



HM Government of Gibraltar

EUROPEAN PARLIAMENT CONSTITUTIONAL AFFAIRS COMMITTEE

“The constitutional relationship of the United Kingdom with the European Union: the consequences of the results of the referendum of 23 June 2016”

MONDAY 30 JANUARY 2017

Her Majesty’s Government of Gibraltar

SPEAKING NOTE

Ladies and Gentlemen

It is a pleasure to be invited to address you today as Chief Minister of Her Majesty's Government of Gibraltar in representation of the People of Gibraltar.

Thank you for deciding to hear the voice of the People of Gibraltar in what is for all of us the heart of European democracy.

This is a seminal time in our history as a People.

Indeed, this is a seminal time in the history of all of Europe.

The Gibraltarians have been, are and would have wished to continue to be the most enthusiastic European citizens.

Citizens that you will represent in the context of the coming Article 50 negotiations.

But the British people as a whole have decided to take a different route.

And so in the light of the decision to leave the European Union, I want to start today by setting out for you some of the details of Gibraltar's current status of membership of the European Union.

I will move on after that to the referendum and the issues that may arise in the context of the negotiations once the United Kingdom triggers Article 50 of the Treaty of Lisbon.

I will of course very much look forward also at the end of that process to taking any questions you may have at the end of my presentation.

So I will start by describing the nature and terms of Gibraltar's existing relationship with the European Union.

Gibraltar joined the then European Economic Community with the United Kingdom in 1973.

Our membership was provided for by what was then Article 227(4), now Article 355(3) Treaty on the Functioning of the European Union.

That Article provides as follows:

"The provisions of the Treaties shall apply to the European territories for whose external relations a Member State is responsible".

The effect of that provision was to apply the EU Treaties in full to Gibraltar.

That full application was qualified by Articles 28-30 of the United Kingdom's Act of Accession, which dealt with:

- Acts concerning agricultural products and acts of harmonisation of legislation concerning turnover taxes (VAT) are not applicable to Gibraltar.

- Gibraltar is excluded from the EU's Common Customs Territory and the free movement of goods rules of the single market do not apply to Gibraltar in relation to those goods.
- And the EU's Common Commercial Policy is not applicable to Gibraltar.

Otherwise, Gibraltar is only excluded from those areas of EU law which the UK itself has not signed up to like Schengen and the single currency.

All other parts of the EU Treaties, including the free movement provisions for persons, services, establishment and capital, apply to Gibraltar as do common policies such as the environment, consumer protection etc.

As for its actual status within the EU, in an Opinion delivered on 19 January 2017, hot off the Press, in case c-591/15, the Advocate General of the European Court has found that "the United Kingdom and Gibraltar are to be considered as a single Member State".

So let me now briefly explain the application of EU law in Gibraltar.

All EU laws and rules relevant to those parts of the Treaties which I've told you apply in Gibraltar now are in Gibraltar provisions of our law by dint of the Gibraltar European Communities Act in Gibraltar, not the UK's European Communities Act, a specific Gibraltar European Communities Act.

Responsibility for transpositions and application of EU laws is a matter ENTIRELY for Her Majesty's Government of Gibraltar.

In this respect, the key provision is section 47 (3) of the Gibraltar Constitution of 2006 which provides that it is Ministers in the Government of Gibraltar who have FULL responsibility for all EU matters except those relating to the areas of Defence and External Relations.

We therefore transpose and implement all EU measures in Gibraltar in the same way as any national parliament and government does in every other Member State.

Indeed, 70% of all laws enacted in Gibraltar are connected to Gibraltar's EU membership.

You will no doubt be pleased and indeed impressed to note that Gibraltar is COMPLETELY ahead of ALL transposition deadlines in respect of ALL EU directives and other measures.

There is ABSOLUTELY nothing outstanding.

Indeed, Gibraltar may well be the only jurisdiction in the European Union that can say that.

You will therefore agree with me that it will be a great pity to see such an exemplary jurisdiction in the field of compliance with the corpus juris of the EU involuntarily having to leave the club!

Let me now set out for you some of the mechanisms for direct engagement between Gibraltar and the EU.

Gibraltarians and other EU and Commonwealth nationals resident in Gibraltar vote in European Parliamentary Elections since the European Court of Human Rights decision in *Matthews v United Kingdom*.

That judgment was also important for the European Parliament – it was the first time that a court found that the European Parliament forms an integral part of the legislatures of the Member States.

Gibraltar has now participated in all European Parliamentary elections since 2004 as a part of the United Kingdom's South West Constituency.

Gibraltar also counts with a representative office in Brussels, Gibraltar House, which was opened in 2014.

Our representation engages regularly with the EU institutions, as it does with the UK's Permanent Representation to the EU (UKREP).

I must tell you that the day that we opened that office, and the Gibraltar flag begun to fly in the capital of Europe, was one of the proudest political achievements of my life.

We are committed, whatever the outcome of the Brexit negotiations to continue our presence in Brussels going forward.

So let me tell you now a little bit about the Brexit referendum in Gibraltar.

On the 23rd June 2016 the people of Gibraltar sent a clear and unequivocal statement of support for continued EU membership.

As you know, the referendum result in Gibraltar was 96% in favour of Remain with only 4% voting to Leave.

It may be difficult to think of any other electoral region in the entire EU which would have given such a resounding vote in favour of continued EU membership.

You will share our sadness that such enthusiastic Europeans are leaving the EU.

I believe that there are five principal reasons for Gibraltar's strong attachment to the EU and for the overwhelming support in Gibraltar of remaining in the EU.

- The first is the deep and unprecedented political unity in Gibraltar on this subject.
- The Second reason for the huge support for remain was that people could see that Spain would use BREXIT as an opportunity to try and advance its Sovereignty claim.

- Thirdly, that Gibraltar is in the continental mainland and our ancestry is very much a blend of European nationalities. Europe is very much part of our history, culture and our collective DNA. We want that to continue and that should be the case beyond our inevitable BREXIT.
- Fourthly: the people of Gibraltar have over the years come to see the EU as providing a degree of protection against the excesses of an unfortunately, sometimes hostile neighbour.
- And fifth, although no less important, is the issue of course of EU Funding. A total of £60m in 16 years, which is a significant amount in the context of the Gibraltar economy.

In order to illustrate the fourth point above, it is worth noting that it has not been uncommon for Spain to operate lengthy border queues of 2 hours or more at the international frontier between Gibraltar and Spain. These delays are disproportionate and transparently politically motivated. The Commission itself recently found that they were “unjustified”.

Indeed, a Spanish Foreign Minister has specifically stated in the past that the queues are created to “demonstrate Spain’s ability to pressure Gibraltar”.

In that time, the vast majority of people affected were EU nationals, most of them EEA nationals working in Gibraltar and living in Spain.

So what are the implications then for Gibraltar and the surrounding region of Spain of the UK’s decision to leave the European Union?

Clearly, until such time as it is known what the new relationship between the UK and the EU will be, it will be difficult to assess what the effect of Brexit on Gibraltar and the surrounding region of Spain will be.

I would, however, highlight the following issues.

Notwithstanding the political difficulties which Spain creates, the relationship between Gibraltar and the surrounding region in Spain is a European success story to be proud of.

It is a textbook example of two separate parts of the EU coming together to create economic growth, human friendship and mutual prosperity for all in the region.

And nothing symbolises this success more clearly for both sides than a free and flowing border.

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.

A frontier which lacks the necessary fluidity for people to be able to access their places of work would therefore put directly at risk the jobs of 10,000 European Citizens who live in one Member State and work in Gibraltar.

The loss of any significant number of these workers would negatively affect the Gibraltar economy and the Spanish regional economy around Gibraltar.

A Report for the Gibraltar Chamber of Commerce, copies of which I am leaving with the Secretariat, show the following economic data:

- 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.
- Additionally, residents of Gibraltar spent almost 100M Euros on shopping, food and other goods and services in Andalucía in 2013.
- On top of that, Gibraltarians with second homes in the Campo de Gibraltar spent an additional 90M Euros more in Andalucía.
- Indeed, with its population of only 32,000, Gibraltar represents 25% of the GDP of the neighbouring Spanish municipalities which have a combined population of 300,000 people.
- Our effect on the region is therefore a net positive and in a ratio disproportionate to our population and land mass.

Indeed, probably the best statistic to illustrate our contribution is to note that Gibraltar is the second largest employer for the whole of Andalucía.

We are second in size only to the Junta de Andalucía, its regional Government.

Gibraltar's prosperity is the prosperity of the neighbouring Spanish region and vice versa.

This is why 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.

That is why we see the Spanish workers from the region around Gibraltar as a part of our success.

We will not tire of saying that we can do more to create even more jobs in the region if we are able to work together.

This is as much in the interests of the neighbouring Spanish region as it is in the interests of Gibraltar.

To achieve these aims, Her Majesty's Government of Gibraltar is working closely with UK Government Ministers and officials, in a Joint Ministerial Committee for Gibraltar's Exit of the European Union, to make sure that Gibraltar is "fully involved" in the negotiations and the preparations for withdrawal from the EU in order to ensure that our concerns are heard and our position is safeguarded.

Much will clearly depend on the details as the negotiations advance, but the following broad principles inform my Government's position as we head into the coming negotiations.

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.

So essentially I would ask you to note that Gibraltar's situation is unique and cannot be overlooked in the process of negotiation that is forthcoming.

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.

Gibraltar has always had a different status in the EU to the UK and in so far as the Remaining Member States agree and Gibraltar wishes, we should be able to enjoy any opt in or make other realistically and geographically sensible arrangements.

That should be agreed in order to secure the best co-operation and neighbourly relations with the nations surrounding us, namely Spain and Morocco.

Common sense must prevail.

I call on all sides in the coming negotiations to heed the Prime Minister's call to deal with each other with respect.

To negotiate in the best interest and for the mutual benefit of each other's citizens.

To work to secure a continued partnership beyond membership between a successful, newly independent United Kingdom and a thriving, developing European Union.

And I trust that you will do so with good will and a sympathetic eye on the people of Gibraltar and its surrounding region.

Because we may leave the European Union.

But our hearts will always be in Europe.

And our homes will always be European.

Thank you very much ladies and gentlemen. I will be happy to take any questions you may wish to put. There are some I am quite looking forward to answering.