



Lord Boswell of Aynho
Chair, European Union Committee
House of Lords
London, SW1A 0PW

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25 MAR 2019

Dear Tom

Regulation establishing the conditions for accessing other EU information systems and amending Regulation (EU) 2018/1862 (SIS II) and Regulation (EU) yyyy/xxx (ECRIS-TCN) (5071/19)

I write further to the Committee's letter of 6 March 2019. Your letter asks for the Government's analysis of the advantages and disadvantages of an opt-in / opt-out decision, and the operational benefits of participating in this Regulation, given the UK's non-participation in ETIAS (European Travel Information and Authorization System).

In looking at the benefits of participating in this Regulation, I have considered the operational implications of doing so by examining the interaction of ETIAS with the European Criminal Records Information System – Third Country National database (ECRIS-TCN) and the Second Information Schengen System (SIS II) separately. In terms of the ECRIS-TCN provisions, should the UK agree to participate, a search by ETIAS could result in a hit on the data of the UK ECRIS-TCN. Under this Regulation, the UK would be required to add a 'flag' to data loaded into ECRIS-TCN to confirm that conviction data of Third Country Nationals (TCNs) of interest to ETIAS is on UK systems. The ETIAS National Unit would facilitate the verification of the information in the ETIAS application. However, as the UK is not part of ETIAS and does not have an ETIAS National Unit, this could introduce some financial and resource obligations for the UK, should a technical solution be needed to resolve the verification issue. Whilst it is clear there are advantages to the EU from ETIAS having access to UK's criminal data on Third Country Nationals, given both ETIAS and ECRIS-TCN measures will not come into operation until at least 2021, it is too early to properly estimate the potential benefits to the UK. Significantly, it is also not possible to quantify the resource implications without which we cannot conduct a cost-benefit analysis.

If an ETIAS search against SIS II resulted in a hit, the ETIAS Central Unit based in the European Border and Coast Guard Agency (EBCGA), would contact the UK SIS II (SIRENE) Bureau to verify the information on the ETIAS application. The result would be communicated to the ETIAS National Unit in the Member State to whom the ETIAS application was made. The absence of an established ETIAS National Unit may lead to additional obligations on the UK's SIRENE Bureau, which at present have not yet been quantified. Again, whilst there are advantages to those EU Member States who operate ETIAS from accessing UK SIS II data, the potential benefits to the functioning of SIS II and to the UK more widely from participating in the Regulation, remain unclear.

However, it is important to consider how the UK's participation in the Regulation could contribute to the EU's strategy on border control and security. Participation in this proposal would highlight the UK's commitment to the wider security of the Schengen zone at a time when we would seek a close relationship with the EU on security and law enforcement once the UK leaves the EU.

In terms of the deadline for the UK to make a decision on the Schengen opt-out (SIS II) and JHA opt-in (ECRIS-TCN) decision, the Council Secretariat have now confirmed that the date of the last language version was 14 January 2019, so the deadline by which the UK must communicate its decision is 13 April. The Government will confirm its position in due course.

I am copying this letter to Sir William Cash MP, Chair of the Commons European Scrutiny Committee; Jessica Mulley, Clerk to the Commons Committee; Arnold Ridout, Legal Adviser to the Commons Committee; Les Saunders, Department for Exiting the EU; and Alex Bernal, Departmental Scrutiny Coordinator.

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

Rt Hon Caroline Nokes MP
Minister of State for Immigration