



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 7 April 2005

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INFORMATION NOTE

from : Legal Service
to : Permanent Representatives Committee (part II)
Subject : **Case C-137/05 (United Kingdom of Great Britain and Northern Ireland
against Council of the European Union)**

1. By an Application entered in the Register of the Court of Justice of the European Communities on 25 March 2005, the United Kingdom has requested, pursuant to the second paragraph of Article 230 EC, that the Court annul 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, hereinafter referred to as the 'Passports Regulation'.¹
2. In a letter dated 19 May 2004, the United Kingdom notified the President of the Council of the European Union of its intention to participate in the adoption of the 'Passports Regulation'.
3. However, the Council decided that the 'Passports Regulation' constituted a development of the Schengen Acquis in which the United Kingdom did not take part. It concluded that the UK could not take part in its adoption and would not be bound by it or be subject to its application.

¹ OJ 385 of 29.12.2004, p.1

4. The United Kingdom contends that, in excluding it from the adoption of the 'Passports Regulation', the Council acted on the basis of an erroneous interpretation of the relationship between Articles 4 and 5 of the Protocol integrating the Schengen Acquis into the framework of the European Union, annexed to both the Treaty on the European Union and the Treaty on the European Community.
5. The United Kingdom also suggests that if the Council's interpretation of the relationship between these two Articles is found to be correct, its decision to exclude the United Kingdom from participation in the 'Passports Regulation' was predicated on a mistaken understanding and application of the notion of a measure developing the Schengen acquis.
6. The United Kingdom therefore argues that the decision to adopt the 'Passports Regulation' without its participation entails the infringement of an essential procedural requirement and/or the infringement of the Treaty. It considers that annulment is the appropriate remedy for these infringements. The United Kingdom has declared that, should the 'Passports Regulation' be annulled, it would not object to a decision of the Court to preserve the effects of the 'Passports Regulation' which do not exclude the United Kingdom from participation, pending the adoption of new legislation.
7. The United Kingdom has requested the Court to order that this case be joined with case 77/05, (United Kingdom v. Council), in which annulment is being sought of 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, for the purposes of the hearing.
8. By virtue of Article 40(1) of the Rules of Procedure of the Court, the Council is entitled to submit a statement of defence within one month from the date on which it received notification of the Application. The Council received the notification on 4 April 2005.
9. The Director-General of the Legal Service of the Council has appointed Mr Julian SCHUTTE, Director at the Legal Service of the Council, and Ms Giovanna GIGLIO and Mr Richard SZOSTAK, Legal Advisors in the said service, as the Council's agents in this case.