



HOUSE OF LORDS

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Rt Hon Priti Patel MP
Home Secretary
Home Office
2 Marsham Street
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1 July 2021

Dear Home Secretary,

The remit of the House of Lords Justice and Home Affairs Committee is to “consider justice and home affairs, including the domestic criminal justice system, and international cooperation in respect of criminal justice, civil justice, migration and asylum.”

This letter relates to two electronic systems that the European Union will launch in 2022. These systems - the Entry/Exit System (EES) and the European Travel Information and Authorisation System (ETIAS) - will affect both citizens and businesses. Their launches raise a wide range of logistical, legal, and political issues.

The EES and ETIAS

The Entry/Exit System (EES) will keep electronic records of those entering and exiting the Schengen Area. All non-EU citizens attempting to cross into the Schengen Area will have an individual EES file created on them. Every time they enter or exit the Schengen Area, this will be automatically recorded in their file. If they overstay their visa (or stay longer than 90 days in any 180-days period in the case of visa-exempt travellers), this will automatically be flagged by the system.

The European Travel Information and Authorisation System (ETIAS) is another electronic system that will affect non-EU citizens travelling to the European Union without a visa, which includes UK citizens. Visa-exempt travellers will need to apply for a travel authorisation prior to entering the European Union. In most cases, such authorisation will be granted. Some UK citizens, however, may be denied access to the European Union.

Public awareness of these systems would seem to be extremely limited. There appear also to be several areas of considerable uncertainty which require urgent clarification.

These systems will be another fundamental change in the movement of people across Europe, and preparation is needed now. Given the multiple issues and detailed questions, it would be helpful to receive answers that follow our numbering. I would be grateful for

answers to as many questions as possible by 6 September 2021 and for an indication of when we may expect a response to any that cannot by then be answered.

Our first two questions, on timing and geographical scope, are crucial. That we are asking them illustrates the lack of available information.

1. On timing: we understand that the EES and ETIAS were originally due to launch in 2020 and that their launch was postponed to 2022. When exactly will the EES and ETIAS come into force in respect of United Kingdom citizens?
2. On geographical scope: the ETIAS Regulation appears to state that most UK citizens will need a travel authorisation to enter any Member State of the European Union, as well as Iceland, Lichtenstein, Norway and Switzerland, but with the exceptions of the Republic of Ireland and Cyprus. Can the Home Office confirm this?

Level of preparedness

We understand that the launch of the EES will require most UK citizens, as well as many other non-EU citizens transiting through the UK, to register into the EES when crossing into the European Union from Dover, Folkestone, St Pancras International, Ebbsfleet International, and Ashford International. We also understand that the launch of the EES and ETIAS may disrupt air travel since carriers will need to check ETIAS travel authorisations on UK soil and travellers will need to register in the EES upon arrival in the EU.

3. How much disruption does the Home Office expect in the follow-up to the launch of the EES and of ETIAS?
4. What plans are there to mitigate disruption to air travel and at EU border-crossing points in the UK?
5. What is the Home Office's assessment of the level of preparedness of those who will be affected by the launch of the EES and of ETIAS, including the haulage industry, travel companies, and travel operators?
6. How does the Home Office intend to help them prepare?

The launch of ETIAS will likely require UK citizens to submit long application forms followed by a lengthy application process, the outcome of which may not be known immediately, necessitating some to go through this process well ahead of travelling to the EU.

7. How does the Home Office intend to raise public awareness of the launch of ETIAS and of the EES?
8. How does the Home Office intend to work with Embassies and Consulates of EU Member States in the UK in efforts to raise awareness of ETIAS implications?

Assistance and accessibility issues

Submitting these applications seems very likely to require computer literacy, the ability to read and write in the Latin alphabet, a strong internet connection, a suitable electronic device, and a credit or debit card.

9. What support will the Government provide to residents in the UK who would need help to apply for an ETIAS travel authorisation?
10. How will they be made aware of and able to access such support?
11. What consultation has the Home Office had with third-sector organisations which are aware of accessibility issues and which travellers may consult?

We understand that some UK citizens may need legal assistance to navigate ETIAS and its consequences. For instance, some applicants may be required to attend an interview as part of their ETIAS applications.

12. Will legal or linguistic assistance be available to them?

Similarly, some UK citizens may be denied a travel authorisation by ETIAS. They will have the option to appeal against that decision, but this appeal will take place in another state, under the law of that state, and it will not be possible for them to travel to that country.

13. What legal support will be available to them?

Creation of files

According to the Office for National Statistics, UK residents crossed into the European Union close to 67 million times in 2019 alone, compared to 5.5 million visits to North America, where electronic systems similar to the EES and ETIAS are in place.¹ Those UK residents who cross into the EU by car, train or ferry undergo EU border checks on UK soil every year. We understand that when the EES launches, most of these passengers will need to have an individual file created for them in the EES, under the supervision of European border officials. We understand that this process could take approximately 45 minutes for every passenger, which will cause delays and generate queues, and that these queues will affect private travellers and hauliers alike, potentially delaying the transport of goods across borders for several hours.

14. Will the current physical and technological infrastructure be sufficient to accommodate this?
15. How will social distancing (while applicable) be enforced in queues?
16. What physical infrastructure is required, particularly for that part of the process which involves the collections of passengers' biometric information?
17. How does the Government intend to mitigate the adverse consequences of the EES for hauliers?

We understand that the creation of the EES files must be supervised by a European border official. We understand that this may be difficult to accommodate under current international agreements, whereby European border officials can operate only in very restricted areas.

¹ Office for National Statistics, "[Number of visits abroad by region of visits and purpose of visit 2009 to 2019](#)" webpage [accessed 10 May 2021].

18. Has consideration been given to extending the control zones in which European officers can operate at UK-based border-crossing points?

We understand that a potential solution to mitigate the disruptions induced by the launch of the EES would be to enable travellers to create their individual EES files prior to approaching border-crossing points.

19. Will the Government consider the construction of facilities aside from border-crossing points where passengers will be able to register into the EES without affecting the flow at border-crossing points?
20. Will the Government consider establishing registration centres away from border-crossing points where prospective passengers will be able to register into the EES prior to departure?
21. Will registration be possible online and, if so, how will biometric information be collected and recorded?
22. What discussions have there been with Consulates and Embassies of EU Member States about accommodating registration processes, perhaps on their premises?

Data protection

By design, the EES and ETIAS will collect and store a large amount of personal data on UK citizens. The EES will notably store the fingerprints and facial image of all travellers, whereas ETIAS applicants will need to provide their surname, first name(s), given name(s), surname at birth, date of birth, country of birth, sex, current nationality, other names, alias(es), artistic name(s), other nationalities, type, number and country of issue of their travel document, date of issue and of expiry of the validity of their travel document, their home address, their email address, their phone numbers, their educational background (primary, secondary, higher or none), their current occupation (job group), the EU Member State of their first intended state, and the address of their first intended stay. For minors, some of the same data will be collected on their parents.

23. What safeguards will be introduced to ensure that confidential information will be protected? What assurances have been received that the European Union will not use the data collected for any other purposes than those stated in the EES and ETIAS Regulations?
24. How much control will UK citizens have over the data collected on them by the European Union, on how it will be stored, and on the use that will be made of it?
25. What is in place to ensure that the databases in which the data will be stored will be kept safe from cyberattacks, such as hacking, or technical failure? For instance, will the data be backed up in several datacentres?
26. What processes will be in place for corrections?
27. What processes will be in place to allow applicants to update their details, for instance after a change in their circumstances?
28. If someone is denied a travel authorisation under ETIAS, will they have the opportunity to re-apply?

The performance of ETIAS, including aspects related to data protection, shall be monitored by a Fundamental Rights Guidance Board.

29. What representation will the UK Government have on this Board?
30. Has the UK been consulted on how the Board will operate and, if so, will it publish its response?

Profiling

To assess whether the applicant poses an illegal immigration or high epidemic risk, we understand that ETIAS will apply “screening rules” to profile applicants. ETIAS will run an algorithm to compare the data provided by the applicant (their date of birth, sex, nationality, country and city of residence, level of education, and current occupation) with a “standard profile” of individuals likely to represent an illegal immigration or high epidemic risk. The standard profile will be established based on official immigration statistics and information on disease outbreaks and will be decided by EU Agencies.

31. Has the UK been consulted on the design of the algorithm?
32. What information about the algorithm and its application will be made publicly available?
33. How will the system ensure that applicants are aware that they are being subject to profiling through the automatic comparison of their data to “standard profiles” of individuals deemed to represent a high illegal immigration or epidemic risk?
34. Will some UK citizens be at greater risk of being denied a travel authorisation, for instance if they are not employed at the time of their ETIAS application? What combination of triggers is most likely to result in a travel authorisation being denied?
35. What safeguards will be in place to ensure that these criteria will be fair, non-discriminatory, and lawful? How often will they be reviewed?

Security checks

We understand that ETIAS will carry out security checks on UK citizens applying to visit the European Union. These security checks will involve checking the details submitted by applicants against a wide range of EU and Interpol databases, including the ETIAS watchlist, the Second-Generation Schengen Information System, the Visa Information System, the EES, the European Criminal Record Information System for Third Country Nationals, Eurodac, the Stolen and Lost Travel Documents database, and the Travel Documents Associated with Notices database.

36. Will relevant British authorities be notified by EU authorities that a UK citizen has been flagged as representing a security risk?

We understand that non-EU citizens, including UK citizens, may be added to a new “ETIAS watchlist” curated by Europol, the EU’s law enforcement agency. The watchlist will contain the details of “persons who are suspected of having committed or taken part in a terrorist

offence or other serious criminal offence”² based on information held by Member States and by Europol. Non-EU countries, including the UK, can share information with Member States and Europol.

37. What is the threshold for someone to be put on the ETIAS watchlist by Europol?

We understand that non-EU Governments share information with Europol that may result in a UK citizen being put on the ETIAS watchlist and consequently barred from entering the European Union.

38. What safeguards will ensure that this mechanism cannot be used by foreign authorities to limit the freedoms of UK citizens?

We understand that ETIAS will automatically check applications against two Interpol databases, the Stolen and Lost Travel Documents (SLTD) database and the Travel Documents Associated with Notices (TDAWN) database. The United Kingdom and other non-EU countries can share information with these two databases.

39. Will the UK Government share information with these two databases that may result in a UK citizen being barred from entering the European Union?

40. What safeguards will ensure that this mechanism cannot be used by foreign authorities to limit the freedoms of UK citizens?

Denial of authorisation

Some UK citizens are likely to see their ETIAS applications processed manually because of a “hit” in the system. The European Union expects this to happen to 5% of all applicants. As a result of the manual processing, some UK citizens may be denied a travel authorisation. Routinely, we understand that UK citizens may await an answer on their ETIAS application for several days, including sometimes because of a “false hit” in the system, which may prevent them from booking holidays at the last minute or from attending an important event, such as a funeral, a job interview, or a religious ceremony.

41. What is the Government’s expectation of the “hit” rate for UK citizens specifically?

We appreciate that the finer details may not yet be established, but some specific circumstances give further cause for concern. For instance, when submitting an ETIAS application, UK citizens will be required to disclose whether they have stayed in a war or conflict zone over the previous 10 years and the reasons for their stay. This may be the case for British journalists who have covered armed conflicts.

42. What other groups do the Government think may be at risk of denial?

43. What would happen in the case of a UK citizen whose criminal records indicate they have professed non-crime hate speech but have had no fair trial?

² ETIA Regulation, extract from Article 34(1).

44. Would child offenders (whose criminal records are kept indefinitely in the UK but not in the EU) be denied a travel authorisation under ETIAS?
45. What support will be available to them?

We understand that an ETIAS application submitted by a UK citizen subject to a European Arrest Warrant will automatically be flagged by ETIAS and dealt with manually by European officials.

46. In these circumstances, will they be denied a travel authorisation or will they be granted one for police authorities to arrest them upon arrival?

We understand that a UK citizen who has been put on the ETIAS watchlist may be denied a travel authorisation because they are suspected of having committed a serious criminal offence.

47. What representations have the Government made that this would risk undermining the presumption of innocence?

We understand that ETIAS applications will be automatically flagged by the electronic system if it is assessed that the applicant may represent a security, public health, or illegal immigration risk. We understand that these applications will then be assessed manually by ETIAS National Units. The ETIAS Regulation does not specify how this will happen.

48. What is the Government's understanding of the procedure?
49. How does the Government intend to obtain guarantees that assessments will be fair, non-discriminatory, and lawful?

International cooperation

We understand that ETIAS will affect the nationals of other countries and territories, including the U.S.A., New Zealand, Hong Kong, Canada, and Japan.

50. How has the Home Office been working with the Governments of these countries and territories to adopt a common stance?

The Electronic Travel Authorisation System

We understand that the Home Office is currently developing the UK's Electronic Travel Authorisation (ETA) system, which will serve similar purposes in the UK to ETIAS in the EU.

51. To what extent will the ETA replicate the work of ETIAS? If the ETA largely replicates the work of ETIAS, does the Home Office plan to obtain a relaxation of ETIAS requirements for UK citizens in exchange for the relaxation of ETA requirements for EU citizens?

52. If the ETA were to process applications automatically using algorithms³, using an approach similar to the way ETIAS processes applications, would that impact the “adequacy decision” the European Commission adopted on the management of personal data by UK authorities?⁴
53. How does the Home Office intend to minimise risks of the adequacy decision being declined or withdrawn by the European Commission as a consequence of the launch of the ETA? If the adequacy decision were to be withdrawn, how would it affect the ETA?

I am copying this letter to The Rt Hon Dominic Raab MP, Secretary of State for Foreign, Commonwealth and Development Affairs, The Rt Hon Grant Shapps MP, Secretary of State for Transport, The Rt Hon Liz Truss MP, Secretary of State for International Trade, The Rt Hon Lord Frost CMG, Minister of State, and Baroness Williams of Trafford, Lords Minister of State, all of whom have an interest in the matter. I copy it also to Lord Kinnoull, Chair of the House of Lords European Affairs Committee, the Rt Hon Yvette Cooper MP, Chair of the House of Commons Home Affairs Select Committee, and Sir Robert Neill MP, Chair of the House of Commons Justice Select Committee.

I look forward to your response by 6 September 2021.

Yours sincerely,



Baroness Sally Hamwee,
Chair, House of Lords Justice and Home Affairs Committee

³ The [EU General Data Protection Regulation](#) provides that nobody should be “subject to a decision [...] which is based solely on automated processing and which produces legal effects concerning him or her or similarly significantly affects him or her”, adding that “such processing includes ‘profiling’ that consists of any form of automated processing of personal data evaluating the personal aspects relating to a natural person, in particular to analyse or predict aspects concerning the data subject’s [...] location or movements” (see Whereas 71).

⁴ The European Union has an internal procedure, provided for in Article 45 of [Regulation \(EU\) 2016/679](#), to determine whether a country outside the EU offers levels of data protection similar to those of the European Union. The issuance of an “adequacy decision” allows for the transfer of personal data from the EU to the said country without requiring any further safeguards. On 28 June 2021, the European Commission adopted such an adequacy decision in relation to the United Kingdom.