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ECLI:EU:C:2016:715

JUDGMENT OF THE COURT (Third Chamber)

22 September 2016 (*)

(Actions for annulment — Police and judicial cooperation in criminal matters — Automated data exchange — Registration of vehicles — Dactyloscopic data — Legal framework applicable following the entry into force of the Treaty of Lisbon — Transitional provisions — Secondary legal basis — Distinction between legislative acts and implementing measures — Consultation of the European Parliament — Initiative of a Member State or of the European Commission — Voting rules)

In Joined Cases C-14/15 and C-116/15,

ACTIONS for annulment under Article 263 TFEU, brought on 14 January 2015 and 6 March 2015 respectively,

European Parliament, represented by F. Drexler, A. Caiola and M. Pencheva, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Council of the European Union, represented by M.-M. Joséphidès, K. Michoel and K. Pleśniak, acting as Agents,

defendant,

supported by

Federal Republic of Germany, represented by T. Henze and A. Lippstreu, acting as Agents,

and

Kingdom of Sweden, represented by A. Falk, C. Meyer-Seitz, U. Persson, N. Otte Widgren, E. Karlsson and L. Swedenborg, acting as Agents,

interveners,

THE COURT (Third Chamber),

composed of L. Bay Larsen (Rapporteur), President of the Chamber, D. Šváby, J. Malenovský, M. Safjan and M. Vilaras, Judges,

Advocate General: N. Wahl,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 7 June 2016,

gives the following

Judgment

1 By its applications in Cases C-14/15 and C-116/15, the European Parliament seeks the annulment, in the first case, of Council Decision 2014/731/EU of 9 October 2014 on the launch of automated data exchange with regard to Vehicle Registration Data (VRD) in Malta (OJ 2014 L 302, p. 56), Council Decision 2014/743/EU of 21 October 2014 on the launch of automated data exchange with regard to vehicle registration data (VRD) in Cyprus (OJ 2014 L 308, p. 100) and of Council Decision 2014/744/EU of 21 October 2014, on the launch of automated data exchange with regard to Vehicle Registration Data (VRD) in Estonia (OJ 2014 L 308, p. 102) and, in the second case, of Council Decision 2014/911/EU of 4 December 2014 on the launch of automated data exchange with regard to dactyloscopic data in Latvia (OJ 2014 L 360, p. 28) (together, ‘the contested decisions’).

Legal context

The Prüm Treaty

2 Article 34(2) of the Treaty between the Kingdom of Belgium, the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands and the Republic of Austria on the stepping up of cross-border cooperation, particularly in combating terrorism, cross-border crime and illegal migration, signed in Prüm (Germany) on 27 May 2005 (‘the Prüm Treaty’), is worded as follows:

‘The supply of personal data provided for under this Convention may not take place until the provisions of this chapter have entered into force in the national law of the territories of the Contracting Parties involved in such supply. The Committee of Ministers shall decide in accordance with Article 43 whether the conditions have been met.’

3 Article 43(1) of that Treaty provides:

‘The Contracting Parties shall set up a Committee made up of ministers from the Contracting Parties. The Committee of Ministers shall take the necessary decisions on the implementation and application of this Convention. Decisions of the Committee of Ministers shall be taken by all Contracting Parties on the basis of unanimity.’

EU law

Council Decision 2008/615/JHA

4 Recital 1 of Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (OJ 2008 L 210, p. 1), is worded as follows:

‘Following the entry into force of [the Prüm Treaty] this initiative is submitted ... with the aim of incorporating the substance of the provisions of the Prüm Treaty into the legal framework of the European Union.’

5 Article 1 of that decision provides:

‘By means of this Decision, the Member States intend to step up cross-border cooperation in matters covered by Title VI of the [EU] Treaty, particularly the exchange of information between authorities responsible for the prevention and investigation of criminal offences. To this end, this Decision contains rules in the following areas:

(a) provisions on the conditions and procedure for the automated transfer of DNA profiles, dactyloscopic data and certain national vehicle registration data (Chapter 2);

...’

6 Chapter 6 of Decision 2008/615 contains general provisions on data protection in the context of the exchange of information provided for by that decision.

7 Paragraphs (2) and (3) of Article 25 of Decision 2008/615, which features in Chapter 6, provide as follows:

‘2. The supply of personal data provided for under this Decision may not take place until the provisions of this Chapter have been implemented in the national law of the territories of the Member States involved in such supply. The Council shall unanimously decide whether this condition has been met.’

3. Paragraph 2 shall not apply to those Member States where the supply of personal data as provided for in this Decision has already started pursuant to the [Prüm Treaty].’

8 Article 33 of that decision, entitled ‘Implementing measures’, provides that the Council, acting by a qualified majority and after consulting the Parliament, must adopt the measures necessary to implement that decision at the level of the Union.

Council Decision 2008/616/JHA

9 Article 20 of Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615 (OJ 2008 L 210, p. 12), is worded as follows:

‘1. The Council shall take a decision as referred to in Article 25(2) of Decision [2008/615] on the basis of an evaluation report which shall be based on a questionnaire.

2. With respect to the automated data exchange in accordance with Chapter 2 of Decision [2008/615], the evaluation report shall also be based on an evaluation visit and a pilot run that shall be carried out when the Member State concerned has informed the General Secretariat in accordance with the first sentence of Article 36(2) of Decision [2008/615].

3. Further details of the procedure are set out in Chapter 4 of the Annex to this Decision.’

The contested decisions

10 The contested decisions, which refer, first, to Decision 2008/615, in particular Article 25 thereof, and, second, to Decision 2008/616, in particular Article 20 thereof and Chapter 4 of its annex, state as follows in their recitals 1 to 3:

‘(1) According to the Protocol on Transitional Provisions annexed to the [EU Treaty], to the [TFEU] and to the [EAEC Treaty], the legal effects of the acts of the institutions, bodies, offices and agencies of the Union adopted prior to the entry into force of the Treaty of Lisbon are preserved until those acts are repealed, annulled or amended in implementation of the Treaties.

(2) Accordingly, Article 25 of Decision [2008/615] is applicable and the Council must unanimously decide whether the Member States have implemented the provisions of Chapter 6 of that Decision.

(3) Article 20 of Decision [2008/616] provides that decisions referred to in Article 25(2) of Decision [2008/615] are to be taken on the basis of an evaluation report based on a questionnaire. With respect to automated data exchange in accordance with Chapter 2 of Decision [2008/615], the evaluation report is to be based on an evaluation visit and a pilot run.’

11 Article 1 of Decision 2014/731 provides:

‘For the purposes of automated searching of vehicle registration data (VRD), Malta has fully implemented the general provisions on data protection of Chapter 6 of Decision [2008/615] and is entitled to receive and supply personal data pursuant to Article 12 of that Decision as from the day of the entry into force of this Decision.’

12 Article 1 of Decision 2014/743 is worded as follows:

‘For the purposes of automated searching of vehicle registration data (VRD), Cyprus has fully implemented the general provisions on data protection of Chapter 6 of Decision [2008/615] and is entitled to receive and supply personal data pursuant to Article 12 of that Decision as from the day of the entry into force of this Decision.’

13 Article 1 of Decision 2014/744 provides:

‘For the purposes of automated searching of vehicle registration data (VRD), Estonia has fully implemented the general provisions on data protection of Chapter 6 of Decision [2008/615] and is entitled to receive and supply personal data pursuant to Article 12 of that Decision as from the day of the entry into force of this Decision.’

14 Article 1 of Decision 2014/911 is worded as follows:

‘For the purposes of automated searching of dactyloscopic data, Latvia has fully implemented the general provisions on data protection of Chapter 6 of Decision [2008/615] and is entitled to receive and supply personal data pursuant to Article 9 of that Decision as from the day of the entry into force of this Decision.’

Procedure before the Court and forms of order sought by the parties

15 The Parliament claims that the Court should:

- annul the contested decisions; and
- order the Council to pay the costs.

16 The Council claims that the Court should:

- dismiss the actions as unfounded as regards the first plea in law and as regards the first limb and the first two parts of the second limb of the second plea in law, the Council leaving the third part of the second limb of the second plea in law to the discretion of the Court;
- in the alternative, should the Court annul the contested decisions, maintain their effects until they are replaced by new acts, and

– order the Parliament to pay the costs.

17 By decision of the President of the Court of 8 April 2015, Cases C-14/15 and C-116/15 were joined for the purposes of the written and oral procedure and the judgment.

18 By decisions of the President of the Court of 24 June 2015, the Federal Republic of Germany and the Kingdom of Sweden were granted leave to intervene in support of the form of order sought by the Council in Cases C-14/15 and C-116/15. The Federal Republic of Germany has not, however, taken part in any stage of the present proceedings.

The action

19 The Parliament raises two pleas in law in support of its actions alleging, first, the choice of a wrong or unlawful legal basis for the contested decisions and, second, breach of essential procedural requirements when those decisions were adopted.

The first plea in law, alleging the choice of a wrong or unlawful legal basis

Arguments of the parties

20 By way of introduction, the Parliament submits that Article 9 of Protocol (No 36) on Transitional Provisions (‘Protocol on transitional provisions’), concerning acts adopted on the basis of the EU Treaty before the entry into force of the Treaty of Lisbon, must be interpreted as meaning that it maintains only the substantive effects of the former ‘third pillar’ acts and not the decision-making procedures to which those acts refer. Consequently, in its view, those procedures can no longer be used when they no longer feature in the Treaties.

21 The Parliament notes that the contested decisions are based on Article 25(2) of Decision 2008/615 and submits that that provision must be interpreted as laying down a procedure for the adoption of legislative acts.

22 It submits, in this respect, that at the time when that decision was adopted, Article 34(2)(c) EU laid down two separate procedures for the adoption of legislative acts and implementing measures and that only the procedure for legislative acts required a unanimous decision by the Council, such as that required by Article 25(2) of Decision 2008/615. Furthermore, the adoption of measures to implement that decision is specifically governed by Article 33 thereof, which means that measures adopted on the basis of another provision of Decision 2008/615 could not be classified as ‘implementing measures’. Finally, whilst, following the lodging of the Parliament’s action leading to the judgment of 16 April 2015, *Parliament v Council* (C-317/13 and C-679/13, EU:C:2015:223), the Council added the word ‘implementing’ to the title of the various decisions adopted on the basis of acts under the former ‘third pillar’, that institution did not make a similar amendment to the titles of the contested decisions.

23 Inasmuch as the EU legislature is never required to delegate or to confer its powers, a given act could, in the Parliament's view, sometimes be adopted as a legislative act or as an implementing measure depending on the choice made by that legislature.

24 Consequently, the contested decisions should be regarded as legislative acts and should therefore have been founded on the same legal bases as Decision 2008/615, as amended by the Treaty of Lisbon, namely Article 82(1)(d) and Article 87(2)(a) TFEU.

25 In the alternative, the Parliament submits that, even if the Court were to hold that Articles 82 and 87 TFEU are not the appropriate legal bases for the adoption of the contested decisions, those decisions should nevertheless be annulled due to the unlawfulness, *ab initio*, of Article 25(2) of Decision 2008/615, which the Council chose as the legal basis.

26 In that regard, the Parliament contends that Article 25(2) of Decision 2008/615 creates a secondary legal basis which eases the detailed rules for the adoption of a legislative act in the context concerned since it requires neither the prior initiative of a Member State or of the Commission nor consultation of the Parliament, whereas those elements were required by Article 34(2)(c) EU, which was applicable at the time when Decision 2008/615 was adopted.

27 Furthermore, if the Court were to take the view that the contested decisions were implementing measures, the procedure laid down in Article 25(2) of Decision 2008/615 diverges, in its view, from the EU Treaty not only in respect of the arrangements relating to initiative and the lack of consultation of the Parliament, but also in requiring a unanimous decision by the Council instead of a decision by that institution adopted by a qualified majority.

28 The Council takes the view that Article 25(2) of Decision 2008/615 establishes a reservation of the power of implementation in its favour. The contested decisions, it submits, are therefore truly implementing measures and not legislative acts.

29 The Council submits, in this regard, that the Parliament's argument that the fact that that article requires a unanimous vote indicates that it is intended to cover the adoption of legislative acts, misconstrues the case-law of the Court according to which it is the legal basis that determines the procedure to be followed, and not the reverse.

30 Furthermore, from the wording used in Article 25(2) of Decision 2008/615, the general scheme of that decision and the fact that the acts adopted on the basis of that provision are devoid of autonomous objectives, it can be established that those acts are measures which implement that decision.

31 As regards the alleged unlawfulness of Article 25(2) of Decision 2008/615, the Council submits that it follows from the judgments of 16 April 2015, *Parliament v Council* (C-317/13 and C-679/13, EU:C:2015:223) and of 16 April 2015, *Parliament v Council* (C-540/13, EU:C:2015:224) that the divergence between the procedures laid

down by that provision and the Treaties cannot mean that that provision is unlawful, since a consistent interpretation must rather have been intended.

32 As regards, more specifically, the requirement of a unanimous vote, the Council considers that the Parliament's argument is based on a misunderstanding arising from the unfortunate drafting of Article 25(2) of Decision 2008/615.

33 Thus, whilst a unanimous decision of the Council would usually be laid down by reference to 'the adoption of a decision by the Council voting unanimously', that provision uses the more ambiguous phrase 'unanimously decide'.

34 In that context, the Council considers, on the basis of the general scheme of Decision 2008/615 and the wording which it uses, that the procedure at issue is in fact made up of two stages. In the first stage, the Council must make a factual finding that the condition referred to in Article 25(2) of the decision, which requires a range of explicit or tacit agreements between all the Member States, has been met. That stage is necessary due to the real need to ensure the integrity and security of the system of data exchange between Member States. In the second stage, the Council takes a decision, by qualified majority, setting a date for the start of supplies.

35 A similar system, characterised by the combination of a stage at which the proper functioning of a given network is verified consensually and a stage at which the Council makes a formal decision following that verification, governs, in its view, the adoption of various legal instruments.

36 As regards Decision 2008/615, according to the Council, the EU legislature, due to the historical context of the adoption of that decision, namely the integration of the mechanism laid down by the Prüm Treaty into the EU's legal framework, did not sufficiently distinguish between the two stages of the procedure at issue, by translating the consensus in the first stage and the qualified majority in the second stage into one single requirement, that of unanimity as regards the preliminary consensual stage.

Findings of the Court

37 First of all, it must be held that it is clear from the text of the contested decisions that they are based on Article 25 of Decision 2008/615 and on Article 20 of Decision 2008/616 (see, by analogy, the judgments of 16 April 2015, *Parliament v Council*, C-317/13 and C-679/13, EU:C:2015:223, paragraphs 28 to 31, and of 10 September 2015, *Parliament v Council*, C-363/14, EU:C:2015:579, paragraphs 23 to 26), the latter article, moreover, merely specifying the conditions governing the adoption of the decisions referred to in Article 25 of Decision 2008/615.

38 According to settled case-law of the Court, the choice of legal basis for an EU measure must rest on objective factors that are amenable to judicial review; these include the aim and content of that measure (judgment of 6 May 2014, *Commission v Parliament and Council*, C-43/12, EU:C:2014:298, paragraph 29 and the case-law cited).

39 The parties do not disagree as to the relationship between Article 25(2) of Decision 2008/615 and the aim or content of the contested decisions.

40 The Parliament submits, however, first, that, following the entry into force of the Treaty of Lisbon, that provision can no longer serve as the legal basis for the adoption of new acts and, second, that it is, in any event, unlawful.

41 As regards the Parliament's argument that the procedure set out in Article 25(2) of Decision 2008/615 could no longer be applied after the Treaty of Lisbon had entered into force, it must be recalled that the Protocol on transitional provisions includes provisions dealing specifically with the legal rules applicable, after that Treaty had entered into force, to acts adopted on the basis of the EU Treaty before that date (judgment of 10 September 2015, *Parliament v Council*, C-363/14, EU:C:2015:579, paragraph 68 and the case-law cited).

42 Article 9 of that protocol thus provides that the legal effects of such acts are to be preserved until those acts are repealed, annulled or amended in implementation of the Treaties.

43 The Court has held that that article must be interpreted as meaning that a provision of an act duly adopted on the basis of the EU Treaty before the entry into force of the Treaty of Lisbon, which lays down detailed rules for the adoption of other measures, continues to produce its legal effects until it is repealed, annulled or amended, and permits the adoption of those measures in accordance with the procedure which it defines (see, to that effect, judgments of 16 April 2015, *Parliament v Council*, C-540/13, EU:C:2015:224, paragraph 47, and of 10 September 2015, *Parliament v Council*, C-363/14, EU:C:2015:579, paragraph 70).

44 It follows that the entry into force of the Treaty of Lisbon does not, in itself, preclude the adoption of acts, such as the contested decisions, under the procedure defined in Article 25 of Decision 2008/615. Consequently, the Parliament's argument that such acts must necessarily be based on Article 82(1)(d) and Article 87(2)(a) TFEU cannot succeed.

45 Accordingly, the first plea in law relied on by the Parliament in support of its actions may be upheld only if it is established that Article 25(2) of Decision 2008/615 is unlawful.

46 The Parliament submits that that is in fact the case, because it is clear from that article that the detailed rules for adoption that it lays down for measures such as the contested decisions differ from those flowing from the procedure laid down for that purpose by the Treaties.

47 According to the Court's case-law, as the rules regarding the manner in which the EU institutions arrive at their decisions are laid down in the Treaties and are not within the discretion of the Member States or of the institutions themselves, the Treaties alone

may, in particular cases, empower an institution to amend a decision-making procedure established by the Treaties. Accordingly, to acknowledge that an institution can establish secondary legal bases for the adoption of legislative acts or implementing measures, whether for the purpose of strengthening or easing the detailed rules for the adoption of an act, is tantamount to according that institution a legislative power which exceeds that provided for by the Treaties (judgment of 10 September 2015, *Parliament v Council*, C-363/14, EU:C:2015:579, paragraph 43 and the case-law cited).

48 In that regard, since the lawfulness of an EU act must be assessed on the basis of the facts and the law as they stood at the time when the act was adopted, the lawfulness of Article 25(2) of Decision 2008/615 must be assessed in the light of the provisions which governed the adoption of measures, such as the contested decisions, at the time when that decision was adopted, namely Article 34(2)(c) and Article 39(1) EU (see, to that effect, judgments of 16 April 2015, *Parliament v Council*, C-540/13, EU:C:2015:224, paragraph 35, and of 10 September 2015, *Parliament v Council*, C-363/14, EU:C:2015:579, paragraph 59).

49 It follows from those provisions that the Council, voting unanimously on the initiative of any Member State or of the Commission, may adopt legislative acts with any aim that is consistent with those of Title VI of the EU Treaty, with the exception, however, of the areas referred to in Article 34(2)(a) and (b) EU, and, voting by majority, may adopt the measures necessary for the implementation of those acts at EU level (see, to that effect, judgment of 10 September 2015, *Parliament v Council*, C-363/14, EU:C:2015:579, paragraphs 60 to 66). In both cases, those measures can be adopted only after the Parliament has been consulted (see, to that effect, judgment of 16 April 2015, *Parliament v Council*, C-540/13, EU:C:2015:224, paragraph 36).

50 It follows from the foregoing that the procedure established by primary law, to which the procedure laid down in Article 25(2) of Decision 2008/615 must correspond, will differ depending on whether the acts adopted pursuant to that provision are to be regarded as legislative acts or as implementing measures.

51 In that context, it must be noted that the Parliament does not dispute the fact that the EU legislature had the option of providing for the adoption of acts such as the contested decisions as implementing measures. However, it submits that the legislature chose not to exercise that option and that, on the contrary, it decided to reserve to itself the power to adopt such acts.

52 Therefore, contrary to the Council's submissions, that argument advanced by the Parliament cannot be rejected merely because it is established, if that were the case, that it follows from the aim and content of the acts referred to in Article 25(2) of Decision 2008/615 that the adoption of those acts may be delegated to an implementing authority, inasmuch as those acts do not establish the essential elements of basic legislation, the adoption of which requires a political decision involving, exclusively, responsibilities vested in the EU legislature.

53 The dispute between the parties relates not to that point but rather to the question whether, in adopting Article 25(2) of Decision 2008/615, the EU legislature decided to confer on the Council a secondary legislative power or a mere implementing power.

54 In that regard, it must be observed that the provision does not expressly classify the acts that it allows to be adopted.

55 Nevertheless, it is clear from the wording of that provision that the act adopted by the Council in that context seeks solely to ensure that Chapter 6 of Decision 2008/615, which lays down general provisions on data protection, was in fact implemented in the territory of a Member State for the purpose of allowing the supply to that Member State of personal data provided for by that decision.

56 It follows that both the conditions for the adoption of that act and the effects of that act indicate that the EU legislature intended strictly to limit the aim of that act to the implementation of the framework established by Decision 2008/615, without conferring on the Council the task of making significant political choices when adopting that act.

57 This finding is supported by the context in which Article 25(2) of Decision 2008/615 is set, which must be taken into account for the purpose of interpreting that provision (see, to that effect, judgment of 18 December 2014, *M'Bodj*, C-542/13, EU:C:2014:2452, paragraph 34).

58 Thus, that provision appears in a chapter of that decision which has as its purpose the specification of the conditions allowing the application, in Member States other than those referred to in Article 25(3) thereof, of the information-exchange mechanisms established by that decision.

59 It is also important to point out that it follows from Article 20 of Decision 2008/616 and from Chapter 4 of the annex thereto, to which that article refers, that acts such as the contested decisions must be adopted after an evaluation procedure, which is essentially technical, carried out by a Council working group and a team of experts.

60 Those various elements, together with the absence, in Decision 2008/615, of any reference to the adoption of a legislative act or the possible intention of the EU legislature to reserve to itself competence to govern the field concerned, are such as to indicate that, by adopting Article 25(2) of that decision, the legislature decided to confer on the Council the task of adopting measures necessary to implement that decision at EU level.

61 That finding cannot be called into question by the arguments put forward by the Parliament.

62 In the first place, the fact that Article 25(2) of Decision 2008/615 states that the Council 'shall unanimously decide' cannot suffice to show that the legislature intended thereby to refer to the procedure laid down in Article 34(2)(c) EU for the adoption of legislative acts.

63 Although that procedure does indeed require the Council to decide unanimously, the laying down of that single voting rule, without mentioning the other requirements of the aforementioned procedure, namely the initiative of a Member State or of the Commission and the consultation of the Parliament, cannot be regarded as indicating clearly the will of the EU legislature to require the application of that procedure.

64 That analysis is supported by the historical context surrounding the adoption of Decision 2008/615. As the first recital of that decision emphasises, its aim is, in essence, to incorporate the provisions of the Prüm Treaty into the legal framework of the European Union. Article 34(2) of that Treaty provided a mechanism, similar to that laid down by Article 25(2) of the decision, which required, in particular, in accordance with Article 43(1) of that Treaty, a unanimous decision by the ministers of the States which were parties thereto.

65 In the second place, the fact that Article 33 of Decision 2008/615 confers on the Council the power to adopt measures to implement that decision is not determinative.

66 Article 33 and Article 25(2) of that decision appear to have functions that differ significantly. Thus, whilst the first, which merely reflects the power conferred on the Council by Article 34(2)(c) EU, covers, in a general manner, the adoption of measures to implement that decision, the second provides for the adoption of particular measures in the context of a procedure, specifically laid down by the EU legislature, for authorisation of the supply of personal data in Member States other than those referred to in Article 25(3) of that decision.

67 Consequently, the fact that the EU legislature decided to devote Article 33 of Decision 2008/615 to measures implementing that decision cannot, in itself, mean that the acts adopted on the basis of Article 25(2) can no longer be classified as ‘implementing measures’ and must be regarded as legislative acts.

68 In the third place, the fact that the Council did not choose to give the title of ‘implementing measures’ to the acts actually adopted on that basis cannot, having regard to the lack of legal significance of that choice and the date on which it occurred, usefully be relied on in support of the Parliament’s argument.

69 Consequently, Article 25(2) of Decision 2008/615 must be interpreted as providing for the adoption, by the Council voting unanimously, of measures to implement that decision.

70 In that regard, the Council’s argument that that provision should be read as laying down a two-part procedure, consisting of a decision by consensus followed by a decision by qualified majority, is contrary to the clear wording of that provision, under the terms of which ‘the Council shall unanimously decide’ and, moreover, does not find any support in other elements of Decision 2008/615.

71 In those circumstances, the fact that other EU acts might provide for a procedure of that nature or that that procedure might be justified by overriding political reasons, if such reasons were to be proven, does not in any event make it possible to uphold the interpretation of Article 25(2) of that decision proposed by the Council.

72 It follows from all of the foregoing considerations that, by requiring that measures necessary to implement Decision 2008/615 at the level of the European Union be adopted by the Council by means of a unanimous decision, whilst Article 34(2)(c) EU provided that such measures had to be adopted by the Council acting by a qualified majority, Article 25(2) of that decision unlawfully lays down detailed rules for the adoption of measures, such as the contested decisions, that are more stringent in comparison with the procedure laid down for that purpose by the Treaties.

73 It follows that the first plea in law relied on by the Parliament is well founded and that the contested decisions must, accordingly, be annulled.

The second plea in law, alleging breach of essential procedural requirements

74 Since the Parliament's first plea in law has been upheld and the contested decisions must be annulled as a result, it is not necessary to assess the Parliament's second plea in support of its actions.

The request for the effects of the contested decisions to be maintained

75 The Council has requested the Court, in the event that it should annul the contested decisions, to maintain the effects of those decisions until they are replaced by new acts. The Parliament states that it does not object to that request.

76 In that regard, it must be recalled that, under the second paragraph of Article 264 TFEU, the Court may, if it considers it necessary to do so, state which effects of an act which it has declared void are to be considered definitive.

77 In the present case, to declare the annulment of the contested decisions without ordering the maintenance of their effects would be liable to damage the efficacy of the exchange of information between the competent authorities of the Member States for the purposes of detecting and investigating criminal offences, and hence for the maintenance of public order and public security. Although the Parliament seeks the annulment of those decisions on the ground that an unlawful legal basis was used by the Council, it does not dispute the aim or the content of those decisions.

78 It is consequently necessary to maintain the effects of the contested decisions until the entry into force of new acts intended to replace them.

Costs

79 Under Article 138(1) of the Rules of Procedure of the Court of Justice, 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 Parliament has applied for the Council to be ordered to pay the costs and the latter has been unsuccessful, the Council must be ordered to pay the costs.

80 In accordance with Article 140(1) of those rules, the Federal Republic of Germany and the Kingdom of Sweden are to bear their own costs.

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

1. **Annuls Council Decision 2014/731/EU of 9 October 2014 on the launch of automated data exchange with regard to Vehicle Registration Data (VRD) in Malta, Council Decision 2014/743/EU of 21 October 2014 on the launch of automated data exchange with regard to vehicle registration data (VRD) in Cyprus, Council Decision 2014/744/EU of 21 October 2014 on the launch of automated data exchange with regard to Vehicle Registration Data (VRD) in Estonia, and Council Decision 2014/911/EU of 4 December 2014 on the launch of automated data exchange with regard to dactyloscopic data in Latvia;**
2. **Maintains the effects of Decisions 2014/731, 2014/743, 2014/744 and 2014/911 until the entry into force of new acts intended to replace them;**
3. **Orders the Council of the European Union to pay the costs;**
4. **Orders the Federal Republic of Germany and the Kingdom of Sweden to bear their own costs.**

[Signatures]

* Language of the case: French.
