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Press and Information

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Judgments of the Court of Justice in Case C-77/05 and Case C-137/05

United Kingdom of Great Britain and Northern Ireland v Council of the European Union

THE UNITED KINGDOM AND IRELAND MAY TAKE PART IN THE ADOPTION OF MEASURES DEVELOPING THE SCHENGEN ACQUIS ONLY TO THE EXTENT THAT THEY ALREADY TAKE PART IN THE PROVISIONS ON WHICH THE NEW MEASURE IS BASED

The Council was right to refuse to allow the United Kingdom to take part in the adoption of the Frontex Regulation and the Regulation establishing standards for security features and biometrics in passports

According to the Protocol integrating the Schengen acquis into the framework of the European Union, “Ireland and the United Kingdom of Great Britain and Northern Ireland, which are not bound by the Schengen acquis, may at any time request to take part in some or all of the provisions of this acquis”. If the United Kingdom and/or Ireland do not notify their wish to take part in the adoption of a measure to build upon the Schengen acquis, the other Member States are free to adopt the measure without the participation of those countries. A decision of 29 May 2000 lists the provisions of the Schengen acquis in which the United Kingdom is to participate, and provides that the United Kingdom is deemed irrevocably to have notified its wish to take part in all proposals and initiatives based on those provisions.

On 11 February 2004 the United Kingdom informed the Council of its intention to take part in the adoption of the regulation establishing the Frontex Agency.¹

On 19 May 2004 the United Kingdom informed the Council that it also intended to take part in the adoption of the regulation establishing standards for security features and biometrics in passports.²

Despite those notifications the United Kingdom was not allowed to take part in the adoption of those two regulations, on the ground that they constituted developments of provisions of the Schengen acquis in which that State does not take part. Both regulations were adopted without the participation of the United Kingdom.

¹ Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ 2004 L 349, p. 1).

² Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States (OJ 2004 L 385, p. 1).

Since it considered that the Council's refusal to allow it to take part in the adoption of the regulations was in breach of the Schengen Protocol, the United Kingdom brought two actions before the Court of Justice of the European Communities. Unlike the Council, the United Kingdom considers that its right to take part in the adoption of such measures is independent of whether or not it takes part in the provisions of the Schengen acquis on which the measure is based.

The Court considers that the provision in the Schengen Protocol on the participation of the United Kingdom and Ireland in existing measures and the provision making it possible for those Member States to take part in the adoption of new measures must be read together, not independently, even though they relate to two different aspects of the Schengen acquis.

It follows from the use of the words 'proposals and initiatives to build upon the Schengen acquis' in those provisions that the measures in question are based on the Schengen acquis, of which they constitute merely an implementation or further development.

Logically, such measures must be consistent with the provisions they implement or develop. The participation of a Member State in their adoption therefore presupposes that it has accepted the area of the Schengen acquis which is the context of the measure to be adopted or of which it is a development.

In those circumstances, the Court concludes that the possibility of the United Kingdom and Ireland taking part in the adoption of a new measure in connection with the Schengen acquis is applicable only to proposals and initiatives to build upon an area of the acquis in which those countries have already been authorised to take part.

In so far as it is not disputed, in the present case, that the United Kingdom has not accepted the area of the Schengen acquis which is the context of the regulations in question, the Court finds that the Council was right to refuse to allow the United Kingdom the right to take part in the adoption of those measures.

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Languages available: EN ES FR PL

The full text of the judgment may be found on the Court's internet site

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-77/05>

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-137/05>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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