



**THIRD ANNUAL MEETING
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**ТРЕТЬЕ ЕЖЕГОДНОЕ ЗАСЕДАНИЕ
МЕЖПРАВИТЕЛЬСТВЕННОЙ КОМИССИИ ТРАСЕКА**
г. Ереван / Республика Армения, 9-10 октября 2003 г.

Technical Annex to the Basic Agreement on TRACECA Investment

- The States Participants of the Basic Multilateral Agreement on International Transport for Development of the Europe-Caucasus-Asia Corridor (hereinafter referred to as Parties);
- Recognizing that secure transport routes to world markets will be important to the future prosperity of the Parties;
- Expressing their aspiration to fruitful and mutually beneficial economic and trade cooperation;
 - Aware of the fact that account must be taken of all the legal technical, commercial, environmental and financial factors in reaching decisions on transit transportation in cooperation with other interested States, as well as with local and foreign companies investing on their territory;
- Respecting market economy rules in the transport sector, such as the rules and regulations applicable in EU countries and wishing to contribute to the development of international rules and practices governing transit transport activities;
- Conscious of the fact that states have an important role to play in reducing investment and transit risks, by forming integrated transport systems as well as through the facilitation of bilateral or multilateral and mutually beneficial relations achieving peace, security and economic progress;
- Considering that the protection, promotion and treatment of foreign investment and investors, according to internationally acceptable standards and complying with the rules of international economic law constitute appropriate measures to develop the transport sector;
- Conscious of the adverse environmental consequences such investment might have;
- Determined to establish common rules and mechanisms safeguarding the effective operation of various transportation systems in accordance with the practices and usages in force in the international transport industry, and taking into consideration the provisions and principles of the Basic Multilateral Agreement and its annexed protocols;
- Having in mind the present conditions of international and transit transportation of the parties, the Parties agreed the following Technical Annex as an addition to the MLA, according to article 10 of the MLA.

Definitions and titles

For the purpose of the present Technical Annex:

1. Construction means the building of new infrastructure facilities concerning road transport, railway transport, water transport, air transport and pipelines as well as any new parts of such infrastructure facilities.

2. A TRACECA Route means an integrated Interstate Transportation System crossing the territories of more than one State; it can be defined:

- Either by specific transportation means and facilities constituting the said Interstate Transportation System;
- Or/and specific modes of transportation envisaged for the establishment of the said Interstate Transportation System;
- Or/and by specific goods transported through the said Interstate Transportation System.

A TRACECA Route shall be established each time by means of an interstate agreement between at least two Parties signatories to the MLA and the present Technical Annex.

The incorporation of such inter-state agreements into the Internal Legal Orders of the Participating Parties and their implementation shall be pursued in accordance with the constitutional and legislative provisions of those Parties.

3. TRACECA Investment means any project relating to:

- The rehabilitation of existing infrastructure facilities, including the revitalisation and/or reconstruction and/or refurbishment and/or expansion and/or modification of any existing infrastructure facility or any existing part of such a facility.
- The construction of new infrastructure facilities or any new part of an existing infrastructure facility.
- The operation of infrastructure facilities as resulting from either rehabilitation or construction activities.
- Any preliminary stages in terms of planning in view of activities, as set out above.
- Any investment on the territories of the Parties that, due to its contribution to the economic development of the Parties and its contribution to the increase of the movement of goods across a concrete TRACECA Route as described in Article 2 of the present Technical Annex.

3a. (Temporary)

A TRACECA Economic Interest Grouping, hereinafter TEIG, means an association of legal entities, based in at least two State Parties to the MLA. The TEIG has a legal personality itself and aims at the facilitation of the financial and commercial activities of its members.

3b. (Temporary)

A Guarantee Trust Fund means a mechanism covering any non-calculated risks emerging along a TRACECA Route, especially those risks covered under the MIGA Convention.

4. Integrated form of project implementation is the form of cooperation selected by the Parties for the establishment of an interstate transportation system (TRACECA Route) which entrusts a single legal entity or a group of legal entities, with two or more separate functions, as described in Article 8 of the present Technical Annex or any other form of integration.

5. The Inter-State Committee described in Article 9 of the present Technical Annex is the committee consisting of authorised representatives of all the Participating Parties to a TRACECA Route, empowered to monitor in the name and on behalf of such Parties, the implementation of their decision to establish one or more TRACECA Routes.

6. Maintenance means the technical activities necessary to preserve the infrastructure facilities of a TRACECA Route or any part of facility of such transportation system in good functional order, for the purpose for which such a system is intended, in accordance with applicable technical, safety and environmental standards.

7. Maintenance Entity is a legal entity or a group of legal entities established or selected pursuant to the present Technical Annex in order to undertake the function of Maintenance of an Interstate Transportation System (TRACECA Route).

8. Operation means the activities which are necessary for the continuous uninterrupted, proper and efficient functioning of the TRACECA Route (s) in accordance with applicable rules and regulations, as well as international Conventions and Treaties in force.

9. Operation entity is a legal entity or a group of legal entities established or selected pursuant to the present Technical Annex in order to undertake the operation of a TRACECA Route.

10. Other Legal Entities concerned referred to in Articles 4 and 7 of the present Technical Annex, means the Authorised Competent Entities described in Article 14 of the present Technical Annex.

11. Participating Parties means the Parties to the MLA on whose territory a TRACECA Route is established pursuant to the present Technical Annex.

12. Practices or Usages, referred to in the Preamble and Article 4 are the forms and manners of conducting specific technical, commercial and financial activities within a specific industry or market established through common use and applied by professionals operating within the same industry or market.

13. Project means the planning for and undertaking to carry out a specific activity or activities within the framework of a TRACECA Route established under the present Technical Annex.

14. Project Management is the mobilization of a multi-disciplinary team required for the implementation of the overall Project of the Rehabilitation or Construction of a TRACECA Route, or any infrastructure facility or part of it, overseeing and coordinating activities related to engineering, procurement, technical monitoring and supervision, Construction management and commissioning of such a Project within the applicable objective of time schedule, quality and costs.

15. Project Management Entity is the legal entity or a group of legal entities established or selected pursuant to the present Technical Annex in order to undertake the function of Project Management.

16. The Project Management Entity and the Operation Entity might be two different entities, acting in two different phases of the Project implementation and Operation, according to the provisions of

the present Technical Annex, unless the dual function of Project Management (before the completion date) and Project Operation (after the completion date) is entrusted to a single legal entity or a group of legal entities under the terms of Article 7, paragraph 2 of the present Technical Annex.

17. Specific Protocol or Specific Protocols means any subsequent agreement or agreements concluded by two or more Parties in the framework and in implementation of this Technical Annex in compliance with the principles and provisions of the Basic Multilateral Agreement and the procedures set out in the present Technical Annex to be annexed to the Basic Multilateral Agreement.

18. Rehabilitation means the revitalization, reconstruction, refurbishment, expansion or modification of any Interstate Transportation System or Transport Infrastructure facility or any existing part of such transport infrastructure facility.

19. The Emergency Committee described in article 9, paragraph 4 of the present Technical Annex is the committee consisting of authorised representatives of all the Parties, empowered to make recommendations on the coordination of all the steps measures and common actions to be taken by the government of each Party within its territory necessary to ensure the security and protection of the infrastructure facilities of the transport system(s) established pursuant to this Technical Annex, against events such as natural disasters, earthquakes, radioactive or chemical contamination, civil riots, acts of terrorism or sabotage, criminal damage and other events of similar nature.

20. Technical Annex means the present agreement which sets out the necessary framework in terms of procedures, rights and obligations of the Parties for the implementation of its scope of application, as well as for the protection of any third parties operating within the institutional framework established the Basic Multilateral Agreement and its Protocols and Technical Annexes.

Titles in the present Technical Annex are intended solely for ease of reference and should not be construed as affecting the interpretation of the provisions of this Technical Annex.

Article 1. General Commitment

The Parties will cooperate, within the framework of the Basic Multilateral Agreement, its Protocols and Technical Annexes and the present Technical Annex, in order to establish, under mutually acceptable terms and conditions, one or more TRACECA Route (s), by means of the Rehabilitation of the existing infrastructure facilities, the Construction, where appropriate, of new infrastructure facilities, the purchase of various transportation means and the Operation and Maintenance of these transportation facilities, under commonly accepted international practices and rules.

Article 2. Scope of application

1. For the purposes of Article 1, the Parties agreed to undertake or to pursue bilateral and/or multilateral negotiations with other Parties in order to determine by Specific Protocol(s) which existing transportation infrastructure facilities will be part of a TRACECA Route, which transportation means, to which goods, products and/or passengers the TRACECA Route rules will apply, when crossing their territory, as well as which infrastructure facilities and means they wish to be used as parts of one or more TRACECA Route to be established, maintained and operated pursuant to Basic Multilateral Agreement, its Protocol and Technical Annexes and the present Technical Annex and which new infrastructure facilities they accept to be constructed, operated and maintained on their territory as parts of the aforementioned TRACECA Route (s).

2. Without prejudice to the establishment of interconnections between two or more TRACECA Routes established pursuant the present Technical Annex, such TRACECA Routes could be considered as separate Projects, to be designed, financed, rehabilitated, constructed, operated and maintained in accordance with different technical, commercial, financial and environmental considerations. Each Party may agree with (an)other Party(ies) to establish more than one TRACECA Route.

3. For the purpose of assisting the increase of the movement of goods, products and/or passengers, the Parties, participants in a TRACECA Route, agree to undertake the obligation to protect the TRACECA Projects connected with a concrete TRACECA Route within their internal legal order, even if the TRACECA Project is placed on the territory of another Party participant in

that TRACECA Route. *(to add an article with an analysis of the TRACECA Project)*. This means that every party participating in a TRACECA Route undertakes the obligation not to deteriorate the conditions of transportation of goods of any investment, that is considered as a TRACECA investment unless this deterioration is directly connected with the real increase of costs for the said transportation.

Article 3. Interstate agreements for TRACECA Routes and TRACECA Investment provisions.

1. Every interstate agreement creating a concrete TRACECA Route should include as a minimum the following (a part of the usual provision of any interstate agreement):
 - Concrete description of the Route in terms of infrastructure facilities transportation means, goods or other specifications that could include.
 - List of international conventions, treaties or agreements, under which agreement full enforceability exists
 - brief description of TRACECA investments for the concrete TRACECA Route (infrastructure projects) and related TRACECA investments, for which the state and interstate performance Guarantee is in force
 - monitoring system of the operability of the TRACECA Route and appointment of the Interstate Committee that is responsible among other obligations for the Monitoring of the TRACECA Route.
2. Any inter-state agreement could envisage the creation of a Guarantee Trust Fund, on the basis of a Specific Protocol, if deemed necessary.

Article 4. Operation

1. Without prejudice to Article 8, paragraph 2 and taken into consideration the need to provide for rules ensuring efficient functioning of any TRACECA Route established pursuant to the Basic Multilateral Agreement and the present Technical Annex, the Operation of such TRACECA Route, if agreed by the Participating Parties to that concrete TRACECA Route, may be assigned to one Operation Entity, to be established or selected according to the principles, rules and procedures, which will be negotiated and agreed upon by the Participating Parties and, as appropriate, by Other Legal Entities Concerned.
2. The Operation Entity could enter into an Operation Agreement with the Participating Parties and, as appropriate, with Other Legal Entities Concerned, describing the principles and rules according to which the TRACECA Route established by these Parties shall be operated.
3. Without prejudice to Article 8 and unless otherwise expressly provided for in a Specific Protocol for the establishment of a TRACECA Route, one or more Operation Entity(s) may only provide transport services to transporters, forwarders and generally clients of the transportation means and transportation infrastructure facilities under specific transport agreements, following international standards and Usages of the transport industry.
4. The Operation Entity could have the form of a TEIG.

Article 5. Rehabilitation and Construction

1. Unless otherwise expressly provided for in the present Technical Annex, each Participating Party in implementing the decision of two or more Participating Parties relating to the establishment of one or more TRACECA Routes, maintains the right to rehabilitate the existing transportation infrastructure facilities, that are part of the TRACECA Route, which is crossing its territory, pursuant to the national legislation, rules and regulations in force in said Party.
2. The provisions of Paragraph 1 do not preclude the right of a Party to enter into a different arrangement with other Participating Parties, in view of rehabilitating and constructing the transportation infrastructure facilities of a TRACECA Route which is crossing their territories. To this effect, two or more Parties may decide to assign the design, Rehabilitation and Construction of the works lying within their territories to a legal entity or to group of legal entities established or selected as the Participating Parties may jointly decide.
3. In order to ensure the technical consistency and operational efficiency of one or more transportation infrastructure facilities that are part of a TRACECA Route to be established between

two or more Participating Parties, such Participating Parties agree to apply, when contracting out, as per Paragraph 1 and 2, the Rehabilitation and Construction of the national parts of one or more TRACECA Routes, commonly agreed technical specifications which are internationally recognised by the transport industry.

4. The Rehabilitation and/or Construction Entity could have the form of TEIG.

Article 6. Maintenance

1. The provisions of Article 5 similarly apply to the Maintenance of the rehabilitated or newly constructed transportation infrastructure facilities which are part of a TRACECA Route established pursuant to the present Technical Annex.

2. Subject to the provision of Article 4, paragraph 1, when an Operation Entity operates that transportation infrastructure facilities which are part of a TRACECA Route established pursuant to the present Technical Annex and should the Maintenance of such facilities be assigned to a legal entity or a group of legal entities, other than the Operation Entity as described in Article 4, the legal entity, or the group of legal entities, responsible for the Maintenance of such transportation infrastructure facilities shall operate under the control and supervision of the Operation Entity, as the Maintenance Agreement, to be made by virtue of this Article, and the Operation Agreement, provided for in Article 4 paragraph 2, shall expressly provides.

3. The Maintenance Entity could have the form of TEIG.

Article 7. Project Management

1. In implementing their decision to establish a TRACECA Route pursuant to the present Technical Annex the Participating Parties and as appropriate, Other Legal Entities Concerned, if they so agree, may decide to assign the overall responsibility of the feasibility study, design and supervision of a Rehabilitation and Construction of such a transportation infrastructure facility to a Project Management Entity to be established or selected by the Participating Parties and, as appropriate, by Other Legal Entities Concerned, according to mutually acceptable principles, rules and procedures which will be negotiated and agreed upon by the Participating Parties and, as appropriate, by Other Legal Entities Concerned.

2. Without prejudice to the provisions of Article 8, paragraph 2 nothing precludes the Participating Parties and, as appropriate, the Other Legal Entities Concerned, from assigning the function of the Project Management Entity to the Operation Entity described in Article 4 paragraph 1.

3. The Project Management Entity could have the form of TEIG.

Article 8. Integrated Forms of Project Implementation

1. Taking into consideration the specific technical, commercial and financial requirements for the establishment of a TRACECA Route pursuant to the present Technical Annex, the Participating Parties might agree to assign two or more functions among those contemplated separately in Articles 4 to 7, to a single legal entity, or a group of legal entities, to be established or selected by the Participating Parties as more specifically described in:

a) Article 5, paragraph 2, in combination with Article 6 paragraph 1, for the functions of Rehabilitation / Construction and Maintenance.

b) Article 4, paragraph 1, in combination with Article 6 paragraph 2, for the functions of Maintenance and Operation.

c) Article 4, paragraph 1, in combination with Article 7 Paragraph 2, for the functions of Project management and operation.

d) Article 7, Paragraph 2, in combination with Article 6 Paragraph 2, for the functions of Project Management, Operation and Maintenance.

2. The Parties may adopt any other integrated form of Project Implementation, included in, but not limited to the integrated Operation of the TRACECA Route (s) and its transportation means and infrastructure facilities, in order to implement their own decision to establish one or more TRACECA Route (s) pursuant to the present Technical Annex.

3. The integrated form of Project Implementation could have the form of a TEIG.

Article 8A. TEIG

1. Members of a TEIG can only be state or private companies established under the legislation of their respective State Parties to the TRACECA MLA. At least two of the TEIG members shall have their central management or principal activities on the territory of their respective State Parties to the MLA.

2. The management of a TEIG may be exercised by one or more persons. A TEIG cannot manage nor control the individual activities of its members nor act as a holding company.

3. The assets of a TEIG, if any, are contributed by its members. A TEIG itself may not be a profit-making organisation. Any possible profits of that TEIG are deemed to be profits of its members and are distributed to its members according to their ratio of participation.

4. The members of a TEIG contribute to the coverage of expenses of the said TEIG according to their participation, but are jointly and wholly liable as regards their obligations to the said TEIG.

5. A TEIG has a relatively loose structure, and grants a legal personality and a minimum structure to a de facto co-operation of its members. The exact institutional structure of a TEIG is decided in the form of a Technical Annex on the basis of a specific agreement between the Parties to the MLA.

Article 9. Issues relating to the exclusive jurisdiction to the Parties

1. In implementing the decision to establish one or more TRACECA Route (s) pursuant to the present Technical Annex, the Participating Parties shall establish by separate specific Protocol (interstate agreement) the rules governing issues relating to the application by each Participating Party of its exclusive jurisdiction over its territory, as well as over the natural and legal persons operating within such territory, concerning issues including but not limited to social security and labor legislation, Construction regulations, licensing procedures, safety and health regulations, fiscal and customs issues and environmental protection legislation, relating to the Design, Financing, Rehabilitation, Construction, Maintenance and Operation of the transportation infrastructure facilities, which are placed on their own territory, of a TRACECA Route established pursuant to the present Technical Annex.

2. Unless otherwise expressly provided for in the Basic Multilateral Agreement its Protocols and Technical Annexes and the present Technical Annex, no party will modify its national legislation to the extent that such legislation will impair the conditions of design, financing, Rehabilitation, Construction, Maintenance and operation of a TRACECA Route established pursuant to the present Technical Annex, after the present Technical Annex and the Specific Protocol establishing a TRACECA Route subsequently annexed to the MLA enter into force. In case of inconsistency between the provisions of the present Technical Annex establishing a TRACECA Route subsequently annexed to the MLA and the national legislation of the Parties, the provisions of this Technical Annex and of the Specific Protocol shall prevail.

3. The Parties shall cooperate in order to establish by each Specific Protocol establishing a TRACECA Route, an authorised Interstate Committee (Subcommittee (s) of the IGC) which will be empowered to monitor, in the name and on behalf of Participating Parties the implementation of their decision to establish that concrete TRACECA Route established pursuant to the present Technical Annex.

The Parties shall cooperate in order to create, on the basis of the same Specific Protocol establishing a concrete TRACECA Route and the above mentioned Interstate Committee, an authorised Emergency Committee, which can coincide with the authorised Interstate Committee, which will make recommendations regarding the coordination of all the steps, measures and common actions to be taken by the Government of each Participating Parties within its territory, necessary to ensure the security and the protection of the transportation infrastructure facilities of this concrete TRACECA Route established pursuant to the present Technical Annex, against events such as natural disasters, earthquakes, radioactive and chemical contamination, civil riots, acts of terrorism or sabotage, criminal damage and other events of similar nature. Such events as well as the functions and powers of the Emergency Committee shall be determined by the Participating Parties, on a mutually acceptable basis for each concrete TRACECA Route established pursuant to the present Technical Annex.

5. The Specific Protocol(s) to the MLA creating a concrete TRACECA Route(s) pursuant to the present Technical Annex shall constitute an integral part of this Technical Annex and shall be in force only for the Parties that have signed these Specific Protocol(s).

Article 10. Protection of the Environment

In implementing the present Technical Annex, the Parties agree to develop tighter intergovernmental cooperation with a view to creating common institution(s) acting in accordance with international rules, such as those enunciated in the Kyoto Protocol to the United Nations Framework Treaty on Climate changes, taking into account local environmental conditions, and to implement common policies safeguarding the environment against any harmful effect caused by the Rehabilitation, Construction or Operation of transportation means or infrastructure facilities of a TRACECA Route established pursuant to the present Technical Annex (to be elaborated with special emphasis on maritime transportation issues, as well as transportation of hydrocarbons and various dangerous goods).

Article 11. Implementation in the National Legal Orders

1. The Parties shall take all the appropriate measures in order to incorporate and implement the provisions of the present Technical Annex in their National Legal Orders.
2. Where the present Technical Annex or the MLA provides for or implies the conclusion of a separate Protocol or Technical Annexes, to the MLA such Protocol (s) or Technical Annexes shall be negotiated and agreed upon by the Participating Parties, taking into consideration the specific requirements of any concrete TRACECA Route to be established pursuant to this Technical Annex. The incorporation and implementation of such Protocol(s) in the Internal Legal Orders of the Participating Parties shall be pursued in accordance with the relevant constitutional and legislative provisions of said Parties.
3. A Party may not involve the provisions of its Internal Legal Order as justification for its failure to perform its obligations under the MLA, its Protocols and Technical Annexes, the present Technical Annex and the Protocol(s) creating concrete TRACECA Route(s).

Article 12. State and Interstate Performance Guarantee

Each Party guarantees the proper and timely execution of its obligations arising out of the MLA its Protocols and Technical Annexes, as well as the present Technical Annex and Specific Protocol(s) creating concrete TRACECA Routes vis-à-vis all the other Participating Parties in the MLA or the other Participating Parties to a concrete Protocol creating a TRACECA Route. Each Party provides the same guarantee to any third Party, Natural Person or Legal Entity entering to an Agreement or Contract with this Party for the design, Rehabilitation, Construction, financing, Operation and Maintenance of Transportation Infrastructure Facilities and Operation of various transportation means or users of the above mentioned Infrastructure facilities and means that are part of a TRACECA Route established pursuant to the present Technical Annex.

Article 13. Settlement of Disputes

Any disputes arising between the Parties relating to the interpretation and the implementation of the MLA, its Protocols and Technical Annexes, as well as the present Technical Annex and the Protocol(s) creating concrete TRACECA Route(s) and any dispute arising between a Party and a third party relating to the interpretation and implementation of the above mentioned agreements and protocols and/or any contract or agreement which is made between a Party and the said third party for the implementation of a TRACECA Route, or directly connected with its Operation, shall be settled in accordance with the rules provided for in a separate Protocol to the MLA, which will be an addition to Article 12 of the MLA.

Article 14. Authorised Competent Entities

1. Each Party shall designate and notify to the other Parties the national authority, agency, state owned enterprise or any other authorised legal entity which will be responsible, according to its national legislation, for the implementation of the present Technical Annex in each one of the sectors (road, rail, maritime) covered by this Technical Annex.

The Parties accept and guarantee the obligations undertaken by these entities for the implementation of the present Technical Annex and the Specific Protocol(s) creating a concrete TRACECA Route(s) as their own obligations.

Article 15. Relation to the other International Agreements, Treaties and Conventions

The provisions of the present Technical Annex do not preclude the right of the Parties to have recourse to other forms of Intergovernmental Cooperation in the transport and trade sector. The provisions of the present Technical Annex may not be interpreted as modifying or terminating any other International Agreements Treaties and Conventions in force in the transport and trade sector, as well as any other International Agreements Treaties and Conventions concluded by the Parties with other states the purpose of which is related to the protection, treatment and promotion, within the territory of the Parties of foreign investments originating from these other states. [(and other International Agreements Treaties and Conventions related to transport and trade issues). (To be further elaborated the enforceability through the present Technical Annex of various International Agreements Treaties and Conventions that must apply for any concrete TRACECA Route)].

Article 16. Final provisions

1. The duration of this Technical Annex is _____
2. The Technical Annex shall be open for signature from the until the..... The present Technical Annex shall be subject to ratification by the Parliament or other competent bodies of the signatory States. Instrument of ratification shall be deposited with Depositary of MLA.
3. The present Technical Annex shall enter into force on the thirtieth day after the date of deposit of the third instrument of ratification by a State which is signatory to this Technical Annex. The present Technical Annex shall be open for accession from the date on which the Technical Annex is close for signature. The instruments of accession shall be deposited with the Depositary. For each Party, which shall deposit its instrument of ratification or accession after the present Technical Annex has entered into force, this Technical Annex shall enter into force on the date of such deposit with the Depositary.
4. The present Technical Annex is subject to the general principles of international law, including the Vienna Convention on the law of Treaties.

Article 17. Authentic texts

In witness whereof the undersigned, being duly authorised to that effect, have signed the present Technical Annex in English and Russian, in case of discrepancy, the English text shall prevail. The present Technical Annex is deposited with the Depositary which will retain it in its archives. Each of the Parties will receive from the Depositary a true copy of the present Technical Annex. The Depositary of this Technical Annex is equally requested to transmit an authentic copy of the present Technical Annex to the Secretary General of the United Nations for registration under the Article 102 of the Charter of the United Nations.

Done at _____.