



Lord Jay of Ewelme
Acting Chair, European Union Committee
House of Lords
London
SW1A 0PW

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Dear Lord Jay,

BREXIT: GIBRALTAR

I am grateful to the Committee for its insightful report, “*Brexit: Gibraltar*”, which reflects a detailed examination of the implications for Gibraltar of the UK’s decision to leave the European Union. Please accept my sincere apologies for the delay in responding as the General Election was announced shortly after publication.

The UK Government takes its responsibilities to Gibraltar very seriously, and is committed to fully involving them as we prepare to leave the EU. Since the report was published, the Prime Minister has notified the European Council of our intention to withdraw from the EU. As set out in the White Paper on the United Kingdom’s exit from, and new partnership with, the European Union, the Government remains committed to fully involving Gibraltar. We are keen to ensure that all their interests are taken into account in the negotiations.

We welcome this report as an important contribution to this process, and set out our response below.

THE ECONOMIC IMPLICATIONS

Conclusion 1) The EU Single Market has played an important role in helping Gibraltar to develop its vibrant, service-based economy over recent decades. We note the view of our witnesses that the economy is highly resilient. Nevertheless, a loss of Gibraltar’s access to the Single Market in services would unavoidably have negative consequences for Gibraltar’s economy, at least in the short term.

Gibraltar is rightly proud of the strong economy it has built for itself. The Committee heard how Gibraltar’s economy has been transformed in recent decades, from one dominated by military spending, to a thriving and resilient economy based on

financial services, online services, tourism and commercial port services.

As the report notes, Gibraltar is already outside the Customs Union, while the Common Agricultural and Fisheries Policies and VAT do not apply. Gibraltar's most significant economic relationship is with the UK; however, we recognise the role that access to EU markets has played in Gibraltar's economic development.

The Government is seeking a deep and special partnership with the European Union that takes into account both economic and security cooperation. We are seeking a deal that works for the UK and for Gibraltar, and we are working closely with the Government of Gibraltar to ensure that we have understood Gibraltar's particular priorities.

Conclusion 2) A common theme in the evidence we heard on the economic impact of Brexit for Gibraltar has been its reliance upon the free movement of frontier workers, who make up some 40% of the total Gibraltar workforce. If Brexit leads to restrictions being imposed on the daily movement of labour across the land border, this will seriously damage several key sectors of its economy, including the port, tourism, financial services and aviation.

Conclusion 3) The economy of the Campo de Gibraltar region of Spain benefits substantially from the employment opportunities offered by Gibraltar and would also be significantly affected by any restriction of the movement of goods and people over the frontier.

We have worked closely with the Government of Gibraltar to understand the composition of Gibraltar's workforce, including the important role played by British, Spanish and other EU national workers who cross the border every day. The UK Government recognises the importance of a well functioning border to Gibraltar's economy. Our close engagement with the Government of Gibraltar ensures that we understand and reflect their priorities throughout our negotiations with the EU and this is reflected in the priority we have given to citizens' rights issues - including social security coordination and other matters affecting frontier workers - in our negotiations with the EU.

The Committee is right to highlight the benefits of the employment opportunities offered by Gibraltar to the surrounding Spanish region, including for the 7,000 Spanish workers who cross the border every day.

Gibraltar is a motor of prosperity for the Campo de Gibraltar and we are keen to ensure that this continues. That is why, when it comes to Gibraltar and EU exit, the UK Government aims to ensure a well-functioning Gibraltar-Spain border.

Conclusion 4) EU funding has played an important role in Gibraltar's economic development and in supporting regional cooperation. We welcome Mr Walker's confirmation that EU-funded projects in Gibraltar will be covered by HM

Treasury guarantees, but note that, as in the UK, funding is uncertain beyond 2020.

It is also possible that projects in Gibraltar may not be deemed to fulfil the criteria of fitting with UK Government strategic priorities. We call on the UK Government to clarify what future UK-based funding will be available to Gibraltar if it cannot access EU programmes after Brexit.

Parliamentary Under-Secretary of State for Exiting the European Union, Robin Walker, confirmed in his evidence to the Committee that Gibraltar is covered by the EU funding guarantees made by the Treasury in August and October 2016. All European Structural and Investment Funds projects signed or with funding agreements in place before our EU Exit will be guaranteed where they provide strong value for money and are in line with domestic strategic priorities, even when these projects continue beyond the UK's departure from the EU.

These guarantees also cover funding awarded to participants from Gibraltar from European Territorial Cooperation ('ETC') programmes.

When it comes to future funding, leaving the EU means that we can decide how to deliver the policy priorities currently delivered by EU funding programmes. We will continue to work closely with the Government of Gibraltar to understand their priorities.

Conclusion 5) 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 also 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 UK Government is clear that we should work together to maintain and strengthen the strong economic bonds between Gibraltar and the UK after we leave the European Union.

There are strong mechanisms already underpinning Gibraltar's access to the UK financial services market, enshrined in the Financial Services and Markets Act 2000. HM Treasury is working closely with the Government of Gibraltar and agreed at the last Joint Ministerial Council (JMC) in July to report on progress on an agreed programme of work on insurance, which forms the major part of Gibraltar's financial services trade with the UK, at the next JMC.

We have agreed that, together with the Government of Gibraltar, we will take into account the priorities of Gibraltar as we look to establish new trade and investment arrangements with the wider world. At the July JMC, the Department for International Trade committed to establish a mechanism by which it will consult Gibraltar on inclusion in future trade deals.

THE FRONTIER WITH SPAIN

Conclusion 6) It will be in the mutual interest of Gibraltar and Spain to maintain as free-flowing a frontier as possible following Brexit. We urge all parties involved to work together in good faith to reach an agreement that supports ongoing regional cooperation and trade, and avoids undue disruption to the lives of thousands of border residents who cross the frontier daily. We agree with the Chief Minister of Gibraltar that the Local Border Traffic Regulation (EC/1931/2006) could be used as a future basis for movement of labour between Spain and Gibraltar, but note that any agreement will require both sides' commitment to sustain it.

As noted above, we recognise the importance of a well functioning Gibraltar-Spain border. It is crucial not only to Gibraltar's economy but to the wider Campo de Gibraltar. The economics of the issue are vitally important, but the Committee is also right to highlight the other impacts any undue disruption could have on the thousands of people who cross the border daily, including the 7,000 Spanish frontier workers, as set out by the Chief Minister of Gibraltar in his evidence.

These vital workers are covered by our negotiations on citizens' rights, where we are making good progress in our negotiations with the EU, including specifically on the issue of the frontier workers who are so important to Gibraltar's economy. We are keen to build on this important progress as negotiations continue to ensure that Gibraltar can maintain its position as a motor of prosperity for the surrounding area. We will also keep working closely with the Government of Gibraltar to consider a range of options for maintaining a well-functioning border post-exit.

Conclusion 7) Common membership of the EU has greatly facilitated cross-border cooperation between authorities in Spain and Gibraltar, including in the area of police and judicial cooperation. In particular, we note the importance of the European Arrest Warrant in preventing those wanted for crimes from evading justice by crossing the EU's external border, in either direction. In a recent report we highlighted the importance of police and judicial cooperation post-Brexit across the Irish land border. It will be equally vital for Gibraltar to continue to cooperate with Spain in this area, and we urge the UK Government, as part of its wider commitment to continuing cooperation on security and policing, to prioritise supporting a new and stable relationship between Gibraltar and Spain.

Conclusion 8) The European institutions, including the Commission, have played an important part in promoting dialogue between Gibraltar and Spain. Following Gibraltar's withdrawal from the EU, continued cooperation will be just as important, and we urge the UK Government to provide support for this, working both with the Spanish Government and, where possible, with the EU.

The UK Government has been clear that we will do what is necessary to keep our people safe. One of the twelve objectives for the negotiations ahead is to seek a strong and close relationship with a focus on operational and practical cross-border cooperation to fight crime and terrorism.

As part of the negotiations, we will discuss with the EU and member states how best to continue cooperation on security, law enforcement and criminal justice.

There is frequent cooperation between Spanish and Gibraltar law enforcement agencies and individuals suspected of serious criminal offences are regularly arrested. This cooperation is important and valuable not only to Gibraltar and the UK but to the rest of the EU as well. We will continue to work with the Government of Gibraltar to understand their priorities on security cooperation.

IMPLICATIONS FOR THE SOVEREIGNTY DISPUTE

Conclusions 9) We welcome the Government's intention to engage positively and pragmatically with Spain, to try to secure an agreement that reflects the mutual importance of the economic relationship between the UK and Spain, and between Gibraltar and Andalusia.

Conclusion 10) We fully endorse the UK Government's commitment never to enter into sovereignty discussions against the will of the Gibraltar people. At the same time, we note the risk that Spain will seek to involve the sovereignty dispute either in the negotiations under Article 50 or in future negotiations on a UK-EU free trade agreement. The Government must be vigilant to resist any such attempt.

Conclusion 11) We also urge the UK Government to remain alert in the longer term to any attempts by Spain to advance its territorial claims over Gibraltar through the medium of EU laws or policies, when the UK is 'out of the room' after Brexit.

The Government should use whatever means are available under international law to resist encroachment upon Gibraltar's sovereignty under such circumstances.

We welcome the report's strong support of the UK Government's position.

We are steadfast in our support of Gibraltar, its people and its economy. We will continue to stand beside Gibraltar - both as we prepare to leave the European Union, and after we have left. We remain firm in our commitment to never enter arrangements under which the people of Gibraltar would pass under the sovereignty of another state against their freely and democratically expressed wishes, nor enter

into a process of sovereignty negotiations with which Gibraltar is not content.

This was reaffirmed by the Prime Minister in the House of Commons on Wednesday 29 March.

We are clear that future EU legislation or wider policies could not weaken or undermine the legal basis in international law for British sovereignty over Gibraltar.

AN UNCERTAIN FUTURE

Conclusion 12) Gibraltar faces potentially significant economic consequences as a result of the UK's decision to leave the EU. The extent to which these consequences will be realised hinges both on the outcome of the UK's negotiations with the EU, and on the reaction of Spain during and after withdrawal.

Conclusion 13) We agree with the Chief Minister of Gibraltar that Gibraltar and the UK should be considered, for the purposes of withdrawal negotiations, as a single State. Gibraltar is part of the EU, and its withdrawal is a matter for the UK and the EU collectively, not for a separate, bilateral negotiation between the UK and Spain. Aspects of the agreement on the future UK-EU relationship could nevertheless include specific bilateral arrangements between Spain and Gibraltar, for example in relation to local border traffic management.

The UK Government is clear that Gibraltar is covered by our exit negotiations including when it comes to our withdrawal treaty.

The focus of the UK Government will be to ensure that we get the best possible deal in trade and other matters, for the UK and for Gibraltar. We will continue to work closely with the Government of Gibraltar to ensure that we get a result that is in the collective interests of the UK and Gibraltar.

Conclusion 14) A dedicated Joint Ministerial Council has been established to facilitate Gibraltar's involvement in the wider Brexit process, and we note that the Government of Gibraltar appears satisfied with the level of contact it has had with UK ministers and officials to date.

Conclusion 15) 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.

As Robin Walker noted in evidence to the Committee, we are committed to fully involving Gibraltar as we exit the EU, to ensure that their interests are properly taken

into account and reflected at every stage of the negotiations.

The Joint Ministerial Council (Gibraltar EU Negotiations) is the primary formal mechanism for engagement. Robin Walker chaired the third meeting of the JMC on 17 July 2017, with Foreign and Commonwealth Office and HM Treasury Ministers taking part alongside the Chief Minister, Deputy Chief Minister and the Attorney General of Gibraltar.

There have been a wide range of other engagements with the Government of Gibraltar, at both official and ministerial levels. For instance, the Chief Minister of Gibraltar has met with the Secretary of State for International Trade on a number of occasions to discuss the valued links between our economies.

In March, Robin Walker visited Gibraltar to get a first hand view of its unique context, and to speak to representatives from across its economy, from the business community to the unions. The Chief Minister of Gibraltar said of the visit that it “symbolised the relationship that exists between the Governments of Gibraltar and the UK, and is a clear reflection of the real action there is on the real pledge that Gibraltar would be fully involved in exiting the European Union.”

Conclusion 16) *At this stage, it is unclear what level of Single Market access the UK will be able to negotiate after Brexit, in particular with regard to services. It therefore remains to be seen whether Gibraltar will feel compelled to seek a differentiated future relationship with the EU. We note, however, that Spanish opposition may present an insuperable barrier to any perceived special treatment for Gibraltar.*

Conclusion 17) *Moreover, a microstate-style status would need the agreement of the EU institutions and the other 27 Member States. It is not clear that the EU would prioritise special arrangements for a dependent territory of a State which is leaving, not joining, the EU. At the same time, we note that the EU itself has a continuing interest in promoting the economic well-being of Gibraltar, as a neighbouring territory, in developing good relations between Gibraltar and Spain, and in protecting the welfare of EU national border residents.*

As a priority we will seek a bold and ambitious Free Trade Agreement that is of greater scope and ambition than any such existing agreement.

The UK Government is working closely with the Government of Gibraltar to properly take account of Gibraltar’s priorities.

Conclusion 18) *It is essential that Spain, the UK and Gibraltar, once they lose the common forum provided by shared EU membership, redouble their efforts to find a structure through which open lines of communication can be maintained, promoting cooperation and good relations. We call on the*

Government to give early thought to how such a structure might be established, and what, if any, role the EU might play in it. Agreement on this should be sought in tandem with Brexit negotiations.

We agree with the Committee that cross-frontier discussion and cooperation continues to be important. Much of that already takes place between authorities in situ, but the UK sees the value of more formal dialogue, which the Trilateral Forum of Dialogue between the UK, Gibraltar and Spain was designed to facilitate.

It remains the long term aim of the UK and Gibraltar to return to the Trilateral Forum, but we need to continue to work with all parties to encourage open lines of constructive communication.

A handwritten signature in blue ink, appearing to read 'David Davis', with a large, sweeping flourish underneath.

**RT HON DAVID DAVIS MP
SECRETARY OF STATE FOR EXITING THE EUROPEAN UNION**