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Sir William Cash MP
European Scrutiny Committee
House of Commons
London
United Kingdom
SW1A 0AA

11 April 2019

Dear Bill,

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 report of 29 March 2019. Your letter asks for the Government's position on Regulation 5071/19, according to which the European Travel Information and Authorisation System (ETIAS) will be able to access the European Criminal Records Information System for Third Country Nationals (ECRIS-TCN) and the Second Schengen Information System (SIS II) databases.

ETIAS forms part of the Schengen border legislation that the UK cannot participate in. Nevertheless, the UK fully supports the EU's efforts to strengthen its external borders. ETIAS' access to UK's data on ECRIS-TCN and SIS II will allow the EU to refuse an application for admission to the Schengen area or revoke a grant of admission to a third country national if a relevant alert has been identified and the information indicates that the applicant was previously convicted of terrorism or a serious criminal offence in UK. The European Commission has been working towards 2021 as the date on which ETIAS would become operational, but the date might be extended to 2023.

I would like to inform you that on 9 April 2019 Regulation 5071/19 was split in its two components (access of ETIAS to SIS II and access of ETIAS to ECRIS-TCN) but the Council Legal Service has indicated that this will not affect our deadline on the Schengen opt-out (SIS II) and JHA opt-in (ECRIS-TCN) decision, which is 12 April. We intend to update the House formally by a Written Ministerial Statement on 24 April, after the Parliamentary recess. In the meantime, I will arrange a copy of this letter to be placed in the Library of the House.

Further to my letter of 8 March and in light of the decision to split the Regulation into separate elements (given the substance of these is unchanged), the Government has given further, detailed consideration to the advantages and disadvantages of participating in the proposal and has decided that the UK should participate in the measure which means **opting in** to the aspect of the proposal that establishes the conditions for the access of ETIAS to ECRIS-TCN (Justice and Home Affairs opt-in) and **not opting out** of

the aspect that establishes the conditions for the access of ETIAS to the Second Schengen Information System (SIS II) (Schengen opt-out). In summary:

- Whilst, there are advantages to the EU from ETIAS having access to UK's data, there are no obvious operational or public protection benefits for the UK given it involves the provision of data to a scheme that the UK does not participate in. However, a significant argument in favour of participating is to prevent our non-participation from giving rise to issues around UK's access to SIS II and potentially ECRIS-TCN. If the UK exercises its opt-out in respect of the SIS II element of the proposal (i.e. does not participate) we would not be allowing the ETIAS Central Unit (managed by the European Border and Coast Guard Agency, EBCGA) access to UK SIS II data, when EBCGA already accesses SIS II as a result of the 2018 SIS II Regulation (which the UK is participating in). The Commission could argue that this makes the operation of the EBCG provisions in SIS II either impossible or significantly compromised. In this case, UK could be at risk of ejection from SIS II, an outcome that would have detrimental consequences for UK law enforcement agencies and negatively impact our future security relationship with EU.
- In our initial examination of the implications of the access of ETIAS to UK data on ECRIS-TCN we have concluded that the potential financial and resource implications for ACRO Criminal Records Office (ACRO) - the UK agency that operates the ECRIS-TCN database - will be low, given that the technical requirements ETIAS introduces to ECRIS-TCN have already been considered under the ECRIS-TCN Regulation and will need to be implemented before that Regulation goes into force.
- The decision to participate in the proposed Regulation will also send a strong message that UK is supportive of EU's border security initiatives and underlines the UK's efforts to collaborate with EU on a security partnership once UK leaves the EU, including on SIS II and ECRIS-TCN in any implementation period.

I trust this provides the Committee with further information so that it may consider its scrutiny position.

I am copying this letter to Lord Boswell, Chair of the Lords European Union Committee; Chris Johnson, Clerk to the Lords Committee; Lynn Gardner, Clerk to your Committee; Les Saunders, Department for Exiting the European Union; and Alejandra Bernal, Departmental Scrutiny Coordinator.

A handwritten signature in blue ink, appearing to read 'Caroline Nokes'.

**Rt Hon Caroline Nokes MP
Minister of State for Immigration**