



**The European Union's TACIS Action Programme 2004 – Central Asia  
Promotion of Networks: TRACECA**

Republic of Kazakhstan, Republic of Tajikistan, Kyrgyz Republic,  
Republic of Uzbekistan, Republic of Turkmenistan

**Development of Co-ordinated National Transport Policies**

Republic of Kazakhstan, Republic of Tajikistan,  
Kyrgyz Republic, Republic of Uzbekistan,  
Republic of Turkmenistan

Reference: EuropeAid/122076/C/SER/Multi

***Legal and SWOT Analysis***

*Separate Appendix to Progress Report 1*



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A project implemented by  
GOPA - TRADEMCO Consortium

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Submitted by the Consortium  
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## Abbreviations

<b>ADB</b>	Asian Development Bank
<b>AIFU</b>	International Forwarders Association
<b>BOMCA</b>	The European Union's Border Management Programme in Central Asia
<b>BSEC</b>	Organisation of the Black Sea Economic Cooperation
<b>CA</b>	Central Asia
<b>CAR</b>	Central Asia Republics
<b>CAREC</b>	Central Asia Regional Economic Cooperation
<b>CIS</b>	Commonwealth of Independent States
<b>EBRD</b>	European Bank for Reconstruction and Development
<b>ESCAP</b>	Economic Commission for Asia and the Pacific
<b>EC</b>	European Commission
<b>EU</b>	European Union
<b>EURASEC</b>	Eurasian Economic Community
<b>EWG</b>	Expert Working Group
<b>FIATA</b>	Fédération Internationale des Associations de Transitaires et Assimilés (International Federation of Freight Forwarders Associations)
<b>GDP</b>	Gross Domestic Product
<b>HLG</b>	High Level Working Group
<b>IATA</b>	International Air Transport Organisation
<b>ICC</b>	International Chamber of Commerce
<b>ICT</b>	Information and Communication Technologies
<b>IDB</b>	Islamic Development Bank
<b>IFI</b>	International Financing Institution
<b>IGC</b>	Inter-Governmental Commission
<b>IMO</b>	International Maritime Organisation
<b>IRF</b>	International Road Federation
<b>IRU</b>	International Road Transport Union
<b>LC</b>	Logistic Centres
<b>LLDC</b>	Landlocked Developing Countries
<b>M&amp;E</b>	Monitoring and Evaluation
<b>MLA</b>	Multilateral Agreement
<b>MoTC</b>	Ministry of Transport and Communications
<b>MoU</b>	Memorandum of Understanding
<b>NGO</b>	Non-governmental Organisation
<b>OSCE</b>	Organisation for Security and Cooperation in Europe
<b>OSZhD</b>	Warsaw-based Committee for the Organisation for Cooperation between Railways
<b>OTIF</b>	Bern-based Intergovernmental Organisation for International Carriage by Rail
<b>PETRA</b>	Pan-European Corridors and the Black Sea Pan-European Transport Area
<b>PPP</b>	Public-Private Partnership

## ***Development of Co-ordinated National Transport Policies***

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<b>PRC</b>	People's Republic of China
<b>SCO</b>	Shanghai Cooperation Organisation
<b>SMEs</b>	Small and Medium Enterprises
<b>SMGS</b>	Agreement on the International Carriage of Goods
<b>SMPS</b>	Agreement on International Carriage of Passengers
<b>SPECA</b>	Nations Special Programme for the Economies of Central Asia
<b>TA</b>	Technical Annex
<b>TACIS</b>	Technical Aid to the Commonwealth of Independent States
<b>TEN-T</b>	Trans-European Transport Network
<b>TIR</b>	Transports Internationaux Routiers
<b>ToR</b>	Terms of Reference
<b>TRACECA</b>	Transport Corridor Europe-Caucasus-Asia
<b>UIC</b>	Paris-based International Union of Railways
<b>UN</b>	United Nations
<b>UNCTAD</b>	United Nations Conference on Trade and Development
<b>UNECE</b>	United Nations Economic Commission for Europe
<b>UNESCAP</b>	UN Economic Commission for Asia and the Pacific
<b>USAID</b>	United States Agency for International Development
<b>WB</b>	World Bank
<b>WTO</b>	World Trade Organisation

**Report cover page**

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## **Preface**

This paper is a manifestation of the very considerable quantity and quality of the research that has gone into fulfilling the requirements of the ToR and the deliverables that were outlined in the Inception Report. The legal and SWOT analysis presented in this report was carried out wherever possible in close cooperation with the counterpart agencies concerned. It involved repeated visits of the consultant team to the various beneficiary countries; expert interviews; collection of transport laws; qualification of the legal frameworks of transport; review and assessment of the road transport market conditions, and the review and qualification of the PPP enabling environment.

In this report we present:

- an overview of road sector development strategies and programme;
- a catalogue of participation in international conventions and agreements to which the beneficiary countries are signatories;
- the bilateral transit agreements that are based on quotas to be converted to a quota-free or non permit basis;
- a prioritised gap analysis identifying recommended country-specific accession needs to other conventions and agreements;
- a catalogue of violations and recommendations for remedial measures;
- identification of the main violations of the national legislation and regional treaties and agreements;
- guidelines for private sector development (PPP enabling environment); and,
- short and medium/ long-term action plans required for each of the countries.

A catalogue has been drawn up of the existing national laws of relevance to road transport, international trade, customs, taxation, transport tariffs and the existing trade and transport agreements, multilateral, bilateral and international conventions and agreements. Further work will include verification that the international conventions have been properly transposed, and identification of bilateral transit agreements that are based on quotas to be converted to a quota free basis. A preliminary website has been established with a database containing over 70 laws in English and Russian.

SWOT analyses for each country have been prepared covering regional transport development, legislation and administration, and private sector enabling environment (including PPPs). Further SWOT analysis will be carried out on the logistic network.

Definition of well coordinated short, medium and long-term work packages and their assignment to EWGs will be presented to the first meeting of the HLG scheduled for February 2008. The meeting will also be presented with a summary report on the benchmarking analysis in relation to best practices in the EU and TRACECA related to international conventions and agreements, legal harmonisation at regional level as well as bureaucracy and corruption.

Although the consultant's proposals for further action (action plans by country) are largely based on international experience and practice, it has been seriously attempted to take into proper consideration the local and regional circumstances largely determined by the provisions of the MLA, to ensure that the project work will be responsive to the particular reform needs of the TRACECA area.

According to the final agreed version of the Inception Report, the project will focus on the analysis of international conventions and agreements in road transport and their transposition into national legislation, with the final aim of establishing a regional common market for road transport. Also, the initially foreseen feasibility study on logistics centres has been reduced in scope, to a qualitative screening of existing facilities in the region, and the development of a needs assessment for logistics improvements. As a result, the project is now more legally-oriented.

**Acknowledgements:** The consultant wishes to thank the counterparts from the various Ministries of Transport and all the other representatives, state organisations and private companies and associations

that have provided information and assistance in the study work for their valuable input and support provided. A complete list of all the persons contacted since project start up in May 2007 has been provided in Progress Report 1. Also, the consultant would like to thank the local project staff in both the Almaty main office and the antenna offices in Astana, Tashkent and Dushanbe for their dedication and successful contribution to the project work.

## **1 Introduction**

### **1.1 Orientation of the project work**

In line with TOR requirements and the outputs (deliverables) envisaged by the project in the legal field<sup>1</sup>, the efforts of the consultant during the review and clarification phase were focused on:

- the collection of a comprehensive legislation package related mainly to road freight transport;
- the critical review and assessment of the state of development of the legislation database, country by country as far as was possible under the given conditions;
- in-depth exploration, on a country by country basis, of the present situation concerning the implementation and practical application (or violation) of the legislative framework in the road sector;
- the structuring of the legislation package for presentation in the form of a legal database on the project website.

The consultant's work has been based on extensive field research and data collection in the various beneficiary countries, including *ad hoc* expert interviews or by means of structured questionnaires. Unfortunately, the analytical work in the Kyrgyz Republic and in Uzbekistan has been hampered so far by lack of cooperation from the beneficiaries.

However, at last the successful recruitment of legal project (antenna) staff in Bishkek, as well as the more intensified employment by the project of regional legal experts with strong knowledge of Russian and local languages in the implementation phase should facilitate the further mostly legal implementation work of the project.

To an important extent the information and findings of the project presented in this report are based on the work of a number of relevant TRACECA projects, such as the following recent studies:

- harmonisation of border crossing procedures (completed 2004);
- unified policy on transit fees and tariffs (completed 2004);
- common legal basis for transit transportation (completed 2004);
- support in analysing and implementation of the international conventions in the field of transport (Kyrgyz Republic (completed 2007));
- freight forwarders training courses for Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyz Republic, Moldova, Tajikistan, Turkmenistan, Ukraine, Uzbekistan (completed 2007);
- regulation on the transport of dangerous goods (to be completed in 2007);
- creation of perishable goods licensing and certification centres (ongoing).

In addition note has been taken of the study carried out for the Asian Development Bank, Improvement of the Road Sector Efficiency carried out for the Ministry of Transport and Communications, Republic of Kazakhstan (completed in April 2004)

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<sup>1</sup> Reference is to the description of deliverables by task and TOR requirements presented in the Inception Report, page 22.

Last but not least, valuable information has been gained from the “Evaluation of the trade facilitation impact of the BOMCA Programme in Central Asia” the work of the Organisation for Security and Cooperation in Europe (OSCE), in particular their Conference held in Dushanbe, Tajikistan from 23-24 October 2007<sup>2</sup>.

## 1.2 Challenges and solutions

The consultant has kept at the front of his mind that the overall objective of the project is to strengthen international trade and transit in the project region by assisting transport facilitation and the development of a regional road transport market in Central Asia.

The EU is the leading trading partner for Kazakhstan, accounting for one-third of its external trade, and the third largest for Turkmenistan. For the other three Central Asian republics, between 10% and 30% of their external trade is currently conducted with the EU.

Unfortunately, trade, both within Central Asia and between Central Asian states and the rest of the world, continues to be hampered by numerous barriers:

- complex trade policies that are badly coordinated and lack transparency;
- high costs from poor transport and transit conditions;
- delays at border crossings; and
- onerous administrative and clearance requirements

with of course different consequences from country to country.

In Kazakhstan, for instance, it takes an estimated 93 days to move standard cargo from the factory gate to the nearest export port to fulfil all the customs, administrative and export requirements to load the cargo onto its destination, whilst in Uzbekistan 139 days are needed on average to import a standardised shipment of goods.<sup>3</sup> Delays at borders were studied further in the GTZ Project “Promoting Regional trade in Central Asia” (selected results are given in annex 3).

Delays for imports and exports of goods have a major negative impact on trade. A World Bank study (2006) found that each day of delays reduces a country's export volumes by about 1%. Particularly long hold-ups also make it impossible to export perishable agricultural products such as meat, fruit and vegetables. This factor is of particular importance in Central Asia where such commodities make up a significant proportion of the exports. Such reliance on primary resources also leaves these economies vulnerable to external shocks and violent fluctuations in market prices, thereby highlighting the need for greater diversification of exports.

Lowering commercial barriers will help Central Asian countries to expand these currently low levels of trade flows, and opportunities for business. In particular, accession to the WTO for the four non-member states (Kazakhstan, Tajikistan, Turkmenistan and Uzbekistan) would represent a decisive step towards harmonising and streamlining trade conditions, whilst benefits from the reduction in tariffs and cross-border costs would boost economic growth and employment. In practice, this means:

- simplifying and harmonising visa regimes and border crossing rules and procedures;
- creation of an attractive and predictable investment environment;
- deregulation of international tariffs; and
- improving professionalism at customs and border services.

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<sup>2</sup> The Conference was organised in accordance with the OSCE Ministerial Council Decision No. 11/06 on the “Future Transport Dialogue in the OSCE”, by the OSCE Secretariat together with the United Nations Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and the Small Island Developing States (UN-OHRLLS) and with the support of the Government of the Republic of Tajikistan and the OSCE Centre in Dushanbe.

<sup>3</sup> EU Regional Strategy Paper for Assistance to Central Asia for the period 2007-2013

Table 1 for example shows the number of documents, signatures and days necessary to export from, and import to Central Asian countries.

**Table 1: Requirements for international trade transactions in Central Asian countries**

Region/ Economy	Export		Import	
	Documents	Signatures	Documents	Signatures
Europe & Central Asia	8	11	12	15
Kazakhstan	14	15	18	17
Kyrgyzstan	n.a.	n.a.	18	27
Tajikistan	n.a.	n.a.	n.a.	n.a.
Turkmenistan	n.a.	n.a.	n.a.	n.a.
Uzbekistan	n.a.	n.a.	18	32

Source: *www.doingbusiness.org*

Latent mistrust between Central Asian neighbouring states means that individual governments are investing in costly new transport links that compete with alternative pre-existing routes, rather than using their limited financial resources to upgrade existing links that provide vital connections to foreign markets (notably Ukraine, Belarus, Russia and the EU). To overcome these difficulties, a broader view is needed, aiming essentially at:

- the progressive integration of the transport markets of Central Asia and ENPI4 eastern countries;
- the gradual approximation with EU and international legal framework and standards and effective implementation of international agreements in the transport sector;
- the improvement of transport safety and security.

National economies cannot create adequate wealth and employment without efficient transport networks. Central Asian countries, in spite of progress made in recent years, still experience the consequences of decades of neglect and under-investment in the area of transport infrastructure. In terms of capacity and quality, Central Asia significantly lags behind the transport networks in Europe and other parts of Asia.

The transport network problems are caused and aggravated by lack of sufficient funds to address them efficiently. Traditionally the view has been that infrastructure investment requires very large financial outlays, which are planned, financed and disbursed within national budgets. Therefore, prioritisation of development of international trade and international transport corridors for the Central Asian region is essential.

At the national level, among the Central Asian countries, only Kazakhstan has been successful in establishing a national mechanism (the National Interagency Transport Facilitation Committee) to identify border crossing problems, devise solutions and monitor their implementation. Kyrgyzstan and Tajikistan have already made decisions to establish such Committees. A National Interagency Transport Facilitation Committee (similar to the one established in Kazakhstan) should also be established in Kyrgyzstan, Tajikistan and Uzbekistan.

In summary, despite significant efforts, transit trade facilitation still remains a burning and complex issue, especially for road vehicles without a TIR Carnet. But also the latter is no absolute guarantee for smooth border-crossing operation.

As confirmed by *ad hoc expert interviews* carried out during the inception period in Tajikistan on the perception of major transport users with regard to transport and network conditions (see **inception report**,

<sup>4</sup> ENPI refers to European Neighbourhood Policy countries. There are 17 ENPI countries: Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, Palestine, Russia, Syria, Tunisia and Ukraine.

**chapter 2.2.1**), the national transit systems in the Central Asian republics are still far from satisfactory. The interviews had been organised with the help of the Association of International Automobile Carriers of Tajikistan.

Most noteworthy is the perceived lack of logistic facilities, as well as the highly negative rating of illegal payments *en route* and at borders, the latter keeping the variable cost of international transport very high. Reportedly, illegal payments can amount to 30 % of total freight cost. This figure is disputed by the TRACECA Permanent Secretariat which points out that on its initiative TRACECA “hot line” stands have been installed at many crossing points. Simultaneously in each TRACECA member country at the National Secretary Level Commissions consisting of responsible officials from state transport structures and other agencies have been established, and “these are responsible for efficient decisions on each negative action”. As the issue of illegal payments is much contested, this requires further extended investigation for future project reports.

It reconfirms what has been repeatedly pointed out by UNECE and ADB<sup>5</sup> in earlier reports, that it is mainly the non-physical barriers that impede the free flow of transit rather than the physical barriers of trade. It further confirms a statement included in the “Uzbekistan Transport Sector Strategy Study 2006-2020”<sup>6</sup>:

“While customs have undertaken substantial investments in border post development at key crossings, such that infrastructure is not a constraint, investment has not been reflected in improved performance.”

Certainly a key factor for the competitiveness of a corridor is the level of transit costs. Therefore, strategies are required to minimise transit cost arising from non-justifiable transit payments or poorly maintained infrastructure. As regards determining the level of transit payments, the major problem will be to find a balance between network user cost recovery and promotion of network use.

Possibly even more decisive than transit payments are “*transparency and speed at international borders*”<sup>7</sup>. This has a direct impact for the countries concerned in competing effectively in the global economy.

By addressing these issues in a problem-oriented way it is hoped that transport policy decisions will improve overall mobility in Central Asia and thereby positively influence productivity and prosperity. Mobility is the pre-condition for enhanced division of labour (globalisation), new production technologies (just in time production) and, hence, growth in GDP.

Coming from international experience with policy coordination, the value-added of legal transport harmonisation and facilitation at a regional level shows from increased opportunities and improved social and economic cohesion. This valued added is generally demonstrated in terms of the following:

- Facilitated market penetration, aiding exports to Europe and the neighbouring CIS states already committed to EU standards (e.g. Ukraine).
- Time and cost savings *en route* which result in improved price competitiveness of regional products.
- Harmonised legal frameworks with international standards are an important tool to integrate the region into the world economy. This will make the region more attractive to foreign direct investment, since investors are generally highly logistics cost oriented (for example, demanding just-in-time production).

The transport industry already strongly contributes to the GDP (Uzbekistan: 7%).

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<sup>5</sup> E. Molnar, WB, Transport and Trade Facilitation issues in the CIS 7, Kazakhstan and Turkmenistan (No.33879); P.N. Seneviratne, ADB, Transportation Facilitation in Azerbaijan, Kyrgyz Republic, Tajikistan and Uzbekistan.

<sup>6</sup> ADB, Uzbekistan: Transport Sector Strategy 2006-2020, Project Number 37691- 01, 2006

<sup>7</sup> United Nations Economic Commission for Europe, Trade Facilitation in a Global Trade Environment, Trade/2002/21, March 2002

To advance trade and transport facilitation requires interventions at the following three levels:

- transport simplification, a process of eliminating all unnecessary elements and duplications in formalities, processes and procedures;
- transport harmonisation, alignment of national procedures, operations and documents with international conventions, standards and practices; and
- transport standardisation, a process of developing internationally agreed formats for practices and procedures, documents and information

always of course, against the background of EU and international standards and practice.

Cooperation with international agencies active in the area of trade facilitation seems advisable, and it is proposed that the Expert Working Group (EWG) to be set up under the High Level Group (HLG) should be organised accordingly.

### **1.3 Legal review: methodological approach**

The following method has been adopted for the legal review and analysis:

For **national law** for each particular topic

- examining the relevant current legislation in each of the project countries, identifying limitations of the current legislation;
- recommending where necessary, changes to the current legislation following a regional and best practice approach.

For **international law, international conventions**

- listing for each country the conventions of which they are contracting parties;
- considering the way these conventions are implemented, identifying current violations of these conventions for discussion at the High Level Group;
- at a later stage in the project, examining whether there are any constraints in the way these conventions are implemented in practice.

For **international law, bilateral and multilateral agreements**

- considering the way these bilateral and multilateral agreements are implemented, identifying current violations for discussion at the High Level Group;
- at a later stage in the project, examining whether there are any constraints in the way these bilateral and multilateral agreements are implemented in practice.

The only possible bases for harmonisation are the international conventions and multilateral agreements, but Central Asian countries have been reluctant to embrace fully these agreements as working instruments. Most of the multilateral framework agreements that have been signed up must be acknowledged as *cul-de-sacs*, or be re-examined and activated. The need for more framework agreements is questionable and the implementation of existing agreements is overdue. The alternative to multilateralism is a fragmented regulatory regime. Transport corridors might then be created physically, but in practice access might be denied traffic because of the regulatory chaos.

## **2 Relevant framework for transport harmonisation**

### **2.1 Benchmarking: The system of international conventions and multilateral agreements**

#### **2.1.1 General**

Regarding transit, which is particularly important in the context of landlocked countries, the provisions are limited to “customs transit” only (from one customs office to another). WCO recognises that border control of import, export and transit of goods, people and conveyances is critical to the integrity and sovereignty of all countries.

A reduction of border delays through the harmonisation of border crossing procedures would definitely contribute to TRACECA’s overall aims. It is widely accepted that an integrated border management framework system can reduce border delays. Integrated border management has the following essential characteristics:

- to apply substantial preferences to transit transportation;
- to ensure openness and transparency in national administrative requirements; this openness constitutes the basis for any progress and simplification;
- rationalisation of, and reduction in administrative documentations (paperwork) for transit transportation;
- reduction in the amount of information demanded, and harmonisation of the required data; and
- facilitation of customs clearance for cargo transported in transit regime.

The inclusion of the trade facilitation in the WTO Doha Ministerial Declaration and the increased international attention to security has brought the subject into sharper political focus. It is worth noting that the WTO has been promoting trade facilitation since the first WTO Ministerial Conference in Singapore in 1996. WTO explains trade facilitation as follows:

“The simplification and harmonisation of international trade procedures for collecting, presenting, communicating and processing data required for more efficient movement of goods in international trade”.

Facilitation of customs transit forms an integral part of trade and transport facilitation. Accordingly, it is the objective of the World Customs Organisation (WCO) to improve the effectiveness and efficiency of customs globally. The WCO presents a model for legislation, standards, conventions, decisions and recommendations. It offers a forum for discussion, exchange of ideas, joint initiatives and trade consultations and is involved, among others, in capacity building, diagnosis, planning and review of implementation.

A number of WCO instruments for trade facilitation have been developed, among which the most important one is the Revised Kyoto Convention (to be ratified before end of 2007 by the Republic of Kazakhstan). The provisions of this Convention apply to all customs procedures and need to be specified in the national legislation of the signatories. It provides, among others, a number of guidelines related to clearance, customs formalities and transit.

The ‘single window’ (one stop) approach promoted by TRACECA is a valid initiative in this direction<sup>8</sup>. A single window facility should facilitate the sharing (standardised) of information and enable coordinated controls by the various governmental authorities. Also, it should provide facilities for payment of duties and other charges as well as easy access to trade related information. Such an approach of course calls for strong political will and trust, public-private dialogue, adherence to international standards, a legally binding environment and user friendliness. As it requires institution building and institutional

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<sup>8</sup> Refer to the TRACECA project on “Harmonisation of Border Crossing Procedures” completed in 2004.



strengthening, it is here that international agencies such as the OSCE and United Nations Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries (LLDCs) and the Small Island Developing States (UN-OHRLLS) could contribute in the longer term. The mentioned TRACECA project had prepared a wide-ranging set of documents for facilitating and harmonising paper work at borders. However, implementation was left to the individual countries.

Most TRACECA countries took up the challenge of establishing single windows for transit vehicles. It is worth noting that Kazakhstan has been most active in this regard. Kyrgyzstan is also using the single window approach with the assistance of the ADB. It seems from available information that the initiative has been less welcome by Uzbekistan.

An unhampered movement of goods in regional and international trade by road transport would require the Central Asia states to coordinate their national policies, and to prioritise the following issues:

- development of coherent transport policies which would exploit the advantages of road transport as an important element within the overall transport chain, and also would allow a free choice of transporters and transport services on the transport market;
- harmonisation of national transport legislations to meet the internationally agreed technical standards of road transport and coordination of activities for the accession to international conventions and agreements;
- coordinated activities for identification and elimination of non-physical barriers to unhampered international road traffic of goods;
- gradual liberalisation of road freight transportation within the region;
- coordinated activities in developing financial instruments to support road transporters for upgrading their fleet and services;
- coordinated approach to road mapping, construction, rehabilitation and maintenance of roads and road-side facilities;
- development of concepts for and execution of feasibility studies for network formation and modernisation along the main lines of international road traffic.

It appears to the consultant, that the coordination of national transport policies in the Central Asian countries should be based on approximation of the transport laws with the relevant EU Directives, as well as the recommendations of UN ECE Consolidated Resolution CR.4 on international transport facilitation.

Since 1997 the EU has been pushing the TRACECA countries (including the Central Asian republics) for accession to all these UNECE and UNESCAP Conventions and Agreements. In fact, approximation of transport legislation for Central Asian countries with the relevant EU Directives features in the TRACECA Strategy to 2015 and Annual Programme of TRACECA for 2008-2009, the EU Strategy Paper for Central Asia for 2007-2013, the EU Indicative Annual Programme for the Central Asian republics for 2007-2010 and ENPI as well.

Coordinated accession at regional level to, and implementation of international conventions would eliminate most of the non-physical barriers mainly by means of:

- agreeing upon the common criteria of access of road transporters to international operations;
- setting unified standards for axle loads and technical parameters of road vehicles;
- harmonising tariff schemes and road user fees;
- agreeing on common documentation procedures to decrease paper work in connection with importation of goods;
- agreeing on commonly accepted rules of entry for drivers of freight vehicles;
- setting a system of information exchange on external borders for vehicles travelling both in and out, and for cargo flows.

Without doubt, the international conventions on transport are key instruments in promoting road safety, facilitating traffic flows, and harmonising technical standards. To achieve the maximum public benefit, it

is however not sufficient to sign the conventions, but to ensure their transposition into national legislation and their enforcement. It appears that the capacity of the Central Asian countries to enforce these agreements is limited.

### **2.1.2 Priority benchmarks**

In the light of discovered legal shortcomings, the minimum requirement for Central Asian countries in order to ensure full participation in the regional/international transport markets is accession and compliance with the following:

- accession to at least the 7 International UNECE Conventions and Agreements related to transport endorsed by the UNESCAP Resolution 48/11;
- compliance with EU Directive No 96/53 regulating road vehicle standards;
- meeting TRACECA/MLA requirements.

It is obvious that harmonised rules on, for example, axle-load, transit charges, customs regulations, insurance and the introduction of IT would lower transport and transit cost and time considerably.

**But even more important is the fact that technical and administrative harmonisation is the forerunner of regional economic integration.**

Reliance on bilateral agreements and unilateral implementation has led to an excessively fragmented regulatory environment. Multilateral road transport agreements are the primary international engagements between governments for regional cooperation and harmonisation of regulation. Agreement by the beneficiaries on this principle would allow a review of the present portfolio of agreements and decisions on their roles in coordinated regional transport development. Superfluous bilateral agreements should be rescinded. Many agreements lie dormant or are only partially implemented.

#### **a) UN ESCAP Resolution 48/11**

Seven international legal instruments were recommended by the UN ESCAP Resolution 48/11 on road and rail transport modes in relation to facilitation measures, with briefing of purposes, major obligations, (if ratified) and recommendations on:

- Convention on Road Traffic of 1968;
- Convention on Road Signs and Signals of 1968 and the European Agreement of 1971 and the Protocol to the Convention 1973;
- Customs Convention on the International transport of Goods under Cover of TIR Carnets (TIR Convention) of 1975;
- Customs Convention on the Temporary Importation of Commercial Road Vehicles of 1956
- Customs Convention on Containers of 1972;
- International Convention on the Harmonisation of Frontier Control of Goods of 1982; and
- Convention on the Contract for the International Carriage of Goods by Road (CMR) of 1956.

Lately TRACECA countries have made substantial efforts in adopting the TIR Convention. It is, however, not enough to sign and ratify conventions, implementing them is even more important. Thus, for the TIR regime to work, certain institutional requirements have to be met. Complying with the construction requirements for vehicles or maintaining the systems for operating tachographs is difficult and will take time, require capacity building, and the budget to make these conventions operational. Another area that requires urgent attention is a region-wide effort to harmonise existing national regulations and rules. The consultant therefore concludes that there is still much work to be done before the system can be said to be working in the entire Central Asia region.

**b) EU Directive 96/53**

Directive 96/53/EC<sup>9</sup> on the maximum weights and dimensions of vehicles applies, in international and national traffic, to the dimensions of freight vehicles (over 3.5 tonnes) or passenger vehicles (with more than 9 seats). In international traffic it also applies to the weights and certain other vehicles. In this section references to “member state” are to states of the European Union.

Article 3(1) states that participating states “may not reject or prohibit the use in its territory:

- in international traffic, of vehicles registered or put into circulation in any other member state for reasons relating to their weights and dimensions,
- in national traffic, of goods vehicles registered or put into circulation in any other member state for reasons relating to their dimensions.

provided that such vehicles comply with the limit values specified in annex I.” (Art 3 (1))

The Minsk Agreement on the Weight and Dimensions of Road Vehicles Carrying Out Interstate Transport on the Roads of the CIS of 4 June 1999 was broadly based on this Directive. In the EU, Tajikistan and Uzbekistan the weight limit is 40 tonnes, whereas in Kazakhstan and Russia the weight limit is 38 tonnes (we have not been able to find the weight limit in force in the Kyrgyz Republic).

**c) Benchmarks for TRACECA/MLA development**

As already pointed out in the Inception Report, trade and transport facilitation is the main task of the TRACECA Basic Multilateral Agreement (MLA). In the context of the present TRACECA project, the MLA will form the framework for legal harmonisation. Taking into consideration that the beneficiary countries are full members of the IGC TRACECA and are committed to the provisions of the MLA, the project will proceed via the TRACECA Intergovernmental Commission (IGC) institutional framework in presenting legal proposals, of which the HLG to be set up under this project will have to become a separate but well integrated part.

Additional international legal instruments proposed for accession with the aim of supplementing clause 1 of Article 2 on “International Conventions” of the TRACECA MLA, Technical Annex on Customs Documentation Procedures are:

- International Convention on the simplification and harmonisation of customs procedures 1974, as amended;
- Convention on customs treatment of pool containers used in international transit 1994;
- Agreement concerning the establishing of global technical regulations for wheeled vehicles 1998;
- The UN Convention on Liability of Operators of Transport Terminals in International Trade 1991.

Prevailing legislation in these areas is partly still of Soviet origin and outdated. Especially the subject of liability in combined transport is a complex issue and needs to be addressed through a new agreement between the TRACECA participating states in the form of a revised technical annex to the MLA. The consultant agrees with the opinion voiced by several experts interviewed that especially the future success of the forwarding sector as one of the motors of multimodal development in the region will strongly depend upon an acceptable liability and effective insurance scheme.

Important work on these issues in the framework of the MLA has been carried out by the most recently completed TRACECA project on “Freight forwarders training courses”. The project produced interesting interim recommendations on options for how to improve the MLA draft Technical Annexes on “Multimodal Transport” and on “Freight Forwarding Operations”. In essence, the project concludes that

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<sup>9</sup> Council Directive 96/53/EC of 25 July 1996 laying down for certain road vehicles circulating within the Community the maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic. *Official Journal L 235, 17/09/1996 p. 0059 – 0075.*

the various parties to the MLA “should consider abandoning the two draft Technical Annexes”, and instead adopt as benchmark the UNCTAD/ICC rules on a statutory basis as possibly the most immediate practicable option to use within a TA on Multimodal Transport. This would enhance the use of the FIATA (International Federation of Freight Forwarders Association) Bill of Lading. No consensus has been reached so far on these issues.

It will be up to decisions of the HLG if the present project should continue the work on these issues in one of its expert working groups to be established. Experience gained in recent TRACECA projects shows that it might be difficult to reach consensus about further modifications of the Technical Annexes across the whole region because of the apparent divergence in the pace of legal reform and economic development in the various countries. Nevertheless, the consultant agrees with the request of the IGC TRACECA to follow-up developments in this regard.

A detailed comparison of the progress in accession of the Central Asian countries under review to these priority conventions and agreements is provided below in Table 5.

### **2.1.3 Other relevant international practice on benchmarking**

UNECE international conventions are sometimes prescriptive, while others do little more than record what is usual practice in each signatory state. Where they are prescriptive, they often impose rules that might be highly effective, but require training and a very well developed enforcement capacity to achieve anything useful. The following three international conventions have been recommended by various previous studies for adoption by the Central Asian republics.

- **Work of Crews in International Road Transport (AETR), 1970:** This can be enforced by work sheets, manually filled in (simple, but a weak control mechanism), tachographs (currently the imposed method in the EU), and electronic devices (proposed to become the method required by the EU as soon as technical standards can be agreed). Although this is not an easy issue to address, we understand that driver fatigue remains a major cause of road accidents in Central Asia countries. Transport of international tourists will certainly be impeded if present standards are not improved. The Central Asia countries do already have rules on drivers working hours dating from the Soviet period, but these have fallen into disuse.
- **Dangerous Goods by Road (ADR), 1957:** This may require considerable training in order for this to be fully applied. Cross-border transport of dangerous goods in Central Asia by road is rare (most dangerous goods travel by rail) making compliance with the ADR a less critical issue for the time being.
- **Perishable Foodstuffs (ATP), 1970:** Trade in perishable goods is one of the sub-sectors that has declined since the demise of the Soviet Union. Moreover, the poorer sectors of the Central Asian population, who are often working in agriculture or are shopping for low-priced foodstuffs, are notable losers as a result. The ATP is a complicated convention to apply, and probably beyond the resources of the less-wealthy Central Asia republics at present. If the ATP is adopted in a patchwork rather than in a regionally coordinated manner, it is quite possible that it will become a hindrance to trade and, hence, poverty alleviation. There is no identifiable link between the absence of the ATP, and the regional decline in transport and trade of foodstuffs. Nevertheless, considering that the majority of population in Central Asia is involved in the agricultural sector, and that there is a major demand for facilitation of international road transport in this field, it is necessary to develop centres for certification of transport units and special equipment, used during the transportation of perishable goods within the framework of ATP Convention. Perishable foodstuffs are particularly sensitive to unpredictable transit times. This unpredictability is a strong disincentive to their regional trade and transportation.

In addition various studies have recommended the adoption of the following:

**The Single Administrative Documents (SAD)** ensure openness in national administrative requirements which constitutes the basis for any progress and simplification. It creates rationalisation of, and reduction in administrative documentation (e.g. statistical, tax, transport, exchange-control, etc). The SAD replaces

different administrative forms, and limits the administrative documents which may be required in support of the SAD - that is why this is not exclusively a customs document but a single administrative document.

Further details of these conventions and agreements are given in annex 1.

## 2.2 The national legal frameworks for transport

Regional policy coordination in the legal field involves, as a second step, the harmonisation of rules established at national levels. The most notable of these are price (tariff) regulation, access to the market and profession, fiscal conditions, social regulation of transport, technical vehicle and equipment standards, as well as safety and environmental regulations. The aim of such harmonisation (always to be undertaken within the framework of internationally accepted standards and practice) is to ensure a functioning market within a set of parameters which are acceptable to society and the economy.

**The diagnostic work undertaken by the project indicates that existing national regulation is inadequate for various reasons, although different from country to country:**

- existing technical and professional regulation is considered insufficient for assuring acceptable standards for equipment and professional qualifications; the most advanced national law is the draft transport code of Kazakhstan currently discussed in parliament (see in detail Section 4.1.1.3 )
- there is a suspicion that economic/fiscal regulation is applied in an arbitrary and inconsistent way;
- the existing legislative base is full of loopholes.

In the opinion of the consultant, the major objective for the use regulatory instruments and interventions in these areas is to:

- avoid market imbalances and ensure equal competition;
- promote a professional and responsible transport industry;
- enhance the most efficient use of resources;
- safeguard individual and collective safety; and, finally
- contribute to regional and international transport cooperation and global market access.

The results obtained from the analysis of the transport situation in the Central Asia region, shows that legal reform needs to focus on the transposition of international law into the national legal systems with a major focus on the following issues:

- transport safety;
- fees for road use;
- weights and dimensions of vehicles;
- environmental protection and vehicle emissions;
- road transport services;
- facilitation of new transport vehicles supplies;
- improvement of road facilities.

The main elements characterising these major intervention areas are outlined below.

### 2.2.1 Transport safety

Guidelines are provided by the Convention on Road Traffic (08/11/1968) which stipulates a broad range of very practical road safety measures.

Table 2 shows the number of road deaths in the Central Asian republics. The World Health Organisation uses a cost per death outside Europe of US\$ 400 000 because road deaths particularly affect young people, wasting a lifetime of potential productivity (in Europe the figure used per death is € 1 million). In Table 2 it should be borne in mind that the EU average number of deaths per million inhabitants is around 100,

despite the EU member states having significantly higher traffic density and vehicle ownership than the Central Asian states. The table therefore underlines the economic value of having road safety programmes and adequate, enforced legal provisions.

It is worth noting how much the countries under-estimate the magnitude of the problem (considering that, for example, Kyrgyzstan officially considers the cost to be around 1-2 % of GDP). As shown by available statistics, also in the Central Asia region the majority of the victims belong to the younger road user group; often the victims are professionals on whose education scarce national resources have been spent.

**Table 2: Road deaths in the Central Asian region**

Country	Deaths	% GDP	Deaths/million
Kazakhstan	2217	1.37%	132
Kyrgyzstan	725	2.94%	148
Tajikistan	406	3.09%	59
Uzbekistan	n/a		

*Source: International Road Federation World Road Statistics 2006 based on government supplied data.*

Commonly recognised reasons for deficient road traffic safety include:

- negligence of road traffic safety requirements;
- low level of professionalism of drivers;
- poor road conditions;
- deficient road traffic management.

According to statistics, 13% to 15% of road traffic accidents are caused by deficient road conditions. Therefore regional initiatives aimed at raising network standards would pay for themselves in terms of reducing road traffic deaths.

**The national standards applied in the Central Asian countries have to be updated to comply with the European Agreement supplementing the 1968 Convention on Road Traffic of 1971.**

Currently there is a serious lack of statistical information on the subject. Although different from country to country, there is insufficient information on the factors contribution to road accidents. For example, the Final Report on Improvement of the Road Sector Efficiency in 2004<sup>10</sup> examined the nature of road safety problems in Kazakhstan and made the following observations:

“Particular problems associated with the structure of the accident data “card” are apparent which prevents in-depth analysis of accident characteristics and practical understanding of accident generation processes.” “Over three quarters of injury accidents occur in inhabited areas, mainly in Astana and Almaty, where pedestrian accidents are a particular problem.”

**As can be seen from the responses to the questionnaires in annex 5, in some of the area countries more systematic data collection on accidents, accident investigation and the adoption of safety initiatives would improve the situation. Routine surveys and detailed accident analysis need to be instituted, and standardised methodologies employed to permit comparisons over time against established benchmarks, and to develop tailor-made safety concepts.**

Out of the wide scope of issues emerging from the foregoing portrait, the following topics for future safety work are recommended. These seem not only to be important but also are in line with the approach successfully used in OECD countries:

<sup>10</sup> Section 2.1.2 of Volume 3 of the Final Report, carried out for the Ministry of Transport and Communications, Republic of Kazakhstan and financed by the ADB

**Topic 1:** Development of accident data base, including problem quantification, problem identification, disaggregation by road user group and by urban traffic and overland transport, trend analysis.

**Topic 2:** Traffic safety in urban areas: This topic corresponds to the high portion of urban accidents taking place. It concerns detailed studies of road user behaviour and occurrence of accidents. Black spot analysis should be systematically carried out.

**Topic 3:** Infrastructure safety improvements, with focus on infrastructure bottlenecks, accident black spots, and safety principles for road maintenance works.

**Topic 4:** Role of freight vehicles in traffic accidents.

**Topic 5:** Evaluation of European safety programmes.

There is no universal solution to the safety problem and individual solutions have to be found for the individual countries. Nevertheless, it will be important to take stock of the safety measures applied with success elsewhere and review their efficiency for regional/local application, including EU safety programmes.

**The highly particular subject of safety control of dangerous goods transportation has been partly dealt with by the TRACECA project on “Regulation on the transport of dangerous goods along the TRACECA corridor” (completed in late 2007). Despite the fact that the project apparently dealt mostly with the transport of LPG (and not with transport of oil, oil products or other chemicals more relevant for the region) the TOR required the analysis of regulatory authorities and their conformity with EU and UN accepted standards, and therefore it should contain useful information for the present project.**

### 2.2.2 Fees for road use

This is a controversial issue - the present fee system is chaotic, has engendered regional animosity, and requires radical revision. By way of example, Table 3 shows for Uzbekistan, the existing tariff system is not clear; it requires sweeping changes and harmonisation based on international experience (as of January 2007).

**Table 3: Charges and fees levied on Uzbek carriers in transportation of goods across certain countries**

Country	Charge and fee	Cost of travel in one direction (US\$)	Cost of travel in return direction (US\$)
Kazakhstan	Permit (entry permit)	-	-
	Insurance	15	15
	Environmental	15	15
	Transit	-	-
	Transportation to/from third countries based on permits (transport without permit is prohibited)	Agreed number	Agreed number
	Non-TIR movement, for customs escort:		
	up to 1000 km	257	257
	up to 1500 km	386	386
	up to 2000 km	515	515
	> 2000 km	635	635
Gross combined weight of saddle train ≤ 38 tonnes, tractor rear axle load –10 tonnes			

Country	Charge and fee	Cost of travel in one direction (US\$)	Cost of travel in return direction (US\$)
<b>Turkmenistan</b>	Permit or transit	150	150
Up to Seraxs	Insurance	50	50
(to Iran and	Fuel price difference	91	91
Turkey)	Disinfection	5	5
	Quarantine	5	5
	Transport inspection	5	5
	Consular fee	10	10
	Transit across pontoon bridge across Amudarya (in a very bad condition)	80	80
	Visa (one month/2 months /3 months)	71/111/151	
<b>Total</b>		<b>467</b>	<b>396</b>
<b>Kyrgyzstan</b>	Insurance	15	1,5
	Environmental	2	2
	Visa: one week	6	
	One month	12	
	Permit for transportation to/from third countries	250	250
<b>Tajikistan</b>	Permit or transit, to/from third countries	130/90	130/90

It is not clear whether these charges are particular to Uzbek trucks or are applied to trucks of any origin, but in any case this table demonstrates the wide variety and the scale of charges, many of which seem excessive (for example the charge of US\$ 80 levied for crossing the Amudarya pontoon bridge in Turkmenistan).

To quote another example, it clearly shows from the agreed conditions for entry, exit, transit and carriage of road transport vehicles between Uzbekistan and third countries as of 02 January 2007 given in Table 4 below that the prevailing permit system is regulated quite differently from country to country.

**Table 4: Transit of foreign trucks in Uzbekistan**

Country	Type of agreed permits for international road transport
Kazakhstan	Bilateral conveyances, transit without permits, free of charge. Transportation to/from the third countries – mutually agreed number of permits.
Kyrgyzstan	Bilateral conveyances and transit without permits. Transportation to/from the third countries without quotas – US\$ 250.
Turkmenistan	Bilateral conveyances without quotas, entry and transit – US\$ 150, both for loaded and empty transport vehicle.
Tajikistan	Bilateral conveyances, transit without quotas. Entry, transit – US\$130. Transportation to the third countries – US\$ 90.

Guiding principles for fiscal policy are that fees should be non-discriminatory and non-cumulative.

As regards regional and international traffic, which is at the centre of attention of the present study, foreign trade and transit movements should be encouraged in order to consolidate and enhance regional growth and integration. This, however, needs to be accomplished on the basis of the principle of non-discrimination in terms of the costs and benefits for the countries concerned.

With regard to transit traffic causing wear and tear to road infrastructure, it has been generally experienced that foreign vehicles can most effectively contribute to the cost of maintaining infrastructure when they refuel:

- with fuel priced at its economic costs without fuel subsidies; and
- with tolls levied for the use of infrastructure equal to the cost of infrastructure maintenance not already covered by revenue earnings from fuel charges.



The beneficiary states should:

- confirm that right of entry and transit is untaxed, but that payments may be levied for road use up to an agreed maximum;
- agree that any administrative fees will be included in road user charges;
- consolidate other charges (customs convoy, ecological, etc) into single road use charges; and
- not link road transit transport fees with regional issues unrelated to road transport.

In this respect drivers frequently complain that whatever the official charges, they are required to make multiple illicit payments to authorities once they are outside their home country. These can double the official tariffs. It should be recognised that the problem is not going to be easy to resolve.

**It was the objective of the TRACECA project on “Unified Policy on Transit Fees and Tariffs” completed in 2004 to achieve a more transparent tariff and transit fee structure. As stated in the Commission’s evaluation report, the project – although apparently well implemented – “had no visible impact on any wider environment”, to an extent that the project working groups were disbanded when the project was completed. This is evidence of the complexity and political sensitivity of the issue. Although it therefore does not seem reasonable to set up new a working group in the framework of the present project, it might still be of interest to investigate of the lack of progress on this matter.**

### **2.2.3 Weights and dimensions of vehicles**

The region falls under the influence of three similar regulatory regimes (EU, CIS, and People’s Republic of China (PRC)). Similarities derive from the fact that all are based on the European standards, but these three regimes have small but significant differences. In the near term, as traffic across the PRC border is limited, it has been recommended by CAREC and others that the Cholpon Ata agreement on weight certification should be applied. This foresees mutual recognition of weight certification of vehicles between the signatories. The weigh-stations themselves would be subject to regional registration. No reweighing would be allowed except under very limited circumstances. This excellent agreement would be invaluable if implemented.

**The issue has been raised by the PS IGC TRACECA that application of the Cholpon Ata agreement could become a restriction on the entry of the Central Asian road vehicles to the territory of other countries, notably the European countries. It is the consultant’s view (shared by CAREC and others) that application of the Cholpon Ata agreement would not oblige countries to change domestic weights and dimension standards if different. It would only oblige them to accept the regional standards for regional traffic.**

Once these principles have been accepted and the systems put in place, it would be logical to try to harmonise the weights and dimensions of vehicles. This could be done either with the Minsk Agreement on the Weight and Dimensions of Road Vehicles Carrying out Interstate Transport on the Roads of the CIS of 4 June 1999, or preferably with the standard set by EC Directive 96/53<sup>11</sup>.

**Thus, the consultant sees this as a two phased process, adopting the systems of the Cholpon Ata agreement first and then dealing with the harmonisation of weights and dimensions as a second step, or vice versa.**

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<sup>11</sup> Council Directive 96/53/EC of 25 July 1996 laying down for certain road vehicles circulating within the Community the maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic. *Official Journal L 235, 17/09/1996 p. 0059 – 0075.*

#### **2.2.4 Environmental protection and vehicle emissions**

Administrative measures to implement environmental protection would require the following governmental action:

- setting the parameters of ecological safety of transport vehicles operation;
- setting parameters of ecological safety of fuel, lubricants and special liquids;
- certification of cars, fuels and lubricants produced;
- certification of road transport services;
- regulating mandatory inspection of road transport vehicles.

The EURO standards provide the only obvious basis for regional harmonisation. Geographically the Central Asian corridors are widely dispersed, they pass through varied socio-economic zones, and only occasionally cross large urban agglomerations. In fact it is, quite rightly, urban vehicle emissions that are the focus of most attention in the Central Asian countries at present. The ability within the Central Asian region to enforce the maintenance of vehicles to international standards is uncertain. The most developed areas would not have difficulty in doing this, but many other areas would find it impossible. Hence the impact on the rural poor of any rapid changes to regulations, either regionally or nationally, require particular attention.

The question of vehicle standards is a complex problem that requires carefully planned solutions and regional consensus, and possibly a twin track approach – dealing separately with vehicles used in international freight transport according to European standards and those used exclusively in national transport according to lower standards.

**As a first step it is recommended that EURO standards are confirmed as the long term strategy to reduce vehicle emissions. In the immediate future existing GOST standards, provided they can be enforced with technically reliable equipment, should persist in the CIS (and for PRC cross-border traffic at present low levels). Subject to cost-benefit analysis, to poverty impact assessment and to verification of ability to enforce standards, EURO 2 should be applied to major urban access for regional traffic within three years. Outside urban areas the GOST standards could still be allowed. As and when economic conditions allow the EURO standards should be progressively implemented across the whole region, up to EURO 5. The Cholpon Ata agreement (discussed further in section 2.2.3) on weights and dimensions could serve as a model, to develop a similar regional agreement for mutual recognition of certification of emission controls.**

#### **2.2.5 Road transport services**

Road transport services are improving in the region, where economic growth allows. It is recommended that market dynamics be the prime determinant of needs. The actions suggested are therefore designed to review and release any restraints on this dynamism. Regulation of quality of services is recommended, and subsidies or quotas should be avoided.

**The Central Asian states have committed themselves to the gradual liberalisation of road transport services under the Concept of agreed transport policies adopted by the CIS states in Minsk in 2003 for the period until 2010. Under the Concept the states have agreed to:**

- **create equal and favourable conditions for all international road operators present on the market;**
- **optimise quality and quantity requirements to the road vehicles fleet with respect to the level of development of the road transport services;**
- **develop and implement coherent activities for reconstruction and development of the main transit routes;**
- **develop a common legal basis for transit transportation by road within the region.**

**Each of these actions remains fully relevant to the current situation in the Central Asian region.**

### **2.2.6 Facilitation of new transport vehicles supplies**

Bearing in mind the limited budgets of the Central Asian states, the following measures would help in financing the provision of new vehicles:

- development of international and unification of national laws underlying lease arrangements;
- creation of harmonised legal grounds for production of vehicles applying the following scheme;
- financing of production by banks;
  - lease supply agreements with road transport operators;
  - insurance arrangements to secure repayment to the banks;
- creating favourable conditions for border crossing by the vehicles and equipment commonly used;
- regulating beneficial customs and taxation regimes to support mutual supplies of transport equipment between the CIS states;
- formation of national and regional associations of lease companies.

### **2.2.7 Improvement of road facilities**

The following measures could be considered to assist the improvement of road facilities:

- coordinated approach by the Central Asian states to built-up a unified legal basis for road design, construction, rehabilitation and maintenance;
- modernisation of state policy on road improvements and the prioritisation of investment projects;
- development of a coherent approach to licensing of road maintenance and construction works.

### 3 International conventions and agreements in transport

#### 3.1 Summary of accession, ratification, and signature

At a glance the situation is shown in the table below for the countries under review.

The consultant considered whether to include not only international but also European regulations and standards in the analysis. This does not imply that national transport legislation should be brought into compliance with the European standards. It was concluded that as most of the European standards resemble international standards the analysis should focus on international standards.

**Table 5: Accession of beneficiary countries to international conventions/agreements**

Agreements and Conventions	Kazakhstan	Kyrgyzstan	Tajikistan	Uzbekistan	Turkmenistan
<b>MLA recommended Conventions</b>					
TIR Convention, 1975 *	+	+	+	+	+
International Convention on the Harmonisation of Frontier Controls of Goods, 1982	+	+		+	
Customs Convention on Containers, 1972	+			+	
<b>UNESCAP Resolution 48/11 recommended</b>					
Convention on Road Traffic, 1968 *	+	+	+	+	+
Convention on Road Signs and Signals, 1968 *	+	+	+	+	+
TIR Convention, 1975	+	+	+	+	+
Customs Convention on the Temporary Importation of Commercial Road Vehicles, 1956 *		+		+	
Customs Convention on Containers, 1972 *	+			+	
International Convention on the Harmonisation of Frontier Controls of Goods, 1982 *	+	+		+	
Convention on the Contract for the International Carriage of Goods by Road (CMR), 1956 *	+	+	+	+	+
<b>CLBTT Protocol recommendations to MLA</b>					
International Convention on the simplification and harmonisation of customs procedures 1974, as amended					
Convention on Customs Treatment of Pool Containers Used in International Transport, 1994				+	
Agreement concerning establishing Global Technical Regulations for Wheeled Vehicles, 1998					
Convention on the liability of operators of transport terminals in international trade, 1991					
<b>Others recommended in previous studies</b>					
Work of Crews in International Road Transport (AETR), 1970	+			+	+
Dangerous Goods by Road (ADR), 1957	+				
Perishable Foodstuffs (ATP), 1970	+			+	
Single Administrative Documents (SAD)					
<b>Others not recommended in previous studies</b>					
<b>Infrastructure networks</b>					
Construction Traffic Arteries, 1950					
E Road Network (AGR), 1975	+				
E Rail Network (AGC), 1985					
E Combined Transport Network (AGTC), 1991	+				
Protocol Inland Navigation to AGTC, 1997					
E Inland Water Network (AGN), 1996					

Agreements and Conventions	Kazakhstan	Kyrgyzstan	Tajikistan	Uzbekistan	Turkmenistan
<b>Road traffic and road safety</b>					
Road Traffic, 1949		+			
Protocol on Road Signs & Signals, 1949		+			
Supplement to 1968 Convention Road Traffic, 1971					
Supplement to 1968 Convention on Road Signs & Signals, 1971					
Weights and Dimensions, 1950					
Supplement to 1949 Convention and Protocol, 1950					
Road Markings, 1957					
Protocol Road Markings, 1973					
Issue and Validity of Driving Permits (APC)					
<b>Vehicles</b>					
Vehicles Regulations, 1958					
Technical Inspection of Vehicles, 1997					
<b>Other Legal Instruments related to Road Transport</b>					
Taxation Private Road Vehicles, 1956					
Taxation Road Passenger Vehicles , 1956					
Taxation Road Goods Vehicles , 1956				+	
Protocol to CMR, 1978		+		+	+
Contract Passengers & Luggage by Road Transport (CVR) , 1973					
Protocol to CVR, 1978					
Economic Regulation Road Transport , 1954					
<b>Inland navigation</b>					
Collision International Navigation, 1960	+				
Registration of International Navigation Vessels, 1965					
Measurement International Navigation Vessels, 1966					
Liability Vessel Owners (CLN), 1973					
Protocol to CLN, 1978					
Contract International Navigation of Passengers & Luggage (CVN) , 1976					
Protocol to CVN, 1978					
<b>Border crossing facilitation</b>					
Touring Facilities, 1954					
Protocol Touring Facilities, 1954					
Temporary Importation of Private Road Vehicles, 1954					
TIR Convention, 1959					
Temporary Importation of Aircraft & Boats, 1956					
Cross Frontier Passenger Baggage by Rail, 1952					
Cross Frontier Goods by Rail, 1952					
Spare Parts European Wagons, 1958					
Customs Treatment Pallets, 1960					
<b>Dangerous goods &amp; special cargoes</b>					
Protocol to ADR, 1993					
Liability for Dangerous Goods (CRTD) , 1989					
Dangerous Goods by Inland Waterways (ADN), 2000					

\* Conventions endorsed by UN ESCAP.

Source: UNECE Transport agreements and conventions, status at 18 September 2007

## 3.2 Main issues

### a) Progress on legal approximation

The current situation, though progressing, shows significant differences from one country to another. This results in numerous administrative and technical barriers and, consequently, in an increase in the transport component in the price of goods, and decreased competitiveness of these countries.

As already discussed in Chapter 2 on benchmarking, the most important step for Central Asian countries in order to ensure civilised penetration of international transport markets in the opinion of the consultant is accession to at least the 7 International UNECE Conventions and Agreements related to transport endorsed by the UNESCAP Resolution 48/11 (see section 2.1). Of the list of international conventions in Table 4, Kazakhstan has acceded to 13 Conventions and Agreements including 6 endorsed by UNESCAP, Kyrgyzstan has acceded to 9 of which 6 were endorsed by UNESCAP, Tajikistan has acceded to 4 of which all were endorsed by UNESCAP, Uzbekistan acceded to 12 Conventions and Agreements to including all 7 endorsed by UNESCAP, and Turkmenistan to 6, of which 4 of those were endorsed by UNESCAP.

Since 1997 the EU has been pushing the TRACECA countries (including the Central Asian republics) for accession to all these UNECE and UNESCAP Conventions and Agreements. Three of them were included in MLA (see Table 4) in 1998. Consequently accession to all these conventions and other EU directives are listed in the TRACECA Strategy which was approved by all members of MLA, including the Central Asian republics.

The main concern is that Tajikistan and Turkmenistan did not accede to the International Convention on the Harmonisation of Frontier Control of Goods. This convention is very important in facilitating the border crossing by transport, to reduce the delivery period of goods. It defines a code of measures facilitating and accelerating border crossings by goods vehicles.

Although Kazakhstan has acceded to the Convention, there seem to be problems with implementation. Kazakhstan is a transit country for transporters from Uzbekistan, Tajikistan, Kyrgyzstan and Turkmenistan in the international transport to European countries, Russia and Ukraine. Today transporters report long delays at the borders of Kazakhstan, with unofficial charges between US\$600 to 1000 for entry and exit of one road train. To a lesser extent a similar situation can be experienced when entering the Republic of Tajikistan.

Although it is evident from the above that further progress on harmonisation with international conventions and agreements is vital for facilitating international transport, it needs to be underlined that accession to priority international conventions cannot be achieved by the project.

### b) Weights, axle loads and dimensions of road vehicles

Central Asian countries, except Turkmenistan, have acceded to the Minsk Agreement on the Weight and Dimensions of Road Vehicles Carrying out Interstate Transport on the Roads of the CIS of 4 June 1999, where the EC Directive 96/53<sup>12</sup> standards were partially used. In accordance with this Agreement the gross weights of various types of vehicles are as follows:

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<sup>12</sup> Council Directive 96/53/EC of 25 July 1996 laying down for certain road vehicles circulating within the Community the maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic. *Official Journal L 235, 17/09/1996 p. 0059 – 0075.*

**Table 6: Overall weights of vehicles specified in the Minsk agreement**

Permissible maximum weight of a vehicle		
Type of vehicle	The maximum allowed weight, t	
<b>Goods vehicle</b>		
Two-axle goods vehicle	18.0	
Three-axle goods vehicle	24.0	
Three-axle vehicle with one steering axle consisting of twin tyres fitted with air suspension or equivalent	32.0	
<b>Vehicle forming part of a vehicle combination</b>		
Two-axles trailer	18.0	
Three-axes trailer	24.0	
<b>Vehicle combinations</b>		
		<b>Applicable for transit through Uzbekistan only</b>
Articulated vehicles with four axles consisting of a two-axle truck and a two-axle semi-trailer, if the distance between the axles of the semi-trailer:		
Is 1.3m or greater but not more than 1.8m	36.0	36.0
Is greater than 1.8m	38.0	38.0
Two-axle truck with three-axle semi-trailer	38.0	40.0
Three-axle truck with two-axle semi-trailer	38.0	40.0
Three-axle truck with three-axle semi-trailer	NA	40.0
Two-axle truck with single-axle trailer	NA	28.0
Two-axle truck with two-axle trailer	36.0	
Two-axle truck with three-axle trailer	42.0	
Three-axle truck with two-axle trailer	42.0	
Three-axle truck with three-axle trailer	44.0	
Three-axle truck with four-axle trailer	44.0	
<b>Buses</b>		
Two-axle buses	18.0	
Three-axle buses	24.0	
Three-axle articulated buses	28.0	
Four-axle articulated buses	28.0	

In the EU and Uzbekistan the maximum gross weight is 40 tonnes. In Russia, which is of interest for Central Asian countries as a transit country in travelling to Western Europe, the maximum gross weight is also established at 38 tonnes. Considering old Soviet standards, the gross weight of a five-axial road train in accordance with GOST 9314-59 was 40 tonnes. Kazakhstan insists on a maximum weight of 38 tonnes on the grounds of road damage<sup>13</sup>. As a result of this under-loading by two tonnes of vehicles transiting Kazakhstan, businessmen in Central Asian countries loose up to 1 million tonnes of capacity which has to be transported by other road trains, thus increasing transport component in product price and significant losses to consignors. One possible solution to the problem would be to increase the permitted axle load to 40 tonnes but charge a higher transit fee to heavier trucks.

**Analysis of the Minsk Agreement was done in a former TRACECA project and countries were recommended to reject these reservations on axle weight.**

<sup>13</sup> Road damage increases to the power of 4 with axle load, therefore theoretically road damage increases by 20% for an increase in axle load from 38 to 40 tonnes.

c) Environmental standards

In Central Asian countries some 90% of road transport vehicles participating in international transport, have been in service for 10 years and more. Engines used are generally compliant with Euro-0, Euro-1, and occasionally Euro-2 emissions standards. In EU countries Euro-3 standard has been effective from October 2001, with Euro-4 introduced in 2005. This makes the entry of road trains from Central Asian countries to the European countries more difficult, where extra charges are levied on road trains with the engines lower than Euro-3.

In the Republic of Uzbekistan there is a problem of in purchasing new and used Euro-3 and higher compliant vehicles. Higher customs duty is charged, VAT plus a charge for registration of the road train (which is transferred to the Road Fund). These extra payments amount to more than 73% of the cost of vehicle (which is around €130-140 000). These road trains (saddle tractors, semi-trailers, trailers) are not produced by the industry of Uzbekistan and other Central Asian countries. Carriers either have to pay this tax or pay more for using lower emission standard vehicles within the EU. It may be seen, as a consequence, that international road carriers of Uzbekistan perform less than 25% of all export and import conveyances due to the lack of road trains.

d) Road safety

An important challenge for Central Asian countries is to harmonise the control and ensure safety of road transport. Up till now the Soviet standard GOST 25478-91 “Road vehicles - Requirements on technical condition for road safety - Methods of inspection” is still used in Kazakhstan, Kyrgyzstan, Tajikistan and Turkmenistan.

In order to achieve greater consistency in road traffic regulations and ensure a high level of safety and environment, the UN ECE Inland Transport Committee developed the “Agreement Concerning the Adoption of Uniform Conditions for Periodical Technical Inspections of Wheeled Vehicles and the Reciprocal Recognition of such Inspections” of 1997. It became effective on 27 January 2001. This Agreement provides a legal basis and procedures for adoption of uniform conditions for periodical technical inspections of vehicles in service and mutual recognition of certificates of such inspections. Among Central Asian countries only the Republic of Kazakhstan has signed this Agreement, but it has not yet brought its relevant standards into compliance with annexes I and II to 1997 Agreement.

To harmonise national requirements and safety control methods of road vehicles with similar ones laid down in annexes 1 and 2 to the 1997 Agreement, the Republic of Uzbekistan has developed two state standards:

GOST RUz 1057: 2004 – Road vehicles. Safety Requirements on Technical Conditions.  
GOST RUz PY 1058: 2004 – Road vehicles. Technical Inspections. Methods of Control.

However, Uzbekistan has not yet acceded to the 1997 Agreement.

To ensure the alignment of the Central Asian countries with the standards and methods of safety control for road vehicles set out in the 1997 Agreement, the standards of the Republic of Uzbekistan could be used as a benchmark. Nevertheless, the fact that no statistics are collected on road deaths and injuries in Uzbekistan means that there is no evidence of the effectiveness of these road safety measures. Altogether, an evaluation of European safety programmes might be considered useful and should be carried out.

### **Transit Charges**

No visible progress has been achieved concerning the harmonisation within Central Asian countries of the charges levied on road transport vehicles when crossing borders. This requires major changes and harmonisation based on international experience. The High Level Group will be invited to examine this issue and make proposals.



3.3 Compliance: Brief summary of violations and unexecuted obligations of the MLA during the period of 1998-2007

The continued identification and elimination of violations of international conventions and/or regional agreements (MLA) is an important step towards bringing transport policy in line and compliance with international standards.

After signing by the Heads of State, ratification by the parliaments of 12 states and entry into force of the MLA, the following violations and unexecuted regulations of the MLA provision by the Central Asian states were detected:

1. Discriminatory policies in the field of railway transit tariffs carried out in Uzbekistan (application of increasing coefficients) towards Tajikistan and *vice versa* in recent years, contradicting Article 6 (2) of the MLA.
2. In all Central Asian states (2000-2002) additional charges for sanitary and veterinary services for transit transportation were initiated in violation of Article 5 of the MLA.
3. Kazakhstan, in violation of Article 3(c) and Article 8(6) (g), deposit, financial and bank guarantees for excises for freight transit transportation (oil and oil products, ethanol, wine, tobacco goods, etc) were initiated.
4. Obligations in establishing representations of the Parties stated in Article 6(1) (d) of the Technical Annex on Railway Transport have not been fulfilled.
5. Obligations in railway transport concerning elaboration of a coordinated method of prime costs analysis, stated in Article 6(1) (c) of the Technical Annex, have not been fulfilled.
6. Obligations stated in Article 7(b) and (c) of Technical Annex on International Commercial Navigation have not been fulfilled.
7. Obligations of Article 9 of Technical Annex on International Commercial Navigation concerning providing with the most favoured nations treatment in Kazakhstan ports have been fulfilled partly. The most favoured nation treatment is mainly applied in ferry transportations.
8. Regulations of Article 4 (1) and (2) of the MLA concerning facilitation of international transport are not carried out in full measure.

It will remain an important part of the future project work to further investigate the implementation of ratified/signed international conventions and agreements and possible violations especially in the roads sector, and to involve the HLG in designing and implementing effective counter-measures.

## **4 National legal situation in transport**

### **4.1 Kazakhstan**

#### **4.1.1 National legislation**

The Transport Strategy of the Republic of Kazakhstan up to 2015 has national significance as reflected in the Address of the President of the Republic of Kazakhstan to the Nation as of 1 March 2006, "Kazakhstan near the New Spurt of Its Development". The strategy covers railway, road, city passenger, air and water transport, development and effective operation, which significantly depend on government policy. Altogether Kazakhstan acknowledges the important role of transport for its national development.

Because of its geographical position Kazakhstan has substantial transit potential in providing to Asian countries land transport communications with Russia and Europe. The choice made in the early 1990s by the Government of Kazakhstan in favour of developing a market economy and the reforms already initiated significantly changed the conditions of transport operation and the nature of demand for transport services.

The two laws "On road transport" (2003) and "On automobile roads" (2001) provide specific regulatory ground for road transport operations, covering administrative and commercial issues of interaction between clients, operators and administrative authorities in the fields of safety regulations, environmental requirements and border crossing procedures.

Transport safety and also the traffic management in the country are regulated by the national laws in compliance with UN Convention on Road Traffic, 1968. Road signs and signals are subject to national laws in line with the UN Convention on Road Signs and Signals, 1968.

Kazakhstan consented to the Concept for coordinated transport policy of member states of the CIS for the period to 2010, approved by the Decision of Heads of States of CIS on 15 September 2004<sup>14</sup>.

On a national level safety issues are tackled by the law "On road safety" (1996) and a number of governmental regulations (referred to in the tables in annex 5). The licensing of transport services again is subject to the terms Licensing Law of Kazakhstan.

Kazakhstan is implementing a national road transportation development program for years 2006-2012, approved by the Government in 2005, raising road traffic safety.

A set of criteria is specifically established in the national laws, and rules are used to control the safety of road transport vehicles' operation and manufacture, and the certification and inspection of road vehicles. However, there is no monitoring of compliance on environmental standards to international requirements.

##### **4.1.1.1 International transport**

Kazakhstan's geographical location between Europe and Asia means that its economy is one of the most freight intensive and dependent on efficient transport and transit.

Since the 1990s, important progress has been recorded in the road transport sector and transport infrastructure. The legal and regulatory framework in the road and air transport sectors, although greatly improved, has shortcomings with either gaps or overlaps in regulations and inadequate allocation of responsibilities for enforcement. This has made the development of the private sector more difficult than necessary and increased transport costs, and has an impact on other countries, such as the Kyrgyz Republic, Uzbekistan and Tajikistan which need to use Kazakhstan's transport network in order to reach foreign markets.

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<sup>14</sup> The Concept (Chapter 7) requires that the member states harmonise national safety parameters of transport vehicles, which implies development of a unified system of safety standards and implementation methods compliant with international rules.

The facilitation of international trade and transport could be ensured by the improvement of the performance of customs, implementation of the international transport agreements in Kazakh legislation, development of the freight forwarding industry, harmonisation of transport regulations with those of the neighbouring countries, and better interregional coordination of rail transport.

One of the Government's priorities is the development of the role of Kazakhstan as a key transit country between Europe and Asia.

#### 4.1.1.2 Customs regulations, border crossing controls and charges

In April 2003, a new Customs Code of the Republic of Kazakhstan was adopted and three months later, the Resolution of the Government of the Republic of Kazakhstan No. 669 "On Adoption of Rates of Customs Fees, Charges and Payments Levied by Customs Bodies". This specifies the rates of customs charges, fees and payments levied by customs bodies. The customs charges are required provided for:

- customs clearance goods and vehicles transported across the border;
- storage of goods at customs warehouses and temporary storage warehouses owned by customs bodies;
- special premises using specific equipment and having a special temperature regime;
- customs escort of goods;
- issuance of licences for customs storage warehouse;
- issuance of licences for establishing a temporary storage warehouse;
- issuance of licences for performing the activity as a customs broker;
- issuance of certificates of competence for a customs clearance specialist.

The Order No 258/ 29.05.2003 of the Acting Chairman of the Customs Control Agency of the Republic of Kazakhstan should also be mentioned. This provides the rules for participants in foreign economic activity in the minimal risk category and application of simplified customs clearance procedures.

Imported goods are subject to VAT at the point of customs clearance. VAT on imports is currently calculated at 14% of the customs value of goods, including freight and customs levies and taxes. Goods exported outside the territory of Kazakhstan are zero-rated for VAT purposes. Kazakhstan has specific agreements for VAT purposes with other countries. In this case, an export to a country where no such agreement is in force (such as Turkmenistan or certain exports to Russia) may not be a zero-rated export for Kazakhstan VAT purposes.

The VAT zero rates do not apply on railway transport and ports services on international and transit railway connection, including transportation, forwarding, loading/unloading and storage services.

Customs clearance procedures for crossing borders and transit with the countries adjoining Kazakhstan and within the region are insufficiently harmonised and they do not comply with international standards. Complicated and diverse procedures and documents hamper trade flows both inside the region and with the countries outside the region.

A major development will be the creation of the Customs Automated Information System (ASYCUDA) that will contribute to the speeding up of customs clearance, and simplification of border crossing procedures for trucks. Also the SAFETIR software system for the control of cargoes shipped has been introduced.

In 2004, the Intergovernmental Agreement between Kazakhstan and Kyrgyzstan on transit of goods by road via Kazakhstan was signed. The implementation of this agreement ensures movements of goods from/to Kyrgyzstan both without transferring the customs payments due. This procedure is an exception for Kazakhstan. In order for similar facilities to be provided to cargoes from other states, it is necessary to develop appropriate systems throughout the Central Asian region.

There is certainly a need to develop a regional system of guarantees for the improvement of the regional transit.

There is no direct law in the national legislation regulating freight forwarding activities and multimodal transport. However, the Kazakh side considers the legislative base adequate. Forwarder licensing or certification is not required. The national forwarders association is an active member of FIATA. According to the TRACECA project "Freight forwarders training courses" there are no legal restrictions concerning the use of the FIATA FBL (the FIATA Bill of Lading). Insurance is not compulsory for forwarders, although there is a rather well developed insurance and banking system in place.

Most of the facilitation measures are implemented by the Kazakhstan authorities at official level. In Kazakhstan there are currently no fees for road usage although there are plans for constructing toll roads, starting with the Almaty Ring Road.

However, there is no official organ in the country to coordinate border crossing facilitation initiative. And there is no system of information exchange set up on exit borders, but a regional initiative after the signing of a Memorandum of mutual understanding for the improvement of international road transportation of goods within the bounds of the United Nations Special Programme the Economies of Central Asia countries (SPECA).

#### 4.1.1.3 The draft transport code

The draft of the transport code of the Republic of Kazakhstan was introduced to the *Majilis*, the lower house of the Kazakh Parliament, by the decree of the Government of the Republic of Kazakhstan of 27 September 2006. Approval of the draft code is expected soon. This is a comprehensive text running to some 561 articles (some 82 000 words in the Russian language version).

**The consultant's analysis of the draft code, in particular the regulations on road transport, shows that it represents a consistent and coherent piece of legislation. The language of the draft code is comprehensible and the structure makes it possible to find relevant regulations fast. However, from our analysis it appears that several areas have not been regulated sufficiently or have been left out altogether, for example, regulations on qualification of carriers, storage of speedometer charts and several specific aspects of liability. Furthermore some of the provisions could be summed up and streamlined in order to shorten the entire draft.**

Nevertheless the draft of the transport code also establishes a lot of provisions on relevant and up to date topics such as tachographs and toll highways. These regulations show that the draft of the transport code is on its way to become a benchmark for the entire Central Asian region. The future of road transport involves a lot of new challenges. Approximation towards European standards and implementation of international standards is an important step to face developments in the future. The draft of the transport code is a solid basis for a journey towards a modern and consistent transport policy.

The development of the transport sector in the Republic of Kazakhstan is a national strategic and developmental priority. This is reflected in various documents including the "Kazakhstan 2030" Presidential Strategy of 1998, the Strategic RK Development Plan: "Further Actions to Implement the Kazakhstan Development Strategy up to 2030 (Development Plan to 2010)", Government Decree of 11 June 2001 on A National Transport Policy and Government Decree of 12 June 2003 on the Indicative Social & Economic Development Plan for 2004-2006.

At present the Republic of Kazakhstan is following a policy of unification and codification of legislation. The new transport code pursues this strategy by including and systemising provisions on road transport, railway transport, internal water transport, trade navigation and state regulation of civil aviation. These areas have been covered by separate bodies of law up till now.

Furthermore the new transport code shall also become a benchmark for other Central Asian countries (Kyrgyz Republic, Republic of Tajikistan, Republic of Uzbekistan and Republic of Turkmenistan) and

thus facilitate trade in the Central Asian region. The overall objective is to support the transition process to a market economy through strengthening international trade and improving the movement of goods and persons by road at lower cost, including cross border transport. This will enhance regional cooperation in road transport, including multimodal operation between these countries.

The following analysis of the draft of the transport code aims at establishing the reform potential of the draft with special regard to road transport. In addition its value as a benchmark for the region is assessed.

Analysing the Regulations on Road Transport of the new transport draft code with regard to their reform potential the following can be stated:

**The draft of the transport code contains a variety of provisions covering every relevant transport sector such as road transport, electrical city transport, railway transport, water transport and civil aviation. A unified codification of regulations concerning all transport sectors is not common, but this way competition of the different regulations and thus massive legal uncertainty can be eliminated.**

### *Structure of the draft of the transport code*

General provisions applying to every transport sector have been summed up and precede specific regulations on each transport sector. This way the draft remains structured and clear and relevant provisions can be found immediately. A clear structure is an essential precondition for a modern and up to date body of law, and the technique of separating out general provisions is widespread. Consequently the draft can be seen as a role model with regard to its structure.

Nevertheless some of the articles of the draft (e.g. the article containing general and specific definitions) remain too long and thus may confuse the reader. A more detailed subdivision for example summing up basic definitions concerning control, transportation of passengers and baggage, freight transport and classification of roads would contribute to the clarity of the code. Another possibility would be to sum up the respective definitions right before the relevant section of the draft in order to enable a fast location of the relevant parameter.

### *General provisions*

Articles 1 to 48 have been dedicated to general provisions establishing a standard that must be applied to every transport sector. Article 1 of the draft presents in a very detailed way every relevant definition of terms used in the draft. On the one hand the number of relevant definitions will help to understand and implement the code consistently, but on the other hand the number of definitions required illustrates the complexity of the code. A revision of the relevant definitions might help to reduce the number of definitions and thus contribute to its comprehensibility.

### *State politics in the field of transport activity*

Article 3 of the draft states the policies in the field of transport activity, including the unity of the transportation system, free access to all transport services and the safeguard of the economical interests of the Republic of Kazakhstan. The development of the infrastructure and transport, competition and transport safety are some of the most important objectives of the transport policy that will be pursued by the Kazakh Government.

### *Ownership of transport and service lines*

Article 5 of the draft regulates the ownership of transport and service lines as well as pipelines in Kazakhstan establishing that all relevant transport lines reside in state property. However paragraph 3 also enables the grant of concessions on motor roads, thus creating the possibility of establishing Public Private Partnerships. Article 89 *et seq* of the draft provide more specific regulations on motor roads and their ownership, and is considered later in this analysis.

### *Competencies in the field of transport*

Articles 7 to 10 of the draft deal with competencies in the field of transport in a very detailed way. The Government of the Republic of Kazakhstan is equipped with extensive regulatory powers. The fact that the competencies will be concentrated in the hands of one competent legislator guarantees that all future provisions on transport remain consistent and coherent.

### *compulsory Insurance*

A compulsory insurance is a precondition for the provision of transport facilities in the Republic of Kazakhstan according to Article 11 of the draft. Specific regulations concerning compulsory insurance are not stated in the draft but in the relevant laws of the Republic of Kazakhstan.

### *Control in the field of transport*

Control and supervision in the field of transport is necessary in order to make transportation safer and prevent dangers which may arise through potentially dangerous means of transportation. Articles 13 to 17 regulate the types and time periods for inspections in the field of transport. Furthermore rights and responsibilities of controlling bodies are laid down. A detailed regulation of tasks and responsibilities of controlling bodies is an important factor in order to prevent arbitrariness. Every carrier will be able to look up the competencies of controlling bodies in the transport code and to detect overlapping powers.

However some basic provisions on control and supervision are missing. The draft does not state the reason for control and supervision. Furthermore the draft does not contain provisions on administrative fines in case of breach of the law. Those who operate transport facilities have to know what consequences they will have to face once provisions on safety and transport in general are not implemented. The regulation of fines will also warn carriers in the field of transport, and help to make transport safer for passengers and goods by all means of transport.

### *Tariffs*

Provisions on tariffs concerning private and public transport are laid down in Articles 18 to 20. Transport organisations and operators carrying out their activity on a commercial basis have the right to contract and determine the fees freely and independent from state control. This right is of paramount importance to more competition in the transport sector and a free market economy. Article 19 of the draft states exceptions from this rule, especially in the field of municipal and regional transport services. If the operators of transport services were allowed to determine the tariffs on their own, free access of consumers to transportation would be in danger. In order to guarantee a minimum of transport infrastructure for the population tariffs must be determined by the respective authorities. The providers of transportation services, however, have the right to financial support by the appropriate authorities in case the tariffs set out are not sufficient to meet the budget and operate efficiently, for example providing subsidies for unviable routes required for economic and social cohesion. This way two aims in transport policies are set out in Article 3 of the draft – competition and free access to transportation - are balanced out.

### *Provisions on transportation of passengers and freight*

Transportation of passengers and freight in general is regulated in Articles 21 to 40. It is remarkable that the transport code contains provisions on public and private transport in one body of law. In other countries the legal distinction between private and public law applies to the transportation sector as well. In Germany there is private law, regulating the relationship between the contractual partners of a transportation deal on the one hand, and many mandatory public provisions on the other. These compel the contractor to fulfil particular standards, especially regarding the security of the means of transportation. However the advantage of private and public regulations of transport in one body of law can be seen in its consistency and clarity. As no solid reason exists (except from historical development)

as to why regulations on transport should be spread over several bodies of law, the draft of the transport code can be seen as a very modern piece of legislation.

### **a) Transportation of passengers and baggage**

Article 22 of the draft defines the elements of a transport agreement and determines the responsibilities of the operator and the client. This provision ensures a legal framework that comprises many different types of transport and nevertheless complies with the outstanding principles of legal certainty and, at the same time, legal flexibility required by business partners in the sector of transportation. In a free and prospering market, there is a need for general principles and comprehensive norms. Where flexibility is required, the law should leave the possibility of individual agreements, e.g. by general terms proposed by the carrier. Article 22 of the draft meets these requirements and can thus be seen as a successful implementation.

The rights and duties of passengers and carriers as well as the possibility to cancel the agreement are laid down in a more precise way in the following articles. In Article 26 the draft also deals with the obligation to store baggage in case it can not be handed out to the passenger or his representative.

### **b) Transportation of goods (freight)**

Transportation of goods by all means of transport, in particular the provisions on contract and rights and duties of the parties can be found in Article 28 *et seq* of the draft. Detailed provisions on transportation of dangerous goods and military goods are also included.

The duties of the consigner in Article 33 include the responsibility to prepare all documents necessary for transportation and keep these documents up to date. Article 34 covers the carriage of dangerous goods, but the provisions are somewhat perfunctory and cannot be regarded as implementing the ADR Convention on the carriage of dangerous goods. Furthermore the consigner is obliged to meet all requirements concerning weight and size of the transported goods that are laid down in the respective bodies of law. However the duty to pack the goods in the appropriate way in order to reduce the risk of loss and damage is not stated in the code. The consigner is only liable for the consistency and accuracy of freight documents according to Article 56. This is questionable with regard to the fact that the carrier is liable for the loss and damage of goods unless he can prove that the damage or loss is not his fault according to Article 53.

### *Transport safety*

Transport safety is one of the reasons why transportation of passengers and goods requires regulation. Article 41 of the draft obliges the operator of the transport service to carry out transportation of passengers and goods under safe conditions for life and health of people, and in compliance with other legal requirements stated in different laws. Carriers are also obliged to provide for a competent person within their organisational system that is responsible for transport safety and security.

Safety and security of transport is assured through several requirements imposed on the operator and the means of transport. Article 42 states that only those operators who have the qualification and corresponding expertise, confirmed by required documentary evidence, are allowed to control the transport facility. Similar conditions apply to the transport facility itself in Article 43.

### *Responsibility and liability*

The responsibility and liability for the transportation process is regulated in Articles 48 *et seq* of the draft. Article 48 and 49 deal with responsibility and liability of breach of law in particular the provisions laid down in the transport code. In case the transport is carried out by more than one carrier a joint and several liability is stated in Article 49 (3). However the draft does not mention the liability of the carrier for breach of law and other damages caused by his performing vicarious agents.

a) Liability for harm incurred to life and health of the passengers

Article 51 regulates the liability for harm incurred to life and health of the passenger in accordance with the laws of the Republic of Kazakhstan. The carrier is liable for the harm during the entire transportation. The regulation of liability is similar to regulations in the transport codes of other countries that also refer to more general bodies of law such as the civil code.

b) Liability for delay of transportation

Article 52 (5) obliges the carrier of goods and passengers to reimburse the contracting party for all damages deriving from delay of transportation except for delay that is caused by act of nature beyond his control. It remains unclear whether delay caused by the passenger or the contracting party in general can be regarded as an act of nature beyond control for the carrier, or if only circumstances like *force majeure* are included. Therefore it remains unclear who is responsible for damages caused by delay in the sphere of the passenger or consigner/consignee. A paragraph laying down the basic rule that the carrier is liable for delay unless caused by the contracting party or act of nature beyond control might solve the problem.

In addition to liability for damages, Article 52 obliges the carrier to pay a fine for every day of delay to the passenger as well as the consigner and consignee. The fine must be paid independent from any other damages caused by the delay. The regulation of fines in the draft is of great advantage if the contracting parties do not agree on any specific details. Nevertheless, the draft of the transport code does not mention the possibility for the contracting parties to make any other agreement, even if it is more advantageous for the consigner. The provisions in the draft must be flexible and open for new developments in order to remain up to date in the long run.

c) Liability for deprivation, loss and damage of baggage and goods

The carrier is responsible for the baggage or goods during the entire transport. Article 53 specifies the responsibility for damage, deprivation and loss from the moment of receipt/ delivery. The liability for damage, deprivation or loss of goods and baggage is assigned to the carrier unless he can prove that the loss, damage or deprivation is not his fault.

The regulation concerning liability for loss, deprivation and damage on the one hand and the liability of delay on the other hand are not consistent. The term “act of nature beyond control” that relieves the carrier from liability for delay can not be found in Article 53. It remains unclear why the liability is regulated differently. Furthermore liability of the carrier in case that both contracting parties are responsible for the loss, deprivation, delay or damage of goods is not regulated.

d) Lost goods

Article 53 (5) states a presumption of loss. Goods are considered as lost after seven days from the delivery date. It might be sensible to regulate a more flexible and longer period of time after the delivery date. The goods could be considered lost goods after the time span of an additional delivery period which should not go below 20 days. Compensation for lost goods might be enormous and would mean a serious financial loss for the carrier even though insurance is compulsory. The transport code should allow for a longer period in order to enable the carrier to find or replace the goods. Liability for delay is a sufficient compensation for the time that the goods are not available for the contracting party.

Finally the draft does not regulate whether the carrier is obliged to inform the consigner/consignee if goods arrive or are found after the indicated time span, or if the carrier has the goods at his disposal.

e) Extent of damage

The extent of damage is laid down in Article 54. The amount of damage is not limited and thus the draft is not up to date with the Convention on the Contract for the International Carriage of Goods by Road



(CMR) signed in Geneva on 19 May 1956. The package limitation regime of the CMR is limiting liability to 8.33 SDR/kg. CMR relates to various legal issues concerning transportation of cargo, predominantly by lorries, by road and has been ratified by the majority of European states. Therefore it would be essential for a modern body of law that might be used as a benchmark for other countries to adopt the same preconditions. Furthermore in particular with regard to the approximation to European standards the adoption of international regulations is of paramount importance.

### *Concluding remarks*

General provisions concerning transportation in the draft transport code can be seen as modern and consistent. Even though some areas, in particular the structure of the entire body of law and the regulations on liability, are in need of revision, the draft transport code is an appropriate basis for further development in the transport sector.

### **Specific regulations concerning road transport**

The draft of the transport code contains specific regulation on road transport in Articles 63 *et seq.*

#### *Competencies in the field of road transport*

Article 63 and 64 lay down provisions on competencies in the field of road transport. The respective bodies, for example municipalities, are endowed with powers to regulate road transport in a more detailed way, especially in areas where specific regulations are required to suit regional and local characteristics (e.g. local roads and timetables for local and urban transportation).

The division and delegation of powers is an important and modern feature of a successful transport policy. The regulations in the draft transport code clearly define the competencies of every responsible body and thus avoid any conflict of competencies. Furthermore specific regulations that take regional characteristics into consideration can be drafted, and regional authorities that possess expertise in the respective field can establish balanced regulations.

#### *Control in the field of road transport*

Articles 65 to 68 lay down detailed regulations on control in the field of road transport, setting out the rights and duties of controlling bodies, the locations at which controls can take place, and facts and documents that are subject to control. Once again it should be mentioned that a detailed regulation of rights of controlling and supervising bodies is a step towards a transparent and modern body of law, as controlling bodies themselves can thus be subject to revision and control. This way arbitrariness can be avoided.

#### *Tachographs*

Control devices must be installed in buses, cargo vehicles including special vehicles for transportation of dangerous goods, and vehicles for transportation of passengers, baggage and goods in international and interregional transport, in order to control the drivers' work and rest hours. This is an important step towards more safety and security in transportation of passengers and goods of all kinds. Article 69 (2) allows exceptions from the usual rules on the drivers' work and rest time which makes the regulation more flexible.

In order to make the regulation on tachographs more efficient and increase safety in road transport the draft should also include provisions on the storage of tachographs charts and obligation to present these to controlling bodies. The storage time for the charts might be two years which is the European standard for storage of speedometer charts.

### *Safety requirements in the field of road transport*

Special safety requirements in the field of road transport are laid down in 5 Articles of the draft which regulate the trade with vehicles. Trade with vehicles that might harm life and health of people is forbidden according to Article 70. Certain obligations must also be met by the person selling a vehicle on the territory of the Republic of Kazakhstan, such as the obligation to present all necessary papers, and the obligation to inform state authorities if the vehicle can not meet legislative requirements. Finally, specific obligations have also to be met by those producing, storing and disposing vehicles on the territory of the Republic of Kazakhstan. Once again it remains unclear what consequences arise from the breach of these duties by the seller of a vehicle. In order to guarantee the compliance with the law fines should be established.

### *Transportation of passengers and goods by road*

Articles 75 to 86 of the draft are dedicated to specific regulations on road transport of passengers and goods e.g. transportation of children and passengers with special needs.

Article 75 states road transport passengers' rights, for example the right carry baggage and claim transportation without surcharge if the carrier replaces the vehicle ordered by the passenger with a more expensive one.

In addition to this the draft lays down the preconditions under which the carrier is allowed to transport passengers and goods. The roads required for transportation must allow transport of people and goods, and public transportation services in municipalities can only be carried out by carriers having taken part in tenders held by the respective municipality. The right to provide services on a specific transport line can not be delegated or sold by the carrier. This way control of carriers is also strengthened as the respective authority is able to survey the carriers in charge.

Large-sized and heavy freight transport along the territory of the Republic of Kazakhstan is not allowed, except in cases of indivisible large-sized and heavy freight transport. The consigner transporting large-sized and heavy freights has to obtain special permission issued by authorised state services. These limitations support the effort of the draft in enhancing road safety as large-sized and heavy weight freight transport is a potential danger on the roads, even more than usual freight transport.

### *Criteria for carriers and transport organisations*

Even though Article 42 of the draft contains regulations on qualification and the conditions for operators of vehicles, the draft does not mention any criteria that have to be met by the carriers, such as being of good repute, of appropriate financial standing, and satisfying the condition on professional competence. Within the EU these are the conditions laid down by Council Directive 96/26/EC<sup>15</sup>. In order to guarantee professional and safe transportation activities on the territory of the Republic of Kazakhstan the draft of the transport code should include some basic provisions on requirements and qualification of carriers that can be controlled by the respective authorities. These qualifications could be drafted in amore detailed way for every transport field taking the specific characteristics of every transport facility into consideration.

### *International road transport*

International road transport has to be carried out in accordance with the laws and regulations of the Republic of Kazakhstan and its international obligations. Article 87 of the draft of the transport code regulates international transport with special regard to permissions that have to be issued in case transport from countries with permitting system treaties takes place. Transit through the territory of the Republic of

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<sup>15</sup> Council Directive 96/26/EC<sup>15</sup> of 29 April 1996 as amended by Directive 98/76/EC of 1 October 1998 on access to the profession of road haulage and passenger operator.

Kazakhstan is subject to a fee that is established by the respective authorities. Transport services entirely within the territory of the Republic of Kazakhstan can not be carried out by foreign carriers. This regulation enables better control of carriers and thus enhances safety in road transport.

#### *Classification of roads*

Articles 89 *et seq* deal with roads and their classification as well as special requirements for roads. The draft of the transport code subdivides roads into three main categories, roads of general usage or common use, roads of economic use and city roads.

Toll highways may be established on the territory of the Republic of Kazakhstan according to Article 90 of the draft of the transport code. Several preconditions have to be fulfilled in order to create toll highways such as alternative routes free of charge, conformity to the requirements of technical rules and improved quality and safety level provided for toll transport.

The possibility to establish toll highways is an important instrument in order to keep up with future challenges for road transport. Fees collected for toll highways could be used to improve the infrastructure and regulate traffic flow. Travel demand management is another important function of toll highways. Finally toll highways help to preserve nature by reducing the number of vehicles. This will become even more important in the future especially with regard to approximation to European standards as environmental protection is an urgent issue within the European Union. Consequently the draft of the transport code can be considered as modern and future orientated with regard to this regulation. However the possibility of toll highways should also be balanced out with the principle of free access to transportation for the people of the Republic of Kazakhstan. It is worth noting that the first toll road concession in Kazakhstan is likely to be a 64 km bypass for Almaty, where, presumably, the alternative free of charge route would be driving through the city.

In addition to the regulations on toll highways the draft of the transport code also contains regulations on development and construction of roads as well as security preconditions and responsibilities of those using roads.

#### *Concluding remarks*

**In comparison to the general provisions of the draft of the transport code the specific regulations can be considered as more up to date and consistent. Especially the regulations on tachographs and toll highways represent a modern body of law.**

#### **4.1.2 Summary of national legislation in the road transport sector**

**Table 7: Summary of Kazakhstan legislation in the road transport sector**

<b>National Legislation</b>	<b>Dates</b>
Law 156 of 21 September 1994 about transport	21.09.1994
Law on traffic safety	15.07.1996
Resolution on approving the Rules of vehicle movement in the Republic of Kazakhstan, Main positions on tolerance of transport facilities to usages and duties of executives and road movement participants on ensuring safety of road movement and List of operative and special services, which transport subjects equipment special light and bleeps and coloration on special coloured schemes	25.11.1997
Resolution on joining to Agreement on organising and field-performance aspects of multifunction transportation in reporting an Europe-Asia	09.08.1999
On establishing rules on the application of a permit system for the realisation of international motor transportation in the Republic of Kazakhstan	13.12.1999
Resolution on Concepts of state system improvement on ensuring safety of transportation of passengers and cargoes	17.04.2000
Resolution on measures on further system development of international transportation of cargoes with using the MDP book	08.07.2000

## ***Development of Co-ordinated National Transport Policies***

<b>National Legislation</b>	<b>Dates</b>
Resolution on measures on development and improvement to organisations of international vehicle transportation in Kazakhstan Republic	26.07.2000
Order on entering the new samples of driver certificate and certificate on registrations of transport facility	27.11.2000
Resolution on approving a Program of state system improvement on ensuring safety of transportation of passengers and cargoes	30.12.2000
Resolution on Concepts of development of international transport corridors of Republic of Kazakhstan	27.04.2001
Law 245 of 17 July 2001 on the administration of state highways	17.07.2001
Resolution on approving the Rules of state account of roads	18.03.2003
Law 401/05.04.2003 on Customs Code of the Republic of Kazakhstan	05.04.2003
Law 476 of 4 July 2003 on motor transport	04.07.2003
Resolution of the Government of Republic of Kazakhstan No 669 On Adoption of Rates of Customs Fees, Charges and Payments Levied by Customs Bodies	07.07.2003
Rules for conducting annual state technical inspection of tractors, trailers and other vehicles	08.09.2003
Resolution of the Government on approving a list of border crossing points of Republic of Kazakhstan and posts of transport checking on territory of Republic of Kazakhstan	27.02.2004
Order of the Ministry of Transport and Communications on approving the Rules of transportation of passengers and baggage by road transport	10.03.2004
Resolution of the Government on some questions on transportation of dangerous cargoes by vehicle transport	12.03.2004
Resolution on signing an Intergovernmental agreement on the network of Asiatic highways	24.04.2004
Order of the Chairman of the Customs Control Agency of the Republic of Kazakhstan No 385/2004 " About Introduction of the Web-Declarant" Electronic Declaration Program in the Customs Control Departments and Customs Offices of the Republic of Kazakhstan	15.09.2004
Tax Code adopted in 2003	In force 2004
Draft Transport Code	26.09.2006
Rules for cross-border trade	27.04.2007
<b>Bilateral Agreements</b>	
Executive Protocol to Agreement between Government of Republic Kazakhstan and Government of Republic of Poland on international vehicle transportation	24.04.2003
Agreement between Government of Republic Kazakhstan and Government to Russia Federations on international vehicle movement	12.04.2003
Agreement between the Government of Kazakhstan and the Government of Azerbaijan on the international road traffic signed on September 16, 1996	ratified 11.12.1998, in force 7.02.1999
Agreement between the Government of Kazakhstan and the Government of Byelorussia on the international road traffic,	signed 16.09. 1992
Agreement between the Government of Kazakhstan and the Government of Georgia on the international road traffic.	signed on June 1, 1993
Agreement between the Government of Kazakhstan and the Government of Kyrgyzstan on the international road traffic. Signed on October 26, 1993,	ratified 5.01. 1994, in effect 5.12. 1996
Agreement between the Government of Kazakhstan and the Government of Moldova on the international road traffic	signed on July 15, 1999
Agreement between the Government of Kazakhstan and the Government of Russian Federation on the international road traffic.	signed on March 23, 1992
Agreement between the Government of Kazakhstan and the Government of Turkmenistan on the international road traffic signed on 27.02. 1997	ratified 10.12.1998, in force 29.01.1999
Agreement between the Government of Kazakhstan and the Government of Tajikistan on the international road traffic	signed on 30.07.1992
Agreement between the Government of Kazakhstan and the Government of Uzbekistan on the international road traffic.	signed 12.07. 1995
Agreement between the Government of Kazakhstan and the Government of Ukraine on the international road traffic. signed on 22.02. 1993	ratified 15.12. 1993 in force 20.04.1994
Agreement between the Government of Kazakhstan and the Government of Latvia on the	in force 1999

<b>National Legislation</b>	<b>Dates</b>
international road traffic Signed 19.05.1998	
Agreement between the Government of Kazakhstan and the Government of Lithuania on the international road traffic. signed on July 21, 1993	ratified 20.10.1998, in force 03.12.1998
Agreement between the Government of Kazakhstan and the Government of Estonia on the international road traffic	signed on June 15, 2000
Agreement between the Government of Kazakhstan and the Government of Hungary on the international road traffic signed 7.10.1996	ratified 21.04.1998 in force 7.08. 1998.
Agreement between the Government of Kazakhstan and the Government of Netherlands on the international road traffic.	signed 14.06.2000
Agreement between the Government of Kazakhstan and the Government of Finland on the international road traffic signed 2.02. 1996	ratified 23.06.1999
Agreement between the Government of Kazakhstan and the Government of Islamic Republic of Iran on the international road traffic signed 27.02.1997	ratified 1012. 1998, in force 29.01.1999
Agreement between the Government of Kazakhstan and the Government of Islamic Republic of Pakistan on the international road traffic effect signed 27.03.1995	ratified 28.11.1995, No. 2658, in force 9.03.1998
Agreement between the Government of Kazakhstan and the Government of Turkey on the international road traffic signed on May 1, 1992	ratified 21.11.1998, in force 7.08. 1995
Agreement between the Government of Kazakhstan and the Government of Bulgaria on the international road traffic, signed on November 13, 1997	ratified 23.06.1999, in force 19.08.1999
Agreement between the Government of Kazakhstan and the Government of Poland on the international road traffic signed on May 25, 1997	ratified 1.10. 1997, in force 15.04.1998
Agreement between the Government of Republic of Kazakhstan and the Government of the Kyrgyz Republic on Transit of Goods by Road Transport Through the territory of the Republic of Kazakhstan	26.03. 2004
<b>Multilateral Agreements</b>	
Convention on the international road transportation of passengers and goods (in the framework of CIS) Signed on 9.10. 1997	ratified 22.02. 2000
Agreement on the transit procedure signed in Moscow 1992	1992
Protocol regarding to the questions on the transport tariffs signed in Moscow	1992
Agreement on the coordination bodies of railway transport of the CIS signed in Moscow 1992	1992
Agreement on sharing freight cars and containers of the property of the following states: participants of Commonwealth, Azerbaijan, Georgia, Latvia, Lithuania, Estonia, signed in Moscow	1993
The Agreement on the control of transit transportation of dangerous and other waste products, signed in Moscow	1996

A summary of the laws in other transport sectors is given in annex 4. National laws in Russian and English are available in the legal database at the project website, [www.centralasiatransport.com](http://www.centralasiatransport.com).

#### **4.1.3 Progress on accession to international conventions and agreements**

The following table gives a summary of the international conventions and agreements to which Kazakhstan has acceded. The extent to which these have been implemented, with recommendations for changes in the national law will be evaluated in the implementation phase of the project.

**Table 8: Accession of Kazakhstan to international conventions and agreements**

<b>Convention</b>	<b>Acceded</b>
Convention on Road Traffic, 1968	+
Convention on Road Signs and Signals, 1968	+
TIR Convention, 1975	+
Customs Convention on the Temporary Importation of Commercial Road Vehicles, 1956	
Customs Convention on Containers, 1972	+
International Convention on the Harmonisation of Frontier Controls of Goods, 1982	+
Convention on the Contract for the International Carriage of Goods by Road (CMR), 1956	+
International Convention on the simplification and harmonisation of customs procedures 1974, as amended	
Convention on Customs Treatment of Pool Containers Used in International Transport, 1994	
Agreement concerning establishing Global Technical Regulations for Wheeled Vehicles, 1998	
Convention on the liability of operators of transport terminals in international trade, 1991	
Work of Crews in International Road Transport (AETR), 1970	+
Dangerous Goods by Road (ADR), 1957	+
Perishable Foodstuffs (ATP), 1970	+
Single Administrative Documents (SAD)	

#### **4.1.4 Missing legislation/organisation**

Of the international legal instruments recommended by the UN ESCAP Resolution 48/11 on road and rail transport modes, the Customs Convention on the Temporary Importation of Commercial Road Vehicles 1956 remains to be implemented in Kazakhstan.

Other international instruments that have been proposed for accession through supplementing the Technical Annex on Customs Documentation Procedures to MLA, or by other studies in recent years that remain to be implemented are:

- International Convention on the simplification and harmonisation of customs procedures 1974, as amended;
- Convention on Customs Treatment of Pool Containers Used in International Transport, 1994;
- Agreement concerning establishing Global Technical Regulations for Wheeled Vehicles, 1998;
- Convention on the liability of operators of transport terminals in international trade, 1991;
- Single Administrative Documents (SAD)

## **4.2 Kyrgyzstan**

### **4.2.1 National legislation**

The major transport roads of Kyrgyzstan have their origins in the ancient Silk Road network. This caravan route was the main transportation and communication link between China and Europe from the 12<sup>th</sup> century. A large volume of cargo and passengers has traditionally been carried by trucks and rail in Kyrgyzstan. Trucks carry more than 97% of cargo and 80% of all passengers in the country.

Private companies and individuals may operate on payment of a licence fee, and a major part of public transportation is now provided by the private sector. Cargo and intercity passenger transportation is provided by state-owned and private companies. Customers can hire trucks that belong to self-employed drivers in order to transport goods.

Rail transport services are provided by the state-owned Kyrgyz Railroad Department. According to Kyrgyz Rail, passenger service is not profitable and is subsidised by its freight service.

#### 4.2.1.1 Customs regulations

Customs services, including commercial services on customs clearance, forwarding goods and transport vehicles through custom boundaries, are executed by customs brokers as well as by importers themselves.

The Customs Code stipulates rules for the activities of customs brokers, although their activity was not regulated by the existing licensing system. The same situation existed in respect to customs regimes where licensing was requested for opening customs warehouses, duty free shops and others. This requirement was replaced by obtaining permission of the Customs Service Department and necessity to be included into internal register of the Customs Service Department.

Kyrgyzstan is the only WTO member-country in the Central Asia.

A new Customs Code was prepared and passed by the Legislative Assembly on April 2004. This provides for the licensing of customs services according to the Law on Licensing amended by Law No 129/2004 "On amendments to the law on Licensing" which came into force in January 2005. According to the law, customs services (customs carrier, owner of temporary storage, owner of duty free shop, customs broker) are included in the list of activities subject to licensing. A customs broker can commit under his own name transactions associated with customs clearance and carry out intermediary functions in customs business at expense and on assignment of represented entity. In executing the customs clearance procedure, a customs broker must carry out all relevant obligations and bear full responsibility. The rights, obligations and liability of a customs broker in relation to the customs bodies cannot be restricted by agreement with represented entity.

Major improvements of the Customs Code include adoption of some provisions of the General Annexes of the Kyoto Convention including the principle of ensuring the reasonable balance of interests in trade between the state and entrepreneurs. Customs procedures have also been simplified and customs declarations must be checked within 3 days.

The procedure of the customs clearance is based on 3 phases:

- First phase: submission of documents by filling out customs cargo declaration, making due payments and a statement to custom bodies about cargo arrival.
- Second phase: verification of the calculation accuracy of the due payments by the customs payment inspector.
- Third phase: physical examination/inspection of the goods.

Customs clearance process must be carried out within 3 days of filing a declaration.

Temporary customs warehouse. Goods and transport vehicles from the moment of presentation to the customs body until their release or issuing for disposal to an entity in accordance with selected customs regime must be under a temporary storage under customs control. Warehouses for temporary storage may be of an open or closed type. The Customs bodies may determine obligatory requirements regarding the structure, equipment and location of warehouses for temporary storage. Usually, the owner of a warehouse for temporary storage bears the responsibility for making customs payments in respect of goods and transport vehicles, which are stored in his warehouse.

Transit of goods is a customs regime that applies when goods can be transferred under customs supervision between two customs bodies of Kyrgyzstan, and also through the territory of a foreign state without levying customs duties and taxes. Goods in transit are subject to custom control at the place of entry.

Internal customs transit from customs point of departure to customs point of destination is intended to ensure conveyance of goods under supervision of a customs inspector from customs point of destination. The internal customs transit procedure is free of charge. Goods conveyed in transit between two Kyrgyz customs posts must:

- remain in an unchanged condition, except for changes consequential to natural wear or loss under normal conditions of transportation and storage and not be used for any other purposes, but for transit;
- be transported to customs body of destination within terms established by customs body of departure in accordance with normal terms of delivery on the basis of capacity of transport vehicle, planned route and any other conditions of transportation.

Transit of goods within the Kyrgyz Republic can be made in all directions and ways and under the permission of customs bodies.

In case the customs body has reasons to believe that a carrier or its transport vehicles may not guarantee compliance with provisions of the Customs Law, customs bodies can place goods under customs regime of transit, only if appropriate equipment of transport vehicle, conveyance of goods by a customs carrier or customs accompaniment is provided. Costs incurred by the carrier in relation to ensuring appropriate equipment of transport vehicle or by carriage of goods by customs carrier are not reimbursed by state bodies.

In case of an accident or *force majeure* situation, goods may be unloaded and carrier is obliged:

- to adopt every necessary measure to ensure safety of goods and prevention of any unauthorised use,
- to immediately report to the nearest customs body on the circumstances of case, location of goods and transport vehicles,
- to ensure conveyance of goods to the nearest customs body or delivery of customs body officials to the place of goods location.

Customs bodies will not reimburse the carrier's expenses incurred in relation to taking the above-mentioned measures.

The carrier is fully responsible for transit of goods. When issuing goods without the permission of the customs body or in case of their loss or failure to deliver them to the destination customs body, the carrier must pay the customs payments, which would be due appropriately under the customs regimes of release for free circulation, or in case of export, unless goods are destroyed, irretrievably lost as a consequence of an accident or *force majeure*, or shortage in goods occurred due to natural wear or loss under normal conditions of transportation and storage, or goods were disposed as a result of unlawful acts of foreign state bodies or officials.

Export of goods must be carried out under condition of payment of export customs duties and any other customs payments. In case of export, goods are exempted from taxes or amounts paid must be subject to refund in accordance with the current legislation.

There is no direct law in the national legislation regulating freight forwarding activities and multimodal transport. The forwarding business therefore is regulated by provisions in the Civil Code and in the laws on various modes of transport.

The country's national forwarding association was established in 2004/2005 and has joined FIATA. There is no licensing of the business. Although in principle FIATA documents can be used, it was shown by the TRACECA project on "Freight forwarders training courses" completed recently that many practical problems impede the use of the FIATA FBL (FIATA Bill of Lading).



4.2.1.2 Road transport safety

Similar to Kazakhstan, basic safety parameters of transport vehicles and also traffic management in Kyrgyzstan are regulated by the national laws in compliance with UN Convention on Road Traffic, 1968. Road signs and signals are subject to national laws and the UN Convention on Road Signs and Signals, 1968.

Kyrgyzstan consented to the Concept for coordinated transport policy of member states of the CIS for period to 2010, approved by the Decision of Heads of States of CIS on 15 September 2004<sup>16</sup>.

At a national level safety issues are regulated by the law “On road traffic”, 1998 and road traffic rules (referred to in annex 5). The Government of Kyrgyzstan in 2005 approved the introduction of a national road transport safety development program for years 2006-2012.

**4.2.2 Summary of national legislation in the road transport sector**

**Table 9: Summary of Kyrgyzstan legislation in the road transport sector**

<b>National legislation</b>	<b>Dates</b>
Decree of the Government of the Republic of Kyrgyzstan on the Basel convention on control of trans-boarder transport of dangerous waste and their elimination	11.08.1995
Decree of the Government of the Republic of Kyrgyzstan on confirmation the rules of equipment of transport unities (container) for the transport of goods with custom stamps and seals	20.03.1996
Law No. 52 on road traffic	20.04.1998
Law No. 72 on highways	02.06.1998
Law No. 89 on transport (with amendments from 1 August 2003 No 169, 7 February 2005 No 15, 6 February 2006 No 36, 15 July 2006 No 111, 19 July 2006 No 124)	08.07.1998
Decree of the Government of the Republic of Kyrgyzstan on measures on regulating the transport activity of foreign auto transport at the territory of the Republic of Kyrgyzstan	11.05.1999
Decree No 711 on transit fees	20.12.1999
Collection of regulations on carriage of goods	09.04.2001
Decree of the Government of the Kyrgyz Republic on establishing at the territory of the Kyrgyz Republic of international, bi-national and simplified points through the state border for freight and passenger communications	03.07.2001
Decree on approving the Rules of the organisation of passenger carriage by automobile transport in Kyrgyz Republic	06.07.2001
Regulations concerning the Interaction of the UGAI of the Ministry of Internal Affairs of the Kyrgyz Republic and Committee of Transport Inspection of the Ministry of Transport and Communications of the Kyrgyz Republic Concerning the organisation of passenger carriage by automobile transport in the Kyrgyz Republic in accordance with the regulatory legal acts regulating this type of activity	25.02.2002
Order of the Ministry of Transport on the inspection of vehicles for passenger carriage	21.03.2002
Instruction on transport of over dimensioned and overweight cargoes by automobile transport	26.03.2002
Resolution of the Cabinet of Ministries on the collection of customs duties during the registration of auto transports	
Decree on the levy of taxes for the passage of heavy and large-dimension transportation along the motor roads of the general use	21.04.2006
Decree on levies and distribution of collections for the passage of heavy and large-dimension transport vehicles on roads	02.06.2006

<sup>16</sup> The Concept (Chapter 7) requires that the member states harmonise national safety parameters of transport vehicles, which implies development of a unified system of safety standards and implementation methods compliant with international rules.

<b>National legislation</b>	<b>Dates</b>
<b>Bilateral Agreements</b>	
Agreement between the Government of Kyrgyzstan and the Government of Ukraine on the international road traffic. Bishkek.	23.02.1993
Agreement between the Government of Kyrgyzstan and the Government of Turkmenistan on the transportation of passengers and freights by automobile transport. Ashgabat.	29.11. 1995
Agreement between the Government of Kyrgyzstan and the Government of Byelorussia on the international road traffic. Minsk	14.06. 1995
Agreement between the Governments of Kyrgyzstan and Armenia on the international road traffic signed in Yerevan	21.04.1997
Agreement between the Government of Kyrgyzstan and the Government of Georgia on the international road traffic signed in Tbilisi	22 April 1997
Agreement between the Governments of Kyrgyzstan and Russian Federation on the international road traffic signed in Moscow signed on 16 .04. 2002. Approved by the Resolution no.545/ 9.08. 2002	2002
<b>Multilateral Agreements</b>	
Agreement of the coordination of railway transport activity signed by Azerbaijan, Georgia, Turkmenistan and Uzbekistan – Kyrgyzstan acceded in 1997	1997
Resolution on the concept of establishment of agreed tariff policy on the railway transport within CIS framework. Dated on October 18, 1996. Moscow.	1996
Agreement on the principles of creation of the common transport area and cooperation of the CIS states in the field of transport policy. Dated on October 9, 1997. Bishkek	1997
Agreement to carry out agreed tariff policy. Dated on January 17, 1997. Moscow. Approved by the resolution of the Cabinet of Ministers dated on December 18, 2000 no.742.	2000
Agreement on the weight and dimensions of the transport means, engaged in international transportation within the territory of CIS. Dated on June 4, 1999. Moscow. Approved by CM dated on February 01, 2000 no.50.	Approved 2000
Agreement on the international transit of goods between Turkmenistan, India, and Islamic Republic of Iran signed on 22 February 1997 in Teheran. (Acceded by the Resolution No.12 from 15 January 2003).	1997 acceded 2003
The Protocol between the Governments of Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan on the coordination of railway transport activity signed in Bishkek, 23 April 1992.	1992
The Agreement between the Government of Kazakhstan, the Government of the Kyrgyz Republic and the Government of Uzbekistan on carrying out coordinated policy in the field of transport and communications signed in Tashkent on 5 April 1996	1996
Protocol on a customs procedure for the transit of goods, and also for passport and visa regime under quadripartite Agreement on the transit transportation between China, Pakistan, Kazakhstan and Kyrgyzstan as result of meeting of customs' and immigration services' experts, held in Islamabad. Islamabad, 06/07/96.	1996
Agreement between the Governments of Kazakhstan, Kyrgyzstan and the Republic of Uzbekistan on tariff policy regulation in the field of railway transport signed in Almaty on 7 August 1997	1997

A summary of the laws in other transport sectors is given in annex 4. National laws in Russian have been requested from the Kyrgyz authorities but were not supplied. Through the consultant's own contacts in Kyrgyzstan 11 of the key laws have been obtained and are available in Russian and English in the legal database on the project website at [www.centralasiatransport.com](http://www.centralasiatransport.com).

#### **4.2.3 Progress on accession to international conventions and agreements**

Table 10 gives a summary of the international conventions and agreements to which Kyrgyzstan has acceded with an indication of whether these conventions have been transposed into national law. The extent to which these have been implemented, with recommendations for changes in the national law will be evaluated in the implementation phase of the project.

Most of the specific bilateral agreements in the field of border crossing administration are made with Kazakhstan, for example, common frontier control is implemented at the border line between Kyrgyzstan and Kazakhstan, and the information on outgoing traffic flows through common external borders is exchanged with Kazakhstan only.

There is no operative national body to coordinate border crossing facilitation procedures.

International road transporters from CIS and China are not charged additional fees for road usage.

**Table 10: Accession of Kyrgyzstan to international conventions and agreements**

Convention	Acceded	Transposed
Convention on Road Traffic, 1968	+	+
Convention on Road Signs and Signals, 1968	+	+
TIR Convention, 1975	+	-
Customs Convention on the Temporary Importation of Commercial Road Vehicles, 1956	+	-
Customs Convention on Containers, 1972		
International Convention on the Harmonisation of Frontier Controls of Goods, 1982	+	+
Convention on the Contract for the International Carriage of Goods by Road (CMR), 1956	+	+
International Convention on the simplification and harmonisation of customs procedures 1974, as amended		
Convention on Customs Treatment of Pool Containers Used in International Transport, 1994		
Agreement concerning establishing Global Technical Regulations for Wheeled Vehicles, 1998		
Convention on the liability of operators of transport terminals in international trade, 1991		
Work of Crews in International Road Transport (AETR), 1970		
Dangerous Goods by Road (ADR), 1957		
Perishable Foodstuffs (ATP), 1970		
Single Administrative Documents (SAD)		

#### 4.2.4 Missing legislation/organisation

Of the international legal instruments recommended by the UN ESCAP Resolution 48/11 on road and rail transport modes, Kyrgyzstan has not acceded to the Customs Convention on Containers 1972. Of the six international conventions to which Kyrgyzstan has acceded, the TIR Convention 1975 and the Customs Convention on the Temporary Importation of Commercial Road Vehicles 1956 have not been transposed into national law.

All the other international instruments that have been proposed for accession through supplementing the Technical Annex on Customs Documentation Procedures to MLA, or by other studies in recent years remain to be implemented, that is:

- International Convention on the simplification and harmonisation of customs procedures 1974, as amended;
- Convention on Customs Treatment of Pool Containers Used in International Transport, 1994;
- Agreement concerning establishing Global Technical Regulations for Wheeled Vehicles, 1998;
- Convention on the liability of operators of transport terminals in international trade, 1991;
- Work of Crews in International Road Transport (AETR), 1970;
- Dangerous Goods by Road (ADR), 1957;
- Perishable Foodstuffs (ATP), 1970;
- Single Administrative Documents (SAD).

A National Interagency Transport Facilitation Committee (similar to the one established in Kazakhstan) should also be established in Kyrgyzstan

## 4.3 Tajikistan

### 4.3.1 National legislation

Facilitation of international trade and transport is a critical factor in fostering economic development and prosperity in the Central Asian region, especially for Tajikistan. The needs are particularly sensitive for landlocked countries in the area. The country's geography encourages regionalism and ensures that some regions remain difficult for government agencies to govern. International road operations are tending to increase in volume, but the poor condition of transport vehicles remains a serious constraint to the access of national road transporters to international operations. Most of the vehicles used in the country are Soviet Union manufactured MAZ trucks, most of which are in unacceptable condition. Truck leasing could be a rescue measure, but is not currently in use in the country. The renewal/improvement of transport and communications infrastructures should be a central part of initiatives to boost internal trade and link Tajikistan to other related regional initiatives.

GOST standards apply for safety and environmental conditions in the country. No compliance with internationally recognised standards was reported by the local experts.

After joining the MLA by Afghanistan in 2005 and completion of construction of a road bridge over the river Pyang (in August 2007) Tajikistan, being a landlocked developing transit country, will represent one of the key links in the international transit chain between China, Central Asia and the deep-sea ports of Bandar Abbas and Karachi.

The following should be particularly taken into account:

- the special need for development of infrastructure in Tajikistan;
- security enhancement;
- elimination of administrative barriers; and the
- creation of a predictable and attractive investment environment, especially for connecting investment projects and development of a legal framework for international transit and PPPs.

The fact is that over the last 15 years few changes have taken place in improvement of transit trade between, and through these countries. The severe constraints to transit trade continue costing traders and transporters time and money. According to truck companies and transport operators, illegal payments in transit transport are around 30-35% of total freight charges for one trip.<sup>17</sup>

A number multilateral and bilateral transit transport agreements have been concluded in order to facilitate border crossings, to recognise reciprocal access rights, and to simplify visa requirements for transporters. The subject has also been dealt with in the larger region by several studies by the EU, international organisations, IFIs and others.

In view of unsatisfactory level of services provided by customs authorities, the transportation time is significantly increasing (sometimes up to 20 days from Dushanbe to Moscow instead of 6-7 days).

Violation of a number of provisions of the applicable Conventions and regional treaties (for example, TIR Convention, MLA, etc.) are experienced in transiting via Uzbekistan and Kazakhstan.

Having in mind that 45-50% of export goods transported by road are perishable (out of more than 200 000 tons per year), this issue is of great importance.

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<sup>17</sup> According to the Permanent Secretariat of IGC TRACECA, the statement on 30% illegal payments of the total freight cost is unfounded. They point out that on their initiative TRACECA "Hot Line" stands have been installed at many crossing points. In addition, in each TRACECA member country at National Secretary Level, commissions have been established consisting of responsible officials from state transport structures and other agencies, responsible for efficient decisions on each negative action.

For the time being, the National Economic Development Strategy Paper of Tajikistan to 2015 covers the main areas of development of transport (Chapter 2.4 Road Transport Problems and 4.4 Transport and Communications).

The Civil Code of Tajikistan regulates transport carriage activity. The international transport of passengers and goods are regulated by bilateral agreements with the neighbouring countries.

#### 4.3.1.1 Customs procedures

The Tax Code regulating the customs regime of goods was adopted in 1995. A new Customs Code was prepared in 2004, providing customs procedures and related activities and overcoming various problems and deficits with previous Customs Code. Taxation regime for imported goods is the same as for national products.

According to customs legislation, all goods and transportation means imported to customs territory are subject to customs clearance. The order of customs clearance is not the same for all goods and transportation means because goods cross the customs border in a variety of ways. The phases of the customs procedures are:

- notification of an import;
- inspection of a temporary storage warehouse to make sure it is in accordance with storage requirement of the goods and transportation means, prior to full completion of the customs clearance;
- supervision of the conveyance of goods and transportation means to a temporary storage warehouse until full completion of the customs clearance and control.

All kinds of goods can be stored in the warehouse, on condition that they will not harm other goods already being stored at the warehouse. Duration of storage of goods in storage warehouses is determined by customs authorities. However it cannot exceed 2 months.

According to the Customs Code, 1995 a customs broker is a firm, with the status of a legal entity incorporated under the laws of Tajikistan, and licensed by the Customs Department of the Ministry of State Revenues and Duties to perform the responsibilities of a customs broker. Relationship between customs broker and representative are based on a notarised contract. The Customs Department is responsible for publication and maintaining a list of customs brokers.

A customs specialist has custom clearance rights on behalf of the customs broker. However, a customs specialist must have a qualification certificate issued by the Customs Department. A customs specialist is a key person as he is the one who actually fills out the customs cargo declaration.

Once they have arrived at a port, the goods will remain in a temporary storage warehouse under control of the customs officials, until they are released according to the relevant customs regime. A list of temporary customs warehouses is published by the Customs Department periodically. Generally, in order to place goods in a warehouse, customs officials request only the documentation that enables them to identify goods.

The owner of the temporary customs warehouse is responsible for payment of customs dues for goods stored. If the Customs authorities own the temporary customs warehouse the owner of the goods or entity, which placed the goods in the warehouse, is responsible for the dues.

As learnt from the TRACECA project on "Freight forwarders training courses", a law on freight forwarding has been passed, and under this law there is a general freedom to carry out forwarding activities. An Association of forwarders had been formed in 2005 and registered with the Ministry of Justice. There is reportedly no limitation concerning the use of the FIATA FBL (FIATA Bill of Lading).

There is no operating national body to coordinate border crossing facilitation procedures in Tajikistan.

### 4.3.2 Summary of national legislation in the road transport sector

**Table 11: Summary of Tajikistan legislation in the road transport sector**

<b>National legislation</b>	<b>Dates</b>
Customs Code 1995 amended 1997-2001, 2003	1997, 2001, 2003 amendments
Law on road traffic	04.11.1995
Law on transport	12.12.1997
Law on amendments and complementing the Law of on road traffic	12.12.1997
Law on Amendment and Supplement of the Law on Transport	14.05.1999
Decree on confirmation the Agreement on obligatory insurance of passengers at international motor vehicle transports	21.09.2000
Law on transport	29.11.2000
Law on road traffic	29.11.2000
Decree on amendments and supplementing to the Rule of state registration of mechanic transport facilities and trailers	11.06.2001
Law on the highway network and the road maintenance No 47	10.05.2002
Law on the regulation of international automobile transportation	04.08.2003
The law about the freight forwarding No 181	24.02.2006
Rules on the passage on motor roads of transport vehicles with charges and dimensions exceeding set norms	29.12.2006
Rules of the carrying of passengers by automotive transport	29.03.2007
<b>Bilateral Agreements</b>	
Cooperation Agreement between the Government of Tajikistan and Afghanistan and Humanitarian Aid Organisation on the use of river bridge over Puayanj, Signed on 04.07.2001 in Dushanbe (Draft resolution of the Cabinet of Ministries to approve this Agreement has been prepared and sent to the Government of Tajikistan.)	signed 2001
Agreement between the Government of Tajikistan and the Government of Byelorussia on the international passenger and freight road traffic signed in Minsk 2000 Ratified by Decree No. 252 , 19.06.2000	2000
Agreement between the Government of Tajikistan and the Government of Kyrgyzstan on the development and improvement of international road traffic signed 1998, approved by Government Resolution no 271/1998	1998
Agreement between the Government of Tajikistan and the Government of Kazakhstan on the international passenger and freight road traffic signed on 30.07.1992	Draft sent for approval in 2000
Agreement between the Government of Tajikistan and the Government of Kyrgyzstan on the rules of custom border crossing in mutually agreed checkpoints along Tajik and Kyrgyz state border. Signed 6.05. 1998 , approved by Government Resolution 269/30.07.1998	1998
Agreement between the Government of Tajikistan and the Government of People's Republic of China on the international road traffic signed on 13.08.1999, Ratified Decree 443/23.10.1999	1999
Agreement between the Government of Tajikistan and the Government of Turkish Republic on the international road traffic signed In Ankara 06/05/1996	1996
Agreement between the Government of Tajikistan and the Government of Russian Federation on the international road traffic signed 11.07.2001, approved by Government Resolution 484/2001	2001
Agreement between the Government of Tajikistan and the Government of Russian Federation on the international air traffic signed 12.09.1997, approved by Government Resolution 91/2001	2001
Agreement between the Government of Tajikistan and the Government of Uzbekistan on the international border crossing points along the state border 12.01.2002	Signed 2002
<b>Multilateral Agreements</b>	
Basic Multilateral Agreement signed 1998 Ratified by Decree 543/30.12.1998	1998

A summary of the laws in other transport sectors is given in annex 4. National laws in Russian and English are being put in the legal database at the website at [centralasiatransport.com](http://centralasiatransport.com).

Most of the specific bilateral agreements in the field of border crossing administration are made with Kazakhstan and Kyrgyzstan, covering issues of fees charged for road usage (no charges apply), customs and other frontier controls.

### 4.3.3 Progress on accession to international conventions and agreements

The following table gives a summary of the international conventions and agreements to which Tajikistan has acceded. The extent to which these have been implemented, with recommendations for changes in the national law will be evaluated in the implementation phase of the project.

**Table 12: Accession of Tajikistan to international conventions and agreements**

Convention	Acceded
Convention on Road Traffic, 1968	+
Convention on Road Signs and Signals, 1968	+
TIR Convention, 1975	+
Customs Convention on the Temporary Importation of Commercial Road Vehicles, 1956	
Customs Convention on Containers, 1972	
International Convention on the Harmonisation of Frontier Controls of Goods, 1982	
Convention on the Contract for the International Carriage of Goods by Road (CMR), 1956	+
International Convention on the simplification and harmonisation of customs procedures 1974, as amended	
Convention on Customs Treatment of Pool Containers Used in International Transport, 1994	
Agreement concerning establishing Global Technical Regulations for Wheeled Vehicles, 1998	
Convention on the liability of operators of transport terminals in international trade, 1991	
Work of Crews in International Road Transport (AETR), 1970	
Dangerous Goods by Road (ADR), 1957	
Perishable Foodstuffs (ATP), 1970	
Single Administrative Documents (SAD)	

### 4.3.4 Missing legislation/organisation

Of the international legal instruments recommended by the UN ESCAP Resolution 48/11 on road and rail transport modes three remain to be implemented in Tajikistan. These are:

- Customs Convention on the Temporary Importation of Commercial Road Vehicles, 1956
- Customs Convention on Containers, 1972
- International Convention on the Harmonisation of Frontier Controls of Goods, 1982

All the other international instruments that have been proposed for accession through supplementing the Technical Annex on Customs Documentation Procedures to MLA, or by other studies in recent years remain to be implemented, that is:

- International Convention on the simplification and harmonisation of customs procedures 1974, as amended;
- Convention on Customs Treatment of Pool Containers Used in International Transport, 1994;
- Agreement concerning establishing Global Technical Regulations for Wheeled Vehicles, 1998;
- Convention on the liability of operators of transport terminals in international trade, 1991;
- Work of Crews in International Road Transport (AETR), 1970;
- Dangerous Goods by Road (ADR), 1957;
- Perishable Foodstuffs (ATP), 1970;
- Single Administrative Documents (SAD).

Up till now the MoTC of Tajikistan has not developed a substantive Transport Strategy Development Programme, in particular, with regard to the regional transport development. In 2006/2007 ADB is financing a Study on Development of Transport Strategy for the MoTC of Tajikistan.

A National Interagency Transport Facilitation Committee (similar to the one established in Kazakhstan) should also be established in Tajikistan.

#### **4.4 Uzbekistan**

##### **4.4.1 National legislation**

Uzbekistan with its transport network of air, rail and road communications is one of the focal traffic centres of the Central Asian region, as well as a dependable link for international transit.

The development and modernisation of the transport sector has been a government priority, given the urban population's high dependence on public transport and the importance of domestic and international trade for the economy.

The investment climate remains unpredictable in Uzbekistan, characterised by confusing laws and regulations, which are unevenly and arbitrarily enforced. Registration and licensing are lengthy processes, whilst obtaining credit for SMEs remains problematic. Land property rights have not yet been fully established, and privatisation and restructuring of the larger economic concerns are still pending.

The ADB at the end of 2006 completed a study of Transport Development Strategy of Uzbekistan with the principle priorities being:

- planning and developing a modern transport infrastructure;
- developing the transport infrastructure of each region;
- accelerating the process of integrating Uzbekistan's transport system with the international system and developing the country's transit potential; and
- improving Government regulation and developing a competitive transport environment.

The Transport Development Strategy of Uzbekistan was developed by ADB was approved by the Government of Uzbekistan in November 2006.

Since independence, a market for transport services has been established to support economic development. However, the existing capacity of the transport system, including its transit potential, is underutilised.

The Uzbek International Forwarders Association (UIFA) since 2002 plays an important role in the freight forwarding services, transportation of cargoes by rail under the customs control, air/road transportation, transportation of export-import and transit cargoes in large tonnage containers of international standard, insurance of cargos, etc. The FIATA documents and practices are familiar to Uzbekistan thanks to the activities carried out by the UIFA.

The National Joint Stock Railway Company "Uzbekistan Railways" is an important player in the Uzbek transport sector. The railway system transports the bulk of international freight – 90% of the country's imports and exports are transported by rail.

Trucks coming from Turkey and Iran using the southern route dominate the international road traffic.

The Uzbek Automobile and River Transport Agency has been reorganised and its functions were improved in 2001. The Agency is empowered to control the compliance with operation rules of ships and floating constructions, compliance with safety rules and requirements, control over observance by foreign



and national operators of main provisions and rules of international agreements and conventions where Uzbekistan is a party in the field of automobile and river transport.

#### 4.4.1.1 Customs regulations

Customs clearance is a difficult and bureaucratic process in Uzbekistan. Delays affect all imports, since there is no procedure for releasing goods under bond, there is no system of pre-arrival clearing, no systematic risk analysis, and therefore, customs clearance is only possible after physical inspection of the consignment. In order to avoid the delays, many companies contract for pre-shipment inspection. Excessive documentation requirements make the customs clearance a costly and time-consuming process.

Uzbekistan applies the system of tariff preferences in accordance with the Agreement signed with the EU for trade in textiles. The tariff rates quoted are charged on imports from the countries with which Uzbekistan has bilateral trade agreements. Goods from CIS countries, Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Ukraine, Turkmenistan and Tajikistan can freely enter Uzbekistan under the Agreement on Creation of a Free Trade Area. In addition, Uzbekistan has bilateral free trade agreements with all CIS countries, except Armenia.

Uzbekistan concluded various intergovernmental agreements on trade and economic cooperation, which provide for preferential tariff regimes.

According to the Tax Code, the VAT on imports is 20% with some exceptions. The Resolution of the Cabinet of Ministers No 567/25.12.2003 lays down the rates of excise tax on products imported and exported from Uzbekistan. VAT of 20% and excise duties of up to 90%, both calculated on the tariff inclusive cost, are both levied and added by the customs service.

The Customs Code provides that customs formalities have to be performed within 10 days of receipt of the customs declaration and presentation of all necessary documents and information. The goods can be declared by a physical person or legal entity that transfers the goods, or a customs broker. They have to fulfil all obligations and carry full responsibility provided under the legislation. The customs broker is the legal entity that conducts customs clearing operations on behalf of the person/entity and may carry out other functions related to customs and are registered at the Customs Committee of Uzbekistan without a licensing procedure. The use of a customs broker is convenient for the consignee because after signing an agreement with the customs broker, all responsibility for customs formalities is transferred to the customs broker. The responsibilities of the customs broker are:

- to declare shipment and submit customs declaration to the customs body;
- to submit to the customs body documents and additional information, necessary for customs procedures;
- on demand of customs body, to present/show declared shipment;
- to pay customs and other payments envisaged by the customs legislation of Uzbekistan;
- to assist customs authorities in carrying out customs formalities.

The Customs warehouses are designated for storage of goods under regime of temporary storage or customs warehouse.

The transit of goods has to be declared to the customs authorities of Uzbekistan upon entry and after release, the goods may move into the territory of Uzbekistan only along the route determined by the customs authorities.

No duties and charges are required for the transit of goods.

The goods in transit must remain in unchanged conditions, except for a natural depreciation. Also the goods must not change their economic purpose during the in transit.

If the goods are not presented to the customs authorities when released, the carrier is responsible to pay all duties and taxes because of the goods released in free circulation; unless it has been proved that the goods were imported, destroyed or lost due to an accident.

There are some categories of goods that are restricted from transit, mostly armaments and machine tools for making armaments.

Since 2002, Uzbekistan applies the Commodity List of Foreign Economic Activity based on the Harmonised System of describing and coding products. (Resolution of Cabinet of Ministers 3 May 2002).

In 2004, many customs duty rates were modified through the Decree of the Cabinet of Ministries "On Measures to Further enhance Customs Tariff Regulation". Goods that are not produced in Uzbekistan have zero rates, while goods which are not produced in sufficient volume in Uzbekistan have 5% rate.

As regards freight forwarding and multimodal transport, "Regulations for freight forwarding enterprises and procedure for rendering of freight forwarding services" have been established in 2000 by Decision of the Cabinet of Ministers. There is no direct law in the national legislation regulating freight forwarding activities and multimodal transportation. According to the existing regulations, licensing and certification is required.

The national forwarding Association is a FIATA member since 1997. The existing insurance system is weak and has no regional outreach.

Most of the facilitation measures are implemented by authorities of Uzbekistan at official level. In Uzbekistan there are no fees for road usage. Uzbekistan has applied the Convention on frontier controls (1982) since 1997.

However, there is no official body in the country to coordinate border crossing facilitation initiatives. The system of information exchange on exit borders operates only for TIR carriers, the SAFE TIR, whereby Customs reports to IRU on every vehicle operating under the TIR regime that passes through the border.

#### 4.4.1.2 Safety and environmental security

GOST standards are used to establish safety and environmental security standards in the country. However, some of the European standards for environmental security apply directly. This concerns manufacture and operation of vehicles. However, requirements on technical conditions of vehicles are set below Euro 1 standard. Uzbekistan has recently adopted a program for production of oils and fuels corresponding to Euro 2 by 2010.

Most of the requirements to the safety of road operations applied in the country are set in line with international conventions, ISO standards and EC directives. Most of the national safety standards are recently updated and harmonised with international rules.

#### 4.4.2 Summary of national legislation in the road transport sector

**Table 13: Summary of Uzbekistan legislation in the road transport sector**

<b>National legislation</b>	<b>Dates</b>
Law on motor roads	03.05.1992
Law on road transport (Decree 674-1)	1992
Law on foreign investments and guarantees for foreign investors	02.05.1994
Resolution on amendments to decree of the Cabinet of Ministers on the rules of entry, stay and departure of foreign road carriers of the territory of Uzbekistan (decree No 11)	11.01.1995
Resolution of the State Tax Committee of Uzbekistan on intensified customs control of foreign road carriers (decree No 127)	05.06.1995
The resolution of the Cabinet of Ministries No.175 from 12 May 1996 "On the licensing of	12.05. 1996

## **Development of Co-ordinated National Transport Policies**

<b>National legislation</b>	<b>Dates</b>
activity in the field of transport”	
Regulations on licensing of carriage of goods and passengers by rail, air and road transport (Annex 1 to decree of the Cabinet of Ministers of Uzbekistan No 175)	12.05.1996
Resolution of the Cabinet of Ministers on approval of state duty for transport and communications activity (decree No 89)	19.02.1997
Law on public customs service	29.08.1997
Customs Code 1997	26.12.1997
Law on the guarantees and security measures for foreign investors	30.04.1998
Regulations of the Uzbek Agency for Road and River Transport (Decree No 296, Cabinet of Ministries of Uzbekistan)	11.07.1998
Law 674 on vehicle transport	29.08.1998
Resolution on the measures for strengthening of customs border in Uzbekistan (decree No 488)	24.11.1998
Law on investment activity	24.12.1998
The Resolution of the Cabinet of Ministries of the Republic of Uzbekistan No 67 from 11 February 1999 «On strengthening measures of customs control over foreign auto carriers»	11.02.1999
ORDER on the levy of collections for the entrance of foreign motor transport vehicles to the territory of the republic of Uzbekistan	15.03.1999
The Resolution of the Cabinet of Ministries of the Republic of Uzbekistan “Standard rules for the insurance of the civil liability of the drivers of foreign transportation means and other self-propelled machines and mechanisms, which enter to the customs territory of the Republic of Uzbekistan, before the third persons”	12.01.2000
Regulations on the transport-forwarding enterprises and the rules of rendering of transport-forwarding services. The Resolution of the Cabinet of Ministries of the Republic of Uzbekistan No 348	09.09.2000
Regulation on forwarding enterprises and order of rendering the forwarding services	25.09.2000
Resolution of the Cabinet of Ministers 2002 #332 “On Amendments to the Provisions on Transport-forwarding entities and Order of services provision undertaken in the field of transport and forwarding activities”	25.09.2002
Resolution of the Cabinet of Ministers 2003 #54 “On Procedures for Mandatory Technical Examination of Road Transport Vehicles”	31.01.2003
President’s Decree 2003 # UP-3292 “On improvement of Public Roads Construction and Operation Management System”	19.08.2003
Resolution of the Cabinet of Ministries 2003 #482 “On Approval of the Rules aimed at Road Passenger and Cargo (Luggage) Transport and Requirements on Bus Passenger Transport Safety”	04.11.2003
Provisions on Introducing (Closing) of Urban, Suburb, Intercity and International Routes within Road Passenger Transport” (Ministry of Justice –2004 #1363)	21.05.2004
Rules on Road Transport of Explosive Materials (Registered in the Ministry of Justice 2005 #1492)	08.07.2005
President’s Decree 2006 #PP-303 “On Regulation of Private Operators, involved in Road Passenger Transport”	09.03.2006
President’s Decree 2006 # 325 “Measures on Service Field Development Speeding-up in Uzbekistan for 2006-2010”	17.04.2006
Provisions approved by the Resolution of the Ministry of Justice 2006 #15 and the Ministry of Internal Affairs #5, registered in the MJ on July 4, 2006 under #1589 “On the Order of Banning and Removal of the Banning in terms of Road Vehicle Arrest, as well as Establishment of Database on Registration of Banned and Arrested Transport Vehicles”	27.06.2006
Resolution of the Cabinet of Ministries 2006 #241 “On additional Measures Aimed at Road Traffic Safety”	21.11.2006
President’s Decree 2006 #PP-535 “Measures on Public Automobile Roads Development for the period of 2007–2010”	20.12.2006
Order of the Head of Uzbek Agency of River and Automobile Transport 2007 #46 “On Amendments and Additions to the Provisions on Qualification Standards of the Juridical Entity Personnel involved in Passenger and Freight Transport, as well as Private	02.03.2007

<b>National legislation</b>	<b>Dates</b>
Entrepreneurs involved in Road Cargo Transportations”	
Resolution of the Cabinet of Ministers 2007 #44 “On Measures for Traffic Safety Securing in Passenger and Road Transport Operations”	06.03.2007
Resolution of the Cabinet of Ministers 2007 #91 “On Additional Measures aimed at Re-registration of Power of Attorneys for Road Transport Vehicle Operation”	04.05.2007
Law about motor roads	02.10.2007
<b>Bilateral Agreements</b>	
Agreement between the Government of Uzbekistan and the Government of Italy on the mutual regulation of international transportation of passengers and freights	21 November 2000
Agreement between the Government of Uzbekistan and the Government of Russia in the field of international road traffic	2000
Agreement between the Government of Uzbekistan and the Government of Czech Republic in the field of international automobile passenger and freight transportation	1999
Agreement between the Government of Uzbekistan and the Government of Bulgaria in the field of international automobile passenger and freight transportation	1998
Agreement between the Government of Uzbekistan and the Government of Kazakhstan on the transit transportation of passengers, freights and luggage, and on guaranteeing their safety and security in automobile and railway main lines in the territory of Uzbekistan and Kazakhstan,	1998
Agreement between the Government of Uzbekistan and the Government of Romania in the field of international road traffic.	1996
Agreement between the Government of Uzbekistan and the Government of Turkmenistan in the field of international automobile passenger and freight transportation.	1996
Agreement between the Government of Uzbekistan and the Government of Azerbaijan in the field of international automobile passenger and freight transportation,	1996
Agreement between the Government of Uzbekistan and the Government of Kyrgyzstan in the field of international road traffic	1996
Agreement between the Government of Uzbekistan and the Government of Moldova in the field of international road traffic,	1995
Agreement between the Government of Uzbekistan and the Government of Georgia,	1995
Agreement between the Government of Uzbekistan and the Government of Islamic Republic of Iran in the field of international road traffic,	1993
Agreement between the Government of Uzbekistan and the Government of Ukraine in the field of international road traffic,	1993
Agreement between the Government of Uzbekistan and the Government of Turkey in the field of land communication,	1992
Memorandum of Understanding between the State Stock Company of Uzavtoyol and the Ministry of Social Works of Afghanistan and the Ministry of Road and Transport of Islamic Republic of Iran on the cooperation during rehabilitation of road infrastructure of Afghanistan.	2002

A summary of the laws in other transport sectors is given in annex 4. National laws in Russian and English have been put in the legal database on the project website at [www.centralasiatransport.com](http://www.centralasiatransport.com).

#### **4.4.3 Evaluation of compliance with international conventions and agreements**

The following table gives a summary of the international conventions and agreements to which Uzbekistan has acceded. The extent, to which these have been implemented, with recommendations for changes in the national law, will be evaluated in the implementation phase of the project.

**Table 14: Accession of Uzbekistan with international conventions and agreements**

<b>Convention</b>	<b>Acceded</b>
Convention on Road Traffic, 1968	+
Convention on Road Signs and Signals, 1968	+
TIR Convention, 1975	+
Customs Convention on the Temporary Importation of Commercial Road Vehicles, 1956	+
Customs Convention on Containers, 1972	+
International Convention on the Harmonisation of Frontier Controls of Goods, 1982	+
Convention on the Contract for the International Carriage of Goods by Road (CMR), 1956	+
International Convention on the simplification and harmonisation of customs procedures 1974, as amended	
Convention on Customs Treatment of Pool Containers Used in International Transport, 1994	+
Agreement concerning establishing Global Technical Regulations for Wheeled Vehicles, 1998	
Convention on the liability of operators of transport terminals in international trade, 1991	
Work of Crews in International Road Transport (AETR), 1970	+
Dangerous Goods by Road (ADR), 1957	
Perishable Foodstuffs (ATP), 1970	+
Single Administrative Documents (SAD)	

#### **4.4.4 Missing legislation/organisation**

**Uzbekistan has implemented all of the international legal instruments recommended by the UN ESCAP Resolution 48/11 on road and rail transport modes.**

Other international instruments that have been proposed for accession through supplementing the Technical Annex on Customs Documentation Procedures to MLA, or by other studies in recent years that remain to be implemented are:

- International Convention on the simplification and harmonisation of customs procedures 1974, as amended;
- Agreement concerning establishing Global Technical Regulations for Wheeled Vehicles, 1998;
- Convention on the liability of operators of transport terminals in international trade, 1991;
- Dangerous Goods by Road (ADR), 1957;
- Single Administrative Documents (SAD).

Multimodal transport organisation is at an initial stage and regulation as undeveloped as it is planned to set up a specialised multimodal transport organisation to develop multimodal terminals throughout the country. A National Interagency Transport Facilitation Committee (similar to the one established in Kazakhstan) should also be established in Uzbekistan.

#### **4.5 Conclusion**

The volumes of international road transport operations are tending to increase. This growth however is slow, below commercial potential of the markets of Central Asian countries, hampered by the lack of coordination between the governments of the countries on the issues of legal harmonisation. A regional transport policy would be very much welcomed by the transport industry, and this would lead to the development and investment in physical infrastructure. Another important issue is the strengthening of governmental controls to prevent underlying corrupt practices, as well as investments into the scientific and technological works to be carried by specialised institutions in the field of transport operations, efficiency and safety.

Almost all of the bilateral transit agreements identified in this section are based on quotas. The consultant understands that new transit agreements signed by Kazakhstan will be on a quota-free or non permit basis. Transit agreements not limited by quotas on the number of trucks are important for freeing the development of trade, and are regarded by the United Nations, World Trade Organisation and the European Union as important for development. Further work needs to be done to identify the bilateral transit agreements that are based on quotas and recommendations will be made to the beneficiary states for these to be converted to a quota-free or non permit basis.

## **5 The background conditions for legal reform: SWOT analysis**

An analysis of the overall Strengths, Weaknesses, Opportunities and Threats (SWOT analysis) by country allows identification of the starting points for the coordination of road transport policies between the four Central Asian countries and, hence, the formulation of proposals for future action under the present project discussed in chapter 6.

**Table 15: SWOT analysis for Kazakhstan**

<b>SWOT analysis</b>			
<b>Strengths</b>	<b>Weaknesses</b>	<b>Opportunities</b>	<b>Threats</b>
National Interagency Transport Facilitation Committee has been established.	Lack of international weight and axle load harmonisation in Central Asian countries (observation to the Minsk Agreement). Lack of approximation to international/ EU standards in transport	Economic growth of the TRACECA area countries, Russia, China and the development of the regional market economy.	Lack of legal framework harmonisation between the Central Asia states in regional transport development field.
Transport Sector Strategy and AP were approved by the President in 2006.	High transport costs, transit tariffs and fees. Lack of computerised customs information management system (ASYCUDA).	Development of trade between the countries of Central Asia with the rest of the world.	Lack of Inter-agency cooperation hinders implementation of Strategy and its Action Plan. Image of unpredictability of the quality of the service.
Political and financial support of the EU, ADB, EBRD, IDB, WB.	Weak PPP enabling environment; weak project identification procedures (top-down)	General infrastructure upgrade and development including the rehabilitation of Road connection to Aktau.	Necessary funding for development of transport infrastructures not provided; non-sustainability of investments
Existence of the MLA TRACECA institutions (IGC, PS, WG of National Secretaries) and INOGATE	Violations of MLA;	Development of regionally relevant transport infrastructure projects; improvement of MLA technical annexes	Lack of consensus among TRACECA member countries concerning modification of MLA technical annexes
Key location within Central Asia.	Deposit for excise transit freight.	Alternative transport corridor to Iran and planned second r/w connection to China/Horgos.	Over pricing and non-transparent transport charges directly affecting transit transportation. Increasing transit fees in Central Asia countries.
Substantial direct and indirect income from international transport growth; no legal restrictions to use FIATA Bill of Lading; insurance and banking systems in place	Lack of internationally compliant equipment (Euro II and Euro III) restricts access to international markets.	Development of international freight business if environmental standards are adopted.	Border closures or restrictions (Horgos)

SWOT analysis			
Strengths	Weaknesses	Opportunities	Threats
Accession to the priority international conventions stated in TRACECA Strategy and approved by all Central Asia states.	Missing legislation	Improved business opportunities for foreign trade and transit and transport and logistic service providers	Lack of financial means/concepts (leasing) for transport fleet modernisation
Expansion of Aktau Port.	Imposition of unofficial fees and charges at the border-crossing. Application of VAT to the r/w tariff towards Aktau port and THC in Aktau Port	Establishment of EU conform entry point; promotion of intermodal transport and short sea shipping	Lack of coordination of the Central Asia states' authorities in charge for regional transport development. International corridor competition
Concession Law was approved by Presidential Decree in 2006.	Lack of direct law in the national legislation regulating freight forwarding activities and multimodal transportation. Not yet full approximation to EU/international standards	Access to new financial sources	Lack of political willingness
Draft Transport Code is comprehensive and could be initial benchmark for Central Asian countries.		Legal transport harmonisation at regional level; application of EU/ international regulation into national practice	Lack of attractiveness and predictabilities of investment environment (high level of non calculated risks)
			Lack of proper implementation (by-laws, enforcement)

Table 16: SWOT analysis for Kyrgyzstan

SWOT analysis			
Strengths	Weaknesses	Opportunities	Threats
Member of MLA and EU Programme TRACECA and INOGATE. Member of WTO	Lack of Transport sector development Master Plan.	Economic growth of the TRACECA area countries, China and the development of the market economy.	Lack of legal framework harmonisation between the Central Asia states in regional transport development field.
Substantial direct and indirect income from international transport;	Decline in international traffic. Lack of internationally compliant equipment (incl. Euro II and Euro III) restricts access to international markets. Practical problems with the use of the FIATA FBL	Development of international freight business if environmental standards are adopted and FIATA documents can be easily used.	Lack of cooperation and coordination between state authorities and transport sector operators.
Kyrgyzstan consented Concept for coordinated transport development CIS	High transport costs and transit fees.	Development of trade between countries of Central Asia with rest of the world.	Lack of financial means/concepts (leasing) for transport fleet modernisation; Image of unpredictability of the quality of the service.
Political and financial support of the EU, ADB and other IFIs.	Very weak PPP enabling environment	General infrastructure development; Road connection to China offering alternative transport corridor to China.	Inter-agency conflicts hinder implementation

**Development of Co-ordinated National Transport Policies**

Existence of the MLA TRACECA institutions (IGC, PS, WG of National Secretaries)	Violations of MLA; Imposition of unofficial fees and charges at the border-crossing.	Development of regionally relevant transport infrastructure projects ; improvement of MLA technical annexes	Necessary funding for transport infrastructure development not provided. Lack of attractiveness and predictabilities of investment environment (high level of non calculated risks)
Key location within Central Asia toward to China.	Poor regional trade facilitation, delaying traffic and increasing cost.	Establishment of National Interagency Transport Facilitation Committee would facilitate development of road transport market.	Lack of consensus among TRACECA member countries concerning modification of MLA technical annexes
Accession to the priority international conventions stated in TRACECA Strategy and approved by all Central Asian states.	Lack of direct law in national legislation regulating freight forwarding activities and multimodal transportation.	Improved import /export business opportunities for industries and transport and logistic service providers	Over pricing and non transport charges directly affecting transit transportation; Border closures or restrictions for political reasons. Increasing transit fees in Central Asia countries
New Customs Code, adopting provisions of Kyoto Agreement General Annexes	Missing legislation		Lack of coordination of the Central Asia states' authorities in charge for regional transport development. International corridor competition
	Lack of computerised customs information management system (ASYCUDA).		Red tape

**Table 17: SWOT analysis for Tajikistan**

SWOT analysis			
Strengths	Weaknesses	Opportunities	Threats
Member of MLA and EU Programme TRACECA and INOGATE.	Lack of Transport sector development Master Plan.	Economic growth of the TRACECA area countries, Russia, China and the development of the regional market economy.	Lack of cooperation and coordination between the State authorities and transport operators.
Substantial direct and indirect income from international transport growth	High transport costs and transit fees. Lack of internationally compliant equipment (incl. Euro II and Euro III) restricts access to international markets. Lack of computerised customs management system (ASYCUDA).	Development of trade between the countries of Central Asia with the rest of the world.	Inter-agency conflicts hinder coordination; Image of unpredictability of the quality of the service.
Political and financial support of the EU, ADB, IDB.	Very weak PPP enabling environment	General infrastructure development; Road connection to China offering alternative transport corridor to China.	Necessary funding for transport infrastructure development not provided. Lack of attractiveness of business environment and high level of non calculated risks



SWOT analysis			
Strengths	Weaknesses	Opportunities	Threats
Existence of the MLA TRACECA institution (IGC, PS, WG of National Secretaries)	Violations of MLA.	Development of regionally relevant transport infrastructure projects and harmonised legal framework; improvement of MLA technical annexes	Lack of consensus among TRACECA member countries concerning modification of MLA technical annexes
Key location within Central Asia towards to Afghanistan and China	Poor regional trade facilitation, delaying traffic and increasing cost.	Establishment of National Interagency Transport Facilitation Committee would facilitate development of road transport market.	Border closures or restrictions for political reasons. Increasing in transit fees in Central Asia countries
Accession to the priority international conventions stated in TRACECA Strategy and approved by all Central Asian states.	Lack of direct law in national legislation regulating freight forwarding activities and multimodal transportation.	Improved import /export business opportunities for industries and transport and logistic service providers	Lack of coordination of the Central Asia states' authorities in charge for regional transport development. International corridor competition
	Missing legislation		

**Table 18: SWOT analysis for Uzbekistan**

SWOT analysis			
Strengths	Weaknesses	Opportunities	Threats
Improving coordination of sectors through UTACA.	No Ministry of Transport, and a fragmented administrative structure in reformation	Economic growth of the TRACECA area countries, Russia, China and the development of the regional market economy.	A Ministry of Transport not yet set up.
Substantial direct and indirect income from international transport; FIATA documents and procedures are familiar	High transport costs and transit fees. Lack of computerised customs management system (ASYCUDA).	Development of trade between the countries of Central Asia with the rest of the world.	Inter-agency conflicts hinder coordination; Image of unpredictability of the quality of the service.
Transport Sector Strategy and AP were approved by the Government in 2006.	Multimodal transport at an initial stage; lack of modern transit facilities;	Establishment of National Interagency Transport Facilitation Committee would facilitate development of freight forwarding market.	Inter-agency conflicts hinder strategy and its Action Plan implementation
Key location within Central Asia towards Tajikistan, Afghanistan	Poor regional trade facilitation, delaying traffic and increasing cost.	Establishment of National Interagency Transport Facilitation Committee would facilitate development of road transport market.	Border closures or restrictions for political reasons. Increasing in transit fees in Central Asia countries
Existence of the MLA TRACECA institutions (IGC, PS, WG of National Secretaries) and participation in INOGATE programme	Lack of direct law in national legislation regulating freight forwarding activities and multimodal transportation.	Development of regionally relevant transport infrastructure projects and harmonised legal framework; improvement of MLA technical annexes	Lack of consensus among TRACECA member countries concerning modification of MLA technical annexes

<b>SWOT analysis</b>			
<b>Strengths</b>	<b>Weaknesses</b>	<b>Opportunities</b>	<b>Threats</b>
Accession to the priority international conventions stated in TRACECA Strategy and approved by all Central Asian states.	Violations of MLA.	Improved import /export business opportunities for industries and transport and logistic service providers	Lack of coordination of the Central Asia states' authorities in charge for regional transport development. Lack of enforcement
Uzbekistan has acceded to all the 7 priority conventions identified by UNESCAP.	Missing legislation; Lack of internationally compliant equipment (Euro II and Euro III) restricts market access. High cost of import taxes discourages operators from upgrading their equipment.		
	Lack of international weight and axle load harmonisation in other Central Asia countries reduces profitability of international freight operations.		

## **6 PPP environment**

According to the Terms of Reference of the present project (TOR, Para 4.2), it is one of the major tasks of the present project “to review and analyse the state of development of the road transport legislation regarding investment policies including financing options for infrastructure investment (...PPP)”. The following analysis of the PPP enabling environment capitalises on the previous discussions held during the PPP regional seminar organised by the project in Dushanbe in October.

**A strong, reform-oriented state is needed in order to ensure a suitable investment framework for private investors to be interested in Public-Private Partnership (PPP) projects in transport in the long run.**

To this end it is deemed necessary to back up the privatisation and deregulation process in transport with supplementary regulations which:

- sufficiently address structural problems of the transport market,
- regulate competition, and
- safeguards the environment and transport safety.

Therefore, the focus of legal reforms needs to be on harmonising PPP law with other relevant provisions, such as the traffic law, penal law, investment promotion law or company law.

In this section we consider the fundamentals of the PPP enabling environment.

### **6.1 Criteria for a PPP enabling environment**

By definition PPPs demand a relationship of trust in risk-sharing between government and interested private investors. Therefore, it is crucial to have important preparations and reforms of the public sector in order to create a trustworthy investment environment (the enabling environment). Attracting private sector investment requires:

- a stable political environment & good governance principles;
- healthy economic & financial environment;
- concession-specific legal framework;
- general policy framework for private sector participation and strong political commitment;
- legal integration;
- public sector capacity and regulatory structures;
- private sector capacity; and
- a competitive tendering process.

The political environment and the risk it implies (country risk), is one of the major parameters affecting the attractiveness of a country to foreign investors. In this context issues of interest are:

- government and regime stability;
- good external relations and cooperation with neighbouring countries (no external conflicts);
- internal social peace – social homogeneity;
- consistency and objectivity of law enforcement; and
- general conditions of transparency.

A healthy macroeconomic environment requires the following to be taken into consideration:

- the current GDP level;
- economy growth prospects (GDP expected growth rate);

- level of economy liberalisation (private sector level and development prospects, competition level) particularly for transport and financial services (banking, insurance etc); and
- extent of public debt.

In terms of policy frameworks and political commitment, implementation of PPPs requires top level government support and high political commitment because serious public sector reforms are needed as a prerequisite (particularly for transition economies). This, in turn implies:

- a significant political cost; and
- top level coordination of reforms, needed horizontally across the public administration (ministries).

Therefore, the following are absolute requirements:

- coordination at Prime Ministerial level (top government support);
- a clear policy statement is needed to denote high political commitment (binding statement) in order to attract;
- private funds in the transport sector.

The general legal framework needs to be clear, consistent and not conflicting, stable and fair. Usually it consists of:

- the concession law;
- complementary decrees; and
- other associated laws composing an integrated investment environment for a private investor.

The concession-specific law is of key importance to establish an enabling environment and to function as a marketing tool for investors (this is the first essential requirement for a sound legal basis). This should be relatively simple and general, with operational guidelines in being covered in decrees and supporting legislation. Some of the main aspects of such a law include:

- definition of concepts and terms;
- transparent and competitive bidding;
- allowing for bid evaluation on a net present value (NPV) basis;
- provision for international arbitration;
- concept of contract renegotiation and amendments (clear mechanisms);
- allowing public disclosure of concession agreements;
- no differentiation in law treatment between national and foreign investors; and
- exceptions to competitive bidding.

A concession law needs to be compatible with a variety of other legal texts, which in total compose the country's clear and sound legal basis for an integrated investment environment. Beyond the concession law the following laws are also required:

- procurement law(s) - to allow for competitive bidding;
- dispute resolution law with possible international arbitration;
- expropriation law with provisions for compensation;
- foreign ownership legislation dealing with any foreign ownership restrictions on land or land rights, foreign equity;
- limitations to domestic companies;
- labour law enabling the flexibility to hire and fire, and dealing with wage and benefit levels;
- foreign exchange law removing restrictions on local currency convertibility;
- a tax system defining what tax incentives/exemptions are applied; and
- consistent and objective judicial enforcement has to be ensured.

PPP implementation generates a strong need for highly specialised and multi-disciplinary know-how (legal, technical, financial, economic) in the public sector, mainly focusing on:

- PPP policy development and PPP concept promotion;
- facilitating government coordination;
- environmental assessment; and
- contract negotiations, management and supervision (specialised legal know-how).

Consequently, in the opinion of the consultant, there is a need to set up and operate a PPP unit (centralised or decentralised) in the form of a focused, dedicated and experienced team. In fact, for streamlining PPP project management, many argue in favour of the establishing a permanent PPP task force at national level, or even at regional level, which might take become a “centre of intelligence”, a “documentation centre” and/or a “clearing house” for all PPP project related questions. In order to promote the PPP formula itself, fiscal incentives or subsidies to the private sector can be an appropriate solution, in particular in cases where it appears difficult to start up the project commercially.

In the framework of its new Neighbourhood Policy the European Commission currently discusses the possibility of granting interest rate subsidies for transport project loans, provided the individual project concerns a “considerable public utility” and does not have “a large internal rate of return”.

### **6.2 PPP centralised regional seminar**

In order to help a better understanding of the issues that need to be addressed in order to develop PPPs, a regional seminar was organised on 25 October in Dushanbe. This was aimed at preparing the environment for tangible and decisive improvements of the legal base. This first centralised regional seminar was organised and conducted by project international experts Dr. Goetz (Team Leader), Mr. Dimitri Kostianis (Financing and PPP Expert) and Mr. Anthony Pearce (Senior Advisor) with the support of the project antenna office. It was attended by government officials and private transport operators from Kazakhstan, Uzbekistan and Tajikistan. Unfortunately there was no participation from Kyrgyzstan which could be taken that they have very limited interest in PPPs.

Detailed information on the seminar was provided in annex 2 of Progress Report 1. The lively discussion and keen interest of the participants confirmed the high importance in which this issue is held by the authorities of the participating countries. There was a feeling that that there is a need for an Expert Working Group to be set up within the High Level Group to advance knowledge in the PPP-related areas. The issue of PPPs in the present project leads also to logistic centre development for which guidelines will be developed in the coming period.

### **6.3 SWOT analysis for transport sector PPPs by country**

The following tables evaluate the PPP enabling environment and implementation for transport sector infrastructure financing for each of the beneficiary countries. The analysis suffers from lack of information concerning Kyrgyzstan and Uzbekistan where it was not possible for the project so far to establish a reasonable working contact with the beneficiary due to the non-cooperative attitude of the official contact persons.

**Table 19: Kazakhstan SWOT Analysis and benchmarks on transport infrastructure PPPs**

SWOT analysis			
Strength	Weaknesses	Opportunities	Threats
Strong economy with ample natural resources, high growth rates (9-10% GDP growth in last five years) and very good growth prospects, underpinned by sound macroeconomic policies targeting to diversify away from oil and mineral resources heavy dependency. Good strategic location for transit traffic	Limited level of multi-disciplinary public sector skills/know how in: <ul style="list-style-type: none"> <li>• assessing prospective PPP projects,</li> <li>• building public sector comparators,</li> <li>• managing the tendering process,</li> <li>• accompanying the implementation phase,</li> <li>• renegotiating efficiently way when necessary etc</li> </ul>	Good economy growth prospects with government economic policy; tapping on new financial resources for infrastructure development and transport sector modernisation	No allocation of public funds to transport; overheating of economy; lack of willingness by infrastructure users to pay.
Stable political environment	Lack of suitable institutional/regulatory structures to support PPP implementation effectively and impartially	High transit traffic growth potential due to country's strategic position (between Russia/Europe – China and with respect to the other CARs)	Inversion of the positive investment climate due to lack of government policy credibility
Stable economic and financial environment with good progress record in transition reform (see EBRD Transition Report 2006). Kazakhstan holds the leading position regarding transition reform in the Central Asia region (in areas like market liberalisation and small-scale privatisation, financial sector reforms, large scale privatisation, enterprise restructuring and competition policy, reforms of infrastructure).	No valid country experience in PPP implementation, regarding transport sector concessions;	Positive investment climate. The overall investment climate for the private sector has improved in some areas between 2002 and 2005, as witnessed by surveys conducted jointly by EBRD and the World Bank (WB). However, in areas such as dealing with licenses, trading across borders and closing a business, businesses in Kazakhstan incur significantly more time and costs compared to other countries.	Corruption, lack of transparency, consistency and objectivity of law enforcement (good governance)
Political commitment in supporting PPPs with preparations made to facilitate the way to privatisations (creation of SAMRUK, a state holding company to manage assets of state-owned corporations – such as KEGOC (national electricity transmission monopoly), KazMunaiGaz (national oil and gas company), Kazakhstan Temir Zholy (national railway company))	Shortcomings and ambiguities regarding the concessions legal framework - still strong need for implementation regulations, list of public assets allowed for concessions, regulation concerning concession tender procedures, standard model of a concession agreement	Important transport investment in roads construction and maintenance, railways electrification and construction of new railroads, but also airports and ports. Expectations of efficiency gains from improved transport administration	Corruption, lack of transparency, consistency and objectivity of law enforcement (good governance)

SWOT analysis			
Strength	Weaknesses	Opportunities	Threats
Clear PPP policy in the transport sector (“Transport Strategy of the Republic of Kazakhstan up to 2015”, government clearly encourages and stresses the importance of PSP to the development of transport infrastructure, setting clear objectives and targets)	Government interference in project identification/selection (currently impression of planning being top-down by governmental decree, instead of bottom-up based on structured traffic analysis and bankable project evaluation in case of logistics centre planning)	Further improvement of regional cooperation climate with neighbouring countries (Kazakhstan participates in various regional security and economic organisations including Central Asian Cooperation Organisation (CACO), EurAsEC, CIS, Shanghai Cooperation Organisation (SCO) and the Single Economic Space). This cooperation however, has to address the real economic issues and to focus on producing tangible economic results regarding trade, transit and transport issues (need to become result-orientated).	Corruption, lack of transparency, consistency and objectivity of law enforcement (good governance)
Good level of a concessions-specific legal framework (good Concession Law from 2006) and satisfactory integration/compatibility with remaining legal environment (e.g. foreign exchange laws, foreign investment laws etc)	Unknown implementation capacity/reliability	Good level of cooperation with IFIs and multilateral donors.	Corruption, lack of transparency, consistency and objectivity of law enforcement (good governance)

Table 20: Kyrgyzstan SWOT analysis and benchmarks on transport infrastructure PPPs<sup>18</sup>

SWOT analysis			
Strengths	Weaknesses	Opportunities	Threats
	Inadequate legal framework to support PSP, although Concession Law exists since 1992 and was amended in 2004. EBRD evaluates a “low compliance” level (problems identified in the scope of application, list of objects subject to concessions, selection procedures, negotiation flexibility, security)	In principle, important transport investment especially in roads construction and maintenance, but also airports. Expectations of efficiency gains from improved transport administration Diminution of intra-regional and inter-regional development disparities	No allocation of public funds to transport; lack of political commitment of PPP formula
	Poor economy and low per capita income level – Budgetary constraints	Improvement of regional transport network and hence, cooperation climate with neighbouring countries	Traffic development restrictions because of closed borders or border restrictions due to political or security reasons

<sup>18</sup> Inadequate evaluation of current situation in Kyrgyz Republic, since no information input was received as yet from the Kyrgyz Government (questionnaire was forwarded by the consultant but no answers were received yet).

SWOT analysis			
Strengths	Weaknesses	Opportunities	Threats
	Low traffic potential to support on its own viable PPPs in the transport sector – Need of regional cooperation to adhere to international transport networks	Attraction of interregional and international traffic by transport network improvements	Development of transport corridors ignoring/bypassing Kyrgyz Rep due to prohibitive non-physical barriers of trade and transport.
	No country experience on PPP implementation and in the transport sector particularly	Development of appropriate legal framework for attracting foreign investment	Corruption, lack of transparency, consistency and objectivity of law enforcement (good governance)

**Table 21: Tajikistan SWOT analysis and benchmarks on transport infrastructure PPPs<sup>19</sup>**

SWOT analysis			
Strengths	Weaknesses	Opportunities	Threats
Government commitment to economy liberalisation with emphasis to transport sector	Poor economy and very low per capita income level – Budgetary constraints	In principle, important transport investment especially in road construction and maintenance, but also airports. Expectations of efficiency gains from improved transport administration. Diminution of intra-regional and inter-regional development	No allocation of public funds to transport
Experience of PPP project planning and implementation in the energy sector	No country experience on PPP implementation in the transport sector; Low traffic potential to support on its own viable PPPs in the transport sector – Need of regional cooperation to adhere to international transport networks; Fragmented and understaffed transport administrative structure - Lack of policy framework and suitable institutional/regulatory structures	Extension of PPP formula to transport sector finance; Rehabilitation of limited and severely damaged transport infrastructure due to civil war and natural disasters	Closed borders or border restrictions due to political or security reasons
Successful PPP projects under implementation in the energy sector	Inadequate legal framework to support PSP, although Concession Law exists since 1997 and was supplemented in 2002. EBRD evaluates a “very low compliance” level (problems identified in the scope of application, list of objects subject to concessions, pre-selection procedures, dispute settlement procedures, security instruments etc.)	Improvement of regional transport network and hence, of cooperation climate with neighbouring countries	Corruption, lack of transparency, consistency and objectivity of law enforcement (good governance); Development of transport corridors ignoring/bypassing Tajikistan

<sup>19</sup> No information input was received as yet from Tajikistan’s government, regarding PPPs in transport infrastructure development (questionnaire was forwarded by the consultant but no answers were received yet). However, the consultant visited the country in 23-26/10/2007 for the implementation of a Regional Seminar on PPP issues in transport infrastructure financing. During this particular visit, views were exchanged between the consultant and government representatives/private stakeholders.



**Table 22: Uzbekistan SWOT analysis and benchmarks on transport infrastructure PPPs**

SWOT analysis			
Strengths	Weaknesses	Opportunities	Threats
Consistent economic growth (~7% in the period 2004-2006) and positive growth prospects in future years (~5%)	No Ministry of Transport – Fragmented administrative structure - Lack of suitable institutional/regulatory structures to support PPP implementation effectively and impartially	Important transport investment in roads construction and maintenance, railway electrification and construction of new railroads, but also airports and dry ports. Expectations of efficiency gains from improved transport administration	No allocation of public funds to transport; lack of political commitment
Good strategic location in Central Asia	Limited level of multidisciplinary public sector skills/know how in <ul style="list-style-type: none"> <li>• assessing prospective PPP projects,</li> <li>• building public sector comparators,</li> <li>• managing the tendering process,</li> <li>• accompanying the implementation phase,</li> <li>• renegotiating in an efficiency way when necessary, etc.</li> </ul>	Good transit traffic potential due to country’s strategic position in Central Asia (road corridors to China and Afghanistan)	Conservation of a negative investment climate due to lack of government policy credibility; negative monetary policy (because of limited convertability)
	No country experience in PPP implementation, regarding transport sector concessions	Viable alternatives for regional transit traffic through Uzbekistan	Closed borders or border restrictions for political or security reasons
	Lack of PPP policy in the transport sector	Development of appropriate legal framework for attracting foreign investment.	Corruption, lack of transparency, consistency and objectivity of law enforcement (good governance)
	Inadequate legal framework to support PSP, although Concession Law exists since 1995. EBRD evaluates a “low compliance” level (problems identified in the selection procedure, definition of the concerned sectors, discrimination against foreign investors, dispute settlement procedures, security instruments etc.)		Corruption, lack of transparency, consistency and objectivity of law enforcement (good governance)

## 6.4 Benchmarks for concession law development

According to the EBRD, the Lithuanian Concession Law is the best drafted law in the eastern European region up to the present time.

At a regional level, the PPP legal base with its associated enabling environment put in place with World Bank assistance by Kazakhstan could be proposed as a regional benchmark in within the Central Asian countries.

## 7 Proposals for action (action plan)

The work already performed under the project since start-up is for reasons of easy reference again summarised in chapter 7.1. The further actions proposed for future implementation are presented in sections 7.2 and 7.3. They are not only recommended for the project beneficiaries (7.3) but also comprise the action plan for the project itself (7.2).

### 7.1 Work so far undertaken by this project

Table 23 summarises the work that has been undertaken by the project so far and the work to be completed in the coming months.

**Table 23: Action to be undertaken by this project**

Task	TOR	Deliverables	Progress
1	<b>In-depth review of the present situation</b>	Overview of road sector development strategies and programme	Completed
		Demonstration of value added of road sector activities	Partly discussed – to be continued.
		Formulated guidelines for private sector development (PPP enabling environment)	Completed
2	<b>Analysis of the membership of the four CARs in international conventions and regional agreements, as well as in international governmental and non-governmental organisations and initiatives</b>	A catalogue of participation in international conventions and agreements to which the beneficiary countries are signatories (or in the process of negotiation).	Completed
		Prioritised gap analysis identifying recommended country-specific accession needs to other conventions and agreements, including reporting to the beneficiaries.	Gap analysis completed
		A catalogue of violations and recommendations for remedial measures and reporting to the HLG/IGC TRACECA.	Commenced, to be completed
3	<b>Practical handling and application of transport legislation</b>	Extension of field research to Kazakhstan, Kyrgyzstan and Uzbekistan and presentation of the results in terms of Qualitative Transport User Perception Profiles.	Commenced, to be completed
		Identification of the main violations of the national legislation and regional treaties and agreements, and presentation to HLG/IGC TRACECA.	Commenced, to be completed

Task	TOR	Deliverables	Progress
4	<b>Assessment of management systems, qualifications and personnel prerequisite</b>	Status report on management systems, qualifications and personnel issues to the HLG.	To be completed and finalised for the first HLG meeting (a respective working paper is under preparation)
5	<b>Analysis of the results of the above mentioned steps of the fact-finding exercise resulting in systematic benchmarking</b>	Summary report to the HLG/IGC TRACECA of the benchmarking analysis in relation to best practices in the EU and TRACECA in the areas of compliance with international conventions and agreements, legal harmonisation and bureaucracy and corruption.	Report completed, to be presented to the first meeting of the HLG
6	<b>Identification of strengths, weaknesses, opportunities and threats (SWOT)</b>	The SWOT analysis covering four main domains: <ul style="list-style-type: none"> <li>• regional transport development;</li> <li>• legislation and administration;</li> <li>• private sector enabling environment (including PPPs);</li> <li>• the logistic network.</li> </ul>	Partly completed, logistics network analysis to be carried out in the next period.
7	<b>Collection of complete legislative package for the Central Asian Countries related to road transportation.</b>	A catalogue of existing national laws of relevance to road transport, international trade, customs, taxation, transport tariffs and the existing trade and transport agreements, multilateral, bilateral and international conventions and agreements.	Completed. Further work will be including verification that the international conventions have been properly transposed, and identification of bilateral transit agreements that are based on quotas to be converted to a quota free or non-permit basis.
		Initial recommendations on the development of new laws, the modification of existing laws and the accession to international conventions and agreements (see also under Task 2). The MLA will form the basis for legal harmonisation.	Work to be continued.
		Overview of investment protection and concession laws.	Commenced, to be completed
		Concept for the creation and development of regional agreement (or new TA to the MLA) on integrated international customs transit.	To be developed.
		Concept for a one-stop-shop customs check point (Kazak-Kyrgyz border) for further development.	To be followed-up, applying concept developed by TRACECA project on harmonisation of border crossing procedures.
		For the two above concepts, the project could proceed to develop a methodology and draft a legal framework law if at least two of the beneficiary countries agree with them.	To be developed.
		Identification of bilateral transit agreements that are based on quotas to be converted to a quota-free or non permit basis.	Completed.
		Creation of hierarchically structured legal data base by country, and presentation on the project website.	Under construction; Preliminary website and database functioning.
		Eventual submission of the results of the project work relevant to the MLA to the TRACECA MLA anniversary summit in 2008.	To be carried out.

<b>Task</b>	<b>TOR</b>	<b>Deliverables</b>	<b>Progress</b>
8	<b>Presentation of findings from tasks 1-7, development of mutually accepted guiding principles and a hierarchically classified set of laws, awareness creation and know-how transfer measures</b>	Two centralised regional seminars.	One completed on PPPs. One planned for logistics issues in the next period.
		Quarterly steering committee (SC) meetings.	Kick-off meeting held on 3 August, next meeting date to be agreed with Delegation.
		2 HLG meetings and EWGs as appropriate.	Under preparation, first to be held in February 2008.
9	<b>Elaborate short, medium and long term action plans</b>	Short, medium and long-term action plans required for each of the countries.	Draft proposal completed for discussion in legal expert groups and further development into feasible measures to be implemented under the project
		Definition of well coordinated short, medium and long-term work packages and their assignment to EWGs by the first meeting of the HLG.	To be carried out at first HLG meeting
10	<b>Assist in the coordination of action plans among the involved beneficiaries and in implementing the action plans</b>	Reports and working papers on relevant topics to the HLG/IGC TRACECA.	Under preparation.
		Centralised regional seminars and EWGs.	One Centralised Regional Seminar on PPP financing carried out. EWGs to be established by the first HLG meeting.
		People trained.	Participation at the PPP Centralised Regional Seminar.
		Training materials.	Distributed

## 7.2 Action plan for the project

Within the context of the project's activities, it is proposed that the following will be commenced, although these activities may need to continue beyond the time remaining for the project. These medium-term actions comprise specific legislative changes in the field of road transport. Guidelines for legal amendments or new legislation should be drafted in close cooperation with the relevant authorities. Much of the work should be carried out in collaboration with other ongoing programmes. The various actions envisaged are as follows:

1. Resulting from the above, continued action is required in the fields of:
  - a. demonstration of value added of improved road sector activities;
  - b. continued research into violations of transport conventions and agreements (MLA) and presentation to IGC/ HLG TRACECA;
  - c. status report on management systems, qualifications and personnel issues related to legal frameworking/implementation and enforcement;
  - d. SWOT analysis concerning regional logistics centre network situation;
  - e. compliance with international and national laws on road transport;
  - f. improvement of the preliminary project website already established;
  - g. completion of the hierarchically structured legal database;
  - h. organisation of the various seminars and meetings as agreed;
  - i. organisation of HLG meetings and of its EWGs.
2. Follow up of the parliamentary discussions and implementation of the Kazakh new transport code which should serve as benchmark for national legal harmonisation at regional level.
3. Preparation for the adoption of the Green Card Model. As one the options for transit the introduction of the green card model should be examined with special regard to required legislative changes. This

is one of the recommendations of IGC TRACECA Strategy and SPECA.

4. Transport safety - legislative changes required for the improvement of transport safety must be established including regulations on infrastructure safety improvements. For this purpose an evaluation of European safety should be carried out.
5. Road transport services - the field of road transport services is also in need of reform. Revision of existing regulations on quality and quantity of the vehicles fleet of road transport services and transit transportation within the region should be carried out and legislative changes should be proposed.
6. Environmental protection and vehicle emissions - The project should provide assistance to this action by advising on revising the existing legislation and certification of cars, fuels and lubricants as well as road transport services, mandatory inspection of road transport vehicles and an insurance model based on vehicle emissions in order to stimulate the investment in non-polluting vehicles.
7. As discussed earlier, the issue of illegal payments is much contested. This issue requires further investigation prior to consideration by the High Level Group. Work on this issue could be combined with investigations into the efficiency of the TRACECA "hot line".
8. Follow up of the developments concerning the MLA draft agreements (modal laws) prepared in the framework of the TRACECA project on "freight forwarder training courses" on multi modal transport and freight forwarding.
9. Preparation of directions for a draft harmonised legal and regulatory framework on PPP in the transport sector, in full compliance with international standards –including:
  - a concession law;
  - associated regulations;
  - compatible legislation on associated foreign investment issues (e.g. local currency convertibility, land and equity ownership, etc).
10. Establish an Expert Working Group (EWG) on transport infrastructure PPP issues. The aim of the EWG would be to promote the coordinated development of PPP in the transport sector in CARs. Its objectives should include:
  - discussion of national strategies, policies, plans and actions;
  - exchanging of experiences and know-how on identification, selection, planning, implementation and administration of PPP projects in the transport sector;
  - examination of risk sharing and project financing issues and difficulties for each CAR;
  - exploring best practices and lessons learned from international experience;
  - examination of real enabling environment difficulties;
  - identification of a list of projects with regional importance for transit traffic, which should be treated with priority through the stages of project maturity;
  - setting up the main organisational and operational characteristics of each national PPP Unit;
  - exploring the option to establish an Infrastructure Steering Group in order to facilitate coordination on regional transport priorities in line with strategies defined by national authorities;
  - exploring the option for a Project Preparation Facility in charge of financing technical assistance for project preparation in order to make potential investments bankable.Participation in the PPP EWG from each beneficiary state should comprise:
  - one representative from the Ministry of Finance;
  - one representative from the Ministry of Transport/Infrastructure;
  - one top level representative from private sector (preferably operator, forwarder).

### Longer Term

Long-term actions should help to bring together the solutions found for every country and harmonise the preparation of legislation developed throughout the project. Furthermore long-term actions also include topics such as environmental issues, because they require a longer adaptation period, legislative changes as well as a change in mentality. Some areas, such as customs procedures, should be handled in conjunction with other programmes such as BOMCA. It is hoped that the structures to be established by

this project, particularly the High Level Group, will enable longer term actions to be undertaken. These may include the following.

1. Recommendation on the development of a new law on international integrated custom transit agreement.
2. Promotion of the efficient application of provisions of Multilateral Investments Guarantee Agency (MIGA Convention, 1985) in the field of development of transport infrastructure (more details in annex 2).
3. Encouragement for the introduction of border controls based on Information Communication Technology such as the automated Safe TIR and the GPRS in each of the Central Asian countries.
4. Standardisation, harmonisation of customs documentation, codification and simplification of the procedures for international trade and under the AP for 2008-2009 of IGC TRACECA, a customs goods declaration (Single Administrative Document/SAD) instead of any other transit customs documents.
5. Creation and development of offices dealing with the management of international border offices under one umbrella within relevant national administrations of the Central Asian states (National Interagency Transport Facilitation Committees or revitalising of activities of TRACECA National Commissions).
6. Accommodation of risk management techniques of border administrations and infrastructure of the transit corridors in the transportation process through implementation of ASYCUDA computerised customs management system.
7. Acceptance of copies of passport of international transport drivers' to process multiple entry visa applications for a minimum period at least one year.
8. Assistance concerning accession to and implementation of international conventions. Implementation of international and European standards in the transport sector is of paramount importance for the future of transport in the Central Asian region. Therefore according to the short-term action of compliance with international standards the long-term action should be to conduct a revision of the entire national legislation on transport with regard to compliance with international and European standards. It should be established as to what extent European standards can be incorporated into national legislation or at least if an approximation is possible. One of the main objectives in the long run will be to bring the solutions found for every country in compliance not only with international and European standards but also with the other countries in the Central Asian region.
9. Development of a coordinated regional road safety programme based on EU practice and experience with safety regulation and control, as transport safety does not know borders.

### **7.3 Action to be undertaken by the beneficiary states**

The following actions for short, medium and long term are recommended for the project beneficiaries and stakeholders.

#### **7.3.1 Kazakhstan**

##### Short term

1. completion of the legislative process for the introduction of the new transport code.
2. efficient implementation of the national transport strategy and its action plan.
3. strengthening of activities of National Interagency Transport Facilitation Committee (or revitalising of activities of TRACECA National Commission) in order to identify border crossing problems, devise solution and monitor of implementation of provisions national legislation, international conventions, regional treaties and bilateral agreements (Recommendations of IGC TRACECA, SPECA);

4. Proceed with final adjustments regarding the existing legal and regulatory framework for concessions, in order to achieve full compliance with international standards. Main areas to improve upon:
  - list of public assets allowed for concessions;
  - tendering procedures;
  - standard model of a concession agreement;
5. Clarify remaining policy issues regarding PPP in transport (e.g. the need to have un-tolled roads parallel to new tolled ones etc) and also the role of:
  - various government departments/agencies/institutions;
  - local authorities;
  - private stakeholders.
6. Boost the process of improving investment climate by systematically:
  - speeding up transition reform in areas like market liberalisation and small-scale privatisation, financial sector, large scale privatisation, enterprise restructuring and competition policy, reforms of infrastructure;
  - intensifying fight against corruption;
  - promoting transparency, consistency and objectivity of law enforcement (good governance) in the PPP project planning/implementation and administration processes;
7. Set up a PPP unit (task force) and support its role in order to become fully and effectively operational. The following issues have to be implemented:
  - legal, organisational and operational set up;
  - staffing;
  - staff training;
8. Appoint an experienced foreign consultants for the following main issues:
  - leading and coordination of the ppp implementation process (technical and financial design, contract administration) for the first projects to be successful;
  - provide systematic on-the-job training for the specialised-to-be public sector staff;
  - set-up and organise/staff a PPP unit;
9. seek the assistance of IFIs from early stages in order to formulate bankable transport PPP projects with a viable financing plan;
10. cooperation and coordination with the EU funded projects, CAREC/ADB, WB and MOTC of Kyrgyzstan, Tajikistan and the services under the Vice Prime Minister responsible for transport in Uzbekistan, and other relevant state and private agencies for the purpose of elaboration of the Coordinated Action Plan (short, medium, long-term) for Regional Transport Strategy Development.
11. identification and elimination of violations of Conventions, International Treaties and Regional Agreements in the field of trade and international transport (in line with international law/Vienna Convention 1969);
12. creation of predictable and attractive investment environment, especially with regards of PPP and connecting/regional transport investment Business Plans development.
13. efficient application of provisions of Multilateral Investments Guarantee Agency (MIGA Convention, 1985) in the field of development of transport infrastructure (in line with EC Strategy Paper for Central Asia and IGC TRACECA Strategy).
14. recall the observations regarding the TA of R/W made by Kazakh Parties to the MLA in 1998 (Baku) and to the Protocol of Amendments of MLA in TRACECA Conference in 2002 (Yerevan).
15. approval of Multimodal Transport Regional Agreement (or TA to the MLA) and Model Law of Freight Forwarding to be adopted by a future meeting of IGC TRACECA, elaborated by PS of TRACECA IGC;
16. accession to the Customs Convention on the Temporary Importation of Commercial Road Vehicles, 1956 (Recommendations UN ECE, UN ESCAP and IGC TRACECA Strategy)

Medium/long term

1. implementation of 'Single window' and 'One-stop shop' Methodology with Uzbekistan and Kyrgyzstan (*Recommendations of IGC TRACECA, SPECA*);
2. further development of Customs Broker service (*in line with Provisions of MLA*);
3. implementation of Information Communication Technology based controls over transit movements like the automated Safe TIR and the GPRS in each Central Asian countries (*in line with IGC TRACECA Strategy and ADB Recommendations*);
4. ratification of the standards (including axle limits) provided in Conventions and international transport agreements (Minsk Agreement, 1999), without exception throughout the Central Asian countries (*in line with TRACECA IGC Recommendations*);
5. conversion and implementation of road transport bilateral and multilateral agreements on a non-quota or quota-free basis (*in line with ADB, WB and IGC TRACECA Strategy Recommendations*);
6. acceptance of copies of passport of international transport drivers' to process multiple entry visa applications for a minimum period at least one year (*in line with ADB Recommendations*);
7. contribute to a more effective regional cooperation process with neighbouring governments (CARs), towards political support/decisions to:
  - Formulate regionally relevant transport projects on international transport corridors with transit traffic (and consequently achieve higher attractiveness to private investors and IFIs)
  - Eliminate non-physical transit transport barrierson the basis of an associated road map and specific targets;
8. capacity building in central government and local authorities on policy, legal and implementation issues regarding PPP, with emphasis on transport;
9. prepare a prioritised list of mature transport projects (focus on road, rail and logistics centres) to be considered for PPP financing. These priority projects should have been previously soundly screened and approved by government, on the basis of Public Sector Comparator and economic/financial feasibility;
10. choose one-two relatively simple transport projects to start off with, in order to gradually build up public experience and private sector confidence (Almaty Ring Road may provide a good starting case example);
11. implementation of other international instruments that have been proposed for accession through supplementing the Technical Annex on Customs Documentation Procedures to MLA, or by other studies in recent years:
  - International Convention on the simplification and harmonisation of customs procedures 1974, as amended
  - Convention on Customs Treatment of Pool Containers Used in International Transport, 1994
  - Agreement concerning establishing Global Technical Regulations for Wheeled Vehicles, 1998
  - Convention on the liability of operators of transport terminals in international trade, 1991
12. Standardisation, harmonisation of customs documentation, codification and simplification of the procedures for international trade and transport under the AP for 2008-2009 of IGC TRACECA, a customs goods declaration (Single Administrative Document/SAD) instead of any other transit customs documents (*in line with EC Strategy Paper for Central Asia and IGC TRACECA Strategy Recommendations*);
13. creation and development of management of international border offices under one umbrella within relevant National administrations (National Interagency Transport Facilitation Committee) (*in line with WB, ADB and BOMCA Recommendations*);
14. accommodate risk management techniques in the border administration and infrastructure through implementation of ASYCUDA computerised customs management system (*in line with IGC TRACECA Strategy, ADB, BOMCA and UNDP Recommendations*).



### **7.3.2 Kyrgyzstan**

#### Short term

1. elaboration of master plan for transport sector development;
2. establishment of National Interagency Transport Facilitation Committee (or revitalising the TRACECA National Commission activities) in order to identify border crossing problems, devise solution and monitor of implementation of provisions national legislation, international conventions, regional treaties and bilateral agreements (*Recommendations of IGC TRACECA, SPECA*);
3. accession to the Customs Convention on Containers, 1972 (*Recommendations UN ECE, UN ESCAP and IGC TRACECA Strategy*);
4. transposition into national law of the two conventions to which Kyrgyzstan has acceded but not enacted at national level – the TIR Convention, 1975 and the Customs Convention on the Temporary Importation of Commercial Road Vehicles, 1956 (*Recommendations UN ECE, UN ESCAP and IGC TRACECA Strategy*);
5. cooperation and Coordination with the EU funded projects, CAREC/ADB, WB and MOTC of Kazakhstan, Tajikistan and the services under the Vice Prime Minister responsible for transport in Uzbekistan and other relevant State and Private agencies for the purpose of elaboration of the Coordinated Action Plan (short, medium, long-term) for Regional Transport Strategy Development;
6. identification and elimination of violations of Conventions, International Treaties and Regional Agreements in the field of trade and international transport (*in line with international law/Vienna Convention 1969*);
7. proceed with final adjustments regarding the existing legal and regulatory framework for concessions, in order to achieve international standards. Main areas to improve upon:
  - List of public assets allowed for concessions
  - Tendering procedures
  - Standard model of a concession agreement;
8. establish clear government policy and targets regarding PPP in transport and also define clearly the expected role of:
  - various government departments/agencies/institutions
  - local authorities
  - private stakeholdersin the PPP project planning/implementation and administration processes;
9. boost the process of improving investment climate by systematically
  - Speeding up transition reform in areas like market liberalisation and small-scale privatisation, financial sector, large scale privatisation, enterprise restructuring and competition policy, reforms of infrastructure
  - Intensifying fight against corruption,
  - Promoting transparency, consistency and objectivity of law enforcement (good governance);
10. set up a PPP unit (task force) and support its role in order to become fully and effectively operational. The following issues have to be implemented:
  - Legal, organisational and operational set up
  - Staffing
  - Staff training;
11. capacity building in central government and local authorities on policy, legal and implementation issues regarding PPP, with emphasis on transport;
12. appoint an experienced foreign consultant on transport PPP for the following main issues:
  - Assist government to put priorities and set up an initial/realistic country specific action plan with day-to-day targets, pre-screen potential projects, establish systematic communication channels with IFIs etc)

- Increase awareness at central government level
  - Provide systematic on-the-job training for the specialised-to-be public sector staff
  - Set up and organise/staff a PPP unit
13. identify one or two simple and mature transport projects (preferably on road and logistics centres) to be considered for PPP financing. Maturity means that these projects should have been previously soundly screened and approved by government on the basis of Public Sector Comparator and economic/financial feasibility;
  14. furthermore consider and ensure compatibility of existing legislation with the concessions legal framework (e.g. local currency convertibility, land and equity ownership etc);
  15. seek the assistance of IFIs from early stages in order to formulate bankable transport PPP projects with a viable financing plan;
  16. efficient application of provisions of Multilateral Investments Guarantee Agency (MIGA Convention, 1985) in the field of development of transport infrastructure (*in line with EC Strategy Paper for Central Asia and IGC TRACECA Strategy*);
  17. approval of Multimodal Transport Regional Agreement (or TA to the MLA) and Model Law of Freight Forwarding to be adopted by a future meeting of IGC TRACECA, elaborated by PS of TRACECA IGC;

### Medium/long term

1. implementation of 'Single window' and 'One-stop shop' Methodology (*Recommendations of IGC TRACECA Strategy, SPECA*);
2. further development of Customs Broker service (*in line with Provisions of MLA*);
3. implementation of Information Communication Technology based controls over transit movements like the automated Safe TIR and the GPRS (*in line with ADB Recommendations*);
4. ratification of the standards (including axle limits) provided in Conventions and international transport agreements (Minsk Agreement, 1999), without exception throughout the Central Asian countries (*in line with TRACECA IGC Strategy Recommendations*);
5. conversion and implementation of road transport bilateral and multilateral agreements on a non-quota or quota-free basis (*in line with ADB, WB and IGC TRACECA Strategy Recommendations*);
6. acceptance of copies of passport of international transport drivers' to process multiple entry visa applications for a minimum period at least one year (*in line with ADB Recommendations*);
7. implementation of other international instruments that have been proposed for accession through supplementing the Technical Annex on Customs Documentation Procedures to MLA, or by other studies in recent years:
  - International Convention on the simplification and harmonisation of customs procedures 1974, as amended
  - Convention on Customs Treatment of Pool Containers Used in International Transport, 1994
  - Agreement concerning establishing Global Technical Regulations for Wheeled Vehicles, 1998
  - Convention on the liability of operators of transport terminals in international trade, 1991
  - Work of Crews in International Road Transport (AETR), 1970
  - Dangerous Goods by Road (ADR), 1957
  - Perishable Foodstuffs (ATP), 1970
8. standardisation, harmonisation of customs documentation, codification and simplification of the procedures for international trade and transport under the AP for 2008-2009 of IGC TRACECA, a customs goods declaration (Single Administrative Document/SAD) instead of any other transit customs documents (*in line with EC Strategy Paper for Central Asia and IGC TRACECA Strategy Recommendations*);
9. creation and development of management of international border offices under one umbrella within relevant National administrations (National Interagency Transport Facilitation Committee) (*in line with WB, ADB and BOMCA Recommendations*);

10. contribute to a more effective regional cooperation process with neighbouring governments (CARs), towards political support/decisions to:
  - Formulate transport projects on international transport corridors with transit traffic (and consequently achieve higher attractiveness to private investors and IFIs)
  - Eliminate non-physical transit transport barrierson the basis of an associated road map and specific targets;
11. accommodate risk management techniques in the border administration and infrastructure through implementation of ASYCUDA computerised customs management system (*in line with IGC TRACECA Strategy, ADB, BOMCA and UNDP Recommendations*).

### **7.3.3 Tajikistan**

#### Short term

1. elaboration of master plan for transport sector development;
2. establishment of National Interagency Transport Facilitation Committee (or revitalising the TRACECA National Commission activity) in order to identify border crossing problems, devise solution and monitor of implementation of provisions national legislation, international conventions, regional treaties and bilateral agreements (*Recommendations of SPECA*);
3. accession to the following international conventions (*Recommendations UN ECE, UN ESCAP and TRACECA Strategy*):
  - Customs Convention on the Temporary Importation of Commercial Road Vehicles, 1956
  - Customs Convention on Containers, 1972
  - International Convention on the Harmonisation of Frontier Controls of Goods, 1982
4. cooperation and coordination with the EU funded projects, CAREC/ADB, WB and MOTC of Kazakhstan, Kyrgyzstan and the services under the Vice Prime Minister responsible for transport in Uzbekistan and other relevant State and Private agencies for the purpose of elaboration of the Coordinated Action Plan (short, medium, long-term) for Regional Transport Strategy Development;
5. identification and elimination of violations of conventions, international treaties and regional agreements in the field of trade and international transport (*in line with international law/Vienna Convention 1969*);
6. proceed with final adjustments regarding the existing legal and regulatory framework for concessions, in order to achieve international standards. Main areas to improve upon:
  - List of public assets allowed for concessions
  - Tendering procedures
  - Standard model of a concession agreement;
7. establish clear government policy and targets regarding PPP in transport and also define clearly the expected role of :
  - various government departments/agencies/institutions
  - local authorities
  - private stakeholdersin the PPP project planning/implementation and administration processes;
8. boost the process of improving investment climate by systematically:
  - SPEEDING up transition reform in areas like market liberalisation and small-scale privatisation, financial sector, large scale privatisation, enterprise restructuring and competition policy, reforms of infrastructure;
  - intensifying fight against corruption;
  - promoting transparency, consistency and objectivity of law enforcement (good governance)
9. furthermore consider and ensure compatibility of existing legislation with the concessions legal framework (e.g. local currency convertibility, land and equity ownership etc);

10. set up a PPP unit and support its role in order to become fully and effectively operational. The following issues have to be implemented:
  - legal, organisational and operational set up;
  - staffing;
  - staff training;
11. appoint an experienced foreign consultant on transport PPP for the following main issues:
  - Assist government to put priorities and set up an initial/realistic country specific action plan with day-to-day targets, pre-screen potential projects, establish systematic communication channels with IFIs etc)
  - Increase awareness at central government level;
  - Provide systematic on-the-job training for the specialised-to-be public sector staff;
  - Set up and organise/staff a PPP unit;
12. efficient application of Provisions of MIGA (Multilateral Investment Guarantee Agency) Convention (1985) in the field of development of transport infrastructure (*in line with EC Strategy Paper for Central Asia and TRACECA Strategy*);
13. approval of Multimodal Transport Regional Agreement (or TA to the MLA) and Model Law of Freight Forwarding to be adopted by a future meeting of IGC TRACECA, elaborated by PS of TRACECA IGC;

Medium/long term

1. implementation of 'Single window' and 'One-stop shop' Methodology (*Recommendation of IGC TRACECA Strategy, SPECA*);
2. further development of Customs Broker service (*in line with Provisions of MLA*);
3. Implementation of Information Communication Technology based controls over transit movements like the automated Safe TIR and the GPRS (*in line with TRACECA IGC Strategy and ADB Recommendations*);
4. ratification of the standards (including axle limits) provided in Conventions and international transport agreements (Minsk Agreement, 1999), without exception throughout the Central Asian countries (*in line with TRACECA IGC Strategy Recommendations*);
5. seek better coordination of various International Institutions (IFIs) active in the Central Asian Region, for more effective action towards real country and regional needs;
6. capacity building in central government and local authorities on policy, legal and implementation issues regarding PPP, with emphasis on transport;
7. prepare a prioritised list of mature transport projects (focus on road, rail and logistics centres) to be considered for PPP financing. These priority projects should have been previously soundly screened and approved by government, on the basis of Public Sector Comparator and economic/financial feasibility;
8. conversion and implementation of road transport bilateral and multilateral agreements on a non-quota or quota-free basis (*in line with ADB, WB and IGC TRACECA Strategy Recommendations*);
9. acceptance of Copies of passports of international transport drivers' to process multiple entry visa applications for a minimum period at least one year (*in line with ADB Recommendations*);
10. standardisation, harmonisation of customs documentation, codification and simplification of the procedures for international trade and transport under the AP for 2008-2009 of IGC TRACECA, a customs goods declaration (Single Administrative Document/SAD) instead of any other transit customs documents (*in line with EC Strategy Paper for Central Asia and IGC TRACECA Strategy Recommendations*);
11. creation and development of management of international border offices under one umbrella within relevant National administrations (National Interagency Transport Facilitation Committee) (*in line with WB, ADB and BOMCA Recommendations*);

12. contribute to a more effective regional cooperation process with neighbouring governments (CARs), towards political support/decisions to:
  - formulate transport projects on international transport corridors with transit traffic (and consequently achieve higher attractiveness to private investors and IFIs);
  - eliminate non-physical transit transport barriers;on the basis of an associated road map and specific targets;
13. accommodate risk management techniques in the border administration and infrastructure through implementation of ASYCUDA computerised customs management system (*in line with IGC TRACECA Strategy, ADB, BOMCA and UNDP Recommendations*).

#### **7.3.4 Uzbekistan**

##### Short term

1. efficient implementation of Transport Strategy Master Plan and its Action Plan;
2. establishment of National Interagency Transport Facilitation Committee (or revitalising of activities of TRACECA National Commission) in order to identify border crossing problems, devise solution and monitor of implementation of provisions national legislation, international conventions, regional treaties and bilateral agreements (*Recommendations of IGC TRACECA, SPECA*);
3. cooperation and coordination with the EU founded projects, CAREC/ADB, WB and MOTC of Kazakhstan, Kyrgyzstan, Tajikistan and other relevant State and Private agencies for the purpose of elaboration of the Coordinated Action Plan (short, medium, long-term) for Regional Transport Strategy Development;
4. identification and elimination of violations of conventions, international treaties and regional agreements in the field of trade and international transport (*in line with international law/Vienna Convention 1969*);
5. reformulate the existing Concession Law and concessions-related regulations, in order to achieve full compliance with international standards. Main areas to improve upon:
  - selection procedure,
  - definition of the concerned sectors,
  - discrimination against foreign investors,
  - dispute settlement procedures,
  - security instruments;
6. furthermore, consider and ensure compatibility of existing legislation with the concessions legal framework (e.g. local currency convertibility, land and equity ownership etc);
7. establish clear government policy and targets regarding PPP in transport and also define clearly the expected role of:
  - various government departments/agencies/institutions;
  - local authorities;
  - private stakeholders;in the PPP project planning/implementation and administration processes;
8. boost the process of improving investment climate in the country by systematically:
  - speeding up transition reform in areas like market liberalisation and small-scale privatisation, financial sector, large scale privatisation, enterprise restructuring and competition policy, reforms of infrastructure;
  - intensifying fight against corruption;
  - promoting transparency, consistency and objectivity of law enforcement (good governance);
  - liberalisation of convertibility regulations;
9. seek better coordination of various International Institutions (IFIs) active in the Central Asian region, for more effective action towards real country and regional needs;

10. set up a PPP unit and support its role in order to become fully and effectively operational. The following issues have to be implemented:
  - legal, organisational and operational set up;
  - staffing;
  - staff training;
11. appoint an experienced foreign consultant on transport PPP for the following main issues:
  - Assist government to put priorities and set up an initial/realistic country specific action plan with day-to-day targets, pre-screen potential projects, establish systematic communication channels with IFIs etc)
  - Increase awareness at central government level
  - Provide systematic on-the-job training for the specialised-to-be public sector staff
  - Set up and organise/staff a PPP unit;
12. seek the assistance of IFIs from early stages in order to formulate bankable transport PPP projects with a viable financing plan;
13. efficient application of provisions of Multilateral Investments Guarantee Agency (MIGA Convention, 1985) in the field of development of Transport Infrastructure (*in line with EC Strategy Paper for Central Asia and IGC TRACECA Strategy*);
14. approval of Multimodal Transport Regional Agreement (or TA to the MLA) and Model Law of Freight Forwarding to be adopted by a future meeting of IGC TRACECA, elaborated by PS of TRACECA IGC;

Medium/long term

1. implementation of 'Single window' and 'One-stop shop' Methodology (*Recommendations of IGC TRACECA Strategy, SPECA*);
2. further development of Customs Broker service (*in line with Provisions of MLA*);
3. implementation of Information Communication Technology based controls over transit movements like the automated Safe TIR and the GPRS (*in line with ADB Recommendations*);
4. ratification of the standards (including axle limits) provided in Conventions and international transport agreements (Minsk Agreement, 1999), without exception throughout the Central Asian countries (*in line with TRACECA IGC Strategy Recommendations*);
5. conversion and implementation of road transport bilateral and multilateral agreements on a non-quota or quota-free basis (*in line with ADB, WB and IGC TRACECA Strategy Recommendations*);
6. contribute to a more effective regional cooperation process with neighbouring governments (CARs), towards political support/decisions to:
  - formulate transport projects on international transport corridors with transit traffic (and consequently achieve higher attractiveness to private investors and IFIs);
  - eliminate non-physical transit transport barriers;on the basis of an associated road map and specific targets;
7. capacity building in central government and local authorities on policy, legal and implementation issues regarding PPP, with emphasis on transport;
8. prepare a prioritised list of mature transport projects (focus on road, rail and logistics centres) to be considered for PPP financing. These priority projects should have been previously soundly screened and approved by government, on the basis of Public Sector Comparator and economic/financial feasibility;
9. acceptance of copies of passport of international transport drivers' to process multiple entry visa applications for a minimum period at least one year (*in line with ADB Recommendations*);
10. implementation of other international instruments that have been proposed for accession through supplementing the Technical Annex on Customs Documentation Procedures to MLA, or by other studies in recent years:

- International Convention on the simplification and harmonisation of customs procedures 1974, as amended;
  - Agreement concerning establishing Global Technical Regulations for Wheeled Vehicles, 1998;
  - Convention on the liability of operators of transport terminals in international trade, 1991;
  - Dangerous Goods by Road (ADR), 1957;
11. standardisation, harmonisation of customs documentation, codification and simplification of the procedures for international trade and transport under the AP for 2008-2009 of IGC TRACECA, a customs goods declaration (Single Administrative Document/SAD) instead of any other transit customs documents (*in line with EC Strategy Paper for Central Asia and IGC TRACECA Strategy Recommendations*);
  12. creation and development of management of international border offices under one umbrella within relevant National administrations (National Interagency Transport Facilitation Committee) (*in line with WB, ADB and BOMCA Recommendations*);
  13. accommodate risk management techniques in the border administration and infrastructure through implementation of ASYCUDA computerised customs management system (*in line with IGC TRACECA Strategy, ADB, BOMCA and UNDP Recommendations*).

## **8 Summary, findings and conclusions**

As clearly envisaged by the MLA, the transport industry in the Central Asian countries cannot only be viewed on a national basis. Transport needs to become gradually a more open and competitive market for the following reasons:

- changes in interregional trade patterns;
- the fast growth of China transit trade;
- the increasing economic interest of Europe in the Central Asia countries as trading partners; and,
- the growing awareness in all the Central Asia republics of the importance of facilitated international exchange for sustained economic welfare and growth.

There is now a pressing need to pool efforts at a regional level, and to adjust to the new demands of international traffic and transit, from the side of both the transport providers and agents (forwarders) and the governments who set the rules for transport operation and organisation.

A review of the transport legal framework in the various countries shows that past government interventions have been at best half-hearted, very often fragmentary, inconsistent and inadequate, suffering from imbalances and unexploited opportunities. Prevailing legislation at large parts is still from Soviet origin and not adapted to the needs of free flow of international traffic and the development of modern form of haulage. The problems experienced concerning the regulation of the liability issue in the field of multimodal transport are an illustrative example.

Acknowledging that technical and administrative harmonisation in transport is the forerunner for regional integration, the priority benchmarks established by the project for legal approximation and harmonisation to ensure full participation in the regional/international road haulage market are the following:

- accession to at least the 7 International UNECE Conventions and Agreements related to transport endorsed by the UNESCAP Resolution 48/11;
- compliance with EU Directive No 96/53 regulating road vehicle standards;
- meeting MLA requirements.

Generally although there is progress towards these goals, the current situation shows significant lack of accession to (and compliance with) these international transport laws, though with differences from country to country. Reliance on bilateral agreements and unilateral implementation has so far led to an excessively fragmented regulatory environment, Uzbekistan being an illustrative example for that. Superfluous bilateral arrangements should be replaced with multilateral road transport agreements which should become the primary regulatory basis for regional cooperation and harmonisation in the transport field.

Concerning vehicle standards, the issue has been raised by the PS IGC TRACECA that application of the Cholpon Ata agreement could become a restriction on the entry of the Central Asian road vehicles to the territory of other countries, notably the European countries. It is the consultant's view (shared by CAREC and others) that application of the Cholpon Ata agreement would not oblige countries to change domestic weights and dimension standards if different. It would only oblige them to accept the regional standards for regional traffic. Thus, the consultant sees this as a two phased process, adopting the systems of the Cholpon Ata agreement first and then dealing with the harmonisation of weights and dimensions as a second step.

The diagnostic work undertaken by the project reveals that existing national legislation is inadequate for various reasons, although different from country to country:

- existing technical and professional regulation is considered insufficient for assuring acceptable standards for equipment and professional qualifications;



- there is a suspicion that economic/fiscal regulation is applied in an arbitrary and inconsistent way;
- the existing legislative base is full of loopholes.

In the field of vehicle weights, the consultant, confirming the analysis of the Minsk Agreement done in a former TRACECA project, recommends the countries to reject the divergent reservations on axle weight.

The most advanced national law is considered the draft transport code of Kazakhstan currently under consideration in the Kazakh Parliament, which is seen therefore as a first benchmark for national legal harmonisation. The consultant's analysis of the draft code, in particular the regulations on road transport, shows that it represents a consistent and coherent piece of legislation. The language of the draft code is comprehensible and the structure makes it possible to find relevant regulations fast. However, from our analysis it appears that several areas have not been regulated sufficiently or have been left out altogether, for example, regulations on drivers' hours, qualification of carriers, handling of tachograph charts and several specific aspects of liability. Furthermore some of the provisions could be streamlined in order to shorten the entire draft.

A general observation throughout the region has been a deficient road safety situation and regulation. Governments should regard the level of road deaths and the cost to the economies of the Central Asian countries with greater importance. Currently there is a serious lack of statistical information on the subject, calling for more systematic data collection on accidents, accident investigation, black spot analysis, and the adoption of safety initiatives to improve the situation. It will be important in this regard to take stock of the safety measures applied with success in the OCDE world. The objective is to ensure the alignment of the Central Asian countries with the standards and methods of safety control for road vehicles set out in the UN ECE 1997 Agreement.

Despite an encouraging economic and political environment (case of especially Kazakhstan), the consultant sees that considerable training of public officials is needed for the development of Public Private Partnerships (PPP) for transport network development. There is also a lack of suitable institutional and regulatory structures for efficient and impartial PPP implementation. In the opinion of the consultant, there is a need to set up and operate a PPP unit (at a regional or national level) in the form of a focused, dedicated and experienced team. The PPP legal base with its associated enabling environment put in place with World Bank assistance by Kazakhstan could be proposed as a regional benchmark for the Central Asian countries.

Apart from required improvements of the legal base, the continued identification and elimination of violations of international conventions and/or regional agreements (MLA) is an important step towards bringing transport policy in compliance with international standards.

Overall, the phased action plan proposed by the consultant for addressing identified shortcomings has been divided into actions performed by the project and medium/longer term actions to be carried out by the beneficiaries.

Within the context of the project's activities, it is proposed that commenced activities are completed, although these activities may need to continue beyond the time remaining for the project. These medium-term actions comprise specific legislative changes in the field of road transport. Guidelines for legal amendments or new legislation will be drafted in close cooperation with the relevant authorities. Much of the work should be carried out in collaboration with other ongoing programmes.

Long-term actions include especially topics such as safety and environmental issues, because they require a longer adapting period, legislative changes as well as a change in mentality. Some areas, such as customs procedures, should be handled in conjunction with other programmes such as BOMCA. It is hoped that the structures to be established by this project, particularly the High Level Group, will enable longer term regional cooperation. The consultant refrained from including some aspects, though important and in need of harmonisation, into its action plan for the following reasons:

“One stop shop”: This customs related issue has been widely covered by earlier TRACECA projects and the concept has been left to national authorities to implement. It requires not only lengthy training and institutional strengthening, but also investments in border structures. Longer term assistance can be expected from international agencies such as OCSE and the EU BOMCA project.

Fees and tariffs: Also here an earlier TRACECA project has already produced detailed proposals for a more transparent road tariff scheme. Political sensitivities, however, have impeded implementation of the issue. Without a clear indication that there is the political will to make progress on this complex issue it does not seem advisable to set up a new EWG on this subject.

The action plan proposed for the project is consistent with the revised project objectives which require:

1. the establishment of legislative frameworking principles and proposals, reflecting TRACECA MLA and strategy as well as international/EU standards;
2. the establishment of legal harmonisation principles to establish a regional market for the road transport sector in Central Asia;
3. a preliminary qualitative scanning of existing logistic centres, needs assessment and catalogue of good practice, as a precursor for the 2006 TRACECA project on “International Logistics Centres/Nodes Network in Central Asia).

It has been agreed in the Inception Phase of the project, that it would be far from realistic considering the project’s implementation period and resources, to expect as project output substantive drafting of laws, the achievement of a harmonised legislative framework for regional transport, the elaboration of a bankable feasibility study for a region wide logistics networking concept, or even coordinated national transport policies.

**International conventions and agreements**



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## **Annex 1: International conventions and agreements**

### **TIR Convention, 1975**

#### Purpose of the Convention

To facilitate the international carriage of goods by road vehicle by simplifying and harmonising administrative formalities in the field of international transport, in particular at frontiers.

#### Major obligations of the Contracting Parties

- (a) To allow goods carried under the TIR procedure to be transported without the payment or deposit of import or export duties and taxes at Customs office *en route*.
- (b) To cause to be published the list of the Customs offices of departure, Customs offices *en route* and Customs offices of destination approved by it for accomplishing TIR operations.
- (c) To consult other Contracting Parties to agree upon corresponding frontier and upon their opening hours.
- (d) To communicate to other Contracting Parties, on request, information necessary for implementing the provisions of the Convention, and particularly information relating to the approval of road vehicles or containers and to the technical characteristics of their design.

### **International convention on the harmonisation of frontier controls of goods, 1982**

#### Purpose of the Convention

The Convention aims at facilitation of international movement of goods by reducing the requirements for completing formalities as well as the number and duration of controls applied to all goods being imported or exported or in transit, when being moved across one or more maritime, air or inland frontiers.

#### Major Obligations of the Contracting Parties

- (a) To establish national and international coordination of control procedures and of their methods of application covering all relevant border control authorities;
- (b) To provide adequate resources at border stations, which means that they have to be provided with:
  - qualified personnel in sufficient numbers consistent with traffic requirements;
  - equipment and facilities suitable for inspection, taking into account the mode of transport, the goods to be checked and traffic requirements;
  - official instructions to officers for acting in accordance with international agreements and with current national provisions
- (c) To provide relevant information to other Contracting Parties on their request
- (d) To provide simple and speedy treatment of goods in transit, especially when carried in containers
- (e) To establish cooperation with adjacent countries to facilitate passage of the goods:
  - endeavour to arrange for the joint control of goods and documents, thought the provision of shared facilities;
  - endeavour to ensure that the following correspond;
  - opening hours of frontier posts,
  - the control services operating there,
  - the categories of goods
  - the modes of transport, and
  - the international Customs transit procedures accepted or in use there

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<sup>1</sup> The Convention applies to all control services at border crossing points of the Contracting Parties: customs, medico-sanitary, veterinary, phytosanitary inspections, control of compliance with technical standards, quality control measures.

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## **Customs Convention on Containers, 1972**

### Purpose of the Convention

To develop and facilitate international carriage by container.

### Major obligations of Contracting Parties

- (a) To grant temporary admission to containers fulfilling the requirements laid down in the Convention, whether loaded with goods or not, which shall be re-exported within three months (with possible extension) from the date of importation.
- (b) To grant temporary admission to accessories and equipment of temporarily admitted containers.
- (c) To communicate to one another, on request, the information necessary for implementing the provisions of the Convention, and more particularly information relating to the approval of containers and to the technical characteristics of their design.

## **Convention on road traffic (Vienna, 8 November 1968)**

### Purpose of the Convention

To facilitate international road traffic and to increase road safety through the adoption of uniform traffic rules.

### Major Obligations of Contracting Parties

- (a) To take appropriate measures to ensure that the rules of the road conform in substance to the provisions of the Convention (no penalty required).
- (b) To take appropriate measures to ensure that the rules concerning the technical requirements to be satisfied by motor vehicles and trailers conform to the Convention.
- (c) To admit to the territories in international traffic motor vehicles, trailers, etc, which fulfil the conditions laid down in the Convention and whose drivers fulfil the conditions laid down in the Convention.
- (d) To communicate to any other Contracting Party which requests the information necessary to determine the identity of the person in whose name a motor vehicle or a trailer is registered if the vehicle has been involved in an accident.
- (e) To ensure that any measures which Contracting Parties have taken or may take either unilaterally or under bilateral or multilateral agreements to facilitate international road traffic conform to the object of the Convention.

## **Convention on Road Signs and Signals, 1968**

### Purpose of the Convention

To facilitate international road traffic and to increase road safety by keeping uniformity of road signs, signals and symbols and of road markings.

### Major obligations of Contracting Parties

- (a) To accept the system of road signs, signals and symbols and road markings described in the Convention and to undertake to adopt it as soon as possible.
- (b) To undertake to replace or supplement, not later than four years from the date of entry, any sign, symbol, etc. which is used with a different meaning from that assigned to in the Convention.

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- (c) To undertaken to replace, within fifteen years from the date of entry, any sign, symbol, etc. which does not conform to the system prescribed in the Convention.
  - (d) To limit the number of types of sign and marking they adopt to what is strictly necessary, although the Contracting Parties are not required to adopt all the types of signs and markings prescribed in the Convention.

### **Customs convention on the international transport of goods under cover of TIR carnets (TIR Convention) (Geneva, 14 November 1975)**

#### Purpose of the Convention

To facilitate the international carriage of goods by road vehicle by simplifying and harmonising administrative formalities in the field of international transport, in particular at frontiers.

#### Major obligations of Contracting Parties

- (a) To allow goods carried under the TIR procedure to be transported without the payment or deposit of import or export duties and taxes at Customs office en route
- (b) To cause to be published the list of the Customs offices of departure,
- (c) Customs offices en route and Customs offices of destination approved by it for accomplishing TIR operations
- (d) To consult other Contracting Parties to agree upon corresponding frontier and upon their opening hours.
- (e) To communicate to other Contracting Parties, on request information necessary for implementing the provisions of the Convention, and particularly information relating to the approval of road vehicles or containers and to the technical characteristics of their design.

### **Customs convention on the temporary importation of commercial vehicles (Geneva, 18 May 1956)**

#### Purpose of the Convention

To apply provisions similar to that of the Customs Convention on the Temporary Importation of Private Road Vehicles (New York, 4 June 1954), so far as possible, to the temporary importation of commercial road vehicles and, in particular, to provide for the use, for those vehicles, of the Customs documents prescribed for private road vehicles in order to facilitate international movement of goods.

#### Major obligations of Contracting Parties

- (a) To grant temporary admission without payment of import duties and import taxes and free of import prohibitions and restrictions, subject to re-exportation and to the other conditions laid in the Convention, to vehicles imported and used in international road traffic for commercial use.
- (b) To allow the driver and other member of the crew of the vehicle to import temporarily a reasonable quantity of personal effects.
- (c) To admit the fuel in the ordinary supply tanks of vehicles without payment of import duties and import taxes and free of import prohibitions and restrictions.
- (d) To admit component parts for the repair of particular vehicle already temporarily imported without payment of import duties and import taxes and free of import prohibitions and restrictions.
- (e) To endeavour not to introduce Customs procedures which might have the effect of impeding the development of international commercial road traffic.
- (f) To endeavour to place Customs offices and posts close together and to keep them open during the same hours in order to expedite Customs procedures contiguous.

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**Convention on the contract for the international carriage of goods by road (CMR)  
(Geneva, 19 May 1956)**

Purpose of the Convention

To standardise the conditions governing the contract for the international carriage of goods by road, particularly with respect to the documents used for such carriage and to the carrier's liability.

Major obligations of Contracting Parties

To ensure that the Convention is applied to every contract for the carriage of goods by road in vehicles for reward, when the place of taking over of the goods and the place designated for delivery, as specified in the contract, are situated in two different countries, of which at least one is a Contracting Party.

**International convention on the simplification and harmonisation of customs procedures,  
1974, as amended**

Purpose of the Convention

To contribute effectively to the development of international trade and exchanges by simplifying and harmonising Customs procedures and practices and by fostering international co-operation without compromising appropriate standards of Customs control,

Major obligations of Contracting Parties

- (a) To promote the simplification and harmonisation of Customs procedures and, to that end, to conform, in accordance with the provisions of this Convention, to the Standards, Transitional Standards and Recommended Practices in the Annexes to the Convention.
- (b) To notify reservations to recommended practices in the specific annexes/chapters accepted to the depositary, review the reservations every 3 years, inform the depositary if reservations are to be continued
- (c) To apply, in particular, the following principles:
  - the implementation of programmes aimed at continuously modernising Customs procedures and practices and thus enhancing efficiency and effectiveness,
  - the application of Customs procedures and practices in a predictable, consistent and transparent manner,
  - the provision to interested parties of all the necessary information regarding Customs laws, regulations, administrative guidelines, procedures and practices,
  - the adoption of modern techniques such as risk management and audit-based controls, and the maximum practicable use of information technology,
  - co-operation wherever appropriate with other national authorities, other Customs administrations and the trading communities,
  - the implementation of relevant international standards,
  - the provision to affected parties of easily accessible processes of administrative and judicial review,

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## **Convention on customs treatment of pool containers used in international transport (1994)**

### Purpose of the Convention

To enhance the efficient use of containers in international transport, by facilitating administrative procedures, in order to provide for a reduced transport of empty units and preventing that not the same containers, which have been previously imported or exported, have to be exported or imported again.

### Major obligations of Contracting Parties

- (a) To grant admission to pools containers, without payment of import duties and taxes, free of import prohibitions or restrictions of an economic character, without limitations as to use in internal traffic and without requiring, on their importation and exportation, customs documents and security, provided that the following conditions are complied with: containers have been previously exported or will be subsequently re-exported, or that an equal number of containers of the same type have been previously exported or will subsequently be re-exported;
- (b) Under the agreement setting up the Pool, the Pool members:
  - exchange among themselves containers in the course of international transport of goods;
  - keep records, for each type of container, in the course of international transport of goods;
  - undertake to deliver to one another the number of containers of each type necessary to offset, over periods of 12 months, the outstanding balances of the accounts so kept, so as to ensure a balance for each Pool member between the number of containers of each type which he has placed at the disposal of the Pool and the number of Pool containers of these same types at his disposal in the territory of the Contracting Party in which he is established. The competent Customs authorities of that Contracting Party may extend the period of 12 months.
- (c) Communicate to other Contracting Parties, on demand and in so far as their laws permit, the information required to implement the provisions of this Convention.
- (d) Decide whether containers placed at the disposal of the Pool by any Pool member established in its territory shall meet the conditions contained in its legislation concerning admission and unrestricted use in internal traffic on its territory.

## **Agreement concerning the establishment of global technical regulations for wheeled vehicles, equipment and parts which can be fitted and / or be used in wheeled vehicles (1998)**

### Purpose of the Convention

To establish a global process by which Contracting Parties from all regions of the world can, using transparent procedures, jointly develop global technical regulations for achievement of higher levels of safety, environmental protection, energy efficiency, and anti - theft performance of wheeled vehicles, equipment and parts which can be fitted and / or be used on wheeled vehicles, ensuring that due and objective consideration is given to the existing technical regulations of Contracting Parties, and to the UN ECE Regulations. Also to reduce technical barriers to international trade through harmonising existing technical regulations of Contracting Parties, and UN/ECE Regulations, and developing new global technical regulations governing safety, environmental protection, energy efficiency and anti -theft performance of wheeled vehicles, equipment and parts which can be fitted and/or be used on wheeled vehicles, consistent with the achievement of high levels of safety and environment protection and the other above-stated purposes.



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### Major obligations of Contracting Parties

- (a) To apply this Agreement in parallel with the 1958 Agreement, without affecting the institutional autonomy of either Agreement;
- (b) The representatives of Contracting Parties shall constitute the Executive Committee of this Agreement and shall meet at least annually in that capacity;
- (c) To implement the Agreement, including the setting of priorities for activity under this Agreement;
- (d) A Contracting Party that votes in favour of establishing a global technical regulation through either (1) harmonisation of existing regulations; or (2) establishing new technical regulation in the Global Registry, or (3) amending established global technical regulation, shall be obligated to submit the technical Regulation to the process used by that Contracting Party to adopt such a technical Regulation into its own laws or regulations and shall seek to make a final decision expeditiously;
- (e) To use the global technical regulations established under this Agreement as a basis for their technical regulations.

### **Convention on the liability of operators of transport terminals in international trade (1991)**

#### Purpose of the Convention

To eliminate or reduce the deficiencies in the legal regimes applicable with regard to the international carriage of goods, in part of transport-related services, by establishing uniform rules concerning liability for loss of, damage to or delay in handling over such goods while they are in the charge of operators of transport terminals and are not covered by the laws of carriage arising out of conventions applicable to the various modes of transport.

#### Major obligations of Contracting Parties

- (a) To ensure that the provisions of the Conventions are applied to every operator of transport terminal, who falls, in accordance with the rules of the private international law, under the regulation of the present Convention, performing in the course of his business<sup>2</sup> the transport-related services<sup>3</sup> with respect to goods involved in international carriage<sup>4</sup> in an area under his control or in respect of which he has a right of access or use<sup>5</sup>.
- (b) To apply the provisions of the Convention in respect of goods taken in charge by the operator on or after the date of entry into force of this Convention in respect of that State
- (c) To ensure that the defences and limits of liability provided for in the Convention apply in any action against the operator in respect of loss of or damage to the goods, as well as delay in handing over the goods, whether the action is founded in contract, in tort or otherwise
- (d) To ensure that the Provisions of the Convention are applied with respect to: special rules on dangerous goods; rights of operator to enjoy security in goods; limitation of actions of two years
- (e) To ensure recognition of a contract concluded by an operator or any other document issued by the operator pursuant to the Convention, being null and void to the extent it derogates, directly or indirectly, from the provisions of this Convention
- (f) To provide uniformity to the application of Convention within the State

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<sup>2</sup> The Convention applies only if the transport-related services constitute a commercial activity of an enterprise. The applicability of the Convention is determined on the basis of the transport-related services such enterprises perform, irrespective of the name or designation of the enterprise. However a person is not considered an operator whenever he is a carrier under applicable rules of law governing carriage.

<sup>3</sup> For the purposes of this Convention transport-related services include such services as storage, warehousing, loading, unloading, stowage, trimming, dunnaging and lashing – typically performed by the operator, a commercial enterprise which handles goods before, during or after the carriage of goods.

<sup>4</sup> International carriage means that the places of departure and destination must be “identified” as being located in different States already at the time when the goods are taken in charge by the operator.

<sup>5</sup> The scope of application includes the performance of various transport-related services even if no safekeeping is involved.

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## **Work of Crews in International Road Transport (AETR), 1970**

The European Agreement concerning the work of Crews of Vehicles engaged in International Road Transport (AETR), of 1st July 1970 is commonly referred to as 'AETR Agreement'. It aims at improving road safety and regulating drivers' hours' rules for working and rest times. Today, 42 Contracting Parties have signed and ratified the AETR Agreement.

The working hours and rest periods of professional drivers are defined in the AETR. Its objectives are threefold: improve road safety, regulate certain conditions of employment in international road transport and ensure the observance of those regulations. Since its adoption in 1970, the AETR has been modified four times in order to align it with European Union social legislation. The last amendment, which introduces the digital tachograph to allow more reliable checking of driving times and rest periods, entered into force on 16 June 2006. This date was also the start of the four-year transition period for the introduction of the digital tachograph by non-European Union contracting parties to the AETR.

## **Customs Container Convention, 1956**

### Purpose of the Convention

To develop and facilitate international carriage by container.

### Major obligations of Contracting Parties

- (a) To grant temporary admission to containers fulfilling the requirements laid down in the Convention, whether loaded with goods or not, which shall be re-exported within three months (with possible extension) from the date of importation.
- (b) To grant temporary admission to accessories and equipment of temporary admitted containers.
- (c) To communicate to one another, on request, the information necessary for implementing the provisions of the Convention, and more particularly information relating to the approval of containers and to the technical characteristics of their design.

## **Dangerous Goods by Road (ADR), 1957**

The European Agreement concerning the International Carriage of Dangerous Goods by Road was created in Geneva on 30 September 1957 under the auspices of the United Nations Economic Commission for Europe, and it entered into force on 29 January 1968. The Agreement itself was amended by the Protocol amending article 14 (3) done in New York on 21 August 1975, which entered into force on 19 April 1985.

The key article of the Agreement is Article 2, which states that, apart from some excessively dangerous goods, other dangerous goods may be carried internationally in road vehicles subject to compliance with:

- the conditions laid down in Annex A for the goods in question, in particular as regards their packaging and labelling; and
- the conditions laid down in Annex B, in particular as regards the construction, equipment and operation of the vehicle carrying the goods in question.

Annexes A and B have been regularly amended and updated since the entry into force of ADR. They were entirely revised and restructured between 1992 and 2000, and a first version of the restructured annexes entered into force on 1 July 2001. New amendments entered into force on 1 January 2003 and on 1 January 2005, consequently, a third consolidated "restructured" version was published as document ECE/TRANS/175, Vol. I and II ("ADR 2005"). The new structure is consistent with that of the United Nations Recommendations on the Transport of Dangerous Goods, Model Regulations, the International Maritime Dangerous Goods Code (of the International Maritime Organisation), the Technical Instructions for the Safe Transport of Dangerous Goods by Air (of the International Civil Aviation Organisation) and

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the Regulations concerning the International Carriage of Dangerous Goods by Rail (of the Intergovernmental Organisation for International Carriage by Rail). The lay-out is as follows:

**Annex A:** General provisions and provisions concerning dangerous articles and substances:

Part 1: General provisions; Part 2: Classification; Part 3: Dangerous goods list, special provisions and exemptions related to dangerous goods packed in limited quantities; Part 4: Packing and tank provisions; Part 5: Consignment procedures; Part 6: Requirements for the construction and testing of packaging, intermediate bulk containers (IBCs), large packaging and tanks; Part 7: Provisions concerning the conditions of carriage, loading, unloading and handling.

**Annex B:** Provisions concerning transport equipment and transport operations:

Part 8: Requirements for vehicle crews, equipment, operation and documentation; Part 9: Requirements concerning the construction and approval of vehicles.

### **The Agreement on the Transport of Perishable Foodstuffs (ATP), 1970**

The ATP Agreement entered into force on 21 November 1976. The Agreement and its annexes have been regularly amended and updated since their entry into force by the Working Party on the Transport of Perishable Foodstuffs (WP.11) of the Economic Commission for Europe's Inland Transport Committee in order to take into account technological evolutions.

This agreement lays down a set of rules and standards that are to be applied to the international transport of certain perishable foods (fruit and vegetables are outside the scope of the agreement). It provides a multi-lateral agreement between Signatory Countries (Contracting Parties) for overland cross-border carriage of perishable foodstuffs. Its purpose is to facilitate international traffic by setting common internationally recognised standards.

It is an Agreement between States, and there is no overall enforcing authority. In practice, highway checks are carried out by Contracting Parties, and non-compliance may then result in legal action by national authorities against offenders in accordance with their domestic legislation. ATP itself does not prescribe any penalties. It applies to transport operations (excluding air transport) performed on the territory of at least two of the Contracting Parties. In addition, a number of countries have also adopted the ATP as the basis for their national legislation.

There are three annexes:

- Annex 1: definitions of and standards for special equipment for the carriage of perishable foodstuffs;
- Annex 2: selection of equipment and temperature conditions to be observed for the carriage of quick(deep)-frozen and frozen foodstuffs;
- Annex 3: temperature conditions for the carriage of certain foodstuffs which are neither quick (deep)-frozen nor frozen.

Functions:

- Lists foodstuffs to be carried in accordance with the ATP agreement and sets the warmest permissible temperature of the load.
- Lays down common standards for temperature controlled transport vehicles such as road vehicles, railway wagons and (for sea journeys under 150km) sea containers.
- Sets down the tests to be done on such equipment to ensure that it meets the standards.
- Provides the system of certification of equipment, which conforms to the standards.
- Requires all contracting parties to recognise certificates issued in accordance with the agreement by the competent authorities of other contracting parties.

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## Single Administrative Documents (SAD)

The implementation of the single administrative document had the following essential characteristics:

1. To ensure openness in *national administrative requirements*. This openness constitutes the basis for any progress and simplification.
2. *Rationalisation of and reduction in administrative documentation* (of a statistical, tax, transport, exchange-control, etc. nature) which have resulted from the introduction of the SAD and which, formerly, required the use of different administrative forms, and the limitation of the administrative documents which may be required in support of the SAD.

That is why this is not exclusively a customs document but a single administrative document. The only cases where additional or different documents may continue to be required in types of trade for which the SAD applies were expressly mentioned in Article 205, 5 of Regulation No. 2454/93.

That covers in particular:

- The documents expressly created by EU acts or provided for by such acts or for the implementation of specific regulations, the application of which cannot be implemented solely by the use of the single document. (For example: additional documents intended for the payment of export refunds).
- The documents required under the terms of international conventions compatible with the treaty (For example: document 302 for the transport of goods for NATO).
- The documents required from operators to enable them to qualify at their request, for an advantage or specific facility.

3. *To reduce the amount of information and standardise the required data.*

The legislation on the SAD establishes, procedure by procedure, the maximum list of information which can be required of operators. In this system, boxes called "optional boxes for the Member States" enable these to collect information from areas which are not yet completely harmonised at EU level.

The EU Customs provisions also provide for, procedure by procedure, the minimum list of the boxes which have to be completed. (See the new provisions table, legend and notes to table)

4. *The harmonisation of the data* likely to be transmitted from one Member State to another, together with the establishment of common codes, constitutes a language understandable in all the Member States and avoids linguistic problems for the documents which are drawn up in other countries. The SAD therefore fits within this framework and provides the basis for coordinated development of computerised systems.

### Maintenance of the existing facilities

The introduction of the SAD has not affected in any way the existence of the existing facilities, thus:

- the simplified procedures are maintained in their entirety;
- the use of loading lists is always possible in the event of groupage/consolidation

Annex 2

**MIGA convention**



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## **Annex 2: MIGA convention**

Multilateral Investment Guaranty Agency created under the MIGA Convention (1985) as a member of the World Bank Group promoting foreign direct investment (FDI) into developing countries. MIGA mitigates risks and facilitates foreign direct investment into developing countries by:

- insuring investors against political or non commercial risks;
- mediating in disputes between investors and governments;
- advising governments on attracting investment; and
- sharing information through online investment information services.

Since its inception in 1988, MIGA has issued nearly 850 guarantees worth more than \$16 billion for projects in 92 developing countries. MIGA is committed to promoting socially, economically, and environmentally sustainable projects that are above all, developmentally responsible. They have widespread benefits, for example, generating jobs and taxes, and transferring skills and know-how. Local communities often receive significant secondary benefits through improved infrastructure.

MIGA specialises in facilitating investments in high-risk, low-income countries and conflict-affected areas. By partnering with the World Bank and others, MIGA is able to leverage finance for guarantee trust funds in these difficult or frontier markets. The agency also focuses on supporting complex infrastructure projects and promoting investments between developing countries.

All Central Asian states are contracting parties of MIGA Convention. Since 1995 Central Asian countries (including Turkmenistan) have implemented only 10 projects under guarantees issued by MIGA (no projects have been implemented in Tajikistan). Apart from the development of transport infrastructure only one project has been implemented in Kyrgyzstan (construction of Manas Airport in Bishkek).

### **MIGA Member Countries (171)**

*Status at 31 July 2007*

#### *Industrialised/Developed Countries (23)*

Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, Netherlands, Norway, Portugal, Slovenia, Spain, Sweden, Switzerland, United Kingdom, United States

#### *Developing Countries (148)*

*AFRICA:* Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Congo (Democratic Republic of), Congo (Republic of), Côte d'Ivoire, Djibouti, Equatorial Guinea, Ethiopia, Eritrea, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Nigeria, Rwanda, Senegal, Sierra Leone, Seychelles, South Africa, Sudan, Swaziland, Tanzania, Togo, Uganda, Zambia, Zimbabwe

*ASIA/PACIFIC:* Afghanistan, Bangladesh, Cambodia, China, East Timor, Fiji, India, Indonesia, Korea, Republic of, Lao People's Democratic Rep., Malaysia, Maldives, Micronesia, Mongolia, Nepal, Pakistan, Palau, Papua New Guinea, Philippines, Samoa, Singapore, Solomon Islands, Sri Lanka, Thailand, Vanuatu, Vietnam

*MIDDLE EAST/NORTH AFRICA:* Algeria, Bahrain, Egypt, Iran (Islamic Republic of), Israel, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, Qatar, Saudi Arabia, Syrian Arab Republic, Tunisia, United Arab Emirates, Yemen

*EUROPE/CENTRAL ASIA:* Albania, Armenia, Azerbaijan, Belarus, Bulgaria, Bosnia-Herzegovina, Croatia (Republic of), Cyprus, Estonia, Georgia, Hungary, Kazakhstan, Kyrgyz Republic,

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Latvia, Lithuania, Macedonia, Malta, Moldova, Montenegro, Poland, Romania, Russian Federation, Serbia, Slovak Republic, Tajikistan, Turkey, Turkmenistan, Ukraine, Uzbekistan

*LATIN AMERICA/CARIBBEAN:* Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Nicaragua, Paraguay, Panama, Peru, St. Kitts & Nevis, St. Lucia, St. Vincent, Suriname, Trinidad & Tobago, Uruguay, Venezuela.

**Data on Documentation and Delays from the GTZ Project  
“Promoting Regional trade in Central Asia”**





### Annex 3: Data on documentation and delays from the GTZ Project “Promoting Regional trade in Central Asia”

#### (a) Results of mapping seminars in Kyrgyzstan

Imports	Washing powder		Beer		Lathe		Refrigerator	
	min	max	min	max	min	max	min	max
Number of documents needed	5	17	5	21	4	15	5	17
Number of signatures needed	8	16	8	16	7	16	8	16
Days needed to get through the whole procedure	1	10	3	30	1	3	1	10

Exports	Potatoes		Textiles		Milk		Construction materials	
	min	max	min	max	min	max	min	max
Number of documents needed	5	22	5	22	4	20	4	22
Number of signatures needed	7	21	7	21	5	19	6	19
Days needed to get through the whole procedure	5	15	5	15	3	5	3	15

#### (b) List of documents needed for export/import operations in Tajikistan

According to applicable legislative and normative acts for export/import operations the following documents are needed:

1. Contract/agreement between partner organisations with bank details ID
2. Certificate of origin issued by Chamber of Commerce of Tajikistan
3. Certificate of quality issued by State Agency on Standardisation, Certification and Metrology
4. Quarantine certificate for agriculture products issued by the State Quarantine Office in the Ministry of Agriculture
5. Veterinary certificate from the Veterinary Department of the Ministry of Agriculture
6. Bank Confirmation about full payment in advance for goods noted in Presidential Decree № 424 from 24.02. 96 (cotton, aluminium, collared metals).
7. Insurance policy for exporting goods if the exporter is a state enterprise.
8. ABBAT (International Association of Automobile Carriers) licence issued by the Ministry of Transport.
9. Quota and licence for export and import of alcohol and tobacco by Corporation “Khurokvori”
10. Confirmation on tax payments from export of cotton and aluminium by Tax authorities

Also for special and strategic goods, the following are needed:

1. Permission of Government to export aluminium products
2. Permission of Government to export cotton
3. Permission of Government to export ferrous and non-ferrous metals
4. Permission of the Committee for Precious Metals and the Ministry of Industry to export and import precious, half-precious metals, scraps
5. Permission of Committee for Precious and Gemstones to export and import precious stones
6. Permission of the Ministry of Health to export and import medicines

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7. Permission of the Nature Protection Committee to import chemical, mineral and poisonous materials
  8. Permission of the Ministry of Communication to import radio-electronic equipment.
  9. Bank form for foreign currency outflow
  10. Special Government Decrees for export/import:
    - Uranium and other radioactive elements
    - Blasting materials
    - Drug and poisons
    - Weapons
    - Military equipment
    - Art handiwork, antiquities

**Summary of national transport laws in sectors other than road transport**



#### Annex 4: Summary of national transport laws in sectors other than road transport

##### Republic of Kazakhstan

National Legislation	Dates
Order of The Ministry of Transport and Communications on approving the opening Rules and closing the railway stations for performing of all or separate operations	23.07.2004
Order of the Ministry of Transport and Communications on approving the normative legal acts in the field of transportation of passengers, baggage and cargoes by sea transport a Republic Kazakhstan	06.07.2004
Law on internal water transport	06.07.2004
Resolution on approving the use Rules by main railway network	16.04.2004
Order of the Ministry of Transport and Communications on approving the Rules of transportation of passengers, baggage rail freight traffic of Republic Kazakhstan	18.03.2004
Resolution of the Government on approving the Rules of a referring the water objects to categories of navigable and list of navigable waterways, opened for navigation	29.01.2004
Order of the Ministry of Transport and Communications on approving the Rules of tolerance of air highways to usages by air courts	09.12.2003
Resolution of the Government on approving a List of railroad tracks, falling into main railway network	29.11.2003
Resolution on determination of charge per registration of mortgage of ship or building ship and on approving the Rules of presentation information on registrations of mortgage of ship or building ship	17.04.2003
Resolution on approving the Rules of accommodation of seaports for their constructions	27.02.2003
Resolution on approving a List of obligatory services of seaport	24.02.2003
Law on commercial seafaring	17.01.2002
Resolution on approving a Program an changes rail-freight traffic of Republic Kazakhstan on 2001-2005	04.06.2001
Resolution on approving an Order of using oil and terminal in seaport Actau for export of oil for limits of customs territory of Republic Kazakhstan	24.07.1997
Resolution on approving a list of railway points of gap on State border of Republic Kazakhstan	

##### Kyrgyz Republic

National Legislation	Dates
Law of the Kyrgyz Republic on amendments to the Law of the Kyrgyz Republic on railway transport	24.07.2003
The Regulations on operative planning of carriage of goods and procedure of completing of the registration form on Kyrgyz Railway (to articles 16, 17, 18 Charter of Railway of Kyrgyz Republic)	27.06.2001
Decree on approving the rules on operative planning of carriage of goods and procedure of completing of the registration form on Kyrgyz Railway	27.06.2001
Decree on approving the regulations on services provided for carriage of	12.02.2001

<b>National Legislation</b>	<b>Dates</b>
passengers, luggage, heavy luggage as well as goods for personal (domestic) use by Rail of Kyrgyz Republic	
Law No. 90 on railway transport	09.07.1998
Law 18 for the accession to the Agreement between Azerbaijan, Georgia, Turkmenistan and Uzbekistan on coordination of railway transport activity	27.03.1997
Resolution of the Cabinet of Ministries on the draft Agreement between the Government of Kyrgyzstan and the Government of Islamic Republic of Iran in the field of railway communication	
The Resolution of the Cabinet of Ministers No. 315/2000 on the approval of the Statute of National Railway Company	2000
Cooperation Agreement between the Government of Kyrgyzstan and the Government of Georgia in the field of railway transport signed in Tbilisi	22 .04. 1997
Agreement between the Government of Kyrgyzstan and the Government of Kazakhstan on the features of legal regulation of the railway enterprises', establishments' and organisations' activity signed in Almaty	18 .04. 1997

#### **Republic of Tajikistan**

<b>National Legislation</b>	<b>Dates</b>
Agreement between the Government of Tajikistan and the Government of Byelorussia on the air traffic signed in Minsk 2001 Ratified by Decree 482, 3.11.2001	3.11.2001
Agreement between the Government of Tajikistan and the Government of Islamic Republic of Iran on the international air traffic signed 2002 approved by Government Resolution 418/2002	2002
Agreement between the Government of Tajikistan and the Government of Turkish Republic on the international air traffic signed 1995, Ratified by Resolution No 666/ 2.11. 1995	1995

#### **Republic of Uzbekistan**

<b>National Legislation</b>	<b>Dates</b>
Law on rail freight traffic	15.04.1999
Law 766-1/1999 on railway transport	15.04.1999

Annex 5

**Responses to legal questionnaires**



## Annex 5: Responses to legal questionnaires

Questionnaire on border crossing	Country: Kazakhstan
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1. Please mark in the relevant box to answer “yes”, “no” and “yes to [country(ies)]” to confirm the provision is false or true and indicate the relevant international, regional or bilateral convention/agreement

Facilitation measure	No	Yes/Yes, only with (country)	Convention / Agreement
International road transporters are not charged with state or locally imposed fees for road usage, excluding fees commonly charged for commercial usage of roads, bridges, tunnels and other facilities		yes	Tax Code of the RK and on other compulsory budget payments with amendments and additions adopted in 22.05.2007 Law of the RK on Automobile Transport of 4 July 2003, No 476-II. Convention on transit trade activities in landlocked countries, signed in New York on 8 July 1965 was ratified by Republic of Kazakhstan on 20 March 2007 #238
Permit for a road transporter to execute international operations is granted by the national government in the country of registration, and there is no practice to require certification of this permit other than from presenting it by the permit holder.		yes	Law of the RK on Automobile Transport of 4 July 2003, No 476-II
International transporter of another state is to have registration documents and number plates and marking of the state of its registration, while it is accepted that trailers and semi-trailers may have number plates, marking and be registered with another state.		yes	Law of the RK on Automobile Transport of 4 July 2003, No 476-II
Frontier, customs, veterinary and phytosanitary and other border crossing controls applied to transportation of animals, perishable goods and emergency recovery freights is performed under simplified and prioritized procedures		yes	Order of the Acting Chairman of the Customs Control Agency of the Republic of Kazakhstan “On Approval of the Rules and Referring Participants in Foreign Economic Activity to the Minimal Risk Category and Application of Simplified Customs Clearance Procedures” 29 May 2003 under # 258
Road transportation of freights exceeding weights and dimensions ultimately accepted in the territory of your country, is subject to the provisions of the Minsk Agreement of 1999 on weights and dimensions of vehicles		yes	Law of the RK on Automobile Transport of 4 July 2003, No 476-II; Rules for organization and implementation of transportation of bulky and heavy cargoes across the territory of the Republic of Kazakhstan, approved by Governmental Regulation on 24 January 2005.

**2. Please indicate whether it is national rules or internationally (including regional, bi-lateral) agreed provisions apply to performance of frontier, customs, veterinary and phytosanitary and other border crossing controls in your country.**

Instruction on the Order for interacting and locating of supervising authorities aimed at border control activities through the state border of the Republic of Kazakhstan dated of October 10, 2002 under #47, approved by the Chairman of the National Security Committee, Minister of transport and communications of the Republic of Kazakhstan dated of October 23, 2002 under #353-I, Minister of Health of the Republic of Kazakhstan dated of January 14, 2003 under #34 and Minister of agriculture of the Republic of Kazakhstan dated of January 7, 2003 under #3

**3. Please tell whether a special committee is established in your country to coordinate border crossing facilitation initiatives.**

**4. Please inform whether system of information exchange on external border crossings exists and with what countries?**

Governmental Decree of the Republic of Kazakhstan dated of July 6, 2004 under #740 "On signing of Memorandum of Understanding aimed at enhancing automobile freight transport within the framework of UN SPECA of the Central Asian states"