JUDGMENT OF THE COURT (Grand Chamber)

18 December 2007 *

In Case C-137/05,

ACTION for annulment under Article 230 EC, brought on 21 March 2005,

United Kingdom of Great Britain and Northern Ireland, represented by C. Jackson and C. Gibbs, acting as Agents, and A. Dashwood, barrister,

applicant,

supported by:

Ireland, represented by D. O'Hagan, acting as Agent, assisted by A. Collins, SC, and P. McGarry, BL, with an address for service in Luxembourg,

* Language of the case: English.

Slovak Republic, represented by R. Procházka, J. Čorba and B. Ricziová, acting as Agents,

interveners,

v

Council of the European Union, represented by J. Schutte, R. Szostak and G. Giglio, acting as Agents,

defendant,

supported by:

Kingdom of Spain, represented by J. Rodríguez Cárcamo, acting as Agent, with an address for service in Luxembourg,

Kingdom of the Netherlands, represented by H.G. Sevenster, acting as Agent,

Commission of the European Communities, represented by C. O'Reilly, acting as Agent, with an address for service in Luxembourg,

interveners,

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas, K. Lenaerts and A. Tizzano, Presidents of Chambers, R. Schintgen (Rapporteur), J.N. Cunha Rodrigues, R. Silva de Lapuerta, J.-C. Bonichot, T. von Danwitz, A. Arabadjiev and C. Toader, Judges,

Advocate General: V. Trstenjak,
Registrar: J. Swedenborg, Administrator,

having regard to the written procedure and further to the hearing on 13 March 2007,

after hearing the Opinion of the Advocate General at the sitting on 10 July 2007,

gives the following

Judgment

1 By its application the United Kingdom of Great Britain and Northern Ireland asks the Court, first, to annul 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) and, second, to maintain

the effects of that regulation until the adoption of a new regulation to replace it, except in so far as Regulation No 2252/2004 excludes that Member State from participation in its application.

Legal context

Protocol on the position of the United Kingdom and Ireland

2 Title IV of Part Three of the EC Treaty ('Title IV') establishes the legal bases for the adoption of measures concerning visas, asylum, immigration and other policies related to free movement of persons.

3 The Protocol on the position of the United Kingdom and Ireland, annexed to the EU Treaty and the EC Treaty by the Treaty of Amsterdam ('the Protocol on Title IV'), concerns the participation of those Member States in the adoption of measures proposed pursuant to the provisions of Title IV.

4 Under Article 1 of the Protocol on Title IV, subject to Article 3 of that protocol, the United Kingdom and Ireland are not to take part in the adoption of proposed measures pursuant to Title IV, and under Article 2 of the Protocol those measures are not to be binding on or applicable in those Member States.

5 Under Article 3 of the Protocol on Title IV:

'1. The United Kingdom or Ireland may notify the President of the Council in writing, within three months after a proposal or initiative has been presented to the Council pursuant to Title IV ... that it wishes to take part in the adoption and application of any such proposed measure, whereupon that State shall be entitled to do so. ...

...

2. If after a reasonable period of time a measure referred to in paragraph 1 cannot be adopted with the United Kingdom or Ireland taking part, the Council may adopt such measure in accordance with Article 1 without the participation of the United Kingdom or Ireland. In that case Article 2 applies.'

6 Article 4 of the Protocol on Title IV confers on the United Kingdom and Ireland the right at any time to accept existing measures under Title IV. In that case the procedure provided for in Article 11(3) EC is to apply *mutatis mutandis*.

7 In accordance with Article 7 of the Protocol on Title IV, 'Articles 3 and 4 shall be without prejudice to the Protocol integrating the Schengen acquis into the framework of the European Union'.

The Protocol integrating the Schengen acquis into the framework of the European Union

8 Under Article 1 of the Protocol integrating the Schengen acquis into the framework of the European Union, annexed to the EU Treaty and the EC Treaty by the Treaty of Amsterdam ('the Schengen Protocol'), 13 Member States of the European Union are authorised to establish closer cooperation among themselves within the scope of the Schengen acquis as defined in the annex to the protocol.

9 The Schengen acquis thus defined includes the Agreement, signed in Schengen (Luxembourg) on 14 June 1985, between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ 2000 L 239, p. 13, 'the Schengen Agreement') and the Convention implementing the Schengen Agreement signed, also in Schengen, on 19 June 1990 (OJ 2000 L 239, p. 19, 'the Implementing Convention'). Those two acts together constitute the 'Schengen Agreements'.

10 Under Article 4 of the Schengen Protocol:

'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.

The Council shall decide on the request with the unanimity of its members referred to in Article 1 and of the representative of the Government of the State concerned.'

11 Article 5 of the Schengen Protocol provides:

'1. Proposals and initiatives to build upon the Schengen acquis shall be subject to the relevant provisions of the Treaties.

In this context, where either Ireland or the United Kingdom or both have not notified the President of the Council in writing within a reasonable period that they wish to take part, the authorisation referred to in Article 11 of the Treaty establishing the European Community or Article 40 of the Treaty on European Union shall be deemed to have been granted to the Member States referred to in Article 1 and to Ireland or the United Kingdom where either of them wishes to take part in the areas of cooperation in question.

2. The relevant provisions of the Treaties referred to in the first subparagraph of paragraph 1 shall apply even if the Council has not adopted the measures referred to in Article 2(1), second subparagraph.'

12 Article 8 of the Schengen Protocol provides:

'For the purposes of the negotiations for the admission of new Member States into the European Union, the Schengen acquis and further measures taken by the institutions within its scope shall be regarded as an acquis which must be accepted in full by all States candidates for admission.'

The declarations relating to the Schengen Protocol

13 In Declaration No 45 on Article 4 of the Protocol integrating the Schengen acquis into the framework of the European Union, the High Contracting Parties invite the Council to seek the opinion of the Commission of the European Communities before it decides on a request under that article. Those parties also 'undertake to make their best efforts with a view to allowing Ireland or the United Kingdom of Great Britain and Northern Ireland, if they so wish, to use the provisions of Article 4 of the said Protocol so that the Council may be in a position to take the decisions referred to in that Article upon the date of entry into force of that Protocol or at any time thereafter'.

14 According to Declaration No 46 on Article 5 of the Protocol integrating the Schengen acquis into the framework of the European Union, the High Contracting Parties 'undertake to make all efforts in order to make action among all Member States possible in the domains of the Schengen acquis, in particular whenever Ireland and the United Kingdom of Great Britain and Northern Ireland have accepted some or all of the provisions of that acquis in accordance with Article 4 of the [Schengen Protocol]'.

Decision 2000/365/EC

15 Pursuant to the second paragraph of Article 4 of the Schengen Protocol, the Council on 29 May 2000 adopted Decision 2000/365/EC concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis (OJ 2000 L 131, p. 43).

16 Article 1 of that decision lists the provisions of the Schengen acquis in which the United Kingdom is to participate.

17 Article 8(2) of the decision provides:

'From the date of adoption of this Decision the United Kingdom of Great Britain and Northern Ireland shall be deemed irrevocably to have notified the President of the Council under Article 5 of the Schengen Protocol that it wishes to take part in all proposals and initiatives which build upon the Schengen acquis referred to in Article 1. Such participation shall cover the territories referred to in Article 5(1) and (2) respectively, to the extent that the proposals and initiatives build upon the provisions of the Schengen acquis to which those territories become bound.'

Regulation No 2252/2004

18 As stated in the citations in its preamble, Regulation No 2252/2004 was adopted on the basis of Article 62(2)(a) EC.

19 Recitals 2 to 4 in the preamble to the regulation read as follows:

'(2) Minimum security standards for passports were introduced by a Resolution of the representatives of the Governments of the Member States, meeting within the Council, on 17 October 2000 ... It is now appropriate to upgrade this

Resolution by a Community measure in order to achieve enhanced harmonised security standards for passports and travel documents to protect against falsification. At the same time biometric identifiers should be integrated in the passport or travel document in order to establish a reliable link between the genuine holder and the document.

(3) The harmonisation of security features and the integration of biometric identifiers is an important step towards the use of new elements in the perspective of future developments at European level, which render the travel document more secure and establish a more reliable link between the holder and the passport and the travel document as an important contribution to ensuring that it is protected against fraudulent use. The specifications of the International Civil Aviation Organisation (ICAO), and in particular those set out in Document 9303 on machine readable travel documents, should be taken into account.

(4) This Regulation is limited to the harmonisation of the security features including biometric identifiers for the passports and travel documents of the Member States. The designation of the authorities and bodies authorised to have access to the data contained in the storage medium of documents is a matter of national legislation, subject to any relevant provisions of Community law, European Union law or international agreements.'

20 According to recitals 10 to 12 in the preamble to Regulation No 2252/2004, the regulation constitutes a development of the provisions of the Schengen acquis, with the consequence that:

— the Kingdom of Denmark, which is not taking part in the adoption of the regulation and is not bound by it or subject to its application, has a period of six months from the adoption of the regulation in which to decide whether it will implement it in its national law or not;

— Ireland and the United Kingdom are not taking part in the adoption of the regulation and are not bound by it or subject to its application.

21 Recital 11 in the preamble to Regulation No 2252/2004, relating to the United Kingdom, reads as follows:

'This Regulation constitutes a development of provisions of the Schengen acquis in which the United Kingdom does not take part, in accordance with [Decision 2000/365]. The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.'

22 Article 1 of Regulation No 2252/2004 provides:

'1. Passports and travel documents issued by Member States shall comply with the minimum security standards set out in the Annex.

2. Passports and travel documents shall include a storage medium which shall contain a facial image. Member States shall also include fingerprints in interoperable

formats. The data shall be secured and the storage medium shall have sufficient capacity and capability to guarantee the integrity, the authenticity and the confidentiality of the data.

3. This Regulation applies to passports and travel documents issued by Member States. It does not apply to identity cards issued by Member States to their nationals or to temporary passports and travel documents having a validity of 12 months or less.'

23 Article 2 of the regulation provides:

'Additional technical specifications for passports and travel documents relating to the following shall be established in accordance with the procedure referred to in Article 5(2):

(a) additional security features and requirements including enhanced anti-forgery, counterfeiting and falsification standards;

(b) technical specifications for the storage medium of the biometric features and their security, including prevention of unauthorised access;

(c) requirements for quality and common standards for the facial image and the fingerprints.'

24 Under Article 3 of Regulation No 2252/2004:

'1. In accordance with the procedure referred to in Article 5(2) it may be decided that the specifications referred to in Article 2 shall be secret and not be published. In that case, they shall be made available only to the bodies designated by the Member States as responsible for printing and to persons duly authorised by a Member State or the Commission.

2. Each Member State shall designate one body having responsibility for printing passports and travel documents. It shall communicate the name of that body to the Commission and the other Member States. The same body may be designated by two or more Member States. Each Member State shall be entitled to change its designated body. It shall inform the Commission and the other Member States accordingly.'

Facts of the dispute

25 On 18 February 2004 the Commission put before the Council a proposal for a regulation on standards for security features and biometrics in passports issued to citizens of the Union.

26 On 19 May 2004 the United Kingdom informed the Council of its intention to take part in the adoption of Regulation No 2252/2004. It referred to the notification procedure provided for in the second subparagraph of Article 5(1) of the Schengen Protocol and to the procedure mentioned in the Protocol on Title IV.

27 On 13 December 2004 the Council adopted Regulation No 2252/2004. Despite the notification of 19 May 2004 the United Kingdom was not allowed to take part in the adoption of the regulation, on the ground that it constituted a development of provisions of the Schengen acquis in which the United Kingdom does not take part, in accordance with Decision 2000/365.

28 Since it considered that the Council's refusal to allow it to take part in the adoption of Regulation No 2252/2004 constituted a breach of Article 5 of the Schengen Protocol, the United Kingdom brought the present action.

Forms or order sought by the parties

29 The United Kingdom claims that the Court should:

— annul Regulation No 2252/2004;

— determine, pursuant to Article 231 EC, that, following the annulment of Regulation No 2252/2004 and pending the adoption of new legislation in the matter, the provisions of the regulation should remain effective, except in so far as they have the effect of excluding the United Kingdom from participating in its application;

— order the Council to pay the costs.

30 The Council contends that the action should be dismissed and the United Kingdom ordered to pay the costs.

31 By order of the President of the Court of 8 September 2005, Ireland and the Slovak Republic were given leave to intervene in support of the form of order sought by the United Kingdom, and the Kingdom of Spain, the Kingdom of the Netherlands and the Commission of the European Communities were given leave to intervene in support of the form of order sought by the Council.

The action

Arguments of the parties

32 The United Kingdom's principal submission is that, in excluding it from the procedure for the adoption of Regulation No 2252/2004, the Council relied on an incorrect interpretation of the Schengen Protocol and infringed Article 5 of that protocol.

33 According to the United Kingdom, it cannot be argued that the system established by Article 5 of the Schengen Protocol is subordinate to that established by Article 4 of the Protocol. Articles 4 and 5 are independent of each other, so that the United Kingdom is not required, in order to take part in measures adopted on the basis of Article 5, previously to have been allowed under Article 4 to take part in the corresponding Schengen acquis.

34 In support of its position, the United Kingdom argues in particular that the interpretation of Articles 4 and 5 of the Schengen Protocol proposed by the Council is contradicted by the structure and language of those two provisions, infringes the very nature of the mechanism set up by Article 5, and is incompatible with Declaration No 46 on Article 5 of the Protocol integrating the Schengen acquis into the framework of the European Union.

35 That interpretation would moreover deprive Article 5 of the Schengen Protocol of its effect, which is in particular to ensure maximum participation of the United Kingdom and Ireland in measures based on the Schengen acquis, and is not necessary either to safeguard the effectiveness of Article 7 of the Protocol on Title IV or to preserve the integrity of the Schengen acquis. In any case, such an interpretation would have effects that were grossly disproportionate to the aim pursued and, since the Council, as can be seen from its current practice, has a 'loose and ill-defined' conception of what is to be understood by 'proposals and initiatives to build upon the Schengen acquis', would have the consequence that the mechanism laid down in Article 5 could operate in a way that was incompatible with the principle of legal certainty and with the fundamental principles governing enhanced cooperation.

36 The United Kingdom submits, in the alternative, that if the interpretation of Articles 4 and 5 of the Schengen Protocol put forward by the Council is correct, the words 'proposals and initiatives to build upon the Schengen acquis' in the first subparagraph of Article 5(1) of that protocol should be understood as referring only to measures inextricably connected with the Schengen acquis ('Schengen-integral' measures), such as measures amending provisions in the acquis, which the United Kingdom could not join in without first having accepted the provisions being amended. By contrast, that provision does not cover measures that are merely 'Schengen-related', namely those which, although designed to develop or complement certain objectives of the Schengen acquis, are not so intimately connected with that acquis that its integrity would be put at risk if a Member State not taking part in that acquis were nevertheless able to take part in the adoption of such measures. It

follows that, when measures in the latter category are being adopted, the position of the United Kingdom is not governed by the provisions of that protocol but, depending on the case, by those of the Protocol on Title IV or the relevant provisions of the 'third pillar'. Since Regulation No 2252/2004 must be regarded as falling within that category of measures, the United Kingdom should not have been excluded from the adoption of that regulation.

37 The Council submits, first, that the object of Article 5 of the Schengen Protocol, contrary to the United Kingdom's submissions, is not to confer a right on that State but to reassure the Member States participating in the Schengen acquis in its entirety that their actions will not be jeopardised by the reluctance of other Member States to join in those actions. The wording of the provision moreover confirms that interpretation, in that, unlike the wording of Article 4 of that protocol and Article 3 of the Protocol on Title IV, it does not explicitly recognise such a right.

38 The interpretation of Article 5(1) of the Schengen Protocol proposed by the United Kingdom would deprive the vetting procedure in Article 4 of that protocol of its effectiveness, since, where a Member State had, on the basis of that article, been refused the right to take part in the adoption of a particular measure, that State could nevertheless take part in any measure developing the area in question by making use of the procedure provided for in Article 5. The integrity of the Schengen acquis would therefore no longer be guaranteed, and Article 7 of the Protocol on Title IV, which provides that Articles 3 and 4 of that protocol are to be without prejudice to the provisions of the Schengen Protocol, would likewise be deprived of effectiveness.

39 The Council submits, second, that the distinction drawn by the United Kingdom between 'Schengen-integral' and merely 'Schengen-related' measures finds no support in either primary or secondary law. In this respect, it observes that the United Kingdom's proposed definition of 'Schengen-related' measures is based on a

misunderstanding of what could constitute a threat to the integrity of the Schengen acquis, and that the distinction in question creates unnecessary legal uncertainty in that it entails a discrepancy between what should be understood by 'measure developing the Schengen acquis' in relation to the adoption of a measure applicable to the Republic of Iceland and the Kingdom of Norway on the one hand and one applicable to the United Kingdom and Ireland on the other.

40 The Council says, third, that its position is altogether compatible with the principle of proportionality and the rules applicable to enhanced cooperation. In the first place, the authors of the Treaty are not bound by the principle of proportionality. In the second place, the provisions of the EU and EC Treaties governing enhanced cooperation are without prejudice to those of the Schengen Protocol.

41 Ireland submits that the interpretation of Articles 4 and 5 of the Schengen Protocol proposed by the United Kingdom is consistent with the wording of those articles and corresponds to the current practice of the Council relating to measures concerning the Schengen acquis in which the United Kingdom and Ireland have been allowed to take part. That interpretation is moreover supported by the declarations relating to the Schengen Protocol attached to the Final Act of the Treaty of Amsterdam. Furthermore, the Council is unable to show any actual risk of damage to the Schengen acquis if the United Kingdom were allowed to take part in the adoption of Regulation No 2252/2004.

42 According to the Slovak Republic, the right of the United Kingdom to take part in the adoption of Regulation No 2252/2004 depends on the absence of any threat to the integrity and coherence of the Schengen acquis applied so far. It is for the Council, since it has denied that right to the United Kingdom, to prove that that Member State's participation in the application of that regulation would constitute such a threat. In the present case there is no threat.

43 The Kingdom of Spain submits that the United Kingdom's action is unfounded. First, the United Kingdom's principal claim is based on the conferral on that State by an article of the Schengen Protocol of a hypothetical right which the protocol does not grant. The interpretation put forward by the United Kingdom would entail a certain risk to the measures already adopted as a result of the closer cooperation established by that protocol, in that it would jeopardise the integrity and coherence of the Schengen acquis. Second, the United Kingdom's alternative claim disregards the fact that it is for the Council to determine which measures are to be regarded as measures to build upon the Schengen acquis, and it is not for a Member State which is not party to the Schengen Agreements to perform that determination.

44 The Kingdom of the Netherlands submits that the Schengen Protocol takes account of the particular situation of United Kingdom and Ireland with respect to the Schengen acquis by providing in Article 4 for it to be possible for those Member States to take part in that acquis in future, and by ensuring by means of the second subparagraph of Article 5(1) that that participation cannot later give rise to stagnation in the development of the acquis. As it cannot be validly argued that the participation, pursuant to the latter provision, of the United Kingdom or Ireland in a measure developing the Schengen acquis is subject to a less onerous procedure than that provided for in Article 4 of the protocol governing the participation of those two Member States in the provisions of the acquis itself, the second subparagraph of Article 5(1) should be interpreted as proposed by the Council.

45 The Commission states that the principal characteristic of closer cooperation in general and the Schengen acquis in particular is its integrity. The preservation and protection of that integrity and the coherence of the Schengen acquis are therefore essential concerns. The Schengen Protocol indeed contemplates partial participation by a Member State that is not party to the Schengen Agreements, but does not go so far as to provide for a system of 'pick and choose' by the Member States concerned, resulting in a patchwork of participation and obligations.

46 According to the Commission, the interpretation of Articles 4 and 5 of the Schengen Protocol put forward by the United Kingdom is contrary to the scheme and logic of that protocol and may harm the coherence and integrity of the Schengen acquis.

47 It submits, moreover, that the words 'to build upon the Schengen acquis' in the first subparagraph of Article 5(1) of the Schengen Protocol do not refer to a 'loose and ill-defined' conception of measures which can be adopted by the Member States taking part in an enhanced cooperation initiative, while a decision to classify a proposal as a measure 'to build upon the Schengen acquis' is not very different from a decision as to the proper legal basis for the adoption of a Community measure.

48 Finally, with respect to Regulation No 2252/2004, the Commission points out that its objective is to make passports more secure and to establish a more reliable link between passports and their holders by harmonising their security features and introducing biometric identifiers. That objective is closely connected with the control of external borders, the reinforcement of which is at the very heart of the cooperation established by the Schengen Agreements. The regulation falls into that logic since it enables external border controls to be harmonised and made more effective.

Findings of the Court

49 In order to decide on the United Kingdom's principal argument, the Court must examine whether the second subparagraph of Article 5(1) of the Schengen Protocol must be interpreted as applicable only to proposals and initiatives to build upon an area of the Schengen acquis in which the United Kingdom and/or Ireland have been

allowed to take part pursuant to Article 4 of that protocol, or whether those two provisions must, on the contrary, as the United Kingdom submits, be regarded as independent of each other.

50 On this point, it must be stated that, as is apparent from paragraph 68 of today's judgment in Case C-77/05 *United Kingdom* v *Council* [2007] ECR I-11459, the second subparagraph of Article 5(1) of the Schengen Protocol must be interpreted as being applicable only to proposals and initiatives to build upon an area of the Schengen acquis which the United Kingdom and/or Ireland have been authorised to take part in pursuant to Article 4 of that protocol.

51 It follows that the United Kingdom's principal argument in support of its action for annulment must be rejected as unfounded.

52 As regards the United Kingdom's alternative argument, it should be observed, to begin with, that the distinction drawn by that Member State between what it calls 'Schengen-integral' measures and what it regards as merely 'Schengen-related' measures has no basis either in the EU and EC Treaties or in secondary Community law.

53 It should be observed, next, that although the United Kingdom contests the classification performed by the Council, it admits itself that Regulation No 2252/2004 is linked with the provisions of the Schengen acquis, since it considers that it is none the less a 'Schengen-related' measure.

54 Despite those considerations and the fact that in the present case the Council's allegedly incorrect classification is not directly linked to the choice of legal basis for the adoption of Regulation No 2252/2004, namely Article 62(2)(a) EC, it must be stated that, like the choice of the legal basis of a Community act, the classification by the Council of Regulation No 2252/2004 as a measure developing the provisions of the Schengen acquis had a direct effect on the determination of the provisions governing the procedure for the adoption of that regulation, and consequently also on the possibility of the United Kingdom being able to take part in that procedure.

55 In so far as the exercise by the United Kingdom of the option to take part in the adoption of a proposal presented pursuant to the provisions of Title IV is not, in accordance with Article 3(1) of the Protocol on Title IV, subject to compliance with any condition other than the notification period laid down by that provision, the classification of Regulation No 2252/2004 as a measure developing provisions of the Schengen acquis had a direct effect on the rights of that Member State.

56 Consequently, and by analogy with what applies in relation to the choice of the legal basis of a Community act, it must be concluded that in a situation such as that at issue in the present case the classification of a Community act as a proposal or initiative to build upon the Schengen acquis within the meaning of the first subparagraph of Article 5(1) of the Schengen Protocol must rest on objective factors which are amenable to judicial review, including in particular the aim and the content of the act (see Case C-300/89 *Commission* v *Council* [1991] ECR I-2867 ('*Titanium dioxide*'), paragraph 10; Case C-176/03 *Commission* v *Council* [2005] ECR I-7879, paragraph 45; and Case C-440/05 *Commission* v *Council* [2007] ECR I-9097, paragraph 61).

57 It is in the light of those considerations that it must be examined whether, as the United Kingdom submits, the Council was wrong to classify Regulation No 2252/2004 as a measure developing provisions of the Schengen acquis.

58 As to the purpose of Regulation No 2252/2004, it is apparent from recitals 2 and 3 in the preamble and from Article 4(3) that it was intended to combat falsification and fraudulent use of passports and other travel documents issued by the Member States.

59 To achieve that objective, Regulation No 2252/2004, as is apparent from Articles 1 and 2, harmonises and improves the minimum security standards with which passports and travel documents issued by the Member States must comply, and provides for a number of biometric features relating to the holders of such documents to be inserted in those documents.

60 In that connection, it should be recalled that, as the Court held in paragraph 84 of its judgment of today's date in Case C-77/05 *United Kingdom* v *Council*, checks on persons at the external borders of the Member States and consequently the effective implementation of the common rules on standards and procedures for those checks must be regarded as constituting elements of the Schengen acquis.

61 In accordance with the provisions of Article 6(2)(b) and (c) of the Implementing Convention, which establishes the uniform principles governing checks at the external borders of the Member States, all persons must undergo at least one check in order to establish their identities on the basis of the production or presentation of their travel documents, and, if appropriate, they must be subject to a thorough check to detect and prevent threats to the national security and public policy of the Member States signatories to the Implementing Convention.

62 The detailed rules for the checks laid down by the Implementing Convention are determined in the Common Manual adopted by the Executive Committee established by the Implementing Convention (OJ 2002 C 313, p. 97), which forms part of the Schengen acquis as referred to in Article 1 of the Schengen Protocol.

63 In Part II of the Common Manual, 'Border checks', point 1.3.1 provides that the minimum check referred to in Article 6(2)(b) of the Implementing Convention is to consist of an identity check on the basis of the travel documents produced or presented and of a rapid and straightforward verification of the validity of the document authorising the holder to cross the border and of the presence of signs of falsification or counterfeiting.

64 According to point 1.3.2.1 of that part of the Common Manual, concerning the detailed rules for the thorough check referred to in Article 6(2)(c) of the Implementing Convention, that check includes a detailed examination of the validity and authenticity of the travel document presented when crossing the border.

65 In so far as the verification of the authenticity of passports and other travel documents thus constitutes the main element of checks on persons at external borders, measures which make it possible to establish that authenticity and the identity of the holder of the document in question more easily and more reliably must be regarded as capable of guaranteeing and improving the effectiveness of those checks and thereby of the integrated management of external borders established by the Schengen acquis.

66 In view of the purpose and content of Regulation No 2252/2204, as analysed in paragraphs 58 and 59 above, it must be concluded that that regulation must be regarded as constituting a measure to build upon the Schengen acquis within the meaning of the first subparagraph of Article 5(1) of the Schengen Protocol.

67 In those circumstances, the Council was right to classify Regulation No 2252/2004 as a measure developing the provisions of the Schengen acquis.

68 It follows that the United Kingdom's alternative argument cannot be accepted either.

69 Accordingly, the United Kingdom's claim for the annulment of Regulation No 2252/2004 cannot be upheld, and there is consequently no need for the Court to rule on that Member State's application concerning the maintenance of the effects of the regulation.

70 The action brought by the United Kingdom must therefore be dismissed.

Costs

71 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs, if they have been applied for in the successful party's pleadings. Since the Council has applied for costs and the United Kingdom has been unsuccessful, the United Kingdom must be ordered to pay the costs. Under the first subparagraph of Article 69(4) of the Rules of Procedure, the Member States and institutions which have intervened in the proceedings must bear their own costs.

On those grounds, the Court (Grand Chamber) hereby:

1. **Dismisses the action;**

2. **Orders the United Kingdom of Great Britain and Northern Ireland to pay the costs;**

3. **Orders the Kingdom of Spain, Ireland, the Kingdom of the Netherlands, the Slovak Republic and the Commission of the European Communities to bear their own costs.**

[Signatures]