



BRIEFING PAPER

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Brexit and Gibraltar

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Contents:

1. Gibraltar's constitutional status
2. Relations with Spain
3. Gibraltar and the EU
4. Brexit



Contents

Summary	4
1. Gibraltar’s constitutional status	5
1.1 British Overseas Territory	5
1.2 The Gibraltar Government and Parliament	6
2. Relations with Spain	7
Brussels Process	7
Re-launch of Brussels Process	7
A new forum for dialogue	7
Issues: border controls, fishing rights, money laundering and smuggling	8
Spanish elections	9
3. Gibraltar and the EU	10
Gibraltar joined with the UK	10
EU law in Gibraltar	10
4. Brexit	12
4.1 The 2016 EU referendum	12
4.2 Gibraltar’s constitutional status	12
4.3 New Spanish Foreign Minister	14
4.4 The Gibraltar International Airport	14
4.5 The border	16
4.6 Gibraltar’s economy	17
Currency	17
Recent economic performance	17
Impact of Brexit on Gibraltar’s economy	18
Impact of Brexit on local Spanish economy	20
4.7 Is there an issue concerning pensions for Spanish workers?	21
4.8 The negotiations	23
How will Gibraltar’s interests be represented in the negotiations?	23
Different provisions for Gibraltar?	25
Future relations agreement	26
EU support for Spain?	26
Could Gibraltar be a bargaining chip?	27

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Summary

Gibraltar is a British Overseas Territory (BOT) and is in the European Union, having joined the then European Economic Community (EEC) with the UK in 1973. But under the terms of the UK's membership, Gibraltar is not in the Customs Union, Common Commercial Policy, Common Agriculture Policy, Common Fisheries Policy and the VAT regime. EU law is applicable in Gibraltar except in these areas and much of it is implemented under Gibraltar's [European Communities Act 1972](#).

In the referendum on continued EU membership on 23 June 2016, nearly 96% of Gibraltar's electorate voted to stay in the EU. Analysts suggest the high remain vote was because EU membership has been beneficial for Gibraltar's economy and because many Gibraltarians believe it has been helpful with regard to Spanish sovereignty ambitions.

Spain maintains a sovereignty claim over Gibraltar, but the UK Government's position is that it will not change the constitutional status of Gibraltar as a BOT without the approval of its people. In a referendum in 2002, with a turnout of 88%, around 99% of the electorate voted against a proposal for joint UK-Spanish sovereignty. At the United Nations Gibraltar has argued in support of its right to self-determination.

There have been various forums and formulas for talks between the UK, Spanish and Gibraltar governments about its future and its status, but there are currently no on-going discussions.

Since the EU referendum the Gibraltar Chief Minister, Fabian Picardo, has given evidence to the Commons Committee for Exiting the EU and the Lords European Union Committee. Gibraltar's main concerns regarding Brexit are:

- Protection from a possible Spanish sovereignty claim
- The impact on Gibraltar's economy
- The Gibraltar-Spain border
- Future trade and financial services opportunities for Gibraltar

The UK Government has said it will respect Gibraltar's constitutional status, that keeping the Gibraltar-Spain border functioning is a priority, that it recognises Gibraltar's special interests and that it will work with the Gibraltar Government during the Brexit negotiations.

The Guidelines adopted at the end of April by the European Council, which will form a framework for the Brexit negotiations, state that an agreement between the EU and the UK after it has left the EU cannot apply to Gibraltar without Spain's consent. This has given rise to speculation that Gibraltar could be used as a bargaining chip in the forthcoming negotiations.

1. Gibraltar's constitutional status

1.1 British Overseas Territory

Gibraltar was ceded to Britain under [Article X](#) of the 1713 Treaty of Utrecht (this consisted of several agreements signed by the belligerents in the War of the Spanish Succession in the Dutch city of Utrecht in March and April 1713). Gibraltar's status was confirmed in later treaties signed in Paris and Seville, but Spain tried to recapture the territory in 1727 and 1779–1783.¹

Today Gibraltar is a British Overseas Territory of around 32,000 people, for whose international relations the UK is responsible. Its constitutional relationship with the UK was defined in the [Gibraltar Constitution Order 1969](#), 23 May 1969, which was repealed and replaced by the [Gibraltar Constitution Order 2006](#) from 2 January 2007.²

Gibraltar has a high level of internal self-government. The Queen, represented by the Governor, is the Head of State. The Governor has responsibility for all matters not specifically allocated to local Ministers, mainly defence, external affairs, internal security and financial stability. The Governor is currently Lieutenant-General Edward Davis CB CBE.

The UK Government is responsible for Gibraltar's external affairs, which includes its international borders. It has asserted Gibraltar's territorial sea to be three nautical miles wide (which was the generally accepted limit from the 18th century onwards), and has not extended it to the 12 nautical miles permitted under the 1982 [UN Convention on the Law of the Sea](#).³ Spain, which maintains a sovereignty claim over Gibraltar (see below), considers that Gibraltar does not have a territorial sea, as that was not mentioned in the Treaty of Utrecht.

Most Gibraltarians have indicated they want to keep their current constitutional relationship with the UK. In 2002, in a referendum on a proposal for the UK to share sovereignty with Spain, Gibraltarians rejected the proposal by 99%.⁴

The Gibraltar Government has also repeatedly addressed the United Nations, where it is a "non-self-governing territory", on the right to self-determination. Gibraltar has claimed this right as one to choose to remain British.

¹ This paper does not provide a detailed history of Gibraltar. There are more detailed accounts of Gibraltar's history and the Spanish claims in earlier Library papers, including: Research Paper 98/50, [Gibraltar, the United Kingdom and Spain](#), 22 April 1998; Research Paper 02/37, [Gibraltar's constitutional future](#), 22 May 2002; Research Paper 06-48, [Gibraltar: diplomatic and constitutional developments](#), 11 October 2006.

² Gibraltar's constitutional relationship with the UK is discussed in Library Research Paper 06/48, [Gibraltar: diplomatic and constitutional developments](#), 11 October 2006.

³ [HC Deb 20 May 2013 c510W](#). The UK included Gibraltar in its ratification of the Convention: see [Declaration of the United Kingdom of Great Britain and Northern Ireland](#), 12 January 1998

⁴ The results were as follows: "18,176 voted representing 87.9% of the electorate. There were 89 papers spoilt of which 72 were blank 18,087 of which 187 Voted YES, and 17,900 voted NO", [Gibnet.com](#).

1.2 The Gibraltar Government and Parliament

The Government of Gibraltar is responsible for all matters except defence, foreign policy, internal security and the judiciary, which are the responsibility of the UK Government.

Elections are held every four years to a unicameral parliament of 18 members (at least 17 members elected by popular vote, and the Speaker - currently Adolfo Canepa - who is appointed by Parliament). The last election to the Gibraltar Parliament was on 26 November 2015.

The leader of the majority party or coalition is formally appointed by the Governor as the Chief Minister (head of government). The present Chief Minister is Fabian Picardo of the Gibraltar Socialist Labour Party (GSLP). The Hon. Dr. Joseph Garcia (Liberals) is the Deputy Chief Minister of Gibraltar and its Minister for Brexit and Europe.

Under Article 45 of the Gibraltar Constitution, the Council of Ministers (cabinet) is usually formed by up to 10 of the 17 elected Members of Parliament, as prescribed by the Chief Minister and with the approval of the Governor.⁵ The other seven Members constitute the Opposition. The Gibraltar Social Democrats, led by Daniel Feetham, currently form the Opposition.

The Gibraltar legislature “may make laws for the peace, order and good government of Gibraltar”.⁶ Bills are passed by the Parliament and assented to by the Governor on behalf of the Monarch.

The legal system of Gibraltar is based on the common and statute law of England. In 1962 the [English Law \(Application\) Act](#) was passed, declaring the extent to which English law is in force in Gibraltar. A [summary](#) of the Gibraltar legal system by *GibraltarLawyers.com* states:

The common law and the rules of equity from time to time in force in England apply to Gibraltar subject to any modifications or exclusions made by Her Majesty in Council, an act of the UK Parliament or an Act passed by the Gibraltar Parliament.

In all causes or matters in which there is any conflict or variance between the common law and the rules of equity with reference to the same subject, the rules of equity prevail. The Act further lists in its schedule the statute law of England which applies to Gibraltar.

Whilst the legal system is based on that of England the statute law has developed differently insofar as the Gibraltar Parliament has enacted and amended laws to suit Gibraltar's own particular requirements.

⁵ See Cabinet reshuffle, Gibraltar Government [press release](#), 20 October 2016.

⁶ Part II, Article 32, Gibraltar Constitution.

2. Relations with Spain

Brussels Process

In recent times, reclaiming Gibraltar by peaceful means has been Spanish Government policy.⁷ Spain has also proposed shared or joint sovereignty with Britain, most recently at the United Nations in October 2016.⁸

Successive UK governments, including the present one, have maintained the position that they will never transfer the sovereignty of Gibraltar against the wishes of the people of Gibraltar.

In the 1970s and early 1980s, Spain sought to become a member of the then European Community (EC), to which the UK and Gibraltar already belonged. In preparation for this, Spain and the UK signed the [Brussels Agreement](#) in 1984. This bilateral agreement on Gibraltar was a precursor to normal relations between EC Members and also provided for discussions between the UK and Spain on topics including sovereignty. These talks were known as the Brussels Process. Joe Bossano, who was elected Chief Minister in 1988, was opposed to any discussions over the future of Gibraltar between Spain and the UK.

Meetings were held throughout the 1980s and 1990s, during which time Spain made two formal proposals for integrating Gibraltar into Spain. One of these was an indefinite transitional period of joint sovereignty.

The talks lapsed and there followed a period of border and maritime difficulties.⁹

Re-launch of Brussels Process

The Brussels Process was relaunched in 2001. The then Foreign Secretary, Jack Straw, held talks with his Spanish counterpart, which included proposals for joint sovereignty over Gibraltar. The proposals were strongly resisted by Gibraltar, which had not taken part in the dialogue. The talks collapsed after the 2002 referendum.

A new forum for dialogue

Talks stalled until October 2004, when the Spanish and UK Foreign Ministers agreed to consult further on how to establish a new forum for dialogue on Gibraltar, separate from the Brussels Process, with an open agenda, and in which Gibraltar would have its own voice. In December 2004 the FCO set out the modalities for trilateral talks.

In September 2006 the governments of Spain, the UK and Gibraltar signed the Cordoba Agreement,¹⁰ which included measures on issues

⁷ The basis for the Spanish claim is clarified on the Spanish Ministry for Foreign Affairs and Cooperation website, [History and Legal Aspects of the Dispute](#).

⁸ See Gibraltar Chronicle, 5 October 2016, [Picardo says 'no' as Spain pitches joint sovereignty at UN](#); also Gibraltar Panorama, 8 July 2016, [A short history on 'joint sovereignty'](#), Joe Caruana.

⁹ See Foreign Affairs Committee, 2nd Report, 24 June 2014, [Gibraltar: Time to get off the fence](#).

¹⁰ See [BBC News, 18 September 2006](#).

such as border crossings and access for flights. It also committed the parties to a tripartite forum for regular talks. In November 2006, the Spanish airline Iberia announced that it would start flights from Madrid to Gibraltar, marking the first Spanish airline to fly to Gibraltar since 1979.

Talks were suspended when the new centre-right Popular Party (PP) Government led by Mariano Rajoy withdrew on taking office in December 2011. In early 2012 the then Prime Minister David Cameron faced renewed demands from Spain to start talks over the sovereignty of Gibraltar. But there was a diplomatic crisis in summer 2013 over fishing rights and environmental protection in the waters around Gibraltar¹¹ which led to Spain announcing a package of measures against Gibraltar, including tighter controls at the border. A resumption of talks appeared remote.¹²

In [response](#) to a Foreign Affairs Committee report on Gibraltar in September 2014, the UK Government confirmed that after the “disappointment” of many delays it had reached “agreement in principle to the terms for talks” and was “discussing with both the Spanish Ministry of Foreign Affairs and the Government of Gibraltar how and when talks can be organised”.

The UK Government said in July 2016 said its “long-term aim is to return to the trilateral forum for dialogue between the UK, Spain and Gibraltar”.¹³

Issues: border controls, fishing rights, money laundering and smuggling

Spain has accused Gibraltar of being implicated in various illegal and ‘parasitical’ practices, such as smuggling (mainly cigarettes), money-laundering and tax evasion. Spanish claims that Gibraltar does not do enough to tackle tobacco smuggling and other illegal activities have been denied by successive Gibraltar Governments.

There has also been a long-running dispute over Gibraltar’s liability for Spanish workers’ pension rights (see section 5.5). Spain’s response has included increased border controls and the imposition of restrictions on telephone access.

The border between Spain and Gibraltar was closed between 1969 and 1985, shortly before Spain joined the European Community. EU free movement rules have meant that the border has remained open ever since, in spite of over-zealous border checks by Spanish police that have caused long delays for those crossing into and out of Gibraltar.

Gibraltar is not part of the Schengen area, but Spain is, and in line with the [Schengen Borders Code](#)¹⁴ Spain is required to carry out checks on

¹¹ Gibraltar created an artificial reef with concrete blocks in July 2013.

¹² There is a useful account of these events by Alejandro del Valle Gálvez of the Elcano Institut, [The Gibraltar crisis and the measures, options and strategies open to Spain](#), ARI 32/2013 (Translated from Spanish), 30 September 2013.

¹³ Lord Faulks, [HL Deb 12 July 2016](#).

¹⁴ This Code has been substantially amended several times, most recently by EP and [Council Regulation \(EU\) 2016/399](#) of 9 March 2016 on a Union Code on the rules

persons and goods. These checks should fully respect EU law and remain “reasonable and proportionate” without jeopardising freedom of movement. But the Gibraltar Government maintains that the long delays at the border have been deliberate acts of official obstruction.

There have also been on-going disputes over fishing rights around Gibraltar and incursions into Gibraltar waters by Spanish police vessels. The Spanish Government has threatened to prevent Gibraltar-bound planes from entering Spanish airspace and to investigate the tax arrangements of Gibraltarians with homes in Spain.

Spanish elections

Spain held a general election on 20 December 2015, amid widespread popular frustration with the economic crisis and austerity measures. Neither of the two main parties won an absolute majority and a second election was held on 26 June 2016. Again, there was no absolute majority and the government of Mariano Rajoy continued in a caretaker capacity until a new government could be formed. In October 2016 Mr Rajoy was re-elected Prime Minister as head of a minority government.

governing the movement of persons across borders (Schengen Borders Code). On 7 December 2016, the Permanent Representatives Committee (Coreper) approved a compromise text agreed with the EP on an amendment to the Schengen Borders Code to reinforce checks against relevant databases at external borders.

3. Gibraltar and the EU

Gibraltar joined with the UK

The 1972 UK [Act of Accession](#) to the then European Economic Community (EEC) applied the EEC Treaties to Gibraltar, with the exception of the Customs Union, Common Commercial Policy, Common Agriculture Policy, Common Fisheries Policy and requirement to levy VAT. So Gibraltar has been in the EU since 1973 as part of the UK's membership under what is now Article 355(3) of the *Treaty on the Functioning of the European Union* (TFEU): "The provisions of the Treaties shall apply to the European territories for whose external relations a Member State is responsible".

In February 1999 the European Court of Human Rights ruled by 15 votes to 2 that the UK Government was in violation of the Council of Europe's *European Convention on Human Rights* for its failure to make arrangements for the people of Gibraltar to vote in elections to the European Parliament.¹⁵ To remedy this situation Gibraltar was incorporated into the South West of England electoral regions for EP elections. Spain challenged this at the EU Court of Justice¹⁶ but the Court dismissed the action.

Since 2014 Gibraltar has had a representative office in Brussels, Gibraltar House, which engages with the EU institutions and the UK's Permanent Representation to the EU (UKREP).

EU law in Gibraltar

EU law applies in Gibraltar except in the excluded areas. About 70% of Gibraltar's laws comes from the EU.¹⁷ The UK and Gibraltar Governments have insisted that Gibraltar is included in EU laws that would benefit Gibraltar, but there have been occasions when the UK Government has agreed to Spanish requests for EU legislation to exclude Gibraltar in order not to prevent its adoption.

Gibraltar applies EU law under provisions in its own [European Communities Act](#) (1972). Gibraltar laws implementing EU obligations are available at http://www.gibraltarlaws.gov.gi/full_index.php.

Section 47 (3) of the Gibraltar Constitution provides that Gibraltar Government Ministers are responsible for all EU matters except those relating to the areas of Defence and External Relations. If an EU proposal applies to Gibraltar, Westminster Government Departments liaise with the EU-Gibraltar desk in the Foreign and Commonwealth Office (FCO), who ensure that the Government of Gibraltar is notified so that it can implement or transpose the relevant legislation. The Gibraltar Government is responsible for the transposition and application of EU law in Gibraltar.

¹⁵ [Matthews v. the United Kingdom](#), Application No. 24833/94, 18 February 1999.

¹⁶ Case C-145/04, *Spain v United Kingdom*, [Case C-145/04 Spain v UK \(2006\)](#)

¹⁷ Fabian Picardo, Gibraltar Chief Minister, [uncorrected evidence](#) to Lords EU Committee, 13 December 2016.

Gibraltar's Legislation Support Unit (LSU) works with Gibraltar Government ministers and officials and is responsible for drafting most domestic, international and EU legislation, which is subsequently passed by the Gibraltar Parliament. The unit is also a "dissemination centre for all EU directives, consultation documents, etc. and helps Government departments and the general public with advice and information on all Gibraltar's legislation".¹⁸

Gibraltar implements much EU law by subsidiary legislation under section 23(g) of the [Interpretation and General Clauses Act](#) and other Gibraltar Acts. For example, Directive (EU) 2015/849 "on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing" was transposed by the [National Coordinator for Anti-Money Laundering and Combating Terrorist Financing Regulations 2016](#).

The Government's proposed Great Repeal Bill will need to take account of EU legislation that applies in Gibraltar. Measures concerning financial services and free movement are particularly important for Gibraltar.¹⁹

¹⁸ Gibraltar Government website: [Legislative Support Unit](#).

¹⁹ Links to Gibraltar legislation implementing EU directives are available in Commons Briefing Paper 7943, [Legislating for Brexit: EU directives](#) 5 April 2017.

4. Brexit

4.1 The 2016 EU referendum

In the EU referendum in June 2016, 95.9% of Gibraltarians (19,322 to 823) voted to stay in the EU. Gibraltar also recorded the highest turnout of 83.5%.²⁰

The UK vote to leave the EU means Gibraltar will have to leave too, but, as the Government's February 2017 White Paper concedes, "Gibraltar will have particular interests".²¹

Spain's acting Foreign Minister at the time of the referendum, José Manuel García-Margallo, was reported to have said on 24 June 2016 that the "Spanish flag on the Rock is much closer than before".²²

One report quoted a Gibraltar 'remainer': "It's not so much that all Gibraltarians love the European Union project, but rather that many see the EU as the only force standing in the way of a tricky relationship with Spain".²³

Chief Minister Fabian Picardo underlined to the Lords European Union Committee in December 2016 how unified the Gibraltar vote had been:

...this was a referendum on which Gibraltar's view was entirely united. All former Chief Ministers of Gibraltar joined me in campaigning for remain. All the political parties took that view. Every single Member of the Parliament took that view. So much for the political class. Every trade union in Gibraltar and every employers' representative organisation in Gibraltar took exactly the same view.²⁴

He thought the possibility of renewed Spanish sovereignty bids had "turned this referendum in Gibraltar not just into a referendum on whether we liked or did not like the European Union and what it might or might not have done to us, but into, once again, a referendum on sovereignty".²⁵ He made the same point in [evidence](#) to the Committee for Exiting the EU (the Brexit Committee) on 25 January 2017.²⁶

4.2 Gibraltar's constitutional status

Brexit will not alter Gibraltar's constitutional status in relation to the UK. The former Europe Minister, David Lidington, [said on 8 July 2016](#):

The outcome of the EU referendum does not affect the United Kingdom's steadfast and longstanding commitment to Gibraltar. We will never enter into arrangements under which the people of Gibraltar would pass under the sovereignty of another State against their wishes. Furthermore, the UK will not enter into a

²⁰ For details of the referendum result, see Commons Briefing paper 7639, [European Union Referendum 2016](#) 29 June 2016.

²¹ Cm 9417, [The United Kingdom's exit from and new partnership with the European Union](#), February 2017.

²² BBC News, 24 June 2016, [Brexit: Spain calls for joint control of Gibraltar](#).

²³ BBC News, 9 March 2016, [What does Gibraltar think about Brexit?](#)

²⁴ [Uncorrected oral evidence](#), 13 December 2016.

²⁵ [Uncorrected Evidence](#), 13 December 2016.

²⁶ [Oral evidence](#), The UK's negotiating objectives for its withdrawal from EU, HC 815, 25 January 2017.

process of sovereignty negotiations with which Gibraltar is not content.

Mr Lidington [confirmed on 11 July 2016](#):

The United Kingdom will continue to stand by Gibraltar. We are confident of the United Kingdom's sovereignty over the whole of Gibraltar, including British Gibraltar Territorial Waters, and have been firm in our commitment to the double lock. We will continue to protect the rights of the people of Gibraltar to remain British, for as long as they wish to do so.

Many commentators predicted before the EU referendum that, in the event of a vote to leave, Spain would probably step up its on-going sovereignty bid and try to change Gibraltar's status. There were reports earlier in 2016 that Spain might revive the 2002 joint sovereignty idea. In March 2016 Fabian Picardo told the Spanish newspaper *El Mundo* that Gibraltar would "never accept any joint sovereignty proposal",²⁷ and in May he elaborated on any such 'offer' from Spain:

Something upon which those who advocate Brexit should reflect is that they don't just say in Spain that our rights in Europe would come to an end [...] but also that if we want to continue to have access to European Union rights, we would have to consider the concept of joint sovereignty, which would be back on the table.²⁸

During an official visit to Gibraltar in May 2016, the then UK Foreign Secretary, Philip Hammond, warned that Brexit would threaten Gibraltar's sovereignty, "seriously impair" the Government's ability to stand up for Gibraltar, and would "also endanger Gibraltar's future security and prosperity".²⁹ Brexit, he said, would be "...as big a threat to Gibraltar's future security and Gibraltar's future sovereignty as the more traditional threats that we routinely talk about".³⁰ However, he also reassured Fabian Picardo that "Britain's commitment to Gibraltar is absolute, it's unshakable and it will endure whatever the decision in the referendum".

The Gibraltar press reported on 7 June 2016 that the Spanish Government had indeed revived the idea of sharing sovereignty of Gibraltar with Britain in the event of a vote to leave, saying this would allow Gibraltar to maintain access to the EU.³¹ On 24 June, immediately after the referendum, the acting Spanish Foreign Minister, José Manuel García-Margallo, spoke on the radio about applying the co-sovereignty formula for a determined period of time, leading towards "the restitution of Gibraltar to Spanish sovereignty". Gibraltar would then be able to stay in the EU.

During the Lords EU Committee [evidence session](#) on 13 December 2016 Lord Selkirk asked the Chief Minister about the relevance of concerns expressed by former Foreign Secretary, William Hague, "that Spain could hold the UK hostage [...] in Brexit negotiations over demands to renegotiate Gibraltar's sovereignty?". He thought the new Spanish

²⁷ [Gibraltar Chronicle, 29 March 2016](#).

²⁸ [Gibraltar Chronicle, 12 May 2016](#).

²⁹ [Gibraltar Chronicle, 12 May 2016](#).

³⁰ [Gibraltar Chronicle, 12 May 2016](#). See also [Joint Statement](#), 11 May 2016.

³¹ [The Local, 7 June 2016](#).

Foreign Minister, Alfonso Dastis, had taken a different position from the previous one, but acknowledged a report that the Government of Andalusia³² had threatened there would be no deal for Gibraltar without joint sovereignty.

According to the Chief Minister, Gibraltar is not so wedded to the idea of staying in the EU that it would contemplate Spanish joint sovereignty as a possible solution.³³

Fabian Picardo has emphasised that a “sensible Brexit that provides for Gibraltar to continue to be an engine of economic growth is not only in the best interests of Gibraltar, it is also in the best interests of Spain itself”. But will Spain take a pragmatic approach or seek to make the sovereignty issue a bargaining point in the Brexit negotiations?

4.3 New Spanish Foreign Minister

Robin Walker, Parliamentary Under-Secretary of State at the Department for Exiting the European Union, thought the new Spanish Foreign Secretary, Alfonso Dastis, was taking a “pragmatic and constructive approach”.

Mr Dastis has said that although Spain’s ‘offer’ of joint sovereignty is still on the table,³⁴ “if Gibraltar wants to make a life outside the EU, they are perfectly free to do so”. He would also not “put Gibraltar at the centre of negotiations”, implying that Spain would not obstruct agreement because of disagreement over Gibraltar. Dastis thought the EU should begin trade talks with the UK “relatively soon and has no plan to impose a ‘punitive’ Brexit agreement that would weaken London as a financial centre”.³⁵ He is reported to be sympathetic to the UK Government’s wish to negotiate a free trade agreement with the EU as the same time as the withdrawal agreement, and supportive of a transitional agreement to avoid a disorderly Brexit after the two-year negotiating deadline. However, according to Dr Grocott’s [evidence](#): “if you talk to people there they will say that although, in their view, Señor Dastis’ tone seemed more moderate, if you read between the lines it seemed almost exactly the same as that of Señor Margallo”.

4.4 The Gibraltar International Airport

Gibraltar’s international airport handles around 9 arrivals a day³⁶ from the UK and Morocco from four airlines: British Airways, EasyJet, Monarch and Royal Air Maroc.³⁷

³² Gibraltar shares a three-quarter-mile land border with the Andalusian province of Cádiz at the eastern end of the Strait of Gibraltar.

³³ [Oral evidence](#) to Brexit Committee, 25 January 2017.

³⁴ [Gibraltar Olive Press, 9 January 2017](#).

³⁵ [Financial Times, 26 January 2017](#).

³⁶ For full details, see Gibraltar International Airport [Traffic Statistics 2017](#) (covering 2016 and 2017).

³⁷ From December 2006 to September 2008 the Spanish airline Iberia operated flights from Gibraltar to Madrid, ending them because of lack of demand. Similarly, Ándalus Líneas Aéreas operated between Gibraltar and Barcelona from July 2009, but stopped in August 2010 due to lack of demand.

The Guardian [suggested](#) on 1 April that although sovereignty or joint sovereignty of Gibraltar is a Spanish aim, “its more realistic aims will be to rid the territory of an airport and to ensure it is unable to maintain its 10% corporate tax rate”.

The isthmus on which the airport is built is part of Spain’s sovereignty claim. Spain asserts that it was not ceded to Britain under the Treaty of Utrecht; extending access to the airport would imply recognition of the UK’s/Gibraltar’s legal right to the isthmus on which it is built.

This position has been an obstacle to the adoption of EU aviation legislation and Gibraltar’s airport is currently excluded from EU air liberalisation measures, while other EU proposals have been delayed or blocked.³⁸ According to a *Financial Times* [report](#) on 12 February 2017:

While Spain has made positive overtures to London since the Brexit vote and warned Europe against seeking a punitive deal, it has also signalled it would block UK access to the EU’s single aviation market unless the terms exclude Gibraltar’s international airport.

The report suggested the following possible post-Brexit air access option:

The UK’s post-Brexit air access options include attempting to retain membership of the European Common Aviation Area, which would mean it keeps full access, or seek a bilateral “open skies” agreement with the EU, which is likely to have more restrictive terms. Both deals would, however, require unanimous support from all EU member states.

The deputy Chief Minister, Dr Joseph Garcia, is concerned that Spain will try to have Gibraltar left out of any post-Brexit aviation agreement between the UK and the EU.³⁹ But the Chief Minister thought Spain Brexit might encourage a different reaction from Spain:

I wonder whether, in order to take the dogma of the Spanish position forward after Brexit, Spain will try to include Gibraltar airport in any aspects of air liberalisation in the European Union, without the United Kingdom or Gibraltar at the table, to demonstrate that it is a Spanish airport.⁴⁰

Minister for Exiting the EU, Robin Walker, was optimistic that Spain would not try to hold the UK hostage in the Brexit negotiations over demands to renegotiate Gibraltar’s sovereignty. He was “confident that the Government of Madrid are squarely behind the objective of achieving a positive relationship between the UK and the EU after Brexit”. He reminded the Lords EU Committee that 300,000 British nationals lived in Spain and that over 17 million UK tourists visited Spain in 2016, that the UK and Spain cooperated in fighting crime and had a “considerable trade relationship”.⁴¹

³⁸ For example, proposals on compensation for passengers for cancellations, airport slots, rules reforming air traffic control and reducing flight times.

³⁹ [Oral evidence](#) to Brexit Committee, 25 January 2017.

⁴⁰ [Oral evidence](#) to Brexit Committee, 25 January 2017.

⁴¹ [Uncorrected oral evidence](#), 2 February 2017.

4.5 The border

On 30 January 2017 Fabian Picardo [set out](#) his proposals for Gibraltar's future relations with the EU to the European Parliament Constitutional Affairs Committee (AFCO).⁴²

The first is that the mutually beneficial free flowing border which will be good for the adjoining Spanish region and for Gibraltar is an essential. In particular this is important for Frontier Workers and for Tourists. These are essentially people who come in and out of Gibraltar on the same day.

Gibraltar is of course prepared to consider any reasonable solution to safeguard border flow. For instance, a special relationship with the Schengen Area or the establishment of a Common Travel or Immigration Area between Gibraltar and the EU subject to customs controls as there are today and as there have been since 1973.

A potential route may be provided for by, Regulation EC 1931/2006 which lays down provisions for derogations for local border traffic at the external land borders of the Member States. That regulation is inspired by the interests of the enlarged Community to ensure that the borders with its neighbours are not a barrier to trade, social and cultural interchange or regional cooperation. And in Gibraltar's case, it will be easier to operate than in all the other places it already operates because it is only opening up a further 2.5 square miles.

The second important matter for Gibraltar going forward is that we should be able to continue to access the single market in services, which represents about ten percent of our financial and other services businesses. [...]

A proper free flowing frontier for day/cross-border workers and tourists (as distinct from the EU's free movement of people as understood generally in the United Kingdom) is an essential.

For the Chief Minister, the operation of the frontier between Gibraltar and Spain is the "issue of most concern". Gibraltar could, he said, live with a hard border, as long as human interaction between people on both sides remained possible; he would accept "a hard border but a collaborative border".

The UK Government is not proposing that the UK should seek to stay in the Single Market.⁴³ This means that after Brexit, unless there is a specific agreement on the border, free movement will not apply between Spain and Gibraltar; Spain will be able to close the border and establish border and passport controls. José Manuel Garcia-Margallo said in May 2016 that Spain might do this if the UK voted to leave the EU.⁴⁴

According to Professor John Fletcher, immediately after the EU referendum, there was "a tightening up of crossing the frontier" and

⁴² [Speech, 30 January 2017](#).

⁴³ See Government White Paper [The United Kingdom's exit from and new partnership with the European Union](#), Cm 9417, February 2017.

⁴⁴ [The Local, 30 May 2016](#).

that Spanish authorities had “initially refused to accept the ID cards of Gibraltarians. There were huge queues, and it was taking ages”.⁴⁵

The Chair of the Lords EU Committee, Lord Boswell of Aynho, asked the Minister for Exiting the EU, Robin Walker, whether the Spanish Government was “keeping in as close contact as it can with the tide of official opinion in Spain, so that the tide of what might be termed civil society in Spain, and more particularly in Andalusia as the adjacent Campo [...] is understood so that that can also feed into the negotiations”. The answer was yes, and Mr Walker was confident that a discussion about sovereignty was not on the table in the withdrawal negotiations; and that the EU institutions and the other EU Member States would understand and respect this position.

4.6 Gibraltar's economy⁴⁶

Gibraltar is a very small wealthy economy, with a large financial services sector. It has its own tax system, which it uses to attract companies with low-tax policies.

Currency

Gibraltar has its own currency – the Gibraltar pound – which, along with Bank of England notes, have the status of legal tender in Gibraltar.

The exchange rate between UK pound sterling and the Gibraltar pound is kept at parity under currency board arrangements, through which any note issued is at least 100% backed by sterling-denominated assets, and full convertibility with sterling is guaranteed.⁴⁷ As a result, Gibraltar can exercise no control over their interest rates or exchange rates.

Recent economic performance

GDP in Gibraltar is estimated at £1.64 billion in 2014/15, with growth of 10.6% in real (inflation-adjusted) terms on the year before. Forecasts provided in the July 2016 Chief Minister's Budget Address are for a further 7.5% increase in 2015/16 (with nominal GDP at £1.77 billion).⁴⁸

Financial services and online gaming are two of the most important sectors of the economy, contributing around 40% of GDP and accounting for nearly a quarter of jobs in Gibraltar.⁴⁹

Based on the above estimate of GDP in 2015/16, GDP per capita – a rough measure of living standards – is forecast to be £54,979 in

⁴⁵ [Evidence](#) to Lords EU Committee on 24 January 2017.

⁴⁶ Parts of this section were contributed by Daniel Harari.

⁴⁷ In Gibraltar, convertibility is guaranteed under the [Currency Notes Act 2011 \(Section 6\)](#) which states *The Commissioner shall issue on demand to any person desiring to receive currency notes in Gibraltar, currency notes to the equivalent value (at the rate of one pound for one pound sterling) of sums in sterling lodged with the Commissioner by such person, and shall pay on demand to any person desiring to receive sterling the equivalent value so calculated of currency notes lodged with him by such person.*

⁴⁸ Data provided in [The Chief Minister's Budget Address 2016](#), 5 July 2016, paras 71-77

⁴⁹ Lords EU Committee, [Brexit: Gibraltar](#), 1 March 2017, HL Paper 116, [Evidence GLT0001](#) (from Government of Gibraltar)

2015/16.⁵⁰ This is much higher than the UK (£28,800) and Spain (£17,100) in 2015.⁵¹ These calculations are based on the average sterling/euro exchange rate in 2015; current exchange rates would be more favourable to Spain, given the recent fall in sterling.

Impact of Brexit on Gibraltar's economy

In evidence submitted to the House of Lords EU committee inquiry on the impact of Brexit on Gibraltar, the Government of Gibraltar boiled the economic implications down to one issue: the border with Spain. In particular, the prospect of a closed or hard border.⁵²

David Lidington [said on 6 July 2016](#) that “ensuring a well-functioning Gibraltar-Spain border is one of our top priorities”, and that border crossing would not change in the near term.

A large number of jobs in Gibraltar are filled by “frontier workers” – people who cross the border from Spain to work in Gibraltar. In October 2015, 40% of the 26,000 jobs in Gibraltar were filled by frontier workers (around 10,000 jobs). Of this number of jobs filled by frontier workers more than half were filled by Spanish nationals.^{53 54} Fabian Picardo [gave](#) the following analysis to the European Parliament's Constitutional Affairs Committee on 30 January 2017:

As at October 2015 there were 26,144 employee jobs in Gibraltar:
- 10,473 were held by frontier workers or almost 40% of total jobs on Gibraltar - Approximately 60% of those are held by Spanish nationals.

He has also said 154 Gibraltarians were registered as living in Spain, but they too tended to work in Gibraltar.⁵⁵

Some sectors had especially high shares of jobs filled by frontier workers. For instance, they accounted for nearly three-quarters of jobs in the hotels and restaurants sector, while 60% of jobs in the online gaming sector were filled by them.⁵⁶

The Gibraltar Government notes that “a harder, non-fluid border” with Spain would likely mean the loss of some of these frontier workers potentially lowering tax revenue and adversely affecting sectors that are

⁵⁰ The way Gibraltar presents GDP figures – on a factor cost basis, i.e. excluding taxes and subsidies – is different to how most countries produce it, which is on a market prices basis, i.e. including VAT, excise taxes etc. This does not materially change the general picture painted by these statistics: that Gibraltar has a high standard of living and is growing quickly.

⁵¹ Instituto Nacional de Estadística, [Spanish Regional Accounts](#) (March 2017); Office for National Statistics, [GDP per head](#), 31 Mar 2017; Exchange rate from HMRC, [foreign exchange rates](#)

⁵² Lords EU Committee, [Brexit: Gibraltar](#), 1 March 2017, HL Paper 116, [Evidence GLT0001](#) (from Government of Gibraltar)

⁵³ Ibid.

⁵⁴ “There are 10,000 frontier workers of many different EU nationalities who live in Spain but work across the border. Gibraltar has a base labour force of 22,907 workers (2013), and 32.76 per cent of these people are frontier workers, or, in other words are normally resident in Spain but employed in Gibraltar”, Iskra Mihaylova, [The Parliament Magazine, 15 April 2016](#). As Fabian Picardo noted in oral evidence to the Brexit Committee on 25 January 2017, the number depends on factors such as building and tourism cycles.

⁵⁵ [Oral evidence](#) to Brexit Committee, 25 January 2017.

⁵⁶ Ibid.

heavily dependent on these workers. The large tourism sector would also be impacted, with the government stating that “the border is therefore the vital artery of Gibraltar’s tourism sector”.⁵⁷

Another impact of Brexit would be the loss of access to the EU single market for services, especially financial services.⁵⁸ While links to the UK would remain – the Secretary of State for International Trade has committed to the continuation of Gibraltar’s access to the UK market for financial services – the loss of being in the EU single market, in the words of the Gibraltar government: “would therefore strike a severe blow to the Gibraltar economy”.⁵⁹

Brexit could affect Gibraltar’s economy in other ways too:

- Gibraltar has received EU funding amounting to “£60 million in the past 16 years”.⁶⁰
- Attempts to block Gibraltar’s participation in aviation liberalisation could affect the economy. Fabian Picardo outlined the Airport’s economic activity: “50 flights a week, mainly to the United Kingdom, but also to Morocco. [...] a record number of passengers in 2016, with over half a million passengers”.⁶¹

Some experts are optimistic. The *Economist* did not think Brexit would threaten Gibraltar’s economy:

“We don’t see Gibraltar plc collapsing,” says John Westwood, managing director of Blacktower, a financial-services company based in the territory.

[...] Moreover, self-interest is likely to mute Spanish sabre-rattling. Gibraltar provides 25% of the economy of the neighbouring Spanish area of Campo de Gibraltar; the region of Andalusia as a whole suffers 32% unemployment. “Our economy is completely dependent on Gibraltar,” says Juan Franco, mayor of the border town of La Línea de la Concepción. [...]

Some even think the future will be brighter. A Shell-operated liquid natural gas terminal will come online by mid-2017. A new secure data facility is housed deep within the Rock. The government hopes to forge tighter links with Morocco and Africa beyond. Tarik El-Yabani, one of the few local Leave activists, thinks that Gibraltar could position itself as “the Hong Kong of Europe”.⁶²

In written evidence to the Lords EU Committee Christian De Lange [summarised](#) potential opportunities for Gibraltar:

2.3.2 Opportunities

The Chief Minister in the Budget Address 2016, in the advent of the Brexit referendum result, made mention that “*The top priority has been in working towards a sustainable alternative economic*

⁵⁷ Lords EU Committee, [Brexit: Gibraltar](#), 1 March 2017, HL Paper 116, [Evidence GLT0001](#) (from Government of Gibraltar).

⁵⁸ David Allen Green, Financial Times, “[Brexit and Gibraltar](#)”, 6 March 2017

⁵⁹ Ibid.

⁶⁰ Fabian Picardo, [uncorrected oral evidence](#) to Lords EU Committee, 13 December 2016, and [oral evidence](#) to Committee on Exiting the EU, 25 January 2017.

⁶¹ Ibid, Dr Joseph Garcia, oral evidence to Brexit Committee.

⁶² Economist, 16 July 2016, [Rock out. A territory is dragged from Europe against its will. Spain looms.](#)

model and making best use of the time we have now, to position Gibraltar's economy ...".

This would be a most challenging endeavour since, in order to grow its economy, Gibraltar would need to continue to attract investors, and to encourage businesses to locate in Gibraltar. This would prove particularly challenging, and even more so, with Gibraltar residing outside of the EU, and not having access, or restricted access, to the EU.

No doubt of concern to Gibraltar would be what the impact of restricted access to the EU would mean for its existing investors and businesses? Would such investors and businesses remain in Gibraltar or seek the advantages that Gibraltar offered in a post Brexit environment, elsewhere?

The opportunities, for Gibraltar, in a post Brexit environment is presently not that apparent.

Impact of Brexit on local Spanish economy

Fabian Picardo summarised economic data published by the Gibraltar Chamber of Commerce on the importance of Gibraltar to the Spanish economy:

- In 2013 Gibraltar businesses imported almost £381M of goods and services from Spain. That was almost half a billion Euros at the time.
- Gibraltar's economy increased the level of output in the Campo de Gibraltar in 2013 by £554M or almost three quarters of a billion Euros at the time.
- Gibraltar represented a quarter of the GDP of the region.
- The number of jobs supported by the Gibraltar economy is equivalent to 24% of the total permanent jobs in the Campo de Gibraltar region in 2013.
- Spanish Frontier Workers earned more than 130M Euros in Gibraltar in 2013.
- Other FWs earned a further 135M Euros from within the economy of Gibraltar.
- Residents of Gibraltar spent almost 100M Euros on shopping, food and other goods and services in Andalucía in 2013.
- Gibraltarians with second homes in the Campo de Gibraltar spent an additional 90M Euros more in Andalusia.
- Gibraltar represents 25% of the GDP of the neighbouring Spanish municipalities which have a combined population of 300,000 people.
- Gibraltar is the second largest employer for the whole of Andalucía, second in size only to the Junta de Andalucía, its regional Government.

- Gibraltar's effect on the region is a net positive and in a ratio disproportionate to its population and land mass.⁶³

The Chief Minister has also spoken of a "cross-pollination" of health and financial services between Gibraltar and Spain.⁶⁴

Dr Grocott [emphasised](#) the importance of Gibraltar as an employer to the regional economy of the Spanish town of La Linea.⁶⁵

4.7 Is there an issue concerning pensions for Spanish workers?⁶⁶

Both employers and employees in Gibraltar pay weekly social insurance contributions into an open long-term benefits fund operated by the Government, in order to provide employees with a state pension on retirement.⁶⁷

Social insurance is a matter for the Government of Gibraltar.⁶⁸ However, in 2006 the UK Government agreed to make payments to a group of Spanish pensioners who had accrued rights to an element of State Pension from Gibraltar before 1969, who for historic reasons were unable to continue contributing because the border was closed, but who became entitled to an enhanced rate of pension when Spain acceded to the EU in 1986. The Communiqué of a meeting of Ministers of the governments of Spain, the UK and Gibraltar explained the background:

1. As is well known, historical circumstances prevented large numbers of Spanish workers resident in Spain from continuing to work in Gibraltar and thus from continuing to contribute to the Gibraltar Social Insurance Fund (GSIF) from the late 1960s.
2. We acknowledge the financial imbalance which affected the GSIF as a result of the disparity between the contributions to it of those workers and the enhanced rate of pensions to which they became legally entitled as a result of Spain's accession to the EU in 1986. Accordingly, in 1996 the UK Government assumed indefinite responsibility for the funding of pensions from the GSIF of the pre-1969 Spanish workers. As part of those arrangements, such pensions have remained frozen at the 1988 rates.
3. Wishing, in the spirit of the Trilateral Forum of Dialogue on Gibraltar ("the Forum"), to improve local co-operation and relations and to resolve some of the problems affecting them, the Governments of the United Kingdom, Spain and Gibraltar ("the participants") have agreed a full and final settlement of the Pensions and related issues on the terms set out in this statement.⁶⁹

⁶³ [Speech](#) to EP Constitutional Affairs Committee, 30 January 2017.

⁶⁴ Lords EU Committee, [Uncorrected oral evidence](#): Brexit: Gibraltar, 13 December 2016.

⁶⁵ Lords EU Committee, [Uncorrected oral evidence](#): Brexit: Gibraltar, 24 January 2017.

⁶⁶ This section was contributed by Djuna Thurley.

⁶⁷ [HM Government of Gibraltar, Social Insurance](#)

⁶⁸ [Oral evidence to the Select Committee on Exiting the European Union](#), 25 January 2017, Q746. Evidence from Fabian Picardo QC MP, Chief Minister of Gibraltar

⁶⁹ [Agreements Arrived at in Cordoba, Spain on the Airport, Pensions, Telecommunications, Frontier Flow and "Instituto Cervantes", 18 September 2006](#)

The UK Government agreed to offer all affected Spanish pensioners a lump sum in exchange for withdrawing from the Gibraltar Social Insurance Fund:

4. This agreement applies to Spanish nationals, alive to-day, who were resident in Spain while working in Gibraltar and who made contributions to the GSIF prior to 1969, who qualify for a pension from the GSIF, and who, as a result of the border/fence closure in 1969, were no longer able to continue working in Gibraltar, or contributing to the GSIF or to draw a GSIF pension, and who did not resume contributions to the GSIF after 1969, and who are now resident in the EU. The agreement also covers other recipients of a pension, including widows.

In this statement, beneficiaries of this agreement are referred to as "Affected Spanish Pensioners".

The Agreed Solution

5. The agreed solution will be offered to all Affected Spanish Pensioners, on a voluntary basis, and it will treat all such pensioners in an equal manner. All payments will be funded and made by the UK.

6. All Affected Spanish Pensioners will be offered by the UK a lump sum in exchange for withdrawing from the GSIF and giving up any further claims in relation thereto. This lump sum takes into account the fact that, unlike elderly persons resident in Gibraltar, the Affected Spanish Pensioners, as EU residents, many of whom received very reduced pensions because of their incomplete contribution record, have not been able to access any other source of financial support since 1989, during which period their Gibraltar pensions have remained frozen. The lump sum will be paid in two tranches. The first tranche will be paid in April 2007 and the second tranche will be paid in April 2008. By way of indication only, the average total lump sum will be about 6,200 €.

7. If they accept the offer by the UK, those Affected Spanish Pensioners will receive their future payment entitlement from a non-contributory scheme to be established and funded by the UK for that purpose. This scheme will make payments equivalent to their former GSIF pensions, increased to what they would have been had the GSIF pensions been uprated annually from 1989 to April 2007 in accordance with the Gibraltar Index of Retail Prices. Future uprated payments will be index-linked to the UK Retail Price Index.

8. Any Affected Spanish Pensioner who decides not to accept this offer and withdraw from the GSIF will not be entitled to receive and will not receive any lump sum payment. They will continue to be members of the GSIF and thus to receive their pension from the GSIF. The pensions of this group of pensioners (including such future uprating of Gibraltar pensions as the Gibraltar Government decides) will continue to be paid by the UK.⁷⁰

Fabian Picardo gave the Government of Gibraltar's perspective on the issue in his evidence to the Select Committee on Exiting the EU in February 2017:

What happened then was that a group of those pensioners said, "Hang on a minute. I have now got an EU right to have that

⁷⁰ [Agreements Arrived at in Cordoba, Spain on the Airport, Pensions, Telecommunications, Frontier Flow and "Instituto Cervantes", 18 September 2006](#)

pension respected and updated every year.” The numbers would have bankrupted the Gibraltar social insurance scheme. The Government of Gibraltar said, “Look, this is not something that we can honour, because there was no EU right to them and no acquired right under EU law. We therefore cannot make these payments, because they would break the Gibraltar social insurance system.”

Successive Governments of Gibraltar insisted that we would not pay. Social insurance is a matter that is entirely for the Government of Gibraltar. As a matter of international comity, the United Kingdom agreed to pay—without recognising a right or obligation to pay, in the context of the agreements done in 2006, which covered Gibraltar, which I have referred to already—and also covered the payment of what we know as the Spanish pensioners case.⁷¹

4.8 The negotiations

How will Gibraltar’s interests be represented in the negotiations?

David Lidington [said on 12 July 2016](#) that the Government was committed “to the full involvement of Gibraltar in the negotiations for our exit from and subsequent relationship with the EU 27”. He also invited the Chief Minister “to identify the key economic priorities for the people of Gibraltar as we approach those negotiations”. This promise was reiterated in the [debate](#) on leaving the EU on 18 January 2017, when Robin Walker, said the Government had “made it clear that we intend to fully involve Gibraltar, Crown dependencies and overseas territories as we prepare for exit, to ensure that their interests are properly taken into account”.

Nick Clegg, the former deputy prime minister and Liberal Democrat Brexit spokesman, has said Gibraltar must be “very ferocious” in its demands ahead of the Brexit negotiations, warning that its fate “will be at the very bottom” of Theresa May’s list of priorities.⁷² He continued:

The fact that the Prime Minister has chosen to persist with the hardest, most remorseless and unforgiving form of Brexit just demonstrates how, never mind Gibraltar, she doesn’t care about Scottish opinion, Northern Irish opinion, opinion dare I say it in London either.

But Fabian Picardo has expressed his confidence in Theresa May “having the stomach” for a fight with Spain if needed and standing by the people of Gibraltar.⁷³

The Gibraltar Government has been working with a Joint Ministerial Council (Gibraltar EU Negotiations) with Robin Walker (DExEU) and Sir Alan Duncan (FCO). Robin Walker [described](#) the arrangements:

UK Ministers have met Government of Gibraltar Ministers frequently since the referendum result. That includes the Prime Minister, the Secretary of State for Foreign and Commonwealth

⁷¹ [Oral evidence to the Select Committee on Exiting the European Union](#), 25 January 2017, Q746

⁷² [Gibraltar Chronicle, 28 January 2017](#).

⁷³ [Oral evidence](#) to Brexit Committee, 25 January 2017.

Affairs, the Secretary of State for Exiting the EU and the Secretary of State for International Trade, as well as the Minister for Europe and the Americas and me. That is in addition to regular and ongoing contact at an official level.

And:

The JMC (Gibraltar: EU Exit Negotiations) is there specifically to pick up the issues relating to the UK's exit from the EU and to ensure that those are fed in not just to our department but to every department in Whitehall. For instance, we have been able to get Treasury officials to come along to that to ensure that they can take away some of the issues, and to send information where there are discussions around potentially broader issues and how that feeds into our broader negotiations. The JMC is the formal process, as opposed to what otherwise might be individual Ministers from different government departments meeting with the Government of Gibraltar.⁷⁴

He reminded the Committee that, although Gibraltar could make its own representations in the EU, with regard to the withdrawal negotiations, it was important that their interests were taken on board at the JMC: "we are there to represent its interests in the interests of the whole UK and the territories associated with it". Fabian Picardo [confirmed](#) to the Brexit Committee that he had been "involved in a very detailed process of consultation" with the JMC.

The first meeting of the JMC took place on 7 December 2016 and the second on 1 March 2017. The recent meeting focussed on "the opportunities and challenges in areas such as trade and market access, with ministers in agreement that we must ensure Gibraltar's interests are taken into account".⁷⁵

Speaking after the meeting, the Gibraltar Chief Minister said:

Today's meeting has been an excellent opportunity to engage with the three lead departments in the UK Government which are important to Gibraltar in the context of our Brexit work. Together we have looked at the politics of Brexit, we have looked at how our exit from the EU can create new opportunities for Gibraltar and how new partners around the world can work with us to create many of these new opportunities.⁷⁶

On 29 March 2017 the Prime Minister's letter of notice of withdrawal was delivered to the European Council President, Donald Tusk. It did not mention Gibraltar, which gave rise to a question following Theresa May's statement in the Commons later that day. She [confirmed](#) the Government's support for Gibraltar:

We are absolutely steadfast in our support of Gibraltar, its people and its economy. Our position has not changed. We have been firm in our commitment never to enter arrangements under which the people of Gibraltar would pass under the sovereignty of another state against their wishes, nor to enter into a process of sovereignty negotiations with which Gibraltar is not content. The letter is a notification in relation to our withdrawing from the

⁷⁴ Lords EU Committee, [Uncorrected oral evidence](#): Brexit: Gibraltar, 2 February 2017.

⁷⁵ Government News Story, 1 March 2017. [Robin Walker: 'Gibraltar has particular interests'](#).

⁷⁶ Ibid.

European Union. Gibraltar is not a separate member of the EU, nor is it a part of the UK for the purposes of EU law, but we are clear that it is covered by our exit negotiations. We have committed to involving Gibraltar fully in the work that we are doing. We have been having regular discussions with the Government of Gibraltar, and we will continue to work with them in the future.

Different provisions for Gibraltar?

Before the 2016 referendum, Fabian Picardo said that in the event of Brexit, Gibraltar should be given the opportunity to remain in the European Union with a “different degree of membership”.⁷⁷ In the wake of the referendum result he has [set out](#) the Brexit arrangement he would like for Gibraltar:

Gibraltar wants to participate in the single market. Gibraltar wants to participate in the freedom of movement of people. Taking that example, that is not the sort of movement that creates issues of immigration in the United Kingdom, where people come and establish themselves in the UK because of the treaty right to do so. [...] For Gibraltar, like perhaps for Northern Ireland and—dare I say it?—some other nations in the United Kingdom, the reverse-Greenland aspect of this is to preserve certain parts of the existing *acquis* going forward. Geopolitically, I think that is eminently achievable for Gibraltar.⁷⁸

Robin Walker has conceded that Gibraltar is a ‘special case’: “Gibraltar has a unique relationship with the EU, with a set of unique challenges that are slightly different from those of the United Kingdom”.⁷⁹

For the Gibraltar Government and businesses, one of the most important questions is how to cope with a possible ‘hard Brexit’ suggested by Theresa May in her Lancaster House speech on 17 January and in the February 2017 White Paper. Some thought Gibraltar might be able to conclude a separate bilateral treaty with the EU and thereby maintain access to the Single Market. But it is doubtful that Gibraltar, an Overseas Territory and not a sovereign state under international law, could negotiate such a treaty.

Mr Picardo [said](#) the withdrawal agreement might contain specific provisions for Gibraltar:

... if we assume that the geography of Gibraltar and the socioeconomic functioning of our community are different from those of the United Kingdom, as of course they are, you can see why it may be necessary to have an aspect of the new agreement between the United Kingdom and the European Union apply in a different way to Gibraltar.

He pointed out to the BBC’s Nick Robinson, 11 December 2016, that “Different parts of the rules that are the European rules already apply in a different way to Gibraltar; for example, we are not part of the

⁷⁷ [Telegraph, 14 April 2016](#).

⁷⁸ Lords EU Committee, [Uncorrected oral evidence](#): Brexit: Gibraltar, 13 December 2016.

⁷⁹ Lords EU Committee, [Uncorrected oral evidence](#): Brexit: Gibraltar, 2 February 2017.

common customs union even today”, adding: “As we look at where we’re going in the future that must be the case too”.⁸⁰

As Lord Selkirk pointed out to the Lords EU Committee: “The Secretary of State has suggested that he would be very reluctant to go down the road of differentiated Brexit arrangements for Gibraltar”.⁸¹ Such an arrangement is unlikely to be acceptable to Spain, whose support is likely to be needed for the withdrawal agreement.⁸²

Future relations agreement

In January 2017 Fabian Picardo [emphasised](#) that Gibraltar wanted any future UK-EU trade relationship to apply to Gibraltar “with such differentiation, graduation or nuance [...] as may be relevant to the circumstances of Gibraltar, in the same way as the current European *acquis* applies to Gibraltar with the nuances that you have observed ...”.

This, he believes, is “eminently doable” with good will in the Brexit negotiations. He reiterated the importance of continuing a strong UK-Gibraltar bilateral relationship, particularly in relation to financial services, and the need for continuing free movement across the border with Spain.

But not being in the Single Market would be the stumbling-block. Esteban González Pons, the spokesman for the Partido Popular in the European Parliament, confirmed that if the UK left the EU, “all the components of the United Kingdom will leave the European Union [...] There is no possibility after Brexit of maintaining [access] to the single market or the free movement of people if it is not for the whole of the United Kingdom”.⁸³

Nevertheless, Robin Walker assured the Lords EU Committee that for Gibraltar, “we will want to make sure that we get the best possible access to a single market in services”.⁸⁴

Gibraltar is currently not in the EU Customs Union. The Chief Minister confirmed that, although not being in it had created certain obstacles to the free movement of goods, Gibraltar wanted to continue the regime because it made clear that there is an international frontier between Gibraltar and Spain, but one that is “open and free flowing, subject to such checks as may be necessary”.

EU support for Spain?

Gibraltar’s EU membership has to some extent been a buffer against Spain. Gibraltar has “looked to the European Commission as an arbiter in issues relating to Spain and the free-flowing frontier”.⁸⁵ The Chief Minister told the EP Constitutional Affairs Committee that Gibraltar had “over the years come to see the EU as providing a degree of protection

⁸⁰ [Politico, 11 December 2016](#).

⁸¹ [Uncorrected evidence, 2 February 2017](#).

⁸² 20 of the EU-27 Member States will be needed to approve the withdrawal agreement under Article 50.

⁸³ [Gibraltar Chronicle, 31 January 2017](#).

⁸⁴ Lords EU Committee, [Uncorrected oral evidence](#): Brexit: Gibraltar, 2 February 2017.

⁸⁵ [Uncorrected oral evidence](#), 13 December 2016.

against the excesses of an unfortunately, sometimes hostile neighbour".⁸⁶

Lord Liddle [reminded](#) the Lords EU Committee in January 2017 that the European Commission had been engaged in the Gibraltar question, but that with Brexit, it "will no longer feel the need to put pressure on the Spanish Government in the way that it has in the past".

On the other hand, as Mr Picardo also pointed out to the Brexit Committee, the European Commission has tended to leave the Gibraltar issue to Spain and the UK to sort out as a bilateral matter. He thought this was:

a complete abrogation by the Commission of its obligations, because its duty of neutrality was to take the position that Gibraltar is a part of the territory of the European Union and a failure to defend that means that the Commission can be seen to have sometimes sided with Spain on the issue of the sovereignty of Gibraltar.⁸⁷

Both the Spanish-Gibraltar border and the Ireland – Northern Ireland border will be part of the withdrawal negotiations and/or the future relations agreement. But Dr Grocott did not think a bilateral agreement between the UK and Spain would be enough:

... the extent to which we could rely on it in the future may be questioned. Because of the usefulness of the European Union in arbitrating these matters, it would have to be built into the negotiations so that there was at least some recourse to a third party and it would not be handled solely bilaterally.⁸⁸

Could Gibraltar be a bargaining chip?

Under Article 50 TEU, the first stage in the exit process after formal notice was for the European Council to draw up guidelines that will form the framework for the withdrawal negotiations. The European Council published [draft guidelines](#) on 31 March 2017, which were finalised and adopted on 29 April. They contain a significant sentence on Gibraltar in Article 24 (Article 22 of the draft):

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.⁸⁹

Potentially, Spain could use Gibraltar's status as a bargaining chip and even exclude Gibraltar from an EU-UK relations agreement. Fabian Picardo called the clause unnecessary, unjustified, unacceptable and discriminatory and Daniel Feetham, the leader of the GSD Opposition, said on [Twitter](#) that the EU had put political expediency over people.

If Gibraltarians have regarded the EU as a protector, Mr Picardo wrote on [Facebook on 29 April](#) that now "Many Gibraltarians will rightly feel betrayed and let down by the EU Council having buckled so easily under

⁸⁶ [Speech](#) to AFCO, 30 January 2017.

⁸⁷ [Oral evidence](#) to Brexit Committee, 25 January 2017.

⁸⁸ Lords EU Committee, [Uncorrected oral evidence](#): Brexit: Gibraltar, 24 January 2017.

⁸⁹ EUCO XT 20004/17, Special meeting of the European Council (Art. 50) (29 April 2017) – [Guidelines](#).

the pressure of the Spanish right wing Partido Popular government". But he continued in a more positive vein, suggesting why the clause would "change little":

Firstly, all this clause represents is another one of the "wishes" on the Council's shopping list for the negotiations. The more important issue is that the inclusion on this clause has given Gibraltar huge international prominence and has illustrated the support we have in the United Kingdom. If anything, the current Spanish Government has continued the Margallo trait of making us closer to Britain. We have a clear commitment from the current Conservative Government not to do a future trade deal if it doesn't include Gibraltar. We have also had a similar commitment from Emily Thornberry, who is the Labour Shadow Foreign Secretary who visited Gibraltar this week. All parties in the UK have made their commitment to Gibraltar clearer than ever.

Secondly, the prospects of a UK/EU trade deal after Brexit are not great when it comes to financial services, which is the only aspect of a new arrangement which is likely to be relevant to us. Matters related to frontier fluidity are separate. What is clear is that any future arrangements (in keeping with the provisions of the guidelines) will also cover workers' rights and State Aid. We will be pleased to be released from the bureaucracy of State Aid measures. Matters related to workers' rights after Brexit (ie relating to new workers who start their employment after 29th March 2019) are protections which Spain should have been seeking for its citizens in Gibraltar. At present, their "brilliant" politicians have "successfully" negotiated a clause that will NOT automatically extend such arrangements to Spanish workers in Gibraltar if such arrangements are negotiated between the UK and the EU. Well done! In Gibraltar we say "ponte un badge" when you achieve such great pyrrhic victories.

Thirdly, the Spanish seem to be spinning out of control on what they say is the effect of this clause. They are wrong to say it excludes Gibraltar from the Brexit negotiations. We are going to be a part of the exit negotiations. What the clause does is try / pretend we may not have a future UK / EU trade deal extended to us automatically. Beware the Spanish media self-servingly trying to confuse the two.

Fourthly, the hyperbole in the media is remarkable in the comments I see suggesting that clause 24 of the guidelines somehow gives Spain a veto over Gibraltar's future. Nothing could be further from the truth. If anything, if Spain were to be successful in excluding us from any future UK/EU trade agreement, we will be less under the control of the EU 27 which includes Spain. Spain has been left with one attempt at having a veto on our being part of such new trade deal in services as may be agreed. Other than that, and at the risk of sounding like an ardent Brexiteer, we are in effect going to be free from Spanish influence in our affairs by the EU back door. Spain may be able to block aspects of what we do with the EU 27, but there are 196 Nations recognised by the UN today, which means there are many more potential partners out there to do business with!

So it seems to me that what we have seen today is being played to maximum effect in the Spanish media by a Spanish political class that is so mired in corruption allegations and cases that they hanker over any subject to debate which is unrelated to the back-handers and graft that otherwise dominates their headlines. I do think that on this occasion, however, not even trusty Gibraltar is

going help them to wipe corruption off the top headline in their newspapers (although I am sure they will try).

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