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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES  
COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES  
CÚIRT BHREITHIÚNAIS NA gCÓMHPHOBAL EORPACH  
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HOF VAN JUSTITIE VAN DE EUROPESE GEMEENSCHAPPEN  
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Press and Information

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Judgment of the Court in Case C-257/01

*Commission of the European Communities v Council of the European Union*

**THE COURT OF JUSTICE ADJUDICATES FOR THE FIRST TIME ON THE  
EUROPEAN INSTITUTIONS' IMPLEMENTING POWERS IN THE CONTEXT OF  
IMPLEMENTATION OF THE SCHENGEN AGREEMENT**

*The Court dismisses the Commission's action and approves the implementing powers which the Council had reserved to itself, on a transitional basis, in respect of the examination of visa applications and border control*

The Convention Implementing the Schengen Agreement, signed in 1990, contains rules relating to the *crossing of external borders* and to *visas*. The arrangements implementing those rules – detailed normative provisions and practical instructions – were prescribed by the Common Manual (CM) and the Common Consular Instructions (CCI) respectively.

Following the Treaty of Amsterdam's integration of the Schengen *acquis* into the legal and institutional framework of the European Union, the Council, in 2001, adopted two regulations<sup>1</sup>, by which, in reserving the right to exercise implementing powers itself in relation to visa applications and border surveillance, it departed from the ordinary system under which the Commission is responsible for implementing the Council's basic instruments.

Two types of procedure are thereby established for the implementation and updating of the CM and the CCI: First, certain provisions may be amended by the Council acting unanimously; second, Member States may communicate to the Council such amendments as they wish to make to other provisions.

The European Commission sought annulment of those two regulations.

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<sup>1</sup> Council Regulation (EC) No 789/2001 of 24 April 2001 reserving to the Council implementing powers with regard to certain detailed provisions and practical procedures for examining visa applications (OJ 2001 L 116, p. 2), and Council Regulation (EC) No 790/2001 of 24 April 2001 reserving to the Council implementing powers with regard to certain detailed provisions and practical procedures for carrying out border checks and surveillance (OJ 2001 L 116, p. 5).

### ***Reservation of power to the Council***

The Commission claimed, first, that the Council had not established that the nature of the implementing measures provided for by the regulations could justify the exercise by the Council of implementing powers.

The Court observed that under the system established by the Treaty<sup>2</sup>, it is the Commission which, in the normal course of events, is responsible for exercising implementing powers under a basic instrument. The Council may exceptionally reserve the right to exercise implementing powers directly, *in specific cases*, and it must state in detail the grounds for such a decision by reference to the nature and content of the basic instrument to be implemented or amended.

The Court stated that the preambles to the contested regulations explained the Council's reservation of power. Assessed in their specific context, they showed clearly the grounds justifying the reservation of powers to the Council and allowed the Court to exercise its power of review.

Prior to the entry into force of the Treaty of Amsterdam (1999), visa policy and border policy were excluded in their entirety from the European Community's competence. The Member States, which did not wish to confer on the Commission a sole right of initiative in this area at the outset, decided that, during a five-year transitional period, the Council would, as a general rule, act unanimously on a proposal from the Commission or on the initiative of a Member State and after consulting the European Parliament.

Furthermore, the provisions of the CCI and the CM in respect of which the Council reserved the right to exercise implementing powers themselves concern clearly circumscribed matters and do not deal with all aspects of visas and border control.

The Council thus rightly took the view that it was concerned with a specific case and duly stated the reasons for its decision to reserve to itself, on a transitional basis, power to implement a series of provisions exhaustively listed in the CCI and the CM.

### ***Implementing powers conferred on the Member States***

Second, the Commission claimed that the Council only had the alternative of either reserving the right to exercise implementing powers itself or of conferring them on the Commission; however, it could not authorise the Member States to amend or update certain parts of the CCI and the CM – in particular the list of documents valid as residents permits and the list of cases in which visa applications are subject to consultation with the central authorities.

The Court stated that the amendments which the Member States are authorised to make to certain provisions of the CCI and the CM (unilaterally or in collaboration with the other Member States), pertained to a mechanism for exchanging information of a factual nature which they alone possess.

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<sup>2</sup> See the third indent of Article 202 EC and the "second comitology decision": Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ 1999 L 184, p. 23).

The Court held that, in that quite specific and transitional context (prior to the evolution of the Schengen *acquis* within the legal and institutional context of the European Union), no objection could be made to the Council having established a procedure for the transmission by the Member States of amendments which they were authorised to make, unless it was established that the procedure was such as to prejudice the effective or correct implementation of the CCI or the CM: the Commission had not established that that was the case here.

Nor had the Commission established that it was necessary, when the CCI refer to national law and practice, to use a uniform procedure.

Having regard to all those considerations, the Court dismissed the Commission's action.

*Unofficial document, for media use only, not binding on the Court of Justice.*

*Languages available: Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish, Swedish.*

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

*<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>*

*It can usually be consulted after midday (CET) on the day of delivery.*

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