



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 20 November 2008

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INFORMATION NOTE

from : Legal Service
to : Permanent Representatives Committee (part II)
Subject : **Case C-428/08 (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 10 November 2008, the United Kingdom has requested, pursuant to Article 35 of the EU Treaty, that the Court annul Council Decision No. 2008/633/JHA of 23 June 2008 concerning access for consultation of the Visa Information System (VIS) by designated authorities of the Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences, hereinafter referred to as the 'VIS Police Access Decision'.¹
2. In a Joint Declaration made at the time of the adoption of the VIS Police Access Decision, the United Kingdom, together with Ireland, made clear that they considered they were entitled to participate in the adoption of the instrument.

¹ OJ 218 of 23.6.2008, p.129.

3. However, the Council adopted the VIS Police Access Decision acting under Title VI to the EU Treaty and classified the measure as a development of the visa area of the Schengen acquis. It therefore constituted a development of the Schengen Acquis in which the United Kingdom did not take part. The Council concluded that the United Kingdom could not take part in its adoption and would not be bound by it or be subject to its application.
4. The United Kingdom considers that, in excluding it from the adoption of the VIS Police Access Decision, the Council acted on the basis of an erroneous application of the test determining whether a measure constitutes a development of the Schengen acquis.
5. The United Kingdom contends that either the VIS Police Access Decision is a police cooperation measure adopted under Title VI to the EU Treaty and there is no obstacle to the United Kingdom's participation, or the VIS Police Access Decision builds upon the common visa policy and its correct legal basis lies in Title IV to the EC Treaty.
6. The United Kingdom therefore argues that the decision to adopt the VIS Police Access Decision 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 VIS Police Access Decision be annulled, it would not object to a decision of the Court to preserve the effects of the VIS Police Access Decision which do not exclude the United Kingdom from participation, pending the adoption of new legislation.
7. 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 17 November 2008.
8. The Director-General of the Legal Service of the Council has appointed Mr Julian SCHUTTE, Director at the Legal Service of the Council and Mr Richard SZOSTAK, Legal Advisor in the said service, as the Council's agents in this case.