the federal **Ombudsman**

a bridge between citizens and the public services

ANNUAL REPORT 2009

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Annual Report

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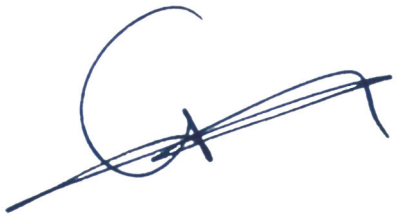
Mr Speaker of the House of Representatives,
Mrs Chairwoman of the Petitions Committee,
Honourable Members of Parliament,

In accordance with Article 15 of the Federal Ombudsman Act of 22 March 1995, we have the honour of submitting the report of the Federal Ombudsman for 2009.

We hope that you will enjoy reading this report and are at the entire disposal of the House of Representatives to present and comment on it before the Petitions Committee and the standing committees.

Yours faithfully,
The Federal Ombudsmen

Catherine De Bruecker



Guido Schuermans

Preface

As every year, this report for 2009 provides a critical view by citizens of the federal public services, but also illustrates the unwavering determination of the federal authorities to improve the quality of service to users.

This thirteenth annual report of the Federal Ombudsman brings an intense year to a close. Citizens filed no fewer than 6,429 complaints and requests for information with us.

2009 was a demanding year. On 29 June 2009, the Federal Ombudsman submitted two investigation reports on the running of open and closed centres. On 25 September 2009, the Federal Ombudsman submitted an interim report to Parliament on the reception of minors residing with their parents illegally on the territory, whose state of need had been ascertained by a public social welfare centre.

The report comprises four parts:

Part I reports on the operation and management of the institution.

Part II contains the general figures and graphs: number of complaints received, admissibility rate, evaluation, result, complaint processing time, etc.

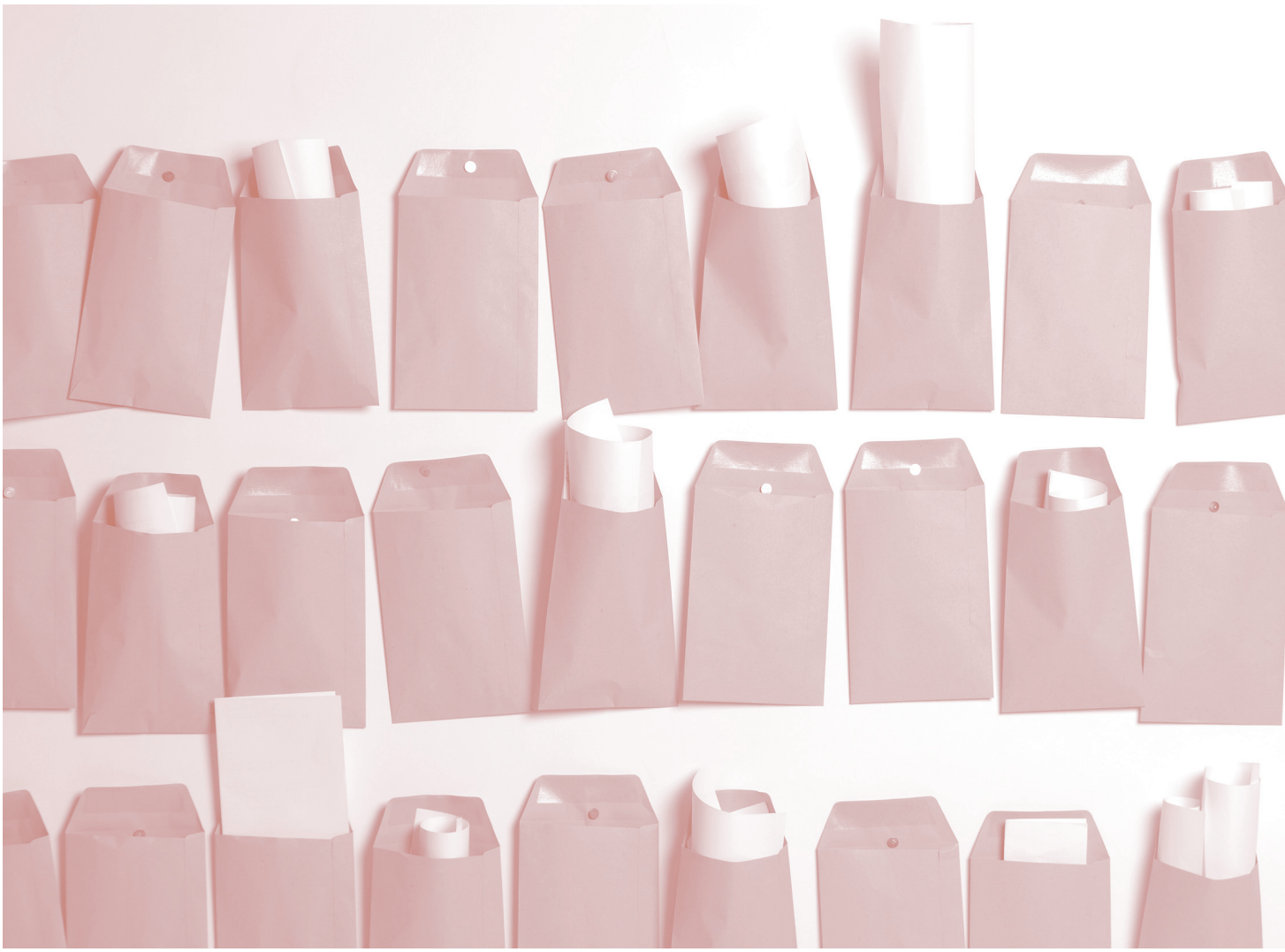
Part III provides a thematic approach to complaints processed, illustrated with striking samples from practice.

Foto: Contrast Image

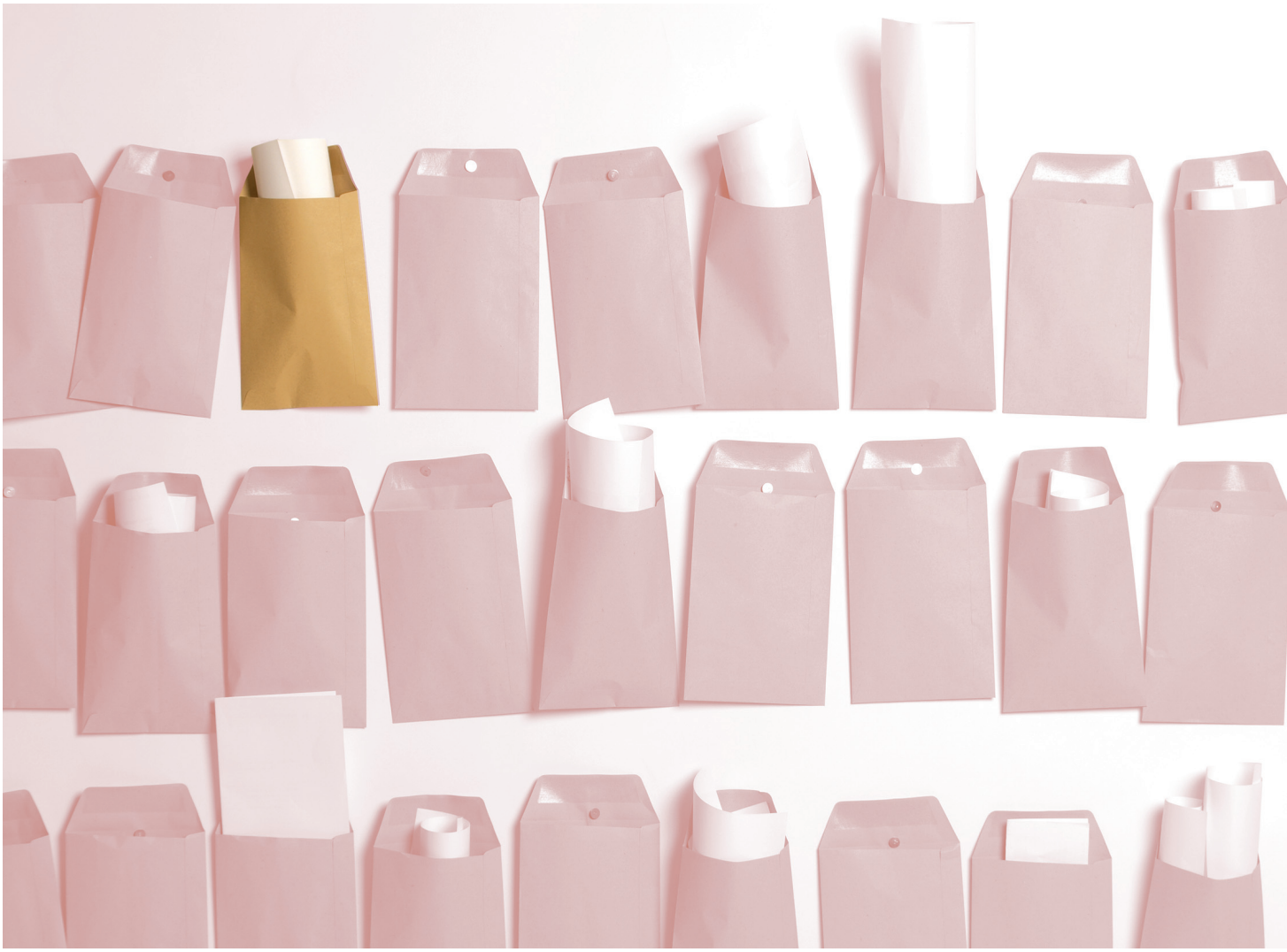
Part IV contains the general recommendations to Parliament and the official recommendations we sent to the federal administrative authorities in 2009, as well as a summary of the follow-up of recommendations from previous years.

We wish to express our warmest thanks to the many staff members of the different federal public services whom we contacted in 2009 for their active cooperation in helping to solve individual cases and applaud the positive commitment of the directors of these services in seeking solutions to structural problems, through constructive dialogue, with our proposals and draft recommendations, for the shared goal of offering quality public service to all.

Special thanks are in order for the team of the Federal Ombudsman, not only for its contribution to the preparation of this report, but also for the work it performs on a daily basis, lending a heedful ear to the difficulties encountered by citizens, to find fair solutions with the administrative authorities.



I. Operation and Management



The Federal Ombudsman: An independent institution that contributes to the quality of public service offered to citizens

The Federal Ombudsman is an independent institution that intervenes, free of charge, at the request of citizens, natural persons or legal persons. It helps them to solve their disputes with the federal administrative authorities in a reliable and rapid manner. But its mission does not stop there. An important part of its remit is to examine the complaints and make observations, turn these observations into useful information for the administrative authorities and, where necessary, turn them into recommendations to improve the quality of service offered to citizens.

In 2009, the institution went over the 50,000 case file mark since it was created.

This year, the institution made 8 recommendations to the administrative authorities and submitted 4 recommendations to Parliament.

In 833 complaints, the Federal Ombudsman concluded that the administrative authorities had not provided a service that the citizen was entitled to expect and provided a reasoned assessment of its conclusion to the service concerned.

I. The Ombudsman criteria[1]

The mission of an institutional Ombudsman is to deal with cases of "poor governance." But what is actually meant by good or poor governance?

The first European Ombudsman, Jacob Söderman, was of opinion that there were essentially two ways of informing citizens and civil servants as to what good or poor governance comes down to in practice. The first is that the Ombudsman decides on a case-by-case basis through investigation and then publishes the results. The second consists of adopting and publishing a code of good governance.[2] This is already the case in a number of member states.

The Federal Ombudsman has from the outset focused on drawing up a transparent list of rules and criteria used to process the complaints received.

This list has been updated through the years in accordance with the practice of the Federal Ombudsman and in comparison with such Ombudsman services in other democratic countries.

These criteria were originally called "principles for good governance." In reality, they comprise broader obligations than those developed by the Council of State and the Court of Cassation and do not lend themselves fully to legal supervision. They have consequently been rechristened "Ombudsman criteria" after the revision of the complaint assessment system in 2006.

"Proper application of the rules of law" is naturally the first ombudsman criterion. The Federal Ombudsman currently uses 15 such ombudsman criteria in all. This list of criteria and their definition will be adapted in time in accordance with developments in case law, and especially in the society in which the Ombudsman is active and which is reflected in the complaints that the Ombudsman investigates.

1 Annual Report 2006, p. 18.

2 Jacob Söderman, "Les premières années du Médiateur européen," in *Le Médiateur européen. Origines, creation, evolution,* Luxembourg, 2006, p. 94.

The definition of the 15 ombudsman criteria used by the institution at this time is published below. It is also posted on the Federal Ombudsman's website.

The publication thereof is a necessary step to a better knowledge and thus better understanding of the criteria to which the Federal Ombudsman refers in its relations with the administrative authorities. This tool will also help make more objective the (annual and interim) reports that the Federal Ombudsman submits to Parliament and to initiate a discussion on the need for a code of good governance in our country.

Proper application of the rules of law

The administrative authorities act in compliance with the general legal rules and regulations and with respect for fundamental human rights.

When a rule is not clear, the administrative authorities see to it that it is applied in the spirit of the law or in the meaning that is usually recognised by case law and legal doctrine.

The administrative authorities must moreover comply with their own administrative instructions and circulars, provided they do not run contrary to the legal and regulatory provisions.

Equality

The administrative authorities must treat all citizens equally without creating any illicit distinction between them.

Citizens who find themselves in the same circumstances must be treated in the same way. Citizens in different situations are accorded different treatment. The situation is assessed in regard to the measure considered.

A different treatment may be established between categories of persons provided it is based on an objective criterion and is reasonably justified in view of the purposes and the effects of the measure criticised. The equality principle is violated when there is no reasonable proportional relation between the means used and the end pursued.

Impartiality

The administrative authorities may under no circumstances favour one party at the expense of the other. This impartiality presupposes an objective treatment of the case file and entails an absence of interest – even the appearance of interest – of the officiating civil servant.

When the administrative authorities process a case file, they may not be influenced by any form of personal, family or national interest, nor by any external pressure or by religious, political or philosophical convictions. No one from the administrative authorities may be involved in a decision in which he or one of his close relations has -- or may be perceived as having – interests; a civil servant may not be involved in an appeal of a decision if he helped to take that decision.

The administrative authorities must avoid having their decision influenced by the fact that it might cause inconvenience for one of the parties.

Reasonableness and proportionality

The administrative authorities must make sure that their decision is appropriate, proportional and fair.

The principle of reasonableness is violated when the administrative authorities use their freedom of assessment in a manifestly unreasonable manner. The decision of the administrative authorities may be qualified as being manifestly unreasonable when it is not that which would have been taken by any other normally prudent and diligent civil servant under the same circumstances.

To comply with the principle of proportionality, a normally diligent civil servant makes sure to take the measure that seems concurrently most respectful of the citizen's interests and of the general interest objectives pursued by his department.

When a citizen finds himself in an unfair situation as a result of an administrative rule or practice, the administrative authorities must spare no effort to put things right. Equal treatment of all citizens under the same circumstances must be ensured in such a case too and abuse of power must be avoided.

Legal certainty

Legal certainty entails that citizens are placed in a position to know the positive law that is applicable to them. Citizens must be able to assess beforehand the legal consequences of their conduct and actions. They must be able to rely on certain constancy in regulations and administrative practices.

To preserve legal certainty, the administrative authorities must endeavour to familiarise the citizen, within a reasonable period, with the rules applicable to him.

The principle of legal certainty entails that the citizen may not be expected to take account of rules that are made known late if at all, or with decisions of an individual scope that were not notified to him.

Legal certainty entails that the retroactive application of legal and regulatory provisions is prohibited.

Legal certainty offers guarantees for equal and impartial treatment, thereby setting limits on the freedom of action of the administrative authorities and doing away with arbitrary decisions.

Legitimate confidence

The administrative authorities honour the legitimate confidence that their constant attitude, promises and previous decisions have aroused in citizens.

The expectation aroused must be legitimate. Barring particular exception, legitimate expectation cannot be deduced from the silence of the administrative authorities.

Right to be heard

Everyone has the right to have his observations asserted orally or in writing when he has to defend his interests, even if this right is not expressly stipulated in the legislation or if the legislation does not require the administrative authorities to hear the citizen before they take a decision. This right must be assertable at every stage of the decision-making procedure, including, insofar as reasonable, after the decision is taken.

This principle is intended to protect the interests of the citizen and the administrative authorities alike, as the former can thereby present his or her case, and the administrative authorities can be certain of taking a decision with full knowledge of the facts.

Reasonable time limit for complaint handling

Every request must be processed by the administrative authorities within a reasonable period of time.

A reasonable period of time is assessed in terms of the concrete situation considered: it will depend on the urgent nature of the request, its complexity, as well as any negative consequences of a late response for the citizen. Consequently, under certain circumstances, the principle of reasonable time requires the administrative authorities to decide within a shorter period than the maximum period provided by law.

In the absence of a legally stipulated such period, the "Charter of Good Governance" serves as a guideline. If the administrative authorities are not in a position to answer a question within three weeks, they must send an acknowledgement of receipt to the interested party informing him accordingly and proposing a period within which to provide such an answer. The administrative authorities must make efforts to take a decision within four months. For a particularly complex case, this period amounts to eight months.

Conscientious handling

Every administrative authority must proceed and decide conscientiously. This presupposes first and foremost that the administrative authorities obtain sufficient information to decide with knowledge of the facts. They must have all the legal and factual data needed for the decision.

In making their decision, the administrative authorities must rely on verifiable facts, taking into account the applicable provisions and all pertinent elements of the case, and discard those which are not.

The precautionary principle constitutes an integral part of the conscientious handling requirement.

Effective coordination

The different governmental services must cooperate efficiently with each other. Communication must moreover be smooth within the same governmental service for the sake of optimal information exchange. Citizens may not be asked to provide elements that are already at the disposal of -- or easily obtainable otherwise by -- the administrative authorities.

When different administrative authorities have to work together, efficient coordination entails harmonised procedures and a correct and rapid exchange of information. Reciprocal access to databases, in compliance with privacy protection rules, may be required. No department may hide behind the silence of another department to justify its failure to act and must make every effort to get the department that is responsible for the case to cooperate optimally.

Justification of administrative acts

Every administrative action must be based on acceptable and reasonable ground, de facto and de jure.

Citizens must understand the reasons for which they receive a given decision, which means that the decision served to them must be reasoned. This requirement nonetheless extends beyond merely formal motivation to the quality of the motivation. A well reasoned decision is an intelligible decision. Standard or excessively general turns of phrases are therefore insufficient. Concise motivation may suffice if it is clear and appropriate to the citizen's case.

Active information

The administrative authorities must act in a transparent manner and inform the public, unsolicited, in as clear, objective and extensive a manner as possible within the limits authorised by law.

Active information tallies with the mission of the administrative authorities which consists of making legal and regulatory provisions as well as administrative practices more accessible and intelligible to as wide a public as possible. This information must be correct, complete, unambiguous, efficient and up to date.

The administrative authorities must use clear and understandable language and their communication must be effective. They must make sure to use diversified and adequate channels of communication to reach the largest number of citizens concerned.

Passive information

Apart from the exceptions provided by law, information requested by citizens must be provided to them.

A request for information and the answer thereto may be made verbally or in writing. Insofar as authorised by law, the administrative authorities give priority to the means and channel of communication preferred by the citizen.

Courtesy

In his contacts with citizens, in addition to compliance with the elementary rules of politeness generally acceptable in our society, a civil servant must maintain a professional tone in his speech and attitudes, so as to preserve a harmonious, respectful and humane inter-personal relationship.

Where necessary, he provides instruction by explaining the reasons why he may not comply with the citizen's request and tries to direct him or her to the competent department. In any event, he tries to use understandable language, adapted to the situation and characterised by neutrality.

If the administrative authorities have made a mistake and have not acted in accordance with the citizen's legitimate expectations, they must restore the citizen's trust and confidence in the administrative authorities by apologising.

Appropriate access

The administrative authorities endeavour to maximise accessibility to their services, offices and information by making sure that their opening hours are convenient for the public concerned, that they can be reached by telephone and through various channels of communication. They endeavour to receive citizens in an appropriate working environment, to limit waiting times and to improve the legibility of administrative decisions and documents and access to legal and regulatory information. The administrative authorities try to make such information accessible to as wide a public as possible, without claiming to be exhaustive.

Particular attention must be paid to making offices accessible to persons with reduced mobility.

2. Recommendations

The Federal Ombudsman may recommend to the administrative authorities to amend an individual decision or administrative practice,[3] and may moreover submit to the House of Representatives any and all recommendations it should deem useful,[4] whether to amend a particular regulation or piece of legislation or to put an end to contestable administrative practices.

These recommendations are made public through the Federal Ombudsman's annual or interim reports.

As regards the recommendations made to the House of Representatives, Article 24, paragraph 7, 1° of the House Regulations requires each standing committee to enter in its agenda, at regular intervals, the examination of Federal Ombudsman's recommendations sent by the Petitions Committee. Article 38 of the same regulation provides for the appointment of an "ombudspromotor" in each standing committee to follow the reports submitted by the Petitioners Committee.

There is no formal monitoring procedure, however, for recommendations made to the administrative authorities. It would nonetheless seem desirable in the relations of the Federal Ombudsman with said authorities, in particular as regards the enhancement of good governance.

A monitoring procedure would also make it easier for Parliament to exercise effective supervision on what action the administrative authorities have taken on the Parliamentary Ombudsman's work.

What should be the main lines of such a procedure in order for it to be successful?

First, such a procedure is inconceivable if no time limit is set within which the administrative authorities must reply to the Ombudsman's recommendation, as a matter of due diligence.

Second, if the administrative authorities decide that they cannot follow the Ombudsman's recommendation, they must provide reasons for their refusal, as a matter of motivation and transparency.

Third, if the administrative authorities agree to follow the recommendation made to them, it is indispensable for them to accept a timetable and concrete objectives for the implementation of the recommendation, as a matter of efficiency.

Such a procedure must not be seen as an additional constraint imposed on the administrative authorities. On the contrary, it promotes a clear and transparent discussion between the responsible interlocutors round the shared objective of improving continually the public service offered to citizens.

3. Management of the institution

Structure of the organisation

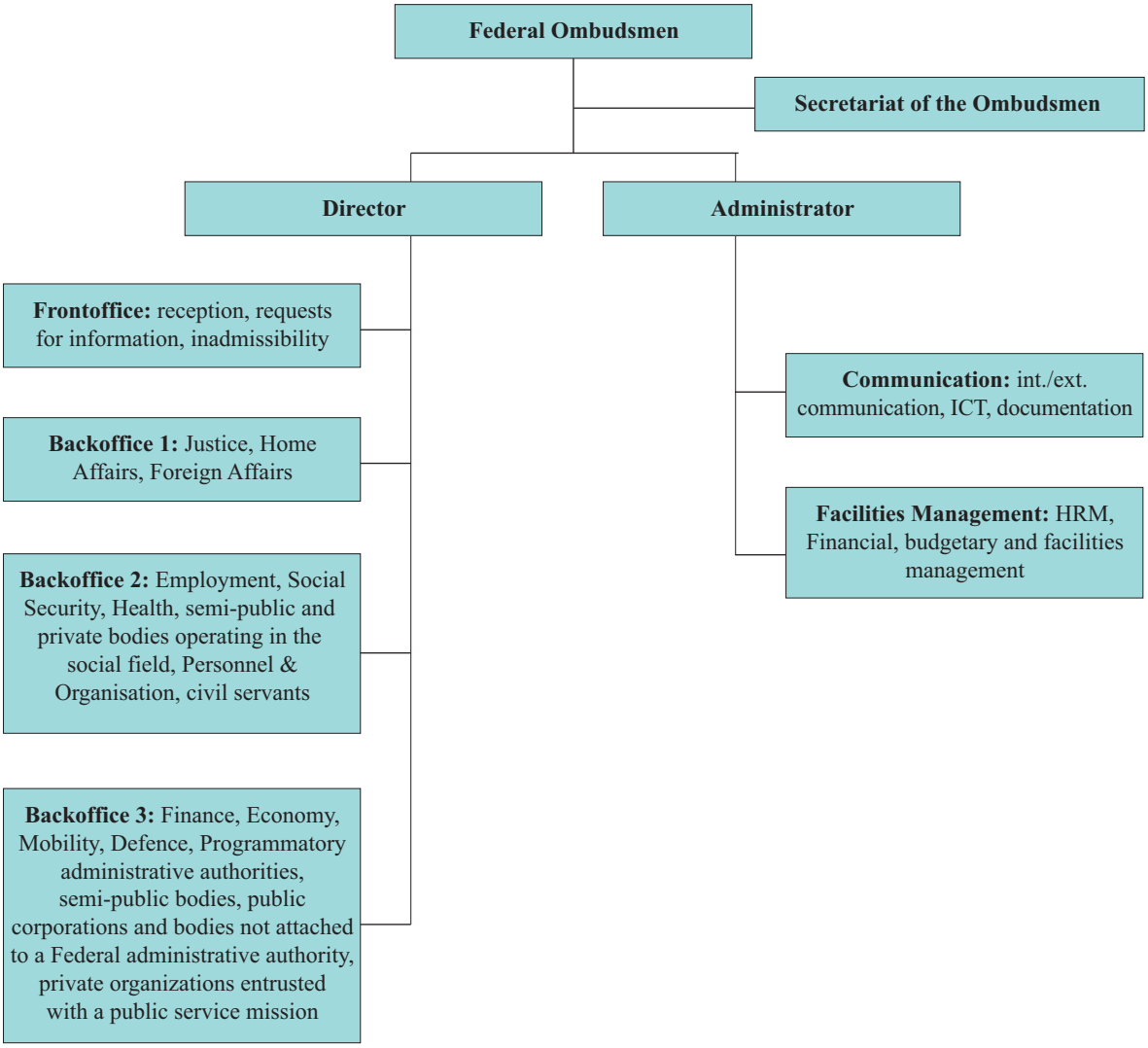
A clear organisational structure makes the institution more accessible.

The Front Office handles the first contact with the citizen who calls on the Federal Ombudsman. It investigates the admissibility of incoming complaints, processes requests for information and, insofar as possible, refers the complaints not intended for the Federal Ombudsman to the right authority. The 3 back offices deal with complaints relating to the respective fields. The Communication department

[3] These are known as "official" recommendations. For an overview of the monitoring of official recommendations since we assumed our duties in November 2005, cf. pp. 58-64.

[4] These are known as "general" recommendations. For an overview of the monitoring of general recommendations, cf. pp. 52-55.

supports and implements the communication policy of the federal ombudsmen, whereas the logistical staff are responsible in particular for the management of human resources and the financial and material management of the institution.



Personnel situation and management

On 1 January 2010, the institution had 47 employees, divided over 4 levels, as shown in the table below.

Grade	Language		Gender		Legal Status		Total workforce In FTE[5]	Staff Framework Total
	F	N	M	F	Statutory	On contract		
A	14	14	14	14	19 (a)	9 (b)	28	24 (+4)
B	7	7	4	10	8	6 (c)	14	12 (+2)
C	1	1	2	0	0	2	2	2
D (d)	2	1	0	3	0	3	2.5	(2.5 FTE)
Total	***24***	***23***	***20***	***27***	***27***	***20***	***46.5***	***38 (+8.5)***

(a) of which 1 agents in full-time career interruption owing to illness;
(b) of which 4 contract staff members, article 4 of the establishment plan (urgent and temporary need).
(c) Of which, 2 contract employees for the Front Office, article 4 of the establishment plan (urgent and temporary need).
(d) Cleaning staff, equivalent to Level D, article 4 of the establishment plan (urgent and temporary need): 3 agents (2.5 FTE)

Compared with the situation as at 1 January 2009, the number of employees has been increased by one unit.

The external procedure to recruit a director was brought to a close in the course of 2009. The new director assumed his duties on 1 June 2009.

In spite of the growth in the volume of work due to the constant inflow of case files, our institution must continue to offer quality service to citizens. To do so, the House of Representatives authorised an increase in our workforce in 2010 by two graduate case file managers under contract (one French-speaking and one Dutch-speaking) who were actually assigned to the operational services as of the beginning of 2010.

For their continuing training needs, staff members attend study days on a regular basis or take external training courses in their discipline (immigration law, social and fiscal law, civil service management or communication, etc.). Our institution moreover organises collective internal training courses. A global quality policy stressed written communication in 2009.

Financial and budgetary management

The estimate and monitoring of the Federal Ombudsman's expenditures have for years relied on a long- term projection. For personnel expenditures, which account for the biggest item by far with 83.4% of expenditures,[6] the Federal Ombudsman has since 1999 already relied on a multi-year estimate, updated every year to make its budget proposals. The various endowed public institutions henceforth submit a multi-year estimate spread over three years to the House of Representatives for their overall expenditure budget.

The Court of Audit checks the financial and budgetary accounts at the end of every budget year.

The basic budget figures for 2008-2010 are given in the table below:

5 Full-Time Equivalent.
6 Budget 2009 figures.

Budgetary year	Accounts 2008	Budget[7] 2009	Budget 2010
Expenditures	4,117,649.28	4,505,290.00	4,729,000.00
Revenues	4,340,612.24	4,505,290.00	4,729,000.00
Endowment	*3,858,000.00*	*4,108,000.00*	*4,590,000.00*
Transferred surplus	*251,555.33*	*397,290.00*	*139,000.00*
Other revenues	*231,056.91*		
Balance	222,962.96		

The heading 'Accounts 2008' mentions, for expenditures in 2008, the amount of the actual expenditures made; the headings 'Budget 2009' and 'Budget 2010' the amount of the total expenditure allocations granted by the House of Representatives. These expenditure allocations are financed by the proprietary endowment (the amount entered each year in the federal government's general expenditures budget), the surplus carried forward from previous years and other revenues.

Facilities management

In addition to the daily ICT infrastructure management, major projects were carried out in 2009 for IT management, including the launch of a new website.

A preliminary study was moreover conducted in 2009 on another essential project to modernise our case file management system developed nearly ten years ago. Relying on the latest IT developments, the new system must be operational with other software in order to optimise the work procedures in the years to come. It will in particular allow for automatic document creation and management as well as remote operation, thereby improving considerably the quality of the service of our branches in the provinces.

Before launching new programmes, it was nonetheless imperative to be able to count on sufficiently efficient and reliable hardware. An extensive upgrade of the network infrastructure in 2009 will enable us to offer new, appropriate tools to our staff soon.

[7] The accounts for 2009 will be audited by the Belgian Court of Audit and closed by the House of Representatives in the course of 2010.

II. General figures

1. Introduction

In this part, general statistical data provide an overall view of the number of case files, language, means of communication used, processing phase, admissibility and forwarding of case files.

This Annual Report pertains to the entire calendar year 2009. The figures contained in this part reflect the situation as at 31 December 2009.

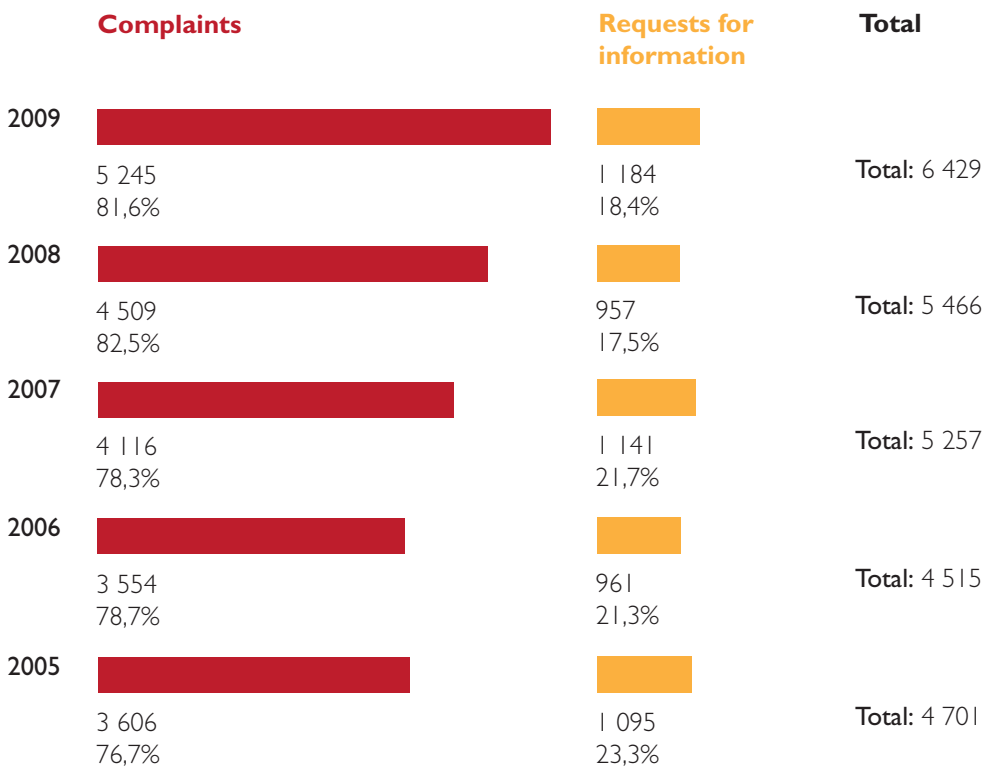
To give a clear picture of the case files introduced in the year under review, unless expressly indicated otherwise, the tables and graphs will be based on the new case files for the period, thereby avoiding case files from previous years, still in progress in 2009, from being booked twice. The case files introduced in previous years are indicated globally in the comments and explicitely included in certain graphs, so that the overall workload per year is illustrated all the same.

Inasmuch as possible, the general figures compare developments in the year 2008 and 2009. The number of new case files is considered from as far back as 2005. The statistics of this annual report are established on the basis of the evaluation method published in the Annual Report 2006[8].

2. General Statistics

2.1. New case files

New case files: comparison 2005 – 2009



[8] Annual report 2006, pp. 17 ff.

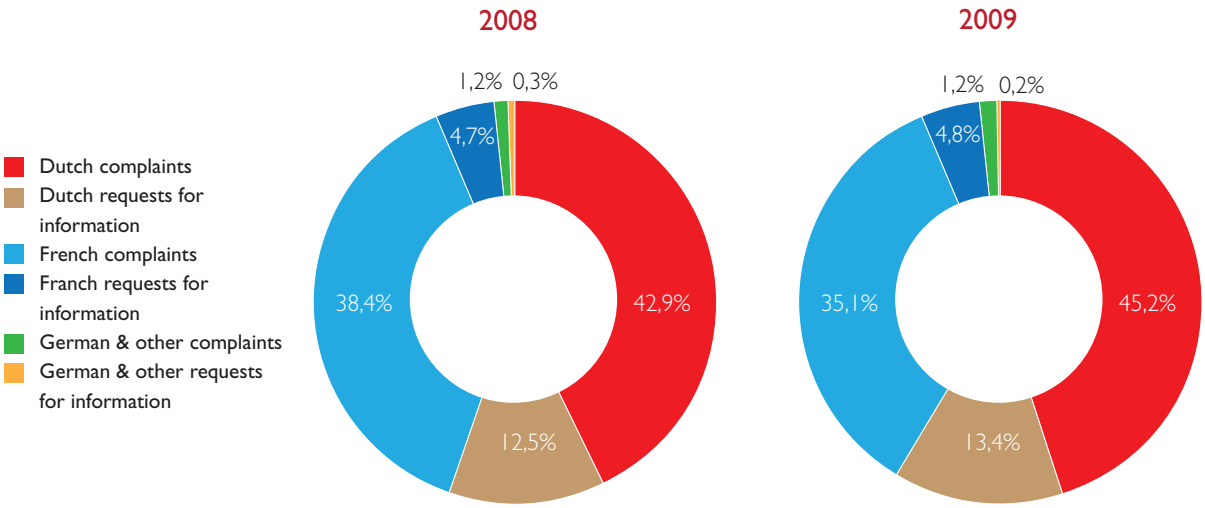
The total number of new case files in 2009 amounted to 6,429, including 1,184 requests for information (compared with 5,466 new case files in 2008, including 957 requests for information). This is the highest number of new files registered since the office of the Federal Ombudsman was created thirteen years ago. It is worth noting a slight increase in the proportion of requests for information in 2009 (up by 0.9% from 2008).

In addition to complaints and requests for information, the Federal Ombudsman receives phone calls with requests for information that are not booked as case files, as they are answered immediately by the front office. In 2009, the front office recorded 6,859 telephone calls: 4,526 calls (66.51%) concerned an existing – or led to the opening of a new – case file, 2,297 calls (33.49%) did not lead to the opening of a case file. The toll-free telephone number recorded 2,984 calls (43.5%).

Over a period of thirteen years, the Federal Ombudsman has registered 51,810 case files, including 41,236 complaints.

2.2. New case files bij language

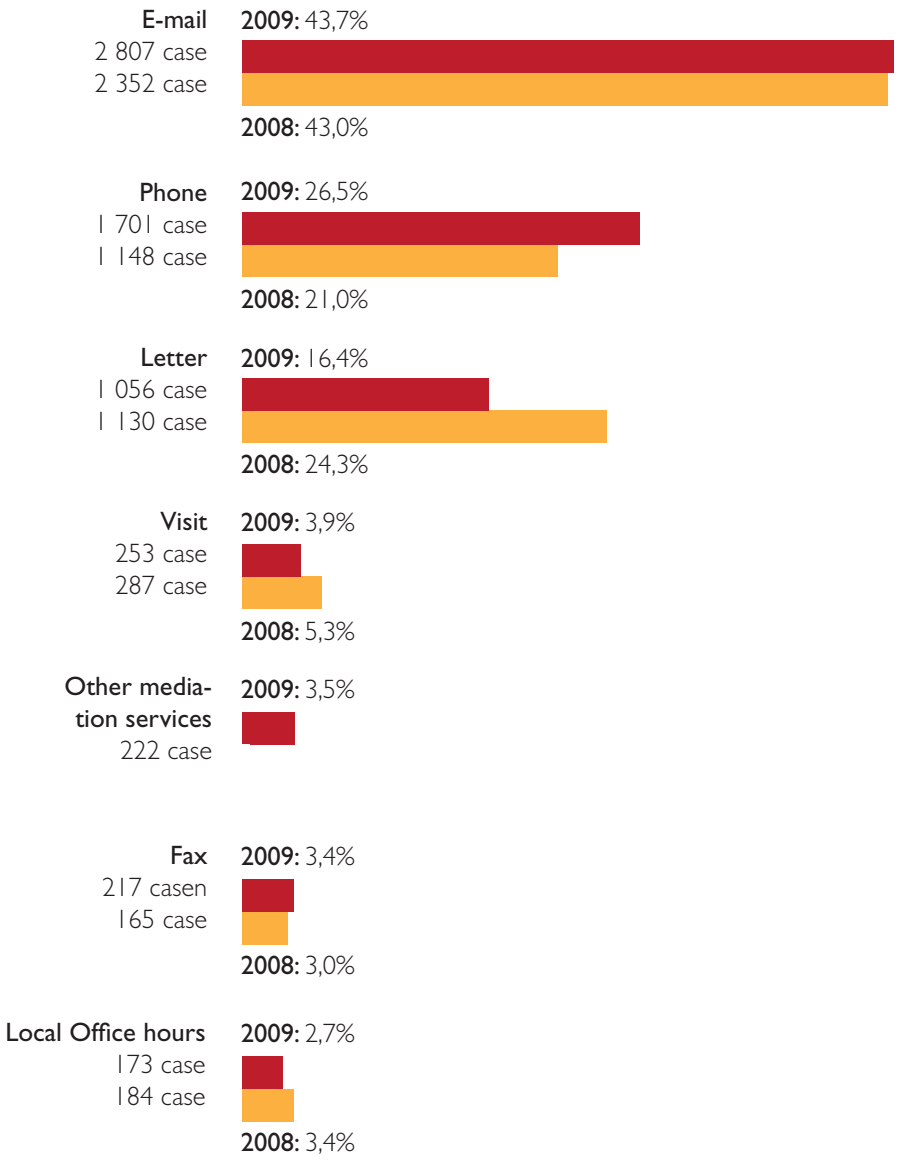
New case files by language : comparison 2008 - 2009



2.3. New case files by means of communication

The means of communication indicates how a complaint was lodged or a request for information made. The predominance of electronic means (by e-mail or via the Federal Ombudsman's website) over the post was confirmed yet again in 2009. Since October 2008, the Federal Ombudsman can also be reached by a toll-free telephone number (0800 99 962), which may explain the increase of the telephone as a means of introducing a case. A new registration tool was created in 2009 to identify case files addressed to the Federal Ombudsman by other mediation services.

New case files by means of communication : comparison 2008 - 2009

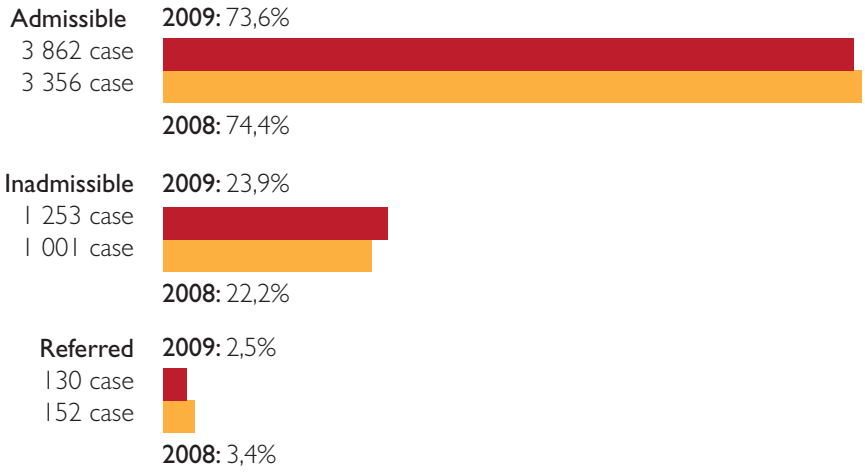


2.4. Admissibility of new complaints

Inadmissible or forwarded case studies account for a non-negligible part of the workload. Very often in fact, the decision to declare a file inadmissible or to forward it to another mediation service can be taken only after an in-depth examination.

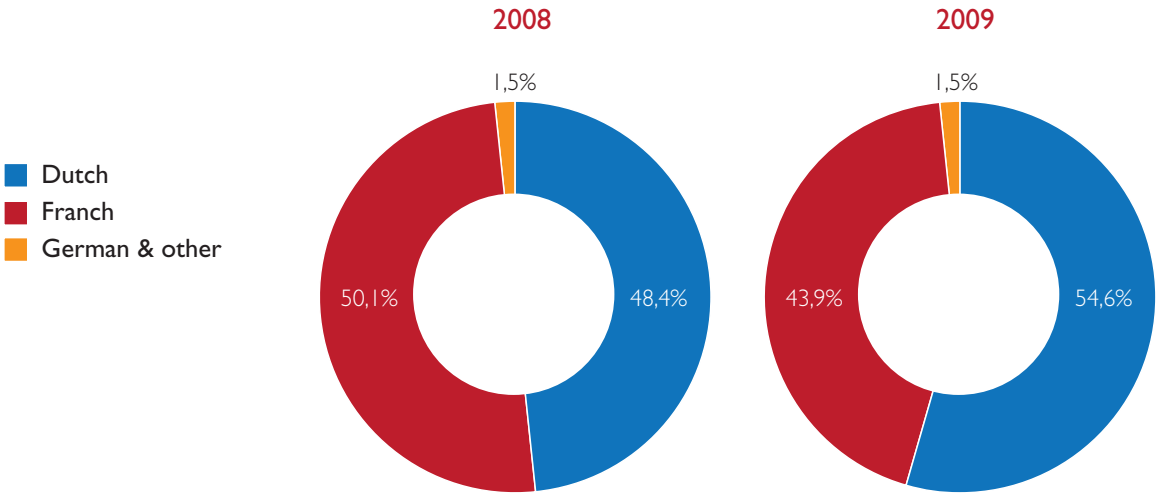
Of the 5,245 new complaints, 1,253 were inadmissible and 130 were forwarded to another Ombudsman Service. The remaining 3,862 were declared admissible.

Admissibility of new complaints : comparison 2008 - 2009



2.5. New admissible complaints by language

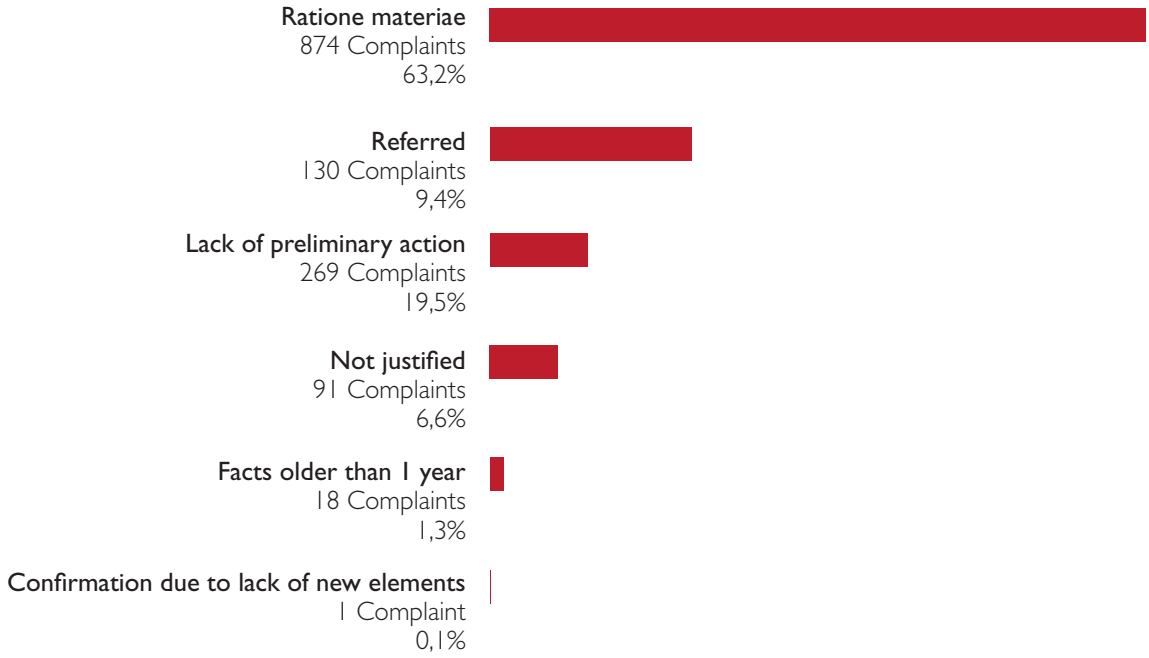
New admissible complaints by language : comparison 2008 - 2009



2.6. Breakdown of inadmissible complaints

This graph shows the number of complaints per reason for inadmissibility as set out in the organic law[9] and the rules of internal procedure of the Federal Ombudsman. Referrals are here considered as a category of inadmissible complaints.

Breakdown of inadmissible complaints



2.7. Complaints referred

When a complaint concerns a federal, regional, municipal or local administrative authority, which has its own ombudsman by virtue of a legal regulation, it is systematically and without formalities referred, and registered as such in the statistics. Complaints about other authorities are inadmissible (even if the case file is sent to a complaints or ombudsman department).

Destinations of complaints referred	2009	%
Mediation body for the telecommunication sector	41	31,5%
Flemish Ombudsman	26	20,0%
Pensions Mediation Service	17	13,1%
Mediation body for the Postal Office	12	9,2%
Ombudsman of the Walloon Region	11	8,5%
Supervisory Standing Committee for the Federal Police ("P" Committee)	9	6,9%
Supreme Council of Justice	6	4,6%
Mediation body for the National railroad Company	3	2,3%
Ombudsman of the Franch-speaking Community	3	2,3%
Local mediation bodies	2	1,5%
	130	

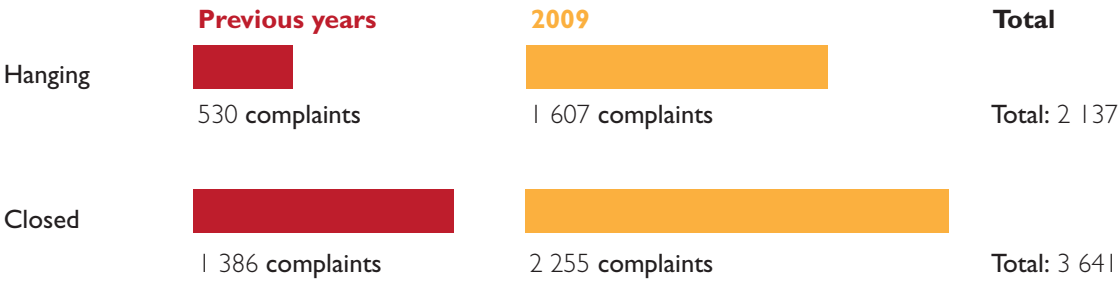
[9] pp. 67-71.

2.8. State of admissible complaints as at 31 December 2009

On 31 December 2008, there were still 1,940 complaints in progress (lodged in 2008 and previous years). In 2009, 24 of these were declared inadmissible or referred to another service. Of the remaining 1,916 admissible complaints of the previous years, 1,386 were closed in 2009, so that there were still 530 complaints in progress as at 31 December 2009. Of the 3,862 admissible complaints that were lodged in 2009, there were still 1,607 in progress as at 31 December 2009.

The total number of complaints closed was up: 3,651 in 2009 compared with 3,235 in 2008. Nevertheless, the number of complaints still to be processed at the end of the year increased from 1,940 on 30 December 2008 to 2,137 on 31 December 2009 – accountable by the increase in the number of admissible complaints for the year (3,862 in 2009 compared with 3,356 in 2008).

State of inadmissible complaints as at 31 December 2009



An admissible complaint is closed when the result has been notified to the complainant (3,553) or when the examination of the complaint has been suspended (organised legal or administrative actions: 88).

2.9. New admissible complaints per administrative department: 2008-2009

The following tables show the distribution in the number of new admissible complaints in 2008 and 2009 among the different administrative departments. A distinction is drawn between complaints lodged by civil servants and other complaints.

Complaints by civil servants are lodged against their own (current, former or future) administrative department and concern a support staff or personnel service (support service) or an operational service (e.g. a complaint against an immediate superior), provided that the relationship between the civil servant and the administrative department does not fall under the core activity of that operational service (e.g. Selor).

New admissible complaints per administrative department (with the exception of complaints lodged by civil servants)	2009	2008
Chancellery of the Prime Minister	1	0
Personnel & Organisation	127	41
Information technology & Communication	5	1
Justice	84	77
Home Affairs	968	1174
Foreign Affairs, Foreign Trade & Development Co-operation	128	91
Defence	3	4
Finance	1144	948
Employment, Labour & Social Dialogue (not including semi-public bodies operating in the social field)	7	11
Social Security (not including semi-public bodies operating in the social field)	301	205
Health, Food Chain Security & Environment	50	20
Economy, SMEs, Self Employed & Energy	146	26
Mobility & Transport	153	102
Federal Public Planning Servics	3	2
Semi-public bodies operating in the social field	377	295
Semi-public bodies, public corporations and bodies not attached to a Federal administrative authority	30	21
Private organisations entrusted with a public service mission	302	349
Others	35	37
	3864	**3404**

The increase in the number of complaints against the Federal Public Service Personnel and Organisation is explained by the difficulties encountered in 2009 by civil servants who took part in training courses organised by the Federal Government Training Institute (known by the French/Dutch initials IFA/OFO).

The increase in the number of complaints against the Federal Public Service Economy SMEs, Self-employed and Energy concerns the late payment of the flat-rate energy bill reduction by the directorate general for Energy.[10]

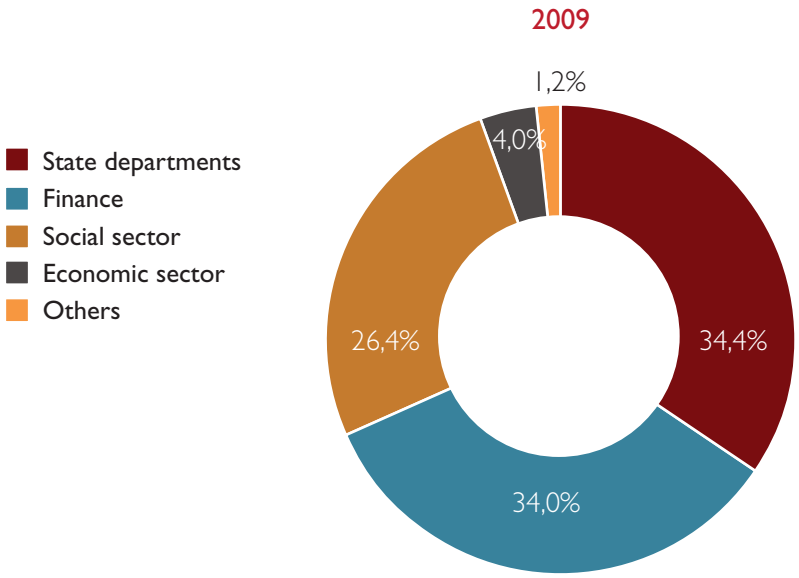
New admissible complaints lodged by civil servants per administrative department	2009	2008
Justice	11	8
Home Affairs	7	4
Foreign Affairs, Foreign Trade & Development Co-operation	6	5
Defence	8	6
Finance	26	27
Employment, Labour & Social Dialogue (not including semi-public bodies operating in the social field)	1	0
Social Security (not including semi-public bodies operating in the social field)	2	2
Health, Food Chain Security & Environment	3	2
Economy, SMEs, Self Employed & Energy	1	0
Mobility & Transport	2	1
Federal Public Planning Servics	1	1
Semi-public bodies operating in the social field	9	8
Semi-public bodies, public corporations and bodies not attached to a Federal administrative authority	10	4
	87	**68**

Since a complaint can pertain to different governmental authorities, the number of complaints per administrative department is always higher than the number of admissible case files (3,864 + 87 = 3,951 authorities concerned; for 3,862 new admissible complaints in 2009).

[10] pp. 43-44.

2.10. New admissible complaints per sector

New admissible complaints per sector (not including lodged by civil servants)



The share of the "Authority Departments," the sector under which the immigration authorities fall, dropped for the second consecutive year, falling below the 35% mark. The Finance sector rose by 6% while the share of the Social sector remained stable.

2.11. Evaluation of closed complaints

When a case file is closed, the Federal Ombudsman indicates whether the complaint is justified in the light of its grid of good administrative behaviour standards (ombuds criteria).

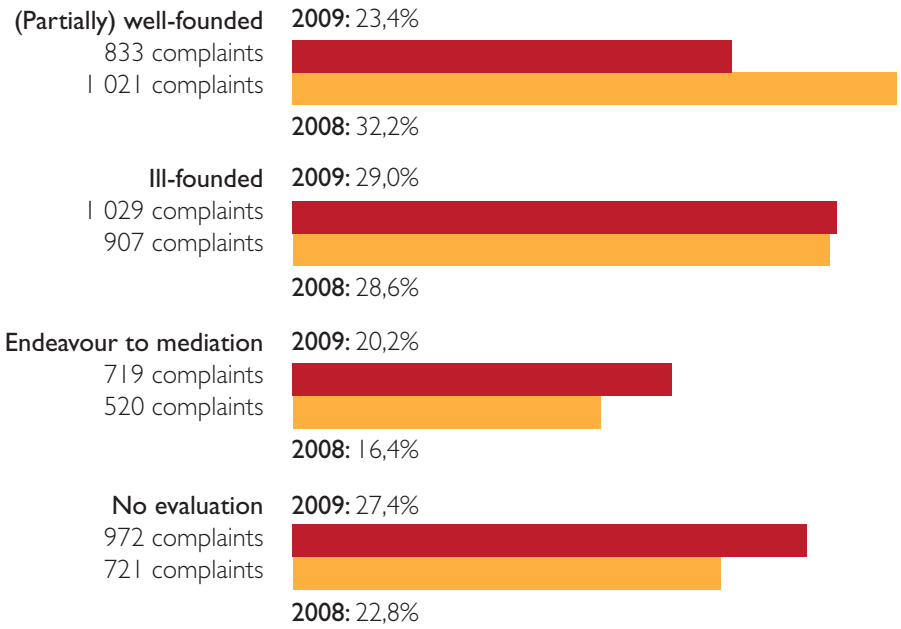
The investigation of a complaint can lead to one of the following 4 evaluations:

1. Well-founded: one or more good administrative behaviour standards are not met.
2. Ill-founded: the good administrative behaviour standards were not violated.
3. Partially well-founded.
   3 situations are meant:
   - The complaint contains various, equally important grievances, not all of which are well- founded however. Nevertheless, if one and the same main concern appears from the complaint, then the evaluation of the complaint will be geared to this main concern;
   - Cases where there is shared responsibility between the petitioner and the administrative authority;
   - A complaint where material principles are met (e.g. the complainant is not entitled to a subsidy he claims), but which shows that the procedural principles were not respected (e.g. improper reception of the petitioner or the provision of wrong information).
4. No evaluation
   4 different suppositions are meant:
   - The attempt to mediate is used in complaints that cannot be immediately considered as well-founded or ill-founded (the administrative authority has a discretionary power) or where a solution can be found rapidly without requiring to investigate further into the responsibilities;
   - The impossibility to decide on whether the complaint is well-founded;

- The petitioner's failure to answer a request for an explanation by the Federal Ombudsman;
- A complaint that has become pointless; the petitioner informs the Federal Ombudsman that the latter's intervention is no longer justified or that the problem has been solved before it was referred to the Federal Ombudsman.

The graph below provides a general picture of the evaluation of the 3,553 complaints closed in 2009 (not including suspended cases), but including complaints lodged by civil servants.

Evaluation of closed complaints : comparison 2008 - 2009



The increase in the number of case files closed "*no evaluation*" is explained by the closing, in 2009, of 249 complaints pertaining to the processing period of an application for authorisation to stay with the Department of Immigration and Naturalisation. The Federal Ombudsman had already intervened with said department on these case files, some of which had been pending for several years.

Following the publication of new instructions concerning situations where an authorisation to stay may be justified on humanitarian grounds on 19 July 2009, the Federal Ombudsman considered that complaints from applicants who had decided to update their application with the Department of Immigration and Naturalisation in order to benefit from the new regularisation rules had become pointless. More specifically, updating an application for authorisation to stay in accordance with the instructions of 19 July 2009 constitutes a new element, so the Department of Immigration and Naturalisation should be given an additional reasonable time to process the applications of the complaints concerned.

2.12. Application of the ombudsman criteria

A summary of the ombudsman criteria applied to the 833 complaints closed in 2009 with the evaluation "*well-founded*" or "*partially well-founded*" is given below. Several criteria may be violated in the same case file, and the criterion "*efficient coordination*" in principle goes together with another ombudsman criterion. This explains why the number of violated criteria (1,164) is higher than the number of case files closed (833).

Application of the evaluation criteria

Evaluation criteria	2009	%2009	2008	%2008
Reasonable time limit for complaint handling	440	37,8%	541	41,2%
Conscientious handling	174	14,9%	170	12,9%
Proper application of the rules of law	161	13,8%	136	10,4%
Passive information	112	9,6%	76	5,8%
Active information	72	6,2%	25	1,9%
Reasonable and propotionality	68	5,8%	64	4,9%
Justification of administrative acts	38	3,3%	22	1,7%
Effective coordination	23	2,0%	54	4,1%
Appropriate access	23	2,0%	20	1,5%
Legitimate confidence	16	1,4%	98	7,5%
Equality	15	1,3%	8	0,6%
Legal certainty	13	1,1%	97	7,4%
Courtesy	8	0,7%	1	0,1%
Right to be heard	1	0,1%	1	0,1%
	1164		**1313**	

The extensive share of "*reasonable period*" in the ombudsman criteria is largely due to the long time it takes to process applications to regularise residence at the Department of Immigration and Naturalisation.

2.13. Result of the intervention by the Federal Ombudsman

As soon as a complaint is found to be well founded, the Federal Ombudsman, relying on the new evaluation method introduced in 2007, proceeds to check the result of his intervention:

a) If the complaint is well-founded or partially well-founded:
   - Reparation
   - Partial reparation
   - Reparation refused
   - Reparation impossible (if it is materially not possible (any longer) to remedy the existing situation)

b) When the Federal Ombudsman made an attempt to mediate:
   - Successful
   - Unsuccessful

When the investigation into the justification of a complaint shows that it was well-founded or partly well- founded, then the complaint in question is closed as "*successful*" so that reparation or partial reparation can be awarded. The same applies when an attempt to mediate is brought to a successful conclusion, in the latter case the dispute was settled in a positive manner for the complainant.

On the other hand, the case file is closed "*Reparation impossible*" when the complaint is well- founded or partially well-founded, but the reparation is refused, or when an attempt at mediation failed.

'Reparation impossible' entails that the Federal Ombudsman's intervention could not lead to a solution that was satisfactory for the complainant. This evaluation is therefore not taken into consideration for assessing the result of the Federal Ombudsman's intervention.

Result of the intervention by the federal ombudsman

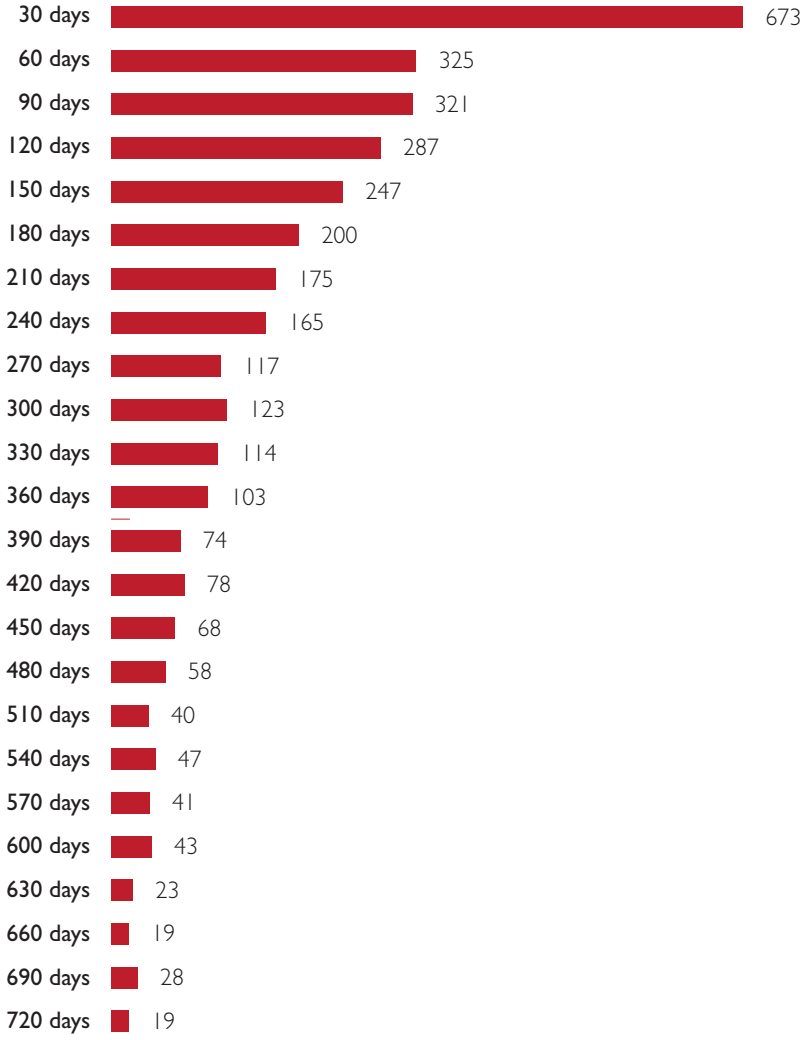
	Compliance	No compliance	Total
2009	1 406 **complaints** 92,6%	112 **complaints** 7,4%	**Total:** 1 518
2008	1 267 **complaints** 87,1%	188 **complaints** 12,9%	**Total:** 1 455

A sizeable number of these case files closed without result is explained by the decision of the IFA/OFO not to take action any longer on requests from the Federal Ombudsman concerning case files relating to certified training courses. Consequently, in 82 case files examined by the Federal Ombudsman, IFA/OFO indicated that recourse against the same certified training course as that referred to by the complaints in progress was pending before the Council of State and that it was consequently reserving its arguments for the administrative court. This made de facto impossible any further pursuit of the initiated mediation, even if the Federal Ombudsman is not formally required in any way to suspend its intervention, since the complainants concerned had not taken action themselves before the Council of State. The IFA/OFO has nonetheless undertaken to apply the same procedure to the case studies of the complainants concerned as that stemming from the pending decision.

2.14. Processing time of admissible complaints closed in 2009

A graph with the number of admissible complaints in 2009 per period of 30 calendar days is given below. It concerns both the new complaints as well as those of the previous year still in progress.

Processing time in calendar days of admissible complaints closed in 2009



A case file is considered "*closed*" when the result of the Federal Ombudsman's intervention has been communicated to the petitioner.

The data show that of these 3,553 complaints, 2,053 (57.8%) were closed within 6 months (compared with 2,018 complaints or 63.7% in 2008).

An additional 797 complaints (22.4%) were closed within a year (compared with 725 complaints or 22.9% in 2008), 365 other complaints (10.3%) within a year and a half (compared with 234 complaints or 7.4% in 2008), and finally 173 complaints (4.9%) within 2 years (compared with 90 complaints or 2.8% in 2008).

Finally, 165 complaints (4.6%) took more than 720 days to be processed (compared with 102 complaints or 3.2% in 2008).

The proportion of case files closed during the year dropped (80.2% compared with 86.6% in 2008). The curve peak is maintained at 30 days, with 18.9% of the case files closed within this period (compared with 13.7% in 2008).

The long processing time in these cases is attributable to:

- The complexity of the problem, which may pertain to various administrative departments, and even various levels of power;
- The slowness of people in a number of cases to react to the questions of the Federal Ombudsman, both complainants and authorities, during the examination of these complaints.

The impact of the workload due to the specific reports filed in 2009 on the average period for processing complaints must not be overlooked.

More specifically, investigative missions entrusted by the House of Representatives in 2008 were finalised in 2009. Thus, on 29 June 2009, the Federal Ombudsman submitted two investigation reports to the Speaker of the House of Representatives: the first on the operation of open centres authorised and managed by Fedasil, and the second on the operation of closed centres managed by the Department of Immigration and Naturalisation.

Finally, on 25 September 2009, the Federal Ombudsman submitted an interim report on the reception of minors residing with their parents illegally on the territory, the needy situation whereof has been ascertained by a public welfare centre, when the parents are incapable of assuming their duty of support.

III. Analysis of complaints processed

Introduction

As every year, this report for 2009 provides a critical view by citizens of the federal public services, but also illustrates the unwavering determination of the federal authorities to improve the quality of service to users.

The complaints filed this year raise three major concerns:

- **Unequal treatment:** Efforts to modernise the administrative authorities do not take sufficient account of the unequal access of citizens to new technologies. Some discrimination results from the regulations themselves. At times, they are the last trace of a past society…
- **The administrative authorities at times fail to comply with the law themselves:** When the regulations are inadequate to deal with new or unforeseen situations, the administrative authorities take initiatives on occasion that depart from the law without waiting for the recommended reforms to enter into force – with unacceptable consequences for the fundamental rights of the citizens.
- **The citizens expect greater proactivity and communication from the administrative authorities when they do not succeed in honouring their commitments:** The automation and rationalisation of procedures, as well as the multiple number of intervening parties in certain procedures, do not leave enough room for dialogue between the administrative authorities and the citizens.

All these topics are illustrated with striking examples from the processing of complaints.

The names mentioned in the examples have been changed.

Inequalities…

… in access to the administrative authorities

Mr Albin has a burglar alarm system in his house. According to information provided by the General Direction Security and Prevention, all alarm systems must be declared in a central database as of September 2009. When he wanted to declare his system, he noted that he could only do so electronically on the website www.policeonweb.be. As Mr Albin does not have access to the Internet, he considers it is impossible for him to declare his alarm.

A procedure that offers no alternative to the electronic option and provides no accompanying measures does not meet the requirements of governance accessible to the public and respectful of equal treatment for all citizens.

Some 30% of the population at present does not have direct access to the Internet or sufficient initiation to use it. No citizen may therefore be required to use only electronic means to fulfil the formalities stipulated by the regulations.

The development of electronic channels for a growing number of administrative formalities reflects developments in society but must not exclude certain categories of citizens from having access to the administrative authorities and in so doing compromise the universality of the public service and equal treatment of users.

For administrative procedures based on new information and communication technologies, the Federal Ombudsman consequently recommends that the administrative authorities provide either alternative means or accompanying measures so as to safeguard equal treatment for all citizens (RG 09/01).

… regarding unemployment benefits

Regulations currently discriminate between unemployed persons whose partner is a salaried employee and unemployed persons whose partner is self-employed.

An unemployed person whose partner is a salaried employee is considered as a cohabitant with family responsibilities. An unemployed person whose partner is self-employed, however, is automatically considered as a cohabitant without family responsibilities, irrespective of his or her partner's income.

As of the second year of unemployment, this distinction entails a considerable difference in the amount of unemployment benefit granted.

An unemployed person whose partner is a salaried employee will continue to receive a benefit corresponding to 60% of his or her last salary, if his or partner's gross income does not exceed the limit of €612 gross per month. On the other hand, an unemployed person whose partner is self-employed will see his or her benefit automatically reduced to 40% of his or her last pay, and then fall to a flat rate of €447.20, irrespective of his or her partner's income.

The Federal Ombudsman recommends that this discrimination be done away with (GR 09/02).

… in embassies and consulates

Mrs Van der Donckt, a Belgian national, wishes to get married with her Nepalese fiancé in the Belgian embassy in India. The future spouses want to draw up a marriage contract. However, drawing up a marriage contract in a Belgian embassy or consulate is possible only by and between a Belgian man and a foreign woman.

Her fiancé is therefore forced to apply for a visa so that the couple can come to Belgium to get married with a marriage contract, but Mrs Van der Donckt considers that she is a victim of gender discrimination.

According to an old law dating from 1931, a Belgian embassy or consulate may not draw up a marriage contract between a Belgian woman and a foreign national, although it can do so for a Belgian man who marries a foreign woman.

This provision clearly runs contrary to the principle of equality and non-discrimination, to the internal legal system and to different international law regulations.

The Federal Ombudsman recommends that the provision governing the competence of diplomatic and consular staff on notarial matters be amended to do away with this discrimination (GR 09/03).

Legal shortcomings…

…when exercising the right to vote

During the elections of 7 June 2009 for the regional and community parliaments as well as the European Parliament, some citizens who had received a notice convening them to vote were prevented from doing so on election day, because their name did not appear on the list of voters provided by another EU Member State.

This notification is served pursuant to a European directive which organises the data interchange of electoral lists between EU Member States to prevent certain people from voting in several countries for European elections. As the regional and community elections in Belgium were organised at the same time as the European elections, the people entered on the foreign lists were not only crossed off the list for the European elections, but also for the regional and community elections.

The lists provided by the other Member States were not always up to date, however, either because of administrative problems, or because these Belgian voters had failed to inform the authorities of the other Member States that they had left. The Member States are aware of the flaws of the system organised by the directive and discussions are in progress to change it.

The Federal Public Service Home Affairs nonetheless wrongly gave more credit to the foreign lists than to the Belgian population registers. The people who took the matter up with the Federal Ombudsman actually resided in Belgium and were validly registered in the population registers of a Belgian municipality. They were therefore entitled to vote in Belgium, both for European as well as the regional and community elections.

More specifically, whereas the directive instructs the Member States to take appropriate measures in order to prevent double voting and double candidacies on the part of their nationals, it expressly states that these measures must be in compliance with their national legislation. Nothing in Belgian law however allows that a person validly registered in the population register and entered in the electoral list is refused the right to participate in elections because his or her name is on the electoral list of another Member State. Even if this person had actually neglected to inform the authorities of the other

Member State when he or she left, there was no reason to deprive that person of a fundamental voting right. Belgian law provides only a sanction in case of double voting in the European elections.

The Federal Ombudsman therefore recommended to the Federal Public Service Home Affairs that voters on the Belgian electoral list be no longer crossed out for the sole reason that they also appear on a list of another EU Member State (OR 9/04).

In March 2010, the Minister for the Interior informed the Federal Ombudsman that she had followed this recommendation. If, in future elections, Belgian voters appear also on the electoral lists provided by other member States, these people will take part in the regional and community elections nonetheless. They may be excluded from the European elections only if probative evidence shows that they already voted in another Member State. If such evidence is provided after the election, they may be subject to sanctions for double voting.

… in the reception of asylum seekers and needy minors

The crisis in reception, the first signs of which appeared in 2008, worsened throughout 2009.

In the course of the year, the Federal Agency for the Reception of Asylum Seekers (Fedasil) proceeded to exclude certain categories of beneficiaries of the Asylum Act, without any legal capacitation.

Fedasil started to refuse to receive illegally residing families with a needy minor, except by court order or recommendation from the Federal Ombudsman. In the second half of 2009, the reception crisis worsened further. Fedasil was no longer capable of guaranteeing accommodation for asylum seekers.

Belgium is thus failing in its duty to protect children and asylum seekers as enshrined in Belgian law and in international conventions that are binding for Belgium (in particular the International Convention on the Rights of the Child), and to recognise their most basic rights.

The fact that the government has instructed Fedasil to find solutions in the short, medium or long term does not authorise administrative authorities to forego their obligation to receive certain categories of people listed in the Act. The search for the most appropriate form of accommodation for illegal needy minors, though pertinent, does not mean that children can be left on the street in the meantime.

The Federal Ombudsman has drawn attention to these serious violations of fundamental rights on several occasions, and has recommended that an urgent solution must be found to accommodate immediately the families concerned under conditions in line with human dignity.

In September 2009, the Federal Ombudsman submitted to the House of Representatives an interim report on the refusal to accommodate children residing illegally in the territory and pointed to Belgium's failure to provide protection for these children.

More recently, the Federal Ombudsman reminded the government that the Federal State must offer immediately to every person entitled to material reception, accommodation to meet basic needs. Compliance with the law, fundamental rights and good governance require the federal authorities to engage in efficacious coordination to this end (OR 09/03).

Lack of proactivity and communication …

… in the face of demands for flat-rate energy bill reductions

This measure was introduced in 2008 and 2009 to help low income households who do not enjoy the social rate for natural gas and electricity to deal with the increase in energy costs.

In January 2010, nearly one million two hundred thousand people had filed an application for such a reduction with the Federal Public Service Economy, which is enormous, and the administrative authorities were evidently not prepared to process such a high number of applications.

As of the second half of 2009, the Federal Ombudsman started to register repeated complaints about this flat-rate reduction.

The Federal Public Service Economy had opted to automate fully the processing of applications. If everything had functioned correctly, citizens should have received, within four months of their application, either the amount of the reduction on their account, or a letter informing them that their application had been rejected. No acknowledgement of receipt had been foreseen, and every step of the processing was managed by means of standardised letters – even decisions of refusal.

As of mid 2009, it became apparent that this system was not tenable.

Thus,

- the administrative authorities were unable to process applications within the period of four months initially announced;
- the standardised letters mentioned no contact who could provide information about individual applications;
- the designated Contact Centre rapidly proved inadequate to deal with the influx of requests for information;
- the budget initially allocated could not be released rapidly enough and moreover proved insufficient to meet all the demands, so that all payments were interrupted for several months in the second half of 2009;
- the verification of certain criteria proved arbitrary in regard to legal security (composition of household);
- the information on the application form concerning the method of calculating the net annual income of the household led to misunderstandings;
- the decisions of refusal were not sufficiently reasoned because of the shared tasks between the Federal Public services for Economy, Finance and the Centralised Social Security Database, in verifying the conditions for granting the reduction;
- negative decisions did not mention ways of appeal.

Thus, not only did the implementing procedure not comply with several legal provisions of the Administration Publicity Act and the Formal Motivation of Administrative Procedures Act, but it did not meet the imperative requirements of the Charter of Good Governance. The complaints revealed an entire series of difficulties that can occur when a procedure has been excessively automated.

Furthermore, whereas a massive inflow of applications may cause delays in the processing thereof, the administrative authorities must in the very least keep the citizens informed accordingly. Furthermore, when this situation is foreseeable, the administrative authorities must get organised to deal with it.

In the case at hand, many complaints could have been avoided through adequate communication on the part of the administrative authorities to the general public in the third quarter of 2009, when all payments were provisionally interrupted, and the Contact Centre of the Federal Public Service Economy was incapable of dealing with the influx of applications.

A real service culture entails a proactive attitude on the part of the administrative authorities, with respect for the rights of the citizen, the law and the regulations.

… in the processing of tax refunds

In theory, a citizen must receive a tax refund to which he is entitled within two months as of the month in which he receives the relevant notice of assessment informing him of said refund.

Nevertheless, in certain situations referred to as "special cases" by the tax authorities, a longer period is needed before proceeding to such a refund, because the administrative authorities must ask the citizen to provide additional information. This could be the case during a de facto separation, an inheritance or the notification of the taxpayer's account number. Several departments of the tax authorities must then go through these files.

The abnormally high number of "special cases" for tax year 2008, owing to bank account coding errors, delayed the usual refunding period and saturated the services. A good number of taxpayers wishing to obtain information on the state of their file contacted their collection office, but could not be informed properly.

It appeared that, whereas the different services involved in the processing of files exchange information on a case-by-case basis, there is no structural communication between the services on the progress of the files that would enable the collection office to provide correct information to taxpayers. Furthermore, the very routing of these files should be simplified.

The Federal Ombudsman recommended different measures to the Federal Public Service Finance to improve the tax refunding process in "special cases" (OR 09/06).

The last two examples clearly illustrate that, like every year, the prime concern of citizens is a reasonable period. When this period is exceeded, the administrative authorities should at least keep the citizen adequately informed of the progress of his case. In this respect, the recommendation we made in 2006 to require all federal departments to indicate a period within which they would take a decision, is expected by citizens more than ever before (GR 06/01).

IV. Recommendations

1. Introduction

Recommendations based on observations made during the examination of complaints about the way the federal authorities function constitute one of the missions entrusted explicitly to the federal ombudsmen by Article 1, 3°, of the Federal Ombudsman Act[11] of 22 March 1995 (hereinafter referred to as "the Act").

There are two types of recommendations:

a) *Recommendations to Parliament (GR)*[12]: Article 15, section 1, of the Act, stipulates that the annual report on activities and any interim reports that the ombudsmen submit to the House of Representatives shall contain such recommendations as they deem useful and shall expose any operating difficulties that they should encounter in the exercise of their office.

b) *Recommendations to the administrative authorities (OF)*[13]: by virtue of Article 14, section 3 of the Act, the ombudsmen may, when processing complaints, make such recommendations as they deem useful to the administrative authority.

2. Recommendations to Parliament

Cross-thematic recommendation 2009

GR 09/01: Provide appropriate accompanying measures in all administrative procedures based on new information and communication technologies so as to safeguard equal treatment for the users.

The quest for efficiency and a determination to rationalise may go against the quality of the service offered to -- and the legitimate expectations of – citizens: excessively standardised information to the point of becoming inadequate, depersonalised and computerised communication, accessibility reduced to certain channels of communication.

The development of electronic channels for a growing number of administrative formalities reflects developments in society, but must not exclude certain categories of citizens from having access to the administrative authorities and in so doing compromise the universality of the public service and equal treatment of users.

Already in 2004, the Court of Arbitration,[14] asked to decide on doing away with the "paper" edition of the Official Belgian Gazette and have it made available to the public on the gazette's website, had taken into consideration the digital divide in the population and ruled that in the absence of sufficient accompanying measures, the contested measure would infringe the equal treatment of users inasmuch as it had not taken into account the fact that not everyone has equal access to IT techniques.

Although the digital divide has been reduced in the last five years, it will take time before it is done away with completely. A significant part of the population still does not have direct access to the Internet or sufficient initiation to be able to use it. No citizen should therefore be required to use exclusively electronic means to accomplish the formalities required by law. The administrative authorities must see to it either that an alternative remains available or that accompanying measures are taken.

11 pp. 67-71.
12 Hitherto known as "General Recommendations," whence the abbreviation "GR")
13 Hitherto known as "Official Recommendations", whence the abbreviation ("OR").
14 C.A., judgement no. 106/2004 of 16 June 2004.

Thematic recommendations 2009

GR 09/02: Put an end to discrimination resulting from the fact that an unemployed person whose partner is a salaried employee earning a limited income is considered to be a cohabitant with family responsibilities, whereas an unemployed person whose partner is self-employed is automatically considered to be a cohabitant without family responsibilities, irrespective of the amount of income (which may be limited) of his or her self-employed partner. As of the second year of unemployment, this distinction entails a considerable difference in the amount of unemployment benefit granted.[15]

During the first period of unemployment (the first year), an unemployed person is, irrespective of his family situation, entitled to a benefit corresponding to 60% of his last pay (limited, respectively, to a higher salary ceiling of €2,206.46 per month for the first six months, and an intermediate salary ceiling of €2,056.46 per month for the next six months).

As of the second year of unemployment, the unemployed person's family situation is taken into account. A cohabitant with family responsibilities continues to receive a benefit corresponding to 60% of his last pay (limited to a basic salary ceiling of €1,921.71). A cohabitant without family responsibilities receives, as of the second year of unemployment, a benefit corresponding to 40% of his last pay (limited to a basic salary ceiling of 1,921.71) and then (after a period depending on his occupational career) a flat- rate benefit (€447.20 per month).

A cohabitant unemployed person with family responsibilities is an unemployed person cohabiting with a partner who has neither an occupational nor a replacement income.

Article 60, paragraph 2 of the Ministerial Decree of 26 November 1991[16] on the procedures for the application of unemployment regulations nevertheless provides that the partner's income[17] shall not be considered as occupational income if the unemployed person declared it when applying for benefit, if it comes from salaried work, and if it normally does not exceed €612 gross per month on average (indexed amount).

An unemployed person whose partner earns an income as a salaried worker will consequently be considered as a cohabitant with family responsibilities and will continue to receive, during the entire period of unemployment, a benefit corresponding to 60% of his last pay (limited after one year to the basic ceiling of €1,921.71), provided that his salaried partner's has been declared and does not exceed the €612 limit.

An unemployed person whose partner earns income from self-employed activity is automatically considered as a cohabitant without family responsibilities. The possibly very reduced amount of this income from self-employment notwithstanding, after the first year of unemployment he will receive only a benefit corresponding to 40% of his last pay (limited to the basic ceiling of €1921.71), which may then be reduced to the flat-rate benefit of €447.20 per month.

15 p. 40.

16 "The first section notwithstanding, the spouse's income shall not however be considered as occupational income for the application of Article 110, §1, section 1, 1° of the Royal Decree if the following two conditions are met:
1° The worker declares his spouse's income when he applies for benefit or at the beginning of exercising this occupational activity;
2° The income comes from salaried work;
3° The gross amount of this income normally does not exceed €502.05 per month on average, and the spouse has no other replacement income for the month considered, except if such income is granted owing to occupational disablement or temporary unemployment in the case of occupation with an income which, by virtue of this provision, is not considered as occupational income, and provided that the gross amount of this occupational income, plus the income from work as a salaried employee, does not exceed the afore-cited limit."

17 Pursuant to Article 110, §1, section 2, of the Royal Decree of 25 November 1999 on unemployment regulations, for the purpose of this article, a person with whom the worker forms a de facto household and who is his or her financial dependent, shall be considered as a spouse.

That only the nature of the partner's income is used to determine whether an unemployed person will be considered as a cohabitant with or without family responsibilities and therefore influence, as of the second year of unemployment, the amount of benefit to which the unemployed person is entitled, is discriminatory.

An unemployed person who is a partner of a self-employed worker must be able to enjoy the same exemption as that granted to an unemployed person who is a partner of a salaried worker (whose occupational income does not exceed €612 gross per month on average), so that he may also, after the first year of unemployment, receive the quality unemployment benefit of a cohabitant with family responsibilities. That problems of verification, and perhaps also of recovery, may ensue for the administrative authorities because of this, does not justify this difference in treatment.

The Federal Ombudsman therefore recommends that Article 60, section 2, of the Ministerial Decree of 26 November 1991 on the procedures for the application of unemployment regulations is amended to put an end to the discrimination that arises out of it.

GR 09/03: Do away with the existing discrimination in drawing up marriage contracts so that every Belgian national, irrespective of his or her gender and that of the future spouse, may have a marriage contract drawn up by a Belgian diplomatic or consular official vested with notarial powers.[18]

According to article 5, 2° of the Act of 10 July 1931, "the notarial competence of diplomatic and consular officials who are […] vested with notarial duties shall extend [„„]to marriage contracts concerning a Belgian and a foreign national."

By virtue of this provision, a Belgian embassy or consulate with notarial competence refuses to draw up a marriage contract between a Belgian woman and a foreign national, although it accepts to do so for a Belgian man.

The Federal Public Service Foreign Affairs applies the same exclusion to same-sex future spouses, one of whom is foreign.

Article 5, 6° of the afore-cited Act admittedly does allow a foreign future spouse to be represented by an authorised agent with special, authenticated power of attorney, in order to draw up a marriage contract before a Belgian notary.

Although the legislator has amended the Act of 10 July 1931 on several occasions, he has not deemed it necessary to amend the article in question, even though it clearly runs counter to the principle of equality and non-discrimination, the internal legal system and different international law standards.

The Federal Public Service Foreign Affairs is currently preparing a draft of the consular code that will lead to a complete revision of the competencies of embassies and consulates concerning births, marriages and deaths. This discrimination must nonetheless be done away with without delay.

This may be easily done by amending Article 5, 2° of the Notarial Competencies of Diplomatic and Consular Officials Act of 10 July 1931 so that the discrimination arising out of it disappears.

[18] p. 41.

GR 09/04: Do away with the inadmissibility sanction because an application for authorisation to stay for medical reasons pursuant to Article 9ter of the Act of 15 December 1980 was not filed with a registered letter.

Article 7 of the Royal Decree of 17 May 2007[19] implementing Article 9ter provides for the requirement to file an application for authorisation to stay on medical grounds by registered letter, sanctioning it with inadmissibility otherwise:

"§1. The application for authorisation to stay referred to in Article 9ter, §1, of the Act, must be filed by registered letter sent to the minister's authorised agent. The application must be accompanied by the following documents and information:

[…]

§2. Subject to the provisions of Article 9ter, §3, of the Act, the minister's authorised agent shall declare the application inadmissible when the documents and information referred to in §1 are provided only partially if at all with the initial application, or if the application is not filed by registered letter."

[…]

The Department of Immigration and Naturalisation consequently declares inadmissible any application for authorisation to stay pursuant to Article 9ter of the Act of 15 December 1980 that is filed in a way other than by registered letter.

Nevertheless, the cases of inadmissibility are defined by law. In this regard, Article 9ter, §3 of the Act of 15 December 1980 provides that the elements cited in support of the application for authorisation to stay in the Realm are to be declared inadmissible only if they have already been cited in a previous application for authorisation to stay or if they were (or should have been) cited in support of an application for asylum.[20]

By stipulating that the application for authorisation to stay must be filed by registered letter, the King is acting within the limits of his regulatory power. Nevertheless, in providing that the minister's authorised agent is to declare an application inadmissible when it is not lodged by registered letter, the Royal Decree adds a new inadmissibility sanction which is not provided by Article 9ter of the Act of 15 December 1980. In other words, the King has exceeded the regulatory function vested in him by Article 108 of the Constitution.[21] Consequently, the new inadmissibility sanction is unconstitutional.

Why should an application for authorisation to stay based on Article 9ter be filed by registered letter, for that matter? According to the Department of Immigration and Naturalisation, the registered letter requirement is intended to protect the rights of the applicants. As these applications are not filed through the municipality, the formality of a registered letter provides proof for foreign nationals that their application was filed on a specific date. Furthermore, again in accordance with the Department of Immigration and Naturalisation, a registered letter guarantees that these applications are forwarded directly to the competent service and are processed as a matter of priority.

The Department of Immigration and Naturalisation agrees that the inadmissibility sanction is not directly related to the rule of procedure and that it is in no way indispensable. Except for the restrictive nature of the regulation, there is no reason why an application for authorisation to stay on medical grounds, which was not filed by registered letter, but which was nonetheless received by the Department of Immigration and Naturalisation, cannot be declared admissible and processed by the

19 Royal Decree stipulating the implementing procedures for the Act of 15 September 2006, amending the Act of 15 December 1980 on Access to the Territory, Stay, Establishment and Deportation of Foreigners.

20 Article 9ter refers to the grounds for inadmissibility provided under Article 9bis of the Act of 15 December 1980.

21 "The King shall see to the regulations and decrees necessary for the implementation of the laws, without being ever able to suspend the laws themselves or to dispense their implementation."

services. In the current state of the regulations, the administrative authorities are nonetheless required to comply with the Royal Decree: they must declare admissible all applications for authorisation to stay on medical grounds which reach them by means other than the registered letter.

The Federal Ombudsman has noted that the inadmissibility sanction applied to an application for authorisation to stay based on article 9ter because it was not filed by registered letter is not only unconstitutional because it exceeds the regulatory powers of the King, but also because it is not reasonably justified in regard to the objective of the Royal Decree.

The Federal Ombudsman therefore recommends repealing the inadmissibility sanction referred to in Article 7, §2, section 1 of the Royal Decree of 17 May 2007 on the procedures for implementing the Act of 15 September 2006 amending the Act 15 December 1980 on access to the territory, the stay, establishment and deportation of foreign nationals by striking out the words "*or if this application was not filed by registered letter.*"

Outline of General Recommendations

GR	Title	Object	Status	Comment	Petitions Committee
Cross-thematic general recommendations					
97/11	Dispute between two administrative authorities as to which of the two must disburse expenses incontestably payable	Cross-thematic	Pending	Recommendation that is still topical, pertaining to a more rapid processing of claims for compensation of expenses when several administrative authorities can be involved but are trying to pass the responsibility for paying to each other so that a settlement is delayed or remains outstanding.	
06/01	Require of every federal administrative authority to indicate the period within which it will take a decision, by inserting a new provision in the Act of 11 April 1994 on the transparency of governance	Cross-thematic	Pending	The complaints received in 2009 confirm again the need of this measure.	26.04.2007
07/01	Develop a central information point that provides basic information as well as efficient orientation and referral to the competent services. This information point can assume the form of a(n) (free) information line of the federal government.	Cross-thematic	Pending	Proposal for a resolution of 30 April 2008 to create a central information point as well as a corresponding information line.[22]	24.11.2008
09/01	Provide appropriate accompanying measures in all administrative procedures based on new information and communication technologies so as to safeguard equal treatment for the users	Cross-thematic	New	Cf. p. 47.	
General recommendations relative to the FPS Finance					
02/03	The tax trap of unemployment	FPS Finance	Pending	The bill of 18 January 2008 to amend the Income Tax Code 1992 regarding the tax inducement for life-long learning and in all areas.[23]	
06/07	Exoneration of road tax on vehicles that are rented with driver: deletion of the wording: "on the occasion of ceremonies" in article 15, §2, 2°, of the Royal Decree of 8 July 1970	FPS Finance	Pending	No action has been taken on this recommendation.	26.04.2007
07/02	Amend article 366 of the Income Tax Code 1992 so that a notice of objection lodged with a service involved in the establishment or levy of the tax that contests the taxpayer's notice of objection, can also be considered as lodged and officially sent to the competent director of taxes	FPS Finance	Pending	The Petitions Committee forwarded this recommendation on 24 November 2008 to the Finance and Budget Committee. • Bill of 22 April 2008 amending the Income Tax Code 1992 as regards the introduction of a written complaint. • Bill of 3 September 2008 amending the Income Tax Code 1992 as regards the introduction of a written complaint • Bill of 3 November 2008 amending article 366 of the Income Tax Code 1992.	24.11.2008

22 Parl. Doc., House of Representatives, DOC 52 1129/001

23 Parl. Doc., House of Representatives, DOC 52 0709/001.

GR	Title	Object	Status	Comment	Petitions Committee
07/03	Amend Article 371 of the Income Tax Code 1992 (WIB92) so that the sending date of the notice of objection is valid as the lodging date.	FPS Finance	Pending	The Petitions Committee forwarded this recommendation on 24 November 2008 to the Finance and Budget Committee, and instructed the Ombudspromotor of said committee to see to the monitoring thereof. • Bill of 3 November 2008 amending article 366 of the Income Tax Code 1992 as regards the complaint period.[24]	24.11.2008
07/04	Amend Article 375 of the Income Tax Code 1992 so that the director of taxes is unequivocally empowered to cancel a decision on a notice of objection.	FPS Finance	Pending	The Petitions Committee forwarded this recommendation on 24 November 2008 to the Finance and Budget Committee, and instructed the Ombudspromotor of said committee to see to the monitoring thereof.	24.11.2008
08/01	Adopt a Royal Decree implementing Article 394, §4 of the Income Tax Code (ITC 92) so as, in the case of joint taxation, to define the way in which the part of the tax pertaining to the taxable income of each of the taxpayers is established.	FPS Finance	Pending	An implementing Royal Decree is under preparation in the FPS Finance.	29.04.2009
General recommendations relative to FPSs Justice, Home Affairs and Foreign Affairs					
01/01	Greater transparency and greater legal security in the application of the Act of 15 December 1980 and its implementing decree.	FPS Home Affairs	Partially met	On 29 March and 19 July 2009, the Department of Immigration and Naturalisation received instructions concerning situations that may justify granting authorisation to stay on humanitarian grounds, which have been published on its website.[25]	
03/01	The time limit for processing case files submitted on Belgian territory and referred to the Department of Immigration and Naturalisation	FPS Home Affairs	Pending	This recommendation is monitored with the Department of Immigration and Naturalisation (cf. OR 06/03 and 06/04).	
06/08	Take the necessary measures to guarantee that detainees are actually given an opportunity to prepare for their reintegration into society. This entails that the Federal State must conclude efficient and effective cooperation agreements with the Communities and/or Regions.	FPS Justice	Pending	No action has been taken on this recommendation.	26.04.2007

24 Parl. Doc., House of Representatives DOC 52 0676/001

25 The instructions of 19 July 2009 were cancelled by the Council of State (cf. Decision no. 198.769, 11 December 2009).

GR	Title	Object	Status	Comment	Petitions Committee
08/02	Take such measures as necessary to remove the contradiction arising out of the combined application of the Act of 15 December 1980 on access to the territory, the stay, establishment and deportation of foreign nationals and article 31 of the Private International Law Code.	FPS Home Affairs FPS Justice	Pending	This recommendation is still topical. The Council of State ruled in two cases (Decisions 192.125 of 1 April 2009 and 3409 of 9 October 2008) upholding that Article 27 of the International Private Law Code vests all competent authorities with powers to recognise or to refuse to recognise a foreign duly authenticated document and attaches no "authority of res judicata" to the decision of the administrative authority to which the matter was referred first. The Council of State has also upheld that the Permanent Refugee Appeals Commission could legally declare itself incompetent to rule on the recognition of a marriage certificate, as such a challenge falls under the purview of the District Court. In a notification published on the internal network of the municipalities on 13 July 2009, the Department of Immigration and Naturalisation reminded the municipal authorities that they cannot refuse to take into consideration an application for family reunion on the grounds that they had doubts about the validity of the marriage certificate, when the person concerned provides proof of kinship, union or partnership by means of a validly legalised official document. This notification has no regulatory value, however.	29.04.2009
08/03	Define directives to ensure the uniform application of article 31 of the International Private Law code, in accordance with the capacitation given by this provision to the Minister for Justice, in order to prevent contradictory decisions regarding the recognition of a civil status document and to ensure the formal reasoning of decisions to refuse a mention in the margin of a civil status document, a transcription in a register of births, marriages and deaths, or the registration, on the basis of said document, in the population, aliens or waiting register	FPS Justice	Pending	No action has been taken on this recommendation.	29.04.2009
09/03	Do away with the existing discrimination in drawing up marriage contracts so that every Belgian national, irrespective of his or her gender and that of the future spouse, may have a marriage contract drawn up by a Belgian diplomatic or consular official vested with notarial powers.	FPS Foreign Affairs	New	Cf. p. 41; p. 49.	
09/04	Do away with the inadmissibility sanction because an application for authorisation to stay for medical reasons pursuant to Article 9ter of the Act of 15 December 1980 was not filed with a registered letter.	FPS Home Affairs	New	Cf. p. 50-51.	

GR	Title	Object	Status	Comment	Petitions Committee
General recommendations relative to other federal administrative authorities					
06/02	Adapt article 24, §2, of the Royal Decree of 22 May 2003 on the procedure concerning the processing of applications for disablement benefit - which stipulates that the social insured must give his consent in order to proceed to the recovery, via his banking institution -- - to the Act of 27 February 1987 on disablement benefit, article 16, §2 of which lays down the terms and conditions that must be met by decisions to recover sums paid unduly.	FPS Social Security	Pending	No action has been taken on this recommendation.	26.04.2007
06/03	Provide a legal basis for the administrative practice that allows self-employed workers to pay social security contributions after the expiry period and determine the procedure to be followed	FPS Social security	Pending	An updated version of the two draft Royal Decrees dating from 2007 was submitted to the Minister responsible for the self-employed in March 2009. No action has been taken on the recommendation since.	26.04.2007
06/04	Provide, in the Act of 3 July 2005 on the rights of volunteers, the possibility for disabled civil servants and self-employed workers to do volunteer work	FPS Social security	Pending	A Royal Decree of 29 June 2007 enables disabled self-employed workers to do volunteer work. The means of offering this possibility to disabled civil servants are still under study. A draft Royal Decree aims at entrusting Medex with the mission of consulting physician in accordance with Article 15 of the Act of 3 July 2005.	26.04.2007
09/02	Put an end to discrimination resulting from the fact that an unemployed person whose partner is a salaried employee earning a limited income is considered to be a cohabitant with family responsibilities, whereas an unemployed person whose partner is self-employed is automatically considered to be a cohabitant without family responsibilities, irrespective of the amount of income (which may be limited) of his or her self-employed partner. As of the second year of unemployment, this distinction entails a considerable difference in the amount of unemployment benefit granted	National Employment Office	New	Cf. p. 40; p. 48-49.	

3. Recommendations to the administrative authorities

Recommendations 2009

Fedasil

OR 09/01: The Federal Ombudsman recommends that Fedasil put an end immediately to the refusal to receive needy minors residing on the territory illegally with their family.

Secretary of State for Social Integration and the Fight against Poverty

OR 09/02: The Belgian State must provide, at all times and under all circumstances, reception in accordance with the fundamental human rights and dignity to all beneficiaries of the Asylum Act, without discrimination.

In view of the current saturation of the reception network, the necessary measures must be taken immediately, either by releasing sufficient human and material resources, or through an appropriate legal mechanism, to enable Fedasil to fulfil its reception mission in regard to all beneficiaries at all times.

In anticipation of such measures producing the desired effect, the State may not cite the saturation of the reception network in order to refrain from receiving certain beneficiaries, and must enable the legal exemption mechanism provided for asylum seekers in the Asylum Act to produce its full effects so as to guarantee that, under particular circumstances, all beneficiaries may receive the necessary support to meet their basic needs.

Prime Minister in charge of coordinating the migration and asylum policy and Secretary of State for social integration and the fight against poverty

OR 09/03: The Federal State must provide accommodation immediately to all persons entitled to material reception so that they can meet their basic needs. Compliance with the law, fundamental rights and good governance require the federal authorities to coordinate their efforts efficiently to that end.

FPS Home Affairs – Directorate General for Institutions and Population

OR 09/04: The Federal Ombudsman recommends that voters on the Belgian electoral list be not crossed out for the sole reason that they also appear on an electoral list of an EU Member State, as such a possibility is not provided by the Belgian electoral legislation.

FPS Justice – Directorate General for Penitentiaries

OR 09/05: The Federal Ombudsman recommends that the detention section of the penitentiary at Merksplas be closed because it is not suitable for receiving detainees.

FPS Finance

OR 09/06: The Federal Ombudsman recommends that the services of the FPS Finance take the following measures concerning tax refunds in special cases:

- Accelerate the processing of special cases through greater coordination between the different services involved;
- Provide more detailed information to taxpayers at every stage of the liquidation procedure, in particular as regards the date of payment of a claim;
- Designate a contact point to inform taxpayers about the progress of their case;
- Conduct an audit of the reimbursement process as soon as possible.

OR 09/07: The tax authorities must ask de facto separated taxpayers who file separate tax returns to provide proof of the time of their de facto separation, before regrouping the two separate returns for joint taxation purposes.

FPS Home Affairs – Directorate General for Immigration and Naturalisation

OR 09/08: The Federal Ombudsman recommends that the inadmissibility decision taken on 28 January 2009 on the application of Mrs X[26][12] for authorisation to stay on medical grounds on 18 March 2008 be overturned and that the merits of the case be examined.

[26] Pursuant to article 15 of the Act of 22 March 1995 establishing the Federal ombudsmen, the identity of the complainants and of the staff members of the administrative authorities may not be mentioned in their reports.

OR	Title	Object	Status	Comment
Recommendations relative to FPS Finance				
06/11	To guarantee equal treatment for all taxpayers and remove all legal insecurity, the Federal Ombudsman recommends that the new administrative position concerning Article 169 of the Income Tax Code be upheld. When a taxpayer gets no advantage from outstanding debt insurance, he cannot be taxed on the fictitious income from the disbursed capital.	FPS Finance	Granted	Administrative circular of 14 February 2007 - CHR241/580919.
08/04	The Federal Ombudsman recommends that complaints about the fixing of the cadastral income be processed within the reasonable period provided under article 4 of the Charter of Good Governance, i.e. within 4 to 8 months, extended, where necessary, by the time taken by the interested party to provide the information requested by the services of the Land Registry, which is needed to take a decision.	FPS Finance	Granted	In reply to a parliamentary question,[27] the Minister for Finance declared that since 1 June 2009, under the approach plan BRU-CELLS for regrouping services outside the Brussels-Capital Region, a "litigation" pool had been specifically assigned to processing administrative disputes. Thanks to this restructuring, several personnel members have been assigned the specific task of processing only complaints about the amount of the cadastral income. Since then, all new complaints lodged are processed within the period recommended by the Federal Ombudsman (4 to 8 months)
08/05	In order to be able to fulfil its duty to provide information and ensure equal treatment for taxpayers in all case files in progress, the Federal Ombudsman recommends to the SFP Finance to adopt a staggered plan to curb the backlog of complaints about the fixing of cadastral income in the Regional Offices of the Land Registry where the situation is alarming.	FPS Finance	Granted	In reply to the same parliamentary question mentioned above, the Minister for Finance declared that the priority given to complaints against the amount of the cadastral income had made it possible to reduce the complaints still outstanding by 51.5%. Given the particular situation of the Regional Land Registry Department in Brussels, this methodology should not be generalised for all the regional departments.
08/06	The Federal Ombudsman recommends that petitions to reduce the advance levy on income derived from real estate be examined within the reasonable period provided in article 4 of the Charter of Good Governance, i.e. within 4 to 8 months, extended, where necessary, by the time taken by the interested party to provide the information requested by the services on the advance levy on income derived from real estate, which is needed to take a decision.	FPS Finance	Pending	The FPS Finance is preparing an administrative circular to accelerate the examination of complaints concerning the advance levy on income derived from real estate, in particular through a better coordinating of services relating to the advance levy on income derived from real estate and the Land Registry services.
08/07	The Federal Ombudsman recommends to the FPS Finance to adopt a staggered plan to curb the backlog of complaints about the reduction of the advance levy on income derived from real estate in the Regional Offices of Direct Taxation where the situation is alarming.	FPS Finance	Pending	This recommendation is monitored with the General Tax Authorities.

[27] Q&A, House of Representatives, 4th session of the 52nd Legislature 2009-2010, question no. 110 of 17 December 2007 (Xavier Baeselen), "*Cadastral income – petition processing period,*" DO 20092010, Bull. No.92 of 1 February 2010, pp. 48 ff.

OR	Title	Object	Status	Comment
09/06	The Federal Ombudsman recommends that the services of the FPS Finance take the following measures concerning tax refunds in special cases: • Accelerate the processing of special cases through greater coordination between the different services involved; • Provide more detailed information to taxpayers at every stage of the liquidation procedure, in particular as regards the date of payment of a claim; • Designate a contact point to inform taxpayers about the progress of their case; • Conduct an audit of the reimbursement process as soon as possible.	FPS Finance	Pending	cf. pp. 44; 57.
09/07	The tax authorities must ask de facto separated taxpayers who file separate tax returns to provide proof of the time of their de facto separation, before regrouping the two separate returns for joint taxation purposes.	FPS Finance	Pending	cf. p. 57.
Recommendations relative to FPS Justice, Home Affairs and Foreign Affairs				
06/01	The Federal Ombudsman recommends that a receipt be issued for every application for a residence permit.	FPS Home Affairs Department of Immigration and Naturalisation	Granted	As regards applications for authorisation to stay on humanitarian grounds, pursuant to Article 9bis of the Act of 15 December 1980, the circular of 21 June 2007 relating to the amendments to the regulations on the stay of aliens provides that the municipal authorities issue an acknowledgement of receipt for the foreign national's application (Annex 3), having first verified his or her residence. Applications for authorisation to stay on medical grounds, pursuant to Article 9ter of the afore-cited Act must henceforth be filed directly with the Department of Immigration and Naturalisation by registered letter, in accordance with Article 7 of the Royal Decree of 17 May 2007.
06/02	In anticipation of the effective entry into force of article 4, third paragraph of the Charter for a user-responsive governance, the Federal Ombudsman recommends to the Department of Immigration and Naturalisation that, at the request of the users, the period within which a decision concerning a residence permit can be expected, be duly indicated.	FPS Home Affairs Department of Immigration and Naturalisation	Refused	The Department of Immigration and Naturalisation objects that because of the high number of applications for regularisation, as well as the complexity of the cases, the Helpdesk is not capable of providing information as to the processing time.
06/03	The Federal Ombudsman recommends that applications for a residence permit be processed within a reasonable period, as provided in article 4 of the Charter for a user-responsive governance, i.e. 4 to 8 months, and where appropriate, that said period be extended by such time as the department concerned or another governmental authority needs to provide the information requested by the Department of Immigration and Naturalisation which is needed in order to take a decision.	FPS Home Affairs Department of Immigration and Naturalisation	Pending	This recommendation is followed by the Department of Immigration and Naturalisation. The number of proceedings open at the Humanitarian Regularisation Service amounted to 23,500 on 31 December, not counting about 10,000 letters yet to be scrutinised. This increase is due in large part to the publication of new instructions in March and July 2009 concerning situations that can justify granting authorisation to stay on humanitarian grounds.

OR	Title	Object	Status	Comment
06/04	To be able to meet its information obligation in all case files in progress, the Federal Ombudsman recommends that the Department of Immigration and Naturalisation accepts a plan with deadlines so as to catch up with the backlog of the Bureau *Article 9, paragraph 3 – Humanitarian considerations.*	FPS Home Affairs Department of Immigration and Naturalisation	Pending	In March 2006, the Humanitarian Regularisation Service had 25,448 applications for authorisation to stay that still had to be processed. In November 2008, the total number of case files to be processed had been brought down to 15,500. On 31 December 2009, about 4,000 applications filed prior to 1 June 2007 pursuant to the former Article 9, section 3 of the Act of 15 December 1980 were still pending. These were applications chiefly on medical grounds that could not be dealt with because of a shortage of doctors.[28]
06/05	The Federal Ombudsman recommends that all necessary measures be taken to guarantee that the Department of Immigration and Naturalisation takes a decision on the application to renew or extend a temporary authorisation of stay before the limit date expires.	FPS Home Affairs Department of Immigration and Naturalisation	Partially granted	Article 33 of the Royal Decree of 8 October 1981 on access to the territory, stay, establishment and deportation of foreign nationals was amended by a Royal Decree of 27 April 2007 to require foreign nationals to file earlier their application to renew or to extend their residence permit, i.e. between the 45th and the 30th day prior to the expiry of said permit. Since then, the Federal Ombudsman has noted no further structural delays in extending residence permits. Delays still encountered sporadically were usually due to punctual factors (holiday periods, forwarding errors by the municipality, encoding errors at the Department of Immigration and Naturalisation, etc.). The main persisting problem is that an error is often detected when the permit expires, when the person concerned gets worried about a decision not being forthcoming, and is not capable at that time to prove when s/he went to the municipality and with what documents. The Department of Immigration and Naturalisation will continue the logistical effort to avoid delays or identification errors when processing applications to extend permits, but for reasons to do with costs, has excluded setting up an electronic exchange network with the municipal authorities in the short term in order to limit the risks of errors and to accelerate the processing of applications.
06/06	The Federal Ombudsman recommends that, before giving an order to leave the territory, the Department of Immigration and Naturalisation should process the pending application for a residence permit.	FPS Home Affairs Department of Immigration and Naturalisation	Partially granted	The Department of Immigration and Naturalisation no longer serves notice to foreign nationals to leave the territory when the latter have filed, before their application for asylum was rejected: • An application for authorisation to stay on medical grounds pursuant to article 9ter of the Act of 15 December 1980; • An application for authorisation to stay for humanitarian reasons pursuant to article 9bis, based either on the unreasonable length of the asylum procedure, or a violation of articles 3 or 8 of the European Convention on Human Rights (ECHR). In these two cases, the Department of Immigration and Naturalisation examines the application for authorisation to stay before issuing, where warranted, an order to the foreign national concerned to leave the territory.
06/07	The Federal Ombudsman recommends that a temporary authorisation to stay be issued to stateless individuals, who are waiting for a decision on their application for a residence permit.	FPS Home Affairs Department of Immigration and Naturalisation	Partially granted	The Department of Immigration and Naturalisation henceforth examines the admissibility of applications for authorisation to stay filed by stateless individuals on a case-by-case basis. If the foreign national cannot be regularised on the basis of another criterion, the Department of Immigration and Naturalisation verifies concretely whether it is not possible for that person to return to another country, having regard to Article 3 of the ECHR.[29]

28 Annual Report 2008, p. 70.

29 Q & A, House of Representatives, 4th session of the 52nd Legislature 2009-2010, Question no. 95 of 9 October 2009 (Nathalie Muylle), *"Granting a social integration income to stateless persons,"* Bull. No. 83 of 3 November 2009, p. 282.

OR	Title	Object	Status	Comment
06/08	The Federal Ombudsman recommends that a decision by the Federal Public Service Home Affairs settling a dispute concerning difficulties and/or objections as to the determination of the main place of residence be made retroactive to the date of application for registration in the official population register or to the date as close as possible to the date of the actual occupation of the dwelling.	FPS Home Affairs Department Institutions and Population	Granted	An internal note of 30 August 2007 defines the cases in which an SPS Home Affairs decision on a dispute concerning the determination of the principal residence may have retroactive effect. When the dispute pertains to an automatic removal, the decision will have retroactive effect if an investigation shows that the person concerned had his or her main residence at the address where s/he claimed to reside. When the dispute concerns a refusal of registration, such registration may have retroactive effect as of the day of the actual occupation of the new dwelling, on condition that the person concerned is able to prove said date by means of sufficiently probative documents and data.
06/09	The Federal Ombudsman recommends that, during the transition phase from the ordinary to the electronic identity cards, and for as long as there is no express legal basis, no identity cards that are still valid should be cancelled for the sole reason that the holder has not responded to the summon to have the identity card replaced before the expiry of the period of validity.	FPS Home Affairs Institutions and Population	Granted	The Royal Decree of 18 January 2008 amending the Royal Decree of 25 May 2003 on transitional measures relating to the electronic identity card (Belgian Official Gazette of 28 February 2008) determines the cases in which an identity card may be cancelled. This Royal Decree therefore introduces a legal basis for the cancellation of existing identity cards.
08/01	Give instructions to the municipal authorities so that they can extend, automatically and in accordance with the circular of 21 June, the registration certificates of the strikers of the Rue Royale and of Forest while waiting for the reasoned decision of the Department of Immigration and Naturalisation on their applications for authorisation to stay on medical grounds.	FPS Home Affairs Department of Immigration and Naturalisation	Refused	The Department of Immigration and Naturalisation informed the Federal Ombudsman that the Minister of Immigration and Asylum Policy had refused to act on this recommendation.
08/02	Make sure, in general and irrespective of the circumstances, to process applications for authorisation to stay filed by foreign nationals in compliance with the law.	FPS Home Affairs Department of Immigration and Naturalisation	Granted	All foreign nationals who henceforth cite medical grounds to be authorised to stay, including through a hunger strike, must henceforth file an application pursuant to Article 9ter to be issued, where warranted, a certificate of registration (A1 form).
08/03	Reduce legal insecurity by defining directives for the processing of applications for the regularisation of residence on humanitarian grounds monitored by the Department of Immigration and Naturalisation, preferably by a circular made public and updated regularly as soon as the new applicable procedures are defined or the administrative practice has changed. This recommendation is in extension to the general recommendation GR 01/01[30], which was aimed at a greater transparency and greater legal security in the application of the Act of 15 December 1980 by the Department of Immigration and Naturalisation.	FPS Home Affairs Department of Immigration and Naturalisation	Partially granted	The instructions received on 29 March and 19 July 2009 by the Department of Immigration and Naturalisation specify the situations that can justify granting authorisation to stay on humanitarian grounds. The Department of Immigration and Naturalisation published these instructions on its website. Nevertheless, when the instruction of 19 July 2009 was cancelled by the Council of State it was removed from the website and the current directives of the Secretary of State for migration and asylum policy have not been made public.

30 p. 53.

OR	Title	Object	Status	Comment
08/08	The Federal Ombudsman recommends to the Department of Immigration and Naturalisation, in processing an application for authorisation to stay based on article 9bis or on former article 9, section 3, of the Act of 15 December 1980, filed by the foreign parent of a Belgian child, to limit the examination to the exceptional circumstances required by these articles to the existence of a link between the foreign parent and his Belgian child, and to cease to require proof of emotional bonds and/or material/financial links between the Belgian child and the applicant for regularisation and the Belgian parent of this child	FPS Home Affairs Department of Immigration and Naturalisation	Granted	The instructions given on 29 March 2009 to the Department of Immigration and Naturalisation relating to the application of the former Article 9, section 3 and Article 9bis of the Act of 15 December 1980 provide that the parent of a Belgian minor leading an actual family life with that child is henceforth considered as being in an urgent humanitarian situation justifying the granting of authorisation to stay. The Department of Immigration and Naturalisation need no longer verify the ties that the Belgian child maintains with its Belgian parent.[31]
09/04	The Federal Ombudsman recommends that voters on the Belgian electoral list be not removed for the sole reason that they also appear on the electoral list of another EU Member State, as the Belgian electoral legislation does not provide for such an eventuality.	FPS Home Affairs Institutions and Population	Pending	Cf. pp. 41-42; 56.
09/05	The Federal Ombudsman recommends that the detention section of the penitentiary at Merksplas be closed because it is not suitable for receiving detainees.	FPS Justice Penitentiaries	Partially granted	The Directorate General for penitentiaries has given instructions to turn two cells on every floor of the detention section into toilets and showers as rapidly as possible. These sanitary facilities will be accessible during the day thanks to an adjustment in the rules of the detention section.
09/08	The Federal Ombudsman recommends that the inadmissibility decision taken on 28 January 2009 on the application of Mrs X[32] for authorisation to stay on medical grounds on 18 March 2008 be overturned and that the merits of the case be examined.	FPS Home Affairs Department of Immigration and Naturalisation	Granted	Mrs X was issued a temporary authorisation to stay given the seriousness of her state of health.
Recommendations relative to FPS Social Security				
06/10	To guarantee the equal treatment of all parties concerned, and to avoid that additional steps have to be taken in certain cases, the Federal Ombudsman recommends that interest for late payment be payable ex officio, and thus without any express request thereto, when a legal ruling overturns the decision about the right to compensation payable to a disabled person.	FPS Social Security	Granted	In mid-2007, the Secretary of State for families and the disabled instructed the Directorate General for disabled persons to apply the recommendation.

31 These instructions also deal with the case of Ecuadorian nationals whose child obtained Belgian nationality pursuant to Article 10, section 1, of the Belgian Nationality Code and whose application for authorisation to stay was declared inadmissible (cf. Annual Report 2004, p. 42). The Minister for migration and asylum policy confirmed at the House of Representatives' Home Affairs Committee meeting of 6 May 2009 that the instructions of 29 March 2009 applied also to the latter hypothesis. Full Report, House of Representatives, 3rd session of the 52nd Legislature 2008-2009, Question no. 12476 of 6 May 2009 (Karine Lalieux) on "*Families composed of Brazilian parents and Belgian children.*" CRIV 52 COM 547.

32 Pursuant to Article 15 of the Act of 22 March 1995 establishing the Federal ombudsmen, the identity of the complainants and of the staff members of the administrative authorities may not be mentioned in their reports.

OR	Title	Object	Status	Comment
Recommendations relative to other federal administrative authorities				
07/01	The Federal Ombudsman recommends to the NSSO, in connection with the application of the specific sanction for the C02 contribution, to apply, by analogy, the general regulations on the waiver or reduction of the civil sanctions and, in particular, Articles 54ter and 55 of the Royal Decree of 28 November 1969 for the (representatives of) employers who invoke arguments to justify or explain a late return (or payment) of the CO2 contribution.	National Social Security Office	Granted	The National Social Security Office accepted to apply the recommendation in anticipation of a clarification of the legal text. An exemption or reduction is henceforth also possible for the specific sanction of the C02 contribution under the conditions set out in Article 55 of the Royal Decree of 28 November 1969.
07/02	The Federal Ombudsman recommends that Article 17 of the Act of 11 April 1995 on the introduction of the Charter of the Socially Insured persons be applied to new decisions (within the meaning of Article 17) concerning family allowances that date prior to 1 October 2006 and which entail that entitlement to the benefit was smaller than the initially attributed entitlement.	National Family Allowances Office for Salaried Workers	Granted	The National Family Allowances Office for Salaried Workers followed the recommendation in 2008 and regularised the files concerned.
07/03	The Federal Ombudsman recommends that, in anticipation of a possible amendment of Article 20, §1, of the Royal Decree of 8 March 2001, candidates who were registered for a language test, be not excluded from taking part in subsequent language tests during a period of one year, when they have notified Selor in advance that they would not be sitting for the language test, without any additional explanation afterwards. The Federal Ombudsman moreover recommends doing away with the exclusion from participation in language tests for one year that was imposed on candidates that had informed Selor in advance that they would not be participating, but had not provided reasons for their absence afterwards.	Selection Office of the Federal Department for Government Personnel (known by the acronym "Selor")	Granted	Selor adapted its practices in 2007. • Candidates who notified Selor by e-mail, post or fax at the latest on the day before the language examination for which they had been asked to sit, are henceforth no longer excluded for a period of one year; • Candidates who did not notify Selor, but who give reasons for their absence within five working days after the day of the examination by a detailed letter or certificate are likewise not excluded for a year.
09/01	The Federal Ombudsman recommends that Fedasil put an end immediately to the refusal to receive needy minors residing on the territory illegally with their family.	Fedasil	Pending	Fedasil has pointed out that the lack of places available makes it impossible to accommodate this target group. In individual cases, Fedasil nonetheless does take action on the Federal Ombudsman's recommendation. On 24 September 2009, the Federal Ombudsman submitted an interim report on this subject to the Lower House of Parliament.

OR	Title	Object	Status	Comment
09/02	The Belgian State must provide, at all times and under all circumstances, reception in accordance with the fundamental human rights and dignity to all beneficiaries of the Asylum Act, without discrimination. In view of the current saturation of the reception network, the necessary measures must be taken immediately – either by releasing sufficient human and material resources, or through an appropriate legal mechanism – so that Fedasil can fulfil its mission regarding all beneficiaries correctly at all times. While waiting for these measures to have the expected effect, the State may not take refuge behind the saturation of the reception network to refuse to receive certain beneficiaries, and must allow the derogatory legal mechanism provided for asylum seekers in the reception act to bring out its full effects so as to guarantee that, in case of particular circumstances, all beneficiaries receive the aid they need to meet their basic needs.	Secretary of State for social integration and the fight against poverty	Pending	The Secretary of State instructed Fedasil to prepare proposals for amending the Asylum Act to introduce a specific reception procedure for needy minors residing on the territory illegally with their family. Furthermore, a certain number of operational measures were taken to create new accommodation places as rapidly as possible so as to be able to guarantee accommodation for all the beneficiaries of this law.
09/03	The Federal State must provide accommodation immediately to all persons entitled to material reception so that they can meet their basic needs. Compliance with the law, fundamental rights and good governance require the federal authorities to coordinate their efforts efficiently to that end.	Prime Minister in charge of coordinating the migration and asylum policy and Secretary of State for social integration and the fight against poverty	Pending	The Prime Minister answered that he was aware of the urgent need of additional accommodation places. In spite of the many measures taken in the previous months and the mobilisation of additional resources, the problem is as acute as ever. The Prime Minister contacted the different members of the government concerned and supports the Secretary of State for social integration and the fight against poverty in the ongoing search for solutions in the short as well as in the longer term.

Appendix

The Federal Ombudsmen Act, Kingdom of Belgium, March 22, 1995.[33]

CHAPTER 1. The federal ombudsmen

Article 1. There are two federal ombudsmen, one French-speaking, the other Dutch- speaking, whose mission it is :

1°) to examine the claims relating to the operation of the federal administrative authorities;
2°) at the request of the House of Representatives, to lead any investigation on the functioning of the federal administrative services that it designates;
3°) to make recommendations and submit a report on the operation of the administrative authorities, in compliance with Article 14, paragraph 3, and Article 15, paragraph 1, based on the observations made while implementing the duties referred to in 1 and 2, above.

The ombudsmen carry out their duties with regard to the federal administrative authorities referred to in Article 14 of the coordinated laws on the Council of State, except for those administrative authorities endowed with their own ombudsman by a specific legal provision.

When the ombudsman's office is assumed by a woman, she is designated by the French term "médiatrice" or the Dutch term "ombudsvrouw" (in English : ombudswoman).

The ombudsmen act collectively.

Article 2. The ombudsmen and the staff who assist them are subject to the provisions of the laws on the language used in administrative matters, coordinated on July 18, 1966. They are regarded as services which are extended to the entire country.

Article 3. The ombudsmen are appointed by the House of Representatives (lower house of parliament) for a term of six years, after an open invitation to candidates to apply. At the end of each term of office, there is an open invitation to submit applications to renew the board of federal ombudsmen. An ombudsman's term of office can be renewed only once for the same candidate. If his term of office is not renewed, the ombudsman continues to perform his duties until a successor is appointed.

To be appointed ombudsman, it is necessary :

1°) to be Belgian;
2°) to be of irreproachable conduct and to enjoy the civil and political rights;
3°) to hold a degree, giving access to the functions of level 1 of the Civil Service departments of the State;
4°) to demonstrate sufficient knowledge of the other national languages, according to the standards laid down by the House of Representatives;
5°) to have had relevant professional experience of at least five years, either in the legal, administrative or social spheres, or in another field relevant to carrying out this function.

The same person may not serve as ombudsman for more than two terms of office, whether successive or otherwise.

Article 4. Before taking up duty, the ombudsmen take the following oath before the Speaker of the House of Representatives : "I swear fidelity to the King, obedience to the constitution and to the laws of the Belgian people".

[33] As modified by Act of February 11, 2004 and by Act of May 23, 2007.

Article 5. During their period in office, the ombudsmen may not carry out the following duties or hold any of the following positions or offices :
1°) magistrate, notary public or bailiff;
2°) lawyer;
3°) minister of a recognised religion or delegate of an organisation recognised by the law which gives moral assistance according to a non-religious philosophy;
4°) a public office conferred by election;
5°) employment remunerated in the public services referred to in Article 1, paragraph 2.

The ombudsmen cannot hold an office, public or otherwise, which could compromise the dignity or the performance of their duties.

For the application of this article, the following are treated as a public office conferred by election : a position as mayor appointed separately from the communal council; director of a public interest organisation and a position as a Government commissioner, including that of Governor of province, Deputy Governor or Vice-Governor.

The holder of a public office conferred by election who accepts a nomination for the office of ombudsman is legally excluded from his elective mandate.

Articles 1, 6, 7, 10, 11 and 12 of the Act of 18 September 1986 instituting political leave for the members of staff of the public service are applicable to the ombudsmen, if they are entitled to such leave, and the necessary adaptations are made.

Article 6. The House of Representatives can terminate the ombudsmen's functions :
1°) at their request;
2°) when they reach the age of 65;
3°) when their health seriously compromises the exercise of their duties.

The House of Representatives can remove the ombudsmen from office :
1°) if they carry out the duties or hold one of the positions or offices referred to in Article 5, paragraph 1 and paragraph 3;
2°) for serious reasons.

Article 7. Within the limits of their mission, the ombudsmen do not receive instructions from any authority.

They cannot be relieved of their duties due to activities conducted within the framework of their functions.

CHAPTER II. Complaints

Article 8. Any interested person can lodge a complaint with the ombudsmen, in writing or verbally, regarding the activities or functioning of the administrative authorities.

As a preliminary matter, the interested party must contact these authorities in order to obtain satisfaction.

Article 9. The ombudsmen can refuse to investigate a complaint when :
1°) the complainant's identity is unknown;
2°) the complaint refers to facts which occurred more than one year before the lodgement of the complaint.

The ombudsmen will refuse to investigate a complaint when :
1°) the complaint is obviously unfounded;

2°) the complainant obviously took no steps to approach the administrative authority concerned to obtain satisfaction;
3°) the complaint is primarily the same as a complaint dismissed by the ombudsmen, if it contains no new facts.

When the complaint refers to a federal, regional, community and other administrative authority which has its own ombudsman by virtue of legal regulation, the ombudsmen will pass it on to the latter without delay.

Article 10. The ombudsmen will inform the complainant without delay of their decision of whether or not the complaint will be handled, or whether it will be passed on to another ombudsman. Any refusal to handle a complaint will be substantiated.
The ombudsmen will inform the administrative authority of their intention to investigate a complaint.

Article 11. The ombudsmen can impose binding deadlines for response on the agents or services to which they address questions in the course of their duties.

They can similarly make any observation, acquire all the documents and information that they consider necessary and hear all persons concerned on the spot.

Persons who are entrusted with privileged information by virtue of their status or profession, are relieved of their obligation to maintain confidentiality within the framework of the enquiry carried out by the ombudsmen.

The ombudsmen may seek assistance by experts.

Article 12. If, in the performance of their duties, the ombudsmen note a fact which could constitute a crime or an offence, they must inform the Public Prosecutor in compliance with Article 29 of the Code of Criminal Procedure.

If, in the performance of their duties, they note a fact which could constitute a disciplinary offence, they must inform the competent administrative authority.

Article 13. The examination of a complaint is suspended when the facts are subject of judicial appeal or of organised administrative appeal. The administrative authority will inform the ombudsmen of legal proceedings.

In this event, the ombudsmen will report to the complainant of the suspension of the examination of his or her complaint without delay.

The lodgement and the examination of a complaint neither suspend nor stop time limits for judicial or organised administrative appeal.

Article 14. The complainant is kept periodically informed of the progress of his or her complaint.

The ombudsmen will endeavour to reconcile the complainant's point of view and those of the services concerned.

They can send any recommendation to the administrative authority that they consider useful. In this case, they will inform the minister responsible.

CHAPTER III. Reports by the ombudsmen

Article 15. Every year, by March 31st at the latest, the ombudsmen send a report on their activities to the House of Representatives. They can, in addition, submit intermediate quarterly reports if they consider it useful. These reports contain the recommendations that the ombudsmen consider useful and expose possible difficulties that they encounter in the performance of their duties.

The identity of the complainants and of members of staff in the administrative authorities may not be divulged in these reports.

The reports are made public by the House of Representatives.

The ombudsmen may be heard by the House at any time, either at their request, or at the request of the House.

CHAPTER IV. Various provisions

Article 16. Article 458 of the Penal Code applies to the ombudsmen and their staff (professional secrecy).

Article 17. The ombudsmen adopt house rules.

The house rules are approved by the House of Representatives.

After seeking the advice of the ombudsmen, the House of Representatives can modify the house rules. In case the advice has not been given within the 60 days following the request, it is considered favourably.

Article 18. Without prejudice to the competence of the House of Representatives – assisted by the Auditor's Office – to examine the federal ombudsmen's detailed budget propositions and to approve their budget as well as to verify its implementation and to audit the books, a part of the Kingdom's general expenditure budget is allocated for the state grant covering this budget.

For their budget and accounts, the federal ombudsmen follow a scheme comparable to the one that the House of Representatives uses for its budget and accounts.

Correspondence sent as part of the ombudsmen's office is sent free of postage.

Article 19. Without prejudice to the assignments agreed upon by collegial decision, the ombudsmen appoint, dismiss and direct the members of staff who will assist them in the performance of their duties.

The staffing and the members status are decided by the House of Representatives at the suggestion of the ombudsmen.

After seeking the advice of the federal ombudsmen, it can modify this status and staffing. In case the advice has not been given within the 60 days following the request, it is considered favourably.

Article 20. The ombudsmen enjoy a status identical to that of the counsellors of the Court of Auditors. The rules governing the financial status of the counsellors of the Court of Auditors, in the Act of 21 March 1964 on the salaries of the members of the Court of Auditors, as amended by the acts of 14 March 1975 and 5 August 1992, are applicable to the ombudsmen.

The ombudsmen's pension on retirement is calculated on the basis of the average salary for the last five years, determined in accordance with the applicable arrangement for retirement pensions to be paid by the State, at a rate of one thirtieth per year of service as an ombudsman, providing he or she has carried out his or her functions in the aforementioned capacity for twelve years.

Services by the ombudsmen which are not governed by the previous paragraph and which are acceptable for the calculation of a pension on retirement to be paid by the State, are calculated according to the laws fixing retirement pensions pertaining to these services.

If an ombudsman is not considered fit to carry out his or her functions due to illness or infirmity, but has not reached the age of 65, he or she may draw a pension irrespective of age.

The ombudsmen's pension on retirement shall not be higher than nine tenths of the average salary for the last five years.

Except in the cases referred to in Article 6, Paragraph 1, 1° and 2°, and Paragraph 2, and in the case referred to in Paragraph 4 of this article, an ombudsman whose term of office expires shall receive a severance allowance calculated on the basis of a monthly salary per year of service.

Table of contents

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