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Rt Hon Caroline Nokes MP
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Sir William Cash MP
Chair of the European Scrutiny Committee
House of Commons
Telford House
14 Tothill Street
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19 DEC 2018

Dear Bill

Proposal for a Regulation on the European Border and Coast Guard and repealing Council Joint Action n°98/700/JHA, Regulation (EU) n° 1052/2013 and Regulation (EU) n° 2016/1624 – a contribution from the European Commission to the Leaders' meeting in Salzburg on 19-20 September 2018 (12143/18)

I am writing in reply to the questions raised in your report published on 6 November following the European Scrutiny Committee's consideration of the above proposal on 31 October.

Firstly, a reply to your letter of June on whether any Member States have indicated that they will host a controlled centre has since been issued to you (on 7 November). In answer to the second part of your question, these controlled centres are still in the concept stage with little detail available and no legal proposal. We are not aware that the role of the European Border and Coast Guard in relation to them has yet been raised.

You also ask for a comment on the size of the standing corps and its enhanced operational powers. We are not full members of the European Border and Coast Guard Agency but we are generally supportive of efforts to strengthen it in order to improve the security of the external EU border. However, we appreciate that Member States who do participate in the Regulation and who are bound by it have concerns over sovereignty and they are right to raise these concerns with the Commission.

In relation to the EU's false and authentic documents database (FADO), we have asked the Commission how they envisage continued UK access to the data given that they aim to move it into a regulation that we are unable to opt into. We have received an acknowledgment and are awaiting a reply. Discussions at working level have not reached this part of the proposal yet.

Lastly, you ask for an assurance that the proposed Regulation includes a robust set of safeguards, complaints procedures and redress mechanisms to ensure that any violations of individual rights or complaints of mis-treatment are dealt with swiftly, fairly and effectively. As did the current European Border and Coast Guard Regulation, the proposal includes articles in relation to these measures with a recital (20) acknowledging that "the extended tasks and competence of the Agency should be balanced with strengthened fundamental rights safeguards and increased accountability."

Articles 81 (previously 34) on protection of fundamental rights and a fundamental rights strategy, 106 (previously 70) on a consultative forum, 107 (previously 71) on a fundamental rights officer and 108 (previously 72) on a complaints mechanism have all been transferred across with some necessary updating and tweaks to relate them to staff including members of the European Border and Coast Guard standing corps.

The proposal continues to be examined at the Working Party on Frontiers and I will provide updates as I have them.

I am copying this letter to Lord Boswell, Chair of the Lords European Union Committee; and to Lynn Gardner, Clerk to the Commons Committee; Chris Johnson, Clerk to the Lords Committee; Arnold Ridout, Legal Adviser to the Commons Committee; Les Saunders, Department for Exiting the EU; and to Alex Bernal, Departmental Scrutiny Co-ordinator for the Home Office.

A handwritten signature in blue ink, appearing to read 'Caroline Nokes', is centered on the page.

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