EU-UK cooperation on migration and asylum

The free movement of people between the EU and the UK ended on 1 January 2021, with the end of the transitional period set out in the Withdrawal Agreement, signed in January 2020. The EU and UK both apply their own migration and asylum systems, with ad hoc cooperation on various aspects of migration.

Background
With the exceptions of EU and UK citizens covered by the Withdrawal Agreement, and citizens of Ireland, with which the UK shares a Common Travel Area, the free movement of people between the EU and the UK ended on 1 January 2021. Since then, the EU and UK apply their own immigration systems, with each treating the other’s citizens as any other third-country/non-national for long-term stays (for work, study or family-related mobility). For short stays – without the right to work – both the EU and UK have granted visa waivers to each other’s citizens. UK nationals may stay in the Schengen area for up to 90 days in any 180-day period. Short-term travel to Bulgaria, Cyprus and Romania – outside the Schengen area – is counted separately for each, and similar time restrictions apply. UK nationals must have a passport valid for at least three months after their intended departure from the EU. EU nationals may stay in the UK for up to six months without a visa, provided they have a passport valid for the duration of their stay.

Legal migration for work or study
As non-nationals, EU citizens need a visa and a work permit to be employed in the UK. Moreover, their UK employers need to complete a right-to-work check (not applicable to EU employees who were already in the UK by 1 July 2021). UK citizens need a work permit to work in most EU countries. Generally, a job offer from an EU country is required to obtain a visa to move there. The UK has also established a points-based system, which includes a route for skilled workers who have a job offer from an approved employer sponsor. Nevertheless, the UK is seeking to reduce the volume of migrants admitted, and on 4 December 2023 the UK government announced key measures to ‘cut net migration’.

The EU-UK Trade and Cooperation Agreement (TCA), which came fully into force on 1 May 2021, includes provisions for business and professional mobility of natural persons in the context of trade in services. The aim is to facilitate short-term business trips and temporary secondment of highly skilled employees. However, they are subject to eligibility criteria and conditions regarding experience, professional status, remuneration and allowed length of stay. Some sectors are excluded from the mobility rights in the TCA, even if they are providing services (e.g. public services, services of general interest, some transport services, and audiovisual services – in an effort to preserve cultural diversity).

The UK’s withdrawal from the EU has had a chilling effect on EU students’ applications to UK universities, which fell by 53% after post-Brexit rules took effect. Reasons for this decline include the need for visas, higher tuition fees, and loss of access to government-subsidised loans for the payment of fees. Moreover, as of January 2024, international students may no longer bring their partners and children to the UK, with the exception of specific postgraduate courses categorised as research programmes. UK students coming to the EU also face higher tuition fees and visa requirements. As for student exchanges, the UK is no longer participating in the Erasmus+ programme and has instead set up the Turing scheme, which helps UK students to study anywhere in the world, including at EU universities.

Asylum policy
Post-Brexit, the UK is no longer bound by the Common European Asylum System (CEAS). Previously, the UK adhered to the first phase of EU asylum directives on reception conditions, qualification and asylum procedures. It had also opted into the Dublin III Regulation and the Eurodac Regulation. The Dublin system contains a criterion for determining the state responsible for processing an asylum application: if the asylum-seeker has neither family ties in nor a recent visa or residence permit for any EU Member State, the
first country into which they enter is responsible. The entry into EU territory is recorded in the Eurodac database, which helps determine responsibility. For the British government, the Dublin system was beneficial in that it supported the transfer of asylum-seekers back to other EU countries, as the majority of them had transited through the European continent on their way to the UK. This allowed for an overall reduction in the number of asylum applications made in the UK. Conversely, under the Dublin system, in cases where a migrant had family ties or a visa or residence permit in the UK it was possible for EU countries to transfer the applicant to the UK. In fact, for several years in the run-up to Brexit, transfers into the UK were more numerous than transfers out of the UK.

The CEAS instruments ceased to apply to the UK on 1 January 2021, and the sides have not yet agreed on an alternative asylum cooperation framework. The British government is reportedly looking for ways to cooperate with the EU on return of asylum-seekers, whereas the EU has thus far not shown interest in discussing this possibility. Both the EU and the UK have been working on overhauling their own asylum systems. The EU is about to finalise reforms under the 2020 New Pact on Migration and Asylum, in an effort to establish faster and stricter procedures and to strike a new balance between collective responsibility and solidarity. The UK reformed its asylum policy through the Nationality and Borders Bill, which the British Parliament approved in April 2022. The act has been criticised by human rights organisations and more than 200 UK civil society groups for weakening refugee protection and criminalising asylum-seekers who use irregular routes, in violation of the UK's obligations under international law. Moreover, in April 2022, the UK also concluded a Memorandum of Understanding (MoU) with Rwanda with the aim of transferring irregularly arriving asylum-seekers to Rwanda, where they would have their applications processed and possibly receive refugee status. While the MoU has been widely denounced due to Rwanda not being a safe country for asylum-seekers (as confirmed by the UK Supreme Court ruling in 2023), the British government has stuck with the plan. In December 2023, it adopted the Safety of Rwanda (Asylum and Immigration) Bill and signed a treaty with Rwanda, assuring that the scheme would be subject to rigorous oversight and monitoring mechanisms.

Irregular migration
Since 2018, there has been a sharp rise in attempts to reach the UK across the English Channel using small boats or inflatable dinghies. Many of those who arrive apply for asylum, which has contributed to an increase in asylum applications in the UK. According to the UK Home Office, 75,340 asylum applications were submitted in the UK between September 2022 and September 2023, similar to the number from the previous year. It has been suggested that this increase is partly due to the fact that asylum-seekers can no longer reach the UK through the legal routes previously available under the Dublin system. Aiming to stop the Channel crossings, in July 2023 the UK government adopted the Illegal Migration Act, according to which anyone arriving irregularly into the UK will have their asylum claim deemed inadmissible. Irregular migration is not covered by the TCA, so any cooperation between the EU and the UK in this area is ad hoc. The only aspect related to irregular migration included in the TCA is the chapter on law enforcement and judicial cooperation in criminal and civil law matters, including cooperation with Europol. The chapter calls for strong cooperation between national police and judicial authorities, in particular for fighting and prosecuting cross-border crime, including migrant smuggling. On 21 February 2024, a large-scale operation involving authorities from Belgium, France and Germany with Europol and Eurojust coordination led to the dismantling of one of the most active migrant-smuggling networks.

Post-Brexit, several initiatives have aimed at increasing cooperation on curbing Channel crossings. In December 2022, Belgium, France, Germany, the Netherlands and the UK issued a joint statement calling for an EU-UK cooperation agreement to address irregular migration in north-western Europe. In March 2023 the UK agreed to provide more than €500 million in funding to France over three years to increase the number of officers and patrols on the French coast, add new capabilities (including drones) and operate a new command centre and a new detention centre in northern France. On 18 February 2024, a working agreement was concluded between the UK’s migration agencies and Frontex, the EU Border and Coast Guard Agency. It forms part of wider EU-UK cooperation to combat smuggling, human trafficking and facilitation of irregular immigration through exchange of intelligence, expertise and personnel. The details and the operationalisation of the agreement still need to be finalised.