



HM Government of Gibraltar

Office of the Deputy Chief Minister

Your ref:

Our ref: JG-589

11 March 2016

Hon Crispin Blunt MP
Chairman of the Foreign Affairs Committee
House of Commons
Westminster
LONDON
United Kingdom

Dear Mr Chairman

Thank you for giving Her Majesty's Government of Gibraltar (HMGoG) the opportunity to provide a statement to the Foreign Affairs Committee on the question of our concerns ahead of the June 23rd 2016 referendum on membership of the European Union.

The position of the Parliament, Government, Opposition and all the political parties in Gibraltar is that remaining in the European Union is undoubtedly the outcome that will best protect Gibraltar's interests.

We believe that our position on a vote to stay will be substantially reflected in the outcome in Gibraltar when our people exercise their right to vote on this issue of vital importance, not just to Gibraltar but to the United Kingdom and the European Union itself.

Once again I would like to thank the Committee for this opportunity to put forward HMGoG's views. Please do not hesitate to contact me for further information or assistance.

Yours faithfully

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Submission to the Foreign Affairs Committee of the House of Commons on the position of Gibraltar in the European Union and the challenges posed were that position to change after the Referendum of 23 June on whether the UK and Gibraltar should remain in the EU or should leave.

Gibraltar entered the European Economic Community in 1973, under Article 227(4) of the Treaty of Rome¹, but was excluded, at the request of the Government of Gibraltar, from the common customs territory, the common external tariff, the Common Agricultural Policy and Value Added Tax². The terms also ensured that Gibraltar remained in the same position with regard to the Community's import liberalisation system as it was before accession.

That forty-year period of membership of the EU has been both challenging and transformational for Gibraltar.

The opening of the border to pedestrian and vehicular traffic on February 5th 1985, which was contingent on Spain's joining the EU a few weeks later, was important to Gibraltar on socio-economic grounds. The open frontier resulted in an increase in tourism which has been sustained to reach 9,761,800 land frontier visitors in 2014 although before difficulties with Spain the summer of 2013 the average between 2010 and 2012 was over 11 million a year³.

SINGLE MARKET

EU membership has been an important factor in the development of Gibraltar's economy in the direction that was recommended by the then Prime Minister Margaret Thatcher after the Royal Navy dockyard closed in 1984. This set out tourism, financial services and the commercial port as pillars of the economy.

¹ Article 227 (4) EEC Treaty (now Article 355(3) TFEU) provides: "*The provisions of this Treaty shall apply to the European territories for whose external relations a Member State is responsible*".

² Article 28 Treaty of Accession 1972 provides: "*Acts of the institutions of the Community relating to the products in Annex II to the EEC Treaty and the products subject, on importation into the Community, to specific rules as a result of the implementation of the common agricultural policy, as well as the acts on the harmonization of legislation of Member States concerning turnover taxes, shall not apply to Gibraltar unless the Council, acting unanimously on a proposal from the Commission, provides otherwise.*"

³ https://www.gibraltar.gov.gi/new/sites/default/files/HMGoG_Documents/Statistics/new/Statistics_by_Topic_Area/2014/Tourism/Arrivals_by_Land/T.6.pdf

Politically, Gibraltar embraced the challenge of compliance with EU laws and directives and the current government has, since its first election to office in 2011, accelerated the process of meeting implementation deadlines.

The Gibraltar Socialist Labour Party / Liberal Party alliance was re-elected in November 2015 and HM Gibraltar of Government has maintained the highest level of compliance with EU legislation and directives.

Membership of the European Union has been important to the Gibraltar economy, which includes ensuring proper access through the land frontier. As a result of petitions from Gibraltar, many visitors and the personal intervention of the Prime Minister David Cameron, the European Commission has conducted several inspections of the frontier and told Spain clearly that it must maintain a reasonable flow for traffic and pedestrians⁴.

As part of a rules-based system mutual understanding has been fostered and Gibraltar has, at all levels, developed as a modern European jurisdiction working with EU partners. However, this has not resulted in homogenization and we have maintained our distinct Anglo-Saxon jurisdiction.

Our membership of the European Union has been a unifying issue in Gibraltar politics. In 1999 Gibraltar won the right to vote at EU parliamentary elections. After consultation with the Electoral Commission, Gibraltar was combined with the UK's South West of England constituency for the European Parliament election in 2004 and has voted in all subsequent elections as part of that "combined region".

Gibraltar is included in the referendum set for June 23rd 2016 and the Gibraltar Parliament has implemented all the necessary legislation⁵ to ensure this right can be fully exercised. Both the Government and Opposition of Gibraltar are united on the position of remaining in the European Union and will be strongly recommending this to the 23,000 persons eligible to vote in Gibraltar.

HM Government of Gibraltar has the deepest respect for the democratic rights of all people in Britain and Gibraltar to vote as they see fit and this includes the position taken by those British MPs who are also very strong and loyal supporters of Gibraltar but intend to vote to leave the EU.

⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:357:0005:0007:EN:PDF>

⁵ <http://www.gibraltarlaws.gov.gi/articles/2016-01o.pdf>

However, it is important that there should be clarity as to the rights the British Government will protect and defend for Gibraltar in the context of its own negotiations if the referendum decides for leaving the EU. This decision would set off the two-year negotiation period defined by Article 50 of the Treaty of the European Union.

ECONOMY

Access to the single market is important to the Gibraltar economy.

Gibraltar's financial industry has a successful and well-regulated financial sector that has benefitted from EU passporting rights principally in the areas of banking, funds and insurance.

Freedom of services has underpinned some aspects of the gaming industry's access to EU markets as well as the UK. It is important that the UK government underpin a commitment to include Gibraltar in the access to trade and markets it will be seeking to secure in the event of a 'Brexit'.

Commerce in Gibraltar and indeed the neighbouring Campo de Gibraltar (Spain) rely on a free flow through the border. Approximately 7,000 officially registered Spanish workers cross into Gibraltar each day. It is estimated that a further 3,000 do so for casual jobs such as house cleaners and nannies.

SECURITY

Membership of the EU contributes significantly to Gibraltar's security because of arrangements made under justice and home affairs legislation. European measures allow for smooth judicial and police cooperation with other European countries, including Spain. It is probable that if Gibraltar was not in the EU, Spain would be significantly more reluctant to cooperate with its authorities. This would impact negatively on law and order in the region. Measures of particular note relate to extradition, information sharing, and airport and port security measures.

SPAIN AND ITS SOVEREIGNTY CLAIM

As a result of historic difficulties with Spain, Gibraltar has maintained its own independent supply of electricity and water. Its communications are partly dependent on access through Spain. More significantly food and provisions and goods generally are predominantly supplied through the access at the land border.

In 2004, although maintaining its claim over sovereignty, the then Socialist (PSOE) government agreed an initiative with the UK and Gibraltar that became known as the Trilateral Forum and led to the so called

Cordoba Agreement which sought to resolve a number of historic issues such as communications, aviation and former Spanish workers' pensions. Talks under that umbrella were held on a trilateral basis.

With the 2011 arrival of the Popular Party (PP) government led by Mariano Rajoy, the appointment of Jose Manuel Garcia-Margallo as Foreign Minister saw a reversal of policy on relations with Gibraltar. The Spanish government reneged on Cordoba and ceased to implement any of the agreements. Sr Garcia-Margallo has consistently run a policy of trying to exclude Gibraltar from EU measures, aviation in particular, and has made use of pressure on the flow at the frontier in order to try and force a return to bilateral talks which is wholly unacceptable to the people of Gibraltar.

Gibraltar, in contrast, has kept to its side of the bargain and spent about £ 80 million on the construction of a new air terminal and its relocation adjacent to the frontier fence. The Spanish Government did not construct the building on their side of the frontier which would have enjoyed direct access to the terminal.

To date the Prime Minister David Cameron and the British Government have stood firm on their commitment that the UK's "position on sovereignty has not changed and will not change. The UK 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 process of sovereignty negotiations with which Gibraltar is not content. We remain committed to furthering co-operation between Gibraltar and Spain through appropriate arrangements for dialogue which are acceptable to Gibraltar."⁶

The threat from Spain to Gibraltar's democratic, political and economic well-being remains real. On Friday 4th March 2016, Sr Garcia-Margallo was interviewed on Spain's national radio. He said that although he did not want the UK to leave the EU it would present opportunities for Spain. In this regard he said that Spain could replace the UK as the privileged partner of the US in the EU, and that "the next day we will talk about Gibraltar." It is not the first time Sr Garcia-Margallo talks about Spain's aspirations with the US. On 10th November 2015 he said: "if Britain should exit the EU, we are the ones that can occupy that privileged relationship with the other side of the Atlantic."

On the morning of 6th May 2015, during an interview with Spanish national radio, Sr Garcia-Margallo said that if the UK were to leave the EU, but Gibraltar wished to remain, "...it would have to take out of the trunk of memories that formula of joint-sovereignty." Gibraltar's Deputy-Chief Minister Dr Joseph

⁶ Europe Minister David Lidington on various occasions including HC Deb, 11 June 2012, col 230W see also HC Deb, 6 February 2012, col 52W

Garcia retorted that Sr García-Margallo would not see a Spanish, or half-Spanish, Gibraltar in his lifetime: “So that there are no doubts, absolutely no possibility exists that, even if the UK were to totally leave the EU, Gibraltar and the Gibraltarians would be prepared to make sovereignty concessions. [...] The identity of Gibraltarians and their British sovereignty are not a currency to be negotiated with, nor would we allow ourselves to be blackmailed.⁷”

On 30th January 2012 *El Confidencial Digital*⁸ reported that the new team at Spain’s foreign ministry had set Gibraltar as one of Spain’s foreign policy priorities. The plan was for direct bi-lateral negotiations between Spain and the UK, with the Gibraltarians being denied a referendum on the question of what nation they would wish to be part of. Sr Garcia-Margallo’s team was of the view that the best formula for Gibraltar was temporary joint-sovereignty prior to Spain obtaining full sovereignty over the Rock.

In February 2014 the *Real Instituto Elcano* published a report titled ‘Towards a strategic renovation of Spanish foreign policy’. The *Elcano* is Spain’s best known foreign policy think-tank, and is closely linked to the ministry of foreign affairs. To produce the report around 200 experts from government, academia, business, parliament and think-tanks were consulted. According to the report’s coordinator, Ignacio Molina, professor of political science at the Autonomous University of Madrid, the aim of the report was to undertake a strategic renewal of Spain’s foreign policy, which had been left without reference points after achieving the objectives set during Spain’s transition to democracy: the complete integration of Spain into the EU and NATO, and the normalisation of its international relations.

In reference to Gibraltar, the report argued that: ‘...in the search for a definite solution through Hispano-British negotiations international models could be assessed that would facilitate the recovery of sovereignty with an imaginative formula or status, through an agreement between the UK and Spain that, in accordance with International Law, would take into account the interests and aspirations of the populations most directly affected in Gibraltar and its hinterland.’ The Spanish daily *El Pais* interpreted the phrase ‘imaginative status’ as being an ‘allusion to joint-sovereignty’.

Sr Garcia-Margallo’s willingness to use the frontier in a similar manner to that used by Franco to apply pressure on Gibraltar is well documented⁹.

⁷ http://www.heraldo.es/noticias/internacional/2015/05/06/el_penon_responde_margallo_que_nunca_vera_gibraltar_espanol_medio_espanol_358827_306.html

⁸ http://www.elconfidencialdigital.com/politica/Garcia-Margallo-Gibraltar-cosoberania-Andorra-referendum_0_1770422941.html

⁹ <http://www.newstatesman.com/gibraltar/newstatesman-gibraltar/2015/04/rock-and-hard-place-gibraltar-and-eu>

CONCLUSION

1. The position of the Government of Gibraltar is that the United Kingdom and Gibraltar should remain in the European Union.
2. In the event of a vote to leave the European Union, it is imperative that the United Kingdom's negotiation of a new relationship with the EU, from outside it, takes account of the views of the Government of Gibraltar.
3. Access to the Single Market and free movement of persons, capital and services are essential to Gibraltar.
4. European Union law provides a framework of protection for Gibraltar to safeguard it against the excesses of a hostile Spanish Government in Madrid.
5. There is a danger that Spain could close the border with Gibraltar in the event of "Brexit". Madrid seriously considered a frontier toll in 2013 and they were stopped by the European Commission which declared that such a toll would be illegal.
6. The Spanish Foreign Minister is on record as having said last year that if Gibraltar wants to remain in the European Union in the event of "Brexit" then he would revive the proposals for shared sovereignty between the United Kingdom and Spain.
7. It is essential that the United Kingdom Government guard against attempts by Spain to take advantage of the present situation by advancing their claim to Gibraltar.