



The **OLAF** report
2011

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The **OLAF** report **2011**

Twelfth report of the
European Anti-Fraud Office,
1 January to 31 December 2011

Disclaimer:

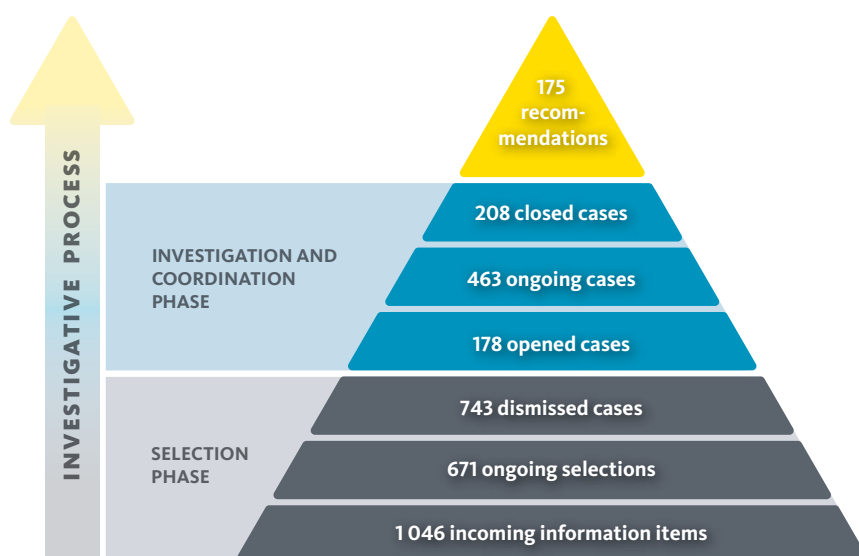
OLAF's annual report features case studies for illustrative purposes only. In particular, the fact that OLAF presents such case studies does not prejudge the outcome of any judicial proceedings; nor does it imply that any particular individuals are guilty of any wrongdoings.



Executive summary

- 2011 was a year of change for OLAF, the European Anti-Fraud Office. An internal review highlighted a number of areas where the efficiency of the Office could be improved. As a result, decisions were taken on changes to the organisation and on a new set of investigative procedures. The changes took effect on 1 February 2012.
- In 2011, OLAF received 1 046 incoming information items, three quarters of which came from private sources.
- One in five completed selections resulted in an investigation or coordination case. Out of the 178 cases opened, 144 were investigations.
- At the end of 2011, OLAF had 463 ongoing investigations and coordination cases. During the year, OLAF closed 208 cases.
- In order to improve the efficiency of the investigative activities the Office focused on the closing of old cases, and fewer new cases were opened in 2011 than in previous years. This resulted in an improved clearance rate and an increase in the average age of investigation and coordination cases.
- In more than half of all cases closed in 2011, recommendations were made by OLAF for action to be taken by EU institutions, bodies, offices, agencies or competent authorities of the Member States concerned. OLAF mainly recommended judicial action and financial recoveries.
- OLAF's investigations and coordination cases led to the recovery of EUR 691.4 million, as recorded in 2011. Member State courts issued a cumulative 511 years of prison sentences in 2011, acting upon conclusions and recommendations from OLAF investigations.
- OLAF has a key role in the Commission-wide effort to combat cigarette smuggling along the EU's eastern border. OLAF has deployed its investigative, policy and technical assistance tools for this purpose.
- OLAF coordinates the implementation of the Commission's anti-fraud strategy, adopted in June 2011.
- In 2011, OLAF had at its disposal a budget of EUR 23.5 million to provide financial support in order to fight fraud and corruption affecting the financial interests of the EU, to improve cooperation with partners, to measure the costs of corruption in public procurement and to strengthen the protection of euro banknotes and coins.

Chart 1: 2011 caseload





Foreword

I am pleased to present to you the 12th OLAF report highlighting the activities of the European Anti-Fraud Office in 2011.

The achievements presented in this report are a reflection of a busy year at OLAF, during which a major reorganisation took place. Extensive internal consultations on an update of OLAF's investigative procedures ran in parallel with the core investigative work. In the policy field, the preparation of new legislative initiatives, including financing under the Hercule and Pericles programmes for the period 2014–20 and the implementation of the Commission's anti-fraud strategy, adopted in June 2011, have increased OLAF's visibility for our stakeholders.

This year's OLAF report shows the results of the investigative activities in a new way. The 2011 results are presented in a manner consistent with the new investigative procedures introduced in February 2012.

During 2011, the number of incoming information items originating from private sources continued to increase. At the same time, there was a decrease in the information coming from public sector sources. This result follows a trend which we monitor closely.

The number of cases closed in 2011 was higher than in recent years as a consequence of our effort to improve the efficiency of OLAF's investigative activities. More than 500 monitoring cases were also finalised in 2011 in order to better focus OLAF's resources on its investigative activity. These preparatory actions were necessary for the efficient functioning of OLAF following the introduction of the new instructions on investigative procedures and the updated organisational structure.

More than half of OLAF investigations resulted in recommendations for judicial, disciplinary and financial action to be taken by institutions and Member States.

Due to the general economic climate, the human and financial resources available to OLAF are not expected to increase in the future. At the same time, the protection of EU money and the fight against fraud remains a key priority for the EU institutions and Member States alike. Since I took office on 14 February 2011, my efforts have therefore centred on improving the efficiency and results of OLAF investigations.

With the help of OLAF's management and staff, the instructions on investigative procedures and a new organisational structure of the Office were devised during 2011 and they reached their final form by the end of the year. This exercise took into account the key objectives in the proposal amending Regulation (EC) No 1073/1999 defining the Office's investigative role and remit.

I rely on continued support from my colleagues in OLAF to make this change process a complete success. The early results of these changes will be presented in next year's OLAF report.

I trust that you will find this report informative and enjoyable reading.

Giovanni Kessler
Director-General of OLAF



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1. OLAF's role and responsibilities

Mission statement

The mission of the European Anti-Fraud Office (OLAF, also referred to as 'the Office' in this report) is threefold:

- ▶ to protect the financial interests of the European Union (EU) by investigating fraud, corruption and any other illegal activities;
- ▶ to detect and investigate serious matters relating to the discharge of professional duties by members and staff of the EU institutions and bodies that could result in disciplinary or criminal proceedings;
- ▶ to support the European Commission in the development and implementation of fraud prevention and detection policies.



'OLAF' is the acronym of its title in French, *Office européen de lutte antifraude*.

Homepage: http://ec.europa.eu/anti_fraud/index_en.html

To report fraud: http://ec.europa.eu/anti_fraud/investigations/report-fraud/index_en.htm

OLAF: Key facts and figures for 2011

Director-General: Giovanni Kessler

Established: 1999

Staff: 437

Budget: EUR 58.2 million

Programmes: EUR 23.5 million

Incoming information: 1 046 items

Total cases at 31.12.2011:

▶ **Investigations:** 328

▶ **Coordination cases:** 135

▶ **Cases in selection phase:** 671

▶ **Cases in monitoring phase:** 407

Total cases closed: 208

Number of recommendations issued:

▶ **Judicial:** 73

▶ **Disciplinary:** 16

▶ **Financial:** 63

▶ **Administrative:** 23

Average duration of investigations: 29.1 months

Total amounts recovered: EUR 691.4 million

Judicial outcome (in national courts): 511 years in prison sentences; EUR 154.7 million in financial penalties



'The current difficulties within the European Union cannot be solved by economic and financial means alone. To gain the trust of our citizens, the Union must demonstrate that its financial interests are protected against fraud and corruption. Doing so is the role of OLAF.'

*Giovanni Kessler,
Director-General of OLAF*

OLAF investigates cases of fraud, assists EU bodies and national authorities in their fight against fraud and contributes to the design of anti-fraud legislation and policies in the EU. OLAF is part of the European Commission but is independent in its investigative function.

The legal basis for Union action against fraud is Article 325 of the Lisbon Treaty. OLAF's main role and remit for carrying out its administrative investigations is defined principally in Regulation (EC) No 1073/1999⁽¹⁾.

For investigations concerning members and staff of EU institutions, OLAF also derives its mandate from the interinstitutional agreement between the European Parliament, the Council and the Commission.

OLAF has a right to perform investigative activities, including on-the-spot checks and inspections, in the context of its administrative investigations.

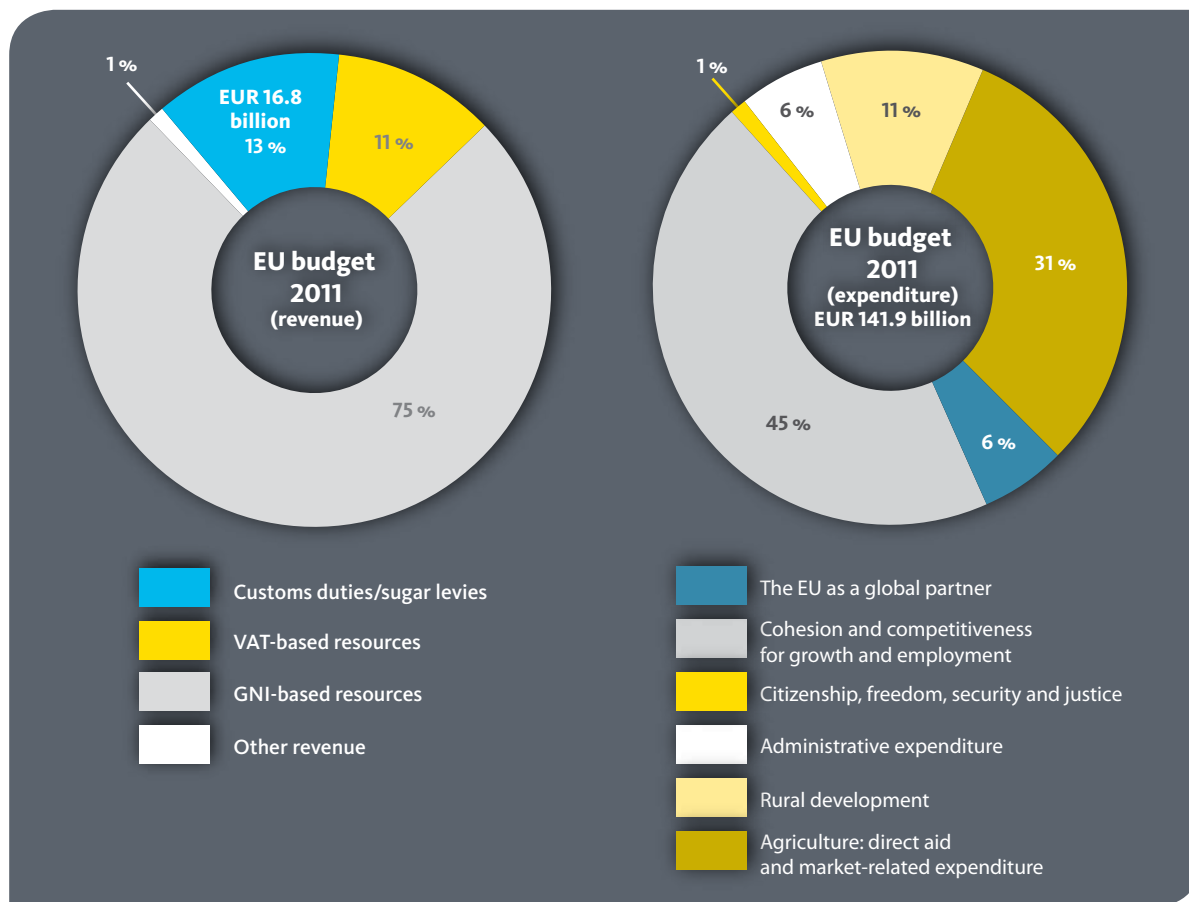
OLAF conducts, in full independence, investigations inside any EU institution or body, as well as in the Member States and non-EU countries.

Furthermore, OLAF contributes to investigations carried out by national authorities by facilitating the gathering and exchange of information and contacts. The Office may assist the competent authorities of a Member State in the conduct of criminal investigations in relation to cases affecting the interests of the EU.

As part of the Commission, OLAF also contributes to the development, monitoring and implementation of the anti-fraud policies of the European Union, and takes the necessary initiatives to ensure that anti-fraud measures are systematically included in relevant legislation.

OLAF's investigations cover, in principle, all expenditure of the EU and a part of the revenue side of the budget where OLAF focuses particularly on 'traditional own resources', including customs duties.

Chart 2: EU budget



⁽¹⁾ Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF); OJ L 136, 31.5.1999, pp. 1-7



2. Focus on: OLAF's new investigative procedures and organisation

Significant changes to OLAF's investigative procedures and internal organisation were introduced on 1 February 2012. These changes were the result of an internal review launched in 2011 following the arrival of Giovanni Kessler as Director-General in February of that year.

The main objectives of the review were to:

- ▶ better define the distribution of responsibilities and competences;
- ▶ reduce non-core activities, overheads and administrative burden;
- ▶ improve the efficiency and quality of investigations, reducing their length; and
- ▶ strengthen the role of OLAF as the Commission service in charge of anti-fraud policy.

Key changes to OLAF's investigative procedures.

- ▶ Simplified and concise instructions to staff have been issued on the procedure to be followed in connection with investigations to ensure a consistent application of the rules and full respect of the procedural rights of the persons concerned by investigations.
- ▶ Efficiency and consistency in the selection of cases have increased thanks to the establishment of a dedicated unit.
- ▶ The case types have been reduced from the former five to two (investigations and coordination cases).
- ▶ Quality and legal review of cases have been strengthened at the opening and closing of investigations, as well as at important milestones during the investigations.
- ▶ Recommendations are issued by the Director-General for specific action to be taken by national authorities and EU institutions.
- ▶ The results of the action taken, following the Recommendations, are monitored annually.

Key changes to OLAF's internal organisation.

- ▶ The new organisation chart provides a clearer allocation of responsibilities (investigations, investigative support, policy and resources) while allowing for OLAF's policy work to benefit from its investigative experience and vice versa.
- ▶ While the total number of OLAF staff has remained the same, the number of staff members dedicated to investigations and policy has increased.

- ▶ Legal expertise is integrated into the investigative units to ensure that legal aspects are taken into account from an early stage.

The reorganisation has also presented OLAF with an opportunity to give relevant answers to the European Court of Auditors on their findings ⁽²⁾. In the recent management audit of OLAF, the Court made nine recommendations for further action, which OLAF has fully or partially accepted and taken into account in the review of its structure and processes. The main points raised by the Court include:

- ▶ increasing the number and speed of investigations by increasing the proportion of time spent on the investigative function;
- ▶ improving the efficiency (i.e. planning and monitoring) of investigations, in order to reduce their duration;
- ▶ developing the reporting on OLAF's performance;
- ▶ revising the legal framework, notably to consolidate anti-fraud legislation and to better protect the rights of persons investigated.

The Court also made recommendations concerning the governance framework, the rights of the persons concerned by an investigation, relations between OLAF and the Member States' competent authorities and cooperation with Eurojust and Europol. The implementation of these recommendations depends wholly or partly on the adoption of the revised proposal for amending Regulation 1073/1999 ⁽³⁾.

OLAF considers that all recommendations accepted by OLAF have either been already addressed or are currently being implemented.

⁽²⁾ Following its Special Report No 1/2005, the European Court of Auditors published on 2 May 2011 its 'Special Report No 2/2011 concerning the management of the European Anti-Fraud Office'.

⁽³⁾ Amended Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1073/1999 concerning investigations conducted by the European Anti-fraud Office (OLAF) and repealing Regulation (EURATOM) No 1074/1999; COM(2011) 135 final of 17 March 2011.

Chart 3: The investigative process from 1 February 2012

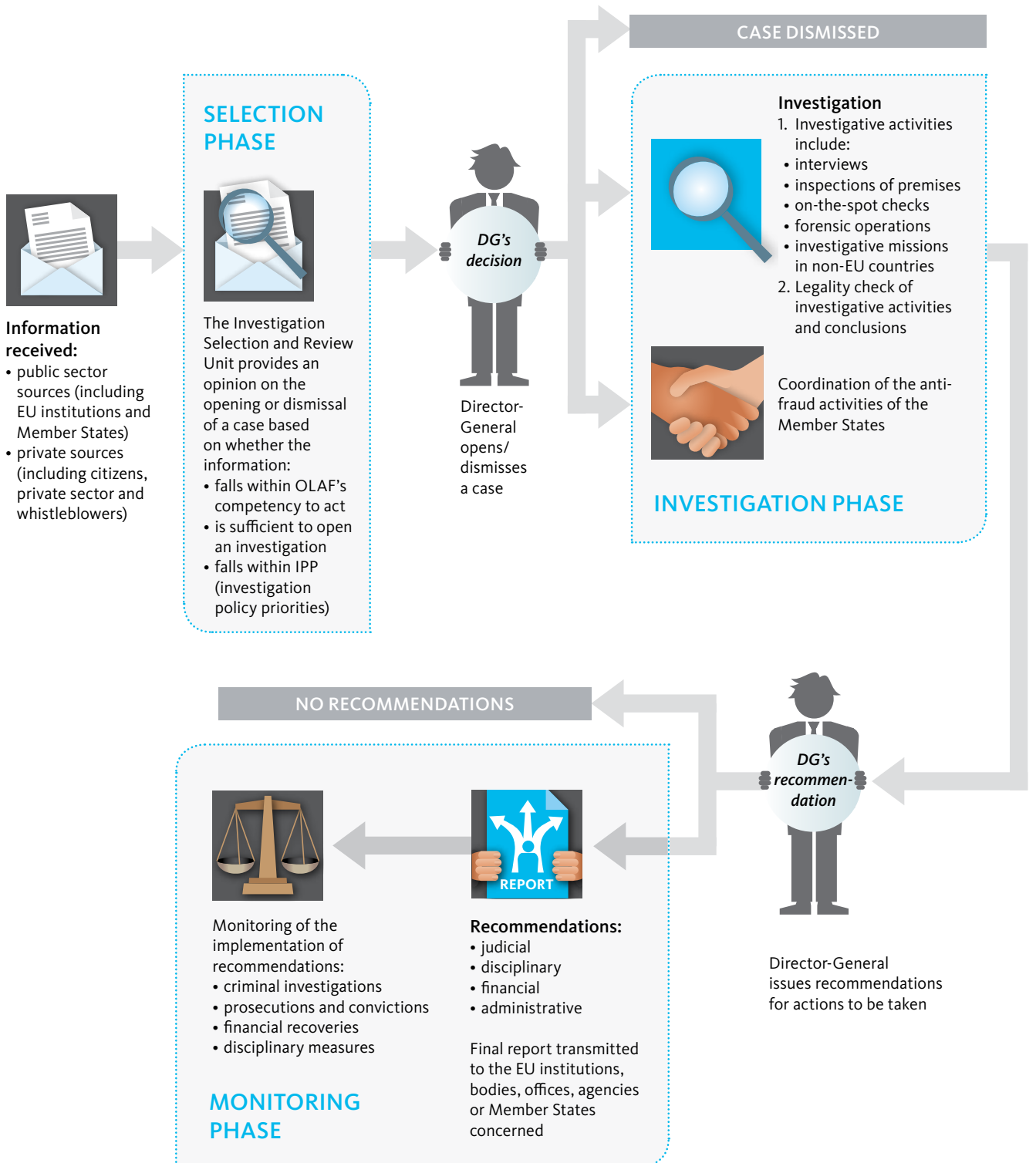
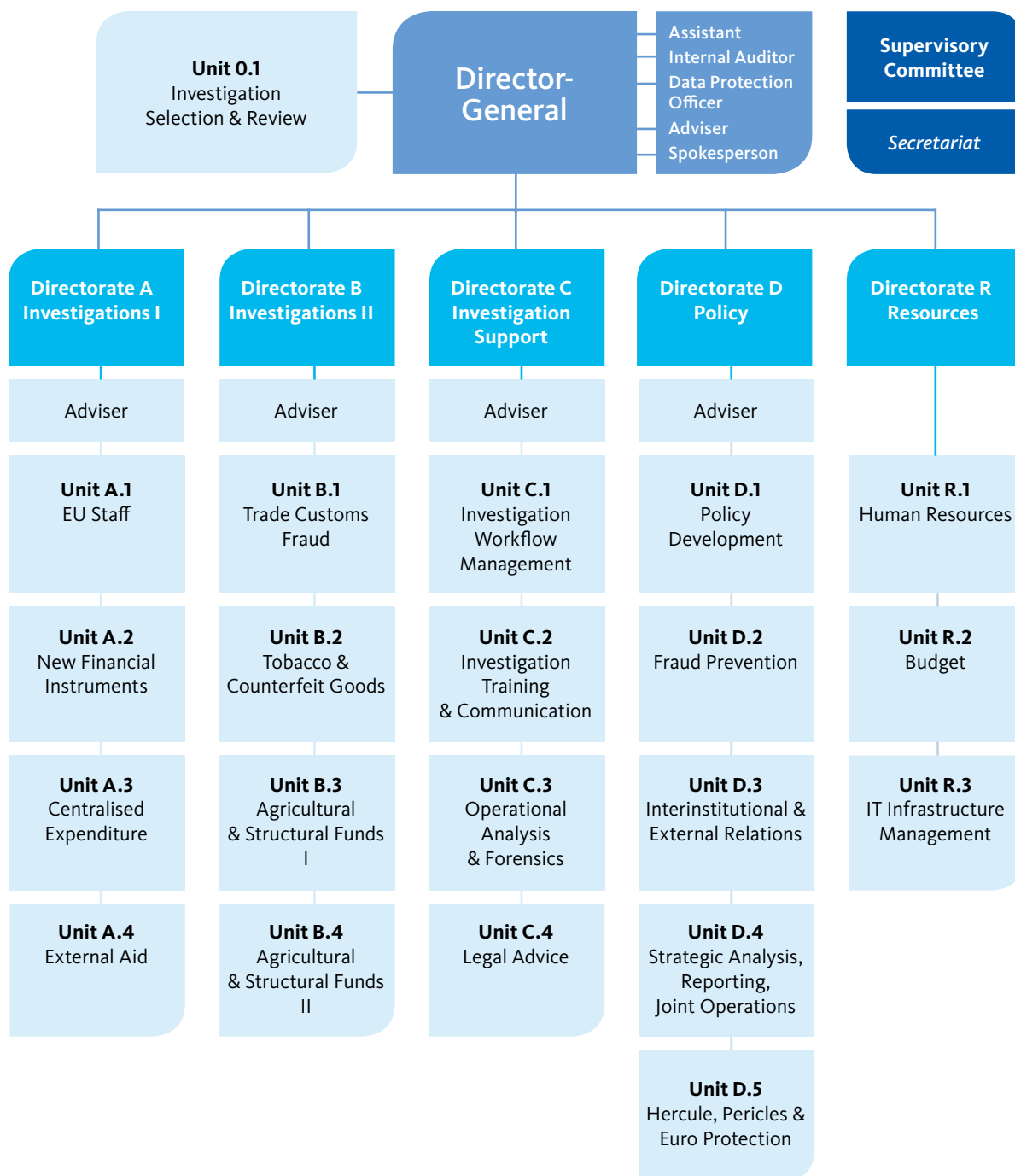




Chart 4: Organisation chart of OLAF from 1 February 2012



3. OLAF's investigative activities

The statistics outlined in this section reflect the results of the investigative activity of 2011 which was conducted in line with the procedures that existed then. On 1 February 2012, new investigative procedures were introduced and the 2011 results have been presented in a manner consistent with them.

In the 2011 report, statistical data are recorded, for the first time, under new headings which reflect the new investigative procedures and which will be used in future OLAF reports. The most significant changes concern the replacement of 'assessments' by a selection phase, the discontinuance of formal follow-up and its replacement by simplified monitoring activities and the reduction of case classifications to two types, investigations and coordination cases. External and internal investigative cases are now classified as 'investigations'. Coordination, criminal assistance and mutual assistance cases are now classified as 'coordination cases'.

3.1 Incoming information

Distribution by source

OLAF received 1 046 incoming information items in 2011 from public and private sources. There was a significant increase in the number of incoming information items received from individuals and private sector sources compared to the previous year. This increase can largely be explained by the doubling of the number of information received through the Internet-based Fraud Notification System (FNS) ⁽⁴⁾ which now accounts for nearly one fifth of all incoming information.

Chart 5a: Distribution of incoming information by source

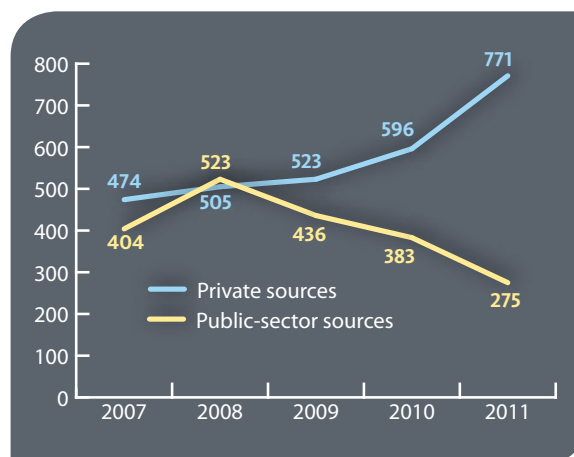
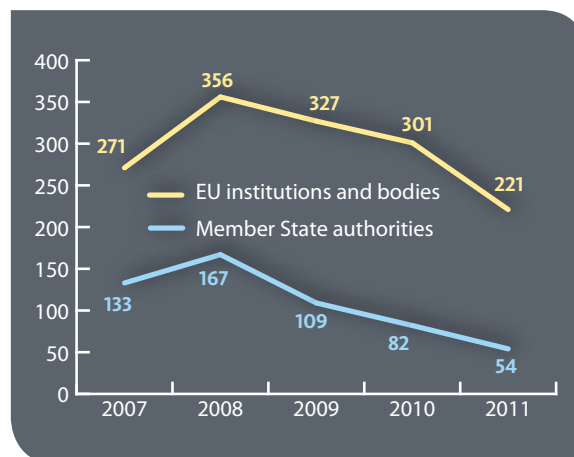


Chart 5b: Distribution of incoming information from public-sector sources



Distribution by OLAF sector

Two thirds of incoming information relates to EU budget expenditure (external aid, Structural Funds, direct expenditure and agriculture), with the highest amount of incoming information relating to Structural Funds.

⁽⁴⁾ Report fraud via FNS: http://ec.europa.eu/anti_fraud/investigations/report-fraud/index_en.htm

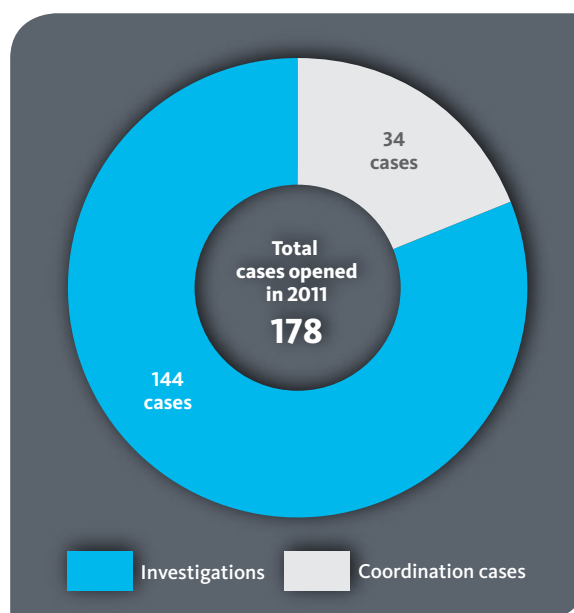
**Chart 6: Distribution of incoming information received by sector**

3.2 Selection phase

On 1 February 2012, the process of selecting cases for further action by OLAF changed significantly with the creation of a central unit advising the Director-General on the opening and closing of investigations. A case is opened where OLAF is competent to act, the information is sufficient to justify an investigation or coordination case and the information falls within the investigation policy priorities established annually by OLAF ⁽⁵⁾.

Results of the selection process

In 2011, a record number of 1 592 cases ⁽⁶⁾ were dealt with in the selection process, which contributed to an increase in the average duration of the selection phase. This figure includes 671 selections that were ongoing at the end of 2011. The selection process resulted in the opening of 144 investigations and 34 coordination cases.

Chart 7: Cases opened as investigation/coordination cases**Table 1: Results of the selection process**

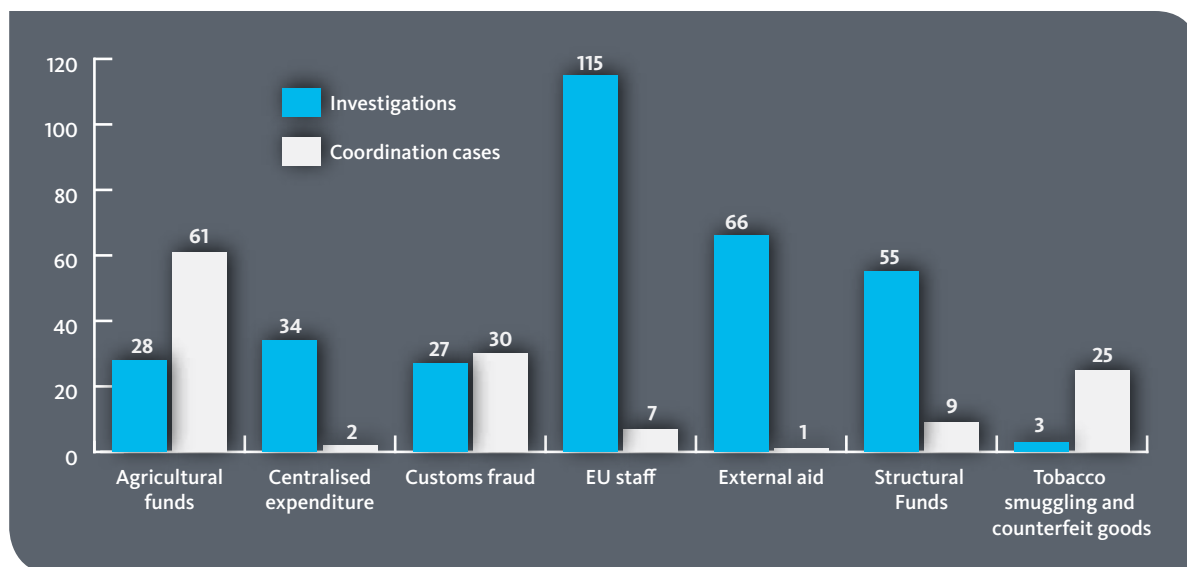
Selection results	2007	2008	2009	2010	2011
Cases dismissed ⁽⁷⁾	592	684	787	661	743
Cases opened as investigation/coordination cases	210	204	220	225	178
Total selections	802	888	1 007	886	921

⁽⁵⁾ The investigation policy priorities are published as part of OLAF's management plan (accessible at http://ec.europa.eu/atwork/synthesis/amp/doc/olaf_mp.pdf).

⁽⁶⁾ Including the former 'prima facie non-cases'.

⁽⁷⁾ See footnote 6.

Chart 8: Investigation and coordination cases by sector (end of 2011)



3.3 Investigative phase

As part of the new investigative procedures introduced on 1 February 2012, all investigative and post-investigative activity (including the monitoring of the implementation of actions recommended to be taken) is carried out by the same unit. This streamlining of the procedure will result in an overall reduction in the duration of investigations and more effective investigative outcomes.

OLAF's caseload

On 31 December 2011, there were 463 investigations and coordination cases, 70 % of which were investigations. The investigative resources of OLAF were focused on investigations whereby OLAF's special investigative powers could produce optimal results (through interviews, inspections of premises, on-the-spot checks, forensic operations and investigations in non-EU countries). The remaining cases related to coordination activities for which OLAF assisted Member States in their investigations.

Table 2: Investigation and coordination cases at the end of each year

Type of case	2007	2008	2009	2010	2011
Investigation	317	317	325	338	328
Coordination case	91	108	132	155	135
Total	408	425	457	493	463

Clearance rate

OLAF opened fewer cases during the year and concentrated its efforts on closing a greater number of cases than in previous years as reflected in the clearance rate.

Chart 9: Clearance rate (number of investigation and coordination cases opened/closed)

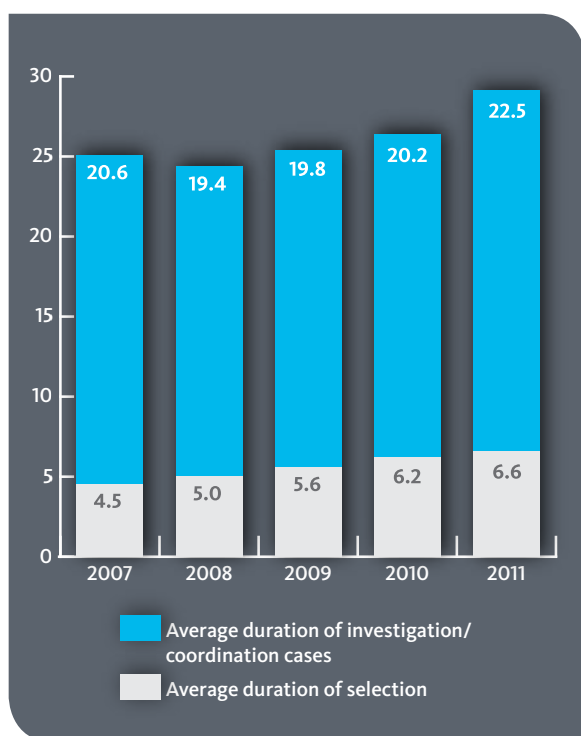




Average duration of investigation/coordination cases

In order to improve the efficiency of the investigative activities, the Office focussed on the closing of old cases and fewer new cases were opened in 2011 than in previous years. This resulted in an increase in the average age of investigation and coordination cases ⁽⁸⁾.

Chart 10: Average duration (in months) of investigation/coordination cases



3.4 Monitoring phase

OLAF's recommendations

The Director-General may make a recommendation, based on a final report, for action to be taken by EU institutions, bodies, offices, agencies or competent authorities of Member States concerned. A recommendation may be for judicial, disciplinary, financial or administrative action to be taken. In 2011, recommendations were made in half of the cases closed.

Chart 11: Type(s) of recommendation made in 2011

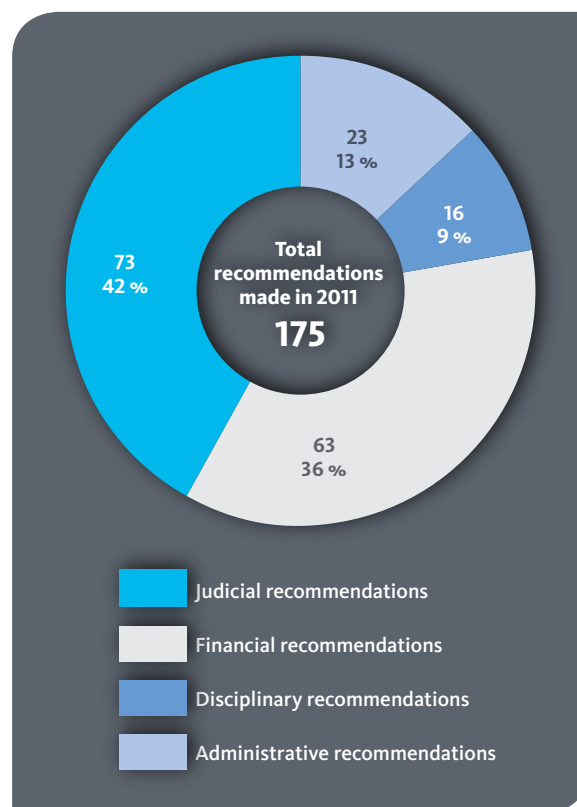
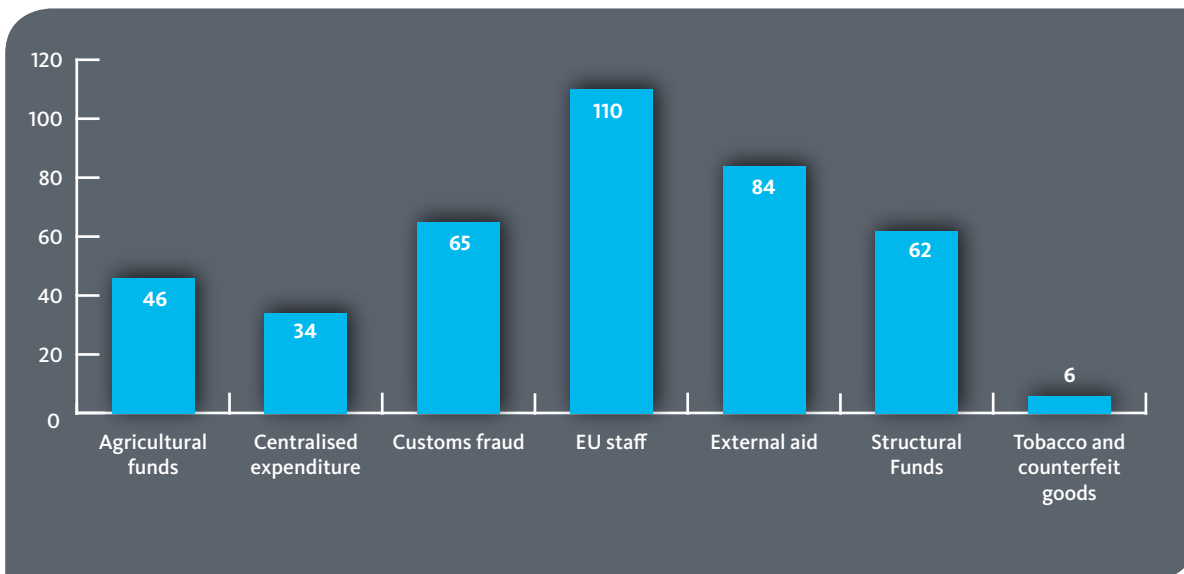


Table 3: Investigation and coordination cases closed with or without recommendations

	2007	2008	2009	2010	2011
With recommendation	153	125	106	98	108
Without recommendation	79	62	82	91	100
Total	232	187	188	189	208

⁽⁸⁾ To better reflect the efficiency of the Office, the duration of the investigative phase now includes the duration of cases closed during the reporting period and those still open at the end of the reporting period.

Chart 12: Cases in monitoring phase



In 2011, 108 cases were closed with 175 recommendations for action to be taken, of which 73 were judicial, 16 disciplinary, 63 financial recovery and 23 administrative.

further significant results was low. Consequently and in order to better focus OLAF's resources on its investigative activity, a decision was taken in 2011 to end the monitoring activity for these cases.

Cases in monitoring phase

Under the new procedures, the investigation units will monitor the implementation of the Director-General's recommendations by EU institutions, bodies, offices, agencies or Member States concerned.

Within the framework of OLAF's internal review, an evaluation of the monitoring cases open in 2011 identified over 500 cases for which no further OLAF activity was necessary and where the likelihood of

Amounts recovered in monitoring phase

In 2011, EUR 691.4 million was recovered. This was an exceptional amount due to particular circumstances that year.

The total amount recovered in a case has been recorded in the OLAF report in the year in which the case is closed regardless of when it was actually recovered. The year 2011 is the last year in which

Table 4: Amounts recovered in monitoring activities closed during the year (million EUR)

Major sector	2007	2008	2009	2010	2011
Agricultural funds	0.7	0.3	137.2	11.4	34.0
Tobacco smuggling and counterfeit goods	0.0	0.2	0.0	0.0	0.1
Customs fraud	3.5	15.9	54.1	7.6	113.7
Centralised expenditure	0.5	0.5	0.9	10.6	0.8
EU staff	0.1	0.2	0.2	0.1	0.6
External aid	0.9	2.3	7.5	5.3	17.5
Structural Funds	197.7	128.0	51.4	32.9	524.7
Total	203.4	147.4	251.3	67.9	691.4



recoveries will be reported in this manner. In order to better reflect the activity of the Office during the reporting year, future reports will record the amounts recovered in the year of their recovery.

The amounts reported as having been recovered in 2011 include the total amounts recovered in the more than 500 monitoring cases which were closed.

The amounts reported as having been recovered in the Structural Funds sector in 2011 include a large single amount of EUR 389 million. This recovery relates to a single case in the Calabria region of Italy under programmes for the financing of roadworks.

Judicial results from monitoring activities

The number of months of imprisonment resulting from judicial action taken by the Member States, following OLAF recommendations, was significantly higher in 2011 than in previous years, reflecting the high number of monitoring activities closed. In the

future, reporting will no longer be based on judicial results of closed cases, but on the results achieved during the year in question.

An analysis of judicial actions taken by the Member States following OLAF investigations in the period 2006-11 indicates that the number of cases in which no judicial decision has yet been taken is relatively high, at 54 %.

More than half of the 471 actions considered by the judicial authorities were dismissed before trial, 42 % of the actions resulted in a conviction and 7% resulted in acquittals. There was a significant variation in the results of the judicial actions between the Member States.

The statistics in table 6 reflect a number of factors, inter alia:

- the total number of investigations transmitted to the Member States;
- the different national procedures relating to criminal investigations;
- the length of national criminal proceedings.



Table 5: Judicial results from monitoring activities closed during the year

Judicial results	2007		2008		2009		2010		2011	
	CASES	VALUES	CASES	VALUES	CASES	VALUES	CASES	VALUES	CASES	VALUES
Suspended sentence (months)	13	246	12	452	9	339	18	1 249	35	840
Imprisonment (months)	9	326	15	955	15	1 240	23	1 503	59	6 137
Financial penalty (million EUR)	13	1.8	16	175.3	12	17.3	23	1 467.7	42	154.7

Table 6: Overview of progress on judicial actions in actions created between 2006 and 2011

Country	Progress on judicial actions					Outcomes of judicial actions					
	Actions transferred to MS	Actions pending judicial decision	As % of all actions transferred	Actions with judicial decision	As % of all actions transferred	Dismissed before trial	Dismissals as % of results	Aquittal	Aquittals as % of results	Convictions	Convictions as % of results
Austria	8	4	50.0 %	4	50.0 %	0	0.0 %	0	0.0 %	4	100.0 %
Belgium	56	28	50.0 %	28	50.0 %	10	35.7 %	0	0.0 %	18	64.3 %
Bulgaria	37	23	62.2 %	14	37.8 %	6	42.9 %	2	14.3 %	6	42.9 %
Cyprus	1	1	100.0 %	0	0.0 %	0	NA	0	NA	0	NA
Czech Republic	23	15	65.2 %	8	34.8 %	6	75.0 %	0	0.0 %	2	25.0 %
Denmark	4	1	25.0 %	3	75.0 %	2	66.7 %	0	0.0 %	1	33.3 %
Estonia	3	2	66.7 %	1	33.3 %	0	0.0 %	0	0.0 %	1	100.0 %
Finland	12		0.0 %	12	100.0 %	1	8.3 %	0	0.0 %	11	91.7 %
France	29	17	58.6 %	12	41.4 %	3	25.0 %	0	0.0 %	9	75.0 %
Germany	168	54	32.1 %	114	67.9 %	37	32.5 %	12	10.5 %	65	57.0 %
Greece	86	60	69.8 %	26	30.2 %	14	53.8 %	7	26.9 %	5	19.2 %
Hungary	10	9	90.0 %	1	10.0 %	1	100.0 %	0	0.0 %	0	0.0 %
Ireland	0	0	NA	0	NA	0	NA	0	NA	0	NA
Italy	112	75	67.0 %	37	33.0 %	21	56.8 %	2	5.4 %	14	37.8 %
Latvia	4	4	100.0 %	0	0.0 %	0	NA	0	NA	0	NA
Lithuania	9		0.0 %	9	100.0 %	1	11.1 %	0	0.0 %	8	88.9 %
Luxembourg	2	1	50.0 %	1	50.0 %	0	0.0 %	0	0.0 %	1	100.0 %
Malta	5	5	100.0 %	0	0.0 %	0	NA	0	NA	0	NA
Netherlands	29	13	44.8 %	16	55.2 %	11	68.8 %	0	0.0 %	5	31.3 %
Poland	90	73	81.1 %	17	18.9 %	9	52.9 %	2	11.8 %	6	35.3 %
Portugal	21	12	57.1 %	9	42.9 %	3	33.3 %	0	0.0 %	6	66.7 %
Romania	225	97	43.1 %	128	56.9 %	94	73.4 %	4	3.1 %	30	23.4 %
Slovakia	16	7	43.8 %	9	56.3 %	8	88.9 %	1	11.1 %	0	0.0 %
Slovenia	2	2	100.0 %	0	0.0 %	0	NA	0	NA	0	NA
Spain	54	49	90.7 %	5	9.3 %	5	100.0 %	0	0.0 %	0	0.0 %
Sweden	5	1	20.0 %	4	80.0 %	0	0.0 %	0	0.0 %	4	100.0 %
United Kingdom	19	6	31.6 %	13	68.4 %	9	69.2 %	1	7.7 %	3	23.1 %
Total	1 030	559	54.3 %	471	45.7 %	241	51.2 %	31	6.6 %	199	42.3 %



3.5 Case examples

3.5.1 Expenditure: OLAF protects EU interests

OLAF protects the financial interests of the EU in relation to the expenditure side of the EU budget. The case studies below illustrate OLAF's achievements in the fields of regional policy, support for a non-EU country and EU enlargement.

Case study A: The winning consortium misrepresented its qualifications and experience in a high-value EU tender



The Directorate-General for Regional Policy (DG REGIO) of the European Commission passed to OLAF information received about possible irregularities in the tender procedure for an EU-funded (Cohesion Fund) project for the construction of a plant in Bulgaria. The EU funding allocated for the project was EUR 34 million. The European Bank for Reconstruction and Development (EBRD) had also provided a loan of EUR 25 million for this project.

The central allegations in the case were that the consortium that had won the tender had misrepresented its qualifications and eligible experience in the specialised sector concerned. Of the EU funding involved, an advance payment of over EUR 7 million had already been made for the project.

OLAF's findings

OLAF's investigation in the matter necessitated enquiries in several Member States. The investigation found that the successful bid had been prepared and

submitted by the winning consortium in a manner which gave an incorrect and misleading account of its experience and qualifications.

OLAF's recommendations

Consequently, OLAF recommended to the Regional Policy DG that the EU funding of EUR 34 million allocated for the project should be cancelled and that the EUR 7 million already paid out should be recovered. The DG is acting on these recommendations. OLAF also passed the file to the Bulgarian judicial authorities, which have opened a criminal investigation.

Conclusions and further steps

In EU-funded projects of a high value, Member States need to be rigorous in their examination and understanding of supporting documentation whose purpose is to demonstrate a proven and eligible record in a particular sector. Only then can it be expected that the best quality will be obtained for EU taxpayers' money. This is especially so when such supporting documentation is obtained from non-EU countries and refers to specialised sectors.

Case study B: Abuse of experts' CVs in an EU-funded African project



OLAF opened an investigation after it had received information from an EU delegation in an African country, alleging irregularities in a procurement procedure. The information concerned a service contract assigned to an EU-based company responsible for the selection of experts to direct and supervise roadworks financed by the EU budget.

OLAF's findings

OLAF carried out checks and found that the EU-based company had systematically altered the CVs of its experts, to ensure that they would meet the award criteria. OLAF also found that controls were deficient. There had been a high turnover of experts and their qualifications and competences were not checked as required. There was a general failure to ensure continuity. By examining other contracts of the same European company in another three African countries, the same modus operandi was discovered, including the substitution of highly qualified experts with unqualified last-minute replacements.

OLAF's recommendations

OLAF made recommendations for the recovery of the amounts, by means of financial damages and penalties of up to 10 % of the contract, amounting to a total of EUR 3 million. OLAF also recommended the exclusion of the contractor from EU funding for a period of time.

Conclusions and further steps

OLAF also recommended that databases of experienced experts in projects financed by EU funds should be set up and that compulsory financial sanctions should be applied in such cases.

Case study C: Fraudulent use of EU support by an Albanian NGO

The European Commission delegation in Albania and the Commission's Directorate-General for Enlargement provided OLAF with information on a possible fraud scheme affecting external aid funds awarded to two Albanian NGOs. OLAF opened an investigation in September 2011 and carried out its investigation in Albania the same month.

OLAF's findings

A number of interviews were conducted and several companies were visited. The findings of the mission fully confirmed the suspicions of fraud regarding the main grant contract awarded to an Albanian NGO. More specifically, investigators found that a tender procedure that should have been organised in the framework of the contract had never taken place and that documents presented to the EU delegation had been falsified. Evidence showed that an event that had allegedly been organised in the framework of the contract had never

taken place, and that all documentation presented regarding the event had apparently been falsified. Most invoices presented in the framework of the same project had also been falsified.

Investigators found that the NGO staff responsible for the project had left Albania and were currently living in Canada. OLAF had grounds to believe that the falsified documentation and/or invoices had been presented in two or three other projects awarded to the same NGO.

OLAF's recommendations

As a result of OLAF's findings, the Commission launched recovery orders. For the main contract, the sum to be recovered amounts to the full EU contribution of more than EUR 70 000. For other contracts, recovery orders are still being prepared and national judicial authorities are commencing proceedings.

Conclusions and further steps

Experience shows that projects requiring the organisation of local educational or other events tend to create a risk of fraud. The EU funding per project is relatively low, so the likelihood of projects being inspected is also low. This case also shows that the same beneficiary can easily perpetrate such fraud in similar projects benefiting from EU grants. EU delegations need to improve their monitoring and inspection procedures. At present, only copies of invoices need to be delivered to the EU delegation, and this significantly raises the risk of fraud, as it is easy to falsify them.

3.5.2 Revenue: OLAF protects traditional own resources

Own resources provide the EU's main revenue. There are three kinds of own resources: firstly, traditional own resources which account for roughly 13 % of EU revenue, comprising mainly customs duties on imports from outside the EU and sugar levies; secondly, own resources from value added tax (VAT); and, thirdly, contributions based on gross national income (GNI). As regards traditional own resources, OLAF exercises the Commission's powers to carry out administrative investigations to fight against customs fraud and support the national customs authorities in their missions. The case studies below illustrate OLAF's achievements in the discovery of fraud in the areas of customs duties, anti-dumping duties and tax payments.

Case study D: Fraudulent biodiesel import

— US biodiesel shipped through India



OLAF established that, since the entry into force of EU anti-dumping duties for biodiesel of US origin in 2009, significant consignments of US biodiesel had been shipped from the USA to a company in India. Subsequently, the same Indian company had exported similar quantities of biodiesel to the EU, which had been declared on importation as being of either preferential or non-preferential Indian origin. Therefore, no import duties had been paid. However, it was suspected that the biodiesel exported by the Indian company to the EU was of US origin and should have been subject to such duties.

OLAF decided to open an external investigation into this matter. In the course of the investigation, it requested and received information and assistance from competent authorities in Belgium, Spain, Switzerland, India and the USA.

OLAF's findings

In December 2011, OLAF made an investigative mission to India with the support and cooperation of the national authorities there. Substantial evidence was obtained by OLAF from national authorities and economic operators, other than the suspect company, which were not directly involved, such as storage and inspection companies. OLAF's investigation established that the company in India had imported biodiesel from the US, which had been stored temporarily in a warehouse and subsequently re-exported to the EU.

The Indian company, which was also a producer of biodiesel, had added minor quantities of biodiesel of Indian origin to the biodiesel of US origin and subsequently misled the Indian authorities about the

origin and the composition of the product in order to fraudulently obtain certificates of preferential Indian origin. Biodiesel imported with such certificates was not subject to the payment of any import duties on importation into the EU.

In the case of one shipment, the Indian company had transported the US biodiesel to its factory and alleged that this biodiesel had been reprocessed in order to improve its properties and so meet EU standards. However, OLAF established that the biodiesel exported from the US to India had already met these standards. Moreover, these standards were not legally required on import into the EU. Therefore, the process allegedly carried out by the Indian company, which did not actually result in a new product, was not justified in economic terms. Consequently, even if the processing had been carried out as declared by the Indian company, the biodiesel would have retained its non-preferential US origin.

OLAF's recommendations

Belgium and Spain, the Member States of importation, have been provided with the necessary evidence to recover evaded import duties of over EUR 32 million.

Conclusions and further steps

This case demonstrates the importance of international cooperation with all counterpart administrations, including those countries which are not directly concerned but are able to provide OLAF with valuable information. This case also demonstrates the importance of gathering evidence from economic operators not directly implicated in the fraud.

Case study E: Identity theft — Fraudulent import of plastic bags from China

In 2010, OLAF received a complaint from the EU-based parent company of a Chinese plastic bag producer that their company's name had been used illegally by other Chinese exporters to wrongly benefit from the considerably reduced rate of anti-dumping duties payable on import into the EU of that company's legitimate products.

OLAF decided to open an investigation into this matter. In the course of the investigation, it requested and received information and assistance from the competent authorities in China and the EU Member States (primarily Denmark, Germany, Ireland, Sweden and the UK).

OLAF's findings

In April 2011, OLAF carried out an investigative mission to China with the support and cooperation of the Chinese authorities and customs officers from Germany and the United Kingdom. Substantial evidence was obtained by OLAF from those national authorities and the complainant company, which proved that a significantly larger quantity of plastic bags had been imported from China, in the name of the complainant company, than the company's own figures showed.

Over 2 000 metric tons of plastic bags, worth over EUR 3 million, had been incorrectly imported into the EU to wrongly benefit from the reduced rate of anti-dumping duties applicable to the company whose name was being misused. Additionally, these consignments were often accompanied by falsified certificates of Chinese origin. This fraud had directly led to the evasion of over EUR 1 million in EU own resources.

OLAF's recommendations

The EU Member States of importation (Denmark, Germany, Ireland, Sweden and the UK) have been provided with the necessary evidence to recover the evaded import duties. Follow-up action is under way in China.

Conclusions and further steps

This case demonstrates the importance of international cooperation, not only with the competent national authorities, but also with the economic operators who are sometimes the victims of this type of fraud and without whose cooperation a successful investigation would not have been possible.

Case study F: International criminal group smuggles cigarettes from Russia



In March 2010, OLAF received a letter from the Public Prosecutor's Office in Bielefeld (Germany) requesting that OLAF provide assistance in an ongoing investigation carried out by the Customs Investigation Office in Hanover and coordinate further investigative actions in Germany, Lithuania and Poland. This investigation concerns the illegal activities of an international criminal group smuggling cigarettes from Russia (Kaliningrad) and Ukraine via Belarus and Lithuania onto the Polish and German black markets. The criminal organisation has been using several transport companies and various cover loads and can deliver 4 million–6 million cigarettes at a time, causing significant losses to the EU and Member States' budgets.

OLAF's findings

This operation was launched in May 2010 after specific intelligence about suspicious cigarette smuggling, money laundering and organised crime was gathered by OLAF and law enforcement agencies in the Member States concerned. The aim of the investigation is twofold: firstly, to coordinate, assist and support the investigation carried out by law enforcement agencies in these Member States; and, secondly, to seize the smuggled cigarettes, arrest the members of the criminal organisation and freeze their assets.

Following the first operational meeting organised by OLAF in May 2010 in Germany, joint operations have resulted so far in the seizure of approximately 70 million cigarettes in Germany, Lithuania, Poland and Belarus representing losses of taxes and duties to the Member States and EU of approximately EUR 6.5 million. Additionally, 35 persons have been charged, 10 of whom — including the main organisers — remain in detention in Lithuania. In Poland, 30 suspects have been charged with cigarette smuggling.

The complexity of this case is due to the flexibility of 'business relations' between criminal groups in Germany, Lithuania and Poland, namely from variations in demand and in cigarette prices on the black market. OLAF has played a key role in organising and sharing coordination meetings with the representatives of the Member States concerned. Moreover, all relevant information and documents have been exchanged via OLAF in order to overcome linguistic problems and the difficulties inherent in cooperation between different legal systems.

OLAF's recommendations

Investigations are ongoing as OLAF is still facilitating the exchange of evidence between the countries involved



and more arrests are expected. Penalties for smugglers will differ depending on the Member State in which the suspect was caught.

Conclusions and further steps

This case highlights the significant losses to the EU budget that can be brought about by organised crime groups and demonstrates that OLAF has a major role to play in fighting transnational crime. A thorough examination of criminal groups' modus operandi and organising coordination and cooperation between law enforcement agencies at supranational level are essential in order to efficiently tackle cigarette smuggling.

3.5.3 OLAF fights fraud, corruption and misconduct within all EU institutions and bodies

OLAF is mandated to investigate suspected cases of serious professional misconduct in all EU institutions, bodies and agencies.

Case study G: EU official caught taking bribes

OLAF received allegations that an EU official had committed irregularities, in the form of demanding bribes. The EU official in question was employed as a project manager in a European Commission delegation. This entailed the selection of contractors and the implementation of the project.

OLAF's findings

OLAF investigators obtained immediate access to the relevant information. OLAF analysts scrutinised the relevant computer data obtained by its investigators. This information was subsequently referred to the competent judicial authorities. The same authorities drew on OLAF's expertise when conducting searches and evaluating the findings within the framework of a criminal investigation.

OLAF's findings showed that the EU official allegedly established improper links with participants in the projects and allowed participants to engage in improper contacts during the selection procedure. Over the years, the person concerned had supposedly demanded and obtained bribes. As a result, some participants were given favourable treatment.

OLAF's recommendations

A criminal investigation of the EU official and the project participants was opened as a result of OLAF's findings. In parallel, OLAF recommended that the official be removed from his post, as a precautionary measure. OLAF also recommended that the project participants be entered in the Commission's early warning system, to ensure that they cannot take part in any future European projects.

Conclusions and further steps

This case shows that it is important that OLAF's powers include immediate access to relevant premises and information to enable OLAF to examine suspicious elements and to secure data for use as admissible evidence in court by judicial authorities. OLAF has been able to continue assisting the judicial authorities after the criminal investigation was opened. The information also led to a second criminal case being opened in another jurisdiction.

Case study H: EU official divulges selection test answers to a friend at an EU agency



OLAF opened an investigation concerning possible irregularities in the selection procedure at one of the EU agencies. During the examination process, it became clear that information had been divulged, as one of the candidates' answers were almost identical to the model answers. It was considered that an official member had disclosed unauthorised information to an outside person who was a candidate in the competition.

OLAF's findings

OLAF discovered, through a forensic analysis of computers, that a high-ranking official had sent the questions and model answers of the selection test,

via a private mailbox, to a candidate, who was a friend of his. He violated his obligations with regard to rules concerning conflicts of interest and disclosed confidential information.

OLAF's recommendations

Based on OLAF's recommendation, the agency's management board decided to open a disciplinary procedure, as a result of which the high-level official resigned.

Conclusions and further steps

This case shows the efficiency of a forensic analysis carried out by OLAF in order to verify the violation of professional rules by EU officials. The cooperation with the agency was smooth and allowed OLAF to conduct a thorough check, which led to the recommendation of disciplinary measures.

3.5.4 Summary

OLAF is an administrative service with no judicial power. As an investigative service, OLAF cannot impose sanctions. It must rely on the Member States, EU institutions and bodies to carry out its recommendations. For example, if OLAF finds evidence that EU funds have been misused, it will recommend repayment or recovery of the funds. If OLAF finds evidence of criminal acts, it will ask the national authorities to start a criminal investigation. For investigations concerning EU staff, it can recommend disciplinary follow-up. The case is then referred to a disciplinary panel that decides on the measures to be taken.

OLAF adds value thanks to its multidisciplinary team of investigators, its cooperation with bodies responsible for criminal investigations in the Member States, its cooperation with EU bodies on the management and auditing of funds, and its tools to integrate and make accessible databases necessary for an efficient fight against fraud.

4. Focus on: curbing cigarette smuggling along the EU eastern border

Smuggling of highly taxed goods is a prevailing criminal phenomenon at the eastern border. It causes significant losses of revenue to the budgets of the EU and its Member States. Although accurate statistics are difficult to obtain, the direct loss in customs revenue as a result of cigarette smuggling in the EU is estimated to amount to more than EUR 10 billion a year.

Cigarette smuggling is almost exclusively the domain of organised crime groups that make substantial financial gains from their illegal activities. Their activities are also detrimental to public health as smuggling can lead to a rise in the consumption of tobacco products, especially in vulnerable groups, such as young people.

With all tools at its disposal, OLAF is active in the fight against cigarette smuggling. A large number of coordination cases and several investigations have been concluded over the years and technical assistance, including co-financing of equipment, has been provided to Member States' authorities. OLAF has also engaged in negotiations with cigarette manufacturers

and with international partners in both bilateral and international contexts.

A number of factors contribute to the large-scale smuggling of tobacco. The exchange of operational information between competent authorities in the region is not always sufficient, and corruption is a prevalent problem at the eastern border, which smugglers often use to cover their illegal activities. Due to insufficient financing, flaws remain in infrastructure and equipment at the external borders.

In order to help tackle this complex problem, the Commission published an action plan to fight against cigarette and alcohol ⁽⁹⁾ smuggling along the EU eastern border, in June 2011.

⁽⁹⁾ The smuggling of alcohol involves less loss of revenue than that of cigarettes. The seizures from non-commercial traffic and passengers are not recorded in databases because individual seizures are not significant.

The implementation of the EU eastern border action plan was one of OLAF's main priorities in 2011 and it will continue to be a key objective in 2012. The following are examples of actions accomplished by OLAF in 2011.

- Organised by the Polish Customs Service in close cooperation with OLAF, Operation Barrel was conducted in October 2011. Twenty-four Member States, as well as Norway, Switzerland, Croatia and Turkey, participated in this first joint customs operation targeting rail traffic along the EU's eastern border. The Taxation and Customs Union DG, Europol, Frontex and the World Customs Organisation also provided their support. Operation Barrel resulted in the seizure of 1.2 million cigarettes.
- In the Commission's legislative proposal for the future Hercule III programme ⁽¹⁰⁾, to be managed by OLAF, the rate of co-financing by the EU for

technical equipment is significantly higher than in the previous programmes. The proposal is currently being negotiated by the European Parliament and the Council of the European Union.

- In August 2011, an OLAF liaison officer (OLO) was posted in the EU delegation in Kiev, Ukraine, to establish closer contacts and case-related cooperation with the competent services of the region, particularly in the area of illicit tobacco products. The OLO's actions are already producing investigative results.
- A targeted regional meeting on cigarette smuggling organised by OLAF took place in Bucharest in June 2011 with the participation of competent authorities from Bulgaria, Hungary, Romania, Moldova and Ukraine. The meeting not only offered the opportunity to share views and expertise with other law-enforcement authorities from the region but also provided a useful platform for discussing the possibility of developing internal cooperation and coordination.

⁽¹⁰⁾ Please refer to Section 7.5.1 for further information.

While the action plan focuses on a particularly problematic geographical area, OLAF contributes to the Commission's efforts to tackle the smuggling of cigarettes on a global scale. In this context, OLAF has coordinated the EU position and has represented the EU throughout the negotiations of a Protocol on the Elimination of the Illicit Trade in Tobacco Products, (under the umbrella of the Framework Convention on Tobacco Control (FCTC)), a World Health Organisation (WHO) treaty.

In 2007, the Conference of the Parties to the FCTC established an intergovernmental negotiating body (INB) to negotiate a draft protocol. The negotiations, which started in 2007, involved over 170 parties. At the fifth meeting of the INB in April 2012, the parties agreed the draft protocol.

The protocol, once ratified, would become a powerful international treaty in the fight against the illicit trade in tobacco products. It is foreseen that the

protocol would oblige parties to ensure thorough control of the supply chain by means of licencing or other equivalent approval or control systems. In this context, all tobacco products would be subject to a tracking and tracing regime in order to assist law enforcement officers worldwide to identify the companies and persons responsible for the diversion of tobacco products onto the black market. It is also foreseen that there would be strong anti-money laundering, record-keeping and due diligence ('know your customer') provisions. Control of manufacturing and movement of tobacco products in free zones, and the prohibition of intermingling of tobacco products with non-tobacco products at the point of export from free zones with appropriate criminal sanctions for offenders, are major successes in the text of the proposed protocol.

The draft protocol will be submitted for consideration and adoption to the Conference of the Parties at the WHO FCTC in November 2012.



5. Data protection

Compliance with Regulation (EC) No 45/2001 on data protection ⁽¹¹⁾ is a comprehensive and challenging aspect of OLAF's case-related work, in particular since the requirements of data protection must be balanced with the fulfilment of OLAF's investigative and operational tasks. With the support of OLAF's Data Protection Officer (DPO), staff are instructed to comply with the rules on the protection of personal data laid down in this regulation, such as the requirements on data quality, providing information to the data subject and respecting the rights of the data subject regarding access, rectification, blocking and erasure.

5.1 EDPS: 2011 inspection of OLAF

In July 2011, the European Data Protection Supervisor (EDPS) conducted an inspection at OLAF's premises to verify implementation of his recommendations made with respect to investigations conducted by OLAF, as well as those regarding OLAF's security systems. The EDPS issued a report on the inspection with recommendations in October 2011. The inspection team randomly selected 15 investigations (five internal and 10 external) to examine from a list of cases that OLAF had provided. For each investigation selected, the team checked compliance with data protection requirements related to information on the data subject and transfers of personal data. The EDPS found that compliance was higher for internal than for external investigations, and made several recommendations for improving compliance in external investigations. OLAF is currently working on implementing these recommendations.



5.2 EDPS: 2011 general survey

OLAF considers the protection of personal data a priority issue. The EDPS has acknowledged OLAF's high level of compliance in a report on its 2011 general survey of compliance by all EU institutions and bodies ⁽¹²⁾. The EDPS analysed the performance of all 58 EU institutions and bodies, including OLAF, in each of six areas:

- ▮ completion of the inventory of processing operations;
- ▮ completion of notifications;
- ▮ completion of prior checks with the EDPS;
- ▮ follow-up given to EDPS recommendations;
- ▮ adoption of data protection implementing rules; and
- ▮ the appointment and role of the DPO.

The institutions and bodies were divided into four groups, based on when they were created and when

⁽¹¹⁾ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ L 8, 12.1.2001, p. 1–22

⁽¹²⁾ EDPS, 'Measuring compliance with Regulation (EC) 45/2001 in EU institutions and bodies (Survey 2011)' (http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Inquiries/2012/12-01-23_Survey_2011_General_Report_EN.pdf).

they appointed a DPO. OLAF was found to have performed highly on all criteria.

5.3 The OLAF inventory and register of personal data-processing operations

Regulation 45/2001 requires that each EU institution and body has a publicly available register of all of its personal data-processing operations. The OLAF register is available on the OLAF website ⁽¹³⁾.

The register contains the notifications prepared by OLAF, providing details about the processing, the categories of data subjects, the categories of personal data being processed, the recipients of the data and the retention period. OLAF currently has approximately 70 processing operations in its register. During 2011, it introduced eight notifications for new, or revisions to existing, processing operations.

5.4 The EDPS's 'prior checks' of OLAF's sensitive processing operations

Approximately half of OLAF's processing operations have been subject to prior checking by the EDPS because they fall within the criteria specified in Article 27 of Regulation 45/2001 as likely to present specific risks. In particular, a number of OLAF's processing operations relating to investigations and coordination cases may relate to 'suspected offences, offences,

criminal convictions or security measures'. In 2011, OLAF submitted six new notifications to the EDPS for prior checking, all of which related to the OLAF reorganisation (one concerned procedures for the reallocation of staff within OLAF and five concerned the new OLAF investigative procedures).

For each of these prior checks, the EDPS has issued an opinion, which is available on the OLAF website and on the EDPS website ⁽¹⁴⁾. Each prior checking opinion contains recommendations. OLAF has implemented most of the EDPS's recommendations, and continues to work with the EDPS to find solutions on several outstanding issues.

5.5 Guidance for OLAF staff

In October 2010, OLAF adopted an updated version of its 'Guidelines for OLAF staff regarding practical implementation of data protection requirements.' These guidelines provide OLAF investigative staff with detailed instructions on how to implement data protection requirements in their daily work. OLAF staff also received training on the guidelines at the time of their introduction. Following the OLAF internal review, it will be necessary to update these guidelines in the course of 2012. The updated guidelines will also implement a number of recommendations made by the EDPS in his recent prior checking opinions. Once completed, OLAF staff will receive training on the revised data protection procedures.

⁽¹³⁾ http://ec.europa.eu/anti_fraud/dataprotectionofficer//register/index.cfm?TargetURL=D_REGISTER

⁽¹⁴⁾ <http://www.edps.europa.eu/EDPSWEB/edps/Supervision/priorchecking/OpinionsPC>



6. Supervisory Committee

OLAF's Supervisory Committee monitors the investigative activities of the Office with the objective of reinforcing OLAF's independence. It is composed of five outside experts, appointed by the common agreement of the European Parliament, the Council and the Commission, who take no instructions from any government, institution, body, office or agency.

The Director-General keeps the committee regularly informed of the Office's activities and investigations and their results, as well as of the follow-up actions carried out.

The committee monitors the implementation of OLAF's investigative function without interfering in the conduct of investigations in progress. The committee delivers opinions to the Director-General and submits reports to the EU institutions.

In 2011, the members of the committee were the following: Mr Kálmán Györgyi, Ms Rosalind Wright, Mr Peter Strömberg, Ms Diemut Theato and Mr Luis López Sanz-Aranguez.

The Supervisory Committee provided several opinions, notably concerning the access by OLAF to personnel data held by the Commission, OLAF's powers concerning the independent conduct of internal investigations within the EU institutions and the transmission by OLAF to the institutions of final case reports drawn up following internal investigations closed without follow-up. The Committee's opinion on the amended proposal for a regulation of the European

Parliament and of the Council amending Regulation (EC) No 1073/1999 concerning investigations conducted by the European Anti-Fraud Office (and repealing Regulation (Euratom) No 1074/1999) contributed to the general debate on the reform of this regulation.

The committee issued an activity report covering the period from January to November 2011, which was the final activity report of this committee whose term of office began in December 2005. As well as summarising its activities during 2011, this report provides a synopsis of the main issues on which the Supervisory Committee focused its monitoring activity throughout its six-year mandate.

The recommendations of the Supervisory Committee have provided very useful advice for improving OLAF's efficiency and effectiveness. In its activity report the Supervisory Committee recognises, in particular, OLAF's efforts to implement the opinions on the respect for fundamental rights and procedural guarantees and on investigative planning. Many of the recommendations given in different opinions and reports of the Supervisory Committee have been implemented in the course of the internal review of the Office.

The new members of the Supervisory Committee were appointed on 23 January 2012. They are (from left): Mr Johan Denolf, Ms Catherine Pignon, Mr Christiaan Timmermans, Ms Rita Schembri and Mr Herbert Boesch. Mr Timmermans was elected chairman of the Committee.



7. Policy for fraud prevention and detection

7.1 OLAF reform proposal

The basic regulation defining OLAF's main role and remit for carrying out its administrative investigations (Regulation (EC) No 1073/1999) is currently under review. Further to a reflection process carried out during 2010, the Commission presented an amended proposal to improve the legislative framework governing the work of OLAF ⁽¹⁵⁾ to the co-legislators, the European Parliament and the Council of the European Union, in March 2011.

Based on the Commission proposal, the reform of the regulation is likely to confirm certain legal aspects, including the presumption of innocence and rights, such as the right for the person concerned by an investigation of the Office to make their views known and to be assisted by a person of their choice. Based on the proposal, each Member State would be asked to provide support to OLAF at various stages of an investigation, to allow the Office to monitor the action taken to implement its recommendation(s). Member States are asked to designate an anti-fraud coordination service (AFCOS) for effective cooperation and information exchange with OLAF. The reform also focuses on improving the effectiveness of information exchange with judicial authorities.

To strengthen its capacity to conduct operations outside the EU, OLAF would be mandated to make administrative arrangements with competent services in non-EU countries. Furthermore, OLAF would receive a mandate to intensify its cooperation with other EU partners and to agree on administrative arrangements with Eurojust, the EU's judicial cooperation unit, and Europol, the EU's police office.

Provisions on OLAF's governance would be reinforced. The role of the Supervisory Committee would be clarified and the mandate of the Director-General would be extended to seven years, instead of the current five years. But in the future this mandate would

be non-renewable, to reinforce the independence of the Director-General.

After negotiations at working group level under the Hungarian Presidency (January–June 2011), which led to the adoption of a draft 'outcome of proceedings', the Polish Presidency (July–December 2011) received a mandate to negotiate with the European Parliament rapporteur in the framework of an informal trilogue. Since then, more than 10 trilogue meetings have taken place during the Presidencies of Poland and Denmark (January–June 2012) in order to agree on a joint compromise in the first reading.

7.2 Commission Anti-fraud Strategy

As part of its preventive mandate, OLAF plays a key role in the development of comprehensive anti-fraud policies. The new Commission strategy ⁽¹⁶⁾, adopted in June 2011, aims at improving:

- the prevention and detection of fraud;
- conditions for fraud investigations;
- recovery and deterrence.

The strategy is directed primarily at Commission services and provides for the development of sectoral strategies in each policy area.

The strategy highlights the following priorities:

- adequate anti-fraud provisions in Commission proposals on spending programmes under the new multiannual financial framework (MFF);
- the development and implementation of anti-fraud strategies at Commission service level, with the assistance of OLAF;
- the revision of the public procurement rules in order to simplify requirements and reduce the risks of procurement fraud in the Member States.

⁽¹⁵⁾ 'Amended proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 1073/1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (Euratom) No 1074/1999'; COM(2011) 135 final, 17.3.2011.

⁽¹⁶⁾ Communication from the Commission on the Commission anti-fraud strategy, COM(2011) 376 final, 24.6.2011.



The implementation of the actions linked to the strategy is in progress. A number of concrete results have already been achieved, including:

- ▶ the insertion/reinforcement of anti-fraud provisions in the legislative proposals submitted in the framework of the MFF for the period 2014–20;
- ▶ the adoption of an action plan to fight against smuggling of cigarettes and alcohol along the EU's eastern border (see Chapter 4 for further information);
- ▶ the setting-up of a fraud prevention and detection network (FPDNet) within the Commission;
- ▶ the creation of a dedicated fraud prevention section on OLAF's intranet site, accessible to Commission services;
- ▶ an ad hoc meeting on fraud prevention in the field of structural actions, within the framework of the Advisory Committee for the Coordination of Fraud Prevention (Cocolaf), in preparation for the establishment of a sectoral subgroup;
- ▶ the publication and dissemination of a casebook for structural actions.

7.3 Protection of EU financial interests by criminal law and administrative investigations

Criminal investigators, prosecutors and judges in the EU Member States apply their own national rules to decide how to combat fraud and to intervene to protect EU finances, if at all. As a consequence, the conviction rate in cases involving offences against the EU budget varies considerably across the EU from one Member State to another, ranging from 14 % to 80 %⁽¹⁷⁾.

OLAF's experience, underpinned by statistical and analytical evidence, shows that there is insufficient deterrence concerning criminal misuse of the EU budget.

Member States' criminal law has been, to a limited extent, harmonised with the Convention on the

Protection of the European Communities' Financial Interests ('PIF Convention'). However, a number of shortcomings have not yet been addressed⁽¹⁸⁾. Additionally, practitioners have pointed out that mutual legal assistance has its limits, that the use of evidence in cross-border cases is sometimes problematic and that there is a tendency to limit prosecutions to domestic cases and disregard the European dimension.

The Lisbon Treaty has strengthened the EU's powers in protecting the financial interests of the EU. Inasmuch as related criminal law aspects are concerned OLAF has cooperated internally with the Directorate-General for Justice.

In May 2011, the Commission announced its intention to step up action in three areas where the legal framework should be further improved to protect EU financial interests⁽¹⁹⁾.

- ▶ The current definitions of the major offences affecting EU financial interests (such as fraud) as well as of other criminal offences affecting the protection of EU financial interests (such as embezzlement or abuse of power) vary across the EU. These concepts should be approximated by means of a new initiative on the protection of EU financial interests by substantive criminal law. The Commission is in the process of preparing a proposal for a directive to be based on Article 325 of the Treaty on the Functioning of the European Union (TFEU), for adoption in 2012.
- ▶ A proposal on the procedural framework for the protection of EU financial interests is planned, in order to make it easier for prosecutors and judges across the EU to fight fraudsters. This should, in particular, improve cooperation and the exchange of information between all competent actors, including police, customs, tax and judicial authorities, and ensure the admissibility of evidence stemming from such cooperation.
- ▶ An institutional framework should be established to investigate, prosecute and bring to justice

⁽¹⁸⁾ 'Second report on the implementation of the Convention on the Protection of the European Communities' Financial Interests and its protocols', COM(2008) 77 final, 14.2.2008.

⁽¹⁹⁾ Commission communication on the protection of the financial interests of the European Union by criminal law and by administrative investigations — An integrated policy to safeguard taxpayers' money, COM(2011) 293 final, 26.5.2011.

⁽¹⁷⁾ See also OLAF's report for 2010 (http://ec.europa.eu/anti_fraud/about-us/reports/olaf-report/index_en.htm).

perpetrators of offences against EU financial interests. This should follow a coherent approach for all competent EU structures, including the reinforcement of existing bodies — Eurojust and OLAF — and comprise the establishment of a specialised European public prosecutor’s office. In accordance with Article 86 TFEU, these structures would be competent to investigate, prosecute and bring to justice perpetrators of fraud and any other offences affecting EU financial interests.

The Commission reports annually, in cooperation with the Member States, on the protection of the EU’s financial interests under Article 325 TFEU. The report for 2011 is scheduled for adoption by the Commission in July 2012.

7.4 Cooperation with Eurojust

OLAF’s cooperation with Eurojust was given further impetus in 2011.

Case-related cooperation with Eurojust is in line with the ‘Practical agreement on arrangements of cooperation between Eurojust and OLAF’ of 24 September 2008.

As foreseen by the ‘practical agreement’, the yearly meeting of OLAF’s Director-General and the President of Eurojust took place in July 2011 in The Hague. Additionally, as in previous years, a one-day study visit for staff was organised by the liaison teams, and a group

of OLAF staff visited Eurojust in The Hague. Finally, OLAF also participated in the joint investigation team expert meetings of Eurojust.

As a major practical improvement to the information exchange between the two bodies, a secure communication system was set up, allowing a secure electronic exchange of case-related information. The system has been used effectively between OLAF and Eurojust since 2011.

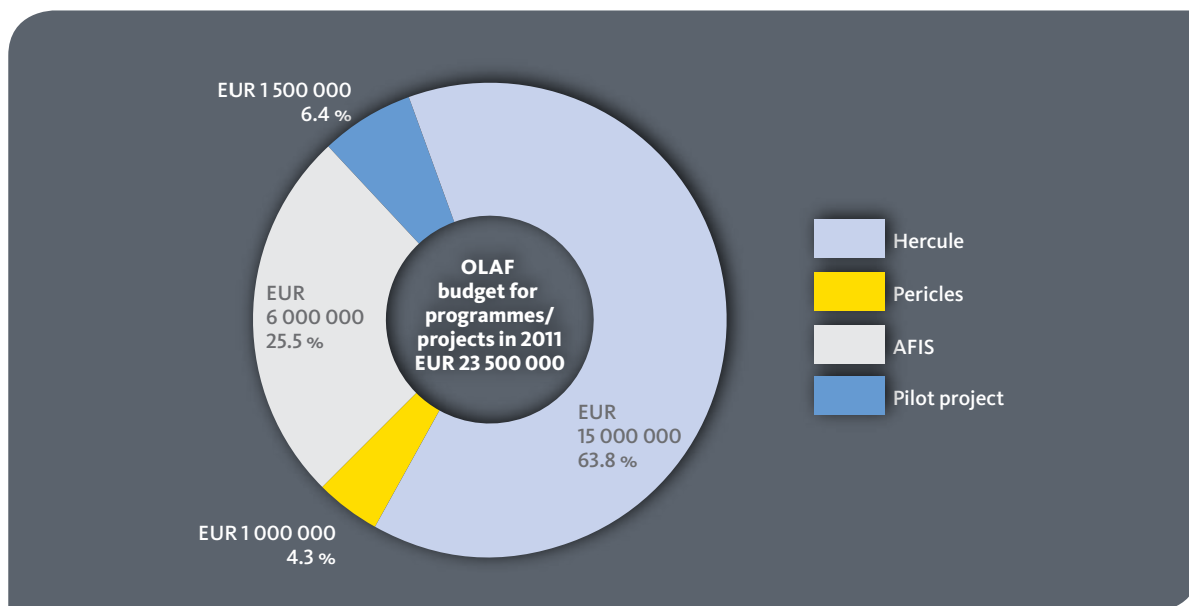
The number of investigations in which OLAF involved Eurojust has already increased from five in 2010 to 11 in 2011. Furthermore, in 2011, OLAF participated in eight coordination meetings organised by Eurojust in connection with OLAF’s investigations.

OLAF and Eurojust liaison teams continue to meet at least on a quarterly basis to enhance cooperation of ongoing OLAF investigations, discuss matters of common interest and carry out joint activities.

7.5 Prevention and support

In 2011, OLAF had a budget of EUR 23.5 million at its disposal to finance activities in the framework of the Hercule II and Pericles programmes, the operation of the Anti-Fraud Information System (AFIS) and a pilot project.

Chart 13: OLAF budget for programmes/projects in 2011



- ▶ **Hercule:** is a programme dedicated to fighting fraud, corruption and any other illegal activities affecting the financial interests of the EU.
- ▶ **Pericles:** is an exchange, assistance and training programme to strengthen the protection of euro banknotes and coins in Europe and worldwide.
- ▶ **Anti-Fraud Information System (AFIS):** offers tools to improve cooperation with partners, including other institutions, Member States, international organisations and non-EU countries.
- ▶ **Pilot project:** aims at developing a methodology to quantify the costs of corruption in public procurement.
- ▶ EUR 0.7 million went towards funding a number of specific studies and academic seminars in order to disseminate the results of academic research into the protection of EU financial interests.

On 19 December 2011, the Commission adopted a proposal for a regulation on the Hercule III programme to promote activities in the field of the protection of EU financial interests ⁽²⁰⁾. This proposal is now being discussed by the European Parliament and the Council.

7.5.1 Hercule programme: an efficient tool to prevent and fight fraud

Activities under the Hercule II programme were intended to achieve the aims set out for the Hercule programme, in particular, the improvement of transnational and multidisciplinary cooperation between the Member States and the Commission in fighting and preventing fraud and irregularities against the EU budget.

The programme provided substantial financial support to four groups of activities.

- ▶ Funding of around EUR 7 million was provided for technical assistance to national and regional (customs) authorities, allowing them to detect and prevent illegal imports of illegal or counterfeit products, including cigarettes and tobacco.
- ▶ Approximately EUR 4 million was provided to fund a large number of conferences, seminars and training activities in order to disseminate information on best practice amongst law enforcement staff working 'in the front lines' of the fight against fraud and the prevention of fraud against EU financial interests.
- ▶ Access to databases containing information on companies, trade statistics, shipments or container movements was purchased for nearly EUR 3 million. Such access enables Member States' law enforcement agencies to better carry out their investigations.

Actions funded under the Hercule programme

As part of the technical assistance element of the Hercule II programme, the Commission provided financial support to the Romanian authorities to allow them to purchase special equipment in order to strengthen the investigation of smuggled and counterfeit goods. This not only led to the seizure of substantial quantities of (counterfeit) cigarettes and smuggled tobacco, but also to the identification and arrest of customs officials suspected of corruption.

Hercule II support was used to purchase scanners deployed in harbours to improve container checks for smuggled items, such as cigarettes.

The Hercule II - funded subscription to databases containing company information results in substantial savings for Member States' law enforcement authorities. Additionally, analyses made on the basis of information available in these databases helped customs authorities, for example, in determining risk profiles of container shipments. This, consequently, enabled national customs authorities to target their investigations and detect counterfeit goods and irregularities with documents certifying the origin of goods.

⁽²⁰⁾ COM(2011) 914 final.

7.5.2 OLAF contributes to the protection of the euro

In 2011, 606 000 counterfeit euro banknotes were removed from circulation, down from 751 000 the year before and 860 000 in 2009. In the same year, 157 500 counterfeit euro coins were discovered, a total below 200 000 for the fourth consecutive year and a decrease of 15 % compared to the previous year.

With regard to the protection of euro banknotes and coins, OLAF, on behalf of the Commission, continued its activities in the following three domains:

- ▶ training and technical assistance;
- ▶ technical analysis of counterfeit euro coins; and
- ▶ the preparation of legislative initiatives.

Implementation of training and assistance requires close institutional cooperation and coordination with the competent Member State authorities, as well as with Europol, Interpol and the European Central Bank (ECB).

In 2011, 15 projects for the protection of euro banknotes and coins against counterfeiting, including conferences and seminars, were organised, under the Pericles programme, by either the Member States or OLAF, in collaboration with Europol and the ECB.



The European Technical and Scientific Centre (ETSC) ⁽²¹⁾ provided technical 'on-the-spot' support to four investigations carried out by the Member States' competent authorities, by delivering technical reports and establishing possible technical links between the different investigations.

On 19 December 2011, the Commission adopted a proposal for a new Pericles programme (Pericles 2020) for the next MFF, which has been submitted to the European Parliament and the Council.

⁽²¹⁾ Located in OLAF, established by Commission Decision 2005/37/EC of 29 October 2004 establishing the European Technical and Scientific Centre (ETSC) and providing for coordination of technical actions to protect euro coins against counterfeiting (OJ L 19, 21.1.2005, p. 73–74).

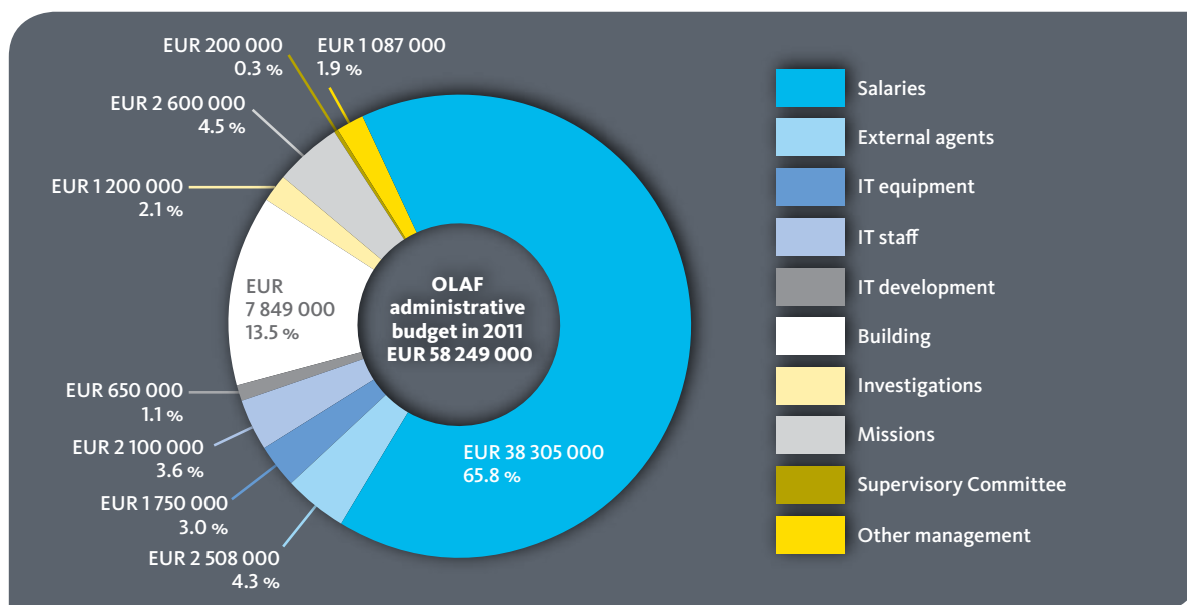


8. Resource management

8.1 Budget

In 2011, OLAF had an administrative budget of EUR 58.249 million at its disposal, the allocation of which is shown in the chart below.

Chart 14: OLAF's administrative budget in 2011



8.2 Human resources

Table 7: Overview of OLAF personnel on 31 December 2011

	Permanent and temporary posts	External personnel	Total
Fight against fraud	295	35	330
Administrative support for the European Anti-Fraud Office	41	13	54
Policy strategy and coordination for the European Anti-Fraud Office	48	5	53
Total	384	53	437

In 2011, there were no major organisational changes in OLAF as the year was dedicated to a reflection on the review of its working methods and organisation. The new organisational chart was approved by the Commission at the end of October 2011 and entered into force on 1 February 2012. The main objective of the new structure is to focus on the core tasks: investigations and anti-fraud policy.

There was a slowdown in recruitments during the second half of 2011, in anticipation of the upcoming reorganisation. However, OLAF further stabilised and retained the staff required to fulfil its mission and increased its staff, with 36 new recruits during the year. The vacancy rate for permanent posts at 31 December 2011 was around 8.5%.

8.3 Training

An important aspect of OLAF's quality management is training. The training budget for 2011 was EUR 220 000. This budget covers all internal and external training activities for OLAF staff, specialist training for analysts and training provided by OLAF for its operational partners and for other directorates-general, Member States and EU bodies.

OLAF organises internal training sessions in order to meet the specific needs of its staff in their core activities. This includes topics such as interviewing techniques, administrative writing, conducting of on-the-spot checks, clear writing and evidence gathering.

OLAF also organises general training sessions on topics including ergonomics at the workplace, assistant network sessions, ethics and individual obligations for officials, the appraisal system, lunchtime debates and away days.

Training sessions are also provided to other Commission services, for example on fraud prevention in the field of Structural Funds. In 2011, the following courses were organised:

- ▶ training on the new Irregularities Management System (IMS) modules for Structural Funds and fisheries, with representatives from national authorities;
- ▶ training on the renewed IMS module for agriculture, with representatives from national authorities;
- ▶ implementation of the reporting structure for the pre-accession aid module of the IMS in Croatia.

OLAF experts have participated, on an ad hoc basis, in training events initiated by external organisers.



9. Outlook: 2012 and beyond

A number of change processes launched or ongoing in 2011 will have an impact on the work of the Office in the coming years.

OLAF will implement the 'Instructions to staff on investigative procedures' following their introduction on 1 February 2012. The new organisation chart, effective from the same date, will also be tested in the coming period. A first assessment of these changes will be provided in next year's OLAF report.

To tackle cigarette smuggling on a global scale ⁽²²⁾, OLAF will continue to be involved in the next steps towards the adoption of the Protocol on the Elimination of the Illicit Trade in Tobacco Products, under the umbrella of the World Health Organisation's Framework Convention on Tobacco Control. It will be submitted for consideration and adoption to the Conference of the Parties in November 2012.

In the policy field, OLAF is, at the time of writing, actively engaged in the following key processes ⁽²³⁾:

- ▶ negotiations of the European Parliament and the Council on the Commission's amended proposal to improve the legislative framework governing the work of OLAF, aimed at reaching a joint compromise in the first reading;

- ▶ the implementation of the Commission's anti-fraud strategy;
- ▶ new legislative proposals on the protection of EU financial interests by substantive criminal law ⁽²⁴⁾, on the procedural framework for the protection of EU financial interests and on the establishment of a specialised European public prosecutor's office, and on the reinforcement of Eurojust and OLAF; and
- ▶ negotiations for new Hercule and Pericles programmes under the MFF for the period 2014–20.

Inasmuch as related criminal law aspects are concerned, OLAF cooperates internally with the Directorate-General for Justice.

Updated information on these ongoing processes will be posted on OLAF's website throughout the year.

⁽²²⁾ Please refer to Chapter 4 for further information.

⁽²³⁾ Please refer to Chapter 7 for further information.

⁽²⁴⁾ Scheduled for adoption by the Commission in 2012.

European Commission

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