

Migreurop - Fact sheet -
Outcomes of Brexit at the Franco-British border
April 2022

Investigation at the border from September 2021 to April 2022

Since 1991 and the Sangatte protocol, the border area of the Channel has been subject to increasing controls and surveillance by both France and the UK. France's northern coastline, particularly in the departments of Pas-de-Calais and Nord, is a transit area for exiles wishing to travel to the UK, whether or not they wish to claim asylum there. The Franco-British border has seen its landscape change with the progressive construction of walls and fences, the ever-increasing presence of police and military forces, and the relentless repression of exiles and their supporters, as a result of successive governments in both countries.

If over the last thirty years the security situation at this border has only gone from bad to worse, Brexit, an important political and geopolitical event in the history of the United Kingdom and in its relationship with the rest of continental Europe, has had, continues to have and will have repercussions on the situation at the border facing exiles wishing to reach British territory. Beyond the legal changes on a national and international scale created by its implementation, Brexit is fertile ground for the continuation and reinforcement of anti-migrant, nationalist and imperialist rhetoric from the British state and reactionary spheres.

What is Brexit ?

Brexit is the name given to the withdrawal of the United Kingdom from the European Union (EU).¹ A member of the EU since 1 January 1973, the country left the EU following a referendum held on 23 June 2016, which saw a narrow victory for Leave over Remain: 51.89% of votes cast were in favour of leaving the union. Following several years of strained negotiations with EU institutions² Brexit was legally implemented from 31 January 2020, initially under a transition period that ended on 1 January 2021, before being fully implemented according to agreements between the two parties.

Brexit is rooted in the growing Euroscepticism (distrust and/or rejection of a country's membership and/or deep integration with the EU) that has polarised British political debate for decades. Tinged by the mobilisation of nationalist sentiment and discourse against the presence of foreigners on British soil, this Euroscepticism has been strongly fuelled by a number of newspapers and personalities critical of the Union, freedom of movement and immigration, such as Prime Minister Boris Johnson who championed the Leave camp,³ as well as a section of the Tories.⁴ However, the increasing hostility towards migrants that has become cemented within British society is not only the consequence of the mobilisation of the Conservative movement: the Labour Party, rival of the Conservatives, greatly contributed under the mandates of Tony Blair and Gordon Brown to creating a legal and political environment hostile to exiled persons. Thus, a series of laws restricting the freedoms of people without the right to stay or seeking protection were passed during the years when the

¹[Toute l'Europe, "Le Brexit en 3 minutes", 22 June 2021](#)

²[France Inter, "Brexit : quatre ans de négociations résumés en cinq minutes de lecture", 24 December 2020](#)

³Piotr Cap, "Immigration and Anti-migration Discourses : The Early Rhetoric of Brexit", in *Piotr Cap, The Language of Fear*, October 2017.

⁴Nickname given to members of the Conservative Party in the UK.

Labour Party was in power.⁵ In the 2000s, the Labour Party took an increasingly hard line on the asylum process and exiles, which greatly contributed to the rise of tensions in the public debate on migration.

What are Brexit's consequences regarding international and European law ?

Prior to Brexit, the UK was subject to EU law on migration policy. Although not a member of the Schengen area - a single travel area consisting of 22 EU member states plus the four members of the European Free Trade Association (EFTA) -⁶ the border between France and the UK remained an internal EU border for as long as the UK was a member.

Now it is an external border of the Union. This means that the EU has the capacity to deploy external border control tools there. During December 2021, a Danish aircraft attached to the European border and coast guard agency Frontex flew over the coastline from the Bay of the Somme to the northern end of the Belgian coastline.^{7;8} Mobilised following the shipwreck of 24 November 2021 that killed 27 exiles in the English Channel,⁹ Frontex's presence ceased after 30 December 2021,¹⁰ before resuming with two new Belgian and Dutch aircraft on 12 April 2022. Although it may seem like an announcement after this tragedy, the possibility of sending human, material and military resources through Frontex is in fact a new means for European surveillance and control, which could be superimposed on the French and British resources already deployed in the region.

The French government, which holds the Presidency of the Council of the EU from 1 January 2022 to June 2022, has expressed its willingness for several months to establish a more in-depth dialogue on migration issues at the Franco-British border, within a European-British framework and not just a bilateral one.^{11;12} However, the UK government is not inclined to negotiate with the EU and remains determined to hold discussions with its French counterpart as the sole interlocutor.¹³ As of April 2022, no less than 23 treaties, declarations and administrative arrangements exist between the two states as part of their cooperation on the management of their common border.

⁵[The Guardian, "How immigration became Britain's most toxic political issue", 15 November 2019](#)

⁶Composed of Iceland, Liechtenstein, Norway and Switzerland.

⁷[La Voix du Nord, "L'avion de Frontex déployé contre le trafic migratoire stationnera-t-il à l'aéroport du Touquet ?", 29 November 2021](#)

⁸[Nord Littoral, "Frontex : que fait exactement l'avion de l'agence européenne dans le ciel de Calais ?", 17 December 2021](#)

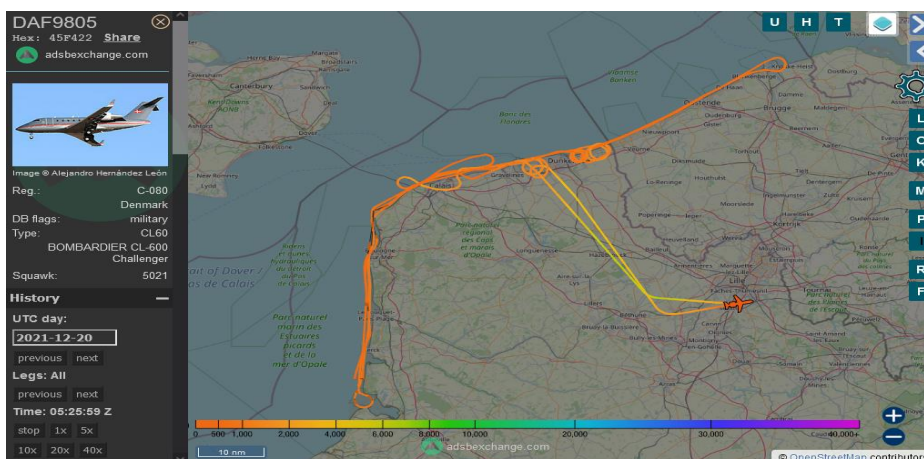
⁹[Le Monde, "La colère des associations après la mort de 27 migrants dans la Manche \[...\]", 25 November 2021](#)

¹⁰View DAF9805 flights: [ADS-B Exchange](#)

¹¹[France 24, "France calls for creation of a migration treaty between the EU and Britain", 10 October 2021](#)

¹²[Mediapart, "Des deux côtés de la Manche, la politique du blâme", 21 November 2021](#)

¹³[European Council on Refugees and Exiles, News, 11 February 2022](#)



Frontex flight path along the French-Belgian coastline, 20 December 2020, [ADS-B Exchange](https://adsbexchange.com)

The UK's withdrawal from the EU means that it can no longer send people back under Regulation 604/2013/EU of 26 June 2013, known as "Dublin". This regulation allows states to send back foreigners, be they asylum seekers or not, who do not have the required documents for entry, to the first country on the European continent where they were fingerprinted.¹⁴ Very often, this is the first country of entry into the European Union (Spain, Italy, Malta, Greece, Cyprus).¹⁵ Thus, people arriving in the UK can no longer be removed because they were identified in the first EU Member State they entered. As a consequence, the British government is considering the implementation of new mechanisms to compensate for the inapplicability of the Dublin Regulation on its territory.¹⁶

What are the consequences of Brexit for migration policy and foreigners' rights in the UK ?

No longer a member of the EU, the British government has new means to pursue a restrictive and hostile migration policy towards exiled people. The Brexit campaign was animated by numerous populist slogans that continue to be part of the recurrent discursive tools of the various ministers and members of the Conservative Party, such as "take back control of our borders",¹⁷ or the idea of "becom[ing] a sovereign nation once more".¹⁸ This nationalist and sovereignist rhetoric is matched by an anti-migrant discourse, increasingly distinguishing as time goes by between "those who have a legitimate right to [come] - and those who are not conducive to the public good [...]".¹⁹

Thus, while the situation for people in exile had already been undermined by Labour and Conservative governments since the late 1990s, the governments of Theresa May and then Boris Johnson considerably amplified their determination to implement deleterious migration policies towards those seeking to reach the UK through "illegal" routes, as well as those already in the country. This is what May called, while she was Home Secretary in 2012, the "hostile environment": an

¹⁴ [La Cimade, "Dubliné.e, vous avez dit Dubliné.e ? Guide pratique et théorique du règlement Dublin", 7 March 2021](#)

¹⁵ [Vues d'Europe, "Le bilan chiffré du règlement Dublin ne plaide pas pour son maintien", fig. 2](#)

¹⁶ Cf. infra.

¹⁷ [GOV.UK, "The UK's Points-Based Immigration System : a Policy Statement", 19 February 2020, §1](#)

¹⁸ [GOV.UK, "2025 UK Border Strategy", 17 December 2020, p.5, §1](#)

¹⁹ Ibid., §4.

environment in which those without the right to stay are forced, willingly or unwillingly, to leave the UK.²⁰

A whole range of people who previously lived legally in the UK are now in an extremely precarious situation and are liable to be deported. Since Brexit, new immigration laws have narrowed the gap in treatment between EU and non-EU citizens. Brexit has allowed the UK to introduce new restrictive measures in its migration policy. For EU and EFTA nationals, the rules have changed and the conditions for obtaining work visas or Indefinite Leave to Remain are now more difficult with longer processing times. The 2019 EU Settlement Scheme (EUSS) has created new conditions for residence in the UK, and nationals from relevant EU countries can be deported if they have not applied for the scheme in time.²¹ For example, some people who have not provided the necessary documents for their stay by the government's deadline may be detained in Immigration Removal Centres and sent back to their country of origin,²² even after having lived and worked in the UK for many years. The number of deprivation of liberty orders for these EU citizens, particularly from Central and Eastern European countries, has increased significantly.²³

While the EUSS applies to people who are nationals of an EU Member State, the same measures are planned for people who are nationals of a country outside the Union.²⁴ From 1 January 2021, non-EU nationals are subject to new rules on admissibility to the UK when claiming asylum at the border. People who have transited through a "safe third country" where they do not fear for their life and liberty, and could have claimed asylum, are likely to have their claim for protection deemed "inadmissible" before being returned to that third country.^{25;26} Despite the fact that just 11 people have been returned during 2021,²⁷ and despite the absence of readmission agreements with EU and non-EU countries, the UK government is seeking ways to deport individuals it deems undesirable. Thus, the new rules stipulate that in the absence of an agreement with the "safe third country" in which the person has remained, he or she may be taken to any state where he or she would be accepted.²⁸

Nationality and Borders Bill

However, the government is planning to go further. Since the beginning of 2021, the Home Office (HO), headed by Home Secretary Priti Patel, has been preparing a new law that would mark a major turning point in the tightening of rules for asylum seekers, as well as for anyone arriving in the country outside the authorised border posts. Entitled the Nationality and Borders Bill (N&BB), this bill - still being debated in Parliament in April 2022 - would be a historic change, as it would make it a criminal offence to enter the UK through so-called irregular channels, in contravention of international protection instruments ratified by the UK.²⁹ The N&BB would divide refugees into two categories: those who have arrived through so-called regular channels, and those who have not. The latter would

²⁰[University of Portsmouth, "What is the Hostile Environment", an introduction to Immigration policy in Britain](#)

²¹[Commons Library, "The EU Settlement Scheme : a summary", §16](#)

²²[The Guardian, "EU citizens who applied to stay in Britain facing threat of deportation", 1 August 2021](#)

²³Interview with a member of the Samphire Project, 16 February 2022.

²⁴Cf. infra Nationality and Borders Bill.

²⁵[GOV.UK, "Statement of changes to the immigration rules HC 1043", 10 December 2020](#)

²⁶[GOV.UK, Immigration Rules, §345 A-C](#)

²⁷[Asylum in Europe, "Safe Third Country", 14 March 2022, §4](#)

²⁸Cf. supra, Immigration Rules, §345 A-C.

²⁹[Amnesty International, " Nationality and Borders Bill : the truth behind the claims", 3 November 2021, §19](#)

be punished by heavier penalties: it is notably planned to punish those who arrive on the territory in an "irregular" manner with 4 years in prison (as opposed to 6 months at the beginning of 2022),³⁰ to reduce their rights and benefits, to increase the obstacles to family reunification, and to outsource asylum to third countries. Moreover, if protection is granted, it would be shorter (30 months, instead of the current 5 years for people arriving by "regular" means), with limited rights to social assistance.³¹ Limiting the right to family reunification will, moreover, close a "safe and legal" route for many people who could have benefited from this right. Such restrictive measures therefore further fuel the hostile environment for exiles.

The N&BB could also have consequences for the supporters of exiles. As arrival through unauthorised border crossings is liable to prosecution, the provision of assistance by supporters could also be criminalised as a solidarity offence.³² Until now, it has been a criminal offence in the UK to provide assistance to exiles in exchange for money.³³ The new law no longer requires proof of financial compensation, which would give the HO much more scope to consider a situation as criminal. Penalties, currently up to 14 years in prison, could be extended to life. Although volunteers acting on behalf of charities would not be liable to prosecution, any citizen who selflessly helps people arriving in the country would be threatened with punishment by the authorities.³⁴ These provisions of the bill are also concerning regarding the increased criminalisation they could lead to for exiled persons accused of assisting in the passage of persons. Cases of foreign nationals being charged by the HO for steering boats while they themselves were trying to cross the Channel are becoming increasingly common: more than 20 asylum seekers were convicted on these grounds between 2019 and 2021, with sentences ranging from two to six years in prison.³⁵ While some of these judgements have recently been overturned by the Canterbury Court of Appeal -³⁶ effectively suspending prosecutions on these grounds - the new law would give the HO more power over these matters.

The other key measure proposed by the government is the possibility for Border Force officers to carry out push back operations in the Channel, i.e. to divert boats carrying exiled people back into French territorial waters. This contravenes international maritime law, which states that any vessel in distress or difficulty must be rescued and returned to a safe port.³⁷ Although the manoeuvre is not yet legally enforceable, and has attracted strong criticism, including from within the Border Force,^{38;39} the latter appears to be already operational, having acquired new, faster ships⁴⁰ and new deterrents, such as sonic cannons⁴¹ (despite the Home Office's denial). BF vessels have operated in the Vessel Traffic Separation Scheme area - part of which is largely outside UK territorial waters⁴² - indicated on the map below by the large purple area.

³⁰[GOV.UK, "Nationality and Borders Bill : Factsheet", 6 July 2021](#)

³¹[Refugee Council, "Differential treatment \(Clause 11\)"](#)

³²Interview with several Channel Rescue volunteers, 17 February 2022.

³³[GOV.UK, "Nationality and Borders Bill : maximum sentences for people smugglers factsheet", 2 March 2022](#)

³⁴Interview with several Channel Rescue volunteers, 17 February 2022.

³⁵[Independent, "Migrants jailed for steering dinghies across English Channel 'just wanted to claim asylum', court hears", 25 December 2021](#)

³⁶[The Guardian, "Convictions quashed for men who drove dinghies across Channel", 21 December 2021](#)

³⁷[UK Parliament - Committees, "New powers to pushback and criminalise Channel crossings breach UK's human rights obligations, JCHR finds", 1 December 2021, §6](#)

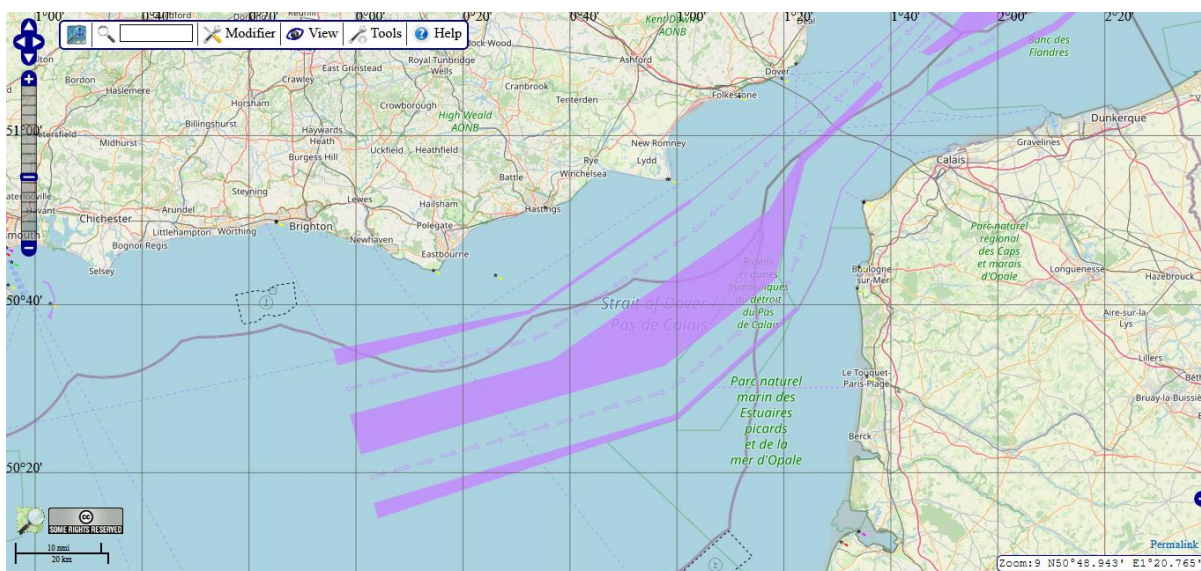
³⁸[The Guardian, "Priti Patel faces three legal challenges over refugee pushback plans", 25 November 2021](#)

³⁹[Guernsey Press, "Border Force officials could strike over plans to turn dinghies around in Channel", 20 January 2022](#)

⁴⁰Interview with Channel Rescue member, 17 February 2022.

⁴¹[The National News, "UK government considered using sonic weapons to deter migrants", 18 January 2022](#)

⁴²Interview with Channel Rescue member, 17 February 2022.



Although the aforementioned measures have been amended several times by the House of Lords⁴³ and contested by members of the majority in the House of Commons,⁴⁴ the legislative package prepared by the government and the Home Office presents a major threat to exiles travelling to the UK, and to those already in the UK. It contravenes several international conventions, and hinders freedom of movement and the right to asylum.

Brexit has concrete consequences for exiles seeking to travel to the UK. Although several mechanisms desired by the British government cannot be applied yet - due to the absence of agreements with partner states, political and public opposition and judicial control - the political and social climate around issues relating to the reception of migrants has been aggravated by several years of aggressive discourse against them. Intimidations by groups close to extreme right-wing circles or hostile citizens, as well as their supporters, are regular. Several charities and NGOs have come under considerable pressure,⁴⁵ even when they were acting solely for humanitarian purposes: this is the case of the Royal National Lifeboat Institution,⁴⁶ accused of being "a taxi service for illegal immigration" by the leader of the UKIP party, Nigel Farage, who is anti-migrant and pro-Brexit.⁴⁷

Although there are regular outbursts of solidarity that allow voices to be heard in opposition to these discourses, the pervasiveness of security and anti-migration rhetoric from the media and government leaves little room for a viable alternative that respects the rights of people in exile.

⁴³ [Electronic Immigration network, "Nationality and Borders Bill suffers further defeats on second day of report stage in the House of Lords", 2 March 2022](#)

⁴⁴ [Financial Times, "Johson faces Commons rebellion over UK Borders Bill", 18 March 2022](#)

⁴⁵ Testimonies from interviews with several organisations: Channel Rescue, Humans for Rights Network, Samphire Project, February 2022.

⁴⁶ RNLI, the marine rescue organisation for the UK, Ireland and the Crown Dependencies.

⁴⁷ [The Guardian, "RNLI donations soar in response to Farage's migrants criticism", 29 July 2021](#)