

Commentary #37

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The Reform UK–RN Memorandum

Under what conditions could its Channel commitments be lawfully implemented?

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Under what conditions could its Channel commitments be lawfully implemented?

The memorandum signed in Birmingham on 4 September 2026 by Nigel Farage and Jordan Bardella is a political document between two parties, Reform UK and the Rassemblement National, and by its own terms it applies only if both form the next governments of their countries. It is not an agreement between France and the United Kingdom, and it has no legal effect today, so this paper does not ask whether the policy is right or whether it would succeed. It asks a narrower question: whether the Channel commitments in the text could be lawfully implemented, and under what conditions, and it analyses the text without taking a position on the parties or the policy.

1. What the text says

The memorandum is a bilingual document made of recitals followed by five commitments. In the recitals, the two parties describe themselves as sovereigntist, state that Reform UK is committed to intercepting small boats and returning those on board to the point of departure, and add that international law, including the European Convention on Human Rights, "must not constrain sovereign nations from securing and defending their borders"; the commitments then apply "should our parties form the next Governments of the United Kingdom and France, respectively". Clause 1 commits both countries to a restrictive national immigration policy, with measures against illegal work, no legal status for undocumented migrants and restricted access to welfare, while clause 2 provides that France will do its utmost to stop all departures from French soil. Clause 3 recognises the need for a mechanism to assess the full costs of bilateral border protection agreements on a jointly defined basis, so that costs are shared each year equitably, but it sets no amount and no split.

The two clauses that bear most directly on the Channel are the last. Clause 4 provides that a person arriving in the United Kingdom from France will be immediately detained and deported to their home country, without the ability to claim asylum, because they will have passed through safe countries, and clause 5 provides that the United Kingdom will intercept boats that have launched from French shores and entered British territorial waters, and return the people on board to France. Read side by side, they describe two different routes, removal to the country of origin in one case and return to France in the other, and the text does not say how they fit together. It also leaves out a good deal that a returns arrangement would normally address: it does not expressly mention detention in France, since the only detention it names takes place in the United Kingdom, and it sets out no procedure by which France would receive or examine returned persons, no exclusion for vulnerable people such as unaccompanied minors, and no route to challenge a return. Nor does it say which language version prevails, which matters because the two versions of clause 5 differ: the English text says France "will ordinarily accept" the persons returned, who will be repatriated to their home country in accordance with French law on

expulsion, whereas the French text has no equivalent wording and says that France “reconduira” these persons to their country of origin in accordance with French expulsion law.

Statements reported from RN spokespeople can be compared with this text. According to AFP, Edwige Diaz said that migrants would be placed in detention pending expulsion, and Laurent Jacobelli said that costs would be shared between Paris and London. The cost point corresponds to the mechanism in clause 3, which sets no amount, while the detention point is not written in the text, although it is not far from what the French wording could imply, since clause 5 refers to expulsion under French law and an expulsion under that law can involve administrative detention. This paper relies on the text and notes such statements only where they can be compared with it.

2. Two legal regimes

A lawful implementation would have to pass through two legal regimes that are easily confused. The first governs what the United Kingdom does: interception in British waters, detention and removal, and because EU law does not bind the UK, it is a matter of UK law and the ECHR. The Dublin III Regulation, which allowed transfers between EU states and the UK before Brexit, no longer applies, which is one reason the UK has sought bilateral arrangements, and UK law already allows an asylum claim to be declared inadmissible where there is a connection to a safe third state. Even there, the Supreme Court held in *R (AAA (Syria)) v Secretary of State for the Home Department* ([2023] UKSC 42, 15 November 2023), the Rwanda case, that a country counts as safe only if it respects the principle of non-refoulement.

The second regime governs what France does once people are on its territory, where EU law applies alongside the ECHR. Since June 2026, the Pact on Migration and Asylum applies, with the Asylum Procedure Regulation (2024/1348) replacing Directive 2013/32/EU and the Asylum and Migration Management Regulation (2024/1351) replacing Dublin III, and the Charter of Fundamental Rights and the EU rules on return frame any removal from French territory. On return, the position is changing: Directive 2008/115/EC (the Return Directive) still applies today, but Regulation (EU) 2026/2280, adopted in October 2026, repeals it. Some provisions, including those on return hubs in third countries and readmission procedures, already apply, while the main rules on return decisions, detention, and remedies are due to apply from 17 October 2027, so implementation would have to be assessed under whichever text applies at the time. A person returned to France who applies for asylum there would in principle fall within these rules, which is why the French half of clause 5 would be difficult to reconcile with EU law unless returned persons keep access to the asylum procedure and to an effective remedy before any expulsion.

3. The ECHR as common ground

The two regimes meet in the ECHR, which binds both countries and makes three provisions relevant. Article 3 prohibits returning a person to a place where they would face a real risk of ill-treatment, including indirectly, through a country that would itself send them on; Article 13 requires an effective

remedy for those who arguably claim such a risk, and Article 4 of Protocol No. 4 prohibits the collective expulsion of aliens, although the United Kingdom has not ratified that protocol and France is bound by it. Article 19(1) of the Charter of Fundamental Rights also prohibits collective expulsions, and it binds France when it applies EU law.

The leading authority on interception at sea is *Hirsi Jamaa and Others v. Italy* (Grand Chamber, 23 February 2012), where Italy had intercepted migrants on the high seas and returned them to Libya without identifying them or hearing their claims. The Court held that people on board Italian vessels were within Italy's jurisdiction, and found violations of Article 3 (for the risks in Libya) and Article 4 of Protocol No. 4 (for the risk of onward removal to Somalia and Eritrea), read together with Article 13. As a precedent, it has limits here, because the vessels were Italian, the sea was the high seas and the destination was Libya, not an EU Member State, whereas in British waters jurisdiction is not in doubt and a return to France raises a different question about onward removal. The case establishes a method: the individual assessment and the possibility of challenging it make a return at sea compatible with the Convention. Because the UK is not bound by Protocol No. 4, the collective-expulsion question would arise mainly on the French side, for any expulsion France carries out itself.

Applied to the memorandum, clause 5 would be difficult to reconcile with Articles 3 and 13 unless each person intercepted could have their individual situation assessed and could challenge a return before it takes place. Clause 4 raises a similar difficulty, since removal without the ability to claim asylum, on the basis that safe countries were crossed, would be hard to reconcile with Article 3 unless the person can contest that France, or another country, is safe for them. The recital stating that the ECHR must not constrain border defence does not change this for as long as both countries remain parties to the Convention.

4. A comparator: the 2025 UK–France Agreement

The best available benchmark is an arrangement that has actually existed. The UK–France Agreement on the Prevention of Dangerous Journeys was signed in London and Paris on 29 and 30 July 2025, entered into force on 6 August 2025 and was extended by exchange of letters until 1 October 2026, but on 30 September the Home Office said the pilot was no longer processing new cases. LBC reported that this followed a French request for a Europe-wide arrangement instead, and Reuters reported the same day that a French interior ministry source said Paris was unwilling to extend the pilot, and that Interior Minister Laurent Nuñez had told lawmakers in June that France wanted a more European approach to illegal migration; the ministry did not say why it wanted to wind the scheme down. According to Home Office data published on 16 July 2026, 1,117 people had been transferred to the UK and 1,087 returned to France between 6 August 2025 and 30 June 2026. The agreement is therefore in the past, but its published text shows what a returns arrangement between the two countries looked like when it was drafted to comply with EU law and the ECHR.

The two texts differ first in nature. The 2025 agreement was a treaty between two governments, in force from 6 August 2025, whereas the memorandum is a political document between two parties, conditional on both being in office and without legal effect today, and the treaty also tied itself to the legal orders discussed above: France was to implement it in full compliance with EU legislation (Art. 1(5)), the European Commission could sit as an observer on the joint committee (Art. 17(2)), and transfers were to be treated in accordance with the ECHR and the Refugee Convention (Art. 1(4)(c)). The memorandum contains no EU-law clause, and its recital instead says that the ECHR must not constrain sovereign nations from defending their borders.

They differ again in how people would be selected, since the treaty set individualised criteria for each return (Art. 4(1)): proof of a small-boat crossing, adult or accompanied minor, no outstanding human rights claim or suspensive remedy, and no court order barring the transfer, with unaccompanied minors excluded (Art. 4(2)(d)), and a protection claim, if one had been made, had to have been declared inadmissible under UK law (Art. 4(1)(d)). The memorandum speaks of persons arriving from France (clause 4) and of persons on intercepted boats (clause 5), states no individual criteria or exclusions, and provides in clause 4 that there is no ability to claim asylum, on the basis of safe countries crossed.

Selection is not the only difference, because France's role is framed differently as well. Under the treaty, readmission took place on application, with France able to refuse on security grounds (Art. 4(4)) and bound to reply within 14 days, or 28 in exceptional cases (Art. 8), whereas under clause 5 of the memorandum France "will ordinarily accept" the persons returned in the English text, or "reconduira" them in the French text, with no procedure attached. The treaty also sought a one-for-one balance between transfers in each direction (Art. 1(3)) and suspended readmissions while the numbers were unbalanced (Art. 4(2)(f)), while the memorandum has no reciprocity and provides only, in clause 3, for a mechanism to assess and share border-protection costs. Finally, the treaty applied to persons who had arrived in the UK and provided for transfer by air after the procedure (Art. 9(2)), whereas clause 5 concerns interception at sea in British waters and the return of the persons on board. The treaty's French and English texts were also equally authentic, a point on which the memorandum is silent, and its two versions of clause 5 differ.

Two observations follow from this comparison. First, the 2025 agreement was a treaty between governments, with an express EU-law clause and individualised criteria for each return, and the Institut Montaigne has noted that the memorandum keeps the principle that interests London, returns to France, but leaves out the main counterpart Paris had obtained. The second is that the earlier arrangement was not beyond criticism, since the French National Consultative Commission on Human Rights expressed concern about ambiguities in it, and the Conseil d'État, in a decision of 30 December 2025 (nos. 508947 and 508948), rejected requests to annul the decree of 11 August 2025 publishing it. The comparison therefore shows what was built around a returns arrangement, not that such arrangements are free of legal questions.

5. Conditions for a lawful implementation

Read together, these texts suggest that the memorandum's Channel commitments could be lawfully implemented only under certain conditions. They would need a legal basis between states, such as a treaty, rather than a party text, and an individual assessment before any return, with a way to challenge it in time, which in turn requires access to an asylum procedure to be preserved and any safe-country finding to rest on a basis that a person can contest. The people the 2025 text excluded, such as unaccompanied minors, would need protection, and clause 4, which provides for removal to the country of origin, would have to be reconciled with clause 5, which provides for return to France. It would also have to be said how returned persons are treated in France under the Asylum Procedure Regulation, including its border procedure and its safe-third-country rules, and how France receives, examines and, where relevant, removes them under the return rules in force at the time, which clause 5 leaves open, as well as which language version governs. None of these conditions is a bar in itself, and the 2025 agreement tried to provide for several of them, but the memorandum, as a party text, does not yet address them.

6. Independence within a legal order

The memorandum drew criticism from several candidates in the French presidential campaign and was defended by Mr Bardella, but those exchanges belong to the campaign, whereas the legal questions above concern what any government would have to respect once in office. They also point to a wider debate about how far a government in Paris can act independently within the European legal order, a debate the memorandum's recital on the ECHR already highlights. The analysis above does not settle it. It shows where, for this particular text, national choices would meet obligations that EU law and the Convention already impose, on asylum procedure and returns in France and on non-refoulement and remedies in both countries, and the question for any government that carried these commitments into office would be how much of the independence it seeks can be exercised within, rather than outside, those obligations.

Sources

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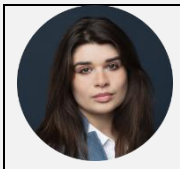
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