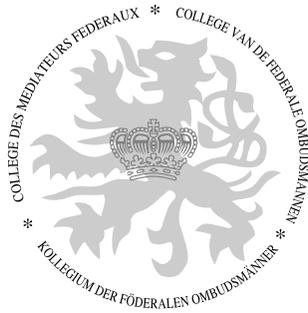


KINGDOM OF BELGIUM



ANNUAL REPORT

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Realisation: Vanden Broele Grafische Groep

*Mr Speaker of the House of Representatives,
Mr Chairman of the Petitions Committee,
Honourable Members of Parliament,*

In accordance with Article 15 of the Federal Ombudsman Act of 22 March 1995, we have the honour of submitting the report on the activities of the Office of the Federal Ombudsmen during the period from 1 January to 31 December 2005.

This report has the particular feature of being our first annual report and of covering a period during which we were essentially not yet operational. Having been sworn in by the Speaker of the House on 8 November 2005, we actually commenced our first term of office seven weeks before the expiry of the period to which this report pertains.

This report has the format and structure of the institution's previous reports, but is nonetheless characterised by certain specific traits.

*The first part, "**I. General Considerations**," broaches the general functioning of the Office of the Federal Ombudsmen. This year, we wanted to present our mission statement, which sets out the values we intend to pursue and the strategies we plan to implement the mission entrusted to us.*

*The second part, "**II. Statistical Analyses**" presents the general statistics of the period under review.*

Although we have retained the same presentation of statistics overall, we have decided to make them more transparent by presenting figures on the basis of new complaints lodged in 2005, and no longer on the basis of the total volume of complaints in progress. Wherever possible, the number of complaints from previous years that were still in progress in 2005 was listed separately.

*The third part, "**III. Recommendations**" is devoted to general and official recommendations made by the Office.*

When we assumed our duties, we drew up a statement of general recommendations made by our predecessors. The result is ultimately more encouraging if the recommendations pertaining to the institution itself are excepted (which we decided not to broach anymore in this framework). In this part, we set out the latest developments of recommendations that are still topical.

We have not made any new general recommendations this year. The time we have had to learn about the complaints dealt with in 2005 was not sufficient to establish a constructive dialogue with the authorities concerned about complaints that could have led to a general recommendation. We actually think that it would be counter-productive to make a recommendation in haste, without having previously discussed our observations in this regard with the competent department and its Minister. Far from calling the independence of the Ombudsmen to question, this approach constitutes not only an indispensable token of respect for the work and expertise of the Civil Service, but should also help bolster the credibility of the Office's recommendations by verifying their – at times unsuspected – consequences beforehand, so that said recommendations can be duly adjusted.

For this first annual report, we should like to thank the House of Representatives for the confidence it has shown in us. The remit entrusted to us fills us with a feeling of great responsibility about our mission.

The first term of office of the Federal Ombudsmen was characterised by the establishment of the institution. It constituted the phase of enshrining the Office in the Belgian institutional landscape and we should like to pay tribute to our predecessors for the job done.

The second term of office must be a consolidation of the institution, which will confirm its actual contribution to the objective assigned to it by Parliament when it was created:

to help bolster confidence between citizens and the Federal authorities.



We enjoy an essential advantage to that end: We can count on conscientious and experienced staff members, whose motivation is equalled only by their concern for proper administration. We should therefore like to take this opportunity to express our warmest thanks for the vital support they have given us in producing this first annual report.

We hope that you will receive this report in good order and, always at your entire disposal to present it to the Petitions Committee, we remain

*Yours faithfully,
The Federal Ombudsmen,*

Catherine DE BRUECKER

Guido SCHUERMANS

I. General Considerations



I. GENERAL CONSIDERATIONS

1. Mission statement

Three months after we assumed our duties, we think the time has come to inform the House of our intentions for the term of the remit entrusted to us and of our vision of the institution's future.

The following key-concepts and themes will guide our approach.

Target our action on the citizen, the core activity being dealing with individual complaints; see to the preservation and ongoing improvement of the quality and efficiency of the service as well as the client's concerns; see to the preservation and ongoing improvement of the efficacy of our action, including internal and external communication; ensure open-mindedness, transparency, relevance and impartiality in our procedures and in our contacts with the citizen, the authorities and the House of Representatives; guarantee and improve the accessibility and availability of the service to all citizens; aim at serving as a model; help improve the way Federal administrative authorities function; manage and share the expertise obtained with others; report.

We are convinced that thanks to the flawless professionalism and investment of our team, we shall succeed in continuing to develop the Office into an institution that meets the legitimate expectations of the public: a modern, accessible, constantly improving ombudsman service.

Transposing these vision and intention into practice naturally requires time, a structural approach and support inside and outside the institution. We therefore intend to draw up short and medium-term strategic plans with precise objectives in line with this vision.

1.1. *Our mission*

The Federal Ombudsmen have a triple mission, namely to:

- 1° Examine complaints about the way the Federal administrative authorities function;

- 2° At the request of the House of Representatives, conduct an investigation on the functioning of those Federal administrative departments it designates;
- 3° On the basis of the observations made while carrying out the missions referred to in sub 1 and 2 above, make recommendations and report on how the administrative authorities operate.

1.2. *Our mission statement*

When we translate the mission entrusted to us by the Legislator in the light of the vision and the intentions expounded above, our mission can be summarily stated as follows:

As an independent institution, to:

- Analyse complaints from users concerning Federal administrative authorities in a rapid, in-depth and impartial manner;
- Implement appropriate and adapted solutions;
- Use transparent and correct procedures mindful of the client;
- Make the service accessible to whoever needs it;
- Help improve the way the Federal administrative authorities function and promote the citizen's right to proper administration;
- Convince the Federal administrative authorities of the added value of a fair redress in the event of a justified complaint.

1.3. *A few key concepts*

Efficiency, Efficacy and Quality are concepts that do not require further explanation. They constitute an integral part of the culture of any modern corporation and administrative authority. They pertain to the entire workings of the institution and transcend other concepts at all levels. The stakes today are to transpose them into concrete, operational objectives and to development measuring instruments for ensuring the necessary corrections.

On the other hand, we deem it necessary to elaborate on other key concepts and to endow them with a more concrete content.

➤ Accessibility and availability

An ombudsman service (this term is used deliberately, rather than 'mediation' because it connotes better the entire mission of the service) can only be efficient if each and everyone can turn to it whenever she or he needs it. This requires as high a level of awareness and as low a threshold of access as possible.

The access threshold has already been lowered considerably. The service is free and the referral methods are informal (letter, fax, e-mail, telephone, visit). Furthermore, regular duty offices are organised in co-operation with the Walloon Ombudsman, the Ombudsman of the French-speaking Community and the Flemish Ombudsman. The evaluation and adaptation of these duty offices are a priority.

Awareness about the institution and its functioning necessarily requires a good external communication. To improve the external communication of the institution, including its website, a communication strategy will have to be developed.

➤ Serving as a model

An ombudsman service must serve as a model as regards proper administration. An ongoing evaluation of the way it functions therefore is necessary. Thus, we shall examine the internal rules of procedure and propose, if necessary, adjustments in the House of Representatives. Points requiring immediate attention include the legibility of correspondence and the simplification of our own administrative procedures.

➤ Giving account

The independence of ombudsmen does not mean that they do not have to give account of their own functioning, which is financed by public money.

The annual report is the instrument par excellence for giving account, provided it is drawn up in a spirit of openness and transparency. For that reason we pay particular attention to the transparency of figures in our reports, which must make it possible to assess the way we function: the actual workload, the handling periods, the results, etc. In the same spirit of transpar-

ency, we will report on our activities on the organisational level: strategic plans, internal and external communication, any internal reorganisations, external relations (both national and international).

➤ Helping improve the way Federal administrative authorities function

The work of an ombudsman service naturally goes beyond dealing with individual complaints. We want to share the knowledge and experience acquired from dealing with complaints with the administrative authorities. In so doing, we hope to help them improve the way they function and to avoid a certain number of complaints in future. The individual evaluation of complaints can contribute to this. We have already initiated a discussion with certain authorities on the possible correction of our evaluation methodology to turn it into an efficient instrument in practice, one that can be used by the Civil Service to initiate measures for improvement.

➤ Transparency

Transparency at all levels is indispensable if the institution is to function properly. The citizens, the Civil Service and the House of Representatives must have a clear view at all times of how we function as well as of our means of actions and our competence.

For citizens, this means in particular that they must have a clear view of our competence and the limits thereto. We have already initiated a series of meetings with other institutions and mediation services to clarify our respective field of competence (in particular the Higher Council of Justice, the Centre for Equal Opportunities and the Fight against Racism, the Pensions Mediation Service). Other meetings must follow.

For the Federal administrative authorities, this means in particular intensifying bilateral contacts and the open debate.

As to the House of Representatives and in particular our privileged partner, the Petitions Committee, we are at their disposal throughout the year, to exchange views or to give concrete ex-

planations on our activities. Every time that the volition for opening and transparency will require, we shall avail ourselves of the possibility provided by law to submit interim reports.

2. The management of the Office

As regards the organisation and management of human resources, the Office of the Federal Ombudsmen has focused mainly on completing projects commenced previously, such as the Personnel evaluation procedure ¹ developed in previous years and finalised this year.

As indicated in the previous chapter, our recent assumption of duties is an opportunity for a global and fundamental reflection not only on the missions and workings, but also on the (organisational, human, financial and material) means and resources of the institution. With regard to external co-operation, for instance, we intend, in consultation with the House of Representatives, to examine the possibilities of a partnership at the logistical level so as to maximise the efficacy and efficiency of the way we function.

2.1. Management of Personnel and number of Staff

The table below gives the personnel numbers as at 1 January 2006.

Grade	Language		Sex		Legal status		Total FTE ² employees	Staff Framework Total
	F	N	M	F	Statutory	On contract		
A (a)	10	13(b)	12	11	18	5	23	24
B	6	6	3	9	10	2	12	12
C (c)	2	2	3	1	0	4	4	2 (+ 2)
D (d)	2	1	0	3	0	3	2	(2 ETP)
Total	20	22	18	24	28	14	41	38 (+4)

- (a) including 1 seconded special adviser with a temporary remit (*Administrateur*)
 (b) awaiting a decision by the Council of State (9 January 2006)
 (c) including 2 telephone operators-receptionists-typists, Grade C, Article 4 of the Staff Framework (urgent and temporary need)
 (d) Maintenance staff, equivalent to Grade D, Article 4 of the Staff Framework: 3 staff members, 2 FTE (2 part-time, F language).

¹ OFO, *Annual Report 2004*, pp. 9-10.

² Full-time equivalent.

Compared with the situation on 1 January 2005, the number of employees has diminished by two full-time equivalent (FTE) units. The number of staff members on contract has gone from 13 to 14, but remains unchanged in terms of FTE units. External recruiting procedures will be launched in 2006 to fill various positions on a permanent basis.

The position as *Directeur* (director), two *Auditeur-coordonateur* (auditor-coordinator) positions and one *Attaché's* position are not filled as at 1 January 2006. The hiring of one *Attaché* on contract is currently under preparation.

In addition to the positions for which the Staff Framework explicitly provide that they must or may be assumed by servants on contract owing to their specific nature (in this case 2 FTE maintenance staff and 2 ushers-drivers), the IT management is still entrusted to a university graduate under contract. Furthermore, 4 case file manager positions are temporarily filled by employees on contract.

Furthermore, according to Article 4 of the Staff Framework, the Office had recruited two Grade C servants on a full time basis contract to meet an urgent and temporary need for auxiliary personnel (July 2003 – December 2004). In view of the positive evaluation of this project, for which funds were also allocated in 2005 and 2006, the new Office will make a structural proposal to the House of Representatives in the course of 2006.

2.2. Financial and budgetary management

Based on economic accounting, the administration of accounts is organised almost entirely internally. The bookkeeping and the budget accounts are subjected to an annual audit by the Court of Auditors.

The accounts for 2004 showed a positive balance of € 271,679.08³ (€3,470,330.00 revenues – €3,203,413.12 expenditures + €4,166.78 net financial result + €595.42 other revenues).

³ Report drawn up in the name of the Accounts Committee by Mr Pierre Lano, 9 December 2005, *Parl. Doc.*, House of Representatives, 4th session of the 51st legislature 2005-2006, n° 2139/001, pp. 189 ff.

After adjustment, the budget for 2005 provides allocations ⁴ for a total amount of €3,696,320.00, compared to €3,680,940.00 in 2004. This slight increase (+ 0.4 %) is due mainly to the creation of a provision in 2005, covering the legal severance pay for the outgoing Federal Ombudsmen, which is nonetheless offset by savings made in expenditures.

On account of the imminent commencement of the new term of office of the Federal Ombudsmen, the budget for 2006 is an unchanged policy budget, introduced and approved on the basis of the adjusted budget for 2005. The allocations amounted to €3,698,170.00, or a very slight increase of 0.05% from 2005, taking into account the indexing and the disappearance of the above mentioned provision. The afore-announced strategic reorientation will acquire concrete form through the proposal to adjust the budget for 2006 that the Office will submit to the House.

In the course of 2005, the Office took an active part in a work group chaired by the Court of Auditors to reform the chart of the budgets and accounts of endowed institutions. The result was submitted to the Accounts Committee of the House of Representatives and was implemented for the first time for the initial budget 2006, which was transmitted to the House in both the old and the new chart. The work group is continuing its activities in 2006 so as to follow up this reform. The *Administrateur* represents the Office in this work group.

2.3. IT management and facilities management

In addition to the current management of systems in progress, the effort to modernise the internal IT network was continued in 2005.

The storage of the files in our archives is a serious concern, first and foremost because of the sore shortage of space in the premises of the Office, and the security risks such a shortage is likely to cause. To remedy the situation, the Office is looking for solutions in terms of available space and organisation, areas in which the ICT unit can make a contribution. The examination of this latter aspect is closely connected to the restructuring of the institution's hardware equipment (printers and scanners).

⁴ The amounts of allocations (expenditures) are different from those of the endowment, as entered in the General Budget of Expenditures, resulting from the use of the balance from previous years.

The lack of space is felt not only in terms of archival storage space, but also in terms of reduced -at times inadequate- office space at the disposal of staff members. The Office will take up this problem presently with the House. It is actually one of the areas in which a better synergy with the House seems appropriate.



II. STATISTICAL ANALYSES



II. STATISTICAL ANALYSES

1. Introduction

Part II contains a series of general statistical data that provide an overall view of the number of files (language, means of communication used, geographic distribution, handling phase, admissibility and forwarding) as well as the evaluation that closes each case broached, together with the Federal department concerned and sectors (tax, social, etc.) to which these files pertain.

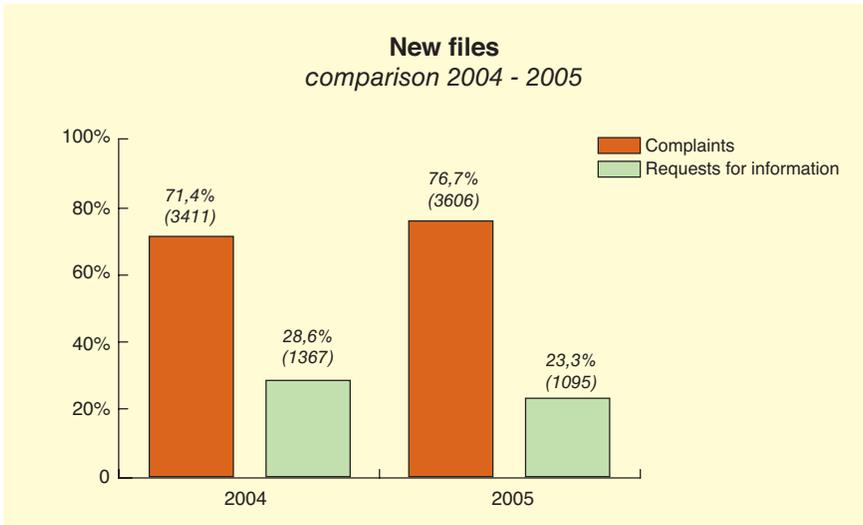
The period considered in this Annual Report 2005 covers the calendar year. The figures contained in Part II reflect the situation as at 31 December 2005.

To give a better idea of the files introduced in 2005, the tables and graphs will only contain the new files of the period – unless clearly indicated otherwise. This choice is made deliberately so as to avoid that case files from previous years, still in progress in 2005, are again included in the figures. The case files introduced in previous years are indicated globally in the comments and explicitly included in certain graphs, so that the overall workload for the year is illustrated all the same. Inasmuch as possible, the general figures reflect the changes between 2004 and 2005.

2. General Statistics

2.1. *New files*

The total number of new files in 2005 amounts to 4,701, of which 1,095 are requests for information (compared with 4,778 new files in 2004, of which 1,367 requests for information). In other words, the real number of complaints increased from 3,411 in 2004 to 3,606 in 2005.



Alongside these new complaints, 1,628 case files from previous years were still being processed in 2005, i.e.: 1 case file initiated in 1998, 1 in 1999, 4 in 2000, 14 in 2001, 34 in 2002, 154 in 2003, and finally, 1420 in 2004.

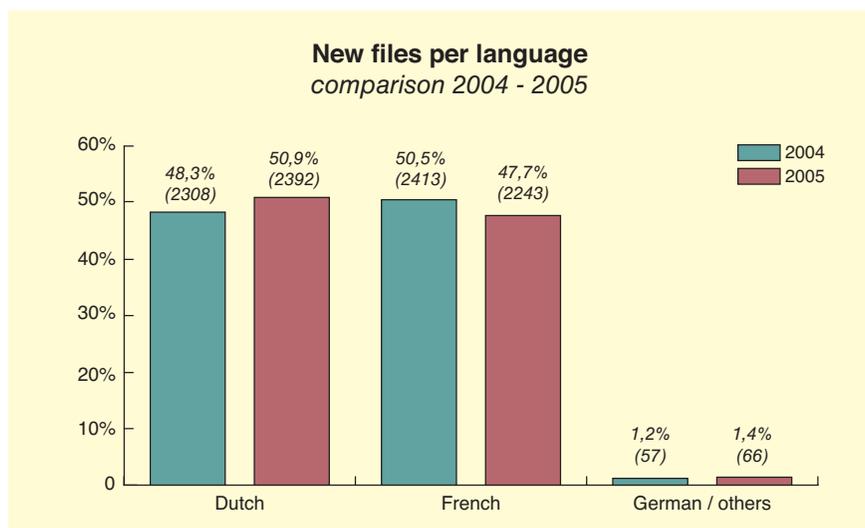
Inadmissible case files or those forwarded to other authorities, and requests for information represent a non-negligible part of the workload at the Office of the Federal Ombudsmen. Very often, in fact, the decision to declare a case file inadmissible or to refer it to another authority can only be taken after a thorough examination. The same applies to replies to requests for information made in writing or by telephone.

Furthermore, the Office continues to receive numerous requests for information by telephone which are not considered as a case file (about 1,800 requests received by the central secretariat in 2005). Although each of these requests for information does not take much time to be processed in and by itself, taken together they nonetheless represent a workload for the institution that can be estimated at one full-time equivalent unit.

2.2. *New files by language*

The 4,701 new case files in 2005 are broken down by language as follows: Dutch: 2,392 or 50.9%, French: 2,243 or 47.7%, others

(including German): 66 or 1.4%. The graph below shows the number of files by language for 2004 and 2005.

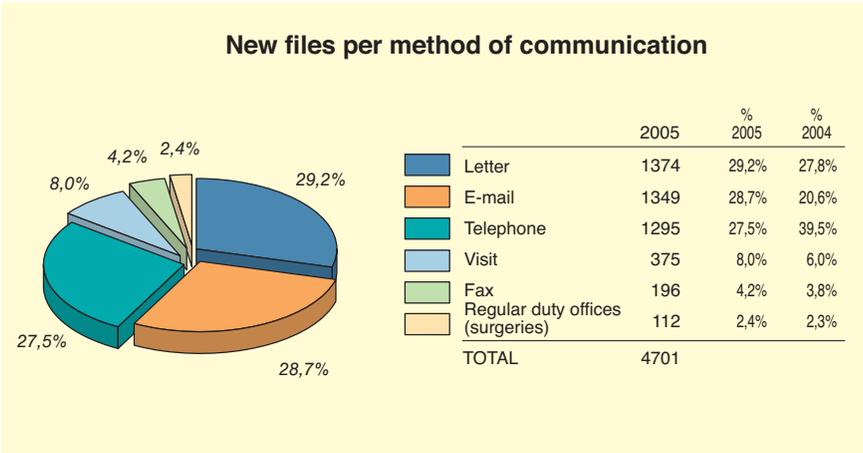


The breakdown between new complaints and requests for information gives the following result:

- New complaints (3,606): Dutch: 1,804 or 50.0%, French: 1,746 or 48.4%, others (including German) 56 or 1.6%;
- Requests for information (1,095): Dutch: 588 or 53.7%, French: 497 or 45.4%, others (including German): 10 or 0.9%.

2.3. *New files by method of communication*

The graph below shows the breakdown of new files for 2005 by means of communication used to file the complaint or request for information, as well as a comparison (in percentage) with 2004. By decreasing order, the Office of the Federal Ombudsman opened 1,374 files as a result of a complaint or a request for information by letter, 1,349 by e-mail, 1,295 by telephone, 375 during a visit to the Office, 196 by fax, and finally 112 during a visit to regular duty offices in the provinces.



2.4. Geographic distribution of the new files

The graph on page 25 gives an idea of the geographic distribution of the 4,282 new files among the 10 provinces and the administrative district of Brussels.⁵ These are by definition only files for which the plaintiff's official address is known (which is not always the case for complaints lodged by e-mail, requests for information and, needless to say, anonymous complaints), provided said address is in Belgium. In fact, 165 files were introduced by persons residing abroad (compared with 121 in 2004).

2.5. Complaints by phase

There are ten possible phases in dealing with case files, as stipulated in Article 12 of the Internal Rules of Procedure of the Office of the Federal Ombudsmen⁶, corresponding to the different stages or options for handling complaints: acknowledgement of receipt, information procedure, investigation procedure, mediation process, statement of non-competence/non-admissibility, suspension of handling procedure, proposal, official recommendation, complaint forwarded and termination of the procedure.

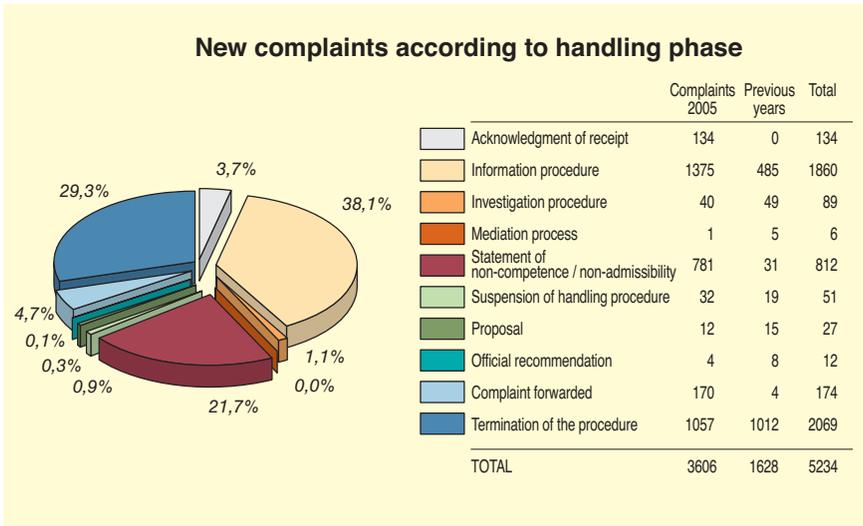
⁵ 2005, NSI, Federal Public Service Economy, SMEs, Self-employed and Energy (population figures as at 1 January 2005).

⁶ *Moniteur belge/Belgisch Staatsblad -Belgian Official Gazette-*, 27 January 1999, pp. 2339-2345; OFO, *Annual Report 1997*, pp. 43-45.

**Comparison between the number of new files and the population
per province + Brussels**



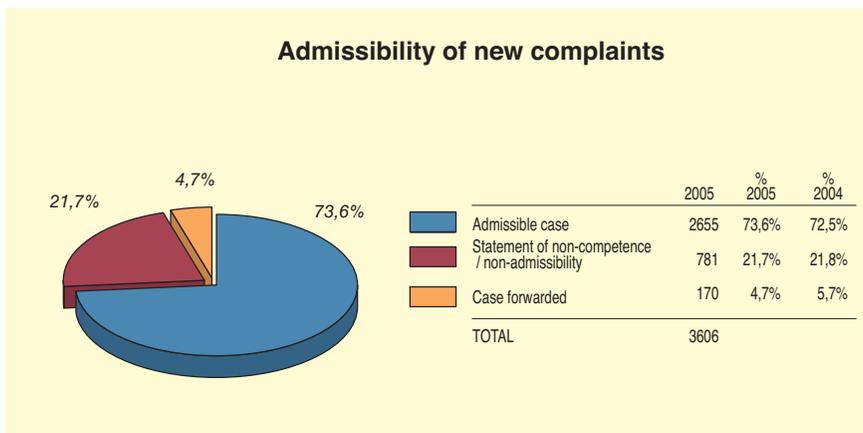
The following graph depicts the handling phase at 31 December 2005, for new complaints lodged in 2005 and for those of previous years. As the complaint handling phases fluctuate, this graph shows the phase only at a specific moment of the process. The total number of complaints still in progress as at 31 December 2005 is 2,128. This figure gives an idea of the overall workload remaining at the end of the period.



2.6. Admissibility of new complaints

Of the 3,606 new complaints lodged in 2005, 781 were inadmissible; 170 complaints were forwarded to mediation or complaint services or, for want of such a service, to the institutions against which the complaints were lodged. The remaining 2,655 complaints were declared admissible.

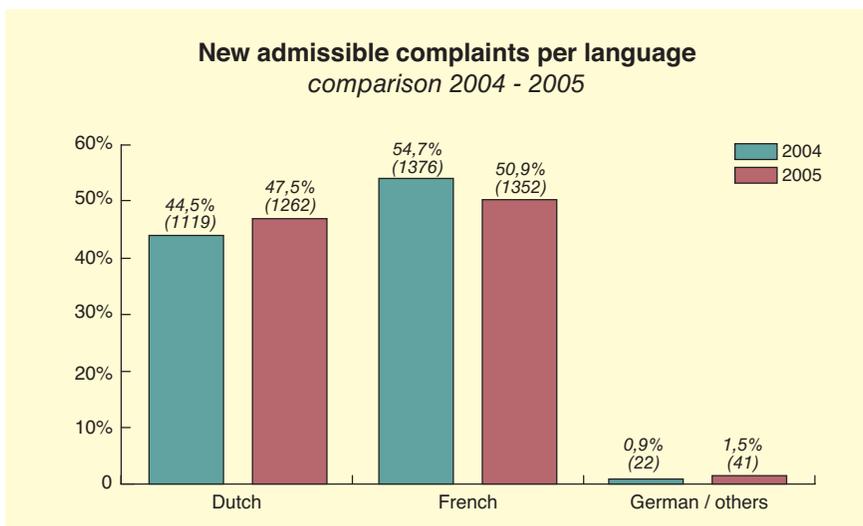
The graph below gives an idea of the admissible complaints for 2005 as well as a comparison (in percentage) with 2004. Contrary to previous years, written or oral requests for information are not taken into consideration (1,095 in 2005).



2.7. New admissible complaints by language

In 2005, the 2,655 new admissible complaints break down as follows according to the language in which they were lodged: French: 1,352 (50.9 %), Dutch: 1,262 (47.5 %), others (including German): 41 (1.5 %).

The graph below shows a comparison between the new admissible complaints in the last two periods.



2.8. *New complaints forwarded*

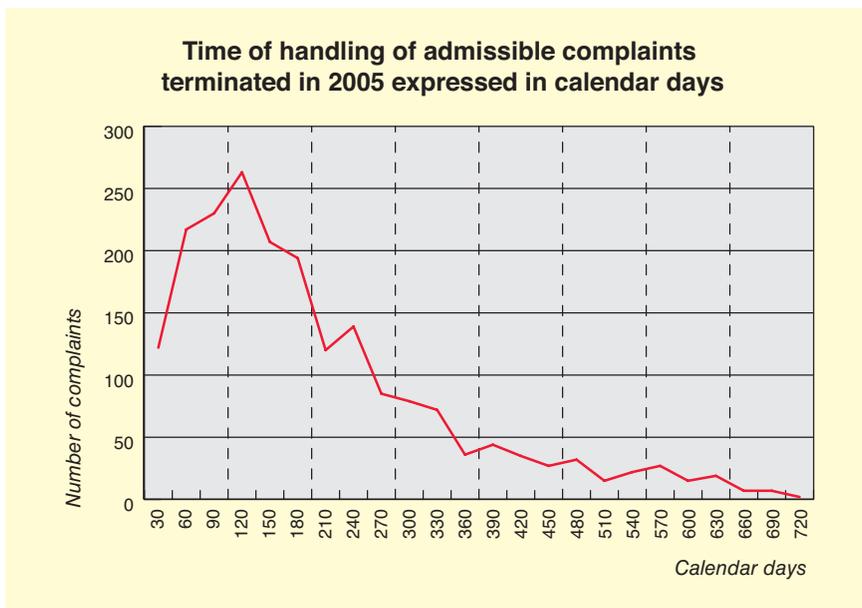
170 complaints received in 2005 were referred to the following mediation services and institutions:

Recipients of new complaints forwarded	number	%
Federal Civil Service	45	26,5%
Flemish Ombudsman	26	15,3%
Pensions Mediation Service	19	11,2%
Supreme Council of Justice	11	6,5%
Mediation body for the telecommunications sector	10	5,9%
Ombudsman of the French-speaking Community	10	5,9%
Mediation body for the Postal Office	9	5,3%
Local mediation bodies	8	4,7%
Ombudsman of the Walloon Region	7	4,1%
Mediation services in the private sector (banks, insurance companies, etc.)	6	3,5%
Mediation body for the National Railroad Company	5	2,9%
Regions and Communities	4	2,4%
Supervisory Standing Committee for the Federal Police ("P" Committee)	3	1,8%
Mediation body "Right of the patient"	3	1,8%
Local authorities	2	1,2%
Flemish child's rights Commissioner's Office	1	0,6%
Foreign mediation bodies	1	0,6%
	170	

In the Annual Report 2004, this table contained also requests for information that were "forwarded" to the Federal authorities and their information services. For this reason, only 45 new complaints were referred to the Federal authorities in 2005, owing amongst others to the fact that the plaintiff did not take prior steps to approach the authority concerned.

2.9. *Time of handling admissible complaints terminated*

The graph below gives statistical data – per 30 calendar days – on the processing time for admissible complaints closed in 2005. It comprises both new complaints and those from previous years.



These data show that of these 2,066 complaints, 1,233 (59.7%) were closed in 6 months. 531 complaints (25.7%) were closed in a year, 175 (8.5%) in 18 months, and 77 complaints (3.7%) in 2 years. Finally, for 50 complaints (2.4%), more than 720 days of processing were needed to close the file.

There are several reasons for this long handling time:

- The complexity of the matter, which concerns various authorities, and even various levels of power;
- The slowness of people questioned by the Office to react, both plaintiffs and authorities, during the examination of the case;
- The fact that the Office fell behind schedule on the formal closing of complaints terminated.

2.10. Evaluation of admissible complaints terminated

Admissible complaints closed definitively were classified in one of the following evaluation categories ⁷:

“Proper administration”: when the Civil Service proceeds flawlessly or when its error is rectified at its own initiative before any intervention on the part of the Office.

“Proper administration following intervention” indicates that an error was made by the Civil Service which was rectified after intervention by the Office.

The Office closes a case by *“consensus”* when the 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.

“Shared responsibility” is cited when the plaintiff and the Civil Service each bear part of the responsibility for the improper administration in question.

“Improper administration” denounces an error by the Civil Service that was not rectified in spite of the intervention of the Office.

“Indeterminable responsibility” is used when the responsibility of neither the plaintiff nor the Civil Service can be established with certainty.

A case file is *“closed due to lack of information”* when the plaintiff does not provide the Office with additional information that is indispensable for dealing with her or his file.

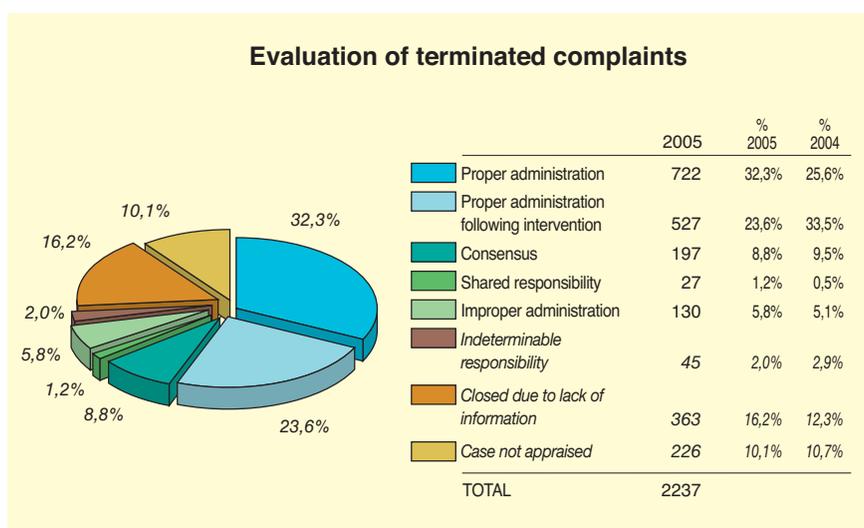
Finally, the Office of the Federal Ombudsmen closes, *“case not appraised”*, cases where the problem was solved before its intervention but after the intervention of a third party, or after the intervention of the Office, although in the latter case it is not clear whether said intervention contributed decisively to solving the problem. Furthermore, an individual case may have been settled without the intervention of the Office, but the structural problem or regulatory provision that gave rise to the dispute still subsists.

The graph below gives a global idea of the evaluation of 2,066 complaints closed in 2005 (including complaints lodged in previous years): 722 *“proper administration,”* 527 *“proper administration*

⁷ OFO, *Annual Report 2000*, pp. 16-17.

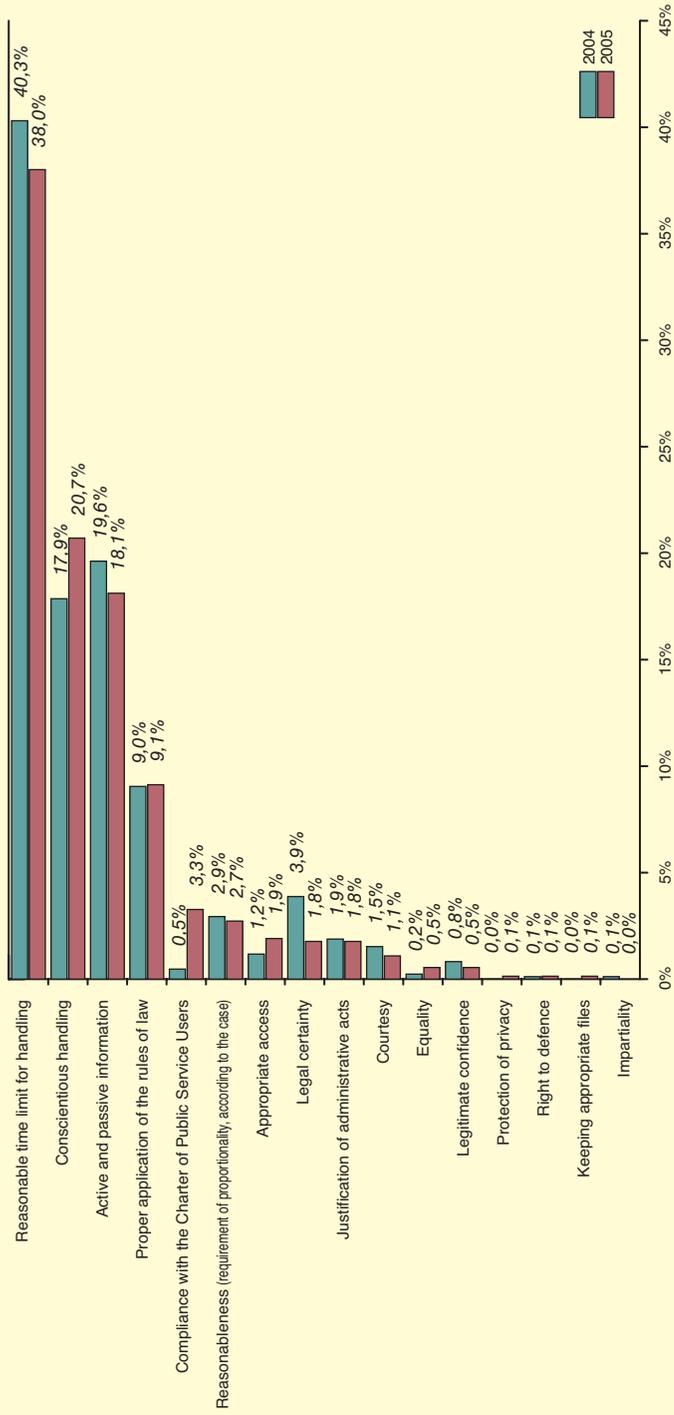
following intervention," 130 "improper administration", 197 "consensus," 27 "shared responsibility," 45 "indeterminable responsibility," 363 "closed due to lack of information," and 226 "case not appraised".

The difference between the number of evaluations (2,237) and the number of complaints closed (2,066) is explained by the fact that the same complaint may concern several departments and, consequently, be closed with several evaluations. The graph also contains a comparison (in percentage) with 2004 -without duplicate counting since the complaints are closed (both for the year concerned and for previous years)-.



The following graph gives an idea of the proper administration criteria violated in 657 complaints closed with "improper administration" or "proper administration following intervention" in 2005, as well as a comparison with 2004. In this respect, it happens frequently that several proper administration criteria are infringed on in the same case file. As a result, the total number of criteria indicated in the table (734) is higher than the number of case files closed (657).

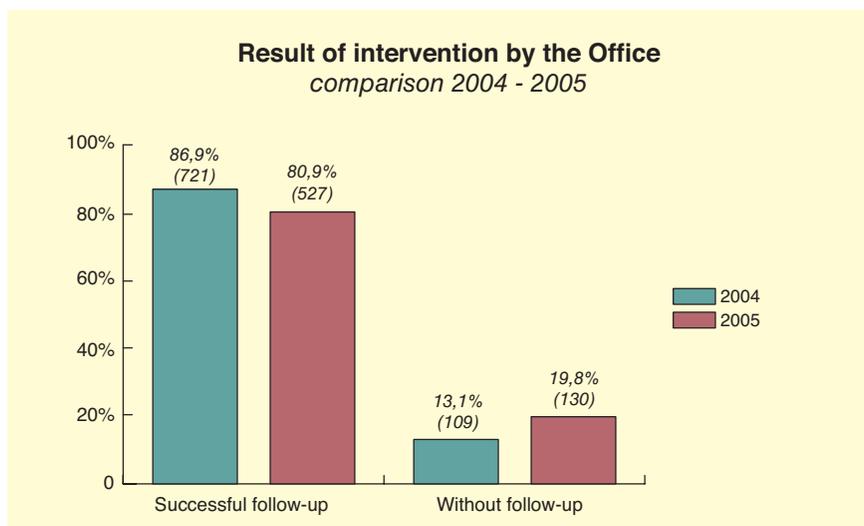
Application of evaluation criteria comparison 2004 - 2005



2.11. Result of the intervention by the Office

The graph below shows the results (for 2004-2005) of the intervention by the Office of the Federal Ombudsmen for established cases of malfunctions. The term 'intervention' refers to all information and investigation procedures, proposals, mediation processes and official recommendations by the Office.

So as not to distort the comparison with the previous year, this graph includes only the evaluations "*proper administration following intervention*" and "*improper administration,*" and does not take into account the 197 case files in which the problem was resolved satisfactorily, and which were finally closed with "*consensus.*" The Office shall as of next year provide an adapted graph that takes all positive interventions into consideration.



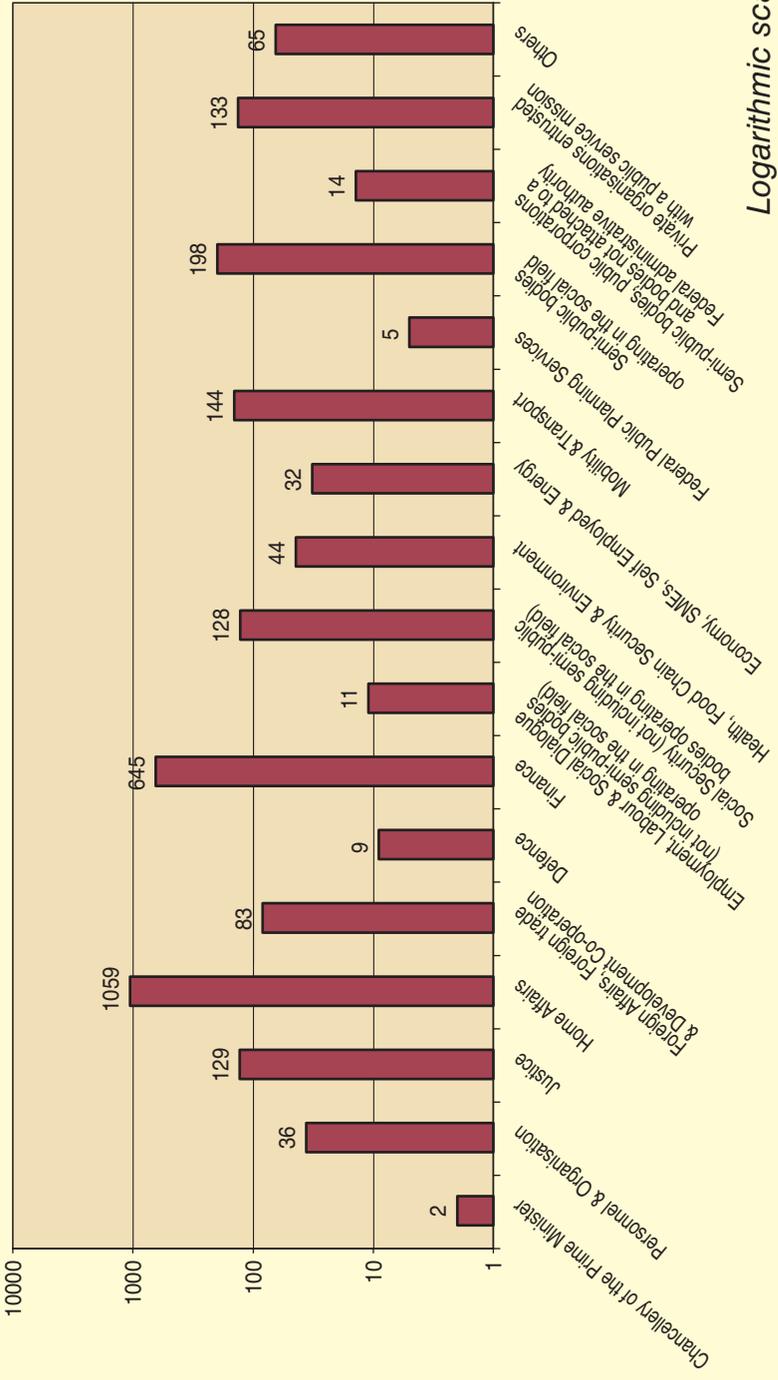
2.12. Admissible complaints by department and by sector

The breakdown of the different admissible complaints, by department, is as follows:

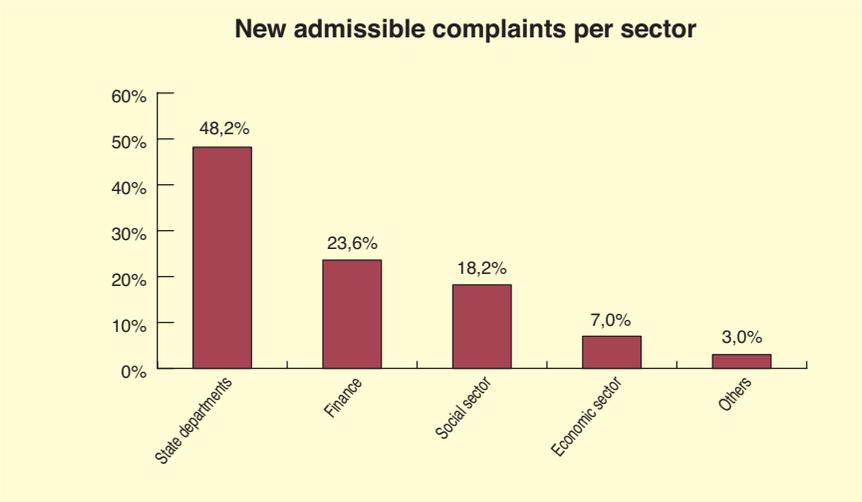
Admissible complaints per department	2005			
	New		All	
Federal Civil Service				
Chancellery of the Prime Minister	2	0,1%	5	0,1%
Personnel & Organisation	36	1,3%	44	1,0%
Justice	129	4,7%	221	4,9%
Home Affairs	1059	38,7%	1848	41,1%
Foreign Affairs, Foreign trade & Development Co-operation	83	3,0%	205	4,6%
Defence	9	0,3%	11	0,2%
Finance	645	23,6%	1085	24,1%
Employment, Labour & Social Dialogue (not including semi-public bodies operating in the social field)	11	0,4%	25	0,6%
Social Security (not including semi-public bodies operating in the social field)	128	4,7%	185	4,1%
Health, Food Chain Security & Environment	44	1,6%	56	1,2%
Economy, SMEs, Self Employed & Energy	32	1,2%	54	1,2%
Mobility & Transport	144	5,3%	180	4,0%
Federal Public Planning Services	5	0,2%	8	0,2%
Semi-public bodies operating in the social field	198	7,2%	276	6,1%
Semi-public bodies, public corporations and bodies not attached to a Federal administrative authority	14	0,5%	24	0,5%
Private organisations entrusted with a public service mission	133	4,9%	170	3,8%
Others	65	2,4%	98	2,2%
	2737		4495	
<i>Amongst which, complaints filed by Civil servants</i>	95		154	

As several administrative authorities can be concerned by the same complaint, the total number of complaints or requests for mediation, by department, is higher than the number of admissible complaints (2,737 compared to 2,655 new complaints in 2005). The table draws a distinction between complaints lodged in 2005 and those of previous years.

New admissible complaints per departement (n=2737)



At the end of this overall view, the graph below gives a breakdown, by sector, of complaints of 2005 contained in previous tables and graphs.



III. RECOMMENDATIONS



III. RECOMMENDATIONS

Recommendations based on observations made during the examination of complaints about the way the Federal authorities function is one of the missions entrusted explicitly to the Federal Ombudsmen by Article 1, 3°, of the Federal Ombudsman Act of 22 March 1995 (hereinafter referred to as “the Act”).

These recommendations can be either:

- a) *“Official” Recommendations*: by virtue of Article 14, section 3, of the Act, the Ombudsmen may, when dealing with complaints, make such recommendations as they deem useful to the administrative authority;⁸ or
- b) *“General” Recommendations*: 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;

Being keen on a dynamic follow up of the Petitions Committee’s reports on the recommendations of the Office of the Federal Ombudsmen, the House of Representatives created the position of “Ombudspromoter”⁹, in each Standing Committee.

In May 2005, the Petitions Committee decided to examine the general recommendations of the Office henceforth by theme, corresponding to the respective field of competence of the different Standing Committees of the House by involving the Members of the Standing Committee concerned. The Ombudsmen are invited to come and explain their priority recommendations. The Ombudspromoter concerned by the matter is requested to relay the tenor of the discussion in her or his Standing Committee and will, if necessary, draw up a bill or a draft resolution, co-signed by the Members of the Petitions Committee. The Ombudspromoter will then be instructed to monitor the examination of the bill or draft resolution in her or his Standing Committee. Pursuant to

⁸ A recapitulative list of recommendations made in 2005 is given in p. 53.

⁹ Article 38, of the Rules of Procedure of the House of Representatives.

this procedure, the Petitions Committee met four times in June and July 2005 to examine recommendations designated as priorities by our predecessors relating to Justice and the Home Affairs and cross-departmental recommendations.

When we assumed our duties, we wanted to draw up a statement of the general recommendations made by our predecessors. This statement is appended in table form.¹⁰

We opted to distinguish three categories among these general recommendations: cross-departmental recommendations which concern all the Federal administrative authorities; thematic recommendations that pertain to one department or authority in particular, and finally recommendations devoted by our predecessors to the institution itself (made essentially in 1997 and 1999).

We have informed the Petitions Committee that we do not wish to include these latter recommendations in the follow up of the general recommendations referred to in Article 15 of the Act. Without challenging the value of the questions some of them raise regarding the field of competence and the means and resources of action of the Office of the Federal Ombudsmen, we consider that they do not fall under the Office's recommendation mission as provided under Article 1 of the Act. Conversely, these questions have a rightful place in the presentation of the difficulties that Ombudsmen encounter in performing their duties, which will henceforth be broached separately in the annual report.

If the recommendations concerning the institution itself are accepted, the examination of the follow up of the general recommendations made by our predecessors is rather encouraging in the end.

Of 44 general recommendations, 20 were closed because the problem they addressed had been encountered.¹¹ If this outcome does

¹⁰ OFO, *Annual Report 2005*, pp. 64-69.

¹¹ Seven had become irrelevant or had been included in another recommendation and three had been closed by our predecessors in 2005.

not always stem from a parliamentary initiative, these recommendations will have in any event contributed to the debate that ultimately led to a solution. The discussions devoted to them in the Petitions Committee and the numerous parliamentary questions that have ensued attest thereto. The general recommendations of the Ombudsmen are not always intended to be transposed into legislative initiatives. When they can be so transposed, the Government at times takes the initiative to insert them in a bill.

14 recommendations are still in progress. We report on the latest developments below. Of these, 6 of the 7 recommendations considered matters of priority by our predecessors have been discussed in the Petitions Committee according to the above mentioned new work method introduced in 2005.

1. General Recommendations

1.1. *General Recommendations 2005*

We have not made any new general recommendations this year. We assumed our duties on 8 November 2005, so that we only had seven weeks to become cognisant of the complaints in process which may have led to a recommendation. This interval was not sufficient to establish a constructive dialogue with the departments concerned. We actually think that it would be counter-productive to make a recommendation in haste, without having previously discussed our observations in this regard with the competent department and its Minister. Far from calling the independence of the Ombudsmen to question, this approach constitutes not only an indispensable token of respect for the work and expertise of the Civil Service, but should also help bolster the credibility of the recommendations by verifying their – at times unsuspected – consequences beforehand, so that said recommendations can be duly adjusted.

1.2. Follow up of General Recommendations from previous years in 2005

1.2.1. Cross-departmental recommendations

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

After the efforts made by the departments concerned (the Federal Public Service Foreign Affairs, Directorate General for Consular Affairs; the Federal Public Service Finance, Administration of Property Documentation – Land Registry Sector – AFER/AOIF and Collection Department; the Federal Public Service Home Affairs, Immigration Office; the Federal Public Service Social Security, Directorate General for the Self-Employed) and the improved justification where gaps had been reported, the various problems that had elicited this recommendation have been -or will be soon- solved.

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

In connection with the *Copernic reform*, communication officers were appointed to the Federal Civil Service (COMMnetkern) to promote internal and external communication. COMMnetkern reported on its planned unique toll-free number for the entire Federal Civil Service. The Parliament questioned the Minister of the Civil Service about this project.¹² According to information obtained from the Chancellery of the Prime Minister, the project is being monitored in connection with the development of the Federal contact centre. The project was still at the experimental stage when this annual report went to press.

¹² *Integral Report*, House of Representatives, ordinary session 2005-2006, question n° 6791 (Bex), CRIV51 Com. 615, pp. 5-7.

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 Federal Ombudsmen met the Secretary of State responsible for Administrative Simplification in 2004, for whom this issue is a priority¹³; his aim was to introduce a system so that the Federal Civil Services would no longer require from citizens data or certificates relating to them that are already recorded, or already available at their town hall. 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) are already playing a similar role in this regard on the social and economic fronts respectively.

This recommendation was broached in the Petitions Committee in July 2005. In his note to the Petitions Committee in July 2005, the Secretary of State responsible for Administrative Simplification indicated that the Administrative Simplification Agency had initiated pilot projects in a certain number of departments and had also planned a global screening of the Federal Public Services with regard to their access to the National Register.

The Senate's Committee of Home and Administrative Affairs is currently examining a Bill which provides that the authorities should not ask citizens to produce data unless no other authority has such data already.¹⁴

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 officers of the competent departments of the Federal Public Service Finance, thereby sparing the tax authorities from having to ask the same information from the taxpayer several times. This consultation will be made with due respect for the protection of pri-

¹³ General Policy Note on Administrative Simplification of 26 November 2003 and the website www.sav.fgov.be.

¹⁴ Bill aimed at improving relations between citizens and the Civil Service (Cornil), Parl. Doc. Senate, extraordinary session 2003, Art. 12, 11 July 2003, 3-67/1.

vacy. Asked by a Federal MP about this matter, the Secretary of State for the Modernisation of Finance indicated that said Bill had been approved by the Government and was in the process of implementation.¹⁵

For the follow up of this recommendation, it is worth mentioning that the SELOR has adapted its computer system so that all the useful data on a candidate can be kept in a *single file*. The *single file* principle has been a reality since 2004 for selections in the *Internal Market* (mobility) as well as for the selection of civil servants on contract. It is now possible to complete a *curriculum vitae* (CV) when registering online and to attach a personalised CV to this electronic CV, together with a copy of one's diploma(s). In 2005, all the Federal Public Services and semi-public services and scientific establishments that wish to recruit staff or staff on contract through the *Internal Market*, have been granted direct access to this online registration database.

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

Three Bills pursuant to this recommendation were sent to the Committee on the Home Affairs, General Affairs and the Civil Service of the House of Representatives¹⁶ or in the Senate's Committee of the Home and Administrative Affairs.¹⁷ In July 2005, the Petitions Committee decided to question the Minister of the Interior through the competent Ombudspromoter about possible follow up to this recommendation.

As regards taxes, the acknowledgement of receipt has since become mandatory in the event of a complaint against taxation as well as in the case of tax relief *ex officio*.¹⁸

¹⁵ *Integral Report*, House of Representatives, ordinary session 2005-2006, Question n° 8131 (Govaerts), CRIV51 Com. 706, pp. 5-8.

¹⁶ Bill on a *general administration Act* (Leterme and Vandeurzen), *Parl. Doc.*, House of Representatives, ordinary session 2003-2004, 26 November 2003, n°51 0496/001; Bill *amending the Act of 11 April 1994 on public transparency to improve the relationship between citizens and the Federal administrative authorities* (Van Gool and Frédéric), *Parl. Doc.*, House of Representatives, ordinary session 2003-2004, 19 March 2004, n°51 0937/001

¹⁷ Bill *aimed at improving relations between citizens and the Civil Service* (Cornil), *Parl. Doc.* Senate, extraordinary session 2003, Art. 12, 11 July 2003, 3-67/1.

¹⁸ GR 03/03; OFO, *Annual Report 2003*, pp. 49 ff.

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

This recommendation was broached in the Petitions Committee in July 2005 in the presence of a representative of the Minister of the Civil Service. The latter reported on the initiatives taken by the Minister after a working meeting that he had with the Secretary of State responsible for Administrative Simplification, *i.e.* the establishment of a work group with the Ministers of the Federal Government concerned and the examination of the possibility of involving other levels of authorities in the discussion.

*1.2.2. Thematic recommendations***GR 03/01: The period for handling cases lodged on Belgium territory and submitted to the Immigration Office**

This recommendation was discussed in the Petitions Committee on 15 June 2005 in the presence of a representative of the Vice-Prime Minister and Minister of the Interior.¹⁹ The period for processing applications for authorisations to take up residence, requests for reviews, and applications to renew authorisations to take up residence were broached.

Given the number of complaints lodged in 2005 concerning delays in the processing of applications for authorisation to take up residence that fall under the purview of the Service “Article 9, section 3 – humanitarian,” the structural analysis, which was started in 2004 and led to the opening of a Master file, is still topical.

Concerning applications for the extension and/or renewal of authorisations to take up residence, in the beginning of 2006 the Immigration Office informed the Office of the Federal Ombudsmen of the reasons why it has difficulties in managing this type of applications and of the measures to be taken.

¹⁹ Parliamentary document pending.

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

The Office of the Federal Ombudsmen noted a clear improvement during the period under review in the way the Directorate General for Benefits for the Disabled functioned. Thanks to the different improvement projects implemented by the Civil Service, the reduction in the processing time already noted in 2004 was sustained. Thus, the *Communit-e*²⁰ project that enables municipal staff to have a direct access to the databases of the Directorate General, was extended to all the municipalities in October 2005. The applications are transmitted electronically and registered in real time. The identification data of the disabled person and the composition of her or his household are extracted at the same time from the National Register. The municipal authority receives proof of registration of the application immediately, together with the various pre-completed forms to be submitted to the disabled person. This new system, which will initially exist along-side the old procedure and will become compulsory for all municipalities around mid-2006, makes it possible to save several weeks' time in processing files.

Furthermore, the Office of the Federal Ombudsmen had made an official recommendation in 2001²¹ concerning the time required by the Direct Taxation authorities to process requests for inquiries into revenues made by the Directorate General for the Disabled or the National Office of Pensions. At the end of 2005, the Directorate General informed the Federal Ombudsmen that the Council of Ministers had approved the report of the work group on "Modernising the management of social security" on 22 April 2005, and had agreed to set up work groups in charge in particular of organising an interchange of data between the Federal Public Service Finance and the social security network. The Directorate General for the Disabled would in the end be able to access data from notices of tax assessment and from the property registry. This data interchange is part of the priority projects of the Crossroads Bank for Social Security for 2006.

²⁰ This project was hailed as best federal project by the Agoria « E-Gov Awards 2005 » and was also selected for the « eEurope Award ».

²¹ OR 01/04; OFO, *Annual Report 2001*, p. 56.

Of the fifteen improvement projects that concern medical expert's opinions in particular, the *Medic-e* project should save even more time, as it is ultimately intended for the interchange of medical data between attending physicians and the doctors of the Directorate General for the Disabled.

Thanks to the *Contact Centre*, which became fully operational in February 2005, accessibility to the service has improved. The *Contact Centre*, the installation of which commenced in 2004, has since February 2005 been centralising all telephone calls; its staff has already been bolstered, and several adaptations have been made to deal with operating problems noted during its launch. The *Contact Centre* is expected to assume the task of replying to written correspondence as of February 2006. The Office also applauds the publication of a monthly bulletin (via e-mail) containing very useful information for the users. The website of the Directorate General (www.handicap.fgov.be) has been reworked entirely and has become more user-friendly.

The Office of the Federal Ombudsmen has consequently proceeded to close this general recommendation, as it has been met.

GR 03/03: Appeals concerning taxation

The Office recommended certain changes to the procedures for lodging complaints with the Director General for Direct Taxes. The Office's previous annual reports and day-to-day experience have shown that the tax authorities can be excessively formal in assessing the admissibility of a complaint against taxation, which abuses the principle of the collection of the right tax.

1. Extension of the period within which a complaint may be filed

The tax procedure reform adopted in 1999 reduced the period for contesting the taxation to three months as of the day that the notice of tax assessment was dispatched. Complaints received by the Office showed that this period is clearly too short. Not all taxpayers who receive their notice of tax assessment can verify it immediately and react in accordance with the rules of procedure. The calculation of the tax and the rules of procedure mentioned on the notice of tax assessment often seem so complicated, that specialists or the tax authorities themselves have to be contacted for explanations. The verification of the calculated tax takes such a long time because of this, that the taxpayer loses sight of the deadline within which he might file a complaint.

By way of example, we can cite the case of a taxpayer who, unaware of the facts, had omitted to enter the interest of his mortgage loan under two separate headings of his tax return. When he noticed his mistake, the above mentioned three-month period had expired. The Regional Tax Office decided that his application for tax relief was inadmissible because the complaint had been filed beyond the imparted period. The Office of the Federal Ombudsmen knows of many such complaints where the plaintiffs, satisfied that their tax assessment shows that they will be getting a refund, did not check the calculation and thus missed an additional refund.

The Office maintains its recommendation that the period within which a taxpayer may file a complaint should be extended considerably.

2. Notions of writing and of signature – certain date

By virtue of Article 366 of the 1992 Income Tax Code, a taxpayer can only complain in writing. At present, the notion of *writing* is interpreted in a very restrictive manner by the regional offices, whereby modern means of writing -in particular the fax- are excluded. Furthermore, by relying on the case law of the Supreme Court, the regional tax authorities consider that a signature on a fax is not valid because it is not an original signature. The Office of the Federal Ombudsmen consequently recommended in 2003, that the 1992 Income Tax Code be amended to expand the notions of *writing* and *signature*.

Furthermore, taxpayers often send their complaint on the last day of the period within which said complaint can be lodged. But the tax authorities do not take into account the date on which the complaint was dispatched, but the date on which it was received by the competent regional tax office. Complaints must be lodged within three months. The taxpayer, however, has no control over the date on which the complaint is received.

To make the formalities of the procedure more flexible, a new provision in the 1992 Income Tax Code should enable taxpayers to file their complaints validly either by registered letter (post-marked date on the acknowledgement of receipt taken as proof of postage), by fax (date of acknowledgement of receipt of the fax), or by e-mail (date the e-mail was sent), or by hand-delivering it at the competent regional office against acknowledgement of receipt.

3. Acknowledgement of receipt

The Programme Law of 27 December 2004 (*Moniteur belge/Belgisch Staatsblad* -Belgian Official Gazette- of 31 December 2004) inserted Article 376 *quarter* in the 1992 Income Tax Code which stipulates that an acknowledgement of receipt must be sent to the taxpayer both for a complaint and for the request for *ex officio* reduction of tax. The Legislator has thus partially complied with the recommendation made by the Office in 2003.

The Office regrets that the law does not stipulate a time limit for sending an acknowledgement of receipt. It is obvious, nonetheless, that the compulsory dispatching of an acknowledgement of receipt becomes irrelevant if said acknowledgement is not sent within a reasonable period, for example within ten working days. A circular could perhaps offer a solution in anticipation of a possible amendment to the legal provision.

4. Internal forwarding

Pursuant to the Programme Law 2004, a complaint lodged with a regional director other than the one mentioned on the notice of tax assessment shall be considered admissible. The tax authorities shall be required by law to forward complaints automatically to the territorially competent director.

In the meantime, in a Circular dated 13 December 2005, the tax authorities published a series of sample acknowledgements of receipt that indicate whether the complaint is admissible or if it has to be lodged with another department. The same Circular provides that when a complaint is lodged with a civil servant other than the regional director of direct taxation (such a claim would not be admissible according to the current regulation), the department that receives it must send it back to the taxpayer immediately mentioning the address and particulars of the competent regional director.

GR 03/04: Collective settlement of debt

In 2003, the Office of Federal Ombudsmen made a general recommendation for a legislative initiative to enable tax collectors to grant a tax remission of the principal owed during the amicable phase of the collective settlement of debt.

The Act of 13 December 2005 on various provisions as to the time limit, joint request and collective settlement of debts authorises

the remission of tax debts in the amicable phase of the collective settlement of debt. As this Act has espoused the general recommendation fully, the Federal Ombudsmen have closed it.

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

During the discussion in the Petitions Committee on 15 June 2005, the representative of the Vice-Prime Minister and Minister of the Interior pointed out that the status of cohabiting partners would be inserted in the Act of 15 December 1980.

The Immigration Office specified in October 2005 that the status of cohabiting partners under the legislation relating to aliens would be settled when the Directive 2003/86/EC of 22 September 2003 on the right to family reunification was transposed.

In replying to an oral question ²², the Minister of the Interior indicated at the beginning of 2006 that a preliminary version of the Bill in this regard had been approved by the Council of Ministers and sent to the Council of State for an opinion. It provides for the right to family reunification for non-married partners from third countries. An identical provision will be inserted in the preliminary draft of a Bill transposing the Directive 2004/38 concerning EU citizens.

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

Pursuant to the adoption of the new International Private Law Code, a Circular of 2 May 2005 on the legalisation of documents by Belgian diplomatic and consular offices entered into force on 15 May 2005. The purpose of this circular is to reiterate that, pursuant to Article 30 of the afore-cited code, legalisation attests only to the veracity of the signature, the capacity in which the signatory of the document has acted and, where applicable, the identity of the seal or stamp that appears on the document. It is consequently not up to the Belgian diplomatic or consular offices to refuse to legalise a document for reasons other than those listed in

²² *Integral Report*, House of Representatives, ordinary session 2005-2006, question n°9919 (Lanjri) – *Residence permits in connection with a long-term relationship*, 51 Com. 828, pp. 3-4.

this definition. It is up to them, however, if they should notice that a document to be legalised is defective in form or content, to inform the authorities that will have to become cognisant of this document subsequently in our country (municipal officer for births, marriages, and deaths, Immigration Office, etc.) and to mention such defect thereon. Thus forewarned, the authorities will be able, if they should deem it necessary, to ask the Belgian diplomatic or consular office – via the Federal Public Service Foreign Affairs – to have an in-depth investigation conducted on the document, even if already legalised. This investigation could be lead by a confidential lawyer of the diplomatic or consular office. The fact that a document is legalised is therefore a necessary, yet insufficient condition, for it to be accepted in Belgium. This recommendation is still topical however, in that the new circular maintains the option of having recourse to a confidential lawyer according to the above mentioned procedure, though no legal or regulatory provision sanctions this practice.

GR 02/03: The tax trap in unemployment

In its Annual Report 2002, the Office mentioned that fully covered unemployed persons over fifty years of age were discouraged, by the tax system, from undergoing training, when offered an allowance for that purpose by the regional employment offices, since they could lose a *de facto* tax exemption for their replacement income because of this flat-rate allowance.

On 25 May 2004, a Bill was introduced to exempt this allowance from all taxation.²³ This proposal is currently being examined by the Parliament.

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

After having initially apprised the House of Representatives that he shared the analysis of the Office of the Federal Ombudsmen concerning the application of the Social Insurance Contributors' Charter on public social security institutions that do not provide

²³ Bill amending Article 38 of the 1992 Income Tax Code to eliminate the tax trap in unemployment for unemployed individuals undergoing training (Van Gool, Baeke, Storms, Burgeon, Dieu, De Clercq, Van der Maelen, Lenssen, Claes), *Parl. Doc.*, House of Representatives, ordinary session 2003-2004, 25 May 2004, pending, no. 51 1158/001.

social benefits (ONSS/RSZ, ONSSAPL/RSZPPO, INASTI/RSVZ and BCSS/KSZ) and that he planned to word the Bill accordingly, the Minister of Social Affairs and Public Health in the end informed the Federal Ombudsmen that he had revised his position on the basis of an opinion of the Board of public social security institutions. The latter considered that the missions of said institutions did not fall under the scope of the Charter and that any such amendment of the Bill would entail additional budget allocations.

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 decree

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.²⁴

GR 00/02: Procedure for changing surnames and first names / consent of the spouse for changing the name of a child born in adultery *a patre*

On 20 October 2005, the House of Representatives adopted a Bill amending the provisions of the Civil Code concerning the establishment of filiation, and the effects thereof, Article 16 of which espouses the recommendation made by the Ombudsmen.²⁵ The Senate evoked the draft on 9 November 2005.²⁶ The text was sent to the Justice Committee.

²⁴ *Integral Report*, House of Representatives, ordinary session 2004-2005, question n°6847 (Nagy) – *Documents to be submitted for the declaration of marriage*, 51 Com. 605, pp. 4-6.

²⁵ *Bill amending the provisions of the Civil Code concerning the establishment of filiation and the effects thereof*, *Parl. Doc.*, House of Representatives, ordinary session 2005-2006, 20 October 2005, 51 0597/34.

²⁶ *Bill amending the provisions of the Civil Code concerning the establishment of filiation and the effects thereof*, *Parl. Doc.*, Senate, ordinary session 2005-2006, 9 November 2005, 3-1402.

GR 99/07: International adoption

The Act of 24 April 2003 reforming adoption entered into force on 1 September 2005. GR 99/07 has therefore been espoused.

GR 99/13: The lack of transparency of the Order of Physicians

Several Bills to reform the Order of Physicians are pending before both the House and the Senate. In some of them, the recommendation is followed inasmuch as it is explicitly stipulated that the patient who files a complaint with the Order against a doctor must have the right to know the result of the disciplinary procedure.²⁷

2. Overview of Official Recommendations 2005 ²⁸

OR 05/01, Finance (three years instead of three months)

OR 05/02, Finance (registration fees - refund)

OR 05/03, Finance (the calculation programmes for tax returns)

OR 05/04, Complaints by civil servants (the compensation system for members of the Customs and Excise Department)

OR 05/05, Complaints by civil servants (language frameworks, Centre for the Study of Nuclear Energy)

OR 05/06, Complaints by civil servants (scale promotion, Finance)

²⁷ Bill creating the Order of Physicians, the Disciplinary Board for Health, and the Higher Council for the medical code of ethics (Gerkens), *Parl. Doc.*, House of Representatives, extraordinary session 2003, 2 July 2003, 51 0045; Bill on the creation of a Higher Council for the medical code of ethics (De Meyer, Peeters, Detiège), *Parl. Doc.*, House of Representatives, extraordinary session 2003, 2 September 2003, 51 0187; Bill amending Royal Decree n°79 of 10 November 1967 relative to the Order of Physicians (Bacquelaine), *Parl. Doc.*, House of Representatives, extraordinary session 2003, 5 September 2003, 51 0191; Bill creating the Order of Physicians (Vandeurzen), *Parl. Doc.*, House of Representatives, ordinary session, 2003-2004, 10 November 2003, 51 0424; Bill creating an Order of French-speaking and German-speaking Physicians, and an Order of Flemish Physicians (Bourgeois), *Parl. Doc.*, House of Representatives, ordinary session 2003-2004, 23 April 2004, 51 1045; Bill creating an Order of Physicians (Vankrunkelsven), *Parl. Doc.*, Senate, ordinary session 2003-2004, 3 December 2003, 3-373/1; Bill creating the Order of Physicians, (De Schampelaere), *Parl. Doc.*, Senate, ordinary session 2003-2004, 11 December 2003, 3-413/1.

²⁸ For the official recommendations from 1997 to 2001, cf. OFO, *Annual Report 2001*, pp. 56-57, for 2003, cf. OFO, *Annual Report 2003*, p. 61 and for 2004, cf. OFO, *Annual Report 2004*, p. 42.

Appendixes



Appendix I

The Federal Ombudsmen Act, Kingdom of Belgium, of 22 March 1995, as modified by Act of 11 February 2004 (free translation)

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 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 Grade 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 Civil Service 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 Civil 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 notice 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 notice 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 deem 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 deem 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/Belgisch Staatsblad* - Belgian Official Gazette.

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 she or he has carried out her or his 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, she or he 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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Appendix II - Table summarizing the General Recommendations (GR) 1997-2004

GR	TITLE	OBJECT	STATE	COMMENT	PETITIONS COMMITTEE
Cross-departmental General Recommendations					
97/06	The failure of Civil Service departments to respond to citizens' correspondence, or excessive slowness in responding (the object of this GR is contained in GR 99/05: OFO, AR 1999, p. 72 and AR 2000, p. 57)	Cross-departmental	Abandoned	GR 99/05 in progress	
97/07	Transparency of the Civil Service (this GR is to be compared with GR 99/02: OFO, AR 1999, p. 72 and AR 2000, p. 57)	Cross-departmental	Abandoned	GR 99/02 closed	
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	Cross-departmental	Priority		13/07/2005
97/14	The importance of the principle of non-retroactivity of legislation	Cross-departmental	Closed	Partially espoused on the matter of solidarity contribution by the Royal Decree of 21/10/1998 after the decision of the Court of Arbitration of 15/07/1998 (OFO, AR 1999, p. 74)	
97/17	Establishment of the position of ombudsman at municipal and provincial levels	Cross-departmental	No longer applicable	This matter no longer falls under Federal purview since what are known as the Saint-Polycarpe Agreements (OFO, AR 2001, p. 55)	
98/02	The issuing, in one form or another, of an acknowledgement of receipt establishing the submission of documents to a Civil Service department	Cross-departmental	Priority		13/07/2005
99/02	The establishment of an <i>ad hoc</i> commission entrusted with monitoring the implementation of the Law on formal justification of administrative acts	Cross-departmental	Closed	07/2005	05/2001; Put on the agenda of the Petitions Committee meeting of 29/06/2005 then of 13/0720/05, but removed from this agenda by the OFO because it had been closed

GR	TITLE	OBJECT	STATE	COMMENT	PETITIONS COMMITTEE
99/04	Evaluation of the needs of some departments in terms of additional staff (this GR is extended by GR 03/01 and GR 03/02 concerning the Immigration Office and the Directorate General for Benefits to Disabled Persons (OFO, AR 2003, pp. 56-57)	Cross-departmental	Abandoned	GR 03/01: priority ; GR 03/02: being closed	05/2001
99/05	The adoption of measures to ensure that the general public is more aware of the existence and missions of information officers	Cross-departmental	In progress		05/2001
99/06	The obligation for citizens to produce documents, whereas the Civil Service may or should have the means of obtaining these itself	Cross-departmental	Priority		13/07/2005
General recommendations relating to the FPS Finance (Fin)					
97/08	No legal time limit for the processing of a complaint by regional directors	FPS Fin	Closed	GR espoused by the Acts of 15 and 23/03/1999 (OFO, AR 1999, p. 72)	
97/09	The method of tax collection in the case of <i>de facto</i> separated spouses	FPS Fin	Closed	GR espoused by a legislative amendment in 2001 and the procedure of undefined stay of collection (OFO, AR 1999, p. 73)	
97/10	Tax on revenue not yet acquired	FPS Fin	Closed	Problem solved (OFO, AR 1998, p. 49)	
99/08	Problems arising when a property is evaluated by the tax authorities	FPS Fin	In progress	Partially espoused	
99/09	Extension of the possibilities of tax relief at decentralised level by rectifying (the data of) the initial tax assessment	FPS Fin	Closed	GR espoused by the Programme Law of 27/12/2004 (OFO, AR 2004, p. 40)	
99/10	Specific training for tax collection officers	FPS Fin	Closed	Problem solved (OFO, AR 2000, p. 53)	
00/03	Training in communication and reception skills for all tax administration officials	FPS Fin	Closed	GR espoused by the Civil Service (OFO, AR 2004, p. 36)	
00/04	Payment of the road traffic tax by automatic debit	FPS Fin	Closed	05/2005	

GR	TITLE	OBJECT	STATE	COMMENT	PETITIONS COMMITTEE
01/02	Extension of the scope of Article 143 (2) of the 1992 Income Tax Code	FPS Fin	Closed	05/2005	
02/03	The tax trap in unemployment	FPS Fin	In progress	Bill (DOC 1158/001)	
02/04	Limited seizures from bank accounts	FPS Fin	Closed	GR espoused by the Act of 14/06/2004 (OFO, AR 2004, pp. 34-35)	
03/03	Appeals concerning taxation	FPS Fin	Priority		12/05/2004 - passed on to the Finance Ombuds-promotor
03/04	Collective settlement of debt	FPS Fin	Being closed	GR espoused by the Act of 13/12/2005	
General Recommendations relating to the FPS Justice (Ju), FPS Home Affairs (Home Aff) or FPS Foreign Affairs (For Aff)					
98/01	The use of secret criteria by the tax authorities or, under Article 9, section 3, of the Act of 15 December 1980, by the Immigration Office, contrary to the principle of administrative transparency and the principles of legal security and legitimate confidence (the "immigration" aspect of this GR is contained in GR 01/01 and its tax aspect is connected to GR 99/08: OFO, AR 2001, p. 52)	FPS Home Aff	Abandoned	GR 99/08: in progress; GR 01/01: in progress - followed with Civil Service during half-yearly meetings	
99/07	International adoption	FPS Ju	Being closed	Espoused by the Act reforming adoption of 24/04/2003, as amended and entered into force on 1/09/2005	16/05/2002
00/01	Declaration of marriage	FPS Ju	In progress		16/05/2002
00/02	Procedure for changing surnames and first names	FPS Ju	Being closed	GR espoused by the Bill adopted in plenary session and sent to the Senate (DOC 0597/034)	1/06/2005
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 decree	FPS Home Aff	In progress	Followed with Civil Service during half-yearly meetings	16/04/2002
02/01	Status of cohabiting partners under the legislation relating to aliens	FPS Home Aff	Priority		1/06/2005

GR	TITLE	OBJECT	STATE	COMMENT	PETITIONS COMMITTEE
02/02	Adoption of a legal basis in the fields of authentication and of confidential lawyers	FPS For Aff	Priority	Partially espoused (OFO, AR 2004, p. 34)	30/01/2004
03/01	The period for handling cases lodged on Belgian territory and submitted to the Immigration Office	FPS Home Aff	Priority		15/06/2005
General Recommendations relating to other Federal administrative authorities					
97/13	The long period for handling files by the Closed Companies Compensation Fund	Closed Companies Compensation Fund	Closed	GR espoused by the Act of 26/06/2002 (OFO, AR 2002, p. 60)	
97/15	The problem of extra-curricular child minding for children of workers (Equipment & Mutual Service Fund)	National Child Allowance Office	Closed	Matter solved (OFO, AR 1999, p. 74)	
97/16	The backlog of files handled by the War Victims Office	FPS Social Security	Closed	The Ministerial Decree of 19/10/1998 deals with the problem (OFO, AR 1999, p. 74)	
97/18	The inconsistent application of Federal legislation by a welfare public centre	PPS Social Integration	Closed	Problem handled by a circular (OFO, AR 1999, p. 75)	
97/19	Non-compliance with the principle of conscientious handling by a Minister	Minister of the Civil Service	Closed	Problem solved (OFO, AR 1998, p. 51)	
99/11	The recurrent blocking of the files of pensioned teachers	National Pensions Office & Pensions Department	No longer applicable	OFO no longer competent since 1/06/1999	
99/12	Taking military service into account when calculating the basis and/or the amount of the pension	National Pensions Office & Pensions Department	No longer applicable	OFO no longer competent since 1/06/1999	
99/13	The lack of transparency of the Order of Physicians	Order of Physicians	In progress		
99/14	The in-depth examination of the regulation on the exchange of foreign driving licences	FPS Mobility and Transport	Closed	Problem solved by the regulation relating to the driving licence (OFO, AR 2001, p. 51)	
00/05	The abolition of the requirement to take account of the income of the person with whom a disabled person had been living, once the couple is separated	PPS Social Integration	Closed	Problem solved by the reform of the regulation on allowances for the disabled (OFO, AR 2003, pp. 54-55)	

GR	TITLE	OBJECT	STATE	COMMENT	PETITIONS COMMITTEE
01/03	The neutralisation of the perverse effect of the aggregation of certain social benefits or, even, the introduction of progressiveness in the aggregation of social benefits	FPS Social Security & FPS Employment, Labour and Social dialogue	Closed	Further to information provided by the Minister of Social Affairs in 2002 (OFO, AR 2002, p. 52)	
02/05	The application of the Social Insurance Contributors' Charter to certain social security institutions	FPS Social Security	In progress		
03/02	Dysfunctions at the Directorate General for Benefits for the Disabled	FPS Social Security	Being closed	GR espoused by the Civil Service	
General Recommendations relating to the Office of the Federal Ombudsmen (OFO)					
97/01	The confusion created by the use in the Act of 22 March 1995 establishing the Federal Ombudsmen of the term "mediateur" in its French version and 'ombudsman' in its Dutch version, as these two terms do not cover the same notions	OFO			
97/02	Constitutional recognition of the Office of the Federal Ombudsmen	OFO			
97/03	Establishment of the Office of Federal Ombudsmen as a second line mediating authority, complementary to the first line bodies (like the sectorial mediation services and complaints services)	OFO			
97/04	Suspension of deadlines for judicial appeal while the matter is before the Ombudsman	OFO	Priority	Work Group (WG) evaluation Act of 22/03/1995, DOC 51 0571/001, p. 13	1/06/2005
97/05	Possibility of the Office of the Federal Ombudsmen asking the Court of Arbitration for a preliminary ruling	OFO			
97/12	Explanation of the principle of the parliamentary ombudsman's recourse to equity in the Federal Ombudsman Act of 22 March 1995	OFO		WG evaluation Act of 22/03/1995, DOC 51 0571/001, p. 14	
97/20	Possibility for the Office of the Federal Ombudsmen to forward a complaint to the Standing Committee for Language Supervision	OFO			
99/01	Increasing the resources of the Office of the Federal Ombudsmen as an instrument for promoting and protecting human rights	OFO			

GR	TITLE	OBJECT	STATE	COMMENT	PETITIONS COMMITTEE
99/03	External supervision of the administrative acts and of the functioning of the administrative jurisdictions	OFO			
99/15	Legal protection of the term "ombudsman"	OFO		WG evaluation Act of 22/03/1995, DOC 51 0571/001, p. 10	
99/16	The submission of the Annual Report of the Office of the Federal Ombudsmen to the House of Representatives in spring rather than in October	OFO		GR espoused by Article 15, new, of the Act of 22/03/1995 after amendment by the Act of 5/02/2001 (<i>Moniteur Belge/Belgisch Staatsblad</i> -Belgian Official Gazette-, 23/03/2001)	

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