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WORKING PAPER

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NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Letters regarding a proposed framework for a UK-EU legal instrument setting out Gibraltar's future relationship with the EU

Delegations will find enclosed letters addressed to the Secretaries-General of the Commission and the Council by Spain and the UK regarding a proposed framework for a UK-EU legal instrument setting out Gibraltar's future relationship with the EU (c.f. enclosed non-paper).



Representación Permanente de España
ante la Unión Europea

El Embajador Representante Permanente
de España ante la U.E.

REPR. PERM. ESPAÑA U.E. BRUSELAS SALIDA
Fecha 31 DEC. 2020
<i>ENAI-15-</i>

Sra. Ilze Juhansone
Secretaria General
Comisión Europea
Bruselas

Sr. Jeppe Tranholm-Mikkelsen
Secretario General
Consejo de la Unión Europea
Bruselas

Estimados Secretarios Generales:

España ha alcanzado con el Reino Unido un entendimiento acerca de elementos fundamentales de la futura relación entre la Unión Europea y el Reino Unido en lo que respecta a Gibraltar, con el fin de que sirva de base para la elaboración de las directrices de negociación de la UE. Tengo el honor de adjuntar a esta carta la documentación que contiene dicho entendimiento.

De acuerdo con la Declaración del Consejo Europeo y la Comisión de noviembre de 2018, esta comunicación y su contenido no prejuzga el acuerdo previo que deba dar España a las eventuales directrices de negociación y al eventual acuerdo de la Unión Europea y el Reino Unido en lo que respecta a Gibraltar. Nada de lo dispuesto en ese documento implica por parte de España ninguna modificación en su posición sobre Gibraltar o sobre los límites de ese territorio.

Atentamente,

María Lledó

Encargada de Negocios a.i.,

BOULEVARD DU
REGENT, 50-52
B-1000 BRUSELAS
BÉLGICA
TEL.: 02 509 8611

E-MAIL

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UK Mission to the
European Union

UK Ambassador to the EU
Sir Tim Barrow

Ilze Juhansone
Secretary-General
European Commission
Rue de la Loi/Wetstraat 200
1049 Bruxelles/Brussel

Jeppe Tranholm-Mikkelsen
Secretary-General
Council of the European Union
Rue de la Loi/Wetstraat 175
1000 Bruxelles/Brussel

31 December 2020

Dear Secretaries-General,

**Proposed framework for a future UK-EU legal instrument setting out
Gibraltar's future relationship with the EU**

The United Kingdom together with Gibraltar have reached an understanding with the Kingdom of Spain about fundamental elements of the future relationship between the European Union and the United Kingdom in respect of Gibraltar, with the objective that it should serve as a basis for drawing up the European Union's negotiating mandate for an agreement between the European Union and the United Kingdom in respect of Gibraltar. I have the honour to attach to this letter the documentation that sets out that understanding.

The Spanish Deputy Permanent Representative to the EU will convey in parallel a copy of the documentation.

I recall and reiterate my letter of November 2018: the documentation and the negotiation of such an agreement will be without prejudice to the respective legal positions of the United Kingdom and Spain on sovereignty and jurisdiction.

The United Kingdom wishes to underline the importance of effective bridging arrangements to prevent any new barriers in the relations between the Union and Gibraltar until the point at which the agreement on a future relationship arrangement enters into force.

A handwritten signature in black ink, appearing to read 'Tim Barrow', with a stylized flourish at the end.


SIR TIM BARROW
United Kingdom Ambassador to the European Union

NON-PAPER

PROPOSED FRAMEWORK FOR A UK-EU LEGAL INSTRUMENT SETTING OUT GIBRALTAR'S FUTURE RELATIONSHIP WITH THE EU

1. This proposed framework will be without prejudice to the issue of sovereignty and jurisdiction.
2. The EU/UK Agreement on Gibraltar ('the EU/UK(GIB) Agreement') will govern the relationship between Gibraltar and the EU in certain areas of EU competence.
3. The EU/UK(GIB) Agreement will contain recitals to safeguard the respective legal positions of Spain and the United Kingdom on sovereignty and jurisdiction.
4. The EU/UK(GIB) Agreement will be preceded by this framework and by a political instrument that will lay out the basic understandings of Spain and the United Kingdom, together with the Gibraltar authorities, on the future relationship between Gibraltar, Spain and the EU. These understandings will be the basis of the future EU/UK(GIB) Agreement. They could be accompanied by other agreements on areas of national competence, as well as administrative arrangements and memoranda of understanding aimed at developing the practical aspects of the agreements aforementioned.

Mobility (persons)

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5. The EU/UK(GIB) Agreement will contain provisions to permit the application in Gibraltar of the relevant parts of the Schengen acquis necessary to achieve the elimination of control on the movement of persons between Gibraltar and the Schengen area, removing all physical barriers. There will be Schengen crossing points at the port and airport and entry and exit through them will only be permitted on completion of both Gibraltar and Schengen checks. Spain as the neighbouring Schengen Member State will be responsible for the implementation of the relevant parts of the Schengen acquis, including Schengen checks. The Gibraltar authorities will be responsible for the Gibraltar checks in regard to their own legislation. The UK (Gibraltar) will not implement Schengen checks.
 6. The EU/UK (GIB) Agreement will therefore reflect that Spain as the neighbouring Schengen Member State will be responsible as regards the European Union for the implementation of the relevant parts of the Schengen acquis including the Schengen Borders Code and the protection of the Schengen external border. Gibraltar authorities will be responsible as regards the UK for ensuring that their legislation gives effect to these arrangements.

7. Disputes in relation to the operation of the EU/UK (GIB) Agreement will be submitted to the governance mechanism established in the EU/UK (GIB) Agreement.
8. Spain will enter with the Gibraltar authorities into the necessary arrangements to develop their cooperation in this area. Mutual cooperation in police and judicial matters will continue and be enhanced.
9. The operational system to be established as a result of the EU/UK (GIB) Agreement and of arrangements between Spain and the authorities of Gibraltar is described in more detail in Annex 1 of this framework. During the implementation period, this system will be modulated as set out in paragraph 10.
10. EU/UK (GIB) Agreement may establish a reasonable implementation period after the entry into force of this Agreement. During that period Spain, in agreement with the Gibraltar authorities shall request operational assistance from the European Border and Coast Guard Agency for some tasks related to Schengen checks and external border protection*. A joint operation with the European Border and Coast Guard Agency may thus be established for a period of 4 years. In the event that, after consultations on the results of the arrangements of the implementation period, either of the parts, namely Spain on the first part, and the UK and the Gibraltar authorities, on the second part, are not satisfied with the results at the end of the implementation period, the agreement will be terminated at the end of that period.

Mobility (goods – customs relationship)

11. The EU/UK (GIB) Agreement could foresee a bespoke solution, based on an adaptation of a customs union between the EU and Gibraltar with some features destined to remove the physical barriers between Gibraltar and the EU, suppressing the customs checkpoint at La Linea and making unnecessary the control of people for the purposes of customs checks.
12. To achieve this goal, the EU/UK (GIB) Agreement would need to apply the necessary safeguards to avoid distortions in the internal market, in particular in the economy of the region. It would also include the measures which Gibraltar (although a separate customs territory from the EU) will have to apply, including:
 - a) The Common External Tariff, with Gibraltar applying substantially the same duties and trade policy measures as the EU.
 - b) The relevant EU customs, excise and VAT legislation, IT systems and formalities, including in particular the prohibitions and restrictions and the application of security measures.

* Practical details laid out in a separate document.

- c) Measures that should enable the EU to have precise and reliable statistics on imports into Gibraltar (a list with the minimum elements needed will be elaborated).

13. The EU / UK (GIB) Agreement would also envisage:

- a) That any customs procedures needed will be formalized at customs points in Spain or using simplified procedures.
- b) Installation of two Border Control Points compliant with EU legislation, one at Gibraltar airport and one at Gibraltar port. Concerning international travellers entering Gibraltar from non-EU countries, customs controls on pets and SPS goods in luggage will be transferred to the airport and at the port.
- c) Accompanied visits/reports in Gibraltar port and airport and in relevant customs points in Spain by EU customs in order to monitor direct imports into Gibraltar, under a form to be examined. These matters will require agreements for enhanced cooperation between the Customs authorities of Gibraltar and Spain.
- d) Safeguards for cases of circumvention or of no proper application of the relevant EU customs legislation, and consequences (e.g. reintroduction of customs checks).
- e) A mechanism for monitoring the correct application of the relevant EU customs legislation, including as appropriate modalities for mutual administrative assistance.

14. Removing the physical barriers between Spain and Gibraltar will require reinforced alignment. Given the extremely limited size of Gibraltar traffic of goods towards the EU, the facilitation of trade provisions should be simplified and not imply a disproportionate legal and administrative burden, but provisions which prevent the distortion of the EU internal market will be required, as detailed in the section on Level Playing Field. A safeguard clause could be used.

15. It will be necessary in any case to address the following issues: VAT on goods, implementing excise duties for particular ('sensitive') products (cigarettes/tobacco, alcohol, fuel) and level playing field measures. Spain shall play a special role in the EU/UK (GIB) Agreement as the neighbouring Member State with full membership of the EU Customs Union. Administrative arrangements between Spain and the Gibraltar authorities will develop their mutual cooperation in this area.

Transport

16. The EU/UK(GIB) Agreement will include a chapter on transport. This will include dispositions on Level Playing Field in transport services.
17. On air transport, land transport and maritime transport the provisions could be similar to the ones included in the EU/UK Agreement.

Level playing field

18. The EU/UK(GIB) Agreement will include chapters on the level playing field in areas where distortions may occur, including particularly in terms of environment, state aid and social issues, taking into consideration the relevant EU Regulation. There will be specific provisions on VAT and excise duties for particular ('sensitive') products (cigarettes/tobacco, alcohol, fuel) and to assure the traceability of tobacco products.

Environment

19. Gibraltar shall not adopt or maintain any measure that weakens or reduces the level of environmental protection provided by EU standards. Mutual cooperation in environmental matters will continue and will be enhanced.

Social Security Coordination

20. The EU/UK(GIB) Agreement will include a chapter on social security coordination regarding workers who are resident in Spain and employed in Gibraltar, and those who are resident in Gibraltar and employed in Spain. The provisions included could be similar to those of the EU/UK Agreement and they will at least provide the level of protection and rights for workers foreseen in the Withdrawal Agreement. The minimum level of protection proposed by Spain is laid out in Annex 2.

Citizens' rights

21. The EU/UK(GIB) Agreement will include a chapter on citizen's rights, including frontier workers. Its provisions will at least provide the level of protection and rights for workers foreseen in the Withdrawal Agreement. The minimum level of protection is laid out in Annex 3.

Data

22. To facilitate the continued flow of personal data required for enhanced cooperation between Gibraltar and the EU, the EU/UK(GIB) Agreement will make provision for the General Data Protection Regulation and the Law Enforcement Directive to continue to apply to Gibraltar after December 2020 on a dynamic alignment basis.

Financial mechanism

23. The EU/UK(GIB) Agreement could include provisions on a financial mechanism of cohesion between Gibraltar and the Campo de Gibraltar on matters of training/skill and employment. EU funding may contribute to this mechanism.

Other issues

24. Other sectors of interest for the relationship between the EU and UK/Gibraltar could be addressed. This could include the conditions for the use of documents necessary for certain dispositions of the EU/UK(GIB) Agreement.

Governance

25. This Part would deal with standard matters such as Interpretation, Governance, Entry into force, Suspension and Termination.

ANNEX 1

1. Checks for access of persons to Gibraltar and the Schengen Area will be shared operationally between the authorities of Gibraltar and Spain, as the neighbouring Schengen Member State, respectively.

The Gibraltar authorities will first decide on the authorization or denial of entry through the entry points of Gibraltar. To do this, Gibraltar authorities will use, among other instruments, their own databases.

Spanish authorities, in application of the Schengen acquis will make the decision on the authorization or refusal of entry into the Schengen Area. To do this, Spain will use, among other instruments, the Schengen databases.

The conditions required by Spanish authorities and Gibraltar authorities for authorizing admission into Gibraltar and the Schengen Area will be cumulative.

2. Spanish and Gibraltar authorities will carry out the checks of persons and their belongings where necessary at the port facilities, as well as other control actions related to cruises and marinas. Similar arrangements will be put in place at the airport. Spanish and Gibraltar officials will share office space at a facility at the airport to be created for this purpose. During the implementation period, a joint operation with Frontex may assist in carrying out these tasks as foreseen in p. 10.

3. Spanish and Gibraltar authorities will perform joint external border surveillance through seamless police and judicial cooperation. To this end, Police and Judicial Cooperation arrangements shall be agreed.

4. Regarding short-term visas ("Schengen Visa"), the competency criteria established in the Schengen regulations will be applied, so that the Spanish Embassies/Consulates will be competent for the issuance of short-term visas for entry into Schengen through Gibraltar when such competency criteria so determines as will be the Embassies/Consulates from other Schengen Member States,. For its part, Spain undertakes to inform the Gibraltar authorities of all short-term visa requests issued. It will be necessary to align Gibraltar with the EU visa policy.
5. Gibraltar authorities will be responsible for the authorization of residence permits, which will only be valid for residence in Gibraltar. Gibraltar authorities will take due account of any eventual opposition that may be formulated by Spain. Any long term visas that may be required by recipients of residence permits will be issued by the Embassies/Consulates of Spain in accordance with the harmonized Schengen model, unless they contravene the Schengen regulations. It could be foreseen that, after issuance, such visas can be sent to the competent United Kingdom Embassy/Consulate for the purpose of delivery to the interested party when appropriate.
6. Gibraltar authorities will provide assurances that their general policy of residence permits is aligned with EU and Spanish standards, and based on the existence of real links with Gibraltar.
7. Regarding refusals of entry, the Schengen regulations will apply (return to the country of origin of the flight/sea route).
8. Regarding asylum, Gibraltar regulations on asylum will apply, with the Gibraltar authorities being the competent authorities to process asylum applications and, if necessary, enforce a possible return decision (subject to consultations with the Commission to ascertain whether it is possible under EU law).
9. Regarding ETIAS, the competency criteria established in the Schengen regulations will be applied, so that the Spanish ETIAS National Unit will be competent for the issuance of an authorisation for entry into Schengen through Gibraltar when such competency criteria so determines.



ANNEX 2

Social Security coordination

- Se propone acordar un régimen de coordinación de Seguridad Social que sea de aplicación a las personas que, siendo nacionales de un Estado miembro de la Unión Europea, del Reino Unido, refugiados, apátridas o nacionales de terceros países, se encuentren en alguna de las siguientes situaciones:
 - a) Residan en Gibraltar e inicien una actividad por cuenta propia o ajena en un Estado miembro de la Unión Europea a partir del 01.01.2021
 - b) Inicien una actividad por cuenta propia o ajena en Gibraltar a partir del 01.01.2021

- c) Reciban una prestación o pensión derivada de la actividad a que se refieren las letras a) y b)
- d) Sean miembros de la familia o supérstites de las personas mencionadas en las letras anteriores”

El régimen sólo será aplicable a las situaciones no cubiertas por las disposiciones del Título III de la Segunda Parte del Acuerdo sobre la Retirada del Reino Unido de Gran Bretaña e Irlanda del Norte de la Unión Europea y de la Comunidad Europea de la Energía Atómica.

- El régimen propuesto supondría la aplicación de las siguientes normas de coordinación en materia de seguridad social:
 - Las normas y objetivos establecidos en el artículo 48 del TFUE, en el Reglamento (CE) nº 883/2004 y en el Reglamento (CE) nº 987/2009 del Parlamento Europeo y del Consejo.
 - Por lo que se refiere a los nacionales de terceros países que cumplan las condiciones del Reglamento (CE) nº 859/2003, así como los miembros de sus familias o sus supérstites incluidos en el ámbito de aplicación, se entenderá que las referencias al Reglamento (CE) nº 883/2004 y al Reglamento (CE) nº 987/2009 se refieren al Reglamento (CEE) nº 1408/71 del Consejo y al Reglamento (CEE) nº 574/72 del Consejo, respectivamente.
- La Unión y el Reino Unido tendrán debidamente en cuenta las decisiones y recomendaciones de la Comisión Administrativa de Coordinación de los Sistemas de Seguridad Social vinculada a la Comisión Europea, y creada en virtud del Reglamento (CE) nº 883/2004 (en lo sucesivo, «Comisión Administrativa»), cuya lista figura en el anexo I, parte I, del Acuerdo sobre la retirada del Reino Unido de Gran Bretaña e Irlanda del Norte de la Unión Europea y de la Comunidad Europea de la Energía Atómica.
- Se propone que, en materia de Cooperación administrativa, el Reino Unido pase a tener la condición de observador en la Comisión Administrativa desde la fecha de entrada en vigor del Acuerdo y pueda enviar a un representante, para asistir con carácter consultivo, a las reuniones de la Comisión Administrativa y a las reuniones de los organismos a que se refieren los artículos 73 y 74 del Reglamento (CE) nº 883/2004 en las que se traten puntos relacionados con las situaciones cubiertas por el Acuerdo. Asimismo, el Reino Unido participará en el intercambio electrónico de información sobre seguridad social (EESSI, por sus siglas en inglés) y asumirá los gastos correspondientes, a efectos de la aplicación del presente Acuerdo.
- Se propone que lo dispuesto se adapte a las modificaciones que se produzcan en los Reglamentos (CE) nº 883/2004 y (CE) nº 987/2009 con posterioridad a su entrada en vigor, en el mismo sentido en que sea adaptado

el Acuerdo sobre la retirada del Reino Unido de Gran Bretaña e Irlanda del Norte de la Unión Europea y de la Comunidad Europea de la Energía Atómica en aplicación de su artículo 36. Ello será igualmente aplicable a las Decisiones y Recomendaciones de la Comisión Administrativa arriba mencionadas.

ANNEX 3

Workers / Frontier workers

- El sistema que se acuerde deberá garantizar al menos la igualdad de trato con respecto al empleo, la retribución y las demás condiciones de trabajo y, en relación con el necesario permiso de trabajo deberían considerarse los siguientes elementos:
 - Definición del trabajador fronterizo: por cuenta ajena y por cuenta propia, lo más amplia posible, tomando como base, por ejemplo, la definición del acuerdo de retirada.
 - Acceso preferente al mercado de trabajo: no situación nacional de empleo o labour market test.
 - Posibilidad de que la solicitud se canalice por el empleador o por el trabajador.
 - Inexistencia de limitaciones por ocupación, con posibilidad de cambiar de empleador.
 - Posibilidad de que la solicitud prevea el desplazamiento para la búsqueda de empleo.
 - Obtención de un documento físico que le acredite como trabajador fronterizo y le facilite el paso de frontera.
