

Professor Tim J Wilson, Professor of Criminal Justice Policy, Northumbria University Law School, Electronic Border Management Systems Follow-up – Written evidence (EBM0004)

1.1 I welcome the Committee's new phase of work on electronic border management (EBM) in response to the Commission's decision on 10 October to postpone the launch of the EU Entry Exit System (EES). In view of the pace of the Committee's response to this important development, I am submitting further supplementary evidence. I hope that a quick addition to my earlier evidence¹ might be helpful in these circumstances. It reflects research undertaken in connection with press coverage of the EES decision.²

1.2 This note covers three questions:

(a) Might the postponement decision be followed by fundamental changes in supervised biometric registration requirements?

(b) Despite a great deal of communication, is there sufficient transparency?

(c) Are there other options that might be worth reviewing as alternative locations for initial EES enrolment?

Might the postponement decision be followed by fundamental changes in supervised biometric registration requirements?

2.1 In the present political climate within the EU (as in the UK), the supervised collection of biometric data requirements are unlikely to be relaxed. EES is designed to prevent short-term travel entry morphing into unauthorised migration. It is intended to give Schengen country police and other border/migration control agencies real-time identification and demographic data without relying on any person questioned for these purposes carrying physical documents.

2.2 Officially supervised biometric registration is a fact of life for EU citizens and residents. For example, the mairies of French major towns and arrondissements are equipped for taking fingerprints when issuing universal citizen identity cards. Since 2021 these documents have had to conform to EU minimum technical and security standards, including for biometric data a facial image and, with the exception of children, two fingerprints. EU law requires that such data can only be collected by qualified and duly authorised staff, whose work must comply with the EU Charter of Fundamental Rights, the European Convention for the Protection of Human Rights (ECHR) and Fundamental Freedoms and the United Nations Convention on the Rights of the Child (UNCRC).³ In this respect ESS resembles arrangements for issuing visas. Most countries, including the UK, supervise (either by an official or, if outsourced, by a designated agent) the act of linking the applicant's biometric data to a passport. The passport, as is the

¹ Evidence Session No. 8, Questions 99 – 109 on 16 April 2024, Written evidence (EBM0006) and Supplementary written evidence (EBM0024).

² ['Politically courageous': EU postpones Entry/Exit System once again - but what's behind it? | Euronews](#)

³ [Security of identity cards and residence documents | EUR-Lex](#)

case with the ESS, then becomes a token to call-up full visa entry details and any related data when the applicant arrives at the visa issuing country's border. The challenge with the EES is that a process that for visa purposes will take place over several days, even weeks or months, needs to occur at a short time at or in reasonable proximity to a Schengen Zone border.

2.3 Mr John Keefe, Chief Corporate and Public Affairs Officer, Getlink Group commented at the Committee's hearing on 16 October that the EES is designed with an airport environment in mind. At such locations congestion and delays are easier to manage than when the system initially becomes operational than at juxtaposed borders (Q6). Travellers may still face considerable inconvenience and delay, however, even if there is space at airports when waiting to be enrolled. There have been press reports in France about concerns at West French ferry ports and smaller regional airports about the introduction of the EES, particularly about ensuring the availability of officials when third-country passengers arrive. Such concerns may not be confined to France among Schengen Zone countries. Mr Keefe also clarified that the much-discussed EES app ('as we understand it') would not help to avoid delays during enrolment/first EES crossing. The Committee also heard on 16 October well-informed local scepticism about building new off-road locations to manage delayed tourist traffic on the approaches to Dover (Q7).

2.4 It is unlikely – in the light of the discussion on 16 October - that new physical solutions could be implemented next year to avoid congestions risks on the approaches to Dover or in the town itself. Such problems could also affect traffic flow on the M20 thus negating investment by Getlink at Cheriton. Operation Brock is unlikely to be suitable in emergencies because it was designed for managing lorry congestion, Even for a comparatively smaller numbers of lorry drivers the facilities are poor. For cars and buses occupying the same linear space on the M20 there would be much greater numbers of people of varying ages and states of health without adequate sanitary facilities, access to food and water and vulnerable in medical emergencies. It is also unclear what work, if any, has been undertaken to assess the possible impact of severe car and bus congestion on the nationally important flow of goods (especially perishable items) via the M20 to and from the Channel port and terminal.

Despite a great deal of communication, is there sufficient transparency?

3.1 the postponement decision has been almost universally welcomed. At the Committee's hearing on 16 October, however, it was confirmed that the timing of this decision had not avoided some unnecessary expenditure by operators and had increased concern about the degree of impact from a failure of the EES launch, particularly in Dover and in Kent more generally. Going forward the key objective must be to avoid any relatively short notice cancellations again.

3.2 Mr Keefe emphasised that 'it is not feasible ... to introduce a partially tested and unreliable system (Q8). The tourist industry, as well as infrastructure operators, wishes to see a phased rollout to allow the system to be thoroughly tested before full implementation.⁴ Gareth Williams, General Secretary and Chief

⁴ See the above press coverage for this suggestion by Christina Brazier, Head of Industry Affairs at Association

Strategic Partnerships Officer, Eurostar, put more detail on this by suggesting a start up with maybe 5% or 10% of passengers to test communications, processes, systems and how the technology works in a real-world environment to build confidence and experience (Q8).

3.3 There was much talk on 16 October about frequent communication but less evidence of effective information sharing. Therefore, I would go further than the proposals in paragraph 3.2 by suggesting that well before even a partial rollout begins there needs to be greater transparency about progress towards implementation. This could take the form of regular updates about progress in meeting key milestones, such as computer system resilience, availability of enrolment applications and devices (e.g. the registration iPad), integration with existing border control kiosk technology and data base access, staff training and availability (both officials and private sector staff), building availability/adaptation, the readiness of carrier/port/airport staff and systems and a well designed and funded publicity campaign for the industry and individual travellers. (There are well established precedents for public authorities or commercial enterprises to review contractor progress with major public infrastructure delivery through on-site inspections, and access to site meetings and contractor documentation by independent professional advisers. However, it is unclear what arrangements are in place for the EES and, in terms of the highest risk UK site, new hard standing and passenger facilities at the Port of Dover.)

3.4 There might be issues of law that could restrict the extent and detail required for effective information sharing, but any claims or assumptions about commercial confidentiality in this context need to withstand open scrutiny against a rigorous public interest test. Taking the example of Dover, behind the fears expressed by Councillor Kevin Mills, Leader, Dover District Council of 'gridlock on steroids', lies the risk of emergency, health and education services unable to function effectively. Across both the UK and the Schengen Zone many financial decisions depend on having confidence in the effectiveness of EES implementation and when it will be introduced. Such decisions by a wide range of business would be equally relevant to such a test.

Are there other options that might be worth reviewing as alternative locations for initial EES enrolment?

4.1 If, as suggested at paragraph 2.4, there may be no quick fixes available to prevent EES enrolment problems at juxtaposed borders and that if this risk materialises it could have significant human and commercial impacts. In those circumstances, there might be merit in the Government considering whether to approach the Commission and member states, notably France, the Netherlands and Belgium, with direct and high-volume sea and train links to the UK to explore what options might be possible now that the commission has been reported to be considering 'targeted amendments' to the relevant EU laws.⁵

4.2 The key to any really effective solution that would also benefit airline passengers would be enrolments in the UK outside the port or terminal itself. If,

of Independent Tour Operators (AITO).

⁵ See the above press coverage for highlights of a press conference given by EU Commissioner for Home Affairs, Ylva Johansson.

there are substantial risks of congestion at the Port of Dover, possibly the only existing largely unused location with reasonable proximity to the juxtaposed Channel terminals with good M20 access, extensive (at the location and nearby) parking and space for enrolment to take place in civilised conditions is the no longer operational internal terminal⁶ at Ashford International Station. There would be no need for legal powers to divert traffic to Ashford. Carriers/operators could simply refuse to accept passengers not enrolled or exempt from enrolment in the EES.

4.3 Longer-term it might be possible to set up an enrolment system on either the French model at local authority premises and by local authority staff. The process could be self-funded through a national scheme with central government guaranteeing financial cost to limits authorised by the relevant department. An alternative local model for England and Wales would be to incorporate enrolment within civil registration services (e.g., births marriages and deaths) managed by the Passport Office, thereby giving the Home Office direct managerial and financial control over where most costs would fall. Taking this idea further registration might enable travel identity cards to be issued for young persons to reduce the cost of travel to the Schengen Zone. This would replicate the Jersey/French model on which Lord Foster commented in his letter of 20 May to the then Minister for Legal Migration and the Border. If the present government does not seek to repeal the law on proof of voter identity, an identity document issued to record EES enrolment could also be used for voter identification purposes. Arguably, in those circumstances the card should be provide free of charge.

4.4 Local enrolment would be likely to be a comparatively low cost, low risk and quickly implementable IT project because there would be no need to develop bespoke systems and applications, and such systems will have been well tested in real-world environments. Enrolment authorisation in the UK would conform to UK national law, thereby, would not trespass on sovereign control over border movements and migration. It would have to conform to EU technical standards, ECHR, UNCRC and the relevant UK data protection law would need to remain comparable for this function at least to the relevant EU data protection law. Additionally - as a consequence of the Brexit arrangements agreed by the Johnson administration - police, border agency, security service and judicial access to the collected data would need to comply with ECHR and be deemed adequate for EU data protection law principles applicable in such circumstances.

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⁶ Possibly still legally the location of a juxtaposed frontier under UK-French treaties.