



the federal **Ombudsman**

a bridge between citizens and the public services

ANNUAL REPORT

2012



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Realisation House of Representatives

Mr. Speaker of the House of Representatives,

Mr. Chairman of the Petitions Committee,

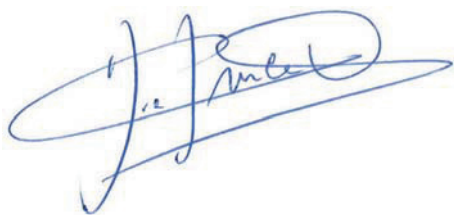
Honourable Members of Parliament,

In accordance with Article 15 of the Federal Ombudsman Act of March 22, 1995, we have the honour of submitting the report of the Federal Ombudsman for 2012.

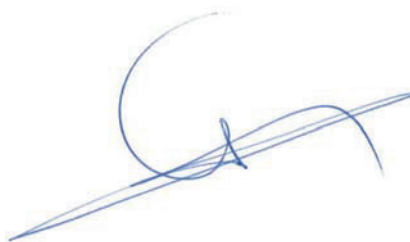
We hope that you will enjoy reading this report and are at the entire disposal of the House of Representatives to present and comment on it before the Petitions Committee and the standing committees.

Yours faithfully,

The federal ombudsmen



Catherine De Bruecker



Guido Schuermans

Preface

In the report for 2011, we addressed the various facets of the mission we have had the honour of carrying out since 2005, namely to remedy the threatening gap between the citizens and the public authorities, facilitate dialogue, play a moving role for reconciliation but also for the accountability of opposing parties in a conflict, at times to defend rights, and finally, as a new vehicle for civic participation in the management of public affairs.¹

The Ombudsman has become an indispensable instrument on all these fronts at a time when public governance and administrative organisations are meeting fundamental changes.

In terms of prospects for the future, the colloquium² organised in the “Palais de la Nation” in November 2010 and the ensuing assessment results³, set out concrete lines for the consolidation of the institution to enable it to perform its mission fully in the face of the stakes in the 21st century:

- the constitutionalization of the individual right to have recourse to an independent ombudsman;
- a better coordination between the Ombudsman's intermediation and legal remedies;
- the extension of the scope of the Federal Ombudsman with regard to other authorities under the federal purview;
- the conferral of a right of initiative to the Ombudsman;
- the reinforcement of the power to make recommendations;
- the opportunity to decide in fairness.

Some of these avenues are already being examined and are taken into consideration.

Our term of office came to an end on November 8, 2011. Since then, pursuant to the act establishing federal ombudsmen, we have continued to perform our duties whilst waiting for the House of Representatives to organise an appeal procedure for the appointment of new federal ombudsmen. This is already in progress.

We would like to wish all the luck and success to the institution for the third term of office which will commence with the appointment of new federal ombudsmen by the House of Representatives for the six years to come.

We would like to thank all those without whom we would not have been able to see our mission through:

- Our staff, for the quality of the work they put in day in and day out in the service of citizens, with devotion, efficiency and tenacity;
- The civil servants of the federal administrative authorities at all levels, for the constructive dialogue we have been able to develop and their participation in the search for solutions, whether in individual complaints or structural questions;

¹ For a detailed development, cf. C. De Bruecker and G. Schuermans, Annual Report 2011, Brussels, The Federal Ombudsman, 2012. Preface.

² Proceedings of the colloquium “A Consolidated federal Ombudsman for the 21st century: Are Reforms Needed?” held in Brussels on November 30, 2010, Anthemis sa / Intersentia, 2011.

³ B. Blero and B. Hubeau, “A Consolidated federal Ombudsman for the 21st century: Are Reforms Needed?": Evaluation of the results of the colloquium of November 30, 2010.” Brussels, the Federal Ombudsman, 2011.

— The House of Representatives, for the confidence shown and for the attention paid to our reports and recommendations.



Guido Schuermans

Catherine De Bruecker

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I. Operation and Management



How the Ombudsman service operates

To get results, an ombudsman must cultivate cooperation continuously with its different partners: the administrative authorities, Parliament, and the other ombudsmen.

In 2012, the Federal Ombudsman continued its efforts in that direction.

Promote all administrative authorities geared to the citizen

- By developing the processing of complaints on the front line

In its annual report for 2011, the Federal Ombudsman recommended that a structured and harmonised processing of complaints on the front line be developed in all the federal administrative authorities by establishing internal complaints departments based on a common model.

This recommendation elicited a positive response.

At the initiative of the Secretary of State for the Civil Service and the Modernization of Public Services, the Council of Ministers agreed to have the management of complaints harmonized in the federal administrative authorities. The deadline set for the implementation of this project is July 21, 2013.

For its part, the Federal Ombudsman continued to support the development of a harmonized processing of complaints on the front line. In 2012, we proposed to the federal administrative authorities to review the cooperation protocol,¹ so as to include expressly the role of their internal complaint coordinator. We thus plan to give further impetus to the launch of the processing of complaints by the administrative authorities.

The Secretary of State for the Civil Service and the Modernization of Public Services asked the FPS Personnel and Organization (P&O) to conduct an assessment of the management of complaints in the federal public services.

After consulting with the Federal Ombudsman, the Directorate General for Development of Personnel and Organization of the FPS P&O defined a certain number of quality criteria for a complaints department to be considered as good practice. As soon as a department meets these criteria, its organisation may sign the new cooperation protocol with the Federal Ombudsman.

Finally, a proposal for a resolution was introduced in the Senate to reinforce a culture of service in the federal administrative authorities.² It stipulates expressly that modern administrative authorities geared to the citizen must have a uniformly structured and harmonized model for the processing of complaints.

The development of the processing of complaints on the front line has thus received broad support.

Last year we included the first report of the Federal Complaint Management Network in our annual report. This year, we received from the Directorate General for Development of Personnel and Organization the first report of front line complaint management indicators in the federal administrative authorities for 2012. It is entitled: *"Evolving together for the benefit of the customer."*

¹ This protocol has already been approved by the Board of Public Social Security Institutions and the Board of Public Interest Organisations and must still go through a final reading with the Board of the FPSs and PPS.

² Parl. doc., Senate, 2011-2012, May 30, 2012, n° 5-1638/I.

As regards cooperation, it indicated that: "Voluntary cooperation, the partnership with the Federal Ombudsman, the sharing of good practices and exchange of contacts between the different complaint coordinators (already 57 in number) of the Federal Complaint Management Network have already yielded numerous results. These include the concrete implementation of complaint management in the different federal administrative authorities, jointly defined assessment criteria, and the annual measurement of indicators."

- By providing a continuous follow-up of the recommendations and proposals made to the administrative authorities every year

In daily practice, the Federal Ombudsman contributes throughout the year to the development of a culture geared to the citizen in the federal administrative authorities. This entails in particular proposals and recommendations for the adaptation, introduction or discontinuance of certain administrative practices.

The processing of complaints actually enables the Federal Ombudsman to pinpoint the problems and how they can be avoided in future.

The Federal Ombudsman's recommendations and proposals are not always followed without striking a blow¹ but, in many cases, they ultimately lead to the adaptation of internal practices or directives of the administrative authorities.

For instance, in 2011, the Federal Ombudsman had recommended to the Department of Persons with Disabilities to pay interest on all outstanding monthly instalments, including the six monthly instalments prior to the expiry of the legal six-month time limit provided for the processing of applications for benefits, when said deadline is exceeded. At the end of January 2013, the Secretary of State responsible for persons with disabilities informed us that the Department of Persons with Disabilities will adjust its practice in accordance with this recommendation.

At times, it is not necessary to go as far as a recommendation, as the administrative authorities gauge rapidly the dysfunctions reported by the Federal Ombudsman and engage in constructive dialogue on the proposals to remedy them. This was the case in 2012 with the FPS Finance concerning the difficulties that arose from the entry into force of new measures for the issuance of certificates of inheritance. Following our proposals, the FPS Finance amended its internal directives, revising in particular the process and scope of the inquiry into tax debts and imposing on the tax authorities a maximum time limit of four weeks to issue certificates.²

Reinforce all information and orientation for citizens

- In the federal administrative authorities

Let us return to the afore-cited proposal for a resolution introduced in the Senate, to reinforce the culture of service in federal administrative authorities with regard to citizens.

The other section of this proposal is based on the observation, described in our annual report for 2011³, that a harmonization of the presentation, the minimum content required, and the user-friendliness expected of the websites of the different administrative authorities constituted undeniable progress. The proposal suggests that it would be particularly helpful for the website of every federal administrative authority mentioned to indicate in a conspicuous place, such as the homepage, for instance, the general contact details of the service.

¹ Part IV of the annual report is devoted to the follow-up of the recommendations.

² Part III, Analysis of complaints, p. 39

³ Annual Report 2011, p. 98.

This observation was a follow-up to our cross-thematic recommendation of 2010¹ to endow the federal administrative authorities with an efficient information and communication policy by establishing the general principles on which the external communication of the different administrative authorities must be based.

■ With the other mediators and ombudsmen

Launched in 2007 by the Belgian Network of Mediators and Ombudsmen,² the portal www.ombudsman.be provides citizens with a unique, centralised point of access to the different ombudsman services in our country. Belgium has a large number of such services and it is not always easy for citizens to figure out where to go to with their problem.

The Federal Ombudsman is an active member of the network with the federal ombudswoman, Catherine De Bruecker, being its chairwoman since January 28, 2011.

In 2012, the different ombudsman services of the network cooperated on the renovation of the website to improve the search function and the user-friendliness thereof for visitors.

The new portal is therefore chiefly geared to the search for efficient information and orientation for citizens, based on their concrete concerns rather than on the division of competences between institutions. Furthermore, it enables the network and its members to disseminate news on the ombudsman sector. It was put on line in the beginning of 2013.

The general figures of the Federal Ombudsman show that in 2012, the number of complaints intended for other mediators had dropped considerably.³ Does this suggest that citizens can already find their way better through the maze of mediation?

Join forces to ensure that fundamental rights are protected

We have since 2006 underscored that the protection of the fundamental rights of citizens against the arbitrary conduct of the administrative authorities is an essential and inherent task of the Ombudsman, even when it is not expressly enshrined in its constituent deeds.⁴ Since then, the Federal Ombudsman has each year devoted a particular chapter in the annual report to the analysis of complaints concerning the respect of fundamental rights by the federal administrative authorities.

Next to the Constitution, the protection of human rights is enshrined by definition in an international legislative context established by conventions for the protection of human rights that are binding for the signatory states. International cooperation between ombudsmen and a comparative analysis of the protection mechanisms introduced in the different states are indispensable for contributing to the discussion currently conducted in our country on the concrete and effective implementation of international commitments undertaken by Belgium.

In the follow-up of the recommendation we made in 2010⁵ to ensure independent and effective supervision of the federal penitentiaries, in accordance with the commitments undertaken by Belgium upon signing the Optional Protocol to the United Nations Convention Against Torture (OPCAT), the Federal Ombudsman launched a comparative study of the implementation of OPCAT in European countries.

¹ GR 10/01, Annual Report 2010, pp. 131-132.

² Officially, the Permanent Consultation of Mediators and Ombudsmen.

³ Part II, General statistics, p. 21.

⁴ Annual Report 2006, pp. 23-24.

⁵ GR 10/02, Annual Report 2010, pp. 132-134.

In this connection, in the beginning of 2013, the Office of the Federal Ombudsman paid a study visit to its Austrian counterpart (the Volksanwaltschaft), which has just been put in charge of the national prevention mechanism (NPM) against torture stipulated by the OPCAT. The Austrian model involves the ombudsman, through a new advisory board, representatives from the civil society, and experts from the former advisory committee on human rights and its commissions of experts, hitherto under the purview of the Minister for the Interior, comparable to our Central Prison Supervisory Council and our Supervisory Commissions.



From left to right: Ulrike Grieshofer, Ombudsman Peter Kostelka, Catherine De Bruecker, Guido Schuermans, Ombudswoman Terezija Stoisits, Valérie Goffin

Join forces to promote the concept of ombudsman throughout the world

- Through multilateral cooperation

The Federal Ombudsman is a member of the International Ombudsman Institute (IOI), an INGO of Austrian law, which groups ombudsmen from all over the world. Ever since it was created in Sweden in 1809, the concept of ombudsman has been adopted virtually everywhere in the world and has proven to be flexible and innovative, while staying true to its characteristic fundamental principles, namely independence, objectivity and fairness.

In November 2010, the IOI held its 10th world congress on the topic “Speaking truth to power – the role of the Ombudsman in the 21st century” as well as its statutory general meeting. On that occasion, the IOI adopted an important revision of its articles of association.

Article 2.2 of the new articles of association of the IOI¹ lists a dozen principles which an ombudsman institution must meet to comply with the international standard of the ombudsman according to the ideals set out in the Paris Principles and the US Resolutions on the role of the ombudsman.

The IOI also renewed its statutory bodies. The Federal Ombudsman, in the person of Catherine De Bruecker, was appointed by her peers to the board of directors of the European Chapter of the IOI.

¹ www.theioi.org

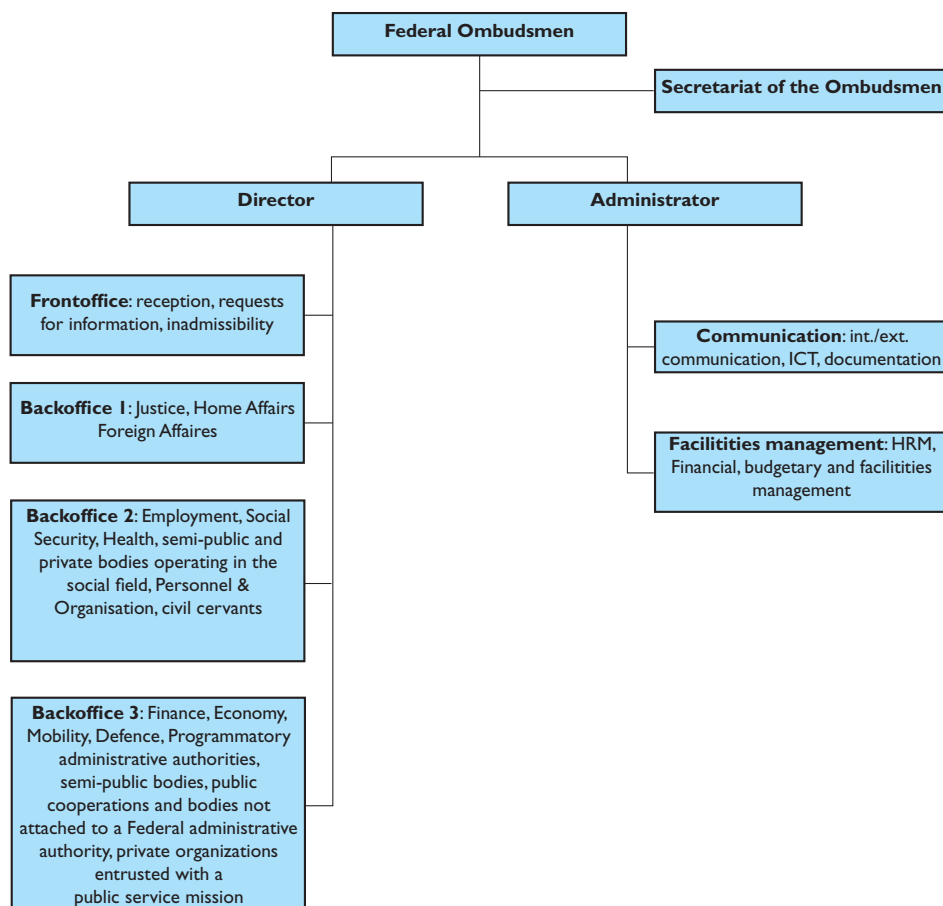
■ Through bilateral cooperation

Following a visit of the ombudsman of Burundi in April 2012 and pursuant to the support programme for young institutions implemented by the Association of Ombudsmen and Mediators of French-speaking Countries, the Federal Ombudsman organised a professional practical training for two staff members of the Burundian institution. This practical training was provided in January 2013 at the Office of the Federal Ombudsman, with the participation of the ombudsman of the Wallonia-Brussels Federation and Wallonia, the ombudsman of the City of Charleroi and the Flemish Ombudsman.

Management of the institution

Structure of the organisation

The Front Office handles the first contact with citizens who turn to the Federal Ombudsman. It verifies the admissibility of incoming applications, processes requests for information and refers complaints that do not concern the Federal Ombudsman as much as possible to the competent authority. The three back offices process complaints that fall under their respective purview as indicated in the organizational chart below. The Communication Section supports and implements the communication policy of the federal ombudsmen, whereas the logistical staffs are responsible in particular for human resources and financial and logistical management.



Personnel situation and management

On January 1, 2013, the institution had 53 employees, as indicated in the table below:

Grade	Language		Gender					
	N	F	M	F	Statutory	On contract	Total workforce in FTEI	Staff Framework Total
A	16	17 (a)	18 (a)	15	18 (a)	15 (b)	32	24 (+8)
B	8	8	4	12	8	8 (c)	16	12 (+4)
C	1	1	2	0	0	2	2	2
D (d)	1	2	0	3	0	3	2,75	(2,75 ETP)
Total	26	28	24	30	26	28	52,75	38 (+14,75)

(a) Including a tenured staff member on mission leave

(b) Including 8 contract employees, Article 4 of the organic framework (urgent and temporary needs), and a contract employee replacing a tenured staff member on mission leave

(c) Including 4 contract employees, Article 4 of the organic framework (urgent and temporary needs)

(d) Maintenance personnel, recognized as equivalent to Level D, Article 4 of the organic framework: 3 staff members (2.75 PTE)

The workforce has increased by two compared to the situation on January 1, 2012.

To enable us to maintain a quality service to the citizen, the House of Representatives has enabled us to reinforce our services with two full-time graduates (one French-speaking and one Dutch-speaking).

On the continuing training front, the institution turns regularly to the Federal Administration Training Institute. Furthermore, participation in study days and other external training programmes enables staff members to keep pace with developments in their discipline.

Financial and budgetary management

The estimate and monitoring of the Federal Ombudsman's expenses have, ever since the office was created, depended on a long-term projection of personnel expenses. Like various endowed public institutions, the Federal Ombudsman submits to the House of Representatives a multi-year estimate of its budget for its overall expenses over three years.

The basic budget figures for 2011-2013 are given in the table below:

Budgetary year	Accounts 2011	Budget 2012	Budget 2013
Expenditures	4 613 829,96	5 509 900,00	5 768 200,00
Financement	5 147 010,98	5 509 900,00	5 768 200,00
Endowment	4 752 000,00	5 309 000,00	5 309 000,00
Transferred surplus	361 350,00	200 900,00	459 200,00
Other revenues	33 660,98		
Balance	533 181,02		

The heading “Accounts 2011” mentions the actual amount of expenses for 2011, whereas the headings “Budget 2012” and “Budget 2013” post the total budget lines (for expenses) allocated by the House. These lines are financed by the endowment proper (i.e. the annual amount in the general budget for government spending), bonuses carried forward from previous years, and other revenues.

Facilities management

Facilities management in 2013 pertains to our prospective move in the Forum Building of the Federal Parliament at the end of March. Such an operation cannot be improvised. Different actions have been taken to that end since 2012, including an invitation to tender for the actual move and the security and arrangement of the new premises. The foundation stone was laid at the end of December: our servers were transferred to an external data centre of the non-profit association Smals ASBL, the ICT partner of the federal authorities.

The new complaint management system developed with the help of an extern firm went into production in the beginning of 2013. To that end, in 2012, an internal working group focused fully on the development and launch of this application, which will help optimise our working processes in the coming years.

As is too often the case with new IT tools, the launch of this application did not proceed without hitches, and entailed a slow-down in our normal deadlines for processing applications in 2013. For the sake of efficient and transparent communication, we immediately informed all our complainants as well as the public through our website.

II. General figures



I. 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.

These data can be used to gauge the result of the Federal Ombudsman's work.

The figures cover the calendar year 2012 and report on the situation of case files as at December 31, 2012.

To give a clear picture of the case files submitted 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 2012, from being booked twice. The case files submitted in previous years are indicated globally in the comments and explicitly included in certain graphs, so that the overall workload per year is illustrated all the same.

Inasmuch as possible, the general statistics compare developments in the year 2011 and 2012.

I. Result of the Federal Ombudsman's intervention

The Federal Ombudsman intervenes in a case when, having analysed said case and considered the point of view of the different parties, the claim is justified and mediation seems possible

What can be the result of such intervention?

(Partially) founded claim:

- Reparation
- Partial reparation
- Reparation refused
- Reparation impossible: it is not possible to remedy the problem (any longer)
- Structural intervention: when, under precise circumstances determined previously in advance, the Federal Ombudsman does not ask for a correction in individual cases but for structural measures beneficial to all similar cases.

Mediation:^I

- Successful
- Unsuccessful

The Federal Ombudsman's intervention achieves a positive result when the administrative authorities agree to a total or partial correction, as well as when the mediation was successful, i.e. the dispute was settled.

Conversely, a complaint is closed without result when the administrative authority refuses the correction requested or if mediation fails.

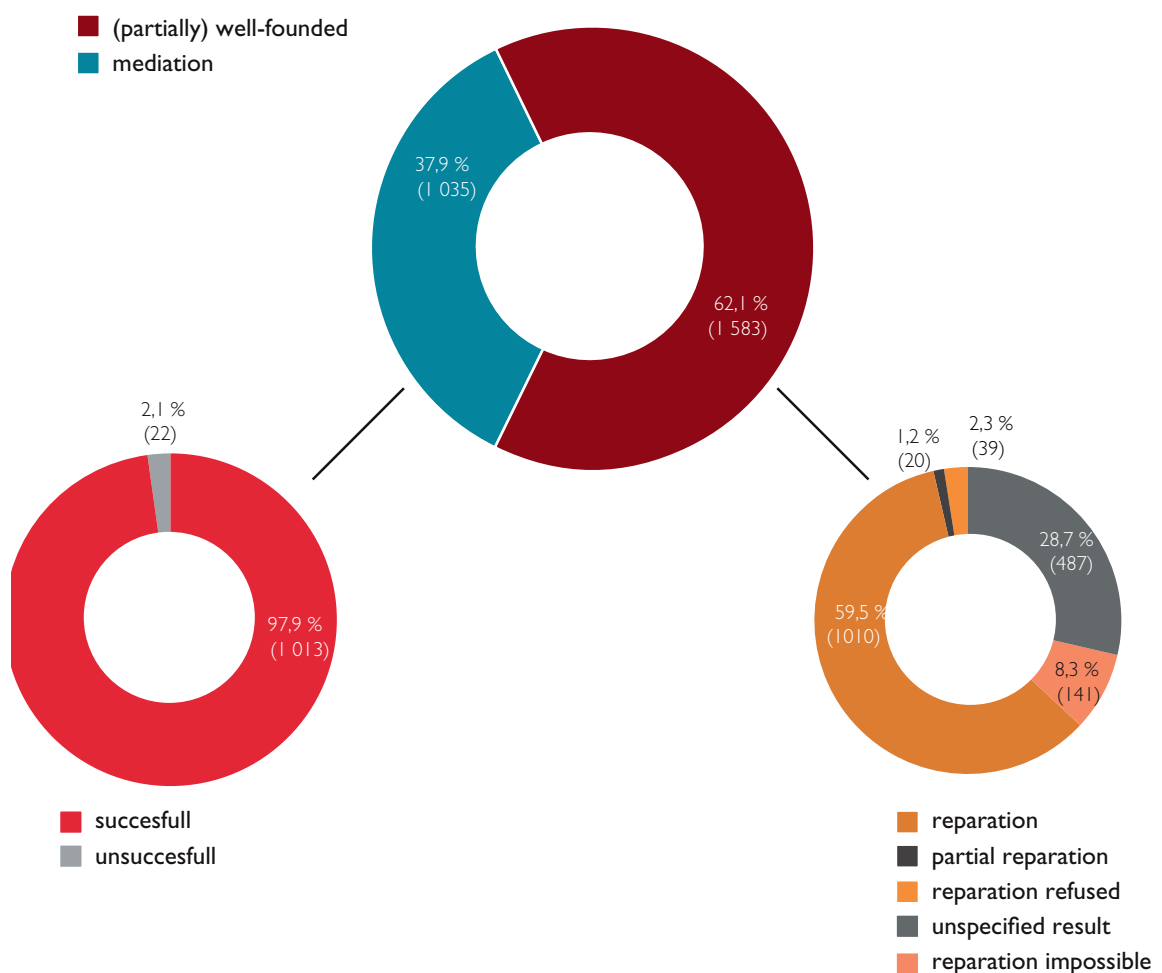
^I Cf. p. 25.

When a correction is impossible, there can be no result, of course. And when opting for a structural intervention, the Federal Ombudsman does not aim at a result in an individual case. If we do not take these cases into account in calculating the result, the Federal Ombudsman's intervention attains a positive result in 98% of the cases.

In other words, whenever the Federal Ombudsman undertook a rectification or intervened for the benefit of a petitioner, the effort nearly always led to a positive result.

Result of the Federal Ombudsman's intervention

2012



If we do take into account cases in which a correction was impossible, and those in which no individual rectification was requested (structural intervention), we reach a positive result of 75.5% of the case files for the complainants. In 2011, this figure amounted to 81.21%

This difference is explained in part by the increase in the number of case files in which we opted for a structural intervention, namely 487 in 2012 compared with 359 in 2011.

At issue are complaints about the time it takes to process regularisation applications under article 9bis in progress at the Humanitarian Regularization Service of the Department of Immigration and Naturalization. In view of the difficult situation that this service was faced with, it was decided at the end of 2010 not to raise these numerous complaints individually with the Department of Immigration and Naturalization any more, with the exception of case studies that may concern a violation of a fundamental right. This decision was necessary so as not to increase the workload of this service, and in order to preserve equal treatment for those applying for regularization. Since then, the Federal Ombudsman draws up a statement of all these complaints which is sent periodically to the Department of Immigration and Naturalization. We do not ask for individual correction for these case files. We have instead opted for a structural intervention for the benefit of all complainants.

On the other hand, there was an increase in the number of cases in which a correction was impossible in 2012, namely 141, compared with 64 in 2011.

This significant increase (more than double) is almost exclusively due to complaints concerning the Motor Vehicle Registration and Approval Department, following the considerable delays that occurred in this department for the registration of vehicles in May and June. It is impossible to rectify a late issuance of a number plate...

2. Evaluation of closed complaints

When an admissible case file is closed, the Federal Ombudsman indicates whether the complaint is justified in the light of its grid of ombudsman criteria.

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

1. Well-founded

- one or more ombudsman criteria are not met.

2. Ill-founded

- the ombudsman criteria were not violated.

3. Partially well-founded

- The complaint contains various, equally important grievances, not all of which are well-founded however;
- There is shared responsibility between the petitioner and the administrative authority;
- The 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).

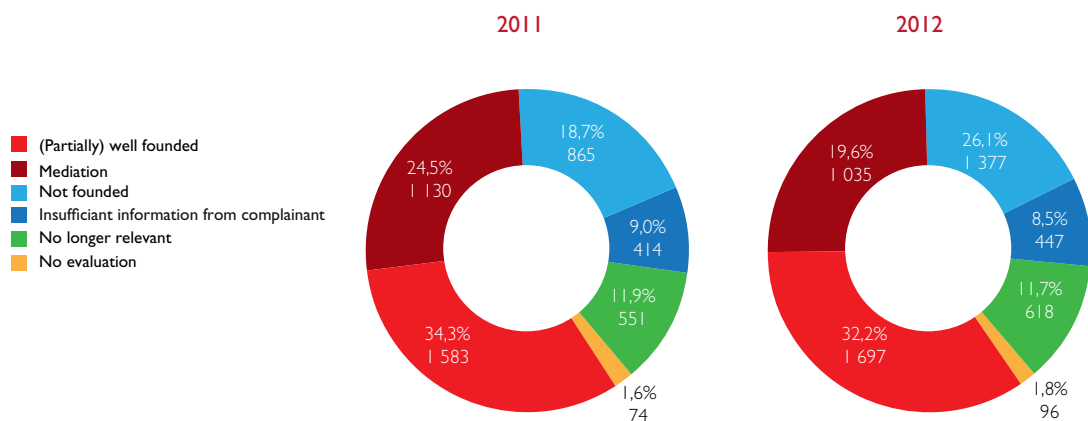
4. No evaluation

- Mediation 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 graph below provides a general picture of the evaluation of the 5,270 complaints closed in 2012 (not including suspended cases), but including complaints lodged by civil servants.

Evaluation of closed complaints

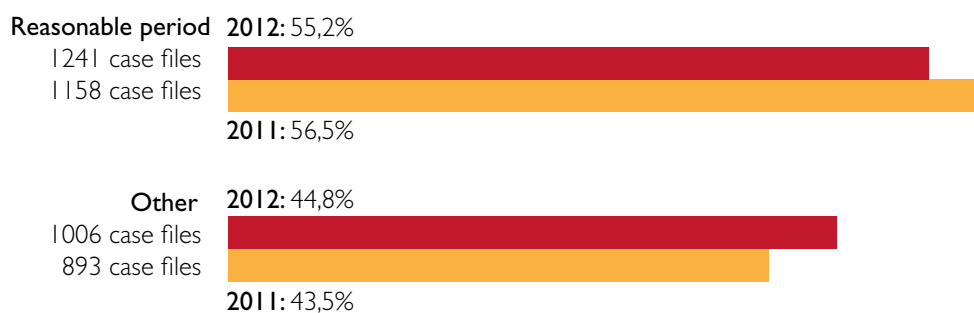


The number of complaints declared to be well founded in 2012 is higher than in 2011.

In percentage terms, however, the share of well-founded complaints dropped from 10% in 2011 to 6% in 2012 with regard to the unfounded complaints.

3. Application of the ombudsman criteria

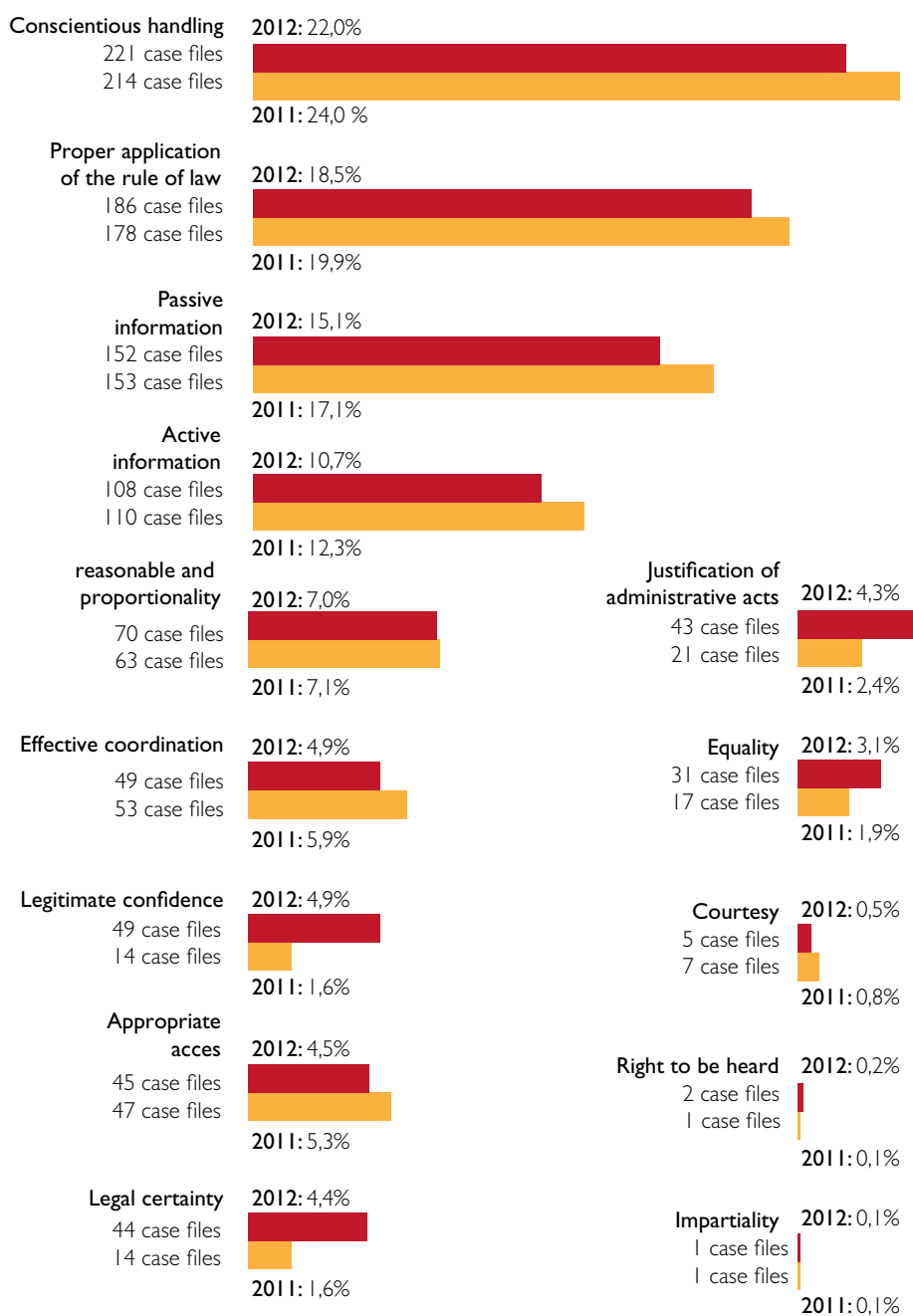
An overview of the ombudsman criteria applied in the 1,697 complaints closed as "well founded" or "partially well founded" is given on the next page. Several criteria may be violated in a single case file, and the "efficient coordination" criterion is generally accompanied by another ombudsman criterion. This explains why the total number of violated criteria (2,247) exceeds the number of case files closed (1,697).



As in previous years, the most violated criterion is the “reasonable period.” This standard is not complied with in 55% of the (partially) well founded complaints.

Application of ombudsman criteria: except reasonable period

As the preponderance of the criterion “reasonable period” makes it difficult to read and interpret statistical data, we have once again provided a graph that does not include “reasonable period.” The relative importance of the violation of the fourteen other ombudsman criteria is consequently more visible.



4. New case files

We received 7,320 new case files in 2012, of which 5,804 were complaints and 1,516 requests for information (compared with 7,682 new case files in 2011, of which 6,294 were complaints and 1,388 requests for information).











We expect a stabilisation at ca. 7,500 case files per year. The proportional share of requests for information

increased slightly compared with 2011 (+2.5%). The Federal Ombudsman continues to underscore the importance of a federal information line.

In addition to complaints and requests for information for which a file is opened, the Federal Ombudsman also receives many requests for information by telephone which are not booked as case files, as the answers are provided immediately by our Front Office. In 2012, the Front Office registered 8,455 telephone calls. In 1 out of 3 cases, the Front Office was able to inform the callers immediately, without having to open a file (2,938 calls processed immediately).

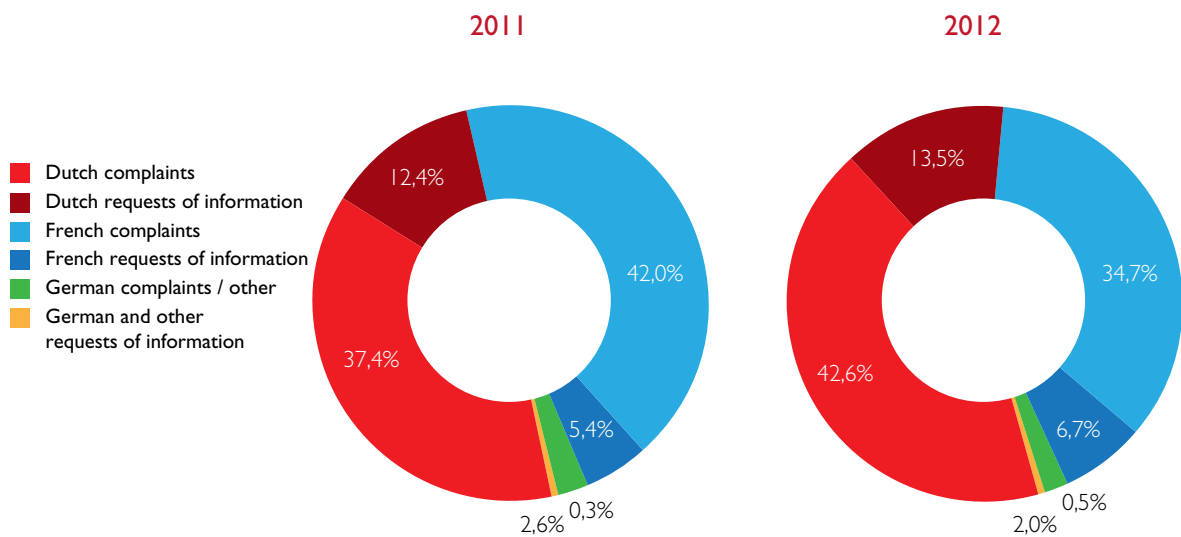
The toll-free number received 60% of all the telephone calls for a 3% increase from the previous year.

New case files: comparison 2008 - 2012

	Complaints	Requests of information	Total
2012	 5 804 79,3%	 1 516 20,7%	Total: 7 320
2011	 6 294 81,9%	 1 388 18,1%	Total: 7 682
2010	 6 964 84,6%	 1 267 15,4%	Total: 8 231
2009	 5 245 81,6%	 1 184 18,4%	Total: 6 429
2008	 4 509 82,5%	 957 17,5%	Total: 5 466

New case files by language: comparison 2011 - 2012

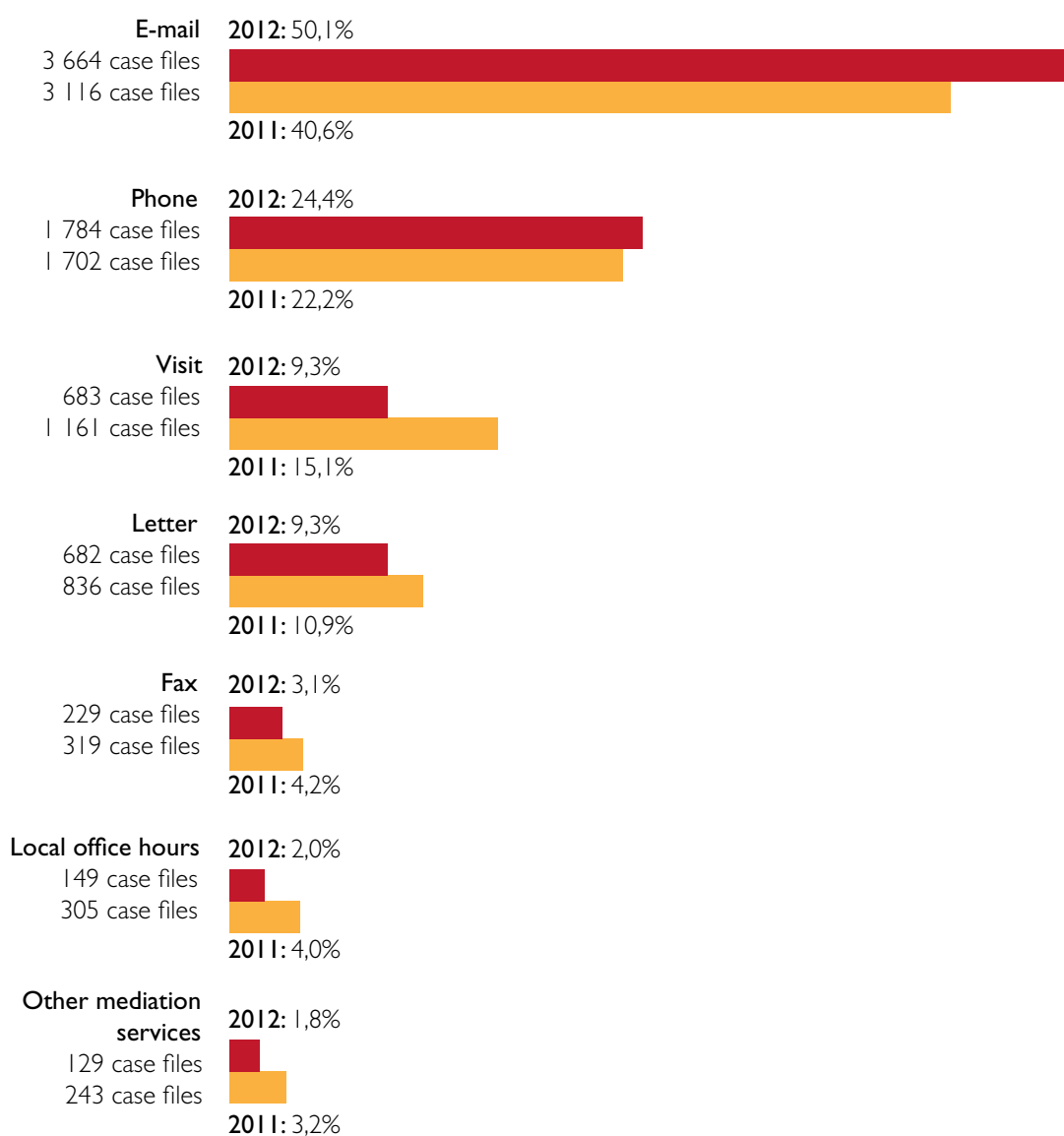
The share of French-speaking case files declined in 2012. This is due to the decline in the number of complaints concerning the sector of departments under which the Department of Immigration and Naturalization falls. The great majority of complaints relating to the Department of Immigration and Naturalization are lodged in French. In 2012, we received 681 fewer complaints concerning this administrative authority.



New case files per means of communication

The predominance of the electronic path is a definitively established trend. In 2012, half of the requests were made by e-mail or the website, i.e. 10% increase from 2011.

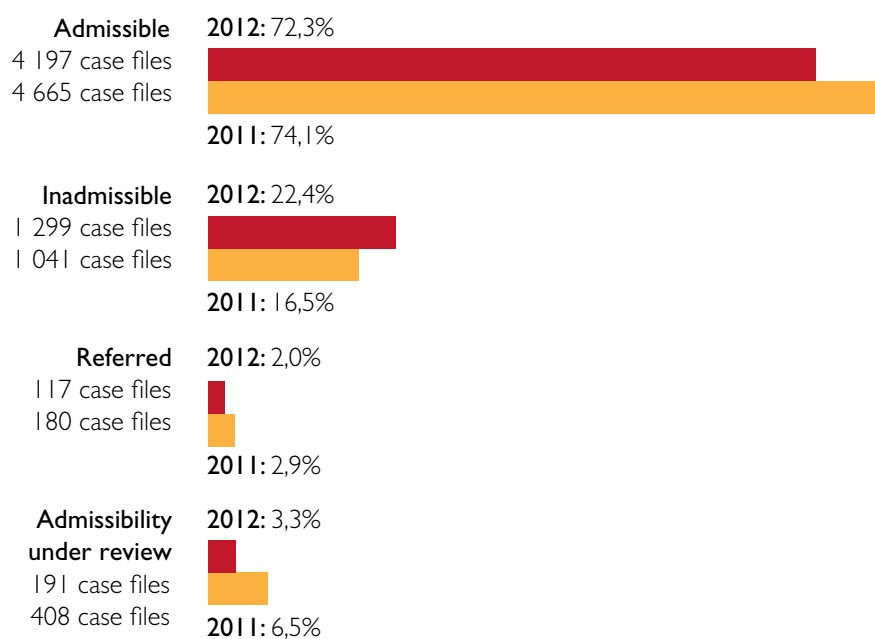
The local office hours, on the other hand, were solicited far less in 2012.



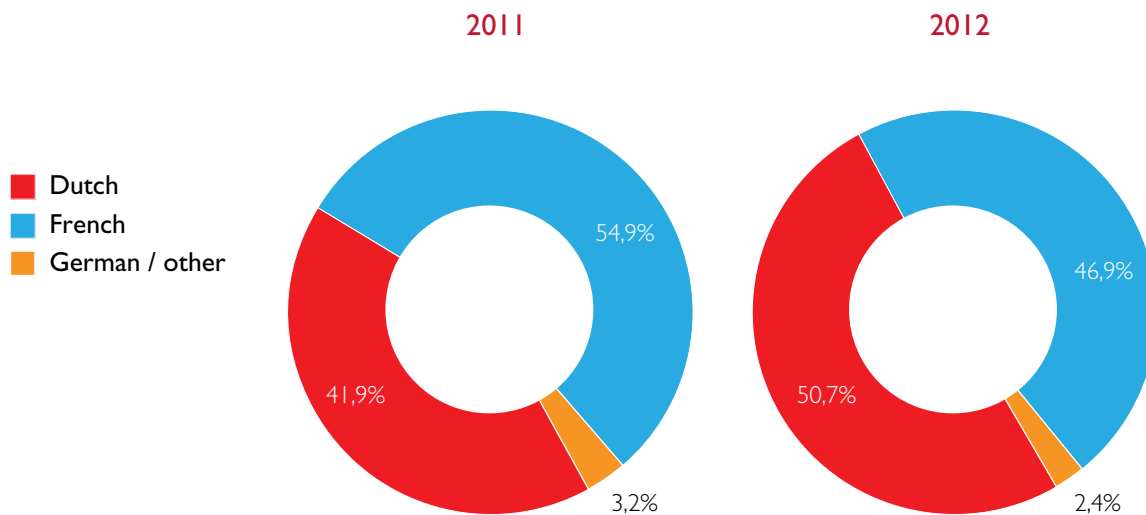
5. Admissibility of new complaints

In 2012, 72.3% of 5,804 complaints were admissible. Of the 1,416 that remained, 117 could be referred to another ombudsman service. The admissibility of 191 complaints was still being examined at the end of the period.

Admissibility of new complaints



New admissible complaints by language: comparison 2011 - 2012



As afore-indicated, we received more complaints in Dutch than in French in 2012.

The share of complaints in French continues to be higher than those in Dutch concerning the FPS Interior (chiefly the Department of Immigration and Naturalization), the FPS Foreign Affairs, Fedasil, and the FPS Personnel and Organization.

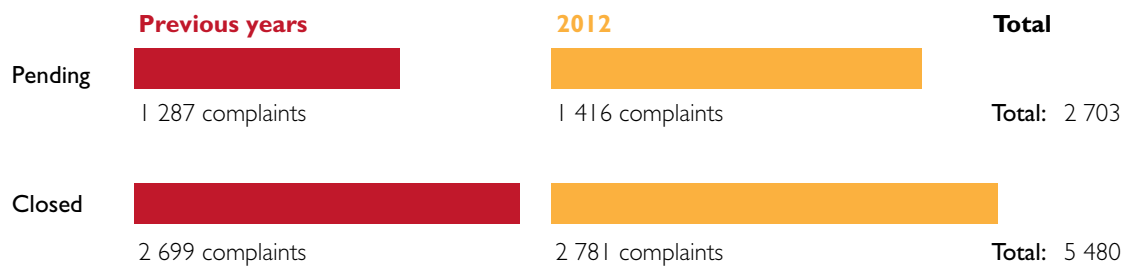
As regards all the other administrative authorities, the Federal Ombudsman received more complaints in Dutch than in French. The difference is significant as regards the FPS Mobility and Transport, for which we received 339 complaints in Dutch and 48 in French (concerning chiefly the issuance of number plates).

6. State of admissible complaints as at December 31, 2012

At the end of 2011, 3,986 complaints were to be processed (lodged in 2011 or in previous years). Of these 3,986 admissible complaints, 2,699 were closed in 2012, whilst 1,287 were still being processed as at December 31, 2012. Of the 4,197 admissible complaints lodged in 2012, 1,416 were still being processed as at December 31, 2012.

This brings us to a provisional total of $1,287 + 1,416 = 2,703$ complaints being processed as at 31 December 2012. If we add the case studies (191) for which no decision on admissibility had been taken yet, we arrive at a final total of $2,703 + 191 = 2,894$ complaints being processed as at December, 31 2012. The number of complaints being processed has therefore declined by about 1,000 in one year.

State of admissible complaints as at December 31, 2012



7. New admissible complaints per administrative department: comparison 2011-2012

The following tables show the distribution in the number of new admissible complaints in 2011 and 2012 among the different administrative departments. A distinction is drawn between complaints by users of these department's services and "complaints by civil servants".

Complaints by civil servants are lodged against their own (former, current, 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).

New complaints by users per administrative authority

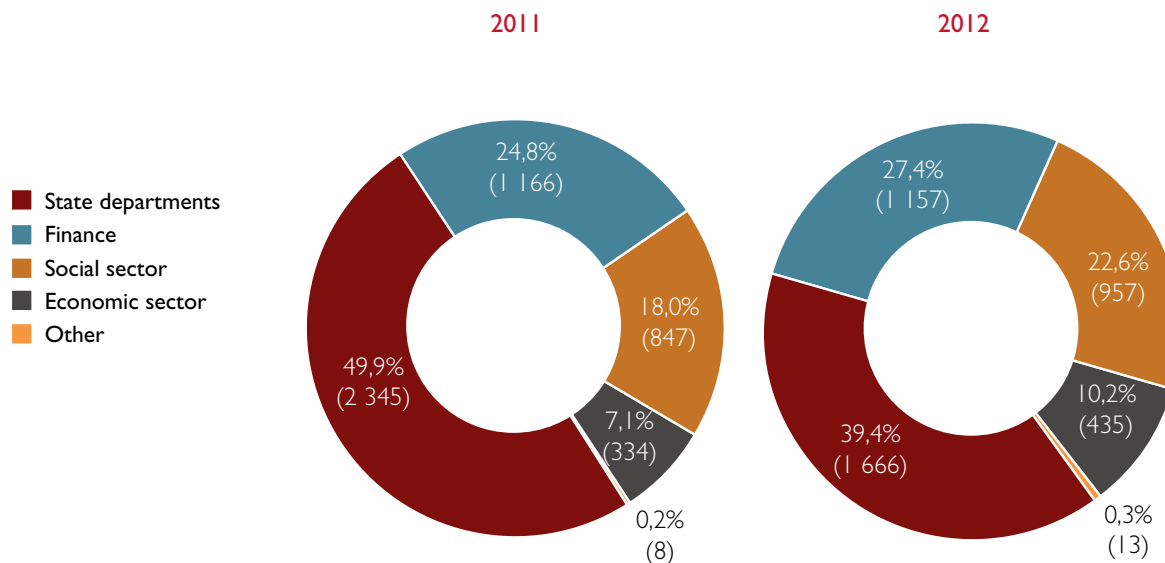
	2011	2012
Chancellery of the Prime Minister	2	1
Personnel & Organisation	32	38
Justice	52	93
Home Affairs	2 105	1 415
Foreign Affairs, Foreign Trade & Development Co-operation	149	116
Defence	5	1
Finance	1 161	1 152
Employment, Labour & Social Dialogue (not including semi-public bodies operating in the social field)	7	8
Social Security (not including semi-public bodies operating in the social field)	239	258
Health, Food Chain Security & Environment	60	57
Economy, SMEs, Self Employed & Energy	41	26
Mobility & Transport	279	390
Federal Public Planning Services	0	2
Semi-public bodies operating in the social field	279	325
Semi-public bodies, public corporations and bodies not attached to a Federal administrative authority	31	54
Private organisations entrusted with a public service mission	257	290
Others	1	3
	4 700	4 228

New complaints by civil servants per administrative authority

	2011	2012
Personnel & Organisation	0	2
Justice	10	20
Home Affairs	7	9
Foreign Affairs, Foreign Trade & Development Co-operation	2	1
Defence	1	5
Finance	10	12
Employment, Labour & Social Dialogue (not including semi-public bodies operating in the social field)	0	1
Social Security (not including semi-public bodies operating in the social field)	1	0
Health, Food Chain Security & Environment	1	0
Economy, SMEs, Self Employed & Energy	1	1
Mobility & Transport	0	1
Federal Public Planning Services	1	1
Semi-public bodies operating in the social field	6	7
Semi-public bodies, public corporations and bodies not attached to a Federal administrative authority	3	5
	43	65

As several administrative authorities may be concerned by the same complaint, the total number of complaints per administrative authority is higher than the number of admissible complaints (4,228 + 65 = 4,286, for 4,197 admissible complaints lodged in 2012).

8. New admissible complaints per sector



The number of complaints concerning Finance remains constant. The social sector and economic sector have registered an increase of some one hundred complaints each. The share of the Authority Departments dropped from 2,345 to 1,666 complaints, for a 10% decline in relative terms.

9. Processing time of closed admissible complaints closed in 2012

The next graph indicates, per period of 30 calendar days, the data relating to the processing period for closed admissible complaints in 2012. It lists both new complaints and those of previous years, which were still being processed.

Of 5,270 complaints, 51.5% (2,716 case files) were closed within six months. Furthermore, 19.1% (1,008 complaints) were closed within a year, and 13.9% within 18 months. Finally, 8% of the complaints were closed within 2 years.

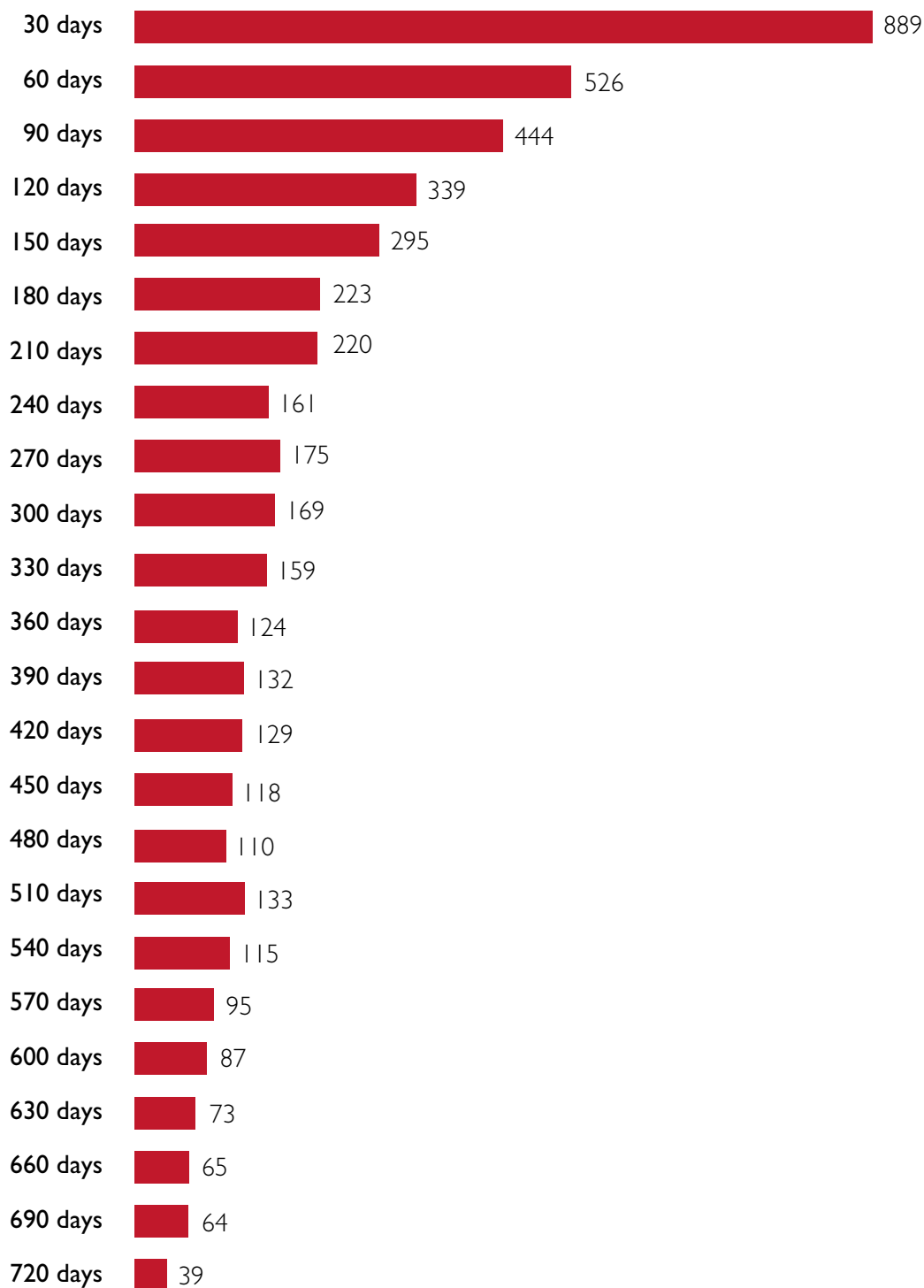
For 386 complaints (7.3%), more than 720 processing days were required before they were closed.

The peak level of the curve is always 30 days: 16.8% of the case files are closed within 30 days.

To recapitulate, 70.6% of the admissible complaints were closed in 2012, compared with 80% in 2011.

Nevertheless, 653 more complaints were closed in 2012 than in 2011 (and 1,446 more than in 2010).

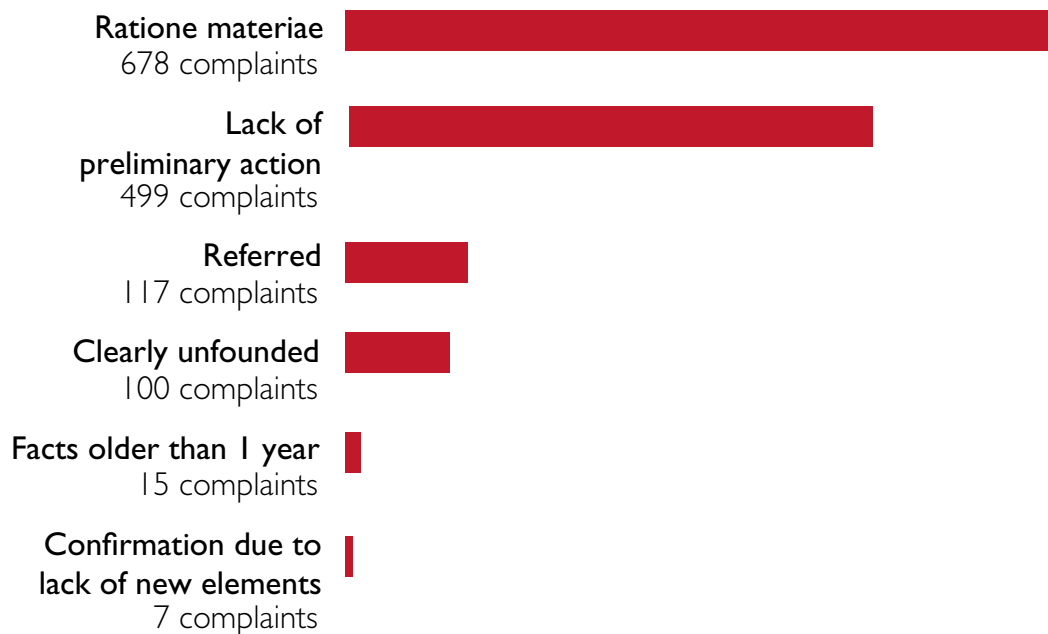
Processing time of closed admissible complaints.



10. Breakdown of inadmissible complaints

This graph shows the number of complaints per reason for inadmissibility as set out in the organic law¹ and the rules of internal procedure of the Federal Ombudsman. Referrals are considered as a category of inadmissible complaints.

Breakdown of inadmissible complaints



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.

Only 2% of the complaints were referred to another ombudsman service – the lowest percentage to date. Are citizens starting to find their way through the ombudsman landscape themselves?

¹ Annexe p. 79.

III. Analysis of complaints



Addressees of referrals

Destinations of complaints referred	2012	%
Flemish Ombudsman	36	30,8%
Pensions Mediation Service	14	12,0%
Mediation body for the telecommunication sector	14	12,0%
Mediation body for the Postal Office	14	12,0%
Energy Mediation Service	10	8,5%
Ombudsman of the Walloon Region	7	6,0%
Ombudsman of the Franch-speaking Community	5	4,3%
Supreme Council of Justice	4	3,4%
Local mediation bodies	4	3,4%
Supervisory Standing Committee for the Federal Police ("P" Committee)	4	3,4%
Mediation body for the National railroad Company	3	2,6%
Ombudsman in financial conflicts	1	0,9%
Flemish children's rights commissioner	1	0,9%
	117	

As in 2011, the Flemish federal ombudsman is at the forefront. This is undoubtedly explained by the transfer of competencies from the federal administrative authorities to the Flemish administrative authorities.

A MATTER OF FAIR PLAY!

Dick Allewijn, a Dutch administrative judge specialized in mediation, summarises the dynamics of conflicts between public authorities and citizens as follows: the citizen cries “it’s unfair!” and the administrative authority replies “it’s the law!”

If the dispute is referred to the court, the discussion focuses only on the question of legality and will not help appease frustrations stemming from other aspects of the dispute.

Intermediation by ombudsmen has gained such importance in our society because it succeeds in including dimensions other than legality in conflict management.

The administrative authorities are bound by a legal and regulatory framework, of course. But this framework defines only their field of action. An area may be found within this field for other, fairer solutions for the citizen without necessarily infringing on the general interest that the administrative authorities defend.

The crux of the ombudsman’s role can be summarised as follows: Convince the administrative authorities that they must proceed not only in compliance with the law, but they must also show a sense of fair play!

The ombudsman’s criteria used to assess complaints ultimately reflect in some fifteen principles what citizens expect from the administrative authorities in terms of fair play.

NOT ALL CASES ARE THE SAME

Each case must be examined carefully by the administrative authorities.

Family responsibilities do not cease automatically when children turn 18!

The Employment Office suddenly reduced Mr Struelens’s unemployment benefit to the rate for a person living alone. And yet, he still pays alimony for his younger daughter who is still in school...

Problem

The Employment Office applied to the letter the court judgement that fixes the alimony he has to pay to cover the needs of “his children who are underage.” However, this modifier “underage” refers only to the age of the children at the time of the judgement. It does not say that the obligation ceases when the children will reach majority. Furthermore, the Civil Code requires parents to continue to fulfil their alimony obligation to their children of full age as long as they are still in school.

Result

Mr Struelens’s unemployment benefit was restored and the Employment Office adapted its practice.

Fair play

- Proceed with caution before restricting a citizen's benefit;
- Take every argument into account.

The same health care inside prison as outside? Really?

Bertrand Warnier is a detainee. His left leg was amputated following a road accident. His prosthesis is more than three years old and is beginning to get worn. He has pain in his hip, thigh and back. He should change it, but the prison will contribute only €50, whereas the total cost exceeds €8000.

Problem

As Mr Bertrand Warnier is incarcerated, his health insurance cannot intervene. The prison administrative authorities have to assume the care costs. It claims that the Federal Institute for Health Insurance reimburses expenses for a new prosthesis only every 4 years. But its information is not up to date: the mutual benefit insurance confirms that said institute accepts to intervene every 3 years.

Result

The prison administrative authorities accept to assume the expenses and Bertrand Warnier can change his prosthesis.

Fair play

- Verify conscientiously whether the citizen's request is justified;
- Keep information in other sectors up to date.

The fight against fraud goes overboard at times

Mr Piette's wife is Russian. They live in Russia, and she would like to accompany him to visit family in Belgium. But her visa application was rejected. The decision indicates that there is a "risk of improper use of the family reunification procedure."

Problem

The administrative authorities generally refuse to issue a visa for a short stay to spouses of Belgian citizens, because the conditions of obtaining this type of visa are more flexible than those for a visa for family reunification. But Mr and Mrs Piette are both retired, they live together in Russia, and have no intention of settling in Belgium!

Result

The Federal Ombudsman asked the Department of Immigration and Naturalization to examine the couple's situation thoroughly. Mrs Piette was finally issued a visa to visit her in-laws.

Fair play

- Stick to verifiable facts and examine an application without bias;
- In case of doubt, allow the citizen to provide additional information.

A complaint = a solution for many

At times, one complaint leads to a corrective measure for the benefit of all citizens concerned

Cost of a number plate: €20 or €30?

Mr Ghys requested a new number plate from the Motor Vehicle Registration Department in December 2012. When the postman delivered his number plate, he asked him to pay €30. Mr Ghys expected to pay €20.

Problem

When Monsieur Ghys applied, a number plate cost €20. On 1 January 2012, the rate was increased to €30. Initially, the Motor Vehicle Registration Department informed him that Bpost had applied the rate in force at the time that the vehicle was registered. A closer reading of the general terms and conditions of the agreement by and between the Motor Vehicle Registration Department and Bpost showed that the obligation to pay originates on the date of application for registration, which was in 2011, before the increase!

Result

Mr Ghys recovered €10 and the FPS Mobility and Transport reimbursed all the other citizens in a similar situation as well.

Fair play

- Comply with one's own provisions;
- Do not apply a new provision retroactively.

A soldier's endeavour to obtain a certificate of inheritance

Patrick Lebon needs a certificate of inheritance to release the bank account of his deceased father. One month after his request, the registration office announced that it cannot issue the certificate for the time being...

Problem

The legislation has just been changed. The registration office can no longer issue a certificate of inheritance when one of the heirs has a tax or social security debt. Patrick's sister actually owes €160 to internal revenue, but this amount is not yet due for payment. At the request of the Federal Ombudsman, the registration office took the necessary steps to get the tax collection department to release the issuance of the certificate for that debt.

Result

Patrick Lebon received the certificate of inheritance that he needs. Furthermore, the registration offices were instructed to process applications for certificates of inheritance within a maximum period of 4 weeks and can no longer refuse to do so because of a debt for which the period of payment has not yet expired.

Fair play

- Process the application within a reasonable period.
- Stick to the agreed terms of instalment.

FROM COMPLAINT TO RECOMMENDATION

Certain complaints lead to recommendations

The social rate for gas and electricity: who is eligible?

Those on disability benefit are entitled to the social rate for gas and electricity.

Mrs Vandenberghe filed an application for disability benefit in September 2011. In February 2012, she received a decision granting her a disability benefit as of October 1, 2011. However, her utility granted her the social rate as of January 1, 2012. She lost three months. The Department of Energy confirmed that this is normal.

Problem

The social rate need no longer be applied for since 2010. It is granted automatically thanks to a data exchange system between the administrative authorities and the utilities. To simplify the management of the system, the Department of Energy decided that the social rate would henceforth be granted as of the 1st day of the quarter in which the decision granting the benefit for persons with disabilities is taken, and not of the date on which the benefit enters into force, which is necessarily later. Entitlement to the social rate is systematically cut down in accordance with the period of processing the application.

Fair play

- Treat all citizens in the same situation equally;
- Do not cut down a social right.

→ Recommendation (12/06) to the Department of Energy!

IV. Recommendations

The regular renewal of identity cards: even for those over 75?

The identity card of Anne Demolder's mother will soon expire. Being 90, very ill and bedridden, she cannot go to the town hall to have her photo taken and sign a form.



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Introduction

Submitting recommendations is one of the tasks assigned explicitly to the federal ombudsmen by Article 1, 3°, of the Act of March 22, 1995 establishing federal ombudsmen¹ (hereinafter referred to as the "Act").

There are two types of recommendations.

- a) Recommendations to Parliament (GR)²: 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) Official recommendations to the administrative authorities (OR)³: 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.

Recommendations to Parliament

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Recommendations 2012

GR 12/01: Remedy the absence of a legal basis that affects the delegation of powers conferred by the Department of Immigration and Naturalization to certain diplomatic and consular posts to refuse to issue student visas.

By virtue of the Act of December 15, 1980, the Minister responsible for access to the territory, stay, establishment and repatriation of foreign nationals (hereinafter referred to as "the Minister") may delegate some of his powers by ministerial decree published in the "Moniteur belge" [Belgian Official Gazette].

This delegation is currently organised by a ministerial degree of March 18, 2009, which delegates some of the Minister's powers to members of the staff of the Department of Immigration and Naturalization.

Visas for access to the territory are issued by diplomatic and consular posts on the instructions of the Department of Immigration and Naturalization. If an application for a visa is refused, the decision must be signed by the Minister or his authorised representative at the Department of Immigration and Naturalization.

Following several complaints, the Federal Ombudsman noted that in certain such posts, decisions to refuse to issue visas for students were not signed by the Minister or his authorised representative, but by the consul.

¹ Annex p.79..

² Hitherto known as "General Recommendations", whence the abbreviation "GR".

³ Hitherto known as "Official Recommendations", whence the abbreviation "OR".

The Department of Immigration and Naturalization pointed out that in the period leading up to a new academic year, certain posts are overwhelmed with applications for student visas. To manage this influx of applications more efficiently, one of the officers at posts under a great deal of pressure (Casablanca, Kinshasa and Yaoundé) is usually assigned for that purpose during the summer period. This makes it possible to help the post manage the growing volumes of applications as well as to train local teams.

In the final stage of this reinforced cooperation, the Consulate General of Belgium in Casablanca as well as the Embassy of Belgium in Kinshasa have for years been authorised, for a limited period, to refuse to issue a student visa without consulting the Department of Immigration and Naturalization in advance. Initiated in 2001 on the basis of an agreement by and between the two competent ministers concerned (for the Interior and for Foreign Affairs), this particular procedure was subsequently assessed and renewed by the administrative authorities during tripartite meetings between the posts concerned, the Department of Immigration and Naturalization, and the Department of Consular Affairs. The renewal of the procedure, within the limits and for the period fixed by the Department of Immigration and Naturalization,¹ is then confirmed by simple e-mail.

The Department of Immigration and Naturalization is aware that it has gone ahead of the legislator in acting thus, but defends this choice for two strategic reasons, in the interest of the procedure and of the foreign students. It cites the following advantages in particular:

- a significant reduction in the processing time and risks of data loss;
- the possibility of deciding on a new application filed after a refusal, thanks to a faster decision-making procedure so that the applicant does not run the risk of losing an academic year;
- enhanced exchanges of expertise between the consulates and the Department of Immigration and Naturalization, and a better approach to the applications.

Following the intervention of the Federal Ombudsman, it nonetheless restricted the informal delegation accorded to these two posts, given the obvious lack of legal basis.

By Instruction of July 20, 2012 sent to the Embassy of Belgium in Kinshasa and to the Consulate General of Belgium in Casablanca, the empowerment of these posts to refuse a student visa automatically is henceforth limited only to cases where one of the four required documents listed in Article 58 of the Act of December 15, 1980 (concerning the right of stay for studies) was not included in the file. "Technically complete" applications, for which a doubt persists (abuse of the procedure, problem with the authenticity of documents, etc.), must be sent to the Department of Immigration and Naturalization.

The Department of Immigration and Naturalization moreover confirmed to the Federal Ombudsman that these instructions would be renewed for the 2013-2014 academic year, whilst regretting the restriction on the initial instructions. An increase in the average processing time of applications for visas filed in these two posts was already observed in 2012.

The Federal Ombudsman shares the concern of the administrative authorities to implement efficient solutions for a conscientious processing of applications within a reasonable period.

But whereas the Department of Immigration and Naturalization has always called on the posts concerned to show good judgement in cases of immediate refusal of visas and to consult it if there is the slightest doubt, the fact remains, as admitted by said department itself, that this delegation of powers to the posts has no legal basis and decisions thus taken are marred by a substantial irregularity that would risk overturning them if they were appealed.² It is therefore injurious to legal security.

¹ Generally from June 1st to October 31st.

² Aliens Litigation Council, Decisions no 32.902 and 32.903 of October 20, 2009.

The rare, even lack of appeal against these decisions, cited by the Department of Immigration and Naturalization to justify the relevance of its choice, is not a convincing argument in a constitutional state. The relevance of this parameter is moreover highly debatable given the inconveniences inherent to such an appeal by the applicant in terms of costs, but also of time. This appeal is in fact irrelevant if a decision is not taken before the beginning of the academic year to which the student visa pertains.

The Federal Ombudsman therefore recommends to frame legally the delegation of powers that can be conferred by the Department of Immigration and Naturalization to certain diplomatic and consular posts to refuse applications for student visas and to fix the limits, before the next period of influx of applications in June 2013.

GR 12/02: Amend Articles 1411^{quater}, § 1, and 1452 of the Code of Judicial Procedure so that the amounts credited on a bank account on the effective date of a seizure or transfer are covered by protection of income paid into an account as desired by the legislator.

Articles 1411bis to 1411^{quater} of the Code of Judicial Procedure¹ extend the protection of revenues against seizure and transfer provided under Articles 1409, 1409bis and 1410 of the same code to sums credited on a bank account.

In case of a seizure or transfer of professional income credited on a current account, protection shall be provided for a period of thirty days as of the crediting of said sums in the account.²

Upon receiving the instrument relating to the seizure or transfer, the credit establishment must apprise the bailiff, transferee or creditor of the balance of the account on the date on which said seizure/transfer becomes effective³ as well as a list of the coded amounts credited during the preceding 30-day period.⁴ In case of a seizure, this declaration must take the forms referred to in Article 1452 of the Code of Judicial Procedure.

On the basis of this information, it is then up to the bailiff, the transferee or the creditor to calculate the part of the occupational income that cannot be seized/transferred.

Upon examining a complaint for a seizure or transfer by inland revenue,⁵ the Federal Ombudsman noted that a combined reading of these different provisions shows that remuneration paid on the effective date of the seizure or transfer must be entered in the assets that are the subject thereof⁶ but not in the list of coded sums used to calculate the share of such income that is exempt from seizure/transfer.

Pursuant to a literal application of Articles 1411^{quater}, §1, and 1452 of the Code of Judicial Procedure, these sums do not benefit from the restrictions and exclusions referred to in Articles 1409, 1409bis and 1410 of the same code.

¹ Inserted by the Act of June 14, 2004 concerning the exemption from seizure and transfer of the amounts provided under Articles 1409, 1409bis and 1410 of the Code of Judicial Procedure when such accounts are credited on a current account.

² Article 1411^{ter}, § 1, of the Code of Judicial Procedure.

³ Which corresponds to the time that the Instrument containing the seizure or transfer is received (Article 1451 of the Code of Judicial Procedure).

⁴ Article 1411^{quater}, §1, of the Code of Judicial Procedure.

⁵ Pursuant to Articles 164 and 165 of the implementing royal decree of the Income Tax Code 1992.

⁶ On condition that these sums were credited on the current account before the instrument containing the seizure or transfer was received (*Doc. parl.*, House of Representatives, 2003-2004, n° 0639/002, p. 7).

The objective of the legislator, i.e. to protect occupational income during a period of thirty days as of the time they are credited in the current account, therefore risks not being achieved if said sums are credited in the current account on the effective date of the seizure or transfer.

Although the debtor may contest the statement and prove by all legal means that the amounts credited in his current account are in fact protected income, the Federal Ombudsman is of opinion that an amendment of the provisions of Articles 1411quater, §1, and 1452 of the Code of Judicial Procedure is necessary to meet the objective pursued by the legislator better.

RG 12/03: Transpose Directive 2010/18/EU of March 8, 2010 fully into Belgian law, and recognise the right of parental leave for personnel under contract in foreign embassies and SHAPE.

The National Employment Office refused to pay the career-break benefit for parental level to a staff member under contract at a foreign embassy. On the basis of this complaint, the Federal Ombudsman noted that the right to parental leave was not regulated for staff under contract at foreign embassies in Belgium. Consequently, the Belgian legislation on parental leave is not compliant with European Directive 2010/18/EU of March 8, 2010, which stipulates that all workers under contract of employment or an employment relationship defined by the legislation in force in each Member State have an individual right to parental leave for a period of at least 4 months.

The legal basis for parental leave in Belgium is enshrined in Article 105 of the Recovery Act of January 22, 1985. This article stipulates that a royal decree must determine in which case and under which conditions the right to career interruption and the right to reduced working time can be granted. The royal decree of October 29, 1997 enshrines the right to parental leave for workers that fall under the scope of the Act of December 5, 1968 on collective labour agreements and joint committees (private sector). The same royal decree applies also to regular staff under contract at local and provincial administrative authorities. A royal decree of May 7, 1999 regulates the granting of parental leave for employees in the public sector.

Staff members of foreign embassies on Belgian territory do not fall under the scope of any of the aforementioned royal decrees. Their entitlement to parental leave is not regulated by law. This runs contrary to the European regulation which stipulates that each European worker is entitled to at least 4 months of parental leave. In the absence of adequate legislation, when the embassy nonetheless grants the parental leave on a voluntary or contractual basis, it is nonetheless impossible for the National Employment Office to pay career-break benefits.

Directive 2010/18/EU of March 8, 2010 has been partially transposed into Belgian law by the royal decrees of May 31, 2012 ("Moniteur belge" [Belgian Official Gazette] of 1 June 2012) and of July 20, 2012 ("Moniteur belge" [Belgian Official Gazette] of 1 August 2012). As the scope of the regulations defined in these decrees has remained the same, staff members of foreign embassies are still deprived of their right to parental leave, in spite of the clear provisions of the Directive.

The National Employment Office has indicated that the same problem arises for the right to career interruption to assist or care for a family member suffering from serious illness and that moreover the staff members under contract at SHAPE are in the same situation as the staff members under contract at foreign embassies.

The Federal Ombudsman recommends a legislative initiative to recognise the right to parental leave for staff employed by a foreign embassy in Belgium or by SHAPE.

IV. Recommendations

GR	Title	Object	Status	Comment	Petitions Committee
<i>Cross-thematic recommendations</i>					
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 April 11, 1994 on the transparency of governance.	Cross-thematic	Pending	Exceeding a reasonable time limit remains the prime reason for complaint cited by citizens in 2012.	April 26, 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	The general policy note of December 21, 2011 of the Secretary of State for the Civil Service and the Modernisation of Public Services provides that the government shall set up a single federal information line. Proposal for a resolution to reinforce a service culture between the federal administrative authorities and the citizens.	November 24, 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	Pending	The purpose of this recommendation is taken expressly into consideration in the general policy note of January 12, 2012 of the Minister for Finance. Proposal for a resolution to reinforce a service culture between the federal administrative authorities and the citizens.	July 13, 2011
10/01	Endow the federal authorities with an efficient information and communication policy by defining general principles on which the external communication of the different federal administrative authorities can rely.	Cross-thematic	Pending	This recommendation has been referred to the COMNetkern. Proposal for a resolution to reinforce a service culture between the federal administrative authorities and the citizens.	July 13, 2011

GR	Title	Object	Status	Comment	Petitions Committee
11/01	Generalise the introduction of a structured and harmonised processing of complaints in the federal administrative authorities by establishing internal complaint services in all federal public services according to common basic standards.	Cross-thematic	Partially met	On a proposal of the Secretary of State for the Civil Service and the Modernisation of Public Services, the Council of Ministers decided to generalise the management of complaints in the federal public services by 21 July 2013. Proposal for a resolution to reinforce a service culture between the federal administrative authorities and the citizens.	
Recommendations relative to FPS Finance					
02/03	The tax trap of unemployment.	FPS Finance	Pending	Recommendation presented to the Finance and Budget Committee on November 17, 2010.	
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 July 8, 1970.	FPS Finance	Partially met	The Flemish government deleted this wording.	April 26, 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	Recommendation presented to the Finance and Budget Committee on November 17, 2010. Bill of February 2, 2011 amending the Income Tax Code 1992 as regards the introduction of a written complaint.	November 24, 2008
07/03	Amend Article 371 of the Income Tax Code 1992 so that the sending date of the notice of objection is valid as the lodging date.	FPS Finance	Pending	Recommendation presented to the Finance and Budget Committee on November 17, 2010.	November 24, 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	Bill of August 9, 2010 amending Article 375 of the Income Tax Code of 1992. Recommendation presented to the Finance and Budget Committee on November 17, 2010.	November 24, 2008

GR	Title	Object	Status	Comment	Petitions Committee
Recommendations relative to the FPS Justice, Home Affairs and Foreign Affairs					
03/01	The time limit for processing case files submitted on Belgian territory and referred to the Department of Immigration and Naturalization.	FPS Interior	Pending	In her general policy note of December 20, 2011, the Secretary of State of Asylum and Migration provides that the administrative authority shall make every effort to ensure that decisions on applications to stay on humanitarian grounds are taken within six months. (Cf. also OR 06/03 and 06/04 to the Department of Immigration and Naturalization)	
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.	April 26, 2007
08/02	Take such measures as necessary to remove the contradiction arising out of the combined application of the Act of December 15, 1980 on access to the territory, the stay, establishment and deportation of foreign nationals and article 31 of the Private International Law Code.	FPS Interior FPS Justice	Pending	The general policy note of December 20, 2011 concerning asylum and migration reform provides for the creation of a register of foreign documents recognised or refused by an authority on the basis of the private international law code ² . Furthermore, this recommendation is on the agenda of the working group dealing with "foreign documents" at the Administrative Simplification Agency.	April 29, 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	This recommendation is on the agenda of the working group dealing with "foreign documents" at the Administrative Simplification Agency. The general policy note on Justice of December 27, 2012 reiterates that the possibility of creating a database of foreign documents, which might be recognised by Belgium, will be studied with the Secretary of State for Asylum and Migration.	April 29, 2009

GR	Title	Object	Status	Comment	Petitions Committee
10/02	Ensure independent and effective supervision of penitentiaries and other federal places of detention.	FPS Justice	Pending	During the universal periodic examination by the UN Human Rights Council in May 2011, Belgium undertook to ratify the additional Optional Protocol to the Convention against Torture (OPCAT) and to establish a national prevention mechanism in charge of inspecting places of detention.	July 13, 2011
10/03	Have the provisions of the act on the principles concerning the administration of prisons and the legal status of detainees of January 12, 2005 (Prison Principles Act) that do not require an implementing measure enter into force at once, and adopt promptly the Royal Decrees required to implement the other sections of said act.	FPS Justice	Partially met	Various chapters of the Principles Act of January 12, 2005 concerning in particular the disciplinary system and contacts with the outside, entered into force on September 1, 2011 by Royal Decree of April 8, 2011 published in the "Moniteur belge" [Belgian Official Gazette] of April 21, 2011. Some sections of the act remain to be enforced, however, in particular those concerning the reintegration of the offender and the processing of complaints from detainees.	July 13, 2011
10/04	Adapt the Electoral Code so that Belgians living abroad can vote without hindrance in case of early federal legislative elections.	FPS Interior FPS Foreign Affairs	Met	The Act of August 22, 2012 reforms the voting procedure for Belgians abroad in this respect.	July 13, 2011
10/05	Adopt at once a legal basis for the issuance of Certificates of No Impediment to Marriage for Belgians who wish to get married abroad.	FPS Foreign Affairs	Pending	The Government introduced a bill on February 26, 2013 to combat marriages of convenience and legal cohabitations of convenience. One of the chapters of this bill is devoted to the issuance of certificates of non-impediment to marriage.	July 13, 2011
11/02	Amend the Act of December 15, 1980, as amended by the Act of July 8, 2011 concerning the conditions for family reunification to introduce transitional provisions for all applications filed before September 22, 2011 for which no definitive decision had been given on that date.	FPS Interior	Pending	This recommendation was treated in a quarterly report sent to the House of Representatives on December 15, 2011.	
12/01	GR 12/01: Remedy the absence of a legal basis that affects the delegation of powers conferred by the Department of Immigration and Naturalization to certain diplomatic and consular posts to refuse to issue student visas.	FPS Interior FPS Foreign Affairs	New	Cf. p. 47	

GR	Title	Object	Status	Comment	Petitions Committee
12/02	Amend Articles 1411 ^{quater} , § 1, and 1452 of the Code of Judicial Procedure so that the amounts credited on a bank account on the effective date of a seizure or transfer are covered by protection of income paid into an account as desired by the legislator.	FPS Justice	New	Cf. p. 49	
12/04	Fix a longer period of validity for the electronic identity card of elderly persons.	FPS Interior	New	Cf. p. 51	
Recommendations relative to other federal administrative authorities					
06/02	Adapt article 24, §2, of the Royal Decree of May 22, 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 February 27, 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.	April 26, 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.			<p>The administrative authorities submitted two updated draft royal decrees from 2007 to the minister in charge of self-employed workers in April 2010. It was not possible to make progress on these drafts during routine proceedings. They will be resubmitted to the minister in 2012.</p> <p>On June 22, 2012, the Council of Ministers approved a draft royal decree that preserves the pension entitlements of self-employed workers in case of a late correction of their file attributable to the administrative authorities.</p>	

GR	Title	Object	Status	Comment	Petitions Committee
06/03		FPS Social Security	Pending	<p>This draft goes further than the recommendation of the Federal Ombudsman which called for a legal basis for the administrative practice that allows self-employed workers to pay social security contributions due owing to a late correction of their file after the expiry period in order to preserve their pension entitlements.</p> <p>Although it has announced that the royal decree was to enter into force in July (2012), said decree was not yet published when this annual report went to press.</p>	April 26, 2007
06/04	Provide, in the Act of July 3, 2005 on the rights of volunteers, the possibility for disabled civil servants and self-employed workers to do volunteer work.	FPS Social Security	Partially met	<p>A Royal Decree of June 29, 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 drawn up in 2009 aims at entrusting Medex with the mission of consulting physician in accordance with Article 15 of the Act of July 3, 2005. The file was blocked during the routine proceedings of the motions, but the administrative authority submitted it to the competent minister in the beginning of 2012. In the meantime, the file is with the Minister for the Budget and the Secretary of State for the Civil Service and the Modernisation of Public Services.</p>	April 26, 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	Pending	<p>A proposal for a resolution of December 1, 2010 is aimed at amending the regulations on unemployment to do away with this discrimination. In April 2011, the then Minister for Employment asked the management committee of the National Employment Office for an opinion on the advisability of a regulatory amendment to harmonise the treatment of unemployed persons whose partner is gainfully employed, depending on whether they stem from an employed or self-employed activity. Said committee submitted a negative opinion on May 19, 2011. In view of the elements contained in that opinion, on February 14, 2012, the current Minister for Employment indicated to the Federal Ombudsman that he did not think it possible to respond favourably to this recommendation.</p>	July 13, 2011

GR	Title	Object	Status	Comment	Petitions Committee
10/06	Bring the legislation on family allowances for salaried workers again in compliance with the provisions of Article 17 of the Charter of the Insured Person and thus put an end to the discrimination between insured persons cited by the Constitutional Court: this discrimination consists of enabling family allowances organisations for salaried workers to recover for one year family allowances paid unduly due to an error on their part, whereas the Charter makes such a recovery impossible under the same circumstances for other social security institutions.	National Office of Family Allowances for Salaried Workers	Pending	<p>The Secretary of State for Social Affairs, Families and Persons with Disabilities, in charge of Occupational Risks, submitted a draft proposal to the Minister for the Budget to bring the legislation on family allowances in line with the decision of the Constitutional Court.</p> <p>A bill amending the acts on family allowances for salaried employees, consolidated on December 19, 1939.</p>	July 13, 2011
10/07	Amend the regulation relating to benefits for persons with disabilities, so that the increase of benefits arising from a scheduled medical review takes effect on the 1 st day of the month following the review date.	FPS Social Security	Pending	In 2011, the administrative authority submitted a proposal to adapt the regulation to the then Secretary of State in charge of persons with disabilities. In reply to a parliamentary question, the Secretary of State declared that he seriously planned to take rapidly an initiative to adapt the regulation. The situation did not change in 2012.	July 13, 2011
10/08	Transpose European Directive 2005/36/EC fully into Belgian law, and more specifically, for practitioners of healthcare professions (generalist physicians, specialists, nurses, dentists, midwives, and pharmacists) exclude the possibility of rejecting the application for the recognition purely and simply by providing compensation measures as set out in Article 14 of said directive.	FPS Public Health, Safety of the Food Chain and the Environment	Met	<p>Publication on August 17, 2012 of the royal decree amending Royal Decree no. 78 of November 10, 1967 on the practice of care and health occupations to transpose Directive 2005/36/EC of the European Parliament and of the Council of September 7, 2005 on the recognition of professional qualifications. According to Article 4 of this royal decree, the general system for the recognition of diplomas of the Act of February 12, 2008 (establishing a general new framework for the recognition of professional qualification in the EC) applies to care and health occupations that are not covered by the automatic recognition system.</p>	July 13, 2011

GR	Title	Object	Status	Comment	Petitions Committee
11/03	Adapt the regulation relating to the granting of career-break benefits so that the entitlement to such benefits is open as of the day indicated on the application for benefits, when all the necessary documents duly and fully completed are sent to the unemployment office concerned within two months, effective as of the day after the date indicated on the application. When the documents duly and fully completed are sent outside this time limit, the entitlement to benefits is open only as of their date of dispatch.	National Employment Office	Pending	The Federal Public Service Employment, Labour and Social Dialogue indicated that it would follow the recommendation of the Federal Ombudsman. The Department of Employment and the Labour market of the FPS is going to examine, in consultation with the National Employment Office, how the current legislation may be brought in line with administrative practices, to ensure the legal security of those insured. As a result, eight royal decrees have to be adopted.	
12/03	Transpose Directive 2010/18/EU of March 8, 2010 fully into Belgian law, and recognise the right of parental leave for personnel under contract in foreign embassies and SHAPE.	National Employment Office	New	Cf. p. 50	

Recommendations made to the administrative authorities^I

Recommendations 2012

FPS Interior – Department of Immigration and Naturalization

OR 12/01: Do not make the issuance of a visa for marriage contingent upon the payment of prior forced repatriation expenses.

OR 12/04: Accept an expired passport or identity card as proof of identity and nationality to file an application on the basis of Article 9^{ter} of the Act of December 15, 1980, and do not add any condition to the Act by systematically requiring that the applicant provide proof of his or her current nationality by a currently valid document.

FPS Foreign Affairs– Department of Consular Affairs

OR 12/02: Recognise deeds of acknowledgement of paternity drawn up by the Cameroonian authorities on July 30, 2010 for the children of Erwin and Kynan Mbendé and issue Belgian passports to them without delay.

OR 12/05: Recognise the divorce of Mr Verlinden and Mrs Talbot in 1998.

FPS Justice – Department of Penitentiaries

OR 12/03: Take appropriate measures so that decisions relating to applications for prison leave are processed within the legal time limits and that applications for temporary release are processed in good time for the purpose of the required release.

FPS Economy – Department of Energy

OR 12/06: Make sure that every end consumer who belongs to a category of eligible parties obtains the social rate in accordance with the law, namely as of the entry into force of the decision that recognises the end consumer as a “residential customer with modest income or in a difficult situation,” and not only as of the first day of the quarter in which said decision is delivered.

^I All the names are fictitious.

Follow-up of recommendations made to the administrative authorities 2006-2012¹

OR	Title	Administrative authority concerned	Status	Comment
Recommendations relative to the 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	Met	Administrative circular of February 14, 2007. CHR241/580.919.
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	Met	In reply to a parliamentary question, the Minister for Finance declared that since June 1, 2009, under the approach plan BRU-CELLS for regrouping services outside the Brussels-Capital Region, a "litigation" pool had been specifically assigned to process 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 FPS 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	Met	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.

¹ All the names are fictitious.

OR	Title	Administrative authority concerned	Status	Comment
08/06	<p>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.</p>	FPS Finance	Pending	<p>At the end of 2010, the administrative authorities specified that it is not possible to foresee a period of 4 to 8 months for the processing of appeals on this matter: When the legislature requires waiting for the expiry of the tax period, the taxpayer is informed accordingly. In other cases, the administrative authorities wish to intensify their cooperation with the Land Registry to reduce processing times.</p> <p>In 2012, the working group created in the FPS Finance, with involvement of the Regions, continued to examine the measures necessary to try and stem new complaints.</p>
08/07	<p>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.</p>	FPS Finance	Pending	<p>At the end of 2010, the administrative authorities had not yet drawn up a plan to catch up with the backlog of complaints in the Regional Offices of Direct Taxation. The backlog of cases not solved by the end of the year shows a slight upward trend (51,174 appeals pending at the end of 2010 compared with 50,524 at the end of 2009). As priority is given to processing recent litigation, the backlog of older complaints is managed in accordance with the availability of each regional service.</p> <p>In 2012, the working group created in the FPS Finance, with involvement of the Regions, continued to examine the measures necessary to try and stem new complaints.</p>
09/06	<p>Adopt the following measures concerning tax reimbursements that do not follow the ordinary payment process (special cases):</p> <ul style="list-style-type: none"> - 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	<p>Since October 2010, the Revenue Service has some additional days to process tax reimbursements under the ordinary liquidation procedure.</p> <p>The Treasury has acquired an Interactive Voicemail Response (IVR) system, and has adapted its website.</p> <p>Owing to the termination of the contract of the supplier of the STIMER application, the processing of special cases, initially foreseen for 2012, could not be initiated. Nevertheless, the transfer of the account of disputes from the Department of the Treasury to the General Department of Collection and Recovery should already bolster synergies.</p>

OR	Title	Administrative authority concerned	Status	Comment
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	The tax authorities have informed the Federal Ombudsman that a correction notice (Article 346, Income Tax Code of 1992) to taxpayers separated but not legally divorced before the regrouping of their tax returns, was not necessary, in their view, and is bound to cause more red tape. The Federal Ombudsman considers that this motivation is not convincing.
11/10	The Federal Ombudsman recommends to the General Department of Collection and Recovery of FPS Finance, to: 1) Comply strictly with the legal conditions applicable to the procedure for the recovery of the advance levy on income derived from real estate pursuant to Articles 395 and 396 of the Income Tax Code 1992; 2) Take action within a reasonable period for the procedure provided under Article 396 of the Income Tax Code 1992 for the recovery of the advance levy on income derived from real estate from the new owner.	FPS Finance General Department of Collection and Recovery	Met	In the beginning of 2013, the administrative authorities were in the process of finalising an instruction to implement the Federal Ombudsman's recommendation.
Recommendations to the 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 Interior Department of Immigration and Naturalization	Met	As regards applications for authorization to stay on humanitarian grounds, pursuant to Article 9bis of the Act of December 15, 1980, the circular of June 21, 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 authorization 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 Naturalization by registered letter.
06/02	Indicate, at the request of the users, the period within which a decision concerning a residence permit can be expected.	FPS Interior Department of Immigration and Naturalization	Refused	For the Department of Immigration and Naturalization, the Helpdesk is not capable of providing information as to the processing time owing to the high number of applications for regularisation as well as the complexity of the cases.

OR	Title	Administrative authority concerned	Status	Comment
06/03	Process residence permits 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, extend said period by such time as the department concerned or another governmental authority needs to provide the information requested by the Department of Immigration and Naturalization which is needed in order to take a decision.	FPS Interior Department of Immigration and Naturalization	Pending	Pursuant to the general policy note of December 21, 2012 of the Secretary of State for Asylum and Migration, the Department of Immigration and Naturalization continues to make every effort to reduce the exceptional workload registered since 2009 as promptly as possible. Whereas 45,673 applications on humanitarian (including medical) grounds were still open in May 2009, there were only 18,884 left at the beginning of December 2012.
06/04	Adopt a staggered plan to catch up with the backlog of the Bureau Article 9, paragraph 3 – <i>Humanitarian considerations</i> .	FPS Interior Department of Immigration and Naturalization	Pending	Cf. OR 06/03.
06/05	Take all necessary measures to guarantee that the Department of Immigration and Naturalization takes a decision on the application to renew or extend a temporary authorization of stay before the limit date expires.	FPS Interior Department of Immigration and Naturalization	Partially met	In 2007, the Royal Decree of October 8, 1981 on access to the territory, stay, establishment and deportation of foreign nationals had already been amended to require foreign nationals to file an application to extend their residence permit as soon as possible, namely between the 45 th and 30 th day prior to the expiry date of said permit. A Royal Decree of August 12, 2012 amends the Royal Decree of October 8, 1981 yet again. Since September 10, 2012, the municipality must issue an Annex 15 if the Department of Immigration and Naturalization does not decide in good time on the application to extend the residence permit, on condition that the foreign national has filed an application within the required time period. Annex 15 will cover the residence for 45 days and may be extended twice.
06/06	Before giving an order to leave the territory, the Department of Immigration and Naturalization should process the pending application for a residence permit.	FPS Interior Department of Immigration and Naturalization	Partially met	The Department of Immigration and Naturalization 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 authorization to stay on medical grounds pursuant to article 9ter of the Act of December 15, 1980; - An application for authorization 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 Naturalization examines the application for authorization to stay before issuing, where warranted, an order to the foreign national concerned to leave the territory.

OR	Title	Administrative authority concerned	Status	Comment
06/07	Issue a temporary authorization to stay to stateless individuals, who are waiting for a decision on their application for a residence permit.	FPS Interior Department of Immigration and Naturalization	Partially met	The Department of Immigration and Naturalization henceforth examines the admissibility of applications for authorization to stay filed by stateless individuals on a case-by-case basis. If the foreign national cannot be regularized on the basis of another criterion, the Department of Immigration and Naturalization verifies concretely whether it is not possible for that person to return to another country, having regard to Article 3 of the ECHR. The government agreement of March 18, 2008 provided for the introduction of a new procedure for granting stateless status by the General Commissioner for Refugees and Stateless Persons accompanied by a temporary right to stay while the application is examined. The general policy statement and the general policy note of December 21, 2012 of the Secretary of State for Asylum and Migration on "Social Integration and the Fight against Poverty" confirm the establishment of a new procedure for the recognition of stateless status.
06/08	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 should 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 Interior Institutions and Population	Met	An internal note of August 30, 2007 defines the cases in which an FPS Interior 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	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 summons to have the identity card replaced before the expiry of the period of validity.	FPS Interior Institutions and Population	Met	The Royal Decree of January 18, 2008 amending the Royal Decree of May 25, 2003 on transitional measures relating to the electronic identity card (Belgian Official Gazette of February 28, 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.

IV. Recommendations

OR	Title	Administrative authority concerned	Status	Comment
08/01	Give instructions to the municipal authorities so that they can extend, automatically and in accordance with the circular of June 21, 2007, 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 Naturalization on their applications for authorization to stay on medical grounds.	FPS Interior Department of Immigration and Naturalization	Refused	The Department of Immigration and Naturalization 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 authorization to stay filed by foreign nationals in compliance with the law.	FPS Interior Department of Immigration and Naturalization	Met	All foreign nationals who henceforth cite medical grounds to be authorized 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 (AI 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 Naturalization, 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, which was aimed at a greater transparency and greater legal security in the application of the Act of December 15, 1980 by the Department of Immigration and Naturalization.	FPS Interior Department of Immigration and Naturalization	Partially met	The instructions received on March 29 and July 19, 2009 by the Department of Immigration and Naturalization specify the situations that can justify granting authorization to stay on humanitarian grounds. The Department of Immigration and Naturalization published these instructions on its website. Nevertheless, when the instruction of July 19, 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.

OR	Title	Administrative authority concerned	Status	Comment
08/08	In processing an application for authorization to stay based on article 9bis or on former article 9, section 3, of the Act of December 15, 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 regularization and the Belgian parent of this child.	FPS Interior Department of Immigration and Naturalization	Met	The instructions given on March 29, 2009 to the Department of Immigration and Naturalization relating to the application of the former Article 9, section 3 and Article 9bis of the Act of December 15, 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 authorization to stay. The Department of Immigration and Naturalization need no longer verify the ties that the Belgian child maintains with its Belgian parent.
09/04	The Federal Ombudsman recommends not crossing out voters on the Belgian electoral list for the sole reason that they are also on an electoral list of an EU Member State, as this possibility is not provided by the Belgian electoral legislation.	FPS Interior Institutions et Population	Met	In March 2010, the Minister for Home Affairs decided to follow the Federal Ombudsman's recommendation. If it should again turn out at the next elections that Belgian voters are also on electoral lists provided by other Member States, those persons will nonetheless take part in the community and regional parliamentary elections. They will be excluded from the European voting only if it is established by germane documents that they had already voted in another Member State. If these documents are provided after the election, they may be liable for criminal sanctions if they vote twice.
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.	SPF Justice Penitentiaries	Partially met	Since the end of 2011, every floor of the cell section has a toilet and shower facility accessible during the day.
09/08	The Federal Ombudsman recommends that the inadmissibility decision taken on January 28, 2009 on the application of Mrs Buku for authorization to stay on medical grounds on March 18, 2008 be overturned and that the merits of the case be examined.	FPS Interior Department of Immigration and Naturalization	Met	Mrs Buku was issued a temporary authorization to stay given the seriousness of her state of health.

OR	Title	Administrative authority concerned	Status	Comment
	With regard to the penitentiary authorities:			
	1) Ensure compliance with the provisions of the Royal Decree of May 21, 1965 concerning the general regulation on penitentiaries that flank the measures concerning interference in the rights of detainees, for as long as the provisions of the Act concerning the administration of prisons and the legal status of detainees of January 12, 2005 (Prison Principles Act) which are to replace them have not entered into force;	SPF Justice	Partially met	A Royal Decree of April 8, 2011 repealed various provisions of the regulation, as a royal decree of the day pertained to the enforcement of various provisions of the Principles Act of January 12, 2005 and set September 1, 2011 as the date of the entry into force.
10/01	2) Include the general principles of the Prison Principles Act already in force as well as the higher standards required of the administrative authorities in the application of the general regulation.	Penitentiaries		
	1) Refrain from imposing any additional conditions during the application of Article 3, 3, of the Royal Decree of October 25, 2005 concerning chaplains working full-time after having worked part-time; accordingly, when calculating the seniority in order to determine the annual basic salary of these officials, take into consideration, at least in proportion to the full-time work, the services rendered on a part-time basis by such chaplains;			In the beginning of 2011, the FPS Justice announced that it had submitted a proposal to the Inspectorate of Finance to implement the recommendation in the cases of chaplains who find themselves in this situation.
10/06	2) Re-examine the individual cases of chaplains working full-time after having worked part-time.	FPS Justice	Pending	In mid 2012, the SPF Justice confirmed that the Inspectorate of Finance was examining a proposal to follow the recommendation concerning the cases of chaplains affected by this situation. Moreover, there was a draft overall revision for the status of chaplain.

OR	Title	Administrative authority concerned	Status	Comment
I / 02	The Federal Ombudsman recommends to the Department of Immigration and Naturalization to withdraw its decision of 14 February 2011, which declared Mr Mutombo's application for regularization inadmissible.	FPS Interior Department of Immigration and Naturalization	Met	In 2012, the Department of Immigration and Naturalization finally withdrew its decision of inadmissibility taken on the grounds that Mr Mutombo had not appended a passport - whereas the person concerned contended that he had appended said passport in his application for regularisation. In a decision, the Council of Aliens Disputes reiterated that the administrative authorities have a duty to proceed with prudence, meticulousness and care. This implies that the administrative authorities are to decide with full knowledge of the facts and proceed to investigate the facts thoroughly and collect all the information needed to take a decision. The Department of Immigration and Naturalization should have therefore informed the applicant that the passport had not been appended to complete the file. More recent complaints examined by the Federal Ombudsman show that the Department of Immigration and Naturalization adapted its practice and asks for the missing passport before taking a decision.
I / 04	The Federal Ombudsman recommends issuing Belgian passports to the children Sa'dou and Emmanuel immediately.	FPS Foreign Affairs	Met	The children were issued provisional travel documents to join their parents in Belgium
I / 05	The Federal Ombudsman recommends issuing Belgian passports to the children Mark and James immediately.	FPS Foreign Affairs	Refused	The FPS Foreign Affairs did not follow the recommendation of the Federal Ombudsman, but the children were finally able to come to Belgium with their mother by means of a short stay visa issued by another Member State.
I / 06	The Federal Ombudsman recommends to the Department of Penitentiaries to amend its internal instruction on "removal under escort for humanitarian reasons" in order to: - Add the hospitalisation of a child accommodated with an imprisoned parent to the list of situations considered automatically as justifying removal on humanitarian grounds; - Provide an examination on a case by case basis for petitions justified for reasons not contained in that list; - Guarantee that the decision will be notified to the detainee in good time, taking into account the circumstances in the case at hand.	SPF Justice Penitentiaries	Met	The Department of Penitentiaries amended the instruction.

OR	Title	Administrative authority concerned	Status	Comment
11/07	While waiting for the introduction of a common IT system, the Federal Ombudsman recommends to the FPS Justice to take immediately, in consultation with the prescribers of criminal court assessments, such coordination measures as are required to guarantee the processing and payment of the expenses and fees of court-appointed experts within a reasonable period.	FPS Justice	Pending	The Federal Ombudsman was not informed of any development in 2012.
11/09	The Federal Ombudsman recommends to the Department of Penitentiaries to adopt specific instructions concerning the accommodation of children who accompany their imprisoned parent, as regards the infrastructural standards that the facility must meet as well as the living conditions for the child in prison.	FPS Justice Penitentiaries	Partially met	The Department of Penitentiaries designated establishments suitable for accommodating incarcerated mothers with their child.
12/01	Do not make the issuance of a visa for marriage contingent upon the payment of prior forced repatriation expenses.	FPS Interior Department of Immigration and Naturalization	Pending	Cf. p. 60
12/02	Recognise deeds of acknowledgement of paternity drawn up by the Cameroonian authorities on July 30, 2010 for the children of Erwin and Kynan Mbendé and issue Belgian passports to them without delay.	FPS Foreign Affairs	Pending	Cf. p. 60
12/03	Take appropriate measures so that decisions relating to applications for prison leave are processed within the legal time limits and that applications for temporary release are processed in good time for the purpose of the required release.	FPS Justice Penitentiaries	Pending	Cf. p. 60

OR	Title	Administrative authority concerned	Status	Comment
12/04	Accept an expired passport or identity card as proof of identity and nationality to file an application on the basis of Article 9ter of the Act of December 15, 1980, and do not add any condition to the Act by systematically requiring that the applicant provide proof of his or her current nationality by a currently valid document.	FPS Interior Department of Immigration and Naturalization	Pending	Cf. p. 60
12/05	Recognise the divorce of Mr Verlinden and Mrs Talbot in 1998.	FPS Foreign Affairs	Pending	Cf. p. 60
Recommendations relative to FPS Social Security and semi-public social bodies				
06/10	To ensure equal treatment between persons with disabilities and to spare some of them from an additional formality, the Federal Ombudsman recommends to the Department of Persons with Disabilities to pay interest on arrears automatically in the event of a court decision reforming the entitlement to benefits for persons with disabilities, without the latter having to apply expressly.	FPS Social Security Department of Persons with Disabilities	Met	In mid-2007, the Secretary of State for the Family and Persons with Disabilities instructed the Department of Persons with Disabilities to apply the recommendation.
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 November 28, 1969 for the (representatives of) employers who invoke arguments to justify or explain a late return (or payment) of the C02 contribution.	National Social Security Office	Met	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 November 28, 1969.

OR	Title	Administrative authority concerned	Status	Comment
07/02	The Federal Ombudsman recommends that Article 17 of the Act of April 11, 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 October 1, 2006 and which entail that entitlement to the benefit was smaller than the initially attributed entitlement.	National Office of Family Allowances for Salaried Workers	Met	The National Family Allowances Office for Salaried Workers followed the recommendation in 2008 and regularized the files concerned.
10/05	1) Improve the information provided to persons with disabilities on the effects of a scheduled medical review (entry into force of the new benefit for the future only even if the worsening of the medical condition was established in the past as well); 2) Optimise the processing of this type of cases so as to avoid a loss of benefits for persons with disabilities.	FPS Social Security Department of Persons with Disabilities	Pending	In the beginning of 2011, the Department of Persons with Disabilities informed the Federal Ombudsman that it was examining the possibilities of implementing the recommendation concretely. The situation remained unchanged in 2012.
11/08	The Federal Ombudsman recommends to the Department of Persons with Disabilities to pay interest for late payment of all instalments which are due for the months prior to the expiry of the legal time limit (6 months) for the processing of applications for benefits which were not paid by then.	FPS Social Security Department of Persons with Disabilities	Met	At the end of January 2013, the Secretary of State responsible for persons with disabilities informed the Federal Ombudsman that the Department of Persons with Disabilities will adopt its practice in accordance with the conclusions in the recommendation.

OR	Title	Administrative authority concerned	Status	Comment
Recommendations relative to FPS Public Health, Food Chain Safety and the Environment				
	As regards the recognition of professional qualifications:			
	1) Offer practitioners of a non-sectorial healthcare profession who apply, by virtue of Directive 2005/36/EC, for the recognition of their professional qualifications acquired in another EU Member State but which differ fundamentally from the education and training required in Belgium to access or to practice the regulated healthcare profession, the possibility to show that they have acquired the missing knowledge and skills, by means of an aptitude test or a practical training scheme ("compensation measures"); and thus no longer reject without further ado, their application for recognition, but to subordinate such recognition to the fulfilment of the proposed compensation measure;			
	2) Reply within the regulatory period (three or four months depending on the case) to applications for the recognition of a professional qualification obtained in another Member State to practice a regulated healthcare profession.			
10/03		FPS Public Health	Partially met	<p>1. Compensation measures are henceforth proposed where deemed appropriate by the competent approval committee.</p> <p>2. The administrative authority is making efforts to process applications within the regulatory period but does not manage to do so in all case files.</p> <p>In 2012, said regulatory period still caused problems in certain cases.</p>
11/03	The Federal Ombudsman recommends to Medex not to make retroactive a medical decision that terminates the recognition of the severe and long-term nature of an illness.	FPS Public Health Medex	Met	Medex replied to the Federal Ombudsman that it did not accept the principle of making retroactive its decision that put an end to the recognition of a severe and long-term illness. Such recognition will henceforth be maintained until the date fixed for the next medical examination.

OR	Title	Administrative authority concerned	Status	Comment
Recommendations relative to FPS Mobility and Transport				
	<p>The Federal Ombudsman recommends to the FPS Mobility and Transport to take the following measures to correct the wrongful modification of the inspection reports on vehicles that had undergone an individual acceptance procedure and which were subsequently equipped with an LPG installation:</p> <ul style="list-style-type: none"> - Recall all wrongfully modified inspection reports; - Provide information about the error made; - Restore the inspection reports to their original version without additional costs; - Reimburse citizens the fee of f160 			
11/01		FPS Mobility and Transport	Met	The identification and reimbursement of the persons concerned is under way.
Recommendations relative to the FPS Economy				
	<p>Make sure that every end consumer who belongs to a category of eligible parties obtains the social rate in accordance with the law, namely as of the entry into force of the decision that recognises the end consumer as a "residential customer with modest income or in a difficult situation," and not only as of the first day of the quarter in which said decision is delivered.</p>			
12/06		FPS Economy	Pending	Cf. pp. 60

OR	Title	Administrative authority concerned	Status	Comment
Recommendations relative to other federal administrative authorities				
07/03	<p>The Federal Ombudsman recommends that, in anticipation of a possible amendment of Article 20, §1, of the Royal Decree of March 8, 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.</p> <p>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.</p>	Selor	Met	<p>Selor adapted its practices in 2007.</p> <ul style="list-style-type: none"> - 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	<p>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.</p>	Fedasil	Pending	<p>On September 24, 2009, the Federal Ombudsman had submitted an interim report on this subject with the House of Representatives.</p> <p>On October 19, 2011, the federal ombudsmen were heard, at their request, on this issue by the Committee on Public Health, the Environment and Renewal of Society.</p> <p>In spite of this, Fedasil continued to refuse systematically needy minors residing on the territory illegally with their family. Fedasil nonetheless followed the recommendation of the Federal Ombudsman in individual cases and accommodated families in a centre.</p>

OR	Title	Administrative authority concerned	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. Given the current saturation of the reception network, the necessary measures must be taken immediately – either by making sufficient human and material resources available, or through an adequate legal mechanism, so that Fedasil can fulfil its reception mission for all beneficiaries correctly at all times. While waiting for these measures to produce the expected effect, the State may not hide behind the saturation of the reception network to refrain from receiving certain beneficiaries and must allow the legal exemption mechanism provided for asylum seekers by the legislation on reception to produce its effects in full so as to guarantee that under particular circumstances, all beneficiaries of reception will receive the aid needed to meet their basic needs.	Secretary of State for Social Integration and the Fight against Poverty	Pending	<p>The general policy note of the Secretary of State for Asylum and Migration, Social Integration and the Fight against Poverty of December 21, 2012 reiterated that families with minors without legal residence permits are entitled to accommodation in the collective structures of Fedasil. An intensive and individualized advice and support course is provided for these families by Fedasil, in cooperation with the Department of Immigration and Naturalization. This advice and support nonetheless seems to provide a sustainable solution for only a minority of the beneficiaries and must be improved further.</p> <p>In the beginning of 2013, the Secretary of State and the director general of Fedasil announced that the reception crisis had ended.</p>
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	<p>No further decision not to list an applicant for asylum has been taken. Fedasil nonetheless continues to refuse systematically to receive needy minors residing on the territory illegally with their family, who applied for accommodation on the basis of the Royal Decree of June 24, 2004.</p>

OR	Title	Administrative authority concerned	Status	Comment
10/02	The Federal Ombudsman recommends that the Royal Decree of October 8, 1981 concerning access to the territory, stay, establishment and deportation of foreign nationals be amended to draw up a specific decision-making model for the removal of EU citizens and to avoid that an EU citizen is erroneously served an order to leave not only the Belgian territory but also the territory of other Schengen States.	Secretary of State for Migration and Asylum Policy	Pending	No action has been taken on this recommendation.
10/04	As regards the reserve for recruitment: 1) Mention, in accordance with the status of State officials, in the notice published in the "Moniteur belge" [Belgian Official Gazette] announcing the organization of comparative selections, both the duration and scope of the reserve pool of the successful participants where such a reserve is provided, and ensure that all information relating to the selection published on the Selor website is compliant with the notice published in the Belgian Official Gazette; 2) Refrain from amending subsequently the duration or the scope of such a reserve pool; 3) Take the measures necessary to integrate all the successful participants (who obtained a result of equal to or greater than 12/20) of the ANG09863 / AFG09863 selection in the reserve pool of successful participants, which is valid for two years.	Selor	Met	Selor confirmed that henceforth, the scope of the reserve for recruitment and its period of validity will be specified during the announcement of a comparative selection, and this information will be published in identical fashion in the Moniteur Belge and on Selor's website. It was also confirmed that no amendment or addition will be made to the published notices. In so doing, Selor meets the first two sections of the recommendation. As to the third section, it is not possible, under law, to alter a list of participants drawn up more than sixty days earlier by an official instrument signed by Selor's managing director.

Appendix



The Federal Ombudsmen Act, Kingdom of Belgium, March 22, 1995¹¹

CHAPTER I. 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 I 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".

¹¹ 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 lodging 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 lodging 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.