



# Select Committee on the European Union

## Uncorrected oral evidence: Progress of negotiations on the future relationship

Tuesday 24 November 2020

2.30 pm

Watch the meeting

Members present: The Earl of Kinnoull (The Chair); Baroness Brown of Cambridge; Lord Cavendish of Furness; Baroness Couttie; Lord Faulkner of Worcester; Lord Kerr of Kinlochard; Lord Lamont of Lerwick; Baroness Neville-Rolfe; Lord Oates; Baroness Primarolo; Lord Ricketts; Lord Sharkey; Lord Teverson; Baroness Verma; Lord Wood of Anfield.

Evidence Session No. 1

Virtual Proceeding

Questions 1 - 14

### Witness

I: Hon Fabian Picardo QC MP, Chief Minister of Gibraltar.

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## Examination of witness

Chief Minister Fabian Picardo.

Q1 **The Chair:** I declare open this public evidence session with the Chief Minister of Gibraltar, the honourable Fabian Picardo QC MP. Chief Minister, welcome back once again to the virtual House of Lords and to the European Union Committee. As this is a public session, a transcript will be taken and sent to you, and we would be grateful in due course for any corrections you might want to make to that record.

We have only one hour, because you have an important meeting with the Prime Minister in your diary, so we will move on quickly. For the benefit of those watching, I shall re-explain the process when we run virtually. Each questioner will have up to four minutes to ask their questions of you. After that period, I will call the next questioner. I ask that both questions and answers are brief. After the main questions have been asked, there should be a bit of time left over. There will be some supplementary questions if not all Members, in the short time, have been able to ask questions in a programmed way. I shall ask you whether you are available for some of those supplementary questions towards the end of our session.

That said, perhaps I could begin by asking you to update us on Gibraltar's response to Covid-19, and in particular how you have been co-operating with the UK, Spain and the EU over this terrible disease.

**Chief Minister Fabian Picardo:** Good afternoon, my Lords. It is a pleasure to be with you once again. I very much look forward to the opportunity to come back to London in more normal times and appear before you in person on the red chairs of your committee rooms.

As you know, it has been a difficult time for Gibraltar, as it has been for the rest of the United Kingdom, Europe and the world. I am sorry to have to tell you that in just two weeks Gibraltar suffered five deaths from Covid-19. We had suffered none until then. The second wave has been particularly cruel in Gibraltar. Three of those deaths occurred in one of our institutions in the elderly residential services area, where we look after our most precious elderly members of the community, and two in the general population, one affecting a 69 year-old and the other a man in his late 40s. Unfortunately, we have not been able to stop this disease taking the lives of Gibraltarians. We had done so well, yet in the past two weeks we have, unfortunately, lost five of our number.

In the process of dealing with the disease, we have been working remarkably closely with the United Kingdom and the Spanish public health authorities in a way that perhaps, in respect of the latter, we might not have imagined possible in the past. I am today wearing the tie of the Gibraltar Regiment to honour the work it helped us to do at the time of the first wave when we set up our Nightingale hospital. A MACA request to the United Kingdom Ministry of Defence liberated members of the Gibraltar Regiment to assist us in setting up the Nightingale hospital

in Gibraltar. That hospital has not reopened, but it will be operable again at 48 hours' notice should we need it during the second wave.

The happy news is that the work we have been doing with the United Kingdom extends not just to helping us deal with how to manage the pandemic but how to come out of it. Already 35,000 doses of vaccine have been earmarked for Gibraltar in a first tranche of vaccine that will become available to our people in, I hope, the next eight to 12 weeks. The vaccine gives us the opportunity to see light at the end of a dark and difficult tunnel to navigate.

The work that we have been doing with the United Kingdom on Covid-19 has demonstrated, as much as in the context of Brexit, which I am sure we will come on to, how closely the Administration of Gibraltar and Her Majesty's Government of the United Kingdom are able to work together. I am very proud of how strong that relationship is and of how we have been able to deploy it in dealing with the pandemic.

Moving on quickly to deal with the financial aspects, Covid-19 has devastated treasuries around the world. The Gibraltar Treasury is strong but small. The United Kingdom has stepped up and provided a £500 million sovereign guarantee to Gibraltar. It is not a loan, but a mechanism for guaranteeing our borrowing. We will be able to borrow at the UK's sovereign rate of interest, rather than the commercial rate of interest, which is how we would usually borrow, thereby ameliorating the cost to the Government of Gibraltar in respect of any borrowing we need to do to deal with Covid-19.

We have worked closely with the public health authorities of Andalusia and Spain in respect of the flow of people between us and the area around us. Even today, while Spain requires those who arrive in Spain by air to have PCR tests to be able to access Spain, and while Spain's municipalities and regions are shut off from one another, Gibraltar is not shut off from the rest of Spain. People are able to enter Spain from Gibraltar, whether they live in the neighbouring town of La Línea or beyond it, if they need to travel in and out of Gibraltar for work. That is a remarkably different approach from the one we have often suffered before. I am sorry I have taken so long to answer the question.

**The Chair:** It is a very full answer and I am very grateful for it.

Q2 **Lord Oates:** Chief Minister, thank you for spending time with us this afternoon. Our condolences to the families of all those in Gibraltar who lost their lives.

Perhaps I could turn to the discussions on Gibraltar's future relationship with the EU. Could you tell the Committee the current status of the discussions with the UK Government, Spain and the EU as regards that relationship?

**Chief Minister Fabian Picardo:** I should start by telling you that off camera—so that we are able to keep to the required social distance indoors—is the Deputy Chief Minister of Gibraltar, Dr Joseph Garcia, who,

with me, was part of the negotiating team for Gibraltar dealing with the Brexit negotiations, together with the Attorney-General and the Financial Secretary.

In the past five months, we have been involved in very detailed ongoing negotiations between the Gibraltar Administration and the Administration of Spain, together with the UK Government, seeking to finalise the concept of agreement between ourselves, Spain and the UK as to how Gibraltar should be included in the future relationship with the European Union. If I were pressed to answer more shortly, the question would be answered in one word: ongoing.

**Lord Oates:** When you spoke to us back in June, you said that the discussions were moving in the direction of what you hoped would be agreement. Can you say whether we are further forward? Is the line of travel continuing in the correct direction?

**Chief Minister Fabian Picardo:** I would say that we are moving in the right direction even now, but time is short. I would not like to say to you that at the end of the process we got close but no cigar. I would like to say that the brilliant legal minds working on this in London, Brussels and Madrid have found a mechanism properly to encapsulate the legal formalities of the Gibraltar mobility solution that we are seeking, and I am optimistic enough to think that we will make it.

Q3 **Lord Kerr of Kinlochard:** What form would that legal mechanism take? Would it be a protocol to an agreement between the UK and the EU, as last time with the protocol to the withdrawal agreement?

**Chief Minister Fabian Picardo:** As you know better than most, my Lord, the mechanism for accession for Gibraltar was by way of protocol to the United Kingdom's accession document, or Act of accession, in 1972. Therefore, withdrawal had to be in keeping with accession. When it comes to the future relationship, we are starting with almost a blank canvas and the political positioning that we saw in November 2018. My view is that the legal form that agreement is very likely to take—but until the last moment not all of it will be clear—is a free-standing EU-UK treaty in relation to Gibraltar.

**Lord Kerr of Kinlochard:** You mentioned mobility. Back in October, the Spanish Foreign Minister, Arancha González Laya, was talking about making mobility smoother, simpler and safer for ordinary people. Is your arrangement limited to mobility—in other words, Schengen territory—or does it get into customs union territory?

**Chief Minister Fabian Picardo:** The arrangement we are looking at would seek to resolve all aspects of the mobility conundrum, if I could put it that way. That relates not just to matters of immigration, which are dealt with purely under Schengen, but to the ability of persons to move when they are carrying goods with them, so it is also a goods arrangement and potentially something that would permit the wholesale and commercial movement of goods, principally into Gibraltar, without

customs friction being suffered. Therefore, we would expect to stray, if not immediately certainly in the future, into some arrangement that provided for a more fluid movement of goods, even if it were not an unrestricted movement of goods.

**Lord Kerr of Kinlochard:** Would easier mobility between Gibraltar and Spain carry as a corollary the need for documentation on movement between the United Kingdom and Gibraltar?

**Chief Minister Fabian Picardo:** Not in any way that is not already the case. As you may know, Gibraltar is not in a common travel area with the United Kingdom at the moment for immigration purposes. On arrival in the United Kingdom, we are required to show our passports to be able to enter the UK today; so are those arriving in Gibraltar today. Nor are we in a customs union with the United Kingdom. Although goods move freely between us, they move with customs checks, so we will not see a new set of restrictions imposed between us because we never enjoyed those freedoms. Interestingly, you will note that Gibraltar is looking to access the areas of the *acquis* of which we were not members during our period of membership of the European Union.

Q4 **Baroness Couttie:** Much of my question has been covered by your previous answer about the arrangements between Gibraltar and Spain and Gibraltar and the UK. For absolute clarity, does that mean that Gibraltar is seeking formally to participate in Schengen and the EU customs union at the end of the transition period, or are you trying to put in place a different arrangement that has similar effects?

**Chief Minister Fabian Picardo:** If I could put it this way, we are looking at an arrangement that provides the maximal unrestricted level of fluidity of persons that may be possible, which today is best characterised in the context of the existing arrangement in the European Union as Schengen mobility between the member states, but, properly analysed once the agreements are done, may be an arrangement of common travel area between Gibraltar and the Schengen area. It may be that we find a different legal formulation in the coming weeks that is more acceptable to the European Commission, the United Kingdom, Gibraltar and Spain. I would say that the final legal form is not yet set in stone.

**Baroness Couttie:** Ever since I can remember, there have been delays at the border between Spain and Gibraltar. Does this bring a bit of light to residents on either side of the border and it may become easier to travel between the two areas?

**Chief Minister Fabian Picardo:** I should hope so; that is our objective. The restrictions have always been in relation to immigration or goods-checking on access to or egress from Spain, never on access to or egress from Gibraltar unless there are intelligence-led reasons. Usually, delays coming into Gibraltar arise from the fact that our apron cuts across the main road into Gibraltar. When we finally have a tunnel under our runway, we may be able to get rid of those delays too, but I have to tell you that that is proving even harder to negotiate than Brexit.

**Baroness Couttie:** In your discussions, has the EU raised any of the concerns it raised when we were talking about Northern Ireland with the EU, about any form of back-door mechanism for products from the UK to enter the EU, or does the fact that Gibraltar would be outside the customs area of the UK deal with that issue?

**Chief Minister Fabian Picardo:** Instead of having to extricate a territory that is within the club, we are trying to create space for a territory that was never in the club in a way that does not create distortions to the market. The important thing to remember is the geography of Gibraltar. Gibraltar has only one crossing point into Spain; we have only a small port, which is not able to take the sorts of volumes that might create distortions to the single market. We are a much more controllable geography than the more expansive and productive geography of Northern Ireland, which has an established relationship with the south and the rest of the European Union because it has been part of the common customs union for the past 48 years. The Gibraltar issue is much more circumspect and manageable in that respect.

Q5 **Lord Teverson:** I remember from our previous session that your discussions indirectly with Spain or the United Kingdom Government were relatively successful. On the issue of Schengen, if the European Union offered you full membership of Schengen, would you grab it with both hands? Would you say, "Yes, please"?

**Chief Minister Fabian Picardo:** The principle of forming part of a free movement area with the rest of the members of the Schengen acquis is one that Gibraltar finds attractive. We want to ensure that we have the ability to have unrestricted and fluid movement at the border. The legal mechanism to do that—whether it is full membership of Schengen, associate membership of Schengen, extension of Schengen, or simply treating the entry points to Gibraltar, at the port and the airport, as Schengen entry points—is now the subject of our final considerations, in order to find a legal framework that is agreeable to all the parties and does not cross any of the sovereignty, jurisdiction and control red lines that I believe each of us is bringing to the table in good faith.

**Lord Teverson:** But if it was offered to you would you take it?

**Chief Minister Fabian Picardo:** The analysis is not straightforwardly black and white. I understand the attraction of putting the question, but you will have to understand why I am unable to give an answer. The Schengen acquis is more than a doorstep of obligations and responsibilities, and a small Administration such as Gibraltar would not be entirely able to assimilate it in a short period. It relates to information on intelligence, et cetera, and not all of that is relevant to what we do as an Administration.

**Lord Teverson:** I understand that.

**Chief Minister Fabian Picardo:** I appreciate the reasons for the black and white question.

**Lord Teverson:** There is all the Schengen Information System side of it as well.

Are you taking a role model like Monaco, San Marino or Andorra? Are they role models that you can use with the EU?

**Chief Minister Fabian Picardo:** All the small territories in the European area—none of them a member of the European Union—are very similar, yet completely different when more closely analysed. For example, Andorra has no airport or port, and entry to Andorra is possible only through the Schengen area. There is, therefore, less need for control over immigration via Andorra, because people are already going there having been Schengen-cleared. The same is true of the Vatican and Liechtenstein. Different models require different actualisation.

Gibraltar is very different because we have a port and an airport. Monaco has a heliport, not an airport, and it had a pre-existing common travel area arrangement with France, which we do not have with Spain. Monaco was imported into Schengen with the travel area arrangements it had with France. We and Spain have seen an opportunity to resolve our mobility issues, which pre-existed until now, with the possibility that Brexit, unfortunately, visits on us, so I think the circumstances are quite different.

**Lord Teverson:** If customs union was possible, why not go the whole deal with the single market as well?

**Chief Minister Fabian Picardo:** I do not think customs union is possible, simply because Schengen would be a bureaucratic nightmare for a small Administration like Gibraltar if we were to take it whole. The common customs union, and its 50-plus years of existence, would be almost impossible for us to assimilate. The Gibraltar Parliament would spend most of the next decade simply trying to bring into our corpus juris all the rules of the customs union; and for no reason, because there is no production in Gibraltar and a lot of the customs union rules are about goods on the market and how their production must be done in a way that provides for a level playing field, et cetera. It is more likely that we will end up in a customs union with the European Union than in the customs union; otherwise, we would be creating a monolith that would be unnecessary for the purposes of protecting the Union's single market in goods.

Q6 **Lord Wood of Anfield:** Can I ask about the dreaded no-deal possibility that we are all thinking about and that I am sure very few people want to come to pass? From your point of view, could you say a little about the preparations you are making for that contingency?

**Chief Minister Fabian Picardo:** You accurately describe the scenario by referring to it as "dreaded". I do not think anybody will gain from no deal. We will, therefore, stretch every sinew to ensure that we use every available second to try to reach an agreement with the European Union in respect of what our future relationship should be. None the less, the only

way we are able to do that, to show that we are not negotiating from a position of greater disadvantage than necessary, is by ensuring that we have covered every base in preparing for the contingency of that dreaded scenario.

The Deputy Chief Minister and I have divided our responsibilities in that respect. He has taken responsibility for planning on the contingencies of no deal, together with a team from the United Kingdom. They meet regularly. We are as ready as it is possible to be in this scenario to meet the challenges of no deal, but it is important that people in Gibraltar should understand, as I am sure people in the United Kingdom must also, that planning for the contingencies of no deal does not mean that it is possible to put ourselves in a position where, on the morning of 1 January, in the absence of a deal, we can provide for life as we knew it the day before in the European Union.

Life will be very different. The contingencies we are providing for will ensure that the essentials can continue to flow and we can continue to do business. In the absence of a deal, we will lose a lot of the mobility and other advantages that we have today as members de facto, even in transition, of the European Union. It is important that people should not imagine that life being different after 1 January means that we have failed, if there is no deal, to plan properly for no deal.

**Lord Wood of Anfield:** We clearly understand that distinction. Can you remind us, or give us a sense, of which implications of no deal for Gibraltar most concern you at this point? What are the one or two most damaging things that you think will arise from no deal at the end of the year?

**Chief Minister Fabian Picardo:** It is important that I do not set out in a public forum the concerns that we have most been planning for, because there are national security implications for Gibraltar in ensuring that we do not provide a guidebook for those who would damage our ability to continue trading. I do not mean official state actors, but others who might wish to use 1 January for the purposes of defeating the best interests of the people of Gibraltar.

Broadly, the mobility issue affecting persons and the availability of goods on the market in Gibraltar is what has most vexed us. To be fair, I think that is also what is most vexing our neighbours in the region around Gibraltar. I do not believe that the Administrations in Gibraltar and Spain will be seeking to do their worst to damage each other in the event that there is no deal. If we reach the stage where we have no deal on 31 December, we will do so more in sadness than in anger, and because we have run out of time. We will want to continue talking about how we resolve issues, and to ensure that administratively we do everything possible to continue to provide as much fluidity as our people need at both commercial and human level, without getting in the way of their everyday lives.

Q7 **Baroness Primarolo:** Building on the questions Lord Wood asked you,



Chief Minister, could you briefly characterise and perhaps expand slightly what you have already said about your relations with Spain in the context of the negotiations?

**Chief Minister Fabian Picardo:** The past two and a half years of socialist government in Spain, and the period before that when Partido Popular was in power and the Foreign Minister was Señor Dastis, now Spain's ambassador to Rome, have been characterised by a different attitude to the negotiations from what we might have been experiencing during the period of the former Spanish Prime Minister, Señor Mariano Rajoy.

We have found that there is an attempt to deal with the issues of concern to each of the Administrations while seeking not to put the issue of sovereignty, at least simpliciter, on the front burner. That does not mean that we are not very alive to the ingredients of sovereignty forming part of any of the matters that are being pressed in the context of the negotiations, but I believe that we have been able to build what I would term only as negotiating trust: that is to say, trust between negotiators in the context of how we take forward discussions.

That is a very positive and salutary approach and not what might have been expected in the past, given the way matters were dealt with previously. If I may say so, when the current Spanish Foreign Minister, Ms González Laya, has been pushed on the subject of sovereignty, she has been very clear in saying that Spain is not pursuing sovereignty now but is not renouncing the Spanish claim to sovereignty.

That is an honest position to put. I do not think it is possible for us to have expected otherwise, and it is therefore possible to find a successful route through the issues to a negotiated outcome that can produce the practical and logistical result that the people of Gibraltar and the people of the neighbouring region of Spain need us to produce, while not prejudicing each other's position in respect of sovereignty, although I hope that one day we will be able to persuade our Spanish colleagues to drop that claim.

**Baroness Primarolo:** That is very clear, Chief Minister. You are confident that in the context of these negotiations the question of sovereignty will not be raised by Spain because, as you said, the issue has been parked; Spain is not renouncing sovereignty, nor is the United Kingdom.

Could you explain to us whether, if there is no deal at the end of the process, which we all agree we prefer should not happen, you are still confident that the question of sovereignty, and the disputes that have arisen in the past, will remain on the back burner, as you put it, and that Gibraltar and Spain will be able to come to some arrangement about the everyday life matters that are needed to protect the market for both Spain and Gibraltar?

**Chief Minister Fabian Picardo:** I am not saying that the Spanish have parked the issue of sovereignty; I am saying that they said they have parked the issue. I do not think you will find a Gibraltarian who would not pinch themselves and look very cynically at every move in the context of ensuring that we protect ourselves. I take at face value the statements that have been made, and there is negotiating trust.

As we go forward, it is important that, although we seek to ensure that we provide agreement, if we are unable to, we will reach that situation more in sorrow than in anger, as I suggested a moment ago. We will want to continue to co-operate, as far as possible, to try to push the clock forward and perhaps continue to negotiate even after 31 December, or to seek in parallel to provide as much amelioration as possible for the people of Gibraltar and Spain in the context of no deal. On our side of the frontier, we are not going to use this moment to wreak havoc on frontier flow, or in any way prevent families getting together and prevent people accessing Gibraltar. We would not wish to characterise any of what we do thereafter in that way, but we will be alive to the principle of reciprocity in the rules relating to immigration.

**Baroness Primarolo:** Minister, you said you would negotiate after the 31st, regardless of what happens. Is that correct? Those negotiations will continue with Spain.

**Chief Minister Fabian Picardo:** I am saying that we will stretch every sinew to reach an agreement in time for the end of the transition period. Were Lord Wood's dreaded no deal to come, there is no reason why a second after midnight we might not continue to negotiate to try to see whether we could finalise the arrangements thereafter. I do not think the people of Gibraltar would expect their Government to give up the ghost simply because the second hand on a clock had moved in a particular clockwise direction.

**The Chair:** That was a valuable question and a comforting answer.

Q8 **Lord Lamont of Lerwick:** Chief Minister, could you give us an update on the protocol relating to Gibraltar and the MoU with Spain, both of which cover a wide range of issues? Perhaps you would touch on the most important ones, but could you tell us what has been the development in relation to these issues?

**Chief Minister Fabian Picardo:** As you know, the protocol on Gibraltar establishes a number of MoUs and provides for a specialised committee that will look into the performance of the relevant parties—the United Kingdom, the European Union, Spain and Gibraltar—in all the obligations that arise under the Gibraltar protocol. The specialised committee has met twice, in May and November 2020, and in respect of all sides there have been only satisfactory statements about the performance by each side of their obligations.

To give an example, police and customs co-operation has long been a vexed issue in our relationship with our neighbour. There have been a

number of meetings of the working group on police and customs co-operation, and on the protection of the environment under the environment MoU, one of them chaired by the head of the Gibraltar Ministry of the Environment, a Gibraltarian lady, Dr Liesl Torres.

I think the relationship at administrative level with Spain has developed remarkably well. The MoU on tobacco sets out a unilateral commitment by the Government of Gibraltar which I gave in a letter to the former Prime Minister, the right honourable Theresa May. In that, I said that Gibraltar had determined that we would set the price of tobacco at a differential no less than 32% of the price in Spain until 31 December. We were able to report to the specialised committee that that differential had been met in June this year, ahead of the schedule I set out in my letter to the former Prime Minister.

I think all that demonstrates Gibraltar acting in keeping with its obligations. Also in the context of tobacco, Gibraltar has acquired responsibilities under the Seoul protocol on track and trace. We are seeking to ensure that we are able to bring those into effect as soon as possible. We acquired the obligation in the time that we provided for, but technically it is not possible to ensure that track and trace will be in place as quickly as we would like.

Finally, on the issue of citizens' rights, both the Kingdom of Spain and the Administration of Gibraltar have exchanged the lists of those who enjoy rights as stock under the withdrawal agreement. We have provided for the digital registration of each of them in time for 31 December this year. There are approximately 15,000 cross-frontier workers who cross from Spain to Gibraltar and we have provided the full list of them to the EU and our Spanish colleagues. There are three who cross from Gibraltar to Spain and we have obtained a list of those from the Spanish.

**Lord Lamont of Lerwick:** You mentioned the date 31 December. The protocol commitments cease to apply at the end of the transition period, apart from Article 1 dealing with citizens' rights. What will be the status of commitments that are negotiated after 31 December?

**Chief Minister Fabian Picardo:** I sincerely hope that we will be able to have a new relationship with the European Union that deals with many of the areas provided for in the MoUs, but under a different mechanism that is more enduring and provides for the development of the relationship in a positive and maturing way.

Q9 **Lord Faulkner of Worcester:** Chief Minister, it is good to see you again. The last time you came to see us your upbeat optimism cheered us all up, and you are doing the same again today.

In relation to the protocol to which Lord Lamont referred, have there been further developments in the status and operation of Gibraltar Airport?

**Chief Minister Fabian Picardo:** In the historical sweep of developments relating to Gibraltar Airport, we might go back to 1988 to understand how

Gibraltar came to be excluded from what was then called air liberalisation, as Spain joined the European Union in 1986, but I know Lord Kinnoull will not give me the hour I need to go through that vexed history.

If I can come bang up to date, in 2006 we reached a trilateral agreement with Spain—the Cordoba agreement—under which there was a provision for the airport whereby passengers arriving in Gibraltar from Schengen destinations would go through a complex set of corridors that might have given them access to Spain. Today, when we talk about Gibraltar accessing the Schengen area, and potentially having a customs arrangement with the European Union, it would mean that Gibraltar Airport would come within the geographic space of what is Schengen and the common customs area of the European Union. Therefore, all arrivals of aircraft at Gibraltar Airport would be within the Schengen and customs union space, and the arrangements we have reached generally would cover Gibraltar Airport without the need for specific arrangements in respect of Gibraltar Airport. That is probably the best way of showing what the model we are discussing now does to invert the difficulties of the past.

**Lord Faulkner of Worcester:** Can I ask you about last week’s meeting of the UK-EU specialised committee on Gibraltar, and the work of the co-ordination committees provided for in the protocol? Will they continue to meet after the end of the transition period?

**Chief Minister Fabian Picardo:** My understanding is that the specialised committee will endure. It is a committee of the withdrawal agreement designed specifically for those who will enjoy enduring rights under the agreement. It will need to continue to meet after the end of the transitional period in the event that difficulties are experienced by those exercising those rights that might inevitably end up thereafter, if there are such issues, going through the dispute resolution mechanisms provided for in the treaty. The representative of the people of Gibraltar in the specialised committee is the Attorney-General of Gibraltar.

**The Chair:** There are three questions remaining, which means we would finish at about 25 past, in normal questioning time. There are a couple of questions we would like to ask after that, so if you were available for an additional five minutes, it would greatly assist us. Would that be all right?

**Chief Minister Fabian Picardo:** It would be my pleasure. My next commitment is at 5 pm, so I have a cushion available.

**The Chair:** That is most generous of you.

Q10 **Lord Sharkey:** When you last came to see us in June, Chief Minister, I asked you for an update on developments following the March 2018 agreement with the EU and the UK. I was particularly interested in market access for financial services and online gaming companies. Could I ask you for a further update on those areas? In particular, I would like to know whether you are satisfied with the Gibraltar provisions in Clauses

22 and 23 of the new Financial Services Bill.

Perhaps I could also ask for a brief update on tuition fees. Have you reached a satisfactory agreement with Scotland, Wales and Northern Ireland?

**Chief Minister Fabian Picardo:** Last week, the Minister for Financial Services in my Government, the Hon Albert Isola, gave evidence before a Committee of the other place, with the green benches, that was analysing the effect of the Financial Services Bill to which you referred. We are very satisfied with the fact that the commitments entered into in 2018 have now turned into the legal provisions that will provide access for Gibraltar-established firms and companies to the UK market. We are fine-tuning with the United Kingdom Government, in particular the Treasury, the criteria for access. That is an ongoing discussion that is being resolved favourably, as I understand it.

I am very pleased that those commitments have turned into channels for access to the United Kingdom market by companies and firms established in Gibraltar. As ever, there were naysayers in Gibraltar who said that we were being promised the earth and would be delivered nothing but sand, but the British Government have been true to their word. The access has been delivered and will soon form part of the statutory framework providing for access to the United Kingdom.

In the context of fees for students from Gibraltar in the United Kingdom, as you rightly point out, we were pursuing an Administration-by-Administration solution, having resolved the issue with England, Wales and Northern Ireland. I am very pleased to say that on 20 November the Minister for Overseas Territories, Baroness Sugg, was able to write to me and the other leaders of the overseas territories confirming a United Kingdom-wide solution in respect of the payment of fees by British citizens resident in the overseas territories. They will pay fees in the United Kingdom as if they were British citizens resident in the United Kingdom.

I did not expect the solution to be different, given that all those British citizens now have the right to establish themselves and reside in the United Kingdom, but I am very pleased that it has now been provided for explicitly, and confirmed by Baroness Sugg.

**Lord Sharkey:** I am glad to hear all that.

Q11 **Lord Kerr of Kinlochard:** Chief Minister, are you now happy with the way in which the UK Government are handling the issue of including Gibraltar in third-country agreements? I speak as a member of the EU International Agreements Sub-Committee chaired by Lord Goldsmith. In our recent report on the agreement with Japan, we argued that, if overseas territories wished to be included in such agreements, it should be so arranged. Are you happy with the way it is being handled?

**Chief Minister Fabian Picardo:** As you know, we had a commitment from the United Kingdom that in continuity FTAs we would be included

without more, and that we would be given a choice of being included in new FTAs. Co-operation between my Government and the Department for International Trade is excellent, and the Foreign Secretary has ensured that the work of the Department for International Trade does not lose sight of the interests of Gibraltar and, I have no doubt, the rest of the overseas territories.

There was for one moment a difficulty with what were not just continuity FTAs but renewed FTAs with slight changes to the mechanisms that had been in place between those countries and the European Union that were being rolled forward in otherwise continuity FTAs. I am very pleased to say that those issues have been entirely resolved, and Gibraltar is very satisfied indeed. I had a lengthy, positive and productive conversation with Minister Truss on the subject. We are now able to say that there is not even the slightest glitch in the process. I am very pleased that that is the case.

**Q12 Lord Ricketts:** This is a wrapping-up question on relations with the UK Government. It has been a thread running through your responses. I remember that in June you talked to us about the concordat between Gibraltar and London on how negotiations would be handled to reflect Gibraltar's interests. How is that standing up to the stress of the much greater tempo in the negotiations now that they are in the end game?

**Chief Minister Fabian Picardo:** The concordat we entered into, signed by the former Deputy Prime Minister and Chancellor of the Duchy of Lancaster, David Lidington, was about the arrangements that led to the withdrawal agreement, and how relationships would be managed between the United Kingdom and Gibraltar, and talked about the future relationship.

I expect that we will need a new concordat when we have entered the new arrangements, to ensure that we each understand what we are responsible for in that new arrangement. These things almost supplement the Gibraltar constitution, which was conceived at a time when the drafters, one of whom is with me in the room, the Deputy Chief Minister, did not envisage that we would leave the European Union. There are clauses in that Magna Carta referring to the European Union that are hard-wired into our constitution.

Before the next iteration of constitutional development, we will need a concordat between us and the United Kingdom so that we have set down on paper how we will ensure that what we understand to be the split of responsibilities between our respective current Administrations will still be the split of responsibilities going forward, if there is not already a new constitution.

The relationship is a very, very close one. I have spoken to the Foreign Secretary probably three times in the past three weeks. It has been a process of working through the negotiations together and ensuring that we work hand in glove. There is not a cigarette paper between Gibraltar and the United Kingdom when it comes to these negotiations and our

understanding of the wishes and interests of the people of Gibraltar in the outcome that results.

**Lord Ricketts:** An area that we discussed last time was security and justice. Are you satisfied that in the emerging arrangements, for example in the area of the arrest warrant and the Schengen Information System, Gibraltar's interests will be protected?

**Chief Minister Fabian Picardo:** That is an issue that goes to the core of how we would see the unrestricted fluidity of persons to operate. To put it this way, if we were to agree that Gibraltar should form part of a common travel area with Schengen—I put it no higher than that at the moment—but we were not to agree the continued application of the European arrest warrant, you might see a cannonball run of fugitives coming to Gibraltar from the rest of the European Union who could then not easily be extradited from our jurisdiction because of the non-application of the European arrest warrant.

Either you have to make provision for a system of application of arrest warrants and extradition that is as fluid as the European arrest warrant, or you need to keep in Gibraltar law, because we apply it already, and in European law, the strand that permits us to have the benefit of the European arrest warrant continuing to apply after 31 December. The same is true with the European investigation order. They stand out as two key aspects of what we think we need to maintain to ensure that Gibraltar does not become a des res for those we might not like to see in this part of the world.

**Lord Ricketts:** None of us wants to see that.

**The Chair:** That is, as it were, ordinary time. We now come to extra time. There are two additional questions.

Q13 **Lord Cavendish of Furness:** Chief Minister, you have handled a lot of technical questions. Mine is more general in character. Have you and your colleagues identified opportunities that could arise for Gibraltar after 31 December? If so, could you give an example?

**Chief Minister Fabian Picardo:** We have spent a lot of time not just at Gibraltar Cabinet level but in our relationship with business in Gibraltar seeking to identify where the opportunities lie in the future relationships that the United Kingdom is carving out with nations around the world. If I could simplify it for you in this way, the advantage that we see—I have never hidden my politics on Brexit, so it is one of the few advantages I might see—is that the United Kingdom is going to open up markets with other common law nations, many of them the old Commonwealth, where our system of laws is understood better than it is in the civil law nations of the European Union.

Given that what we export are exclusively services, we may find that there are better opportunities to sell the services our professionals are best at delivering in the common law nations with which we will have future trade arrangements than there have been to sell in the European

Union. The hurdle is not high. In a survey we did at the time of the referendum result, it appeared that 94% of our financial services trade was with the United Kingdom, and only 6% was with the rest of the European Union. Given that there are a number of other common law jurisdictions in the European Union, and that Ireland, Malta and Cyprus were not included in the count of 94%, you can imagine that trading with other common law nations probably makes a lot of sense for us. That is one of the opportunities we see.

**Lord Cavendish of Furness:** That is very interesting and helpful.

Q14 **Lord Kerr of Kinlochard:** In your answer to Lord Wood, Chief Minister, I think it was implicit that if there was no UK-EU deal there would be no Gibraltar-UK-EU deal. Is that right? I do not think it will happen—like Lord Wood and you, I dread it—but are the UK-EU deal and the deal you are discussing with us, the EU and Spain inextricably linked?

**Chief Minister Fabian Picardo:** I do not think that the two things are inevitably linked in that way. The view I have expressed on a number of occasions in Gibraltar is that, although it is difficult enough already to do these deals, it becomes devilishly difficult to do the Gibraltar deal, if I could call it that, in the absence of a UK-EU deal, but just because it is devilishly difficult does not mean that it is impossible. In the way we conceive the deal now, a lot of what we will do is likely to impute that which is included in the UK-EU main deal, if I can call it that. That deal is now drafted, even if it is not finalised, so you could rely on that drafting, even if it were not a completed treaty, for the purposes of completing a treaty between the UK and the EU on Gibraltar.

These circumstances are already, in my view, suboptimal, so that would be a very suboptimal situation in which to find oneself, but that is not to say that it is impossible to skin the cat and do the deal. I remain optimistic that even in these very difficult circumstances, with the politics of the UK and the EU potentially being even more fraught than they are today, it is still possible to do arrangements in relation to Gibraltar that are enduring and protect the interests of the people of Gibraltar and the region around Gibraltar.

**The Chair:** I was going to ask that very question, so you have been spared another question, Chief Minister, and we have come to the end. That is not an expression of lack of interest on our part; it is an expression of the great clarity with which you have spoken in answer to our questions. We very much wish you well in the coming weeks, and indeed with the Prime Minister in the coming hours. Please keep us in the loop. We would be interested to hear about any developments. In the meantime, thank you very much indeed for coming before us today, and we look forward to seeing you again in the future.

**Chief Minister Fabian Picardo:** Thank you for your continuing interest in Gibraltar.