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Ombudsman criticises Commission's refusal to disclose documents on UK opt-out from Charter of Fundamental Rights

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The European Ombudsman investigates complaints about maladministration in the EU institutions and bodies. Any EU citizen, resident, or an enterprise or association in a Member State, can lodge a complaint with the Ombudsman. The Ombudsman offers a fast, flexible and free means of solving problems with the EU administration.

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The European Ombudsman, P. Nikiforos Diamandouros, has strongly criticised the European Commission's refusal to give access to documents concerning its view of the UK opt-out from the EU Charter of Fundamental Rights. This follows a complaint from the European Citizen Action Service (ECAS), a Brussels-based NGO, which wanted to find out why UK citizens do not enjoy the same fundamental rights as other EU citizens. The Commission rejected the Ombudsman's recommendation that it disclose the documents, without giving adequate reasons.

Commission refused access to documents without giving valid reasons

ECAS lodged a complaint with the Ombudsman about the Commission's refusal to give access to five documents, drafted by its services and concerning the UK opt-out from the EU Charter of Fundamental Rights. The opt-out was a major issue in the intergovernmental negotiations leading to the adoption of the Lisbon Treaty and the documents were prepared by the Commission in that context.

The Commission explained its refusal by referring to the need to protect both the legal advice it receives, as well as its internal decision-making process.

After inspecting the documents in question, the Ombudsman concluded that the Commission's arguments for non-disclosure were not convincing.

Mr Diamandouros stated: "Public access to documents concerning how EU law is adopted is key to winning the trust of European citizens. I therefore strongly regret the Commission's refusal to give the public appropriate access to

documents concerning how one of the most important EU laws, namely, the Charter of Fundamental Rights, was adopted".

Despite the Ombudsman's recommendation that it make the documents in question public, the Commission only gave partial access. As access to documents is itself one of the fundamental rights guaranteed by the Charter, and as the Commission failed substantively to engage with certain of his arguments, the Ombudsman concluded that such refusal constituted "a most serious instance of maladministration".

The Ombudsman's decision is available at:
<http://www.ombudsman.europa.eu/en/cases/decision.faces/en/12439/html.bookmark>