MEMORANDUM OF UNDERSTANDING
ON
VEHICLE LOAD MANAGEMENT
ENTERED INTO BETWEEN the sovereign States of -

Republic of Angola  Republic of Mozambique
Republic of Botswana  Republic of Namibia
Republic of Burundi  Republic of Rwanda
Democratic Republic of the Congo  Republic of South Africa
Republic of Djibouti  Republic of Sudan
State of Eritrea  Kingdom of Swaziland
Federal Democratic Republic of Ethiopia  United Republic of Tanzania
Republic of Kenya  Republic of Uganda
Kingdom of Lesotho  Republic of Zambia
Republic of Malawi  Republic of Zimbabwe

Being the Common Market for East and Southern Africa (COMESA) and East African Community (EAC) and the Southern African Development Community (SADC).

(hereafter referred to as “the Parties”) –

WHEREAS the Member States of the Organization for African Unity (OAU), the precursor to the African Union (AU), entered into a Treaty in Abuja, Nigeria in June 1991 to establish an African Economic Community (AEC) with the objectives to –

(a) promote economic, social and cultural development and the integration of African economies in order to increase economic self-reliance; and promote an endogenous and self-sustained development;

(b) establish, on a continental scale, a framework for the development, mobilisation and utilisation of the human and material resources of Africa in order to achieve a self-reliant development;

(c) promote co-operation in all fields of human endeavour in order to raise the standard of living of African peoples, and maintain and enhance economic stability, foster close and peaceful relations among Member States and contribute to the progress, development and the economic integration of the Continent; and

(d) coordinate and harmonise policies among existing and future economic communities in order to foster the gradual establishment of the Community;

AND WHEREAS the Member States established among themselves in 1994 a Common Market for Eastern and Southern Africa (COMESA), referred to as the Common Market, to replace the Preferential Trade Area which had existed since 1981 and entered into a Treaty to that effect;
AND WHEREAS the partner states of the East African Community (EAC) signed a Treaty for the establishment thereof on 30 November 1999;

AND WHEREAS the partner states of the Southern African Development Community have on 17 August 1992 signed a Treaty for the establishment thereof;

AND WHEREAS the COMESA, the EAC and the SADC, are pillars of the AEC and the AU and were established in conformity with the ultimate objective of the Treaty establishing the AEC;

AND WHEREAS the Parties have in 2005 established the COMESA – EAC – SADC Tripartite;

AND PURSUANT to the regional workshop that took place from 9-10 July, 2008 in Nairobi, Kenya and organised by Sub-Saharan Africa Transport Policy Program (SSATP), the Southern African Office of the United Nations Economic Commission for Africa (UNECA) and the three Regional Economic Communities (COMESA, EAC and SADC) that was aimed at:

(a) disseminating the issues identified in the Synthesis Report, Case Studies and Guidelines;

(b) identifying key elements of overload control practice to be standardised or harmonised;

(c) developing an implementation strategy for overcoming the challenges to effective overload control in East and Southern Africa; and

(d) producing resolutions on key elements of overload control to be standardised or harmonised in the East And Southern Africa region;

AND PURSUANT to a meeting of the Ministers responsible for transport in COMESA and SADC held on 15 May 2009 at Swakopmund, Namibia where the Ministers recalled that the COMESA, SADC and UNECA working under the Regional Economic Communities Transport Coordinating Committee established under the SSATP identified vehicle overload control as one of the priority areas to be addressed in their 2006/7 Work Program and that in this regard, a project was commissioned to prepare reports on various aspects of overload control in the East And Southern Africa region of which the key outputs were:

(a) synthesis of Overload Control Practice and Main Lessons Learned;

(b) case Studies on Emerging Good Practice; and

(c) guidelines on Aspects of Overload Control;

AND PURSUANT to the Ministers at the meeting held at Swakopmund on 15 May 2009 noting the resolutions reached by consensus of the Experts at the final plenary session of the Workshop held on 9 and 10 July in Nairobi, Kenya;
AND WHEREAS the EAC has on 29 May 2013 passed the EAC Vehicle Load Control Bill, 2013, which was assented to on 1 December 2015 by the Heads of State and which is awaiting commencement by notice in the Gazette;

AND PURSUANT to the meeting of the COMESA-EAC-SADC Tripartite Vehicle Load Management Initiative on the 12th of November 2014 in Gaborone, Botswana;

AND WHEREAS the Parties to this Memorandum wish to strengthen their co-operation and to endorse the objective of a continental economic zone by 2028, with specific reference to the control of vehicle loads, harmonisation of enforcement and institutional arrangements for regional co-operation in vehicle load management,

NOW THEREFORE THE PARTIES HAVE REACHED THE FOLLOWING UNDERSTANDING:

ARTICLE 1: DEFINITIONS

“additional road pavement consumption” means the usage of a road pavement as a result of overloading of an axle, axle unit or a vehicle or a combination of vehicles, over and above the road pavement usage for which that road pavement has been designed for;

“decriminalisation” means the conversion of the offence of overloading a vehicle from a criminal offence to an administrative offence which must be adjudicated in terms of the principles of the administrative law;

“due process” means an administrative process that complies with the rules of just administration;

“ESA” means equivalent standard axle [The traffic load spectrum (i.e. traffic demand for pavement design purposes) is expressed in Equivalent Standard Axle repetitions (ESAs or E80s)];

“MOU” means this Memorandum of Understanding;

“operator” means the person responsible for the use of a goods vehicle, and includes the owner;

“punitive factor” means the numeric value attached to the punishment of overload offences, incorporating the additional profit made per kilometre by an overload, a level of apprehension factor and an administrative cost factor;

“regional trunk road network” means the regional trunk road network agreed on and indicated in Schedule B;

“security bond” means an amount payable by an operator by means of an electronic deposit at a weighing station to secure payment of an overload fee in the case where that operator is found to be liable to pay such fee;
“standards organisation” means any bureau, body, organization or authority established with the object of promoting standardization, the publications of which a Member State of a Party is authorised to apply by virtue of law or an agreement between that Member State and that bureau, body, organization or authority;

“weighbridge” means a weighbridge or any other apparatus, whether installed in a fixed position or mobile, which is intended for use for determining the mass of vehicles, laden or unladen; and

“weighing station” means the facility where a fixed weighbridge is installed, including the offices and the entire premises.

ARTICLE 2: POLICY REFORM

The Parties confirm their prior agreement to-

2.1 decriminalise the offence of carriage of loads in excess of legal load limits and to introduce a system of administrative control of vehicle loading;

2.2 combat non-compliance with legal load limits by imposing financial sanctions, mobility restrictions, administrative sanctions and points demerit systems in response to such non-compliance;

2.3 vest primary responsibility for the management of vehicle loading in appropriate road authorities and to ensure that such road authorities are vested with adequate powers to undertake vehicle load management comprehensively and effectively;

2.4 recover overloading fees which are punitive in respect to the levels of overloading and cover additional road pavement consumption, enforcement and administration costs and to dedicate income obtained from overloading fees to road maintenance and rehabilitation;

2.5 encourage voluntary compliance with legal load limits and, to this end, agree to facilitate regional partnerships between the public and private sector;

2.6 take all necessary steps to implement appropriate control measures to combat corrupt practices in the management of vehicle loading;

2.7 encourage broad-based private sector investment, including, but not limited to public-private – partnerships in the provision and operation of weighing stations: Provided that private investment may not be undertaken by an entity that has a direct or indirect interest in the consequences of the operation of the weighing station;

2.8 monitor the adequacy of overload management and the regional network of weighing stations; and

2.9 ensure the implementation of an asset management system in relation to weighing stations.

ARTICLE 3: HARMONISATION

3.1 The Parties agree to the harmonised legal load limits contained in Schedule A.
3.2 The Parties agree that no revisions of legal load limits will be undertaken without comprehensive stakeholder consultation.

3.3 The Parties agree to harmonise vehicle dimensions insofar as it relates to vehicle load management.

3.4 The Parties agree to ensure the harmonisation of legal definitions of vehicles in accordance with the technical definitions as contained in Schedule A.

3.5 The Parties agree to ensure that financial sanctions, mobility restrictions, administrative sanctions, offences and points demerit systems related to non-compliance with load limits, are harmonised as provided for in this MOU.

3.6 The Parties agree to introduce a system for the electronic payment of a security bond equal to the overload fee imposed in terms of the relevant legislation in relation to an overload offence, which security bond must be refunded if the operator is found not liable for that offence in terms of due process.

3.7 The Parties agree to ensure that they calculate the security bond or fee to be paid by an operator found to be overloaded at the currency exchange rate of the day on which the vehicle was weighed.

3.8 The Parties agree to ensure that they calculate overload fees taking into account the cost of additional road pavement consumption by a vehicle or combination of vehicles that exceeds the prescribed permissible mass load as well as the distance over which that vehicle or combination of vehicles travelled and an apprehension level and punitive factor that includes an administrative cost recovery factor:

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\text{Overload Fee} = \text{[Additional ESA (due to overload)] x [Cost of ESA/km] x [Distance Travelled] x [Level of Apprehension Factor] x [Punitive Factor]}\]

3.9 The Parties agree to amend their legislation to require, where possible that vehicles are, subject to article 6, not be processed by Customs unless in possession of a weighbridge certificate.

ARTICLE 4: REGIONAL NETWORK OF WEIGHING STATIONS

4.1 The Parties agree to ensure the effectiveness of vehicle load management on a regional basis through the development of a regional network of weighing stations which is effective and sustainable in respect of both domestic and international road traffic.

4.2 The Parties agree that the weighing stations forming part of the regional network must be strategically and equitably located on –

4.2.1 the regional trunk road network; and

4.2.2 arterial roads not forming part of the regional trunk road network to which the legal load limits in Schedule A apply.

4.3 The Parties agree that the strategic location of weighing stations will include consideration of the cost of construction and operation of the weighing stations as opposed to the savings brought about by the operation of those weighing stations, meaning that the cost of overload
law enforcement within their territories should not equal or exceed the savings brought about by that law enforcement.

4.4 The Parties agree to monitor, on an ongoing basis, the effective operation of regional network weighing stations and related equipment and, where this is found to be inadequate, the Parties further agree to maximize national and regional financial and human resources, by –

4.4.1 promoting joint use of weighing stations and related facilities;
4.4.2 promoting joint management of weighing stations and related facilities;
4.4.3 exploring options for joint funding of infrastructure and equipment upgrading; and
4.4.4 jointly procuring private investment and technology transfer for upgrading of existing facilities and establishment of new facilities.

4.5 The Parties agree to ensure they implement a vehicle load management information system that supports all functions in the weighing chain, from screening of vehicles to be weighed, the identification of the operator of the vehicle, the weighing process, to the adjudication and payment of overload fees.

4.6 The Parties agree to jointly implement an information management system for the regional trunk road network weighing station systems that will-

4.6.1 link the vehicle load management information system for weighbridges located on the regional trunk road network in a manner that allows all weighbridges located on that network to identify a vehicle that has been weighed at the different weighbridges along its journey;
4.6.2 subject to the reciprocal recognition of weighbridges, allow a vehicle to be statically weighed once only during a leg of a trip where one leg of that trip consists between the points where the vehicle uploads and downloads its load or part of its load;
4.6.3 identify habitual offenders;
4.6.4 identify the operator or owner and the driver of a vehicle; and
4.6.5 identify an operator or a vehicle on which mobility restrictions have been imposed so as to enable a Member State of a Party to prohibit that vehicle from entering that Member State.

ARTICLE 5: REGIONAL PERFORMANCE AUDITS

5.1 The Parties agree to conduct regular regional performance audits on the effectiveness of the regional network of weighing stations.

5.2 To this end, the Parties undertake to develop regional performance targets and set expected regional performance levels.

ARTICLE 6: WEIGHBRIDGE CERTIFICATION, VERIFICATION AND MAINTENANCE

6.1 The Parties agree to ensure that every weighbridge is issued with a certificate of conformity with a standard which determines design and installation requirements for weighbridges to be used by regulatory authorities.
6.2 The Parties agree to ensure that the verification of weighbridges is undertaken annually, in accordance with an agreed standard for weighbridges used by regulatory authorities which sets the standards for the measuring of the accuracy of the weighbridge against calibrated weights.

6.3 The Parties agree to develop or adopt operational standards that must apply to the weighbridges located on the regional trunk road network.

6.4 The Parties agree to ensure that equipment at weighing stations is maintained on an ongoing basis.

6.5 The Parties agree that non-compliance with the provisions of this article empowers any other Party not to recognise a weighbridge certificate of a Member State of another Party.

ARTICLE 7: TRIPARTITE VEHICLE LOAD MANAGEMENT WORKING GROUP

7.1 The Parties agree to establish a Tripartite Vehicle Load Management Working Group comprising public and private sector representatives to oversee implementation of the regional strategy on vehicle load management and to promote the regional effectiveness of vehicle load management by -

7.1.1 identifying opportunities to integrate national vehicle load management systems;
7.1.2 identifying the optimal regional allocation of permanent weighing stations;
7.1.3 identifying the optimal utilization of mobile weighing stations in support of the regional weighing station network;
7.1.4 harmonising the development of a regional vehicle load management information system which accommodates operator and shipper-based risk analysis;
7.1.5 harmonising design and implementation of a regional demerit point system for offenders and harmonised penalties that are commensurate to the additional road pavement consumption caused by overloading;
7.1.6 monitoring the effectiveness of vehicle load management on a regional basis;
7.1.7 monitoring the incidences and levels of corruption relating to vehicle load management;
7.1.8 reviewing impact assessments and advising the Parties on actions to be taken in support of a regional system of vehicle load management;
7.1.9 harmonising regional training programmes for their relevant road authority’s personnel, the traffic police and other persons involved in national vehicle load management systems; and
7.1.10 disseminating information on the objectives, design, functions and procedures of a regional vehicle load management system.

7.2 The Parties agree that the Tripartite Vehicle Load Management Working Group will be representative of national consultative and co-ordinary structures concerned with vehicle load management in the Parties.

7.3 The Parties agree that the Tripartite Vehicle Load Management Working Group must liaise regularly with other institutional structures within the Tripartite region.
7.4 The Parties agree that the Tripartite Secretariat must facilitate the establishment of the Tripartite Vehicle Load Management Working Group and chair the first meeting of the Working Group at which the Working Group must elect its own presiding members.

7.5 The Parties agree that the Tripartite Vehicle Load Management Working Group will meet as often as required but at least four times a year.

7.6 The Parties agree that the Tripartite Vehicle Load Management Working Group shall annually submit a report on its activities to the Tripartite Secretariat, who shall distribute that report to the the Parties.

7.7 The Parties agree that the Tripartite Vehicle Load Management Working Group shall determine its own rules and procedures and keep a record of its proceedings.

ARTICLE 8: OPERATIONS MANUAL

The Parties agree that in order to ensure that all weighbridge operations are carried out in a proper, consistent and standardized manner a regional weighbridge operations and procedures manual must be compiled by and agreed on by the Parties.

ARTICLE 9: PERFORMANCE BASED SYSTEM

9.1 The Parties agree that as a long term goal they will strive to implement voluntary self-regulation schemes that encourage consignees, consignors and transport operators engaged in the road logistics value chain to implement a vehicle management system that preserves road infrastructure, improves road safety and increases the productivity of the logistics value chain.

9.2 The performance based system may entail exemptions from vehicle load legislation on condition that the operator complies with the conditions of the performance based system adopted.

9.3 The Parties agree to allow any person or group of persons to establish a weighing station of which the weighing equipment shall be verified by the the Parties, in order for that group of persons to determine the correct loading of their vehicles.

ARTICLE 10: LIABILITY FOR OVERLOAD OFFENCES

10.1 The Parties agree to amend their domestic legislation prior to the implementation of the information management system contemplated in article 4.5, to provide for the operator to be the prime offender liable for the overload offence.

10.2 The Parties agree to investigate the implementation of a system where all persons in the loading chain may be held liable for the overloading of a vehicle, inclusive of the consignor, the consignee, the operator/owner, the driver and the loader.

ARTICLE 11: RECIPROCAL RECOGNITION

11.1 The Parties agree to recognise the authority of persons appointed by a Member State to carry out vehicle load management functions, as may be agreed, at a shared facility in the territory of
another Member State and, to this end, agree to reciprocally recognise qualifications of authorised officers.

11.2 Subject to article 6, the Parties undertake to recognise each other’s weighbridge certificates and related documentation issued by an accredited weighing station provided that this takes place on a reciprocal basis and subject to the freedom of a Party to withhold recognition where similar standards are not maintained.

11.3 The Parties agree that, notwithstanding the provisions of articles 11.1 and 11.2, the operators of a Party will be bound by the legal load limits of the other Parties and the authorised inspection authorities of that other Party will be entitled to inspect and weigh the vehicle or combination of vehicles of such operator at any time.

11.4 Where a Party has been informed by another Party that it reasonably suspects that an accredited weighing station in the territory of that Party is not complying with the required standards, that Party must alert the COMESA-EAC-SADC Tripartite of the suspicion and of any intention to withhold recognition of weighing certificates issued by such weighing station.

11.5 On receipt of a notice in terms of article 11.4, the COMESA-EAC-SADC Tripartite must cause the matter to be investigated with the view to achieve a solution of the matter.

ARTICLE 12: TOLERANCE

The Parties agree that in the adjudication of overload offences a tolerance of 5% on axle or axle unit loads shall be allowed and a tolerance of 2% on vehicle loads or vehicle combination loads shall be allowed.

ARTICLE 13: TRAINING

13.1 The Parties, in support of voluntary compliance and the promotion of a common understanding of the vehicle load management system and its enforcement in the region through the ongoing exchange of information must endeavour to promote, through appropriate training, a high standard of professionalism amongst authorised officers, operators, drivers, consignors and consignees.

13.2 To this end, the Parties agree to -

13.2.1 encourage programmes aimed at promoting a common understanding of -

13.2.1.1 the regulation and enforcement of vehicle loading;

13.2.1.2 the manner in which any goods may be loaded and carried on a vehicle including driving practices; and

13.2.1.3 weighing practices and procedures;

13.2.2 share existing training facilities and investigate the feasibility of establishing regional training centres;

13.2.3 harmonise training programmes bearing in mind the need to ensure adequate levels of expertise and professionalism;

13.2.4 co-ordinate human resource development policies and programmes by developing a regional plan for the transfer of knowledge, skills and technology;
13.2.5 provide for the mutual recognition of qualifications; and
13.2.6 encourage practical on-the-job joint training.

ARTICLE 14: TRANSITIONAL PROVISIONS

14.1 The Parties agree to harmonise their domestic vehicle load management legislation in accordance with this MOU within five years from the date of its signature.

14.2 The Parties acknowledge that, during the phasing-in of the minimum contents of the legislation for vehicle load management, axle and vehicle load limits may differ within the region.

14.3 To ensure the equitable recovery of the additional road pavement consumption caused by the difference in axle and vehicle load limits, the Parties agree that where the legal axle and vehicle load limits are lower than in the territory of another Party, the party where the vehicle and axle load limits are lower, may require vehicles that originate from the territory of the Party where the legal axle and vehicle load limits are higher, to pay an extra fee calculated based on the formula agreed on by the Parties in terms of article 3.8, excluding the punitive factor and the level of apprehension factor.

ARTICLE 15: EXCHANGE OF INFORMATION AND PUBLIC AWARENESS

The Parties agree to promote a common understanding of the vehicle load management system and its implementation in the region through the ongoing exchange of information and the conducting of public awareness campaigns to develop an appreciation of the impact which vehicle overloading which cause additional road pavement consumption, has on the preservation of road infrastructure.

ARTICLE 16: AMENDMENT TO DOMESTIC LEGISLATION

16.1 The Parties agree to adhere to the fundamental and operational principles that shall govern the achievement of the objectives mentioned in this MOU and to the principles of international law governing relationships between sovereign states.

16.2 The Parties agree that their domestic legislation need to be perused and amended or additional legislation drafted as necessary to provide for the co-ordinated effort to control vehicle loads, harmonisation of enforcement and institutional arrangements for vehicle load management.

16.3 The Parties agree to amend their domestic legislation to reflect the minimum content prescribed in Schedule A, adapted to suit the Parties’ domestic institutional structures.

ARTICLE 17: IMPLEMENTATION FRAMEWORK

17.1 The Parties agree to file their respective existing vehicle load management legislation and strategies with the Tripartite Secretariat within 90 days from the date of signature of this MOU.

17.2 The Parties undertake to file relevant subsequent amendments and additions to their regulatory framework referred to in article 17.1 to provide and maintain a central data base of legislation in the Tripartite region.
17.3 Each Party shall, within one year from the date of entry into force of this MOU take the necessary steps as agreed to in article 16 with respect to the amendments of or additions to domestic legislation.

17.4 Each Party shall within one year from the entry into force of this MOU, submit a report to the COMESA-EAC-SADC Tripartite reporting on the status of the implementation of this, and thereafter on the anniversary date of the submission of the first report.

ARTICLE 18: FILING OF DEVIATIONS

18.1 A Party may file deviations from the minimum content prescribed in Schedule A or with respect to the Implementation Framework in article 17.

18.2 The filing of a deviation shall be in the form of a written notice to the Tripartite Secretariat and consist of at least –
  18.2.1 the detail of the specific deviation; and
  18.2.2 the envisaged effect on the Implementation Framework contemplated in article 17.

18.3 The Tripartite Secretariat shall transmit certified copies of any deviation filed in accordance with this article to all the Parties.

ARTICLE 19: DISPUTE RESOLUTION

19.1 Any dispute that may arise in the interpretation, application and implementation of this MOU and any supplementary agreements between the Parties must be resolved by the Parties amicably and in the spirit of co-operation.

19.2 The Parties hereby acknowledge that in resolving such disputes they shall primarily be guided by the need to give effect to the paramount objectives of this MOU.

19.3 Any dispute between the Parties in terms of this MOU that remains unresolved in terms of this Article for a period of more than 180 days may be referred by any Party to an arbitration tribunal appointed in terms of article 19.4 for arbitration.

19.4 An arbitration tribunal shall exist of three members of whom two shall be appointed by each Party to the dispute and the two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the tribunal.

19.5 The arbitration tribunal shall decide on the arbitration procedures to be followed.

19.6 For the purpose of this Article, “Parties” shall include a regional economic community contemplated in this MOU, any interested operator or group of operators or other person or group of persons involved in the carriage of goods along the regional corridors within the COMESA – EAC- SADC region.

ARTICLE 20: SIGNATURE, RATIFICATION AND ACCESSION

20.1 This MOU will be open for signature on behalf of any Party.

20.2 The Parties agree, after the signature of this MOU, to—
  20.2.1 ratify the MOU in accordance with their constitutional procedures; and
20.2.2 deposit an instrument of ratification with the Tripartite Secretariat in accordance with the rules determined by the Tripartite Secretariat in terms of article 6.8 of the Memorandum of Understanding on Inter Regional Cooperation and Integration.

20.3 This MOU shall remain open for accession by any African country that is not represented by COMESA-EAC-SADC region and such accession may be effected by the deposit of an instrument of accession in accordance with the rules determined by the Tripartite Secretariat in terms of article 6.8 of the Memorandum of Understanding on Inter Regional Cooperation and Integration.

20.4 The Tripartite Secretariat shall transmit certified copies of an instrument of ratification or accession to all Parties.

20.5 The Tripartite Secretariat may at any time substitute Schedule B in accordance with the expansion of the regional trunk road network.

**ARTICLE 21: ENTRY INTO FORCE**

This MOU enters into force between the Parties on the date of signature by the duly authorised representatives of the Parties, but its commencement is not dependent on the signature of all the Parties.

**ARTICLE 22: ORIGINAL**

The copy of this MOU in each of the languages that it is translated into, serves as the original MOU.

**IN WITNESS WHEREOF,** the Parties, each acting through its duly authorised representative have signed this MOU.

Signed at ........................................................ on this ........................... day of .......................................................

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Witness ...........................................................................................................................................

Witness

duly authorised representative of the Republic of Angola.
Signed at ........................................................ on this ............. day of .........................................................

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Duly authorised representative of the Republic of Botswana

Signed at ........................................................ on this ............. day of .........................................................

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Duly authorised representative of the Republic of Burundi

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Duly authorised representative of the Democratic Republic of the Congo
Signed at ........................................................ on this ............ day of ...........................................................

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Duly authorised representative of the
Republic of Djibouti

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Duly authorised representative of the
State of Eritrea

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Duly authorised representative of the
Federal Democratic Republic of Ethiopia

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Duly authorised representative of the
Republic of Kenya
Signed at ........................................................ on this ................ day of ............................................

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Witness                          Duly authorised representative of the Kingdom of Lesotho

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Duly authorised representative of the
Kingdom of Swaziland
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United Republic of Tanzania

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Duly authorised representative of the
Republic of Zimbabwe
SCHEDULE A

Minimum Requirements to be incorporated into Legislation for Vehicle Load Management

A. STANDARDISATION OF TECHNICAL DEFINITIONS

The following technical definitions are needed to regulate overload in accordance with the MOU:

Note: It is important to note the difference between gross mass and permissible mass: Gross mass is the mass that the manufacturer has intended the vehicle to carry and permissible mass is the legal limit determined in accordance with the legislation.

“adaptor dolly” means a semi-trailer with one or more axles, designed or adapted -

(a) to be attached between a truck-tractor and semi-trailer; and

(b) not to carry any load other than that imposed by a semi-trailer;

“axle” in relation to a vehicle, means a device or set of devices, whether continuous across the width of the vehicle or not, about which the wheels of the vehicle rotate and which is so placed that, when the vehicle is travelling straight ahead, the vertical centre lines of such wheels would be in one vertical plane at right angles to the longitudinal centre-line of such vehicle;

“axle mass” means the sum of the wheel mass of all wheels on any axle;

“axle unit” in relation to a vehicle, means a set of two or more parallel axles of such vehicle which are so interconnected as to form a unit;

“bus” means a motor vehicle designed or adapted for the conveyance of more than 16 persons, including the driver, if any;

“centre-line of an axle unit” or any like expression, means a line midway between the centre-lines of the extreme axles of an axle unit;

“ESA” means equivalent standard axle [The traffic load spectrum (i.e. traffic demand for pavement design purposes) is expressed in Equivalent Standard Axle repetitions (ESAs or E80s);

“goods vehicle” means a motor vehicle excluding a motorcycle, motor car, minibus or bus, designed or adapted for the conveyance of goods on a public road and includes a truck-tractor, adaptor dolly, converter dolly and breakdown vehicle;

“gross axle mass”, in relation to a motor vehicle, means the maximum mass of a particular axle of the vehicle as specified by the manufacturer thereof or, in the absence of such specification, as determined by the [relevant roads authority];
"gross axle unit mass", in relation to a motor vehicle, means the maximum mass of a particular axle unit of the vehicle as specified by the manufacturer thereof or, in the absence of such specification, as determined by the [relevant roads authority];

"gross combination mass", in relation to a motor vehicle which is used to draw any other motor vehicle, means the maximum mass of any combination of motor vehicles, including the drawing vehicle, and load as specified by the manufacturer thereof or, in the absence of such specification, as determined by the [relevant roads authority];

"gross kingpin mass", in relation to a semi-trailer, means the maximum mass of the kingpin as specified by the manufacturer of the semi-trailer or in the absence of such specification, as determined by the [relevant roads authority];

“minibus” means a motor vehicle designed or adapted solely or principally for the conveyance of more than nine, but not more than 16 persons, including the driver;

"manufacturer" means a person who manufactures or assembles new motor vehicles for the purpose of sale or disposal otherwise commercially;

“motor vehicle” means any self-propelled vehicle and includes a trailer;

"overall height", in relation to a vehicle, means the distance measured from ground level to the highest part of-

(a) any part of such vehicle; or

(b) any load thereon,

whichever part is the highest, but in the case of a vehicle driven by electrical power, the overall height should not include any overhead electrical contacting gear or catwalk protruding above such vehicle;

"overall length", in relation to a vehicle, means the distance between the front end and the rear end of the vehicle and, in relation to a combination of vehicles, the distance between the front end of the leading vehicle and the rear end of the rearmost vehicle;

"overall width", in relation to a vehicle, means the width measured between two planes parallel to the longitudinal centre-line of the vehicle and passing through the extreme projecting points on either side of that vehicle, excluding any side mirror or direction indicator;

“steering axle” means an axle, the wheels of which are attached in such a manner that it enables the vehicle concerned to be steered thereby, but excludes-

(a) any axle of a semitrailer or trailer;

(b) the rear axle or axles of any motor vehicle; and

(c) any axle of a motor vehicle which is steered by movement of the front part of the vehicle relative to the rear part of the vehicle, or which is steered by movement of its articulated frame,

and the phrase "steering axle unit" has the same meaning subject to due alteration where necessary;
“tandem” means an axle unit comprising of two parallel axles;

“trailer” means a vehicle which is not self-propelled and which is designed or adapted to be drawn by a motor vehicle;

“tridem” means an axle unit comprising of three parallel axles;

“truck-tractor” means a motor vehicle designed or adapted-

(a) for drawing other vehicles; and

(b) not to carry any load other than that imposed by a semi-trailer or by ballast, but does not include a tractor;

"weighing device" means a weighbridge or any other apparatus, whether installed in a fixed position or mobile, which is intended for use for determining the mass of vehicles, laden or unladen; and

"wheel mass", in relation to any wheel of a vehicle, means the total mass supported by the contact area between the tyre of that wheel and the road surface.

B. CORE PROVISIONS FOR DETERMINING THE PERMISSIBLE MASS

At the meeting of the COMESA-EAC-SADC Tripartite Vehicle Load Management Initiative on the 12th of November 2014 in Gaborone, Botswana, it was agreed to determine the permissible mass of an axle, axle unit, vehicle or combination of vehicles in relation to the mass that the manufacturer of the tyres determines that the tyres can carry, the mass that the manufacturer determined that the axle, axle unit, vehicle or combination of vehicles can carry, and the mass which the road pavement design allows for over a period of time. The provisions below are examples of the core provisions to determine the permissible mass in this manner. The model regulations below are used in conjunction with a fact sheet (“Schedule”) which is published together with the regulations:

1. **Permissible maximum axle mass of vehicle**

   (1) An operator may not operate or allow a minibus, bus, tractor or goods vehicle to be operated on a public road if the permissible maximum axle mass of the vehicle is exceeded.

   (2) The permissible maximum axle mass of a vehicle is the least of the mass limits in relation to-

   (a) the maximum load on tyres as indicated in Schedule (X –insert schedule number)I

   (b) the gross axle mass determined by the manufacturer of the axle and indicated in Schedule X(insert Schedule Number)II(a); and

   (c) the maximum carrying capacity of the road as indicated for single axles in Schedule X (insert Schedule Number) (III).
2. **Permissible maximum axle unit mass of vehicle**

(1) An operator may not operate or allow a minibus, bus, tractor or goods vehicle to be operated on a public road if the permissible maximum axle unit mass of the vehicle is exceeded.

(2) The permissible maximum axle unit mass of a vehicle is the least of the mass limits determined by-

   (a) the maximum load on tyres as indicated in Schedule X(insert Schedule Number)(I);

   (b) the gross axle unit mass determined by the manufacturer of the axle and indicated in Schedule X(insert Schedule Number)(II)(a); and

   (c) the maximum carrying capacity of the road as indicated for tandem or tridem axle units in Schedule X(insert Schedule Number)(III).

3. **Permissible maximum vehicle mass**

(1) An operator may not operate on a public road or allow a minibus, bus, tractor or goods vehicle to be operated if the permissible maximum vehicle mass of the vehicle is exceeded.

(2) The permissible maximum vehicle mass of a vehicle is the least of the mass limits determined by-

   (a) the sum of the permissible maximum axle mass and axle unit mass of the vehicle as contemplated in regulations 1 and 2;

   (b) the gross vehicle mass determined by the manufacturer as indicated in Schedule X(Insert Schedule Number)(II)(a);

   (c) the permissible drawing mass of a vehicle as indicated in Schedule X(Insert Schedule Number)(II)(b);

   (d) the power to mass ratio of a vehicle as indicated in Schedule X(Insert Schedule Number)(II)(c); and

   (e) the mass carrying capacity of bridges calculated in terms of Schedule X(insert Schedule Number)(IV),

   but the permissible maximum vehicle mass of such vehicle may not exceed 56,000 kilograms.

4. **Permissible maximum combination mass**

(1) An operator may not operate or allow a combination of vehicles to be operated on a public road where the drawing vehicle is a minibus, bus, tractor or goods vehicle, if the permissible maximum combination mass of that combination is exceeded.
(2) The permissible maximum combination mass of a combination of vehicles is the least of the mass limits determined by-

(a) the sum of all the permissible maximum axle mass and axle unit mass of the combination of vehicles as contemplated in regulations 1 and 2;

(b) the gross combination mass of the combination of vehicles as determined by the manufacturer;

(c) the drawing mass of the vehicle or combination of vehicles determined as indicated in Schedule X (insert Schedule Number)(II)(b);

(d) the maximum ratio of the total mass of the combination of vehicles to the driving axle of that combination of vehicles determined as indicated in Schedule X (insert Schedule Number) (II)(c);

(e) the mass carrying capacity of bridges determined as indicated in Schedule X (insert Schedule Number)(IV); or

(f) 56,000 kilograms.

5. Distribution of axle mass and wheel mass

An operator may not operate or allow a vehicle to be operated on a public road if on an axle with-

(1) two tyres, the wheel mass on one tyre exceeds the wheel mass on the other tyre by more than 10 percent; or

(2) four tyres, the wheel mass on two tyres nearest to each other exceeds the wheel mass on the other two tyres by more than 10 percent;

(a) in the case of an articulated motor vehicle the axle mass of a steering axle or the sum of the axle mass of a steering axle unit is less than 11 percent of the sum of all axle masses of the vehicle;

(b) in the case of a motor vehicle, not being an articulated motor vehicle, with a steering axle unit, the sum of the axle mass of that steering axle unit is less than 30 percent of the sum of all axle mass of the vehicle; or

(c) in the case of any other vehicle, the axle mass of a steering axle is less than 20 percent of the sum of all axle mass of the vehicle, except in the case of a tractor when the axle mass of the steering axle may not be less than 12 percent of the sum of all the axle mass of the tractor.
SCHEDULE X:

FACT SHEET

I. Load on tyres

The permissible load on a tyre is determined in accordance with-


(b) Where the standard specification referred to above do not contain the relevant tyre data, the wheel mass approved by the manufacturer of the tyre concerned.

Note: For the purpose of determining the pressure in a tyre, the temperature of the tyre is disregarded.

II. Gross vehicle mass, gross axle mass, gross axle unit mass, gross combination mass, drawing mass and axle mass of driving axle/total mass ratio

(a) The gross vehicle mass, gross axle mass or gross axle unit mass is the mass that the vehicle, axle or axle unit can carry according to the certification of the manufacturer of the vehicle, the axle or axle unit.

(b) The permissible drawing mass of a vehicle or a combination of vehicles is determined by multiplying the net power in kilowatts of the engine of the vehicle as determined in accordance with or calculated with due regard to the South African Bureau of Standards SANS 10013-1:2006 (Ed. 4.00): “The determination of performance (at net power) of internal combustion engines Part 1: Road vehicle internal combustion engines at sea level” by 240.

Note: where the drawing vehicle is a tractor, the net power of the tractor must be multiplied by 400.

(c) The maximum ratio of the total mass is of a vehicle or combination of vehicles to the driving axle mass is five times the total axle mass of the driving axle or axles of the vehicle or combination of vehicles.

III. Mass carrying capacity of road

<table>
<thead>
<tr>
<th>Axle description</th>
<th>Axle types</th>
<th>Maximum mass(kilogrammes)</th>
</tr>
</thead>
<tbody>
<tr>
<td>For each wheel fitted to a steering axle</td>
<td>![symbol]</td>
<td>3,850</td>
</tr>
<tr>
<td>For each wheel fitted to a non-steering axle</td>
<td>![symbol]</td>
<td>4,000</td>
</tr>
<tr>
<td>Axle description</td>
<td>Axle types</td>
<td>Maximum mass (kilogrammes)</td>
</tr>
<tr>
<td>---------------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------</td>
<td>---------------------------</td>
</tr>
<tr>
<td>Steering axle fitted with two wheels</td>
<td><img src="image" alt="Axle Diagram" /></td>
<td>7,700</td>
</tr>
<tr>
<td>Non-steering axle fitted with two wheels</td>
<td><img src="image" alt="Axle Diagram" /></td>
<td>8,000</td>
</tr>
<tr>
<td>Single axle fitted with four or more wheels</td>
<td><img src="image" alt="Axle Diagram" /></td>
<td>10,000</td>
</tr>
<tr>
<td>Single axle fitted with four or more wheels and fitted to the rear or middle of</td>
<td><img src="image" alt="Axle Diagram" /></td>
<td>10,200</td>
</tr>
<tr>
<td>a bus-train, to a bus or to a breakdown vehicle or to a refuse compacting vehicle</td>
<td><img src="image" alt="Axle Diagram" /></td>
<td></td>
</tr>
<tr>
<td>A tandem axle unit which is a steering axle fitted with two wheels on each axle</td>
<td><img src="image" alt="Axle Diagram" /></td>
<td>15,400</td>
</tr>
<tr>
<td>Tandem axle unit which is a non-steering axle fitted with two wheels on each axe</td>
<td><img src="image" alt="Axle Diagram" /></td>
<td>16,000</td>
</tr>
<tr>
<td>Tandem axle unit which is a steering axle and which is fitted with four wheels on each axe and which is fitted to a vehicle (excluding a trailer) designed to compact and carry refuse or to a</td>
<td><img src="image" alt="Axle Diagram" /></td>
<td>20,400</td>
</tr>
<tr>
<td><strong>Axle description</strong></td>
<td><strong>Axle types</strong></td>
<td><strong>Maximum mass (kilogrammes)</strong></td>
</tr>
<tr>
<td>---------------------</td>
<td>----------------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>breakdown vehicle</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Tandem axle unit</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>which is a non-steering axle and which is fitted with four wheels on each axle</td>
<td><img src="image" alt="Tandem Axle Diagram" /></td>
<td>18,000</td>
</tr>
<tr>
<td><strong>Tridem steering-axle unit with four wheels on each axle</strong></td>
<td><img src="image" alt="Tridem Steering Axle Diagram" /></td>
<td>23,100</td>
</tr>
<tr>
<td><strong>Tridem non-steering axle unit fitted with four wheels on each axle</strong></td>
<td><img src="image" alt="Tridem Non-Steering Axle Diagram" /></td>
<td>24,000</td>
</tr>
<tr>
<td><strong>Axle unit consisting of three or more axles</strong></td>
<td><img src="image" alt="Axle Unit Diagram" /></td>
<td>24,000</td>
</tr>
</tbody>
</table>
IV. Mass carrying capacity of bridges

(a) The mass carrying capacity of bridges is determined by multiplying the dimension of a group of axles by 2,100 and adding 18,000.

(b) A group of axles may comprise any series of axles, but may not consist of only one axle unit.

(c) The dimension referred to in paragraph (a) is measured in meters and tenths of meters from the center of the first axle of any group of axles to the center of the last axle of that group.

(d) If the dimension measured is not a definite figure in meters and tenths of a meter, the next highest number of tenths of a meter with which the dimension so measured is exceeded, must be used for the calculation referred to in paragraph (a).

(e) Where a group of axles of a combination of vehicles is measured, the vehicles of that combination must be positioned in line and both sides of that combination of vehicles must be measured, and if the dimensions of the two sides differ, the longer dimension must be used for the calculation of the mass carrying capacity of bridges.

Note: The above does not provide for the use of super single tyres, which in accordance with the Swakopmund resolution can only be allowed with stringent law enforcement and a desk top study must be performed in relation to the feasibility to allow them.

V. Information plates for goods vehicles exceeding a GVM of 3,500kg

To enable law enforcement and the calculation of permissible mass loads, information regarding the gross mass of a vehicle needs to be displayed on the vehicle. The following is an example of such a legal provision:

“The following information must be displayed on a metal plate affixed in an accessible place on a door post, under the bonnet or on the dash-board of the vehicle concerned or, in the case of a trailer, on the left side thereof in any conspicuous place:

(a) the tare in kilograms (denoted as T);

(b) the gross vehicle mass in kilograms (denoted as GVM);

(c) the gross axle mass or gross axle unit mass of each axle or axle unit in kilograms (denoted as GA or GAU respectively);

(d) in the case of a semi-trailer the gross kingpin mass as specified by the manufacturer (denoted as GKM);

(e) the gross combination mass in kilograms where the vehicle is used to draw any other vehicle (denoted as GCM);

(f) the permissible maximum vehicle mass referred to in [insert reference to domestic legislation] in kilograms (denoted as V), but this subparagraph does not apply to a semi-trailer; and

(g) the permissible maximum axle mass referred to in [insert reference to domestic legislation] or axle unit mass referred to in [insert reference to domestic legislation] of each axle or axle unit in kilograms (denoted as A or AU respectively).”
C. SPECIFIED FEES IN ACCORDANCE WITH A SPECIFIED FORMULA

The following is an example of such a provision:

“The fee prescribed (by subsidiary legislation) for exceeding the permissible maximum mass of a vehicle or a combination of vehicles, must relate to the additional road pavement consumption caused by a vehicle or combination of vehicles that exceeds the prescribed permissible mass and may-

(a) be calculated on averages in relation to travel distances of the categories of vehicles for which an operator is registered in terms of [insert reference to domestic legislation];

(b) include the additional traffic load due to overloading expressed in ESA’s;

(c) include the cost of an ESA/km; and

(d) include a punitive factor.

Note: The punitive factor includes the estimated level of apprehension, a cost recovery factor and a deterrent factor.

The SADC Model Law Provisions provides the following example of an overload punitive provision:

“(1) Where any person fails to comply with section [insert reference to domestic legislation], a road authority may, in addition to recovering any monies due as overloading fees, impose one or more of the following sanctions against such person -

(a) a temporary ban on the use of a specified road or route or generally;

(b) the imposition of a higher scale of overloading fees in respect of any future carriage of loads in excess of the legal load limit for a specified period or indeterminately; or

(c) the withdrawal of an operating license.

(2) The imposition of the higher overloading fees may be linked to the points demerit system contemplated [insert reference to domestic legislation] as prescribed.”

Below is an example of fees for some configurations of vehicles calculated in accordance with the formula contained in Article 3 of this MOU (the fees have been calculated in Namibian Dollar). In this example the punitive factor has been kept constant throughout the calculations, but Parties could consider the increase of the punitive factor in proportion with the overload. Please also note that the amount of the security bond to be paid by an offender before he can leave the weighing station equals that of the fee:
### NAMIBIA OVERLOAD FEE SCHEDULE PER AXLE

<table>
<thead>
<tr>
<th>INPUT VARIABLE</th>
<th>DISTANCE (km)</th>
<th>ESA/ km (N$)</th>
<th>PUNITIVE FACTOR</th>
<th>n-VALUE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>300</td>
<td>0.22</td>
<td>6</td>
<td>4</td>
</tr>
</tbody>
</table>

#### AXLE CONFIGURATION

- **Steering Axle**
  - Legal Mass=7.7t
  - ESA=1.85
- **Single(Drive)Axle**
  - Legal Mass=9t
  - ESA=1.45
- **Tandem Axle**
  - Legal Mass=18t
  - ESA=3.93
- **Tridem Axle**
  - Legal Mass=24t
  - ESA=3.68

<table>
<thead>
<tr>
<th>OVERLOAD/ AXLE (kg)</th>
<th>OVERLOAD FEE (N$)</th>
</tr>
</thead>
<tbody>
<tr>
<td>100</td>
<td>40  26  72  76</td>
</tr>
<tr>
<td>200</td>
<td>80  53  144 153</td>
</tr>
<tr>
<td>300</td>
<td>122 81  220 233</td>
</tr>
<tr>
<td>400</td>
<td>166 110 297 316</td>
</tr>
<tr>
<td>500</td>
<td>211 139 377 402</td>
</tr>
<tr>
<td>600</td>
<td>258 170 460 491</td>
</tr>
<tr>
<td>700</td>
<td>306 201 545 583</td>
</tr>
<tr>
<td>800</td>
<td>357 234 633 678</td>
</tr>
<tr>
<td>900</td>
<td>409 267 724 777</td>
</tr>
<tr>
<td>1000</td>
<td>463 302 818 879</td>
</tr>
<tr>
<td>1100</td>
<td>519 337 914 985</td>
</tr>
<tr>
<td>1200</td>
<td>577 374 1013 1094</td>
</tr>
<tr>
<td>1300</td>
<td>637 412 1116 1206</td>
</tr>
<tr>
<td>1400</td>
<td>699 450 1221 1323</td>
</tr>
<tr>
<td>1500</td>
<td>763 490 1329 1443</td>
</tr>
<tr>
<td>1600</td>
<td>829 532 1441 1567</td>
</tr>
<tr>
<td>1700</td>
<td>897 574 1555 1695</td>
</tr>
<tr>
<td>1800</td>
<td>967 617 1673 1827</td>
</tr>
<tr>
<td>1900</td>
<td>1040 662 1795 1963</td>
</tr>
<tr>
<td>2000</td>
<td>1115 708 1919 2104</td>
</tr>
<tr>
<td>2100</td>
<td>1192 755 2048 2248</td>
</tr>
<tr>
<td>2200</td>
<td>1272 804 2179 2397</td>
</tr>
<tr>
<td>2300</td>
<td>1354 854 2314 2551</td>
</tr>
<tr>
<td>2400</td>
<td>1439 905 2453 2708</td>
</tr>
<tr>
<td>2500</td>
<td>1526 958 2596 2871</td>
</tr>
<tr>
<td>2600</td>
<td>1616 1012 2742 3038</td>
</tr>
<tr>
<td>2700</td>
<td>1709 1067 2892 3210</td>
</tr>
<tr>
<td>2800</td>
<td>1804 1124 3046 3387</td>
</tr>
<tr>
<td>2900</td>
<td>1902 1182 3204 3569</td>
</tr>
<tr>
<td>3000</td>
<td>2003 1242 3366 3756</td>
</tr>
<tr>
<td>3100</td>
<td>2107 1303 3532 3948</td>
</tr>
<tr>
<td>3200</td>
<td>2213 1366 3703 4146</td>
</tr>
<tr>
<td>3300</td>
<td>2323 1431 3877 4349</td>
</tr>
<tr>
<td>3400</td>
<td>2436 1497 4056 4557</td>
</tr>
</tbody>
</table>
D. DEMERIT POINTS ATTACHED TO NUMBER AND SERIOUSNESS OF OFFENCE

Each Member State must develop a system of demerit points that must be attached to a finding of guilt in relation to an offence. A saturation point must be determined per annum, the accrual of which leads to a vehicle licence/operator card/driving licence being suspended, as well as the possibility of being banned from entering the Member State in which the offences have been committed. A saturation level may also be determined on a shorter cycle, say three months, after which the operator’s fees are increased should he transgress. This cycle must be determined leaving sufficient time for the appeal period to lapse, so that the operator is not penalised.

- Demerit points must take into account the following objectives of punishment, which will apply whether or not the offence is decriminalised:
  (a) the punishment should fit the offender as well as the offence, be fair to society and be blended with a measure of mercy according to the circumstances; and
  (b) differentiation must be made between demerit points accruing to the driver and points accruing to the operator – overloading is mostly due to decisions of the operator, not the driver;
- Demerit points must be linked to the financial penalty paid for each offence; and
- Demerit points must increase exponentially parallel to the exponential increase in overloading fees.

A guideline example of demerit points calculated on an exponential scale in accordance with the additional road pavement consumption that the overload causes is shown in the table below:

<table>
<thead>
<tr>
<th>OVERLOAD/AXLE (kg)</th>
<th>OVERLOAD FEE (N$)</th>
</tr>
</thead>
<tbody>
<tr>
<td>3500</td>
<td>2551</td>
</tr>
<tr>
<td>3600</td>
<td>2670</td>
</tr>
<tr>
<td>3700</td>
<td>2792</td>
</tr>
<tr>
<td>3800</td>
<td>2918</td>
</tr>
<tr>
<td>3900</td>
<td>3046</td>
</tr>
<tr>
<td>4000</td>
<td>3178</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>HV CATEGORY</th>
<th>DEMERIT POINTS PER GVM OVERLOAD (t)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1</td>
</tr>
<tr>
<td>2 AXLE</td>
<td>1</td>
</tr>
<tr>
<td>3 AXLE</td>
<td>0.9</td>
</tr>
<tr>
<td>4 AXLE</td>
<td>0.9</td>
</tr>
<tr>
<td>5 AXLE</td>
<td>1</td>
</tr>
<tr>
<td>6 AXLE</td>
<td>1</td>
</tr>
</tbody>
</table>

NB: The above example cannot be copied as is. It can only provide a guideline.
E. Obligatory Weighing of Vehicles

When legislating obligatory weighing of vehicles, care must be taken to allow for screening and the fact that not every vehicle can practically be weighed. Wording such as the following can be used:

“A driver of a goods vehicle of which the Gross Vehicle Mass exceeds 3500kg must when passing a weigh station, present the vehicle to be weighed.”

Evading a weighbridge must be made an offence for which both the driver and the operator is liable. The following example could be used:

“Offences and Penalties

It is an administrative offence -

(a) to evade a weighbridge; or
(b) to abscond from a weighbridge after having been directed to that weighbridge,

and in the case of any of the above offences being committed, the driver and the operator of the vehicle concerned may both be held liable for the offence and the offence may be adjudicated in terms of the procedure prescribed in terms of [insert reference to domestic legislation].”

Note: Imprisonment cannot be imposed for an administrative offence.

F. Powers of Officers

This is usually contained in the legislation either establishing the police force or traffic unit. However, where specialist units are being established within the relevant roads authority and officers are appointed with the sole purpose of overload law enforcement, the officers must be authorised in the overload-specific legislation. It is more efficient to add some traffic officers’ powers to that of the overload control powers if a driver of a vehicle being presented to be weighed is e.g. obviously drunk, or the vehicle is obviously unroadworthy or unlicensed, the overload control officer should be empowered to act on it. The following section may be used:

“An authorised officer may-

a) ascertain the dimensions of, the load on, or the mass, axle mass or axle unit mass of any vehicle, or the mass of any combination of two or more vehicles coupled together, laden or unladen, and require such vehicle or combination of vehicles to be taken to a designated place for the purposes of ascertaining such mass by means of a weighing device, and if the mass so ascertained exceeds the mass allowed in terms of the [insert reference to domestic legislation], prohibit the operation of that vehicle or combination of vehicles on a public road until such mass has been reduced or adjusted to comply with the provisions of [insert reference to domestic legislation], but where the load on a vehicle includes any dangerous goods, the reduction and handling of the mass must be undertaken in accordance with the requirements of any law relating to such goods;
b) drive any vehicle which is being examined by him or her or for the purpose of performing any other duty in relation to such vehicle under [insert reference to domestic legislation], provided he or she is licensed to drive a motor vehicle of the particular class;

c) if it appears to the officer that the driver or a person apparently in charge of a vehicle is incapable for the time being of driving or being in charge of such vehicle by reason of his or her physical or mental condition, temporarily forbid such person to continue to drive or be in charge of such vehicle and make such arrangements for the safe disposal or placement of the vehicle as in his or her opinion may be necessary or desirable in the circumstances;

d) regulate and control traffic on any public road, and give such directions as, in his or her opinion, may be necessary for the safe and efficient regulation of such traffic and, where he or she is of the opinion that the driver of a motor vehicle is impeding the normal flow of traffic at the weighbridge, direct the driver to remove the vehicle from that weighbridge or to follow a different route with the vehicle;

e) require of any person whom such officer reasonably suspects of having committed an offence under this Act or of being able to give evidence in regard to the commission or suspected commission of such an offence, to furnish his or her name and address and give any other particulars which are required for his or her identification or any process;

f) in respect of any motor vehicle, demand from the owner, operator or driver thereof to produce any document prescribed in terms of this Act;

g) impound any document produced to him or her in terms of the abovementioned subsection (x) which in his or her opinion may afford evidence of a contravention of or failure to comply with any provision of [insert reference to domestic legislation] provided he issues the driver with a receipt for that document; and

h) inspect any motor vehicle or part thereof and impound any document (on proviso that he issues a receipt) issued in connection with the registration and licensing of such motor vehicle where it is found that the engine number or chassis number of such motor vehicle differs from the engine number or chassis number as specified on the document, and may direct that such motor vehicle be taken forthwith to the nearest police station specified by such traffic officer for police clearance, and may notify the owner of the motor vehicle that such vehicle must be reregistered.”

Note: In order to allow for the privatization of weighbridge operations, the law could allow for authorised officers to be appointed by the private organization, on condition that they are registered with the government and bound to a code of conduct issued by the government. Section 11 of the Namibian Road Traffic and Transport Act, 1999 provides such an example: “The Minister may, by notice in the Gazette, and subject to such conditions and requirements as may be specified in such notice, authorise any party with whom the Minister has entered an
agreement in terms of section [the section authorising the Minister to contract out his functions] to appoint persons employed by such party in such category or categories of authorised officers as may be specified in the notice, to perform such powers, duties and functions as may be so specified.”

G. **WEIGHBRIDGE ACCREDITATION, VERIFICATION, CALIBRATION AND AUDITS**

Standard provisions should include at least the following:

**Accreditation/approval of weighbridge**

(a) The relevant roads authority must determine the requirements for approval of a weighbridge. These requirements will typically include the following:

- Certification of conformity compliance with a standard that has been incorporated into the domestic legislation and which determines design and installation requirements for weighbridges to be used by regulatory authorities;

- Annual verification of weighbridges. The verification must be done in accordance with a standard incorporated into national legislation, and which sets the standards for the measuring of the accuracy of the weighbridge against calibrated weights. This verification must be done by a person/s accredited by the relevant Standards Organisation; and

- Operational standards may be prescribed by each Member State against which the weighbridge must be audited annually. It is not necessary to incorporate the Guidelines into domestic legislation, but the legislation must contain a provision empowering the relevant roads authority to determine operational standards for weighbridges.

Typical sections giving effect to the above requirements can be found in the SADC Model Law Provisions:

**“Application for accreditation of weighing stations**

X. (1) A person –

(a) operating a weighing station; or

(b) wishing to build and operate a weighing station,

must apply, in the prescribed manner, to a road authority or the inspectorate, to have such station accredited.

(2) An application made in terms of subsection (1) must be accompanied by -

(a) a locality plan and drawings of the weighing station; and

(b) a specifications certificate issued by the manufacturer of the mass measuring equipment installed at the weighing station.

**Accreditation of weighing stations**
(1) Upon receipt of an application referred to in section [section regulating the application], a road authority must -

(a) ensure that such application is in order; and

(b) undertake an inspection of the weighing station to ensure compliance with the prescribed accreditation standards.

(2) A road authority may specify different standards for different weighing stations having regard to -

(a) the volume of traffic on the route along which a weighing station is situated;

(b) the category or type of vehicles to be weighed at a weighing station;

(c) whether the weighing station will be a common-user facility or dedicated to vehicles operated by the applicant or a specified category of carriers; or

(d) whether the weighing station will be jointly managed in terms of a multilateral or bilateral agreement concluded with the government of another Member State.

(3) If a road authority is satisfied that the weighing station complies with the prescribed accreditation standards, it shall -

(a) issue to the applicant a certificate of accreditation on the prescribed form; and

(b) give notice of such accreditation in the Gazette.

(4) Subject to section [the section regulating annual audits] a certificate of accreditation issued in terms of sub-section (3) is valid for an unlimited period and must contain the conditions subject to which such certificate was issued.

Note: the accreditation of the weighbridge should be made subject to the successful annual audit.

(5) The Minister may prescribe the conditions under which a certificate of accreditation may be renewed.

Annual audits and random inspections

X. (1) An accredited weighing station is subject to an annual audit by a road authority to confirm that it meets the requirements for accreditation.

(2) For the purpose of subsection (1), a road authority or its duly authorised agent may impose an audit fee to recover the cost related to an annual audit.

(3) A person operating a weighing station must provide a road authority or its duly authorised agent with all reasonable assistance to undertake an audit, including –

(a) any information which may be requested;

(b) access to documentation relating to the operation of the weighing station;
(c) access to any part of the weighing station and its facilities; and

(d) access to any person employed with regard to the operations of the weighing station.

(4) If the findings of an annual audit are that a weighing station no longer complies with the prescribed standards, a road authority or its duly authorised agent may -

(a) issue a directive in writing to the person operating the weighing station to ensure compliance within the period specified in the directive;

(b) suspend the certificate of accreditation pending such compliance; or

(c) revoke the certificate of accreditation.

(5) A certificate of accreditation may be re-issued if a weighing station is found to comply with the prescribed standard after an accreditation inspection contemplated in section X [the section regulating accreditation] has been conducted.

(6) A road authority or its duly authorised agent may, at any time, conduct a random inspection of a weighing station for the purpose of verifying compliance with a standard applicable to such station.

(7) The provisions of subsection (3) apply to any random inspection conducted in terms of subsection.

(8) A road authority must for time to time introduce supplementary actions to monitor the performance of weighing stations by utilizing mobile weigh-in motion technology.

**Right of appeal to Minister**

X. (1) Any person who is aggrieved at the refusal of a road authority to accredit him or her as a weighing station or at the suspension or cancellation of his or her accreditation may, within 21 days after such refusal, suspension or cancellation, in writing appeal to the Minister against such refusal, suspension or cancellation and such appellant must at the same time serve a copy of the appeal on such road authority.

(2) After receipt of the copy of the appeal referred to in subsection (1), a road authority must forthwith furnish the Minister with its reasons for the refusal, suspension or cancellation and such appellant must at the same time serve a copy of the appeal on such road authority.

(3) The Minister may after considering the appeal give such decision as he or she may deem fit.”

**NOTE:**

1. The right to appeal in different countries may lie to different organisations, for example a transport appeal tribunal or commission.

2. Guidelines on the compilation of operational standards and guidelines to which a weighbridge operation must comply, can be found in the Sub-Saharan Transport Policy Programme’s “Guidelines on Overload Control in
Eastern and Southern Africa”, dated March 2010 and available at www.worldbank.org/afr/ssatp: this document provides amongst others, guidelines on the compilation of-

- Procedural guidelines;
- Institutional, management and maintenance guidelines;
- Data collection and reporting; and
- Monitoring of private sector operated weighing facilities- guidelines are amongst others, provided on performance indicators for weighbridges. (While these guidelines are provided for private sector facilities, they are equally useful to apply to public sector facilities.)

H. INCORPORATION OF STANDARDS

The following is a typical provision empowering the incorporation of standards into subsidiary legislation:

“Incorporation of standard

(1) The power conferred to make regulations includes the power to incorporate into any regulation so made any standard publication contemplated in section [insert reference to domestic legislation] or any part thereof, without stating the text thereof, by mere reference to the number, title and year of issue of that standard publication or any other particulars by which it is sufficiently identified.

(2) Any provision of a standard publication incorporated into regulations under subsection (1) is, for the purposes of this Act, in so far as it is not inconsistent with the regulations made in terms of this Act, is deemed to be a regulation.

(3) Regulations incorporating any standard publication under subsection (1) must state the place at and times during which a copy of the standard publication is available for inspection.

(4) For the purposes of subsection [insert reference to domestic legislation], "standard publication" means any code of practice, specification, standard or standard method published or issued by the [insert Member State name and name of standards organisation within that Member State (if any)], a standard adopted by the Southern African Development Community [insert reference to relevant Regional Economic Community (REC)] or any bureau, body, organization or authority established with the object of promoting standardization, and which [insert Member State name] is authorised to apply by virtue of an agreement between the [insert Member State name and name of standards organisation within that Member State (if any)] and that bureau, body, organization or authority, or between the government of [insert Member State name] and that bureau, body, organization or authority or between the Minister and that bureau, body, organization or authority.

Currently, the following standards have been developed for regulatory authorities, based on the relevant ISO standards:

(b) For static weighbridges:
- SANS 10343:2003: Verification of non-automatic electronic self-indicating road vehicle mass measuring equipment for use by road traffic authorities. This standard provides for the manner of certification of weighbridges.
- SANS 1838-1:2007: Electronic self-indicating road vehicle mass measuring equipment for use by road traffic authorities Part 1: Non-automatic mass measuring equipment for static mass measurement. This standard provides for type approval of static weighbridges.

(c) For Weigh in Motion weighbridges:
- E1318-02: Standard specification for Highway-In-Motion (WIM) Systems with User Requirements and Test Methods. This is a standard published by ASTM International (formerly known as the American Society for Testing and Materials) and is subject to copyright.

(d) Where a Member State or a REC has adopted standards to the same effect, and those standards conform substantially to the above standard or the ISO standard on which it is based, those standards may be incorporated into the domestic legislation.

I. MUTUAL RECOGNITION OF WEIGHBRIDGE CERTIFICATES

Weighbridges must issue a weighbridge certificate attesting to the fact that a vehicle has been weighed by that weighbridge, and domestic legislation must be adapted to provide for the recognition of other countries’ weighbridge certificates. The prerequisite for the implementation of Article 11 of this MOU is that weighbridges must comply with the same standards and that an information system links the regional weighbridges. The SADC Model Law Provisions provides a typical example of such a provision:

“Mutual recognition of weighing certificates

(1) A weighing certificate issued by an accredited weighing station in any other Member State is recognised as valid for the purpose of carriage in the Republic / Kingdom, but such recognition does not exempt a carrier from the obligatory weighing requirements in terms of [insert reference to domestic legislation], if applicable.

(2) Nothing in this section is deemed to prohibit an authorised officer from requiring a vehicle carrying a weighing certificate contemplated in subsection (1) from being weighed in terms of this Act.”

J. DIMENSIONS

The Parties have previously agreed to a 22 metre length limitation on heavy vehicles. Below is an example how this could be included in the legislation and fitted with a Member State’s own length limits:

“Overall length of vehicle
A person may not operate on a public road -

(a) a trailer which is coupled to a drawing vehicle in such a manner that the trailer and the drawing vehicle cannot swivel in a horizontal plane at the coupling, if the overall length including any drawbar or coupling exceeds one comma eight metres;

(b) a trailer with one axle or one axle unit, other than a semi-trailer -
   (i) with a gross vehicle mass exceeding 12,000 kilograms, if the overall length of the trailer, excluding any drawbar or coupling, exceeds 11,3 metres; or
   (ii) with a gross vehicle mass which does not exceed 12,000 kilograms, if the overall length of the trailer, excluding any drawbar or coupling, exceeds eight metres;

(c) an articulated motor vehicle or any other combination of motor vehicles consisting of a drawing vehicle and a semi-trailer, if the overall length of the motor vehicle or combination of motor vehicles, including any drawbar or coupling, exceeds 18,5 metres;

(d) a bus-train, if the overall length thereof exceeds 20 metres;

(e) a trailer not referred to in paragraph (b), excluding a semi-trailer, with a gross vehicle mass exceeding 12,000 kilograms, if the overall length of the trailer, excluding any drawbar or coupling, exceeds 12,5 metres;

(f) any other vehicle, excluding a semi-trailer, if the overall length, including any drawbar or coupling, exceeds 12,5 metres; or

(g) any other combination of motor vehicles, if the overall length thereof, including any drawbar or coupling, exceeds 22 metres, but this paragraph does not apply to a breakdown vehicle while towing any other motor vehicle."

K. Presumptions

To facilitate evidence either in Court or during administrative adjudication of overload offences, the following examples of presumptions may be used, which are examples of an administrative adjudication system:

“Presumption in relation to gross vehicle mass of motor vehicle

In any adjudication in terms of this Act for an offence in relation to the gross vehicle mass of a motor vehicle-

(a) any document purporting to have been issued by the manufacturer of such motor vehicle and stating the gross vehicle mass of the particular model of motor vehicle; or

(b) in the absence of evidence as contemplated in paragraph (a), a certificate purporting to have been issued by a vehicle testing station and specifying the gross vehicle mass of the particular model of motor vehicle,

is prima facie evidence of the gross vehicle mass of the model of motor vehicle concerned.
Presumption in relation to the mass of a vehicle or combination of vehicles

(1) Notwithstanding any provision in any other law, where in the adjudication of an offence in terms of this Act, or the review of a decision taken in terms of this Act, evidence to prove that offence is given of mass ascertained by means of a weighing device, that mass is, subject to subsection (2), deemed to be correct in the absence of any evidence to the contrary.

(2) Every weighing device must be installed in accordance with the relevant standard incorporated into a regulation made in terms of [insert reference to domestic legislation], in the manner contemplated in that section.

(3) The Minister must at all times and in respect of every weighing device, be able to produce a certificate stating that the weighing device concerned has been verified to be operating correctly and that the person issuing the certificate is qualified as approved by the Minister and stating the date on which such verification has been done which date may not be earlier that one year before the date of the alleged contravention.

L. Adjudication

A quick, effective and procedurally fair prosecution/adjudication procedure that is supported by an electronic information system must be implemented by every Member State. The electronic system is crucial to ensure that the process remains quick.

Before overload can be treated as an administrative offence there are a few requirements that are almost non-negotiable and which should be in place. The requirements are aimed at creating a fair and equitable environment for the calculation and imposition of the administrative fee for overload (overload fee), as well as cost effectiveness of the system for a government. In addition, the opportunity for corruption must be limited to the minimum.

The prerequisites before decriminalisation can be implemented are:

- The mass measuring equipment must be reliable;
- The system must be automated, limiting human intervention;
- The system that is implemented must be cost effective (the system cannot cost more than the savings it effects);
- The system must be easy for operators to understand;
- The system to be implemented should be simpler than the current system;
- Compliance with the system on a regional level must be ensured; and
- The rules of administrative justice must be adhered to. These rules, in short entail-
  o adequate notice of the nature and purpose of the proposed administrative action;
  o a reasonable opportunity to make representations;
  o a clear statement of the administrative action;
  o adequate notice of any right of review or internal appeal, where applicable;
  o adequate notice of the right to request reasons for the decision in an adjudication;
in difficult or highly technical cases, the adjudicator may allow the offender to obtain assistance, legal or otherwise;
- the adjudicator may allow the offender to present and dispute information and arguments; and
- the adjudicator may allow the offender to appear in person.

The best option to decriminalise the offence of overloading is as follows: An entirely new law should be promulgated, declaring the offence to be an administrative offence and determining that it is adjudicated in terms of the administrative law, entailing fair procedure. An agency/authority may be either established or an already established agency can be tasked with the adjudication of the offence. A “security bond” commensurate to the overload fee could be required to be paid up front, pending the adjudication of the offence. Should representations be successfully made by the offender, the security bond is refunded to the offender. The security bond and or the overload fee is payable into the relevant road fund. If the presentations are not successful or the offender did not make representations, the adjudication becomes final and the demerit points system is triggered. The fee is paid electronically to limit human intervention and so limit the opportunity for corruption. The finding of the adjudicator may be taken on review in a court of law, but that review will be limited to the fairness of the procedure. An example of an overload fee adjudication process is given below:
M. PERFORMANCE-BASED SCHEME

A performance-based system includes the aspects of voluntary compliance, self-regulation and cooperation with and by government. This issue should be regulated as little as possible in order not to stifle initiative. The following example could be used:

“Performance based scheme

(1) The [relevant roads authority] may implement a performance-based scheme providing for-
(a) the screening and approval of prospective participants;
(b) performance standards;
(c) the monitoring of performance of participants to the performance-based scheme; and
(d) a code of conduct to be binding on operators or owners, consignors or consignees or any other person identified in the logistics chain and which provides for amongst others,-
(i) the sharing and formalisation of industry best practices;
(ii) mandatory and audited parameters for all aspects of road freight logistics operations including key areas such as driver behaviour, vehicle safety and maintenance and risk assessed operating methods;
(iii) the improvement of safety levels,
(iv) the reduction environmental impact; and
(v) the promotion of professionalism through tried and tested operating procedures.

(2) The [relevant roads authority], in terms of a performance-based scheme, may impose duties and liabilities in terms of this Act on the consignor or the consignee or any other person identified in the logistics chain.

(3) An operator or owner, consignor or consignee or any other person identified in the logistics chain, who is part of a performance-based scheme, may be exempted from a provision of this Act in terms of that scheme and on the conditions determined by the [relevant roads authority].

(4) An operator, owner, consignor or consignee or any other person identified in the logistics chain, who transgresses the conditions of the performance-based scheme, may be prohibited for a period from partaking in any such scheme.”

N. OUTSOURCING OF FUNCTIONS OF ROAD AUTHORITY

Where a Member State does not have specific legislation in relation to the outsourcing of functions or the inherent power to do so, the following model provisions may be used as incorporated in the SADC MLP and the EAC Vehicle Loads Control Bill:

“Agency Agreements

(1) A national road authority may conclude agency agreements to outsource any function to a person contemplated in [insert reference to domestic legislation] of this Act.

(2) An agency agreement may provide for:
   (a) the setting of performance targets;
   (b) bonus or incentive payments in cases in which targets are exceeded;
(c) reduced compensation in cases in which targets are not met;
(d) regular and random audits; and
(e) any other matter necessary to achieve the objectives of this Act.

Compensation of Agents

(1) Where any agreement is concluded to outsource a function of a national road authority, such agreement must, subject to [insert reference to domestic legislation] provide for fair and adequate compensation of an agent in line with commercial principles.

(2) An agreement contemplated in subsection (1) may in the case of the outsourcing of fee collection provide for the retention of an administrative component of the fee structure as compensation.”

The outsourcing of functions must be accompanied by a provision providing for the assignment of that function and the powers associated with it. The following example can be used:

“Delegation and assignment

The Minister [or relevant roads authority] may delegate or assign to any person any power or duty conferred or imposed on the Minister [or relevant roads authority] by this Act, except the power to make regulations or the duty under [insert reference to domestic legislation] to hear appeals.

(3) A delegation or assignment by the Minister under subsection (1) [or relevant roads authority] under subsection (2) -

(a) may be effected subject to such conditions as the Minister [or relevant roads authority] may be determine; and

(b) shall not preclude the Minister [or relevant roads authority] from exercising or performing any power or duty so delegated or assigned by him or her.”

Note: In outsourcing the functions in relation to weighbridges, countries should consider the possibility of outsourcing the law enforcement function as well. In this regard the Namibian system could be used as an example: “any organization with which the Minister of Works and Transport has an agreement to perform functions on his behalf, may appoint a road transport inspector, subject to his or her registration as an officer. The organization is bound by a performance agreement with the Minister, and the officer is bound, on pains of deregistration, to a Code of Conduct prescribed by the Minister. The officer must as a prerequisite for registration, undergo training as determined by the Minister”.
O. **ABNORMAL OR AWKWARD LOADS**

The following examples may be used for the regulations of abnormal or awkward loads:

“**Abnormal load**

(1) The Minister may in the prescribed manner, authorise the owner or operator of a vehicle or a combination of vehicles of which the indivisible load in terms of mass does not comply with the maximum permissible mass contemplated in [insert reference to domestic legislation] to operate that vehicle or combination of vehicles on a public road.

(2) The Minister must by notice in the Gazette publish guidelines in accordance with which an authorisation referred to in subsection (1) must be issued.

(3) The Minister may impose conditions in relation to each authorisation individually in accordance with the requirements of the vehicle or the load concerned.

(4) The Minister may impose a fee for granting the authorisation referred to in subsection (1), which fee may include-

(a) the administrative cost of granting the authorisation;

(b) the estimated cost of the additional road pavement consumption that the excess will probably cause, calculated in accordance with general road design principles;

(c) the cost, if any, of escorting the motor vehicle concerned, if necessary; and

(d) any other reasonable cost relevant to operating a vehicle on a public road while the mass of the vehicle concerned exceeds the maximum permissible mass.

**Note:** The South African Committee of Land Transport Officials developed a guideline set of documents called the TRH 11. It consists of a technical guideline and an administrative guideline and provides an excellent guide to handling abnormal loads.

P. **EXTRATERRITORIALITY**

To give effect to the extraterritoriality provisions of the REC legislation in domestic legislation, the following proposed section may be used:

“**Enforcement**

Notwithstanding anything to the contrary contained in any other law, and in relation to a regional corridor, the powers and duties of a road transport inspector [insert Member State specific terminology] given and imposed in term of this Act may in terms of the article 11.1 of the MOU be exercised or performed by an official of any other Member State referred to in that MOU.”
Q. DATA MANAGEMENT

The following provision from the draft EAC Vehicle Loads Control Bill can be used to ensure the acquisition and implementation of a data management system:

“Application of information communications technology and data management

(1) The [relevant roads authority] shall establish and manage an information and communications technology system for the Road Network, and in particular, for weighbridges and weighing stations.

(2) The information and communications technology system shall facilitate the sharing of information within the network of weighbridges and with the regional network of weighbridges.”