

SELECT COMMITTEE ON THE EUROPEAN UNION

EVIDENCE SESSION WITH HON FABIAN PICARDO, CHIEF MINISTER OF GIBRALTAR

23 OCTOBER 2018, 4:30-6:00PM, COMMITTEE ROOM 3

POSSIBLE QUESTIONS

1. **The Government of Gibraltar issued a statement of 15 October that an agreement between the UK and the EU is “almost complete”.**
 - (a) **Can you provide an update on the state of the negotiations regarding Gibraltar?**
 - As I said in my statement of 15 October, I spent a very substantial amount of time in Brussels from 10 to 15 October. During that time, the negotiating teams of Spain, the United Kingdom and Gibraltar met twice at the Residency of the UK’s Permanent Representative in Rue Ducale. As a result of those further negotiating rounds meetings the shape of the application of the Withdrawal Agreement to Gibraltar is clearer now.
 - There is now a fairly final **Protocol** on Gibraltar which will be a part of the Withdrawal Agreement. That Protocol will form an integral part of the WA that is to be entered into between the UK and the EU. And this is text which is agreed – as it has to be – with Task Force 50; the group of legal experts of the European Commission that have carriage of the draft Withdrawal Agreement as a whole with the UK team at the Cabinet Office and the Department for Exiting the European Union.
 - We were also able to advance of a number of sets of practical arrangements reflected in **4 Memoranda of Understanding** which deal with Citizens’ Rights, the Environment, Police & Customs Cooperation and Cooperation on Tobacco. Separate to this, work is also well under way on a **tax agreement** that will deal with transparency, tax residency and double taxation, in fact, something very similar to a double taxation agreement.
 - Virtually all these documents are now settled with the exception of a couple of discreet matters in relation to tobacco and taxation.

(b) What is the status of discussions with Spain in relation to the airport?

- HMGoG made it clear from the outset that, under no circumstances, would it cross the well-established red lines on sovereignty, jurisdiction and control in relation to the Airport (or indeed any other matter).
- Although the increased use of the Airport is an important matter to both Spain and Gibraltar in order to maximise the Area's potential, generate employment and develop the economy of the region, it soon became apparent that our respective positions would be irreconcilable. Our position has been to advocate a return to the Cordoba Agreement of 2006.
- Although the Party I lead had reservations about the Cordoba Agreement when it was entered into, it was an agreement that was defended by the then Government of Gibraltar in the 2007 General Election which they won. As a result, they spent in excess of £84m of taxpayers' money implementing the Gibraltar obligations under the Cordoba Agreement. The current Government of Gibraltar takes the view that the Gibraltar side has complied with its obligations under the Cordoba Agreement and we are ready to see it come into effect.
- We have not found the PSOE Government of Spain prepared to move to implement the arrangements agreed in Cordoba by the former PSOE Government of Spain in this respect.
- The result is that the Gibraltar Protocol maintains the status quo.
- The fact that discussions on the Airport have been put to one side at this stage of the Brexit process does not mean that HMGoG is not open to engaging in discussions on the Airport as part of negotiations concerning the future partnership provided red lines are not crossed.

(c) Has Spain now accepted that any transition arrangements will apply to Gibraltar?

- Speaking to the Spanish Parliament's Foreign Affairs Committee on [17] October, the Spanish Foreign Minister, Sr. Borrell, stated that the text of the Protocol was closed and "in green". More importantly, in a statement on 18 October, the Spanish Prime Minister, Sr. Sanchez, confirmed that agreement on the Gibraltar Protocol had been reached. The Gibraltar Protocol, like the Protocols on Northern Ireland and the SBAs in Cyprus, will form an integral part of the Withdrawal Agreement. This means that the transitional arrangements will apply to Gibraltar.
- The UK and Gibraltar Governments had always been cautiously optimistic that Gibraltar would be covered by the WA's scope and that Gibraltar would benefit from any transitional arrangements agreed under the WA given the assurances provided by the Prime Minister and UK Government.
- The territorial scope of the current WA covers Gibraltar and that is highlighted in green as agreed text.

2. According both to your statement and recent comments by Spanish Foreign Minister Josep Borrell, the ‘Gibraltar Protocol’ of the Withdrawal Agreement will be separate from the five memoranda.

(a) Can you describe what measures will be included in the ‘Protocol’?

- Like the Protocols on Northern Ireland and SBAs in Cyprus, the Protocol on Gibraltar will contain measures that are specific to Gibraltar.
- The Protocol provides mechanisms for ongoing cooperation with respect to relevant areas, such as Citizens’ Rights, Tax, the Environment and Police & Customs cooperation. The emphasis is on cooperation between the competent authorities in the area.

(b) How is the Protocol distinct from the memoranda?

- The Protocol is very distinct to the MoUs.
- The Protocol is between the UK and the EU. It is an integral part of the WA and it will therefore have international treaty status.
- The MoUs are not legally binding. They set out the practical arrangements that have been agreed to deliver the political commitment given by all the parties to ensure ongoing cooperation in areas which both Gibraltar and Spain have identified “irritants”. These flesh out the provisions of the Protocol in relation to Citizens’ Rights, Tax, the Environment and Police & Customs cooperation.
- The commitments made in respect of the MoUs will be delivered by Gibraltar competent authorities in accordance with the terms of the Gibraltar Constitution, in particular section 47(3).

3. **Can you outline what has been agreed in the memoranda in relation to tax cooperation, police and customs cooperation, the environment, citizens' rights and tobacco?**

- The common theme of the 4 Memoranda is the establishment of enhanced cooperation. HMGoG welcomes this. Committees and Working Groups will be established in relation to Citizens' Rights, the Environment and Police & Customs Cooperation.
- In some of these areas there has been a genuine commitment to cooperate by both sides. For instance, with regard to **Police & Customs Cooperation** there has long been excellent regional cooperation between our respective law enforcement agencies in many respects. Law and order is something we all strive for and the MoU will facilitate this.
- The **Environment** has been an area on which Gibraltar has long wanted to cooperate with our neighbours. We have only one environment, one which knows no frontiers. We have long been keen to see cooperation in this area on a basis which is clearly without prejudice to the sovereignty, jurisdiction and control position on which we would never compromise, expressly or impliedly, in particular in respect of Gibraltar's British Gibraltar Territorial Waters.
- **Citizens' Rights** is another area which both sides have wished to protect. Frontier Workers make an important contribution to the Gibraltar economy whilst, at the same time, the Gibraltar economy provides employment and wealth in the surrounding Spanish region.
- The discussions have been greatly assisted by meetings between the technical experts during the month of August. I told my experts to embrace the meetings with confidence on the basis of a solid track record on compliance enjoyed by Gibraltar in these matters. It has borne results.

- You have raised specific questions on **tax** and **tobacco**:
- (a) **On the issue of tax cooperation, will an agreement lead to Gibraltar sharing corporate tax information with Spain?**
- Taxation is not dealt with in an MoU but instead in a tax agreement, which is currently being finalised. The tax agreement deals, broadly speaking, with transparency, residency, double taxation and Gibraltar's removal from Spanish blacklists on tax havens.
 - It is important to underline that the sharing of tax information with Spain is not new. Gibraltar has been sharing tax information with Spain, consistently with EU law, under various gateways for the exchange of tax information amongst Member States, notably, EU Directive 2011/16.
 - EU law with respect to direct taxation and the exchange of tax information would continue to apply to Gibraltar throughout the transition period so nothing would change in that respect at least until the end of transition.
 - Therefore, it would be incorrect to state that it would be as a result of any potential arrangement with Spain in this area that Gibraltar would start to exchange information with Spain.
 - With regard to the other aspects of the agreement, these concern the sort of measures that one would expect to see in tax agreements of this nature, such as rules on tax residency and non-double taxation.
 - And, of course, it is my Government's firm position that signature of such an agreement must be accompanied by Spain's removal of Gibraltar from any blacklists that it operates, otherwise there would be little point in entering such an agreement. This is a matter of common sense.

(b) Does Gibraltar envisage raising its rate of corporation tax to bring it closer to Spain's?

- Absolutely not. HM Government of Gibraltar will continue to set its own corporate tax rates in accordance with its own requirements and domestic policies.

(c) On the issue of tobacco smuggling, will there be an agreement with Spain to minimise price differences across the border? How will this operate in practice?

- Both Spain and Gibraltar have a shared agenda to control illicit tobacco activity and to safeguard respective legitimate markets.
- **Price of tobacco has increased in Gibraltar by 148% since I took office. Prices will continue to increase on public health grounds.** I consider this commodity to be on a permanent price escalator and that the health consequences of tobacco consumption my government greatly.
- Price harmonisation is not the only way to deal with smuggling. Securing closer collaboration with relevant agencies and competent authorities across the border, and having better systems for the exchange of information, will be key components of our shared cooperation going forward.

(d) Your statement also says that these measures will be “time limited” and end at the same as the transition period in December 2020. How can Gibraltar ensure a smooth relationship across the border if these agreements are only temporary?

- The agreements are aligned with the WA and it is therefore unsurprising that they end at the same as the transition period in the WA (December 2020).
- Indeed, this reflects the mechanics of the wider EU-UK position, that the EU would only be able to legally conclude agreements giving effect to any potential future relationship once the UK has left the EU.
- In order to ensure a “smooth relationship” post transition, the particular interests and concerns of Gibraltar and the neighbouring region will need to be carefully considered when it comes to putting in place any future arrangements that are to apply.
- We are confident that Gibraltar will part of that future partnership and the work we will have done during the transition period will serve as the basis for our negotiation.

(e) Is the intention for permanent solutions to be found through the overall future UK-EU relationship?

- Yes, that is the intention. But the solutions would need to deal with the unique circumstances of Gibraltar and the area. For example, we make no secret of the fact that border fluidity is fundamental. The wider UK-EU arrangements might not work for us given the specific circumstances that apply locally.

(f) What discussions are you having with the Spanish authorities to ensure continued police and customs cooperation after Brexit?

- As I have already stated, in this area there has long been excellent regional cooperation between our respective law enforcement agencies. The discussions have therefore sought to capture in writing cooperation which to an extent already takes place, on the ground, on a day to day basis. We wish to develop them further through the MoU.

5. How is the Gibraltar Government cooperating with the Andalusian regional government, and the local authorities in the Campo de Gibraltar region, to protect cross-border workers and defend the interests of communities on both sides of the border?

- We have good relations with the Andalusian regional government. On 24 January, I paid an official visit to the President of the Junta de Andalucía, Sra, Susanna Diaz. I also have an excellent relationship with the local authorities in the Campo de Gibraltar region, in particular, with the Mayor of the neighbouring town of La Linea, Sr. Juan Franco.
- We share common interests and we all have a common aim to ensure that Gibraltar's withdrawal from the EU does not have a negative impact on either side of the border, and in particular on border fluidity which is vital to us all in the area.

6. Is the issue of recognition of professional qualifications for cross-border workers part of the negotiations with Spain?

- No. Chapter 3 of Part 2 of the WA deals with the continuing application of rules on the mutual recognition of professional qualifications to citizens' and workers covered by the WA. This would apply in Gibraltar to the same extent as it would apply in the UK.

7. Can you update us on discussions with the UK Government in the context of the Joint Ministerial Council (Gibraltar EU Negotiations), including on UK-Gibraltar relations post-Brexit?

- The UK Government has fully involved the Gibraltar Government in its Brexit work. It has fully respected Gibraltar's interests and has engaged with us as at every step of the negotiations.
- The high level conduit through which that engagement has been coordinated has been the Joint Ministerial Council - Gibraltar Exit Negotiations (JMC-GEN), chaired by Robin Walker MP, and involving other UK Government Ministers, notably, Sir Alan Duncan MP, Minister of State for Europe and the Americas.
- The JMC-GEN is specific to Gibraltar thereby fully recognising our unique circumstances.
- Since the first JMC meeting of 7 December 2016 there have been 6 further high level, JMC meetings. The meetings have taken place on a quarterly basis, like clockwork, and the next meeting will be taking place before the end of the year.
- Separate to the JMC meetings there are formal UK-Gibraltar Strategy Talks. These are meetings which take place between the Gibraltar Government and top UK civil servants from a range of UK Government departments. The discussions which take place at these Strategy Talks are broader, more technical in nature and were formalised by my Government well before the Brexit referendum. Invariably, these discussions now support the JMC process. Since the referendum, there have been 7 "official" Strategy Talk sessions, 6 of which have taken place in Whitehall and 1 of which has taken place here in Gibraltar.
- Even more detailed and technical are the discussions of the various UK-Gibraltar Brexit Working Groups that report directly to the JMC. Each Working Group is issue specific, scrutinizing the potential effects of Brexit on various sectors and recommending action to mitigate those effects where necessary.

- I need to reiterate however that our engagement with the UK Government does not end there. It is important to underline that engagement with the UK Government is constant and fluid, and interaction takes place on a daily basis, at all levels, outside of the mechanisms I have just described. Communication is continuous, cooperation is tight and, as we have often said, **it is our view that, rarely if ever in its recent history, has the Gibraltar Government enjoyed such a positive and intimate working relationship with the UK Government. I would like to pay tribute to the officials at the FCO in particular, with whom the contact is daily, but also at the Cabinet Office, DExEU, the Home Office and Treasury. Together, we have really formed a “Team Gibraltar” of high quality and great efficiency.**
- In terms of UK-Gibraltar relations post-Brexit, on 8 March this year, together with the UK Government, we announced a series of measures to secure the strong, historic and valued UK-Gibraltar relationship.
- We have now agreed key fundamentals. We have secured the continuation of our current trade arrangements with the UK. These will be enhanced also in some areas, not least in online gaming and insurance.
- In these areas, cooperation on regulatory outcomes with the UK will be closer and more aligned in future in a way that will be mutually beneficial. The principle of our continued access to the UK market after Brexit is therefore established and accepted.
- Mechanisms to facilitate this market access are in place already until the end of the transition period. And work is progressing well towards the updating of the mechanisms that will need to be put in place thereafter.
- As I have stated many times, continued access to the UK market for our financial services and online gaming companies was the essential first step in securing Gibraltar’s future post-Brexit, with the UK representing over 90% of the market for our online gaming and financial services companies. This had been the stated objective for Phase 1 of the Gibraltar Government’s Brexit Plan and is in my view the essential founding block for everything else connected to Brexit in Gibraltar.
- Additionally, we have also reached and announced agreements with the UK Government on other issues which are of importance to us like health and education. These achievements and the benefits they bring cannot be underestimated.

8. Are you satisfied with your engagement with the UK Government in relation to Brexit, in particular through the JMC mechanism?

- Absolutely. As just stated. And not just through the JMC mechanism but through the day to day close working relationships that we have established with the excellent team at the FCO and other Whitehall Departments.

9. What further assurances are you seeking from the UK Government as Brexit negotiations continue?

- Once we have secured the transitional arrangements, the focus will be on the future relationship and, in the context of those discussions, it will be essential for us that our wishes and concerns are properly taken into account. Gibraltar will seek to form an integral part of the UK's future partnership with the EU. In addition, it will also be necessary to address the specific circumstances of Gibraltar. As I have already said, the most obvious example is in relation to border fluidity and the mobility aspects of the negotiations generally.

10. You have stated that a Specialised Committee on Gibraltar is to be set up under the UK-EU Joint Committee, to act as a recourse mechanism in the event of a dispute. Can you explain how this mechanism will work, and what involvement the Governments of Gibraltar, Spain and the UK will have in this process?

- The WA makes provision for the establishment of Specialised Committees with respect to various areas including the Protocol on Northern Ireland and the Protocol on the SBAs in Cyprus and the Chapter of Citizens' Rights.
- The idea is for there to be also one with regard to the Gibraltar Protocol.
- The architecture for the Specialised Committees is set out in Article 158 of the WA. The Committees will be made up of representatives of the Union on one side and the United Kingdom on the other. **The composition of the teams has still not been discussed but we would expect that with regard to HMGoG's participation in the Specialised Committee our officials and competent authorities will participate in meetings in accordance with our constitutional requirements.**

11. In the Gibraltar Government's statement of 14 October, you repeat the UK Government's position that "no deal is better than a bad deal".

(a) What preparations is your Government undertaking for a no deal outcome?

- HMGoG has worked tirelessly over the last 2 years to ensure that it has in place appropriate plans to mitigate the potential effects of a "no-deal" Brexit. This work is now being led by our Chief Secretary who is working very closely with relevant authorities and HMGoG departments.
- A substantial amount of this work has been conducted in conjunction with the UK Government and in recent months work on this front has accelerated.

(b) What are the key issues for Gibraltar in preparing for a no deal?

- The main concern is of course the border.
- Virtually half of our workforce (14,000) are frontier workers: over 90% (10 million) of our tourists; over 90% of food. Jet fuel. Waste etc. All cross the border on a daily basis.
- The border is the vital artery of our economy. Any increased delays as a result of more thorough immigration controls or customs checks, or as a result of increased bureaucracy with respect to these processes, can have affect our economy and the economy of surrounding area.
- Securing post-Brexit UK market access for our financial institutions and remote gambling operators has also been a key element in terms of mitigating for any losses which may be incurred as a result of, potentially, not having any degree of access to the EU Single Market in the future.

(c) The UK Government has not issued a 'no deal technical notice' specifically covering Gibraltar, other than about the continuity of EU funding to the British Overseas Territories. Does the Gibraltar Government intent to issue its own set of technical notices?

- Many of the UK Government's "no deal" technical notices are of equal application in Gibraltar and some of these technical notices have been very useful in terms of informing HMGoG's own contingency planning.
- We plan to publish our own technical notices in key areas that have an accentuated effect in Gibraltar. For instance, Gibraltar has published a technical notice in relation to passports and Schengen entry requirements.

(d) Are the separate agreements with Spain that you have described dependent on the agreement of the overall Brexit deal? What happens to these agreements in the event of a no deal?

- The Protocol is dependent on the overall UK-EU deal, in that it forms an integral part of the WA.
- The MoUs have been negotiated on the basis of the Protocol. However, they are free standing arrangements, large elements of which could be given effect to even in the event of a no deal.
- We have negotiated them with every eventuality in mind and in a manner that allows us to adapt to any such eventuality, including a no deal. That has formed part of the strategy that we would in place from the very beginning of the negotiations.
- We would stand ready to discuss with Spain their implementation even in the case of a no deal.