



EUROPEAN COMMISSION

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COMMISSION 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

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on European Union, and in particular Article 48(3) thereof,

Whereas:

- (1) At the meeting of the European Council on 29 and 30 October 2009 the Heads of State or Government, taking into account the position taken by the Czech Republic, agreed that, at the time of the conclusion of the next Accession Treaty, the Treaties should be amended to the effect that a Protocol on the application of the Charter of Fundamental Rights of the European Union to the Czech Republic is attached to the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU). That Protocol should provide that Protocol No 30 on the application of the Charter of Fundamental Rights of the European Union to Poland and the United Kingdom also applies to the Czech Republic. In that connection, the European Council recalled that the entry into force of the Treaty of Lisbon requires ratification by each of the 27 Member States in accordance with their respective constitutional requirements and reaffirmed its determination to see that Treaty enter into force by the end of 2009. Having been ratified by the Czech Republic on 13 November 2009, the Treaty of Lisbon entered into force on 1 December 2009.
- (2) On 5 September 2011, the Czech Government submitted to the Council a proposal, in accordance with Article 48(2) TEU, for the 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.
- (3) The President of the European Council wrote to the Commission on 25 October 2011 requesting its opinion on that proposal.
- (4) Pursuant to the first subparagraph of Article 6 (1) of the TEU the Charter of Fundamental Rights of the EU shall have the same legal value as the Treaties. The second subparagraph of Article 6 (1) of the TEU clarifies that the Charter shall not extend in any way the competences of the Union as defined in the Treaties. Pursuant to its Preamble, the Charter reaffirms, with due regard for the powers and tasks of the Union and for the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case-law of the Court of Justice of the European Union and of the European Court of Human Rights. It aims at strengthening the protection of fundamental rights by making those rights more visible. In accordance with its Article 51 (1) the Charter is “addressed to the institutions, bodies, offices and agencies of the Union with due

regard for the principle of subsidiarity and to the Member States only when they are implementing Union law”.

- (5) Article 1(1) of Protocol No 30 provides that the Charter does not extend the ability of the Court of Justice of the European Union, or any court or tribunal of the Member States that the Protocol No 30 applies to, to find that the laws, regulations or administrative provisions, practices or action of Member States that it applies to are inconsistent with the fundamental rights, freedoms and principles that it reaffirms. Pursuant to Article 1(2) of Protocol No 30 nothing in Title IV of the Charter creates justiciable rights applicable to Poland and the United Kingdom except in so far as these Member States have provided for such rights in their national law. Finally, Article 2 of Protocol No 30 provides that 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 these Member States.
- (6) Protocol No 30 is without prejudice to other obligations devolving upon Poland and the United Kingdom under the Treaty on European Union – and in particular Article 6 (3) thereof, the Treaty on the Functioning of the European Union, and Union law generally. In that connection it must be noted that the Charter only reaffirms the rights, freedoms and principles recognised in the Union and makes those rights more visible. The purpose of Protocol No 30 is to clarify the application of the Charter in relation to the laws and administrative action of these Member States and of its justiciability within these Member States.
- (7) The Commission notes that the agreement among the Heads of State or Government on an amendment of the Treaties concerning the addition of a Protocol on the application of the Charter of Fundamental Rights of the EU to the Czech Republic has been reached in a specific context.

HAS DELIVERED A FAVOURABLE 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.

This opinion is addressed to the European Council.