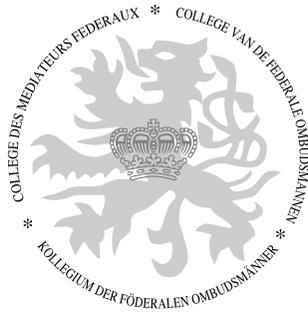


KINGDOM OF BELGIUM



ANNUAL REPORT

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INTRODUCTION

The first paragraph of Article 15 of the Federal Ombudsmen Act of 22 March 1995 stipulates that “Ombudsmen shall, by March 31st at the latest, submit a report on their activities to the House of Representatives.” This report covers the calendar year 2004, i.e. from 1 January to 31 December. It is the eighth such annual report of the Office of the Federal Ombudsmen, taking into account the fact that 1999 was covered by two reports: the first dealing with the period up to 31 July 1999 and the second covering the period from 1 August to 31 December 1999. It is only since 2000 that the annual report covers a calendar year.

The first part, “**I. General Considerations,**” broaches different aspects of the activity of the Office of the Federal Ombudsmen during the year under review, to wit the amendment of the Federal Ombudsmen Act,¹ the follow-up on recommendations of the Office, contacts with the Ombudsmen and finally the management of the Office.

The second part, “**II. Statistical Analyses,**” provides a general summary of the cases dealt in 2004 by the Office of the Federal Ombudsmen, mentioning general characteristics such as the number of cases, the different processing phases as at 31 December 2004, the way complaints are lodged, language, admissibility, evaluation of closed cases, and the success rate of the Office (the highest since it was created, incidentally).

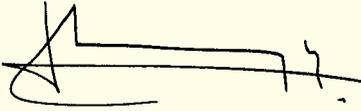
The third part, “**III. Recommendations,**” is devoted to the general and official recommendations (abbreviated as GR and OR respectively) of the Office, wherein we analyse the degree to which recommendations made in previous years were followed in 2004 or went unheeded. For reasons cited below, in part I,² the Office has presented no general recommendations in 2004.

The last part, “**IV. Appendix**” contains the amended Act of 22 March 1995 establishing federal ombudsmen, pertaining in particular to the ombudsman’s remit.

¹ Act of 11 February 2004 amending the Act of 22 March 1995 establishing the Federal Ombudsmen, *Moniteur Belge/Belgisch Staatsblad* [Official Gazette], 29 March 2004, OFO, Annual Report 2004, pp. 43 ff.

² OFO, Annual Report 2004, pp. 7-8.

In addition to the support from our staff members, we should like to thank other parliamentary ombudsmen and mediation services for their cooperation, as well as for the unrelenting and ever greater support of the authorities in general and the many civil servants in particular, who have had to seek solutions in what are at times difficult cases. This attests to their willingness to accept the intervention of an external supervisory body, thereby helping to bring citizens closer to the governmental authorities and to improve administrative services.

A handwritten signature in black ink, consisting of a large, stylized initial 'H' followed by a long horizontal line and a small flourish at the end.

Dr H. Wuyts

A handwritten signature in black ink, featuring a large, stylized initial 'M' followed by a horizontal line and a small flourish at the end.

P.-Y. Monette

I. General Considerations



I. GENERAL CONSIDERATIONS

1. The Office of the Federal Ombudsmen in 2004

The Federal Ombudsmen Act of 22 March 1995 turned 10 on 22 March 2005. We should like to thank our staff members for their professionalism and perseverance, especially during this particularly difficult period at the end of 2004, as well as during the two years that followed the legal expiry of our remit and its various extensions since December 2002.

It is now time to consider the future by building on what has been achieved through the years and drawing lessons as to what has to be improved or changed, in cooperation with the House of Representatives, so as to continue to bring the Civil Service closer to citizens, improve administrative services and good governance, and improve fundamental rights and freedoms.

In the beginning of 2004, the Act of 22 March 1995 was amended for a second time, revising the procedure for the renewal and replacement of the Federal ombudsmen. The amended provisions are presented in the Appendix.³

2. General recommendations⁴

In its seven annual reports from 1997 to 2003, the Office of the Federal Ombudsmen addressed, pursuant to its statutory mission, 56 general recommendations (RGs) to Parliament: 4 in 2003, 5 in 2002, 3 in 2001, 5 in 2000, 17 in 1999, 2 in 1998 and 20 in 1997.

Some of these recommendations were geared to legislative amendments, others to administrative dysfunction; some pertaining to a specific category of citizens, others to all citizens. However, only one of these recommendations made to the House of Representatives by its collateral body has been dealt with by the House. The government (the King), the other branch of the Legislative Power, has broached a number of these general recommendations, turning

³ OFO, Annual Report 2004, pp. 43 ff.

⁴ OFO, Annual Report 2004, pp. 31 ff.

them into bills which were subsequently enacted by Parliament. Many recommendations, however, though at times included in a bill, are still before the competent committee in the House of Representatives.

On the urging of the Petitions Committee and its successive chairmen, the House of Representatives has made structural changes in the way it works with the Office of the Federal Ombudsmen. The various standing committees (Finance & Budget, Home Affairs, Social Affairs, Justice, etc.) have to be more involved in how to follow up the general recommendations of the Office of the Federal Ombudsmen. To this end, the House of Representatives has changed its rules of procedure, and has appointed an M.P. as "*ombudspromoter*" in each committee, to ensure that the general recommendations of the Office and the petitions of citizens are duly followed up. Furthermore, they are to liaise with their standing committee and the Petitions Committee. We cannot but note, however, that these good intentions have scarcely been put to practice, and that most of the general recommendations of the Office of the Federal Ombudsmen are still waiting to be broached by the House of Representatives.

We consequently do not deem it desirable to table new general recommendations, even if our work has shown yet again this year that there is no shortage of topics. The idea is to give Parliament an opportunity to catch up on the numerous general recommendations, some of which have been pending for years. The Office of the Federal Ombudsmen stands ready to provide all assistance to that end.

3. Contacts of the Office of the Federal Ombudsmen

In 2004, the federal ombudsmen not only bolstered the cooperation with the Civil Service and their Belgian colleagues (such as the ombudsmen of the Communities and the Regions, of municipalities, for pension-related matters, within hospitals, the public and the private sectors), but they also played host to several foreign colleagues and delegations, more specifically from Germany, Burundi, China, France and Luxembourg.

This year once again, the Office of the Federal Ombudsmen continued its policy of welcoming staff members of ombudsmen from the southern hemisphere for practical training sessions of eight days at a time (and at its expense), more specifically from Congo-

Kinshasa, Haiti, Puerto Rico and Venezuela. Furthermore, as every year, the Office of the Federal Ombudsmen welcomed once again trainees from Belgian and European universities and (higher) institutes.

In Belgium, the federal ombudsmen took part in the discussion, training, and implementation of a number of mediation services: The *“Patient’s Rights”* Federal Committee (the Office of Ombudsman for the Federal Department of Public Health, Food Chain Safety and the Environment), the Directorate General for Supervision and Mediation of the Federal Department of Economy, SMEs, Self-employed and Energy, the future ombudsman of the Brussels-Capital Region, the future ombudsman for the Public Social Welfare Centres, the Office of Ombudsman of SIBELGA, etc. They have also taken part in two colloquia, one on mediation (*“Political Power and institutional mediation”*) on 18 November 2004 at Louvain-la-Neuve and the other on *“The effects of the ombudsman’s work: results in tax matters,”* on 14 December 2004 at the Parliament. The Office of the Federal Ombudsmen moreover promoted institutional mediation at conferences and in university courses. Ombudsmen and their staff members have even carried out comparable missions and training courses abroad, at times in cooperation with international organisation.

4. Management of the Office

With respect to human resources management (HRM), and more specifically skills management, the Office of the Federal Ombudsmen continues to devote financial means and resources in particular in order to deepen and update the knowledge and skills of its staff members who have to deal with constantly changing issues such as tax law, legislation relating to aliens, social and economic law, personnel management and finance, information technology management, etc.

Furthermore, in 2004 the Office of the Federal Ombudsmen endeavoured to making the personnel evaluation system operational, focusing in particular on experience obtained from evaluating the statutory training system. This entailed updating and detailing the job descriptions of nearly all positions -both operational and logistical- and defining and specifying, on a position-by-position basis, the evaluation criteria and behaviour indicators. This overall evaluation system was drawn up in close consultation with the parties concerned. The individual evaluation phase is now under way.

In July 2004, a fourth section was set up in the Office of the Federal Ombudsmen to provide operational support to the institution. It is to optimise the flow of information within the Office, distribute the admissible cases and requests for information among the different sections according to subject matter, and deal with inadmissible cases as well as with cases to forward to other competent authorities. During the current start-up period, the relevant tasks have been entrusted to a University graduate staff member, assisted by administrative staff from other units.

To bolster the efficacy and efficiency of the three other sections of the Office of the Federal Ombudsmen (authority departments, economic and social departments, finance), and to stimulate the motivation of level B staff, the position of administrative assistant was partially upgraded on 1 July 2004 for four staff members who had attended successfully an internal training course and had taken part in external training sessions. This upgrading was granted only after a process of evaluation, over several months, of the skills and aptitudes to handle cases in very specific areas.

4.1. Staff management

The table below shows the staff of the Office of the Federal Ombudsmen as at 1 January 2005.

Grade	Language		Sex		Status		Total staff	Total staff framework
	Dutch-speaking	French-speaking	M	F	Statutory	On contract		
A(a)	13	12	12	13	19	6	25(b)	24
B(c)	6	6	3	9	10	2	12	12
C	2	2	3	1	0	4	4	2+2 (d)
D	1	1	0	2	0	2	2	2 (e)
Total	22	21	18	25	29	14	43	38 + 4

- (a) including 2 special advisers with a temporary remit (the administrator and the director)
 (b) while waiting for a decision of the Council of State
 (c) one staff member on contract replaces another staff member on contract on complete career interruption
 (d) including 2 telephone operators-receptionists-typists, grade C, Article 4 of the staff framework (urgently required on a temporary basis)
 (e) cleaning staff, similar to grade D, Article 4 of the staff framework.

There was an increase of two units in the staff compared with the situation as at 1 January 2004. The number of staff members on contracts rose from 13 to 14. For the sake of good administrative practise, the Office opted not to proceed to external recruitment

and appointments for the time being. In fact, the procedure for the renewal of the term of office or replacement of the Federal Ombudsmen is not yet terminated.

Apart from the four staff members on contract (two cleaners and two drivers-ushers), whose posts may, according to the staff framework, be filled by people on contracts because of the specific nature of the posts, IT management is still the responsibility of a staff member on contract who is a university graduate. The plan to establish a specific permanent post as senior/junior official (*attaché / auditeur*) responsible for IT services is being examined by Parliament. The Office in fact referred this matter to the House at the end of 2002 and is expecting that a decision can finally be taken in 2005.

Furthermore, pursuant to Article 4 of the staff framework, the Office temporarily recruited two full-time staff members on contracts at grade C to meet an urgent and temporary need in terms of operating personnel (from July 2003 to June 2004). Given the positive evaluation of this plan to which funds will be allocated in 2005, the Office will address a structural proposal in this respect to the House of Representatives during the financial year.

Moreover, the fourth post of senior official-coordinator has not yet been filled, as an internal procedure is under way.

As regards the maintenance of buildings, 2 full-time units (cleaners) have been replaced by one full-time and 2 part-time units, in an effort to organise optimally the building opening and closing assignments.

4.2. Financial and budget management

The accounting, based on business accounting practices as mentioned in the previous Annual Reports, is managed internally almost entirely. The budgets and accounts of the Office of the Federal Ombudsmen are subjected to subsequent audit by the Court of Audit of Belgium.

The adjusted 2004 budget provides for allocations⁵ totalling €3,410,270.00, whereas the 2005 budget has been set at €3,501,70.00. This increase (+2.67%) is mainly due to normal career development as well as to the fact that salaries and other expenses (rent and

⁵ The amounts of allocations (expenditures) are different from those of the appropriation, as entered in the General Estimates, owing to the use of the balance from previous years. See following note.

maintenance contracts) are index-linked. The rise in salary charges is in strict line with the (indexed) multi-annual estimate that the Office submitted to the House of Representatives in 1998. A new multi-annual estimate of the salary charges for the period 2005-2010 has been submitted to the House of Representatives.

The 2003 accounts show a positive balance of €270,155.77 (budget of €3,247,699.00 - € 3,034,115.14 expenditure + €36,571.91 net financial result).⁶

4.3. IT and equipment management

The 2004 programme entailed radical changes in the IT infrastructure.

First, the internet environment was modernised. Certain components that no longer met the needs of users were replaced.

Another important adjustment was the improvement of the internal network. In addition to software changes, the physical connections had to be adapted to enable access to the different federal sites available until recently on the Fedenet network (now terminated).

Finally, the file management application has been adapted in support of an internal restructuring operation (creation of a new "operation" section).⁷

The IT training programme, commenced to a large degree in 2003, was continued in 2004, making it possible to manage the aforementioned adjustments internally with minimal external assistance.

⁶ Report by Mr Pierre Lanno on behalf of the Accounts Commission, 15 December 2004, *Parl. Doc.*, House of Representatives, Ordinary session 2004-2005, no. 1476/001, pp. 25 ff.

⁷ OFO, Annual Report, 2004, p. 10.

II. STATISTICAL ANALYSES



II. STATISTICAL ANALYSES

1. Introduction

Here the reader will find a series of general statistical data which give an overall picture of the number of complaints, the language, the means of communication used, the geographic breakdown, the breakdown by Civil Service department and per sector (finance, social or economic sector, a.o.), the handling phase, the cases passed on to others and the final evaluation of each case handled.

The figures given in the various tables always refer to the situation at 31 December 2004. Following on from the 2003 Annual Report (1 January 2003 - 31 December 2003), the period covered by this 2004 Annual Report is twelve months (1 January 2004 - 31 December 2004). Moreover, the trend in the general figures for 2002, 2003 and 2004 is compared whenever the elements are available or comparable. As the figures taken into account in this respect are set on 31 December, a few files opened before 1 January 2004 might be listed more than once, to wit in the data related to the years 2002, 2003 and 2004. Nonetheless, these figures are relevant as they reflect the real workload of the Office.

It is useful to bear in mind the following explanations when analysing the various Federal Civil Service departments⁸.

- A case being handled may concern either a complaint or a mediation request.
- With the exception of semi-public bodies operating in the social field and of the semi-public bodies and the public corporations which are not attached to a specific Federal Public Service (FPS) from an organisational point of view, we will analyse semi-public bodies together with their supervisory FPS, although we are quite aware that these institutions do not form part of the department properly speaking.
- Pursuant to Article 14 of the Coordinated Laws on the Council of State, a Minister or a Secretary of State is also a Federal administrative authority. The Office of the Federal Ombudsmen is therefore also competent to evaluate her or his (purely administrative) action in the course of handling a complaint or a mediation request.

⁸ See OFO, *Annual report 2003*, p. 3.

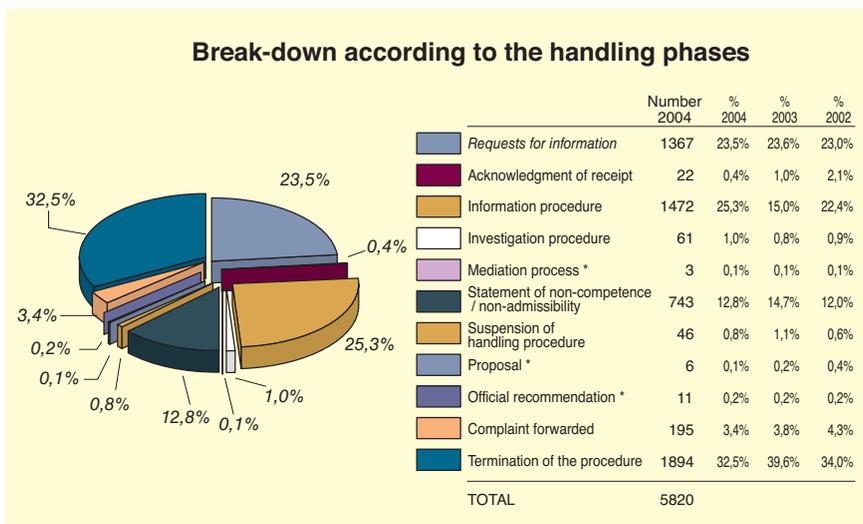
2. Some figures

A total of 5 820 cases was handled in 2004. Of these, two cases have been initiated in 1998, three in 1999, eleven in 2000, 31 in 2001, 191 in 2002, 804 in 2003 and 4 778 in 2004; the latter figure includes 1 367 requests for information (1 357 in 2003 and 1 343 in 2002). The period of time referred to is the respective calendar year. Compared to the 4 097 and 4 277 new cases filed with the Office of the Federal Ombudsmen in 2003 and 2002 respectively, the number of new files opened in 2004 (4 778) shows that the Office is better known. It also reflects the increase in workload of the Office.

From few years back, the Office of the Federal Ombudsmen adopted the rule of closing an individual case at the latest after two years, with some exceptions. It then monitors the matter, where necessary, at a more general level on the basis of a "Master file". The Office therefore regularly closes all cases of over two years that are still open. The vast majority of cases are, however, closed after a few months. Most of the above-mentioned files opened in the period 1998-2002 and still dealt with at the beginning of 2004 have therefore been closed in the meantime. Amongst the 238 cases filed with the Office in the period 1998-2002 and mentioned in the tables below, only 55 are thus still open. Such long time of handling was caused by the complexity of the matter dealt with concerning various departments, possibly depending on different levels of competence, or by the slowness of the people concerned (the claimant or the authority) in responding to the Office.

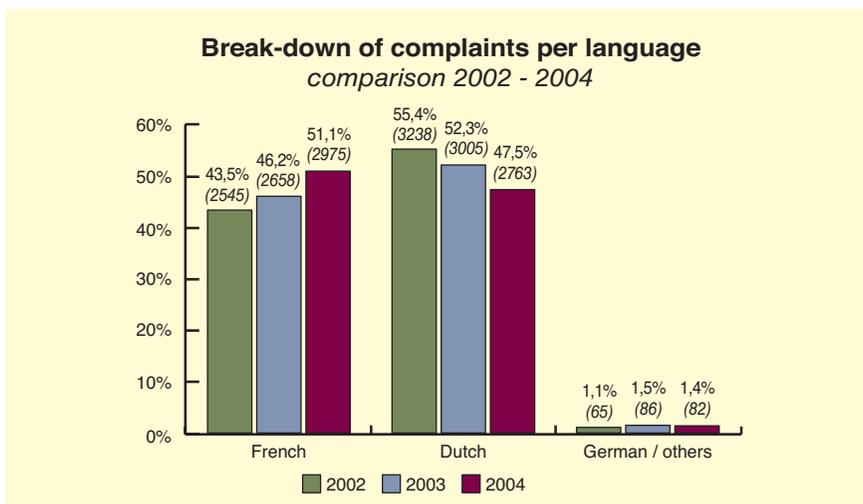
The cases are broken down in accordance with the ten phases of handling listed under Article 12 of the Rules of Procedure of the Office of the Federal Ombudsmen⁹: acknowledgement of receipt, information procedure, investigation, mediation process, statement of non-competence / non-admissibility, suspension of handling procedure, proposal, official recommendation, complaint forwarded and termination of the procedure.

⁹ See *Moniteur belge/Belgisch Staatsblad* [Official Gazette], 27 January 1999, pp. 2339-2345, see also OFO, *Annual Report 1997*, pp. 43-45.



(*) There were 8 mediation processes, 23 proposals and 13 official recommendations in 2004. The figures shown in the graph reflect the situation at 31 December 2004, since the phases of a case are by definition progressive.

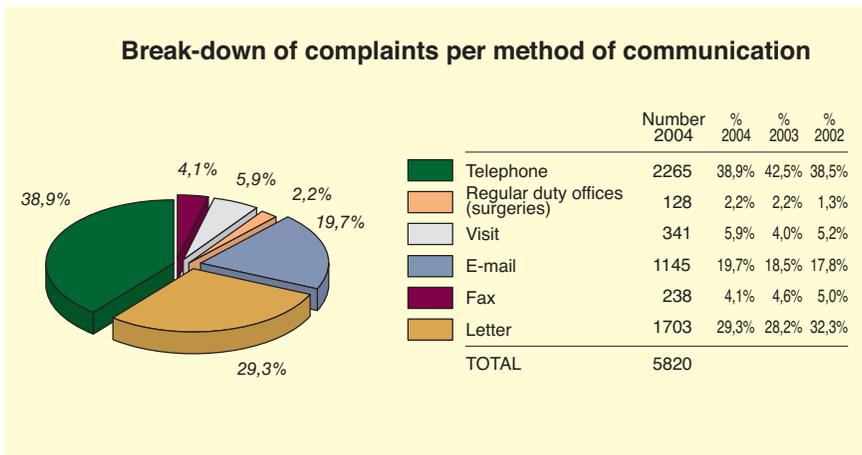
The complaints handled in 2004 are also broken down according to the language in which they were filed: French: 2 975, Dutch: 2 763, others (including German): 82. The following graph shows the evolution in the number of cases lodged for the period 2002 to 2004 according to such breakdown.



If we break down, still according to the language criterion, the 4 778 new files opened in 2004, we get the following figures: French: 2 413 or 50.5 %, Dutch: 2 308 or 48.3 %, others (including German): 57 or 1.2 %. When classified according to whether they are new complaints, requests for mediation or requests for information, we obtain the following results:

- new complaints or requests for mediation (3 411): French: 1 765 or 51.7 %, Dutch: 1 607 or 47.1 %, others (including German): 39 or 1.1 %;
- new requests for information (1 367): Dutch: 701 or 51.3 %, French: 648 or 47.4 %, others (including German): 18 or 1.3 %.

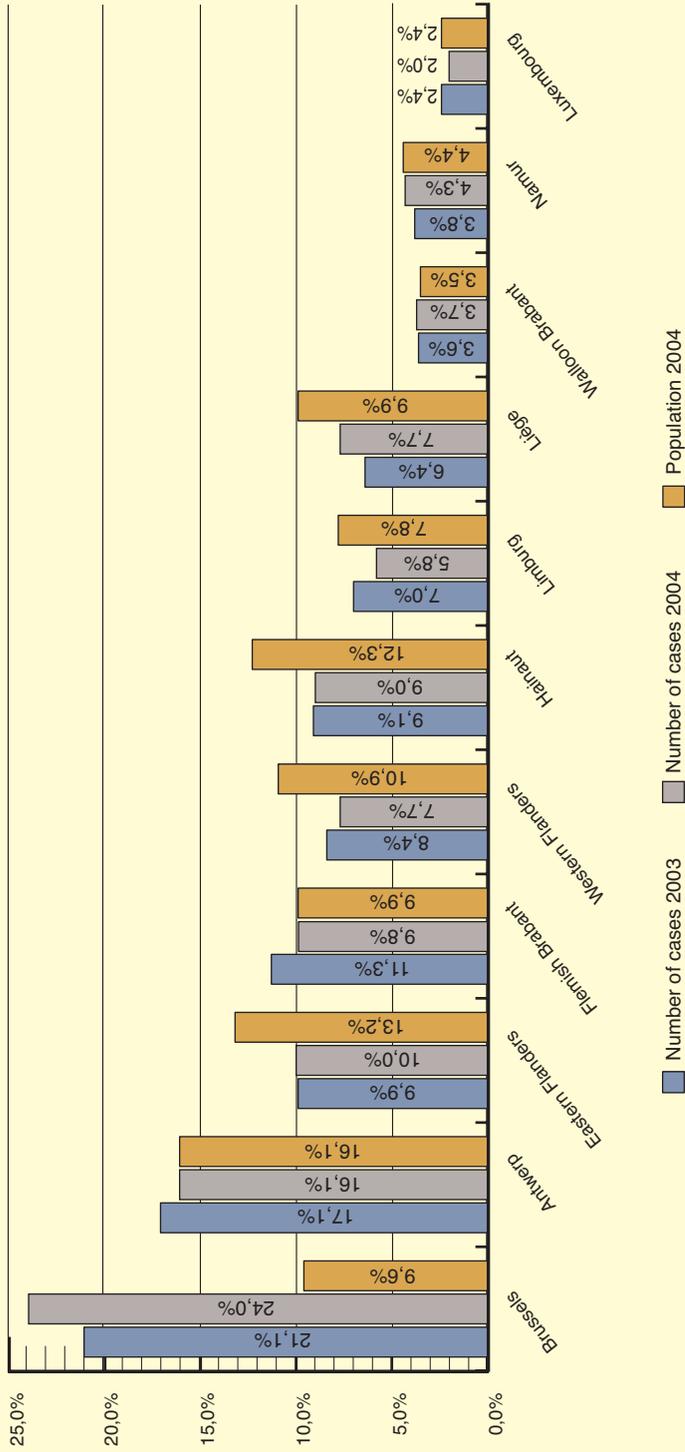
The graph below breaks down cases according to the method of communication used to file the above referred complaints and requests with the Office of the Federal Ombudsmen in 2004. These figures are also compared to those of 2002 and 2003. In descending order, we recorded new 2 265 cases opened pursuant to telephone conversation, 1 703 opened following receipt of a letter sent by post, 1 145 opened following receipt of an e-mail, 341 opened following a visit to the Office, 238 opened as a result of a fax and, lastly, 128 respectively opened following a visit to the regular duty offices (surgeries) in several provinces.



The following graph provides an overview¹⁰ of the geographic breakdown between the ten provinces and Brussels as regards the number of cases (5 177 files).

¹⁰ 2004, FPS Economy, SME and self-employed & Energy.

**Comparison between the number of cases and the population
per provinces + Brussels
comparison 2003 - 2004**



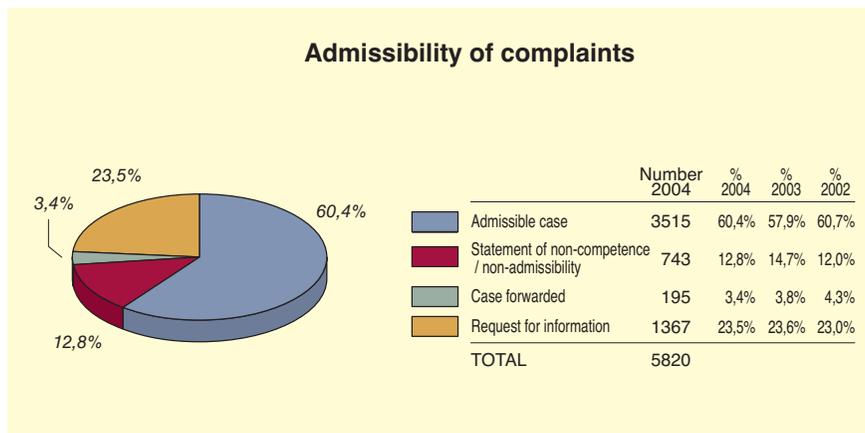
Of course these figures take account only of cases for which the residence of the complainant is known (this is not always true in the case of e-mails, requests for information or, obviously, anonymous complaints) and provided that the party concerned has mentioned a place of residence in Belgium. In fact 177 cases were filed further to the request of people resident abroad.

Some of these complaints (a total of 743) were in fact inadmissible. Others (195) were forwarded to Community or Regional parliamentary ombudsmen, to local ombudsmen, to mediation bodies within the Civil Service or mediators to public corporations or even to the administrative authority which had taken the disputed decision (in the absence of any competent parliamentary or administrative ombudsmen). Lastly, numerous requests for information amongst the 1 367 received were forwarded to the administrations concerned or to the information officer of the latter. With the exception of these files, the Office of the Federal Ombudsmen thus actually dealt with 3 515 complaints.

The cases that are not admissible or forwarded represent a significant part of the workload of the Office of the Federal Ombudsmen. In fact, in a number of cases, the decision to declare a case inadmissible or to pass it on to another body cannot be taken until the elements have been examined in depth. The same applies to written requests for information.

The central reception desk of the Office also received as many requests for information by telephone as in 2003 (approximately 1 750). Although the individual handling of each one of these requests does not require much time and they are not therefore included in the graph, contrary to the 1 367 written requests for information which require much more work because of the content, they nevertheless represent together the workload of a full time staff member.

The graph below gives an overview of the number of admissible cases in 2004, as compared to those for 2002 and 2003.

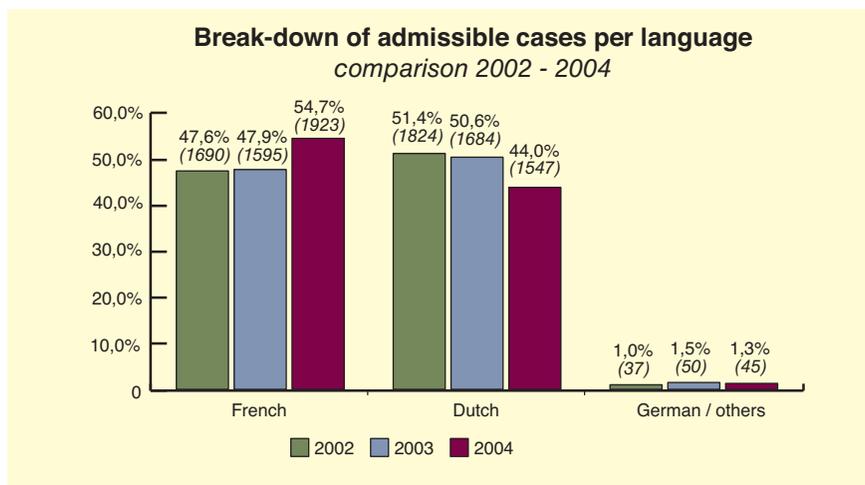


We have observed the following trend in the past three years, not taking into account requests for information:

- 2002 (for 4 505 cases): 3 551 admissible cases (78.8 %), 701 inadmissible cases (15.6 %) and 253 cases forwarded (5.6 %);
- 2003 (for 4 392 cases): 3 329 admissible cases (75.8%), 846 inadmissible cases (19.2 %) and 217 cases forwarded (5.0 %);
- 2004 (for 4 453 cases): 3 515 admissible cases (78.9 %), 743 inadmissible cases (16.7 %) and 195 cases forwarded (4.4 %).

The complaints actually handled (*i.e.* the 3 515 admissible files) are broken down according to the language in which they were made: French: 1 923 (54.7 %), Dutch: 1 547 (44.0 %), others (including German): 45 (1.3 %).

The following graph shows the trend in admissible cases over the last three years.



In 2004, the 2 517 new admissible cases which the Office recorded can be broken down according to language as follows: French: 1 376 or 54.7 %, Dutch: 1 119 or 44.5 %, others (including German): 22 or 0.9 %. In 2003, the 1 803 new admissible cases were broken down as follows: Dutch: 901 or 50.0 %, French: 876 or 48.6 %, others (including German): 26 or 1.4 %. 2 060 new admissible cases were recorded in 2002, amongst which: Dutch: 1 122 or 54.5 %, French: 915 or 44.4 %, others (including German): 23 or 1.1 %.

As highlighted in the graph below, the Office of the Federal Ombudsmen forwarded files to the following Community or Regional parliamentary ombudsmen, mediation bodies within the Civil Service and institutions:

Recipients of the forwarded complaints and requests for information	Number	%
House of Representatives	1	0,1%
Supervisory Standing Committee for the Federal Police ("P" Committee)	2	0,2%
Ombudsman of the Walloon Region	6	0,5%
Ombudsman of the French-speaking Community	8	0,7%
Ombudsman of the Flemish Community / Region	37	3,2%
Supreme Council of Justice	13	1,1%
Mediation body for pension-related complaints	29	2,5%
Mediation bodies attached to independent public corporations	19	1,7%
Other bodies for mediation and claims within the public sector	22	1,9%
Federal Civil Service	875	76,6%
Authorities of Communities and Regions	31	2,7%
Local authorities	25	2,2%
Private organisations entrusted with a public service mission	65	5,7%
Mediation services in the private sector (banks, insurance companies, etc.)	9	0,8%
	1142	100,0%

The admissible cases that were definitively closed were assessed and classified in the following evaluation categories¹¹:

The "proper administration" assessment is applied when the Civil Service operated perfectly well or when its error was redressed before the Office intervened.

"Proper administration following intervention" means that an error was committed by the Civil Service, but was rectified after the Office intervened.

The assessment "Improper administration" is given when an error committed by the Civil Service has not been rectified despite the Office's intervention.

¹¹ see OFO, *Annual Report 2000*, pp. 16-17.

“Application of equity”: concerns all the quite exceptional cases in which a decision by the Civil Service runs counter to the natural feeling of human justice, although it may fully respect legality and the principles of proper administration, thereby inducing the Office of the Federal Ombudsmen to invoke equity in order to ask the Civil Service to modify the decision in question.

“Consensus” indicates that a problem has been solved either by effective mediation or by the clearing up of a misunderstanding, without there being any real question of proper or improper administration.

“Responsibility shared” is used when the responsibility for the malpractice is shared between the complainant and the administration.

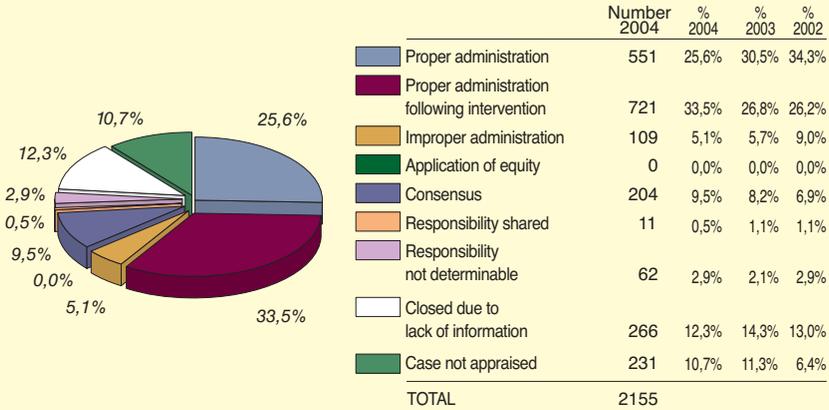
The assessment “responsibility not determinable” is given when it is impossible to establish precisely the responsibility of the complainant or of the Civil Service.

A case is said to be “closed due to lack of information” when the complainant does not forward to the Office the information essential for handling it.

Lastly, the expression “case not appraised” is applied to a case when the problem was solved before the intervention of the Office but after the intervention of a third party, or after the intervention of the Office when it is not clear whether the latter did or not contribute decisively to solving the problem. It may also happen that an individual case was solved without the intervention of the Office, but that the structural problem or regulatory provision causing the dispute have not yet been solved or modified.

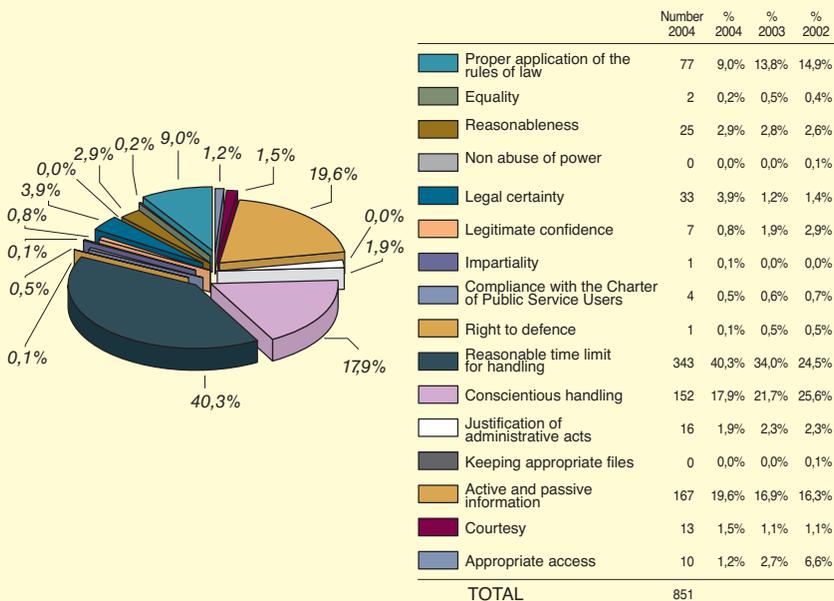
The following graph gives an overview of the 1 894 files closed in 2004, which were evaluated as follows: 551 “proper administration”, 721 “proper administration following intervention”, 109 “improper administration”, 204 “consensus”, 11 “responsibility shared”, 62 “responsibility not determinable”, 266 “closed due to lack of information”, and 231 “cases not appraised”. The existing difference between the number of evaluations (2 155) and closed files (1 894) lies in the fact that one complaint might concern several authorities, each of them being evaluated at the time the file is closed. Said graph also compares these figures with those for 2002 and 2003.

Evaluation of terminated cases

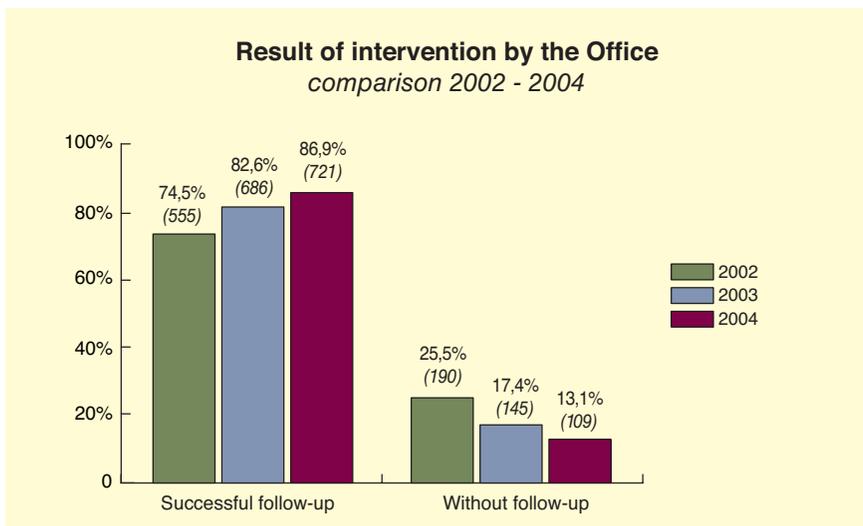


The graph below shows the evaluation criteria as applied in the 830 cases closed in 2004 that were designated “improper administration” or “proper administration following intervention”. It also provides a comparison with the data relating to 2002 and 2003 (with no double counting). Since more than one criterion may have been infringed by the administration in relation to a sole case, several criteria may be used to evaluate the same file. Therefore, the total amount of violations of these criteria (851) is higher than the number of files (830).

Application of evaluation criteria



The following graph highlights the results of the intervention by the Office of the Federal Ombudsmen for the period 2002 to 2004 in the cases where the Office denounced a dysfunction by the Civil Service. Intervention should be understood as all the information and investigation procedures, mediation processes, proposals and official recommendations by the Office.

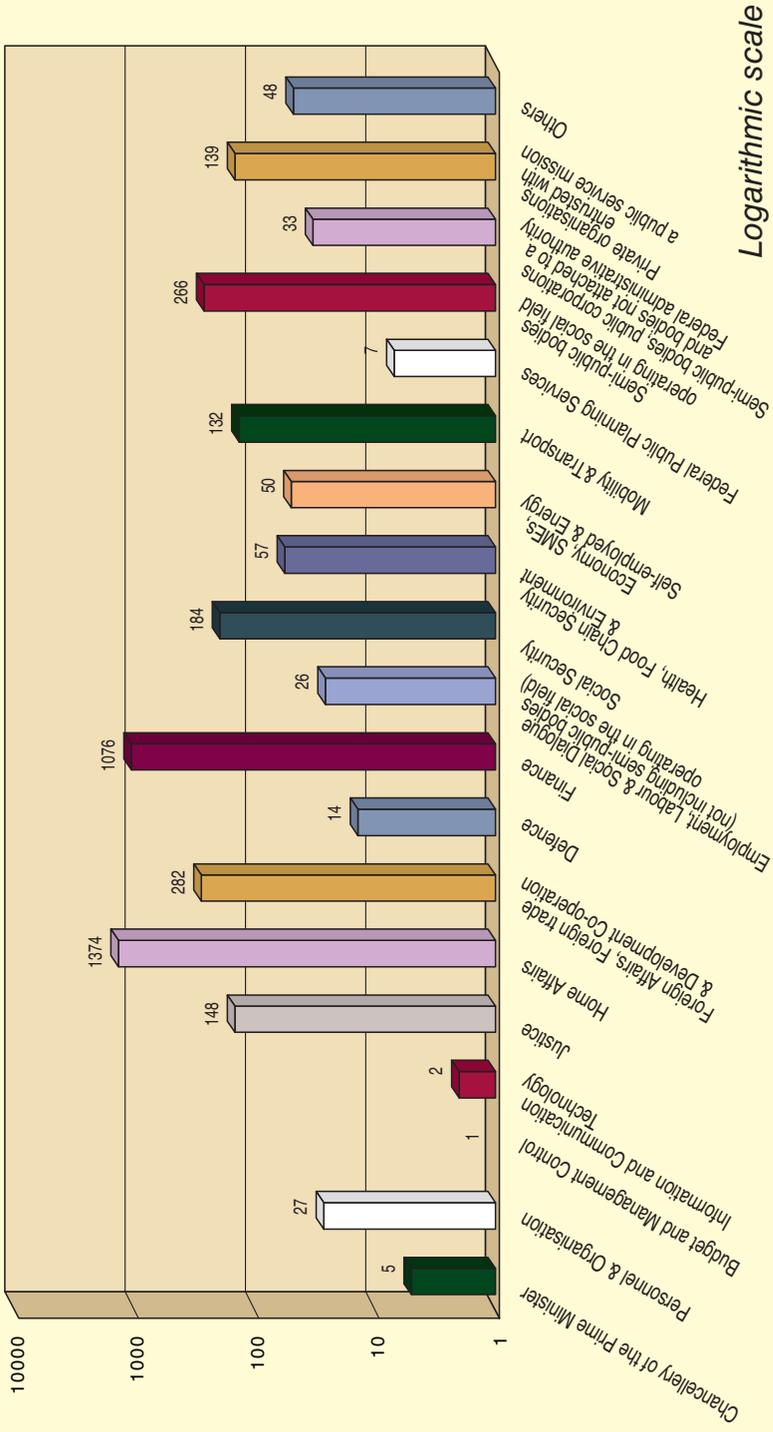


Break-down by department of the various complaints handled by the Office of the Federal Ombudsmen is as follows:

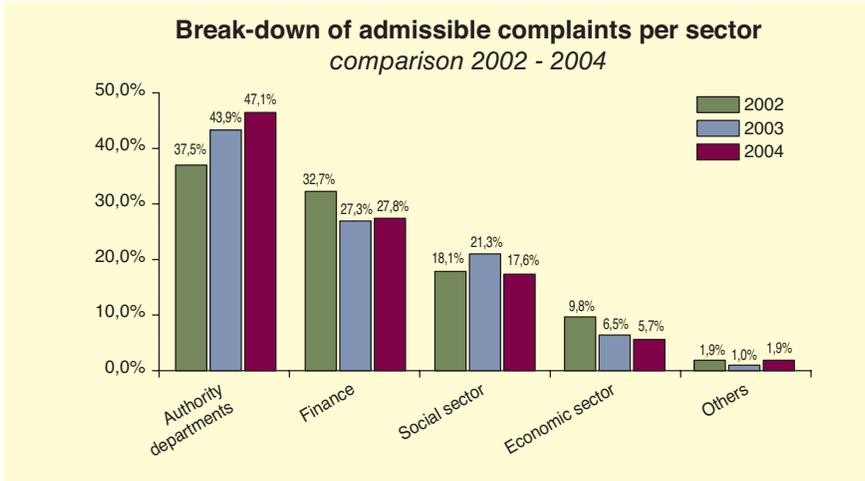
Federal Civil Service	2004		2003	
Chancellery of the Prime Minister	5	0,1%	2	0,1%
Personnel & Organisation	27	0,7%	51	1,4%
Budget and Management Control	1	0,0%	0	0,0%
Information and Communication Technology	2	0,1%	0	0,0%
Justice	148	3,8%	191	5,2%
Home Affairs	1374	35,5%	926	25,3%
Foreign Affairs, Foreign trade & Development Co-operation	282	7,3%	375	10,2%
Defence	14	0,4%	29	0,8%
Finance	1076	27,8%	984	26,9%
Employment, Labour & Social Dialogue (not including semi-public bodies operating in the social field)	26	0,7%	20	0,5%
Social Security	184	4,8%	193	5,3%
Health, Food Chain Security & Environment	57	1,5%	102	2,8%
Economy, SMEs, Self-employed & Energy	50	1,3%	42	1,1%
Mobility & Transport	132	3,4%	151	4,1%
Federal Public Planning Services	7	0,2%	18	0,5%
Semi-public bodies operating in the social field	266	6,9%	289	7,9%
Semi-public bodies, public corporations and bodies which are not attached to a Federal administrative authority	33	0,9%	46	1,3%
Private organisations entrusted with a public service mission	139	3,6%	146	4,0%
Others	48	1,2%	94	2,6%
	3871	100,0%	3659	100,0%
<i>Amongst which, complaints filed by Civil servants</i>	147		181	

The number of complaints and requests for mediation per department (3 871) is higher than the one of admissible complaints (3 515) in 2004 as more than one administrative authority may be concerned by one file.

Break-down of the admissible complaints per department (n=3871)



To conclude this overall picture, the following graph shows a breakdown per sector of the cases covered by the above tables and graphs.



III. RECOMMENDATIONS



III. RECOMMENDATIONS

The recommendations by the Office of the Federal Ombudsmen are either “general” or “official.” Pursuant to Article 15.1 of the Federal Ombudsman Act, the *General Recommendations* are addressed to the Legislative Authority (more particularly, the House of Representatives, but they are also of interest to the Senate, when they pertain to legislative improvements), and naturally, the Executive might also find it interesting to take them into consideration. The *official recommendations*, in line with Article 14.3 of said act, are sent to the Executive Authority (the competent Minister and/or the Civil Service).

General Recommendations concern either improvements of a legislative nature, in relation to which the Parliament may take the initiative, or administrative malfunctioning of a regulatory, cyclical or structural nature, for which the House may exercise its power of control over the Executive.

Official Recommendations call upon the civil service to modify a decision brought before the office, for which the latter has concluded that there had been a violation of legality or a non-compliance with the principles of proper administration and/or of good governance, or for which it has invoked equity. In such recommendations, the Civil Service or Minister responsible may also be asked to solve an administrative dysfunction of a regulatory, cyclical or structural nature on the basis, where appropriate, of specific solutions proposed by the Office.

1. General Recommendations

1.1 *General Recommendations – 2004*

As explained in point I.2 of this report,¹² the Office of the Federal Ombudsmen has opted not to make any general recommendations (GRs), so as to enable the House of Representatives to deal with the backlog of recommendations still pending from previous years.

¹² OFO, *Annual Report 2004*, pp. 7-8.

1.2 Follow-up of general recommendations from previous years in 2004

GR 03/01: The period for handling cases lodged on Belgian territory and submitted to the Immigration Office

The Petitions Committee discussed Recommendation RG 03/01 on 12 May 2004.¹³ It decided to entrust the ombudspromoter in the Committee on Home Affairs, General Affairs and the Public Service, with the task of preparing a bill, and to submit it for signing to the members of the Petitions Committee. The committee also decided to draw up a resolution to encourage the Minister for the Interior to take appropriate measures to deal with the backlog of cases pending before the Immigration Office within a reasonable period.

For its part, the Office of the Federal Ombudsmen conducted a structural analysis in 2004 on the time it takes to process applications for residence permits that fall under the purview of the bureau pursuant to “Article 9, Paragraph 3 – Humanitarian Affairs” which lead to the opening of a Master file. Replying to questions put to him in this connection, the Minister for the Interior, by letter of 16 January 2005, informed the Office of the Federal Ombudsmen that a coordinator had been appointed in the “Article 9, paragraph 3 – Humanitarian Affairs” bureau to ensure that ministerial instructions concerning the processing of applications were followed properly. Furthermore, this bureau had been provided with extensive assistance to deal with the backlog of pending cases.

In addition, the Office of the Federal Ombudsmen noted that this recommendation remains ever topical for departments of the Immigration Office in charge of applications for review and for the extension or renewal of residence permits.

The Minister for the Interior had, as at 28 February 2005, not yet replied to an oral question raised about the general recommendation.¹⁴

¹³ *Parl. Doc.*, House of Representatives, Session 2003-2004, no. 1239/001, pp. 3-5.

¹⁴ Oral Question no. 3866 (Chastel) on “*The Recommendation of the Office of the Federal Ombudsmen concerning the period for handling cases lodged on Belgian territory and submitted to the Immigration Office.*”

GR 03/02: Dysfunctions at the Directorate General for Benefits for the Disabled

This recommendation was discussed in the Petitions Committee on 24 June 2004¹⁵, and was followed by a parliamentary question posed in plenary session. In reply to this question,¹⁶ the Secretary of State for Families and the Disabled acknowledged that there were obvious problems in the Directorate General for benefits for the Disabled, such as delays in the processing of applications, personnel shortages, technical problems, and the entry into force of a new regulation. The Secretary of State indicated that there were four projects geared to improving the way the services at the Directorate General For Benefits for the Disabled function. One of these projects consists in establishing a *Contact Centre* to ensure accessibility to the competent authorities and the quality of information given to disabled persons -something that the Office of the Federal Ombudsmen has been recommending for quite some time. Another project, referred to as "*Communit-e*", is to enable an electronic data interchange between the Directorate General and the municipal authorities with whom applications for benefits have been filed. Five pilot municipalities are at present testing this system, which is to be extended to the other municipalities as of April 2005. Disabled persons will ultimately be able to consult files on line. The Office of the Federal Ombudsmen applauds this progress and will continue to raise any new problems noted with the House of Representatives.

GR 03/03: Appeals concerning taxation

This general recommendation has been taken up in part by the programme law of 27 December 2004, which entered into force on 1 January 2005, and which amends Articles 366 and 376 of the Code on Income Tax. Taxes can now be reduced by means of enforceable tax assessments. Furthermore the programme authorises complaints addressed to a regional inland revenue officer other than the one mentioned on the taxpayer's notice of tax assessment and requires that officer to forward it automatically to the territorially competent regional inland revenue officer.

¹⁵ Report on behalf of the Petitions Committee, House of Representatives, Ordinary session 2003-2004, 24 June 2004 (Van Gool) – "*Annual Report 2003 of the Office of the Federal Ombudsmen*", Doc 51 1239/001.

¹⁶ Analytical Report, House of Representatives, ordinary session 2004-2005, Question no. 3867 (Chastel). "*The recommendation of the Office of the Federal Ombudsmen concerning Dysfunctions at the Directorate General for Benefits for the Disabled*" (GR 03/02)" 51 Com. 386, p. 6.

GR 03/04: Collective settlement of Debt

In 2003, the Office of the Federal Ombudsmen recommended that a legislative measure be adopted to enable tax officials to exempt the capital of a tax debt in the context of the amicable phase of the procedure for the collective settlement of debts. This general recommendation is currently being examined by the House of Representatives.¹⁷

GR 02/01: Status of cohabiting partners under the legislation relating to aliens

No further progress has been made regarding this general recommendation.

GR 02/02: Adoption of a legal basis in the fields of authentication and of confidential lawyers

The Act of 16 July 2004 on the International Private Law Code¹⁸ finally provides a legal basis for the authentication of foreign deeds and judgements. This recommendation remains topical nonetheless as regards the need to flank the practice of turning to a confidential lawyer for verifying the authenticity of the contents of a foreign deed or court decision.

RG 02/03: The tax trap in unemployment

The Annual Report 2002 mentions the situation of completely unemployed persons over fifty years of age, who are discouraged from undergoing training when offered an allowance for that purpose by regional employment offices, because they could lose a de facto tax exemption if they accepted it.

On 25 May 2004, a bill was introduced to exempt this allowance from taxation.¹⁹ This proposal is currently being examined in the House of Representatives.

GR 02/02: Limited seizures from bank accounts*A more human collection*

In previous annual reports, the Office of the Federal Ombudsmen has stressed a more human collection policy as an answer to

¹⁷ Bill pertaining to various provisions concerning time limits, through joint request and the procedure for the collective settlement of debts," Parl. Doc., House of Representatives, ordinary session 2003-2004, 28 July 2004, pending, no. 1309.

¹⁸ *Moniteur Belge/Belgisch Staatsblad* [Official Gazette], 27 July 2004.

¹⁹ Bill amending Article 38 of the Code on Income Tax 1992 to eliminate the tax trap of employment for unemployed individuals undergoing training (Van Gool, Baeke, Storms, Burgeon, Dieu, De Clercq, Van der Maelen, Lenssen, Claes), *Doc. Parl.*, House of Representatives, ordinary session 2003-2004, 25 May 2004, no. 51 1158/001.

numerous complaints condemning the use of extreme collection measures. The Annual Report for 2002 already expressly underscored the need for legal protection for funds deposited on a bank account so as to take into consideration the limits set by the Code of Judicial Procedure for seizures and transfers from wages and other income. The Annual Report for 2003 also cited the expediency of a clear regulation that takes dependent children into account when determining protected assets.

The Act of 14 June 2004 has extended the protection provided under Articles 1409 ff. of the Code of Judicial Procedure to situations in which protected funds are deposited on a sight account. The act on the non-seizability and non-transferability of amounts credited on a sight account is expected to enter into force by 1 July 2005 at the latest. Such protected sums will have to be distinguished on the sight account by a specific code.

Several royal decrees of 27 December 2004 then announced the development of a form, the layout of which is to be fixed by ministerial decree. The debtor whose assets are seized or the holder of transferable sums will have to indicate the desire of taxpayers with dependent children to increase sums that cannot be seized or transferred.

GR 02/05: Application of the Social Insurance Contributors' Charter to certain social security institutions

The Minister for Social Affairs and Public Health informed the Office of the Federal Ombudsmen that he shared the latter's analysis according to which Articles 2, 2°, a) of the Social Insurance Contributors' Charter did refer to all public social security institutions, including those that do not provide social security benefits.²⁰ Consequently, the collecting organisms, such as the ONSS/RSZ or the ONASSAPL/RSZPPO do fall under the scope of the Social Insurance Contributors' Charter. To avoid any ambiguity, the Minister wanted to change the heading of Article 2, 2°, a) of the Charter and to entrust the drafting thereof to an ad hoc working group of the Office of Public Social Security Institutions. The latter is apparently looking into these issues at this time.

²⁰ Full Report, House of Representatives, ordinary session 2003-2004, Question no. 2661 (Pieters) – *"The Social Insurance Contributors' Charter"*, 51 Com. 242, p. 8.

GR 01/01: Greater transparency and greater legal certainty in the application by the Immigration Office of the Act of 15 December 1980 and of its implementing degree

No further progress has been made regarding this general recommendation.

GR 01/02: Extension of the scope of Article 143 (2) of the 1992 Code on Income Tax

No further progress has been made regarding this general recommendation.

GR 00/01: Declaration of marriage

No further progress has been made regarding this general recommendation.

GR 00/02: Procedure for changing surnames and first names

No further progress has been made regarding this general recommendation.

GR 00/03: Training in communication and reception skills for all tax administration officials

This recommendation has led the National Institute of Taxation and Finance to organise various training courses under the module "*Communication with / Reception of Taxpayers*". For instance, "*Negotiating techniques and difficult aspects in face-to-face dealings*," were geared to department heads, whereas "*Social skills and public service*" were intended for alimony recovery officials. Some sessions were preceded by training on "*Relations with the taxpayer*" organised for trainee auditors and inspectors. This general recommendation has consequently been taken up by the Department of Finance.

GR 00/04: Payment of the road traffic tax by automatic debit

No further progress has been made regarding this general recommendation.

GR: 99/01: Increasing the resources of the Office of the Federal Ombudsmen as an instrument for promoting and protecting human rights

No further progress has been made regarding this general recommendation.

GR: 99/02: The establishment of an *ad hoc* commission entrusted with monitoring the implementation of the law on formal justification of administrative acts

The Petitions Committee held a hearing of the Federal Ombudsmen in May 2001 concerning this general recommendation in order to refine its information on this matter.

In the light of the assessment of improper administration with lack of justification applied by the Office to many cases handled by the Committee relating to exemption from social security contributions, the department responsible for the social contributions of the self-employed, presented proposals to its supervisory Minister at the beginning of 2001 aimed at adapting the standard forms used in the decision-making process by this Committee to include adequate justification. The Minister responsible for the self-employed approved these proposals. These proposals were effectively implemented in the course of 2003. In 2004, the competent department kept the Office informed of the developments of the matter and took measures to improve the readability of the decisions of said Committee.

The Office moreover recently met the Minister for Public Service, Social Integration, Policy on Large Towns and Equal Opportunities to draw his attention to this matter. He has indicated that he would look into the merits of establishing such a committee.

GR 99/05: Adoption of measures to ensure that the general public is more aware of the existence and missions of information officers

The Petitions Committee held a hearing of the Federal Ombudsmen in May 2001 concerning this general recommendation. Given the crosscutting nature of this general recommendation, which concerns the entire Federal Civil Service, the Office of the Federal Ombudsmen drew the attention of the Minister for Public Service, Social Integration, Policy on Large Towns and Equal Opportunities to this matter. Furthermore, the Office met communication officials appointed in the Federal Civil Service by the *Copernic* reform (COMMnetkern), which led to new options and initiatives in internal and external communication. The Office of the Federal Ombudsmen reiterated the aim of this recommendation, to wit to make federal authorities easier to reach by citizens faced with an administrative problem or simply in need of information, without taking a stand on the practical arrangements implemented by the communication and information officials. In this connection, COM-

Mnetkern has informed the Office of its plan of unique toll-free number for the entire federal civil service. This project is at the experimental stage.

GR 99/06: The obligation for citizens to produce documents, whereas the Civil Service may or should have the means of obtaining these itself

The Petitions Committee held a hearing of the Federal Ombudsmen in May 2001 concerning this general recommendation. Included in the past in the Government officer's plan on administrative simplification, no further progress was been made. The Federal Ombudsmen then held a meeting with the Secretary of State responsible for administrative simplification, who indicated in particular that he had contacted his colleague in charge of the computerisation of the State with a view to adopting this general recommendation.

This matter is actually a priority for the Secretariat of State responsible for administrative simplification (cf. the *General Policy Note on administrative simplification* of 26 November 2003 and the website www.sav.fgov.be). Its objective is to implement a system for the single collection of data concerning citizens. The Federal Civil Service departments will then no longer require from citizens data or certificates relating to them that are already recorded in the National Register of Natural Persons or which are already available at their municipal authorities.

It should be noted that the *Banque-Carrefour de la Sécurité sociale/Kruispuntbank voor de Sociale Zekerheid* (Crossroads Bank for Social Security) and the *Banque-Carrefour des Entreprises/Kruispuntbank van Ondernemingen* (Crossroads Bank for Businesses - a data bank containing information on companies and self-employed) are already playing a similar role in this regard on the social and economic fronts respectively. Therefore, the civil service departments concerned will consult this data base so that they no longer have to ask a company or retailer -henceforth identified by a single company number- for information which they have already communicated to the *Banque-Carrefour des Entreprises/Kruispuntbank van Ondernemingen*. In this respect, further to the observations of the Secretariat of State responsible for administrative simplification, in 2004 the civil service did away with the requirement for companies to attach three paper certificates (for payment of social security contributions, liability for VAT, and the deposit of annual accounts with the National Bank) to their offers in reply to invitations to tender issued by the federal public authorities, as these can be consulted at the Crossroads Bank for Businesses.

Furthermore, a bill provides that the authorities should not ask citizens to produce data unless no other authority already has these data.²¹ This bill is currently being examined in the Senate's Home Affairs and Administrative Affairs Committee.

As regards this recommendation, it is also worth mentioning the "single tax file" proposed by the Secretary of State for the Modernisation of Finance, with whom the Office has held a meeting. This is a computerised document containing all the tax data of a taxpayer. This document could be consulted by the authorised officials of different departments from the Federal Department of Finance, thereby sparing the tax authorities from having to ask the same information from the taxpayer several times. Aspects concerning the protection of privacy in the aforementioned bill are currently being examined by the competent authorities.

GR 99/07: International adoption

The amendments to the Act of 24 April 2003 reforming the adoption system which proved necessary during the negotiations between the Federal State and the Communities on the cooperation agreement were inserted in the programme law of 27 December 2004.²² The entry into force of the Act of 24 April 2003 henceforth depends on concluding the cooperation agreement with the Communities and the adoption of implementing royal decrees.²³

GR 99/08: Problems arising when a property is evaluated by the tax authorities

The Office of the Federal Ombudsmen noted, during the year under review, that the different authorities concerned by this recommendation have already taken measures to justify more fully decisions on fixing the value of a property.

²¹ Bill to improve the relationship between citizens and their civil service (Cornil and Nagy), Art. 12, *Parl Doc.*, Senate, extraordinary session 2003, 11 July 2003, 3-67/1.

²² *Moniteur Belge/Belgisch Staatsblad* [Official Gazette], 31 December 2004, cf. Title IX, Chapter IV.

²³ Oral question no. 3828 (Taelman) to the Vice-Prime Minister and Minister for Justice on "the cooperation agreement on adoption," *Full Report*, House of Representatives, ordinary session 2004-2005, 51 Com 354, p. 8.

GR 99/09: Extension of the possibilities of tax relief at decentralised level by rectifying (the data of) the initial tax assessment

This general recommendation was addressed by inserting an Article 376 ter in the Code on Income tax vesting the regional direct tax official or an officer appointed by the latter with the powers to enter the reduced amount in an enforceable tax assessment.²⁴

GR 93/13: Lack of transparency of the Medical Association

In 2004, the Senate held hearings on creating a Superior Council of Ethics for the health professions. The discussion is being conducted on the basis of three bills²⁵ and a bill by the Minister for Public Health. The purpose is to arrive at a unique bill on the reform of the various orders (physicians, pharmacists, etc.). All the bills are geared to greater democratisation and transparency for the existing bodies, something that has met the recommendation of the Office to the Legislator to grant to the patient and her or his entitled parties the right to be informed of the results of the disciplinary procedure.

GR 98/02: The issuing, in one form or another, of an acknowledgement of receipt establishing the submission of documents to a Civil Service department

The Petitions Committee held a hearing for the Federal Ombudsmen in May 2001 concerning this general recommendation. In line with this recommendation, a bill provides that citizens should receive proof of the handing in of documents to the civil service under conditions to be determined by the King.²⁶ This bill is currently being examined by the Senate's Home Affairs and Administrative Affairs Committee. Along the same lines, a bill provides in particular that the administration should state immediately the date of receipt on the document used to submit the request and should send an acknowledgement of receipt without delay to the applicant mentioning the said date.²⁷ Furthermore, another bill

²⁴ Article 378 of the programme law of 27 December 2004.

²⁵ Bill *creating an Order of Physicians* (Vankrunkelsven, Van Duppen and Van de Castele), *Parl. Doc.*, Senate, ordinary session 2003-2004, 3 December 2003, 3-373/1; Bill *creating the Order of Physicians* (De Schamphelaere), *Parl. Doc.*, Senate, ordinary session 2003-2004, 11 December 2003, 3-413/1; Bill *creating an Order of Pharmacists* (Van de Castele, Germeaux and Vankrunkelsven), *Parl. Doc.*, ordinary session 2003-2004, 10 May 2004, 3-675/1.

²⁶ Bill *to improve the relationship between citizens and the administration* (Cornil), Art. 4 and 16, *Parl. Doc.* Senate, extraordinary session 2003, 11 July 2003, 3-67/1.

²⁷ *General bill on administration* (Leterme and Vandeurzen), Article 3.4.3, *Parl. Doc.*, House of Representatives, ordinary session 2003-2004, 26 November 2003, 0496/001.

amending the Act of 11 April 1994 on public transparency to improve the relationship between citizens and the federal administrative authorities²⁸ requires the federal administrative authority to issue a receipt to anyone who submits one or more documents, irrespective of the method of submission.

Given the crosscutting nature of this general recommendation, which concerns the Entire Federal Civil Service, the Minister of the Public Service is obviously the most appropriate authority for implementing it. Contacted by the Office, the minister replied that this recommendation relates to good administration actions needed to reduce uncertainties for users of public services. The Office deems it necessary for Parliament to legislate on this subject.

GR 97/02: Constitutional Recognition of the Office of the Federal Ombudsmen

No further progress has been made regarding this general recommendation. The relevant articles of the Constitution were declared open for revision during this legislature.

GR 97/04: Suspension of deadlines for judicial appeal while the matter is before the ombudsman

No further progress has been made regarding this general recommendation.

GR 97/05: Possibility of the Office of the Federal Ombudsmen asking the Court of Arbitration for a preliminary ruling

No further progress has been made regarding this general recommendation.

GR 97/11: Dispute between two Civil Service departments regarding which of the two has to pay costs indisputably due to a citizen, which have not been paid

The Petitions Committee forwarded this general recommendation to the Committee on Home Affairs, General Affairs, and the Public Service. However, no further progress has been made.

Given the crosscutting nature of this general recommendation, which concerns the entire Federal Civil Service, the Minister of the Public Service is obviously the most appropriate authority for implementing it in the entire administration. The Minister stated during a meeting with the Federal Ombudsmen that he intended

²⁸ (Van Gool and Frédéric), Art 12 quarter, *Parl. Doc.*, House of Representatives, ordinary session 2003- 2004, 19 March 2004, 51 0937/001.

to look into this matter. Furthermore, he indicated that a uniform solution would be sought for all the Federal civil services with the Secretary of State for administrative simplification.

GR 97/12: Explanation of the principle of the parliamentary ombudsman's recourse to equity in the federal Ombudsman Act of 22 March 1995

No further progress has been made regarding this general recommendation.

2. Overview of Official Recommendations ²⁹ 2004 ³⁰

OR 04/01, Interior, *Annual Report 2004* (Immigration Office)

OR 04/02, Interior, *Annual Report 2004* (Immigration Office)

OR 04/03, Finance, *Annual Report 2004* (Department of Health Certificates)

OR 04/04, Finance, *Annual Report 2004* (Form 247.7 in case of Garnishment)

OR 04/05, Finance, *Annual Report 2004* (cover letter of a VAT report)

OR 04/06, Finance, *Annual Report 2004* (automatic reduction of road traffic tax)

OR 04/07, Foreign Affairs, *Annual Report 2004* (back benefits).

²⁹ Official recommendations are addressed by the Office to the administrative authorities. They are based on Article 14, para. 3, of the Federal Ombudsmen Act of 22 March 1995.

³⁰ For the official recommendations from 1997 to 2001, cf. OFO, *Annual Report 2001*, pp. 56-57 and for those of 2003, cf. OFO, *Annual Report 2003*, p. 61.

APPENDIX

The Federal Ombudsmen Act, Kingdom of Belgium, of 22nd March 1995, as modified by Act of 11th February 2004.

CHAPTER 1. The Federal Ombudsmen

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

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

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

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

The ombudsmen act collectively.

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

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

To be appointed ombudsman, it is necessary :

- 1°) to be Belgian;
- 2°) to be of irreproachable conduct and to enjoy the civil and political rights;
- 3°) to hold a degree, giving access to the functions of level 1 of the Civil Service departments of the State;

- 4°) to demonstrate sufficient knowledge of the other national languages, according to the standards laid down by the House of Representatives;
- 5°) to have had relevant professional experience of at least five years, either in the legal, administrative or social spheres, or in another field relevant to carrying out this function.

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

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

Article 5. During their period in office, the ombudsmen may not carry out the following duties or hold any of the following positions or offices :

- 1°) magistrate, notary public or bailiff;
- 2°) lawyer;
- 3°) minister of a recognised religion or delegate of an organisation recognised by the law which gives moral assistance according to a non-religious philosophy;
- 4°) a public office conferred by election;
- 5°) employment remunerated in the public services referred to in Article 1, paragraph 2.

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

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

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

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

Article 6. The House of Representatives can terminate the ombudsmen's functions :

- 1°) at their request;
- 2°) when they reach the age of 65;
- 3°) when their health seriously compromises the exercise of their duties.

The House of Representatives can remove the ombudsmen from office :

- 1°) if they carry out the duties or hold one of the positions or offices referred to in Article 5, paragraph 1 and paragraph 3;
- 2°) for serious reasons.

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

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

CHAPTER II. Complaints

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

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

Article 9. The ombudsmen can refuse to investigate a complaint when :

- 1°) the complainant's identity is unknown;
- 2°) the complaint refers to facts which occurred more than one year before the lodgement of the complaint.

The ombudsmen will refuse to investigate a complaint when :

- 1°) the complaint is obviously unfounded;
- 2°) the complainant obviously took no steps to approach the administrative authority concerned to obtain satisfaction;
- 3°) the complaint is primarily the same as a complaint dismissed by the ombudsmen, if it contains no new facts.

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

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

The ombudsmen will inform the administrative authority of their intention to investigate a complaint.

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

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

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

The ombudsmen may seek assistance by experts.

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

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

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

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

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

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

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

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

CHAPTER III. Reports by the ombudsmen

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

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

The reports are made public by the House of Representatives.

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

CHAPTER IV. Various provisions

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

Article 17. The Ombudsmen adopt house rules determining the methods of handling of the complaints. It is approved by the House of Representatives and is published in the *Moniteur belge*.

Article 18. The appropriations necessary for the functioning of the ombudsmen's office are budgeted as special allocations (distinct from the budgets of the House and the Government). 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.

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.

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