

TRILATERAL FORUM OF
DIALOGUE ON GIBRALTAR

ANNEX

21 July 2009

**Trilateral Forum of Dialogue
Framework for forthcoming negotiations**

The governments of Gibraltar, Spain and the United Kingdom have agreed to take forward co-operation in the areas of environment, financial services and taxation, judicial, customs and police co-operation, education, maritime communications and safety and visa-related issues. We have today concluded the detailed framework within which to reach agreements for the next Ministerial meeting of the forum in 2010.

We want to create a constructive atmosphere of mutual and balanced co-operation and confidence for the benefit and prosperity of Gibraltar and the whole region, in particular the Campo de Gibraltar, in accordance with the July 2008 Ministerial communiqué of the Forum.

We have re-affirmed that, as was the case with the Cordoba Statements, any work in this area would have no implications whatsoever regarding sovereignty and jurisdiction. In addition, any such agreements would have to be compatible with any EU instruments' and international conventions' obligations binding on the participants.

Co-operation in these areas will be in the context and under the auspices of the Trilateral Forum.

Environmental issues

Designations of Sites of Community Importance, and EU Commission Decisions relating thereto, made pursuant to Council Directive 92/43/EEC, have no implications for, and thus do not change the sovereignty, jurisdiction and control of waters to which they relate, which accordingly remain as they had been before.

Nothing in this Paper (especially, but not limited to, the contents of the preceding paragraph) or in any arrangement entered into pursuant to or consequential upon it, and nothing done or omitted to be done pursuant to any such arrangement shall prejudice any position in relation to any stage of or issue arising in relation to Case T-176/09 in the Court of First Instance of the European Communities. This Paper and any aforesaid arrangements, acts or omissions, shall not be alluded to, produced at, relied on or made use of in any way at any stage in connection with that Case.

Overview

Environmental issues are of great importance to people in Gibraltar and the Campo de Gibraltar. Threats to the environment have the potential to impact on both sides and affect adversely the day-to-day lives of citizens. Equally, ongoing protection of the area's environment may mean that action is needed on both sides. Closer co-operation will help secure the best environmental outcomes.

Objectives

1. To ensure a high level of environmental protection in Gibraltar and the whole region, in particular the Campo de Gibraltar, consistent with applicable European and international measures.
2. To achieve the management of waste in a manner that avoids negative impact for the region.
3. To reduce cases of pollution and its effect whether atmospheric, marine / aquatic or terrestrial.
4. To co-ordinate means on both sides of the fence/ frontier in order to combat environmental accidents.

Areas for co-operation would include:

- i) Maritime activity and traffic, including oil pollution or threats posed by maritime accidents, bunkering operations, the loss of containers overboard, the handling of hazardous cargoes, illicit dumping at sea, air pollution from ships, emptying of ballast tanks etc;
- ii) Industrial emissions and water discharges;
- iii) Water contamination, both fresh water and sea water, including nutrient discharge and impact on species diversity;
- iv) Waste disposal, in particular hazardous waste and recycling of waste;
- v) Dredging and disposal of silt and spoil;
- vi) Land and soil damage including soil erosion and issues of habitat and species diversity;
- vii) Land reclamation including hydrodynamic changes in the region and their environmental impact due to modifications in the coastal line.

Procedures and mechanisms

The list that follows sets out procedures and mechanisms that will need to be considered in reaching agreements to take forward the areas of co-operation.

- i) Identify the responsible public authorities;
- ii) Agree at what level co-operation should be taken forward on a daily basis, and any limits of authority at this level;
- iii) Appoint appropriate liaison contacts and exchange and maintain up-to-date contact details;
- iv) Hold 'workshops' for the sharing of experience and procedures to prevent and control spillages, and organise training courses and exercises led by experts for maritime inspectors and technicians in the region;
- v) Revise and improve the communication procedures between the Maritime authorities of Algeciras and Gibraltar. Establish a 'hot line' for potential spillages or dumping, either intentional or accidental;
- vi) Consider options for a common framework for planning and management of solid waste in Gibraltar and the whole region, in particular the Campo de Gibraltar;
- vii) Consider cross fence / frontier mechanisms relating to the transport and disposal of waste generated in Gibraltar;
- viii) Consider a formula for collaboration for the identification and, if necessary, resolution of problems relating to air quality;
- ix) Co-ordinate exchange of information on air quality;
- x) Enhance co-operation between Gibraltar and the commissions that exist in the region for the prevention of marine pollution both originating on land and from vessels, and for waste management.

Response to pollution incidents

Pollution incidents can cause negative, and sometimes rapid, cross-border environmental impacts. In order to address pollution-based environmental risks work should be undertaken to:

- i) Assess where pollution could come from within Gibraltar or elsewhere in the region, in particular the Campo de Gibraltar, or from an external source that could impact on either or both;
- ii) Examine the response plans in place in Gibraltar and in Spain to address such pollution incidents, whether atmospheric, marine /aquatic or terrestrial;
- iii) Examine how such response plans could interface with each other;
- iv) Develop a programme of joint exercises to test mutually supportive response plans;
- v) Agree procedures for the dissemination of information in the event of a pollution incident;
- vi) Consider what joint strategies might be put in place to reduce the risk of a pollution incident occurring.

Co-operation in an EU / International context

There is an increasing amount of co-operation at an EU and international level on environmental issues. Work should be undertaken to:

- i) Identify which EU and international environment instruments require, or would benefit from, liaison between Gibraltar and Spain;
- ii) Examine issues in relation to the interface between Gibraltar and Spain under the EU Water Framework Directive including:
 - the degree to which Gibraltar and La Linea draw from the aquifer on the North Front;
 - the re-charge of the aquifer, purification and consideration of supervision of the quality of the aquifer's water including the possibility of pollution and spills;
 - cross-border morphological pressures on the Bay.
- iii) Consider options for co-operation in relation to the EU Floods Directive due to come into force.

Financial Services and Taxation

Overview

Co-operation will advance our common view that international financial services should be carried out in a well regulated context and effectively compliant with all applicable EU and other international measures relating to money laundering, terrorist and other serious crime financing. This will allow us to respond to changing circumstances in the global financial system so that there should be strong financial supervision and regulation.

Objectives

To this end we will agree arrangements for the normal degree of co-operation, including arrangements, mechanisms and regular contacts at all levels in relation to financial services policy, regulation and supervision, taxation, exchange of information and anti-money laundering issues.

Procedures and mechanisms

The list that follows sets out procedures and mechanisms that will need to be considered in reaching agreements to take forward the areas of co-operation:

1. Close co-operation and working relations between respective competent authorities for supervision and regulation.
2. Regular meetings between officials in relation to financial services policy, regulation, taxation, and anti-money laundering issues.
3. Familiarisation briefings, presentations and visits in relation to participants' legislative and administrative systems and frameworks.
4. Regular contact and meetings between Financial Intelligence Units, including for the purposes of effective exchange of information.
5. Negotiations with Gibraltar with the aim of concluding a Tax Information Exchange Agreement, on the basis as a minimum of the OECD TIEA model. The agreement will include mechanisms for the effective exchange of information between the corresponding authorities in Spain and Gibraltar in order to combat money laundering, terrorist financing and fiscal or financial fraud. The entering into force of the agreement will produce the effects which are foreseen in the respective fiscal legislations.
6. Negotiations with Gibraltar on Double taxation arrangements including provisions for the exchange of information and the prevention of fiscal evasion with respect to taxes or income and the avoidance of double taxation.
7. Full levels of Mutual Legal Assistance co-operation in relation to financial services related law enforcement.
8. The provision of information on an urgent basis in cases of terrorism and other serious organized crime financing.
9. Legislation and practice in Spain, Gibraltar and the UK will effectively comply with the 40 recommendations of the Financial Action Task Force (FATF) against money laundering and 9 special recommendations of the FATF against terrorist financing.

Judicial, Customs and Police Co-operation

Overview

There should be full co-operation in the common objective to fight crime, whether local or international, and address the particular challenge of organised international crime. Such issues cannot be addressed in isolation. Justice and Home Affairs (JHA) is also a growing area of legislation at the EU level and brings with it an increasing number of obligations, particularly in terms of cross-border judicial (civil and criminal), customs and police co-operation. More effective co-operation will therefore deliver real benefits for people on both sides of the fence / frontier and ensure compliance with EU obligations.

Objectives

1. Customs and Police Co-operation

An early task should be to review and enhance existing structures and modalities for co-operation (including liaison and communication) between customs and police authorities. Exchange of Information (including data sharing in areas where data sharing is agreed) and operational co-operation will be two key areas.

On the exchange of information (including data sharing in areas where data sharing is agreed), this work, while taking into account all relevant rules on data sharing and protection and other EU obligations, should:

- i) Review / improve direct liaison, contact, exchange of information and intelligence sharing mechanisms between law enforcement agencies, including Financial Intelligence Units;
- ii) Explore the possibility of networking the criminal registers between Gibraltar, UK and Spain;
- iii) Explore which aspects of the current framework decision on the Prüm Treaty might usefully be introduced into co-operation between the relevant authorities (given that the current framework decision does not apply to Gibraltar).

On operational co-operation, this work, while taking into account all relevant EU and international obligations, should:

- iv) Encourage more joint operations between law enforcement agencies, including Financial Intelligence Units;
- v) Identify what measures already exist or what measures might be put in place to co-operate / co-ordinate in relation to:
 - Child protection including issues of access, maintenance, enforcement of court orders etc;
 - Liaison between probation staff, social workers;
 - Drugs including whether specific measures / joint campaigns could be put in place to address rehabilitation issues and tackle abuse, trafficking and the proceeds of trafficking;
 - Internet crime and child pornography;
 - Organised crime, trafficking in human beings, and illegal immigration;
 - Corruption and customs offences.

2. Judicial Co-operation

Work should also be undertaken to agree arrangements that will enable rapid and effective judicial co-operation in both civil and criminal matters, and processing of requests for mutual legal assistance.

This work should:

- i) Review and then lead to the exchange of papers relating to existing domestic, EU, and international assistance and co-operation legislation and mechanisms, including required procedures;
- ii) Identify, in light of the above review, any problems, impediments or gaps as well as opportunities for improved co-operation and how these might be addressed;
- iii) Consider possible means to co-operate in relation to issues such as the service of legal documents, the taking of evidence abroad, and cross-border legal aid.
- iv) Review the operation of European Arrest Warrants and extradition.

Procedures and mechanisms

The list that follows sets out procedures and mechanisms that will need to be considered in reaching agreements to take forward the areas of co-operation.

- Study the applicable legislation and practice followed in matters of judicial, customs and police co-operation and draw up recommendations to eliminate any weaknesses detected;
- Prepare a manual for use by the relevant authorities on how to process commissions rogatoires (letters of request) in line with the requirements of the Agreed Arrangements of 2000 and 2007;
- Consider simplified procedures to access information of judicial, customs and police value;
- Identify contact points within the administrations involved in judicial, customs and police co-operation, through direct informal communication, in order to resolve any issues that require an urgent solution or that arise in emergency situations;
- Examine where access to information and the completion of the applicable procedures by the judicial, customs and police authorities does not meet requirements, and, in the event of disagreement, to submit to the Forum of Dialogue;
- Organise regular co-ordination meetings between the relevant competent authorities, particularly those that are frequently in contact in order to propose improvements in the arrangements for exchange of information and co-ordination;
- Organise co-ordination of research covering crimes that are particularly common in the respective territories.

Education

Overview

Bilingualism in languages such as English and Spanish, which together cover a large proportion of the planet, represents a significant social and economic opportunity for citizens of Gibraltar and the whole region, in particular the Campo de Gibraltar, who are particularly well placed to achieve such bilingualism. Education also has an important role to play in the enhancement and appreciation of culture and in the fostering of understanding.

Objectives

- To enhance cultural and educational co-operation between Gibraltar and the whole region, in particular the Campo de Gibraltar;
- To promote bilingualism and the teaching of English and Spanish in Gibraltar and the Campo de Gibraltar;
- To explore enhanced opportunities in the field of higher education, training and professional development;
- To develop a mutual understanding of both education systems.

Procedures / mechanisms

The list that follows sets out procedures and mechanisms that will need to be considered in reaching agreements to take forward the areas of co-operation through the competent authorities and institutions of the participants.

1. To establish arrangements and procedures to:
 - Put in place criteria to consider requests by staff and pupils to visit specific schools and for cultural interchanges;
 - Standardise the system for handling requests for school visits and cultural interchanges;
 - Advise schools in Gibraltar and the whole region, in particular the Campo de Gibraltar of the opportunities available to them for school visits and cultural interchanges.
2. To establish more concrete links with Higher Education institutions in the region with a view to:
 - Gibraltar students accessing specific courses/facilities and vice versa;
 - Gibraltar educationalists accessing Spanish facilities and vice versa;
 - Gibraltar and Spanish educationalists in the region sharing good practice and expertise.
3. To consider options to facilitate and improve mutual recognition of tertiary education qualifications, and to note that students in the region have the opportunity to study in UK universities.
4. Gibraltar will extend financial assistance to Gibraltar students wishing to pursue university studies in Spain on the same terms as it does for UK universities.

5. To co-operate in the creation of professional development opportunities for teaching staff in Gibraltar and in the region in Spain on:
 - The teaching of Spanish in Gibraltar schools;
 - The teaching of English in Spanish schools in the region;
 - The use of open-source software;
 - The use of new technologies;
 - Environmental education;
 - Special needs education.
6. To offer advice and expertise in the promotion of bilingualism in the region by: -
 - Drawing on the expertise of teachers in Gibraltar and the whole region, in particular the Campo de Gibraltar;
 - Advise on the provision of relevant teaching and learning resources;
 - Provide for the exchange of resource material.
7. Establish specific training programmes for Gibraltarians in the Fundación Campus Tecnológico in Algeciras and for Spaniards in the College of Further Education in Gibraltar.
8. The delivery through the Instituto Cervantes of:
 - Spanish language courses including specific courses in business / technical language for which there may be a demand in Gibraltar and the whole region, in particular the Campo de Gibraltar and advanced courses for teachers of Spanish as a foreign language.
 - DELE (Diploma in Spanish as a foreign language) and preparatory courses.
 - A cultural programme to enhance the knowledge and appreciation of Spanish culture in Gibraltar and at the same time enrich cultural opportunities in the Campo de Gibraltar.

Maritime Communications And Safety

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Overview

1. Measures to improve communications in the Gibraltar area that were a matter for consideration and agreement during the first phase of the Forum of Dialogue should continue to be a principal aim during this second phase bearing in mind their positive impact on the quality of life of the people of the area. The introduction of maritime communications between the port of Gibraltar and Spanish ports, particularly in the Bay, apart from leading to the same aim, will bring about an additional element in boosting the economy of the area, as it will provide new opportunities for firms in the fields of transport and tourism, with the subsequent creation of jobs.

The establishment of these maritime links will need to take into account that Gibraltar is outside the EU Customs Union and that the United Kingdom (and, therefore Gibraltar) is also out of the Schengen area as regards crossing of borders by people. Consequently, ports should be provided with means for customs and border-crossing (immigration) controls as well as with adequate facilities for service to passengers.

2. Maritime communications in the area should be developed with all guarantees for the personal safety of users and the environmental safety of the ecosystem. Mechanisms should be introduced that allow the traffic of all types of vessels to take place with maximum standards of safety for traffic and the environment. This is understood to be without prejudice to the respective legal positions of Spain and the United Kingdom as regards the dispute over sovereignty and jurisdiction over the waters in the context of Gibraltar.

In this field it must be stressed that safety certificates for cargo ships of more than 500 GT and all passenger ships operating internationally – regardless of the GT - have to comply with the SOLAS Convention.

3. In the case of a maritime incident, both from the environmental point of view and from that of maritime search and rescue, the respective competent authorities should agree and develop efficient mechanisms to achieve an appropriate coordination in case of an emergency and to assign the necessary means to tackle it.

Objectives

- A. Encourage firms that may be interested to establish permanent links between the Port of Gibraltar and Spanish ports, especially in the Bay, in accordance with the relevant Community regulations. In order to achieve this aim, adequate staff and equipment should be provided to ports for customs and transit of persons controls, as well as the necessary infrastructure on the ground for mooring, waiting areas, sale of tickets, security, etc.
- B. Improve maritime safety of ships navigating within the Bay or travelling to and from the ports of Algeciras or other Spanish destinations in the Bay and Gibraltar.

- C. Coordinate actions in combating pollution or in maritime search and rescue in case of maritime incidents in the area.
- D. Ensure the validity of maritime safety certificates of vessels as required by SOLAS.
- E. Ensure compliance with international laws and regulations regarding the registration of ships and the requirement to fly a State's flag.

Procedures And mechanisms

The list that follows sets out procedures and mechanisms that will need to be considered in reaching agreements to take forward the objectives, including the setting up of a Group of Experts.

- Consider the possibility of commissioning a market research and an analysis of the feasibility of establishing a scheduled passenger line between the ports of Algeciras and other ports in Spain and Gibraltar.
- In the context of maritime links between the port of Gibraltar and other ports in the area, to study the most appropriate form to develop co-operation between Gibraltar and the Consortium of Metropolitan Transport of the Campo de Gibraltar, which would enable the adoption of an integrated system of fares, the use of common technology, etc.
- Exchange of information on regulation and administrative practices applicable in the area regarding maritime safety, salvage means and resources for combating pollution, provision of services, management of ports, ports tariff and taxes, etc.
- Formulate practical arrangements including in the field of communications in order to improve safety of maritime movements in the area.
- Formulate arrangements, in case of incidents in the area, that include cooperation in cases of risk to the life of persons in cases in which there is risk of pollution or in case of danger to other ships

The participants agree to expedite internal procedures in the event of incidents.

- Establish a follow-up mechanism to keep these matters under review
- Establish a procedure to guarantee the validity of maritime safety certificates of vessels as required by SOLAS.
- Ensure compliance with international laws and regulations regarding the registration of ships and the requirement to fly a State's flag.

Visa related issues

Overview

1. The fact that Spain belongs to the Schengen area and that the United Kingdom does not take part in some aspects of that acquis, specially regarding crossing of borders by persons, imposes on Spain the obligation to control the transit of people to and from Gibraltar, that takes place at the fence/frontier.

Although community citizens enjoy the right to freedom of movement in the EU in accordance with Community regulations, the nationals of third countries that wish to enter or depart from Spain are subject to certain legal demands and, in certain cases, to be in possession of a Visa.

The issuing of Visas to travel to Spain requires, in accordance with the second part of the third Additional Provision of the Ley Orgánica 4/2000, of 11 January, on Rights and Freedoms of foreigners in Spain and their social integration, to be carried out at the competent Spanish Consulate which in the case of residents in Gibraltar is the Consulate General of Spain in London.

2. As it happens, many nationals of third countries resident in Gibraltar, particularly Moroccans, notwithstanding in many cases their having resided legally in Gibraltar for more than ten years, have not obtained British nationality which would give them the right to circulate freely within the EU, and, furthermore, neither do they have the right of entry without a Visa or the right of residence in the United Kingdom. Consequently, these Moroccan citizens would be obliged to previously obtain a British Visa to travel to London in order to present their application personally (in person) at the Spanish Consulate in London, all of which multiplies the difficulties of the procedure, and limits in fact the visits of these persons to their families in Morocco creating a problem of humanitarian nature.

Bearing in mind that in practically all of the cases the principal aim of that Visa for members of the Moroccan community in Gibraltar is exclusively to cross in transit from or to a Spanish port in order to embark in one of the ferries to their country, or vice-versa, and considering also the proximity of Morocco, Spain could introduce a procedure that, in accordance with applicable regulations and certain conditions could, allow them to more easily obtain these Visas. The adoption of such a measure, based on humanitarian and good neighbourliness motives and considering that it would be applicable only to Moroccan nationals, would be justified by the size of the Moroccan community in Gibraltar, the existence of special relations between Morocco and the EU (as shown for example by the participation of this country in the Neighbourhood Policy of the EU or by the recently adopted Advanced Statute by the EU-Morocco Association Council) and by the fact that the Port of Algeciras has a high number of daily maritime links with various ports of the north of that country, which makes it an optimal point of transit for Moroccan nationals resident in Gibraltar that wish to visit their families.

Aims

- A. To facilitate, by legally feasible practical solutions, the granting of Visas to the Moroccan community members resident in Gibraltar for transit through Spain towards their country.
- B. To introduce efficient mechanisms that speed-up the fence/frontier crossing of people and the stamping of travel documents.

Procedures And mechanisms

A group of experts from Spain, the United Kingdom and Gibraltar will be established in order to:

1. Exchange of information on communities of third country nationals residing in Gibraltar, in particular on the Moroccan community with the aim of allowing the evaluation based on data of the real situation on the ground and the problems facing these communities.
2. Examine the different modalities that allow the necessary measures to be adopted in order to reach the proposed aims, as well as the required period to implement them.