



European Ombudsman

Public access to 'environmental information'

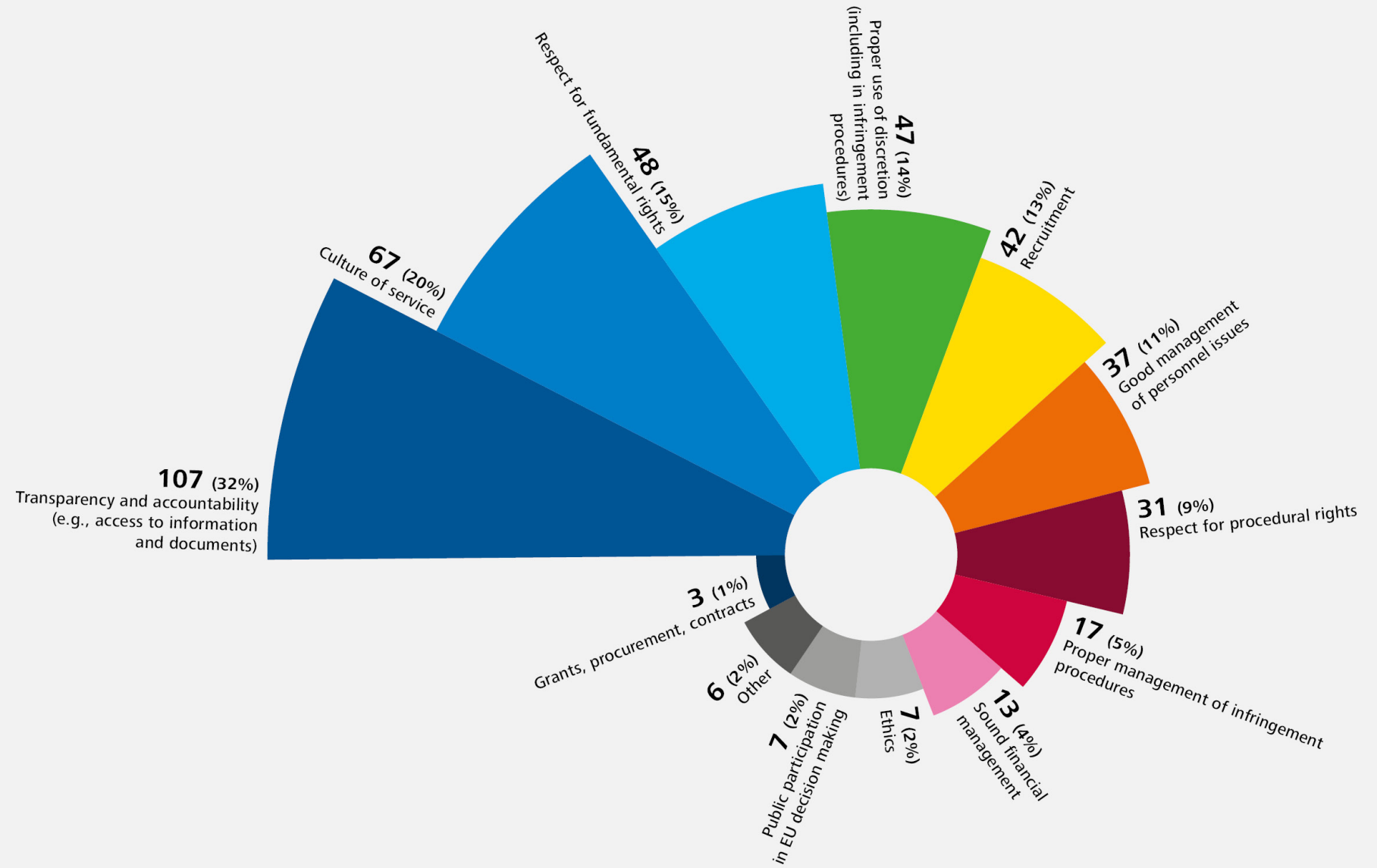
Tanja Ehnert, Inquiries Coordinator

Two main areas of work:

- **Dealing with complaints** from the public
- **Strategic inquiries** on the Ombudsman's own initiative

- **Mandate** covers administrative work of EU institutions and bodies
- **Powers** during inquiries include the right to inspect files held by institution.
- **Soft power**: conclusions not binding (79% acceptance rate 2021)

Subject matter of inquiries closed by the European Ombudsman in 2022



Note: In some cases, the Ombudsman closed inquiries with two or more subject matters. The above percentages therefore total more than 100%.

- **Redress mechanism** under EU legislation on public access to documents (Regulation 1049/2001)
- Regulation 1049/2001 applies to **‘environmental information’**
- But: specific obligations enshrined in **Aarhus Convention** (signed by EU + all its Member States) → transposed through Regulation 1367/2006, **EU Aarhus Regulation**

Ombudsman found that **EU institutions and bodies** sometimes:

1. **deny** that ‘environmental information’ is at stake
2. **fail to address** an ‘environmental information’ argument
3. **acknowledge, but refuse** access
4. **delay** its disclosure
5. **fail to proactively disclose** ‘environmental information’ in a timely manner

Ombudsman noted that **EU institutions and bodies** sometimes:

- 1. deny** that 'environmental information' is at stake
- 2. fail to address** 'environmental information' argument
- 3. acknowledge, but refuse** access
- 4. delay** its disclosure
- 5. fail to proactively disclose** 'environmental information' in a timely manner

Examples (II)



- Cases [1132/2022/OAM and 1374/2022/OAM](#)
- Refused full public access to documents concerning a **mineral exploration research project**
- EU institution considered that documents do not contain ‘environmental information’
- EO:

“31. The Commission’s reply seems to suggest that only “information such as policies, legislation, programmes, environmental agreements or measures or activities designed to protect elements of the environment” fall within the remit of the EU Aarhus Regulation. This is not correct. [...], **not only measures to protect the environment should benefit from greater transparency, but also, and even more importantly, measures that affect the environment in general.** [...]

33. In this context, the Ombudsman refers to **findings of the Aarhus Convention Compliance Committee**, clarifying that mining licences and other mining-related information constitutes ‘environmental information’.” [reference ACCC/C/2012/69]

Examples (I)



- Case [311/2021/TE](#)
- Refused access to a **cost-benefit analysis of the Brenner base tunnel project**
- EO: *“the cost-benefit analysis contains information that cannot reasonably be understood to be commercially sensitive, such as those sections on ‘change in environmental externalities’ (5.6.4) and ‘change in climate impacts’ (5.6.5), which also mention CO2 emissions. These **parts of the document contain ‘environmental information’** within the meaning of the EU Aarhus Regulation and should be released”*.
- In reply, the EU agency maintained its position that no ‘environmental information’ is at stake.

Examples (III)

- Case [1053/2023/MIK](#) - How the European Commission handled two requests for public access to the impact assessments and opinions of the Regulatory Scrutiny Board regarding the envisaged revision of REACH and the Mercury Regulation
- Case [925/2022/LDS](#) - How the European Commission dealt with two requests for public access to documents concerning the Swedish and Danish national plans under the Recovery and Resilience Facility
- Case [2142/2018/EWM](#) - the European Commission's refusal to grant public access to Member State positions on a guidance document concerning the risk assessment of pesticides on bees

Current language: **EN** English • Available languages: Other languages (23) ▾

Ombudsman holds public consultation on transparency in EU environmental decision making

CASE [SI/5/2022/KR](#) - OPENED ON Thursday | 08 September 2022 - DECISION ON Tuesday | 20 June 2023



- Ombudsman asked for input from the public
- Respondents confirmed that EU institutions sometimes do not consider that information having an environmental impact should be recognised as ‘environmental information’.

Next steps

- Follow up to public consultation → possible inquiry into the matter
- Contact with Aarhus Convention Secretariat and Compliance Committee
- Reliance on findings of Aarhus Convention Compliance Committee in Ombudsman inquiries
- Further developments:
 - Special report in [OI/2/2022/OAM](#) on systemic delays in dealing with requests for public access to documents
 - Independent study on the proactive disclosure of environmental information



Thank you.
Questions?