

IN THE MATTER OF :

THE APPLICATION OF THE EEA AGREEMENT TO GIBRALTAR.

OPINION

1. I have been asked on a number of occasions to advise on whether the European Economic Area Agreement ("EEA Agreement") applies to Gibraltar¹. The purpose of this Opinion is to explain why it is clear that the EEA Agreement applies to Gibraltar and the bases upon which it does so.

(1) Gibraltar falls within the territorial scope of application of the EEA Agreement.

2. Article 126 (1) EEA Agreement defines the territorial scope of application of the EEA Agreement as follows :

"The Agreement shall apply to the territories to which the Treaty establishing the European Economic Community is applied and under the conditions laid down in that Treaty, and to the territories of the Republic of Iceland, the Principality of Liechtenstein and the Kingdom of Norway".

3. Gibraltar is a territory to which the Treaty establishing the European Economic Community, now superseded by the Treaty on the Functioning of the European Union ("TFEU"), applies. The basis for the application of the TFEU to Gibraltar is Article 355(3) TFEU. It provides that the TFEU shall apply to "*the European territories for whose external relations a Member States is responsible*". Gibraltar is such a territory. The Member State United Kingdom is responsible for Gibraltar's external relations.

¹ The EEA Agreement entered into force on 1 January 2004 creating a free trade area between the then European Community (now European Union) and three EFTA States (Iceland, Liechtenstein and Norway). It did so by duplicating numerous provisions of the EC Treaty (now the Treaty on the Functioning of the European Union), notably those concerning the four fundamental freedoms (free movement of goods, persons, services and capital) and the competition rules (Article 1 EEA Agreement).

4. In Case C-145/04 Spain v United Kingdom [2006] ECR I-7917 the CJEU ruled :

“In Community law, Gibraltar is a European territory for whose external relations a Member State is responsible within the meaning of Article 299(4) EC [now Article 355(3) TFEU] and to which the provisions of the EC Treaty apply”.

5. Accordingly, in accordance with the explicit terms of Article 126 (1) EEA Agreement, Gibraltar is a territory to which the EEA Agreement applies by virtue of the fact that it is a territory to which the TFEU applies. The result is that Gibraltar forms part of the European Economic Area.
6. As provided for in Article 126 (1) EEA Agreement, that Agreement applies to Gibraltar under the same conditions as laid down in the TFEU. This means that the provisions of the EEA Agreement concerning the free movement of goods (Articles 8 to 27) do not apply to Gibraltar (Case C-30/01, European Commission v United Kingdom [2003] ECR I-9481). However, all the other provisions of the EEA Agreement apply to Gibraltar.

(2) The EEA Agreement forms an integral part of Community law.

7. As an international agreement concluded by the Council on behalf of the EU², the EEA Agreement forms "*an integral part of Community law*" (Case T-115/94, Opel Austria GmbH v Council of the European Union [1997] ECR II-39, at para. 49).
8. The EEA Agreement is therefore also clearly applicable to Gibraltar as an integral part of Community law.

² The EEA Agreement was concluded by Council Decision 94/1/EC, ECSC (OJ 1994 L 1/1).

(3) Confirmation in the laws of Gibraltar.

9. The application of the EEA Agreement to Gibraltar is confirmed by the laws of Gibraltar. Section 2 (h) of Gibraltar's European Communities Act 1972 lists the EEA Agreement as one of the international instruments which fall within the meaning of the term "Treaties" for the purposes of that Act. Section 3 (1) of the Act provides as follows :

"All such rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Treaties, and all such remedies and procedures from time to time provided for by or under the Treaties, as in accordance with the Treaties are without further enactment to be given legal effect or used in Gibraltar, shall be recognised and available in law, and be enforced, allowed and followed accordingly..."

10. Section 3 (1) of the Act gives the force of law in Gibraltar to the EEA Agreement.

A handwritten signature in blue ink, reading "M Llamas", with a horizontal line underneath the name.

**Michael Llamas QC
Chief Legal Advisor
HM Government of Gibraltar**

12 November 2014