



Rt Hon Priti Patel MP
Home Secretary
Home Office
2 Marsham Street
London SW1P 4DF

22 November 2021

Dear Home Secretary,

The Justice and Home Affairs Committee is very concerned indeed about the upcoming launch of two new EU border management systems. They could have serious consequences in the UK and for the rights and liberties of UK citizens, and the UK appears to be unprepared. Although the two systems are due to launch next year, several ethical, legal and logistical challenges remain unaddressed.

The European Travel Information and Authorisation System (ETIAS) will require most travellers to apply for a travel authorisation prior to entering the European Union. The Entry/Exit System (EES) will require most travellers to share their facial image and fingerprints with European authorities and to have them checked every time they travel to or from the EU. We have corresponded about these two systems in July and September 2021, and we raised it with you in our meeting on 27 October.¹

We also sought the advice of stakeholders in an evidence session on 2 November 2021.² Senior representatives from the Port of Dover, Eurotunnel, and Eurostar explained the basis for their concerns about the impact the two EU systems will have on their operations, their customers, and communities in Kent. It is clear from that session that there are serious logistical challenges which can only be solved by targeted interventions by the Government.

Both systems will affect UK citizens. Under the EES, they will be required to undergo border checks that are likely to cause sustained delays and disruption, both for travellers and communities in Kent, problems arising from basic practicalities. For example, Eurostar terminals and port infrastructures are too small to accommodate the EES registration process. We also understand that those travelling in vehicles may be required to step out into live traffic to undergo checks, which would be unsafe and cause further delay.

¹ ETIAS (European Travel Information and Authorisation System), inquiry: <https://committees.parliament.uk/work/1273/etias-european-travel-information-and-authorisation-system/publications/>; and Formal meeting (oral evidence session), Home Office oral evidence session: <https://committees.parliament.uk/event/6064/formal-meeting-oral-evidence-session/>

² Formal meeting (oral evidence session): ETIAS: <https://committees.parliament.uk/event/6140/formal-meeting-oral-evidence-session/>

Under ETIAS, some UK citizens will be barred from entering the EU. Given that the system will involve algorithmic profiling, risks of discrimination are high. Robust safeguards and clear appeal processes are required to protect the rights and liberties of UK citizens. We are sceptical about those offered by the EU.

With these and other factors in mind, we were disappointed by your written response to us of 15 September 2021. Some questions were unanswered, and it appeared to put the onus on the European Union, Member States, and transport operators in addressing serious matters that will affect UK citizens. In oral evidence, you stated that the EES is “a Commission matter on implementation.”³ Given the potential disruption and the importance of the systems under discussion, we consider that the UK should take urgent steps to engage with the Commission, support the operators and develop and consult on plans to raise the public’s awareness of the new arrangements.

While we acknowledge that, recently, resources have been focussed on the immediate impact of withdrawal from the European Union and on the pandemic, we are profoundly concerned about the lack of attention paid to either ETIAS or the EES.

We set out our findings in three appendices. Appendix A relates to the EES and the logistical concerns this system raises. Appendix B relates to ETIAS and the serious ethical, legal, and political concerns this system raises. Appendix C relates to the UK’s Electronic Travel Authorisation (ETA), a system which will be equivalent to ETIAS. By acting proactively, the Government has an opportunity to prevent the ETA from becoming a cause for concern.

Conclusions we have reached are set out in bold. Recommendations which – if accepted – may mitigate disruption, are also in bold and are italicised. Questions, to which we would also welcome a response, are italicised. For ease of reference, we have compiled them below. We look forward to your response to each of them by 7 January 2022.

I am copying this letter to the Rt Hon Grant Shapps MP, Secretary of State for Transport; the Rt Hon Lord Frost CMG, Minister of State; 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; Sir Robert Neill MP, Chair of the House of Commons Justice Select Committee; and Huw Merriman MP, Chair of the House of Commons Transport Select Committee.

Yours sincerely,



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

³ [Q 12](#) (Home Secretary)

Summary of conclusions and recommendations

1. **There are several practical problems associated with conducting Entry/Exit checks to which there are currently no solutions. As it stands, continuous EES checks are expected to permanently slow the flow of UK vehicles and passengers to and from the EU.** (Paragraph 15)
2. **The Government should proactively cooperate with European partners and all relevant parties to address these problems. In doing so, the Government and stakeholders should have regard to specific complications arising from the arrangement of juxtaposed border controls and physical realities of check-point sites including space limitations and live traffic.** (Paragraph 16)
3. **Raising awareness of these systems is crucial and will require more than updating Travel Advice.** (Paragraph 20)
4. **The Government should engage energetically with domestic stakeholders and work with them to provide clear and consistent messaging to raise public awareness of new border rules. The Government must also ensure that the relevant European institutions fully understand the specific implications of ETIAS and the EES in the UK.** (Paragraph 21)
5. *We are concerned for those who may not be able to navigate the ETIAS application. What support and advice will the Government provide, particularly for those with accessibility needs? Your letter to the Committee from September 2021 suggests that Government involvement will be limited to updating Travel Advice. Is this still your position?* (Paragraph 30)
6. **The Government should engage with relevant European authorities to clarify what the manual processing of ETIAS applications will involve, and whether someone denied a travel authorisation will be given the opportunity to re-apply. The Government should also seek specific assurances on how the rights of appellants will be effectively protected.** (Paragraph 31)
7. **The Government should engage with relevant European authorities in relation to ETIAS security checks. It should secure agreement that it will be notified when a UK citizen is assessed by ETIAS as representing a security risk and obtain guarantees against any attempt by another non-EU government to abuse ETIAS to undermine the rights and liberties of UK citizens.** (Paragraph 35)
8. **We are concerned that UK citizens may be discriminated against by the ETIAS algorithm, including on the basis of protected characteristics.** (Paragraph 38)
9. **We urge the Government to engage with relevant European authorities to ensure that robust safeguards are in place to guarantee the fairness and lawfulness of the profiling algorithm that forms part of ETIAS.** (Paragraph 39)

- 10. At the outset of the development of the European Travel Authorisation (ETA) system, we recommend that the Government engages with transport operators, infrastructure owners, and police forces on both sides of the Channel to consider practical implications and ways of mitigating any potential disruption. (Paragraph 46)**
11. What plans are there, if any, for an algorithm to form part of the ETA? How will you ensure that this is non-discriminatory? What consideration is being given to potential implications on the European Commission's data adequacy decision in relation to the UK? (Paragraph 52)

APPENDIX A: The Entry/Exit System

INTRODUCTION TO THE EES

1. The Entry/Exit System (EES) will effectively substitute the manual processing of passports at the EU's borders. It will apply to most non-EU citizens entering or exiting the Schengen area.⁴ The EES was originally due to launch in 2020, but is now expected to launch in the first half of 2022. The Council of the European Union is due to decide on the exact launch date later in 2021.
2. European border authorities will create an "individual file" the first time a traveller enters or exits a country operating the EES. Subsequent movements will be recorded in this file, and records kept containing the date, time, and place of entry or exit.
3. The registration process must be supervised by a European border official. It involves the collection of the traveller's personal details, of their facial image, and of key information related to their travel document(s). Travellers will also be required to share their fingerprints, unless they hold a visa.
4. This will have an impact on UK soil. Due to the system of "juxtaposed controls", someone travelling from Folkestone, Dover, or UK Eurostar terminals to the Schengen area will undergo checks both to leave the UK and to enter the Schengen area in those terminals.⁵ According to the Office for National Statistics, UK residents crossed into the European Union close to 67 million times in 2019, and approximately half of these crossings take place through border-crossing points operating juxtaposed controls. Therefore, even though these are two EU systems, "most of the impacts will be here in the UK"⁶, with up to 1,700 passengers per hour going through each crossing point at peak times.
5. The EES will also affect those travelling through other border-crossing points (such as airports). These travellers will also be required to register in the EES and to undergo Schengen entry checks, but these will take place upon arrival in the destination country.
6. We regret that the EES launch date remains unknown. Uncertainty makes it difficult for stakeholders to prepare.

LOGISTICS

7. In Dover and Folkestone, red tape at borders has "an immediate knock-on effect on traffic".⁷ Car passengers first go through UK exit checks, and then encounter European border officials for Schengen entry checks. If Schengen entry checks take longer than UK exit checks, congestion ensues. Within minutes, it is impossible for cars to move

⁴ Non-EU citizens residing in the EU will be exempt, as will those visiting the EU on a long-stay visa.

⁵ Juxtaposed controls were agreed in the 1986 Treaty of Canterbury and the 2003 Treaty of Le Touquet.

⁶ [Q16](#) (John Keefe)

⁷ [Q3](#) (John Keefe)

forward after passengers have undergone UK exit checks. With time, congestion reaches motorways and “Kent becomes impassable”.⁸

8. As it stands, implementing the EES will be impossible in Dover and Folkestone. The Committee has heard that there is no technology available for registration and checks to be carried out in a car, meaning that passengers will need to exit vehicles. At Dover and Folkestone, this will require passengers walking through live traffic, which would be “fundamentally unsafe”.⁹ Tim Reardon, Company Secretary and Head of EU Exit at the Dover Harbour Board, told the Committee that:

*It would be particularly helpful for the [European] Commission — and it is reasonable for anyone to ask it — to address the issue of how its scheme operates in relation to vehicle traffic. The Commission has acknowledged that it does not, and has acknowledged that it needs to, but it has not yet found a way of making that happen.*¹⁰

9. Even if these points were addressed, implementation would be difficult in Dover and Folkestone. The EES is designed to apply to passengers crossing borders one at a time, on foot, in a sheltered and well-lit environment. EES implementation will necessarily be sub-optimal where passengers cross borders in vehicles and in groups. In ideal circumstances – which these would not be – registration would be expected to take an average of 90 seconds per person. Once registered, checks would be expected to take an average of 50 seconds per person, significantly longer than current processes.¹¹
10. At its London terminal, Eurostar faces “an extreme space challenge”.¹² Currently, passengers queue in the hall of St Pancras International station, check in with Eurostar, undergo luggage and body searches, undergo UK exit checks, undergo Schengen entry checks, and proceed to their trains. All these stages “are a matter of feet apart”, the Committee was told.¹³ Eurostar estimates that over 30 kiosks would be required for passengers to register in the EES at peak time. Accommodating those 30 kiosks would require an area equivalent to the entire area in which passengers are currently queuing before checking in at St Pancras International station. This is an enclosed space with little room for social distancing. Eurostar is yet to find a solution to accommodate those kiosks.
11. These are not one-off problems. There is an annual renewal of customers travelling and anyone entering the Schengen area for the first time will need to register. The need will also regularly arise to register in the EES on subsequent occasions. Separate to registration, continuous EES checks once passengers are registered are expected to permanently slow the flow of vehicles in Dover and Folkestone and of passengers at Eurostar terminals.

⁸ [Q9](#) (John Keefe)

⁹ [Q1](#) (Tim Reardon)

¹⁰ [Q16](#) (Tim Reardon)

¹¹ [Q7](#) (Gareth Williams)

¹² [Q3](#) (Gareth Williams)

¹³ [Q3](#) (Gareth Williams)

12. Solutions can be found. Industry representatives stated that pre-registration in the EES would speed up processes at the border. While EU law requires registration to be supervised by European border officials, nothing prevents this from taking place away from the border. Investment in personnel or in physical or technological infrastructure may be required. The redrawing of existing border control zones seems unavoidable to enable passengers to register in the EES, but it is unclear how this can be achieved.¹⁴
13. Another potential solution mentioned by witnesses would involve the Government sharing the biometric data it holds on UK citizens with its European partners, subject to robust safeguards, to make the collection of biometric data by European border officials redundant.¹⁵
14. Solutions cannot be found by private companies alone, not least because some would require diplomatic work. Firstly, companies cannot alter the physical amount of space available to them. Eurostar does not own any of its three UK terminals, which cannot easily be extended. In Dover and Folkestone, the available infrastructure is compressed between cliffs and the Channel. Secondly, they are required by the EES Regulation to accommodate some specific checks but are lacking operational guidance about how to do so. They would benefit from government support in efforts to secure such guidance from the European Commission.
- 15. There are several practical problems associated with conducting Entry/Exit checks to which there are currently no solutions. As it stands, continuous EES checks are expected to permanently slow the flow of UK vehicles and passengers to and from the EU.**
- 16. The Government should proactively cooperate with European partners and all relevant parties to address these problems. In doing so, the Government and stakeholders should have regard to specific complications arising from the arrangement of juxtaposed border controls and physical realities of check-point sites including space limitations and live traffic.**

AWARENESS

17. Industry representatives are committed to raising public awareness and have long been trying to engage with governments on both sides of the Channel. They acknowledge that the travelling public is likely to contact them about any new travel rules and are “happy to be the relay for information”.¹⁶
18. There appears, however, to be little public awareness of the system and its implications in the UK. Industry representatives believe that travellers are saturated with instructions, updated frequently in recent years. In your September letter to the Committee, you mentioned that the Government will update its travel advice and that

¹⁴ [Q15](#) (Gareth Williams)

¹⁵ [Q22](#) (Tim Reardon)

¹⁶ [Q19](#) (John Keefe)

European authorities are intending to distribute leaflets. These measures are limited and likely to be insufficient.

19. Low awareness will exacerbate any disruption. Unaware passengers are more likely to arrive late. They may not have prepared all the required documents for a smooth registration in the EES. They may not know whether they must register in the EES or undergo EES checks. They may not follow instructions as scrupulously as someone aware of the new requirements. This will all take additional time and will result in further disruption.

20. Raising awareness of these systems is crucial and will require more than updating Travel Advice.

21. The Government should engage energetically with domestic stakeholders and work with them to provide clear and consistent messaging to raise public awareness of new border rules. The Government must also ensure that the relevant European institutions fully understand the specific implications of ETIAS and the EES in the UK.

APPENDIX B: The European Travel Information and Authorisation System

INTRODUCTION TO ETIAS

22. The European Travel Information and Authorisation System (ETIAS) is a new EU border management system that will issue travel authorisations to non-EU citizens travelling to the European Union without a visa.¹⁷ This includes UK citizens, who are allowed to travel to the EU for 90 days in every 180-day period. ETIAS requirements do not apply, however, to UK citizens travelling on a visa, as well as all those residing in the EU.
23. ETIAS is due to launch 6 months after the EES. It was accordingly due to launch in 2020 and is now expected to be fully operational in the second half of 2022.
24. Under ETIAS, most UK citizens will need to submit an online application prior to travelling to the European Union. Applicants will be asked to submit a wide range of information, including personal details, key information related to their travel document(s), their educational attainments, and their current occupation. Most applicants will also be required to pay a €7 (£6) fee upon submission.
25. Application forms will be processed automatically. The system will assess whether an applicant poses a security, illegal immigration, or high epidemic risk. This involves checks against EU and Interpol security databases and algorithmic profiling.
26. If the system does not automatically identify any risk, the applicant will receive a travel authorisation. In any other cases, the application will be processed manually and may eventually be rejected. An unknown proportion of UK citizens will lose their right to travel to the EU.

ACCESSIBILITY AND INDIVIDUAL RIGHTS

27. Submitting an ETIAS application requires a range of assets and skills. ETIAS applicants must possess a suitable electronic device, have access a strong internet connection, own a credit or debit card, and be in a position to pay €7 (£6). Moreover, applicants must be computer literate and able to read and write in the Latin alphabet.
28. ETIAS will deny some UK citizens the right to travel to the EU. Automatic security checks and profiling, as described below, will flag some applications for manual processing. The EU expects this to be required for up to 5% of all applications.¹⁸ So-called “ETIAS national units” will then decide on applications. It is unknown how decisions will be reached, by whom, and on what basis. It is also unclear whether unsuccessful applicants will be allowed to re-apply.

¹⁷ An ETIAS travel authorisation will also be required to travel to Iceland, Lichtenstein, Norway, and Switzerland without a visa, but will not be required to travel to the Republic of Ireland.

¹⁸ See the “[What is ETIAS?](#)” memo published by the European Commission, p.3.

29. Applicants denied an ETIAS travel authorisation will have the right to appeal against that decision. The appeal, however, will take place in another state and under the law of that state. The unsuccessful applicant will not be able to travel to that country to support their claims.
30. *We are concerned for citizens who may not easily navigate ETIAS. What support and advice will the Government provide, particularly for those with accessibility needs? Your letter to the Committee from September 2021 suggests that Government involvement will be limited to updating Travel Advice. Is this still your position?*
- 31. *The Government should engage with relevant European authorities to clarify what the manual processing of ETIAS applications will involve, and whether someone denied a travel authorisation will be given the opportunity to re-apply. The Government should also seek specific assurances on how the rights of appellants will be effectively protected.***

SECURITY CHECKS

32. ETIAS will carry out automatic security checks. To assess whether an applicant poses a security risk, ETIAS will automatically check the details submitted against a wide range of EU and Interpol security databases.¹⁹
33. The UK lacks access to many of these databases. They may contain information on UK citizens that UK authorities do not possess. If a UK citizen is denied access to the EU because they or their travel document feature in one of these databases, it may be on the basis of information unknown to UK authorities. There is no indication that the EU would notify the Government that a UK citizen, currently in the UK, is believed to pose a security risk.
34. Many governments can contribute to these databases. A non-EU Government could, for instance, add an entry into one of the two Interpol databases on the travel documents of a UK citizen. A non-EU Government could also share intelligence on a UK citizen with Europol, the curator of the ETIAS watchlist. It is feasible that the action of one such non-EU Government could result in a UK citizen being denied the right to travel to the EU.
- 35. *The Government should engage with relevant European authorities in relation to ETIAS security checks. It should secure agreement that it will be notified when a UK citizen is assessed by ETIAS as representing a security risk and obtain guarantees against any attempt by another non-EU government to abuse ETIAS to undermine the rights and liberties of UK citizens.***

¹⁹ These databases are the ETIAS watchlist, the Second Generation Schengen Information System (SIS II), the Visa Information System (VIS), the Entry/Exit System (EES), the European Criminal Record Information System for Third Country Nationals (ECRIS-TCN), Eurodac, the Stolen and Lost Travel Documents (SLTD) database, and the Travel Documents Associated With Notices (TDAWN) database.

PROFILING

36. ETIAS applicants will be subject to profiling. The system 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 algorithm will be trained on official immigration statistics, data derived from the EES, and information on disease outbreaks provided by the World Health Organisation (WHO) and the European Centre for Disease Prevention and Control (ECDC).
37. As part of its inquiry into new technologies for the application of the law, the Committee has been repeatedly told that “there is no such thing as unbiased data”.²⁰ Algorithms train on datasets; those mentioned above are unlikely to be the exception to the rule.
- 38. We are concerned that UK citizens may be discriminated against by the ETIAS algorithm, including on the basis of protected characteristics.**
- 39. We urge the Government to engage with relevant European authorities to ensure that robust safeguards are in place to guarantee the fairness and lawfulness of the profiling algorithm that forms part of ETIAS.**

AWARENESS

40. Despite the efforts of the Committee, transport operators, and other interested stakeholders, there remains little public awareness of the system and its implications for UK citizens.
41. As with the EES, industry representatives believe that travellers are saturated with instructions, which have been updated frequently in recent years. They told the Committee that travel operators are best placed to relay key information with customers, but that they need the Government’s backing to successfully raise awareness. In your letter to the Committee from September 2021, you stated that the Government will update its travel advice and that European authorities are intending to distribute leaflets. As with the EES, these measures are likely to be insufficient.
42. Low awareness is likely to exacerbate any disruption. Unaware passengers may not hold an ETIAS travel authorisation by the time they reach the border. They may try to apply at the last minute. This would require infrastructure owners to provide a dedicated space with a strong internet connection for passengers to apply for a travel authorisation. Some may request assistance. Some may be declined a travel authorisation and would need to be redirected away from the border. Some may miss ferry and rail connections.

²⁰ [Q69](#) (Sandra Wachter), see also [Q18](#) (Charles Raab), [Q28](#) (Michael Wooldridge), [Q47](#) (Rosamunde Van Brakel and Colin Gavaghan), or [Q57](#) (Karen Yeung).

43. Raising awareness of ETIAS is crucial, and will require far more than updating travel advice. The Government should engage energetically with domestic and international stakeholders, including embassies and consulates of EU Member States to raise public awareness of new border rules, and ensure that the relevant institutions fully understand the implications for the UK.

APPENDIX C: The UK Electronic Travel Authorisation and the future of borders

THE ETA: SYNERGIES WITH ETIAS

44. In July 2020, the Home Office announced the development of an electronic system to issue travel authorisations to visa-exempt travellers to the UK. This system – the Electronic Travel Authorisation (ETA) system – is due to launch by the end of 2024.
45. Red tape at borders has an immediate knock-on effect on the flow of passengers and vehicles. The digitisation of border controls entails the potential to speed up border checks. While we understand that the ETA will fundamentally be a digital system, it appears that it will add to existing border controls. Industry representatives who appeared before the Committee confirmed that they have not yet been consulted on the ETA.
- 46. At the outset of the development of the European Travel Authorisation (ETA) system, we recommend that the Government engages with transport operators, infrastructure owners, and police forces on both sides of the Channel to consider practical implications and ways of mitigating any potential disruption.**

SPECIFIC CONCERNS

47. In your September letter to the Committee, you confirmed that the ETA will be similar to ETIAS, although not a replica. It remains unclear whether the ETA, like ETIAS, will involve the algorithmic profiling of applicants.
48. As part of its inquiry into new technologies for the application of the law, the Committee was told that “there is no such thing as unbiased data”.²¹ Algorithms trained on biased datasets perpetuate biases. It seems inevitable that this would apply to any ETA profiling algorithm.
49. In September 2021, the Government launched a public consultation on a proposed reform of the UK’s data protection regime. The consultation document, *Data: A new direction*, suggests that the Government is considering removing Article 22 of the UK General Data Protection Regulation (GDPR), which is also Article 22 of the EU GDPR. These articles apply to “solely automated” decision-making that significantly affect an individual, including profiling.
50. In June 2021, the European Commission adopted an adequacy decision for the transfer of personal data to the UK on the basis of the EU GDPR. The House of Lords EU Security and Justice Sub-Committee had stressed the importance of this adequacy decision in its final report.²² The adequacy decision includes a ‘sunset clause’ and ‘emergency brakes’ in case the UK’s data protection regime was to differ significantly from the EU’s.

²¹ [Q69](#) (Sandra Wachter)

²² House of Lords Security and Justice Sub-Committee, 2021, [Beyond Brexit: policing, law enforcement and security](#).

51. In your September 2021 letter to the Committee, you explained that the ETA will comply with the UK's data protection regime. However, it appears from the ongoing consultation that some guarantees against solely automated decision-making may be removed. These guarantees are a cornerstone of the EU's data protection regime. Therefore, if the ETA was to comply with the future UK data protection regime, it may still breach an important provision of the EU's data protection regime. This would put the adequacy decision at risk. We recommend caution.
52. *What plans are there, if any, for an algorithm to form part of the ETA? How will you ensure that this is non-discriminatory? What consideration is being given to potential implications on the European Commission's data adequacy decision in relation to the UK?*