

# European Scrutiny Committee

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From: Sir William Cash MP

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Rt Hon James Brokenshire MP  
Minister for Security  
Home Office  
2 Marsham Street  
London SW1P 4DF

## **UK participation in the Schengen Information System (Council documents 6463/20 and 6554/20) (ESC 41107 and 41120)**

I am writing in connection with two EU documents concerning the Schengen Information System (SIS II) which were deposited for scrutiny in early March and on which we have yet to receive an Explanatory Memorandum. I understand that you are the Minister responsible for Home Office policy during the transition period established by the EU/UK Withdrawal Agreement.

The first document, a [Council Implementing Decision](#) adopted on 5 March 2020, follows an on-site evaluation by a team of Commission and Member State experts in November 2017 which found serious deficiencies in the UK's implementation of SIS II. It makes a series of recommendations, addressed to the UK, to rectify these deficiencies, with 25 of the 34 recommendations described as "very serious deficiencies" which require immediate action.

The second document, a [Commission report](#) published in February 2020, examines the progress made by countries currently connected to SIS II (including the UK during the transition period) in preparing for its phased upgrade by the end of 2021.

Both documents provide important context for the negotiations underway between the EU and the UK to establish a new relationship post-transition, including a framework for continued law enforcement and criminal justice cooperation. As you know, the [Political Declaration](#) agreed by the EU and the UK in October 2019 says that arrangements for the exchange of information for law enforcement purposes should seek to deliver capabilities approximating those provided by existing EU systems (such as SIS II) "in so far as is

technically and legally possible, and considered necessary and in both Parties' interests".<sup>1</sup> The EU's [draft legal text](#) rules out sharing data with the UK that has been "processed in databases established on the basis of Union law."<sup>2</sup> This would preclude direct or indirect access by UK law enforcement authorities to SIS II data. It is consistent with Article 65 of the [SIS II Law Enforcement Regulation](#), adopted in 2018, which provides that data processed in SIS *and* related supplementary information exchanged between national law enforcement authorities "shall not be transferred or made available to third countries".<sup>3</sup>

By contrast, the UK's [draft legal text](#) includes a place holder for the insertion of "legal provisions on SIS II capability" and puts on record the Government's view that there is a mutual interest in establishing capabilities similar to those provided by SIS II and that it is legally possible for the EU to do so.

We ask you to expand on the Government's reasons for believing that it is legally possible for the EU to agree to the inclusion of "legal provisions on SIS II capability", drawing on any relevant third country precedents. We also ask you to clarify whether the Government is seeking continued participation in and direct access to SIS II as a third country after transition, or rather a legally binding commitment by the EU to develop capabilities short of participation that replicate those of SIS II? If the latter, what type of model do you have in mind?

The documents under scrutiny indicate that, even if a legal solution can be found, the political obstacles may be far harder to surmount because of a perception that the UK is not adhering to the rules governing the use of SIS II. The Council Implementing Decision is part of a process set out in a [2013 Regulation](#) establishing a mechanism for evaluating and monitoring Member States' application of the Schengen rule book.<sup>4</sup> We ask you to explain:

- whether the Government accepts the Council's judgment that there are serious deficiencies in the UK's implementation of SIS II;
- whether the UK has drawn up an action plan to remedy the deficiencies identified by the Council and, if so, what assessment the Commission has made of its adequacy;
- whether (and how frequently) the Government is reporting to the Commission on its progress in implementing the action plan; and

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<sup>1</sup> See para 85 of the Political Declaration.

<sup>2</sup> See Part Three of the draft legal text, chapter four concerning cooperation on operational information.

<sup>3</sup> Regulation (EU) 2018/1862 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters.

<sup>4</sup> See Articles 15 and 16 of Regulation (EU) No 1053/2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen acquis.

- what efforts the Government has made to inform Parliament of the concerns raised about UK implementation of SIS II, the steps being taken to address them, and any practical or operational implications for UK law enforcement authorities.

Turning to the Commission report on preparations for the SIS II upgrade, we ask you to explain:

- whether the UK is developing its national systems to prepare for full implementation of the SIS II upgrade by the end of 2021 (as foreseen in para 2.1 of the report);
- whether the UK is part of the network of experts (set up in January 2019) to coordinate the preparatory work (para 2.2.1 of the report);
- how much the UK has been allocated from the EU budget to fund a “quick and effective upgrade” of its national systems and how this funding has been used (para 2.4.2 of the report);
- whether the UK has submitted a “state of play” report on its preparations for deploying SIS II’s automated fingerprint identification system (AFIS) and is deploying the fingerprint search functionality (para 2.4.3 of the report); and
- whether the UK has responded to the Commission questionnaire on preparations for implementing the SIS II upgrade (para 2.4.4 of the report).

We look forward to receiving your Explanatory Memorandum—now three months overdue—as a matter of urgency. We seek an explanation of the reasons for the delay (one of many on Home Office documents) and an assurance that you and your Department are committed to fulfilling your scrutiny obligations to Parliament during the transition period.

I am copying this letter to the Chair (Yvette Cooper MP) and Clerk (Elizabeth Hunt) of the Home Affairs Committee, the Chair (Sir Bob Neill MP) and Clerk (David Weir) of the Justice Committee; the Chair (Hilary Benn MP) and Clerk (Gordon Clarke) of the Future Relationship with the European Union Committee, the Chair (the Earl of Kinnoull) and Clerk (Christopher Johnson) of the EU Committee in the House of Lords; Alex Bernal and Mark Leslie, your Departmental Scrutiny Coordinators; and Les Saunders and Donald Harris in the Cabinet Office.

**CHAIR**