



House of Lords
London
SW1P 0PW

15 September 2021

Dear Baroness Hamwee,

Thank you for your letter of 1 July 2020 seeking more information about the European Union's forthcoming Entry/Exit System (EES) and European Travel Information and Authorisation System (ETIAS), both of which form key parts of the EU's wider approach to border control.

Whilst the Government supports effective parliamentary scrutiny and will always endeavour to cooperate with Select Committees to facilitate this, it is our view that the European Commission is better placed to answer many of the more detailed concerns set out in the Committee's letter. As the Committee will be aware, whilst a member of the European Union the UK was never part of the Schengen area and was not bound by the Schengen Borders Code.

Just as the UK will now run its border in our own interests, we must acknowledge and accept that the EU will do the same. That said, we are of course, continuing to engage with our European partners at an operational level and, in particular, where we operate juxtaposed controls, to ensure our respective border arrangements work and interact as well as possible.

Turning to the Committee's questions, some of which have been grouped for ease, I set out below the Government's response.

- 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?**

It is our current understanding, as set out on the European Commission website, that both the EES and ETIAS are planned to be implemented in 2022¹ and the ETIAS Regulation will apply to Schengen States, plus Croatia, Cyprus, Bulgaria and Romania².

Level of preparedness

¹ [Smart Borders \(europa.eu\)](http://Smart Borders (europa.eu))

² [European Travel Information and Authorisation System \(ETIAS\) | Migration and Home Affairs \(europa.eu\)](http://European Travel Information and Authorisation System (ETIAS) | Migration and Home Affairs (europa.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?**

It is the responsibility of the implementation authorities (those empowered by European Union Member States to exercise entry and exit controls to and from the EU) to determine both the infrastructure requirements and processes/procedures that result from the introduction of the EU's ETIAS and EES systems. Where these may eventually be carried out within control zones in the UK at locations with juxtaposed controls, existing international treaties between the UK and our international partners set out that we should collectively agree and determine the requirements.

- 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?**

The launch of the ETIAS and the EES is being overseen by the European Commission and Schengen States³ will be responsible for implementation at border crossing points. It is, therefore, the responsibility of the EU and Schengen States to raise public awareness, which includes providing clear information and guidance online, such as on the websites of the relevant Embassies and Consulates in the UK.

The UK Government will support implementation by ensuring Travel Advice is updated to reflect the requirement under the ETIAS for British passport holders to obtain a travel authorisation before travelling to the Schengen Area. The Government will also continue to engage with the EU Institutions and Member States to support effective implementation. For example, we will make clear that UK nationals protected by the Citizens' Rights part of the Withdrawal Agreement are exempt from the ETIAS and EES.

Assistance and accessibility issues

- 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?**
- 12. Will legal or linguistic assistance be available to them?**
- 13. What legal support will be available to them?**

The Government does not ordinarily provide direct support to travellers in obtaining pre-travel authorisations for other countries e.g. the equivalent schemes for travel to the US and Canada. The Government's Travel Advice provides signposts to relevant Embassies

³ The term Schengen States also refers to the application of the ETIAS regulation in Croatia, Cyprus, Bulgaria and Romania who are in the process of joining the Schengen Area, bar Cyprus.

and Consulates in the UK in case individuals have questions or require support in meeting entry requirements.

The ETIAS and EES Regulations provide for a transitional period of six months and transitional measures to ensure the smooth roll out of both the ETIAS and the EES. For example, the European Commission has planned for border guards to distribute leaflets to third country national travellers subject to the travel authorisation requirement to have a valid ETIAS authorisation from the expiry of the six-month transitional period.

Further information on the transitional period and measures, including assistance and support for travellers, will be available from the European Commission. It is also worth noting that if a travel authorisation is refused, the applicant retains the right to appeal.

Creation of files

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

As noted above, it is the responsibility of the implementation authorities (those empowered by European Union Member States to exercise entry and exit controls to and from the EU) to determine both the infrastructure requirements and processes/procedures that result from the introduction of the EU's ETIAS and EES systems. Where these may eventually be carried out within control zones in the UK at locations with juxtaposed controls, existing international treaties between the UK and our international partners set out that we should collectively agree and determine the requirements.

Data protection

- 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?**
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?**

It is the responsibility of the Schengen States and the ETIAS Central Unit to ensure that confidential information is protected in line with the safeguards agreed in the EES and ETIAS Regulation. The EU's legislation requires ETIAS National Units to comply with the GDPR and the European Border and Coast Guard Agency must comply with the equivalent data protection legislation governing EU institutions; both of which are overseen by the relevant data protection supervisory authorities. As part of their obligations, the processing authority should ensure that data collected will not be used for any other purpose than noted in the Regulation. The ETIAS Regulation also notes that membership of the ETIAS Fundamental Rights Guidance Board shall be comprised of *'the Fundamental Rights Officer of the European Border and Coast Guard Agency, a representative of the consultative forum on fundamental rights of the European Border and Coast Guard Agency, a representative of the European Data Protection Supervisor, a representative of the European Data Protection Board established by Regulation (EU) 2016/679 and a representative of the European Union Agency for Fundamental Rights'*, meaning the UK will not be represented. Finally, article 37 of the ETIAS Regulation notes that applicants that have been denied a travel authorisation shall have the right to appeal.

Profiling

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?**

The operation of the ETIAS, including the use of any algorithm which are involved in the processing of applications, is a matter for the European Commission and Schengen States. The Government cannot comment on whether such an algorithm and its application will be made publicly available; how the system would inform applicants where

they were subject to profiling; or the safeguards to ensure that the criteria will be fair, non-discriminatory, and lawful.

Security checks

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

Having left the EU, UK nationals are now subject to the EU's broader approach to border control, including the Schengen Border Code. It is the EU's prerogative to restrict the travel and entry of those they consider to present a security risk. Similarly, the UK unilaterally prevents the travel of foreign nationals considered a threat to the UK, including some EEA nationals.

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

Article 34 of the ETIAS Regulation provides that the information on which the ETIAS watchlist will be established should relate to terrorist offences or other serious criminal offences. It provides for Europol to enter such information into the ETIAS watchlist without prejudice to the Europol Regulation.

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

Our decision to leave the EU means UK citizens no longer have freedom of movement within the EU and, as noted earlier, are subject to the EU's broader approach to border control, including the Schengen Border Code. It is the EU's prerogative, as well as the prerogative of other international sovereign States, to safeguard their borders as they deem appropriate, which includes limiting the entry of those they consider a risk. It is also the case that EU citizens no longer have freedom of movement within the UK, and the UK prevents the travel of foreign nationals considered a threat to the UK.

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?

As noted above, having left the EU, UK citizens no longer have freedom of movement within the EU and are subject to the external Schengen border controls that apply to all third country nationals.

The UK provides information about stolen and lost UK travel documents to the INTERPOL SLTD database. To the extent that information might result in a UK citizen not being granted an EU travel authorisation, the individual would have been indicating an intention to travel to the Schengen area using a document they had reported stolen or lost which, as a result, would no longer be valid for travel. It is more likely imposters will be inhibited from travelling using British passports stolen from or lost by the individuals to whom they were issued.

Should the UK issue a notification through INTERPOL channels in respect of a British citizen which includes their travel document information, that may result in a British citizen

not being granted authorisation to travel to the EU on the basis of serious criminal conduct for which they have been convicted. The INTERPOL TDAWN database (Travel Documents Associated with an INTERPOL Notice) can include passport information of individuals who are the subjects of INTERPOL circulations, including as wanted persons or missing persons.

Denial of authorisation

41. What is the Government's expectation of the "hit" rate for UK citizens specifically?

The Government cannot provide an assessment of the "hit" rate for UK citizens as it is not privy to the development of the ETIAS.

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?

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?

Article 37 of the ETIAS Regulation sets out the criteria for refusing a travel authorisation and notes that applicants who have been refused a travel authorisation shall have the right to appeal.

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?

The Government would direct the Committee to the European Commission to comment on this. Under the EU–UK Trade and Cooperation Agreement (TCA) any extradition requests to the UK, for UK citizens or EU nationals, would be in the form of a TCA Warrant, not an EAW.

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

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?

The operation of the ETIAS, which includes the manual processing of specific ETIAS application forms, is a matter for the European Commission and Schengen States. The Government trusts the EU will conduct assessments in a fair, non-discriminatory, and lawful manner.

International cooperation

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

The ETIAS, like the UK's impending ETA scheme, is in line with the approach to border security taken by many international partners, including the United States, Australia, New

Zealand, and Canada. These schemes broadly operate in a similar manner, meaning it is a familiar concept for travellers.

The Electronic Travel Authorisation Scheme

- 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 algorithms, 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?**
- 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?**

Whilst the objective of the UK’s ETA scheme is similar to that of the ETIAS, based on the publicly available information, it will not be a replica. The UK’s ETA scheme will apply to those visiting or transiting through the UK who do not currently need a visa for short stays or who do not already have an immigration status prior to travelling, including EEA citizens.

An adequacy decision requires a third country to guarantee data protection standards that are essentially equivalent to those in the EU, it does not require a third country to have an identical framework. The EU have now rightly recognised the UK’s high standards and we have been clear that we will maintain those standards going forwards. As such, we see no reason why the EU would seek to revoke or amend the UK’s adequacy decisions. The UK’s ETA scheme is still under development and further details will be announced in due course. As it stands, the UK ETA scheme will use, like the EU ETIAS, searching of databases and automation, to process most application. However any, and, all data processing conducted as part of the ETA scheme will be processed according to and in compliance with the UK’s Data Protection legislation.

I hope this information is useful to the Committee.

Yours sincerely



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Home Secretary