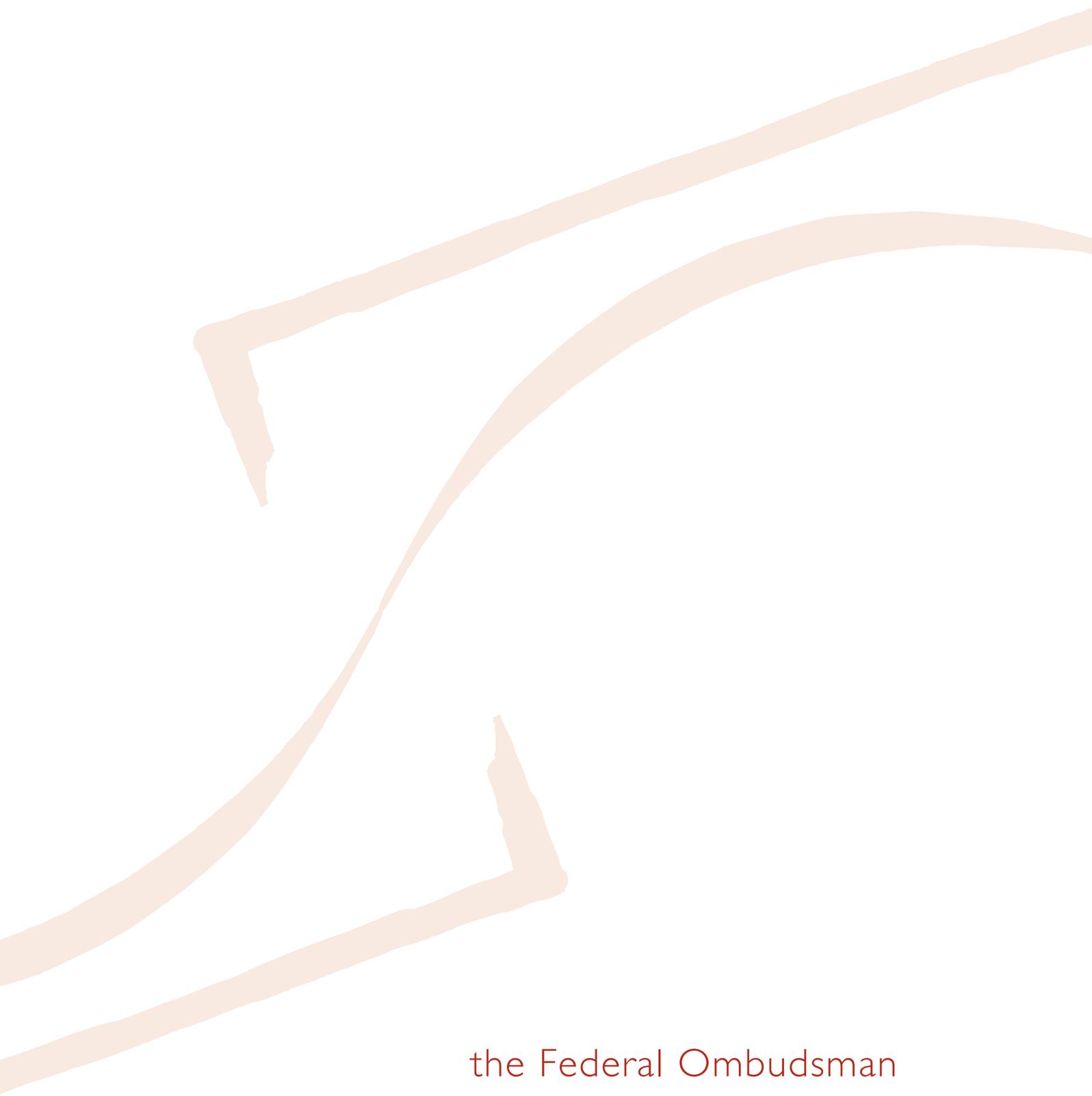




the Federal Ombudsman  
**Annual Report '06**







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**Annual Report '06**



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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 of the Federal Ombudsman for 2006.*

*You will have immediately noted that we have opted for a new concept this year. The layout and presentation have become lighter and different elements are stressed in the contents.*

*We have adopted this new approach in an effort to make the annual report easier to read and more accessible to a wider readership. Naturally, we are first of all reporting to the House of Representatives, but the law stipulates also that the report should be made public. This entails that various quality requirements must be met. Seriousness and thoroughness must go together with accessibility and legibility – no easy task. And yet, we think that the new concept is a step in the right direction. Experience will show whether this is so, and it goes without saying that we shall make any adjustments needed in the coming years.*

*All this takes nothing away from the fact that the structure of the annual report is pretty standard. In the introduction, we report on the management and workings of the Federal Ombudsman. By way of example: a new name for the institution, a new folder and poster, the selection of desk officers, including a communication officer, a new evaluation method and, as already announced in the previous year, the difficulties that the ombudsmen encounter in carrying out their duties.*

*Here, we should like to focus for a moment on the new evaluation method we defined in 2006 and which we have applied since 1 January 2007, where the emphasis is on the complaint itself, while the evaluation will concurrently continue to be an effective and usable administrative instrument.*

*As the Federal Ombudsman will henceforth evaluate the complaint as “justified” or “unjustified,” and assess the action of the administrative authority against mediation standards, citizens will get a better and clearer picture of the intervention of the Federal Ombudsman and the result thereof.*

*In the body of this annual report, as in its Part III in which an analysis of handled complaints is included, we emphasize on the content of the complaints. The assessed dysfunctions are dealt with in a thematic approach and are illustrated with striking examples.*

*An essential component of our task as Federal Ombudsman is that we make the necessary recommendations to prevent detected problems from recurring in the future. The third part contains the eight general recommendations which we have made to Parliament this year. In 2006, we also made eleven official recommendations directly to the administrative departments when measures at their level can suffice to improve the service.*

*The figures and graphs are contained in a part entitled “General Figures.”*

*Finally, we wish to thank all employees for the motivation and unremitting commitment they have shown again this year.*

Preface

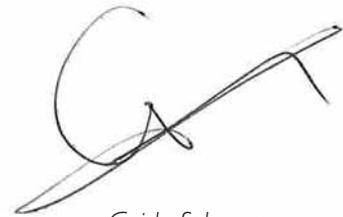
*We are always at your disposal to present this annual report to the petitions committee and wishing you happy reading, we remain*

*Yours faithfully,*

*The federal ombudsmen,*

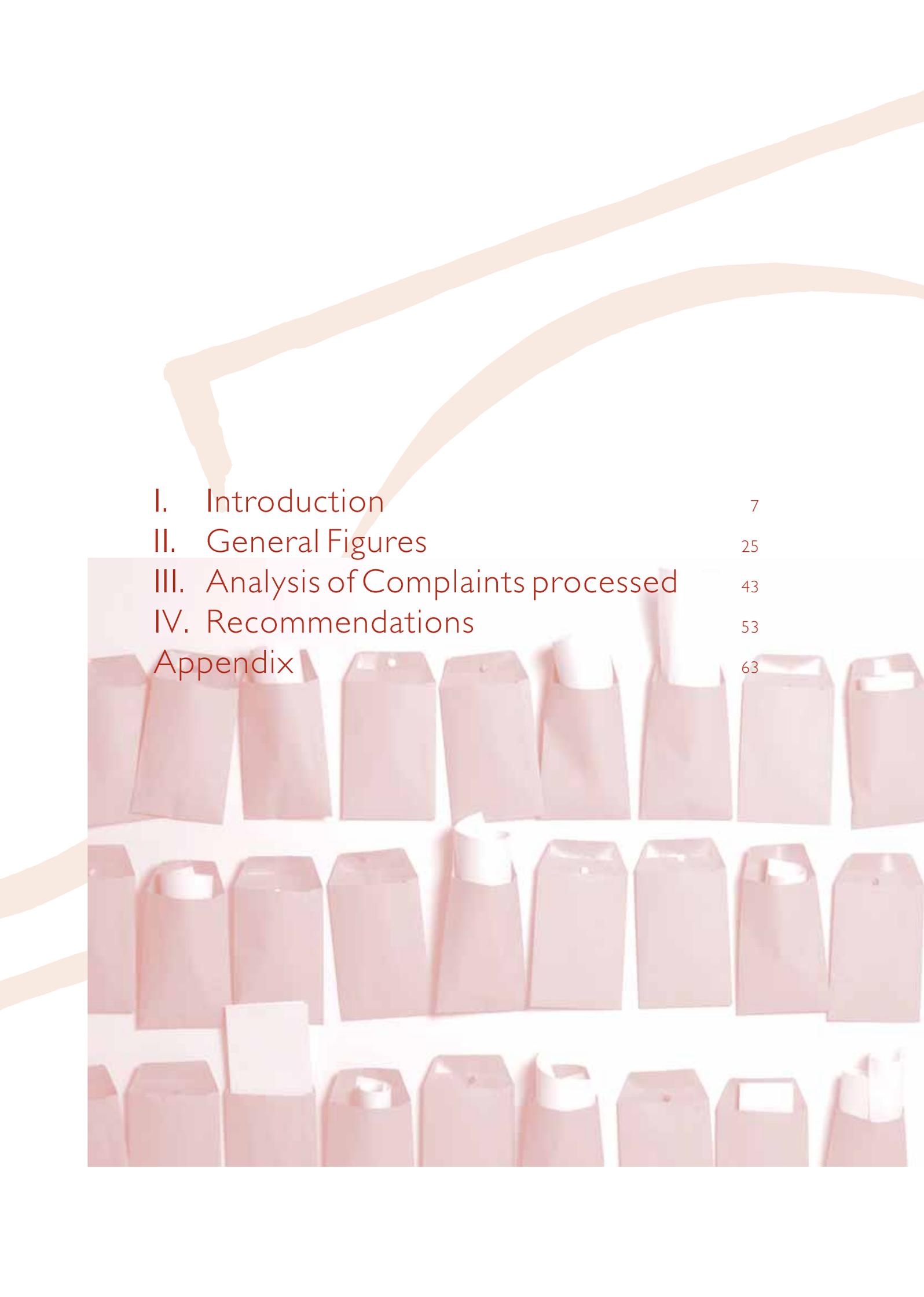
A handwritten signature in black ink, appearing to read 'De Bruecker', written in a cursive style.

Catherine De Bruecker

A handwritten signature in black ink, appearing to read 'Schuermans', written in a cursive style.

Guido Schuermans





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# I. Introduction





## Listening – Convincing – Mediating

The Federal Ombudsman is an independent institution that intervenes, free of charge, at the request of citizens, natural persons or legal persons. It helps them to solve their disputes with the federal administrative authorities and examines their complaints with impartiality. In doing so, it verifies whether the service against which a complaint has been lodged has complied with the regulations and principles that generally underpin good governance. When the complaint seems justified, it tries to convince the administrative department to make the necessary improvements. It is vested with wide recommendation powers and can thus also contribute to improve the regulations and the administrative work in practice.

For instance, since it was founded in 1997, the Federal Ombudsman has tried to help more than 34,000 citizens; it has made 88 official recommendations to administrative authorities and 52 general recommendations to Parliament.

In our report for 2005, we presented our mission statement for the next six years. The main aim of this mission is to put the citizen centre-stage again in our actions. Different key concepts supported this statement, and were intended to put the approach on the right track in turning the mission statement into operational objectives.

The first half of 2006 was devoted to an in-depth consideration of all facets of the institution's organisation on both the operational and the logistical front: the workings, work methods, resources (human, material and financial). All our employees were involved in this strategic consideration and the brainstorming yielded a large number of constructive proposals.

We then got to work to put these proposals to practice, and have managed to implement a number of them already in 2006.

## I. How the service works

### Accessibility

Keeping the access threshold as low as possible for the user constitutes a fundamental challenge for every ombudsman service. The low threshold does not pertain only to rules for access to the service, but also to being able to reach and to provide a good insight to citizens concerning their role. Citizens must know when they can call on the ombudsman and must gain easy access thereto as and when necessary.

Consequently, developing a communication strategy seems an absolute must to get the institution known and to enhance its accessibility. For an external ombudsman service for the citizen can achieve its aim only to the extent that said service is known to the target public.

All too soon, we reached the conclusion that the team had to be bolstered by a communication officer. To this end, we included a job description for a communication officer in the profiles for the situations vacant of auditor-coordinator.

The further elaboration of a real communication strategy will reach its cruising speed only after said communication officer has taken up his duties in the very near future. We have nonetheless already taken a number of actions in 2006.

### ❖ Complaints about the federal administrative authorities?

The starting signal for an information campaign geared to the citizen was given at the end of 2006. The campaign shall continue in 2007, and comprises three lines of action:

- the publication of a folder and a poster, that present succinctly but clearly how the institution works and the conditions for lodging a complaint;
- the distribution of the folder in all municipalities and public welfare offices (known by the Dutch and French acronyms respectively as “OCMW” and “CPAS”) in the country and in all Belgian embassies and consulates abroad, followed by a second distribution in all post offices;
- advertisements in the written press that refer to the folder.

### ❖ the Federal Ombudsman helps you...

The name of an institution is of essential importance if it is to be recognised by the target public. The Act of 22 March 1997 founding the federal ombudsmen provides no official name for our institution. It merely specifies that there are two federal ombudsmen, one Dutch-speaking and one French-speaking, and that the ombudsmen are to act as a board.

This principle was at the basis for the name *Office of the Federal Ombudsmen*...

However, this name is admittedly not very expressive for citizens, and in the last ten years has not managed to acquire a fixed place in administrative usage. To add force to this statement, it suffices to refer to the four sectorial ombudsman services set up in the lap of the Federal State (pensions, railways, telecommunications and postal services). Although they were all set up according to the same collegial model, none of these services has assumed the appellation of board. We have consequently found that the collegial nature of the institution must appear in full form in the daily policy, but must not be used as a signboard in the communication with the citizen.



In addition to the folder published in 2006, all the institution's means of communication (stationery, visiting cards, website and publications) henceforth mention the new name thereof: the Federal Ombudsman. The clarity of this new name should contribute to improve the accessibility of the service for citizens.

### ❖ Availability

The Federal Ombudsman can be contacted by letter, telephone, fax or e-mail. The offices are open daily, from 8:30 AM to 5:30 PM. An electronic complaint form is also available on the website.

In addition, special office hours have been scheduled to deal with the rise in the number of complaints that are lodged personally at the reception desk by migrants who are concerned about their residency situation. A Federal Ombudsman employee, specialised in immigration law, will be available for these complaints every Wednesday afternoon, from 2:00 to 5:00.

### ❖ Local office hours

As modern means of communication are gaining in importance, appeals to the Federal Ombudsman are also increasingly being lodged through these channels. And yet, the possibility of lodging a complaint directly with a Federal Ombudsman employee still remains, for a large part of the target population, the necessary precondition for establishing a relationship of trust. Age, economic or social situation, education level or an insecure administrative situation may make the citizen vulnerable and constitute an obstacle to communicating his problems through more impersonal means of communication. The complexity of our institutional system and the multiplicity of possible competent ombudsmen increase even more the risk of confusion among citizens.

To respond to this double challenge, the Federal Ombudsman has for several years now held office hours in the various provinces.

In the French-speaking part of the country, the Federal Ombudsman holds joint office hours with the ombudsman service of the French-speaking Community and with the Walloon Ombudsman in Brussels, Charleroi, Liege, Marche-en-Famenne, Namur and Mons. At present, the competent authorities are considering how to give more clout to this initiative. The success of these office hours depends highly on an active and repeated notification among local actors that could refer the target public to the office hours.

In the Dutch-speaking part of the country, we assessed the joint local office hours of the Federal and the Flemish Ombudsman in the course of 2006. The conclusion was that the office hours must be given renewed impetus. We hope that we have found as much in cooperating closely with the local ombudsmen. As of March 2007, the Federal and the Flemish Ombudsman will hold office hours on the same day every month in the offices of the ombudsmen of the Flemish provincial capital Antwerp, Bruges, Ghent and Leuven. In Hasselt, the location of the office hours has been moved to the more

centrally located Provincial Library. Work on that day is by appointment in an effort to boost efficiency. The local ombudsmen have promised to record and coordinate the appointments.

### ❖ Public relations

The increased name recognition of the Federal Ombudsman depends also closely on an active presence policy in the media and the networks that would be able to refer citizens with a problem or a conflict with the authorities to the ombudsman.

So we seize every opportunity that offers us a chance to explain the work of the Federal Ombudsman and its tasks better.

For instance, in May 2006, the ombudsmen presented the annual report for 2005 at one of the monthly meetings on asylum, organised by the Belgian Committee for Assistance to Refugees.

In June 2006, the ombudswoman took part in the radio programme “Appelez, on est là” [Call us, we are here] on VivaCité, broadcast to the entire French Community. This service programme is geared to every day problems and regularly devotes a dossier to an institutional or private ombudsman service. Participation in the programme affords a fine opportunity to explain to listeners how the service works and the solutions that it can offer for their problems. The programme's website gives the address details of all ombudsman services that are presented in the programme.

In November 2006, the Federal Ombudsman, together with the Ombudsman for Insurance, the Mediation Service for Banks – Credit – Investments and the Ombudsman Service for Telecommunication made a contribution to the training for debt mediation services.

The recruitment of high quality employees also presupposes an active communication policy on career possibilities in the departments of the Federal Ombudsman. In this context, the Federal Ombudsman has taken part in the employment fair [Talent@public](#), organised by Selor at Thurn & Taxis in Brussels, where the recruiting of several desk officers for the posts of director and auditor-coordinator was announced.

### ❖ Permanent Consultation Ombudsman Members

(known by the Dutch acronym “POOL”, or the French “CPMO”)

Promoting the accessibility of the ombudsman for every citizen also presupposes close cooperation between the various ombudsman services.

POOL/CPMO is an informal network where all Belgian institutional ombudsmen – local, parliamentary and sectorial, as well as a number of ombudsmen from the private sector – are members.





The members of POOL/CPMO must implement the following four principles from the articles of association:

1. The ombudsman as an appeal authority in the service of the public;
2. The ombudsman as an independent authority;
3. Investigation and evaluation powers;
4. The publication of a report by the ombudsman.

The network tries to promote the efficiency of the ombudsman services by exchanging experiences, reflecting on topics that are necessary for the efficiency and for improving the image of the ombudsman and access to his services.

The latter objective was given concrete form in 2007 with the launch of the portal [www.ombudsman.be](http://www.ombudsman.be), where all ombudsman services that are members of POOL/CPMO can be found.

## Serving as a model

An ombudsman service must serve as a model of good governance. An ongoing evaluation of the way it functions therefore is necessary. The points for special attention announced for 2006 were the promotion of legibility of the Federal Ombudsman's letters and the simplification of its own administrative procedures.

As regards legibility, last summer the Federal Ombudsman, in cooperation with the Training Institute of the Federal Government (known by the Dutch acronym 'OFO', or the French IFA) organised two-day internal training sessions. This training was geared to simplifying and improving our written communication. Responding to the wishes of several institutional ombudsmen to promote cooperation in training, this two-day session was open to participants from other ombudsman services.

The training course resulted in enhanced legibility, a constant commitment to improvement and continuous quality control, as well as to a new format for our letters in accordance with the relevant Belgian standard (BIN).

The evaluation of our internal procedure revealed administrative unwieldiness in the way that case files are closed. This cumbersome procedure contributed to a sizeable lengthening of the average complaint processing time. Two important measures were adopted to have this procedure run more smoothly:

- The abolition of the systematic drafting of a summary of the case files at the time of closing. From now on, only significant complaints will be summarised. This decision further entailed that the quarterly notification of these summaries on our website and their dispatch to senior civil servants of the federal administrative departments were likewise abolished. Consultations with these civil servants actually showed that most of them found the notification of quarterly statistics on their department more useful than a series of summaries;
- The closing of a case file at the time that the conclusions of the investigation are dispatched to the complainant. Up to 2006, case files were deemed closed when the closing letter was sent to the administrative department concerned. As a result, on more than one occasion, a case file was still being followed up by the administrative department long after the closing letter had been sent to the complainant, and consequently, our statistics provided no information on the precise processing time of a case file for the complainant.

Pursuant to the most important objective from our mission statement, which consists of putting the citizen again centre-stage in our actions, it will henceforth be possible to indicate the time within which a citizen who has lodged an appeal with the Federal Ombudsman is informed about the result of our intervention. The statistics for 2006 give a picture of the transition to this new work method.

## Transparency

### ❖ Clarification of the powers of the Federal Ombudsman

One of the basic requirements regarding transparency for the citizen is that the latter must have a good idea of our powers and the limitations thereof.

By virtue of article 1, paragraph 2, of the Act of 22 March 1995, "...*(the ombudsmen) shall carry out their duties in regard of the federal administrative authorities as stipulated in article 14 of the restated acts on the*



*Council of State, with the exception of the administrative authorities that are endowed with their own ombudsman by a special legal provision.”*

Confronted with the developments in case law on the concept of administrative authority and with the increase of authorities with specific statuses and duties, it was necessary to define a clear methodology for delineating our powers. In April 2006, a working group was set up to draw up a general framework for the notion of administrative authority and to define guidelines on how to apply the definition in concrete cases submitted to the Federal Ombudsman.

By way of conclusion the working group proposed to fall in line with the definition proposed by the legislation department of the Council of State.

*“Administrative authority means: “the federal government, as well as the institutions that are created or recognised by the federal government, insofar as their workings are defined and supervised by the federal government, they exercise a part of the public authority, and they can take decisions that are binding for third parties.”<sup>1</sup>*

This definition is wider than the purely organic criterion. In brief, it pertains to the federal executive power (organic criterion) and to the institutions (of private law) that meet a number of criteria where the criterion of the *imperium*, within the meaning of the capacity to take binding decisions regarding third parties, is the decisive element.

Note that the act establishing the federal ombudsmen does not limit their powers to actions that can be appealed to the Council of State, but covers the entire working of the federal administrative authorities.

The method described above enables us to give the definitive answers about our powers for certain institutions or services. It has moreover led to the transformation of the working group into a permanent internal body in charge of giving advice on contested cases. In this way, all cases are analysed in an impartial, objective and transparent way.

<sup>1</sup> This definition was moreover proposed by the Council of State, legislation department, in its advice on the draft general administrative law act submitted to the House of Representative on 25 May 2000; Gedr. St. Kamer, zitting 1999-2000, 0679/01; Advies Rv.St. Nr. 30.416/3, Gdr.St.Kamer, zitting 1999-2000, 0679/002, p. 14 *“If the Legislative Chambers wish to include a description of the concept “administrative authority” in the bill submitted, the following wording, which is in line with the most recent case law of the Court of Cassation, must be given preference.”* The general proposal of the Council runs as follows: *“It seems better to use the term ‘administrative authority’ in article 3, §1 and in the other articles. As such it will be in line with the meaning of this concept in case law, whereby a change thereof is excluded. (...) The term administrative authority means an administrative authority within the meaning of article 14, §1, of the acts on the Council of State.”*



As regards the municipalities and the social welfare offices, the application of the chosen definition does not leave the slightest shadow of a doubt about the incompetence of the Federal Ombudsman to investigate a complaint about one of these local authorities, irrespective of whether said authority carries out a federal mission. The Federal Ombudsman has consequently declared himself incompetent to investigate complaints about social welfare offices. As there is no ombudsman competent for the social welfare offices, the Federal Ombudsman agreed to mediate in such cases, on condition that the local authority did not contest this mediation. In the event of a federal mission, where the municipality does not have its own ombudsman service, the Federal Ombudsman tries to mediate by intervening with the federal supervisory authority. These are usually complaints on the issue of driving licences, identity cards and residence permits.

#### ❖ A constructive dialogue with the administrative authority

For the sake of greater transparency, fair play and respect for the expertise of the administrative authority, the Federal Ombudsman attaches great importance to bilateral conducts and to discussion meetings with the administrative authority.

The administrative authority has on the whole responded enthusiastically to the wish for a constructive dialogue with the Federal Ombudsman. Meetings were consequently held in 2006 with the management committees of the three federal public services which, owing to their task, elicited the most complaints: the Federal Public Service Finances, the Federal Public Service Home Affairs, and the Federal Public Service Social Security.

In the same line of reasoning, the half-yearly meetings with the directorates general that had the most to do with the interventions of the Federal Ombudsman were retained, and introduced where needed. The method of an informal investigation before processing individual complaints with the



immigration and naturalisation department and the monthly meetings of Federal Ombudsman employees with officials from the Access and Residence department, made it possible to bring several hundreds of complaints to completion this year too.

In addition, ad hoc meetings with the leading civil servant and/or with the policy unit of the competent minister could be held, each time that the Federal Ombudsman indicated that it planned to make a recommendation. This method led to the administrative authority taking the necessary measures, in a number of cases, to respond to the objections of the Federal Ombudsman. For instance, the immigration and naturalisation department of the Federal Public Service Home Affairs accepted to deal thoroughly with applications for a residence permit filed by foreign nationals with recognised stateless status. In the same way, the directorate general Institutions and Population authorised its inspectors to take account of pertinent items of evidence that made it possible to establish the date of registration in the registers with retroactive effect. Constructive exchanges of views enabled the Federal Ombudsman to hone its analysis. This led to a rewording of – and sometimes to a proposal for – a recommendation in certain cases.

## 2. New evaluation procedure

In setting out our mission statement in the Annual Report 2005, we announced a possible adjustment of our evaluation procedure. To this end, we set up a working group of staff with knowledge of the different federal government sectors. The working group conducted a comparative study of the evaluation systems used by the most important Belgian and European ombudsman services, and compared them with the characteristic features of the complaints filed with the Federal Ombudsman. These activities led to a complete revamping of the evaluation system.

### Why a new evaluation procedure?

Up to now, the evaluation system was geared primarily to evaluating the action of the administrative authority. This had two disadvantages:

- First, the system was unclear for the petitioner, because he was not expressly told whether his complaint was justified;
- Second, the evaluation system of an individual complaint could be perceived as a value judgement of the way the administrative authority or its officials functioned.

Furthermore, the evaluation caused confusion because the result of the Federal Ombudsman's evaluation was processed also in the evaluation of the administrative authority's intervention.

*In line with our mission statement, the new evaluation procedure lays emphasis on the complaint itself, and is concurrently intended to be an effective and practical analysis instrument.*

By placing the emphasis on the evaluation of the complaint, the Federal Ombudsman falls in line with the practices of most other Belgian institutional ombudsmen, thereby giving the citizen a better picture of the intervention of the institutional ombudsman.

Henceforth, we investigate, on the basis of a number of ombudsman standards, whether a complaint lodged with the Federal Ombudsman is justified or unjustified. The ombudsman standards are the successors of the former *principles of good governance*, and have a broader scope than the interpretation of these principles by the Council of State.

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

- justified;
- not justified;
- partially justified;
- no evaluation.

**The heading “no evaluation” in turn comprises four possible working hypotheses:**

- attempt at mediation;
- impossible to make a pronouncement;
- complainant has not answered the ombudsman's requests for information;
- the complaint has become irrelevant.

**Fifteen ombudsman standards are used as criteria for evaluating the complaint:**

- 1) compliance with the legal rules;
- 2) equal treatment;
- 3) reasonableness and proportionality;
- 4) impartiality;
- 5) legal security;
- 6) confidentiality;
- 7) hearing obligation;
- 8) reasonable period;
- 9) carefulness ;
- 10) efficient coordination;
- 11) sufficient motives;
- 12) active information provision;
- 13) passive information provision;
- 14) politeness;
- 15) sufficient accessibility.

With the new evaluation procedure, we also want to improve the communication between the Federal Ombudsman, the federal administrative departments and the petitioners. We therefore devote particular attention to the motives for the chosen evaluation in the closing letters.



As soon as it is established that a complaint is justified, the Federal Ombudsman checks the result of his intervention:

- a) if the complaint is justified or partially justified:
  - redress;
  - partial redress;
  - redress refused;
  - redress impossible.
- b) when the Federal Ombudsman has made an attempt at mediation:
  - successful;
  - unsuccessful.

The distinction between the actual evaluation of the complaint and the result of the Federal Ombudsman's intervention promotes the insight into one's own effectiveness and in the cooperation of the administrative authority.

The new evaluation procedure was tested at the end of 2006 and, after certain adjustments, has since 2007 replaced the old evaluation system. We presented the new evaluation procedure official to senior civil servants at the New Year's reception that we held for the first time on 31 January 2007 in their honour.

The statistics in this annual report are thus the last that are compiled on the basis of the evaluation procedure described in the annual report for 2002.

## 3. Management of the institution

### Personnel situation and management

The following table provides a picture of the personnel situation of our department on 1 January 2007.

Grade	Language		Gender		Legal Status		Total FTE <sup>2</sup> employees	Staff Framework Total
	F	N	M	F	Statutory	On contract		
A (a)	13	11	12	12	18	6	24	24
B	7	7 (c)	4	10	9	5	14	12 (+2)
C (c)	1	1	2	0	0	2	2	2
D (d)	1	2	0	3	0	3	2	(2 EFT)
Total	22	21	18	25	27	16	42	38 (+4)

(a) Including 2 seconded special advisers with a temporary remit (Administrator and Auditor- coordinator)

(b) Including 2 telephone operators-receptionists (on contract), Article 4 of the Staff Framework (urgent and temporary needs)

(c) Including 1 executive secretary in case of full disability and 1 employee on replacement contract

(d) Maintenance staff, equivalent to Grade D, Article 4 of the Staff Framework: 3 staff members, 2 FTE (2 part-time, F language)

<sup>2</sup> Full-time equivalent.

Compared with the situation on 1 January 2006, the overall number of employees increased by one unit, as a result of a replacement contract owing to an absence due to sickness.

In cooperation with Selor, external recruitment procedures were initiated in 2006 for positions as officers to hire a *Directeur* (director) (French-speaking), 2 auditor-coordinators (Dutch- and/or French-speaking) and 1 auditor-coordinator, communication officer (Dutch- or French-speaking).

## Financial and budgetary management

The bookkeeping management is based on an economic bookkeeping system and is organised almost entirely in-house. The bookkeeping and the budget accounts are subjected to an annual audit by the Court of Auditors.

The basic budget figures for 2005-2007 are given in the table below.

Budgetary year	Accounts 2005	Budget <sup>3</sup> 2006	Budget 2007
<b>Revenues</b>	<b>3,760,885.92</b>	<b>3,698,170.00</b>	<b>3,852,560.00</b>
<i>Endowment</i>	3,587,000.00	3,426,490.92 <sup>4</sup>	3,500,000.00
<i>Transferred surplus</i>	170,225.77	271,679.08	352,560.00
<i>Other revenues</i>	3,660.15		
<b>Expenditures</b>	<b>3,515,932.53</b>	<b>3,698,170.00</b>	<b>3,852,560.00</b>
<b>Balance</b>	244,953.39		

The heading *accounts* mentions, for expenditures 2005, the amount of the actual expenditures made; the headings *budget 2006* and *budget 2007* the amount of the total expenditure allocations granted by the House of Representatives. These expenditure allocations are financed by the proprietary endowment – the amount entered each year in the federal government’s general expenditure budget – and the surplus carried forward from previous years.

The Federal Ombudsman continued to lend in 2006 its active cooperation to a working group, headed by the Court of Auditors, on the introduction of a new budget system for endowment- entitled institutions. In 2006, the new structure was evaluated and partially introduced. The new system will be fully operational in 2007, for both accounts and budgets. The Administrator represents the institution in this working group.

<sup>3</sup> The accounts of 2006 will be verified by the Court of Auditors and closed by the Chamber of Representatives in 2007.

<sup>4</sup> € 3,427,000.00 in round figures in the General Expenditure Budget 2006.



## IT and facilities management

The continuing adaptation of the existing IT systems to the new work methods constituted our main ICT concerns in 2006. To keep the performance of our computer and network infrastructure and facilities up to date and to optimise their performance, we called on the services of Fedict via the fedman II network.

Each employee now has his or her own e-mail address and direct access to the network.

In our previous annual report, we had already mentioned the problem of the too limited office space in the building at 43 Rue Ducale/Hertogsstraat, Brussels. This problem was solved in 2007 under pressure from the prevailing circumstances. The current lease is coming to an end and the owner of the building that houses our offices wanted to let it only together with the adjoining building that had been empty for several months. After consultation with the President, the Registrar and the Director General of the Parliamentary Administrative Services of the House of Representatives, we decided to rent also the adjoining, small property at 45 Rue Ducale/Hertogsstraat, which was empty, as of 1 April 2007. This much smaller building is currently being renovated.

## 4. Difficulties encountered in exercising the office

In our previous annual report, we already related that problems in connection with the powers and the means of action of our institution would no longer be discussed under the general recommendations, but henceforth under a separate chapter devoted to the difficulties that the ombudsmen experienced in exercising their duties.

### Requests for information and guidance

This year once again, one fifth of the case files submitted to the Federal Ombudsman concerned questions for information or guidance.

Providing information to the public does not fall under the tasks of the Federal Ombudsman. For this reason, we refer such queries to the information service best suited to answer them. We nonetheless do provide all useful information in our possession. But all too often, the citizen has already been sent from department to department before ending up at the ombudsman. Such excessive referral in a row could cause citizens to lose their confidence in the administrative apparatus. The last chapter of part III, devoted to analysing the case files, attempts to provide an overview of the most important matters of information queries in 2006. These queries can actually form an indication for a deficit or lack of knowledge of the information channels that exist in certain sectors of the federal administration.

## Suspension of processing in case of appeal to the courts or organised administrative appeal

Article 13, paragraph 1, of the Act of 22 March 1995 establishing federal ombudsmen provides that *“The investigation of a complaint shall be suspended when an appeal concerning the facts is lodged with a court or in the case of an administrative appeal. The administrative authority shall inform the ombudsmen of such an appeal having been lodged.”*

This article has brought about a complete separation between the judicial and the ombudsman procedures. As the legislator of the time understood it, the party concerned must choose for one way or the other.

In the meantime, this concept has been clearly questioned by the legislator himself. With the enactment of the Act of 21 February 2005, amending the Code of Judicial Procedure as regards mediation, the legislator has brought mediation under the judicial procedure.

As a result of discussion on the follow-up of general recommendation 97/4 made by our predecessors, the Petitions Committee has repeatedly in the past come out in favour of an amendment of article 13 of the Act of 22 March 1995 so as to remove this obstacle. A bill to this end was introduced in September 2003<sup>5</sup>, but has not been discussed in the Home Affairs Committee to date.

In spite of the fact that the filing of an appeal, and the time needed to process a case in the court do not, in and of themselves, constitute a counter-indication to a simultaneous search for a solution with the administrative authority, we have had to suspend a large number of complaints again this year precisely for this reason.<sup>6</sup> For the party concerned, filing an appeal is often the only means to protect his rights if the ombudsman’s intervention should fail, for as is well known, the latter has no means of enforcing a decision. The choice that the legislator considered in 1995 is often not a real choice, in fact.

## Competency of the Federal Ombudsman on the protection of human rights

The Federal Ombudsman is increasingly more often asked by Belgian and international authorities to help with the drawing up of reports on Belgium’s compliance with its international obligations for the protection of human rights and fundamental freedoms.

For instance, in April 2005, the Federal Ombudsman was invited by the Federal Public Service Justice to a meeting with the delegation of the European Committee on the Prevention of Torture and Inhuman

<sup>5</sup> Bill to amend article 13 of the Act of 22 March 1995 establishing federal ombudsmen, Doc. 51 222/001.

<sup>6</sup> In 2006, the processing of 76 case files was suspended. More than half of these cases concerned the social sector.



or Degrading Treatment or Punishment, which paid a visit to our country. In 2006, the Federal Public Service Justice requested a contribution in drawing up the third Belgian report on the Convention on the Rights of the Child.

The EU Network of Independent Experts on Fundamental Rights also uses the Federal Ombudsman's reports in drawing up its annual report on the situation of fundamental rights in Belgium. Given its current competencies, the Federal Ombudsman cannot however broach the issue so as to cooperate more actively in that report.

The Federal Ombudsman's competency for investigating complaints about the action and workings of the federal administrative authorities naturally enables it to investigate complaints about possible violations of human rights by a federal administrative authority. When dealing with such a complaint, it can use all means and resources at its disposal to investigate the alleged violation and, where appropriate, to recommend that it be discontinued at once. It can also inform the Parliament of its findings.

The Federal Ombudsman however has no express mandate about the protection and promotion of human rights and fundamental freedoms. More specifically, it does not have a right of initiative on this level. Furthermore, it must always reserve the findings of the investigation into complaints first for the Parliament.

The High Level Group in charge of investigating the long-term effectiveness of the control mechanisms of the European Treaty on the Protection of Human Rights and Fundamental Freedoms includes a possible recommendation by the Council of Ministers in its reform proposals to attribute the competency for human rights in all cases to the national ombudsmen and authorities accorded similar status with the national ombudsmen. This proposal was supported by the Commissioner for Human Rights of the Council of Europe. At the latter's initiative, a roundtable with all the ombudsmen and national authorities for human rights was held in April 2007 on the possible mechanisms for cooperation between the Commissioner and the national structures.

In certain countries, the national ombudsman is put in charge with specific tasks for the protection of human rights. In France, for instance, where the *Médiateur de la République* has, under the bare ratification of the optional protocol of the UN Treaty against Torture, been put in charge of the external supervision of prisons.



## II. General Figures





## I. Introduction

In this part, general statistical data provide an overall view of the number of case files, language, means of communication used, processing phase, admissibility and forwarding of case files. The fourth part of this annual report contains the data on the various federal departments.

The period considered in this Annual Report 2006 covers the calendar year. The figures contained in this part reflect the situation as at 31 December 2006.

To give a better idea of the case files introduced in the year under review, unless expressly indicated otherwise, the tables and graphs will be based on the new case files for the period, thereby avoiding case files from previous years, still in progress in 2006, from being 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 2005 and 2006.

## 2. General Statistics

### 2.1. New case files

#### New case files: comparison 2005-2006

	Complaints	Requests for information	Total
<b>2005</b>			
	3606 Complaints 76,7%	1095 Requests for information 23,3%	Total: 4701
<b>2006</b>			
	3554 Complaints 78,7%	961 Requests for information 21,3%	Total: 4515

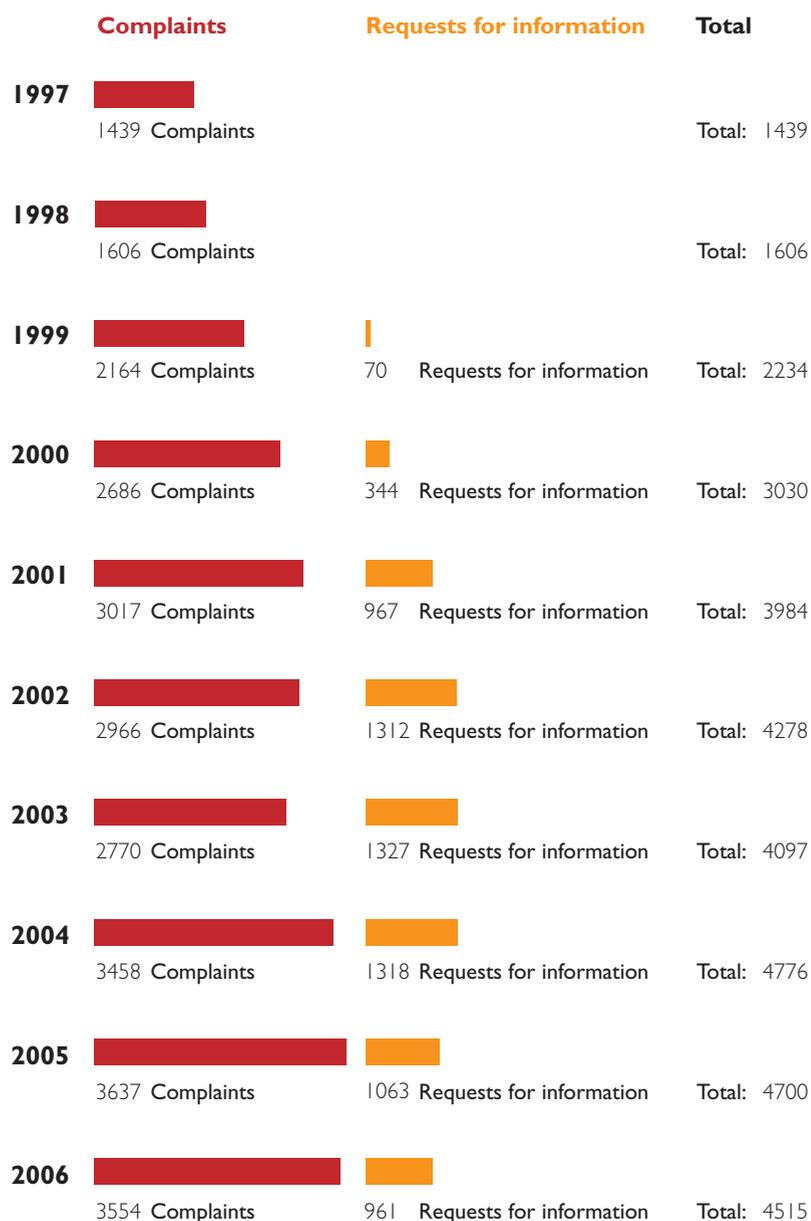
The total number of new case files for 2006 amounts to 4,515, of which 961 are requests for information (compared with 4,701 new case files in 2005, of which 1,095 requests for information).

In addition to complaints and requests for information, the Federal Ombudsman received a number of telephone calls with queries that are not considered as case files, and are answered immediately by the central secretariat.

Answering written or telephone requests for information represents a considerable part of the workload. The Federal Ombudsman nonetheless tries to help people who have no complaints, but a question for information.

## 2.2. Developments in case files over a 10-year period

### Number of case files: comparison 1997-2006



This graph shows the number of complaints and information requests since the first ombudsmen took the oath of office in 2001. Information requests have been recorded accurately only since the current IT system was commissioned in 2001. In ten years, 34,659 case files have been submitted to the Federal Ombudsman, of which 27,297 were complaints.

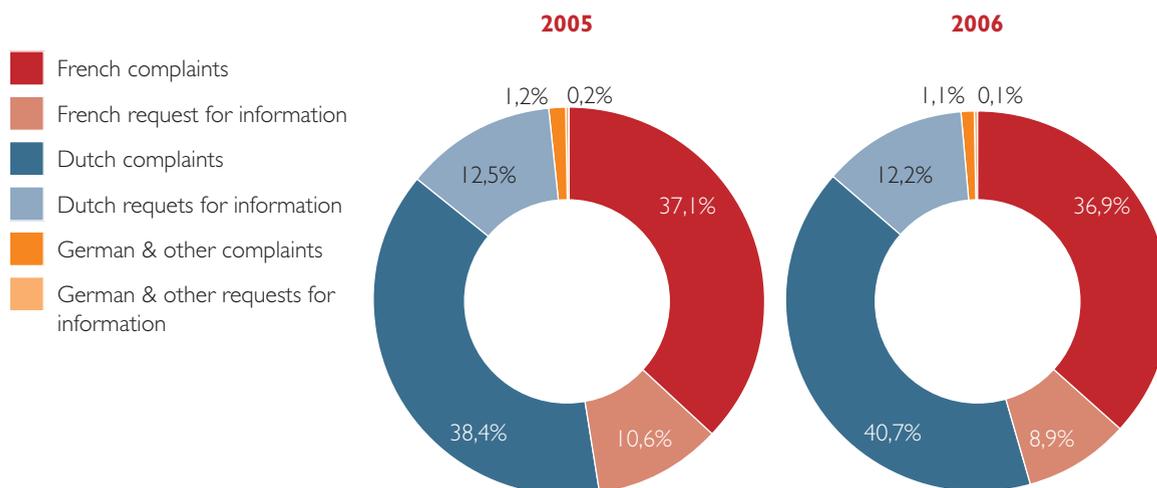


This graph shows the number of complaints and information requests of the previous years as at 31 December 2006. The (slight) differences from the numbers indicated in the previous annual reports are due to technical corrections (removal of duplicate case files) and changes from information request to complaint and vice versa.

### 2.3. New case files by language

The 4,701 new case files in 2005 are broken down by language as follows: French: 2,243 or 47.7%; Dutch: 2,392 or 50.9%, others (including German): 66 or 1.4%. The graph below shows the number of files by language for 2004 and 2005.

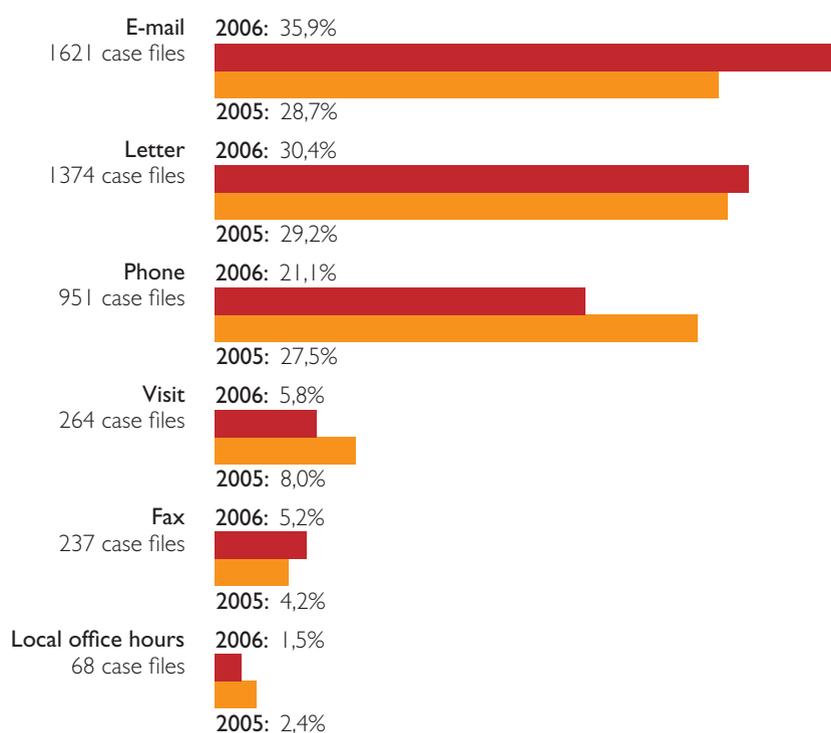
#### New case files by language: comparison 2005-2006



## 2.4. New case files by means of communication

The means of communications indicates the way in which a complaint was lodged or an information request submitted. For the first time, more case files were submitted electronically (by e-mail or online via the website of the Federal Ombudsman) than by letter.

### New case files by means of communication



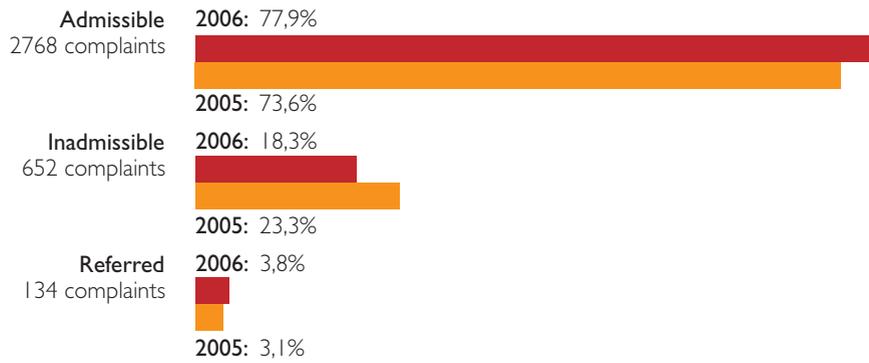
## 2.5. Admissibility of new complaints

The inadmissible or redirected case files represent a considerable part of the workload. A thorough investigation is often required before a case file is declared inadmissible or before it is referred to another mediation service.

Of the 3,554 new complaints lodged in 2006, 652 were inadmissible; 134 complaints were referred to another mediation service. The remaining 2,768 complaints were declared admissible.

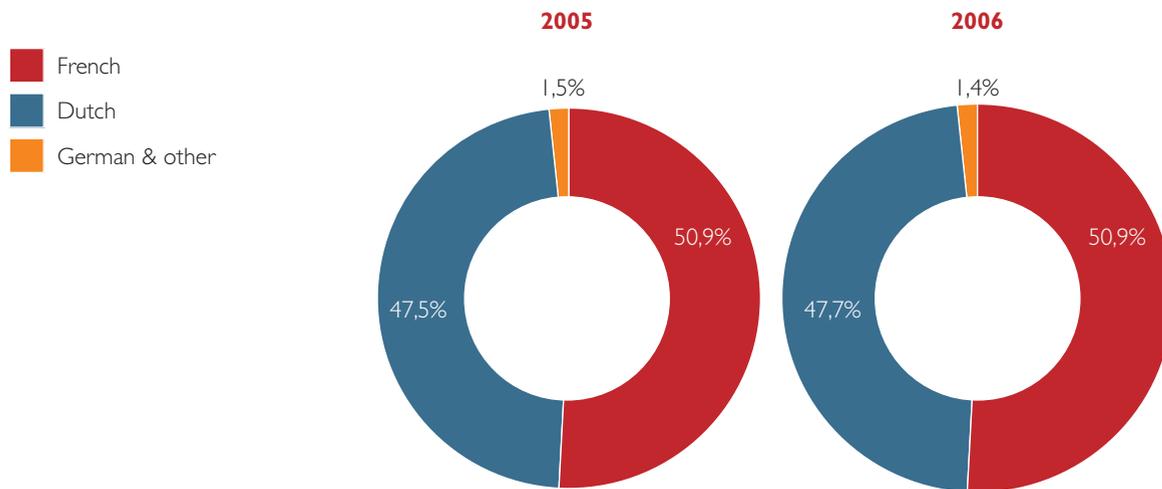


### Admissibility of new complaints



## 2.6. New admissible complaints by language

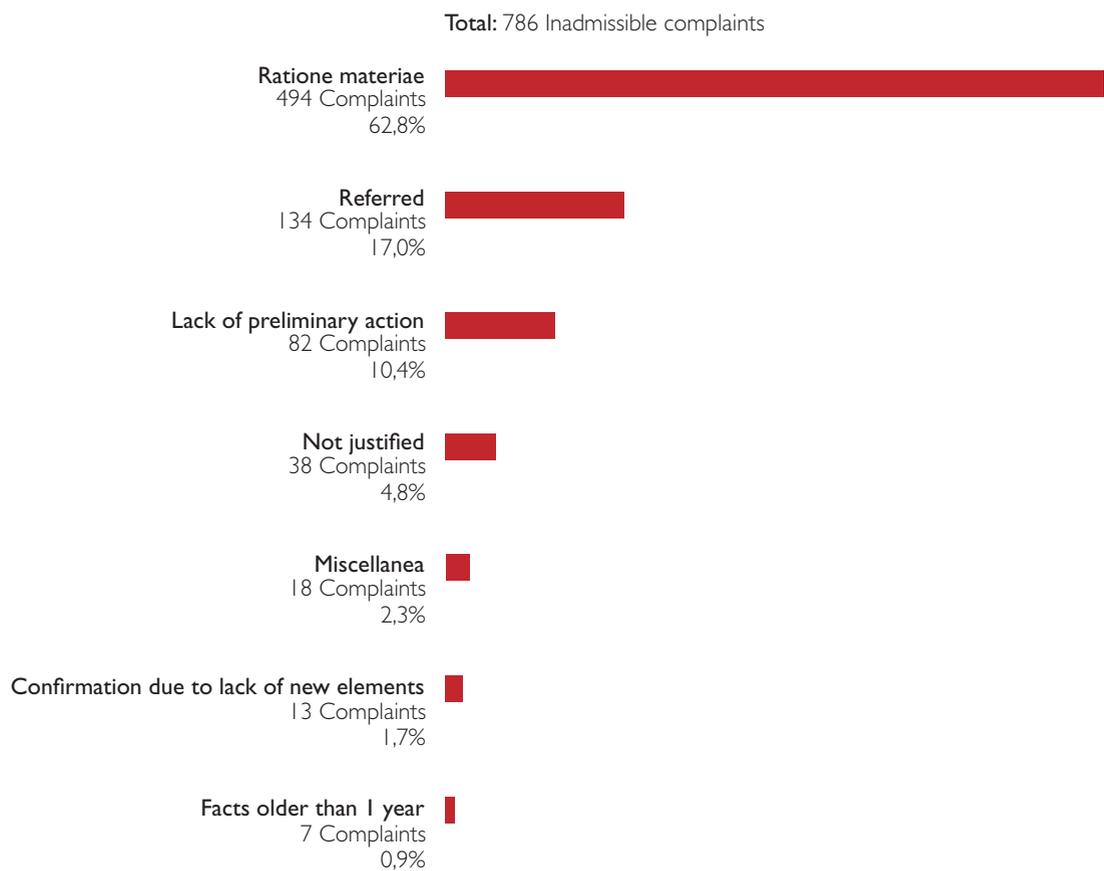
New admissible complaints by language: comparison 2005-2006



## 2.7. New inadmissible complaints

This graph shows the number of complaints by ground of inadmissibility as stated in the Act of 22 March 1995 and in the house rules of the Federal Ombudsman. Referrals are considered as a category of inadmissible complaints.

### Inadmissible complaints



## 2.8. New complaints referred

### Destinations of new complaints referred

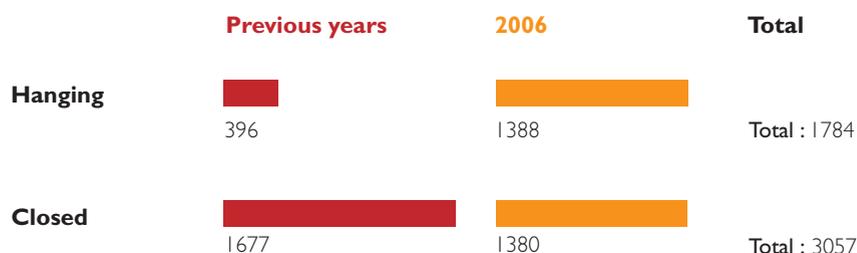
	2006	%
Flemish Ombudsman	38	28,4%
Pensions Mediation Service	25	18,7%
Supreme Council of Justice	18	13,4%
Mediation body for the telecommunication sector	18	13,4%
Ombudsman of the Walloon Region	7	5,2%
Mediation body for the Postal Office	7	5,2%
Local mediation bodies	5	3,7%
Mediation body "Right of the patient"	5	3,7%
Mediation body for the National Railroad Company	5	3,7%
Ombudsman of the French-speaking Community	2	1,5%
Supervisory Standing Committee for the Federal Police ("P"Committee)	2	1,5%
Privacy Commission	2	1,5%
	<b>134</b>	

We shall henceforth use a stricter definition for referrals within the meaning of article 9, paragraph 2, of the Act of 22 March 1995 on the appointment of federal ombudsmen. Only if the complaint concerns a federal, regional, municipal or local administrative authority that, pursuant to a legal regulation, has its own ombudsman, is the complaint referred systematically and without formalities and registered as a referral in the statistics. Complaints about other authorities are inadmissible (even if the case file was sent to a complaints or mediation service).

## 2.9. State of admissible complaints as at 31 December 2006

On 31 December 2005, there were still 2,128 complaints in progress (lodged in 2005 and the previous year). Of these, another 55 were declared inadmissible or referred to another service in the beginning of 2006. Of the remaining 2,073 inadmissible complaints of the previous years, 1,677 were closed in 2006, so that there were still 396 complaints in progress as at 31 December 2006. Of the 2,768 admissible complaints that were lodged in 2006, there were still 1,388 in progress. The total number of complaints to be processed thus fell from 2,128 on 31 December 2005, to 1,784 on 31 December 2006 (1,388 + 396).

### State of admissible complaints as at 31 December 2006



An admissible complaint is closed when the complaint is closed for the complainant (2,983) or when the processing thereof has been suspended (appeal to the court or organised administrative appeal: 74).

## 2.10 New admissible complaints per administrative department

The following tables show the distribution in the number of new admissible complaints in 2005-2006 among the different administrative departments. A distinction is drawn between complaints lodged by a civil servant against his or her own administrative department and/or taking action on the application of his or her status and other complaints. The data in the fourth part of this annual report on the statistics per governmental authority therefore no longer contain complaints lodged by civil servants.

### New admissible complaints per administrative department (with the exception of complaints lodged by civil servants)

	2006	2005
Chancellery of the Prime Minister	1	2
Personnel & Organisation	37	36
Information technology & Communication	2	0
Justice	81	97
Home Affairs	1182	1055
Foreign Affairs, Foreign Trade & Development Co-operation	79	81
Defence	6	3
Finance	606	614
Employment, Labour & Social Dialogue (not including semi-public bodies operating in the social field)	16	11
Social Security (not including semi-public bodies operating in the social field)	140	128
Health, Food Chain Security & Environment	42	39
Economy, SMEs, Self Employed & Energy	30	31
Mobility & Transport	79	141
Federal Public Planning Services	0	4
Semi-public bodies operating in the social field	270	193
Semi-public bodies, public corporations and bodies not attached to a Federal administrative authority	12	9
Private organisations entrusted with a public service mission	139	133
Others	17	65
	<b>2739</b>	<b>2642</b>



### New admissible complaints lodged by civil servants per administrative department

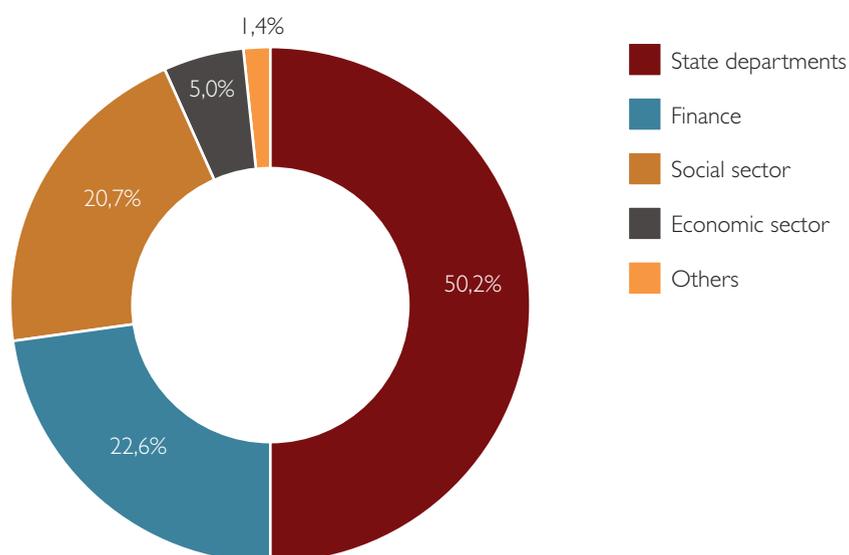
	2006	2005
Personnel & Organisation	1	0
Justice	12	32
Home Affairs	5	4
Foreign Affairs, Foreign Trade & Development Co-operation	5	2
Defence	3	6
Finance	28	31
Social Security (not including semi-public bodies operating in the social field)	1	0
Health, Food Chain Security & Environment	3	5
Economy, SMEs, Self Employed & Energy	1	1
Mobility & Transport	1	3
Federal Public Planning Services	1	1
Semi-public bodies operating in the social field	4	5
Semi-public bodies, public corporations and bodies not attached to a Federal administrative authority	9	5
	<b>74</b>	<b>95</b>

Since a complaint can pertain to different governmental authorities, the number of complaints per administrative department is always higher than the number of admissible case files (2,739 + 74 = 2,813, for 2,768 new admissible complaints in 2006).

The increase in the number of complaints concerning social semi-public bodies comes from a hundred case files submitted in 2006 on the winding up of the bankruptcy of the same company.

## 2.11. New admissible complaints per sector

### New admissible complaints per sector in 2006



## 2.12. Evaluation of closed complaints

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

*“Good governance:”* when the civil service proceeds flawlessly or when its error is rectified at its own initiative before any intervention on the part of the Federal Ombudsman.

*“Good governance after intervention”* indicates that an error was made by the civil service which was rectified after intervention of the Federal Ombudsman.

The Federal Ombudsman closes a case by *“consensus”* when the problem has been solved by mediation, or by diffusing a misunderstanding, without being able to speak of good or bad governance.

*“Shared responsibility”* is cited when the plaintiff and the civil service each bear part of the responsibility.

*“Bad governance”* denounces an error by the civil service that was not rectified in spite of the intervention of the Federal Ombudsman.

*“Indeterminable responsibility”* is used when the responsibility of neither the plaintiff nor the civil service can be established with certainty.

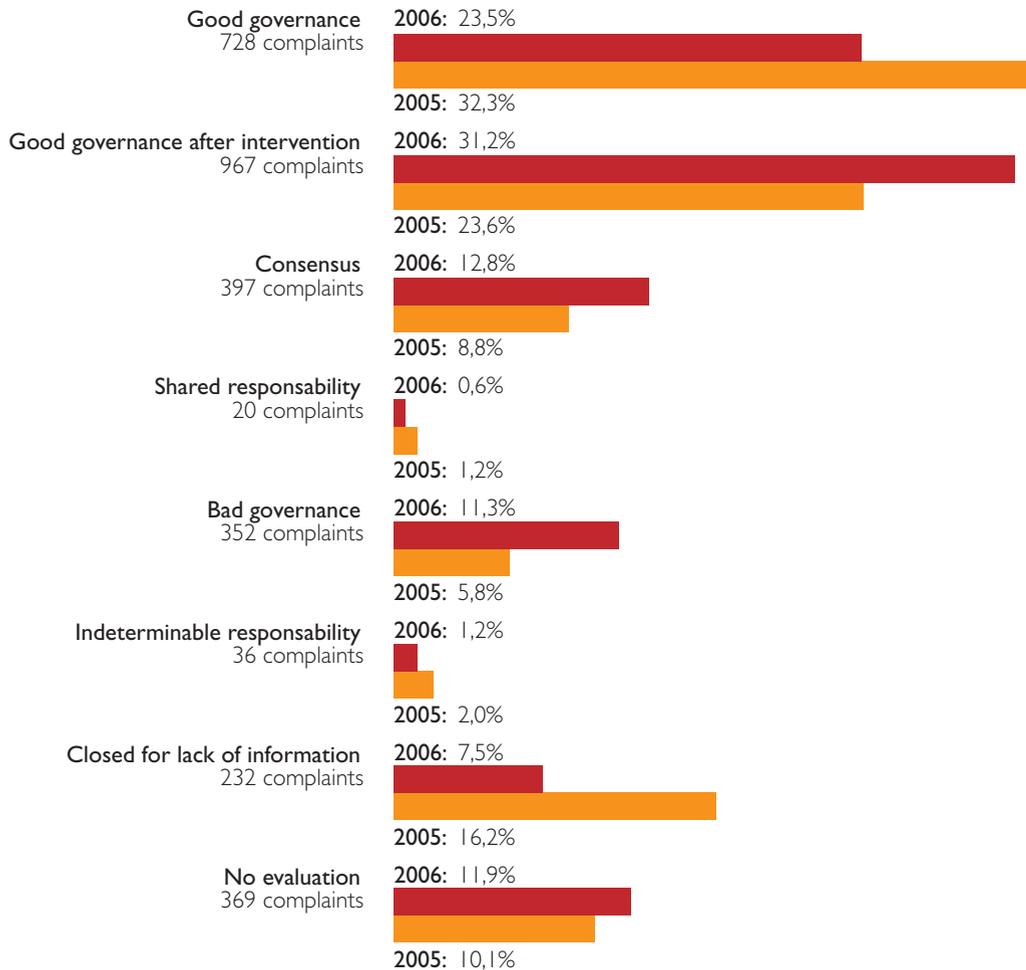
A case file is *“closed for lack of information”* when the plaintiff does not provide the Federal Ombudsman with additional information that is indispensable for processing his or her file.

Finally, *“no evaluation,”* is the criterion applied in cases where the problem was solved before the intervention of the Federal Ombudsman, but after the intervention of a third party, or after the intervention of the Federal Ombudsman, 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 Federal Ombudsman, 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 2,983 complaints closed in 2006, including complaints lodged in previous years.



### Evaluation of closed complaints



By comparison with the number of case files processed by the administrative departments, the number of complaints lodged with the Federal Ombudsman is statistically not sufficiently relevant to make comparisons on how the government functions over several years.

The difference between the number of evaluations (3,101, including complaints lodged by civil servants) and the number of complaints closed during the year (2,983) can be explained by the fact that the same complaint may pertain to several administrative departments and thus be closed with several evaluations.

A new evaluation method will be applied as of 2007.

## 2.13. Application of the evaluation criteria

A summary of the principles of good governance applied for the 1,319 complaints closed in 2006 with the evaluation “good governance” or “good governance after intervention” is given below. Several principles may be cited in a case file, so the total number of principles (1,399) is higher than the number of case files concerned (1,319).

### Application of the evaluation criteria

Evaluation criteria	2006	%2006	2005	%2005
Reasonable time limit for complaint handling	932	66,6%	279	38,0%
Conscientious handling	148	10,6%	152	20,7%
Active and passive information	101	7,2%	133	18,1%
Equality	71	5,1%	13	1,8%
Proper application of the rules of law	65	4,6%	67	9,1%
Appropriate access	23	1,7%	14	1,9%
Reasonableness (requirement of proportionality, according to the case)	19	1,4%	13	1,8%
Justification of administrative acts	16	1,1%	20	2,7%
Legal certainty	11	0,8%	4	0,5%
Legitimate confidence	7	0,5%	4	0,5%
Compliance with the Charter of Public Service Users	3	0,2%	24	3,3%
Keeping appropriate files	1	0,1%	1	0,1%
Impartiality	1	0,1%	0	0,0%
Courtesy	1	0,1%	8	1,1%
Right to defence	0	0,0%	1	0,1%
Protection of privacy	0	0,0%	1	0,1%
	<b>1399</b>		<b>734</b>	

A partial explanation for the large share of the reasonable period principle in the evaluation criteria applied has to do with the closing operations of case files in connection with the Federal Public Service Home Affairs. An entire series of case files was closed in both August 2006 and in December 2006, with the evaluation of a violation of the principle of the reasonable period by the Immigration and Naturalisation Department.

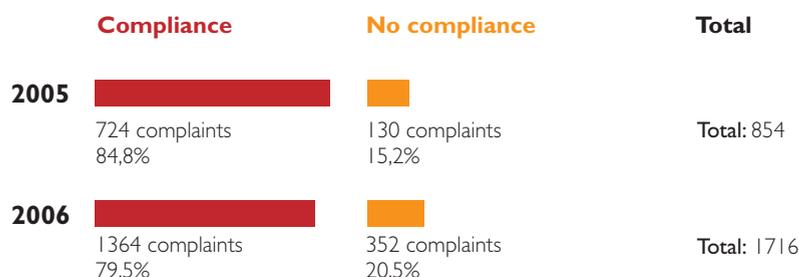
As of 2007, we shall have ombudsman standards instead of principles of good governance.

## 2.14. Result of the intervention by the Federal Ombudsman

A positive result is obtained when the evaluations “good governance after intervention” and, as announced in our previous annual report, “consensus” are given. The problem is solved in a positive way in this latter case too. The data for 2005 were adjusted accordingly so as to make a comparison with 2006 possible. The evaluation “bad governance” in turn shows that no result was obtained.



### Result of the intervention by the Office: comparison 2005-2006



The increase in the number of case files without a positive result is explained in large measure by the new method used to process complaints concerning the Immigration and Naturalisation Department, whereby a list was provided of case files submitted and pending the reasonable processing time for which had expired. Without reply from this department within two months, these case files are closed with “*bad governance*” as a result (cf. comment on the figures concerning the Federal Public Service Home Affairs in the fourth part).

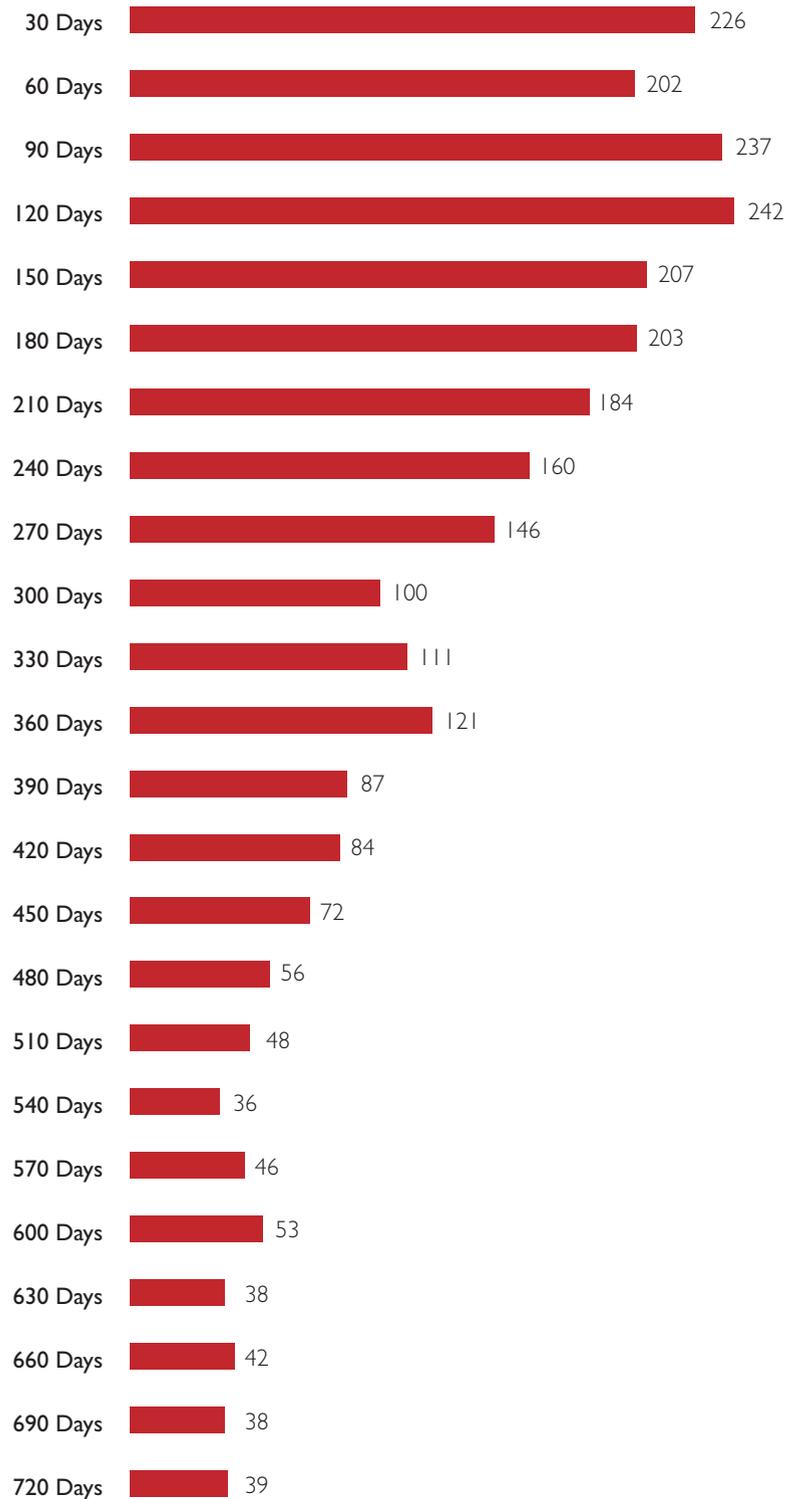
## 2.15. Processing time of admissible complaints closed in 2006

A graph with the number of admissible complaints closed in 2006 per period of 30 calendar days is given below. It concerns both the new complaints as well as those of the previous year still in progress.

The data show that of these 2,983 complaints, 1,317 (44.2%) were closed within six months (compared with 1,233 complaints or 59.7% in 2005). An additional 822 complaints (27.5%) were closed within a year (compared with 531 complaints or 25.7 in 2005), 385 (12.8% other complaints within a year and a half (compared with 175 complaints or 8.5% in 2005), and finally 256 complaints (8.6%) within two years (compared with 77 complaints or 3.7% in 2005). 205 complaints (6.9%) took more than 720 days to be processed (compared with 51 complaints or 2.4% in 2005).

In 2006 more ‘older’ complaints were closed than in 2005. As a result of a number of catch up actions taken in 2006 (cf. the figures concerning the Federal Public Service Home Affairs in the fourth part) the number of closed files and the percentages of time of handling increased compared to 2005.

Processing time (in calendar days) of admissible complaints closed in 2006



The long processing time in these cases is attributable to:

- The complexity of the problem, which may pertain to various administrative departments, and even various levels of power;
- The slowness of people in a number of cases to react to the questions of the Federal Ombudsman, both plaintiffs and authorities, during the examination of these complaints;
- The fact that the Federal Ombudsman fell behind schedule on the formal closing of complaints definitively completed.

As of 2006, case files in which the result is certain for and communicated to the complainant are considered to be closed. Formerly, the closing date for the administrative department applied, e.g. only after the structural problem was solved (which the concrete complaint may have already been solved long ago). The emphasis here is on the solution of the individual complaint, even if structural improvements are sought thereafter.



### III. Analysis of complaints processed





## Introduction

In this summarized part of the annual report, the complaints that we processed in 2006 are grouped according to the contents, plus, as in previous years, according to the administrative authority concerned by the complaint.

The following topics were broached.

1. Reasonable period
2. Applying the rules and regulations: self-evident?
3. What does the administration do in the absence of rules and regulations?
4. What does case law have to say?
5. Does the administration provide sufficient information? Does it provide sufficient reasons for its decisions?
6. Accessibility by telephone
7. Teething problems of a new procedure
8. Acknowledgement of receipt and proof of receipt
9. When different public services have to cooperate...

All are illustrated by clear examples from the processing of complaints.

**The names mentioned in the examples have been changed.**

## I. Do the federal administrative authorities act within a reasonable period?

At present, when a person is worried about the fate of his case, some administrative authorities, such as the Department of Immigration and Naturalisation or some Land Registry Offices, limit themselves to replying that they are not in a position to predict when a decision will be taken.

Having to wait for years for a decision is no longer acceptable nowadays.

In the Council of Ministers of 23 June 2006, the government approved the Charter for User-Responsive Governance. This indicates periods of four to eight months, within which the citizen should receive a decision. The Federal Ombudsman therefore considers that each federal administrative authority must be able to comply with these time limits.

The indication of time limits in the Charter provides the citizen with a real point of reference. For the citizen must know the period within which his case will be processed and be able to refer to it. The Charter provides that the period of processing must be specified only if the time limit of four months was not met.

*In 2002, Mr Ramiz, a Kosovaar, files an application for a residence permit in Belgium for humanitarian reasons. He finally receives a decision at the end of 2006, limited to pointing out that he could not file his application from Belgium and that he must return to Kosovo to file the same application all over again. Because only then will his application for a residence permit be examined. Taking four years for this type of decision is unacceptable. Mr Dandrieux is luckier. He receives the decision that revises his cadastral income downward three years after filing his complaint.*

The Federal Ombudsman's experience has shown that it is important for legal security and for the citizen's confidence in the administrative authorities that the latter always indicate a period within which a decision will be taken.

**This year, the Federal Ombudsman recommended to the Parliament to insert a new provision in the Act of 11 April 1994 on the transparency of governance, requiring every federal administrative authority to indicate the period within which it will take a decision.**

## 2. Applying the rules and regulations is not always self-evident

Painful situations can underscore the need to ensure that the rules and regulations can be fully effective, even if this is not always self-evident.



Practice has thus shown that it is at times impossible for a detainee to participate in the elaboration of his plan for reintegration into society.

Most often, such specialised institutions fall under the Communities that are competent for personalisable matters. Experience has shown that they often do not have sufficient adapted reception capacities.

**As such situations are harmful both for the detainee and society, the Federal Ombudsman has recommended to Parliament to take such measures as necessary so that the detainee is afforded an effective opportunity to prepare his reintegration into society. This entails that the Federal State must conclude efficient and efficacious cooperation agreements with the Communities and/or Regions.**

*Monsieur Fresnes was sentenced to 20 years in prison. Since 2001, he has been eligible for conditional release, but his application has no chance of succeeding, as long as his problems of alcoholism and aggressiveness have not been successfully treated in a specialised institution. His conditional release has been systematically refused on the grounds that his plan for reintegration into society was not sufficiently supported. In fact, only long-term psychiatric institutionalisation would provide treatment for his problem so that he no longer represents a threat to society. But, although he has turned to all institutions likely to treat his pathology, none has declared that it was ready to take him in to date.*

### 3. What does the administration do in the absence of rules and regulations?

The legislator wanted to promote volunteer work in general and to allow the same access to volunteer work to disabled employees, civil servants and self-employed individuals.

In the meantime, the rules and regulations on health insurance for the self-employed are being adapted.

The Medical Expertise Authority, which is responsible for issuing authorisation to work to disabled civil servants, also considers that civil servants must be able to do volunteer work. Nevertheless, the legal basis for such authorisation is lacking.

*The social welfare office of a psychiatric institution wonders why among patients, disabled employees can do voluntary work, while civil servants and the self-employed in the same situation cannot; for it considers that volunteer work has a major therapeutic effect!*

**Legal security requires that the Act of 3 July 2005 on the rights of volunteers explicitly provides the possibility for disabled civil servants and self-employed individuals to do volunteer work.**

**The Royal Decree of 2 October 1937 on the status of Government agents must moreover indicate explicitly whether the civil servant wishing to do volunteer work is required to request prior authorisation from his employer.**

## 4. What does case law have to say?

Serving an order to leave the territory to asylum seekers whose application has been turned down, before they have received a decision on their application for a residence permit, is unacceptable.

The case law of the Council of State and of the Court of Cassation confirms that in acting thus, the Department of Immigration and Naturalisation does not fulfil its obligations.

*In April 2002, Mr Amouchi applied for asylum in Belgium. Some time afterwards, he also applied for a residence permit. In April 2006, he received a decision rejecting his application for asylum, and before he even received the decision about his application for a residence permit, he was ordered to leave the territory.*

**The Federal Ombudsman has recommended to the Federal Public Service Home Affairs to process the application for a residence permit pending before serving an order to leave the territory.**

## 5. Does the administration provide sufficient information? Does it provide sufficient reasons for its decisions?

The explanatory brochure attached to the tax return form did not mention that the amount of tax could vary considerably depending on whether a joint return or two separate returns were filed.

The Federal Ombudsman has thus asked the tax authorities to draw the attention of taxpayers to the consequences of their choice for one or another method for calculating taxes.

*Because after her husband had died, Mrs Dupuis filed, through ignorance, two separate tax returns, not realising that she could still opt for a joint declaration, she has to pay nearly € 1,000.00 more in taxes!*

For tax year 2007, Inland Revenue has adopted the explanatory brochure *"To help you complete part 1 of your tax return for natural persons."*

## 6. What about accessibility by telephone?

The complaints we receive about accessibility by telephone are often accompanied by a lot of irritation.

The Federal Ombudsman has been following proposals to improve accessibility by telephone made by the Vehicle Registration Department for six years. Ever since an information desk was established as a sort of call centre, the Federal Ombudsman has received practically no more complaints about the phone accessibility of the central services of the Vehicle Registration Department. Conversely, the phone accessibility of local branches remains a problem. This call centre must nonetheless be bolstered before it can cope with all these calls. As of 1 April 2007, six more people have been working there full time, which should make it possible to transfer calls.

The Federal Ombudsman also receives many complaints about the helpdesk of the Department of Immigration and Naturalisation. The latter department has conducted its own survey about its accessibility, according to which, 90% of the calls are answered immediately. Of the remaining 10%, the department contacts the persons during the day by telephone or by e-mail to provide the information obtained in the meantime.

The Federal Ombudsman nonetheless receives complaints from persons who have not managed to reach the helpdesk. These persons are obviously not included in the statistics of the Department of Immigration and Naturalisation. It is necessary to verify whether the efforts made by said department in 2006 have produced results this year.

## 7. A new procedure often has teething problems

The introduction of the electronic identity card by the Federal Public Service Home Affairs has not always gone smoothly.

An operation of such scope naturally requires extensive organisation. Nevertheless, the transitory measures for the introduction of the electronic identity card do not fix clear rules for the replacement of the current cards which are still valid.

Questions therefore arise when the identity card has to be replaced even though it is still valid.

The administration may not cancel cards that are still valid like that in the absence of a legal provision or other regulatory provision explicitly imposing said sanction. The identity card is an essential document for the citizen. The cancellation in the cases referred to runs contrary to legal security and to the principle of legitimate confidence.

**The Federal Ombudsman has sent a recommendation to the Federal Public Service Home Affairs, asking that, during the transition phase from the ordinary to the electronic identity card, and for as long as there is no explicit legal basis, the ordinary identity card that is still valid is no longer cancelled for the sole reason that the holder has not responded to the notice convening him to replace it before its date of expiry.**

*In August 2005, Mr Brion received a notice from his municipality convening him to report to the population service for his new electronic identity card. As his old identity card is still valid until 9 December 2006, he does not react immediately to this notice. He plans to contact the population service himself before his old identity card expires. Around mid-August 2006, right before he gets ready to travel, Mr Brion decides to see to the necessary formalities. When he goes to the population service, his old identity card is confiscated immediately, because it is not considered valid any more.*

*Mr Brion was not aware. He cannot recover his former identity card and cannot travel without it. In order to be able to travel, he must introduce an emergency procedure so that he can get his new electronic identity card in time.*

## 8. Of the need for an acknowledgement of receipt

The Federal Public Service Home Affairs has refused that the municipalities should issue an acknowledgement of receipt when an application for a residence permit is filed.

In view of the long time that it often takes between the filing of an application for a residence permit and the time a decision is taken, the Federal Ombudsman is convinced of the absolute need to issue an acknowledgement of receipt for the application for a residence permit, as said acknowledgement of receipt may be the only document of reference for an alien who is at times left for years in the uncertainty as to his application for residence in Belgium. In the very least, it gives him the right to a decision.

*Mr Gambuele filed an application for a residence permit on 15 November 2002. On 27 January 2003, he received an acknowledgement of receipt from the municipality. In June 2006, he had not yet received a decision. The Department of Immigration and Naturalisation seems to have lost Mr Gambuele's application. The latter fortunately has the acknowledgement of receipt that enables him to prove that he did file such an application!*

**The Federal Ombudsman has thus expressly recommended to the Federal Public Service Home Affairs to issue an acknowledgement of receipt for every application for a residence permit.**



## 9. When different public services have to cooperate...

Exchange of information is one form of cooperation between the different public services.

Already in 1999, the Federal Ombudsman had made a recommendation that underscored the need to require the public services to use existing systems to collect the necessary information so as not to have to ask citizens for data that the administration already has.

Henceforth, Principle 12 of the Charter of User-Responsive Governance explicitly encourages this form of cooperation: “Every public service will make optimal use of data already available at other public organisations.”

Requiring the citizen to provide certain documents or information, although the administration may – or in the very least could – obtain them on its own, is not in line with the principles of good governance.

At times, however, an authority has certain types of information that another service may not use.

The examination of the complaints has shown that it is necessary for the Vehicle Registration Department of the Federal Public Service Mobility and Transport to be able to access the National Register online.

*Mr Jeremiah has had a Belgian identity card since 2002. He cannot understand why each time he calls on the services of the Vehicle Registration Department, he has to get a certificate from the municipality attesting to his Belgian nationality. The data in the population registers of his municipality are correct, but according to the information available to the Vehicle Registration Department, he is still registered in the waiting register. Apparently, the data of the Vehicle Registration Department cannot be adapted. The switch over from the waiting register to the population register does not appear in the National Register data that the Vehicle Registration Department has.*



# IV. Recommendations





## I. Introduction

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 Ombudsman by Article 1, 3°, of the Federal Ombudsman Act of 22 March 1995 (hereinafter referred to as "the Act").

There are two types of recommendations:

- a) "*Official*" Recommendations: by virtue of Article 14, section 3 of the Act, the ombudsmen may, when processing complaints, make such recommendations as they deem useful to the administrative authority;<sup>7</sup> 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 in the exercise of their office.<sup>8</sup>

## 2. General Recommendations

### Cross-thematic Recommendation 2006

**GR 06/01: Impose an obligation on all federal administrative authorities by a rider to the Act of 11 April 1994 on the transparency of governance to indicate the period within which a decision will be taken.**

The government intervention must be subject to a time period that is beyond dispute. If no time period is imposed for a legislative provision, than such a period must be reasonable.

In the Council of Ministers of 23 June 2006, the government approved the Charter of User-Responsive Governance. The charter has been put in a circular that will be published in the 'Belgisch

<sup>7</sup> A recapitulative list of recommendations made in 2006 is given in pp. 61-62.

<sup>8</sup> Only the general recommendations of 2006 are contained in this part. The summary table of all general recommendations (1997-2006) still being processed is given as Appendix, p. 64 ff.

Staatsblad' [Belgian Official Gazette] and sent to all the governmental services. Every Federal Public Service will in the coming months have to sign a protocol undertaking commitments concerning its specific services.<sup>9</sup>

This Charter is a valuable supplement to the existing instruments for transparent and user-responsive governmental actions. We are thinking here in particular of the act on the express motivation of administrative actions, the act concerning the transparency of governance, the charter of the socially insured persons, and the charter of the user and public services.

We have already referred explicitly in this report to the principle of the Charter in which a concrete standpoint was taken regarding a reasonable period.

*"Each governmental service shall, within 15 days from the receipt of a petition from a citizen, a company or an association, send an acknowledgement of receipt, unless the petition can be processed within a period of three weeks. It shall process the petition within a reasonable time. This period may in principle not exceed a maximum of four months. For complicated cases, the service shall target a maximum processing period of eight months. In such cases, a preliminary reply must be given after four months and must then specify the processing period."*

We are convinced that the inclusion of processing periods of time in the Charter for a user-responsive governance offers a real charter for all citizens. Pursuant to the charter, the processing time must be communicated to the citizen only if the basic period of four months is exceeded. That does not suffice, however. Everyone must moreover be able to know at all times the period within which he or she will receive a decision and must be able to count on it.

Our experience with complaint processing has moreover taught us that it is extremely important for citizen confidence in the government that the administrative authority indicate a period within which a decision will be taken. The legislator is clearly aware of this. For instance, the Charter of the socially insured persons stipulates not only a binding period on all social security institutions in taking decisions; the latter are also required to communicate the instigation period to the socially insured persons. This charter is contained in an act.<sup>10</sup>

In light of the forgoing, we have made a general recommendation to supplement the Act of 11 April 1994 concerning the transparency of governance so that all federal administrative authorities are required to communicate the period within which a decision will be taken.

<sup>9</sup> According to information at our disposal at the time that this annual report went to press, the Federal Public Services Mobility and Transport, Social Security, and the National Pension Service (known by the Dutch initials RVP) were the first three departments to implement the Charter concretely.

<sup>10</sup> Act of 11 April 1997 introducing the "charter" of the socially insured persons.

## Thematic Recommendations 2006

**GR 06/02: Article 24, §2, of the Royal Decree of 22 May 2003 concerning the case file processing procedure for compensating disabled persons, which stipulates that the socially insured agrees that a reclaim can be lodged through the bank, must be brought in line with the Act of 27 February 1987 on compensating disabled persons, which in article 16, §2, establishes the procedures that must be followed for decisions concerning reclaiming unduly paid sums.**

Unduly paid compensations to disabled persons can in the case of death or departure abroad be reclaimed directly via the financial institution. The Federal Public Service Social Security has relied, for this work method, on article 24, paragraph 2 of the Royal Decree of 22 May on the procedure for processing case files for compensation payable to disabled persons. In this way, however, article 16, paragraph 2 of the Act of 27 February 1987 on compensating disabled persons is circumvented. This article stipulates that the decision for a re-claim shall, on pain of nullity, be served to the debtor indicating the unduly paid amount and the calculation thereof, the provisions in violation of which the payments were made, the lapse period, the appeal period, the possibility to submit a proposal for staggered repayment, and the possibility to submit an application for renunciation. The current work method deprives the socially insured of the possibility to exercise certain rights. The Federal Ombudsman has consequently recommended that the royal decree, which is illegal, should be amended.<sup>11</sup>

**GR 06/03: Provide a legal basis to the possibility for the self-employed to pay supplementary social security contributions, in spite of the lapse, and laid down a procedure for that purpose**

An internal note from the then Minister for the Self-Employed of 19 November 1986 offers the self-employed the possibility to make additional social security payments after the lapse period (in theory, five years), when they have paid insufficient amounts for a given year, thus no entitlements to a pension are opened for that year. A pre-condition to this, however, is that the delay in sorting out the situation is due to an administrative shortcoming. In such a case, the self-employed person concerned may file an application to lift the lapse, and to pay a supplement on his or her social security contributions. Because a legal regulation on the applicable procedure is lacking, there is legal insecurity and the self-employed have no legal means at this time to contest the decision of the administrative authority on whether to lift the lapse. In the interest of legal security and of transparency, the Federal Ombudsman recommends that a legal basis should be created for this administrative practice.<sup>12</sup>

<sup>11</sup> p. 67.

<sup>12</sup> p. 67.

**GR 06/04: In the Act of 3 July 2005 on the rights of volunteers, provide the possibility for disabled civil servants and disabled self-employed persons to do volunteer work**

Article 15 of the Act of 3 July 2005 on the rights of volunteers expressly provides for the possibility for disabled workers to do volunteer work, provided the consulting physician has ascertained that these activities are compatible with the general state of health of the party concerned. As said act contains no such provisions for disabled civil servants and self-employed persons, a question of discrimination may arise, or it was unclear, at any whether and under what conditions, these persons could also perform volunteer work.

During the investigation, the Federal Ombudsman established that the legislator had intended to promote volunteer work in general, and that volunteer work would be accessible to disabled workers, civil servants and self-employed person in an equal manner.

Owing to the legal insecurity, the Federal Ombudsman recommends that the possibility to perform volunteer work for disabled civil servants and self-employed persons be expressly stipulated in the Act of 3 July 2005.<sup>13</sup>

**GR 06/05: In the Royal Decree of 2 October 1937 on the status of state personnel, mention expressly whether the civil servant who wishes to do volunteer work must obtain the prior consent of his employer**

It is unclear whether a civil servant (disabled or otherwise) who wishes to do volunteer work, has to obtain the prior consent of the administrative authority so as to avoid any potential incompatibility problems of volunteer work with his or her position as a civil servant. The Federal Ombudsman recommends that this lack of clarity be removed.<sup>14</sup>

**GR 06/06: Remove the unequal treatment of Belgian and foreign students in obtaining a Belgian driving license by bringing the Royal Decree of 23 March 1998 on the driving licence in line with the principles contained in the European Directives on driving licences**

Article 3, §1 of the Royal Decree of 23 March 1998 concerning the driving licence stipulates that a Belgian who wishes to obtain a driving licence, must be registered in the official population register of a Belgian municipality. The same article provides that a foreign student can obtain a Belgian driving licence if he can prove that he has been registered in a Belgium educational institution for at least six months. On the basis of the current regulation, a Belgian student living in a neighbouring country and

<sup>13</sup> p. 67.

<sup>14</sup> p. 67.



studying in Belgium, cannot obtain a Belgian driving licence. The regulations thus create discrimination between Belgian students and students who are nationals of a neighbouring country and who find themselves in the same situation. Furthermore, the regulations run contrary to the European directives on driving licenses.

At present, a circular stipulates the conditions under which a driving licence can be issued to a Belgian student living abroad. It is indispensable that this new practice is given a regulatory basis. <sup>15</sup>

#### **GR 06/07: Delete the words “on the occasion of ceremonies” in article 15, §2, 2, of the Royal Decree of 8 July 1970**

Article 5, §1, 8, of the Code of Taxes Assimilated to Income Tax (known by the Dutch initials ‘WIGB’) stipulates that *“motor vehicles used exclusively for hire with driver shall be exempted from the road tax on motor vehicles.”* The article empowers the King to set terms and conditions for the application of this paragraph.

Article 15, §2, 2, of the Royal Decree of 8 July 1970 stipulates that *“said exemption shall apply to motor vehicles which, ...with the exception of any other use, are hired with a driver to transport persons on the occasion of ceremonies.”*

In its decision of 16 October 2003, the Court of Cassation ruled that *“the power vested in the king to set terms and conditions for the application of the exemption referred to in article 5, §, 80 WIGB, shall not include the power to limit the application of this exemption to hiring with a view to transport persons on the occasion of ceremonies.”*

The regional Taxation directors of the Federal Public Service Finance should be given the necessary guidelines to take account of this decision and not to require any longer that the vehicle be used only for ceremonies.

It is indispensable to bring the Royal Decree of 8 July 1970 in line with the powers of the King and to remove the wording *“on the occasion and ceremonies”* from the royal decree. <sup>16</sup>

<sup>15</sup> p. 67.

<sup>16</sup> p. 64.

**GR 06/08: Take the necessary measures to guarantee that detainees are actually given an opportunity to prepare for their reintegration into society. This entails that the Federal State must conclude efficient and effective cooperation agreements with the Communities and/or the Regions**

Article 2, paragraph 2, 2 of the Act of 5 March 1998 on conditional release stipulates that “*the detainee must be able to submit a plan for reintegration into society that shows his preparedness and willingness to reintegrate into society; the detainee shall be assisted by the competent services in drawing up the reintegration plan.*” Article 9 of the Basic Law of 12 January 2005 on prisons and the legal positions of the detainees stipulates that the implementation of punishment by deprivation of liberty is intended in particular for the rehabilitation of the detainee and the personalised preparation for his reintegration into society. Article 9, §3 expressly stipulates that the detainee be given the opportunity to cooperate constructively in drawing up the personal detention plan referred to in Title IV, Chapter II.<sup>17</sup>

At present, when the elaboration of the reintegration plan requires the cooperation of the Communities and/or the Regions, it may become de facto impossible for a detainee to meet the conditions set by the law. This is the case in particular when hospitalisation is deemed necessary for reintegration into society, and hospitals, which fall under the purview of the Communities, refuse to admit the detainee.

Having regard to the competency of each, the Federal legislator and the Communities must work together with due regard for the competencies of each.<sup>18</sup> It is therefore necessary to bridge these gaps between the competency of the federal authorities and the Communities, and to ensure that detainees are given the opportunity to actually implement their plan for reintegration into society.

In the current situation, detainees get no chance to obtain conditional release, and as a result they return to society after serving their sentence without having dealt with the problems that had led to serious incidents, notwithstanding the fact that examinations have revealed that their (psychiatric) problems are serious and require long-term treatment.

As such situations are pernicious for the detainees and for society, the Federal Ombudsman recommends that the necessary measures be taken to guarantee that detainees are actually given an opportunity to prepare for their reintegration into society. This entails that the Federal State must conclude efficient and effective cooperation agreements with the Communities and/or the Regions.<sup>19</sup>

<sup>17</sup> Basic Law of 12 January 2005 on prisons and the legal position of the detainees. Article 9 of said law has entered into force. Articles 38ff. have not yet entered into force.

<sup>18</sup> The two governmental authorities have concluded cooperation agreements for certain aspects, e.g. the Cooperation Agreement of 28 February 1994 by and between the State and the Flemish Community on social assistance to detainees with a view to their reintegration in society.

<sup>19</sup> p. 66.

## 3. Official Recommendations 2006

### Federal Public Service Home Affairs

#### ❖ Department of Immigration and Naturalisation

**OR 06/01:** The Federal Ombudsman recommends that a receipt be issued for every application for a residence permit.

**OR 06/02:** In anticipation of the effective entry into force of article 4, third paragraph of the Charter for a user-responsive governance, the Federal Ombudsman recommends to the Department of Immigration and Naturalisation that, at the request of the users, the period within which a decision concerning a residence permit can be expected, be duly indicated.

**OR 06/03:** The Federal Ombudsman recommends that application for a residence permit be processed within a reasonable period, as provided in article 4 of the Charter for a user-responsive governance, i.e. 4 to eight months, and where appropriate, that said period be extended by such time as the department concerned or another governmental authority needs to provide the information requested by the Department of Immigration and Naturalisation which is needed in order to take a decision.

**OR 06/04:** To be able to meet its information obligation in all case files in progress, the Federal Ombudsman recommends that the Department of Immigration and Naturalisation accepts a plan with deadlines so as to catch up with the backlog of the *Bureau Article 9, paragraph 3 – Humanitarian considerations*.

**OR 06/05:** The Federal Ombudsman recommends that all necessary measures be taken to guarantee that the Department of Immigration and Naturalisation takes a decision on the application to renew or extend a temporary authorisation of stay before the limit date expires.

**OR 06/06:** The Federal Ombudsman recommends that, before giving an order to leave the territory, the Department of Immigration and Naturalisation should process the pending application for a residence permit.

**OR 06/07:** The Federal Ombudsman recommends that a temporary authorisation to stay be issued to stateless individuals, who are waiting for a decision on their application for a residence permit.

#### ❖ Institutions and Population

**OR 06/08:** The Federal Ombudsman recommends that a decision by the Federal Public Service Home Affairs settling a dispute concerning difficulties and/or objections as to the determination of the main

place of residence be made retroactive to the date of application for registration in the official population register or to the date as close as possible to the date of the actual occupation of the dwelling.

**OR 06/09:** The Federal Ombudsman recommends that, during the transition phase from the ordinary to the electronic identity cards, and for as long as there is no express legal basis, no identity cards that are still valid should be cancelled for the sole reason that the holder has not responded to the summon to have the identity card replaced before the expiry of the period of validity.

Federal Public Service Social Security

## Federal Public Service Social Security

**OR 06/10:** To guarantee the equal treatment of all parties concerned, and to avoid that additional steps have to be taken in certain cases, the Federal Ombudsman recommends that interest for late payment be payable ex officio, and thus without any express request thereto, when a legal ruling overturns the decision about the right to compensation payable to a disabled person.

## Federal Public Service Finance

**OR 06/11:** Backed by case law and recent amendments, we officially recommend to the Federal Public Service Finance to inform all local tax offices of the amended position on article 169 of the Income Tax Code 92. This will guarantee equal treatment for all taxpayers and remove the prevailing legal insecurity. When a taxpayer gets no advantage from an outstanding debt insurance, he cannot be taxed on the fictitious income from the disbursed capital.



# Appendix



## Outline of General Recommendations

GR	Title	Object	Status	Comment	Petitions Committee
<b>Cross-thematic general recommendations</b>					
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-thematic	Pending	Recommendation that is still topical, pertaining to a more rapid processing of claims for compensation of expenses when several administrative authorities are trying to pass the responsibility for paying to each other so that a settlement remains outstanding	13/07/2005
98/02	The issuing, in one form or another, of an acknowledgement of receipt to citizens establishing the submission of documents to a Civil Service department	Cross-thematic	Closed in 2006	Recommendation met by the Charter of User-Responsive Governance	13/07/2005
99/05	The adoption of measures to ensure that the general public is more aware of the existence and missions of information officers	Cross-thematic	Pending	Recommendation that is still topical and under study in the Office of the Prime Minister	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-thematic	Closed in 2006	Recommendation met by the Charter of User-Responsive Governance	13/07/2005
06/01	Impose an obligation on all federal administrative authorities by a rider to the Act of 11 April 1994 on the transparency of governance to indicate the period within which a decision will be taken	Cross-thematic	New	Cf. pp. 55-56	
<b>General recommendations relative to the FPS Finance</b>					
99/08	Problems arising when a property is evaluated by the tax authorities	FPS Finance	Pending	Partially met	
02/03	The tax trap in unemployment	FPS Finance	Pending	Bill (DOC 1158/001)	
03/03	Appeal concerning taxation	FPS Finance	Pending	Section: "Extension of the time limit for appeal against taxes;" met by Article 7 of the Programme-Law of 20 July 2006, which extends the time limit from 3 to 6 months; Sections: "Certain date" and "Notion of writing and of signature;" have remained as they are; Section: "Acknowledgement of receipt;" the principle of sending an acknowledgement of receipt was introduced by the Programme-Law of 27 December 2004. As regards the time limit to acknowledge receipt, this section is met by the Charter of User-Responsive Governance; Section: "Internal Referral;" met by the Programme-Law of 27 December 2004 only as regards the referral from one regional department to another.	12/05/2004 referral to the Finance Ombudsman promotor
06/07	Exoneration of road tax on vehicles that are rented with driver: deletion of the wording: "on the occasion of ceremonies" in article 15, §2, 2° of the Royal Decree of 8 July 1970	FPS Finance	New	Cf. p. 59.	

GR	Title	Object	Status	Comment	Petitions Committee
<b>General recommendations relative to FPSs Justice, Home Affairs and Foreign Affairs</b>					
00/01	Declaration of marriage	FPS Justice	Pending	This general recommendation has remained as it is	16/05/2002
00/02	Procedure for changing surname and first name	FPS Justice	Closed in 2006	General recommendation met by article 21 of the Act of 1 July 2006 amending the provisions of the Civil Code on the establishment of lineage and for the effects thereof	01/06/2005
01/01	Greater transparency and greater legal certainty in the application by the Immigration Office of the Act of 15 December 1980 and its implementing decree	FPS Home Affairs	Pending	Monitored with the Immigration Office	16/04/2002
02/01	The status of cohabiting partners under the legislation relation to aliens	FPS Home Affairs	Pending	Problem partially solved: the status of people living together is incorporated in article 6 of the Act of 15 September 2006 amending the Act of 15 December 1980 <sup>20</sup> . The King may nonetheless still determine, by decree deliberated on in the Council of Ministers, the criteria for assessing the lasting nature of the relationship between the partners <sup>21</sup> .	01/06/2005
02/02	Adoption of a legal basis in the fields of authentication of confidential lawyers	FPS Foreign Affairs	Closed in 2006	This general recommendation is met by: – article 30, §1 <sup>st</sup> , indent 2, of the Private International Law Code <sup>22</sup> – the Royal Decree of 12 July 2006 on the legalisation of foreign court decisions or notarial deeds (M.B., 11 January 2007) <sup>23</sup> – the Circular of 14 December 2006 on instructions concerning legalisation (M.B., 11 January 2007) <sup>24</sup>	

<sup>20</sup> M.B. [Official Gazette], 29 December 2006.

<sup>21</sup> M.B., 6 October 2006.

<sup>22</sup> "The 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 affixed on the document."

<sup>23</sup> Article 2: "When a diplomatic or consular official or the Minister for Foreign Affairs (...) notices a problem *prima facie* at the level of this foreign court decision or foreign notarial deed, (...) he shall legalise the foreign court decision or foreign notarial deed and shall mention his remarks in an appended sheet." Article 3: "The Belgian authority that receives the legalised foreign court decision or legalised foreign notarial deed may request that the competent diplomatic or consular post carry out an investigation into the validity of the foreign court decision or foreign notarial deed or into the veracity of the reported facts."

<sup>24</sup> Point 4.2: "The investigation shall be carried out by the competent diplomatic or consular post for the place where the foreign court decision or foreign notarial deed were delivered. Depending on the nature of the problem, the diplomatic or consular official may call on local authorities for this investigation. No expenses may be incurred for this investigation, unless the requesting authority undertakes to cover them itself."

## Outline of General Recommendations

GR	Title	Object	Status	Comment	Petitions Committee
03/01	The period for handling cases lodged on Belgian territory and submitted to the Immigration Office	FPS Home Affairs	Pending	As regards the period for processing applications under review, the general recommendation is still pending in anticipation of the entry into force of article 230 of the Act of 15 September 2006 <sup>25</sup> . As regards the period for processing applications for residence permits, the general recommendation is supplemented by the official recommendations OR 06/02 <sup>26</sup> , RO 06/03 <sup>27</sup> , RO 06/04 <sup>28</sup> . As regards the time limit for processing applications to extend or renew a temporary residence permit, the general recommendation is supplemented by official recommendation OR 06/05 <sup>29</sup> . Cf. p. 60.	15/06/2005
06/08	Take the necessary measures to guarantee that detainees are actually given an opportunity to prepare for their reintegration into society. This entails that the Federal State must conclude efficient and effective cooperation agreements with the Communities and/or Regions.	FPS Justice	New		
<b>General recommendations relative to other federal administrative authorities</b>					
99/13	The lack of transparency of the Order of Physicians	Order of Physicians	Pending	Several bills relative to the reform of the Order of Physicians are pending, both in the House of Representatives and in the Senate. In some of them, the recommendation is followed, in that it explicitly provides that the patient or his representative must have the right to know the outcome of the disciplinary procedure.	
02/05	The application of the Social Insurance Contributors' Charter to certain social security institutions	FPS Social Security	Closed in 2006	The problem relative to the scope of application of the Social Insurance Contributors' Charter was closed with the information provided by the Minister for Social Affairs <sup>30</sup> . Moreover, the Charter of User-Responsive Governance henceforth imposes time limits within which each administrative authority must reply to requests for information as well as an obligation of rapid communication with the citizen.	

<sup>25</sup> M.B., 6 October 2006.

<sup>26</sup> p. 61.

<sup>27</sup> p. 61.

<sup>28</sup> p. 61.

<sup>29</sup> p. 61.

<sup>30</sup> the Federal ombudsman, *Annual Report 2005*, p. 133.



GR	Title	Object	Status	Comment	Petitions Committee
06/02	Adapt article 24, §2, of the Royal Decree of 22 May 2003 concerning the case file processing procedure for compensating disabled persons, which stipulates that the socially insured agrees that a reclaim can be lodged through the bank, must be brought in line with the Act of 27 1987 on compensating disabled persons, which in article 16, § 2, establishes the procedures that must be followed for decisions concerning reclaiming unduly paid sums	FPS Social Security	New	Cf. p. 57.	
06/03	Provide a legal basis to the possibility for the self-employed to pay supplementary social security contributions, in spite of the lapse, and laid down a procedure for that purpose	FPS Social security	New	Cf. p. 57.	
06/04	Provide, in the Act of 3 July 2005 on the rights of volunteers, the possibility for disabled civil servants and self-employed workers to do volunteer work	FPS Social security	New	Cf. p. 58.	
06/05	Mention explicitly in the Royal Decree of 2 October 1937 on the status of state personnel, whether the civil servant who wishes to do volunteer work must obtain the prior consent of his employer	FPS Personnel and Organisation	New	Cf. p. 58.	
06/06	Remove the unequal treatment of Belgian and foreign students in obtaining a Belgian driving licence by bringing the Royal Decree of 23 March 1998 on the driving licence in line with the principles contained in the European Directives on driving licences	FPS Mobility and Transport	New	Cf. pp. 58-59.	



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the Federal Ombudsman

Rue Ducale / Hertogsstraat 43

1000 Brussels

T. 02 289 27 27

F. 02 289 27 28

E [email@federalombudsman.be](mailto:email@federalombudsman.be)

[www.federalombudsman.be](http://www.federalombudsman.be)

