



BACKGROUND NOTE

ECAS's Requests for Access to Commission Documents

Concerning the Opt-Out from the EU Charter of Fundamental Rights

This Background Note seeks to provide greater clarification on the documents which ECAS has received from the European Commission following several requests made under Regulation 1049/2001¹, which allows the public to request the release of documents from the EU institutions. The requests were made in relation to documentation held by the European Commission relating to the negotiation of opt-outs from the Charter of Fundamental Rights concerning the UK, Poland and the Czech Republic.

ECAS's Requests for Access to Documents

ECAS made an original request on 25 October 2007 for documents held by the Commission relating to the negotiations concerning the UK's opt-out from the EU Charter of Fundamental Rights. The Commission rejected the initial request on the basis that disclosure of those documents would undermine the EU decision-making process. However, ECAS decided to pursue the issue further because it considered that it was in the public interest for citizens to be informed of these negotiations and this outweighed any interest to protect the EU decision-making process. ECAS argued that European citizens have a right to know why they might not enjoy the same fundamental rights throughout all EU Member States.

As a result, on 12 August 2008 ECAS submitted a complaint to the European Ombudsman who has the power to investigate administrative failures by the EU institutions under Article 228 of the Treaty on the Functioning of the European Union. After having inspected the documents, the European Ombudsman issued a draft recommendation on 21 July 2011 to the effect that "[t]he Commission should consider giving access to the documents in question or provide valid reasons for not doing so"². This draft recommendation was regrettably not followed and, following a round of observations by both ECAS and the Commission, the

¹ Regulation (EC) No 1049/2001 of the European Parliament and the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (2001) OJ L 145/43.

² Ombudsman Decision of 17 December 2012, para. 57, available here:
<http://www.ombudsman.europa.eu/en/cases/decision.faces/en/12439/html.bookmark>



Ombudsman issued his final decision on 17 December 2012. In his decision, the Ombudsman ruled that *“the Commission’s position constitutes a substantive violation of the fundamental right of access to documents foreseen in Article 42 of the Charter”*³ and that the Commission was guilty of *“a serious instance of maladministration”*⁴.

On 21 December 2012, ECAS made a new request to the Commission which not only covered the contested documents, but also extended to documents relating to Poland as well as the Czech Republic’s negotiations on opting-out from the Charter of Fundamental Rights.

The Commission released a first batch of five documents on 31 January 2013 which relate to the negotiations for an opt-out that resulted in the adoption of Protocol (No 30) of the Lisbon Treaty on the Application of the Charter of Fundamental Rights of the European Union to Poland and to the United Kingdom.

After this initial release, the Commission identified a further set of documents which they considered relevant to ECAS’s request. On 14 February 2013, the Commission released a second series of documents concerning the Czech Republic’s request to join in Protocol (No 30) relating to the Charter of EU Fundamental Rights. A large proportion of these documents were already in the public domain.

Finally, further documents were released on 22 February 2013. These consisted in the Commission’s submissions to the European Court of Justice in a case that concerned the status of Protocol (No 30) and internal Commission documents relating to an opinion on the Czech Republic’s request for joining into the Protocol. The Commission appears to have gone beyond the scope of ECAS’s requests by extending access to these more recent documents and by revealing the existence of a special database that tracks treaty amendments.

Historical and Legal Context

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 later that year. These documents related to internal deliberations on the negotiations for the Treaty of Lisbon and more specifically discussions on the status of the Charter of Fundamental Rights.

³ Ibid., para 77.

⁴ Ibid., conclusion.



It should be noted that the negotiations on the Treaty of Lisbon, which involved the discussions on the legal status of the Charter of Fundamental Rights, took place over a particularly short period of time. Although the initial process started in March 2007 with the Berlin Declaration celebrating the fiftieth anniversary of the Treaty of Rome (also known as the EEC Treaty), discussions only began in earnest at the European Council held on 21-23 June 2007. The Lisbon Treaty was signed on 13 December 2007, marking an uncharacteristically brief negotiation process in comparison to previous treaties. This can be explained - in part - by the fact that the Lisbon Treaty followed the doomed Treaty Establishing a Constitution for Europe that was signed in 2004 but never ratified following its rejection in public referenda held in France (29 May 2005) and the Netherlands (1 June 2005).

The EU Charter of Fundamental Rights was proclaimed on 7 December 2000, well before the Lisbon Treaty negotiations began. The Charter is intended to apply to the EU institutions and to the Member States when they implement EU law. It was initially proclaimed by the EU institutions but was not officially incorporated into the EU Treaties. As a result, the Charter initially had a questionable legal status and it did not initially carry the same weight as the EU Treaties. The Charter was to be incorporated into the Treaty Establishing a Constitution for Europe that was signed in 2004. However, after that Treaty was abandoned following its rejection in the French and Dutch referenda, the issue of its legal status again became the subject of discussions between the EU institutions and the Member States during the Lisbon Treaty negotiations.

Opposition to the Charter

The UK Government's position on the Charter at the time was laid out in a White Paper published in July 2007⁵. On the issue of the Charter of Fundamental Rights, the White Paper stated:

"The Government sought to ensure that nothing in the Charter of Fundamental Rights would give national or European Courts any new powers to strike down or reinterpret UK law, including labour and social legislation. ..."

⁵ White Paper "The Reform Treaty: The British Approach to the European Union Intergovernmental Conference" (Cm 7174) published and laid before Parliament on 23 July 2007 available here: <http://www.official-documents.gov.uk/document/cm71/7174/7174.pdf>



The Charter of Fundamental Rights was ‘solemnly proclaimed’ at the Nice European Council in December 2000 but is not currently legally binding. ... The [Lisbon] Treaty will make the Charter of Fundamental Rights ... legally binding on the EU institutions and on Member States when implementing EU legislation. ... A UK-specific Protocol annexed to the Treaty, as set out in the IGC Mandate, will clarify beyond doubt the application of the Charter in relation to UK laws and measures, and in particular its justiciability in relation to labour and social articles. This Protocol is legally binding and sets out clearly that the Charter provides no greater rights than are already provided for in UK law, and that nothing in the Charter extends the ability of any court to strike down UK law."

The released documents indicate that, while the UK was opposed to being subject to the Charter, it was acutely aware of the negative impact that an opt-out would have on the country’s reputation. This can be inferred from a note addressed to Commission President Barroso explaining that in a meeting with Chancellor Merkel it was made clear that the German Presidency of the Council of the EU would not be seeking to propose an opt-out for two reasons. Firstly, there was British concern that “an opt-out from fundamental rights is hard to sell”⁶. Secondly, there was the risk of contagion to other Member States requesting similar treatment⁷. This concern eventually materialised with Poland joining the UK prior to the signing of the Lisbon Treaty and the Czech Republic later requesting to join at the time of its ratification by the Czech President.

Opt-Out versus All-Inclusive Charter

The solution proposed by the German Presidency of the Council was to remove references to the Member States from the Charter altogether as a way to address UK concerns⁸. This proposal was supported by an opinion by Jean-Claude Piris, the Director-General of the Council’s Legal Service, that the removal of the reference to Member States from the text would have no practical effect and the Charter would continue to apply to Member States regardless⁹.

⁶ Note to President Barroso from the Director General of the Legal Service to President Barroso, 21 June 2007, JUR(2007)55081.

⁷ Ibid.

⁸ Note to President Barroso from the Director General of the Legal Service to President Barroso, 21 June 2007, JUR(2007)55081.

⁹ Ibid.



The Commission disagreed with this interpretation and strongly opposed such a proposal on the grounds that it would cause the Charter to be “amputated by one of its two legs” by removing explicit references to its application to the Member States¹⁰. The Commission’s Legal Service initially proposed to compromise by replacing the reference to Member States with a reference to “the Union” in Article 51(1) of the Charter, which the Legal Service considered would leave it open for the courts to apply the Charter when they interpret EU law¹¹.

The Commission considered that, at best, the Council Presidency’s proposal would cause confusion between the jurisdiction of the European Court of Justice in Luxembourg and the European Court of Human Rights in Strasbourg¹².

A further reason was the need to ensure the consistent application of EU law:

“The rationale of the ECJ’s case law is that individuals, in their contacts with Community law, can expect homogeneous standards of human rights protection ensured by the ECJ, whether that law is implemented by the institutions themselves or by Member State authorities acting as “agents of the Union”¹³.

Excluding the application of the Charter to the Member States would cause problems such as the European Court of Justice having, on the one hand, to apply the Charter to the EU institutions, but, on the other hand, only applying the general principles of EU law to Member States¹⁴. It could even lead to the Luxembourg Court deciding not to exercise its jurisdiction over cases involving EU law that raise issues of human rights, thus creating confusion¹⁵. An opt-out was therefore preferable since it would confine this legal uncertainty to a single Member State.¹⁶

¹⁰ Note from the Director General of the Legal Service to President Barroso, 8 June 2007, MP/gv (2007).

¹¹ Note to President Barroso from the Director General of the Legal Service to President Barroso, 21 June 2007, JUR(2007)55081.

¹² Note to President Barroso from the Director General of the Legal Service to President Barroso, 21 June 2007, JUR(2007)55081.

¹³ Note from the Director General of the Legal Service to President Barroso, 8 June 2007, MP/gv (2007).

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.



The Commission's Legal Service therefore concluded that it would be preferable for the Union to have a strong Charter with an option for an opt-out rather than a watered-down version of the Charter which might be acceptable to all¹⁷ but would represent a "serious step back" compared to what had been agreed with the European Constitution in 2004¹⁸.

Final Outcome

The Commission's view eventually prevailed in the final outcome of the Lisbon Treaty negotiations. The Charter retained its full force and was given the same legal value as the EU Treaties as reflected by Article 6 of the Treaty on the European Union.

At the same time, the application of the Charter in the UK and Poland became the subject of a special protocol which was hailed by the British Government of the time as an opt-out from the Charter of Fundamental Rights¹⁹.

The Validity of the Opt-Out

The documents released also reveal an evolution in the Commission's views on the validity of the opt-out. In the note to Commission President Barroso dated 8 June 2007²⁰, the Director-General of the Commission Legal Service, Michel Petite, expressed the opinion that an opt-out would be legally valid. This opinion was given on the basis that the opt-out would contain an explicit derogation from Article 51(1) of the Charter, so that the Charter would not apply to the UK when implementing EU law.

However, the final wording used in Protocol (No 30) is much more convoluted and leaves much scope for interpretation²¹. This explains why, in 2011, the Commission expressed a

¹⁷ Note from the Director General of the Legal Service to European Commission President Barroso, 6 June 2007, JUR (2007) 30329:

"En revanche, même si un opt-out peut apparaître juridiquement baroque dans le domaine des droits fondamentaux, le recours à une telle solution pourrait être posé en ces termes : un opt-out pour un ou deux Etats membres avec une Charte pleinement préservée n'est-il pas préférable à une Charte affaiblie applicable à tous les Etats membres?"

¹⁸ Note from the Director General of the Legal Service to President Barosso, 8 June 2007, MP/gv (2007).

¹⁹ Tony Blair informed the House of Commons on 25 June 2007: "It is absolutely clear that we have an opt-out from both the Charter and judicial and home affairs", Hansard HC Deb 25 June 2007, vol 462, col 37.

²⁰ Note to President Barroso MP/gv (2007).

²¹ It reads as follows:

"Article 1



different opinion on the effect of Protocol (No 30) in its submission to the European Court of Justice in Joined Cases C-411/10 and C-493/11 *NS v Secretary of State for the Home Department and Others*²². These proceedings concerned a reference for a preliminary ruling made by the English Court of Appeal on the interpretation of Protocol (No 30) and the application of the Charter to the UK. The case involved a claim for asylum in the UK and the application of the so-called Dublin II Regulation, which lays down rules to determine which country is responsible to decide on a claim for asylum. In case C-411/10, a claimant for asylum had sought to prevent the UK from sending him back to Greece on the basis that his detention and treatment by the Greek authorities would breach his fundamental rights under the EU Charter. One of the questions referred to the ECJ by the Court of Appeal concerned the effect of Protocol (No 30) on the application of the Charter to the UK.

The Commission's opinion was that the Protocol merely clarified the application of the Charter to the UK and did not in fact constitute an opt-out at all. There was no question of the Charter not applying to the UK or having no legal value. In that instance, the questions related to acts taken to implement EU law over which the protocol could have no effect. In its ruling, the Court of Justice held that Protocol (No 30) is not intended to exempt Poland or the UK from the obligation to comply with the provisions of the Charter.

The Czech Republic Requests to Join the Protocol

The Czech Republic decided to request to join the UK and Poland in opting out from the Charter of Fundamental Rights prior to ratification of the Lisbon Treaty by the Czech President²³.

1. The Charter does not extend the ability of the Court of Justice of the European Union, or any court or tribunal of Poland or of the United Kingdom, to find that the laws, regulations or administrative provisions, practices or action of Poland or of the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it reaffirms.

2. In particular, and for the avoidance of doubt, nothing in Title IV of the Charter creates justiciable rights applicable to Poland or the United Kingdom except in so far as Poland or the United Kingdom has provided for such rights in its national law.

Article 2

To the extent that a provision of the Charter refers to national laws and practices, it shall only apply to Poland or the United Kingdom to the extent that the rights or principles that it contains are recognised in the law or practices of Poland or of the United Kingdom."

²² Written Observations submitted by the European Commission in Joined Cases C-411/10 and C-493/11 *NS v Secretary of State for the Home Department and Others*, 28 January 2011.

²³ Conclusions of the Presidency of the Council of the EU addressed to the Delegations of the Member States, 30 October 2009, 15265/09.



The Council agreed at the time of the European Council held in Brussels on 29-30 October 2009 that a protocol would be added to the next Accession Treaty concerning the application of the Charter on Fundamental Rights to the Czech Republic²⁴. This proposed protocol would have the effect of amending Protocol (No 30) so that it would also apply to the Czech Republic on the same terms as the UK and Poland²⁵. On 5 September 2011 the Czech Government submitted a proposal to the Council for a treaty amendment which would see this new protocol added to the EU Treaties. The Czech proposal foresaw its coming into force at the same time as Croatia's Accession Treaty²⁶. However, the Czech Republic's protocol was not included in that Accession Treaty²⁷. This amendment is now only likely to be approved at the time of the next future enlargement of the EU to twenty nine or more Member States.

While the released documents relating to the Czech Republic are largely technical in nature, they do reveal one point of particular interest, namely that the opt-out was the price extracted for Czech ratification of the Lisbon Treaty in November 2009. The Commission held a meeting a few days after the European Council held on 29-30 October 2009 when agreement was reached on the Czech Republic joining Protocol (No 30). At that meeting, Commission President Barroso expressed his satisfaction that "significant results had been achieved" on the Lisbon Treaty ratification process and that "[i]mmediately after this agreement [was reached] at the European Council and the ruling by the Czech Constitutional Court [was issued] on 3 November, the Czech President had signed the law ratifying the [Lisbon] Treaty"²⁸. It therefore appears that the reason the Czech proposal has received consistent approval from the Commission is because it reflects a political settlement that contributed to ratification of the Lisbon Treaty by the Czech Republic.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Note from the General Secretariat of the Council to the Committee of Permanent Representatives (COREPER), 6 September 2011, 13840/11.

²⁷ The Act concerning Croatia's Accession to the Treaty (2012) OJ L 112/1, available here: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:112:FULL:EN:PDF>

²⁸ Minutes of the Secretariat General reporting on the European Commission's 1893rd meeting, 11 November 2009, PV(2009) 1893.



Conclusions

It is apparent that the UK has continuously opposed the Charter of Fundamental Rights and that the Commission has resisted attempts to water it down in order to placate dissension within the EU. There have also been proposals from the Council of the EU which would have explicitly excluded the Charter from applying to the Member States. Most notably such a suggestion was floated by the German Presidency of the Council of the EU in June 2007. This was staunchly resisted by the Commission, which highlighted the potential problems and confusion this would cause within the EU's legal order. Protocol (No 30) was clearly the lesser of two evils, but it is one which should be eliminated when the Treaties are next revised.

Documents Summaries

A. Documents released on 31 January 2013:

The released documents trace the evolution of negotiations for an opt-out that resulted in the adoption of Protocol (No 30) of the Lisbon Treaty on the Application of the Charter of Fundamental Rights of the European Union to Poland and to the United Kingdom.

1. Note from the Director General of the Legal Service to European Commission President Barroso, 6 June 2007, JUR (2007) 30329

This notes provides advice on various aspects of the negotiations for the new Treaty taking place between 14 and 22 June. The advice discusses the various alternative ways in which the Charter's legal status could be clarified in the future Lisbon Treaty. It considers it unlikely that the Charter would be included in the new Treaty. It mentions that agreeing to an opt-out for one or two Member States is preferable to a situation where, in order to achieve unanimity, the Charter would only apply to the EU institutions to the exclusion of the Member States. Excluding all the EU's Member States from its scope would have represented a step backward and would have meant watering down the Charter itself.

2. Note from the Director General of the Legal Service to President Barroso, 8 June 2007, MP/gv (2007)

This note explains that the reason that the Charter applies to Member States is to ensure uniformity in the way individuals benefit from human rights across the European Union.



Excluding the application of the Charter to the Member States would cause problems such as the European Court of Justice having, on the one hand, to apply the Charter to the EU institutions, but, on the other hand, only applying the general principles of EU law to Member States. It could even lead to the Luxembourg Court deciding not to exercise its jurisdiction over cases involving EU law that raise issues of human rights, thus creating confusion. An opt-out is preferable since it confines this legal uncertainty to a single Member State. It then discusses how a specific opt-out from the Charter would be legally valid. It concludes that an opt-out is preferable to a situation where Member States are completely excluded from the scope of the Charter, which should be firmly opposed.

3. Note to President Barroso from the Director General of the Legal Service to President Barroso, 21 June 2007, JUR(2007)55081

The note reports that, following a meeting with Chancellor Merkel, it became clear that the Presidency of the Council of the EU would not propose an opt-out for the UK. It observes that the UK itself is not in favour of an opt-out because “an opt-out from fundamental rights is hard to sell” and notes there is a risk of contagion with other Member States also requesting an opt-out. The note also foresees that the Presidency would instead propose that the reference to the Charter also applying to Member States should be removed from the Charter altogether. It highlights how, although the head of the Council’s Legal Service claims that the Charter would still apply to Member States, the Commission’s Legal Service disagrees and believes that at best such a proposal would cause confusion. The note ends by proposing a compromise with the Charter simply referring to “The Union”, which the Legal Service considers would leave it open for the Courts to apply the Charter when they interpret EU law.

4. Note from the Director General of the Legal Service to Chiefs of Staff of President Barroso and Commissioner Wallström, 7 September 2007, JUR(2007) 30464

The note reports on the meeting of the Group of legal experts of the Inter-Governmental Conference held on 3, 4 and 5 September 2007. The note mentions that a consensus had emerged between the EU institutions on the references to the Charter in the new Treaty. It goes on to confirm that Poland intends to join the UK in its opt-out from the Charter. It also notes that the UK rejected the European Parliament’s call for the opt-out to include a provision allowing the countries to unilaterally withdraw.



5. A file note established by the Secretariat-General of the European Commission on 15 October 2007, which reports on the meeting of the IGC held on 15 October 2007 in Luxembourg, 15 October 2007, no document reference

This note mentions the concern expressed by representatives of the European Parliament on granting an opt-out from the Charter to the UK and Poland, since it does not contain a provision that would permit a reversal the situation and allow for the full application of the Charter in the future. The note also observes that Poland reaffirmed its intention to join the opt-out with the UK and notes that Poland would also make a declaration reaffirming its commitment to the labour and social rights as proclaimed in the Charter.

B. Documents released on 14 February 2013:

These documents relate to the Czech Republic's proposal for amendment of the EU Treaties which would see them join into Protocol (No 30) alongside the UK and Poland.

1. Conclusions of the Presidency of the Council of the EU addressed to the Delegations of the Member States, 30 October 2009, 15265/09

These report on the discussions of the Council of the EU held on 29-30 October 2009 in Brussels. It reports on the Council's determination to see the Treaty of Lisbon enter into force by the end of 2009, which requires ratification by all 27 Member States. The conclusions make reference to the Czech Republic's position and note the agreement reached by the Member States to add a protocol to the EU Treaties at the time of the next expansion of the EU. The conclusions recall Article 5 of the EU Treaty and Article 51(1) of the EU Charter that concern their respective relationship with the national legal systems. The suggested protocol as set out at Annex I would have the effect of amending Protocol (No 30) so that it will apply to the Czech Republic on the same terms as the UK and Poland.

2. Minutes of the Secretariat General reporting on the European Commission's 1893rd meeting, 11 November 2009, PV(2009) 1893

The minutes report on a meeting of the Commission held on 4 November 2009 in Brussels. The minutes report on the Commission President's impression that significant results had been achieved in respect of the Lisbon Treaty ratification process. The minutes note that agreement had been reached on the application of the Charter of Fundamental Rights to the Czech Republic and specify that the agreed wording would take the form of a protocol attached to the next accession treaty. The minutes go on to state that shortly after this agreement was reached at the European Council, the Czech Republic ratified the Lisbon



Treaty. It also notes that an internal debate was under way in the Czech Republic on the question of applying the Charter of Fundamental Rights.

3. Note from the General Secretariat of the Council to the Committee of Permanent Representatives (COREPER), 6 September 2011, 13840/11

This Note circulates a letter from the Permanent Representative of the Czech Republic sent to the President of the Committee of Permanent Representatives on 5 September 2011, in which the Czech Government submitted a proposal to the Council for amendment of the EU Treaties which would see a new protocol added that would extend Protocol (No 30) to the Czech Republic. This draft protocol proposed the amendment coming into force at the same time as when the Croatian Accession Treaty would come into force.

4. Note from the Presidency of the Council to the Committee of Permanent Representatives (COREPER), 6 September 2011, 13842/11

This note traces the steps taken in relation to the Czech Republic's proposal to join into Protocol (No 30). It notes that the Council agreed on 29-30 October 2009 that a protocol would be added to the next accession treaty concerning the application of the charter on fundamental rights to the Czech Republic. It confirms that a request for treaty amendment was received from the Czech Republic on 5 September 2011. The Note then invites COREPER to recommend to the Council of the EU that the Czech Republic's proposal be notified to the European Council (consisting in Heads of Government and State) and to national parliaments.

5. Note from the General Secretariat of the Council to COREPER, 5 October 2011, 15130/2011

This note explains further steps taken in relation to the Czech Republic's proposal to join into Protocol (No 30) following the note of 6 September 2011. This note explains that, after being informed of the request, the European Council should consult the Commission and European Parliament in accordance with Article 48(3) of the EU Treaty. The Note then invites COREPER to recommend to the European Council that it consults the European Parliament and the European Commission on the Czech Republic's proposal. The note also considers that, in view of the political agreement reached on 29-30 October 2009, there would be no need to convene a Convention to examine the proposal. The note therefore recommends to the European Council to request the consent of the European Parliament not to convene a Convention.

6. Commission Opinion, 4 May 2012, COM (2012) 197 final



This paper contains the Commission's opinion on a draft European Council decision in favour of examining the proposed amendment of the Treaties concerning the addition of a Protocol on the application of the Charter of Fundamental Rights of the European Union to the Czech Republic. The opinion gives the background to Protocol (No 30) concerning the application of the Charter in the UK and Poland and confirms the Czech Republic's desire to join into the Protocol. The paper concludes by giving a favourable opinion to the draft EU Council decision in favour of examining the proposed Czech amendment on the addition of a Protocol on the application of the Charter to the Czech Republic.

C. Documents released on 22 February 2013:

These documents consist in the European Commission's submissions before the European Court of Justice in a case concerning the interpretation of Protocol (No 30), as well as internal documents relating to the Commission's Opinion on the Czech proposal to join Protocol (No 30).

1. Written Observations submitted by the European Commission in Joined Cases C-411/10 and C-493/11 *NS v Secretary of State for the Home Department and Others*, 28 January 2011

These written observations were submitted by the Commission to the European Court of Justice in a case concerning a reference for a preliminary ruling made by the English Court of Appeal on the interpretation of Protocol (No 30) and the application of the Charter to the UK. The case involved a claim for asylum in the UK and the application of the so-called Dublin II Regulation, which lays down rules to determine which country is responsible to decide on a claim for asylum (Joined Cases C-411/10 and C-493/10). In case C-411/10, a claimant for asylum sought to prevent the UK from sending him back to Greece on the basis that his detention and treatment by the Greek authorities would breach his fundamental rights under the EU Charter. The opt-out was invoked by the UK, which initially claimed the Charter had no effect in the UK. In its submission to the Court, the Commission indicated that it no longer considered the opt-out had the effect of excluding the UK from the scope of the Charter and instead considered that Protocol (No 30) merely sought to clarify that the Charter only applies to the UK authorities when they implement EU law. The Commission's opinion was that the Protocol did not constitute an opt-out at all. There was no question of the Charter not applying to the UK or having no legal value. In this instance, the UK was seeking to take action under the Dublin II Regulation, an EU legal instrument, and therefore nothing in the Protocol had the effect of excluding the Charter from applying. In its judgment handed down on 21 December 2011, the Court followed the Commission's reasoning and ruled that Protocol (No 30) is not intended to exempt Poland or the UK from the obligation



to comply with the provisions of the Charter. The Court left open the question of the Protocol's effects on the application in the UK of social and labour rights guaranteed by the Charter.

2. Note Ares(2012)291516 from the European Commission's Secretariat General to Luis Romero Requena, Director General of the Legal Service, Koos Richelle, DG Employment and Ms Françoise Le Bail, DG Justice, 12 March 2012

This note contains a request from the Secretariat General asking for comments from the Legal Service, DG Justice and DG Employment on a draft Commission Opinion on the proposed amendment of the Treaties concerning the addition of a Protocol on the application of the Charter of Fundamental Rights of the European Union to the Czech Republic. This note advises that a positive opinion from the Commission on the Czech proposal for joining into Protocol (No 30) is appropriate since the Czech proposal is in line with the political agreement that was reached on 29 and 30 October 2009 in respect of the entry into force of the Lisbon Treaty.

3. Response to Note Ares(2012)291516, 15 March 2012

The note delivers a favourable opinion on the draft Commission Opinion on the proposed amendment of the Treaties concerning the addition of a Protocol on the application of the Charter of Fundamental Rights of the European Union to the Czech Republic.
