



**MEMORANDUM OF UNDERSTANDING
ON COOPERATION IN POLICE AND CUSTOMS MATTERS**

***Notes for Interpretation of all Memoranda agreed between the Spain, the UK
and Gibraltar on 29th November 2018***

In order to properly understand the effect of the Memoranda, and the proper interpretation to put on the terms used therein, it is important to bear in mind some of the essential, underlying principles involved. These are best summarised below.

Sovereignty

*The Memoranda, or any activity or measure taken in application or as a result of them, does not imply any modification of the respective legal positions of the UK or Spain on sovereignty or jurisdiction. This is expressly spelt out in each of the Memoranda. **The Memoranda make no concessions on sovereignty, jurisdiction or control.***

Interpretation

Throughout the Protocol on Gibraltar which refers to the Memoranda, as a result of the definition in Article 3 of the Withdrawal Agreement (and unless otherwise provided for) the term "United Kingdom" includes "Gibraltar" throughout the text.

For a proper interpretation of the Memoranda they should be read in light of the Concordat between the UK and Gibraltar, also published alongside. This Concordat preserves the balance of the 2006 Gibraltar Constitution. It was approved by the Prime Minister, Theresa May, and the Chief Minister, Fabian Picardo, in Downing Street on the 15th November.

Signature

It is important to remember that the Memoranda are only signed by the United Kingdom as a result of the UK being the State responsible for Gibraltar's external relations. This is expressly spelt out in each of the Memoranda.

Commencement & Duration

It should be noted that the Memoranda only come into effect if there is a Withdrawal Agreement entered into by the UK. Additionally, the Memoranda cease to have effect in December 2020 unless we agree to extend them.

MEMORANDUM OF UNDERSTANDING ON COOPERATION IN POLICE AND CUSTOMS MATTERS

CONSIDERING that, for the purposes of this Memorandum, the United Kingdom acts as the State responsible for Gibraltar's external relations,

NOTING that the present Memorandum, or any activity or measure taken in application or as a result thereof, do not imply any modification of the respective legal positions of the Kingdom of Spain or of the United Kingdom with regard to sovereignty and jurisdiction in relation to Gibraltar,

Police and customs cooperation: General principles

The Parties will intensify cooperation on law enforcement and customs matters, thus supporting the common fight against international crime and the mutual commitment to guarantee safe, secure and prosperous communities in both Gibraltar and the surrounding area, in particular the Campo de Gibraltar.

The Parties declare their deep commitment to close cooperation for the correct application of criminal and customs laws in order to prevent and combat criminal offences and infringements of the criminal and customs laws applicable in Gibraltar and in the surrounding area. Such cooperation will be inspired by principles and mechanisms of administrative and police cooperation set out in the criminal and customs laws in force in the European Union.

Police cooperation

Police cooperation will extend to the criminal offences provided for in the criminal legislation in force in Gibraltar and in the surrounding area, whether or not the criminal offences are committed by criminal organizations or groups, including, without prejudice to the generality of the foregoing, terrorism, people smuggling and trafficking, trafficking in weapons cybercrime, trafficking in drugs and other goods, environmental crimes (including illegal trafficking in hazardous waste, and illegal fishing), corruption, money laundering, and fraud.

In the case of criminal offences relating to road safety, cooperation will build on the transfer of data on individuals who are alleged to have committed such offences, as well as exchanging data on holders of driving licences and, as the case may be, of vehicle insurance policies.

Police cooperation will include exchanging information on financial and asset investigations.

The respective police authorities may jointly develop and carry out any operational procedures and action protocols required to facilitate the cooperation set forth in the above paragraphs.

Customs cooperation

Customs cooperation will include in all cases:

- a) Exchanging information, spontaneously or at the request of either Party, considered necessary for the proper application of customs regulations, and to prevent and combat customs fraud and smuggling. This exchange will extend to cash movements and to money laundering in relation to customs fraud and smuggling.
- b) Coordination of customs controls.
- c) Collaboration on joint operations relating to movement of goods subject to customs controls. This type of collaboration may include, when so jointly decided, any of the special forms of collaboration set forth in the provisions on customs cooperation in force in the European Union.
- d) Cooperation between customs services to combat smuggling and drug trafficking.

The competent customs authorities may jointly develop and carry out any operational procedures and action protocols required to facilitate the cooperation set forth in the above paragraphs. These may include, in particular, the cooperation mechanisms set forth in the present Memorandum and the special forms of cooperation set forth in the following paragraphs.

Cooperation and information exchange

Cooperation and exchange of information on the ground will be carried out through the territorial services in Campo de Gibraltar of Spain's National Police, Civil Guard, and Customs, on the one hand, and the Royal Gibraltar Police, HM Customs Gibraltar and the competent immigration authorities, on the other.

Cooperation and exchange of information between the United Kingdom and Spanish Central Services and vice versa will continue to be carried out through the United Kingdom's Home Office and Her Majesty's Revenue and Customs and Spain's Ministry of the Interior and Ministry of Hacienda.

Any minutes, records, information, proceedings, communications, certificates, reports, certified copies, and any other documents provided through the mechanisms for exchange of information, set up by or pursuant to their national law, by officials of the requested authority and transferred to the requesting authority, may be used as evidence, pursuant to the law of the requesting authority.

Confidential information exchanged under the provisions of the present Memorandum may not be transferred to third parties without the express consent of

the authority providing the information, except as provided in the preceding paragraph.

Joint Coordination Committee

The purpose of the Committee referred to in article 5 of the Protocol will be to ensure the greatest effectiveness in police and customs cooperation including exploring options for strengthening that cooperation in future. The European Union will be invited to participate in the meetings of this Coordination Committee. The committee will report on a regular basis to the Specialised Committee of article 165 of the withdrawal agreement.

Each Party will have an equal number of members in the Committee and will inform each other of the members appointed and of any possible changes.

For Spain, the Committee will include representatives of the State Secretariat for Security; of the National Police; of the Civil Guard; of the Tax Agency; of the Ministry of Foreign Affairs, the European Union and Cooperation; and of the Government Delegation in Andalusia.

For the British side, the Committee will include representatives of the Foreign and Commonwealth Office, the Royal Gibraltar Police, HM Customs Gibraltar and the competent immigration authorities.

The Committee will adopt its rules of procedure and work by joint decision between the Parties. The Committee will also have a Working Group on Police, and a Working Group on Customs, which will coordinate operational collaboration on the ground between the respective participating forces and corps.

The Committee will hold periodic meetings. The agenda, together with the items of business for said meetings will be jointly decided in advance. When so required by the urgency or seriousness of the issue to be discussed, which cannot be resolved in the Working Groups, the Committee may hold ad hoc meetings. Minutes will be drawn up of each meeting, containing the agenda items discussed and, as the case may be, the decisions adopted, to enable the proper monitoring of the issues addressed or of the decisions adopted.

The Committee will establish the appropriate operational cooperation mechanisms to ensure good communication and transfer of information and any other elements guaranteeing direct coordination between police and customs services engaged in operational services.

To ensure the utmost effectiveness of police and customs cooperation, the Committee may propose action guidelines for the respective law enforcement services, so that they may be applied in the event of pursuits.

Each Party will appoint liaison officers for police and customs cooperation who, in the periods between meetings, will strive to guarantee appropriate and regular dialogue and collaboration between their respective services.

This Memorandum will cease to have effect on the 31st December 2020 unless the Parties decide otherwise.

Signed in duplicate in London on 28 November 2018 and Madrid on 29 November 2018, in the English and Spanish languages, both texts having equal validity.

For the United Kingdom

For the Kingdom of Spain

The Rt Hon David Lidington

H.E. Josep Borrell Fontelles

Minister for the Cabinet Office
and Chancellor of the Duchy
of Lancaster

Minister of Foreign Affairs,
European Union and
Cooperation