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European Union Committee

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Brexit: Gibraltar

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Q in footnotes refers to a question in oral evidence.

SUMMARY

On 23 June 2016, 95.9% of votes cast in Gibraltar were for the UK to stay in the EU, by far the strongest vote for 'remain' of any area eligible to participate in the referendum. Yet the territory is now set to leave the EU along with the UK, and faces significant challenges as a result.

Access to the EU Single Market, and to the pool of over 10,000 workers who cross daily into Gibraltar over the border with Spain, has underpinned the development of Gibraltar's vibrant, service-based economy over recent decades. While Gibraltar's most important economic relationship is with the UK itself, any loss of access to the Single Market in services, or to its cross-border workforce, could significantly harm Gibraltar's economy. There could also be a corresponding impact on the economy of the neighbouring region of Spain.

It is still uncertain how far these consequences will be realised following Brexit. Much will depend on the outcome of the UK's negotiations with the EU and on Spain's reaction during and after withdrawal.

Negotiating on Gibraltar's behalf, the UK Government will be responsible for ensuring that Gibraltar's voice is heard, and its interests respected, throughout the Brexit process. The UK also has a responsibility to support Gibraltar in benefiting from any opportunities that arise following Brexit, including by participating in any new international trade deals.

In the wake of the referendum result, Spain renewed calls for the UK to enter bilateral discussions on Gibraltar's status, alongside Brexit negotiations, and proposed joint sovereignty as the only avenue for Gibraltar to protect its relationship with the EU. We strongly endorse the UK Government's commitment never to enter into sovereignty discussions against the will of the Gibraltarian people, and consider that, for the purposes of withdrawal negotiations, Gibraltar and the UK should be considered as a single State.

We urge the UK, Gibraltar and Spain, together with the EU institutions and other Member States, to work together, positively and pragmatically, to secure an agreement that reflects all their economic interests.

EU membership has greatly facilitated cross-border cooperation between authorities in Gibraltar and Spain, particularly in police and judicial cooperation. The UK Government should prioritise Gibraltar as part of its wider commitment to continuing cooperation on security and policing, to ensure that the border with Spain cannot be exploited by those seeking to evade justice.

It will be essential in the longer term to find a structure through which open lines of communication between Spain, the UK and Gibraltar can be maintained. The EU itself has a continuing interest in this, to support the economic well-being of a neighbouring territory, develop good relations between Gibraltar and Spain, and to protect the welfare of EU national border residents.

Without prejudice to the UK's commitment to Gibraltar's sovereignty, the Government should give early thought to how such a structure might be established, what role the EU might play, and should seek agreement on this in tandem with Brexit negotiations.

Brexit: Gibraltar

CHAPTER 1: INTRODUCTION

Overview

1. Of all the British Overseas Territories,¹ only Gibraltar is part of the EU. Its 24,117 voters were therefore eligible to take part in the referendum of June 2016 but, despite delivering an overwhelming majority for ‘remain’, Gibraltar is now set to leave the EU along with the UK when Brexit negotiations are concluded.
2. This report seeks to highlight the key challenges posed by Brexit to Gibraltar, including for its service-based economy, its land border with Spain, for relations between the UK, Gibraltar and Spain, and for Gibraltar’s future relationship with the EU.

Gibraltar’s current relationship with the EU

3. Gibraltar is a British Overseas Territory, which has been under British sovereignty since it was formally ceded by Spain in the Treaty of Utrecht in 1713. Spain continues to dispute Gibraltar’s status, but the territory joined the European Economic Community in 1973 as a dependent territory of the UK.² Gibraltar’s membership is now defined under the terms of Article 355(3) TFEU, which states: “The provisions of the Treaties shall apply to the European territories for whose external relations a Member State is responsible.”³
4. The UK’s 1973 Act of Accession provided for certain derogations in relation to Gibraltar, including exclusion from the Common Agricultural and Fisheries Policies, and from the customs union (including VAT and common commercial policies). In effect, this means that Gibraltar participates in all four of the ‘freedoms’ that underpin the EU Single Market, apart from the free movement of goods. The rest of the *acquis* applies to Gibraltar, apart from those areas from which the UK itself has ‘opt-outs’, such as the Schengen *acquis*.⁴
5. Under its current constitution, Gibraltar’s own elected Government and Parliament are responsible for the transposition and implementation of EU laws, which amount to about 70% of all Gibraltar’s legislation. Since 2004, Gibraltar has also participated in elections to the European Parliament as part of the South West England region, following a successful challenge against its disenfranchisement at the European Court of Human Rights.⁵

1 The EU Treaties do not apply to the UK Sovereign Base Areas of Akrotiri and Dhekelia but they are treated as part of the territory of Cyprus for customs, VAT and excise purposes and they have been *de facto* members of the eurozone since Cyprus adopted the euro in 2008.

2 House of Commons Library, Gibraltar, Research Paper, [95/80](#), June 1995

3 Consolidated version of the Treaty on the Functioning of the European Union ([OJ C 326/1](#), 26 October 2012)

4 Supplementary written evidence from the Government of Gibraltar ([GLT0001](#))

5 [Q 6](#), *Matthews v United Kingdom* (1999) 28 EHRR 361 (ECHR)

This report

6. On 23 June 2016, 95.9% of votes cast in Gibraltar were in favour of the UK staying in the EU, the strongest vote for ‘remain’ of any area eligible to participate in the referendum.⁶ As the Chief Minister, the Hon Fabian Picardo MP QC, told us, this result reflected near total unity on the issue across party, class, and generational lines, on a scale matched only by that shown in referendums on the issue of Gibraltar’s sovereignty.⁷ Nevertheless, the overall outcome in favour of leaving the EU now presents challenges to Gibraltar’s place in Europe, to which, as several of our witnesses pointed out, the territory is culturally, socially, economically and geographically attached.⁸
7. The Chief Minister stressed that the referendum result had been accepted by people in Gibraltar, but admitted that it had caused considerable uncertainty, notably over the economic impact of any restrictions in access to the Single Market in services and potential disruption at the frontier with Spain, which will now become an external EU border.⁹ Witnesses also told us that the referendum had challenged people’s sense of identity as Gibraltarian, British, Europeans, as well as sparking renewed calls by Spain for negotiations on Gibraltar’s sovereignty.¹⁰
8. The UK Government will be responsible for representing and promoting Gibraltar’s views and interests as part of EU withdrawal negotiations, and in any future EU and international trade agreements. We have therefore undertaken this inquiry to draw attention to the particular issues and concerns facing Gibraltar as a result of the UK’s decision to leave the EU.
9. We heard evidence from the Chief Minister of Gibraltar, Mr Picardo, the Deputy Chief Minister, the Hon Dr Joseph Garcia MP, and the Attorney-General of Gibraltar, Michal Llamas QC. We also heard from Dr Chris Grocott, Lecturer in Management and Economic History at the University of Leicester, Professor John Fletcher Pro Vice Chancellor for Research and Innovation at Bournemouth University, and Robin Walker MP, Parliamentary Under Secretary of State at the Department for Exiting the European Union (DExEU). We were also grateful to receive written evidence from the University of Gibraltar, the Gibraltar Port Authority, politicians, academics, and other interested parties.

The work of the EU Committee

10. Following the referendum on 23 June 2016, the European Union Committee and its six sub-committees launched a coordinated series of inquiries, addressing the most important cross-cutting issues that will arise in the course of negotiations on Brexit. These inquiries, though short, are an opportunity to explore and inform wider debate on the major opportunities and risks that Brexit presents to the United Kingdom.
11. **We make this report to the House for debate.**

6 ‘EU referendum results’ *Financial Times* (24 June 2016): <https://ig.ft.com/sites/elections/2016/uk/eu-referendum/> [accessed 20 February 2017]

7 Q 2 (Fabian Picardo MP)

8 Written evidence from Marlene D E Hassan Nahon MP (GLT0004), Peter-Ashely Mackay-Jackson (GLT0003) and Prof Andrew Canessa (GLT0002)

9 Q 2 (Fabian Picardo MP). The land border with Spain is commonly referred to in Gibraltar as the frontier, and we use the terms border and frontier interchangeably in this report.

10 Written evidence from Marlene D E Hassan Nahon MP (GLT0004) and Prof Andrew Canessa (GLT0002)

CHAPTER 2: THE ECONOMIC IMPLICATIONS

The impact on Gibraltar

12. Professor Fletcher described Gibraltar’s transformation over recent decades from economic dependence on the UK (in particular on the Royal Navy dockyard and visiting British military families) into “a much higher gross-value-added economy”, based on services, which was now “incredibly resilient”.¹¹
13. The Government of Gibraltar noted that this transformation was driven by Gibraltar’s geography, which left no room for manufacturing or heavy industry, and had been underpinned by access to the EU Single Market in services. It described such access as “a fundamental tool” in Gibraltar’s economic development.¹²
14. Professor Fletcher also highlighted Gibraltar’s ability to draw on the pool of workers who cross daily into Gibraltar from the surrounding area of Spain: “The frontier workers are exceptionally important for Gibraltar.”¹³ Government of Gibraltar statistics show that 10,473 jobs in Gibraltar are held by frontier workers, making up 40% of the entire workforce.¹⁴

Financial services and online gaming

15. The Gibraltar Government highlighted financial services and online gaming as significant sectors within Gibraltar’s economy (together accounting for 40% of GDP and a quarter of total jobs).¹⁵
16. The Chief Minister noted that Gibraltar’s ability to ‘passport’¹⁶ its financial services to the rest of the EU through the UK and directly as part of the Single Market could be affected by Brexit.¹⁷ Restrictions on the ability to move freely across the border would also have a significant impact, as nearly a third of jobs in the finance sector are held by frontier workers.¹⁸
17. The online gaming sector is also highly dependent on frontier workers (who make up 60% of jobs in this sector).¹⁹ On the other hand, Professor Fletcher observed that the industry was largely focused on UK customers, so access to the Single Market was comparatively less important. Even so, he warned that Brexit could make it harder for Gibraltar to compete for European business against gaming agencies located within the EU.²⁰
18. Susie Alegre, of Doughty Street Chambers, suggested that leaving the EU might also leave Gibraltar vulnerable to EU economic sanctions, which target jurisdictions that have low or zero corporate tax regimes.²¹

11 [Q 12](#) (Prof John Fletcher)

12 Supplementary written evidence from the Government of Gibraltar ([GLT0001](#))

13 [Q 12](#) (Prof John Fletcher)

14 Supplementary written evidence from the Government of Gibraltar ([GLT0001](#))

15 Supplementary written evidence from the Government of Gibraltar ([GLT0001](#))

16 Passporting is the term normally used to describe the ability of financial services firms authorised in the one Member State to provide services into and within other EU Member States without the need for further authorisations.

17 [Q 7](#)

18 Supplementary written evidence from the Government of Gibraltar ([GLT0001](#))

19 Supplementary written evidence from the Government of Gibraltar ([GLT0001](#))

20 [Q 15](#) (Prof John Fletcher)

21 Written evidence from Susie Alegre ([GLT0007](#))

Tourism

19. The tourism industry contributed £199.93 million to Gibraltar's economy in 2015, and 93% of tourists arrived through the frontier, which the Government of Gibraltar described as the "vital artery of Gibraltar's tourism sector". Any restriction on people's ability to visit Gibraltar via the border would therefore have a significant impact on the sector.²²

Aviation

20. Mr Picardo raised the concern that Brexit could affect Gibraltar's ability to access European airspace, recalling that it was only in 2006 that the Spanish Government had agreed to the inclusion of Gibraltar Airport in EU aviation measures.²³ Professor Fletcher argued, though, that aviation restrictions would have more of a symbolic than an economic impact, as the vast majority of Gibraltar's trade, labour and tourists arrived over the land border. On the other hand, Dr Grocott told us:

"Although 95% of tourism into Gibraltar is day visitors coming in from La Línea, the other 5% are people who are staying for longer than one night. They are the people who are filling the hotels, and there is an expanding number of rooms in Gibraltar. So in terms of the tourist industry, yes, day tourism is important, but air access is important as well, for the hotels and for the people whose jobs they support."

He also noted that, for financial services professionals, "the speed with which you can move between" London and Gibraltar was important.²⁴

Port services

21. Gibraltar is one of the Mediterranean's leading 'bunker' ports, underpinned by its status within the EU but outside the EU's VAT jurisdiction, which allows it to offer low-cost, VAT-free fuel.²⁵
22. Commodore Bob Sanguinetti, CEO and Captain of the Gibraltar Port Authority, explained that 'bunkering' and other port activity could be "severely affected" by any additional border restrictions resulting from Brexit. He noted that 30% of Gibraltar's bunker fuel was currently stored in Algeciras in Spain, and that uncertainty over the movement of parts, provisions, and labour could affect Gibraltar's attractiveness to visiting ships and place its valuable refuelling business at risk. Cdre Sanguinetti also highlighted that the port would need to be entirely reconfigured if increased border restrictions obliged Gibraltar to import more goods by sea.²⁶

Higher education

23. Professor Daniella Tilbury, Vice-Chancellor and CEO of the University of Gibraltar, was concerned about the impact of Brexit on her fledgling institution, which opened in 2015. Professor Tilbury noted that the

22 Supplementary written evidence from the Government of Gibraltar (GLT0001)

23 Q 4; Tim Hepher and Julia Fioretti, 'Aviation industry seeks EU intervention in Britain-Spain row over Gibraltar airport' *Reuters* (30 April 2016): <http://uk.reuters.com/article/uk-europe-aviation-gibraltar-idUKKCN0XQ27M> [accessed 20 February 2017]

24 Q 13 (Prof John Fletcher, Dr Chris Grocott)

25 Felicity Landon, 'Defending the Rock', *Seatrade Maritime Review*, Quarterly Issue 4, (December 2016): http://www.gibraltarport.com/sites/default/files/news/merged_document.pdf [accessed 20 February 2017] 'Bunkering' is the supply of fuel for ships in a seaport.

26 Written evidence from Gibraltar Port Authority (GLT0010)

University had a research-intensive business model based on assumed access to EU research funding and exchange programmes such as Horizon 2020 and Erasmus+. She emphasised the importance of the University's inclusion in any agreement with the EU for the UK's continued participation in these programmes.

24. Professor Tilbury noted that the movement of staff and students over the land border with Spain was critical to the success of the University. If the University could not recruit adequate numbers of students, there would be a significant impact on its financial viability.²⁷

EU funding

25. The Government of Gibraltar estimates that, by 2020, Gibraltar will have received almost €60 million since its first allocation of EU funds in 1990. The Chief Minister acknowledged that this level of EU funding “might not sound like much ... but for Gibraltar it has meant kick-starting a lot of businesses and giving them opportunities they might not otherwise have had”.²⁸ Professor Fletcher considered it to be a “major investment”,²⁹ based on Gibraltar's population size, and the Government of Gibraltar emphasised that it did not want access to EU funding to be put at risk as a result of Brexit.³⁰
26. In addition to supporting higher education and research, the Government of Gibraltar described how EU funding to the territory had primarily been channelled through the European Regional Development Fund and the interregional cooperation programmes SUDOE and MED. Gibraltar also received funding through the Konver programme, which supported it in converting assets from military to civilian use.³¹
27. Robin Walker pointed to HM Treasury's commitment to guarantee programmes under the EU's 2014–2020 funding period:

“Gibraltar is covered by the EU funding guarantees made by the Treasury in August 2016 and by the additional guarantees made in October 2016. In August, the Chancellor announced that all European structural investment fund projects signed or with funding agreements in place before the Autumn Statement would be fully funded, even where those projects continue beyond the UK's departure from the EU. In October, he announced that, for projects signed after the Autumn Statement that continue after we have left the EU, funding will be honoured by the Treasury if the projects provide strong value for money and are in line with strategic priorities. Those guarantees cover funding awarded to participants from Gibraltar as part of the European territorial co-operation programmes. That includes the funding awarded to the University to participate in the climate project funded under the south-west Europe ETC programme.”³²

28. Mr Walker also said that the UK Government would aim to ensure that the UK and Gibraltar “can continue to benefit from the research collaboration

27 Written evidence from University of Gibraltar ([GLT0006](#))

28 [Q 2](#)

29 [Q 14](#) (Prof John Fletcher)

30 Supplementary written evidence from the Government of Gibraltar ([GLT0001](#))

31 Supplementary written evidence from the Government of Gibraltar ([GLT0001](#))

32 [Q 24](#)

that takes place across Europe ... and we would hope to establish opportunities to continue that kind of funding well into the future”.³³

Economic links to the UK

29. Several witnesses emphasised the relative importance of Gibraltar’s economic links to the UK, particularly the City of London, over those with the rest of the EU. The Chief Minister told us that, in terms of financial services and online gaming, most of Gibraltar’s business was with the UK, and said that his priority would be to deepen and strengthen this relationship following Brexit, especially if Gibraltar should find itself excluded from the Single Market in services.³⁴
30. While noting that trade in financial services is already facilitated by the UK’s Financial Services and Markets Act 2000 (Gibraltar), the Government of Gibraltar emphasised that it would seek to develop a broader, “bespoke” arrangement to improve access to the UK market in services before withdrawal from the EU.³⁵
31. Mr Walker confirmed that the UK Government has agreed to work with the Government of Gibraltar to explore where the two governments can “broaden economic cooperation and increase market access”.³⁶
32. Looking beyond Brexit, both the Government of Gibraltar and Robert Vasquez, Chairman of the opposition Gibraltar Social Democrats Party, emphasised Gibraltar’s interest in participating in future UK international trade agreements, which they believed could help to compensate for any loss suffered by Gibraltar as a result of leaving the EU.³⁷

Implications for Spain and the Campo de Gibraltar

33. A number of witnesses commented on the importance of Gibraltar to the economy of Andalusia, particularly the border area known as the Campo de Gibraltar. The Chief Minister described Gibraltar as an “an engine of the regional economy of Andalusia”, noting that Spanish nationals made up 55% of frontier workers and that Gibraltar accounted for 25% of employment in the entire Campo region. This made it the second biggest employer after the Junta de Andalucía (the state government).³⁸
34. Dr Grocott told us that the Campo, which already has some of the highest unemployment rates in Spain, would suffer a “significant loss” if Gibraltar were cut off from the region after Brexit.³⁹ Professor Fletcher agreed, noting that, in addition to jobs, Gibraltar contributed €800 million to the GDP of the region through trade and visitor spending.⁴⁰
35. According to an economic impact study conducted by Professor Fletcher in 2015, Gibraltar imported almost £381 million in goods and services from Spain in 2013. Residents of Gibraltar also spent £73 million on shopping,

33 [Q 24](#)

34 [Q 7](#)

35 Supplementary written evidence from the Government of Gibraltar ([GLT0001](#))

36 [Q 23](#)

37 Supplementary written evidence from the Government of Gibraltar ([GLT0001](#)) and written evidence from Robert M. Vasquez ([GLT0005](#))

38 [QQ 5–8](#)

39 [Q 12](#) (Dr Chris Grocott)

40 [Q 15](#) (Prof John Fletcher)

food and other goods and services in Andalusia during 2013, of which £46 million was within the Campo de Gibraltar. Overall, the study concluded: “The Gibraltar economy has a significant and positive economic impact on the Campo de Gibraltar region”.⁴¹

Looking to the future

36. The Chief Minister struck an optimistic note, saying that “the rest of the world beckons”⁴² if Gibraltar’s access to the Single Market is restricted after Brexit. In written evidence, however, the Government of Gibraltar acknowledged that Brexit presented “few opportunities worthy of mention”, and that losing access to the Single Market in services would be a “severe blow” to Gibraltar’s economy.⁴³
37. In terms of Gibraltar’s potential to diversify and seek new markets, Dr Grocott noted recent efforts to build links with Hong Kong and the US, but believed that simple geography would lead to a continued economic focus on Europe and the UK.⁴⁴ Professor Fletcher observed that, for a micro-economy, Gibraltar was already well diversified, and suggested that further diversification might affect Gibraltar’s competitiveness and ability to achieve economies of scale.⁴⁵
38. Mr Walker argued that the UK Government’s priority would be to secure the best possible access to the EU Single Market in services after Brexit, which would benefit both the UK and Gibraltar. He also indicated that the UK was prepared to walk away from trade talks if it did not like the terms offered by the EU, and acknowledged that an agreement would not necessarily be reached at the end of the negotiations.⁴⁶
39. Mr Walker did not speculate on what a so-called ‘cliff edge’ scenario—a break-down of talks on withdrawal—might mean for Gibraltar. But Dr Grocott suggested it could result in Gibraltar’s frontier being severely disrupted or even closed. He argued this would be “potentially disastrous ... financially and in terms of labour”, and might require the UK Government to step in to support Gibraltar’s economy, as it did when the border was shut during the Franco era.⁴⁷

Conclusions

40. **The EU Single Market has played an important role in helping Gibraltar to develop its vibrant, service-based economy over recent decades. We note the view of our witnesses that the economy is highly resilient. Nevertheless, a loss of Gibraltar’s access to the Single Market in services would unavoidably have negative consequences for Gibraltar’s economy, at least in the short term.**
41. **A common theme in the evidence we heard on the economic impact of Brexit for Gibraltar has been its reliance upon the free movement**

41 John Fletcher, Yeganeh Morakabati and Ken Male, *An Economic impact study and analysis of the economies of Gibraltar and the Campo de Gibraltar: Update 2015* (May 2015): <http://www.infogibraltar.com/info-gibraltar/sites/default/files/Economic%20Impact%20Study%20FINAL> [accessed 20 February 2017]

42 [Q 7](#)

43 Supplementary written evidence from the Government of Gibraltar ([GLT0001](#))

44 [Q 12](#) (Dr Chris Grocott)

45 [Q 12](#) (Prof John Fletcher)

46 [Q 23](#)

47 [Q 12](#) (Dr Chris Grocott)

of frontier workers, who make up some 40% of the total Gibraltar workforce. If Brexit leads to restrictions being imposed on the daily movement of labour across the land border, this will seriously damage several key sectors of its economy, including the port, tourism, financial services and aviation.

- 42. The economy of the Campo de Gibraltar region of Spain benefits substantially from the employment opportunities offered by Gibraltar and would also be significantly affected by any restriction of the movement of goods and people over the frontier.**
- 43. EU funding has played an important role in Gibraltar's economic development and in supporting regional cooperation. We welcome Mr Walker's confirmation that EU-funded projects in Gibraltar will be covered by HM Treasury guarantees, but note that, as in the UK, funding is uncertain beyond 2020. It is also possible that projects in Gibraltar may not be deemed to fulfil the criteria of fitting with UK Government strategic priorities. We call on the UK Government to clarify what future UK-based funding will be available to Gibraltar if it cannot access EU programmes after Brexit.**
- 44. Gibraltar's most significant economic relationship is with the UK itself, and it will be important for Gibraltar to maintain and enhance its access to UK markets to compensate for any loss in access to the Single Market. The UK also has a responsibility to support Gibraltar in benefiting from any opportunities that arise following Brexit, including by participating in any new international trade deals.**

CHAPTER 3: THE FRONTIER WITH SPAIN

An historic ‘pressure point’

45. Despite the long-standing sovereignty dispute, the border between Gibraltar and Spain remained relatively open until the Franco era. During this period, Spain increasingly obstructed communications and movement between Gibraltar and Spain, ultimately shutting the border altogether.⁴⁸ The frontier remained closed until the early 1980s, when the newly democratic Spain began negotiations to join the European Community.
46. The correlation between the UK and Spain’s common membership of the European Community, now the EU, and the improved relations between them, is discussed further in Chapter 4. Here we note only that, in the words of the Chief Minister: “Many in Gibraltar see Spain’s accession to the European Economic Community in 1986 as the thing that bust open the frontier gates that General Franco had closed in 1969.”⁴⁹
47. Marlene Hassan Nahon, an independent Member of the Gibraltar Parliament, described the border closure as a “lengthy siege”, which had had a lasting impact on the “Gibraltarian psyche”. Ms Hassan Nahon noted that the frontier remained a “pressure point”, with fluidity of access dependent on political relations between Gibraltar and Spain at any given time.⁵⁰ Professor Fletcher agreed, comparing Spain’s willingness to cause disruption at the frontier to “a tap ... something that comes and goes”.⁵¹
48. The Government of Gibraltar cited a visit to Gibraltar in 2012 by the Earl and Countess of Wessex, and Gibraltar’s artificial reef project in 2013, as recent events that had caused politically motivated border disruption. During this period, increased border controls by Spain caused large queues of vehicles and pedestrians, who faced delays of three to seven hours in crossing the frontier. This resulted in an estimated loss of £37.5 million to Gibraltar’s economy.⁵²

Implications of Brexit for the border

49. The Chief Minister noted that Gibraltar already had a relatively ‘hard’ border with Spain, since it was outside the customs union and Schengen Area, with the result that checks were required on goods and people crossing to and from Spain. Mr Picardo said that it would be possible for the border to function effectively after Brexit, but emphasised that this would depend on “good will and good faith” between Gibraltar and Spain, and on whether Spain felt less inclined to demonstrate such good will when Gibraltar was no longer a fellow EU member.⁵³
50. Mr Vasquez agreed that the checks already in place should be sufficient to monitor the movement of people and goods, and to ensure appropriate VAT is paid, when the frontier became an external EU border. Consequently, he argued, Spain should have no cause to intensify border controls following Brexit, and any change would represent simply an “aggressive act” against

48 House of Commons Library, Gibraltar, Research Paper, [95/80](#), June 1995

49 [Q 2](#)

50 Written evidence from Marlene D E Hassan Nahon MP ([GLT0004](#))

51 [Q 16](#) (Prof John Fletcher)

52 Supplementary written evidence from the Government of Gibraltar ([GLT0001](#))

53 [Q 3](#)

the UK and Gibraltar.⁵⁴ Professor Fletcher, by contrast, noted that Brexit had already been the cause of disruption at the frontier—immediately after the referendum, Spain refused to accept Gibraltarian ID cards for a time, causing long delays.⁵⁵

51. The Chief Minister told us of a border inspection visit by the Commission, during the period of intense disruption in 2012–2013, describing it as an example of how Gibraltar has looked to the EU to arbitrate in disputes with Spain. Though the Commission did not find Spain in breach of EU law, it wrote both to the UK (representing Gibraltar) and Spain with recommendations to help streamline border crossings. Mr Picardo suggested that this, and subsequent inspection visits in 2014 and 2015, had helped to exert ‘soft’ pressure on Spain to keep border delays to a minimum.⁵⁶
52. This view was supported by Susie Alegre, who warned: “Outside the EU, the possibility of enforcement measures against Spain for [excessive border controls] will be lost.”⁵⁷

The impact of border restrictions

53. As mentioned in Chapter 2, 40% of jobs in Gibraltar are held by ‘frontier workers’, who commute from Spain to work in the territory. The Chief Minister highlighted the contrast with the UK, where jobs and immigration were prominent themes in the referendum campaign. He noted that there was simply not enough space or housing stock for people to come and settle in Gibraltar itself, which has a total area of just 2.6 square miles, so many live in Spain but cross the border for work.⁵⁸
54. The Government of Gibraltar noted that any restrictions to frontier workers’ ability to work in Gibraltar after Brexit would not only jeopardise Gibraltar’s general economy, by depriving it of a large part of its work-force, but would also deprive the Government of an important source of revenue in income tax receipts.⁵⁹ Dr Grocott highlighted Gibraltar’s social welfare infrastructure as being particularly dependent on frontier workers.⁶⁰
55. Mr Picardo also stressed the human cost of frontier restrictions, which could get in the way of people being able to see friends and family. He described a “cross pollination” effect, where people both in Spain and Gibraltar access services such as banking, healthcare, shops and schools either side of the border.⁶¹ Government of Gibraltar figures show that access to Spanish health care is particularly important for Gibraltarians, with over 50% of tertiary referrals to Spanish health providers. Peter-Ashley Mackay-Jackson, a Gibraltar resident, was concerned about future access to health services in Spain if the UK did not negotiate continued access to the European Health Insurance Card (EHIC) system.⁶²

54 Written evidence from Robert M. Vasquez ([GLT0005](#))

55 [Q 16](#) (Prof John Fletcher)

56 [Q 2](#)

57 Written evidence from Susie Alegre ([GLT0007](#))

58 [QQ 7–8](#)

59 Supplementary written evidence from the Government of Gibraltar ([GLT0001](#))

60 [Q 12](#) (Dr Chris Grocott)

61 [Q 5](#)

62 Written evidence from Peter-Ashley Mackay-Jackson ([GLT0003](#)). EHIC (European Health Insurance Card)

56. The Government of Gibraltar highlighted the importance of the frontier as the route of most of Gibraltar’s goods imports, including virtually all food and fuel supplies. The border is also essential to waste management in Gibraltar, with all the territory’s waste streams presently transported to Spain for processing.⁶³

Cross-border cooperation

57. Witnesses emphasised the importance of cross-border cooperation between Spanish and Gibraltarian officials. Despite friction caused by the sovereignty dispute, which can manifest in occasional confrontations between law enforcement agencies on land and at sea, the Chief Minister told us: “In most instances there is good co-operation at a law enforcement agency to law enforcement agency level.”⁶⁴
58. Professor Andrew Canessa, a social anthropologist based at the University of Essex, supported this, noting that his research indicated there was considerable official and unofficial cooperation between Gibraltarian and Spanish police and customs officials to combat drug smuggling and people trafficking across the frontier.⁶⁵
59. Nevertheless, the Chief Minister also emphasised the importance of the EU in facilitating cross-border cooperation by removing the sovereignty dispute from the equation. In particular, Mr Picardo told us that the European Arrest Warrant (EAW), which provides for mutual recognition of arrest warrants issued by participating EU Member States, had been “a blessed relief because it took the sovereignty dispute out of the equation”. Before the introduction of the EAW, “if somebody were to commit a crime in Gibraltar, their bolthole would naturally be to run to Spain through the frontier before they could be apprehended. Ditto, if someone committed a crime in southern Spain, they might wish to try to run to Gibraltar”. Continuing participation in the EAW would be “in the interests of everyone”.⁶⁶
60. We note that, during our recent inquiry into Brexit: UK-Irish relations, similar concerns over loss of access to the EAW were expressed in respect of the Irish land border, which, like the Spain-Gibraltar border, will become an EU external border post-Brexit. The Police Service of Northern Ireland regarded the EAW as vital in preventing suspects from simply fleeing across the border to evade arrest.⁶⁷

The impact for Spain

61. As we noted in Chapter 2, fluid cross-frontier movement is also important for the regional economy of Andalusia and the Campo de Gibraltar, both in terms of frontier workers and also in bringing Gibraltarian visitors’ spending power to the area. Indeed, the Chief Minister argued that Spanish workers travelling daily to and from Gibraltar suffered the most from the disruption during periods of heightened border controls.⁶⁸

63 Supplementary written evidence from Government of Gibraltar ([GLT0001](#))

64 [Q 11](#)

65 Written evidence from Prof Andrew Canessa ([GLT0002](#))

66 [Q 11](#)

67 European Union Committee, *Brexit: UK-Irish relations* (6th Report, Session 2016–17, HL Paper 76), paras 144–152. See also European Union Committee, *Brexit: future UK-EU security and police cooperation* (7th Report, Session 2016–17, (HL Paper 77).

68 [Q 5](#)

Future border management

62. There is already a relatively ‘hard’ frontier between Gibraltar and Spain, with passport checks and customs controls, and the Gibraltar Government’s key priority is to maintain the fluid movement of people and goods through this frontier, by means of a collaborative approach to border management with Spain.⁶⁹ Witnesses’ primary concern was that Spain might take advantage of Brexit to create additional disruption at the frontier.
63. Andalusia will also have an interest in lobbying the Spanish Government to preserve fluidity at the frontier.⁷⁰ Commenting on the Cross Frontier Group—a cross-border organisation which brings together representatives from unions, businesses, and public entities from Gibraltar and the neighbouring region of Spain—Dr Grocott said:
- “[The] message to take away from the work of that group ... is that everybody on both sides of the frontier benefits from a good relationship between Gibraltar and the Campo.”⁷¹
64. But though there is a strong common interest in maintaining a good relationship, Dr Fletcher cautioned that politics might trump economics.⁷² Ashley Fox, MEP for the South West England and Gibraltar region (giving evidence during the Committee’s recent visit to the European Parliament), did not think the Spanish Government would stop frontier workers coming to Gibraltar entirely and risk putting upwards of 10,000 people out of work. However, he also warned that, without the EU to restrain Spanish actions, border disruption might become more frequent. The onus would then be on the UK to take action to try to resolve any issues.⁷³
65. Mr Vasquez suggested that free movement of people over the Gibraltar border might also be affected by recent revisions to the Schengen Border Code, which will require more systematic checks on people travelling in and out of the Schengen zone. He argued that the strict application of these controls by Spain could significantly affect the frontier’s fluidity, unless a specific local accommodation were agreed.⁷⁴
66. The Chief Minister was confident that an agreement could be reached, and noted that immigration and customs both fell within the competence of the Gibraltar Government. He suggested that existing EU rules on managing local border traffic between third countries and the Schengen zone could provide a possible solution.
67. EU law permits Member States to establish local border traffic management regimes with neighbouring (third) countries outside the EU. These regimes are an exception to the usual Schengen rules on the entry of third-country nationals into the EU, and are intended to ease the restrictions on passage between the EU Member State and the neighbouring country by creating a ‘local border traffic permit’. They are based on a bilateral international agreement between the two countries concerned, which has been approved

69 [Q 5](#)

70 [Q 15](#) (Dr Chris Grocott)

71 [Q 18](#) (Dr Chris Grocott)

72 [Q 16](#) (Prof John Fletcher)

73 Oral evidence taken on 18 January 2017 (Session 2016–17), [Q 35](#) (Ashley Fox MEP)

74 Written evidence from Robert M. Vasquez ([GLT0005](#))

by the European Commission. The rules are set out in the 2006 Local Border Traffic Regulation, whose main provisions are summarised in Box 1.

Box 1: Regulation EC/1931/2006, the Local Border Traffic Regulation

Conditions of entry and stay

Local border traffic refers to the regular and frequent crossing for legitimate reasons of the European Union's (EU) external border by nationals of neighbouring non-EU countries resident in the border areas with the EU. These border residents may cross the external land border of an EU country provided that they are in possession of a permit delivered to facilitate such a crossing (and of a passport, if required in the bilateral agreement), they are not persons in respect of whom the Schengen Information System (SIS) has been alerted and they are not deemed to be a threat to public order. These persons are authorised to stay in the border area for a maximum duration stipulated in the bilateral agreement between an EU country and the neighbouring non-EU country. The stay must not exceed three months.

Permits

Border residents are given a permit limited to the border area which is valid for between one and five years. The fees will be equivalent to those payable for a short-term multiple-entry visa. However, EU countries may decide to reduce or even waive the fees.

Agreements on the implementation of the local border traffic regime

EU countries may conclude agreements on local border traffic with neighbouring non-EU countries. They may also maintain existing agreements provided they comply with this regulation. Furthermore, EU countries must ensure that non-EU countries apply the principle of reciprocity and grant comparable treatment to citizens of the EU wishing to travel to their border area.

These agreements can allow border residents to use:

- border crossing points open only to border residents;
- special lanes at ordinary border crossing points;
- exceptional authorisations for border residents to cross the border outside authorised border crossing points and hours.

EU countries must enforce effective, proportionate and dissuasive penalties in the event of misuse of the local border traffic regime. These may include cancelling or revoking the permit.

Source: Summary of EU Legislation, Local border traffic at external land borders, 15 June 2014: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:l14506> [accessed 6 February 2017]⁷⁵

68. We agree with the Chief Minister that the Local Border Traffic Regulation could be applied to Gibraltar and Spain post-Brexit, as a basis for continuing cross-border movement of labour. We also note that such a regime would apply to passage in both directions between Spain and Gibraltar, not just for passage from Gibraltar to Spain.
69. In contrast to the Chief Minister, Dr Grocott questioned whether a bilateral border deal could be relied on in the long term, given the ongoing sovereignty dispute and strained relations between Gibraltar and Spain. He argued that it

⁷⁵ Appendix 3 provides an analysis of the main provisions of the Regulation.

would be essential to build in recourse to a third party for dispute resolution in any border agreement, and suggested the EU could be persuaded to play this role to protect the interests of frontier workers (who are largely Spanish and other EU nationals).⁷⁶

Conclusions

70. **It will be in the mutual interest of Gibraltar and Spain to maintain as free-flowing a frontier as possible following Brexit. We urge all parties involved to work together in good faith to reach an agreement that supports ongoing regional cooperation and trade, and avoids undue disruption to the lives of thousands of border residents who cross the frontier daily. We agree with the Chief Minister of Gibraltar that the Local Border Traffic Regulation (EC/1931/2006) could be used as a future basis for movement of labour between Spain and Gibraltar, but note that any agreement will require both sides' commitment to sustain it.**
71. **Common membership of the EU has greatly facilitated cross-border cooperation between authorities in Spain and Gibraltar, including in the area of police and judicial cooperation. In particular, we note the importance of the European Arrest Warrant in preventing those wanted for crimes from evading justice by crossing the EU's external border, in either direction. In a recent report we highlighted the importance of police and judicial cooperation post-Brexit across the Irish land border. It will be equally vital for Gibraltar to continue to cooperate with Spain in this area, and we urge the UK Government, as part of its wider commitment to continuing cooperation on security and policing, to prioritise supporting a new and stable relationship between Gibraltar and Spain.**
72. **The European institutions, including the Commission, have played an important part in promoting dialogue between Gibraltar and Spain. Following Gibraltar's withdrawal from the EU, continued cooperation will be just as important, and we urge the UK Government to provide support for this, working both with the Spanish Government and, where possible, with the EU.**

76 [Q 17](#) (Dr Chris Grocott)

CHAPTER 4: IMPLICATIONS FOR THE SOVEREIGNTY DISPUTE

Relations under common EU membership

73. The process of Spain's accession to the European Community in the 1980s led to renewed efforts to normalise relations between the UK and Spain, and to make progress in discussions on the status of Gibraltar. An agreement signed in Brussels in 1984 provided for:
- reciprocity of rights for Spanish people in Gibraltar and Gibraltarians in Spain;
 - reduced restrictions on the movement of goods and people over the land frontier; and
 - the establishment of bilateral discussions on numerous issues, including Gibraltar's sovereignty.⁷⁷
74. These talks, known as the Brussels Process, proceeded throughout the 1990s, but made limited progress. Gibraltarians, who were not directly involved in the negotiations, generally considered them to lack legitimacy. The process stalled entirely following a 2002 referendum, in which the people of Gibraltar resoundingly (by 98.97% of votes cast) rejected Spanish shared sovereignty proposals.⁷⁸
75. In 2004 the UK and Spanish Foreign Ministers and the Chief Minister of Gibraltar established a new trilateral (or tripartite) Forum for Dialogue, with Gibraltar participating on an equal basis with the UK and Spain. In 2006, a meeting of the Forum in Córdoba resulted in agreements on a range of areas, including:
- payment of pensions to Spanish people who had worked in Gibraltar;
 - improvements to border fluidity;
 - Spanish recognition of Gibraltar dialling codes; and
 - efforts to establish cross-border economic cooperation.⁷⁹

In what was seen as a major step, the three parties also agreed the “lifting of Gibraltar Airport’s suspension from all EU aviation measures”, and an end to Spanish airspace restrictions on civilian aircraft using the airport.⁸⁰

76. Progress continued with a Joint Declaration by the UK and Spain at the Intergovernmental Conference on the Treaty of Lisbon in 2007, which confirmed that:

77 House of Commons Library, Gibraltar, Research Paper, [95/80](#), June 1995

78 House of Commons Library, Gibraltar, Research Paper, [95/80](#), June 1995

79 House of Commons Library, Gibraltar: diplomatic and constitutional developments, Research Paper [06/48](#), October 2006

80 Liberal Party of Gibraltar Agreements Arrived at in Cordoba, Spain on the Airport, Pensions, Telecommunications, Frontier Flow and “Instituto Cervantes” (18 September 2006): <http://www.liberal.gi/treaty-agreements.php> [accessed 5 February 2017]

“The Treaties apply to Gibraltar as a European territory for whose external relations a Member State is responsible. This shall not imply changes in the respective positions of the Member States concerned.”⁸¹

77. These trilateral talks collapsed in 2011, following the election of the Partido Popular Spanish Government, which demanded the renewal of bilateral negotiations with the UK over Gibraltar’s sovereignty.⁸² Relations have remained fractious ever since—reflected in varying levels of disruption at the frontier, and Spain’s return to its former position that Gibraltar should be excluded from EU aviation measures.
78. Despite the contribution of shared EU membership to improved relations between the UK/Gibraltar and Spain, the Chief Minister suggested that Spain had also used the EU to try to advance its jurisdiction in relation to Gibraltar. Mr Picardo highlighted the particular case of Spain designating a Site of Community Importance (SCI) under the EU Habitats Directive. This SCI was located in British Gibraltar Territorial Waters (BGTW), which Spain does not recognise, and clashed with a site already designated as an SCI by the UK. Even though, according to Mr Picardo, the United Nations Convention on the Law of the Sea is “abundantly clear as to the extent of British Gibraltar territorial waters”,⁸³ the European Commission adopted Spain’s SCI, and has rejected subsequent legal attempts by the UK and Gibraltar to overturn its decision. The Government of Gibraltar told us that Spain had subsequently used the designation of this SCI to justify incursions by Spanish vessels into Gibraltarian territorial waters.⁸⁴

Brexit and the sovereignty dispute

79. The Chief Minister described how, in the run-up to the referendum, Spain’s then Foreign Minister, José Manuel García-Margallo, had repeatedly called for joint-sovereignty proposals to be immediately revived, should the UK vote to leave the EU.⁸⁵ Following the referendum, Mr García-Margallo described such proposals at the UN General Assembly in October 2016 as the only avenue for Gibraltar to maintain free trade and free movement with the EU after Brexit, vowing to “plant his flag” on the Rock of Gibraltar.⁸⁶
80. Mr García-Margallo has since been replaced as Foreign Minister by Mr Alfonso Dastis, and Mr Picardo welcomed the fact that he had heard “very little” from Mr Dastis on the sovereignty issue. The Minister, Robin Walker MP, also suggested that Mr Dastis was taking a more “pragmatic and constructive approach.”⁸⁷ However, Dr Grocott warned that, despite a more moderate tone, the message that Gibraltar will only continue to have a relationship with the EU through Spanish joint-sovereignty remained the same.⁸⁸

81 Supplementary written evidence from Government of Gibraltar (GLT0001)

82 Foreign Affairs Committee, *Gibraltar: Time to get off the fence* (Second Report, Session 2014–15, HC 461)

83 Q 4

84 Supplementary written evidence from the Government of Gibraltar (GLT0001)

85 Q 2

86 James Badcock, ‘Spain’s foreign minister vows to ‘plant his flag’ on Gibraltar’ *The Telegraph* (6 October 2016): <http://www.telegraph.co.uk/news/2016/10/06/spains-foreign-minister-vows-to-plant-his-flag-on-gibraltar/> [accessed 20 February 2017]

87 Q 25

88 Q 16 (Dr Chris Grocott)

81. The Government of Gibraltar highlighted the risk that Spain could refuse to allow discussion of Gibraltar within the wider negotiation on Brexit, and that it might demand that Gibraltar's future be "decided on a bilateral basis between the UK and Spain".⁸⁹ However, the Chief Minister did not think that other Member States would look positively on attempts to conflate the sovereignty dispute with the Brexit process.⁹⁰ In support of his stance that Gibraltar must be included in Brexit negotiations, represented by the UK, Mr Picardo has since drawn attention to an Opinion delivered by Advocate General Szpunar to the Court of Justice of the European Union in January 2017. In this Opinion, the Advocate General concluded that the UK and Gibraltar should be considered as a single Member State for the purposes of Article 56 TFEU, the freedom to provide services.⁹¹
82. Several witnesses raised the possibility of Spain holding the UK to ransom in exit talks over the sovereignty issue. The Chief Minister warned that the UK would need to be conscious of this risk from the outset, and should be prepared to "play hard ball with Spain".⁹² The Government of Gibraltar also raised the concern that, after Brexit, when the UK is no longer present in Working Groups and other EU decision-making fora, Spain will be able to act with impunity in using EU law (such as that relating to Sites of Community Interest) to advance its territorial claims over Gibraltar.⁹³
83. Ashley Fox MEP noted that the withdrawal agreement reached under Article 50 TEU will only need to be approved by the Council of the EU by qualified majority, mitigating concern over a Spanish veto. However, any future trade agreement between the UK and the EU would need unanimous support, and he suggested that "you might expect a Spanish Government to use their veto in that trade [negotiation] as a lever on ... Gibraltar".⁹⁴
84. The Minister reiterated the UK Government's commitment never to renegotiate Gibraltar's sovereignty against the freely-expressed democratic wishes of the people of Gibraltar. He acknowledged that the UK Government would need to make it clear at the outset that Gibraltar's sovereignty was not open for discussion, but was confident that the EU institutions and other Member States would not want the sovereignty dispute to disrupt Brexit negotiations.⁹⁵
85. Mr Walker also highlighted the many positive aspects of the relationship between the UK and Spain:

"There are more than 300,000 British nationals in Spain and there were 17 million tourist visits from the UK to Spain during the first 11 months of 2016. We have very strong co-operation with the Spanish authorities in fighting crime and pursuing fugitives from British justice, and there

89 Supplementary written evidence from the Government of Gibraltar ([GLT0001](#))

90 [Q 11](#)

91 The Chief Minister spoke at a hearing of the European Parliament Committee on Constitutional Affairs, 30 January 2017: <http://www.europarl.europa.eu/ep-live/en/committees/video?event=20170130-1500-COMMITTEE-AFCO>. The Opinion was delivered on 19 January 2017 in relation to Case C-591/15: <http://curia.europa.eu/juris/celex.jsf?celex=62015CC0591&lang1=en&type=FXT&ancre> [accessed 3 February 2017]

92 [Q 7](#) and supplementary written evidence from the Government of Gibraltar ([GLT0001](#))

93 Supplementary written evidence from the Government of Gibraltar ([GLT0001](#))

94 Oral evidence taken on 18 January 2017 (Session 2016–17), [Q 38](#) (Ashley Fox MEP)

95 [Q 25](#)

is a considerable trade relationship; we are Spain's ninth largest export market and the third largest investor in Spain."

86. Mr Walker argued that this "mutual interest" would ensure that the UK and Spain both came to the negotiating table with a "focus on the pragmatic benefits ... to the economy of southern Spain and to Gibraltar in negotiating an effective arrangement on the border".⁹⁶

Conclusions

87. **We welcome the Government's intention to engage positively and pragmatically with Spain, to try to secure an agreement that reflects the mutual importance of the economic relationship between the UK and Spain, and between Gibraltar and Andalusia.**
88. **We fully endorse the UK Government's commitment never to enter into sovereignty discussions against the will of the Gibraltarian people. At the same time, we note the risk that Spain will seek to involve the sovereignty dispute either in the negotiations under Article 50 or in future negotiations on a UK-EU free trade agreement. The Government must be vigilant to resist any such attempt.**
89. **We also urge the UK Government to remain alert in the longer term to any attempts by Spain to advance its territorial claims over Gibraltar through the medium of EU laws or policies, when the UK is 'out of the room' after Brexit. The Government should use whatever means are available under international law to resist encroachment upon Gibraltar's sovereignty under such circumstances.**

CHAPTER 5: AN UNCERTAIN FUTURE

90. Throughout this short inquiry, there was a pervasive sense of uncertainty over what lies in store for Gibraltar following Brexit. Marlene Hassan Nahon observed that “Gibraltarians are once more faced with the insecurity of what our perennially fragile future will entail”.⁹⁷
91. Robert Vasquez said that Gibraltar’s situation was “uncertain, fluid and evolving on most fronts”, and emphasised that the impact of Brexit on the territory “depends entirely on the outcome of the withdrawal negotiations between the UK and the remaining Members of the EU, and on Spain’s attitude and reaction to that process”.⁹⁸

Gibraltar’s role in Brexit negotiations

92. Mr Picardo was clear that Gibraltar’s involvement in the process of EU withdrawal would be “in the context of one negotiation, led by the United Kingdom”; he emphatically rejected the idea of any bilateral Brexit negotiations between the UK and Spain over Gibraltar.⁹⁹
93. This approach was reflected by the Minister, Mr Walker, who emphasised that it would be for the UK to negotiate terms of exit and future relations with the EU. However, he stressed that the Government was focused on getting the “best deal on market access for the whole of the UK and the family of territories on whose behalf we are negotiating”. Mr Walker also told us that there was widespread, cross-party support in the House of Commons for “making sure that Gibraltar’s interests are respected in this negotiation”.¹⁰⁰
94. We note that two paragraphs of the Government’s February 2017 White Paper on *The United Kingdom’s exit from and new partnership with the European Union* make reference to Gibraltar, together with the Crown Dependencies and other Overseas Territories. Noting that Gibraltar has particular interests as the UK leaves the EU, the White Paper outlines the mechanisms through which the Government will engage with these territories on Brexit issues, and asserts that the Government will “continue to involve them fully in our work, respect their interests and engage with them as we enter negotiations”.¹⁰¹
95. For Gibraltar, the mechanism established to fulfil this undertaking is a new Joint Ministerial Council (JMC) on Gibraltar EU Negotiations, chaired by Robin Walker MP (representing DExEU), and including the Government of Gibraltar and Sir Alan Duncan MP, Minister of State for Europe and the Americas at the FCO.
96. Mr Walker described the JMC as the formal structure for Gibraltar to feed into the Brexit process, but noted that a lot of other meetings outside this forum were taking place, including meetings between the Gibraltar Government and other UK Government departments, as well as between officials. He noted that the Government of Gibraltar had been “very forthcoming” in

97 Written evidence from Marlene D E Hassan Nahon MP ([GLT0004](#))

98 Written evidence from Robert M. Vasquez ([GLT0005](#))

99 [Q 8](#) and supplementary written evidence from the Government of Gibraltar ([GLT0001](#))

100 [Q 2](#) and [QQ 22–23](#)

101 HM Government, *The United Kingdom’s exit from and new partnership with the European Union*, Cm 9417, February 2017: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589191/The_United_Kingdoms_exit_from_and_partnership_with_the_EU_Web.pdf [accessed 7 February 2017]

sharing its views and concerns on Brexit, giving the UK Government a good understanding of the “key issues” facing Gibraltar as a result of the UK’s decision to leave the EU.¹⁰²

Responsibilities of the UK Government

97. Witnesses commented on the responsibility placed on the UK Government, negotiating on Gibraltar’s behalf, to protect and promote the territory’s interests throughout the process of withdrawing from the EU. Marlene Hassan Nahon feared that “the interests of a much larger British population will displace those of Gibraltarians in the UK government’s dealings in exiting the European Union.”¹⁰³ Mr Picardo, on the other hand, was confident that the JMC would facilitate adequate representation of Gibraltar’s interests, but took “nothing for granted”. He would keep “a cynical eye” on the JMC throughout the Brexit process.¹⁰⁴
98. The Government of Gibraltar argued that the UK could not afford for Gibraltar to become a “high profile failure” of Brexit.¹⁰⁵ Professor Canessa agreed, suggesting that “Gibraltar in the context of Brexit presents considerable humanitarian and political risks for the UK Government”.¹⁰⁶ Marlene Hassan Nahon also stressed that Gibraltar would require “the utmost support from the British Government”.¹⁰⁷
99. Professor Fletcher noted that Gibraltar had survived many economic challenges over the years. But he emphasised that:

“It will survive this one properly only if the UK keeps Gibraltar close to it in the way in which it can trade, build its services and carry on developing the economy ... it needs the UK economy to be with it going forward.”¹⁰⁸

Professor Fletcher and Dr Grocott also argued that a public declaration of the UK’s plans in relation to Brexit and Gibraltar would help to provide more certainty for Gibraltar’s people, and for businesses looking to invest in the territory.¹⁰⁹

Gibraltar’s future relationship with the EU

100. The Chief Minister told us that he would be looking to see whether the UK could negotiate sufficient access to the Single Market in services to meet Gibraltar’s economic needs. He emphasised that Gibraltar and the UK would start from a position of full compliance with EU regulations, and hoped that financial services businesses in Gibraltar would be able to continue either to “passport into the EU” post-Brexit, or to trade on the basis of ‘equivalence’: “On the day of Brexit we will be entirely compliant with EU rules and therefore, the morning after Brexit, we will be equivalent”.¹¹⁰ Professor Fletcher acknowledged that decisions determining equivalence, which are taken by the European Commission, could be as much political as

102 [Q 21](#)

103 Written evidence from Marlene D E Hassan Nahon MP ([GLT0004](#))

104 [QQ 7–10](#)

105 Supplementary written evidence from the Government of Gibraltar ([GLT0001](#))

106 Written evidence from Prof Andrew Canessa ([GLT0002](#))

107 Written evidence from Marlene D E Hassan Nahon MP ([GLT0004](#))

108 [Q 19](#) (Prof John Fletcher)

109 [Q 19](#) (Dr Chris Grocott, Prof John Fletcher)

110 [Q 11](#)

technical.¹¹¹ Nevertheless, given the extent of Gibraltar’s legislative autonomy, it will have considerable discretion in seeking to maintain equivalence with the EU following withdrawal.

101. If it were not possible to reach a satisfactory outcome for Gibraltar within the UK-wide Brexit process, Mr Picardo suggested that Gibraltar might seek a microstate-style relationship with the EU, or, “to have an aspect of the new agreement between the United Kingdom and the European Union apply in a different way to Gibraltar.”¹¹² Robert Vasquez, in contrast, did not consider ‘special status’ a realistic prospect, though he agreed that the future relationship between the UK and EU could be “nuanced” to facilitate specific local needs, such as the fluid operation of Gibraltar’s land border with Spain.¹¹³
102. Mr Vasquez also highlighted that any proposals for special or differentiated treatment of Gibraltar would need to be approved by the EU institutions and 27 remaining Member States.¹¹⁴ On this, Ashley Fox commented:

“I am fairly confident that the Spanish would say absolutely no, and I suspect that most other MEPs have not turned their minds to the subject.”¹¹⁵

This was borne out by Spanish centre-right politician Esteban Gonzalez Pons MEP, giving evidence to the Select Committee during its visit to the European Parliament, who said unequivocally: “There can be no special solution for Gibraltar.”¹¹⁶

Relations with Spain outside the EU

103. As we have seen, in the context of common EU membership, regional cooperation between Gibraltar and Spain has improved, particularly with regard to fluidity at the frontier. Robert Vasquez observed that the EU had “greatly ‘managed’ the ongoing relationship between Spain, the UK and Gibraltar”, and expressed real concern at the potential for this relationship to deteriorate when two of these parties leave the EU.¹¹⁷
104. Susie Alegre argued that, bearing in mind Gibraltar’s clear show of support for the EU during the referendum and the EU’s Treaty obligations under the Charter of Fundamental Rights, the EU had a role to play in preventing undue harm to Gibraltar’s people or to its economy, and in maintaining regional cooperation with Spain.¹¹⁸
105. The Government of Gibraltar suggested that the best avenue for managing future relations would be for Spain, the UK and Gibraltar to return to the trilateral Forum for Dialogue, where discussions could take place on all aspects of the post-Brexit relationship, including on cooperation for the effective management of the frontier.¹¹⁹

111 [Q 15](#) (Prof John Fletcher)

112 [QQ 7–8](#)

113 Written evidence from Robert M. Vasquez ([GLT0005](#))

114 Written evidence from Robert M. Vasquez([GLT0005](#))

115 Oral evidence taken on 18 January 2017 (Session 2016–17), [Q 38](#) (Ashley Fox MEP)

116 Oral evidence taken on 18 January 2017 (Session 2016–17), [Q 1](#) (Esteban Gonzalez Pons MEP)

117 Written evidence from Robert M. Vasquez ([GLT0005](#))

118 Written evidence from Susie Alegre ([GLT0007](#))

119 Supplementary written evidence from the Government of Gibraltar ([GLT0001](#))

106. We note, however, that while the UK continues to support this process, Spain maintains its position that bilateral sovereignty talks should take place under the Brussels process.¹²⁰

Conclusions

107. **Gibraltar faces potentially significant economic consequences as a result of the UK's decision to leave the EU. The extent to which these consequences will be realised hinges both on the outcome of the UK's negotiations with the EU, and on the reaction of Spain during and after withdrawal.**
108. **We agree with the Chief Minister of Gibraltar that Gibraltar and the UK should be considered, for the purposes of withdrawal negotiations, as a single State. Gibraltar is part of the EU, and its withdrawal is a matter for the UK and the EU collectively, not for a separate, bilateral negotiation between the UK and Spain. Aspects of the agreement on the future UK-EU relationship could nevertheless include specific bilateral arrangements between Spain and Gibraltar, for example in relation to local border traffic management.**
109. **A dedicated Joint Ministerial Council has been established to facilitate Gibraltar's involvement in the wider Brexit process, and we note that the Government of Gibraltar appears satisfied with the level of contact it has had with UK ministers and officials to date.**
110. **The Government of Gibraltar has placed its trust in the UK to negotiate on its behalf and secure a Brexit that meets Gibraltar's needs. However, it remains the case that, in leaving the EU, Gibraltar finds itself in a situation that 96% of its voters did not support. Negotiating on their behalf, the UK Government has a moral responsibility to ensure Gibraltar's voice is heard, and its interests respected, throughout the Brexit process.**
111. **At this stage, it is unclear what level of Single Market access the UK will be able to negotiate after Brexit, in particular with regard to services. It therefore remains to be seen whether Gibraltar will feel compelled to seek a differentiated future relationship with the EU. We note, however, that Spanish opposition may present an insuperable barrier to any perceived special treatment for Gibraltar.**
112. **Moreover, a microstate-style status would need the agreement of the EU institutions and the other 27 Member States. It is not clear that the EU would prioritise special arrangements for a dependent territory of a State which is leaving, not joining, the EU. At the same time, we note that the EU itself has a continuing interest in promoting the economic well-being of Gibraltar, as a neighbouring territory, in developing good relations between Gibraltar and Spain, and in protecting the welfare of EU national border residents.**

120 'Spain and UK agree a more constructive approach on Gibraltar dispute at UN', *MercoPress* (11 November 2016): <http://en.mercopress.com/2016/11/11/spain-and-uk-agree-a-more-constructive-approach-on-gibraltar-dispute-at-un> [accessed 8 February 2017]. This article reports on the UN General Assembly's Fourth Committee consensus decision which sets out the conflicting positions of the British and Spanish governments on Gibraltar.

113. **It is essential that Spain, the UK and Gibraltar, once they lose the common forum provided by shared EU membership, redouble their efforts to find a structure through which open lines of communication can be maintained, promoting cooperation and good relations. We call on the Government to give early thought to how such a structure might be established, and what, if any, role the EU might play in it. Agreement on this should be sought in tandem with Brexit negotiations.**

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

The economic implications

1. The EU Single Market has played an important role in helping Gibraltar to develop its vibrant, service-based economy over recent decades. We note the view of our witnesses that the economy is highly resilient. Nevertheless, a loss of Gibraltar's access to the Single Market in services would unavoidably have negative consequences for Gibraltar's economy, at least in the short term. (Paragraph 40)
2. A common theme in the evidence we heard on the economic impact of Brexit for Gibraltar has been its reliance upon the free movement of frontier workers, who make up some 40% of the total Gibraltar workforce. If Brexit leads to restrictions being imposed on the daily movement of labour across the land border, this will seriously damage several key sectors of its economy, including the port, tourism, financial services and aviation. (Paragraph 41)
3. The economy of the Campo de Gibraltar region of Spain benefits substantially from the employment opportunities offered by Gibraltar and would also be significantly affected by any restriction of the movement of goods and people over the frontier. (Paragraph 42)
4. EU funding has played an important role in Gibraltar's economic development and in supporting regional cooperation. We welcome Mr Walker's confirmation that EU-funded projects in Gibraltar will be covered by HM Treasury guarantees, but note that, as in the UK, funding is uncertain beyond 2020. It is also possible that projects in Gibraltar may not be deemed to fulfil the criteria of fitting with UK Government strategic priorities. We call on the UK Government to clarify what future UK-based funding will be available to Gibraltar if it cannot access EU programmes after Brexit. (Paragraph 43)
5. Gibraltar's most significant economic relationship is with the UK itself, and it will be important for Gibraltar to maintain and enhance its access to UK markets to compensate for any loss in access to the Single Market. The UK also has a responsibility to support Gibraltar in benefiting from any opportunities that arise following Brexit, including by participating in any new international trade deals. (Paragraph 44)

The frontier with Spain

6. It will be in the mutual interest of Gibraltar and Spain to maintain as free-flowing a frontier as possible following Brexit. We urge all parties involved to work together in good faith to reach an agreement that supports ongoing regional cooperation and trade, and avoids undue disruption to the lives of thousands of border residents who cross the frontier daily. We agree with the Chief Minister of Gibraltar that the Local Border Traffic Regulation (EC/1931/2006) could be used as a future basis for movement of labour between Spain and Gibraltar, but note that any agreement will require both sides' commitment to sustain it. (Paragraph 70)
7. Common membership of the EU has greatly facilitated cross-border cooperation between authorities in Spain and Gibraltar, including in the area of police and judicial cooperation. In particular, we note the importance of the European Arrest Warrant in preventing those wanted for crimes from

evading justice by crossing the EU's external border, in either direction. In a recent report we highlighted the importance of police and judicial cooperation post-Brexit across the Irish land border. It will be equally vital for Gibraltar to continue to cooperate with Spain in this area, and we urge the UK Government, as part of its wider commitment to continuing cooperation on security and policing, to prioritise supporting a new and stable relationship between Gibraltar and Spain. (Paragraph 71)

8. The European institutions, including the Commission, have played an important part in promoting dialogue between Gibraltar and Spain. Following Gibraltar's withdrawal from the EU, continued cooperation will be just as important, and we urge the UK Government to provide support for this, working both with the Spanish Government and, where possible, with the EU. (Paragraph 72)

Implications for the sovereignty dispute

9. We welcome the Government's intention to engage positively and pragmatically with Spain, to try to secure an agreement that reflects the mutual importance of the economic relationship between the UK and Spain, and between Gibraltar and Andalusia. (Paragraph 87)
10. We fully endorse the UK Government's commitment never to enter into sovereignty discussions against the will of the Gibraltarian people. At the same time, we note the risk that Spain will seek to involve the sovereignty dispute either in the negotiations under Article 50 or in future negotiations on a UK-EU free trade agreement. The Government must be vigilant to resist any such attempt. (Paragraph 88)
11. We also urge the UK Government to remain alert in the longer term to any attempts by Spain to advance its territorial claims over Gibraltar through the medium of EU laws or policies, when the UK is 'out of the room' after Brexit. The Government should use whatever means are available under international law to resist encroachment upon Gibraltar's sovereignty under such circumstances. (Paragraph 89)

An uncertain future

12. Gibraltar faces potentially significant economic consequences as a result of the UK's decision to leave the EU. The extent to which these consequences will be realised hinges both on the outcome of the UK's negotiations with the EU, and on the reaction of Spain during and after withdrawal. (Paragraph 107)
13. We agree with the Chief Minister of Gibraltar that Gibraltar and the UK should be considered, for the purposes of withdrawal negotiations, as a single State. Gibraltar is part of the EU, and its withdrawal is a matter for the UK and the EU collectively, not for a separate, bilateral negotiation between the UK and Spain. Aspects of the agreement on the future UK-EU relationship could nevertheless include specific bilateral arrangements between Spain and Gibraltar, for example in relation to local border traffic management. (Paragraph 108)
14. A dedicated Joint Ministerial Council has been established to facilitate Gibraltar's involvement in the wider Brexit process, and we note that the Government of Gibraltar appears satisfied with the level of contact it has had with UK ministers and officials to date. (Paragraph 109)

15. The Government of Gibraltar has placed its trust in the UK to negotiate on its behalf and secure a Brexit that meets Gibraltar's needs. However, it remains the case that, in leaving the EU, Gibraltar finds itself in a situation that 96% of its voters did not support. Negotiating on their behalf, the UK Government has a moral responsibility to ensure Gibraltar's voice is heard, and its interests respected, throughout the Brexit process. (Paragraph 110)
16. At this stage, it is unclear what level of Single Market access the UK will be able to negotiate after Brexit, in particular with regard to services. It therefore remains to be seen whether Gibraltar will feel compelled to seek a differentiated future relationship with the EU. We note, however, that Spanish opposition may present an insuperable barrier to any perceived special treatment for Gibraltar. (Paragraph 111)
17. Moreover, a microstate-style status would need the agreement of the EU institutions and the other 27 Member States. It is not clear that the EU would prioritise special arrangements for a dependent territory of a State which is leaving, not joining, the EU. At the same time, we note that the EU itself has a continuing interest in promoting the economic well-being of Gibraltar, as a neighbouring territory, in developing good relations between Gibraltar and Spain, and in protecting the welfare of EU national border residents. (Paragraph 112)
18. It is essential that Spain, the UK and Gibraltar, once they lose the common forum provided by shared EU membership, redouble their efforts to find a structure through which open lines of communication can be maintained, promoting cooperation and good relations. We call on the Government to give early thought to how such a structure might be established, and what, if any, role the EU might play in it. Agreement on this should be sought in tandem with Brexit negotiations. (Paragraph 113)

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members

Baroness Armstrong of Hill Top
 Lord Boswell of Aynho (Chairman)
 Baroness Brown of Cambridge
 Baroness Browning
 Baroness Falkner of Margravine
 Lord Green of Hurstpierpoint
 Lord Jay of Ewelme
 Baroness Kennedy of The Shaws
 The Earl of Kinnoull
 Lord Liddle
 Baroness Prashar
 Lord Selkirk of Douglas
 Baroness Suttie
 Lord Teverson
 Lord Trees
 Baroness Verma
 Lord Whitty
 Baroness Wilcox
 Lord Woolmer of Leeds

Declarations of interest

Baroness Armstrong of Hill Top
No relevant interests declared
 Lord Boswell of Aynho (Chairman)
No relevant interests declared
 Baroness Brown of Cambridge
No relevant interests declared
 Baroness Browning
No relevant interests declared
 Baroness Falkner of Margravine
No relevant interests declared
 Lord Green of Hurstpierpoint
No relevant interests declared
 Lord Jay of Ewelme
Member, European Policy Forum Advisory Council
Member, Senior European Experts Group
 Baroness Kennedy of The Shaws
No relevant interests declared
 The Earl of Kinnoull
No relevant interests declared
 Lord Liddle
No relevant interests declared
 Baroness Prashar
No relevant interests declared
 Lord Selkirk of Douglas
No relevant interests declared

Baroness Suttie

No relevant interests declared

Lord Teverson

No relevant interests declared

Lord Trees

No relevant interests declared

Baroness Verma

No relevant interests declared

Lord Whitty

No relevant interests declared

Baroness Wilcox

No relevant interests declared

Lord Woolmer of Leeds

No relevant interests declared

A full list of Members' interests can be found in the Register of Lords Interests <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/>

APPENDIX 2: LIST OF WITNESSES

Evidence is published online at <http://www.parliament.uk/brexit-gibraltar/> and available for inspection at the Parliamentary Archives (020 7219 3074).

Evidence received by the Committee is listed below in chronological order of oral evidence session and in alphabetical order. Those witnesses marked with a ** gave both oral and written evidence. Those marked with a * gave oral evidence and did not submit any written evidence. All other witnesses submitted written evidence only:

Oral evidence in chronological order

- | | | |
|----|--|--------------------------|
| ** | The Hon Dr Joseph Garcia MP, Deputy Chief Minister of Gibraltar | QQ 1–11 |
| ** | Mr Michael Llamas QC, Attorney General of Gibraltar | |
| ** | The Hon Fabian Picardo QC MP, Chief Minister of Gibraltar | |
| * | Professor John Fletcher, Pro-Vice-Chancellor for Research and Innovation, Bournemouth University | QQ 12–19 |
| * | Dr Chris Grocott, Lecturer in Management and Economic History, University of Leicester | |
| ** | Robin Walker MP, Parliamentary Under Secretary of State, Department for Exiting the European Union | QQ 20–26 |

Alphabetical list of all witnesses

- | | | |
|----|---|-------------------------|
| | Susie Alegre | GLT0007 |
| | Felix Alvarez | GLT0008 |
| | Andrew Canessa | GLT0002 |
| | Paul Cartwright | GLT0012 |
| * | Professor John Fletcher, Pro-Vice-Chancellor for Research and Innovation, Bournemouth University (QQ 12–19) | |
| ** | The Hon Dr Joseph Garcia MP, Deputy Chief Minister of Gibraltar (QQ 1–11) | GLT0001 |
| | Gibraltar Port Authority | GLT0010 |
| * | Dr Chris Grocott, Lecturer in Management and Economic History, University of Leicester (QQ 12–19) | |
| | The Hon Marlene D E Hassan Nahon MP | GLT0004 |
| | Christiaan de Lange | GLT0009 |
| ** | Mr Michael Llamas QC, Attorney General of Gibraltar (QQ 1–11) | GLT0001 |
| | Peter-Ashley Mackay-Jackson | GLT0003 |
| ** | The Hon Fabian Picardo QC MP, Chief Minister of Gibraltar (QQ 1–11) | GLT0001 |

University of Gibraltar

[GLT0006](#)

Robert M. Vasquez

[GLT0005](#)

** Robin Walker MP, Parliamentary Under Secretary of
State, Department for Exiting the European Union
([QQ 20-26](#))

[GLT0011](#)

APPENDIX 3: ANALYSIS OF THE MAIN PROVISIONS OF LOCAL BORDER TRAFFIC REGULATION (EC/1931/2006)

1. Article 1 authorises Member States to conclude bilateral agreements with neighbouring third countries for the purpose of implementing the local border traffic regime established by the Regulation.
2. Article 3 defines the terms used in the Regulation:
 - “external land border” means the common land border between a Member State and a neighbouring third country;
 - “border area” means an area that extends no more than 30 kilometres from the border. The local administrative districts that are to be considered as the border area shall be specified by the States concerned in their bilateral agreements. If part of any such district lies between 30 and 50 kilometres from the border line, it shall nevertheless be considered as part of the border area;
 - “local border traffic” means the regular crossing of an external land border by border residents in order to stay in a border area, for example for social, cultural or substantiated economic reasons, or for family reasons, for a period not exceeding the time limit laid down in this Regulation;
 - “third-country national” means any person who is not a citizen of the Union under EU law;
 - “border residents” means third-country nationals who have been lawfully resident in the border area of a country neighbouring a Member State for a period specified in the bilateral agreements, which shall be at least one year. In exceptional and duly justified cases specified in those bilateral agreements, a period of residence of less than one year may also be considered as appropriate;
 - “local border traffic permit” means a specific document entitling border residents to cross an external land border under the local border traffic regime.
3. Article 4 sets out the conditions of entry. Border residents may cross, either way, the external land border of a neighbouring Member State under the local border traffic regime, on condition that they:
 - are in possession of a local border traffic permit and, if so required by the relevant bilateral agreement, a valid travel document or documents;
 - are not persons for whom an alert has been issued in the Schengen Information System (SIS) for the purposes of refusing them entry;
 - are not considered to be a threat to public policy, internal security, public health or the international relations of any of the Member States, and in particular where no alert has been issued in Member States’ national databases for the purposes of refusing entry on the same grounds.
4. Article 5 provides that the duration of stay in the border area of each State must not exceed three months. The Court of Justice of the EU has held,

in the case of a border traffic management regime between Hungary and Ukraine, that this period is renewed each time the border in question is crossed.¹²¹

5. Article 6 sets out entry and exit checks:
 - the EU Member State concerned must carry out entry and exit checks on border residents in order to ensure that they fulfil the conditions set out in Article 4;
 - entry or exit stamps shall be affixed to the local border traffic permit.

6. Article 7 introduces the local border traffic permit, which must observe the following conditions:
 - The territorial validity of the local border traffic permit shall be limited to the border area of the issuing Member State.

The local border traffic permit shall bear a photograph of the holder of the permit and shall contain at least the following information:

- (a) the forename(s), surname(s), date of birth, nationality and place of residence of the holder of the permit;
- (b) the issuing authority, date of issue and period of validity;
- (c) the border area within which the holder of the permit is authorised to move;
- (d) the number of the valid travel document (passport or identity card) entitling its holder to cross the external border.

It shall clearly state that its holder is not authorised to move outside the border area and that any abuse shall be subject to penalties.

7. Article 9 states that local border traffic permits may be issued to border residents who:
 - are in possession of a valid travel document (passport or identity card) entitling them to cross the external borders;
 - produce documents proving their status as border residents and proving the existence of legitimate reasons frequently to cross an external land border under the local border traffic regime.
8. Article 10 provides that a local border traffic permit shall be valid for a minimum of one year and a maximum of five years.
9. Article 11 states that the fees corresponding to the administrative costs of processing applications for the local border traffic permit shall not exceed the fees charged for processing applications for short-term multiple-entry visas. A local border traffic permit may also be issued free of charge.

121 Judgment of 21 March 2013, *Shomodi*, C-254/11, EU:C:2013:182, paragraph 26: “Consequently [...] Regulation No 1931/2006 must be interpreted as meaning that the holder of a local border traffic permit granted under the special local border traffic regime established by that regulation must be able, within the limits laid down in that regulation and in the bilateral agreement concluded for its implementation between the third country of which he is a national and the neighbouring Member State, to move freely within the border area for a period of three months if his stay is uninterrupted and to have a new right to a three-month stay each time that his stay is interrupted.”

10. Article 13 authorises EU Member States to conclude bilateral Agreements with neighbouring third countries for the purposes of implementing the local border traffic regime, so long as they are in accordance with the Regulation.

Before concluding or amending any bilateral agreement on local border traffic with a neighbouring third country, the Member State concerned must consult the Commission as to the compatibility of the agreement with the Regulation.

If the Commission considers the agreement to be incompatible with the Regulation, it notifies the Member State concerned. The Member State must then amend the agreement accordingly, within a reasonable period.

11. Article 14 concerns comparability of treatment. A bilateral agreement must ensure that third countries grant persons enjoying the EU right of free movement, and third-country nationals lawfully resident in the border area of the Member State concerned, equal treatment to that granted to the border residents of the third country concerned.

12. Article 15 sets out the terms for easing border crossings. Member States can:

- set up specific border crossing points open only to border residents;
- reserve specific lanes to border residents at ordinary border crossing points;
- taking into account the local circumstances, and where exceptionally there is a requirement of a special nature, authorise border residents to cross their external land border at defined places other than authorised border crossing points and outside the fixed hours.
- allow persons who regularly cross the external land border and who, by reason of their frequent crossing of the border, are well known to the border guards to be subject only to random checks (although they should be subject to thorough checks from time to time, without warning).

13. Article 16 clarifies that the Regulation does not apply to the Spanish autonomous towns of Ceuta and Melilla on the Moroccan coast.