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Final Report

Advice case title: Removal or simplification of the procedure to obtain the Car Circulation Guide for Cross-Border Workers

Full official name of the advised entity: EGTC Galicia-Norte de Portugal

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I. Description of the legal or administrative obstacle in the specific context

A: The case

1. The EGTC Galicia-Norte de Portugal presented in b-solutions, during the "3rd Call for Proposals", a case for legal advice related to an obstacle in the cross-border cooperation between Portugal and Spain concerning the movement of cross-border workers, namely those who, residing in Spain, regularly drive to Portugal because they have their workplace there. He argues, in summary, that:

- a) - *"Travelling for commuting in a private car is still a big bureaucratic problem for the cross border workers in this territory, in particular for those crossing from Spain to Portugal to work. In order to properly use his/her car that is legally registered in Spain, the commuter has to apply for a temporary admission permit. This permit is called Circulation Guide for foreign cars. This situation itself implies a cost (cost of context) and an obstacle to cross-border movement."*
- a) - *"This Circulation Guide must be renewed every year. It must be inside the car in case it is requested by a police inspection and it is exclusively for the single (number plate) that was identified in the document. The application for the Circulation Guide is mandatory for all cross-border workers who want to use their personal car to go to their workplace, and not having it is an act punished by law with high fines. It has to be noticed that commuting in its own car, or sharing private cars, is the most common way of transport for cross-border workers between Galicia and North of Portugal, as there is no specific public transport that could be used for those trips."*
- b) - *"This is a real legislative barrier but also administrative, which hinders cross-border cooperation making it more difficult than it should be (...). A specific regime for the mobility of cross-border workers must be developed. A regime duly legally defined and legislated, since the priority will always be to comply with the law, fulfilling all legal and safety requirements of the commuters."*



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2. On 22 February 2021, in order to prepare this report with relevant and updated information, meetings were held with the Portuguese and Spanish authorities with direct responsibility for monitoring and investigating the sanctioning proceedings related to the issue addressed in this case (the requirement of the Circulation Permit¹ for cars of Spanish cross-border workers), as well as with cross-border workers directly affected by the problem under analysis in this case.²

3. The meetings were very useful and enlightening. Before going into the description of the obstacle, it is appropriate to highlight three aspects that emerged from the meetings and which are of great importance for understanding the scale of the difficulty presented in this case and how it impacts on the lives of many Spanish cross-border workers who regularly use their cars to commute to work.

4. The first aspect is that, in the absence of a public transport network that ensures regular transport between the two sides of the border, with timetables that coincide with working hours, almost all Spanish cross-border workers use their private vehicles (which may be shared or individual) to get to their workplaces in Portugal. Therefore, the requirement for the Circulation Permit (as developed later in this report) directly affects thousands of people daily. This is a real problem on a large scale.

5. The second aspect is that the obstacle under analysis is felt by cross-border workers with violence³, since non-compliance with the obligation to circulate with the travel document leads to the application of heavy fines by the Portuguese police and customs authorities. It was expressly mentioned at the work meetings by the Portuguese police and inspection authorities that the cases resulting from inspections carried out by the National Republican Guard⁴ (hereafter GNR) and which give rise to administrative proceedings for the application of fines by the Tax and Customs Authority⁵ (hereafter ATA) for lack of circulation permits in the motor vehicles of Spanish cross-border workers (therefore with Spanish number plates) represent a large proportion of all the proceedings instituted by the said ATA at its Viana do Castelo

¹ “Guia de Circulação” in portuguese

² The following personalities were present at the working meetings:

Beraldino Pinto - Vice-President of Comissão de Coordenação e Desenvolvimento Regional-Norte (Portugal); Jesús Gamallo - General Director of Foreign Relations and with the European Union (Regional Government of Galicia - Xunta Galicia); Xosé Lago - Director of Galicia-Norte Portugal, EGTC ; Graça Fonseca - Deputy Director of Galicia-Norte Portugal, EGTC; Olímpia Noya Portela - Director of the Tax and Customs Authority; Ivo Morais - Commander of the National Republican Guard Detachment in Valença; Juan José López Castro - Lieutenant Chief of the Pontevedra Traffic Detachment; Teresa Ventín - EURES-T Coordinator; Conceição Pereira - EURES-T; Borja Navarro - GNP,EGTC; Isabel Esteves - GNP, EGTC; Fátima Costa - Intermunicipal Community of Alto Minho; Ana Delgado - Cross-border worker; Xavier Macias - cross-border worker;

³ Violence in the sense that it is an aspect of the State's sanctioning apparatus, that is, a part of State action where the principle of authority is most strongly felt, which is the imposition of fines.

⁴ Guarda Nacional Republicana (GNR)

⁵ Autoridade Tributária e Aduaneira (ATA)



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delegation in northern Portugal. This is therefore an obstacle which is also very significant in terms of the procedures for monitoring and imposing fines by the Portuguese authorities, which reveals the scale of the problem.

6. The third and last relevant aspect that emerged from the work meetings is the following: there is no legal requirement in the Spanish legal system that obliges the vehicles of Portuguese cross-border workers (with Portuguese plates) to have any kind of document similar to the Circulation Permit in order to be authorized to drive in Spain. In other words, **there is no reciprocity in the legal treatment of the motor vehicles of cross-border workers on the two sides of the border**: while the Portuguese can move freely when travelling to their place of work in Spain without the requirement of any specific documentation (besides the usual vehicle and driver identification documents), the Spanish, when travelling to their place of work by car, must have the aforementioned Circulation Permit. This lack of reciprocity in the legal treatment given to the same situation on both sides of the border means that Spanish cross-border workers are unaware of the Portuguese rule. In fact, this legal inequality between the Spanish and Portuguese legal systems explains - and even justifies - the fact that Spanish drivers who regularly travel to work in Portugal are unaware of the bureaucratic requirement to obtain the Circulation Permit, which in itself increases the scale of the problem, as mentioned with regard to the large number of sanction proceedings brought before the Tax and Customs Authority.⁶

B: The obstacle

1. The obstacle is well identified (with precision and accuracy) in the case proposal submitted by EGTC Galicia - Norte de Portugal: the existence, in the Portuguese legal system, of a legal imposition on Spanish cross-border workers travelling in their car to their place of work in Portugal, to obtain the " Circulation Permit " for their vehicles, a document which is issued by the General Directorate of Customs and Consumption Taxes⁷.

2. This bureaucratic requirement becomes a genuine and real obstacle for Spanish cross-border workers, a context cost which they end up feeling⁸, by virtue of the countless penalty proceedings brought by the Portuguese authorities every year, which culminate, in most cases, in the application of heavy financial penalties (fines). In fact, in addition to the aforementioned circumstance that this administrative requirement to

⁶ This problem is felt most at the northern border between Portugal and Spain, which is the most dynamic border with the highest traffic of cross-border workers and the second highest with regard to car traffic in general.

⁷ Direção-Geral das Alfandegas e dos Impostos sobre o Consumo

⁸ It should be noted that obtaining the Circulation Permit does not entail any direct financial cost for those requesting it.



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obtain the Circulation Permit is unknown to the vast majority of Spanish cross-border workers, since there is no reciprocity as regards the existence, in the Spanish legal system, of a similar rule, the procedure to obtain it is, nowadays, quite complicated and inaccessible to the respective potential addressees. This is because, with the digitalization of all procedures relating to Vehicle Tax (ISV), the Circulation Permit can only be obtained online, on the website of the tax authority ("Portal das Finanças"), which only has a Portuguese language version, making access very difficult for non-Portuguese speakers.

3. Therefore, we can only agree with the EGTC Galicia - Norte de Portugal when it states that *"At the present time, where cross-border cooperation is a primary tool for economic and social progress, it is surprising that there are relatively new issues arising, such as this one. It is a step back, a clear setback in the relationships between both countries"*. A study promoted, in 2017, by the Iberian Network of Cross-border Entities (RIET)⁹, reported that the entire border between Portugal and Spain lags behind in the main indices of economic development, if compared with the rest of the geographical area of the two countries, showing less dynamic growth. For example, the figure of 40 inhabitants/km², the average for the cross-border territories, compares with 114 inhabitants/km² for Portugal and 92 inhabitants/km² for Spain. The ageing rate (% over 65 / % under 15) of 1.5 in cross-border regions compares with an average of 1.2 for Portugal and 1.1 for Spain. The per capita GDP of the border regions between Portugal and Spain is 73% of the EU figure, lower than the 80% for Portugal and 99% for Spain. One of the conclusions of this study was the absolute need for a **stable legal and regulatory framework** as a **fundamental prerequisite for the development of any cross-border cooperation policy**. Hence, the obstacle we are dealing with in this case - and mainly because it directly affects cross-border workers - is a real setback in the implementation of cross-border labour and economic policies.

II. Indication of the legal dispositions causing the obstacle

1. In the work meetings, it was several times mentioned an absolutely crucial aspect to understand well the legal framework of the obstacle (and the requirement of the "Circulation Permit"): even if this obstacle is felt by cross-border workers, its framework has nothing to do with the status of the "cross-border worker". In fact, the bureaucratic requirement of the car circulation permit concerns foreign-registered motor vehicles and is linked to the fiscal and tax aspects of the taxation of motor vehicles in Portugal.

⁹ Cf. José Santos Soeiro, Luis Braga da Cruz, Eduardo Junco, Carlos Beltrán, Carmén Lopez and Miguel Antunes Guimarães, *"Towards a new cross-border cooperation agreement between Spain and Portugal"*, ed. RIET, 2017.



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And so much so that the legal origin of the obstacle is a norm of the Vehicle Tax Code¹⁰(hereafter CISV), but specifically **article 34** of the Code.

2. But before we go on to analyze the CISV rules which are relevant to the present case, it should be noted that part of the CISV, more specifically the rules included in Section I of Chapter V, concerning the "*Temporary Admission and Importation*" of vehicles, reflect in Portuguese law the rules set out in *Directive 83/182/EEC* on tax exemptions applicable in the European Union with regard to temporary importation of certain means of transport. Although the aim here is to identify, in the Portuguese legal system, the legal origin of the obstacle, I will, whenever I consider it relevant, make a comparison of the Portuguese rules with those contained in the European Directive.

3. Let's look at the legal regime of temporary admission (importation) of vehicles in Portugal, in schematic terms:

- a) **General rule for temporary admission:** it is possible to drive a vehicle with a foreign number plate in Portugal if all the following conditions are met:
 - i) - not be a resident in Portugal;
 - ii) - be the owner/holder of the vehicle or their direct family member;
 - iii) - the car will not be left for more than 6 months in any 12 month period;
 - iv) - the vehicle is permanently registered in a Member State of the European Union.
- b) **It is forbidden:**
 - i) - a citizen resident in Portugal drives a car with a foreign number plate;
 - ii) - leave or use the vehicle for more than 6 months in any 12 month period.

¹⁰ Código do Imposto Sobre Veículos (CISV)



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This general rule is provided for in Article 30 of the CISV¹¹, which reflects the provisions of Directive 83/182/EEC, in particular Article 3¹².

4. For what concerns us in this case, it should be emphasized that the general rule of temporary admission of vehicles with foreign number plates has a time limit, i.e., it is only valid for 6 months (consecutive or interpolated days) in every 12 months. This is a

¹¹ " **Article 30**

Requirements and period of validity

1 - The temporary admission regime allows taxable vehicles registered in another Member State of the European Union to remain in the national territory with suspension of tax for a maximum period of six months, consecutive or interspersed, in each 12-month period, provided the following cumulative conditions are met:

a) The vehicles have the definitive registration number of another Member State and are registered in the name of a person who has no normal residence in Portugal;

(b) the vehicles are brought into the national territory by their owners or lawful holders for their private use.

2 - Vehicles subject to temporary admission may only be driven in national territory by their owners, spouses or unmarried partners in fact, ascendants and descendants in first degree or by their legitimate holders, on condition that these persons do not have normal residence in Portugal.

3 - By way of derogation from the provisions of the preceding paragraph, vehicles subject to temporary admission may be driven by persons other than the owner in the case of force majeure, mechanical breakdown or by virtue of a contract for the provision of professional driving services.

4 - The employees of duly accredited vehicle rental companies may be authorized to drive light automobiles subject to temporary admission in the trajectory of return to the State in which they are registered.

5 - Residents in national territory may only use, under the temporary admission regime, vehicles with foreign number plates in the situations provided for in this chapter when prior authorisation from customs is granted for the purpose.

6 - For the purposes of this Code, a resident is considered to be an individual who has his/her normal residence in the national territory for a period equal to or exceeding 185 days, per calendar year, as a result of personal and professional ties, or, in the case of a person without professional ties, as a result of personal ties indicating a close relationship between him/herself and the place where he/she lives, as well as a corporate person who has its head office or permanent establishment in the national territory.

The normal residence of a person whose occupational ties are in a different place from his personal ties and who consequently lives in turn in different places situated in two or more Member States shall be regarded as being in the place of his personal ties, provided that such person returns there regularly.

8 - Individuals shall prove their place of normal residence by presenting their identity card or by any other document validly issued by a competent authority, and the supervisory authorities may, in case of doubt, require other elements of information or additional proof.

9 - The provisions of the Community Customs Code, established by Council Regulation (EEC) No 2913/92 of 12 October 1992, and its Implementing Provisions are applicable to the temporary importation of vehicles with third-country registration plates."

¹² " **Article 3**

Temporary importation of certain means of transport for private use

An exemption from the taxes referred to in Article 1 shall be granted, for a continuous period or otherwise, not exceeding six months in any twelve-month period, for temporary importation of private cars, caravans, pleasure boats, private aircraft and cycles, under the following conditions

a) The private importer of the said goods shall:

(aa) have their normal residence in a Member State other than that of temporary importation;

(bb) use the means of transport concerned for their own private use;

(b) means of transport may not be disposed of or hired out in the Member State of temporary importation nor lent to a resident of that State. However, private cars belonging to a leasing firm with its head office in the Community may be subleased to a non-resident with a view to re-exportation provided that they are in the country as a result of the performance of a leasing contract terminating in that country. They may also be returned to the Member State of the place of origin of the leasing by an employee of the leasing company even if that employee is resident in the Member State of temporary importation.



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harmonized rule, by virtue of the said Directive, which is applied by all EU Member States. However, while this rule is useful for the vast majority of people who travel in their cars from one country to another for tourism or sporadic shopping, it does not serve the purposes of those who have to travel daily by car between countries, as is the case of cross-border workers.

5. Hence, the Portuguese CISV contains, like Directive 83/182/EEC, exceptions to the system of temporary admission of vehicles for situations in which the limit of six months out of every twelve months is not appropriate. As far as cross-border workers are concerned, **Article 34** of the CISV¹³ governs the situation of vehicles used by such workers when travelling for work purposes (together with the vehicles of persons temporarily undertaking missions, studies or training). **Article 34** thus provides a derogation from the rule of temporary admission of motor vehicles, allowing Spanish cross-border workers **to use their vehicles for more than 6 months in every 12 months**, but subject to such possibility to a **prior bureaucratic process of recognition, by the tax authority (the Directorate-General of Customs and Excise), that the vehicle meets the legal conditions of Article 34**, namely: the residence of the owner in Spain, the existence of a work contract in Portugal and the elements of the vehicle. This bureaucratic process,

¹³ **Article 34**

Missions, placements, studies and cross-border work

1 - By way of derogation from the provisions of paragraph a) of no. 1 of article 30, vehicles registered in the normal series of another Member State by persons who are in Portugal on a mission of limited duration, training course or study, and who maintain their residence and personal ties in another Member State, may benefit from the temporary admission regime.

2 - In derogation to that set forth in paragraph a) of number 1 of article 30, cross-border workers who reside in Spain with their respective family members, if any, and regularly commute between their residence and the workplace located in national territory can also benefit from the temporary admission regime.

3 - The application of the temporary admission regime to the situations provided for in paragraph 1 depends on the presentation of an application to the Directorate General of Customs and Excise, to be carried out within a maximum of 30 days after entering national territory, accompanied by documentation proving the respective assumptions.

4 - The recognition of the temporary admission regime to the situations foreseen in No. 2 depends on the interested party's declaration that he/she meets the referred requirements, presented to the Directorate-General of Customs and Excise Duties, by registered mail or directly delivered to its services, containing the following elements:

a) Name, civil identification number, residence and Portuguese tax identification number;

b) Place of work and, in the case of employees, identification of the employer;

c) Identification of the vehicle, indicating the make, model and respective registration plate.

5 - Within eight working days of receiving the declaration referred to in the previous number, the Directorate-General for Customs and Excise shall send the interested party the movement order referred to in paragraph 1 of Article 40

6 - During the period of time between sending the declaration and issuing the circulation guide, the interested party may circulate by showing, if stopped by the surveillance agents, a copy of the declaration with the proof of delivery or record of sending.

7 - Without prejudice to counter-ordenational liability, if, at the time of inspection, the interested party does not exhibit the movement order referred to in No. 5, nor a copy of the declaration sent under the terms of No. 4, a period of 10 working days will be granted for it to be presented to the customs office in whose jurisdiction the respective place of work is located, and the latter will be immediately informed of this diligence.

8 - In the circumstances referred to in the previous number, there is no place for seizure or immobilisation of the vehicle, under the terms of paragraph 8 of Article 73 of the General Taxation Infringements Law.



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which begins with a request from the private individual (and which currently, as we have seen, can only take place via the internet, on the “Portal da Finanças”), ends with the issuing, by the tax authority, of the Circulation Permit, which is only valid for one year.

6. The Article 5 of Directive 83/182/EEC¹⁴ regulates the matter of vehicles used by cross-border workers and also provides for an exemption from the general rule on the temporary admission of vehicles, allowing their use without time-limits. The conditions for the application of this special exemption scheme are those laid down in Article 4 of the Directive, which regulates vehicles for special use.

7. In the CISV, the "professional use" is regulated in **article 39¹⁵: this article allows the permanence and circulation in Portuguese territory, without the requirement of the circulation license or any kind of customs formality, of vehicles for professional**

¹⁴ "Article 5

Special cases of temporary importation of tourist vehicles

(1) An exemption from the taxes referred to in Article 1 shall be granted on the temporary importation of tourist vehicles in the following cases:

(a) where a private car registered in the country of normal residence of the user is used regularly by the latter for journeys from his place of residence to his place of work in the territory of another Member State, and vice versa. This exemption shall not be subject to any time limitation;

(b) where a student uses a private car registered in the Member State of normal residence in the territory of another Member State in which he is staying for the sole purpose of pursuing his studies there.

2. The granting of the exemptions provided for in paragraph 1 shall be subject only to the conditions laid down in Article 4(1)(a), (b) and (c).

¹⁵"Article 39

Professional use

1 - Vehicles for professional use, bearing normal serial number plates of another Member State, may temporarily remain and circulate within national territory, without the requirement of a circulation permit or the compliance with customs formalities, with a view to the direct exercise of a remunerated activity or for profit, provided that the following conditions are met:

a) The vehicles are admitted by or on behalf of a person established outside the national territory;

(b) the vehicles are not intended to be permanently used essentially on national territory, but may be put to private use ancillary to professional use;

c) The vehicles have been acquired under the general conditions of taxation, this condition being considered fulfilled when they bear a normal serial number plate of another Member State, with the exclusion of any temporary number plate;

d) (Repealed.)

2 - (Revoked by Law no. 3-B/2010, of 28 April).

3 - For the purposes of access to the regime foreseen in the previous number, the persons with normal residence in another Member State that use the vehicle in the national territory for professional use must be accompanied by the following documentation, for the purposes of exhibition to the inspection entities, whenever requested:

a) Vehicle documents attesting that the vehicle is registered in a normal series and in the name of a person established in another Member State;

b) Personal identification document or any other document having equivalent effect showing the normal residence of the driver of the vehicle in another Member State.

4 - As an exception to the provisions in number 1, the travel document referred to in number 1 of article 40 is required from persons with normal residence in national territory, which will be issued upon presentation of a declaration to the customs that they comply with the conditions required in number 1 of this article, and the provisions in numbers 4 to 7 of article 34 are applicable, with the necessary adaptations, to them.

5 - Professional use is considered to be the use of a light vehicle for the direct pursuit of a remunerated activity or for profit. »



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use, bearing the registration plate of another member state, provided that it has in view the exercise of a remunerated or lucrative activity, verified that the assumptions of paragraphs a), b) and c) are met. The verification of these assumptions does not require any previous administrative procedure, and the police authorities can verify the compliance with the legal assumptions by showing only the vehicle documents and the identity documents of the driver, which prove his residence in another member state.

8. Directive 83/182 EEC treats "professional use" of motor vehicles in its Article 4¹⁶, imposing the same exemption regime of the temporary admission rule. However, differently from the Portuguese legislator, the European legislator makes an analogy between the situation of "professional use" and "use as a cross-border worker", since the assumptions of the exemption are the same for both situations. Furthermore, in neither case is any procedure for prior verification of the assumptions of the exemptions provided for, leaving such regulation to the free discretion of each Member State.

9. The difference between the use of vehicles with Spanish number plates by drivers resident in Spain for "**professional use**" and **as a "cross-border worker"** for the purposes of application of the Portuguese Vehicle Tax Code¹⁷ (CISV) should be better explained at this stage: **the difference is whether there is a work contract in Portugal or in Spain. Thus, a Spanish resident who has a work contract with a Portuguese employer and who regularly visits Portugal as his usual place of work is a cross-border worker for the purposes of the CISV, Article 34 is applicable to him and he must**

¹⁶ "Article 4

Temporary importation of tourist vehicles for professional use

(1) Exemption from the taxes referred to in Article 1 shall be granted on the temporary importation of a private car for business use under the following conditions:

a) The private importer of the tourist vehicle:

(aa) must be normally resident in a Member State other than the Member State of temporary importation;

(bb) may not use the vehicle to carry out, in the Member State of temporary importation, the transport of persons for remuneration or other material benefits or the industrial or commercial transport of goods, with or without remuneration;

(b) the private car may not be sold, hired out or lent in the Member State of temporary importation;

(c) the private car must have been purchased or imported under the general conditions of taxation in the domestic market of the Member State where the user is normally resident and must not benefit on exportation from any exemption or refund of turnover tax, excise duty or other consumption tax. This condition is presumed to be fulfilled when the vehicle is fitted with a standard-issue registration plate of the Member State of registration, excluding any temporary plate.

However, in the case of passenger cars registered in a Member State where the issue of standard-issue registration plates is not subject to compliance with the general conditions of taxation in the internal market, users shall provide proof of payment of excise duty by any means.

2. The exemption provided for in paragraph 1 shall be granted for a continuous or indefinite period of time:

- seven months in any 12-month period in the case of imports of a private car by commercial intermediaries as referred to in Article 3 of Directive 64/224/EEC (5);

- six months in every twelve-month period in all other cases. »

¹⁷ We leave out the situation of "professional use" of a vehicle with Spanish number plates by a Portuguese resident, provided for in Article 29(4) of the CISV, as it is outside the scope of the present case, as presented by EGTC Galicia-Northern Portugal.



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therefore **obtain a Circulation Permit for his vehicle**. In the case of **a resident in Spain, with a work contract in Spain, or a provider of services under a free professional regime, but who has to travel regularly to perform work in Portugal**, Article 39 of the CISV is applicable, referring to professional use, and **no previous bureaucratic or customs formalities are required to legitimize the use of his vehicle** in Portuguese territory. **The former is a "cross-border worker" and the latter is "displaced or posted worker"**.

10. The obstacle identified - the obligation to obtain the Circulation Permit - concerns only cross-border workers (residing in Spain with an employment contract in Portugal) who wish to use their vehicle for their daily journeys (**Article 34 of the CISV**), and not "displaced or posted workers" (residing in Spain with a Spanish employment contract, but who work, sporadically or regularly, in Portugal), as they do not require any prior bureaucratic procedure for recognition of their condition, nor any additional document, in addition to the documents that are normally already presented to the inspection authorities: car documents and personal identification documents of the driver (**Article 39 of the CISV**).

III. Roadmap towards a possible solution of the obstacle with indication of the entities to be involved in the possible solution

1. This is the moment to summarize what has been said so far on the legal framework of the identified obstacle:

a) - **Article 34 of the Vehicle Tax Code (CISV)** imposes an obligatory bureaucratic procedure for prior recognition that **vehicles of Spanish cross-border workers** (vehicles with Spanish number plates of Spanish residents in Spain) are in a position to benefit from the regime of exemption from the general rule of temporary admission or importation of vehicles, provided for in Article 30 of the CISV;

b) - This bureaucratic procedure takes place in the Directorate General of Customs and Excise Duties and culminates with the issuing of the **Circulation Permit**, which must always be in the vehicle and be shown to the Portuguese police authorities during inspections;

c) - **Article 39 of the CISV** provides an exemption from the same rule on the admission or temporary importation of vehicles as in Article 30 for the **"professional use" of vehicles by Spanish drivers residing in Spain**, without subjecting them to any prior customs formality or to obtaining any document or driving license.

d) - the difference between the legal concept of the use of a vehicle with foreign number plates by a "cross-border worker" and for "professional use" lies in



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the existence (or not) of an employment contract in Portugal: **"cross-border worker" is one who, residing in Spain, has an employment contract with a Portuguese employer and uses his vehicle, with Spanish plates, to commute regularly to his workplace in Portugal; "professional use" concerns workers who, residing in Spain, use their vehicle, with Spanish plates, to commute to work in Portugal, but under an employment contract with a Spanish entity or as free professionals (self-employed, without an employment contract).**

2. From this brief review of the legal framework of the obstacle, one can already glimpse the possibility of a solution. In fact - and this was stated in the preparatory meetings for this report - **there are no grounds or reasons why the legal treatment of vehicles of Spanish cross-border workers and those used for professional purposes should not be treated in the same way.** This is the **same life situation and should have the same legal framework:** they are all citizens resident in Spain who cross the border in their vehicles to work in Portugal. The fact that the employer is Spanish or Portuguese is totally irrelevant for the purposes of checking vehicles. It would be - as it is - relevant in situations relating to the personal status of the workers (employment insurance or contributions to each country's tax system), but it is not apparent that there is any reason for different treatment of vehicles used by cross-border workers or for professional use. In both situations, these are citizens resident in Spain who use their vehicle in order to obtain, in Portugal, remuneration for their work.

3. Therefore - and this was the opinion unanimously shared by all those who attend at the working meetings, principally the Portuguese authorities - **the solution to the problem requires a legislative amendment, specifically to Articles 34 and 39 of the Vehicle Tax Code (CISV). Under such a legislative amendment, vehicles used by Spanish cross-frontier workers (residing in Spain and with a work contract in Portugal) would be covered by Article 39, which refers to vehicles used for "professional use" (residing in Spain, with a work contract in Spain or self-employed professionals). Thus, they would not be required to go through any bureaucratic procedures, customs formalities or obtain a Road Permit.**

4. In other words: the present obstacle will be perfectly overcome and resolved if **Article 34 CISV is amended so that it no longer applies to cross-border workers and Article 39 CISV is also amended so that it applies to cross-border workers.** This is because, as we have already said, Article 39 does not require any customs formality (which is required by Article 34 CISV) and it is sufficient, in the event of checks by the police authorities, to present the vehicle documents and the driver's identity document (showing residence in Spain).

5. This solution, as well as resolving the obstacle in question, is the fairest, as it treats identical living situations in the same way and, most importantly, respects



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the principle of reciprocity, since Spanish cross-border workers will now be treated in Portugal in the same way as Portuguese cross-border workers in Spain with regard to the use of their own car to travel to work.

6. As this is a legislative alteration of a Law which falls under the legislative competence of the Assembly of the Republic (the Portuguese Parliament) and whose initiative belongs to the Portuguese Government, this solution will necessarily involve the Portuguese Government. It will be the responsibility of the Government, through the Minister of Finance (as it is a matter of the amendment of a tax law), to initiate the legislative process in order to amend the referred legal articles. The amendment is not complex nor does it entail any tax effect (loss of revenue, disregard of taxable income, etc.), since, as already stated, obtaining the "Circulation Permit" is a free of charge process. We are therefore convinced that it will be accepted by the Portuguese Government, as part of the Iberian policy to promote cross-border cooperation, which has been one of the priorities of the Spanish and Portuguese Governments.

7. It would therefore be entirely appropriate for the Portuguese Government to be aware of this obstacle and of the solution proposed in this report, which, although simple, always involves a legislative process for amending a tax law that falls within the competence of the Portuguese Parliament.

8. In conclusion: **the solution to the obstacle identified in this report requires an amendment to Articles 34 and 39 of the CISV, so that the use of private vehicles by cross-border workers residing in Spain is governed by the rule in Article 39 of the CISV on vehicles for professional use. To this end, the Portuguese Government should take the legislative initiative and propose this amendment to Parliament.**

IV. Pre-assessment of whether the case could be solved with the European Cross-Border Mechanism

1. The solution proposed for removing the obstacle identified in this report involves, as we saw in the previous chapter, a legislative change: by altering the legal framework for the vehicles of cross-border workers residing in Spain travelling in Portuguese territory, and legally classifying the situation as "professional use" of vehicles by residents in Spain, the obstacle will be removed insofar as it will no longer be necessary to obtain a Circulation Permit or any other customs formality. In this way, the treatment of vehicles of frontier workers resident in Spain travelling in Portugal will become the same as that given in Spain to vehicles of frontier workers resident in



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Portugal. The rule will be harmonized and the principle of reciprocal treatment in Spanish and Portuguese law of situations which are identical will be respected.

2. As described above, this solution requires the initiation of a legislative process in Portugal to amend the law that causes the obstacle (the Vehicle Tax Code, specifically Articles 34 and 39). This is a tax law and therefore falls outside the scope of the European Cross-Border Mechanism (ECM).

3. The ECM is intended to be applied to the removal of legal obstacles relating to joint projects in context of infrastructure elements with an impact on a cross-border region or any service of general economic interest provided in a cross-border region. The barrier identified in this report, conditioning the free movement of cross-border workers by car, as we have seen, is transversal to all joint projects or provision of services of general interest that may occur in the cross-border region between Portugal and Spain. However, the removal of such obstacle implies a change in a Portuguese tax law, which cannot be subject to the legal instruments provided in the ECM.

4. Accordingly, the present case could not be solved with the ECM.

V. **Other relevant aspects to this case**

VI. **References and Appendix/Appendices if any**