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Sir William Cash MP  
Chair, European Scrutiny Committee  
House of Commons  
London  
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Our ref:  
Your ref:

13 October 2021

*Dear Bill,*

### **Negotiations with the European Union in respect of Gibraltar**

I am writing further to my appearance before the Committee on 22 September and my letter of 21 July regarding negotiations between the European Union (EU) and UK in respect of Gibraltar.

On 5 October 2021, the EU concluded its internal processes necessary to begin the UK-EU negotiations. Formal negotiations began in Brussels on 11 October with both sides setting out positions on a range of issues. While the EU mandate has not been published, we understand it has been amended from the Commission's draft mandate published on 20 July 2021. Importantly it now references the role of the European Border and Coastguard Agency (Frontex) in delivering the fluid movement of people between Gibraltar and the Schengen area. You will recall that both the UK Government and Government of Gibraltar have been clear that the operation of front line Schengen external border checks on the territory of Gibraltar by Spanish officials would not be acceptable. It is therefore welcome that the role of Frontex is acknowledged.

However, there remain areas where the opening EU position directly conflicts with the Political Framework agreed between the UK and Spain on 31 December 2020. We discussed some of the concerns with the July draft mandate during my recent appearance and below I have set out further detail on our areas of concern.

- The mandate proposes that Spain be responsible for issuing or renewing residence permits for Gibraltar upon request from the UK authorities, and that Spain has the ability to veto such requests. The Political Framework is clear that the Gibraltarian authorities would be responsible for issuing residence permits, taking account of any opposition/ concerns from Spain.

- The mandate proposes that Spain be responsible for issuing all short and long stay visas in respect of Gibraltar. The Political Framework outlines Spain should only issue visas for entry into Schengen through Gibraltar. Gibraltar authorities would retain responsibility for issuing visas for individuals whose sole destination is Gibraltar.
- The mandate proposes that Spain, 'in cooperation with the UK', be responsible for asylum claims made in Gibraltar. The Political Framework is clear that the Government of Gibraltar should make decisions on asylum in line with its domestic law. Gibraltar currently processes asylum claims made on its territory in line with international law.
- The mandate also proposes law enforcement measures going well beyond what is in the Political Framework which would have direct implications for UK sovereignty.
- On mobility of goods and on the level playing field, the mandate is wholly disproportionate to what is needed to deliver the objectives of the Political Framework. The UK is willing to support appropriate arrangements to underpin the legitimate protection of the EU's Single Market but any such provisions must reflect the very small size of Gibraltar economically and geographically, and not result in a disproportionate legal and administrative burden.

Although this is not an exhaustive list these are some of the issues that will need to be addressed in UK-EU negotiations to ensure the pragmatic and careful balance of the Political Framework is maintained. The UK is committed to working constructively to address these issues with the objective of concluding a treaty in line with the Political Framework.

You will recall that Gibraltar was not included within the scope of the UK-EU Trade and Co-operation Agreement at the request of the EU. That position was an internal decision but importantly it did not preclude having a separate agreement in respect of Gibraltar. The Political Framework represented the first stage of the two-part process outlined by the EU whereby it would examine a request from Spain, in agreement with the UK, to initiate the procedure for the negotiation of a separate UK-EU agreement in respect of Gibraltar.

Our position reflects the unique situation of Gibraltar, its geography and proximity to the EU. The UK Government is not seeking separate treaties with the EU in respect of other Overseas Territories.

The Committee was interested in the interim arrangements including the function of the land border in respect to the delay in negotiations. Until a separate treaty enters into force, the UK, Gibraltar and Spain have agreed to ensure a minimum of disruption in cross-border arrangements following the end of the Transition Period. In particular, the land border between Gibraltar and the EU continues to operate as far as possible in the same way as it did previously.

The Committee was also interested in what was included in the EU draft mandate regarding EU laws and the role of the CJEU that the EU had set out. On the specific point about how many EU laws would apply to Gibraltar under the EU proposal, while I

would not attempt to give a precise number, it would be numerous regulations and directives covered by the Single Market, Schengen and Law Enforcement cooperation rulebooks. These would be directly overseen by the EU Institutions and enforced directly by the CJEU. This is clearly unnecessary and totally disproportionate to the size and scale of Gibraltar and the type of agreement we are seeking. With regards to the role of the CJEU generally, I would reiterate that it is not mentioned or foreseen in the Political Framework and is not necessary for the purposes of this agreement. On a related note, with regards to the so called Level Playing Field proposals in the EU mandate, particularly State Aid, Environment and Labour standards, I would point out that Gibraltar is a territory that maintains high standards in these areas and will continue to do so, however having such provisions in a Treaty of this nature would not only be disproportionate but in fact irrelevant. Gibraltar produces and exports very small volumes of goods to the EU. I will certainly keep the Committee's interest in this area in mind and endeavour to provide as much detail as possible to the Committee as matters progress.

The UK Government continues to work side-by-side with the Government of Gibraltar. As you are aware we agreed our joint approach to negotiations at the UK-Gibraltar Joint Ministerial Council held in Gibraltar on 29 March 2021. At the core is a shared aim to secure future prosperity for Gibraltar and the surrounding region. This can be delivered through a treaty which brings confidence, legal certainty and stability to the lives and livelihoods of the people of Gibraltar and neighbouring communities, without prejudice to legal positions on sovereignty and jurisdiction.

While fully committed to seeking a treaty based on the Political Framework, the UK Government and Government of Gibraltar are working closely to ensure robust plans are in place for all eventualities, including No Negotiated Outcome. Although we are confident an agreement can be reached it is only prudent to prepare for all eventualities. The UK will stand fully behind Gibraltar, its people and its economy in any scenario. We remain steadfast in our support for Gibraltar and will not agree to anything that compromises UK sovereignty.

*Yours sincerely*



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