



DEBATE PACK

Number CDP-2017-0263, 15 December 2017

Motion to approve European documents relating to the Schengen Information System

Commons Chamber, Tuesday 19 December 2017

A debate on a Motion to approve European documents relating to the Schengen Information System is scheduled for Tuesday 19 December 2017.

Text of motion

The text of the motion as it appears on the Order Paper is:

Mr Nick Hurd

That this House takes note of European Union Documents No. 15812/16, a Proposal for a Regulation of the European Parliament and of the Council on the use of the Schengen Information System for the return of illegally staying third-country nationals, and No. 15814/16, a Proposal for a Regulation of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1986/2006, Council Decision 2007/533/JHA and Commission Decision 2010/261/EU; agrees with the Government's decision not to opt in to proposals on the use of the Schengen Information System for the return of illegally staying third-country nationals; and further agrees with the Government's decision not to opt out of proposals on the establishment, operation and use of the Schengen Information System in the field of police cooperation and judicial cooperation in criminal matters.

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1. Summary

Background

The Second Generation Schengen Information System (SIS II) is a database of real time alerts about individuals and objects (such as vehicles) of interest to EU law enforcement agencies. It includes information on people wanted under a European Arrest Warrant, suspected foreign fighters and missing people.

It contains around 70 million “alerts” on individuals or objects likely to be of interest to border control and law enforcement authorities. Alerts created in any of the 29 countries operating SIS II are stored in a central database and are immediately accessible to around two million end-users.

SIS II alerts are made available to the police through the Police National Computer and to Border Force officers at ports of entry.

In December 2016, the European Commission proposed three Regulations to improve the functioning of SIS II and strengthen border control and counter-terrorism efforts across the EU:

- 1 A proposed Regulation on the use of SIS II for the return of illegally staying third country nationals (“the proposed returns Regulation”);
- 2 A proposed Regulation on the use of SIS II in the field of border checks (“the proposed border checks Regulation”); and
- 3 A proposed Regulation on the use of SIS II in the field of police cooperation and judicial cooperation in criminal matters (“the proposed police cooperation Regulation”).

UK Participation

The UK is entitled to participate in two of the three proposed Regulations — 1 and 3 — as they cover areas of Schengen cooperation in which the UK has chosen to take part.

In a Written Ministerial State on 20th July, Nick Hurd, Minister for Policing and the Fire Service, set out the reasons for the Government’s decision to remain bound by (and so not opt out of) the proposed police cooperation Regulation:

The proposed police co-operation regulation will replace the legislation that currently governs SIS II’s use for that purpose. The UK has participated in this aspect of SIS II since April 2015. Our law enforcement agencies benefit from this, for example by being able to detain at the border people who are wanted under European arrest warrants and to obtain intelligence from police forces across the EU on suspected criminals and security risks. The draft regulation contains a number of proposals that would update SIS II’s capabilities, for example allowing it to store a wider range of biometric data and permitting alerts to be created to protect children who are at risk of going missing. There are some changes we will seek, in particular to maintain member states’ control over when alerts are created, but the Government believe we will be in a better position to do this by not opting out and remaining full participants in the negotiation.[\[1\]](#)

In relation to the proposed returns Regulation, the Minister said:

The proposed returns regulation would allow member states to use SIS II to circulate alerts on non-EEA nationals who have been made subject to removal decisions. Therefore, the UK will not opt in to the draft returns regulation.[\[2\]](#)

The Minister provided further explanation of the decision not to opt in to the proposed returns Regulation in a letter to the European Scrutiny Committee:

Although in principle there would be some benefit in knowing whether individuals seeking entry to the UK (or who had come here illegally) had been ordered to leave another Member State, it is the Commission's firm view that the UK cannot participate in this measure without also opting in to Directive 2008/115/EC ('the Return Directive'). The Government has no intention of doing that as it would pose a risk to national control over how we remove people with no right to be here, and would place our returns process under the jurisdiction of the Court of Justice of the European Union.[\[3\]](#)

The UK remains outside the Schengen free movement area and is not bound by EU rules on external border controls. This means that the UK cannot access "alerts" concerning third country (non-EU) nationals who are not allowed to enter or remain in the Schengen area and cannot participate in the proposed border checks Regulation.

Brexit implications

The Regulations would necessitate technical and operational changes to SIS II which are not expected to take effect until around 2021, after the date on which the UK is expected to leave the EU.

In her Florence speech, the Prime Minister said that the Government would seek an implementation period of around two years during which the UK would continue to take part in existing security measures.[\[4\]](#)

The Government's future partnership paper, *Security, law enforcement and criminal justice* highlights the importance of SIS II for circulating European Arrest Warrants and apprehending "people wanted for arrest, as well as acting as a watch-listing system to follow the movements of sex offenders and suspected terrorists".[\[5\]](#)

The paper indicates that the Government hopes to negotiate a treaty between the UK and the EU providing a legal basis for continued cooperation between the UK and the EU in the area of security cooperation.

In a letter to the European Scrutiny Committee on 1 December 2017, the Minister said:

[I]t is too early to say what future cooperation we may have in relation to individual measures. We recognise the challenges in negotiating a new relationship, but it is in the clear interest of both the UK and European partners that we find a way to continue to cooperate and exchange this kind of information.

The issue of third country access to SIS II data, and the possible exchange of information on a bilateral basis, would need to be addressed as appropriate in the course of negotiations on our future

partnership. We have proposed a treaty with the EU on security, law enforcement and criminal justice.^[6]

[1] [Written Ministerial Statement](#) on the Second Generation Schengen Information System, Hansard HC 64WS, 20th July 2017.

[2] Ibid

[3] [Letter](#) dated 20 July 2017 from the Minister for Policing and the Fire Service to the Chair of the European Scrutiny Committee.

[4] Prime Minister, [Florence speech](#), 22 September 2017

[5] [Future partnership paper](#), *Security, law enforcement and criminal justice* published in September.

[6] [Letter](#) dated 1 December 2017 from the Minister for Policing and the Fire Service to the Chair of the European Scrutiny Committee.

2. Media

European Scrutiny Committee

[Why is Government stalling on improving European counter-terrorism measures?](#)

15 December 2017

UK in a Changing Europe

[New report warns of danger of Brexit security 'cliff-edge'](#)

17 November 2017

Prime Minister's Office

[PM's Florence speech: a new era of cooperation and partnership between the UK and the EU](#)

Rt Hon Theresa May 22 September 2017

Guardian

[UK calls for treaty on post-Brexit security cooperation with EU](#)

18 September 2017

Times [Registration required]

[Home Office hid study warning of terror and crime risks after Brexit](#)

23 August 2017

Times [Registration required]

[Leaked document: the Home Office assessment of post-Brexit terror and crime risks](#)

23 August 2017

3. Parliamentary Business

3.1 Ministerial Statement

[Second Generation Schengen Information System](#)

The Minister for Policing and the Fire Service (Nick Hurd):

The Government have decided not to opt out of a new EU proposal for a regulation governing the use of the second generation Schengen information system (SIS II) for police and judicial co-operation purposes (“the draft police co-operation regulation”), and not to opt in to a proposal for a regulation on the use of SIS II for the return of illegally staying non-European economic area (EEA) nationals (“the draft returns regulation”).

SIS II is an EU-wide system that circulates alerts on people and objects that are of interest to law enforcement agencies across the EU. This includes people who are wanted for extradition on European arrest warrants, stolen vehicles, lost or cancelled travel documents and suspected criminals and terrorists on whom information is sought.

The proposed police co-operation regulation will replace the legislation that currently governs SIS II’s use for that purpose. The UK has participated in this aspect of SIS II since April 2015. Our law enforcement agencies benefit from this, for example by being able to detain at the border people who are wanted under European arrest warrants and to obtain intelligence from police forces across the EU on suspected criminals and security risks. The draft regulation contains a number of proposals that would update SIS II’s capabilities, for example allowing it to store a wider range of biometric data and permitting alerts to be created to protect children who are at risk of going missing. There are some changes we will seek, in particular to maintain member states’ control over when alerts are created, but the Government believe we will be in a better position to do this by not opting out and remaining full participants in the negotiation.

The proposed returns regulation would allow member states to use SIS II to circulate alerts on non-EEA nationals who have been made subject to removal decisions. Therefore, the UK will not opt in to the draft returns regulation.

The decisions announced here have no implications for our general opt out from the internal border-free zone established by Schengen.

Until the UK leaves the EU it remains a full member, and the Government will continue to consider the application of the UK’s right to opt in to, or opt out of, forthcoming EU legislation in the area of justice and home affairs on a case-by-case basis, with a view to maximising our country’s security, protecting our civil liberties and enhancing our ability to control immigration.

3.2 Debate

[Leaving the EU: Security, Law Enforcement and Criminal Justice](#)

HC Deb 18 January 2017 c955-1023

3.3 Parliamentary Questions

[Schengen Agreement: ICT](#)

Asked by: Jo Stevens

To ask the Secretary of State for the Home Department, whether she has made an assessment of the potential effect of no longer having access to the second generation Schengen Information System on her Department's ability speedily to secure the arrest and extradition of suspects who flee to the EU.

Answered by: Brandon Lewis | Home Office

We are proposing an ambitious strategic agreement with the EU that provides a comprehensive framework for our future security, law enforcement and criminal justice cooperation that delivers the capabilities our operational partners need to keep our people safe.

Our proposals are set out in "**Security, Law Enforcement and Criminal Justice – a future partnership paper**" which was published on 18 September, available on the gov.uk website at:

<https://www.gov.uk/government/publications/security-law-enforcement-and-criminal-justice-a-future-partnership-paper>.

We are confident that all parties will recognise the value of continued, practical cooperation between the UK and EU on law enforcement and national security.

However, a responsible government should prepare for all potential outcomes, including the unlikely scenario in which no mutually satisfactory agreement can be reached. That is exactly what we are doing across the whole of Government.

18 October 2017 | Written question | 105757

[Leaving the EU: Policing](#)

Oral questions

HC Deb 6 March 2017 c549-50

4. Further reading

Library papers

[Brexit: implications for national security](#), Commons Library Briefing Paper 7798, 9 April 2017

[Brexit: implications for policing and criminal justice cooperation](#), Commons Library Briefing Paper 7650, 24 February 2017

Select Committee, Government and other papers

[Proposals for European Regulations concerning the Schengen Information System](#). Letter from Nick Hurd MP, Minister of State for Policing and the Fire Service, to Chair of European Scrutiny Committee. Home Office, 1 December 2017

European Scrutiny Committee, [Enhancing law enforcement cooperation and border control: strengthening the Schengen Information System](#), HC 301-vi, 15 December 2017

European Scrutiny Committee, *Documents considered by the Committee on 13 November 2017 including the following recommendations for debate: [Enhancing law enforcement cooperation and border control: strengthening the Schengen Information System](#)*, HC 301-i, 21 November 2017

Harriet Deane and Anand Menon, [Post-Brexit law enforcement cooperation: negotiations and future options](#), UK in a Changing Europe, 17 November 2017

HM Government, [Security, law enforcement and criminal justice: a future partnership paper](#), 18 September 2017

[Enhancing law enforcement cooperation and border control: strengthening the Schengen Information System](#). Letter from Nick Hurd MP, Minister of State for Policing and the Fire Service, to Chair of European Scrutiny Committee. Home Office, 20 July 2017

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