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|  | **Support the Government of Azerbaijan in the legal approximation of the Rail, Road and Combined Transport to the EU Acquis**  Missions 63.544-63.942  (November 2016 to February 2017)  **Consolidated draft version**  **This missions are funded by**  **The European Union**  **To be revised by:**  **The Ministry of Transport**  Emblem of Azerbaijan.svg **of Azerbaijan** |

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# List of Acronyms, Abbreviations and Glossary

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| --- | --- |
| 7 Wises | Seven independent High level Rail experts chosen to elaborate the first white paper (position paper) on the railway situation in the EU |
| ADB | Asian Development Bank |
| ADIF | Spanish Rail Infrastructure Administration |
| ADR | European Agreement concerning the International Carriage of dangerous Goods by Road |
| ADY | Azerbaijan Railways |
| AETR | European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport |
| AIB | Accident Investigation Body |
| BU | Business Unit |
| CJSC | Closed Joint Stock Company |
| COTIF | Convention of International Carriage by Rail |
| CSI´s | Common Safety Indicators |
| CST´s | Common Safety Targets Indicators |
| CT | Combined Transport |
| EBRD | European Bank for Reconstruction & Development |
| EC | European Commission |
| EEAS | European External Action Service |
| EU | European Union |
| EU ACQUIS | European legislated laws |
| EUD | European Union Delegation |
| GDP | Gross Domestic Product |
| HR | HR or HHRR used to designate Human Resources (Manpower) |
| ICT | Information and Communication Technology |
| IM | Infrastructure Manager |
| IMTC | Inter-Ministerial Transport Committee |
| ITS | Intelligent Transport Systems |
| ME | Ministry of Economy |
| MOF  NTBT | Ministry of Finance  Non-technical Barriers to Trade |
| NGO | Non-Governmental organization |
| OECD | Organization for Economic Co-operation & Development |
| PMU | Project Management Unit |
| PPP | Public Private Partnership |
| RECAST | Reformulation of EU Directives |
| REFIT | Regulatory Fitness and Performance programme |
| RR | Rail Regulator |
| RTA | Resident Twinning Advisor |
| RU | Rail Undertaking |
| SA | Safety Authority |
| SC | Safety Certificate |
| Shift2Rail | Shift to Rail (means to shift loads from the road to the rail mode |
| SWOT | Strengths, Weaknesses, Opportunities, Threats; methodology to represent in one table managerial variables |
| TA  TBT | Technical Assistance  Technical Barriers to Trade |
| TEN´s | Trans-European Networks |
| ToR  TQM | Terms of Reference  Total Quality Management |
| TPI | Technical Periodical Inspection |
| TRACECA | Transport Corridor Europe-Caucasus-Asia |
| TRI | Technical Road Inspection |
| UIC | International Railways Union |
| UIRR | International Union for Road/Rail Combined Transport |
| UNECE | United Nation Economic Commission for Europe |
| UNIFE | Association of the European Rail Industries |
| WB | World Bank |
| WG | Working Group |
| WTO | World Trade Organisation |
| X-RAY | Expression used in management to indicate a diagnostic process |
|  |  |

1. **EXECUTIVE SUMMARY**

**Before coming to the results** of this peer to peer review on the approximation of the Azerbaijani transport legislation to the EU Acquis, for keeping fairness, once has to be outlined; the incepted situation is not so bad that it could be by taking into consideration that Azerbaijan has become to act again as an independent country only from the 12th November 1995. Some of the EU countries with historical consolidated governments were in more adverse situation as far as their own transport legislation was concerned.

**1.1 X-Ray of the Transport Governance: as far as the first crucial point of the governance is concerned,** it can be generally said that the transport sector in Azerbaijan is fragmented, both horizontally and vertically. Horizontally, the governance of the system is not only divided by modes (road, rail, etc.), but is further divided in semi-independent bodies, not clearly coordinated among themselves. The Ministry of transport seems not having a real power towards the companies (e.g. rail and road) that it should coordinate, but as well in other sectors this fragmentation is clear. For example, traffic lights in Baku are managed by two different entities, Road Police and Baku Transportation Agency, and are split not with reference to, e.g., a geographical criterion, but in a patchy way, that makes practically impossible any application of intelligent traffic systems. Vertically, on the same topic different entities intervene to reach a final decision (e.g. Ministry of Transport, Ministry of Finance, Ministry of Economy) without a clear procedure, that makes it necessary to establish coordinating bodies like the Coordinating Counsel on Transit Freight and the Centre for Economic Reforms & Communications. The final result is a substantial lack of coordination among modes in terms of vision, planning, investments, tariffs, accessibility and operations. Moreover, traffic forecasts, especially with regards to international relations, are probably more than double a reasonable target, don’t consider problems and opportunities of technological evolution and, above all, are elaborated “business as usual”, considering that competitors will not adapt their strategy on the bases of Azerbaijani decisions.

Rail

**1.2 Two words to the legal approximation to the EU Acquis: as far as the Azerbaijani approximation to the EU transport laws is concerned,** the EU Legislation, is an experienced guide and will automatically support the transport governance difficulties which are the result of a ministerial misalignment towards a missing common agreed Strategy and National Transport Plan.

**1.3 Framework recommendation of the road mode expert: for the Road,** regulatory and institutional reforms have to be completed beside the launching of the AETR, namely to establish provisions for vehicles which cannot be fitted with digital tachographs, to appoint a control authority empowered to check both premises and vehicles in road traffic, to organize an examination for obtaining the certificate of competence for transport managers, to control road transport operators with regard of compliance with all road transport applicable legislation, to perform checks both in premise of the operator and in road traffic, to stop vehicles in road traffic. For this aim, the appropriate legal base should be prepared.

Road

**1.4 Framework recommendation of the rail mode expert: for the Rail,** once Accident Investigation Body implemented (first is the first), the integrated railways separated into Infrastructure Manager and State rail commercial operator, Rail Regulator and Safety Authority established, a healthy competition can take place in the rail sector.

**1.5 Framework recommendation of the combined transport expert: for the specific case of the combined transport** Road/Rail/Road, the Council Directive 92/106/EC has to be introduced overtaking technical norms and by adapting the benefits to be offered to the logistic operators. Finally, if to survive in costs, the Azerbaijani Railways has to follow the recommendations of the first position paper of the 7 Wises which consist in making 50% more with 50% less. This ambitious but not impossible objective was successfully met in several European Railways.

CT

1. **FINDINGS AND RECOMMENDATIONS**

Road

**2.1 Road mode expert: recommendations, corresponding to the findings of this executive summary are for the Road as follows** (due to the many misalignments of the road with high impact on safety, security and unfair competence with the rail mode, the recommendations are more detailed):

1. To start the administrative procedures to create the legal base for practices provided by the Directive 2008/96/EC, as well as to set up the administrative tasks for institutional actors which will be involved and to identify the financial sources for financing of the practices;
2. To start the training of a sufficient number of road safety auditors as well as a number of specialists who will perform road safety inspections, road safety ranking and black spots management;
3. With regard of the cost of maintenance of the roads, the appropriate financial resources are to be identified. The best practices recommend a gradually introducing a system of direct collection of a toll from road users, on principle "to pay as use". Of course, if necessary, funds are to be completed from public budget and from special road fund collected from certain types of payments associated with road transport.
4. To take as standard for transport of dangerous goods by road the latest version of ADR Agreement, namely so called ADR 2017, and to focus more on enforcement, otherwise the Azerbaijani vehicles carrying dangerous goods may be sanctioned abroad. In addition, a procedure of translation of the agreement and its periodical amendments into Azerbaijani language should be applied as well as making the text publicly available for everyone. The instructions in writing for the drivers (4 pages) should be translated immediately and made available on-board of each vehicle, as a measure of safety;
5. To monitor the application of the ADR both for national and for international transport operations (issuance of approval certificates for vehicles, approval of packages, classification and labelling of chemicals etc.),
6. To improve permanently the quality of training of ADR drivers, of ADR safety advisers, of ADR traffic inspectors and of emergency intervention personnel;
7. To keep an eye on the security threats posed by high consequence dangerous goods and on ADR related provisions;
8. To take benefits of provisions of Directive 95/50/EC, which establishes a template check list for roadside control of dangerous goods and an international clasification of the risk posed by each infringement, by transposing this directive into national legislation;
9. To monitor and to enforce efficiently the TPI for all vehicles and TRI for commercial vehicles (M2, M3, N2, N3, O3, O4) and to create a database with inspections outcomes, to be used for a risk ranking system which will help to focus the enforcement resources to the transport companies with the highest risk of committing infringements related to technical condition of the vehicles.
10. To regulate the temporary suspension of the vehicle registration based on the outcome of TPI /TRI, till the defects are eliminated.
11. To implement the standards provided in Directive 2006/126/EC in Azerbaijani national legal and administrative systems and, if necessary, to ask assistance and to act to complete the full implementation of the Directive 2006/126/EC, with regard of: the content of the examination and characteristics of vehicle used for driving licence exams, the anti-forgery features of driving licence card, a unified list of driving licence categories, minimum ages for access to each category and an unified list of codes for restrictions, the initial and continuous training of driving examiners, as well as their supervision and monitoring, the mandatory medical fitness of the drivers and candidates, the training for some driving licence categories;
12. To keep the procedures for obtaining of the driving licence in a highest level of quality and security;
13. To implement the standards provided in Directive 2003/59/EC for the training and certification of all the professional drivers, not only of those who are in scope of AETR. If required, assistance can be offered.
14. For an appropriate implementation of standards provided in Regulation (EC) no. 1071/2009, the following steps are to be done:

* to include in scope of authorization for pursuing the road transport commercial activity all the vehicles operators, notwithstanding their type of organization (private person, legal person, NGO, state owned company, public institution etc.). It will lead to fair competition on the internal transport market;
* to define the conditions to by fulfilled for authorization as in Regulation (EC) no. 1071/2009, namely: to have an effective and stable establishment in Republic Azerbaijan, to be of good repute, to have appropriate financial standing, and to have the requisite professional competence.
* to appoint an authority /competent body to organize an examination for obtaining the certificate of competence for transport managers. In addition, it is recommended to regulate the possibility for the candidates to be trained prior examination by training centre(s) duly approved;
* to appoint an authority in charge with control of road transport operators with regard of compliance with all road transport applicable legislation. This authority should be able to perform checks both in premise of the operator and in road traffic. Also, this authority should be able /empowered to stop vehicles in road traffic. For this aim, the appropriate legal base should be prepared;
* to introduce a classification of the seriousness of infringements according the Regulation (EU) no. 2016/403[[1]](#footnote-2) and a risk ranking system for undertakings as to focus the control to the most problematic undertakings;
* to create an electronic register of the transport operators. It is recommended that the format of the data should comply with provisions of Commission Decision 2009/992/EU[[2]](#footnote-3). The data from the electronic register should be accessible to control authority, which will upload the controls and sanctions into the register.

1. With regard of international transport:

* it should be check and, if necessary, to adapt the definitions of passengers’ transport operations as in Regulation (EC) no. 1073/2009, as to have a common set of concepts with international best practices;
* it should be regulated a system of licensing of international transport operators as provided in Regulations (EC) no. 1072/2009 and 1073/2009, providing them with a number of certified true copies of the licence for each vehicle for which the financial standing condition is fulfilled. The forms should be based on the forms provided in above mentioned regulations;
* it should be created a system for cooperation with other competent authorities from other states for the aim of mutual assistance for the enforcement;
* it should be introduced in legislation a form of attestation of lawfully employment of foreign drivers in Republic of Azerbaijan, intended to be presented by the driver to foreign control authorities.

1. With regard of establishment of a fix price of a transport ticket, if this means that the transport is subsidised, the procedure and principles provided in the Regulation (EC) no. 1370/2007 on public passenger transport services by rail and by road should be applied.
2. To finish first, the implementation of the recommendations of July 2015 report,
3. To extend the application of social legislation to all transport operations, not only to international ones. The main challenge with this is the quantity, but the purpose of AETR is road safety and will be no significant effect only with application of AETR to international transport operations;
4. To implement the Directive 2006/22/EC as amended, which provides targets with regard of the yearly volume of control (as article 12 of AETR does for international transport), details about control procedure, a common classification of seriousness of infringements and the establishment of a risk ranking system for undertakings;
5. To implement the Directive 2002/15/EC which provides rules for mobile workers. The fatigue of a person is a result of his/her working activity, not only of driving activity. If a driver works 4 hours’ stationary and then drives 8 hours, it will be very fatigued, so dangerous for road traffic. In addition, a driver may have a driving activity which is not in scope of social legislation (small vehicles, driving not on public road like in working pits, in quarries etc.). These activities will be recorded as “other work” and for them, Directive 2002/15/EC will be applicable.
6. The competent authority ITS should consider the implementation of the necessary measures to ensure that the specifications adopted by the Commission are applied to deployed ITS applications and services, the processing of personal data is carried out in accordance with Union rules protecting fundamental rights and freedoms of individuals, that personal data is protected against misuse, including unlawful access, alteration or loss, the usage of anonymously data is encouraged, as to ensure the privacy, the personal data shall only be processed insofar as it’s necessary for the performance of ITS applications and services, the consent to the processing of such personal data are requested and respected, the issues related to liability for defective products are applied.
7. To increase the administrative capacity of institutions by creating of a “critical mass” on road transport professional which will make possible the implementation of legislation and the increase the operational standards in road transport. This means not only to train a number of persons, but to create a adult professional training system for:

* road safety auditors,
* transport managers,
* ADR safety advisers,
* ADR drivers,
* professional drivers,
* TPI inspectors,
* driving licence examiners,
* AETR & ADR & Technical traffic inspectors,
* emergency intervening forces in case of ADR accidents.

1. Due to the reduced administrative capacity for enforcement of AETR, ADR, Technical Roadside Inspection and Market Access provisions, after duly appointing of the authority(ies) empowered to perform these controls, a Study Visit in one EU Member State on the topic of enforcement and control will be of high benefit.

**2.2 Rail mode expert: recommendations, corresponding to the findings of this executive summary are for the Rail as follows:**

Rail

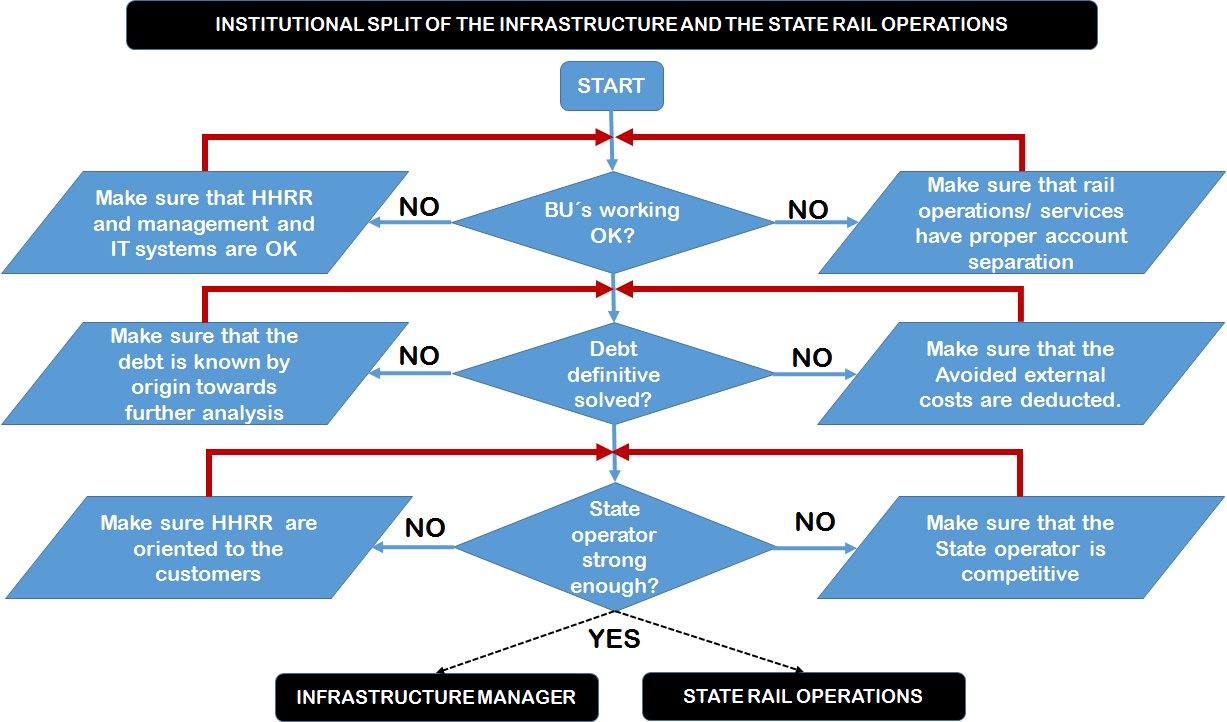
To keep it simple, the following framework actions are recommended:

1. To simplify the governance structure, horizontally by an intermodal mandatory planning instrument and by grouping fragmented responsibilities and vertically by entrusting a single body for governing and taking mandating decisions – not simply finally approving – on a specific subject;
2. To produce realistic forecasts, without optimistic hypothesis (better pessimistic);
3. Not to trust that freight transit will be a basic source of revenues for the country and, in any case, establish a serious cost/benefit analysis to evaluate investments.

**2.3. Rail (rail mode and combined Transport experts): recommendations, corresponding to the findings of this executive summary are for the Rail as follows:**

CT

Going down into details, summarized and in chronological order, the following detailed actions which are highly recommended[[3]](#footnote-4) may be conducted (some of them) through the TAIEX instruments like Twinning’s, Technical Assistances, Workshops, Missions and Study Visits:

**2.3.1 ACTION 1**; **Pre-condition of Rail Governance:** A pre-condition before totally applying the EU legislation for the rail transport sector go through the transformation of the present integrated railways as indicated in the decision flow on the right. It is mandatory if to avoid mistakes done in some railways organizations in the EU to follow this scheme. If an integrated railway, then before splitting it into Infrastructure manager and State commercial rail operator, a business unit’s organization grouping the different coherent and homogeny businesses towards rationalizing them by improving customer oriented processes and reducing costs is necessary. Once these business units well fine-tuned and working and the historical debt solved, the final split can be done. This process should be completed in a two years’ time.

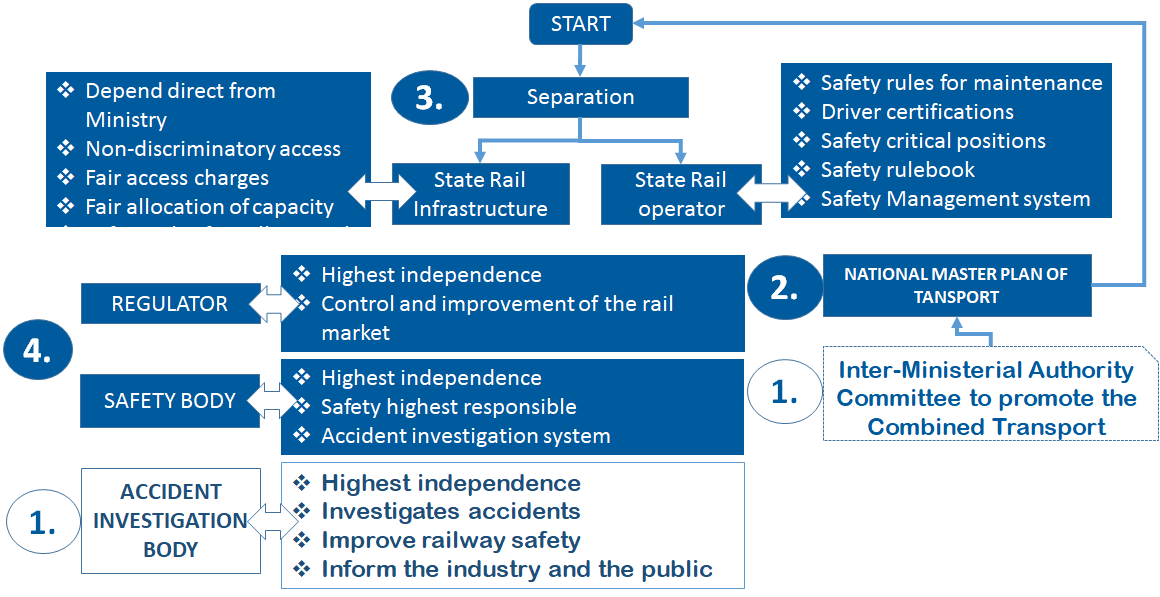
**In parallel, the Accident Investigation Body should be launched immediately, in order to achieve rapid improvement of Rail safety**. Having regard to the difficulties and the time required for establishing an investigation body and for training adequate personnel, but considered as well the fact that it’s essential to have related activities performed as soon as possible, it’s recommended to ask another country, where this body is working properly, to act as accident investigation body (as widely done at international level, e.g. in the maritime sector).

**2.3.2 ACTION 2**; **Recommended EU Directives and organizational scheme:** In parallel, the governance problem together with the review of the national transport strategy which has to be expressed in a “National Master Plan of Transport” progressively aligned by “working together” and by applying the corresponding relevant legislation. These listed directives support functions and responsibilities deriving from the separation of the Rail Infrastructure and provide inputs to establish the Rail Regulator, Accident Investigation Body[[4]](#footnote-5) and the Safety Authority:

1. Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (recast)
2. Directive (EU) 2016/798 of the European Parliament and of the Council of 11 May 2016 on railway safety (recast)
3. Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community (Recast)

EU directives have to be transposed to the Azerbaijani national legislation in the Railway Act and the Network declaration.

The explanatory scheme towards priorization and coordination of actions to apply the mentioned legislation is described as follows:



**2.3.3 ACTION 3; To create the Safety Authority:** which has to focus:

* the setting up, in each Member State, of an authority responsible for supervising safety;
* the mutual recognition of safety certificates delivered in the Member States;
* the establishment of common safety indicators (CSIs) in order to assess that the system complies with the common safety targets (CSTs) and facilitate the monitoring of railway safety performance;
* the definition of common rules for safety investigations.

It has to be accompanied with a redesign of the ministry of transport with the sufficient economic and financial independence. The yearly budgets in line with the different business plans aligned to the “National Transport Plan” should be used to seek for releasing the requested funds by the corresponding ministry. The authentic role of the ministry of transport will reside then in the coordination of the Transport modes efforts full in line with the authentic ministerial strategy.

**2.3.4 ACTION 4; To create the Rail Regulator Authority:** a powerful and independent body for ensuring the basic functions of improving and controlling the rail market and protect the customers[[5]](#footnote-6). As per the European approach the main tasks to be ensure are:

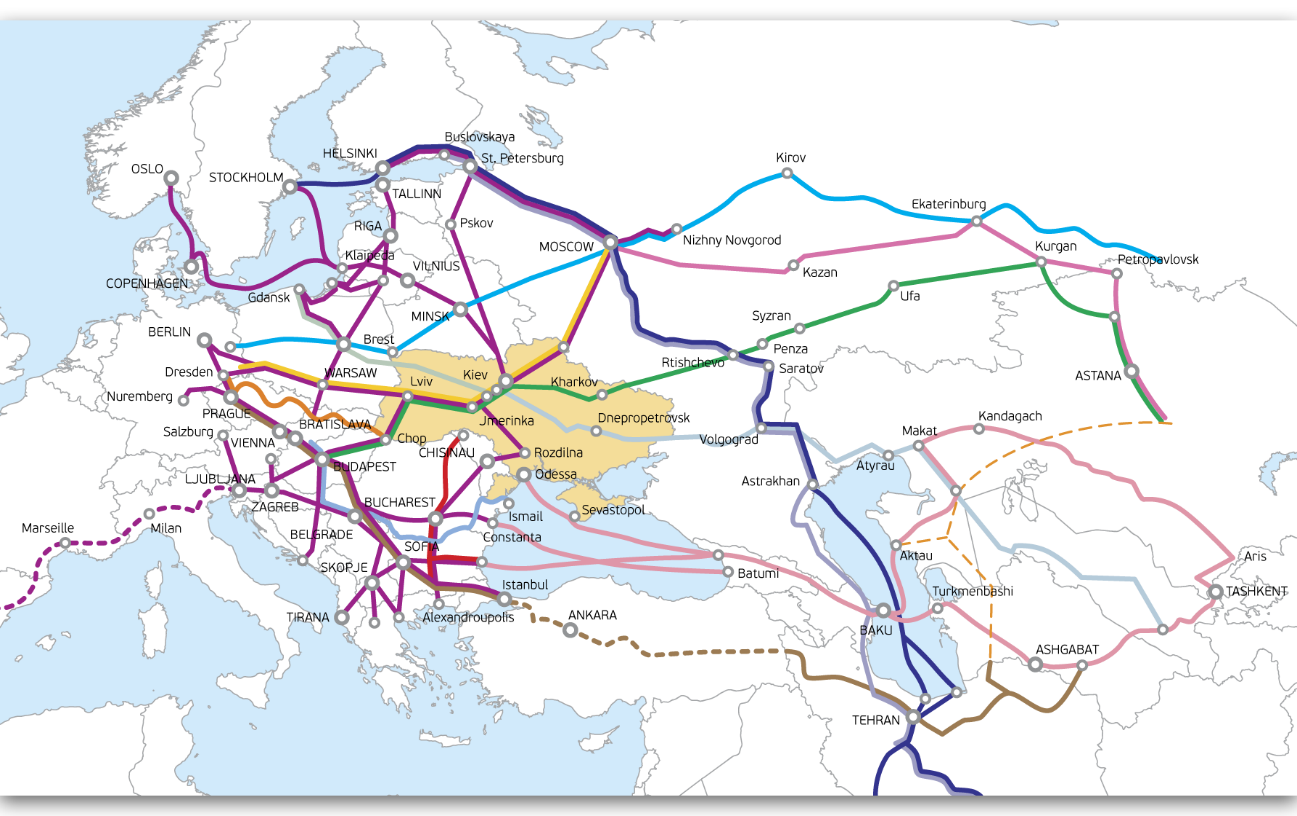
1. Be an appeal body in relation to decisions taken by an infrastructure manager or a railway undertaking regarding discriminatory access conditions.
2. Process complaints of applicants or interested parties with the Regulatory Body if it feels that it has been treated unjustly, has been subject to discrimination or injured in any other way.
3. ensure that the charges set by the infrastructure manager are non-discriminatory. It shall supervise any negotiation between an applicant and an infrastructure manager on the level of the charges and intervene if necessary.
4. monitor the competition in the rail services market. In its monitoring function it shall decide on complaints or on its own initiative on appropriate measures to correct undesirable developments.
5. shall have the right to request relevant information from the infrastructure manager, applicants and any third party involved within the Member State concerned, which must be supplied without undue delay.

**2.4 Combined transport expert: recommendations, corresponding to the findings of this executive summary are as follows:**

**2.4.1 ACTION 3; To create and inter-Ministerial Authority:** to be created for the elaboration of a common agreed “National Master Plan of Transport. Working together becomes than a reality if the different ministerial institutions which today act as nearly independent “Taïfas Kingdoms”[[6]](#footnote-7) with overlapped responsibilities and gaps which jeopardize any kind of actions. This high level interdisciplinary “Combined Authority” is to speed up and solve the transport challenges of funding, planning of investment projects and operative incentives and monitoring the implementation.

The Railway business plan recently contracted has to be aligned with the Masterplan but understanding the urgency of doing changes the present plan is acceptable. Inception report done cover the main topics and fix the state of the arts. Although the combined transport is today marginal, a mention of the “combined transport” term would be appreciated in this inception report[[7]](#footnote-8).

The last point is actually also the first but it will be treated now as the previous considerations represent the right frame to approach the combined transport in his full extend. On one hand we need efficient roads and rail infrastructure, adequate logistic centres and the support of a combined transport legislation towards consideration of the key chapters Safety, Security, Social standards, State aid control, Market liberalization and Competition. On the other Hand, Azerbaijan need further support of TAIEX if to profit on the many opportunities of the international traffic challenges of the Europe-Asia International Transport Corridors.



The most important condition to attract the traffic loads through Azerbaijan is, at the end to be competitive. This is only possible if the transit, import, export and domestic transport in the territory is fast, cheap, safe and secure. To offer this quality of transport service it is important to detect and solve all the present deficiencies or transport barriers.

**2.4.2 Combined Transport barriers:** there are organizations like the UIRR which have excellent results in the combined transport branch but they advise that it is only possible, first after a launching period of several years and with an intensive benefit package from the state to this kind of transport. Tangible and intangible transport barriers are due because of the many differences in administrative and border processes, norms, prohibitions, technical specifications in infrastructure, rolling stock, trucks and loading unit, fiscal treatment and language used so that present results compared with investments realized are not satisfactory even in the TRACECA corridors. We are still far away of the ambition to link with the TENs. However, present international traffics are better ensured by the competition which continue by-passing Azerbaijan as the Azerbaijani transport offer remain still far away from a “seamless supply transport chain”. A Final report of the EU Combined Transport in the EU from 2015[[8]](#footnote-9) indicate the main barriers to work out via technical, operative, fiscal and administrative improvements. The global barriers to be work out were related with: Lack of operational service quality, Interoperability deficits of rail infrastructure, Insufficient train path capacity for CT trains, Non-harmonised terms and conditions for rail access, Lack of service level guarantees, Costly last mile, Constraints on loading gauges, Lack of open-access terminals and Insufficient ICT capabilities. As per the experience of the logistic operators of UIRR, more detailed barriers worked out during the launching of the combined transport by areas are:

**Financial:** Intermodal infrastructure investment cost, Rail infrastructure investment cost, User cost at intermodal terminals, User cost in intermodal transport and User cost in rail transport.

**Organizational:** Lack of express delivery in intermodal transport, Lack of just in time delivery in intermodal transport, Delays at intermodal terminals, Institutional barriers that prevent intermodal transport between different countries and Bureaucratic organization of rail mode.

**Software:** Insufficient informatics system in rail mode and Insufficient informatics system used by freight transport operators.

**Psychological:** Unjustified prejudice against rail mode and Justified prejudice against rail mode.

**Hardware:** Lack of intermodal terminals, Lack of rail infrastructure, Lack of specific rail vehicles suitable for intermodal infrastructure, Lack of specific truck vehicles suitable for intermodal transport and Lack of interoperability of railways at the European level.

Recommendations, given in the end of this report are to build international working groups by domestic and international corridors under the leadership of one coordinator as it is in use in the EU. These groups are the source of pragmatic useful information’s towards the detection of the barriers. This measure supports the identification of transport barriers and their reduction or elimination towards a final transport objective of a “Seamless Combined Transport Chain”. Lack of appropriate legislation can also be considered as transport barrier.

**2.4.3 Green corridors: as far as the legislative support is concerned**, the EU council directive 92/106 which has been amended successively is now under a final review and will be published new or amended in December 2017.

However, for Azerbaijan, the most important is to study in which extend the different articles can be addressed. As done for the trucks transiting Azerbaijan, reduction in road taxes, beside fiscal, traffic prohibition exemptions and other benefits like promotional financial support should be fixed as soon as possible in the Azerbaijani legislation to boost this kind of traffic.

In fact, **shift the road loads to the rail means high savings on external costs for the state**. In average in the EU, the costs of transport amount to 12% which is the same figure than those produced by the external costs[[9]](#footnote-10). This is the main reason of why the state must support a reduction on external effects which are at 80% generated by the road mode. Norms for weight dimensions of trucks, containers, wagons, platforms are also included in this directive. Special attention has to be given to the fulfilling of documents and specifications especially in the borders. Recommendations are given to build international working groups by corridors under the leadership of one coordinator as it is in use in the EU. This measure supports the identification of transport barriers and their reduction or elimination towards a final transport objective of a “Seamless Transport Chain”.

Together with this mission, a peer review on Azerbaijani combined transport legislation against the EU transport law will be performed to indicate which legislative support need Azerbaijan to launch the combined transport. Since 2010, several peer reviews were performed indicating some of the articles of the council directive 92/106 which were written for 14 years ago. The directive needed in Azerbaijan is those containing a guideline of common agreed technical norms based on the Leaflets of the UIC[[10]](#footnote-11), important tax exemptions especially in the launching phase which should considered 5 years, prohibition exemptions if applicable, fiscal exemptions or reductions and other benefits. In summary, the investment and operative costs have to lower in such extend necessary to attract the interest of the logistic operators. We have to keep in mind that with the combined transport, **we are automatically using green corridors which will give important savings of external costs to the state.**

A study done in the UIC has demonstrated that all grants and subventions given by the EU states to the rail were 2 time lower than the external costs avoided by the rail instead of using the road mode (effect of the modal split by shifting Road loads to the Rail Mode). The EU states are aware of the combined transport (in the whole extend, the intermodal transport) and have therefore developed enormous funding programmes like Marco Polo and Shift to Rail (Shift2Rail) to discontinue the massive road transport which generate each year a cost to the state amounting to 9,6% of the GDP.

CT

Rail

Road

1. **ANSWERING TO THE T.o.R. QUESTIONS**

1. Is the legislation aligned with the acquis on public services by rail and by road?

RAIL: No. In the draft (?) railway law (only an excerpt in English was provided) there are only generic provisions, always referring to not better specified “relevant authorities”.

ROAD: As later developed in the scoreboard, a proper alignment by important road chapters is not there.

CT: Road is more regulated than the rail. Nothing exist on combined transport.

1. Have the main strategic documents, that define development of the transport policy in the *country* been adopted? Has the transport strategy been adopted and implemented?  Do the relevant Master Plans for each transport modes exist?

RAIL: As highlighted above, the “Strategic Roadmap for Logistic and Trade Development in Azerbaijan” presents some questionable points, but is positive the comprehensive view and the fact that the development of freight transport is linked with trade and industrial development, especially with the creation of a “Free Trade Zone”. Apart from that, the overall transport strategy is not clear and, as said, fragmented. In any case, seems to be centered on investments, without considering exploitation and maintenance problems and costs.

ROAD: The Strategic Roadmap for Logistics & Trade Development in Azerbaijan is drafted, pending for approval. It is a comprehensive document which identifies the strategic development opportunities, based on a SWOT analyse on the transport sector in the regional framework. The road transport is reflected to some extent in the document, but the development of transport is not foreseen as being in correlation with road safety and progressive reduction of dependence of oil. It should be noted also that electrical energy is mainly imported in Republic of Azerbaijan from neighbour countries.

CT: There is no a “National Transport Strategy” covering all transport modes (including pipelines) and a Master Transport Plan for later developing the corresponding sectorial business plans. There is no a unified strategy covering all transport modes. Some of them are in the inception phase like the case of the railways. However, recent inception report says that Strategic planning and goal setting process is at the low level. ADY strategy was not identified, but there are strategic plans in several business units, which are not fully aligned between each other. There is no evidence of strategic planning cycle across the company[[11]](#footnote-12).

1. Which measures have been undertaken in order to strengthen administrative capacity for all modes of transport? What are the direct results of the measures?

RAIL: No information on this point. The change of management of ADY seems to be a positive signal, due to managerial skills of top management.

ROAD: No information available at this moment on the road transport with regard of administrative capacity enhancement.

CT: No but thoughts are there via TAIEX twinning and technical assistances together with the short term instruments of workshops, missions and study visits.

1. *ROAD: Road safety -* Has the law on road traffic safety and the corresponding implementing regulations been adopted?

ROAD: Information related infrastructure shows that the EU standard established in Directive 2008/96/EC on road infrastructure safety management is not yet approached, in spite of the awareness rising campaign which took place in 2015 in TRACECA Countries within the *European Union financed Project "TRACECA ROAD SAFETY II"*.

According with the European Union financed Project "TRACECA ROAD SAFETY II", which took place in 2015 in TRACECA Countries, the procedures of TPI is in accordance with standard provided in Directive 2009/40/EC. However, the full appliance of TPI principles in Azerbaijan is hindered by socio-economical aspects, being considered that it will affect the part of the population which own old vehicles. The expert does not share this view. To keep a vehicle in a good condition as to not endanger the road safety is not as expansive as to risk the other road users lives for this.

It is not acceptable to endanger the public safety with a regular commercial activity. This means that an appropriate administrative system to perform TRI for commercial heavy vehicles should be developed. It will be applicable also for foreign vehicles transiting the Azerbaijan and will help to keep Azerbaijani roads free of accidents with heavy vehicles.

With regard of road users, EU acquis comprise two sets of provisions, namely Directive 2006/126/EC on driving licence and Directive 2003/59/EC on drivers Certificate of Professional Competence. On the other hand, Republic of Azerbaijan is a Contracting Party to European agreement concerning the work of crews of vehicles engaged in international road transport (AETR) and it means at least for drivers engaged in international transport operations, provisions of article 5 of AETR (which recommends training of drivers of passenger’s vehicles and of young drivers) do apply.

According with the report of the project Component 2: Regulatory and institutional reforms, task 2.1.4 - Implementation support for EU/ECE Agreements and Conventions including national workshops, drivers are trained via ABADA (Association of Transport Companies as IRU representation) and are granted of a professional certificate issued by Ministry of Transport and IRU.

During discussions, the beneficiary informed the expert about their intention to extend the application of AETR for all transport operations performed with heavy vehicles, not only to international ones.

1. ROAD: Dangerous goods - Has the legislation on dangerous goods been adopted? Does it include the rulebooks on transport of hazardous substances? Has a company, institution or other legal entity responsible for conducting the conformity assessment of the existing equipment law on carriage of dangerous goods been appointed

ROAD: The Republic of Azerbaijan ratified in 28 Sep 2000 the European Agreement on international transport of dangerous goods by road - ADR, done at Geneva in 1957, and it is legally in force for both international and national road transport operations.

However, the reference text for transport of dangerous goods is an outdated version of ADR. It needs to be aligned with version in force (nowadays ADR 2017). Moreover, there is no version of the agreement and of its annexes in Azerbaijani language. Due to legal and safety reasons, this should be changed, a latest version of the agreement needs to be publicly available, in order to be enforceable.

1. ROAD: Market access for goods, passengers and pricing - market access, the profession of road transport operators and digital tachographs, access to the haulage market, access to the international market for coach and bus services

The present status of the market access in the Republic of Azerbaijan can be summarized as follows: there is an authorization system applied for transport companies which are legal persons, which is based on the compliance with conditions, slightly different compared with Regulation (EC) no. 1071/2009. EU financial standing is applied to undertakings performing international haulage, but it is checked only at the moment of authorization.

According with the Azerbaijani Transport Law, undertaking is defined as only al “legal person” whilst the Regulation (EC) no. 1071/2009 provides the “undertaking means any natural person, any legal person, whether profit-making or not, any association or group of persons without legal personality, whether profit-making or not, or any official body, whether having its own legal personality or being dependent upon an authority having such personality, engaged in the transport of passengers, or any natural or legal person engaged in the transport of freight with a commercial purpose;”. This difference leads to situation that approx. 80% of the small-scale road transport in the territory, between small settlements, is done by “individual carriers” which are not organized as “legal person” and which do not comply with the previous conditions.

The price for transport of passengers is controled by the Tariff’s Council. If this means that the transport is, to some extent, subsidised by the state, the procedure and principles provided in the Regulation (EC) no. 1370/2007 on public passenger transport services by rail and by road should be applied. For this aim, the appropriate legislative framework should be developed.

The transport market in Azerbaijan needs to be more controled with regard of respecting of national and international regulations, rather than with regard of planning the commercial activities. This control with keep a healtly market, free of bad players.

1. ROAD: Regarding the enforcement of *social legislation*, can you report on the developments in the areas of roadside checks, in enhancing the legal competence and capacity of inspection officers for enforcing the legislation, adopting and implementing rules on penalties for infringement of AETR provisions?

In general, the regulations are in line the AETR, with regard of technical provisions, the main difference is they apply to all transport operations (except the exemptions) whilst the AETR apply only to international transport operations. According with the available information, the Republic of Azerbaijan implemented the AETR, up to enforcement, several actions are pending to be done as for a full implementation, namely to establish provisions for vehicles which cannot be fitted with digital tachographs, to appoint a control authority empowered to check both premises and vehicles in road traffic, to train the inspectors, to assess the possibility to increase the number of approved workshops.

1. *ROAD Intelligent Transport Systems (ITS) -* does the current national regulatory framework provide for the implementation of ITS? Does the *country* have sufficient capacity and resources for the implantation of the ITS?

The approach of the ITS systems is still at the beginning in the Republic of Azerbaijan, but some practical steps are in progress to be done at the level of Baku ITS, for improving the passengers’ transport and traffic management by ITS.

1. *RAIL: Market access - Has the Law on Railways been published in accordance with the EU acquis? Has the separation of train operations from infrastructure management been done? Is the independence of infrastructure manager to make decisions guaranteed? Is it applied in practice?         Have any private rail companies entered the market?*

No to all questions. However, within ADY IM and RU have been split into two departments with separate accounting systems. The simple fact that Azerbaijan acceded COTIF 1999 with annexes A, B and C, as quoted by Mr. Panahov during the debriefing, is irrelevant: COTIF is an agreement for reducing boundaries when cars and wagons are passing by different countries and has nothing to do with internal market.

1. *RAIL: Has the country set up an independent safety authority and regulatory authority?*

No.

1. *RAIL: Is the rail market opened?  Do the railway undertakings that were certified and licensed by national authorities have access to the network and the service facilities for the purpose of providing domestic or international rail freight services? Has the country published the Rail Network Statement?*

No to all questions.

1. *RAIL: Railway safety - has the legislation on railway safety been adopted, implemented and enforced? Are the requirements met by establishing training centres, improving the necessary level of professional qualifications, training programs and examination methods and enhancing the procedure of issuing licenses and setting medical requirements for railways employees?*

No to all questions.

1. *RAIL:* *Has the law on railway accident investigations been adopted and implemented? Has an independent accident investigation body been established?*

No to all questions.

1. *RAIL:* *Railway interoperability - Has the legislation on railway interoperability been adopted, implemented and enforced? Has the Directorate for Railways (DfR) adopted the Technical Specifications for Interoperability?*

No to all questions.

1. *CT:* *The definition of ‘combined transport’ did not exist in Azerbaijani legislation. The current trends in establishing inter-modal transportation makes necessary to review update legislation on this direction.*

Actions are ongoing

1. **SCOREBOARDS TOUGHS**

CT

The proposed amendments are only a draft to give an orientation to the Azerbaijani legislators who will take into consideration possible connections or conflicts with other laws governing the relevant ministries of Transportation, Taxes, Finances, Economic Development, Ecology and Natural Resources, Economic Development, Communications and High Technologies and Emergency Situations. Namely, the purpose of the scoreboards is:

1. to advise the Azerbaijani legislators and the corresponding transport stakeholders about the EU laws applicable to the Azerbaijani local conditions.
2. To make clear to the transport stakeholders that it is fundamental to introduce the road, rail and combined transport in Azerbaijan rather as a must than merely an objective.
3. To explain to the direct interested parties what has been done up to now in Europe in road, rail and combined transport; best practices and mistakes.
4. To transmit not only a spirit of hope for this kind of transport but also the positive economic results for the market and the society.
5. Finally, to propose appropriate amendments to be done in the present transport law and relevant decrees and a new integrated combined transport law.

All this is necessary to avoid forcing a legislation without the understanding and agreement of the transport stakeholders. This is not the style of the European Union to transpose any EU legislation without adapting the “acquis communitaire” to any country. Furthermore, the aim of the scoreboard for road, rail & CT

* To give an overview on legal approximation with a focus on safety and security, social standards, state aid control and market liberalization for finally align the Azerbaijani combined transport legislation with the EU transport policy,
* Identification of the relevant chapters of the legal approximation for the establishment of a scoreboard with the final objective to propose pertinent Azerbaijani amendments or the adoption of new combined transport legislation.

This is for the 3 exercises. It should be highlighted that the scoreboard on the Rail mode will cover the basic directives about the governance of the 4 independent bodies: Infrastructure Manager, Rail Regulator, Safety Authority and State Rail Operator. On his turn, the road will cover the part of Dangerous Goods.

**Thoughts on the scoreboard specific to the CT**

As mentioned above, the mission also separately requests this exercise for ROAD and RAIL, the two scoreboards will cover the achievement of the aim in combined transport excepting those singularities given by the today transport objectives of these 2 modes. In line with that statement, it is important to remember that the aim of the European Commission is to promote a mobility that is efficient, **safe, secure and environmentally friendly** and to create the conditions for a competitive industry generating growth and jobs.

As the rail mode is better positioned than the road to ensure the aspects of **safe, secure and environmental friendly,** stakeholders and legislators come to the idea of looking for a transport system combining the rail and the road but giving to the road the main leg to cover. **This has been the first thought.**

The combined transport is more safe and secure especially if dangerous goods are concerned and reduce considerably the environmental external effects which are actually costs to be paid by the states. **This is the second thought**.

Today the sates are paying yearly a bill of 12%[[12]](#footnote-13) from their GDP by managing accidents and by countering environmental effects. Instead of continuing paying this bill, the sate prefers economically to promote the use of the combined transport. If taken into consideration that there is still free rail capacity which is not the case in the road, the use of this remaining transport loads become an opportunity. **This is the third thought.**

In line with this, the DG MOVE has outlined in their web page that the negative consequences of transport such as pollution, climate change, noise, congestion and accidents pose problems to the economy, health and well-being of European citizens. Freight transport continues to grow and road freight transport, in particular, is projected to increase by around 40% by 2030 and by little over 80% by 2050. The EU transport policy aims therefore at reducing road transport towards less polluting and more energy efficient modes of transport. Therefore, the combined transport is not only an objective but a **MUSST FOR THE ENTIRE SOCIETY. This is the fourth thought.**

Before discussing the combined transport directive 92/106, amendments and last refit, it is important to outlined that there are many funding programmes of the EU to promote directly or indirectly the combined transport. These funding’s, regulated by law have a common objective of **taking loads from the road to shift it to the rail which is a main issue in Europe[[13]](#footnote-14).**

To retain, facing recommendations to the Azerbaijani legislators, is that doing nothing and not promoting green modes like the rail means the state to pay a bill amounting to 12% of the present GDP. In other words, the pollution, congestion, and other environmental effects together with the accidents costs to the Azerbaijani state based on the 2015 GDP which was around 50 billion $, 7.500.000.000$. Considering that the road mode contributes by 80%, the bill that the road user doesn’t pay is 6.000.000.000$. It is of course under a theoretical scenario of an up to date road infrastructure as it is in Europe. The reality is far away from this though but it becomes true if nothing is done for introducing and promoting the combined transport. These figures have to be taken into consideration by shifting Road loads top the rail for the evaluation of Rail Infrastructure investments, Road facilities towards using combined transport (Terminals, loading unloading) and for the amount of incentives given to the logistic operators.

To remember to the legislators is that, as mentioned in the corresponding report done in this mission, **Grants, subsidies and incentives given to the rail in the EU are very high but always less than the half if compared with the environmental benefits and reduction of accidents of the rail versus the road mode[[14]](#footnote-15).**

**ANNEXES**

Scoreboard Combined Transport

Scoreboard Rail

Scoreboard Road

**6.1 Scoreboard for the Legal Approximation Process in the field of Road Transport**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **WTO Prov.** | **EU Legal Reference** | **Azerbaijani Existing Laws and Drafts** | **LAD** | **Comments and Recommendations** |
| **ROAD SAFETY** | | | | |
|  | **Directive 2008/96/EC of the European Parliament and of the Council of 19 November 2008 on road infrastructure safety management**  Directive 2008/96/EC applies to main transport corridors and provides for the following practices:  - road safety impact assessment of the infrastructure projects,  - road safety auditing of the infrastructure projects,  - periodical inspection of roads, to check whether the features of the road which determine the road safety are still in good condition,  - special inspections at spot of each serious accident when it results in death of people, as to identify if road itself does favour or does not prevent enough the occurrence of that accident,  - ranking of the safety level of roads and  - training of specialists – road safety auditors.  Directive recommends to apply the road safety principles to also to other road categories than the main transport corridors. | The Directive 2008/96/EC principles are not yet transposed in the Azerbaijani legal framework | 0 | Not approximated  Information related infrastructure shows that the EU standard established in Directive 2008/96/EC on road infrastructure safety management is not yet approached, in spite of the awareness rising campaign which took place in 2015 in TRACECA Countries within the European Union financed Project "TRACECA ROAD SAFETY II".  The following steps are to be done:  1. to start the administrative procedures to create the legal base for practices provided by the Directive 2008/96/EC, as well as to set up the administrative tasks for institutional actors which will be involved and to identify the financial sources for financing of the practices;  2. to start the training of a sufficient number of road safety auditors as well as a number of specialists who will perform road safety inspections, road safety ranking and black spots management;  3. to apply and to monitor the application of practices provided by the Directive 2008/96/EC. |
|  | **Directive 2014/45/EU of the European Parliament and of the Council of 3 April 2014 on periodic roadworthiness tests for motor vehicles and their trailers**  Directive provides for technical periodical inspection of the vehicles (TPI), at specific intervals, with the aim of certifying they are adequate to be used on roads.  Directive provides for a unified and exhaustive list of defects as well as a list of reasons for failing the test. | The instruction of the Ministry of Internal Affairs “On rules of inspection of technical condition and safety of motor vehicles by the State Road Police”, dated October 24, 2003  Resolution of the Cabinet of Ministers “On rules of state technical inspection on motor-vehicles and their trailers” No. 40, dated on March 15, 1999 | 3 | Almost approximated  The TPI procedure is in accordance with standard provided in Directive 2009/40/EC. However, the full appliance of TPI principles in Azerbaijan is hindered by socio-economical aspects, being considered that it will affect the part of the population which own old vehicles.  To have a satisfactory level of implementation of the directive, the competent authority should extend the application of TPI standards to all the vehicles registered in Azerbaijan and to enforce more the TPI by monitoring and creating a database with inspections outcomes. |
|  | **Directive 2014/46/EU of the European Parliament and of the Council** **of 3 April 2014 on the technical roadside inspection of the roadworthiness of commercial vehicles circulating in the Union**  Directive provides for temporary suspension of the registration of the vehicle, in case of serious technical defects or malfunction of the vehicle’s systems, observed during technical periodical inspection (TPI) or technical roadside inspections (TRI) | The Azerbaijani legal framework does not contain such provision. | 0 | Not approximated  To implement the directive, the competent authority should regulate the temporary suspension of the vehicle registration based on the outcome of TPI /TRI, till the defects are eliminated. |
|  | **Directive 2014/47/EU of the European Parliament and of the Council of** **3 April 2014** **on the technical roadside inspection of the roadworthiness of commercial vehicles circulating in the Union**  Directive provides for performance of technical roadside inspections (TRI) of commercial vehicles, both randomly and based on a risk ranking system.  The risk ranking system has to be developed by control authority, based on the number and the outcomes of the controls, for each transport company, aiming to focus the control resources on the companies with the highest risk of committing infringements. | The instruction of the Ministry of Internal Affairs “On rules of inspection of technical condition and safety of motor vehicles by the State Road Police”, dated October 24, 2003 | 1 | Very low level of approximation  It is not acceptable to endanger the public safety with a regular commercial activity. This means that an appropriate administrative system to perform technical roadside inspections (TRI) for commercial heavy vehicles should be developed. It will be applicable also for foreign vehicles transiting the Azerbaijan and will help to keep Azerbaijani roads free of accidents with heavy vehicles.  To this aim the competent authority should:  - create the legislative and institutional framework to implement TRI to commercial vehicles (M2, M3, N2, N3, O3, O4) and  - monitor and to enforce efficiently the TPI and TRI and to create a database with inspections outcomes, to be used for a risk ranking system which will help to focus the enforcement resources to the transport companies with the highest risk of committing infringements related to technical condition of the vehicles. |
|  | **Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences, as amended**  Directive 2006/126/EC provides for:  - the content of the examination and characteristics of vehicle used for driving licence exams,  - the anti-forgery features of driving licence card,  - a unified list of driving licence categories, minimum ages for access to each category and an unified list of codes for restrictions,  - the initial and continuous training of driving examiners, as well as their supervision and monitoring,  - the mandatory medical fitness of the drivers and candidates,  - the training for some driving licence categories; | Resolution of the Cabinet of Ministers no. 41 dated on 15 March 1999 | 2 | Low level of approximation  For diminishing of road risks associated with the road users, the competent authorities should focus on the following actions:  1. to implement the standards provided in Directive 2006/126/EC in Azerbaijani national legal and administrative systems and, if necessary, to ask assistance and to act to complete the full implementation of the Directive 2006/126/EC.  2. to keep the procedures for obtaining of the driving licence in a highest level of quality and security; |
|  | **Directive 2003/59/EC of the European Parliament and of the Council of 15 July 2003 on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers, as amended** | The legislation concerning the application of European agreement concerning the work of crews of vehicles engaged in international road transport (AETR) | 2 | Low level of approximation  Directive 2003/59/EC provides for:  - the mandatory initial qualification for professional drivers engaged in transport with heavy vehicles, by examination with or not prior training,  - the periodic training of all professional drivers,  - the mandatory subject’s curricula to be used for qualification,  - quality criteria for approval of training when it is provided by private sector.  Republic of Azerbaijan is a Contracting Party to European agreement concerning the work of crews of vehicles engaged in international road transport (AETR) and it means at least for drivers engaged in international transport operations, provisions of article 5 of AETR (which recommends training of drivers of passengers’ vehicles and of young drivers) do apply.  Drivers are trained via ABADA (Association of Transport Companies as IRU representation) and are granted of a professional certificate issued by Ministry of Transport and IRU.  To have a high professional training for drivers, making them competitive on international market, it is recommended to implement the standards provided in Directive 2003/59/EC for the training and certification of all the professional drivers, not only of those who are in scope of AETR. If required, assistance can be offered. |
| **MARKET ACCESS** | | | | |
|  | **Regulation (EC) No 1071/2009 of the European Parliament and of the Council establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator** |  | 1 | Very low level of approximation  According with the Azerbaijani Transport Law, undertaking is defined as only al “legal person” whilst the Regulation (EC) no. 1071/2009 provides that the undertakings in scope all the vehicles operators, notwithstanding their type of organization (private person, legal person, NGO, state owned company, public institution etc.).  For an appropriate approximation of legislation, the following actions are to be taken:  - to include in the scope of authorization for road transport activities of all the vehicle operators, notwithstanding of their organizational form,  - to establish a common list of conditions to be met to become road transport operator (real premise, financial standing, good repute and professional competence),  - to regulate the employment of a transport manager or the contracting of management services,  - to regulate the examination (and optional prior training) of candidates for obtaining the transport manager’s certificate of competence, as well as a continuous training of managers,  - to regulate the loosing of good repute of the operator and /or manager and to implement a list of most serious infringements which lead to loosing of good repute,  -to establish a national electronic register of transport operators, with essential information about undertakings, including sanctions,  - to regulate and to the control of operators to check the compliance with the regulation. |
|  | **Regulation (EC) no. 1072/2009 of the European Parliament and of the Council on common rules for access to the international road haulage market and** |  | 1 | Very low level of approximation  The transport companies which perform international freight operations should have an appropriate financial standing of 9000 EUR for the first vehicle and 5000 for each of the rest of vehicles. However, the complying with this condition is not controlled permanently, but only when the authorization is issued.  For an appropriate approximation of legislation, the following actions are to be taken, in addition to those for implementation of Regulation (EC) no. 1071/2009:  - to regulate a system of licensing of international transport operators as provided in Regulation (EC) no. 1072/2009 providing them with a number of certified true copies of the licence for each vehicle for which the financial standing condition is fulfilled. The forms should be based on the forms provided in above mentioned regulations;  - to create a system for cooperation with other competent authorities from other states for the aim of mutual assistance for the enforcement;  - to introduce in legislation a form of attestation of lawfully employment of foreign drivers in Republic of Azerbaijan, intended to be presented by the driver to foreign control authorities. |
|  | **Regulation (EC) no. 1073/2009 of the European Parliament and of the Council on common rules for access to the international market for coach and bus services.** |  | 1 | Very low level of approximation  Bus operators performing international transport are not required to have an appropriate financial standing as heavy goods vehicles operators.  For an appropriate approximation of legislation, the following actions are to be taken, in addition to those for implementation of Regulation (EC) no. 1071/2009:  - to check and, if necessary, to adapt the definitions of passengers’ transport operations as in Regulation (EC) no. 1073/2009, as to have a common set of concepts with international best practices;  - to regulate a system of licensing of international transport operators as provided in Regulation (EC) no. 1073/2009, providing them with a number of certified true copies of the licence for each vehicle for which the financial standing condition is fulfilled. The forms should be based on the forms provided in above mentioned regulations;  - to create a system for cooperation with other competent authorities from other states for the aim of mutual assistance for the enforcement. |
|  | **Regulation (EC) no. 1370/2007 of the European Parliament and of the Council on public passenger transport services by rail and by road** |  | 0 | Not approximated  The establishment of a fix price for transport, if this means that the transport is, to some extent, subsidised by the state, the procedure and principles provided in the Regulation (EC) no. 1370/2007 should be applied. For this aim, the appropriate legislative framework should be developed. |
|  | **Commission Regulation (EU) no. 2016/403 supplementing Regulation (EC) No 1071/2009 with regard to the classification of serious infringements of the Union rules, which may lead to the loss of good repute by the road transport operator** |  | 0 | Not approximated  It is recommended to introduce in Azerbaijani legislation the international classification of the seriousness of infringements, in order to harmonize the sanctioning system with the EU system.  Is also recommended to introduce a system for ranking of the undertaking with regard to the risk of committing infringements, as to focus better the limited resources of control. |
| **SOCIAL LEGISLATION** | | | | |
|  | **Regulation (EC) No 561/2006 on the harmonisation of certain social legislation relating to road transport, as amended**  **Regulation (EU) no. 165/2014 on tachographs in road transport,**  **Regulation (EU) no. 799/2016 implementing Regulation (EU) No 165/2014 of the European Parliament and of the Council laying down the requirements for the construction, testing, installation, operation and repair of tachographs and their components** |  | 2 | Low level of approximation  The Republic of Azerbaijan implemented the AETR, up to enforcement.  For the full compliance with the regulations, the following measures should be considered:  - to establish provisions for vehicles which cannot be fitted with digital tachographs,  - to appoint a control authority empowered to check both premises and vehicles in road traffic,  - to train the inspectors of this new authority and road police officers,  - to assess the possibility to increase the number of approved workshops.  - to extend the application of social legislation to all transport operations; |
|  | **Directive 2006/22/EC on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities** |  | 0 | Not approximated  The Directive 2006/22/EC provides:  - targets with regard of the yearly volume of control (as article 12 of AETR for international transport),  - details about control procedure,  - a common classification of seriousness of infringements and  - the establishment of a risk ranking system for undertakings. |
|  | **Directive 2002/15/EC on the organisation of the working time of persons performing mobile road transport activities** |  | 0 | Not approximated  The Directive 2002/15/EC provides rules for mobile workers. The fatigue of a person is a result of his/her working activity, not only of driving activity. This directive improves significantly the road safety. |
| **TRANSPORT OF DANGEROUS GOODS BY ROAD** | | | | |
|  | **Directive 2008/68/EC on the inland transport of dangerous goods, as amended** | Resolution of Cabinet of Ministers on “Transportation rules of dangerous goods by road”, dated January 27, 2000 | 2 | Low level of approximation  Directive transposes into EU legislation the UNECE European Agreement concerning the International Carriage of Dangerous Goods by Road A D R, concluded at Geneva on 30 September 1957, as amended;  The competent authorities should struggle to:   * translate permanently translate and enforce the latest version of ADR; it has to be publicly available, * to monitor the application of the ADR both for national and for international transport operations (issuance of approval certificates for vehicles, approval of packages, classification and labelling of chemicals etc.), * to improve permanently the quality of training of ADR drivers, of ADR safety advisers, of ADR traffic inspectors and of emergency intervention personnel; * to keep an eye on the security threats posed by high consequence dangerous goods. |
|  | **Directive 95/50/EC on uniform procedures for checks on the transport of dangerous goods by road, as amended** | Resolution of Cabinet of Ministers on “Transportation rules of dangerous goods by road”, dated January 27, 2000 | 0 | Not approximated  Directive establishes the uniform procedure of checks in order to ensure the efficiency and uniformity of checks. Also, it provides a uniform classification of seriousness of infringements. |
| **INTELIGENT TRANSPORT SYSTEMS - ITS** | | | | |
|  | **DIRECTIVE 2010/40/EU on the framework for the deployment of Intelligent Transport Systems in the field of road transport and for interfaces with other modes of transport** |  | 1 | Very low level of approximation  The approach of the ITS systems is still at the beginning in the Republic of Azerbaijan, but some practical steps are in progress to be done at the level of Baku ITS, for improving the passengers’ transport and traffic management by ITS.  The competent authority should consider the implementation of the necessary measures to ensure that:  - the specifications adopted by the Commission are applied to deployed ITS applications and services,  - the processing of personal data is carried out in accordance with Union rules protecting fundamental rights and freedoms of individuals,  - that personal data is protected against misuse, including unlawful access, alteration or loss,  - the usage of anonymously data is encouraged, as to ensure the privacy,  - the personal data shall only be processed insofar as it’s necessary for the performance of ITS applications and services,  - the consent to the processing of such personal data are requested and respected,  - the issues related to liability for defective products are applied. |

**6.2 Scoreboard for the Legal Approximation Process in the field of Rail Transport**

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| --- | --- | --- | --- |
| **EU Legal Reference** | **Azerbaijani Existing Laws and Drafts** | **LAD** | **Comments and Recommendations** |
| **Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (recast)** | Draft (?) railway law | 0 | Not approximated |
| **Directive (EU) 2016/798 of the European Parliament and of the Council of 11 May 2016 on railway safety (recast)** |  | 0 | Not approximated |
| **Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community (Recast)** |  | 0 | Not approximated |

**6.3 Scoreboard for the Legal Approximation Process in the field of the Combined Transport**

| **WTO**  **Prov.** | **EUROPEAN LAWS GOVERNING THE COMBINED TRANSPORT** | **Azerbaijani Existing Laws/Drafts** | **LAD 0-4**[[15]](#footnote-16) | | | | | **Comments and Recommendations** |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **0** | **1** | **2** | **3** | **4** |
|  | **COUNCIL DIRECTIVE 92/106/EEC of 7 December 1992** on the establishment of common rules for certain types of combined transport of goods between Member  States |  | **x** |  |  |  |  | A combined transport law for Azerbaijan is mandatory if to comply with the recent “Strategic Roadmap on Azerbaijani logistic and trade development 2016” |
|  | **ARTICLE** 1:  1. This Directive shall apply to combined transport operations, without prejudice to Regulation (EEC) No 881/92 (5).  For the purposes of this Directive, 'combined transport' means the transport of goods between Member States where the lorry, trailer, semi-trailer, with or without tractor unit, swap body or container of 20 feet or more uses the road on the initial or final leg of the journey and, on the other leg, rail or inland waterway or maritime services where this section exceeds 100 km as the crow flies and make the initial or final road transport leg of the journey;  - between the point where the goods are loaded and the nearest suitable rail loading station for the initial leg, and between the nearest suitable rail unloading station and the point where the goods are unloaded for the final leg, or;  - within a radius not exceeding 150 km as the crow flies from the inland waterway port or seaport of loading or unloading. |  | **x** |  |  |  |  | *For the purposes of this Directive, 'combined transport' means the transport of goods in Azerbaijan and between States under a transport agreement with Azerbaijan where the lorry, trailer, semi-trailer, with or without tractor unit, swap body or container of 20 feet or more uses the road on the initial or final leg of the journey where the Rail section exceeds 100 km and make the initial or final road transport leg of the journey;*  *- between the point where the goods are loaded and the nearest suitable rail loading station for the initial leg, and between the nearest suitable rail unloading station and the point where the goods are unloaded for the final leg, or;*  *- within a radius not exceeding 150 km from the loading or unloading facilities.*  *The aim of this definition is to promote the rail transport so that the lengths of the road legs and rail section are to be considered as an approximation.* |
|  | **ARTICLE** 2:  Each of the Member States shall, by 1 July 1993, liberalize the combined transport operations referred to in **ARTICLE** 1 from all quota systems and systems of authorization. |  | **x** |  |  |  |  | *Each of the States under a transport agreement with Azerbaijan shall, by (date), liberalize the combined transport operations referred to in Article 1 from all quota systems and systems of authorization.* |
|  | **ARTICLE** 3: In the case of combined transport for hire or reward, a transport document which fulfils at least the requirements laid down in **ARTICLE** 6 of Council Regulation No 11 of 27 June 1960 concerning the abolition of discrimination in transport rates and conditions, in implementation of **ARTICLE** 79 (3) of the Treaty establishing the European Economic Community (6), shall also specify the rail loading and unloading stations relating to the rail leg, or the inland waterway loading and unloading ports relating to the inland waterway leg, or the maritime loading and unloading ports relating to the maritime section of the journey. These details shall be recorded before the transport operation is carried out and shall be confirmed by means of a stamp affixed by the rail or port authorities in the railway stations or inland waterway or sea ports concerned when that part of the journey carried out by rail or inland waterway or by sea has been completed. |  | **x** |  |  |  |  | *In the case of combined transport for hire or reward, a e-transport document which fulfils at least the requirements laid down in (if not existing, Azerbaijani law to be developed) concerning the abolition of discrimination in transport rates and conditions, in implementation (if not existing, Azerbaijani law to be developed) specifying the rail loading and unloading stations relating to the rail leg. These details shall be recorded before the transport operation is carried out and shall be confirmed by means of a e-stamp affixed by the rail or port authorities in the railway stations concerned when that part of the journey carried out by rail has been completed.* |
|  | **ARTICLE** 4: All hauliers established in a Member State who meet the conditions of access to the occupation and access to the market for transport of goods between Member States shall have the right to carry out, in the context of a combined transport operation between Member States, initial and/or final road haulage legs which form an integral part of the combined transport operation and which may or may not include the crossing of a frontier. |  | **x** |  |  |  |  | *All hauliers established in a State under a transport agreement with Azerbaijan who meet the conditions of access to the occupation and access to the market for transport of goods between Member States shall have the right to carry out, in the context of a combined transport operation between Member States, initial and/or final road haulage legs which form an integral part of the combined transport operation and which may or may not include the crossing of a frontier.* |
|  | **Article 5**   1. Every two years and in the first instance by 1 July 1995 the Commission shall draw up a report to the Council on:  * the economic development of combined transport, * the application of Community law in this area, * the definition, where necessary, of further measures to promote combined transport operations.   2. When drawing up the report referred to in paragraph 1, the Commission shall be assisted by representatives of the Member State to collect the information necessary for this purpose.  The report shall analyze the information and statistics relating in particular to:   * transport links used in combined transport operation, * the number of vehicles (a road train counting as a single vehicle), swap bodies and containers transported over the various transport links, * transported tonnages, * services carried out, in terms of tonnes/kilometres.   The report shall, where appropriate, propose solutions for the subsequent improvement of such information and the situation in the combined transport sector. |  |  |  |  |  |  | 1. *Every two years the Ministry of Transport shall draw up a report on:*  * *the economic development of combined transport,* * *the application of the Azerbaijani law in this area,* * *the definition, where necessary, of further measures to promote combined transport operations.*   *2. When drawing up the report referred to in paragraph 1, the Ministry of transport shall be assisted by representatives of the States under a transport agreement with Azerbaijan (especially TRACECA countries) to collect the information necessary for this purpose.*  *The report shall analyze the information and statistics relating in particular to:*   * *transport links used in combined transport operation,* * *the number of vehicles (a road train counting as a single vehicle), swap bodies and containers transported over the various transport links,* * *transported tonnages,* * *services carried out, in terms of tonnes/kilometres.* |
|  | **ARTICLE** 6   1. Member States shall take the measures necessary to ensure that the taxes listed in paragraph 3 which are applicable to road vehicles (lorries, tractors, trailers or semi-trailers) when routed in combined transport are reduced or reimbursed either by a standard amount, or in proportion to the journeys that such vehicles undertake by rail, within limits and in accordance with conditions and rules they fix after consultation with the Commission. 2. The reductions of reimbursements referred to in the first paragraph shall be granted by the State in which the vehicles are registered, on the basis of the rail journeys effected within that State. Member States may, however, grant these reductions or reimbursements on the basis of the rail journeys which take place partially or wholly outside the Member State in which the vehicles are registered. 3. Without prejudice to the provisions resulting from a possible reorganization of national taxation systems for commercial vehicles at Community level, vehicles used exclusively for road haulage in feeder or final delivery carriage by combined transport may be exempted, if they are taxed separately, from the taxes listed in paragraph 3. |  | x |  |  |  |  | 1. *States under a transport agreement with Azerbaijan shall take the measures necessary to ensure that the taxes listed in paragraph 3 which are applicable to road vehicles (lorries, tractors, trailers or semi-trailers) when routed in combined transport are reduced or reimbursed either by a standard amount, or in proportion to the journeys that such vehicles undertake by rail, within limits and in accordance with conditions and rules they fix after consultation with the responsible Ministry.* 2. *The reductions of reimbursements referred to in the first paragraph shall be granted by the State in which the vehicles are registered, on the basis of the rail journeys effected within that State. States under a transport agreement with Azerbaijan may, however, grant these reductions or reimbursements on the basis of the rail journeys which take place partially or wholly outside the State in which the vehicles are registered.* 3. *Without prejudice to the provisions resulting from a possible reorganization of national taxation systems for commercial vehicles at Community level, vehicles used exclusively for road haulage in feeder or final delivery carriage by combined transport may be exempted, if they are taxed separately, from the taxes listed in paragraph 3.* 4. *Sate Benefits given to the logistic operators have to differentiate the 4 combined transports traffic categories: domestic, import, export and transit, depending on the Azerbaijani strategy policy.* |
|  | **ARTICLE** 7  Where a trailer or semi-trailer belonging to an undertaking engaged in own-account transport is hauled on a final section by a tractor belonging to an undertaking engaged in transport for hire or reward, the transport operation so effected shall be exempt from presentation of the document provided for in ARTICLE 3; however, another document shall be provided giving evidence of the journey covered or to be covered by rail, by inland waterway or by sea. |  | x |  |  |  |  | *Where a trailer or semi-trailer belonging to an undertaking engaged in own-account transport is hauled on a final section by a tractor belonging to an undertaking engaged in transport for hire or reward, the transport operation so effected shall be exempt from presentation of the document provided for in Article 3; however, another e-document shall be provided giving evidence of the journey covered or to be covered by rail.* |
|  | **ARTICLE** 8  Initial or final road haulage legs forming part of combined transport operations shall be exempted from compulsory tariff regulations. |  |  |  |  |  |  | *Initial or final road haulage legs forming part of combined transport operations shall be exempted from compulsory tariff regulations.* |
|  | **Council Directive 96/53/EC of 25 July 1996 laying down for certain road vehicles circulating within the Community the maximum authorized dimensions in national and international traffic and the maximum authorized weights in international traffic** |  | **x** |  |  |  |  | *Similar directive has to be transposed taking into considerations both EU directives.* |
|  | **DIRECTIVE (EU) 2015/719 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 29 April 2015 amending Council Directive 96/53/EC** 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. |  | **x** |  |  |  |  | *The lack of these directives do not allow a regulated traffic and will converge to unavoidable transport barriers especially in the TRACECA corridors* |
|  | **PACT,1997-2001: Regulation (EC) No**[2196/98](http://eur-lex.europa.eu/legal-content/EN/AUTO/?uri=celex:31998R2196)  **MARCO POLO I, 2003-2006: Regulation (EC) No 1382/2003**  **MARCO POLO II, 2007-2013: Regulation (EC) No 923/2009**  **TEN-T: Regulation (EU) No 1315/2013**  **HORIZON 2020: Regulation 1291/2013**  **CEF: Regulation 1316/2013** |  | **x** |  |  |  |  | *Similar to Europe, Azerbaijan should promote the investments of combined transport by legislating two regulations: The first one similar to MARCO POLO, TEN T, CEF, HORIZON 2020 for boosting the infrastructure projects including combined transport terminals.* ***The purpose of this proposal is to focus the possibility Azerbaijan being the country designing one transport international area like the European one (Single Market).*** |
|  | **Shift2Rail: Regulation (EU) No 642/2014 of 16 June 2014** establishing the Shift2Rail Joint Undertaking towards radically enhance the attractiveness and competitiveness of the European railway system to ensure a modal shift towards rail. |  | **x** |  |  |  |  | *The second one similar to Shift2Rail for fostering the technical and managerial investigation in Azerbaijan. Master plan of Shift2Rail and scoping paper which described the field of investigation from IP 1 to IP 5 can be overtaken integrally[[16]](#footnote-17)* |

1. Regulation (EU) no. 2016/403 supplementing Regulation (EC) No 1071/2009 with regard to the classification of serious infringements of the Union rules, which may lead to the loss of good repute by the road transport operator [↑](#footnote-ref-2)
2. Commission Decision 2009/992/EU on minimum requirements for the data to be entered in the national electronic register of road transport undertakings [↑](#footnote-ref-3)
3. Bear in mind that most of these actions are subject to Twinning’s and Technical assistances [↑](#footnote-ref-4)
4. The Accident Investigation Body should be build first before other organizational considerations as this issue directly affect the safety improvements. [↑](#footnote-ref-5)
5. For extensive details please consult OECD “Principles for the governance of regulators” [↑](#footnote-ref-6)
6. Administrative division of the Umayyad [Caliphate of Córdoba](https://en.wikipedia.org/wiki/Caliphate_of_C%C3%B3rdoba): used in Spain to designate organizational chaos in the case of excessive administrative independency [↑](#footnote-ref-7)
7. Inception Report done by the consulting group DB Engineering & Consulting GmbH / KPMG towards a preparation of a business plan for Azerbaijan Railways JSC [↑](#footnote-ref-8)
8. Google source: [Analysis of the EU Combined Transport - Europa](https://www.google.es/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0ahUKEwi0-8mM1tzQAhXL5CYKHTwqCbsQFgg_MAI&url=http%3A%2F%2Fec.europa.eu%2Ftransport%2Fsites%2Ftransport%2Ffiles%2Fthemes%2Fstrategies%2Fstudies%2Fdoc%2F2015-01-freight-logistics-lot2-combined-transport.pdf&usg=AFQjCNFZsKvHZ1RlMl8STgT-4sQYI2tQfQ) [↑](#footnote-ref-9)
9. http://ec.europa.eu/transport/sites/transport/files/themes/sustainable/studies/doc/2014-handbook-external-costs-transport.pdf [↑](#footnote-ref-10)
10. UIC: International Railways Union [↑](#footnote-ref-11)
11. See inception report 11/2016: “Consulting services for preparation of a business plan for Azerbaijan Railways JSC” [↑](#footnote-ref-12)
12. As per last UIC Study on External costs: <http://www.shop-etf.com/en/> [↑](#footnote-ref-13)
13. In fact, there are voices claiming for an additional effort towards shifting more loads from the Road to the Rail if to comply with the emissions reduction objectives. In particular, the respected Öko-Institut in Germany says Europe needs to slash its transport emissions by 94% by 2050. That's what it takes to avoid catastrophic 2 degree warming. Meanwhile, EU governments – particularly Italy and Poland – are trying to destroy the already inadequate target of -30% by 2030. <https://www.transportenvironment.org/publications/europe-needs-slash-its-transport-emissions-94-2050-effort-sharing-regulation> [↑](#footnote-ref-14)
14. Reference is made to the many studies on external costs available in the UIC: <http://www.uic.org/> [↑](#footnote-ref-15)
15. LAD (Legal Approximation Degree); 0 = Not approximated; 1 = Very low level of approximation; 2 = Low level of approximation; 3 = Almost approximated; 4 = Harmonized [↑](#footnote-ref-16)
16. <http://shift2rail.org/about-shift2rail/reference-documents/> [↑](#footnote-ref-17)