

## EXPLANATORY NOTE

The Prime Minister's letters to all 31 signatories as Contracting Parties to the EEA Agreement would need to be more detailed than her statement to the House of Commons. It should cover the following bullet points:

- The UK reaffirms its full commitment to the Article 1(1) aim/purpose of the EEA Agreement and proposes to continue its membership of the EEA from 29 March 2019.
- The UK assures all other parties that it will continue to perform its post-Brexit obligations under the Agreement, recognising that these obligations will expand in scope as competences currently lying with the EU are transferred to the UK (an automatic consequence of the transfer of sovereignty that Brexit entails).
- The UK reaffirms its commitment to the existing territorial scope of the application of the EEA to the territories for which it has responsibility.
- The UK expects all other parties to the Agreement to continue their own obligations to the UK under the Treaty, again recognising that, for the EU, these will be diminished by the transfer of competences that will occur in consequence of Brexit.
- The UK will be bound by obligations equivalent to those of Iceland, Liechtenstein and Norway.
- The UK notes that such change of status occurred, with relative ease, when Austria, Finland and Sweden ceased to be 'EFTA States' and became members of the EU in 1995.
- In the event of any dispute the UK will seek arbitration under international law as is provided by the Permanent Court of Arbitration.
- The UK formally give notice that it reserves its EEA Treaty rights under international law, recognising that, after 29 March 2019, it will be international law that will be relevant for settling any disputes.

The UK intends to remain being a member of the EEA on the same basis as that of Norway, Iceland and Liechtenstein and there will be a deep FTA in place on 30 March 2019 and no need to take recourse to WTO tariff schedules for intra-EEA trade. Irish Border issues will be greatly reduced in significance by virtue of the regulatory harmonisation that the continued membership of EEA will bring and any problems over cross-border customs duties will be greatly reduced.

Continuing in the EEA on this basis could unite many different viewpoints in Parliament because (a) it is different approach in which the UK would have significant control, a characteristic that follows from the facts that the UK is currently a party to the EEA Agreement and has not instigated EEA Article 127 to quit, and no other party has given notice that they would try to force a UK exit, and (b) it leaves longer term trade policy issues to be settled later. It would require a minor amendment to the European Union (Withdrawal) Act 2018.

The Permanent Court of Arbitration [PCA] is an institution that the WA anticipated might play a role in the arbitration arrangements that it envisages for the transition. It is referenced numerous times in the WA, so there would be nothing novel in suggesting its relevance for arbitration over EEA membership.

We would not be asking anything more from the EU than we are entitled to under the provisions of the EEA. Refusal of consent would, in the circumstances, be deeply damaging to the Article 1(1) that all EEA states have promised to promote (*Pacta sunt*

*servanda*). There is nothing to stop us doing what Norway has sometimes done by paying extra for greater cooperation. The EEA is, in reality extremely flexible in accommodating side-deals between its parties: contrary to the myths that it establishes a rigid, one-size-fits-all set of rules, its protocols and annexes contain all manner of bespoke adjustments.

It is a feature of the EEA that its non-EU member states do not participate in all aspects of the EU's Internal Market: parts that are absent include the EU customs union, agriculture and fisheries.

We, like the three other non-EU members of the EEA, would not be required to be part of the EU customs union. At the same time, there is nothing to stop any of them doing so should they so wish. Options are left open. In practice the three states have chosen to pursue FTAs, both through EFTA and on their own, individual accounts. They have judged that option the more favourable to their interests. There are major differences of view on how to use this available option, there should be a much wider consensus before we do.

Any customs arrangement will take time because of the need to establish a comprehensive rules-of-origin system, not for want of appropriate technologies. The EU might offer to retain their proposed transitional arrangements in the WA until the end of 2020. Since the substance of the relevant matters has already been agreed, such transitional arrangements could be contained in UK-specific protocols to the EEA Agreement or any UK-EU withdrawal understanding that needs legislation. The UK would pay for this making our total exit bill closer to the £39 billion in the WA.

Under these specific EEA arrangements there would be a considerable easing of the disruption that might otherwise occur from leaving the EU without an agreement. The major issue of trade arrangements, including the relevant regulatory infrastructure supporting trade, would be settled at the outset, and we would continue to see an EEA-EU border in Northern Ireland with sporadic checks away from that border focused particularly on those commodities for which EU and UK tariff differentials were high enough to attract significant attempts at smuggling. We would be in a much improved relationship when seeking to agree mutually beneficial arrangements on this and other important matters.