The EEA Agreement and why it is a potential vehicle for a UK implementation period after leaving the EU and while negotiating an EU/UK trade agreement.

It is very important that Brexit does not become the property of the Conservative Party or Conservative MPs during this General Election. It is the policy chosen by the majority of the British people in the referendum in June 2016. The country's best interests will be served if as many Labour MPs as possible who are elected to the House of Commons on 8 June have unequivocally told their voters that they fully endorse the EU referendum result and are ready to support its implementation.

That means first: leaving the EU no later than March 2019, preferably much earlier; the reinstatement of our own UK and devolved parliaments' laws, border controls, immigration policies and democratic governance; attempting to negotiate an EU/UK trading agreement and other trading agreements worldwide.

Staying in the Single Market on the terms and conditions as they currently apply to EU Member States, with no mechanism to control entry of EU citizens, would run counter to any fair-minded interpretation of last year's vote to leave. It is, therefore, not a Brexit option despite being referred to by its proponents as a 'soft' Brexit.

The Prime Minister when spelling out the Government's Article 50 stance sensibly said she would not seek to change the founding fathers' commitment to 'free movement of peoples'. This was neither 'hard' nor 'soft' but realistic: a recognition that the EU was adamantly against changing the terms on which its own Member States participated in the Single Market. The response we can now see from the Commission is a highly provocative demand for a €100 billion divorce bill. The British response should be to spell out in manifesto and legal terms what the Prime Minister meant when calling for an 'implementation period' after leaving the EU. This will allow during the next few months the UK government to see if the EU in their Article 50 negotiations are serious about whether we can reasonably expect an EU/UK trade agreement based on a 'heads of agreement' on implementation.

It is well understood that, although the Single Market was first developed by the EU, it was subsequently extended to include non-EU States. The name for this wider Single Market is the European Economic Area (EEA) and it is governed by a distinct Treaty, the EEA Agreement (EEAA). It is, however, insufficiently recognised that the Agreement provides for a two-pillar governance or supervisory structure, one for EU Member States and another for non-EU states. Neither the European Commission nor the ECJ holds sway in the non-EU pillar. [**See accompanying detailed assessment and interpretation of the EEAA**]

The EEAA is differentiated from the EU Treaty in a number of other, major ways, including, for example, to become effective in non-EU States, Single Market

regulations must be approved by national parliaments of NEU States; there is no common agricultural or fisheries policy; there is no mandatory membership of a customs union (non-EU States can negotiate their own trade deals); and the EEA-wide freedom of movement principles have different interpretations and implementation processes.

While for States in the EU pillar, controls on cross-border movements of workers are constrained by the existence of a common EU citizenship, in the non-EU pillar there is no such constraint: the relevant Treaty entailments derive exclusively from economic and social policy considerations, not from quasi-constitutional Treaty rights. As a consequence one NEU state in the EEAA does operate mechanisms to restrict movement of workers.

The UK is currently a Contracting Party to the EEAA and, wisely, the Prime Minister did not combine the Article 50 notification with an Article 127 (EEAA) withdrawal notification, thereby keeping options open. A mechanism exists, therefore, to avoid a cliff-edge in March 2019 if, after exiting the EU, we remain a Contracting Party to the EEAA and seek to rely on the non-EU governance pillar while in the implementation period. There are some immediate implications of adopting such an approach.

First, there would be a need for some textual adjustments to the EEA Agreement to reflect the UK's change in status. For the maintenance of market confidence, which could become a crucial factor during the 'to and fro' of the negotiations, the sooner those discussions are initiated the better. Given the mutual benefits that would be in prospect, it is difficult to see grounds for EU resistance to such adjustments, but if the European Commission were to refuse to cooperate then there would be time for recourse to international dispute resolution on the basis of Vienna Convention principles and provisions - on which the UK would very likely succeed.

Second, as EEAA Contracting Parties, Iceland, Liechtenstein and Norway are necessary participants in the discussions, particularly in relation to the governance/supervisory arrangements. We should start talking to them soon. Their goodwill will be essential and we need to talk to them anyway about future trade arrangements, separate from the EU trade negotiations. Notwithstanding their small populations, proximity, historic ties and common interests in natural resource management two of these three NEU states, Iceland and Norway, are significant economic partners for the UK. And Liechtenstein already operates immigration controls.

This phased/sequential procedure is neither a 'hard' nor a 'soft' exit. It is a mechanism that provides the opportunity for a mutually beneficial bargain to be implemented against a flexible timetable, but with expedient transitional arrangements that would themselves immediately satisfy the main wish of the referendum majority (to take back control). If there was an undue delay in reaching an EU/UK trade agreement the UK only has to give a year's notice to leave the EEAA. We would then exit on WTO terms, but at a time of our own choosing.