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BREXIT UPDATE

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CONTEXT

On 25 November 2018, EU leaders endorsed the Withdrawal Agreement and a Political Declaration negotiated between the UK and the EU.

- the [Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community](#). This is a draft legal agreement setting out arrangements for the UK's departure from the EU.
- an [Outline Political Declaration](#) on the UK-EU future relationship.

Before the Withdrawal Agreement and Political Declaration can be ratified, one of the necessary conditions is approval by the UK Parliament.

The House of Commons has rejected motions to approve the Withdrawal Agreement and Political Declaration on two occasions and it rejected a motion on just the Withdrawal Agreement at the end of March 2019.

The UK Government has twice sought extensions to the Article 50 period, thereby delaying the UK's departure from the EU. At the European Council meeting on 10 April, the UK requested a second extension to the Article 50 period. This resulted in a flexible extension to 31 October 2019. As a result of the extension to the Article 50 period, the UK was required to participate in the European Parliament elections on 23 May.

On 24 May, Prime Minister Theresa May [announced](#) she would resign as Leader of the Conservative Party on 7 June. This triggered a leadership contest in the Conservative Party with Boris Johnson being [declared the winner](#) on 23 July. He succeeded Theresa May as Prime Minister the following day.

In his [first statement to the House of Commons](#), the new Prime Minister told Parliament:

“...we must take some immediate steps. The first is to restore trust in our democracy and fulfil the repeated promises of Parliament to the people by coming out of the European Union – and doing so on October 31st.”

I and all ministers in this government are committed to leaving on this date, whatever the circumstances. To do otherwise would cause a catastrophic loss of confidence in our political system.”

The Prime Minister said that while leaving the EU with a negotiated exit deal was his preference, he appeared to rule out a negotiated deal including the Irish backstop in its current form or with a time limit:

“A time limit is not enough. If an agreement is to be reached it must be clearly understood that the way to the deal goes by way of the abolition of the backstop.

...I do not accept the argument that says that these issues can only be solved by all or part of the UK remaining in the customs union or in the single market. The evidence is that other arrangements are perfectly possible, and are also perfectly

compatible with the Belfast or Good Friday Agreement, to which we are of course steadfastly committed.”

The Prime Minister told Parliament that he hoped the EU would “rethink their current refusal” to reopen the Withdrawal Agreement and indicated that:

“If they do not, we will of course have to leave the EU without an agreement under Article 50.”

The Prime Minister also indicated the UK would not nominate a new Commission for the college of commissioners which is due to take office under the leadership of new Commission President Ursula Von Der Leyen on 1 November. The logic of the Prime Minister’s decision being that the UK will have left the EU before the new College of Commissioners takes office.

Prime Minister’s discussions with the Taoiseach, Leo Varadkar

Following their [previous discussions](#) which took place on 30 July, the Prime Minister and the Taoiseach held another conference call on 19 August. According to [Downing Street’s read out of the meeting](#):

“They shared perspectives on the Withdrawal Agreement. The Prime Minister indicated that the Withdrawal Agreement in its current form will not get through the House of Commons, that the backstop would need to be removed, and that an alternative solution is required. The Taoiseach reiterated the EU27 position that the Withdrawal Agreement cannot be reopened, and emphasised the importance of the legally operable guarantee to ensure no hard border and continued free trade on the island of Ireland.

The Prime Minister made clear that the Common Travel Area, which long predates the UK and Ireland joining the EU, would not be affected by the ending of freedom of movement after Brexit.

The two leaders reiterated their desire to see the Northern Ireland political institutions reinstated urgently, and agreed to work closely to this end. They condemned this morning’s bombing in Fermanagh and urged anyone with relevant information to contact the PSNI.

They agreed that their teams would maintain close contact over the coming weeks, while recognising that negotiations take place between the UK and the EU27 Task Force. They also agreed to meet in Dublin in early September.”

The Taoiseach’s office also published a [readout of the telephone conversation](#) which it said lasted for almost an hour. Subsequently, in a [speech](#) during visit to Ireland of US Vice President Pence, Leo Varadkar said:

“Divergence between the UK and the EU means that the return of a hard border on our island is a very real risk. And I know that you understand the impact a hard border will have on us on this island.

That is why we as a Government have to stand our ground on the Withdrawal Agreement. An Agreement which was carefully negotiated over two years.

This isn't a problem of our making. It is one we want to solve - through an orderly Brexit and a withdrawal agreement that guarantees no re-emergence of a hard border on this island."

The Prime Minister's visits to Berlin and Paris

Ahead of the G& summit in France, the Prime Minister travelled to Berlin and Paris for meetings with Chancellor Angela Merkel and President Macron.

In both meetings, the Prime Minister sought to persuade both leaders to remove the Irish backstop from the Withdrawal Agreement. It was [reported](#) that Chancellor Merkel set out that the Prime Minister had "30 days to persuade the EU that there was a viable alternative to the backstop". According to the report in the Guardian:

"Merkel at one point appeared to set Johnson a 30 day deadline. She said that the backstop had always been a "fallback position" and would only come into effect if no other solution could be agreed that would protect the "integrity of the single market". She went on:

If one is able to solve this conundrum, if one finds this solution, we said we would probably find it in the next two years to come but we can also maybe find it in the next 30 days to come. Then we are one step further in the right direction and we have to obviously put our all into this."

Article 50 Negotiations between the EU and the UK

At the time of writing, no formal negotiating rounds appear to have taken place between the UK and the EU since Boris Johnson became Prime Minister. However, it was reported that the Prime Minister's newly appointed EU envoy and senior negotiator, David Frost, held meetings with EU officials, on 31 July and 1 August. Following these meetings in Brussels, the [Financial Times reported](#):

"The EU has held firm on the contents of the withdrawal agreement, negotiated by Mr Johnson's predecessor Theresa May, insisting it will not reopen the terms of the so-called "backstop" which seeks to avoid a hard border on the island of Ireland. Mr Johnson has described it as "anti-democratic" and has said he wants it "abolished".

"Both sides reiterated their positions," said a spokeswoman for the commission. Mr Johnson and Jean-Claude Juncker, the outgoing president of the European Commission, are expected to have their first meeting on the sidelines of a G7 summit in Biarritz this month. Germany's Angela Merkel and France's Emmanuel Macron will also be in attendance at the G7.

EU officials do not expect Mr Johnson to arrive in Brussels before the Conservatives' party conference in the autumn, setting up a showdown with EU leaders at a summit in mid-October, just weeks ahead of the planned exit date."

The week after David Frost's visit to Brussels, the [BBC reported](#) that EU negotiators had told European diplomats that there was currently no basis for "meaningful discussions" and talks were back where they were three years ago. In response, the BBC quoted Downing Street as suggesting the EU needed to "change its stance". According to the BBC report:

"The European Commission said on Tuesday morning it was willing to hold talks in the coming weeks by phone or in person, "should the UK wish to clarify its position in more detail".

A spokeswoman added the agreement negotiated by Mrs May - rejected three times by MPs - was the "best possible deal", and could not be re-opened."

The report also included a quote from a UK Government spokesperson in response to the European Commission official:

"A No 10 spokesperson said: "The prime minister wants to meet EU leaders and negotiate a new deal - one that abolishes the anti-democratic backstop.

"We will throw ourselves into the negotiations with the greatest energy and the spirit of friendship and we hope the EU will rethink its current refusal to make any changes to the withdrawal agreement."

On 19 August, [the Prime Minister wrote to the President of the European Council](#), Donald Tusk. In his letter Boris Johnson said that the UK Government hoped to leave the EU on 31 October with a deal. However, he added that for a deal to be agreed, it would require the removal of the Northern Ireland and Ireland backstop from the Withdrawal Agreement. In the letter the Prime Minister reaffirmed the UK Government's commitment to the Common Travel Area with Ireland and to the Good Friday Agreement. However, he set out three reasons for why the UK Government believed the backstop needed to be removed from the Withdrawal Agreement:

- It is anti-democratic and inconsistent with the sovereignty of the UK.
- It is inconsistent with the UK's desired final destination for a sustainable long-term relationship with the EU.
- It has become increasingly clear that the backstop risks weakening the delicate balance embodied in the Belfast (Good Friday) Agreement.

The Prime Minister also wrote that a hard border on the island of Ireland must be avoided and that the UK Government would not put in place infrastructure, checks or controls at the border between Northern Ireland and Ireland. He added the UK "would be happy to accept a legally binding commitment to this effect and hope that the EU would do likewise".

Finally, the Prime Minister suggested alternative arrangements should be part of the solution, but he gave no indication what those alternative arrangements might be.

On the margins of the G7 summit in France, the Prime Minister met with the President of the European Council, Donald Tusk. According to Downing Street's [readout of the meeting](#):

“The PM repeated that the UK will be leaving the EU on 31 October whatever the circumstances. We must respect the referendum result.

The PM said the UK would prefer to leave with a deal but the current Withdrawal Agreement will not get through Parliament.

The PM said the deal is anti-democratic. The people of Northern Ireland would have no say in rules covering large swathes of their economy and it would actually be harder for us to exit the new arrangement than it is to leave the EU itself.

The PM said we will work in an energetic and determined way to get a better deal and we are very willing to sit down to talk with the EU and member states about what needs to be done to achieve that.

The PM and the President also discussed foreign policy, including Iran and Russia, and stressed the importance of upholding the rules-based international system.

The PM said that, post-October 31, the UK will remain a close partner and strong ally of the EU.”

On 27 August, the Prime Minister [spoke](#) with the President of the European Commission, Jean-Claude Juncker by telephone. In the telephone call, the Prime Minister set out that the UK would be leaving the EU on 31 October. According to the UK Government’s readout of the meeting:

“The Prime Minister set out that the UK will be leaving the EU on October 31, whatever the circumstances, and that we absolutely want to do so with a deal. The PM was also clear however that unless the Withdrawal Agreement is reopened and the backstop abolished there is no prospect of that deal.

The Prime Minister reiterated his commitment to Belfast/Good Friday Agreement in all its parts. He underlined the importance of ensuring the peace, prosperity and security of Northern Ireland and said that we will never place infrastructure, checks, or controls at the border.

The leaders noted that their teams would continue their informal discussions and they agreed to remain in touch.”

The European Commission also [published a readout](#) from the conversation. It stated:

“President Juncker repeated his willingness to work with Prime Minister Johnson and to look at any concrete proposals he may have, as long as they are compatible with the Withdrawal Agreement.

President Juncker underlined the EU27’s support for Ireland is steadfast and that the EU will continue to be very attentive to Ireland’s interests.

Finally, he recalled that while the EU is fully prepared for a ‘no-deal’ scenario, it will do everything it can to avoid such a situation. A ‘no-deal’ scenario will only ever be the UK’s decision, not the EU’s.”

On 30 August, the Prime Minister [announced](#) a renewed effort to secure a deal with the EU before the Brexit deadline. As part of this, the BBC reported that UK's negotiators will meet EU counterparts twice a week in the run-up to the European Council meeting on 17 October.

On 1 September, the [BBC reported](#) that EU's lead Brexit negotiator, Michel Barnier, had rejected the Prime Minister's demand for the Irish backstop to be scrapped. According to the report:

["Michel Barnier said the backstop - intended to avoid a hard border on the island of Ireland - was the "maximum flexibility" the EU could offer."](#)

The BBC's report referenced an [article by Michel Barnier](#) in the Daily Telegraph on 31 August. After explaining the importance of the Irish backstop to the EU, Michel Barnier added:

["The new UK government has asked us to change what was agreed. The EU had already committed itself to working with the UK, during the standstill transition period, on alternative arrangements that achieve the same objectives of the backstop. We are ready to start this work immediately upon ratification of the Withdrawal Agreement, in parallel to finally creating clarity on our future relationship.](#)

[I am not optimistic about avoiding a "no deal" scenario but we should all continue to work with determination. The EU is ready to explore all avenues that the UK government may present and that are compatible with the Withdrawal Agreement. Uncertainty has festered for far too long in the UK, in particular in Northern Ireland, as well as in Ireland and all other EU countries, for that matter.](#)

[The Prime Minister has said there will be no more extensions beyond the end of October. Therefore, the UK has now come to a moment of truth and it must decide if it leaves the EU with or without an agreement. If it chooses the latter, it means that there will be no transition period and no so-called "mini-deals", as the EU will only act to protect its own interests.](#)

[In case of "no-deal", all the UK's financial and other obligations from its past EU membership will continue to exist, as well as obviously the international obligations it has to protect the Good Friday Agreement, in all its dimensions.](#)

[The EU cannot prevent the UK from choosing a "no-deal" scenario. I would fail to understand the logic of that choice though, as we would still need to solve the same problems after 31 October."](#)

Speaking outside Number 10 Downing Street on 2 September, the Prime Minister said that negotiations with the EU were making progress:

["And as we come to that brexit deadline I am encouraged by the progress we are making.](#)

[In the last few weeks the chances of a deal have been rising, I believe, for three reasons.](#)

- They can see that we want a deal.
- They can see that we have a clear vision for our future relationship with the EU - something that has perhaps not always been the case.
- And they can see that we are utterly determined to strengthen our position by getting ready to come out regardless, come what may

But if there is one thing that can hold us back in these talks it is the sense in Brussels that MPs may find some way to cancel the referendum.”

On 3 September, Tytti Tuppurainen, the Finnish Government’s Minister for European Affairs and President of the Council of the European Union (Finland took over the rotating Presidency on 1 July) reportedly [told the European Parliament’s Committee on Constitutional Affairs](#) that there has been no new proposal received from the UK government on the Irish backstop or any other aspect of Brexit.

During the week of 2 September, it was [reported](#) that the UK Government’s EU envoy David Frost was in Brussels for further Brexit related meetings.

UK Government ends participation in EU meetings

On 12 August 2019, news reports suggested that the UK Government intended to pull its diplomats from participating in EU meetings (such as working groups) in which the regular business of the EU is conducted. [According to the Guardian:](#)

“In an attempt to reinforce the message that the UK is leaving the EU by 31 October, “do or die”, the UK will stop attending the day-to-day meetings that inform the bloc’s decision-making.

The move under discussion is said by UK officials to be in line with Boris Johnson’s first statement in the House of Commons, in which he said he would “unshackle” British diplomacy from EU affairs.

Critics have countered that the symbolic walkout would merely leave the UK blindsided on decisions and ultimately damage the national interest.”

Following this report, the Scottish Government’s Cabinet Secretary for External Affairs, Fiona Hyslop [wrote](#) to Stephen Barclay, Secretary of State for Exiting the European Union to seek an assurance that no such decision has yet been made, and insist that any move to do so must first involve discussions with the Scottish Government.

Prorogation

On 28 August, the UK Government announced that it had sought and been granted by HM The Queen a prorogation of Parliament. The prorogation will begin no earlier than Monday 9 September and no later than Thursday 12 September and last until Monday 14 October. Following the prorogation, a new Parliamentary Session will begin with a Queen’s Speech.

The decision to prorogue could be seen as an attempt to limit MP’s time to debate a no-deal Brexit. However, [according to the BBC](#), the Prime Minister said suggestions the

suspension was motivated by a desire to force through a no deal were "completely untrue".

He said he did not want to wait until after Brexit "before getting on with our plans to take this country forward", and insisted there would still be "ample time" for MPs to debate the UK's departure from the EU. He added:

"We need new legislation. We've got to be bringing forward new and important bills and that's why we are going to have a Queen's Speech,"

Guidance and analysis on prorogation has been published by the [Institute for Government](#) and the [House of Commons library](#).

House of Commons attempts to prevent no-deal

On 2 September, the Prime Minister [made a speech](#) outside 10 Downing Street. The statement followed reports that in the light of the Government's decision to prorogue Parliament, MP's planned to try to take control of the Order Paper (managing business in the House of Commons) to seek to prevent the UK leaving the EU without a deal at the end of October.

In his statement, the Prime Minister said:

"I want everybody to know – there are no circumstances in which I will ask Brussels to delay. We are leaving on 31 October, no ifs or buts.

We will not accept any attempt to go back on our promises or scrub that referendum

Armed and fortified with that conviction I believe we will get a deal at that crucial summit in October

A deal that parliament will certainly be able to scrutinise

And in the meantime let our negotiators get on with their work

Without that sword of Damocles over their necks

And without an election, which I don't want and you don't want."

On 3 September, following an "urgent debate" about EU withdrawal, MP's successfully defeated the UK Government (by 328 votes to 301 votes) [allowing the introduction of a Bill seeking to prevent a no-deal Brexit to be introduced and considered by Parliament](#).

European Union (Withdrawal) (No. 6) Bill (also referred to as the "Benn-Burt Bill") was introduced in the UK Parliament on 4 September. Colleagues at the House of Commons Library have published a [helpful blog which outlines the purpose of the Bill](#).

The Bill as drafted gives the Government until Saturday 19 October to seek and secure the approval of MPs for either a withdrawal agreement, or to leaving the European Union without a withdrawal agreement (a no-deal Brexit). If neither of these options is secured by the end of 19 October, the Bill requires that the Prime Minister

must then have sought from the European Council an extension of Article 50 for a further four months – until 31 January 2020. The Bill also allows the Prime Minister to withdraw or modify his Article 50 extension request if at any time after 19 October a withdrawal agreement is approved by the Commons, or the Commons decides the UK should leave without a deal.

The Bill also deals with what happens if the European Council offers an extension to the Article 50 process. It provides that the Prime Minister is compelled to accept an offer of an extension to 31 January 2020. If the terms of the extension offered by the European Council are for a different end date, the Prime Minister can either accept the offer or ask the House of Commons (within two calendar days) whether it wishes to approve that extension. If the House of Commons “decides not to pass” a specifically-worded motion approving the extension, the Prime Minister then has a free choice whether or not to agree to the extension.

The Bill also makes provision for aligning the end of the Article 50 period set out in EU law with the Exit day set out in domestic UK law. It does this by compelling Ministers to make regulations to ensure the two dates remain aligned.

Whilst the legislation would require the UK Government to seek an extension to the Article 50 process, it is important to remember that the UK’s departure from the EU is governed by the process set out in Article 50 of the Treaty on European Union. As a result, it means that the UK’s departure is set out in EU law as being on 31 October 2019. Any change to this date will require the unanimous approval of the 27 Heads of State and Government in the European Council. If a request for an extension to the Article 50 period from the UK Government is not granted by the European Council, then under EU law, the UK will leave the EU on 31 October 2019.

Debate on the Benn-Burt Bill took place in the House of Commons on 4 September with the Bill passing its third reading by 327 votes to 299. The Bill was then sent to the House of Lords for its consideration. At the time of writing, the Bill is being considered by the House of Lords with the Government’s Chief Whip in the Lords, Lord Ashton of Hyde announcing that all stages of the bill would be completed in the Lords by 17:00 BST on Friday. [According to the BBC](#), a commitment has also been given by the Commons chief whip that MPs will consider any Lords amendments on Monday and that the government intends that the “bill will be ready” to be presented for royal assent.

A general election?

Immediately following the House of Commons decision to agree the Benn-Burt Bill at third reading, the Prime Minister moved a motion seeking a general election. He [told the House of Commons](#):

“It is a Bill that effectively ends the negotiations; a Bill that demands an extension at least until next year, and perhaps for many more years to come; and a Bill that insists that Britain acquiesces to the demands of Brussels and hands control to our partners. It is a Bill designed to overturn the biggest democratic vote in our history, the 2016 referendum. It is therefore a Bill without precedent in the history of this House, seeking as it does to force the Prime Minister, with a pre-drafted letter, to surrender in international negotiations. I refuse to do this. It is clear that there is therefore only one way forward for the country. The House has voted

repeatedly to leave the EU, yet it has also voted repeatedly to delay actually leaving. It has voted for negotiations, and today, I am afraid, it has voted to stop—to scupper—any serious negotiations.”

The Prime Minister asked the House to agree to a general election under the terms of the Fixed Terms Parliament Act. This means that two-thirds of all MPs needed to vote for an election (434 votes). In the vote, [298 MPs voted for an election with 56 voting against and 288 abstaining \(not voting\)](#). Therefore, at this stage, the Prime Minister is unable to call a general election.

No-deal preparations

Whilst the UK Parliament has debated whether it should seek to prevent a no-deal Brexit, it is still the default position in EU law that the UK will leave the EU on 31 October. Given the Prime Minister’s commitment that the UK will leave the EU with or without a deal (and with negotiations not appearing to make much progress) on 31 October, both the UK and Scottish Government have continued to make preparations for the event of a no-deal Brexit.

The Chancellor of the Duchy of Lancaster, Michael Gove is responsible for leading the UK Government’s coordination of preparations. On 3 September, he provided an [update to the House of Commons](#) on the UK Government’s preparations for departure from the EU. On the possible implications of a no-deal Brexit, he told the Commons:

“There has been extensive speculation about what leaving without a deal might mean for businesses and individuals. Moving to a new set of customs procedures, adjusting to new border checks and dealing with new tariffs all pose significant challenges, and nobody can be blithe or blasé about the challenges we face or the scale of work required. But provided the right preparations are undertaken by government, business and individuals, risks can be mitigated, significant challenges can be met and we can be ready. Leaving without a deal is, of course, not an event whose consequences are unalterable; it is a change for which we can all prepare, and our preparations will determine the impact of the change and help us also to take advantage of the opportunities that exist outside the EU.

We have, of course, to prepare for every eventuality, and that is the function of Operation Yellowhammer. It is an exercise in anticipating what a reasonable worst-case scenario might involve and how we can then mitigate any risks. Operation Yellowhammer assumptions are not a prediction of what is likely to happen; they are not a base-case scenario or a list of probable outcomes. They are projections of what may happen in a worst-case scenario, and they are designed to help government to take the necessary steps to ensure that we can all be ready in every situation.”

Michael Gove also provided an update on the new Government’s actions to mitigate the effects of a no-deal Brexit including the following:

“Guaranteeing the effective flow of goods across our border with the EU is, of course, central to our preparations, and that will require action by business, to adjust to new customs procedures, and intervention by government, to ensure the freest flow of traffic to our ports. That is why Her Majesty’s Revenue and Customs

has announced an additional expenditure of £16 million to train thousands of customs staff, traders and hauliers, so that trade with the EU continues as smoothly as possible. It is also why today we are announcing £20 million more to ensure that traffic can flow freely in Kent and trucks arriving at Dover are ready to carry our exports into the EU.

On business, we have automatically allocated an economic operator registration indicator—EORI—number to 88,000 companies across the UK, and businesses can also register for transitional simplified procedures to delay the submissions of customs declarations and postpone the payments of duties. New transit sites have been built in Kent to smooth the flow of goods into the EU, and we are recruiting 1,000 new staff to help to maintain security and to support flows at the border.

The Government will do all that they can to support businesses to get ready, but many of the steps required to ensure the smooth flow of trade fall to business. We will provide advice, finance and flexibility over how revenue payments may be settled, but it is important that businesses familiarise themselves with the new requirements that exit will involve. That is why we have launched a public information campaign, “Get ready for Brexit”, to give everyone the clear actions that they need to prepare. As well as TV and radio advertising, there is now a straightforward, step-by-step checker tool, available on the Government’s website at gov.uk/brexit, so we can all identify quickly what we may need to do to get ready.”

On 5 September, Michael Gove [gave evidence](#) to the Exiting the EU Committee on the progress of preparations for the UK’s withdrawal from the EU. The evidence session is available on the [UK Parliament TV](#).

In the afternoon, the House of Commons [asked questions](#) of the UK Government about the preparations for the UK’s exit from the European Union.

On 5 September, the Scottish Parliament [debated a no-deal Brexit](#). Following the debate, Parliament adopted the following motion by 87 votes to 28:

“That the Parliament agrees that the UK should in no circumstances leave the EU on a no-deal basis, and condemns the Prime Minister’s suspension of the UK Parliament from as early as 9 September until 14 October 2019.”

SPICe has published a briefing on a no-deal Brexit. [Preparing for a no-deal Brexit](#) outlines some of the potential immediate impacts of a no-deal Brexit along with contingency planning for disruptions that may occur in the immediate days and weeks after EU exit.

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[About this publication](#)

This regular paper produced by SPICe sets out developments in the UK's negotiations to leave the European Union, the process for which formally begun following the Prime Minister's triggering of Article 50 on 29 March 2017.

The updates provide information on the UK Government's approach to leaving the EU including the domestic legislation necessary to ensure a smooth transition in terms of the UK statute book, along with details of the positions of the Scottish Government and the other Devolved Administrations. The updates also provide information on developments within the EU with regard to the UK's departure. Finally, the updates will provide information on the key issues likely to be at play during the negotiations and in developing the UK's future relationship with the European Union.

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