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I. EXECUTIVE SUMMARY

The Eurobec Eurocity wants to promote a cross-border mobility project to respond to the increase in traffic intensity in the immediate area of the Elvas-Badajoz border crossing, derived from the expansion and concentration of urban developments in Badajoz (commercial, university, hospital, business...) and the installation of new business facilities in the logistics hub connected to the Madrid-Lisbon high-speed line.

The main obstacles identified relate, on the one hand, to the lack of coordination and/or connections between the existing transport networks on both sides of the border and the lack of previous experience between the competent local mobility and transport bodies. This calls for the creation of a framework for concertation prior to the definition of any cross-border project. And on the other hand, the immaturity of the cross-border project proposed, which requires further definition through technical, legal and economic studies to determine the scope of the present and future mobility needs of the border area and the most appropriate response in terms of service, management and financing.

While the complexity of the current legal framework, which integrates international transport provisions, public passenger transport services and cross-border cooperation, is not a facilitating factor, there are, however, examples where political will, technical coordination and European funding have helped to implement cross-border services. And this experience serves as a model or guide for the Eurocity Eurobec, to define and implement a roadmap, considering its specificities, in terms of transport and mobility.

II. DESCRIPTION OF THE OBSTACLE WITH INDICATION OF THE LEGAL/ADMINISTRATIVE PROVISIONS CAUSING THE OBSTACLE

2.1.- Eurobec Eurocity Project

The Eurocity Badajoz-Elvas-Campo Maior (hereinafter Eurocity Eurobec) is geographically located between the Spanish-Portuguese border of the regions of Extremadura and Alto Alentejo¹, in the Lisbon-Madrid corridor.

The three municipalities of Badajoz, Elvas and Campo Maior have intensified cross-border cooperation around the Eurobec Eurocity project, currently legally constituted as a working group without legal personality² and in the process of becoming a European grouping of territorial cooperation (EGTC).

With a population of 182,000 inhabitants, of which 152,000 live in the municipality of Badajoz, the area includes an urban pole of attraction of the regional economy and a low-density territory, with a service economy.

Currently, the border crossing area between Elvas and Badajoz is undergoing a significant urban transformation, due to the concentration of residential commercial and public services (university, hospital, trade fair and event) areas, together with an intermodal logistics hub³, under development, of the Atlantic corridor connected to the Lisbon-Madrid high-speed rail project, where the installation of large companies is foreseen. This expanding reality will generate an increase in the intensity of traffic in the area and new demands for mobility, particularly for labour mobility.

This situation is impacting on the pattern of local mobility, characterised by increasing labour mobility due to the flow of human capital providing services to cross-border employers⁴ and increasing two-way mobility generated by leisure and recreational activities, shopping, health, sports, cultural and academic activities.

At present, mobility in Eurobec Eurocity is organised around road connections between the three municipalities, where the use of private vehicles is absolutely dominant.

With regard to public passenger transport, two types of services coexist in the Eurocity: a) international bus services, mainly between Lisbon and Madrid and rail services between Lisbon-Madrid-Irun-Hendaye, which do not meet local

¹ Eurocity Eurobec has two border crossings, the Badajoz-Elvas crossing, the third border with the highest traffic flow of the Spanish-Portuguese borders, and the Badajoz-Campo Maior crossing.

²Cooperation Protocol "EUROCITY BADAJOZ-ELVAS-CAMPO MAIOR" signed on 3 May 2018, published on 20 March 2018 in the Portuguese Official Gazette and on 16 April 2019 in the Spanish State Gazette.

³ Southwest European Logistics Platform.

⁴ Some of the main local companies confirm the presence of workers from both sides of the border.

mobility needs, and b) urban transport services in Badajoz⁵ and interurban services between Elvas and Campo Maior⁶. There is no coordination or connection between these services.

In this context, Eurocity Eurobec wants to promote a public passenger transport offer for the three municipalities (hereinafter the Project) and thus respond to the current and future needs of cross-border mobility, and in particular, to the needs of labour mobility.

Previously, studies have already been carried out with proposals for the provision of public transport services by road and rail, but no progress has been made.⁷

At present, the Eurocity wants to promote a cross-border service project, but has not yet carried out the necessary preliminary studies to quantify current and future cross-border demand, the most appropriate service options (type, itinerary, frequency, etc.), the associated investment and operating costs and their financing, as well as the possible management models.

2.2.- Regulatory framework of the project

Public road, bus and rail transport in border areas is a recurrent theme in the European Union. On the one hand, because it is a vector of territorial cohesion and economic and social development for territories, businesses and citizens, and on the other hand, because of the legal and administrative problems encountered in the development of cross-border projects. The B-solutions programme has even had the opportunity to study the legal and administrative obstacles to regular passenger transport projects on several borders in Spain and Portugal⁸.

From a regulatory point of view, the Eurobec Eurocity Road Transport Project falls within the regulatory scope of international transport and urban and interurban public transport. On the one hand, the project falls within the scope of **international transport or carriage**^{9 10}, in accordance with **Regulation (EC)**

⁵ According to data published by Grupo Ruiz, operator of Tubasa, the Badajoz transport system carries 7 million passengers on 17 urban lines and 3 suburban lines. Three of the lines (3,9,18) reach the area limiting the Badajoz-Elvas border crossing.

⁶ Due to the low population density, line 8083 operating between Elvas and Campo Maior provides an outbound service in the morning and a return service in the afternoon to meet the mobility needs of mainly students and workers.

⁷ Prospective study of mobility in the Badajoz-Alto Alentejo cross-border area. POCTECT Project Integrated Mobility Plan for the Cross-border Area PIMET promoted by the Badajoz Provincial Council and the municipalities of Campo Maior, Elvas and Portalegre.

⁸ Mobitrans Project, European Grouping of Territorial Rio Minho, AECT RIO MINHO, 2019 and Project Launch of a regular passenger transport, with cabotage, between Chaves and Verín, "Eurocidade Chaves-Verín, AECT" 2019.

⁹ Regular services' are services which provide for the carriage of passengers at specified intervals along specified routes, passengers being taken up and set down at predetermined stopping points.

¹⁰ For the purposes of this Regulation and this report "international carriage means: (a) a journey undertaken by a vehicle the points of departure and destination of which are situated in two different Member States, with or without transit through one or more Member States or third countries; (b) a journey undertaken by a vehicle the points of departure and destination of which are situated in the same Member State, but where the picking up or setting down of passengers takes place in another Member State or in a third country;

No° 1073/2009 on common rules for access to the international market for coach and bus services¹¹. This regulation lays down provisions applicable to undertakings wishing to operate on the international road passenger transport for coach and on national markets, other than the national market of their Member State of establishment (so-called cabotage transport).

The Regulation contains provisions concerning the documents which such undertakings must receive from the Member State of establishment (Community licence) and from the authorising authority (authorisation of a international service). In addition, it lays down provisions on penalties applicable in the event of failure to comply with these obligations and provisions on cooperation between Member States.

The legal regime of Regulation (EC) No 1073/2009 under Article 25 may be amended, in relation to the authorisation regime, the simplification or waiving of control documents, especially in border regions, in order to further liberalise international transport services, through the conclusion of bilateral or multilateral agreements. At present, no such agreements have been signed between Spain and Portugal, so the provisions of Regulation 1073/2009 apply, without the need for internal transposition, as well as the national provisions on several administrative and social matters, to which the regulation itself refers¹².

In Spain, the **Law 16/1987 Organisation of Land Transport**¹³ and the **Royal Decree 1211/1990**¹⁴ which approves the **Regulation de Ordination of Land Transport**, regulate the legal regime and the conditions for contracting *regular services for general use of passengers*¹⁵ and the process for authorising and issuing control documents for international passenger transport by bus¹⁶, which is the responsibility of the Directorate General for Land Transport of the Ministry of Transport, Mobility and Urban Agenda.

In Portugal, **Decree Law 3/2001 establishes a new legal regime for access to the road passenger transport activity by means of vehicles with more than nine seats and for the organisation of the non-regular transport market**¹⁷ subjects, by virtue of Article 18, regular passenger transport services between Portugal and an EU country to prior authorisation, the responsibility of the Instituto da Mobilidade e dos Transportes (IMT, I.P.), a state public entity.

¹¹ OJ L 300, 14.11.2009. amended by Regulation (EU) 2016/2338 of the European Parliament and of the Council of 14 December 2016, OJ L 354, 23.12.2016.

¹² For example, companies carrying out cabotage services, according to Article 16 must, without prejudice to European rules, comply with national provisions on, inter alia, the contract of carriage, the technical conditions of vehicles, driving conditions, or the taxation of transport services.

¹³ Published in the Spanish Official Journal of 31 July 1987.

¹⁴ Published in the Spanish Official Journal of 08 October 1990 and developed in its Chapter IV Title IV by Order of 6 May 1999 on the granting of authorisations for international road passenger transport.

¹⁵ Articles 67-87 of Law 16/1987 and Articles 61-97 of Royal Decree 1211/1987.

¹⁶ Articles 106-109 Law 16/1987 and Articles 144-155 Royal Decree 1211/1987

¹⁷ Portuguese Official Journal n.° 8/2001, Série I-A de 2001-01-10

Moreover, the Project constitutes a **public transport service**¹⁸ in a geographical area for which a local authority is responsible under the terms of **Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) No 1191/69 and (EEC) No 1107/70**¹⁹.

Regulation (EC) No 1370/2007 defines the procedures under which, in compliance with the provisions of European law, the competent authorities may intervene in the public passenger transport sector to ensure the provision of services of general interest which are more frequent, safer, of higher quality and cheaper than those which the market alone would have allowed to be provided.

To this end, it defines the conditions under which competent authorities, when imposing or contracting public service obligations, compensate public service operators for the costs incurred and grant exclusive rights in return for the discharge of public service obligations.

Regulation (EC) No 1370/2007 applies to the national and international operation of public road passenger transport services, subject to exceptions²⁰, as well as to public transport services on a cross-border basis, including those covering local and regional transport needs provided that they are approved by the competent authorities of the Member States in whose territory the services are provided.

The granting to the transmission operator of an exclusive right and/or compensation in return for the discharge of public service obligations must be carried out within the framework of a public service contract, with different provisions applying depending on the contractual modalities and thresholds provided for by law.

Thus, procurement shall be governed by the provisions of **Regulation (EC) 1370/2007** and **Directives 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC**²¹, **Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts**²² and

¹⁸Article 2a) : passenger transport services of general economic interest provided to users on a non-discriminatory and continuous basis

¹⁹ OJ L 315, 3.12.2007

²⁰ Article 2 covers those services which are operated essentially for their historical interest or their tourist purpose.

²¹It lays down the rules applicable to procurement procedures in respect of works, supply or service contracts and design contests with an estimated value equal to or above the following thresholds: (a) EUR 431 000 for supply and service contracts and design contests; (b) EUR 5 382 000 for works contracts; (c) EUR 1 000 000 for service contracts for social services and other specific services listed in Annex XVII. OJ L 94, 28.3.2014

²² It lays down the rules applicable to procurement procedures by means of a works or service concession, with an estimated value equal to or above the threshold of EUR 5 382 000. OJ L 94, 28.3.2014

Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC²³

In Spain, the three European procurement directives have been transposed into Spanish law by **Law 9/2017 of 8 November on Public Sector Contracts²⁴** and Royal Decree-Law 3/2020 of 4 February on urgent measures transposing into Spanish law various European Union directives in the field of public procurement in certain sectors; private insurance; pension plans and funds; taxation and tax litigation.

In Portugal, the European Directives have been transposed into the **Public Contracts Code - consolidated with the amendment introduced by Decree-Law 78/2022 of 7 November**.

Lastly, the Eurobec Eurocity Project, to be developed between the competent bodies in passenger transport services, falls within the regulatory framework of cross-border cooperation, in particular the **Treaty between the Kingdom of Spain and the Portuguese Republic on cross-border cooperation between territorial bodies and authorities**, signed in Valencia on 3 October 2002.²⁵

The Treaty of Valencia defines the legal regime of the forms of cooperation, subject to public law, which may be developed by the Spanish and Portuguese territorial entities and bodies, identified in Article 3, within the scope of their respective competences.

The cooperation agreement is the legal instrument that makes it possible to institutionalise the implementation of joint activities for which there is a common interest and in compliance with the competences attributed by national law to the signatory entities.

According to article 5.1a, the purposes of the cooperation agreement include the following: a) the coordination of initiatives and decision-making; b) the promotion of studies, plans, programmes and projects, especially those which are susceptible to State, Community or international co-financing; c) the implementation of investment projects, infrastructure and equipment management and the provision of services of public interest; d) the promotion of forms of relations between agents, structures and public and private entities, which may contribute to the development of the respective border territories.

These aims of the agreement are of interest to the Eurobec Eurocity Project.

The pursuit of these objectives agreed by agreement may require the adoption of measures of various kinds, such as the establishment of legal obligations, the

²³ OJ L 94, 28.3.2014

²⁴ Spanish Official Journal n°. 272 of 09 November 2017

²⁵ Spanish Official Journal" no. 219, 12 September 2003 and Portuguese Official Journal, no. 51, 01/03/2003.

conclusion of contracts with third parties or the creation of bodies with or without legal personality, all of which are regulated by the Treaty.

In addition to defining the aspects to be included in the cooperation agreement, it refers, on aspects not regulated by the Treaty, to Portuguese national legislation on public law contracts, and to Spanish national legislation on agreements between public administrations and other supplementary rules.

Finally, the cross-border cooperation agreement projects must be processed, for the purposes of prior notification and control, in Spain, with the State Secretariat for Public Administrations of the Ministry of Finance and Public Administrations²⁶ and in Portugal, with the Financial Institute for Regional Development. (IFDR, I. P.).²⁷

²⁶ Royal Decree 1317/1997, of 1 August 1997, on prior notification to the General State Administration and official publication of cross-border cooperation agreements between Autonomous Communities and local entities with foreign territorial entities. JO of 29 August 1997, Resolution of 14 November 1997 of the Secretary of State for Territorial Administrations on the procedure for complying with the provisions of Royal Decree 1317/1997.

²⁷ Decree-Law No 161/2009 establishing the legal regime applicable to cooperation agreements. JO n.º 135/2009, Série I de 2009-07-15.

2.3.- Identified obstacles

As a result of meetings with Eurocity Eurobec partners and other stakeholders in the field of transport, and the analysis of technical and legal documentation on cross-border mobility, a number of obstacles have been identified, which are detailed below:

a)Project maturity level

One of the objectives of Eurocity Eurobec is to facilitate cooperation between the three municipalities in order to make it possible to share services, equipment and infrastructures and improve the quality of life of its citizens. For this reason, it has asked the B-solutions programme for technical assistance to define the legal model for structuring a cross-border transport service project, which offers a response to the growing cross-border mobility and, in particular, to the needs arising from the business projects linked to the logistics hub in the development phase.

Currently, the Eurobec Eurocity project is an initiative that needs to be defined. Technical, legal and economic studies have not yet been carried out to quantify present and future mobility needs, to define a proposal for the most appropriate services between the three municipalities, including technical aspects (typology, itineraries, timetables, frequencies) as well as contracting and management methods (one or several transport operators) and financing.

From the exchange of information with the competent transport authorities on both sides of the border, it has emerged that the on-demand transport service, currently in operation at weekends to the districts²⁸ of Badajoz, presents aspects of interest to be considered for the Eurocity. Thus:

- i) The current increase in demand from users in the districts of Badajoz is likely to lead to an extension of the service to all days of the week.
- ii) The on-demand service based on virtual stops allows to create a flexible, efficient and customised sustainable management model in terms of itineraries and timetables.
- iii) On-demand service can cover mobility needs based on different reasons (labour, health, education, leisure...).
- iv) The contract signed between Badajoz City Council and the operator already has a fleet of buses and a digital solution for users. A possible

²⁸The districts (pedanias), for the purposes of Law 7/1985 of 2 April 1985 regulating the bases of local government, is an entity with a territorial scope smaller than the Municipality, which lacks legal personality, as a form of deconcentrated organisation of the same for the administration of separate population center. It is created as a more efficient option, for budgetary and financial sustainability purposes, for the deconcentrated administration of separate population center.

extension of the service to the municipalities of Elvas and Campo Maior would require an adaptation of the current service and contract, an option that may be more feasible than the creation of a new service²⁹ .

At a theoretical level, there is another possibility to consider for the development of the project. This would be to study the organisation and provision of a transport service exclusively aimed at meeting the mobility needs of cross-border workers and not the general public, if the demand study shows evidence of a significant flow of cross border workers.

For legal purposes, this would be a regular own-account special transport service³⁰ regulated by Regulation (EC) No 1073/2009 on common rules for access to the international market for coach and bus services. In this case, it would be up to the companies employing the cross-border workers to organise the service by means of a contract with a transport company. This service does not require the authorisation provided for in Chapter III and can be carried out in cabotage provided that it is covered by a contract between the organising company and the transport undertaking .

In conclusion, in this case, it would not be a public transport service organised and managed by a public entity, such as the on-demand service of the Badajoz City Council, but a private service organised by the company employing the cross-border workers.

This type of project is included in the regulatory provisions on company transport plans³¹ . Thus, in Spain, the Sustainable Mobility Law Project, currently in the parliamentary process, provides that within 18 months of the entry into force of this law, entities belonging to the public sector and companies must have sustainable transport plans, for those workplaces with more than 500 employees or 250 employees per work centre.

Sustainable transport plans shall include sustainable mobility solutions that consider the promotion of active mobility, collective transport, electric mobility, and shared or collaborative mobility, among others, including, as far as possible, measures relating to safety and accident prevention when commuting to work.

These plans should be linked to the municipal or supra-municipal sustainable mobility plans provided for in Law 2/2011 on sustainable economy and in the context of air quality regulations and the reduction of emissions from transport,

²⁹ Law 2/2011, of 4 March, on Sustainable Economy, makes the establishment of new transport services subject to the existence of a volume of demand in accordance with the costs of investment and maintenance, taking into account, in any case, the existence of alternative modes of adequate quality, price, safety, as well as the results of their environmental assessment (article 99 d).

³⁰ According to the definition in Articles 2.1, 3 and 5

³¹ There are currently digital mobility platforms (e.g. Busup operates in Spain and Portugal) that facilitate the organisation of transport services between several companies located in the same area of activity. Other options exist for platforms managed by the companies themselves, to encourage workers to share vehicles by attributing them benefits by agreement.

which aim to implement more sustainable forms of travel, prioritising the reduction of use of car in favour of collective systems and other non-motorised modes of transport.

In this respect, the Eurobec Eurocity and transport authorities could promote dialogue and consultation with major local companies, so that they adopt sustainable mobility measures.

b) Entities competent for the development of cross-border public transport services

Eurocity Eurobec, by virtue of articles 1, 3 and 4 of the cooperation protocol of 3 May 2018 between the municipalities of Badajoz-Elvas-Campo Maior, is constituted as a cooperation body, in the form of a working group, without legal personality, whose purpose is to accompany, promote, coordinate, support or implement cross-border cooperation activities.

In particular, this working group studies issues of common interest, formulates proposals, promotes their implementation and monitoring, prepares studies, plans, programmes and projects in a series of areas, including transport and communications, as well as promoting relations between agents and entities in the respective territories or carrying out cross-border activities.

Consequently, the Eurobec Eurocity can promote studies and actions on cross-border mobility, but it does not have the power to plan and/or manage cross-border transport services. This conclusion is also valid for the case in which the Eurocity is constituted as a European grouping of territorial cooperation, provided that, according to its constitution agreement and its statutes, it does not have delegated competences in the field of passenger transport management.

In terms of public transport services, the competences legally attributed to the municipalities of Badajoz, Elvas and Campo Maior differ significantly.

Firstly, the **municipality of Badajoz**, by virtue of articles 25.2 g), 3 and 26, 1.d) of the Law 7/1985 of 2 April 1985 regulating the bases of the local regime ³², is responsible for the urban collective passenger transport service, under the terms of the legislation of the State and the Autonomous Community of Extremadura.

Pursuant to Article 7 of Law 16/1987, of 30 July 1987, on the organisation of land transport³³ and Article 15.1).d and 2) of Law 3/2019, of 22 January, on the guarantee of municipal autonomy in Extremadura, the City Council of Badajoz exercises the functions of organisation, planning, programming, management, sanctioning

³²Published in the Boletín Oficial del Estado num 80 of 3 April 1985.

³³Published in the State Gazette of 31 July 1987.

and promotion of urban public passenger transport services which, by any mode of transport, are carried out entirely within the municipal area, as well as any measure necessary to ensure the correct operation of the service.

Territorially, the municipality of Badajoz borders the border and the municipalities of Elvas and Campo Maior.

The Badajoz urban transport service is operated under a concession contract by a private operator whose term of office runs until 2037.

In Portugal, there has been an administrative reorganisation of transport, with the creation of new transport authorities and the organisation and contracting of public transport services. Thus, Law 52/2015 on the legal regime of public passenger transport services recognises municipalities and Intermunicipal Communities as competent transport authorities for municipal and intermunicipal public passenger transport services, respectively, which are carried out entirely or mainly in their geographical area.

Both municipalities and Intermunicipal Communities³⁴ have the right to form associations for the joint provision of passenger transport services under their jurisdiction and the power to delegate their powers, in whole or in part, to other entities. Transport authorities may also delegate their powers to other transport authorities or to other public authorities, and two or more transport authorities may agree to share their powers by means of inter-administrative contracts.

The municipalities of Elvas and Campo Maior have delegated, through inter-administrative contracts, the competences as transport authority to the **Comunidade Intermunicipal do Alto Alentejo** (hereinafter CIMAA). It is a territorial public entity comprising the municipalities of Alter do Chão, Arronches, Avis, Campo Maior, Castelo de Vide, Crato, Elvas, Fronteira, Gavião, Marvão, Monforte, Nisa, Ponte de Sor, Portalegre and Sousel.

This entity is responsible, among others, for planning³⁵, contracting, management and financing of networks and lines of the public passenger transport service, as well as the facilities and infrastructures dedicated to it.

The transport service in Alto Alentejo, which includes the municipalities of Elvas and Campo Maior, is operated through a concession contract by a private operator. The contract runs until 2026.

Therefore, the planning and development of a regular passenger transport service by bus in the Eurocity Eurobec, corresponds to the City Council of

³⁴ Its legal regime is defined in Law 75/2013 on the legal regime of local entities, Law 73/2013 on the financial regime of local and inter-municipal entities and Law 52/2015 on the legal regime of the public passenger transport service.

³⁵ Sustainable Urban Mobility Action Plan for Alto Alentejo (PAMUSAA) 2016

Badajoz and CIMAA, as competent entities of the local and intermunicipal public transport services respectively.

Both entities, within the meaning of Article 3 of the Treaty of Valencia, are empowered to conclude cross-border cooperation agreements within the scope of their competences and under the conditions laid down by law.

In addition, other competent authorities must be considered, in relation to the provisions and authorisation procedures provided for in European and national legislation on international transport, in particular, in Spain, the Directorate General of Land Transport of the Ministry of Transport, Mobility and Urban Agenda and in Portugal, the Instituto da Mobilidade e dos Transportes (IMT, I.P.), a state public entity, the attribution of the administrative authorisation provided for in Regulation (EC) No 1073/2009.

c) Lack of prior cross-border experience between competent bodies

In addition, it should be noted that the lack of previous experience among the three municipalities in the management of local public services, and in particular transport services, together with the lack of competences in the field of transport and the absence of legal personality of the Eurocity, constitutes an administrative obstacle to the development of the project.

From this starting point, the implementation of the project, in addition to the will of the political decision-makers, requires the deepening of concerted mutual technical knowledge, in order to generate joint working mechanisms that allow a) to know and evaluate how the integration of the cross-border scale in current transport services impacts on the current public contracts (in Badajoz until 2037 and in Elvas-Campo Maior until 2026) and b) how joint initiatives can be deployed for the gradual integration in the culture of the competent transport entities and in the planning systems of transport services, implemented on each side of the border.

The experience and joint management of initiatives is an essential factor that helps to improve knowledge of transport systems and to progressively advance in the implementation of larger projects that involve decisions on measures and commitments in terms of management and financing of public services.

c) Cabotage in cross-border transport

From a legal perspective, for the purposes of Regulation **EC No 1073/2009 of 21 October 2009 on common rules for access to the international market for coach and bus services**, cabotage services means "national road passenger transport services for hire or reward carried out on a temporary basis by a carrier in a host Member State, or the picking up and setting down of passengers in the same Member State, in the course of a regular international transport service, in

accordance with the provisions of this Regulation, provided that this is not the principal purpose of that service".

As a general principle, cabotage services shall be permitted, inter alia, in **the case of special regular services and regular services performed by a carrier not resident in the host Member State in the course of a regular international service. Cabotage transport shall not be carried out independently of such an international service.**

Thus, in the special regular services organised, for example, by an employer by means of a contract of carriage for its cross-border workers or in a regular transport service, regulation of cabotage allows a Spanish transport operator to pick up and drop off users on Portuguese territory or a Portuguese operator to do the same on Spanish territory, under the terms of the authorisation (e.g. identification of stops).

However, there is one **exception to this general principle in case of the regular services. That is services which serve the needs of an urban centre or conurbation, or transport needs between such a centre or conurbation and its surrounding area.**

If it is understood that the municipalities of Elvas and Campo Maior, located 20km from the urban centre of Badajoz, are assimilated to the surrounding area, and that the regular service serves the needs of Badajoz and the surrounding area, for the purposes of the Regulation, cabotage does not apply. Therefore, the passenger service could be carried out under the conditions laid down in the authorisation for international transport, but without cabotage.

Consequently, the identified legal obstacle, i.e. the exclusion of cabotage on regular services serving the transport needs between such a centre or conurbation and its surrounding area, is located in European law, and not in national law.

In this regard, the European Commission presented in 2017 a **proposal to amend Regulation EC No 1073/2009**³⁶. This proposal aims at opening up national transport markets insofar as they strengthen the market for international regular services, thus responding to the problems identified that impede the development of intercity bus services in the Member States.

In particular, and with regard to the subject matter of this report, the proposal introduces the following amendments:

- It incorporates amendments to the definitions of regular services³⁷ and cabotage transport³⁸.

³⁶ COM (2017) 647 final

³⁷ Article 2(3), "services which provide for the carriage of passengers at specified intervals along specified routes, either without intermediate stops or by passengers being taken up and set down at predetermined stopping points".

³⁸ Article 2(7) "national road passenger services carried out for hire or reward in a host Member State".

- It establishes a differentiated authorisation procedure for international passenger transport for distances less than or equal to and greater than 100 kilometres in a straight line. In both cases, it establishes specific grounds for refusal of authorisation (Article 8)³⁹.
- Member States may restrict the right of access to the international and domestic market for regular services if the proposed regular service carries passengers over distances of less than 100 kilometres as the crow flies and if the service is likely to jeopardise the economic stability of a public service contract.
- It is for the national regulatory body⁴⁰ to carry out an economic analysis, inform all interested parties and determine whether the authorisation should be granted, whether it should be granted subject to certain conditions, or whether it should be refused (Article 8d).
- Cabotage transport operations shall be permitted in respect of regular services operated in accordance with the Regulation (Article 15).

In other words, if the proposal were to be approved under the current procedure, a regular international passenger service between Badajoz and Elvas and Campo Maior, which is less than 100 km, which obtains the corresponding authorisation, could operate cabotage. Such authorisation may be refused or subject to conditions if the competent national regulatory body confirms, after carrying out an economic analysis, that such a service would jeopardise the economic stability of the public service contract in force between Elvas and Campo Maior.

³⁹ For distances of less than 100km, the grounds for refusal are those defined in paragraphs a) to d) and for distances equal to or greater than 100km, those defined in paragraphs a) to c). Grounds for refusal: (a) the applicant is not in a position to operate the service which is the subject of the application with the equipment directly at his disposal; (b) the applicant has not complied with national or international road transport legislation, and in particular the conditions and requirements relating to authorisations for international passenger services, or has committed a serious infringement of Union road transport legislation, and in particular the rules applicable to vehicles and to driving and rest periods for drivers; (c) in the case of an application for renewal of the authorisation, the conditions of the authorisation have not been respected; (d) a regulatory body has determined, on the basis of an objective economic analysis, that the service would jeopardise the economic stability of a public service contract.

⁴⁰ It is responsible, inter alia, for carrying out economic analyses to determine whether a proposed new service would affect the economic stability of a public service contract; or for deciding on appeals against decisions of terminal operators and whose decisions are subject to judicial review. (Article 3a)

From the identification of all identified obstacles, it can be concluded:

- a) In terms of cross-border mobility, the Eurobec Eurocity needs to actively promote and associate institutional and technical cooperation between the competent local transport entities, i.e. Badajoz City Council and CIMAA.**
- b) The project requires concerted action by the relevant bodies on current and future cross-border mobility needs and decisions to plan, develop and finance coordinated and sustainable responses.**
- c) Cross-border cooperation, building on existing services, such as demand service, may be more legally feasible than the creation of a new passenger transport service.**
- d) Legal obstacles related to cabotage do not prevent the operation of cross-border regular services, but they do condition the operation of the service.**
- e) Additionally, Eurobec Eurocity together with the local transport authorities, can promote public-private cooperation with larges companies or areas of activity to work towards the sustainable and innovative solutions aimed at reducing the use of private vehicles development**
- f) The Treaty of Valencia provides the appropriate legal tools, through the cross-border cooperation agreement, to develop cross-border transport service projects.**

III. DESCRIPTION OF POSSIBLE SOLUTION(S)

In view of the identification of obstacles, mainly of an administrative nature, defined above, the implementation of the Eurobec Eurocity project requires the adoption of various measures detailed below, with the aim of defining a roadmap for its promoters.

3.1. Solutions of an administrative nature

The identification of cross-border mobility needs and the definition of the scope of the project, best suited to those needs in the territorial scope of the Eurobec EuroCity, requires the adoption of different measures at the administrative level:

a) The establishment of close cooperation between the Municipality of Badajoz and CIMAA, transport authorities responsible for the planning, contracting, management and financing of regular passenger transport between Badajoz, Elvas and Campo Maior.

The scope of this cooperation includes both the institutional and the technical sphere, and its development will take place in the medium term, taking into account the scope of the project, i.e. cross-border mobility, and the initial situation, i.e. the lack of previous cooperation between the entities responsible for the transport networks and services between the three municipalities.

Thus the proposed cooperation can integrate the following activities, according to the following phases:

i) Phase 1: Laying the foundations for transport and mobility cooperation

The lack of previous cross-border experience in the field of transport and mobility, between the competent bodies, requires the creation of a stable cooperation framework, for example as a sectoral working group, promoted by the Eurocity aimed at:

- Knowledge of institutional and technical decision-makers and competency framework
- Exchange of information on existing transport systems and mobility models as well as the prospects for development in terms of regulations, planning and service provision on either side of the border.
- Definition of synergies and common interests in transport and mobility systems and services and definition of cooperation projects.

ii) Phase 2: Advanced technical cooperation

At this stage, those technically responsible for the planning and management of passenger transport services are concerned. This is because the definition and development of cross-border actions must take into account the existing legal and financial models on each side.

Eurocity should co-ordinate, dynamise and follow up the technical work.

This phase includes the implementation of previously agreed tasks and activities aimed at defining and developing cooperation on the supply of transport services, and in particular:

- Carrying out a study at Eurobec Eurocity level to quantify current and future mobility needs and define the cross-border service offer (typology, itineraries, frequency, fares...) either from existing services or new services.
- Carrying out a legal study of the validated service offer, addressing the applicable legal framework, the modalities of contracting and operating the service (management by 1 or several operators, definition of public service obligations, impact on existing public contracts...) and an economic-financial study evaluating the cost of the operation (investment in vehicles, operating costs) as well as the financing modalities (tariffs, subsidies, sharing between public entities...).
- Implementation of other cooperation initiatives, for example in relation to private companies to promote actions aimed at reducing the use of vehicles by cross-border workers, adapting the routes of existing lines to improve connectivity with areas of economic activity, etc.
- Apply to the Poctect programme for a request for co-financing for preparatory and/or implementation actions for the cross-border transport offer.

iii) Phase 3: Implementation of the cross-border transport offer

Once the competent bodies have carried out the studies prior to the Project, the adoption and decision-making phase begins in view of the conclusions obtained in legal, technical and legal terms.

Once the decision on the scope of the project of cross-border interest has been taken, its implementation requires the signing of a cross-border cooperation agreement between the City Council of Badajoz and CIMAA which includes, among other aspects, as an indication:

- Definition of the objective and common interest of cooperation related to cross-border sustainable mobility.
- Definition of the activities of common interest to be developed and which are necessary for the provision of a cross-border transport service offer.
- Definition of the activities and commitments of each of the signatory entities.

The aim is to identify the areas of competence attributed in the field of transport. Thus, by way of example: the identification of cross-border public service obligations, the processing and approval, if necessary, of modifications to existing public contracts or the implementation of a new contract, the financing of the service, modalities and distribution between the signatory entities.

- Definition of the activities and tasks to be carried out by the company/companies operating the cross-border service according to the agreed management model.

The aim is to identify those actions aimed at compliance with, for example, international transport regulations (application for authorisation), the acquisition of vehicles or the reporting of information (service users, etc.).

In addition to being included in the agreement, this issue may be the subject of a development agreement between the transport operators, in the event that a shared management model is agreed between a Spanish and a Portuguese operator.

- Identification of the coordination and monitoring mechanism for the implementation of the agreement (e.g. creation of a committee to deal with any aspects of the cross-border transport service).
- Establishment of a term for the duration of the agreement (e.g. maximum 10 years) and cases of extension, early termination.
- Identification of the applicable law and dispute resolution mechanism.

The conclusion of a cross-border cooperation agreement for the organisation, provision and financing of a cross-border transport service does not require the creation of a new legal entity. It can be legally articulated, as has been done on other European borders, on the basis of a cross-border cooperation agreement.

Lastly, Eurobec Eurocity does not have legal personality, and therefore, with regard to the proposed cooperation framework, it should act as a promoter and facilitator, coordinating the different activities that are planned and agreed between the competent entities.

3.2. Solutions of a legal nature

From a legal point of view, the identified obstacle of the current regulation of cabotage in international regular transport services, as explained above, has already been the subject of a proposal by the European Commission, in 2017, to amend EC Regulation No 1073/2009 , which is currently being processed.

This proposal allows cabotage in international passenger services and establishes a list of reasons that may justify the refusal or establishment of conditions to the authorisation of international transport, among them, if the regular service to be performed for a distance of less than 100km as the crow flies is likely to jeopardise the economic stability of a public service contract.

Approval of the amendment to Regulation EC No 1073/2009, given the direct application of its provisions, would remove the obstacle identified, given that its origin is in European legislation and not in national law.

3.3. Other solutions

Similar obstacles to cross-border passenger transport projects have been identified at other European borders, including other borders between Spain and Portugal, as those described in this report, such as insufficient knowledge between competent bodies, insufficient demand for cross-border mobility, or legal complexity.

While it is true that the legal framework does not establish a simplified regime for the management of cross-border transport services, the mobility needs of population, the political will and the coordination of technical mobility managers, have allowed the implementation of transport services that respond to cross-border mobility needs.

The solutions proposed in the previous section are based on the experiences and projects that have been carried out and are currently a reality.

Among the existing experiences, the extension of interurban transport lines between the municipalities of Hendaye(FR) and Irún(ES) and Urrugne-Hendaye(FR) and Behobia(ES) should be highlighted. The extension of two regular passenger lines, in both directions, responds to two specific objectives: on the one hand, to connect the transport networks and offer an alternative

to the private vehicle, and on the other hand, to integrate these border lines with the intermodal transport system (bus and rail).

The project is based on the conclusion of a cross-border cooperation agreement under the Treaty between Spain and France on cross-border cooperation between territorial entities, signed in Bayonne on 10 March 1995⁴¹ whose provisions are similar to the Valencia Treaty on cross-border cooperation between territorial entities between Spain and Portugal.

⁴¹ Resolution of 20 July 2018, of the Secretary of State for Territorial Policy, publishing the Cooperation Agreement between the city of Irún and the Syndicat des mobilités Pays Basque-Adour, within the framework of the transport service to Irún by the collective transport area of the Syndicat des Mobilités. BOE No. 196, 14 August 2018.

IV. A FULL LIST OF ALL LEGAL PROVISIONS RELEVANT TO THE CASE WITH THE CORRECT CITATION BOTH IN ENGLISH AND ORIGINAL LANGUAGE (SPANISH / PORTUGUESE)

- Regulation (EU) No 1073/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international market for coach and bus services, and amending regulation (ec) No 561/2006 (recast) OJ L 300, 14.11.2009, p. 88-105.
Regulation (EC) No 1073/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international market for coach and bus services and amending Regulation (EC) No 561/2006 (recast) OJ L 300, 14.11.2009, p. 88-105.
- Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70, OJ L 315, 3.12.2007 p. 1-13
Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Regulations (EEC) No 1191/69 and (EEC) No 1107/70, OJ L 315, 3.12.2007, p. 1-13.
- Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC, OJ L 94, 28.3.2014, p. 243-374.
Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC OJ L 94, 28.3.2014, p. 243-374.
- Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts OJ L 94, 28.3.2014, p. 1-64.
Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts OJ L 94, 28.3.2014, p. 1-64.
- Treaty between the Kingdom of Spain and the Portuguese Republic on cross-border cooperation between territorial entities and authorities, signed in Valencia on 3 October 2002.
Tratado entre el Reino de España y la República Portuguesa sobre cooperación transfronteriza entre entidades e instancias territoriales, firmado en Valencia el 3 de octubre de 2002.

- Law 16/1987 for the Organisation of Land Transport, Official Law Gazette No. 182 of 31 July 1987, p. 23451.
Ley 16/1987 de Ordenación de los Transportes Terrestres, BOE núm. 182, de 31 de julio de 1987, p. 23451.
- Decree Law 3/2001 establishes a new legal regime for access to the road passenger transport activity by means of vehicles with more than nine seats and for the organisation of the non-regular transport market, Republic Diary n.º 8/2001, 2001-01-10
Decreto-Lei 3/2001 Institui um novo regime jurídico de acesso à actividade dos transportes rodoviários de passageiros por meio de veículos com mais de nove lugares e de organização do mercado de transportes não regulares, Diário da República nº8/2001, 2001-01-10
- Law 9/2017 on Public Sector Contracts⁴², transposing Directives 2014/23/EU and 2014/24/EU of 26 February 2014 of the European Parliament and of the Council into Spanish law, Official Law Gazette n.º. 272 of 09 November 2017, p107714
Ley 9/2017 de Contratos del Sector Público, por la que se transponen al ordenamiento jurídico español las Directivas del Parlamento Europeo y del Consejo 2014/23/UE y 2014/24/UE, de 26 de febrero de 2014. BOE, BOE» núm. 272, de 9 de noviembre de 2017, p 107714
- Decree 18/2008 approves the public procurement code – Republic Diary n.º20/2008, 2008-01-29
Decreto-Lei 18/2008 Aprova o Código dos Contratos Públicos .Diário da República n.º 20/2008, 2008-01-29
- Law 7/1985 of 2 April 1985 regulating the bases of the local regime Official Law Gazette n.º. 80 of 03 April 1985
Ley 7/1985 reguladora de bases de regimen local, BOE nº80 de 3 de Abril de 1985
- Law 52/2015 Approves the Legal Regime of the Public Passenger Transport Service and revokes Law no. 1/2009, of 5 January, and the Regulation of Transport in Automobiles, Republic Diary 111/2015, 2015-06-09.
Lei 52/2015 Aprova o Regime Jurídico do Serviço Público de Transporte de Passageiros e revoga a Lei nº1/2009 e o Regulamento de Transportes em Automóveis, Diário da Republica nº111/2015, 2015-06-09

⁴² Spanish Official Journal n.º. 272 of 09 November 2017

V. OTHER RELEVANT ASPECTS TO THIS CASE IF RELEVANT

VI. REFERENCES AND APPENDIX/APPENDICES IF ANY

The preparation of this legal report was based on the analysis of the applicable European, Spanish (national and Extremadura regional) and Portuguese regulatory frameworks, as well as on the documentation provided by the various local stakeholders with whom meetings were held to ascertain their views on the existing obstacles and future opportunities in cross-border and international transport.

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