.4.6 Whether or not conditions can be applied to licences and if so what type.

The present system seems to result in a licence application either being granted or rejected. We would recommend that it should be possible for negotiations to take place where AAT is not satisfied with some aspect of the proposed operation. It could then grant the application in part or subject to conditions and the operator would have the choice between abandoning its application, accepting the proposed modifications, or appealing against them. Conditions might be proposed as to the number, type or size of vehicles to be kept at a centre, the nature of the maintenance arrangements to be made for the vehicles etc.

2.4.7 The procedure for appeals from refusal.

We recommend that a specialised appellate body should be developed to hear appeals from decisions made by AAT.

2.4.8 Duration of the licence, what information shown, type and colour of discs.

The present arrangements for a licence with only a 2-year validity seem unsatisfactory as it is difficult for a business to plan on the basis of an assured duration of only two years and frequent renewal is unjustifiably costly for both the State and operators. A 5-year validity for the licence would create administrative savings both for operators and the State, without significantly affecting the deterrent/supervisory impact of licence renewal requirements.

2.4.9 Fees for licences, payable to whom and fee levels set how and by whom.

We would recommend that licence fees should be set by the Cabinet of Ministers, or following creation of a unified Ministry of Transport, by the Minister of Transport under powers delegated by the legislative authority and subject to review by that body on public policy grounds. The fees should be payable to AAT and should at least cover all the costs of administration of the entire operator licensing system including appeals. It will therefore be necessary for an economist to review the costs of the system and propose appropriate fee levels.

By way of guidance only, relative fee levels in the UK are:

- | | |
|-------------------|----------|
| ▪ application fee | 16 units |
| ▪ issue fee | 25 units |
| ▪ renewal fee | 25 units |

- fee to specify each vehicle 2.8 units per year (or pro-rata)

The unit figure in the UK is £10.00 Sterling.

2.4.10 Procedures for changed circumstances of the operator.

We would recommend that a procedure be introduced to allow fairly rapid variation of a licence, subject to the same rules as apply to the issue or renewal of a licence. An operator may obtain a large new contract that will require him to buy and operate more vehicles. Such a contract should not be jeopardised by the absence or slowness of a mechanism for amending the licence to allow such operation.

2.5 Enforcement procedures

2.5.1 Who is responsible for enforcement?

Enforcement of licensing matters is the responsibility of AAT while the Traffic Police carry out road checks. We recommend that the Traffic police should better inform AAT of offences related to vehicle safety, which should affect the licence of the operator concerned.

2.5.2 Practical structure of the enforcement system within AAT.

There is currently an insufficiently defined procedure for “**revocation**” (withdrawal) of licences and also for “**suspension**” of the licence but not for “**curtailment**” (cutting back on the number of vehicles). Revocation of the licence will normally lead to the failure of the business and sale of its assets with probable loss of employment of its employees. This is a very drastic measure that will also have adverse repercussions for the state in terms of lost tax revenues from the failed business. We therefore support the concept of a temporary suspension procedure and would consider a maximum of one month, or at most two, to be satisfactory. This would represent a severe sanction against the operator and the mere threat of suspension should have a deterrent effect. A short cessation of activities would, however, not normally be fatal to the business and could be used to put in place better systems of maintenance, supervision etc to remedy whatever situation led to the suspension.

We also recommend that consideration should be given to a procedure for **curtailment** of the licence so that the operator could be required to operate fewer vehicles than originally permitted if there was evidence, (such as convictions for failure to ensure adequate maintenance) suggesting that the operator was operating beyond its current competence. This could be used as a realistic way of enforcing standards without totally destroying the business in question.

2.5.3 Definition of grounds for revocation or suspension of licences

There are at present insufficiently defined grounds for revocation. We recommend that there should be some **mandatory** grounds for revocation and also **discretionary** grounds where

the seriousness of the particular circumstances would be taken into account but revocation would not be automatic.

Revocation or suspension should be mandatory if:

- There is no longer a professionally competent person as required by the licence and this situation has continued for more than 12 months without a replacement being found
- The good repute of the nominated professionally competent person has been lost because of offences for which that person is responsible and no replacement has been found within 12 months of the loss of good repute
- The requisite financial standing of the company is not maintained

There should be a case to answer and the possibility of revocation, suspension or curtailment if:

- The operator has been prosecuted for using vehicles in an unroadworthy or overloaded condition or has breached rules on drivers' hours of work or undertakings given in the application on maintenance of vehicles
- The operator has used an operating centre which has not been declared to AAT
- The application for the licence contained false information
- The operator has become bankrupt or gone into liquidation

2.5.4 The procedure for appeals

No clear and satisfactory overall appeals mechanism was reported. We therefore recommend that an additional appellate body should be developed to hear appeals from decisions of all kinds made by AAT. This appellate body should be composed of persons experienced in law and/or in road transport operations and should operate under a legally qualified chairman. It would develop its own case law over a period of time which should be published and would give guidance to operators and their legal representatives on licensing matters. The right of appeal to a court from the decisions of this body would be necessary only in exceptional circumstances where it was alleged that the body had made a mistake of law rather than fact.

3. GEORGIA

3.1 Introduction

This Blueprint contains the Consultant's assessment and recommendations for improvements to the present system (based on European Union precedents) which could be the basis for new legislation when ministerial and parliamentary time permits.

3.2 Applicability of Operator Licensing in Georgia

3.2.1 Whether Operator Licensing applies to International and National operations

Operator Licensing applies only to passenger transport. It is therefore not presently compatible with the EU licensing system that also includes all National and International goods transport operations for hire and reward. We strongly recommend that the Georgian system should be more closely aligned with actual EU standards within 5 years. In view of the lack of a legislative base of any kind for licensing of goods transport it is unlikely that early progress can be made on core objectives from the ToR of this project.

It should be borne in mind that adoption of quality-based operator licensing for international goods transport might make the establishment of reciprocal transit rights with countries who are members of the European Union easier to secure.

3.2.2 Whether Operator Licensing applies to hire and reward only or also to own account

No distinction was reported between “own account” (companies that only provide for their own transport requirements) and “hire and reward” (companies that offer a transport service for anyone), with the outcome that own account passenger transport may also be subject to licensing.

3.2.3 Whether exemptions exist for vehicles under 3.5 tonnes gross and certain passenger vehicles

For passenger vehicles we recommend that the exemption from Operator Licensing found in the EU for vehicles constructed and equipped to carry no more than 9 persons, including the driver, would be suitable in Georgia. This could reduce the potential administrative burden facing both the state and operators without having significant safety repercussions.

3.3 Preconditions for obtaining a licence

There are 3 main pre-conditions to obtaining a licence within the EU, each regarded as essential to ensure safe and reliable operations:

- Good repute
- Adequate financial resources-capital and reserves
- Professional competence

We recommend that these pre-conditions should also become the main criteria to be satisfied in obtaining a licence in Georgia, though specific conditions will need to be tailored to the local situation.

3.3.1 Good repute

According to EU Directives the requirement of Good Repute is not satisfied, or is no longer satisfied if the relevant individual in the business:

- has been convicted of serious offences including offences of a commercial nature, or
- has been declared unfit to pursue the occupation of a road transport operator under applicable rules, or
- has been convicted of serious offences against applicable rules concerning pay and employment conditions in the profession or road transport legislation particularly rules relating to:
 - drivers' driving and rest periods
 - weights and dimensions of commercial vehicles
 - road safety and vehicle safety (including maintenance)
 - protection of the environment
 - professional liability

Georgia does not currently examine the good repute of relevant managers or owners in the above manner, apart from the recording of convictions for economic offences. We recommend that the Law on Certification should be amended to introduce a requirement that the manager and/or owner of a passenger transport business should not have lost good repute at the time of a first application or application to renew a licence. Also if good repute is lost during the currency of a licence there should be a requirement to nominate a specified individual or individuals to replace that person. Failure to do so should lead to suspension or revocation of the licence. It is suggested that 2 categories of defined offences should be taken into account:

- serious crimes such as fraud, violence, theft, and
- specified breaches of road traffic and transport rules such as operating a vehicle in an unroadworthy condition, without a valid test certificate, overloading a vehicle or failing to ensure that drivers respect the limits on drivers' hours

3.3.2 Adequate Financial Resources – Capital and Reserves

According to EU Directives, an undertaking must have available capital reserves of at least 9,000.00 EUR (approximately \$9,000.00) when only one vehicle is used and at least 5,000.00 EUR (approximately \$5,000.00) for each additional vehicle. The competent authority will need to consider what the level should be for Georgia. Our minimum recommendation would be \$1,000.00 for the first vehicle and \$500.00 for each subsequent vehicle. This is to ensure the operator has enough money to maintain the vehicles in a safe condition.

3.3.3 Professional competence

There are expected educational standards for persons wishing to establish a transport business in Georgia, but these are not presently compatible with the EU system of National and International CPC evidenced by examination. We recommend that an International Certificate of Professional Competence examination system (**International CPC**) for passenger transport based on the materials and systems provided and initiated by the present project should be given legal force by the end of 2001.

A National Certificate of Competence examination system (**National CPC**) should also be introduced for those involved only in domestic passenger transport within 5 years. There is an urgent need to improve management and safety standards in domestic transport, which represents the majority of passenger traffic on Georgian roads. In introducing a National CPC, guidance can be taken from EU norms, but the precise content will have to be tailored to reflect actual Georgian national transport legislation. The framework for this process is contained within this Takis TRACECA programme, International Road Transport Transit Facilitation.

We recommend that one professionally competent person should normally be employed at each centre from which vehicles are operated. This requirement might exceptionally be relaxed if the applicant for a licence could demonstrate that one professionally competent person could exercise continuous and effective supervision over more than one centre. This could be the case where an operator split its operations between 2 depots in the same town.

3.4 Application Procedures that need to be considered

3.4.1 Whether applications should be published or advertised.

We recommend that applications for licences should be published in an official gazette.

3.4.2 Whether there should be a right of objection by state organs/associations.

Although rights of objection exist in Europe (for example in the UK), we are concerned that such "safeguards" could be misused and be seen as anti-competitive in the wrong hands in Georgia. We recommend that for a period of 5 years from the introduction of our recommended changes to the licensing system there should be an absolute right to a licence if quality pre-conditions are met. Subsequently it may be appropriate to give the right to certain

institutions such as Local Planning Authorities, Carriers' Associations and the Traffic Police to object to the grant of a licence on defined public policy grounds. Such objections should not be by way of a veto. It should always be the responsibility of the Licensing Authority to reach a final decision having considered all material factors, including any objections and replies made by the operator to those objections.

3.4.3 Whether licences should be for authorised or specified vehicles or both.

We recommend that the required number and type of vehicle(s) should be stated on the licence application. This will mean the operator can only operate up to the maximum number of vehicles **authorised** on his licence and if he wants more he will need to apply for more. The details (e.g. registration number) of each vehicle actually operated should be specified in a notice to the Licensing Authority. There should be a requirement to display an individual licence disc in the windscreen specific to the particular vehicle.

3.4.4 Whether there should be controls over operating centres.

Although subject to potential abuse in the wrong hands, we recommend that the bases from which vehicles operate should be approved as suitable in practical and environmental terms for use as such. A plan of each centre and details of how and when it will be used would therefore need to accompany each application for an operators' licence. A centre should be defined as any place owned or occupied by the operator at which vehicles are normally kept when not in use on the road.

3.4.5 The making of the decision, by whom and in what time.

We recommend that licensing should become the responsibility of a division of the Ministry of Transport. This division should act in a quasi-judicial manner in deciding applications according only to the principles established by law. It should not be under the direct influence of the Ministry of Transport or any other government organ or official.

3.4.6 Whether or not conditions can be applied to licences and if so what type.

Conditions might be proposed as to the number, type or size of vehicles to be kept at a centre, the nature of the maintenance arrangements to be made for the vehicles etc.

3.4.7 The procedure for appeals from refusal.

We recommend that a specialised appellate body should be developed to hear appeals from decisions made about licences.

3.4.8 Duration of the licence, what information shown, type and colour of discs.

We recommend that licences should have a 5-year validity period and that each renewal should involve consideration of the same items as were considered on original application.

3.4.9 Fees for licences, payable to whom and fee levels set how and by whom.

We recommend that the Minister of Transport should set licence fees under powers delegated by the legislative authority and subject to review by the legislative authority on public policy grounds. The fees should be payable to the MOT and should at least cover all the costs of administration of the entire operator licensing system including appeals. It would therefore be necessary for an economist to review the costs of the system and propose appropriate fee levels.

3.5 Enforcement procedures

3.5.1 Who is responsible for enforcement?

Enforcement of licensing matters is a matter for the courts. We recommend that the MOT should have a greater role in this area and that clear procedures for revocation, suspension or curtailment of licences should be introduced.

3.5.2 Definition of grounds for revocation or suspension of licences

We recommend that there should be some **mandatory** grounds for revocation and also **discretionary** grounds where the seriousness of the particular circumstances would be taken into account but revocation would not be automatic.

Revocation or suspension should be mandatory if:

- There is no longer a professionally competent person as required by the licence and this situation has continued for more than 12 months without a replacement being found
- The good repute of the nominated professionally competent person has been lost because of offences for which that person is responsible and no replacement has been found within 12 months of the loss of good repute
- The requisite financial standing of the company is not maintained

There should be a case to answer and the possibility of revocation, suspension or curtailment (cutting back on the number of vehicles) if:

- The operator has been prosecuted for using vehicles in an unroadworthy or overloaded condition or has breached rules on drivers' hours of work or undertakings given in the application on maintenance of vehicles
- The operator has used an operating centre which has not been declared
- The application for the licence contained false information
- The operator has become bankrupt or gone into liquidation

3.5.3 The procedure for appeals

Cancellation of registration is currently a matter for the Courts. It is unlikely that many courts have regular experience of dealing with road transport licensing matters. We therefore recommend that an additional appellate body should be developed to deal with transport licensing issues. This appellate body should be composed of persons experienced in law and/or in road transport operations and should operate under a legally qualified chairman. It would develop its own case law over a period of time which should be published and would give guidance to operators and their legal representatives on licensing matters. The right of appeal to a court from the decisions of this body would be necessary only in exceptional circumstances where it was alleged that the body had made a mistake of law rather than fact.

4. KAZAKHSTAN

4.1 Introduction

Specific focus of attention is given to Decree Numbers 1894 of 29.12.95, 1621 of 25th December 1996, 1322 of 23rd December 1998 and Edict Numbers 2200 and 2201 of 17th April 1995

4.2 Applicability of Operator Licensing in Kazakhstan

4.2.1 Whether Operator Licensing applies to International and National operations

Operator Licensing applies only to the passenger sector and international carriers and carriers of dangerous goods. It is therefore not presently compatible with the EU licensing system that also includes all National transport operations for hire and reward. We strongly recommend that the Kazakh system should be more closely aligned with actual EU standards within 5 years.

4.2.2 Whether Operator Licensing applies to hire and reward only or also to own account

Licensing does not apply to “own account” (companies that only provide for their own transport requirements) as opposed to “hire and reward” (companies that offer a transport service for anyone). This is compatible with the EU system.

However, the own account sector still accounts for the majority of heavy traffic on the roads in Kazakhstan. It should therefore be regulated unless the Ministry of Transport (MOT) is satisfied that it can adequately supervise these operations through other parts of the enforcement system such as vehicle testing, and criminal sanctions against overloading, speeding, excessive drivers' hours etc. This is the case in some parts of Europe though in the UK own account operations are subject to licensing with a separate category of licence. The argument in favour of licensing would be that it allows the state to know how many vehicles are used by the own account sector and for what purpose. It can then more easily check that companies found carrying goods for third parties are not abusing the own account exemption. Should the present exemption continue, we would strongly recommend that there should be severe penalties for any own account operator who is found to be carrying goods for another business without an operators' licence.

In economic terms it makes sense for vehicles to be used in the most efficient manner. We therefore suggest that the Committee of Transport Control should encourage own account operators in appropriate business sectors to widen their activities in a legitimate way by applying for licences that would enable them to carry goods for other businesses (i.e. haulage would become a secondary activity for them).

They could then seek to carry goods on their return journeys rather than travelling empty. Such flexibility may be particularly important in rural areas where the total supply of transport is presently inadequate or on trunk routes.

4.2.3 Whether exemptions exist for vehicles under 3.5 tonnes gross and certain passenger vehicles

There are currently no exemptions for goods vehicles under 3.5 tonnes maximum gross weight. In the view of the Consultant this is a lost opportunity and we would recommend that such an exemption should be introduced for the following reasons:

- Such vehicles are small and represent no more danger in their operation than private cars
- Vehicles under 3.5 tonnes gross require maintenance procedures no more complicated than for private cars
- Such vehicles are found in large numbers and subjecting them to operator licensing creates considerable extra costs for government in terms of administration and enforcement, for very marginal benefits in terms of safety or income
- The costs for operators to comply with the regulations are disproportionately high and can act as an impediment to the development of new business
- Regulatory authorities would have more time to concentrate on goods vehicles over 3.5 tonnes to ensure their compliance with the law

If such an exemption is put in place, a decision would be needed as to whether the weight of any trailer towed by the vehicle should be taken into account in calculating the maximum gross weight. We suggest that a trailer with an **unladen** weight of one tonne or below could be disregarded. There would be few safety repercussions.

For passenger vehicles we recommend that the exemption from Operator Licensing found in the EU for vehicles constructed and equipped to carry no more than 9 persons, including the driver, would be suitable in Kazakhstan. Again this would reduce the administrative burden facing both the state and operators without having any significant safety repercussions.

4.2.4 Whether exemptions exist for specific vehicle types

There are no reported exemptions from Operator Licensing for vehicles used for certain special purposes. We would suggest that exemptions should be introduced for vehicles that either cover only short distances on public roads or are in the hands of specialist state agencies. These exemptions could include:

- agricultural machines
- police, fire, ambulance and military vehicles
- road construction, maintenance and cleaning and snow clearing vehicles

4.3 Preconditions for obtaining a licence

There are 3 main pre-conditions to obtaining a licence within the EU, each regarded as essential to ensure safe and reliable operations:

1. Good repute
2. Adequate financial resources-capital and reserves
3. Professional competence

We recommend that these pre-conditions should also become the main criteria to be satisfied in obtaining a licence in Kazakhstan, though specific conditions will need to be tailored to the local situation.

4.3.1 Good repute

According to EU Directives the requirement of Good Repute is not satisfied, or is no longer satisfied if the relevant individual in the business:

- has been convicted of serious offences including offences of a commercial nature, or
- has been declared unfit to pursue the occupation of a road transport operator under applicable rules, or
- has been convicted of serious offences against applicable rules concerning pay and employment conditions in the profession or road transport legislation particularly rules relating to:
 - drivers' driving and rest periods
 - weights and dimensions of commercial vehicles
 - road safety and vehicle safety (including maintenance)
 - protection of the environment
 - professional liability

As established in the Legal Report, Kazakhstan does not currently examine the good repute of relevant managers or owners in the above manner. We recommend that the decrees on licensing should be amended to introduce a requirement that the manager and/or owner of a business should not have lost good repute at the time of a first application or application to renew a licence. Also if good repute is lost during the currency of a licence there should be a requirement to nominate a specified individual or individuals to replace that person. Failure to do so should lead to suspension or revocation of the licence. It is suggested that 2 categories of defined offences should be taken into account:

- serious crimes such as fraud, violence, theft, and

- specified breaches of road traffic and transport rules such as operating a vehicle in an unroadworthy condition, without a valid test certificate, overloading a vehicle or failing to ensure that drivers respect the limits on drivers' hours

It will be necessary to ensure that relevant enforcement agents such as GAI and criminal courts inform the Kazakh Committee of Transport Control (KTE) of relevant offences, and to establish a system for storing and acting on such information. This exchange of information would be vital for this law to be enforceable.

4.3.2 Adequate Financial Resources – Capital and Reserves

According to EU Directives, an undertaking must have available capital reserves of at least 9,000.00 EUR (approximately \$9,000.00) when only one vehicle is used and at least 5,000.00 EUR (approximately \$5,000.00) for each additional vehicle. The competent authority will need to consider what the level should be for Kazakhstan. Our minimum recommendation would be \$1,000.00 for the first vehicle and \$500.00 for each subsequent vehicle. This is to ensure the operator has enough money to maintain the vehicles in a safe condition.

4.3.3 Professional competence

The requirement for professional competence currently applies only in a limited form to holders of international licences in Kazakhstan according to Instructions for enforcement of Decree 1621 and is not yet properly institutionalised by way of examination (CPC). We recommend that an International Certificate of Competence examination system (**International CPC**) should immediately be introduced. The examination topics for the International CPC should be based on EU norms, as already developed by this project.

We recommend that a National Certificate of Competence examination system (**National CPC**) should also be introduced for managerial holders of all national licences within 5 years in addition to the specific rules already applied to drivers involved with dangerous goods. There is an urgent need to improve management and safety standards in domestic transport, which represents the majority of traffic on Kazakh roads.

In introducing a National CPC, guidance can also be taken from EU norms, but the precise content will have to be tailored to reflect actual Kazakh national transport legislation. The framework for this process is contained within this Tacis TRACECA programme, International Road Transport Transit Facilitation.

We recommend that one professionally competent person should normally be employed at each centre from which vehicles are operated. This requirement might exceptionally be relaxed if the applicant for a licence could demonstrate that one professionally competent person could exercise continuous and effective supervision over more than one centre. This could be the case where an operator split its operations between 2 depots in the same town.

4.4 Application Procedures that need to be considered

4.4.1 Whether applications should be published or advertised.

We recommend that applications for licences should be published in an official gazette.

4.4.2 Whether there should be a right of objection by state organs/associations.

Although rights of objection exist in Europe (for example in the UK), we are concerned that such "safeguards" could be misused and be seen as anti-competitive in the wrong hands in Kazakhstan. We recommend that for a period of 5 years from the introduction of our recommended changes to the licensing system there should be an absolute right to a licence if quality pre-conditions are met. Subsequently it may be appropriate to give the right to certain institutions such as Local Planning Authorities, Carriers' Associations (such as KazATO) and GAI to object to the grant of a licence on defined public policy grounds. Such objections should not be by way of a veto. It should always be the responsibility of KTE to reach a final decision having considered all material factors, including any objections and replies made by the operator to those objections.

4.4.3 Whether licences should be for authorised or specified vehicles or both.

We recommend that the required number and type of vehicle(s) should be stated on the licence application. This will mean the operator can only operate up to the maximum number of vehicles **authorised** on his licence and if he wants more he will need to apply for more. The details (e.g. registration number) of each vehicle actually operated should be specified in a notice to KTE. There should continue to be a requirement to display an individual licence disc in the windscreen specific to the particular vehicle. Using a combination of vehicles authorised by numbers and type only on the licence itself and individually specified vehicles subsequently issued with a display disc should result in both flexibility for the operator and administrative simplicity for KTE. The licence itself would no longer need to be endorsed each time a vehicle is replaced. However, KTE would always be aware of the precise details of each vehicle actually operated, even if it is in the fleet for only a short time, (for example if a vehicle is temporarily hired).

4.4.4 Whether there should be controls over operating centres.

Although subject to potential abuse in the wrong hands, we recommend that the bases from which vehicles operate should be approved by KTE as suitable in practical and environmental terms for use as such. A plan of each centre and details of how and when it will be used will therefore need to accompany each application for an operators' licence. A centre should be defined as any place owned or occupied by the operator at which vehicles are normally kept when not in use on the road. KTE may wish to control the number, type or size of vehicles which may be kept at any centre and any other aspects of the use of the centre which are relevant (for example the storing of fuel or hazardous products at the centre).

4.4.5 The making of the decision, by whom and in what time.

We recommend that KTE should establish within each regional department an autonomous division or branch to deal with the issuing of licences. This division should be required to act in a quasi-judicial manner in deciding applications according to the principles established by law. It should not be under the direct influence of the KTE or any other government organ or official. No problems were reported concerning the present timescale for issue of a licence.

4.4.6 Whether or not conditions can be applied to licences and if so what type.

The present system seems to result in a licence application either being granted or rejected. We would recommend that it should be possible for negotiations to take place where KTE is not satisfied with some aspect of the proposed operation. It could then grant the application in part or subject to conditions and the operator would have the choice between abandoning its application, accepting the proposed modifications, or appealing against them. Conditions might be proposed as to the number, type or size of vehicles to be kept at a centre, the nature of the maintenance arrangements to be made for the vehicles etc.

4.4.7 The procedure for appeals from refusal.

We recommend that an appellate body should be developed to hear appeals from decisions made by the KTE.

4.4.8 Duration of the licence, what information shown, type and colour of discs.

The present unlimited duration of licences may remove the deterrent effect of knowing that conduct will be formally considered at each licence renewal. Though there is European precedent for "continuous" licences (the UK recently introduced such a system) we recommend that the Ministry of Transport should consider limiting the validity of licences to 5 years. The present system of individual licence discs displayed in the windscreen seems satisfactory.

4.4.9 Fees for licences, payable to whom and fee levels set how and by whom.

We would recommend that the Minister of Transport should set licence fees under powers delegated by the legislative authority and in consultation with KTE and subject to review by the legislative authority on public policy grounds. The fees should be payable to KTE and should at least cover all the costs of administration of the entire operator licensing system including appeals. It will therefore be necessary for an economist to review the costs of the system and propose appropriate fee levels.

By way of guidance only, relative fee levels in the UK are:

- | | |
|-------------------|----------|
| ▪ application fee | 16 units |
| ▪ issue fee | 25 units |
| ▪ renewal fee | 25 units |

- fee to specify each vehicle 2.8 units per year (or pro-rata)

The unit figure in the UK is £10.00 Sterling.

4.4.10 Procedures for changed circumstances of the operator.

We would recommend that a procedure be introduced to allow fairly rapid variation of a licence, subject to the same rules as apply to the issue or renewal of a licence. An operator may obtain a large new contract that will require him to buy and operate more vehicles. Such a contract should not be jeopardised by the absence or slowness of a mechanism for amending the licence to allow such operation.

4.5 Enforcement procedures

4.5.1 Who is responsible for enforcement?

Enforcement of licensing matters is the responsibility of KTE while GAI carry out road checks. We recommend that KTE should be better informed by GAI of offences related to vehicle safety that should affect the licence of the operator concerned.

4.5.2 Practical structure of the enforcement system within KTE.

There is currently a procedure for “**revocation**” (withdrawal) of licences and also for “**temporary suspension**” but not for “**curtailment**” (cutting back on the number of vehicles). Revocation of the licence will normally lead to the failure of the business and sale of its assets with probable loss of employment of its employees. This is a very drastic measure that will also have adverse repercussions for the state in terms of lost tax revenues from the failed business. We therefore support the temporary suspension procedure but wonder whether there is a need for the maximum period to be as long as six months. A six-month suspension will still be fatal to almost all businesses and we would consider a maximum of one month, or at most two, to be satisfactory. This would still represent a severe sanction against the operator and the threat of suspension should still have a deterrent effect.

We also recommend that consideration should be given to a procedure for **curtailment** of the licence so that the operator could be required to operate fewer vehicles than originally permitted if there was evidence, (such as convictions for failure to ensure adequate maintenance) suggesting that the operator was operating beyond its current competence. This could be used as a realistic way of enforcing standards without totally destroying the business in question.

4.5.3 Definition of grounds for revocation or suspension of licences

There are already a number of satisfactory grounds for revocation set out in the legislation. We think it could be useful to redefine these into mandatory grounds for revocation and also

discretionary grounds where the seriousness of the particular circumstances would be taken into account but revocation would not be automatic.

To be better aligned with EU standards, revocation or suspension should be mandatory if:

- There is no longer a professionally competent person as required by the licence and this situation has continued for more than 12 months without a replacement being found
- The good repute of the nominated professionally competent person has been lost because of offences for which that person is responsible and no replacement has been found within 12 months of the loss of good repute (this should embrace the existing ground for revocation concerning frauds related to vehicles)
- The requisite financial standing of the company is not maintained

There should be a case to answer and the possibility of revocation, suspension or curtailment if:

- The operator has been prosecuted for using vehicles in an unroadworthy or overloaded condition or has breached rules on drivers' hours of work or undertakings given in the application on maintenance of vehicles (this could consolidate the existing ground of failing to operate in conformity with the licence and the ground of operating out of permitted area)
- The operator has used an operating centre which has not been declared to KTE
- The application for the licence contained false information
- The operator has become bankrupt or gone into liquidation

4.5.4 The procedure for appeals

According to information supplied for the Legal Report, suspension of a licence is a decision for KTE, having heard evidence from the operator but revocation would be conducted "in accordance with court procedures". It is unlikely that many courts have regular experience of dealing with road transport licensing matters.

We therefore recommend that a specialised appellate body should be developed to hear appeals from decisions made by KTE. This appellate body should be composed of persons experienced in law and/or in road transport operations and should operate under a legally qualified chairman. It would develop its own case law over a period of time which should be published and would give guidance to operators and their legal representatives on licensing matters. Because of the size of Kazakhstan the new appellate body would probably need to sit regularly at a number of regional centres as it would cause hardship to operators to have to travel to one place such as Astana to bring their appeals. The right of appeal to a court from the decisions of this body would be necessary only in exceptional circumstances where it was alleged that the body had made a mistake of law rather than fact.

5. KYRGYZ REPUBLIC

5.1 Introduction

Special focus of attention is given to Decree No 655.

5.2 Applicability of Operator Licensing in Kyrgyzstan

5.2.1 Whether Operator Licensing applies to International and National operations

Operator Licensing applies both to National and International operations and so in principle is compatible with the EU licensing system but we recommend that it should be more closely aligned with **actual** EU standards.

5.2.2 Whether Operator Licensing applies to hire and reward only or also to own account

No distinction is made between “own account” (companies that only provide for their own transport requirements) and “hire and reward” (companies that offer a transport service for anyone), with the outcome that own account transport is also subject to licensing. Although a distinction is possible between such operations in Europe, with less stringent standards applying to the own account sector, we consider the current position in Kyrgyzstan to be satisfactory.

Continued application of operator licensing to own account transport should help raise standards in this sector that still accounts for the majority of heavy traffic on the roads. If only one category of licence continues to be issued, an "own account" operator will be able to carry goods for other persons so there will be no practical difference between the two types of operator. This can be justified commercially as it increases competition and customer choice and should help reduce the number of vehicles returning empty to base. It can be justified also on safety grounds. There is no reason why different rules should apply depending on whether the road transport operator owns or does not own the goods carried. The only relevant consideration should be whether or not his vehicles are operated safely.

5.2.3 Whether exemptions exist for vehicles under 3.5 tonnes gross and certain passenger vehicles

There are currently no exemptions for goods vehicles under 3.5 tonnes maximum gross weight. In the view of the Consultant this is a lost opportunity and we would recommend that such an exemption should be introduced for the following reasons:

- Such vehicles are small and represent no more danger in their operation than private cars;

- Vehicles under 3.5 tonnes gross require maintenance procedures no more complicated than for private cars
- Such vehicles are found in large numbers and subjecting them to operator licensing creates considerable extra costs for government in terms of administration and enforcement, for very marginal benefits in terms of safety or income
- The costs for operators to comply with the regulations are disproportionately high and can act as an impediment to the development of new business
- Regulatory authorities would have more time to concentrate on goods vehicles over 3.5 tonnes to ensure their compliance with the law

If such an exemption is put in place, a decision would be needed as to whether the weight of any trailer towed by the vehicle should be taken into account in calculating the maximum gross weight. We suggest that a trailer with an **unladen** weight of one tonne or below could be disregarded. There would be few safety repercussions.

For passenger vehicles we recommend that the exemption from Operator Licensing found in the EU for vehicles constructed and equipped to carry no more than 9 persons, including the driver, would be suitable in Kyrgyzstan. Again this would reduce the administrative burden facing both the state and operators without having any significant safety repercussions.

5.2.4 Whether exemptions exist for specific vehicle types

There are exemptions from Operator Licensing for certain types of emergency vehicles, for agricultural transport and for government-owned vehicles. We would suggest that further exemptions could be introduced for vehicles that either cover only short distances on public roads or are in the hands of certain specialist state agencies. These exemptions could include:

- police, fire, ambulance and military vehicles
- road construction, maintenance and cleaning and snow clearing vehicles

However, a continuing general exemption in favour of vehicles merely because they are government-owned does not seem justifiable.

5.3 Preconditions for obtaining a licence

There are 3 main pre-conditions to obtaining a licence within the EU, each regarded as essential to ensure safe and reliable operations:

1. Good repute
2. Adequate financial resources-capital and reserves
3. Professional competence

We recommend that these pre-conditions should also become the main criteria to be satisfied in obtaining a licence in Kyrgyzstan, though specific conditions will need to be tailored to the local situation.

5.3.1 Good repute

According to EU Directives the requirement of Good Repute is not satisfied, or is no longer satisfied if the relevant individual in the business:

- has been convicted of serious offences including offences of a commercial nature, or
- has been declared unfit to pursue the occupation of a road transport operator under applicable rules, or
- has been convicted of serious offences against applicable rules concerning pay and employment conditions in the profession or road transport legislation particularly rules relating to:
 - drivers' driving and rest periods
 - weights and dimensions of commercial vehicles
 - road safety and vehicle safety (including maintenance)
 - protection of the environment
 - professional liability

Kyrgyzstan does not currently examine the good repute of relevant managers or owners in the above manner, though criminal offences are taken into consideration. We recommend that the decree on licensing should be amended to introduce a requirement that the manager and/or owner of a business should not have lost good repute at the time of a first application or application to renew a licence. Also if good repute is lost during the currency of a licence there should be a requirement to nominate a specified individual or individuals to replace that person. Failure to do so should lead to suspension or revocation of the licence. It is suggested that 2 categories of defined offences should be taken into account:

- serious crimes such as fraud, violence, theft, and
- specified breaches of road traffic and transport rules such as operating a vehicle in an unroadworthy condition, without a valid test certificate, overloading a vehicle or failing to ensure that drivers respect the limits on drivers' hours

It will be necessary to ensure that relevant enforcement agents such as GAI and criminal courts inform the Ministry of Transport and Communications (MOTC) about relevant offences and to establish a system for storing and acting on such information. This exchange of information would be vital for this law to be enforceable.

5.3.2 Adequate Financial Resources – Capital and Reserves

According to EU Directives, an undertaking must have available capital reserves of at least 9,000.00 EUR (approximately \$9,000.00) when only one vehicle is used and at least 5,000.00 EUR (approximately \$5,000.00) for each additional vehicle. The competent authority will need to consider what the level should be for Kyrgyzstan. Our minimum recommendation would be \$1,000.00 for the first vehicle and \$500.00 for each subsequent vehicle. This is to ensure the operator has enough money to maintain the vehicles in a safe condition.

5.3.3 Professional competence

A Diploma in Road Transport is in practice necessary to get a job as a transport manager in Kyrgyzstan but this is not based on EU standards.

We recommend that an International Certificate of Professional Competence examination system (**International CPC**) based on the materials and systems provided and initiated by the present project should be given legal force by the end of 2001.

A National Certificate of Competence examination system (**National CPC**) should also be introduced for holders of National licences within 5 years. There is an urgent need to improve management and safety standards in domestic transport, which represents the majority of traffic on Kyrgyz roads. In introducing a National CPC, guidance can be taken from EU norms, but the precise content will have to be tailored to reflect actual Kyrgyz national transport legislation. The framework for this process is contained within this Takis TRACECA programme, International Road Transport Transit Facilitation.

We recommend that one professionally competent person should normally be employed at each centre from which vehicles are operated. This requirement might exceptionally be relaxed if the applicant for a licence could demonstrate that one professionally competent person could exercise continuous and effective supervision over more than one centre. This could be the case where an operator split its operations between 2 depots or factories in the same town.

5.4 Application Procedures that need to be considered

5.4.1 Whether applications should be published or advertised.

We recommend that applications for licences should be published in an official gazette.

5.4.2 Whether there should be a right of objection by state organs/associations.

Although rights of objection exist in Europe (for example in the UK), we are concerned that such "safeguards" could be misused and be seen as anti-competitive in the wrong hands in Kyrgyzstan. We recommend that for a period of 5 years from the introduction of our recommended changes to the licensing system there should be an absolute right to a licence if quality pre-conditions are met. Subsequently it may be appropriate to give the right to certain

institutions such as Local Planning Authorities, Carriers' Associations (such as AIA) and GAI to object to the grant of a licence on defined public policy grounds. Such objections should not be by way of a veto. It should always be the responsibility of MOTC to reach a final decision having considered all material factors, including any objections and replies made by the operator to those objections.

5.4.3 Whether licences should be for authorised or specified vehicles or both.

We recommend that the required number and type of vehicle(s) should be stated on the licence application. This will mean the operator can only operate up to the maximum number of vehicles **authorised** on his licence and if he wants more he will need to apply for more. The details (e.g. registration number) of each vehicle actually operated should be specified in a notice to MOTC. There should continue to be a requirement to display an individual licence disc in the windscreen specific to the particular vehicle. Using a combination of vehicles authorised by numbers and type only on the licence itself and individually specified vehicles subsequently issued with a display disc should result in both flexibility for the operator and administrative simplicity for MOTC. The licence itself will not need to be amended each time a vehicle is replaced. However, MOTC will always be aware of the precise details of each vehicle actually operated, even if it is in the fleet for only a short time, for example if a vehicle is temporarily hired.

5.4.4 Whether there should be controls over operating centres.

Although subject to potential abuse in the wrong hands, we recommend that the bases from which vehicles operate should be approved by MOTC as suitable in practical and environmental terms for use as such. A plan of each centre and details of how and when it will be used will therefore need to accompany each application for an operators' licence. A centre should be defined as any place owned or occupied by the operator at which vehicles are normally kept when not in use on the road. MOTC may wish to control the number, type or size of vehicles which may be kept at any centre and any other aspects of the use of the centre which are relevant (for example the storing of fuel or hazardous products at the centre).

5.4.5 The making of the decision, by whom and in what time.

We recommend that MOTC's Regional Road Transport Licensing Agency should be required to act in a quasi-judicial manner in deciding applications according to the principles established by law. It should not be under the direct influence of the MOTC or any other government organ or official. The present timescale for issue of a licence seems broadly satisfactory.

5.4.6 Whether or not conditions can be applied to licences and if so what type.

The present system seems to result in a licence application either being granted or rejected. We would recommend that it should be possible for negotiations to take place where MOTC

5.5 Enforcement procedures

5.5.1 Who is responsible for enforcement?

Enforcement of licensing matters is the responsibility of MOTC's Transport Inspectorate while GAI carry out road checks. We recommend that MOTC should be better informed by GAI of offences related to vehicle safety which should affect the licence of the operator concerned.

5.5.2 Practical structure of the enforcement system within MOTC

There is currently a procedure for “**revocation**” (withdrawal) of licences as well as one for “**temporary suspension**” but not for “**curtailment**” (cutting back on the number of vehicles). Revocation of the licence will normally lead to the failure of the business and sale of its assets with probable loss of employment of its employees. This is a very drastic measure that will also have adverse repercussions for the state in terms of lost tax revenues from the failed business. Revocation should, in our view, be a last resort and not first instrument for enforcement.

We support the procedure for **temporary suspension** of the licence for a period of up to 3 months although even a shorter maximum period would be a severe sanction against the operator, as the threat of suspension would have a deterrent effect. A short cessation of activities is not normally fatal to the business and can be used to put in place better systems of maintenance, supervision etc to remedy whatever situation led to the suspension.

We also recommend that consideration should be given to a procedure for **curtailment** of the licence so that the operator could be required to operate fewer vehicles than originally permitted if there was evidence, (such as convictions for failure to ensure adequate maintenance) suggesting that the operator was operating beyond its current competence. This could be used as a realistic way of enforcing standards without totally destroying the business in question.

5.5.3 Definition of grounds for revocation or suspension of licences

There are already a number of grounds for revocation set out in the legislation but these are more related to breaches of administrative procedure than to relevant safety considerations concerning the operation of vehicles. We recommend that there should be some **mandatory** grounds for revocation and also **discretionary** grounds where the seriousness of the particular circumstances would be taken into account but revocation would not be automatic.

Revocation or suspension should be mandatory if:

- There is no longer a professionally competent person as required by the licence and this situation has continued for more than 12 months without a replacement being found

- The good repute of the nominated professionally competent person has been lost because of offences for which that person is responsible and no replacement has been found within 12 months of the loss of good repute
- The requisite financial standing of the company is not maintained

There should be a case to answer and the possibility of revocation, suspension or curtailment if:

- The operator has been prosecuted for using vehicles in an unroadworthy or overloaded condition or has breached rules on drivers' hours of work or undertakings given in the application on maintenance of vehicles
- The operator has used an operating centre which has not been declared to MOTC
- The application for the licence contained false information
- The operator has become bankrupt or gone into liquidation

5.5.4 The procedure for appeals

The Transport Inspectorate is responsible for revocation of licences subject to a right of appeal to a court. (It is not clear to what extent there is a right of appeal against the failure to issue a licence in the first place). It is unlikely that many courts have regular experience of dealing with road transport licensing matters.

We therefore recommend that an additional appellate body should be developed to hear appeals from decisions of all kinds made by MOTC and its agencies. This appellate body should be composed of persons experienced in law and/or in road transport operations and should operate under a legally qualified chairman. It would develop its own case law over a period of time which should be published and would give guidance to operators and their legal representatives on licensing matters. The right of appeal to a court from the decisions of this body would be necessary only in exceptional circumstances where it was alleged that the body had made a mistake of law rather than fact.

6. MOLDOVA

6.1 Introduction

Special focus of attention is given to Decree Number 332-XIV of 26th March 1999

6.2 Applicability of Operator Licensing in Moldova

6.2.1 Whether Operator Licensing applies to International and National operations

Operator Licensing (as distinct from ordinary business registration) applies only to international carriers. It is therefore not presently compatible with the EU licensing system that also includes all National transport operations for hire and reward. We strongly recommend that the Moldovan system should be more closely aligned with actual EU standards within 5 years by extending licensing to National operations.

6.2.2 Whether Operator Licensing applies to hire and reward only or also to own account

No distinction was reported between “own account” (companies that only provide for their own transport requirements) and “hire and reward” (companies that offer a transport service for anyone), with the outcome that own account transport may also theoretically be subject to licensing but for international journeys only. Should our recommendations be taken up with regard to extension of the Operator Licensing system to National Operations, a decision will be needed as to whether to exempt own account, (which still accounts for the majority of heavy traffic on the roads) as is permitted under EU rules or whether to introduce controls in the interest of public safety.

If only one category of licence continues to be issued, an "own account" operator will be able to carry goods for other persons so there will be no practical difference between the two types of operator. This can be justified commercially as it increases competition and customer choice and should help reduce the number of vehicles returning empty to base. It can be justified also on safety grounds. There is no reason why different rules should apply depending on whether the road transport operator owns or does not own the goods carried. The only relevant consideration should be whether or not his vehicles are operated safely. However, should an exemption be introduced for "own account" in future, we would strongly recommend that there should be severe penalties for any own account operator who is found to be carrying goods for another business without having obtained an operators' licence.

6.2.3 Whether exemptions exist for vehicles under 3.5 tonnes gross and certain passenger vehicles

No exemptions for goods vehicles under 3.5 tonnes maximum gross weight were reported. In the view of the Consultant this is a lost opportunity and we would recommend that such an exemption should be introduced for the following reasons:

- Such vehicles are small and represent no more danger in their operation than private cars
- Vehicles under 3.5 tonnes gross require maintenance procedures no more complicated than for private cars
- Such vehicles are found in large numbers and subjecting them to operator licensing creates considerable extra costs for government in terms of administration and enforcement, for very marginal benefits in terms of safety or income
- The costs for operators to comply with the regulations are disproportionately high and can act as an impediment to the development of new business
- Regulatory authorities would have more time to concentrate on goods vehicles over 3.5 tonnes to ensure their compliance with the law

If such an exemption is put in place, a decision would be needed as to whether the weight of any trailer towed by the vehicle should be taken into account in calculating the maximum gross weight. We suggest that a trailer with an **unladen** weight of one tonne or below could be disregarded. There would be few safety repercussions.

For passenger vehicles we recommend that the exemption from Operator Licensing found in the EU for vehicles constructed and equipped to carry no more than 9 persons, including the driver, would be suitable in Moldova. Again this would reduce the administrative burden facing both the state and operators without having any significant safety repercussions.

6.2.4 Whether exemptions exist for specific vehicle types

No exemptions from Operator Licensing for certain types of vehicles were reported. We would suggest that exemptions should be introduced for vehicles that either cover only short distances on public roads or are in the hands of specialist state agencies. These exemptions could include:

- agricultural machines
- police, fire, ambulance and military vehicles
- road construction, maintenance and cleaning and snow clearing vehicles

6.3 Preconditions for obtaining a licence

There are 3 main pre-conditions to obtaining a licence within the EU, each regarded as essential to ensure safe and reliable operations:

1. Good repute
2. Adequate financial resources-capital and reserves
3. Professional competence.

We recommend that these pre-conditions should also become the main criteria to be satisfied in obtaining a licence in Moldova, though specific conditions will need to be tailored to the local situation.

6.3.1 Good repute

According to EU Directives the requirement of Good Repute is not satisfied, or is no longer satisfied if the relevant individual in the business:

- has been convicted of serious offences including offences of a commercial nature, or
- has been declared unfit to pursue the occupation of a road transport operator under applicable rules, or
- has been convicted of serious offences against applicable rules concerning pay and employment conditions in the profession or road transport legislation particularly rules relating to:
 - drivers' driving and rest periods
 - weights and dimensions of commercial vehicles
 - road safety and vehicle safety (including maintenance)
 - protection of the environment
 - professional liability

As established in the Legal Report, Moldova does not currently examine the good repute of relevant managers or owners in the above manner, apart taking into account certain offences such as smuggling. We recommend that the decree on licensing should be amended to introduce a requirement that the manager and/or owner of a business should not have lost good repute at the time of a first application or application to renew a licence. Also if good repute is lost during the currency of a licence there should be a requirement to nominate a specified individual or individuals to replace that person. Failure to do so should lead to suspension or revocation of the licence. It is suggested that 2 categories of defined offences should be taken into account:

- serious crimes such as fraud, violence, theft, and
- specified breaches of road traffic and transport rules such as operating a vehicle in an unroadworthy condition, without a valid test certificate, overloading a vehicle or failing to ensure that drivers respect the limits on drivers' hours

Relevant enforcement agents such as the Traffic Police and criminal courts should inform the Ministry of Transport and Communications (MOT) about relevant offences, which should establish a system for storing and acting on such information. This exchange of information would be vital for this law to be enforceable.

6.3.2 Adequate Financial Resources – Capital and Reserves

According to EU Directives, an undertaking must have available capital reserves of at least 9,000.00 EUR (approximately \$9,000.00) when only one vehicle is used and at least 5,000.00 EUR (approximately \$5,000.00) for each additional vehicle. The competent authority will need to consider what the level should be for Moldova. Our minimum recommendation would be \$1,000.00 for the first vehicle and \$500.00 for each subsequent vehicle. This is to ensure the operator has enough money to maintain the vehicles in a safe condition. In view of current economic problems the requirements may have to be phased in over 5 years

6.3.3 Professional competence

There are well considered training and examination requirements for persons wishing to operate an international transport business in Moldova, but these are not presently fully aligned with the EU system of National and International CPC evidenced by examination. We recommend that an International Certificate of Professional Competence examination system (**International CPC**) based on the materials and systems provided and initiated by the present project should be given legal force by the end of 2001 to replace the existing procedures.

A National Certificate of Competence examination system (**National CPC**) should also be introduced for holders of the new National licences within 5 years. There is an urgent need to improve management and safety standards in domestic transport, which represents the majority of traffic on Moldovan roads. In introducing a National CPC, guidance can be taken from EU norms, but the precise content will have to be tailored to reflect actual Moldovan national transport legislation. The framework for this process is contained within this Takis TRACECA programme, International Road Transport Transit Facilitation.

We recommend that one professionally competent person should normally be employed at each centre from which vehicles are operated. This requirement might exceptionally be relaxed if the applicant for a licence could demonstrate that one professionally competent person could exercise continuous and effective supervision over more than one centre. This could be the case where an operator split its operations between 2 depots or factories in the same town.

6.4 Application Procedures that need to be considered

6.4.1 Whether applications should be published or advertised.

We recommend that applications for licences should be published in an official gazette.

6.4.2 Whether there should be a right of objection by state organs/associations.

Although rights of objection exist in Europe (for example in the UK), we are concerned that such "safeguards" could be misused and be seen as anti-competitive in the wrong hands in Moldova. We recommend that for a period of 5 years from the introduction of our recommended changes to the licensing system there should be an absolute right to a licence if quality pre-conditions are met. Subsequently it may be appropriate to give the right to certain institutions such as Local Planning Authorities, Carriers' Associations and the Traffic Police to object to the grant of a licence on defined public policy grounds. Such objections should not be by way of a veto. It should always be the responsibility of the State Licensing Commission (SLC) to reach a final decision having considered all material factors, including any objections and replies made by the operator to those objections.

6.4.3 Whether licences should be for authorised or specified vehicles or both.

We recommend that the required number and type of vehicle(s) should be stated on the licence application. This will mean the operator can only operate up to the maximum number of vehicles **authorised** on his licence and if he wants more he will need to apply for more. The details (e.g. registration number) of each vehicle actually operated should be specified in a notice to MOT. There should continue to be a requirement to display an individual licence disc in the windscreen specific to the particular vehicle. Using a combination of vehicles authorised by numbers and type only on the licence itself and individually specified vehicles subsequently issued with a display disc should result in both flexibility for the operator and administrative simplicity for MOT.

6.4.4 Whether there should be controls over operating centres.

Although subject to potential abuse in the wrong hands, we recommend that the bases from which vehicles operate should be approved by the State Licensing Committee (SLC) as suitable in practical and environmental terms for use as such. A plan of each centre and details of how and when it will be used will therefore need to accompany each application for an operators' licence. A centre should be defined as any place owned or occupied by the operator at which vehicles are normally kept when not in use on the road. SLC may wish to control the number, type or size of vehicles which may be kept at any centre and any other aspects of the use of the centre which are relevant (for example the storing of fuel or hazardous products at the centre).

6.4.5 The making of the decision, by whom and in what time.

The division of responsibilities between the MOT and the SLC appears broadly satisfactory but we would reiterate that the SLC should act in a quasi-judicial manner in deciding

6.4.10 Procedures for changed circumstances of the operator.

We would recommend that a procedure be introduced to allow fairly rapid variation of a licence, subject to the same rules as apply to the issue or renewal of a licence. An operator may obtain a large new contract which will require him to buy and operate more vehicles. Such a contract should not be jeopardised by the absence or slowness of a mechanism for amending the licence to allow such operation.

6.5 Enforcement procedures

6.5.1 Who is responsible for enforcement?

Enforcement of licensing matters is the responsibility of MOT while both the Traffic Police and MOT carry out road checks. We recommend that MOT should be better informed by the Traffic Police of offences related to vehicle safety which should affect the licence of the operator concerned.

6.5.2 Practical structure of the enforcement system

There is currently an insufficiently defined procedure for “**revocation**” (withdrawal) of licences and also for “**temporary suspension**” of the licence but not for “**curtailment**” (cutting back on the number of vehicles). Revocation of the licence will normally lead to the failure of the business and sale of its assets with probable loss of employment of its employees. This is a very drastic measure that will also have adverse repercussions for the state in terms of lost tax revenues from the failed business. We therefore support the temporary suspension procedure and would consider a maximum of one month, or at most two, to be satisfactory. This would represent a severe sanction against the operator and the mere threat of suspension should have a deterrent effect. A short cessation of activities would, however, not normally be fatal to the business and could be used to put in place better systems of maintenance, supervision etc to remedy whatever situation led to the suspension.

We also recommend that consideration should be given to a procedure for **curtailment** of the licence so that the operator could be required to operate fewer vehicles than originally permitted if there was evidence, (such as convictions for failure to ensure adequate maintenance) suggesting that the operator was operating beyond its current competence. This could be used as a realistic way of enforcing standards without totally destroying the business in question.

6.5.3 Definition of grounds for revocation or suspension of licences

There are already a number of grounds for revocation apparently considered by the SLC but these were reported to have no basis in the actual legislation. We recommend that there should be some clearly established **mandatory** grounds for revocation and also

discretionary grounds where the seriousness of the particular circumstances would be taken into account but revocation would not be automatic.

Revocation or suspension should be mandatory if:

- There is no longer a professionally competent person as required by the licence and this situation has continued for more than 12 months without a replacement being found
- The good repute of the nominated professionally competent person has been lost because of offences for which that person is responsible and no replacement has been found within 12 months of the loss of good repute
- The requisite financial standing of the company is not maintained

There should be a case to answer and the possibility of revocation, suspension or curtailment if:

- The operator has been prosecuted for using vehicles in an unroadworthy or overloaded condition or has breached rules on drivers' hours of work or undertakings given in the application on maintenance of vehicles
- The operator has used an operating centre which has not been declared to MOT/SLC;
- The application for the licence contained false information
- The operator has become bankrupt or gone into liquidation

6.5.4 The procedure for appeals

Disciplinary hearings are held by SLC before revoking a licence but no clear and satisfactory overall appeals mechanism was reported. If a licence holder believes he has been treated harshly or unfairly by SLC there is a right of appeal to a court. It is unlikely that many courts have regular experience of dealing with road transport licensing matters. We therefore recommend that an additional appellate body should be developed to hear appeals from decisions of all kinds made by the State Licensing Committee.

This appellate body should be composed of persons experienced in law and/or in road transport operations and should operate under a legally qualified chairman. It would develop its own case law over a period of time which should be published and would give guidance to operators and their legal representatives on licensing matters. The right of appeal to a court from the decisions of this body would be necessary only in exceptional circumstances where it was alleged that the body had made a mistake of law rather than fact.

7. MONGOLIA

7.1 Introduction

This Blueprint contains the Consultant's assessment and recommendations for improvements to the present system (based on European precedents) which could be the basis of amendments when ministerial and parliamentary time permits.

7.2 Applicability of Operator Licensing in Mongolia

7.2.1 Whether Operator Licensing applies to International and National operations

Detail obtained was inconclusive as to whether Operator Licensing applies to both National and International operations and whether it is in principle compatible with the EU licensing system. Based on detail that was obtained we would expect it not to be and would therefore recommend that it should be closely aligned with actual EU standards.

7.2.2 Whether Operator Licensing applies to hire and reward only or also to own account

It was not confirmed whether licensing does or does not apply to “own account” (companies that only provide for their own transport requirements) as well as to “hire and reward” (companies that offer a transport service for anyone). The argument in favour of licensing “own account” would be that it allows the state to know how many vehicles are used by the own account sector and for what purpose. It can then more easily check that companies carrying goods for third parties are not abusing the own account exemption. Where “own account” is exempt from licensing, we would strongly recommend that there should be severe penalties for any own account operator who is found to be carrying goods for another business without an operators' licence.

However in economic terms it makes sense for vehicles to be used in the most efficient manner. We therefore suggest that the Ministry of Infrastructure Development (MID) should encourage own account operators in appropriate business sectors to widen their activities in a legitimate way by applying for licences that would enable them to carry goods for other businesses (i.e. haulage would become a secondary activity for them). They could then seek to carry goods on their return journeys rather than travelling empty. Such flexibility may be particularly important in rural areas where the total supply of transport is presently inadequate.

7.2.3 Whether exemptions exist for vehicles under 3.5 tonnes gross and certain passenger vehicles

There are currently believed to be no exemptions for goods vehicles under 3.5 tonnes maximum gross weight. In the view of the Consultant, this is a lost opportunity and we would recommend that such an exemption should be introduced for the following reasons:

- Such vehicles are small and represent no more danger in their operation than private cars
- Vehicles under 3.5 tonnes gross require maintenance procedures no more complicated than for private cars
- Such vehicles are found in large numbers and subjecting them to operator licensing creates considerable extra costs for government in terms of administration and enforcement, for very marginal benefits in terms of safety or income
- The costs for operators to comply with the regulations are disproportionately high and can act as an impediment to the development of new business
- Regulatory authorities would have more time to concentrate on goods vehicles over 3.5 tonnes to ensure their compliance with the law

If such an exemption is put in place, a decision would be needed as to whether the weight of any trailer towed by the vehicle should be taken into account in calculating the maximum gross weight. We suggest that a trailer with an **unladen** weight of one tonne or below could be disregarded. There would be few safety repercussions.

For passenger vehicles we recommend that the exemption from Operator Licensing found in the EU for vehicles constructed and equipped to carry no more than 9 persons, including the driver, would be suitable in Mongolia. Again this would reduce the administrative burden facing both the state and operators without having any significant safety repercussions.

7.2.4 Whether exemptions exist for specific vehicle types

No exemptions from Operator Licensing were reported for specific types of vehicles. We would suggest that exemptions could be introduced for vehicles that either cover only short distances on public roads or are in the hands of specialist state agencies. These exemptions could include:

- agricultural machines
- police, fire, ambulance and military vehicles
- road construction, maintenance and cleaning and snow clearing vehicles

7.3 Preconditions for obtaining a licence

There are 3 main pre-conditions to obtaining a licence within the EU, each regarded as essential to ensure safe and reliable operations:

1. Good repute
2. Adequate financial resources-capital and reserves
3. Professional competence

We recommend that these pre-conditions should also become the main criteria to be satisfied in obtaining a licence in Mongolia, though specific conditions will need to be tailored to the local situation.

7.3.1 Good repute

According to EU Directives the requirement of Good Repute is not satisfied, or is no longer satisfied if the relevant individual in the business:

- has been convicted of serious offences including offences of a commercial nature, or
- has been declared unfit to pursue the occupation of a road transport operator under applicable rules, or
- has been convicted of serious offences against applicable rules concerning pay and employment conditions in the profession or road transport legislation particularly rules relating to:
 - drivers' driving and rest periods
 - weights and dimensions of commercial vehicles
 - road safety and vehicle safety (including maintenance)
 - protection of the environment
 - professional liability

As established in the Legal Report, Mongolia does not currently examine the good repute of relevant managers or owners in the above manner though some criminal activity may be taken into account. We recommend that there should be a requirement that the manager and/or owner of a business should not have lost good repute at the time of a first application or application to renew a licence. Also if good repute is lost during the currency of a licence there should be a requirement to nominate a specified individual or individuals to replace that person. Failure to do so should lead to suspension or revocation of the licence. It is suggested that 2 categories of defined offences should be taken into account:

- serious crimes such as fraud, violence, theft, and

- specified breaches of road traffic and transport rules such as operating a vehicle in an unroadworthy condition, without a valid test certificate, overloading a vehicle or failing to ensure that drivers respect the limits on drivers' hours.

It will be necessary to ensure that MID is informed by relevant enforcement agents such as the Traffic Police and criminal courts of relevant offences and to establish a system for storing and acting on such information.

7.3.2 Adequate Financial Resources – Capital and Reserves

According to EU Directives, an undertaking must have available capital reserves of at least 9,000.00 EUR (approximately \$9,000.00) when only one vehicle is used and at least 5,000.00 EUR (approximately \$5,000.00) for each additional vehicle. The competent authority will need to consider what the level should be for Mongolia. Our minimum recommendation would be \$1,000.00 for the first vehicle and \$500.00 for each subsequent vehicle. This is to ensure the operator has enough money to maintain the vehicles in a safe condition.

7.3.3 Professional competence

There is currently no requirement for professional competence, evidenced by examination. We recommend that an International Certificate of Professional Competence examination system (**International CPC**) based on the materials and systems provided and initiated by the present project should be given legal force by the end of 2001.

A National Certificate of Competence examination system (**National CPC**) should also be introduced for holders of National licences within 5 years. There is an urgent need to improve management and safety standards in domestic transport, which represents the majority of traffic on Mongolian roads. In introducing a National CPC, guidance can be taken from EU norms, but the precise content will have to be tailored to reflect actual Mongolian national transport legislation. The framework for this process is contained within this Takis TRACECA programme, International Road Transport Transit Facilitation.

We recommend that one professionally competent person should normally be employed at each centre from which vehicles are operated. This requirement might exceptionally be relaxed if the applicant for a licence could demonstrate that one professionally competent person could exercise continuous and effective supervision over more than one centre. This could be the case where an operator split its operations between 2 depots in the same town.

7.4 Application Procedures that need to be considered

7.4.1 Whether applications should be published or advertised.

We recommend that applications for licences should be published in an official gazette.

7.4.2 Whether there should be a right of objection by state organs/associations.

Although rights of objection exist in Europe (for example in the UK), we are concerned that such "safeguards" could be misused and be seen as anti-competitive in the wrong hands in Mongolia. We recommend that for a period of 5 years from the introduction of our recommended changes to the licensing system there should be an absolute right to a licence if quality pre-conditions are met.

Subsequently it may be appropriate to give the right to certain institutions such as Local Planning Authorities, Carriers' Associations (such as NARTAM) and the Traffic Police to object to the grant of a licence on defined public policy grounds. Such objections should not be by way of a veto. It should always be the responsibility of MID to reach a final decision having considered all material factors, including any objections and replies made by the operator to those objections.

7.4.3 Whether licences should be for authorised or specified vehicles or both.

We recommend that the required number and type of vehicle(s) should be stated on the licence application. This will mean the operator can only operate up to the maximum number of vehicles **authorised** on his licence and if he wants more he will need to apply for more. The details (e.g. registration number) of each vehicle actually operated should be specified in a notice to MID. There should continue to be a requirement to display an individual licence disc in the windscreen specific to the particular vehicle. Using a combination of vehicles authorised by numbers and type only on the licence itself and individually specified vehicles subsequently issued with a display disc should result in flexibility for the operator and administrative simplicity for MID. The licence itself will not need to be amended each time a vehicle is replaced. However, MID will always be aware of the precise details of each vehicle actually operated, even if it is in the fleet for only a short time, for example if a vehicle is temporarily hired.

7.4.4 Whether there should be controls over operating centres.

Although subject to potential abuse in the wrong hands, we recommend that the bases from which vehicles operate should be approved by MID as suitable in practical and environmental terms for use as such. A plan of each centre and details of how and when it will be used will therefore need to accompany each application for an operators' licence. A centre should be defined as any place owned or occupied by the operator at which vehicles are normally kept when not in use on the road. MID may wish to control the number, type or size of vehicles which may be kept at any centre and any other aspects of the use of the centre which are relevant (for example the storing of fuel or hazardous products at the centre).

7.4.5 The making of the decision, by whom and in what time.

We recommend that MID should establish within itself an autonomous division or branch to deal with the issuing of all licences, to replace the apparently fragmented present system

7.4.10 Procedures for changed circumstances of the operator.

We recommend that a procedure be introduced to allow fairly rapid variation of a licence, subject to the same rules as apply to the issue or renewal of a licence. An operator may obtain a large new contract that will require him to buy and operate more vehicles. Such a contract should not be jeopardised by the absence or slowness of a mechanism for amending the licence to allow such operation.

7.5 Enforcement procedures

7.5.1 Who is responsible for enforcement?

Enforcement of licensing matters is believed to be the responsibility of MID and the Transport Inspectorate while the Traffic Police carry out road checks. We recommend that MID should be better informed by the Traffic police of offences related to vehicle safety. These should affect the licence of the operator concerned.

7.5.2 Practical structure of the enforcement system within AAT.

There is currently an insufficiently defined procedure for “**revocation**” (withdrawal) of licences but none for “**suspension**” of the licence or “**curtailment**” (cutting back on the number of vehicles). Revocation of the licence will normally lead to the failure of the business and sale of its assets with probable loss of employment of its employees. This is a very drastic measure that will also have adverse repercussions for the state in terms of lost tax revenues from the failed business. We therefore support the concept of a temporary suspension procedure and would consider a maximum of one month, or at most two, to be satisfactory. This would represent a severe sanction against the operator and the mere threat of suspension should have a deterrent effect. A short cessation of activities would, however, not normally be fatal to the business and could be used to put in place better systems of maintenance, supervision etc to remedy whatever situation led to the suspension.

We also recommend that consideration should be given to a procedure for **curtailment** of the licence so that the operator could be required to operate fewer vehicles than originally permitted if there was evidence, (such as convictions for failure to ensure adequate maintenance) suggesting that the operator was operating beyond its current competence. This could be used as a realistic way of enforcing standards without totally destroying the business in question.

7.5.3 Definition of grounds for revocation or suspension of licences

There are at present insufficiently defined grounds for revocation. We recommend that there should be some **mandatory** grounds for revocation and also **discretionary** grounds where the seriousness of the particular circumstances would be taken into account but revocation would not be automatic.

Revocation or suspension should be mandatory if:

- There is no longer a professionally competent person as required by the licence and this situation has continued for more than 12 months without a replacement being found
- The good repute of the nominated professionally competent person has been lost because of offences for which that person is responsible and no replacement has been found within 12 months of the loss of good repute
- The requisite financial standing of the company is not maintained

There should be a case to answer and the possibility of revocation, suspension or curtailment if:

- The operator has been prosecuted for using vehicles in an unroadworthy or overloaded condition or has breached rules on drivers' hours of work or undertakings given in the application on maintenance of vehicles
- The operator has used an operating centre which has not been declared to MID
- The application for the licence contained false information
- The operator has become bankrupt or gone into liquidation

7.5.4 The procedure for appeals

No clear and satisfactory overall appeals mechanism was reported. We therefore recommend that an additional appellate body should be developed to hear appeals from decisions of all kinds made by MID. This appellate body should be composed of persons experienced in law and/or in road transport operations and should operate under a legally qualified chairman. It would develop its own case law over a period of time which should be published and would give guidance to operators and their legal representatives on licensing matters. The right of appeal to a court from the decisions of this body would be necessary only in exceptional circumstances where it was alleged that the body had made a mistake of law rather than fact.

8. TAJIKISTAN

8.1 Introduction

Special focus of attention is given to Decrees 123 and 286.

8.2 Applicability of Operator Licensing in Tajikistan

8.2.1 Whether Operator Licensing applies to International and National operations

Operator Licensing is believed to apply both to National and International operations and so in principle would be compatible with the EU licensing system but we would recommend that it should be more closely aligned with **actual** EU standards.

8.2.2 Whether Operator Licensing applies to hire and reward only or also to own account

No distinction is thought to exist between “own account” (companies that only provide for their own transport requirements) and “hire and reward” (companies that offer a transport service for anyone), with the outcome that own account transport is also believed to be subject to licensing.

8.2.3 Whether exemptions exist for vehicles under 3.5 tonnes gross and certain passenger vehicles

There are currently believed to be no exemptions for goods vehicles under 3.5 tonnes maximum gross weight. In the view of the Consultant this is a lost opportunity and we would recommend that such an exemption should be introduced for the following reasons:

- Such vehicles are small and represent no more danger in their operation than private cars
- Vehicles under 3.5 tonnes gross require maintenance procedures no more complicated than for private cars
- Such vehicle are found in large numbers and subjecting them to operator licensing creates considerable extra costs for government in terms of administration and enforcement, for very marginal benefits in terms of safety or income
- The cost for operators to comply with the regulations are disproportionately high and can act as an impediment to the development of new business
- Regulatory authorities would have more time to concentrate on goods vehicles over 3.5 tonnes to ensure their compliance with the law

If such an exemption is put in place, a decision would be needed as to whether the weight of any trailer towed by the vehicle should be taken into account in calculating the maximum gross weight. We suggest that a trailer with an **unladen** weight of one tonne or below could be disregarded. There would be few safety repercussions.

For passenger vehicles we recommend that the exemption from Operator Licensing found in the EU for vehicles constructed and equipped to carry no more than 9 persons, including the driver, would be suitable in Tajikistan. Again this would reduce the administrative burden facing both the state and operators without having any significant safety repercussions.

8.2.4 Whether exemptions exist for specific vehicle types

There are no reported exemptions from Operator Licensing for certain types of emergency vehicles. We would suggest that exemptions should be introduced for vehicles that either cover only short distances on public roads or are in the hands of specialist state agencies. These exemptions could include:

- agricultural machines
- police, fire, ambulance and military vehicles
- road construction, maintenance and cleaning and snow clearing vehicles

8.3 Preconditions for obtaining a licence

There are 3 main pre-conditions to obtaining a licence within the EU, each regarded as essential to ensure safe and reliable operations:

1. Good repute
2. Adequate financial resources-capital and reserves
3. Professional competence

We recommend that these pre-conditions should also become the main criteria to be satisfied in obtaining a licence in Tajikistan, though specific conditions will need to be tailored to the local situation.

8.3.1 Good repute

According to EU Directives the requirement of Good Repute is not satisfied, or is no longer satisfied if the relevant individual in the business:

- has been convicted of serious offences including offences of a commercial nature, or
- has been declared unfit to pursue the occupation of a road transport operator under applicable rules, or

- has been convicted of serious offences against applicable rules concerning pay and employment conditions in the profession or road transport legislation particularly rules relating to:
 - drivers' driving and rest periods
 - weights and dimensions of commercial vehicles
 - road safety and vehicle safety (including maintenance)
 - protection of the environment
 - professional liability

As established in the Legal Report, Tajikistan does not currently examine the good repute of relevant managers or owners in the above manner. We recommend that the decree on licensing should be amended to introduce a requirement that the manager and/or owner of a business should not have lost good repute at the time of a first application or application to renew a licence. Also if good repute is lost during the currency of a licence there should be a requirement to nominate a specified individual or individuals to replace that person. Failure to do so should lead to suspension or revocation of the licence. It is suggested that 2 categories of defined offences should be taken into account:

- serious crimes such as fraud, violence, theft, and
- specified breaches of road traffic and transport rules such as operating a vehicle in an unroadworthy condition, without a valid test certificate, overloading a vehicle or failing to ensure that drivers respect the limits on drivers' hours

It will be necessary to ensure that the Ministry of Transport and Road Economy (MOTR) is informed by relevant enforcement agents such as GAI and criminal courts of relevant offences and to establish a system for storing and acting on such information. This exchange of information would be vital for this law to be enforceable.

8.3.2 Adequate Financial Resources – Capital and Reserves

According to EU Directives, an undertaking must have available capital reserves of at least 9,000.00 EUR (approximately \$9,000.00) when only one vehicle is used and at least 5,000.00 EUR (approximately \$5,000.00) for each additional vehicle. The competent authority will need to consider what the level should be for Tajikistan. Our minimum recommendation would be \$1,000.00 for the first vehicle and \$500.00 for each subsequent vehicle. This is to ensure the operator has enough money to maintain the vehicles in a safe condition.

8.3.3 Professional competence

There is currently no requirement for professional competence, evidenced by examination. We recommend that an International Certificate of Professional Competence examination system (**International CPC**) based on the materials and systems provided and initiated by the present project should be given legal force by the end of 2001.

A National Certificate of Competence examination system (**National CPC**) should also be introduced for holders of National licences within 5 years. There is an urgent need to improve management and safety standards in domestic transport, which represents the majority of traffic on Tadjik roads. In introducing a National CPC, guidance can be taken from EU norms, but the precise content will have to be tailored to reflect actual Tadjik National Transport Legislation. The framework for this process is contained within this Tacis TRACECA programme, International Road Transport Transit Facilitation.

We recommend that one professionally competent person should normally be employed at each centre from which vehicles are operated. This requirement might exceptionally be relaxed if the applicant for a licence could demonstrate that one professionally competent person could exercise continuous and effective supervision over more than one centre. This could be the case where an operator split its operations between 2 depots in the same town.

8.4 Application Procedures that need to be considered

8.4.1 Whether applications should be published or advertised.

We recommend that applications for licences should be published in an official gazette.

8.4.2 Whether there should be a right of objection by state organs/associations.

Although rights of objection exist in Europe (for example in the UK), we are concerned that such "safeguards" could be misused and be seen as anti-competitive in the wrong hands in Tajikistan. We recommend that for a period of 5 years from the introduction of our recommended changes to the licensing system there should be an absolute right to a licence if quality pre-conditions are met. Subsequently it may be appropriate to give the right to certain institutions such as Local Planning Authorities, Carriers' Associations (such as ABBAT) and GAI to object to the grant of a licence on defined public policy grounds. Such objections should not be by way of a veto. It should always be the responsibility of MOTR to reach a final decision having considered all material factors, including any objections and replies made by the operator to those objections.

8.4.3 Whether licences should be for authorised or specified vehicles or both.

We recommend that the required number and type of vehicle(s) should be stated on the licence application. This will mean the operator can only operate up to the maximum number of vehicles **authorised** on his licence and if he wants more he will need to apply for more. The details (e.g. registration number) of each vehicle actually operated should be specified in a notice to MOTR. There should continue to be a requirement to display an individual licence disc in the windscreen specific to the particular vehicle. Using a combination of vehicles authorised by numbers and type only on the licence itself and individually specified vehicles subsequently issued with a display disc should result in both flexibility for the operator and administrative simplicity for MOTR. The licence itself will not need to be

amended each time a vehicle is replaced but the MOTR will always be aware of the precise details of each vehicle which is actually operated, even if it is in the fleet for only a short time (for example if a vehicle is temporarily hired).

8.4.4 Whether there should be controls over operating centres.

Although subject to potential abuse in the wrong hands, we recommend that the bases from which vehicles operate should be approved by MOTR as suitable in practical and environmental terms for use as such. A plan of each centre and details of how and when it will be used will therefore need to accompany each application for an operators' licence. A centre should be defined as any place owned or occupied by the operator at which vehicles are normally kept when not in use on the road. MOTR may wish to control the number, type or size of vehicles which may be kept at any centre and any other aspects of the use of the centre which are relevant (for example the storing of fuel or hazardous products at the centre).

8.4.5 The making of the decision, by whom and in what time.

We recommend that MOTR should establish within itself an autonomous division or branch to deal with the issuing of licences. This division should be required to act in a quasi-judicial manner in deciding applications according to the principles established by law. It should not be under the direct influence of the MOTR or any other government organ or official. The present timescale for issue of a licence seems broadly satisfactory.

8.4.6 Whether or not conditions can be applied to licences and if so what type

The present system seems to result in a licence application either being granted or rejected. We would recommend that it should be possible for negotiations to take place where MOTR is not satisfied with some aspect of the proposed operation. It could then grant the application in part or subject to conditions and the operator would have the choice between abandoning its application, accepting the proposed modifications, or appealing against them. Conditions might be proposed as to the number, type or size of vehicles to be kept at a centre, the nature of the maintenance arrangements to be made for the vehicles etc.

8.4.7 The procedure for appeals from refusal.

We recommend that a specialised appellate body should be developed to hear appeals from decisions made by MOTR.

8.4.8 Duration of the licence, what information shown, type and colour of discs.

Insufficient data was available to be able to make recommendations in this area.

8.4.9 Fees for licences, payable to whom and fee levels set how and by whom.

We recommend that licence fees should be set by MOTR under powers delegated by the legislative authority and subject to review by that body on public policy grounds. The fees

should be payable to MOTR and should at least cover all the costs of administration of the entire operator licensing system including appeals. It will therefore be necessary for an economist to review the costs of the system and propose appropriate fee levels.

By way of guidance only, relative fee levels in the UK are:

- application fee 16 units
- issue fee 25 units
- renewal fee 25 units
- fee to specify each vehicle 2.8 units per year (or pro-rata)

The unit figure in the UK is £10.00 Sterling.

8.4.10 Procedures for changed circumstances of the operator.

We would recommend that a procedure be introduced to allow fairly rapid variation of a licence, subject to the same rules as apply to the issue or renewal of a licence. An operator may obtain a large new contract which will require him to buy and operate more vehicles. Such a contract should not be jeopardised by the absence or slowness of a mechanism for amending the licence to allow such operation.

8.5 Enforcement procedures

8.5.1 Who is responsible for enforcement?

Enforcement of licensing matters is the responsibility of MOTR while GAI carry out road checks. We recommend that MOTR should be better informed by GAI of offences related to vehicle safety which should affect the licence of the operator concerned.

8.5.2 Practical structure of the enforcement system within MOTR

Insufficient data was available on whether there is currently a procedure for “**revocation**” (withdrawal) of licences, “**temporary suspension**” or for “**curtailment**” (cutting back on the number of vehicles). Revocation of the licence will normally lead to the failure of the business and sale of its assets with probable loss of employment of its employees. This is a very drastic measure that will also have adverse repercussions for the state in terms of lost tax revenues from the failed business. Revocation should, in our view, be a last resort and not the only instrument for enforcement.

We recommend that a procedure should exist to allow **temporary suspension** of the licence for a period of up to one month. This would be a severe sanction against the operator and the threat of suspension would have a deterrent effect. A short cessation of activities would, however, not normally be fatal to the business and could be used to put in place better systems of maintenance, supervision etc to remedy whatever situation led to the suspension.

We also recommend that consideration should be given to a procedure for **curtailment** of the licence so that the operator could be required to operate fewer vehicles than originally permitted if there was evidence, (such as convictions for failure to ensure adequate maintenance) suggesting that the operator was operating beyond its current competence. This could be used as a realistic way of enforcing standards without totally destroying the business in question.

8.5.3 Definition of grounds for revocation or suspension of licences

We recommend that there should be some **mandatory** grounds for revocation and also **discretionary** grounds where the seriousness of the particular circumstances would be taken into account but revocation would not be automatic.

Revocation or suspension should be mandatory if:

- There is no longer a professionally competent person as required by the licence and this situation has continued for more than 12 months without a replacement being found
- The good repute of the nominated professionally competent person has been lost because of offences for which that person is responsible and no replacement has been found within 12 months of the loss of good repute
- The requisite financial standing of the company is not maintained

There should be a case to answer and the possibility of revocation, suspension or curtailment if:

- The operator has been prosecuted for using vehicles in an unroadworthy or overloaded condition or has breached rules on drivers' hours of work or undertakings given in the application on maintenance of vehicles
- The operator has used an operating centre which has not been declared to MOTR
- The application for the licence contained false information
- The operator has become bankrupt or gone into liquidation

8.5.4 The procedure for appeals

No clear and satisfactory overall appeals mechanism was reported. We therefore recommend that an additional appellate body should be developed to hear appeals from decisions of all kinds made by MOTR. This appellate body should be composed of persons experienced in law and/or in road transport operations and should operate under a legally qualified chairman. It would develop its own case law over a period of time which should be published and would give guidance to operators and their legal representatives on licensing matters. The right of appeal to a court from the decisions of this body would be necessary only in



exceptional circumstances where it was alleged that the body had made a mistake of law rather than fact.

9. TURKMENISTAN

9.1 Introduction

Special focus of attention is given to Decrees 1977, 2606 and 3361.

9.2 Applicability of Operator Licensing in Turkmenistan

9.2.1 Whether Operator Licensing applies to International and National operations

Operator Licensing applies only to International operations and so is not presently compatible with the EU licensing system. We recommend that it should be more closely aligned with existing EU standards by extending licensing to National operations.

9.2.2. Whether Operator Licensing applies to hire and reward only or also to own account

No distinction was reported between “own account” (companies that only provide for their own transport requirements) and “hire and reward” (companies that offer a transport service for anyone). It therefore is likely that own account transport may also at least theoretically be subject to licensing (with exemptions for some state owned vehicles).

9.2.3 Whether exemptions exist for vehicles under 3.5 tonnes gross and certain passenger vehicles

There are currently no exemptions for goods vehicles under 3.5 tonnes maximum gross weight. In the view of the Consultant this is a lost opportunity and we would recommend that such an exemption should be introduced for the following reasons:

- Such vehicles are small and represent no more danger in their operation than private cars
- Vehicles under 3.5 tonnes gross require maintenance procedures no more complicated than for private cars
- Such vehicle are found in large numbers and subjecting them to operator licensing creates considerable extra costs for government in terms of administration and enforcement, for very marginal benefits in terms of safety or income
- The cost for operators to comply with the regulations are disproportionately high and can act as an impediment to the development of new business
- Regulatory authorities would have more time to concentrate on goods vehicles over 3.5 tonnes to ensure their compliance with the law

If such an exemption is put in place, a decision would be needed as to whether the weight of any trailer towed by the vehicle should be taken into account in calculating the maximum gross weight. We suggest that a trailer with an **unladen** weight of one tonne or below could be disregarded. There would be few safety repercussions.

For passenger vehicles we recommend that the exemption from Operator Licensing found in the EU for vehicles constructed and equipped to carry no more than 9 persons, including the driver, would be suitable in Turkmenistan. Again this would reduce the administrative burden facing both the state and operators without having any significant safety repercussions.

9.2.4 Whether exemptions exist for specific vehicle types

There are existing extensive exemptions from Operator Licensing for certain types of emergency vehicles or vehicles which cover only short distances on public roads. We regard these as satisfactory. However there seems little justification for exempting certain vehicles performing normal long distance transport merely because they are state owned, as was reported to be the case at present.

9.3 Preconditions for obtaining a licence

There are 3 main pre-conditions to obtaining a licence within the EU, each regarded as essential to ensure safe and reliable operations:

1. Good repute
2. Adequate financial resources-capital and reserves
3. Professional competence.

We recommend that these pre-conditions should also become the main criteria to be satisfied in obtaining a licence in Turkmenistan, though specific conditions will need to be tailored to the local situation.

9.3.1 Good repute

According to EU Directives the requirement of Good Repute is not satisfied, or is no longer satisfied if the relevant individual in the business:

- has been convicted of serious offences including offences of a commercial nature, or
- has been declared unfit to pursue the occupation of a road transport operator under applicable rules, or
- has been convicted of serious offences against applicable rules concerning pay and employment conditions in the profession or road transport legislation particularly rules relating to:
 - drivers' driving and rest periods

- weights and dimensions of commercial vehicles
- road safety and vehicle safety (including maintenance)
- protection of the environment
- professional liability

As established in the Legal Report, Turkmenistan does not currently examine the good repute of relevant managers or owners in the above manner. We recommend that the decrees on licensing should be amended to introduce a requirement that the manager and/or owner of a business should not have lost good repute at the time of a first application or application to renew a licence. Also if good repute is lost during the currency of a licence there should be a requirement to nominate a specified individual or individuals to replace that person. Failure to do so should lead to suspension or revocation of the licence. It is suggested that 2 categories of defined offences should be taken into account:

- serious crimes such as fraud, violence, theft, and
- specified breaches of road traffic and transport rules such as operating a vehicle in an unroadworthy condition, without a valid test certificate, overloading a vehicle or failing to ensure that drivers respect the limits on drivers' hours.

It will be necessary to ensure that the Ministry of Motor Transport (MMT) is informed by relevant enforcement agents such as GAI and criminal courts of relevant offences and to establish a system for storing and acting on such information. This exchange of information would be vital for this law to be enforceable.

9.3.2 Adequate Financial Resources – Capital and Reserves

According to EU Directives, an undertaking must have available capital reserves of at least 9,000.00 EUR (approximately \$9,000.00) when only one vehicle is used and at least 5,000.00 EUR (approximately \$5,000.00) for each additional vehicle. The competent authority will need to consider what the level should be for Turkmenistan. Our minimum recommendation would be \$1,000.00 for the first vehicle and \$500.00 for each subsequent vehicle. This is to ensure the operator has enough money to maintain the vehicles in a safe condition.

9.3.3 Professional competence

There are well considered training requirements for persons wishing to operate an international transport business in Turkmenistan, but these are not presently fully aligned with the EU system of National and International CPC evidenced by examination. We recommend that an International Certificate of Professional Competence examination system (**International CPC**) based on the materials and systems provided and initiated by the present project should be given legal force by the end of 2001 to replace the existing procedures.

A National Certificate of Competence examination system (**National CPC**) should also be introduced for holders of the new National licences within 5 years. There is an urgent need to improve management and safety standards in domestic transport, which represents the majority of traffic on Turkmen roads. In introducing a National CPC, guidance can be taken from EU norms, but the precise content will have to be tailored to reflect actual Turkmen national transport legislation. The framework for this process is contained within this Tacis TRACECA programme, International Road Transport Transit Facilitation.

We recommend that one professionally competent person should normally be employed at each centre from which vehicles are operated. This requirement might exceptionally be relaxed if the applicant for a licence could demonstrate that one professionally competent person could exercise continuous and effective supervision over more than one centre. This could be the case where an operator split its operations between 2 depots or factories in the same town.

9.4 Application Procedures that need to be considered

9.4.1 Whether applications should be published or advertised.

We recommend that applications for licences should be published in an official gazette.

9.4.2 Whether there should be a right of objection by state organs/associations.

Although rights of objection exist in Europe (for example in the UK), we are concerned that such "safeguards" could be misused and be seen as anti-competitive in the wrong hands in Turkmenistan. We recommend that for a period of 5 years from the introduction of our recommended changes to the licensing system there should be an absolute right to a licence if quality pre-conditions are met. Subsequently it may be appropriate to give the right to certain institutions such as Local Planning Authorities, Carriers' Associations (such as THADA) and GAI to object to the grant of a licence on defined public policy grounds. Such objections should not be by way of a veto. It should always be the responsibility of MMT to reach a final decision having considered all material factors, including any objections and replies made by the operator to those objections.

9.4.3 Whether licences should be for authorised or specified vehicles or both.

We recommend that the required number and type of vehicle(s) should be stated on the licence application. This will mean the operator can only operate up to the maximum number of vehicles **authorised** on his licence and if he wants more he will need to apply for more. The details (e.g. registration number) of each vehicle actually operated should be specified in a notice to MMT. There should continue to be a requirement to display an individual licence disc in the windscreen specific to the particular vehicle. Using a combination of vehicles authorised by numbers and type only on the licence itself and individually specified vehicles subsequently issued with a display disc should result in both flexibility for the operator and administrative simplicity for MMT. The licence itself will not need to be amended each time

a vehicle is replaced. However, MMT will always be aware of the precise details of each vehicle which is actually operated, even if it is in the fleet for only a short time, (for example if a vehicle is temporarily hired).

9.4.4 Whether there should be controls over operating centres.

Although subject to potential abuse in the wrong hands, we recommend that the bases from which vehicles operate should be approved by MMT as suitable in practical and environmental terms for use as such. A plan of each centre and details of how and when it will be used will therefore need to accompany each application for an operators' licence. A centre should be defined as any place owned or occupied by the operator at which vehicles are normally kept when not in use on the road. MMT may wish to control the number, type or size of vehicles which may be kept at any centre and any other aspects of the use of the centre which are relevant (for example the storing of fuel or hazardous products at the centre).

9.4.5. The making of the decision, by whom and in what time.

We recommend that MMT should establish within itself an autonomous division or branch to deal with the issuing of licences. This division should be required to act in a quasi-judicial manner in deciding applications according to the principles established by law. It should not be under the direct influence of MMT or any other government organ or official. The criteria for deciding whether applicants meet the required standards should be made public. The present timescale for issue of a licence seems satisfactory with flexibility to deal with urgent cases.

9.4.6 Whether or not conditions can be applied to licences and if so what type.

The present system seems to result in a licence application either being granted or rejected. We recommend that it should be possible for negotiations to take place where MMT is not satisfied with some aspect of the proposed operation. It could then grant the application in part or subject to conditions and the operator would have the choice between abandoning its application, accepting the proposed modifications, or appealing against them. Conditions might be proposed as to the number, type or size of vehicles to be kept at a centre, the nature of the maintenance arrangements to be made for the vehicles etc.

9.4.7 The procedure for appeals from refusal.

We recommend that a specialised appellate body should be developed to hear appeals from decisions made by MMT.

9.4.8 Duration of the licence, what information shown, type and colour of discs.

The present arrangements for a licence with a 3-5 year validity seem satisfactory as does the system of individual licence discs.

9.4.9 Fees for licences, payable to whom and fee levels set how and by whom.

We recommend that licence fees should be set by the Cabinet of Ministers, or following creation of a unified Ministry of Transport, by the Minister of Transport under powers delegated by the legislative authority and subject to review by that body on public policy grounds. The fees should be payable to MMT and should at least cover all the costs of administration of the entire operator licensing system including appeals. It will therefore be necessary for an economist to review the costs of the system and propose appropriate fee levels.

By way of guidance only, relative fee levels in the UK are:

- application fee 16 units
- issue fee 25 units
- renewal fee 25 units
- fee to specify each vehicle 2.8 units per year (or pro-rata)

The unit figure in the UK is £10.00 Sterling.

9.4.10 Procedures for changed circumstances of the operator.

We recommend that a procedure be introduced to allow fairly rapid variation of a licence, subject to the same rules as apply to the issue or renewal of a licence. An operator may obtain a large new contract which will require him to buy and operate more vehicles. Such a contract should not be jeopardised by the absence or slowness of a mechanism for amending the licence to allow such operation.

9.5 Enforcement procedures

9.5.1 Who is responsible for enforcement?

Enforcement of licensing matters is the responsibility of MMT while GAI carry out road checks. We recommend that MMT should be better informed by GAI of offences related to vehicle safety which should affect the licence of the operator concerned.

9.5.2. Practical structure of the enforcement system within MMT.

There is currently a procedure for “**revocation**” (withdrawal) of licences and also a quite sophisticated procedure for “**temporary suspension**” of the licence but not for “**curtailment**” (cutting back on the number of vehicles). Revocation of the licence will normally lead to the failure of the business and sale of its assets with probable loss of employment of its employees. This is a very drastic measure that will also have adverse repercussions for the state in terms of lost tax revenues from the failed business. We therefore support the temporary suspension procedure but would consider a maximum of one month, or at most two, to be satisfactory. This would still represent a severe sanction against the

operator and the mere threat of suspension should have a deterrent effect. A short cessation of activities would, however, not normally be fatal to the business and could be used to put in place better systems of maintenance, supervision etc to remedy whatever situation led to the suspension.

We also recommend that consideration should be given to a procedure for **curtailment** of the licence so that the operator could be required to operate fewer vehicles than originally permitted if there was evidence, (such as convictions for failure to ensure adequate maintenance) suggesting that the operator was operating beyond its current competence. This could be used as a realistic way of enforcing standards without totally destroying the business in question.

9.5.3 Definition of grounds for revocation or suspension of licences

There are already a number of grounds for revocation set out in the legislation related both to breaches of administrative procedure and relevant safety considerations concerning the operation of vehicles. We recommend that there should be some **mandatory** grounds for revocation and also **discretionary** grounds where the seriousness of the particular circumstances would be taken into account but revocation would not be automatic.

Revocation or suspension should be mandatory if:

- There is no longer a professionally competent person as required by the licence and this situation has continued for more than 12 months without a replacement being found
- The good repute of the nominated professionally competent person has been lost because of offences for which that person is responsible and no replacement has been found within 12 months of the loss of good repute
- The requisite financial standing of the company is not maintained

There should be a case to answer and the possibility of revocation, suspension or curtailment if:

- The operator has been prosecuted for using vehicles in an unroadworthy or overloaded condition or has breached rules on drivers' hours of work or undertakings given in the application on maintenance of vehicles
- The operator has used an operating centre which has not been declared to MMT
- The application for the licence contained false information
- The operator has become bankrupt or gone into liquidation

9.5.4 The procedure for appeals

No clear and satisfactory overall appeals mechanism was reported although if a licence holder believes he has been treated harshly or unfairly on refusal of a licence by MMT there is a right to arbitration and of final appeal to a court. It is unlikely that many courts have regular experience of dealing with road transport licensing matters. We therefore recommend that an additional appellate body should be developed to hear appeals from decisions of all kinds made by MMT to replace the present arbitration and court system. This appellate body should be composed of persons experienced in law and/or in road transport operations and should operate under a legally qualified chairman. It would develop its own case law over a period of time which should be published and would give guidance to operators and their legal representatives on licensing matters. The right of appeal to a court from the decisions of this body would be necessary only in exceptional circumstances where it was alleged that the body had made a mistake of law rather than fact.

10. UKRAINE

10.1 Introduction

Attention is given particularly to Resolution Number 1020 of 3rd July 1998 on licensing procedures and the Ministry of Transport Order on issue of licences.

10.2 Applicability of Operator Licensing in Ukraine

10.2.1 Whether Operator Licensing applies to International and National operations

Operator Licensing applies only to international carriers and, even then, it does not apply when they travel only to other CIS countries. It is therefore not presently compatible with the EU licensing system which also includes all National transport operations for hire and reward. We strongly recommend that the Ukrainian system should be more closely aligned with actual EU standards within 5 years by extension of the licensing requirement to National operations.

10.2.2 Whether Operator Licensing applies to hire and reward only or also to own account

No distinction is made between “own account” (companies that only provide for their own transport requirements) and “hire and reward” (companies that offer a transport service for anyone), with the outcome that own account transport is also subject to licensing.

Should our recommendations be accepted with regard to extension of the Operator Licensing system to National Operations, a decision will be needed as to whether to exempt own account, (which still accounts for the majority of heavy traffic on the roads) as is permitted under EU rules, or whether to introduce controls in the interest of public safety.

If only one category of licence continues to be issued, an "own account" operator will be able to carry goods for other persons so there will be no practical difference between the two types of operator. This can be justified commercially as it increases competition and customer choice and should help reduce the number of vehicles returning empty to base. It can be justified also on safety grounds. There is no reason why different rules should apply depending on whether the road transport operator owns or does not own the goods carried. The only relevant consideration should be whether or not his vehicles are operated safely.

However, should an exemption be introduced for "own account" in future, we would strongly recommend that there should be severe penalties for any own account operator who is found to be carrying goods for another business without having obtained an operators' licence.

10.2.3 Whether exemptions exist for vehicles under 3.5 tonnes gross and certain passenger vehicles

There are currently no exemptions for goods vehicles under 3.5 tonnes maximum gross weight. In the view of the Consultant this is a lost opportunity and we would recommend that such an exemption should be introduced for the following reasons:

- Such vehicles are small and represent no more danger in their operation than private cars
- Vehicles under 3.5 tonnes gross require maintenance procedures no more complicated than for private cars
- Such vehicles are found in large numbers and subjecting them to operator licensing creates considerable extra costs for government in terms of administration and enforcement, for very marginal benefits in terms of safety or income
- The cost for operators to comply with the regulations are disproportionately high and can act as an impediment to the development of new business
- Regulatory authorities would have more time to concentrate on goods vehicles over 3.5 tonnes to ensure their compliance with the law

If such an exemption is put in place, a decision would be needed as to whether the weight of any trailer towed by the vehicle should be taken into account in calculating the maximum gross weight. We suggest that a trailer with an **unladen** weight of one tonne or below could be disregarded. There would be few safety repercussions.

For passenger vehicles we recommend that the exemption from Operator Licensing found in the EU for vehicles constructed and equipped to carry no more than 9 persons, including the driver, would be suitable in Ukraine. Again this would reduce the administrative burden facing both the state and operators without having any significant safety repercussions.

The above exemptions for goods and passenger vehicles would significantly reduce the administrative implications of adopting our recommendation of bringing National operations within the scope of operator licensing.

10.2.4 Whether exemptions exist for specific vehicle types

There are no reported exemptions from Operator Licensing for vehicles used for certain special purposes. We would suggest that exemptions should be introduced for vehicles that either cover only short distances on public roads or are in the hands of specialist state agencies. These exemptions could include:

- agricultural machines
- police, fire, ambulance and military vehicles
- road construction, maintenance and cleaning and snow clearing vehicles

10.3 Preconditions for obtaining a licence

There are 3 main pre-conditions to obtaining a licence within the EU, each regarded as essential to ensure safe and reliable operations:

1. Good repute
2. Adequate financial resources-capital and reserves
3. Professional competence.

We recommend that these pre-conditions should also become the main criteria to be satisfied in obtaining a licence in Ukraine, though specific conditions will need to be tailored to the local situation.

10.3.1 Good repute

According to EU Directives the requirement of Good Repute is not satisfied, or is no longer satisfied if the relevant individual in the business:

- has been convicted of serious offences including offences of a commercial nature, or
- has been declared unfit to pursue the occupation of a road transport operator under applicable rules, or
- has been convicted of serious offences against applicable rules concerning pay and employment conditions in the profession or road transport legislation particularly rules relating to:
 - drivers' driving and rest periods
 - weights and dimensions of commercial vehicles
 - road safety and vehicle safety (including maintenance)
 - protection of the environment
 - professional liability

As established in the Legal Report, Ukraine does not currently examine the good repute of relevant managers or owners in the above manner, apart from the recording of convictions for offences in an individual's work record book and the possibility of personal liability for serious accidents, also under general employment legislation. We recommend that the Resolution on licensing should be amended to introduce a requirement that the manager and/or owner of a business should not have lost good repute at the time of a first application or application to renew a licence. Also if good repute is lost during the currency of a licence there should be a requirement to nominate a specified individual or individuals to replace that person. Failure to do so should lead to suspension or revocation of the licence. It is suggested that 2 categories of defined offences should be taken into account:

- serious crimes such as fraud, violence, theft, and
- specified breaches of road traffic and transport rules such as operating a vehicle in an unroadworthy condition, without a valid test certificate, overloading a vehicle or failing to ensure that drivers respect the limits on drivers' hours

It will be necessary to ensure that the State Licensing Committee (SLC) is informed by relevant enforcement agents such as GAI and criminal courts of relevant offences and to establish a system for storing and acting on such information. This exchange of information would be vital for this law to be enforceable.

10.3.2 Adequate Financial Resources – Capital and Reserves

According to EU Directives, an undertaking must have available capital reserves of at least 9,000.00 EUR (approximately \$9,000.00) when only one vehicle is used and at least 5,000.00 EUR (approximately \$5,000.00) for each additional vehicle. The competent authority will need to consider what the level should be for Ukraine. Our minimum recommendation would be \$1,000.00 for the first vehicle and \$500.00 for each subsequent vehicle. This is to ensure the operator has enough money to maintain the vehicles in a safe condition. In view of current economic problems the requirements may have to be phased in over a period of 5 years.

10.3.3 Professional competence

There are training requirements for persons wishing to establish a transport business in Ukraine, but these are not presently compatible with the EU system of National and International CPC evidenced by examination. We recommend that an International Certificate of Professional Competence examination system (**International CPC**) based on the materials and systems provided and initiated by the present project should be given legal force by the end of 2001.

A National Certificate of Competence examination system (**National CPC**) should also be introduced for holders of the new National licences within 5 years. There is an urgent need to improve management and safety standards in domestic transport, which represents the majority of traffic on Ukrainian roads. In introducing a National CPC, guidance can be taken from EU norms, but the precise content will have to be tailored to reflect actual Ukrainian national transport legislation. The framework for this process is contained within this Tacis TRACECA programme, International Road Transport Transit Facilitation.

We recommend that one professionally competent person should normally be employed at each centre from which vehicles are operated. This requirement might exceptionally be relaxed if the applicant for a licence could demonstrate that one professionally competent person could exercise continuous and effective supervision over more than one centre. This could be the case where an operator split its operations between 2 depots or factories in the same town.

10.4 Application Procedures that need to be considered

10.4.1 Whether applications should be published or advertised.

We recommend that applications for licences should be published in an official gazette.

10.4.2 Whether there should be a right of objection by state organs/associations.

Although rights of objection exist in Europe (for example in the UK), we are concerned that such "safeguards" could be misused and be seen as anti-competitive in the wrong hands in Ukraine. We recommend that for a period of 5 years from the introduction of our recommended changes to the licensing system there should be an absolute right to a licence if quality pre-conditions are met. Subsequently it may be appropriate to give the right to certain institutions such as Local Planning Authorities, Carriers' Associations (such as AsMAP) and GAI to object to the grant of a licence on defined public policy grounds. Such objections should not be by way of a veto. It should always be the responsibility of SLC to reach a final decision having considered all material factors, including any objections and replies made by the operator to those objections.

10.4.3 Whether licences should be for authorised or specified vehicles or both.

We recommend that the required number and type of vehicle(s) should be stated on the licence application. This will mean the operator can only operate up to the maximum number of vehicles **authorised** on his licence and if he wants more he will need to apply for more. The details (e.g. registration number) of each vehicle actually operated should be specified in a notice to SLC. There should continue to be a requirement to display an individual licence disc in the windscreen specific to the particular vehicle.

10.4.4 Whether there should be controls over operating centres.

Although subject to potential abuse in the wrong hands, we recommend that the bases from which vehicles operate should be approved by SLC as suitable in practical and environmental terms for use as such. A plan of each centre and details of how and when it will be used will therefore need to accompany each application for an operators' licence. A centre should be defined as any place owned or occupied by the operator at which vehicles are normally kept when not in use on the road. SLC may wish to control the number, type or size of vehicles which may be kept at any centre and any other aspects of the use of the centre which are relevant (for example the storing of fuel or hazardous products at the centre).

10.4.5 The making of the decision, by whom and in what time.

The division of responsibilities between the Licensing Department and the State Licensing Committee (SLC) is well considered and appropriate. We would reiterate that the SLA should act in a quasi-judicial manner in deciding applications according only to the principles established by law. It should not be under the direct influence of the Ministry of Transport or any other government organ or official. There are no reports of problems with the present timescale for issue of a licence.

contract should not be jeopardised by the absence or slowness of a mechanism for amending the licence to allow such operation.

10.5 Enforcement procedures

10.5.1 Who is responsible for enforcement?

Enforcement of licensing matters is the responsibility of the Licensing Department of the Ministry of Transport while GAI carry out road checks. We recommend that the Licensing Department should be better informed by GAI of offences related to vehicle safety which should affect the licence of the operator concerned.

10.5.2 Practical structure of the enforcement system by the Ministry of Transport

There is currently a procedure for “**revocation**” (withdrawal) of licences and also for “**temporary suspension**” of the licence but not for “**curtailment**” (cutting back on the number of vehicles). Revocation of the licence will normally lead to the failure of the business and sale of its assets with probable loss of employment of its employees. This is a very drastic measure that will also have adverse repercussions for the state in terms of lost tax revenues from the failed business. We therefore support the temporary suspension procedure but wonder whether there is a need for the maximum period to be as long as six months. A six-month suspension will still prove fatal to almost all businesses and we would consider a maximum of one month, or at most two, to be satisfactory. This would still represent a severe sanction against the operator and the threat of suspension should still have a deterrent effect.

We also recommend that consideration should be given to a procedure for **curtailment** of the licence so that the operator could be required to operate fewer vehicles than originally permitted if there was evidence, (such as convictions for failure to ensure adequate maintenance) suggesting that the operator was operating beyond its current competence. This could be used as a realistic way of enforcing standards without totally destroying the business in question.

10.5.3 Definition of grounds for revocation or suspension of licences

The present grounds for revocation or suspension are well considered but could be brought more in line with EU example. We recommend that there should be some **mandatory** grounds for revocation and also **discretionary** grounds where the seriousness of the particular circumstances would be taken into account but revocation would not be automatic.

Revocation or suspension should be mandatory if:

- There is no longer a professionally competent person as required by the licence and this situation has continued for more than 12 months without a replacement being found

- The good repute of the nominated professionally competent person has been lost because of offences for which that person is responsible and no replacement has been found within 12 months of the loss of good repute
- The requisite financial standing of the company is not maintained

There should be a case to answer and the possibility of revocation, suspension or curtailment if:

- The operator has been prosecuted for using vehicles in an unroadworthy or overloaded condition or has breached rules on drivers' hours of work or undertakings given in the application on maintenance of vehicles
- The operator has used an operating centre which has not been declared
- The application for the licence contained false information
- The operator has become bankrupt or gone into liquidation

10.5.4 The procedure for appeals

If a licence holder believes he has been treated harshly or unfairly by SLC there is a right of appeal to a court. It is unlikely that many courts have regular experience of dealing with road transport licensing matters. We therefore recommend that an additional appellate body should be developed to hear appeals from decisions of all kinds made by the State Licensing Committee. This appellate body should be composed of persons experienced in law and/or in road transport operations and should operate under a legally qualified chairman. It would develop its own case law over a period of time which should be published and would give guidance to operators and their legal representatives on licensing matters. The right of appeal to a court from the decisions of this body would be necessary only in exceptional circumstances where it was alleged that the body had made a mistake of law rather than fact.

11. UZBEKISTAN

11.1 Introduction

Special focus of attention is given to Decrees 175, 215 and 296.

11.2 Applicability of Operator Licensing in Uzbekistan

11.2.1. Whether Operator Licensing applies to International and National operations

Operator Licensing applies both to National and International operations and so in principle is compatible with the EU licensing system but we would recommend that it should be more closely aligned with **actual** EU standards.

11.2.2 Whether Operator Licensing applies to hire and reward only or also to own account

No distinction is made between “own account” (companies that only provide for their own transport requirements) and “hire and reward” (companies that offer a transport service for anyone), with the outcome that own account transport is also subject to licensing. Although a distinction is possible between such operations in Europe, with less stringent standards applying to the own account sector, we consider the current position in Uzbekistan to be satisfactory. Continued application of operator licensing to own account transport should help raise standards in this sector which still accounts for the majority of heavy traffic on the roads. If only one category of licence continues to be issued, an "own account" operator will be able to carry goods for others, so there will be no practical difference between the two types of operator. This can be justified commercially as it increases competition and customer choice and should help reduce the number of vehicles returning empty to base. It can be justified also on safety grounds. There is no reason why different rules should apply depending on whether the road transport operator owns or does not own the goods carried. The only relevant consideration should be whether or not his vehicles are operated safely.

11.2.3 Whether exemptions exist for vehicles under 3.5 tonnes gross and certain passenger vehicles

There are currently no exemptions for goods vehicles under 3.5 tonnes maximum gross weight. In the view of the Consultant this is a lost opportunity and we would recommend that such an exemption should be introduced for the following reasons:

- Such vehicles are small and represent no more danger in their operation than private cars
- Vehicles under 3.5 tonnes gross require maintenance procedures no more complicated than for private cars

- Such vehicle are found in large numbers and subjecting them to operator licensing creates considerable extra costs for government in terms of administration and enforcement, for very marginal benefits in terms of safety or income
- The costs for operators to comply with the regulations are disproportionately high and can act as an impediment to the development of new business
- Regulatory authorities would have more time to concentrate on goods vehicles over 3.5 tonnes to ensure their compliance with the law

If such an exemption is put in place, a decision would be needed as to whether the weight of any trailer towed by the vehicle should be taken into account in calculating the maximum gross weight. We suggest that a trailer with an **unladen** weight of one tonne or below could be disregarded. There would be few safety repercussions.

For passenger vehicles we recommend that the exemption from Operator Licensing found in the EU for vehicles constructed and equipped to carry no more than 9 persons, including the driver, would be suitable in Uzbekistan. Again this would reduce the administrative burden facing both the state and operators without having any significant safety repercussions.

11.2.4 Whether exemptions exist for specific vehicle types

There are exemptions from Operator Licensing for certain types of emergency vehicles. We would suggest that further exemptions should be introduced for vehicles that either cover only short distances on public roads or are in the hands of specialist state agencies. These exemptions could include:

- agricultural machines
- police, fire, ambulance and military vehicles
- road construction, maintenance and cleaning and snow clearing vehicles

11.3 Preconditions for obtaining a licence

There are 3 main pre-conditions to obtaining a licence within the EU, each regarded as essential to ensure safe and reliable operations:

1. Good repute
2. Adequate financial resources-capital and reserves
3. Professional competence.

We recommend that these pre-conditions should also become the main criteria to be satisfied in obtaining a licence in Uzbekistan, though specific conditions will need to be tailored to the local situation.

11.3.1 Good repute

According to EU Directives the requirement of Good Repute is not satisfied, or is no longer satisfied if the relevant individual in the business:

- has been convicted of serious offences including offences of a commercial nature, or
- has been declared unfit to pursue the occupation of a road transport operator under applicable rules, or
- has been convicted of serious offences against applicable rules concerning pay and employment conditions in the profession or road transport legislation particularly rules relating to:
 - drivers' driving and rest periods
 - weights and dimensions of commercial vehicles
 - road safety and vehicle safety (including maintenance)
 - protection of the environment
 - professional liability

As established in the Legal Report, Uzbekistan does not currently examine the good repute of relevant managers or owners in the above manner, apart from the examination of allegations of "unfair competition", which we are not convinced is effective. We recommend that the decree on licensing should be amended to introduce a requirement that the manager and/or owner of a business should not have lost good repute at the time of a first application or application to renew a licence. Also if good repute is lost during the currency of a licence there should be a requirement to nominate a specified individual or individuals to replace that person. Failure to do so should lead to suspension or revocation of the licence. It is suggested that 2 categories of defined offences should be taken into account:

- serious crimes such as fraud, violence, theft, and
- specified breaches of road traffic and transport rules such as operating a vehicle in an unroadworthy condition, without a valid test certificate, overloading a vehicle or failing to ensure that drivers respect the limits on drivers' hours

It will be necessary to ensure that the Uzbek Agency of Automobile and River Transport (AART) is informed by relevant enforcement agents such as GAI and criminal courts of relevant offences and to establish a system for storing and acting on such information. This exchange of information would be vital for this law to be enforceable.

11.3.2 Adequate Financial Resources – Capital and Reserves

According to EU Directives, an undertaking must have available capital reserves of at least 9,000.00 EUR (approximately \$9,000.00) when only one vehicle is used and at least 5,000.00 EUR (approximately \$5,000.00) for each additional vehicle. The competent authority will

need to consider what the level should be for Uzbekistan. Our minimum recommendation would be \$1,000.00 for the first vehicle and \$500.00 for each subsequent vehicle. This is to ensure the operator has enough money to maintain the vehicles in a safe condition.

11.3 3 Professional competence

The requirement for professional competence, evidenced by examination, currently applies only to holders of international licences (**International CPC**) in Uzbekistan. We recommend that a National Certificate of Competence examination system (**National CPC**) should also be introduced for holders of national licences within 5 years. There is an urgent need to improve management and safety standards in domestic transport, which represents the majority of traffic on Uzbek roads.

The examination topics for the International CPC are already based on EU norms, having been developed by a TACIS project and procedures will be reviewed and amended as part of the work of the present project. In introducing a National CPC, guidance can also be taken from EU norms, but the precise content will have to be tailored to reflect actual Uzbek national transport legislation. The framework for this process is contained within this Tacis TRACECA programme, International Road Transport Transit Facilitation.

We recommend that one professionally competent person should normally be employed at each centre from which vehicles are operated. This requirement might exceptionally be relaxed if the applicant for a licence could demonstrate that one professionally competent person could exercise continuous and effective supervision over more than one centre. This could be the case where an operator split its operations between 2 depots or factories in the same town.

11.4 Application Procedures that need to be considered

11.4.1 Whether applications should be published or advertised.

We recommend that applications for licences should be published in an official gazette.

11.4.2 Whether there should be a right of objection by state organs/associations.

Although rights of objection exist in Europe (for example in the UK), we are concerned that such "safeguards" could be misused and be seen as anti-competitive in the wrong hands in Uzbekistan. We recommend that for a period of 5 years from the introduction of our recommended changes to the licensing system there should be an absolute right to a licence if quality pre-conditions are met. Subsequently it may be appropriate to give the right to certain institutions such as Local Planning Authorities, Carriers' Associations (such as AIRC) and GAI to object to the grant of a licence on defined public policy grounds. Such objections should not be by way of a veto. It should always be the responsibility of AART to reach a

final decision having considered all material factors, including any objections and replies made by the operator to those objections.

11.4.3 Whether licences should be for authorised or specified vehicles or both.

We recommend that the required number and type of vehicle(s) should be stated on the licence application. This will mean the operator can only operate up to the maximum number of vehicles **authorised** on his licence and if he wants more he will need to apply for more. The details (e.g. registration number) of each vehicle actually operated should be specified in a notice to AART. There should continue to be a requirement to display an individual licence disc in the windscreen specific to the particular vehicle. Using a combination of vehicles authorised by numbers and type only on the licence itself and individually specified vehicles subsequently issued with a display disc should result in both flexibility for the operator and administrative simplicity for AART. The licence itself will not need to be amended each time a vehicle is replaced but the AART will always be aware of the precise details of each vehicle which is actually operated, even if it is in the fleet for only a short time (for example if a vehicle is temporarily hired).

11.4.4 Whether there should be controls over operating centres.

Although subject to potential abuse in the wrong hands, we recommend that the bases from which vehicles operate should be approved by AART as suitable in practical and environmental terms for use as such. A plan of each centre and details of how and when it will be used will therefore need to accompany each application for an operators' licence. A centre should be defined as any place owned or occupied by the operator at which vehicles are normally kept when not in use on the road. AART may wish to control the number, type or size of vehicles which may be kept at any centre and any other aspects of the use of the centre which are relevant (for example the storing of fuel or hazardous products at the centre).

11.4.5 The making of the decision, by whom and in what time.

We recommend that AART should establish within itself an autonomous division or branch to deal with the issuing of licences. This division should be required to act in a quasi-judicial manner in deciding applications according to the principles established by law. It should not be under the direct influence of the AART or any other government organ or official. The present timescale for issue of a licence seems broadly satisfactory.

11.4.6 Whether or not conditions can be applied to licences and if so what type.

The present system seems to result in a licence application either being granted or rejected. We would recommend that it should be possible for negotiations to take place where AART is not satisfied with some aspect of the proposed operation. It could then grant the application in part or subject to conditions and the operator would have the choice between abandoning its application, accepting the proposed modifications, or appealing against them. Conditions

11.5 Enforcement procedures

11.5.1 Who is responsible for enforcement?

Enforcement of licensing matters is the responsibility of AART while GAI carry out road checks. We recommend that AART should be better informed by GAI of offences related to vehicle safety which should affect the licence of the operator concerned.

11.5.2 Practical structure of the enforcement system within AART.

There is currently a procedure for “**revocation**” (withdrawal) of licences but none for “**temporary suspension**” nor for “**curtailment**” (cutting back on the number of vehicles). Revocation of the licence will normally lead to the failure of the business and sale of its assets with probable loss of employment of its employees. This is a very drastic measure that will also have adverse repercussions for the state in terms of lost tax revenues from the failed business. Revocation should, in our view, be a last resort and not the only instrument for enforcement.

We recommend that a procedure should be introduced to allow **temporary suspension** of the licence for a period of up to one month. This would be a severe sanction against the operator and the threat of suspension would have a deterrent effect. A short cessation of activities would, however, not normally be fatal to the business and could be used to put in place better systems of maintenance, supervision etc to remedy whatever situation led to the suspension.

We also recommend that consideration should be given to a procedure for **curtailment** of the licence so that the operator could be required to operate fewer vehicles than originally permitted if there was evidence, (such as convictions for failure to ensure adequate maintenance) suggesting that the operator was operating beyond its current competence. This could be used as a realistic way of enforcing standards without totally destroying the business in question.

11.5.3 Definition of grounds for revocation or suspension of licences

There are already a number of grounds for revocation set out in the legislation but these are related to breaches of administrative procedure rather than to relevant safety considerations concerning the operation of vehicles. We recommend that there should be some **mandatory** grounds for revocation and also **discretionary** grounds where the seriousness of the particular circumstances would be taken into account but revocation would not be automatic.

Revocation or suspension should be mandatory if:

- There is no longer a professionally competent person as required by the licence and this situation has continued for more than 12 months without a replacement being found

- The good repute of the nominated professionally competent person has been lost because of offences for which that person is responsible and no replacement has been found within 12 months of the loss of good repute
- The requisite financial standing of the company is not maintained

There should be a case to answer and the possibility of revocation, suspension or curtailment if:

- The operator has been prosecuted for using vehicles in an unroadworthy or overloaded condition or has breached rules on drivers' hours of work or undertakings given in the application on maintenance of vehicles
- The operator has used an operating centre which has not been declared to AART
- The application for the licence contained false information
- The operator has become bankrupt or gone into liquidation

11.5.4 The procedure for appeals

If a licence is revoked in Uzbekistan there is a right of appeal to a court within 30 days. (It is not clear to what extent there is a right of appeal against the failure to issue a licence in the first place). It is unlikely that many courts have regular experience of dealing with road transport licensing matters.

We recommend that the existing Committee of the Cabinet of Ministers should develop a role as an appellate body rather than being responsible for deciding licence applications as at present. This appellate body should be composed of persons experienced in law and/or in road transport operations and should operate under a legally qualified chairman. It would develop its own case law over a period of time which should be published and would give guidance to operators and their legal representatives on licensing matters. The right of appeal to a court from the decisions of this body would be necessary only in exceptional circumstances where it was alleged that the body had made a mistake of law rather than fact.