



PRESS RELEASE

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GSD'S LAZY ANALYSIS IS LEGALLY FLAWED AND POLITICALLY WRONG

The analysis of Mr Azopardi and the GSD Opposition of the Gibraltar Memoranda of Understanding can only be seen as a cheap and transparent attempt to confuse public opinion. Moreover, their view is legally flawed, politically wrong and totally unsustainable.

It would appear that Mr Azopardi has been remarkably lazy and has failed to read the whole of the Withdrawal Agreement in carrying out his analysis. If he had read the Withdrawal Agreement, he would not have made some of the strikingly ridiculous points he has raised. If he has read it, he has failed to understand it.

UK and EU Frontier Workers.

One of the main criticisms made by the Opposition, repeated ad nauseam in its statement, is that the Government has given away Gibraltar's biggest bargaining chip by allowing frontier workers to be protected beyond the transition period and that the MoU on Citizens' Rights that protects Spanish frontier workers will not lapse at the end of the transitional period.

This is quite a remarkable failure of understanding of the Withdrawal Agreement. Indeed, it is the same failure of analysis that Mr Azopardi has displayed from his very first utterances on Brexit.

Anyone who has been following the Brexit debate with any seriousness will know that one of the most prominent and basic features of the Withdrawal Agreement is that Part Two of the Agreement on Citizens' Rights protects, on a permanent basis, and therefore beyond the end of the transition period, the position of all frontier workers and of all EU nationals living in the UK and British nationals living in the EU at the end of the transition period. That is to say, their rights are protected forever under Part Two of the Withdrawal Agreement. UK or EU frontier workers would enjoy exactly the same rights Protocol or no Protocol, MoU or no MoU because they derive those rights from Part Two of the Agreement and not from the Protocol or the MoU. The Gibraltar MoU on Citizens' Rights does not therefore grant Spanish frontier workers in Gibraltar any new or additional rights or rights on a permanent basis other than those that they already enjoy under Part Two of the Withdrawal Agreement itself. All that the MoU does is to institute a basis for



cooperation in relation to Citizens' Rights, notably by the creation of a Committee. Nothing more. Mr Azopardi does not appear to have understood this fundamental aspect of the Withdrawal Agreement.

Therefore, the effect of the Withdrawal Agreement as a whole is to protect, indefinitely, those who are exercising EU rights today. In his lazy analysis Mr Azopardi has failed to understand that this includes a huge number of Gibraltarians who own homes in Spain today. In particular it protects the rights of those Gibraltarians who live in Spain and commute into Gibraltar every day. Mr Azopardi has forgotten those Gibraltarians. He has neglected a large number of people who need or choose to live in Spain, whose rights are also indefinitely protected.

Ironically, he has also overlooked the fact that in order to protect those rights, there is a recognition of the importance of the principle of the freedom of movement. He has also neglected to add to his analysis the confirmation from the EU that British Citizens, which includes all Gibraltarians, will have the right of visa free travel into the EU. In fact, the EU Commission press release on the subject actually specifically states:

'British nationals residing in Gibraltar will continue to be able to enter the Schengen area without a visa.'

Bilateralism.

Mr Azopardi also incorrectly states that the MoUs have been concluded bilaterally between the UK and Spain and that they represent an abandonment of the gains made by Sir Peter Caruana in Cordoba. Mr Azopardi would do well to listen to Sir Peter Caruana's interview in Viewpoint several weeks ago where Sir Peter made it abundantly clear that the Brexit negotiations could not be compared to the Cordoba negotiations, that the Brexit negotiations "*in a very big-time way...unlike my Cordoba agreements or my Trilateral Forum which was a purely political project, there was no sense of international treaty, there was no sense of a wider member-state context*", that this also applied to the MoUs "*which are also part of the structure of this withdrawal agreement*" and "*will have been entered into pursuant to an obligation contained in an international treaty*" and that he thought it would be "*unrealistic for anybody here to think that she [Spain] is going to do it [trilateral agreements] in the context of the EU*". Unrealistic, indeed, is what Mr Azopardi is and what his analysis is shown to be.

Unsurprisingly, Mr Azopardi glosses over the Concordat entered into by the UK and Gibraltar Governments. Yet, this is a fundamental document in the whole architecture of agreements reached in relation to Gibraltar. The Concordat highlights the importance of the definition of the United Kingdom in Article 3 of the Withdrawal Agreement, which, for the first time ever in an EU treaty, explicitly includes and integrates Gibraltar in the definition of the United Kingdom, and makes it absolutely clear that the implementation of the Gibraltar Protocol and the MoUs will fully respect the Gibraltar Constitution and that all rights and obligations will be enjoyed and performed by the Government of Gibraltar and its competent authorities.



Bilateral Committees.

The Opposition statement also incorrectly states that the Gibraltar Protocol envisages bilateral UK-Spain committees. The composition of the Committees is set out in the MoUs. The Committee set up by the MoU on Citizens' Rights will have seven members on the British side. One member is to be appointed by the UK Government and six members are to be appointed by the Gibraltar Government. The Committee set up by the MoU on Police and Customs Cooperation will be composed of representatives of the FCO, the Royal Gibraltar Police, HM Customs Gibraltar and the Borders and Coastguard Agency and it is clear from the MoU that the cooperation will be carried out by our competent authorities. The same applies to the MoU on Tobacco where the lead will be taken by HM Customs Gibraltar. Finally, the Committee set up by the MoU on the Environment will be composed of the competent authorities which, on the British side, means the Gibraltar competent authorities.

So, it is clear that we have not conceded anything, in any of the Memoranda, that usurps the rights of the Gibraltar Parliament or the Gibraltar Government who will be the ones who take the decisions in Gibraltar, about Gibraltar and about our affairs. Even less, do any of the MoUs undermine any aspect of our Constitution.

Encroachments on our domestic affairs.

The GSD goes on to state that the MOUs will allow encroachments into our domestic affairs by Spain. That is completely false. All the MoUs have been negotiated on the basis of reciprocity. And if it were to be true, which it is not, then the Gibraltar Government has obtained a historic advancement since the MoUs impose reciprocal rights and obligations so we would be encroaching into the domestic affairs of Spain.

All the MoUs are concluded with the aim of establishing cooperation in this geographical area which is defined as Gibraltar and the surrounding area in Spain. On environmental matters, cooperation will cover air quality, water quality, projects that have transboundary effects, waste disposal. Cooperation will extend to all of these environmental concerns, wherever they occur. On tobacco, cooperation will extend to examine illicit activities in the same geographical area. And the entire MoU on Police and Customs Cooperation is based on the objective to create mechanisms that will allow law enforcement agencies on both sides of the border to cooperate with each other.

Longer term gains.

Equally misconceived is Mr Azopardi's repeated accusations that we have not obtained "longer term gains for Gibraltar". Longer terms gains were not on the agenda because the WA, of which the Gibraltar Protocol is an integral part, is about the divorce not the future. Its objective is not to establish a permanent relationship between the United Kingdom and the EU. The entire WA, with the exception of the provisions on Citizens' Rights, is about ensuring an orderly withdrawal and a



transition period. That is how it applies to the United Kingdom, and Gibraltar is no different. The future will be dealt with in a separate agreement that will set out the future partnership between the United Kingdom, including Gibraltar, and the EU. Again to quote Sir Peter Caruana, "*The UK has no guarantees itself, has no assurances, about what deal it can get at the end of the transitional period... It's really unrealistic for Gibraltar to think that we could be in a better position than the UK and have some negotiated certainty about that for ourselves, when the UK doesn't have it for itself.*" That is correct. And that is the position.

Commenting on the GSD's statement, the Chief Minister Fabian Picardo QC MP said:

"The GSD's criticisms of the negotiations that I have led on behalf of the Government of Gibraltar in the context of the Withdrawal Agreement are utterly pathetic. For the last year the Government has negotiated a difficult deal for Gibraltar that does not require us to make any concessions on sovereignty, jurisdiction or control or that undermines our Constitution. It has been achieved, whether the GSD or Mr Azopardi like it or not. In particular, we have succeeded in ensuring that Gibraltar will be part of the Withdrawal Agreement and its transitional period, if there is one. We have done so by negotiating reciprocal cooperation, not by granting concessions. Mr Azopardi considers this to be an insignificant achievement. Not only have we not given any concessions but Gibraltar's inclusion in the transition period is no mean feat. As has been stated by Sir Peter Caruana "*no-one in Gibraltar should be under any illusion about how serious*" crashing out of the EU on 29 March 2019 would have been for Gibraltar, what he described as "*the calamity of crashing out of Europe, out of the EU in isolation from Britain*". This is what we have avoided and I am proud of this achievement.

Finally, on what some are calling a 'second referendum' or 'a peoples' vote', I have to caution the community that holding such a referendum might require an extension of the Article 50 notification period. Such an extension would require unanimity of the Member States, with all that implies for Gibraltar. Hence why I would favour the unilateral withdrawal of the Article 50 notification if such a referendum were to be held. I have spoken to Members of Parliament in the UK of all the political parties sharing my concerns in this respect. Moreover, it is not clear yet what question such a new referendum would pose, if it were to become an option. For now, the only live option is this Withdrawal Agreement. We have considered all potential eventualities and have a plan to protect Gibraltar in respect of each option which might materialise.

The truth is that nobody knows what the immediate future holds. Today, the European Court has confirmed that the United Kingdom can unilaterally revoke its Article 50 notification. This very afternoon we have heard that the Prime Minister has delayed the vote on the Withdrawal Agreement in the House of Commons, with the uncertainty that will create. My job has been to protect Gibraltar, our people and our economy. This is what I have done, and this is what I will continue to do in light of the changing landscape. To protect the well-being of our nation with safe and realistic decisions in true leadership and in full understanding of the legal texts".