Post-Brexit travel between the UK and the EU

European Union: MW 439

Summary

1. Brexit negotiators should prioritise agreement on future ease of travel by UK and EU citizens going to and from the continent. Those leading the talks will also need to consider the post-departure implications of separate UK and EU improvements in border technology. There have been reports that the UK may introduce a 'light-touch' pre-authorisation scheme for certain travellers along the lines of the United States' Electronic System for Travel Authorisation (ESTA). For its part, the EU is in the process of introducing a European Travel Information and Authorisation System (ETIAS), along with fingerprint and photograph checks for all arrivals at the Schengen border (an Entry-Exit System or EES). EU officials have already indicated that ETIAS will apply to UK nationals after Brexit. Conclusions are at paragraphs 25-26.

Introduction

2. Nearly 35 million passengers arrive from the EU at the UK border each year.[1] The UK government's draft immigration proposals, published by the media in September 2017, highlighted the priority of 'maintaining a smooth entry procedure to the UK for legitimate travellers' after Brexit. This is the correct approach. Brexit negotiators should prioritise an agreement on future ease of travel. More difficult questions will arise with respect to planned border technology improvements. They are described below.

Current regime for entry to the Schengen area

3. The 26-state Schengen area consists of 22 EU member states (all EU members excluding the UK, Ireland, Cyprus, Bulgaria, Romania and Croatia) and four non-EU states: Iceland, Norway, Switzerland and Liechtenstein.

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1   The five-year annual average for EEA passenger arrivals (2012-2016) was 34.1 million (see table ad_01 in HO admissions data).

4. Currently, citizens of 106 countries require visas to be issued prior to entry to the Schengen area[2], while around 1.4 billion citizens of 61 countries can enter the Schengen area without a visa for short stays not exceeding 90 days in any 180-day period (see lists of the respective countries in Annexes B and C).[3]

5. Citizens of countries in the former category must obtain a short-stay visa from the national authorities of the Schengen member state of entry in order to travel into the zone. This allows the holder to transit through or reside in this territory for up to 90 days in any 180-day period. It costs just over £50 for a short-stay visa.

6. Since November 2015, visa nationals have been required to provide biometric data (fingerprints) and a photograph when submitting an application. This data is then stored in a Visa Information System (VIS).4 This is complemented by the Schengen Information System (SIS), which enables authorities to enter and consult alerts on wanted or missing persons and objects.

7. Citizens of 61 countries can enter and travel throughout the Schengen area for short stays using only their passport. They are not currently required to provide biometric data such as fingerprints or photographs in advance.5

Proposed reforms to Schengen border checks

8. The EU is planning two new systems to collect information from those entering the Schengen area. These arrangements would apply to arrivals at the external Schengen borders (including upon arrival in four non-EU Schengen countries) and to EU member states that do not yet fully apply the Schengen acquis i.e. Croatia, Cyprus, Bulgaria and Romania. Under the EU treaties, Denmark will have to decide within six months after the Council has passed the relevant legislation whether to implement it into national law.

a. Entry-Exit System (EES)

9. As the name implies, the EES would replace the current system of manual passport stamps with the procurement of basic and biometric information (ie. fingerprints or a photograph) from every non-EU national entering and exiting the Schengen area (both those who require a visa and those who do not).[6] The aim is to improve intelligence on potential overstayers. The checks would be done at self-service kiosks and supplemented by border guard inspection.[7] Data would be retained for three years but this period could be extended to five years for third country nationals who had overstayed.

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2   In 2015, the 26 Schengen States issued around 14.3 million Schengen visas to non-EEA nationals. EU Visa Policy website, URL: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/visa-policy/index_en.htm

3   Consolidated version of Council Regulation No. 539/2001, as of 9th June 2014, URL: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02001R0539-20140609&from=EN

4   European Commission, 'Visa Information System', URL: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/visa-information-system/index_en.htm

5   Although more recently the EU has stipulated fingerprint and photographic biometric requirements in negotiations for visa-free access to citizens of Turkey and Kosovo, these discussions seem to have been put on hiatus for the time being, BBC News, May 2016, URL: http://www.bbc.co.uk/news/world-europe-36199811

6   Information collected will include name, type of travel document, biometrics and date and place of entry and exit of each traveller. The biometric component will take the form of four fingerprints and a facial image.

7   EU factsheet on EES, URL: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/securing-eu-borders/fact-sheets/docs/factsheet_-_entryexit_system_en.pdf

10. On 20 November 2017, the Council of the EU adopted the EES regulation, along with an accompanying regulation which reforms the Schengen border code.[8] The EU expects the EES to be operational from the start of January 2020.[9] However, the experience of attempts to introduce a biometric entry-exit system in the U.S. over the last two decades suggests that it is unlikely that the EES will be completed on schedule.[10]

b. European Travel Information and Authorisation System (ETIAS)

11. Schengen border guards already have access to advanced information on visa-exempt passengers who arrive by air (as a result of a 2002 EU directive). However, they currently lack this kind of advanced information when deciding on entry of those who have arrived by other means of transport (or on foot).[11] It is intended that ETIAS addresses this lacuna by requiring all visa-exempt travellers who are planning to travel to the Schengen area to apply online for pre-clearance at least 72 hours prior to their trip.

12. ETIAS has been described as a 'visa' in parts of the UK media.[12] This is misleading, as ETIAS will not require the provision of biometric data (unlike the current application requirements for UK and Schengen visitor visas). Instead, obtaining ETIAS approval is likely to involve a ten-minute online procedure as well as the provision of details on the applicant's identity, contact information, purpose of journey, itinerary, education and occupational status.[13]

13. Under the latest EU proposals, adopted in October 2017 by the European Parliament's Civil Liberties, Justice and Home Affairs Committee, each authorisation would cost ten Euros (just under £9) for a visa-exempt passenger planning a trip to the Schengen area. Persons younger than 18 and older than 60 would not be required to pay the fee, nor would family members of EU citizens, students and science personnel. ETIAS authorisation would allow unlimited trips of up to 90 days in a 180-day period and last three years.[14] For comparison, the authorisation period under the United States' ESTA scheme is two years, while a Canadian eTA lasts for five years (see Annex A).

14. ETIAS proposals are currently being debated in the EU's legislative bodies. The plan is for implementation by 2020.[15]

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8   Council of the EU press release, November 2017, URL: http://www.consilium.europa.eu/en/press/press-releases/2017/11/20/entry-exit-system-final-adoption-by-the-council/

9   EU Press Release, November 2016, URL: http://europa.eu/rapid/press-release_MEMO-16-3706_en.htm

10   Since 1996, the U.S. Congress has passed seven separate laws mandating the creation of an automated biometric entry-and-exit screening system for foreign nationals. Although the entry element of checks is already in operation, three successive presidential administrations have failed to implement biometric exit checks. Roy Beck, The Hill, January 2016, URL: http://thehill.com/blogs/congress-blog/homeland-security/266341-why-is-the-biometric-exit-tracking-system-still-not-in

11   Council Directive 2004/82/EC already obliges air carriers to communicate all passenger data, known as advance passenger information, head of inbound flights to the EU. This data must then be given to EU countries, in accordance with Directive (EU) 2016/681 (the Passenger Name Record 'PNR' directive. EU Parliament Briefing on ETIAS, March 2017, URL: http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599298/EPRS_BRI(2017)599298_EN.pdf

12   Daily Telegraph, March 2017, URL: http://www.telegraph.co.uk/news/0/has-britain-left-eu-almost-every-single-brexit-question-answered/

13   When first introduced, ETIAS would be limited to collecting declaratory data i.e. passport information, contact details, place of intended first entry and answers to background questions regarding education and occupation. However, ETIAS may also begin to collect biometrics (facial images, fingerprint or iris scans) at some point after the system is brought online. European Commission, 'Feasibility document', URL: http://www.statewatch.org/news/2016/nov/eu-com-etias-feasability-study.pdf Canada and Australia are also looking to incorporate biometric facial recognition software into the electronic travel authorisations processes, using digital technology.

14   European Parliament press release, October 2017, URL: http://www.europarl.europa.eu/unitedkingdom/en/media/news/2017/october17/visaexemptedtravellers.html

15   European Parliament briefing on legislation in progress, URL: http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599298/EPRS_BRI(2017)599298_EN.pdf

15. For six months after ETIAS comes online, the requirement for visitors to obtain authorisation would be optional, extendable for another six months.[16]

UK-EU travel post-Brexit

16. Preserving ease of travel between the UK and EU after Brexit should be a priority as the negotiations move forward. The UK should impose only minimal formalities on EU citizens arriving at the border.[17] Those who plan to work would need to apply for a work permit.

17. It is highly unlikely that the negotiations will result in travel between the UK and EU that requires a visa to be issued in advance. As a Common Market and then EU member for over four decades, the UK already meets the criteria for visa-free access to the Schengen area, which has already been accorded to 61 non-EU nations. Similarly, the UK grants visa-free entry to citizens of 56 countries, including those from the United States, Japan and Brazil.[18] As Home Secretary Amber Rudd stated before the House of Commons Home Affairs Committee in January 2017, 'having visa travel for the European Union in the same way that we have it for other countries is certainly something we would seek to avoid in any discussions'.[19]

18. As stated by the House of Commons European Scrutiny Committee in late November 2017, the biometric EES 'would apply to UK nationals unless a different outcome were to be secured as part of the UK's exit negotiations'. The question of whether UK law enforcement authorities would, in future, be able to access EES data is also a topic for discussion during the talks.[20]

19. Top EU officials have already indicated that UK citizens will be subject to ETIAS in future. Commission Vice-President Frans Timmermans and Interior Affairs Commissioner Dimitris Avramopoulos were quoted in November 2016 as saying that the system 'will certainly apply to UK nationals after Brexit'.[21] However, any future applicability of ETIAS to UK nationals will likely depend on the negotiations.

20. The government is also considering the introduction of an electronic travel authorisation system for certain travellers to the UK - there are reports that this may be similar to the United States' ESTA (described in Annex A).[22] In evidence to the Home Affairs Committee, the Home Secretary said:

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16   Council of the EU, note to Working Party on Frontiers / Mixed Committee, March 2017, URL: http://statewatch.org/news/2017/mar/eu-council-etias-presidency-compromise-proposals-7223-17.pdf

17   Subject to checks against security watch lists and other routine inspections of passenger arrivals. For more see our paper on movement between the EU and UK after Brexit, URL: https://www.migrationwatchuk.org/briefing-paper/421

18   Candidate countries for visa-free access are judged on a range of bilaterally determined yardsticks such as the strength of the rule of law, the combat of organised crime, corruption, illegal migration and administrative capacity in border control. As an EU member for 43 years, the UK meets these criteria already. EU Visa Policy website, URL: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/visa-policy/index_en.htm

19   Home Secretary Amber Rudd, Evidence to the House of Commons Home Affairs Select Committee, 31st January 2017, URL: http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/implications-of-the-uks-exit-from-the-european-union/oral/46493.html

20   Commons European Scrutiny Committee, 29 November 2017, URL: https://publications.parliament.uk/pa/cm201719/cmselect/cmeuleg/301-iii/30116.htm

21   *Euractiv*, November 2016, URL: http://www.euractiv.com/section/justice-home-affairs/news/eu-plans-online-screening-for-visa-free-visitors-from-outside-eu/

22   Financial Times, January 2017, URL: https://www.ft.com/content/031d6ae6-dbf2-11e6-9d7c-be108f1c1dce?ftcamp=published_links%2Frss%2Fworld_uk_politics%2Ffeed%2F%2Fproduct

> *"You may be aware that the EU itself has proposed putting in place an electronic travel authority, which is largely for security measures, where everyone will have to participate and submit their information. We have said that we may look at doing that as well."*

Note 23

21. A leaked draft Home Office document on post-Brexit immigration arrangements, published by the media in September 2017, said:

> *"We are considering whether to introduce a requirement for certain travellers to the UK to have obtained an Electronic Travel Authorisation before they travel, in the same way that the U.S. requires UK travellers going to the U.S. to have obtained an ESTA. This would be a simple, light-tough online system which would enable us to make a more informed decision on the basis of information obtained at an earlier stage as to whether individuals should be allowed to travel to the UK… We will discuss with the EU whether our respective proposals should apply to UK and EU citizens."*

Note 24

22. If the UK followed the model of the ESTA, an online application by a traveller planning to come to the UK could be made 72 hours prior to departure and would cost $14 (just over £10). Once granted, authorisation would be valid for multiple trips of up to 90 days during a two year period.

23. Should the EU apply ETIAS to UK citizens after Brexit, it would be for the UK government to decide whether to reciprocate.

The Common Travel Area between the UK and the Republic of Ireland

24. The Common Travel Area[25] (CTA) between the UK and the Republic of Ireland will not be affected by ETIAS and the EES. The Republic of Ireland is not currently a Schengen member and will not be joining the zone once Britain leaves the EU. Schengen membership is not compatible with maintenance of the CTA. The Irish and UK governments have confirmed that maintaining the CTA is a shared goal.

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23 Evidence by Ms Rudd to HAC, 31 January 2017.

24 *The Guardian*, September 2017, URL: https://www.theguardian.com/uk-news/2017/sep/05/the-draft-home-office-post-brexit-immigration-policy-document-in-full

25 The Common Travel Area has existed since 1923 and reflects the social, economic and cultural ties between the two countries. Indeed, Irish nationals have a special status in UK law which is separate from and pre-dates the rights they have as EU citizens. "In short, Ireland is not considered to be a 'foreign country' for the purpose of UK laws, and Irish citizens are not considered to be "aliens". Furthermore, Irish citizens are treated as if they are 'settled' (i.e. have permanent immigration permission to remain in the UK) from the date they take up 'ordinary residence' in the UK." House of Commons Library, Brief on the Common Travel Area, July 2016, URL: http://researchbriefings.files.parliament.uk/documents/CBP-7661/CBP-7661.pdf

Conclusions

25. After Brexit, there should be minimal formalities at the UK border for arriving EU citizens.[26] However, those who plan to work should need to apply for a work permit. It would be in the interests of both sides if such arrangements were reciprocated by the EU with respect to UK nationals travelling to the continent. The post-Brexit implications of planned improvements to border technology will depend upon the negotiations.

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26   Subject to checks against security watch lists and other routine border inspections of passenger arrivals.

Annex A: Electronic travel authorisation systems in other countries

Australia

Australia introduced its Electronic Travel Authority (ETA) System in 1996.[27] Although no country has been granted visa-free access to Australia, nationals of 46 countries are exempted from the need to obtain a normal visitor visa. Instead they must apply for ETA visa. Prospective travellers are required to apply online for pre-departure authorisation. Although there is no application fee, there is a processing fee of $20 Australian (just under £12). ETA visas allow multiple entries, for a maximum of 90 days each time, over a twelve month period. All ETA holders must be free from tuberculosis and have no criminal convictions.

Canada

The Canadian Electronic Travel Authorisation (eTA) system for visa-exempt nationals, which began operation in 2015, applies to visits of less than six months and costs just $7 Canadian dollars (just over £4). Approved eTAs are valid for five years.[28]

United States

The U.S. has 38 countries (including the UK) on its visa-waiver list. Citizens of these countries can apply to visit the U.S. in advance of travel by registering under the Electronic System for Travel Authorisation (or ESTA, which began operation in 2009). The application costs $14 U.S. (or just over £10). Applicants are asked to fill in details online 72 hours before departure.[29] Authorisation applies to visits of 90 days or less and is generally valid for multiple trips over a period of two years. Since 2009, more than 90 million ESTAs have been approved. However, more than 5,900 ESTA applications have been rejected on national security grounds.

Turkey

Turkey introduced an electronic visa scheme in 2013. This does not solely apply to visa-exempt nationals but is aimed at streamlining the application process for all of those who require visas. A Turkish e-visa costs $20 (just under £15). Travellers can apply up to three months in advance of the departure date. Turkish visit visas issued on arrival are valid for multiple stays of up to a maximum of 90 days in any 180 day period.[30]

India

The Indian e-Tourist visa, introduced in 2014, allows one single visit for a stay of up to 30 days in India. The cost ranges between zero and $75 (£56), depending on nationality. A maximum of two online visas can be issued within one year. An Indian e-Visa is valid for one single entry.[31]

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27   Australian Government, Electronic Travel Authority, URL: https://www.border.gov.au/Trav/Visa/Appl/Electronic-travel-authority
28   Canadian eTA website, URL: https://www.etavisa-gov.ca/index.html
29   US Customs and Border Protection, ESTA website, URL: https://esta.cbp.dhs.gov/esta/
30   Turkish e-visa website, URL: https://www.evisa.gov.tr/en/
31   Indian e-tourist visa,, Travisa, URL: https://india-evisa.travisa-online.com/india-eta/faqs

Annex B: Countries whose citizens have been granted visa-free access to the Schengen Zone[32]

Albania

Andorra

Antigua and Barbuda

Argentina

Australia

Bahamas

Barbados

Bosnia and Herzegovina

Brazil

Brunei Darussalam

Canada

Chile

Colombia

Costa Rica

Dominica

The former Yugoslav Republic of Macedonia

Grenada

Guatemala

Holy See

Honduras

Israel

Japan

Kiribati

Malaysia

Marshall Islands

Mauritius

Mexico

Micronesia

Moldova, Republic of

Monaco

Montenegro

Nauru

New Zealand

Nicaragua

Palau

Panama

Paraguay

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32   Annex II of the Consolidated version of Council regulation No. 539/2001, as of 9 June 2014, URL: http://eur-lex.europa.eu/legal-content/
EN/TXT/PDF/?uri=CELEX:02001R0539-20140609&from=EN

Peru

Saint Kitts and Nevis

Saint Lucia

Saint Vincent and the Grenadines

Salvador

Samoa

San Marino

Serbia (excluding holders of Serbian passports issued by the Serbian   Coordination Directorate)

Seychelles

Singapore

Solomon Islands

South Korea

Timor-Leste

Tonga

Trinidad and Tobago

Tuvalu

United Arab Emirates

United States of America

Uruguay

Vanuatu

Venezuela

Special administrative regions of the People's Republic of China

- Hong Kong SAR

- Macao SAR

British citizens who are not nationals of the United Kingdom of Great Britain and Northern Ireland for the purposes of Union law

- British nationals (Overseas)

- British overseas territories citizens

- British overseas citizens

- British protected persons

- British subjects

Entities and territorial authorities that are not recognised as states by at least one member state:

- Taiwan

Annex C: Countries whose citizens have not been granted visa-free access to the Schengen Zone[33]

Afghanistan

Algeria

Angola

Armenia

Azerbaijan

Bahrain

Bangladesh

Belarus

Belize

Benin

Bhutan

Bolivia

Botswana

Burkina Faso

Burma/Myanmar

Burundi

Cambodia

Cameroon

Cape Verde

Central African Republic

Chad

China

Congo

Côte d'Ivoire

Cuba

Democratic Republic of the Congo

Djibouti

Dominican Republic

Ecuador

Egypt

Equatorial Guinea

Eritrea

Ethiopia

Fiji

Gabon

Gambia

Georgia

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33   Annex I of the Consolidated version of Council regulation No. 539/2001, as of 9 June 2014, URL: http://eur-lex.europa.eu/legal-content/
EN/TXT/PDF/?uri=CELEX:02001R0539-20140609&from=EN

Ghana

Guinea

Guinea-Bissau

Guyana

Haiti

India

Indonesia

Iran

Iraq

Jamaica

Jordan

Kazakhstan

Kenya

Kuwait

Kyrgyzstan

Laos

Lebanon

Lesotho

Liberia

Libya

Madagascar

Malawi

Maldives

Mali

Mauritania

Mongolia

Morocco

Mozambique

Namibia

Nepal

Niger

Nigeria

North Korea

Oman

Pakistan

Papua New Guinea

Philippines

Qatar

Russia

Rwanda

São Tomé and Príncipe

Saudi Arabia

Senegal

Sierra Leone

Somalia

South Africa

South Sudan
Sri Lanka
Sudan
Surinam
Swaziland
Syria
Tajikistan
Tanzania
Thailand
The Comoros
Togo
Tunisia
Turkey
Turkmenistan
Uganda
Ukraine
Uzbekistan
Vietnam
Yemen
Zambia
Zimbabwe
Kosovo (as defined by the United Nations Security Council Resolution 1244 of 10 June 1999)
Palestinian Authority