
Office of the Ombudsman for the postal sector

Rules of procedure

I. The relevant legislation for the organisation of the Office of the Ombudsman for the postal sector and the execution of its missions:

Universal Postal Convention. Letter post regulation.

Universal Postal Convention. Parcel post regulation.

Warsaw Convention of 12 October 1929.

Geneva Convention of 19 May 1959.

Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service.

Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 amending Directive 97/67/EC with regard to the further opening to competition of Community postal services.

Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008 amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services.

Act of 6 July 1971 creating La Poste.

Act of 21 March 1991 on the reform of certain economic public companies.

Act of 21 December 2006 pertaining to various provisions with a view to the creation of the Office of the Ombudsman for the postal sector and the amendment of the Act of 13 June 2005 on electronic communications.

Act of 1 April 2007 amending the Act of 6 July 1971 creating La Poste and amending the Act of 26 December 1956 on the Postal Service.

Act of 13 December 2010 amending the Act of 21 March 1991 on the reform of certain economic public companies, the Act of 17 January 2003 on the status of the regulator of the Belgian postal and telecommunications sectors and amending the Act of 9 July 2001 laying down certain rules regarding the legal framework for electronic signatures and certification services.

Act of 21 December 2013 inserting Book VI “Market practices and consumer protection” into the Code of Economic Law and inserting definitions specific to Book VI and provisions for the enforcement of the Act specific to Book VI into Books I and XV of the Code of Economic Law.

Act of 4 April 2014 inserting Book XVI “Alternative dispute resolution for consumer disputes” into the Code of Economic Law.

Act of 26 January 2018 on postal services.

Royal Decree of 9 October 1992 on the Office of the Ombudsman in certain autonomous public companies.

Royal Decree of 13 December 2005 approving the fourth management contract concluded between La Poste and the State.

Royal Decree of 11 January 2006 implementing Title IV (Reform of the Postal Authorities) of the Act of 21 March 1991 on the reform of certain economic public companies.

Royal Decree of 11 January 2006 laying down the terms regarding notification and transfer of postal services outside the scope of the universal service and implementing Articles 144quater, par. 3, 148sexies, par. 1, 1° and 148septies of the Act of 21 March 1991 on the reform of certain economic public companies.

Royal Decree of 27 April 2007 on the regulation of the postal service.

Royal Decree of 30 April 2007 on the regulation of the financial postal services.

Royal Decree of 29 May 2013 approving the fifth management contract concluded between the State and bpost for the 2013-2015 period.

Royal Decree of 10 April 2014 on the entry into force of the Act of 4 April 2014 inserting Book XVI "Alternative dispute resolution for consumer disputes" into the Code of Economic Law.

Royal Decree of 19 April 2014 amending the Royal Decree of 11 January 2006 laying down the terms regarding notification and transfer of postal services outside the scope of the universal service and implementing Articles 144quater, par. 3, 148sexies, par. 1, 1° and 148septies of the Act of 21 March 1991 on the reform of certain economic public companies.

Royal Decree of 14 April 2014 on the regulation of the postal service.

Royal Decree of 16 February 2015 specifying the conditions to be met by the qualified entity referred to in Book XVI of the Code of Economic Law.

Ministerial Order of 20 April 2007 pertaining to the regulation of private letterboxes.

Ministerial Order of 30 April 2007 pertaining to the regulation of postal financial services.

European Standard CEN 14012 - Belgian registered standard - Postal services - Quality of service - Complaints handling principles.

The Office of the Ombudsman for the postal sector is a member of the CPMO-POOL, a network of Belgian Ombudsmen who all apply the same basic principles:

- 1° By definition, the Ombudsman serves the public and acts as an appeal body when an initial contact proved ineffective.
- 2° The Ombudsman must act in complete independence and have the necessary resources to do so. These resources include, among others, a real power to investigate and to make recommendations.
- 3° The Ombudsman is bound by the obligation of professional secrecy. The Ombudsman carries out objective investigations and works on the basis of legal texts or regulations but is also inspired by the principle of equity and seeks practical solutions.
- 4° The Ombudsman regularly reports on his activities. His reports must be publicly available.

You will find more information on the different Offices of the Ombudsman in Belgium and their procedures at <http://www.ombudsman.be/>

II. The Office of the Ombudsman for the postal sector

- Is in charge of:
The dispute settlement of all clients and users, natural or legal persons (provided that they do not offer postal services themselves)
- Is tasked with:
 - 1° the settlement of disputes
 - Regarding all postal and other activities as far as bpost is concerned, apart from
 - complaints falling within the competence of another independent sector-specific dispute commission or another independent ombudsman;

- complaints concerning products and services offered by bpost by subcontracting to third parties (provided that these are not postal activities).
- As far as the other companies are concerned, only the disputes regarding their postal activities, in other words, the collection, sorting and delivery of letters and parcels.

2° intervening in order to allow an amicable settlement of the dispute

3° making a recommendation to the postal company when no amicable settlement can be reached and sending a copy of this recommendation to the client/user

4° providing clients and users with the best available information on their rights and interests

5° issuing opinions at the request of the competent ministers (postal sector and consumer protection), the Belgian Institute for Postal Services and Telecommunications and the Consultative Committee for Postal Services

6° cooperating with other independent sector-specific dispute commissions or independent ombudsmen and foreign ombudsmen or bodies having an equivalent function.

Besides, the Office of the Ombudsman for the postal sector also handles cases regarding bpost bank, but only those falling outside the competence of another Office of the Ombudsman. In practice, that means the complaints of legal persons regarding all financial activities, apart from cross-border credits and payments. For these last two services, a competent Office of the Ombudsman already exists (Ombudsfin, the Ombudsman in financial conflicts).

An intervention request submitted to the Office of the Ombudsman for the postal sector is complete when it contains the following information:

- the identity of the client,
- the address and other possible contact details of the client,
- the identity of the provider of letters and parcels concerned by the complaint,
- a mention of the fact that the client has already contacted the concerned company or not,
- a clear description of the complaint.

The process of dispute settlement starts once the Office of the Ombudsman has judged that the case contains all the necessary information and that, based on that, it is admissible. Then, the Office of the Ombudsman will also send an acknowledgement of receipt to the client.

Other documents that would be necessary to settle the dispute can still be sent later in the process.

Within the framework of a complaint lodged with the Office of the Ombudsman for the postal sector, the Ombudsman is allowed to examine, on the spot, the books, correspondence, reports and in general all documents and records of the concerned company or companies directly related to the subject of the complaint, except for the documents falling under the confidentiality of correspondence. The Ombudsman may require explanation or information from the management bodies and the staff of the companies involved and carry out all the inspections necessary to the investigation.

The information received in this way is treated confidentially if its disclosure might harm the company in general.

Within the limits of his competence, the Office of the Ombudsman shall not receive any instructions from any authority.

The investigation of a complaint ends when an appeal is lodged against it.

III. Contact information

The complainant can submit his/her case by e-mail, by filling in the online form available on the website, by fax or by post. The complainant can also submit all the necessary supporting evidence in this way. The complainant may also come to the Office of the Ombudsman to submit his/her case.

The Office of the Ombudsman for the postal sector also foresees the possibility for the two parties to exchange information via the Office of the Ombudsman.

Website

<http://www.smspo.be/>

E-mail

French info@omps.be

Dutch info@omps.be

German/English info@omps.be

Post

Rue Royale 97 box 14
1000 Brussels

Telephone

French 02 221 02 30

Dutch/German/English 02 221 02 20

Visit

Our offices are open every working day, from 9 a.m. until 4 p.m. or by appointment.

Rue Royale 97

2nd floor

1000 Brussels

(itinerary available on the website)

The procedure is free of charge.

IV. Procedure

Filing a complaint

A natural or a legal person.

A Belgian or a foreigner, provided that it concerns a company active on the Belgian postal market.

Clients/users can contact the Dutch-speaking or French-speaking Ombudsman or woman.

Complaints are handled in French, Dutch, German or English.

The complainant can be assisted or represented.

Both parties have the right to access the case documents. The Office of the Ombudsman for the postal sector ensures that the parties have a reasonable period of time to, among others, take note of all documents, arguments and facts brought forward by the other party.

A client/user can always ask to end the procedure.

Which complaints are admissible?

The Office of the Ombudsman for the postal sector can, in some cases, declare that it is unable to handle a case.

You will find below an exhaustive list of the reasons why the Office of the Ombudsman can declare a case inadmissible:

Complaints that were not previously submitted to the company:

- Clients did not first try to solve their problem with the company, in accordance with the procedures laid down for that purpose.
- Clients send a copy of their complaint to the company and to our service at the same time.
- Clients do not respect the deadlines laid down by the companies for an investigation, without it being urgent.

Complaints falling outside the foreseen competences:

- Complaints falling outside the mail/parcels sector.
- Unaddressed items that were not delivered by bpost.
- Complaints following a road accident involving a staff member of a postal company.
- A rental conflict between a postal company (mail or parcels) and the owner of the building.
- A dispute between the different companies.

Complaints with insufficient information:

- If, in spite of our insistence, the client gives insufficient information to determine the admissibility or to start an investigation.

Personal disputes:

- From staff members or former staff members having a problem regarding for instance their salary, social benefits, retirement file...
- From applicants asking information or complaining about why they were not recruited.

Complaints falling outside the sector or undetermined:

- Regarding a foreign postal company (mail or parcels), for activities taking place exclusively abroad.
- Regarding an unidentifiable operator: the client does not know who delivered the item/who is responsible or has a general question regarding the entire sector.

Complaints that were filed too late or outside the deadlines:

- More than a year after the last contact with the company.
- The impossibility to intervene because the facts are henceforth impossible to retrace.

Vexatious complaints:

- Complaints offensive to the company, management or personnel.
- Constantly repeated complaints that are unfounded or do not contain any additional argument or evidence.

Anonymous complaints:

- A refusal to identify oneself.
- An e-mail address without further information and the impossibility to obtain further data (name, address).

Complaint lodged with a court:

- Complaints that have already been settled in court.
- The Office of the Ombudsman is not (or no longer) competent when a complaint has been brought to court.

How does the procedure take place?

The complaints are registered every working day as soon as they are received (in accordance with a European standard - CEN 14012 - for the registration and handling of complaints in the postal sector).

Complaints are assigned daily to a file manager who sends an acknowledgement of receipt **within two working days maximum** mentioning the file number and the file manager, including his/her contact details and the follow-up given:

- **Inadmissible complaints** are forwarded to the concerned company, which is asked to handle the complaint and to communicate the result to the client. The case is closed by the Office of the Ombudsman and the client is immediately informed.
- If the admissibility cannot be established **due to insufficient information**, the client is asked to provide information within 10 working days. Otherwise, the client is called and if he/she does not answer in the given deadline, the complaint is forwarded as inadmissible to the concerned company or, when appropriate, to the client, indicating the reasons. In both cases, the client receives a confirmation that the case is closed.
- For the **admissible complaints**, the company involved shall either transmit all the elements necessary to defend its initial point of view or make a proposal for an amicable settlement, within 10 working days.

When a complaint is declared admissible, the operator suspends the **procedure for recovery** for a maximum duration of 4 months following the lodging of the complaint with the Office of the Ombudsman or until an amicable settlement can be achieved.

The Office of the Ombudsman **analyses** the answers, may ask additional questions or carries out further research.

Limitation periods applying in ordinary law are suspended from the date of receipt of the complete request.

- **If the case is settled amicably**, the Office of the Ombudsman closes the case and sends a confirmation to both parties on a durable medium.
When no amicable settlement can be reached or if the company still does not reply after several reminders, the Office of the Ombudsman issues a recommendation sent by registered post to the company, with a copy to the complainant.

The company has 20 working days to explain its decision if it does not comply with the recommendation. The reasoned decision shall be sent to the complainant and to the Office of the Ombudsman.

If the company does not answer within the given deadline, the Office of the Ombudsman sends a reminder and informs the complainant.

The company then has another 20 working days to explain its decision if it does not comply with the recommendation.

If the specified time limit is not respected, the company shall undertake to apply the recommendation as regards the specific and personal compensation to the complainant involved.

- If the company has provided a reasoned reply within the time limit laid down but does not abide by the recommendation, the Office of the Ombudsman informs the complainant and sends him/her a copy of the company's reply.

The Office of the Ombudsman gives to the client the possibility to withdraw from the mediation at any moment. However, postal operators cannot escape the obligation to participate constructively in the resolution of the dispute.

When the Office of the Ombudsman communicates its findings and offers a solution to resolve the dispute, it is not, however, legally binding for any of the two parties. The Office of the Ombudsman relies on the goodwill of the two parties. The Office of the Ombudsman is not a judge who can impose obligations on operators or clients and a solution as proposed by the Office of the Ombudsman can therefore offer another answer than if the client brought the case to court. Accepting a solution as proposed by the Office of the Ombudsman does not in any case rule out any potential legal actions.

The Office of the Ombudsman informs the client of these provisions on a durable medium in the acknowledgement of receipt and informs the concerned operator of the opening of the case.

Processing time

The **Royal Decree of 16 February 2015** specifying the conditions to be met by the qualified entity referred to in Book XVI of the Code of Economic Law states, regarding the processing times of a case,

- That, within the 90 calendar days following receipt of the complete request, the result of the dispute resolution is communicated to the parties on a durable medium;
- That, on an exceptional basis, this deadline can be extended once for the same duration, provided that the parties are informed before the end of the initial deadline and that this extension is justified by the complexity of the dispute.

Conflicts of interests

The persons in charge of a procedure of alternative dispute resolution for consumer disputes communicate without delay to the concerned parties any event likely to impact or to be considered as impacting their independence or impartiality or to lead to a conflict of interests with one party or the other.

In case of a conflict of interests, the Ombudsman for the postal sector lays down the following:

- Another natural person is responsible for the alternative dispute resolution in the entity;
- Or, if that is not possible, the entity offers the possibility to the parties to submit the case to another qualified entity to handle it;
- Or, if it is not possible to submit the case to another qualified entity, this impossibility is notified to the parties who can oppose the continuation of the procedure by the natural person who is in the described circumstances.

Independence of the Office of the Ombudsman for the postal sector

The legislator protects the independence of the Office of the Ombudsman for the postal sector and thereby also ensures that the so-called conflicts of interests are avoided.

Article 44 of the Act of 21 March 1991 lays down that:

"§ 2. To be appointed member of the Office of the Ombudsman, the candidate must

1° possess Belgian nationality;

2° have an exemplary behaviour and enjoy full civic and political rights;

3° have a degree giving access to level 1 functions in State administrations;

4° not have exercised a mandate or a function during a period of three years prior to his/her appointment in

a) The public enterprise concerned or any associated enterprise as far as the Ombudsmen for the public enterprises are concerned;

b) ...

c) Any enterprise referred to in par. 1 of Article 43ter of this Act or any associated enterprise as far as the members of the Office of the Ombudsman for the postal sector are concerned.

§ 3. The function of member of the Office of the Ombudsman is not compatible with:

1° a remunerated public mandate;

2° a public mandate conferred by elections;

3° the profession of lawyer;

4° the function of notary, judge or bailiff;

5° a mandate or function in:

a) The public enterprise concerned or any associated enterprise as far as the Ombudsmen for the public enterprises are concerned;

b) ...

c) Any enterprise referred to in par. 1 of Article 43ter of this Act or any associated enterprise as far as the members of the Office of the Ombudsman for the postal sector are concerned.

...

§ 5. Members of the Office of the Ombudsman can only be dismissed with a valid reason by Royal Decree deliberated in the Council of ministers.