

## **Technical Notice:**

# **GUIDANCE TO BUSINESSES AND CERTAIN PUBLIC SERVICES**

## **Preparing for the possibility of a Non-Negotiated Outcome (NNO)**

31 October 2022

### **A. The possibility of a Non-Negotiated Outcome (NNO)**

Gibraltar is no longer part of the EU. On 31 December 2020, the Transition Period under the EU-UK Withdrawal Agreement came to an end. The end of the Transition Period brought an end to what used to be the position prior to 1 January 2021 whereby Gibraltar, its citizens and its business, enjoyed EU rights and benefits that accrued from the terms of the UK and Gibraltar's membership of the EU.

Businesses will also be aware that, on 31 December 2020, the UK, Spain and Gibraltar agreed a framework for a UK-EU legal instrument which should govern Gibraltar's future relationship with the EU. This framework sets out a political understanding. It is not a legal agreement.

On 11 October 2021, the UK and Gibraltar started formal negotiations with the EU in order to convert this understanding into a legally binding international treaty. Negotiations commenced after the EU Commission received, from the European Council, on 5 October 2021, its mandate authorising the start of negotiations. At the time, the Government made clear that the mandate did not follow the framework agreed with Spain in certain important respects. The United Kingdom and Gibraltar both underlined that it may not be possible to arrive at a treaty on the basis of the mandate.

Since then there have been nine formal rounds of negotiations with further rounds expected to take place in the final quarter of 2022. Negotiations have taken place in a constructive and cooperative atmosphere and, whilst progress has been made, discussions need to continue in order for the parties to attempt to resolve complex issues which remain outstanding.

Until this treaty is negotiated and enters into force, and subject to reduced bridging arrangements which govern Gibraltar's relationship with Spain in specific areas, Gibraltar is to be treated as a third-country with respect to the EU for all intents and purposes.

The Government remains committed to the framework agreement as the way forward and will work towards a deal being secured because that would be in the interests of all concerned. However, since neither the UK nor Gibraltar would be able to accept an agreement which would sacrifice fundamentals or put Gibraltar's future prosperity in jeopardy, we must be ready to walk away.

While walking away from the negotiation in order to protect Gibraltar's interests remains a possibility, the Government has a duty to prepare Gibraltar for the chance of a **"Non-Negotiated Outcome"** (or a **"NNO"**).

This does not mean that that an agreement will not happen, it simply means that the Government has a duty to prepare for the alternative.

**We are getting ready for an agreement and for no agreement at the same time.**

## **B. Purpose**

The purpose of this Notice is to remind everyone, and the business community in particular, of the steps which the Government has taken to prepare for a NNO and the steps which businesses would be advised to take in order to prepare for this potential eventuality.

This Notice, which focuses specifically on issues affecting the business community, will refer the public to previous Technical Notices issued in relation to a broad range of areas which have been, or will be, affected by the UK and Gibraltar's withdrawal from the EU. A separate Notice was published earlier this year focusing on matters that are of more relevance to citizens.

It is of fundamental importance for the business community to, on the basis of the guidance provided, prepare itself for the possibility of a NNO. This will mitigate the effect of no treaty to the greatest extent possible. It will clearly be impossible to mitigate those effects completely because in many areas the new situation will simply reflect the new position outside of the EU.

As explained below, in many areas, and given that an agreement with the EU is not yet in place, Gibraltar is already operating in the legal framework which would apply in a NNO and adaptations have already been made.

## **C. Subject Areas**

### **1. Movement of persons**

The Government has maintained, throughout the Brexit process which commenced over 6 years ago, that the impact of EU exit would be most felt at the land border between Gibraltar and Spain. It is for this reason that chief amongst the Government's priorities in the negotiations is to agree an arrangement which would enhance fluidity for all persons crossing the land border and to do so to the maximum extent possible.

In a NNO, this arrangement would not be secured. Instead, in a NNO, the parties would revert to the default position (i) under EU law with respect to controls on persons entering Spain from Gibraltar and persons exiting Spain into Gibraltar; and (ii) under Gibraltar law with respect to controls on persons entering Gibraltar from Spain and exiting Gibraltar into Spain.

With respect to the above, in a [Technical Notice published on 18 September 2020](#), the Government advised the public on the legal and practical effect of a NNO on the movement of persons across the border. For further detail, the public should refer to

that Technical Notice. This information was further supplemented by the [Government's Guidance to Citizens](#) published on 11 February 2022.

For the purposes of this Notice, the Government would reiterate that because of the systematic and thorough nature of the controls which would need to be carried out on all persons crossing the border, long border delays, extending to several hours, are to be expected. Delays will be worse during peak crossing times.

These controls include the systematic electronic scanning of passports and stamping of passports, checks with respect to the number of days being spent in the Schengen Area and enquiries which could lead to deeper interrogations by border guards. This is the position at all the external borders of the Schengen zone.

The Government has in place detailed traffic management plans, and plans to potentially improve border infrastructure in the event of a NNO, however, these plans can only have a mitigating effect on the Gibraltar side of the border.

How the Spanish Government implements its obligations under EU law on the Spanish side of the border, or whether the Spanish Authorities decide to amplify facilities or streamline traffic flows to reduce delays to the maximum extent possible, are matters for the Spanish Authorities. These are issues which are outside of the Gibraltar Government's control.

Delays at the border are not new. These have featured at regular intervals even during our membership of the EU, partly because Gibraltar was never part of the EU Customs Union (for goods) or the Schengen Area (for people). On many of these occasions businesses and citizens have adapted to the new situation.

The delays that are to be expected have the potential to disrupt businesses, particularly those which employ significant numbers from across the border or those whose customers are primarily made up of visitors to Gibraltar.

It is because of this expected disruption that business should do their utmost to try to manage, as far as possible, the difficulties which have been foreseen. For example, it would be prudent for businesses to identify staff members who live across the border

and consult them on the ways which employers can facilitate their day-to-day management of commutes. For instance, planning for staggered shift patterns so that not all staff members are required to cross the border during peak times or the introduction of more flexible working hours are some of the strategies which could be considered.

This said, and whilst the Government stands ready to support the business community in any way that it can, the Government is aware that businesses have different needs and different ways of operating so it is up for individual companies to take the action which they consider to be in their best interests.

With respect to frontier workers providing essential services, such as healthcare services, the public should note that the Government has in place plans to, in an emergency scenario, house a sufficient number of workers to cover key services.

In fact, these plans were already in place and effective prior to 31 December 2020 and they are ready to be redeployed in the event of a NNO.

The Government of Gibraltar is working closely with the United Kingdom Government across a broad range of issues in this regard.

## **2. Movement of goods**

As explained in the [Government's Technical Notice published on 21 September 2020](#), Gibraltar, unlike the UK, never formed part of the EU Customs Union. Gibraltar was therefore already treated as a third country for the purposes of all trade in goods with the EU. This was the position prior to 1 January 2021 and it has been the position since then.

Generally, the only change which has affected the importation of goods into Gibraltar has concerned UK products of animal origin. If coming from the UK via the customs territory of the EU, such products have, since 1 January 2021, had to be cleared at the Algeciras Border Control Post. Upon clearance, consignments make their way to Gibraltar by ferry and these are unloaded with the assistance of new port facilities

installed last year. The service provided by the ferry is now privately funded by those companies that make use of it.

With respect to these matters, Gibraltar is effectively already operating in a NNO. Therefore, the Government does not anticipate any further changes to these procedures in case an agreement with the EU is not reached.

The Government remains available to discuss with individual operators difficulties which they may be encountering importing goods and to provide guidance with respect to tackling new procedures.

### **3. Road haulage and road passenger transport**

In a NNO, and in the absence of any other agreement or the extension to Gibraltar of relevant international conventions, holders of Gibraltar licences issued to road haulage operators, and to bus and coach operators, no longer have a legal entitlement to operate in Spain or the EU.

Businesses are asked to prepare accordingly including by making arrangements for operations conducted on EU territory to be carried out by appropriately licenced operators.

For the time being, it should be noted that the UK and Gibraltar continue to work on the extension to Gibraltar of arrangements under the European Conference of Ministers of Transport (the "ECMT") and the Agreement on the International Occasional Carriage of Passengers by Coach and Bus (the "Interbus Agreement").

In the event that these instruments are extended to Gibraltar, they would apply even in a NNO scenario.

#### **4. Export of waste**

Gibraltar exports most of its waste, including all of its municipal waste, for treatment in authorised facilities in Spain.

This was done under the framework provided by the EU Waste Shipments Regulation prior to 1 January 2021. For new authorisations sought after 31 December 2020, these are being issued by the central authority in Spain under the provisions of the Basel Convention and the relevant OECD Decision both of which apply to Gibraltar.

Gibraltar operators are legally able to export waste to facilities in Spain in accordance with these international procedures, and NNO should not change this. However, as is prudent, the Government of Gibraltar is exploring other options for waste exports.

The above having been said, the public should also note that during the course of 2020 the Government significantly increased Gibraltar's capacity to store waste in Gibraltar in an emergency scenario. This was done through the installation of new facilities at the site of the old incinerator where waste is collected and sorted.

The United Kingdom Government assisted with the purchase of a shredder, baler and wrapper to compact the waste in a way which occupies less space and which prepares it for export.

#### **5. Aviation**

As has been the case since 1 January 2021, in a NNO flights between Gibraltar and the UK and flights between Gibraltar and Morocco will remain unaffected. For further information, refer to the Government's [Technical Notice published on 5 October 2020](#).

#### **6. Financial Services and Online Gaming**

As from 1 January 2021, EU Single Market rules on the freedom to provide services in EU Member States stopped applying to operators and institutions based in Gibraltar.

The above having been said, and both with respect to financial services and online gaming, the two sectors which make the largest contributions to Gibraltar's services economy, it needs to be underlined that Gibraltar is the only jurisdiction which has secured specific, guaranteed access to the UK market post-EU exit.

This exclusive access to the UK market which is, by far, the most valuable market for both financial services and online gaming services offered from Gibraltar, has allowed Gibraltar to retain this business and remain a global hub of excellence in these sectors.

It is worth reiterating that these arrangements are impervious to a NNO.

Separately, with respect to EU facing businesses, the reality is that Gibraltar has been operating in a NNO since 1 January 2021 and contingency arrangements made by operators affected to address any issues that may arise are already in place.

#### **7. Exchange of data between Gibraltar and the EU**

With respect to matters concerning the transfer of data as between Gibraltar and the EU, businesses should refer to the Government's [Technical Notice published on 30 November 2020](#).

The guidance provided therein, which is applicable in the event of no agreement, is relevant to the position that has applied since 1 January 2021.

A NNO is of no impact to arrangements which businesses may have already put in place to ensure that they can continue to receive data from the EU.

#### **Further information**

This Notice is meant for guidance only.

If you have any further queries please send an email to:

[brexit@gibraltar.gov.gi](mailto:brexit@gibraltar.gov.gi)