

EUROPEAN UNION - TACIS

Technical Assistance to the Southern Republics of the
CIS and Georgia - TRACECA

TRADE AND TRANSPORT SECTORS

Terms of Reference

for

Legal and Regulatory

Framework

Final Recipients:
TRACECA Region Ministries of Transport

LEGAL AND REGULATORY FRAMEWORK

(TRACECA PROJECT N° 1)

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1. INTRODUCTION AND BACKGROUND

The present project is one of the priority components of the TRACECA initiative launched at the Brussels Conference held in May 1993, at which the states of Armenia, Azerbaijan, Georgia, Turkmenistan, Uzbekistan, Kazakhstan, Kyrgyzstan and Tadjikistan were represented.

The objectives of the Conference were :

- To promote co-operation among the participating states in all matters pertaining to the development of trade and transport in the region.
- To promote the Central Asian-Trans-Caucasian-Europe transport corridor.
- To identify problems and deficiencies in the region trade and transport systems.
- To define in terms of content and timing a Technical Assistance Programme to be financed by the EU.
- For the Technical Assistance programme 23 projects were identified to be implemented over several years.

In order to develop and manage the TRACECA Technical Assistance programme a Management Team has been established in Brussels, consisting of a Team Leader and Trade expert, a Road expert, a Rail expert, and a Maritime expert. Parallel to this similar national sectoral working groups have been established in each of the TRACECA states as part of the TRACECA programme. They meet periodically in the region. They have inaugurated specific projects, including this one and will monitor results.

Five horizontal projects were marked out as priority projects for immediate implementation including the Legal and Regulatory Framework project

The legislation framework of the trade and transport sectors in the TRACECA states was inherited from the Soviet Union command economy system of transport management, designed for trade and economic relations planned by, directed from and centred on Moscow.

The new separate independent Sovereign States in the TRACECA sub-region now find themselves compelled to create new legislation for the transport sector.

Such legislation must take into account previous USSR laws, new Russian Federation laws, Republic laws, and International laws or conventions.

Clarification and harmonisation of this situation is of vital importance to the transport sector in the TRACECA corridor. A fact-finding mission has been carried out, but except in Kazakhstan, no previous projects have actively promoted harmonisation of legislation and regulation.

2. OBJECTIVES

At a conference held in Almaty on 19-20 May 1995, which brought together authorities from the Recipient States, the following general objectives were defined for this Legal and Regulatory Framework project :

To provide technical assistance and documentary support in the field of transport legislation and promote :

- optimum utilisation and harmonisation of the existing transport systems
- improved use of the equipment, facilities and terminals
- a reduction in commercial risk and cross-frontier delays
- a competitive transport and compatible information system related to the exchange of commercial, customs and regulatory computerised data
- advice where necessary in joining international institutional training

Activities in the above fields should be directed towards achieving:

1. The introduction of legislative changes to national transport laws and regulations

- The updating or editing of all legislation including directives relating to transportation
- The drafting of new laws governing transport and trade
- The definition of the right to transport and the conditions under which it may be exercised
- The terms and conditions of transport and the environment under which it operates
- The conditions regulating competition in the transportation sector, and the role of the different modes in the framework of the market
- The acquisition of private and public resources to permit financing of necessary investments in the transport system
- The clarification of the role of the various public and political bodies responsible for regulation
- The clarification of the role of other semi-official or private entities providing transport and ancillary services
- The clarification of the rules applicable to private enterprises providing transport and ancillary services
- The clarification of the rules applicable to private operators/enterprises in the transport and ancillary fields
- The clarification of the relationship between national legislation and international conventions etc. in force in the transport sector

2. The regulation of the technical components in the transport sector

- The promotion of logistical chains.
- Normalisation of technical equipment, e.g. rolling stock, containers, mobile boxes, multimodal handling equipment.
- Definition of pricing principles applicable to public and private transport services, international transport, and to obligatory minimum service levels where applicable (e.g. frequency, and security).

3. The creation a Legal/Institutional Environment conducive to establishing good management practice in the movement of goods

- The revision of customs legislation in the context of evolving transport and information technologies
- Reducing the number of customs procedural services, simplifying customs procedures, simplifying banking procedures applicable to transit goods
- Adopting harmonised international documents
- Encouraging the establishment of private sector professional associations participating actively in the decision making process in the transport and trade sectors.
- Updating the regulatory framework for banking and insurance activities in the transport sector, on the basis of international practice.
- Encouraging private involvement and investment in the professional training process aimed at adapting transport managers to organisational change and at preparing logistics and international transport specialists.

4. The facilitation of Regional Co-operation in the development of infrastructure and services

- The encouragement of a joint approach between beneficiary states in project design and to international infrastructure financing
- The definition of the rights and obligations of infrastructure suppliers and users in the regional context.
- The establishment of support measures for regional sectoral and infrastructure projects.

5. The creation of regional harmonisation of the transport sector legal and regulatory framework

- Multimodal agreements
- International regulation of transport operations, including transit and equipment pooling activities

3. SCOPE OF WORK

3.1 Organisational Framework

To carry out the project it is proposed that an International Task Force (ITF) reporting to TACIS be established either in Brussels, or in the Contractors home office. This Task Force could consist of a core unit of Project Manager and a Transportation Legislation Expert, assisted by a Secretary Documentalist.

This International Task Force will be complemented by individual National Task Forces (NTF) in each TACIS State which comprise officials from the Transport and Justice Ministries. Each NTF will be assisted by a permanent local secretary/documentalist and by local well qualified short term experts, these assistants being appointed and remunerated by the Contractor, and be accountable to him.

It is anticipated that the NTFs will form the nucleus of future Trade and Transport Legislation Facilitating Committees in each TRACECA State. Their role would be to ensure maximum conformity between the laws of their individual States in this sector, as well as continuity of the work initiated by the ITF beyond the life of this project.

While remaining within this general framework, the Consultant's proposal must clearly explain his own detailed plan of action to address the projects' Objectives as defined in Section 2.

3.2 International Task Force (ITF)

It is a prerequisite for the successful execution of the project that two closely related conditions be fulfilled:

- there be effective communication links between the legislatures in the beneficiary states and a technical assistance team well versed in the theory and practice of international transport law.
- local legal professionals, and transport authorities and wherever possible practitioners should contribute actively in the formation of any proposed legislation.

To this end the ITF must establish a reasonably continuous presence in the region, and excellent close working relationships with their NTF counterparts.

The role of International Task Force is :

- to promote adoption of harmonised transport legislation and regulation and provide the outside expertise necessary for its formulation
- to provide the NTFs with documentation, model legislation, computer equipment and databases in conformity with the Consultants proposal or approved modified workplan (see Section 4.2 Deliverables)
- arrange for translation of all pertinent texts into the Russian language
- to establish a process of constant transport law development and updating
- to establish the long term framework and procedures of the NTF in each beneficiary state and relations between the respective NTF of the eight TRACECA states
- to provide training (see Section 3.7)

The ITF will establish co-ordination procedures with the TRACECA Project Management Team in Brussels. It will promote permanent links between the NTF and Western Institutions, such as the ECE in Geneva, to ensure continuity of information flow after the present contract is completed.

3.3 National Task Forces (NTF)

The contractor is to advise the Recipient State governments on the composition and appointment of their NTF, and agree with them a workplan, as well as relationships of the NTF with other governmental and non-governmental bodies.

The role of the NTF would be to present draft legislation to the legislature, to maintain close links with the ITF with the NTFs in the other beneficiary States, and with the TRACECA working groups. Ideally, at least one member of the NTF should also be a member of the TRACECA working group.

The NTF is to be supported by the following minimum resources to be provided by the Contractor:

- the ITF
- short term local consultants
- a permanent local secretary/documentalist, possessing appropriate qualifications including a good knowledge of English
- an office for the permanent secretary and experts, with telephone fax, computer (with standard/specialist software and e-mail), photocopier, and other equipment judged necessary by the Contractor. Preferably it should be located in a University legal faculty, or Transport Institute Legal Department and have access to a meeting room

The local offices are to act as the focal points for the projects activities in each Beneficiary state.

All documentation, equipment, software and databases are to remain the property of the Ministries of Transport of each beneficiary state at the conclusion of the project.

To achieve harmonisation and an exchange of views between the NTF's and ITF two seminars of 2-3 days duration should be held annually in the region to be attended by up to 5 NTF members from each beneficiary state.

3.4 External Expertise

The exact composition of the ITF would depend on the proposals received from interested contractors, but it could consist of a qualified transport legal expert or transport administration/practitioner with wide practical experience of transport legislation and its implementation as full time team leader, assisted by a full time deputy team leader of similar experience and qualification, backed up by a roster of specialists for short term to medium term assignments.

All experts should preferably possess some experience in the Former Soviet Union. A knowledge of the Russian language is highly desirable.

The ITF would be supported by a specialist secretary/documentalist, with a good knowledge of Russian.

The consultant is free to compose his team of experts and specialists for short and medium term missions as he thinks fit. However the following domains of expertise should be clearly visible in his proposed staff list :

- General Transport Legislation drafting
- International Conventions - road, rail, sea and multimodal
- International Transport Legislation and practice
- International Insurance Law and Practice
- Limitation of liability-passenger and freight transport
- Railway code formulation, and Railway law
- Freight forwarding-Legal aspects and codes of practice
- Operator licensing legislation and practice
- Environmental issues e.g. noise, exhaust, axle loading
- Customs Legislation and procedures, including integration with the world trade systems
- Documentary requirements
- Transit tariff harmonisation
- Institutional strengthening
- Legal training programmes

The Contractors proposal must fully describe the experts to be assigned to the project, their precise domain of expertise applicable to the project , their individual roles in the achievement of the projects objectives, the timing, duration and location of their assignments. Time spent in the beneficiary states and at home office is to be clearly shown.

3.5 Local Expertise

The maximum possible use should be made of experienced national consultants of high academic standing, who should be closely involved in all aspects of the project. All TRACECA countries have institutions specialising in various aspects of transport legislation and planning. It is a firm requirement that organisation and methodologies include local experts and Institutions to:

- make full use of local experience, antecedent projects and data bases
- promote the emergence of a financially viable local consulting sector
- ensure the effective transfer of know-how to the beneficiary states
- ensure the enduring effect of project output

Consultants must make amply clear in their proposal the arrangements they have made to work with local entities.

3.6 Fields of Specific Consultancy Activity

Legislative requirements in the following sectors are common to all states.

1. General Transport Legislation, covering road, rail, air and where applicable, maritime.
2. Customs Legislation, including integration with the world trade systems.
3. Transport and international trade documentation for use in international trade, which should be common to all TRACECA states.
4. Freight forwarding
5. Institutional strengthening
6. Maritime Law, where applicable
7. Railway Law
8. Integration with world trading practices and international convention
9. Road transport legislation, including licensing, environment and safety legislation
10. Banking
11. Warehousing
12. Transit tariff harmonisation

The following schedule reflects specific legal reform needs advised during the preliminary fact finding survey, and should be considered as priority requests for technical assistance.

Most problems are encountered in all TRACECA states, but with varying degrees of severity of impact.

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		AR	AZ	GE	KA	KYR	TAD	TUR	UZ
1.	Civil Law-Contracts, commercial codes bringing coherence to different laws, carrier client relationships convention binding forms way bills	*	*	*		*			
2.	Transport law framework modal codes normative acts and rules	*	*	*		*	*	*	
3.	Consistency of bi-lateral agreements and regional agreements	*	*	*		*	*	*	
4.	Legal aspects of Customs (additions to SAD, documentation, customs code, TIR, transit, traffic, inspections, customs information exchange, assistance to adopt new customs schedule and regime with regards to imports, exports, re-export I/E transformation, transit, temporary admission, harmonising documentation and standards)	*	*		*	*	*	*	*
5.	Insurance law, premium determination, insurance certificates, claims and their settlement	*	*	*	*	*	*	*	*
6.	Arbitration boards, commercial courts procedural advice, settlement of disputes	*	*	*	*				
7.	Privatisation laws, trade liberalisation (tariffs, bilateral exemptions; freedom of entry/exit, bankruptcy, freedom of tariff setting, non-discriminatory licensing)	*	*			*			*
8.	Russian road transport statute (contents and embodiments)	*	*	*		*	*		*
9.	Membership in new conventions, such as transport of dangerous goods, container pool, etc.	*	*		*	*	*	*	*
10.	COTIF/SMGS compatibility	*		*		*	*	*	

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	(additional agreements required adaptation of rail domestic law to international law)								
11.	Draft Road Transport Bill, road international rules and regulations, contracts, waybills, documents and their legal basis, co-ordination of road carriage regulations	*				*	*	*	*
12.	Domestic transport documents		*						
13.	Institutional building expertise (directories and ministries concentration of responsibilities)		*						
14.	Advice on licensing, permits, road worthiness, license to act as haulage contractor, and to be a foreign trade actor			*			*	*	*
15.	Rail/Road Competition, pricing, fares, freight, rate system								*
16.	Financing methods to support restructuring, transfer of assets to new owners, promotion of small and medium enterprises in road freight sector								
17.	Setting professional associations such as freight forwarders associations, advice on standard contracts within the profession		*	*	*	*		*	
18.	Shipping codes, bills of lading		*	*				*	
19.	Combined transport convention			*					
20.	Banking expert, documentary credits, letter of credit practice, setting up effective system		*						
21.	Inland waterways legislation				*				
22.	Seamen's passports and officer rank status				*				
23.	INCO Terms meaning and exact method of application					*			
24.	FIATA documents and regulations					*		*	

3.7 Training

The ITF should assist the beneficiary states in introducing or expanding transport law training programmes at selected universities or institutes throughout the TRACECA region.

The ITF should promote regional seminars, workshops, conferences and on-the-job training aimed at improving and harmonising the legal trade and transport regime. It should make full use of the expertise and material already available in international institutes such as the ECE.

The ITF will assist in the introduction of a training programme covering the following identified urgent requirements, and mobilising the ITF experts or external consultants when visiting the beneficiary countries

<i>SUBJECT</i>	<i>AR</i>	<i>AS</i>	<i>GE</i>	<i>KA</i>	<i>KY</i>	<i>TU</i>	<i>TA</i>	<i>UZ</i>
Training of the Top level executives (transport legislation concepts, principles and prospects)								*
Training private sector lawyers, and legal advisers (drafting transport business and international law)	*	*						
Training in the operational aspects of international law technicalities	*	*				*		
Training in European transport legislation								*
Training operators in the transport, freight forwarding, and in the issuing of convention related documents for all	*	*	*	*	*	*	*	*
Training in EDI		*			*			*
Training of documentalists	*	*	*	*	*	*	*	*
Specialist foreign language training	*	*	*	*	*	*	*	*

3.8 Other Related Projects

Several related reports prepared by western Consultants precede this project:

- Organisation for the Transfer of a Legal Framework for Transport and Trade in the Region TRACECA (TACIS “Mercadal”)
- Technical Assistance in the Reform of Transport Law Kazakhstan (TACIS)
- Central Asia outline Transport Strategy Kazakhstan, Kyrgyzstan, Turkmenistan, Uzbekistan EBRD/TACIS
- ESCAP Studies

At the time of writing the following projects, sharing certain domains of interest with this legal framework project are expected to commence shortly.

- Trade facilitation, Customs Procedures, Freight Forwarding, TACIS
- Forwarding-Multimodal Transport Systems, TACIS
- Programme of Economic Integration between the Republics of Kazakhstan, Uzbekistan, and Kyrgystan (CACOM), Regional Governmental Initiative supported by TACIS
- Transit Treaty for Central Asia sponsored by UNCTAD and ESCAP

Other related projects are or may expected to commence within the time frame of the present project.

The consultants appointed to carry at this project are to co-ordinate their work closely with all other related activities within the TRACECA region, especially with the Trade Facilitation, Customs Procedures and Freight Forwarding Project.

3.9 Logistics

The consultant shall be responsible for arranging necessary living accommodation transportation, telecommunications, equipment, document reproduction, printing, secretarial services, office space, and all other inputs required for the purpose of executing the project.

It is specifically noted that telecommunications between Europe and the TRACECA member states are of low standard. As the achievement of project objectives will require excellent communications between the ITF and NTF, the Contractor should make clear in his proposal that his workplan is not sensitive to such difficulties.

4. TIME TABLE AND REPORTING

4.1 The project’s total duration is two years.

4.2 Technical Deliverables

The Contractor will catalogue in his proposal the individual Deliverables by which he proposes to address the full range of legislative issues raised in the Objectives and Scope of Work, and his schedule for their provision.

Technical Deliverables may be model legislation, draft legislation, seminar manuals, databases, or any other tool which the Contractor proposes to utilise. The Contractors Work Schedule must indicate his follow-up activities with the NTF, to promote and guide legislation

All Technical Deliverables must be provided in both English and Russian, in numbers and formats to be agreed with TACIS.

4.3 Reports

4.3.1 All Reports are to be delivered in the numbers, languages and locations as follows :

	Bound English	Russian	Loose-leaf		Diskette (English + Russian)
			English	Russian	
TACIS Brussels	5	1	1	1	1
Traceca CU (per state)	1	5	1	1	0

The word processing programme to be used will be agreed with TACIS.

4.3.2 Reporting is to be in accordance with standard TACIS guidelines. These foresee.

4.3.3 A Project Inception Report shall be issued within 2 months of the start of the project.

It shall summarise initial activities and propose any modifications to the methodology and work plan.

In particular it will describe the establishment of the NTF.

Moreover it will adapt to the work plan and needs of each individual TRACECA state taking into account the parallel activities of other international assistance programmes, avoiding duplication of effort, and addressing unfilled needs.

4.3.4 Periodic/Status Reports

Periodic Status Reports will be submitted to TACIS on a quarterly basis, and will cover the operational progress of the project, the programme for the following quarter and administrative aspects of the project.

Any deviation from the Contractors schedule or difficulties encountered should be noted, as well as actions necessary to compensate them.

4.3.5 Annual Report

After 12 months a detailed report will be submitted by the Project Manager to TACIS recapitulating all the activities undertaken since the start of the project.

4.3.6 Final Report

A Draft Final Report on the operational and technical contribution to the project will be submitted by the Project Manager to TACIS at least one month before the end of the project. Any comments on the Draft Final Report will be issued by TACIS Brussels within six weeks of its receipt. The Final Report incorporating any modifications will be issued one month thereafter, i.e. 2,5 months after receipt of the Draft Final Report by TACIS.