



the federal **Ombudsman**

a bridge between citizens and the public services

ANNUAL REPORT

2011



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Annual Report

2011

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Realisation House of Representatives

Mr. Speaker of the House of Representatives,

Mr. Chairman of the Petitions Committee,

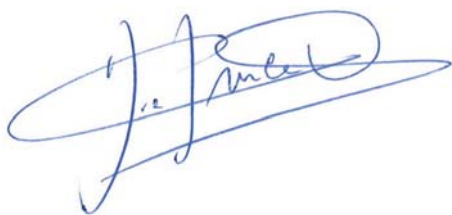
Honourable Members of the Parliament,

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 2011.

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

This annual report is the seventh edition we have the honour of submitting to the House of Representatives since we took office on November 8, 2005. The first annual report we submitted related to a period (2005) that was still in essence under the purview of our predecessors. This report covers the period during which our six year term of office came to an end.

This term of office actually expired on 8 November 2011. In accordance with the Federal Ombudsman Act of March 22, 1995, we shall continue to fill our duties until Parliament has appointed the following ombudsmen.

In the report for 2010, we provided an outline of the results obtained during our term of office from a double angle of approach: for one, the actions undertaken to crystallize our mission statement, and secondly, our observations on the development of relations between the federal administrative authorities and the citizens. We then cited the challenges for the federal authorities and the prospects for the institution.

In 2011, we essentially continued or brought to a close projects already undertaken, in line with our mission statement adopted in 2005. We shall return thereto in the section devoted to the functioning and management of the institution.

Let us first elucidate certain aspects of the mission that we have had the honour to pursue these past six years. Seen as a remedy to a threatening gap between the citizens and the public authorities, the ombudsman helped to facilitate the dialogue between the administrative authorities and their "clients." The Federal Ombudsman is not only a driving force for reconciliation, but also for getting the conflicting parties to assume their responsibilities. The Ombudsman stands up for defending rights and makes a stand against arbitrary bureaucracy. Finally, through its proposals, recommendations and reports, the Federal Ombudsman constitutes a vector of getting citizens' participation in the management of public services.

Remedy

The institution had registered a nearly continuous numerical growth of requests since we came into office. We noted a slight drop for the first time this year.

In six years, we have received more than 30,000 complaints and received nearly 7,000 requests for information and guidance from citizens.

The administrative authorities have shown themselves willing to listen to our arguments on the whole, as the correction rate following the intervention of the Federal Ombudsman has increased continuously from year to year and currently stands at more than 90% of the founded complaints.

This increase undoubtedly indicates that the intervention of the Federal Ombudsman has become more pertinent. It is thus accompanied by a numerical growth of cases for which we did not request redress from the administrative authorities, although we found the complaint founded. These are first of all cases where redress is not within its power (*redress impossible*) and where an amendment in the regulations is required. We then submit a recommendation to the legislator.

Furthermore there are cases where the dysfunction noted is all-round. Individual redress for the sole benefit of the ones who turned to the Federal Ombudsman risks monopolising excessive means and resources at the expense of a general solution for the problem. Thus leading to unequal treatment with regard to other citizens. At issue here are essential complaints about exceeding a reasonable time limit by the administrative authorities owing to a backlog in the service concerned. We then encourage

structural solutions (*structural intervention*). The citizens generally understand this choice very well, and the administrative authorities feel that they receive more support in their efforts to improve the situation. This approach remains exceptional nonetheless, as our usual guiding principle is to request individual redress for the citizen who has turned to the Federal Ombudsman and subsequently a structural solution for other people who find themselves in the same situation. An illustration of the guiding principle is provided in Part III of this report, under Chapter 6 *Redress for one entails a solution for all*.

The Federal Ombudsman has proved an efficient form of remedy through the years for restoring the relationship between the citizens and the administrative authorities when it has taken a turn for the worse. It has shown its capacity to find mutually acceptable solutions and to meet the objectives pursued by the legislator, namely to provide an alternative to the growing recourse to legal intervention in case of conflicts and to bolster the trust and confidence of citizens in the administrative authorities, in particular through redress in cases of maladministration.

Facilitator

The Federal Ombudsman focuses on the material aspects of the action taken by the administrative authorities (the content of decisions) of course, but the formal and procedural aspects, as well as their customer-orientation, are paid as much attention: the legibility of documents, user-friendly procedures, accessibility of services, courtesy of officials, the communication policy, etc. We have endeavoured to facilitate relations between the administrative authorities and the citizen on all these issues, with particular attention for the most vulnerable segments of the population.

Conciliator

Whereas the Ombudsman's mission is obviously the defence of the citizen's rights against unfair action by the administrative authorities, we consider that it is equally incumbent upon the service to defend the administrative authorities against any unjustified complaint. By explaining the contents and the justification of an administrative decision, by relocating the private interest of the complainant in the perspective of the general interest, by clarifying the purpose of a regulation, the Ombudsman helps getting citizens to accept the contested administrative action and to restore the legitimacy of administrative action. This is the instructional and reconciling contribution made by the Ombudsman.

Vector for responsible behaviour

It is often said that by involving the two parties in the search for an agreement, the Ombudsman puts the responsibility for the outcome of the dispute back with the parties themselves, unlike a court case where that responsibility lies with the judge. There is nonetheless still one type of litigation in which the administrative authorities continue to be excessively recalcitrant to assume the responsibility for a solution and prefer the referral of the matter to the courts.

These are cases where the citizen claims compensation for damages he considers to have suffered owing to an action or lack of action on the part of an administrative authority. Whether by taking refuge behind arguments of legality, invoking prescription or the request of vestitive facts, the Ombudsman's intervention often has to stop when it is noted that an error has been established but the administrative authorities refuse to grant compensation to the citizen. In the best of cases, they apologise.

Such an attitude is not acceptable when the error is clearly established but the prejudice is not sufficient to justify the costs of a trial enabling the administrative authorities to get around any responsibility. This leads to a loss of citizens' confidence and undermines the legitimacy of the administrative authorities.

There are various cases where a wrongful action by the administrative authorities (erroneous information, inadequate coordination, exceeding a reasonable time limit) can entail a prejudice for the citizen.

This observation has led us to group all complaints relating to this issue and to initiate a systemic investigation - *Indemnita\$* - in the way that the federal administrative authorities process petitions for redress from citizens for the prejudice caused by their wrongful action.

We therefore intend to ascertain whether there are flagrant differences in the approach of the various federal authorities; whether such differences are explicable and justifiable; whether a more uniform approach is possible and desirable; and whether the approach of certain administrative authorities can serve as “best practice.”

This study was launched in the autumn of 2011 and is based on the cooperation of the administrative authorities themselves to gather information and to draft conceivable recommendations.

Defender of rights

The violation of fundamental rights by public authorities is the most serious form of maladministration.

Since 2007, the Federal Ombudsman has devoted a specific chapter in its annual report to the respect of fundamental rights by the federal administrative authorities.

As an independent institution in charge of promoting good governance and of the protection against arbitrary bureaucracy, the Ombudsman contributes to the consolidation of the rule of law and respect of the principles of justice and equality.

Means of civic participation

Citizens indicate their needs and expectations in terms of governance through their complaints. These complaints reflect the changes in progress in society's deeply-held values. Insofar as the Ombudsman's proposals and recommendations to undertake reforms in administrative practices reflect such expectations and changes, they generate a new form of dialogue between citizens and public officials.

The former Ombudsman of the Grand Duchy of Luxembourg, Marc Fischbach, expressed this very clearly in his last report: “I endeavour, through the office that I hold, to contribute to the emergence of a more participatory society in which citizens are more likely to take their fate into their own hands and to get more involved in public affairs. This undoubtedly constitutes the most notable added value of the Ombudsman as an institution for the country's democratic life.”

We have highlighted this aspect of our mission essentially through our cross-thematic recommendations, with the intention of raising the legislator's awareness about the new expectations of citizens regarding the entire federal administrative apparatus, irrespective of its sector of interventions.

We would not wish to bring this term of office to a close without thanking all those without whom we would not manage to settle most of the conflicts referred to us. The results of the Federal Ombudsman have been obtained through teamwork. We therefore wish to thank all our colleagues for the quality of the work they perform day and day out in the service of citizens, with devotion, efficiency and tenacity. Particular thanks are also in order for the civil servants of the federal administrative authorities at all levels, whose cooperation is indispensable to us. Finally we would like to thank the House of Representatives, whose confidence and support constitute the indispensable cement for building the moral authority of the institution and for reinforcing its capacity to persuade.

Catherine De Bruecker

Guido Schuermans



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I. Operation and Management



How the Ombudsman service operates

Publication of the proceedings of the colloquium entitled “A consolidated Federal Ombudsman for the 21st century: are reforms needed?” and the criteria for assessing the results

The colloquium on the consolidation of the Federal Ombudsman was held in the House of Representatives on November 30, 2010. The proceedings of the colloquium were published in the beginning of September 2011. Very specific avenues for reform were delineated.

The works of November 30, 2010 led to an inventory of proposed avenues for reform. This inventory served as the basis for a record book entitled “**Evaluation of the results of the colloquium of November 30 2010**”. Prepared by Professors Bernard Blero (ULB) and Bernard Hubeau (UA), this report is the fruit of cooperation between the University of Antwerp (Law Research School – Research Group on Government and Law) and the (French-speaking) Free University of Brussels (Centre for Public Law).

The record book provides a summary image of the possible reforms as well as their underlying arguments. It explores first of all whether there is an agreement of principle on certain consolidation elements and whether such elements can rely on a sufficient base. In a second stage, possible amendments to the Act of March 22, 1995 establishing the federal ombudsmen are proposed.

The proposals to reinforce and consolidate the position of Ombudsman are based on an external objective: based on the principles of law and order in Belgium and the perspective of the citizen user; to guarantee a clear and effective intervention on the part of the Ombudsman in order to improve the quality of services to be provided in the long term by the federal authorities.

The report broaches six consolidation elements:

- The constitutionalisation of the position and institution of the Ombudsman;
- A better coordination between the duties of the Ombudsman and the powers devolved onto the courts;
- Extension of the scope of application to other authorities in the federal sphere of influence;
- The Ombudsman's right of initiative;
- The reinforcement of the Ombudsman's powers of recommendation;
- The Ombudsman's powers to recommend a fair solution.

Hearing in the Committee on Public Health

At their request¹, the federal ombudsmen were heard by the Committee on Public Health, the Environment and Renewal of Society in October 2011 on the refusal to receive minors in a state of need residing with their parents illegally in Belgium.²

¹ Article 15, paragraph 4, of the Act of March 22, 1995 establishing the federal ombudsmen provides that said ombudsmen may be heard at all times by the House of Representatives, either at the latter's request or at the request of the ombudsmen themselves.

² Hearing of the federal ombudsmen, *Parl. Doc.*, House of Representatives, 2011-2012, n° 1884/I.

The federal ombudsmen requested to be heard by the committee following the ascertainment that on two occasions, Fedasil had not honoured the commitments it had undertaken concerning the reception of said minors.³

Interim report

On December, 15 2011, we submitted an interim report to the House of Representatives concerning the absence of transitional provisions in the Act of July 8, 2011 amending the Act of December 15, 1980 regarding the conditions for family reunification.⁴

In the autumn of 2011, following the entry into force of the act, many complaints were lodged with the Federal Ombudsman concerning the decisions of the Department of Immigration and Naturalisation. In the absence of transitional provisions, the Department of Immigration and Naturalisation applied the new act to requests in progress. In so doing, it turned down a large number of requests by applying conditions provided in the new act.

We reached the conclusion that the application of the new act to requests filed before it entered into force entailed *unequal treatment* as well as a *violation of the principles of legal security and legitimate expectations*.

It was not possible to find an appropriate solution for these complaints with the administrative authorities. We therefore apprised the House of Representatives of our conclusions through an interim report and recommended that transitional provisions be inserted in the Act of July 8, 2011.⁵

Information campaign: the “OmbudsbuS”

Accessibility for all and name recognition remain the key concepts for an efficient Ombudsman service, for which there is need to work constantly.

In October 2011, the Federal Ombudsman and the Office of the Pensions Ombudsman traversed Belgium together in a double-decker bus under the slogan: “All aboard the OmbudsbuS!”

The bus called at the following cities:

- Arlon, Charleroi, Eupen, Liege, Marche-en-Famenne, Mons, Namur, Nivelles, Tournai and Wavre.
- Brussels.
- Antwerp, Bruges, Kortrijk, Ghent, Genk, Hal, Hasselt, Leuven, Mechelen, Sint-Niklaas and Turnhout.

The ombudsmen were on the bus to answer questions from citizens personally and to register any complaints. Information brochures and promotional articles were concurrently distributed to the public. The local ombudsmen participated extensively in the action in their city.

The campaign received extensive coverage in the local and regional media, both in the press and on radio and television.

³ Cf. pp.XXX.

⁴ Article 15, paragraph 1, of the Act of March 22, 1995 establishing the federal ombudsmen authorises the latter to submit interim reports if they deem such action useful.

⁵ Cf. pp. XXX.

Support for the development of the front line

When in 2008, the then minister responsible for the civil service instructed the Federal Public Service Personnel and Organisation to develop a harmonised complaint management model for the federal administrative authorities and requested the support of the Federal Ombudsman, we responded with enthusiasm from the outset.

Promoting efficient processing of complaints by the administrative authorities, on the front line, was actually set out in one of the objectives of our mission statement, namely to convince the administrative authorities about the added value of fair redress when a complaint by a citizen is justified.

This project is based on the fundamental idea that the complaint provides the administrative authorities with an opportunity for progress. Errors are bound to occur in any human organisation. The important thing is to acquire the means to correct them and above all to draw lessons for the future.

Furthermore, the determination to ensure, from the outset, a good interaction between the management of complaints on the front line and the recourse to the parliamentary ombudsman on the second line reflected our concern for efficient coordination for the benefit of the citizen.

The development of the front line complaint management finally took off in 2011, as attested in the first report communicated to us by the Directorate General for Development of Personnel and Organisation of the FPS Personnel and Organisation, reproduced below.

We hope to be able to publish the statistics of the Federal Complaint Management Network as of next year so as to be able to provide Parliament with an overview of complaints against the federal administrative authorities and the action taken on them.

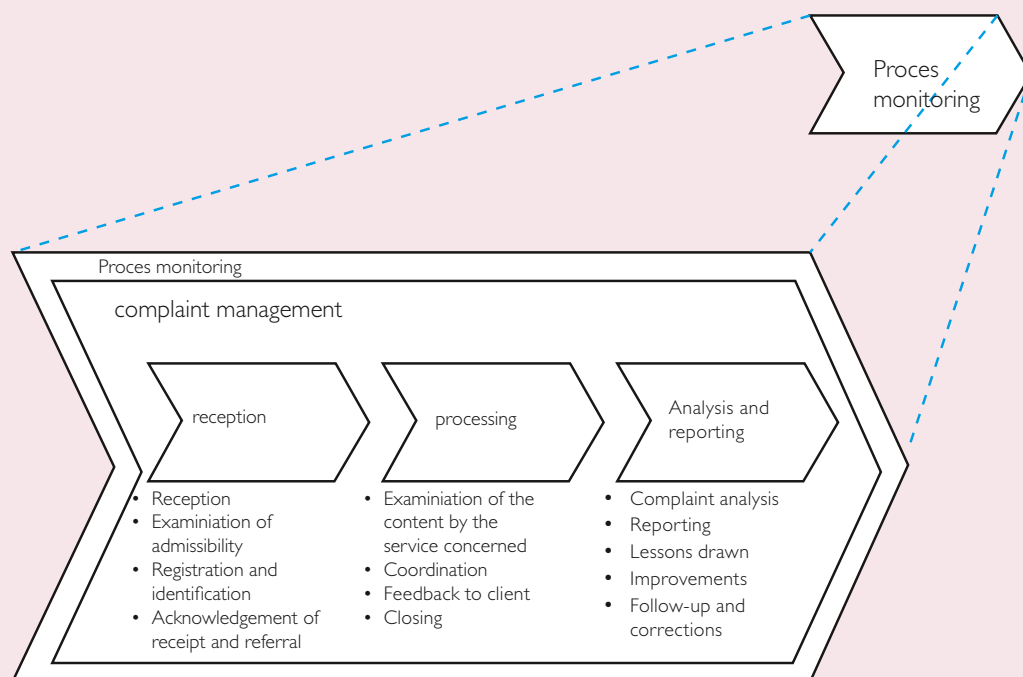
We are moreover convinced that the time has come to establish legally an integrated front line complaint management in all federal administrative authorities and have issued a cross-thematic recommendation accordingly. Cf. Part IV of this report.⁶

⁶ Cf. XXX

Report of the Federal Complaint Management Network - Source: FPS P + O, Directorate General for Development of Personnel and Organisation

Development of the front line reception for complaints: complaint management in the federal administrative authorities

The complaint management process (a) is situated in the client process monitoring phase. In concrete terms, it comprises three major steps: reception, processing, and finally analysis and reporting on complaints.



Development of the Federal Complaint Management Network

Forty-five federal organisations have at this time taken part in this network voluntarily. Each of them has a complaint coordinator who serves as the central contact inside the respective body for everything to do with complaint management.

A common logo for complaint management

To facilitate the orientation to front line complaint reception, it was decided to create a common logo (b).



Klachten over onze dienstverlening?



Klachten over onze dienstverlening?

The aim is to have this logo acquire certain recognition as soon as the organisations have implemented their complaint management.

(a) For the list of participating organisations, cf. Annex 6 of this Annual Report 2011 of the Federal Ombudsman; for more information, go to www.orientation-client.belgium.be.

(b) For the charter on the utilisation of the 'complaint management' logo, go to www.orientation-client.belgium.be.

Concrete implementation of complaint management in the field

The different organisations work step-by-step to implement complaint management.

For the moment, 22 organisations have already adopted the minimal procedure. This means that they have integrated the complaint process, that there is an internal awareness raising action and that the complaint logo is used according to the standards.

List of organisations that have implemented the complaint management procedure

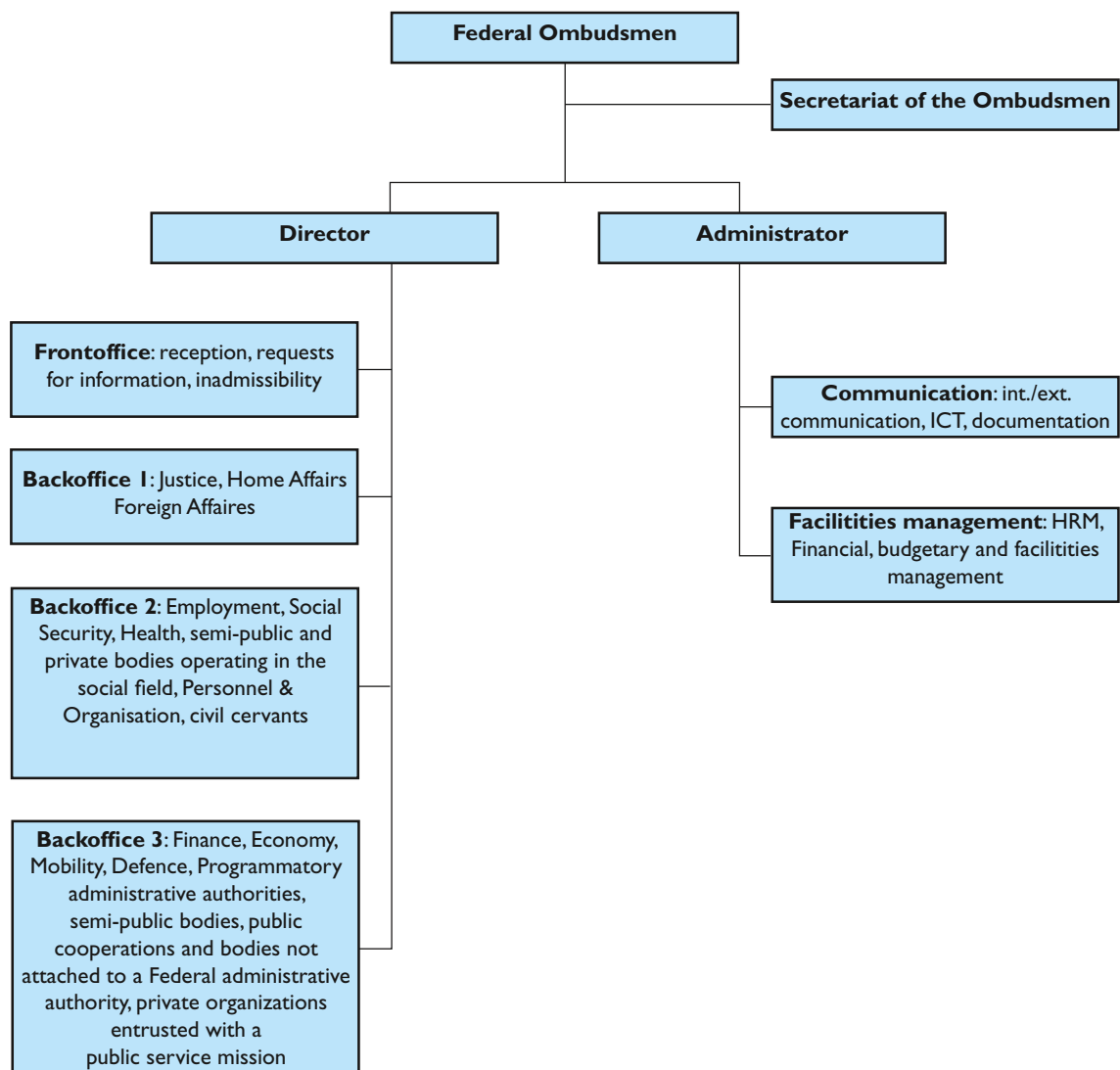
| | | |
|--|--|---|
| FPS Personnel and Organisation | PPS Social Integration, Anti-Poverty Policy and Social Economy | National Pensions Bureau |
| Fedict | Federal Agency for the Reception of Asylum Seekers | National Social Insurance Institute for Self-employed Workers |
| FPS Home Affairs | Occupational Diseases Fund | National Institute of Sickness and Disability Insurance |
| FPS Foreign Affairs, Foreign Trade and Development Cooperation | Auxiliary Unemployment Benefit Fund | Royal Museum for Central Africa |
| FPS Social Security | Auxiliary Illness and Disability Insurance Fund | Royal Museums of Fine Arts of Belgium |
| FPS Mobility and Transport | National Employment Office | Belgian Technical Cooperation |
| FPS Employment, Labour and Social Dialogue | National Holiday Allowance Office | |
| PPS Sustainable Development | National Social Security Office | |

On the way to a structured reporting system

In consultation with the federal ombudsmen, it was decided to introduce a front line structured reporting system, the indicators of which are under development. The FPS Personnel and Organisation organises the data collection. The Federal Ombudsman will henceforth publish the network's statistics as an annex to its annual report. Management of the institution

Structure of the organisation

The Front Office handles the first contact with the citizen who calls on the Federal Ombudsman. It investigates the admissibility of incoming complaints, processes requests for information and, insofar as possible, refers the complaints not intended for the Federal Ombudsman to the right authority. The 3 back offices deal with complaints relating to the respective fields. The Communication department supports and implements the communication policy of the federal ombudsmen, whereas the logistical staffs are responsible in particular for the management of human resources and the financial and material management of the institution.



Personnel situation and management

On January 1, 2012, the institution had 51 employees, divided on four levels, as given in the table below:

| Grade | Language | | Gender | | | | | |
|-------|----------|--------|--------|----|-----------|-------------|-------------------------|-----------------------|
| | N | F | M | F | Statutory | On contract | Total workforce in FTEI | Staff Framework Total |
| A | 15 | 16 (a) | 16 (a) | 15 | 18 (a) | 13 (b) | 30 | 24 (+6) |
| B | 8 | 8 | 5 | 11 | 8 | 8 (c) | 16 | 12 (+4) |
| C | 1 | 1 | 2 | 0 | 0 | 2 | 2 | 2 |
| D (d) | 1 | 2 | 0 | 3 | 0 | 3 | 2,5 | (2,5 ETP) |
| Total | 25 | 27 | 23 | 29 | 26 | 26 | 50,5 | 38 (+12,5) |

(a) Of which one full-time employee on leave for a mission

(b) Of which 6 administrative staff under contract, pursuant to Article 4 of the organic framework (urgent and temporary need), and one administrative staff member replacing a full-time employee on leave for a mission

(c) Of which 4 administrative staff members under contract, pursuant to Article 4 of the organic framework (urgent and temporary need)

(d) Maintenance staff, accorded Level D status, pursuant to Article 4 of the organic framework: 3 employees (2.5 FTE)

Compared with the situation on January 1, 2011, the workforce increased by four units.

To enable us to continue to provide quality service to citizens in spite of the constantly higher number of new cases (+ 82.3% in four years), we asked the House of Representatives to bolster our operational services under the budget for 2011 with four full-time employees (two case managers with university degrees and two administrative staff, one French-speaking and one Dutch-speaking per level).

The external recruitment procedure in cooperation with Selor to fill two positions for auditors-coordinators (1 French-speaking and 1 Dutch-speaking) was concluded in 2011. It yielded only one successful applicant, who nonetheless did not take up his duties when called to do so because he was in the meantime on a mission for a European institution and requested to be put on the reserve list.

The institution calls regularly on the "Institut de Formation de l'Administration fédérale" (IFA) [Federal Administration Training Institute] to provide continuing training for its staff. Furthermore, participation in study days and other external training schemes enables employees to keep up to date with developments in their discipline.

In the second half of 2011, Human Resources prepared intensively for the implementation of a new employee working time management software. Operational since 2012, this more sophisticated software application not only enables employees to monitor their performance in real time, but simplifies significantly the administrative tasks of the personnel department and provides officials with a real tool for managing the organisation of work.

Financial and budgetary management

The estimate and monitoring of the Federal Ombudsman's expenditures have, ever since the service was established, relied on a long-term projection of personnel expenses. Like various public institutions with an endowment, the Federal Ombudsman submits a three-year estimate to the House of representatives for its overall spending estimates.

⁷ Full-Time Equivalent.

The spending estimates show an increase essentially due to an increase in personnel costs (cf. supra).

The basic budget figures for 2010-2012 are given in the table below⁸:

| Budgetary year | Accounts 2010 | Budget 2011 | Budget 2012 |
|---------------------|---------------|--------------|--------------|
| Expenditures | 4 460 598,76 | 5 113 350,00 | 5 436 200,00 |
| Financement | 4 737 420,82 | 5 113 350,00 | 5 436 200,00 |
| Endowment | 4 590 000,00 | 4 752 000,00 | 5 309 000,00 |
| Transferred surplus | 139 061,89 | 361 350,00 | 127 000,00 |
| Other revenues | 8 358,93 | | |
| Balance | 276 822,06 | | |

The heading "Accounts 2010" indicates the amount of actual expenditures for 2010, whereas the headings "Budget 2011" and "Budget 2012" show the total allocations (for expenditures) made by the House of Representatives. These allocations are financed by the endowment proper (i.e. the annual account in the general budget for the expenditures of the Federal State), sums carried forward from previous years and other revenues.

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Facilities management

The year 2011 was marked by reinforced synergies with the House of Representatives for a more economical and more efficient management of the allocated resources.

A cooperation agreement with the House of Representatives press ensued for the Federal Ombudsman's printed matter as of 2012.

Furthermore, on September 1, 2012, the institution will relocate in the building of the Federal Parliament's Forum.

The new complaint management system developed with the help of an external company will go into production in the first half of 2012. This new application will help us to optimise our work processes in the coming years.

Following the virtualisation of the server population, attention in 2011 was focused on this technological innovation from the user's perspective. The shared desktop principle was subjected to an in-depth study. The considerable advantages offered by such a system in terms of savings, flexibility, security and management proved decisive in our choice. In particular the possibility to work at home or from a distance (when on duty in the provinces, for instance) will mean more efficient organisation of our services. The implementation of this system has in the meantime got under way and will continue during 2012.

⁸ The accounts for 2011 will be audited by the Belgian Court of Audit and closed by the House of representatives in the course of 2012.

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.

This Annual Report pertains to the entire calendar year 2011. The figures contained in this part reflect the situation as at December 31, 2011.

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 2011, 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 figures compare developments in the year 2010 and 2011.

In 2011, a new criterion was set for indicating the outcome of the Federal Ombudsman's intervention: "structural intervention". The definition of this criterion and the reasons why we created it are presented further on.⁹

2. General Statistics

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2.1. New case files

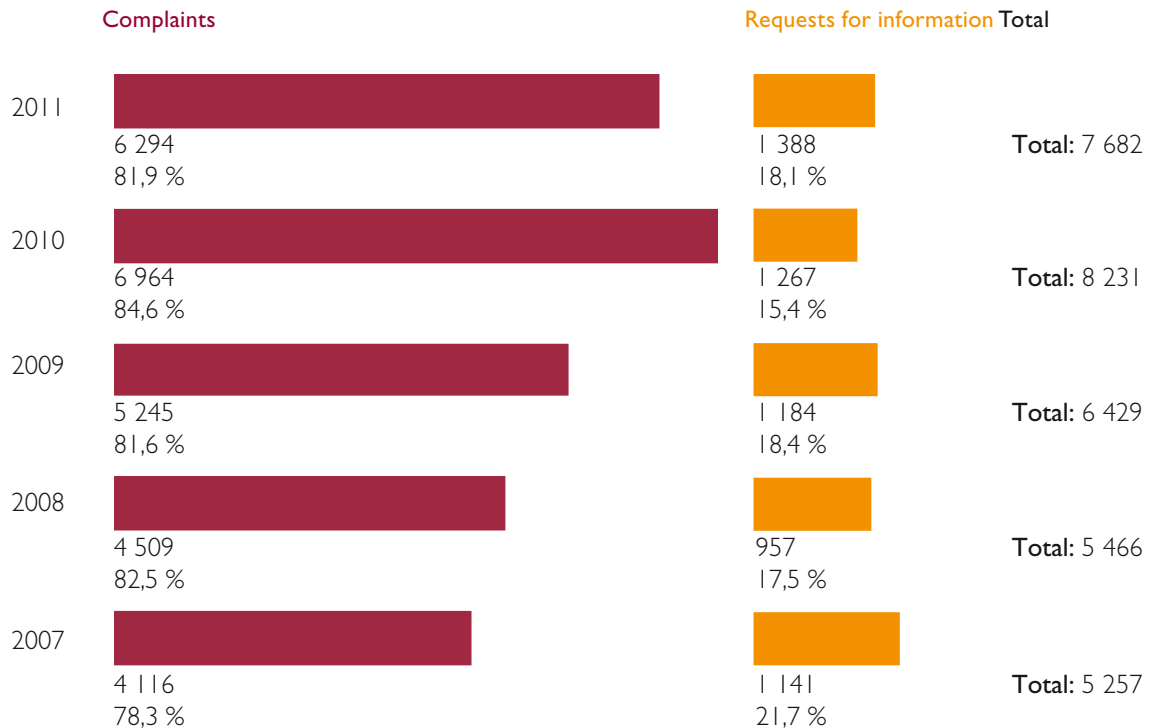
The total number of new case files in 2011 amounted to 7,682, of which 1,388 were requests for information (compared with 8,231 new case files in 2010, of which 1,267 were requests for information). There is consequently a slight drop in the number of new case files from last year (- 9%). Both the significant increase in the number of case files (+ 28%) registered in 2010 and the drop in 2011 fall mainly under the "*Authority Departments*" and concern the immigration authorities."¹⁰

The proportional share of requests for information in 2011 increased slightly compared with 2010 (+ 3%), climbing back up to the 2009 level. This increase is in all likelihood due to the "All aboard the Ombudsbust!" information campaign that we organised in October 2011 with the Office of the Pensions Ombudsman to make the Federal Ombudsman service better known to the public. We registered a considerably higher number of requests in October 2011 compared with the other months of the year.

⁹ Cf. point 2.13. Outcome of the Federal Ombudsman's Intervention.

¹⁰ Cf. point 2.10. New admissible complaints per sector.

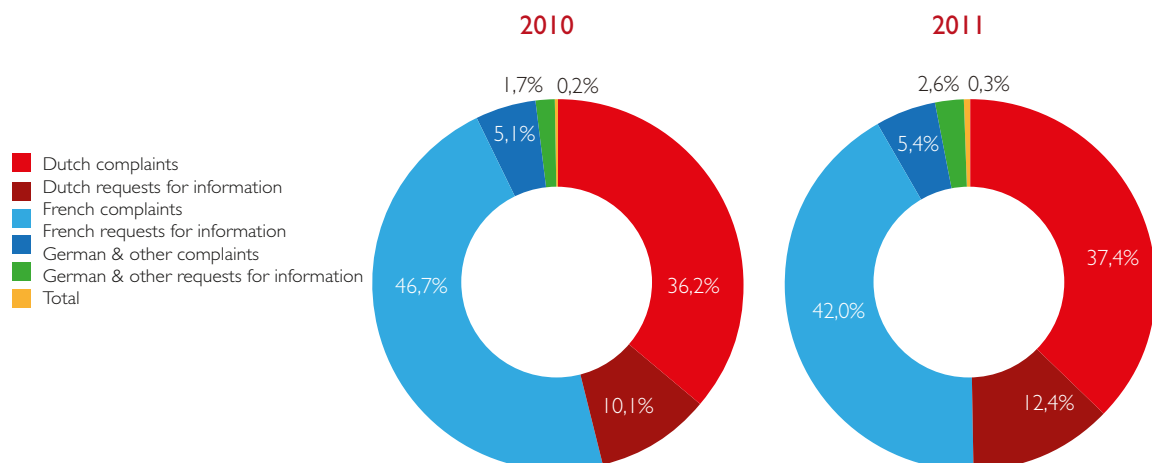
New case files: comparison 2007 – 2011



In addition to complaints and requests for information, the Federal Ombudsman also receives many telephone calls for information which are registered as case files; the answers are provided immediately by the Front Office. In 2011, the Front Office registered 8,970 telephone calls; no case file was opened for 2,786 of these. 5,107 of the calls came in through the toll-free number.

2.2. New case files by language

New case files by language: comparison 2009 - 2010



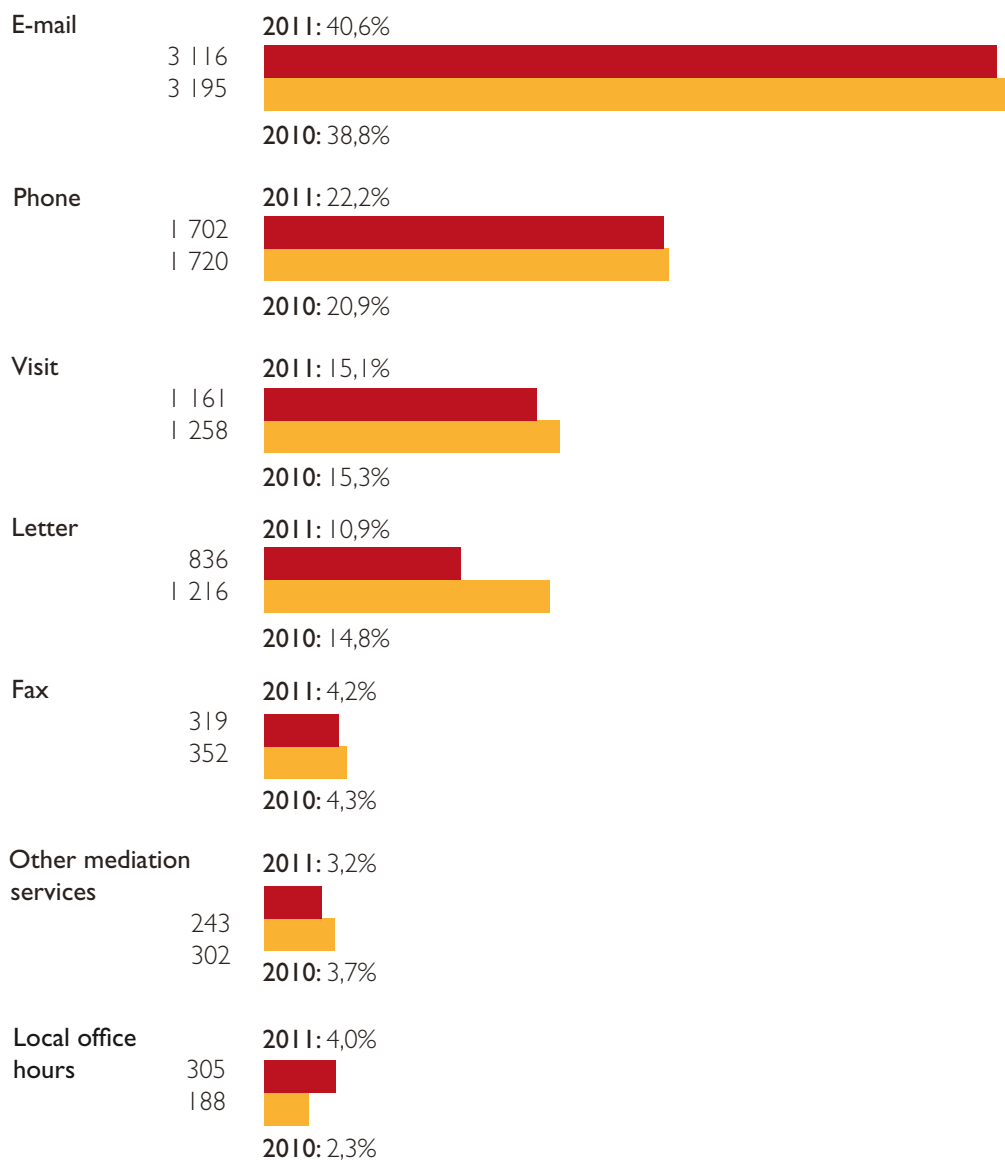
2.3. New case files per means of communication

The predominance of the electronic path (e-mail or via the website of the Federal Ombudsman) as a means of communication was confirmed once again in 2011.

In 2011, 10.9% of the case files were submitted by letter, whereas in 2006, 30.4% of the complaints were submitted by that means of communication. There is a pronounced trend, therefore.

In 2011, the number of visits paid to the institution's office remained high (1,161 compared with 1,258 in 2010). The overwhelming majority of such visits concerned complaints relating to the asylum and immigration authorities.

New case files by means of communication

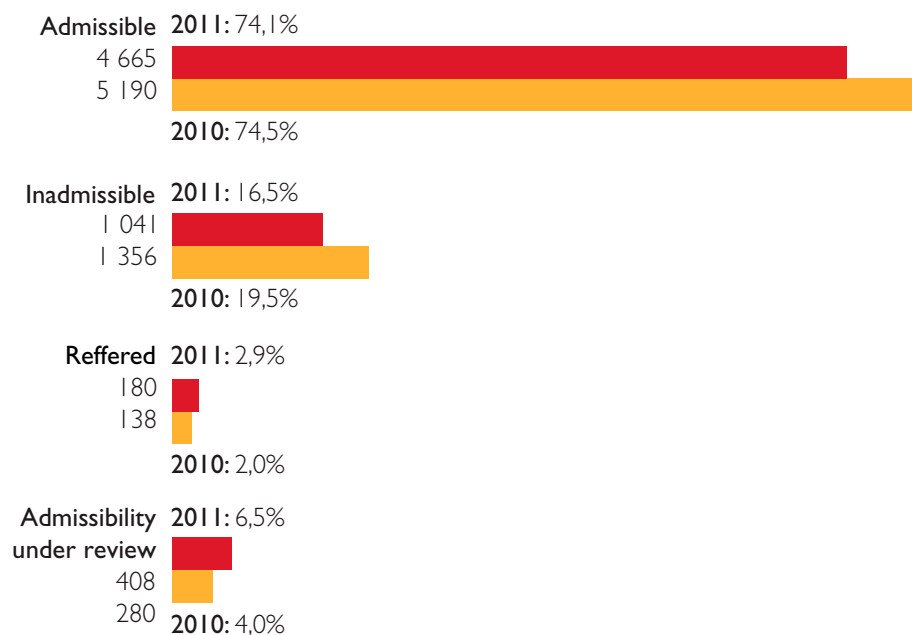


2.4. Admissibility of new complaints

Of 6,294 new complaints, 1,041 were admissible, and 180 were forwarded to another ombudsman service.

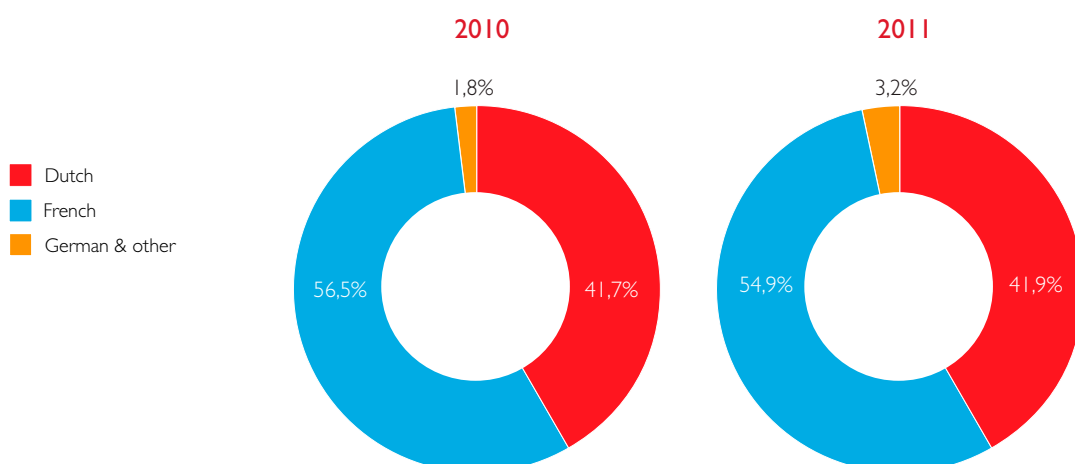
The proportion of admissible complaints remained practically identical by comparison with 2010. In 2010, the percentage of inadmissible complaints was a little higher, but this difference can be linked to the fact that there were more case files still being examined for admissibility on 31 December 2011.

Admissibility of new complaints



2.5. New admissible complaints by language

New admissible complaints by language: comparison 2010-2011

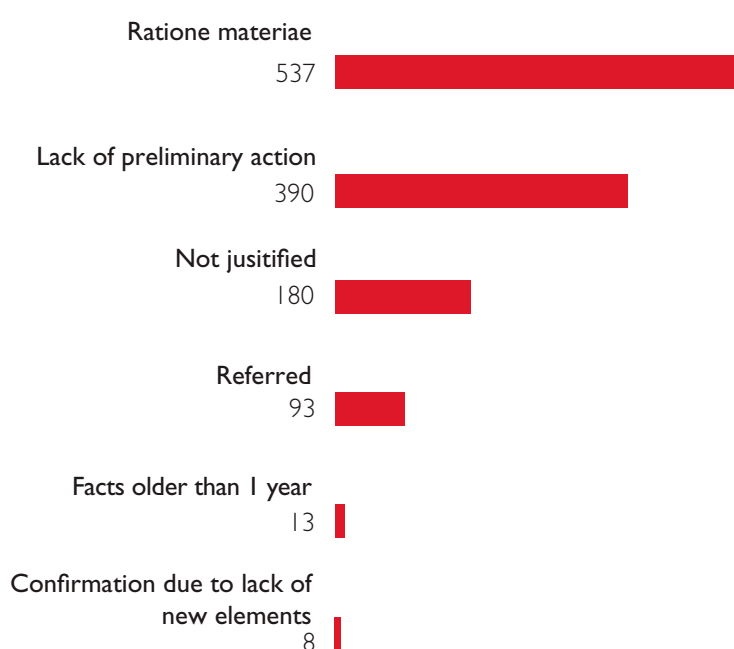


2.6. Breakdown of inadmissible complaints

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

In 2010, the high number of case files in the “clearly unfounded” category came from premature complaints about applications filed during the regularization campaign in the autumn of 2009. In 2011, the number of inadmissibility decisions returned to normal.

Breakdown of inadmissible complaints



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2.7. Complaints referred

When a complaint concerns a federal, regional, municipal or local administrative authority, which has its own ombudsman by virtue of a legal regulation, it is systematically and without formalities referred, and registered as such in the statistics.

The number of case files transmitted to the Flemish Ombudsman went from fourth place in 2010 to first place in 2011. In the beginning of 2011, the collection of the road tax was actually taken over by the Flemish administrative authorities. As of January, the Federal Ombudsman therefore transmitted to the Flemish Ombudsman all the case files in progress concerning this tax.

^{II} Cf. XXX

Destinations of complaints referred

| Destinations of complaints referred | 2011 | % |
|---|------------|-------|
| Flemish Ombudsman | 68 | 37,8% |
| Energy Mediation Service | 22 | 12,2% |
| Pensions Mediation Service | 18 | 10,0% |
| Mediation body for the telecommunication sector | 17 | 9,4% |
| Ombudsman of the Walloon Region | 17 | 9,4% |
| Mediation body for the Postal Office | 8 | 4,4% |
| Ombudsman of the Franch-speaking Community | 8 | 4,4% |
| Supreme Council of Justice | 7 | 3,9% |
| Local mediation bodies | 5 | 2,8% |
| Mediation body for the National railroad Company | 5 | 2,8% |
| Supervisory Standing Committee for the Federal Police ("P" Committee) | 4 | 2,2% |
| Federal Ombudsman Service for Patients' Rights | 1 | 0,6% |
| | 180 | |

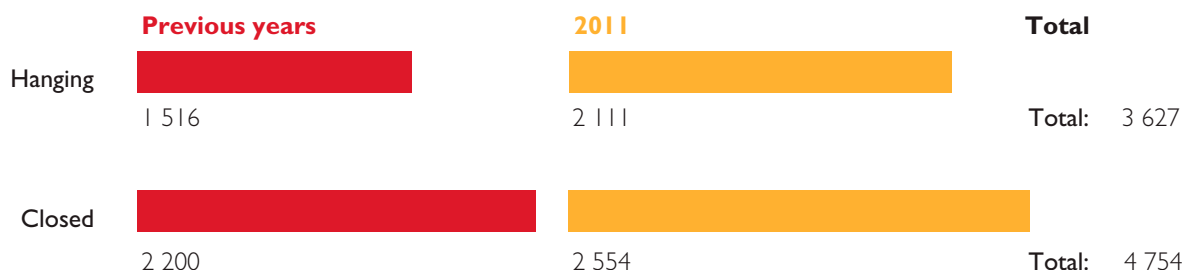
2.8. State of admissible complaints as at December 31, 2011

At the end of the previous financial year, there were 3,716 case files that still had to be processed (submitted in 2010 or in previous years).¹² Of the 3,716 admissible complaints from previous years, 2,200 were closed in 2011, whereas 1,516 were still in progress on December 31, 2011.

Of the 4,665 admissible claims submitted in 2011, 2,111 were still being processed on December 31, 2011.

The total number of complaints closed (not including suspensions) increased: 4,617 in 2011 compared with 3,824 in 2010. In spite of this, the total number of admissible complaints still in progress at the end of the year went from 3,419 on December 31, 2010 to 3,627 on December 31, 2011. This is explained by the spectacular increase in the number of admissible complaints registered in 2010, the effect of which is still being felt in 2011.

State of admissible complaints as at December 31, 2011



An admissible complaint is closed when the result has been communicated to the complainant (4,617) or when the examination of the complaint was suspended (court action or administrative action organised: 137).

¹² In the 2010 annual report, we indicated a balance of 3,419 of complaints to be processed at the end of the year. The difference with 3,716 is explained in particular by complaints which were still being examined at the end of 2010 and which were declared admissible in 2011.

2.9. New admissible complaints per administrative department: trend in 2010-2011

The following tables show the distribution in the number of new admissible complaints in 2010 and 2011 among the different administrative departments. A distinction is drawn between complaints by users and "complaints by civil servants".

Complaints by civil servants are lodged against their own (current, former or future) administrative department and concern a support staff or personnel service (support service) or an operational service (e.g. a complaint against an immediate superior).

| New admissible complaints per administrative department (with the exception of complaints lodged by civil servants) | 2011 | 2010 |
|---|-------------|-------------|
| Chancellery of the Prime Minister | 2 | 2 |
| Personnel & Organisation | 32 | 31 |
| Information technology & Communication | 0 | 4 |
| Justice | 52 | 60 |
| Home Affairs | 2105 | 2432 |
| Foreign Affairs, Foreign Trade & Development Co-operation | 149 | 184 |
| Defence | 5 | 1 |
| Finance | 1161 | 1232 |
| Employment, Labour & Social Dialogue (not including semi-public bodies operating in the social field) | 7 | 14 |
| Social Security (not including semi-public bodies operating in the social field) | 239 | 184 |
| Health, Food Chain Security & Environment | 60 | 64 |
| Economy, SMEs, Self Employed & Energy | 41 | 137 |
| Mobility & Transport | 279 | 209 |
| Federal Public Planning Services | 0 | 1 |
| Semi-public bodies operating in the social field | 279 | 320 |
| Semi-public bodies, public corporations and bodies not attached to a Federal administrative authority | 31 | 67 |
| Private organisations entrusted with a public service mission | 257 | 274 |
| Others | 1 | 15 |
| | 4700 | 5231 |

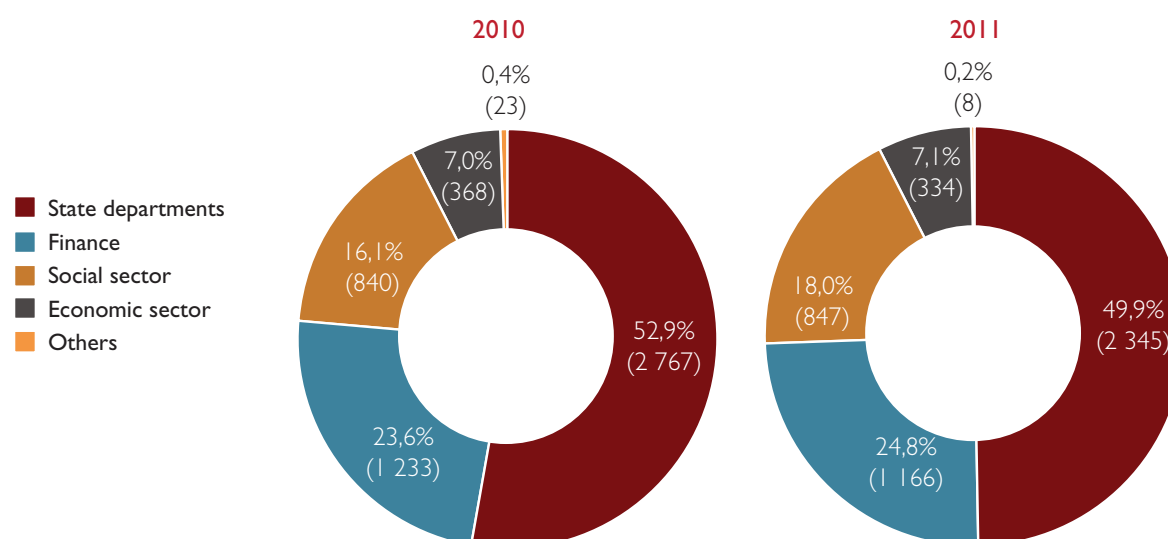
New admissible complaints lodged by civil servants per administrative department

Since a complaint can pertain to different governmental authorities, the number of complaints per administrative department is always higher than the number of admissible case files (4,700 + 43 = 4,743 authorities concerned; for 4,665 new admissible complaints in 2011).

| New admissible complaints lodged by civil servants per administrative department | 2011 | 2010 |
|---|-----------|-----------|
| Justice | 10 | 17 |
| Home Affairs | 7 | 3 |
| Foreign Affairs, Foreign Trade & Development Co-operation | 2 | 10 |
| Defence | 1 | 4 |
| Finance | 10 | 19 |
| Employment, Labour & Social Dialogue (not including semi-public bodies operating in the social field) | 1 | 0 |
| Social Security (not including semi-public bodies operating in the social field) | 1 | 3 |
| 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 | 2 |
| Semi-public bodies, public corporations and bodies not attached to a Federal administrative authority | 3 | 4 |
| | 43 | 65 |

2.10. New admissible complaints per sector

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



In 2011, the share of the "Authority Departments," within which the immigration authorities are essentially concerned, registered a slight drop (- 2% / - 422), but still accounted for 49.9% of the admissible complaints. The three other sectors registered a slight to very slight increase.

2.11. Evaluation of closed complaints

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

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

1. Well-founded: one or more good administrative behaviour standards are not met.
2. Ill-founded: the good administrative behaviour standards were not violated.

3. Partially well-founded.

Three situations are meant:

- The complaint contains various, equally important grievances, not all of which are well- founded however. Nevertheless, if one and the same main concern appears from the complaint, then the evaluation of the complaint will be geared to this main concern;
- Cases where there is shared responsibility between the petitioner and the administrative authority;
- A complaint where material principles are met (e.g. the complainant is not entitled to a subsidy he claims), but which shows that the procedural principles were not respected (e.g. improper reception of the petitioner or the provision of wrong information).

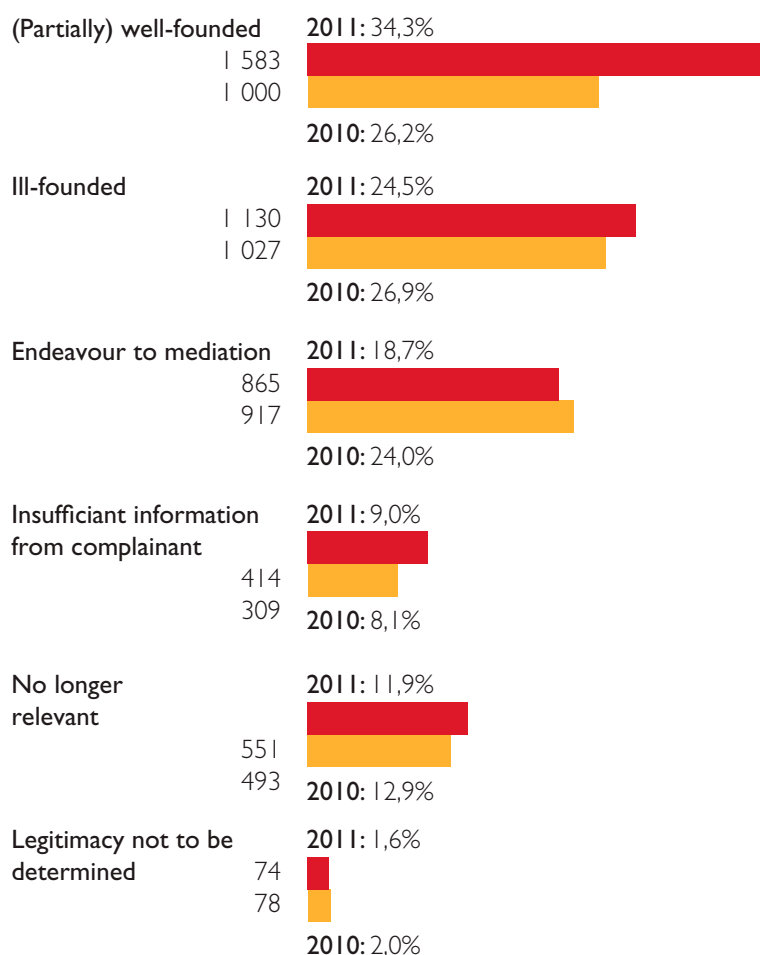
4. No evaluation

Four different suppositions are meant:

- The attempt to mediate is used in complaints that cannot be immediately considered as well-founded or ill-founded (the administrative authority has a discretionary power) or where a solution can be found rapidly without requiring to investigate further into the responsibilities;
- The impossibility to decide on whether the complaint is well-founded;
- The petitioner's failure to answer a request for an explanation by the Federal Ombudsman;
- A complaint that has become pointless; the petitioner informs the Federal Ombudsman that the latter's intervention is no longer justified or that the problem has been solved before it was referred to the Federal Ombudsman.

The graph below provides a general picture of the evaluation of the 4,617 complaints closed in 2011 (not including suspended cases), but including complaints lodged by civil servants.

Evaluation of closed complaints



2.12. Application of the ombudsman criteria

Application of the ombudsman criteria: reasonable period and others

An overview of the ombudsman criteria applied in the 1,583 complaints closed as “justified” or “partially justified” is given below. 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 (2,051) is higher than that of justified or partially justified complaints (1,583).

Last year, we noted that the criterion “reasonable period” was growing shorter. In 2011, on the other hand, there was a spectacular increase: the reasonable period criterion was violated in 1,158 cases, which represents 56.5% of the complaints processed.

This sizeable share of “reasonable period” in the ombudsman criteria applied in 2011 concerned, in 900 out of 1,158 case files (77.7%), the time it took to process applications for the regularization of

residence by the Department of Immigration and Naturalisation.

Application of the evaluation criteria

| Evaluation criteria | 2011 | %2011 | 2010 | %2010 |
|---------------------|-------------|-------|-------------|-------|
| Reasonable period | 1158 | 56,5% | 480 | 32,2% |
| Other criteria | 893 | 43,5% | 1013 | 67,8% |
| | 2051 | | 1493 | |

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.

Application of the evaluation criteria

| Evaluation criteria | 2011 | %2011 | 2010 | %2010 |
|--|------------|-------|-------------|-------|
| Conscientious handling | 214 | 24,0% | 217 | 21,4% |
| Proper application of the rules of law | 178 | 19,9% | 215 | 21,2% |
| Passive information | 153 | 17,1% | 148 | 14,6% |
| Active information | 110 | 12,3% | 129 | 12,7% |
| Reasonable and proportionality | 63 | 7,1% | 97 | 9,6% |
| Effective coordination | 53 | 5,9% | 57 | 5,6% |
| Appropriate access | 47 | 5,3% | 31 | 3,1% |
| Justification of administrative acts | 21 | 2,4% | 36 | 3,6% |
| Equality | 17 | 1,9% | 56 | 5,5% |
| Legal certainty | 14 | 1,6% | 11 | 1,1% |
| Legitimate confidence | 14 | 1,6% | 6 | 0,6% |
| Courtesy | 7 | 0,8% | 7 | 0,7% |
| Impartiality | 1 | 0,1% | 2 | 0,2% |
| Right to be heard | 1 | 0,1% | 1 | 0,1% |
| | 893 | | 1013 | |

2.13. Result of the Federal Ombudsman's intervention

The Federal Ombudsman reports on the outcome of the service's intervention:

a) When the complaint is well-founded or partially well-founded:

- Reparation;
- Partial reparation;
- Reparation refused;
- Reparation impossible (if it is materially not possible (any longer) to remedy the existing situation);
- Structural intervention.

The “structural intervention” category was introduced in 2011.

At the end of 2010, we adapted our way of intervening with the administrative authorities to take account of the particularly difficult situation faced by the Humanitarian Regularization Service of the Department of Immigration and Naturalisation. With the exception of complaints about a possible

violation of a fundamental right, we decided not to take up any longer individually with the Department of Immigration and Naturalisation complaints pertaining to the time it takes to process applications for residence permits. The reason was to avoid an excessive work load for the Department of Immigration and Naturalisation and to preserve the principle of equal treatment among applicants for regularization.

For all the complaints concerning the processing time of applications for regularization, the Federal Ombudsman sends periodically a list of complaints received to the Department of Immigration and Naturalisation.

The Department of Immigration and Naturalisation appraises us of the date the application for regularization was received and of the state of the case file. When the Department of Immigration and Naturalisation informs us that a decision has been taken, and that said decision came more than eight months from the date on which the application was received, without any particular justification relating to the case file, we close the complaint by considering it well-founded as regards the reasonable period. Nevertheless, we did not ask for individual reparation in such case files from the Department of Immigration and Naturalisation, but we preferred a structural intervention to support measures that are likely to reduce the processing time for all.

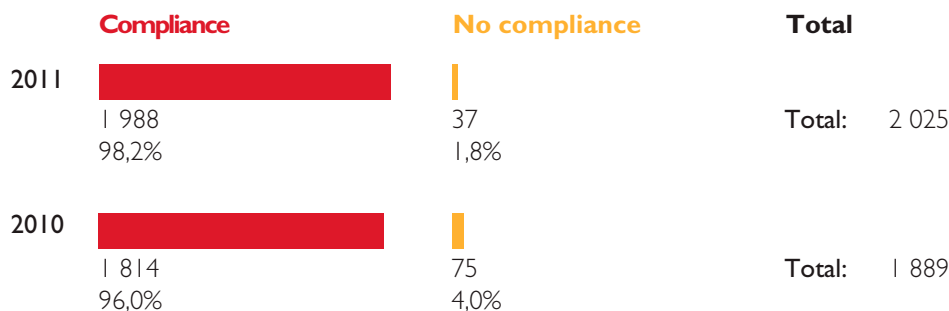
The Federal Ombudsman assessed 359 case files concerning the Department of Immigration and Naturalisation as “complaint well-founded – structural intervention.”

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

- Successful;
- Unsuccessful.

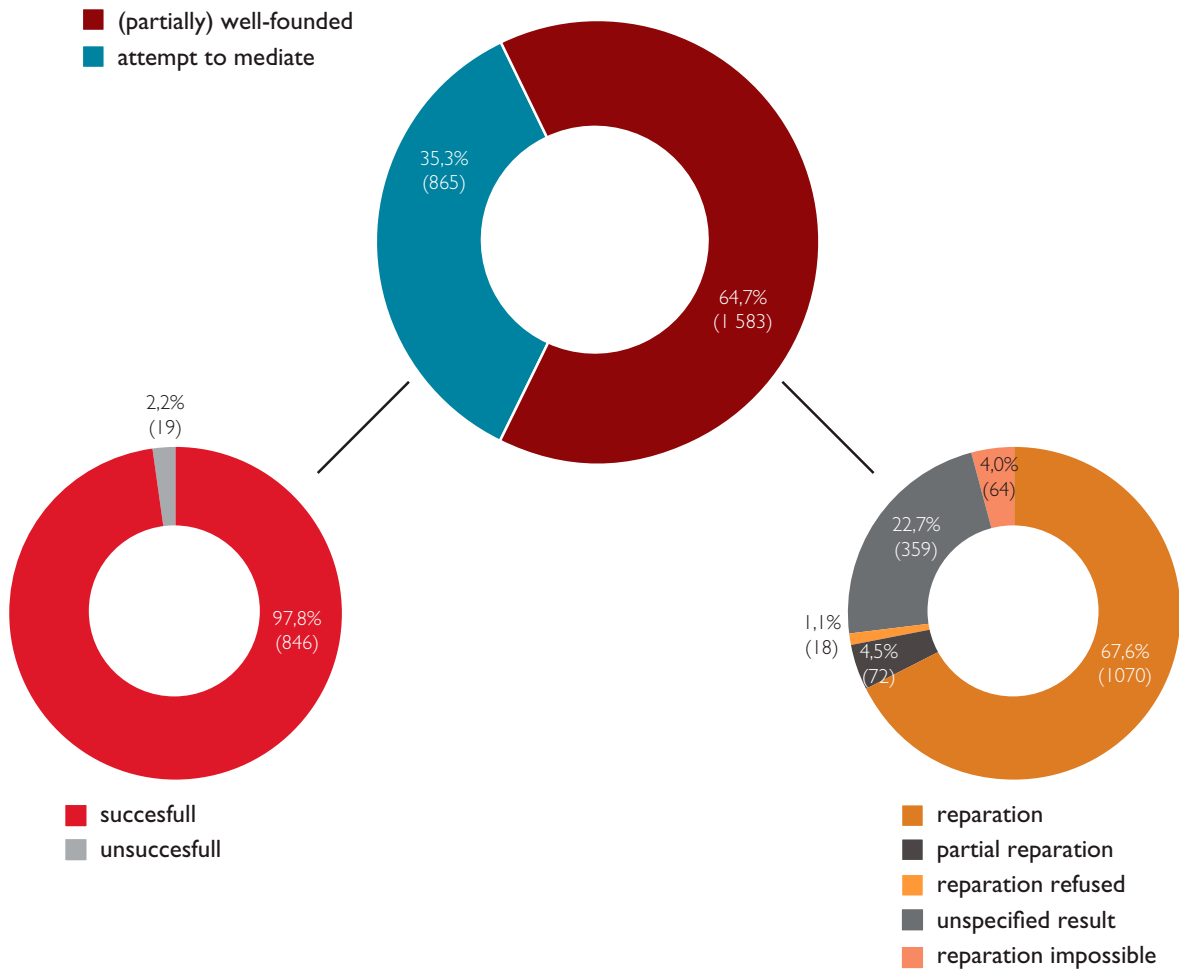
Among the case files in which the Federal Ombudsman tried to obtain redress for the benefit of the complainant or attempted to mediate, the outcome is largely positive. Only in a very small percentage of case files was a reparation refused or mediation unsuccessful.

Result of the intervention by the Federal Ombudsman



If we examine the outcome of the Federal Ombudsman's intervention on all the admissible case files, including files in which reparation was not possible or was not requested (structural intervention), there was a positive solution for the complainant in 81.21% of the cases.

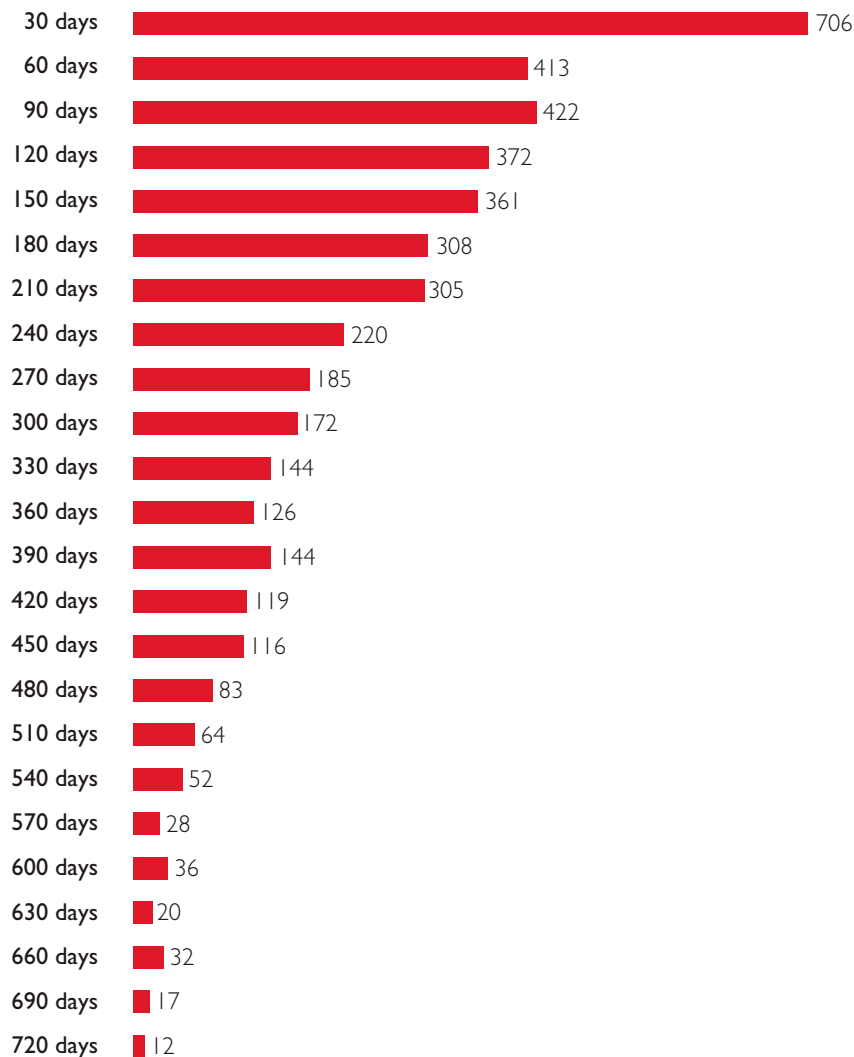
The graph below gives a more detailed overview of the outcome of the Federal Ombudsman's intervention. It specifies, for (partially) well-founded complaints, the respective share of complete, partial, impossible or refused reparations, and describes the outcome of attempts to mediate.



2.14. Processing time of admissible complaints closed in 2011

A graph with the number of admissible complaints in 2011 per period of 30 calendar days is given below. It concerns both the new complaints as well as those of the previous year still in progress.

Processing time in calendar days of admissible complaints closed in 2011



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

The data show that of these 4,617 complaints, 2,582 (55.9%) were closed within 6 months (compared with 2,632 complaints or 68.8% in 2010).

An additional 1,152 complaints (24.9%) were closed within a year (compared with 615 complaints or 16.1% in 2010), 578 other complaints (12.5%) within a year and a half (compared with 283 complaints or 7.4% in 2010), and finally 145 complaints (3%) within 2 years (compared with 216 complaints or 5.6% in 2010).

Finally, 150 complaints (3.2%) took more than 720 days to be processed (compared with 78 complaints or 2% in 2010).

Although the absolute number of case files closed in 2011 increased (+ 793), the average processing time increased slightly that same year. This is undoubtedly due to the sizeable number of case files submitted in 2010, whose impact was felt on the average processing time in 2011. Nevertheless, the Federal Ombudsman still manages to process more than 80% of the files during the year.

III. Analysis of complaints processed





Introduction

“Why is the processing of my case taking so long?”, “Have the administrative authorities made an error?”, “Am I going to get reimbursed?”, “Will I receive interest for late payment?”

Citizens expect the administrative authorities to show a real service culture. They must not only perform their duties to the best of their abilities, but must also anticipate potential problems or delays, and when they occur, they must spare no effort to correct them without waiting for citizens to ask them to do so.

Each administrative authority must in particular have an accessible and efficient internal complaint processing service.

The other major concerns of citizens pertain to a plethora of services: whether for the reimbursement of taxes, the payment of family allowances, the registration of a vehicle, technical inspection, visa or authorization to stay, citizens are entitled to a proper and fair application of the regulations.

Finally, each child must be taken fully into consideration in decisions that concern him or her.

A real service culture

The administrative authorities have in recent years developed initiatives to make services more user-friendly. The necessary and laudable aim is to improve the way of dealing with citizens who turn to them.

But user-friendliness is no longer enough! Citizens expect the administrative authorities to develop a real service culture. The administrative authorities must not wait for citizens to come calling in order to take their needs and expectations into consideration. It must integrate them from the outset in the very concept of service.

This service culture must be extended to all administrative sectors.

Tax collection and a service culture are not irreconcilable!

Mr Van Bauwel is entitled to a tax reimbursement of €1,200. On the date indicated on his notice of assessment, the administrative authorities reimburse the amount... on his old account. Mr Van Bauwel had nonetheless apprised Inland Revenue of his new account number on several occasions. When he is finally paid, three months later, he asks for interest for late payment. The Ombudsman intervenes, and he is finally paid €18 by way of compensation for the three months delay.

The administrative authorities have since 2008 accepted the possibility of paying interest by way of compensation in the event of an error on their part. Some local services were not informed accordingly. As progress on the service culture front by the central authorities had not yet extended to the local services, taxpayers continued to turn to the Federal Ombudsman.

Inland Revenue therefore issued a directive for all services in charge of tax collection and recovery.

The directive comprises the Federal Ombudsman's proposal to:

- Pay compensatory damages in case of error on the part of the administrative authorities;
- Exercise prosecution powers with good judgement.

The Federal Ombudsman has noted a certain eagerness on the part of some collectors to proceed to the forced recovery of tax debts.

When a collector proceeds with such excessive eagerness to forced measures, unjustified bailiff's fees may be reimbursed.

When will there be a complaint department in each administrative authority?

A real service culture entails in particular that each federal administrative authority is endowed with a complaint service capable of providing an appropriate and efficient processing of complaints lodged with it.

An initiative of the Federal Public Service Personnel and Organisation has led to the establishment of internal complaint services by a certain number of federal administrative authorities on a voluntary basis. The creation of a federal "complaint management" network ensued, comprising the different internal complaint services.

The Federal Ombudsman has supported this project from the outset because it meets a real need for the citizen.

Citizens who wish to call on the Federal Ombudsman must first contact the administrative authority concerned and try to get satisfaction. This complaint processing, entailing a front line approach within the administrative authority and a second line outside, creates optimal conditions for promoting the settlement of complaints by the administrative authority itself. And there is no better way to restore confidence among citizens than to settle complaints within the administrative authorities!

The prior step approach nonetheless makes sense only if the administrative authority is really open to the citizen's initiative and manages the latter's complaint correctly.

Too many administrative authorities still do not pay sufficient attention nor follow up properly the complaints lodged with them. The proof comes from the significant number of complaints lodged with the Federal Ombudsman which could have been settled satisfactorily within the administrative authority itself.

Not all the complaint services of the network are at this time in the same stage of development of the process proposed by the FPS Personnel and Organisation. A certain number of services have no internal complaint management at all, whilst others have developed different initiatives.

Citizens are aspiring to a uniform, transparent and efficient complaint procedure in a clearly identifiable body that is capable of providing a solution if the complaint is justified.

The optional establishment of an internal complaint management by the administrative authorities no longer seems sufficient to arrive at real integrated front line complaint management in all the federal administrative authorities in the foreseeable future.

The Federal Ombudsman therefore recommends establishing internal complaint management units in all the federal public services in accordance with common basic standards (Recommendation II/01 to Parliament).

More than 15 years after it was adopted, the Charter of People Insured under Social Security is still encountering resistance

Adopted in the form of an act in 1995, the Charter of People Insured under Social Security established common rules that all social security bodies must comply with. It determines in particular the time that social security bodies have to take a decision. In the event of a delay attributable to the body, the latter must pay interest to the citizen. This is not always the case.

Social security institutions may not require official notice for interest for late payment to become payable

Mr De Visser suffered an occupational accident. The health insurance fund pays him a provisional benefit while waiting for additional information from a foreign institution. Nine years later, the National Health and Disablement Insurance Institute (known by the French acronym INAMI) informed him that he had received the arrears of benefits incumbent upon the foreign fund, and paid him the balance due to him. Mr De Visser however found out that INAMI had received these sums three years earlier and had been late in paying them to him. He demanded interest. INAMI refused, allegedly because Mr De Visser had to serve official notice to make the interest payable, as provided under ordinary law. However, the Charter departs from ordinary law and provides that interest is payable, as of right, after the expiry of the period within which INAMI has to decide. Following the Federal Ombudsman's intervention, INAMI paid him €2765.50 in interest for late payment.

Specific regulations for different social security sectors must be interpreted in the light of the Charter

Mrs Burges applied for her disability benefit to be revised. The administrative authorities have six months to grant and to pay benefits to disabled persons. More than a year after her application, the Department of Persons with Disabilities had not taken any decision. Finally, it granted her two months of augmented benefits, but no interest for late payment. However, the processing of Mrs Burges's file has exceeded by far the six months provided by the relevant legislation...

The administrative authorities interpreted the specific regulations concerning the processing of applications for disability benefits in such a way that the monthly instalments payable in the first six months following the application never accrue interest for late payment, irrespective of the time that it pays such monthly instalments.

Result: when the benefit granted pertains to less than six monthly instalments, it is cleared of any penalty for late payment, however long it may be!

Whereas this regulation is admittedly very poorly worded, it is not up to the administrative authority to opt for an interpretation that is clearly incompatible with the Charter of People Insured under Social Security, on which it is based.

The Federal Ombudsman therefore recommended to the administrative authorities that when they exceed the legal period of six months, they should pay interest on all the monthly instalments due, including those pertaining to the first six months (Recommendation II/08 to the administrative authorities).

One complaint = one solution for all!

The Federal Ombudsman pays particular attention so that solutions obtained for citizens who appealed to it can, insofar as possible, benefit all persons concerned by the same problem. Year 2011 enables us to provide two telling examples.

The administrative authority must reimburse citizens spontaneously when a service that works for the State makes a mistake.

In the summer of 2010, the Federal Ombudsman suddenly received some ten complaints from citizens concerning their technical inspection. They had a vehicle equipped with an LPG system for several years. For the first time, the technical inspection sent the inspection report of their vehicle to the Motor Vehicle Registration and Approval Department: the type of fuel, the weight of the vehicle, and the number of authorised seats had to be rectified.

A few months later, they were asked to pay €160 to get their certificate. For some, the number of authorised seats in the vehicle was reduced from 5 to 4! None of them had however been informed of an amendment to the regulations concerning vehicles equipped with LPG.

The Federal Ombudsman's survey shows that all the technical inspection centres concerned fall under the same inspection body. The latter issued a wrong instruction on vehicles equipped with LPG, for which only the FPS Mobility and Transport is competent.

Notified by the Federal Ombudsman, the FPS immediately asked the inspection body to cease applying this instruction. In the meantime, however, several hundreds of people had to pay €160 for an unjustified modification of their vehicle documents.

The Federal Ombudsman therefore recommended to FPS Mobility and Transport to recall the wrongly modified documents, to restore their original version and to reimburse the citizens concerned (Recommendation 11/01 to the administrative authorities).

The administrative authorities accepted and started to identify the citizens concerned. There were 1180 in all! The first reimbursements took place in the beginning of 2012.

Everyone has the right to be located efficiently by the emergency services

When Mrs De Bruyne dialled 100 because her mother suffered a cardiac episode, she informed the operator that the address is not located correctly by most GPS systems and gave instructions how to get there. The operator refused to note the instructions down, reassuring her that the coordinates she had given sufficed. Mrs De Bruyne's apprehensions unfortunately materialised. The ambulance did not go to her mother's home, but to a similar address in a neighbouring municipality. Mrs De Bruyne had luckily taken the initiative and had gone to meet the ambulance to guide it to the right address.

After this event, she contacted the Federal Ombudsman, because she did not want the situation to recur.

The investigation conducted by the Federal Ombudsman showed that similar location problems can occur at various places in the country, in particular when a street runs through several municipalities.

Following the observations of the Federal Ombudsman, the FPS Home Affairs acquired a new database of building numbers for the call centres. In cooperation with the Federal Public Service Public Health, it conducted pilot projects to test the utility of a GPS that receives the coordinates of the place where

the incident occurred immediately through the emergency centre. It also looked into the possibility for the call centres to follow the emergency vehicles visually on the map and to guide the crews by radio.

There is nothing, for the time being, that excludes Mrs Debruyne's mishap from recurring or from happening to someone else.

A consultation meeting was therefore organised with the two administrative authorities, which led to several immediate measures:

- A signal henceforth appears on the screen of the operators of the 100 and 112 call centres for all roads that straddle two municipalities to inform them that these are problem locations;
- The operators of emergency centres will receive directions to report systematically inconsistencies that they detect between the location system and the coordinates communicated by the callers.

Finally the mapping provider for the call centre responsible for Mrs De Bruyne's mother received express instructions to correct the indication of that street on its map. So if she has to call the emergency services again, the latter should arrive at the right address!

The best interest of the child is not an abstract concept!

The Belgian State omits all too often to put the interest of the child at the centre of its concerns when it takes decisions concerning children.

The living conditions of a child residing with his mother in prison

An incarcerated mother is entitled to keep her child with her up to the age of three. Only a few penitentiaries have specific facilities to accommodate children. Children are at times accommodated in other institutions which are not suited to their needs. That was the case of Aaron.

When his mother contacted us, Aaron was two and a half years old. He had lived in prison since he was born. His father was also incarcerated. His mother has had a difficult prison history, and has been transferred on several occasions for disciplinary reasons.

Suffering from asthma, Aaron had to be admitted in a state of respiratory distress to the intensive care unit of the nearest hospital. As his mother could not get permission to leave prison, she asked to be allowed to go under escort, for humanitarian reasons, to see her son in the hospital. The administrative authority refused because such eventuality is not provided for in the relevant internal instructions.

By refusing this visit, the administrative authority showed a lack of humanity and contributed to an increase in the child's suffering. A decision that violates both the constitution and the EU's Charter of Fundamental Rights and the International Convention on the Rights of the Child.

The prison authorities cannot take a decision concerning the mother without gauging the impact on the child – irrespective of whether the eventuality is addressed in internal instructions.

The Federal Ombudsman therefore recommended that the internal instruction be amended to include the case of a hospitalised child and to guarantee a conscientious examination of cases which are not

explicitly provided for (Recommendation 11/06 to the administrative authorities). The administrative authority accepted.

Aaron's mother also complained about the living conditions of her child.

The prison in which she is held is actually not at all suited for the needs of a young child in terms of both equipment and living regulations. When a female detainee with a child has to be transferred, she should not be sent to a prison that is not adapted to accommodate children. If no other suitable prison is available, the administrative authorities must take measures other than a transfer.

The Federal Ombudsman recommended to the penitentiary authorities to develop a global policy for children that are staying in prison with their parent, entailing minimum infrastructure standards and living conditions for the child in prison (Recommendation 11/09 to the administrative authorities). As a result, the prison authorities have designated prisons which are qualified to accommodate children.

Legal discussions on the validity of a Belgian civil status certificate may not prevent a child to join his or her parents

In 2011, a Belgo-Mauritanian couple appealed to the Federal Ombudsman because the diplomatic post refused to issue Belgian passports to their two children, aged two and four.

A child born of one Belgian parent obtains Belgian nationality automatically, unless the child is born outside Belgium to a Belgian parent who has also been born abroad. In such a case, the parent must make a declaration, requesting Belgian nationality for his or her child. This declaration can be made before the registrar of births, marriages and deaths of the Belgian municipality where the Belgian parent resides.

In the case of the couple, the embassy questioned the validity of the document attributing Belgian nationality, because the registrar of births, marriages and deaths had made a mistake.

The parents had in the meantime returned to Belgium to try and solve the situation and had entrusted their children to an acquaintance in Dakar.

The case remains unresolved. The consular staff required a new certificate of attribution of nationality. However, a new certificate cannot be drawn up as long as the old certificate was not cancelled by the district court. This judicial procedure may take months, or even years.

The parents cannot be held responsible for the error made by the registrar of births, marriages and births, because they at no time tried to deceive the Belgian authorities. The administrative authorities must take into consideration the best interest of their children and their right to a family life with their parents.

The Federal Ombudsman therefore recommended to the FPS Foreign Affairs (Recommendation OR 11/04 to the administrative authorities) to issue Belgian passports to the two children without delay.

Finally, the children received provisional travel documents to join their parents and they arrived in Belgium on 9 March 2012.

Fedasil is still depriving children in a state of need of the right to reception

The refrain is unfortunately known. Starting in 2009, the reception crisis is still raging three years later.

Fedasil does not receive minors in state of need residing illegally with their parents in Belgium, justifying its refusal by the saturation of the reception network.

Faced with this state of affairs, the federal ombudsmen were heard, at their request, by the Public Health Committee in October 2011.

In the best interest of the child, the Belgian State cannot turn back from its duty to provide protection pursuant to its international obligations.

IV. Recommendations



I. Introduction

Recommendations based on observations made during the examination of complaints about the way the federal authorities function constitute one of the missions entrusted explicitly to the federal ombudsmen by Article 1, 3°, of the Federal Ombudsman Act of March 22, 1995¹³ (hereinafter referred to as “the Act”).

There are two types of recommendations:

a) Recommendations to Parliament (GR)¹⁴: Article 15, section 1, of the Act, stipulates that the annual report on activities and any interim reports that the ombudsmen submit to the House of Representatives shall contain such recommendations as they deem useful and shall expose any operating difficulties that they should encounter in the exercise of their office.

b) Recommendations to the administrative authorities (OR)¹⁵: by virtue of Article 14, section 3 of the Act, the ombudsmen may, when processing complaints, make such recommendations as they deem useful to the administrative authority.

2. Recommendations to Parliament

Cross-thematic recommendation 2011

GR 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.

The Directorate General for Development of Personnel and Organisation of the FPS Personnel and Organisation has for years endeavoured to develop a global client orientation service for the federal administrative authorities. The internal management of complaints is expressly in line with this offer and has led to the establishment of internal complaint services by a certain number of federal administrative authorities on a voluntary basis. A federal complaint management network was then created, bringing together the complaint coordinators of the different internal complaint services, and promoting the implementation of an integrated complaint management process.

The Federal Ombudsman has supported this project from the outset,¹⁶ as it clearly addresses obvious needs.

When the legislator established the federal ombudsmen in 1995, he had also provided that before contacting the ombudsman, the complainant had to contact the administrative authority concerned to try and get satisfaction.¹⁷ This model, which has become well known in the meantime under the concept of front line and second line complaint processing, creates the best conditions possible for having complaints dealt with by the administrative authority itself. Such a solution moreover has clear added value. There is no better way to restore the citizen's confidence in the administrative authorities.

¹³ Pp. xx-xx.

¹⁴ Hitherto known as “General Recommendations”, whence the abbreviation “GR”.

¹⁵ Hitherto known as “Official Recommendations”, whence the abbreviation “OR”.

¹⁶ Cf. pp. XXX.

¹⁷ Act of March 22, 1995 establishing the federal ombudsmen, Article 9, paragraph 2, 2°.

For this prior approach requirement to make sense, the administrative authority must nonetheless be really open to the citizen's effort, and be able to manage it correctly.

Too many administrative authorities still do not pay sufficient attention to nor follow up adequately complaints lodged with them. A significant number of complaints lodged with the Federal Ombudsman could have been properly settled by the administrative authority itself, on condition that the latter subscribed to a service culture.

A customer-oriented service culture requires a single, structured and harmonised complaint management model for all the federal administrative authorities. It was therefore vital for the federal administrative authorities to get down to developing a front line integrated complaint management process.

This development is on the right track, but there is still some way to go. Not all the network's complaint services are at the same development stage of the process proposed by the FPS Personnel and Organisation yet. This basic process does not yet include definitive and uniform performance indicators for complaint processing. Different initiatives have been developed in some administrative authorities with a risk that citizens may get confused about what they may or may not expect. Finally, a certain number of administrative authorities have no internal complaint management at all.

The optional introduction of internal complaint management by the administrative authorities, the organisation of which depends solely on the voluntary commitment of its management, and can therefore be abandoned at any time, does not seem sufficient to achieve real integrated front line complaint management in the entire federal administrative authorities in the foreseeable future, whereas the second line (Federal Ombudsman) has existed for fifteen years.

Thematic recommendations 2011

GR 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.

Many Belgian citizens and foreign nationals lodged complaints with the Federal Ombudsman at the end of 2011 about the way the Department of Immigration and Naturalisation of FPS Home Affairs applied the new family reunification conditions to their application in progress.

The Act of July 8, 2011 amending the Act of December 15, 1980, entered into force on September 22, 2011.¹⁸

The new act introduces additional conditions for family reunification and does away with certain possibilities. From now on, a Belgian national must be able to provide proof of a certain level of income, and certain members of his family (his ascendants) are excluded from the right of reunification.

The new law contains no transitional provision.

What happens to requests in progress that had not been processed by September 22, 2011?

According to the information gathered, more than 3,000 case files are concerned. The Department of Immigration and Naturalisation applies the new act on all these files.

This practice engenders unequal treatment between citizens.

¹⁸ Act of December 15, 1980 on access to the territory, stay, establishment and repatriation of foreign nationals.

Under the current circumstances, the difference in treatment cannot be explained by an objective criterion, but by the time when the Department of Immigration and Naturalisation decides – before or after September 22, 2011, i.e. by chance.

In the absence of transitional provisions, the application of the new law by the administrative authorities is not compliant with the standards of good governance because it violates the criterion of legal security and legitimate expectations.

The citizen who submits an application for family reunion is entitled to have his file treated on the basis of the conditions and procedure in force at the time the application is filed.

Faced with this situation, the Federal Ombudsman submitted an interim report to the House of Representatives on December 15, 2011.¹⁹

GR II/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 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.

When someone insured under the social security system wishes to obtain career-break benefits in case of a career break (time credit, parental leave), he must apply to the National Employment Office using Form C61.

The regulation provides that the application must reach the unemployment office, duly and fully completed, at the latest within two months as of the day after the date on which the career break mentioned on the application commenced. When the application form, duly and fully completed, reaches the unemployment office outside this time limit, the entitlement to benefits is open as of the day it is received by the National Employment Office.²⁰

The Federal Ombudsman noted that the information that the National Employment Office provides on this matter is not compliant with the regulation. For instance, Form C61 stipulates that it must be sent by registered letter to the unemployment office within two months following the commencement of the career break. This means that someone insured under the social security system who follows the instructions scrupulously nonetheless risks filing his application for career-break benefits late. More specifically, when such a person sends Form C61 at the very end of the two-month period following the commencement of the career break, and thus complies strictly with the instructions mentioned on the application, his application may reach the unemployment office later than said two months. In accordance with the regulation, the application will in such a case have to be considered as being filed late and, as a result, the career-break benefits can be granted only as of the day that the form was received by the unemployment office.

The Federal Ombudsman has drawn the attention of the National Employment Office to this problem, and initially asked the latter to change the information printed on the application forms so as to bring them into line with the regulation. The National Employment Office decided to consider as submitted within the time limit all applications sent within two months as of the commencement of the career-break or parental leave, even if such applications arrived after the two-month period. All the requests shall be examined in accordance with the date on which they were sent, not the date on which they

¹⁹ The interim report is available on our website: www.federalombudsman.be.

²⁰ Article 22 of the Royal Decree of January 2, 1991 relating to the allocation of career-break benefits and Article 16 of the Royal Decree of 12 December 2001 implementing Chapter IV of the Act of 10 August 2011 on the reconciliation of employment and the quality of life concerning the time-credit system, career reduction and reduction of part-time work benefits.

were received by the unemployment office. This practice by the National Employment Office has attracted the interest of people who file an application for career-break benefits.

In proceeding thus, the National Employment Office does not comply with the regulation nonetheless. However, for obvious reasons of legal security, administrative practice and regulation must coincide.

If the National Employment Office maintains its administrative practice of taking into account the date on which the application was sent, Article 22 of the Royal Decree of January 2, 1991 concerning the granting of career-break benefits, and Article 16 of the Royal Decree of December 12, 2001 implementing Chapter IV of the Act of August 10, 2001 concerning the reconciliation of work and quality of life pertaining to the time credit system, career reduction, and reduction of part-time benefits must be adapted accordingly so that the entitlement to benefits is open as of the day indicated on the application for benefits, when the application forms, duly and fully completed, are sent to the unemployment office 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 the day on which they were sent.

| GR | Title | Object | Status | Comment | Petitions Committee |
|---------------------------------------|--|----------------|---------|---|---------------------|
| Cross-thematic recommendations | | | | | |
| 97/11 | Dispute between two administrative authorities as to which of the two must disburse expenses incontestably payable. | Cross-thematic | Pending | Recommendation that is still topical, pertaining to a more rapid processing of claims for compensation of expenses when several administrative authorities can be involved but are trying to pass the responsibility for paying to each other so that a settlement is delayed or remains outstanding. | |
| 06/01 | Require of every federal administrative authority to indicate the period within which it will take a decision, by inserting a new provision in the Act of April 11, 1994 on the transparency of governance. | Cross-thematic | Pending | The complaints received in 2011 confirm again the need of this measure. | 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 Modernization of Public Services provides that "the government shall set up a single federal information line". ²¹ | 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. ²² | 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 COMMetkern. | July 13, 2011 |
| 11/01 | Generalize the introduction of a structured and harmonized 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 | New | Cf. pp. XXX. | |

²¹ Parl. Doc., House of Representatives, 2011-2012, n° 1964/013, p. 4.

²² Parl. Doc., House of Representatives, 2011-2012, n° 1964/030, p. 8.

| GR | Title | Object | Status | Comment | Petitions Committee |
|---|---|------------------|---------|--|---------------------|
| Recommendations relative to the 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 | Pending | Recommendation presented to the Finance and Budget Committee on November 17, 2010. | 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. ²³ | 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. ²⁴ Recommendation presented to the Finance and Budget Committee on November 17, 2010. | November 24, 2008 |
| 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 Home Affairs | 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. ²⁵ (Cf. also OR 06/03 and 06/04 to the Department of Immigration and Naturalization) | |

²³ Parl. Doc., House of Representatives, 2010-2011, n° 1161/001.

²⁴ Parl. Doc., House of Representatives, 2010-2011, n° 0060/001.

²⁵ Parl. Doc., House of Representatives, 2011-2012, n° 1964/009, p.6.

| GR | Title | Object | Status | Comment | Petitions Committee |
|-------|--|---------------------------------|---------|---|---------------------|
| 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 Home Affairs 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 recognized or refused by an authority on the basis of the private international law code. ²⁶ 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. | April 29, 2009 |
| 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. ²⁷ | July 13, 2011 |

²⁶ Parl. Doc., House of Representatives, 2011-2012, n° 1964/009, p.7.

²⁷ United Nations Human Rights Council. Universal Periodic Review, Belgium, A/HRC/18/3.

IV. Recommendations

| GR | Title | Object | Status | Comment | Petitions Committee |
|-------|--|---|---------------|--|---------------------|
| 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 Home Affairs FPS Foreign Affairs | Pending | The governmental agreement provides that the voting procedure for federal legislative elections concerning Belgians abroad will be amended shortly, concurrently with the first section of the institutional reform. Objective connection criteria will be used to designate the municipality of registration and registrations in the electoral lists will be perpetuated, in particular to facilitate the right to vote in case of early elections. The Minister for Foreign Affairs is in charge of this reform, together with the Secretary of State for institutional reforms ²⁸ . | 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 Department of Consular Affairs has been instructed to prepare a bill to address this problem. A revision of the current circular is in progress to clarify the mission of diplomatic and consular posts on the matter while waiting for the adoption of a legal basis. | 13 July 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 Home Affairs | New | This recommendation was treated in a quarterly report sent to the House of Representatives on December 15, 2011. Cf. p. XXX. | |

28 Parl. Doc., House of Representatives, 2011-2012, n° 1964/010, p.14 and n° 1964/016, p.8.

| GR | Title | Object | Status | Comment | Petitions Committee |
|---|---|---------------------|---------------|---|---------------------|
| 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. | FPS Social Security | Pending | 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. These projects could not be pursued during the routine proceedings of motions. They will be resubmitted to the minister. | 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 | 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 was 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. | April 26, 2007 |

IV. Recommendations

| GR | Title | Object | Status | Comment | Petitions Committee |
|-------|---|---|---------|---|---------------------|
| 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 | Refused | A proposal for a resolution of December 1, 2010 is aimed at amending the regulations on unemployment to do away with this discrimination. ²⁹ 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 harmonize 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. | July 13, 2011 |
| 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 organizations 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 | On October 18, 2011, the administration submitted a proposal to the Minister for Social Affairs to bring the legislation of family allowances for salaried workers in line with the decision of the Constitutional Court. | July 13, 2011 |

²⁹ Parl. Doc., House of Representatives, 2010-2011, n° 0753/001.

| GR | Title | Object | Status | Comment | Petitions Committee |
|-------|---|--|---------|---|---------------------|
| 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 1st 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 ³⁰ , the Secretary of State declared that he seriously planned to take rapidly an initiative to adapt the regulation. | 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, Food Chain Safety and the Environment | Pending | The administrative authority prepared two bills to transpose Directive 2005/36/EC correctly: a bill to amend the Act of February 12, 2008 establishing a general framework for the recognition of professional qualifications in the EU, and a draft Royal Decree to amend certain provisions of Royal Decree no. 78 relating to the exercise of healthcare professions. These bills were submitted to the Minister for the Budget for an opinion in the beginning of 2012. Cf. pp. XXX. | July 13, 2011 |
| 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 | New | | |

30 Question n° 3801 of Mrs Valérie De Bue of April 27, 2011, "Revision of allowances for persons with disabilities," C.R.I., House of Representatives, 2010-2011, 53 COM 202, pp. 19 ff.

3. Recommendations made to the administrative authorities in 2011

Thematic recommendations

FPS Mobility and Transport

OR 11/01 – 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:

- 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 €160.

FPS Public Health – Medex

OR 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 Justice – Department of Penitentiaries

OR 11/06 – 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 hospitalization 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.

OR 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

OR 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 Social Security - Department of Persons with Disabilities

OR 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 Finance – General Department of Collection and Recovery

OR II/I0 – The Federal Ombudsman recommends to the General Department of Collection and Recovery of FPS Finance, to:

- 1) Comply strictly with the legal conditions applicable with the procedure for the recovery of the advanced 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.

Recommendations in an individual case file³¹

FPS Home Affairs - Department of Immigration and Naturalization

OR II/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 Foreign Affairs, Foreign Trade and Development Cooperation

OR II/04 – The Federal Ombudsman recommends to issue Belgian passports to the children Saïdou and Emmanuel immediately.

OR II/05 – The Federal Ombudsman recommends to issue Belgian passports to the children Mark and James immediately.

³¹ The forenames and surnames mentioned in the recommendations have been changed.

Follow-up of recommendations made to the administrative authorities 2006-2011

| OR | Title | Administrative authority concerned | Status | Comment |
|--|--|------------------------------------|--------|--|
| Recommendations relative to FPS Finance | | | | |
| 06/11 | To guarantee equal treatment for all taxpayers and remove all legal insecurity, the Federal Ombudsman recommends that the new administrative position concerning Article 169 of the Income Tax Code be upheld. When a taxpayer gets no advantage from outstanding debt insurance, he cannot be taxed on the fictitious income from the disbursed capital. | FPS Finance | 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 ³² , 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 generalized for all the regional departments. |

32 Question n° 110 of M. Xavier Baeselen of December 17, 2009, "Cadastral income – Application processing time," Q.A., House of Representatives, 2009-2010, n° 92, pp. 48 ff.

| OR | Title | Administrative authority concerned | Status | Comment |
|-------|--|------------------------------------|---------|---|
| 08/06 | The Federal Ombudsman recommends that petitions to reduce the advance levy on income derived from real estate be examined within the reasonable period provided in article 4 of the Charter of Good Governance, i.e. within 4 to 8 months, extended, where necessary, by the time taken by the interested party to provide the information requested by the services on the advance levy on income derived from real estate, which is needed to take a decision. | FPS Finance | Pending | 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. Finally, in 2011, a working group involving the regions was created in the FPS Finance to examine the measures necessary to deal with this litigation and to avoid its recurrence. |
| 08/07 | The Federal Ombudsman recommends to the FPS Finance to adopt a staggered plan to curb the backlog of complaints about the reduction of the advance levy on income derived from real estate in the Regional Offices of Direct Taxation where the situation is alarming. | FPS Finance | Pending | At the end of 2010, the administrative authorities had not yet drawn up a plan to make up 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. Finally, in 2011, a working group involving the regions was created in the FPS Finance to examine the measures necessary to deal with this litigation and to avoid its recurrence. |
| 09/06 | Adopt the following measures concerning tax reimbursements that do not follow the ordinary payment process (special cases): - Accelerate the processing of special cases through greater coordination between the different services involved; - Provide more detailed information to taxpayers at every stage of the liquidation procedure, in particular as regards the date of payment of a claim; - Designate a contact point to inform taxpayers about the progress of their case; - Conduct an audit of the reimbursement process as soon as possible. | FPS Finance | Pending | Since October 2010, the Revenue Service has some additional days to process tax reimbursements under the ordinary procedure. The Treasury will soon be equipped with an Interactive Voicemail Response (IVR) system, and will adapt its website as well. The STIMER project will focus on the "reimbursement module" as of 2012. |

IV. Recommendations

| 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. |
| 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 | Cf. pp. XXX. |
| Recommendations relative 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 Home Affairs 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 Home Affairs 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 regularization 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 Home Affairs - Department of Immigration and Naturalization | Pending | The number of proceedings initiated with the Humanitarian Regularization Service as at October 31, 2011 amounted to 29,758, including 451 applications based on the previous Article 9, section 3, of the Act of December 15, 1980; 18,557 applications based on Article 9bis; and 10,750 applications based on Article 9ter (medical grounds). In the nine first months of 2011, the Humanitarian Regularization Service took nearly 24,000 decisions. According to the general policy note of December 20, 2011 on asylum and migration reform, the administrative authority will make every effort to make a decision within six months. |
| 06/04 | Adopt a staggered plan to catch up with the backlog of the Bureau Article 9, paragraph 3 – Humanitarian considerations. | FPS Home Affairs Department of Immigration and Naturalization | Pending | In March 2006, the Humanitarian Regularization Service had 25,448 applications for authorization to stay that still had to be processed. In November 2008, the total number of case files to be processed had been brought down to 15,500. This figure has gone up constantly in 2009 and 2010 to reach 45,673 applications in May 2010. On October 1, 2010, 41,654 applications were still pending, brought down less than 30,000 at the end of October 2011. The number of case files to be has thus been reduced by more than 10,000 units in the last year. At the end of 2010, the Department of Immigration and Naturalization took on 25 additional staff, including 5 doctors. |

IV. Recommendations

| OR | Title | Administrative authority concerned | Status | Comment |
|-------|--|--|---------------|---|
| 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 Home Affairs Department of Immigration and Naturalization | Partially met | <p>Article 33 of the Royal Decree of October 8, 1981 on access to the territory, stay, establishment and deportation of foreign nationals was amended by a Royal Decree of April 27, 2007 to require foreign nationals to file earlier their application to renew or to extend their residence permit, i.e. between the 45th and the 30th day prior to the expiry of said permit. Since then, the Federal Ombudsman has noted no further structural delays in extending residence permits. Delays still encountered sporadically were usually due to punctual factors (holiday periods, forwarding errors by the municipality, encoding errors at the Department of Immigration and Naturalisation, etc.). The main persisting problem is that an error is often detected when the permit expires, when the person concerned gets worried about a decision not being forthcoming, and is not capable at that time to prove when s/he went to the municipality and with what documents.</p> <p>The Department of Immigration and Naturalization will continue the logistical effort to avoid delays or identification errors when processing applications to extend permits, but for reasons to do with costs, has excluded setting up an electronic exchange network with the municipal authorities in the short term in order to limit the risks of errors and to accelerate the processing of applications.</p> |

| OR | Title | Administrative authority concerned | Status | Comment |
|-------|--|--|---------------|---|
| 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 Home Affairs Department of Immigration and Naturalization | Partially met | <p>The Department of Immigration and Naturalisation no longer serves notice to foreign nationals to leave the territory when the latter have filed, before their application for asylum was rejected:</p> <ul style="list-style-type: none"> - 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). <p>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.</p> |
| 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 Home Affairs Department of Immigration and Naturalization | Partially met | <p>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.³³</p> <p>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.</p> |

33 Question n° 95 of Mrs Nathalie Muylle of October 9, 2009, "Allocation of social integration allowance to stateless persons," Q.A., House of Representatives, 2009-2010, n° 83, p. 282.

IV. Recommendations

| OR | Title | Administrative authority concerned | Status | Comment |
|-------|---|--|---------|--|
| 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 Home Affairs Institutions and Population | Met | An internal note of August 30, 2007 defines the cases in which an SPS Home Affairs decision on a dispute concerning the determination of the principal residence may have retroactive effect. When the dispute pertains to an automatic removal, the decision will have retroactive effect if an investigation shows that the person concerned had his or her main residence at the address where s/he claimed to reside. When the dispute concerns a refusal of registration, such registration may have retroactive effect as of the day of the actual occupation of the new dwelling, on condition that the person concerned is able to prove said date by means of sufficiently probative documents and data. |
| 06/09 | 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 Home Affairs 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. |
| 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 Home Affairs 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 Home Affairs 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 (A1 form). |

| OR | Title | Administrative authority concerned | Status | Comment |
|-------|---|--|---------------|---|
| 08/03 | Reduce legal insecurity by defining directives for the processing of applications for the regularization 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 Home Affairs 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. |
| 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 Home Affairs 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. ³⁴ |

34 These instructions also settle the case of the Ecuadorian nationals whose child had obtained Belgian nationality by application of Article 10, section 1, of the Belgian Nationality Code, and whose application for authorisation to stay was declared inadmissible (cf. Annual Report 2004, p. 42). The Minister for Migration Policy and Asylum confirmed to the Committee of the Interior in the Lower House on 6 May 2009 that the instructions of 29 March concerned the latter hypothesis as well. Question n° 12474 of Mrs Karine Lalieux of 6 May 2009, "Families composed of Brazilian parents and Belgian children," C.R.I., House of Representatives, 2008-2009, 52 COM 547.

IV. Recommendations

| OR | Title | Administrative authority concerned | Status | Comment |
|-------|---|--|---------------|--|
| 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 Home Affairs Institutions and 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 Mersplas be closed because it is not suitable for receiving detainees. | FPS Justice Penitentiaries | Partially met | The Directorate General for penitentiaries has given instructions to turn two cells on every floor of the detention section into toilets and showers as rapidly as possible. These sanitary facilities will be accessible during the day thanks to an adjustment in the rules of the detention section. The Department of Buildings is in charge of the performance of these works. |
| 09/08 | The Federal Ombudsman recommends that the inadmissibility decision taken on January 28, 2009 on the application of Mrs. X ¹ for authorization to stay on medical grounds on March 18, 2008 be overturned and that the merits of the case be examined. | FPS Home Affairs Department of Immigration and Naturalization | Met | Mrs. X was issued a temporary authorization to stay given the seriousness of her state of health. |
| 10/01 | 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; 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. | FPS Justice Penitentiaries | Partially met | A Royal Decree of April 8, 2011 repealed various provisions of the regulation, as a royal decree of the same day pertained to the enforcement of various provisions of the Principles Act of 12 January 2005 and set 1 September 2011 as the date of the entry into force. |

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

| OR | Title | Administrative authority concerned | Status | Comment |
|-------|--|--|---------|--|
| 10/06 | 1) Refrain from imposing any additional conditions during the application of Article 3, 3°, of the Royal Decree of October 25, 2005 ³⁵ 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; 2) Re-examine the individual cases of chaplains working full-time after having worked part-time. | FPS Justice | Pending | 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. |
| 11/02 | The Federal Ombudsman recommends to the Department of Immigration and Naturalization to withdraw its decision of 14 February 2011, which declared Mr. X's ³⁶ application for regularization inadmissible. | FPS Home Affairs Department of Immigration and Naturalization | Pending | This case file is under discussion with the Secretary of State for Asylum and Migration, Social Integration and the Eradication of Poverty. Cf. pp. XXX. |
| 11/04 | The Federal Ombudsman recommends issuing Belgian passports to the children Saïdou and Emmanuel immediately. ³⁷ | FPS Foreign Affairs | Met | The children were issued provisional travel documents to join their parents in Belgium. Cf. pp. XXX. |
| 11/05 | The Federal Ombudsman recommends issuing Belgian passports to the children Mark and James immediately. ³⁸ | FPS Foreign Affairs | Pending | Cf. pp. XXX. |
| 11/06 | 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 hospitalization 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. | FPS Justice - Penitentiaries | Met | The Department of Penitentiaries amended the instruction. Cf. pp. XXX. |

35 Royal decree establishing the framework of chaplains and Islamic counsellors belonging to one of the recognised religions as well as non-confessional moral philosophy counsellors of the Central Secular Council in penitentiaries and fixing their salary scales.

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

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

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

IV. Recommendations

| OR | Title | Administrative authority concerned | Status | Comment |
|---|--|--|---------------|---|
| I11/07 | 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 | Cf. pp. XXX. |
| I11/09 | 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. Cf. pp. XXX. |
| Recommendations relative to the 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 CO ₂ 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. |
| 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) Optimize 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. |

| OR | Title | Administrative authority concerned | Status | Comment |
|--|--|--|---------------|--|
| 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 | Pending | Cf. pp. XXX. |
| Recommendations relative to FPS Public Health, Food Chain Safety and the Environment | | | | |
| 10/03 | 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. | FPS Public Health | Partially met | 1. Compensation measures are henceforth proposed where deemed appropriate by the competent approval committee. 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. |
| 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 be henceforth be maintained until the date fixed for the next medical examination. Cf. pp. XXX. |
| Recommendation relative to FPS Mobility and Transport | | | | |
| 11/01 | 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: - 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 €160. | FPS Mobility and Transport | Met | The identification and reimbursement of the persons concerned is under way. Cf. pp. XXX. |

IV. Recommendations

| OR | Title | Administrative authority concerned | Status | Comment |
|--|---|------------------------------------|---------|--|
| Recommendations relative to other federal administrative authorities | | | | |
| 07/03 | 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. 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. | 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 | The Federal Ombudsman recommends that Fedasil put an end immediately to the refusal to receive needy minors residing on the territory illegally with their family. | Fedasil | Pending | <p>On September 24, 2009, the Federal Ombudsman had submitted an interim report on this subject with the House of Representatives.</p> <p>Fedasil continued in 2011 to refuse systematically to receive minors in a state of need who are residing illegally with their family in Belgium. In 11 individual case files, the Agency nonetheless followed up on the Federal Ombudsman's recommendation in 2011 and 7 families were thus given a place in a reception centre.</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.³⁹</p> |

39 Parl. Doc., House of Representatives, 2011-2012, n° 1884/I.

| 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 | The general policy note of December 20, 2011 concerning the asylum and migration reform reiterates that families with minor children without legal residence permit are entitled, pursuant to the Royal Decree of June 24, 2004, to reception in the collective accommodation structures of Fedasil. Advice and guidance is provided to families by Fedasil in cooperation with the Department of Immigration and Naturalization. The note moreover provides a series of measures to get out of the reception crisis, including a reduction of the duration of stay in a reception network, a provisional increase of the reception capacity, with a material distribution (voluntary in principle, compulsory if the capacity is not sufficient) and support and guidance for repatriation. ⁴⁰ |
| 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 | In 2011, 4,314 people have not been given accommodation. The general policy note of December 20, 2011 concerning the asylum and migration reform fixes quality support and reception for all beneficiaries. ⁴¹ |
| 10/02 | The Federal Ombudsman recommends that the Royal Decree of October 8, 1981 concerning access to the territory, stay, establishment and removal 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. |

40 Parl. Doc., House of Representatives, 2011-2012, n° 1964/008.

41 Parl. Doc., House of Representatives, 2011-2012, n° 1964/008, p.5.

IV. Recommendations

| OR | Title | Administrative authority concerned | Status | Comment |
|-------|--|------------------------------------|--------|---|
| 10/04 | <p>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 to ensure that all information relating to the selection published on the Selor website is compliant with the notice published in the Belgian Official Gazette;</p> <p>2) Refrain from amending subsequently the duration or the scope of such a reserve pool;</p> <p>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.</p> | Selor | Met | <p>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.</p> <p>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.</p> |

Appendix



The Federal Ombudsmen Act, Kingdom of Belgium, March 22, 1995⁴²

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".

⁴² 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.