



the
Federal
Ombudsman
Annual Report
'07





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*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 2007.

This is already the eleventh annual report of the Federal Ombudsman. In the last eleven years, more than 39,000 citizens have found their way to the ombudsman. This is an average of 3,500 complaints and requests for information per year.

If we leave the running in period out of consideration and limit ourselves to the last five years, we come to an average of more than 4,700. The year 2007 brings this average substantially higher, being the year in which, for the first time, we received more than 5,000 complaints and requests for information.

The information campaign we conducted in 2007, through the municipalities and public welfare offices (known by the Dutch and French acronyms respectively as "OCMW" and "CPAS"), Belgian embassies and consulates and in penitentiaries – supported with adverts in the written press – naturally contributed thereto.

We are continuing our work to make the institution better known among the general public so that citizens can find their way easier to the Federal Ombudsman. This is a desirable precondition, in fact, to a good, and above all, efficient functioning of the service.

The annual report contains the usual parts. In the introduction, we report on the operation and management of the Federal Ombudsman, in particular on the adjustment that we made to the organisational structure in 2007. Part II contains the general figures and graphs: number of complaints received, admissibility, assessment, result, processing period, etc. In Part III, we analyse the claims processed along the same lines as in the previous year: a thematic approach of the ascertained problems, illustrated with striking samples from practice. Part IV contains the recommendations: four general recommendations intended for Parliament and the official recommendations that we made in 2007 directly to the administrative authorities.

Preface


The work at the Federal Ombudsman is above all teamwork and we should like to thank all staff members for the input, flexibility and motivation they have shown in their respective field.

We are always at your disposal to present and explain this annual report to the Petitions Committee and wishing you happy reading, we remain

*Yours faithfully,
The federal ombudsmen,*



Catherine De Bruecker

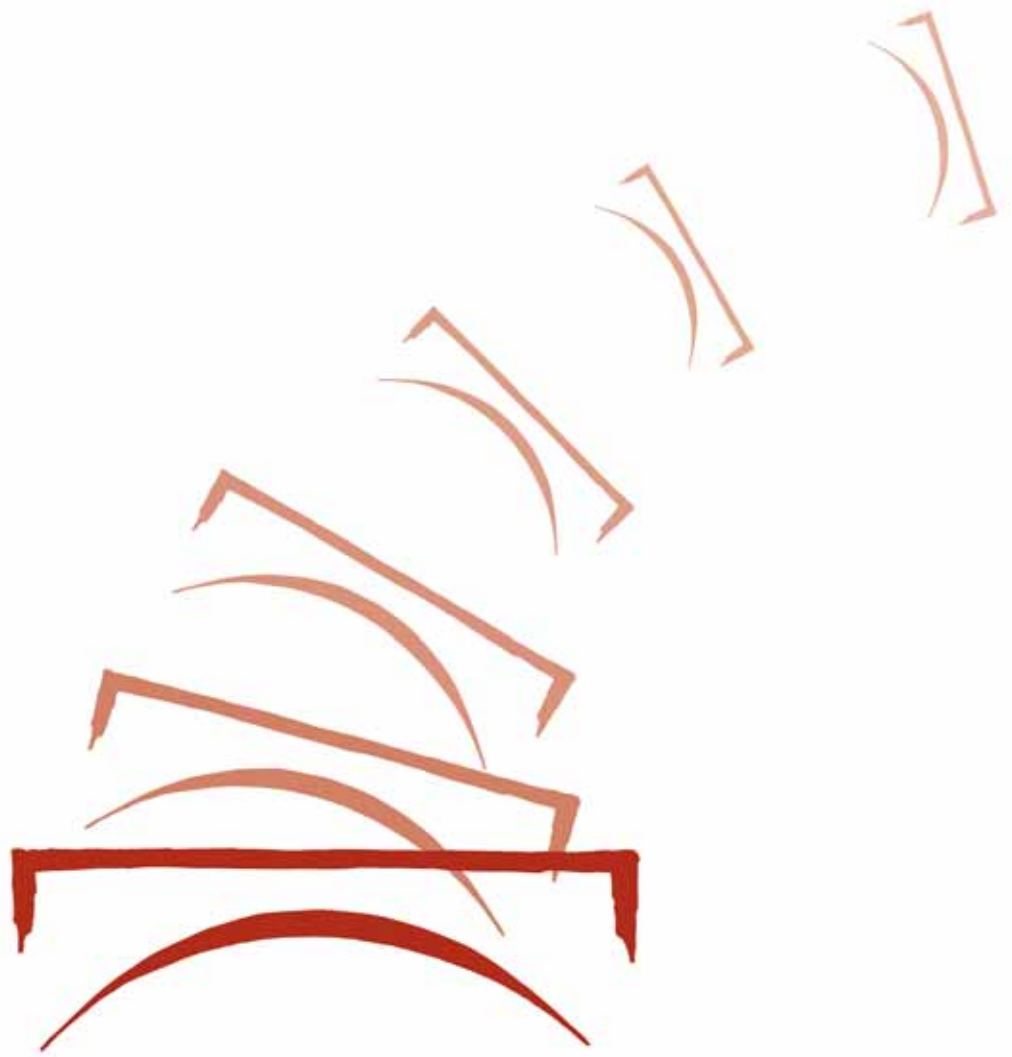


Guido Schuermans



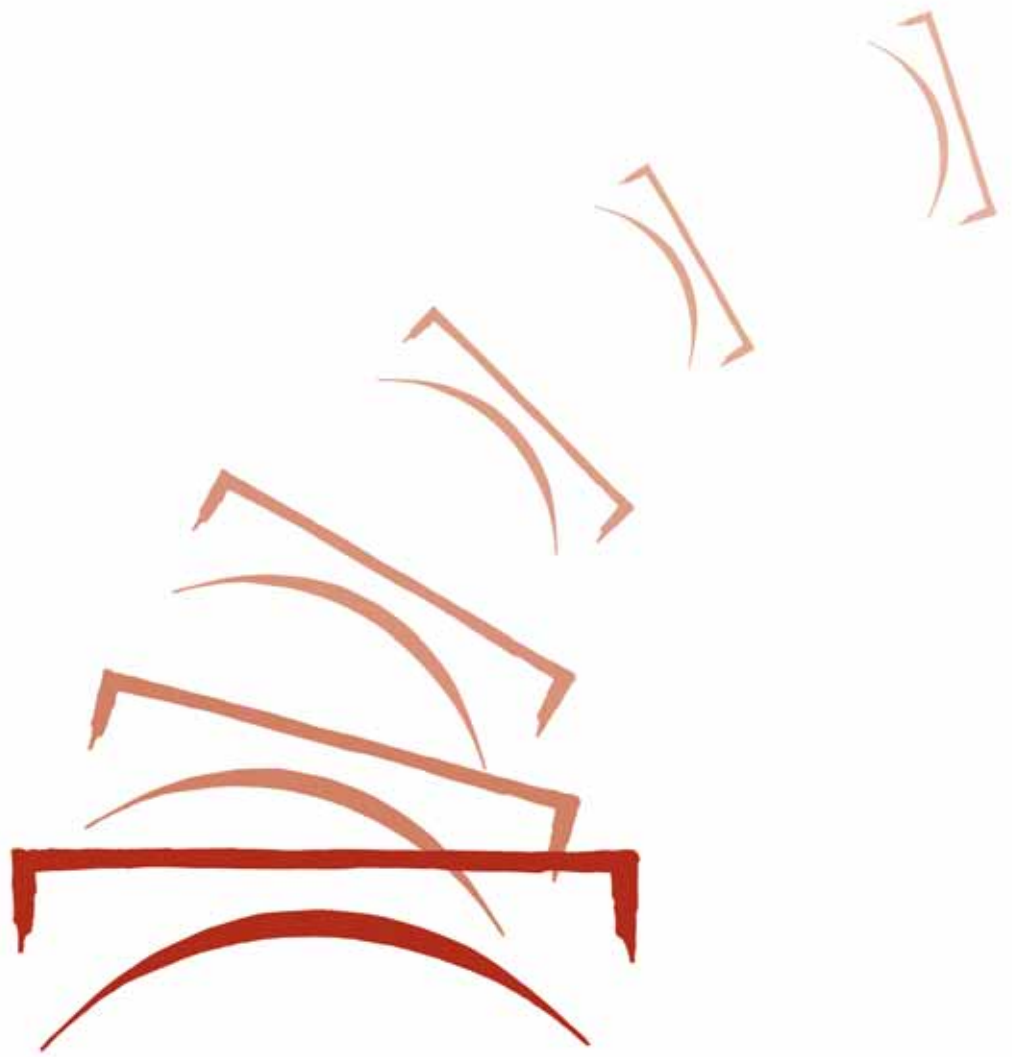
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I. Introduction.





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 ill-founded, 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 39,000 citizens; it has made 91 official recommendations to administrative authorities and 56 general recommendations to Parliament.

After we were appointed by the House of Representatives in 2005, we put the citizen again centre-stage in the actions of the Federal Ombudsman, setting out this task in our mission statement.

As an independent institution, the Federal Ombudsman endeavours to:

- investigate complaints rapidly, thoroughly and impartially;
- bring about suitable, appropriate solutions;
- use transparent, correct, client-friendly procedures;
- make our service accessible to everyone who needs it;
- help to improve the workings of the federal administrative authorities and promote the right to good governance;
- convince the federal administrative authorities of the added value of a fair reparation of well-founded complaints.

The mission statement still constitutes the leitmotiv for our action, with quality, effectiveness and efficiency being the gauging points.

I. How the service works

Accessibility

Accessibility is closely connected to awareness and availability. An external service such as the Federal Ombudsman can work efficiently only if it is well known to and reachable by all who need it. We therefore concentrated further during the year under review on enhancing the (name) awareness and availability of the service.

The Federal Ombudsman helps you....

As announced in our Annual Report 2006¹, we completed a phased information campaign this year.

Information folders and posters proclaiming "*The Federal Ombudsman is there to help you*" explain, in clear language, how the institution works and set out the conditions for lodging a complaint. In an initial phase, these folders and posters were sent, in large numbers,² to all municipalities and public welfare offices in the country, to all Belgian embassies and consulates, and to penitentiary institutions, with the request that the folders be made available to the public.

Then, in the autumn, we advertised in a number of dailies and weeklies (Metro, Humo, Télé-Moustique, Dag Allemaal, Ciné-Télé-Revue). The adverts referred expressly to the folders available at the municipalities and public welfare offices.

The rather modest campaign has apparently produced results. The municipalities and public welfare offices ordered and are still ordering folders regularly, and in 2007 the Federal Ombudsman opened some 700 more files than in 2006, or an increase of 16%.

On the French-speaking side, there was also the "*Semaine de la médiation*" [Ombudsman Week]. It was held from 3 to 6 October 2007, with the slogan "*Le médiateur à votre écoute*" [The Ombudsman at your service]: in cooperation with the Ombudswoman of the French-speaking Community and the Ombudsman of the Walloon Region, the Federal Ombudswoman took her colleagues to various Walloon cities and Brussels on an English double-decker bus to bring the ombudsman's work closer to – and to inform – citizens.

¹ Annual Report 2006, pp. 10 ff.

² Packs of 100 or 150 copies, depending on the number of inhabitants.





For four days, the three ombudsmen and their staff were available in Liège, Charleroi, Mons, Namur, Nivelles and Brussels to answer questions from citizens about their work and to register complaints. The public also received documentation on the powers and means of action of the three services. In certain cities, the Ombudsman of Charleroi and the Ombudsman for Pensions joined the team.

In Liège, the three ombudsmen went on the regional radio programme “*Appelez, on est là,*” [Call us, we are here] on VivaCité and answered questions from listeners for one hour and a half.

Local office hours

As of March 2007, the Federal and the Flemish Ombudsman hold office hours every month on the same day in the offices of the ombudsmen of the Flemish provincial capitals, Antwerp, Bruges, Ghent and Leuven. In Hasselt, the office hours are held in the Provincial Library.

To boost efficiency, the local ombudsmen also work by appointment, so as to avoid useless travel. In ten months, the employees of the Federal Ombudsman received 87 complaints on location, compared with 50 in the previous year over a period of twelve months in the former premises. In absolute figures, this is not spectacular progress, but in percentage terms it represents an increase of 75%. The new

impetus hoped for did materialise, in other words, in large measure thanks to the input of our local colleagues who promote these office hours and guide users in the right direction.

The “*Semaine de la médiation*” in French-speaking Belgium also wanted to draw the public’s attention to the local office hours that the three French-speaking parliamentary ombudsmen have together organised for the last five years with a view to administrative simplification and proximity. In practice, thanks to this “common counter” citizens can lodge a complaint on location verbally against an administrative decision of the Federal State, the Walloon Region, or the French-speaking community, and can rest assured that it will be automatically processed by the competent ombudsman.³

In 2007, the local office hours registered increasing success in Wallonia as well. This shows that, once they are better known, they can meet a real need of the citizens. The number of complaints lodged during such office hours tripled this year.

This increase was particularly perceptible in Liège. Thanks to fruitful relations with the bar and local associations, the ombudsman’s role and means of action were made better known among these actors in the field who can direct the citizen to the ombudsman.

Reflections on good governance in the European Union

The network of European ombudsmen comprises the national and regional ombudsmen of the EU Member States and, since 2005, also those of the candidate Member States, or more than 90 institutions in 31 countries. It is a practical form of cooperation for dealing with complaints from European citizens in connection with the application of EU law.

The national ombudsmen of the Member States convene every other year at a seminar organised by the European Ombudsman together with a national ombudsman. These meetings make an active contribution to the exchange of information on EU law and to the promotion of good practices.

In October 2007, we attended, together with our European colleagues, the 6th seminar of the national ombudsmen of the EU Member States and candidate countries in Strasbourg, on “*Reflections on good governance in the European Union.*”⁴

Upon the completion of the seminar, the network issued a statement in which it referred to the EU dimension of the work of ombudsmen and explained the service offered to citizens, companies and associations on matters that fall under EU law. For it is the competent national and regional ombudsmen that have to deal with complaints against the administrative authorities of a Member State, including matters that fall under EU law. The European Ombudsman deals with complaints lodged against the institutions and organs of the European Union.

³ These office hours are currently held twice a month in Mons, Charleroi, Liège, Marche-en-Famenne and Namur.

⁴ Information on this seminar is available at <http://www.ombudsman.europa.eu>.



The statement contains a number of quality standards that all the members of the network use to offer optimal service to the public: politeness, transparency, motivation of the advice or decisions, public information, accessibility, rapid processing, efficiency and effectiveness, and unwavering attention to respect for fundamental rights.

The national and regional ombudsmen can moreover henceforth request a written answer from the European Ombudsman to issues relating to European law and the interpretation thereof, as well as when dealing with special cases.

The European Ombudsman, a partner

In connection with the aforementioned seminar, at the end of November we hosted Mr Nikiforos Diamandouros, European Ombudsman, for an official three-day working visit. On that occasion, we were received by the Speaker of the House and the Deputy Speaker.



From left to right: C. De Bruecker, H. Van Rompuy, N. Diamandouros, H. De Croo, G. Schuermans.

The European Ombudsman held a discussion about a joint meeting of the federal advisory committee for European affairs and the commission for petitions of the House of Representatives, and took part, in our presence, in an exchange of ideas with the members of the united commissions.⁵

At the invitation of the Premier President and the President of the Court of Cassation, a working lunch was held in the presence of the Premier President and the Presidents of the Council of State and the Constitutional Court.

The European Ombudsman took part in the general meeting of the Permanent Consultation Ombudsman Members (known by the Dutch and French acronyms respectively as "POOL" and "CPMO")⁶, where he was able to share his experience with the regional, municipal and sectoral ombudsmen of our country on the topic of "*Promoting transparency and responsibility in the civil service.*" Then, together with said members, he was received by the Governor of Namur.

Furthermore, accompanied by the federal ombudsmen, he was the guest speaker at the Catholic University of Leuven in the course on "*Relations between citizens and the authorities*" of professor Marleen Brans and at the (French-speaking) Free University of Brussels, in the course on "*Administrative Disputes*" of professor Michel Leroy.

Work meetings were also held with the Minister for Justice and the Minister for Foreign Affairs.

The visit was completed with an exchange of ideas with the staff of the Federal Ombudsman.

Seminar: "*Ombudsman services and foreigners*"

In cooperation with the Interdisciplinary Centre for Ombudsman Studies (ICOM) and the Keure publishing house, on 9 October 2007, the Federal Ombudsman and the Flemish Ombudsman Service organised a seminar on "*Ombudsman services and foreigners.*"

This seminar was geared to mediators, ombudsmen, officials (in particular those who apply policy and legislation relating to foreigners), university professors and their academic staff, parliamentarians, mayors, municipal secretaries, non-governmental organisations (NGOs), social services and anyone interested in policy relating to foreigners and/or the ombudsman function.

⁵ Doc 52 0520/001

⁶ Permanent Overleg van Ombudslieden / Concertation Permanente des Médiateurs et Ombudsmans (www.ombudsman.be)



❖ Programme

Morning

- Chairman: Bernard Hubeau, Flemish Ombudsman
- Welcome address: Marleen Vanderpoorten, Speaker of the Flemish Parliament
- Introduction: Bernard Hubeau, Flemish Ombudsman
- *“Recent developments in legislation relating to foreigners”*, Jean-Yves Carlier, Catholic University of Louvain
- *“The action of the Federal Ombudsman in the foreigner issue: types of complaints and the work of the ombudsman”*, Catherine De Bruecker, Federal Ombudswoman
- *“The Department of Immigration and Naturalisation and the Federal Ombudsman”*, Freddy Roosemont, Director General, Department of Immigration and Naturalisation
- *“The perspective from the Centre for Equal Opportunities and the Fight against Racism”*, Jozef De Witte, Director, Centre for Equal Opportunities and the Fight against Racism
- *“Fair treatment of foreigners. The view of the Dutch National Ombudsman”*, Alex Brenninkmeijer, National Ombudsman, Netherlands

Afternoon

- Chairman: Philippe De Bruycker, (French-speaking) Free University of Brussels
- *“Marginal comments on a new policy relating to foreigners. Short stay, family reunification, application for residence owing to exceptional circumstances”*, Bob Brijs, Attorney-at-law
- *“Accessibility to services for ethnic minorities. Developments, policy and instruments”*, Piet Janssen, Staff member, Flemish Centre for Minorities
- Discussion with:
 - Rafael Ribo, Sindic de Greuges de Catalunya, Ombudsman of Catalonia
 - Catherine De Bruecker, Federal Ombudswoman
 - Guido Schuermans, Federal Ombudsman
 - Rita Passemier, Ombudswoman for the City of Ghent, and the public welfare office
 - Annick Goeminne, European Commission, DG Justice, Freedom, Security – Immigration and Asylum Unit
 - Paul Pataer, League for Human Rights, Refugee Action, Flanders
 - Christine Flamand, UN High Commissioner for Refugees – Regional delegation for the Benelux and the European Institutions
- General conclusions, professor Robert Anderson, Premier President of the Council of State

❖ Conclusions

Professor Robert Andersen, Premier President of the Council of State, drew the conclusions of this seminar. He sees no difficulty in allowing mediation to run parallel with the organised administrative appeal procedure and, even for the judge or the administrative authority that must decide on the appeal to be able to suspend the decision while waiting for the result of the mediation. He moreover referred to the many authorities that deal, in one way or another, with complaints from foreigners,

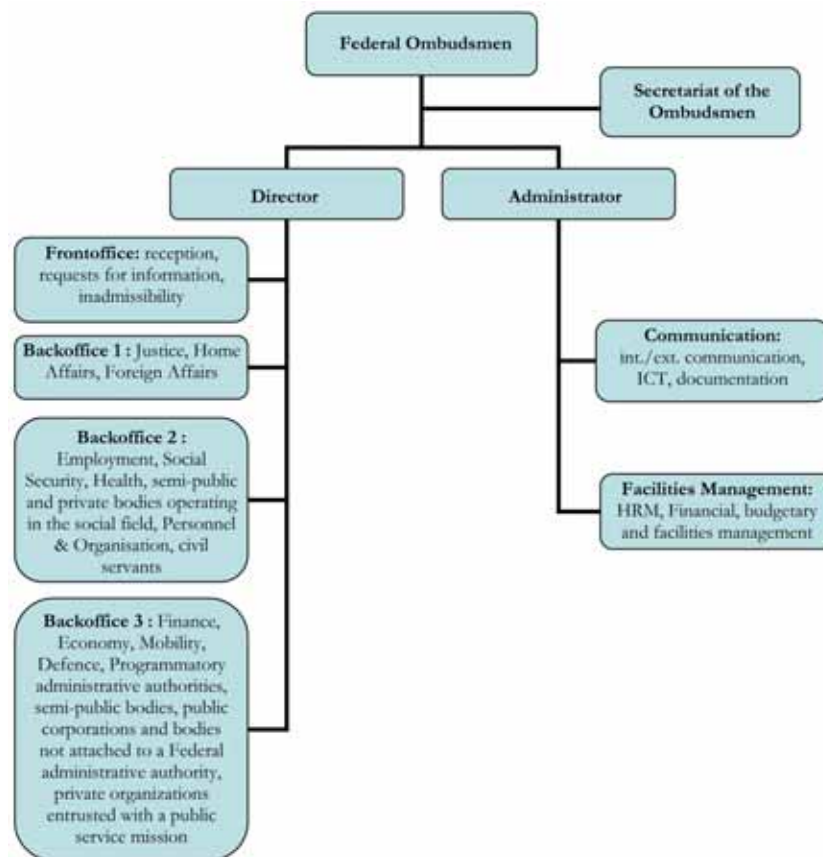
which entails certain ambiguities about their respective role. For instance, he underscored that the role of the Centre for Equal Opportunities and the Fight against Racism must not be confused – as the verbal statement by its director pointed out for that matter – with that of the ombudsman. Unlike the latter party, said centre is not a third party bound to impartiality and neutrality. It is there to provide support to foreigners. The fact that the remit of these two institutions differs, in no way excludes that regular contacts and synergies are desirable.

The papers given at this study day will be published in the beginning of 2008.

2. Management of the institution

Structure of the organisation

The institution was reorganised in May 2007 in order to optimise the quality of our service. The structures were adapted to anticipate better the growing needs for reception and communication and to deal with changes in the nature and quality of the complaints.



Conspicuous new elements in the updated organisational chart are the Front Office and Communication departments. The Front Office handles the first contact with the citizen who calls on the Federal Ombudsman. It investigates the admissibility of incoming complaints, processes requests for information and, insofar as possible, refers the complaints not intended for the Federal Ombudsman to the right authority. The centralisation of these tasks ensures a uniform and quality approach to the first contact with petitioners. In this way, these cases get the attention that they deserve.

The three back offices deal with complaints relating to their respective fields. The Communication Department supports and implements the communication policy of the federal ombudsmen.

The adaptations to the organisational structure went together with the appointment of four auditors-coordinators as heads of the three operational departments (the back offices) and the new Communication Department. The new structure had no impact on the total personnel situation.

Personnel situation and management

On 1 January 2008, the institution had 43 employees, divided over 4 levels, as shown in the table below.

Grade	Language		Gender		Legal Status		Total workforce in FTE ⁷	Staff Framework Total
	F	N	M	F	Statutory	On contract		
A (a)	13	13	13	13	19(a)	7(b)	26	24
B	7	5	4	8	8	4(c)	12	12 (+2)
C (c)	1	1	2	0	0	2	2	2
D (d)	1	2	0	3	0	3	2.5	(2 FTE)
Total	22	21	19	24	27	16	42.5	38 (+4.5)

(a) of which 5 agents with a temporary remit (one director and 4 auditors-coordinators);

(b) Recruitment of 2 contract staff members to replace temporarily one permanent employee on sick leave, one employee in full-time career interruption, and one employee in part-time career interruption for maternity leave.

(c) Of which, 1 Dutch-speaking reception employee, article 4 of the establishment plan (urgent and temporary need). Recruitment of one contract French-speaking reception staff member in February 2008.

(d) Cleaning staff, equivalent to Level D, article 4 of the establishment plan (urgent and temporary need)

The number of employees increased by half a unit by comparison with the situation on 1 January 2007.

After the external recruitment procedures in cooperation with Selor, 5 permanent staff positions could be filled, of which 1 administrator (N) and 4 auditors-coordinators (2N and 2F). The procedure for recruiting a director has not yielded any success and will be relaunched in the course of 2008.

For continuing training the institution calls regularly on the services of the Training Institute of the Federal Government (known by the Dutch and French acronyms respectively as "OFO" and "IFA"), both for the acquisition of administrative skills and for optimising the personal performance or the

⁷ Full-time Equivalent

development of management skills. In addition, employees regularly attend study days or other external training courses in their area of expertise (legislation relating to foreigners, social and tax law, governmental management, communication, etc.).

Financial and budgetary management

The bookkeeping management is based on an economic bookkeeping system and is organised almost entirely in-house. The accounts and the budget are each year submitted to an a posteriori audit by the Auditor's Office.

The basic budget figures for 2006-2008 are given in the table below.

Budgetary year	Accounts 2006	Adjusted Budget 2007 ⁸	Budget 2008
Expenditures	3,371,009.46	3,900,000.00	4,093,360.00
Revenues	3,714,371.40	3,900,000.00	4,093,360.00
<i>Endowment</i>	3,427,000.00	3,547,000.00	3,852,000.00
<i>Transferred surplus</i>	271,679.08	353,000.00	235,000.00
<i>Other revenues</i>	15,692.32		
Balance	343,361.94		

The heading 'Accounts' mentions, for expenditures 2006, the amount of the actual expenditures made; the headings 'Budget 2007' and 'Budget 2008' 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), the surplus carried forward from previous years and other revenues.

IT and facilities management

As announced in the previous annual report, the adjacent building at 45 Rue Ducale/Hertogsstraat, Brussels, was rented to alleviate the dire lack of space. Owing to renovation works carried out by the owner, this building was finally occupied two months later. The occupation and equipment of the additional space, as well as the integration of both buildings (43 & 45) in terms of telecommunication and security required an extra effort.

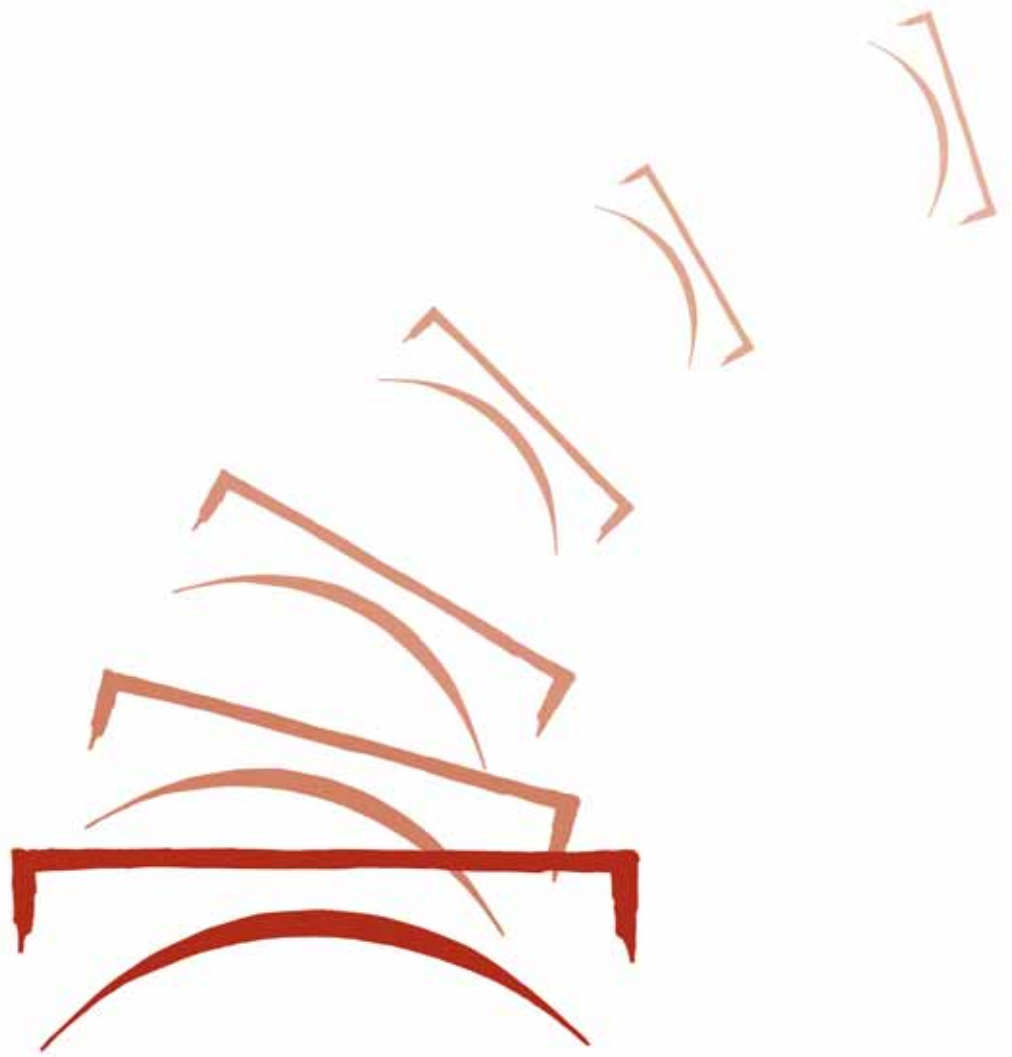
As regards IT management, keeping the existing ICT infrastructure up to date is always a prime concern. Consequently, in 2007, the entire printer and copier population was renewed. The rental of the adjoining building required an expansion of the existing network infrastructure, as a result of which the servers were given a more appropriate location.

⁸ The accounts for 2007 will be audited by the Audit Office and closed by the House of Representatives in the course of 2008.



II. General Figures





I. Introduction

In this part, general statistical data provide an overall view of the number of case files, language, means of communication used, processing phase, admissibility and forwarding of case files.

This Annual Report pertains to the entire calendar year 2007. The figures contained in this part reflect the situation as at 31 December 2007.





To give a clear picture 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 2007, 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 compare developments in the years 2006 and 2007. For the first time, the figures contained in this annual report are based on the new evaluation procedures described in the Annual Report 2006, which has been in use since 1 January 2007.⁹ A conclusive comparison with year 2006, during which another method was used, is consequently not possible for a number of data (evaluation of the closed complaints, application of the evaluation criteria and the result of the intervention of the Federal Ombudsman).

2. General Statistics

2.1. New case files

New case files – comparison 2006-2007

	Complaints	Requests for information	Total
2006	 3,554 Complaints 78,7%	 961 Requests for information 21,3%	Total: 4,515
2007	 4,116 Complaints 78,3%	 1,141 Requests for information 21,7%	Total: 5,257

During year 2007, we received 5,257 new case files, including 1,141 requests for information (compared with 4,515 new case files in 2006, of which 961 requests for information). This is the largest

⁹ Annual Report 2006, pp. 17 ff.

number of new case files registered since the establishment of the Federal Ombudsman eleven years ago. It is worth noting that the substantial increase of case files in 2007 by comparison with 2006 (+16.4%) leaves the distribution between complaints and requests for information unaffected (78/22).

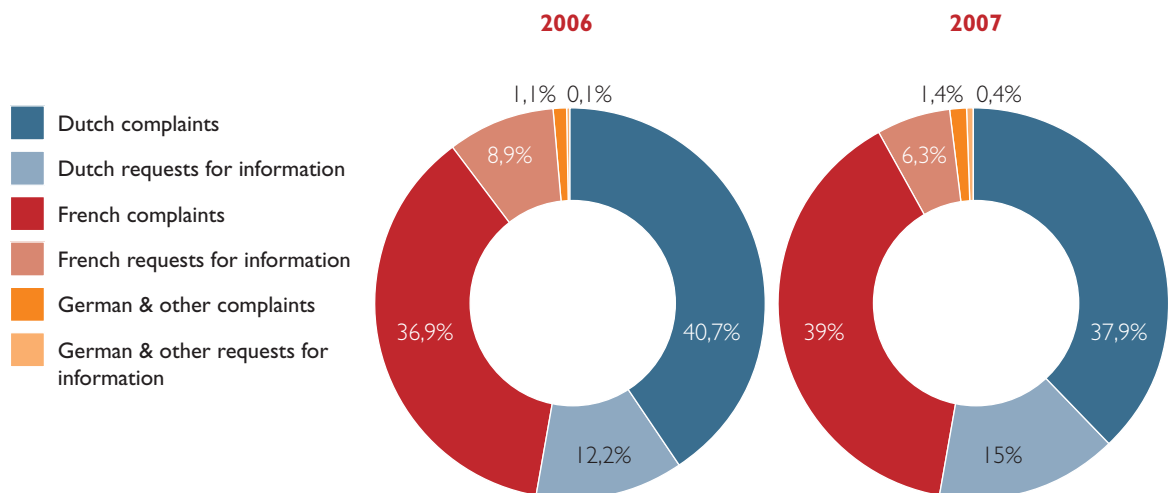
In addition to complaints and requests for information, the Federal Ombudsman received a number of telephone calls with queries that are not considered as case files, and are answered immediately by the Front Office.

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 mere request for information.

In the last eleven years, the Federal Ombudsman opened 39,916 case files, of which 31,413 were complaints.

2.2. New case files by language

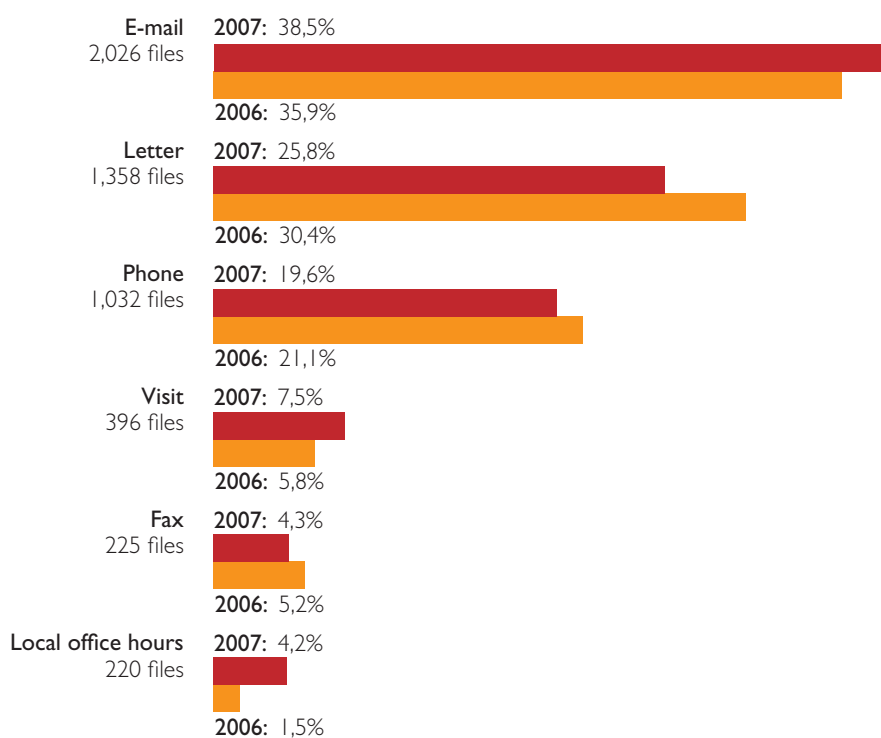
New case files by language



2.3. New case files by means of communication

The means of communication indicates the way in which a complaint was lodged or an information request submitted. Once again, 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



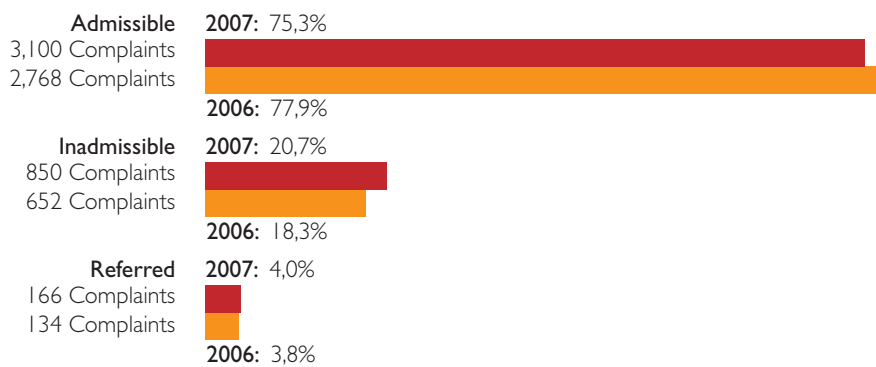
We should like to draw attention to the increase, in comparison with 2006, of the number of case files introduced during the local office hours, in terms of absolute figures (which tripled) as well as percentage, while the number of new case files rose by 16.4%. In 2007, a new cooperation with the local ombudsmen in Flanders was launched. On the French-speaking side, the case files submitted during “*La semaine de la médiation*” were added to those submitted during the office hours.

2.4. 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.

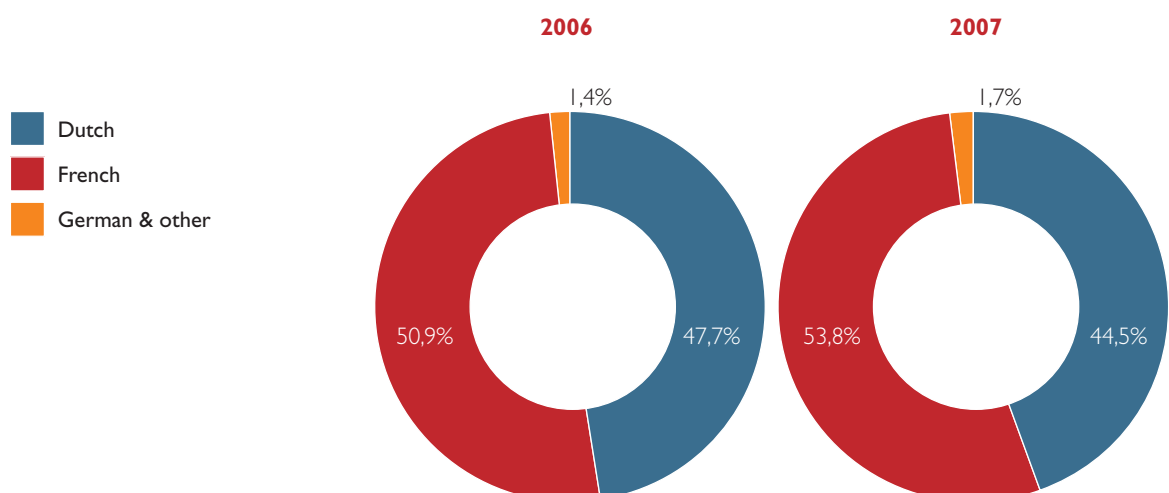
Of the 4,116 new complaints, 850 were inadmissible; 166 complaints were referred to another mediation service. The remaining 3,100 complaints were declared admissible.

Admissibility of new complaints



2.5. New admissible complaints by language

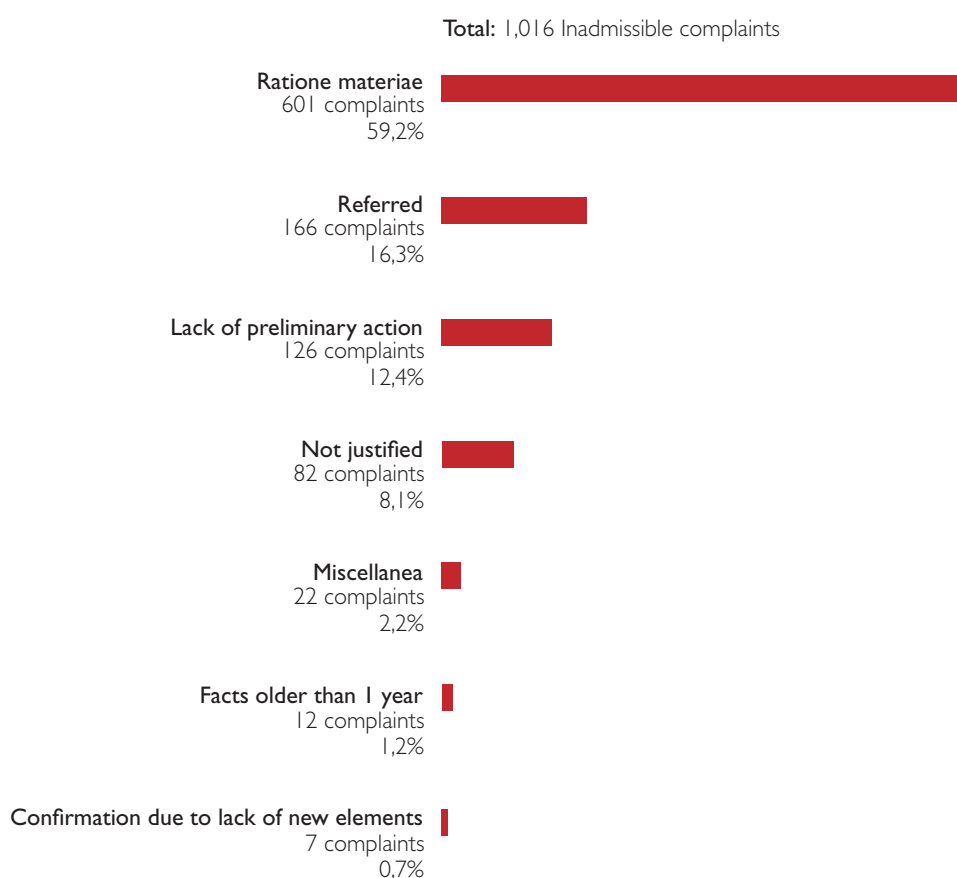
New admissible complaints by language: 2006-2007



2.6. New inadmissible complaints

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

Breakdown of inadmissible complaints



2.7. New complaints referred

When a complaint concerns a federal, regional, municipal or local administrative authority, which has its own ombudsman by virtue of a legal regulation, it is systematically and without formalities referred, and registered as such in the statistics. Complaints about other authorities are inadmissible (even if the case file is sent to a complaints or ombudsman department).

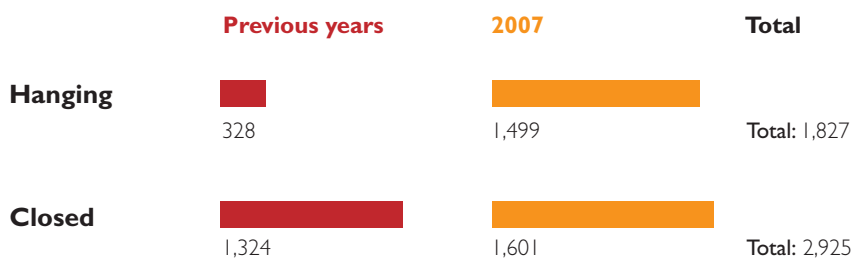
Destinations of complaints referred

	2007	%
Flemish Ombudsman	38	22,9%
Pensions Mediation Service	35	21,1%
Mediation body for the telecommunication sector	32	19,3%
Supreme Council of Justice	18	10,8%
Mediation body for the Postal Office	11	6,6%
Local mediation bodies	10	6,0%
Mediation body for the National Railroad Company	10	6,0%
Ombudsman of the Walloon Region	6	3,6%
Ombudsman of the French-speaking Community	5	3,0%
Supervisory Standing Committee for the Federal Police ("P" Committee)	1	0,6%
	166	

2.8. State of admissible complaints as at 31 December 2007

On 31 December 2006, there were still 1,784 complaints in progress (lodged in 2006 and previous years). Of these, another 132 were in 2007 declared inadmissible or referred to another service. Of the remaining 1,652 admissible complaints of the previous years, 1,324 were closed in 2007, so that there were still 328 complaints in progress as at 31 December 2007. Of the 3,100 admissible complaints that were lodged in 2007, there were still 1,499 in progress. The total number of complaints to be processed thus rose slightly from 1,784 on 31 December 2006, to 1,827 on 31 December 2007 (1,499 + 328).

State of inadmissible complaints as at 31 December 2007



An admissible complaint is closed when the complaint is closed for the complainant (2,828) or when the processing thereof has been suspended (appeal to the court or organised administrative appeal: 97).



2.9. New admissible complaints per administrative department: 2006-2007

The following tables show the distribution in the number of new admissible complaints in 2006- 2007 among the different administrative departments. A distinction is drawn between complaints lodged by civil servants and other complaints. Complaints by civil servants are lodged against their own (current, former or future) administrative department and concern a support staff or personnel service or an operational service (e.g. a complaint against an immediate superior), provided that the relationship between the civil servant and the administrative department does not fall under the core activity of that operational service (e.g. Selor). New admissible complaints per administrative department (exclusive of complaints lodged by civil servants).

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

	2007	2006
Chancellery of the Prime Minister	3	1
Personnel & Organisation	29	37
Information technology & Communication	0	2
Justice	87	81
Home Affairs	1,294	1,182
Foreign Affairs, Foreign Trade & Development Co-operation	82	79
Defence	5	6
Finance	731	606
Employment, Labour & Social Dialogue (not including semi-public bodies operating in the social field)	14	16
Social Security (not including semi-public bodies operating in the social field)	143	140
Health, Food Chain Security & Environment	40	42
Economy, SMEs, Self Employed & Energy	19	30
Mobility & Transport	116	79
Federal Public Planning Services	1	0
Semi-public bodies operating in the social field	257	270
Semi-public bodies, public corporations and bodies not attached to a Federal administrative authority	12	12
Private organisations entrusted with a public service mission	204	139
Others	41	17
	3,078	2,739

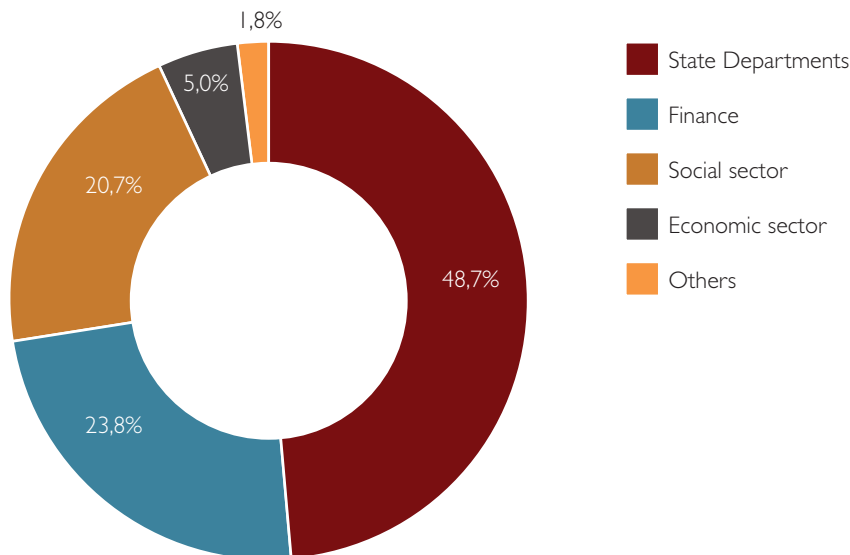
New admissible complaints lodged by civil servants per administrative department

	2007	2006
Personnel & Organisation	1	1
Justice	11	12
Home Affairs	7	5
Foreign Affairs, Foreign Trade & Development Co-operation	3	5
Defence	5	3
Finance	32	28
Social Security (not including semi-public bodies operating in the social field)	1	1
Health, Food Chain Security & Environment	2	3
Economy, SMEs, Self Employed & Energy	6	1
Mobility & Transport	1	1
Federal Public Planning Services	3	1
Semi-public bodies operating in the social field	12	4
Semi-public bodies, public corporations and bodies not attached to a Federal administrative authority	11	9
	95	74

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 (3,078 + 95 = 3,173; for 3,100 new admissible complaints in 2007).

2.10. New admissible complaints per sector

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



2.1 I. Evaluation of closed complaints

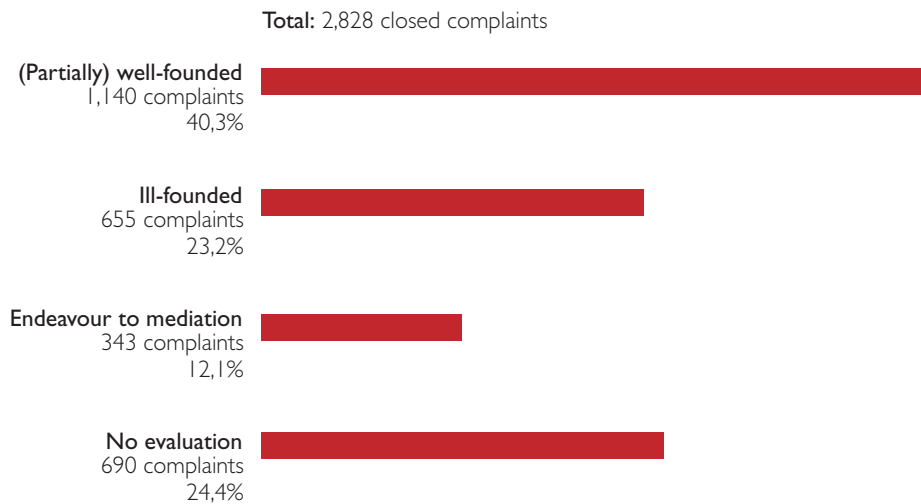
A new evaluation method was introduced in 2007. When a case file is closed, the Federal Ombudsman indicates whether the complaint is well-founded in light of the 15 ombudsman criteria.

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

1. Ill-founded: one or more ombudsman criteria are not met.
2. Well-founded: the ombudsman criteria are met.
3. Partially well-founded.
Three situations are meant:
 - The complaint contains various, equally important grievances, not all of which are well-founded however. Nevertheless, if one and the same main concern appears from the complaint, then the evaluation of the complaint will be geared to this main concern;
 - Cases where there is shared responsibility between the petitioner and the administrative authority;
 - A complaint where material principles are met (e.g. the complainant is not entitled to a subsidy he claims), but which shows that the procedural principles were not respected (e.g. improper reception of the petitioner or the provision of wrong information).
4. No evaluation
Four different suppositions are meant:
 - The attempt to mediate is used in complaints that cannot be immediately considered as well-founded or ill-founded (the administrative authority has a discretionary power) or where a solution can be found rapidly without requiring to investigate further into the responsibilities;
 - The impossibility to decide on whether the complaint is well-founded;
 - The petitioner's failure to answer a request for an explanation by the Federal Ombudsman;
 - A complaint that has become pointless; the petitioner informs the Federal Ombudsman that the latter's intervention is no longer justified or that the problem has been solved before it was referred to the Federal Ombudsman.

The graph below provides a general picture of the evaluation of the 2,828 complaints closed during 2007, not including suspended cases, but including complaints lodged by civil servants. The application of the new evaluation method allows no comparison with year 2006 during which a different method was used. Such a comparison with the previous year will be possible as of 2008.

Evaluation of closed complaints



2.12. Application of the ombudsman criteria

A summary of the ombudsman criteria applied to the 1,140 complaints closed in 2007 with the evaluation “well-founded” or “partially well-founded” is given below. Several ombudsman criteria may be cited in the same case file, and the criterion “efficient coordination” in principles goes together with another ombudsman criterion. This explains why the number of violated ombudsman criteria (1,287) is higher than the number of case files closed (1,140).

Years 2006 and 2007 were compared. The table contains the new ombudsman criterion “efficient coordination” that was not used yet in 2006. The principle “active and passive information provision” used in 2006 was decoupled into “active information” and “passive information.”



Application of the ombudsman criteria

Evaluation criteria	2007	% 2007	2006	% 2006
Reasonable time limit for complaint handling	742	57,7%	932	66,6%
Passive information	106	8,2%	101	7,2%
Active information	31	2,4%		
Conscientious handling	129	10,0%	149	10,7%
Proper application of the rules of law	79	6,1%	68	4,9%
Effective coordination	43	3,3%		
Reasonable and proportionality	38	3,0%	19	1,4%
Appropriate access	32	2,5%	23	1,6%
Legitimate confidence	29	2,3%	7	0,5%
Legal certainty	24	1,9%	11	0,8%
Justification of administrative acts	22	1,7%	16	1,1%
Courtesy	6	0,5%	1	0,1%
Equality	5	0,4%	71	5,1%
Right to defence	1	0,1%	0	0,0%
Impartiality	0	0,0%	1	0,1%
	1,287		1,399	

The extensive share of “*reasonable time limit*” in the ombudsman criteria is largely due to the long time it takes to process applications to regularise residence at the Department of Immigration and Naturalisation.

2.13. Result of the intervention by the Federal Ombudsman

As soon as a complaint is found to be well-founded, the Federal Ombudsman, relying on the new evaluation method introduced in 2007, proceeds to check the result of his intervention:

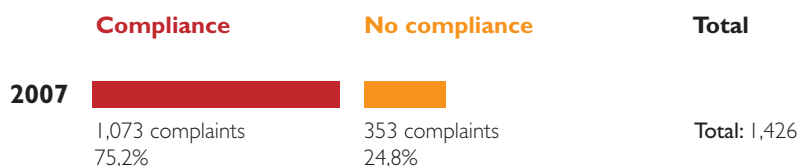
- a) If the complaint is well-founded or partially well-founded:
 - Reparation
 - Partial reparation
 - Reparation refused
 - Reparation impossible (if it is materially not possible (any longer) to remedy the existing situation)
- b) When the Federal Ombudsman made an attempt to mediate:
 - Successful
 - Unsuccessful

When the investigation into the justification of a complaint shows that it was well-founded or partly well-founded, then the complaint in question is closed as “*successful*” so that reparation or partial reparation can be awarded. Likewise, when an attempt to mediate is brought to a good end, which entails that the dispute was settled in a positive way.

On the other hand, there may be no solution to the problem when reparation is refused or when an attempt to mediate proves unsuccessful. “*Reparation impossible*” entails that the Federal Ombudsman’s

intervention could not lead to a solution that was satisfactory for the complainant. This evaluation is therefore not taken into consideration for assessing the result of the Federal Ombudsman's intervention.

Result of the intervention by the Federal Ombudsman



The number of case files without compliance is explained in large measure by the time it takes to process applications for the regularisation of residence by the Department of Immigration and Naturalisation – DIN (known by the Dutch and French initials respectively as “DVZ” and “OE”), whereby a list is provided quite regularly to the DIN of case files submitted to the Federal Ombudsman, a reasonable processing time for which has expired. Without reply from this department within a period of 15 working days after this list is dispatched, these case files are closed as “(partially) well-founded – reparation refused”, with a violation of the criterion “reasonable time limit for complaint handling”. The refused reparation goes nearly in full to the DIN.

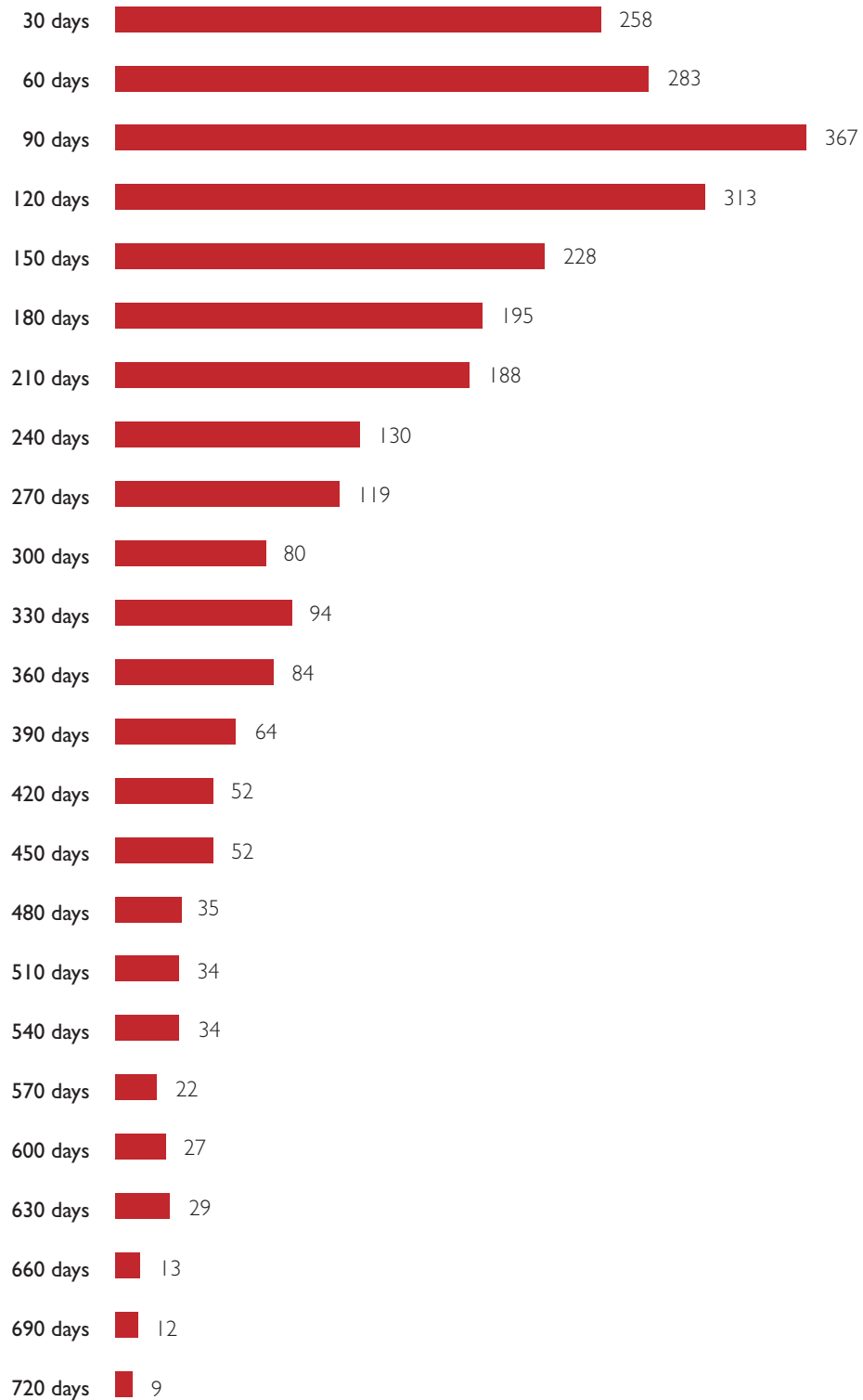
The use of the new evaluation method allows for no conclusive comparison with year 2006, during which another method was used, and where the evaluations “good governance after intervention” and “consensus” point to a successful intervention of the Federal Ombudsman, while the evaluation “bad governance” points to the lack of results. Of a total of 1,716 complaints considered in 2006, 1,364 (79.5%) were successfully closed, and 352 (20.5%) were without success.

2.14. Processing time of admissible complaints closed in 2007

A graph with the number of admissible complaints closed in 2007 per period of 30 calendar days is given below. It concerns both the new complaints as well as those of the previous year still in progress.



Processing time (in calendar days) of admissible complaints closed in 2007



The data show that of these 2,828 complaints, 1,644 (58.1%) were closed within six months (compared with 1,317 complaints or 44.2% in 2006). An additional 695 complaints (24.6%) were closed within a year (compared with 822 complaints or 27.5% in 2006), 271 other complaints (9.6%) within a year and a half (compared with 383 complaints or 12.8% in 2006), and finally 112 complaints (4%) within two years (compared with 256 complaints or 8.6% in 2006). 106 complaints (3.7%) took more than 720 days to be processed (compared with 205 complaints or 6.9% in 2006).

The number of case files closed within the year rose (82.7%, compared with 71.7% in 2006). The efforts to catch up in 2007 made it possible to reduce the number of the oldest case files (more than two years). As a result, the top of the curve is henceforth at 90 days, with 32.1% of the closed case files within this period, compared with 120 days 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 respond to the questions of the Federal Ombudsman, both complainants and authorities, during the examination of these complaints.

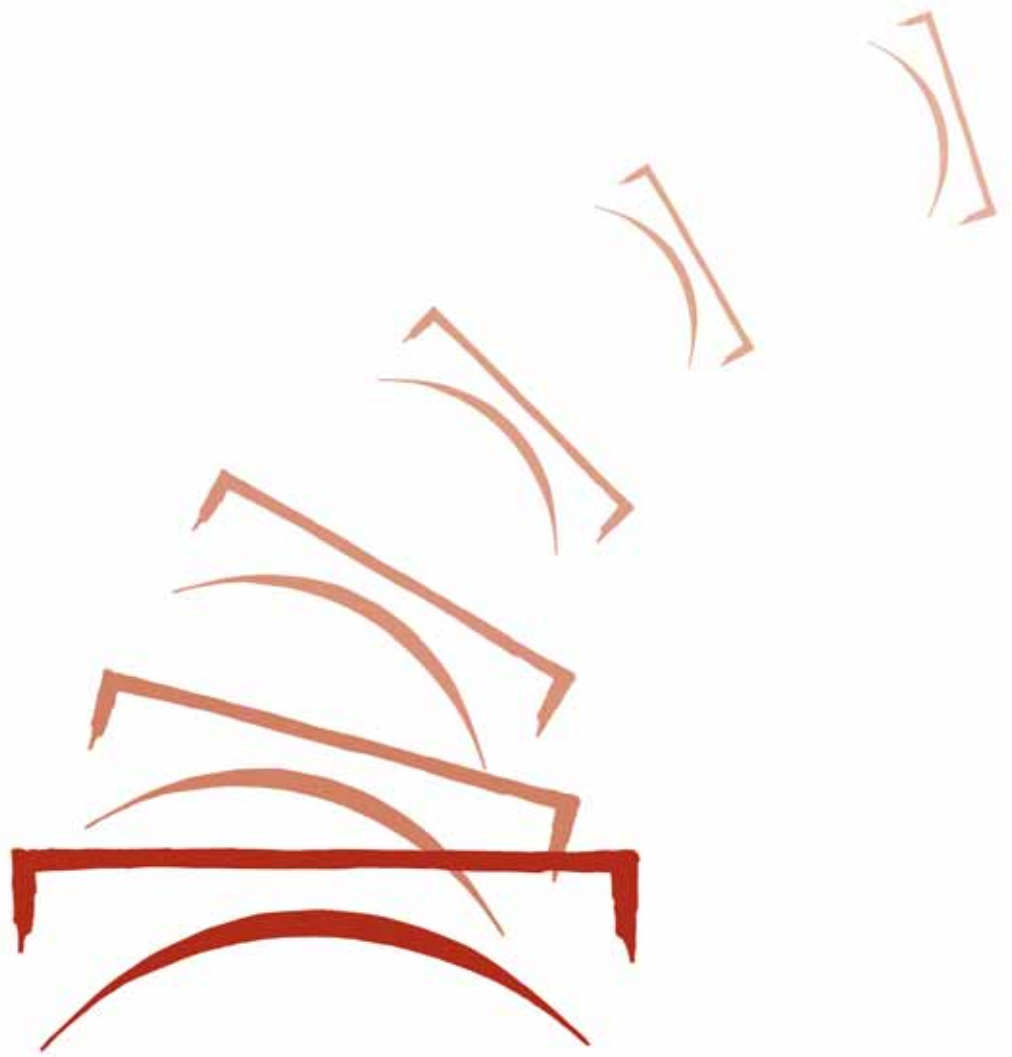
As of 2006, a case file is considered closed as soon as the Federal Ombudsman announces the results of its intervention to the petitioner. Formerly, this occurred only when the underlying structural problem was solved by the administrative department concerned, while the individual dispute had long been settled. 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 processed in 2007 were, as in the previous year, compiled on the basis of the content thereof and no longer on the basis of the administrative authority against which they were lodged.

The following topics were broached:

1. Does the administration keep pace with developments?
2. What happens when the administration causes prejudice?
3. Fundamental rights
4. When being proactive is needed
5. Application of the regulations
6. When different ombudsman services cooperate
7. Complaints about the policy, inadmissible complaints and requests for information

All these topics are illustrated with striking examples from the processing of complaints.

The names mentioned in the examples have been changed.

I. Are the administrative authorities keeping pace?

In a constantly changing society the citizen's expectations to the quality of service offered by the administrative authorities keep apace. The complaints reflect this change and shape in particular the citizen's new expectations.

Avoid useless collection measures

The contemporary citizen expects the authorities to justify their actions, asserts his rights, and does not just stand by... This is particularly the case when confronted with tax collection measures.

Based on our past experience, we proposed to the executive board of the FPS¹⁰ Finance a set of measures to improve the quality of service to taxpayers.

Taking due account of these observations, in August 2007, the FPS Finance sent a circular to its Taxation and Collection Departments on how to optimise the service offered to citizens. One of the instructions concerns avoiding useless collection measures.

It is at times clear that errors were made in assessing the tax. These errors can be easily corrected by assessment register. Inland revenue can thus proceed to a new, correct assessment without any formal claim being made. The first tax assessment nonetheless still exists, which at times leads to useless

measures. Improved cooperation between the Tax and the Collection Offices should forestall such useless collection measures. For FPS Finance forms a whole in the eyes of the citizen, who rarely makes a distinction between the Tax Office and the Collection Office.

Henceforth, when the Tax Office finds out that a wrong assessment was made, it must contact the Collection Office immediately to ensure that due account is taken of the correction.

Mrs Courtois owes € 1,541 in taxes for the tax year 2007. She is convinced that a mistake has been made. She is a student and cannot understand where such a high sum comes from. Her first letter apparently did not reach her Tax Office, and before the second could be processed, a bailiff has already proceeded to a seizure of her goods. The Collection Department concerned was actually not informed that Mrs Courtois had contested the assessment. To avoid seizure, while waiting for the results of her petition, Mrs Courtois started paying her tax debt.

¹⁰ Federal Public Service.



Simplify administrative procedures further

In view of the long time it takes to process an application for the recovery of the registration fees by the Registry Offices, applicants regularly inquire about their entitlement to delayed interest on the amount they had to wait for so long.

The discussion with the authorities pertained to the form of the process served to pay.

Requiring notification served by bailiff for interest on registration rights to accrue was obviously too formal and outdated. This procedure entails useless, though not trifling expenditures, and is moreover intimidating for the taxpayer thereby depriving him from a possible recourse against the unreasonably long period that the processing of an application for reimbursement may take. Modern legal doctrine and case law consider that the letter of formal notice is sufficient.

At the end of 2007, the executive board of the Registry decided, in view of the evolving case law, to accept a registered letter as being tantamount to a process served. Interest can thus be granted if the processing period is unreasonably long.

On 11 September 2003, Mrs Wansart filed an application, by notarial deed, for the reimbursement of registration fees. Four months later, she served notice to the Registry, by registered letter, to process its application. On 10 February 2004, she received a decision for reimbursement, but without any interest. Mrs Wansart, a lawyer by training, took up the matter with the authorities. The regulation on registration fees expressly refers to ordinary law for the attribution of interest. A registered letter constitutes formal notice, as it happens. Although Mrs Wansart concedes that she obtained reimbursement within a reasonable period, she does not share the point of view of the authorities that only notification served by bailiff constitutes formal notice. Three years later, the authorities finally changed their mind and accepted a registered letter as a process served to pay.

Follow the case law

With the exception of those who can avail themselves of a long asylum application procedure¹¹, all other asylum seekers whose application has been turned down are served notice to leave the territory upon the completion of the procedure, even if the Department of Immigration and Naturalisation (DIN) has not yet taken a decision about their application for a residence permit.

Now the Council of State has clearly indicated in various rulings, that the Minister for the Interior must first take a decision on the residence application before taking measures to have the person concerned removed. Otherwise, the Council of State cancels the order to leave the country on the grounds that it is not adequately reasoned.

¹¹ Based on a long asylum procedure, foreigners may obtain a favourable decision on their application for a residence permit. The Department of Immigration and Naturalisation (DIN) considers that an asylum application procedure is long when it has lasted three years for families with children in school, and aged four in other cases.

I. Are the administrative authorities keeping pace?

The Federal Ombudsman had last year made a recommendation to the FPS Interior asking to decide on the application for a residence permit before issuing an order to leave the country.¹²

Complaints we have received show that this recommendation is not yet applied and that it remains fully topical.

We therefore referred the Department of Immigration and Naturalisation (DIN) to the case law of the Council of State, this time of 2007, which confirms our recommendation.¹³ Similarly, the Foreigners Appeal Court refers to the ample case law of the Council of State to admit the recourse by an foreigner against the order to leave the country served before his application for a residence permit has been processed.¹⁴

On 19 January 2004, Mrs Baloui filed an application for asylum. On 3 November 2005, she filed an application for a residence permit with the Department of Immigration and Naturalisation (DIN). When she was informed on 20 September 2006 that her application for asylum had been definitively refused, she had not yet received a decision about her application for a residence permit. Her asylum application procedure lasted 2 years and 8 months.

On 13 January 2007, when her application for asylum was rejected, she was served notice to leave the country. At that time, she has still not received a decision about her residence permit.

She contacted the Federal Ombudsman. The DIN however refused to withdraw the order to leave the country.

We consider that complaints about this practice by the DIN are well-founded insofar as such a practice clearly violates the principles of reasonableness and of legitimate expectation.

Furthermore, we believe that in certain cases, in serving an order to leave the country before the application for a residence permit has been processed, the DIN violates Article 8 of the European Convention on Human Rights and Fundamental Freedoms, because it takes a removal measure without having examined the elements provided by the party concerned regarding a risk of affecting his private and family life.

¹² Annual Report 2006, pp. 16 ff.

¹³ Council of State, no. 169.855 of 5 April 2007 and no. 170.996 of 10 May 2007.

¹⁴ Decision number 844 of 19 July 2007.



2. What if the administrative authorities cause prejudice?

The citizen considers that the administrative authorities cause prejudice when the lack of care in processing a dossier impacts his personal situation or when he has to face the consequences of an error or of negligence on the part of said authorities. That is when he turns to the Federal Ombudsman.

In certain cases, the error can be corrected...

The Vehicle Registration Service (VRS) of the FPS Mobility & Transport has at times stricken off number plates by mistake, because the electronic plate reader malfunctioned.

All the number plates sent to the VRS are placed in an optical reader to be stricken off. The machine reads the characters of the plate and transfers these data to the database of the VRS. The number plate is automatically stricken off the list of registered vehicles. Once stricken off the list, the plate is automatically destroyed.

The procedure does not seem to be infallible, however. Number plates are at times stricken off, although they are still in circulation and no request to have them stricken off was filed. The consequences of such an action can be considerable for the citizen who has to use his vehicle on a daily basis, whilst entailing serious administrative complications as well.

The VRS has accepted to cancel the erroneous removals on production of a certificate issued by the police confirming that the holder is still in possession of the official number plate. This additional approach is inevitably not very well received by the citizen.

In the situations we have examined, the VRS gradually accepted to rectify the error subject to a declaration on one's honour, signed by the holder of the number plate. We asked the VRS to allow for this option directly in such a case.

The VRS could above all verify itself if such a removal was made rightly or wrongly when the party concerned informs it that an error has been made. This would make it superfluous for the injured party. We also asked the VRS to look into this possibility.

Fortunately, a solution has been found for the individual dossiers referred to the Federal Ombudsmen. We nonetheless think that it is indispensable to proceed to an in-depth review of the existing system.

In other cases, the prejudice is caused by the lack of a decision

We have cited examples in the report to illustrate this situation. Whereas the prejudice caused by the lack of a decision in tax or in social security matters can be remedied by granting delayed interest, nothing at this time remedies the prejudice suffered by a foreign national who has to wait for months, and even years, for a decision of the Department of Immigration and Naturalisation (DIN) on his or her application for a residence permit. Yet the prejudice suffered has serious consequences at times. It may mean that a child cannot take part in a school trip, a loss of an occupational opportunity, the inaccessibility to adequate medical care, etc.



3. Fundamental rights

Complaints are regularly lodged with the Federal Ombudsman relating directly or indirectly to fundamental rights. They may concern complaints concerning the rights of the child, the situation of detainees or the prohibition of inhuman or degrading treatment. The matter concerns a variety of hypotheses in which the parties concerned meet difficulties in having their rights respected in relations with the Belgian federal authorities. In processing such complaints, the Federal Ombudsman refers explicitly or implicitly sometimes to international and sometimes to national instruments.

Such is the case of Katarina, a young woman who arrived in Belgium whilst a minor to join her father who has applied for asylum. Four years later, although her relations with her father had been severely strained, she discovered that she was residing in the country illegally, because he had in the meantime sorted out his residence situation and discontinued the asylum application procedure. Neither he, nor the immigration and asylum authorities bothered to protect the interests of Katarina, who had reached legal age. Referring to the International Convention on the Rights of the Child, the Federal Ombudsman reminded the asylum authorities that the higher interest of the child must be a primordial consideration in all decisions concerning her. The General Commissioner for Refugees and Stateless Persons committed himself to take such measures as necessary to take better account of the specific interest of minors in the asylum procedure. As to the particular case of Katarina, after consultations with the Department of Immigration and Naturalisation, the residence of the young girl was legalised.

The areas in which administrative action affects the fundamental rights of the child are numerous. They concern in particular the attribution of social security benefits, the right to acquire a nationality or the protection of family life. For detainees, there is obviously the prohibition of inhuman and degrading treatment, but also maintaining the registration in the population registers.

4. When being proactive is necessary

Being proactive is not a standard of good administrative conduct.

Trying to reconcile the citizen with the administrative authorities, on the other hand, is an integral part of the Federal Ombudsman's mission. Preventing complaints is part of this mission.

Many federal administrative authorities do not yet have a(n) (first line) organised complaints department that enables them to assess and improve their own working method, in particular in their relations with the citizen.

When the same complaint becomes recurrent, lessons can be drawn. Even when these complaints are not ill-founded as such – for example because the law was properly applied – they may suggest a need to adopt another approach so as to alleviate the citizen's discontent.

The Federal Ombudsman, relying on the analysis of second line complaints, tries to help and to support the administrative authorities to adopt measures intended to prevent complaints. This requires an additional effort from the administrative authorities. But a preventive effort may at times forestall serious problems afterwards.

An example concerning registration fees

To qualify for a reduction of the registration fees when acquiring a modest dwelling, the buyer has to register with the National Population Register at the address of the acquired property within three years.¹⁵ Although this condition is stated in the deed of purchase, it is at times lost sight of. In such a case, the part of the registration fees exceeding the reduced rate is payable, together with a fine or an increase in the fees. Only a case of force majeure can entail discharge.

¹⁵ Article 60 of the Mortgage and Registration Fees Code stipulates:
"… To benefit from the reduction referred to in Article 53, 2°, that buyer or his spouse must be registered in the population register or in the alien register at the address of the acquired property. This registration must be made within three years as of the date of the notarial deed of purchase and be maintained for an uninterrupted period of at least three years.
Nonetheless, the reduction shall be granted if failure to comply with these conditions is due to a case of force majeure."



The complaints lodged with the Federal Ombudsman have generally been discussed extensively at the different administrative departments concerned, from local registration offices to central departments. The strict application of the law, and in particular the notion of force majeure, is controversial.

The administrative authorities consequently agreed to our proposal to send a letter, six months prior to the expiry date, to the buyers of modest dwellings to remind them of their obligation to register their domicile at the address of the purchased property.

Since mid January 2008, the letter has been sent automatically to all persons who were granted a reduction of the registration fees. Useless discussions will thus be avoided, and the administrative authorities will save considerable time.

In April 2003, Jan and Els bought a house together in Mechelen. As it was a modest dwelling, they paid only 5% of the registration fees (instead of the usual 10%). They had to do a certain number of works in their new house, and Els moved temporarily in with Jan who was living with his mother. They both remained provisionally domiciled at their parents' address.

The works fell behind schedule and it was only in February 2006, just under 3 years after they had purchased their house, that Jan and Els were finally able to move in their new house. With all the hassles, they forgot to change their domicile.

In May 2006, they were surprised to receive a new statement from the Registration Office. They had to pay 5% more in registration fees – the difference between the normal rate and the reduced rate, as well as a fine, as they had not registered at the address of their new house within the stipulated three-year period. Els and Jan had to pay €4,500 each, i.e. a total of € 9,000, after all the works that they carried out in their house....

In panic, they contacted their Registration Office. The collector was only able to confirm that the law had been correctly applied: registering one's domicile at the address of the purchased property is a strict condition for the reduction of the registration fees. The simple fact of having forgotten to do so after moving into the new house is not an excuse and cannot constitute a case of force majeure.

Another example concerning direct taxes

Many taxpayers are convinced that they do not have to pay the taxes due once they have filed an application for an adjustment of an assessment they deem to be wrong. They often lose sight of the fact that interest continues to accrue validly on the part of the tax that will remain due after the adjustment, if the amount is greater than or equal to € 860.

The SPF Finance will henceforth mention the pivotal sum of € 860 on all notices to pay tax for which an application to rectify the official assessment has been filed.

5. Application of the regulations

The existing law or regulations may not be clear at times. Similarly, a new law at times has unforeseeable effects. These circumstances may make it difficult to apply the existing regulations. On the other hand, existing rules may be clear enough, but the administrative authorities (deliberately or otherwise) do not apply them correctly if at all.

The administrative practice is illegal or unfair

In such case, if no consensual solution is found, the Federal Ombudsman will use all the means at his disposal to get the administrative authorities to rectify their position. It is therefore no surprise that the three official recommendations made to the administrative authorities in 2007 all have to do with this issue. Two have already been met. They concerned the National Social Security Office and Selor.¹⁶ The last is still facing opposition from the ONFATS.¹⁷ We shall return to this issue in the chapter on recommendations.

Fortunately, numerous situations have been settled on good terms with the administrative authorities.

The Federal Ombudsman was able to persuade the tax authorities that the Notes on the Tax Code were more restrictive than the law. Neither the law nor the relevant parliamentary works had prohibited taking into account the change in the situation of the household during the tax year; so nothing justified prohibiting the combination of the two benefits. This analysis was moreover confirmed by case law. The Federal Ombudsman thus asked the tax authorities to adapt the Notes to the Income Tax Code '92. The tax authorities issued a new administrative circular applicable immediately.

All parents who are de facto separated will henceforth be granted the possibility to benefit, for the year of separation, both from the tax exemption for dependent children and the alimony from the parent who has actually paid it.

In 2003, Mr and Mrs Collard separated. Their children remained domiciled with their mother, and Mr Collard started paying alimony as of April 2003. He wanted to obtain the tax deduction for the alimony he pays for his children who have not been his dependents since April 2003. The tax authorities refused this deduction. In the joint tax assessment established in the name of Mr and Mrs Collard for the year of the de facto separation, they were already granted a tax exemption for the (same) dependent children. According to the tax authorities, combining two tax benefits (tax exemption for dependent children and tax deduction for alimony) is not possible: the same children cannot be both dependent and not dependent for Mr Collard for the same tax year, in this case, 2003. After discussions with the tax authorities, the latter acknowledged that nothing in the law prevents granting the two tax benefits simultaneously. Mr and Mrs Collard can thus obtain the tax exemption for dependent children for 2003, and Mr Collard can deduct the alimony he has paid for his children since April 2003. This represents a tax gain of €768 for the parties concerned.

¹⁶ Translator's note: Selor recruits and selects personnel for the government and provides government employees with job rotation, orientation and promotions.

¹⁷ Translator's note: National Office of Family Allowances for the Dependent Labour Force.



The administrative authorities remain entrenched in a restrictive interpretation of the law

For several years, the analysis of complaints shows that the FPS Finance is applying a certain number of provisions relating to complaints about direct taxes in (too) restrictive a manner. As the tax authorities remain entrenched behind the letter of the law to justify their position, we have opted to make three general recommendations to Parliament to amend the provisions of the Income Tax Code at issue.

Return of the complaint

Article 366 of the Income Tax Code 92 (ITC92) stipulates that to appeal against the tax assessment imposed on him, a tax payer must write to the tax director of the tax district in which he lives.

The structure of the FPS Finance is no obvious matter for the tax payer to understand. A tax director is not his first contact. His first contacts are usually with his Tax Office. If he contests the tax assessment, the taxpayer often contacts the department that is claiming payment, his Collection Office.

Taxpayers at times lodge their complaints with a federal authority other than that mentioned in Article 366 ITC92. Informed too late about their error, they at times are not able to re-lodge their complaint with the competent authority within the stipulated time.

After an initial recommendation on the subject in 2003, the programme law of 27 December 2004, which entered into force on 1 January 2005, already amended Article 366 ITC92 by making admissible a complaint addressed to a territorially incompetent tax director, who automatically forwards the complaint to the territorially competent director and informs the complainant accordingly.

This extension to the direct tax directors only, is not sufficient, however.

Article 5 of the Charter of User-Responsive Governance stipulates that: *"Every public service that receives a request from a citizen or a company which does not concern that service, shall forward it to the competent public service and shall inform the citizen or company accordingly."*

The FPS Finance does not want to meet our proposal for the time being. It invokes the public order nature of tax legislation. Consequently, the collector or inspector at this time returns the taxpayer's complaint and indicates the director to which it must be submitted in order to be validly lodged.

To guarantee legal security while enabling the FPS to meet the provisions of the Charter of User-Responsive Governance, Article 366 ITC92 must be adapted.

The Federal Ombudsman consequently recommends to amend Article 366 ITC92 so that the complaint lodged with a service involved in the establishment and recovery of the tax at issue be considered validly lodged and forwarded to the office of the competent director, and that the complainant be duly informed.

When is a complaint deemed to have been lodged within the stipulated time limit?

Article 371 ITC92 stipulates that complaints must be lodged, on pain of forfeit, within six months as of the date of dispatch of the official tax assessment.

The date of dispatch of the official tax assessment is indicated thereon. Many taxpayers often send it on the last day, at times by registered letter, convinced that their complaint has been lodged within the stipulated period. They consider in fact that the postmark proves that the complaint has been lodged within the stipulated time limits.

The Constitutional Court has considered that the commencement of the complaint period cannot depend on the action of the parties. According to this case law, the FPS Finance henceforth accepts that, barring proof to the contrary, the complaint period starts on the third working day after the date of dispatch indicated in the official assessment.

The end of the complaint period may no longer depend on the action of one party or the other. Referring to the term “*lodge*” in the aforementioned article, the FPS Finance argues that the date of lodging a complaint is that of receipt by its services. This position encourages legal insecurity and inequality. Although the taxpayer knows perfectly well on which date he sent his complaint, he cannot always determine with precision the date on which it was received – or was considered as such -- by the FPS Finance. Thus, barring proof to the contrary, the date of dispatching the complaint should therefore be considered as that on which it was lodged.

The taxpayer must have at his disposal the entire complaint period prescribed by the legislator on the taxation of natural persons, which is currently six months. Now, this is the only way that a period of six months could be fully respected with a view to all the taxpayers.

Sounded out on the draft recommendation, the FPS Finance has not issued any fundamental practical objection to proceeding in that way. On the other hand, it considers that the current wording of Article 371 ITC92 does not authorise it to follow our suggestion, unless a new ruling by the Constitutional Court imposes that Article 371 ITC92 is read with that meaning.

We therefore consider that it is necessary to act proactively and to amend Article 371 ITC92 in this regard.



The Federal Ombudsman consequently recommends to amend Article 371 ITC92 so that the date of dispatching the complaint is considered the date on which it is lodged.

What does “irrevocable” mean?

Article 375 ITC92 stipulates that a decision about a complaint, served by registered letter, is irrevocable, unless action is taken before the district court within the period set in Article 1385undecies of the Code of Judicial Procedure.

The FPS Finance considers that it can deduce from this that it is impossible to revoke a decision on a complaint. We cannot subscribe to this position.

The administrative authorities do not take account of the fact that since the reform of 1999, the tax director decides on a complaint as *an administrative authority*. This necessarily implies that the rules of administrative law are applicable to these decisions. Now, according to said rules, an unlawful administrative act that creates rights can be revoked as long as it can be quashed by the Council of State – or the district court for tax matters.

The position of the FPS Finance is contrary to the rules of administrative law when it asserts that an erroneous decision by the tax director must stay, unless the taxpayer takes court action.

Furthermore, to exclude the revocation of an erroneous administrative decision, except through court action is in practice tantamount to depriving the taxpayer of access to mediation in certain tax matters – an alternative way to settle disputes established by the legislator in 1995 for complaints against all federal administrative authorities. At this time, pursuant to the exclusion of the revocation of a decision on tax matters, directors refuse to respond to the intervention of the Federal Ombudsman, although they recognise that the decision at issue is wrong.

This rigid position of the tax administration creates an unjustified unequal treatment of disputes between the citizens and the administrative authorities, depending on whether said dispute has to do with the decision of a direct tax director or another federal administrative authority.

Mrs Tuerlincx received her official assessment for tax year 2006 nearly fifteen days after the date of dispatch indicated thereon. A cover letter specified that in view of the late dispatch of the official assessment, the date within which to complain had been extended. Mrs Tuerlincx does not agree with the calculation of her tax, and lodged a complaint within the date indicated in the cover letter. The regional direct tax director apprised her of his decision that the complaint is inadmissible because it was lodged late. This is not possible! The regional director does not seem to be aware of the extension given in the cover letter. It is impossible to revoke his decision. Indignant, Mrs Tuerlincx contacted the Federal Ombudsman. The regional director's decision is obviously wrong. The legal period within which to file a complaint at Mrs Tuerlincx's disposal was unquestionably that indicated in the cover letter. Inland Revenue found a solution to accommodate Mrs Tuerlincx: a tax reassessment was carried out to take into account the arguments put forward in her complaint. However, there is no question of revoking the erroneous decision of the regional director.

5. Application of the regulations

The expenses of court proceedings must not be underestimated either. If the taxpayer is constrained to take action before the court owing to an erroneous decision about a trifling sum, the stakes are obviously not worth the effort. This is all the more unacceptable and again creates inequality.

The Federal Ombudsman henceforth recommends to amend Article 375 ITC92 so that the tax director is explicitly authorised to revoke an administrative decision he took on a complaint.



6. When various ombudsman services cooperate

There is a wide variety of ombudsman services in Belgium, that citizens can look up at the Ombudsman's portal: <http://www.ombudsman.be>.

At times, the solution of the problem requires the intervention of several ombudsmen, in particular when several authorities pass on the responsibility for a situation.



The case between the City of Antwerp and the FPS Interior will illustrate the point. Complaints lodged with the Ombudsman for the Postal Service revealed that a dispute between the FPS Interior, the National Register Department, and the City of Antwerp, caused post to go missing. The City of Antwerp had not applied correctly the instructions of the FPS Interior concerning the numbering of houses, and the electronic data of addresses of the City of Antwerp were not always compatible with the database of the National Register. As a result, errors occurred in the encoding of addresses.

This posed a problem, especially for dwellings with a double street number and buildings with several post boxes.

For a certain time already, all correspondence of the administrative authorities, hospital invoices and documents relating to the tax returns of 135 inhabitants in a block of flats in Antwerp were returned to sender by the postman because no letterbox number was mentioned with the address. Mrs Poulain, president of the building management committee, took the necessary steps to ensure that tax documents were sent again to the persons concerned, and got an extension from the FPS Finance for the period within which to file a return owing to the problems that had occurred. Other post, however, went missing for good. She wishes to see the problem of letterbox numbers solved as promptly as possible.

6. When various ombudsman services cooperate

Most of the complaints that reached us through the Ombudsman Service for the Postal Sector concerned official documents sent from data from the National Register Department which the postman, in accordance with the instructions of the Postal Service, was not authorised to distribute because the letterbox number was not mentioned thereon.

The Federal Ombudsman contacted the Ombudsman of the City of Antwerp.

As a result of this cooperation, the City of Antwerp brought its police regulation in line with the instructions of the FPS Interior concerning the numbering of dwellings, while the National Register Department corrected electronically the street numbers where technically possible. These measures made it possible to solve 80% of the cases. For the others, the authorities concerned undertook to proceed to a manual correction.

Since then, the Ombudsman Service for the Postal Sector has noted a clear drop in complaints relating to the distribution of post in Antwerp.



7. Inadmissible complaints and requests for information

In 2007, the Federal Ombudsman continued to receive all sorts of requests for information.

Three departments are at this time involved in providing information to citizens at the federal level. The updating of the information available on the portal is entrusted to the on-Line Unit of the External Communication Department of the Office of the Prime Minister. Since the beginning of 2007, 15 staff have been dealing with the different issues, while developing a more user-friendly project. The information and/or communication officials of the different authorities are coordinated in cooperation with the Internal Communication Department of the FPS Personnel and Organisation. The technical support is provided by the FPS Information Technology and Communication (Fedict).

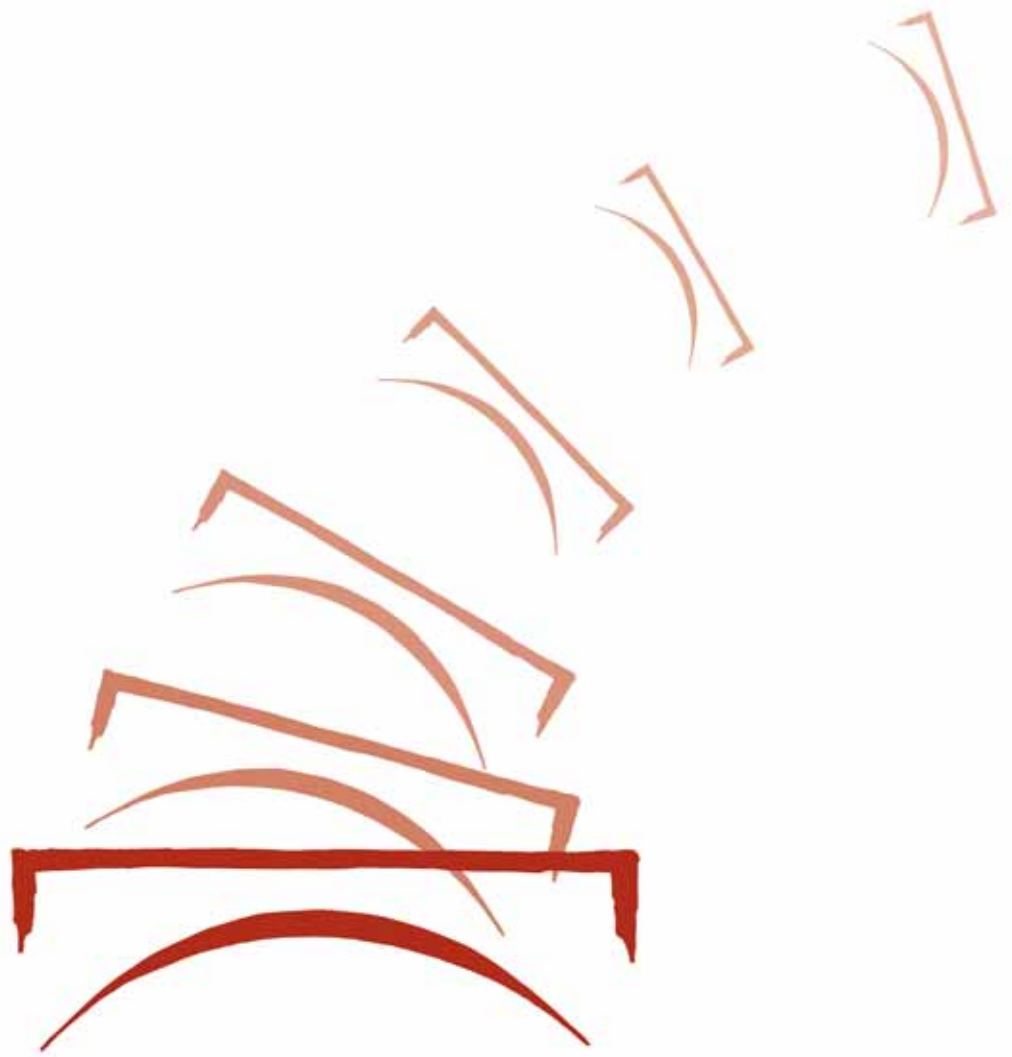
While the Regions place free information lines at the citizen's disposal, the federal authorities limit themselves to a federal portal, which undeniably contains a wealth of information. However, this offer is not supported and completed by a service that actually answers questions from citizens or refers them to the competent services. Thus, aside from the technical helpdesk, the portal offers no point of contact. There is no specific (free) telephone number, nor postal or electronic address for citizens to go to with their questions.

The result of a search on the portal will therefore depend on the citizen's skills and familiarity with the Internet. Citizens who do not have access to the Internet will simply not be able to access the information available on the federal site.

The requests for information that the Federal Ombudsman receives by telephone, letter and e-mail frequently come to: *"I do not know where to turn to... Could you refer me to the right service?"* It is interesting to note that it is not only citizens, but also companies and self-employed persons who turn to the Federal Ombudsman, at times with quite complex questions – and they have often been already sent from service to service.

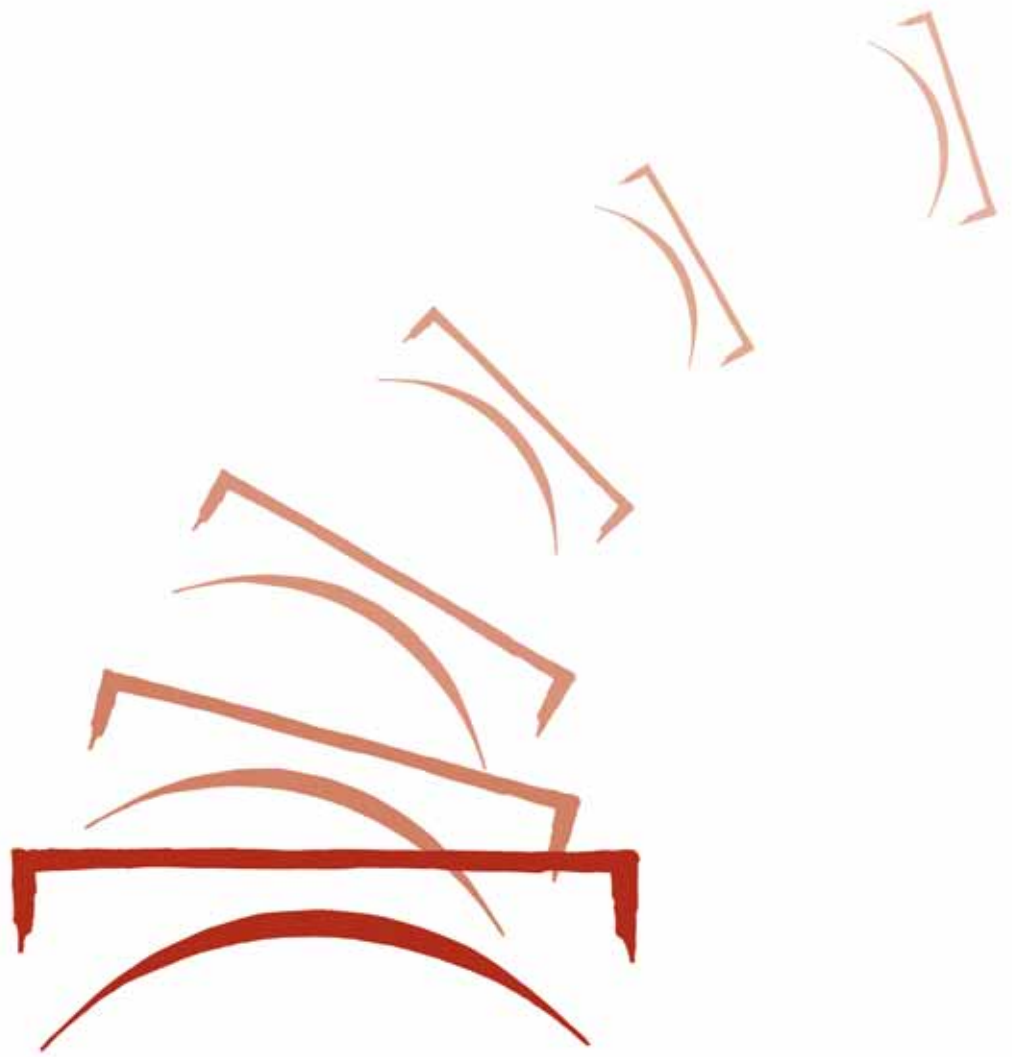
The thousand requests for information that the Federal Ombudsman had to answer this year, are just the tip of the iceberg.

The Federal Ombudsman therefore recommends creating a central point of information that provides basic information and directs or refers requests efficiently to the competent services. This centre of information could assume the form of a(n) (free) information line of the federal authority.



IV. Recommendations





I. Introduction

Recommendations based on observations made during the examination of complaints about the way the federal authorities function constitute one of the missions entrusted explicitly to the Federal 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;¹⁸

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.¹⁹

2. General Recommendations

Cross-thematic Recommendation 2007

GR 07/01: Develop a central information point that provides basic information as well as efficient orientation and referral to the competent services. This information point can assume the form of a(n) (free) information line of the federal government.

Whereas the regions provide free information lines, the centralised information offer at federal level is limited to a federal portal site. This site does provide a wealth of information. However, this offer is not supported and completed by a service that answers effectively the questions of citizens or refers queries to the competent services. So the portal site offers only one direct contact possibility, namely the telephone number and e-mail address of the (technical) helpdesk at Fedict. There is no specific (free) information number, letter or e-mail address for requesting information.

¹⁸ A recapitulative list of recommendations made in 2007 is given at the end of this Part IV, p. 63.

¹⁹ Only the general recommendations of 2007 are contained in this part IV, pp 57 ff. The summary table of all general recommendations (1997-2007) still being processed is given as Appendix, pp. 66 ff.

The result of a search on the portal site therefore depends on the surfing skills of the citizen and his or her familiarity with the Internet. Citizens with no access to the Internet are left out in the cold.²⁰

Thematic Recommendations 2007

GR 07/02: Amend article 366 of the Income Tax Code 92 (ITC92) so that a notice of objection lodged with a service involved in the establishment or levy of the tax that contests the taxpayer's notice of objection, can also be considered as lodged and officially sent to the competent director of taxes.

Pursuant to Article 366 ITC92, a taxpayer can lodge a written notice of objection against the amount of the established assessment with the director of taxes in whose district the assessment is established.

Programme law of 27 December 2004, which entered into force on 1 January 2005, added to article 366 ITC92 that the notice of objection is still validly lodged when brought before another director of taxes. When the notice of objection is addressed to another director of taxes, the latter sends it ex officio to the territorially competent director and informs the taxpayer who has lodged the objection accordingly.

This extension ensued from a general recommendation by the Federal Ombudsman in 2003²¹ occasioned by the ascertainment that taxpayers at times sent their notices of objection to another tax authority than that stipulated by Article 366 ITC92 (a regional director of another district, an inspector or a collector). When these taxpayers are then informed too late that this was not the right authority, they are at times unable to lodge their note of objection again within the deadline. For this reason, we recommended that it must be made possible to file notices of objection with another tax authority than the competent regional authority by means of a compulsory forwarding by and between the various tax departments in the FPS Finance.

After this amendment, by the Programme Law of 27 December 2004, notices of objections can be lodged with internal revenue validly irrespective of the territorially competent director of taxes with whom they are filed, even with a director of collection, provided that the official is a director...

This extension is not sufficient, however.

The structure of the FPS Finance is not self-evident for a taxpayer. A director of taxes is not the taxpayer's first contact. If a citizen does not agree with the amount of taxes that s/he has to pay, s/he often turns first to where s/he must pay, i.e. the Collection Office. Furthermore, the taxpayer has often had earlier contacts with his or her Tax Office. For this service is closer to taxpayers too...

²⁰ p. 53 and 66

²¹ GR 03/03; Annual Report 2003, p. 49, and Annual Report 2004, p. 33.



It should not come as a surprise that a taxpayer should apprise a collection office or a taxation office of his or her objections. This should pose no problem in and of itself.

Article 5 of the Charter of User-Responsive Governance actually states that: *“Each governmental department that receives a request or an application from a citizen, a company or an association, which is actually not intended for it, shall forward such request or application to the correct governmental department and inform the citizen, company or association accordingly.”*

The FPS Finance does not want to accept the Federal Ombudsman’s proposal at this time. A notice of objection lodged in good time with a Taxation Office or a Collection Office, which is forwarded by said office, within the objection period, to the competent director of taxes, cannot be considered as a validly lodged notice of objection.

In our opinion, this should be the case, however:

The FPS Finance wants to accept that only as a request for official exemption²² within the meaning of Article 376 ITC92. According to the FPS Finance, it cannot be a valid or admissible notice of objection, because Article 366 ITC92 expressly states that such a notice must be lodged with a *“director of taxes.”* In the strict reading of Article 366 ITC92 by the FPS Finance, a forwarded notice of objection does not meet these conditions.

At present, the tax or collection offices consequently send *“wrongly”* lodged notices of objection back to the taxpayers and refer them to the competent director of taxes with whom they must lodge a valid notice of objection.

The FPS Finance however is afraid that it cannot accept the Federal Ombudsman’s proposal at this time. A judge before whom a decision by a director, who accepted a notice of objection in this manner, is contested, could for that matter invoke the exception of illegality on the basis of the current wording of Article 366 ITC92 and the fact that the tax regulations are of a public nature.

For the sake of legal security and to enable the FPS Finance to meet the requirements set by the Charter of User-Responsive Governance, the Federal Ombudsman proposes that Article 366 ITC92 be reworded as recommended above.

Owing to the same concern, attention must also be paid to notices of objection that are lodged against the establishment of the road tax, advance levy on income derived from real estate, or cadastral income.²³

²² An official exemption can only be granted in a limited number of situations. The director of taxes or the official designated by him grants official exemption from over-taxation:

1° Arising out of material errors;

2° Arising out of double taxation;

3° Ascertained from sufficient new documents or facts which, owing to legal reasons, could not be produced in time.

²³ pp. 46 and 66.

GR 07/03: Supplement Article 371 of the Income Tax Code 92 (ITC92) so that the sending date of the notice of objection is valid as the lodging date.

Article 371 ITC92 stipulates that, on pain of lapse, notices of objection must be lodged within a period of six months as of the date of dispatch of the assessment notice or the notification of the assessment, or of the date of the collection of taxes in a way other than by assessment register.

The date of dispatch of the assessment notice is mentioned on said notice. Convinced that their notice of objection is lodged in good time, taxpayers send their notice of objection – sometimes even registered – often on the last day of the legally prescribed period. They are then convinced that the postmark is valid as proof of timely submission.

Because of problems with the inadmissibility of such notices of objection, the Federal Ombudsman had already in 2003 made a general recommendation²⁴ that is still topical.

A taxpayer is entitled to the full period of six months within which to lodge an objection that the legislator has conferred for personal income tax.

The Constitutional Court has ruled that the commencement of the objection period cannot depend on the course of action of the parties. Consequently, said Court has proposed a solution to have the term commence on the third working day as of the date of dispatch mentioned on the assessment notice, unless proof to the contrary can be provided.

The FPS Finance will confirm its new stance, based on the ruling of the Constitutional Court, in a circular.

The closing date within which to lodge an objection cannot depend on the course of action of one of the parties either. On the basis of the term “*lodged*,” in the aforementioned article, the FPS Finance opines that the date in which the notice of objection is lodged is the date in which said notice is received. This position paves the way for legal insecurity and inequality. For although the taxpayer knows precisely when s/he sent the notice of objection, s/he cannot always know precisely when it is received – or considered as received – by the FPS Finance. Barring proof to the contrary, the date of dispatch of the notice of objection must be considered as the date of lodging the objection.

Only in this way will the period of six months be respected in the same way fully and with regard to all taxpayers.

After discussing this draft recommendation, the FPS Finance did not seem to have any practical remarks about this way of proceeding. It does however think that the current wording of Article 371 ITC92 does now allow for such an approach, unless a ruling by the Constitutional Court so requires.

²⁴ GR 03/03; Annual Report 2003, p. 49 and Annual Report 2004, p. 33.



The Federal Ombudsman therefore recommends to proceed proactively and to amend Article 371 ITC92 already.²⁵

GR 07/04: Amend Article 375 of the Income Tax Code 92 (ITC92) so that the director of taxes is unequivocally empowered to cancel a decision on a notice of objection.

Article 375, §1, ITC92 stipulates:

“§1. The director of taxes, or the official designated by the latter shall, as the administrative authority, take a reasoned decision about objections lodged by the taxpayer or by his/her spouse on whose property the assessment is levied.

Notification of the decision shall be served by registered letter. This decision shall be irrevocable when no claim is lodged with the district court within the period stipulated in Article 1385 undecies of the Code of Judicial Procedure.”

The FPS Finance thinks that it can deduce from the second paragraph of this provision, and more specifically from the term “*irrevocable*” that the cancellation of a decision on a notice of objection is not possible, and cites a decision of the Court of Cassation from 1938²⁶ to underpin its position.

In so interpreting the legislation, the FPS Finance loses sight of two important points.

First, it overlooks that the scope of the ruling by the Court of Cassation is limited to protecting the taxpayer against the unrestricted possibility for inland revenue to change its previous *positive* decision on a notice of objection.

Second, it takes no account of the fact that the first paragraph of Article 375, §1, ITC92 expressly stipulates that the director of taxes, *as the administrative authority*, shall decide on the notice of objection. This necessarily entails that the rules of administrative law are applicable to the decisions.

According to the rules of administrative law, an unlawful administrative legal action can be cancelled, as long as it is not quashed by the Council of State (in tax matters, by the district court).

The cancellation is at the junction of two general legal principles, compliance with which is supervised by the ombudsman: the legality principle and the legal security principle. On the one hand, the government must ensure, in the public interest, that an unlawful decision taken by it is removed from judicial matters (legality principle). On the other hand, the citizen must be confident that rights derived from a government decision, are not taken away from him or her through the retroactive effect of the cancellation (legal security principle).

²⁵ p. 48-49 and 66.

²⁶ Cass., 8 June 1938, Pas., I, p. 197.

Just as the unrestricted possibility of cancelling can be difficult to reconcile with the legal security principle, an *absolute cancellation ban* is difficult to reconcile with the legality principle.

In light of the foregoing, the term “*irrevocable*” in Article 375 ITC92 must be seen in the context of administrative law, and can consequently only mean that the possibilities for organised administrative appeal, as describe in the ITC92, are exhausted.

The fact that, once a decision on an objection is taken, no organised administrative appeal is possible any longer, does not exclude a willing appeal and the cancellation of the decision. The cancellation of a decision puts the parties concerned again at the time before the decision was taken, and the cancelled decision is deemed not to have ever existed. The legal consequences thereof disappear, also retroactively.

The position of the FPS Finance that an unlawful decision by a director of taxes must stay, unless the taxpayer goes to court, runs counter to administrative law.

Furthermore, in practice, excluding the possibility of cancelling an unlawful administrative decision, comes down, in certain administrative tax matters, to denying the taxpayer access to alternative dispute settlement by the Federal Ombudsman as provided by the Act of 22 March 1995.

The departments are currently refusing to respond to the intervention of the Ombudsman, even when they acknowledge that the contested decision is unlawful.

This rigid position by inland revenue causes an unjustified unequal treatment of disputes between the citizen and the administrative authority, depending on whether it concerns a director of taxes or another federal administrative authority.

In view of these circumstances, an amendment is urgently needed.²⁷

²⁷ pp. 49-50 and 66.



3. Official Recommendations 2007

(In chronological order)

Social semi-governmental institutions

❖ National Social Security Office (NSSO)

OR 07/01: The Federal Ombudsman recommends to the NSSO, in connection with the application of the specific sanction for the CO² contribution, to apply, by analogy, the general regulations on the waiver or reduction of the civil sanctions and, in particular, Articles 54ter and 55 of the Royal Decree of 28 November 1969 for the (representatives of) employers who invoke arguments to justify or explain a late return (or payment) of the CO² contribution.

❖ National Employees' Family Allowance Office (NEFAO)

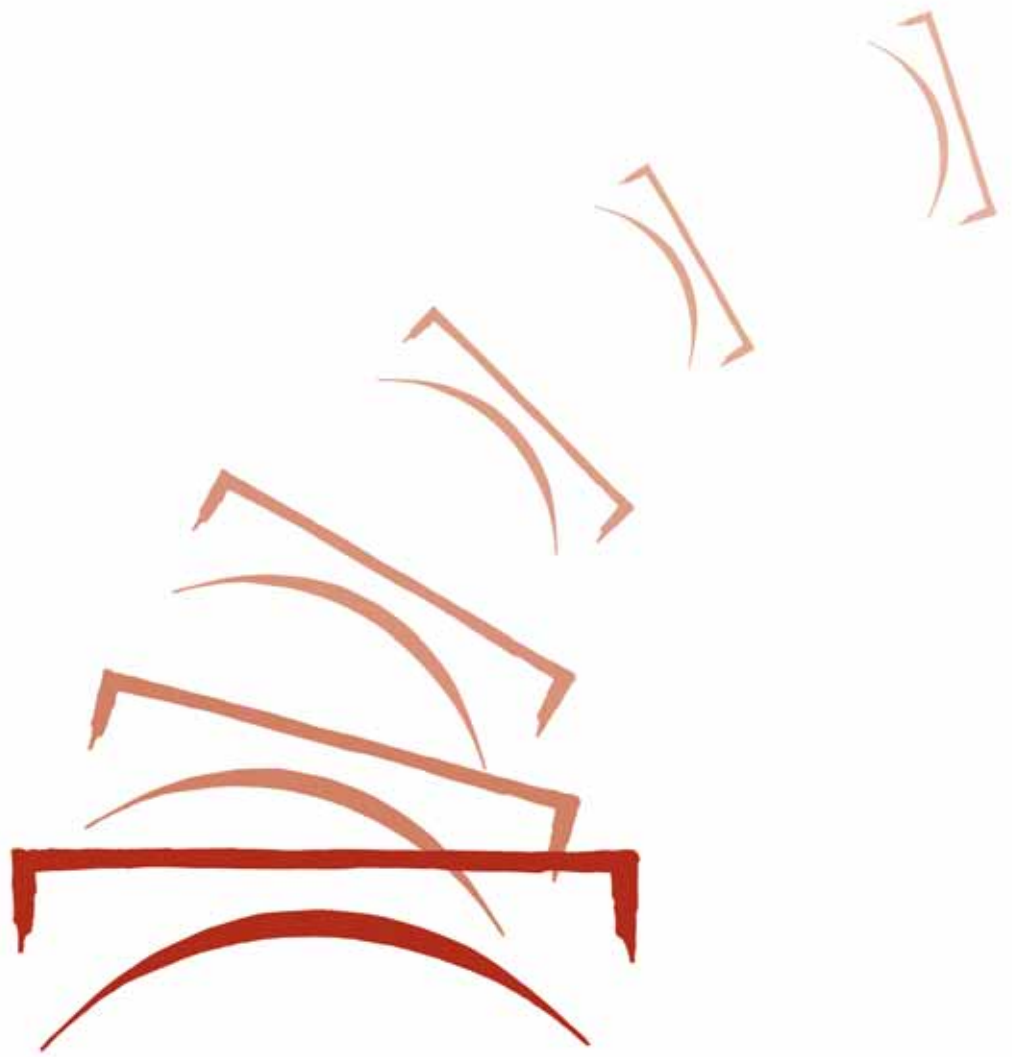
OR 07/02: The Federal Ombudsman recommends that Article 17 of the Act of 11 April 1995 on the introduction of the Charter of the Socially Insured persons be applied to new decisions (within the meaning of Article 17) concerning family allowances that date prior to 1 October 2006 and which entail that entitlement to the benefit was smaller than the initially attributed entitlement.

FPS Personnel and Organisation

❖ Selor

OR 07/03: The Federal Ombudsman recommends that, in anticipation of a possible amendment of Article 20, §1, of the Royal Decree of 8 March 2001, candidates who were registered for a language test, be not excluded from taking part in subsequent language tests during a period of one year, when they have notified Selor in advance that they would not be sitting for the language test, without any additional explanation afterwards.

The Federal Ombudsman moreover recommends doing away with the exclusion from participation in language tests for one year, that was imposed on candidates that had informed Selor in advance that they would not be participating, but had not provided reasons for their absence afterwards.



Appendix



Outline of General Recommendations

GR	Title	Object	Status	Comment	Petitions Committee
Cross-thematic general recommendations					
97/11	Dispute between two administrative authorities as to which of the two must disburse expenses incontestably payable	Cross-thematic	Pending	Recommendation that is still topical, pertaining to a more rapid processing of claims for compensation of expenses when several administrative authorities can be involved but are trying to pass the responsibility for paying to each other so that a settlement is delayed or remains outstanding.	
99/05	The adoption of measures to familiarise the general public with the existence and tasks of information officers	Cross-thematic	Pending	Consultations will take place in 2008 with the DG Internal Communication of the FPS Personnel & Organisation.	
06/01	Require of every federal administrative authority to indicate the period within which it will take a decision, by inserting a new provision in the Act of 11 April 1994 on the transparency of governance	Cross-thematic	Priority	The overwhelming number of complaints in 2007 about non-compliance with the principle of a reasonable period confirms the importance of this measure.	26.04.2007
07/01	Develop a central information point that provides basic information as well as efficient orientation and referral to the competent services. This information point can assume the form of a (free) information line of the federal government.	Cross-thematic	New	Cf. pp. 53 and 57-58.	
General recommendations relative to the FPS Finance					
99/08	Difficulties between taxpayers and the tax authorities when the latter assess a property	FPS Finance	Pending	Various measures taken in 2007 are in line with this recommendation.	
02/03	The tax trap of unemployment	FPS Finance	Pending	The bill of 18 January 2008 to amend the Income Tax Code 1992 (ITC92) regarding the tax inducement for life-long learning is intended to address this recommendation (DOC I 158/001)	
03/03	Notice of objection (Appeal against taxes)	FPS Finance	Closed in 2007	The gaps of this recommendation, that have not been addressed yet, taking into account the most recent case law and administrative developments, are contained in two new recommendations (GR 07/02 for internal forwarding and GR 07/03 for the correct ending date of the objection period).	
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	Pending	No action has been taken on this recommendation.	26.04.2007
07/02	Amend article 366 of the Income Tax Code 92 (ITC92) so that a notice of objection lodged with a service involved in the establishment or levy of the tax that contests the taxpayer's notice of objection, can also be considered as lodged and officially sent to the competent director of taxes	FPS Finance	New	Cf. pp. 47 and 58-60	
07/03	Supplement Article 371 of the Income Tax Code 92 (ITC92) so that the sending date of the notice of objection is valid as the lodging date.	FPS Finance	New	Cf. pp. 48-49 and 60-61.	

GR	Title	Object	Status	Comment	Petitions Committee
07/04	Amend Article 375 of the Income Tax Code 92 (ITC92) so that the director of taxes is unequivocally empowered to cancel a decision on a notice of objection.	FPS Finance	New	Cf. pp. 49-50 and 61-62.	
General recommendations relative to FPSs Justice, Home Affairs and Foreign Affairs					
00/01	Declaration of marriage	FPS Justice	Closed in 2007	Addressed by the Act of 9 May 2007 amending certain provisions of the Civil Code to facilitate the proof of the status of persons when a certificate of civil status is lacking (Belgian Official Gazette of 15 June 2007).	
01/01	Greater transparency and greater legal security in the application of the Act of 15 December 1980 and its implementing decree thereof	FPS Home Affairs	Pending	Monitored with the Directorate General of the Department of Immigration and Naturalisation	
02/01	The status of people living together in immigration law	FPS Home Affairs	Closed in 2007	Addressed by Article 6 of the Act of 15 September 2006 amending the Act of 15 December 1980 (Belgian Official Gazette of 6 October 2006), Article 11 of the Royal Decree of 17 May 2007 establishing the implementation procedures of the Act of 15 September 2006 amending the Act of 15 December 1980 (Belgian Official Gazette of 31 May 2007) and Article 20 of the Act of 25 April amending the Act of 15 December 1980 (Belgian Official Gazette of 10 May 2007).	
03/01	The time limit for processing case files submitted on Belgian territory and referred to the Department of Immigration and Naturalisation	FPS Home Affairs	Pending	Monitored with the Directorate General of the Department of Immigration and Naturalisation	
06/08	Take the necessary measures to guarantee that detainees are actually given an opportunity to prepare for their reintegration into society. This entails that the Federal State must conclude efficient and effective cooperation agreements with the Communities and/or Regions.	FPS Justice	Pending	No action has been taken on this recommendation.	26.04.2007
General recommendations relative to other federal administrative authorities					
99/13	The lack of transparency of the Order of Physicians	Order of Physicians	Pending		
06/02	Adapt article 24, §2, of the Royal Decree of 22 May 2003 on the procedure concerning the processing of applications for disablement benefit; - which stipulates that the social insured must give his consent in order to proceed to the recovery, via his banking institution -- - to the Act of 27 February 1987 on disablement benefit, article 16, §2 of which lays down the terms and conditions that must be met by decisions to recover sums paid unduly.	FPS Social Security	Pending	No action has been taken on this recommendation.	26.04.2007
06/03	Provide a legal basis for the administrative practice that allows self-employed workers to pay social security contributions after the expiry period and determine the procedure to be followed	FPS Social security	Pending	The Directorate General for the Self-Employed announced that in May 2007 two draft Royal Decrees were submitted to the Minister for the Self-Employed. These drafts have not been signed yet.	26.04.2007

Outline of General Recommendations

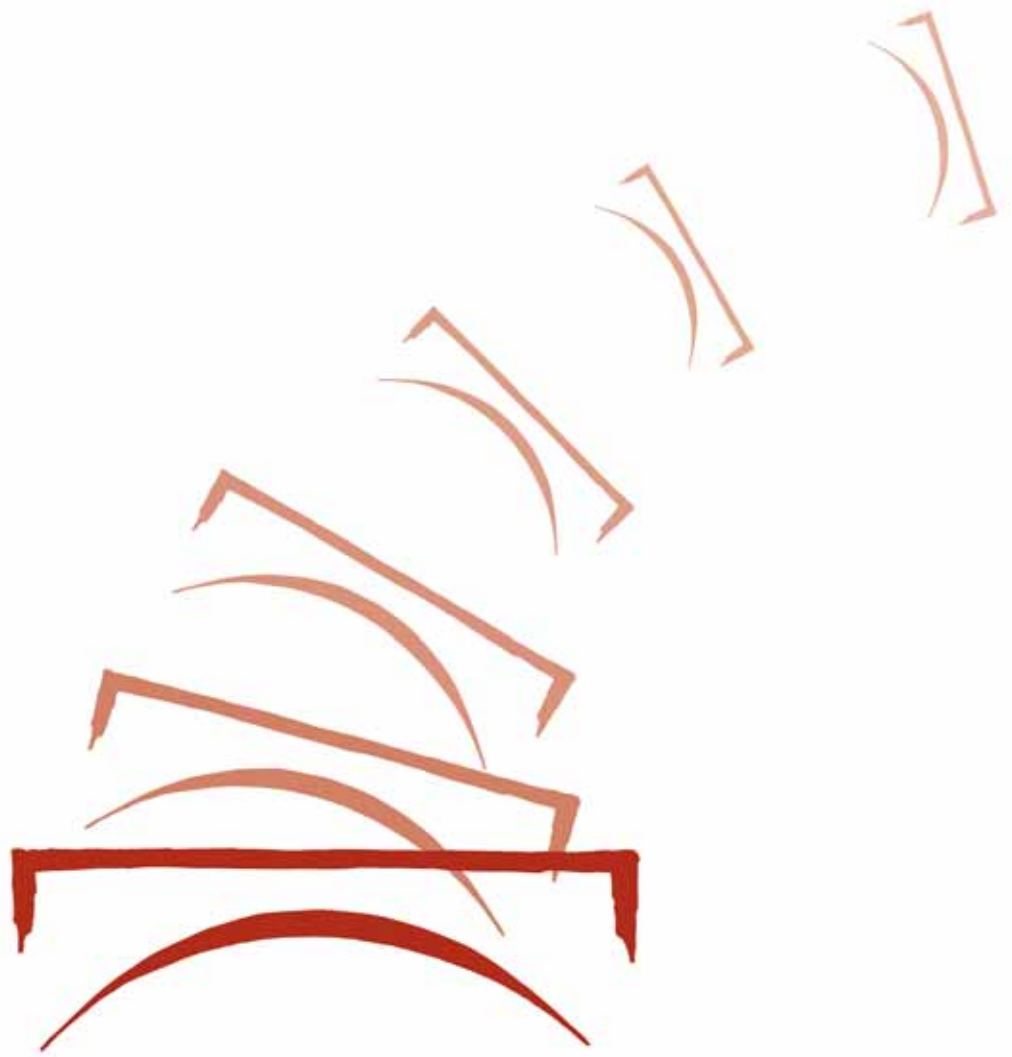
GR	Title	Object	Status	Comment	Petitions Committee
06/04	Provide, in the Act of 3 July 2005 on the rights of volunteers, the possibility for disabled civil servants and self-employed workers to do volunteer work	FPS Social security	Pending	The Royal Decree under preparation at the end of 2006, which expressly provided for the possibility for disabled self-employed workers to do volunteer work, was not yet published at the end of 2007.	26.04.2007
06/05	Mention explicitly in the Royal Decree of 2 October 1937 on the status of Government officials, that a civil servant who wishes to do volunteer work must either ask his employer's prior consent, or need not do so.	FPS Personnel and Organisation	Closed in 2007	This recommendation was examined in connection with the regulatory reform of the rights, obligations, incompatibilities and combination of offices regulation for national civil servants. This reform led to the Royal Decree of 14 Jun 2007, where it was expressly stipulated that a civil servant may not exercise any remunerated activity before obtaining authorisation for the combination of offices. Conversely, a civil servant who wishes to do volunteer work, does not have to obtain any prior authorisation. If the civil servant has any doubts or if there can be any question of conflict of interest, s/he can request advice beforehand.	
06/06	Remove the existing discrimination between Belgian and foreign students for obtaining a Belgian driving license, by amending the Royal Decree of 23 March 1998 on the driving licence to bring it in line with the principles set out in the European driving licence directives.	FPS Mobility and Transport	Closed in 2007	This recommendation was addressed by the Royal Decree of 24 August 2007 amending the Royal Decree of 1998 concerning the driving licence (Belgian Official Gazette of 31 August 2007).	26.04.2007



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