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ESTA’s response to the cross-border CIT study

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Secretary General
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The plan,,, and the outcome

EUROPEAN COMMISSION

CALL FOR TENDERS

Study on the cross-border cash-in-transit market

TENDER SPECIFICATIONS

Ref: ECFIN 2024 004/C5

Specific Contract under the Multiple Service Framework Contract N° MOVE/ENER/SRD/2020/OP/0008

Lot 4

3.2.1.3. **Tasks**

The study shall help the Commission to better understand the legal and economic situation of the cross-land-border CIT activity in the euro area. Supported by the study, the Commission would li be in a position to take an informed decision on the review of the CIT-Regulation.

Initially review four "probably" restrictive definitions,

From a planned review of 4 definitions in the ToR for a maximum budget **of €120K**, the study conducted **around 4 scenarios**:

- A baseline scenario (no change),
- Repeal,
- Mild changes,
- More extensive revision,

Offers a full range of new scope outside the current legislation (page 86)

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A strange opinion of the CIT sector…

It can be observed that CIT customers such as banks or larger retailers, that operate in different eurozone countries have requested such cross-border CIT transports in the past, but CIT Companies have been unable or unwilling to offer such cross-border CIT transports and related services. In any case, such situation was discovered especially in the BeNeLux region

Report at page 129

A further evaluation shows that the lack of offer from CIT Companies for cross-border transports is due to the inability of CIT Companies to meet the requirements of the CIT Regulation. The conditions of the CIT Regulation require additional investments and organizational structures which are economically not viable or considerable for many, also

In some cases, the CIT Companies circumvent the CIT Regulation, when the conditions cause unnecessary hardship for CIT Companies following a cross-border strategy. For example, the CIT Regulation specifies the highest armouring class for CIT Vehicles in cross-border

Report at page 129

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A strange opinion of the CIT sector…

transport, even if the national security policies stipulate a lower class. The CIT Companies are then forced to invest in higher protection levels or violate the CIT Regulation. Consequently, the CIT Company operating at a national level tends to terminate the cross-border transport

However, the innovation intensity of the CIT industry is at a very low level. This sector therefore ranks among the lowest in terms of economic innovation expenditure[259]. This can be one reason why CIT Companies do not think out of the box or out of the current region and pursue cross-border logistics for obvious cost reductions, even though customer demand is existing[260]. Report at page 134

The decision for or against is therefore a balancing act between the profit of a CIT Company and the security of the employees. This may also be affected by an increased workload concentrated on one person thereby causing additional stress. (refers to OMV) Report at page 151

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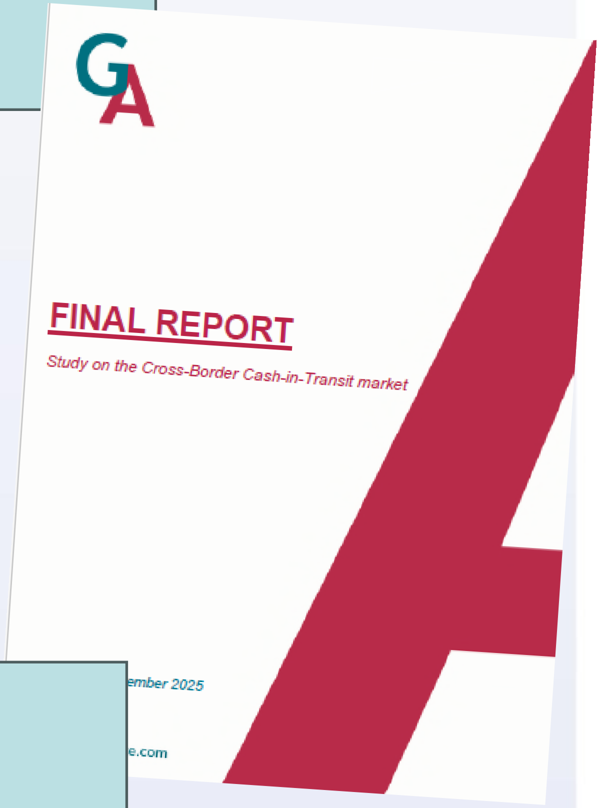
A '*market study*'… with no assessment of demand!

The contractor was *<u>not</u>* requested to assess what might trigger cross-border CIT!
(and therefore did not do it)

Only <u>unsubstantiated</u> statements that "*demand exists, but not satisfied by the industry*"

Why would a customer want its cash abroad? And what happens to it abroad?

ESTA's submissions that there is very limited demand for cross-border CIT ignored (not mentioned in the report)



Is demand for X-border CIT irrelevant ?

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Limited expectations in the CIT Regulation

*"The cross-border market **is by definition limited**"*

*"The CIT-market has a predominantly **local character** "*

"Regulatory differences have less impact on the free circulation of the euro,"

Draft CIT Reg
(2009)

Explanatory memorandum

The potential is around "2.6 % *of the total value of all euro cash ordered to CIT-companies.*"

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Expected expectations

Original task defined in the ToR

"Review the "probably" restrictive impact of 4 definitions"

- Majority of stops in the host country
- 20% maximum non euro cash
- Home country control (for transports arrangement only)
- Language requirement in specific areas

2009 Explanatory memorandum:

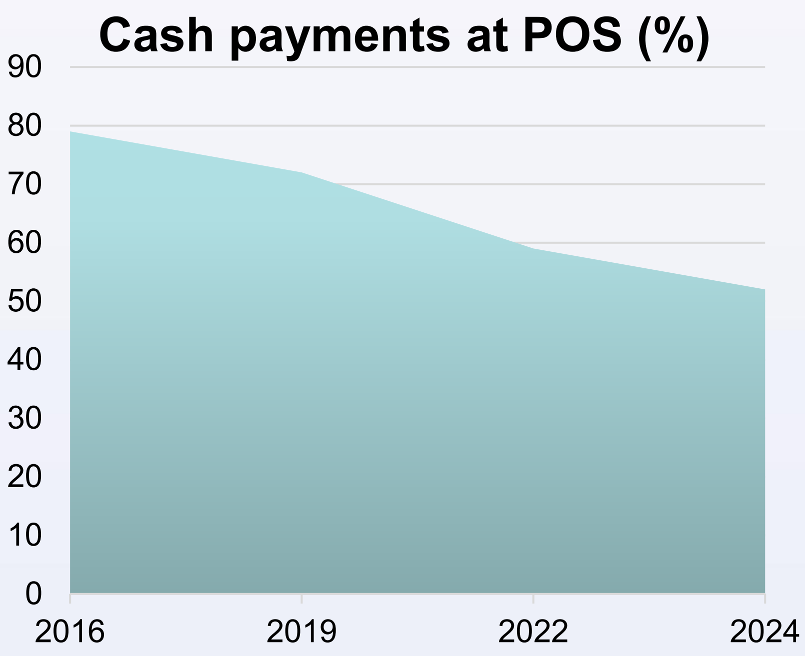
Options in Regulation restrictive on purpose so as not "*complicate the adoption process* ***for relatively little added value.***"

2009 White Paper on Cross-border CIT:

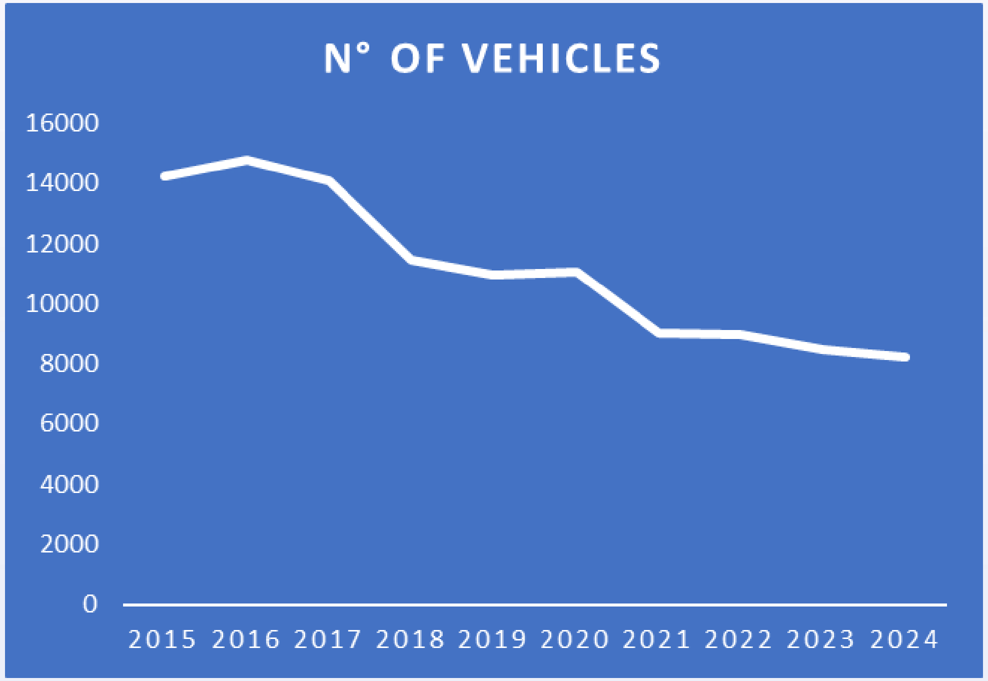
"extremely difficult *to reach* ***agreement on a full harmonisation or mutual recognition of national rules***

"Regulation is not delivering" !

Hardly any mention in the study that cash payments are declining fast !



Source: ESTA based on ECB SUCH and SPACE data



Source: ESTA A&L reports – not including vehicles in non-ESTA UK CITs and in Poland

"2,6%" of a declining mass is a declining figure!

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"*Regulation not delivering*" ?

~~The CIT Regulation *"aims at removing restrictions to professional Cash-in-transit transport by road "*~~
~~(p. 82)~~

NO! It only proposes an **<u>additional set</u>** of common rules: no harmonisation, no approximation of national regulation.

The Regulation is NOT imposing an exclusive and mandatory scheme

Grimaldi:

- "*CIT industry is **circumventing and violating** the laws* (by not using EU licences)"

ECFIN (27.05.2026, Brussels social dialogue committee)

- "*Low number of licences ? Regulation is not delivering!*"
- "*Air transport of cash is a concern*"

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Repeal ? "*X-border left unregulated…*"

Grimaldi:

"*The repeal would lead to the "reapplication of national regulations leading to regulatory divergences*" (p. 163)

"*The repeal of the Regulation would leave cross-border CIT UNREGULATED*"

Recital 7 of the CIT Regulation:

(7) The professional cross-border transport of euro cash by road between participating Member States should fully comply with this Regulation or with the law of the Member State of origin, the host Member State and, if applicable, the Member State of transit.

(not exactly what one could call "*unregulated*"…!)

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Some unexpected legal analyses…

~~Repeal of the CIT Regulation:~~
~~**EU general principles** and the **Treaty fundamental freedoms apply to CIT** - ie Article 56 TFEU - (p. 95)~~

No legal vacuum in case of repeal of the CIT Regulation!

Van Binsbergen EUCJ case law: "*The national law of a member state cannot, by imposing a requirement as to habitual residence within that state, deny persons the right to provide services [cross-border] where the provision of services is not subject to any special condition under the national law applicable*"

~~"The Currency Rule (20% non euro cash limit), **seems to go against the rationale** of Article 63 TFEU"~~

No inconsistencies between the CIT Regulation and the Treaties!

The Regulation is not establishing an exclusive mode of transport of cash

Not all restrictions are obstacles to the EU fundamental freedoms…

~~"Firearms pass" for CIT crews~~

The firearm pass of Directive 2021/555/EU does not grant any right to anyone to pass a border armed!

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Security? An “administrative burden”!

First and foremost, the preservation of the **Host Country Principle** results in a further bureaucratic burden for CIT Companies that need to carry out a risk analysis for both the

The bureaucratic burden comes from the fact that the Regulation is based on the highest security requirements for cash transport as applicable in Belgium and France, against the background of the armouring of the CIT Vehicle but always considering the relation between

armouring and the use of an IBNS. This practically signifies that CIT Companies need to take into account the (non-uniform) security situation in each Host Member State. If a higher

(Grimaldi report, p. 74)

Security? An “administrative burden”?

2009 Commission White Paper on cross-border CIT:

Due to the nature of the goods transported, the CIT-sector is at the same time exposed to serious security threats and the nature and level of the risks may be very different between Member States. It is therefore of paramount importance that cross-border cash transports take place under conditions that ensure a high level of protection for the CIT-staff and for the general public. Commission White Paper at page 2

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The way forward

What the CIT Regulation should do:

- **Facilitate cross border CIT for the customers that need it** (done!)
- **Secure a level playing field between market operators**

What the CIT Regulation should *not* do:

- **Allow circumvention of national rules (e.g. home country control)**
- **Increase risks for CIT** operators (national regulations reflect domestic risk patterns)

No increase in cross-border will ever happen if cash volumes are let to continue declining.

(and it's no rocket science…)

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Conclusion

The Grimaldi paper offers no basis for a revision of the CIT Reg.:

- *It indulges in unwarranted disparaging comments on the CIT industry*
- *It offers spurious EU law analyses*
- *It misunderstands the industry and the justification of national regulations*
- *It ignores the CIT Regulation historic background and rationale.*

"No one is asking for a revision of the CIT Regulation"