



*Press Release*

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## **EU Rights Clinic and ECAS Secure Release of EU Charter Opt-Out Documents**

With the help of the EU Rights Clinic, ECAS has obtained documents from the European Commission that relate to opt-outs from the EU Charter of Fundamental Rights. The Clinic and ECAS hope that publication of these documents in will shed light on the negotiations that concerned the Charter of Fundamental Rights when the Treaty of Lisbon was being negotiated in 2007.

ECAS made the initial request for the documents relating to the UK's opt-out in October 2007, prior to the signing of the Lisbon Treaty. The request was made under EU Regulation 1049/2001 which allows the public to request the release of documents from the EU institutions. After an initial refusal from the European Commission, ECAS took the matter before the European Ombudsman. Having inspected the documents, the Ombudsman recommended in July 2011 that "[t]he Commission should consider giving access to the documents in question or provide valid reasons for not doing so". Since this recommendation was not followed, the Ombudsman issued a final decision on 17 December 2012 ruling that the Commission was guilty of "a serious instance of maladministration" and that "the Commission's position constitutes a substantive violation of the fundamental right of access to documents foreseen in Article 42 of the Charter". Following a new request by ECAS made in December 2012, which covered not only the UK but also Poland and the Czech Republic, the Commission released the contested documents on 31 January 2013.

ECAS and the EU Rights Clinic welcome this as a victory not only for transparency, but also for the moral authority of the European Ombudsman. Moreover, the Commission may be signalling its new commitment to transparency because it has gone beyond the scope of the requests and extended access to more recent documents and a special database.

The released documents indicate that the Council Presidency initially proposed the removal of any reference from the Charter to its binding effects on the Member States as a way to address UK concerns, considering that "an opt-out from fundamental rights is hard to sell". Such a proposal was also supported by the Council's Legal Service which believed that this would have no practical effect and the Charter would continue to apply to Member States regardless. The Commission disagreed with this interpretation and opposed such a proposal on the grounds that it would create legal confusion and cause the Charter to be "amputated by one of its two legs" by removing explicit references to its application to the Member States. The Commission therefore considered an opt-out was preferable to amending the Charter.

"The documents reveal that the opt-out was the lesser of two evils. Serious proposals were made by the Council Presidency to remove the reference to Member States from the Charter of Fundamental Rights. This suggests that governments cannot be trusted to negotiate on our fundamental rights on their own. It appears that the need to reach an agreement among themselves takes precedence over the maximum protection of our rights. It is indeed a positive development that these documents have been released as this will make it difficult for governments to talk about EU democracy at home and then negotiate in secret

in Brussels. This increased transparency is welcome and timely.” said Tony Venables, Director of the European Citizen Action Service.

“The EU Rights Clinic is delighted to have contributed to this important endeavour. Our students worked on drafting letters, reviewing the released documents and putting together the Background Note that explains the contents of these documents and highlights their importance.” explained Anthony Valcke, Legal Supervisor for the EU Rights Clinic.

ECAS and the EU Rights Clinic are now making the documents released by the Commission available to the public as a way of enhancing citizens’ awareness of their EU rights and further contributing to the European Year of Citizens which in 2013 is dedicated to the rights that come with EU citizenship. These documents, as well as a Background Note offering an explanation of what is contained within them, are accessible on the European Citizens House website ([www.citizenshouse.eu](http://www.citizenshouse.eu)) and the EU Rights Clinic’s blog (<http://blogs.kent.ac.uk/eu-rights-clinic/>).

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