The Rt Hon Theresa May MP
Prime Minister
10 Downing Street
London SW1A 2AA

4 July 2018

Dear Prime Minister

Further to my letter on a UK position to be held in reserve in case your preferred bespoke option is blocked by the EU, as they continue to brief they will.

My key suggestion is to adjust the Withdrawal Agreement so our EEA membership becomes fully operative not nominal from the end of March 2019.

Since writing my key adviser George Yarrow has pointed out there are significant other advantages in addition to those I mentioned in my letter.

The EFTA Court would replace the ECJ: the latter would have no direct jurisdiction. This would be a major step to accelerate our entanglement from EU legal supremacy.
We would be able to immediately influence EU Directives and Regulations in the pipeline via 'decision shaping' rights (as things stand we will be largely excluded from this development process – participation will be at the EU's discretion, not 'as of right').

We could seek amendments to new Directives and Regulations coming on to the books during the transition period, and even reject them outright in the unlikely event that proved necessary.

The end of the transition for trading arrangements would be flexible, because of the flexibility of Article 127. There would be no new cliff edge. It would simply be a matter of replacing the EEA Agreement with the desired future trading agreement as soon as the latter is ready. Political and regulatory uncertainties facing business could be expected to fall away quickly the moment such a 'smooth join' between transition and the future agreement was announced, i.e. now, not in some indefinite future.

This 'smooth join' would also largely deal with Irish Border Issues, the most difficult of which are to do with product conformity assessment, not with any anticipated UK/EU differences in import tariffs (which will likely be zero or modest for a few years.) The backstop would be the EEA, which deals with the conformity assessment problems.

We would have unilateral power to take measures on free movement of workers, if we so wish. As things stand in the draft Withdrawal Agreement those powers lie with the European

Commission. That would be an immediate return of sovereignty on a major matter of concern to the public.

As I have emphasised before, the UK is currently a contracting party to the EEA Agreement, a distinct international Treaty. It is clear now that our international commitments under that Treaty do not end on our withdrawal from the Lisbon Treaty: all being well, next April we will be out of the EU, but in the EEA. The challenge now is to get changes in the EEA (including by adding bespoke elements) that are more to our advantage. The most important of these is a transfer to the Efta governance pillar of the Agreement at the earliest possible date, which could be 29 March next (if it is included soon in the Withdrawal Agreement).

If we do that, international law will be supportive as the EU side knows full well. Any attempt to block sensible, 'necessary' adjustments to the EEA Agreement by the EU would run the risk that the UK could, through international dispute resolution, (Vienna Convention) challenge the EU legal order. As you know all too well, the EU is very highly protective of that legal order, so this would pose a serious threat to them which they will want to avoid.

Yours ever

DAVID OWEN

The Rt Hon Theresa May
Prime Minister
10 Downing Street
London SW1A 2AA

1 July 2018

Dear Prime Minister,

As you know I have long believed the best place to be on the day after Brexit is the EEA, but crucially in the non-EU/Efta governance pillar. It looks as if your bespoke option which all along you said was ambitious will fail. Sadly, the EU is - as you now have experienced - an inflexible Treaty-driven bureaucracy. It is, however, a political imperative that the UK should leave the EU on the 31 March 2019.

I hope you can acknowledge that there is an alternative to work up as the UK's reserve position. It would mean changing the draft Withdrawal Agreement text which involves staying in the EU pillar, where the Commission and ECJ rule all, and where the UK will have no influence on new legislation; always an uncomfortable position.

To do so in terms of leveraging international law, the UK position has strengthened since we last communicated. David Davis's previous arguments that the EEAA would fall on Brexit Day, because either (a) the UK would not be a member of EFTA or (b) the EEAA would not be applicable or operable, have now been refuted by facts on the ground. The draft WA contemplates that, during the transition, the UK will be a member of an applicable and operable EEAA, even though it will not be a member of either EFTA or the EU. Moreover, the EU cannot now easily argue that the Government's previous statements can be read as implicit Article 127 notice to quit (since the draft WA implies otherwise). Moreover, if the EU had really believed the automaticity arguments, the EEAA requires that an international conference should have been organised, fairly immediately after 29 March of this year and it has not been. On this point there is room still for a legal challenge.

This re-arrangement, which I propose, would mean the essential referendum commitment of leaving Brexit on 31 March would be fulfilled. Most of the leave agenda would also be delivered earlier; for instance we would be taking back control of fishing and agriculture on entering the EEAA automatically; how we proceed is up to us and negotiations would be inevitable.While in the EEA we would be undertaking exactly the same negotiation for a longer-term settlement that you have envisaged. The case for joining the customs union would be answered by the fact that neither of the three existing EEA countries are in it.

As to are what is said in the WA we need only say something vague like 'The EU and UK will continue to seek to negotiate an Association Agreement for the longer-term', and leave it at that.

But we would be free, if we thought we could handle it all technically, to announce in a UK statement that we would be leaving the same EAA, as we currently plan to do, on 31 December 2020 or some specified months later. The mechanism at anytime for doing this would be by giving in a year's notice of leaving. So the announcement could have us announcing that we would put in our notice of leaving as early as on 31 December 2019.

Yours sincerely

DAVID OWEN

10 DOWNING STREET
LONDON SWIA 2AA

THE PRIME MINISTER

14 May 2018

Dear Lord Owen

Thank you for your letter of 28 March.

As you are aware, the UK and EU negotiating teams have now reached agreement on the terms of an implementation period, which will start on 30 March 2019 and last until 31 December 2020. I was pleased that the European Council endorsed this agreement, which will help to achieve a smooth and orderly exit from the EU.

The implementation period will give businesses and citizens the time they need to put in place the new arrangements required for our future relationship and it also marks an important step towards finalising the full Withdrawal Agreement. Of course, we continue to plan for all possible outcomes, but with increased confidence that we will leave with a deal and that a no deal scenario in March 2019 is significantly less likely.

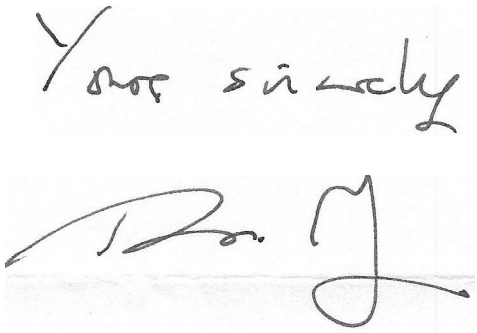
As part of the agreement at the European Council in March, it was made clear that during the implementation period the UK is to be treated as a Member State for the purposes of international agreements. This approach flows from the unique and time-limited nature of the period, recognising that these agreements are an important part of the EU acquis. As I confirmed previously, the implementation period will also see the continued application of the EEA Agreement to the UK, as this governs crucial elements of our trading and non-trading relationship with Norway, Iceland and Liechtenstein. However, once the implementation period ends we will no longer be participants in the EU's international agreements, including the EEA Agreement. We will therefore seek to put in place new arrangements to maintain our relationships with these countries. The Government is working hard to achieve this and to deepen our partnerships with the EEA-EFTA countries.

You also raised in your letter the importance of working with the Devolved Administrations and involving them in the negotiations on fisheries. As you have noted, under the terms of the implementation period the UK will be consulted ahead of negotiations with coastal states and ahead of the December Fisheries Council. We will also continue to input into the development of scientific advice. We recognise the importance of the fishing industry to the local communities across all four nations of the UK and will work very closely with the Devolved Administrations to ensure that their interests are fully represented.

More broadly, as you may be aware, we have set up a Joint Ministerial Committee on EU Negotiations, enabling Ministers from each of the UK's Devolved Administrations to contribute to plans for our departure from the EU, including for fisheries, and to ensure we can deliver a deal that works for the whole of the UK.

The Government will continue to work with the Devolved Administrations, industry and other stakeholders to develop a domestic fisheries policy that is tailored to the needs of the UK fishing fleet and will lead to a more resilient and profitable sector.

Thank you, once again, for writing.



The Right Honourable The Lord Owen CH

The Rt Hon Theresa May MP
Prime Minister
10 Downing Street
London SW1A 2AA

28 March 2018

Dear Prime Minister

Congratulations on your speech at the Mansion House and your response to the Russians; both of which I think have gained great respect for the UK.

I am writing further to your letter to me of 26 February. I was very pleased to read the 8th para of that letter about "continued application of the EEA Agreement for the duration of the implementation period to ensure continuity in crucial elements of our trading and non-trading relationship with the three EEA EFTA states Norway, Iceland and Liechtenstein." I hope very much that you will hold to this position.

When I meet, as I do from time to time, your Parliamentary colleagues on the ERG on 23 April I will strongly support your position. I have assumed you had to concede the status quo applied to everything and it was impossible to get an exemption for fishing and agriculture. Now it will be more important than ever to have the support of Norway and Iceland and I was glad to read your Minister of State for Fisheries went to Norway as relations are from my own contacts not as good as they could be with the present government nervous about damaging their relations with the Commission.

Some of my fellow Brexiteers may wish to push you to break any linkage with the EEA during the implementation period. Apart from the formidable technical difficulties of doing this, some of these remain stubbornly in favour of breaking off negotiating at the end of March 2019 and refuse to face up to some of the practical difficulties that we would face outlined recently by Sir Martin Donnelly. Of course none of us can rule out such a break but I am very aware that it is fraught with difficulty.

If we were already heading towards technical EEA membership as part of implementation through the Withdrawal Agreement with the EU, as you wish and as I would prefer, it would be very difficult for the Commission facing an early breakdown to refuse us in these circumstances to take up EEA membership from April 2019.

None of us can be sure of what the global economy will be doing even as early as April 2019 but that uncertainty is magnified considerably if we look at December 2020. Again it might be easier to extend the implementation period, as you may have to, through continuing EEA membership

rather than to argue in Parliament for continuing the status quo period. It appears you have been able to persuade your colleagues that this 21 month status quo period can be sustained without having any vote or voice on EU legislation. But at that point the demand for the UK to manage fishing in our own waters could become decisive in getting Parliamentary approval for continuing negotiations. So I urge you, as a failsafe measure, to retain your existing wording over the EEA.

While on the subject of fishing I had of course a constituency interest as an MP for over 26 years besides negotiating the first EU fishing agreement with Russia, and although my political reflexes may well be getting rusty, I suspect fishing will remain a very difficult issue for you in Parliament. I wonder whether you have considered formalising the extensive consultative procedures already in place and build on David Lidington's statement by offering the fishing ministers for Scotland, Wales and Northern Ireland a more formal place in the negotiations and if the fishing minister representing the UK as a whole was in a minority or even the negotiated team was locked 2:2, there would be a constitutional right for a reference back to the Prime Minister for a final decision? This may not be attractive to you for the constitutional implications for future negotiations involving the UK but it would only extend to where the Scots, Welsh and Irish had distinctive devolved roles under the constitution. I think the time has come to indicate that Brexit does have future implications for the evolution of our constitution in devolved areas of government, but to do it as we traditionally do in a step-by-step way.

Yours ever

DAVID OWEN

10 DOWNING STREET
LONDON SW1A 2AA

THE PRIME MINISTER

26 February 2018

Dear David

Thank you for your letters of 12 December 2017 and 19 January 2018, in which you propose that the UK remains a contracting party to the European Economic Area (EEA) during an implementation period.

As you recognise, there have been a number of developments over recent weeks and I would like to respond to the points outlined in your most recent letter.

I welcome your support for an implementation period, which will provide certainty to businesses and individuals and allow time to prepare for our new relationship with the EU. As such, during this period, the UK and the EU should continue to have access to one another's markets on current terms.

You have suggested that our continued participation in the EEA Agreement could be the central element of the set of agreements necessary to give effect to the implementation period. I welcome your suggestion, but I believe that we should agree the implementation period through the Withdrawal Agreement with the EU and it is clear from the guidelines agreed by the European Council in December 2017 that the EU also support this approach.

As you note in your letter, participation in the EEA Agreement alone would not be sufficient to give effect to the implementation period - there are other important elements of our relationship with the EU that fall outside the scope of the EEA Agreement.

As you know, the Government's legal position is that, in the absence of any further action, the EEA Agreement will no longer operate in respect of the UK when we leave the EU. Respecting that you take a different view on this, ifwe were to use the Agreement as a bridge to our future relationship with the EU, it is possible that the existing parties to the Agreement would either require us to join the European Free Trade Association first, or re-write the EEA Agreement to allow for a member who was neither in the EU or EFTA. Both of these options are far more arduous and would create a longer period of uncertainty than providing for the implementation period through the Withdrawal Agreement.

Following the successful conclusion of phase one of the talks, I am confident that the implementation period we are now negotiating will meet the objectives you outline in your letters.

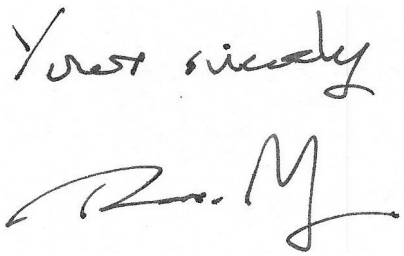
Whilst I do not believe that the EEA Agreement is the right way to give effect to the implementation period, the Government has been clear that our existing international agreements should continue to apply during the implementation period. Our aim is to deliver continuity with international partners and the EU during this phase, and certainty for businesses and individuals. This approach will include seeking continued application of the EEA Agreement for the duration of the implementation period to ensure continuity in crucial elements of our trading and non-trading relationship with the three EEA EFTA states - Norway, Iceland and Liechtenstein.

Once the implementation period ends, we will no longer participate in the EEA Agreement. We will instead put in place new arrangements to maintain our relationships with these countries. We have been and will continue to hold regular discussions with the EFTA states about how we maintain continuity of effect in our agreements as we exit the EU.

Your letter of 19 January also raises a specific point about immigration. We have been clear that during the implementation period, EU citizens should be able to continue to visit, live and work in the UK as they do now. We will, however, use this period to prepare for our future partnership and introduce a registration scheme for new arrivals in preparation for our future immigration system.

The intention behind the citizens' rights agreement reached in December 2017 is to provide certainty to EU citizens in the UK and UK citizens in the EU. The rights of those people who arrived during the implementation period once the period ends are a matter for the negotiations.

Thank you, once again, for writing.



The Right Honourable The Lord Owen CH

The Rt Hon Theresa May MP
Prime Minister
10 Downing Street
London SW1A 2AA

19 January 2018

Dear Prime Minister

Since I last wrote on 12 December 2017 a number of things have happened relating to that letter which I strongly urge you to consider amongst your Cabinet colleagues. We have seen now how the Article 50 procedure can work in a very vivid way, namely an EU-UK Withdrawal Agreement document is published on 8 December and we then hear of the decision of the European Council on 15 December that in a material way changes a very important and politically sensitive issue. Instead of a proposition that we could exercise our freedom on immigration at the end of March 2019 on leaving the EU we are now facing a demand by the European Council that we should accept we can only do this in January 2021.

This is a direct result of the Article 50 procedure which allows them to present a final framework to us where changes can be made at the last moment, eg in response to pressure from the European Parliament in addition to pressures from EU countries.

All this strengthens my argument about the need to establish our right to be a continuing contracting party to the EEA were we to be faced as late as October 2018 by the inability to reach a EU-UK agreement.

Since I wrote to you I have now had a reply from David Davis of 21 December in relation to my FOI request to see the formal legal opinion. His letter is drafted in a way that makes me doubt even more that your Government has ever had a formal legal opinion from international - as distinct from primarily European lawyers - on this question of whether EEA membership automatically ends with EU membership. I have deliberately sat on his letter not wishing to make it public because I do not want to damage him personally or the Government's negotiating position in the way that was done by the recent disclosure that David had not undertaken proper sectoral impact assessments.

The one part of his letter that I have made public is contained in a detailed lecture I gave at the University of Bath yesterday, a copy of which I enclose, where I take up his reference to the EEA. I understand that he, along with many others, feared that the mechanism that might be chosen for leaving the EU was for the long term continued membership of the EEA. As a result these people have consistently downplayed the position of EEA membership. Frequently people have said that it involves remaining

under the jurisdiction of the ECJ and poured scorn and derision on the EFTA Court. They have never talked up the advantages of the UK being able to assume control of our fishing and agriculture immediately on leaving the EU. Even if we do decide not to exercise that option for two years as part of a status quo agreement as you might judge necessary, if our right existed in law it would strengthen our negotiating position and the same applies to many other aspects of continued membership of the EEA in handling the transition period to January 2021.

I have never advocated long term continued membership of the EEA as being in the UK's national interest but I strongly believe it is hugely in the UK's national interest up until January 2021.

I, like many people, genuinely believed that the Prime Minister on the day after the referendum would be served up by the Civil Service with detailed options for handling an exit in the event of a referendum vote to leave. The fact that such studies were not available to you immediately inevitably meant that there had to be a delay, in contrast to what your predecessor had told the House of Commons namely that he would immediately invoke Article 50. As a consequence you had a very difficult negotiating pathway. I was too optimistic as to how quickly we could leave the EU and invoke Article 50 but I supported your decision to leave the EU as early as possible and to have a subsequent implementation period which I now see is commonly called a transition period.

In my speech I warned about a High Court action taking place soon challenging the right of the Government to come out of the EEAA without Parliamentary debate. It is now coming, according to an announcement today, even earlier than I had envisaged. After the last High Court ruling you can certainly not exclude that while perhaps saying that they have no legal jurisdiction on this question, they do believe there is an underlying constitutional obligation to have this decision made in Parliament. This is because the UK becoming a contracting party to the EEA was not signed on our behalf by the EU but signed individually by the UK.

It would, of course, be far better that this legal issue was set aside by a political agreement in the context of the EU-UK Withdrawal Agreement and that we remain members of the EEA with small amendments being made to make this possible and agreed between us as part of the next EU-UK document.

The EU does not want the British Government to use the Vienna Court dispute resolution procedure because it could mean that not only the Commission interpretation of the law would be challenged - and I believe changed - but it would underline that the ECJ's authority is not of an international court and that the Vienna Court judgement would oblige the EU to accept their verdict. They have been trying for years to build up the authority of the ECJ and that is one of the reasons why they want to extend its authority beyond EU membership. When they are demanding that we in the UK, having left the EU, continue under the ECJ they build up a picture of the ECJ becoming an international court.

I am sorry to write such a complicated letter. These issues are, unfortunately, very complex but I do urge you to rely on international legal opinion. David Davis in his letter quoted two names in support of the Commission's interpretation of EEA membership. I know having talked on two occasions to the former President of the EFTA Court, Professor Baudenbacher, that his view is not absolute on this issue. As President he had to take account of a working relationship with the ECJ and the need to speak for all EFTA members, but it was notable in his evidence to the House of Lords Select Committee on 16 January he indicated that the EEA-EFTA option for the UK's transition period is potentially feasible, even given the short timescale. As to Jean-Claude Piris, also mentioned by David Davis, he has not only worked for the European Commission but he is an extremely close adviser to President Macron, so hardly an independent view.

I hope I have written sufficiently to at least convince you that the Government's position on this issue needs to be reviewed at the highest level with the best possible legal advice. This is the way to take back the initiative in the continuing dialogue with the EU and to challenge the European Council's absolutist guidelines. Those guidelines of 15 December are not acceptable in its present form to any democrat. We have to have some way of formal consultation on any new EU legislation during the transition period as of right and we would have that right as a non EU contracting party to EEA. One of the ways that the relationship has developed is that Norway in particular is given very early access to the European Commission's intentions and this is one of the reasons why Norway does not want to upset the Commission. It is very important, however, that Norway understands that the UK would not be remaining in the EEA for any longer than the transition period and we are not challenging in the long term Norway's leadership of non EU contracting parties to the EEA.

I have tried to define a negotiating position for the UK Government that is not abrasive but clear. If they do not allow through amendment of the EEA our continued membership, then and only then should we exercise our right to use the Vienna Convention.

Yours ever

DAVID OWEN

The Rt Hon Theresa May MP
Prime Minister
10 Downing Street
London SW1A 2AA

12 December 2017

Dear Prime Minister

When I last wrote to you on 23 November 2016 about retaining the option to remain a contracting party to the EEA Agreement after we leave the EU in March 2019, I promised not to "pepper you with letters."

A year has passed during which I have tried to keep my commitment to you to do everything I can to help to ensure a successful exit from the EU, while persisting in arguing that it is very dangerous to be in a position where the EU 27 can present the UK with a proposal at some stage in 2018 under Article 50 which we should on its merits refuse, but we may be forced to accept due to the absence of another viable option.

Since no preliminary work had been done in advance of the referendum, we do need a two-year implementation or standstill period available to us so that we can, with growing confidence, come to rely on the WTO option if needs be. I say this having visited Geneva a few weeks ago. Our Ambassador is excellent, the Deputy Director General of WTO, a German, is as helpful as we could hope for, but that is not sufficient. By early 2019 the WTO will have the UK schedules inclusive of quotas, but at best these matters are not going to be all finally settled until very close to March 2019.

In order to have a real chance to negotiate your ambitious Bespoke Option, I am sure you would agree it is highly desirable for you not to be up against the "cliff edge" that was deliberately designed into Article 50. President Tusk's recent statements over Ireland gave Dublin a clear veto on behalf of the other 26, underlining that, in procedural terms, this is not what is normally described as a negotiation. There will be other States trying to develop similar positions, i.e. constraining the EU to require their endorsement for priority matters of major concern to them. There are also potential problems before you in relation to the oft-stated EU positions on the single market and the customs union, which are nowhere near the UK positions on these matters.

It is because things rarely go to plan and are often thrown off course by unexpected events that I think that continued participation in the EEA until such time as a longer-term agreement has been fully settled would be such a useful addition to the UK's negotiating armoury. It can be thought of as a safety-net or insurance policy that would protect the UK against downside risks over what might continue to be a turbulent period. It is not a substitute for a long-term, ambitious bespoke agreement, but rather an interim aid in getting to such an agreement, preventing the UK from being threatened or bullied or forced to accept a long-term arrangement that is less than satisfactory for fear

of something much worse. The icing on the cake is that we are already a contracting party to the EEA Agreement, and forced ejection would be exceedingly difficult for the EU to achieve. We can have it if we want it: control lies with the UK.

I do not know whether it has been brought to your attention that I have an FOI request to see the legal opinion that Ministers have claimed have provided support for the Government's legal interpretation of Article 126 of the EEA Agreement, which was referred to in your letter to me of 30 December 2016. At that time, you also referred to pending legal cases, which would naturally constrain what you could say on the issues, but there are no such pending cases at the moment. The ICO have asked to be informed in the event that I have not had a reply by 20 December from the Secretary of State for Exiting the EU. Time is therefore running out to clarify the legal position by the end of March 2018.

We could, however, circumvent all these legal tangles if, at the outset of discussions on a two-year standstill agreement, the UK Government said that it would like to put on the table for serious consideration the option of continuing full participation of the UK in the EEA as the central element of the set of agreements required for the standstill period (other new agreements would, of course, be needed for those areas not covered by the EEA Agreement itself, chiefly agriculture, fisheries and the customs union). If this were done, there would also be merit in providing clarity at the outset that what is envisaged is (a) that the UK would, in the words of EFTA Court President Baudenbacher, 'dock' to the EEA-EFTA pillar of the EEA Agreement and (b) that the EU could expect the UK to push forward during the standstill period with the negotiation and potential signing of, but not the implementation of, new FTAs and with measures to gain significantly greater control of immigration, each of which is possible under the EEA Agreement (noting that any new customs arrangements would need to acknowledge these intentions regarding FTAs).

Under the EEA Agreement, as it currently stands, the UK must surely, in good faith and in all propriety, let other contracting parties (which include Iceland, Liechtenstein and Norway who depend on the Agreement as their FTA with the UK) know its intentions concerning its continuing membership of the EEA, by 29 March 2018 at the latest. While recognising the potential of the EEA Agreement to be the cornerstone of the intended standstill period, you could announce to Parliament that the Government has no intention of giving Article 127 notice – because you are seeking to make use of the EEA Agreement for the standstill period. That may avoid a lot of trouble for the Government in Parliament and the Courts further down the line.

The EU may try to extract a price – yet more money – for its approval of such standstill proposals, raising Article 126 as a blockage that needs to be overcome, but you should resist indicating that the Article 126 interpretation is contested and that under the Vienna Convention on the Law of Treaties the UK has every right to remain a full participating member of the EEA and that right it not undermined by Article 126. If the issue is raised, our negotiators would do well to suggest to their counterparts on the

other side that they take time to read Vienna Convention, particularly its Article 29 (see the attached briefing note for detail on this).

Yours ever

David Owen

10 DOWNING STREET
LONDON
SWIA 2AA

THE **PRJME MINISTER**

30 December 2016

Dear David

Thank you for your letter of 23 November.

I appreciate you making me aware of your proposal regarding the negotiating benefits of leaving open an option of remaining separately in the EEA Agreement, even after the Article 50 process is complete.

This issue seems likely to be litigated so you will understand I cannot go into detail. But I would simply draw your attention to Article 126 of the EEA Agreement which says the Agreement applies to the territories to which the Treaty establishing the EEC (now EU) is applied and to three non-EU countries. As the UK is party to the EEA agreement only in its capacity as an EU Member State, once we leave the EU, the EEA Agreement will automatically cease to apply to the UK.

Thank you, once again, for your letter and for your offer to do everything you can to help to ensure a successful exit from the EU.

Yours sincerely

TR-M

The Right Honourable The Lord Owen CH

The Rt Hon Theresa May MP
Prime Minister
10 Downing Street
London SW1A 2AA

23 November 2016

Dear Prime Minister

I do not intend to pepper you with letters. My previous letter regarding a UK Federal Council and this one on the EU are the only ones I intend to send you and I do not expect replies. All I hope you will do is weigh carefully the thoughts within them. I intend do everything I can to help you ensure a successful exit from the EU.

I support your strategy of trying to, first, negotiate under Article 50 a bespoke UK-EU Agreement extending beyond our exit from the EU in 2019 and including sectoral agreements that are not possible under WTO.

I hope you will, however, consider very seriously building into the UK negotiating position an additional mechanism to avoid the cliff edge inherent in Article 50. You can do this by using the fact that under the EEA Agreement (EEAA) an EU country does not automatically become a Contracting Party to the Agreement. It must apply and there is no provision for a Contracting Party to leave the EEA other than by means of a voluntary withdrawal after having given 12 months notice.

Furthermore, it is not recognized sufficiently in our own internal UK debate that the governing structure of the EEA has two pillars, one for EU Member States and one for non EU Member States. The three existing non EU Member States are unable constitutionally to accept direct decisions by the European Commission or the European Court of Justice and take their decisions by consensus not majority vote.

The logic of this reality is that in drawing up your framework agreement the UK should make a specific distinction between that part of the withdrawal agreement from the EU, which is under 218 (3) of the Treaty on the Functioning of the European Union and withdrawal from the EEA by the UK as a Contracting Party giving one year's notice.

If such a UK framework document were to be challenged by the EU on the tenuous argument that the UK would cease to be a Contracting Party to the EEA Agreement as a consequence of leaving the EU, the UK could make it clear that it disagrees with this argument and that the disputed matter can only be settled by reference to international law, guided by the principles and Articles

of the Vienna Conventions on the Law of Treaties and on Succession of States.in respect of Treaties.

These principles are conservative in nature and lean heavily toward preserving established international agreements wherever possible. For example, Article 34 of the Vienna Convention on Succession of States says that:

> "1. When a part or parts of the territory of a State separate to form one or more States, whether or not the predecessor State continues to exist; (a) any Treaty in force at the date of the succession of States in respect of the entire territory of the predecessor State continues in force in respect of each successor State so formed;…."

It might be argued internally amongst some of your advisers that to make this distinction is too provocative a stance for the UK to adopt in relation to winning the confidence and support of friendly Member States in the EU and we should be more ameliorative. To this I can only reiterate that Article 50 is deeply provocative and dangerous to the UK. We have to counter the design of Article 50 with another which we are legally entitled to invoke. In any event, it might be the case that some Member States would welcome the separation of the Article 50 and EEA issues, recognizing the harm to their own interests that a cliff-edge could bring.

From my previous letter of 2 November you will be aware that I attach great importance to avoiding Brexit contributing to Scotland leaving the UK. The dialogue and debate that you have already established with the Scottish Executive and with Wales and Northern Ireland is very important. Within that dialogue the Scottish Executive will argue that we should remain within the EEA. I assume that you will not be planning to make a definitive judgement on this issue before issuing the UK framework document and that you see advantages in conducting that debate within the Article 50 process.

I support such a decision though I expect we will be forced to conclude, as I did during the referendum campaign, that EEA membership as presently constructed is not compatible long term with Brexit. I see no harm, however, in opening up the perfectly legitimate arguments about EEA membership that it should carry full voting rights for all its members ending the exclusion of Norway, Iceland and Liechtenstein from full participation. Also the strong arguments that free movement of labour, as currently entailed by a common 'European Union citizenship', should not be an obligation of EEA membership, particularly for those countries who are eligible but do not want to be part of the Eurozone.

This debate might continue for a year if need be and we would only need to give notice of the UK intention to leave the EEA in the spring of 2018 if we wished to come out a year later from the both the EU and the EEA.

Unspoken in all of this would be the right of the UK, if you were not confident of the way the bespoke agreement was shaping up and particularly the transitional arrangements, to not give notice of withdrawal from the EEA and continue a dialogue with those EEA members of the EU that were ready to discuss the issues and in particular more intensive discussion with the three non EU EEA members, and where possible including Switzerland. During all this time we would be fully engaged in the Article 50 process.

The EEAA does not, unlike membership of the EU, preclude non-EU Contracting Parties entering into other trade arrangements. Nor would the UK be under any obligation to join EFTA though I think it would be reasonable to discuss that option fully. Also to discuss the many free trade agreements that EFTA has made and consider whether we might wish to join some if they did not inhibit our own plans for bilateral trade agreements. The UK would retain, of course, its opt out of monetary union and from Schengen. Again it is not understood in the UK debate on Brexit sufficiently that the three non-EU Contracting Parties chose, separately, to join Schengen via individual bilateral agreements and they were not obliged to do so.

If the UK decided to continue EEA membership beyond the moment that we left the EU it would be possible to put into British law exactly the same types of provisions on limiting the freedom of movement of labour as Liechtenstein have operated. This might be challenged but it would take a long time in the courts for it to be sorted out and it would provide a useful sign that we are on course to take back full control of our own borders.

There will be those who will argue that we are establishing a precedent whereby we make it easier for a breakaway Scotland at some future date to apply to be a member of the EEA. There is a simple answer to this. If it started to emerge that that was becoming a possibility; for example, the Scottish Executive on their own initiative were contemplating calling for a referendum on separation, the UK could immediately give a year's notice for withdrawal and the UK would have left the EEA well before any judgement under the Vienna Convention.

What this EEA option would establish is a very useful mechanism for alleviating the worst of the cliff-edge effects impacting immediately after we have rejected an EU withdrawal agreement. It would give us sufficient time to put in place bilateral agreements of a size and range to protect our own economy.

There are many reasons why the EU would hesitate before pushing us to test their interpretation of one or two Articles in the EEA Agreement and we might well find that they would not challenge our separation of the two elements, the first relating to Article 50 and the EU, the second relating to the UK withdrawal from the EEA, believing that they would work themselves out alongside each other during the two-year process. But if they insist on their interpretation then I

believe we have an excellent chance of our own interpretation succeeding under the provisions of the Vienna Conventions.

I believe your wish for reasonable transitional arrangements will be the most vulnerable part in any withdrawal agreement negotiated with the European Parliament. Your chance of satisfactory transitional arrangements, which might include the Customs Union, may be dependent on your having put in place a situation where you have somewhere else to go in 2019. The UK may be dealing by then with a dysfunctional EU, evermore vindictive, and perhaps in the midst of a Eurozone crisis.

Yours sincerely

DAVID OWEN

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THE PRIME MINISTER

25 November 2016

Dear David

Thank you for your letter of 2 November about the future governance of the United Kingdom.

I appreciate you making me aware of your proposals for a 'Federal UK Council'. The Government has no plans to establish a constitutional convention. Instead, our focus is on delivering a fair and balanced settlement for people across the United Kingdom - as outlined in our 2015 manifesto, which we were elected on.

As you say, national identity across the four nations of the United Kingdom needs to be treated as a binding rather than a divisive force. This is all the more important as we seek a way forward together as the UK leaves the EU. We must make sure, and will make sure, to keep those relationships strong in the future.

Thank you again for writing.

The Right Honourable The Lord Owen CH

The Rt Hon Theresa May MP
Prime Minister
10 Downing Street
London SW1A 2AA

2 November 2016

I enclose a hard copy of a pamphlet on a 'Federal UK Council' which I am launching at Cardiff University tomorrow. Electronic copies can be obtained via my office on the email address shown on this letterhead.

Some of what I say in this pamphlet I said during the EU referendum campaign. I gather Gordon Brown is also speaking tomorrow but I assume it is along the lines of his speech on 29 August on replacing the House of Lords with an elected Senate. I used to believe that the route to a federal UK lay through an elected House of Lords but as I watched successive attempts to use that route fail, often ignominiously, I began to look for a different model which I thought was achievable in legislative terms. Hence this very specific proposal to study carefully as politicians, not academics, the practicality of adjusting the Bundesrat model to the UK.

I will also write to David Davies. If the UK post Brexit is to deepen its unity it is a reasonable assumption that there has to be some kind of structural interrelationship between all its parts and not just an *ad hoc* series of relationships with Whitehall. National identity, whether it be Scottish, Welsh, Irish or English deserves to be treasured as a binding force, not divisive one. It all depends on whether we can find the correct balance. I was delighted to see you make your first visit as Prime Minister to Scotland. I was also very pleased to see you meeting the Scottish, Welsh and Northern Irish First Ministers and Martin McGuinness recently.

In the Annex to the pamphlet is a submission by George Yarrow that he made to the Scottish Parliament. A much longer version, of which your officials may be aware, was published by the Regulatory Policy Institute under the title of 'Brexit and the Single Market' (NS6.1 July 2016, www.rpieurope.org)

I have long been interested in the EEA and wrote a book *Europe Restructured* on it as long ago as 2012. There are many problems with it, but there are flexibilities within it that are interesting and could have some potential.

The reason why I became a Brexiteer in February of this year was because of my longstanding belief that the design of the Eurozone was fatally flawed and that we had a once in a lifetime opportunity in the referendum to choose a different direction and that because of fixed term Parliaments, your government would have a stable three-year window for negotiating all the arrangements for our withdrawal.

I believe you can both keep the UK prosperous and together, give NATO the leadership from Europe that it desperately needs, and with blue water diplomacy fashion through the Security Council an international role that will put behind us the tragic errors of Iraq, Afghanistan and Libya.

DAVID OWEN