

STATEMENT BY THE GSLP/LIBERAL OPPOSITION

98/2008

16 September 2008

The Opposition notes the decision of the Court of First Instance of the European Court of Justice in the case which challenged the Basque Country's right to set its own tax rates in certain defined circumstances (Case C428-34/06) ("the Basque Case").

In that case the Court of Justice specifies the criteria to be used in order to determine whether in the context of state aid, a regional body is institutionally, procedurally and economically autonomous in relation to central government.

"The legal issues in that case, although not by any measure identical to those of the Gibraltar case against the Commission, are similar to the issues that are pending decision in the Gibraltar case. Like the decision in the Madeira and Azores cases, this line of authorities can only assist the Gibraltar case", said Shadow Minister for Financial Services Mr Fabian Picardo.

The Opposition has taken on board the fact that both the PSOE and the PP, which are the main political parties in Spain, have welcomed the decision of the court and defended the fiscal autonomy of the Basque Country. It will be recalled in the Madeira and Azores

case, Spain also defended the Portuguese position and the right of these territories, which are integrated into an EU Member State, to set their own level of taxation.

The judgment of the court in these other cases, where the territory is an integral part of a Member State, means that in the case of Gibraltar which is not an integral part of the United Kingdom, does not receive any funding from the UK Treasury and does not contribute to the coffers of the UK Government, the case is even clearer.

Since the regional selectivity argument has been rejected in these territories which are regions of EU Member States, in Gibraltar's case it is 100% clear that the application of the regional selectivity concept cannot be right.

Given the position that Spain has taken in relation to the fiscal autonomy of Madeira, the Azores and the Basque Country, it would be completely inconsistent if they held a different view when it came to Gibraltar. It therefore cannot be the case that the delay in reaching a decision over Gibraltar is a consequence of Spanish lobbying against Gibraltar as has happened in other instances.

The government should, in our view, pursue with the Court what it is that is causing this delay. The delay

in delivery of this judgment is creating further uncertainty in the financial services sector which has had to become increasingly reliant on rulings from the Commissioner of Income Tax on whether or not corporate activity is taxable in Gibraltar.

Mr Picardo added: "It is notable that the Basque Case was filed as recently as 2006 and has already been decided by the Court of First Instance (the same division of the ECJ that is considering the Gibraltar case). Given that the Gibraltar Government's case was filed in 2004, there seems to be some impediment to the decision in the Gibraltar case being delivered expeditiously.

As in previous meetings, I have put a question in Parliament asking the Chief Minister if the Government knows when the judgment in the Gibraltar case is expected, given that its delivery is not presently anticipated on the ECJ's website."

ENDS