

To: Seema Malhotra MP  
Parliamentary Under Secretary of State (Minister for Migration and Citizenship) and Parliamentary Under Secretary of State (Minister for Equalities)

CC: D3SF (Digital Status Services Stakeholder Forum)  
FBIS (Future Borders and Immigration System) Engagement Team  
ETA (Electronic Travel Authorisation) Engagement Team  
IMA (Independent Monitoring Authority)

16 April 2025

Dear Minister,

**ETA rules and Home Office Policy for Carriers unlawfully preventing people from travelling to the UK**

Further to your meeting with the3million and ILPA, we are writing to ask for urgent policy changes to cover a policy gap that prevents people, who have the right to **enter** the UK, from **travelling** to the UK.

This has also been raised directly with the FBIS Engagement Team and the ETA Engagement Team, on 28 March 2025, but we are yet to receive any substantive response.

**People with EU Settlement Scheme (EUSS) Certificate of Application (CoA)**

We consider that the UK is already in breach of the Withdrawal Agreement, in not granting **all** holders of an EUSS CoA the right to enter the UK. You will be aware of the European Commission statement of April 2024<sup>1</sup>, in which they explain:

*“In the Commission’s view, the Withdrawal Agreement provides that a person who has a valid certificate of application issued under Article 18(1)(b) of the Withdrawal Agreement has a right of entry and residence in the host State as long as there is no final decision on the application for Withdrawal Agreement beneficiary status. A decision on the application for Withdrawal Agreement beneficiary status has not become final where the person concerned has made use of available appeal possibilities and the appeal is still being dealt with. In such a situation, the holder of a certificate of application must not, in the Commission’s view, be removed nor be denied entry based on not having provided, to a border guard, (sufficient) evidence of residence in the host State by 31 December 2020.”*

However, setting this broader point aside for the purpose of this letter, the UK Home Office does allow **certain** holders of an EUSS CoA to enter the UK, as set out below.

This cohort will now find they cannot board a carrier to reach the UK border. This is due to the rollout of the Electronic Travel Authorisation (ETA) scheme, particularly on 2 April 2025 to European citizens, which has pushed decisions by UK Border Force officers ‘upstream’ to decisions by a carrier / transport hub staff member, who are clearly not qualified, nor intended to be qualified, to apply UK Home Office Border Force Guidance.

Although we have been informed that there is currently, informally, a transitional phase, in which no-one should be denied boarding for not having an ETA, this is not what the Rules or guidance say. We initially

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<sup>1</sup> [https://www.europarl.europa.eu/doceo/document/E-9-2024-000062-ASW\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/E-9-2024-000062-ASW_EN.pdf)

raised our concern in September 2024 with the ETA Engagement Team, when it was said that there would be a period in which ETA was not 'enforced', but this was clearly contrary to the Immigration Rules which have expressed obtaining an ETA for travel to the UK as a requirement. We were informed by the ETA External Engagement Team, on 12 September 2024, that:

*"An ETA should be obtained before travel, but at the moment, an applicant can still travel to the UK while waiting for a decision on an application. ETAs will be strictly enforced at the end of the implementation period. At that point, under a revised Carriers' Liability Scheme, all carriers, including ferry operators, will be incentivised to confirm that a person has an appropriate permission to travel to the UK prior to boarding any vessel intended for travel to the UK from outside of the CTA. The enforcement date for ETAs is kept under review. The Home Office will provide advance notice ahead of the enforcement period."*

However, at present, carriers reading the liability guidance and lawyers reading the Rules will not advise individuals accordingly. We are in any case already receiving reports of people being denied boarding despite this transitional phase. The carriers' liability guidance and Immigration Rules must be urgently updated to reflect this pragmatic transitional period, or individuals, carriers, and representatives will continue to face legal uncertainty, as what happens in practice will deviate from the Executive's very statements of practice contained in the Immigration Rules. **This requires urgent resolution, as this is an escalation of the above breach of the Withdrawal Agreement. In several cases it is also a direct breach of the saved rights under the EEA Regulations 2016.**

We share a few accounts below from people who have contacted the3million. These are individuals with an EUSS CoA status, who have the right to enter the UK, albeit requiring a discussion with Border Force officers before they are granted entry to the UK. Following the roll-out of ETA, these same people will now find it immensely challenging to board a carrier, and completely impossible once the informal ETA transition phase is over. The examples show the range of reasons why travel is essential for many.

*"Since my immigration status is still pending, and since I have to travel a lot for work, when I return to England I always get stopped to check my status."*

*"I am scared of travelling to [redacted] to visit my grandmother who is very elderly and ill, because when I travel (within Europe) I am stopped at the UK border and my passport is confiscated and my right to enter rescinded until they decide to let me back in."*

*"Recently, I was compelled to leave the UK for a few days due to crucial family matters. Upon my return, I faced a challenging encounter with border control. The officers contended that my certificate of application did not grant me the right to reside in the UK. Despite this, I was allowed entry."*

### **Current Home Office policy on EUSS CoA cohorts who may enter the UK**

- Passenger facing guidance<sup>2</sup> makes clear that the **following cohorts have the right to enter the UK, despite not having leave to enter, a valid visa or a valid visa exemption document:**

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<sup>2</sup> Border Force, 'Entering the UK under the EU Settlement Scheme and EU Settlement Scheme family permit' (published 24 January 2022, last updated 27 February 2025) <<https://www.gov.uk/government/publications/entering-the-uk-under-the-eu-settlement-scheme-and-eu-settlement-scheme-family-permit>> accessed 14 April 2025.

- **An EEA CoA holder, who was living in the UK by 31 December 2020.** This includes where they were initially refused but are awaiting the outcome of an administrative review or appeal. They may be asked to demonstrate to Border Force officers that they were continuously resident in the UK by 31 December 2020 and have remained so since.
- **A non-EEA CoA holder, who was living in the UK by 31 December 2020.** This includes where they were initially refused but are awaiting the outcome of an administrative review or appeal. They may be asked to demonstrate to Border Force officers that they were continuously resident in the UK by 31 December 2020 and have remained so since, and demonstrate their family relationship on which they rely in their pending EUSS application, in the form of a UK-issued BRC or EUSS Family Permit.
- **A CoA holder of any nationality, who is a joining family member, who is in possession of an expired EUSS Family Permit, and is awaiting an initial decision on their EUSS application.** This does not include where they were initially refused their EUSS status and are awaiting the outcome of an administrative review or appeal.
- Border Force guidance<sup>3</sup> confirms the above in its section “Arriving passengers with a pending valid EU Settlement Scheme application - overview” and shows the grounds on which such entry should be allowed:
  - EEA CoA holder, resident in UK by 31 December 2020, whose EUSS application was made in-time by 30 June 2021 - Saved rights under EEA Regulations 2016
  - EEA CoA holder, resident in UK by 31 December 2020, whose EUSS application was late - Leave Outside The Rules (Temporary Protection)
  - Non-EEA CoA holder, resident in UK by 31 December 2020, whose EUSS application was made in-time by 30 June 2021, in possession of EEA BRC or EEA Family Permit (in-date or expired) - Saved rights under EEA Regulations 2016
  - Non-EEA CoA holder, resident in UK by 31 December 2020, whose EUSS application was made in-time by 30 June 2021, family relationship accepted, without EEA BRC or EEA Family Permit - Leave Outside the Rules (Temporary Protection)
  - Non-EEA CoA holder, resident in UK by 31 December 2020, whose EUSS application was late, family relationship accepted - Leave Outside The Rules (Temporary Protection)
  - Joining family member (any nationality) with expired EUSS Family Permit, awaiting initial decision on EUSS application - Leave Outside The Rules (Temporary Protection)
  - **Any categories where compelling, compassionate circumstances apply to mean removal is disproportionate** - including for example a child without EUSS status travelling with a parent with EUSS status - Leave Outside The Rules.

**ETA Eligibility - this cohort is unable to apply for an ETA**

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<sup>3</sup> Home Office, ‘EU Settlement Scheme: Border Force guidance’ (published 7 January 2022, last updated 15 October 2024 <<https://www.gov.uk/government/publications/eea-nationals-at-the-border-post-grace-period>> accessed 14 April 2025.

People in all of these categories above are unable to apply for an Electronic Travel Authorisation (ETA), since one of the mandatory validity requirements in Appendix Electronic Travel Authorisation, para ETA 1.1(f) is that:

*(f) the applicant must be seeking permission to enter the UK as either:*

*(i) a Visitor (other than a Marriage/Civil Partnership Visitor), staying in the UK for up to 6 months; or*

*(ii) a Creative Worker who is seeking entry to the UK pursuant to paragraph Appendix Temporary Work - Creative Worker at CRV 3.2.*

As is clear from para ETA 1.5, in contrast to many other Appendices under the Immigration Rules, there is no discretion within the Immigration Rules to consider such an application: *“An application which does not meet the validity requirements for an ETA application is invalid and must be rejected and not considered”*.

### **Carriers guidance - this cohort is prevented from boarding**

The ETA Guidance<sup>4</sup> provides a list of cohorts who do not need an ETA. This includes, for example, British or Irish citizens, those travelling within the CTA, and those in possession of a visa or permission to live, work or study in the UK (including settled or pre-settled status).

Crucially, it does not include those with an EUSS CoA who would be granted entry to the UK by UK Border Force; therefore, this cohort is unable to apply for an ETA, and is also unable to travel without an ETA.

Furthermore, the Home Office’s guidance to carriers states explicitly: *“A Certificate of Application or Acknowledgement of Application is not satisfactory evidence of status.”*<sup>5</sup>

Due to this catch-22 situation, individuals (and their representatives) are understandably confused regarding the appropriate process by which individuals may travel to the UK to be able to make their case to Border Force, with many contemplating the ETA route, which may lead to a rejected application.

### **Proposed solution to this urgent situation**

We believe the Home Office should either:

- be clearly instructing carriers that those with a pending EUSS application can travel, or
- change the Immigration Rules to allow this cohort to apply for an ETA.

We would argue that the former solution is more appropriate, given ETAs are intended for visitors and certain creative workers.

Furthermore, this should be extremely simple to implement, as someone in possession of a digital EUSS CoA is able to produce share codes to satisfy employers and landlords.

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<sup>4</sup> UKVI, ‘Apply for an electronic travel authorisation (ETA)’ (published 25 October 2023, last updated 9 April 2025) <<https://www.gov.uk/guidance/apply-for-an-electronic-travel-authorisation-eta>> accessed 14 April 2025.

<sup>5</sup> UKVI, ‘Document checks and charges for carriers’ (published 1 September 2007, last updated 14 April 2025) <<https://www.gov.uk/government/publications/document-checks-and-charges-for-carriers>> accessed 14 April 2025.

It would be technically trivial to ensure that the interactive Advance Passenger Information (iAPI) system returned an 'Ok to Board' message to carriers where a person's identity document is linked to their digital CoA.

There are, however, likely to be many people in these cohorts whose current identity document is not linked to their digital CoA. This is because people with a digital CoA are actively prevented (by design within the Update My Details (UMD) functionality) from linking a new identity document to their digital status, combined with the extreme length of time many have been waiting for resolution of their EUSS application or administrative review, with the latter now taking 30 months.

Others of course may experience technical problems with their digital status, in common with the general eVisa population.

The iAPI solution described above would, therefore, need to be accompanied with clear messaging to carriers that they should also accept share codes from individuals where the result of an online immigration check<sup>6</sup> shows that they have a digital Certificate of Application. Furthermore, the Carrier Support Hub must be fully and properly instructed that those with an EUSS CoA must be allowed to board a carrier. This must be accompanied by immediate guidance to carriers and affected individuals as to what processes they should follow.

We appreciate that the simple package of solutions identified above is likely made complicated by the fact that the Home Office only allows **some** EUSS CoA holders to enter the UK, rather than allowing **all** EUSS CoA holders to enter the UK, as both the undersigned and the European Commission hold to be the correct interpretation of the Withdrawal Agreement.

To ensure no individuals are unlawfully inhibited from travelling to enter the UK, we respectfully recommend that **all** EUSS CoA holders be permitted to travel to and enter the UK.

If the Home Office is not prepared to do this, we would welcome having a further opportunity to hear and discuss proposals for ensuring that those who **are** currently allowed to enter the UK are able to travel to the UK and have Border Force assess whether to grant them entry.

### **Compelling, compassionate circumstances**

As a final point, we would like to bring to your attention that the result of the ETA scheme, with its intended 'pushing the border upstream', is that those who could have been allowed entry at the UK border due to "compelling and compassionate circumstances" will now likely be prevented from travelling to the UK, unless the Carrier Support Hub is able to issue permission to carriers on those same discretionary grounds.

By way of example, 'compelling and compassionate circumstances' would include situations where parents with EUSS status leave the UK with a child who does not have EUSS status. This could be, for example, to visit family abroad or to go on a holiday. They only find out their mistake (of not having made an application for their child) at the point of trying to board a carrier to return to their home in the UK.

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<sup>6</sup> 'Check someone's immigration status: use their share code' <<https://www.gov.uk/check-immigration-status>> accessed 14 April 2025.

The EUSS Caseworker Guidance<sup>7</sup> rightly ensures that such situations will always constitute reasonable grounds for making a late application where the child is under the age of 18. Border Force guidance would allow a Border Force officer to grant Leave Outside The Rules to such a child for 28 days, to allow them to submit an in-country EUSS application.

At present, there is no provision to enable a family in this situation to travel back to their UK home with their child. If they have to submit an out-of-country EUSS application, this could take several weeks to be granted even if expedited. If the child does not have an EEA passport or national identity card, and is forced to make an application for an EUSS Family Permit, the child could be stranded outside the UK for a considerable period of time, likely several months.

We would be grateful to have confirmation that a child in this position may be granted “permission to travel” by the Carrier Support Hub, due to “compelling and compassionate circumstances”.

We thank you for your engagement with us on this matter and look forward to your urgent reply.

Yours sincerely,

Monique Hawkins, Policy and Research Officer, the3million

Zoe Bantleman, Legal Director, Immigration Law Practitioners' Association (ILPA)

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<sup>7</sup> Home Office, 'EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members' (v27.0, 9 April 2025) 47<<https://www.gov.uk/government/publications/eu-settlement-scheme-caseworker-guidance>> accessed 14 April 2025.