



Rt Hon David Davis MP
Secretary of State for Exiting the European Union
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28 March 2018

Dear Secretary of State

Brexit: Gibraltar

Thank you for your letter, dated 31 January 2018, responding to the Committee's March 2017 report on *Brexit: Gibraltar*.

Following receipt of your letter, the Committee decided to undertake a follow-up visit to Gibraltar in order to understand better the implications of Brexit for it, and to take account of developments since our original report was published. A Committee delegation visited Gibraltar on Thursday 15 and Friday 16 March. We were pleased to have the opportunity to meet the Chief Minister, Hon Fabian Picardo QC MP, and other members of the Government of Gibraltar; members of the Parliament of Gibraltar Brexit Committee, including leading opposition party representatives; Clare Moody MEP; representatives of the Gibraltar Chamber of Commerce, Gibraltar Federation of Small Businesses, the Grupo Transfronterizo (Cross-Border Group), and the Port of Gibraltar; and, in visits to the border with Spain and to Gibraltar Airport, Gibraltar police, customs and Airport officials.

Four key themes emerged from our visit, on which we welcome your response:

I. Transitional arrangements need to apply to Gibraltar in full

Our interlocutors stressed the importance of ensuring that, in order to give the Gibraltar economy the ability to adapt effectively to the post-Brexit environment, transitional arrangements should apply to Gibraltar in full, and on the same basis as they apply to the UK as a whole.

There was widespread concern about the implications of paragraph 24 of the 29 April 2017 European Council guidelines, which states:

“After the United Kingdom leaves the Union, no agreement between the EU and the United Kingdom may apply to the territory of Gibraltar without the agreement between the Kingdom of Spain and the United Kingdom.”

Article 3 of the revised draft withdrawal agreement, as agreed by you and the EU's Chief Negotiator Michel Barnier on 19 March, states that, with regard to its territorial scope:

“Unless otherwise provided in this Agreement or in Union law made applicable by this Agreement, any reference to the United Kingdom or its territory, shall be understood

as referring to: (a) the United Kingdom; (b) Gibraltar to the extent that Union law was applicable to it before the date of entry into force of this Agreement...”

However, this is qualified by an asterisk, stating:

“It is recalled that the territorial scope of the Withdrawal Agreement, including as regards the transition period, should fully respect paragraphs 4 and 24 of the European Council guidelines of 29 April 2017, notably as regards Gibraltar.”

In your letter to us, you wrote that “Gibraltar is covered by our negotiations for withdrawal, the implementation period and the future relationship”, and we note that you repeated this commitment at the 19 March press conference when the revised draft withdrawal agreement was published. However, at the same press conference Michel Barnier said:

“Gibraltar leaves the European Union at the same time as the United Kingdom [and] legally, we’ve specified the territorial scope of the agreement. But there’s a reference which remains valid [and] which member states are keen on, all member states of the European Union on behalf of whom I negotiate. Twice, the 27 member states and heads of state and government indicated their position on the question of Gibraltar, in total solidarity with the Spanish Government. ... No agreement between the European Union and the United Kingdom can apply to the territory of Gibraltar without a bilateral agreement between the Kingdom of Spain and the United Kingdom.”

Following this, there were reports that Spain was holding up agreement to the European Council’s agreement of the terms of the transition agreement because it was seeking clarification of whether it still retained the right to be consulted on the application of a transitional arrangement or withdrawal agreement to Gibraltar. Subsequently, the European Council guidelines agreed on 23 March were published, which stated that “negotiations can only progress as long as all commitments undertaken so far are respected in full”, and called for “intensified efforts on the remaining withdrawal issues, as well as issues related to the territorial application of the Withdrawal Agreement, notably as regards Gibraltar, and reiterates that nothing is agreed until everything is agreed”.

A number of our interlocutors in Gibraltar reflected on the recent reported comments by Spain’s Foreign Affairs Minister Alfonso Dastis, that while Spain would not give up its sovereignty claim over Gibraltar, it would not pursue it in the context of the Brexit negotiations. Rather, it was focussed on specific areas of cooperation including the operation of Gibraltar Airport, tax and fiscal transparency and tobacco smuggling. Those we met questioned many of the assumptions behind Mr Dastis’ assertions, and we note that the Chief Minister has made clear that Gibraltar will not make any compromises on sovereignty, jurisdiction or control. In relation to Gibraltar Airport, the Government of Gibraltar has sought to clarify that it is not the case that it is willing to share control of the Airport, but rather it continues to stress Spain’s obligations to adhere to the terms of the 2006 Córdoba Agreement on enhanced use of the Airport, which the previous Government of Gibraltar signed and the commitments to which the present Government inherited.

Nevertheless, there was a broad welcome of the change of tone from Madrid, and the Government of Gibraltar has stated that it is prepared to engage in constructive, technical discussions with all relevant parties, At the same time, it was pointed out to us that warmer

words from Spain, while welcome, were no substitute for concrete assurances about Gibraltar's status during the transition period and in terms of the future UK-EU relationship.

It is vital for Gibraltar's continued economic prosperity that the terms of the withdrawal agreement, in particular those relating to the transitional arrangements, apply to it in full. We therefore welcome the specific statement in the draft withdrawal agreement that Gibraltar is included within its territorial scope. Nevertheless, we are concerned at the retention of a footnote reference in the agreement to paragraph 24 of the 29 April 2017 European Council guidelines, and the European Council's subsequent statement calling for "intensified efforts" on "issues related to the territorial application of the Withdrawal Agreement, notably as regards Gibraltar." What is the meaning of these statements, and what are their political and legal implications? How can the apparent tension between them and the text of the draft withdrawal agreement be resolved? What reassurance can you provide that Gibraltar will be covered in full by the withdrawal agreement, the transition period, and (to the extent it wishes to be so) by the terms of the future UK-EU relationship?

What is your response to recent comments by the Spanish Foreign Minister, and what is your understanding of the Spanish Government's position regarding the issues he cited, including cooperation on Gibraltar Airport, tax and fiscal transparency and tobacco smuggling? What is your position on these issues, and how are you liaising with the Government of Gibraltar with regard to them?

Can you reiterate the Government's commitment to the so-called 'double lock', that you will never enter arrangements under which the people of Gibraltar would pass under the sovereignty of another state against their wishes, nor will you enter into a process of such a negotiation with which they are not content? Against the backdrop of this historic commitment, how are you engaging with the EU, the Government of Spain and the Government of Gibraltar to ensure that these issues are resolved to the satisfaction of the people of Gibraltar?

2. The fluidity of the border with Spain, and cross-border cooperation with the Campo de Gibraltar must be retained and, if possible, enhanced

The border with Spain is a border for customs and people, as Gibraltar is outside both the customs union and the Schengen area. It is therefore, in a physical sense (and in contrast to the Irish land border) a 'hard' border, with checks on vehicles and people. Yet the intensity of such checks has varied over the years, often depending on the political context and the attitude of the Spanish authorities at any given time. The border can, when operating efficiently, be a relatively fluid operation, but there is a fear that Brexit may lead to a hardening of the border, causing delays on both sides.

Our Gibraltarian interlocutors made clear to us the importance of the retention of a fluid border with Spain, and of cross-border cooperation, for the effective functioning not only of Gibraltar's economy and public services, but also that of the neighbouring Spanish region, the Campo de Gibraltar. We also saw first-hand the potential for cross-border cooperation for the mutual benefit of all.

We heard from the Gibraltar Chamber of Commerce and Gibraltar Federation of Small Businesses about the scale of cross-border economic activity. The Gibraltar Chamber of Commerce said that the single biggest issue affecting Gibraltar's continued prosperity post-Brexit is maintaining an open and fluid border for civilian and commercial traffic. Virtually everything sold or supplied in Gibraltar is imported through the border, which makes it the principal artery of commercial life. Virtually all fuel and imported freight, and 90% of Gibraltar's tourists, enter Gibraltar through the land border.

Yet our interlocutors made clear that the benefits of a fluid border are felt not just by Gibraltar but by the Campo de Gibraltar. Government of Gibraltar statistics show that there are over 13,000 frontier workers in Gibraltar, over 8,000 of them Spanish, making up 40% of the entire workforce. Frontier workers fill a particularly large proportion of jobs in the financial services, online gaming and tourism sectors. Gibraltar accounts for a quarter of all jobs in the wider region, and one-fifth of its GDP—significant figures given that unemployment figures in the neighbouring towns of Algeciras and La Linea de la Concepcion are around 30%.

We visited the frontier towards the end of the working day, and were immediately struck by the sheer volume of foot and vehicle traffic, comprising frontier workers, local residents and tourists alike. We were particularly struck by the fact that, at that time of day, the overwhelming preponderance of crossings is from Gibraltar into Spain (and primarily comprising Spanish-registered vehicles), whereas in the morning the flow is into Gibraltar, reflecting the fact that large numbers of frontier workers cross into Gibraltar and out again at the beginning and end of each day.

We also visited Gibraltar Airport, and saw how, in line with the commitments in the 2006 Córdoba Agreement, it had been constructed in such a way as to provide access from both sides of the border. Yet the impressive new terminal building stops abruptly at the border fence because the Spanish authorities have yet to fulfil their commitments under the Córdoba Agreement to construct a small terminal on the Spanish side. We heard how, if and when this work could be completed, Gibraltar Airport could fulfil its potential as an asset and a springboard for economic development on both sides of the border. By way of illustration, we were told that 75% of all passengers arriving at the Airport travel on across the border to Spain.

We also heard about cross-border cooperation in the provision of public services. Gibraltar police and port authorities cooperate with colleagues in Spain in matters of public safety and security. The Gibraltar Health Authority send patients in ambulances to hospitals in Spain several times a week. Many of the staff in the health service are Spanish nationals. Gibraltar's refuse is sent across the border each day to a recycling centre in Los Barrios. There are also efforts to promote cross-border collaboration in educational provision.

We met the Cross-Border Group (Grupo Transfronterizo), which brings together Spanish and Gibraltarian business, trade union and community representatives. We were impressed by the way in which the Group, which was formed in 2014 at a time when border delays were particularly prevalent, had proved successful in enhancing cross-border cooperation and in stressing the importance of such links to local and national political leaders in Spain, as well as in Westminster and Brussels. They warned that, while delays at the border had eased in recent years, any attempt post-Brexit to heighten checks at the border would put a severe strain on the border crossing infrastructure, not to mention the damage to the local economy and public service provision.

Those we met were confident that, not least because of the work of the Cross-Border Group and others, the importance of a fluid border for the Campo de Gibraltar was increasingly recognised not only at local level in Spain (the Algeciras Chamber of Commerce and mayors in a number of towns in the Campo region have publicly called for the retention of a fluid frontier after Brexit), but also by the Spanish Government in Madrid. Spanish Foreign Minister Alfonso Dastis has said that the rights of frontier workers will be safeguarded and defended, and “people will be able to keep living in one place and working in another”.

In a speech welcoming the Committee’s delegation to Gibraltar, the Chief Minister noted that Snr Dastis “has clearly and rightly understood that we have a common responsibility to ensure that the lives of the people who cross the frontier between Gibraltar and Spain should not be in any way disadvantaged by the Brexit decision. ... I welcome [this statement] by the Spanish Government. That is a good basis on which to consider how best to achieve the objective I have repeatedly stated should be our joint endeavour: How to use Brexit to create a rainbow of opportunities that will enhance the wealth created in Gibraltar in a manner that is designed to further lap all parts of the shore of the Bay of Gibraltar. There are many untapped opportunities that repeated generations of politicians in Gibraltar and in the Campo have wanted to see take off ... without either side having to be a winner or a loser. The drama of Brexit can provide the backdrop on which the stage could be set for cooperation that has been within our grasp before but which we have never been able to see through to action.”

The existing level of fluidity at the Gibraltar-Spain border needs to be retained, and even enhanced, post-Brexit. Border fluidity is vital not just for the Gibraltar economy, but also, given the scale of cross-border frontier workers, for the economy of the neighbouring Campo de Gibraltar region of Spain. Any hardening of the border would have a damaging effect on both sides, and given that Gibraltar is already outside the customs union and Schengen Area, would be wholly unnecessary and counterproductive. We therefore welcome the Spanish Government’s commitment to uphold the rights of frontier workers. However, warm words must be translated into action if the interests of frontier workers, and the wider interests of the Gibraltar and Spanish economies, are to be protected.

The momentum created by the work of the cross-border group and others in recent years in promoting cross-border economic and public service cooperation must also be maintained, for the economic and societal benefit of communities on both sides of the border. If these initiatives can be built on in the years ahead, then it will be possible both for Gibraltar and the Campo de Gibraltar to fulfil their economic potential to the mutual benefit of all.

What steps are you taking to support Gibraltar’s Government, businesses, service providers, trade unions and community groups as they seek to build such cooperation? What efforts are you making to ensure that the Spanish Government follow through on their commitments to ensure that the rights of frontier workers are protected, and that a fluid border is retained post-Brexit?

3. UK-Gibraltar relations need to be maintained and enhanced post-Brexit

Our March 2017 report concluded:

“Gibraltar’s most significant economic relationship is with the UK itself, and it will be important for Gibraltar to maintain and enhance its access to UK markets to compensate for any loss in access to the Single Market. The UK has a responsibility to support Gibraltar in benefiting from any opportunities that arise following Brexit, including by participating in any new international trade deals.”

The importance of the bilateral Gibraltar-UK relationship has become clearer in the months since, as Government of Gibraltar research has found that 92% of Gibraltar’s activity within the EU Single Market is with the UK.

Shortly before our visit, at a meeting of the UK-Gibraltar Joint Ministerial Council on EU Negotiations on 8 March, a package of measures was agreed by the UK and Gibraltar Governments to promote closer UK-Gibraltarian cooperation, including:

- Guarantees that Gibraltar financial services firms will have continued access to UK markets until 2020.
- The UK and Gibraltar Governments will work together to design a post-2020 framework based on a shared, high standard of regulation, and enforcement of this regulation, underpinned by modern arrangements for information-sharing, transparency and regulatory cooperation.
- Enhanced liaison on the environmental and fisheries implications of Brexit that are relevant to Gibraltar, whether by sharing information as openly as possible, by providing specialist expertise across a range of policy areas to support Gibraltar with its own preparations, or by considering with Gibraltar where its interests might be promoted in future through regional or international agreements.
- UK Government assurance that British citizens resident in Gibraltar will continue to be eligible for higher education home fee status at English institutions (both during transition and afterwards), subject to conclusion of a reciprocal agreement for UK students studying at Higher Education Institutions in Gibraltar.
- UK Government assurance that gambling operators based in Gibraltar will continue to access the UK market post-Brexit in the same way as now, and continued work towards agreement of a Memorandum of Understanding to enable closer working and collaboration between gambling regulators in Gibraltar and the UK.
- A UK Government commitment to work closely with the Government of Gibraltar towards transport arrangements post-Brexit that support Gibraltar’s prosperity.
- Maintenance by the UK of the current reciprocal healthcare arrangement between the UK and Gibraltar, meaning that Gibraltar can continue to refer an unlimited number of their patients to the UK for free elective treatment.

Our interlocutors in Gibraltar welcomed this package, although some were anxious for further clarity on the nature of the post-2020 framework. Others stressed the need to ensure that the Gibraltarian business community was supported in adapting to the post-Brexit framework, and that the loss of EU funding, which had proved beneficial for start-up businesses in particular, did not prove detrimental. The Gibraltar Chamber of Commerce noted that EU funding since 1990 had stimulated private sector investment amounting to more than €21 million and leading to the creation of more than 3,700 jobs—not insignificant figures

given the size of Gibraltar. Still others stressed the need for a double taxation agreement between Gibraltar and the UK.

In your letter to us, you stated that the UK Government and the Government of Gibraltar “intend to pursue a close economic partnership underpinned by shared, high standards of regulation. It is the unshakeable objective of the UK Government to ensure the seamless continuation of existing market access into the UK and enhance it where possible. This will require mutual confidence in, and cooperation on, regulatory and supervisory structures.”

To that end, we welcome the package of measures announced at the UK-Gibraltar Joint Ministerial Council on EU Negotiations on 8 March, to promote closer UK-Gibraltarian cooperation. How will you take forward the commitment to design a post-2020 framework based on a shared, high standard of regulation, and what more needs to be done to bring this work to fruition? Can you give more information on the support you will provide to promote closer collaboration between gambling regulators, and to enhance transport arrangements post-Brexit that support Gibraltar’s prosperity?

Can you also give an update on discussions with the Government of Gibraltar regarding Gibraltar’s potential participation in future trade deals with third countries? What steps is the Government taking, together with the Government of Gibraltar, to help Gibraltarian businesses to adapt to the post-Brexit environment, to ensure that the loss of EU funding does not prove detrimental to those such as start-up businesses who have benefited from it, and to consider potential new funding streams? Is the Government considering the case for a double taxation agreement between the UK and Gibraltar?

4. The UK Government has a moral duty to defend and represent the interests of Gibraltar in the Brexit negotiations

Our March 2017 report concluded:

“The Government of Gibraltar has placed its trust in the UK to negotiate on its behalf and secure a Brexit that meets Gibraltar’s needs. However, it remains the case that, in leaving the EU, Gibraltar finds itself in a situation that 96% of its voters did not support. Negotiating on their behalf, the UK Government has a moral responsibility to ensure Gibraltar’s voice is heard, and its interests respected, throughout the Brexit process.”

A number of our interlocutors in Gibraltar emphasised this point. One stressed the irony that, while the percentage in Gibraltar in favour of remaining in the EU was by far and away the highest of any counting area in the EU referendum, it nevertheless stood to be most significantly affected by Brexit. As our report and as this follow-up letter demonstrate, Gibraltar faces a set of unique issues arising from Brexit that, due to its relatively small size and the sheer complexity of the Brexit process overall, may not always attract the attention that they deserve.

Yet, as the Chief Minister told us, “the Gibraltarians have remained resolutely British. We have remained devotedly a part of the British family. And we have been a strategic asset for

the projection of British power around the world. We are therefore not 'fair weather British citizens'. We are not a nation who seek simply to be British in the good times and who will jump from the good ship Britannia at the first hint of trouble. And so anyone who thinks there is even the remotest possibility that we might be prepared to trade any part of our sovereignty in the negotiations to establish a new relationship with the European Union will have failed to understand the lessons of history."

We reiterate that the Government of Gibraltar has placed its trust in the UK to negotiate on its behalf and secure a Brexit that meets Gibraltar's needs. However, it remains the case that, in leaving the EU, Gibraltar finds itself in a situation that 96% of its voters did not support. Negotiating on their behalf, the UK Government has a moral responsibility to ensure Gibraltar's voice is heard, and its interests respected, throughout the Brexit process. What reassurance can you give us, and the people of Gibraltar, that you will continue to fulfil this moral responsibility, both during the Brexit negotiations and beyond?

We would be grateful for a reply to this letter by 27 April 2018.

Yours sincerely,

Tim Boswell

Lord Boswell of Aynho
Chairman of the European Union Committee