



REPORT OF THE EUROPEAN ANTI FRAUD OFFICE

Activity report for the period 1 June 2000 - 31 May 2001

EN

Rue de la loi, 200 B-1040 Bruxelles

Internet address: europa.eu.int/olaf

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FOREWORD

The following Activity Report gives an overview of the first business year for which I am totally responsible. It is characterised by the difficulties stemming from the transformation from UCLAF to OLAF.

The first Report, from May 2000, was more a stock-taking of the inheritance from UCLAF. During 2001 it emerged that this inheritance, which was outlined in the first Report, was harder to deal with than had previously been expected. A fundamental restructuring, especially with regard to internal investigations, was necessary.

The first structural changes were undertaken with the aim of breaking up the somewhat inflexible structure of the investigation units and setting up a flexible, transparent working structure. This is now in place and is fully accepted especially by the new staff in OLAF.

New arrivals have been faced with many administrative obstacles, in particular in filling the management posts, and they could not be completed within the foreseen deadline. In the meantime, numerous OLAF officials have left. Of course, the Commission had to be in agreement with this plan. Therefore it is only now possible to speak about a true new beginning.

The main priority of the work inside OLAF is therefore the completion of the organisational changes and the re-defining of the tasks of the Office. The Office therefore is now in a position to carry out its operational missions in complete independence with the unfailing support of the Supervisory Committee.

While OLAF is an administrative investigation body, the results of its investigations must be able to be used in different proceedings, for example during possible disciplinary proceedings, administrative proceedings (recovery) or even penal proceedings. Therefore close co-operation with the different authorities of the Member States and the Judiciary is necessary. Only through this close, international and multi-disciplinary co-operation can we achieve the aim of obtaining investigation results which may be effectively exploited.

The adaptation to the new requirements of OLAF was particularly problematic with internal investigations. The investigation methods had to be completely revised, and they have been brought to an acceptable standard for an investigation body aiming to achieve successful results, without disregarding the principles of the rule of law. This process is on the right track with the latest staff changes.

The mistrust of the officials of the Institutions comes from the experiences linked to the resignation of the last Commission. It is to be hoped that this mistrust can be overcome and the importance of the investigations of OLAF be better understood.

The goal of all these internal reforms is to put OLAF in a stronger position to protect the interests of Europe. An important role in this is the service function that OLAF offers in the cross-border pursuit of the misuse of public money and the resulting economic crime. Open

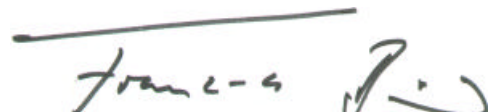
borders are a chance for Europe, but the investigation bodies are still not in a position to overcome quickly the still existing boundaries of competence. This can be accelerated with the help of OLAF and the experiences gained should be included in the future reflections on the improvement of co-operation. The Member States, along with the Candidate Countries and non member Countries are already making ample use of the possibilities which OLAF can offer in terms of providing the necessary information and bringing them into contact with the different investigation and enforcement bodies.

In an ever-growing Europe the co-operation of investigation bodies, including the judiciary, has accelerated during the last years independently of the tragic events of 11th September. While the negotiations on Eurojust, a co-ordination unit for judicial co-operation which should start its activities next year, are still ongoing, a provisional unit has already been put into place. In addition to this very visible project there are many other efforts to improve co-operation. I hope on the basis of the Green Book on the European Public Prosecutor which the Commission will produce in late Autumn to have an open dialogue about this overall project. In this framework, great efforts are required to bring together the different proposals into one overall project to develop an effective system of co-operation and collaboration.

Independently of the co-operation and collaboration established, we should strive for a solution which makes it possible for the ever growing Europe, despite the multiplicity of investigation bodies and the different legal systems, to combat irregularities, economic crime and other forms of crime detrimental to our Communities' interests as effectively as possible.

Today everybody will be called upon to think and act globally. But the investigation bodies are unfortunately excluded from this to a large degree.

OLAF will actively participate and contribute with the collected experiences of its investigators and judicial experts. The candidate countries should be involved in this dialogue at a very early stage, so as to prepare the overall project for the future.

A handwritten signature in black ink, appearing to read "Franz-Hermann Bruener". The signature is written in a cursive style and is positioned above a horizontal line.

Franz-Hermann BRUENER
Director-General OLAF

INTRODUCTION

The European Anti-Fraud Office is required to report on its operational activities¹. The first report of this kind, covering the period from 1 June 1999, the date of the establishment of OLAF, to 31 May 2000, was adopted on 23 May 2000²: it analysed the Office's powers and procedures under the relevant legislation. The report also analysed operational activities in statistical and quantitative terms and presented a series of questions to serve as a basis for future guidelines.

The present report covers the period from 1 June 2000 to 31 May 2001 and documents the major changes which have been or are about to be made to the Office's organisation and working methods in view of its mission to protect the Community's financial interests and to fight fraud and other illegal activities affecting the interests of the Community.

The first part of the report gives account of the Office's past operational activity, as regards the protection of financial interests. It presents the specific activity in each of the main sectors of the Communities' policies with a summary of some exemplary cases. Because of the protection accorded to people under investigation and the need to respect the confidentiality of investigations cases presented here are either known to the public or closed. This presentation is followed by a detailed statistical analysis which takes account of the mass of existing information and uses it in accordance with the new methodology adopted to process files.

This account of last year's operational activity is the summary of an exercise which was largely predetermined by a number of contingencies, in particular:

- the large number of files inherited from UCLAF;
- the structural inertia resulting from the transfer en bloc of human resources;
- the rigid division of operational activities and the lack of objective and transparent working methods;
- the nature of the expertise available, which is itself also inherited from the former structure;
- the actual timing of the budgetary procedure which explains that the 2000 budget was prepared by the former structure before new guidelines were formulated;
- the complexity of budgetary negotiations for 2001/2002, due in particular to the freezing of several posts;
- the heavy burden of recruitment to be carried out in the period in question;

¹ Regulations n° 1073/99 and n° 1074/1999 of the European Parliament and of the Council of 25 May 1999 (OJ L 136 of 31 May 1999). The Commission, in accordance with Article 280(5) of the EC treaty, is further required to give account, in its annual report, of its overall activity to protect the Communities' financial interests and the fight against fraud. So far, two reports of this kind have been established: the Annual Report adopted on 8 November 2000 (Doc. COM (2000) 718 final) and the 2000 Annual Report adopted on 23 May 2001 (Doc. COM (2001) 255 final).

² Doc. COM (2001) 255. The Report is available at the Internet address http://europa.eu.int/comm/anti_fraud/reports/commission.

- the slowness of the redeployments to be carried out without affecting the continuing of activities;
- the lack, finally, of a material law of Community level, in particular for offences in the area of internal investigations.

It is consequently only at the end of this period that the Director General will have most of the necessary resources for the implementation of the new policy. The period 2000 – 2001 is largely dominated by the change of direction of the Office, on the basis of procedures, resources and methods, whose adaptation will have only come into effect at the end of the period in question.

The second part opens with a summary of the main stages in the establishment of the Office. This transitional period was marked by reflections on new organisation, in co-operation with the Supervisory Committee³, which plays an important role in consolidating the Office's operational independence. The report subsequently focuses on the role of the Office, in particular the efforts deployed to modernise working methods and internal procedures and to ensure that investigations and their follow-up are effective and proactive.

The third part takes stock of progress made to set up the necessary instruments for defining the Office's future operational strategy, based on the new structure and a culture of proactive action and co-operation with the Member States.

Finally, the report sets out the Office's major orientations for future activities.

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Our Objective

The mission of the European Anti-Fraud Office (OLAF) is to protect the interests of the European Union, to fight fraud, corruption and any other illegal activity, including misconduct within the European Institutions. In pursuing this mission in an accountable, transparent and cost-effective manner, OLAF aims to provide a quality service to the citizens of Europe.

Our Methods and Means

The European Anti-Fraud Office achieves its mission by conducting, in full independence, internal and external investigations. It also organises close and regular co-operation between the competent authorities of the Member States, in order to co-ordinate their activities. OLAF supplies Member States with the necessary support and multidisciplinary technical know-how to help them in their fight against economic and financial crime. It strives to contribute to the

³ Committee set up by article 11 of Regulations n°1073/99 and n°1074/1999 to monitor the implementation of the Office's investigative function and to consolidate its independence.

design of the European strategy for the fight against fraud and illegal activities and takes the necessary initiatives to strengthen the relevant legislation.

Our Principles

The Office's activities will be carried out with integrity, impartiality and professionalism, and will, at all times, respect the rights and freedoms of individuals and be fully consistent with the law.

1 INVESTIGATION ACTIVITY⁴ (1 JUNE 2000 – 31 MAY 2001)

The following is a presentation of the period in question, mainly devoted to the continuation of work underway, the setting up of the new operational structure, the adaptation of the expertise and the definition of new working methods.

1.1 Past year's trends in investigations and operations

An important part of the past year's investigative and operational activity⁵ dealt with files that existed before the setting up of the Office. To implement the new policy decided by the legislator, the Office did not in fact start *ex nihilo* but had to reconstruct by means of redeployment and recruitment over time its resources and internal expertise. Moreover, the resources available which had been transferred en bloc when the Office was established, were devoted by way of priority to establishing new investigative procedures. This reallocation of means affected activities on the ground, but led to adoption of the OLAF Manual and full implementation of the new Case Management System(CMS)⁶.

This work was carried out within the new Investigations and Operations Directorate, set up in September 2000 composed of two pools, responsible for investigations and operations respectively.

By setting up such an operational structure and such instruments, the Office aims at the definition of an investigation policy that will be based on the contribution of all services and particularly of the new Directorate for Intelligence. Within the immediate transition context, guidelines for operational activity have been based on a harmonisation of criteria for processing information and on a pragmatic targeting of activities.

Two pools of investigators from the new operational Directorate continued ongoing tasks in the following areas:

⁴ It concerns "administrative investigations", that is all checks, inspections, and other measures undertaken by employees of the Office in the performance of their duties, in accordance with the relevant Regulations with a view to strengthening the fight against fraud, corruption, and any other illegal activity harmful to the Community's financial interests and to establishing, where necessary, the irregular nature of the activities under investigation. These investigations shall not affect the powers of the Member States to bring criminal proceedings.

⁵ Apart from investigations, the Office's operational activities include co-ordination of action to protect financial interests and assistance, particularly to Member States' criminal prosecution.

⁶ The system is presented in detail at point 2.3.3

Internal investigations

According to the priority themes defined by the overall Strategic Approach⁷, by the Parliament's guidelines in its resolutions, and by the Supervisory Committee's recommendations, internal investigations focusing on the European institutions and bodies constituted the main priority in the operational area.

Direct Expenditure

In the area of direct expenditure, operations were mainly based on the need to reinforce work on cases with internal ramifications. Priority was given to cases of a complex transnational nature and cases involving co-operation with judicial authorities within and outside the European Union, with a view notably to establishing a basis for further work in 2001/2002 in the areas of expenditure on enlargement and in the European Development Fund.

Structural actions

For structural actions, priority was given to cases with significant transnational or financial impact.

Customs/Trade

In this sector, activity was mainly concerned with:

- protecting preferential customs regimes;
- cases involving sugar and banana imports, due to high rates of duties;
- export refunds, in particular on exports to the Russian Federation⁸.

Agriculture

Processing and production aid notably for olive oil, tomatoes, flax and dairy products, based on risk identification.

Customs and Excise duties

Combating cigarette and alcohol smuggling and other illegal activities.

1.2. Internal investigations

Thirty-six investigations were opened during the period, including eight concerning Community institutions, bodies and agencies other than the Commission. Reports have been produced in nine investigations. These reports concern the Commission, the Economic and social Committee as well as the Translation Centre for the bodies

⁷ It is the third theme, defined as "an inter-institutional approach to preventing and fighting fraud and corruption" (COM(2000) 358 final of 17.07.2000 and COM(2001)254 of 15.05.2001).

⁸ Already identified in the 1999/ 2000 Activity Report, p. 42.

of the European Union and the European Parliament; eight investigation reports were followed by decisions to refer the case to the national judicial authorities.

They are usually complex cases of fraud committed either by well-organised people or by isolated individuals or individual actions which may constitute a breach of the obligations of officials.

These cases show the diversity of behaviour (misappropriation of funds, forgery, manipulation of tenders, transmission of information on tenders liable to lead to criminal prosecution, concealed activities) of officials or servants of the various institutions.

Specific investigations

Two specific investigations in cases that actually came to judgement, with assistance from the Office, bear witness to the difficulties in co-operation among all the authorities or services concerned, but they also illustrate the evolution of procedures. These two files remarkably show the need for co-ordination of the actions in the fight against fraudulent practices.

"Stockholm representation Office" case.

In November 1999, alleged financial malpractice was reported at the Commission Representation in Stockholm.

Because of the specific limitations resulting from the Protocol on the Privileges and Immunities and the Staff Regulations, the Swedish judicial authorities asked for the assistance of the Office, which has the necessary powers to carry out investigations inside the Commission.

OLAF accomplished this task and, on 24 May 2000, submitted its report both to the Commission and to the Swedish authorities. On the basis of the findings of the investigators of the Office, the judicial services were able to continue their work without any delay, also with the assistance of OLAF.

The Prosecutor for Stockholm launched the hearings and acts necessary for prosecution purposes. On 28 June 2001, the Commission started disciplinary proceedings.

This case illustrates the risks inherent in decentralised management of Community finance and the need to ensure sound financial management particularly in the delegations. In addition, the case has demonstrated an excellent co-operation between OLAF and the Swedish judiciary.

Public interest and the press coverage in this particular case have been unusually high not only in Sweden but also in other Member States. A rigorous and professional treatment of such an internal case by OLAF is extremely important for the credibility of the European institutions.

Tourism case/France

A first ruling was given in France by the Tribunal de Grande Instance of Paris on 22 September 2000 concerning fraud detected in the field of tourism. The Commission

(UCLAF) had reported the fraud in December 1994. Sentences ranging from one to four years' imprisonment and fines of €304 898 were passed against the five principal defendants and the Community was awarded civil damages of €1 029 030. As the parties concerned have appealed, the Paris Court of Appeal will retry the case (hearings scheduled for the end of 2001).

Other proceedings under way in the same case, in particular in Belgium, also commenced in 1994, should come to judgement in the near future.

This case shows the obstacles preventing national authorities from advancing rapidly in cases involving trans-national fraudulent operations whose complexity may be made even greater because of the Commission staff's status. It is regrettable that the judicial investigations have not evolved to the same degree in all the Member States.

This kind of investigation clearly shows the need for complete co-operation between Community and national services, as well as between the national services themselves, which may ensure the attainment of satisfactory results within a reasonable period of time for all parties concerned.

Generally, in order to improve co-operation and to get results as fast as possible, the Office has adopted the policy of using its own criminal law expertise and addressing the national judicial authorities at the earliest possible stage of investigations.

1.3 Direct expenditure

1.3.1 External aid and enlargement

Although investigations in this area are recognised as important, the priority given to internal cases and to reorganising and overhauling procedures has for the moment necessarily reduced the available resources. It is important that OLAF co-operate with other donor organisations (World Bank, International Monetary Fund, United Nations Agencies...) particularly with their investigation and anti-fraud services, because of the complementarity of funding programs and synergies that can be found in co-operation and information sharing. The Office has also been able to benefit from close co-operation with Non Governmental Organisations (NGO), for example Transparency International, by supporting their actions to strengthen the civil society and the fight against fraud and corruption. As OLAF and NGOs have many common objectives, it is expected liaisons will be further developed.

1.3.1.1 Typology of frauds

The types of fraud encountered in these two areas are the same as those identified in the Office's report for 1999/2000. But in the period 2000/2001, the Office identified specific problems in relation to public procurement.

An important portion of the EU budget is used for technical assistance to third countries, including the acceding countries. Most of these funds are spent through service contracts with specialist firms that bid for public tenders issued by the responsible EU departments or by recipient authorities under the supervision of the EU services.

As in all public procurement situations, there are various possibilities for fraud and irregularities. The rules to avoid fraud and ensure fair competition so that the best

services can be obtained at the best prices are the result of the combined experience of many years.

Cases in which OLAF was involved concern the suspicion of undue influence on members of committees who are responsible for evaluating the quality of offers made by tenderers. A number of allegations concern bribes and kickbacks to these persons in order to win an undue advantage over competitors. Other allegations concern conflicts of interest between experts who have been involved in designing projects and formulating terms of reference and tenders. The applicable rules are designed to ensure a level playing field for all competitors; information leaking out to potential bidders about the technical requirements at an early stage may have an adverse effect on fair competition.

OLAF will strengthen its efforts to work closely with the responsible services to increase their ability to detect potential cases of tender fraud and to further develop the rules and structures to fight irregularities with regard to procurement.

1.3.1.2 Development and humanitarian aid

The signing of the Cotonou Agreement in June 2000 ushered in a new 20-year-partnership between the Community and the ACP countries, replacing the Lomé Convention. The partnership seeks to create a more favourable context for sustainable development and poverty reduction and to reverse the processes of social, economic and technological marginalisation. It also establishes special consultation procedures and penalties for dealing with serious corruption.

The Office has examined a number of cases involving financing under the Lomé Convention and has undertaken investigations to support actions by judicial authorities concerned by fraud in certain ACP countries. The Office considers that it is important to build on this experience in the context of the commitments made under the Cotonou Agreement to boost action against fraud.

The Office is currently providing assistance to Kenya in connection with a criminal investigation into serious allegations of irregularity in a tendering procedure. This file is ongoing and is considered to be a useful test case on what can be achieved, given the legal constraints on direct action by the Office.

1.3.1.3 Enlargement.

It is necessary to ensure an appropriate protection of financing prior to accession; therefore, the Office focused on aid to national administrations in the fight against fraud. Some examples follow of work undertaken with the co-operation of national administrations in the conduct of investigations

Public procurement

OLAF handled two cases in Romania in 2000, in the area of public procurement. One concerned alleged fraud with regard to a technical assistance project in favour of the Romanian authorities. The tender was cancelled and re-launched after being completely rewritten.

In another case, information received has led OLAF to believe that tenderers may have influenced members of the independent evaluation committee. The file was

transmitted to the Romanian Prosecutor General. The OLAF Magistrates and Judicial Advice Unit has been ensuring continuing co-operation with Romanian authorities.

Management of PHARE funds

In 2001 OLAF initiated an investigation with regard to allegations of corruption in relation to the handling of PHARE funds in Slovakia.

OLAF is assisting the national investigators responsible in this case and provides expert advice on PHARE programming and tendering structures that the investigators need in order to understand the actions to be taken. A monthly workshop with the national authorities has been organised during which the interim results of the investigation and the workplan are discussed. OLAF also assists in providing information necessary for the investigators from files under the control of the European Union departments.

JOP Program

Finally, the Office has worked on cases in close co-operation with Commission departments. An example of the type of work undertaken concerns a number of cases in a joint venture programme funded by PHARE.

In the JOP programme, the Directorate General for Economic and Financial Affairs made a significant number of checks and inspections at the recipient firms. The findings highlighted the involvement of certain consultancy firms, including some in the European Union, and gave an overall view of their action. Together with the financial operations department, OLAF analysed all the files concerned and proposed a progressive strategy, taking account of the various facts emerging from the investigation, so as to be able to determine the fraud mechanism involved and to take the most effective actions to penalise those responsible.

1.3.2 Internal policies

OLAF is responsible for conducting investigations into allegations of serious irregularity or fraud in the sector of the European budget concerned with what are termed "Internal policies". These policies, which include such areas as transport, education and culture, research and technological development and which account for some 6% of the budget, are implemented and managed by different Commission departments and involve no formal responsibility of the Member States such as exists, for example, in agriculture and Structural Funds.

As far as possible OLAF is increasingly seeking to co-operate with the responsible Commission departments at all stages of such programmes to prevent and detect irregularity and fraud. Initiatives taken include: consultation at initial stages on the inclusion of appropriate anti-fraud measures in the terms on which grants and payments are approved; joint collection and evaluation of information; joint controls (depending on the legal basis); and co-ordination of financial recoveries as appropriate.

In March 2000, acting on information received from a Commission department, OLAF launched an investigation into a non-profit making organisation which had been receiving funds from a number of Commission departments for a number of years.

OLAF, in close association with two different Commission departments, prepared and undertook a comprehensive inspection of the range of different funds advanced to the organisation.

Besides a remarkable number of ineligible operations, the Office found out that the non-profit organisation had applied to the Commission for reimbursement of costs that it had not incurred and costs of services for which there were no invoices or statements.

Interim findings have confirmed that €300 000 need to be recovered by Commission departments with OLAF's assistance. Moreover, the case has now also been formally transmitted to the Member States' judicial authorities for action on allegations of fraud and deception.

A lesson that can be drawn from this investigation is that, when the European Commission finances a non-profit making organisation on a long-term basis, such financing may create *de facto* dependence, since these organisations rarely have the resources to finance their permanent assets (building, equipment, staff).

1.4 Structural measures

In consideration of the central role played by the Member States in the field of the Structural Funds, the Office focused its efforts on its own investigations and on high-risk areas. Nevertheless, it was particularly vigilant regarding the follow up action taken by them in cases of systematic irregularities with major financial implications.

In this framework, OLAF co-operated closely with the Commission authorising services and with the Member States, in order to ensure the co-ordination of the activities aiming to protect financial interests, combat fraud and remedy persistent weaknesses.

Since December 2000, the Office has been using a new communication software, set up in the context of Regulation n° 1681/94⁹ which, in making on-line communication between Member States and the other departments concerned possible, will boost the effectiveness of administrative and financial follow-up.

Moreover, the Office transmitted full information on criminal activities to competent judicial and police authorities for the opening of criminal proceedings and gave them its full co-operation and assistance. Several co-ordination and assistance cases were opened on this basis.

For its more operational activity, OLAF paid close attention to the cases where the activity of the Member States alone proved insufficient or impossible, including cases where:

- transnational irregularities or irregularities may involve economic operators acting in several Member States;

⁹ Commission Regulation (EC) No 1681/94 of 11 July 1994 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the structural policies and the organisation of an information system in this field(OJ L 178, 12.7.94, p. 43)

- inadequate answers are given by the Member State to the Office’s requests;
- the recipient had received Community funds from different sources (direct financing and Structural Funds).

During a routine control carried out by one of the authorising departments of the Commission in a Member State on a project partly financed by a Structural Fund, OLAF’s attention was drawn to expenditure statements submitted by the beneficiary on the basis of documents issued by a contractor based in another Member State.

The contractor in question, who was also the direct beneficiary of Community financing, was the subject of an on-the-spot inspection by OLAF on the basis of Council Regulation No 2185/96.¹⁰

The Office ascertained facts showing that expenditure presented in the part-financed project had been inflated and, in particular, that a part of the over-invoiced amount had been used to pay money to a company established in a tax haven.

The inspection report and all relevant documentation were immediately transmitted to the judicial authorities of the Member State where the part-financed project was submitted. Searches and seizures carried out afterwards in co-operation with the Office enabled the situation previously suspected to be confirmed.

1.5 Customs/Agriculture external Trade/ Taxation

1.5.1 General review of activities-

The Customs Union and the common commercial policy fall within the exclusive responsibility of the Community (Articles 23 and 131 of the EC Treaty). The Commission accordingly has the power to take action against operations which constitute or appear to constitute breaches of the customs legislation. Regulation (EC) No 515/97¹¹ is the basic Regulation containing provisions on mutual assistance between Member States and between Member States and the Commission. OLAF is responsible for the application of this Regulation.

On the basis of implementing regulations¹² and international agreements, OLAF has the highest responsibility for organising an effective co-operation at all levels in order to ensure a good application of customs and agriculture regulations. To that end, it exchanges information, co-ordinates actions undertaken in the Member States, takes part in checks and inspections in the Member States and non-member countries and carries out on-the-spot checks.

All customs investigations concern exchange of goods between the European Community and non-member countries (import, export, transit, warehousing,

¹⁰ Council Regulation (Euratom, EC) No 2185/96 of 11.11.1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities’ financial interests against fraud and other irregularities (OJ L 292, 15.11. 1996, p. 2).

¹¹ Council Regulation (EC) No 515/97 of 13.3.1997 on mutual assistance between the administrative authorities of the Member States and co-operation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (OJ L 082, 22.3.1997 p. 1).

¹² In particular Regulation No 515/97 and Regulation 2185/96

processing) on the basis of information on established or suspected breaches of customs legislation.

In the fight against VAT fraud, the legal basis (Regulation No (EEC) No 218/92¹³ and Directive 77/799/EEC¹⁴) provides for the primary responsibility of the Member States¹⁵. But Article 280(3) of the EC Treaty contains the obligation for the Member States to co-ordinate their actions to protect the Community's financial interests and to "organise, together with the Commission, close and regular co-operation between the competent authorities".

The Commission, which has already an operational experience in this field, plays a co-ordination and stimulation role, particularly in the exchange of information, in the most serious intra-community frauds, with ramifications in many Member States.

OLAF therefore intervenes in international VAT cases only if they require Community co-ordination at operational level and its assistance is explicitly requested by a national administrative or judicial authority.

1.5.2 *Agricultural external trade*

In matters of agricultural trade with third countries, priorities include the examination of matters concerned with the payment of export refunds, the recovery of customs duties due on certain agricultural imports and the application of preferential agreements in agriculture. OLAF conducted specific enquiries in the following high risk sectors: beef (exports to Russia), fruit and vegetables (investigation into banana imports - see detailed description below), milk and milk products (investigation into adulterated butter), and wine and alcohol exports.

Enquiry into banana imports.

Following joint checks by OLAF and the Italian and Belgian authorities, in the framework of both criminal and administrative enquiries, it was established in mid 2000 that false AGRIM import licences were being used at customs clearance for free circulation of bananas coming from South and Central America. Investigations are continuing and have now been extended to several other Member States (France, Portugal and Spain).

Banana imports from South and Central America are eligible for reduced customs duties (€75 /tonne) under an annual quota when covered by AGRIM import licences. Imports of such bananas outside the tariff quota are currently subject to the payment of €80/tonne.

Bananas mainly entered the Community via Belgian and Italian ports, although similar operations have been identified in Spain, Portugal, Greece and Germany. So far it has been established that between early 1998 and mid 2000 at least 160 000 tonnes of bananas were imported covered by false French AGRIM licences, whereas

¹³ Council Regulation (EEC) No 218/92 of 27.1.1992 on administrative co-operation in the field of indirect taxation (VAT) (OJ L 24, 1.2.1992, p. 1).

¹⁴ Council Directive 77/799/EEC of 19.12.1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation (OJ L 336, 27.12.1977, p. 15).

¹⁵ To strengthen administrative co-operation in the field of VAT, the Commission has proposed a new Parliament and Council Regulation and Directive (COM (2001) 294 final, 18.6.2001).

approximately 60 000 tonnes were covered by false Spanish AGRIM licences. Evaded customs duties are estimated at approximately €160 million so far.

Following the detection of this large-scale banana fraud, the Commission immediately enacted Regulation (EC) n° 1632/2000, to boost the control measures¹⁶.

The investigations into the network for the production of false French and Spanish certificates have been carried out in close co-operation with the national judicial services. They showed how criminal organisations exploit the loopholes of international co-operation to make huge profits at low risk. Bringing to the fore these activities demonstrates the excellent co-operation between the Member States and OLAF (in both judicial and administrative circuits) and is evidence of the very positive results of their collaboration, carried out in a spirit of partnership and information sharing, for the purpose of protecting the Community's financial interests.

1.5.3 *Fishery / Industrial products (textiles and footwear)*

In the field of fishery and industrial products (including textiles and footwear), priority was given to the files requiring action at Community level and meeting one or more criteria:

- involvement of international groups aiming to capture markets by fraudulent practices,
- high customs duties or a combination of customs and anti dumping duties,
- threats to other Community policies or to health measures;
- need to check the correct application of the preferential arrangements,
- undervaluation, and abuse of the transit system, especially in the field of footwear and textiles.
- massive diversion of trade protection.

In the field of fishery, these actions revealed significant frauds particularly concerning:

- canned tuna imported with the undue benefit of preferential treatment reserved for ACP (Africa, Caribbean, Pacific) countries;
- shrimp and squid imported with the undue benefit of GSP (Generalised System of Preferences) preferential treatment, also in order to circumvent prohibitive health measures aimed at certain Indian producers,
- salted cod imported from Iceland with the undue benefit of preferential arrangements provided for in the EEA (European Economic Area) agreement;

¹⁶ See point 2.3.1 of the annual Commission Report on protection of the communities' financial interests and the fight against fraud (Doc. COM(2001) 255 final/2 of 23.05.2001).

In the field of industrial products, the actions carried out allowed significant irregularities to be identified on:

- Brazilian, Canadian and Russian aluminium imported duty-free (abuse of the procedure granted to the overseas territories);
- metal-silicon falsely declared to be of Swiss or Russian origin to avoid the antidumping duties on Chinese products;
- silicon carbide falsely declared to be of Czech origin to avoid the antidumping duties on Russian and Ukrainian products;
- clothing products imported from Malaysia and declared to be of Malaysian origin while unduly benefiting from GSP preferential arrangements and circumvention of the quotas applicable to the true country of origin (Vietnam);
- shoes imported under a false origin to exceed the quantitative limits and/or to avoid the antidumping duties in force with regard to Chinese origin;
- the removal of Asian textile products from the Community transit procedure to avoid the payment of the customs duties due and exceed existing quantitative limits;
- the release for free circulation (without payment of VAT) of Asian textile products in a first Member State on the basis of a false invoice and consequently on the basis of a reduced declared value; thereafter, the recipients in the other Member States pay the correct amounts to the suppliers in the third countries. In this way, the customs services in the importing Member State are not in a position to establish the correct value at the time of import; moreover, a check on the subsequent payment of VAT is very difficult.

Textiles: a specific case

As a result of an investigation and administrative co-operation mission organised by OLAF, joint enquiries have been carried out with the competent authorities of Malaysia in relation to the fraudulent use of Malaysian Certificates of Origin for textile products – principally denim jeans.

A single importer, based in Germany but with business interests in other Member States and a number of other countries, had undertaken a systematic assault on the Community's import restrictions by presenting false documents misstating origin and value of the products involved. According to the analysis of one Member State (the Netherlands), the resultant fraud, for illegal imports from Malaysia alone, approached 10% of total annual Community imports for the products concerned. Similar fraudulent imports had taken place earlier claiming the origin of the products to be Cambodia, Laos, Myanmar, Vietnam and Lesotho. The overall minimum economic impact is €30 million, with own resources at risk of €4.5 million.

As a consequence of increased surveillance by OLAF and the Community's customs services, the principal suspect fled from the jurisdiction of the European authorities, but not before defrauding European banks and a certain African government's Trade Development Board of more than €60 million.

This case illustrates the fraudulent activity of a single individual, working in the context of a highly-organised international criminal network, capable of obtaining and producing false origin, commercial and transport documents at will. Its effects are far greater than the immediate impact of false claims to tariff preference (import duties) and evasion of value added tax. It has an immediate detrimental effect on the trading and business activities of legitimate Community importers and on Community trade policy, and it places an undue burden on the Community's international trade agreements and administrative co-operation arrangements which is disproportionate to the direct financial benefit to the fraudster.

1.5.4 Drug precursors

In the field of drug precursors, priority was given to co-ordinating the efforts of the Member States to seize/prevent the use of these products for the illegal manufacture of drugs. The communication of information to the Member States is aimed at avoiding "shopping around" by persons and companies. The preparation of the world-wide monitoring of acetic anhydride ("Operation Topaz") was another priority, along with co-operation with international organisations (for example United Nations International Narcotics Control Board and World Customs Organisation).

1.5.5 Indirect taxation

In this field, falling primarily under the responsibility of the Member States, OLAF provides co-ordinated assistance aimed at protecting the financial interests of the Community and fighting fraud, in agreement with the Member States and at their request. Evident in this activity, in compliance with the mandate laid down in Article 280(3) of the EC Treaty, is the prefiguration of the Communities' platform of services described at point 3.7.

Priority was given to measures enabling the Member States to co-ordinate their actions to combat fraud which:

- involves high amounts; and/or
- is organised via carrousels, involving intra-Community trade and in certain cases imports/exports; and/or
- is organised by criminal organisations; and/or
- is connected with fraud in other fields (cigarettes, money laundering, etc.).

Given these criteria, actions focused especially on cars, mobile telephones, electronic components and metals.

VAT - Co-ordination of investigations into precious metals (silver, gold etc) –

Precious metals are one product category, amongst others used by internationally organised criminal groups for the systematic evasion of VAT. The raw material for the production of precious metals (for example silver) is found or traded in world-wide markets, where it is processed and traded in the form of ingots or grains. The international price is fixed daily at the London Metal Exchange (LME).

Refining or wholesale companies sell the goods to intermediate companies following two different procedures:

- the goods are cleared through customs for free circulation in the Community without payment of VAT at the time of clearance. After clearance, the goods are sold in another Member State, allowing the importer to recover the tax on the basis of the false invoice, delivered by the buyer in the Member State of destination (who will become a “missing trader”);
- the same system is used in case of intra-community sales.

VAT evasion gives an undue competitive advantage to the economic operators who take part in it and it distorts the internal European market. As VAT is not harmonised, a course of transactions in the Member States multiplies the impact of VAT evasion at each stage. The resultant tax loss is very high.

At the request of the competent authorities in the Member States, OLAF is assisting in the co-ordination of the actions by the national authorities using its expertise on the VAT and criminal legislation, as well as the organisational structures of each Member State.

1.6 Agriculture

1.6.1 Introduction

In the Community internal agricultural market, OLAF was particularly concerned with checks and inspections regarding flax (see below) and alleged breaches of the application of the milk quota rules by companies in several different Member States.

1.6.2 Irregularities in the flax regime, Spain.

Following reports from Spain in 1999 about suspected irregularities in the operation of the flax regime, which is fully funded by the Community budget, OLAF contacted the appropriate Spanish authorities. The Spanish Fiscalía Especial Anti-Corrupción (SFAC = Special Anti-corruption Prosecution Service) then opened an inquiry. OLAF also opened its own administrative enquiry under Regulation (EC) No 2185/96 in May 2000. In December 2000, OLAF received a copy of the final report of the SFAC, and OLAF’s own enquiry was finalised in mid-March 2001.

In essence this involved the over-declaration of the production of flax straw from parcels of land cultivated for flax and the submission of false grant claims to the Spanish authorities. Such claims were accompanied by false declarations of processing, certified by the flax processing units. In the report period 1998/99 and 1999/2000 Spain received financial transfers amounting to over €100 million.

The OLAF administrative investigation was extended to Belgium, targetting an economic operator linked to the Spanish processors. Other investigations are ongoing in Portugal and in the United Kingdom in the same field.

On its completion in mid-March 2001, OLAF sent a copy of its report to the Spanish judicial authorities for appropriate action, to FEGA (the Spanish Paying Agency) with appropriate recommendations and to Directorate General Agriculture, Clearance of Accounts Unit, for consideration of a financial correction to be imposed on Spain

in the clearance of accounts procedure for possible failings in the controls operated in the flax regime during the periods in question.¹⁷

This investigation illustrates the complexity of the actions to be carried out under different aspects: recovery in respect of operators, financial corrections to the Member States' funds, judicial assistance to national authorities for suspected corruption.

1.7 Cigarettes

1.7.1 Priorities of the sector

The protection of the Community's financial interests against organised international cigarette fraud was one of the Office's priorities during the year. Cigarette smuggling is a problem for all Member States and for many non-member countries, causing serious losses to Community and national budgets. The organisers of the frauds make enormous profits, and cigarette smuggling is often linked to other illegal activities such as VAT fraud, money laundering and drugs. Particularly concerning cigarettes, fraudsters treat fraud as a global business for which they have huge resources and very sophisticated infrastructures.

Smuggled cigarettes have often been warehoused in the European Union at an earlier stage before they are exported, or declared as having been exported, to third countries. The export procedures and the subsequent customs procedures in third countries are usually strictly legal, but the quantities of cigarettes being exported to certain destinations, and the brands of the cigarettes involved, should raise concerns about the possible subsequent intentions for these cigarettes. It is only by improving co-operation, enhancing the awareness of the situation and exchanging information and intelligence that it will be possible to take more effective preventive action to reduce cigarette smuggling. The Office therefore contributes to combating cigarette fraud through the co-ordination of investigations within and outside the Community and by providing services to the Member States' enforcement and judicial authorities to assist them in investigating, preventing and prosecuting the fraud.

The Office is also contributing fully to the Commission's civil action in the American Courts against two American cigarette manufacturers. In addition, under the terms of the EC-USA Customs Mutual assistance agreement, the Office's Director General and the US Customs Commissioner arranged for two colleagues from the US Customs to work in OLAF for three months in order to enhance co-operation in the fields of common interest. This has proved to be very useful and may well be repeated in the future.

There are really no new methods of committing fraud in the cigarette area: the smuggling mainly arises through misdescription, diversion and "pure" smuggling (totally undeclared consignments). However, the organisation of the frauds changes to take account of changing circumstances. If the control of the sourcing and movement of cigarettes becomes tighter in a particular country, the fraudsters simply relocate their operations to another country. Because of the huge profits involved, the fraudsters are ready to store or move cigarettes for a considerable period of time,

¹⁷ Council Regulation (EC) n° 1258/1999 of 17.05.1999 on financing the Common Agricultural Policy (OJ No L 160, 26.6.1999).

hoping to reduce the interest of the enforcement authorities in the cigarettes, before smuggling them into the Community. In the light of trends in the movement and storage of cigarettes, a primary objective of the Office will therefore be to improve co-operation with certain key countries so that information about cigarette movements is rapidly available and can be used to prevent the smuggling of cigarettes into the Community.

1.7.2 *Description of a case*

In a recent case the Office provided support to a Member State needing to gather evidence for the prosecution of a major fraudster who has been involved in serious smuggling activities into the European Union over a number of years. Members of the Office led Community missions in former Yugoslavia countries in order to establish the routes and means of transport used for the movement of the cigarettes, as well as the identity of the consignees and warehouses involved in the movements. The missions also established the declared final destinations for the cigarettes for their return to the European Union, the dates of these movements, the vessels used and the names of the crew of these vessels.

In co-operation with the authorities in these countries the missions were also able to examine commercial documentation relating to the various consignments and their financing. Copies of a very large number of documents were also obtained which can be used by the Member States to prosecute frauds in the European Union. In addition, these documents will be analysed in the Office to see what further information can be gleaned which would be helpful to other Member States which did not take part in the missions. The Community's agreements with third countries in general, and the Office's relationships with the appropriate authorities in these countries in particular, enable the Office to provide a service over and above that which the Member States could perhaps obtain merely through bilateral agreements with the countries concerned.

1.8 **Statistical overview**

Statistics for operational activities in the period 1 June 2000 - 31 May 2001 are produced hereunder. The figures provided in the tables below have been extracted from the Case Management System and they reflect the past year's trends. Note also that figures have been rounded up or down to the nearest percentage point. The overview which is provided here has been established by the staff still in place, on the basis of old files. It is therefore not representative of the new operational policy, even if the statistics are based on the new method and the transparency requested by the Director General. To ensure continuity in handling files it has been necessary to adapt this method to existing files.

The headings used in the statistical breakdown of cases are evaluation, investigation and closed.

Evaluation

Evaluation does not involve any investigation activity. A complaint, whether received by letter, phone call, email or formal report and whether from a private citizen, economic operator, national authority or Community institution will be first assessed by an investigator with responsibility in the subject area. He can use the

information available within the Office and contact European institutions, agencies and bodies, competent national authorities and the source of the information to confirm the alleged facts. The Advisor who deals with that sector will make an evaluation and refer the case to the Board of the Operations Directorate. The Board which is constituted by the Operations Director, all Advisors and the Head of the Magistrates and Judicial Advice Unit will prepare an opinion for the Director General who then decides whether or not to open an investigation. The Office does try to ensure the evaluation is carried out as expeditiously as possible and that the resources allocated are adequate. One of the aims of this phase is to weed out the unreliable information and to close these files. This screening work enables the office to close a large number of files at this stage.

Investigation

This signifies that a formal investigation in accordance with Regulation 1073/99 or Regulation 1074/99 has been formally opened by the Director General. At the end of this stage a final investigation report is presented which may recommend follow up action. On the basis of this report the Director General takes the formal decision to close the case. This marks the end of the investigation phase and the file is then considered to be completed from an operational point of view.

Closed

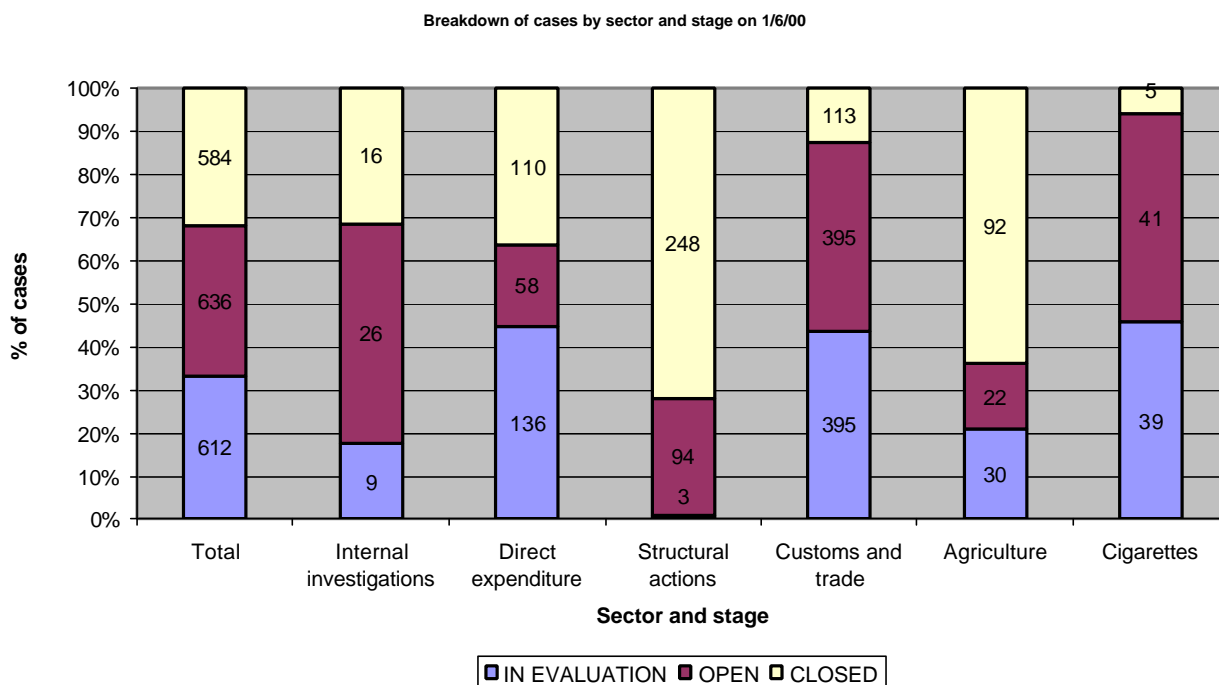
The same procedure and level of scrutiny used to open a case is adopted in closing it, though the decision is usually based upon evaluation of the investigators' final case report. The file although closed from an operational point of view still requires, generally speaking, a financial, administrative or judicial follow up (see point 3.1 on the revised version of OLAF Manual).

Cases were closed during the reporting period for a variety of reasons. Typically there were cases where after investigation it was found the allegation could not be substantiated. Evidence was not available or after assessment, it failed to support the matters alleged. Equally there were cases in which the facts were substantiated but there was no criminality or financial irregularity to be found. Accusations may be withdrawn, an essential witness may decline to co-operate or the subject matter may be found to be outside the competence of OLAF. There have also been cases which have been statute barred because of the interval between the commission of the offence and its referral to OLAF or the Office's ability to dispose of the matter within the time allowed. On this latter point it should be noted that as the Office recruits more staff and better management systems take effect it is not expected there will be any case discontinued as a result of dilatory treatment of the complaint.

Following the adoption of the OLAF Manual and after drawing up an inventory and verifying the files to be transferred from the old database (see point 2.3.3 above) during the activity period, the Office has adopted a new statistical methodology based on the systematic and complete recording of files. Prior to the introduction of CMS, there was no procedure in place for encoding changes in the database when the Director General officially opened or closed a case. The changing of the status of a case (from evaluation to open and from open to closed etc) was based on the judgement of the investigative staff. Since the implementation of CMS in May 2001, internal procedures have been put in place to ensure that all cases formally opened or closed by the Director General are encoded in the CMS.

Consequently cases listed as opened or closed during the period are a mixture of those whose status was changed by OLAF staff and those officially opened or closed by the Director General of the Office.

Situation as at 1/6/00¹⁸



Situation at 1/6/00	Internal Investigations	Direct Expenditure*	Structural Actions	Customs and Trade	Agriculture	Cigarettes	Total	% of cases by stage
Evaluation	9	136	3	395	30	39	612	33%
Open	26	58	94	395	22	41	636	35%
Closed	16	110	248	113	92	5	584	32%
Total at 1/6/00	51	304	345	903	144	85	1832	100%
% of total number of cases	3%	17%	19%	49%	8%	5%	100%	

*Including external aid

The total number of cases at the start of the period is characterised by

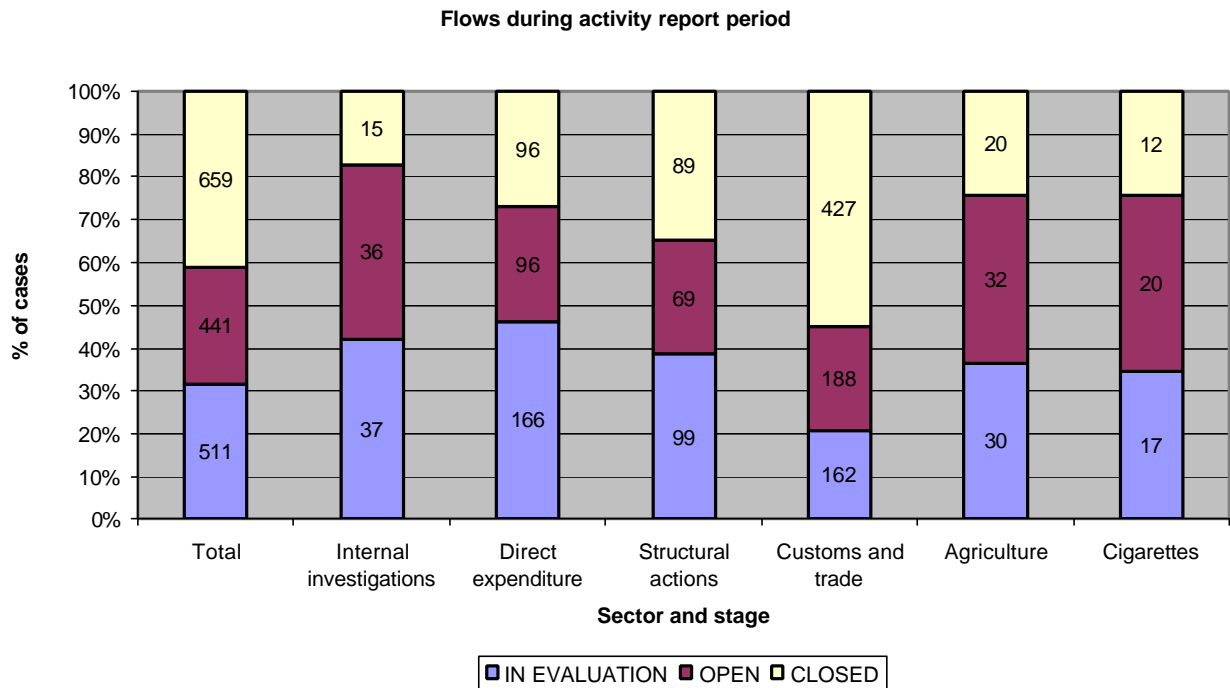
- a roughly equal breakdown of cases between cases in evaluation (33%), cases being investigated (35%) and cases closed (32%);

¹⁸

With regard to the abovementioned statistics, OLAF has not in this report classified offences by type because very often there is no definition of what constitutes an offence common to all Member States. Furthermore, classification can only safely be made at the conclusion of the matter.

- a large number of cases in evaluation in the area of customs and external agricultural trade (44% of all customs and trade cases), direct expenditure (45% of all direct expenditure cases) and cigarettes (46% of all cigarettes cases). This reflects the large number of cases created that had not been actively pursued due to lack of resources or other cases having greater priority;
- customs and trade cases making up almost half (49% of total) of the total cases.

Flows during the period (1 June 2000 – 31 May 2001)



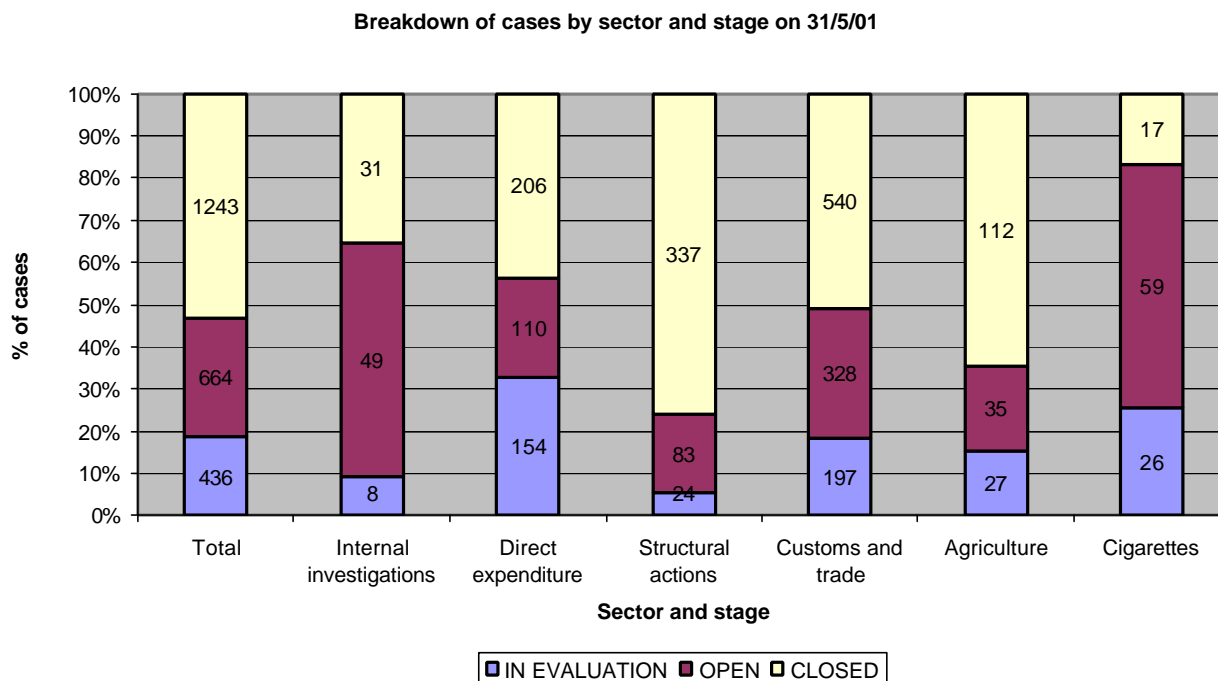
Flows during activity period	Internal Investigations	Direct Expenditure	Structural Actions	Customs and Trade	Agriculture	Cigarettes	Total
Evaluation	37	166	99	162	30	17	511
Open	36	96	69	188	32	20	441
Closed	15	96	89	427	20	12	659
% cases by sector	8%	22%	16%	43%	7%	4%	100%

During the period considered in the table, 511 new files have been created (evaluation), 441 cases moved on to the investigation stage and 659 files were closed. The total flow therefore includes former cases already appearing as at 1st June 2000 and new cases created in the period

The movement in the number of cases during the period is characterised by:

- a high degree of activity in the area of internal cases which represent 8% of the cases created thus reflecting the priority nature of this work for the Office;
- the large number of cases closed, notably in the area of customs and trade (65% of the total cases closed); this reflects the efforts devoted to revalidating and updating all cases migrated from the previous database system mentioned at section 2.3.3 of the present report.

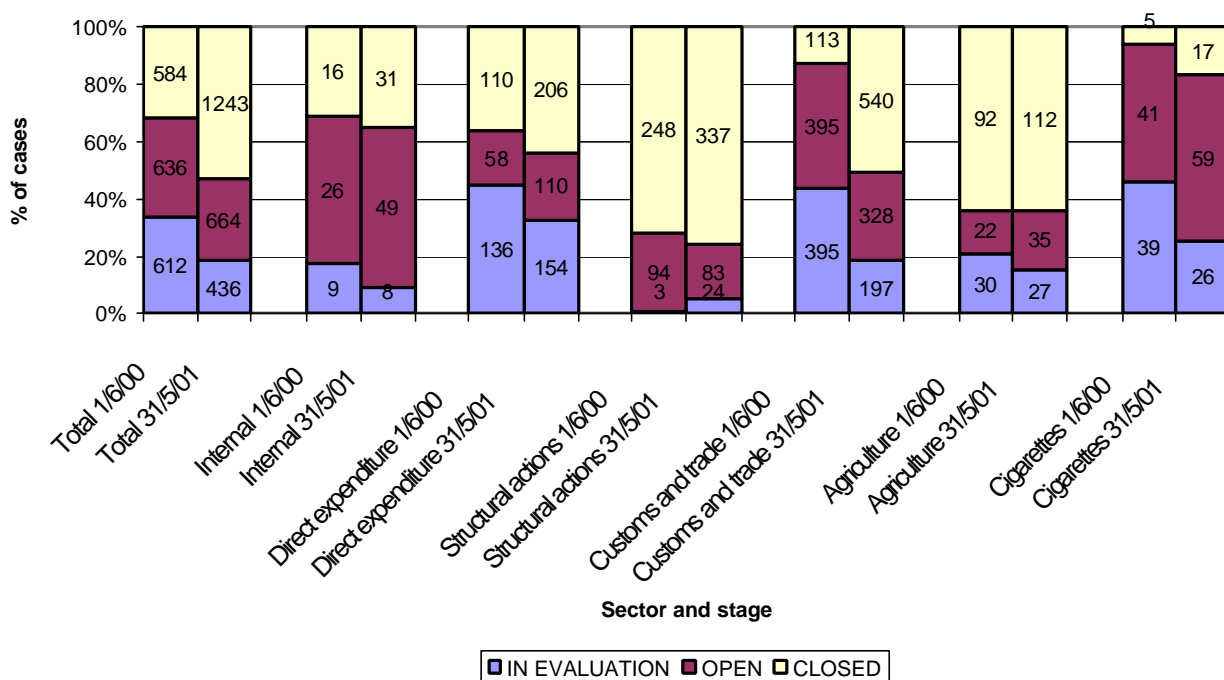
Situation as at 31/5/01



Situation at 31/5/01	Internal investigations	Direct expenditure	Structural Actions	Customs and Trade	Agriculture	Cigarettes	Total	% of cases by stage
Evaluation	8	154	24	197	27	26	436	20%
Open	49	110	83	328	35	59	664	28%
Closed	31	206	337	540	112	17	1243	52%
								100%
Total at 31/5/01	88	470	444	1065	174	102	2343	
% cases by sector	4%	20%	19%	45%	8%	4%	100%	

When combining the opening figures at 1/6/00 with the movements for the period under review, the situation at 31/5/01 is as illustrated above. A comparison of the situation between the beginning and the end of the period is presented below.

Comparison between beginning (1-06-2000) and end of period (31-05-2001)



The situation at the end of the period is best compared with that at the start of the period and is characterised by:

- an absolute increase in the total number of cases from 1832 to 2343, an increase of 28% during the period which represents a relatively high level of activity. This is partly due to the more rigorous system of registration of cases introduced by the CMS and also to an increased awareness of the activities of OLAF by the EU institutions and the general public and improved co-operation with the Member States;
- a significant fall in the total number of cases in evaluation which fell from 612 to 436. This represents a fall as a proportion of all cases from 33% to 19% over the period. As mentioned previously, this development is largely related to the extensive work carried out in the Office to progress customs and trade cases referred to above;
- a small increase in the total number of cases in investigation which rose from 636 to 664 although this represents a fall as a proportion of all cases from 35% to 28% over the period;
- a large increase in the number of cases closed from 584 to 1243, this represents an increase in the proportion of all cases from 32% to 52% over the period. This development is largely related to the extensive work carried out in the Office on old cases referred to above.

As regards the breakdown of all cases between areas of investigation, the following should be noted between the beginning and the end of the period:

- the increase in the number of internal cases (absolute increase from 51 to 88 cases which represents an increase from 3% to 4% of all cases) and direct expenditure (absolute increase from 304 to 470 cases which represents an increase from 17% to 20% of all cases);
- the reduction, as a proportion of all cases, in customs and trade cases (absolute increase from 903 to 1065 cases but overall a fall from 49% to 45% of all cases) and cigarettes (absolute increase from 85 to 102 cases but overall a fall from 5% to 4% of all cases);

2 OLAF PROCEDURES IN THE INSTITUTIONAL SET-UP

2.1 Relations with the Commission departments

Articles 2 and 3 of the Commission Decision of 28 April 1999¹⁹ distinguish between the investigation mission of the Office which it carries out in full independence and the other missions which it carries out as a department of the Commission.

2.1.1. *The functional autonomy of the Office*

The Office enjoys administrative and financial autonomy within the Commission and follows the line laid down by the Decision of 28 April 1999. For its internal organisation measures: insofar as they are compatible with the provisions concerning its operational independence, the Office applies the Commission's internal organisation rules. To take into account this particular status, the Commission, in full agreement with the Director General and the Supervisory Committee amended the composition of the advisory committee for management staff appointments. In his capacity as appointing authority, the Director General decides on the organisation of his department and informs the Commission of his decisions.

In financial matters, the Director General of the Office prepares the preliminary draft budget and informs the Directorate General for Budgets²⁰. Parliament and the Council adopt the Office's budget and establishment plan on this basis. The Director General is the authorising officer for the implementation of the specific line of the general budget reserved for OLAF. In practice, a more or less formal inventory of the expenditure to be managed directly by the Office was drawn up together with the Directorate General for Budgets and the Directorate General for Administration, the Commission departments and an allocation of management functions on a pragmatic basis has been carried out. The object of this exercise is to benefit from economies of scale without affecting the independence of the Office. The decentralisation of the functions provided for by the Financial Regulation (authorising officer, accounting officer, internal auditor) is nearly completed.

The legislator²¹ wanted OLAF to have an independent power of administrative investigation in particular within all the Community institutions and bodies. The Director General and the Supervisory Committee are the guardians of this functional independence.²²

¹⁹ Commission Decision 99/352/EC/CECA/Euratom of 28 April 1999 (OJ L136 of 31.05.1999) creating the Office.

²⁰ In accordance with article 6 of Commission Decision 99/352/EC of 28 April 1999

²¹ Council Regulations (EC) No 1073/1999 and (Euratom) No 1074/1999 of 25.5.1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) (OJ L 136, 31.5.1999 p. 8).

²² Articles 11 and 12 of the Regulations referred to above.

2.1.2 *The administrative and budgetary organisation of the Office*

2.1.2.1 A new structure to put the new guidelines into practice

The Commission presented its overall strategy for the fight against fraud to the European Parliament and the Council during the second half of 2000²³. The Supervisory Committee's opinions and annual report stressed the need for OLAF's structure and establishment plan to be adjusted in line with its tasks and priorities. These priorities were then set out in the 2001-2003 Action Plan approved by the Council in Gothenburg on 15 June 2001²⁴.

In organisational terms, this overall approach entails a clearer distinction between operational functions: intelligence, activities on the ground, assistance and administrative, legislative, judicial and financial follow-up. This differentiation not only avoids the cumulation of functions and conflicts of interest within the same structure, but also aims to organise work on a horizontal basis and support complementarity.

In this spirit and to take account of transfer of all the staff from UCLAF and ensure the transition to the Office and a new operational culture, a first reorganisation in September 2000 set up two Directorates to mark the transition from UCLAF. One of these Directorates is responsible for investigations and operations; the other is a horizontal Directorate responsible both for proposing political and legislative initiatives and for providing the operational pole with support and advice. The structure of the Investigations and Operations Directorate groups the sectoral advisers into two teams, one dealing with internal investigations, direct expenditure and structural measures and the other with other external investigations and operations. In accordance with the guidelines laid down, the objective was to replace the existing sectoral structures with teams that were flexible and versatile and to allow a policy of adjustable priorities. The horizontal Directorate is designed to strengthen the legal and judicial dimension and the cohesion of operational action with national administrative and judicial authorities.

The purpose of this transitional structure was to allow the overall transfer of resources after a period of observation intended to ensure that the organisation was capable of adapting to new orientations and organising the staff's redeployment. At the end of the first half of 2001, the reorganisation of administrative structures continued with the creation, currently ongoing, of a third Directorate responsible for strategic and operational intelligence; these departments previously reported direct to the Director General. The Community level is to be an information hub prefiguring a future Economic and Financial Crime Monitoring Centre and helping to establish priorities for operational action. The new structure will combine information

²³ COM (2000) 358 final of 28.06.2000, approved by the Economic and Financial Affairs Council of 17.07.2000 and by the European Parliament in its Resolution of 13.12.2000.

²⁴ COM (2001) 254 final of 15 June 2001. The above mentioned priorities are the following:

- the conception of an overall anti-fraud legislative policy based on a strengthened legislative framework;
- a culture of co-operation with all the institutions and the national authorities;
- an inter-institutional approach to preventing and fight fraud, corruption and other illegal activities;
- strengthening of the criminal dimension of operational activities.

gathering and processing activities, including information technology, and will be mainly responsible for strengthening the relevance and impact of investigations and operations undertaken by OLAF. This pole will also make its expertise available internally (Commission departments and other institutions) and externally (Member States) to secure complementarity with the Office's work.

The following either were or are being established:

- a Financial Follow-up and Recovery Unit in the General Affairs and Legislation Directorate, for the Office files.
- a unit to provide support to the applicant countries, reporting to the Director General. Its task is to establish close co-operation with these countries so that in the run-up to accession they can become prepared to ensure a level of protection of the Communities' financial interests equivalent to the level achieved in the rest of the Community;
- a financial auditor responsible for improving financial management and evaluation in accordance with the new guidelines laid down by the Commission;
- an advisor responsible for security and data confidentiality.

2.1.2.2 The adaptation of human and financial resources

In past years, the budgetary authority strengthened substantially the financial and human resources of the Office²⁵. In its mid-2000 opinion²⁶, the Supervisory Committee however expressed its concern at the delays noted in the establishment of the conditions necessary for the independence of the Office and its administrative and budgetary autonomy. Recruitment, in the Office, has revealed itself to be a heavy and complex procedure, owing to two principal factors: first, the new Director had to manage the change of direction of the Office, while the draft 2000 budget was drawn up by UCLAF²⁷; second, successive amendments were made to the establishment plan during the 2001 budgetary procedure. Moreover, the organisation of the selection procedures for the recruitment of temporary staff (1200 candidates) constituted a very heavy workload, before the reserve lists of successful candidates could be established.

To follow the guidelines laid down by the legislator and the high-level Working Group set up by the European Council²⁸, the budgetary authority, in adopting the 2001 budget, substantially amended the OLAF table of posts, in particular by increasing the number of temporary staff in categories A and B (123 temporary posts authorised in 2001, while temporary posts passed from 143 in 2000 to 109 in 2001) and the number of B posts in relation to A posts. Moreover, the availability of the 76 new posts provided for in the initial 2001 budget has been "frozen" while awaiting

²⁵ The Office has a specific budget heading inside part A of the section of the general budget of the Union; in annex to this part, appear the detailed contents as well as a list of the posts assigned to the Office.

²⁶ Opinion 2/2000 on the initiatives of the institutions regarding OLAF's future.

²⁷ Before the new guidelines were laid down by the legislator and the Commission's overall Strategic Approach.

²⁸ This High-level Working Group comprised three representatives, from the Commission, Parliament's Committee on Budgetary Control and the Presidency.

the conditions laid down in the Resolution of 16 May 2000 on the Protection of financial interests and the fight against fraud to be met; the release of some of the posts is envisaged within the framework of the amended budget for 2001²⁹. This involved redeploying A grade officials to vacant posts in other Commission departments while taking care to avoid any break in the continuity of activity and the level of expertise.

	A			B		
	Permanent staff	Temporary staff	Total	Permanent staff	Temporary staff	Total
On 01/06/2000	53	1	54	32	1	33
On 01/06/2001	69*	20	89	37	18	55
Progression	+16	+19	+35	+5	+17	22

* of which 11 persons have been redeployed to Commission departments on the 1st October 2001.

	C	D	TOTALS			
	Permanent staff	Permanent staff	Permanent staff	Temporary staff	Grand Total	Authorised manpower
On 01/06/2000	20	3	108	2	110	224
On 01/06/2001	36	3	145	38	183*	300**
Progression	+16	/	+37	+36	+73	

*as the present report was adopted (October 2001), this figure rose to 199, out of which 64 were temporary agents (that is 26 units more)

**of which 76 posts are subject to the prior authorisation of the budgetary authority

This table gives an indication of the degree of change which has occurred in the period. An increase of almost 70% in the number of staff, while at the same time redeploying some of the staff and not jeopardising the organisation's cohesion and the continuity of the service, constitutes a real challenge for any organisation.

All in all, however, the three-year plan adopted by the legislative authority in 1999 to raise the staff recruited under the Staff Regulations to 300 in 2001 continued in the report period. In order to have highly qualified and versatile staff, most of whom are experts from the Member States, the Office carried out several temporary staff selection procedures in 2000 and spring 2001: two to recruit A and B grade investigators specialised in complex fraud cases, including internal investigations,

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Resolution of 16 May 2000 on the Protection of financial interests and the fight against fraud.

and two more to recruit Magistrates specialising in criminal law and particularly in economic and financial crime.

Once these selection procedures were completed, reserve lists were drawn up in November 2000 and the first appointments were made.

For the reasons outlined above, the Office will only be in a position to finalise the Magistrates' and Judicial Advisors' recruitment (two thirds of the pool) in the second half of 2001. Thus, between now and the end of 2001, the Office will be able to have Magistrates specialised in criminal law and the fight against serious economic and financial crime. Their expertise is necessary to cover all the national judicial systems and it will contribute to make the disciplinary, administrative, judicial and civil dimension of the Office's action more effective.

With regard to Directors, the head of Directorate A (Policy, Legislation and Legal Affairs) was appointed on 1 April 2001. The Directors of Directorates B (Investigations and operations) and C (Intelligence, operational strategy and information technology), are expected to take up their posts respectively in October and November 2001.

Once all the management posts have been filled, on the basis of actual occupation of the new posts in 2001, the Office will carry out a careful examination, post by post, of the correspondence between its resources as at the end of 2001 and its tasks. The purpose of this will be to ensure that the Office can perform its operational tasks (investigations and operations), its new tasks (intelligence, administrative, judicial, financial and legislative follow-up, in particular from the point of view of fraud-proofing) and its more traditional tasks as a Commission department.

2.1.3 An anti-fraud training policy and a communication policy aimed at the public

A specific training action

In view of its specific character the Office has developed a training strategy specific to the field of the fight against fraud, regarding its sphere of activity, its status and its means of action. Internally, the arrival of large numbers of new staff requires an effort by the Office to provide them with basic training to make them operational as soon as possible in a multicultural, multilingual and multi-procedural environment. In addition, the Office co-operates closely with Member States, taking part in their training schemes, for instance.

Some of these actions (13 for the report period) have been (co)organised and/or (co)financed by the Office. In this case, the priorities and methods of intervention of OLAF were determined. Moreover, Office agents are frequently invited to take part, as participants or speakers, in conferences, seminars or conferences. 74 interventions of this type took place between June 2000 and May 2001.

Communication towards the public

OLAF's work is frequently very technical, and it needs to be explained in an intelligible way to the general public. Consequently, the Office has set up a policy of information on its operational activity. It aims to set up transparent procedures which also respect the principles and limits governing the disclosure of sensitive information affecting both individuals' rights and the effectiveness of investigations.

To this end, the unit charged with communication, public relations and the co-ordination of training devised public information tools. This involves the timely transmission of information to specific information media, presented in a form enabling them to play their role. The public was also informed of the activities of the Office and its achievements, thanks to co-operation with the national investigation agencies.

With regard to operational activities, connected with the independent status of OLAF, only the Office's Spokesman and Director General are entitled to be in contact with the media. Public relations relating to the activities of the Office which do not concern its operational independence are ensured by the Commission's Press and Communication service, in particular by the spokesman for the Commissioner concerned.

A "network of anti-fraud communicators" was set up. It includes the various spokespersons and persons responsible for public relations in the main national investigation agencies with which OLAF co-operates. Its goal is to create synergies and to establish permanent contacts between the communication, public relations and training co-ordination unit of OLAF and its national counterparts.³⁰

2.2 Relations with the other EU institutions and bodies

2.2.1 The institutional environment

As provided by Article 280 of the EC Treaty, the legislator and the Commission wanted the Office to provide its support to the co-operation with Member States, including their law enforcement and judicial authorities³¹, and give its technical assistance to the other institutions, agencies and bodies and the national authorities. It also fulfils for the Commission a role of technical and operational assistance in the field of mutual legal assistance on criminal matters³². It is with the view to fully implementing these missions that the Office intends to be a « Community platform of services»³³.

Moreover, the Office has clear competencies and a well-defined mandate. It is subject to the control of the Court of Auditors, the Court of Justice, as well as the political control of the European Parliament and the Council. In addition, the follow-up of its investigation reports comes under the responsibility of the national jurisdictions. The Office has been granted the means to incorporate the dynamics at Community level (Article 280 of the EC Treaty) with the need for an intergovernmental approach in relation to the goal of a judicial area (Article 2 of the EU Treaty). Whenever necessary to accomplish their respective missions, OLAF co-operates with Europol or with the provisional unit of Eurojust. It is currently negotiating an agreement with Europol in order to set up a framework for their co-

³⁰ This network is linked to the planned Community platform of services (see point 3.7).

³¹ See Article 2 of Commission Decision 99/352/EC of 28 April 1999 (OJ L136 of 31.05.1999) creating the Office and Article 2 of Regulations N°1073/99 and 1074/99).

³² Explanatory Report on the Second Protocol of the Convention on Protection of the European Communities' financial Interests (OJ C91 of 31.03.1999). See Article 7 of the Second Protocol (OJ C221 of 19.07.1997).

³³ This is a priority in the Action Plan 2001-2003.

operation which takes into account the specific needs of mutual assistance in the field of activity of OLAF.

The regulatory provisions require the European Anti-Fraud Office and the Community institutions, bodies, offices and agencies to exchange information in accordance with their respective rights and duties, in compliance with the confidentiality rules, with respect for the legitimate rights of individuals and in compliance with national law. The power of internal investigation is supported by regulation obligations of the members or staff of the institutions to give information and co-operation, in compliance with their duties and guarantees under the European Convention for the Protection of Human Rights, the Staff Regulations and the Protocol on Privileges and Immunities³⁴.

However, certain aspects of the role of the Office in operational matters as well as practices in the area of co-operation with the institutions concerned by internal investigations who are responsible for the protection of financial interests (Parliament, Court of Auditors, Council) are worth specifying: exchange of information and processing of operational information, including in the framework of internal and external investigations³⁵, interlinking of the Office's internal investigations with disciplinary and administrative procedures³⁶. These aspects are tackled in a draft Code of Conduct and draft Guidelines for a Communication policy for the European Anti-Fraud Office (see points 3.2 and 3.3).

2.2.2 *The legal framework of internal investigations*

In its first management report³⁷, the Supervisory Committee stressed certain gaps in the legal and institutional provisions of the Office, in particular in the sensitive field of internal administrative investigations.

The European Parliament asked the Commission to present a draft amendment to regulation n°1073/99 aiming to establish a European prosecutor in the field of internal investigations³⁸. The Commission, after a first proposal³⁹ that the Nice European Council did not adopt, proposed to revive the debate on a European Public Prosecutor responsible for the protection of financial interests by means of a broad consultation of the interested parties (Green Paper), within the context of a treaty amendment.

The Office shares this concern and strives to enhance the legitimacy of internal investigations pending the results of this wide consultation on the establishment of

³⁴ Articles 1, 3 and 4 of Parliament and Council Regulations Nos 1073/99 and 1074/99, Articles 1 and 2 of the Commission Decision of 2.6.1999 relating to the conditions and procedures for internal investigations

³⁵ In accordance with the provisions of regulation n° 1073/99

³⁶ Carried out in particular by the investigation and discipline office, a permanent team responsible for inquiries in the area of professional misconduct. A reform of the Staff Regulations, including in the area of discipline and the rights of the defence, is foreseen in the White paper on Reform to be submitted to the Council in December 2001.

³⁷ OJ C360 of 14.12.2000

³⁸ Resolution of the European Parliament on the protection of the financial interests of 13.12.2000 (paragraph 12) and Resolution on the annual report 1999 of the Commission on the protection of the financial interests, in particular item 8.

³⁹ Complementary contribution of the Commission (COM (2000) 608 final, 29.9.2000).

the European Public Prosecutor for the protection of the Communities' financial interests. This last point, which is essential to strengthen the credibility of the institutions, is also a priority for the Directorate of the office. It will have to be examined in the framework of the joint reflections with the Supervisory Committee.

The Council examining the Commission annual reports⁴⁰, has also noted that there are delays in ratification of the Convention of 26 July 1995 for the protection of the financial interests of the European Communities and of its additional protocols by the Member States.⁴¹ These delays constitute a serious danger for the legal framework of the protection of the financial interests of the European Union, and in particular they are a barrier to the judicial follow up of the Office's administrative investigations.

In this framework, the Director General is willing to consider any means that may make it possible to offer a better response to the question raised by the Parliament and the Supervisory Committee.

2.3 New management instruments

The setting up of the European Anti-Fraud Office raises a number of issues as to its independence and organisation. Transparency and complementarity in the framework of the operational, functional separation (intelligence/investigation/assistance/follow-up) are central management principles in the Office's new operational strategy. In this spirit, a number of new instruments have been prepared. The objectives are to improve the management of operational activity and organise proper information flows. Analysis and internal communication of strategic and operational information should make for clear definition of priorities in work on the ground while facilitating the administrative and judicial monitoring of investigations. Moreover, the Office needs its own communication strategy, based on effective mechanisms to manage information which is by definition sensitive.

2.3.1 *Information and communication policy towards other institutions and the Member States*⁴²

In addition to the information obtained through its operational activities, the Office mainly has the information supplied to the Commission by the Member States on the basis of sectoral rules and information from the European institutions and third parties. Community and national provisions on confidentiality and data protection (Article 8 of Regulation No 1073/99), professional secrecy and protection of basic rights (Articles 286 and 287 of the Treaty) all apply here. Moreover, the legislator has adopted rules and standards by means of a new regulation on the protection of individuals with regard to the processing of personal data and access to documents⁴³.

⁴⁰ Particularly, in its Göteborg conclusions of 15 June 2001

⁴¹ See for example the conclusions, item 10, of the Economic and Financial Affairs Council of 17 July 2000 again calling on Member States which have not done so to ratify the 1995 Convention and its protocols. At the end of February 2001, five Member States had not yet notified their ratification of the Convention on the protection of financial interests.

⁴² Not to be confused with the communication policy towards the public presented in point 2.1.3

⁴³ The right of access of the public to the documents of the institutions is provided for by article 255 of the EC Treaty and Parliament and Council Regulation N°1049/2001 of 30.05.2001 (OJ L145 of 31.05.2001). The protection of individuals with regard to the processing of personal data by the

Proper information flows mean that OLAF's obligations must be clarified and its own communication strategy must be defined. Communication criteria and mechanisms have to be worked out so that data held by the Office can be precisely identified⁴⁴. Moreover, the different persons entitled to receive information in accordance with their tasks (and their responsibility in the event of dissemination of confidential information) must also be clarified. Information is often sensitive and rules must be in place to regulate its communication. The Office also needs a reliable system for gathering, recording and processing operational data which makes it possible to meet the requirements of effectiveness, availability, transparency and controlled access, while respecting the constraints and limits necessary for the protection of individual rights. The validation of such a system is within the remit of the new Intelligence Directorate.

2.3.2 *The OLAF Manual*

The OLAF Manual was created with the aim of improving working methods and procedures within the Office and is based on the laws and regulations applicable to OLAF. It is only intended for internal use by OLAF staff, covering existing legislative and internal provisions without creating rights and obligations for third parties. The guiding principle is to ensure that the work of OLAF is carried out in a transparent and effective manner, respecting fully the appropriate legal bases and respect of human rights.

The Manual focuses primarily on the operational activities of OLAF. Casework is the primary function of OLAF and the Manual sets out the administrative procedures to be applied through all stages of casework, from initial receipt of information through to case closure. The OLAF Manual outlines internal policy in a number of key areas, it defines roles and responsibilities internally and provides specific guidance on a variety of relevant topics.

2.3.3 *An effective IT system*

The new operational policy attaches priority to the rational use of information (intelligence) and the strengthening of the criminal-law dimension of work on the ground. In accordance with the mandate defined by the Commission Decision of 28 April 1999, and in particular Article 2(5), the Office's Information Technology Unit has developed a work plan to implement an infrastructure, ensure the collection and use of information and give its technical support to the institutions, bodies or agencies and the competent national authorities. The purpose of IT activities is to organise control systems related to work procedures and to support services intended for the outside (Community institutions and departments, national authorities).

The Office has undertaken the development of a new case handling system, replacing the old database (Irene) for the 2300 cases dealt with since it was created. The 2300 cases are made up largely of cases migrated from the Irene system.

Community institutions and bodies and on the free movement of such data is covered by Parliament and Council Regulation (EC) No 45/2001 of 18.12.2000 (OJ L8 of 12.01.2001).
See point 3.3 below, on the draft Guidelines for a communication policy of the Office.

⁴⁴

Previous database system (Irene)

The decision to replace Irene by CMS was taken for the following reasons:

- the need to have a case handling system adapted to the procedures laid down in the new OLAF Manual;
- there was a need to have a more centralised database which would guarantee a more homogenous and consistent encoding of case related information throughout the life cycle of cases, thus enabling progress in cases to be monitored more easily and to serve as a management tool;
- the need to have a database which was technically more stable and more adaptable to the developing requirements of the Office.

Implementation of Case Management System

From an organisational point of view, a steering committee was set up to oversee the introduction of this project in October 2000. A project team was designated to implement the project. The development, by internal staff only, took 6 months and the new database system (Case Management System – CMS) came into operation in May 2001.

The CMS has essentially two objectives:

- it functions as a case-handling tool, helping the investigations staff to maintain an exhaustive record of cases;
- it functions as a management tool enabling management and investigators to keep track of cases by means of its reporting functionality;

The main features of the CMS are as follows:

- a separate administrative entity (Support Unit) has responsibility for examining all incoming information about alleged frauds to decide whether to create a CMS file (previously this important function was decentralised to investigations staff);
- more complete data about cases is encoded in CMS than in the previous database system;
- in CMS, most of the data input is carried out by the Support Unit, previously it was entirely decentralised to investigations staff;
- in CMS, all authorised staff have access with an audit trail keeping track of all read and write accesses (previously access conditions were more restrictive);
- CMS has an enhanced reporting and analysis tool.

All cases stored in the Irene system have been migrated to CMS. The following actions have been taken:

- revalidation and updating of all cases migrated from the previous database system. This was necessary due to the fact that the range of information stored in Irene was not always updated and the Office has undertaken a number of corrective actions to improve the quality of this data. Given the volume and complexity of the information transferred from Irene to CMS and the fact that the updating task must be carried out manually, this task is still ongoing;
- encoding and maintenance tasks in CMS;
- development/improvement of CMS based on users' needs analysis. In particular, it is planned to expand the database to monitor follow up activities, including financial recovery, administrative and judicial follow up.

The system became operational on 1 May 2001, as a result of close co-operation between the Information Technology unit and the Investigations and Operations Directorate. Precise procedural guidelines improve the quality of the data processed by the Office and the production of statistics and reports based on it. The plan is to extend the system by creating administrative and judicial follow-up modules for closed cases.

External systems

Regarding external systems, several developments should be noted. A new system for recording communications received from the Member States (ECR – Electronic Communication Registry) has been set up. It gives the Office a more reliable means of recording, validating and using the data provided under sectoral rules, formerly stored in the IRENE database. Since the implementation of this system in October 2000, access by the other Commission departments concerned is now possible. The Intelligence Unit, responsible for access authorisations, checks this limited access.

Another improvement has been the development of AFIS, the anti-fraud information system transferred to OLAF on 1 January 2000. This system is used to exchange electronic information with partners in the fight against fraud, particularly in relation to irregularities detected in the various sectors, and on specific sensitive products. These new applications make it possible to store information provided under sectoral rules in particular⁴⁵ In addition, a new version of the customs information system, dealing with third pillar activities has been set up.

2.3.4 Co-operation and prevention instruments – two examples

Co-operation in the enlargement field

The Office is responsible for supporting on the Commission's behalf, co-operation with the Member States in the fight against fraud⁴⁶, so as to protect financial interests effectively. Consequently, the candidate countries must demonstrate, before their

⁴⁵ In particular, Regulation Nos 595/91 on EAGGF Guarantee Section, Regulation 1681/94 for the Structural Funds, Regulation 1834/94 for the Cohesion Fund, the Early Warning System for movements of products subject to excise duties and Ciginfo for cigarette seizures.

⁴⁶ The Office accomplishes this function, laid down by article 280 of the EC Treaty, in accordance with Article 2 (2) of Commission decision 1999/352/EC of 28.04.1999(OJ L136 of 31.05.1999).

accession, that they have the operational capacity to effectively combat fraud and irregularities affecting the Community budget⁴⁷.

In the candidate countries, competencies in the field of combating fraud and irregularities are generally divided between several administrative and judicial entities for whom it is difficult to measure their operational capacity to protect effectively the Community budget. It appears also that for the most part these services do not co-ordinate their activities with one another, so co-operation with the Member States and the Commission is not guaranteed either.

OLAF has therefore consistently endeavoured during the past few years to have a central contact point in each candidate country, competent to co-ordinate administrative investigations into irregularities and fraud affecting the Community budget, and of co-operating with OLAF on an operational level. By designating such a co-ordinating body, the candidate countries demonstrate their willingness for fulfilling this part of the *acquis* and to implement operational co-operation before the accession date.

This pragmatic approach has been implemented in Poland. Contacts have been taken with the other candidate countries with a similar objective.

The PHARE programme for Poland for the year 1999 contained a project, drawn up in co-operation with OLAF, aiming to develop a horizontal anti-fraud structure in Poland. This project involving 3.5 million euro covers three main activities:

- institution building : the establishment of a multi-disciplinary anti-fraud structure within the Polish civil service specifically responsible for the protection of the Communities' financial interests;
- investment: provide the necessary technical and computer equipment for the new structure;
- training: building up operational capacity for the staff of the new structure and related departments.

A memorandum of understanding was signed on 20 December 2000 between OLAF and the Polish Ministry of Finance setting out the practical arrangements for the implementation of this project. As provided in the project and to help the Polish authorities to take on the Community "acquis" in the area of the fight against fraud, four experts from the Member States are currently working within the General Inspectorate of Customs (GIC), the Polish service designated to be responsible for the protection of the Communities' financial interests and as such the beneficiary of the finance from this project. In addition to the four officials and to stress the importance of the project, OLAF decided to send one of its own officials to work on detachment in Poland and co-ordinate the work of this anti-fraud structure for which it has overall responsibility.

The technical investment for strengthening the operational capacity of the GIC and the staff-training programme are under way as planned. The institutional part of the

⁴⁷ This capacity of the candidate countries is evaluated in the framework of accession negotiations (Chapter 28- Financial control)

project also began when the GIC set up within its service a special unit for the fight against fraud. It is now important to lay down operational provisions between the services in Poland responsible for Community funds and the GIC to achieve effective operational co-operation. The PHARE programme will come to an end in September 2002. However, it would seem already necessary to envisage the prolongation of the project beyond this date so as to be able to strengthen further the structure established and improve operational co-operation with the Commission.

Co-operation in the intelligence field with non-member countries

The collection and structured use of information allow to draw a clear operational policy and to define a strategy of complementary priorities for Member States' action. The setting up of this capacity will enable to implement the future platform of services that the Office wishes to create. The aim of this platform is to enable the Office to fulfil all its missions in close partnership with the institutions, and in particular with the national authorities.

For several years now, the Russian market has been the EU's most important destination for exports in the agricultural sector in particular animal products. There is a resulting risk of misappropriation of and trafficking in goods which may be evaluated and prevented by a monitoring of the flows of goods and the detection of forged documents. The Office has detected major problems concerning the meat sector: they consisted, on the one hand of false customs documents delivered by Community exporters in order to obtain the payment of export refunds from the Community and on the other hand of false import declarations of goods exported to Russia. Following discussions with the competent services of the Commission and the Member States, the Office has set up a "Mutual Information System"(MIS) with the Russian authorities, allowing the arrival and the correct customs clearance of supplies to Russia to be followed. In this regard, an administrative arrangement was signed on 5 July 2000 with the State Customs Committee of the Russian Federation (SCC).

Under this system, implemented in February 2001⁴⁸, each Member State designates a central body that communicates certain information provided by the meat exporter to OLAF. OLAF forwards this information to the SCC and processes its reply. Each reply received is forwarded to the central body of the Member State concerned. In cases where the SCC is unable to confirm the safe arrival of the goods, or if discrepancies are established, enquiries are undertaken on both the Russian and the EU sides, in accordance with the administrative agreement.

By the end of May 2001, more than 1100 messages had been processed by the system, of which 1% are under investigation by the Member States competent authorities.

From the early feedback already received from the Member States, the MIS appears to offer great practical advantages in speeding up the payment procedure. Furthermore, it is a good way of improving co-operation with the Russian customs as a fraud prevention system and as a repressive system; the SCC is also keen to

⁴⁸ Commission Regulation (EC) N° 2584/2000 of 24.11.2000 establishing a system for the communication of information on certain supplies of beef, veal and pork-meat by road to the territory of the Russian Federation (OJ L 298, 25.11.2000, p.16)

maintain this system for the exchange of information. An in-depth evaluation will be carried out later in 2001.

A public complaint mechanism (the freephone)

For the European citizen a "freephone" system is in place that can be used by anybody in the Member States to contact free of charge the Office to provide information about fraud and irregularities that might be of interest for the protection of the financial interests of the Community. All the calls are recorded and listened to by officials from the Office who make a first assessment about the seriousness and relevance of the information given. The Office may, depending on the pertinence and importance of the information, open a case or refer the information to its partners for their consideration.

During the period 1 January 2000 until 31 August 2001, in total 3 867 calls were received by the Office freephone system. Of these total number of calls 1 118 calls were considered to be of potential relevance and have undergone a first assessment by OLAF officials. These triggered a more detailed assessment in 47 instances and resulted in a formal decision by the Office Director General to open a formal inquiry in 24 cases. In addition, OLAF is currently reflecting on the consequences to be drawn from the consultative document on "raising concerns about serious wrongdoing"⁴⁹.

2.4 The follow-up of operational files

In order to improve the results of investigation work with a suitable follow-up the Office has put in place a follow-up structure based on the separation of operational functions, which will be reflected in the Manual.

The overall follow-up to be ensured for investigation activities consists of:

- administrative follow-up: this consists of drawing non-financial conclusions from operational activity, in particular in respect of the obligations which result from Community or national law⁵⁰, including measures to ensure that the Member States apply the administrative penalties provided for by Community or national law, taking the appropriate disciplinary measures laid down⁵¹ and, where necessary, proposing amendments or reinforcements of the structure or procedures, on the basis of findings made;
- financial follow-up: the aim is to participate in the financial follow-up of accounting procedures with the competent Commission departments (authorising officers, accounting officers, OLAF for direct expenditure) and recovery by the competent authorities (usually national, sometimes

⁴⁹ Communication from Mr Kinnoek to the Commission of 29.11.2000, SEC(2000)2078/6

⁵⁰ In accordance with the principle of assimilation of the Communities' financial interests to national financial interests and of equivalence of the protection of these Communities' financial interests in the Member States, as stated in Article 280(2) and (4) of the EC Treaty.

⁵¹ Both concerning the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities, and Regulations relating to Members and managerial staff of Community institutions and bodies not subject to the Staff Regulations, following the conclusions of the Office.

Community) of the amounts of revenue evaded or expenditure unduly paid, including interest on these amounts, provided for by Community Regulations;

- judicial follow-up: this is particularly aimed at liaison with the judicial authorities, so as to get results that can be exploited by national courts and to improve the application of civil and criminal penalties by national procedures.
- legislative follow-up: this consists of proposing amendments to either Community or national legislation, drawing lessons from operations when they are completed or, in an emergency, where they are ongoing. This function has similarities with fraud-proofing⁵².

⁵²

This kind of follow-up has been carried out in order to amend the legislation concerning some customs treatments (guarantee in transit, preferential arrangements, warehouses) and some agricultural products.(bananas in particular)

3 EVOLUTION OF THE INSTRUMENTS FOR SUPPORT TO THE OPERATIONAL ACTIVITY

The reference period of this second activity report of the Office marks a new stage in the transition towards a coherent structure of the Office reflecting the legislative intention conceived to define in a visible manner its new strategy and operational priorities. In this period, the Office laid the first bases of this structure aiming to guarantee its independence, the transparency of its operations and a greater and more targeted operational effectiveness while enabling it to function as a Commission department.

The structural supports that are described below are to be put in place in the near future. They will make possible for the Office to have a better grasp, based on pre-established means and parameters, of its priority areas of activity and to define a new operational strategy. The office will therefore be able to support the Member States and the institutions, particularly in their fight against corruption. The establishment of a well-targeted operational action plan actually requires:

- clear and easy rules of procedure to be followed during investigations, in the respect of people’s rights; that is the goal of the OLAF Manual;
- implementing rules for its independence in the relations with the other relevant institutions in the protection of financial interests; that is the purpose of the future inter-institutional Code of conduct;
- guidelines to handle operational information and guarantee transparency and respect of people’s rights, of professional secrecy, and of data protection; that is the purpose of the draft “Guidelines for a Communication policy for the European Anti-Fraud Office”⁵³;
- enhanced instruments for co-operation and assistance with the national authorities, especially concerning mutual assistance with the administrations, particularly customs ones, including in non-member countries;
- ways and means to finalise the investigations conducted and to organise an effective administrative, financial and judicial follow-up; it is to this end that the Office is reorganising the operational functions of the future structure;
- a proactive analysis capacity to establish an operational strategy for internal use and an assistance to the external authorities who take part in the protection of financial interests and the fight against economic and financial crime, the objectives of the future Intelligence Directorate⁵⁴;

⁵³ Not to be confused with the communication policy towards the public presented in point 2.1.3

⁵⁴ In accordance with the second theme of the overall Strategic Approach of the Commission and the Action Plan on the protection of financial interests (respectively COM(2000) 358 final of 17.07.2000 and COM(2001)254 of 15.05.2001

- a culture of operational co-operation with all structures and authorities that fight against economic and financial crime, in order to allow the Office to become a real Communities’ “platform of services⁵⁵”.

With these essential elements, the Office, after having adapted its structures and procedures, will be in the best position to provide its assistance to the Member States in the fight against economic and financial crime and to the institutions in the fight against corruption and to define in the best possible way its operational missions with the resources at its disposal.

3.1 The OLAF Manual

The OLAF Manual, available since 15 February 2001, is a work in progress that will continue to be revised. The next edition, taking into account the practical experiences of the first months of its application, is planned for the end of 2001. This edition will not only improve the operational procedures, organise synergies between the services (investigation, intelligence, judicial advice), but will also lay down the internal policy for follow up and case management. Preparation of this new version is well underway.

3.2 Adoption of a Code of conduct concerning inter-institutional relations

Certain aspects of the role of the Office and of the Commission's tasks to guarantee the autonomy of the Office need to be clarified (see above). In particular, it is important to specify the conditions for the functional independence of the Office and for its co-operation with other Commission departments.

To that effect a draft Code of Conduct is currently being finalised in co-operation with the Supervisory Committee. This draft recalls the legislation applying at inter-institutional level and governing the mutual obligations of the Office and the Community institutions, agencies or bodies, in particular in the context of internal investigations and the fight against corruption. In addition, it makes suggestions for the practical organisation of the Office in its relations with other Commission departments and analyses the way in which its autonomy is to operate in terms of management and administration.

3.3 Establishing a policy on handling operational information

There are specific rules of Community legislation and national law governing access to and the transmission of operational information; they provide guarantees particularly in respect of

- the right of access to documents by Union citizens (Article 255 of the EC treaty and Regulation N°1049/2001);
- professional secrecy, applicable to information communicated or obtained during internal investigations (Article 8(2) of Regulation No 1073/99) or external investigations (Article 8(1) of Regulation No 2185/96) or under Article 287 of the EC Treaty;

⁵⁵ Idem

- the protection of individuals with regard to the processing of personal data, as provided for by Article 286 of the EC Treaty, implemented by Regulation No 45/2001, which entered into force on 1 February 2001;⁵⁶
- national provisions concerning confidentiality of judicial investigations.

The Office must fully control compliance with the legal and technical limits inherent in the communication process. In this context, having regard to the sensitive nature of information held in the context of its operational activities and to the Director General's specific communication rights, the Office needs to develop its own communication strategy to ensure good co-operation between the Community institutions and the competent national authorities.

This is the object of the draft "Guidelines for a Communication policy for the European Anti-Fraud Office", which are being elaborated in co-operation with the Supervisory Committee. The Office will set the guidelines identifying the objective criteria and the mechanisms required, in order to comply with these rules and with the standards set by the Treaty and Community legislation, inter alia the new regulation on protection of individuals with regard to the processing of personal data and access to the documents.

3.4 Enhanced Mutual Assistance and Customs co-operation instruments

The creation of a common technical architecture for the storage of sensitive data in order to prevent, detect and pursue irregularities against Community customs (and agricultural) regulations and non harmonised customs regulations, was entrusted to OLAF in January 2000⁵⁷. In order to overcome the lack of resources, OLAF obtained, provisionally, the detachment of three national experts, to implement the system (for strategic fraud analysis and expertise production) and to prepare an operational procedure manual for the system (CIS, Customs Information System).

Concerning Mutual assistance in customs matters, the recent entry into force of the mutual assistance agreements on customs matters, whose negotiations fall now under the competence of OLAF, brings up to 37 the number of non-member countries with whom OLAF and the customs authorities of the Member States exchange information, either spontaneously or on request, in order to prevent, detect and pursue irregularities in the customs field. During the second half of 2001, OLAF will strive to conclude new agreements. They represent an important instrument for co-operation with non-member countries.

Moreover, the Office will support all the initiatives, in particular legislative, aimed at strengthening co-operation with all the authorities responsible for combating economic and financial crime.

3.5 Organisation of the follow-up of investigations

The Office strives to organise the work of assistance and administrative, financial and judicial follow-up of its investigations in order to ensure an optimal

⁵⁶ See footnote 43. A transitional period of one year is planned for practical application by the Office.

⁵⁷ It is part of the implementation of title V of Council Regulation (EC) n°515/97 of 13 March 1997 and of the Convention on the use of information technology in the customs field (CIS).

complementarity with operational activities and intelligence, based on the repartition of tasks. Moreover, based on acquired experience and lessons from the past, it will ensure that the various consequences of investigations be effectively drawn.

3.6 The setting up a structure in charge of Intelligence, Operational strategy and Information Technology

In the new structure of the Office a new Directorate C "Intelligence, Operational Strategy and Information Technology" has been created and has been operational since summer 2001, to implement the guidelines of the overall Strategic Approach adopted by the Commission in June 2000 and approved by the Council.

The creation of this Directorate underlines the importance the Office gives to an enhanced use of intelligence and information technology in the fight against fraud.

This new Directorate will have three main areas of responsibility :

- information management : for the assistance to external partners in the Member States as well as for the Office's internal operational and strategic requirements. This includes collecting, analyzing and dissemination of all kinds/types of information originating from various sources, using modern up to date tools (e.g. forensic computing);
- establishing and managing computerized information networks via the AFIS network (Anti-Fraud Information System) for official communications and information requests from our partners in the Member States in the areas of agriculture, customs and structural funds⁵⁸.
- developing and managing the Office internal IT-structure (hardware and software) according to the Office's requirements.

As a consequence of the platform of services approach, the above mentioned tasks are essential to give the Office a more pro-active role in the fight against fraud. They provide the Office with the necessary means in the ongoing process of defining operational and strategic priorities for internal usage and support to external partners.

3.7 A Community platform of services

The Office supports co-operation among Member States,⁵⁹ and with them, including their police and judicial authorities. It gives in particular its technical support to other institutions, bodies or agencies and to the competent national authorities in the different fields of operational actions, including internal investigations. And the Office fulfils a specific of technical and operational role in mutual assistance in criminal matters on behalf of the Commission.

The new structure of the Office will enable it to give concrete expression to the concept of platform of services for the Communities, which is a central component of the culture of operational co-operation already described in the Commission's

⁵⁸ AFIS is made available to our partners in the Member States and selected non-member countries.
⁵⁹ See article 280 of EC treaty, and notably (1) and (3).

overall Strategic Approach and in the 2001-2003 Action Plan.⁶⁰ From the point of view of method, the Office proposes to associate the relevant authorities, in particular the national authorities, in the development, implementation and final evaluation of rules. This goal will be attained, by boosting the role of the Advisory Committee for the Co-ordination of Fraud Prevention⁶¹ to a more proactive orientation to the activity on the ground, and for a better evaluation of legislation under the point of view of prevention.

⁶⁰ COM (2001) 254 final, 15.05.2001.

⁶¹ Established by Commission Decision of 23.02.1994 (OJ L.61 of the 04.03.1994).

4 CONCLUSION

The European anti-Fraud Office recognizes that, when fraud or misconduct is found within the European Institutions, this harms their credibility and the confidence which European citizens have in them. Corruption is not restricted to illicit payment of money. The financial interests of the EU can also be damaged by gross incompetence and unfair practices. Notwithstanding the problems of recruitment and the present shortage of staff, the clear priority in dealing with cases opened by the Office is towards internal cases. It is essential that OLAF's response to suspected internal corruption, whatever form it takes, is prompt, thorough, and fair.

At the same time the important work on external cases will continue to be carried out, in accordance with a well-developed strategy, and more use will be made of administrative and judicial authorities in the Member States. It is an essential strength of OLAF that it is able to offer assistance to national authorities in their investigations and to co-ordinate investigations where there are several Member States involved. The platform of services is being extended to reflect this. There is scope for the Office to improve its cooperation in the field of follow up as well as in cases where there is a disciplinary or judicial procedure arising from an investigation.

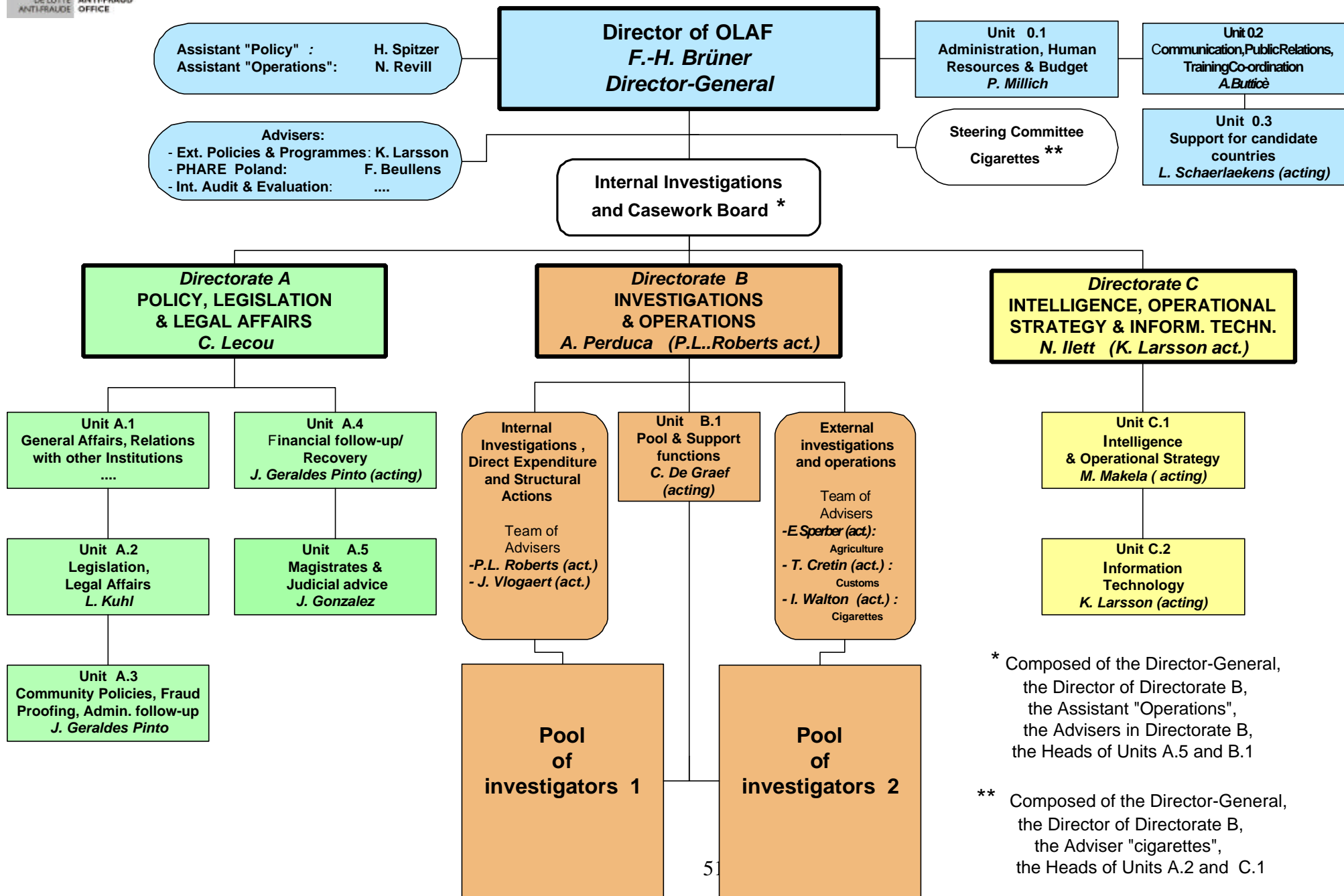
The success of OLAF's investigations, particularly with regard to internal cases, is dependent in large measure upon a high level of cooperation with the Institutions' departments. Similarly co-operation with Member States can be the key to the successful conclusion of an internal or external case. This means that there must be sufficient resources made available within the Commission departments and Member States to help OLAF in its investigations. With regard to disciplinary proceedings following internal investigations, there is still a need for reform in this area and OLAF has a clear role to play by contributing to the debate.

Access to documents and witnesses, proper regard for confidentiality and a shared view that internal corruption is intolerable are essential. OLAF ensures with regard to the Commission that its requests for information are given priority. Similar arrangements are envisaged with other institutions and will be communicated immediately after their finalization. In the White Paper on reform, the Commission is embarking on a course of raising awareness in order to ensure that no official, agent or member of the Institutions is in doubt about OLAF's resolve, namely, the policy of zero tolerance towards internal corruption will be rigorously applied.

The Office now benefits from its own legal framework. This provides the clear legal base from which to proceed. It has its own manual of procedures, a case management tracking system, an in house team of Magistrates and Judicial Advisors whose work includes helping to ensure that the OLAF investigation of cases pays scrupulous regard to the rights of people under investigation, the correct recording of interviews and documentary evidence as well as taking into account any legal requirements peculiar to the jurisdiction where the case may end up.

The effect of the changes in practice and attitude should lead to improved confidence in the ability of the Office to discharge its responsibilities. This in turn should encourage a higher level of confidence in the Community at large that the financial interests of the EU are vitally important and must benefit from the highest level of protection.

OLAF ORGANISATION CHART - 1 October 2001



* Composed of the Director-General, the Director of Directorate B, the Assistant "Operations", the Advisers in Directorate B, the Heads of Units A.5 and B.1

** Composed of the Director-General, the Director of Directorate B, the Adviser "cigarettes", the Heads of Units A.2 and C.1